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Monday
March 22, 1993

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Federal Register

Monday
March 22, 1993

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Contents

Federal Register
Vol. 58, No. 53
Monday, March 22, 1993

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Bradley International Airport, CT, et al.; aircraft conversions, etc., 15329

Animal and Plant Health Inspection Service
PROPOSED RULES
Practice and procedure:
Veterinary diagnostic services; user fees, 15292
Viruses, serums, toxins, etc.:
Analogous products
Restrictions and use, 15301
NOTICES
Upjohn Co.; ZW-20 virus resistant squash regulatory status determination; interpretive ruling, 15323

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Texas Commerce Bancshares, Inc., et al., 15361

Army Department
NOTICES
Meetings:
Science Board, 15330

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Florida, 15323

Coast Guard
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 15396
Navigation Safety Advisory Council, 15396

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Thailand, 15328
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 15329

Commodity Credit Corporation
RULES
Loan and purchase programs:
Price support levels—
Cotton, 15261

Defense Department
See Air Force Department
See Army Department
NOTICES
Defense Base Closure and Realignment Commission, 15238

Drug Enforcement Administration
RULES
Diversion control program; registration application fee schedule; adjustment, 15272
NOTICES
Applications, hearings, determinations, etc.:
Gaber, Ahmed, M.D., 15377
Ganes Chemical, Inc., 15378
Kirk, Lowell O., M.D., 15378
Konstantin, Karl, M.D., 15379
Ramirez, Rodrigo I., M.D., 15381

Employment and Training Administration
NOTICES
Adjustment assistance:
AT&T Technologies, 15381
Douglas Aircraft Co., 15381
Henson Kickernick, 15382
Standard Tool & Manufacturing Co. et al., 15382
Teledyne Vasco Colonial Plant et al., 15383
Committees; establishment, renewal, termination, etc.:
Native American Employment and Training Council, 15385

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreements awards:
Electric Power Research Institute, 15330
Natural gas exportation and importation:
Portal Municipal Gas, 15341
Victoria Gas Corp., 15341, 15342

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 15282
Florida, 15277
Maine, 15281
Ohio, 15278
Hazardous waste:
Oil, gas, and geothermal energy exploration, development, and production waste determinations, 15284
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 15287
PROPOSED RULES
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic and radioactive wastes; management and disposal, 15320
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; environmental protection standards, 15320

NOTICES
Toxic and hazardous substances control:
Premanufacture notices receipts, 15343

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Hartzell Propeller, Inc. model HD-E6C-3()/E13482K dual acting propeller, 15262
Standard instrument approach procedures, 15265, 15266, 15268, 15270
Transition areas, 15264
PROPOSED RULES
Airworthiness directives:
Boeing, 15305
Fairchild, 15309
NOTICES
Airport noise compatibility program:
Noise exposure map—
Ann Arbor Municipal Airport, MI, 15394
Kent County International Airport, MI, 15397
Environmental statements; availability, etc.:
Kent County International Airport, MI, 15398

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arizona, 15289
New Mexico, 15289
New York, 15288
New York et al., 15289
Washington, 15290
PROPOSED RULES
Radio stations; table of assignments:
Delaware, 15321
Louisiana, 15321

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act:
Electronic bulletin boards standards, 15311
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Ohio Power Co. et al., 15330
Hydroelectric applications, 15333
Natural gas certificate filings:
Northern Natural Gas Co. et al., 15339

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Rutland County, VT, 15398

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 15400

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Celebrity Cruises Inc. et al., 15349

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Gulf Coast Bank Holding Co., Inc., et al., 15350
Lyon, Stephen J., et al., 15350
Olmsted Bancorporation, Inc., 15350
Saban S.A.; correction, 15351

Food and Drug Administration
NOTICES
Biological product licenses:
Worldwide Biologicals, Inc., 15351
Meetings:
Advisory committees, panels, etc., 15353

Geological Survey
NOTICES
National Environmental Policy Act; proposed implementing procedures, 15355

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
April, 15353

Indian Affairs Bureau
PROPOSED RULES
Energy and minerals:
Indian lands; Federal programs, 15404

Interior Department
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Election, revocation, termination, and tax effect of Subchapter S status; correction, 15274
PROPOSED RULES
Employment taxes and collection of income taxes at source:
Qualified business unit; change to dollar approximate separate transactions accounting method
Correction, 15312
Estate and gift taxes:
Generation-skipping transfer tax; correction, 15314
Income taxes:
Nuclear power plant interest disposition; correction, 15312
Qualified retirement plans—
Cash or deferred arrangements; correction, 15313
Income taxes and estate and gift taxes:
Marital deduction provisions; changes
Correction, 15313
Procedure and administration:
Taxpayers involved in administrative proceedings; reasonable administrative costs recovery; correction, 15314

International Trade Administration
NOTICES
Antidumping:
Hot-rolled lead and bismuth carbon steel products from—

Brazil et al., 15324
Countervailing duties:
Hot rolled lead and bismuth carbon steel products from—
Brazil, 15324
France, 15326
Germany, 15325
United Kingdom, 15327
Meetings:
Exporters' Textile Advisory Committee, 15323

Interstate Commerce Commission
RULES
Privacy Act; implementation, 15290
NOTICES
Agency information collection activities under OMB review, 15356
Privacy Act:
Systems of records, 15357
Railroad services abandonment:
Chicago & North Western Transportation Co., 15356
CSX Transportation, Inc., 15357

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Alpha Cellulose Corp., 15359
Fina Oil & Chemical Co., 15359
Inland Steel Corp., 15360
LaRoche Industries, Inc., 15360

Labor Department
See Employment and Training Administration
See Labor-Management Standards Office

Labor-Management Standards Office
RULES
Employee rights notification; payment of union dues or fees; Executive Order 12800 implementation; CFR Part removal, 15402

Land Management Bureau
NOTICES
Meetings:
Worland District Grazing Advisory Board, 15355

National Aeronautics and Space Administration
NOTICES
Meetings:
Minority Business Resource Advisory Committee, 15385

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 15385
Meetings:
Music Advisory Panel, 15386
Presenting and Commissioning Advisory Panel, 15386

National Institutes of Health
NOTICES
Meetings:
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 15354

National Labor Relations Board
PROPOSED RULES
Union fees and dues; exaction limitations, 15314

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 15291
Marine sanctuaries:
Monterey Bay National Marine Sanctuary, CA, 15271

National Park Service
NOTICES
Meetings:
Mississippi River Corridor Study Commission, 15355

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants; maintenance effectiveness monitoring, 15303

Pension Benefit Guaranty Corporation
PROPOSED RULES
Single-employer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 15315

Presidential Documents
PROCLAMATIONS
Special observances:
American Red Cross Month (Proc. 6535), 15411
Poison Prevention Week, National (Proc. 6536), 15413

President's Commission on Model State Drug Laws
NOTICES
Meetings, 15386

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 15400
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 15387
Intermarket Clearing Corp., 15389
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 15390
Applications, hearings, determinations, etc.:
Equitable Funds et al., 15390
ICOS Corp., 15392

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 15275
PROPOSED RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamations operation—
Indian lands; Federal programs, 15404
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 15315
Wyoming, 15318, 15319

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 15395
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 15396

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Labor, Labor-Management Standards Office, 15401

Part III
Department of the Interior, Bureau of Indian Affairs, 15403

Part IV
The President, 15409

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6535.....15411
6536.....15413

7 CFR

1427.....15261

9 CFR

Proposed Rules:

92.....15292
113.....15301
130.....15292

10 CFR

Proposed Rules:

50.....15303

14 CFR

35.....15262
71.....15264
97 (4 documents).....15265, 15266, 15268, 15270

Proposed Rules:

39 (2 documents).....15305, 15309

15 CFR

944.....15271

18 CFR

Proposed Rules:

284.....15311

21 CFR

1301.....15272
1311.....15272

25 CFR

Proposed Rules:

216.....15404

26 CFR

1.....15274

Proposed Rules:

1 (4 documents).....15312, 15313
20.....15313
25.....15313
26.....15314
301 (2 documents).....15314

29 CFR

470.....15402

Proposed Rules:

103.....15314
2619.....15315
2676.....15315

30 CFR

920.....15275

Proposed Rules:

710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
935.....15315
950 (2 documents).....15318, 15319

40 CFR

52 (4 documents).....15277, 15278, 15281, 15282
261.....15284
300.....15287

Proposed Rules:

144.....15320
191.....15320
194.....15320

47 CFR

73 (5 documents).....15288, 15289, 15290

Proposed Rules:

73 (3 documents).....15321

49 CFR

1007.....15290

50 CFR

675.....15291

Rules and Regulations

Federal Register
Vol. 58, No. 53
Monday, March 22, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AC55

Cotton Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On September 4, 1992, the Commodity Credit Corporation (CCC) issued an interim rule with respect to the cotton price support program which is conducted by the CCC in accordance with The Agricultural Act of 1949, as amended (the 1949 Act). The interim rule amended the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the CCC in accordance with the 1949 Act. The interim rule provided greater clarity, enhanced the administration of CCC programs by providing uniformity between CCC price support programs, eliminated obsolete provisions, and more appropriately, reflected loan eligibility quality requirements for the 1992 and subsequent year crops. This rule adopts as final the interim rule published on September 4, 1992.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and it has been determined "nonmajor" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. To the extent State and local laws are in conflict with the provisions of this final rule, the provisions of this final rule shall prevail. This final rule is not retroactive. Before any judicial action may be brought with respect to the provisions of this final rule, administrative appeal remedies at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1427 set forth in this final rule do not contain any new or revised information collection requirements that require clearance through the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35. The information collection requirements contained in the current regulations at 7 CFR part 1427 and have been approved through August 31, 1994, by the OMB under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0074, 0560–0087, and 0560–0129. Public reporting burden for these collections is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the information collection requirements, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Office, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, paperwork reduction Project (OMB No. 0560–0074, 0087, 0129), Washington, DC 20503.

Discussion of Comments

Four letters were timely received in response to the interim rule published on September 4, 1992, requesting public comments on the interim regulations for implementing the price support loan programs for upland and extra long staple cotton which are conducted by the CCC.

All respondents opposed CCC's proposal to allow cotton graded by entities other than Agricultural Marketing Service (AMS) to be eligible to be pledged as collateral for CCC price support loans, if such entities are approved by CCC. Commenters believed classing consistency and quality assurance standards can be best maintained using AMS personnel and classing facilities. Commenters also believed that allowing non-government classing may result in increased classing costs for producers using AMS and potential fraudulent and inconsistent of classing results. Although this provision is opposed by all commenters, CCC believes that non-government entities

could provide accurate classing information in some areas and result in lower cost to producers in those areas. However, CCC will only approve non-government entities that conform with terms and conditions set forth by AMS. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on CCC's definition of "authorized loan servicing agent (LSA)" to clarify that authorized LSA's may make loan deficiency payments (LDP's) to eligible producers. The respondents agreed with CCC's definition. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on CCC's removal of the provisions that did not allow producers to delegate to a person, who has an interest in storing, processing, or merchandising cotton which is eligible for price support or an LDP, authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement, LDP request, or any other applicable price support document. The respondents agreed with CCC's removal. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on CCC's clarification that the quantity of cotton for which an LDP has been made cannot be pledged as collateral for a price support loan. The respondents agreed with CCC's clarification. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on the changing of the referenced year from 1991 to 1992 for the Specifications for Cotton Bale Packaging Materials published by the Joint Cotton Industry Bale Packaging Committee. The respondents agreed with CCC's change. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on the clarification that the producer must retain control, title, and risk of loss in the commodity to be considered eligible to receive a CCC price support commodity loan or LDP, as applicable, on an eligible commodity. The respondents agreed with CCC's clarification. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on the provision that CCC will accept a gin bale-listing and gin weights in lieu of requiring a warehouse receipt for an LDP. The respondents agreed with the interim rule. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on the provision to provide that the producer may file a request for LDP before or on the day the cotton is ginned and receive an LDP based on the date of ginning. The respondents agreed with the interim rule. CCC has determined that this provision of the interim rule is adopted without change.

Two respondents commented on the provision to provide that an LDP made on cotton pledged under a seed cotton loan must be applied to the applicable outstanding seed cotton loan balance. The respondents agreed with the interim rule. CCC has determined that this provision of the interim rule is adopted without change.

Accordingly, the interim rule amending 7 CFR part 1427 that was published at 57 FR 40593 on September 4, 1992, is adopted as a final rule without change.

Signed this 17th day of March, 1993 in Washington, DC.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-6483 Filed 3-19-93; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. 92-ANE-47; Special Conditions No. SC-92-03-NE]

Special Conditions: Hartzell Propeller, Inc., Model HD-E6C-3( )/E13482K Dual Acting Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Hartzell Propeller, Inc., Model HD-E6C-3( )/E13482K Dual Acting Propeller, installed on Dornier DO-328 aircraft. This propeller uses a dual acting, pitch control system and has propeller blades constructed using composite material. These design features are novel and unusual. Part 35 of the Federal Aviation Regulations (FAR) does not currently address the airworthiness considerations associated with dual acting, pitch control systems, or propellers constructed using composite blades. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 35 of the FAR.

EFFECTIVE DATE: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; (617) 273-7079; Fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1989, Hartzell Propeller, Inc., applied for type certification for Model HD-E6C-3( )/E13482K propeller. This propeller uses a dual acting, pitch control system and has propeller blades constructed using composite material. These design features are novel and unusual. Part 35 of the FAR does not provide airworthiness standards for propellers using a dual acting, pitch control system or composite blades.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Hartzell Propeller, Inc., must show that the Model HD-E6C-3( )/E13482K propeller meets the requirements of the applicable regulations in effect on the date of the application. These Federal Aviation Regulations are § 21.21 and part 35, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations in part 35, as amended, do not contain adequate or appropriate safety standards for the Hartzell Propeller, Inc., Model HD-E6C-3( )/E13482K propeller. Therefore, the Administrator prescribes special conditions under the provisions of Section 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with Section 11.49 of the FAR after public notice and opportunity for comment, as required by Sections 11.28 and 11.29(b), and become part of the type certification basis in accordance with Section 21.101(b)(2).

Novel or Unusual Design Features

The Hartzell Propeller Model HD-E6C-3( )/E13482K propeller uses a dual acting, pitch control system with hydraulic components and a pitchlock. This dual-acting system can be susceptible to failures and, when followed by improper commands, may result in, for example: rapid increase in propeller RPM, extremely high disk

drag, or high asymetric disk drag. Rapid increases in propeller RPM at high airspeeds can result in massive propeller overspeeds. Extremely high disk drag or high asymetric disk drag can result in rapid slowing of the aircraft below the speed necessary for flight, especially on wing-mounted turbo-propeller aircraft.

Dual acting, pitch control systems must, therefore, demonstrate structural integrity of all mechanical and hydraulic components, maintain hydraulic capacity at all times, and demonstrate pitchlock system integrity.

This model propeller also uses blades of composite materials having additional airworthiness considerations not currently addressed by part 35 of the FAR. Those additional airworthiness considerations associated with propellers constructed using composite materials are propeller integrity following a bird strike, propeller integrity following a lightning strike, and propeller fatigue strength when exposed to the deteriorating effects of in-service use and the environment. Composite materials have fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the matrix material. Composite materials can exhibit multiple modes of failure. Propellers constructed of composite materials must demonstrate continued airworthiness when considering these novel design features not associated with propeller blades constructed using other materials.

The requirements of part 35 of the FAR were established to address the airworthiness considerations associated with wood and metal propellers used primarily on reciprocating engines. Propeller blades of those types are generally thicker than composite blades and have demonstrated good service experience following a bird strike. Propeller blades constructed using composite materials are generally thinner when used on turbine engines, and are typically installed on high-performance aircraft. Further, high-performance aircraft generally fly at high airspeeds with correspondingly high-impact forces associated with a bird strike. Thus, composite propellers must demonstrate propeller integrity following a bird strike.

In addition, part 35 of the FAR does not currently require a demonstration of propeller integrity following a lightning strike. No safety considerations arise from lightning strikes on propeller blades constructed of metal because the electrical current is safely conducted through the metal blade, without damage to the propeller. Fixed-pitch, wooden propellers are generally used on engines installed on small, general-aviation aircraft that typically do not encounter flying conditions conducive to lightning strikes. Composite-propeller blades, however, may be used on turbine engines and high-performance aircraft which have an increased risk of lightning strikes. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite-propeller blades must demonstrate propeller integrity following a lightning strike. Information on testing for lightning protection is contained in SAE Report AE4L, entitled, "Lightning Test Waveforms and Techniques for Aerospace Vehicles and Hardware," dated June 20, 1978.

Lastly, the current certification requirements only address fatigue evaluation of metal propeller blades or hubs and those metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature and erosion. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Due consideration has been given to the comments received.

One commenter supports the special conditions as proposed.

One commenter supports the special conditions as proposed and provided the following comments to which the FAA agrees. In addition, this commenter requested information on how the auxiliary feathering pump was selected to give a feathering capability up to 141 percent overspeed. This is also explained below.

(a) Feathering Capability: The propeller manufacturer calculated the maximum propeller overspeed that can be attained with the aircraft air speed at V_{mo} and a flat propeller pitch. The propeller manufacturer proposed a feathering capability at 141 percent overspeed, and this was accepted by the FAA.

(b) The commenter agreed with the intent of the special conditions to prevent the capacity of the propeller overspeed system from being exceeded due to a failure in the pitch control system, or due to an inadvertent command to blade fine pitch.

(c) The commenter noted that damage resulting from a lightning strike on Hartzell's propeller control system be acceptable, provided no unsafe condition results. The FAA agrees, provided it can be shown that no critical function is affected.

(d) The commenter noted that the HERF testing of Hartzell's propeller control system be conducted at the intended airplane HERF environmental levels.

The FAA has changed the reference to High Intensity Radio Frequencies (HIRF) in paragraph (1) of the proposed rule to High Energy Radio Frequency (HERF).

After careful review of the available data, including the comments noted above, the FAA determined that air safety and the public interest require the adopting of the special conditions as proposed, with the change noted.

Conclusion

This action affects only the Hartzell Propeller, Inc., Model HD–E6C–3()/E13482K Dual Acting Propeller, installed on Dornier DO–328 aircraft. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Hartzell Propeller, Inc., HD–E6C–3()/E13482K Dual Acting Propeller installed on Dornier DO–328 airplanes:

(a) *Propeller Pitch Control System—Variable Pitch Propellers Strength, Deformation, and Fatigue Evaluation:*

(1) The control system must be able to support limit loads without detrimental permanent deformation. At any load up to limit load through V_{ne}, the control system deformation may not interfere with safe operation. The control system must support ultimate loads without failure.

(2) Each component of the control system whose structural failure can cause loss of propeller pitch control must be fatigue evaluated for the defined loading spectra expected in service. Environmental effects and

service deterioration must be included. Each established mandatory replacement time and inspection interval must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness as required by FAR 35.4.

(b) *Propeller Pitch Control:*

(1) The auxiliary feathering pump unit shall maintain feathering capability up to maximum propeller overspeed, or 141 percent overspeed limitation and an airspeed limitation of V_{mo}, for the intended aircraft installation, that can be attained in service with the propeller overspeed protection system inoperative.

(2) A failure in the propeller pitch-control system or an inadvertent command toward fine blade pitch shall not result in overspeeding the propeller, such that the capacity of the overspeed protection system is exceeded. This is to be demonstrated for propeller loadings up to V_{mo} of the intended aircraft installation.

(3) It must be shown that the propeller pitch-control system has the hydraulic capacity, with sufficient margin, to control propeller pitch for all normal category operating conditions.

(c) *Hyraulic Systems Tests*:

All components that must withstand hydraulic pressure, and whose structural failure or leakage could cause loss or deterioration of propeller control, must be tested as follows:

(1) Show that the components can withstand a pressure of 1.5 times the design operating pressure without deformation that would prevent them from performing their intended functions.

(2) Burst pressure test 2.0 times the maximum operating pressures.

(3) Fatigue tests and evaluation to demonstrate that the components can withstand the number of cyclic pressures (defined loading spectra) expected in service. Each established mandatory replacement time and inspection interval must be included in the Airworthiness Limitation Section of the Instructions for Continued Airworthiness as required by FAR section 35.4

(d) *Pitchlock*:

A pitchlock system must maintain a fixed position, and its structural integrity, under all expected conditions of applied loading and vibration frequencies. The pitchlock system cannot interfere with the normal pitch control system operation.

(e) *Hydraulic Pump-Warning Light/ Indicator*:

A provision must be available to install a warning light/indicator to show when the hydraulic pump pressure is at its lowest acceptable level. It shall indicate when a maintenance check of the system is required.

(f) *Fatigue Evaluation for Composite Propeller Blades*:

The procedures for the fatigue evaluation must be approved (a fatigue Methodology Report is required for approval).

(g) *Propeller Hub to Shaft Connection*:

Verify that the deflections of the propeller shaft and its connecting flange are such that unacceptable axial loads are not applied to the hub to shaft connection.

(h) *Failure Analysis*:

(1) A failure mode and effects analysis of the propeller and its control system shall be carried out in order to assess all failures that can be reasonably expected to occur.

(2) Catastrophic failure conditions must be extremely improbable. No identified single failure, or combination of failures (likely combinations including dormant failures), shall have a probability of greater than 10 to the minus 9th power per propeller hour that can result in a catastrophic failure. Catastrophic failure conditions are those which would prevent continued safe flight and landing.

(i) *Bird Strike*

The propeller can withstand a 4 pound bird strike at its critical radial location, when rotating to takeoff RPM and liftoff speed of a representative aircraft, without giving rise to the following hazardous conditions, while maintaining the capability to be feathered:

(1) Loss of propeller, a blade, or a major portion thereof;

(2) Propeller overspeed; or

(3) Unintended movement of the blades to an angle that would cause excessive drag, or that is below the established minimum inflight blade angle.

(j) *Lightning Strike-Propeller:*

A lightning strike on a propeller shall not result in the following hazardous conditions, and the propeller must be capable of continued operation:

(1) Loss of propeller, a blade, or a major portion thereof;

(2) Propeller overspeed; or

(3) Losing the capability to be feathered;

(4) Unintended movement of the blades to an angle that would cause excessive drag, or that is below the established minimum inflight blade angle.

(k) *Lightning Strike-Propeller Control System:*

(1) Multiple-stroke and multiple-burst testing must be conducted on the propeller control system and demonstrate no adverse effects on the control system performance or resultant damage.

(2) All the electro-mechanical components of the propeller system shall be pin-injected tested to appropriate wave forms and levels with no resultant damage.

(l) *High Energy Radio Frequencies (HERF) Protection-Propeller System:*

HERF susceptibility tests are to be conducted on the propeller-control system with no adverse effects on control system performance.

Issued in Burlington, Massachusetts, on March 4, 1993.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–6492 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–20]

Transition Area Modification; Brookings, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the transition area near Brookings, SD, to accommodate a new ILS/DME runway 30 instrument approach procedure to Brookings Municipal Airport, Brookings, SD. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, December 11, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area near Brookings, SD, (57 FR 58754). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The control

zone description, however, has been withdrawn from this final rule. The terminal airspace reclassification docket which became effective on October 15, 1992, contains the same legal description that was proposed in the notice of proposed rulemaking. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the transition area near Brookings, SD, to accommodate a new ILS/DME runway 30 instrument approach procedure to Brookings Municipal Airport, Brookings, SD.

The development of a new instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AGL SD TA Brookings, SD [Revised]
Brookings Municipal Airport, SD
(lat. 44° 18′ 15″ N., long. 90° 48′ 58″ W.)
BARTT Outer Marker
(lat. 44° 14′ 20″ N., long. 96° 42′ 06″ W.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of the Brookings Municipal Airport and within 4 miles northeast and 8 miles southwest of the 129° bearing from the BARTT outer marker extending from the outer marker to 16 miles southeast of the outer marker and within 8 miles north and 4 miles south of the 118° bearing from the airport to 16 miles east of the airport, and within 8 miles southwest and 4 miles northeast of the 322° bearing from the airport extending from the airport to 16 miles northwest of the airport, excluding that airspace within the Brookings, SD, Control Zone during the specific dates and times that it is effective.

* * * * *

Issued in Des Plaines, Illinois, on February 23, 1993.

Harold G. Hale,

Acting Manager, Air Traffic Division.

[FR Doc. 93–6490 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27203; Amdt. No. 1537]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 97.20 of the Federal Aviation Regulations (FAR) The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–

4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on March 12, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing; amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 37.35 COPTER SIAPs, identified as follows:

* * * *Effective May 27, 1993*

San Luis Obispo, CA, San Luis Obispo County-McChesney Field, LOC RWY 11, Amdt. 4
Tulare, CA, Mefford Field, VOR/DME RWY 13, Orig. Crystal River, FL, Crystal River-Homosassa Air Terminal, VOR/DME–A, Orig.
Asheville, NC, Asheville Regional, NDB RWY 34, Amdt. 18 Stillwater, OK, Stillwater Muni, VOR/DME RWY 35, Orig.

* * * *Effective April 29, 1993*

Little Rock, AR, Adams Field, VOR/DME RNAV RWY 22R, Amdt. 10
Burbank, CA, Burbank-Glendale-Pasadena, VOR RWY 8, Amdt. 10
Burbank, CA, Burbank-Glendale-Pasadena, LOC RWY 8, Amdt. 2
Burbank, CA, Burbank-Glendale-Pasadena, NDB RWY 8, Amdt. 2
Burbank, CA, Burbank-Glendale-Pasadena, ILS RWY 8, Amdt. 35
Stockton, VA, Stockton Metropolitan, VOR RWY 29R, Amdt. 18
Taylorville, IL, Taylorville Muni, NDB RWY 18, Amdt. 3
Roswell, NM, Roswell Industrial Air Center, LOC BC RWY 3, Amdt. 8

* * * *Effective April 1, 1993*

Spencer, IA, Spencer Muni Airport, NDB RWY 12, Orig.
Spencer, IA, Spencer Muni Airport, ILS RWY 12, Orig.
Nantucket, MA, Nantucket Memorial, VOR RWY 24, Amdt. 12
Nantucket, MA, Nantucket Memorial, LOC BC RWY 6, Amdt. 7
Nantucket, MA, Nantucket Memorial, NDB RWY 24, Amdt. 10
Nantucket, MA, Nantucket Memorial, ILS RWY 24, Amdt. 14
Worcester, MA, Worcester Muni, LOC RWY 29, Orig.
Grand Marais, MN, Devils Track Municipal, NDB RWY 27, Amdt. 6, Cancelled
Grand Marais, MN, Grand Marais-Cook County, NDB RWY 27, Orig. Orr, MN, Orr Regional, NDB RWY 13, Amdt. 7
New Richmond, WI, New Richmond Muni, NDB RWY 13, Amdt. 2, Cancelled
New Richmond, WI, New Richmond Muni, NDB RWY 14, Orig.

[FR Doc. 93–6489 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27204; Amdt. No. 1538]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions. Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW.; Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description on each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on March 12 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURE

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC Nos.	SIAP
02/18/93	LA	New Orleans	New Orleans INTL/ MOISANT FLD.	3/0846	ILS RWY 10 (CAT III) AMDT ORIG–A...
02/26/93	AL	Selma	Craig Field	3/1042	NDB RWY 32 AMDT 2...
02/26/93	AL	Selma	Craig Field	3/1043	ILS RWY 32 ORIG...
02/26/93	KS	Phillipsburg	Phillipsburg Muni	3/1033	NDB RWY 31 AMDT 5...
02/26/93	LA	Slidell	Slidell	3/1030	VOR/DME RWY 17 AMDT 2...
02/26/93	LA	Slidell	Slidell	3/1031	NDB RWY 17 ORIG...
02/26/93	PA	Monongahela	Rostraver	3/1024	VOR–A AMDT 4...
02/26/93	SC	North Myrtle Beach	Grand Strand	3/1025	NDB RWY 23 AMDT 10...
02/26/93	SC	North Myrtle Beach	Grand Strand	3/1026	ILS RWY 23 AMDT 9...
03/02/93	AL	Butler	Butler-Choctaw County.	3/1100	NDB RWY 11, AMDT 2...
03/02/93	AL	Centre	Centre Muni	3/1099	VOR/DME RWY 27, AMDT 1...
03/02/93	IA	Perry	Perry Muni	3/1106	NDB RWY 31 AMDT 4...
03/02/93	IA	Perry	Perry Muni	3/1147	NDB RWY 13 AMDT 1...
03/02/93	MA	Bedford	Laurence G. Hanscom Field.	3/1112	ILS RWY 29 AMDT 3...
03/02/93	MA	Bedford	Laurence G. Hanscom Field.	3/1113	NDB RWY 29 AMDT 5...
03/02/93	MA	New Bedford	New Bedford Muni	3/1114	NDB RWY 5, AMDT 11...
03/03/93	TX	Houston	William P. Hobby	3/1129	VOR/DME RWY 22 AMDT 23...
03/03/93	TX	Houston	William P. Hobby	3/1132	ILS RWY 12R AMDT 11..
03/03/93	TX	Houston	William P. Hobby	3/1133	LOC BC RWY 22 AMDT 3
03/05/93	AK	Delta Junction/Ft. Greely.	Allen AAF	3/1202	VOR/DME OR TACAN RWY 18 AMDT 2B
03/05/93	AK	Delta Junction/Ft. Greely.	Allen AAF	3/1203	VOR RWY 18 AMDT 7A...
03/05/93	AK	Delta Junction/Ft. Greely.	Allen AAF	3/1204	NDB–A AMDT 3A...
03/05/93	AL	Montgomery	Dannelly Field	3/1190	RNAV RWY 3 AMDT 5...
03/05/93	AL	Montgomery	Dannelly Field	3/1191	NDB RWY 9 AMDT 18...
03/05/93	AL	Montgomery	Dannelly Field	3/1192	ILS RWY 9 AMDT 23...
03/05/93	AL	Montgomery	Dannelly Field	3/1193	ILS RWY 27, AMDT 8...
03/05/93	AL	Montgomery	Dannelly Field	3/1194	VOR–A, AMDT 3...
03/05/93	IA	Harlan	Harlan Muni	3/1175	NDB RWY 33 AMDT 3...
03/05/93	IN	Nappanee	Nappanee Muni	3/1198	VOR/DME–A AMDT 3...
03/05/93	NJ	Newark	Newark Intl	3/1180	ILS RWY 4R AMDT 8...
03/05/93	NJ	Newark	Newark Intl	3/1181	ILS RWY 4L AMDT 11...
03/10/93	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field.	3/1243	ILS RWY 20L AMDT 14...
03/10/93	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field.	3/1244	NDB RWY 20L AMDT 11...

[FR Doc. 93–6488 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27182; Amdt. No. 1535]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation

Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on February 26, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC Nos.	SIAP
02/12/93	AK	Nome	Nome	3/0739	VOR/DME RWY 9 ORIG...
02/12/93	ME	Pittsfield	Pittsfield Muni	3/0738	NDB RWY 1 AMDT 3...
02/12/93	TN	Columbia/Mt Pleasant.	Maury County	3/0748	NDB RWY 23 AMDT 3A... this corrects NOTAM 3/0527.
02/16/93	MO	St. Louis	Spirit of St. Louis	3/0793	NDB RWY 26L ORIG A...
02/16/93	MO	St. Louis	Spirit of St. Louis	3/0794	LOC RWY 26L AMDT 3A...
02/18/93	ST	Charlotte Amalie	Cyril E. King	3/0843	THOMAS, VI. ILS RWY 10 ORIG A...
02/19/93	AR	Walnut Ridge	Walnut Ridge Regional.	3/0867	LOC RWY 17 AMDT 2A...
02/19/93	AR	Walnut Ridge	Walnut Ridge Regional.	3/0868	NDB RWY 17 AMDT 3A...

NFDC TRANSMITTAL LETTER—Continued

Effective	State	City	Airport	FDC Nos.	SIAP
02/19/93	NY	Dunkirk	Dunkirk/Chautauqua County.	3/0858	VOR RWY 24 AMDT 6...
02/19/93	NY	Dunkirk	Dunkirk/Chautauqua County.	3/0859	VOR RWY 6 AMDT 1...
02/22/93	IN	Lowell	Lowell	3/0912	VOR–A ORIG...
02/22/93	IN	Rensselaer	Jasper County	3/0911	NDB RWY 18 AMDT 3...
02/22/93	IN	South Bend	Michina Regional	3/0910	VOR RWY 18 AMDT 7...
02/22/93	IN	Valparaiso	Porter County Muni ..	3/0907	RNAV RWY 9 AMDT 2...
02/22/93	IN	Valparaiso	Porter County Muni ..	3/0908	NDB RWY 27 AMDT 5...
02/22/93	IN	Valparaiso	Porter County Muni ..	3/0909	ILS RWY 27 AMDT 2A...
02/22/93	NJ	Linden	Linden Airport	3/0922	VOR/DME–D ORIG...
02/23/93	NJ	Linden	Linden Airport	3/0968	VOR–C ORIG...
02/23/93	PA	Johnstown	Johnstown-Cambria County.	3/0987	ILS RWY 33 AMDT 2...
02/24/93	NE	Aurora	Aurora Muni	3/0991	NDB RWY 16 AMDT 1...
02/24/93	NE	Aurora	Aurora Muni	3/0992	VOR–A AMDT 4...
02/24/93	TN	Savannah	Savannah-Hardin County.	3/0996	SDF RWY 18 AMDT 3...
02/24/93	TN	Savannah	Savannah-Hardin County.	3/0997	VOR/DME RWY 18 AMDT 5...
02/24/93	TN	Savannah	Savannah-Hardin County.	3/0998	NDB RWY 18 AMDT 3...
02/25/93	IN	Gary	Gary Regional	3/1004	VOR/DME RWY 2 AMDT 5...
02/25/93	IN	Gary	Gary Regional	3/1006	NDB RWY 30 AMDT 6...
02/25/93	IN	Gary	Gary Regional	3/1008	ILS RWY 30 AMDT 3...

[FR Doc. 93–6487 Filed 3–19–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27181; Amdt. No. 1534]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather. Issued in Washington, DC on February 26, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective May 27, 1993*

Scottsdale, AZ, Scottsdale, VOR–B, Orig.
Torrance, CA, Zamperini Field, ILS RWY 29R, Amdt. 2
Bainbridge, GA, Decatur County Industrial Airpark, VOR–A, Amdt. 3
Kenton, OH, Hardin County, VOR/DME RNAV RWY 22, Amdt. 1
Mansfield, OH, Mansfield Lahm Nuni, RADAR–1 Amdt. 4
North Kingstown, RI, Quonset State, ILS RWY 16, Amdt. 5
Rapid City, SD, Rapid City Regional, VOR or TACAN RWY 32, Amdt. 24
Rapid City, SD, Rapid City Regional, VOR/DME or TACAN RWY 14, Amdt. 15, CANCELLED
Rapid City, SD, Rapid City Regional, VOR or TACAN RWY 14, Orig.
Rapid City, SD, Rapid City Regional, NDB RWY 32, Amdt 3
Rapid City, SD, Rapid City Regional, ILS RWY 32, Amdt. 17
Madisonville, TN, Monroe County, NDB RWY 5, Amdt. 4
Follett, TX, Follett-Lipscomb County, NDB RWY 35, Amdt. 1, Cancelled

* * * *Effective April 29, 1993*

Eagle Lake, TX, Eagle Lake, VOR RWY 17, Amdt. 4

* * * *Effective April 1, 1993*

Gulf Shores, AL, Jack Edwards, RADAR–1, Amdt. 1, CANCELLED
Bainbridge, GA, Decatur County Industrial Air Park, NDB RWY 27, Orig.
Angola, NY, Angola, VOR/DME–A, Orig.
Roxboro, NC, Person County, NDB RWY 6, Amdt. 2
North Myrtle Beach, SC, Grand Strand, VOR/DME or TACAN RWY 23, Amdt. 3, CANCELLED
North Myrtle Beach, SC, Grand Strand, VOR RWY 23, Amdt. 18
North Myrtle Beach, SC, Grant Strand, VOR/DME or TACAN RWY 5, Amdt. 4, CANCELLED
North Myrtle Beach, SC, Grand Strand, VOR RWY 5, Amdt. 19
Conroe, TX, Montgomery County, LOC RWY 14, Amdt. 1, CANCELLED
Conroe, TX, Montgomery County, ILS RWY 14, Orig.
Sinton, TX, San Patricio County, VOR/DME RWY 14, Orig.
Sinton, TX, San Patricio County, VOR RWY 32, Amdt. 7
Tacoma, WA, Tacoma Narrows, NDB RWY 35, Amdt. 5
Wenatchee, WA, Pangborn Field, VOR–B, Amdt. 4

* * * *Effective February 15, 1993*

St. Charles MO, St. Charles, VOR RWY 9, Amdt. 4.

[FR Doc. 93–6486 Filed 3–19–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 930361–306]

Monterey Bay National Marine Sanctuary: Petition to Suspend, Reconsider and Repeal Those Portions of the Monterey Bay National Marine Sanctuary Regulations Restricting the Use of Motorized Personal Water Craft

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: NOS announces its decision to deny a petition for a rulemaking received pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) from the Personal Watercraft Industry Association (Petitioner). The petition requested NOS to "suspend, reconsider and repeal" those portions of the Monterey Bay National Marine Sanctuary (Sanctuary) regulations (57 FR 43310, to be codified at 15 CFR part 944) that restrict the use of motorized personal water craft (MPWC) to four areas within the Sanctuary. NOS has determined that, at present, there is no basis for suspending or repealing the MPWC regulation. If upon completion of an 18-month vessel traffic study, new findings arise with regard to the impact of MPWC on Sanctuary resources and qualities, NOS will at that time determine if it is necessary to revise the regulation.

EFFECTIVE DATE: March 16 1993.

FOR FURTHER INFORMATION CONTACT: Michael L. Weber, Deputy Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235; (202/606–4122).

SUPPLEMENTARY INFORMATION: On September 18, 199[illegible] NOS published final implementing regulations for the Monterey Bay National Marine Sanctuary (57 FR 43310, to be codified at 15 CFR part 944). The regulations became effective January 1, 1993 (57 FR 55444, November 25, 1992). One of the regulations restricts the operation of MPWC to four areas and access routes within the Sanctuary (57 FR 43325, 43328, 43329, to be codified at 15 CFR 944.5(a)(8) and Appendix III).

The regulations define MPWC as:

> Any motorized vessel that is less than fifteen feet as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, miniature speed boats, air boats and hovercraft.

57 FR 43324, to be codified at 15 CFR 944.3(a).

On November 17, 1992, NOAA received a petition from Petitioner, whose member companies include Arctco, Inc., Kawasaki Motor Corp., U.S.A., Yamaha Motor Corp., U.S.A., WetJet International Ltd., and SurfJet International Ltd., requesting that NOAA:

> [i]nitiate rulemaking proceedings to reconsider and repeal those provisions of the recently-promulgated rule which restrict only the use of personal watercraft with the Monterey Sanctuary; [e]xpressly acknowledge that (1) there is currently no basis for distinguishing between personal watercraft and other motorized vessels with respect to any potential threat posed to Sanctuary resources, and (2) there is no basis for concluding that personal watercraft pose any actual threat to the Sanctuary; and [a]ct expeditiously to suspend the application of the recently-promulgated personal watercraft restrictions, pending completion of the requested rulemaking proceedings.

Petition, p. 2.

The petition also states that:

> Petitioner requests that NOAA act to suspend the personal watercraft restrictions before the agency completes its report to Congress on vessel traffic generally. Specifically, Petitioner urges that a proposal to suspend the personal watercraft regulation be published in response to this petition, together with notice of NOAA's intent to reconsider the personal watercraft restrictions and to undertake a rulemaking regarding vessel traffic in general. Petitioner submits that final action on the suspension proposal would be appropriate after a public comment period, but before NOAA makes any determination whether general vessel traffic regulations are necessary.

Petition, p. 8, footnote 6.

On December 14, 1992, NOS published a notice of receipt of the petition (57 FR 59086).

NOS has reviewed the petition and denies it for the following reasons. First, the existing regulation was promulgated after consideration of the threat posed by MPWC operation to Sanctuary resources and qualities based upon the characteristics of these craft and incidents involving them and numerous comments in favor of prohibiting their operation in the Sanctuary. The combination of small size, maneuverability and high speed of these craft is what causes them to pose a threat to resources. NOS determined that these combined characteristics distinguish MPWC from other vessels and necessitated restrictions on MPWC to protect Sanctuary resources. Resources such as sea otters and seabirds either are unable to avoid these craft or are frequently alarmed enough to modify their behavior significantly, such as cessation of feeding or abandonment of young. In addition, other uses of the Sanctuary such as sailing, surfing and diving are interfered with during the operation of MPWC. Also, restriction of MPWC to specified zones and access routes reduces esthetic disturbance.

Further, the existing regulation does not ban MPWC from the Sanctuary. Rather, it regulates them by allowing their use in specified areas. Petitioner has introduced no new facts to warrant initiation of a rulemaking to suspend or repeal the existing regulation.

As Petitioner itself points out, Public Law 102–587 requires the Secretaries of Commerce and Transportation, by May 4, 1994, and in consultation with the State of California and with adequate opportunity for public comment, [to] report to Congress on measures for regulating vessel traffic in the Sanctuary if it is determined that such measures are necessary to protect sanctuary resources. Pub. L. 102–587 § 2203(d); see also Pub. L. 102–368, § 102(d). MPWC will be included in the study. If the study produces new facts with regard to MPWC, NOS will also determine if it is necessary to revise the MPWC regulation. It would be premature at this time to grant Petitioner's request to "reconsider and repeal" the existing regulation before the outcome of the study.

(Federal Domestic Assistance Catalog Number 11.429; National Marine Sanctuaries Program)

Dated: March 16, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–6417 Filed 3–19–93; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1311

Registration and Reregistration Application Fees

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: This final rule establishes the application fee schedule for DEA registration to adequately recover the Federal costs associated with the Diversion Control Program as mandated in the Department of Justice and Related Agencies Appropriations Act, 1993.

EFFECTIVE DATE: March 22, 1993. The new fee schedule will be in effect for all new applications postmarked on April 21, 1993 or later and on all renewal applications with an expiration date of May 21, 1993 or later.

FOR FURTHER INFORMATION CONTACT: Mr. Terrance Woodworth, Chief, Drug Operations Section, Office of Diversion Control, Washington, DC 20537, Telephone (202) 307–8569.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on December 18, 1992 (57 FR 60148) to adjust the registration application fees as required by the Department of Justice and Related Agencies Appropriations Act, 1993 (Pub. L. 102–395). The Act requires that the Drug Enforcement Administration (DEA) collect fees to ensure the recovery of the full costs of operating the Diversion Control Program. Section 111(b) of that Act requires that there be established an account in the general fund of the Treasury, and in section 111(b)(1) there shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of $15,000,000, for the operation of its diversion control program. In addition, section 111(b)(3) requires fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.

There were 23 comments received, all objecting to the proposed rule. Twenty

of the comments (18 of which were submitted by pharmacies and their associations) centered around four main points: (1) The increase was unreasonable and excessive, (2) DEA should look to violators and traffickers to cover the costs through fines and penalties, (3) DEA should look to administrative efficiencies rather than increased fees, and (4) any fee increase would be passed on to the patient which would add to health care costs in the United States. While the issues raised by the commentors are of concern to DEA, the comments relate to issues which are not within the scope of DEA's discretion in implementing the legislation upon which the rule was based.

The legislation specifically provides that fees charged by DEA shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program. The legislation does not give DEA discretion to set the fees at a lower level than that necessary to recover the full costs of the Diversion Program.

Fines and penalties collected as a result of DEA investigations are returned to the U.S. Treasury, not to DEA. Since DEA does not control the disposition of these funds, such an application is not within DEA's jurisdiction. Additionally, DEA is bound by the legislation in which Congress clearly directed DEA to recover the costs specifically through fees.

DEA works diligently to achieve administrative efficiencies. Through a scheduled, periodic review process, virtually all aspects of the Diversion Control Program are inspected to detect any waste, fraud or abuse. This process was instituted long before the proposed rule was published, and will continue in the future.

Three additional comments challenge the proposed rule on the basis that it imposes an unconstitutional tax on registrants to support activities which are not related to their registrations. One of these comments was submitted on behalf of the American Medical Association, the National Association of Retail Druggists, the National Wholesale Druggists Association, the Pharmaceutical Manufacturers Association and the American Pharmaceutical Association. This comment contended that the rule was arbitrary and capricious because it did not provide adequate information on how DEA arrived at the increased fee figures and what programs the fees would support. The comment called upon DEA to withdraw the proposal until an administrative hearing could be held on a reduced fee schedule. The commentor discusses in great detail the provisions of the Office of Management and Budget (OMB) Circular A–25 regarding "user fees" and the provisions of the Independent Offices Appropriations Act (IOAA) regarding the criteria to be applied when imposing a fee.

Regarding the latter comment, Circular A–25 establishes guidelines for Federal agencies to assess fees. The circular was not intended to override statutorily mandated charges. Despite the previous basis for the DEA registration application fee (21 U.S.C. 821) and the 1984 fee increase based on that authority, the current proposal is based upon a new statutory mandate in the Department of Justice and Related Agencies Appropriations Act and must be guided by the specific language of that act.

The commentor also represents that the rule imposes an unconstitutional tax on registrants to support activities which are not related to their registrations. The Congress obviously determined otherwise and would not intentionally promulgate unconstitutional legislation. The legislation identifies the funding basis as the "operation of the diversion control program." In light of the comment, DEA re-reviewed the costs associated with the registration and control of the manufacture, distribution and dispensing of controlled substances contained in the budget of the Attorney General as appropriated by Congress under the budget category "Diversion Control Program." Activities frequently associated with the Diversion Control Program, such as the chemical control efforts, clandestine laboratory efforts, overseas efforts, the support by the DEA Office of Chief Counsel and executive direction were also reexamined. This review confirmed that the above items, with the exception of certain chemical control costs, are not included in the Attorney General's budget delineation for the category of "Diversion Control," and were not included in the determination of the fees.

Diversion Investigators and other personnel of DEA which staff the Diversion Control Program are responsible for enforcing provisions of the Chemical Diversion and Trafficking Act (CDTA), and additional resources for this program have been proposed and adopted in the 1994 Department of Justice budget process. In the implementation of the domestic chemical control program, Diversion Control Program resources devoted to the registration and control of pharmaceutical controlled substances were assigned these additional investigative tasks. Although, in general, these resources were originally authorized for the control of pharmaceutical controlled substances, there is an identifiable segment of the current and 1994 resources which are now conducting reassigned duties separate from the control of controlled substances. This shift, although clearly established and documented in DEA internal policy and tracking systems, was not specifically addressed in the Congressionally adopted use of the Department of Justice budget category "Diversion Control Program."

Upon consideration of the comments, DEA determined that it was Congress' intention that DEA implement the legislatively mandated fee account in a Constitutionally consistent manner, i.e., that Congress did not intend for DEA to include the costs associated with the enforcement of the CDTA which had been reassigned within the budget category "Diversion Control Program" from activities associated with the registration and control of controlled substances. Therefore, DEA has conducted a review of all investigative work hours, support staff hours, and management hours related to the enforcement of the CDTA and their associated costs, i.e., rent, utilities, and equipment, for the current and 1994 projected efforts. It has been determined that the current costs associated with the enforcement of the CDTA are not funded through registration application fees. The amount associated with the 1994 projected efforts has been deducted from the calculation for the Diversion Control Program fee account and will not be included in the future. This amount is $8.1 million.

The activities contained in the program which give rise to the fees consist of Diversion Investigators, analysts, technicians, and clerical personnel salaries and expenses; and travel, rent, utilities, supplies, equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances.

The commentor was concerned that DEA did not provide adequate information on how it arrived at the increased fee figures. As stated in the proposed rule, the amount to be recovered is established by the Congressional appropriation process. The legislation specifically mandates that the amount to be recovered shall be in accordance with estimates made in the budget request of the Attorney General. Within that budget request, the budget category "Diversion Control Program" is clearly delineated. The

budget figures are those listed in that category of the budget for the activities outlined above, minus the CDTA activities mentioned previously.

This final rule establishes the fee structure under the existing registration system to recover the costs mandated by the Justice Appropriation Act. The amount required to be recovered for fiscal year 1993 will be $12 million, and $57.1 million will be required for fiscal year 1994.

A correction is also being made to § 1301.11(d) to include reregistration which was inadvertently omitted in a previous change to the section.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this action has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*

This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. The vast majority of DEA registrants are considered to be small entities whose interests are to be considered under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, these registrants are predominantly practitioners and pharmacies whose individual registration fees would be increased by $150 once every three years. Therefore, the Administrator has concluded that the fee increase will have no significant impact on small entities.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1311

Administrative practice and procedure, Drug traffic control, Exports, Imports.

For reasons set out above, 21 CFR part 1301 and 21 CFR part 1311 are amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.11 is revised to read as follows:

§ 1301.11 Fee amounts.

(a) For each registration or reregistration to manufacture controlled substances, the registrant shall pay an application fee of $875 for an annual registration.

(b) For each registration or reregistration to distribute controlled substances, the registrant shall pay an application fee of $438 for an annual registration.

(c) For each registration or reregistration to dispense, or to conduct instructional activities with, controlled substances listed in Schedules II through V, the registrant shall pay an application fee of $210 for a three-year registration equating to an annualized fee of $70 per annum.

(d) For each registration or reregistration to conduct research or instructional activities with a controlled substance listed in Schedule I, or to conduct research with a controlled substance in Schedules II through V, the registrant shall pay an application fee of $70 for an annual registration.

(e) For each registration or reregistration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay an application fee of $70 for an annual registration.

(f) For each registration or reregistration to engage in a narcotic treatment program, including a compounder, the registrant shall pay an application fee of $70 for an annual registration.

PART 1311—[AMENDED]

1. The authority citation for part 1311 continues to read as follows:

Authority: 21 U.S.C. 952, 956, 957, 958, unless otherwise noted.

2. Section 1311.11 is revised to read as follows:

§ 1311.11 Fee amounts.

(a) For each registration or reregistration to import controlled substances, the registrant shall pay an application fee of $438 for an annual registration.

(b) For each registration or reregistration to export controlled substances, the registrant shall pay an application fee of $438 for an annual registration.

Dated: February 22, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–6437 Filed 3–19–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8449]

RIN 1545–AE26

Election, Revocation, Termination, and Tax Effect of Subchapter S Status; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8449, which was published in the **Federal Register** for Wednesday, November 25, 1992 (57 FR 55445). The final regulations relate to small business corporations and the election, revocation, termination, and corporate effect of electing subchapter S treatment.

EFFECTIVE DATE: November 25, 1992.

FOR FURTHER INFORMATION CONTACT: Andrea Tucker (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction provide rules under sections 1362 and 1363 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8449 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8449), which was the subject of FR Doc. 92–28193, is corrected as follows:

1. On page 55450, column 1, in the middle of the column, the paragraph designated as § 1.1362–2(c)(4)(ii)(b) entitled "(b) *Sales of stock or securities*" is correctly designated as § 1.1362–2(c)(4)(ii)(B), to read "(B) *Sales of stock or securities*".

2. On page 55451, column 2, in the middle of the column, the paragraph designated as § 1.1362–2(c)(5)(iii)(c) entitled "(c) *Payment to a patron of a cooperative.*" is correctly designated as § 1.1362–2(c)(5)(iii)(C), to read "(C) *Payment to a patron of a cooperative.*".

3. On page 55451, column 3, § 1.1362–2(c)(6), in *Example 4*, third line from the bottom of the paragraph, the language "stock or securities held by PRS if PRS sold all" is corrected to read

"stock or securities held by PRS if PRS had sold all".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5887 Filed 3–6–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Abandoned Mine Lands Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland Abandoned Mine Lands Reclamation Plan (hereinafter referred to as the Maryland Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.*, as amended. The amendment provides for a new program that will allow Maryland to expend up to ten percent of Title IV funds provided under sections 402(g)(1) and 402(g)(5) of the SMCRA for the abatement and treatment of acid mine drainage (AMD). The amendment was submitted in response to changes in the abandoned mine lands program that resulted from the Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508) enacted on November 5, 1990.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement. Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, PA 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland Plan effective July 16, 1982. Information on the background of the Maryland Plan including the Secretary's findings, and the disposition of comments can be found in the June 16, 1982, **Federal Register** (47 FR 25955–25957).

II. Submission of Amendment

By letter dated September 4, 1992, the Maryland Department of Natural Resources Bureau of Mines (BOM) submitted to OSM a proposed amendment to revise the Maryland Plan (Administrative Record No. MD–560). The proposal would change the Plan to allow for a program initiative made available under the AML Reclamation Act of 1990. This new initiative would allow for the establishment of an acid mine drainage (AMD) abatement and treatment fund under Maryland State law from which amounts (including all interest earned on such amounts) are expended to implement AMD abatement and treatment plans. In addition, the amendment proposes to update the organizational structure contained in the original plan.

The amendment consists of revisions to chapters 1, 5, and 11 of the original plan, as well as supplementary information in support of those changes. Chapter 1, Program Authority, provides information on the AMD abatement and treatment fund established under Maryland State law. Chapter 5, Maryland Ranking and Selection Procedures, provides information on the ranking, selection, and reclamation priorities of AML problems under the Maryland program. Chapter 11, Description of Bureau of Mines and Relationships to Other Participating State Organizations, contains a discussion and organizational charts showing the structure of Maryland State government, the Department of Natural Resources, the Water Resources Administration, and the Bureau of Mines.

Other information submitted in support of the amendment included an addition to appendix A containing Maryland House Bill 1263, an evaluation of the amendment with respect to AML program requirements under 30 CFR 884.13, a revised legal opinion by the Maryland Assistant Attorney General, and information on the public review opportunity provided by Maryland prior to submission of the amendment.

OSM announced the receipt of the proposed amendment in the October 28, 1992, **Federal Register** (57 FR 48762–48764) and in the same notice opened the public comment period and provided the opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 27, 1992. The public hearing scheduled for November 23, 1992, was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR part 884, are the Director's findings concerning the proposed amendment to the Maryland Plan. Nothing in the amendment affects the State's authorization to conduct the Maryland Plan as originally approved effective July 16, 1982 (47 FR 25955–25957). Only those revisions to the original plan approved by OSM that substantively amend the Maryland Plan will be discussed in this final rule. Minor revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding rules, concern non-substantive word changes, or revise cross-references and paragraph notation to reflect organizational changes resulting from this amendment. In addition to the information submitted in support of the new AMD program and the revisions in State government organization, Maryland provided an analysis of the proposed changes with respect to the requirements for plan amendments contained under 30 CFR part 884.13.

1. Acid Mine Drainage Abatement and Treatment Fund

Maryland is revising the AML Plan to enable the State to receive and retain up to 10 percent of its total grants awarded under paragraphs (1) and (5) of section 402(g) of SMCRA to be deposited in an Acid Mine Drainage Abatement and Treatment Fund (AMD Fund). To accomplish the revision, Maryland provided changes to Chapters 1 and 5, a revised legal opinion from the State Assistant Attorney General, and an addition to Appendix A containing Maryland House Bill 1263.

The changes to Chapter one, Program Authority, of the Maryland Plan consist of a discussion of the October 1990 amendment to SMCRA and the Maryland legislation that authorized the establishment of an AMD Fund. The changes to chapter 5, Maryland Ranking and Selection, consist of the addition of the AMD hydrologic unit plan criteria specified in the 1990 AML Reclamation Act (section 402(g)(7)(B)) and a redefining of the subpriorities under the Priority 3 category. The changes in the Priority 3 category provide for sub-categories that elevate the importance of addressing water quality impacts of mine drainage. The Director finds the

State's revisions to its Plan to be substantively identical to and therefore no less stringent than the counterpart provisions in section 402(g) (6) and (7) of SMCRA as amended in 1990. In addition, and with respect to the changes in sub-priorities of the Priority 3 category, the Director finds that the revisions are no less stringent than the provisions in section 403(a)(3) of SMCRA.

2. Administration and Management

Maryland is revising the Maryland Plan to reflect changes in the State government organizational structure. The new organization structure is contained in a revised chapter 11, Description of Bureau of Mines and Relationships to Other Participating State Organizations, and includes both narrative descriptions and diagrams. The Federal regulations at 30 CFR 884.13(d)(1) require that the State provide a description of the administration and management structure, including the organization of the designated agency conducting the reclamation activity. The Director finds the State's organizational changes to be consistent with the provisions of the cited Federal regulation.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the October 28, 1992, **Federal Register** (57 FR 48762–48764) ended on November 27, 1992. No public comments were received and since no one requested an opportunity to testify at a public hearing, the scheduled hearing was not held.

Agency Comments

In accordance with 30 CFR 884.14(a)(2), OSM solicited the views of other Federal agencies having an interest in the amendment. The U.S. Department of the Interior, Bureau of Mines, and the Department of the Army, U.S. Army Corps of Engineers, responded without providing comments. The U.S. Department of the Interior, U.S. Fish and Wildlife Service advised by telephone that they had no comments on the proposal. The Environmental Protection Agency, Advisory Council on Historic Preservation, Maryland Historic Trust, and the U.S. Department of Agriculture, Soil Conservation Service, did not respond to requests for comments.

One commenter responded that nothing in the amendment should be interpreted or construed as providing relief from the Mine Safety and Health Act. In response, the Director notes that the proposed amendment relates to the use of AML funds to address acid mine drainage problems throughout the coal fields of Maryland, and does not in any way relieve responsibilities under the Federal Mine Safety and Health Act. No changes to the amendment are necessary.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment to the Maryland Plan submitted by Maryland on September 4, 1992.

The Federal rules at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This amendment to the Federal rules is being made effective immediately to expedite the State amendment process and to encourage states to bring their programs in conformity with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Abandoned Mine Land Plans, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 1993.

Alfred Whitehouse,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The Authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.25 is added to read as follows:

§ 920.25 Approval of Maryland Abandoned Mine Reclamation Plan (AMLR) amendments.

The Maryland AMLR Plan amendment submitted September 4, 1992, is approved effective March 22, 1993.

[FR Doc. 93–6525 Filed 3–19–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–041–5501; FRL–4559–1]

Approval and Promulgation of Implementation Plans; Florida: Vehicle Inspection Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP). These revisions were submitted to EPA through the Florida Department of Environmental Regulation on March 25, 1991, and will revise the regulation approved on September 24, 1990. This plan has been submitted by the Florida Department of Environmental Regulation (FDER) as an integral part of the program to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. These regulations meet all EPA requirements and therefore EPA is approving the SIP revisions.

EFFECTIVE DATE: This action will be effective May 21, 1993 unless notice is received by April 21, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by Florida may be examined at the following locations during normal business hours:

Public Information Reference Unit, Attn: Jerry Kurtzweg (AN443), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Alan Powell of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On June 5, 1987, the Florida Legislature created the Motor Vehicle Emissions Study Commission. The Commission was charged with the responsibility of recommending an Inspection/Maintenance (I/M) program design that would be effective at both reducing vehicular emissions and protecting the health of the citizens of Florida. This was in response to two key issues: (1) Continued ozone nonattainment in various Florida counties, and (2) an FDER study that demonstrated that over 70% of the emissions of volatile organic compounds (VOCs) in Florida result from mobile sources.

The commission members visited various I/M programs throughout the country to evaluate alternative program designs. Public hearings were also conducted in the nonattainment counties to solicit citizen input. The Florida Motor Vehicle Study Commission delivered its report to the Governor of Florida on March 1, 1988. The report concluded that "A centralized, contractor-operated I/M program is best suited to Florida's needs." The report also addressed tampering, enforcement, compliance, fleets, waivers, and public education elements.

Following the study, the 1988 Florida Legislature passed Chapter 88–129, Laws of Florida, entitled the Clean Outdoor Air Law (COAL). The law was amended by the 1989 Florida Legislature and is codified in Chapter 325, Florida Statutes (F.S.), and Section 316.2935, F.S. The FDER was charged by the COAL to develop test procedures, regulations and emission standards. After a series of public hearings, the Florida Environmental Regulation Commission, on December 7, 1988, approved Florida Administrative Code, Chapter 17–242 (Mobile Source—Motor Vehicle Emissions Standards and Test Procedures). That rule was adopted by FDER by filing with the Florida Secretary of State on January 31, 1989, and was submitted to EPA on March 20, 1989. That program began operation in April 1991. Chapter 17–242 was approved on March 3, 1992 (55 FR 7550). All counties that are nonattainment for ozone or carbon monoxide are required to implement the program.

During the ensuing years, following the adoption of Rule 17–242, F.A.C., the FDER realized that some changes to the regulation were necessary to ensure smooth operation of the program. Workshops were held on August 30 and October 30, 1990, and changes were discussed. Some of the changes were procedural in nature and did not require approval of the environmental commission. No objections to these rules which dealt with emissions testing equipment performance specifications were voiced at the public hearing in Tallahassee, Florida, held on December 3, 1990.

On January 10, 1991, a public hearing was held to discuss revisions which required the approval of the environmental commission. The changes discussed involved strengthening of the training criteria for motor vehicle inspectors (two Florida Department of Highway Safety and Motor Vehicle rules, Rules 15C–6.001 and 15C–6.002, were adopted by reference for this purpose); change in requiring proof of catalytic converter operation only at the time of waiver application rather than upon reinspection following a fuel inlet restrictor failure; and the changing of the waiver criteria for 1975–1979 vehicles.

The FDER chose to modify the requirements pertaining to the operation of the catalytic converter because it would cause an operational and public relations problems. These problems would arise because EPA has not established or approved a method to test operation of a catalytic converter at an inspection lane. The inspector would therefore be required to pass judgment as to whether the catalytic converter was operating, which could cause real and perceived inequities.

The fuel inlet restrictor check requirements were also amended. Since lead fuel is no longer sold commercially, the State found it difficult to require replacement of a damaged inlet restrictor if its only purpose is to prevent misfueling of the vehicles. Therefore, FDER removed the requirement for automatic failure of the emissions test based solely on failure to meet fuel restrictor requirements. This amendment to the rule is expected to save Florida consumers approximately

$5 million dollars based on predicted failure rates and repair costs.

The State also amended the waiver requirements pertaining to 1975–1979 vehicles to reduce the economic shock on owners of old vehicles. Instead of a full scale emission controls inspection upon failure, these vehicles will only be required to demonstrate that the vehicle has an unvented gas cap and an operating catalytic converter. The Rule still requires a reduction in emissions from the original test and this waiver is only good for one year.

Final Action

EPA is today approving revisions to the Florida SIP incorporating revisions to the inspection and maintenance program. All of the revisions being approved are consistent with Agency policy. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective May 21, 1993. However, if notice is received by April 21, 1993 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not for profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget temporarily waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with the requirements of the Act.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 16, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(75) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(75) Revisions to F.A.C. Chapter 17–242 (Motor Vehicle Emission Standards and Testing Procedures) which were submitted to EPA on March 25, 1991.

(i) Incorporation by reference.

(A) Revision to F.A.C. 17–242 (Motor Vehicle Emission Standards and Testing Procedures) which were adopted March 1, 1991.

Revision to F.A.C. Chapter 17–242 as follows:

17–242.100; and
17–242.200 (1), (6), (9), (11), (12), (15), (18), (26), (29) and (30); and
17–242.300; and
17–242.400; and
17–242.500; and
17–242.600 (1–3(a)(3)), 3(a)(6–10), 5(a–f), 5(h), 6 and
17–242.700; and
17–242.800; and
17–242.900 (1), (2)(a), (2)(b), (2)(d) through (2)(g), (3), (4) and (5)

(ii) Other material.

(A) Letter of March 25, 1991, from the Florida Department of Environmental Regulation.

[FR Doc. 93–6451 Filed 3–19–93; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[OH39–1–5714; FRL–4605–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving, in final, a revision request to the ozone portion of the Ohio State Implementation Plan (SIP) for Ludlow Flexible Packaging, Inc. (Ludlow), in Mt. Vernon, Ohio. The revision was submitted by the Ohio Environmental Protection Agency (OEPA) on September 30, 1983, as an emissions trade (bubble) with monthly averaging. The revision consists of variances and permits for 22 printing and paper coating lines (sources K001–K022), which exempts these lines from the control requirements contained in the Ohio Administrative Code (OAC) Rules 3745–21–09(Y) and 3745–21–09(F), with a compliance date extension to June 30, 1987.

This revision does not meet the requirements of USEPA's emissions trading policy statement (ETPS) and, therefore, cannot be approved as a bubble. However, USEPA is approving this revision, in final, as a relaxation from the reasonably available control technology (RACT) requirements, because the source is located in Knox County, which is currently designated as an attainment area for ozone and, thus, the existing control requirements are not required by the Clean Air Act (Act). Approval of this SIP revision cancels the accommodative SIP for Knox County.

EFFECTIVE DATES: This final rulemaking becomes effective on April 21, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Richard Schleyer at (312) 353–5089, before visiting the Region 5 Office).

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (ANR–443), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 1983, the OEPA submitted a revision request to the ozone portion of the Ohio SIP for Ludlow. The revision, a bubble with monthly averaging between 10 printing lines (sources K001–K010) and 12 paper coating lines (sources K011–K022), and a compliance date extension to June 30, 1987, for all 22 lines, consists of variances and permits.

The printing lines are subject to the control requirements contained in the OAC Rule 3745–21–09(Y), and to the compliance schedule contained in OAC Rule 3745–21–04(C)(32). The paper coating lines are subject to the control requirements contained in OAC Rule 3745–21–09(F), and to the compliance schedule contained in OAC Rule 3745–21–04(C)(5). In lieu of these requirements, the terms and conditions for the variances and permits for these lines limit the volatile organic compounds (VOC) emissions to 0.27 pounds per pound of solids, as applied, as a monthly average. In addition, there is a limit of 4.8 pounds of VOC per pound of solids, as applied (based on 2.9 pounds of VOC per gallon of coating, excluding water) on a daily average for seven of the paper coating lines (K016–K022).

On January 13, 1987, the OEPA submitted additional information concerning this revision. In this submittal, the OEPA stated that several of the printing lines have been or will be permanently shut down and the remaining lines will be controlled by thermal incineration in accordance with OAC Rule 3745–21–09(Y), thereby removing the ten printing lines from the bubble. In addition, 4 of the 12 paper coating lines K017–K019, K022) have been removed from the plant. Therefore, only 8 paper coating lines (K011–K016, K020–K021) remain under the bubble. The compliance date extension to June 30, 1987, still applies to all 22 lines.

A proposed rulemaking approving this revision request was published in the September 25, 1992 **Federal Register** (57 FR 44351). The public comment period ended October 26, 1992. No public comments were received.

II. Current SIP

Under the existing federally approved SIP, Ludlow's printing lines are subject to the control requirements contained in the OAC Rule 3745–21–09(Y). This rule limits the VOC content in the coatings and inks to 40 percent by volume, excluding water, or 25 percent by volume of the volatile content. Ludlow's paper coating lines are subject to the control requirements contained in OAC Rule 3745–21–09(F), which limits the VOC content to 4.8 pounds per pound of solids, as applied (based on 2.9 pounds per gallon of coating, excluding water).[1] In lieu of these requirements, the terms and conditions for the variances and permits for these lines limit the VOC emissions to 0.27 pounds per pound of solids, as applied, as a monthly average. In addition, there is a limit of 4.8 pounds of VOC per pound of solids, as applied (based on 2.9 pounds of VOC per gallon of coating, excluding water) on a daily average for seven of the paper coating lines (K016–K022).

III. Knox County Attainment Status

These lines are located in Knox County, Ohio. Knox County was originally designated as a nonattainment area of the NAAQS for ozone.[2] This designation was based on the assumption that nonattainment of the 0.08 ppm ozone standard (the level of the standard prior to 1979) was widespread around major urban areas. As requested by OEPA, USEPA designated Knox County as a nonattainment area although no in-county monitoring data was available. After the ozone standard was changed to 0.12 ppm, OEPA recognized that the assumption of widespread ozone nonattainment was no longer valid and initiated the redesignation of Knox County to attainment of the ozone standards. USEPA approved this request, and in 1984 redesignated Knox County as an attainment area for ozone.[3]

IV. Compliance with the Clean Air Act Amendments of 1990

This request for a revision to the Ohio SIP for ozone has been reviewed for conformance with the provisions of the Clean Air Act Amendments of 1990 (CAAA of 1990), enacted on November 15, 1990. It has been determined that this action does conform with the General Savings Clause stated in Subpart 6, Section 193 of the CAAA of 1990 which prohibits, in nonattainment areas, any relaxation of SIP requirements, without at least offsetting emission reductions. Ludlow is located in Knox County which is designated as an attainment area for ozone.

V. Conclusion

In order to have a revision to the ozone SIP approved as a plan that is equivalent to the RACT requirements, the revision must meet the criteria contained in USEPA's policies on bubbles and long-term averaging. The Ludlow revision does not meet these criteria. However, as discussed below, this revision request can be approved as a relaxation from the RACT requirements.

USEPA is also approving the request for a compliance date extension to June 30, 1987, because: (1) Ludlow is located in an area that is designated attainment for ozone; (2) approval of this revision will not increase historical VOC emissions from the source; and (3) RACT is not required by the Act in an area designated as attainment of the ozone standard.

Although the requested revision does not satisfy USEPA's bubble policy and

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[1] In the October 31, 1980 **Federal Register** (45 FR 72122), and in the June 29, 1982 **Federal Register** (47 FR 28097), USEPA approved OAC Rule(s) 3745–21–09 (Y) and (F) as part of the SIP as meeting the RACT requirements of Part D of the Act.

[2] This designation was published in the March 13, 1978 **Federal Register** (43 FR 8962), and in the October 5, 1978 **Federal Register** (43 FR 45993).

[3] This designation was published in the June 12, 1984 **Federal Register** (49 FR 24124), and in the November 6, 1991 **Federal Register** (56 FR 56694).

monthly averaging requirements within the context of the RACT requirements, as stated above, the revision is approved, in final, as a relaxation from the RACT requirements because Knox County is a rural attainment area for ozone. The revision will not cause an increase in actual historical VOC emissions from this source. Additionally, the Act does not require RACT level control in attainment areas. Approval of this revision eliminates the accommodative ozone SIP in Knox County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements.

These variances and permits were issued by the State of Ohio and issued to Ludlow Flexible Packaging, Inc., and expire on April 22, 1996. Therefore, this SIP revision is only effective until these variances and permits expire.

Final Action

USEPA is approving this SIP revision, in final, as a relaxation from the RACT requirements of section 172 of the Act, for Ludlow Flexible Packaging, Inc. Ludlow is located in Knox County which is designated as an attainment area for ozone. This revision can be approved because the Act does not require RACT level control in areas designated as attainment of the NAAQS for ozone.

Approval of this SIP revision cancels the accommodative SIP for Knox County. USEPA is also approving the request for a compliance date extension to June 30, 1987.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table Two and Table Three revisions. The Office of Management and Budget (OMB) has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 23, 1993.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Ohio—Subpart KK

2. Section 52.1870 is amended by adding new paragraph (c)(91) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(91) On September 30, 1983, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to the ozone SIP for Ludlow Flexible Packaging, Inc. (Ludlow), located in Mt. Vernon (Knox County), Ohio. This revision was in the form of variances and permits that established a bubble with monthly averaging between 22 paper coating and printing lines (sources K001–K022) and a compliance date extension to June 30, 1987. On January 13, 1987, the OEPA submitted additional information concerning this revision stating that several of the printing lines have been or will be permanently shut down and the remaining lines will be controlled by thermal incineration in accordance with OAC Rule 3745–21–09(Y). In addition, four of the paper coating lines (K017–K019, K022) have been removed from the plant. Therefore, only eight paper coating lines (K011–K016, K020 and K021) remain under the bubble. This revision exempts these lines from the control requirements contained in Ohio Administrative Code (OAC) Rules 3745–21–09(F) and 3745–21–09(Y). These variances and permits expire on April 22, 1996.

The accommodative SIP for Knox County will be canceled upon approval of this SIP revision.

(i) Incorporation by reference.

(A) Condition Number 8 (which references Special Terms and Conditions Numbers 1–7 within each of the 5 "State of Ohio Environmental Protection Agency Variance to Operate an Air Contaminant Source," Application Numbers 0342010111K011–0342010111K015, as they apply to Ludlow Flexible Packaging, Inc., located in Mt. Vernon, Ohio. The Date of Issuance is September 23, 1983.

(B) Condition Number 8 (which references Special Terms and Conditions Numbers 1–7) within each of the 3 "State of Ohio Environmental Protection Agency Permit to Operate an

Air Contaminant Source," Application Numbers 0342010111K016, 0342010111K020, and 0342010111K021, as they apply to Ludlow Flexible Packaging, Inc., located in Mt. Vernon, Ohio. The Date of Issuance is September 23, 1983.

(ii) Additional material.

(A) January 13, 1987, letter from Patricia P. Walling, Chief, Division of Air Pollution Control, Ohio Environmental Protection Agency; to Steve Rothblatt, Chief, Air and Radiation Branch, U.S. Environmental Protection agency.

[FR Doc. 93–6450 Filed 3–19–93; 8:45 am]

BILLING CODE 4605–1–M

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40 CFR Part 52

[ME–2–1–5673; A–1–FRL–4599–8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Capture Efficiency Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision corrects deficiencies in the State's volatile organic compound (VOC) regulations in response to EPA's May 25, 1988 Ozone SIP call and the Clean Air Act requirement, section 182(a)(2)(A), that States "fix-up" their reasonably available control technology (RACT) rules. The intended effect of this action is to approve of Maine's Chapter 126 "Capture Efficiency Test Procedures" which incorporates the current Federal RACT requirements for VOC. These RACT corrections are a requirement of the Clean Air Act (CAA) as amended in 1990. This action is being taken under section 110 and part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 21, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW., (ANR–443), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On June 5, 1991, the Maine Department of Environmental Protection (DEP) submitted a revision to its SIP. This revision corrects deficiencies in Maine's VOC regulations. On August 12, 1992 (57 FR 36040), EPA published a Notice of Proposed Rulemaking (NPR) which proposed approval of this revision. No public comments were received on the NPR.

Maine's Revision

In response to EPA's May 25, 1988 Ozone SIP call, EPA's June 16, 1988 follow-up letter, and requirements of the Clean Air Act, as amended in 1990, on May 22, 1991, Maine adopted a new regulation entitled "Capture Efficiency Test Procedures" (Chapter 126). This regulation specifies the test procedures required to measure how much of the total VOC emissions from a regulated source is captured and delivered to a control system.

EPA has evaluated this revision and found that it corrects the deficiencies listed in EPA's SIP call follow-up letter and is consistent with the applicable EPA guidance as discussed in EPA's NPR (57 FR 36040). Therefore, EPA believes Maine has met the section 182(a)(2)(A) requirement that it correct its SIP by including a capture efficiency test method. Maine's regulation and EPA's evaluation are detailed in a memorandum, dated May 27, 1992, entitled "Technical Support Document—Maine—Capture Efficiency Test Procedures." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Final Action

EPA is approving Chapter 126 "Capture Efficiency Test Procedures" as a revision to the Maine SIP. Today's action makes final the action proposed at 57 FR 36040 (Aug. 12, 1992).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214).

EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 5, 1993.

Patricia L. Meaney,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1020 Identification of plan.

* * * * * *

(c) * * *

(32) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 5, 1991.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated June 3, 1991 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 126 of the Maine Department of Environmental Protection Regulations, "Capture Efficiency Test Procedures" effective in the State of Maine on June 9, 1991.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

In § 52.1031 Table 52.1031 is amended by adding a new entry to read as follows:

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by state	Date approved by EPA	Federal Register citation	52.1020
•	•	•	•	•	•
Chapter 126	Capture Efficiency Test Procedures	5/22/91	March 22, 1993	[FR page citation from published date].	(c)(32)
•	•	•	•	•	•

[FR Doc. 93–6453 Filed 3–19–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[CA–22–2–5682; FRL–4561–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of direct final rulemaking.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) for the San Joaquin Unified Air Pollution Control District (SJVUAPCD). These revisions were submitted to EPA by the California Air Resources Board (CARB) on January 28, 1992. This approval action will incorporate a rule that controls organic compounds from non-assembly line motor vehicle and mobile equipment refinishing operations into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clear Air Act, as amended (CAA or the Act). EPA is approving this revision under section 110(k)(3) as meeting the requirements of section 110 and part D of the CAA.

DATES: This action will be effective on May 21, 1993 unless notice is received by April 21, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be sent to: Esther Hill, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

A copy of the rule and EPA's evaluation report is available for public inspection at EPA's Region 9 office during normal business hours. A copy of the submitted rule is also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

San Joaquin Valley Unified, Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711.

Jerry Kurtzweg ANR–443, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195, Fax: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act), that included the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because Fresno, San Joaquin, and Stanislaus Counties were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California State Implementation Plan (SIP) were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182 (a)(2)(A), Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology

[1] At that time, Kern County included portions of two air basins: The San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for Kern, Kings, Madera, Merced, and Tulare Counties. The attainment date for these counties remained December 31, 1982.

(RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the SJVUAPCD was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182 (a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVUAPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4]

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1992, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for SJVUAPCD's Rule 460.2, Motor Vehicle and Mobile Equipment Refinishing Operations. This submitted rule was found to be complete on April 3, 1992 pursuant to EPA's completeness criteria set forth in section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991) and is being granted approval.

Rule 460.2 controls VOC emissions from non-assembly line motor vehicle and mobile equipment refinishing operations. This rule was originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation for San Joaquin's Rule 460.2.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley Air Basin was redesignated nonattainment and classified as serious by operation of law pursuant to section 107(d) and section 181(a) on November 15, 1990. See 56 FR 56694 (November 6, 1991).

EPA Evaluation

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

EPA has evaluated San Joaquin's submitted rule 460.2 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address suggestions made previously by EPA. The rule will achieve greater enforceability through the inclusion of the newly referenced capture efficiency test method, utility body coating operations requirements, and a compliance schedule. A brief description of the rule change is provided below.

SJVUAPCD's rule 460.2 applies to the coating and refinishing operations of non-assembly line vehicles (i.e., not original equipment manufacturers). The rule was revised to cite the EPA recommended reference to capture efficiency: "Capture efficiency shall be determined using methods in the **Federal Register** at 55 FR 26865 (June 29, 1990) as described under (a)(4)(iii)—Capture System Efficiency Test Protocols and Appendix B—Volatile Organic Material Measurement Techniques for Capture Efficiency. The procedure described under (a)(4)(iii)(2) of the above referenced FR has been modified as follows: If a source owner or operator uses a control device designed to collect and recover VOC (e.g., a carbon adsorber), an explicit measurement of capture efficiency is not necessary if the conditions described in 55 FR 26865 are met. The overall emission reduction efficiency shall be determined each day by directly comparing the input liquid VOC to the recovered liquid VOC. The procedure for use in this situation is specified in 40 CFR 60.433 with additional modifications described in 55 FR 26865." Also, a utility body coating requirement was added to provide standards for operations that coat less than 20 utility bodies per day. Finally, a compliance section was added for sources installed or constructed on or after April 11, 1991. A few minor revisions were made and are described in the technical support document.

EPA Action

EPA has concluded that the submitted rule is consistent with the CAA, EPA regulations, and EPA policy. Moreover, this submitted rule revision will improve and strengthen the current SIP Therefore, EPA is approving the submitted rule under section 110(k)(3) as meeting the requirements of section 110 and part D of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective May 21, 1993, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this notice will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 21, 1993.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant

impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 12, 1993.

John C. Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(187)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(187) * * *

(i) * * *

(A) * * *

(2) Rule 460.2, adopted on September 19, 1992.

[FR Doc. 93–6454 Filed 3–19–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[FRL–4606–6]

Clarification of the Regulatory Determination for Wastes From the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy

AGENCY: Environmental Protection Agency.

ACTION: Clarification.

SUMMARY: This document provides additional clarification of the Resource Conservation and Recovery Act (RCRA) *Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes* dated June 29, 1988 (53 FR 25446; July 6, 1988). This document clarifies the regulatory status of wastes generated by the crude oil reclamation industry, service companies, gas plants and feeder pipelines, and crude oil pipelines. Since this document only further clarifies the status of these wastes under the RCRA Subtitle C hazardous waste exemption discussed in EPA's 1988 Regulatory Determination, and does not alter the scope of the current exemption in any way, comments are not being solicited by the Agency on this notice.

FOR FURTHER INFORMATION CONTACT: For general information on the scope of the RCRA Subtitle C exemption for wastes from the exploration, development and production of crude oil, natural gas and geothermal energy, contact the RCRA/Superfund hotline at (800) 424–9346 (toll free) or (703) 412–9810. For technical information, contact Mike Fitzpatrick, U.S. Environmental Protection Agency OS–323W, 401 M Street, SW., Washington, DC 20460; phone (703) 308–8411.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Clarification of the Scope of the Oil and Gas Exemption
  A. Crude Oil Reclamation Industry
  B. Service Companies
  C. Crude Oil Pipelines
  D. Gas Plants and Feeder Pipelines
III. Administrative Procedures Act Requirements
IV. EPA RCRA Docket

I. Introduction

In the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 94–580), Congress amended the Resource Conservation and Recovery Act (RCRA) to add sections 3001 (b)(2)(A), and 8002(m). Section 3001(b)(2)(A) exempted drilling fluids, produced waters, and other wastes associated with exploration, development, and production of crude oil, natural gas and geothermal energy from regulation as hazardous wastes. Section 8002(m) required the Administrator to complete a Report to Congress on these wastes and provide an opportunity for public comment. The Administrator was also required by section 3001 (b)(2)(A) to make a determination no later than six months after completing the Report to Congress as to whether hazardous waste regulations under RCRA Subtitle C were warranted for these wastes.

EPA's Report to Congress was transmitted to Congress on December 28, 1987. In the process of preparing the Report to Congress, the Agency found it necessary to define the scope of the exemption for the purpose of determining which wastes were considered "wastes from the exploration, development or production of crude oil, natural gas or geothermal energy." Based upon statutory language and legislative history, the Report to Congress identified several criteria used in making such a determination. In particular, for a waste to be exempt from regulation as hazardous waste under RCRA Subtitle C, it must be associated with operations to locate or remove oil or gas from the ground or to remove impurities from such substances and it must be intrinsic to and uniquely associated with oil and gas exploration, development or production operations (commonly referred to simply as exploration and production or E&P); the waste must not be generated by transportation or manufacturing operations.

Transportation of oil and gas can be for short or long distances. For crude oil, "transportation" is defined in the Report to Congress and the subsequent Regulatory Determination as beginning after transfer of legal custody of the oil from the producer to a carrier (i.e., pipeline or trucking concern) for transport to a refinery or, in the absence of custody transfer, after the initial separation of the oil and water at the primary field site. For natural gas, "transportation" is defined as beginning after dehydration and purification at a gas plant, but prior to transport to market. To accurately determine the scope of the exemption, the reader is referred to the December 28, 1987, Report to Congress, Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy (NTIS # PB88–146212) for the specific application of the criteria.

The Agency's Regulatory Determination was published in the **Federal Register** on July 6, 1988 (53 FR

25446). The Regulatory Determination included a list of example wastes that generally are exempt and a list of example wastes that generally are not exempt. Neither of these lists was intended to be a complete itemization of all possible exempt or non-exempt wastes. Also, because definitions of the terms used in these lists vary, the criteria identified in the Report to Congress remain the authoritative source for determining the scope of the exemption. The reader is referred to the July 6, 1988, notice for detailed background on all aspects of the Regulatory Determination.

Since 1987, the terms uniquely associated and intrinsic have been used as interchangeable synonyms in various documents in reference to oil and gas wastes qualifying for the exemption from Subtitle C regulation. (For simplicity's sake, when referring to exempt wastes, this notice combines the use of these two terms into the single term uniquely associated.) A simple rule of thumb for determining the scope of the exemption is whether the waste in question has come from down-hole (i.e., brought to the surface during oil and gas E&P operations) or has otherwise been generated by contact with the oil and gas production stream during the removal of produced water or other contaminants from the product (e.g., waste demulsifiers, spent iron sponge). If the answer to either question is yes, the waste is most likely considered exempt.

Since the Agency's Regulatory Determination, numerous requests have been received for determination, on a site-specific basis, of the regulatory status of wastes not itemized in the Regulatory Determination's list of examples. Many of these requests have dealt with broad categories of similar wastes (e.g., crude oil reclaimer wastes, service company wastes, pipeline wastes). Today's notice responds to the many requests for clarification of the scope of the exemption.

II. Clarification of the Scope of the Oil and Gas Exemption

A. Crude Oil Reclamation Industry

The crude oil reclamation industry recovers marketable crude oil and other hydrocarbons from produced water, crude oil tank bottoms and other oily wastes that are generated by the production of crude oil and natural gas. In general, the marketable crude oil is recovered from the waste materials by simple thermal and/or physical processes (e.g., heat and gravity separation). Occasionally, demulsifiers may be added to produced waters from which crude oil cannot be separated with heat and settling time alone. The typical residual materials left after removal of the crude oil by the reclaimers are also produced water and tank bottom solids. These residuals will often exhibit the same characteristics as the parent waste, although the concentrations of some constituents may vary from those in the parent.

In September 1990, the crude oil reclamation industry requested that the Agency provide an interpretation of the language in the 1988 Regulatory Determination pertaining to RCRA Subtitle C coverage of wastes from crude oil and tank bottom reclaimers. (The list of "non-exempt" wastes in the Regulatory Determination included "liquid and solid wastes generated by crude oil and tank bottom reclaimers.") In particular, they requested that EPA clarify whether any wastes generated by crude oil reclaimers are included within the oil and gas exemption, particularly those originating from the crude oil itself, such as produced water and the other extraneous materials in crude oil, otherwise known as basic sediment and water (BS&W).

In April 1991, the Agency responded to the request with a letter that included broad guidance on the status of wastes from the crude oil reclamation industry. (A copy of the letter is included in the docket to this notice.) EPA explained that the inclusion of "liquid and solid wastes" from crude oil reclamation on the list of non-exempt wastes contained in the Regulatory Determination was intended to refer only to those non-E&P wastes generated by reclaimers (e.g., waste solvents from cleaning reclaimers' equipment) and was not intended to refer to wastes remaining from the treatment of exempt wastes originally generated by the exploration, development or production of crude oil or natural gas.

EPA's basis for this position is several-fold. First, the Agency has consistently taken the position that wastes derived from the treatment of an exempt waste, including any recovery of product from an exempt waste, generally remain exempt from the requirements of RCRA Subtitle C. Treatment of, or product recovery from, E&P exempt wastes prior to disposal does not negate the exemption. [The same principle applies to exempt mining and mineral processing wastes. See, 54 FR at 36621 (Sept. 1, 1989).] For example, waste residuals (e.g., BS&W) from the on-site or off-site process of recovering crude oil from tank bottoms obtained from crude oil storage facilities at primary field operations (i.e., operations at or near the wellhead) are exempt from RCRA Subtitle C because the crude oil storage tank bottoms at primary field operations are exempt. In effect, reclaimers are conducting a specialized form of waste treatment in which valuable product is recovered and removed from waste uniquely associated with E&P operations. In addition, in many cases, product recovery or treatment reduces the volume and overall toxicity of the waste and thereby contributes to the Agency's policy and goals for waste minimization and treatment of waste prior to disposal.

EPA further notes that the off-site transport of exempt waste from a primary field site for treatment, reclamation, or disposal does not negate the exemption. The change of custody criterion (which is discussed in the Report to Congress) for the purpose of defining transportation refers to the transport of product (crude oil, natural gas) and does not apply to exempt wastes moving off-site for treatment or disposal since these wastes were generated by the exploration, development or production operations and not by the transportation process. Thus, the off-site transport and/or sale of exempt oil-field wastes to crude oil reclaimers for treatment does not terminate the exempt status either of the wastes or the residuals from a reclamation process applied to these wastes.

However, there are solid and liquid wastes from reclamation operations that are not exempt from RCRA Subtitle C. These are wastes which the Agency intended to refer to in its example within the 1988 Regulatory Determination. Generally, these reclaimer wastes are derived from non-exempt oilfield wastes or otherwise contain materials that are not uniquely associated with exploration, development or production operations. An example would be waste solvents generated from the solvent cleaning of tank trucks that are used to transport oilfield tank bottoms. Such wastes would not be exempt from Subtitle C because the use of cleaning solvents is not uniquely associated with the production of crude oil.

Generally, crude oil reclaimer wastes that are derived from exempt oilfield wastes (e.g., produced water, BS&W) are not subject to the Subtitle C waste management requirements of RCRA. Such wastes, however, remain subject to any applicable state solid waste management requirements. Moreover, this exemption from RCRA Subtitle C requirements may not apply if the crude oil reclaimer wastes are combined with other wastes that are subject to RCRA Subtitle C requirements.

B. Service Companies

Oil and gas service companies are those companies hired by the principal operating company to, among other things, supply materials for use at a drilling or production site or provide a service to be performed. Some of the activities of service companies take place on-site while others may take place off-site. Examples of the types of activities that may take place off-site are product formulation, transport of materials, laboratory analysis, and waste handling and disposal.

The 1988 Regulatory Determination stated that "oil and gas service company wastes, such as empty drums, drum rinsate, vacuum truck rinsate, sandblast media, painting wastes, spent solvents, spilled chemicals, and waste acids" are not covered by the oil and gas E&P exemption. The Agency intended this statement to identify those wastes, including unused and discarded product materials, generated by service companies that are not uniquely associated with primary field operations. (Primary field operations occur at or near the wellhead or gas plant and include only those operations necessary to locate and recover oil and gas from the ground and to remove impurities.) Similar to the reference to crude oil reclamation wastes, the Agency did not intend to imply that under no circumstances will a service company ever generate a RCRA Subtitle C-exempt waste. For example, if a service company generates spent acid returns from a well work-over, the waste is exempt since the waste acid in this case came from down-hole and was part of primary field operations.

EPA is aware that some confusion exists in various segments of the industry with regard to the scope of the exemption from RCRA Subtitle C for solid wastes not uniquely associated with oil and gas exploration and production. One common belief is that any wastes generated by, in support of, or intended for use by the oil and gas E&P industry (including most service company wastes) are exempt. This is not the case; in fact, only wastes generated by activities uniquely associated with the exploration, development or production of crude oil or natural gas at primary field operations (i.e., wastes from down-hole or wastes that have otherwise been generated by contact with the production stream during the removal of produced water or other contaminants from the product) are exempt from regulation under RCRA Subtitle C regardless of whether they are generated on-site by a service company or by the principal operator. In other words, wastes generated by a service company (e.g., unused frac or stimulation fluids and waste products) that do not meet the basic criteria listed in the Report to Congress (i.e., are not uniquely associated with oil and gas E&P operations) are not exempt from Subtitle C under the oil and gas exemption, just as wastes generated by a principal operator that do not meet these criteria are not exempt from coverage by RCRA Subtitle C.

The 1988 Regulatory Determination also stated that "vacuum truck and drum rinsate from trucks and drums transporting or containing non-exempt waste" is not included within the exemption (emphasis added). The unstated corollary to this is that vacuum truck and drum rinsate from trucks and drums transporting or containing exempt wastes is exempt, provided that the trucks or drums only contain E&P-related exempt wastes and that the water or fluid used in the rinsing is not subject to RCRA Subtitle C (i.e., is itself non-hazardous). This is consistent with the general policy principle that certain wastes derived exclusively from RCRA Subtitle C-exempt wastes remain exempt from RCRA Subtitle C.

C. Crude Oil Pipelines

Crude oil is produced from the ground through a system of one or more wells in an oilfield. The oil and any related produced water typically is directed to a series of tanks known as a tank battery where the water and oil separate naturally due to gravity; sometimes, separation is enhanced by the use of heat. Most water is separated from the oil at the tank battery. The volume of oil produced is then metered prior to a change in custody or ownership of the oil and/or its transportation off-site.

In the case of crude oil, all production-related activities occur as part of primary field operations at or near the wellhead. Wastes generated as part of the process of transporting products away from primary field operations are not exempt. Generally, for crude oil production, a custody transfer of the oil (i.e., the product) or, in the absence of custody transfer, the end point of initial product separation of the oil and water, will define the end point of primary field operations and the beginning of transportation. Only wastes generated before the end point of primary field operations are exempt. In this context, the term end point of initial product separation means the point at which crude oil leaves the last vessel, including the stock tank, in the tank battery associated with the well or wells. The purpose of the tank battery is to separate the crude oil from the produced water and/or gas. The movement of crude oil by pipeline or other means after the point of custody transfer or initial product separation is not part of primary field operations.

Therefore, any waste generated by the transportation or handling of the crude oil (product) after custody transfer or, in the absence of custody transfer, after the end point of initial product separation of the oil and water, is not within the scope of the exemption. Examples of non-exempt wastes resulting from transportation include transportation pipeline pigging wastes, contaminated water and snow resulting from spills from transportation pipelines or other forms of transport of the product, and soils contaminated from such spills. It should be noted that the hydrocarbon-bearing soils identified in the 1987 Report to Congress and listed in the 1988 Regulatory Determination as being exempt are limited to those hydrocarbon-bearing soils that occur at oil or gas E&P sites or result from spills of exempt waste. As discussed above, the exempt status of wastes generated by primary field operations and transported off-site for treatment or disposal is not affected by custody transfer.

D. Gas Plants and Feeder Pipelines

Natural gas is produced from the ground through a system of one or more wells in a gas field. Some water may be separated from the gas at the wellhead, but due to economy of scale, the gas from several wells is generally commingled and sent to a central gas plant where additional water and other impurities are removed. The ownership, or custody, of the natural gas commonly changes hands between the wellhead and the gas plant, yet the removal of impurities from the gas at a gas plant is still a necessary part of the production process for natural gas.

For natural gas, primary field operations (as defined in the 1987 Report to Congress) include those production-related activities at or near the wellhead and at the gas plant (regardless of whether or not the gas plant is at or near the wellhead) but prior to transport of the natural gas from the gas plant to market. Because the movement of the natural gas between the wellhead and the gas plant is considered a necessary part of the production operation, uniquely associated wastes derived from the production stream along the gas plant feeder pipelines (e.g., produced water, gas condensate) are considered exempt wastes, even if a change of custody of the natural gas has occurred between

the wellhead and the gas plant. Some wastes generated at this production stage may not be uniquely associated with the natural gas production stream and are, therefore, not exempt (e.g., pump lube oil, waste mercury from meters and gauges). Similarly, soils contaminated by spills of wastes that are not uniquely associated with production operations, such as soils contaminated by mercury from gauges, are not exempt wastes.

Wastes generated at compressor stations and facilities located along the transportation and distribution network downstream from the gas plant or at the market end of the transportation system are not covered by the E&P exemption. These wastes are not uniquely associated with oil or gas exploration and production and are not exempt.

In addition, wastes generated by non-production related activities (i.e., manufacturing) that may occur at a gas plant are not exempt. These non-exempt manufacturing activities include operations that go beyond the removal of impurities from the raw gas and the physical separation of the gas into its component fractions. Manufacturing activities would be those that are similar to petrochemical plant operations, such as the cracking and reforming of the molecular structures of the various gas fractions and the addition of odorants or other substances. The end point of the scope of the exemption for natural gas is in the gas plant once manufacturing begins or, if no manufacturing occurs, at the point at which the natural gas leaves the gas plant for transportation to market.

It should be noted that the production of elemental sulfur from hydrogen sulfide gas at a gas plant is considered treatment of an exempt waste (i.e., the hydrogen sulfide gas is a uniquely associated waste). This waste treatment process reduces the volume and/or toxicity of the exempt waste and produces a saleable product. As such, this process is similar to crude oil reclamation and any residual waste derived from the hydrogen sulfide remains exempt.

Finally, wastes uniquely associated with operations to recover natural gas from underground gas storage fields are covered by the exemption just as if the gas were being produced for the first time. This is because operations to store and retrieve natural gas from natural underground formations, as well as the types of wastes generated, are virtually identical to those involved with the production of natural gas for the first time, although the volume of wastes generated by natural gas storage and retrieval is typically smaller than the volume generated by the initial production. In effect, in the context of the E&P exemption, the storage of natural gas in natural underground formations returns the gas to the beginning point of the production process.

III. Administrative Procedure Act Requirements

Today's notice is issued without request for public comment since it does not revise, amend, repeal, change, or otherwise alter any EPA regulation, nor constitute a change to EPA's 1988 Regulatory Determination regarding oil and gas exploration and production wastes. This notice merely provides further clarification of EPA's statements regarding the scope of the exemption for oil and gas wastes. Thus, EPA does not believe that today's notice constitutes an action for which notice and comment is required under the Administrative Procedure Act (APA).

To the extent today's notice is covered by APA requirements, EPA believes that it is merely interpreting the scope of the existing RCRA statutory exclusion for oil and gas wastes, for which notice and comment is not ordinarily required. Alternatively, EPA believes it has good cause under Section 553(b) of the APA to publish this notice without opportunity for comment. EPA has already received substantial comment regarding the scope of the oil and gas exemption in response to its 1987 Report to Congress, and further comment on the issue is unnecessary, particularly since EPA is not altering its position from that which the Agency announced in the 1988 Regulatory Determination.

IV. EPA RCRA Docket

The EPA RCRA docket is located at: United States Environmental Protection Agency, RCRA Information Center, room M2427, 401 M Street, SW., Washington, DC 20460.

The RCRA Information Center is open from 9:00 to 4:00 Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials. Call the docket at (202) 260–9327 for appointments. Copies cost $.15 per page.

The following documents related to the July 6, 1988 regulatory determination are available for inspection in docket number F–88–OGRA-FFFFF.

- Report to Congress on Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy;
- All supporting documentation for the regulatory determination, including public comments on the Report to Congress and EPA response to comments, and
- Transcripts from the public hearings on the Report to Congress.

All supporting documentation for this **Federal Register** Notice are available for inspection in docket number F–93–OGRC-FFFFF.

Dated: March 11, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS.
Acting Assistant Administrator.

[FR Doc. 93–6153 Filed 3–19–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–4607–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Woodbury Chemical Company Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Woodbury Chemical Company Superfund Site (Site) in Commerce City, Colorado, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Colorado have determined that all appropriate response actions have been implemented at the Site and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Colorado have determined that remedial activities conducted at the Site are protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams (8HWM-SR), Remedial Project Manager, U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1531, or Mr. Patrick Bustos (8OEA), Office of External Affairs, U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 294–1139.

ADDRESSES: Comprehensive information on this Site is available at the following addresses:

EPA's Region VIII Administrative Records Center, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, 5th floor, Denver, Colorado 80202–2466, (303) 293–1807, Hours: Mon–Fri 8 a.m.–4:30 p.m.

and

Colorado Department of Health, Hazardous Materials and Waste Management Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222, (303) 692–3300, Hours: Mon–Fri 8 a.m.–5 p.m.

and

Adams County Public Library, Commerce City Branch, 7185 Monaco Street, Commerce City, Colorado 80022, (303) 287–0063, Hours: Mon and Th 1 p.m.–8 p.m., Tues, Wed, Fri, and Sat 10 a.m.–5 p.m.

SUPPLEMENTARY INFORMATION:

The Site to be deleted from the NPL is:

Woodbury Chemical Company Superfund Site, Commerce City, Colorado

A Notice of Intent to Delete for this Site was published December 29, 1992 (57 FR 61867). The closing date for comments on the Notice of Intent to Delete was January 29, 1993. Of the two written comment letters submitted during the Woodbury comment period, one voiced strong support in favor of EPA's proposed deletion of the Woodbury Site. In its response, EPA agreed that the Site should be deleted.

The second comment letter was from a corporation which owns property near the Woodbury Site. The commenter was primarily concerned with the action levels specified in the 1985 Record of Decision (ROD) and the potential migration of remaining contaminants in Site soils to the ground water aquifer below its property. In its response, EPA directed the commenter to the Deletion Docket which includes the 1989 ROD that superseded the 1985 document. The 1989 ROD specified individual action levels for ten chemicals of concern. The Technical Summary Report documents that cleanup activities for the entire Woodbury Site complied with all ten action levels and that the cumulative health risk associated with the remaining soils is less than one in one million ($1x10^{-6}$). This adherence to the 1989 action levels ensured that the ground water aquifer below the Woodbury Site will not be affected by former Site contaminants. EPA's detailed response to these comments can be found in the Responsiveness Summary filed in the EPA, Region VIII Deletion Docket. The Technical Summary Report is also included in the Deletion Docket.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action. Section 300.425 (e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Hazardous waste.

Dated: March 10, 1993.

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300–[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B–[Amended]

2. Table 1 of appendix B to part 300 is amended under Colorado by removing the site for "Woodbury Chemical Company Site, Commerce City,"; and by revising the total number of sites, "1,080" to read, "1,079".

[FR Doc. 93–6529 Filed 3–19–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–142; RM–8014]

Radio Broadcasting Services; Brighton, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Renard Communications Corp., allots Channel 231A to Brighton, New York, as the community's first local FM service. See FR 31692, July 17, 1992. Channel 231A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5 miles) east to avoid a short-spacing to Station WACZ, Channel 230A, Danville, New York, at coordinates North Latitude 43–08–55 and West Longitude 77–27–04. This allotment is short-spaced to Stations CBL–FM, Channel 231C1, Toronto, and CBBB–FM, Channel 232B, Belleville, Ontario, Canada. However, the Commission has determined that a Brighton station can limit its power in the direction of these stations and avoid any prohibited interference. Canadian concurrence in the allotment of Channel 231A to Brighton, as a specially negotiated allotment, has been received. With this action, the proceeding is terminated.

DATES: Effective April 26, 1993. The window period for filing applications will open on April 27, 1993, and close on May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–142, adopted January 4, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Brighton, Channel 231A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6420 Filed 3–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92-173; RM-8033]

Radio Broadcasting Services; Lakewood, NY and Clarendon, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert Stevens, allots Channel 295B1 to Lakewood, New York, as the community's first local FM service, and substitutes Channel 282A for unoccupied but applied-for Channel 296A at Clarendon, Pennsylvania. See 57 FR 38292, August 24, 1992. Channel 295B1 can be allotted to Lakewood with a site restriction of 10.1 kilometers (6.3 miles) south to avoid short-spacings to Stations WCTL, Channel 292A, Union City, Pennsylvania, and CILQ-FM, Channel 296C1, Toronto, Ontario, Canada, at coordinates North Latitude 42-00-54 and West Longitude 79-17-38. Channel 282A can be allotted to Clarendon with a site restriction of 4.1 kilometers (2.6 miles) west to avoid a short-spacing to Station WLMI, Channel 280A, Kane, Pennsylvania, at coordinates 41-47-21; 79-08-29. Channel 282A can also be used at the site specified in the pending application for Channel 295A at Clarendon (BPH-920306MA), at coordinates 41-48-50; 79-10-04. Canadian concurrence in both allotments has been received. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1993. The window period for filing applications for Channel 295B1 at Lakewood, New York, will open on April 27, 1993, and close on May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-173, adopted January 21, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Lakewood, Channel 295B1.

3. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 295A and adding Channel 282A at Clarendon.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-6418 Filed 3-19-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-333; RM-7340; RM-7518]

Radio Broadcasting Services; Mora, Bosque Farms and Socorro, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of H&HSB Corporation, reallots channel 284C from Socorro to Bosque Farms, New Mexico, as the community's first local FM transmission service (RM-7518). See 55 FR 29390, July 19, 1990. Channel 284C can be allotted to Bosque Farms in compliance with the Commission's minimum distance separation requirements with a site restriction of 39.8 kilometers (24.7 miles) southwest to avoid short-spacing to Station KCEM-FM, Channel 283C, Bloomfield, New Mexico, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 284C at Bosque Farms are North Latitude 34-34-40 and West Longitude 106-57-40. Mexican concurrence in the Bosque Farms allotment has been received since the community is within 320 kilometers (199 miles) of the U.S.-Mexican border. The request of Voices of the Desert to allot Channel 284A to Mora, New Mexico, is dismissed because neither the petitioner nor any other party expressed continuing interest in applying for the channel, if allotted (RM-7340). With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-333, adopted January 27, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 284C at Socorro and adding Bosque Farms, Channel 284C.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-6424 Filed 3-19-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-66; RM-7940]

Radio Broadcasting Services; Sun City, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C2 for Channel 292A at Sun City, Arizona, and modifies the Class A license for Station KONC-FM to specify operation on the higher powered channel, as requested by Resource Media, Inc. See 57 FR 12794, April 13, 1992. Coordinates for Channel 292C2 at Sun City are 33-58-30 and 112-20-08. Since Sun City is located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–66, adopted January 28, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 292A and adding Channel 292C2 at Sun City.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6419 Filed 3–19–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–240; RM–8085]

Radio Broadcasting Services; Yakima, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KZTA Broadcasting, Inc., substitutes Channel 259C3 for Channel 257A at Yakima, Washington, and modifies the license of Station KZTA–FM accordingly. See 57 FR 49162, October 30, 1992. Channel 259C3 can be allotted to Yakima in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site with a site restriction of 16 kilometers (9.9 miles) southeast to avoid short-spacing to Station KISW, Channel 260C, Seattle, Washington. The coordinates for Channel 259C3 at Yakima are North Latitude 46–31–20 and West Longitude 120–19–59. Since Yakima is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–240, adopted January 22, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 257A and adding Channel 259C3 at Yakima.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6428 Filed 3–19–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1007

[Ex Parte No. 514 (B)]

Privacy Act: New System of Records—Exemption; Office of Inspector General; Complaint and Investigative Files

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission (ICC) is exempting a new system of records due to the law enforcement nature of those records. That system of records, which the Commission has established in another proceeding under the Privacy Act of 1974, as amended (5 U.S.C. 552a), consists of the complaint and investigatory files of the ICC's Office of Inspector General (OIG). This rule amendment is required in order to invoke the relevant exemptions. By relieving the OIG of certain restrictions, the exemption will help ensure that the OIG may efficiently and effectively perform investigations and other authorized duties and activities.

EFFECTIVE DATE: This rule is effective April 21, 1993.

FOR FURTHER INFORMATION CONTACT: S. Arnold Smith, Freedom of Information/Privacy Officer, (202) 927–6317. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: At 58 FR 580 (January 6, 1993), the ICC published a notice proposing to establish a new system of records, "Office of Inspector General Complaint and Investigative Files," under the Privacy Act, as amended, 5 U.S.C. 552a. In the notice section of today's **Federal Register**, the Commission is publishing a notice establishing that system of records. The Commission also proposed an amendment of 49 CFR 1007.12 (58 FR 532, January 6, 1993) to exempt the new system of records from certain provisions of the Act. These provisions require, among other things, that the ICC provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the conduct of OIG investigations if applied to the OIG's maintenance of the proposed system of records.

No comments on our proposed amendment to 49 CFR 1007.12 were received from the public or the Office of Management and Budget. Accordingly, the ICC will exempt the system of records under sections (j)(2) and (k)(2) of the Privacy Act. Section (j)(2), 5 U.S.C. 552(j)(2), exempts a system of records maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws * * *." Section (k)(2), 5 U.S.C. 552a(k)(2), exempts a system of records consisting of "investigatory materials compiled for law enforcement purposes," where such materials are not within the scope of the (j)(2) exemption pertaining to criminal law enforcement.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Commission certifies that this amendment to its regulations will not have a significant economic impact on a substantial number of small entities

within the meaning of the RFA. The purpose of this amendment, which has been proposed pursuant to the Privacy Act, is solely to exempt from disclosure certain files of the ICC's OIG that would be kept in a new system of records within the ICC. This amendment imposes no new regulatory requirements either directly or indirectly on anyone, including small entities. Moreover, because the Privacy Act applies only to "individuals," and the RFA defines "small entities" as having the same meaning as 'small business', 'small organization' and 'small government jurisdiction' as defined in section 601 (3), (4) and (5) respectively, the "individuals" who may be affected by the new rule do not appear to come within the meaning of "small entity" as defined by the RFA.

Energy and Environment Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1007

Administrative practice and procedure, Privacy.

Decided: March 15, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1007 of the Code of Federal Regulations is amended as follows:

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

1. The authority citation for part 1007 continues to read as follows:

Authority: 5 U.S.C. 552, 553, and 559.

2. Section 1007.12 is amended by adding a new paragraph (c) as follows:

§ 1007.12 Exemptions.

* * * * *

(c) Complaints and investigatory materials compiled by the Commission's Office of Inspector General are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, pursuant to 5 U.S.C. 552a(j)(2), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and, (11) and (i) to the extent that the system of records pertains to the enforcement of criminal laws. Complaint and investigatory materials compiled by the Commission's Office of Inspector General for law enforcement purposes also are exempt from the provisions of 5 U.S.C. 552a and the regulations of this part, pursuant to 5 U.S.C. 552a(k)(2), except subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

[FR Doc. 93–6475 Filed 3–19–93; 8:45 am]
BILLING CODE 7035–01

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 921185–3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the shortraker/rougheye species (SRRE) target species category in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the SRRE total allowable catch (TAC) in the AI.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), March 17, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2), the 1993 SRRE TAC for the AI was established by the final notice of groundfish specifications (58 FR 8703, February 17, 1993) as 935 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the SRRE TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 730 mt, with consideration that 205 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for SRRE in the AI, effective from 12 noon, A.l.t., March 17, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 17, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–6524 Filed 3–17–93; 4:44 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 53
Monday, March 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 130

[Docket No. 91-021-4]

RIN 0579-AA43

User Fees—Veterinary Diagnostics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish user fees for certain veterinary diagnostic services we provide. This proposed rule replaces a portion of a proposed rule published in the **Federal Register** on August 7, 1991. These proposed user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The effect of these regulations would be to require certain persons to pay fees for services they receive.

We are also proposing to amend certain provisions of our current regulations for user fees to either make them consistent with this proposal or to clarify their intended meaning. In addition, we are also proposing to amend certain provisions of our current regulations for user fees that pertain to debtors who fail to pay the fees when due, to make them consistent with provisions of our overtime regulations.

DATES: Consideration will be given only to comments received on or before April 21, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-021-4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Joan Arnoldi, Director, National Veterinary Services Laboratories, VS, APHIS, USDA, 1800 Dayton Road, P.O. Box 844, Ames, Iowa 50010, (515) 239-8266.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended, referred to below as the Farm Bill, authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance. (sec. 2509(c)(1) of the Farm Bill).

The Farm Bill further authorizes the Secretary to prescribe and collect fees to recover the costs of carrying out the provisions of 21 U.S.C. 114a, as amended which relate to veterinary diagnostics. (sec. 2509(c)(2) of the Farm Bill) 21 U.S.C. 114a concerns control and eradication of communicable livestock and poultry diseases which constitute an emergency and threaten the livestock industry of the United States. Section 2509(c)(5)(C)(ii) also provides procedures for the Secretary to follow in the case of non-payment of assessed fees, late payment penalties, or accrued interest. The section states that the Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest.

Section 2509(d) of the Farm Bill provides in addition that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of section 2509.

Previously Published Regulations

On August 7, 1991, we published a document in the **Federal Register** (56 CFR 37481-37499, Docket 91-021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. We also proposed in that document to amend 9 CFR chapter I to establish user fees for veterinary diagnostic services we provide. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or toxin is present in body tissues or cells.

On August 21, 1991, and September 24, 1991, documents making various corrections to our published proposal were published in the **Federal Register** (56 FR 41605 and 56 FR 48270).

We solicited comments concerning our proposal for a 30-day period ending September 6, 1991. We received 176 comments by that date. They were from shipping interests, both international and domestic, members of Congress, airlines, state governments, representatives of agricultural industries, importers, exporters, veterinarians, and producers.

After carefully considering all of the comments received, we published a final rule implementing collection of user fees for various inspection and quarantine services. The final rule was published in the **Federal Register** on January 9, 1992 (57 FR 755-773, Docket 91-135). However, we did not include in the final rule user fees proposed for veterinary diagnostic services. Instead, we stated that we would "consider further the comments we received on this issue and decide what action to take as soon as feasible."

Of the comments we received in response to our August 7, 1991, proposal, many addressed the user fees proposed for veterinary diagnostics. Some were supportive. However, most were not. Of those which were negative, many voiced general objections. Others stated that our fees were too high or were unfair to certain users. Several objected to the fact certain users had to pay fees "up front," rather than being billed.

Since our August 7, 1991, proposal was published, we have thoroughly reviewed the comments we received. We have compiled additional and more recent cost data. We have also resurveyed the diagnostic services we provide. Based on this work, we have substantially revised our original proposed rules concerning veterinary diagnostics. The regulations proposed in this document are new. The lists of services we provide have been revised; many of the user fees have been recalculated and revised; and most payment procedures have been changed.

Therefore, the regulations we are proposing in this document supersede

the proposed rules published August 7, 1991, concerning user fees for veterinary diagnostic services.

Regulations Proposed in This Document

We are proposing to charge user fees for certain veterinary diagnostic services, including providing certain diagnostic reagents, slide sets, and tissue sets. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or toxin is present in body tissues or cells. Services in this category include: (1) performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to the Animal and Plant Health Inspection Service (APHIS or Agency) by veterinarians or State animal health officials who, or universities which, want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); and (3) providing certain diagnostic reagents, slide sets, and tissue sets. Diagnostic reagents are substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostic service.

We are also proposing to amend the regulations to add definitions of "National Veterinary Services Laboratories (NVSL)" and "National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL)", which are the laboratories where we provide the veterinary diagnostic services covered by this proposed rule, and definitions of "Diagnostic reagent", "Privately operated permanent import-quarantine facility", "Reference assistance testing", and "State animal health official".

In addition, as discussed in another section of this docket, we are proposing to amend certain provisions of our current user fee regulations for service provided under Title 9, Code of Federal Regulations, to either make them consistent with what we are proposing here or to clarify their intended meaning. Further, we are proposing to amend certain provisions of our current regulations that pertain to debtors who fail to pay fees when due, to make them consistent with certain provisions of our overtime regulations. Further, we are also proposing to make certain non-substantive technical changes.

User Fees for Laboratory Tests, Diagnostic Reagents, Slide Sets, and Tissue Sets, and Sterilization by Gamma Radiation

We are proposing to charge a user fee for: (1) Laboratory tests we perform in connection with the importation or exportation of animals and birds (proposed §§ 130.14 and 130.15); (2) laboratory tests we perform as part of reference assistance testing (proposed § 130.16); (3) diagnostic reagents, slide sets, and tissue sets we provide (proposed § 130.17); and (4) sterilization by gamma radiation we perform (proposed § 130.18). The proposed user fees have been calculated to recover the costs for listed tests, diagnostic reagents, slide and tissue sets, and sterilization by gamma radiation, including support and overhead costs.

We are proposing to charge an APHIS user fee only for the listed tests, diagnostic reagents, slide and tissue sets, and sterilization by gamma radiation. If, in the future, we decide to charge a user fee for a test, diagnostic reagent, slide or tissue set, or service that is not on the list, we will publish a proposed user fee for public comment in the **Federal Register**.

We do not intend to charge an APHIS user fee for tests and diagnostic reagents provided in the United States in connection with: (1) Current programs to control or eradicate various domestic diseases or pests, known as "program diseases"; or (2) current programs to detect the presence of and prevent the spread of dangerous foreign (exotic) animal diseases in the United States. Examples of program diseases are tuberculosis, brucellosis, and pseudorabies. Examples of dangerous foreign animal diseases are foot-and-mouth disease and swine vesicular disease.

We are not proposing to charge user fees for testing for program diseases. As part of these programs, we conduct surveillance of livestock to identify and locate diseased animals and birds. Diseased animals and birds can then be removed. This eliminates the foci of infection and stops the spread of disease. However, for our programs to be effective, samples must be submitted for testing. We also depend on samples submitted for testing to compile statistics concerning disease incidence. These statistics are used by us and by others, including researchers and other government agencies concerned with veterinary medicine, agricultural production, and other related topics. In order to compile accurate and useful statistics, we depend on the submission of samples for testing. Submission of test samples is critical to both the effectiveness of our programs to control and eradicate domestic diseases and pests, and to our efforts to compile statistics concerning the incidence of disease. We believe submission of test samples would be encouraged by not charging a user fee for these services.

With regard to exotic diseases, we are also not proposing to charge for testing. Livestock in the United States have no resistance to most of these diseases, and effective vaccines are not available for all of these diseases. The harmful impact of an outbreak of exotic disease in this country would therefore be tremendous. A critical element in our programs to prevent the introduction of exotic diseases is sample testing. Therefore, we want to encourage submission of samples for testing. We believe submission of test samples would be encouraged by not charging a user fee for these services.

With regard to reference assistance testing, APHIS user fees would apply only if the testing is related to a disease which is not subject to an APHIS detection, control, or eradication program at the time the testing is performed.

Laboratory tests are conducted as needed, usually in connection with the import or export of animals or birds. Those who request specific tests are mainly importers, exporters, animal owners, and brokers. Laboratory tests are also conducted as part of reference assistance testing. Veterinarians, State animal health officials, and universities request APHIS to assist them by either establishing or confirming a diagnosis. APHIS then conducts whatever tests and procedures are necessary to accomplish that. Under our proposal, there would be an APHIS user fee for each such test APHIS conducts for a disease which is not subject to an APHIS detection, control or eradication program at the time the test is performed.

Diagnostic reagents, slide sets, and tissue sets, are substances and materials used in diagnostic tests to detect disease antibodies by causing an identifiable reaction. They are available in measured amounts or sets, which are adequate to conduct a "standard run" of tests. The National Veterinary Services Laboratories (NVSL) at Ames, Iowa, and the National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, New York, supply diagnostic reagents and slide and tissue sets to other laboratories. Some reagents provided by FADDL are supplied only to users outside the United States. This is because these reagents contain

infectious agents of diseases not known to exist in the animal population of the United States. Under our proposal, there would be an APHIS user fee for each diagnostic reagent, slide set, or tissue set supplied for a disease which is not subject to an APHIS detection, control or eradication program at the time the test is performed.

We are also proposing to charge an APHIS user fee for sterilization by gamma radiation. We consider this a diagnostic service. It involves placing biological material in a standardized container, referred to as a can, and exposing it to gamma radiation. This ensures that agents of exotic disease present in the material are destroyed before the material can enter the United States for diagnostic testing.

Costs Included in Proposed User Fees

We are proposing to charge a specific dollar amount for each individual service we provide, that is, each test we perform or each diagnostic reagent, slide set, tissue set, or service we provide. Each fee has been calculated to cover the full cost of performing the test or providing the diagnostic reagent, slide set, tissue set, or service. This cost includes direct labor and direct materials costs. It also includes administrative support, equipment capitalization, Agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to perform the test or provide the diagnostic reagent, slide set, tissue set, or service. For example, the time spent by laboratory personnel to prepare a sample, conduct the test, and read the test would be part of the direct labor costs for testing a tissue sample for disease-causing organisms. Direct labor costs vary with the test performed, or the diagnostic reagent, slide set, tissue set, or service provided.

Direct material costs include the cost of any materials needed to conduct the test, or provide the diagnostic reagent, slide set, tissue set, or service. For example, direct material costs for conducting a laboratory test would include animals, eggs, glassware, chemicals, and other supplies necessary to perform the test. Again, direct material costs vary for different tests, diagnostic reagents, slide sets, tissue sets, and services.

Administrative support costs are incurred at the local level, that is, at the laboratories. They include clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing necessary work that is not directly connected with the test, diagnostic reagents, slide set, tissue set, or service, such as repairing equipment); travel and transportation for personnel, supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware, and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct materials costs, the type, amount, and cost of administrative support vary.

Equipment capitalization is the annualized cost to replace equipment. We determine this by estimating the life expectancy, in years, of equipment we use to provide a service and by estimating the cost to replace that equipment at the end of its useful life. We subtract any money we anticipate receiving for selling used equipment. Then we divide the resulting dollar figure by the life expectancy of the equipment. The result is the annual cost to replace equipment.

Agency overhead is the pro-rata share, attributable to a particular test, diagnostic reagent, slide set, tissue set, or service, of the management and support cost for all Agency activities at the regional level and above. Included are the cost of providing budget and accounting services, management support at the headquarters and regional level, including the Administrator's office, and personnel services, public information service, and liaison with Congress.

Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the Agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributable to a particular test, diagnostic reagent, slide set, tissue set, or service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each test, diagnostic reagent, slide set, tissue set, and service.

Calculation of Proposed User Fees

The basic steps in the calculation, for each particular service, are:

1. determine which of the following costs apply, and the amount:
   - Direct labor;
   - Direct materials;
   - Pro-rata share of administrative support;
   - Pro-rata share of equipment capitalization;
   - Pro-rata share of Agency overhead; and
   - Pro-rata share of Departmental charges.
2. Add all costs.
3. Round total cost up to the nearest quarter of a dollar.

The result of these calculations is a user fee which covers the total cost to perform a particular test or provide a particular diagnostic reagent, slide set, tissue set, or service one time, rounded up to the nearest quarter of a dollar.

We have individually calculated costs for each test, diagnostic reagent, slide set, tissue set, and service.

To arrive at proposed user fees for laboratory tests, we determined the amount of time, in hours, needed to perform the specific test. If 400 tests could be done in 1 hour, the time per test would be 1/400th of an hour. We then multiplied the number of hours per test by the average hourly salary of personnel in the laboratory where the test is performed, plus direct material costs, administrative support costs, equipment capitalization, Agency overhead, and Departmental charges.

We are proposing tiered user fees for three tests—complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (NV). That is, there would be one fee for the first CF, HI, or NV test on a sample, and a second, different, fee for each additional test of the same type on the same sample. The user fee for additional tests would be lower than the user fee for the first test.

CF, HI, and NV tests are conducted to detect many different diseases. A single sample may be tested many times for different diseases, each time using the same type of test. A given amount of time and effort is required to prepare a sample for the first test. However, once the sample has been prepared for the first test, less time and effort is necessary to ready it for each additional test of the same type. Because of this, costs are lower for each additional test.

Therefore, we are proposing one user fee for the first CF, HI, or NV test on a sample, and another, lower, user fee for each additional test of the same type on the same sample.

For microscopic agglutination tests, we are proposing to charge one user fee for each accession (i.e., each request), up to five serovars per accession, and a lesser fee for each serovar or test performed in excess of five serovars per accession. A given amount of preparation time and effort is required prior to conducting microscopic agglutination tests. However, once the test is set up in the laboratory, less time and effort is necessary to conduct each procedure. Most accessions for this test require five or fewer serovars. Therefore, most users would have to pay only the accession fee.

Readers may note that our proposed user fees for tests performed at FADDL are higher than our proposed user fees for the same tests performed at NVSL. Both FADDL and NVSL are designed for work with infectious and contagious disease agents. However, FADDL, which is isolated from the United States mainland, works with agents of diseases exotic to the United States, while NVSL works with agents of diseases present in the United States. Because of this, special biosecurity measures are required at FADDL which are not required at NVSL. These special measures are expensive, and FADDL operating costs are necessarily higher than NVSL operating costs. The user fees we are proposing reflect this difference in costs.

To arrive at proposed user fees for diagnostic reagents, we determined the amount of time needed to produce a batch of reagent. We multiplied the number of hours needed by the average hourly salary of personnel in the laboratory where the diagnostic reagent is produced, plus direct materials costs, administrative support costs, equipment capitalization, Agency overhead, and Departmental charges. We then divided the total by the number of milliliters of diagnostic reagent in the batch, to arrive at a cost per milliliter. The proposed user fee is the cost per milliliter multiplied by the number of milliliters of diagnostic reagent in a standard unit of that diagnostic reagent.

To arrive at proposed user fees for slide and tissue sets, we determined the amount of time needed to provide a tissue set or slide set, and multiplied that by the average hourly salary of personnel in the laboratory where the slide or tissue set is produced. To this we added direct materials costs, administrative support costs, equipment capitalization, Agency overhead, and Department charges to arrive at the cost per slide or tissue set.

To arrive at a proposed user fee for sterilization by gamma radiation, we determined costs using the same method.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We will publish any necessary adjustments in the **Federal Register**.

Additional data and computations for the fees proposed to be established by this proposal are available for inspection at the Animal and Plant Health Inspection Service, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8:00 am and 4:30 pm, Monday through Friday, except holidays.

Rounding

We have rounded our proposed user fees up to the nearest quarter. This is consistent with the methodology used to determine APHIS user fees for issuing phytosanitary certificates for plants and plant products being exported from the United States, and for services related to the export or import of animals and birds.

APHIS has extensive experience with billings and collections. Based on this experience, we believe rounding up our fees is most practical. Rounding up makes calculations easier. It reduces billing and collection errors. In addition, it compensates for the impossibility of calculating the *exact* cost of any service. Determining the *exact* cost is impossible because the total cost of any service is based on many factors, all of which vary over time and some of which vary unpredictably. For example, we cannot determine, in advance, exactly how many times a particular service will be requested during a year, and we cannot know, in advance, the exact cost of direct materials that will be utilized over the course of a year. That is a function, among other things, of who wants to import or export animals, which types of animals are involved, and where the animals are being exported to or imported from. None of this data can be definitely determined in advance. Therefore, we must estimate, based on past experience.

Rounding up is also most practical because it would compensate APHIS for the portion of user fees which will never be paid and which we cannot collect. We anticipate that unpaid user fees will be minimal. We base this on our experience charging APHIS user fees for other services. However, we have no specific experience collecting user fees for veterinary diagnostic services. Therefore, we cannot estimate the amount of unpaid user fees for these services. Rounding up our proposed user fees would, however, compensate APHIS for these bad debts.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We would propose any necessary cost adjustments in the **Federal Register**. Our intention is not to collect user fees in excess of our actual costs to provide services.

Overtime

NVSL and FADDL occasionally receive a request for special service. For example, we are sometimes asked to expedite a test or service. If we must conduct a test or provide a service on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, we propose to require the person or organization requesting the service to pay reimbursable overtime, in addition to the APHIS user fee for each test. We believe this is necessary to discourage unnecessary demands for overtime work, and resulting high costs to APHIS. Regulations governing reimbursable overtime are found in 9 CFR part 97.

Payment Procedures (see Proposed § 130.50(a)(1), (a)(2), (a)(5), and (a)(6)

We propose that users who request tests, other than testing conducted on animals and birds in Animal Import Centers, privately operated permanent import-quarantine facilities, privately operated temporary import-quarantine facilities, and reference assistance testing, and users who request diagnostic reagents, slide sets, tissue sets, or sterilization by gamma radiation, pay the applicable APHIS user fee either at the time they make their request, or under certain circumstances described below, when we bill them. Users would have to pay the user fees at the time they make the request, until they have established an acceptable credit history. Once we determine that a user has established an acceptable credit history, they may choose either to pay at the time they request the test, diagnostic reagent, slide or tissue set, or sterilization, or when they are billed.

With regard to tests performed on animals and birds in an Animal Import Center or privately operated permanent import-quarantine facility, we would collect payment when the animals or birds are released from quarantine, since this is when we collect all fees that are due as a result of the quarantine.

We also propose to amend existing § 130.50(a)(2), to make it consistent with

this proposal. This section concerns payment of user fees for animals and birds in privately operated temporary import-quarantine facilities. It currently states that APHIS user fees must be paid when billed. As with animals in Animal Import Centers or privately operated permanent import-quarantine facilities, we intend to collect APHIS user fees at the time the animals are released from quarantine.

With regard to reference assistance testing, we propose to bill users for the actual tests performed, as soon as we determine what tests are necessary. In this case, a request for advance payment is not possible, since we do not know what is owed until we determine what tests are necessary.

Penalties for Nonpayment (Proposed § 130.51(b)(3) and (b)(4))

Under our proposal, in all cases where APHIS is in the process of providing any service proposed in this document for which a user fee is due, and the user has not paid the fee within the time required, or payment offered by the user is inadequate or unacceptable, then we would not release the test results, diagnostic reagent, slide set, tissue set, or sterilized material.

We believe these provisions would help ensure that APHIS user fees are paid promptly and in full. Prompt and full payment is necessary if we are to recover the costs of conducting tests, sterilizing material, and providing slide sets and tissue sets. Without payment, we cannot continue to provide those services.

Our regulations already provide in § 130.51(c) that, "If user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717."

We intended that we would impose a late penalty payment and interest charges, in accordance with 31 U.S.C. 3713, for user fees which are billed, if they are unpaid 30 days after the date of the bill. To ensure that this is clear in the regulations, we are proposing to revise § 130.51, paragraph (c), to clarify this. We are also proposing to revise § 130.51(a) to state when debtors who are delinquent in paying must prepay for services, when such debtors must pay in guaranteed form, and when APHIS would refuse service based on delinquent debts.

As amended these provisions would be consistent with our existing regulations concerning payment for overtime services relating to imports and exports (9 CFR Part 97). It is important for APHIS to discourage delinquent debts because the cost of carrying or writing them off would have to be factored into the user fees. This could raise the user fees paid by everyone requesting APHIS services. Based on our experience collecting overtime payments, we believe these provisions would ensure that persons with delinquent debts do not incur additional debts to APHIS. The proposed provisions to require prepayment for services in a guaranteed form if a person is 60 days delinquent paying any debt to APHIS would enable them to continue to receive service from APHIS without increasing the existing debt to the Agency. It would also provide an additional opportunity for debtors to pay a delinquent bill, so their credit standing could be restored. The proposed provision to withhold service if the person is 90 days delinquent paying any debt to APHIS would encourage users to pay the delinquent debt and settle their accounts with APHIS in order to obtain requested services.

Liability for Payment

We are proposing to specify "the person for whom the service is provided and the person requesting the service are jointly and severally liable" for payment of any APHIS fee due for veterinary diagnostic services. We believe this is necessary to avoid future problems in collecting fees, since the identity of the person for whom the service is provided may be unknown to us. We are also proposing to amend our current regulations to add this language with regard to most other APHIS user fees for services provided under title 9, Code of Federal Regulations. The only exception would be the APHIS user fees specified in § 130.8. Those fees are for inspection services outside the United States. Section 130.8 is already similar to the changes we are proposing to make.

Amendment of § 92.106

Regulations governing the importation of various animals, birds, and poultry appear in 9 CFR part 92. Section 92.106 contains quarantine requirements for birds and ratites. Paragraph (c) of that section sets standards for approved quarantine facilities and handling procedures for the importation of birds. Among other things, birds quarantined in privately operated bird quarantine facilities must be tested for velogenic viscerotropic Newcastle disease (VVND). Paragraph (d)(2) of § 92.106 states that laboratory costs are "$8.50 per sample, plus shipping charges per sample . . .".

We are proposing to amend paragraph (d)(2) to delete the charge and state instead that charges will be made for all applicable user fees listed in 9 CFR part 130. This amendment would consolidate all fees for veterinary diagnostic tests. It would also ensure that all persons who request a VVND test pay the same fee for that service.

Certain other editorial, nonsubstantive changes are also being proposed.

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This proposed rule is one of several rules which concern requiring certain persons to pay user fees for APHIS services they receive. We have already published, in three separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837–14846, Docket No. 91–028), and was effective May 13, 1991. The second final rule covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. It was published April 23, 1991 (56 FR 18496–18502, Docket No. 91–054). It was withdrawn in another document published April 21, 1992 (57 FR 14475, Docket No. 91–142). The third final rule was published January 9, 1992 (57 FR 755–773, Docket No. 91–135), and was effective February 9, 1992. It covered user fees for services provided to commercial aircraft entering the customs territory of the United States, services related to the issuance of phytosanitary certificates for plants and plant products being exported from the United States, and services related to the export or import of animals or birds.

The rules currently in effect, along with the regulations proposed in this document, are expected to provide total savings to taxpayers of $131 million annually. The discounted value of this amount is estimated at about $546 million over 5 years. The veterinary diagnostic fees alone, as proposed in this rule, are expected to contribute approximately $2 million per year, or 1.5 percent of the total savings. These anticipated savings would have a discounted value of approximately $7 million over 5 years.

We believe this proposed action is unlikely to have a significant economic impact on a substantial number of small

entities. Approximately 125,000 diagnostic and reference assistance tests are performed annually at APHIS laboratories. These tests are performed for animal importers and exporters, veterinarians, State and Federal agencies and laboratories, commercial laboratories, educational institutions, and foreign governments, most of whom are not small entities.

However, APHIS does not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. We therefore invite comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities which may incur benefits or costs from the implementation of user fees for veterinary diagnostics.

Our preliminary Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or by telephoning (202) 690–2817.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12606

We have analyzed this proposed rule in accordance with Executive Order 12606, and have determined that it would have no potential impact on family well-being. We have determined that this proposed rule: would not affect the stability of the family, and particularly, the marital commitment; would not affect the authority and rights of parents in the education, nurture, and supervision of their children; would not help or hinder the family to perform its functions; would not substitute governmental activity for family functions; and would not have any significant effect on family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This proposed rule sends no message, intended or otherwise, to the public concerning the status of the family, or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping regulations, Tests.

Accordingly, we are proposing to amend 9 CFR parts 92 and 130 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114(a), 134a, 134b, 134c, 134d, 134f, 135, 136, and 136(a); 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.106, paragraph (d)(2) would be revised to read as follows:

§ 92.106 Quarantine requirements.

* * * * *

(d) *Charges for services.* * * *

* * * * *

(2) All applicable user fees, as listed in part 130 of this chapter; and

* * * * *

PART 130—USER FEES

3. The authority citation for part 130 would be revised to read as follows:

Authority: 21 U.S.C. 114a, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

4. In § 130.1, the following definitions would be added, in alphabetical order, to read as follows:

§ 130.1 Definitions.

* * * * *

Diagnostic reagent. Substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

* * * * *

National Veterinary Services Laboratories (NVSL). The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL). The National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory, located in Greenport, New York.

* * * * *

Privately operated permanent import-quarantine facility. Any permanent facility approved under 9 CFR part 92 to quarantine animals or birds, except facilities operated by APHIS.

Reference assistance testing. Tests conducted by APHIS at the request of a veterinarian, state animal health official, or university, to either establish or confirm a diagnosis.

* * * * *

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

* * * * *

5. In § 130.2, the text of paragraph (a) preceding the table would be revised to read as follows:

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for the following user fees, which include standard care, feed, and handling, and which must be paid for

*

each animal or bird quarantined in an Animal Import Center: [5]

* * * * *

6. In § 130.3, the text of paragraph (a) preceding the table would be revised to read as follows:

§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for the user fee which will be charged for each building as follows:

* * * * *

7. Section 130.4 would be revised to read as follows:

§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.

A daily user fee of $49.25 must be paid for each animal quarantined in a privately operated permanent import-quarantine facility. The person for whom the service is provided and the person requesting the service are jointly and severally liable for this user fee.

8. In § 130.5, paragraph (a) would be revised to read as follows:

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the user fee for each animal quarantined in a privately operated temporary import-quarantine facility.

* * * * *

9. In § 130.6, the text of paragraph (a) preceding the table and the text of paragraph (b)(1) preceding the table would be revised to read as follows:

§ 130.6 User fees for endorsing export health certificates.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export health certificate requested [7] for the following types of animals, regardless of the number of animals covered by the certificate:

* * * * *

(b)(1) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export certificate requested for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests required:

* * * * *

11. In § 130.7, paragraph (a), the introductory text would be revised to read as follows:

§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the user fees for the following APHIS services provided within the United States for export animals or birds:

* * * * *

12. In part 130, new §§ 130.14 through 130.18 would be added to read as follows:

§ 130.14 User fees for tests performed at NVSL.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each test listed in this paragraph performed at NVSL in connection with the importation or exportation of animals or birds. All user fees in this paragraph are per test, unless stated otherwise:

Test	User fee
Agar gel immunodiffusion	$4.75
Buffered acidified plate antigen presumptive	3.50
Card	2.00
Competitive enzyme linked immunosorbent assay	4.75
Complement fixation (includes Complement fixation-ovis) [1]	9.00
Enzyme linked immunosorbent assay	4.75
Hemagglutination inhibition (includes Hemagglutination inhibition-5) [1]	7.50
Histopathology	[2] 8.50
Indirect fluorescent antibody	9.00
Latex agglutination	4.75
Mercaptoethanol	3.50
Microscopic agglutination	([3])
Plaque neutralization	7.50
Parasitology	17.00
Plate	3.50
Rivanol	3.75
Tube agglutination (includes tube agglutination melitensis)	3.50
Virus neutralization [1]	7.50

[1] The user fees listed are for the first complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (VN) test performed on a sample. The user fee for each additional test of the same type (CF, HI, or VN) performed on the same sample is 20% of the stated fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests, one HI test and one VN test are performed on the same sample, the user fees are $9.00 for the first CF test, $7.50 for the HI test, $7.50 for the VN test, and, for the second CF test, $2.00, or $1.80 (20% of $9.00), rounded up to the nearest quarter of a dollar.

[2] Per slide.

[3] $10 per accession, plus $2.00 for each serovar in excess of five serovars per accession.

(b) If a test must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each test, in addition to the user fee listed in paragraph (a) of this section.

§ 130.15 User fees for tests performed at FADDL.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each test listed in this paragraph performed at FADDL in connection with the importation or exportation of animals or birds. All user fees in this paragraph are per test, unless stated otherwise:

Test	User fee
Agar gel immunodiffusion	$13.50
Complement fixation [1]	30.50
Direct immunofluorescent antibody	9.50
Enzyme linked immunosorbent assay	11.00
Fluorescent antibody neutralization	22.00
Histopathology	[2] 20.75
In-vivo safety tests	4,177.00
Indirect fluorescent antibody	21.50
Latex agglutination	9.25
Virus isolation	77.75
Virus isolation (OP)	80.00
Virus isolation in embryonated eggs	163.75
Virus neutralization [1]	22.00

[1] The user fees listed are for the first complement fixation (CF) and virus neutralization (VN) test performed on a sample. The user fee for each additional tests of the same type (CF or VN) performed on the same sample is 20% of the stated user fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests and one VN test are performed on the same sample, the user fees are $30.50 for the first CF test, $22.00 for the VN test, and, for the second CF test, $6.25, or $6.10 (20% of $30.50) rounded up to the nearest quarter of a dollar.

[2] Per slide.

(b) If a test must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime,

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

[7] An export certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export certificates as a service to the public.

as provided for in part 97 of this chapter, must be paid for each test, in addition to the user fee listed in paragraph (a) of this section.

§ 130.16 User fees for reference assistance testing.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each reference assistance test listed in this paragraph. All user fees in this paragraph are per test, unless stated otherwise:

(1) Bacterial identification tests:

Test	User fee
Bacterial identification/isolation, routine	$15.00
Bacteriology requiring special characterization	25.00
Leptospira cultures	25.00
Leptospira serotyping	75.00
Phage typing	10.00
Plasmid typing	25.00
Salmonella serotyping	20.00
(2) Toxicology tests:	
GC/MS organic compound:	
Screen	106.50
Confirmation	31.00
ICP metals:	
Screen	26.25
Confirmation	6.00
Mycotoxin screen	30.75
Selenium	30.50
Pesticide:	
Screen	34.25
Quantitation	47.50
Other toxicant:	
Screen	39.75
Quantitation	39.75
(3) Other tests:	
Complement fixation (includes complement fixation—ovis) [1]	9.00
Agar gel immunodiffusion	4.75
Hemagglutination inhibition (includes hemagglutination-5) [1]	7.50
Histopathology	[2] 8.50
Indirect fluorescent antibody	9.00
Parasitology	17.00
Virus isolation	29.75
Virus neutralization [1]	7.50

[1] The user fees listed are for the first complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (VN) test performed on a sample. The user fee for each additional test of the same type (CF, HI, or VN) performed on the same sample is 20% of the stated user fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests, one HI, and one VN test are performed on the same sample, the user fees are $9.00 for the first CF test, $7.50 for the HI test, $7.50 for the VN test, and, for the second CF test, $2.00, or $1.80 (20% of $9.00) rounded up to the nearest quarter of a dollar.

[2] Per slide.

(b) If a test must be conducted on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each test, in addition to the user fee listed in paragraph (a) of this section.

§ 130.17 User fees for diagnostic reagents, slide sets, and tissue sets.

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each diagnostic reagent listed in this paragraph and obtained from NVSL:

Diagnostic reagent	Unit (ml.)	Fee/unit
Avian adenovirus 127:		
Antigen	2	$39.50
Antiserum	2	21.75
Avian encephalomyelitis:		
Virus	0.6	5.25
Antiserum	2	21.75
Avian influenza:		
Antigen	2	8.75
Antiserum	6	51.00
Avian paramyxovirus-2:		
Virus	0.6	5.25
Antigen	2	39.50
Antiserum	2	21.75
Avian paramyxovirus-3:		
Virus	0.6	5.25
Antigen	2	39.50
Antiserum	2	21.75
Avian reovirus:		
Virus	0.6	5.25
Bluetongue:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Bovine coronavirus:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Bovine herpes virus:		
Virus:		
Type 1	0.6	5.25
Type 2	0.6	5.25
Type 4	0.6	5.25
Antiserum:		
Type 1	2	83.50
Type 2	2	83.50
Type 4	2	83.50
Conjugate:		
Type 1	1	19.25
Type 2	1	19.25
Type 4	1	19.25
Positive control serum:		
Type 1	2	4.50
Type 2	2	4.50
Bovine papular stomatitis:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Bovine parvovirus:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Positive control serum	2	4.50
Bovine respiratory syncytial virus:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Positive control serum	2	4.50
Bovine rotavirus:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Bovine viral diarrhea:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Positive control serum	2	4.50
Brucella canis:		
Antigen	2	8.25
Brucella ovis:		
Antigen	2	5.50
Chlamydia psittaci:		
Agent	0.6	5.25
Antiserum	1	21.75
Antigen	1	5.25
Conjugate	1	19.25
CF modifying factor	1	11.50
Contagious ecthyma:		
Virus	0.6	5.25
CF antigen	1	7.00
Antiserum	2	5.25
Conjugate	1	19.25
Duck viral enteritis:		
Virus	0.6	5.25
Antiserum	2	21.75
Conjugate	1	31.25
Encephalomyocarditis:		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Positive control serum	2	6.25
Epizootic hemorrhagic disease:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Equine adenovirus:		
Virus	0.6	5.25
Antiserum	2	11.50
Conjugate	1	24.00
Equine herpes type 1:		
Virus	0.6	5.25
Antiserum	2	11.50
Conjugate	1	24.00
Equine herpes type 2:		
Virus	0.6	5.25
Antiserum	2	11.50
Equine herpes type 3:		
Virus	0.6	5.25
Antiserum	2	11.50
Equine influenza:		
Virus	0.6	5.25
Antiserum	2	21.75
Equine viral arteritis:		
Virus	0.6	5.25
Antiserum	5	48.25
Hemagglutinating encephalomyelitis:		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Positive control serum	2	6.25
Hog Cholera:		
Tissue set	1 set	76.75

Diagnostic reagent	Unit (ml.)	Fee/unit
Infectious bronchitis virus:		
Virus	0.6	4.50
Antiserum	2	21.75
Infectious bursal disease:		
Virus	0.6	5.25
Antigen	1	8.00
Antiserum	2	21.75
Infectious laryngotracheitis:		
Virus	0.6	5.25
Antiserum	2	21.75
Johnin:		
OT	10	12.25
PPD	2	10.75
Lepto FA:		
Conjugate	1	19.25
Flazo-orange	3	6.00
Leptospira:		
Antigen	10	20.00
Antiserum	2	4.50
Lepto transport medium	10	3.00
Newcastle disease:		
Virus	0.6	5.25
Antigen	2	39.50
Antiserum	2	21.75
Parainfluenza-3:		
Virus	0.6	5.25
Antiserum	2	83.50
Conjugate	1	19.25
Positive control serum	2	6.25
Pasteurella:		
Antigen	1	3.50
Antiserum	1	10.00
Porcine adenovirus (AV):		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Porcine parvovirus (PPV):		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Positive control serum	2	6.25
Porcine reovirus:		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Porcine rotavirus:		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Positive control serum	2	6.25
Psittacine herpes virus:		
Virus	0.6	5.25
Antiserum (standard)	2	21.75
Conjugate	1	24.00
Quail bronchitis virus:		
Virus	0.6	5.25
Swine influenza:		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Positive control serum	2	6.25
Transmissible gastroenteritis:		
Virus	0.6	5.25
Antiserum	2	57.50
Conjugate	1	19.25
Positive control serum	2	6.25

(b) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each diagnostic reagent, slide set, or tissue set listed in this paragraph and obtained from NVSL or FADDL for delivery outside of the United States:

Diagnostic reagent, slide set, tissue set	Unit (ml.)	Fee/unit
African swine fever Immunosmophoresis antigen	1	$60.75
Slide set for direct fluorescent antibody test	(1)	23.00
Tissue set	(1)	76.75
Anti-foot-and-mouth disease antigen, Guinea pig origin	1	12.75
Bovine antiserum, any agent	1	2.50
Fluorescent antibody conjugate	1	48.50
Foot-and-mouth disease anti-VIAA serum	1	5.00
Foot-and-mouth disease virus associated antigen	1	36.75
Monoclonal antibodies, mouse ascitic fluid	1	14.75
Ovine antiserum, any agent	1	2.00
Swine antiserum, any agent	1	2.00

[1] Set.

§ 130.18 User fees for sterilization by gamma radiation.

The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of a user fee of $427.75 per can for sterilization by gamma radiation.

13. In § 130.50, paragraphs (a)(1) and (a)(2) would be revised; paragraph (a)(3) would be amended by removing "and" at the end of the paragraph; paragraph (a)(4) would be amended by removing the period at the end of the paragraph and adding a semicolon in its place; and new paragraphs (a)(5) and (a)(6) would be added to read as follows:

§ 130.50 Payment of user fees.

(a) * * *

(1) User fees for animals and birds in an Animal Import Center or privately operated permanent import-quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid at the time the animals or birds are released from quarantine;

(2) User fees for animals or birds in privately-operated temporary import-quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid at the time the animals or birds are released from quarantine;

* * * * *

(5) User fees for tests, other than reference assistance tests, on samples submitted to NVSL or FADDL, and user fees for diagnostic reagents, slide sets, tissue sets, and sterilization by gamma radiation, must be paid when the test, diagnostic reagent, slide set, tissue set, or sterilization is requested, unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed; and

(6) User fees for reference assistance tests must be paid when billed.

* * * * *

14. In § 130.51, paragraphs (a) and (c) would be revised; paragraph (b)(1) would be amended by removing the "and" at the end of the paragraph; paragraph (b)(2) would be amended by removing the period at the end of the paragraph and adding a semicolon in its place; and new paragraphs (b)(3) and (b)(4) would be added to read as follows:

§ 130.51 Penalties for nonpayment or late payment of user fees.

(a) If any person for whom the service is provided or the person requesting the service fails to pay when due, any debt to APHIS, including any user fee due under Title 7 or Title 9, Code of Federal Regulations, then:

(1) Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored;

(2) APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the amount due;

(3) The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt;

(4) Cash payments will be accepted only at a location designated by the APHIS employee during normal business hours; and

(5) Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 90 days after date of bill;

(iii) The person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) * * *

(3) If a user fee is due for a test conducted by APHIS, APHIS will not release the test result or any endorsed certificate; and

(4) If a user fee is due for a diagnostic reagent, slide set, tissue set, or sterilization by gamma radiation, APHIS will not release the diagnostic reagent, slide set, tissue set, or sterilized material.

(c) If for unbilled user fees, the user fees are unpaid 30 days after that date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

* * * * *

Done in Washington, DC, this 11th day of March 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–6142 Filed 3–19–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 113

[Docket No. 92–090–1]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Clostridium Perfringens Types C and D Toxoids and Bacterin-Toxoids

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to the Standard Requirements for *Clostridium perfringens* Type C and *Clostridium perfringens* Type D toxoids and bacterin-toxoids. The amendments would eliminate the testing of individual serums under certain circumstances and would reduce the number of rabbit sera necessary in order to pool serum samples. This proposed amendment would also revise the method of determining the test dose which is currently either one-half of the recommended cattle dose or one-half of the recommended sheep dose. The new test dose would be one-half of the smallest host animal dose. This would provide for treatment recommendations for a variety of host animal species.

The proposed amendment would not change the accuracy of the assays and, under certain circumstances, would reduce the number of required tests as well as the number of mice needed for testing.

The proposed amendment is necessary in order to make the assays more economical to run and to conform more closely to the general format found in the recently revised Standard Requirements for *Clostridium novyi* and *Clostridium sordellii* bacterin-toxoids.

DATES: Considerations will be given only to comments received on or before May 21, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–090–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark D. Wood, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5863.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning potency testing of Clostridum Perfringens Type C Toxoid and Bacterin-Toxoid in § 113.111 and Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid in § 113.112 could be improved by reducing certain test requirements and thereby decreasing the cost of performing these tests. This can be accomplished without affecting the accuracy and reliability of the tests.

The proposed amendments would reduce the number of mice needed for serum neutralization testing. Also, the current test method uses one-half of the recommended cattle or sheep dose. The new test dose would provide for recommendations for a variety of host animal species by requiring the use of one-half of the smallest host animal dose. In addition, it would provide for consistency with other recently revised Standard Requirements for *Clostridium novyi* and *Clostridium sordellii* bacterin-toxoid and permit the use of the same test rabbits for potency testing when these fractions are mixed together in a combination product.

Current regulations in § 113.111(c) and § 113.112(c) provide for the use of at least four rabbits in the potency determination of Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid and Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid respectively. The amount of antitoxin found in the rabbit sera after injection with the toxoid or bacterin-toxoid is proportional to the potency of the antigen in the product tested.

The antitoxin response of vaccinated rabbits is measured by a toxin neutralization assay in mice. A standard amount of *Clostridium perfringens* Beta or Epsilon toxin is mixed with a designated amount of the test rabbits' sera. The mixture is allowed to neutralize for one hour. Swiss white mice are then injected with this toxin-sera mixture to determine if the standard amount of toxin was neutralized by the test rabbit sera. Since mice are particularly sensitive to these toxins, a lack of mouse mortality indicates sufficient toxin neutralization and thus an adequate antitoxin response in the rabbits tested. This would indicate an acceptable potency for the toxoid or bacterin-toxoid antigen in the product tested.

Under the current regulations in § 113.111(c) and § 113.112(c), if 4 to 7 rabbits are used, the sera from each rabbit must be assayed individually. This requires the use of at least 20 to 35 mice for serum neutralization testing as opposed to a minimum of 5 mice with the proposed pooled method.

The proposed method would require the use of at least 7 rabbits in order for the sera to be combined into a single pool. The entire potency test is then conducted on one pooled sample. Pooling the samples would require a minimum of one toxin neutralization assay. This would significantly reduce the number of tests required, the number of mice needed, the time spent, and the expense of the procedure.

Retests may be indicated if less than 80% of control mice inoculated with standard antitoxin and 10 L_+ doses of standard toxin die in the neutralization

test. However, since the testing of the proposed pooled serum sample involves fewer mice as opposed to conducting individual serum samples, the number of mice required for a retest in the proposed rule would be less.

If multiple controls had been needed for individual sera testing, fewer "no tests" might result with pooled serum samples as opposed to current potency assay provisions which allow for running 4 to 7 individual tests. With the mitigation of retest conditions, the number of mice needed would be even further reduced.

Current regulations in § 113.111(c)(2) and § 113.112(c)(2) require injecting test rabbits with one-half of the recommended cattle or sheep dosage only. The proposed revision would require that test rabbits be injected with the smallest host animal dose. This provides for the testing or product recommended for use in other host animal species in addition to cattle and sheep.

Manufacturers, as well as the National Veterinary Services Laboratories, would benefit from the proposed revisions since they would improve efficiency and reduce costs but would not change the accuracy of the assays. In addition, the proposed amendments would provide for consistency with other recently revised Standard Requirements for *Clostridium novyi* and *Clostridium sordellii* and permit the use of the same group of rabbits when testing the potency of these fractions when mixed together in a combination product. Therefore, we are proposing to revise the current regulations in 9 CFR 113.111(c) and 113.112(c) concerning the potency testing of Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid and Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid respectively.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992 memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with the law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that the public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Executive Order 12291, and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would result in a reduction of the number of mice required to run the potency assays. The reduction in the number of mice needed will result in a reduction in the total cost of the assays.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 113

Animal biologics.

Accordingly, 9 CFR part 113 would be amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17 2.51, and 371.2(d).

2. Section 113.111, paragraphs (c)(2); (c)(3)(i); (c)(3)(ii); (c)(3)(iii); and (c)(5)(iii) would be revised to read as follows:

§ 113.111 Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid.

* * * * *

(c) * * *

(1) * * *

(2) Each of at least eight rabbits, each weighing 4–8 pounds, shall be injected subcutaneously with half of the smallest host animal dose. A second dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) * * *

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

* * * * *

(5) * * *

(iii) If any mice inoculated with the mixture of serum with 10 L_o doses of Standard Toxin die, the serum is considered to contain less than 10 International Units per ml, and the serial is unsatisfactory.

3. Section 113.111 paragraph (c)(5)(iv) would be removed.

4. Section 113.112, paragraphs (c)(2); (c)(3)(i); (c)(3)(ii); (c)(3)(iii); and (c)(5)(iii) would be revised to read as follows:

§ 113.112 Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid.

* * * * *

(c) * * *

(2) Each of at least eight rabbits, each weighing 4–8 pounds, shall be injected subcutaneously with half of the smallest host animal dose. A second dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) * * *

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

* * * * *

(5) * * *

(iii) If any mice inoculated with the mixture of serum with 10 L_o doses of Standard Toxin die, the serum is considered to contain less than 2 International Units per ml, and the serial is unsatisfactory.

§ 113.112 [Amended]

5. Section 113.112 paragraph (c)(5)(iv) would be removed.

Done in Washington, DC, this 15th day of March 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 93–6481 Filed 3–19–93; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE55

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for monitoring the effectiveness of maintenance programs at commercial nuclear power plants. The current regulations require that nuclear power plant licensees evaluate performance and condition monitoring activities and associated goals and preventive maintenance activities at least annually. The proposed amendment would change the time interval for conducting evaluations from once every year to at least once every refueling cycle, but not to exceed 24 months.

DATES: The comment period expires on May 6, 1993. Comment received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments submitted and received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal Workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3795.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, (56 FR 31324) the Nuclear Regulatory Commission published the final rule, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," (§ 50.65). The final rule, which will become effective July 10, 1996, requires commercial nuclear power plant licensees to monitor the effectiveness of maintenance activities for safety-significant plant equipment in order to minimize the likelihood of failures and events caused by the lack of effective maintenance. Section 50.65(a)(3) requires nuclear power plant licensees to evaluate the overall effectiveness of their maintenance activities on an annual basis. An industry consensus guidance document and a regulatory guide to provide an acceptable methodology for implementing the final rule are expected to be published by June 30, 1993.

Discussion

Since the Maintenance Rule was published in July 1991, two events have occurred that lead the Commission to reconsider the annual evaluation requirements in § 50.65(a)(3).

First, in the Summer of 1991, the Nuclear Management Resources Council (NUMARC) Steering Group was formed to develop an industry guide for implementing the Maintenance Rule. While developing the guide, the Steering Group suggested to the NRC in a public meeting held on February 26, 1992, that instead of annual assessment requirements, the NRC should consider assessments based on a refueling cycle interval. The NUMARC Steering Group stated that:

(1) Significantly more data would be available during refueling cycles than is available on an annual basis.

(2) Key data from some surveillance tests can only be obtained during refueling outages and is not available on an annual basis; and

(3) Adjustments to maintenance activities that may be made after such an evaluation would be typically performed after a refueling outage.

The NUMARC Steering Group further added that the evaluation process is a time consuming activity and that with limited data available, the annual evaluation would not provide for meaningful results. With only limited data, changes to maintenance programs will likely not be made because there would not be sufficient information available for spotting trends or doing trend analysis.

Second, the NRC conducted a regulatory review to eliminate or revise unnecessarily burdensome regulations and published a final rule on August 31, 1992 (57 FR 39353) that amended several regulations identified by its Committee to Review Generic Requirements (CRGR). One of those amended regulations was 10 CFR 50.71 (e) (Final Safety Analysis Report Updates) where the frequency of licensee reporting to the NRC was changed from annually to once per refueling cycle. The change was made because the use of a refueling cycle interval provided a more coordinated and cohesive update since, a majority of design changes and major modifications were performed during refueling outages. In addition, it had no adverse impact on the public health and safety and reduced the regulatory burden on the licensees.

The Commission is now proposing to change the required frequency of maintenance activity evaluations from annually to once per refueling outage. Evaluation of data collected over the period of a refueling cycle will provide a substantially better basis for detecting problems in degraded performance of structures, systems, and components (SSC's) and weakness in maintenance practices. Evaluations conducted on a refueling cycle basis would also consider and integrate data available only during refueling outages with the data available during operations; under the existing requirements this may not occur depending on whether the annual assessment coincides with the refueling outage. Furthermore, evaluations of data

accumulated over the period of a refueling cycle, as opposed to the shorter annual period required by the rule, will provide a more meaningful basis for the recognition and interpretation of trends. The Commission understands that a normal frequency of refueling outage ranges from 15 to 18 months; however, the conditions may vary from plant to plant. In order to ensure that an indefinite period of time does not occur between maintenance evaluations, the Commission is proposing the establishment of an upper limit of 24 months between the maintenance evaluations. This would address those licensees that have extended their refueling cycle beyond 24 months for any reason including numerous short outages or extended shutdown periods. Although the Commission believes that it is generally the case that maintenance evaluations will be more effective if conducted in conjunction with refueling outages, licensees would still have the option of conducting them more frequently.

In light of the above discussion, the NRC is proposing to change the requirement for evaluation of the overall effectiveness of maintenance activities to be performed once per refueling cycle provided the interval between evaluations does not exceed 24 months.

Finding of No Significant Environmental Impact

The Commission has determined that, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action that significantly affects the quality of the human environment and therefore an environmental impact statement is not required.

The proposed amendment does not require any change to nuclear power plant design or require any modifications to a plant. Nor does the rule change the scope of the maintenance rule or affect the nature of the activities to be performed, e.g., monitoring, corrective action, and assessments of compliance. The proposed rule change would only extend the time period for performing evaluations of the effectiveness of licensees' maintenance program from at least once a year to at least once every refueling cycle, not to exceed 24 months. The proposed extension should not result in any significant or discernible reduction in the effectiveness of a licensee's maintenance program; rather the change would increase the meaningfulness and quality of the maintenance evaluations. For these reasons, the Commission finds that the proposed amendment will not result in any significant increase in either the probability of occurrence of an accident or the consequences of an accident and therefore concludes that there will be no significant effect on the environment as a result of the proposed amendment.

The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Single copies of the environmental assessment are available from Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3795.

Paperwork Reduction Act Statement

This proposed rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will relax existing recordkeeping requirements, the public burden for this collection of information is expected to be reduced by 150 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U. S. Nuclear Regulatory Commission, Washington, DC, 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, DC, 20503.

Regulatory Analysis

The Nuclear Regulatory Commission has considered the costs and benefits of the proposed rule. With respect to benefits, the proposed amendment would allow those licensees who choose to exercise the option to perform evaluations of their maintenance program in conjunction with refueling outages but no less frequently than every 24 months. The Commission believes that this additional flexibility will not result in any increase in risk to the public health and safety, and may result in a more effective maintenance and improved plant safety.

Under the proposed rule, the frequency of periodic assessments would change from annually to at least once per refueling cycle but not to exceed 24 months. Since most refueling outages normally occur in the 15- to 18-month range, the time between periodic assessments assuming a 16-month average would be increased by about 33 percent. Therefore, the licensee staff hours to accomplish a periodic assessment under the proposed rule would be reduced from approximately 460 staff hours to about 310 staff hours per plant. This would save the licensee approximately 150 staff hours per plant. There are no additional changes in costs to be incurred by the NRC. The foregoing constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Nuclear Regulatory Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in the regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required. The proposed amendment to the interval for evaluating the effectiveness of maintenance activities by licensees is considered a relaxation from the existing requirement and does not involve any provisions which would impose backfits as determined in 10 CFR 50.109. Further, the option of conducting an annual review as provided by the current rule would be retained. Because there are no new requirements or procedures imposed on licensees by this proposed rule, it does not impose a backfit.

List of Subjects

10 CFR Part 50—Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended, (42 U.S.C. 2131, 2235); secs. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended, (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended, (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.65, paragraph (a)(3) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

(a) * * *

(3) Performance and condition monitoring activities and associated goals and preventive maintenance activities shall be evaluated at least every refueling cycle provided the interval between evaluations does not exceed 24 months. The evaluations shall be conducted taking into account, where practical, industry-wide operating experience. Adjustments shall be made where necessary to ensure that the objective of preventative failures of structures, systems, and components through maintenance is appropriately balanced against the objective of minimizing unavailability of structures, systems, and components due to monitoring or preventative maintenance. In performing monitoring and preventative maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions.

* * * * *

Dated at Rockville, Maryland, this 15th day of March 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–6577 Filed 3–19–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–265–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would have superseded an existing AD that currently requires periodic leak checks of the forward lavatory drain system and provides for the installation of a new drain valve as terminating action. The proposed action would have deleted the existing provision for terminating action and would have required repetitive leak checks of both the forward and aft lavatory drain systems. That proposal was prompted by reports of engine and airframe damage, engine separation, and damage to property on the ground, caused by "blue ice" that had formed from leaking forward lavatory drain systems and subsequently had dislodged from the airplane. This action revises the proposal by adding an optional procedure for complying with the rule which entails revising the FAA-approved maintenance program to incorporate a schedule and procedure to conduct leak checks of the lavatory drain systems.

DATES: Comments must be received no later than May 6, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–265–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Eiford, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2675; fax (206) 227–1811.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–NM–265–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 86–05–07, Amendment 39–5250 (51 FR 7767, March 6, 1986), applicable to all Boeing Model 727 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 10,

1991 (56 FR 967). That action would have deleted a provision in the existing rule that provides for terminating action for the required repetitive leak checks of the forward lavatory drain systems, and would have required repetitive leak checks of both the forward and aft lavatory drain systems.

That proposed action was prompted by reports of engine and airframe damage and one report of engine separation on a Boeing Model 727 series airplane that occurred subsequent to the issuance of AD 86–05–07. These incidents were caused by "blue ice" that had formed from leaking forward lavatory drain systems and subsequently had broken loose from the airplane and struck the fuselage or had been ingested into the engine. That proposed action also was prompted by reports of leakage from lavatory drain valves that have a configuration similar to that specified in AD 86–05–07 as terminating action. Such leakage can result in the formation of blue ice, which can dislodge from the airplane and result in engine damage or separation, airframe damage, and/or a hazard to persons or property on the ground.

Discussion of Changes to the Proposal

Since the issuance of that NPRM, the FAA has determined that certain significant changes to the proposed rule are necessary. Based on a review of the comments received in response to the notice (discussed below), and due to the "maintenance aspect" of the proposed requirements of this AD action, the FAA has reconsidered the approach it previously had taken in addressing the identified unsafe condition. The FAA now considers that it is necessary to revise the proposal to provide for an alternative to the mandatory inspections previously proposed.

The FAA considers that an acceptable option would be a revision to each operator's FAA-approved maintenance program that would incorporate a schedule and procedure for conducting repetitive leak checks of both forward and aft lavatory drain systems. This supplemental NPRM proposes to include such an option, as well as specific leak check intervals. This option of revising the maintenance program would be available to all operators operating under such a program. The lavatory drain system inspection intervals would not be permitted to be adjusted without prior approval from the Seattle Aircraft Certification Office.

With regard to the proposed inspection intervals, the FAA evaluated the possibility of establishing inspection criteria that incorporate objective, predictable "failure threshold criteria" (lavatory drain system reliability criteria). With such criteria, affected airlines would be allowed to escalate inspection intervals until the threshold is reached; when the threshold is exceeded, the inspection intervals would be required to be reduced accordingly. If it were possible to develop some "predictor" of valve failure and to monitor that predictor, then each affected airline's unique lavatory drain valve combination(s) and maintenance/inspection program could be timed to provide the least regulatory compliance burden. The FAA has attempted to work with the aviation industry to establish such failure threshold criteria, but, so far, has been unable to stimulate enough interest in the concept. Therefore, without such criteria, it is necessary for the FAA to continue to specify "hard" compliance time intervals for the inspections proposed in this supplemental notice. The FAA requests that commenters consider providing data that could be used to establish specific failure threshold criteria (which then could be used to provide for the escalation of the inspection intervals). The FAA may consider future rulemaking based on the data received.

The option to accomplish the specific leak check procedures, as originally proposed, would remain available to all operators.

Since the change described above expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Discussion of Comments to the Original Proposal

Due consideration has been given to the following comments that were submitted to the originally-issued NPRM:

Several commenters request that the interval between leak checks for the aft lavatory drain systems be longer than those for the forward drain systems. These commenters suggest that the proposed rule be changed to require leak checks at 1,500 to 3,500 flight hour intervals for aft drains with donut/cap type or other approved drain valves, excluding the Shaw Aero Devices, Inc., (Shaw Aero) drain valve; and leak checks at 3,000 to 5,000 flight hour intervals, or not at all, for aft drains with the Shaw Aero drain valves that incorporate an inner integral door with a second positive seal. (The NPRM proposed a 200 flight hour leak check interval for all of these valves.) These commenters state that the hazard posed by leakage from the aft lavatory drain is less than that from the forward lavatory drain. These commenters note that ice formed from leaking forward lavatory drains could break loose and strike the airframe, engine, and/or persons on the ground, whereas ice formed from leaking aft lavatory drains is only a hazard to persons on the ground. Two commenters suggest that the possibility of an unsafe condition occurring from any blue ice hitting persons on the ground is extremely remote, and another commenter suggests that such an event would be highly unlikely. (However, none of the commenters provided an analysis to support these claims). The FAA does not concur with the request to treat the requirements pertaining to aft lavatory drains differently from those for forward lavatory drains. The FAA considers that an unsafe condition exists with respect to the current designs of both the aft and forward lavatory drains. Lavatory drain system leakage, and the attendant hazards it poses to the airplane and to persons on the ground, is an unacceptable condition.

Several commenters note that the current configuration of the Boeing Model 727 aft lavatory drain cannot accommodate the same design improvements as the forward lavatory drain. The FAA agrees that current airplane designs may not accommodate installation of identical design improvements on forward and aft lavatory drains. Therefore, the different compliance time intervals for the required repetitive leak checks (as explained below) were selected to assure an equal level of reliability of the various lavatory drain configurations.

Several commenters request that the rule be revised to require leak checks at 3,000 to 5,000 flight hour intervals for lavatory drains in which a ball valve is installed, as opposed to the proposed 1,000 flight hour interval. These commenters believe that the in-service record of these valves on Boeing Models 727, 767, and 747–400 series airplanes, as well as on McDonnell Douglas Model DC–9–80 series airplanes, justifies at least this much time between leak checks. These commenters note that only one ball valve out of 364 installed on Boeing Model 727 airplanes and McDonnell Douglas Model DC–9–80 airplanes had to be repaired due to leakage, and had not resulted in a blue ice leakage problem. These commenters also note that Boeing Model 747–400 and 767 airplanes have accumulated over 4 million flight hours with no reported ball valve leakage. The FAA agrees that the lavatory drain systems with a ball valve installed are more

reliable than other approved drain configurations. However, the FAA recently received an incident report indicating that a Boeing Model 767 airplane with a ball valve installed in the lavatory drain had left blue ice on the runway. An investigation of this incident revealed that the aft lavatory service port was leaking. Kaiser Electroprecision, the supplier of these ball valves, has submitted data on this valve to the Rules Docket, which shows that of 2,403 ball valves installed, 117 were returned (excluding 350 returned due to a degerm problem) and that 28 of those failed a leak check; this number does not include valves that were disassembled or non-functional. Additionally, one commenter has reported three incidents of blue ice damage to engines on airplanes equipped with ball valves in the forward lavatory drain system, which is in direct contradiction to the data submitted by the other commenters. The FAA considers that reports of valve leakage from aft locations are unlikely, since blue ice from those locations would not impact the engine or airframe. Based on its review of the data, the FAA has determined that some extension of the inspection interval is justified, but not to the degree that the commenters requested. The proposal has been revised to extend the interval for leak checks of lavatory drains with ball valves installed from the proposed 1,000 flight hours to 1,500 flight hours. Such an extension will not adversely affect safety.

Several commenters request that the proposal be revised to require leak checks at 800 to 1,750 flight hour intervals for forward lavatory drains equipped with a Shaw Aero drain valve that incorporates an integral inner door with a second positive seal; and to require leak checks at 3,000 to 5,000 flight hour intervals, or not at all, for aft lavatory drains with this valve installed. (The NPRM proposed a 200 flight hour leak check interval for this valve.) These commenters believe that the in-service record of this valve justifies at least this much time between leak checks. These commenters note that this valve has accumulated over 90,000 flight hours on Boeing Model 737–300 and 737–400 airplanes, and over 720 leak checks have been conducted in accordance with AD 89–11–03, Amendment 39–6223 (54 FR 21933, May 22, 1989), with no reported failures. Additionally, these commenters note that this valve is durable and resistant to damage because it has an all-stainless steel design with bore-type seals. The FAA agrees that lavatory drains with Shaw Aero drain valves installed are more reliable than other approved drain configurations insofar as leakage problems. The FAA has determined that the interval for leak checks of lavatory drains with Shaw Aero drain valves installed may be extended to 1,000 flight hours without adversely affecting safety. The supplemental NPRM reflects this interval.

Several commenters request that the ball valve and Shaw Aero drain valve combination installed in the forward lavatory drain system be approved as terminating action for the repetitive leak checks required by the proposed AD. These commenters believe that this valve combination will virtually eliminate the blue ice problem. The FAA does not concur with the request. Although the FAA agrees that this combination of valves may offer the best protection currently available against valve leakage, this configuration is not currently approved or installed on any Boeing Model 727 airplanes and, if approved and installed, would still require repetitive leak checks. The FAA may consider a longer interval for leak checks of this combination of valves, if requested, as an alternative method of compliance.

Several commenters request that the FAA mandate the installation of current designs that they believe should be considered as terminating action for the proposed inspections. These commenters believe that hardware is now available and in operation which responds to the permanent solution to the leakage problem sought by the FAA. To require the installation of such terminating designs would be in line with the consideration, accepted by both industry and the FAA, that long term operational safety will be better assured by actual modification to remove the source of the problem rather than by repetitive inspections. Further, these commenters note that the proposed rule does not encourage the installation of better designs. The FAA does not concur. The FAA has determined that none of the currently approved designs can guarantee that leakage will not occur. The FAA does agree that some existing designs are better than others, and this is taken into account in this supplemental NPRM, which provides for a longer leak check interval for those designs that have proven to be more reliable in service. However, the FAA does not consider it appropriate to mandate the installation of drain designs that would still require repetitive leak checks. To do so would place an undue economic burden on affected operators without providing additional safety. Further, the FAA is not discouraging the installation of better designs; on the contrary, the FAA is providing the incentive to install better designs by providing an extended time interval between required leak checks for the more reliable designs.

Several commenters request that the rule be revised to require leak checks at 300 to 400 flight hour intervals for forward lavatory drains with donut/cap type or other approved drain valves, excluding the Shaw Aero drain valve. (The NPRM proposed a 200 flight hour leak check interval for these valves.) These commenters believe that the 200 flight hour leak check requirement is too conservative and not necessary in eliminating lavatory drain system leakage. These commenters note that the proposed 200 flight hour leak check requirement creates maintenance logistics problems. The FAA does not concur. The proposed 200 flight hour inspection interval was based on the effectiveness of the 200 flight hour repetitive leak check that is required by AD 89–11–03, Amendment 39–6223 (54 FR 21933, May 22, 1989), applicable to Boeing Model 737–300 and 737–400 airplanes. Since the lavatory drain configurations (i.e., dump valve with either donut/cap type drain valve, or drain valves incorporating an integral door with second positive seal) are common to both Boeing Model 727 and 737 series airplanes, the proposed interval is consistent with the existing requirements for the Model 737, which have been shown to be effective in identifying and correcting leakage problems.

One commenter requests that the rule be revised to require leak checks at 1,000 flight hour intervals for lavatory drain systems that have the Kaiser Electroprecision expander valve installed. This commenter states that this recommendation is based on over 30 years of in-service data which shows that a lavatory drain plug, when properly installed, has never been reported to have failed, causing leakage. The FAA does not concur. This valve is similar in design to donut/cap type valves, which do have a significant history of leaks. The commenter has not provided any service data to demonstrate the effectiveness of this particular valve. The FAA may consider extending the leak check interval for this valve as an alternative method of compliance if a request is submitted with adequate service data to justify an extension of the leak check interval.

One commenter requests that the FAA mandate removal of the combination donut/cap drain valves from all Boeing Model 727 airplanes. This commenter notes that the removal and refit of the

donut plug is an entirely manual operation, subject to the feel of the maintenance person. This commenter believes that a system passing a pressure test may fail during use if the plug is replaced (or omitted) from the valve nipple. This commenter also believes that the outer cap face seal can be easily damaged and could fail to provide the backup to the donut seal. The FAA does not concur. The FAA agrees that the removal and refit of the donut plug on the drain valve is subject to error; however, the 200 flight hour interval leak check will ensure the integrity of the dump valve and the integrity of the cap seal if the donut seal is defective.

One commenter requests that the FAA place more emphasis on the potential hazard of blue ice to persons on the ground. This commenter believes that the proposed AD does not sufficiently stress the potential ground impact damage and possible catastrophic effect on the total industry should even a single death result. This commenter states that the number of near misses that have been reported in various media is sufficient to indicate that a serious situation exists and is likely to result ultimately in death to persons on the ground. This commenter believes that this probability is more likely than the possibility of loss of an airplane due to ingestion of blue ice in the engine or due to structural damage by blue ice. The FAA agrees that ground impact, as well as airplane damage, must be considered in this issue. The fact that the FAA is proposing to require repetitive inspections of both the forward and aft lavatory drains indicates that the FAA does consider the possibility of blue ice striking persons on the ground to be a serious safety issue. (As discussed previously, ice formed from leaking forward lavatory drains and departing airplane could strike the airframe, engine, and/or persons on the ground; whereas, ice formed from leaking aft lavatory drains and departing the airplane is mainly a hazard to persons on the ground.)

One commenter requests that the FAA revise the proposed rule to state that any leaks discovered at any time, not just those leaks found as a result of the inspections proposed in this AD, must be repaired prior to further flight, or that the lavatory system must be drained and the lavatory(s) locked and placarded inoperative prior to further flight. The FAA does not concur that such a change is necessary. The proposed rule is intended to address only the necessary follow-on actions that result from the inspections specified by this proposal. The addressed leakage of the system renders the airplane unairworthy and, if such leakage is found by other means, corrective action must be taken in accordance with the requirements of Federal Aviation Regulations (FAR) Part 43 to return the airplane to an airworthy condition.

One commenter requests that the rule be revised to require that the leak check be applied "across the drain valve," not "across each seal of the drain valve." The commenter notes that a leak check across each seal of the drain valve would require removing the inner seal to test the outer seal. The commenter believes that the likelihood of introducing a leak by improper seal installation or damage to the seal is greatly increased by performing this procedure every 200 flight hours. The FAA concurs and has revised the proposed rule accordingly.

One commenter requests that the proposed rule be revised to clarify that the 3 pounds per square inch differential pressure (PSID) leak check is to be applied across the cap valve as well as the ball valve. This commenter believes that the proposed rule is not clear as to how to test the cap valve. The FAA concurs. The proposed rule has been revised to clarify the requirement.

One commenter requests that the rule be revised to require a leak check of the rinse/fill system or, on airplanes with no rinse/fill system, a test of the check valve. This commenter notes that several incidents of blue ice from this source have occurred. The FAA does not concur with the request to require a leak check of the rinse/fill system. The primary source of blue ice has been the lavatory drains. However, the FAA will review this situation and may take separate action to address the rinse/fill system, if warranted.

One commenter requests that the rule be revised to require disconnection of the service panel heater. This commenter believes that disconnecting the service panel heater provides a fail-safe system whereby any leaked fluid will freeze before reaching the exterior of the airplane, thus preventing any blue ice from forming outside the airplane. Consequently, a frozen drain line would provide an indication to the operator of needed maintenance. The FAA agrees that disconnecting the service panel heater could reduce the possibility of ice forming outside the airplane, but it would not eliminate the need for repetitive leak checks. The FAA, however, will review this item and may take separate action to address the service panel heater, if warranted.

Two commenters agree with the proposed rule, but request that the FAA consider additional rulemaking activity to address the other transport category airplanes that have similar lavatory drain systems. The FAA concurs. The FAA is considering a plan to take similar action on all transport category airplanes to impose repetitive inspections of all lavatory drains. The time interval for inspection would be dependent upon the drain system configuration alone, and required action would be consistent, regardless of airplane model.

One commenter requests that the FAA use an average labor cost of $75 per work hour in estimating the cost impact of the proposed rule. This commenter notes that its average labor cost is $55 per work hour for operator maintenance and $95 per work hour for contract maintenance. This commenter believes that the $75 per work hour labor cost is more realistic than the $40 per work hour estimate that was used in the cost analysis section of the preamble to the NPRM. The FAA concurs that the $40 per work hour labor estimate is outdated, and should be increased somewhat. The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $40 per work hour to $55 per work hour. The economic analysis paragraph, below, has been revised to reflect this increase in the specified hourly labor rate.

The format of the supplemental NPRM has been restructured to be consistent with the standard **Federal Register** style.

Paragraph (c) of the supplemental NPRM specifies the current procedure for submitting requests for approval of alternative methods of compliance.

Cost Impact

There are approximately 1,752 Boeing Model 727 series airplanes of the affected design in the worldwide fleet, operated by 153 operators. It is estimated that 1,277 airplanes of U.S. registry and 54 U.S. operators would be affected by this AD. The FAA estimates that it would take approximately 4 manhours per airplane lavatory drain (2 drains per airplane) to accomplish a leak check, and the average labor cost would be $55 per manhour. For the 1,077 airplanes that have donut/cap type or other approved drain valves (excluding Shaw Aero drain valves) installed in both drain systems, 15 leak checks per airplane would be required each year. For the 36 airplanes that have Shaw Aero drain valves installed in both drain systems, 3 leak checks per

airplane would be required each year. For the 164 airplanes that have a ball valve installed in the forward lavatory drain and a Shaw Aero drain valve installed in the aft lavatory drain, 2 leak checks of the forward drain and 3 leak checks of the aft drain would be required per year. Based on these figures, the total annual (recurring) cost impact of the repetitive leak checks on U.S. operators is estimated to be $7,336,120.

In addition to the costs discussed above, for those operators who elect to comply with proposed paragraph (b) of this AD action, the FAA estimates that it would take approximately 40 manhours per operator to incorporate the lavatory drain system leak check procedures into the maintenance programs, at an average labor cost of $55 per manhour. Based on these figures, the total cost impact of the proposed maintenance revision requirement of this AD action on the 54 U.S. operators is estimated to be $118,800, or $2,200 per operator.

These total cost figures assume that no operator has yet accomplished the proposed requirements of this AD action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5250 (51 FR 7767, March 6, 1986), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket No. 90–NM–265–AD. Supersedes AD 86–05–07, Amendment 39–5250.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent engine damage or separation, airframe damage, and/or hazard to persons or property on the ground as a result of "blue ice" that has formed from leakage of the lavatory drain system and dislodged from the airplane, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, accomplish the applicable procedures specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD:

(1) For each lavatory drain system, forward or aft, that has a ball valve installed: Within 1,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,500 flight hours, conduct a leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel), ball valve, and cap valve. The ball valve and cap valve leak checks must be performed with a minimum of 3 pounds per square inch differential pressure (PSID) applied across each valve.

(2) For each lavatory drain system, forward or aft, that has a Shaw Aero Devices, Inc., drain valve installed that incorporates an integral inner door with second positive seal: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, conduct a leak check of the dump valve and drain valve. The drain valve leak check must be performed with a minimum of 3 PSID applied across the valve.

(3) For other forward or aft lavatory drain systems not addressed in paragraph (a)(1) or (a)(2) of this AD: Within 200 flight hours from the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct a leak check of the dump valve and the drain valve at the service panel. The drain valve leak check must be performed with a minimum 3 PSID applied across the valve.

Note 1: This paragraph does not necessarily apply to systems for which an alternative method of compliance and/or adjustment of the compliance time has been approved by the FAA. The terms of each approved alternative method of compliance and/or adjustment of compliance time (including repetitive leak check intervals) for those systems stand separately from this AD action.

(4) If a leak is discovered during any leak check required by paragraph (a)(1), (a)(2), or (a)(3) of this AD, prior to further flight, accomplish the procedures specified in either paragraph (a)(4)(i) or (a)(4)(ii) of this AD:

(i) Repair the leak; or

(ii) Drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within 30 days after the effective date of this AD, revise the FAA-approved maintenance program to include procedures for lavatory drain system leak checks and necessary follow-on actions as specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, as applicable. In all cases, the leak checks must be completed in accordance with the applicable compliance schedule specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6456 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–CE–20–AD]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92–16–11, which applies to certain Fairchild Aircraft SA226 and SA227 series airplanes. This AD currently requires modifying the horizontal stabilizer aft spar attach fitting installation and stabilizer skin, and repetitively inspecting the radius area of the rib splice straps for cracks, and, if found cracked, modifying this area. Based upon installation reports from the affected SA227 series airplane operators, Fairchild Aircraft has improved the modification procedures, and, the Federal Aviation Administration (FAA) has determined that these procedures should be incorporated. The actions specified by the proposed AD are intended to prevent horizontal stabilizer failure caused by broken pivot fitting fasteners, which could result in loss of control of the airplane.

DATES: Comments must be received on or before June 4, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–20–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; Telephone (512) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150; Telephone (817) 624–5155; Facsimile (817) 624–5029.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–20–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92–16–11, Amendment 39–8320 (57 FR 31959, July 20, 1992), currently requires modifying the horizontal stabilizer aft spar attach fitting installation and stabilizer skin on certain Fairchild Aircraft SA226 and SA227 series airplanes, and repetitively inspecting the radius area of the rib splice straps for cracks, and, if found cracked, modifying this area. These actions are accomplished in accordance with Fairchild Service Bulletin (SB) 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, as applicable.

Since the FAA issued AD 92–16–11, several of the affected Fairchild Aircraft SA227 series airplane operators report that there is an installation difficulty with the modification required by the current AD. Fairchild Aircraft has improved the modification procedures for the SA227 series airplanes to correct these difficulties, and revised the service information referenced above to reflect these improvements.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) incorporating these improved modification procedures provides the desired level of aircraft safety; and (2) AD action should be taken in order to prevent horizontal stabilizer failure caused by broken pivot fitting fasteners, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would supersede AD 92–16–11, Amendment 39–8320, with a new AD that would (1) retain the requirement of modifying the horizontal stabilizer aft spar attach fitting installation and stabilizer skin, and repetitively inspecting the radius area of the rib splice straps for cracks, and, if found cracked, modifying this area; and (2) incorporate improved modification procedures for the SA227 series airplanes as specified in Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993. The proposed actions for the SA226 series airplanes would continue to be accomplished in accordance with Fairchild SB 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, and the proposed actions for the SA227 series airplanes would be accomplished in accordance with the revised service information described above.

The compliance statement of AD 92–16–11 referenced Fairchild Aircraft Model SA227–AC airplanes with serial numbers AC420 through AC783 and AC785. These particular model airplanes are either a Model SA227–AC or SA227–BC. The applicability statement in the proposed AD is different than that of AD 92–16–11 in that it reflects this Model and serial number effectivity. No additional serial number airplanes would apply to the proposed AD than that which are affected by AD 92–16–11.

The FAA estimates that 715 (368 SA226 series and 347 SA227 series) airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 32 workhours per SA226 series airplane and 33 workhours per SA227 series airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,400 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,278,485 ($1,162,880 for the SA226 series airplanes and $1,115,605 for the SA227 series airplanes). The proposed AD would provide no additional cost impact upon U.S. operators than that currently required by AD 92–16–11, except for a slight additional procedure in the modification already required for

the SA227 series airplanes. This procedure is so slight that the FAA has no means of determining the cost impact upon the public.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–16–11, Amendment 39–8320 (57 FR 31959, July 20, 1992), and by adding the following new airworthiness directive:

Fairchild Aircraft: Docket No. 93–CE–20–AD. Supersedes AD 92–16–11, Amendment 39–8320.

Applicability: The following Model and serial number airplanes, certificated in any category:

Model	Serial No.
SA226–T	T201 through T275 and T277.
SA226–T(B)	T(B)276 and T(B)292 through.
SA226–AT	AT001 through AT074.
SA226TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT695.
SA227–AC	AC406, AC415, AC416.
SA227–AC or SA227–BC.	AC420 through AC783, and AC785; or BC420 through BC783, and BC785.

Compliance: Required initially upon the accumulation of 10,000 hours time-in-service (TIS) or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (see Note 1), and thereafter as indicated.

Note 1: Compliance with superseded AD 92–16–11 is considered "unless already accomplished" for the initial inspection and modification requirements of this AD except as specified in paragraph (c) of this AD.

To prevent failure of the horizontal stabilizer caused by broken pivot fitting fasteners, which could result in loss of control of the airplane, accomplish the following:

(a) Modify the horizontal stabilizer aft spar attach fitting installation in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

(b) Modify the stabilizer skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

(c) If any Model SA227–AC or SA227–BC airplane incorporating any serial number of AC528 through AC783, AC785, BC528 through BC783, or BC785 has accomplished the modifications required by AD 92–16–11 in accordance with Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, then the only modification required by paragraphs (a) and (b) of this AD is that which is specified in paragraph B (3) of the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993.

(d) Visually inspect the radius area of the rib splice strap for cracks in accordance with Figure 2 of Fairchild SB 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Figure 3 of Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

(i) If cracks are found, prior to further flight, repair in accordance with a scheme obtained from the manufacturer through the Fort Worth Airplane Certification Office at the address specified in paragraph (f) of this AD, and reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(ii) If no cracks are found, reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 92–16–11, Amendment 39–8320.

Issued in Kansas City, Missouri, on March 16, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6457 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

March 16, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of informal conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) will be holding an informal conference pursuant to the Notice of Informal Conferences issued on March 10, 1993.

The conference is to begin the process of standards development (relating to capacity release) for Electronic Bulletin Boards that interstate natural gas pipelines are required to maintain under part 284 of the Commission's regulations, as set forth in the March 10, 1993 Notice.

DATES: Monday, March 22, 1993: 9 a.m.

ADDRESSES: Edison Electric Institute, Conference Center, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Notice of Informal Conference

March 16, 1993.

Take notice that Commission staff will convene an informal conference in this proceeding on Monday, March 22, 1993, at 9 a.m. The purpose of the conference is to begin the process of standards development (relating to capacity release) for Electronic Bulletin Boards, as set forth in the Notice of Informal Conferences issued by the Commission on March 10, 1993.

The conference will take place at: Edison Electric Institute, Conference Center, 701 Pennsylvania Avenue NW., Washington, DC 20004.

All interested persons are invited to attend. For additional information, or to indicate intent to participate in the conference, such persons should contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6477 Filed 3–19–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–42–92]

RIN 1545–AQ77

Certain Cash or Deferred Arrangements Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (EE–42–92), which was published in the **Federal Register** for Monday, January 4, 1993 (58 FR 43). The regulations propose to amend final regulations under section 401(k). The proposed amendments simplify the application of the regulations to certain plans benefiting employees who are members of collective bargaining unit.

FOR FURTHER INFORMATION CONTACT: Cheryl Press, (202), 622–4688 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document that is the subject of this correction proposes to amend final regulations under section 401(k) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (EE–42–92), which was the subject of FR Doc. 92–31188, is corrected as follows:

On page 44, column 2, § 1.401(k)–1(g)(11)(iii)(D)(*2*), last line in the column, the language "the meaning of § 1.415–1(a)(2)) is treated" is corrected to read "the meaning of § 1.413–1(a)(2)) is treated".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5891 Filed 3–19–93; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[PS–4–89]

RIN 1545–AN06

Disposition of an Interest in a Nuclear Power Plant; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to proposed regulations [PS–4–89], which was published in the **Federal Register** for Friday, November 20, 1992 (57 FR 54734). The proposed regulations relate to the Federal income tax treatment of the disposition of an interest in a nuclear power plant where the taxpayer disposing of that interest has maintained a nuclear decommissioning fund with respect to that plant.

FOR FURTHER INFORMATION CONTACT: Peter C. Friedman on (202) 622–3110 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction provide regulations under section 468A of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (PS–4–89) which was the subject of FR Doc. 92–27641, is corrected as follows:

On page 54734, third column, in the preamble under the caption "**SUPPLEMENTARY INFORMATION**", the following language is added immediately before the caption "Background" to read as follows:

"Paperwork Reduction Act

The collection(s) of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the

Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in this regulation are in proposed regulations §§ 1.468A–3(h)(2)(xi), 1.468A–3(h)(2)(xii), and 1.468A–3(i)(1)(ii)(C). Electing taxpayers that file a request for a schedule of ruling amounts must submit certain information with such a request. Electing taxpayers that determine a ruling amount with respect to the formulas contained in proposed regulation § 1.468A–6 must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the first taxable year that begins after the disposition of an interest in a nuclear power plant.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

With respect to proposed regulation § 1.468A–3(i)(1)(ii)(C), the estimated total annual reporting burden is 50 hours. The estimated annual burden per respondent varies from 20 to 30 hours, depending on individual circumstances, with an estimated average of 25 hours. The estimated number of respondents is 2. The estimated annual frequency of responses is 1.

With respect to proposed regulation § 1.468A–3(h)(2) (xi) and (xii), the estimated total annual reporting burden is 75 hours. The estimated annual burden per respondent varies from 1 to 2 hours, depending on individual circumstances, with an estimated averages of 1.5 hours. The estimated number of respondents is 50. The estimated annual frequency of responses is 1."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5896 Filed 3–19–93; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts, 1, 20, and 25

[PS–102–88]

RIN 1545–AM85

Income, Gift and Estate and Estate Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (PS–102–88), which was published in the **Federal Register** for Tuesday, January 5, 1993 (58 FR 305). The proposed regulations relate to the marital deduction provisions of the income, gift, and estate tax chapters of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz or George Masnik (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections provide regulations under sections 1015, 2056, 2056A, 2101, 2102, 2106, 2503, and 2523 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (PS–102–88), which was the subject of FR Doc. 92–31190, is corrected as follows:

On page 309, column 2, in the preamble immediately preceding the heading *"Special Analyses"*, new language is added to read as follows:

"Proposed Effective Dates

Except as provided below, these regulations are proposed to be effective with respect to decedents dying and to gifts made after the date these regulations are published in the **Federal Register** as final regulations. With respect to decedents dying and gifts made on or before that date, taxpayers may rely on any reasonable interpretation of the statutory provisions. The additional requirements for qualification as a qualified domestic trust necessary to ensure collection of the deferred estate tax, contained in § 20.2056A–2(d), are proposed to be effective in the decedents dying on or after the date that is 180 days after the date these regulations are published as final regulations. With respect to decedents dying before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5897 Filed 3–19–93; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[INTL–45–92]

RIN 1545–AR28

Change From Profit and Loss Method to DASTM; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (INTL–45–92), which was published in the **Federal Register** for Tuesday, January 5, 1993 (58 FR 300). The proposed amendments relate to adjustments required when a qualified business unit (QBU) that used the profit and loss method of accounting in a post-1986 taxable year begins to use the dollar approximate separate transactions method of accounting (DASTM).

FOR FURTHER INFORMATION CONTACT: Jacob Feldman, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document that is the subject of this correction proposes to amend Income Tax Regulations (26 CFR part 1) under section 985 of the Internal Revenue Code of 1986.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (INTL–45–92), which was the subject of FR Doc. 92–314668, is corrected as follows:

On page 300, column 3, in the heading, the language "RIN 1545–AL24" is corrected to read "RIN 1545–AR28".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5892 Filed 3–19–93; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 26 and 301

[PS–73–88]

RIN 1545–AL75

Generation-Skipping Transfer Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a proposed regulation (PS–73–88), which was published in the **Federal Register** for Thursday, December 24, 1992 (57 FR 61356) regarding the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: John B. Franklin, (202) 622–3090 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The document that is the subject of these corrections proposes to amend the final regulations under sections 2601 through 2663 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (PS–73–88), which was the subject of FR Doc 92–30946, is corrected as follows:

1. On page 61359, column 3, in the preamble under the heading "Proposed Effective Dates", first paragraph, line 3, the language "skipping transfer made after December" is corrected to read "skipping transfer made on or after December".

2. On page 61363, column 3, § 26.2632–1(c)(3)(ii), line 2, the language "the property would be includible in the" is corrected to read "the property (is or would be) includible in the".

3. On page 61367, column 2, § 26.2642–4(b), *Example 1*, third line from the bottom of the paragraph, the language "allocated). The denominator is $500,000 (the" is corrected to read "allocated)). The denominator is $500,000 (the".

4. On page 61367, column 2, § 26.2642–4(b), *Example 2*, thirteenth line from the bottom of the paragraph, the language "($10,000/$40,000). The balance of the" is corrected to read "($10,000/$40,000)). The balance of the".

5. On page 61367, column 3, § 26.2642–4(b), paragraph (iii) of *Example 3*, fourth line from the bottom of the paragraph, the language "zero. The balance of the allocation $20,000" is corrected to read "zero. The balance of the allocation, $20,000".

6. On page 61367, column 3, § 26.2642–4(b), paragraph (ii) of *Example 4*, last line, the language "$99,000=one)." is corrected to read "$99,000) over $165,000=one.".

7. On page 61367, column 3, § 26.2642–4(b), paragraph (iii) of *Example 4*, line 7, the language "computed as follows: $60,000 (the nontax" is corrected to read "computed as follows: ($60,000 (the nontax".

8. On page 61367, column 3, § 26.2642–4(b), paragraph (iii) of *Example 4*, fourth line from the bottom of the paragraph, the language "allocation to the 1996 transfer) over $200,000" is corrected to read "allocation to the 1996 transfer)) over $200,000".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5893 Filed 3–6–93; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 301

[IA–3–89]

RIN 1545–AN02

Recovery of Reasonable Administrative Costs; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to [IA–3–89], which was published in the **Federal Register** for Wednesday, December 23, 1992 (57 FR 61020). The proposed regulations relate to the recovery of reasonable administrative costs incurred by taxpayers in connection with an administrative proceeding within the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Thomas D. Moffitt (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document that is the subject of this correction provides proposed regulations under section 7430(a)(1) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (IA–3–89) which was the subject of FR Doc. 92–30525, is corrected as follows:

On page 61029, second column, § 301.7430–5(h), in *Example 3*, fourth line from the bottom of the paragraph, the language "personnel under § 301.7430–5(c), and thus," is corrected to read "personnel under § 301.7430–5(c)), and thus,".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5888 Filed 3–19–93; 8:45 am]

BILLING CODE 4830–01–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Union Dues Regulations

AGENCY: National Labor Relations Board.

ACTION: Proposed rule; notice of change in dates for oral argument.

SUMMARY: The National Labor Relations Board gives notice that it is rescheduling oral argument on the proposed rulemaking for the implementation of the United States Supreme Court's decision in *Communications Workers of America* v. *Beck*, 487 U.S. 735 (1988) relating to union dues.

DATES: Oral argument will be held on March 16, 22, and 30, 1993.

ADDRESSES: Oral argument will be held at the headquarters of the Board, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary. Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION:

Background

The Board's notice of proposed rulemaking and original notice of oral argument was published in the **Federal Register** (57 FR 43635) on September 22, 1992. Thereafter, the time for filing comments was extended on October 14, 1992 (57 FR 47023) and again on November 25, 1992 (57 FR 55491). Oral argument was held on November 5, 1992. On February 5, 1993, the Board

published in the **Federal Register** (58 FR 7199) a notice of additional oral argument to be held on March 8, 15, and 16, 1993. On February 23, 1993 (58 FR 10997) the Board rescheduled the additional oral argument to March 15, 16, and 22, 1993. Thereafter, because of severe weather conditions in the metropolitan Washington, DC area on March 13–15, 1993, the Board decided to reschedule the oral argument to March 16, 22, and 30, 1993. Those persons who had notified the Board by March 1, 1993, of their desire to participate were contacted personally and advised directly. Oral argument was heard on March 16, 1993, focusing on issues raised by the notice and information provisions of the proposed rule contained in §§ 103.40(e) and 103.40(f) (1) and (2), and by the model union security clause set forth in § 103.42 and the appendix to that section. On March 22, 1993, the Board will focus on the financial aspects of the proposed rule raised by § 103.41, including but not limited to unit-by-unit and chargeability issues. The March 30, 1993, session will focus on the procedural aspects of the proposed rule, such as those contained in §§ 103.40(f) (3) and (4) and 103.40(g).

Dated Washington, DC, March 17, 1993.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–6458 Filed 3–19–93; 8:45 am]

BILLING CODE 7545–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In a recent proposal to amend its regulations on Valuation of Plan Benefits (29 CFR parts 2619 and 2676), the Pension Benefit Guaranty Corporation (PBGC) announced its intention to adopt new assumptions for valuing annuity benefits. The proposal did not alter the PBGC's historical assumptions for valuing lump sum benefits but invited public comment on the approach the PBGC should take in valuing lump sum benefits.

The proposed regulation provided a comment period of 60 days. The PBGC has now decided to extend the comment period on the proposed amendment by 14 additional days; during that additional period the public may comment on all aspects of the proposed regulation as well as on the approach the PBGC should adopt in valuing lump sum benefits.

DATES: Comments must be received on or before April 5, 1993.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006–1860, or delivered to suite 7200 at that address between 9 a.m. and 5 p.m. on business days. Written comments (including those submitted both heretofore and hereafter) will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Peter H. Gould, Senior Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006–1860; 202–778–8850 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On January 19, 1993, the PBGC published in the **Federal Register** (58 FR at 5128) a proposed amendment to its valuation regulations. The proposed amendment would revise the methods of valuing annuity benefits (1) to update the current regulation's mortality assumptions to reflect recent actuarial practice, (2) to uncouple the current regulation's administrative expense ("loading") assumptions from its interest assumptions, and (3) to clarify the valuation of annuity benefits by prescribing a new interest rate structure format that bases valuations on the length of time between the valuation date and the presumed date of each payment. In addition, the PBGC proposed to adopt unisex mortality assumptions when it is calculating de minimis lump sums (i.e., those of $3,500 or less) to be paid to a participant; the PBGC would otherwise continue to use its historical mortality assumptions and its current interest rate structure in the calculation of lump sums.

At the same time, the PBGC proposed to amend its regulation governing valuation of annuity benefits in multiemployer plans following mass withdrawal, so as to adopt the same mortality, loading, and interest assumptions as would the modified single-employer regulation.

The preamble to the proposed amendment discussed in detail the statutory and regulatory background of the proposals as well as the proposals themselves and requested public comments. The PBGC envisioned the possibility that it might make the proposed changes in annuity valuations effective sooner than any changes in assumptions to be used in lump sum valuations, with respect to which the PBGC "will be seeking guidance * * * from Congress, other administrative agencies, and the public." The PBGC specifically invited "comments as to what those [lump sum] assumptions should be."

The comment period on the proposed amendment was limited to 60 days. A number of persons have expressed uncertainty as to whether the 60-day limit applied to comments relating to possible changes in lump sum valuations. Although the PBGC did not provide for a different comment period with respect to such comments, in order to ensure that those persons wishing to comment not fail to do so as a result of uncertainty over the applicability of the 60-day time limit, the PBGC has decided to extend the comment period until April 5, 1993. During that period, the public may comment on all aspects of the proposed regulation as well as on the approach the PBGC should take in valuing lump sums.

Issued at Washington, DC, this 17th day of March, 1993.

William M. DeHarde,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–6513 Filed 3–19–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 56 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated

by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment revises, reorganizes, and clarifies one Ohio rule concerning the requirements for the measurement of revegetation success on areas with different postmining land uses.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 21, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on April 16, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 6, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232. Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224. Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 1, 1992 (Administrative Record No. OH–1690), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 56. This amendment proposed changes to two Ohio rules concerning measurement of revegetation success on pasture or grazing land, undeveloped land, recreational areas, and previously disturbed areas.

As part of and in support of Program Amendment Number 56, Ohio also submitted four draft Policy/Procedure Directives entitled "Measurement of productivity on pasture and grazing land," "Identification of areas for which the premining land use is undeveloped land," "Planting plans for areas for which the approved postmining land use is undeveloped land," and "Verification of proper planting of tree seedlings." These proposed policy statements elaborated on and established criteria for the new requirements in the two revised Ohio rules.

OSM announced receipt of proposed Program Amendment Number 56 in the June 2, 1992 **Federal Register** (57 FR 23178), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 2, 1992. The public hearing scheduled for June 29, 1992, was not held because no one requested an opportunity to testify.

OSM and Ohio staff met on October 15, 1992, and informally resolved most of OSM's initial questions and comments about Ohio's May 1, 1992, amendment submission. On November 19, 1992, OSM sent a letter to Ohio (Ohio Administrative Record No. OH–1794) concerning the one unresolved issue which remained after the October meeting.

By letter dated January 12, 1993 (Ohio Administrative Record No. OH–1803), Ohio submitted Revised Program Amendment Number 56. This revised amendment proposes additional modifications to one rule at Ohio Administrative Code (OAC) 1501:13–9–15. These modifications are intended to resolve OSM's questions and comments about the May 1, 1992, amendment submission and to improve the organization and overall readability of the rule. In reorganizing the rule, Ohio has relocated much of the text within the rule, has renumbered and relettered most paragraphs, and has made numerous minor wording changes. Also as part of this effort to clarify the rule, Ohio has separately grouped the general requirements for herbaceous and woody vegetation, the provisions for the start of the maintenance period for various types of vegetation, and the Phase II and III bond release requirements for each postmining land use.

In addition to reorganizing the rule, Ohio has proposed the following revisions to the content of the rule. These revisions supplement or further modify the rule revisions previously proposed in Ohio's May 1, 1992, submission of Program Amendment Number 56.

(1) OAC 1501:13–9–15(F)(2)(c)(ii)

Ohio is rewording this paragraph to clarify that Ohio will not consider limited repair of rills and gullies to be an augmentative practice requiring the restart of the period of extended responsibility. Ohio may consider extensive rill and gully repair to be augmentative in some cases, based on the extent of the repairs needed and the cause of the erosion.

(2) OAC 1501:13–9–15 (J)(2) and (M)(3)(b)

Ohio is adding statements in these two paragraphs to clarify the existing requirements that only one ground cover evaluation is necessary for Phase III bond release on areas to be developed for industrial, residential, or commercial use two or more years after regrading is completed, and on undeveloped land.

(3) Previously Proposed OAC 1501:13–9–15(K)

Ohio is deleting previously proposed paragraph (K) which would have established alternative ground cover standards for previously disturbed areas (remining areas).

(4) OAC 1501:13–9–15(M)

For undeveloped areas, Ohio is proposing to make mandatory, rather than discretionary, the planting of trees or shrubs over ten to fifty percent of the revegetated area on slopes steeper than twenty degrees and in areas along drainways and permanent sources of water.

(5) OAC 1501:13–9–15(M)

Ohio is proposing to delete the single barren area standard for herbaceous ground cover on undeveloped areas to be planted in trees and shrubs. Ohio had previously proposed this provision in

the May 1, 1992, version of paragraph (J)(9)(d)(ii).

(6) OAC 1501:13–9–15(N)

Ohio is proposing to adopt revegetation success standards for developed recreational facilities, such as parks, camps, and amusement areas, and for less intense recreational use areas, such as areas for hiking and canoeing.

In its January 12, 1993, submission of Revised Program Amendment Number 56, Ohio also provided revised copies of the four Policy/Procedure Directives originally included in support of the May 1, 1992, version of Program Amendment Number 56. Ohio has modified these four Policy/Procedure Directives as necessary to be consistent with the new proposed revisions to OAC 1501:13–9–15.

Ohio has also submitted two new support documents as part of its January 12, 1993, submission of Revised Program Amendment Number 56. The first document is Administrative Record information intended to support the proposed language at OAC 1501:13–9–15(G)(3)(a) (formerly paragraph (J)(3)(c)(ii)(a) in the May 1, 1992 submission). This proposed rule language would authorize the use of soil surveys to demonstrate the achievement of required productivity for Phase III bond release on pasture or grazing land. The second document is a description of Tree Planting Workshops which Ohio plans to conduct to ensure that the persons supervising, monitoring, or verifying the proper planting of trees have received the necessary training. These training workshops relate to two of the four Policy/Procedure Directives submitted by Ohio as part of Revised Program Amendment Number 56.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 6, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to coment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the date and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 26, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–6526 Filed 3–19–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment establishes shrub density standards applicable to all lands (excluding cropland and pastureland) used jointly by livestock and wildlife.

This document sets forth the times and location that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. April 21, 1993. If requested, a public hearing on the proposed amendment will be held on April 16, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on April 6, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office:

Guy V. Padgett, Director; Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, Wyoming 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer, Director; Wyoming Department of Environmental Quality; Herschler Building; West 122 West 25th Street; Cheyenne, Wyoming 82002. Telephone: (307) 777–7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated January 6, 1993, (Administrative Record No. WY–21–01) Wyoming submitted the shrub density rules as a proposed amendment to its permanent program pursuant to SMCRA. The Wyoming proposed amendment is a State response designed to establish a shrub density standard applicable to all lands (excluding cropland and pastureland) used jointly by livestock and wildlife. The changes to the regulatory rule package are also reflected in changes made to Appendix A, Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations.

The proposed amendment is intended to revise the State program to be consistent with corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed shrub density rules satisfies the applicable program approval criteria of 30 CFR 732.15. If the shrub density rules are deemed adequate, they will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the proposed rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "Dates" or at locations other than OSM's Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. April 6, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "Addresses." A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance with Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance with Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a)

and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance with the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 19, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center

[FR Doc. 93-6527 Filed 3-19-93; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing the receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to standardize State reporting requirements for all wildlife affected by coal mining and improve operational efficiency.

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t., April 16, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, the additional explanatory information, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director; Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, Wyoming 82601-1918. Telephone: (307) 261-5776.

Dennis Hemmer, Director; Wyoming Department of Environmental Quality; Herschler Building; West 122 West 25th Street; Cheyenne, Wyoming 82002. Telephone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated July 8, 1992, (administrative record No. WY-18-1) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative to improve its program.

The regulations that Wyoming proposed to amend are: Department of Environmental Quality, Land Quality Division Rules and Regulations, Chapter II, Section 3(b)(iv)(B), Permit Applications—Special Application Content for Wildlife Monitoring; Chapter IV, Section 3(o)(iv), Environmental Protection Performance Standards—Special Environmental Protection—Wildlife Monitoring; and the addition of Appendix B—Wildlife Monitoring Requirements for Surface Coal Mining Operations.

OSM published a notice in the September 11, 1992 **Federal Register** (57 FR 41714) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended October 13, 1992. During its review of the amendment, OSM identified four concerns relating to needed changes to Appendix B of the Rule. OSM notified Wyoming of the concerns by letter dated November 9, 1992 (administrative record No. WY-18-09). The issues raised by OSM's letter included limitation of Wyoming's monitoring rules to coal operations less than 640 acres in size; collection of wildlife monitoring information on adjacent areas; reporting requirements for threatened and endangered species; and wildlife survey time-frames. Wyoming responded in a letter dated January 11, 1993 by submitting proposed rule language and additional explanatory information (administrative record No.

WY–18–11). Wyoming responded to all the issues raised as follows: no exclusion of coal operations less than 640 acres in size from wildlife monitoring; removing the language which would have interfered with the collection of wildlife data on adjacent areas; modified the reporting requirement for threatened and endangered species by requiring direct reporting to the regulatory authority; and modified the dates that wildlife surveys are to be conducted.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 20, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center

[FR Doc. 93–6528 Filed 3–19–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 191

[FRL–4607–1]

RIN 2060-AC30

Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period.

SUMMARY: This is an action to extend the period for public comment on the proposed amendments to the environmental standards for the disposal of spent nuclear fuel, high-level and transuranic radioactive waste and to the underground injection control program regulations. These proposed amendments were published February 10, 1993 in the **Federal Register**, including a request for public comments by March 22, 1993. This announcement extends the period for public comments to April 12, 1993.

DATES: The period for public comment on proposed amendments to 40 CFR parts 144 and 191 is extended to April 12, 1993.

ADDRESSES: Comments should be submitted, in duplicate, to: Docket No. R–89–01, Air Docket, room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, 202–233–9310 or the 24-hour information line, 202–233–9716 (800–331-WIPP, after March 23, 1993).

SUPPLEMENTARY INFORMATION: Proposed amendments to 40 CFR parts 144 and 191 were published in the **Federal Register** on February 10, 1993 (58 FR 7924). These proposed amendments pertain to environmental radiation protection standards for the disposal of spent nuclear fuel, high-level and transuranic radioactive wastes. Comments on these proposed amendments were requested by March 22, 1993. Public hearings related to this rulemaking were held at three locations in New Mexico February 23 through 26, 1993. At the public hearings numerous commenters requested that the Agency extend the period for public comments. By this announcement, the Agency is extending the period for public comments to April 12, 1993.

Dated: March 15, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–6515 Filed 3–19–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 194

[FRL–4606–9]

Criteria for the Certification of Compliance with Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period.

SUMMARY: This is an action to extend the period for public comment on the Advance Notice of Proposed Rulemaking (ANPR) on Criteria for the Certification of Compliance with 40 CFR Part 191—Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes. This ANPR was published in the **Federal Register** on February 11, 1993 with a request for public comments by March 15, 1993. This announcement extends the period for public comments to March 31, 1993.

DATES: The period for public comment on the 40 CFR part 194 ANPR on Criteria for the Certification of Compliance with 40 CFR part 191 is extended to March 31, 1993.

ADDRESSES: Comments should be submitted, in duplicate, to Docket No. A–92–56, Air Docket, room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Caroline Petti, Office of Radiation and Indoor Air, 202–233–9310 or the 24-hour information line, 202–233–9716.

SUPPLEMENTARY INFORMATION: On February 11, 1993 the Environmental Protection Agency (EPA) published an ANPR (58 FR 8029) on Criteria for the Certification of Compliance with 40 CFR part 191, Environmental Radiation Protection Standards for the Managment and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes. Comments on this ANPR were requested by March 15, 1993. As a result of several requests received for additional time to comment, the Agency is extending the comment period to March 31, 1993.

Dated: March 15, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 93–6516 Filed 3–19–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–14; RM–8155]

Radio Broadcasting Services; Bethany Beach, DE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Roger A. Akin and Banking Services Corp., Co-Receivers of KAT Broadcasting Corporation, requesting the substitution of Channel 240B1 for Channel 240A at Bethany Beach, Delaware, and the modification of Station WWRT(FM)'s license to specify operation on Channel 240B1. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 240B1 at Bethany Beach or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties. The proposed coordinates for Channel 240B1 at Bethany Beach are North Latitude 38–32–24 and West Longitude 75–03–23.

DATES: Comments must be filed on or before May 3, 1993, and reply comments on or before May 18, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, Interested parties should serve the petitioner, or its counsel or consultant, as follows: Matthew H. McCormick, Reddy, Begley & Martin, 1001 22nd Street, NW., suite 350, Washington, DC 20037 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–14, adopted January 21, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts and prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6427 Filed 3–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–13, RM–8156]

Radio Broadcasting Services; Blanchard, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Daryl L. Bordelon seeking the allotment of Channel 271C3 to Blanchard, Louisiana, as the community's first local FM service. Channel 271C3 can be allotted to Blanchard in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) north to avoid a short-spacing to Station KDET–FM, Channel 272A, Center, Texas. The coordinates for Channel 271C3 are 32–35–18 and 93–53–31.

DATES: Comments must be filed on or before May 3, 1993, and reply comments on or before May 18, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Daryl L. Bordelon, 6036 Dillingham Avenue, Shreveport, Louisiana 71106 (Petitioner) and Larry G. Fuss, Contemporary Communications, P.O. Box 1787, Cleveland, Mississippi 38732 (Consultant).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–13, adopted January 21, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6425 Filed 3–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–12, RM–8151]

Radio Broadcasting Services; Galliano and Buras Triumph, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Callais Cablevision, Inc., licensee of Station KBAU–FM, Channel 232C3, Galliano, Louisiana, seeking the substitution of Channel 232C2 for Channel 232C3 at Galliano and modification of Station KBAU–FM's license to specify on the higher powered channel. In order to

accommodate this proposal, Callais also requests the substitution of Channel 278A for vacant Channel 231A at Buras Triumph, Louisiana, or alternatively, the deletion of Channel 231A. Channel 232C2 can be allotted to Galliano in compliance with the Commission's minimum distance separation requirements without the imposition of site restriction. The coordinates for Channel 232C2 at Galliano are 29–26–00 and 90–17–54. The coordinates for 231A at Buras Triumph are 29–17–29 and 89–30–07. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 232C2 at Galliano or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before May 3, 1993, and reply comments on or before May 18, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marjorie R. Esman, Esq., Hardy and Carey, 111 Veterans Boulevard, Metairie, Louisiana 70005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–12, adopted January 21, 1993, and released February 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6426 Filed 3–19–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 53
Monday, March 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–127–2]

Proposed Interpretive Ruling in Connection With The Upjohn Company Petition for Determination of Regulatory Status of ZW–20 Virus Resistant Squash

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening of comment period.

SUMMARY: The Animal and Plant Health Inspection Service is reopening the comment period for a notice of proposed interpretive ruling in connection with The Upjohn Company petition for determination of regulatory status of ZW–20 virus resistant squash. This action is necessary to obtain additional comments on scientific and technical issues raised by previous comments on the petition.

DATES: Consideration will be given only to written comments that are received on or before May 21, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–127–2. A copy of The Upjohn Company petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the petition or comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. A copy of The Upjohn Company petition may be obtained by contacting Ms. Kay Peterson at (301) 436–7601.

FOR FURTHER INFORMATION CONTACT: Dr. James L. White, Biotechnology Permits, BBEP, APHIS, USDA, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1992 (57 FR 40632, Docket No. 92–127–1), the Animal and Plant Health Inspection Service (APHIS) issued a notice of proposed interpretive ruling in connection with The Upjohn Company petition for determination of regulatory status of ZW–20 virus resistant squash. Interested persons were given until October 19, 1992, to comment on this proposed interpretive ruling. After careful consideration of the comments, we have determined that it is in the public interest to allow interested parties to submit comments on the following scientific and technical issues raised by previous comments:

(1) Is there evidence to support a finding that squash (*Cucurbita pepo* L. cultivar YC77E) is a weed in the United States?

(2) Does the introduction of genes encoding virus resistance increase the weediness potential of *C. pepo*?

(3) Is *Cucurbita texana* a weed? If yes, is it a serious weed in the United States?

(4) If the viral resistance genes are introduced into *C. texana*, would this significantly increase its weediness potential?

(5) What is the likelihood of genomic masking or transencapsidation between the coat proteins engineered in the ZW–20 squash plants and indigenous cucurbit potyviruses? What would be the potential environmental impact of such an event?

(6) How widespread are zucchini yellow mosaic virus and watermelon mosaic virus II in natural stands of *C. texana*?

(7) What is the geographical distribution of *C. texana*? How does its distribution relate to the commercial cultivation of *C. pepo*?

(8) What is the probability of recombination between the engineered viral coat protein nucleic acids and indigenous squash potyviruses? What is the potential environmental impact of such a recombinant virus?

After reviewing the data submitted by the petitioner, written comments received during the two comment periods, as well as other relevant literature, and interpreting the application of statutes and regulations to these data and comments, APHIS will issue its determination on the regulatory status of the ZW–20 squash. A notice of the ruling and its availability will be published in a subsequent **Federal Register**.

Done in Washington, DC, this 16th day of March 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–6482 Filed 3–19–93; 8:45 am]

BILLING CODE 3410–34–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee announced at FR Doc 93–5439, 58 FR 13251, will convene at 12 p.m. and adjourn at 5 p.m. on Wednesday, March 24, 1993, at the City Council Chambers, 175 Fifth Street, North, Second Floor, in St. Petersburg, Florida. (This amendment is change of date only.)

Dated at Washington, DC, March 17, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–6533 Filed 3–17–93; 4:44 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Meeting Cancellation

A notice published in the **Federal Register** on March 8, 1993 (58 FR 12937) announced a meeting of the Exporters' Textile Advisory Committee on March 25, 1993. This meeting has been postponed indefinitely.

For further information, contact William Dawson (202/482–5155).

Dated: March 16, 1993.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-6552 Filed 3-19-93; 8:45 am]

BILLING CODE 3510-DR-F

[A-351-811 (Brazil), A-427-804 (France), A-428-811 (Germany), A-412-810 (United Kingdom)]

Antidumping Orders: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Pasden (Brazil), Office of Agreements Compliance; Edward Easton (France), Cynthia Thirumalai (Germany) and Michael Ready (United Kingdom), Office of Antidumping Investigations (telephone: (202) 482-0194, (202) 482-1777, (202) 482-4087, and (202) 482-2613, respectively); Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

ANTIDUMPING DUTY ORDERS:

Scope of Orders

The products subject to these investigations are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in these investigations are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of these proceedings is dispositive.

Orders

On January 27, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) published its final determinations of sales at less than fair value for certain hot-rolled lead and bismuth carbon steel products. (58 FR 6202 (Brazil), 58 FR 6203 (France), 58 FR 6205 (Germany) and 58 FR 6207 (United Kingdom)). On March 10, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that imports of certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany and the United Kingdom materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority pursuant to section 736(a) of the Act, antidumping duties equal to the estimated amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany and the United Kingdom. These antidumping duties will be assessed on all unliquidated entries of certain hot-rolled lead and bismuth carbon steel products entered, or withdrawn from warehouse, for consumption on or after September 28, 1992, for France, Germany and the United Kingdom and November 17, 1992, for Brazil, the dates on which the Department published its preliminary determinations in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Producer/manufacturer/exporter	Margin percentage
Brazil	
Mannesman	148.12
All Others	148.12
France	
Usinor Sacilor	75.08
All Others	75.08
Germany	
Saarstahl AG	85.05
All Others	85.05
United Kingdom	
United Engineering Steels Limited	25.82
All Others	25.82

This notice constitutes the antidumping duty orders with respect to hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany and the United Kingdom, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

In accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9)(A)-(F) of the Act (19 U.S.C. section 1677(9)(A)-(F)) and 19 CFR 353.2(k)(1)-(6), may request, in accordance with 19 CFR 353.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Holly Kuga at (202) 482-2104, Office of Antidumping Compliance.

This determination is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

March 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-6432 Filed 3-19-93; 8:45 am]

BILLING CODE 3510-DS-F

[C-351-812]

Countervailing Duty Order: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Laurel Lynn, Office of Countervailing Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-2786.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on January 19, 1993, the Department of Commerce (the Department) made its final determination that producers or exporters in Brazil of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products") receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 6213, January 27, 1993). On March 10,

1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (the ITC) notified the Department of its determination that imports of certain additive steel products are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. sections 1671e and 1675), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain additive steel products from Brazil. These countervailing duties will be assessed on all unliquidated entries of certain additive steel products from Brazil which were entered, or withdrawn from warehouse, for consumption, on or after September 17, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before January 15, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**. Entries of certain additive steel products made on or after January 15, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on September 17, 1992, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 0.67 percent *ad valorem* for all entries of certain hot rolled lead and bismuth carbon steel products from Brazil, except entries from Companhia Acos Especiais Itabira (ACESITA), for which a cash deposit of 19.19 percent *ad valorem* must be required.

This determination constitutes a countervailing duty order with respect to certain additive steel products from Brazil pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this order are hot rolled bars and rods of nonalloy and other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steel classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this order are provided for under subheadings 7213.20,00.00 and 7214.30.00.00 or the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with § 355.22 of the Department's regulations, that the Department conduct an administrative review of this order. For further information regarding these reviews, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e).

Dated: March 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–6433 Filed 3–19–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–812]

Countervailing Duty Order: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Paulo Mendes or Magd Zalok, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5050 or 482–4162, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on January 19, 1993, the Department of Commerce (the Department) made is final determination that producers or exporters in Germany of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products"), receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 6233, January 27, 1993). On March 10, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination that imports of certain additive steel products are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. sections 1671e and 1675), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain additive steel products from Germany. These countervailing duties will be assessed on all unliquidated entries of certain additive steel products from Germany which were entered, or withdrawn from warehouse, for consumption, on or after September 17, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before January 15, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**. Entries of certain additive steel products made on or after January 15, 1993, and prior to date of

publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on September 17, 1992, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, a cash deposit for entries of certain additive steel products from Germany as follows:

Company	Ad valorem rate
Saarstahl AG	17.28 percent.
All Others	17.28 percent.

Normally, the Department will exclude from the application of a countervailing duty order a producer found to have a *de minimis* or zero ad valorem countervailing duty rate during the period of investigation 19 CFR 355.21(C). The Department's final determination resulted in a *de minimis* countervailing duty margin for Thyssen AG (Thyssen). However, the Department is currently drafting proposed regulations which would eliminate exclusions. In the meantime, the Department wants to make clear that in excluding Thyssen from the order, this exclusion will apply only to certain additive steel which is produced and sold by Thyssen to the United States. We will review import statistics and work closely with the U.S. Customs Services to ensure that other producers are not making sales through Thyssen to evade an order and to ensure that entry documentation identifies the producer of the certain additive steel products. The Department has the authority to conduct a changed circumstances review to determine whether Thyssen is reselling certain additive steel products produced by other companies in Germany. We will immediately initiate a review if we have reason to believe that the integrity of the order is threatened as a result of such evasion. A preliminary or final affirmative finding could result in the suspension of liquidation of all entries of Thyssen.

This determination constitutes a countervailing duty order with respect to certain additive steel products from Germany pursuant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this investigation are hot rolled bars and rods of annalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding this administrative review procedures, contact Barbara Tillman at (202) 482-2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-6434 Filed 3-19-93; 8:45 am]

BILLING CODE 3510-DS-P

C-427-805

Countervailing Duty Order and Amendment of Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Susan Strumbel, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0167 or 482-1442, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on January 19, 1993, the Department of Commerce (the Department) made its final determination that producers or exporters in France of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products"), receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 6221, January 27, 1993). On March 10, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination that imports of certain additive steel products are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain additive steel products from France. These countervailing duties will be assessed on all unliquidated entries of certain additive steel products from France which were entered, or withdrawn from warehouse, for consumption, on or after September 17, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before January 15, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**. Entries of certain

additive steel products made on or after January 15, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on September 17, 1992, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, a cash deposit of 23.11 percent *ad valorem* for all entries of certain additive steel products from France.

This determination constitutes a countervailing duty order with respect to certain additive steel products from France pursuant to 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this investigation are hot rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Correction of Ministerial Error

On February 8, 1993, Usinor Sacilor, respondent in this countervailing duty investigation, alleged that the Department made a ministerial error in calculating the subsidy margin in our final determination pursuant to 19 CFR 355.28. Specifically, respondent alleged that with respect to the subsidy calculation for the CFDI Loan program, the Department did not use the actual payments made by Usinor Sacilor on certain CFDI loans for 1991.

We agree with respondent's allegation of a ministerial error. Thus, we have recalculated the CFDI Loan program and found that we overstated the subsidy rate by 0.04 percent.

In addition, we made another correction to the final calculation of the subsidy bestowed by CFDI loans. We found that we had understated the subsidy by 0.01 percent. We are unable to discuss this correction further because of its proprietary nature.

We initially found a subsidy rate of 0.48 percent for the CFDI Loan program. The recalculated subsidy rate for this program is now 0.45 percent. The final margin percentage in this notice reflects this recalculation for certain additive steel products.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. section 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated: March 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–6435 Filed 3–19–93; 8:45 am]

BILLING CODE 3510–DS–P

Countervailing Duty Order: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Annika L. O'Hara, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5055 or 482–0588, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on January 19, 1993, the Department of Commerce (the Department) made its final determination that producers or exporters in the United Kingdom of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products"), receive benefits which constitute subsidies within the meaning of the countervailing duty law (58 FR 6237, January 27, 1993). On March 10, 1993, in accordance with section 705(d) of the Act, the U.S. International Trade Commission notified the Department of its final determination that imports of certain additive steel products are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751, countervailing duties equal to the amount of the estimated net subsidy on all entries of certain additive steel products from the United Kingdom which were entered, or withdrawn from warehouse, for consumption, on or after September 17, 1992, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before January 15, 1993, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**. Entries of certain additive steel products made on or after January 15, 1993, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on September 17, 1992, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, a cash deposit for entries of certain steel products from the United Kingdom as follows:

Company	Ad valorem rate (percent)
ASW Limited	20.33
United Engineering Steels Limited	12.69
All others	12.69

Normally, the Department will exclude from the application of a countervailing duty order a producer found to have a *de minimis* or zero ad valorem countervailing duty rate during the period of investigation. 19 CFR 355.21(C). The Department's final determination resulted in a *de minimis* countervailing duty margin for Glynwed International plc (Glynwed). However, the Department is currently drafting proposed regulations which would eliminate exclusions. In the meantime, the Department wants to make clear that in excluding Glynwed from the order, this exclusion will apply only to certain additive steel which is produced and sold by Glynwed to the United States. We will review import statistics and work closely with the U.S. Customs Services to ensure that other producers are not making sales through Glynwed to evade an order and to ensure that entry documentation identifies the producer of the certain additive steel products. The Department has the authority to conduct a changed circumstances review to determine whether Glynwed is reselling certain additive steel produced by other companies in the United Kingdom. We will immediately initiate a review if we have reason to believe that the integrity of the order is threatened as a result of such evasion. A preliminary or final affirmative finding could result in the suspension of liquidation of all entries of Glynwed.

This determination constitutes a countervailing duty order with respect to certain additive steel products from the United Kingdom pursuant to section 706 of the Act (19 U.S.C. section 1671e). Interested parties may contact the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The products covered by this investigation are hot rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. 1677(9)) and 19 CFR section 355.2(i), may request, in accordance with 19 CFR section 355.22, that the Department conduct an administrative review of this order. For further information regarding administrative review procedures, contact Barbara Tillman at (202) 482–2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 19 CFR 355.21.

Dated March 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–6436 Filed 3–19–93; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

March 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of the 1993 limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations have not resulted in a mutually satisfactory solution on Category 617, the United States Government has decided to control imports in this category for the prorated period beginning on October 29, 1992 and extending through December 31, 1992; and the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

The limit for the period October 29, 1992 through December 31, 1992 is overshipped. Overshipments of this limit will be charged to the 1993 limit.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54976, published on November 23, 1992, announcing the request to consult with the Government of Thailand on Category 617.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956,

as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Textile Agreement of September 3, 1991 between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 23, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 617, produced or manufactured in Thailand and exported during the period beginning on October 29, 1992 and extending through December 31, 1992, at a level of 1,437,838 square meters [1].

Also, you are directed, effective on March 23, 1993, to establish a limit for Category 617 for the twelve-month period which began on January 1, 1993 and extends through December 31, 1993, at a level of 8,715,996 square meters [2].

Imports charged to this category limit for the period October 29, 1992 through December 31, 1992, shall be charged against that level to the extent of any unfilled balance. Goods exported in excess of that limit shall be charged to the limit established for the 1993 period.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–6422 Filed 3–19–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Romania

March 16, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs converting and increasing a limit.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to convert the current minimum consultation level for Category 836 to a designated consultation level at a higher level.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53884, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on March 23, 1993, you are directed to amend the directive dated November 6, 1992 to increase the limit for Category 836 to 35,443 dozen [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–6423 Filed 3–19–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission; Investigative Hearings; Change of Location

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission separate from and independent of DoD).

ACTION: Notice of investigative hearings; change of hearing location.

SUMMARY: On March 12, 1993, the Department of Defense published a Notice of Investigative Hearings (58 FR 13587). This notice is published to announce a change to the location of the March 22, 1993 investigative hearing concerning environmental issues.

The new hearing location is 334 Cannon House Office Building, corner of Independence and New Jersey Avenues, Washington, DC. Start time remains 10 a.m. for this planned all-day session.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Houston, Director of Communications at (703) 696–0504. Please contact the Commission to confirm last minute changes in dates, times, and locations of all upcoming hearings.

Dated: March 16, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–6429 Filed 3–19–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Record of Decision for Proposed Aircraft Conversions at the 103rd Fighter Group, Bradley International Airport, Connecticut and the 104th Fighter Group, Barnes Municipal Airport, Massachusetts and Proposed Changes in Utilization of Military Training Airspace in the Northeastern United States

On March 3, 1993, the Air Force signed the Record of Decision (ROD) for the Environmental Impact Statement (EIS) for the aircraft conversions at Barnes IAP, CT, Bradley MAP, MA and

[1] The limit has not been adjusted to account for any imports exported after October 28, 1992.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1992.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

changes to the military training airspace in the Northeastern United States.

The United States Air Force has decided to replace the existing 18 A–10A aircraft located at Barnes IAP, CT and Bradley MAP, MA with the more modern F–16C/D aircraft as part of the ongoing modernization program and Force Structure changes for the Air National Guard. This will require the construction of new support facilities and minor modifications to some existing facilities at both locations. There will also be a small increase of approximately 50 personnel, most of whom will be part-time employees.

The United States Air Force has also decided to present airspace actions that include modifications and creation of new military training airspace in New Jersey, Pennsylvania, Maine, New Hampshire, Vermont, and New York, to the Federal Aviation Agency for aeronautical analysis. These actions include: Modifications to Military Training Route (MTR) VR 1709 in New Jersey; establishment of Antler Military Operations Area (MOA) in Pennsylvania; Condor 1 MOA modifications in Maine and New Hampshire; Yankee 2 MOA modifications in New Hampshire and Vermont; and establishment of Syracuse 5 MOA in New York.

The implementation of the aircraft replacements and establishing and modifying military training airspace in the Northeastern United States and the mitigation measures will proceed with minimal adverse impact to the environment. These actions conform with applicable Federal, State and local statutes and regulations, and all reasonable and practicable efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Air National Guard Readiness Center/CEVP, Building 3500, Andrews AFB, MD 20331, Attn: Mr. Harry Knudsen, (301) 981–8143.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–6461 Filed 3–19–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 9 April 1993.

Time of Meeting: 0930–1230 hours.

Place: Pentagon.

Agenda: The Army Science Board's Systems Issue Group study on "Liquid Propellant Advanced Field Artillery System" will meet with the Deputy for Systems Management to discuss the final report. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703)695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–6510 Filed 3–19–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Notice of Unsolicited Financial Assistance Award

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Determination of a noncompetitive financial assistance grant award with the Electric Power Research Institute.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology announces that pursuant to 10 CFR 600.7(B), it intends to award a grant to the Electric Power Research Institute (EPRI) for a research effort entitled "Co-Funding of the EPRI High Sulfur Test Center."

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Jo Ann C. Zysk, Contract Specialist (412) 892–6200.

SUPPLEMENTARY INFORMATION:

Grant Number:
DE–FG22–93PC93256
Title of Research Effort
"Co-Funding of the EPRI High Sulfur Test Center"
Awardee:
Electric Power Research Institute
Term of Assistance Effort
Sixty (60) months
Grant Estimated Total Value:
$17,929,000.00 DOE: $2,000,000.00; Cost-Sharing: $15,929,000.00)

Objective: The proposed research will promote improvements to conventional flue gas cleanup technologies and will contribute to the development of advanced environmental control technologies. The purpose of the work conducted at the High Sulfur Test Center is to evaluate and develop cost-effective solutions for controlling sulfur dioxide (SO_2), nitrogen oxides (NO_x), and particulate emissions resulting from high-sulfur, coal-fired electric utility boilers.

Justification:

Implementation of the proposed grant is based upon the authority of 10 CFR 600.7(b)(2)(i) (A), (B), and (D). This is a sixty month research effort with an estimated value of $17,929,000.00 (DOE: $2,000,000.00; Total Cost-Sharing: $15,929,000.00). The research developed under this grant will be cost-shared by the Department of Energy, Electric Power Research Institute, High Sulfur Test Center Steering Committee member utilities, and other organizations.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–6508 Filed 3–19–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–434–000, et al.]

Ohio Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Ohio Power Company

[Docket No. ER93–434–000]

March 12, 1993.

Take notice that on March 8, 1993, Ohio Power Company (OPCo), tendered for filing with the Commission a Modification No. 1 to its existing Municipal Resale Service Agreement, and a Facilities Agreement that were executed by OPCo and the Village of Carey on February 16, 1993. OPCo states that the Village of Carey recently requested an additional delivery point.

As requested, and for the sold benefit of the Village of Carey, OPCo proposes an effective date of March 15, 1993, for the tendered agreements.

OPCo states that copies of its filing were served upon the Village of Carey, Ohio, and the Public Utilities Commission of Ohio.

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Cambridge Electric Light Company

[Docket No. ER93–433–000]

March 12, 1993.

Take notice that on March 8, 1993, Cambridge Electric Light Company (Cambridge) tendered for filing a Net Requirements Power Supply Agreement (Agreement) between Cambridge and its wholesale customers, the Town of Belmont, Massachusetts (Belmont). The Agreement would supersede, cancel and replace the agreement between Cambridge and Belmont for service pursuant to Cambridge's FERC Electric Traffic for Partial Requirements Service. Cambridge requests waiver of the Commission's regulations, and any such authorization as may be necessary to permit the Agreement to become effective April 1, 1993, and to permit the cancellation and termination of the "partial requirements" agreement as of the effective date of the Agreement.

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER93–435–000]

March 12, 1993.

Take notice that on March 8, 1993, Public Service Company of Oklahoma (PSO) tendered for filing a Contract for Electric Service together with a related amended supplemental agreement and equipment lease agreement. Under the Electric Service Contract PSO will provide service to the City of Collinsville, Oklahoma (City) under PSO, FERC Rate Schedule RE–5. PSO seeks an effective date of September 1, 1993. PSO also seek approval under section 203 of the Federal Power Act for the lease to the City of certain facilities and the granting to the City of the option to purchase such facilities.

Copies of the filing have been sent to the City and the Oklahoma Corporation Commission.

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER93–382–000]

March 12, 1993.

Take notice that on March 4, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission corrected pages to Service Schedule D of its pending interchange agreement with Otter Tail Power Company (Otter Tail). The revised pages explicitly state WPSC's FERC Order No. 84 rates in lieu of a reference in the original filing to an Order No. 84 appendix that was not included with the filing. With Otter Tail's concurrence, WPSC requests an effective date 60 days after the parties' original February 19, 1993 submittal.

WPSC states that copies of the filing have been served on Otter Tail and on the state commissions where WPSC and Otter Tail serve at retail.

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Indiana Michigan Power Company Appalachian Power Company

[Docket No. ER93–276–000]

March 12, 1993.

Take notice that on March 8, 1993, American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M) and Appalachian Power Company (APCO), tendered for filing additional information required by the Commission's Staff, regarding a change in the loss percentage used in the Transmission and Unit Power Supply Agreement, dated December 14, 1988 (1988 Agreement), among I&M, APCO, and Carolina Power & Light Company (CP&L). The 1988 Agreement has been previously designated as I&M's Rate Schedule FERC No. 77 and APCO's Rate Schedule FERC No. 24.

The 1988 Agreement provides that the parties may review and adjust the loss percentage biennially. An effective date of January 1, 1993 has been requested.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the State Corporation Commission of Virginia, the Public Service Commission of West Virginia, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and CP&L.

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Power Company Ohio Power Company

[Docket No. ER93–295–000]

March 12, 1993.

Take notice that on March 8, 1993, American Electric Power Service Corporation on behalf of Kentucky Power Company (KPCO) and Ohio Power Company (OPCO), tendered for filing information requested by the Commission's Staff in support of a proposed change in the loss percentage used in the Agreement among the City of Hamilton, Ohio (Hamilton), KPCO, OPCO, and American Municipal Power-Ohio, Inc. (AMP-Ohio), dated May 1, 1988 (1988 Agreement). The 1988 Agreement has been previously designated as OPCO's Rate Schedule FERC No. 96.

The 1988 Agreement provides that the loss percentage is subject to change under certain described circumstances.

A copy of the filing was served upon the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, Hamilton, and AMP-Ohio.

An effective date of January 1, 1993 is being requested.

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER93–313–000]

March 15, 1993.

Take notice that on March 8, 1993 Niagara Mohawk Power Corporation (Niagara) tendered for filing an amendment to its Power Sales Tariff which provides for sales of system capacity and/or energy or resource capacity and/or energy. The proposed Tariff requires interested purchasers to enter into a service agreement with Niagara Mohawk before transactions may commence under the Tariff.

Niagara Mohawk requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. Information filed in support of the Tariff includes cost support for Niagara Mohawk's tariff ceiling rates, and pricing terms that allow for the capacity and energy changes to pro-rated for the duration of each sale. A copy of this filing was served upon the New York State Public Service Commission.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER93–429–000]

March 12, 1993.

Take notice that on March 5, 1993 South Carolina Electric & Gas Company (SCE&G), tendered for filing proposed changes in its FERC Electric Service Tariff, (Volume Nos. I–IV).

The proposed changes would increase revenues from jurisdictional sales and service by $7,411,686 based on the 12 month period ending December 31, 1993. The Company also proposes a revised wholesale electric tariff designated as First Revised Volume No. 1, to supersede Original Volume No. 1

SCE&G states that the proposed increased rates are necessitated by the fact that it is realizing an unreasonably low rate of return on sales to its jurisdictional customers.

Copies of the filing were served upon the public utility's jurisdictional customers and the South Carolina Public Service Commission.

Comment date: March 26, 1993, in accordance with Standard Paragraph E end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER93–222–000]

March 15, 1993.

Take notice that on March 11, 1993, Northeast Utilities Service Company (NUSCO) filed on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company additional information in this docket.

NUSCO state that copies of this submission have been mailed or delivered to each of the parties.

Comment date: March 29, 1993, in accordance with Standard Paragraph E end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–331–000]

March 15, 1993.

Take notice that on March 5, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) in response to a deficiency letter, tendered for filing additional information relative to an agreement for transmission service for New York State Electric & Gas Corporation (NYSEG).

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Multitrade Limited Partnership, Multitrade of Pittsylvania County, L.P.

[Docket No. ER93–427–000]

March 15, 1993.

Take notice that on March 3, 1993, Multitrade Limited Partnership (Multitrade) and Multitrade of Pittsylvania County, L.P. (MPC) filed an application requesting the Commission to accept for filing under section 205 of the Federal Power Act (FPA) Multitrade's rate schedule change as set forth in Amendment No. 1, dated as of November 3, 1992, to the Power Purchase and Operating Agreement, applicable to sales of energy and capacity to Virginia Electric Power Company (Virginia Power) from a biomass waste wood electric generating facility being developed in Pittsylvania County, Virginia (the Facility). As part of the Application, MPC also requested the Commission to accept for filing its Notice of Succession in Ownership to Supplement No. 1 to Multitrade's Rate Schedule FERC No. 1. The Facility is a qualifying small power production facility within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder.

The Commission has previously accepted for filing the Power Purchase Agreement on November 15, 1989 in Docket No. ER90–18–000, and by order dated February 26, 1993, in Docket No. ER93–244–000, the Commission accepted for filing MPC's Notice of Succession to Multitrade's Rate Schedule FERC No. 1.

Copies of the instant filing have been served upon Virginia Power.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Great Bay Power Corporation

[Docket No. ER93–425–000]

March 15, 1993.

Take notice that on March 4, 1993, Great Bay Power Corporation (Great Bay) tendered for filing a Notice of Succession in Ownership or Operation for EUA Power Corporation, now known as Great Bay Power Corporation.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER93–428–0000]

March 15, 1993.

Take notice that on March 5, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its Interconnection Agreements with Turlock Irrigation District (TID) and Modesto Irrigation District (MID), PG&E Rate Schedule FERC Nos. 115 and 116, respectively.

The amendment implements a revised metering procedure for these customers to take into account the replacement of magnetic tape meters with solid-state meters; it also includes updated information for notification of metering problems.

No rate change is involved in this filing.

Copies of this filing have been served upon MID, TID and the California Public Utilities Commission.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER93–443–000]

March 15, 1993.

Take notice that Florida Power Corporation (Florida Power) on March 11, 1993, tendered for filing a Construction Agreement which entails a contribution in aid of construction arrangement between Kissimmee Utility Authority and itself. Florida Power requests that this agreement be allowed to become effective as of May 10, 1993, 60 days from date of filing.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Upper Peninsula Power Company

[Docket No. ER93–431–000]

March 15, 1993.

Take notice that on March 8, 1993, Upper Pensinsula Power Company (UPPCO) tendered for filing Notices of Cancellation of the following rate schedules:

Customer	Rate Schedule No.
Wisconsin Electric Power Company	1
City of Escanaba, Michigan	9

UPPCO states that Rate Schedule Nos. 1 and 9 were previously superseded by other rate schedules on file at the Federal Energy Regulatory Commission. Copies of these notice of cancellation were served upon the affected customers.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Montana Power Company

[Docket No. ER93–114–000]

March 15, 1993.

Take notice that on March 10, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a supplement to its original filing of a Transmission Agreement executed by the United States of America, Department of Energy acting by and through the Bonneville Power Administration and Montana Intertie Users (Colstrip Project). This supplemental filing provides additional information requested through a deficiency letter issued under this docket.

Copies of the filing were served upon the Bonneville Power Administration, PacifiCorp, Portland General Electric Company, Puget Sound Power & Light Company and The Washington Water Power Company.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER93–21–000]

March 15, 1993.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on March 8, 1993, tendered for filing an amendment to its original filing in the above-referenced docket. The amendment summarizes the direct and indirect cost of the substations in question and also provides one line diagram of the subject facilities.

Wisconsin Electric renews its request for an effective date of December 14, 1990. Wisconsin Electric is authorized to state that Wisconsin Public Service Corporation joins in the requested effective date.

Copies of the filing have been served on Wisconsin Public Service Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6444 Filed 3–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2436–007, et al.]

Hydroelectric Applications; Consumers Power Co., et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 *a. Type of Application:* New Major License.

b. Project No.: 2436–007.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Foote.

f. Location: On the Au Sable River within the Huron National Forest near Oscoda in Iosco County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 23, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 3,800-foot-long earth embankment dam; (2) a 93-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 1,702 acres at surface elevation 639.2 feet m.s.l. and a storage capacity of 32,360 acre-feet; (4) a powerhouse containing three generating units each with a rated capacity of 3,000 kW; (5) a concrete tailrace; (6) an existing 600-foot-long transmission line; and, (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 38,593 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

2 *a. Type of Application:* New Major License.

b. Project No.: 2447–008.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Alcona.

f. Location: On the Au Sable River within the Huron National Forest near Curtis in Alcona County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 19, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 4,820-foot-long earth embankment dam; (2) a 250-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 1,006 acres at surface elevation 829.0 feet m.s.l. and a storage capacity of 12,547 acre-feet; (4) a powerhouse containing two generating units each with a rated capacity of 4,000 kW; (5) a concrete tailrace; (6) an existing 400-foot-long transmission line; and, (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 32,498 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at

941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

3 *a. Type of Application:* New Major License.

b. Project No.: 2450–005.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Cooke.

f. Location: On the Au Sable River within the Huron National Forest near Oscoda in Iosco County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 23, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 700-foot-long earth embankment dam; (2) a 92-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 1,627 acres at surface elevation 679.0 feet m.s.l. and a storage capacity of 26,749 acre-feet; (4) a powerhouse containing three generating units each with a rated capacity of 3,000 kW; (5) a concrete tailrace; (6) an existing 150-foot-long transmission line; and, (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 32,720 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

4 *a. Type of Application:* New Major License.

b. Project No.: 2451–004.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Rogers.

f. Location: On the Muskegon River near Auston in Mecosta County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 7911(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 19, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 600-foot-long earth embankment dam; (2) a 156-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 449 acres at surface elevation 861.6 feet m.s.l. and a storage capacity of 4,678 acre-feet; (4) a powerhouse containing four generating units each with a rated capacity of 1,687 kW; (5) a concrete tailrace; (6) an existing 140-foot-long transmission line; and, (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 36,651 MWh. The applicant owns all the exiting project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

5 *a. Type of Application:* New Major License.

b. Project No.: 2452–007.

c. Date Filed: December 19, 1991.

d. Applicant: Consumer Power Company.

e. Name of Project: Hardy.

f. Location: On the Muskegon River near Big Prairie in Mecosta and Newaygo Counties, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 19, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: the licensed project would consist of the following existing facilities: (1) A 2,600-foot-long earth embankment dam; (2) a 600-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 3,902 acres at surface elevation 822.5 feet m.s.l. and a storage capacity of 134,973 acre-feet; (4) a powerhouse containing three generating units each with a rated capacity of 10,000 kW; (5) a concrete tailrace; (6) an existing 1,800-foot-long transmission line; and (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 98,277 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December

7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

6 *a. Type of Application:* New Major License.

b. Project No.: 2453–003.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Five Channels.

f. Location: On the Au Sable River within the Huron National Forest near Oscoda in Iosco County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 23, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 620-foot-long earth embankment dam; (2) a 90-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 212 acres at surface elevation 715.0 feet m.s.l. and a storage capacity of 3,419 acre-feet; (4) a powerhouse containing two generating units each with a rated capacity of 3,000 kW; (5) a concrete tailrace; (6) an existing 1,430-foot-long transmission line; and, (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 24,622 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

7 a. Type of Application: New Major License.

b. Project No.: 2468–003.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Croton.

f. Location: On the Muskegon River near Big Prairie in Newaygo County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillas, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 23, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 370-foot-long earth embankment dam; (2) a 242-foot-long-reinforced concrete spillway; (3) a reservoir with a surface area of 1,209 acres at surface elevation 722.0 feet m.s.l. and a storage capacity of 21,932 acre-feet; (4) a powerhouse containing four generating units with a total rated capacity of 8,849 kW; (5) a concrete tailrace; (6) an existing 700-foot-long transmission line; and, (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 41,400 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

8 a. Type of Application: New Major License.

b. Project No.: 2580–015.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Tippy.

f. Location: On the Manistee River within the Manistee National Forest near Dickson in Manistee County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 19, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 576-foot-long earth embankment dam; (2) a 150-foot-long-reinforced concrete spillway; (3) a reservoir with a surface area of 1,330 acres at surface elevation 687.4 feet m.s.l. and a storage capacity of 27,620 acre-feet; (4) a powerhouse containing three generating units each with a rated capacity of 6,700 kW; (5) two existing transmission lines, one 100 feet long and the other 1,000 feet long; and, (6) appurtenant facilities. The applicant is

proposing no changes to the project. The average annual net energy generation is 59,500 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint Offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service and the Michigan State Historic Preservation Officer was filed with the Commission on December 17, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Offer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

9 *a. Type of Application:* New Major License.

b. Project No.: 2599–055.

c. Date Filed: December 19, 1991.

d. Applicant: Consumers Power Company.

e. Name of Project: Hodenpyl.

f. Location: On the Manistee River within the Manistee National Forest near Marilla in Manistee and Wexford Counties, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas W. Bowes, 330 Chestnut Street, Cadillac, MI 49601, (616) 775–0176.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Deadline Date: April 19, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A 4,165-foot-long earth embankment dam; (2) a 500-foot-long reinforced concrete spillway; (3) a reservoir with a surface area of 1,798 acres at surface elevation 809.0 feet m.s.l. and a storage capacity of 39,684 acre-feet; (4) a powerhouse containing two generating units each with a rated capacity of 8,500 kW; (5) a concrete tailrace; (6) a 550-foot-long transmission line; and (7) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 40,600 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

A joint offer of Settlement among Consumers Power Company, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, the National Park Service, and the Michigan State Historic Preservation Officer was filed with the Commission on December 7, 1992, and supersedes some aspects of the application.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application and the Officer of Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Consumers Power Company, 330 Chestnut Street, Cadillac, MI 49601, or by calling (616) 775–0176.

10 *a. Type of Application:* Surrender of License.

b. Project No.: 6786–018.

c. Date Filed: January 26, 1993.

d. Applicant: Jefferson National Bank.

e. Name of Project: Aurelius Avenue Project.

f. Location: Owasco Lake Outlet in Cayuga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., suite 1200, Washington, DC 20005, (202) 682–3300.

i. FERC Contact: Hank Ecton, (202) 219–2678.

j. Comment Date: April 22, 1993.

k. Description of Project: The license for this project, with a proposed capacity of 400 kilowatts, was issued on June 25, 1986, and transferred to Jefferson National Bank on August 19, 1992. The licensee states that it cannot develop the project. No construction has occurred, and the proposed site remains unaltered.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

11 *a. Type of Application:* Transfer of License.

b. Project No.: 7019–025.

c. Date Filed: November 5, 1992.

d. Applicant: City of Forsyth.

e. Name of Project: East Juliette Power Project.

f. Location: On the Ocmulgee River in Jones County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert L. Rose, President, PK Ventures, Inc., P.O. Box 262628, Tampa, FL 33685–1628, (813) 287–0600.

i. FERC Contact: Ms. Donna Marie Sangimino-Perez, (202) 219–2798.

j. Comment Date: April 14, 1993.

k. Description of Project: The City of Forsyth proposes to transfer the license for the East Juliette Power Project No. 7019 to Mr. Robert L. Rose, the President of PK Ventures, Inc.

l. This notice also consists of the following standard paragraphs: B and C.

12 *a. Type of Application:* Major License (less than 5 MW).

b. Project No.: 10462–002.

c. Date Filed: May 31, 1990.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Allens Falls.

f. Location: On the West Branch of the St. Regis River, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Michael W. Murphy, System Law Department, C–3, Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6941.

i. FERC Contact: Michael Dees, (202) 219–2807.

j. Deadline Date: Initial Comments April 20, 1993. Reply Comments June 4, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. Description of Project: The proposed project would consist of: (1) An existing concrete gravity type dam with flashboards two feet high; (2) an existing intake structure; (3) an existing pipeline 9,344 feet long and seven feet in diameter; (4) an existing differential surge tank; (5) an existing penstock 886 feet long and seven feet in diameter; (6) an existing powerhouse housing a 4,400-kW hydropower unit; (7) an existing tailrace 450 feet long; (8) an existing 115-kV transmission line; and (9) appurtenant facilities. The estimated annual energy production is 23.4 GWh.

m. Purpose of Project: The purpose of the project is to generate energy that would be used by the applicant to satisfy its customers needs.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, New York 13202.

13. *a. Type of Application:* Major License.

b. Project No.: 10808–000.

c. Date Filed: July 24, 1989.

d. Applicant: Wolverine Hydroelectric Corporation.

e. Name of Project: Edenville.

f. Location: On the Tittabawassee and Tobacco Rivers in Tobacco and Edenville Townships, Gladwin and Midland Counties, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John D. Kuhns, P.O. Box 147, 6000 South M–30, Edenville, Michigan 48620, (517) 689–3161.

i. FERC Contact: Charles T. Raabe (dt) (202) 219–2811.

j. Deadline Date: Initial Comments April 20, 1993, Reply Comments June 4, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached standard paragraph D10.

l. Description of Project: The existing, operating project consists of: (1) A reinforced concrete multiple arch spillway and integral powerhouse dam with an overall length of about 118 feet, a base width of about 52 feet, and a crest height of about 42 feet; (2) three tainter gates at the crest, each about 20 feet wide by 10 feet high, and two low-level sluiceway gates, each about 8 feet square, in the dam; (3) three lengths of earth embankments, consisting of a central section about 3,840 feet long and 55 feet in maximum height, a right section about 2,040 feet long and 60 feet in maximum height, and a left section about 850 feet long and 55 feet in maximum height; (4) a reinforced concrete multiple arch spillway dam 72 feet long, with a base width of about 70 feet and a crest height of about 45 feet, located between the right and the central earth embankment sections; (5) three steel tainter gates surmounting the spillway dam, each 20 feet wide and 10 feet high; (6) a reservoir named Wixom Lake, with a surface area of 2,600 acres and gross storage of about 40,000 acre-feet; (7) an integral reinforced concrete and brick powerhouse, about 80 feet long, 51 feet wide, and 60 feet high, equipped with two Francis vertical axis turbine-generator units rated at 2,400 kW each; (8) certain transmission equipment; and (9) appurtenant facilities.

The project generates an estimated annual output of 16.8 GWh.

m. Purpose of Project: Power generated would be sold to Consumers Power Company.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371, and at the Wolverine Hydroelectric Corporation, 6000 South M–30, Edenville, Michigan 48620.

14. *a. Type of Application:* Minor License.

b. Project No.: 10809–000.

c. Date Filed: July 24, 1989.

d. Applicant: Wolverine Hydroelectric Corporation.

e. Name of Project: Secord.

f. Location: On the Tittabawassee River in Secord Township, Gladwin County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John D. Kuhns, P.O. Box 147, 6000 South M–30, Edenville, Michigan 48620, (517) 689–3161.

i. FERC Contact: Charles T. Raabe (dt), (202) 219–2811.

j. Deadline Date: Initial Comments April 20, 1993 Reply Comments June 4, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached standard paragraph D10.

l. Description of Project: The existing, operating project consists of: (1) A reinforced concrete multiple arch spillway and integral powerhouse dam with an overall length of about 71 feet, a base width of about 85 feet, and a crest height of about 42 feet; (2) two tainter gates at the dam crest, each about 22 feet wide by 10 feet high; (3) a right side earth embankment about 400 feet long by 57 feet high maximum; (4) a reservoir named Secord Lake, with a surface area of about 1,100 acres and gross storage of about 15,000 acre-feet; (5) an integral reinforced concrete and brick powerhouse, about 64 feet long, 25 feet wide, and 57 feet high, equipped with one Francis vertical axis turbine-generator unit rated at 1,200 kilowatts (kW); (6) certain transmission equipment; and (7) appurtenant facilities.

The project has an estimated annual output of 4.0 GWh.

m. Purpose of Project: Power generated would be sold to Consumers Power Company.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wolverine Hydroelectric Corporation, 6000 South M–30, Edenville, Michigan 48620.

15 *a. Type of Application:* Major License.

b. Project No.: 10810–000.

c. Dated Filed: July 24, 1989.

d. Applicant: Wolverine Hydroelectric Corporation.

e. Name of Project: Smallwood.

f. Location: On the Tittabawassee River in Hay Township, Gladwin County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John D. Kuhns, P.O. Box 147, 6000 South M–30, Edenville, Michigan 48620, (517) 689–3161.

i. FERC Contact: Charles T. Raabe (dt), (202) 219–2811.

j. Deadline Date: Initial Comments April 20, 1993. Reply Comments June 4, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached standard paragraph D10.

l. Description of Project: The existing, operating project consists of: (1) A reinforced concrete hollow gravity spillway dam about 52 feet long, 25 feet high, and 50 feet wide at the base, surmounted by two steel tainter gates, each 25.3 feet wide and 10 feet high; (2) a right side earth embankment about 100 feet long by 40 feet high maximum, and a left side earth embankment about 550 feet long by 40 feet high maximum; (3) a reservoir named Smallwood Lake,

with a surface area of about 500 acres; (4) a reinforced concrete powerhouse integral with the spillway, about 55 feet long, 27 feet wide, and 65 feet high; (5) powerhouse equipment consisting of one vertical axis, open flume turbine-generator unit rated at 1,200 kilowatts (kW); (6) certain transmission equipment; and (7) appurtenant facilities.

The project generates an estimated annual output of 2.65 GWh.

m. Purpose of Project: Power generated would be sold to Consumers Power Company.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wolverine Hydroelectric Corporation, 6000 South M–30, Edenville, Michigan 48620.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a part to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 20, 1993 for Project No. 10462–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 4, 1993 for Project No. 10462–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 20, 1993 for Project Nos. 10808–000, 10809–000, 10810–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 4, 1993 for Project Nos. 10808–000, 10809–000, and 10810–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary

circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: March 16, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-6446 Filed 3-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-238-000, et al.]

Northern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP93-238-000]

March 11, 1993.

Take notice that on March 9, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP93-238-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate one existing valve setting as a new delivery point to provide natural gas deliveries to Diamond Shamrock McKee Plant (Diamond Shamrock), an end-user located in Moore County, Texas, under the certificate issued to Northern in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it will deliver 50,000 Mcf per day and 10,950,000 Mcf on an annual basis to Diamond Shamrock under Northern's Rate Schedule TI. Northern also states that Diamond Shamrock will use the natural gas volumes as fuel for running the refinery and ammonia plant.

Northern states that installation of facilities will not be involved in the proposed project. It is stated that Diamond Shamrock will reverse the flow of an existing meter owned by Diamond Shamrock through which Diamond Shamrock formerly delivered gas to Northern.

Comment date: April 26, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP93-237-000]

March 11, 1993.

Take notice that on March 9, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP93-237-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point for deliveries of natural gas to Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install a small volume measuring station and appurtenant facilities as a delivery point to provide additional natural gas deliveries to Peoples to accommodate service under Northern's Rate Schedule TI to serve Liquid Corn, Inc., a commercial end-user in Platte County, Nebraska. Northern states that the peak day and annual volumes are estimated to be 30 Mcf and 6,600 Mcf, respectively. Northern explains that the gas would be used as fuel for grain drying. Further, Northern advises that the gas volumes would be within the current entitlements of Peoples and, more specifically, would be from the total firm entitlement currently assigned to Nebraska small volume taps. Northern estimates that the total cost of installing the delivery point would be $2,065.

Comment date: April 26, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP93-239-000]

March 12, 1993.

Take notice that on March 10, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP93-239-000, an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of a transportation service provided under Rate Schedule T-81 to Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern in its letter dated April 24, 1991, notified Trunkline of its intent to terminate the agreement designated as Rate Schedule T-81 of Trunkline's

FERC Gas Tariff. By letter dated April 29, 1991, both parties mutually agreed to terminate the agreement, effective December 1, 1993.

Comment date: April 2, 1993 in accordance with Standard Paragraph F at the end of the notice.

4. El Paso Natural Gas Company

[Docket No. CP93–235–000]

March 12, 1993.

Take notice that on March 8, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–235–000 a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the firm transportation of natural gas to Westar Transmission Company (Westar) at certain miscellaneous delivery taps located in Crockett, Reagan and Sutton Countries, Texas, under El Paso's blanket authorization issued in Docket No. CP82–425–000, all as more fully set forth in the request on file with the Commission and open to public inspection. Instead, as all parties affected by the change agreed, El Paso will provide open-access interruptible transportation service to NatGas Inc. (NatGas) at these same delivery taps.

El Paso states that it received authority to sell to Westar (formerly Pioneer Natural Gas Company, a Division of Pioneer Corporation) for resale natural gas by order issued August 5, 1957 at Docket No. G–12373. Subsequently, by various Commission orders, El Paso also states that it received authority to add additional points of delivery to sell natural gas to Westar for resale to areas located in the State of Texas.

El Paso further states that El Paso and Westar were parties to a service agreement dated January 27, 1981, which provided for the sale and firm delivery of natural gas by El Paso to Westar for resale according to the authorization discussed above. According to the global settlement at Docket No. RP88–44–000, et al., Westar converted its sales entitlements to firm transportation service. That service is rendered according to the terms of a transportation service agreement (TSA) dated December 31, 1991, between El Paso and Westar. Among other things, the TSA provided for the cancellation of the other service agreement between El Paso and Westar dated January 27, 1981.

Under the provisions of the firm TSA, El Paso, *inter alia*, delivers volumes of gas for Westar at four delivery point locations, included as part of Exhibit B to the TSA and described as the: (i) Reagan Taps (EPNG Code IW41–180); (ii) Crockett Taps (EPNG Code (IW41–151); (iii) Crockett Taps (EPNG Code IW41–152); and (iv) Herbert Fields (EPNG Code 20410 62). These are the location descriptions for base meters used by El Paso for billing purposes, which aggregate the volumes delivered under six separate taps. More specifically, the delivery tap behind (i) above is the W.H. Dixon tap; the delivery taps behind (ii) above are the F.D. Strauss and Atlantic Refining tap; the delivery taps behind (iii) above are the John Childress and J.B. Parker taps; and the delivery tap behind (iv) is the Herbert Fields tap.

El Paso also states that NatGas has acquired from Energas Company a natural gas distribution system, which is comprised of, *inter alia*, the six delivery tap locations served by the above pipeline taps presently serving Westar. With NatGas' acquisition, NatGas desires natural gas service at these delivery points. Therefore, NatGas and El Paso have entered into an interruptible TSA dated February 4, 1993, to provide service to NatGas at these delivery taps. As a result, Westar will no longer require gas service at the taps. NatGas does not seek assignment of the natural gas firm transportation service that El Paso provide to Westar at these delivery points. Accordingly, El Paso proposes to abandon only the related natural gas service it provides Westar at these taps, but not the physical metering facilities.

El Paso further states that the proposed abandonment of service will have no adverse environmental effects. Because the facilities that provide the natural gas service will remain in place and be operated in the same manner as presently operated, there will be no soil or surface disturbance or any other physical activity taking place in or around the delivery taps. Therefore, the proposed action is not a major Federal action significantly affecting the quality of the human environment.

Comment date: April 26, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP93–233–000]

March 12, 1993

Take notice that on March 5, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–233–000 a request pursuant to § 157.205 of the Commission's Regulations to add the KB pipeline delivery point at the PGE Meter Station in Cowlitz County, Washington (PGE meter station) to its Rate Schedule ODL–1 Service Agreement dated November 1, 1992, (service agreement) with Northwest Natural Gas Company (Northwest Natural) and to reallocate portions of Northwest's existing maximum daily delivery obligation (MDDO) for firm service under the service agreement to the new delivery point under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to add the KB pipeline delivery point at the PGE meter station to Northwest Natural's service agreement and to reallocate 300,000 therms of MDDO to that point from the existing Camas and Deer Island delivery points located in Clark and Columbia Counties, respectively for deliveries to Northwest Natural to provide natural gas supplies for Portland General Electric Company's (PGE) Beaver plant for use in the generation of electricity and for Northwest's Natural's system supply. Northwest states that no significant impact on Northwest's system peak day or annual deliveries is projected to result from the proposed delivery point and reallocations, since Northwest's total firm obligations under its service agreements with Northwest Natural remains unchanged.

Comment date: April 26, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. Alabama-Tennessee Natural Gas

[Docket No. CP93–232–000]

March 12, 1993

Take notice that on March 5, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P. O. Box 918, Florence, Alabama 35631, filed in Docket No. CP93–232–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new sales tap for the delivery of natural gas to American Fructose-Decatur, Inc. (American Fructose), an end user presently being served indirectly by Alabama-Tennessee through the municipally owned distribution facilities of the City of Decatur, Alabama. Alabama-Tennessee's request is being made under the blanket certificate of public convenience and necessity authorizing certain routine activities issued to Alabama-Tennessee in Docket No. CP85–359–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that

is on file with the Commission and open to public inspection.

Alabama-Tennessee states that it proposes to add a sales tap on its system in Morgan County, Alabama in order to provide direct natural gas transportation deliveries to American Fructose. Alabama-Tennessee states that it will deliver up to 8,400 dekatherms of natural gas per day to American Fructose at this point under Alabama-Tennessee's currently effective Rate Schedule IT.

Comment date: April 26, 1993, in accordance with Standard Paragraph G at the end of this notice.

7. Arkla Energy Resources Company

[Docket No. CP93-234-000]

March 12, 1993

Take notice that on March 5, 1993, Arkla Energy Resources Company (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93-234-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate facilities in Caddo County, Oklahoma, for deliveries into the intrastate system of Transok, Inc. (Transok), under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to convert an existing receipt point into a delivery point to serve as an interconnection between AER and Transok. AER states that the delivery point would be used for the delivery of up to 50,000 MMBtu equivalent of natural gas per day under AER's Part 284 blanket certificate issued in Docket No. CP88-820-000.

It is stated that the existing receipt point was constructed for service from Tex-con Gas Marketing Company, whose services in Oklahoma were subsequently acquired by Transok. It is estimated that the cost of converting the facilities would be $2,300, to be financed with internally generated capital.

Comment date: April 26, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-6445 Filed 3-19-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-06-NG]

Portal Municipal Gas; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Portal Municipal Gas (PMG) authorization to import up to 2,295 Mcf per day of natural gas from Canada beginning on March 5, 1993, and continuing through September 1, 2012. The gas will be purchased from SaskEnergy Incorporated, and will be imported at Portal, North Dakota, through new pipeline facilities to be constructed by PMG.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 15, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-6509 Filed 3-19-93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 93-21-NG]

Victoria Gas Corporation; Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on February 19, 1993, of an application filed by Victoria Gas Corporation (Victoria) requesting blanket authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first import or export after June 5, 1993, the date that Victoria's current blanket authorization expires. See DOE FE Opinion and Order No. 413 issued June 30, 1990 (1 FE ¶70,339). The proposed imports and exports would take place at any point on the United States/Mexico border where existing pipeline facilities are located. Victoria would file with DOE quarterly

reports detailing each import and export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, April 21, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4587.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Victoria, a natural gas marketer, is a Texas corporation with its principal place of business in Houston, Texas. Victoria requests authorization to import and export natural gas on its own behalf or as an agent on behalf of others. Victoria does not yet know the identity of the actual suppliers, transporters, or purchasers. Victoria would determine the specific terms of each import/export transaction through arms-length negotiations and states that these transactions would be short-term in nature. The domestically produced gas to be exported would be incremental to the needs of current domestic purchasers in the regions from which the supplies would be drawn.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues. Victoria asserts that its proposal is in the public interest. Parties opposing Victoria's application bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Victoria's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 15, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs.

[FR Doc. 93–6506 Filed 3–19–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–22–NG]

Victoria Gas Corporation; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Victoria Gas Corporation (Victoria) blanket authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Canada over a two-year term, beginning on the date of the first import or export after June 5, 1993, the date that Victoria's current blanket authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 15, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs.

[FR Doc. 93-6507 Filed 3-19-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-51815; FRL-4570-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 130 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-364, 93-365, 93-366, 93-367, April 4, 1993.

P 93-368, April 24, 1993.

P 93-369, 93-370, 93-371, 93-372, 93-373, 93-374, 93-375, 93-376, 93-377, 93-378, 93-379, 93-380, 93-381, April 4, 1993.

P 93-382, 93-383, April 5, 1993.

P 93-384, 93-385, 93-386, April 6, 1993.

P 93-387, April 7, 1993.

P 93-388, 93-389, 93-390, April 6, 1993.

P 93-391, 93-392, 93-393, 93-394, 93-395, 93-396, 93-397, 93-398, April 7, 1993.

P 93-399, 93-400, 93-401, 93-402, 93-403, 93-404, 93-405, 93-406, April 10, 1993.

P 93-407, 93-408, 93-409, 93-410, 93-411, 93-412, 93-413, 93-414, 93-415, April 11, 1993.

P 93-416, April 13, 1993.

P 93-417, April 12, 1993.

P 93-418, April 14, 1993.

P 93-419, April 12, 1993.

P 93-420, April 13, 1993.

P 93-421, April 18, 1993.

P 93-422, 93-423, 93-424, 93-425, 93-426, 93-427, 93-428, 93-429, 93-430, 93-431, 93-432, 93-433, 93-434, 93-435, 93-436, 93-437, 93-438, 93-439, 93-440, 93-441, 93-442, 93-443,.93-444, 93-445, 93-446, 93-447, 93-448, 93-449, 93-450, 93-451, 93-452, 93-453, 93-454, April 20, 1993.

P 93-455, 93-456, 93-457, 93-458, 93-459, 93-460, 93-461, 93-462, 93-463, 93-464, 93-465, 93-466, 93-467, April 21, 1993.

P 93-468, 93-469, 93-470, 93-471, 93-472, 93-473, 93-474, 93-475, 93-476, April 24, 1993.

P 93-477, 93-478, 93-479, 93-480, 93-481, 93-482, 93-483, April 25, 1993.

P 93-484, 93-485, 93-486, 93-487, 93-488, 93-489, 93-490, 93-491, 93-492, April 26, 1993.

P 93-493, April 27, 1993.

Written comments by:

P 93-364, 93-365, 93-366, 93-367, March 5, 1993.

P 93-368, March 25, 1993.

P 93-369, 93-370, 93-371, 93-372, 93-373, 93-374, 93-375, 93-376, 93-377, 93-378, 93-379, 93-380, 93-381, March 5, 1993.

P 93-382, 93-383, March 6, 1993.

P 93-384, 93-385, 93-386, March 7, 1993.

P 93-387, March 8, 1993.

P 93-388, 93-389, 93-390, March 7, 1993.

P 93-391, 93-392, 93-393, 93-394, 93-395, 93-396, 93-397, 93-398, March 8, 1993.

P 93-399, 93-400, 93-401, 93-402, 93-403, 93-404, 93-405, 93-406, March 11, 1993.

P 93-407, 93-408, 93-409, 98--410, 93-411, 93-412, 93-413, 93-414, 93-415, March 12, 1993.

P 93-416, March 14, 1993.

P 93-417, March 13, 1993.

P 93-418, March 15, 1993.

P 93-419, March 13, 1993.

P 93-420, March 14, 1993.

P 93-421, March 19, 1993.

P 93-422, 93-423, 93-424, 93-425, 93-426, 93-427, 93-428, 93-429, 93-430, 93-431, 93-432, 93-433, 93-434, 93-435, 93-436, 93-437, 93-438, 93-439,93-440, 93-441, 93-442, 93-443, 93-444, 93-445, 193-446, 93-447, 93-448, 93-449, 93-450,93-451,93-452, 93-453, 93-454, March 21, 1993.

P 93-455, 93-456, 93-457, 93-458, 93-459, 93-460, 93-461, 93-462, 93-463, 93-464, 93-465, 93-466, 93-467, March 22, 1993.

P 93-468, 93-469, 93-470, 93-471, 93-472, 93-473, 93-474, 93-475, 93-476, March 25, 1993.11P 93-477, 93-478, 93-479, 93-480, 93-481, 93-482, 93-483, March 26, 1993.

P 93-484, 93-485, 93-486, 93-487, 93-488, 93-489, 93-490, 93-491, 93-492, March 27, 1993.

P 93-493, March 28, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51815] " and the specific number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460 (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93-364

Importer. Confidential.

Chemical. (G) Poly epoxy polyol.

Use/Import. (G) Coatings. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Mutagenicity: negative.

P 93-365

Manufacturer. Eastman Chemical Progress.

Chemical. (S) Propene 1-butene prepolymer; 2,5-furandione; TiC1 4 MgC1 4; A1 (C2H5)3; (t-C4H9) 202.

Use/Production. (S) Adhesives, hot-melt. Prod. range: Confidential.

P 93-366

Manufacturer. Eastman Chemical Program.

Chemical. (S) Propene; 1-Hexene; prepolymer 2,5-furandione; TiC14,MgC12; A1 (C2H5)3 (t-C4H9)202.

Use/Production. (S) Adhesives, hot-melt. Prod. range: Confidential.

P 93-367

Manufacturer. Eastman Chemical Program.

Chemical. (S) Propene;1-butene ethene 2,5-furandione;prepolymer TiC14 MgC1 2; A1(C2H5)3;(t-C4H9)2O2.

Use/Production. (S) Adhesives, hot-melt. Prod. range: Confidential.

P 93-368

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Nylon salt.

Use/Production. (G) Polyamide intermediate; closed nondispersive use. Prod. range: Confidential.

P 93-368

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Polyether ketone.

Use/Production. (G) Open, nondispersive uses. Prod. range: Confidential.

P 93-370

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.

Chemical. (G) Polyether ketone.

Use/Production. (G) Open, nondispersive uses. Prod. range: Confidential.

P 93-371

Importer. Ciba-Geigy Corporation.

Chemical. (G) Epoxy resin, reaction products with acrylic acid.

Use/Import. (S) Solder mask matting agent for printed wiring board production. Import range: Confidential.

P 93-372

Importer. Ciba-Geigy Corporation.

Chemical. (G) Epoxy resin, reaction products with 4,4'-(1-methylethylidene)bis(2,6-dibromophenol acrylic acid.

Use/Import. (S) Solder mask resin and matting agent for printed wiring board production. Import range: Confidential.

P 93-373

Importer. Ciba-Geigy Corporation.

Chemical. (G) Epoxy resin, reaction products with 4,4'-(1-methylethylidene)bis (2,6-dibromophenol acrylic acid.

Use/Import. (S) Solder mask resin and matting agent for printed wiring board production. Import range: Confidential.

P 93-374

Importer. Ciba-Geigy Corporation.

Chemical. (G) Substituted benzotriazole derivative.

Use/Import. (S) Intermediate to manufacture. Import range: Condifidential.

P 93-375

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted benzotriazole derivative.

Use/Production. (S) Intermediate to manufacture. Prod. range: Confidential.

P 93-376

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted benzotriazole derivative.

Use/Production. (S) UV Light stabilizer for coatings, primarily automotive coatings. Prod. range: Confidential.

P 93-377

Manufacturer. Pi-Tech Inc.

Chemical. (S) Titanium IV tetrakis tridecanolate.

Use/Production. (S) Chemical imtermediate. Prod. range: Confidential.

P 93-378

Manufacturer. Pi-Tech Inc.

Chemical. (S) Zirconium IV tetrakis tridecanolato.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93-379

Manufacturer. Pi-Tech Inc.

Chemical. (S) Titanium IV tetrakis ethoxylated butanolato.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93-380

Manufacturer. Pi-Tech Inc.

Chemical. (S) Zirconium IV tetrakis ethoxylated butanolato.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93-381

Manufacturer. Confidential.

Chemical. (G) Subnstituted alkane aniline.

Use/Production. (G) Commercial and consumer contained use in an article. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat).

P 93-382

Manufacturer. Confidential.

Chemical. (G) Sulfo substituted heterocyclic derivative.

Use/Production. (G) Commercial and consumer contained use in. Prod. range: Confidential.

P 93-383

Importer. Confidential.

Chemical. (G) Polyester polyurethane aqueous disperson.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 93-384

Importer. American Cyanmid Company.

Chemical. (S) 2,4,4-trimethylphentylphosphine.

Use/Import. (G) Chemical intermediate nondispersive. Import range: Confidential.

P 93-385

Manufacturer. Confidential.

Chemical. (G) Complex epoxy resin/amine.

Use/Production. (S) Crosslinking agent for epoxy type adhesives. Prod. range: Confidential.

P 93-386

Manufacturer. Amoco Chemical Company.

Chemical. (G) Rubber modified polyamide.

Use/Production. (S) Engineering polymer for use in the manufacture of articles. Prod. range: Confidential

P 93-387

Importer. Ruetgers.

Chemical. (G) Epoxydized polyacrylamine.

Use/Import. (S) Hardner for epoxy resin. Import range: 5,000–15,000 kg/yr.

P 93-388

Importer. Ciba-Geigy Corporation.

Chemical. (G) Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-homopolymer, acrylate blocked.

Use/Import. (S) Resin component for solder mask for production of printed wiring boards. Import range: Confidential.

P 93-389

Importer. Ciba-Geigy Corporation.

Chemical. (S) Reaction products of acrylate ester with 1,3,5-tris(6-isocyanatohexyl)-1,3,5-triazine-2,4,6(*1H,3H,5H*)-trione.

Use/Import. (S) Resin component for solder mask for production of printed wiring boards. Import range: Confidential.

P 93-390

Importer. Ciba-Geigy Corporation.

Chemical. (G) Reaction products of acrylate ester with 1,3,5-tris(6-isocyanatohexyl)-1,3,5-triazine-2,4,6(*1H,3H,5H*)-trione.

Use/Import. (S) Resin component for solder mask for production of printed wiring boards. Import range: Confidential.

P 93-391

Importer. Ruetgers.

Chemical. (G) Polyfunctional epoxy resin.

Use/Import. (S) Epoxy resin. Import range: 5,000–15,000 kg/yr.

P 93-392

Importer. Ruetgers.

Chemical. (G) Epoxy resin of epoxydized bisphenol-*A*-novolac.

Use/Import. (S) Epoxy resin. Import range: 5,000–15,000 kg/yr.

P 93-393

Importer. Ruetgers.

Chemical. (G) Acrylated epoxy resin, solution methoxypropylacetate.

Use/Import. (S) Epoxy resin. Import range: 5,000–15,000 kg/yr.

P 93-394

Importer. Ruetgers.

Chemical. (G) *N*-Substitutued diaminodiphenylmethane.

Use/Import. (S) Hardener for epoxy resin. Import range: 5,000–15,000 kg/yr.

P 93–396

Importer. Confidential.
Chemical. (G) Alcohol propoxylate.
Use/Import. (S) Gasoline additive. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: strong species (rtabbit). Skin irritation: strong species (rabbit). Mutagenicity: negative.

P 93–398

Manufacturer. H.B. Fuller Company.
Chemical. (G) Acid modified polyether prepolymer.
Use/Production. (S) Prepolymer Prod. range: Confidential.

P 93–397

Manufacturer. Confidential.
Chemical. (G) 2-Methyl-2-propenoic acid, copolymer.
Use/Production. (S) Boiler and cooling water treatment compound. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (rat). Static acute toxicity: LC50 96h 19,524 species (pimephales prameling). Mutagenicity: negative.

P 93–396

Manufacturer. H.B. Fuller Company.
Chemical. (G) Polyurethane.
Use/Production. (S) Adhesive. Prod. range: 53,000–320,000.

P 93–399

Manufacturer. Confidential.
Chemical. (G) polyurethane acrylate.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93–400

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylate polymethacrylate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–540,000 kg/yr.

P 93–401

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylate polymethacrylate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–540,000 kg/yr.

P 93–402

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylate polymethacrylate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–540,000 kg/yr.

P 93–403

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylate polymethacrylate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–540,000.

P 93–404

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylate polymethacrylate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–540,000.

P 93–405

Manufacturer. Confidential.
Chemical. (G) Polyurethane polyacrylate polymethacrylats.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–540,000 kg/yr.

P 93–406

Importer. Zeneca.
Chemical. (S) 2,3,5,6-Tetrachloro-4-(methylsulphonyl) pyridine.
Use/Import. (G) Preservative. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: strong species (rabbit). Mutagenicity: negative.Static acute toxicity: EC50 48 h4.23 mg/l species (daphnia magna). Skin irritation: strong species (rabbit). Skin sensitization: positive species (guinea pig).

P 93–407

Manufacturer. Anitec, Division of Internation Paper.
Chemical. (G) 2-Substituted benzothiazole.
Use/Production. (S) Intermediate in synethesis of photographic sensitizing dye. Prod. range: 25–50 kg/yr.

P 93–408

Manufacturer. Anitec, Division of International Paper.
Chemical. (G) 3-(3-Substituted)-2-((3-substituted)thio)-benzothiazolium hydroxide, inner salt.
Use/Production. (S) Intermediate in synethesis of photographic sensitizing dye. Prod. range: 25–50 kg/yr.

P 93–409

Manufacturer. Allied-Signal Inc.
Chemical. (S) Ethane, pentaluoro
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 93–410

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azo naphthalenedisulfonic acid.
Use/Import. (S) Direct dye for paper and cellulosic products. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit).Skin irritation: negligible species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 93–411

Manufacturer. Confidential.
Chemical. (G) Methacrylate/acrylate/styrene copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–412

Manufacturer. Confidential.
Chemical. (G) Methacrylate/acrylate/styrene copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–413

Manufacturer. Confidential.
Chemical. (G) Methacrylate/acrylate/styrene copolymer.
Use/Production. (G) Open, nondispersive uise. Prod. range: Confidential.

P 93–414

Manufacturer. Confidential.
Chemical. (G) Methacrylate/acrylate/styrene copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range; Confidential.

P 93–415

Manufacturer. Confidential.
Chemical. (G) Methacrylate/acrylate/styrene copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–416

Manufacturer. Rohm Tech Inc.
Chemical. (G) Aliphatic polyurethane.
Use/Production. (S) Base or top coating material for leather finishing, surface coating. Prod. range: Confidential.

P 93–417

Importer. Confidential.
Chemical. (G) Reaction azo dyestuff.
Use/Import. (S) Textile dye for fabric and yarn. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rats). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rats). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit).

P 93–418

Manufacturer. FMC Corporation.

Chemical. (S) Hydroxyphononoacetic acid, nonoethanolamine salt.

Use/Production. (S) Corrosion control agent for cooling system. Prod. range: Confidential.

P 93–419

Importer. Confidential.

Chemical. (G) Heterocyclic monoazo dye.

Use/Import. (G) Dyeing of polyester fibers. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,200 mg/kg species (rat). Static acute toxicity: LC50 3399≤100 mg/l species (zebra fish 3).

P 93–420

Manufacturer. Moore Business Forms, Inc.

Chemical. (G) Polyamide.

Use/Production. (G) Carbonless paper coating. Prod. range: 400,000–1,000,000 kg/yr.

P 93–421

Manufacturer. Allied Signal.

Chemical. (S) Ethane 1,1,1-trifluoro.

Use/Production. (G) Dispersive. Prod. range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 93–422

Manufacturer. International Specialty Products.

Chemical. (S) 4-Propenyloxymethyl 1.3-2-dioxolanone.

Use/Production. (S) Reaction diluent in radiation curing. Prod. range: Confiddential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93–423

Importer. Confidential.

Chemical. (G) Macrocyclico lactone.

Use/Import. (G) Ingredient for use in consumer products; Highly dispersive use. Import range: 50–300 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit).Skin irritation: moderate species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 93–424

Manufacturer. Worthen Industries Inc.

Chemical. (G) Adipic acid polymer with 1,4-butanediol, 1,6-hexane diol, neopentyl glycol,isophthalic acid, polymerwith 1,6-hexane diol, neopentyl glycol, glycol of 1,3-butadiene homopolymer, alkyl amine, 2,4,4-trimethyl hexamethylene diisocyanate, 3,5,5-trimethyl,3-isocyanatomethyl cyclohexyl isocyanate and propanoic acid, 3-hydroxy-2- (hydroxy methyl) 2-methyl,adduct with N,N′ diamine adipamide.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 93–425

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst premix precursor.

Use/Production. (S) Olefin catalyst premix precursor. Prod. range: Confidential.

P 93–426

Importer. Unichema North America.

Chemical. (G) Polyol ester of short chain carboxylic acids.

Use/Import. (G) Dispersive use and open nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 93–427

Manufacturer. Courtaulds Aerospace, Inc.

Chemical. (S) Ethanethiol, 2,2′-(1,2-(1,2ethanediylbis(oxy); bis-;formic acid, ethylester.

Use/Production. (S) Additive for adhesives and sealants. Prod. range: 10,000–20,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 93–428

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted monoazo indole.

Use/Production. (S) Site-limited intermediate used in the manufacture of liquid dye and powder dye. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Skin irritation: negligible species (rabbit).Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 93–429

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–430

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–431

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–432

Manufacturer. The Dow ChemicaL Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–433

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–434

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–435

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–436

Manufacturer. The Dow Chemical Company.

Chemical. (G) Ziegler catalyst precursor.

Use/Production. (G) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93–437

Manufacturer. E.I. Du Pont De Nemours Company, Inc.

Chemical. (G) Polysubstituted methacrylic copolymer latex.

Use/Production. (G) Fabric finish - open, nondispersive use. Prod. range: Confidential.

P 93-438

Importer. Confidential.

Chemical. (G) Terminally blocked polyglycol ether.

Use/Import. (S) Technical, cleaning (bottle, metal surfaces) cleaning agent for dishwashers. Import range: Confidential.

P 93-439

Manufacturer. U.S. Polymers Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phthalic anhydride, dimer acid and petroleum by product.

Use/Production. (G) Resins are made into paints for industrial enamels & primners. Prod. range: Confidential.

P 93-440

Manufacturer. U.S. Polymers Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phathalic acid, dimer acid, tall oil fatty acid, petroleum by product.

Use/Production. (G) Resins are made into paints for industrial enamels & primners. Prod. range: Confidential.

P 93-441

Manufacturer. U.S. Polymers, Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol. diethylene glycol, phthalic anhydride.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-442

Manufacturer. U.S. Polymers, Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phthalic anhydride.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-443

Manufacturer. U.S. Polymers, Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phthalic anhydride, dimer acid.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-444

Manufacturer. U.S. Polymers, Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phthalic anhydride, dimer acid.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-445

Manufacturer. U.S. Polymers, Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phthalic anhydride, dimer acid.

Use/Production. (G) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-446

Manufacturer. U.S. Polymers, Inc.

Chemical. (G) Reaction product of branched aliphatic alcohol, diethylene glycol, phthalic anhydride, dimer acid.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-447

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyethylene glycol dibutyl ether.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-448

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyethylene glycol dibutyl ether.

Use/Production. (S) Olefin polymer catalyst precursor. Prod. range: Confidential.

P 93-449

Importer. Hoechst Celanese Corporation.

Chemical. (G) Polyethylene glycol dibutyl) ether.

Use/Import. (S) Volatile organic chemicals absorption recovery. Import range: 25,000–50,000 kg/yr.

P 93-450

Importer. Hoechst Celanese Corporation.

Chemical. (G) Alkyl glycol.

Use/Import. (S) Volatile organic chemicals absorption recovery. Import range: 25,000–50,000 kg/yr.

P 93-451

Importer. Hoechst Celanese Corporation.

Chemical. (G) Alkyl glycol.

Use/Import. (S) Volatile organic chemicals absorption recovery. Import range: 25,000–50,000 kg/yr.

P 93-452

Importer. Hoechst Celanese Corporation.

Chemical. (G) Alkyl glycol.

Use/Import. (S) Volatile organic chemicals absorption recovery. Import range: 25,000–50,000 kg/yr.

P 93-453

Manufacturer. Pi-Tech Inc.

Chemical. (S) Titanium IV tetrakis tridecanolato, adduct 2 moles of tris tridecyl phosphate.

Use/Production. (S) Process aid/ surfactant. Prod. range: Confidential.

P 93-454

Manufacturer. Pi-Tech, Inc.

Chemical. (S) Zirconium IV Tetrakis tridecanolato, adduct 2 moles of tris tridecyl phosphate.

Use/Production. (S) Process aid/ surfactant. Prod. range: Confidential.

P 93-455

Manufacturer. Texaco Chemical Co.

Chemical. (G) Alkylphenyl polyetheramidoalkanolamine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 3.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit).

P 93-456

Manufacturer. Confidential.

Chemical. (S) 2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl) propyl ester hydrolysate.

Use/Production. (G) Closed, nondispersive use, site limited. Prod. range: Confidential.

P 93-457

Manufacturer. The Minerals Laboratory.

Chemical. (S) Tungstate (W12(OH)2O386-), hexalithium.

Use/Production. (S) Minerals separations by solution/ suspension density. Prod. range: 5,000–10,000 kg/ yr.

P 93-458

Importer. Basf Corporation.

Chemical. (G) Alkanelate of alkanelated polymer.

Use/Production. (G) Thickening agent for textile printing. Prod. range: Confidential.

P 93-459

Manufacturer. Eastman Kodak Comany.

Chemical. (G) Reaction product od alicyclic diol and symmetricalaromatic isocyanate.

Use/Production. (G) Chemical intermediate. Prod. range: 80–1,200 kg/ yr.

P 93-460

Manufacturer. Confidential.

Chemical. (G) Polyamide.

Use/Production. (G) Isolated intermediate. Prod. range: Confidential.

P 93-461

Manufacturer. Confidential.

Chemical. (G) Polyethanolamine diester with fatty acids dialkyl sulfate salts.

Use/Production. (G) Softening of cellulose. Prod. range: Confidential.

P 93–462

Manufacturer. Confidential.

Chemical. (G) Polyethanolamine diester with fatty acids dialkyl sulfate salts.

Use/Production. (G) Softening of cellulose. Prod. range: Confidential.

P 93–463

Manufacturer. Confidential.

Chemical. (G) Polyethaneolamine diester with fatty acids dialkylsulfate salts.

Use/Production. (G) Softening of cellulose. Prod. range: Confidential.

P 93–464

Manufacturer. Texaco Chemical Co.

Chemical. (G) Alkylphenylpolyetheramine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2.13 g/kg species (rat). Acute dermal toxicity: LD50 > 3.0 g/kg species (rabbit). Eye irritation: strong species (rabbit). Skin irritation: moderate species (rabbit).

P 93–465

Manufacturer. Texaco Chemical Co.

Chemical. (G) Alkyl morpholinone.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2.13 g/kg species (rat). Acute dermal toxicity: LD50 > 3.0 g/kg species (rabbit). Eye irritation: strong species (rabbit). Skin irritation: moderate species (rabbit).

P 93–466

Manufacturer. Confidential.

Chemical. (G) Benzenemethanamine, *N*-((((3-((((((bis (phenylmethyl) amino) substituted) carboxyl) amino)methyl)-3,5,5-trimethylcyclohexyl)amino) carbonyl) substituted)-*N*-(phenylmethyl)-.

Use/Production. (S) Antioxidant open, nondispersive use. Prod. range: Confidential.

P 93–467

Manufacturer. Confidential.

Chemical. (G) Polyaminoamide-epichlorohydrin resin.

Use/Production. (G) Papermaking aid. Prod. range: Confidential.

P 93–468

Importer. Ciba-Geigy Corporation.

Chemical. (G) Azo metal complex dye.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 93–469

Importer. Ciba-Geigy Corporation.

Chemical. (G) Azo metal complex dye.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 4,425 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: positive.

P 93–470

Manufacturer. Ciba-Geigy Corporation.

Chemical. (S) Bis(hydrogenated tallow alkyl)amines, oxidized.

Use/Production. (S) Processing stabilizer for poly-propylen, primarily fiber. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: LC50 96h76 ppm species (zebra fish). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 93–471

Manufacturer. Confidential.

Chemical. (G) Modified polyester urethane.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–472

Manufacturer. Confidential.

Chemical. (G) Modified polyester urethane.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–473

Manufacturer. Confidential.

Chemical. (S) Tall oil fatty acid modified dicyclopentadiene -styrene polymer with acrylic acid and magnesium hyroxide acid and magnesium hydroxide and soya oil.

Use/Production. (S) Printing ink (gravure). Prod. range: 5,000,000–10,000,000 kg/yr.

P 93–474

Manufacturer. Confidential.

Chemical. (G) Epoxy amine adduct.

Use/Production. (G) Crosslinking agent for epoxy compounds. Prod. range: Confidential.

P 93–475

Manufacturer. Westvaco Corporation.

Chemical. (G) Lignin, kraft, reaction product with tall oil fatty acids, C_{21} dicarboxylic acid and ethyleneamines.

Use/Production. (S) Asphalt emulsifier. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2.2 g/kg species (rat). Static acute toxicity: EC50 48H 10.8 species (daphnia magna). Eye irritation: strong species (rabbit). Skin irritation: strong species (rabbit).

P 93–476

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Nitrogen containing heterocyclic ester.

Use/Production. (G) Chemical processing aid. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93–477

Manufacturer. Pi-Tech, Inc.

Chemical. (S) Titanium IV bis(ethoxylated) butanolato, cyclo (bis tridecyl) diphospato.

Use/Production. (S) Process aid for PVC extrusion. Prod. range: Confidential.

P 93–478

Manufacturer. Confidential.

Chemical. (G) Aromatic copolyamic acid.

Use/Production. (G) Adhesive-closed system. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit).

P 93–479

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–480

Importer. High Pont Chemical Corporation.

Chemical. (S) Polyloxy-1,2-ethanediyl)-alpha-(carboxymethyl)-, omega,- (9-octadecenyloxy)-.

Use/Import. (S) Emulsifier for industrial applications (metal working industrial cleaners, etc.). Import range: 50,000–200,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat).

P 93–481

Manufacturer. Confidential.

Chemical. (G) Polyurethane prepolymer.

Use/Production. (G) This is a destructive use polyurethane intermediate. Prod. range: Confidential.

P 93–482

Importer. Confidential.

Chemical. (G) Polyurethane.

Use/Import. (G) Open, nondispersive use as a plastics additive. Import range: Confidential.

P 93–483

Importer. Confidential.

Chemical. (S) 1,4-bis(3-Hydroxy-4-benzoylphenoxy) butane.

Use/Import. (G) Open, nondispersive use in fibers. Import range: Confidential.

P 93-484

Importer. Confidential.

Chemical. (G) Cyano ethyl sorbitol.

Use/Import. (S) Binder for inorganic powder. Import range: Confidential.

P 93-485

Manufacturer. Stepan Company.

Chemical. (G) Alkylaryl sulfonic acid.

Use/Production. (G) Intermediate for surfactant. Prod. range: Confidential.

P 93-486

Manufacturer. Stepan Company.

Chemical. (G) Alkylarylsulfonic acid, magnesium salt.

Use/Production. (G) Surfactant for oil based formulations. Prod. range: Confidential.

P 93-487

Manufacturer. Stepan Company.

Chemical. (G) Alkylarylsulfonic acid, barium salt.

Use/Production. (S) Surfactant for oil based formulations. Prod. range: Confidential.

P 93-488

Manufacturer. Stepan Company.

Chemical. (G) Alkylarylsulfonic acid, calcuim salt.

Use/Production. (G) Surfactant for oil based formulations. Prod. range: Confidential.

P 93-489

Manufacturer. Stepan Company.

Chemical. (G) Alkylarylsulfonic acid, potassium salt.

Use/Production. (G) Surfactant for oil based formulations. Prod. range: Confidential.

P 93-490

Manufacturer. Stepan Company.

Chemical. (G) Alkylarylsulfonic acid, sodium salt.

Use/Production. (G) Surfactant for oil based formulations. Prod. range: Confidential.

P 93-491

Importer. International Specialty Chemicals, Inc.

Chemical. (S) 2,3-Dimethyl-1-butene.

Use/Import. (S) Synthetic intermediate in the preparation of musk fragrances. Import range: 1,000,000–1,350,000 Kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2 ml/kg species (rat). Inhalation toxicity: LC50 6054 ppm species (rat). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit).

P 93-492

Manufacturer. Confidential.

Chemical. (G) Mixture of reaction products of diphenylmethanediisocyanate polymer; oxirane, methyl-, polymer with oxirane; and alkanolamine with methacrylate end groups.

Use/Production. (S) Graphic arts printing plates. Prod. range: Confidential.

P 93-493

Importer. Confidential.

Chemical. (G) Molybdenum alkylamine complex.

Use/Import. (G) Additive for a lubricant. Import range: Confidential.

Dated: March 5, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

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BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Celebrity Cruises Inc. and Fifth Transoceanic Shipping Co. Ltd., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Amerikanis

Celebrity Cruises Inc. and Ruza Cruising Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: The Azur

Celebrity Cruises Inc. and Ajax Navigation Corp., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Britanis

Celebrity Cruises Inc. and Fantasia Cruising Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Horizon

Celebrity Cruises Inc. and Fourth Transoceanic Shipping Co. Ltd., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Meridian

Celebrity Cruises Inc. and Zenith Shipping Corporation, 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Zenith

Dated: March 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-6409 Filed 3-19-93; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Celebrity Cruises Inc. and Fifth Transoceanic Shipping Co. Ltd., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Amerikanis

Celebrity Cruises Inc. and Ruza Cruising Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: The Azur

Celebrity Cruises Inc. and Ajax Navigation Corp., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Britanis

Celebrity Cruises Inc. and Fantasia Cruising Inc., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Horizon

Celebrity Cruises Inc. and Fourth Transoceanic Shipping Co. Ltd., 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Meridian

Celebrity Cruises Inc. and Zenith Shipping Corporation, 5200 Blue Lagoon Drive, Miami, Florida 33126

Vessel: Zenith

Dated: March 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-6410 Filed 3-19-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Gulf Coast Bank Holding Company, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Gulf Coast Bank Holding Company, Inc., New Orleans, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Coast Bank & Trust Company, New Orleans, Louisiana.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Quad City Holdings, Inc., Bettendorf, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Quad City Bank and Trust Company, Bettendorf, Iowa, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Trust Financial Corporation, Clinton, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Clinton, Clinton, Kentucky, which will subsequently purchase certain assets and assume certain liabilities of the Hickman, Fulton, and Clinton, Kentucky branch offices of First Trust Federal Savings and Loan Association, Knoxville, Tennessee, pursuant to section 5(d)(3) of the Federal Deposit Insurance Act.

Board of Governors of the Federal Reserve System, March 16, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6470 Filed 3–19–93; 8:45 am]

BILLING CODE 6210–01–F

Stephen J. Lyon, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stephen J. Lyon, legal representative of the George J. Lyon estate, to acquire 38.80 percent of the voting shares of Minowa Bancshares, Inc., Decorah, Iowa, and thereby indirectly acquire Decorah State Bank, Decorah, Iowa, and First National Bank of Mabel, Mabel, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Ernest Hulon Bay, Anderson, Texas; to acquire an additional 2.36 percent of the voting shares of First Anderson Bancshares, Inc., Anderson, Texas, for a total of 22.09 percent, and thereby indirectly acquire The First National Bank, Anderson, Texas.

Board of Governors of the Federal Reserve System, March 16, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6471 Filed 3–19–93; 8:45 am]

BILLING CODE 6210–01–F

Olmsted Bancorporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Olmsted Bancorporation, Inc., Byron, Minnesota; to engage *de novo* in selling primarily hail insurance but may also sell multi-peril, accident, health, and life insurance pursuant to §

225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Byron, Minnesota.

Board of Governors of the Federal Reserve System, March 16, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6469 Filed 3–19–93; 8:45 am]

BILLING CODE 6210–01–F

RNYC Holdings; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

This notice corrects a previous notice (FR Doc. 93-5558) published at page 13494 of the issue for Thursday, March 11, 1993.

Under the Federal Reserve Bank of New York heading, the entry for RNYC Holdings is revised to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Saban S.A., Panama City, Panama; to acquire 100 percent of the voting shares of RNYC Holdings, Marina Bay, Gibraltar, and Republic New York Corporation, New York, New York, and thereby indirectly acquire Republic National Bank of New York, New York, New York, and The Manhattan Savings Bank, New York, New York. In connection with this application, RNYC Holdings, Marina Bay, Gibraltar, has applied to become a bank holding company by acquiring 27.5 percent of the voting shares of Republic New York Corporation, New York, New York, and thereby indirectly acquire Republic National Bank of New York, New York, New York, and The Manhattan Savings Bank, New York, New York.

In connection with this application, RNYC Holdings Limited, Marina Bay, Gibraltar, has applied to engage through its subsidiaries, Republic New York Corporation, New York, New York; Republic Clearing Corporation, New York, New York, in futures commission merchant activities with respect to foreign exchange, government securities, certificates of deposits, other money market instrument, and bullion contracts pursuant to § 225.25(b)(18) of the Board's Regulation Y; Republic Factors Corporation, New York, New York, in factoring, including old line maturity factoring of accounts receivable (purchase of accounts receivable) and lending against accounts receivable collateral, pursuant to § 225.25(b)(1)(v) of the Board's Regulation Y; Republic Information and Communications Services, Inc., New York, New York, in providing processing, systems, programming, communications, technical support and related services to RNYC Group members, and to provide equipment and technical support regarding such equipment to non-RNYC Group members for disaster recovery actions by them, pursuant to §§ 225.22(a)(2)(iii) and 225.25(b)(7) of the Board's Regulation Y; Republic New York Trust Company of Florida, National Association, North Miami, Florida, limited to trust and other fiduciary services, pursuant to § 225.25(b)(3) of the Board's Regulation Y; Republic New York Mortgage Corporation, Pompano Beach, Florida, in originating and servicing mortgage loans for members of the RNYC Group, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; Republic New York Securities Corporation, New York, New York, in (1) providing investment advisory services and financial advisory services, including advice regarding mergers, acquisitions, and capital raising proposals by institutional customers, pursuant to §§ 225.25(b)(4) and (15) of the Board's Regulation Y; (2) providing securities brokerage services on an individual basis as well as in combination with investment advisory services (full-service brokerage), including exercising limited investment discretion on behalf of institutional customers, (*Saban, S.A.*, 78 Federal Reserve Bulletin 955 (1992)); (3) purchasing and selling all types of securities on the order of institutional and retail customers as a "riskless principal," *Saban, S.A.*, 78 Federal Reserve Bulletin 955 (1992)); and (4) engaging in securities credit activities under the Board's Regulation T, pursuant to § 225.25(b)(15) of the Board's Regulation Y, including acting as a "conduit" or "intermediary" in securities borrowing and lending, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 16, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6472 Filed 3–19–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0438]

Worldwide Biologicals, Inc.; Opportunity for Hearing on Intent to Revoke U.S. License No. 832–003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the establishment license (U.S. License No. 832–003) and the product license issued to Worldwide Biologicals, Inc., for the manufacture of Source Plasma. The proposed revocation is based on significant noncompliance with certain provisions of the biologics regulations specified in this document.

DATES: The firm may submit a written request for a hearing to the Dockets Management Branch by April 21, 1993, and any data justifying a hearing by May 21, 1993. Other interested persons may submit written comments on the proposed revocation by May 21, 1993.

ADDRESSES: Submit written requests for a hearing, any data justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9074.

SUPPLEMENTARY INFORMATION: FDA is proposing to revoke the establishment license (U.S. License No. 832–003) and the product license issued to Worldwide Biologicals, Inc., 508–A Owen Dr., Fayetteville, NC 28304, for the manufacture of Source Plasma. Other locations under the Worldwide Biologicals, Inc., license are not affected by this proposed revocation. The mailing address for Worldwide Biologicals, Inc., is 1085 Ohio Pike, Cincinnati, OH 45245. The proposed revocation is based on inspections of the firm which documented significant deviations from the Federal regulations in 21 CFR parts 600, 601, 606, 610, and 640 and the applicable standards in its license.

FDA conducted an inspection of Worldwide Biologicals, Inc., located at Fayetteville, NC, from June 24 through

July 2, 1991. FDA also conducted an inspection of Worldwide Biologicals, Inc., located at 1085 Ohio Pike, Cincinnati, OH, from July 18 through August 26, 1991. This Cincinnati location was the site of the testing laboratory approved to perform all required testing for the Fayetteville facility. These inspections documented numerous significant deviations from the applicable Federal regulations. Deviations identified during the inspection of the Fayetteville location included, but were not limited to, the following: (1) Failure to assure that each donation of blood to be used in preparing a biological product was tested for the antibody to human immunodeficiency virus type 1 (HIV–1), or hepatitis B surface antigen; (2) failure to assure that donor serum protein electrophoresis patterns were reviewed by a qualified physician within 21 days after the sample was drawn to determine if the donor may continue in the program; (3) failure to adequately explain acquired immunodeficiency syndrome (AIDS) educational material to donors; (4) failure to assure that the skin at the site of the phlebotomy was prepared by a method that gave maximum assurance of a sterile container of blood; (5) failure to maintain records concurrently, in that, donor record files frequently lacked important information, and refrigerator/freezer recorder charts contained unexplained overlaps or double tracings; and (6) failure to assure that equipment was standardized and calibrated on a regularly scheduled basis. Deviations identified at the testing laboratory included, but were not limited to, the following: (1) Failure to assure that personnel have the capabilities commensurate with their assigned functions, a thorough understanding of the manufacturing operations which they perform, the necessary training and experience relating to individual products, and adequate information concerning the application of the pertinent provisions of 21 CFR parts 600 through 640 to their respective functions, in that, personnel did not establish scientifically sound and appropriate test procedures to assure that blood components are safe, pure, potent and effective, did not monitor the reliability, accuracy, precision and performance of laboratory test procedures and did not use adequate test specimen identification procedures; (2) failure to maintain records of calibration and standardization of laboratory instruments; (3) failure to maintain refrigerator temperature records for the storage of laboratory test kits and donor specimens; (4) failure to maintain blood processing records, including results and interpretation of all tests and retests; (5) failure to maintain records concurrently with the performance of each significant step in the processing of each unit of blood and blood component so that all steps can be clearly traced; (6) failure to maintain adequate written standard operating procedures for all steps to be followed in the processing of blood components; and, (7) the absence of supervisory review of test results prior to their release.

FDA determined that the deviations from Federal regulations constituted a danger to public health. In a letter to Worldwide Biologicals, Inc., dated October 1, 1991, FDA suspended the firm's licenses. The suspension was based on the serious deviations documented during the above-referenced inspections. In a letter to FDA dated October 2, 1991, the firm requested that revocation of the licenses be held in abeyance pending resolution of the matters involved.

In letters to FDA dated October 21, 1991, and November 15, 1991, Worldwide Biologicals, Inc., addressed the inspectional findings outlined in FDA's October 1, 1991, letter. In a letter to Worldwide Biologicals, Inc., dated November 29, 1991, FDA indicated that the firm had responded satisfactorily to FDA's October 1, 1991, letter and permitted the firm to resume collecting and storing Source Plasma on a limited basis for the purpose of reinspection of the firm. It was emphasized that this was not a release from the suspension and that the prepared Source Plasma may not be shipped until written permission from FDA was received.

At an inspection completed on January 27, 1992, it was noted that only one individual was currently employed at the firm. A letter from the firm dated January 31, 1992, failed to provide assurance that one employee could simultaneously manage the facility and provide adequate donor safety. In a letter to Worldwide Biologicals, Inc., dated February 5, 1992, FDA notified the firm that approval to operate under limited operation was rescinded based on the firm's operating with an inadequate number of employees. In a facsimile to FDA dated February 5, 1992, the firm indicated that a second employee was hired and included the employee's resume. In a letter to the firm dated February 6, 1992, FDA permitted the firm to resume collecting and storing Source Plasma under limited operation.

A letter to Worldwide Biologicals, Inc., dated April 17, 1992, evaluated the firm's February 6, 1992, responses to the most recent inspection of January 17 through January 27, 1992. FDA indicated that inspection of the firm found that even under limited operations, compliance with all applicable standards was not demonstrated. The corrections outlined in responses by the firm to the noted deviations were adequate except for a few items. Therefore, an expedited reinspection was scheduled.

In a letter to Worldwide Biologicals, Inc., dated May 15, 1992, FDA indicated that inspections conducted January 17 through January 27, 1992, and again on May 5 and 6, 1992, documented continuing noncompliance with applicable standards and regulations. Therefore, the approval to resume limited operations for the purpose of reinspection at the firm was rescinded. FDA indicated that the original request of October 2, 1991, that license revocation be held in abeyance, was under evaluation.

The May 5 and 6, 1992, inspection documented deviations which included, but were not limited to, the following: (1) Failure to assure that the skin at the site of the phlebotomy was prepared by a method that gave maximum assurance of a sterile container of blood; (2) failure to obtain the physicians's signed approval to perform plasmapheresis on repeat donors who had not returned at the time the 4-month sample was due to be collected and where it had been longer than 6 months since the last collected sample; (3) failure to process as new donors, repeat donors who were not evaluated for a total period exceeding 6 months; and, (4) failure to assure that personnel have capabilities that are commensurate with their assigned functions, a thorough understanding of the manufacturing operations which they perform, the necessary training and experience relating to individual products and adequate information concerning the application of the pertinent provisions of 21 CFR parts 600 through 640 to their respective functions, in that no documentation of training was available for an employee hired in February 1992. In a letter to the firm dated June 15, 1992, FDA denied the firm's original request that license revocation be held in abeyance, based on continued inspections of the firm which documented failure to adequately implement previously promised corrections and which gave no assurance that the proposed corrective action plan would be properly implemented to correct the recently noted deficiencies. In the same letter, FDA issued the firm notice of FDA's

intent to revoke U.S. License 832–003 and announced its intent to offer an opportunity for a hearing. In a facsimile dated June 24, 1992, the firm notified FDA of its intent to request a hearing concerning the proposed license revocation.

Accordingly, FDA is issuing a notice of an opportunity for a hearing pursuant to 21 CFR 12.21(b) on a proposal to revoke the licenses for Worldwide Biologicals, Inc.

FDA has placed copies of documents supporting the proposed license revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. These documents include the following: The List of Observations (Form FDA–483) from the inspections of June 24 through July 2, 1991, January 17 through January 27, 1992, and May 5 and 6, 1992; FDA letters of October 1, and November 8 and 29, 1991, and February 5 and 6, April 17, May 15, and June 15 and 29, 1992; the firm's letters or facsimiles of October 2 and 21, November 15, and January 31, 1991, and February 5 and 6, March 24, May 8, and June 24, 1992. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Worldwide Biologicals, Inc., may submit a written request for a hearing to the Dockets Management Branch by April 21, 1993, and any data justifying a hearing must be submitted by May 21, 1993. Other interested persons may submit comments on the proposed license revocation to the Dockets Management Branch by May 21, 1993. The failure of a licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation.

FDA procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data and information to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is no genuine and substantial issue of fact for resolution at a hearing, or if a request for a hearing is not made within the specified time, or with required format or required analyses, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351 (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701 (21 U.S.C. 321, 351, 352, 355, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: March 10, 1993.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 93–6459 Filed 3–19–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1993:

Name: Advisory Committee on Infant Mortality.

Date & Time: April 16, 1993, 8:30 a.m.

Place: Stonehenge, room 615 F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People: 2000: National Health Promotion and Disease Prevention Objectives*

Agenda: Topics that will be discussed include: PHS Interagency Committee on Infant Mortality analysis of FY 1994 budget; and completion of recommendations.

Anyone requiring information regarding the Committee should contact Mr. Ronald Carlson, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2460.

Persons interested in attending any portion of the meeting should contact Ms. Kyungeun Carol Han, Public Health Analyst, Office of the Planning, Evaluation and Legislation, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: March 16, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–6460 Filed 3–19–93; 8:45 am]

BILLING CODE 4160–15–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

The following advisory committee meeting is announced:

Joint Meeting of the Anti-Infective Drugs and Dermatologic Drugs Advisory Committees

Date, time, and place. March 31, 1993, 8:30 a.m., Holiday Inn, Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug

Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committees. The Anti-Infective Drugs Advisory Committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders. The Dermatologic Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 26, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. There will be a joint meeting of the Anti-Infective Drugs Advisory Committee and the Dermatologic Drugs Advisory Committee to discuss new drug application (NDA) 20–013, Maxaquin® (lomefloxacin hydrochloride, G.D. Searle & Co.) and recent reports of phototoxicity thought to be associated with the use of lomefloxacin. The committees will also discuss a recent animal photocarcinogenicity study in which lomefloxacin appears to act as a dermal tumor promoter. The relevance of these findings to humans, various regulatory options regarding the drug product, and various information dissemination options will be discussed.

FDA is giving less than 15 days public notice of this joint Anti-Infective Drugs and Dermatologic Drugs Advisory Committee meeting because of the need to address the relevancy of these recent findings as soon as possible. The agency decided that it was in the public interest to hold this scientific discussion on March 31, 1993, even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing; (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting. This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 16, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–6579 Filed 3–18–93; 11:30 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Peggy McCardle (301) 496–7640.

Date of Meeting: March 26, 1993.

Place of Meeting: Holiday Inn, Chevy Chase, MD.

Time of Meeting: 8:30 a.m.

Scientific Review Administrator: Dr. Teresa Levitin (301) 496–7025.

Date of Meeting: April 8, 1993.

Place of Meeting: Embassy Suites, Chevy Chase, MD.

Time of Meeting: 8:30 a.m.

This notice is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 16, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–6559 Filed 3–19–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–03–4320–10]

Meeting of the Worland District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Worland District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Worland District Grazing Advisory Board.

DATES: April 20, 1993, 10 a.m.

ADDRESSES: Bureau of Land Management, Worland District Conference Room, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Darrell Barnes, District Manager, Worland District Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401–0119, (307) 347–9871.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Discussion of the Worland District Grazing Advisory Board Charter.
2. Election of a chairperson and a vice chairperson.
3. Animal Damage Control Decision and Appeal.
4. Review of current allotment management plan development.
5. Review of fiscal year 1992–93 range projects and discussion and recommendations for proposed 1994 range improvement projects.
6. Review the range program summary progress for resource areas.
7. Briefing concerning the Grass Creek Area Planning schedule.
8. Wild horse management update.
9. Other discussion of business.
10. Opportunity for the public to present information or make comments.

The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by April 12, 1993.

Dated: March 12, 1993.

Gregg R. Berry,

Associate District Manager.

[FR Doc. 93–6468 Filed 3–19–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE & TIME: April 26, 1993, 2 p.m. to 5 p.m.; and April 28, 1993, 8 a.m. until 4 p.m. From 4:00 p.m. until completed, public comments will be heard.

ADDRESSES: Omni Georgetown Hotel, 2121 P Street NW., Washington, DC 20037.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 93–6430 Filed 3–19–93; 8:45 am]

BILLING CODE 4310–70–P

United States Geological Survey

[516 DM 6, Appendix 2]

National Environmental Policy Act, Proposed Implementing Procedures

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed revised instructions for the U.S. Geological Survey (USGS).

SUMMARY: This notice announces a proposed revised appendix to the Department's National Environmental Policy Act (NEPA) procedures for the USGS. The proposed revision primarily reflects changes in USGS organization and responsibilities and deletes references to functions that have been transferred to the Bureau of Land Management, and the Minerals Management Service. The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 2 for the USGS was published on January 23, 1981 (46 FR 7485).

DATES: Comments are due by May 21, 1993.

ADDRESSES: Comments may be addressed to James F. Devine, Assistant Director for Engineering Geology, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 106, Reston, VA 22092.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Devine, address above, or call Mr. Clifford A. Haupt, telephone (703) 648–6832.

SUPPLEMENTARY INFORMATION: This proposed revised appendix to the Departmental Manual (516 DM 6, Appendix 2) provides specific NEPA compliance instructions for the USGS. In particular, it updates information about the USGS's organizational responsibilities, deletes activities transferred to the Bureau of Land Management and the Minerals Management Service and makes other minor technical changes.

The Appendix must be taken in conjunction with the Department's procedures (516 DM 1–6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

Outline

Chapter 6 (516 DM 6) Managing the NEPA Process
Appendix 2–U.S. Geological Survey
2.1 NEPA Responsibility
2.2 Guidance to Applicants
2.3 Major Actions Normally Requiring an EIS
2.4 Categorical Exclusions

Dated: February 23, 1993.
James F. Devine,
Assistant Director for Engineering Geology.

516 DM 6, Appendix 2

U.S. Geological Survey

2.1 NEPA Responsibility

A. The *Director* of the U.S. Geological Survey (USGS) is responsible for National Environmental Policy Act (NEPA) compliance for USGS activities.

B. *The Assistant Director for Engineering Geology* produces policy guidance, direction and oversight for environmental activities including implementation of NEPA, and approves Environmental Impact Statements (EIS) prepared by the USGS. The Assistant Director is also responsible for approving USGS reviews of environmental documents, regulations or rules proposed by other agencies.

C. *The Chief, Environmental Affairs Program* (Reston, VA), is the focal point for NEPA matters and develops NEPA-related policy and guidance for the USGS. The Chief is responsible for: assuring the quality control of USGS environmental documents; monitoring USGS-wide activities to ensure NEPA compliance; reviewing and commenting on other bureaus' and agencies' environmental documents; managing the assignment of USGS personnel to assist other agencies in developing EISs and assisting in the performance of specialized studies to support environmental analyses. Information about USGS environmental documents or the NEPA process can be obtained by contacting the Environmental Affairs Program office.

D. *The Chiefs of the Divisions* or *Independent Offices* are responsible within their respective organizations for ensuring compliance with NEPA and applicable consultation requirements.

2.2 Guidance to Applicants

Because the USGS does not have any regulatory responsibilities in this area, the USGS has no applicable programs requiring guidance to applicants.

2.3 Major Actions Normally Requiring an EIS

A. Approval of construction of major new USGS research centers or test facilities normally will require the preparation of an EIS.

B. If it is initially decided not to prepare an EIS, an Environmental Assessment (EA) will be prepared in accordance with regulations for implementing NEPA, specifically Section 1501.4(c) and Section 1508.9.

2.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions specified in Appendix 1 of 516 DM 2, many of which the USGS also performs, the following USGS actions are designated categorical exclusions unless the action qualifies as an exemption under Appendix 2 of 516 DM 2. The exclusions shall apply to internal program initiatives performed in the United States and its Trust Territories and Possessions, including Federal lands and the Outer Continental Shelf (OCS).

A. Topographic, land use and land cover, geological, mineralogic, resources evaluation, and hydrologic mapping activities, including aerial topographic surveying, photography, and geophysical surveying.

B. Collection of data and samples for geologic, paleontologic, hydrologic, mineralogic, geochemical and surface or subsurface geophysical investigations, and resource evaluation, including contracts therefor.

C. Acquisition of existing geological, hydrological or geophysical data from private exploration ventures.

D. Well logging, aquifer response testing, digital modeling, inventory of existing wells and water supplies, water-sample collection.

E. Operation, construction and installation of: a) water-level or water-quality recording devices in wells; b) pumps in wells; c) surface-water flow measuring equipment such as weirs and stream-gaging stations, and d) telemetry systems, including contracts therefor.

F. Exploratory or observation ground-water drilling operations, including contracts therefor.

G. Test or exploration drilling and downhole testing, including contracts therefor.

H. Establishment of survey marks, placement and operation of field instruments, and installation of any research/monitoring devices.

I. Digging of exploratory trenches.

J. Establishment of seasonal and temporary field camps.

K. Offroad travel to drilling, data collection or observation sites.

L. Hydraulic fracturing of rock formations for the singular purpose of in situ stress measurements.

M. Reports to Surface Management Agencies, or any State, Territorial, Commonwealth or Federal Agencies concerning mineral and water resources appraisals.

N. Other actions where USGS has concurrence or coapproval with another Department of the Interior bureau and the action is a categorical exclusion for that bureau.

O. Minor, routine, or preventive maintenance activities at USGS facilities and lands, and geological, hydrological, or geophysical data collection stations.

P. Gaining or preparing an access to sites selected for completion of exploration drilling operations or construction of stations for hydrologic, geologic, or geophysical data collection.

[FR Doc. 93-6415 Filed 3-19-93; 8:45 am]
BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927-5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer of ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form
Bureau/Office: Office of Economics
Title of Form: Annual Report Form R-1 Class I Railroads
OMB Form Number: 3120-0029
Agency Form Number: R-1
Frequency: Annually
No. of Respondents: 13
Total Burden Hours: 10,400
Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93-6474 Filed 3-19-93; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 248X)]

Chicago and North Western Transportation Company—Abandonment Exemption—In Pocahontas County, IA

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C.

10903–10904, the abandonment by the Chicago and North Western Transportation Company of its 1.4-mile line of railroad extending between milepost 474.0 and milepost 475.4, near Laurens, in Pocahontas County, IA. The Commission issues a notice of interim trail use for the line and also makes the exemption subject to standard employee protective conditions and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 21, 1993. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 1, 1993, petitions to stay must be filed by April 6, 1993, and petitions to reopen must be filed by April 16, 1993. Requests for a public use condition must be filed by April 12, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–1 (Sub-No. 248X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: March 15, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6518 Filed 3–19–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 444X)]

CSX Transportation, Inc.—Abandonment Exemption—In Scioto County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc. (CSXT), of a 4.6-mile segment of rail line in Scioto County, OH, extending from milepost BBD–49.4 at Harding Avenue in Sciotoville to milepost BBD–54.0 at the Young Street Viaduct in Portsmouth, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 21, 1993. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 1, 1993, requests for a public use condition must be filed by April 12, 1993, petitions to stay must be filed by April 6, 1993, and petitions for reconsideration must be filed by April 16, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 444X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: March 15, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6519 Filed 3–19–93; 8:45 am]

BILLING CODE 7035–01–M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[Ex Parte No. 514 (A)]

Privacy Act: Establishment of a System of Records; Office of Inspector General; Complaint and Investigative Files

AGENCY: Interstate Commerce Commission.

ACTION: Notice of establishment of new system of records.

SUMMARY: The Interstate Commerce Commission (ICC) proposed to establish a new system of records under the Privacy Act of 1974, as amended (5 U.S.C. 552a), Pub. L. 93–579, to consist of the complaint and investigatory files of the ICC's Office of Inspector General (OIG). The new system of records facilitates the OIG's ability to collect, maintain, use, and disclose information pertaining to individuals, thus helping to ensure that the OIG may efficiently and effectively perform its investigations and other authorized duties and activities. The Commission is adopting that proposal in this notice.

EFFECTIVE DATE: This notice is effective April 21, 1993.

FOR FURTHER INFORMATION CONTACT: S. Arnold Smith, Freedom of Information/Privacy Officer (202) 927–6317, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: As required by 5 U.S.C. 552a(e)(4), the ICC notified the public of the proposed establishment of a new system of records in its OIG (32–20–0015) through a notice published in the **Federal Register** at 58 FR 580 (January 6, 1993). This system is being established as part of the formal creation of an OIG within the ICC under the authority of the 1988 amendments to the Inspector General Act of 1978. See Pub. L. No. 100–504, 102 Stat. 251 (amending 5 U.S.C. App. 3 (1978)). Among the OIG's statutory duties are the prevention and detection of fraud, waste, and abuse relating to the ICC's programs and operations through the conduct of audits and investigations and the preparation of reports to the ICC's Chairman and to Congress.

The system of records being established consists of complaint and investigatory files compiled and maintained by the OIG. Due to the law enforcement nature of these records, the proposed system may be exempted by the ICC from certain provisions of the Privacy Act including disclosure to individuals who are the subject of a record in the system. See 5 U.S.C. 552a(j)(2) and (k)(2). The exemption of the system was the subject of a notice of proposed rulemaking to amend ICC Rule 49 CFR 1007.12 which was

published in the **Federal Register** at 58 FR 531 (January 6, 1993). That notice of final rulemaking that adopts that rule is published in the rules and regulation section of today's **Federal Register**.

No comments have been received from the public or the Office of Management and Budget on the proposed establishment of this system of records. Accordingly, the ICC adopts the proposal to establish the following system of records.

System 32–20–0015

SYSTEM NAME:

OIG Complaint and Investigative Files.

SYSTEM LOCATION:

OIG, ICC. Room 2121, Washington, DC 20423.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in complaints reported to and investigations conducted by the OIG relating to the programs and operations of the ICC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files containing information relevant to complaints and investigations. Files include all relevant correspondence, internal staff memoranda, copies of all subpoenas issued, affidavits, witness statements, transcripts of testimony and accompanying exhibits, working papers of the staff, and any other reports, documents, and records. These records are used as a basis for the issuance of subpoenas, suitability determinations, and civil, criminal, and administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintenance of the system is found under the Inspector General Act Amendments of 1988, Pub. L. 100–504, 102 Stat. 251 (amending 5 U.S.C. App. 3 (1978)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), these records or information in these records may specifically be disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified herein shall be construed to limit or waive any other routine use specified herein:

(1) To other agencies, offices, establishments, and authorities, whether federal, state, local, foreign, or self-regulatory (including, but not limited to, organizations such as professional associations or licensing boards), authorized or with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information:

(a) Indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or

(b) Indicates a violation or potential violation of a professional, licensing, or similar regulation, rule or order, or otherwise reflects on the qualifications or fitness of an individual who is licensed or seeking to be licensed;

(2) To any source, private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit;

(3) To agencies, offices, or establishments of the executive, legislative, or judicial branches of the federal or state government:

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, or loyalty to the United States Government, or

(b) Where an agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or making a determination of qualifications, suitability, or loyalty to the United States Government or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning the employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment action where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accounting Office, the General Services Administration Board of Contract Appeals, or any other Federal contract board of appeals in cases relating to an agency procurement;

(4) To the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, of records or portions thereof relevant and necessary to carry out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including unfair labor or discriminatory practices), appeals before official agencies, offices, panels or boards, and authorized studies or reviews of civil service or merit systems or affirmative action programs;

(5) To independent auditors or other private firms with which the OIG has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records;

(6) To any authorized component of the ICC, the Department of Justice, or other law enforcement authority, and for disclosure by such parties:

(a) To the extent relevant and necessary in connection with litigation in proceedings before a court or other adjudicative body, where (i) the United States is a party to or has an interest in the litigation, including where the ICC, or an ICC component, or an ICC official or employee in his or her official capacity, or an individual ICC official or employee whom the Department of Justice has agreed to represent, is or may likely become a party, and (ii) the ligation is likely to affect the agency or any component thereof, or

(b) For purposes of obtaining advice, including advice concerning the accessibility of a record or information under the Privacy Act or the Freedom of Information Act:

(7) To the National Archives and Record Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2096;

(8) To a Congressional office from the record of a subject individual in response to an inquiry from the Congressional office made at the request of the individual, but only to the extent that the record would be legally accessible to that individual;

(9) To any direct recipient of federal funds, such as a contractor, where such record reflects serious inadequacies

with a recipient's personnel and disclosure of the record if for purpose of permitting a recipient to take corrective action beneficial to the Government;

(10) To debt collection contractors for the purposes of collecting debts owed to the Government, as authorized under the Debt Collection Act of 1982, 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards;

(11) To a grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purposes of its introduction to a grand jury where subpoena or request has been specifically approved by a court;

(12) To OMB for the purposes of obtaining advice regarding ICC obligations under the Privacy Act or

(13) To the Secretary of the ICC for the purpose of placing any ex parte communication, which has not already been reported to the Secretary pursuant to 49 CFR 1102.2(e), in the correspondence section of the appropriate public docket.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG files consist of paper records maintained in binders or folders, and on automated data storage devices. Files are secured at all times.

RETRIEVABILITY:

Indexed on disk by case number. Paper records are filed numerically by case number. At this time, records are not cross-indexed by name and/or by subject but are expected to be retrieved in this fashion in the near future.

ACCESS CONTROL:

Access to the records is limited to authorized staff in OIG and to other authorized officials or employees of ICC on a need-to-know basis as determined by the OIG. All records are kept in limited access areas during duty hours and in locked files at all other times.

RETENTION AND DISPOSAL:

To be retained for an unlimited period of time.

SYSTEM MANAGER AND ADDRESS:

Inspector General, OIG, ICC, Room 2121, Washington, DC 20423.

NOTIFICATION PROCEDURE:

See 49 CFR part 1007.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from all individuals and entities who may assist OIG in evaluating complaints and conducting investigations authorized by Pub. L. 100–504.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i), under 552a(j)(2) to the extent the system of records pertains to the enforcement of criminal laws; and is exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) under 5 U.S.C. 552a(k)(2), to the extent the system of records consists of investigatory materials compiled for law enforcement purposes, other than that material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

5 U.S.C. App. 3 (1978) prohibits disclosure by the OIG of the identity of any employee, without the consent of the employee, who submits a complaint or provides information concerning the possible existence of an activity constituting a violation of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety.

Decided: March 15, 1993.

By the Commission, S. Arnold Smith, Freedom of Information/Privacy Officer.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6473 Filed 3–19–93; 8:45 am]

BILLING CODE 7035–01

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Alpha Cellulose Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alpha Cellulose Corporation*, Civil Action No. 91–97–Civ–3–H, was lodged on March 9, 1993, with the United States District Court for the Eastern District of North Carolina. This is an action seeking civil penalties for violations of section 301(a) of the Clean Water Act (the Act), 33 U.S.C. 1311(a), brought pursuant to section 309(d) of the Act, 1319(d). The action involves the Alpha Cellulose Corporation (Alpha) located in Lumberton, North Carolina. Alpha is a cotton fiber paper mill that has been operating in North Carolina since 1968. Alpha owns and operates a wastewater treatment facility that treats wastes from its paper mill operation. Alpha was issued a National Pollutant Discharge Elimination System (NPDES) permit by the state of North Carolina in 1986. The permit authorized Alpha to discharge from its treatment facility to the Lumber River subject to meeting certain effluent limitations. The complaint alleges that from November 1988 through October 1990, Alpha chronically exceeded the effluent limitations contained in its NPDES permit. Alpha is now in compliance with its NPDES Permit, and thus no injunctive relief is sought. The company has agreed to pay a civil penalty of $850,000 in settlement of this action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alpha Cellulose Corporation*, DOJ Ref. # 90–5–1–1–3784.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of North Carolina, 301 Green Street, Fayetteville, North Carolina 28302; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–6414 Filed 3–19–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Fina Oil and Chemical Co.

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on March 10, 1993, a proposed consent decree in *United States* versus *Fina Oil and Chemical Company*, Civil Action No. 1:93CV–114, was lodged with the United States

District Court for the Eastern District of Texas. The complaint filed by the United States sought injunctive relief and civil penalties for violations by defendant Fina Oil and Chemical Company, Inc. ("Fina") of sections 301 and 402 of the Clean Water Act and the terms and conditions of its National Pollutant Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA) in 1988. Pursuant to the proposed consent decree, Fina has agreed to pay a $450,000 civil penalty for these violations, to implement a Compliance Plan, and to pay stipulated penalties for future violations.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20530, and should refer to *United States* versus *Fina Oil and Chemical Company*, DOJ# 90–5–1–1–2527A.

The proposed consent decree may be examined at the offices of the United States Attorney for the Eastern District of Texas, 700 North Street, suite 102, Beaumont, Texas 77701 and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Ralph Corley, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW.,4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree can be obtained in person or by mail from the consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–6413 Filed 3–6–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree In United States v. Inland Steel Corporation, Under the Clean Water Act, Safe Drinking Water Act, Clean Air Act and Resource Conservation and Recovery Act

In accordance with the policy of the Department of Justice established in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Inland Steel Corp.*, Civil Action No. H90–0328 was lodged with the United States District Court for the Northern District of Indiana, Hammond Division, on March 9, 1993. This action was brought on October 16, 1990 to address violations of the Clean Water Act ("CWA"), 33 U.S.C. 1251 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.* and the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.* that have occurred at Inland's Indiana Harbor Works facility in East Chicago, Indiana. The violations concern, in part, the emission of airborne pollutants to the atmosphere, the discharge of waterborne pollutants from the Indiana Harbor Works to the Indiana Harbor, Indiana Ship Canal and other navigable waters, and the release of hazardous wastes and hazardous constituents from the Indiana Harbor Works to the environment. The Consent Decree requires Inland, *inter alia*, to come into complete compliance with the pollutant discharge limits set forth in its permit issued pursuant to Section 1342 of the CWA, and to come into complete compliance with all applicable CAA emission standards. The Consent Decree provides further that Inland shall investigate its entire Harbor Works facility for releases of hazardous wastes and undertake those corrective measures the Environmental Protection Agency deems appropriate. In mitigation of the civil penalty and to restore prior degradations of the environment, Inland shall spend $26,000,000 on supplemental environmental projects, including $19,000,000 in sediment remediation of the Grand Calumet River. Also, under the Decree Inland will pay a civil penalty of $3,500,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Inland Steel Corp.*, DJ Ref. # 90–5–1–1–2320A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of Indiana, U.S. Courthouse, 1001 Main St., Suite A, Dyer, Indiana 46311; the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the U.S. Department of Justice Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005 (202 624–0892). In requesting a copy, please enclose a check in the amount of $124.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–6411 Filed 3–19–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. LaRoche Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 20, 1993, a proposed consent decree in *United States* v. *LaRoche Industries, Inc.*, Civil Action No. 4–93–00141, was lodged with the United States District Court for the Eastern District of Missouri. The proposed consent decree resolves claims for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and its implementing regulations codified at 40 CFR part 60, at the Crystal City Plant which is located in Crystal City, Missouri.

The complaint alleged that defendant violated the New Source Performance Standards ("NSPS") for nitric acid plants by emitting into the environment large quantities of air pollutants including NO_x. The complaint sought injunctive relief to require compliance with the NSPS and civil penalties for past violations.

The proposed Consent Decree requires defendant LaRoche to pay $60,000 in settlement of the United States' claims for civil penalties against it. In addition, the decree requires defendant to develop and implement a NO_x refrigeration unit designed to minimize NO_x emissions.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *LaRoche Industries, Inc.*, Ref. No. 90–5–2–1–1559.

The proposed consent decree may be examined at the following locations: (a) Office of the United States Attorney for

the Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri 63101; (b) the Environmental Protection Agency, Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101; (c) the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $2.50, (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–6412 Filed 3–19–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Final Judgments and Competitive Impact Statement

United States v. Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Midland, N.A.

United States v. Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Beaumont, N.A.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) that proposed Final Judgments, Stipulations and a Competitive Impact Statement have been filed with the United States District Court for the Northern District of Texas in *United States* v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-(Midland, N.A.* (Case Number 3–93CV0294–G) and in *United States* v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Beaumont, N.A.* (Case Number 3–93CV0368–D). The proposed Final Judgments are subject to approval by the Court after the expiration of the statutory 60-day public comment periods and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Complaints in these cases allege that the proposed acquisition of New First City Bank-Midland, N.A. and New First City Beaumont, N.A. by defendants would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the markets for business banking services in those areas. The proposed Midland Final Judgment directs the defendants to sell New First City-Midland's only bank office, retaining only the trust business of that bank. Under the Beaumont Judgment defendants are required to sell at least two and as many as three of New First City-Beaumont's three branch offices and the loans and deposits associated with those offices, as well as all commercial loans of more than $500,000 and the deposits of those commercial loan customers.

Public comment is invited within the statutory 60-day comment periods. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard L. Rosen, Chief, Communications & Finance Section, Antitrust Division, Room 8104, 555 Fourth Street, NW., Washington, DC 20001 (202–514–5621).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the Northern District of Texas

United States of America, Plaintiff, v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Midland, N.A.*, Defendants. Filed: February 11, 1993. Civ. No. 3–93CV0294–G. Judge Fish.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 11, 1993.

Counsel for the Plaintiff:

John W. Clark,

Acting Assistant Attorney General.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.

Richard L. Rosen,

Chief, U.S. Department of Justice, Antitrust Division, Communications and Finance Section, 555 Fourth Street, NW., Washington, DC 20001.

Richard Liebeskind (NY-no bar number),

Don Allen Resnikoff,

David R. Myers,

Attorneys, U.S. Department of Justice, Antitrust Division, Communications and Finance Section, 555 Fourth Street, NW., Washington, DC 20001, (202) 514–5807.

Richard H. Stephens,

United States Attorney.

Katherine McGovern (TX–13632080),

Assistant United States Attorney, Northern District of Texas, U.S. Federal Building and Courthouse, 1100 Commerce Street, Dallas, Texas 75242, (214) 767–3679.

Counsel for the Defendants:

Charles E. Koob,

Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017–3909, (212) 455–2000.

John H. Marks, Jr. (TX–12998000),

Liddell Sapp Zively Hill & LaBoom, 1200 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201, (214) 220–4458.

United States of America, Plaintiff, v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Midland, N.A.*, Defendants. Filed February 11, 1993. Civ. No. 3–93CV0294–G. Judge Fish.

Final Judgment

Whereas, Plaintiff United States of America, having filed its Complaint herein on February 11, 1993, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestitures of a bank, bank office, deposits and commercial loans are the essence of this agreement, and defendants have represented to plaintiff that the defendants believe the divestitures required herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

A. As used in this Final Judgment:

1. *Acquisition* means the acquisition of assets and deposit liabilities of New First City-Midland, N.A., by Texas Commerce Bank-Midland, N.A.

2. "Business banking services" means banking services offered to business customers, including at least:

a. *Transaction accounts, i.e.,* money deposited with a depository institution either at an interest rate or at no interest, in practice withdrawable upon demand, and upon which third-party drafts may be drawn by the depositor, including interest-bearing and non-interest-bearing checking accounts; and

b. *Commercial loans, i.e.,* secured or unsecured loans to businesses, including but not limited to commercial operating loans, *i.e.,* loan to businesses for operating or cash flow finance, including lines of credit.

Business banking services may also include other services, such as equipment finance loans, loans to finance the purchase or improvement of commercial property, cash and coin, cash management services (including lockbox, account reconciliation and controlled disbursement), and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

3. *Defendants* means Texas Commerce Bancshares, Inc. ("TCB"), its parent (Chemical Banking Corporation), and subsidiaries, including without limitation Texas Commerce Bank-Midland, N.A.

4. *Divestiture Assets* means all assets and deposit liabilities of New First City Bank-Midland, N.A. ("New First City-Midland") acquired by TCB from the Federal Deposit Insurance Corporation ("FDIC"), including:

a. All personal property; cash on hand; all safe deposit boxes at the Divestiture Office, exclusive of contents; all prepared expenses, including security deposits of the Office, determined in accordance with generally accepted accounting principles, as of the closing date; all rights of defendants to all contracts relating to the Office; all records and original documents in defendants' possession pertaining to the leasehold or the personal property; all loans originated at, serviced at or booked to the Office; any leasehold; any real estate, buildings, structures, drive-in teller facilities, ATMs, fixtures and improvements thereon which are owned and used by defendants as premises for the Office; and any other assets so acquired that are required for the Office to compete effectively in offering business banking services; and

b. All deposit liabilities that constitute the unpaid balance of money or its equivalent received or held by New First City-Midland in the usual course of business and for which the Office has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, investment, retirement or thrift account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the Office.

Notwithstanding the foregoing, Divestiture Assets do not include those assets that at the request of the purchaser are excluded from a sale, including among other things signs and computer equipment not useful to a purchaser. Moreover, Divestiture Assets will not include (1) Trust Assets, or (2) New First City-Midland's indirect consumer loans, subject to the provisions of Section IV.G of this Final Judgment.

5. *Divestiture Office* or *Office* means the main office of New First City-Midland, located at 500 West Texas Avenue, Midland, Texas 79701, including all Divestiture Assets, as herein defined.

6. *Medium-sized business* means a business with annual sales from approximately $5 million to approximately $100 million.

7. *Relevant geographic market* or *Midland market* means the Midland, Texas, MSA, which consists of Midland County, Texas.

8. *Small business* means a business with annual sales of less than approximately $5 million.

9. *Trust assets* means all trust accounts maintained by New First City-Midland, all trust assets under management, and all ancillary papers, files, and other assets dedicated to that business.

III. Applicability

A. The provisions of this Final Judgment shall apply to the defendants; to their successors and assigns; to their subsidiaries, affiliates, directors, officers, managers, agents, and employees; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the negotiated sale or other negotiated disposition of the Divestiture Office, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Divestiture of Office and Assets

A. Defendants are hereby ordered and directed to divest to a qualified purchaser, within three (3) months of the date of entry of this Final Judgment, all of their direct and indirect ownership and control of the Divestiture Office. The purchaser shall be independent of defendants; shall be a federally insured financial institution that offers to business customers, at a minimum, transaction accounts and commercial loans; and shall deliver promptly to plaintiff following the execution of a binding contract, an affidavit from an authorized officer stating a present intention that the Office purchased will offer business banking services to small businesses and medium-sized businesses in the geographic market served by the Office. Plaintiff in its sole discretion shall have the right to approve any purchaser as competitively suitable. The obligation to divest shall be satisfied if, within three (3) months of the date of entry of this Final Judgment, defendants enter into a binding contract with a qualified purchaser for the sale of the Divestiture Office to a purchaser according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable date for closing after compliance with all federal or state bank regulatory requirements and if the sale is completed pursuant to the contract. In the event that any proposed sale of the Divestiture Office is denied approval by any applicable federal or state bank regulatory agency, the time period specified herein in which defendants must satisfy the obligation to divest will still expire on the three (3)

month anniversary date of the entry of this Final Judgment, unless plaintiff under Section IV.B. grants additional time.

B. If defendants have not accomplished the required divestitures, within three (3) months of the entry date of this Final Judgment, plaintiff may, in its sole discretion, extend this time period for divestiture for an additional period of time, if defendants request such an extension and demonstrate to plaintiff's satisfaction that it is then engaged in negotiations with a prospective purchaser that are likely to result in the required divestitures but that the contract cannot be completed by the three (3) month anniversary date of the entry of this Final Judgment.

C. Defendants agree to take all reasonable steps to accomplish said divestitures promptly. In carrying out their obligation to divest the Divestiture Office, defendants may at their election divest along with the Divestiture Office any other assets of TCB or of New First City-Midland.

D. Defendants shall use reasonably diligent means to solicit purchasers for the Divestiture Office. In the event Defendants' efforts do not, within two (2) months of the date of this Final Judgment, yield a prospective purchaser with whom Defendants have by then reached agreement or are then in good faith negotiations for sale of the Divestiture Office, Defendants shall promptly thereafter make known in the Wall Street Journal, the American Banker, and in the State of Texas, by usual and customary means, the availability of the Divestiture Office for sale as an ongoing office that offers business banking services, and shall also make known by the same means the availability of the Divestiture Assets. The defendants shall notify any person making an inquiry regarding the possible purchase of the Divestiture Office and any or all of the Divestiture Assets that the sale is being made pursuant to this Final Judgment and that this Final Judgment requires approval of this Court. The defendants shall provide any such person with a copy of this Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of the Divestiture Office, subject to customary confidentiality assurances, all pertinent information regarding the Divestiture Office and the Divestiture Assets. Defendants shall provide such information to the plaintiff as soon as possible, but no later than two (2) business days after it furnishes such information to any other person. Defendants shall permit prospective purchasers of the Divestiture Office to consult personnel at such Office, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the Divestiture Office. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to defendants' banking business, except to the extent it relates to the Divestiture Office's operations and business. Defendants shall not object to any application for new bank charters sought to facilitate any divestitures.

E. Following accomplishments of the divestiture, defendants shall not acquire or attempt to acquire from the purchaser the Divestiture Office or any Divestiture Assets divested pursuant to this Final Judgment without first receiving prior approval from the plaintiff during the duration of this Final Judgment.

F. Except to the extent otherwise approved by plaintiff, the Divestiture Office divested pursuant to this Final Judgment shall be divested free and clear of (1) all mortgages, encumbrances and liens to defendants, and (2) any contractual commitments or obligations to defendants existing as of the date of divestiture, unless plaintiff is satisfied that the purchaser of the Divestiture Office wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

G. Notwithstanding the provisions of section II.4, defendants shall be required to divest the indirect consumer loans of New First City-Midland to the purchaser of the Divestiture Office, if said purchaser can demonstrate to the plaintiff in its sole discretion that those loans are reasonably necessary for purchaser to operate as a viable bank offering business banking services to small and medium-sized business customers in the Midland market.

V. Appointment of Trustee

A. If defendants have not accomplished the divestitures required by this Final Judgment by the two (2) month anniversary date of the entry of this Final Judgment, defendants shall notify plaintiff in writing of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to section IV.B., whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. Defandents shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court with the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestitures required by this Final Judgment at the expiration of the time period specified in sections IV.A. or IV.B. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the not yet divested Divestiture Office according to the terms of this Final Judgment; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to section VI. of this Final Judgment of the proposed divestiture of the Divestiture Office, and plaintiff has not filed a written notice that it objects to said proposed divestiture.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Divestiture Office or any Divestiture Assets as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestitures to a purchaser acceptable to the plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VI. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the Divestiture Office or Divestiture Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen

(15) days after the trustee has notified defendants of the proposed sale in accordance with section VI. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based upon a fee arrangement which includes an incentive based upon the price of the divestitures and the speed with which they are accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all costs and expenses incurred in connection with this matter. After approval of the Court of the trustee's accounting, including fees and reasonable expenses for his or her services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures and shall, if requested by the trustee, use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Office which the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the Divestiture Office and Divestiture Assets being divested as the trustee may request.

F. After his or her appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestitures as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted, or made an inquiry about acquiring, any ownership interest in the Divestiture Office or Divestiture Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Office or Divestiture Assets, and shall provide additional information to plaintiff upon its request.

G. Within six (6) months after his or her appointment has become effective, if the trustee has not accomplished the divestitures required by this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why any required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish the report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust and the term of the trustee's appointment.

VI. Notification

Immediately following execution of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestitures pursuant to Section IV. of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, he or she shall similarly notify defendants. The notice shall set forth the details of the proposed transactions and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Divestiture Office or Divestiture Assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestitures and the proposed purchaser. Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than the defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendant and to the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestitures may be consummated, subject only to defendants' limited right to object to the sale under the proviso in section V.C. Upon objection by plaintiff, a divestiture proposed under Section IV. shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in section V.C., a divestiture proposed under Section V. shall not be consummated unless approved by the Court. The requirements of this Section VI. are subject to waiver by the plaintiff.

VII. Affidavits

Within fifteen (15) business days of entry of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestitures passes to the trustee pursuant to section V. of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with section IV. of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the Divestiture Office or Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest the Divestiture Office and Divestiture Assets.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to sections IV. or V. of this Final Judgment without plaintiff's prior consent.

VIII. Preservation of Assets

Until the divestiture of the Divestiture Office and Divestiture Assets, as required by this Final Judgment, have been accomplished:

A. The defendants shall take all steps necessary to manage the Divestiture Office and Divestiture Assets prudently so as to maintain the Divestiture Office as an economically viable, ongoing office that offers business banking services. Defendants shall hold the Divestiture Office and all Divestiture Assets separately from their own operations, and shall operate the Divestiture Office separately from the management and personnel of defendants. The defendants shall use all reasonable efforts to maintain and increase sales of business banking services provided through the Divestiture Office, and continue with

any current plans for development of business banking services at those locations. Defendants shall not solicit any existing or new small or medium-sized business customers of the Divestiture Office except for the account and benefit of the Divestiture Office.

B. The defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, any Divestiture Assets required to be divested pursuant to this Final Judgment, except that any component of such Divestiture Assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide and maintain sufficient working capital to preserve the business of the Divestiture Office and of the Divestiture Assets, including funds for commercial lending, as a viable, ongoing office that offers business banking services.

D. Defendants shall, to the extent they do not acquire ownership or leasehold interests for the physical premises now occupied by the Divestiture Office (including all office, parking and support facilities) in the Acquisition, arrange to lease or otherwise occupy such physical premises during the period pending divestiture. In the event that the FDIC or its successor, or other owner or lessee, does not permit defendants to continue to occupy the premises, defendants will make other reasonable arrangements, upon prior consent of plaintiff or of the Court, consistent with defendants' obligations to preserve the businesses of the Divestiture Office as viable businesses as set forth in this Section VIII.

E. Defendants shall preserve the physical assets of the Divestiture Office, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of the Divestiture Office of otherwise related to the Divestiture Assets until the date of divestiture.

F. Pending completion of the divestiture, except in the ordinary course of business, or as is otherwise consistent with the requirements of section X, the defendants shall refrain from terminating or altering any current employment, salary, or benefit agreements for any managerial or commercial loan personnel of the Divestiture Office, and shall refrain from transferring any employee so employed without the prior written approval of plaintiff.

G. Defendants shall refrain from taking any action that would jeopardize the sale of the Divestiture Office or the Divestiture Assets.

IX. Employment Offers

Defendants are hereby enjoined and restrained until two (2) years following the date of divestiture, from employment of, or making offers of employment to, any person who currently is a commercial loan manager, officer or representative, (1) the preponderance of whose duties relate to the successful operation of the Divestiture Office, or (2) who is reasonably needed by the purchaser to continue the successful operation of the Divestiture Office and the servicing of the business customers of the Divestiture Office. This provision, however, does not apply to any employee who is terminated by the purchaser of the Divestiture Office. Defendants shall make available for interview and employment offers by purchaser sufficient Divestiture Office personnel needed to handle the business customers of the Divestiture Office. Defendants shall encourage and facilitate employment by the purchaser of such employees, and shall remove any impediments that may deter such employees from accepting employment with the purchaser of any Divestiture Office, including, but not limited to, the payment of all bonuses accrued up to the closing date of sale of the Divestiture Office to which such employees would otherwise have been entitled had they remained in the employment of defendants until the date of said closing. In connection with the purchaser's solicitation of any employees under this Section, defendants shall not make competing offers.

X. Visitorial Clause

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, be permitted:

1. Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendants and without restraint or interference from it, to interview officers, employees and agents of the defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendants at their principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XI. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by the defendants to plaintiff, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Expiration of Judgment

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Statement of Public Interest

Entry of this Final Judgment is in the public interest.

Dated: Dallas, Texas.

United States District Judge

United States of America, Plaintiff, v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Beaumont, N.A.*, Defendants. No. 3–93CV0368–D.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgement in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of theproposed Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: February 23, 1993.

Counsel for the Plaintiff:

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Acting Assistant Attorney General.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.

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United States of America, Plaintiff, v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Beaumont, N.A.*, Defendants. Civ. No. 3–93–CV0368–D, Filed February 23, 1993.

Final Judgment

Whereas, Plaintiff United States of America, having filed its Complaint herein on February 19, 1993, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestitures of bank offices, deposits, and commercial loans are the essence of this agreement, and defendants have represented to plaintiff that the defendants believe the divestitures required herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

A. As used in this Final Judgment:

1. *Acquisition* means the acquisition of assets and deposit liabilities of New First City-Beaumont, N.A., by Texas Commerce Bank-Beaumont, N.A.

2. *Business banking services* means banking services offered to business customers, including at least:

a. *Transaction accounts, i.e.*, money deposited with a depository institution either at an interest rate or at no interest, in practice withdrawable upon demand, and upon which third-party drafts may be drawn by the depositor, including interest-bearing and non-interest-bearing checking accounts; and

b. *Commercial loans, i.e.*, secured or unsecured loans to businesses, including but not limited to commercial operating loans, *i.e.*, loan to businesses for operating or cash flow finance, including lines of credit.

Business banking services may also include other services, such as equipment finance loans, loans to finance the purchase or improvement of commercial property, cash and coin, cash management services (including lockbox, account reconciliation and controlled disbursement), and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

3. *Defendants* means Texas Commerce Bancshares, Inc. ("TCB"), its parent (Chemical Banking Corporation), and subsidiaries, including without limitation Texas Commerce Bank-Beaumont, N.A.

4. *Designated Employee* means

a. any person who currently is a commercial loan manager, officer or representative whose regular place of business is a Divestiture Branch and

(1) The preponderance of whose duties relate to the successful operation of any Divestiture Branch, or

(2) Who is reasonably needed by the purchaser to continue the successful operation of any Divestiture Branch and the servicing of the business customers of the Divestiture Branch; or

b. if, pursuant to section IV.G of this Final Judgment, the divestiture purchaser also purchases New First City-Beaumont's operations or main cash vault facilities, any person who is currently an employee of New First City-Beaumont and

(1) The preponderance of whose duties relate to the successful operation of New First City-Beaumont's operations or main cash vault facilities, or

5. *Divestiture Assets* means

a. The Divestiture Branches, as hereinafter defined, and all assets and deposit liabilities of New First City Bank-Beaumont, N.A. ("New First City-Beaumont") associated with those branches and acquired by TCB from the Federal Deposit Insurance Corporation ("FDIC"), including:

(1) All personal property; cash on hand; all safe deposit boxes at the Divestiture Branch, exclusive of contents; all prepaid expenses, including security deposits of the Branch, determined in accordance with generally accepted accounting principles, as of the closing date; all rights of defendants to all contracts relating to the Branch; all records and original documents in defendants' possession pertaining to the leasehold or the personal property; all loans originated at, serviced at or booked to the Branch; any leasehold; any real estate, buildings, structures, drive-in teller facilities, ATMs, fixtures and improvements thereon which are owned and used by defendants as premises for the Branch; and any other assets so acquired that are required for the Branch to compete effectively in offering business banking services; and

(2) All deposit liabilities that constitute the unpaid balance of money or its equivalent received or held by New First City-Beaumont in the usual course of business and for which the Branch has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, investment, retirement or thrift account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the Branch; and

b. All commercial loans (including without limitation operating loans, equipment loans, and commercial mortgages) acquired from New First City-Beaumont that have a note or commitment amount of $500,000 or greater, and all deposit accounts of the business debtors of those loans.

Notwithstanding the foregoing, Divestiture Assets do not include (1) those assets that at the request of the purchaser are excluded from a sale, including, among other things, signs and computer equipment not useful to the purchaser; (2) Trust Assets; or (3) indirect consumer loans.

6. *Divestiture Branch(es)* or *Branch(es)* means the following branch offices of New First City-Beaumont, and all Divestiture Assets of those branches, as herein defined:

a. Central Branch, located at 4285 East Lucas, Beaumont, Texas 77706, which as of June 30, 1992, held deposits of $65,846,000; and

b. Spindletop Branch, located at 3915 Phelan Boulevard, Beaumont, Texas 77706, which as of June 30, 1992 held deposits of $42,896,000.

In addition, *Divestiture Branches* shall include the Gateway Branch, located at 3775 Stagg Drive, Beaumont, Texas 77702, which as of June 30, 1992, held deposits of $62,279,000, and all Divestiture Assets of that Branch, if plaintiff in its sole discretion concludes that the purchaser would not be competitively suitable without acquiring the Gateway Branch and its Divestiture Assets.

7. *Main Office* means the Main Office of New First City-Beaumont, located at Orelans and Bowie Streets, Beaumont, Texas 77704.

8. *Medium-sized business* means a business with annual sales from approximately $5 million to approximately $100 million.

9. *Relevant geographic market* or *Beaumont market* means the Beaumont-Port Arthur, Texas, MSA, which consists primarily of the greater part of Jefferson County, Texas.

10. *Small business* means a business with annual sales of less than approximately $5 million.

11. *Trust assets* means all trust accounts maintained by New First City-Beaumont, all trust assets under management, and all ancillary papers, files, and other assets dedicated to that business.

III. Applicability

A. The provisions of this Final Judgment shall apply to the defendants; to their successors and assigns; to their subsidiaries, affiliates, directors, officers, managers, agents, and employees; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the negotiated sale or other negotiated disposition of any of the Divestiture Assets, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Divestiture of Branches and Assets

A. Defendants are hereby ordered and directed to divest to a qualified purchaser, within three (3) months of the date of entry of this Final Judgment, all of their direct and indirect ownership and control of the Divestiture Assets. Defendants shall not divide the Divestiture Assets without the prior written consent of plaintiff. The purchaser shall be independent of defendants; shall be a federally insured financial institution that offers to business customers, at a minimum, transaction accounts and commercial loans; and shall deliver promptly to plaintiff following the execution of a binding contract, an affidavit from an authorized officer stating a present intention that the Divestiture Branches (either singly or in combination) will offer business banking services to small businesses and medium-sized businesses in the Beaumont market. Plaintiff in its sole discretion shall have the right to approve any purchaser as competitively suitable. The obligation to divest shall be satisfied if, within three (3) months of the date of entry of this Final Judgment, defendants enter into a binding contract with a qualified purchaser for the sale of the Divestiture Assets to a purchaser according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable date for closing after compliance with all federal or state bank regulatory requirements and if the sale is completed pursuant to the contract. In the event that any proposed sale of the divestiture Assets is denied approval by any applicable federal or state bank regulatory agency, the time period specified herein in which defendants must satisfy the obligation to divest will still expire on the three (3) month anniversary date of the entry of this Final Judgment, unless plaintiff under section IV.B. grants additional time.

B. If defendants have not accomplished the required divestitures within three (3) months of the entry date of this Final Judgment, plaintiff may, in its sole discretion, extend this time period for divestiture for an additional period of time, if defendants request such an extension and demonstrate to plaintiff's satisfaction that it is then engaged in negotiations with a prospective purchaser that are likely to result in the required divestitures but that the contract cannot be completed by the three (3) month anniversary date of the entry of this Final Judgment.

C. Defendants agree to take all reasonable steps to accomplish said divestitures promptly. In carrying out their obligation to divest the Divestiture Assets, defendants may at their election divest along with the Divestiture Assets any other assets of TCB or of New First City-Beaumont.

D. Defendants shall use reasonably diligent means to solicit purchasers for the Divestiture Assets. In the event Defendants' efforts do not, within two (2) months of the entry of this Final Judgment, yield a prospective purchaser with whom Defendants have by then reached agreement or are then in good faith negotiations for sale of the Divestiture Assets, Defendants shall

promptly thereafter make known in the Wall Street Journal, the American Banker, and in the State of Texas, by usual and customary means, the availability of the Divestiture Branches for sale as ongoing offices that offer business banking services, and shall also make known by the same means the availability of the remaining Divestiture Assets. The defendants shall notify any person making an inquiry regarding the possible purchase of the Divestiture Branches and any or all of the Divestiture Assets that the sale is being made pursuant to this Final Judgment and that this Final Judgment requires approval of this Court. The defendants shall provide any such person with a copy of this Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of the Divestiture Assets, subject to customary confidentiality assurances, all pertinent information regarding the Divestiture Branches and the Divestiture Assets. Defendants shall provide such information to the plaintiff as soon as possible, but no later than two (2) business days after it furnishes such information to any other person. Defendants shall permit prospective purchasers of a Divestiture Branch to consult personnel at such Branch, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the Divestiture Assets. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to defendants' banking business, except to the extent it relates to the Divestiture Branches' operations and business or otherwise relates to the Divestiture Assets. Defendants shall not object to any application for new bank charters sought to facilitate any divestitures.

E. Following accomplishment of the divestiture, defendants shall not acquire or attempt to acquire from the purchaser any Divestiture Branch or Divestiture Assets divested pursuant to this Final Judgment without first receiving prior approval from the plaintiff during the duration of this Final Judgment.

F. Except to the extent otherwise approved by plaintiff, each Divestiture Branch divested pursuant to this Final Judgment shall be divested free and clear of (1) all mortgages, encumbrances and liens to defendants, and (2) any contractual commitments or obligations to defendants existing as of the date of divestiture, unless plaintiff is satisfied that the purchaser of the Divestiture Branch wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

G. Defendants shall offer for sale to the purchaser of the Divestiture Assets all operations and cash vault facilities, acquired from New First City-Beaumont, and all tangible personal property acquired from New First City-Beaumont that relates to the provision of business banking services and that is now located at the Main Office.

H. Plaintiff and defendants understand and acknowledge that the real property and improvements currently occupied and operated as the Main Office is currently owned by the FDIC. Defendants will take such steps as are reasonable to permit the purchaser of the Divestiture Assets to acquire that property, should the purchaser elect to do so. Reasonable steps are deemed to include (1) exercising defendants' option to acquire the property, should the purchaser of the divestiture assets so instruct defendants; and (2) negotiating reasonable extensions of the option. Defendants shall not themselves seek to acquire ownership or leasehold of the Main Office real property (except in connection with Defendant's obligations under section VIII of this Final Judgment) prior to consummation of the divestiture required by this Final Judgment.

V. Appointment of Trustee

A. If defendants have not accomplished the divestitures required by this Final Judgment by the two (2) month anniversary date of the entry of this Final Judgment, defendants shall notify plaintiff in writing of that fact. Within ten (10) days of that data, or twenty (20) days prior to the expiration of any extension granted pursuant to section IV.B., whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of it nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court with the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestitures required by this Final Judgment at the expiration of the time period specified in sections IV.A. or IV.B. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the not yet divested Divestiture Assets according to the terms of this Final Judgment; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to Section VI. of this Final Judgment of the proposed divestiture of the Divestiture Assets, and plaintiff has not filed a written notice that is objects to said proposed divestiture.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any Divestiture Branches or Divestiture Assets as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestitures to a purchaser acceptable to the plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VI. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the Divestiture Branches or Divestiture Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with section VI. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based upon a fee arrangement which includes an incentive based upon the price of the divestitures and the speed with which they are accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or

expenses, prior to the effective date of his or her appointment. The trustee shall account for all costs and expenses incurred in connection with this matter. After approval by the Court of the trustee's accounting, including fees and reasonable expenses for his or her services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures and shall, if requested by the trustee, use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee shall have full and complete access to the personnnel, books, records, and facilities of the Divestiture Branches or otherwise related to the Divestiture Assets which the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the Divestiture Branches and Divestiture Assets being divested as the trustee may request.

F. After his or her appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestitures as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted, or made an inquiry about acquiring, any ownership interest in the Divestiture Branches or Divestiture Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Branches or Divestiture Assets, and shall provide additional information to plaintiff upon its request.

G. Within six (6) months after his or her appointment has become effective, if the trustee has not accomplished the divestitures required by this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitutes, (2) the reasons, in the trustee's judgment, why any required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish the report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust and the term of the trustee's appointment.

VI. Notification

Immediately following execution of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestitures pursuant to section IV. of this Final Judgement, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, he or she shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Divestiture Branches or Divestiture Assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestitures and the proposed purchaser. Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than the defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendant and to the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestitures may be consummated, subject only to defendants' limited right to object to the sale under the proviso in secion V.C. Upon objection by plaintiff, a divestiture proposed under Section IV. shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in section V.C., a divestiture proposed under Section V. shall not be consummated unless approved by the Court. The requirements of this Section VI. are subject to waiver by the plaintiff.

VII. Affidavits

Within fifteen (15) business days of entry of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestitures passes to the trustee pursuant to section V. of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with section IV. of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the Divestiture Branches or Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest the Divestiture Branches and Divestiture Assets.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to sections IV. or V. of this Final Judgment without plaintiff's prior consent.

VIII. Preservation of Assets

Until the divestiture of the Divestiture Branch and Divestiture Assets, as required by this Final Judgment, have been accomplished:

A. The defendants shall take all steps necessary to manage the Divestiture Branches and Divestiture Assets prudently so as to maintain the Divestiture Branches as economically viable, ongoing offices that (individually or collectively) offer business banking services to small and medium-sized businesses. Defendants shall hold the Divestiture Branches and all Divestiture Assets separately from their own operations, and shall operate the Divestiture Branches separately from the management and personnel of defendants. The defendants shall use all reasonable efforts to maintain and increase sales of business banking services to small and medium-sized businesses provided through the Divestiture Branches, and continue with any current plans for development of business banking services at those locations. Defendants shall not solicit any existing or new small or medium-sized business customers of the Divestiture Branches, or any customers whose loans are among the Divestiture Assets, except for the account and benefit of the Divestiture Branches.

B. The defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, any of the Divestiture Assets required to be divested pursuant to this Final Judgment, except that any component of such Divestiture Assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide and maintain sufficient working capital to preserve the business of the Divestiture Branches and of the Divestiture Assets, including funds for commercial lending, as viable, ongoing offices that (individually or collectively) offer business banking services to small and medium-sized businesses.

D. Defendants shall, to the extent they do not acquire ownership or leasehold interests for the physical premises now occupied by the Divestiture Branches (including all office, parking and support facilities) in the Acquisition, arrange to lease or otherwise occupy such physical premises during the period pending divestiture. In the event that the FDIC or its successor, or other owner or lessee, does not permit defendants to continue to occupy the premises, defendants will make other reasonable arrangements, upon prior consent of plaintiff or of the Court, consistent with defendants' obligations to preserve the businesses of the Divestiture Branches as viable businesses as set forth in this section VIII.

E. Defendants shall preserve the physical assets of the Divestiture Branches, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of the Divestiture Branches or otherwise related to the Divestiture Assets until the date of divestiture.

F. Pending completion of the divestiture, except in the ordinary course of business, or as is otherwise consistent with the requirements of section IX., the defendants shall refrain from terminating or altering any current employment, salary, or benefit agreements for any managerial or commercial loan personnel of the Divestiture Branches, and shall refrain from transferring any employee so employed without the prior written approval of plaintiff.

G. Defendants shall refrain from taking any action that would jeopardize the sale of the Divestiture Branches or the Divestiture Assets.

IX. Employment Offers

A. Defendants shall permit the purchaser of the Divestiture Assets to interview all commercial loan managers and officers who are employees of New First City-Beaumont at the time of consummation of the Acquisition, and to make offers of employment to such personnel. The purchaser may designate two-thirds of the total number of commercial loan managers and officers who are employees of New First City-Beaumont at the time of consummation of the Acquisition as "Designated Loan Officers" subject to the provisions of section IX.B of this Final Judgment.

B. Defendants are hereby enjoined and restrained until two (2) years following the date of divestiture, from employment of, or making offers of employment to, any Designated Employee or Designated Loan Officer. This provision, however, does not apply to any Designated Employee or Designated Loan Officer who is terminated by the purchaser of the Divestiture Assets or who is not offered such employment, or to any designated Loan Officer who does not accept an offer of such employment or who resigns such employment. Defendants shall make available all Designated Employees for interview and employment offers by purchaser and sufficient additional Divestiture Branch personnel needed to handle the business customers of the Divestiture Branches. Defendants shall encourage and facilitate employment by the purchaser of all such employees, and shall remove any impediments that may deter such employees from accepting employment with the purchaser of any Divestiture Branch. Defendants shall pay all bonuses accrued up to the closing date of sale of the Divestiture Branches to which such employees would otherwise have been entitled had they remained in the employment of defendants until the date of said closing. In connection with the purchaser's solicitation of any employees under this section IX, defendants shall not make competing offers.

X. Visitorial Clause

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, be permitted:

1. Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendants and without restraint or interference from it, to interview officers, employees and agents of the defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendants at their principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XI. shall be divulged by any representative of Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to plaintiff, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Expiration of Judgment

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the

parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Statement of Public Interest

Entry of this Final Judgment is in the public interest.

Dated: Dallas, Texas.

United States District Judge

United States of America, Plaintiff, v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Midland, N.A.*, Defendants. No. 3–93CV0294–G.

United States of America, Plaintiff, v. *Texas Commerce Bancshares, Inc. and Texas Commerce Bank-Beaumont, N.A.*, Defendants. No. 3–93CV0368–D.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgments submitted for entry in these civil antitrust proceedings.

I. Nature and Purpose of the Proceedings

On February 11, 1993, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, alleging that the proposed acquisition of New First City Bank-Midland, N.A. ("New First City-Midland") by Texas Commerce Bank-Midland, N.A. would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18 (the "Midland action"). On February 23, 1993, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, alleging that the proposed acquisition of New First City Bank-Beaumont, N.A. ("New First City-Beaumont") by Texas Commerce Bank-Beaumont, N.A. would also violate section 7 of the Clayton Act (the "Beaumont action").

New First City-Beaumont and New First City-Midland are two of the 20 bridge banks (collectively "New First City") established by the Federal Deposit Insurance Corporation ("FDIC") from the assets of the failed First City Bancorporation ("First City"), which the FDIC took control of on October 30, 1992. Texas Commerce Bank-Beaumont, N.A. and Texas Commerce Bank-Midland, N.A. are affiliates of defendant Texas Commerce Bancshares, Inc. (collectively "TCB"), a bank holding company based in Houston, Texas. TCB is in turn controlled by Chemical Banking Corp., New York, N.Y.

The complaints allege that the effect of the acquisitions may be substantially to lessen competition in the provision of business banking services in the Beaumont and Midland geographic markets. Business banking services offered to business customers include, either collectively or individually, transaction accounts (money deposited with a depository institution either at an interest rate or at no interest, in practice withdrawable on demand, and upon which third party drafts may be drawn by the depositor, *i.e.*, checking accounts, whether interest-bearing or non-interest-bearing), and commercial loans (*i.e.*, secured or unsecured loans to businesses, including but not limited to commercial operating loans, *i.e.*, loans to businesses for operating or cash flow finance, including lines of credit, as well as equipment finance loans); and may also include loans to finance the purchase or improvement of commercial real property ("commercial mortgages"); cash and coin; cash management services (including lockbox, account reconciliation and controlled disbursement); and business expertise and advice offered to business customers.

Both TCB and New First City compete directly in offering a variety of business banking services to business customers in each of the geographic markets. The proposed acquisitions would result in substantial increases in concentration in markets that are already highly concentrated, in which it appears that the merger would likely result in anticompetitive effects, and for which regulatory and other market factors make it unlikely that effective entry will be sufficient or timely to prevent a substantial lessening of competition in the relevant markets.

The complaints allege that the proposed acquisitions would, in particular, adversely affect competition for medium-sized business customers purchasing business banking services in the Beaumont and Midland markets, and small businesses purchasing these services in Midland. The complaints seek, among other relief, to enjoin the proposed transactions and thereby to prevent their anticompetitive effects.

On February 11, 1993, the United States and TCB filed a Stipulation in the Midland action by which the parties consented to the entry of a proposed final judgment (the "Midland Judgment"). Under the Midland Judgment, as explained more fully below, defendants would be required to sell New First City-Midland's only bank office, retaining only the trust business of that bank. (Under certain conditions, defendants might also retain that bank's indirect consumer loan business.)

On February 23, 1993, the United States and TCB filed a Stipulation in the Beaumont action by which the parties consented to the entry of a proposed final judgment (the "Beaumont Judgment"). Under the Beaumont Judgment, as explained more fully below, defendants would be required to sell at least two and as many as three of New First City-Beaumont's three branch offices and the loans and deposits of those offices, as well as all commercial loans of more than $500,000 and the deposits of those commercial loan customers. TCB will retain the remaining assets (including loans) and deposits of New First City-Beaumont's main office, including its trust business and the small business and consumer loans originated at that main office. The main office's real estate and improvements, and New First City-Beaumont's operations facilities and cash vault, will be made available to the purchaser of the divested branches.

Under the Bank Merger Act, 12 U.S.C. 1828(c)(7)(A), the timely commencement of an antitrust action by the United States challenging a proposed bank merger creates an automatic stay of the transaction. In each of these actions, upon filing a Stipulation whereby the parties agreed to be bound by and seek the entry of the proposed Final Judgment, the United States moved to vacate the automatic stay so that the transaction could proceed, while the relief specified in the Judgments could be entered. In each action the Court vacated the automatic stay, permitting the FDIC to transfer the bridge banks promptly.

The United States and the defendants have stipulated that the proposed Final Judgments may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgments would terminate these actions, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgments and to punish violations of the Judgments.

II. Events Giving Rise to the Alleged Violation

A. The Proposed Transactions

On October 30, 1992, the FDIC took control of First City and its 20 affiliate banks in Texas, and reorganized them into 20 bridge banks. The New First City Banks of Beaumont and Midland, two of the 20 bridge banks, formerly operated in the State of Texas as First City Bank

of Beaumont and First City Bank of Midland, respectively. After establishing the bridge banks, the FDIC solicited bids for the purchase of these banks pursuant to its congressional authority to arrange assisted transactions. See 12 U.S.C. 1823(c).

Congress mandated that FDIC-assisted transactions be subject to antitrust review, both by the bank regulatory agencies whose approval is required and by the Department of Justice. See 12 U.S.C. 1823(f)(7), 1828(c)(6), 1828(c)(7)(a). Congress also expressly provided that the United States can challenge assisted transactions that would violate Section 7 of the Clayton Act. 12 U.S.C. 1828(c)(7)(a).

On January 26, 1993, the FDIC selected TCB as the winning bidder for the bridge banks in Beaumont and Midland, among others.[1] By the terms of TCB's winning bid, TCB would purchase the assets and assume the liabilities of the two bridge banks for a total of approximately $32 million.

TCB is the second largest bank holding company operating in the State of Texas, with total deposits of more than $15 billion, which represent nearly 10 percent of total commercial bank deposits in the State. Through its 16 banks, TCB operates approximately 110 offices or branches throughout Texas. First City was the fourth largest bank holding company in Texas, with nearly $7 billion in deposits statewide, which represented about four percent of total commercial bank deposits in the State. Through its 20 banks, First City operated approximately 113 offices and branches throughout the State of Texas.

In January 1993, TCB submitted to the Comptroller of the Currency its applications to purchase the assets and assume the deposits of New First City-Beaumont and New First City-Midland, among others. The applications were treated as emergency transactions for expedited review and, on February 8, 1993, the Comptroller approved TCB's application for the Midland acquisition. Under the Bank Merger Act,[2] the United States had five days from the date of its notice of the Comptroller's decision, or until February 12, 1993, to prevent the proposed acquisition by filing a complaint with the Court. The United States timely filed the Midland action on February 11, 1993.

The Comptroller's review of the Beaumont transaction was delayed pending further public comment, relating primarily to TCB's performance under the Community Reinvestment Act, 12 U.S.C. 2901–2906. On February 19, 1993, the Comptroller approved TCB's application for the Beaumont acquisition. The United States again had five days from the date of its notice of the Comptroller's decision, until February 23, 1993, to prevent the proposed acquisition by filing a complaint with the Court. The United States timely filed the Beaumont action on February 23, 1993.

B. The Government's Competitive Analysis

The United States filed its complaints because the proposed acquisition would tend to reduce competition in the provision of business banking services in the Beaumont and Midland geographic markets. Medium-sized businesses in Beaumont, and both small and medium-sized businesses in Midland, are the customers that the United States believes are most likely to be adversely affected. The proposed acquisitions would eliminate one of only a few financial institutions serving these customers and would substantially increase the risk of anticompetitive conduct resulting in higher prices for business banking services.

The United States investigated and analyzed the proposed acquisitions under the framework outlined in the Department of Justice and Federal Trade Commission *Horizontal Merger Guidelines*, 57 FR 41552, 4 Trade Reg. Rep. (CCH) ¶13,104 (1992) (*"Merger Guidelines"*). Investigation by the United States shows that TCB and New First City compete in the provision of a wide range of banking services, including services to individual consumers and services to businesses in Texas. Business customers generally have fewer alternatives for their banking needs than do individuals.[3] Therefore, in this as in other bank merger investigations, the government focused its analysis on two groups of commercial customers: Small businesses (generally those with annual revenues of less than $5 million) and medium-sized or "middle market" businesses (those businesses with annual revenues of between approximately $5 million and approximately $100 million).[4]

Each of these groups of business customers have different borrowing needs, and have access to different types of suppliers, than do large corporations. While the largest businesses might be able to obtain operating finance from distant institutions or from the public debt securities markets, neither small businesses nor medium-sized businesses generally have these options. Small businesses and medium-sized businesses are therefore more likely to be adversely affected by a merger of two banks in the same geographic market than are large businesses.

In this investigation and in prior bank merger investigations, the government has learned that small businesses and medium-sized businesses rely on commercial banks for operating or working capital credit to meet short-term or seasonal funding needs. The purpose and characteristics of these loans generally make other credit products, including loans to finance equipment purchases, poor substitutes. While some operating loans are secured by real estate (as well as by the borrowers' other assets, if any), loans to purchase real estate generally are not

[1] TCB was also selected as the winning bidder for New First City Bank-Dallas, N.A.; New First City Bank-El Paso, N.A.; and New First City Bank-Houston, N.A. The United States has not challenged TCB's acquisition of the Dallas or Houston bridge banks. In response to the United States' intention to challenge TCB's acquisition of the El Paso bridge bank TCB abandoned that transaction and assigned its right to acquire that bridge bank to Boatmen's Bancshares, Inc., of St. Louis, Missouri. The United States has concluded that Boatmen's is a competitively suitable purchaser for the El Paso bridge bank, and will not challenge that acquisition.

[2] 12 U.S.C. § 1828(6) and (7)(a), provide in pertinent part that "[t]he responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. . . . [T]he transaction may not be consummated before the fifth calendar day after the date of approval by the agency. . . . Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented."

[3] Thrifts and credit unions typically compete with commercial banks for retail transaction and savings accounts, and for some consumer loans. The United States therefore typically focuses its bank merger investigations on business banking services; if a bank merger presents a likely adverse effect on competition, and the government obtains relief, that relief typically introduces a new bank competitor into the market, or strengthens an existing fringe competitor. Such relief is likely to prevent a substantial lessening of competition in consumer banking as well as in commercial banking. As discussed below, the United States believes that the proposed relief here likely will preserve competition in both consumer and commercial banking in the Baumont and Midland areas.

[4] The government's demarcation between small and medium-sized businesses is based on an analysis of the facts in any given market. For example, the point of demarcation in Seattle, Washington, appeared to the government to be $10 million in sales, see Letter of James F. Rill to Alan Greenspan, March 12, 1992, regarding the proposed acquisition by BankAmerica Corp. of Security Pacific Corp ("BankAmerica Letter"), as compared to the $5 million approximation that the government considers is appropriate in these markets, based on its investigation. The common feature, however, is that all such customers were found to be locally limited.

substitutes for operating or cash flow finance loans, which generally take the form of lines of credit.

There are sound economic reasons that lead small- and medium-sized businesses to tend to purchase business banking services (particularly commercial operating loans and transaction accounts) locally, and for banks to provide these products (particularly credit products) only to businesses located in their general area. Many small- and medium-sized businesses also find that there are good reasons to obtain operating credit, transaction accounts and their primary cash management services, if any, from the same bank.

The United States concluded that, for business banking services in Texas, the relevant geographic markets were those defined by the Federal Reserve Bank of Dallas.[5] The government considered whether a larger Midland/Odessa market would be appropriate, but concluded that banks in Odessa do not and would not significantly constrain anticompetitive activity in Midland. The government also investigated whether a smaller or larger Beaumont market was appropriate, and found that, while banks in Beaumont might compete for customers in Orange, Beaumont customers were unlikely to consider Orange banks to be alternatives. The government also investigated whether Houston banks compete for Beaumont business customers, and learned that there did not appear to be banks in Houston (that were not themselves present in Beaumont) that were competing or likely would compete for the business of Beaumont commercial customers. The government therefore concluded that it was not appropriate to modify the bounds of the relevant geographic markets from those defined by the Federal Reserve Bank of Dallas for use in considering business banking services to small- and medium-sized businesses.

The government then examined whether business banking customers turned or would turn to suppliers other than commercial banks as alternatives to obtaining business banking services from commercial banks. As in prior investigations,[6] it appeared that in the markets here at issue few other financial institutions offer substitutes for the business banking services currently provided by commercial banks in the relevant markets. Nor do such firms appear likely to start offering such substitutes within a reasonably short period of time. Commercial banks are the only firms that provide business banking services, as defined in the complaints, in the Beaumont and Midland markets. In both of these geographic markets, TCB and New First City are two of the largest of these few firms. TCB and New First City each offer a variety of business banking services, and compete directly with one another in these relevant geographic markets. A significant number of small- and medium-sized business customers purchase both transaction accounts and commercial loans as well as other business banking services from TCB and New First City.

Thrift institutions—federal savings and loan associations ("FSLAs") and federal savings banks ("FSBs")—are limited by law in the extent to which they make commercial loans, and thrifts' ability to offer these services to businesses is substantially affected by capital requirements and their own capital positions.[7] The thrifts that had entered business banking and lending in the past decade have generally withdrawn from those markets, and managers of other thrifts have learned from the thrift industry's general lack of success in commercial banking.[8] Thrifts in the Beaumont and Midland markets do not currently provide business banking services to medium-sized businesses or, in most cases, to small businesses. Our investigation revealed that the above factors, coupled with other economic factors concerning the cost, scale and expertise involved in offering business banking services, make it unlikely that savings and loan associations in these markets would enter into the provision of such services either as uncommitted entrants (*i.e.*, rapidly and without incurring significant sunk costs) or as committed entrants (*i.e.*, within approximately two years and having incurred significant sunk costs).[9]

Non-depository institutions may provide one or even a few of the services provided by commercial banks and certain thrift institutions. For example, investment or brokerage houses offer products that in certain circumstances substitute for products offered to consumers by commercial banks or thrift institutions. Non-depository institutions, however, do not provide certain important business banking services, such as transaction accounts for business customers, which are offered by commercial banks and some thrift institutions. Moreover, knowledgeable persons interviewed in this investigation did not indicate that those firms were active competitors to commercial banks in these Texas markets, at least for businesses with sales of less than $100 million. Thus, they are not included as suppliers of business banking services.[10]

The United States' investigation indicates that a substantial majority of business banking customers in each of the Beaumont and Midland markets are served by five or fewer firms. In Beaumont, New First City is the leading firm by a significant margin, and TCB appears to be second. In Midland, TCB and First City are second and third, respectively. Absent the divestitures proposed in the Judgments, the acquisition of New First City-Beaumont would create a firm nearly three times the size of its next largest competitor (measured by deposits). The Midland acquisition would have resulted in two firms, NationsBank and TCB, having more than 70% of the market's

[5] The Federal Reserve Bank of Dallas defined the Beaumont market to be the Beaumont/Port Arthur Metropolitan Statistical Area ("MSA"), which consists of the greater part of Jefferson County and portions of Hardin and Orange Counties. The Midland market was defined as the Midland MSA, which essentially consists of Midland County.

[6] See BankAmerica Letter; Competitive Impact Statement, *United States* v. *Society Corp.* (N.D. Ohio Mar. 13, 1992) (No. 1:92CV0525); Competitive Impact Statement, *United States* v. *Fleet/Norstar Financial Group, Inc.* (D. Me. 1991) (No. 91–0221–P); Competitive Impact Statement, *United States* v. *First Hawaiian, Inc.* (D. Hawaii Mar. 7, 1990) (Civ No. 90–00904 DAE).

[7] Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 1464(t), new, more significant capital requirements and other restrictions were placed upon the lending activities of thrift institutions.

[8] The thrifts in the geographic markets at issue in these actions have not entered, and generally are not expected to enter, business banking. The fact that some thrifts are carrying commercial loans on their balance sheets does not necessarily indicate that those thrifts are making new commercial loans or are actively seeking business customers. Some thrifts with commercial portfolios succeeded to those portfolios when they acquired assets and deposits of earlier failed institutions from the Resolution Trust Corporation or Federal Home Loan Bank Board.

[9] In assessing competition in business banking services, the Department's consistent approach since *United States* v. *First Hawaiian, Inc.* (D. Hawaii 1990), has been to identify those thrifts that are current providers of business banking services in the geographic markets at issue, as well as those thrifts that are uncommitted entrants into those markets, and include those thrifts as competitors. *Merger Guidelines* § 1.3. The Department has at times adjusted estimates of their capacity to reflect the additional regulatory constraints that thrifts face. See *United States* v. *Society Corp.* (N.D. Ohio 1992). The Department generally recognizes that thrifts are full competitors in retail or consumer banking services.

[10] The government's investigations of bank mergers have indicated that credit unions generally are not current or potential competitors in business banking services. Credit unions offer services to individual consumers, but are not permitted to offer business banking services such as those provided to the business customers served by commercial banks. The investigation did not reveal any contrary evidence in these markets.

commercial bank deposits between them. These concentrations of business, together with other relevant factors discussed below, indicated to the United States that these acquisitions would create a substantial possibility that one or a few firms in these markets could exercise market over, profitably raising price and restricting output.

Some banks in the Beaumont and Midland markets are part of statewide banks or of statewide or larger bank holding companies, and those banks may have some ability to shift loanable funds from one market to another. While those banks might therefore offer more loans or larger loans in a particular market than their deposits in that market alone would support, there are other constraints on the amount of out-of-market funds that a depository institution can use effectively to make loans in a market. In addition to risk considerations, an institution needs an effective means of delivering banking services, including loans, to customers. Among other things, it needs a network of branch offices, trained loan personnel familiar with the market, its economy and its businesses, and the technical capability to deliver at least basic cash management services to medium-sized businesses. Therefore, a bank's ability to draw on out-of-market funds does not by itself indicate that it will be able profitably to expand output, and the United States does not believe that such firms' holding company affiliations necessarily warrant attributing to those firms greater measures of capacity that their historical performance indicates is appropriate.[11]

Under the Merger Guidelines, when the Herfindahl-Hirschman Index ("HHI"),[12] a measure of market concentration, is over 1800, the market is considered highly concentrated. A merger that increases the HHI by more than 50 points potentially raises significant competitive concerns, depending upon an analysis of all other relevant factors. Mergers producing an increase in the HHI of more than 100 points in moderately concentrated markets (*i.e.*, in markets where the post-merger HHI exceeds 1000) potentially raise significant competitive concerns, depending upon an analysis of all other relevant factors. Merger Guidelines § 1.51.

In the Midland market, the HHI, calculated on the basis of total deposits of firms now offering business banking services, would increase by approximately 408 to 2450.[13] This and other investigations have indicated that commercial bank deposit concentration is a good early indicator of instances of competitive concern in business banking services arising from bank mergers.[14] In Midland, the government's investigation indicated that concentration in business banking services to medium-sized businesses likely would be significantly greater than indicated by the HHI figures above, because substantially fewer local commercial banks could provide the necessary credit or more sophisticated cash management service required by medium-sized businesses. For example, while seven local commercial banks could provide business banking services in Midland, only five had the capability to provide these services to medium-sized businesses. TCB and New First City were two of the largest of these few banks. Based on all available information, the government concluded that the markets for business banking services to medium-sized and small businesses in Midland would be highly concentrated, and concentration would increase substantially, as a result of these acquisitions. The government estimates the post-merger HHI in the market for medium-sized business banking services in Midland (measured by total deposits of those firms offering those services) at 3328, increasing by 599.

In the Beaumont market, the government's investigation revealed that there were relatively few local banks that could meet the credit needs and provide the necessary cash management services demanded by medium-sized local businesses, banking services currently provided by New First City and TCB. Smaller local banks either did not have the capability to extend loans in the necessary amounts to individual customers, or could not expand in sufficient amounts to prevent an anticompetitive price increase by the larger banks. Hence, HHI calculations that include all commercial banks in Beaumont would understate significantly the level of concentration for medium-sized businesses that are not active participants in these markets. The government found that the markets for business banking services to medium-sized customers were highly concentrated, and the merger would increase that concentration substantially, eliminating one of a few large competitors for such medium-sized businesses. The government estimates that, absent divestiture, the post-merger HHI in the market for medium-sized business banking services (measured by total deposits of those firms offering those services) would be 3368, increasing by 1197 as a result of the proposed acquisition.[15]

However, examination of concentration alone does not exhaust the issues for analysis of competitive impact. In conducting its analysis, the government carefully reviewed evidence of potential competitive effects, such as conditions that would make coordinated or unilateral price increases likely or unlikely to occur or succeed. The evidence we have gathered, together with our growing understanding of competition in business banking services gained in these and other investigations, raised concerns that—in the absence of adequate divesture—the transactions could substantially lessen competition by creating an increased likelihood of supracompetitive pricing of business banking services by leading banks in these markets.

The government's investigation concluded that, without divestiture,

[11] As discussed below, the United States considered, in evaluating the competitive effects of the proposed acquisitions, the likelihood that incumbents would follow or undercut an anticompetitive price rise. In that analysis, the United States considered, among other things, trends in historical deposit and commercial loan volumes and shares.

[12] The HHI is a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2+30^2+20^2+20^2=900+900+400+400=2600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increases. Merger Guidelines § 1.51.

[13] Bank deposit data are available, with some delay, for each bank and thrift branch. Other data, such as loan data, are not readily obtainable on a branch-by-branch basis, although such data are obtainable for some banks in Texas on a county-by-county basis. The United States therefore examines deposit concentration, together with whatever other relevant data it can obtain, in the course of bank merger investigations. In this investigation, the United States examined deposit data and estimates of commercial loans to businesses generally and to medium-sized businesses in particular. The loan estimates, while somewhat imprecise, nonetheless were consistent with and did not contradict the inferences drawn from deposit data.

[14] The government's further investigation of markets with high deposit concentration not infrequently reveals more specific reasons for competitive concern. At the same time, some investigations prompted by high levels of deposit concentration reveal information that leads the government to conclude that, notwithstanding such concentration, adverse competitive effects are unlikely. In such instances (including some instances involving other New First City bridge banks), the Department of Justice takes no further action.

[15] The HHI for the Beaumont market, calculated on the basis of total deposits of firms now offering business banking services, would increase by 520 to 1698 if the proposed acquisition occurred and if there was no divestiture.

these transactions would serve to facilitate coordinated behavior in the provision of business banking services by the leading banks in the Beaumont and Midland markets, particularly to medium-sized businesses in both markets and to small businesses in Midland. The acquisitions would reduce the number of leading banks in Beaumont from five to four, and in Midland from four to three. There appear to be opportunities in both markets for banks to monitor the movement of customers among competitors, and possibly to monitor pricing, thereby providing competitors with the ability to detect and punish firms that do not participate in coordinated activity. The past behavior and current plans of the remaining firms in these markets generally did not lead the government to find that those firms would be likely to act to defeat an anticompetitive price rise by the market leaders. The government also concluded that entry by outside firms or expansion by firms already operating within the market would not be likely, timely or of sufficient magnitude to remedy possible anticompetitive concerns.

The United States understands that there were additional bids above liquidation value for each of Beaumont and Midland bridge banks, and some of those bids would therefore constitute less anticompetitive alternatives to selling those bridge banks to TCB. For that reason, the United States does not believe that a successful "failing company" defense could be made out on these facts.[16] The United States has previously rejected the argument that the failing company defense is automatically applicable to any assisted transaction. Competitive Impact Statement, *United States* v. *Fleet/Norstar, Inc.*, at 12–13.

For all the above reasons, the United States found that each of these markets is or would become highly concentrated as a result of these acquisitions; that the increase in concentration would be substantial; that the relevant market factors created a likelihood of anticompetitive effects; that entry and expansion were unlikely to offset the anticompetitive effects; and that failing firm defenses were inapplicable.

III. Explanation of the Proposed Final Judgments

The risk to competition posed by these acquisitions would be substantially reduced by the structural relief provided in the proposed Final Judgments in each of the relevant markets through divestiture of commercial bank offices, branches, assets and deposits.

TCB is required, by section IV of the respective proposed Final Judgments, within three months from the entry of judgment, to divest the following commercial bank offices:

1. In the Beaumont market, at least two and as many as three New First City branches, including all assets and deposits of those offices;[17] all commercial loans over $500,000, and the deposits of those loan customers. Approximately $100 million in deposits and approximately $38 million in outstanding commercial loans, together with approximately $8 million in direct consumer loans, would be divested. In addition, the purchaser will have the right to acquire New First City's main office facility (without deposits or loans, other than those specified above) and its operations and cash value facilities. TCB will be permitted to retain New First City's trust and indirect consumer loan businesses, wherever served.[18]

2. In the Midland market, New First City's main office, including all assets and deposits of that office; except that TCB will be permitted to retain New First City's trust business and, under certain circumstances, its indirect consumer loan business, wherever served.

To ensure that the divestitures are accomplished in such a way as to maintain competition, the proposed Final Judgments require that the offices be sold to firms determined by the government to be competitively suitable. The divestitures will bring about the entry of a new provider or make larger an existing, small provider of business banking services in each of these markets, thereby ensuring that competition is not substantially lessened by the acquisition.

All purchasers must demonstrate to the satisfaction of the United States that they have a good faith intention to operate the divested branches and offices as banking offices that offer business banking services to small and medium-sized businesses. The proposed Final Judgments also requires that TCB preserve the assets of the divested banking offices and businesses until purchased by a buyer. If TCB fails to sell the branches within three months of the entry date of the proposed Final Judgments, TCB shall file with the court and notify plaintiff within thirty days of the date the purchase contracts were required to be entered into by TCB. The United States can then proceed under the terms of section V of the proposed Final Judgments to appoint a trustee to accomplish the branch divestitures.

It is the intent and belief of the United States that the proposed relief will prevent a reduction of competition in the markets for banking services in Beaumont and Midland, including in particular the markets for business banking services to medium-sized businesses in both markets and for small businesses in Midland. This relief should establish or strengthen new bank competitors in these markets, which are anticipated to provide a full range of banking services to customers, small businesses and medium-sized businesses. Such full service banks with broad bases of commercial and retail business are likely to ensure that a viable competitor will replace the competition that otherwise might be lost in those markets.

The United States and TCB have stipulated that the proposed Final Judgments may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgments constitute no admission by any party as to any issue of fact or law. Under provisions of section 2(e) of the APPA, entry of the proposed Final Judgments is conditioned upon a determination by the Court that the proposed Final Judgments are in the public interest.

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[16] The failing company defense, which has been recognized since *International Shoe Co.* v. *Federal Trade Comm'n*, 280 U.S. 291, 299–303 (1930), provides a defense for mergers that are otherwise anticompetitive that involve a failing or failed firm. To establish the defense, it is necessary to show: (1) the allegedly failing firm probably would be unable to meet its financial obligations in the near future; (2) it probably would not be able to reorganize successfully . . . .; (3) it has made unsuccessful good faith efforts to elicit reasonable alternative acquisition offers of an acquisition of the failing firm that would both keep the firm in the market and pose a less severe danger to competition than the proposed merger; and (4) absent the acquisition, the assets of the failing firm would exit the relevant market.

Merger Guidelines ¶ 5.1. The burden of establishing these elements, including the burden of showing the unavailability of a less anticompetitive alternative purchaser, rests on the merging parties. *United States* v. *General Dynamics Corp.*, 415 U.S. 486, 507 (1974); *Citizen Publishing Co.* v. *United States*, 394 U.S. 131, 136–39 (1969). TCB did not contend that the failing company defense was applicable in these markets.

[17] If the purchaser of the Beaumont divestiture package persuades the Department that divestiture of two branches is sufficient to permit that purchaser to operate as a viable competitor capable of providing business banking services to the full range of small and medium-sized businesses in the Beaumont market, the Final Judgment would require the divestiture of only two branches, the Central and Spindletop branches. Otherwise, all three branches (not including the main office) would be divested.

[18] Direct consumer loans are loans originated by the bank's personnel directly to consumers. Indirect consumer loans are loans originated by others (especially by automobile dealers) and sold to the bank.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees.[19] Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgments have no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgments within which any person may submit to the United States written comments regarding the proposed Final Judgments. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and response(s) of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., room 8104, Washington, DC 20001.

The proposed Final Judgments provide that the Court retains jurisdiction over these actions, and any party may apply to the Court for any order necessary or appropriate for their modification, interpretation or enforcement.

VI. Alternatives to the Proposed Final Judgments

The United States considered the following alternatives regarding divestiture of bank branches. In the Beaumont market, the United States considered the alternative of divesting one or two branches, without the commercial loans that are to be divested under the proposed Final Judgment. In the Midland market, the United States considered the alternative of divestiture of a TCB branch, together with the grant of an option on the facility currently occupied by another TCB branch. The United States concluded in each instance that such divestitures would be unlikely to provide a sufficient entry vehicle so that a new competitor could enter the market for business banking services to medium-sized businesses, and that therefore the alternative would not be sufficient to ameliorate the likely anticompetitive effect of the acquisitions.

The United States also considered requiring TCB to divest all of the assets and deposits of the New First City bridge banks. The United States concluded that divestiture of less than all of those assets and deposits would be sufficient to provide an effective remedy to the government's concerns, and that acquisition of those assets that TCB would acquire, in light of the divestiture of other assets to competitively suitable purchasers, would not be significantly adverse to competition.

As a final alternative to the proposed Final Judgments, the United States considered litigation seeking a permanent injunction preventing TCB's acquisition of New First City. The United States rejected that alternative because the sale of the commercial bank branches will establish viable independent competitors to TCB in all the relevant markets and likely will prevent the proposed acquisition from having significant anticompetitive effects in those markets, and will avoid delaying the final resolution of those bank failures by the FDIC. The United States also recognized that such litigation would require determination of several disputed issues of law and fact, and that there could be no assurance that the position of the United States would prevail.

VII. Standard of Review Under the Tunney Act for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed final judgment "is in the public interest." In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). The courts have recognized that the term "public interest" "take[s] meaning from the purposes of the regulatory legislation." *NAACP* v *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserv[e] free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[20] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert.*

[19] The Bank Merger Act, 12 U.S.C. 1828, however, prevents the filing of an antitrust suit (other than a suit under section 2 of the Sherman Act) later than five days after the Comptroller's orders of February 8 and February 19, 1993, regarding the Midland and Beaumont acquisitions, respectively.

[20] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

denied, 454 U.S. 1083 (1981). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[21]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a merger or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[22]

VIII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgments. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

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[21] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (D.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

[22] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C.), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1982) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

March 8, 1993.

Respectfully submitted.

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Richard H. Stephens,

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Katherine McGovern (TX–13632080),

Assistant United States Attorney, Northern District of Texas, U.S. Federal Building and Courthouse, 1100 Commerce Street, Dallas, Texas 75242, (214) 767–0951.

Certificate of Service

I hereby certify that I have caused to be served a true and correct copy of the foregoing upon the following by placing same in the United States Postal Service mail, first class, postage prepaid this 8th day of March, 1993.

Mr. Charles E. Koob, Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, N.Y. 10017–3909.

Mr. John H. Marks, Jr., Liddell, Sapp, Zively, Hill & LaBoon, 1200 Texas Commerce Tower, 2200 Ross Avenue, Dallas, Texas 75201.

Katherine Savers McGovern,

Assistant United States Attorney.

[FR Doc. 93–6407 Filed 3–19–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Ahmed Gaber, M.D.; Revocation of Registration

On December 21, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ahmed Gaber, M.D., of 8 Table Lane, Hicksville, New York, 11801. The Order to Show Cause sought to revoke his DEA Certificate of Registration, BG0417623, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that on April 28, 1992, the State of New York Department of Health/State Board for Professional Medical Conduct, revoked Dr. Gaber's license to practice medicine, and as a result, he is no longer authorized by state law to handle controlled substances. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Gaber by registered mail and was returned to DEA unclaimed. DEA Investigators were advised by local law enforcement authorities that Dr. Gaber is no longer at his registered location and repeated attempts to locate him have been unsuccessful. The law enforcement authorities further informed DEA Investigators that there is no indication that Dr. Gaber will be returning in the near future. As a result, Dr. Gaber is deemed to have waived his opportunity for a hearing. The Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that, on May 24, 1991, Dr. Gaber was arrested by the Nassau County (New York) Police Department. The arrest was the result of complaints by six female patients, all under the age of sixteen, that Dr. Gaber had sexually abused them.

Following a formal hearing on the matter, the New York State Board for Professional Medical Conduct revoked Dr. Gaber's license to practice medicine in the State of New York, effective April 28, 1992. The board determined that Dr. Gaber breached his patients' trust in the physician-patient relationships and took advantage of individuals who were vulnerable in part because of their age.

The Administrator finds that as of April 28, 1992, Dr. Gaber's license to practice medicine in the State of New York has been revoked, and he is without authority to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See James H. Nickens, M.D., 57 FR 59847 (1992); Elliott Monroe, M.D., 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Gaber's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Dr. Gaber's DEA Certificate of Registration, BG0417623, be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective March 22, 1993.

Dated: March 11, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-6438 Filed 3-19-93; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 3, 1993, Ganes Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than 30 days from publication.

Dated: March 15, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-6442 Filed 3-19-93; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92-1]

Lowell O. Kirk, M.D.; Revocation of Registration

On September 4, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lowell O. Kirk, M.D. (Respondent), of 10799 Western Avenue, Stanton, California 90680, proposing to revoke his DEA Certificate of Registration, AK1051907, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest, as that term is used in 12 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held, beginning on February 25, 1992, in Long Beach, California.

On August 3, 1992, Judge Tenney issued his opinion and recommended decision, recommending that Respondent's DEA Certificate of Registration be revoked in its entirety. Neither party filed exceptions pursuant to 21 CFR 1316.66.

On September 8, 1992, Judge Tenney transmitted the record of the proceedings to the Administrator. The Administrator has carefully considered the record in its entirety and adopts the opinion and recommended decision of the administrative law judge. Pursuant to 21 CFR 1316.67, the Administrator hereby issues his final order in this matter.

The Administrator finds that in 1984, Respondent initially was warned by the California Board of Medical Quality Assurances (Board) about prescribing controlled substances to his patients without adequate medical examinations and indications. In 1985, the Board initiated an investigation of Respondent after receiving a complaint about Respondent's controlled substance prescription practices. In response to these complaints, three undercover agents went to Respondent's office posing as patients. Two of the three obtained prescriptions for controlled substances from Respondent without receiving any medical examinations and in the absence of any legitimate medical purposes. Based upon the latter investigation, Respondent submitted an affidavit acknowledging that he had been warned by the Physician Peer Counseling Panel of the Board regarding his prescribing of controlled substances without good medical indications.

Notwithstanding the action by the Board, in 1988 the California Bureau of Narcotic Enforcement (Bureau) received complaints regarding Respondent's prescribing practices. Based upon these complaints, the Bureau commenced an undercover investigation of Respondent's controlled substance prescribing practices. On September 7 and October 14, 1988, an undercover operative made visits to Respondent's office. On both occasions, Respondent prescribed the operative 100 dosage units of Valium, a Schedule IV controlled substance, even though she indicated she had no medical problems and wanted the Valium to "mellow out." During the second visit, Respondent also prescribed the operative 50 dosage units of Darvon, a Schedule IV controlled substance, even though the operative stated she was not in pain.

On November 29, 1988, a Bureau agent, posing as the undercover operative's boyfriend, went to Respondent's office and informed Respondent that he used some of his "girlfriend's" Valium to relax and requested a Valium prescription from Respondent. Although the agent never indicated that he had any medical problems, Respondent issued the undercover agent a prescription for 50 dosage units of Valium. On December 22, 1988, this same agent returned to Respondent's office seeking another prescription. After the agent indicated that he was not having any medical problems, Respondent issued him a prescription for 100 dosage units of Valium. During this visit the agent requested Darvon and Fastin on behalf of his "girlfriend." Despite the fact that she was not present and that Respondent had never obtained any information about her medical need for such drugs, he issued the requested prescriptions.

Shortly after the Bureau conducted the undercover investigation, it received information about other patients of Respondent. On April 25, 1989, a local police department responded to a call from a convalescent center based upon a report that a person was under the influence of drugs. The policeman who responded saw that this person was conscious, but incoherent. Following an investigation, the officer determined that Respondent was her physician and that he recently had prescribed her various controlled substances.

Another patient of Respondent was found dead in her residence. A metal box was discovered near her body which contained numerous controlled substances prescription vials, of which a majority were issued by Respondent. Particularly, Respondent had issued prescriptions to the deceased for Valium (diazepam) and Tylenol with codeine #3, a Schedule III controlled substance. The coroner's report concluded that this

person had died from a massive gastro-intestinal hemorrhage due to acute intoxication and the combined effects of codeine, morphine, diazepam and other drugs.

Based upon, *inter alia*, the undercover buys conducted in 1988 and the information about the two patients described above, the Bureau obtained and executed a search warrant for Respondent's office. All relevant patient files were seized and submitted to two medical physicians for their expert opinion. Both physicians filed reports which concluded that Respondent had no medical justification of issuing the controlled substance prescriptions to the two undercover agents.

The physicians also concurred in the conclusion that the controlled substance prescriptions issued by Respondent to his patient who was confronted by the police at the convalescent center, were excessive and contraindicated especially in light of the fact that Respondent's records revealed that this patient was a drug addict and had severe psychological illnesses. These experts also concluded that Respondent's prescriptions to the deceased patient were without legitimate medical purpose. One of the physicians noted that Respondent's controlled substance prescriptions could have caused and exacerbated a bleeding ulcer and that the multiple effect of such substances very likely aggravated the intestinal bleeding which resulted in a seizure, the subsequent respiratory arrest and death. This physician concluded that Respondent's prescribing contributed to the patient's death.

While the search warrant was being served, one of the investigators encountered three of Respondent's patients, all of whom exhibited signs of being under the influence of drugs. Two female patients did not have prescriptions but told the investigator they wanted Valium and Darvon. Based upon the investigator's observations, another search warrant was obtained for these patient records. The medical experts also reviewed these patient records and concluded that Respondent had prescribed controlled substances to these three patients without a legitimate medical reason. Both medical history charts for the female patients indicated that they had been past abusers of heroin and cocaine. Despite this information, Respondent continued to prescribe controlled substances to these two patients. Both experts concluded that the third patient obtained unnecessary and excessive amounts of Darvon, Valium and Halcion, a Schedule IV controlled substance, from Respondent and that there was no legitimate medical reason for these prescriptions.

On January 21, 1992, Respondent entered a plea of *nolo contendere* in the Superior Court of California in and for Orange County, to six counts of issuing prescriptions for controlled substances without a legitimate purpose. These convictions are considered misdemeanors under applicable State law.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See David E. Trawick D.D.S., Docket No. 88–69, 53 FR 5326 (1988).

The Administrator has carefully reviewed the entire record and concurs with the opinion and recommended decision of the administrative law judge that factors two, three, four and five of the public interest factors apply. Under factor two, the Administrator finds that Respondent's dispensing of controlled substances is not only poor but this conduct has continued since 1984. Moreover, Respondent was warned about his problems with prescribing controlled substances at least two times by the Board but, nevertheless, continued to prescribe controlled substances for no legitimate medical reasons to patients that he knew or should have known were drug addicts or abusers. The undercover operative and agent were able to procure specific controlled substances from Respondent virtually upon demand. Respondent's prescribing practices exacerbated his patients' medical and psychological problems and, in one case, contributed to the death of a patient.

Factor three applies based upon Respondent's *nolo contendere* plea to the State criminal charges. It is well established that a plea of *nolo contendere* is considered a conviction for the purpose of administrative proceedings under the Controlled Substances Act. *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2d Cir. 1974).

As to factor four, Respondent did not comply with applicable Federal law because he prescribed controlled substances to individuals without legitimate medical reasons. Such conduct is contrary to 21 CFR 1306.04(a). The Administrator finds that factor five also applies because Respondent was warned in 1984 and 1985 and yet continued to indiscriminately prescribe controlled substances through 1989. Despite such warnings, Respondent's abusive practices became worse, inasmuch as his prescribing practices contributed to the death of one of his patients.

Respondent argued that he was entrapped by the actions of the undercover agents. Assuming that such a defense is available in proceedings of this nature, the Administrator concurs with the administrative law judge's conclusion that Respondent could not have been entrapped because he was on notice that his conduct was unlawful based upon the warnings issued to him by the State Board in 1984 and 1985.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK1051907, previously issued to Lowell O. Kirk, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective April 21, 1993.

Dated: March 11, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–6439 Filed 3–6–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–19]

Karl Konstantin, M.D.; Revocation of Registration

On November 18, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Karl Konstantin, M.D.,

Respondent, at 2584 MacArthur Boulevard, Oakland, California proposing to revoke his DEA Certificate of Registration, AKA4771994 and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest.

Respondent requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in San Francisco, California on July 21, 1992. On October 26, 1992, Judge Tenney entered his opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that the Administrator revoke Respondent's registration. Judge Tenney further recommended that after one year favorable recognition be given to any new application submitted by the Respondent. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on November 25, 1992, the administrative law judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter.

The administrative law judge found that in January 1989, the California Department of Justice initiated an investigation of the Respondent following the receipt of a complaint from the California Board of Medical Quality Assurance. The complaint alleged that Respondent made inappropriate sexual comments and advances toward his patients in exchange for controlled substances. As a result, an undercover investigation was conducted by the California Department of Justice.

The administrative law judge found that the undercover investigation involved a total of six undercover visits and one telephone contact by three undercover operatives. Five of the seven undercover contacts were audiotaped and the administrative law judge found, based on the persuasive evidence in the record, that the Respondent prescribed controlled substances to undercover operatives for no legitimate medical purpose on all of the six undercover visits, and authorized a refill of a controlled substance for no legitimate medical purpose as a result of the telephone contact.

The administrative law judge found that, not only did the Respondent prescribe controlled substances in an irresponsible and illegal manner, but he also failed to take an initial or biennial inventory of controlled substances; failed to properly secure controlled substances, keeping them on an open shelf and having a defective lock on a storage cabinet; and failed to maintain any records of the dispensation of controlled substances. However, after reviewing all the evidence, the administrative law judge noted that the Respondent took prompt remedial measures to comply with the recordkeeping and security regulations, and found that the Respondent was now in compliance with the cited regulations.

The administrative law judge found that, on January 23, 1991, the Respondent entered a plea of *nolo contendere* in the Superior Court of the State of California, County of Alameda, to three counts of prescribing a controlled substance to a person not under treatment for pathology or a condition other than addiction to a controlled substance in violation of Section 11154(a) of the California Health and Safety Code. The Court ordered the three counts to be reduced to misdemeanors and sentenced the Respondent to three years probation, a fine, and 200 hours of volunteer work.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)(4), the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See Neveille H. Williams, D.D.S., 51 FR 17556 (1986); David E. Trawick, D.D.S., 53 FR 5326 (1988); Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989); and cases cited therein.

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f) (2), (3), (4) and (5), as referenced by 21 U.S.C. 824(a)(4). In so finding, the administrative law judge noted that the factor found in 21 U.S.C. 824(a)(2) did not serve as an independent basis for revocation of the Respondent's registration as that factor required conviction of a felony relating to controlled substances in order to serve as a separate ground for revocation. However, the Respondent's plea to three misdemeanor counts relating to controlled substances is a consideration under the public interest umbrella cited above.

Although the administrative law judge gave credence to evidence which he described as mitigating, the Administrator is in full agreement with the administrative law judge's opinion that such evidence, if it was indeed mitigating, does not serve to offset the severity of the Respondent's illegal behavior. The Respondent prescribed controlled substances to undercover operatives with no legitimate medical purpose. The Respondent also falsified the medical records of three undercover operators. The Respondent disregarded the responsibility which he owes to his patients and to the public, and the fact that the Respondent is an older physician with a difficult patient community does nothing to diminish the seriousness of the Respondent's behavior. It is evident that the Respondent's DEA Certificate of Registration should be revoked.

The administrative law judge recommended that the Administrator revoke the Respondent's DEA registration and further recommended that after one year, the Administrator give favorable recognition to any new application by the Respondent. The Administrator adopts the opinion and recommended ruling, findings of fact, and decision of the administrative law judge with one modification. The Administrator will give such favorable consideration to any new application filed by the Respondent after a period of five years.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AK4771994, previously issued to Karl Konstantin, M.D., be, and it hereby is, revoked. The Administrator further orders that all pending application for the renewal of

such registration, be, and they hereby are, denied. This order is effective April 21, 1993.

Dated: March 11, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-6440 Filed 3-19-93; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92-25]

Rodrigo I. Ramirez, M.D.; Denial of Application

On December 26, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Rodrigo I. Ramirez, M.D., (Respondent), proposing to deny his application for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause was issued alleging that Respondent's registration would be inconsistent with the public interest.

By letter filed January 24, 1992, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held before Judge Tenney in Tulsa, Oklahoma on June 9, 1992. On August 21, 1992, the administrative law judge issued his findings of fact, conclusions of law and recommended ruling. No exceptions to the recommendation of the administrative law judge were filed. On September 25, 1992, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby adopts the findings, conclusions and recommendations of the administrative law judge and issues his final order in this matter.

The administrative law judge found, first, that the Respondent's previous DEA Certificate of Registration, AR1492266, was revoked by final order of the Administrator on February 7, 1990, holding that the Respondent's continued registration was inconsistent with the public interest. The administrative law judge further found that the Respondent, in his capacity as a physician with Eastern State Hospital, continued to use his revoked DEA registration, issuing or authorizing over twenty controlled substance prescriptions after the revocation was effective. The administrative law judge found, most significantly, that the Respondent had failed to notify his employers at Eastern State Hospital of the revocation of his DEA registration and had, in fact, led them to believe that he was properly authorized to handle controlled substances.

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See David E. Trawick, D.D.S., Docket No. 88-69, 53 FR 5326 (1988).

The administrative law judge found that the Government made a prima facie showing of the factors found in 21 U.S.C. 823(f)(2), (4) and (5). In so finding, the administrative law judge specified that the Respondent had ignored the revocation of his DEA Certificate of Registration, acting as if he remained authorized to handle controlled substances. The Respondent asserted that he was authorized to handle controlled substances under Eastern State Hospital's DEA Certificate of Registration; however, the testimony at the hearing clearly indicated that the hospital, not knowing of the Respondent's revoked Certificate of Registration, had never given the Respondent its permission to act under the authority of the hospital's DEA Certificate of Registration.

As is indicated in the findings of the administrative law judge, the most significant threat posed to the public health and safety by the Respondent is his blatant disregard for the revocation of his DEA Certificate of Registration and his misleading of his employers at Eastern State Hospital in an attempt to continue to handle controlled substances. Such behavior by the Respondent indicates an unwillingness to accept responsibility for his actions and an unwillingness to be honest with his employers. Both types of behavior place any patients treated by the Respondent in danger to the degree that their care relies on the Respondent's handling of controlled substances. The evidence in the record herein clearly demonstrates that the Respondent's application for registration with DEA must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the Respondent's application for registration with DEA be, and it hereby is, denied. This order is effective March 22, 1993.

Dated: March 11, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-6441 Field 3-19-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-28,274]

AT&T Technologies, Westminster, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 1, 1993 in response to a worker petition which was filed on January 18, 1993 on behalf of workers at AT&T Technologies, Westminster, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 11th day of March, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-6511 Filed 3-19-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,201]

Douglas Aircraft Company, Long Beach, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 19, 1993 in response to a worker petition which was filed on December 23, 1992 on behalf of

workers at Douglas Aircraft Company, Long Beach, California.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–27,872). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 11 day of March, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–6505 Filed 3–19–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,385]

Henson Kickernick a/k/a Ball Company, Greenville, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 27, 1992, applicable to the workers at the subject firm. The certification notice was published in the **Federal Register** on August 18, 1992 (57 FR 37172).

At the request of the Texas State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Henson Kickernick is part of the Bali Division of Sara Lee Company. The findings also show that the claimants' wages for Henson Kickernick are being reported under the Bali Company.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–27,385 is hereby issued as follows:

"All workers of Henson Kickernick a/k/a Bali Company Greenville, Texas who became totally or partially separated from employment on or after May 11, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 10th day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–6512 Filed 3–19–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition	Articles produced
Standard Tool & Mfg Co. (Wkrs)	Lyndhurst, NJ	03/08/93	02/22/93	28,416	Tool Making Machines.
Monsanto Chemical Co. (ICW)	Everett, MA	03/08/93	02/25/93	28,417	Chemicals.
ASARCO, Inc. Troy Unit (Wkrs)	Troy, MT	03/08/93	02/18/93	28,418	Silver.
Norton Drilling Co. (Wkrs)	Lubbock, TX	03/08/93	12/02/93	28,419	Oil and Gas Drilling.
Texas Instruments (Wkrs)	Midland, TX	03/08/93	02/26/93	28,420	Integrated Circuits.
Precision Castparts Corp. (Wkrs)	Portland, OR	03/08/93	02/23/93	28,421	Super Alloy & Stainless Steel Castings.
Union Metal Corp. (Wkrs)	Muskogee, OK	03/08/93	02/18/93	28,422	Lighting Metal Poles.
Princeton Packaging, Inc. (Wkrs)	Bloomington, IN	03/08/93	02/24/93	28,423	Plastic Bags for Bakery Products.
P.B.P. Fabrication, Inc. (Wkrs)	Odessa, TX	03/08/93	02/26/93	28,424	Pressure Vessels.
Pennshire Stores, Plant #2 (ACTWU).	Portage, PA	03/08/93	02/09/93	28,425	Men's Coats, Raincoats.
Naccon, Inc. (UIU)	Pennsauken, NJ	03/08/93	02/03/93	28,426	Cardboard Drums.
Kingston-Warren Corp. (Wkrs)	Wytheville, VA	03/08/93	02/10/93	28,427	Window Run Channel for GM Autos.
International Gear Corp. (UAW)	Euclid, OH	03/08/93	02/23/93	28,428	Helicopter Transmissions.
Gateway Safety Systems Co. (IBT)	Michigan City, IN	03/08/93	012/11/92	28,429	Seat Belts.
Exxon Co., USA (Wkrs)	St. Elmo, IL	03/08/93	02/23/93	28,430	Crude Oil.
Baker-Hughes Tubular Services (Wkrs).	Odessa, TX	03/08/93	02/23/93	28,431	Tubular Goods.
Westinghouse Electric Corp. (Wkrs)	Madison, PA	03/08/93	02/25/93	28,432	Nuclear Reactors.
R & S Pants Co. (ILGWU)	Wilkes Barre, PA	03/08/93	02/19/93	28,433	Men's and Ladies' Slacks.
Cliftex Co. (ACTWU)	Falls River, MA	03/08/93	02/19/93	28,434	Men's Suits & Coats.
UNOCAL Molycorp (USWA)	York, PA	03/08/93	02/14/93	28,435	Chemicals.
TA Corporation (ILGWU)	Newark, NJ	03/08/93	02/16/93	28,435	Rainwear.
C & M Sportswear (ILGWU)	Newark, NJ	03/08/93	02/22/93	28,437	Ladies' Sportswear.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition	Articles produced
Portland General Electric Co. (Cc) ..	Portland, OR	03/08/93	02/23/93	28,438	Electric Power.
Enron Corp/Enron Liquids Fuels (Wkrs).	Houston, TX	03/08/93	02/25/93	28,439	Oil and Gas.
Energy Gathering, Inc. (Wkrs)	Corpus Christi, TX.	03/08/93	02/15/93	28,440	Gas Transmission.

[FR Doc. 93-6504 Filed 3-19-93; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February & March 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,884; Teledyne Vasco Colonial Plant, Monaca, PA

TA-W-27,862; Tektronix, Inc., Circuit Board Div., Forest Grove, PA

TA-W-28,078; Beaver Dam Products, Beaver Dam, WI

TA-W-28,105; Fujitsu America, Inc., Hillsboro, OR

TA-W-28,027; Rosaria's Sportswear, Inc., Passaic, NJ

TA-W-28,010; Paxar American Silk Label Group, Troy, PA

TA-W-28,220; M.C.M. Coats, Inc., Hoboken, NJ

TA-W-28,096; Pratt & Whitney, North Berwick, ME

TA-W-28,020; Econo-Cut, Paterson, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,115; The Bargman Co., Coldwater, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,175; Sandoz Chemicals Corp., Fair Lawn, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,014; CAS Refining, Inc., Lafayette, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,153; Coltec Industries, Inc., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,178; Northwest Airlines, Inc., St. Paul, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,023; Greensleeves, Inc., Passaic, NJ

Sales & production at the subject firm increased during the relevant periods

TA-W-28,077; Kezar Falls Woolen Co., Kezar Falls, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,148; Data Switch Corp., T-Bar Div., Milford, CT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,329; Optek Technology, Inc., El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,123; KLA Instrument, Inc., Klasic Div., San Jose, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,137; Coca-Cola Bottling Co of NY, Paterson, NJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA-W-28,113; Air City Models & Tools, Inc., Dayton, OH

The investigtion revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,215; Verona Fashions, Inc., Hoboken, NJ

The investigtion revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,155; Ramco Oil & Gas, Inc., Tulsa, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,316; Callaway Safety Equipment Co., Inc., Levelland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,169 General Instrument Corp., Power Semiconductor Div., Hicksville, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,100; Huls America, Inc., Piscataway & Elizabeth, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the

workers did not become totally or partially separated as required for certification.

TA–W–28,120; Accessories Unlimited of Maine, Cornish, ME

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA–W–28,176; Revlon, Inc., Edison, NJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA–W–27,951; USS/Kobe Steel Co., Lorain, OH

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA–W–28,041; Grays Harbor Paper Co., Hoquiam, WA

U.S. imports of paper and paperboard mills declined in 1991 compared with 1990 and declined further in January to September 1992 compared with this same period of 1991.

TA–W–28,040; ITT Rayonier, Inc., Grays Harbor Pulp & Lignin Products Div., Hoquiam, WA

U.S. imports of paper and paperboard mills declined in 1991 compared with 1990 and declined further in January to September 1992 compared with the same period of 1991.

TA–W–28,106; Dowty Aerospace Yakima, Yakima, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–27,794; Manchester Steel, Inc., Cleveland, OH

U.S. imports of carbon steel sheet (hot & cold rolled) declined absolutely and relative to domestic shipments in 1991 compared to 1990 and in the twelve month period of Apr-Mar 1991–1992 compared to the same period of Apr-Mar 1991–1992 compared to the same period of Apr-Mar 1990–1991.

Affirmative Determinations

TA–W–27,865, TA–W–27–866, TA–W–27–866A; Emerson Quiet Kool Corp., Woodbridge, NJ, Dover, NJ and Edison, NJ

A certification was issued covering all workers separated on or after September 18, 1991.

TA–W–28,087; Atron, Inc., Saranac, MI

A certification was issued covering all workers separated on or after November 20, 1991.

TA–W–28,039; GCA Corp., Andover, MA

A certification was issued covering all workers separated on or after November 5, 1991.

TA–W–28,068; Q–T Foundation Co., Inc., Bergenfield, NJ

A certification was issued covering all workers separated on or after November 11, 1991.

TA–W–28,159, TA–W–28,160; Coalinga Corp., Lafayette, LA and Los Angeles, CA

A certification was issued covering all workers separated on or after December 17, 1991.

TA–W–28,223; The William Carter Co., Senatobia, MS

A certification was issued covering all workers separated on or after December 2, 1991.

TA–W–28,103; Catalina, Murray, UT

A certification was issued covering all workers separated on or after November 21, 1991.

TA–W–28,058; Classic Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after November 10, 1991.

TA–W–27,992; Airco Distributor Gases, Acton, MA

A certification was issued covering all workers separated on or after November 5, 1991.

TA–W–27,875; Skynasaur, Inc., Louisville, CO

A certification was issued covering all workers separated on or after September 21, 1991.

TA–W–28,126; General Electric Co., Ohio Lamp, Warren, OH

A certification was issued covering all workers separated on or after November 9, 1991.

TA–W–28,162; Joan and Jay, Lynchburg, VA

A certification was issued covering all workers separated on or after December 18, 1991.

TA–W–28,284; GLG Energy L.P., Austin, TX

A certification was issued covering all workers separated on or after January 21, 1991.

TA–W–28,072; Gorham, Inc., Smithfield, RI

A certification was issued covering all workers separated on or after October 20, 1991.

TA–W–28,086; Ortech Co., Kirksville, MO

A certification was issued covering all workers engaged in the production of automotive components separated on or after October 29, 1991.

TA–W–28,029; Super Craft Coats, Inc., Garfield, NJ

A certification was issued covering all workers separated on or after November 23, 1991.

TA–W–28,164; Westfield Manufacturing Corp, Div. of HMC Acquisitions Corp., Westfield, PA

A certification was issued covering all workers engaged in the product of ladies' undergarments separated on or after December 18, 1991.

TA–W–28,127; EG & G Vactec, Inc., St Louis, MO

A certification was issued covering all workers separated on or after December 28, 1991.

TA–W–28,064; Professional Geophysics, Inc., Houston, TX

A certification was issued covering all workers engaged in the production of exploration and drilling separated on or after November 2, 1991 and before December 31, 1992.

TA–W–28,053; Leica, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after November 5, 1991.

TA–W–27,999; Medford Corp., Medford, OR

A certification was issued covering all workers separated on or after November 5, 1991.

TA–W–28,009; GM Coat Co., Paterson, NJ

A certification was issued covering all workers engaged in the production of ladies' coats separated on or after October 29, 1991.

TA–W–27,936, TA–W–27,936A; Eastman Teleco, Williston, ND and Bakersfield, CA

A certification was issued covering all workers engaged in the production and exploration and drilling separated on or after October 5, 1991.

TA–W–28,108; Homco International, Inc., Bellaire, TX and Operating at Various Locations in the Following States: A; AL, B; AK, C; CA, D; KS, E; LA, F; MI, G; MS, H; NM, I; TX

A certification was issued covering all workers engaged in exploration and drilling separated on or after November 30, 1991.

TA–W–27,922; Atlas, Inc., Fostoria, OH

A certification was issued covering all workers engaged in the production of engine components separated on or after October 19, 1991.

TA–W–27,979; Airpax, Inc., Philips Technology, Cambridge, MD

A certification was issued covering all workers engaged in the production of circuit breakers separated on or after January 22, 1993.

I hereby certify that the aforementioned determinations were issued during the month of February and March 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 15, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–6501 Filed 3–19–93; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Notice of Establishment of Native American Employment & Training Council

In accordance with the provisions of the Federal Advisory Committee Act and the Job Training Reform Amendments of 1992, the Secretary of Labor has established the Native American Employment & Training Council.

The Council will provide advice to the Department of Labor regarding the overall operation and administration of Native American programs authorized under title IV, section 401 of the Job Training Partnership Act, as amended, as well as the implementation of other programs providing services to Native American youth and adults under this Act. The Council shall prepare and submit directly to the Secretary and to the Congress, not later than January 1 of each even numbered year, a report containing information on the progress of Native American job training programs and recommendations for improving their administration and effectiveness.

As the Amendments direct, the Council will consist of 17 Indians, Alaskan Natives and Hawaiian Natives appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Alaskan Native, or Hawaiian Native organizations. The membership of the Council shall represent all geographic areas of the United States with a substantial Indian, Alaskan Native or Hawaiian Native population and shall include representatives to tribal governments and of nonreservation Native American organizations who are service providers under this Act. The members shall not be compensated and shall not be deemed to be employees of the United States.

The Council will function solely as an advisory body, not a policy formulating or decision making body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter has been filed under the Act concurrently with this publication.

Interested persons are invited to submit comments regarding the establishment of the Native American Employment and Training Council. Such comments should be addressed to: Paul A. Mayrand, Director, Office of Special Targeted Programs, U.S. Department of Labor, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210 Telephone: (202) 219–8500 (this is not a toll free number).

Signed at Washington, DC this 16th day of March, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–6503 Filed 3–19–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–023]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: April 14, 1993, 9 a.m. to 4 p.m.

ADDRESSES: NASA, Lewis Research Center, Administrative Building 3, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, room 9J70, 300 E Street SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overall Vision for the Committee
—Emerging Issues for Small Disadvantaged Business and NASA Priorities for 1993
—Reports from Committee Working Groups
—Invitation for Suggestions by Individuals in Attendance

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 16, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–6476 Filed 3–19–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before April 21, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements Each entry is issued by NEH and contains the following information:

(1) The title of the form;
(2) the agency form number, if applicable;
(3) how often the form must be filled out;
(4) who will be required or asked to report;
(5) what the form will be used for;
(6) an estimate of the number of responses;
(7) the frequency of response;
(8) an estimate of the total number of hours needed to fill out the form;
(9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Reviewer Evaluation Sheet.
Form Number: Not Applicable.
Frequency of Collection: 1–4 instances annually per respondent.
Respondents: Specialists in the fields of the humanities or areas related to applications received by the Division of Research Programs.
Use: To record specialist reviewers' evaluations of applications for funding.
Estimated Number of Respondents: 3,500 per year.
Frequency of Response: Approximately 1.1 response per respondent per year. The majority of respondents receive only one application to review per year; however, a single reviewer could receive up to 4 applications in a year.
Estimated Hours for Respondents to Provide Information: 23,100 hours annually; 6 hours per respondent.
Estimated Total Annual Reporting and Recordkeeping Burden: 23,100 hours.

Thomas S. Kingston,
Assistant Chairman for Operations.
[FR Doc. 93–6443 Filed 3–19–93; 8:45 am]
BILLING CODE 7536–01–M

Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships/Services to Composers Section) to the National Council on the Arts will be held on April 5–7, 1993 from 9 a.m.–5:30 p.m. and April 8 from 9 a.m.–4 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 8 from 3 p.m.–4 p.m. for policy discussion and guidelines review.

The remaining portions of this meeting on April 5–7 from 9 a.m.–5:30 p.m. and April 8 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 16, 1993.

Yvonne M. Sabine,
Director, Panel Operations, National Endowment for the Arts.
[FR Doc. 93–6478 Filed 3–19–93; 8:45 am]
BILLING CODE 7537–01–M

Meeting; Presenting and Commissioning Advisory Panel

Pursuant to section 109a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Commissioning Overview Section) will be held on April 7, 1993 from 9 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include opening remarks, overview of commissioning categories, issues facing the field, and guidelines review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 16, 1993.

Yvonne M. Sabine,
Director, Panel Operations, National Endowment for the Arts.
[FR Doc. 93–6479 Filed 3–19–93; 8:45 am]
BILLING CODE 7537–01–M

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS

Public Hearing of the President's Commission on Model State Drug Laws

AGENCY: Executive Office of the President.
ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a public hearing of The President's Commission on Model State Drug Laws. The hearing is open to the public.

DATES: The hearing is scheduled for March 10, 1993 from 10 a.m. until 5 p.m., e.s.t. The hearing will be held in Philadelphia, PA. An additional Commission hearing is scheduled for March 31 in Washington, DC.

ADDRESSES: The March 10 hearing will be held in the Mayor's Conference Room, Philadelphia City Hall, Broad and Market Streets, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Gary Tennis, The President's Commission on Model State Drug Laws, 800 Connecticut Avenue, NW., suite 210, Washington, DC 20006, (202) 467–9640.

SUPPLEMENTARY INFORMATION: As mandated by the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), the President appointed the 24-member President's Commission on Model State Drug Laws in November 1992. The mission of the bipartisan commission is to develop

comprehensive model state laws to significantly reduce, with the goal to eliminate, illicit drug use in America through effective use and coordination of prevention, education, treatment, enforcement, and corrections. The Commission is currently reviewing model legislation developed to address the spectrum of drug issues at the state and local level.

It is holding a series of public hearings around the country, focusing on the following issues: Economic remedies against drug traffickers (January 6); community mobilization and coordinated state drug-planning mechanisms (January 27); crimes code enforcement as a weapon against drug offenders (February 16); drug and alcohol treatment (March 10), and; drug-free workplaces, schools, and families (March 31).

Based on testimony and information gathered during the public hearing process, the Commission will develop a body of recommended state legislation. The Commission will submit a final report, including the recommended legislation, by the end of May 1993. This report will be sent to the governors of all fifty states and disseminated widely through professional conferences and organizations in the prevention, education, treatment, law enforcement, and corrections fields.

The Commission is vice-chaired by Indianapolis Mayor Stephen Goldsmith. Its Commissioners, half Democrats and half Republicans, are: Kent B. Amos, Ramona L. Barnes, Ralph R. Brown, Ronald D. Castille, Kay B. Cobb, Shirley D. Coletti, Sylvester Daughtry, David A. Dean, Stephen Goldsmith, Daniel S. Heit, Judge Rose Hom, Richard P. Ieyoub, Keith M. Kaneshiro, Vincent Lane, Daniel E. Lungren, Robert H. Macy, N. Hector McGeachy, Jr., Edwin L. Miller, Jr., Michael Moore, John D. O'Hair, Jack M. O'Malley, Ruben B. Ortega, and Robert T. Thompson, Jr.

The public hearing in Philadelphia on March 10 will focus on drug and alcohol treatment. It will specifically address the issues of cost-offset, treatment in the criminal justice system, treatment in the juvenile justice system, state insurance and managed care, and treatment for women and children. Those wishing to submit written testimony to the Commission should contact Gary Tennis by March 5, 1993. For his name, address, and telephone number, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. All oral testimony slots at the hearing have been filled. The hearing is open to the public but attendance is limited to the space available on a first-come basis.

Garold Tennis,

Executive Director, The President's Commission on Model State Drug Laws.

[FR Doc. 93-6496 Filed 3-19-93; 8:45 am]

BILLING CODE 3180-02-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32001; File No. SR-GSCC-92-17]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Proposed Rule Change Regarding the Current Clearing Fund Formula

March 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT"),[1] notice is hereby given that on December 18, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to use its current clearing fund formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] This proposal initially was filed on January 25, 1992 as File No. SR-GSCC-92-3. The Commission approved continued use of the clearing fund formula for sixty days to allow the Commission to consider this proposal in the context of related proposals now awaiting Commission approval. Securities Exchange Act Release No. 30661 (April 30, 1992), 57 FR 19654. The Commission subsequently approved continued use of the clearing fund formula for an additional period ending March 31, 1993. Securities Exchange Act Release No. 31385 (October 30, 1992), 57 FR 52811.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 12, 1990, the Commission approved, on a temporary basis until April 30, 1992, a proposed rule change (SR-GSCC-89-13) that revised GSCC's clearing fund formula in various respects, including allowing offsets to required margin amounts. By this filing, GSCC requests that such authority be made permanent or, in the alternative, that the Commission further extend, temporarily, GSCC's authority to maintain its current clearing fund formula.[3]

In its April 12, 1990, approval order ("Approval Order"), the Commission noted that, "in light of its significance to GSCC and its membership, the proposed revisions to GSCC's clearing fund formula should be carefully monitored before they become a permanent feature" of GSCC's Rules and Procedures.[4] The essence of the Commission's concerns expressed in the Approval Order involved the adequacy of the following: (1) GSCC's analysis of price volatility; (2) GSCC's measures of correlation; and (3) the liquidity the clearing fund provides to GSCC during periods of high volatility. Each concern is discussed below.

1. Analysis of Price Volatility

The Commission stated in the Approval Order that GSCC should "continue to consider ways to refine its analysis of price volatility, including procedures to consider the effects of

[3] A participant's required clearing fund deposit is the sum of two components: Funds-only settlement obligations and securities net settlement obligations. The funds-only settlement obligations component is determined by calculating for a particular business day the net total of the following: (1) trade adjustment for settling positions; (2) any marks-to-the-market owed for failed positions; (3) adjustments for coupon and redemption payments; (4) the amount reported to a member during the previous business day's processing cycle as its funds-only settlement amount obligations ("opening balance"); (5) the aggregate settlement amount that a member has either received from or paid to GSCC since the end of the processing cycle during which the funds-only settlement amount is being calculated ("collection/paid amount"); (6) the total required forward mark allocation payment; and (7) the total forward mark allocation payment; and (7) the total forward mark allocation return amount. The securities net settlement obligations component is the greater of either the average offset margin amount for the last twenty business days or 50% of the gross margin amount. The gross margin amount is the product of the appropriate margin factor and the total dollar value of the member's set settlement position that day. Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[4] Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

dramatic price movements."[5] Since the Commission issued the Approval Order, GSCC has compiled nearly two-years' worth of its own price volatility data. This data base is now sufficient for use in assessing and monitoring the adequacy of its margin factors.

GSCC continues to ensure the sufficiency of its margining process by using conservative margin factor criteria. In this regard, the information currently considered on a quarterly basis by the Membership and Standards Committee in reviewing the sufficiency of GSCC's margin factors includes: (1) Historical daily price volatility data prepared by Carol McEntee & McGinley Inc. which looks at the current leading issue in each category and uses the mean plus two standard deviations and (2) short-term (currently, the past 90 days) and long-term (currently, the past year) GSCC data covering mean plus two standard deviations and, separately, 99 percent of all price movements. GSCC's internal and third-party price volatility data indicates that its margin factors are prudent and conservative, including on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

Recently, private sector initiatives in the government securities marketplace have arisen, such as the establishment of GOVPX, Inc., that have made significant steps toward disseminating the type of government securities price information that would benefit GSCC. In view of this development, GSCC continues to evaluate the types of third-party price volatility information that are available and the utility of such information. GSCC continues to believe, however, that its own data base would be the most accurate and meaningful source of price volatility data on government securities if GSCC could recieve trade data from its members on a time-stamped basis.

2. Measures of Correlation

GSCC believes its disallowance percentage schedule is a conservative one. Currently, GSCC uses neither internal price data nor third-party data to monitor the accuracy of its disallowance percentage schedule.[6] After evaluating available third-party price volatility information, however, GSCC will be able to determine whether and how to use either its internal price data base or a third-party data source to monitor its disallowance percentage schedule.

3. Ensuring GSCC's Liquidity Needs

In the Approval Order, the Commission indicated the need for GSCC "to ensure that the clearing fund has sufficient liquidity, during periods of high volatility, to protect it from contingencies stemming from participants' daily net settlement obligations."[7]

GSCC's margining process helps ensure that GSCC has sufficient liquidity to meet its settlement guarantees, even during periods of high volatility. Perhaps the area of greatest potential concern in this regard is forward trades, which present the largest exposure to GSCC. GSCC believes the margining process for forward net settlement positions, on which clearing fund deposits are taken and which are subject to a separate margin pool (the forward mark allocation payment process), is conservative and prudent, particularly in light of GSCC's recent rule filing (SR–GSCC–91–04) that makes various changes to GSCC's margin and funds collection processes.[8]

Considering GSCC's positive experience to date with the revised clearing fund formula, the conservative nature of its margining process, the extent to which that process has been strengthened to ensure GSCC's liquidity posture, and its ability now to use internal price volatility data to assess the adequacy of margin factors and correlations, GSCC believes its clearing fund formula is appropriate and should receive permanent approval.

GSCC believes the proposed rule change will help further its ability to ensure orderly settlement in the government securities marketplace. Thus, GSCC believes the proposal is consistent with the requirements of the Act and, in particular, section 17A because it will promote prompt clearance and settlement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Comments on the proposed rule change have neither been solicited nor received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–17 and should be submitted by April 12, 1993.

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[5] *Id.*

[6] GSCC uses the Treasury Department's liquid capital schedule to monitor the accuracy of its disallowance percentage schedule. Telephone conversation between Jeffrey F. Ingber, Associate General Counsel, GSCC, and Richard C. Strasser, Attorney, Division of Market Regulation, Commission (March 15, 1993).

[7] *Id.*

[8] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942. The proposed rule change would allow GSCC to treat forward net settlement positions for clearing fund calculation purposes essentially as it does next-day settling and fail net settlement obligations.

In addition to clearing fund deposits of a separate "forward mark allocation" margin amount on forward net settlement positions, the proposed rule change would allow GSCC to raise the cap on this daily margin amount from 75 percent to 100 percent. Under most circumstances, this change would allow GSCC to collect the entire amount of the top five daily member debits in each CUSIP.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 93-6448 Filed 3-19-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32003 ; File No. SR-ICC-92-01]

Self-Regulatory Organizations; The Intermarket Clearing Corp.; Order Approving on a Temporary Basis a Proposed Rule Change Relating to Revisions to Standards for Letters of Credit

March 16, 1993.

On February 4, 1992, The Intermarket Clearing Corporation ("ICC") filed a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] modifying ICC's standards for letters of credit deposited as a form of margin. On March 19, 1992, the Commission published notice of the proposal in the **Federal Register** to solicit comments from interested parties.[2] On March 1, 1993, ICC filed an amendment to the proposal.[3] No comments have been received. This order approves the proposed rule change on a temporary basis through December 31, 1993.

I. Description

ICC proposes to amend in a number of respects its rules governing the standards for letters of credit deposited as margin by Clearing Members. First, ICC intends to require that letters of credit state expressly that payment must be made prior to the close of business on the third banking day following demand.

Second, ICC proposes to amend its rules to eliminate the issuer's right to revoke the letter of credit. Third, unless otherwise permitted by ICC, ICC's proposal requires letters of credit to expire on a quarterly basis rather than annually. Fourth, ICC proposes to add language to its rules to make explicit ICC's authority to draw upon a letter of credit at any time, whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default, if ICC determines that such a draw is advisable to protect ICC, other Clearing Members, or the general public.

Finally, ICC proposes to amend its rules to grant its Chairman limited discretion to accept a letter of credit that varies from the standards set forth in its rules. This discretionary power will be limited by the following factors: (1) Before using this power, the Chairman must consult with the staffs of ICC's regulatory agencies, which include the Commission and the Commodity Futures Trading Commission ("CFTC"), (2) this power can be used only in unusual circumstances and only on a temporary basis, (3) after exercising such power, the Chairman must advise ICC's Board of Directors, and (4) ICC must promptly notify Clearing Members affected by the exercise of this power.[4]

II. Discussion

The Commission believes that ICC's proposed rule change is consistent with section 17A of the Act and specifically with section 17A(b)(3)(F) of the Act.[5] That section requires that a clearing agency's rules be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. As discussed below, the Commission believes ICC's proposed rule change modifying its standards for letters of credit deposited as margin meets that requirement.

ICC's rules currently provide that the issuer of a letter of credit must pay ICC immediately upon demand.[6] However, under the Uniform Commercial Code as enacted in most states, the issuer of a letter of credit, except as otherwise agreed, may defer honor of a letter of credit until the close of the third banking day after demand for payment is made.[7] The Uniform Customs and Practice for Documentary Credits ("Uniform Customs") provides that, unless otherwise expressly agreed, a "bank shall have a reasonable time" in which to determine whether the drawing documents are in order.[8] The Commission believes that ICC's proposed standards would help prevent ambiguity as to the latest time for payment by requiring letters of credit to state expressly that payment must be made prior to the close of business on the third banking day following demand. By this requirement, ICC ensures that the letters of credit comply with applicable law and adds certainty as to the deadline for payment by the issuer.

ICC's rules also currently permit the issuer of a letter of credit to revoke the letter of credit upon two business days written notice.[9] ICC has represented to the Commission that the issuer of a letter of credit is more likely to exercise its revocation rights at a time when the Clearing Member for whom such letter of credit is issued is experiencing financial difficulty or during periods of market volatility. Therefore, ICC's proposal to eliminate the issuer's right to revoke the letter of credit would provide ICC more flexibility in helping financially troubled Clearing Members to resolve their financial difficulties.[10]

ICC's rules currently provide that letters of credit shall expire on an annual basis.[11] However, the financial condition of a Clearing Member may change significantly within a shorter period of time. Thus, ICC believes it would be preferable to structure ICC's letter of credit program in a manner that permits an issuer to make more frequent credit judgments about the Clearing Member for whom it issues a letter of credit. Because letters of credit will have to be reissued every three months unless otherwise permitted by ICC, the financial conditions of Clearing Members electing to deposit letters of credit can be assessed more frequently and adverse developments possibly discovered sooner.

ICC also proposes to amend its rules to allow its Chairman limited discretionary power to accept on a temporary basis a letter of credit that varies from the standards stated in its rules.[12] While this authority imposes adequate limitations on ICC's ability to accept letters of credit deposited as margin, it should also provide ICC with the flexibility it might need in implementing the new standards and in emergency situations in the future.

Finally, ICC proposes to add language to its rules to make explicit ICC's authority to draw upon a letter of credit at any time ICC determines that such draw is advisable to protect ICC, its Clearing Members, or the general public. The new language makes clear ICC's authority to make such a draw whether

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[9] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30470 (March 12, 1992), 57 FR 9581.

[3] Letter from James C. Yong, Vice President, ICC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (March 1, 1993) ("Amending Letter"). A discussion of the amendment is set forth in note 4 and accompanying text.

[4] Factors (1) and (2) are set forth in ICC Rule 502(a)(3). Factors (1), (2), (3), and (4) are set forth in the Amending Letter.

[5] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[6] ICC Rule 502(a)(3).

[7] E.g., 26 Ill. Rev. Stat. § 5-112 (1990).

[8] Uniform Customs and Practice for Documentary Credit, Article 16(c), International Chamber of Commerce Publication 400 (1983 Revision).

[9] ICC Rule 502(a)(3).

[10] Although ICC's proposal would require a letter of credit deposited on behalf of a Clearing Member to be irrevocable, ICC may, of course, consent to the withdrawal of such letter of credit by a Clearing Member if such Clearing Member deposits other forms of margin with ICC or the letter of credit is otherwise no longer needed to satisfy the Clearing Member's margin requirement.

[11] ICC Rule 502(a)(3).

[12] ICC Rule 502(a)(3) and Amending Letter.

or not the Clearing Member that deposited the letter of credit has been suspended or is in default with respect to any obligation to ICC. If such a draw is made without ICC suspending the depositing Clearing Member, any funds so drawn will be treated as cash margin. This authority would permit ICC to increase the liquidity of its margin deposits by substituting cash collateral for a Clearing Member's letter of credit and to eliminate its bank credit risk. ICC has represented to the Commission that it anticipates that this authority will be used very rarely.[13]

Thus, the proposed rule change conforms to section 17A(b)(3)(F) of the Act[14] by promoting the safeguarding of securities and funds which are in the custody or control of ICC. In order to allow the Commission, ICC, and other interested parties the opportunity prior to permanent Commission approval to assess any effects these revised standards have on letter of credit issuance and margin deposits at ICC, the Commission believes that the proposed modifications should be temporarily approved through December 31, 1993.[15]

III. Conclusion

On the basis of the foregoing, the Commission finds that ICC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

It is therefore ordered, Under section 19(b)(2) of the Act, that the proposal (File No. SR–ICC–92–01) be, and hereby is, approved on a temporary basis through December 31, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6521 Filed 3–19–93; 8:45 am]

BILLING CODE 8010–01–M

[13] Proposed Rule File No. SR–ICC–92–01.

[14] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[15] A closely related matter the Commission and ICC are currently studying involves concentration limits on letters of credit deposited as margin. The Division believes that clearing agencies that accept letters of credit as margin deposits or clearing fund contributions should limit their exposure by imposing concentration limits on the use of letters of credit. Generally, clearing agencies impose limitations on the percentage of an individual member's required deposit or contribution that may be satisfied with letters of credit, limitations on the percentage of the total required deposits or contributions that may be satisfied with letters of credit by any one issuer, or some combination of both. ICC has no concentration limits on the use of letters of credit issued by U.S. institutions.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

BioSafety Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–10331)
Blackrock Investment Quality Municipal Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10332)
Galen Healthcare, Inc.
Common Stock, $.01 Par Value (File No. 7–10333)
Dean Witter Discover & Co.
Common Stock, $0.01 Par Value (File No. 7–10334)
Piccadilly Cafeterias, Inc.
Common Stock, No Par Value (File No. 7–10335)
Chase Manhattan Corporation
$3.40 PC Cum Pfd Stock, No Par Value (File No. 7–10336)
Payless Cashways
Common Stock, $.01 Par Value (File No. 7–10337)
SunAmerica, Inc.
Depositary Shares Mandatory Conversion Premium Dividend Pfd Stock (File No. 7–10338)
Sterling Bancorporation
Common Stock, $1 Par Value (File No. 7–10340)
Telecom Corporation
Common Stock, $1 Par Value (File No. 7–10341)
Thackerary Corporation
Common Stock, $0.10 Par Value (File No. 7–10342)
Advo, Inc.
Common Stock, $.01 Par Value (File No. 7–10343)
KCS Energy, Inc.
Common Stock, $.01 Par Value (File No. 7–10344)
Storage Technology Corporation
$3.50 Cv. Exch. Pfd Stock (File No. 7–10345)
Leviathan Gas Pipeline Partners L.P.
Preference Units (File No. 7–10346)
Elf Overseas Limited
$3.50 Pc Cum Guaranteed Pfd Series A (File No. 7–10347)
Tandycrafts, Inc.
Common Stock, $1 Par Value (File No. 7–10348)
2002 Target Term Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–10349)
Aerosonic Corporation
Common Stock, $.01 Par Value (File No. 7–10350)
Manufactured Home Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–10351)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6522 Filed 3–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19333; 812–8302]

The Equitable Funds, et al.; Application for Exemption

March 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Equitable Funds (the "Trust"), Equitable Capital Management Corporation ("ECMC"), and Alliance Capital Management L.P. ("Alliance").

RELEVANT ACT SECTIONS: Order requested under section 6(c) that would grant an exemption from section 15(a).

SUMMARY OF APPLICATION: Applicants seek an order that would permit Alliance to serve without compensation as an investment adviser to certain series of the Trust, without shareholder approval, for a period of no longer than 120 days following a corporate reorganization that will result in the termination of the Trust's existing advisory agreement with ECMC.

FILING DATE: The application was filed on March 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 12, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: The Trust and ECMC, 787 Seventh Avenue, 36th Floor–C, New York, New York 10019; and Alliance, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is registered as an open-end management investment company under the Act. It is a "series company" that has ten investment portfolios (the "Funds"). ECMC is a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States ("Equitable Life") and is registered as an investment adviser under the Investment Advisers Act of 1940. ECMC currently serves as the investment adviser for each of the Funds, various other investment companies, and various separate accounts and general accounts of Equitable Life and other affiliated insurance companies.

2. Alliance is a Delaware limited partnership that is registered as an investment adviser. It supervises client accounts with assets under management totaling over $63.8 billion as of December 31, 1992. Alliance's sole general partner is Alliance Capital Management Corporation, an indirect wholly-owned subsidiary of Equitable Life. As Alliance's general partner, Alliance Capital has the exclusive and complete discretion to manage and control the business affairs of Alliance. Alliance's partnership interests are represented by units, which are publicly-traded on the New York Stock Exchange. Currently, a wholly-owned subsidiary of Equitable Life owns approximately 54.7% of Alliance's units, public shareholders own approximately 33.8%, and employees of Alliance own approximately 11.5%.

3. On February 23, 1993, ECMC, Alliance and Equitable Investment Corporation [1] entered into a transfer agreement providing for the transfer of substantially all of the assets and liabilities comprising ECMC's business to Alliance and its subsidiaries in exchange for newly issued units representing limited partnership interests in Alliance (the "Transaction"). Under the transfer agreement, ECMC may receive additional units as incentive fees. Upon completion of the Transaction, Equitable Life will own directly and indirectly up to approximately 63% of the units of Alliance.

4. ECMC and Alliance have indicated that the transaction is designed to bring together the strengths of the two organizations and to result in significant operating efficiencies. Because Equitable Life's interest in Alliance can be valued for accounting and certain regulatory purposes by reference to the market value of the publicly-traded units, and because ECMC was carried on Equitable Life's books at substantially less than market value, the transaction also will improve Equitable Life's financial condition as reported under generally accepted accounting principles and for purposes of certain insurance regulations. The transaction is scheduled to close on May 28, 1993, subject to the satisfaction of certain conditions to closing.

5. As part of the transaction, and subject to shareholder approval, applicants expect that six of the Funds (the "Merging Funds") [2] will be consolidated, through a sale of their assets, with corresponding registered investment companies for which Alliance serves as the investment adviser (the "Alliance Acquiring Funds"). [3] In addition, and also subject to shareholder approval, applicants expect that the remaining four Funds (the "Surviving Funds") [4] will discontinue their investment advisory relationship with ECMC, and Alliance will become their investment adviser.

6. Applications seek and exemption from section 15(a) to permit Alliance to serve as the investment adviser to the Merging Funds pursuant to a temporary advisory agreement, without shareholder approval. [5] The exemption would cover an interim period from the closing of the transaction to the date the Merging Funds are consolidated with the Alliance Acquiring Funds, which period shall be no longer than 120 days (the "Interim Period"). The temporary advisory agreement's terms and conditions will be identical to the current investment advisory agreement except that Alliance would receive no compensation under the temporary advisory agreement.

7. Although the shareholders of the Merging Funds will not approve the temporary advisory agreement, the shareholders will, in effect, vote concerning the management of their assets by Alliance when they vote on the proposed consolidations with the Alliance Acquiring Funds. It is intended that the consolidations be approved or disapproved by the shareholders prior to the end of the Interim Period. In the meantime, they will receive advisory services from Alliance at no cost. If the shareholders of any Merging Fund do not approve the consolidation of their Fund with the corresponding Alliance Acquiring Fund, the Merging Fund's board of trustees will consider what if any action should be taken in light of the best interests of the Fund and its shareholders.

8. On February 16, 1993, the Trust's board of trustees held an in-person meeting to consider, among other things, the advisability of entering into the temporary advisory agreement to provide advisory services to the Merging Funds. The board, including a majority of the independent trustees, voted to approve the agreement. As part of its review process, the board, with the advice of independent counsel and consistent with the requirements of section 15(c), reviewed all materials provided by Alliance and requested and

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[1] Equitable Investment Corporation is an indirect wholly-owned subsidiary of Equitable Life.

[2] The Merging Funds are expected to be The Equitable Growth and Income Fund, The Equitable Balanced Fund, The Equitable Aggressive Growth Fund, The Equitable Tax Exempt Fund, The Equitable Short-Term World Income Fund, and The Equitable Government Securities Fund.

[3] The Alliance Acquiring Funds are expected to be the alliance Growth and Income Fund, Inc., Alliance Balanced Shares, Inc., Alliance Quasar Fund, Inc., Alliance Municipal Income Fund, Inc., National Portfolio, Alliance Short-Term Multi-Market Shares, Inc., and Alliance Bond Fund, Inc.—U.S. Government Portfolio.

[4] The Surviving Funds are expected to be The Equitable Growth Fund, The Equitable Short-Term U.S. Government Fund, The Equitable Conservative Investors Fund, and The Equitable Growth Investors Fund.

[5] In the case of the Surviving Funds, a new advisory agreement has been approved by the Trust's board and will be approved or disapproved by the shareholders prior to the closing of the Transaction, as required by section 15(a). Accordingly, applicants do not seek relief for the Surviving Funds.

evaluated all information that the board deemed relevant to evaluate the terms of the agreement. Likewise, Alliance, consistent with its obligations under section 15(c), furnished such information as was reasonably necessary to evaluate the agreement. Subsequently, on February 2, 1993, the board also approved the proposed consolidation of the Merging Funds and the Alliance Acquiring Funds.

Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except pursuant to a written contract which has been approved by a majority of the voting securities of such investment company. The section further requires that such written contract provide for its automatic termination in the event of an "assignment," which is defined in section 2(a)(4) of the Act.

2. The Funds' existing advisory agreement with ECMC provides for its automatic termination upon its assignment, and the Transaction will constitute an assignment of that agreement. Consequently, upon completion of the Transaction, the existing advisory agreement will terminate. Applicants therefore seek an exemption from section 15(a) to permit Alliance to serve as the investment adviser to the Merging Funds pursuant to a temporary advisory agreement, without shareholder approval, during the Interim Period.

3. Rule 15a–4 under the Act provides, among other things, that if an investment adviser's investment advisory contract is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate provided that, among other things, a new contract is approved by the board of directors of the investment company, and the investment adviser or a controlling person of the investment adviser does not receive any money or other benefit in connection with the assignment. Because Equitable Life will receive monetary compensation in connection with the assignment, applicants may not rely on rule 15a–4.

4. Alliance and ECMC believe that the interests of the Merging Funds and their shareholders would be best served by consolidating the Merging Funds with the Alliance Acquiring Funds. The Trust's board has made the determination as required by rule 17a–8 that each consolidation is in the best interest of each Merging Fund and there will be no dilution of the interests of existing shareholders of the Merging Funds.[6]

5. In view of the present timetable for the Transaction (calling for completion by May 28, 1993), the need to make appropriate rule 17a–8 presentations to the boards of each of the Alliance Acquiring Funds concerning the proposed consolidations, and the time required to prepare and clear through the SEC the Alliance Acquiring Funds' registration statements (and the Merging Funds' proxy statements), it is probable that the consolidations will not take place until one to two months after the closing date of the Transaction. The additional period of time in the Interim Period will allow for reasonable adjournments of the shareholder meeting if necessary to obtain sufficient shareholder response to the proxy solicitations to obtain the required approval.

6. Without the relief requested, applicants assert that it would be necessary to mail two shareholder proxy statements to each of the Merging Funds within a short time frame. The first proxy statement would seek shareholder approval to permit Alliance to serve as investment adviser to the Merging Funds during the Interim Period. The second proxy statement would be necessary to effect the consolidation of the Merging Funds with the Alliance Acquiring Funds. Applicants assert that there is no benefit to the Merging Funds' shareholders in effecting the consolidations in this manner. Indeed, applicants believe that it would be disruptive and could lead to confusion on the part of shareholders of the Merging Funds about matters of importance to them.

7. Section 6(c) of the Act provides in part that the SEC by order upon application may conditionally exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets the section 6(c) standard.

[6] Rule 17a–8 governs the purchase or sale of substantially all of the assets of a registered investment company involving other registered investment companies that may be affiliated persons solely by reason of having a common investment adviser. Because Alliance is proposed to be the adviser of both the Merging Funds and the Alliance Acquiring Funds at the time of the proposed consolidation, applicants believe that the consolidation should be effected pursuant to rule 17a–8.

Applicants' Conditions

Applicants agree as conditions to the requested exemptive relief that:

1. The temporary advisory agreement to be implemented during the Interim Period will have the same terms and conditions as the existing advisory agreement, except that Alliance will receive no compensation under the temporary advisory agreement.

2. Alliance will take all appropriate steps so that the scope and quality of advisory and other services provided to the Merging Funds during the Interim Period will be at least equivalent in the judgment of the board of trustees, including the independent trustees, to the scope and quality of services previously provided under the existing advisory agreement. In the event of any material change in personnel providing services pursuant to the temporary agreement, Alliance will apprise and consult with the board of trustees in order to insure that they, including a majority of independent trustees, are satisfied that the services provided will not be diminished in scope or quality.

3. Equitable Investment Corporation and Alliance will pay the costs of preparing and filing this application and the costs of holding all special meetings of the Merging Funds' shareholders necessitated by the Transaction, including the cost of proxy solicitations to consider the consolidations with the Alliance Acquiring Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6447 Filed 3–19–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–19334; 812–7885]

ICOS Corp.; Order Granting Exemption

March 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Order granting exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: ICOS Corporation ("ICOS").

RELEVANT ACT SECTIONS: Section 3(b)(2).

SUMMARY OF APPLICATION: ICOS filed an application on March 5, 1992, and amendments thereto on October 26, 1992 and December 22, 1992 requesting an order under section 3(b)(2) declaring that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities. A notice of filing of the

application was issued on February 18, 1993 (Investment Company Act Release No. 19274). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Barry Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

I. Introduction

ICOS is a biotechnology company that researches and develops medications to treat diseases for which there is no effective treatment. ICOS' research has focused on chronic inflammatory diseases, including asthma, multiple sclerosis, and rheumatic arthritis. The company began operations in 1990, and has no drug products approved for commercial use. ICOS requires substantial working capital to fund drug research and development and the preclinical and clinical trials required for approval of therapeutic drugs. ICOS has provided for its current and future working capital through private and public stock offerings, and has raised approximately $90 million to date. The company has invested its assets in high-quality, short-term Government and commercial debt instruments pending their use to fund the company's research and development programs. Based upon the NASDAQ price of its stock and the number of shares outstanding, ICOS has a market valuation of approximately $189 million as of January 27, 1993.

II. Discussion

Section 3(a)(1) defines investment company to include any issuer that is engaged primarily, or that proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Because virtually all of ICOS' capital is invested in securities, a question arises as to whether ICOS is an investment company under section 3(a)(1).

Section 3(a)(3) contains a different test, intended to cover companies that may not intend to be investment companies but that hold large quantities of "investment securities" (all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries).[1] Section 3(a)(3) defines investment company to include any issuer engaged (whether or not primarily) in the business of investing, reinvesting, owning, holding, or trading in securities and that owns or proposes to acquire "investment securities" with a value that exceeds forty percent of the issuer's total assets on an unconsolidated basis. For purposes of the forty percent test, Government securities and cash items are excluded from total assets.

To avoid falling within section 3(a)(3), issuers who have a high proportion of liquid assets tend to invest those assets mostly in Government securities. ICOS states that it does not want to limit a substantial portion of its assets to investments in Government securities because the yield on Government securities is significantly less than that on other high-quality debt instruments. Consequently, ICOS currently exceeds the forty percent limitation and meets the *prima facie* definition of investment company in section 3(a)(3).[2]

An issuer such as ICOS that meets the *prima facie* definition of investment company in section 3(a)(3) nonetheless may be excluded by section 3(b). Section 3(b)(1) excludes issuers engaged primarily in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities, either directly or through wholly-owned subsidiaries. Section 3(b)(2) permits the Commission to issue orders excluding issuers engaged primarily in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities directly, through majority-owned subsidiaries, and through certain controlled companies.[3]

ICOS seeks an order under section 3(b)(2) excluding it from the definition of investment company by finding that it is engaged primarily in a non-investment business. The Commission believes that ICOS may rely on the automatic exclusion provided by section 3(b)(1) because it engages in its primary business, developing medications for the treatment of chronic inflammatory diseases, directly. The Commission ordinarily would be unwilling to issue an order under section 3(b)(2) when section 3(b)(1) provides an automatic exclusion. The Commission, however, believes an order is appropriate here to modify the analysis for determining the primary business of *bona fide* research and development companies.

In Tonopah Mining Co. of Nevada, the Commission adopted a five factor analysis for determining an issuer's primary business.[4] Although the Commission decided Tonopah under section 3(b)(2), the same factors also are used to determine an issuer's primary business under sections 3(a)(1) and 3(b)(1).[5] These factors are: (1) The company's historical development; (2) its public representations of policy; (3) the activities of its officers and directors; (4) the nature of its present assets; and (5) the source of its present income. The Commission accorded the fourth and fifth factors the most weight. Under a strict application of the Tonopah analysis, an issuer generally is deemed to be engaged primarily in the business of investing in securities if most of its assets are securities and most of its income is derived from such securities.

Under the Tonopah analysis, ICOS could be viewed as engaged primarily in investing in securities. The bulk of its assets are securities and its revenue from non-securities activities is less than thirty-three percent of its total revenue.[6] The Commission believes that Tonopah's focus on the composition of present income and assets is ill-suited to ICOS and similar companies. The biotechnology industry did not exist at the time the Commission decided Tonopah. In contrast to the companies contemplated in Tonopah, research and development companies require large amounts of capital to fund the development of products that may not produce income for many years. Given such requirements, research and development companies seek to raise capital whenever market conditions are favorable. Such capital must be invested

[1] Section 3(a)(2) provides an additional definition of "investment company" that includes face-amount certificate companies. Only two face-amount certificate companies remain in existence.

[2] As of June 30, 1992, virtually all of the company's assets, exclusive of Government securities and cash items, consisted of investment securities.

[3] Section 3(b) does not exclude issuers meeting the "primarily engaged" definition of investment company in section 3(a)(1). However, if an issuer is found to be "primarily engaged" in a business other than investing, reinvesting, owning, holding, or trading in securities for purposes of section 3(a)(3), then it necessarily will be engaged primarily in a business other than investing, reinvesting, or trading in securities for purposes of section 3(a)(1). Therefore, a determination that an issuer meets the standards for exclusion under section 3(b) is, by definition, a determination that it is not an investment company under section 3(a)(1). See M.A. Hanna Co., 10 S.E.C. 581 (1941).

[4] 26 S.E.C. 426, 427 (1947).

[5] See Certain Prima Facie Investment Companies: Proposed Rule, Investment Company Act Release No. 10937 (Nov. 13, 1979) (proposing rule 3e–1), n.24.

[6] In Tonopah, the Commission's analysis focused on "net income." ICOS has no net income, however, as it is operating at a loss.

in relatively liquid assets to ensure access to funds needed for operations.

Tonopah's asset test is problematic for research and development companies for another reason. Unlike operating companies that generally invest in tangible assets, biotechnology companies use their capital to retain scientists and other professionals to produce "intellectual capital" and technology. Intellectual capital and technology, however, are not capitalized as assets on the companies' balance sheets, making it difficult for research and development companies to satisfy the asset test.[7]

Given the unique nature of research and development companies, the Commission believes that it is appropriate to expand the traditional Tonopah analysis. If a company demonstrates that it is engaged actively in *bona fide* research and development activities, the Commission would consider the use, rather than simply the composition, of the company's assets and income. The Commission believes that the following factors may be used in the place of the traditional assets and income elements of the Tonopah analysis.

A. Reduction of Principal

Under this factor, the Commission would consider whether the company uses its securities and cash to finance its research and development. A *bona fide* research and development company would be expected to spend more on research and development than gross investment income (gross income from dividends, interest from all sources, and profits on securities (net of losses)). The Commission recognizes that such a research and development company occasionally may spend less than its investment income on research and development, particularly in periods of high interest rates. If gross investment income consistently exceeds research and development expenses, however, the company could be engaged in a perpetual investment program, and thus might be an investment company required to be registered under the Act.

B. Nature of Expenses

Under this factor, the Commission would consider the manner in which the company spends its funds. A company would have to establish that a substantial portion of its gross expenses consists of research and development expenses, as defined in SFAS No. 2. The Commission also would expect the company's gross investment expenses (gross expenses incurred for investment advisory, management and service fees, and in connection with research, selection, supervision, and custody of investments) to be *de minimis* when compared to gross expenses from all sources. Because research and development companies invest in securities that require little management, gross investment expenses typically are *de minimis*. In contrast, the majority of the expenses of most investment companies typically are investment related.

C. Preservation of Capital

Under this factor, the Commission would consider whether the company invests in securities in a manner that is consistent with the preservation of its assets until needed to finance operations. For example, a company generally would meet this requirement only if substantially all of its securities (other than securities of subsidiaries or controlled companies through which it conducts its business) present limited credit risk. Significant investments in equity or speculative debt would indicate that the company is acting as an investment company rather than preserving its capital for research and development.

If a company met these requirements, the Commission also would examine the remaining factors of the historical primary business test (the company's historical development, its public representations of policy, and the activities of its officers and directors) to determine whether the company is engaged primarily in a non-investment business. While the Commission would consider other means of establishing that a *bona fide* research and development company is engaged primarily in a non-investment business, the Commission believes that this analysis will clarify the status of virtually all such companies under the Act.[8]

III. Conclusion

Under the revised analysis, ICOS qualifies for a section 3(b)(2) order. ICOS' research and development expenses greatly exceed its gross investment income. A majority of ICOS' gross expenses consists of research and development expenses and less than one percent are related to its investment activities.[9] ICOS invests its liquid assets entirely in debt instruments that present limited credit risk. In addition, ICOS' historical development, public representations of policy, and the activities of its officers and directors indicate that ICOS is engaged primarily in the biotechnology business. ICOS' business activities since its formation have been researching and developing medications to treat diseases, and its stated intention, as reflected in a resolution adopted by the company's board of directors, is to continue to engage in that business. The company consistently has represented in its prospectuses, reports to stockholders, and filings with the Commission that it is a biopharmaceutical company developing medications for the treatment of diseases. ICOS also represents that it has never held itself out as being in the business of investing in securities. Moreover, ICOS states that only two of its 129 employees devote time to its investment activities, and together these employees spend an average of eight hours per month on such activities. Accordingly,

It is ordered, Under section 3(b)(2), that applicant is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6523 Filed 3–19–93; 8:45 am]

BILLING CODE 8010–01–M

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[7] ACCOUNTING FOR RESEARCH AND DEVELOPMENT COSTS, Statement of Financial Accounting Standards No. 2 (Fin. Accounting Standards Bd. 1992) (hereinafter "SFAS No. 2").

[8] As noted above, ICOS engages in its non-investment business directly. Other companies may engage in research and development activities indirectly, however, through subsidiaries or controlled companies. The financial statements of controlled and controlling companies typically are not consolidated when the controlling company does not hold a majority interest in the controlled company. Thus, application of the reduction of principal and nature of expenses elements of the revised analysis to such companies may present special difficulties, which are neither presented nor addressed in this order.

[9] ICOS was incorporated in September of 1989. In that calendar year, ICOS' expenses consisted entirely of general and administrative expenses. In calendar years 1990, 1991, and the first six months of 1992, however, ICOS' research and development expenses were approximately sixty-five percent, seventy-six percent, and seventy-seven percent, respectively, of total operating expenses. It is understandable that in its start-up phase, ICOS' general and administrative expenses were large and it did not have any research and development expenses.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Ann Arbor Municipal Airport; Ann Arbor, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Ann Arbor for Ann Arbor Municipal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.5, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7280.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Ann Arbor Municipal Airport are in compliance with applicable requirements of part 150, effective March 4, 1993.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the City of Ann Arbor. The specific maps under consideration are the noise exposure maps: Noise Exposure Map—1990 and Noise Exposure Map—1995 found after page I–12, respectively, of the submission. The FAA has determined that these maps for Ann Arbor Municipal Airport are in compliance with applicable requirements. This determination is effective on March 4, 1993. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, , 8820 Beck Road, Belleville, Michigan 48111.

Ann Arbor Municipal Airport, 801 Airport Drive, Ann Arbor, Michigan 48108.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on March 4, 1993.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 93–6493 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Proceedings; Agreements Filed During the Week Ended March 12, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48683
Date filed: March 8, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Mail Vote 618, (Slovakia/Czeck Republic resos), r-1-054k r-2-070r r-3-074pp r-4-080oo r-5-015v
Proposed Effective Date: April 1, 1993

Docket Number: 48684
Date filed: March 8, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Mail Vote 620, (Japan-Russian Federation fares), r-1-043i r-2-053i r-3-063i r-4-085t
Proposed Effective Date: April 1, 1993

Docket Number: 48685
Date filed: March 8, 1993
Parties: Members of the International Air Transport Association
Subject: Resolution 015h—USA–UK add-on amounts, Tables—TC12 Fares 0402 dated March 5, 1993
Proposed Effective Date: April 1, 1993

Docket Number: 48689
Date filed: March 10, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Mail Vote 621 (China-Japan fares), r-1-043i r-2-053i r-3-063i r-4-085hh
Proposed Effective Date: April 1, 1993

Docket Number: 48690
Date filed: March 10, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Mail Vote 617 (Fares to/from Cypress), Comp Telex—Correction
Proposed Effective Date: April 1, 1993

Docket Number: 48695
Date filed: March 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P 0517 dated December 11, 1992, Japan/Korea-Southwest Pacific (except Australia/New Zealand) r-1 to r-12, TC3 Reso/P 0518 dated December 11, 1992,

Japan/Korea-Australia r-13 to r-32, TC3 Reso/P 0519 dated December 11, 1992, Japan/Korea-New Zealand r-33 to r-51, TC3 Meet/P 0052 dated February 19, 1993
Proposed Effective Date: April 1, 1993
Docket Number: 48696
Date filed: March 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Mail Vote 623 (Japan-Russian Federation Cargo Rates)
Proposed Effective Date: April 1, 1993
Docket Number: 48697
Date filed: March 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Mail Vote 624 (Seoul-Toyama Cargo rates)
Proposed Effective Date: April 26, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–6484 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 12, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48687
Date filed: March 8, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 5, 1993
Description: Application of Sigair AS, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Act, applies for a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property and mail between any point in any state of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and any other point in any state of the United States or the District of Columbia or any territory or possession of the United States, on the other hand.
Docket Number: 48693
Date filed: March 12, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 9, 1993
Description: Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations, requests an amendment to its certificate of public convenience and necessity for Route 557 so as to add a segment between a point, or points, in the United States of America and a point, or points, in Guatemala.
Docket Number: 48698
Date filed: March 12, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 9, 1993
Description: Application of Ladeco Cargo, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to engage in the foreign scheduled all-cargo air transportation between a point or points in Chile and the U.S. coterminal points Miami, Florida and New York, New York via intermediate points and beyond the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–6485 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 93–015]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Committee on the Revision of the regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes, title 46, Code of Federal Regulations (CFR), part 151, of the Chemical Transportation Advisory Committee will meet as working groups on Monday, April 19, 1993 and as a Subcommittee on Tuesday April 20, 1993. These meetings will continue the Subcommittee's review of 46 CFR part 151 to determine areas in need of updating and revision, and make recommended changes.

SUPPLEMENTARY INFORMATION: The working group meetings will be in rooms 4119 and 4315 and the Subcommittee meeting will be in room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. All meetings will begin at 9 a.m. and end at 4 p.m. Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify Lieutenant Commander R.F. Corbin, U.S. Coast Guard Headquarters (G-MTH-1) no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Commander K.J. Eldridge or Lieutenant Commander R.F. Corbin, U.S. Coast Guard Headquarters (G-MTH-1), 2100 2nd Street, SW., Washington, DC 20593, (202) 267–1217.

Dated: March 11, 1993.

Joseph J. Angelo,

Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–6498 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–014]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice is issued to advise the public of a change in meeting location and the agenda. On Sunday, March 28, 1993, the Navigation Safety Advisory Council will meet at the Le Pavillon Hotel, 833 Poydras Street, New Orleans, LA. On Monday and Tuesday, March 29 and 30, 1993, the Council will meet at the Hale Boggs Federal Building, 501 Magazine Street, room 1120, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council, U.S. Coast Guard (G-NSR-3), Washington, DC 20593–0001, Telephone (202) 267–0415.

SUPPLEMENTARY INFORMATION: This supplements the notice published in the **Federal Register** on February 24, 1993 (58 FR 11286). In particular it provides that: (1) Sunday, March 28, 1993, meetings will be held at the Le Pavillon Hotel instead of the Coast Guard District offices (Hale Boggs Federal Building); and, (2) A revised agenda.

Committee Meetings, Sunday, March 28, Le Pavillon Hotel

9 a.m.–10:30 a.m.

Navigation Rules Consistency Review Committee (Grevier Room)

1. Consistency between International and Inland Rule 9 (Narrow Channels) regarding duties of vessels being overtaken in a narrow channel.

2. Review of COLREGS amendments likely to be effective in 1995 and consistency with Inland Navigation Rules.

Rules of the Road Committee (Orleans Room)

1. Relationship between International Rule 5 and the lookout provisions of the STCW Convention.

9 a.m.–12 p.m

Ad Hoc OPA–90 Committee (Bienville Room)

1. Review of notice of proposed rulemaking requiring Tug Escorts for Tankers.

Rules of the Road Committee (Gravier Room)

1. Review TSAC and BSAC recommendations on responsibilities of vessels (including barges) made fast to mooring buoys or other similar devices.

2. Lookout requirement for Vessels at anchor—Does Rule 5 apply?

Human Factors/Rules of the Road Committee (Orleans Room)

1. Conduct of trials in which the officer of the navigational watch acts as the sole lookout in periods of darkness.

2–5 p.m.

Navigation Equipment Committee (Bienville Room)

1. Review of H.R. 805, Maritime Navigation Technology and Research Act of 1993, which directs the Secretary of Transportation to issue rules which require vessels operating in harbors in the United States to use state-of-the-art maritime vessel traffic control equipment.

2. Discuss strategy for carriage requirements of dGPS/GPS, ECDIS, and ADS.

Human Factors Committee (Orleans Room)

1. Work hour limitations and fatigue
2. Bridge Team Management

Routing Measures and Vessel Traffic Services Committee (Gravier Room)

1. Discuss VTS participation.

2. Should Automated Dependent Surveillance (ADS) be incorporated into all VTSs? Should the Automated Dependent Surveillance Shipborne Equipment (ADSSE) carriage requirement be expanded?

3. Discuss the role of the marine industry in the VTS training program.

5–6 p.m.

Informal Plenary Session (Bienville Room)

1. Analysis of Rule 19 Questionnaire (Captain Stephen Ford)

2. Announcement

Monday, March 29

Hale Boggs Federal Building, 501 Magazine Street, room 1120, New Orleans, LA

8 a.m.—Plenary Session: Welcoming remarks by RADM J.C. Card (Commander, Eighth Coast Guard District); remarks by sponsor RADM W.J. Ecker (Chief, Office of Navigation Safety and Waterway Services, Coast Guard Headquarters); and speakers on the following subjects:

—Overview of Eighth Coast Guard District.
—Waterway Management Analysis Study.
—U.S. Army Corps of Engineers, ECDIS and Navigation Safety and Efficiency.
—U.S. ECDIS Test and Evaluation Program.
—Exposed Pipelines.
—Opportunities to Modernize Maritime Services (NOAA).
—Coast Guard Study on the Effectiveness of Local Notice to Mariners.

1:30–6 p.m.—Committee Reports

Tuesday, March 30

8:00—Reconvene in Plenary, room 1120, Hale Boggs Federal Building.

Continue committee reports, new business, announcements. Adjourn at 12 noon.

The meeting is open to the public. Persons wishing to make oral statements should notify the Executive Director no later than Thursday, March 25, 1993. Any person may present a written statement to the Council at any time without advance notice.

Date: March 16, 1993.

A. Cattalini,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–6499 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Noise Exposure Map Notice Kent County International Airport Grand Rapids, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Kent County International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.5, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7280.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Kent County International Airport are in compliance with applicable requirements of part 150, effective March 4, 1993.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by Kent County. The specific maps under consideration are the noise exposure maps: Figure 4–6, "1990 Existing Noise Contours," and Figure 4–7, "1995 Future Noise Contours," pages 67 and 68, respectively, of the submission. The FAA has determined that these maps for Kent County International Airport are in compliance with applicable requirements. This determination is effective on March 4, 1993. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from

the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Kent County International Airport, 5500 44th Street, SE., Grand Rapids, Michigan 49512.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, on March 4, 1993.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 93–6494 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

Approval of Record of Decision for a Mitigated Finding Of No Significant Impact (FONSI); Kent County International Airport, Grand Rapids, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that on January 20, 1993, it approved a mitigated FONSI for the proposed short-term development depicted on the Airport Layout Plan (ALP) for Kent County International Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the FONSI is January 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Federal Aviation Administration, Detroit Airports District Office, DET ADO–650.5. Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7280.

SUPPLEMENTARY INFORMATION: The FAA approved a mitigated FONSI for the proposed short-term development depicted on the Airport Layout Plan (ALP) for Kent County International Airport on January 20, 1993.

The short-term development included:

a. Extension and realignment of the existing crosswind Runway 18/36 (17/35) to 8,500 feet;

b. Extension of the existing Runway 8L/26R to 5,000 feet;

c. Construction of a new cargo facility;

d. Construction of new taxiways;

e. Construction of a perimeter road system;

f. Storm water drainage improvements;

g. Acquisition of property for airfield development including relocation under the Uniform Relocation Assistance and Real Property Acquisition Act;

h. Terminal building expansion;

i. Short-term parking improvements;

j. Installation of navigation aids;

k. Wetland mitigation.

Three additional projects depicted on the ALP were evaluated but not approved in this document. These projects were included in the environmental document to show the relationship and environmental impacts between the short- and long-term development program:

a. Construction of a new 7,000-foot Runway 8L/26R with conversion of the existing runway into a parallel taxiway;

b. Long-term parking improvements;

c. Relocation of the Air Traffic Control Tower.

The FAA published a **Federal Register** Notice on October 3, 1991, announcing its intent to prepare an Environmental Document (possible Environmental Impact Statement) and to hold a November 6, 1991, scoping meeting. At the scoping meeting, no significant impacts were identified other than wetlands. The airport sponsor indicated that the wetland impacts would be mitigated below the level of significance as an integral part of the development. Notice was given for a January 16, 1992, public hearing with written comments being received until January 31, 1992. Based on the analysis found in the Environmental Assessment and the results of the public hearing, the FAA published a May 28, 1992, **Federal Register** Notice that it intended to issue a FONSI for the short-term development depicted on the ALP. The FAA received a letter from the US Fish and Wildlife Service (USFW) stating their concerns with the proposed FONSI. After several meetings and additional wetland field work, including the preparation of a site selection report for the wetland replacement site, the USFW agreed at a December 21, 1992, meeting that a FONSI was an acceptable environmental finding. On January 20, 1993, the FAA approved the Record of Decision (ROD).

A copy of the ROD is available for review at the Detroit Airports District Office.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, March 4, 1993.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 93–6491 Filed 3–19–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Rutland County, VT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project (FEGC 419–3 (44)) in Rutland County, Vermont.

FOR FURTHER INFORMATION CONTACT: Donald J. West, FHWA Division Administrator, Vermont, or Patrick Arno, Environmental Coordinator, P.O. Box 568, Montpelier, Vermont 05601, tel.: (802) 828–4423, or Frank Evans, Project Manager, Vermont Agency of Transportation, tel.: (802) 879–5600.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Vermont Agency of Transportation will prepare an EIS to evaluate alternatives to provide a bypass or upgrading of US 4 and US 7 roadways for through traffic in Rutland, Vermont, a distance of 3–6 miles.

Improvements are necessary to alleviate traffic congestion and provide functional efficiency for current and projected traffic volumes. Alternatives under consideration include: (1) No Action, (2) Westerly alignments with controlled access, (3) Easterly alignments with controlled access, and, (4) Upgrade Existing Roadways including a State Street Extension and

Transportation Systems Management/ Transportation Demand Management measures (TSM/TDM). Other alternatives developed during the scoping process will also be evaluated.

The EIS will evaluate, but not be limited to assessing the environmental impacts, including secondary and cumulative impacts, on the affected environment for the following impact categories: Socio-economic including residential, business, and employment; historic and archaeologic; cultural resources; parklands; recreation; aesthetics; traffic; noise; surface water hydrology and quality; air quality; wetlands; wildlife habitat; upland vegetation; geology; soils; and groundwater. The EIS will also evaluate impacts on the affected environment resulting from construction period traffic and induced economic growth associated with the project.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this project. A scoping meeting will be held on Tuesday, April 20, 1993 at 7 p.m. at the Centre Vermont Holiday Inn, US Route 7, Rutland, Vermont. In addition, a public hearing will be held after the draft EIS is published. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues relating to the proposed project are addressed and all potentially significant issues are identified, comments and suggestions are being solicited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on March 16, 1993.

William K. Fung,

FHWA Engineering Coordinator, Montpelier, Vermont.

[FR Doc. 93-6455 Filed 3-19-93; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 53
Monday, March 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Thursday, April 1, 1993; 9:00 a.m., Friday, April 2, 1993.

PLACE: Chicago O'Hare Hilton, Chicago, Illinois.

STATUS: This entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. GSE Studies
2. System 2000
3. Board Mangement Issues

The above matters are exempt under one or more of sections 552b(c)(2), (9)(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,
Managing Director.
[FR Doc. 93–6617 Filed 3–19–93; 8:45 am]
BILLING CODE 6725–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [58 FR 13524 March 11, 1993]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, March 8, 1993.

CHANGE IN THE MEETING: Cancellation.

A closed meeting scheduled for Tuesday, March 16, 1993, at 2:30 p.m. was cancelled.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272–2400.

Dated: March 17, 1993.

Jonathan G. Katz,
Secretary.
[FR Doc. 93–6585 Filed 3–19–93; 8:45 am]
BILLING CODE 8010–01–M

Federal Register

Monday
March 22, 1993

Part II

Department of Labor

Office of Labor-Management Standards

29 CFR Part 470

Obligation of Federal Contractors and Subcontractors; Employee Rights Concerning Payment of Union Dues or Fees; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

Obligation of Federal Contractors and Subcontractors; Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule; removal of regulations.

SUMMARY: This final rule removes the regulations found at 29 CFR Part 470. These regulations implemented Executive Order 12800 which was revoked by Executive Order 12836 signed by President Clinton on February 1, 1993, and published in the **Federal Register** on February 3, 1993.

Part 470, now removed, required government contractors and subcontractors to post notices informing their employees that under federal law: they cannot be required to join a union or maintain membership in a union to retain their jobs; and, employees who choose not to be union members may object to the use of their compulsory union dues and fees collected pursuant to a lawful union-security agreement for activities other than collective bargaining, contract administration, or grievance adjustment, and may be entitled to a refund and an appropriate reduction in future payments. Part 470 also required federal contracting agencies and covered government contractors and subcontractors to include certain provisions of the Order in their contracts, subcontracts, and purchase orders. These contract provisions will no longer be enforced by the Secretary, and shall have no further force and effect.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., room N–5605, Washington, DC 20210, (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 1, 1993, President Clinton signed Executive Order 12836 (58 FR 7043, February 3, 1993) revoking Executive Order 12800 and instructing executive agencies to revoke any orders, rules, or regulations implementing Executive Order 12800.

Regulations implementing Executive Order 12800 found at 29 CFR part 470 required government contractors and subcontractors to post notices informing their employees that under federal law: They cannot be required to join a union or maintain membership in a union to retain their jobs; and, employees who choose not to be union members may object to the use of their compulsory union dues and fees collected pursuant to a lawful union-security agreement for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in future payments. Part 470 also required federal contracting agencies and covered government contractors and subcontractors to include certain provisions of the Order in their contracts, subcontracts, and purchase orders. Based on the revocation of Executive Order 12800 and of the Secretary of Labor's implementing regulations at 29 CFR part 470, those contract provisions formerly required to be contained in covered contracts, subcontracts, and purchase orders will no longer be enforced by the Secretary of Labor, and shall have no further force and effect.

Publication in Final

The Department has determined that the repeal of these regulations need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA, 5 U.S.C. 553). The agency finds that good cause exists for dispensing with notice and public comment as unnecessary since Executive Order 12800 which gave rise to Part 470 has been revoked, and, therefore, no legal basis exists for the regulation. Furthermore, Executive Order 12836 provides that regulations implementing Executive Order 12800 shall be promptly revoked. This repeal is thus exempt from notice and comment by virtue of section 553(b)(B) of the APA (5 U.S.C. 553(b)(B)).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned have determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that Executive Order 12800 which gave rise to part 470 has been revoked, and, therefore, no legal basis exists for the regulation. Furthermore, Executive Order 12836 provides that regulations implementing Executive Order 12800 shall be promptly revoked.

Regulatory Impact

This document reflects the removal of regulations for which there is no current authority. Therefore, this document is not a rule or regulation as defined in Executive Order 12291. In addition, this document was not preceded by a general notice of proposed rulemaking, and is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601(2) and 604(a)).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirement.

List of Subjects in 29 CFR Part 470

Administrative practice and procedure; Government contracts; Union dues; Labor unions.

Promulgation of Final Rule

Accordingly, pursuant to Executive Order 12836, contract provisions included in federal contracts, subcontracts, and purchase orders pursuant to Executive Order 12800 and 29 CFR part 470 will no longer be enforced by the Secretary, and shall have no further force and effect, and title 29, Code of Federal Regulations, is hereby amended by removing subchapter C, consisting of part 470.

Signed at Washington, DC, this 15th day of March, 1993.

Robert B. Reich,

Secretary of Labor.

John R. Fraser,

Acting Assistant Secretary for Employment Standards.

[FR Doc. 93–6502 Filed 3–19–93; 8:45 am]

BILLING CODE 4510–86–M

Federal Register

Monday
March 22, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Office of Surface Mining Reclamation and Enforcement

25 CFR Part 216

30 CFR Parts 710, et al.

Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Surface Mining Reclamation and Enforcement

25 CFR Part 216

30 CFR Parts 710, 715, 716, 717 and 750

RIN 1029–AB65

Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands

AGENCIES: Bureau of Indian Affairs, Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) are proposing to amend their respective regulations to: Remove the initial program performance standards for Indian lands codified at 25 CFR part 216, subpart B; and amend the initial program performance standards codified at 30 CFR chapter VII, subchapter B to make them applicable to Indian lands. These proposed rule changes would avail operators on Indian lands of the opportunity to meet counterpart permanent program performance standards in lieu of meeting the initial program performance standards. This proposal would also enable operators on Indian lands initial program sites to reclaim to the latest technical and environmental standards of the permanent program, an option currently available only to operators on non-Indian lands initial program sites. These changes would eliminate inconsistencies between the current Indian and non-Indian lands initial programs, ensure equal treatment of surface coal mine operators on Indian and non-Indian lands, and clarify regulatory and compliance ambiguities.

DATES:

Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on May 22, 1993.

Public Hearings: Upon request, OSM will hold a public hearing on the proposed rule in Washington, DC on May 11, 1993, beginning at 9:30 a.m. Eastern time. Upon request, OSM will also hold hearings in other locations at times and on dates to be announced prior to the hearings.

OSM will accept requests for a public hearing until 4 p.m. Eastern time on April 21, 1993. Individuals wishing to attend, but not testify at the hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660NC 800 North Capitol Street, Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660NC, Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240.

Public Hearing: If held, the public hearing will be at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings requested to be scheduled at other locations will be announced prior to the hearings.

Request for Public Hearing: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Billie E. Clark, Jr., Federal and Indian Permitting Branch, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Brooks Towers, 1020 15th Street, Denver, CO 80202; Telephone: 303–844–2829.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
A. Background
B. Section-by-Section Analysis
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change.

Where practicable, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the close of the comment period (see **DATES**) or delivered to addresses other than those listed above, may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The time, date and address for the hearing to be held in Washington, DC has been specified previously in this notice (see **DATES** and **ADDRESSES**). The times, dates and addresses for other hearings that may be requested at other locations have not yet been scheduled, but will be announced in the **Federal Register** at least seven days prior to any such hearings.

Any person interested in participating at a hearing should inform Billie E. Clark (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing by 4 p.m. Eastern time April 21, 1993. If no one has contacted Mr. Clark to express an interest in participating in a hearing, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and to ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**), an advance copy of their testimony.

Persons interested in attending the hearing, but not testifying, should contact the individual listed under **FOR FURTHER INFORMATION CONTACT** prior to the scheduled hearing date to verify that the hearing will be held.

II. Discussion of Proposed Rule

A. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act) Public Law 95–87, as amended, 30 U.S.C. 1201–1328, provides a two-phase program for the regulation by the Secretary of the Interior of surface coal mining and reclamation operations on Indian lands. The first phase, codified at 25 CFR part 216, subpart B (43 FR 63395, December 16, 1977 and 47 FR 13327, March 30, 1982), includes regulations setting forth initial program performance standards applicable to Indian lands. The second phase, codified at 30 CFR part 750 (49 FR 38462, September 28, 1984), includes regulations setting forth permanent program performance standards applicable to Indian lands.

As first promulgated, the Indian lands initial program performance standards at 25 CFR part 216, subpart B, were nearly identical to those for non-Indian lands promulgated on December 13, 1977 at 30 CFR parts 715 and 716 (42 FR 62639). However, there were differences, the most important being

the provisions of 25 CFR 216.112 through 216.114 authorizing tribal involvement in the inspection, enforcement and civil penalty procedures. Also, the Indian lands regulations at 25 CFR part 216, subpart B contained no corresponding provisions to 30 CFR 715.19 concerning the use of explosives and, except for the provisions governing steep-slope mining at 25 CFR 216.111, did not include the special performance standards for non-Indian lands set forth at 30 CFR part 716.

On September 28, 1984 (49 FR 38462), OSM promulgated a final rule that, among other things, amended the Indian lands initial program to remove the tribal involvement provisions at 25 CFR 216.112 through 216.114. In the preamble to that rule, OSM stated that those provisions were superseded by the permanent program regulations at 30 CFR parts 842, 843, and 845 which set forth procedures and requirements governing Federal inspections and monitoring, Federal enforcement, and civil penalties respectively. OSM determined that having one set of uniform rules for both Indian and non-Indian lands made administration of the Act simpler and more efficient and that this change would cause no undue hardship on non-complying operators. Hence, a major reason for having separate Indian and non-Indian lands initial programs was eliminated.

On February 14, 1991, OSM amended the non-Indian lands initial program by adding a new provision at 30 CFR 710.11(e) to allow operators on non-Indian lands to meet permanent program performance standards in lieu of initial program performance standards (56 FR 6224). A similar change to the Indian lands initial program was deemed to be outside the scope of the rulemaking. Thus, while operators on non-Indian lands may now choose to meet permanent program standards in lieu of initial program standards, operators on Indian lands do not have the same option.

The basis and purpose for the promulgation of 30 CFR 710.11(e) are also applicable to Indian lands. In explaining this new provision, OSM stated:

> The Permanent Program rules require the latest technical and environmental standards for interpretation of the Act and are the result of more than ten years of experience in implementing the Act. They include many program revisions mandated by courts. However, in cases where the Initial Program performance standards continue to apply, Regulatory Authorities must require operators to comply with all of the earlier standards, even when compliance with Permanent Program standards would ensure implementation of [the Act] or would result in reclamation superior to that which would be achieved under the Initial Program standards.

OSM then described five examples of initial program performance standards that were outdated or for which compliance was impractical (56 FR 6224–25, February 14, 1991). Most of these examples are equally germane to Indian lands.

The Indian lands initial program applies to any person who conducts surface coal mining and reclamation operations on Indian lands on or after December 16, 1977, in accordance with 25 CFR 216.100(a) and 30 CFR 750.11(c), until OSM issues or denies a permit in accordance with the Indian lands permanent program at 30 CFR part 750. Although the Indian lands permanent program was promulgated on September 28, 1984, operators on initial program sites must continue to comply with the Indian lands initial program performance standards at 25 CFR part 216, subpart B, even though compliance with the Indian lands permanent program performance standards would ensure implementation of the Act and in many cases would result in reclamation superior to that achieved under the Indian lands initial program standards.

The rule changes proposed today would allow operators on Indian lands initial program sites to reclaim to the latest technical and environmental standards of the permanent program. Also, this proposal would eliminate inconsistencies between the Indian and non-Indian lands initial programs, ensure equal treatment of surface coal mine operators on Indian and non-Indian lands, and clarify regulatory and compliance ambiguities.

B. Section-by-Section Analysis

The proposed rule would remove the Indian lands initial program performance standards from BIA's regulations at 25 CFR part 216, subpart B, in their entirety and would amend OSM's initial program regulations at 30 CFR chapter VII, subchapter B, to include Indian lands. This latter change would involve amendments to 30 CFR parts 710, 715, and 750. These amendments would, among other things, allow operators on Indian lands initial program sites to avail themselves of the provisions of 30 CFR 710.11(e), under which operators could choose to meet counterpart Indian lands permanent program performance standards in lieu of meeting the initial program requirements.

Removal of 25 CFR Part 216, Subpart B

Subpart B of 25 CFR part 216 sets out the Indian lands initial program performance standards. Although the initial program for Indian lands appears in BIA's regulations at 25 CFR chapter I, OSM is responsible for administering the program.

OSM and BIA are proposing herein to remove 25 CFR part 216, subpart B, and amend OSM's initial program performance standards at 30 CFR chapter VII, subchapter B, to include Indian lands.

The performance standards of 30 CFR chapter VII, subchapter B would not impose any unreasonable additional burdens on operators on initial program Indian lands sites above and beyond those found in 25 CFR part 216, subpart B, and would allow OSM and operators more flexibility while ensuring compliance with the Act.

Amendments to 30 CFR

The initial program regulations codified at subchapter B of 30 CFR chapter VII currently apply only to non-Indian lands. Amendments to §§ 710.11(b) and 715.11 of 30 CFR subchapter B, and to § 750.16 of 30 CFR, subchapter E, are necessary to make those provisions applicable to Indian lands. Also, the information collection statements at 30 CFR 716.10, 717.10 and 750.10 are proposed for revision.

Section 710.11—Applicability

OSM proposes to amend the "Applicability" provisions at 30 CFR 710.11(b) to make the initial program regulations at 30 CFR chapter VII, subchapter B, applicable to Indian lands. Specifically, the proposed amendment would require any person who conducts surface coal mining and reclamation operations on Indian lands on or after December 16, 1977, in accordance with 30 CFR 750.11(c), to meet the performance standards of 30 CFR chapter VII, subchapter B. This change would, by implication, amend any provision of 30 CFR Chapter VII, subchapter B, containing a reference to the State as the regulatory authority to the extent that such reference would also be construed as referring to OSM as the regulatory authority on Indian lands.

This change would also affect operators on Indian lands initial program sites in three principal ways:

a. *Permanent program performance standards in lieu of initial program performance standards.* The proposed change to 30 CFR 710.11(b) would allow operators on Indian lands initial program sites to avail themselves of the provisions of 30 CFR 710.11(e), under

which they could choose to meet counterpart Indian lands permanent program performance standards in lieu of meeting the initial program requirements of 30 CFR, subchapter B. Operators on non-Indian lands are currently able to avail themselves of § 710.11(e), but operators on Indian lands may not do so because 25 CFR part 216, subpart B, has no such counterpart provision. This inequity is not supported by the Act and places operators on Indian lands at a competitive and economic disadvantage when compared with operators on non-Indian lands without any increase in envirnomental protection. Thus, the proposed change to § 710.11(b) would eliminate inconsistencies between the current Indian and non-Indian lands initial programs and ensure equal treatment of surface coal mine operators on Indian and non-Indian lands.

b. *Frequency of inspecting non-Mine Safety and Health Administration size ponds.* The Indian lands initial program regulation at 25 CFR 216.108(e) requires that ponds not meeting the size or other criteria of the Mine Safety and Health Administration (MSHA) regulation at 30 CFR 77.216(a) be examined in accordance with MSHA's inspection requirements contained in 30 CFR 77.216–3, which mandate weekly inspections. In comparison, the non-Indian lands initial program regulation at 30 CFR 715.17(e)(20) allows the regulatory authority to reduce inspection frequency for these ponds to four times per year. The rule changes proposed herein would make 30 CFR 715.17(e)(20) applicable to Indian lands, thus allowing OSM, the regulatory authority on Indian lands, to approve a reduction in the inspection frequency for such ponds located in Indian lands initial program sites to four times per year. This change would eliminate another competitive and economic disadvantage placed on Indian land operators.

c. *Use of explosives.* Section 502(c) of the Act requires surface coal mine operators on non-Indian lands initial program sites to comply with subsection 515(b)(15) of the Act concerning the use of explosives. Consequently, the performance standards for non-Indian lands at 30 CFR 715.19 include provisions governing the use of explosives.

In comparison, section 710(c) of the Act does not specifically require surface coal mine operators on Indian lands to comply with subsection 515(b)(15) of the Act. Therefore, the Indian lands initial program regulations promulgated on December 16, 1977 (42 FR 63395) did not include provisions governing the use of explosives.

Section 710(d) of the Act, however, requires surface coal mine operators on Indian lands, on which such operations are conducted on and after thirty-five months from August 3, 1977, to comply with all of subsection 515 of the Act, including subsection 515(b)(15). Furthermore, section 710(d) of the Act requires that after the applicable thirty-five month period, all of the requirements of subsection 515 of the Act must be incorporated in existing and new leases issued for coal on Indian lands.

The proposed change to 30 CFR 710.11(b) would become effective after the applicable thirty-five month period when operators on Indian lands must comply with all of the requirements of subsection 515 of the Act, including those concerning explosives. Consequently, the proposed change to 30 CFR 710.11(b) would make the performance standards at 30 CFR 715.19 governing the use of explosives applicable to Indian lands initial program sites.

Section 715.11—General Obligations

Part 715 of 30 CFR contains general initial program performance standards and includes regulations governing restoration of disturbed areas to suitable postmining land use, backfilling and grading, off-site disposal of spoil and waste materials, topsoil handling, protection of the hydrologic system, construction inspection, and maintenance of dams, use of explosives, and revegetation. The focus of 30 CFR part 715 is on lands regulated by the States. OSM proposes to amend section 30 CFR 715.11 by adding a new paragraph to clarify that the general performance standards of this part are also applicable to Indian lands. Specifically, OSM proposes to add a new paragraph 30 CFR 715.11(d) to read as follows:

Indian lands. (1) OSM is the regulatory authority for any surface coal mining and reclamation operation conducted under this part on Indian lands.

(2) Mine maps. Any person conducting surface coal mining and reclamation operations on Indian lands under this part shall submit copies (number of copies to be specified by OSM) of an accurate map of the mine and authorized mining areas at a scale of 1:6000 or larger. The maps shall show as of December 16, 1977, the lands where coal has not yet been removed, and the lands and structures that have been used or disturbed to facilitate surface coal mining operations.

(3) Any requirement in this part that provides for consultation with, or notification to, State and local governments shall be interpreted as requiring, in like manner, consultation with, or notification to, tribal governments.

Proposed 30 CFR 715.11(d)(2) would essentially duplicate 25 CFR 216.102(b)—Mine maps. This proposed change is necessary since the effective date of the initial program for Indian land is December 16, 1977, as opposed to May 3, 1978, for non-Indian lands, and operators still must supply these mine maps to OSM.

Subpart B of 25 CFR part 216 generally requires coordination and consultation with tribes, much the same as 30 CFR part 715 requires coordination and consultation with States and local governments. Since subpart B of 25 CFR part 216 would be removed under this rulemaking, OSM proposes to add a provision at 30 CFR 715.11(d)(3) that requires notification of and consultation with tribal governments to the same extent as State and local governments. This provision would recognize the important role of tribal governments in the initial program for Indian lands.

Sections 716.1 Through 716.10—Special Performance Standards

The non-Indian lands initial program at 30 CFR chapter VII, subchapter B, includes provisions governing general obligations (§ 716.1), steep-slope mining (§ 716.2), mountain-top removal (§ 716.3), special bituminous coal mines (§ 716.4), anthracite coal mines (§ 716.5), coal mines in Alaska (§ 716.6), prime farmland (§ 716.7), and information collection (§ 716.10). The only counterpart to these regulations in the Indian lands initial program at 25 CFR part 216, subpart B, is the regulations governing steep-slope mining (§ 216.111), which duplicates only a portion of the regulations covering steep-slope mining at 30 CFR 716.2. Under the changes proposed today, the additional requirements of 30 CFR chapter VII, subchapter B, would also, as applicable, govern operations on Indian lands initial program sites.

Section 750.16—Performance Standards

OSM proposes to modify 30 CFR § 750.16 to reflect that the performance standards that apply to operators who conduct surface coal mining and reclamation operations on Indian lands under the initial program must comply with the provisions of 30 CFR chapter VII, subchapter B. This is necessary since the existing initial program standards for Indian lands codified at 25

CFR part 216, subpart B, would be removed under this proposed rulemaking.

III. Procedural Matters

Federal Paperwork Reduction Act

The Office of Management and Budget has determined that the information collections contained in this rule do not require approval under the Paperwork Reduction Act.

Executive Order 12291 and Regulatory Flexibility Act

The U.S. Department of the Interior (DOI) has determined that this proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This determination is based on the fact the proposed rule would permit an operation to comply with either initial program rules or permanent program rules. All seven existing permits on Indian lands in the States of Arizona, New Mexico, and Montana would be affected.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). An EA will be completed on the final rule and a finding will be made on the significance of any resulting impacts prior to promulgation of the final rule.

Executive order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements, of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule will have no preemptive effect, since it merely substitutes one set of Federal standards for another set, and no State performance standards or other requirements apply.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA. As noted above, the rule will simplify the regulatory process by establishing one set of initial program regulatory provisions for all surface coal mining operations. The rule would also allow surface coal mining operations to choose to comply with permanent program standards which are in some cases less stringent than initial program standards, where OSM has determined that less stringent permanent program standards fully ensure compliance with SMCRA.

D. What is the retroactive effective, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. Applicable administrative procedures may be found at 43 CFR part 4.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5, 701.5 and 750.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of March 22, 1993 the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Authors

The principal authors of this proposed rule are Billie E. Clark, Jr., Federal and Indian Permitting Branch, Office of Surface Mining Reclamation and Enforcement, Denver Colorado, and John Retrum, Office of the Solicitor, Department of the Interior, Denver, Colorado. Telephone: 303–844–2829 and 303–236–3546.

List of Subjects

30 CFR Part 710

Law Enforcement, Public Health, Reporting and recordkeeping requirements, Safety, Surface mining, Underground mining.

30 CFR Part 715

Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 716

Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 717

Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 750

Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

25 CFR Part 216

Environmental protection, Indian lands, Mineral resources, Mines.

Accordingly, it is proposed to remove 25 CFR part 216, subpart B, and to amend 30 CFR parts 710, 715, 716, 717, and 750 as set forth below.

Dated: December 24, 1992.

Larry Roberts,

Acting Assistant Secretary, Land and Minerals Management.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

30 CFR PART 710—INITIAL REGULATORY PROGRAM

1. The authority citation for part 710 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, and Pub. L. 100–34.

2. In § 710.11, paragraph (b) is revised to read as follows:

§ 710.11 Applicability.

(a) * * *

(b) Any person who conducts surface coal mining and reclamation operations on Indian lands on or after December 16, 1977, in accordance with § 750.11(c) of this chapter shall comply with the performance standards of this subchapter.

* * * * *

30 CFR PART 715—GENERAL PERFORMANCE STANDARDS

3. The authority citation for part 715 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

4. In § 715.11, paragraph (d) is added to read as follows:

§ 715.11 General obligations.

* * * * *

(d) *Indian lands.* (1) OSM is the regulatory authority for any surface coal mining and reclamation operation conducted under this part on Indian lands.

(2) *Mine maps.* Any person conducting surface coal mining and reclamation operations on Indian lands under this part shall submit copies (number of copies to be specified by OSM) of an accurate map of the mine and authorized mining areas at a scale of 1:6000 or larger. The maps shall show as of December 16, 1977, the lands where coal has not yet been removed, and the lands and structures that have been used or disturbed to facilitate surface coal mining operations.

(3) Any requirement in this part that provides for consultation with, or notification to, State and local governments shall be interpreted as requiring, in like manner, consultation with, or notification to, tribal governments.

30 CFR PART 716—SPECIAL PERFORMANCE STANDARDS

5. The authority citation for part 716 continues to read as follows:

Authority: Secs. 201, 501, 527, and 529, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

6. § 716.10 is revised to read as follows:

§ 716.10 Information collection.

The Office of Management and Budget has determined that the information collections contained in 30 CFR Part 716 do not require approval under the Paperwork Reduction Act.

30 CFR PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

7. The authority citation for part 717 continues to read as follows:

Authority: Secs. 201 and 501, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201)

8. § 717.10 is revised to read as follows:

§ 717.19 Information collection.

The Office of Management and Budget has determined that the information collections contained in 30 CFR part 717 do not require approval under the Paperwork Reduction Act.

30 CFR PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

9. The authority citation for Part 750 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*, as amended); and Pub. L. 100–34.

10. § 750.10 is revised to read as follows:

§ 750.10 Information collection.

The Office of Management and Budget has determined that the information collections contained in 30 CFR part 750 do not require approval under the Paperwork Reduction Act.

11. In § 750.16, the second sentence is revised to read as follows:

§ 750.16 Performance Standards.

* * * Prior to that time, the person conducting surface coal mining and reclamation operations shall adhere to the performance standards of 30 CFR chapter VII, subchapter B.

25 CFR PART 216—SURFACE EXPLORATION, MINING, AND RECLAMATION OF LANDS

12. The authority citation for part 216, subpart B, continues to read as follows:

Authority: Section 201, 501, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201) (25 U.S.C. 396d).

Subpart B—[Removed]

5. Subpart B—Coal Operations is removed in its entirety.

[FR Doc. 93–6495 Filed 3–19–93; 8:45 am]

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federal register

Monday
March 22, 1993

Part IV

The President

Proclamation 6535—American Red Cross Month, 1993

Proclamation 6536—National Poison Prevention Week, 1993

Federal Register
Vol. 58, No. 53
Monday, March 22, 1993

Presidential Documents

Title 3—

The President

Proclamation 6535 of March 17, 1993

American Red Cross Month, 1993

By the President of the United States of America

A Proclamation

In time of need, millions of Americans, and others around the world, trust in the compassionate and swift assistance of the American Red Cross. Since 1881, the American Red Cross has served this Nation with tireless dedication and consummate skill in the face of natural disasters, war, and other emergencies.

Nineteen ninety-two was an extraordinary year for America and the American Red Cross. In the hurricane-ravaged neighborhoods of south Florida and the desolate villages of Somalia, in the flooded bayou country of Louisiana and alongside the raging wildfires in California, caring Red Cross workers served meals, provided shelter, furnished financial help, and offered emotional support to victims.

Hurricane Andrew, the most costly disaster in our history, cut an almost unimaginable swath of destruction through south Florida. More than 12,000 Red Cross volunteers and staff overcame enormous challenges to provide food and shelter for 170,000 people. Just four days after those relief efforts began, Typhoon Omar battered Guam with 150-mile-an-hour winds. Two weeks later, Hurricane Iniki roared across Hawaii, the worst hurricane to hit the islands in a century. The American Red Cross, stretched to new limits, coordinated disaster relief operations that spanned half the globe. In all, 16,000 trained Red Cross disaster workers brought knowledgeable, humanitarian assistance to the victims of Andrew, Omar, and Iniki.

While the Nation focused on the aftermath of this singular wave of destruction, the American Red Cross continued its mission of helping people prevent, prepare for, and cope with emergencies. Every day, Red Cross workers in 2,600 volunteer-based chapters help the victims of single family fires, floods, tornadoes, and industrial accidents, an average of 150 incidents daily. More than 7.5 million people take Red Cross classes in water safety, first aid, and cardiopulmonary resuscitation (CPR) each year. Millions also depend on Red Cross classes and educational materials for information on HIV/AIDS. The Red Cross helps to save and sustain countless lives by collecting, processing, and distributing more than half the Nation's donated blood, the safest supply in the world. Red Cross workers serve alongside our Armed Forces wherever they are on duty, providing support and a touch of home to members and veterans of the forces and their families.

Internationally, Red Cross workers risk their lives daily to bring emergency relief to Somalia and to provide food, shelter, and medical care in the midst of brutal combat in the former Yugoslavia. The same international humanitarian spirit enables the American Red Cross to help family members send messages to prisoners of war and search for relatives separated by war or refugee movements.

Since its founding 112 years ago by Clara Barton, the American Red Cross has embodied much of what is best about Americans: their willingness to help their neighbors, to take responsibility for their communities, and to respond to the call to service. For this, the American Red Cross and its 1.4 million volunteers have earned the respect of a thankful Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1993 as American Red Cross Month. I urge all Americans to continue their generous support of the Red Cross and its chapters nationwide.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-6864
Filed 3-18-93; 4:56 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6536 of March 17, 1993

National Poison Prevention Week, 1993

By the President of the United States of America

A Proclamation

Since its inception more than three decades ago, the annual observance of National Poison Prevention Week has saved lives. Along with year-round educational programs in the public and private sectors, this annual campaign for awareness has helped to reduce dramatically the number of fatal accidental poisonings among children. In the effort to protect every child from poisoning, which is nearly always preventable, we renew our commitment to informing parents, grandparents, and other adults about the importance of protecting children in their homes. The urgency of our efforts is underscored by the fact that, according to the American Association of Poison Control Centers, nearly 1,000,000 children each year are exposed to potentially harmful medicines and household chemicals.

During National Poison Prevention Week, activities are coordinated by the Poison Prevention Week Council, a coalition of 37 national organizations whose members are determined to stop accidental poisonings. The Council distributes valuable information that is used by the staffs of poison control centers, pharmacists, public health officials, and others as they conduct poison prevention programs in their communities. The United States Consumer Product Safety Commission provides a Commission member to serve as Secretary of the Poison Prevention Week Council each year. Since 1972, the Commission has required child-resistant packaging for certain medicines and household chemicals, preventing countless tragedies.

Every American can help to protect children with simple safety measures, such as using child-resistant packaging and securing potentially dangerous substances out of the reach of children. This week I encourage all Americans to become more aware of potential hazards in their homes and to eliminate them.

The Congress, by a joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as National Poison Prevention Week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 21, 1993, as National Poison Prevention Week. I urge all Americans to observe this week by participating in appropriate programs and activities and by learning how to prevent accidental poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–6665
Filed 3–18–93; 5:08 pm]
Billing code 3195–01–M

Reader Aids

Federal Register

Vol. 58, No. 53

Monday, March 22, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12193 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13189
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413

Administrative Orders:
Presidential Determinations:
No. 93–15 of February 27, 1993.....13183

Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
307.....12145
432.....13191
532.....12146, 13193, 13194
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332
1421.....14495
1427.....12332, 15261
1434.....14495
1464.....11960
1493.....11786, 13684
1703.....13194
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130
58.....13130
59.....13130
61.....13130
68.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634

1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
50.....12339
50.....15303
60.....12342
110.....14344
810.....13427
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
614.....11792
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
121.....12334

14 CFR

25.....12537
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264
93.....12128
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

305.....15086
1030.....12335

Proposed Rules:

305.....12818
308.....13370

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
240.....11804, 11806
250.....13719
259.....13719

18 CFR

284.....15087
365.....11886
381.....11886

Proposed Rules:

284.....14530, 15311

19 CFR

4.....12538, 13195

20 CFR

Proposed Rules:

209.....11811
211.....11811
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
234.....13534, 13950
236.....13007
240.....13534
570.....13686
582.....13884
583.....13870
882.....13828
905.....13916
968.....13916
3500.....13705

25 CFR

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274
52.....14517
602.....13409, 13413

Proposed Rules:

1.....14531, 15312, 15313
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964

Proposed Rules:

650.....11814

29 CFR

470.....15402
1910.....15089
2619.....13706
2676.....13707

Proposed Rules:

103.....15314
825.....13394
2619.....15315
2676.....15315
2700.....12158

30 CFR

920.....15275

Proposed Rules:

56.....14492
57.....14492
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
935.....15315
950.....15318, 15319

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
988.....13007

33 CFR

1.....15228
100.....13214
110.....12539
117.....12540
154.....13550
155.....13708
165.....14151, 15089

Proposed Rules:

117.....12568

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
600.....13335
668.....14152
682.....13335

Proposed Rules:
50.....11924
649.....11928
674.....13356
682.....13356

36 CFR

Proposed Rules:
242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174

39 CFR

111.....13551

Proposed Rules:
3001.....12198

40 CFR

50.....13008
15278, 15281, 15282
52.....11967, 14153, 15277,
55.....14157
80.....13413, 14476
81.....12541
86.....13413
88.....11888
180.....14314, 14316
261.....15284
268.....14317
271.....12174, 14319, 14321
300.....12142, 15287
435.....12454
712.....13556
716.....13556

Proposed Rules:
Ch. 1.....12199,
12352, 13571, 13730
51.....13836
52.....12006, 12913, 12914,
13230, 13572, 13575, 14194
68.....13174
69.....13579
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
180.....12199,
12200, 13234, 13236, 13238,
13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
761.....12352, 13128

41 CFR

Ch. 301.....12890
301–7.....12890

43 CFR

Public Land Orders:
86.....11816
6958.....11968
6959.....14323

Proposed Rules:
3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11968, 14159
65.....14323, 15091
67.....14325

Proposed Rules:
67.....14350

45 CFR

400.....11793
1303.....13019
1611.....12335

46 CFR

10.....15228
12.....15228
15.....13360
25.....13364
552.....13414

Proposed Rules:
67.....12352

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795
5.....14328
13.....12632
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
73.....12902, 12903, 13423,
13424, 15288, 15289, 15290
74.....11795
76.....11970, 11972
90.....12176, 12177

Proposed Rules:
Ch. I.....12915,
13041, 14367, 15120
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535
61.....13435
64.....12204, 13435, 14371
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436,
13437, 15321
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140

49 CFR

1.....12543
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974,
11975, 12183, 13021, 13023,
13424, 14162
582.....12545
591.....12905
1007.....15290

Proposed Rules:
23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316
180.....12316
195.....12213
571.....12921,
13042, 13243, 13424, 15132
613.....12064, 12084
614.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853,
12864, 14169, 14248, 14330
20.....15093
611.....14170
625.....13560
641.....13560
646.....11979
652.....14340
663.....11984
672.....11985,
11986, 13214, 13561
674.....12336
675.....11986, 12336, 13561,
13826, 14172, 14173, 14524,
15291
685.....14170

Proposed Rules:
17.....11821, 12013, 12353,
12573, 13042, 13244, 13732,
14199, 14537, 14541
100.....14350
625.....12017
641.....12018, 15132
646.....13732
663.....14543, 14549

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 11, 1993

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1991 Compilation and Parts 100 and 101)	(869–017–00002–7)	17.00	[1] Jan. 1, 1992
*4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–017–00004–3)	18.00	Jan. 1, 1992
*700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–017–00007–8)	17.00	Jan. 1, 1992
27–45	(869–017–00008–6)	12.00	Jan. 1, 1992
46–51	(869–017–00009–4)	18.00	Jan. 1, 1992
52	(869–017–00010–8)	24.00	Jan. 1, 1992
53–209	(869–017–00011–6)	19.00	Jan. 1, 1992
210–299	(869–017–00012–4)	26.00	Jan. 1, 1992
300–399	(869–017–00013–2)	13.00	Jan. 1, 1992
400–699	(869–017–00014–1)	15.00	Jan. 1, 1992
700–899	(869–017–00015–9)	18.00	Jan. 1, 1992
900–999	(869–017–00016–7)	29.00	Jan. 1, 1992
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–017–00018–3)	13.00	Jan. 1, 1992
1120–1199	(869–017–00019–1)	9.50	Jan. 1, 1992
*1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–017–00021–3)	15.00	Jan. 1, 1992
1900–1939	(869–017–00022–1)	11.00	Jan. 1, 1992
1940–1949	(869–017–00023–0)	23.00	Jan. 1, 1992
1950–1999	(869–017–00024–8)	26.00	Jan. 1, 1992
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–017–00026–4)	17.00	Jan. 1, 1992
9 Parts:			
*1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–017–00028–1)	18.00	Jan. 1, 1992
10 Parts:			
0–50	(869–017–00029–9)	25.00	Jan. 1, 1992
51–199	(869–017–00030–2)	18.00	Jan. 1, 1992
200–399	(869–017–00031–1)	13.00	[4] Jan. 1, 1987
400–499	(869–017–00032–9)	20.00	Jan. 1, 1992
500–End	(869–017–00033–7)	28.00	Jan. 1, 1992
11	(869–017–00034–5)	12.00	Jan. 1, 1992
12 Parts:			
1–199	(869–017–00035–3)	13.00	Jan. 1, 1992
200–219	(869–017–00036–1)	13.00	Jan. 1, 1992
220–299	(869–017–00037–0)	22.00	Jan. 1, 1992
300–499	(869–017–00038–8)	18.00	Jan. 1, 1992
*500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–017–00040–0)	19.00	Jan. 1, 1992
13	(869–017–00041–8)	25.00	Jan. 1, 1992
14 Parts:			
1–59	(869–017–00042–6)	25.00	Jan. 1, 1992
60–139	(869–017–00043–4)	22.00	Jan. 1, 1992
140–199	(869–017–00044–2)	11.00	Jan. 1, 1992
200–1199	(869–017–00045–1)	20.00	Jan. 1, 1992
1200–End	(869–017–00046–9)	14.00	Jan. 1, 1992
15 Parts:			
0–299	(869–017–00047–7)	13.00	Jan. 1, 1992
300–799	(869–017–00048–5)	21.00	Jan. 1, 1992
800–End	(869–017–00049–3)	17.00	Jan. 1, 1992
16 Parts:			
0–149	(869–017–00050–7)	6.00	Jan. 1, 1992
150–999	(869–017–00051–5)	14.00	Jan. 1, 1992
1000–End	(869–017–00052–3)	20.00	Jan. 1, 1992
17 Parts:			
1–199	(869–017–00054–0)	15.00	Apr. 1, 1992
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–017–00059–1)	14.00	Apr. 1, 1992
400–End	(869–017–00060–4)	9.50	Apr. 1, 1992
19 Parts:			
1–199	(869–017–00061–2)	28.00	Apr. 1, 1992
200–End	(869–017–00062–1)	9.50	Apr. 1, 1992
20 Parts:			
1–399	(869–017–00063–9)	16.00	Apr. 1, 1992
400–499	(869–017–00064–7)	31.00	Apr. 1, 1992
500–End	(869–017–00065–5)	21.00	Apr. 1, 1992
21 Parts:			
1–99	(869–017–00066–3)	13.00	Apr. 1, 1992
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–017–00069–8)	5.50	Apr. 1, 1992
300–499	(869–017–00070–1)	29.00	Apr. 1, 1992
500–599	(869–017–00071–0)	21.00	Apr. 1, 1992
600–799	(869–017–00072–8)	7.00	Apr. 1, 1992
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–017–00074–4)	9.00	Apr. 1, 1992
22 Parts:			
1–299	(869–017–00075–2)	26.00	Apr. 1, 1992
300–End	(869–017–00076–1)	19.00	Apr. 1, 1992
23	(869–017–00077–9)	18.00	Apr. 1, 1992
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–9)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–017–00082–5)	13.00	Apr. 1, 1992
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0–1–1.60	(869–017–00084–1)	17.00	Apr. 1, 1992
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–017–00086–8)	19.00	Apr. 1, 1992
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–017–00088–4)	38.00	Apr. 1, 1992
§§ 1.501–1.640	(869–017–00089–2)	19.00	Apr. 1, 1992
§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–017–00092–2)	26.00	Apr. 1, 1992
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1, 1992
§§ 1.1401–End	(869–017–00094–9)	26.00	Apr. 1, 1992
2–29	(869–017–00095–7)	22.00	Apr. 1, 1992
30–39	(869–017–00096–5)	15.00	Apr. 1, 1992
40–49	(869–017–00097–3)	12.00	Apr. 1, 1992
50–299	(869–017–00098–1)	15.00	Apr. 1, 1992
300–499	(869–017–00099–0)	20.00	Apr. 1, 1992
500–599	(869–017–00100–7)	6.00	[5] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992
200-End	(869-017-00103-1)	11.00	Apr. 1, 1991
28	(869-017-00104-0)	37.00	July 1, 1992
29 Parts:			
0-99	(869-017-00105-8)	19.00	July 1, 1992
100-499	(869-013-00106-6)	9.00	July 1, 1992
500-899	(869-017-00107-4)	32.00	July 1, 1992
900-1899	(869-017-00108-2)	16.00	July 1, 1992
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-017-00111-2)	9.00	[7] July 1, 1989
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-017-00114-7)	25.00	July 1, 1992
200-699	(869-017-00115-5)	19.00	July 1, 1992
700-End	(869-017-00116-3)	25.00	July 1, 1992
31 Parts:			
0-199	(869-017-00117-1)	17.00	July 1, 1992
200-End	(869-017-00118-0)	25.00	July 1, 1992
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-017-00119-8)	30.00	July 1, 1992
190-399	(869-017-00120-1)	33.00	July 1, 1992
400-629	(869-017-00121-0)	29.00	July 1, 1992
630-699	(869-017-00122-8)	14.00	[8] July 1, 1991
700-799	(869-017-00123-6)	20.00	July 1, 1992
800-End	(869-017-00124-4)	20.00	July 1, 1992
33 Parts:			
1-124	(869-017-00125-2)	18.00	July 1, 1992
125-199	(869-017-00126-1)	21.00	July 1, 1992
200-End	(869-017-00127-9)	23.00	July 1, 1992
34 Parts:			
1-299	(869-017-00128-7)	27.00	July 1, 1992
300-399	(869-017-00129-5)	19.00	July 1, 1992
400-End	(869-017-00130-9)	32.00	July 1, 1992
35	(869-017-00131-7)	12.00	July 1, 1992
36 Parts:			
1-199	(869-017-00132-5)	15.00	July 1, 1992
200-End	(869-017-00133-3)	32.00	July 1, 1992
37	(869-017-00134-1)	17.00	July 1, 1992
38 Parts:			
0-17	(869-017-00135-0)	28.00	Sept 1, 1992
18-End	(869-017-00136-8)	28.00	Sept. 1, 1992
39	(869-017-00137-6)	16.00	July 1, 1992
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-017-00153-8)	9.50	July 1, 1992
101	(869-017-00154-6)	28.00	July 1, 1992
102-200	(869-017-00155-4)	11.00	[8] July 1, 1991
201-End	(869-017-00156-2)	11.00	July 1, 1992
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-017-00170-8)	8.00	Oct. 1, 1992
90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
140-155	(869-017-00172-4)	12.00	Oct. 1, 1992
156-165	(869-017-00173-2)	14.00	[9] Oct. 1, 1991
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-017-00179-1)	10.00	Oct. 1, 1992
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1-51)	(869-017-00182-1)	34.00	Oct. 1, 1992
1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
50 Parts:			
1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
600-End	(869-017-00199-6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869-017-00053-1)	31.00	Jan. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1986 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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Tuesday
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Contents

Federal Register

Vol. 58, No. 54

Tuesday, March 23, 1993

Agricultural Marketing Service
NOTICES
Meetings:
Tobacco Inspection Services National Advisory Committee, 15467

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farmers Home Administration
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Veterinary biological products; production and establishment licenses, 15466

Army Department
NOTICES
Environmental statements; availability, etc.:
Fort Belvoir Engineer Proving Ground, VA; development, 15487

Coast Guard
RULES
Drawbridge operations:
Florida, 15419, 15420, 15421
PROPOSED RULES
Tank vessels:
Vessels that carry oil cargoes; longitudinal strength, plate thickness, and periodic gauging; minimum standards, 15740

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bulgaria, 15485
Textile consultation; review of trade:
Pakistan, 15486

Commodity Credit Corporation
RULES
Loan and purchase programs:
Price support levels—
Rice, 15416

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 15521

Customs Service
NOTICES
Country of origin marking:
Czech Republic et al., 15519

Defense Department
See Army Department
See Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 15489, 15490

Education Department
RULES
Postsecondary education:
Institutional eligibility under Higher Education Act of 1965 and student assistance general provisions—Emergency sanctions; correction, 15523
PROPOSED RULES
Elementary and secondary education:
Drug-free schools and communities emergency grants program, 15748
NOTICES
Agency information collection activities under OMB review, 15490
Meetings:
National Assessment Governing Board, 15491
Postsecondary education:
Cooperative education program; technical assistance workshops, 15491

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Targeted jobs tax credit program—
Lower living standard income level; economically disadvantaged definition, 15506

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Foreign atomic energy activities; assistance
Correction, 15441
NOTICES
Grants and cooperative agreements; availability, etc.:
National industrial competitiveness through efficiency, energy, environment, and economics State program, 15492
Natural gas exportation and importation:
Petro-Canada Hydrocarbons Inc., 15492

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Maine, 15422
Minnesota, 15431
Clean Air Act:
Acid rain allowance allocations and reserves, 15634
Toxic substances:
Polychlorinated biphenyls (PCBs)—
Waste oil use, 15435
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Benzene waste operations, 15457

NOTICES
Clean Air Act:
Acid rain provisions—
National Allowance Data Base version 2.1; availability, 15720
Toxic and hazardous substances control:
Premanufacture notices receipts, 15494

Farmers Home Administration
RULES
Program regulations:
Servicing and collections—
Borrowers loan servicing; 60-day deadline extension; State Director exception, 15417

Federal Aviation Administration
PROPOSED RULES
Air carrier certification and operations:
Pilot operating and experience requirements, 15730
Airworthiness directives:
Aerospatiale, 15441
Bell, 15444
McDonnell Douglas et al., 15445
Schweizer Aircraft Corp. et al., 15448
Short Brothers, PLC, 15450
NOTICES
Airport noise compatibility program:
Noise exposure map—
Palo Alto Airport, CA, 15518
Meetings:
Aviation Rulemaking Advisory Committee, 15518

Federal Communications Commission
RULES
Radio stations; table of assignments:
California et al., 15439
Kansas, 15439
Texas, 15440
Washington et al., 15440
PROPOSED RULES
Common carrier services:
MSS Above 1 GHz Negotiated Rulemaking Committee; meetings, 15461
Radio stations; table of assignments:
Hawaii, 15461
Idaho, 15462
Tennessee, 15462
NOTICES
Agency information collection activities under OMB review, 15498

Federal Energy Regulatory Commission
RULES
National gas companies (Natural Gas Act) and Natural Gas Policy Act:
Interstate pipelines—
Facilities construction and replacement authorization; amendments withdrawn, 15418
NOTICES
Applications, hearings, determinations, etc.:
Arkla Energy Resources Co., 15493
CNG Transmission Corp., 15493
South Brunswick CoGen, L.P., 15493
Transcontinental Gas Pipe Line Corp., 15493, 15494

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 15521

Federal Procurement Policy Office
NOTICES
Procurement regulatory activity report; availability, 15516

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 15521

Food and Drug Administration
PROPOSED RULES
Human drugs:
Antiperspirant drug products (OTC); request for comments, 15452
NOTICES
Meetings:
Advisory committees, panels, etc., 15499

Forest Service
NOTICES
Appeal exemptions; timber sales:
Malheur National Forest, OR, 15466

General Services Administration
RULES
Federal travel:
Federal and State relocation income tax allowance tables—
Puerto Rico et al., 15436
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 15489, 15490

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Exceptional financial need and financial assistance for disadvantaged health professions students programs, 15501

Interior Department
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Dynamic random access memory semiconductors of one megabit and above from Korea, 15467
Self-propelled bituminous paving equipment, replacement parts, from Canada, 15481

International Trade Commission
NOTICES
Meetings; Sunshine Act, 15521

Interstate Commerce Commission
NOTICES
Agency information collection activities under OMB review, 15505
Motor carriers:
Adequacy of intercity bus service, 15506

Compensated intercorporate hauling operations, 15506
Rail carriers:
Cost recovery procedures—
Adjustment factor, 15506

Justice Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Americans with Disability Act; technical assistance program; correction, 15523

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Wyoming, 15504
Withdrawal and reservation of lands:
Colorado, 15504

Management and Budget Office
See Federal Procurement Policy Office

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 15489, 15490

National Archives and Records Administration
NOTICES
Agency information collection activities under OMB review, 15513

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Fuel system and fuel tank integrity—
Compressed natural gas, 15463

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 15503
National Institute on Deafness and Other Communication Disorders, 15504

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Summer flounder, 15463
NOTICES
Permits:
Experimental fishing, 15484

National Park Service
NOTICES
Meetings:
Gates of Arctic National Park Subsistence Resource Commission, 15505
National Register of Historic Places:
Pending nominations, 15505

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 15521

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Air Station Alameda et al., CA, 15488

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Safety Research Review Committee, 15514
Meetings; Sunshine Act, 15521
Applications, hearings, determinations, etc.:
Rhode Island Atomic Energy Commission, 15514

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
2-Methoxyethanol, 2-Ethoxyethanol and their acetates (glycol ethers); occupational exposure, 15526
NOTICES
Nationally recognized testing laboratories, etc.:
United States Testing Co., Inc., 15509

Personnel Management Office
RULES
Prevailing rate systems, 15415

Postal Service
NOTICES
Meetings; Sunshine Act, 15522

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 15516

Small Business Administration
NOTICES
Disaster loan areas:
Arizona, 15517
California, 15517
Georgia et al., 15517

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 15456

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service

Veterans Affairs Department
NOTICES
Advisory committees; annual reports; availability, 15519
Meetings:
Environmental Hazards Advisory Committee, 15520
Former Prisoners of War Advisory Committee, 15520
Rehabilitation Research and Development Scientific Review and Evaluation Board, 15520

Separate Parts in This Issue

Part II
Department of Labor, Occupational Safety and Health Administration, 15526

Part III
Environmental Protection Agency, 15634

Part IV
Environmental Protection Agency, 15720

Part V
Department of Labor, Federal Aviation Administration, 15730

Part VI
Department of Transportation, Coast Guard, 15740

Part VII
Department of Education, 15748

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532.....15415

7 CFR
1413.....15416
1951.....15417

10 CFR
Proposed Rules:
810.....15441

14 CFR
Proposed Rules:
39 (5 documents).....15441, 15444, 15445, 15448, 15450
121.....15730

18 CFR
2.....15418
154.....15418
157.....15418
284.....15418
375.....15418
380.....15418

21 CFR
Proposed Rules:
350.....15452

29 CFR
Proposed Rules:
1910.....15526

30 CFR
Proposed Rules:
938.....15456

33 CFR
117 (4 documents).....15419, 15420, 15421

34 CFR
600.....15523
Proposed Rules:
232.....15748

40 CFR
52 (2 documents).....15422, 15431
72.....15634
73.....15634
75.....15634
81.....15422
761.....15435
Proposed Rules:
61.....15457

41 CFR
302-11.....15436

46 CFR
Proposed Rules:
31.....15740
32.....15740

47 CFR
73 (4 documents).....15439, 15440
Proposed Rules:
Ch. I.....15461
73 (3 documents).....15461, 15462

49 CFR
Proposed Rules:
571.....15463

50 CFR
Proposed Rules:
625.....15463

Rules and Regulations

Federal Register
Vol. 58, No. 54
Tuesday, March 23, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF01

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending the current regulations to emphasize the requirement for local Federal activities to cooperate with local wage survey committees and appoint and release employees to participate in Federal Wage System (FWS) surveys unless exceptional circumstances prohibit their appointment or release. Because of occasional difficulties encountered in releasing local employees from their normal work assignments to participate in the FWS wage survey process, members of the Federal Prevailing Rate Advisory Committee (FPRAC) expressed concern that local Federal activities do not understand the importance of FWS surveys. This OPM action clarifies the intent of the current regulations and documents some practices previously contained in Federal Personnel Manual (FPM) guidance.

EFFECTIVE DATE: April 22, 1993.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 25, 1992, OPM published a proposed rule to amend the current regulations to emphasize the requirement for local Federal activities to cooperate with local wage survey committees and appoint and release employees to participate in Federal Wage System (FWS) surveys unless exceptional circumstances prohibit their appointment or release (57 FR 44343). No comments were received during the 30-day comment period. However, one minor editorial change is being made in § 532.229(b)(1) to clarify that the management member on the local wage survey committee is to be recommended by Federal agencies. No other changes are being made in the proposed rule.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In § 532.229, paragraph (b)(1) is revised and new paragraphs (b) (5) and (6) are added to read as follows:

§ 532.229 Local wage survey committee.

* * * * *

(b)(1) Local wage survey committees shall consist of three members, with the chairperson and one member recommended by Federal agencies and designated by the lead agency, and one member recommended by the labor organization having the largest number of wage employees under the regular wage schedule who are under exclusive recognition in the wage area.

* * * * *

(5) In selecting and appointing employees recommended by labor organizations and by Federal agencies to serve as committee members, consideration shall be given to the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the recommended employees, the need of the employees' work units for their presence on the job, and the prudent management of available financial and human resources. Employing agencies and activities shall cooperate and appoint the recommended employees unless exceptional circumstances prohibit their consideration. When the recommended employees cannot be appointed to serve as local wage survey committee members, the responsible lead agency or labor organization shall provide additional recommendations expeditiously to avoid any delay in the survey process.

(6) Employers shall cooperate and release appointed employees for committee proceedings unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as committee members are considered to be on official assignment to an interagency function, rather than on leave.

* * * * *

3. In § 532.231, paragraph (c)(2) is revised to read as follows:

§ 532.231 Responsibilities of participating organizations.

* * * * *

(c) * * *

(2) Heads of local activities. The head of each activity in a wage area is responsible for providing employment information, wage survey committee members, the prescribed number of data collectors, and any other assistance needed to conduct local wage survey committee functions.

* * * * *

4. In § 532.233, paragraph (e) is revised to read as follows:

§ 532.233 Preparation for full-scale wage surveys.

* * * * *

(e) Selection and appointment of data collectors. (1) The local wage survey committee, after consultation with the lead agency, shall determine the number of regular and alternate data collectors needed for the survey based upon the estimated number and location of establishments to be surveyed.

(2) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal Wage

System employee recommended by the committee member representing the qualifying labor organization and one Federal employee recommended by Federal agencies. The data collectors shall be selected and appointed by their employing agency.

(3) Wage data for nonappropriated fund surveys shall be collected by teams, each consisting of one local nonappropriated fund employee recommended by the committee member representing the qualifying labor organization and one nonappropriated fund employee recommended by nonappropriated fund activities. The data collectors shall be selected and appointed by their employing agency.

(4) The local wage survey committee shall provide employers with the names of employees recommended by labor organizations and by Federal agencies to serve as data collectors and shall indicate the number of regular and alternate data collectors to be selected and appointed by the employers.

(5) In selecting and appointing employees recommended by labor organizations and by Federal agencies to serve as data collectors, consideration shall be given to the requirement in the prevailing rate law for labor and agency representatives to participate in the wage survey process, the qualifications of the recommended employees, the need of the employees' work units for their presence on the job, and the prudent management of available financial and human resources. Employing agencies and activities shall cooperate and appoint the recommended employees unless exceptional circumstances prohibit their consideration. When the required number of employees cannot be appointed to serve as data collectors from among those recommended, the local wage survey committee shall obtain additional recommendations expeditiously to avoid any delay in the survey process.

(6) Employers shall cooperate and release appointed employees to serve as data collectors throughout the duration of the data collection period unless the employers can demonstrate that exceptional circumstances directly related to the accomplishment of the work units' missions require their presence on their regular jobs. Employees serving as data collectors are considered to be on official assignment to an interagency function, rather than on leave.

* * * * *

[FR Doc. 93–6550 Filed 3–22–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AC72

1993 Rice Acreage Reduction Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations to establish the acreage reduction percentage for the 1993 crop of rice at 5 percent. This action is required by section 101B of the Agricultural Act of 1949, as amended (the 1949 Act).

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Agricultural Economist, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of the selected option is available on request from the above-named individual.

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual affect on the economy of $100 million or more may result from implementing this final rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation is not required by section 105(b) of the 1949 Act to request comments with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies, are as follows: Rice Production Stabilization—10.065.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Information Collection Requirements

The amendments to 7 CFR part 1413 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Background

This final rule amends 7 CFR part 1413 to set forth the acreage reduction requirement under the 1993 Rice Program.

A proposed rule was published in the **Federal Register** on September 28, 1992, at 57 FR 44512 to amend the regulations at 7 CFR part 1413 with respect to the 1993 rice acreage reduction program (ARP) requirements.

During the period for public comment that ended October 20, 1992, one hundred and twelve comments were received regarding the acreage reduction requirement for the 1993 crop of rice. One comment favored no ARP, 54 favored an ARP of zero percent, 5 favored an ARP of 5 percent, and 52 favored an ARP of 10 percent or greater. Many comments stated that it was essential for the continuation of their rice production that the 50/92 program be provided.

After reviewing the comments, it has been decided that the 1993-crop acreage reduction requirement shall be 5 percent. This level is selected because it permits the highest level of rice production while continuing 50/92 program benefits and achieving the stocks-to-use goals of section 101B of the 1949 Act.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, 7 CFR part 1413 is amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.54, paragraph (a)(4)(ii) is revised, paragraph (a)(4)(iii) is added, and paragraph (d)(3) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(4) (i) * * *

(ii) 1992 rice, 0 percent;

(iii) 1993 rice, 5 percent.

* * * * *

(d) * * *

(3) For the 1993 crop:

(i) Shall not be made available to producers of wheat,

(ii) Shall not be made available to producers of feed grains,

(iii) Shall not be made available to producers of ELS cotton, and

(iv) Shall not be made available to producers of rice.

* * * * *

Signed at Washington, DC, on March 17, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–6589 Filed 3–22–93; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Part 1951

RIN 0575–AB42

State Director Exception for an Extension of the 60-day Deadline for Requesting Borrowers Loan Servicing

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The 60-day time period for submitting an application for Farmer Program loan servicing may be extended by the Farmers Home Administration (FmHA) State Director in certain cases when the State Director determines there has been extraordinary circumstances. This action is required by the Agricultural Credit Improvement Act of 1992. The intended effect is that in certain cases of extraordinary circumstances the State Director may determine that the borrower be allowed additional time to request loan servicing.

DATES: Interim rule effective March 23, 1993. Comments must be received on or before April 22, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations, Analysis and Control Branch (RACB), Farmers Home Administration, USDA, room 6348, South Agricultural Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: A. Veldon Hall, Director, Loan Servicing and Property Management Division, Farmer Programs, Farmers Home Administration, USDA, Room 5449, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720–4572.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983). Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Certification of Compliance Executive Order 12778

The interim rule has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in Sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environment Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background Discussion of Interim Rule

Section 10 of the Agricultural Credit Improvement Act of 1992 amended section 331D(e) of the Consolidated Farm and Rural Development Act to authorize the appropriate FmHA State Director to determine if extraordinary circumstances exist which would entitle a borrower to receive an extension of time beyond the 60-day deadline to apply for loan servicing. Therefore, FmHA is publishing a revision to its regulations to implement this provision of the Act. Previously, an extension of such time could only be granted under the Administrator's exception authority if the Administrator determined the Government's best interest would be adversely affected. It was not granted on the condition of benefit for the borrower even if there were extraordinary circumstances. In the past, "a rule of reason" was followed to allow extensions of time. However, there were no guidelines for its application, resulting in delays which abused the "rule of reason." The Food, Agriculture, Conservation and Trade Act of 1990 (FACT ACT) extended the time allowed for a borrower to request loan servicing from 45 days to 60 days. On April 30, 1992, (57 FR 18612) FmHA revised its regulations to comply with the FACT ACT and discontinued the "rule of

reason" because of the additional time allowed for submitting an application. On October 28, 1992, however, Congress enacted the Agricultural Credit Improvement Act of 1992. Section 10 of the statute requires FmHA to provide additional time for borrowers to apply for primary loan servicing when the State Director determines that extraordinary circumstances exist. Under the statute and this regulation implementing the statute, the State Director is the only one authorized to grant an extension of time beyond the 60-day deadline based on his or her determination of whether extraordinary circumstances exist which warrant an extension of time.

It is the policy of the Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This revision, however, is not published for proposed rulemaking since the change is necessary to comply with section 23 of the Agricultural Credit Improvement Act of 1992. Section 23 requires that interim regulations necessary to implement this Act be issued within 180 days of the date of enactment. Therefore, this regulation is published as an interim rule with a 30-day comment period.

List of Subjects in 7 CFR Part 1951

Accounting servicing, Credit, Debt restructuring, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Accordingly, part 1951 of chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 7 U.S.C., 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart S—Farmer Programs Account Servicing Policies

2. Section 1951.916 is amended by redesignating the current paragraph as paragraph (a) and adding paragraph heading, and by adding paragraph (b) to read as follows:

§ 1951.916 Exception authority.

(a) *Administrator.* * * *

(b) *State Director.* The State Director may, in individual cases of extraordinary circumstances, make an exception to the requirement that Attachments 2 or 4 of Exhibit A of this subpart, as appropriate, must be completed and returned to the FmHA County Office with the appropriate forms and documents for a complete application within 60 days after receiving Attachments 1 and 2 or 3 and 4 of Exhibit A of this subpart. If the borrower requests additional time to submit a complete application or submits a complete application after the deadline, the County Supervisor must ask the borrower why the additional time is or was needed. The County Supervisor must ask the borrower whether there are extraordinary circumstances like serious medical illness, severe adverse weather, or a family emergency, and explain that only the State Director can authorize an extension of time for extraordinary circumstances. In such cases, the County Supervisor must document the situation in the case file and immediately submit the request with his or her recommendation on whether the State Director should grant an exception for an extension of time. The request should describe the circumstances in accordance with the examples of extraordinary circumstances mentioned above and recommend an estimate of the additional time needed. Normally, such an extension of time should not exceed 30 days.

Dated: March 4, 1993.

Charles R. Resnick,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 93–6590 Filed 3–22–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90–1–002]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

Issued March 16, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; withdrawal of amendments.

SUMMARY: On September 20, 1991, the Federal Energy Regulatory Commission (Commission) issued a final rule in Order No. 555 that adopted regulations governing the construction and operation of natural gas pipeline facilities. Although the effective date of the final rule subsequently was postponed, the regulations adopted therein nonetheless were codified in the 1992 edition of the Code of Federal Regulations, as well as in the official reporter of Commission orders published by Commerce Clearing House, Inc. This understandably has generated considerable confusion in the industry, particularly among practitioners before the Commission. To alleviate that confusion, the Commission is issuing an order withdrawing the amendments adopted in Order No. 555.

EFFECTIVE DATE: This order is effective on March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–2246.

SUPPLEMENTARY INFORMATION: In addition to this document's being published in the **Federal Register**, all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 North Capitol Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 band, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE, Washington, DC 20426.

Order Withdrawing Amendments

The Federal Energy Regulatory Commission (Commission) is withdrawing the amendments adopted in the final rule issued on September 20, 1991 in Order No. 555.[1]

Order No. 555 adopted final regulations governing the construction of natural gas pipeline facilities. The rule was scheduled to become effective on November 19, 1991. Because of the rule's broad and potentially significant

[1] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶30,928 (1991); 56 FR 52330 (Oct. 18, 1991).

impact on the natural gas industry, the Commission postponed the effective date of the rule until 30 days after publication in the **Federal Register** of an order on rehearing.[2] That rehearing currently is pending.

Although the Commission postponed the effective date of the final rule, the regulations adopted therein were codified in the 1992 edition of the Code of Federal Regulations, as well as in the official reporter of Commission orders published by Commerce Clearing House, Inc. Codification of the non-effective, Order No. 555 regulations understandably has generated considerable confusion in the industry, particularly among practitioners before the Commission. To alleviate this confusion, the Commission is withdrawing the amendments adopted in Order No. 555. All compilations of Commission regulations thus should reflect the pre-Order No. 555 regulations (as any may have been amended since that time in proceedings other than Order No. 555).

The Commission Orders

The amendments to Commission regulations in 18 CFR parts 2, 154, 157, 284, 375 and 380[3] adopted in Order No. 555 are withdrawn.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6562 Filed 3–22–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–25]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Council Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard is changing the regulations of the Ringling Causeway Drawbridge, mile 73.6, at Sarasota by requiring the bridge to begin regulated operations one half hour earlier. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and LT. J.M. Losego, Project Counsel.

Regulatory History

On May 8, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92–10841). The Coast Guard received 5 comments on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that from 7:30 a.m. to 6 p.m., the draw need be opened only on the hour and half hour. The MPO and the bridge owner requested that the regulated period of the half hour opening schedule commence 30 minutes earlier, beginning at 7 a.m. instead of 7:30 a.m. due to increased early morning traffic levels.

Discussion of Comments and Changes

In response to our public notice, we received 5 comments. Three commenters were in favor of the half hour extension. Two commenters wanted an hourly schedule, but did not provide any additional information to support this proposal. A Coast Guard evaluation of the proposal concluded that highway traffic levels and frequency of bridge openings justified beginning the opening schedule 30 minutes earlier. A 60 day test from December 1, 1992, to January 31, 1993, confirmed that the expanded regulated period reduced traffic delays and congestion, without unreasonably impacting navigation.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this rule, the economic impact is expected to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraph (c) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the Ringling Causeway (SR 780) bridge, mile 73.6, shall open on signal; except that, from

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[2] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Reg. ¶30,928A (1991); 56 FR 58844 (Nov. 22, 1991).

[3] Published at 56 FR 52330 on Oct. 18, 1991.

7 a.m. to 6 p.m., the draw need open only on the hour and half hour.

* * * * *

Dated: March 4, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93-6598 Filed 3-22-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-92-56]

Drawbridge Operation Regulations; Hillsborough River, Tampa Bay, Northern Part, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Tampa, Hillsborough County and the Florida Department of Transportation (FDOT), (the bridge owners), the Coast Guard is changing the regulations governing seven drawbridges over the Hillsborough River by requiring two hour advance notice prior to opening the bridges. This action will relieve the bridge owners of the burden of having to staff the bridges with full-time bridge tenders to open the draws, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On December 17, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92-30502). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The drawbridges at Kennedy Blvd., Platt Street, Brorein Street, Cass Street, and Laurel Street which cross the Hillsborough River, presently open on signal from 9 a.m. to 4 p.m., Monday through Friday and from 8 a.m. to 6 p.m. Saturdays, Sundays and Federal holidays. At all other times they open on signal if at least a two hours notice is given. The West Columbus Drive Drawbridge and West Hillsborough Drive Drawbridge open on signal from 8 a.m. to 6 p.m. At all other times the draws open on signal if at least a one hour notice is given. The bridge owners have requested that all seven bridges be allowed to open on signal if at least a two hour advance notice is given. The purpose of the request is to reduce the burden of staffing the bridges with full-time bridgetenders.

Discussion of Comments and Changes

One letter was received from a commercial marine construction company. The commenter requested a 24 hour telephone number to obtain a bridge opening. This number has been established and will be published locally and posted on each bridge.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a regulatory evaluation is unnecessary. We conclude this because the bridges seldom open for commercial navigation and the bridge owners have agreed to open the draws as quickly as possible after notification in specified circumstances such as a situation where a delay would endanger life or property.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.291, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 117.291 Hillsborough River.

(a) The draws of the bridges at Platt Street, mile 0.0, Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, shall open on signal if at least two hours notice is given; except that, the draws shall open on signal as soon as possible after a request by a public vessel of the United States, a vessel owned or operated by the State, county or local government and used for public safety purposes, or a vessel in distress.

* * * * *

Dated: March 2, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93-6597 Filed 3-22-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-92-112]

Drawbridge Operation Regulations; Okeechobee Waterway, Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Lee County, the bridge owner, the Coast Guard is

changing the regulations governing the Sanibel Causeway Drawbridge, Okeechobee Waterway mile 151, San Carlos Bay at Punta Rassa, by requiring a five (5) minute advance notice prior to opening of the bridge during nighttime hours. This action will relieve the bridge owner of the burden of having a bridge tender at the bridge site constantly available to open the draw, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On December 17, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92–30501). No comments were received in response to the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Sanibel Causeway Drawbridge, which crosses San Carlos Bay, Okeechobee Waterway mile 151, presently opens on signal except that from 11 a.m. to 6 p.m., the draw opens only on the quarter hour. The bridge owner has requested that from 10 p.m. to 6 a.m., the bridge be untended and allowed to open on signal if at least a five minute advance notice is given. The purpose of the request is to reduce the burden of staffing the bridge with full time bridgetenders during nighttime hours.

Discussion of Comments and Changes

No comments were received. The final rule is unchanged from the proposed rule published on December 17, 1992.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the bridge owner has agreed to open the draw with a five minute advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.317, paragraph (k) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(k) Sanibel Causeway bridge, mile 151 at Punta Rassa. The draw shall open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. to 6 a.m. the draw will open on signal if at least a five minute advance notice is given. Exempt vessels shall be passed at any time.

Dated: March 2, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–6599 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–28]

Drawbridge Operation Regulations; New Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard is changing the regulations of the New Pass Drawbridge, mile 0.0, between Longboat Key and Lido Key at Sarasota by extending the hours on Saturday, Sunday and federal holidays during which the bridge need open only every 20 minutes. This change is being made because periods of peak vehicular traffic have changed. This action will reduce weekend traffic congestion and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J. M. Losego, Project Counsel.

Regulatory History

On May 8, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 92–10843). The Coast Guard received 40 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that from 7 a.m. to 6 p.m. Monday through Friday, except federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays and federal

holidays the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour. The MPO and the bridge owner requested that the bridge be allowed to open only on the hour and half-hour from 7 a.m. to 6 p.m. weekdays and from 9 a.m. to 6 p.m. on weekends. A Coast Guard evaluation of the proposed changes concluded the two lane highway has become seriously congested between 7 a.m. and 6 p.m. each day. However, the number of bridge openings averages less than 7 per day and the vessel holding conditions near the bridge are unsafe for extended delays due to shoaling, strong currents and cross winds.

As a result of these navigational limitations, the Coast Guard recommended the existing 20 minute opening schedule be effective from 7 a.m. to 6 p.m. each day which will limit the number of drawbridge openings throughout the year.

Discussion of Comments and Changes

In response to our public notice, we received 40 comments. Seven commenters were in favor of the 20 minute schedule. Thirty three commenters recommended a 30 minute schedule, but did not provide any additional information to support this proposal. A 60 day trial of the 20 minute schedule from December 1, 1992, to January 31, 1993, helped reduce traffic delays and congestion, without unreasonably impacting navigation. The final rule is unchanged from the proposed rule published in the **Federal Register** on May 8, 1992.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this rule, the economic impact is expected to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.311 is revised to read as follows:

§ 117.311 New pass.

The draw of the State Road 789 bridge, mile 0.0, at Sarasota, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at any time.

Dated: March 4, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard District.

[FR Doc. 93–6600 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ME–01–01–5068; A–1–FRL–4525–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; NSR/PSD Revisions and Related Revisions for Stack Heights, Visibility, and PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions were made to satisfy the federal new source review (NSR) requirements for the preconstruction permitting of new sources and modifications in both attainment and nonattainment areas. In addition, EPA is approving revisions that were included in the State's submittal which incorporate stack height and dispersion techniques regulations, visibility protection provisions for mandatory federal class I areas and associated integral vistas, and changes associated with the revised national ambient air quality standards (NAAQS) for particulate matter (PM_{10}).

EPA is approving additional revisions which include adoption of the 24-hour PM_{10} NAAQS, adoption of a more stringent State ambient air quality standard for annual PM_{10} levels, and deletion of the ambient air quality standards for total suspended particulate (TSP). These additional revisions combined with the particulate matter revisions in paragraph I, above, constitute a Group III particulate matter SIP. In addition, the Maine Department of Environmental Protection (DEP) requested that EPA redesignate areas classified as nonattainment for TSP to "Cannot Be Classified." EPA is approving the Maine DEP's redesignation request. Finally, EPA is approving an additional revision to Maine's definition of volatile organic compound (VOC) to exclude four more compounds with negligible photochemical reactivity.

The intended effect of this action is to approve the State's request to amend its SIP to incorporate these federal requirements. This action is being taken in accordance with section 110 of the Clean Air Act (the Act).

EFFECTIVE DATES: The amendments to §§ 52.1020(c)(26), 52.1031, and 52.1033 will become effective May 24, 1993. The amendments to §§ 52.1020(c)(27) and 81.320 will become effective May 24,

1993 unless notice is received by April 22, 1993 that adverse or critical comments will be submitted on the portions of the State's submittal that EPA is immediately approving. If the effective date is delayed, EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Comments on section II of this preamble may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., AAA, Boston, MA 02203. Copies of the documents relevant to these actions are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, Tenth Floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: For NSR questions or issues contact Lynne A. Hamjian, (617) 565–3250; and for stack heights, visibility and PM_{10} questions or issues contact Brian Hennessey, (617) 565–3223.

SUPPLEMENTARY INFORMATION: On July 7, 1989 (54 FR 28684), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. The NPR proposed approval of NSR requirements for the preconstruction permitting of new sources and modifications in both attainment and nonattainment areas which were submitted to EPA on August 22, 1988. In addition, the NPR proposed approval of revisions that were included in the State's submittal which incorporated stack height and dispersion techniques regulations, visibility protection provisions for mandatory federal class I areas and associated integral vistas, and changes associated with the revised NAAQS for PM_{10}. The NPR required the Maine DEP to make certain changes in the regulations to meet federal requirements. On October 27, 1989, the Maine DEP resubmitted these revisions as a formal SIP revision including the changes necessary to meet federal requirements. This final rulemaking action approves these formal SIP revisions.

This final rulemaking action also approves additional revisions submitted by the Maine DEP on October 31, 1989, which include adoption of a revised VOC definition and the 24-hour PM_{10} NAAQS, a more stringent state ambient air quality standard for annual PM_{10} levels, and deletion of the ambient air quality standards for TSP. In addition, this final rulemaking approves the Maine DEP's request that EPA redesignate areas classified as nonattainment for TSP to "Cannot Be Classified" for TSP.

This preamble is divided into two separate sections for clarity and to reflect differences in the procedural posture of the sections. Section I discusses the revisions to Maine NSR regulations including the associated state regulations for the prevention of significant deterioration (PSD), nonattainment area NSR permitting, general permitting, stack heights, visibility, and PM_{10}. After having given notice and responding to comments on these revisions in section I, EPA is taking final action approving them today.

Section II of this preamble discusses the additional revisions including the 24-hour PM_{10} NAAQS, a more stringent state ambient air quality standard for annual PM_{10} levels, deletion of the ambient air quality standards for TSP, a TSP redesignation request, and a revision of the definition of VOC. EPA is taking direct final action on the revisions in section II, without prior notice, unless EPA receives notice within 30 days that adverse or critical comments will be submitted. If such notice is received, EPA will withdraw section II of this final action and republish it as a notice of proposed rulemaking. Any such notice would not, however, affect the finality of matters addressed in section I of this preamble.

I. NSR Revisions Which EPA Proposed Approval of on July 7, 1989 (54 FR 28684)

A. NSR/PSD Provisions

1. Background

In 1979, the Maine DEP adopted NSR regulations (including those for PSD) to satisfy the requirements for SIPs codified at 40 CFR part 51. EPA approved these regulations and incorporated them into the SIP on January 25, 1980 and February 12, 1980. On August 7, 1980, EPA promulgated major revisions to 40 CFR part 51's NSR/PSD requirements for SIPs in response to the court's decision in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). In addition, on October 14, 1981, EPA promulgated a change in the definition of the term "stationary source" in the part 51 regulations for nonattainment areas to give states the option of adopting the "plantwide" definition. See 46 FR 50766. The Maine DEP has adopted revisions to its SIP's NSR/PSD regulations (including the plantwide definition) to be consistent with the NSR/PSD requirements codified at 40 CFR 51.160 through 51.166.

2. Summary of NSR/PSD Revisions Including Changes That Were Necessary Prior to Final Rulemaking

On October 27, 1989, the Maine DEP formally submitted amended regulations to EPA as revisions to its SIP. The revisions include changes to Chapter 100 "Definitions," Chapter 110 "Ambient Air Quality Standards," Chapter 113 "Growth Offset Regulation," Chapter 114 "Classification of Air Quality Control Regions," Chapter 115 (formerly Chapter 108) "Emission License Regulations," Chapter 116 "Prohibited Dispersion Techniques," portions of Chapter 1 "Regulations for the Processing of Applications," and the narrative portion of this SIP revision in Chapter 6 "Review of New Sources and Modifications." Pursuant to Maine's request (in its original August 22, 1988 SIP submittal), EPA is withdrawing Chapter 108 from the existing SIP regulations and is replacing it with the new Chapter 115. These revisions also include a letter from the Maine DEP dated May 1, 1989 which states that the Maine DEP is implementing a "Top Down" approach in determining Best Available Control Technology (BACT) and will continue to do so in all future BACT determinations.

EPA's NPR published July 7, 1989 (54 FR 28684, 28685) required three changes to the Maine DEP's SIP submittal prior to final rulemaking. The Maine DEP made the following changes which were outlined in EPA's NPR:

1. The Maine DEP amended its definition of "major source" to incorporate the provisions of 40 CFR 51.165(a)(1)(iv)(A)(2) and 51.166(b)(1)(i)(c).

2. The Maine DEP added a definition of the term "begin actual construction" equivalent to the term found at 40 CFR 51.166(b)(11).

3. The Maine DEP resubmitted Chapter 1 in its State-adopted form with the appropriate numbers and references.

The Maine DEP made one additional change since EPA's NPR. On March 2, 1990, the Maine DEP withdrew the definition of "fuel burning equipment" in Chapter 100(29) from its SIP submittal. Chapter 100(29) is not part of this action. EPA will be approving a new definition of "fuel burning equipment" in Chapter 100(29) in a separate notice.

EPA has evaluated these revisions and found that they are equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.160 through 51.166. Maine's regulations for NSR/PSD and EPA's evaluation are detailed in a memorandum dated February 7, 1990 entitled "Technical Support Document—Maine New Source Review Revisions."

B. Stack Height and Dispersion Techniques Provisions

1. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., (NRDC) and the Commonwealth of Pennsylvania. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions. *Sierra Club* v. *EPA*, 710 F.2d 436 (D.C. Cir. 1983). The court required EPA to promulgate certain revisions to the stack height regulations, which were proposed on November 9, 1984 (49 FR 344878) and finalized on July 8, 1985 (50 FR 27892).

The revisions redefined a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Clean Air Act Amendments of 1977 (Pub. L. 95–95), all states were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA, as required by section 406. Subsequently, EPA issued detailed guidance on the performance of the required reviews.

On January 22, 1988, the U.S. Court of Appeals issued a decision regarding EPA's revised July 8, 1985 stack height regulations. *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The Court remanded three provisions to EPA that may potentially bear on state actions now being taken pursuant to EPA's July 8, 1985 regulations. Since EPA is currently in the process of reconsidering the remanded provisions and the outcome is as yet unknown, EPA's review of Maine's October 27, 1989 submittal addresses its consistency with the July 8, 1985 regulations only. If EPA further revises its regulations in response to the remand at some future date, Maine will, at that time, be required to revise its regulations accordingly. Sources affected by such revisions may have to have their permits amended and/or be required to submit new demonstrations that they meet applicable ambient standards.

2. Summary of Maine's Stack Height and Dispersion Techniques Revisions Including Changes That Were Necessary Prior to Final Rulemaking

Maine's October 27, 1989 SIP submittal includes revised regulations at Chapter 116 which limit stack height credits and dispersion techniques in accordance with the requirements of 40 CFR 51.100 and 51.118. Additionally, Maine's revisions to Chapter 116 define the term "ambient air." A separate SIP revision submittal, received by EPA on September 30, 1988, contains the Maine DEP's review of all existing emission limitations and documents that these limitations are consistent with EPA's stack height requirements. EPA has approved that SIP revision in a separate rulemaking notice published in the **Federal Register** on February 27, 1989 (54 FR 8189).

EPA's NPR required one change to the Maine DEP's SIP submittal prior to final rulemaking. 54 FR 28686. The Maine DEP revised Chapter 116 to include the requirements of 40 CFR 51.100(kk)(2) as required in EPA's NPR.

EPA has evaluated these revisions and found that they are equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.100 and 51.118, as amended on July 8, 1985. Maine's regulations for stack height and dispersion techniques and EPA's evaluation are detailed in two memoranda entitled "Technical Support Document—Chapter 116 of Maine DEP's Regulations," dated December 19, 1988, and "Technical Support Document Addendum—ME's NSR Package: Chapter 116 (Stack Height Regulations), Visibility Protection Regulations, and PM_{10} Regulations," dated November 30, 1989.

C. Visibility Provisions

1. Background

As part of the Clean Air Act Amendments of 1977, Congress adopted section 169A setting a national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory class I federal areas resulting from manmade air pollution. On December 2, 1990, EPA promulgated Phase I visibility regulations, 40 CFR 51.300 through 51.307 to address "reasonably attributable" impairment—that impairment which can be traced to a single existing stationary facility or small group of existing stationary facilities by available techniques.

Part 51 regulations require that SIPs address the following:

1. Coordination with the class I area Federal Land Manager;
2. Review of proposed new sources for their impact on visibility in class I area and integral vistas;
3. A monitoring strategy for evaluating visibility in class I areas;
4. Best available retrofit technology (BART) analyses for existing facilities identified as reasonably anticipated to cause or contribute to visibility impairment in class I areas; and
5. A long-term strategy (10–15 years) for making reasonable progress toward the national visibility goal.

On July 12, 1985, EPA promulgated a visibility Federal Implementation Plan (FIP) covering the monitoring and NSR provisions for Maine and a number of other states that failed to submit necessary visibility SIP revisions. 50 FR 28551. The FIP was promulgated pursuant to Part 1 of a settlement agreement reached in response to a citizen's suit filed in the U.S. District Court for the Northern District of California by the Environmental Defense Fund (EDF) and other environmental groups, *EDF* v. *Reilly*, No. C82–6850 RPA (N.D. Cal. 1982).

On November 24, 1987 pursuant to Part 2 of that settlement agreement, EPA promulgated a visibility FIP covering the long-term strategy provisions and revising the NSR FIP to include integral vista provisions. 52 FR 45137. The FIP promulgated on November 24, 1987, however, deferred action on BART control strategies at existing sources for certain class I areas.

2. Summary of Maine's Visibility Revisions Including Changes That Were Necessary for Final Rulemaking

Maine's October 27, 1989 SIP revision submittal includes many of the requirements covered under EPA's visibility protection regulations at 40 CFR 51.300 through 51.307, and

therefore, those included in EPA's Part 1 visibility FIP. A summary of the visibility-related revisions in Maine's submittal was detailed in EPA's NPR at (54 FR 28686–28688) and will not be restated here.

EPA's NPR required one change to the Maine DEP's SIP submittal prior to final rulemaking. 54 FR 28688. The Maine DEP corrected the identification of a "key feature" observed from Roosevelt Campobello International Park as required in EPA's NPR. Additionally, EPA also stated in the NPR that Maine's submittal did not include certain visibility protection regulations, and noted that relevant portions of the FIP would remain in effect until such time as the Maine DEP submits additional SIP revisions. Maine's October 27, 1989 formal submittal included a revision to Chapter 115 adding a provision for advance notification within 30 days of all affected Federal Land Managers where the Maine DEP confers with a proposed source prior to actual receipt of a permit application. Therefore, this particular FIP provision is satisfied and is no longer necessary. Finally, in response to comments on EPA's NPR from the National Park Service, the Maine DEP corrected its list of integral vistas in Chapter 114.

While Maine's October 27, 1989 submittal addresses many of the requirements for FIPs covered by 40 CFR part 51's visibility regulations, it should be clearly noted that other provisions of those regulations still require action on Maine's part to supersede all of the FIP. Therefore, relevant portions of the FIP will remain in effect in Maine until such time as Maine submits additional SIP revisions to address the following issues:

(1) A long-term strategy for remedying existing impairment as required at 40 CFR 51.306; and

(2) The identification and application of BART and other measures to applicable existing sources as required at 40 CFR 51.302 (b) and (c)(2), (3) and (4).

EPA will take separate rulemaking actions on those additional SIP revisions at such time as the Maine DEP submits them for approval.

EPA's evaluation of the changes pertaining to visibility protection is contained in two memoranda entitled "Technical Support Document—Maine's Class I Visibility Protection Regulations," dated December 19, 1988, and "Technical Support Document Addendum—ME's NSR Package: Chapter 116 (Stack Height Regulations), Visibility Protection Regulations, and PM_{10} Regulations," dated November 30, 1989.

D. PM_{10} Provisions

1. Background

On July 1, 1987, EPA promulgated a revised NAAQS for particulate matter (52 FR 2463). EPA revised the old definition of the NAAQS from TSP to a new definition (i.e., PM_{10}). The new definition applies to particular matter with aerodynamic diameters of 10 micrometers or less.

2. Summary of Maine's PM_{10} Revisions Including Changes That Were Necessary Prior to Final Rulemaking

On October 27, 1989, the Maine DEP submitted amended regulations to EPA as revisions to its SIP. These revisions incorporate NSR-related PM_{10} requirements that include changes to the following regulations: Chapter 100 "Definitions," and Chapter 115 "Emission License Requirements." These amendments include the relevant definitions and PM_{10} PSD provisions. These amendments do not include the definitions of the terms "particulate matter emissions" and "PM_{10} emissions," nor do they include provisions related to significant harm levels and emergency episode plans for PM_{10}. The state has since submitted these revisions and EPA will process them as separate actions. The revisions approved in section I, combined with the revisions EPA is approving in section II of this notice, satisfy Group III area requirements to adopt PM_{10} air quality standards, to incorporate the new standards into preconstruction review and permitting regulations, to establish a PM_{10} monitoring network, and to define any terms the revised SIP uses to implement the new standards.

EPA's NPR required one change to the Maine DEP's SIP submittal prior to final rulemaking. 54 FR 28688. The Maine DEP added provisions in its regulations which require that new or modified sources that would cause or contribute to a violation of the PM_{10} NAAQS comply with nonattainment NSR requirements (lowest achievable emission rate, offsets, statewide compliance, etc.) in order to avoid causing or contributing to a NAAQS violation. These provisions satisfy the requirements of EPA's NPR.

Maine's NSR-related PM_{10} regulations and EPA's evaluation are detailed in two memoranda entitled "Technical Support Document-Maine's Particulate Matter Regulations," dated January 5, 1988, and "Technical Support Document Addendum—ME's NSR Package: Chapter 116 (Stack Height Regulations), Visibility Protection Regulations, and PM_{10} Regulations," dated November 30, 1989.

E. Public Comments

On July 7, 1989 (54 FR 28684), EPA published a notice of proposed rulemaking (NPR) proposing to approve the Maine's NSR/PSD revisions, and related revisions for stack height, visibility, and PM_{10}. EPA received comments from two parties, the National Park Service, and Texaco Inc., in response to the NPR. A brief summary of the comments and responses are presented below.

Comment: Overall, the National Park Service supported Maine's visibility protection provisions, but recommended some technical corrections to the state-declared integral vistas in Maine SIP.

The National Park Service recommended the following:

(1) Correction of erroneous listing of the names of specific vistas under the "key features" heading for some views;

(2) Deletion of certain "key feature" listings where protection is already afforded due to their location within a mandatory class I area; and

(3) Correction of erroneous compass reading for a Duck Harbor view.

Response: In response to the National Park Service's comments, the Maine DEP revised its regulations. These revisions are consistent with Maine's original intent at the time it proposed these regulations on the state level. The Maine DEP submitted these revisions on October 27, 1989.

Comment: In a letter dated August 8, 1989, Texaco Inc. commented on a statement in EPA's NPR regarding certain aspects of the federal-state relationship following final approval of the Maine SIP.[1] The company characterized this statement as a suggestion by EPA that the Agency will be able to enforce interpretations and guidance as if they were part of the formally adopted SIP. The company then asserted that EPA lacks authority under the Administrative Procedure Act to treat interpretations and guidance in this fashion, and that, as to future interpretations, this approach would result in a SIP that is so vague as to violate the Fifth Amendment to the Constitution of the United States.

Response: EPA today clarifies that it did not intend to suggest that Maine is

[1] The comment period on EPA's proposal to approve Maine's submittal closed on August 7, 1989. (See 54 FR 28684, July 7, 1989.) EPA Region I received Texaco's comment letter, dated August 8, 1989, on August 11, 4 days after the comment period on the Notice of proposed Rulemaking closed. Although Texaco's comments were not submitted on a timely basis, and thus, EPA is not obligated to consider or respond to them, and has not formally done so, EPA will informally respond in the interest of fully addressing issues brought to the Agency's attention by the interested public.

required to follow EPA's interpretations and guidance issued under the Act in the sense that those pronouncements have independent status as enforceable provisions of the Maine SIP, such that mere failure to follow such pronouncements would constitute a violation of the Act. Rather, as discussed below, EPA's intent is merely to place the state and the public on notice of EPA's duty under the Act to continue to oversee the NSR provisions of the Act following approval of a state program. The preamble language in question is neither part nor a condition of EPA's approval of Maine's SIP, and has no binding effect. Rather than creating new rights or obligations, it advises the public of EPA's views regarding obligations that already exist by operation of the applicable statutory and regulatory provisions.

The issuance of PSD permits and other actions by the state in the administration of the federal Clean Air Act must conform to the requirements of the Act and the SIP. See sections 167 and 113, 42 U.S.C. 7477 and 7413 (EPA's enforcement authority in overseeing state implementation). In making judgments as to what constitutes compliance with the Act and regulations issued thereunder, EPA looks to (among other sources) its policy statements and interpretive rulings in effect at the time of EPA's action regarding those statutory and regulatory requirements. It follows that state actions implementing the federal Clean Air Act which do not conform to the Act may lead to potential enforcement action by EPA. However, in defending against such an enforcement action, a party is free to assert that EPA has not reasonably interpreted the underlying statutory and regulatory provisions.

EPA's approval of a state NSR program or some portion of it does not divest the Agency of its duty, to continue a vigorous oversight and enforcement role under sections 113 and 167. For example, section 167 provides that EPA shall take whatever enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Thus, as to PSD, the purpose of the preamble language in the July 1989 notice was to advise Maine of EPA's view that approval of a state's PSD program does not bar EPA from deciding whether a state-issued PSD permit conforms to the Act's PSD requirements. In addition, section 113(a)(5) (as amended) grants EPA similar authority in both PSD and nonattainment areas.

However, in other instances, EPA action approving a SIP revision can act to adopt interpretations of the statute, regulations, or implementation plans as part of the revised SIP. As to matters of particular importance, EPA may urge the states to take steps to agree to specific interpretations and policies through the SIP approval process. States may also do this on their own volition. As noted above, this process has been followed in today's action regarding a May 1, 1989 letter from the Maine DEP.

Following SIP approval, then, EPA remains the congressionally designated agency with primary authority to reasonably interpret the applicable federal law under the Act and to base its enforcement actions on those interpretations. If EPA determines that a state-issued permit does not conform to the Act's NSR requirements, EPA will decide whether to sue the state and/or the source to redress the violation. See sections 113(a)(5), 167.

EPA acknowledges that states have the primary role in administering and enforcing the various components of the NSR program. For the most part, the states have been successful in this effort, and EPA's involvement in interpretative and enforcement issues is limited to only a small number of cases. Consequently, EPA's continuing oversight role under the Act leaves Maine and other states with considerable discretion to implement the NSR program as they see fit. First, as noted in the notice of proposed rulemaking, EPA may not fundamentally change the requirements set forth in its own regulations or SIPs through interpretative rulings or policy statements. The creation of new rights or obligations can only be accomplished by enactment of legislation or revisions to the regulations in 40 CFR parts 51 and 52 and by SIP revisions, in accordance with applicable rulemaking procedures. Second, EPA's interpretations often are intended in whole or in part to guide only EPA Regional Offices, and in such instances they have no implications whatsoever for a state's administration of its program.

Thus, EPA believes that the language in question in the September 29, 1989 notice, as clarified here, accurately describes the legal relationship between EPA and the State of Maine with respect to the NSR program.

F. Clean Air Act Amendments of 1990

EPA has reviewed the revisions in section I of this notice for conformance with the provisions of the Clean Air Act Amendments enacted on November 15, 1990. As is discussed, an accommodation has been made for all of the immediately applicable NSR requirements of the Amendments. This approval in no way relieves Maine of the obligation to submit further revisions to its SIP to meet the Act's new requirements according to the schedule contained in the Act. In addition, EPA is currently developing revised federal NSR regulations and Maine will adopt these new requirements and submit them in a separate submittal. EPA has decided to approve these revisions today in order to strengthen the SIP and conform it to existing requirements during this transition period. EPA has determined, however, that certain statutory changes have immediate effect and may impact Maine's NSR revisions. The paragraphs below summarize these provisions and discuss the impact on Maine's SIP revisions.

1. The Clean Air Act Amendments of 1990 add a new section 302(z) of the Clean Air Act defining the term "stationary source" as any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216. EPA's initial review is that the definition of stationary source in the federal regulations is flexible enough to accommodate the new section 302(z) without requiring regulatory revisions. Chapter 100(71) of Maine's regulations defines the term "source." As implemented, this definition conforms to the new section 302(z) definition in the Clean Air Act Amendments. If in the future, EPA promulgates standards for certain nonroad engines and nonroad vehicles, EPA will require that Maine amend its definition of source to exclude these engines and vehicles as appropriate. Therefore, this change in the Clean Air Act Amendments of 1990 does not immediately impact this SIP revision.

2. The Clean Air Act Amendments of 1990 revise section 169(3) of the Clean Air Act to specify that "clean fuels" should be considered in a BACT analysis, and to provide that a source utilizing clean fuels or any other means to comply with the BACT requirement shall not be allowed to increase above levels that would have been required under section 169(3) prior to the 1990 Amendments. EPA has interpreted the new statutory language regarding clean fuels as merely codifying present practice under the Act, under which clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT-level controls. See

Letter from William G. Rosenberg, Assistant Administrator, to Henry Waxman, Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, October 17, 1990. Accordingly, EPA believes that no regulatory revisions at this time are necessary in order to implement these statutory changes.

Furthermore, in a letter dated May 1, 1989, the Maine Department of Environmental Protection committed to implementing BACT in accordance with EPA policy and in accordance with the BACT guidance document issued by the Northeast States for Coordinated Air Use Management (NESCAUM) dated October, 1988. NESCAUM's BACT guidance document includes consideration of clean fuels in the BACT analysis.

3. The Clean Air Act Amendments of 1990 revised sections 162(a) and 164(a) of the Clean Air Act to specify that the boundaries of areas designated as class I must conform to all boundary changes in such areas made since August 7, 1977 and any changes that may occur in the future. Prior law was unclear on this point. However, EPA interprets the current regulations at 40 CFR 51.166 as being able to accommodate these statutory changes, and no regulatory revisions are necessary at this time in order to implement these changes. For a discussion of EPA's policy regarding the implementation of the boundary change, see Memorandum, "New Source Review Program Transitional Guidance," from John S. Seitz, Director, Office of Air Quality Planning and Standards, March 11, 1991. The State of Maine has 3 class I areas which include the following: Moosehorn National Wildlife Refuge, Roosevelt-Campobello International Park and Acadia National Park. Roosevelt-Campobello International Park and Acadia National Park have expanded their boundaries since 1977 and anticipate further expansion in the future.

Chapter 114(I)(C) of Maine's regulations states the following: "The Board hereby recognizes the classification and regulatory requirements of those federal lands which have been established as mandatory class I areas by the federal Clean Air Act: Acadia National Park located in the Downeast and Central Maine Air Quality Regions; Moosehorn National Wildlife Refuge located in the Downeast Air Quality Region; the Roosevelt Campobello International Park located in New Brunswick, Canada, and the Presidential Range Dry River Wilderness and Great Gulf Wilderness or the White Mountain National Forest in New Hampshire." EPA interprets the phrase "recognizes lands which have been established as mandatory class I areas by the federal Clean Air Act" to include all lands (including land acquired after 1977 and in the future). EPA has informed the Maine DEP of the class I area boundary changes and Maine concurs with EPA's interpretation of Chapter 114.

4. Title III of the Clean Air Act Amendments of 1990 added a new section 112(b)(6) that excludes the hazardous air pollutants listed in section 112(b)(1) of the revised Act (as well as any pollutants that may be added to the list) from the PSD (and other) requirements of part C. Thus, because they are on the initial title III hazardous air pollutants list, the following pollutants are now exempt from federal PSD applicability: Arsenic, asbestos, benzene (including benzene from gasoline), beryllium, mercury, radionuclides (including radon and polonium) and vinyl chloride. The title III exemption applies to final federal PSD permits issued on or after November 15, 1990. For federal PSD permit applications now under review, PSD permit requirements do not apply to those pollutants listed under title III.

Note that pursuant to section 116 and the preservation clause in section 112(d)(7) of the amended Act, states with an approved PSD program may continue to regulate the title III hazardous air pollutants now exempted from federal PSD, if the state PSD regulations provide an independent basis to do so. These state rules would remain in effect unless a state revised them to provide similar exemptions. Additionally, the title III pollutants continue to be subject to any other applicable state and federal rules; the exclusion is only for part C requirements.

Maine's regulations include the following pollutants which are now exempt from federal PSD applicability: Asbestos, beryllium, mercury, and vinyl chloride. The Maine DEP is currently regulating these pollutants under the PSD program and will continue to do so until the state implements a hazardous air pollutants program. Note that the definition of "significant emissions" in Maine's regulations also include any emission rate of a regulated pollutant not listed in the definition of significant emissions. Regulated pollutants include pollutants regulated by the state or EPA.

EPA has evaluated these provisions of the Clean Air Act Amendments of 1990 and their impact on Maine's NSR SIP revisions in a memorandum entitled "Technical Support Document—Impact of New Source Review Provisions in the Clean Air Act Amendments of 1990 which May Have an Immediate Effect on Maine's Licensing Regulations," dated January 28, 1992. With respect to the statutory changes discussed above, EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its regulations. Upon final adoption of those regulations, EPA will call upon states with approved NSR and PSD programs, including Maine, to make any necessary corresponding changes in their SIPs.

Final Action

EPA is approving revisions to Maine's SIP which include the following regulations: Chapter 100 "Definitions" (except for Chapter 100(76) which is being approved in section II of this notice), Chapter 110 "Ambient Air Quality Standards" (except for Chapter 110(2) which is being approved in section II of this notice), Chapter 113 "Growth Offset Regulation," Chapter 114 "Classification of Air Quality Control Regions" (except for Chapter 114(II) and (III) which are being approved in section II of this notice), Chapter 115 (formerly Chapter 108) "Emission License Regulations," Chapter 116 "Prohibited Dispersion Techniques," portions of Chapter 1 "Regulations for the Processing of Applications," and Chapter 6 (Maine's NSR SIP narrative) "Review of New Sources and Modifications." These revisions incorporate the federal NSR/PSD requirements for general preconstruction permitting for all sources and the PSD and NSR provisions for major stationary sources and major modifications in attainment and nonattainment areas in 40 CFR 51.160 through 51.166, the stack height and dispersion techniques requirements of 40 CFR 51.100 as amended on June 8, 1985, the portions of the visibility protection provisions of 40 CFR 51.300 through 51.307, PM_{10} PSD provisions, and associated definitions. Pursuant to Maine's request (in its original submittal letter dated August 22, 1988), EPA is withdrawing Chapter 108 from the existing SIP regulations and is replacing it with Chapter 115.

Maine's revisions meet the visibility protection monitoring and NSR provisions of 40 CFR 51.305 and 51.307, which are addressed in the FIP requirements at 40 CFR 52.26 and 52.27, but not all provisions of 40 CFR 51.306, which are addressed in FIP requirements at 40 CFR 52.29, and 40 CFR 51.302. Therefore, EPA is revising those FIP provisions incorporated into Maine's SIP at 40 CFR 52.1033 by deleting the current subsections (a) and (b) and inserting the following text: "The requirements of section 169A of

the Act are not met because the plan does not include approvable procedures for meeting all of the requirements of 40 CFR 51.302 or 51.306 for the protection of visibility in mandatory class I Federal areas." Regulations for long-term visibility strategies in 40 CFR 52.29 which were previously incorporated and made a part of the applicable plan for the State of Maine in 40 CFR 52.1033(c) will remain in effect.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of the action taken under section I of this notice must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

II. PM_{10} Standards, TSP Standards—Deletion, TSP Redesignation, Miscellaneous Revisions, and VOC Definition—Direct Final Rulemaking Notice

On October 31, 1989, the Maine DEP formally submitted these amended regulations to EPA as revisions to its SIP. The revisions include changes to Chapter 110 "Ambient Air Quality Standards," and Chapter 114 "Classification of Air Quality Control Regions." This submittal also included a revised version of Chapter 6 of narrative portion of the Maine SIP entitled "Review of New Sources and Modifications." With these revisions combined with the revisions in section I of this notice, Maine's SIP would satisfy Group III area requirements to adopt PM_{10} air quality standards, to incorporate the new standards into preconstruction review and permitting regulations, to establish a PM_{10} monitoring network, and to define any terms the revised SIP uses to implement the new standards. Lastly, the Maine DEP revised its definition of VOC since EPA's proposal. Therefore, EPA is taking a direct final action on the definition of VOC in section II of this preamble.

A Particulate Matter Standard

Maine's August 22, 1988 NSR and related requirements SIP submittal, which EPA proposed to approve on July 7, 1989, contained both PM_{10} and TSP ambient air quality standards. The Maine DEP proposed the new PM_{10} standards and proposed to delete the TSP standards and held extensive hearings. The Maine Attorney General's Office advised the Maine DEP, however, that only the state legislature had authority to make changes to ambient air quality standards. The Maine DEP proposed legislation to delete the TSP standards and adopt the federal PM_{10} NAAQS. On may 10, 1989, the full Maine legislature adopted regulations which dropped the former TSP standards, but which also revised the annual PM_{10} ambient air quality standard to one more stringent than the federal NAAQS. The state standard is 40 ug/m^3 annual arithmetic mean, whereas the federal standard is 50 ug/m_3 annual arithmetic mean. Subsequently, the following changes were made to the Maine DEP's regulations.

The Maine DEP deleted the 24-hour and annual TSP standards at Chapters 110(2)(A) and (2)(C) of Maine's regulations. The Maine DEP revised the annual PM_{10} ambient air quality standard at Chapter 110(2)(B). The Maine DEP deleted the standard of 50 ug/m^3 (expected annual arithmetic mean concentration, as determined in accordance with appendix K of 40 CFR part 50.) In addition, the Maine DEP made a minor revision to the 24-hour PM_{10} ambient air quality standard to make the language consistent with the language in the federal standard.

Section 116 of the Act reserves the states the right to adopt any standard or limitation respecting emissions of air pollutants, provided they are at least as stringent as the corresponding federal standard. This authority appears to cover "ambient air quality standards" as described in section 109 of the Act. Further, nothing in sections 109 or 110 of the Act, regulating the development of national ambient air quality standards and SIP development and approvals, appears to give EPA the authority to disapprove a more stringent state ambient standard. This is especially so where, as here, the state standard and measures designed to implement it bear a reasonable relationship to efforts towards attainment of the federal PM_{10} standard. Under section 110, EPA cannot disapprove Maine's SIP revision for reasons not enumerated in the Act; therefore, EPA will approve Maine's more stringent PM_{10} ambient air quality standard. See *Train* v. *NRDC*, 421 U.S. 60, 98 (1975). Therefore, EPA is approving Maine's PM_{10} standard.

The Maine DEP deleted Chapter 114(II)(B) which listed areas classified as nonattainment for TSP. This deletion is consistent with Maine's request to redesignate its TSP nonattainment areas to unclassified.

Note that the Maine DEP has removed the nonattainment designation for Millinocket for sulfur dioxide (SO_2) from Chapter 114. EPA has not approved a redesignation request for Millinocket and it is still designated as a primary SO_2 nonattainment area in 40 CFR 81.320. Although EPA is approving Maine's current version of Chapter 114, this action in no way changes the federal designation for Millinocket in 40 CFR part 81 as a nonattainment area for SO_2.

In Chapter 6 of Maine's narrative to its NSR Regulations the Maine DEP made various changes to make it consistent with the revised PM_{10} standards as well as made some insignificant changes to correct references. These changes are consistent with the Maine DEP's SIP revision request.

Maine's particulate matter regulations and EPA's evaluation are detailed in a memorandum entitled "Technical Support Document—Maine's PM_{10} Regulations and Request for Redesignation of TSP Area," dated January 22, 1990. Copies of that memorandum are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

B. VOC Definition

Since publication of EPA's NPR, the Maine DEP amended its definition of VOC in Chapter 100 to exclude four additional compounds which EPA has already determined to have negligible photochemical reactivity. The four compounds are the following: Dichlorotrifluoroethane (HCFC–123), tetrafluoroethane (HFC–134a), dichlorofluoroethane (HCFC–141b), and chlorodifluoroethane (HCFC–142b). The Maine DEP submitted this revised definition on October 27, 1989.

C. Clean Air Act Amendments of 1990

EPA has reviewed the revisions in section II of this preamble for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. If additional changes are necessary to Maine's nonattainment area NSR regulations, Maine will be required to adopt applicable changes and submit them to EPA in a separate submittal by the deadline. EPA has decided to approve these revisions today in order to strengthen the SIP and conform it to existing requirements during this transition period.

EPA is approving these portions of the SIP submittal without prior proposal because the Agency views these as noncontroversial amendments to conform Maine's SIP to existing federal

regulations and anticipates no adverse comments. This action will be effective May 24, 1993 unless, by April 22, 1993, notice is received that adverse or critical comments will be submitted on this specific portion of EPA's approval. If such notice is received, action on these portions will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final on these portions of the rulemaking. The other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that the action on these portions of the rulemaking will be effective on May 24, 1993.[2]

Final Action

EPA is approving the revised 24-hour PM_{10} standard and the more stringent annual PM_{10} standard in Chapter 110(2). EPA is also approving the deletion of the TSP standard in Chapter 110(2) and deletion of the nonattainment classifications for the TSP areas in Maine in Chapter 114(II) and (III). EPA is approving the revised definition of VOC in Chapter 100(76). Lastly, EPA is approving Maine's request to redesignate the following areas from secondary TSP nonattainment areas to areas which "cannot be classified": Augusta, Lincoln, Bangor/Brewer, and Baileyville.[3]

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review which may be allowed by law of the action taken under section II of this preamble must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine and was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 19, 1992.

William K. Reilly,

Administrator.

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraphs (c)(26) and (c)(27) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(26) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on October 27, 1989.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated October 27, 1989 submitting revisions to the Maine State Implementation Plan.

(B) Chapter 100 of the Maine Department of Environmental Protection's Air Regulations entitled "Definitions Regulations," except for the definition of volatile organic compounds in Chapter 100(76) which is being incorporated by reference in 40 CFR 52.1020(c)(27). This regulation was effective in the State of Maine on October 3, 1989. Note, the definition of fuel burning equipment in Chapter 100(29) is not part of Maine's submittal.

(C) Chapter 110 except for Chapter 110(2) which is being incorporated by reference in 40 CFR 52.1020(c)(27), Chapter 113, Chapter 114 except for Chapter 114(II) and (III) which are being incorporated by reference in 40 CFR 52.1020(c)(27), Chapter 115, and Chapter 116 of the Maine Department of Environmental Protection's Air Regulations entitled, "Ambient Air Quality Standards," "Growth Offset Regulation," "Classification of Air Quality Control Regions," "Emission License Regulations," and "Prohibited Dispersion Techniques," respectively. These regulations were effective in the State of Maine on October 25, 1989. Chapter 108, originally approved on January 30, 1980 and February 19, 1980 in paragraphs (c)(10) and (c)(11) of this section, is being withdrawn and replaced with Chapter 115.

(D) Portions of Chapter 1 entitled "Regulations for the Processing of Applications," effective in the State of Maine on February 8, 1984.

(ii) Additional materials.

(A) A State Implementation Plan narrative contained in Chapter 6 entitled "Review of New Sources and Modifications."

(B) Letter dated May 1, 1989 from the Maine Department of Environmental Protection regarding implementation of BACT.

(C) Nonregulatory portions of the state submittal.

(27) Revisions to the State Implementation Plan submitted by the

[2] As noted above, this portion of EPA's approval is intended only to bring Maine's VOC definition into conformity with current regulations. It is not intended to address or invite comments on the reactivity of any other compound for purposes of the VOC definition. Accordingly, should comments be submitted regarding other compounds, EPA will deem them not relevant to today's action, and not a basis to withdraw this action.

[3] Again, EPA's approval of Maine's Chapter 114 does not change the federal designation of Millinocket as a nonattainment areas for SO_2 found at 40 CFR 8° 320.

Maine Department of Environmental Protection on October 31, 1989.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated October 31, 1989 submitting revisions to the Maine State Implementation Plan.

(B) The definition of volatile organic compounds in Chapter 100(76) of the Maine Department of Environmental Protection's "Definitions Regulations" effective in the State of Maine on October 3, 1989.

(C) Chapter 110(2) and Chapter 114 (II) and (III) of the Maine Department of Environmental Protection's "Ambient Air Quality Standards" and "Classification of Air Quality Control Regions" Regulations effective in the State of Maine on October 25, 1989. Note that Millinocket remains designated as a nonattainment area for SO_2 until redesignated at 40 CFR 51.320.

(ii) Additional materials.

(A) A State Implementation Plan narrative contained in Chapter 6 entitled "Review of New Sources and Modifications."

(B) Nonregulatory portions of the state submittal.

3. In § 52.1031 Table 52.1031 is amended by adding new entries for "Chapter: 1", "115", and "116"; and by adding new citations to entries "100", "110", "113", and "114" and by removing the entry for "108", to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031—EPA APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
Chapter:						
1	Regulations for the Processing of Applications.	02/08/84	03/23/93	[Insert FR citation from published date].	(c)(26)	Portions of Chapter 1.
*	*	*	*	*	*	*
100	Definitions	10/03/89	03/23/93	[Insert FR citation from published date].	(c)(26)	All except for the definition of VOC in Chapter 100(76). Note that this definition is approved in another paragraph below. In addition, Maine withdrew the definition of fuel burning equipment in Chapter 100(29) from its SIP submittal. This definition is approved in another paragraph below.
					(c)(27)	Approval of definition of VOC in Chapter 100 (76) only.
*	*	*	*	*	*	*
110	Ambient Air Quality Standards.	10/25/89	03/23/93	[Insert FR citation from published date].	(c)(26)	All of Chapter 110 except for Chapter 110(2) which is approved in another paragraph, below. Note that Maine did not submit its Chromium standard in Chapter 110(12) for approval.
					(c)(27)	Chapter 110(2) only.
*	*	*	*	*	*	*
113	Growth Offset Regulation	10/25/89	03/23/93	[Insert FR citation from published date].	(c)(26)	
*	*	*	*	*	*	*
114	Designation of Air Quality Control Regions.	10/25/89	03/23/93	[Insert FR citation from published date].	(c)(26)	All except for Chapter 114(II) and (III) which are approved in another paragraph, below.
					(c)(27)	Chapter 114(II) and (III) only.
*	*	*	*	*	*	*
115	Emission License Regulation.	05/07/79	01/30/80	45 FR 6784	(c)(10)	PSD.
		12/24/79	02/19/80	45 FR 10766	(c)(11)	New Source Review.
		10/25/89	03/23/93	[Insert FR citation from published date].	(c)(26)	Note Maine did not submit references to nonregulated pollutants for approval. Also note that this Chapter was formerly Chapter 108.
*	*	*	*	*	*	*
116	Prohibited Dispersion Techniques.	10/25/89	03/23/93	[Insert FR citation from published date].	(c)(26)	
*	*	*	*	*	*	*

4. Section 52.1033 is amended by revising paragraphs (a) and (b); paragraph (c) is republished for the convenience of the reader:

§ 52.1033 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures for meeting all of the requirements of 40 CFR 51.302 or 51.306 for the protection of visibility in mandatory class I Federal areas.

(b) (reserved)

(c) *Long-term strategy.* The provisions of § 52.29 are hereby incorporated into the applicable plan for the State of Maine.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.320 is amended by revising the table for "Maine-TSP" to read as follows:

§ 81.320 Maine.

MAINE-TSP

Designated areas	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 107 (Central ME):				
Augusta			X	
Lewiston/Auburn			X	
Rockland			X	
Remainder of AQCR				X
AQCR 109 (Downeast):				
Lincoln			X	
Bangor/Brewer			X	
Baileyville			X	
Remainder of AQCR				X
AQCR 108 (Aroostook)			X	
AQCR 111 (Northwest ME)				X
AQCR 110 (Met. Portland)				X

* * * * *

[FR Doc. 93–6452 Filed 3–22–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[MN07–1–5210; FRL–4527–6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On March 13, 1989, Minnesota Pollution Control Agency (MPCA) requested that the USEPA approve a revised codification of the State's regulations. Under this request, the recodified regulations, contained in Chapter 7001 and Chapter 7005 of the State Rules, would replace the regulations currently in the SIP, generally either the "APC Series" or the "4000 Series." USEPA is approving the requested recodification.

EFFECTIVE DATE: This action will be effective on May 24, 1993 unless notice is received by April 22, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision and the September 21, 1992, technical support document are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region V office.) U.S. Environmental Protection Agency (AE–17J), Region V, Air Enforcement Branch, 77 West Jackson Blvd., Chicago, Illinois 60604–3590.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590

A copy of this revision to the Minnesota SIP is available for inspection at: United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region V, Chicago, Illinois 60604–3590, (312) 886–6067.

SUPPLEMENTARY INFORMATION: On March 13, 1989, MPCA requested that the USEPA approve a revised codification of the State's regulations. Under this request, the recodified regulations, contained in Chapter 7001 and Chapter 7005 of the State Rules, would replace the regulations currently in the SIP, generally either the "APC Series" or the "4000 Series." The recodified regulations were formally submitted on November 26, 1991 (representing Chapter 7005 regulations as of November 1991), and September 18, 1992 (representing Chapter 7001 regulations as of September 1992).

Contents of State Implementation Plan (SIP)

The State's original SIP included a submittal dated January 28, 1972, along with amendments submitted by the State on April 28, 1972. These submittals included rules identified as APC 1 through APC 16. USEPA published its approval of this Plan in the May 31, 1972 **Federal Register** (37 FR 10842). Additionally, amendments to APC 3 were submitted on July 25, 1972, and approved in the March 2, 1976 **Federal Register** (41 FR 8956). The State then submitted APC 33 on January 16, 1981, and submitted amendments to several of the rules in the original SIP and several new rules on January 23, 1981. New rules contained in these submittals included APC 17 through APC 33 and APC 39. The particulate matter portion of these submittals was approved on May 6, 1982, at 47 FR 19520, except that APC 29 was conditionally approved on that date. The State submitted amendments to APC 33 on November 17, 1981. These amendments and the portion of the January 23, 1981, submittal addressing criteria pollutants other than particulate

matter were approved in the June 21, 1982, **Federal Register** (47 FR 26623). A consolidated permit rule and supplemental rules, codified as 6 MCAR 4.0002, 6 MCAR 4.4001 through 4.4021, and 6 MCAR 4.4301 through 4.4305, were submitted on January 7, 1985. Revised indirect source permitting rules, codified as 6 MCAR 4.4311 through 4.4321 were also submitted on that date. These rules were approved by USEPA in the May 13, 1988 **Federal Register** (53 FR 17033). A revised version of APC 29, codified as Rules 7005.2520 through 7005.2523, was approved recently.

In addition to regulations, the SIP contains other material, including other documents limiting source emissions, commitments by the State for processing of new source permits and for transportation control planning, and other supplemental material concerning the State's Plan for attaining and maintaining ambient air quality standards. However, these elements of the SIP are not rules subject to recodification; therefore these SIP elements are not subject to rulemaking in this action.

Review of Recodified Rules

For most rules, no differences were found between the recodified regulations and the SIP regulation other than changes in rule numbering, changes in citations to other rule provisions, and a change from the term "director" to the term "commissioner." SIP regulations found to have essentially identical recodified regulations or recodified regulations with only nonsubstantive modifications include APC 6, APC 7, APC 9, APC 10, APC 11, APC 12, APC 14, APC 18, APC 19, APC 21, APC 22, APC 23, APC 25, APC 26, APC 28, APC 32, and APC 39. Also, APC 29 has already been approved in its recodified form, and thus need not be addressed in this rulemaking. The former APC 20 was never submitted to USEPA, was subsequently repealed, and therefore does not exist as either a State or Federal regulation.

For some rules, the rules which apply at a State level reflect substantive differences from the rules which have been approved as part of the SIP. For one set of rules, including APC 2, APC 3, and APC 33, USEPA approved only part of the rules. For a second set of rules (including some rules from the first set), the State revised the rule but USEPA has not done rulemaking on the revision. This set of rules includes APC 1, APC 2, APC 3, APC 5, and APC 8. Each rule in both sets of rules are discussed individually below.

A further set of rules represent State equivalents of Federal regulations, either new source performance standards or national emissions standards for hazardous air pollutants. State rules meeting this description include APC 17, APC 27, APC 30, and APC 31. USEPA has not approved these regulations in the past, since the State has been delegated the authority to enforce the the Federal regulations, and little purpose would be served by approving essentially duplicate State rules. For similar reasons, USEPA has not approved Rules APC 4, APC 13, APC 15, APC 16, and APC 24 with respect to "new" sources that are covered by Federal new source performance standards, although these rules are approved as applied to other sources. Since the State's recodification request applies only to the approved SIP, the SIP continues to exclude these regulations as they apply to "new" sources covered by the new source performance standards.

Review of Modified Rules

In comparison to the SIP rule APC 1, pertaining to air quality standards, Rules 7005.0010 to 7005.0080 include several new provisions. Rule 7005.0030 provides that the State will not impose a penalty on a source that is in compliance with the emissions limits for a particular pollutant in a State permit or stipulation agreement even if that source causes or contributes to an air quality standard violation for that pollutant. Rule 7005.0040 provides nevertheless that other actions may be taken to address air quality standard violations. Rule 7005.0050 adds appropriate methods for measuring ambient air quality. Rule 7005.0060 provides for the MPCA to judge the approvability of methods for measuring hydrogen sulfide, an air quality standard which exists only at the State level. Rule 7005.0070 provides a compliance deadline for selected air quality standards which is no longer relevant. Rule 7005.0080 has been changed toward closer conformity with the National Ambient Air Quality Standards.

USEPA is concerned that Federal approval of Rule 7005.0030 might limit USEPA enforcement options based on unreviewed State actions, i.e. that USEPA would be prohibited from seeking penalties from a source that is causing air quality standard violations but is complying with a State permit or stipulation agreement. USEPA is also concerned that approval of Rule 7005.0040 might be interpreted to restrict allowable federal actions in cases of air quality violations. In addition, the State did not request approval of this pair of rules but instead asked for recodification of rules already in the SIP (which does not include these two rules). Consequently, these two rules are not approved in today's action as part of the SIP. However, USEPA is today approving the other rules that replace the former APC 1, i.e. Rules 7005.0010, 7005.0020, 7005.0050, 7005.0060, 7005.0070, and 7005.0080.

Rule APC 2 was included in the State's original SIP, and a revised version was approved by USEPA in the May 6, 1982 **Federal Register** (47 FR 19520). An additional revision codified as 6 Minnesota Code of Administrative Regulations 4.0002 (6 MCAR 4.0002) was approved by USEPA in the May 13, 1988 **Federal Register** (53 FR 17033), except that USEPA did not approve paragraph D (Opacity Standard Adjustment). The five paragraphs of this regulation have been recodified as Rules 7005.0100, 7005.0110, 7005.0115, 7005.0116, and 7005.0117. The current State rules reflect subsequent revisions to Rules 7005.0100 and 7005.0116, which were submitted as part of the offset rule revisions but ultimately withdrawn from USEPA consideration. USEPA is today approving the recodification of the previously approved portions of 6 MCAR 4.0002, i.e. Rules 7005.0100, 7005.0110, 7005.0115, and 7005.0117. Rule 7005.0116 (the recodified version of paragraph D) and the withdrawn revisions to Rule 7005.0100 are not included in the approved SIP.

Rule APC 3 was also included in the State's original SIP, and amendments were approved in the March 2, 1976 **Federal Register** (41 FR 8956). A revised version was codified as 6 MCAR 4.4001 through 4.4021 plus 6 MCAR 4.4301 through 4.4305. With the exception of disapproval for certain categories of small sources of the exemption in Rule 6 MCAR 4.4303 paragraph B (small sources covered by new source performance standards), these rules were approved by USEPA in the May 13, 1988 **Federal Register** (53 FR 17033). The present State rules reflect relatively minor revisions to Rules 7001.0020 and 7001.1200 through 7001.1220, such as replacement of the term "emissions facility" with the phrase "emissions unit, emissions facility, or stationary source." USEPA is today approving the recodified rules, except for the exemptions in Rule 7001.1210 subpart 2 in the case of small sources covered by new source performance standards.

The only noteworthy difference between Rule APC 5 and Rules 7005.0450 through 7005.0520 is to

change the basis of the emissions limits from "standard cubic foot" to "dry standard cubic foot." USEPA believes that the test methods used for these limits have always provided these data on a dry basis. (Otherwise, this change would generally be a tightening of the limits.) Therefore, USEPA is today approving this clarification.

In comparison to Rule APC 8, generally prohibiting open burning, Rules 7005.0700 through 7005.0820 differ only insofar as they clarify when cities may apply for permission to allow certain types of open burning and clarify when open burning of diseased shade trees is to be permitted. USEPA is today approving the full set of recodified rules.

Rule 6 MCAR 4.0033 (sometimes referred to as APC 33) is recodified without change as Rules 7005.2850 through 7005.2930. USEPA approved most of 6 MCAR 4.0033, but did not approve section G, based on concerns about authorizing alternate test methods without requirement for USEPA approval. USEPA is today approving Rules 7005.2850 through 7005.2900 and Rules 7005.2920 and 7005.2930, which are recodified versions of the previously approved rules. Rule 7005.2910, which is the recodified version of section G of 6 MCAR 4.0033, continues to be excluded from the SIP.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on May 24, 1993. However, if we receive notice by April 22, 1993, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action; and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–266 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note—Incorporation by reference of the State Implementation Plan for State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 25, 1992.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding new paragraph (c)(26) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(26) On March 13, 1989, the State of Minnesota requested that EPA revise the referencing of regulations in the SIP to conform to the State's recodification of its regulations. On November 26, 1991, and September 18, 1992, the State submitted an official version of the recodified regulations to be incorporated into the SIP. The recodified regulations are in Chapter 7001 and Chapter 7005 of Minnesota's regulations. Not approved as part of the SIP are recodified versions of regulations which EPA previously did not approve. Therefore, the SIP does not include Rules 7005.1550 through 7005.1610 (National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos), Rules 7005.2300 through 7005.2330 (limits for iron and steel plants), Rules 7005.2550 through 7005.2590 (NESHAP for beryllium), Rules 7005.2650 through 7005.2690 (NESHAP for mercury), Rule 7005.0116 (Opacity Standard Adjustment) and Rule 7005.2910 (Performance Test Methods for coal handling facilities). Similarly, the SIP continues to exclude the exemption now in Rule 7001.1210 as applied to small sources subject to new source performance standards, and the SIP is approved only for "existing sources" in the case of Rules 7005.1250 through 7005.1280 (Standards of Performance for Liquid Petroleum Storage Vessels), Rules 7005.1350 through 7005.1410 (Standards of Performance for Sulfuric Acid Plants), Rules 7005.1450 through 7005.1500 (Standards of Performance for Nitric Acid Plants), and Rules 7005.2100 through 7005.2160 (Standards of Performance for Petroleum Refineries). The SIP also does not include changes in the State's Rule 7005.0100 (relating to

offsets) that were withdrawn by the State on February 24, 1992, and does not include the new rules 7005.0030 and 7005.0040.

(i) Incorporation by reference.

(A) Minnesota regulations in Chapter 7005 as submitted November 26, 1991, and in Chapter 7001 as submitted September 18, 1992, except for those regulations that EPA has not approved as identified above.

3. Section 52.1222 is added to read as follows:

§ 52.1222 EPA-approved Minnesota State regulations.

The following table identifies the State regulations submitted to and approved by EPA as revisions to the Minnesota State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1220. To the extent that this table conflicts with § 52.1220, § 52.1220 governs.

TABLE 52.1222.—EPA-APPROVED REGULATIONS

Minnesota rule Nos.	Rule description	Old rule No.	Contents of SIP
7005.0010–0080	Air Quality Standards	APC 1	All rules except 7005.0030 and 7005.0040.
7005.0100–0117	General Provisions	6 MCAR 4.0002	All except 7005.0116 and changes to 7005.0100 since 1985.
7001.0010–0210	Consolidated Permit Rule	6 MCAR 4.4001–4.4021	All rules.
7001.1200–1220	Supplement to Consolidated Permit Rule	6 MCAR 4.4301–4.4305	All rules for most sources.[1]
7005.0300–0400	Limits for Combustion Sources	APC 4	All rules for "existing" sources.[2]
7005.0450–0520	Limits for Process Sources	APC 5	All rules.
7005.0550	Fugitive Particulate Control	APC 6	All rules.
7005.0600–0650	Limits for Incinerators	APC 7	All rules.
7005.0700–0820	Opening Burning Rules	APC 8	All rules.
7005.0900–0960	Ambient Odor Control	APC 9	All rules.
7005.1000–1040	Limits for Animal Matter Odors	APC 10	All rules.
7005.1100–1130	Limits on Visible Emissions	APC 11	All rules.
7005.1150–1200	Limits on Visible Emissions from Vehicles	APC 12	All rules.
7005.1250–1280	Gasoline Storage Tank Rules	APC 13	All rules for "existing" sources.[2]
7005.1300–1320	Limits on Acid, Base Emissions	APC 14	All rules.
7005.1350–1410	Limits on Sulfuric Acid Plants	APC 15	All rules for "existing" sources.[2]
7005.1450–1500	Limits on Nitric Acid Plants	APC 16	All rules for "existing" sources.[2]
7005.1650–1660	Limits for Inorganic Fibers	APC 18	All rules.
7001.1250–1350	Indirect Source Permits	6 MCAR 4.4311–4.4321	All rules.
7005.1850–1880	Source Testing, Reporting, Malfunctions	APC 21	All rules.
7005.1900–1950	Limits for Portland Cement Plants	APC 22	All rules.
7005.2000–2040	Limits for Asphalt Concrete Plants	APC 23	All rules.
7005.2100–2160	Limits for Petroleum Refineries	APC 24	All rules for "existing" sources.[2]
7005.2200–2230	Limits for Secondary Lead Smelters	APC 25	All rules.
7005.2250–2280	Limits for Secondary Brass/Bronze Plants	APC 26	All rules.
7005.2350–2400	Limits for Sewage Sludge Incinerators	APC 28	All rules.
7005.2520–2523	Limits for Grain Handling Facilities	APC 29	All rules.
7005.2750–2790	Limits for Direct Heating Equipment	APC 32	All rules.
7005.2850–2930	Limits for Coal Handling Facilities	APC 33	All rules except 7005.2910.
7005.2950–3006	Emergency Episode Rules	APC 39	All rules.

[1] Exemptions as applied to small sources subject to new source performance standards are not approved.
[2] "Existing" sources are sources other than those subject to a new source performance standard.

[FR Doc. 93-6449 Filed 3-22-93; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 761

[OPPTS-66016; FLR 4080-1]

Polychlorinated Biphenyls; Use of Waste Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a final rule on polychlorinated biphenyls (PCBs); exclusions, exemptions and use authorizations which was published in the **Federal Register** of June 27, 1988 (53 FR 24206; TSCA Docket No. OPTS-62053A). Among other things, that rule prohibited the use of waste oil containing any detectable level of PCBs (i.e., PCB concentration of 2 ppm or greater), but authorized the marketing and burning of used oil with a PCB concentration below 50 ppm for purposes of energy recovery by referencing the Resource Conservation and Recovery Act (RCRA) requirements in 40 CFR 266.40, subpart E. The RCRA requirements have been revised and the referenced requirements have been moved from 40 CFR 266.40, subpart E to 40 CFR 279.60, subpart G and 279.70, subpart H (57 FR 41566, September 10, 1992). This technical amendment replaces the references in § 761.20(e) to reflect the current designations and makes other minor language changes to ensure continuance of TSCA coverage in light of the recent RCRA amendments.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued a final rule on the use of waste oil which was published in the **Federal Register** on June 27, 1988 (53 FR 24211). Section 761.20(e) of this rule authorized the marketing and burning of used oil with a PCB concentration of 2 ppm or greater, but less than 50 ppm under specified circumstances by referencing the RCRA requirements at 40 CFR 266.40, subpart E. This provision must now be updated to reflect the new designations for used oil burners and marketers appearing at 40 CFR 279.60 and 279.70. This rule amendment amends § 761.20(e) by replacing, where appropriate, the previous 40 CFR part 266 designations with the current 40 CFR part 279 designations. Since the Office of Solid Waste (OSW) has restructured its regulation by identifying the various entities of the used oil marketing/burning universe (e.g., generator, transporter, transfer facility, processor/re-refiner, marketer, burner), the TSCA provision at § 761.20(e)(1)(ii) was revised to ensure that the TSCA provision continues to capture any entity which markets used oil to other used oil marketers. Because this rule makes no changes in the substantive requirements of § 761.20(e), EPA believes that notice and an opportunity for comment are unnecessary. The effective date for this provision has been set to conform to the effective date for the RCRA requirements. EPA finds, for good cause, that the rule should take effect on that date, rather than being delayed for 30 days because the rule does not modify any substantive requirements.

I. Public Record

A public record for the action has been established under docket number "OPPTS-66016." The public record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Public Docket Room, room G004, Northeast Mall, 401 M St., SW., Washington, DC 20460.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record for this rulemaking. The record includes basic information considered by the Agency in developing this rule. A full list of these materials is available for inspection and copying in the TSCA Public Docket Room.

1. USEPA. 57 FR 41566, September 10, 1992, "Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Final Rule."

2. 40 CFR 279.10 and 279.11. A technical correction related to these provisions and entitled, "Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Final Rule Correction," will be published in the **Federal Register** later this month. This notice will be made a part of the rulemaking record and will be placed in the TSCA public docket (OPPTS-66016).

II. Other Regulatory Requirements

Paperwork Reduction Act

EPA has determined that this rule is not subject to OMB review under the Paperwork Reduction Act. The existing information collection requirements are not altered in any way.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: March 9, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. By revising § 761.20(e)(1)(ii) to read as follows:

§ 761.20 Prohibitions.

* * * * *

(e) * * *

(1) * * *

(ii) Marketers who market off-specification used oil for energy recovery only to other marketers who have notified EPA of their used oil management activities, and who have an EPA identification number where an identification number is required by 40 CFR 279.73. This would include persons who market off-specification used oil who are subject to the requirements at 40 CFR part 279 and the notification requirements of 40 CFR 279.73.

* * * * *

§ 761.20 [Amended]

3. Section 761.20(e) is amended as follows:

a. In paragraph (e) introductory text by replacing the citation "40 CFR part 266, subpart E" with "40 CFR part 279, subparts G and H."

b. In paragraph (e)(1)(iii) by replacing the citations "40 CFR 266.41(b)" and "40 CFR 266.41(b)(2)(iii)(A), (B) and (C)" with "40 CFR 279.61(a)(1) and (2)," and with "40 CFR 279.23," respectively, each place the citations appear.

c. In paragraph (e)(3)(ii)(A) by replacing the citation "40 CFR part 266, subpart E" with "40 CFR part 279, subpart G."

d. In paragraph (e)(4) introductory text by replacing the citations "40 CFR

266.43(b)(6)(i) and (ii)" and "40 CFR 266.44(e)" with "40 CFR 279.72(b), 279.74(a), (b) and (c), and 279.75," and with "40 CFR 279.65 and 279.66," respectively.

e. In paragraph (e)(4)(i) by replacing the citations "40 CFR 266.43(b)(6)(i)" and "40 CFR 266.43(b)(6)(ii)" with "40 CFR 279.72(b) and 279.74(b) and (c)," and with "40 CFR 279.74(a) and (c) and 279.75," respectively.

f. In paragraph (e)(4)(ii) by replacing the citation "40 CFR 266.44(e)" and the reference to "paragraph (e)(3)(iii)" with "40 CFR 279.65 and 279.66" and "paragraph (e)(3)(ii)," respectively.

[FR Doc. 93-6604 Filed 3-22-93; 8:45 am]
BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-11

[FTR Amendment 30]

RIN 3090-AE46

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Payments for Transfers to, from, and between points in Puerto Rico, the Northern Mariana Islands, or the U.S. Possessions

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to provide for payment of a relocation income tax (RIT) allowance to employees who transfer to, from, or between points in Puerto Rico, the Northern Mariana Islands, or the U.S. possessions. This amendment is intended to provide equitable treatment to these transferees by allowing them to receive a RIT allowance payment for taxes incurred on moving expense reimbursements similar to the RIT allowance authorized for transfers within the United States.

EFFECTIVE DATE: This final rule is effective January 1, 1987, and applies to Year 1 covered reimbursements made on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial 703-305-5745.

SUPPLEMENTARY INFORMATION: This rule amends the FTR to allow payment of the RIT allowance to employees who transfer to, from, or between points in the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or the U.S. possessions. The rule also allows payment to employees in all situations where double taxation occurs.

Puerto Rico RIT allowance

This amendment adjusts the RIT allowance to allow payment for income taxes incurred when an employee relocates to or from a point, or between points, in the Commonwealth of Puerto Rico. Under this modification, the combined marginal tax rate (CMTR) is computed without regard to the Federal marginal tax rate. Therefore, the adjustment to the CMTR for the Federal income tax deduction of State and local income taxes is not a factor in the following CMTR formula to be used in calculating the Puerto Rico RIT allowance:

$$X = P + S + L$$

Where:

X = CMTR for Year 1 and Year 2
P = Puerto Rico tax rate for Year 1
S = State tax rate for Year 1, when applicable
L = Local tax rate for Year 1

The Year 2 marginal tax rates for Puerto Rico cannot be determined with precision since the Federal Government is not involved in developing Puerto Rico's tax laws. The new CMTR formula, therefore, will be used for both Year 1 and Year 2, and the calculation will not account for any differences that may occur in the Puerto Rico marginal tax rates between years.

The Commonwealth of the Northern Mariana Islands and U.S. possessions RIT allowance

This amendment also recognizes the RIT allowance for employees who move to or from a point, or between points, in the Commonwealth of the Northern Mariana Islands or the U.S. possessions; *i.e.*, Guam, American Samoa, and the U.S. Virgin Islands. These jurisdictions have each adopted a tax system that "mirrors" the Federal tax system (meaning that they impose tax in the same manner and at the same rates as the Federal Government). In all these jurisdictions, either the Commonwealth/possession or the U.S. allows a credit or exclusion to prevent double taxation. Thus, the income tax liability of a Federal employee residing in one of these jurisdictions is equivalent to that of an employee residing in a State that imposes no personal income tax. Accordingly, the RIT allowance paid to these employees will not incorporate any component for the Commonwealth's or the possession's income taxes. The CMTR will be calculated, using the formula for transfers within the United States, based on the Federal marginal tax rate, the State marginal tax rate (when applicable), and the local marginal tax rate, including any local tax incurred in the Commonwealth or the possession, as appropriate.

Double taxation by States

This rule also amends the FTR to consider in the RIT calculation all situations where double taxation by States occurs. Previously, the FTR permitted consideration of double taxation only when the employee was subject to double taxation by two States in the vicinity of the same official station, either the old official station or the new official station. This change is intended to allow consideration of double taxation in all instances, including when both the old official station and new official station claim taxing jurisdiction over the Federal employee. However, for double taxation to exist, both States must claim taxing jurisdiction, and neither may offset for income taxes paid to the other jurisdiction. If either State allows an offsetting adjustment for tax payments to the other State, then double taxation does not exist, and the agency shall use the higher of the two State marginal tax rates in computing the RIT allowance.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers

For the reasons set out in the preamble, 41 CFR part 302-11 is amended to read as follows:

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302-11 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR.

1971–1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165.

2. Section 302–11.1 is revised to read as follows:

§ 302–11.1 Authority.

Payment of a relocation income tax (RIT) allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee, or by the employee and spouse if a joint tax return is filed, as a result of certain travel and transportation expenses and relocation allowances which are furnished in kind, or for which reimbursement or an allowance is provided by the Government. Payment of the RIT allowance also is authorized for income taxes paid to the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. possessions in accordance with a decision of the Comptroller General of the United States (67 Comp. Gen. 135 (1987)). The RIT allowance shall be calculated and paid as provided in this part.

3. Section 302–11.5 is amended by revising paragraph (j) to read as follows:

§ 302–11.5 Definitions and discussion of terms.

* * * * *

(j) *Combined marginal tax rate (CMTR).* A single rate determined by combining the applicable marginal tax rates for Federal (or Puerto Rico, when applicable), State, and local income taxes, using formulas provided in § 302–11.8(e)(5).

* * * * *

4. Section 302–11.8 is amended by removing the reference "§ 302–11.8(e)(4)" wherever it occurs in paragraph (e)(2) and adding in its place "§ 302–11.8(e)(5)", by revising paragraph (e)(2)(iv), by redesignating paragraph (e)(4) as paragraph (e)(5), by adding new paragraph (e)(4), and by adding a new paragraph (e)(5)(iii) to read as follows:

§ 302–11.8 Rules and procedures for determining the RIT allowance in Year 2.

* * * * *

(e) * * *

(2) * * *

(iv) An employee may incur a State income tax liability on moving expense reimbursements in more than one State at the same or different marginal tax rates (*i.e.*, double taxation). For example, an employee may incur taxes on moving expense reimbursements in one State because of residency in that State, and in another State because that particular State taxes income earned within its jurisdiction irrespective of whether the employee is a resident. In such cases, a single State marginal tax rate must be determined for use in the CMTR formulas in paragraph (e)(5) of this section. The general rules in paragraph (e)(2)(iv) (A) through (C) of this section apply in determining the applicable single State marginal tax rate in such cases.

(A) If two or more States impose an income tax on an employee's moving expense reimbursement, but no two States tax the same portion of the reimbursement, then the reimbursement is not subject to double taxation. In this situation, the average of the applicable State marginal tax rates, as determined under paragraphs (e)(2) (i) through (iii) of this section, shall be treated as being imposed on the entire reimbursement, and shall be used in the CMTR formula.

(B) If two or more States impose an income tax on the moving expense reimbursement, and more than one State taxes the same portion of the reimbursement, but those States allow an adjustment or credit for income taxes paid to the other State(s), then the reimbursement is not subject to double taxation. In this situation, the highest of the applicable State marginal tax rates, as determined under paragraphs (e)(2) (i) through (iii) of this section, shall be used in the CMTR formula.

(C) If two or more States impose an income tax on the moving expense reimbursement, and more than one State taxes the same portion of the reimbursement without allowing an adjustment or credit for income taxes paid to the other, then the reimbursement is subject to double taxation. In this situation, the sum of the applicable State marginal tax rates, as determined under paragraphs (e)(2) (i) through (iii) of this section, shall be used in the CMTR formula.

* * * * *

(4) *Marginal tax rates for the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. possessions.*—(i) *The Commonwealth of Puerto Rico.* A Federal employee who is relocated to or from a point, or between points, in the Commonwealth of Puerto Rico may be subject to income tax on the employee's salary (including moving expense reimbursements) by both the U.S. Government and the government of Puerto Rico. However, under the current law of Puerto Rico, such employee receives a credit on his/her Puerto Rico income tax for the amount of taxes paid to the United States. The rules in paragraphs (e)(4)(i) (A) through (C) apply in determining the marginal tax rate applicable for transfers to, from, or between points in Puerto Rico.

(A) The applicable Puerto Rico marginal tax rate shall be determined by using the income level determined in paragraph (d) of this section for Federal taxes and the employee's filing status. The Puerto Rico marginal tax rate for Year 1 will be used in computing the CMTR for both Year 1 and Year 2. The Puerto Rico tax tables are contained in appendix D of this part.

(B) If the applicable Puerto Rico marginal tax rate is higher than the applicable Federal marginal tax rate, then the total amount of taxes paid by the employee to both jurisdictions is equal to the employee's total income tax liability to the Commonwealth of Puerto Rico before any credit is given for taxes paid to the United States. The Federal marginal tax rate, therefore, is of no consequence and will be disregarded. In such cases, the formula in paragraph (e)(5)(iii) of this section will be used to compute the CMTR. The CMTR formula shall include only the Puerto Rico marginal tax rate, the State marginal tax rate as determined under paragraph (e)(2) of this section (when applicable), and the local marginal tax rate as determined under paragraph (e)(3) of this section. For purposes of applying the Puerto Rico CMTR formula in paragraph (e)(5)(iii) of this section, the State marginal tax rate will be applicable if both Puerto Rico and one or more of the States impose an income tax on the moving expense reimbursement, and more than one of these entities taxes the same portion of the reimbursement without allowing an adjustment or credit for income taxes paid to the other. In this situation, the S component of the CMTR formula will be the applicable State marginal tax rate as determined under paragraph (e)(2) of this section.

(C) If the applicable Puerto Rico marginal tax rate is equal to or lower than the applicable Federal marginal tax rate, then the total amount of taxes paid by the employee to both jurisdictions is equal to the employee's total Federal income tax liability. The Puerto Rico marginal tax rate, therefore, is of no consequence in such cases and will be disregarded. The CMTR will be computed using the formula in paragraphs (e)(5) (i) and (ii) of this section. This formula will include the Federal marginal tax rate as determined under paragraph (e)(1) of this section, the State marginal tax rate as determined under paragraph (e)(2) of this section (when applicable), and the local marginal tax rate as determined under paragraph (e)(3) of this section.

The State marginal tax rate will be applicable if one or more States impose tax on the moving expense reimbursement.

(ii) *The Commonwealth of the Northern Mariana Islands and the U.S. possessions.* A Federal employee who is relocated to or from a point, or between points, in the Commonwealth of the Northern Mariana Islands or the U.S. possessions (Guam, American Samoa, and the U.S. Virgin Islands) is subject to both Federal income tax and income tax assessed by the Commonwealth of the Northern Mariana Islands or the U.S. possession, as applicable. However, the income tax system and rates for the Commonwealth of the Northern Mariana Islands and for the U.S. possessions are identical to the U.S. Federal income tax system and rates. This constitutes a "mirror tax" system. A tax credit or exclusion is provided by one of the taxing jurisdictions (either the U.S., the Commonwealth of the Northern Mariana Islands, or the U.S. possession, as appropriate) to prevent double taxation. The marginal tax rate for the Commonwealth of the Northern Mariana Islands or the U.S. possession, therefore, is of no consequence since it is identical to the Federal marginal income tax rate and is completely offset by a corresponding credit or exclusion. Thus, the Commonwealth's or the possession's tax rate will not be factored into the CMTR formula. The CMTR will be computed as provided in paragraphs (e)(5) (i) and (ii) based solely on the Federal marginal tax rate; when applicable, the State(s) marginal tax rate; and the local marginal tax rate.

(5) * * *

(iii) *Calculation of CMTR's for Puerto Rico.* The following formula shall be used to calculate the CMTR for transfers to, from, or between points in Puerto Rico. (This formula is different from the formulas provided in paragraphs (e)(5) (i) and (ii) of this section since the Federal marginal tax rate is disregarded.)

CMTR Formula: $X = P + S + L$

Where:

X = CMTR for Year 1 and Year 2

P = Puerto Rico tax rate for Year 1

S = State tax rate for Year 1, when applicable (See § 302–11.8(e)(4)(i)(B).)

L = Local tax rate for Year 1

5. Part 302–11 is amended by adding appendix D to read as follows:

Appendix D to Part 302–11—Puerto Rico Tax Tables for RIT Allowance

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1987

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
25.66	.....	$25,000	.....	.....
33.35	.....	.....	.....	$25,000
47.03	$25,000	50,000	.....	.....
50.00	50,000	.....	$25,000	.....

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1988

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	$25,000	.....	.....
25	.....	.....	.....	$25,000
41	$25,000	.....	$25,000	.....

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1989

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	$25,000	.....	.....
25	.....	.....	.....	$25,000
38	$25,000	.....	$25,000	.....

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1990

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	$25,000	.....	.....
25	.....	.....	.....	$25,000
41	$25,000	.....	$25,000	.....

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1991

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	$25,000	.....	.....
25	.....	.....	.....	$25,000
36	$25,000	.....	$25,000	.....

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1992

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	$25,000	.....	.....
25	.....	.....	.....	$25,000
33	$25,000	.....	$25,000	.....

Dated: February 11, 1993.

Dennis J. Fischer,

Acting Administrator of General Services.

[FR Doc. 93–6462 Filed 3–22–93; 8:45 am]

BILLING CODE 6820–34–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–181; RM–7696 and RM–7817]

Radio Broadcasting Services; Ashland, CA, Rolla and Monroe City, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at California, Missouri, and modifies the license for Station KZMO–FM to specify operation on Channel 232C2, in response to a petition filed by Town and Country Communications, Inc. See 56 FR 30525, July 3, 1991. The coordinates for Channel 232C2 at California are 38–26–00 and 92–26–00. We also substitute Channel 292A for Channel 232A at Rolla, Missouri, and modify the license for Station KQMX(FM) to specify operation on Channel 292A to accommodate the upgrade at California. The coordinates for Channel 292A at Rolla are 37–57–50 and 91–45–54. We deny the counterproposal filed by Sobocomo Radio, Inc. to substitute Channel 291C1 for Channel 291C2 at Ashland, Missouri, and substitute Channel 298A for Channel 292A at Monroe City, Missouri. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 30, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–181, adopted February 25, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased form the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows.

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 232A and adding Channel 232C2 at California and by removing Channel 232A and adding Channel 292A at Rolla.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6534 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–218; RM–8053, RM–8054 and RM–8143]

Radio Broadcasting Services; Olathe, Silver Lake and Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 222C3 for Channel 222A at Olathe, Kansas, and modifies the construction permit for Station KCCV–FM to specify operation on Channel 222C3 in response to a petition filed by Bott Broadcasting Company. See 57 FR 46367, October 8, 1992. The coordinates for Channel 222C3 are 38–58–46 and 94–50–44. To accommodate the upgrade at Olathe, we shall substitute Channel 257A for Channel 223A at Topeka, Kansas, and modify the construction permit for Channel 223A accordingly. The coordinates for Channel 257A are 39–02–56 and 95–40–32. Margaret Escriva, the permittee for Channel 223A at Topeka, has withdrawn her proposal to upgrade to Channel 223C3 (RM–8054). In response to a counterproposal filed by New Horizons Foundation, Incorporated, we shall allot Channel 223A to Silver Lake, Kansas, as that community's first local service. The coordinates for Channel 223A at Silver Lake are 39–06–12 and 95–51–36. With this action, this proceeding is terminated.

DATES: Effective April 30, 1993. The window period for filing applications for Channel 223A at Silver Lake, Kansas, will open on May 3, 1993, and close on June 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–218, adopted February 19, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 222A and adding Channel 222C3 at Olathe, by adding Channel 223A, Silver Lake, and by removing Channel 223A and adding Channel 257A at Topeka.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6535 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–362; RM–7873]

Radio Broadcasting Services; Jourdanton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Seventh Day Christian Group, allots Channel 239A to Jourdanton, Texas. See 57 FR 00867, January 9, 1992. Channel 239A can be allotted to Jourdanton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 239A are 28–54–48 and 98–32–36. Mexican concurrence has been obtained for the allotment of Channel 239A at Jourdanton, Texas. With this action, this proceeding is terminated.

DATES: Effective April 30, 1993. The window period for filing applications will open on May 3, 1993, and close on June 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–362, adopted February 23, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Jourdanton, Channel 239A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6537 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–241; RM–8084]

Radio Broadcasting Services; Camas, WA and Seaside, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pacific Northwest Broadcasting Corporation, substitutes Channel 234C2 for Channel 234C3 at Camas, Washington, and modifies Station KMUZ–FM's construction permit accordingly. See 57 FR 49160, October 30, 1992. To accommodate the upgrade, we also substitute Channel 251A for Channel 234A at Seaside, Oregon, and modify Station KQEM (FM)'s construction permit accordingly. Channel 234C2 can be allotted to Camas, Washington, in compliance with the Commission's minimum distance separation requirements at petitioner's specified site with a site restriction of 28.7 kilometers (17.8 miles) east. The coordinates for Channel 234C2 at Camas are North Latitude 45–32–20 and West Longitude 122–02–24. *See* Supplementary Information, *infra*.

EFFECTIVE DATE: April 30, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–241, adopted February 18, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Additionally, Channel 251A can be allotted to Seaside, Oregon, with a site restriction of 10.1 kilometers (6.3 miles) south. The coordinates for Channel 251A at Seaside are North Latitude 45–54–35 and West Longitude 123–56–07. Since Camas, Washington, and Seaside, Oregon, are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 234C3 and adding Channel 234C2 at Camas.

3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 234A and adding Channel 251A at Seaside.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6536 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 54
Tuesday, March 23, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 810

Assistance to Foreign Atomic Energy Activities; Correction

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.

ACTION: Correction to proposed rulemaking.

SUMMARY: This document contains corrections to proposed amendments to the Department of Energy's (DOE) regulations 10 CFR part 810 which were published Thursday, March 11, 1993 (58 FR 13427). The regulations related to assistance to foreign atomic energy activities.

FOR FURTHER INFORMATION CONTACT: Mr. Zander Hollander, Export Control Specialist, Export Control Operations Division, Office of Export Control and International Safeguards, AN-30, U.S. Department of Energy. Telephone (202) 586-2125.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the proposed rulemaking erroneously lists two countries on the list of countries in the amended § 810.8. The two countries, Estonia and Latvia, actually should have been deleted from the list.

Correction of Publication

Accordingly, the publication on March 11, 1993, of the proposed amendments, which were the subject of FR Doc. 93-5488, is corrected as follows:

On Page 13429, third column, § 810.8(a) would be correctly revised to read as follows:

§ 810.8 Activities requiring specific authorization.

* * * * *

(a) Engaging directly or indirectly in the production of special nuclear material in any of the countries listed below:

Afghanistan
Albania
Algeria
Andorra
Angola
Argentina
Armenia
Azerbaijan
Bahrain
Belarus
Brazil
Burma (Myanmar)
Cambodia
Chile
China, People's Republic of
Comoros
Cuba
Djibouti
Georgia
Guyana
India
Iran
Iraq
Israel
Kazakhstan
Korea, People's Democratic Republic of
Kuwait
Kyrgyzstan
Laos
Libya
Mauritania
Moldova
Monaco
Mongolian People's Democratic Republic
Mozambique
Niger
Oman
Pakistan
Oatar
Russia
Saudi Arabia
South Africa
Syria
Tajikistan
Turkmenistan
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Zambia
Zimbabwe

Countries may be removed from or added to this list by amendments published in the **Federal Register.**

* * * * *

Victor E. Alessi,

Director, Office of Arms Control and Nonproliferation, Office of the Secretary.

[FR Doc. 93-6615 Filed 3-22-93; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-06-AD]

Airworthiness Directives; Aerospatiale Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes. This proposal would require an initial inspection of a floor beam and pressure plate to detect cracks; and repetitive inspections or modification o: repair of the floor beam area, as necessary. This proposal would also require eventual repair or modification of the floor beam area; when accomplished, this repair or modification would terminate the need for the proposed repetitive inspections. This proposal is prompted by in-service and full-scale test reports of cracks in a floor beam and pressure plate. The actions specified by the proposed AD are intended to prevent loss of structural strength of a floor beam and pressure plate, or loss of cabin pressurization.

DATES: Comments must be received by May 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-06-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113,

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72–100 and –200 series airplanes. The DGAC advises that cracks have been discovered in the floor beam and pressure plate at frame 26 on seven in-service airplanes, as well as during full-scale fatigue testing. The origin of this problem has been traced to an alignment problem in the floor beam area that occurred during production. This condition, if not corrected, could result in loss of structural strength of the floor beam and pressure plate, or loss of cabin pressurization.

Aerospatiale has issued Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993, that describes procedures for repetitive detailed visual inspections to detect cracks in the floor beam in the buttock line 0 area and repetitive high frequency eddy current inspections (HFEC) of the pressure plate forward and aft of the floor beam at frame 26 of the fuselage at buttock line 0.

Aerospatiale has also issued Service Bulletin ATR72–53–1027, dated December 18, 1992, that describes procedures for accomplishment of Modification 3616, which entails reinforcement of the floor beam at frame 26 of the fuselage at buttock line 0.

Aerospatiale has also issued Service Bulletin ATR72–53–1028, dated January 18, 1993, that describes procedures for installation of a doubler at frame 26 of the fuselage at buttock line 0.

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directives 92–272–017(B), dated December 23, 1992, and 92–272–017(B)R1, dated February 3, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an initial inspection of a floor beam and pressure plate to detect cracks; and repetitive inspections or modification or repair of the floor beam area, as necessary. This proposal would also require eventual repair or modification of the floor beam area; when accomplished, this repair or modification would terminate the need for the proposed inspections. (If any crack is present, the repair would be required to be performed. If no crack is present, Modification 3616 would be required to be installed.) The actions would be required to be accomplished in accordance with the service bulletins described previously.

The applicability of the proposed AD excludes those airplanes on which Modification 3616 or 3584 has been accomplished. Airplanes so modified are not subject to the unsafe condition addressed by this proposed AD.

The FAA has determined that the circumstances related to the cracking problem addressed by this AD action are such that continued operation of Model ATR72–100 and –200 series airplanes may be permitted when cracks of certain limited lengths are present in either the floor beam or the pressure plate at frame 26 of the fuselage at buttock line 0. In many areas of the airplane, fatigue cracks may exist or develop simultaneously at multiple sites. When multiple site damage is involved, historical in-service experience demonstrates that undetected damage, in conjunction with known damage, may weaken the structure beyond acceptable limits. In such cases, the FAA will not usually permit continued flight with known cracks. For the purposes of this proposed AD, however, investigations by both the manufacturer and the DGAC have shown that damage is due to an alignment problem occurring during production, and is not subject to multiple site damage. Further, the manufacturer has shown that the structure will continue to carry ultimate loads with cracks longer than those identified in this proposed AD. The FAA has reviewed the crack growth data and has determined that the specified proposed inspection intervals are appropriate to ensure the continued operational safety of these airplanes. Finally, the inspections required by this AD are not considered tedious and involve only one localized site; therefore, there is a high probability that any crack would be easily detected. For all of these reasons, the FAA has determined that the progressive inspection and repair schedule, as proposed in this AD, is appropriate.

The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the inspections, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,420, or $220 per airplane.

The FAA has been advised that 9 U.S.-registered airplanes have been modified previously in accordance with the proposed requirements of this AD. Therefore, the future economic cost impact of this proposed rule on U.S. operators is now only $440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 93–NM–06–AD.

Applicability: Model ATR72–100 and –200 series airplanes; on which either Modification 3616, as described in Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992, or Modification 3584 have not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of structural strength of the floor beam and pressure plate, or loss of cabin pressurization, accomplish the following:

(a) Prior to the accumulation of 1,000 total flight cycles, or within the next 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks of the floor beam at frame 26 of the fuselage in the buttock line 0 area, in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993.

(1) If no crack is found, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 1,000 flight cycles, repeat the detailed visual inspection.

(ii) Within the next 1,000 flight cycles, install Modification 3616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. No further action is required by this AD.

(2) If a single crack is found that is less than 65 millimeters (mm) in length, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Thereafter, at intervals not to exceed 750 flight cycles, repeat the detailed visual inspection.

(ii) Within the next 750 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(3) If a single crack is found that is equal to or greater than 65 mm but less than 80 mm in length: Within the next 250 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(4) If a single crack is found that is equal to or greater than 80 mm in length: Prior to further flight, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(5) If two or more cracks are found: Prior to further flight, repair the cracks in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(b) Prior to the accumulation of 1,000 total flight cycles, or within the next 30 days after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection of the pressure plate forward and aft of the floor beam at frame 26 of the fuselage at buttock line 0, in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993.

(1) If no crack is found, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 1,000 flight cycles, repeat the HFEC inspection.

(ii) Within the next 1,000 flight cycles, install Modification 3616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. No further action is required by this AD.

(2) If a single crack is found that is less than 65 millimeters (mm) in length, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 500 flight cycles, repeat the HFEC inspection.

(ii) Within the next 500 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(3) If a single crack is found that is equal to or greater than 65 mm but less than 80 mm in length: Within the next 250 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(4) If a single crack is found that is equal to or greater than 80 mm in length: Prior to further flight, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(5) If two or more cracks are found: Prior to further flight, repair the cracks in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(c) Within 6 months after the effective date of this AD, if no crack is present, install Modification 3616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992; or, if any crack is present, repair in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993.

(d) Installation of Modification 3616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992; or repair in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993; constitutes terminating action for the repetitive detailed visual inspections of the floor beam and repetitive HFEC inspections of the pressure plate required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6567 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-ASW-49]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 204B, 205A, 205A-1, 205B, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205B, 212, and 412 helicopters, that currently requires a repetitive magnetic particle inspection of the main transmission lower planetary spider. This action would require the repetitive magnetic particle inspection of the main transmission lower planetary spider to additionally apply to the BHTI Model 204B, 205A, and 205A-1 helicopters. This proposal is prompted by the need to apply the magnetic particle inspections to additional BHTI model helicopters as well as more clearly state the applicable compliance times for these inspections. The actions specified by the proposed AD are intended to prevent a fatigue failure of the main transmission lower planetary spider, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

DATES: Comments must be received by May 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-49, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc. (BHTI), P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Aircraft Certification Office, FAA, Rotorcraft Directorate, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 624-5177, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-49." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-49, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion

On April 28, 1992, the FAA issued AD 92-11-07, Amendment 39-8257 (57 FR 30392, July 9, 1992), to require a repetitive magnetic particle inspection of the main transmission lower planetary spider (spider) in the BHTI Model 205B, 212 and 412 helicopters. That action was prompted by the results of a crack growth analysis conducted by the manufacturer on a planetary spider that had recently cracked in service and two additional fatigue tests conducted on spiders. These test data and analyses show that, over time and under normal-operating conditions, a crack can appear in the spider and spread to a critical length causing it to fail. The requirements of that AD are intended to prevent failure of the spider that could result in failure of the main transmission and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that three additional BHTI Models, 204B, 205A, and 205A-1 are equipped with the same spider and operate in comparable environments and should be subjected to the same inspections. Additionally, there have been questions raised about the required compliance times stated in AD 92-11-07. Paragraph (a) of that AD requires the magnetic particle inspection within the next 600 hours time in service after the effective date of the AD, or prior to the accumulation of 3,100 hours time in service from the last magnetic particle inspection. Paragraph (b) requires the inspection be conducted at intervals not to exceed 3,100 hours time in service from the last inspection. This proposal would require the inspection within the next 600 hours time in service after the effective date of the AD, unless an inspection has already been accomplished within the last 2,500 hours time in service, and thereafter at intervals not to exceed 3,100 hours time in service from the last inspection.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92-11-07 to require the magnetic particle inspection on three additional BHTI model helicopters and to clarify the compliance times. This proposal would apply to BHTI Model 204B, 205A, 205A-1, 205B, 212, and 412 helicopters and would require, within 600 hours time in service after the effective date of the AD, unless previously accomplished within the last 2,500 hours time in service, a magnetic particle inspection of the spider in accordance with the applicable maintenance, repair, and overhaul manuals. Repetitive inspections would be required at intervals not to exceed 3,100 hours time in service.

The FAA estimates that 1,207 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per helicopter if accomplished during overhaul, or 32 workhours per helicopter if not accomplished during overhaul, to accomplish the proposed actions, and that the average labor rate is $55 per work hour. It is estimated that one-half of the affected helicopter fleet may be effected each year by the requirements of this AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to range from $199,155 to $1,062,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8257 (57 FR 30392, July 9, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 92–ASW–49. Supersedes AD 92–11–07, Amendment 39–8257, Docket No. 91–ASW–17.

Applicability: BHTI Model 204B, 205A, 205A–1, 205B, 212, and 412 helicopters, certificated in any category, with main rotor transmission lower planetary spider, part number (P/N) 204–040–785–003, installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fatigue failure of the main transmission lower planetary spider, P/N 204–040–785–003, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 600 hours time in service after the effective date of this AD, unless previously accomplished within the last 2,500 hours time in service, and thereafter at intervals not to exceed 3,100 hours time in service from the last inspection, remove the lower planetary spider and perform a magnetic particle inspection for cracks in accordance with the pertinent BHTI maintenance, repair, and overhaul manuals.

(b) Remove spiders with cracks and replace with an airworthy part prior to further flight.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, 4400 Blue Mound Road, Fort Worth, Texas 76106. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on March 10, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–6610 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ASW–33]

Airworthiness Directives; McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Company (MDHC) and Hughes Helicopters, Inc. Model 369 series helicopters. This proposal would require initial and repetitive inspections of the fuel vent line emergency shutoff valve assembly and replacement of that assembly upon either discovering a closed or otherwise obstructed vent tube, or upon the rotorcraft attaining 3,000 hours time in service. This proposal is prompted by several reports of erroneously high fuel quantity indications and that condition led to inflight engine fuel exhaustion. The actions specified by the proposed AD are intended to prevent erroneous inflight fuel quantity indications that could lead to engine fuel exhaustion and a subsequent power-off landing.

DATES: Comments must be received by May 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–33, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Helicopter Company, 5000 East McDowell Road, Mesa, Arizona 85205–9797, Attention: Field Service Department. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Rd., Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Bruce Conze, Aerospace Engineer, Propulsion Branch, Los Angeles Aircraft Certification Office, ANM–143L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California, 90806–2425, telephone (310) 988–5261, FAX (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–33." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–33, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion: Several incidences of engine flameout, involving these Model 369 series helicopters have been reported. These flameouts have been attributed to fuel exhaustion. These events reportedly occurred even though the fuel quantity gage indicated that there was fuel remaining in the tank. Further investigation of these incidents revealed that the lead weight on the fuel vent line emergency shutoff valve assembly (valve assembly), part number (P/N) 369H8108, –501, or –503, had eroded and loosened from its support shaft. This allowed the weight to slide down the shaft and block the vent line, thereby closing the valve. These investigations revealed that as fuel is used, a vacuum develops in the fuel tank bladder causing it to collapse and contact the fuel quantity sensor. This contact prevents the fuel quantity sensor from moving as fuel is used, and causes an erroneous indication on the pilot's fuel quantity gage. This condition, if not corrected, could result in fuel exhaustion, and a subsequent power-off landing.

The FAA has reviewed and approved MDHC Service Information Notice HN–234/DN–181/EN–73/FN–60, dated January 17, 1992, that describes the procedures for inspection of the fuel vent line system and replacement, if necessary, of defective valve assemblies. These inspection procedures are included in the proposed AD. The proposed AD would require the installation of improved valve assemblies on helicopters before reaching 3,000 hours' time in service, or as otherwise specified.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of the valve assembly, replacement of defective valve assemblies, and eventual replacement of all original valve assemblies with an improved valve assembly.

The FAA estimates that 2,800 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,320 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,728,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc.: Docket No. 92–ASW–33.

Applicability: MDHC and Hughes Model 369H, 369D, 369E (Serial No. 0001E thru 0508E), and 369F/FF (Serial No. 0003 thru 0091) series helicopters, equipped with fuel vent line emergency shutoff valve assemblies, part number (P/N) 369H8108, 369H8108–501 or 369H8108–503, certificated in any category.

Compliance: Helicopters with less than 2,400 hours time in service on the effective date of this AD shall be inspected on or before attaining 2,500 hours time in service, and thereafter, at an interval not to exceed 100 hours time in service from the last inspection until an improved fuel vent line emergency shutoff valve assembly (assembly) is installed in accordance with paragraph (d) of this AD. Helicopters with 2,400 hours or more time in service on the effective date of this AD shall be inspected in accordance with this AD within the next 100 hours time in service, and thereafter, at an interval not to exceed 100 hours time in service from the last inspection until an improved assembly is installed in accordance with paragraph (d) of this AD.

To prevent erroneously high inflight fuel quantity indications due to a blocked fuel vent line in the assembly, accomplish the following:

(a) Remove the assembly from the helicopter as required by the appropriate Model 369 maintenance manual.

(b) Inspect the valve in the following sequence:

(1) Hold the assembly vertically. Blow air into the assembly to determine if the valve is open. Visually inspect the vent tube for obstructions using a pen-light or equivalent light. (See Figure 1)

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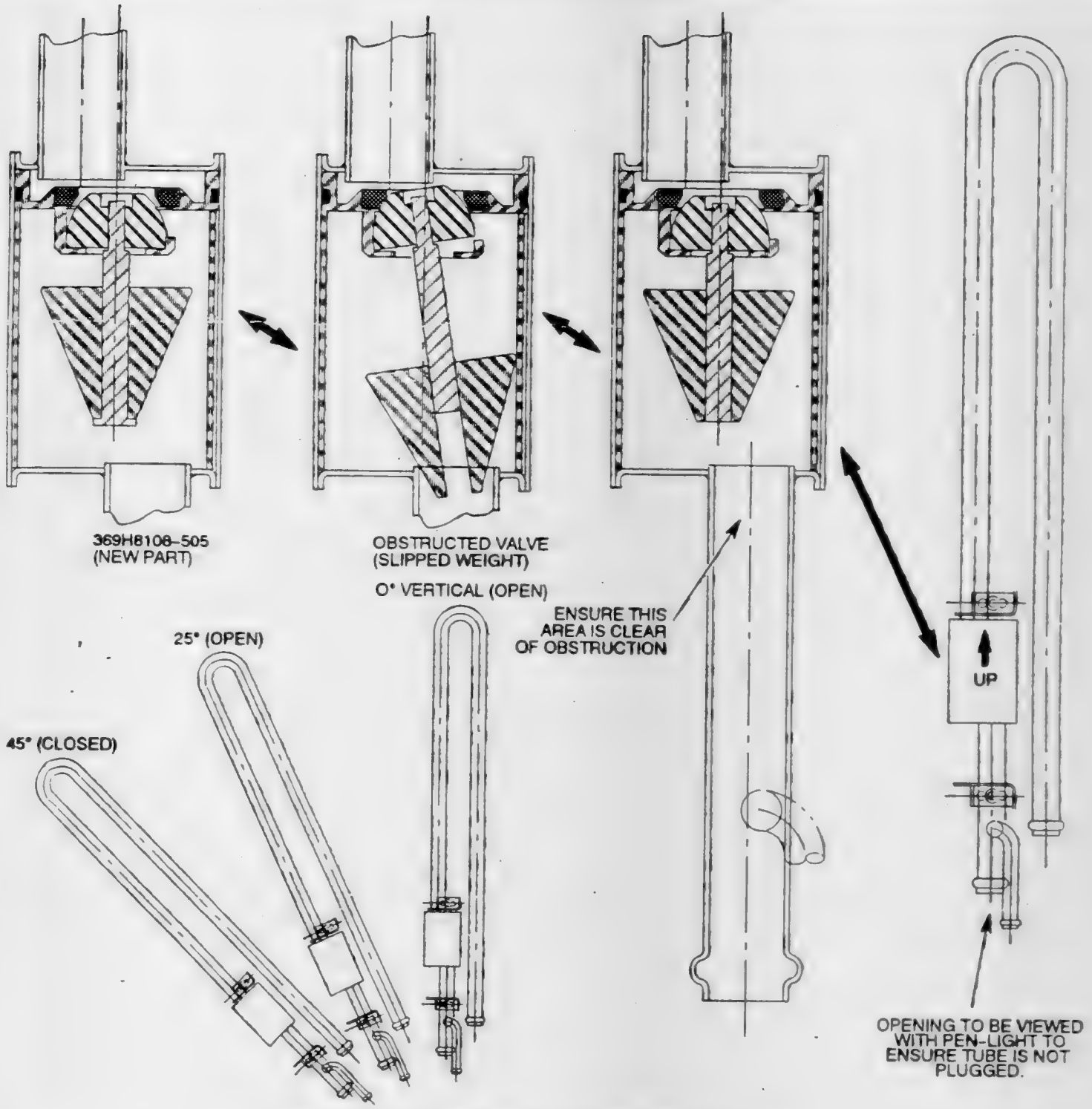

Figure 1. Inspection/Rework of Fuel Vent System.

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(2) Hold the assembly approximately 45 degrees from vertical. Blow air into the assembly to determine if the valve is correctly closed and thus blocks all air passage. (See Figure 1)

(3) Hold the assembly approximately 25 degrees from vertical. Blow air into the assembly to determine if the valve is open. (See Figure 1)

(4) Do not use compressed air in conducting these inspections.

(c) If the inspections conducted in accordance with the requirements of paragraph (b) uncover an incorrectly closed or obstructed valve, before further flight install assembly, P/N 369H8108–505 or higher dash number, or other airworthy assemblies in accordance with the appropriate Model 369 maintenance manual.

(d) Install assembly, P/N 369H8108–505 or higher dash number, as follows, unless already accomplished:

(1) For helicopters with 2,400 hours or more time in service on the effective date of this AD, install the assembly on or before attaining the next 600 hours time in service.

(2) For helicopters with less than 2,400 hours time in service on the effective date of this AD, install the assembly before attaining 3,000 hours time in service.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425. Operators shall submit their request through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on March 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–6612 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–ASW–11]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, and TH–55A series helicopters, that would have required a new repetitive dye penetrant inspection of the tailboom center attachment (saddle) fitting. That proposal was prompted by reports of cracks in the fitting. This action revises the proposed rule by adding a proposal to replace the magnesium tailboom center attachment (saddle) fitting with a new aluminum fitting as a required terminating action. The actions specified by this proposed AD are intended to prevent fatigue failure of the magnesium tailboom center attachment (saddle) fitting that could result in loss of the tailboom and subsequent loss of control of the helicopter.

DATES: Comments must be received by May 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ASW–11, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE–172, New England Region, 181 S. Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–ASW–11." The postcard will be date stamped and returned to the commenter.

Availability of Supplemental Notice of Proposed Rulemaking (SNPRM)

Any person may obtain a copy of this notice by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ASW–11, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion: A proposal to amend part 39 of the Federal Aviation Regulations by superseding Airworthiness Directive (AD) 80–05–05, Amendment 39–3707 (45 FR 14540, March 6, 1980), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, and TH–55A was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 26, 1991 (56 FR 29199). That NPRM proposed to retain the existing requirement for the initial and repetitive visual inspections required by AD 80–05–05 and to add a new requirement for a repetitive dye penetrant inspection. That NPRM was prompted by reports of cracks; these reports indicate that cracks may not be detected in a timely manner solely by visual inspection. That condition, if not corrected, could result in fatigue failure of the tailboom center attachment (saddle) fittings, loss of the tailboom, and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, Schweizer Aircraft Corporation, the only commenter on the NPRM, has submitted additional information gained from an accident investigation involving a Model TH–55A helicopter. The investigation report states that the magnesium tail boom center attachment (saddle) fitting contained several cracks that resulted in complete separation of

the left and right lugs of the fitting. Some of the cracks may have been undetected for a significant period of time prior to separation of the fitting. Extensive evidence of fretting and corrosion was found on the fitting. Fretting and corrosion have been reported previously on Models 269A, 269A–1, 269B, and TH–55A saddle fittings.

Schweizer Aircraft Corporation has since issued Service Bulletin B–238.1, dated November 7, 1991, which describes procedures for an initial dye penetrant inspection, repetitive visual and dye penetrant inspection for cracks, and a terminating action for the inspections. The bulletin also describes procedures for the replacement of the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324 (BSC) or 269A2324–7, with new aluminum fittings for Model 269A, 269A–1, 269B, and TH–55A helicopters.

Because of the extensive fretting and corrosion that were found on the accident aircraft, the FAA proposes that all magnesium tailboom center attachment (saddle) fittings continue to be inspected using a 10-power magnifying glass but further proposes a repetitive dye penetrant inspection of these fittings until they are removed from service. Based on these safety concerns and upon further review, the FAA has determined that it is necessary to revise the notice to propose a terminating modification. Also, the FAA has reordered the paragraphs of this proposed rule by inserting the replacement instructions proposed by paragraph (c) of the NPRM into paragraphs (a) and (b), and renumbering all paragraphs accordingly.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 512 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per helicopter to accomplish the proposed actions, and that the average labor cost is $55 per work hour. Required parts would cost approximately $852 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $943,104.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–3707 (45 FR 14540, March 6, 1980), AD 80–05–05, and adding the following new airworthiness directive:

Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Docket No. 91–ASW–11.

Applicability: All Model 269A, 269A–1, 269B, and TH–55A series helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent fatigue failure of the magnesium tailboom center attachment (saddle) fitting that could result in loss of the tailboom of the helicopter, accomplish the following:

(a) For each helicopter with a magnesium tailboom center attachment (saddle) fitting, part number (P/N) 269A2324 (BSC) or 269A2324–7, with 4,000 or less hours time in service on the effective date of this AD, perform the following in accordance with the 269 Series Basic Handbook of Maintenance Information, as revised by Temporary Revision No. R–42, dated October 8, 1990 (HMI):

(1) Prior to further flight and thereafter at intervals not to exceed 50 hours time in service from the last inspection, visually inspect for fretting, corrosion, and cracks the magnesium tailboom center attachment (saddle) fitting and tailboom assembly using a 10-power or higher magnifying glass.

(2) Within the next 25 hours time in service after the effective date of this AD and thereafter at intervals not to exceed 100 hours time in service from the last inspection, inspect for cracks the magnesium tailboom center attachment (saddle) fitting using a dye penetrant inspection.

(3) If the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324 (BSC) or 269A2324–7, is found unairworthy by the inspections required by this paragraph, before further flight remove and replace it with an airworthy aluminum tailboom center attachment (saddle) fitting, P/N 269A2324–13 (undrilled).

(4) Prior to accumulating 4,100 hours time in service, replace the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324 (BSC) or P/N 269A2324–7, with an airworthy aluminum tailboom center attachment (saddle) fitting, P/N 269A2324–13 (undrilled).

(b) For each helicopter with a magnesium tailboom center attachment (saddle) fitting, P/N 269A2324 (BSC) or P/N 269A2324–7, with more than 4,000 hours time in service on the effective date of the AD, perform the following in accordance with the HMI:

(1) Before the first flight of each day, visually inspect for fretting, corrosion and cracks the tailboom center attachment (saddle) fitting and tailboom using a 10-power or higher magnifying glass.

(2) Prior to further flight after the effective date of this AD and thereafter at an interval not to exceed 50 hours time in service from the last inspection, inspect for cracks the tailboom center attachment (saddle) fitting using a dye penetrant inspection.

(3) If the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324 (BSC) or 269A2324–7, is found unairworthy by the inspections required by this paragraph, before further flight, remove and replace it with an airworthy aluminum tailboom center attachment (saddle) fitting, P/N 269A2324–13 (undrilled).

(4) Within the next 100 hours time in service, replace the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324 (BSC) or 269A2324–7, with an airworthy aluminum tailboom center attachment (saddle) fitting, P/N 269A2324–13 (undrilled).

(c) Installation of an aluminum tailboom center attachment (saddle) fitting, P/N 269A2324–13 (undrilled), constitutes terminating action for the requirements of this AD.

Note: Schweizer Aircraft Corporation Service Bulletin B–238.1 pertains to this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream,

New York 11581–1145. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existance of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on March 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–6611 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–213–AD]

Airworthiness Directives; Short Brothers Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–30 series airplanes. This proposal would require rework of certain life-limited main landing gear (MLG) beam sub-assemblies to achieve a full service life; would establish a life limit on certain other MLG beam sub-assemblies; and would require subsequent replacement of certain life-limited MLG beam sub-assemblies. This proposal is prompted by fatigue testing, which revealed that certain MLG beam sub-assemblies have a specific life limit. The actions specified by the proposed AD are intended to prevent MLG failure, which could damage the airplane or reduce controllability of the airplane during takeoff or landing.

DATES: Comments must be received by May 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–213–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–30 series airplanes. The CAA advises that fatigue testing of the main landing gear (MLG) on Short Brothers Model SD3–30 series airplanes revealed that certain MLG beam sub-assemblies, part numbers 17604–9, –13, and –13A/14A, have a limited service life of 20,000 landings. In order to achieve this service life of 20,000 landings, these MLG beam sub-assemblies, part numbers 17604–9 and –13 need to be reworked prior to the accumulation of 13,500 total landings. In addition, the same fatigue testing revealed that certain other MLG beam sub-assemblies, part numbers 17604–15/16 and –17/18, can achieve a full service life if they are reworked in a certain manner. Main landing gear beam sub-assemblies with fatigue damage, if not detected and reworked or replaced, could lead to MLG failure, which could damage the airplane or reduce controllability of the airplane during takeoff or landing.

Short Brothers, PLC, has issued Shorts SD3–30 Service Bulletin SD3–32–90, Revision 2, dated June 29, 1992, which describes procedures for replacement of certain MLG beam sub-assemblies. This service bulletin refers to Menasco Service Bulletin 32–65, Revision 2, dated October 13, 1982, for additional service information. (Menasco Manufacturing of Canada, Limited, is the manufacturer of the MLG beam sub-assemblies.) The Menasco service bulletin describes procedures for rework of certain MLG beam sub-assemblies, and establishes a life limit of 20,000 landings on certain other MLG beam sub-assemblies. The CAA classified the Shorts service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require rework of certain life-limited MLG beam sub-assemblies to achieve a full service life; would establish a life limit on certain other MLG beam sub-assemblies;

and would require subsequent replacement of certain life-limited MLG beam sub-assemblies. The actions would be required to be accomplished in accordance with the Short Brothers service bulletin described previously.

This proposed AD would establish a "grace period" of up to 2,300 landings after the effective date of the final rule to allow operators to accomplish rework and replacement of certain MLG beam sub-assemblies. This "grace period" is necessary to prevent the grounding of airplanes that would accumulate 13,500 total landings prior to or soon after the effective date of the final rule. This "grace period" would allow operators the opportunity to plan for modification of the affected fleet. Modification would entail removal of the MLG beam sub-assemblies for rework, shipment to the manufacturer of the MLG beam sub-assemblies, and reinstallation; this may be a lengthy process. Operators who utilize all or part of this "grace period" prior to accomplishing the requirements of this proposed AD should note that the ultimate life limit may be reduced on those MLG beam sub-assemblies that are not modified prior to the accumulation of 13,500 total landings.

The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD. Of these airplanes, 49 would be required to accomplish the proposed rework only; 3 would be required to accomplish the proposed replacement only; and 3 would be required to accomplish the proposed replacement and rework.

The FAA estimates that it would take approximately 14 work hours per airplane to accomplish the proposed rework, and that the average labor rate is $55 per work hour. Rework (performed by the MLG beam sub-assembly manufacturer) would cost approximately $12,402 per airplane. The total cost impact of this AD for the 49 airplanes requiring the proposed rework is estimated to be $645,428, or $13,172 per airplane.

The FAA estimates that it would take approximately 14 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $55 per work hour. Parts cost to accomplish the proposed replacement would cost approximately $70,196 per airplane. The total cost impact of this AD for the 3 airplanes requiring the proposed replacement is estimated to be approximately $212,898, or $70,966 per airplane.

The FAA estimates that it would take approximately 28 work hours per airplane to accomplish the proposed replacement and rework, and that the average labor rate is $55 per work hour. Parts cost to accomplish the proposed replacement would cost approximately $70,196 per airplane, and rework (performed by the MLG beam sub-assembly manufacturer) would cost approximately $12,402 per airplane. The total cost impact of this AD for the 3 airplanes requiring the proposed replacement and rework is estimated to be $252,414, or $84,138 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,110,740. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 92–NM–213–AD.

Applicability: All Model SD3–30 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent main landing gear (MLG) failure, which could damage the airplane or reduce controllability of the airplane during takeoff or landing, accomplish the following:

(a) For airplanes equipped with MLG beam sub-assembly part numbers 17604–9, –13, –15/16, or –17/18: Prior to the accumulation of 13,500 total landings or within 2,300 landings after the effective date of this AD, whichever occurs later, rework the MLG beam sub-assembly, in accordance with Shorts SD3–30 Service Bulletin SD3–32–90, Revision 2, dated June 29, 1992.

Note: Shorts SD3–30 Service Bulletin SD3–32–90, Revision 2, dated June 29, 1992, references Menasco Service Bulletin 32–65, Revision 2, dated October 13, 1982, for additional service information.

(b) For airplanes equipped with MLG beam sub-assembly part numbers 17604–9, –13, or –13A/14A: Prior to the accumulation of 20,000 total landings or within 2,300 landings after the effective date of this AD, whichever occurs later, and thereafter prior to the accumulation of 20,000 landings on any MLG beam sub-assembly, replace it with a serviceable unit, in accordance with Shorts SD3–30 Service Bulletin SD3–32–90, Revision 2, dated June 29, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6568 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 350

[Docket No. 78N–0064]

RIN 0905–AA06

Antiperspirant Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on two citizen petitions and a response that disagreed with one of the petitions. The citizen petitions request that the rulemaking for antiperspirant drug products for over-the-counter (OTC) human use be reopened to include new information, all aluminum compounds proposed for use in OTC antiperspirant drug products be reclassified as Category III (more data needed) until further studies are done to determine the amount absorbed following topical application and inhalational exposure, and the safety of these aluminum compounds be reevaluated, particularly their potential for skin absorption or toxic effects with long-term use.

DATES: Written comments by July 21, 1993.

ADDRESSES: Submit written requests for single copies of the citizen petitions and the response to one of the citizen petitions to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. These three documents are available at a cost of $94.30 and contain 943 pages. Alternatively, a copy of the citizen petitions containing a bibliography without copies of the cited references, plus a copy of the response to one citizen petition, are available at a cost of $9.70 and contain 97 pages. Submit written comments or new data on OTC aluminum-containing antiperspirant drug products to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1978 (43 FR 46694), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC antiperspirant drug products, together with the recommendations of the Advisory Review Panel on OTC Antiperspirant Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The agency's proposed regulation, in the form of a tentative final monograph, for OTC antiperspirant drug products was published in the **Federal Register** of August 20, 1982 (47 FR 36492). A final regulation has not been published to date.

The Panel classified the ingredients it reviewed into three categories: (1) "Category I" (generally recognized as safe and effective and not misbranded), (2) "Category II" (not generally recognized as safe and effective or misbranded), and (3) "Category III" (available data are insufficient to classify as safe and effective, and further testing is required). The OTC drug procedural regulations (21 CFR 330.10) provide that any testing necessary to resolve the safety or effectiveness issues resulting from a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

The Panel considered aluminum-containing antiperspirant ingredients applied directly to the skin in nonaerosol dosage forms (e.g., lotion, cream, stick, or roll-on) to be safe (43 FR 46694 at 46707 and 46708). However, the Panel had safety concerns about long-term use of aerosol dosage forms and recommended Category III status until further safety studies were conducted (43 FR 46708 to 46711). The agency adopted the Panel's Category I recommendations for nonaerosol dosage forms (47 FR 36492 at 36502) and, based on new data, proposed Category I status for aerosol dosage forms of the various aluminum chlorohydrate antiperspirant ingredients (47 FR 36498).

FDA has been petitioned (Ref. 1) under the provisions of § 10.30 (21 CFR 10.30) to reclassify all aluminum compounds proposed for use in OTC antiperspirant drug products from Category I to Category III until further absorption studies are done to determine the amount of aluminum absorbed following topical application and inhalation exposure. (The petition also requested FDA to amend its regulations to revoke the use of aluminum compounds as food substances; however, this notice addresses only the uses of aluminum compounds in OTC antiperspirant drug products.) Subsequently, the agency received a comment (Ref. 2) that objected to the conclusions of the petition. The comment argued that current scientific information does not support the need to reclassify the safety of aluminum-containing materials, such as foods and antiperspirants. Subsequently, FDA received a second petition (Ref. 3) under the provisions of § 10.30 to reopen the rulemaking to include new information, revoke the Category I classification of aerosol dosage forms, reclassify nonaerosol aluminum-containing dosage forms as Category III, and require reevaluation of their potential for skin absorption or toxic effects with long-term use. Both petitions and the response to the first petition are on public display in the Dockets Management Branch.

I. Current Regulatory Status of Aluminum-Containing OTC Antiperspirant Drug Products

Both the Panel, in its advance notice of proposed rulemaking (43 FR 46694 at 46718), and the agency, in its tentative final monograph (47 FR 36492 at 36502), proposed Category I status for aluminum-containing and aluminum zirconium-containing antiperspirant active ingredients in topical nonaerosol dosage formulations. The Panel discussed the safety of antiperspirants and stated (43 FR 46707):

> * * * Because of the relatively impermeable properties of the skin to metallic salts and complexes, there is no evidence to suggest that the direct application of antiperspirant products to intact skin has been associated with systemic toxic effects.
>
> Percutaneous dermal toxicity tests have been performed on animals for a great number of antiperspirants. The reported results indicated no ill effects on the animals.

The Panel questioned the safety of the long-term use of these ingredients when applied in an aerosol form (43 FR 46707) and classified all aluminum-containing aerosol antiperspirant products in Category III (43 FR 46725). The Panel stated that the decision to require added testing for aerosol products reflected the fact that damage to the lung, by occurring more insidiously, carries a greater potential for serious illness than damage to the skin (43 FR 46718).

New data were submitted after publication of the Panel's report and were discussed by the agency in the tentative final monograph (43 FR 36492

at 36498). The agency tentatively concluded that the data appeared to be adequate to establish the safe and effective use of OTC aerosol antiperspirants by consumers (47 FR 36498). The agency also proposed the following additional label warning for aerosol antiperspirants in § 350.50(c): "Avoid excessive inhalation." (See comment 22, 47 FR 36498.) However, this warning is not required to appear in product labeling until the effective date of a final monograph. In the interim, OTC aluminum-containing aerosol and aluminum and zirconium-containing nonaerosol antiperspirant drug products currently included in the pending rulemaking for OTC antiperspirant drug products may remain in the marketplace while the agency considers the comments received in response to this notice and develops a final rule for these OTC drug products.

II. Summary of First Petitioner's Views

The following narrative summarizes the information and arguments presented by the first petitioner. The material included in the narrative does not necessarily represent the views of the agency.

The petitioner contended that the use of aluminum in antiperspirants needs to be further studied, particularly the amount absorbed following both inhalational exposure and topical application to the skin. The petitioner mentioned that many published articles that were not discussed by the Panel or by the agency discuss the systemic toxicity and neurotoxicity of aluminum. The petitioner noted that, since the antiperspirant tentative final monograph was issued in 1982, many new studies of aluminum toxicology have been conducted and a growing number of studies show that aluminum is a powerful neurotoxin (Refs. 4 and 5).The petitioner claimed that when taken orally or when inhaled, aluminum can be absorbed and get into the blood; a fraction of aluminum in the blood enters the brain, where it remains and accumulates (Ref. 5). Once in the brain, the petitioner stated, the aluminum can disrupt many normal cellular activities. The petitioner mentioned that animal experiments show that aluminum causes a variety of neurotoxic effects on the brain (Refs. 6 through 11) and in vitro studies show neurotoxic effects on human neurons (Refs. 12 and 13). The comment also stated that human epidemiology studies associate aluminum with neurotoxicity.

The petitioner noted that Perl and Good (Ref. 14) have proposed that inhaled aluminum compounds may be taken directly into the brain by a nasal-olfactory pathway, and this is supported by studies by Pearson et al., who found that olfactory areas of the brain are invariably severely involved (Ref. 15). The petitioner suggested that this may be a mechanism by which aerosolized aluminum compounds in antiperspirants cause Alzheimer's disease. The petitioner stated that a case control study showed epidemiologic evidence of a relationship between aluminum-containing antiperspirants and Alzheimer's disease (Ref. 16).

The petitioner stated that studies show that aluminum can be absorbed when aluminum compounds are inhaled (Refs. 17 through 21). The petitioner contended that there have been no studies measuring the amount of aluminum absorbed systemically by inhalation of aerosolized antiperspirants, and that there has only been consideration of whether aerosolized antiperspirants would cause accumulation of aluminum compounds in the lung, and whether that would cause lung damage (43 FR 46694 at 46708 to 46711). The petitioner also contended that there have been no studies measuring the amount of aluminum absorbed systemically through the skin when antiperspirants are applied on the skin. The petitioner stated that the Panel only mentioned the "relatively impermeable properties of the skin to metallic salts and complexes" (43 FR 46707), but did not quantify the term "relatively impermeable." The petitioner concluded that the use of aluminum in antiperspirants needs to be further studied because it is not known how much aluminum is absorbed, or whether the amounts absorbed are unsafe. The comment added that measurement of absorption is crucial for risk assessment, and that such measurements should be performed before the use of aluminum in antiperspirants receives final monograph approval.

Accordingly, the petitioner requested that: (1) The rulemaking for OTC antiperspirant drug products be reopened, (2) all aluminum compounds proposed for use in OTC antiperspirant drug products be reclassified as Category III until further studies are done to determine the amount absorbed following topical application and inhalational exposure, and (3) the safety of these aluminum compounds, based on the new absorption data, be reevaluated after these studies are done and the compounds then reclassified as Category I or Category II.

III. Summary of the Comment on the First Petition

The comment stated that it had reviewed the published data, including the references cited by the petitioner, and concluded that the data do not support the petitioner's conclusion that the concentration of aluminum in products such as foods and antiperspirants poses a potentially significant neurotoxic risk. The comment contended that the majority of the references cited by the petitioner describe findings from in vitro studies. According to the comment, the studies did not consider the blood-brain barrier, which is the brain's main defense against potentially toxic substances such as aluminum. The comment added that extraordinarily high concentrations of aluminum were used in these studies, and these levels are never approached under physiological conditions or even in pathological states, such as in dialysis encephalopathy. The comment stated that the doses of aluminum that cross the blood-brain barrier must be considered in the aphysiological range. The comment concluded that aluminum from food additives or antiperspirants would not enter the brain in biologically significant concentrations.

The comment also objected to the petitioner's contention that the inhalation of aluminum antiperspirants poses a special risk because this route of delivery bypasses the blood-brain barrier. The comment calculated that an inhalation study (Ref. 19) cited by the petitioner, in which rabbits were exposed to aluminum oxide inhalation for 8 hours per day, 5 days per week for 5 months, would be equivalent to a person using spray deodorants for approximately 10 seconds daily for 789 years. The comment concluded that generalization from this rabbit inhalation study to humans was strained at best.

The comment also disagreed with the petitioner's statement that "aluminum plays a role in Alzheimer's disease * * *." The comment felt that the majority of researchers investigating the etiology of Alzheimer's disease probably would not agree with the petitioner's position. The comment stated that aluminum encephalopathy dialysis patients do not exhibit neurofibrillary tangles or plaques in their brains as do patients with Alzheimer's disease. The comment also stated that neurofibrillary tangles in experimental animals with aluminum injected into their brains differ from the tangles seen in Alzheimer's disease. The comment concluded that current scientific information does not support the need to reclassify the safety of

aluminum-containing materials such as antiperspirants.

IV. Summary of Second Petitioner's Views

The following narrative summarizes the information and arguments presented by the second petitioner. The material included in the narrative does not necessarily represent the views of the agency.

The petitioner agreed with the position taken by the first petitioner that aluminum compounds that are proposed for use in antiperspirant drug products for OTC use need to be reconsidered for safety in view of recent concerns about aluminum neurotoxicity and systemic toxicity. The petitioner also contended that there is a lack of adequate data on the absorption of aluminum from topical or inhaled antiperspirants.

The petitioner requested that FDA revoke its decision in the tentative final monograph to reclassify aerosol dosage forms of aluminum chlorohydrate antiperspirants from Category III to Category I (47 FR 36492 at 36498) because the long-term lung inhalation studies in rats used to support this decision show that aluminum absorption occurs at the peribronchial lymph nodes, and increased aluminum levels are detected in the rat brain and adrenal glands after 12 and 24 months.

The petitioner requested that FDA reclassify non-aerosol dosage forms of aluminum-containing antiperspirants to Category III in order to permit a re-evaluation of their potential for skin absorption or toxic systemic effects following long-term use. The petitioner pointed out that the Panel concluded that because of the relatively impermeable properties of the skin to metallic salts and complexes, there is no evidence to suggest that direct application of antiperspirant products to intact skin has been associated with systemic toxic effects. The petitioner stated that reports show that metal ions do absorb through the skin, and aluminum ions in antiperspirant formulations theoretically appear especially likely to be absorbed. The petitioner further stated that experimental evidence is accumulating to indicate that chronic exposure to low levels of aluminum may lead to neurological disorders, and that there is a reported association between Alzheimer's disease and the exposure to aluminum through lifetime use of antiperspirants.

The petitioner also requested that FDA revise and expand the proposed warning for aluminum-containing aerosols in § 350.50(c)(2), which states "avoid excessive inhalation," to better clarify the safety concern.

V. The Agency's Consideration of Aluminum-Containing Drugs in Other OTC Drug Rulemakings

Since publication of the tentative final monograph for OTC antiperspirant drug products on August 20, 1982, the agency has evaluated substantial additional data on the safety of aluminum compounds used in other categories of OTC drug products. These safety evaluations have some bearing on the issues raised by the petitioners.

A. Topical OTC Drug Products Containing Aluminum

Several other OTC advisory review panels have concluded that various aluminum salts are safe for topical use in other OTC drug products: e.g., acne (March 23, 1982, 47 FR 12430 at 12450), antifungal (March 23, 1982, 47 FR 12480 at 12525), astringent (September 7, 1982, 47 FR 39412 at 39427), and skin protectant (August 4, 1978, 43 FR 34628 at 34634). These conclusions were generally based on the following considerations: (1) Metals are not generally absorbed through the skin. (2) Aluminum salts precipitate protein and may form a superficial protective layer on mucous membranes or damaged skin (Refs. 22, 23, and 24). The Antimicrobial II Panel stated that with protein precipitates, absorption through the skin is probably minimal (47 FR 12430 at 12450). (3) There is an absence of aluminum toxicity reported in the current literature and in standard references (Refs. 24 through 27). (4) There has been a wide clinical usage of aluminum salts topically. (5) There has also been a wide clinical usage of oral aluminum as an antacid, with a minimal degree of absorption of ingested aluminum (Ref. 28).

B. OTC Antacid Drug Products

The agency has evaluated the involvement of aluminum with dialysis encephalopathy and osteomalacia in the **Federal Register** of January 15, 1985 (50 FR 2160 at 2165) and May 11, 1990. In the May 11, 1990 publication (55 FR 19852 at 19856), the agency stated:

When the agency last evaluated this issue prior to publishing the proposed antacid monograph amendment to add professional labeling warnings for OTC aluminum-containing antacids (50 FR 2160 at 2165), the relationship of aluminum to bone disease was not established. There was even some doubt about the relationship of aluminum to encephalopathy (a toxic degeneration of the brain) at that time. Subsequently it has become clear that both encephalopathy and osteomalacia (softening of the bones) can be caused by long-term use of aluminum in renal dialysis patients * * *. Long-term use of aluminum-containing antacids contributes to dialysis osteomalacia * * *. Although only a small fraction of ingested aluminum is absorbed, that amount must be removed by functioning kidneys, bile secretion, or dialysis, or else it will accumulate. Dialysis does not remove aluminum well because the aluminum is bound to albumin and transferrin, which do not cross dialysis membranes. When aluminum accumulates, it tends to be deposited in bone * * * at the mineralization front, blocking mineralization of newly formed bone, increasing calcium loss from bone into serum, and producing osteomalacia * * *. The agency believes that the role of aluminum is significant and that attempts should be made to reduce its contribution to renal osteodystrophy.

The agency further noted that the dialysis encephalopathy, discussed in this section, that was due to aluminum resulted from two factors: (1) Oral aluminum-containing antacids taken as phosphate binders, and (2) aluminum-containing dialysis fluids. Subsequently, in the **Federal Register** of May 11, 1990 (55 FR 19852 at 19859), the agency added the following warning to the monograph for OTC antacid drug products under § 331.80(a)(4)(i):

Prolonged use of aluminum-containing antacids in patients with renal failure may result in or worsen dialysis osteomalacia. Elevated tissue aluminum levels contribute to the development of the dialysis encephalopathy and osteomalacia syndromes. Small amounts of aluminum are absorbed from the gastrointestinal tract and renal excretion of aluminum is impaired in renal failure. Aluminum is not well removed by dialysis because it is bound to albumin and transferrin, which do not cross dialysis membranes. As a result, aluminum is deposited in bone, and dialysis osteomalacia may develop when large amounts of aluminum are ingested orally by patients with impaired renal function.

The Panel and the agency did not discuss Alzheimer's disease or other neurological disorders in prior publications in the antiperspirant rulemaking. However, the agency did discuss Alzheimer's disease in the **Federal Register** of January 15, 1985 (50 FR 2160 and 2161), covering OTC hypophosphatemia drug products. The agency reviewed the literature available up to 1981, which included some of the early articles submitted by the first petitioner. The agency also noted that Perl and Brody (Ref. 29) studied the aluminum content within individual neurons of brain tissue from three cases of Alzheimer's disease and three nondemented controls. They found that aluminum is frequently present in the nuclei of neurons with neurofibrillary tangles both in the presence and absence of Alzheimer's disease, although neurons with neurofibrillary tangles were found more often in the

Alzheimer's patients. However, the agency pointed out that other investigators found no significant difference in the aluminum content of Alzheimer's patients and normal controls and found no correlation between neurofibrillary tangle formations and aluminum content (50 FR 2161).

The agency noted that aluminum can produce some of the histopathological and clinical features of Alzheimer's disease in certain animal species when aluminum salts are injected into different areas of the brain. However, the agency questioned the relationship of changes induced in these animals to humans, particularly in view of the unphysiological route of administration of the aluminum in the studies (50 FR 2161). The agency quoted a 1980 editorial on Alzheimer's disease in the *British Medical Journal* that "Despite the plethora of hypotheses, however, objective analysis of all the data--immunological, genetic, virological, pathological, and biochemical--shows that we still have no idea of the aetiology of Alzheimer's disease," (50 FR 2161). The agency concluded at that time that a role for aluminum in the pathogenesis of Alzheimer's disease cannot be ruled out, but the evidence supporting such a role is very weak (50 FR 2162).

VI. Request for Comments

The petitions and the comment discussed above raise issues that need to be considered before FDA makes a final decision on the safety of aluminum-containing and aluminum zirconium-containing antiperspirant drug products. At this time, the agency has not decided whether it should grant the petitioners' requests. In an effort to determine whether further study should be required to assess the safety of aluminum antiperspirants before issuing a final monograph, FDA is seeking public comments. In accordance with § 10.30(h)(3) (21 CFR 10.30(h)(3)), FDA is seeking public comments on the following questions before reaching any decision on the petitions:

(1) As described above, there is already a considerable amount of safety data concerning aluminum toxicity. Are these data sufficient to retain aluminum-containing and aluminum zirconium-containing OTC antiperspirants in Category I?

(2) If more data are needed to support safety, what data are needed and what testing should be required? What kind of absorption studies should be conducted to determine the level, if any, of aluminum that is absorbed through the skin and deposited in organs, such as the lungs and brain, from direct application of antiperspirant drug products? What levels of aluminum absorption would be considered low enough to be safe?

(3) If aluminum-containing and aluminum zirconium-containing antiperspirants were found to be unsafe, there would no longer be any ingredients in the OTC antiperspirant drug products monograph. FDA is seeking public comment on whether any ingredients that do not contain aluminum may be suitable for review as OTC antiperspirant drug products.

The agency is currently developing the final rule for OTC antiperspirant drug products. The agency will consider the comments received in response to this notice and then decide whether to grant the petitioners' requests or proceed to publish the final rule.

The complete petitions are on public display between 9 a.m. and 4 p.m., Monday through Friday, in the Dockets Management Branch. Requests for single copies of the petitions may be submitted to the Freedom of Information Staff (address above).

Interested persons may, on or before July 21, 1993, submit to the Dockets Management Branch (HFA–305) (address above) written comments regarding this petition and the comment on the petition. Three copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. The petitions, the comment, other information discussed above, and any comments received in response to this request for comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. After reviewing the comments and other information received, FDA will respond to the petitions.

VII. References

(1) Citizen Petition CP2, Docket No. 78N–0064, Dockets Management Branch.

(2) Comment C42, Docket No. 78N–0064, Dockets Management Branch.

(3) Citizen Petition CP3, Docket No. 78N–0064, Dockets Management Branch.

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(16) Graves, A. B. et al., "The Association Between Aluminum-containing Products and Alzheimer's Disease," *Journal of Clinical Epidemiology*, 43:35–55, 1990.

(17) Elinder, C. et al., "Evidence of Aluminum Accumulation in Aluminum Welders," *British Journal of Industrial Medicine*, 48:735–738, 1991.

(18) Mussi, I. et al., "Behaviour of Plasma and Urinary Aluminum Levels in Occupationally Exposed Subjects," *International Archives of Occupational and Environmental Health*, 54:155–161, 1984.

(19) Rollin, H. B., P. Theodorou, and T. A. Kilroe-Smith, "Deposition of Aluminum in Tissues of Rabbits Exposed to Inhalation of Low Concentrations of Al203 Dust," *British Journal of Industrial Medicine*, 48:389–391, 1991.

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Dated: March 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–6530 Filed 3–22–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Abandoned Mine Lands Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania Abandoned Mine Lands Reclamation Plan (hereinafter referred to as the Pennsylvania Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment provides for changes to the approved Pennsylvania Plan to allow for the initiation of a State administered emergency reclamation program.

This document sets forth the times and locations that the Pennsylvania plan and the proposed amendment to that plan are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 22, 1993 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on April 19, 1993. Requests to present testimony at the hearing must be received on or before 4 p.m. on April 7, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, telephone: (717) 782–4036

Pennsylvania Department of Environmental Resources, Bureau of Abandoned Mine Reclamation, P.O. Box 1467, Harrisburg, Pennsylvania 17105, telephone: (717) 783–2156

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior approved the Pennsylvania plan effective July 31, 1982. Information on the background of the Pennsylvania plan including the Secretary's findings, and the disposition of comments can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Effective October 30, 1992, the Pennsylvania Plan was amended to update existing policies and procedures, and to allow for the new initiatives provided under the Abandoned Mine Reclamation Act of 1990 (Public Law 101–508). The Secretary's findings and the disposition of comments relative to the Plan amendment can be found in the October 30, 1992 **Federal Register** (57 FR 49135–49138).

II. Discussion of the Proposed Amendment

By notice dated September 29, 1982 (47 FR 42729–42730), the Secretary extended an opportunity to the States and Tribes to amend their AML Reclamation Plans to allow for a self-administered emergency reclamation program. Until that time, projects declared in emergency pursuant to section 410 of the SMCRA had been administered solely by OSM. To ensure that State/Tribal reclamation plan amendments submitted in response to the notice were consistent and adequately addressed necessary program requirements, OSM established guidelines on March 7, 1983. These guidelines for submission of amendments to State reclamation plans to conduct emergency reclamation contain specific authorizations, policies, and procedures that should be addressed as part of the amendment request. In addition, the March 7, 1983 guidance also contains information on the administration of State emergency reclamation programs.

By letter dated December 30, 1992, the Pennsylvania Department of Environmental Resources (PADER) submitted to OSM a proposed amendment to revise the Pennsylvania Plan to assume responsibility for a State administered emergency reclamation program. The amendment, as submitted, proposes to add a new part F to the current Pennsylvania Plan. Part F is composed of six sections that address AML Reclamation Plan amendment requirements under 30 CFR 884.13. The following is a summary of each section under the new part F:

1. *Governor's Designation of the Department of Environmental Resources:* This section addressed the designation by the Governor of Pennsylvania that PADER is authorized to conduct the reclamation program.

2. *The Legal Opinion Authorizing PADER to Administer the Emergency Program*: PADER has submitted a revised legal opinion from the Assistant Counsel of the Bureau of Legal Services concerning its authorities for conducting an emergency program.

3. *Policies and Procedures in Conducting the Emergency Program*: This section of the amendment contains a discussion of the purpose of the emergency program, coordination activities with other State and Federal agencies, and procedures for entering onto private property and conducting lien evaluations. In addition, this

section addresses the planning and design of emergency projects, the determination of site eligibility, and the participation of the public in the development of the amendment.

4. *Administrative and Managerial Structure for the Emergency Program*: This section of the amendment provides information on the structure and staffing of the emergency program, assistance to be provided by OSM during the period of transition from a Federal to a State administered program, and on the overall funding of the Pennsylvania emergency program. In addition, this section discusses the procurement and accounting systems to be used for emergency projects.

5. *Emergency Problem Quantification*: This section provides information on the types of emergencies and where they may occur in the State.

6. *Emergency Program in Pennsylvania*: This section provides a statement on the objectives of the overall reclamation program and the emergency program in Pennsylvania.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14, OSM is now seeking comments on whether the amendment proposed by Pennsylvania satisfies the applicable plan approval criteria of 30 CFR 884.13. If the amendment is deemed adequate, it will become part of the Pennsylvania Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on April 7, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1993.

W. Hord Tipton,

Deputy Director, Operations and Technical Service.

[FR Doc. 93–1863 Filed 3–22–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD–FRL–4607–5]

National Emission Standards for Hazardous Air Pollutants, Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The EPA is requesting comment on possible future rulemaking to propose an alternative compliance option to the national emission standards for hazardous air pollutants (NESHAP) for benzene waste operations. Sources affected by this NESHAP include chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, coke by-product recovery plants, or petroleum refineries. The alternative compliance option would be based on site-specific risk assessment. If the EPA decides to pursue such a rulemaking, it would further delineate the scope and rationale as well as solicit additional comments at the time of proposal. This ANPR, and any related rulemaking that may follow, do not affect the date by which facilities are required to comply with the NESHAP for benzene waste operations. The EPA may decide not to pursue additional rulemaking. Consequently, facilities must document compliance, as described in the preamble for the amendments to the NESHAP for benzene waste operations published in the **Federal Register** of January 7, 1993.

DATES: Comments. Comments concerning this ANPR must be received by the EPA on or before April 22, 1993.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to Air Docket section (LE–131), Attention, Docket A–92–58, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please also send a copy of the comments to Ms. Gail Lacy at the address below.

FOR FURTHER INFORMATION CONTACT: Gail K. Lacy, Office of Air Quality Planning and Standards, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5261.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 1990 (55 FR 8292), the EPA promulgated under section 112 of the Clean Air Act (Act), 42 U.S.C. 7412, the NESHAP to control emissions of benzene to ambient air from waste operations (subpart FF of 40 CFR part 61). Sources affected by subpart FF include chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, coke by-product recovery plants, or petroleum refineries.

Subsequent to promulgation, the EPA stayed the effectiveness of subpart FF (57 FR 8012, March 5, 1992), and proposed clarifying amendments to subpart FF (57 FR 8017, March 5, 1992). The EPA Administrator signed final clarifying amendments, which also removed the stay, December 1, 1992, the date specified in the settlement agreement filed in connection with litigation on subpart FF. See *American Petroleum Institute* v. *EPA*, No. 90–1238 (D.C. Circuit) (Settlement Agreement). The final amendments were published in the **Federal Register** on January 7, 1993 (58 FR 3072).

In the preamble to the proposed clarifying amendments (57 FR 8022), the EPA solicited suggestions and supporting information for alternative structures for the rule that would encourage reclamation and recycling without compromising the NESHAP risk protection goals (which are described later in this notice). Several commenters from the affected industry suggested that the EPA consider site-specific risk assessment as an alternative rule structure. They believe that, in some cases, the use of site-specific information in the risk modeling may result in estimated health risks that meet the EPA's NESHAP policy goals without implementing the full range of controls required by the NESHAP as promulgated.

Site-specific risk assessment was not included as an alternative structure in the final clarifying amendments for the following reasons. First, development of this alternative compliance option was not feasible under the time frame for signature of the final amendments of December 1, 1992. Second, the EPA specifically stated in the proposed rulemaking of March 5, 1992, that it was not soliciting suggestions for structures based on site-specific control or risk protection. The original benzene waste operations NESHAP, as well as other NESHAP regulating benzene from other source categories, was developed as a uniform national standard, under which all facilities are required to apply a certain level of control. Site-specific standards would be a departure from this policy. However, because some in the affected industry are strongly interested in site-specific risk assessment for this NESHAP, the EPA agreed to request public comment on such an option.

II. Authority and Applicability

The authority for the promulgation of the subpart FF NESHAP for benzene waste operations is section 112 of the Act prior to its amendment by the Clean Air Act as amended (the 1990 Amendments). Similarly, if a rulemaking is pursued, the EPA would propose the alternative compliance option being discussed today under the authority of the Act prior to the 1990 Amendments.

In subpart FF, facility applicability of the control requirements is based on the facility's total annual benzene quantity (TAB) in all aqueous waste streams, as determined under § 61.342(a) of the rule. At facilities with a TAB of less than 10 megagrams per year (Mg/yr), only the recordkeeping and reporting requirements of subpart FF apply. Facilities with a TAB of 10 Mg/yr or greater must manage and treat the facility wastes in accordance with the standards provided by the rule. The alternative compliance option would provide an additional way to comply with the control requirements of the rule. It would have no affect on facilities with a TAB of less than 10 Mg/yr.

An alternative compliance option based on site-specific risk considerations could be structured such that the emissions limitation at the facility would be determined by, or made conditional on, the ability of the owner or operator to remain below a target risk level. The site-specific risk alternative could be based on the health risks associated only with emissions from the emission sources affected by subpart FF (i.e., benzene waste operations). This scope would be consistent with the analysis underlying subpart FF, in which the emissions and risk from only the source category of waste operations (not the entire facility) were examined.

III. NESHAP Policy

The EPA's NESHAP policy for the protection of public health with an ample margin of safety, as implemented under section 112 before the 1990 Amendments, was used to set the original standard for the benzene waste operations source category (54 FR 38044, September 14, 1989). In protecting public health with an ample margin of safety under section 112, the EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by: (1) Protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years, called

maximum individual risk (MIR). The MIR is the estimated risk of contracting cancer following a lifetime of exposure at the maximum, modeled long-term ambient concentration of a pollutant.

Implementation of the policy goals is by means of a two-step, standard-setting approach, with an analytical first step to determine an "acceptable risk" that considers all health information, including uncertainties associated with the risk estimates, the estimated increased annual cancer incidence, and incorporates a presumptive limit on the MIR of approximately 1 in 10 thousand (1×10^{-4}). A second step follows in which the actual standard is set at a level that provides "an ample margin of safety." The second step includes consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million (1×10^{-6}), as well as other relevant factors including costs and economic impacts, and technological feasibility. A level that provides an ample margin of safety, as determined by the EPA, cannot be less stringent than the level that was judged to represent an acceptable risk in the first step.

An alternative compliance option based on site-specific risk assessment would need to provide an ample margin of safety consistent with the NESHAP policy.

IV. Factors in Risk Assessment and Industry's Suggested Approach

A. Parameter Targets

The members of industry who originally requested the site-specific risk compliance alternative submitted a plan specifically for the benzene waste operations NESHAP that they believe would achieve all of the risk goals of the EPA NESHAP policy. Their plan (included in full in Docket A–92–58) is based on examination of only one measure of risk, the individual lifetime risk to the most exposed person, with a target level not to be exceeded of 1 in 1 million (1×10^{-6}). In their plan, the maximum risk would be based on the most exposed person actually living near the facility. (This is different from the calculation of the MIR for the source category used in developing the NESHAP, which examined the risk at an assumed facility boundary.) Other exposure assumptions in the industry's plan include that the most exposed person would be assumed to be exposed continuously for a lifetime of 70 years to the estimated outdoor concentration of benzene from waste operations.

The EPA requests comments on this approach or other approaches that a commenter believes would satisfy the NESHAP risk policy. For example, do other parameters, such as incidence, cost and economic impact, need to be considered on a site-by-site basis when all members of the exposed population are at a risk level of 1×10^{-6} or less? In addition, the EPA would like comments on the focus on the most exposed person in the industry's approach, instead of the facility's boundary.

To ensure the protection goals are met and the NESHAP is implemented uniformly across the affected industry, the EPA believes that a rulemaking for a site-specific risk alternative compliance option, if pursued, would need to establish uniform guidelines or regulations for the site-specific inputs and the methodology for the risk analysis.

B. Benzene Emissions

A key component in the risk assessment that the EPA would particularly like comments on is the estimation of benzene emissions. For site-specific risk assessment, the goal would be to estimate the emissions from the specific facility, including the magnitude of benzene emissions, the nature of the release (e.g., temperature, flow rate) and the location of the release. There are many difficulties associated with estimating benzene emissions from a specific facility. One is that most affected facilities have a large number of waste streams and waste management units. A determination would have to be made as to whether to estimate emissions and dispersion from each unit separately or to group them in some manner. There is also variability in the magnitude of the waste streams and the benzene concentration. Some streams are generated occasionally, but with no particular schedule. Furthermore, there are many factors that affect the amount emitted, including wind and the configuration of the unit.

Several different approaches could be used to estimate benzene emissions; each presents its own problems. Four described below involve the use of the national emission factors developed by the EPA. A fifth discussed below is to allow a facility to test emissions from waste management units. These approaches span a range of possibilities. The EPA is requesting comments on these approaches or other approaches.

The EPA has developed emission factors that are representative of the industry average for the purpose of developing national standards. For each type of waste management unit, there is a "fraction emitted" factor, i.e., the fraction of benzene in a waste that is estimated to be emitted when it is managed in that unit. For typical sequences of waste management units ("waste management trains"), the EPA has developed overall fractions emitted based on model scenarios. With the overall fraction emitted estimates, one can estimate the amount of benzene emitted from the whole management train based on the amount of benzene in the waste at its point of generation. There are three different control scenarios for the EPA's overall fraction emitted estimates: all units in the train are uncontrolled for benzene air emissions; all units are uncontrolled except for the separator, which has a cover; and all units are fully controlled according to the NESHAP requirements.

One of the approaches for using the emission factors is to allow each facility to use the emission factor for each waste management unit and then to model the emission units separately, rather than to use an overall fraction emitted for the train. Some of the difficulties with this approach are that, to correctly calculate the mass of benzene emitted, it is necessary to have a good estimate of the amount of benzene in the waste in the unit. As noted above, this may vary significantly as different waste streams are managed in the unit. This method could become very cumbersome with the number of different waste streams and management units. For example, there may be hundreds of streams and waste management units.

Another potential problem is that some of the air pollution controls suppress emissions, keeping the benzene in the waste. Therefore, the waste has the same emission potential until it is treated to remove or destroy the benzene. It is important that the whole waste management train be considered so that credit is not inappropriately given for emission reductions when the emissions are really emitted at another unit in the waste management sequence.

The other three approaches involving the EPA's factors use the overall fractions emitted for a waste management train and then estimate the emissions for each waste stream managed in that train. This could be less cumbersome than modelling each unit individually as described in the previous paragraph. One of the three approaches is for a facility to use the EPA's overall fraction emitted based on nationally representative model trains. However, particular facilities may have very different configurations or numbers of waste management units than the models on which the EPA's estimates were based.

Another approach is to develop new overall fraction emitted factors for

additional representatives scenarios. For example, the industry included a new overall fraction emitted in their risk assessment plan. This approach may require more data collection or analysis.

The third approach would be to allow a facility to use the EPA's waste management unit emission factors along with site-specific information on the waste management train and develop a more site-specific overall fraction emitted for the train. If the train or some units in it are only partially controlled, it may be necessary to assume that the whole train is uncontrolled. The reason is that it would be very difficult to make sure that the emissions from interrelated units are not underestimated. An example is a wastewater system where an uncontrolled sewer leg and a controlled sewer leg meet in a controlled junction box. Unless the junction box were fully controlled, including a mechanism (such as a water seal) to prevent flow of gases back into the uncontrolled sewer leg, benzene in the waste in the controlled sewer leg could escape into the uncontrolled sewer leg.

All of the approaches using an overall fraction emitted for a waste management train pose the problem of determining the other parameters needed for modeling emissions from the train, such as physical location of the emissions (because a waste management train may span a large area), and the characteristics of the emissions, such as flow and stack height.

The last approach for estimating emissions is to allow facilities to test their own emissions. In theory, the development of site-specific emission factors is reasonable and desirable. However, in the case of many waste management units, such as units in a wastewater treatment system, the measurement of emissions is very difficult. The emissions are fugitive by nature; therefore, it is difficult to get a representative measurement. The units may be open area sources whose emissions are greatly dependent on ambient effects, such as wind. Furthermore, the systems tend to be quite complex, with interdependent components (e.g., many drains and junction boxes). In addition, there is the previously mentioned problem of variability in the waste streams, both in magnitude and benzene concentration. Therefore, the development of site-specific emission estimates and their review by the EPA or delegated State or local agency would be costly and burdensome.

C. Dispersion and Exposure

Other types of guidelines or requirements to be established include how the dispersion modeling is to be performed (e.g., characterization of the emission points, their location, and the site's meteorological conditions), and how the exposure assessment is to be performed (e.g., how to locate the most exposed individual, what period of exposure should be assumed, and how to link the dispersion results to the exposed population around the plant). In developing the guidance or requirements, the EPA would have to determine for which parameters the industry would be allowed to use site-specific information and estimates (e.g., meteorology input based on data collected by the facility), and what analytical methods and amount of documentation the enforcement agency would need to evaluate the facility's risk assessment.

The industry's site-specific risk plan included a tiered risk analysis protocol similar to that described in the EPA's document entitled "A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants" (EPA–450/4–92–001, March 1992). Additional information on both the EPA's and the industry's tiered approach to risk analysis can be found in the rulemaking docket. Essentially, a tiered approach would provide the opportunity for a facility to show it meets the risk target using a very conservative screening analysis, which would require fewer site-specific inputs or data than an actual rigorous site-specific risk assessment would require. If the screening analysis indicates that the risk using conservative assumptions is not lower than the target, the facility owner or operator would then be able to perform a more comprehensive site-specific risk assessment using detailed site-specific inputs to EPA-approved dispersion models. Both the industry's and the EPA's approaches include details on methodology for the comprehensive modeling. The EPA would like comments on these details. The EPA would also like comments on the need for the screening analysis (i.e., the first tier). The first tier, by nature, should be conservative to ensure that no high risk facilities have results from the first tier analysis that are below the target. However, if the first tier is so conservative that almost all facilities would need to do the comprehensive site-specific risk modeling, then the first tier may not be useful.

V. Enforcement and Implementation

If this compliance alternative based on site-specific risk were proposed, the EPA would also address how a compliance approach would be implemented and enforced. One possible approach that could be considered is to develop an emission limitation from the risk analysis that will ensure that the risk goals are met, and then to focus on ways to verify that the emission limitation is met on a continuing basis. Other considerations include whether the inputs into the risk analysis become enforceable requirements in and of themselves, whether a new risk analysis would be required if the values of these inputs change, and whether these parameters (and perhaps others) should be monitored to ensure continued compliance. Any alternative compliance option based on site-specific risk must ensure that the facility continues to meet the risk protection goals of the NESHAP. Consequently, records would be required to document all inputs used in the assessment and the details of the analytical methods.

The industry plan included provisions for annual certification and recordkeeping that would be used in the implementation of this alternative compliance option. Under their plan, the Administrator may request that the owner or operator provide a certification of the site-specific risk assessment and/or provide for an annual review by an independent contractor. Records would be kept for input parameters used in the analysis, including the results of measurements and calculations, as well as documentation of the analytical methods that were used. Records associated with each affected waste management unit would be maintained to provide the basic information needed to evaluate compliance, such as the type of unit, air emission controls, type of waste, waste quantity, benzene concentration, and annual benzene emissions.

Under section 112(d) of the Act, the EPA may authorize qualified States to administer and enforce the NESHAP program within the State. Therefore, this alternative compliance option could be carried out by the delegated State or local agency. If the NESHAP for benzene waste operations has not been delegated to the State, the alternative would be implemented by the EPA regional office.

VI. Compliance Deadline and Requirements for Waiver Applicants Awaiting Development of a Site-Specific Risk Assessment Compliance Option

The compliance deadline and special requirements for waiver applicants awaiting development of an alternative compliance option based on site-specific risk assessment are summarized below. The EPA policy related to granting compliance waivers under an alternative compliance option was presented in section VIII (C) of the preamble to the final rule amendments (58 FR 3091, January 7, 1993). The EPA is not soliciting comments on the compliance deadline or the waiver policy as a part of this notice.

Facilities will have 90 days from January 7, 1993, the effective date of the final rule amendments, in which to comply with all provisions of the rule. Any facility unable to comply with the rule as amended on January 7, 1993, within the 90-day period (i.e., by April 7, 1993) is eligible to apply for a waiver of compliance for a maximum period of up to 2 years beyond January 7, 1993, following the procedures described in the General Provisions to 40 CFR part 61, § 61.10.

Owners or operators who are not meeting the provisions of subpart FF by April 7, 1993, and are considering use of the site-specific risk alternative compliance option, if it becomes available, must apply for waivers of compliance. Facilities that would use the alternative compliance option if EPA proceeds with such an option are not allowed additional time beyond the waiver period. As prescribed in section 112 of the Act, once the maximum 2-year waiver period expires on January 7, 1995, the EPA requires that the source be in compliance with subpart FF, regardless of whether or not the alternative compliance option has been incorporated into subpart FF.

Mitigation goals and credits under the waiver policy must be calculated based on a plan to comply with subpart FF, as amended, and not based on using the possible alternative compliance option discussed above.

The details of this policy are discussed in the preamble to the amendments to subpart FF (58 FR 3091).

Waiver applications by facility owners or operators awaiting the development of an additional compliance option based on site-specific risk assessment should reflect a two-phase compliance path. The first phase would outline how compliance will be achieved with a site-specific risk assessment-based compliance option. In the first phase of the waiver application, the applicant shall demonstrate how, and on what schedule, compliance under this option, should it become available, would be expeditiously achieved. This phase of the compliance path would not have to show installation of control equipment necessary for compliance with §§ 61.343 through 61.349 of subpart FF, if that control equipment would not be required under a compliance option based on site-specific risk assessment.

The second phase of the compliance plan shall document how the applicant will comply with §§ 61.343 through 61.349 of subpart FF, as amended on January 7, 1993 (58 FR 3072). This compliance path would then be implemented by the applicant if the EPA decides not to proceed with the alternative compliance option based on site-specific risk assessment.

Finally, as noted earlier, applicants awaiting development of an additional alternative compliance option for subpart FF should recognize that they will not receive additional time beyond the waiver period for compliance, and that the waiver period shall not extend more than 2 years beyond January 7, 1993.

The waiver policy is further discussed in a guidance document prepared by the EPA, "Benzene Waste Operations NESHAP—Waiver Guidance Document" (EPA–453/R–93–010). This document will facilitate the application and review process for waivers of compliance for the benzene waste operations NESHAP.

VII. Request for Comments

The EPA is soliciting public comments on this advance notice of proposed rulemaking. The EPA is especially interested in receiving information related to: (1) The legal authority for implementing an alternative compliance option based on site-specific risk; (2) how such an option could fulfill the goals of the NESHAP policy; (3) the methodology for the risk assessment, including estimating emissions, dispersion and exposure; and (4) the enforcement and implementation aspects of the alternative compliance option.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Coke oven emission, Hazardous substances, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: March 16, 1993.

Michael Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–6601 Filed 3–22–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 92–166; DA 93–295]

MSS Above 1 GHz Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of cancellation of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee ("Committee") scheduled for Tuesday, March 18, 1993 and Wednesday, March 24, 1993 have been cancelled. These meetings were announced in Public Notices, DA 93–163 (58 FR 8927 (February 18, 1993)) and DA 93–252 (58 FR 13041 (March 9, 1993)), respectively.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell, Administrative Assistant to the Committee, at (202) 634–1952.

SUPPLEMENTARY INFORMATION: Subsequent Full Committee meetings are currently scheduled for Thursday March 25; Tuesday, March 30; Wednesday, March 31, Friday, April 2; and Monday, April 5.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–6539 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–45, RM–8186]

Radio Broadcasting Services; Kealakekua, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Visionary Related Entertainment, Inc., requesting the substitution of Channel 268C1 for Channel 268C3 at Kealakekua, Hawaii, and the modification of Station KAOY(FM)'s construction permit to

specify operation on Channel 268C1. The proposed coordinates for Channel 268C1 at Kealakekua are North Latitude 19–42–56 and West Longitude 155–55–00.

DATES: Comments must be filed on or before May 7, 1993, and reply comments on or before May 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter A. Casciato, 1500 Sansome Street, Suite 201, San Francisco, CA 94111 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–45, adopted February 22, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6540 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–46, RM–8167]

Radio Broadcasting Services; American Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Dobson, Goss, Rones & Dahl, requesting the substitution of Channel 281C1 for Channel 281A at American Falls, Idaho, and the modification of Station KOUU (FM)'s construction permit to specify operation on Channel 281C1. The proposed coordinates for Channel 281C1 at American Falls are North Latitude 42°45′24″ and West Longitude 112°48′38″.

DATES: Comments must be filed on or before May 7, 1993, and reply comments on or before May 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerome J. Dobson, Dobson, Goss, Rones & Dahl, 7121 Maryland, St. Louis, MO 63130 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–46, adopted February 22, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6541 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–28, RM–8172]

Radio Broadcasting Services; Colonial Heights, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Murray Communications, permittee of Channel 290A, Colonial Heights, Tennessee, proposing the substitution of Channel 290C3 for Channel 290A at Colonial Heights and modification of Murray's authorization to specify operation in the higher powered channel. Channel 290C3 can be allotted to Colonial Heights in compliance with the Commission's minimum distance separation requirements with a site restriction 16.7 kilometers (10.4 miles) southwest to accommodate Murray's desired site. The coordinates for Channel 290C3 are 36–21–11 and 82–35–24. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 290C3 at Colonial Heights or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before May 7, 1993, and reply comments on or before May 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, Esq. P.O. Box 986, Brentwood, Tennessee 37027–0986 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–28, adopted February 16, 1993, and released March 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–6542 Filed 3–22–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 2]

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel System and Fuel Tank Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; notice to extend comment period.

SUMMARY: In response to petitions submitted by the American Gas Association, the National Gas Vehicle Coalition, the Compressed Gas Association, and the American Automobile Manufacturers Association, this notice extends the comment period for a proposal to establish a new Federal Motor Vehicle Safety Standard (FMVSS) for compressed natural gas (CNG) fuel tanks and vehicles using CNG as a fuel. NHTSA believes that commenters need more time to formulate their responses given the complexity of the issues and the need for the associations to consult with their members. Accordingly, the agency has decided to extend the comment period from March 22, 1993 to May 6, 1993.

DATES: Comments on the notice of proposed rulemaking, Docket 93–02, Notice 1, must be received on or before May 6, 1993.

ADDRESSES: Comments should refer to Docket No. 93–02, Notice 1 and be submitted to: Docket Section, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Woodford, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4931).

SUPPLEMENTARY INFORMATION: On January 21, 1993, NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing to establish a new Federal Motor Vehicle Safety Standard (FMVSS) specifying performance requirements for compressed natural gas (CNG) fuel tanks and vehicles using CNG as a fuel. The notice requested comments on the proposed standard and on whether to apply the proposed requirements to other vehicles designed to be powered by a gaseous fuel, such as liquefied petroleum gas. The notice specified that comments had to be submitted on or before March 22, 1993.

The American Gas Association (AGA), the National Gas Vehicle Coalition (NGVC), the Compressed Gas Association (CGA), and the American Automobile Manufacturers Association (AAMA) petitioned the agency to extend the comment period an additional 60 days. AGA and the NGVC stated that they needed additional time to coordinate their response with their member companies. They stated that their comments would add greatly to the formulation of an acceptable rule because they represent the majority of companies involved in building and servicing natural gas vehicles. Similarly, CGA and AAMA needed more time to coordinate their response with their members about this complex rulemaking.

After reviewing the petitions, NHTSA agrees with the petitioners that extending the comment closing date is desirable given that the proposal to promulgate a new safety standard for CNG vehicles raises a variety of complex issues. In addition, the agency believes that these associations need more time to consult with their members. An extension of the comment period will therefore allow the petitioners and other commenters more time to better address the issues covered in the NPRM. However, the agency believes that the extension should only be for 45 days given the need to formulate a final rule as soon as practicable. Based on the above considerations, the agency believes that there is good cause to extend the comment period an additional 45 days and that this decision is consistent with the public interest.

Accordingly, the agency has decided to extend the comment period until May 6, 1993.

Issued on: March 16, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–6551 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920543–3056]

RIN 0648–AE21

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA issues this proposed rule to implement a resubmitted portion of Amendment 2 to the Summer Flounder Fishery Management Plan (Amendment 2). This proposed rule would implement, by January 1, 1994, a mandatory reporting requirement for owners of vessels landing summer flounder. The intent of this revision is to replace a measure proposed in the earlier submission of Amendment 2 that was disapproved by the Secretary of Commerce (Secretary).

DATES: Comments are invited through April 7, 1993.

ADDRESSES: Comments on the proposed revision may be sent to Mr. Richard Roe, Regional Director, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, Massachusetts 01930–3799. Copies of the revised Amendment and the environmental impact statement/regulatory impact review may be obtained from John C. Bryson, Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should

be sent to the Northeast Regional Director (address listed above) and the Office of Management and Budget (Attention: NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 281–9324.

SUPPLEMENTARY INFORMATION: Amendment 2 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission. The Council submitted Amendment 2 to the Secretary for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove or partially disapprove Fishery Management Plans or amendments based upon a determination of consistency with national standards and other applicable law. The Secretary announced disapproval of a provision of Amendment 2 that would have implemented a mandatory vessel logbook requirement for the 1993 fishing season. This disapproval was announced in the final rule to Amendment 2 (57 FR 57358, December 4, 1992).

The mandatory vessel logbook requirement in Amendment 2 was disapproved because NMFS had determined that the logbook requirement, if implemented solely for the summer flounder fishery, would be duplicative of existing reporting requirements and impose unnecessary costs. Instead, NMFS determined that the summer flounder logbook requirement should be consolidated into a coastwide mandatory vessel reporting system for fishing off the Mid-Atlantic and New England coasts, targeted for implementation in 1994. To be consistent with NMFS's plans to implement a coastwide vessel reporting system, the Council resubmitted the summer flounder logbook requirement to the Secretary for review under § 304(b)(3) with the proviso that implementation is to occur by January 1, 1994.

The specific information elements the Council requested to be collected are: (1) The vessel name; (2) the vessel permit number; (3) date sailed; (4) date landed; (5) port landed; (6) area fished; (7) number of tows; (8) duration of fishing time or days actually fished; (9) the total amount in pounds/numbers of each species harvested; (10) the total amount in pounds/numbers discarded by species; (11) crew size; (12) date sold; (13) buyer (dealer); (14) number of anglers per trip for party/charter vessels; (15) and other items required by the Regional Director, Northeast Region (Regional Director).

Although the Council is specific regarding the information it wishes to have collected, by including item 15 above it is clear the Council intends to provide for the collection of additional information that may be required by the Regional Director. Because the mandatory logbook requirement will partially supplant some existing voluntary information collections, the Regional Director proposes to collect the following additional information on the logbook: (1) Gear fished; (2) size/quantity of gear; (3) mesh size; (4) depth range fished; (5) average tow/set time; (6) Loran coordinates; and (7) dealer permit number. This information is necessary for scientific assessments of the stocks and other analyses.

Classification

Section 304(b)(3)(B)(iii) of the Magnuson Act, as amended, requires the Secretary of Commerce to publish immediately revised proposed regulations together with an explanation of substantive changes. At this time, the Secretary has not determined that the revised amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental impact statement (EIS) for Amendment 2 outlining the possible impacts of management measures of Amendment 2 on the human and biological environments. This revision would not affect the scope or alter the analysis prepared in the EIS for Amendment 2. A copy of the EIS may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review (RIR) prepared for Amendment 2 that demonstrates negative net short-term economic benefits, but positive long-term economic benefits to the fishery under the management measures. This proposed rule containing a revision to the Amendment does not alter the economic impacts analyzed in the RIR for Amendment 2. This action is not expected to have: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets. A copy of the RIR may be obtained from the Council (see **ADDRESSES**).

Before the provision to make vessel logbooks mandatory for 1993 was disapproved by the Secretary, the reporting requirements were reviewed and approved under the Paperwork Reduction Act, OMB Approval No. 0648–0212 (Vessel Logbooks). This proposed rule revises the existing requirement, and a request for approval of this revision has been submitted to the Office of Management and Budget. The revision does not change the reporting burden of 5 minutes/response, which includes the time necessary for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

Send comments regarding these burden-hour estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing the burden hours, to Richard Roe, NMFS, and to the Office of Management and Budget (Attention NOAA Desk Officer) (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the impacts of the mandatory vessel logbook requirements are minimal.

The Council determined that this rule, if adopted, would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: March 18, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.6 is amended by adding the text of paragraphs (b) and (c) to read as follows:

§ 625.6 Recordkeeping and reporting requirements.

* * * * *

(b) * * * (1) *Daily fishing log.* The owners of a vessel issued a moratorium permit that is not fishing as a vessel for hire, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by, or approved by, the Regional Director, showing at least:

(i) Vessel name;
(ii) Vessel permit number;
(iii) Date sailed;
(iv) Date landed;
(v) Port landed;
(vi) Gear fished;
(vii) Size/quantity of gear;
(viii) Mesh size;
(ix) Area fished;
(x) Depth range fished;
(xi) Number of tows or sets;
(xii) Days fished;
(xiii) Average tow/set time;
(xiv) Loran coordinates;
(xv) Pounds kept by species;
(xvi) Pounds discarded by species;
(xvii) Crew size;
(xviii) Date sold;
(xix) Dealer name;
(xx) Dealer permit number; and
(xxi) Any other information required by the Regional Director.

(2) *When to fill in log.* Vessel owners shall ensure that such logbooks are filled in, except for information that is not yet known, before landing any summer flounder at the end of a fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For 1 year after the date of the last entry in the log, the owner shall retain a copy of each logbook at the owner's principal place of business.

(5) *Trip reports.* The owner shall submit trip reports to the Regional Director or an official designee, on forms supplied by, or approved by the Regional Director postmarked within 72 hours of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip is made during a month, a report so stating must be submitted postmarked within 72 hours after the last calendar date of the month.

(c) * * * (1) *Daily fishing log.* The owner of any party or charter boat issued a permit under § 625.4 and carrying passengers for hire shall maintain, on board the vessel, an accurate daily fishing log for each charter or party fishing trip, on forms supplied by or approved by the Regional Director, showing at least:

(i) Vessel name;
(ii) Vessel permit number;
(iii) Date sailed;
(iv) Date landed;
(v) Port landed;
(vi) Gear fished;
(vii) Size/quantity of gear;
(viii) Area fished;
(ix) Depth range fished;
(x) Days fished;
(xi) Number and pounds kept by species;
(xii) Number and pounds discarded by species;
(xiii) Crew size;
(xiv) Number of anglers; and
(xv) Any other information required by the Regional Director;

(2) *When to fill in log.* Vessel owners shall ensure that such logbooks are filled in at the end of each fishing trip. All logbook information required in paragraph (c)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner shall, immediately upon request, make the logbook available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For 1 year after the date of the last entry in the log, the owner shall retain a copy of each logbook at the owner's principal place of business.

(5) *Trip reports.* The owner shall submit trip reports to the Regional Director or an official designee, on forms supplied by, or approved by the Regional Director postmarked within 72 hours of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports shortly after receipt of a fishing permit. If no fishing trip is made during a month, a report so stating must be submitted postmarked within 72 hours after the last calendar date of the month. If no fishing trip is made during a month, a report so stating must be submitted.

[FR Doc. 93–6613 Filed 3–18–93; 5:09 pm]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 54
Tuesday, March 23, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–027–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of January 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of January 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under "**FOR FURTHER INFORMATION CONTACT.**"

Done in Washington, DC, this 17th day of March 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–6588 Filed 3–22–93; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Exempt Decision for Sharp Salvage Timber Sale From Appeal, Malheur National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Sharp Salvage Timber Sale, located on the Long Creek Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Shoberg, District Ranger, or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845, phone (503) 575–1731.

SUPPLEMENTARY INFORMATION: An epidemic infestation of western spruce budworm has been affecting major portions of the Malheur National Forest. Much of the infestation is in areas that support timber stands. In the Summer of 1992, interdisciplinary teams (IDT's) surveyed much of the infested area. The IDT's assessed the damage to the resources which included damage to vegetation, to soils, and to water.

A district IDT identified the need to salvage the timber, which is dead or dying, in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 11 inches in diameter at breast height. Rapid drying of insect-killed trees is resulting in cracking or "checking," especially in the smaller diameter trees. This will quickly reduce the value of sawlogs. It is also desirable to complete the logging quickly to begin regeneration as soon as possible, thus establishing new stands more quickly.

The environmental analysis of these actions began in June 1992. After public contact with individuals and State and federal agencies, the following major issues were identified: (1) Forest restoration and (2) visual management.

The Sharp IDT developed three alternatives to analyze, including the No-Action Alternative. The effects of these alternatives are disclosed in a project file which was prepared for the proposal. Since the harvest activity fits a category of action that may be categorically excluded from documentation in an environmental assessment or environmental impact statement, a Decision Memo will be

prepared (Forest Service Handbook 1909.15, section 31.2).

The selected alternative would harvest about 284 acres of heavily infested timber and produce about 800,000 board feet of timber. No new roads would be constructed. This alternative meets the visual management objectives for the harvest in the middle-ground of the Highway 395 visual corridor. This treatment will provide for long-term cover and move the area towards the desired future condition. These stands presently do not meet cover definitions due to recent timber harvest and continuous defoliation from the western spruce budworm.

Biological evaluations have been completed for all plant, wildlife and fish Proposed, Endangered, Threatened and Sensitive species within both project areas. The Biological Evaluation indicates that the project could proceed as planned.

This salvage timber sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage, it has been exempted from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Sharp Salvage Timber Sale may be signed by the Long Creek District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: March 17, 1993.

Robert T. Jacobs,

Deputy Regional Forester.

[FR Doc. 93–6563 Filed 3–22–93; 8:45 am]

BILLING CODE 3410–11–M

Agricultural Marketing Service

[Docket No. TB–93–08]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 7, 1993.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To elect officers, review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection and related services. In particular, the Committee will analyze the financial status of the inspection program and recommend the rate of the user fee for the 1993–94 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: March 19, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–6800 Filed 3–22–93; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3464.

FINAL DETERMINATION:

Background

Since publication of the affirmative preliminary determination on October 29, 1992 (57 FR 49006), the following events have occurred.

The respondents in this investigation, Samsung Electronics Co., Ltd., and Samsung Semiconductor, Inc. (Samsung), Hyundai Electronics Industries Co., Ltd., and Hyundai Electronics America (Hyundai), and Goldstar Electron Co., Ltd., and Goldstar Electron America (Goldstar), requested a public hearing on November 2, 6, and 9, 1992, respectively. On November 9, 1992, petitioner in this investigation, Micron Technology, Inc., requested to participate in the public hearing. We also received letters requesting to participate in the hearing from Apple Computer, Inc. (Apple), AST Research, Inc. (AST), Compaq Computer Corporation (Compaq), Digital Equipment Corporation (Digital), and the Korean Semiconductor Industry Association (KSIA).

We conducted verification of the cost portions of the questionnaire responses for the three respondents between November 4 and 23, 1992, in Korea, and on November 13 and 14, 1992, in Japan (for Samsung's related suppliers). We conducted verification of the sales portions of the questionnaire responses for the three respondents between November 9 and 18, 1992, in Korea, on November 13 and 14, 1992, in Singapore (for Hyundai's third-country sales), and between November 19 and 24, 1992, in California.

Interested parties submitted comments regarding the scope of this proceeding between October 13, 1992, and January 19, 1993. We received comments from petitioner, respondents, and the following interested parties: (1) AnTel; (2) Apple; (3) AST; (4) Compaq; (5) Digital; (6) Hewlett-Packard Company (Hewlett-Packard); (7) Motorola, Inc. (Motorola); and, (8) Texas Instruments Inc. (TI).

Case briefs were filed on January 26 and 27, 1993, by petitioner, respondents and the following interested parties: (1) Apple; (2) Compaq; (3) Digital; (4) Hewlett-Packard; and (5) Motorola. Rebuttal briefs were filed on February 2 and 3, 1993, by petitioner, respondents and the following interested parties: (1) Apple; (2) AST; (3) Compaq; and (4) Hewlett-Packard. A public hearing was held on February 2 and 3, 1993.

Hyundai and Goldstar submitted revised sales tapes that corrected clerical errors discovered at verification on January 26 and February 12, 1992, respectively. On February 22, 1992, Samsung submitted a revised sales and cost tape that corrected clerical errors discovered at verification.

Scope of Investigation

In our preliminary determination, we invited all interested parties to comment on the scope exclusion requests received prior to the preliminary determination. We received comments

on the scope of the investigation as noted in the "Background" section of this notice. The comments submitted by the parties concerned whether the following merchandise is included within the scope of the investigation: (1) Future generations of DRAMs; (2) memory boards containing Korean DRAMs; (3) removable, separable memory modules placed on motherboards; and, (4) the Korean DRAM content of defective memory products reimported into the United States for repair or replacement. We have determined that: (1) Future generations of DRAMs are within the scope; (2) memory boards are within the scope, while boards that have a function other than memory, such as video graphic adapter (VGA) boards/cards are outside the scope; (3) removable memory modules contained in motherboards are within the scope, unless the importer certifies that neither it, nor a party related to it or under contract to it, will remove the modules after importation into the United States; and, (4) merchandise reimported for repair or replacement is outside the scope. For a detailed discussion of our determinations regarding the scope issues, see a March 15, 1993, memorandum from Acting Deputy Assistant Secretary Moreland to Acting Assistant Secretary Spetrini.

The products covered by this investigation are dynamic random access memory semiconductors (DRAMs) of one megabit and above from the Republic of Korea. For purposes of this investigation, DRAMs are all one megabit and above dynamic random access memory semiconductors, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea but packaged, or assembled into memory modules, in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this investigation also includes video random access memory (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this investigation also includes removable memory modules placed on motherboards, with or without a CPU, unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation.

The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this investigation are classifiable under subheadings 8473.30.4000, 8542.11.0001, 8542.11.0024, 8542.11.0026 and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute three categories of such or similar merchandise: (1) Dynamic random access memory semiconductor chips of one megabit and above; (2) video random access memory semiconductor chips of one megabit and above; and (3) memory modules. Furthermore, in accordance with 19 CFR 353.58 of the Department's regulations, we compared U.S. sales to home market or third country sales made at the same level of trade. Where we were unable to match sales at the same level of trade, we made comparisons across levels of trade.

Fair Value Comparisons

To determine whether sales of DRAMs from Korea to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Goldstar, Hyundai and Samsung, we based USP on purchase price, in accordance with section 772(b) of the Tariff Act of 1930, as amended (the Act), when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when exporter's sale price (ESP) methodology was not otherwise indicated.

In addition, for Goldstar, Hyundai and Samsung, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP in accordance with section 772(c) of the Act.

For Goldstar and Samsung, because a value-added tax (VAT) was paid on home market sales but not on U.S. sales, we added to the U.S. selling price, for price-to-price comparisons, the amount of the VAT that would have been collected if the export sales had been taxed. Because no VAT was paid on Hyundai's third country sales, we did not make this adjustment to Hyundai's selling price. For Goldstar and Samsung, we recalculated this VAT, where appropriate, to reflect the fact that discounts were granted on sales to the United States. Also for Goldstar and Samsung, because import duties were paid on raw material inputs used to produce DRAMs sold in the home market, we added to USP the amount of duty that would have been collected if the merchandise had been sold in the home market. For all respondents' U.S. sales, except Goldstar's purchase price sales, we recalculated credit, where appropriate, to reflect the fact that discounts were granted on sales to the United States. Goldstar granted no discounts on its purchase price sales. However, for purchase price sales Goldstar did not report imputed credit expenses. Instead, it reported credit costs actually incurred which were verified by the Department. Therefore, we did not recalculate credit for Goldstar's purchase price sales (*see* Comment 18 in the "Analysis of Comments Received" section of this notice).

We made additional, company-specific adjustments as follows:

A. Goldstar

For Goldstar, we calculated purchase price based on packed, f.o.b., f.c.a., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland insurance, air freight, and air insurance. In addition, we disallowed Goldstar's claimed VAT credit expense, because we find that there is no statutory or regulatory basis for making such an adjustment. (see Comment 19).

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate,

for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, U.S. inland freight, U.S. brokerage, credit expenses, warranty expenses, royalty payments, U.S. commissions, U.S. subsidiary packing and U.S. and Korean indirect selling expenses, including inventory carrying costs. For certain sales Goldstar reported no date of payment as the firm had not yet received payment for these sales. As best information available (BIA), we have used the longest period calculated between date of shipment and date of payment for Goldstar's other ESP sales to calculate the credit period when the payment date was missing. We recalculated Korean inventory carrying costs to include an additional inventory holding period discovered at verification.

B. Hyundai

For Hyundai, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling. Hyundai granted no discounts on its purchase price sales. Therefore, no adjustment for discounts was made. We recalculated U.S. credit to reflect the financing costs incurred by Hyundai on its direct sales to Singapore, rather than on its sales through its subsidiary in Singapore.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage, air freight, U.S. inland freight, U.S. duty, insurance, merchandise processing, U.S. brokerage, U.S. subsidiary packing, credit expenses, commissions, royalties, bank charges, price protection expenses and indirect selling expenses, including inventory carrying costs.

For DRAMs that were further manufactured into memory modules after importation, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs of the materials, fabrication, and general expenses associated with the portion of the merchandise further manufactured in the United States, as well as a proportional amount of profit or loss attributable to the value added. Profit or loss was calculated by deducting from the sales price of the memory module all production and selling costs incurred by the company for the memory module. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the memory module, we included: (1) materials, (2) fabrication, and (3) general expenses, including selling (SG&A), and interest expenses.

C. Samsung

For Samsung, we calculated purchase price based on packed, f.o.b., c&f, or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, foreign inland insurance, air freight, and air insurance. Samsung granted no discounts on its purchase price sales. Therefore, no adjustments for discounts was made. In the preliminary determination we treated U.S. banking charges as direct selling expenses since there was no narrative description of these charges and the charges appeared to be directly related to the sales. The parties have not challenged our treatment of this expense and we are continuing to treat it as a direct selling expense.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign brokerage and handling, foreign inland freight, air freight, air insurance, U.S. inland freight, U.S. brokerage, U.S. commissions, foreign banking charges, product liability premiums, credit expenses, royalty payments, advertising and sales promotion expenses, warranty expenses, U.S. subsidiary packing and U.S. and Korean indirect selling expenses, including inventory carrying costs. We continue to treat U.S. banking charges as a direct selling expense.

Foreign Market Value

In order to determine whether there were sufficient sales of DRAMs in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of DRAMs to the volume of third country sales of DRAMs in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of DRAMs by Goldstar and Samsung. For Hyundai, the home market was not viable and, therefore, we based FMV on third country sales. We selected Singapore as the third country because the merchandise exported to Singapore was most similar to the merchandise exported to the United States, the volume of Hyundai's Singapore sales during the POI was the largest of any third country, and the marketing conditions of Singapore were comparable to those in the United States. See 19 CFR 353.49(b).

In the preliminary determination, the Department treated Goldstar's and Samsung's local letter of credit sales as export sales. However, based on further analysis, we have concluded these sales are home market sales (*see* Comment 9 in the "Analysis of Comments Received" section of this notice). For Goldstar, we have included in the price of these sales the amount of duty that would have been charged to home market customers had these DRAMs remained in Korea. For Samsung, these sales were not reported in the home market sales listing. Due to the fact that the treatment of these sales remained an issue until it was too late for the Department to request a revised home market sales listing from Samsung, we are not including these sales in our analysis. However, in future administrative reviews, we will require that Samsung report all of its local letter of credit sales as home market sales.

Since Goldstar sold DRAMs to related parties in the home market, we examined those sales to determine if they were made at arm's length. To conduct this test, we compared the gross unit prices of sales to related and unrelated customers net of all movement charges, direct and indirect selling expenses, value-added tax and packing. Based on the results of that test, we discarded from Goldstar's home market database all related party sales not made at arm's length.

As stated in our preliminary determination, the Department initiated investigations to determine whether Goldstar and Samsung made home market sales at less than their respective costs of production (COP), and whether Hyundai had third-country sales at less than COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given model were at prices below the COP, and such sales were over an extended period of time, we discarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales for that model and calculated FMV based on constructed value (CV). No evidence was presented to indicate that below COP prices would permit recovery of all costs within a reasonable

period of time in the normal course of trade.

In order to establish that below cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market or third country prices were below the COP, we calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing. We adjusted respondents' cost data as described below:

For Goldstar, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. We reclassified certain capitalized costs from R&D and construction in progress to current costs of production;
2. We recomputed Goldstar's R&D costs based on the ratio of its total semiconductor R&D incurred during 1991 to its total semiconductor cost of sales for 1991;
3. We revised Goldstar's general and administrative (G&A) expense calculation to include total general R&D expense incurred during 1991;
4. We revised interest expense using Goldstar's audited financial statements for the year ended December 31, 1991;
5. We included amounts related to gains and losses on foreign currency translation in general expenses; and
6. We lagged cost of manufacture for the length of time it takes Goldstar to assemble and final test a DRAM, and for the average number of days die stock and finished goods remained in inventory during the POI.

For Hyundai, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. We reclassified certain capitalized fixed assets from the construction in progress account and recalculated the depreciation expense to be included in current costs of production;
2. We rejected an adjustment made by Hyundai to its cost of manufacturing (COM) related to its off-spec merchandise, since this adjustment was not specific to each product and the calculation did not use a comparable basis for the quantity of off-spec and non-off-spec products;
3. We included in G&A an amount for the 1991 exchange losses which Hyundai deferred in its financial statements;
4. We recomputed Hyundai's research and development (R&D) percentage based on the ratio of total semiconductor R&D expense incurred during 1991 to total semiconductor cost of sales for 1991;
5. We lagged costs for the length of time it takes Hyundai to assemble and final test a DRAM, and for an estimate of the average number of days die stock and finished goods remained in inventory during the POI; and
6. We revised interest expense to reflect the proportional amount incurred by the semiconductor business.

For Samsung, the Department relied on the submitted COP and CV information except in the following instances where costs were not appropriately quantified or valued:

1. We adjusted material costs to include exchange losses;
2. We revised depreciation expense to reflect costs based on the asset's acquisition cost allocated on a straight line basis over the assets useful life;
3. We recalculated R&D costs to reflect the current costs incurred for all semiconductors;
4. We revised general expenses to include foreign exchange translation losses; and,
5. We revised interest expense to reflect the proportional amount incurred by the semiconductor business.

For CV to purchase price comparisons, for all respondents, we made circumstance-of-sale adjustments, where appropriate, for bank charges, royalty payments, advertising and credit expenses. For Samsung, we added to CV U.S. commissions and deducted the weighted-average home market indirect selling expenses, including advertising, up to the amount of U.S. commissions, in accordance with 19 CFR 353.56(b)(1). For Hyundai, we deducted from CV third-country commissions and added U.S. indirect selling expenses up to the amount of the third-country commissions in accordance with 19 CFR 353.56(b)(1).

For CV to ESP comparisons, for all respondents, we made deductions, where appropriate, for credit expenses, royalty payments, bank charges and advertising. We also deducted from CV the weighted-average home market or third-country indirect selling expenses, including, where appropriate, inventory carrying costs. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2) and, where appropriate, the amount of commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1).

For home market or third-country price to purchase price comparisons, pursuant to 19 CFR 353.56(a)(2), for all respondents, we made circumstance-of-sale adjustments, where appropriate, for credit expenses, royalty payments, bank charges and advertising. For Goldstar and Samsung, we also made a circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. For all respondents, we deducted home market or third-country packing costs and added U.S. packing costs.

For home market or third country price to ESP comparisons, for all respondents, we made deductions, where appropriate, for credit expenses, royalty payments, bank charges and advertising. We also deducted from FMV the weighted-average home market or third-country indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b). For Goldstar and Samsung, we also made a circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. For all respondents, we deducted home market or third country packing costs and added U.S. packing costs. We made additional, company-specific adjustments as follows.

A. Goldstar

For Goldstar, when we calculated FMV based on delivered prices to unrelated customers in the home market, we made deductions for inland freight and inland insurance.

B. Hyundai

For Hyundai, when we calculated FMV based on third country, f.o.b. Kimpo Airport or ex-Singapore warehouse prices to unrelated customers in the third country, we made deductions for discounts, rebates, air freight, insurance, brokerage, and third country inland freight. For third-country price to purchase price comparisons, we deducted third-country commissions and added U.S. indirect selling expenses up to the amount of third-country commissions, in accordance with 19 CFR 353.56(b)(1). We have reclassified as commissions certain expenses Hyundai characterized as

rebates, based on our findings at verification. In addition, we disallowed the inclusion of common advertising expenses in indirect selling expenses because we found at verification that the majority such expenses were incurred for sales outside Singapore.

C. Samsung

For Samsung, when we calculated FMV based on delivered prices to unrelated customers in the home market, we made deductions for inland freight. For home market price to purchase price comparisons, we added to FMV U.S. commissions and deducted the weighted-average home market indirect selling expenses, including inventory carrying costs, up to the amount of U.S. commissions, in accordance with 19 CFR 353.56(b)(1).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

General Issues

Comment 1: Micron claims that in addition to the unresolved problems noted by the Department in the preliminary determination several new and significant problems were discovered during verification. Petitioner points to the numerous problems outlined in the verification report and argues that the Department must use BIA.

Petitioner claims that Hyundai failed verification because the Department could not rely on Hyundai's financial statements to confirm product specific COPs and because of numerous other problems. Pointing to other investigations, *e.g.*, Antifriction Bearings (Other than Tapered Roller Bearings) from Germany, 54 FR 18992 (May 3, 1989) where the inability to tie worksheets to company documents resulted in the use of BIA, petitioner contends that the Department should follow its prior practice and not use Hyundai's response at all. If used, the Department must make adjustments for all the areas in which Hyundai failed verification.

For Goldstar, petitioner alleges that the verification of a certain product's COP was not adequate and that BIA must be used for this product. See also Comment 21.

Since much of Samsung's cost data could not be verified or the costs were understated, petitioner claims that the COP and CV data must be rejected or, if not, fully restated using BIA.

Hyundai argues that it did not fail verification and that it was fully cooperative in every phase of the proceeding. Hyundai states that the facts in the Antifriction Bearings from Germany investigation are unlike the facts in this case and that BIA is not proper when a respondent provides a complete response to the best of its knowledge.

Goldstar contends that BIA is not warranted, that the company cooperated at every stage of the investigation, and that the Department completely verified the COP related to the particular product as well as every cost and production aspect of Goldstar's manufacturing.

Samsung argues that BIA should not be used because: 1) the verification report reflects that Samsung's cost reconciled completely to Samsung's normal cost accounting system; 2) the Department found no discrepancies between Samsung's submitted costs and the actual data verified; 3) although the Department's report lists "certain issues for consideration," each of those issues relates solely to theoretical methodological issues rather than to the validity of the underlying data; and 4) the specific issues listed by petitioner justifying use of BIA are all groundless.

DOC Position: The Department's review of the nature and the complexities of the COP issues for the three respondents indicates that although there were some issues related to the adequacy of the verification, others were theoretical methodological issues. In those instances where we found insufficient verification support, we relied on BIA. For the theoretical methodological issues, as appropriate, the costs were recalculated to quantify or value that particular cost element. See the following comments for specific adjustments.

Comment 2: Petitioner argues that the purpose of the Department's COP and CV analyses is to approximate as closely as possible the actual costs associated with the production of the subject merchandise. Thus, costs such as general expenses, including interest expenses, must be allocated to the COP. The petitioner claims that although interest expense may generally be allocated based on cost of sales, in prior cases the Department has used a number of different methods to allocate interest expenses as dictated by the facts of those cases. Petitioner argues that Hyundai's and Samsung's methods, *i.e.*, interest expense allocated by cost of sales, should not be used because this methodology does not consider salient facts. Petitioner argues that, since semiconductor production is an extremely capital intensive business, relative to the cost of other inputs and in comparison with other lines of business in which the firms are engaged, the Department should allocate interest expenses based on fixed assets.

Hyundai argues that the petitioner's claim that interest expense should be allocated on the basis of fixed assets: (1) Is contrary to standard Department practice; (2) would distort Hyundai's financing costs; and, (3) is not in accordance with the directions contained in the questionnaire, which specifically directed respondents to allocate interest expense on the basis of cost of sales. Additionally, Hyundai claims that not all assets are financed with borrowing and that even though a business line such as semiconductors may have a relatively high fixed asset value, it may also generate large amounts of cash, as variable costs are low.

Samsung states that the Department's longstanding and consistent policy is to base financing expenses on the cost of goods sold and that the cases petitioner has cited are isolated instances in which the Department subsequently reversed itself in administrative reviews. Further, Samsung argues that in prior semiconductor cases the Department has used the consolidated or combined cost of goods sold.

DOC Position: The Department generally accepts interest expense allocated by the cost of sales because that methodology often approximates the interest expense related to the production of the investigated merchandise. However, the Department has used other allocation methodologies when the facts of particular cases have required a change. After reviewing the facts in this case, we have found that for Samsung and Hyundai, a larger proportion of total fixed assets are related to the semiconductor line of business than to other lines of business. While the Department acknowledges that not all assets are financed through borrowings, it also recognizes that funds obtained from debt and equity are fungible and that the method used to finance the purchase of an asset is not relevant to the appropriate allocation

basis. For these companies, because of this disproportional amount of fixed assets related to semiconductors, allocation of interest expense based on cost of sales would not appropriately recognize the expense related to the capital investment necessary for semiconductors compared to the other lines of business. Thus, the Department reallocated interest expense on the basis of proportional fixed assets to account for these facts.

Comment 3: Petitioner states that the methodology used by the respondents to account for certain exchange rate gains and losses, *i.e.*, capitalization and amortization over three to five years, does not identify the effects of the change with the period in which the gains and losses occurred. Thus, this method would identify such gains and losses with sales in future periods. Petitioner also argues that although Korean generally accepted accounting principals (GAAP) may permit this practice, for antidumping purposes, the Department must calculate a COP for the period under investigation. In order to accomplish this in the past, the Department has not always accepted the investigated country's GAAP. See Offshore Platforms Jackets and Piles from the Republic of Korea 51 FR 11788 (April 7, 1986), where the exchange gains and losses were expensed in the year in which they occurred.

Goldstar argues that the Department should not make an adjustment to cost for the amortized gains and losses on foreign currency translation because these costs are not actual but unrealized costs based on outstanding foreign currency monetary assets and liabilities. Accordingly, there is no outflow of funds from the company. Also, Goldstar states that including the gains and losses would not be in accordance with long-standing policy since: (1) Goldstar had not identified them with the product; (2) it would be a departure from the company's own accounting treatment; and (3) there is no reason to believe the costs are understated.

Hyundai and Samsung agree with Goldstar and add that these gains and losses are hypothetical and that only amounts over five percent of the stock of the company are deferred. They argue that the amount under five percent is expensed by the company.

DOC Position: In determining the COP for the POI, the Department includes all costs incurred during the POI. If losses are deferred to some future time, the costs would not be appropriately matched to the sales of the company during the POI.

In reply to respondents' contention that there is no outflow of funds for these losses and that these losses and gains are hypothetical, the Department notes that pursuant to Korean GAAP: (1) Only that portion of the loss or gain over 5 percent is deferred; and (2) the portion of the loss under 5 percent of equity is recognized in the current period. The fact that the amount under 5 percent of equity is expensed confirms that Korean GAAP considers these losses to be real even if there is no outflow of funds. The Department has, therefore, recognized the amount of the exchange gains and losses incurred during the period, whether expensed or deferred, and included them in current G&A.

Comment 4: Petitioner claims that the Department should allocate all R&D costs related to semiconductors to the total COM of semiconductors to determine the R&D related to DRAMs. Arguing that both future generation DRAM R&D and current non-DRAM semiconductor R&D provide benefits to the subject merchandise and to other semiconductors, petitioner maintains that R&D cannot be identified with a specific product. Additionally, petitioner argues that although Korean GAAP permits a company to amortize R&D expenses, such a practice does not meet the needs of the antidumping statute. In the semiconductor agreement, petitioner states that the Department recognized that semiconductor R&D had to be treated in a special manner and allocated current semiconductor R&D over the COM of semiconductors. Petitioner argues that the current expenses must be borne by current revenues and points out that U.S. GAAP does not permit the capitalization and amortization of R&D because of the high failure rate and the uncertainty of the successful development of products and lacks of measurability of the future benefits from the R&D.

Hyundai maintains that the Department should accept Hyundai's practice of amortizing R&D costs since it is in accordance with Korean GAAP. Hyundai argues that Korean GAAP more accurately reflects product specific costs than U.S. GAAP since it more closely matches the R&D and the product. Additionally, Hyundai argues that R&D should be identified with each product, as the Department stated in the Final Determination of Erasable Programmable Read Only Memory Semiconductors from Japan (51 FR 39680) (EPROMS) (*i.e.*, when the Department can identify specific costs with a product, the Department should do so).

Goldstar emphasizes that amortization of R&D is more logical since R&D for a new product is a long-term investment, the return on which is realized over the period of the product's useful life. Goldstar claims that the Department recognized this accounting method in other Korean investigations and in 64K Dynamic Random Access Memory Components from Japan (54 FR 15943, April 29, 1986) (64K DRAMs).

Samsung argues that its method should be accepted by the Department. First, it is consistent with Samsung's financial statements. Second, the Department has accepted the amortization of R&D in previous semiconductor and other cases. Third, it is consistent with the matching principle and the life cycle in the DRAM industry. Finally, amortizing product-specific R&D is consistent with International Accounting Standard Number 9.

DOC Position: Semiconductors present unique problems related to R&D. Because the general underlying technology is the same for all semiconductor products, the benefits from the results of R&D, even if intended to advance the design or manufacture of a specific product, provide an intrinsic benefit to other semiconductor products. It is impossible to measure the extent to which R&D benefits one semiconductor product relative to another. Thus, identification of specific R&D costs with any one product causes overstating or understating of these costs in relation to the benefits that product derived from the total R&D expenditures for semiconductors. Capitalizing and amortizing of the R&D costs on a product specific basis over a period of time approximating its commercial life exacerbates the problem because R&D costs can never be assigned to the proper product or time.

Due to the rapid technological changes and the continuing introduction of more advanced products typical of the semiconductor industry, R&D must be conducted on a constant basis by these companies for the development of new products and the advancement of current products. Technological changes and improved manufacturing methods will have application to both current and future generations of the product. Thus, we have used the current expenditure of R&D allocated by the cost of sales for semiconductors to calculate the R&D related to DRAMs.

Contrary to the respondents' claims that their methodology is in accordance with Korean GAAP, this is not the case. While Korean GAAP capitalizes R&D and amortizes it over a three- to five-year period, it does not identify R&D with a specific product nor does it amortize R&D over the commercial life

of the product, thus, in many instances full amortization occurs prior to the introduction of the product in the marketplace.

Comment 5: Because of the delay between input sourcing and final output, petitioner argues that the Department should lag costs so that foreign market sales are matched to costs as calculated in the previous quarter.

Goldstar claims that it maintains finished goods inventory for a very short period of time and its cumulative process cost accounting system incorporates the correct lag for work in process. Goldstar states that the Department should therefore compare sales during each quarter with the COP for that same quarter.

Hyundai contends that the Department should not lag its costs. Its process cost accounting system accurately captures the COP at each stage of manufacture and moves these forward into the next process.

Samsung argues that the Department should not lag its costs. Samsung contends that its process cost accounting system captures the cost of production at each stage of manufacture as the DRAM moves through the production process.

DOC Position: We agree with petitioner in part. For Goldstar and Hyundai, we lagged costs for the length of time it takes for assembly and final test, and for the average inventory holding periods, in order to capture the appropriate costs of the reported sales. The lag time is less than a quarter.

Although Samsung's cost accounting system appropriately accumulated costs as its products flow from one stage of production to another this did not account for the time finished products remain in inventory. Therefore, we lagged Samsung's submitted costs only to reflect the time spent in inventory.

Comment 6: Petitioner claims that respondents' interest expense should not be offset by short-term interest income because they failed to demonstrate that short-term interest income was related to the operations of the company.

Goldstar argues that its interest expense ratio must be adjusted for the proportion of current to total liabilities, or short-term debt to total debt, to assure that only expenses associated with current liabilities are included in financial expenses. Both Goldstar and Samsung argue that they demonstrated the source and nature of their short-term interest income.

Hyundai argues that all of its interest income is directly linked to its manufacturing operations. Further, Hyundai asserts that, at verification, it demonstrated that the interest income was earned on bank deposits and compensating balances.

DOC Position: We agree with respondents in part. Interest expense may be offset by interest accruing from certain types of temporary, short-term investments related to the current operations of the company as long as it has been verified. During verification, the respondents supported their respective claims of short-term interest income. Accordingly, the calculated amount was offset against interest expense. However, the Department includes interest expenses related to short-term activities and the portion of interest expense related to the cost of financing a company's overall permanent long-term assets. Contrary to Goldstar's contention, the Department does not limit the inclusion of financial expenses to that incurred on liabilities related to operations.

Company Specific Issues

Goldstar

Comment 7: Petitioner states that the Department should reject Goldstar's response and use BIA due to the number of errors discovered during verification. Petitioner further argues that if the whole response is not rejected, the Department should use BIA for unreported sales discovered at verification. Petitioner states that BIA should be the highest single margin calculated for any U.S. sales transaction by any respondent.

Goldstar states that it properly reported all home market and U.S. sales. Goldstar further argues that petitioner's remaining sales issues are either incorrect or trivial and that Goldstar fully disclosed to the Department all clerical errors prior to verification.

DOC Position: We agree with Goldstar. We do not believe that the limited number of errors discovered at verification renders Goldstar's response unusable. The omitted sales found at verification accounted for only a small portion of total sales and we have no reason to believe that such sales were intentionally left out of the sales listing. Therefore, we have accepted Goldstar's response, with adjustments based on our findings at verification, which are addressed separately in this section of the notice.

Comment 8: Petitioner argues that the Department should treat all of Goldstar's local letter of credit (local l/c) DRAM sales as U.S. sales since evidence from verification shows that these products were eventually sold in the United States.

Goldstar states that it properly reported local l/c sales of DRAMs destined for the United States as U.S. sales.

DOC Position: We agree with Goldstar. We found at verification that certain, but not all, local l/c sales of DRAMs were ultimately destined for the United States. Goldstar knew the ultimate destination and that such DRAMs were not being substantially transformed into non-subject merchandise. Goldstar reported these sales as U.S. sales, and we have treated them as such for purpose of the final determination. See Comment 9 for a discussion of Goldstar's other l/c sales.

Comment 9: Goldstar argues that its local l/c sales to Korean original equipment manufacturers (OEMs) should be treated by the Department as home market sales. For these sales, Goldstar states that it does not know the ultimate export destination of the finished products, and that these finished products are not within the class or kind of merchandise subject to this investigation.

DOC Position: We agree with Goldstar. In our preliminary determination, we treated all local letter of credit sales to OEMs in Korea for all respondents as export sales, in response to a request made by Samsung. However, based on a further analysis of this issue, we believe that these sales are more appropriately considered to be home market sales, since Goldstar does not know the ultimate export destination of the merchandise, and the merchandise that is exported is not within the class or kind of merchandise subject to this investigation. Therefore, we are treating these sales as home market sales for all respondents.

Comment 10: Petitioner argues that since Goldstar did not accurately report its home market inventory carrying charges by device type, and since there is a significant differential between the inventory periods for different types, the Department should use as BIA in calculating inventory charges the longest inventory period for all U.S. sales and the shortest inventory period for all home market sales.

Goldstar maintains that its methodology for reporting inventory carrying charges is reasonable and should be accepted. Goldstar further argues that applying the inventory periods suggested by petitioner would result in virtually no impact on the margin calculations since the inventory periods apply equally to both home market and U.S. sales.

DOC Position: We agree with Goldstar. After a review of Goldstar's questionnaire responses as well as the

information discovered at verification, we believe that Goldstar's methodology for reporting inventory carrying charges accurately reflects its expenses, and we have accepted these charges as reported.

Comment 11: Petitioner contends that the Department should reject Goldstar's calculation of indirect selling expenses, since it combined and reallocated ASIC and non-ASIC services fees when Goldstar's own accounting records split these expenses.

Goldstar states that its calculation of indirect selling expenses is accurate. Goldstar argues that a service fee was common to ASIC and non-ASIC only during November and December, 1991. Goldstar stated that it was only during these months that it combined and reallocated this fee based on the number of employees.

DOC Position: We agree with Goldstar. Based on information reviewed at verification, we believe that the indirect selling expenses reported by Goldstar are accurate.

Comment 12: Petitioner argues that the Department should use the average inventory carrying transit period that it calculated for two sample months at verification to calculate U.S. inventory carrying charges.

Goldstar argues that its average inventory period calculated for shipment from Korea to the United States was reasonable. Goldstar further stated that if the Department finds some adjustment is warranted, the average number of days should be used.

DOC Position: We agree with petitioner. Using our calculation of the inventory carrying transit period for two sample months, which we performed at verification, we adjusted inventory carrying costs. As BIA, we included the inventory carrying period calculated for November and December, 1991 in the calculation of U.S. inventory carrying costs because: (1) Goldstar was unable to support its reported figure; (2) the Department calculated a larger inventory carrying period in a month that Goldstar claimed was representative of the POI; and (3) the inventory carrying period calculated for November and December represented one third of the POI.

Comment 13: Petitioner argues that the Department should include an amount in COM for certain module royalty payments made by Goldstar, since these amounts were not included in the COM.

Goldstar argued that it listed these royalty payments as a selling expense. Goldstar further stated that the Department must ensure that these royalties are not double counted in the COM.

DOC Position: We are treating these royalty payments as selling expenses and have made sure that these payments are not included in the COM.

Comment 14: Goldstar states that the Department should assign constructed value according to the date the merchandise was shipped, not the date the merchandise was sold. Goldstar argues that CV reflects production costs, which correlate with the shipment of a product, not the sale of a product.

Petitioner argues that such a procedure would be contrary to the Department's practice and therefore should not be undertaken.

DOC Position: We agree with petitioner. In accordance with 19 CFR 353.50(b), the Department calculates CV according to the date the merchandise was sold, and Goldstar has provided no justification for deviation from that practice.

Comment 15: Goldstar argues that the Department should not include inventory carrying costs in its calculation of constructed value for purchase price sales, as these expenses are adjusted only for ESP sales.

DOC Position: We agree with Goldstar and have not included these costs in the calculation of constructed value for purchase price sales.

Comment 16: Goldstar states that the Department should match sales in the U.S. and home markets at comparable levels of trade. Goldstar argues that the record establishes that in both the U.S. and home markets Goldstar sold to both original equipment manufacturers and distributors which are two distinct levels of trade. Goldstar maintains that: (1) The Department verified that Goldstar made sales at two distinct levels of trade; and (2) the Department's regulations and longstanding administrative practice require that sales be compared at the same level of trade.

Petitioner states that the Department is not required to make comparisons at the same level of trade. Petitioner also states that the Department should not consider this point since a correlation coefficient test provided by petitioner demonstrates only a weak correlation between both prices and selling expenses and level of trade.

DOC Position: We agree with Goldstar and, where possible, have compared products at the same level of trade for all respondents, in accordance with 19 CFR 353.58. For models where we were unable to match sales at the same level of trade, we made comparisons regardless of the level of trade. Goldstar made no effort to quantify a level-of-trade adjustment; therefore, we did not make such an adjustment.

Comment 17: Goldstar argues that the Department should exclude Goldstar's sales of merchandise which were off-specification from its margin calculation.

Petitioner argues that Goldstar's off-spec sales to the United States should be included in its margin calculations. Petitioner states that Goldstar will continue to produce off-spec devices in the future and the market for these devices is well-established and constant.

DOC Position: We agree with petitioner. We see no reason why these sales should be excluded from our analysis. This merchandise is within the scope of this investigation; therefore, we kept these sales in our margin calculations.

Comment 18: Goldstar states that the Department double-counted Goldstar's credit expense on purchase price transactions by making an additional adjustment for imputed credit expenses. Goldstar maintained that it fully reported all credit expenses actually incurred for purchase price sales in its response. Therefore, Goldstar argued that the Department should not adjust for any additional credit expenses on purchase price transactions in its final determination.

DOC Position: Based on the information obtained at verification, we have determined that the credit expenses for purchase price sales reported by Goldstar were its actual credit expenses and have therefore not included imputed credit expenses for purchase price sales in our calculations.

Comment 19: Goldstar states that the Department should make a circumstance-of-sale adjustment for Goldstar's credit expenses for advance tax payments. Goldstar argues that it incurred an expense whenever it made advance value-added tax payments to the Korean government before payment of the tax was received from the customer. Goldstar maintains that the Department verified this payment and an adjustment will conform with the Department's past practice.

DOC Position: We disagree with Goldstar and are not allowing the VAT credit adjustment. As explained in the Final Determination of Sulfur Dyes, including Sulfur Vat Dyes, from the United Kingdom, 56 FR 3253 (January 8 1993) (Sulfur Vat Dyes), we find that there is no statutory or regulatory basis for making such an adjustment. While we recognize that there may be an opportunity cost associated with the prepayment of VAT, that fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price

comparisons. Therefore, we have not made one here.

Comment 20: Goldstar states that the Department should use the revised computer tape file layout for ESP packing costs.

DOC Position: We agree with Goldstar and have done so.

Comment 21: Petitioner contends that Goldstar failed verification of certain merchandise because Goldstar: (1) Did not adequately support the merchandise's beginning work in process (BWIP); (2) did not calculate the production quantities on the correct yield rate; and (3) did not document certain allocation methodologies. Petitioner concludes that if the number of units over which costs are allocated is incorrect, it becomes irrelevant whether the overall costs themselves are correct or verified. Therefore, because the costs were allocated based on an incorrect production quantity, petitioner argues that the Department must resort to using petitioner's information as BIA.

Goldstar claims that it correctly calculated its BWIP based on its audited 1991 financial statements, and that the yield rates were calculated from accurate and verified production quantities. Therefore, Goldstar contends that the costs were allocated over correct quantities. Also, Goldstar states that: (1) The value of manufacturing costs capitalized as construction in progress (CIP) and R&D during the first six months of 1991 reconciled to its 1991 financial statements; (2) the amounts capitalized were accurate and justified, and (3) certain allocation methodologies were not questioned by the Department.

DOC Position: The Department determined the total COM incurred for production of the subject merchandise during the first six months of 1991 based on the audited financial statements, and verified the production quantities. However, while the amount of manufacturing costs capitalized as CIP and R&D may be tied to company documentation, the Department does not agree that these costs should be capitalized. These costs are more appropriately identified as current costs of production because they include the component costs of manufacture, *i.e.*, materials, labor, and overhead, which should be expensed as incurred. Therefore, the Department reclassified the manufacturing costs capitalized as CIP and R&D to current costs of production.

Comment 22: Goldstar claims that the equivalent units of production factors (EUs) used in its calculation of the costs of the merchandise's work in process (WIP) during the POI were verified to be accurate and part of its normal accounting system.

Petitioner argues that Goldstar provided insufficient documentary support for the EUs used in its cost calculation.

DOC Position: We agree with Goldstar. The EUs used by Goldstar for allocating production costs between WIP and cost of sales (COS) were verified by the Department. Although the EUs used by Goldstar for its submission departed from its 1991 normal accounting system, we verified that Goldstar's methodology provided an accurate reflection of its costs.

Comment 23: Goldstar argues that it correctly calculated its per-unit royalty expenses by dividing royalty expenses incurred in a quarter by the quantity of production for the same quarter and including the resultant amount in COM.

Petitioner argues that Goldstar's method of allocating royalties paid during the POI over POI production understated the royalties that accrued to the DRAMs produced during the POI.

DOC Position: We agree with Goldstar. Goldstar correctly included technological royalties in COM; therefore, no adjustment was made. Moreover, there is no evidence on the record indicating that Goldstar's methodology of allocating quarterly royalty amounts by quarterly production quantities during the POI was distortive.

Comment 24: Goldstar contends that the Department improperly used the interest expense of Goldstar instead of its parent company in the preliminary determination and unjustifiably refused to verify the consolidating workpapers prepared for the Department's use. Goldstar also argues that the Department's rejection of the parent's consolidated statement because it was unaudited and incomplete is not dispositive since the Department has previously accepted unaudited statements and has verified the consolidating workpapers. Goldstar states it could not provide audited consolidated statements because they do not exist.

Petitioner maintains that the Department does not invariably use the financial results of the consolidated company to determine interest expense and emphasizes that Goldstar's interest expense should be used rather than the unaudited figures for the consolidated group of companies because the latter would distort Goldstar's true financing costs. Petitioner counsels the Department to continue to disregard the unaudited consolidated financial statements of the parent.

DOC Position: The Department agrees with petitioner. Absent detailed testing usually associated with an audit, the Department cannot rely on the statements as submitted. Goldstar's contention that at verification it offered to consolidate the parent with other companies it initially excluded does not overcome the fact that substantial audit procedures would have been required before the Department could be assured that the statements were adequately presented. The Department does not perform an audit at verification; rather, verification relies on audited records.

Therefore, we relied on Goldstar's audited financial statements for calculating interest expenses, not its parent's unaudited consolidated statement.

Comment 25: Goldstar argues that it appropriately reported material costs exclusive of losses and gains on foreign exchange transactions related to material purchases, because, in accordance with Korean GAAP, these costs are treated as non-operating gains and losses in its normal cost accounting system. Additionally, Goldstar claims that if the Department were to adjust its costs by including foreign exchange transaction gains or losses in COM rather than in general expenses, the resulting COPs and CVs would remain virtually unchanged.

DOC Position: We disagree with Goldstar. Foreign exchange losses arising from the purchase of raw materials should be included in material cost because this is a component of the COM. However, we have not reclassified these losses from general expenses to COM as it would have no impact on the submitted costs.

Comment 26: Goldstar argues that the amortization of stock and debenture issue costs should be excluded from the interest expense calculation.

DOC Position: We disagree. The Department considers the costs incurred to obtain funds to be part of the normal financing needs of the company. It is longstanding Departmental policy to include financing costs in calculating COP and CV.

Comment 27: Goldstar argues that the R&D of Goldstar Information and Communication, Inc. should not be included in Goldstar's COP. Goldstar purchased the semiconductor division with its related assets and liabilities from Goldstar Information and Communication, Inc., which had already expensed its R&D in its normal accounting system. Therefore, the R&D should not now be amortized and included in Goldstar's COP.

DOC Position: We agree with Goldstar. See also comment 4.

Comment 28: Goldstar argues that we should use the R&D costs as computed

in its response. The firm claims that it correctly computed R&D on a quarterly basis, by dividing its annual amortized R&D expenses for each product line by four and allocating the quarterly amounts over each quarter's cost of sales for each respective product line.

DOC Position: We disagree with Goldstar. In this case, allocating amortized R&D over a product line does not account for overlapping benefits. Thus, we have allocated all semiconductor R&D over semiconductor cost of goods sold. See also comment 4.

Hyundai

Comment 29: Hyundai argues that the basis for FMV should be weighted-average monthly prices. Hyundai also argues that the sales below cost test be performed on the basis of monthly sales and monthly costs. Hyundai believes this is necessary to reflect the declining production costs and the price declines in both the U.S. and Singapore markets during the POI.

Hyundai argues that the Act requires that U.S. prices be compared with contemporaneous home market (or third country) prices. It further argues that the Department is inconsistent in applying a six-month weighted average for investigations and a monthly weighted average for administrative reviews. Hyundai states that the Department has previously tested price stability over time and the variance between annual and monthly prices to determine the appropriateness of annual, as opposed to monthly, averages. Hyundai also states that in the price variance test, the Department determined that annual averages would be representative if more than 90 percent of the home market sales were made at monthly average prices within 10 percent of the annual average price. Hyundai states that it has applied the same two tests to its third country sales database. According to Hyundai, the results of this analysis support the contention that monthly averages are required for this investigation.

Petitioner also states that in applying the price variance test, weighting sales on a quantity basis is more appropriate than weighting by sales value, as done by Hyundai.

DOC Position: We agree with Hyundai. Based on our analysis, we find that monthly weighted average prices for FMV are more representative of Hyundai's pricing than POI averages. We examined the time-price correlation and observed a consistent downward trend in both U.S. and Singapore prices over the POI.

We also examined price variance. Our analysis of respondent's information shows that during the POI a significant number of the third-country sales were made at monthly average prices that vary from the POI average prices. Consequently, where FMV was based on third-country price, we used monthly weighted average FMVs.

Comment 30: Hyundai claims that during the POI, it made a very limited number of sales of so called obsolete models in the United States and Singapore and that the Department should drop such sales from its analysis. Hyundai states that the Department's recently revised policy for disregarding below cost sales caused all third country prices for obsolete models to be disregarded. Hyundai claims that including the sales of obsolete models will distort its normal pricing policies.

As an alternative to excluding these U.S. sales, Hyundai argues for adjusting the below cost test so that third country obsolete models remain in the calculation of FMV. Specifically, Hyundai states that the Department's recent practice of applying only the model-specific "micro" test of the "10–90–10 rule" is inappropriate because it alters the administration of the below cost test of the statute so that small volumes of obsolete models are no longer included in FMV. Respondent further states that once a product is obsolete, all sales of this product are below cost since demand turns to its replacement product. Hyundai also states that the legislative history of section 773 of the Act allows for inclusion of obsolete sales.

DOC Position: We disagree with Hyundai. Although the legislative history of the statute indicates that sales of "obsolete" merchandise at less than cost would be disregarded from the below cost test, we do not consider the merchandise in question to be obsolete. First, the original product is interchangeable with its newer "replacement" model. It serves the same purpose and has the same characteristics as the new product. Second, although these original models were made using a different production process than the new model, because the physical characteristics of the original models are the same as the new models, this difference does not justify classifying the former as "obsolete."

Comment 31: Hyundai states that the Act requires that the U.S. price be reduced by the amount of any increased value resulting from further manufacture of the imported merchandise before the sale to an unrelated party. Hyundai claims that profit should only be allocated to U.S. value-added based on the value-added performed by Hyundai's subsidiary, HEA, in the United States, rather than on the total value added in the United States. Hyundai states that profit is included in the price paid to the unrelated subcontractor which performs the further manufacturing. Hyundai argues that the profit on the value added by an unrelated subcontractor should not be included in the Department's adjustment of USP.

Petitioner requests that the Department allocate profit to Hyundai's U.S. operations. Petitioner states that the accepted profit allocation to U.S. value-added is an apportionment of profit from an individual sale into two parts: The portion resulting from the value added in the U.S. and the portion resulting from the production of the merchandise itself. Petitioner further states that the profitability of the subcontractor is irrelevant.

DOC Position: We agree with petitioner. The fact that the unrelated subcontractor performing further manufacturing earned a profit is irrelevant. The price paid by HEA for the subcontracting services was a cost to HEA and we considered it as such in calculating our profit adjustment.

Comment 32: Hyundai argues that the Department should make an inventory carrying cost adjustment to Hyundai's U.S. price only with respect to DRAMs held in inventory to be sold as finished products, and not with respect to those held in inventory to be further manufactured into modules. Respondent holds that in accordance with the Act, only those expenses associated with selling rather than producing the subject merchandise are intended to be deducted.

Petitioner argues that the Department should continue to calculate inventory carrying costs for all of Hyundai's U.S. sales. Petitioner states that Hyundai incurred an opportunity cost for inventorying finished goods regardless of whether there was any further manufacture at a later date.

DOC Position: We agree with respondent. Our determination in Antifriction Bearings, 56 FR 31692, addressed the opportunity cost of holding inventory in both markets, and also addressed the issue of work-in-progress, which is analogous to the DRAMs to be incorporated into modules. Since these DRAMs are parts of unfinished goods, our inventory carrying cost adjustment is limited to DRAMs sold as finished products.

Comment 33: Hyundai states that the Department incorrectly deducted Hyundai's direct selling expenses from ESP. Hyundai argues that the Department should have added the

direct selling expenses incurred on ESP sales to FMV.

DOC Position: We disagree with Hyundai. In accordance with section 772(e) of the Act, we correctly deducted selling expenses from ESP.

Comment 34: Petitioner contends that, with regard to one of the purchase price transactions the Department reviewed at verification, the Department found that the merchandise that was ordered by the customer was not the merchandise that was actually shipped. In its response, Hyundai reported the model number of the merchandise that was shipped. Petitioner claims that, since the price of the merchandise that was ordered is higher than the merchandise that Hyundai shipped, the Department should use the higher prices for these transactions when calculating FMV.

DOC Position: We disagree with petitioner. We found at verification that Hyundai properly reported the sales prices of the merchandise that was shipped. The fact that Hyundai shipped to the customer merchandise that was different than the customer had ordered originally is irrelevant.

Comment 35: Petitioner argues that the Department should reject third country indirect selling expenses. Petitioner asserts that Hyundai allocated certain common selling expenses on a space allocation basis and that the company does not allocate these expenses in its accounting records. Petitioner claims that the Department's standard practice is to use a company's own expense accounting for submission purposes unless it is contrary to generally accepted accounting principles. Petitioner claims that a reclassification of expenses such as the one in question is disingenuous and it requests that Hyundai's third country indirect selling expenses should be disallowed in their entirety.

Hyundai states that its allocation methodology is accurate and reasonable. It also states that because they are general expenses, they are only allocated for the purposes of responding to the Department's questionnaire.

DOC Position: We disagree with petitioner. For purposes of responding to the Department's questionnaire, Hyundai allocated certain indirect selling expenses common to all divisions of the company to the divisions involved in selling the subject merchandise on the basis of the office space occupied by those divisions. Although Hyundai does not allocate these selling expenses to different divisions in its accounting records, we determined that, for purposes of responding to the Department's questionnaire, the allocation by space was a reasonable method for estimating the portion of certain common selling expenses attributable to the divisions involved in the sale of the subject merchandise.

Comment 36: Petitioner requests that the Department subtract one month from Hyundai's reported date of sale since Hyundai incorrectly reported shipment dates as sale dates. Petitioner states that Hyundai appears to consider a change in the date of shipment as a significant enough change to warrant a reporting date basis which does not reflect the date upon which price and quantity are fixed. Petitioner points to a section of the Department's verification report that discusses a shipment date change as an illustration of a change in the terms of sale. Petitioner states that such a change does not constitute a change in the essential terms of sale. Based on this information, petitioner suggests that verification exhibit DOS–1, listing the percentage of Hyundai's orders for which there were changes in the terms of sale, is artificially inflated. Petitioner requests that, as BIA, the Department lag all sales by one month.

Respondent argues that petitioner has based its argument on only one sample, and that with respect to even that sample, price and quantity did in fact change. Hyundai cites the Department's verification report and the extent to which the Department went to examine changes in the terms of sale. Respondent also states that petitioner's argument is based on speculation.

DOC Position: We disagree with petitioner. The Department thoroughly examined Hyundai's methodology for determining date of sale during verification and found no major discrepancies with respondent's data.

Comment 37: Petitioner requests that the Department treat warranty expenses as direct selling expenses. Petitioner states that the Department's verification report shows that all U.S. warranty expenses were assigned to a particular division of the company, and none to the semiconductor division, in Hyundai's general ledger. However, the report also states that the Department did not examine individual claims to see if any were, in fact, related to semiconductors. Petitioner requests that since no direct evidence was provided to show that these expenses are incurred only in relation to sales of non-subject merchandise, the Department should, as BIA, assign all U.S. warranty expenses to sales of subject merchandise as direct selling expenses.

Hyundai states that the Department verified that all of the warranty expenses incurred by Hyundai related to the other division of the company that is not involved in the sale of subject merchandise. Hyundai states that the Department reviewed the general ledger and examined all after-service or warranty expenses.

DOC Position: We disagree with petitioner. The Department examined warranty expenses at verification. We found no warranty expenses directly attributable or related to sales of the subject merchandise. Therefore, we treated Hyundai's warranty expenses as indirect selling expenses.

Comment 38: Hyundai argues that the cost verification report does not reflect the accuracy of Hyundai's data because of misleading statements and "suggested conclusions." It claims that the Department traced the data submitted in its questionnaire response to total costs and allocation bases, and to the financial statements. Additionally, they point out that the allocation bases used for the submission were also used for the financial statements and that the financial statements are reliable.

DOC Position: The Department lists "Issues for Consideration" in its verification reports to alert all parties to its concerns. Quantification of the magnitude of errors or the effect of differences in methodology may be part of the discussion of these issues. In no way should these issues be construed to be conclusions. The Department reaches its final positions only after considering all parties' comments.

Comment 39: Petitioner argues that the verification shows that Hyundai significantly understated the amount of construction in progress that should have been reclassified. Petitioner states that there is no indication that the COM and spare parts were included in the COP and that the entire amount of the CIP should be reclassified and allocated over production during the POI.

Petitioner also argues that because there was a difference in the depreciation used by Hyundai for existing and reclassified assets and the depreciation which would have resulted based on the useful life of those assets, the Department should recalculate the total depreciation.

Hyundai argues that the Department overstated the impact of the costs which were not reclassified for its response. The firm claims that the effect of any errors found at verification regarding the reclassification of the machinery and equipment (M&E) was minimal. Hyundai points out that the Department's recalculation of depreciation had a number of methodological flaws because, although it was based on the asset ledger value, it did not account for: (1) M&E which was used only for a partial year; (2) M&E

which was fully depreciated during 1991; and (3) salvage value of the assets.

DOC Position: For the response, Hyundai reclassified certain M&E from the CIP account to the fixed asset ledger account. This M&E, although entered into production, had not been transferred to the fixed asset ledger and depreciated. Additionally, Hyundai increased the depreciation for other M&E already on its fixed assets ledger, but for which depreciation had not been calculated. When we tested the reclassification of M&E from the CIP account to the fixed asset account, we noted a substantial number of discrepancies in our sample. Furthermore, the reclassification of only that M&E over a certain value was not appropriate, since this method excluded from reclassification a significant amount of M&E below that threshold. Therefore, the information on the asset ledger is not reliable, and we have based Hyundai's depreciation on BIA.

Comment 40: Hyundai claims that the Department has concluded erroneously that the amount paid by Hyundai for the construction of facilities by a related company covered only the direct cost incurred by that company.

DOC Position: The amount of the adjustment would have no impact on the depreciation amount. Therefore, we made no adjustment.

Comment 41: Hyundai argues that contrary to the Department's verification report, exchange gains and losses on purchases of materials used to manufacture the product under investigation have never been included as part of the COP. Additionally, Hyundai states that they were not instructed to include such gains or losses as part of the material costs nor do normal accounting standards consider such exchange fluctuations as part of material costs. Hyundai claims that the Department should follow its standard practice of including exchange gains and losses as part of general expense.

DOC Position: The Department's questionnaire specifically indicates that all expenses associated with obtaining materials should be included as part of the reported cost of materials. Although the questionnaire includes some specific examples of material costs, material costs are not limited to the examples provided. Contrary to Hyundai's assertion, the Department has in prior cases included exchange gains and losses related to obtaining materials as part of the material costs, see, *e.g.*, Man-Made Fiber Sweaters from the Republic of Korea, 55 FR 32659 (August 10, 1990). Although some companies' cost accounting might include such costs as part of general expenses, the focus of the Department's analysis is the cost of production of a specific product, rather than the overall financial results of the company.

Comment 42: Hyundai states that for its submission, the company expensed all interest incurred during the POI, including interest which had been capitalized in the company's official accounts because: (1) The company believes that capitalization of interest expense is not automatically authorized by U.S. GAAP; (2) interest capitalization is contrary to the Department's standard practice of not specifically identifying interest expenses with assets or product lines due to the fungibility of financing costs; and (3) the capitalization of interest, if properly calculated, would result in a lower cost than reported by Hyundai.

DOC Position: The Department reviewed the nature of the assets in the CIP and agrees with Hyundai that the interest expense that was part of the CIP should not have been capitalized. Interest expense is capitalized when the assets are being constructed by the company. The assets in Hyundai's CIP account were machinery and equipment waiting to be placed into the production process.

Therefore, the Department agrees with Hyundai and we included this interest as part of the interest expense calculation.

Comment 43: Hyundai argues that the cost verification report significantly overstates the company's R&D costs. First, Hyundai believes that the Department inappropriately included the fabrication costs of an assembly and test division which are capitalized and should not be assigned to semiconductor production. Second, Hyundai argues that including the historical lump sum expenditures for R&D performed under contract amounts to double-counting. Third, Hyundai declares that using the cost-of-goods-sold (COGS) figure from the financial statements to allocate R&D is inappropriate since the COM for each model has been increased significantly. Fourth, Hyundai believes that the calculation of Hyundai's U.S. subsidiary's semiconductor R&D expense is incorrect. Fifth, Hyundai asserts that machinery and equipment for the R&D department is appropriately classified as part of the CIP account.

DOC Position: With respect to Hyundai's argument that the fabrication costs of an assembly and test division are capitalized, this information was not disclosed at verification and, in fact, is inconsistent with information which was discussed at verification. As BIA, we have included these costs in our calculation of R&D.

We agree with Hyundai's second argument regarding the possible double-counting of lump sum expenditures. Since the repayment of these costs is treated as royalty on sales we have not included these costs in the R&D calculation.

We agree with Hyundai's assertion that the COGS information presented in the financial statement is significantly understated. In order to calculate the R&D percentage applicable to semiconductors, we adjusted COGS for certain of the items included in the CIP account.

Hyundai's argument regarding the calculation of its U.S. subsidiary's semiconductor R&D expense is erroneous. Prior to this final determination the Department had not prepared a calculation of the semiconductor R&D expense. However, the Department's cost verification report provided a mathematically correct comparison of Hyundai's U.S. subsidiary semiconductor R&D to Hyundai's costs. Finally, contrary to Hyundai's assertion, M&E which are in use is not appropriately considered to be CIP, since they are completed and in use.

Comment 44: Petitioner reasons that Hyundai's reported off-spec adjustments to its costs are distortive and needlessly complicated. Petitioner further asserts that off-spec merchandise should be treated in a manner consistent with the way the company treats it in the normal course of business.

Hyundai maintains that the Department should adopt its proposed off-spec merchandise adjustment. Hyundai notes that petitioner fails to provide any support to show how allocating actual costs to produce off-spec merchandise would be distortive. Hyundai further explains that off-spec merchandise costs more than prime product since it incurs additional retesting costs.

DOC Position: We agree with petitioner and have removed from Hyundai's reported costs the off-spec merchandise adjustment prepared by Hyundai for purposes of this antidumping investigation. Absent specific evidence that the company's normal cost accounting system fails to adequately capture a product's COP we will rely on that cost information. We have therefore treated the off-spec merchandise in a manner consistent with respondent Hyundai's normal cost accounting methodology.

Samsung

Comment 45: Petitioner states that Samsung was required to report information about its second U.S. sales subsidiary, including that firm's selling expenses, and did not. Therefore, petitioner argues that since Samsung did not report this information, the Department should reject Samsung's response and use BIA.

Samsung argues that it fully disclosed its relationship with the company in question in its questionnaire responses and, therefore, BIA should not be used.

DOC Position: We agree with Samsung that this company was adequately described in Samsung's section A questionnaire response and, based on this description, we determined that it was not necessary to request additional information regarding the company.

Comment 46: Petitioner argues that Samsung should use 1991 payments for a royalty expense as the best estimate of 1992 payments, rather than report them as zero until the 1992 settlement is reached. Petitioner contends that a potential liability existed for Samsung, and Samsung opted to ignore this liability completely.

Samsung stated that the Department should not impute payments for the royalty expense to 1992 sales. Samsung argued that: (1) It is under no legal obligation to pay a royalty for 1992 sales; (2) no actual expenses have been incurred for these sales; (3) the fact that expenses may be incurred is merely speculative; and (4) any adjustment for royalty expenses should be made in subsequent administrative reviews.

DOC Position: We agree with Samsung that it would not be reasonable to make an adjustment for royalty expenses which were not actually incurred, and may not be incurred, and we have not done so.

Comment 47: Petitioner contends that since Samsung did not report its air freight expenses on the basis of weight, as incurred, the Department should, as BIA, increase all U.S. air freight expenses by the margin of error found at verification. Petitioner states that in accordance with long-standing Departmental practice, expenses should be reported on the same basis as they were incurred.

Samsung states that its methodology for calculating air freight expense is reasonable and is not distortive. Samsung contends that air freight was allocated based on value to be consistent with the allocation methodology for other movement expenses and to avoid distorting per-unit expenses since invoice weights may not be accurate. Samsung also maintains that a value-based allocation overstates air freight expense.

DOC Position: We agree with Samsung and are not increasing its U.S. air freight expenses. For the reasons stated by Samsung, we find that Samsung's allocation methodology provides an accurate reflection of its air freight expenses.

Comment 48: Petitioner argues that the Department's calculation of the weighted-average second royalty expense for its constructed value selling expenses is incorrect and should be recalculated.

Samsung counters that the Department's calculation of the weighted-average second royalty expense for constructed value selling expenses is correct. Samsung argues that petitioner used the wrong sales tape in making its calculations.

DOC Position: We agree with Samsung and have not recalculated the weighted-average second royalty expense.

Comment 49: The petitioner claims that the Department cannot accept the depreciation expense Samsung used for its response, and must instead use BIA. Petitioner states that when Samsung changed its depreciation method from double-declining balance to straight-line, it calculated depreciation on an incorrect basis instead of the retroactively adjusted basis. Furthermore, petitioner argues that Samsung used the total useful life instead of the remaining useful life of the asset.

Samsung argues that its depreciation is fairly stated and that it comes directly from the financial statements which are prepared in accordance with Korean GAAP and audited by a C.P.A. firm. They note that the Department has consistently rejected past attempts to recalculate depreciation expense for a dumping response in a manner different from those reported in the financial statements.

Samsung contends that its methods of depreciation, *i.e.*, straight-line and double-declining balance, used before and after the change in 1991 are permissible and commonly used by companies reporting under U.S. GAAP. Samsung states that a change in accounting principle is allowed under any GAAP. Samsung notes that Korean GAAP and international standards do not require companies to retroactively adjust for an accounting change and that, at the time Samsung made the change, it was permissible under Korean GAAP to base depreciation on the useful life of the assets as opposed to the remaining useful life of the assets. Samsung claims that it used the useful life because at the time of the change, the products manufactured in existing production facilities would have a longer commercial life than expected, and the company would be receiving income over a longer period of time. Therefore, Samsung stated that in order to match the depreciation expenses with the income generated, the useful life of the assets had to be extended.

DOC Position: The fact that the company made an accounting change in the methods used by the company for depreciation, *i.e.*, straight line versus double-declining balance, is not at issue. At issue is the basis and the means used to effect the change.

Generally, the Department relies on the information presented in the company's financial statements and on the country's GAAP when such methods are not distortive for calculating the costs of production. However, in this case, the Department found that the basis used for the financial statement, even if stated in accordance with Korean GAAP at the time of the change, would be distortive for purposes of our antidumping analysis.

In changing its method of depreciation from double-declining to straight-line, Samsung did not retroactively restate the basis of the asset but instead used the net book value of the asset as of the date of restatement. The use of the net book value of the asset as of the date of restatement did not attribute the cost of the asset on a consistent basis over the life of the asset. Therefore, disproportionally greater costs were attributed to products manufactured before the change than subsequent to the change.

Samsung used the total useful life of the assets instead of the remaining useful life of the assets when it changed its method of calculating depreciation. For example, a four-year-old asset at the time of the change, with a useful life of five years, could be extended for another five years. Although, Samsung states that this was in accordance with Korean GAAP at the time of the change, Samsung did not provide any support for this claim. Samsung's argument, that it extended the useful life of the assets because the products' commercial life was longer than anticipated, is not valid because the assets may be used for a number of different products each with varying commercial lives and/or may be replaced during the commercial life of any one of these products.

Therefore, the Department did not rely on the depreciation used by Samsung in its submission but instead recalculated it by restating the basis of

the asset based on BIA. *See* March 11, 1993, Calculation Adjustment Memorandum to Marie E. Parker from Richard C. Lutz for a detailed discussion of the calculation.

Comment 50: Petitioner argues that Samsung was not billed for installation and maintenance costs for its equipment. Petitioner argues that Samsung's submission should be adjusted to account for this understatement of cost.

Samsung argues that all appropriate installation charges were included in its reported equipment costs, as recorded in its books. Samsung states that the installation costs were performed by the equipment vendor as part of the original purchase agreement.

DOC Position: After reviewing the purchase contracts, sales invoices and purchase orders related to equipment purchases, we do not find any evidence that Samsung did not pay the installation costs.

Comment 51: Micron argues that depreciation costs were understated because the entity which constructed part of Samsung's fabrication facility did not charge Samsung a price which was higher than COP.

Samsung argues that the company which constructed its fabrication facilities was not a related party or a member of its chaebol.

DOC Position: In reviewing the verification exhibits, specifically, shareholder lists of the two companies, the Department noted that the company which constructed its fabrication facility is not related to Samsung as defined by the Act. Accordingly, there is no basis for adjusting Samsung's depreciation expenses to account for the construction of the fabrication facility.

Comment 52: Petitioner contends that Samsung failed to provide all of its semiconductor R&D as requested by the Department. Petitioner states that Samsung only provided R&D information for one facility. Petitioner states that as BIA the Department should apply the ratio of expenses incurred at the one facility to all of Samsung's semiconductor operations.

Samsung argues that all R&D expenses have been appropriately calculated. Samsung claims that it correctly reported amortized product development expenses over a three-year period, in accordance with Korean GAAP, its financial statements, the matching concept in accounting theory, and International Accounting Standard Number 9. Samsung also argues that the Department has historically amortized R&D expenses in those cases where it has played a critical role in the development of the product.

Furthermore, Samsung contends that it correctly excluded product-application specific expenditures because the micro products are entirely different from the memory products and therefore, no R&D overlap is possible. Samsung also argues that the Department requires product-specific allocation of R&D.

Finally, Samsung claims that it reasonably accounted for all R&D incurred for the subject merchandise by using an activity-based costing allocation methodology.

DOC Position: For the R&D methodology used in this investigation, see Comment 4. As Samsung did not provide all of the requested R&D for its semiconductor product line (DRAM & non-DRAM), the Department used BIA for purposes of determining Samsung's R&D expenditures. BIA was based upon the information submitted by petitioner. See March 11, 1993, Calculation Adjustment Memorandum to Marie E. Parker from Richard C. Lutz for a detailed discussion.

Comment 53: Petitioner claims the material costs reported by Samsung in its submission are suspiciously low because the Department found that the reported per unit material cost did not reconcile to the Bill of Materials. Petitioner also claims that the explanation given by Samsung for the irreconcilability of the reported per unit material costs makes no sense. Therefore, petitioner argues that the material costs should be adjusted.

Samsung argues that the Department verified the accuracy of the per unit material costs at verification, and that the Department reconciled these expenses to the company records, which themselves demonstrate that Samsung's accounting system fully tracks and absorbs the cost incurred for materials from purchase to production and ultimately to the financial statements. Also, during verification, the company explained that the Bill of Materials is a guide for purchasing and not an absolute standard which outlines the specific amount of materials tracked by device in the cost accounting system.

Samsung questions the validity of the Department's material cost reasonableness test in its verification report because of the effects that production quantities could have on its results and because of the appropriateness of the basis which the Department used in its calculations.

DOC Position: In comparing the selected bill of materials to the submitted material cost, no significant distortion was noted. Therefore, with respect to this issue, no adjustment was made to Samsung's cost.

Comment 54: Samsung contends that, as found at verification, all related party transactions were made at prices above total COP, including selling, general, and administrative expenses (SG&A), and argues, therefore, that we should accept them. Moreover, the company argues that it would be inappropriate to rely upon the financial statements of the parties to determine if a loss/gain was made on the sale from these related companies.

DOC Position: We agree with Samsung. In reviewing the transactions between Samsung and its related entities, we found none that were made below the COP. Accordingly, we made no adjustment to Samsung's cost data with regard to this issue.

Comment 55: Samsung contends that it accounted for foreign exchange gains or losses for its purchases made in foreign currency because the difference in the amount recorded for purchases and the amount paid is fully accounted for in the non-operating section of the income statement. Samsung states that such gains or losses are also reported as general expenses in the submission. Samsung states that this methodology is in accordance with Korean GAAP and is typical of manufacturers worldwide, as it is virtually impossible to account for these gains or losses on a transaction-specific basis.

DOC Position: Although the company may have included the net exchange gain or loss in its general expenses and allocated this amount as part of general expense for the submission, this methodology may not appropriately account for the product costs because the exchange transactions relate specifically to the subject merchandise and not all products produced by Samsung. See Sweaters from Korea (55 FR 32659, August 10, 1990) and Fresh Cut Flowers from Colombia (55 FR 20491, May 17, 1990). In this case the Department found that foreign exchange losses which related directly to the DRAMs were not attributed to the cost of DRAMs. Rather, Samsung has allocated these costs to all products. Therefore, we have made an adjustment to the materials costs for exchange rate fluctuations noted during the POI. In order to avoid double counting, we reduced the general expense amount by the amount added to material cost.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of DRAMs from the Republic of Korea. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is subject of the investigation over a relatively short period.

We normally consider whether there has been an outstanding antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. We normally consider margins of 25 percent or more, in the case of purchase price sales, or margins of 15 percent or more in case of ESP sales, sufficient to impute knowledge of dumping. Petitioner has provided information concerning an antidumping duty investigation on DRAMs from Korea being conducted by the European Community (E.C.). The E.C. issued its preliminary determination in June of this year, subséquent to the POI in the instant investigation. We have determined that this is not sufficient to establish a history of dumping under section 735(a)(3)(A)(i) of the Act, as an antidumping duty order has not yet been issued by the E.C.

With regard to all respondents, since the final dumping margins are less than 15 percent, we cannot impute knowledge of dumping under section 735(a)(3)(A)(ii) of the act. Therefore, in accordance with section 735(a)(3) of the Act, we determine that critical circumstances do not exist with respect to imports of DRAMs from Korea.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of DRAMs from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 29, 1992, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Goldstar Electron Co., Ltd. and Goldstar Electron America	4.97
Hyundai Electronics Co., Ltd. and Hyundai Electronics America	7.19
Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc	.74
All others	3.19

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: March 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-6553 Filed 3-22-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Administrative Review of the Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of administrative review of the antidumping finding.

SUMMARY: On January 6, 1992, the Department of Commerce published the preliminary results of administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (57 FR 396). We have now completed this review and determine the margin to be 4.96 percent for the Allatt Paving Division of Ingersoll-Rand Canada, Inc. (Allatt I-R) during the period September 1, 1989 through August 31, 1990.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria Mackay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 396) the preliminary results of its administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811; September 7, 1977) covering the period September 1, 1989 through August 31, 1990. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs

purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Allatt I–R, and the period September 1, 1989 through August 31, 1990.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, Allatt I–R, and from the petitioner, Blaw-Knox Construction Equipment Corporation. At the request of both parties, we held a hearing on February 19, 1992.

Comment 1: Respondent contends that the Department double-counted packing costs in its calculation of constructed value. The respondent explains that the reported cost of manufacturing (COM) was derived by subtracting certain expenses from an amount called "total spending." Since packing costs were not among the specific items subtracted from this all-inclusive total, packing costs remain included in the respondent's COM. Because the Department calculated constructed value using the company's COM, which the response demonstrates to have been inclusive of packing, the Department erred by again adding packing to constructed value prior to making U.S. price comparisons.

Department's Position: We disagree with the respondent. Neither the company's initial questionnaire response nor its May 13, 1991 supplemental submission contained or pointed to any specific information that demonstrated that packing costs were included in its COM. In fact, respondent's failure to provide such information in these responses prompted the Department to issue a deficiency questionnaire on September 9, 1991, requesting packing cost information for use in calculating constructed value. Although the respondent provided information on its packing costs in response to this request, the respondent did not demonstrate that packing costs were included in its COM.

Comment 2: Respondent argues that the Department has erroneously calculated the cost difference allowable for determining merchandise which is similar for comparison purposes. In making similar merchandise determinations, the Department measured the difference between the variable cost of manufacture (VCOM) of the U.S. item and the VCOM of the Canadian comparison item, and divided this amount by the total COM of the U.S. item. If this resulted in a difference of less than 20 percent, the Department determined that the Canadian and U.S. items could be reasonably compared. Respondent maintains that the denominator in this formula does not comport with the Department's practice regarding similar merchandise because the VCOM, rather than the COM, of the U.S. part should have been used as the denominator. The respondent notes that, although the Department's antidumping regulations do not specify a methodology for determining similar merchandise, the Department, according to the respondent, should use the methodology detailed in the questionnaire that it received in the succeeding review for this case.

Department's Position: We disagree with the respondent. Section 771(16) of the Act confers upon the Department discretionary authority to identify similar merchandise which may reasonably be compared with the subject merchandise sold in the United States. The Department currently uses 20 percent of the COM of the U.S. product as a guideline in its selection of similar merchandise in order to minimize the effect of certain distortions created in our calculations by a difference in merchandise adjustment. See Final Results of Antidumping Duty Administrative Review: Red Raspberries from Canada (57 FR 49686; November 7, 1992). This methodology, which was applied in this review and was explained to Allatt in the Department's September 9, 1991 supplemental questionnaire regarding the selection of similar merchandise, is consistent with existing practice. Because the proportion of variable to fixed costs can vary significantly among products, the Department chooses to use the COM, rather than the VCOM, as the appropriate denominator, thus providing a reasonably stable basis for evaluating comparability which is not affected by a particular product's proportion of fixed to variable costs. The questionnaire received by the company in the succeeding administrative review of this finding has since been corrected to reflect this practice.

Comment 3: Respondent claims that an erroneous home market price and invoice were mistakenly included with its home market sales information. The incorrect price, inflated by a factor of ten, resulted from an invoicing error. The company subsequently corrected the error and issued a new invoice five days after the error occurred, a copy of which has been provided to the Department. Respondent points out that other home market sales of the same part were made at prices which are the same or close to the correct price. The respondent, therefore, requests that the Department correct the mistake and recalculate the corresponding foreign market value.

Department's Position: After examining the home market sales information and comparing the prices for the same part as the part contained on the invoice in question, the Department agrees that the marked difference in price clearly indicates an error. We have amended the home market sales information to reflect the accurate price for the referenced sale and used this corrected information in our sales comparisons.

Comment 4: Respondent contends that the Department should not have assigned the weighted-average margin of the company to those U.S. sales for which no price-to-price or constructed value comparison was found. Respondent suggests that the Department should have instead used the average margin found on sales where constructed value provided the basis of foreign market value. Respondent argues that the preliminary aggregate margin for all U.S. sales of 7.24 percent is greater than the weighted-average margin for those U.S. sales compared to constructed value. Therefore, had the Department requested constructed value information for the unmatched U.S. sales, it is likely that their weighted-average margin would have been no greater than that for those sales for which constructed value was used. The respondent asserts that, absent the opportunity to submit additional constructed value information for these unmatched sales, it is fair and reasonable that no rate higher than the weighted-average rate for sales using constructed value be assigned.

Department's Position: We disagree with the respondent. The Department recognizes that a gap existed for certain U.S. sales information in this record which required the Department to use "other information" as a reasonable surrogate for the missing data. Rather than make another information request, the Department instead chose to use a neutral and reasonable surrogate to bridge this gap. Not to be confused with "best information available," the Department derives the authority to use neutral information under such circumstances from its own inherent authority to administer the U.S. antidumping law in a fair and equitable manner. In this case, because margins had been calculated on the overwhelming majority of the respondent's U.S. sales transactions, which included identical and similar

price-to-price comparisons as well as constructed value, the weighted-average margin derived from this pool of sales was considered a more appropriate rate to use for unmatched sales. Using only the rate for constructed value matches would have required two assumptions. First, that all unmatched sales would ultimately have been compared to constructed value, and second, that constructed value comparisons provide a systematically different result than do price-to-price comparisons. Because we cannot be confident in these assumptions, we believe a broader group of sales is more appropriate to use for unmatched sales.

Comment 5: In its preliminary results of review, the Department made an adjustment to U.S. price for the Canadian federal sales tax (FST) that would have been imposed had the exported merchandise been subject to the tax. Petitioner argues that this methodology is contrary to law since it fails to measure the "incidence of tax" passed through in the home market and fails to make an adjustment based upon that incidence as required by 19 U.S.C. 1677 a(d)(1)(c) (1988). The petitioner states that the U.S. Court of International Trade (CIT) has held that for purposes of calculating the effect of a foreign tax under the statute, the Department cannot assume that the home market price reflects the full amount of such taxes, or that such taxes are passed through to the ultimate consumer. See *Zenith Elecs. Corp.* v. *United States*, 10 CIT 268, 633 F. Supp. 1382 (1986) (Zenith I); *Zenith Elecs. Corp.* v. *United States*, 14 CIT _____, 755 Supp. 397 (1990) (Zenith II). The petitioner argues that, in reaching its final results of this review, the incidence of tax actually passed through to the consumer must be measured in accordance with the CIT's direct instructions to the Department in the Zenith cases.

Department's Position: The CIT decisions cited to by the petitioner are not binding upon the Department in this proceeding. The Department has consistently disagreed with the Zenith decisions, and has sought an appeal of the "pass through" issue before the Court of Appeals for the Federal Circuit (CAFC). The statutory language "added to or included in the price" appearing in 19 U.S.C. 1677a(d)(1)(C) (1991) does not require a measurement of tax incidence in the home market in an economic sense. Accord In the Matter of Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada at 43–53, USA–90–1904–01 (May 15, 1992) (hereinafter Accord Replacement Parts). Therefore, consistent with our longstanding practice, we have not attempted to measure the amount of tax "passed through" to the ultimate consumers in the home market. Accord Replacement Parts, USA–90–1904–01 at 43–53. Rather, we have added to the U.S. price the full amount of tax that we conclude the Canadian tax authorities would have collected on export sales had such sales been subject to the tax, as the full amount of the FST was "added to or included in" the price of comparison parts sold in Canada. See 19 U.S.C. 1677a(d)(1)(C) (1991).

Comment 6: The petitioner contends that the Department erroneously made a circumstance-of-sale adjustment to obtain a tax-neutral margin. Petitioner further contends that the Zenith II court expressly prohibited a circumstance-of-sale adjustment to assume tax neutrality. The CIT concluded that the adjustment to U.S. price for tax effects in the home market must be accomplished under the tax pass-through provision, 19 U.S.C. 1677a(d)(1)(C), and not as a circumstance-of-sale adjustment under 19 U.S.C. 1677b(a)(4)(B).

Department's Position: We do not agree with the CIT's decision in Zenith II concerning the circumstance-of-sale (COS) adjustment and have sought an appeal of this issue before the CAFC. Significantly, the rationale underlying these decisions conflicts with a binding Federal Circuit precedent and a recent CIT decision. See *Smith-Corona Group* v. *United States*, 713 F2d 1568 (Fed. Cir. 1983) (COS deduction of indirect selling expenses from foreign market value to achieve an "apples to apples" comparison upheld); see also *Budd Co.* v. *United States*, Slip Op. 90–85 (CIT 1990) (COS adjustment made to correct artificial distortion to foreign currency upheld).

Furthermore, the statute, as implemented by regulation, provides that the Department "shall" make "due allowance" for any price difference between foreign market value and United States price that is "wholly or partly due to" circumstances of sale that are directly related to the sale of the subject merchandise (19 U.S.C. section 1677b(a)(4)(B) (1991); 19 CFR section 353.56 (1991)). The price difference between the foreign market value and the United States price of the subject merchandise is "partly due" to differences in taxation: only home market merchandise is subject to the Canadian FST. Moreover, the imposition of a sales tax is directly related to the sale of the subject merchandise; merchandise sold in the home market cannot incur the tax in the absence of a sale.

Because the claimed COS adjustment satisfied the statutory and regulatory requirements, the Department is required to make the contested adjustment. Accord Replacement Parts, USA–90–1904–01 at 53–57. Failure to do so, when adding the hypothetical FST forgiven on exportation to United States price, would have artificially inflated the respondent's dumping margins. Such a result would have conflicted not only with a binding Federal Circuit precedent, Smith-Corona, *supra*, but also with congressional intent and the General Agreement on Tariffs and Trade (GATT). See *e.g.*, H.R. Rep. No. 317, 96th Cong., 1st Sess. 45 (1979); S. Rep. No. 16, 67th Cong., 1st Sess. 12 (1921); GATT, art. VI(1), (4).

Comment 7: Petitioner argues that the Department must verify whether the FST reported by the respondent was actually paid. In addition, the Department must satisfactorily establish through access to total monthly tax payments and corresponding monthly sales the effective tax rate applicable to the respondent. No tax adjustment should be made without verification of these amounts.

Department's Position: We disagree with the petitioner. Commerce regulations require verification of all factual information relied on in the final results of an administrative review if "good cause for verification exists," or if an interested party makes a timely request for a verification and no verification took place during either of the two immediately preceding administrative reviews. (See, 19 CFR 353.36(a)(IV)(f) and 19 CFR 353.36(a)(1)(V) (A) (B)). Because the Department conducted verification within two previous administrative reviews of this antidumping finding, the Department would conduct verification only if "good cause," such as a previous failed verification, were shown to exist. In this case, however, the Department has insufficient grounds to question respondents payment of the FST, as argued by the petitioner, given that the most recent verification confirmed that the respondent and its corporate predecessor had paid the FST. See, *e.g.*, Replacement Parts, USA–90–1904–01 at 53–57. In conclusion, absent more compelling reasons, the petitioner did not show "good cause" for conducting a verification. Therefore, no verification was required pursuant to the Department's regulations.

Comment 8: Petitioner contends that the Department improperly accepted an untimely submission from the

respondent. On April 12, 1991, the Department issued a supplemental questionnaire requesting such or similar merchandise data from the respondent. No extension of the deadline for filing the computer tape to accompany this supplemental response was granted. The petitioner states that the respondent "presumptuously granted itself an extension and dictated the terms of that extension to Commerce" in submitting the information on diskette rather than on the requested computer tape format. The petitioner argues that pursuant to the statute (19 U.S.C. 1677e(C)) and the Department's regulations (19 CFR 353.37(a)), the Department must reject respondent's submissions in response to the April 12, 1991, supplemental questionnaire and use, as best information available, the rate of 57.13 percent provided in the petition.

Department's Position: We disagree with the petitioner. The Department "may request any person to submit factual information at any time during a proceeding" (19 CFR 353.31(b) (1991). In this instance, subsequent to the respondent's contested submission, the Department requested that all information submitted by the respondent be resubmitted in SAS rather than FORTRAN format. Therefore, this information request with respect to the computer tapes superceded the Department's request of April 12, 1991. The respondent complied with these requests for information and did so in a complete and timely manner.

Comment 9: Petitioner objects to the Department's use of constructed value as the basis for foreign market value in the absence of such or similar home market sales for comparison purposes. According to the petitioner, given the Department's preference for basing foreign market value on third country sales rather than constructed value, it is incumbent upon the Department to look to third country sales of identical or similar parts prior to resorting to constructed value.

Department's Position: We disagree with the petitioner. The Department's current practice is to use constructed value data, rather than third-country sales data, to calculate foreign market value in the absence of home market sales of identical or similar merchandise when the home market is viable. See 19 U.S.C. section 1677b(a)(1), (2) (1991); Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan: Final Results of Antidumping Duty Administration Review (56 FR 26056; June 6, 1991). Pursuant to 19 CFR 353.48(a), in this review, the Department determined that, since home market sales of such or similar merchandise exceeded five percent of third country sales of such or similar merchandise, the home market was viable for purposes of establishing foreign market value. Based on this determination, the Department used home market sales, where possible, for purposes of comparison, and constructed value when home market sales were not available except where there were no matches for U.S. sales as noted in Comment 4 above.

Final Results of the Reviews

As a result of our comparison of the U.S. price to foreign market value, we determine that the following margin exists for the review period:

Manufacturer/ exporter	Review period	Margin (percent)
Allatt I–R	9/1/89–8/31/90	4.96

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 4.96 percent. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 16, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–6554 Filed 3–22–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of an experimental fishing permit application and request for comments.

SUMMARY: This notice announces receipt of an application from the States of Oregon, California, and Washington for experimental fishing permits (EFPs) for vessels participating in an observation program to determine the impacts of fishing for Pacific whiting on Pacific salmon and other prohibited species. If granted, the permits would allow vessels fishing with trawl gear for Pacific whiting in the exclusive economic zone off the coasts of Washington, Oregon, and California to (1) delay sorting, until offloading, of prohibited species caught incidental to the Pacific whiting fishery, and (2) allow overages in groundfish trip limits. These activities would otherwise be prohibited by Federal regulations. Publication of this notice is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

DATES: Comments on this application must be received by April 21, 1993.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The FMP and implementing regulations at 50 CFR part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application from the States of Oregon, California, and Washington for vessels participating in an observation program was received on March 2, 1993. The purpose and goal of issuing EFPs would be to implement an observation program, at the request of the Pacific Fishery Management Council (Council), to collect information on the bycatch of salmon and other prohibited species in writing harvests delivered to shoreside processing plants. The EFPs would allow vessels participating in the observation program to delay sorting of salmon and other prohibited species (i.e., Pacific halibut, and Dungeness crab caught seaward of Washington or Oregon) from trawl catches of Pacific whiting until the catch is unloaded at a shoreside processing plant. In addition, in order to collect information on unsorted whiting catch shoreside, the States are requesting that the EFPs exempt the holders from groundfish trip limits when participating in the observation program. Retention of prohibited species would be permitted because participants in the observation program will not be sorting their catch and should not be penalized if prohibited species are incidentally retained or if groundfish trip limits are exceeded by a minor amount. Current groundfish regulations at 50 CFR 663.7(b) stipulate that prohibited species must be returned to sea as soon as practicable with a minimum of injury when caught and brought abroad. The EFPs, which would be issued to designated vessels participating in the observation program, are necessary to authorize retention of prohibited species until delivery shoreside, as well as to allow for the potential of minor groundfish overages. The bycatch of salmon by vessels delivering Pacific whiting to offshore processors and catcher/processor vessels is monitored under a voluntary at-sea observer program. If granted, the EFPs would authorize vessels specified by the States to land unsorted Pacific whiting at designated shoreside processing plants where the incidence of salmon, other prohibited species, and other bycatch can be monitored.

The States anticipate that a minimum of 20 vessels may participate in the observation program from April 15, 1993, when the fishery starts, to December 31, 1993, if fish are still available that late in the year. Unsorted Pacific whiting catches would be delivered only to shoreside processing plants in Newport, Astoria, and Charleston, Oregon; Eureka and Crescent City, California; and Westport and Ilwaco, Washington. State port samplers will monitor the offloading of unsorted Pacific whiting catches, collect information on salmon and other prohibited species and bycatch taken, and arrange for the disposal of salmon. Prohibited species taken will not be sold; disposal options, to be determined by the States, include donation to charitable organizations or reduction to fish meal.

The amount of target species, Pacific whiting, that may be delivered to shoreside processing plants under this EFP would be limited by the 1993 harvest guideline. Based on the salmon bycatch rates observed in 1992, it is expected that the number of incidentally caught salmon may range from 736 to 1,683 fish. The development of this shoreside monitoring program and application for an EFP is being pursued by the States at the request of the Council. Similar EFPs were issued in 1992 to 18 vessels participating in the State observation program.

The application was discussed at the March 9–12, 1993, public meeting of the Council in San Francisco, California. The decision on whether to issue an EFP and determinations on appropriate permit conditions will be based on a number of considerations including recommendations made by the Council and comments received from the public. A copy of the application is available for review at the NMFS, Northwest Regional Office (See **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 17, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–6587 Filed 3–18–93; 1:18 pm]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

March 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated March 10, 1993 , the Governments of the United States and the Republic of Bulgaria agreed to establish a Bilateral Textile Agreement for wool textile products in Categories 410, 435 and 448, produced or manufactured in Bulgaria and exported during three consecutive one-year periods beginning on January 1, 1993 and extending through December 31, 1995. This MOU supersedes the MOU dated February 3, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish and amend limits for the period beginning on January 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 11220, published on February 24, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated March 10, 1993, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive

issued to you on February 19, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile products in Category 448, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on March 25, 1993, you are directed, pursuant to the Memorandum of Understanding (MOU) dated March 10, 1993 between the Governments of the United States and the Republic of Bulgaria, to amend and establish limits for wool textile products in the following categories:

Category	Twelve-month limit
410	725,000 square meters.
435	20,000 dozen.
448	20,000 dozen.

Textile products in Categories 410 and 435 which have been exported to the United States prior to January 1, 1993 shall not be subject to this directive.

Textile products in Categories 410 and 435 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated March 10, 1993, between the Governments of the United States and the Republic of Bulgaria.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–6621 Filed 3–22–93; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan on Certain Cotton and Man-Made Fiber Textile Products

March 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On February 28, 1993, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to cotton and man-made fiber men's and boys' coats in Categories 334/634.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 334/634, the Government of the United States has decided to control imports during the ninety-day period which began on February 28, 1993 and extends through May 28, 1993 at a level of 44,773 dozen.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 334/634, produced or manufactured in Pakistan and exported during the prorated period beginning on May 29, 1993 and extending through December 31, 1993, of not less than 91,264 dozen.

A summary market statement concerning Categories 334/634 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 334/634, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Categories 334/634, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 334/634. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 334/634—Cotton and Man-Made Fiber Men's and Boys' Coats

February 1993

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber men's and boys' coats, Category 334/634, from Pakistan reached 137,355 dozen in 1992, more than two and one half times the 53,588 dozen imported in 1991 and 85 percent above the 74,309 dozen imported in 1990. Imports from Pakistan in 1992 accounted for 2 percent of total imports in Category 334/634.

The sharp and substantial increase in Category 334/634 imports from Pakistan is causing a real risk of disruption in the

U.S. market for cotton and man-made fiber men's and boys' coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and man-made fiber men's and boys' coats, Category 334/634, declined from 5,380,000 dozen in 1987 to a depressed 3,493,000 dozen level in 1991, a decline of 35 percent. U.S. production was up during the first nine months of 1992 from the depressed, recessionary level of the comparable 1991 period. The 1992 production level is expected to exceed the 1991 recessionary level, but remain below previous years' levels. In contrast, U.S. imports of cotton and man-made fiber men's and boys' coats, Category 334/634, increased from 5,164,000 dozen in 1987 to 5,792,124 dozen in 1991, a 12 percent increase. U.S. imports surged in 1992, reaching a record level 7,107,600 dozen, 23 percent above the 1991 level.

The ratio of imports to production rose from 96 percent in 1987 to 166 percent in 1991. This increase continued in 1992, with the ratio of imports to production rising to 188 percent for the first nine months of 1992. The domestic manufacturers' share of the U.S. market fell from 51 percent in 1987 to 38 percent in 1991, a decline of 13 percentage points. This decline continued in 1992, with the domestic manufacturers' share of the market falling to 35 percent for the January-September 1992 period.

Duty-Paid Value and U.S. Producers' Price

Approximately 90 percent of Category 334/634 imports from Pakistan during 1992 entered the U.S. under HTSUSA numbers 6101.20.0010—men's knit cotton overcoats, carcoats, anoraks or similar articles, 6201.92.2050—men's cotton anoraks, windbreakers, or similar articles, other than jackets of corduroy or blue denim, 6201.93.3000—men's or boys' man-made fiber water resistant jackets and 6211.33.0035—men's and boys' man-made fiber track suits, other than trousers. These men's and boys' coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable men's and boys' coats.

Committee for the Implementation of Textile Agreements

March 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on March 25, 1993, you are directed to remove Category 334 from the designated consultation level (DCL) aggregate. Textile products in Category 334 which are exported on and after February 28, 1993 shall no longer be subject to the DCL aggregate. Import charges already made to Category 334 shall be retained.

Also, you are directed to establish a limit for cotton and man-made fiber textile products in merged Categories 334/634, produced or manufactured in Pakistan and exported during the ninety-day period beginning on February 28, 1993 and extending through May 28, 1993 at a level of 44,773 dozen [1].

Textile products in Category 634 which have been exported to the United States prior to February 28, 1993 shall not be subject to the limit established in this directive.

Textile products in Category 634 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-6620 Filed 3-22-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA)

March 17, 1993.

To release a Final Environmental Impact Statement (EIS) for the proposed development of the Fort Belvoir Engineer Proving Ground (EPG), Fairfax County, Virginia.

AGENCY: DoD, Headquarters, Department of the Army.

SUMMARY: The Department of the Army currently leases approximately three million square feet of private office space in the Washington, DC area at a direct lease cost of about $54 million per year. In addition, future expansion at Fort Belvoir will put added pressure on the Army's local requirements for space, and will further intensify the Army's need for a low cost alternative to competing for lease space within the private market.

Accordingly, the Department of the Army, pursuant to Public Law 101-189, section 2821, is proposing to develop an 820-acre parcel of government-owned land at the Engineer Proving Ground in Fairfax County, Virginia, in cooperation with the private development community.

The EIS is conceptual rather than site-specific; it is based on a broadly defined development concept. Because the development concept is proposed to be phased over a fifteen to twenty year period, the Army would need to prepare further environmental documentation pursuant to NEPA for each particular phase. This EIS will be used as a tiering document; its results, where applicable, would be incorporated in subsequent NEPA documents.

Alternatives: Alternatives considered in the EIS include:

a. No Build (i.e., No Action)

b. Military Construction Program (MCP) Alternative. This alternative is based on construction of 3.1 million square feet of Army office space using federal funding, i.e. military construction appropriations.

c. The preferred alternative is evaluated. This alternative is based on a 0.55 floor to area ratio, and a mix of residential, commercial offices, retail, and other uses.

The EIS is being conducted in accordance with the National Environmental Policy Act (NEPA), the implementing Army Regulation 200-2, and the provisions of the Council on Environmental Quality, 40 CFR Part 1500. The EIS identifies and determines the extent of environmental impacts and required mitigation measures.

The Draft Environmental Impact Statement was available for public review from November 29, 1991 to January 21, 1992. A public hearing was held on January 13, 1992. Questions and comments regarding the EIS should be forwarded to: Mr. Robert R. Hardiman, Program Manager, OASA (I, L&E), Building 257, Stop 388, Fort Belvoir, VA 22060-5388.

Comments should be received no later than April 26, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 93-6618 Filed 3-22-93; 8:45 am]

BILLING CODE 3710-08-M

[1] The limit has not been adjusted to account for any imports exported after February 27, 1993.

Department of the Navy

Record of Decision for New Construction Dredging Projects at Naval Air Station Alameda and Naval Supply Center Oakland, CA, With Dredge Material Disposal at a Deep Ocean Disposal Site

The Department of the Navy announces its decision to select an ocean disposal site for a new construction dredging project at two Navy facilities in San Francisco Bay. This action is taken pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality regulations at 40 CFR parts 1500–1508, section 103(d) of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, and U.S. Environmental Protection Agency's (EPA) Ocean Dumping regulations (40 CFR parts 220–228). The Final Supplemental Environmental Impact Statement (FSEIS) addressing the impacts of disposal site use and the dredging project was distributed for public review on February 5, 1993. The disposal site is referred to as the Navy Ocean Disposal Site (NODS). The U.S. Army Corps of Engineers (COE) served as cooperating agency in preparation of the Supplemental EIS and will prepare its own Record of Decision/Statement of Findings.

Dredging and deepening of berths will occur at the Navy's facilities located at the Naval Air Station (NAS) Alameda and Naval Supply Center (NSC) Oakland, California. No more than 1.2 million cubic yards of sediments, determined to be suitable for ocean disposal, will be disposed at NODS about 55 miles west-southwest of the Golden Gate Bridge. The project depth for NAS Alameda is 50 feet below mean lower low water (MLLW) versus 42 feet now, and 38 or 41 feet below MLLW at NSC Oakland depending on the area to be dredged versus 35 feet now. The following table lists the approximate sediment maximum quantities covered under this ROD based on February 1993 estimates; actual quantities will depend on predredge surveys.

DREDGE SEDIMENT QUALITY PROJECTIONS:

Dredging area	Est. cu. yd. vol.
NAS Alameda 4	117,166
NAS Alameda 5	115,667
NAS Alameda 6	117,167
NAS Alameda Subtotal	350,000
NSC Oakland 2	103,431
NSC Oakland 3	50,179
NSC Oakland 4	387,282
NSC Oakland 5	54,252
NSC Oakland 6	254,856

DREDGE SEDIMENT QUALITY PROJECTIONS:—Continued

Dredging area	Est. cu. yd. vol.
NSC Oakland Subtotal	850,000
Total NAS and NSC	1,200,000

If all areas were dredged to design depth, they would total 1.6 million cubic yards. Materials determined to be unsuitable for ocean disposal (NAS–2, NSC–1, and NSC–7), a 50-foot buffer adjacent to those unsuitable areas, and material from two adjacent suitable but inaccessible areas at NAS–1 and NAS–3 will not be dredged under this permit. Though the latter two areas are suitable for ocean disposal, dredging them would disturb the intervening unsuitable area and would gain no added additional capacity for Navy vessels. The unsuitable sediments will be left in place and protected from disturbance by the 50-foot buffer. The resulting project comprises 1.2 million cubic yards, and gains some operational efficiency for Navy vessels as a stand-alone project. Further analysis of unsuitable material will be conducted under the Tier IV procedures as described in the EPA/COE testing manual title, "Evaluation of Dredged Material Proposed of Ocean Disposal," also known as the Green Book. Results of this testing and of evaluation of disposal site options for remaining material will be addressed in supplemental NEPA documentation, as discussed below under agency comments.

A Final Environmental Impact Statement (FEIS) which analyzed the impacts of new construction dredging at NAS Alameda and NSC Oakland was distributed for public review on August 24, 1990. The FEIS analyzed the impacts of new construction dredging at the Navy facilities and impacts at alternative disposal sites (in-bay, upland, and open dredge material disposal sites). The Assistant Secretary of the Navy (Installations and Environment) issued a Record of Decision (ROD) on September 25, 1990, that was published in the **Federal Register** on October 12, 1990. In the ROD, the Navy concluded that the proposed new construction dredging of 1.6 million cubic yards of sediment from NAS Alameda and NSC Oakland would not cause significant adverse effects at the dredge site or at the proposed NODS. The NODS was determined to be the only feasible disposal site for the amount of material proposed for disposal. In the ROD, the Navy committed to conduct additional site specific studies at the proposed NODS and sediment tests at the proposed dredging sites, and to document and analyze those findings in a Supplemental EIS (SEIS).

A FSEIS, written in accordance with the Navy's NEPA regulations and consistent with COE permitting process, was published to document the results of the additional studies at the NODS and sediment tests at NAS Alameda and NSC Oakland. All supplemental baseline biological, geological, and physical oceanographic studies sponsored by the Navy at the NODS continue to support the conclusions reached in the FEIS ROD issued on September 25, 1990. Use of the NODS complies with EPA's Ocean Dumping regulations which govern designation of ocean disposal sites.

Section 6 of the FSEIS summarizes the dredging and disposal operations management and monitoring plan. These measures are reflected in the MPRSA section 103 permit conditions and in the Navy's construction contract specifications. Coordination between the Navy and regulatory agencies has resulted in refinement of FSEIS section 6 to ensure adequate controls over dredging and disposal operations. The Navy will continue to work with COE San Francisco District and EPA Region IX to refine specific ocean disposal site monitoring activities before oceanographic cruises take place. Among the MPRSA conditions to which the Navy agrees are:

(1) To avoid dredging and disturbing areas NAS–1, NAS–2, NAS–3, NSC–1, NSC–7, and the 50-foot buffer around NSC–1 and NSC–7;

(2) To inspect all barges for dredge material leakage before departing from San Francisco Bay;

(3) To not load disposal barges over 80 percent of capacity for the first 25 disposal trips to reduce the possibility of spillage during transportation to the NODS while transportation experience is being gained;

(4) To reduce the volume of dredge material in a barge if waves exceed 10 feet with a wave frequency of nine seconds or less unless a wave shield is in place to prevent water from entering the barge and allowing sediment to flow into the ocean;

(5) To terminate disposal operations if wave height exceeds 18 feet;

(6) To have an independent monitor accompany the first 25 ocean disposal trips to verify that disposal operations are being conducted properly, after that the tug captain will be responsible for ensuring compliance with disposal operation conditions; and

(7) To monitor and manage accurate use of specified transportation routes to and precise disposal at the NODS using an enhanced Global Positioning System, and to provide data promptly to affected regulatory and resource agencies.

In order to verify previous sediment dispersion models, the Navy will monitor disposal operations at the mid and end points of the disposal operation. Plumes from at least seven barge loads of dredged material will be tracked and water samples will be taken at the NODS. A sediment profile camera will be used to map the dredged material footprint. Approximately 25 stations will be sampled during the two sampling cruises. Sediment profile photographs will be used to identify the thickness of dredged material deposits on the seafloor. The Navy will coordinate with the COE San Francisco District and EPA Region IX to prepare an acceptable ocean study plan before the cruises are conducted. Results of the disposal site monitoring program will be available to those agencies and organizations who would benefit from the information.

During the FSEIS 30 day no-action comment period which ended March 8, 1993, the Navy received four comment letters. Principal concerns raised included the following summarized comments; the Navy has responded separately to each comment letter.

(a) The Gulf of the Farallones National Marine Sanctuary (GFNMS) reiterated its concern that adequate disposal monitoring controls be implemented to ensure no Sanctuary impacts, and requested that supplemental bird and marine mammal surveys be conducted to assess possible changes in seabird and marine mammal use of the area. Through coordination with the GFNMS, the Navy satisfied the GFNMS concerns.

(b) The Marin Audubon Society requested additional bird and marine mammal effects monitoring and clarification on the extent of planned sediment plume tracking. The Navy agrees and will use Point Reyes Bird Observatory procedures. The COE, EPA, and Navy will monitor sediment plume dispersion as described above. Plume clouds will be tracked to a point of ambient ocean water conditions.

(c) Ocean Advocates concluded (1) that feasible upland disposal alternatives are available and should have been selected, (2) that the management and monitoring plan was insufficient, (3) that potentially significant ocean fisheries may be affected, (4) that endangered marine mammals may be affected, (5) that EPA/COE Green Book testing processes are not valid, (6) that Tier IV sediment test procedures are questionable and should undergo public review, and (7) that bioassay test evaluations, current meter deployment, and sediment dispersion modeling were not done correctly. In response, the Navy concludes that: (1) Feasible and environmentally acceptable upland disposal alternatives are not available in the San Francisco Bay area as explained in the FSEIS, though consideration will be given to using upland disposal for the second phase of the project, (2) the management and monitoring plan currently being finalized by the COE and EPA will adequately ensure that the dredge, transport, disposal, and monitoring operations are conducted correctly and that operations will cease if unacceptable operations or environmental effects occur; (3) the regulatory and resource agencies and the commercial fishermen approve of this site regarding commercial and recreational fisheries effects, and (4) they agree that there will be no effects on endangered marine mammals, as documented in the FSEIS, (5) the EPA/COE Green Book is nationally accepted as the state of the art procedural guidance, and those agencies responsible for its implementation on this project have concluded that its procedures and their conclusions were handled correctly; (6) Tier IV testing would be done using protocols being developed with the EPA and COE, and proposed dredging and disposal of remaining sediments will be subject to public review before decisions are made; and (7) the regulatory and resource agencies, as well as the Navy, conclude that test evaluations, current meter deployment, and dispersion modeling were done correctly.

(d) The Environmental Protection Agency Region IX concurred with the adequacy of the FSEIS, the suitability of the proposed clean dredge sediment (1.2 million cubic yards), and the acceptability of the proposed disposal site. EPA requested that finalization of the dredge and disposal management and monitoring plan (FSEIS section 6) be coordinated among the EPA, COE, and the Navy. The Navy has been and will continue to coordinate the plan. EPA requested that the recently refined dredge quantity projections be published as an attachment to this ROD; they are shown above. EPA stated that a SEIS with full alternatives evaluation is the appropriate type of NEPA documentation to evaluate Tier IV testing and disposal options for the remaining sediments. The Navy acknowledges the potential need for alternatives analysis and an SEIS in the event of possible significant affects, but will leave the option open in the event that retesting results and/or future approved upland disposal alternatives exist such that an Environmental Assessment with formal public review would suffice.

The Navy has concluded that the dredging and disposal action are not likely to result in significant adverse impacts, and that the ocean site is the only feasible disposal site for this project.

Dated: March 17, 1993.

Elsie Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: March 18, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-6619 Filed 3-22-93; 8:45 am]

BILLING CODE 3810-AE-U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0068]

Clearance Request for Economic Price Adjustment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0068).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Economic Price Adjustment.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the

contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *7,200*; responses per respondent, *1*; total annual responses, *7,200*; preparation hours per response, *.25*; and total response burden hours, *1,800*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: March 15, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–6573 Filed 3–22–93; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0071]

Clearance Request for Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Price Redetermination.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *3,500*; responses per respondent, *2*; total annual responses, *7,000*; preparation hours per response, *1*; and total response burden hours, *7,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: March 15, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–6574 Filed 3–22–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 22, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extend that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: March 17, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Application for Grants for Desegregation Assistance Center, New and Continuation.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 40
Burden Hours: 1540
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The application is used by non-profit organizations to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for the College Facilities Loan Program.
Frequency: Annually.
Affected Public: Non-public institutions.
Reporting Burden:
Responses: 200
Burden Hours: 1,070
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Application is needed for eligible applicants to apply for loan funds authorized under Title VII, Part C of the Higher Education Act as amended. Application information is used to evaluate proposals and obligate loan funds. Respondents are institutions of higher education.

[FR Doc. 93–6565 Filed 3–22–93; 8:45 am]
BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: April 7, 1993.

TIME: 11 a.m. (ET).

LOCATION: 800 North Capitol Street, NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet April 7, 1993 from 11 a.m. until 12:30 p.m. to review and approve the agenda for the May 13–15, 1993 meeting of the Board. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: March 17, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–6532 Filed 3–22–93; 8:45 am]
BILLING CODE 4000–01–M

Office of Postsecondary Education

[CFDA Nos. 84.055A, 84.055B, 84.055C, and 84.055D]

Cooperative Education Program (Administrative, Demonstration, Research and Training and Resource Center Projects)

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshops for the Cooperative Education Program.

SUMMARY: The Acting Assistant Secretary for Postsecondary Education of the U.S. Department of Education will sponsor three Technical Assistance Workshops for colleges, universities, and public or private nonprofit agencies or organizations interested in applying for Cooperative Education grants for Administration, Demonstration, Research, and Training and Resource Center projects. These workshops will be conducted by representatives of the Division of Higher Education Incentive Programs and will cover the revised Title VIII statute and regulations governing Cooperative Education Program applications for new projects, application selection criteria, project budgets, and grant management and accountability issues. The sessions will be helpful to those applying for funding for new Administration, Demonstration, Research, and Training and Resource Center projects, as well as to current grantees.

DATES, TIMES, AND PLACES: The technical assistance workshops are scheduled as follows:

First Workshop

Date: March 24–25, 1993.
Time: 9 a.m. to 4 p.m., first day. 9 a.m. to 12 noon, second day.
Place: Newport Marriott Hotel, 25 America's Cup Avenue, Newport, RI 02840, telephone: (401) 849–1000, 1–800–458–3066 (outside Rhode Island).

Second Workshop

Date: April 19–20, 1993.
Time: 9 a.m. to 4 p.m., first day. 9 a.m. to 12 noon, second day.
Place: Catamaran Hotel, 3999 Mission Boulevard, San Diego, CA 92109, telephone: (619) 488–1081.

Third Workshop

Date: May 3–4, 1993.
Time: 9 a.m. to 4 p.m., first day. 9 a.m. to 12 noon, second day.
Place: Holiday Inn Crowne Plaza Hotel, 250 North Main Street, Memphis, TN 38103–1624, telephone: (901) 527–7300.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Payne or Dr. John E. Bonas, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Washington, DC 20202–5251. Their respective telephone numbers are (202) 708–8405 and (202) 708–9407. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

The workshops are free, but because of limited space, prospective participants for the April and May workshops must submit requests for registration forms in writing to the program officials listed in the preceding paragraph. However, you may request registration forms for the first workshop on March 24–25, 1993 by telephoning the Department of Education contact persons. You will need a registration form to be admitted to the workshop.

Program Authority: 20 U.S.C. 1133–1133c.

Dated: March 17, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–6566 Filed 3–22–93; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

NICE³ Pollution Prevention Grants

AGENCY: The Department of Energy (DOE) and the Environmental Protection Agency (EPA).

ACTION: Notice of Eligibility; Clarification.

SUMMARY: The DOE published a Notice concerning NICE³ Pollution Prevention Grants on November 6, 1992 (57 FR 53100). This notice is to clarify the goals of the NICE³ Program and applicant eligibility. The Office of Waste Reduction of the Department of Energy and the Pollution Prevention Division of the Environmental Protection Agency are jointly managing a State Grant Program entitled National Industrial Competitiveness through Efficiency, Energy, Environment and Economics (NICE³). The goals of the NICE³ Program are (1) to foster new industrial processes and/or equipment that can significantly reduce the generation of wastes in industry, improve energy efficiency and enhance the competitiveness of U.S. industry, (2) to encourage collaborative efforts among State agencies responsible for energy, environment and economic issues together with private sector industrial partners.

DATES: Applications must be received by April 30, 1993.

FOR FURTHER INFORMATION CONTACT: Technial Inquiry Service at National Renewable Energy Laboratory (NREL), 1617 Cole Boulevard, Golden, Colorado 80401—Telephone 303–231–7303—for referral to appropriate DOE Support Office.

SUPPLEMENTARY INFORMATION: NICE³ was created in 1991 as a pilot program for seven States (New York and New Jersey in Region II, Illinois and Ohio in Region V, Texas and Louisiana in Region VI and California in Region IX) to advance competitiveness through pollution prevention while conserving energy. Initial funding was $600,000, with DOE and EPA providing an equal amount of funds. The DOE Office of Waste Reduction and the EPA Office of Pollution Prevention were the two contributors. In 1991, three projects were funded in Ohio, Texas and New York.

The NICE³ Program continued as a pilot in the same four regions in 1992. $700,000 each was contributed by DOE and EPA for a total of $1.4 million. Six projects have been funded: three in Ohio, two in California and one in New Jersey.

Availability of FY 93 Funds. With this publication, DOE and EPA announcing the availability of up to $2.5 million in grant/cooperative agreement funds for fiscal year 1993. This third round of awards will be made through a competitive process. Size of the grants may range up to $400,000 and projects may cover a period of up to 3 years.

Restricted Eligibility: Eligible applicants for purposes of funding under this program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, specifically, State energy, environmental or economic agencies. For convenience, the term State in this notice refers to all eligible applicants. Local governments, State and private universities, private non-profits, private businesses, and individuals are not eligible. These organizations are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. DOE and EPA strongly encourage this type of cooperative arrangement in support of program goals.

The Catalogue of Federal Domestic Assistance number assigned to this program is 81.105. The $2.5 million in Federal funds are provided by DOE and EPA. Cost sharing is required by all participants. The Federal Government will provide up to 50% of the funds for the Project. The remaining funds must be provided by the eligible applicants and/or cooperating project participants. Cost-sharing beyond the 50 percent match is desirable. In addition to direct financial contributions, cost-sharing can include beneficial services or items, such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles. Industrial partners are required for a proposal to be considered responsive to this announcement and eligible for grant consideration. State involvement is required for a proposal to be responsive.

Eligible Activities: DOE and EPA seek projects that will encourage accelerated industrial development and dissemination of pollution reduction and energy conserving technologies, demonstrate successful industrial applications of innovative waste reduction techniques in conjunction with less polluting, energy-efficient technologies, and enhance industrial competitiveness through the introduction of cost effective waste reduction and energy efficient practices.

Evaluation Criteria: All proposals submitted under this Notice will be evaluated according to the conditions and specifications set forth in this solicitation.

Review Process: The first tier evaluation will be at the appropriate regional DOE Support Office. Proposals will receive a final review by a panel comprised of members representing DOE's Office of Conservation and Renewable Energy, the Environmental Protection Agency, and DOE and EPA field offices. More detailed information is available from NREL. (See telephone number above.)

DOE/EPA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice.

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 93–6616 Filed 3–22–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–23–NG]

Petro-Canada Hydrocarbons Inc., Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Petro-Canada Hydrocarbons Inc. authorization to export to Canada up to 150 Bcf of natural gas over a two-year term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 12, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–6614 Filed 3–22–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA93–1–31–001]

Arkla Energy Resources Company; Revised Annual PGA Filing

March 16, 1993.

Take notice that on March 11, 1993, Arkla Energy Resources Company (AER), a subsidiary of Arkla, Inc., tendered for filing six copies of the following revised tariff sheet to become effective April 1, 1993:

Rate Schedule No. X–26

Original Volume No. 3
Twenty-Second Revised Sheet No. 185.1

AER states that this tariff sheet is being refiled in AER's Annual PGA Filing to reflect a payment of $116,163 for prior period accruals received by AER from Williams Natural Gas Company which was inadvertently recorded as take-or-pay reimbursement at the time it was received.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6582 Filed 3–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–90–001]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

March 16, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on March 11, 1993, filed the following tariff sheet for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet No. 234–A

CNG requests an April 1, 1993, effective date.

The purpose of the tariff revision is to correct the pagination of a tariff sheet filed on March 1, 1993, in this proceeding.

CNG states that copies of this filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6580 Filed 3–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–32–000]

South Brunswick CoGen, L.P.; Application for Commission Determination of Exempt Wholesale Generator Status

March 17, 1993.

On March 11, 1993, South Brunswick CoGen, L.P. ("SBC"), a Delaware limited partnership, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. SBC is a Delaware limited partnership, whose sole general partner is South Brunswick CoGen (I), Inc., a wholly-owned subsidiary of Air Products & Chemicals, Inc. Air Products is the owner of the entire limited partnership interest in SBC. SBC will own a 120–170 MW (maximum net power production capacity) eligible facility located in Middlesex County, New Jersey. All electric power net of the facility's operating electric power will be purchased at wholesale by a New Jersey public utility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 5, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6584 Filed 3–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–12–29–000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

March 16, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on March 12, 1993 certain revised tariff sheets to Third Revised Volume No. 1 to its FERC Gas Tariff included in appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track a rate change attributable to the storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

Included in Appendix B attached to the filing is the explanation of the rate change and details regarding the computation of the revised S–2 rates.

Also included therein for filing is a revised tariff sheet which incorporates the Rate Schedule S–2 rate change proposed therein into a subsequent intervening rate filing which is currently pending Commission acceptance on the effective date reflected thereon.

TGPL states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6581 Filed 3–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–137–000 (Phase II)]

Transcontinental Gas Pipe Line Corporation; Informal Settlement Conference

March 17, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on March 26, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208–0740, Joanne Leveque at (202) 208–5705, or Lorna J. Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6583 Filed 3–22–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59960; FRL–4574–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93–50, 93–51, 93–52, 93–53, February 23, 1993.

Y 93–54, February 24, 1993.

Y 93–55, 93–56, 93–57, March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–50

Manufacturer. Confidential.

Chemical. (G) Acrylate polymer.

Use/Import. (G) Coatings for open, nondispersive use in original manufacture. Prod. range: Confidential.

Y 93–51

Manufacturer. Confidential.

Chemical. (G) Styrene-acrylic copolymer.

Use/Import. (G) A component used in coating for plastics. Prod. range: Confidential.

Y 93–52

Importer. Mitsui Petrochemical (America), LTD.

Chemical. (G) Dimethylcarbonate, polymer with poly (oxyalkylene) monomethyl ether.

Use/Import. (G) A component of a lubricating oil. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Static acute: LC50 96h > 10 mg/l (rainbow trout). Eye irritation: none (rabbit). Skin irritation: none (rabbit).

Y 93–53

Importer. Mitsui Petrochemical (America), Ltd.

Chemical. (G) Sorbitol hexakis(poly(oxyalkylene)ether(terminal OH)), polymer with bis(2-(2-methoxy-1-propoxy)-1-alkyl)carbonate.

Use/Import. (G) A component of a lubricating oil. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Acute static : LC50 96h > 4.0 mg/l (Rainbow trout).

Y 93–54

Manufacturer. Confidential.

Chemical. (G) Fatty acids, polymer with pentaerythritol, trimethylolpropane and aromatic acids.

Use/Production. (G) Coatings binder. Prod. range: Confidential.

Y 93–55

Manufacturer. Rhone-Poulenc, Inc.

Chemical. (G) Polymer of modified bisphenol A and aliphatic anhydrides.

Use/Production. (G) Fiber sizing agent. Prod. range: Confidential.

Y 93–56

Manufacturer. Confidential.

Chemical. (G) Oil tree isophthalic polymer.

Use/Production. (G) Printing ink resin. Prod. range: Confidential.

Y 93–57

Manufacturer. Confidential.

Chemical. (G) Oil tree isophthalic polyester.

Use/Production. (G) Printing ink resin. Prod. range: Confidential.

Dated: March 11, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–6606 Filed 3–22–93, 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–51816; FRL–4574–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 71 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93–494, 93–495, April 28, 1993.
P 93–496, 93–497, May 1, 1993.
P 93–498, April 3, 1993.
P 93–499, 93–500, 93–501, 93–502, 93–503, May 1, 1993.
P 93–504, 93–505, 93–506, 93–507, May 2, 1993.
P 93–508, 93–509, 93–510, 93–511, 93–512, 93–513, 93–514, 93–515, 93–516, May 3, 1993
P 93–517, 93–518, 93–519, 93–520, 93–521, 93–522, 93–523, 93–524, 93–525, 93–526, 93–527, 93–528, 93–529, 93–530, 93–531, May 4, 1993.
P 93–532, 93–533, May 5, 1993.
P 93–534, 93–535, 93–536, 93–537, 93–538, 93–539, 93–540, 93–541, May 8, 1993.
P 93–542, 93–543, 93–544, May 9, 1993.
P 93–545, 93–546, 93–547, 93–548, 93–549, May 10, 1993.
P 93–550, 93–551, 93–552, 93–553, 93–554, May 11, 1993.
P 93–555, 93–556, 93–557, 93–558, 93–559, 93–560, 93–561, 93–562, 93–563, 93–564, May 12, 1993.

Written comments by:

P 93–494, 93–495, March 29, 1993.
P 93–496, 93–497, April 1, 1993.
P 93–498, March 4, 1993.
P 93–499, 93–500, 93–501, 93–502, 93–503, April 1, 1993.
P 93–504, 93–505, 93–506, 93–507, April 2, 1993.
P 93–508, 93–509, 93–510, 93–511, 93–512, 93–513, 93–514, 93–515, 93–516, April 3, 1993.
P 93–517, 93–518, 93–519, 93–520, 93–521, 93–522, 93–523, 93–524, 93–525, 93–526, 93–527, 93–528, 93–529, 93–530, 93–531, April 4, 1993.
P 93–532, 93–533, April 5, 1993.
P 93–534, 93–535, 93–536, 93–537, 93–538, 93–539, 93–540, 93–541, April 8, 1993.
P 93–542, 93–543, 93–544, April 9, 1993.
P 93–545, 93–546, 93–547, 93–548, 93–549, April 10, 1993.
P 93–550, 93–551, 93–552, 93–553, 93–554, April 11, 1993.
P 93–555, 93–556, 93–557, 93–558, 93–559, 93–560, 93–561, 93–562, 93–563, 93–564, April 12, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51816]" and the specific number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. 201ET, Washington, DC 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–494

Manufacturer. Bedoukian Research, Inc.
Chemical. (S) 1,6,10,14-Hexadecatetraen-3,1-ol, 3,7,11,15-tetramethyl-(mixed isomers.
Use/Production. (S) Fragrance perfume, soap detergents, air fresheners, and scented paper. Prod. range: Confidential.

P 93–495

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) Bis(2,6-dimethoxybenzoly)-2,4,4-trimethylpentylpentylphosphine oxide.
Use/Production. (S) Photoinitiator for coating, including printing plates. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Eye irritation: none (rabbit). Mutagenicity: positive. Acute static: LC50 21.3 mg/l (zebra fish). Skin irritation: negligible (rabbit). Skin sensitization: positive (guinea pig).

P 93–496

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Acrylic copolymer.
Use/Import. (G) Acrylic copolymer for coatings. Import range: Confidential.

P 93–497

Importer. BASF Corporation.
Chemical. (G) Amine ethanol-ethylene oxide-propylene oxide polymer.
Use/Import. (G) Pigment dispersant. Import range: Confidential.

P 93–498

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane acrylate.
Use/Production. (S) Resin for UV curable coatings, inks, and adhesives. Prod. range: Confidential.

P 93–499

Importer. Marubeni America Corporation.
Chemical. (G) Boro complex.
Use/Import. (S) Additive to toners. Import range: 1,200–4,800 kg/yr.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Eye irritation: none (rabbit).Skin irritation: slight (rabbit). Skin sensitization: negative (guinea pig).

P 93–500

Manufacturer. BASF Corporation.
Chemical. (S) Cyclic poly(oxy-1,4-butanedily).
Use/Production. (S) Intermediate used for produce. Prod. range: Confidential.

P 93–501

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Adhesive; open, nondispersive use. Prod. range: Confidential.

P 93–502

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Silane grafted ethylene based polymer.
Use/Production. (G) Sealant-open, nondispersive use. Prod. range: Confidential.

P 93–503

Manufacturer. E.I. Du Pont De Nemours & Company, Inc.
Chemical. (G) Silane grafted ethylene based polymer.
Use/Production. (G) Sealant-open, nondispersive use. Prod. range: Confidential.

P 93–504

Manufacturer. Dow Corning Corporation.
Chemical. (G) Organo functional polydimethylsiloxane.
Use/Production. (S) Silicone textile/paper treatment. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Eye irritation: strong (rabbit). Skin irritation: moderate (rabbit).

P 93–505

Manufacturer. Confidential.
Chemical. (G) Polyisocyanate.
Use/Production. (G) Coatings, for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

P 93–506

Manufacturer. Confidential.
Chemical. (G) Polyester urethane.
Use/Production. (G) Coatings, for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

P 93–507

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified propylene glycol ether.

Use/Production. (S) Industrial cleaning formulation solvent in specialty industrial coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Inhalation: LC50 792 ppm 4hr (rat). Acute static: LC50 96H > 1,000 mg/l (guppy). Eye irritation: none (rabbit). Skin irritation: negligible (rabbit). Skin sensitization: negative (guinea pig).

P 93–508

Manufacturer. Confidential.

Chemical. (G) Alkyl silane resin.

Use/Production. (G) Component of aqueous coating formulations. Prod. range: Confidential.

P 93–509

Manufacturer. Confidential.

Chemical. (G) Mixture of reaction products of diphenyl methane diisocyanate polymer; oxirane, methyl-, polymer with oxirane; and alkanolamine with methacrylate end groups.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 93–510

Manufacturer. Confidential.*Chemical.* (G) Blocked isocyanate - terminated polyurethane.

Use/Production. (G) Component of industrial adhesive. Prod. range: Confidential.

P 93–511

Manufacturer. Confidential.

Chemical. (G) Hydrocarbon modified rosin resin.

Use/Production. (S) Floor covering adhesive. Prod. range: Confidential.

P 93–512

Importer. Akrochem Coporation.

Chemical. (G) Zinc dialkylidithiocarbamate.

Use/Import. (S) Accelerator for dry rubber powder, polymer-bound masterbatch, latex powder and polyolefines powder. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute static: LC50 96hr 10 mg/l (rainbow trout). Mutagenicity: negative. Skin sensitization: positive (guinea pig).

P 93–513

Manufacturer. The Dow Chemical Company.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for paper coating applications. Prod. range: Confidential.

P 93–514

Manufacturer. Confidential.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for paper coating applications. Prod. range: Confidential.

P 93–515

Manufacturer. Confidential.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for paper coating applications. Prod. range: Confidential.

P 93–516

Manufacturer. Confidential.

Chemical. (G) Proprietary modified carboxylated styrene butadiene polymer.

Use/Production. (S) Latex binder for paper coating applications. Prod. range. Confidential.

P 93–517

Manufacturer. Confidential.

Chemical. (G) Amine compound with arylsulfonic acid.

Use/Production. (G) Coating additive. Prod. range: 40,000–100,000 kg/yr.

P 93–518

Manufacturer. Confidential.

Chemical. (G) Amine compound with arylsulfonic acid.

Use/Production. (G) Coating additive. Prod. range: 40,000–100,000 kg/yr.

P 93–519

Manufacturer. Confidential.

Chemical. (G) Amine compound with arylsulfonic acid.

Use/Production. (G) Coating additive. Prod. range: 40,000–100,000 kg/yr.

P 93–520

Manufacturer. Confidential.

Chemical. (G) Amine compound with arylsulfonic acid.

Use/Production. (G) Coating additive. Prod. range: 40,000–100,000 kg/yr.

P 93–521

Manufacturer. Confidential.

Chemical. (G) Amine compound with arylsulfonic acid.

Use/Production. (G) Coating additive. Prod. range: 40,000–100,000 kg/yr.

P 93–522

Manufacturer. Confidential.

Chemical. (G) Polyurethane polymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–523

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–524

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–525

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–526

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–527

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–528

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–529

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–530

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Paint. Prod. range: Confidential.

P 93–531

Manufacturer. Confidential.

Chemical. (G) Mixture of reaction products of diphenyl methane disocyanate polymer; oxirane, methyl-, polymer with oxirane; and alkanolamine with methacrylate end group.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 93–532

Importer. Confidential.

Chemical. (G) Substituted alcohol.

Use/Import. (G) Purification agent. Import range: Confidential.

Toxicity Data. Acute oral: LD50 1,500 mg/kg (rat). Acute dermal: LD50 4.92 g/kg (rabbit). Inhalation: LC50 > 5 g/kg 6

dys (rats). Eye irritation: strong (rabbit). Skin irritation: slight (rabbit). Mutagenicity: negative.

P 93–533

Manufacturer. Confidential.
Chemical. (G) Substituted benzene diazonium.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–534

Manufacturer. Confidential.
Chemical. (G) Aromatic disulfide.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–535

Manufacturer. Confidential.
Chemical. (G) Substituted triazine.
Use/Production. (G) Compounding ingredient for rubber. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Eye irritation: none (rabbit). Skin irritation: negligible (rabbit).

P 93–536

Manufacturer. Confidential.
Chemical. (G) Substituted triazine.
Use/Production. (G) Compounding ingredient for rubber. Prod. range: Confidential.
Toxicity Data. Eye irritation: slight (rabbit). Skin irritation: negligible (rabbit).

P 93–537

Importer. MTC America, Inc.
Chemical. (G) Copolymer of glycidyl methacrylate, acrylonitrile and methacrylic esters.
Use/Import. (G) Binder for film coating. Import range: Confidential.

P 93–538

Manufacturer. Ashland Chemical.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–539

Importer. Granmont Inc.
Chemical. (G) Liquid crystalline aromatic polyester.
, *Use/Import.* (S) Function: specialty high temp. polymer application: engineering thermoplastic injection molding resin. Import range: Confidential.

P 93–540

Manufacturer. Ashland Chemical.
Chemical. (G) Saturated polyester.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 93–541

Manufacturer. Ashland Chemical.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Open, dispersive use. Prod. range: Confidential.

P 93–542

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–543

Importer. Dow Chemical Coporation.
Chemical. (G) Epoxy-functional polyalkylsiloxane.
Use/Import. (S) Silicone plastics adhesive. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Eye irritation: none (rabbit).Skin irritation: negligible (raait). Mutagenicity: negative.

P 93–544

Manufacturer. Confidential.
Chemical. (G) Isocyenate reaction products with primary amines.
Use/Production. (G) Lubricant additive. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat).

P 93–545

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) Ethanamine, 2-((2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo (d,f)(1,3,2) dioxaphosphepin-6-yl)oxy)-*N,N*-bis(2-((2,4,8,10-tetrakis(1,1-dimethylethyl) dibenzo(d,f)(1,3,2)dioxaphosphepin-6-yl)oxy)ethy)-.
Use/Production. (S) Process stabilizer (secondary antioxidant) for primarily polyolefins. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Eye irritation: slight (rabbit). Skin irritation: slight (rabbit). Mutagenicity: negative.

P 93–546

Importer. Confidential.
Chemical. (G) Dibasic acid/ glycol ester urethane.
Use/Import. (G) Used in combination with other resins for the manufacture of sheet molding compound (SMC). Import range: Confidential.

P 93–547

Manufacturer. Confidential.
Chemical. (G) Synthetic terpene dimer oil.
Use/Production. (G) Pesticide adjuvant. Prod. range: Confidential.

P 93–548

Manufacturer. Confidential.
Chemical. (S) Hydroxybutyl vinyl ether; 3-isocyanatopropyl triethoxy silane.
Use/Production. (S) A radiation curable coating for industrial use. Prod. range: Confidential.

P 93–549

Importer. Confidential.
Chemical. (S) 1,4-Dioxaspiro(4,5)decane-2-methano 1,9-methyl-6-(1-methylethyl)-.
Use/Import. (G) Additive for consumer produces; dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: LD50 5,716 mg/kg (rat). Acute dermal: LD50 20,000 mg/kg (rat). Eye irritation: strong (rabbit). Mutagenicity: negative.Acute static: LC50 48h 32 mg/l (daphnia magna). Skin irritation: moderate (rabbit). Skin sensitization: positive (guinea pig).

P 93–550

Manufacturer. Pi-Tech, Inc.
Chemical. (S) Bis hydrogen zirconium IV tris (ditridecyl) diphosphate.
Use/Production. (S) Manufacture conversion to other derivative process aid/surfactant. Prod. range: Confidential.

P 93–551

Manufacturer. Pi-Tech, Inc..
Chemical. (S) Bis hydrogen, zirconium IV tris(ditridecyl) diphosphate.
Use/Production. (S) Manufacture conversion to other derivatives process aid/surfactant. Prod. range: Confidential.

P 93–552

Importer. Mitsubishi Yuka America, Inc.
Chemical. (S) *N,N'*-(2,2'-Dimethyl-4,4'-methylenediphenylene)bis maleimide.
Use/Import. (S) Heat resistant resin for printed circuit board, coating, electronics insulation and carbon fiber plastic. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: LD50 > , 5,000 mg/kg (rat). Acute static: LC50 0.5 mg/l (oryzias latipre). Skin irritation: negligible (rabbit). Mutagenicity: negative.

P 93–553

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted benzofurane sulfonic acid derivative.
Use/Import. (G) Detergent additive. Import range: Confidential.

P 93–554

Importer. Marubeni Specialty Chemicals Inc.
Chemical. (G) Collagen.
Use/Import. (S) Additive for artificial leathers, paints and coating agents

textile treatment agents. Import range: 12,000–60,000 kg/yr.

P 93–555

Manufacturer. Confidential.

Chemical. (S) 1-Chloro-4-*N*-propoxy-9*H*-thioxanthen-9-one.

Use/Production. (G) Photo initiator. Prod. range: Confidential.

P 93–556

Manufacturer. The C. P. Hall Company.

Chemical. (G) Neopentyl glycol diester.

Use/Production. (G) Carrier/binder. Prod. range: Confidential.

P 93–557

Manufacturer. Confidential.

Chemical. (G) Copolyester.

Use/Production. (G) Structural material. Prod. range: Confidential.

P 93–558

Manufacturer. Arizona Chemical.

Chemical. (G) Rosin ester.

Use/Production. (G) Prod. range: Confidential.

P 93–559

Manufacturer. The Dow Chemical Copmany.

Chemical. (G) Fluorinated cyclophospazene.

Use/Production. (S) Magnetic media lubricant. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Eye irritation: slight (rabbit). Skin irritation: negligible (rabbit).

P 93–560

Manufacturer. The Dow Chemical Company.

Chemical. (G) Fluorinated cyclophospazone.

Use/Production. (S) Magnetic media lubricant. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Eye irritation: slight (rabbit). Skin irritation: negligible (rabbit).

P 93–561

Manufacturer. Elf Atochem North America/Wire Mill.

Chemical. (S) Reaction product of ethylenediamine, phosphoric acid, and oleic acid.

Use/Production. (G) Wire drawing lubricant. Prod. range: Confidential.

P 93–562

Manufacturer. EiChrom Industries, Inc.

Chemical. (S) Phosphonic acid ethenylidene bis-, tetrakis(1-methyl) ester.

Use/Production. (S) Monomer in production of ion exchange resin. Prod. range: Confidential.

P 93–563

Importer. International Specialty Chemical.

Chemical. (G) Alkoxylated alkyl phenol.

Use/Import. (G) Lubricant additive. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute static: LC50 96h > 1,000 mg/l (rainbow trout). Eye irritation: slight (rabbit). Skin irritation: slight (rabbit).

P 93–564

Importer. International Specialty Chemicals, Inc.

Chemical. (G) Phosphate ester of alkoxylated alkylphenol.

Use/Import. (G) Lubricant additive. Import range: Confidential.

Dated: March 11, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–6607 Filed 3–22–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 16, 1993

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Station.

Form Number: FCC Form 323–E.

Action: Extension of a currently approved collection.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 600 responses; 4 hours average burden per response; 2,400 hours total annual burden.

Needs and Uses: Each licensee/permittee of a noncommercial AM, FM and TV station is required to file an FCC Form 323–E within 30 days of the date of grant by the FCC of an application for original construction permit and after any changes occur in the information called for in the form; and in conjunction with a renewal application. Licensees with current unamended Ownership Reports on file at the Commission may so indicate on their renewal applications and be relieved of the obligation to file a new Ownership Report. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the "Multiple Ownership" requirements as set forth in the Commission's rules.

OMB Number: 3060–0386.

Title: Section 73.1635, Special Temporary Authorizations (STA).

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,940 responses; 4 hours average burden per response; 11,760 hours total annual burden.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file a request for special temporary authority (STA) to operate a broadcast facility for a period not to exceed 180 days at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station. Specifically, permittees or licensees must submit a letter to the FCC describing the proposed operation and the need for such authority at least 10 days prior to the date of the proposed operation, except when the special temporary authority is necessitated by unforeseen circumstances. In such cases, parties may notify the FCC by alternative means (e.g., telephone, telegram, facsimile) followed by a letter of confirmation. The data are used by FCC staff to determine whether a grant of the requested special temporary authority will maintain adequate compliance with technical and legal regulations to ensure that interference will not be caused to other stations.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 93–6543 Filed 3–22–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

OTC Drugs Advisory Committeee

Date, time, and place. April 8 and 9, 1993, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 8, 1993, 8 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, April 9, 1993, 8 a.m. to 1 p.m., open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 5 p.m.; Mae Brooks or Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 1, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 8, 1993, the committee will discuss the role and appropriate dosage ranges of caffeine as an adjuvant in analgesic drug products. The agency's evaluation of data concerning caffeine as an adjuvant in analgesic drug products was discussed in comments 91 and 92 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products published in the **Federal Register** of November 16, 1988 (53 FR 46204 at 46244 and 46245). Additional data submitted since that time will be considered by the committee. The committee's discussion and recommendations on caffeine will be considered by the agency in its preparation of a final monograph for OTC internal analgesic drug products. On April 9, 1993, the committee will discuss portions of a citizen's petition related to continued marketing of OTC antidiarrheal drug products containing attapulgite, kaolin, and pectin. The committee will also discuss the role of oral rehydration therapy in the treatment of diarrhea. The petition under docket number 93P–0011 is available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The agency's evaluation of data concerning these ingredients was discussed in comments 15, 23, and 24 of the tentative final monograph for OTC antidiarrheal drug products published in the **Federal Register** of April 30, 1986 (51 FR 16138 at 16142 and 16145). Additional data submitted since that time will be considered by the committee. The committee's discussion and recommendations on these ingredients will be considered by the agency in its preparation of a final monograph for OTC antidiarrheal drug products.

Closed committee deliberations. On April 8, 1993, the committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 12, 13, and 14, 1993, 8:30 a.m., Hubert H. Humphrey Bldg., rms. 503–529A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, April 12, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, April 13, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, April 14, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendation for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 1, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for one or more implantable cardioverter defibrillator devices, prosthetic cardiac valves, and interventional cardiology devices.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to

permit discussion of this information (5 U.S.C. 552b(c)(4)).

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. April 29 and 30, 1993, 9 a.m., Bethesda Ramada Inn, Ambassador Room, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 29, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; closed presentation of data, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 1 p.m.; open committee discussion, 1 p.m. to 5 p.m.; open public hearing, April 30, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1180.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 15, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss home uterine activity monitors (HUAM's) used for the early detection of preterm labor. The committee will review and make recommendations on premarket approval applications for HUAM's. The committee will also review and discuss draft guidelines for testing HUAM's.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding home uterine activity monitors. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding home uterine activity monitors. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 15, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–6531 Filed 3–22–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Announcement of Proposed Definitions, Post-Residency Activities, and Student Agreement for Primary Health Care and General Dentistry Service for the Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Programs

SUMMARY: The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408, dated October 13, 1992) amend the Exceptional Financial Need (EFN) Scholarship Program, now found in section 736 of the Public Health Service (PHS) Act, and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Program, now found in section 740 of the PHS Act. Both programs now contain service obligation provisions, requiring each scholarship recipient in schools of medicine, osteopathic medicine and dentistry to agree as follows:

(1) To complete the program of education for which the scholarship funds are received;

(2) In the case of an individual attending a school of medicine or osteopathic medicine, to:

(a) Enter and complete a residency training program in primary health care not later than 4 years after completing the program of education for which the scholarship funds are received; and

(b) Practice in primary health care for 5 years after competing the residency training program; and

(3) In the case of an individual attending a school of dentistry, to practice in general dentistry for 5 years (exclusive of any period during which the individual is attending a residency training program in general dentistry).

This notice will describe program elements necessary to implement the new provisions, proposed definitions of "residency training program in primary health care" and "residency training program in general dentistry", proposed acceptable and unacceptable post-residency activities, and a proposed student agreement for primary health care and general dentistry service.

EFFECTIVE DATE: The program elements described in this notice are proposed for use in fiscal year (FY) 1993 and would become effective with scholarships made to medical, osteopathic medical, and dental students on or after July 1, 1993. Public comments are invited on the proposed definitions, post-residency activities and student agreement. The comments will be considered prior to the publication of the final notice.

Proposed Definition of "Residency Training Program in Primary Health Care" and "Residency Training Program in General Dentistry"

Section 723(d)(5) of the PHS Act defines the term "primary health care" as family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice. The adjective "general" is not used as a modifier of internal medicine and pediatrics training programs. Residency programs that focus on training generalists are not separately approved by the Accreditation Council for Graduate Medical Education (ACGME) or listed in the National Resident Matching Program based on uniform criteria. Thus, it is difficult to discern in any given year which programs should be considered as "general". General internal medicine and general pediatrics "practice" is ultimately defined by decisions residents make following the completion of their 3-year residency programs.

"Residency Training Program in Primary Health Care" is defined as a 3-year residency program in allopathic family medicine, internal medicine, pediatrics, or preventive medicine approved by the ACGME, or a 2–3 year osteopathic residency program in internal medicine, pediatrics, preventive medicine or general practice (including an internship which emphasizes family medicine) approved by the American Osteopathic Association. Two-year osteopathic general practice programs that have not as yet converted to 3 years would also be considered primary health care residency programs for purposes of the EFN and FADHPS programs.

The allopathic and osteopathic programs are described separately to make it clear that approved osteopathic internal medicine, pediatrics and preventive medicine programs are included.

The osteopathic profession is converting its residency training programs from two years of post-doctoral training to three years of training. The authorizing legislation does not differentiate based on length of training. Therefore, both are acceptable training programs for the maintenance of physician eligibility under the EFN and FADHPS programs.

A "residency training program in general dentistry" shall include the following:

(1) Programs of advanced education for general dentistry, general practice residency programs, and pediatric dental residency programs, provided that they are accredited by the Commission on Dental Accreditation;

(2) Dental public health residency programs accredited by the Commission on Dental Accreditation (which may include one academic year in a program accredited by the Council on Education for Public Health, leading to the degree of Master's in Public Health or a similar graduate degree in public health); and

(3) Other continuous advanced education programs in general dentistry that are sponsored by an institution of higher education and that are recognized entities within the institution's administrative structure, as approved by the Secretary on a case-by-case basis.

This definition is intended to assure that a scholarship recipient is permitted to pursue any recognized advanced training program that would further his or her knowledge of general dentistry, including pediatric dentistry and dental public health. It also prohibits scholarship recipients from specializing in orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

Proposed Post-Residency Activities

Acceptable activities: Medical and osteopathic medical residency graduates who will qualify to meet the new service obligation requirement under the EFN and FADHPS programs include: (1) Generalist physician

graduates of a 3-year program in family practice, internal medicine or pediatrics who enter clinical practice; (2) preventive medicine graduates who practice in the primary health care fields of clinical preventive medicine, occupational medicine, or public health; (3) senior (chief) residents in a generalist or preventive medicine specialty; (4) faculty, administrators, or policy makers who maintain certification in one of the primary health care disciplines; (5) family physicians and internists who obtain a certificate of added qualification in geriatrics; and (6) internists and pediatricians who enter training to qualify for a certificate of added qualification in adolescent medicine or board certification in adolescent pediatrics.

An individual shall be considered to be "practicing in general dentistry" as long as he or she is working in the field of dentistry and has not specialized in, or has not limited his or her practice to, orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology.

Unacceptable activities: Physicians who will not meet the service obligation requirement under the EFN and FADHPS programs include those who: (1) Enter medical or pediatric subspecialty training (e.g., cardiology, gastroenterology); (2) enter training to qualify for a certificate of added qualification in sports medicine; (3) receive subspecialty certification; or (4) enter a non-primary health care specialty (e.g., obstetrics/gynecology, surgery, dermatology, radiology).

Dental scholarship recipients who specialize in orthodontics, endodontics, oral surgery, prosthodontics, periodontics, or oral pathology would be considered to be in breach of their service commitments.

In establishing this new service obligation requirement, Congress has recognized that access to affordable quality health care is dependent on a better balance between primary care and other specialties. Today only one-third of all physicians are in the generalist disciplines and less than one percent are in preventive medicine. At the same time the Nation has a growing supply of medical specialists which hinders efforts to expand access to primary care and control costs. Therefore, Congress has determined that these scholarship funds should be awarded on a targeted basis that supports the Nation's need for more generalist or public health physicians or general or public health dentists.

The authorizing legislation requires EFN and FADHPS participants to practice in primary health care or general dentistry for a period of 5 years following residency training. The above lists of post-residency activities are an attempt to cover most of the general categories of potential activities that scholarship recipients are likely to be engaged in and to thereby indicate how all activities will be evaluated. The principal criterion used to assess questionable activities was the likelihood that physicians or dentists engaged in the activity will have a long-term commitment to the delivery and promotion of primary health care and general dentistry services through practice, teaching, administration or policy activities.

Proposed Student Agreement for Primary Health Care and General Dentistry Service

The following Student Agreement for Primary Health Care and General Dentistry Service implements the new service obligation provisions applicable to sections 736 and 740 of the PHS Act and sets forth new requirements found in sections 795(b) of the PHS Act with respect to breach of service obligation, waiver or suspension of liability, and repayment requirements.

Exceptional Financial Need (EFN) and Financial Assistance for Disadvantaged Health Professions Students (FADHPS); Scholarship Programs; Student Agreement for Primary Health Care and General Dentistry Service; Academic Year 1993–94

A. My Obligations as a Scholarship Recipient

I understand that by accepting the EFN/FADHPS Scholarship, I am agreeing to the terms outlined below:

(1) I will complete the program of education with respect to which such assistance is provided;

(2) If I receive such assistance to attend a school of medicine or osteopathic medicine, I will

(a) Enter and complete a 3-year residency program in allopathic family medicine, internal medicine, pediatrics, or preventive medicine approved by the Accreditation Council for Graduate Medical Education (ACGME); or a 2–3 year osteopathic residency program in internal medicine, pediatrics, preventive medicine or general practice (including an internship which emphasizes family medicine) approved by the American Osteopathic Association, not later than 4 years after completing the program of education for which I received such assistance, and

(b) Practice in one of the primary health care specialties identified in paragraph (2)(a) for 5 years after completing the training identified in paragraph (2)(a).

(3) If I receive such assistance to attend a school of dentistry, I will practice in general dentistry for 5 years (exclusive of any period during which I am attending a residency training program in general dentistry).

(4) To receive the Scholarship, I must be a full-time (as determined by the health professions school) student at a school participating in the EFN/FADHPS Scholarship Program;

(5) I must maintain "good standing" as defined by the school;

(6) I must provide the school with all information regarding my financial resources and sources of income that the school requires to conduct a formal needs analysis;

(7) I am aware that the Scholarship pays my tuition and other reasonable educational expenses, as determined by the school, including fees, books and laboratory expenses for a full academic year, but does not provide for any costs of living;

(8) I must keep the school informed at all times of any changes which affect my continued eligibility for the Scholarship, such as withdrawal from the health professions program;

(9) I must attend an entrance interview with school officials before or at the time I sign this contract to discuss the terms of my Scholarship and service obligation and the penalties for not meeting my obligation;

(10) I must provide the school with personal information that would make it possible for the school and the Federal Government to locate me if I fail to keep them informed of my location. This information will include, at a minimum, my current or permanent address, my telephone number, the names, addresses, and telephone numbers of my parents or other close relatives that may be contacted. I will also provide other information as requested, including for example: State driver's license number and expiration date, names, addresses and telephone numbers of other personal references, and the State(s) in which I plan to practice primary care or general dentistry;

(11) I must keep the school informed at all times of any changes in the above information until I complete my service obligation as a primary care or general dentistry practitioner;

(12) Prior to graduating or leaving school for any reason, I must attend an exit interview with school officials to review information regarding eligible practice activities, to update personal information (as described in Item 10

above) and to review the terms of my service obligation and the penalties for not meeting the obligation. Should the school not inform me of a date and time for this interview, I must request an interview from the appropriate school officials.

B. Penalties If I Fail To Comply With Agreement

I understand that I am liable to the Federal Government (Department of Health and Human Services, DHHS) for the entire amount of any scholarship funds I have received and for interest on such amount at the maximum legal prevailing rate, if I

(1) Fail to maintain an acceptable level of academic standing in the program of education (as indicated by such program in accordance with requirements established by the Secretary);

(2) Am dismissed from the program for disciplinary reasons;

(3) Voluntarily terminate the program; or

(4) Fail to begin or complete the service obligation required by this contract in accordance with the terms of the contract.

In the event of my failure to comply with the terms of the contract for any of the above reasons, the Scholarship funds become a debt owed to the Federal Government and I must repay all Scholarship funds that I received under this contract, plus interest, at the maximum prevailing rate, as determined by the Treasury Department. I will be required to repay this amount in full within 3 years of the date that the Secretary determines that I failed to comply with the terms of this contract and will be required to make payments during the three years, in accordance with a repayment schedule which the Secretary will provide to me. If I fail to make payments when they are due in accordance with the repayment schedule, I understand that the Federal Government will actively pursue me to collect the debt. This may include the use of collection agents, reporting the debt to credit bureaus, and other collection procedures (such as addition of late charges under the Department's Claims Collection Regulations).

C. Cancellation, Suspension, and Waiver of Obligation

I understand that my service or payment obligation may be canceled, suspended, or waived under certain circumstances described below:

(1) Should I die or become permanently and totally disabled, the Secretary will cancel my obligation under this contract. To receive cancellation in the event of my death, the executor of my estate must submit an official death certificate to the Secretary. To receive cancellation for permanent and total disability, I or my representative must apply to the Secretary, submitting medical evidence of my condition, and the Secretary may cancel this obligation in accordance with applicable Federal statutes and regulations;

(2) Upon receipt of supporting documentation the Secretary may waive or suspend my service or payment obligation under this contract if the Secretary determines that: (a) my meeting the terms and conditions of the contract is impossible or would involve extreme hardship; and, (b) enforcement of the obligations would be unconscionable. Supporting documentation should be submitted to: Division of Student Assistance, Student and Institutional Support Branch, Room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

D. Scholarship Renewal and Extension of Contract

This contract provides funding for *one year only*. Renewal of the contract is at the discretion of the school and is subject to the availability of funds.

EFN/FADHPS CONTRACT 1993–94

Tuition $ _____
Other Education Costs $ _____
Total $ _____
Name of Recipient _____
Mr _____
Ms _____
Permanent Address _____
City, State, Zip Code _____
Social Security Number _____ (voluntary)
Anticipated Graduation Date _____
Discipline _____

Scholarship Recipient: By my signature below, I certify that I have read and understand my rights and obligations under this contract.

_____
Signature of Scholarship Recipient

_____
Date

Grantee Institution: I understand that this award is made upon the terms, conditions and obligations specified in this contract.

_____
Grantee Institution (NAME)

_____
Signature of Authorizing Official

_____
Date

ANY PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT OR MISREPRESENTATION OR COMMITS ANY OTHER ILLEGAL ACTION IN CONNECTION WITH THE EFN/FADHPS SCHOLARSHIP PROGRAMS IS SUBJECT TO A FINE OR IMPRISONMENT UNDER FEDERAL STATUTE.

Additional Information

Interested persons are invited to comment on the proposed definitions, post-residency activities and student agreement for primary health care and general dentistry service. The comment period is 30 days. All comments received on or before April 22, 1993, will be considered before the final definition and other program elements are established. Written comments should be addressed to: Mr. Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Student Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Dated: March 17, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–6578 Filed 3–22–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given that the meeting of the Program Project Task Force, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, scheduled for March 23, 1993 and published in the **Federal Register** (58 FR 13605) on March 12, 1993, is hereby canceled due to scheduling conflicts.

For further information, please contact Mrs. Barbara S. Bynum, Executive Secretary, P01 Program Project Task Force, National Cancer Institute, Executive Plaza North, room 600A, 9000 Rockville Pike, Rockville, Maryland 20892–9903 (301) 496–5147.

Dated: March 17, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–6560 Filed 3–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: April 15, 1993.

Time of Meeting: 10 a.m. until adjournment.

Place of Meeting: Telephone Conference Call—room 400B, 6120 Executive Boulevard, Rockville, Maryland.

Agenda: Review of K08 Application.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400B, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: March 16, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–6561 Filed 3–22–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–4210–04; WYW 106566]

Notice of Conveyance and Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land in Sheridan County for private land in Sheridan County.

SUMMARY: This notice advises the public of completion of an exchange of Federal surface estate for private surface estate, between the United States, Bureau of Land Management, and Giles Pritchard-Gordon and Veronica Pritchard-Gordon, and The Sussex Cattle Company, under the authority of section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307–775–6115.

SUPPLEMENTARY INFORMATION: The Federal surface estate of the following described land has been conveyed to The Sussex Cattle Company of Sheridan, Wyoming:

Sixth Principal Meridian, Wyoming

T. 57 N., R. 77 W.,
Sec. 32, lot 6.
The land described contains 44.02 acres.

1. In exchange for the Federal surface estate described above, the United States acquired the following described surface estate:

Sixth Principal Meridian, Wyoming

T. 57 N., R. 77 W.,
Tract 51.
The land described contains 40.00 acres.

2. The fair market value of the private land conveyed to the United States is $1,600.00. The fair market value of the Federal land conveyed to The Sussex Cattle Company is $1,760.00. A cash equalization payment of $160.00 was paid by The Sussex Cattle Company to the Bureau of Land Management.

3. At 9 a.m. on April 22, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m., April 22, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: March 11, 1993.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 93–6571 Filed 3–22–93; 8:45 am]

BILLING CODE 4310–22–M

[CO–930–4210–06; COC–48691]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw an additional 4,874.06 acres of National Forest System land adjacent to an existing withdrawal near Vail, Colorado, to protect recreational facilities and high resource values at the Vail Ski Area. This proposed action will withdraw the entire 13,214.64 acres of National Forest System land for 20 years. This notice closes the 4,874.06 acres to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to such forms of disposition as may by law be made of National Forest System lands.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before June 21, 1993.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303/239–3708.

SUPPLEMENTARY INFORMATION: On March 5, 1993, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 80 W.,
Sec. 25, SW¼, W½W½SE¼;
Sec. 26, S½;
Sec. 28, S½;
Sec. 29; S½;

The above-described lands are contiguous to the southerly boundary of the Vail Ski Area withdrawal described in Public Land Order No. 6785, **Federal Register**, Vol. 55, page 27822.

Sec. 30, SE¼NE¼;
Sec. 32, NE¼, E½NW¼, E½SE¼, N½NW¼SE¼ and N½NE¼SW¼;
Sec. 33, All;
Sec. 34, All;
Sec. 35, All;
Sec. 36, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
T. 6 S., R. 80 W.,
Sec. 3, lots 5, 6, 7, 8, 9 and 10;
Sec. 4, lots 5, 6, 7, 8, 9, 10, 11, 12, and S½N½;
Sec. 5, lots 5, 6, 11, 12, and S½NE¼.

The area described aggregates approximately 4,874.06 acres in Eagle County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection

with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, Section 2351.16B. A notice of the date, time and place of the meeting will be published in the **Federal Register** at least 30 days prior to the meeting. This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Dated: March 12, 1993.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–6572 Filed 3–22–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Subsistence Resource Commission

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Roll call and review of agenda.
(2) Approval of summary of minutes.
(3) Superintendent's welcome:
  a. Introduction of guests.
  b. Review of SRC function, purpose and charter.
(4) Superintendent's Report.
(5) Election of Chairperson.
(6) Old Business:
  a. Dalton Highway Corridor issues.
  b. Resource Management Plan discussion.
  c. ATV agreement update.
  d. Federal Subsistence Management Program update.
  e. Review comments on Hunting Plan Recommendation #6.
  f. Battles Road update.
  g. Moose Survey.
(7) New Business:
  a. Secretarial response to draft Hunting Plan.
  b. Resident zone communities.
  c. Traditional use areas.
  d. Customary and traditional use determinations.
(8) Public and other agency comments.
(9) Set time and place of next SRC meeting.

DATES: The meeting will be held Tuesday through Thursday, April 13–15, 1993. Each day's meeting will begin at 9 a.m. and conclude around 5 p.m. (noon on Thursday).

LOCATION: The meeting will be held at the Sophie Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, PO Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

John M. Morehead,

Regional Director.

[FR Doc. 93–6622 Filed 3–22–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 13, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 7, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Mulvenon Building, 230 W. Gurley St., Prescott, 93000287

CALIFORNIA

San Francisco County

Jackson Brewing Company, 1475–1489 Folsom St. and 319–351 11th St., San Francisco, 93000284

COLORADO

Hinsdale County

Rose Lime Kiln, Co. Rd. 20 SW of Lake City, Lake City vicinity, 93000293

CONNECTICUT

Fairfield County

Bartlett, Daniel and Esther, House, 43 Lonetown Rd., Redding, 93000290

Hartford County

Central Avenue—Center Cemetery Historic District (East Hartford MPS), Center Ave. from Main St. to Elm St. and Center Cemetery to the N, East Hartford, 93000289

Windham County

North Grosvenordale Mill Historic District, Riverside Dr. (CT 12), Buckley Hill Rd., Floral Ave., Market La., and Marshall, Central River, and Holmes Sts., Thompson, 93000288

FLORIDA

Brevard County

Whaley, Marion S., Citrus Packing House, 2275 US 1, Rockledge, 93000286

Volusia County

Holly Hill Municipal Building, 1065 Ridgewood Ave., Holly Hill, 93000285

LOUISIANA

Jefferson Davis Parish

Mahaffey, T.C., House, 802 Cary, Jennings, 93000292

MASSACHUSETTS

Suffolk County

Congregation Agudath Shalom, 145 Walnut St., Chelsea, 93000283

MONTANA

Carbon County

Gebo Cemetery, Co Rd. linking Gebo and Fromberg, Fromberg vicinity, 93000291

A proposed move is being considered for the following property:

CALIFORNIA

Butte County

Magalia Community Church, Stirling Hwy. Magalia, 82002172.

[FR Doc. 93–6623 Filed 3–22–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information

collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.
Bureau/Office: Office of Economics.
Title of Form: Annual Survey Form for Certain Switching and Terminal Companies.
OMB Form Number: 3120–0111.
Agency Form Number: Switching and Terminal Companies (S and T).
Frequency: Annually.
No. of Respondents: 18.
Total Burden Hours: 72.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6594 Filed 3–22–93; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. MC–95 (Sub-No. 8)]

Adequacy of Intercity Motor Common Carrier Passenger Service

AGENCY: Interstate Commerce Commission.

ACTION: Bus study; extension of comment due date.

SUMMARY: By notice served March 5, 1993 (58 FR 13282, March 10, 1993), the Commission requested comments by April 9, 1993, on several topics related to the adequacy of service in the motor carrier passenger industry and certain carrier practices. By letter filed March 11, 1993, United Bus Owners of America (UBOA) and the American Bus Association (ABA) jointly request an extension of not less than 30 days to file comments. UBOA and ABA state additional time is needed to advise their members of the proceeding and prepare adequate comments on the complex issues presented. A 30-day extension will be granted. This extension will accommodate UBOA and ABA's need for additional time to prepare their comments, and should not delay the Commission's study.

DATES: Comments must be filed by May 10, 1993.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. MC–95 (Sub-No. 8), to: Office of the Secretary, Case Control Branch, room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

Decided: March 17, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6593 Filed 3–22–93; 8:45 am]

BILLING CODE 7035–01–M

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Scrivner, Inc., an Oklahoma Corporation, Corporate Office, 5701 North Shartel, Oklahoma City, Oklahoma 73118.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

Scrivner of Alabama, Inc., Incorporated in Alabama
Scrivner of Kansas, Inc., Incorporated in Kansas
Scrivner, Columbus Division, Incorporated in New York
Scrivner of Illinois, Inc., Incorporated in Illinois
Scrivner, Syracuse Division, Incorporated in New York
Scrivner of Tennessee, Inc., Incorporated in Tennessee
Scrivner of Texas, Inc., Incorporated in Texas
Scrivner, Buffalo Division, Incorporated in New York
Scrivner of Iowa, Inc., Incorporated in Iowa
Scrivner of North Carolina, Incorporated in North Carolina
Scrivner, Oklahoma Division, Incorporated in Delaware
Scrivner of Pennsylvania, Inc., Incorporated in Pennsylvania
Scrivner Transportation, Inc., Incorporated in Oklahoma.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6591 Filed 3–22–93; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub. 5) (93–2)]

Quarterly Rail Cost Adjustment Factor; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a second quarter 1993 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter RCAF (Unadjusted) is 1.005. The second quarter RCAF (Adjusted) is 0.848, a decrease of 1.7 percent from the first quarter 1993 RCAF (Adjusted) of 0.863. Maximum second quarter 1993 RCAF rate levels may not exceed 98.3 percent of maximum first quarter 1993 RCAF rate levels.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Pertino, (202) 927–6229, Robert C. Hasek, (202) 927–6239, TTD for hearing impaired, (202) 927–5721

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: March 16, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6542 Filed 3–22–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: The Job Training Partnership Act (JTPA) provides that the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL. The Internal Revenue Code also provides that the term "economically disadvantaged" may be defined as 70 percent of the LLSIL for purposes of the Targeted Jobs Tax Credit (TJTC).

EFFECTIVE DATE: This notice is effective on March 23, 1993.

ADDRESSES: Send written comments to: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, room N–4703, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies, Telephone: 202–219–5580 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those economically disadvantaged individuals * * * who are in special need of such training to obtain productive employment." JTPA section 2; see 20 CFR 626.1 and 626.3(b). JTPA section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.5.

The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA section 4(16) defines the LLSIL as follows:

> The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent "lower living family budget" issued by the Secretary.

Internal Revenue Code (I.R.C.) sections 44B and 51 established the Targeted Jobs Tax Credit (TJTC) for a portion of the wages paid by employers to employees from "targeted" groups. Certain of the targeted groups require that the worker be a member of "an economically disadvantaged family." See, e.g., 26 U.S.C. 51(d)(3)(A)(ii), (4)(C), (7)(B), (8)(A)(iv), and (12)(A)(iv). The LLSIL figures published in this notice shall be used to determine whether an individual is a member of an economically disadvantaged family for applicable TJTC purposes.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the TJTC. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA) published the 1992 updates to the LLSIL in the **Federal Register** of April 3, 1992. 57 FR 11512. ETA has again updated the LLSIL to reflect cost of living increases for 1992 by applying the percentage change in the December 1992 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1991 CPI–U, to each of the April 3, 1992 LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(8) of JTPA, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut	New York
Maine	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont
New Jersey	Virgin Islands

North Central

Illinois	Missouri
Indiana	Nebraska
Iowa	North Dakota
Kansas	Ohio
Michigan	South Dakota
Minnesota	Wisconsin

South

Alabama	Kentucky
American Samoa	Louisiana
Arkansas	Marshall Islands
Delaware	Maryland
District of Columbia	Mississippi
Florida	Micronesia
Georgia	North Carolina
Northern Marianas	Tennessee
Oklahoma	Texas
Palau	Virginia
Puerto Rico	West Virginia
South Carolina	

West

Arizona	New Mexico
California	Oregon
Colorado	Utah
Idaho	Washington
Montana	Wyoming
Nevada	

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the 1993 figures were updated by creating a "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, bimonthly or semiannual CPI–U changes for a 12-month period ending in December 1992. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the next highest ten, are set forth in Table 3 below.

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1993 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses.

Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 58 FR 8287 (February 12, 1993).

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies, and employers in their States to use in determining eligibility for JTPA and TJTC. The Governor should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Table 4 may be used with any of the levels designated.

Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulations at 20 CFR 627.200, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA and TJTC programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI–U.

Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA and TJTC programs.

Signed at Washington, DC, this 12th day of March, 1993.

Carolyn M. Golding,

Acting Assistant Secretary of Labor.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

Region	1993 adjusted LLSIL	70 percent LLSIL
Northeast:		
Metro	$24,890	$17,430
Non-Metro	24,730	17,320
North Central:		
Metro	22,930	16,060
Non-Metro	21,550	15,090
South:		
Metro	21,740	15,220
Non-Metro	20,420	14,300
West:		
Metro	24,550	17,190
Non-Metro	23,750	16,630

[1] For ease of calculation, these figures have been rounded to the next highest ten dollars.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII AND GUAM [1]

Region	1993 adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro	$31,440	$22,010
Non-Metro	30,420	20,640
Hawaii-Guam:		
Metro	34,100	23,870
Non-Metro	32,990	22,100

[1] Rounded to the next highest ten dollars.

TABLE 3.—LOWER LIVING STANDARD INCOME LEVEL—25 MSAs [1]

Region MSA	1993 adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$31,440	$22,010
Atlanta, GA	21,590	15,120
Baltimore, MD	23,370	16,360
Boston-Lawrence-Salem, MA/NH	26,420	18,500
Buffalo-Niagara Falls, NY	22,300	15,610
Chicago-Gary-Lake County, IL/IN/WI	24,010	16,810
Cincinnati-Hamilton, OH/KY/IN	23,050	16,140
Cleveland-Akron-Lorain, OH	23,680	16,580
Dallas-Ft Worth, TX	20,840	14,590
Denver-Boulder, CO	22,480	15,740
Detroit-Ann Arbor, MI	21,950	15,370
Honolulu, HI	34,100	23,870
Houston-Galveston-Brazoria, TX	20,570	14,400
Kansas City, MO/KS	22,050	15,440
Los Angeles-Anaheim-Riverside, CA	25,920	18,150
Milwaukee, WI	23,070	16,150
Minneapolis-St Paul, MN/WI	22,340	15,640
New York-Northern N.J.-Long Island, NY/NJ/CT	25,980	18,190
Philadelphia-Wilmington-Trenton, PA/NJ/DE/MD	24,330	17,040
Pittsburgh-Beaver Valley, PA	22,960	16,080
St Louis-East St Louis, MO/IL	22,370	15,660
San Diego, CA	25,720	18,000
San Francisco-Oakland-San Jose, CA	25,540	17,880
Seattle-Tacoma, WA	25,730	18,010
Washington, DC/MD/VA	26,740	18,720

[1] Rounded to the next highest ten dollars.

TABLE 4.—SEVENTY PERCENT OF UPDATED 1993 LLSIL, BY FAMILY SIZE [1]

[In dollars]

Family of one	Two	Three	Four	Five	Six
(5,150)	(8,440)	(11,590)	(14,300)	16,880	19,740
(5,190)	(8,500)	(11,670)	(14,400)	17,000	19,880
(5,260)	(8,610)	(11,820)	(14,590)	17,220	20,140
(5,440)	(8,910)	12,230	15,090	17,810	20,830
(5,450)	(8,930)	12,250	15,120	17,850	20,870
(5,480)	(8,980)	12,330	15,220	17,960	21,010
(5,540)	(9,070)	12,450	15,370	18,140	21,220
(5,560)	(9,110)	12,510	15,440	18,220	21,310
(5,620)	(9,210)	12,650	15,610	18,420	21,550
(5,630)	(9,230)	12,670	15,640	18,460	21,590
(5,640)	(9,240)	12,690	15,660	18,480	21,620
(5,670)	(9,290)	12,750	15,740	18,580	21,730
(5,790)	9,480	13,010	16,060	18,960	22,170
(5,790)	9,490	13,030	16,080	18,980	22,190
(5,810)	9,530	13,080	16,140	19,050	22,280
(5,820)	9,530	13,090	16,150	19,060	22,290
(5,890)	9,660	13,260	16,360	19,310	22,580
(5,970)	9,790	13,430	16,580	19,570	22,880
(5,990)	9,820	13,470	16,630	19,630	22,949
(6,060)	9,920	13,620	16,810	19,840	23,200
(6,140)	10,060	13,810	17,040	20,110	23,520

TABLE 4.—SEVENTY PERCENT OF UPDATED 1993 LLSIL, BY FAMILY SIZE [1]—Continued

[In dollars]

Family of one	Two	Three	Four	Five	Six
(6,190)	10,150	13,930	17,190	20,290	23,730
(6,240)	10,220	14,030	17,320	20,440	23,910
(6,280)	10,290	14,120	17,430	20,570	24,060
(6,440)	10,550	14,490	17,880	21,100	24,680
(6,480)	10,620	14,580	18,000	21,240	24,840
(6,490)	10,630	14,590	18,010	21,260	24,860
(6,540)	10,710	14,710	18,150	21,420	25,050
(6,550)	10,740	14,740	18,190	21,470	25,110
(6,660)	10,920	14,990	18,500	21,830	25,530
(6,740)	11,050	15,170	18,720	22,090	25,840
7,430	12,180	16,720	20,640	24,360	28,490
7,930	12,990	17,830	22,010	25,980	30,380
7,960	13,040	17,910	22,100	26,080	30,500
8,600	14,090	19,340	23,870	28,170	32,950

[1] Figures provided in Tables 1–3 of this notice are for a family of four persons. To use Table 4, the appropriate figure should be found in the Family of Four column. Then one may read across the row for family sizes other than four in the appropriate column.

[FR Doc. 93–6596 Filed 3–23–93; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–90]

United States Testing Company, Inc., California Division; Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the California Division of the United States Testing Company, Inc. application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the United States Testing Company, Inc., California Division (UST/CA), which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: United States Testing Company, Inc., California Division, 5555 Telegraph Road, Los Angeles, California 90040.

Background

The United States Testing Company, Inc. was founded in 1880 as the New York Silk and Wool Conditioning Works. Over the next 30 years, the company increased its services into other fields of testing and expanded its facilities to other locations along the eastern seaboard. Because of this expansion, in 1910 the company's name was changed to the United States Conditioning and Testing Company. In 1920, the company became incorporated and subsequently changed its name to the United States Testing Company, Inc. Its offices and main laboratories were moved to Hoboken, New Jersey in 1926.

In 1942, the third-party certification program was first established using the Seal of Quality of the United States Testing Company, Inc., and this program achieved nationwide implementation when the California Division was formed in 1953. In 1961, the Federal Trade Commission required the Company to change the name of this certification program to eliminate any possibility of identifying the program with an agency of the United States government. In response to this requirement, the Nationwide Consumer Testing Institute, Inc. (NCTI) was introduced the following year, and its label was registered with the U.S. Patent Office in 1969. (NCTI is a wholly owned subsidiary of the United States Testing Company, Inc.) In 1982, the United States Testing Company, Inc., along with its Nationwide Consumer Testing Institute certification program, was purchased and is now wholly owned and operated by Societe Generale de Surveillance (SGS). In the United States, the SGS affiliates including the United States Testing Company are fully owned and controlled by SGS North America, Inc., which is incorporated in Delaware. UST/CA is headquartered in Hoboken, New Jersey, and its Laboratory Services Group is made up of four additional branches located in different areas of the country. The facility covered by this recognition, the California Division, is located in Los Angeles.

The California Division of the United States Testing Company, Inc., applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in November 1989. The application was subsequently amended and additional data submitted as requested. An on-site evaluation was conducted on February 4, 5 and 6, 1991, and the results discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey (Ex. 3A(2)). The final on-site review report (Ex. 3A(1)) consisting of the on-site evaluation of UST/CA's testing facilities and administrative and technical practices, along with the two letters from UST/CA stating the corrective action it would take in response to these evaluations, and the OSHA staff recommendation, were subsequently forwarded to the Acting Assistant Secretary for a preliminary finding on the application. A notice of UST/CA's application together with a positive preliminary finding were published in the **Federal Register** on March 23, 1992 (56 FR 10045–10047).

There were four responses to the **Federal Register** notice of the UST/CA application and preliminary finding (Docket No. NRTL–2–90). One respondent (EX. 4–1) was concerned that the applicant did not meet the requirements for eligibility of a foreign based testing agency or organization.

OSHA determined that UST/CA did not fall under the category of a "foreign based" entity since it is owned and controlled by SGS North America, Inc., which is incorporated in the state of Delaware.

Another responder (Ex. 4–2 and 4–3)) requested an additional 60 day extension of the comment period to enable it to respond. OSHA granted an extension of 30 days, believing it to be adequate for any additional response. At the end of the thirty day extension, additional comments were received from that respondent (Ex. 4–4). A number of issues were raised that were not directly relevant to the issue of UST/CA meeting the definition of an NRTL as set forth in 29 CFR 1910.7. These comments were general criticisms of the standard. For example, one such comment focused on the need to designate and use a single test standard for each product (EX. 4–4, pp 1–2). This issue had been raised by the same respondent during the rulemaking proceeding and was discussed and resolved in the preamble of the final rule (see 53 FR 12108–09, 4/12/88), as well as **Federal Register** notice of recognition of MET Electrical Testing Company, Inc. (See 54 FR 21136–40, 5/16/89).

Among the specific comments made was one concerning the size of the facility, since the on-site inspection, the electrical test laboratory has been expanded to over five times the area of the previous laboratory which, in OSHA's opinion, is sufficient for its present work load. Two other issues were raised questioning the follow-up program being carried out by the Nationwide Consumer Testing Institute, Inc. (NCTI), and with the name "United States Testing Company, Inc." In reality, the NCTI is not a separate entity, but is a part of United States Testing Company, Inc. As stated above, NCTI is the name the United States Testing Company has used for its listing and labeling program since the early 1960s, when the Federal Trade Commission asked them to change the name to prevent confusion with the federal government or any federal government endorsement. Therefore, the name "United States Testing Company, Inc." will not appear on any product; rather NCTI will.

Concerns were also raised as to assurances that only the Los Angeles facility would be used for the OSHA program. When OSHA initially asked UST/CA which facilities would be involved in testing, it was informed that only the California facility was qualified to, and performed, electrical testing. If, at some later date, UST/CA wishes to use its other facilities to test and certify products under the NRTL program, it will apply to OSHA to do so. The issue of experience in testing products to all of the standards for which UST/CA requested recognition was raised. The requirements of 29 CFR 1910.7 are based upon capability rather than experience, and OSHA has determined that UST/CA has the required capability. Finally, concerns were raised over the lack of formalized test procedures and standard operating procedures (SOPs). Since the time of the on-site investigation, many SOPs for the OSHA/NRTL program have been written. Completed SOPs have been submitted to the NRTL staff for review and have been found to be adequate. One follow-up has already been carried out and additional ones are anticipated. All of the written standard operating procedures, which are a part of the quality assurance program, will be in place before UST/CA will function under the NRTL accreditation program.

The final respondent (Ex. 4–5) attested to the credibility of the applicant, agreed with the positive preliminary finding, and recommended accreditation as an NRTL.

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review report and the products and standards in question, UST/CA's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks. Moreover, the applicant has stated that since the last on-site investigation the electrical test laboratory has been expanded to over five times the area of the previous laboratory, and that the new facility can accommodate many projects at one time.

The laboratory contains approximately 53,000 square feet of which some 37,000 square feet is dedicated to product testing. Gas, water and electricity are available in the laboratory.

Environmental conditions are monitored and controlled within the laboratory to ensure compliance with the test conditions required in the standards by equipping all temperature-critical rooms with temperature recording apparatus. If any room is not so equipped, and temperature control is required, electronic digital display thermometers are available. Environmental chambers are also available for sample conditioning and testing.

An identification and tracking system is used to ensure that either the sample is destroyed or returned to the client after the tests are completed. Handling precautions are also noted at the time of receipt. Samples are tracked with each department having specific locations for sample storage, however not all samples were located in the sample storage areas. Samples are stored indoors, within the facilities which are secured, alarmed and patrolled, and signed out only to authorized personnel. Some outdoor samples are stored outdoors in secured areas. Samples have been checked and are now located within the designated sample storage areas.

Access to the facility is controlled by key operated locks and enforced with an alarm. During work hours Monday through Friday 8 a.m.–5 p.m., all employees can enter the facility using their assigned key. Visitors are only allowed to enter through the front lobby after being signed in and escorted by an authorized employee.

Only managers and personnel authorized by the General Manager have entry keys to deadbolts that are enabled at night and on week-ends. Before or after hours, entries to the facilities must be scheduled. All entry points, windows, and smoke detectors are connected to the security system. If any unauthorized entry is made, the local sheriff and security company are notified.

The California Division of the United States Testing Company, Inc. consists of some 41 professional or technical employees. The Electrical Department is the only one involved with certification as it applies to OSHA. Seven employees are involved with the program, as follows:

1—Division Manager
1—Electrical Department Supervisor
1—Quality Assurance Coordinator
1—Project Engineer
2—Electrical Engineers
1—Technical Writer

Each employee reports to his or her supervisor/manager. The General

Manager, who oversees all activities, reports directly to the Chief Executive Officer. The Electrical Department Supervisor oversees its activities. The Quality Assurance Coordinator reports to the Division Manager on all QA matters at that location and also takes direction from and has a reporting obligation to the Corporate Quality Assurance Director.

The technical operation of the laboratory is under the direction of the department manager, who reviews the manpower/education requirements for each job before it is assigned to an engineer.

As of the time of the on-site investigation there were no written position descriptions for each job title for personnel involved with product testing and evaluation. The new Quality Policy Manual requires job descriptions.

Training is the responsibility of the department manager although there was no formal training program in place for either present employees or new hires at the time of the on-site investigation. Informal training was handled through various seminars, small scale training (training on one test apparatus at a time), and apprentice projects (one experienced employee leading an apprentice through the various tests one step at a time). The new Quality Policy Manual addresses these training requirements, which are considered to be adequate.

Test equipment is available in the laboratory to perform the testing required by the standards. Special rarely used test equipment not available in the laboratory, is rented from either a primary or secondary source. Current calibration is required before the equipment is rented. A functional test equipment inventory list is included in the Quality Control (QC) Manual. A separate, more detailed master list is available in the plant manager's office and on a computer data base.

Copies of manufacturer's instructions on the proper use of the test equipment along with some of the calibration and repair records for that test equipment, are maintained in the plant manager's office. A list of the calibration and repair records for test equipment used by a department is maintained in each department manager's office.

The test equipment used for evaluation is identified on the laboratory data sheets. A policy exists requiring that if any equipment is later found to be questionable or out of calibration tolerance, all data sheets in that time frame are reviewed. If the questioned equipment was found to be used for a test, that measurement would be repeated. Test equipment which gives suspect results, or has been shown by calibration or otherwise to be defective, is removed from service and calibration data on received condition is requested from the calibration agency for all out of calibration ranges. This policy has been formalized and is in the QC Manual.

The basic calibration procedure is outlined in the QC Manual. Test equipment is normally calibrated on an annual basis unless required or recommended more often by the test equipment manufacturer. The QC Manual also addresses the use of equipment where cost restrictions require supplemental calibrated instrumentation for part or all of the instruments located on the equipment. A label has been developed that specifies the supplemental instruments to use with the equipment.

At the beginning of each month, the Plant Manager prints out a list for each department of the equipment that requires calibration. The Department Manager then schedules the appropriate agency to perform the calibration. Once calibrated, a copy of the certification is given to the Plant Manager for notation in the computer and placement in the equipment file. All newly acquired and repaired test equipment is required to be calibrated prior to use. Test equipment is either calibrated or "red tagged" (marked "not to be used").

On most equipment, a tag identifying the calibration company and calibration date and due date is plainly visible. If not on the equipment, the supervisor is to be notified immediately. Out of service or uncalibrated pieces of equipment may be used with additional calibrated instruments. At the time of the on-site review the noncalibrated equipment was often not tagged or identified and the technicians are trained to know which equipment requires additional instrumentation. Presently, this situation has been corrected and the equipment has been reviewed and appropriately tagged.

The equipment records maintained in the department files show the calibration and repair histories. No in-house calibrations are performed for equipment utilized for data acquisition in the product certification program. Calibrations are done by outside agencies which use NIST traceable standards.

At the time of the on-site review, separate documents of standard operating procedures were not used for processing applications. The standard(s) chosen and a checklist stating the applicable sections/tests is, in many instances, used for guiding the engineer through the investigation. However, Standard Operating Procedures have since been developed and will be in place prior to listing a product under the OSHA/NRTL Program.

Many of the test standards for which U.S. Testing seeks recognition require a subjective evaluation of the product with respect to meeting the various sections of the standard. At the time of the on-site investigation there was no written procedure that addressed the steps in an investigation, a process of when and how interpretations of conformance to sections of the standard can be made, and what minimum documentation is required to comply with the standard. The Standard Operating Procedures now address interpretations.

Checklists that have been developed, reviewed, and maintained by the department manager and laboratory supervisor, are used by the laboratory personnel. The appropriate standard(s) to be used to evaluate a particular product are determined by the product category and a review of all ANSI or UL cross references.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

Disagreements between the applicant and the laboratory concerning the applicability of a particular standard are initially resolved through communicating the reasons for the choice. A procedure for settling disputes is outlined in the "NCTI Listing and Labeling Procedure Manual". Under this corporate system, the UST/CA is also capable of handling inquiries or complaints from the general public, inspection authorities, and government agencies; it is not limited to solving disputes between the client and the laboratory.

The laboratory maintains a system for identifying product samples submitted for testing to ensure that there is no confusion regarding the identity of the samples. Samples checked were marked and segregated.

Previously, UST/CA had no formal method for developing interpretations to sections of the standards. Informally, the department manager and the laboratory supervisor, upon review of the tests, developed interpretations as required. Interpretations or policy decisions were stated on the check list. A formal written policy for developing

and creating Standard Operating Procedures (SOPs), including interpretations, has been prepared and will be in place prior to listing any product under the OSHA/NRTL program.

The test standard is used to develop the test procedure. Each procedure is then outlined in a test report which is used for future reference and guidance when evaluating similar products. Test reports without reference to the particular client data/information and sample identification are available to the engineer from a computer file.

The reference section of the test report identifies the standard or standards used and the appropriate dates. The test procedure also refers to the standard with the number or name of the appropriate section.

Newer test report files reviewed contained (1) Job Ticket (typed and original), (2) correspondence relating to the job, (3) telephone discussion and conference documentation, (4) data sheets generated by the engineer(s) including charts and printout of test equipment when applicable, (5) documentation provided from the client including operating, instruction and service manuals, (6) product brochures if submitted, (7) client purchase orders and (8) invoices to the client. A standard file format procedure was developed and implemented several years ago.

Test reports contained a detailed description of the product. Drawings and specifications to which the listed product was manufactured are now required prior to the start of an investigation.

Test reports, containing the description of the testing performed on the product and the results of those tests, are prepared by the engineer assigned to the project and reviewed by the department manager and laboratory supervisor for technical content. Also, during the last several years, new policies for reporting and file maintenance have been developed which assist UST/CA in producing creditable findings.

The laboratory, under the direction and control of the department manager, maintains a subscription service for the standards used in the certification process. A formal system for archiving standards has been implemented.

All Nationwide Consumer Testing Institute, Inc. (NCTI) documents (including reports, invoices, data sheets, and phone conversation summaries) are filed in fire resistant file cabinets which are locked when not in use. A manual for each listing and labeling program is generated which includes the requirements for compliance, basic program description, copies of Initial Facility Inspections and Qualification Reports, list of products labeled, quality assurance requirements and basic history or other information deemed important to the program. One copy is accessible in the electrical laboratory area and another copy is provided to the client (without the special notations) for their reference. The original documentation, stored in the fire-resistant cabinets at UST/CA, could be utilized to create additional manuals.

Test reports and records are distributed to clients only. The NCTI Blue Book of Listed Products includes all currently listed products. The department manager has the prime responsibility for the maintenance of these records.

UST/CA is updating their quality assurance manual based on the ANSI/ASQC Q90 Standard. A prototype manual has been developed. A final manual and its implementation will be available before listing under the OSHA/NRTL program.

The Quality Assurance Coordinator is responsible for the Quality Assurance Program. The QA program is reviewed at least once per year.

The Division does not have a formal internal quality assurance auditing system in place. The new corporate system currently under development will address the internal audit. Currently, two programs fulfill a portion of the goals of an internal audit:

(1) The Corporate Responsibility Program—a direct and anonymous pipeline to corporate management for reporting suspected improper conduct or deviation from procedures. All alleged improper conduct is immediately investigated by the Director of Corporate Responsibility, who reports any findings directly to the Chief Executive Officer with appropriate recommendations; and

(2) The Integrated Quality Program—a program, implemented in 1987, with a process similar to that of the Total Quality Management or Quality Circles Program that is designed to promote Quality Awareness and involvement of all personnel in the efficiency and accuracy of the operation. This program is documented in the "IQP Awareness Guide".

Internal procedures and an auditing of these procedures would have identified a product that was not removed from the listing catalog after problems were discovered by the laboratory engineers. The new Quality Policy Manual addresses this type of auditing procedure.

The laboratory participates in round robin testing with other laboratories as part of other certification programs and with laboratories within the parent company's organizational structure. This provides additional independent monitoring of the laboratory's capability in the testing areas.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: Testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. UST/CA has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

The follow-up program enables UST/CA to review the client's quality assurance program implementation and to perform selective retesting. These follow-up inspections are performed a minimum of four times per year. During each visit the inspector reviews the client's quality assurance records and procedures. Variations are recorded along with such information as personnel contacts, personnel changes, production changes, and facility changes. When required by the test program, a sample is selected at random during the inspection.

Noncompliance or discrepancies are classified at four levels, each with a defined response time and plan of action. Termination or suspension of listing or labeling follows a specified procedure that insures that necessary steps are taken.

A formal field auditing system has been added to the NCTI Listing Manual. NCTI labels are serialized by the product's serial number or by a separate numbering system. The production records for each client are reviewed during inspection and each label accounted for.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested

equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

Based upon an examination of the application and discussions with executives of the UST/CA, OSHA has determined that the California Division of the United States Testing Company, Inc., is in compliance with the requirements of § 1910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an ANSI safety designated product standard. Many of the test standards which UST/CA wishes to use are ANSI/UL standards which are acceptable under § 1910.7(c)(4). As to the non-ANSI UL test standards for which UST/CA has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c)(1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the United States Testing Company, Inc., California Division, has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the United States Testing Company, Inc., California Division is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

UST/CA has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI/UL 1—Flex Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
UL 544—Electric Medical and Dental Equipment
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 751—Vending Machines
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
UL 1236—Electrical Battery Chargers
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1459—Telephone Equipment
ANSI/UL 1484—Residential Gas Detectors
ANSI/UL 1571—Incandescent Lighting Fixtures
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations

The United States Testing Company, Inc., California Division must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to UST/CA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

UST/CA's Quality Assurance Program for the Electrical Department shall conform to ANSI/ASQC Q90 before any product is certified under the NRTL program;

Written Standard Operating Procedures for the Electrical Department of UST/CA will be in place before any product is certified under the NRTL program;

If UST/CA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UST/CA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UST/CA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UST/CA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

UST/CA will continue to meet the requirements for recognition in all areas where it has been recognized; and

UST/CA will always cooperate with OSHA to assure compliance with the letter as well as the sprint of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on March 23, 1993, and will be valid for a period of five years from that date, until March 23, 1998, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 17th day of March 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–6595 Filed 3–22–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Research room user response form; proposed information collection submission

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collection submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is

submitting a proposed collection of information to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320.

The information collection is a form for the public to use to register their suggestions, complaints or compliments about the reference service received in a National Archives research room in the Washington, DC, area. The purpose of the information collection is to obtain user views about NARA's reference services and problems with these services. The form would be made available in the research room to be completed on a voluntary basis. Individuals would deposit their forms in a box provided in the research room or mail the response to NARA. The form has been designed as a self-mailer. We estimate that 3,000 forms would be completed over a 1-year period. We estimate that each response will take approximately 5 minutes. The information will assist NARA in planning and improving reference services and in correcting specific problems to our attention.

DATES: NARA invites the public to comment on the proposed information collection. Comments should be submitted by April 22, 1993.

ADDRESSES: Copies of the proposed information collection and supporting documentation can be obtained from the Program Planning and Congressional Liaison Division (NARA), room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408. Telephone requests may be made to (202) 501–5110.

Comments should be sent to Director, Program Planning and Congressional Liaison Division (NARA), National Archives and Records Administration, Washington, DC 20408. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at (202) 501–5110.

Dated: March 11, 1993.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 93–6569 Filed 3–22–93; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Meeting

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on April 28–29, 1993, in the Palladian Center at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to review the status of information and research on nondestructive examination (NDE) of steam generator tubes and the pertinent background of technology and practice.

The planned schedule is as follows:

Wednesday, April 28, 1993

9:30 a.m.–9:45 a.m.: Opening remarks: NSRRC Chairman, RES Director.

9:45 a.m.–12 noon: Background and overview.

General background of the different steam generator designs employed in pressurized-water-reactor nuclear power plants and the types of damage experienced over the years for different generators. Theory of eddy current testing as applied to steam generator tube inspections; NDE methods, procedures, equipment, and personnel used; practical aspects and logistics for conducting these inspections.

1:15 p.m.–5:30 p.m.: Current practices.

Discussion by providers of inspection services. Current steam generator tube inspection practices; advantages and disadvantages of the techniques; reliability of flaw detection and accuracy of flaw sizing; experiences and findings from field inspections.

5:30 p.m.–6 p.m.: Committee discussion.

Thursday, April 29, 1993

8:30 a.m.–11:45 a.m.: Research programs and results.

Recent, current, and future research programs and results related to improvements for nondestructive testing of steam generator tubes. NRC Independent Measurements Program; activities of the NDE mobile laboratory.

1 p.m.–4 p.m.: Emerging technologies.

Emerging methods and technology that may provide improvements for inspections in the near term and in the future.

4 p.m.–4:30 p.m.: Panel discussion.

NDE issues, including the strengths and weaknesses of current methods, potential improvements and future research projects.

4:30 p.m.–6 p.m.: Committee discussion

Participants in the presentations to and discussions with the Committee will include representatives of the NRC staff, industry, and research organizations.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing or written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated: March 18, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–6575 Filed 3–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–193]

Order Modifying License

In the Matter of Rhode Island Atomic Energy Commission (Rhode Island Nuclear Science Center Research Reactor).

I.

The Rhode Island Atomic Energy Commission (the licensee) is the holder of Facility Operating License No. R–95 (the license) issued on July 21, 1964, by the U.S. Atomic Energy Commission. The license, as amended by Amendment No. 1 on September 10, 1968, authorizes operation of the Rhode Island Nuclear Science Center Research Reactor (the facility) at a power level up to 2 megawatts (Mw) thermal (t). The facility is a research reactor located in the Narragansett Bay Campus of the University of Rhode Island (formerly called Fort Kearney) in Narragansett, Rhode Island. The research reactor is contained in the Rhode Island Nuclear Science Center, which is located on the south central portion of the Narangansett Bay Campus. The mailing address is Nuclear Science Center, Rhode Island Atomic Energy Commission, South Ferry Road, Narragansett, Rhode Island 02882–1197.

II.

On February 25, 1986, the U.S. Nuclear Regulatory Commission (NRC

or the Commission) promulgated a final rule in Section 50.64 of Title 10 of the Code of Federal Regulations (10 CFR 50.64) limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (see 51 FR 6514). The rule, which became effective on March 27, 1986, requires that each licensee of a non-power reactor replace HEU fuel at its facility with low-enriched uranium (LEU) fuel acceptable to the Commission (1) unless the Commission has determined that the reactor has a unique purpose and (2) contingent upon Federal Government funding for conversion-related costs. The Commission issued the rule to promote the common defense and security by reducing the risk of theft and diversion of HEU fuel used in non-power reactors.

Sections 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not initiate acquisition of additional HEU fuel, if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Section 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel, to develop and to submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal (proposal) for meeting the requirements of the rule.

Section 50.64(c)(2)(i) also requires the licensee to include the following in its proposal: (1) A certification that Federal Government funding for conversion is available through the U.S. Department of Energy (DOE) or other appropriate Federal agency and (2) a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Section 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses so as to meet the schedule established for conversion.

Section 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of the public health and safety, any necessary changes to the license, the facility and licensee procedures. In the **Federal Register** notice of the final rule, the Commission explained that in most cases, if not all, the enforcement order would be an order to modify the license under 10 CFR 2.204 (see 51 FR 6514).

Section 2.204 provides, among other things, that the Commission may modify a license by issuing an amendment on notice to the licensee that it may demand a hearing with respect to any part or all of the amendment within 20 days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of this 20-day-or-longer period. If the licensee requests a hearing during this period, the amendment will become effective on the date specified in an order made after the hearing.

Section 2.714 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III.

On November 18, 1991, as supplemented on July 23, 1992, December 22, 1992, and January 13, 1993, the NRC staff received the licensee proposal, including its proposed modifications, supporting safety analyses, and plans for conversion. The conversion consists of replacing high-enriched with low-enriched uranium fuel elements. The fuel elements contain materials test reactor (MTR)-type fuel plates, with the fuel meat consisting of uranium silicide dispersed in an aluminum matrix. These plates contain an enrichment of less than 20 percent with the uranium-235 isotope. The NRC staff reviewed the licensee proposal and the requirements of 10 CFR 50.64 and has determined that the public health and safety and the common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the Attachment to this Order and the schedular requirements included herein following. The Attachment to this Order specifies the changes to the license conditions and discusses the changes to Technical Specifications that are needed to amend the facility license.

IV.

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b., 161i., and 161o. of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.204 and Section 50.64, *It Is Hereby Ordered That:*

Facility Operating License No. R–95 is modified by amending the license conditions and Technical Specifications as stated in the Attachment to this Order on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel elements that are necessary to operate the facility as specified in the licensee proposal or (2) 30 days after the date of publication of this Order in the **Federal Register**.

V.

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement at the same address. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which their interest is adversely affected by this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing is whether this Order should be sustained.

This Order shall become effective on the later date of either the day the licensee receives an adequate number and type of LEU fuel elements that are necessary to operate the facility as specified in the licensee proposal or 30 days after the date of publication of this Order in the **Federal Register** or, if a hearing is requested, on the date specified in an order after further proceedings on this Order.

Dated at Rockville, Maryland this 17th day of March 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Attachment to Order Modifying Facility Operating License No. R–95

A. License Conditions Revised and Added by this Order

2.b. Pursuant to the Act and 10 CFR part 70, "Special Nuclear Material," to receive, possess, and use at any one time up to 10.4 kilograms of contained uranium-235 at enrichments equal to or less than 20 percent in the form of MTR-type reactor fuel in connection with operation of the reactor and up to 32 grams of plutonium encapsulated in two plutonium-beryllium neutron sources for reactor startup.

2.d. Pursuant to the Act and 10 CFR part 70, "Special Nuclear Material," to possess, but not use, up to 8.0 kilograms of contained uranium-235 at greater than 20 percent enrichment in the form of MTR-type reactor fuel until the existing inventory of this fuel is removed from the facility.

3.b. *Technical Specifications:*

The Technical Specifications contained in appendix A, as revised through Amendment No. 17, are hereby incorporated in the license. The licensee shall operate the facility in accordance with the Technical Specifications.

3.d.(4) The licensee shall provide a startup test report within six months after initial criticality with low enriched uranium reactor fuel in accordance with Amendment No. 17. This report shall be sent as specified in 10 CFR 50.4 Written Communications.

B. The Technical Specifications will be revised by this Order in accordance with the "Enclosure to License Amendment No. 17, Facility Operating License No. R–95, Docket No. 50–193, Replacement Pages for Technical Specifications," and as discussed in the Safety Evaluation for this Order.

[FR Doc. 93–6576 Filed 3–22–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Procurement Regulatory Activity Report Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report, Number 8.

SUMMARY: Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, codified at 41 U.S.C. 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared the eighth Procurement Regulatory Activity Report. This report is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on the status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, Room 2200, 725 17th Street, NW, Washington, DC 20503, or phone (202) 395–7332.

ADDITIONAL INFORMATION: For additional information write or call the Office of Federal Procurement Policy, 725 17th St., NW, Washington, DC 20503 (202) 395–6803.

Dated: March 16, 1993.

Allan V. Burman,

Administrator.

[FR Doc. 93–6548 Filed 3–22–93; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32005; File No. SR–PHLX–92–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Revision of the Transaction Value Charge

March 16, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PHLX.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Subetance of the Proposed Rule Change

Effective at the opening of business on January 4, 1993, the PHLX proposes to amend its Schedule of Dues, Fees and Charges by eliminating the Transaction Value Charge of $.13 per $1,000 for market makers, firms, and customers, and instituting the Option Comparison Charge. The Option Comparison Charge imposes fees of $.03 per contract for Registered Options Traders ("ROTs") for their proprietary executions, and $.04 per contract for member organizations for their proprietary executions and those undertaken for the benefit of their customers. The PHLX's specialists are exempt from the Option Comparison Charge. The Exchange's Option Transaction Charge will remain unchanged.

The text of the proposed rule change is available at the office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Effective at the opening of business on January 4, 1993, the PHLX proposes to

[1] On January 29, 1993, the PHLX amended its proposal to indicate that the proposed rule change would become effective as of the opening of business on January 4, 1993, and to replace all references to "market makers" with the term "Registered Options Trader" ("ROT"). *See* letter from Ricki Goodstein, Staff Counsel, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 27, 1993. On March 11, 1993, the PHLX amended its proposal to clarify the application of the proposed fees. See File No SR–PHLX–92–41, Amendment No. 1.

amend its Schedule of Dues, Fees and Charges by eliminating the Transaction Value Charge of $.13 per $1,000 for market makers, firms, and customers, and instituting the Option Comparison Charge, which imposes fees of $.03 per contract for ROTs for their proprietary executions, and $.04 per contract for member organizations for their proprietary executions and those undertaken on behalf of their customers. The PHLX's specialists are exempt from the Option Comparison Charge, and the Exchange's Option Transaction Charge remains unchanged.

The purpose of the proposal is to amend the PHLX's Schedule of Fees and Charges. The revisions reflect the PHLX's intention to make ROT and member organization fees conform to industry standards and to simplify the Exchange's rules. In this regard, the revisions constitute separate fees assessed to ROTs from those assessed to member organization for their proprietary executions as well as those executed on behalf of their customers. In authorizing the fee changes, the PHLX states that it will create a fee schedule comparable to the fee schedules adopted by other exchanges.

In addition, the PHLX explains that its previous rate schedule required cumbersome calculations of rates per $1,000 based upon premium amount. The new schedule eliminates this calculation by instituting a per contract charge. The PHLX has structured the new fee to simplify the billing of member organizations and ROTs. The PHLX believes that the simplification provided by the institution of a per contract charge will enable brokers to more readily ascertain their fees and charges.

The PHLX believes that the proposal is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by April 13, 1993.

By the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6586 Filed 3–22–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2623; Amdt. 3]

Arizona; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with a Presidential amendment dated March 6, 1993, to establish the incident period for this disaster as beginning on January 5 and continuing through March 6, 1993.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 22, 1993 and October 19, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 11, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–6545 Filed 3–22–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2629; Amdt. 3]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with a Presidential amendment dated March 4, 1993, to reflect the incident period for this disaster as beginning on January 5, 1993, and continuing.

All other information remains the same, i.e., the termination date for filing applications for physical damage is April 5, 1993 and November 3, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 11, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–6546 Filed 3–22–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2633]

Georgia (and Contiguous Counties in Alabama); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 4, 1993, I find that the Counties of Bartow, Cobb, Hall, Heard, Meriwether, Pike, Polk, and Walton in the State of Georgia constitute a disaster area as a result of damages caused by tornadoes, high wind, and heavy rain which occurred on February 21–22, 1993. Applications for loans for physical damage may be filed until the close of business on May 3, 1993, and for loans for economic injury until the close of business on December 6, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic

injury loans from small businesses located in the contiguous Counties of Banks, Barrow, Carroll, Cherokee, Coweta, Dawson, Douglas, Fayette, Floyd, Forsyth, Fulton, Gordon, Gwinnett, Habersham, Haralson, Harris, Jackson, Lamar Lumpkin, Morgan, Newton, Oconee, Paulding, Pickens, Rockdale, Spalding, Talbot, Troup, Upson, and White in the State of Georgia and Cherokee, Cleburne, and Randolph Counties in the State of Alabama may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.625
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 263312 and for economic injury the numbers are 787300 for Georgia and 787400 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 11, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–6547 Filed 3–22–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps; Palo Alto Airport, Palo Alto, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the County of Santa Clara, California, for Palo Alto Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is March 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Planning & Programming Officer, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone (415) 876–2805.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Palo Alto Airport are in compliance with applicable requirements of part 150, effective March 10, 1993.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and which depict non compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken or proposes for the reduction of existing non compatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the County of Santa Clara. The specific maps under consideration are Figure 4–1 and Figure 6–1 in the submission. The FAA has determined that these maps for Palo Alto Airport are in compliance with applicable requirements. This determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591.

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303.

Mr. Donald C. Flynn, Director of Aviation, County of Santa Clara, P.O. Box 611900, San Jose, California 95161–1900.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on March 10, 1993.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western Pacific Region.

[FR Doc. 93–6608 Filed 3–22–93; 8:45 am]

BILLING CODE 9910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business aircraft issues.

DATES: The meeting will be held on April 8, 1993 at 9 a.m. Arrange for oral presentations by April 1, 1993.

ADDRESSES: The meeting will be held at the National Air Transportation Association, 4226 Duke Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on April 8, 1993, at the National Air Transportation Association, 4226 Duke Street, Alexandria, VA. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Final Report of the Fuel Indicators Working Group
- Report of JAR/FAR 23 Harmonization Working Group
- Discussion of Accelerated Stalls message from the FAA
- Discussion of working group schedules and future activities

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 1, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for General Aviation and Business Airplane Issues or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**" Anyone who wishes to obtain a copy of the Fuel Indicators Working Group report may contact Mrs. Carolina Forrester, FAA Office of Rulemaking, on (202) 267–9690 or FAX (202) 267–5075.

Issued in Washington, DC, on March 18, 1993.

William J. Sullivan,

Assistant Executive Director, for General Aviation and Business Aircraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–6609 Filed 3–22–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 93–17]

Country of Origin Marking for the Czech Republic and the Slovak Republic

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: On December 31, 1992, the Czech and Slovak Federal Republic (CSFR or Czechoslovakia) ceased to exist and was succeeded by two separate and independent states, the Czech Republic and the Slovak Republic. This document notifies the public of the names and the English spellings for these two new countries that are to be used for country of origin marking on merchandise imported into the United States from the territory of the former Czechoslovakia. It also grants a grace period to permit the continued importation of merchandise from these countries marked "Czechoslovakia," or "Czech and Slovak Federal Republic."

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Keith B. Rudich, Office of Regulations and Rulings, (202–482–7010).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country or origin of the article. Customs has authority pursuant to 19 U.S.C. 1304 to determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and to require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

As of January 1, 1993, the United States recognized the Czech Republic and the Slovak Republic as independent countries. Accordingly, articles imported from the former Czechoslovakia are subject to marking with the English name of the independent countries from which they originate. The United States Department of State has indicated that the English names and the correct spellings of these new independent countries are:

Long form name	Short form name
Czech Republic	(no current short form).
Slovak Republic	Slovakia.

Marking an article with either the short form name or the long form name is acceptable. If either of the long form names are used, the abbreviation "Rep." may be used for "Republic".

Customs recognizes that manufacturers and importers may need time to adjust to these changes and that an abrupt change in the marking requirements could cause undue hardship. Therefore, goods made in the former Czechoslovakia will be accepted as properly marked if they are marked with any of the names previously approved: E.g. "Czechoslovakia," "Czech and Slovak Federal Republic", or the abbreviation "Czech."; or the new appropriate country designation: "Czech Republic", "Slovak Republic", or "Slovakia". Such names will be acceptable until January 1, 1994. All goods produced in the Czech Republic or the Slovak Republic and imported on or after January 1, 1994, will be required to be marked as a product of the particular country from which they originate as set forth above.

Dated: March 3, 1993

Karen J. Hiatt,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 93–6549 Filed 3–22–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Availability of Annual Report

Under section 10(d) of Public Law 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Prosthetics and Special-Disabilities Programs for Fiscal Year 1992 has been issued. The Report summarizes activities of the Committee on matters relative to special disability programs, prosthetic rehabilitation technology, accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540, and

Department of Veterans Affairs, Prosthetic and Sensory Aids Service,

Techworld Room 542, 801 I Street, NW., Washington, DC 20001.

Dated: March 12, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–6555 Filed 3–22–93; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Thursday, April 22, 1993, and Friday, April 23, 1993 in room 1206/1208, 801 I Street, NW., Washington, DC 20004. The meetings will convene at 9 a.m. and adjourn at 5 p.m.

The purpose of the meetings is to review information relating to activities during which significant numbers of veterans were exposed to ionizing radiation before January 1, 1970 (this includes activities other than participation in an atmospheric nuclear test or service with the occupation forces of Hiroshima, or Nagasaki, Japan.)

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Mrs. Leney Holohan, Department of Veterans Affairs Central Office (026B), 810 Vermont Avenue, NW., Washington, DC 20420, phone (202) 523–3911, prior to April 15, 1993.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, (026B), Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: March 12, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–6556 Filed 3–22–93; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held in room 1208 at VA Central Office, 701 I St., NW., Washington, DC 20001, from April 28, 1993, through April 30, 1993. the meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: Education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and procedures involved in processing claims for service connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 276, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: March 15, 1993.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–6557 Filed 3–22–93; 8:45 am]

BILLING CODE 8320–01–M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW., Washington, DC July 13 through July 16, 1993. The session on July 13, 1993, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on July 14, 15, 16, 1993, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Services, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the July 13 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 14–16, 1993, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under section 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: March 12, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–6558 Filed 3–22–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 54
Tuesday, March 23, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 F.R. 12984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, April 6, 1993.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has added to the April 6 open Commission meeting the following:

—Application of the Chicago Mercantile Exchange for designation as a contract market in Rolling Spot Pound Sterling Futures and Options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–6733 Filed 3–19–93; 1:04 pm]

BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, March 25, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Zeigler Coal Company,* Docket No. LAKE 91–636 (Issues include whether the judge erred in finding that Zeigler violated 30 CFR 75.507 and that the violation was of a significant and substantial nature.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150 (a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Dated: March 18, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–6769 Filed 3–19–93; 2:51 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Monday, March 29, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 17, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93–6734 Filed 3–19–93; 1:05 pm]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–09]

TIME AND DATE: March 30, 1993 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–644 (Preliminary) (Welded Stainless Steel Pipe from Malaysia)—briefing and vote.
5. Outstanding action jacket requests
   1. GC–93–015–1, APO breach in an investigation under Title VII of the Tariff Act of 1930.
   2. GC–93–020, Proposed Parts 201 and 207 rules amendments.
6. Amended FY 1994 Budget Request and FY 1995 Authorization Request
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: March 19, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6782 Filed 3–19–93; 3:28 pm]

BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, March 31, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5868B—Aviation Accident Report: Trans World Airlines, Inc.; Flight 843; L–1011, Aborted Takeoff After Liftoff at John F. Kennedy International Airport, New York, July 30, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 19, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–6674 Filed 3–19–93; 10:32 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 22, 29, April 5, and 12, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 22

Friday, March 26

10:00 a.m.
Briefing on Progress of NRC Regulatory Review (Public Meeting)
(Contact: Frank Gillespie, 301–504–1275)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 29—Tentative

Tuesday, March 30

10:00 a.m.
Briefing on Status of Technical Specification Improvement Program (Public Meeting)
(Contact: Chris Grimes, 301–504–1161)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Advanced Medical Systems, Inc.—Petition for Review of LBP–92–36 (Tentative)

(Contact: Cecelia Carson, 301–504–1625)
b. Babcock and Wilcox—Appeal of Presiding Officer's Memorandum and Order Denying Hearing Request and Terminating Proceeding (LBP–93–4, Docket No. 70–135–DCOM) (Tentative)
(Contact: Roland Frye, 301–504–3505)

Week of April 5—Tentative

Tuesday, April 6

10:00 a.m.
Briefing by IIT on Unauthorized Forced Entry into the Protected Area at TMI–1 (Public Meeting)
(Contact: Sam Collins, 817–860–8183)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 12—Tentative

Thursday, April 15

8:00 a.m.
Briefing on Review of SALP Process and Assessment of NRC Inspection Program (Public Meeting)
(Contact: Gary Zech, 301–504–1017)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 (Commissioner Curtiss not present) on March 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Environmental and Resources Conservation Organization's Petition for Reconsideration of CLI–93–03 (Rancho Seco)" (Public Meeting) be held on March 15, and on less than one week's notice to the public.

By a vote of 5–0 on March 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Georgia Power Company's Request for Stay of LB–93–5 Pending Appeal" and by a vote of 4–0 (Commissioner Remick not present) on March 18 that "Affirmation of Sequoyah Fuels Corporation (Source Material License No. SUB–1010) (Docket No. 40–8027–MLA): 1. Request for Hearing on License Amendment Application; 2. Withdrawal of License Amendment Application" (Public Meeting) be held on March 18, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: March 19, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–6763 Filed 3–19–93; 2:47 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, April 6, 1993, in Washington, D.C. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, April 5, 1993, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

April 6–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 1–2, 1993.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon.)
3. Annual Report on the Law Department. (Mary S. Elcano, General Counsel and Vice President.)
4. Briefing on the Integrated Mail Handling System. (Stephen E. Miller, Vice President, Operations Support.)
5. Results and Follow-up of the Employee Opinion Survey. (William J. Henderson, Vice President, Employee Relations.)
6. Tentative Agenda for the May 3–4, 1993, meeting in Nashville, Tennessee.

David F. Harris,

Secretary.

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Corrections

Federal Register

Vol. 58, No. 54

Tuesday, March 23, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Part 600

RIN 1840–AB38

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions

Correction

In rule document 93–5400 beginning on page 13336 in the issue of Wednesday, March 10, 1993, make the following correction:

§ 600.40 [Corrected]

On page 13342, in the third column, in § 600.40(a)(1), in the last line, after "institution," insert "location, or program, as applicable, fails".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Civil Rights Division

Public Access Section; The Americans With Disabilities Act; Technical Assistance Grants To Promote Voluntary Compliance With the Act

Correction

In notice document 93–5775 beginning on page 13797 in the issue of Monday, March 15, 1993, make the following corrections:

1. On page 13799, in the third column, in the tenth line, "provided" should read "provide".

2. On page 13800, in the first column, in the fourth full paragraph, in the sixth line, insert "of covered entity, with which to work during the grant period" between "type" and "on".

3. On page 13801, in the first column, the heading "**IV. Evaluation of the Secretary**" should read "**IV. Evaluation of the Strategy**".

4. On the same page, in the same column, in the fourth full paragraph, in the first line, "*Selection*" was misspelled.

5. On the same page, in the third column, in the fourth paragraph, in the fourth, fifth and tenth lines, "[insert date 60 days from date of publication]" should read "May 14, 1993".

BILLING CODE 1505–01–D

Federal Register

Tuesday
March 23, 1993

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates (Glycol Ethers); Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–044]

Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates (Glycol Ethers)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to amend its existing regulation for occupational exposure to 2-Methoxyethanol (2–ME), 2-Ethoxyethanol (2–EE) and their acetates (2–MEA, 2–EEA) ("Glycol Ethers"). The Assistant Secretary has determined, based on a review and evaluation of studies conducted on the health effects of these glycol ethers, that the current permissible exposure limits (PELs) do not adequately protect employees from significant risks of adverse health effects, specifically reproductive and developmental health effects.

To eliminate these significant risks of adverse health effects, OSHA is proposing for general, maritime, agriculture and construction industries to reduce the existing 8-hour time weighted average (TWA) PELs for 2–ME and 2–MEA to 0.1 ppm and for 2–EE and 2–EEA to 0.5 ppm. OSHA proposes excursion limits (ELs) for these glycol ethers of five times the proposed PELs. OSHA also proposes to set Action Levels (ALs) for these glycol ethers of one-half the proposed PELs, measured as an 8-hour TWA, to encourage lower exposure for employees while reducing administrative burdens on employers. In addition, OSHA proposes that no employee shall be exposed to these glycol ethers through dermal contact.

OSHA proposes to require certain ancillary provisions for employee protection such as preferred methods to control exposure, employee exposure monitoring, medical surveillance, recordkeeping, regulated areas, emergency procedures, hazard communication, and personal protective equipment.

DATES: Written comments on the proposed standard must be postmarked on or before June 7, 1993. Notices of Intention to Appear at the informal public hearings on the proposed standard must be postmarked by June 7, 1993. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than June 28, 1993. The informal rulemaking hearing is scheduled to begin on July 20, 1993.

ADDRESSES: Written comments should be submitted to the Docket Officer, Docket No. H–044, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Notices of Intention to Appear at the informal rulemaking hearing, testimony, and documentary evidence are to be sent to Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–044, room N–3662, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Introduction

Table of Contents

I. Introduction
II. Pertinent Legal Authority
III. History of the Regulation
IV. Chemical Identification, Production, and Use of Ethylene Glycol Ethers
V. Health Effects
A. Introduction
B. Metabolism/Metabolic-Related Health Effects
C. Acute Toxicity
D. Background Discussion on Reproductive and Developmental Toxicology
E. Effects in Animals
1. Male Reproductive Effects
2. Maternal/Developmental Effects
3. Blood Effects
F. Adverse Effects in Humans
G. Mutagenicity
H. Conclusions
I. Health Effects of Other Glycol Ethers
VI. Risk Assessment
VII. Significance of Risk
VIII. Summary of the Regulatory Impact Analyses and Regulatory Flexibility Analysis
IX. Environmental Impact
X. Summary and Explanation of the Proposed Standard
XI. Clearance of Information Collection Requirements
XII. Public Participation—Notice of Hearings
XIII. Authority and Signature
XIV. Proposed Standard and Appendices

A. Issues

Comment is requested on all relevant issues, including health effects, risk assessment, technological and economic feasibility and provisions that should be included in a final glycol ethers standard.

OSHA is especially interested in answers, supported by evidence and reasons, to the following questions.

1. Do OSHA's proposed TWA permissible exposure limits (PELs) of 0.1 ppm for 2–ME and 2–MEA and 0.5 ppm for 2–EE and 2–EEA adequately protect employees from significant risk of adverse health effects? If not, what TWA permissible exposure limits would be more appropriate or would more adequately protect employees from health risks? Please provide data and evidence to support your response.

2. In addition to the proposed TWA PELs and action levels, OSHA has proposed Excursion Limits (ELs) of 0.5 ppm for 2–ME and 2–MEA and 2.5 ppm for 2–EE and 2–EEA. In the preamble to this proposal OSHA has also explained the various reasons for establishing ELs for the glycol ethers included in this proposal. OSHA requests comment on this provision. Please provide data and evidence to support your response.

3. In addition to the PELs for airborne exposure to glycol ethers, OSHA is also proposing that employers ensure that no employee is exposed to glycol ethers through dermal contact. OSHA requests comment on this provision. In particular:

a. Are there methods to measure dermal exposure that could be routinely used to monitor worker exposure to glycol ethers?

b. For employers whose employees are exposed to glycol ethers, what methods do you use to protect employees from dermal contact with glycol ethers?

c. What do these methods cost?

4. OSHA has limited the scope of this proposal to the four glycol ethers referred to OSHA by EPA. OSHA requests comment about whether the proposed scope of this rulemaking is appropriate. OSHA also requests comment about whether the scope of this proposed standard should be expanded to cover other ethylene glycol ethers and/or other propylene glycol ethers. Should there be separate rulemaking undertaken to cover other glycol ethers not included in this proposal? If so, what data and evidence are available to indicate that exposure to these other glycol ethers present a risk to employees?

5. In making its risk assessment, OSHA relied upon the NOEL-Uncertainty Factor approach to describe and calculate the risks associated with occupational exposure to glycol ethers. OSHA requests comment on whether this approach is appropriate for making a risk assessment regarding reproductive/developmental health effects.

a. OSHA requests comment on whether there are more appropriate models for describing or calculating the risks of adverse reproductive/developmental effects among exposed workers. Are there scientifically valid quantitative models that would be more appropriate for assessing risk of reproductive/developmental health effects?

b. OSHA has used an Uncertainty Factor of 100 to determine a level below which humans are unlikely to experience significant risk of adverse reproductive/developmental effects similar to those observed in animals. Is an Uncertainty Factor of 100 appropriate in this circumstance? Would an alternative Uncertainty Factor be more appropriate? Please provide data and evidence to support your response. (Please see section VI of this section for more detailed questions on risk assessment.)

6. Paragraph (g) of the proposed standard would require that supplied air respirators be used in those limited situations where the TWA and/or EL permissible exposure limits are not capable of being achieved solely by means of engineering and work practice controls. The requirement that respiratory protection be limited to supplied air respiratory protection is based on the fact that glycol ethers have poor warning properties at the proposed PELs. OSHA requests comment on this provision. OSHA also requests comment on the following:

a. Would the proposed requirement of supplied air respirators provide adequate protection or are there other kinds of respiratory protection that would be more appropriate and provide more protection?

b. Are there situations in which organic vapor cartridges or canisters could be used to adequately reduce exposures to or below the PELs? Do these other methods have adequate warning of potential breakthrough? Please provide evidence to support your response.

c. Are there any end-of-service-life indicators for the glycol ethers covered by this rulemaking?

d. For those employers whose employees are exposed to glycol ethers, what respiratory protection is provided to employees who are exposed above the PELs? How and why was the particular type of respiratory protection selected?

e. What is the cost of the respiratory protection program?

7. The proposed standard would require that employers provide appropriate personal protective equipment (e.g. coveralls, gloves, eye shields) to prevent exposure through dermal or eye contact in those limited situations where elimination of such contact is not capable of being achieved solely by means of engineering and work practice controls. OSHA requests comment on this provision. OSHA also requests information on the following:

a. OSHA is aware that some exposures to glycol ethers may be intermittent or of short duration. In these situations the breakthrough time of protective clothing or gloves may not be exceeded during a single use. OSHA requests comment on whether the clothing or gloves should be allowed to be reused? If so, in what situations would reuse be appropriate or to what situations should reuse be limited?

b. For employers whose employees are exposed to glycol ethers, what kind of personal protective equipment is provided and in what situations? Please explain, based on the specific situation, how and why use of such equipment was determined. Do employees reuse protective clothing and gloves?

c. For employers whose employees are exposed to glycol ethers, what is the cost of the personal protective equipment that is provided?

8. A number of provisions have been proposed to prevent exposure of employees through off-gassing from and/or contact with glycol ethers from contaminated personal protective equipment. OSHA requests information on problems associated with off-gassing and/or contact in the storage, handling, and disposal of contaminated equipment (particularly at the action levels that have been proposed). Should specific change rooms and showers be required?

9. Specific clean-up procedures have not been required in the proposal. OSHA requests information on whether specific procedures and practices should be required and, if so, what procedures are necessary. Is peroxide formation a problem with these compounds?

10. Paragraph (d)(2) of the proposed standard provides that initial exposure monitoring would be required for all employees who are or may be exposed to glycol ethers. OSHA requests comment on this provision.

a. For employers whose employees are exposed to glycol ethers, please describe your monitoring program and the basis for performing initial monitoring.

b. What are the costs of your monitoring program?

11. Monitoring would be permitted to be discontinued if initial monitoring results show exposure levels to be below the action level and at or below the excursion limits. Should the Agency require a second sample, taken at least seven days later, to confirm the initial monitoring results before permitting discontinuance of monitoring for that employee, as has been required for discontinuance of periodic monitoring?

12. In the medical surveillance provisions of the proposed standard OSHA has not proposed a requirement for any specific tests for the detection of the early onset of adverse reproductive or developmental effects. OSHA requests information about whether there are any medical tests which can be routinely used to detect such effects? If so, what are these tests and with what frequency should they be required? Please provide data and evidence to support your response.

13. The medical surveillance provisions of the proposed standard would require that counseling or tests, which are requested by the employee and deemed appropriate by the examining physician, be made available to employees exposed to glycol ethers who are having difficulty conceiving a child or who have concerns about their ability to conceive a healthy child. Are these requirements adequate and appropriate? If not, what other provisions should be added? For those employers whose employees are exposed to glycol ethers, OSHA also requests information on the following:

a. Is medical surveillance being provided to exposed employees?

b. What exposure levels or other factors trigger medical surveillance?

c. What tests and counseling are included in the medical surveillance program?

d. What provisions are included in the medical surveillance program to address reproductive/developmental health effects resulting from exposure to glycol ethers?

e. What benefits have been achieved from the medical surveillance program?

f. What are the costs of the medical surveillance program?

14. Under the recordkeeping provisions, OSHA proposes that medical records be maintained for at least the duration of employment plus 30 years. Is this recordkeeping provision adequate? If not, what other provisions would provide more protection and be more appropriate? For those employers whose employees are exposed to glycol ethers, what is the current policy regarding maintenance of medical records?

15. Data and evidence presented to OSHA in response to the ANPR indicate that a number of industry sectors are substituting away from manufacture and use of the glycol ethers covered under

this proposal. The major substitutes are 2-Butoxyethanol, propylene glycol monomethyl ether, propylene glycol monomethyl ether acetate and ethylene glycol monopropyl ether. OSHA requests comment on the following:

a. Where and how are these substitutes being used and to what degree have substitutes replaced the glycol ethers covered by this proposal?

b. What other substitutes are being used in place of the glycol ethers covered by this proposal?

c. What are the current employee exposure levels for the substitutes?

d. Are there known hazards and health risks associated with these substitutes?

e. For employers who have substituted, wholly or partially, away from the glycol ethers covered by this proposal, why was substitution undertaken?

f. What results, positive and negative, have been documented as a result of substitution (e.g., changes in productivity and/or production efficiency; changes in product quality; changes in employee absenteeism, medical expenses, worker compensation payments, insurance premiums; effects on compliance with environmental regulations)?

g. What were the costs of substitution?

16. For employers that currently manufacture or use glycol ethers covered by this proposal, OSHA requests the following information regarding substitution:

a. Are there substitutes for glycol ethers available for your business?

b. If you are planning to substitute, what plans and timeline do you have for replacing glycol ethers with substitute chemicals?

c. What percentage of production has been substituted and what percentage still can be substituted away from glycol ethers? What factors prevent complete substitution away from glycol ethers?

d. What will be the projected costs of substitution?

17. OSHA requests the following information from employers involved in glycol ether operations:

a. Job categories for each operation or process in which employees are potentially exposed to glycol ethers.

b. The number of employees in each of those job categories.

c. A brief description of each of those operations, job categories and production techniques.

d. A brief description of the engineering and work practice controls associated with each of those operations.

e. Raw exposure data, annotated if possible, associated with the operations described above

f. The Standard Industrial Classification (SIC) codes of the establishment(s).

18. In each job category where employees are potentially exposed to glycol ethers, please provide the following information regarding employee exposure levels:

a. The last two years of raw air monitoring results, annotated if possible, expressed as an 8-hour time weighted average for all employees who are exposed to glycol ethers and the dates of all raw air monitoring data.

b. The duration and frequency of exposure for those employees.

c. The job tasks or duties being performed at the time of monitoring.

d. The engineering and work practice controls in place at the time of monitoring.

e. The method of monitoring used to measure these exposures.

f. To the extent that representative sampling is used, clearly indicate which employees within each job category were monitored, the corresponding results and which employees were represented by the sampling results. Please discuss your representative sampling strategy and why representative sampling was used.

19. Please provide information on any job category and employee whose exposure to glycol ethers is so varied, intermittent, or of such short duration, etc., that the raw air monitoring data provided in response to the previous question do not adequately portray the nature of the exposures. Please explain your response and indicate peak levels, duration and frequency of exposures for employees in those job categories.

20. OSHA requests the following information regarding engineering and work practice controls:

a. For employers whose employees are exposed to glycol ethers, are the proposed PELs currently being achieved in your facilities in most operations most of the time by means of engineering and work practice controls?

b. In what operations are the proposed PELs being achieved most of the time by means of engineering and work practice controls? What engineering and work practice controls have been implemented in those operations?

c. For all operations in your facilities, what engineering and work practice controls have been implemented?

d. What additional engineering and work practice controls could be implemented in each operation where exposure levels are currently above the proposed PELs to further reduce exposure levels?

e. When these additional controls are implemented, to what levels can exposure levels be expected to be reduced?

f. What are the costs and time needed to develop, install and/or implement additional controls?

g. Are there any processes or operations in which it is not reasonably possible to implement engineering and work practice controls within six months to one year to achieve the proposed PELs? If so, would allowing additional time for employers to come into compliance with paragraph (f) make compliance reasonably possible? How much time would be necessary?

21. In operations where air exposure levels are above the proposed PELs, to what extent can these operations and processes be automated and enclosed or remotely controlled? To what extent can quality control sampling be remotely controlled? Are there any restrictions on the use of automated or remote control techniques?

22. What are the benefits, other than reducing employee exposures to glycol ethers, that can be derived from implementing engineering and work practice controls (e.g., reduced exposure to other contaminants; compliance with environmental regulations; increased productivity and/or production efficiency; product improvement; reduced absenteeism; reduction in medical expenses, insurance premiums and worker compensation payments, etc.)?

23. Are engineering control technologies that have proven effective in industries not covered by this notice applicable or transferrable to the chemicals covered by this proposal? Please explain and provide evidence to support the nature and extent of compatibility or applicability.

24. OSHA requests information on whether there are any limited unique conditions or job tasks in glycol ether manufacture or use where engineering and work practice controls are not available or are not capable of reducing exposure levels to or below the proposed PELs most of the time. Please provide data and evidence to support your response.

25. In the Preliminary Regulatory Impact Analysis OSHA has estimated benefits by extrapolating from the NOEL-Uncertainty Factor approach. OSHA requests comment on its methodology in using the Uncertainty Factor approach to project benefits. OSHA also requests comment on whether there are alternative methods, either quantitative or qualitative, for projecting benefits associated with a reduction in exposure to glycol ethers.

26. In order to perform the economic feasibility analysis for the final rule,

OSHA requests employers and interested parties submit the following information from the last five years on your company and/or industry sector:

a. Profits, sales and the percentage of each which are related to the glycol ethers covered by this proposal.

b. Total annual volume and dollar value of production for your company and/or industry sector. What percentages are related to the glycol ethers covered by this proposal?

c. Annual labor turnover rate of your company and/or industry sector for jobs involving exposure to the glycol ethers covered by this proposal.

27. For performing an economic feasibility analysis, OSHA also requests the following:

a. A financial and economic profile of your company and/or industry sector.

b. A profile of your financial position in the market and your market share in producing glycol ethers or producing products utilizing glycol ethers.

c. The number of facilities in your industry sector.

28. What is the age, production capacity and estimated remaining life of your plant and equipment?

29. Will major renovation or reconstruction of your company be required to bring air monitoring results into compliance with the proposed standard? If so, please provide costs and time necessary for renovation and/or reconstruction.

30. The Agency has prepared a draft Regulatory Flexibility Analysis analyzing the impacts of the proposed standard on the small businesses which OSHA believes may be affected. The following information is requested for small businesses in addition to the information OSHA has gathered.

(a) What kinds of small businesses or organizations and how many of them would be affected by regulating exposures?

(b) Which, if any, federal rules may duplicate, overlap, or conflict with an OSHA regulation concerning glycol ethers?

(c) Will difficulties be encountered by small entities when attempting to comply with requirements of the proposed standard? Can some of the requirements be deleted or simplified for small entities, while still achieving comparable protection for the health of employees of small entities?

(d) What timetable would be appropriate to allow small entities sufficient time to comply?

31. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) requires that each Federal agency consider the environmental impact of major actions significantly affecting the quality of the human environment. Any person having information, data or comments pertaining to possible environmental impacts is invited to submit them along with accompanying documentation to OSHA. Such impacts might include:

(a) Any positive or negative environmental effects that could result should a standard be adopted;

(b) Beneficial or adverse relationships between the human environment and productivity;

(c) Any irreversible commitments of natural resources which could be involved should a standard be implemented; and

(d) Estimates of the degree of reduction of glycol ethers in the environment by the proposed standard and alternatives.

In particular, consideration should be given to the potential direct or indirect impacts of any action, or alternative actions, on water and air pollution, energy usage, solid waste disposal, or land use.

B. Federalism

This proposed standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective as the Federal standards in providing safe and healthful employment and places of employment.

Since these materials are present in workplaces in every state of the Union, the occupational hazard of glycol ethers is a national problem.

The Federally proposed glycol ether standard is drafted so that employees in every State would be protected by the standard. To the extent that there are any State or regional peculiarities, States with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems.

In short, there is a clear national problem related to occupational safety and health for employees exposed to glycol ethers. Those States which have elected to participate under section 18 of the OSH Act would not be preempted by this proposed regulation. State comments are invited on this proposal and will be fully considered prior to promulgation of a final rule.

C. State Plans Revisions

The 23 states and 2 territories which operate their own Federally-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a state or territorial standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

II. Pertinent Legal Authority

This proposed standard and the issuance of a final standard are authorized primarily by sections 4(b)(2), 6(b), 8(c) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 653(b)(2), 655(b), 657(c), 657(g)(2)).

Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 6(b)(5) provides that the Secretary, in promulgating standards dealing with toxic materials, or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other

information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws.

Section 3(8) of the Act defines an *occupational safety and health standard* as a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

Under section 6(b)(7) of the Act, standards must, where appropriate, include provisions for labels or other appropriate forms of warning to apprise employees of hazards, suitable protective equipment, exposure control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, medical examinations or other tests, at no cost to employees, to determine whether the health of employees is adversely affected by such exposure, and training and education. In addition, section 8(c)(3) of the Act empowers the Secretary to promulgate standards prescribing recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.

The Supreme Court has held that under the Act the Secretary, before issuing a new standard, must determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607, 642 (1980). The Court stated that "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices." *Id.*, at 642, 644, n. 49.

The Court indicated, however, that the significant risk determination is "not a mathematical straightjacket." *Id.*, at 655. "OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty." *Id.*, at 656. Rather, the Court stated that "a reviewing court [is] to give OSHA some leeway where its findings must be made of the frontiers of scientific knowledge." *Id.*, at 656. The Court also stated that while the "Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations." *Id.*, at 655–56, n. 62.

After OSHA has determined that a significant risk exists and that such a risk can be reduced or eliminated, it must set a standard which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health (section 6(b)(5)). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490, 509 (1981). The Court held that "cost-benefit analysis by OSHA is not required by the statute because feasibility analysis is." *Id.*

Section 4(b)(2) of the Act provides that standards issued under OSHA apply to construction and maritime employment where the Secretary determines these standards to be more effective than existing standards which would otherwise apply to that employment. (OSHA has proposed the addition of new paragraph (n) to 29 CFR 1910.19, which would apply the proposed glycol ethers standard to construction and maritime employment, in addition to its coverage of general industry).

Authority to issue this proposed standard is further supported by the general rulemaking authority found in section 8(g) of the Act. Section 8(g)(2) empowers the Secretary to prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under the Act. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes (section 2(b)), which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions;

Providing for the developing and promulgation of occupational safety and health standards;

Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problems;

Encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

Because the proposed glycol ethers standard is reasonably related to these statutory goals and because the Agency's preliminary judgment is that the evidence satisfies the statutory requirements and that the proposed standard is feasible and substantially reduces significant risk of adverse health effects, especially reproductive and developmental health effects, the Secretary preliminarily finds that the proposed standard is necessary and *appropriate to carry out the Agency's responsibilities under the Act.*

III. History of the Regulation

OSHA's current Permissible Exposure Limits (PELs) for 2–ME, 2–MEA, 2–EE, and 2–EEA are 25 ppm, 25 ppm, 200 ppm, and 100 ppm, respectively. All are time weighted averages (TWAs) for an 8-hour workshift (29 CFR 1910.1000, Table Z–1–A). In the Z–1–A Table, 2–ME, 2–MEA, 2–EE, and 2–EEA are listed under the names Methyl Cellosolve, Methyl Cellosolve Acetate, 2-Ethoxyethanol, and 2-Ethoxyethanol Acetate, respectively. The OSHA standards bear a skin notation, indicating the potential contribution to the overall exposure by the cutaneous route, including mucous membranes and eye, either by airborne or more particularly, by direct contact with the substance.

The current standards were adopted in 1971 pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The source of these standards was the American Conference of Governmental Industrial Hygienists (ACGIH) and they are based primarily on blood, kidney, liver and central nervous system toxicity.

In the late 1970's, many studies began to be published regarding adverse effects, including testicular atrophy, infertility, fetotoxicity, and fetal malformations in laboratory animals exposed to glycol ethers. In response to these findings, the ACGIH, in its notice of Intended Changes (for 1982),

proposed TWAs of 5 ppm for 2–ME, 2–EE and their acetates which were subsequently adopted in 1984. Likewise, on May 2, 1983, NIOSH published a Current Intelligence Bulletin recommending that 2–ME and 2–EE be regarded in the workplace as having the potential to cause adverse reproductive effects in male and female workers and embryotoxic effects, including teratogenesis, in the offspring of the exposed pregnant females and urged employers to reduce exposures to the lowest extent possible (Ex. 5–001).

On January 24, 1984, EPA published an Advance Notice of Proposed Rulemaking (ANPR) in which they announced their intention to regulate 2–ME, 2–EE and their acetates (49 FR 2921). EPA was concerned about the toxicity of these chemicals due to evidence of human exposure to concentrations above levels currently recommended by the ACGIH, and the potential for significant numbers of individuals to become exposed. After consideration of the record developed in connection with its ANPR, EPA determined that the risks associated with exposure to 2–ME, 2–EE and their acetates could be sufficiently reduced by action taken under the OSH Act. Following these findings, EPA, in accordance with section 9(a) of TSCA, on May 20, 1986, referred 2–ME, 2–EE and their acetates to OSHA to give this Agency an opportunity to regulate the chemicals under the OSH Act (51 FR 18488). EPA requested OSHA to determine whether the risks described in the EPA report could be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination was made then OSHA was requested to issue a notice declaring whether the manufacture and use described in the EPA report presented the risk therein described. EPA requested OSHA to respond within 180 days.

On December 11, 1986, OSHA published a notice (51 FR 42257) responding to the EPA referral report by making a preliminary determination that a revised OSHA standard limiting occupational exposure to 2–ME, 2–EE and their acetates could prevent or reduce the risks due to exposure to a sufficient extent and that such a risk had been accurately described by EPA in the report.

On April 2, 1987, OSHA decided it would proceed with permanent rulemaking to reduce exposure to 2–ME, 2–EE and their acetates and published an ANPR (52 FR 10586). OSHA based its decision on the determination that the existing standards did not adequately address the adverse health effects associated with 2–ME, 2–EE and their acetates. OSHA solicited information and comments regarding the hazards of exposures to the chemicals, control methods for reducing these hazards and the costs of controlling exposures.

In September of 1991, NIOSH published a Criteria for a Recommended Standard for Ethylene Glycol Monomethyl Ether, Ethylene Glycol Monoethyl Ether, and Their Acetates (i.e., 2–ME, 2–EE and their acetates) (Ex. 5–154). In this document NIOSH recommended worker exposures to 2–ME and its acetate, 2–MEA, be limited to 0.1 ppm as time weighted average for up to 10 hours/day during a 40 hour workweek (10-hr TWA) and that worker exposure to 2–EE and its acetate, 2–EEA, be limited to 0.5 ppm as a 10-hr TWA. NIOSH also recommended that dermal contact to 2–ME, 2–EE and their acetates be prohibited. In addition to these recommended exposure limits, NIOSH also recommended various industrial hygiene provisions including exposure monitoring, medical monitoring, protective clothing and equipment, engineering controls and work practices and hazard communication. The provisions of this recommended standard were based primarily on adverse reproductive, developmental and blood effects.

IV. Chemical Identification, Production and Use of Ethylene Glycol Ethers

The chemicals, 2-Methoxyethanol (2–ME), 2-Methoxyethanol acetate (2–MEA), 2-Ethoxyethanol (2–EE), and 2-Ethoxyethanol acetate (2–EEA) are members of a class of chemicals known as ethylene glycol ethers which are, in turn, members of a broader class of chemicals known as glycol ethers. In this document the terms ethylene glycol ethers or glycol ethers will refer only to 2–ME, 2–MEA, 2–EE and 2–EEA. The respective Chemical Abstract Service (CAS) Registry numbers for the subject ethylene glycol ethers are 109–86–4, 110–49–6, 110–80–5, 111–15–9. All four compounds are colorless, flammable liquids which are compatible with a broad range of resins and are miscible in both organic solvents and water. They have relatively low vapor pressures, high boiling points, low evaporation rates and high flash points. At room temperature and atmospheric pressure, these compounds are highly reactive in the presence of strong oxidizers; 2–MEA and 2–EEA are also highly reactive in the presence of nitrates and strong acids. Decomposition products during combustion include toxic gases and vapors such as carbon monoxide.

2–ME, chemical formula $CH_3OCH_2CH_2OH$, has a molecular weight of 76.1, a boiling point at 760mm Hg of 124 C, a vapor pressure at 20 C of 6mm Hg, a flash point of 42 C and possesses a mild non-residual odor. 2–MEA, chemical formula $CH_3COOCH_2OCH_3$, has a molecular weight of 118, a boiling point of 145 C, a vapor pressure of 2mm Hg, a flash point of 44 C and possesses a mild ether-like odor. 2–EE, chemical formula $C_2H_5OCH_2CH_2OH$, has a molecular weight of 90.1., a boiling point of 135 C, a vapor pressure of 4mm Hg, a flash point of 49 C and possesses a sweetish odor with odor. 2–EEA has chemical formula $C_2H_5OCH_2OCOCH_3$, a molecular weight of 132, a boiling point of 156 C, a vapor pressure of 2mm Hg, a flash point of 47 C and possesses a mild non-residual odor. The odor thresholds of these compounds are discussed in the Respiratory Protection portion of this document.

Ethylene glycol ethers are produced by the ethoxylation of ethylene oxide with preheated anhydrous alcohol. Methyl alcohol produces ethylene glycol monomethyl ether (2–ME) and ethyl alcohol produces ethylene glycol monoethyl ether (2–EE). The corresponding acetates, 2–MEA and 2–EEA are produced by the esterification of 2–ME and 2–EE with acetic acid.

Due to their physical characteristics, ethylene glycol ethers are useful in a wide variety of applications, particularly as solvents. In general, these ethers are used extensively in the formulation of paints and coatings, commercial printing inks, industrial solvents, and cleaners. They are also used as chemical intermediates in the production of plastisizers, as de-icing additives in jet fuels, and in electronics manufacturing.

After manufacture of glycol ethers for export (45% of total sales), the utilization of these compounds as chemical intermediates accounts for the largest percentage (24%) of their sales (PEI report, Ex. 5–164). For example, the manufacture of 2–EEA is the largest single use of 2–EE while 2–ME is used in the production of 2–MEA. Both 2–ME and 2–EE are also used to produce a variety of plastisizers for use in such products as 35 mm film, insulation for high voltage wires, and high flash coatings.

Another principal area of use (15% of total sales) of the four glycol ethers is in the formulation of paints and coatings (e.g., primers, varnishes, stains, etc.). These paints and coatings are utilized in original equipment manufacture (OEM) of items such as automobiles and trucks, machinery and equipment, metal cans,

metal furniture and appliances, and in coil coatings. They are also found in auto refinishing and maintenance painting formulations. In addition, all four glycol ethers are used in a variety of special coating applications ranging from fingernail polish to wood stains.

The electronics industry employs glycol ethers in the manufacture of semiconductors and circuit boards. Glycol ethers are a component of the photoresist used in the photolithography of semiconductor circuit designs in addition to being utilized in coating/lamination resins of circuit boards. Products used in the marking, bonding, and labeling of circuit boards may also contain ethylene glycol ethers.

Substantial quantities of 2–ME are used as de-icing additive in jet fuel. Since commercial jets have in-line de-icers, this market is principally military. However, some general aviation jet fuel also requires de-icing additive.

Comparable to glycol ether's use in paint and coatings is their role as solvents in the formulation of commercial printing inks, particularly those used in silk screen, flexographic, and gravure printing. Ethylene glycol ethers are also found in formulations used in textile dyeing and printing. In addition to being a component of the ink itself, glycol ethers are used in solvents and machinery cleaners for the commercial printing industry.

While the above uses account for the vast bulk of glycol ether consumption, they have also been reported to be utilized in a number of diverse cleaning solvents, as solvent in adhesive, in leather dying/tanning, and in the manufacturing of pharmaceuticals.

V. Health Effects

A. Introduction

The experimental studies in animals clearly demonstrate that 2–ME and 2–EE induce adverse reproductive, developmental and hematological effects. Several species (e.g., rats, rabbits and mice) exposed through several routes of exposure (e.g., oral, dermal, and inhalation) have consistently shown similar effects after exposure to these ethylene glycol ethers. Exposed males have exhibited testicular degeneration, disrupted spermatogenesis and reduced fertility. Females exposed during gestation have shown signs of maternal toxicity as well as increased incidence of resorptions. Offspring from these exposed females have exhibited a variety of teratogenic effects including cardiac, skeletal and visceral malformations. In addition, newborn pups have exhibited behavioral and neurochemical alterations. Adverse blood effects have also been observed after exposure. These effects include decreases in red blood cells, white blood cells, hemoglobin concentrations and hematocrit.

Although less extensive, the animal data have also shown that the acetates, 2–MEA and 2–EEA, induce adverse reproductive and developmental and hematological effects similar to those observed among their parent glycol ethers. These studies confirm the findings of metabolic studies which indicate that 2–ME, 2–EE and their acetates follow similar metabolic pathways, producing similar metabolites, which are the active agents most likely responsible for the observed effects.

Consistent with these experimental results is human evidence of reproductive and hematological effects. Workers exposed to 2–ME and 2–EE have exhibited decreased sperm counts, testicular atrophy and decreased red and white blood cell counts. Little data have been reported on the reproductive, maternal or developmental effects for women exposed to glycol ethers. However, the lack of data in this area may be due, in most part, to the difficulty in conducting analyses for these types of adverse effects. Although workers in some instances were exposed to multiple substances, making it difficult to ascribe exposure to a particular glycol ether to an observed effect, the human evidence is, nevertheless, consistent with and supportive of the animal evidence which indicates that these substances will induce adverse reproductive and developmental effects.

B. Metabolism/Metabolic-Related Health Effects

The ethylene glycol ethers, 2–ME and 2–EE, are metabolized to their corresponding acetic acids, methoxyacetic acid (MAA) and ethoxyacetic acid (EAA), by an alcohol dehydrogenase (ADH) mediated pathway. Animal studies conducted with MAA have shown that it is the metabolite, rather than the parent glycol ether, which is responsible for inducing adverse reproductive and developmental effects. 2–MEA and 2–EEA are also metabolized by the ADH pathway to MAA and EAA. Because these two acetates are metabolized to the same primary metabolites as their corresponding parent glycol ethers, it is assumed that they will induce similar adverse reproductive and developmental effects. Studies in male and female volunteers confirm that the ADH pathway is also the primary route of metabolism in humans. However these studies also indicate that the retention and biological half life of the active metabolite is longer in humans than in animals.

Miller et al. (Ex. 4–131) identified MAA as the primary metabolite of 2–ME by radiogas-chromatography/mass spectrometry analysis. The investigators recovered 50–60% of the administered ^{14}C from urine of rats within 48 hours after a single oral dose of [^{14}C] 2–ME. Expired $^{14}CO_2$ was the only other significant route of elimination (12%). Thus, urine was established as the major vehicle of elimination of ^{14}C after a single oral dose of [^{14}C] 2–ME. Urine collected was then analyzed by radiogas-chromatography/mass spectrometry. Analysis revealed the primary component as methoxyacetic acid. Based on these findings Miller et al. concluded that 2–ME is first oxidized to methoxyacetaldehyde by ADH and then further oxidized to MAA by aldehyde dehydrogenase.

Evidence also indicates that MAA is the ultimate toxin responsible for the observed adverse reproductive and developmental effects. Brown et al. (Ex. 4–102) gave single injections of 244 mg MAA/kg to pregnant rats on days 8, 10, 12 or 14 of gestation. Exposure to MAA induced significant increases in the incidence of embryo-fetal mortality, decreases in fetal weight, and increases in structural malformations (e.g., skeletal malformations, hydrocephalus and urogenital abnormalities). Similarly Miller et al. (Ex. 4–133) found that the administration of MAA daily for two weeks by gavage to rats resulted in severe degeneration of testicular germinal epithelium and hematological abnormalities. For example significant decreases in testicular weight and in red blood cell counts were observed at 300 and 100 mg MAA/kg. These toxicological effects were remarkably similar to those observed following administration of 2–ME. The authors concluded that the adverse health effects of 2–ME are probably the result of *in vivo* activation of 2–ME to MAA, and that MAA is the proximate toxin following administration of 2–ME. The findings of Ritter et al. (Ex. 4–143), Yonemoto (Ex. 4–192) and Foster et al. (Ex. 5–052) are consistent with this view.

In addition to their studies on the teratogenicity of MAA, Ritter al. (Ex. 4–143) also investigated the effects of the co-administration of 2–ME and 4-Methylpyrazole. 4-Methylpyrazole (4–MP) is an inhibitor of alcohol dehydrogenase (ADH) and thus may block metabolism occurring by an ADH pathway. In this study it was observed

that embryotoxicity (i.e., the number of dead, resorbed and malformed fetuses) following co-administration of the two substances was 16.8%, as compared to 100% for the same dose and the same route of 2–ME alone. The observation that the co-administration of 4–MP provided significant protection against the embryotoxic of 2–ME is consistent with the hypothesis that metabolism of 2–ME occurs via the alcohol dehydrogenase (ADH) pathway and that it is the primary metabolite that is most likely the active agent in the induction of adverse effects.

Similar findings have been reported by Sleet et al (Ex. 5–118). In this study pregnant mice were exposed to either 2–ME (1.3 to 1.6 mmole/kg) or MAA (1.1 to 1.7 mmole/kg) by gavage on day 11 of gestation. 2–ME and MAA were found to be equally potent in producing significant increases in the incidence of paw malformations (e.g., webbed, missing or additional digits). The co-administration of 4-Methyl Pyrazole was found to reduce the teratogenic potency of 2–ME. For example, the incidence of malformations induced by 4.6 mmole/kg 2–ME was reduced from 94% to 59% when 4–MP was administered at a dose of 0.12 mmole/kg. The incidence of malformations was reduced to 0% when 4–MP was administered at a dose of 1.2 mmole/kg. These data further indicate the role of metabolism in inducing teratogenic effects and strongly points to MAA as the active agent.

Similar to the metabolic studies on 2–ME, the evidence also indicates that the primary metabolite of 2–EE is also an alkoxyacetic acid; in this case ethoxyacetic acid (EAA). Cheever et al. (Ex. 5–089) gave single oral doses of 230 mg 2–EE/kg body weight. The major metabolites detected in the urine were EAA and N-ethoxyacetyl glycine. EAA was also detected in the rat testes. The authors concluded that the most probable route of metabolism was the oxidation of 2–EE through ADH to EAA with some subsequent conjugation of EAA to glycine to form N-ethoxyacetyl glycine.

Similar to the findings in animal studies, experimental studies using male and female volunteers, have shown alkoxyacetic acids to be the primary metabolites in humans. In a series of experiments Groeseneken et al. (Exs. 5–112, 5–113, and 5–114) exposed 10 male volunteers by inhalation to 2.7, 5.4 or 10.8 ppm 2–EE for 4 hours, both at rest and during physical exercise. Consistent with findings in animal studies, EAA was found to be the major urinary metabolite. However the biological half-life in humans was found to be approximately 21–24 hours compared to the biological half life of 8–12 hours reported in animals. It was also observed that EAA excretion increased with increasing dose and/or physical activity. Due to the long half life, the authors stated that EAA will not be cleared from the urine by the next morning following exposure and accumulation of the metabolite may be expected through repetitive exposures. Thus EAA may build up in the body over the course of the workweek.

In a similar study Groeseneken et al. (Ex. 5–115) exposed 10 male volunteers by inhalation to 2–EEA. Five volunteers were exposed at rest to 2.6, 5.2 and 9.3 ppm 2–EEA and 5 were exposed to 5.2 ppm 2–EEA during physical exercise. Again, EAA was detected as the major metabolite with a biological half life of approximately 23 hours. It was observed that the metabolism of 2–EEA followed the same time course as 2–EE (Ex. 5–112) and that for equivalent doses of 2–EE and 2–EEA, equivalent amounts of EAA were excreted. The authors concluded that 2–EEA is first converted to 2–EE by esterases and then to EAA by an ADH mediated pathway. Similarly it was found that EAA is not cleared from urine by the next morning and thus may build up over the work week following repetitive exposures.

In field study of workers, Veulemans et al. (Ex. 5–114) studied the urinary excretion of EAA for a group of 5 female silk screen operators who were exposed, by inhalation, to mixtures of 2–EE and 2–EEA at approximately 5.6 and 5 ppm, respectively. In this study the women were monitored for 5 days during a normal production period. They were also monitored during another 7 day period after a 12 day production stop. Similar to the experimental studies among human volunteers, EAA was detected in the urine as the major metabolite during the 5 days of production and was also found to accumulate during the workweek. The authors also reported that even after 12 days of non-exposure, traces of EAA were still detectable in the urine. The authors stated that these findings confirmed the earlier short term studies by Groeseneken (Exs. 5–112 and 5–115) and suggested that the biological half life of EAA may even be greater than 24 hours. Moreover they added that from a toxicological point of view, "it would certainly warrant extra caution in the extrapolation of experimental data from laboratory animals to man, since comparable accumulation effects apparently are not found in all species."

To further investigate the metabolic differences between rats and humans, Groeseneken et al. (Ex. 5–137) compared the urinary excretion of EEA in man and rat. In this study rats were orally exposed to 2–EE at low doses comparable to the inhalation doses used on male volunteers in previous experimental studies (Ex. 5–112). The authors stated that oral doses were used in rats due to the lack of animal data necessary to calculate respiratory uptake of 2–EE (e.g., 2–EE pulmonary retention and respiratory minute volume). Data for calculating respiratory uptake were available in human studies. It was assumed that metabolism was independent of the route of administration. Groups of five rats were exposed to single oral doses of 0.5 mg/kg, 1 mg/kg, 5 mg/kg, 10 mg/kg, 50 mg/kg or 100 mg/kg 2–EE. Exposure levels of 0.5 mg/kg and 1 mg/kg were noted by the authors to be equivalent to human exposures of 5.4 ppm or 10.8 ppm 2–EE used in the human experimental studies. After a correction for body weight on urinary excretion, results from these studies showed that, for humans, the maximal excretion rate of the primary metabolite, EEA, declined at a slower rate (48 hours after exposure) than in rats (12 hours after exposure) at equivalent doses. In addition the half life for EEA in humans was calculated at 42 hours compared to 7.2 hours for rats: almost 6 times higher for man. The authors suggested that these findings could have important consequences for the toxicity of 2–EE in man as the toxic properties of 2–EE have been associated with the alkoxyacetic acid metabolite, EEA.

Romer et al. (Ex. 5–033) have also shown that the co-administration of ethanol with 2–ME and 2–EE prolonged the retention of 2–ME and 2–EE in the blood. In this study rats were pretreated with ethanol and then exposed by inhalation to 1600 ppm 2–ME or 420 ppm 2–EE or ip-administration to 5 ml/kg body weight 2–ME or 2–EE). In both cases it was observed that degradation of 2–ME and 2–EE was almost completely inhibited when rats were pretreated with ethanol. Only after the elimination of ethanol was complete, did the blood levels of 2–ME and 2–EE begin to decrease. The authors concluded that ethanol, which is also metabolized by the alcohol dehydrogenase (ADH) pathway, must have a higher affinity for ADH enzymes than 2–ME or 2–EE. Because of its higher affinity, ethanol is preferentially metabolized. The authors suggested that blood levels of 2–ME and 2–EE may persist in workers who use 2–ME or 2–EE in combination with alcoholic consumption. This persistence of 2–ME and 2–EE in the blood could result in an enhanced health risk.

C. Acute Toxicity

The acute toxicity of ethylene glycol ethers have been shown in several animal species (e.g., mice, rats, rabbits, guinea pigs and cats) by various routes of administration (e.g., oral, injection, dermal and inhalation). Smyth et al. (Ex. 5–138) examined the single dose toxicity of a variety of compounds, including 2–ME, 2–EE, 2–MEA and 2–EEA. In this study rats and guinea pigs were exposed through oral administration to varying concentrations in order to determine the lethal dose (LD_{50}) of the various compounds. In rats, the LD_{50} identified for 2–ME, 2–MEA, 2–EE and 2–EEA were respectively 2460 mg/kg, 3920 mg/kg, 3000 mg/kg and 5100 mg/kg body weight. In guinea pigs the LD_{50}'s for these same 4 compounds were 0.95, 1.25, 1.4 and 1.91 mg/kg body weight, respectively. The authors noted that these compounds induced narcosis but only at exposures at or above the LD_{50}. Pathological examination revealed the primary effect was kidney damage.

Reviews of the data also report relatively high lethal doses (LD50) and lethal concentrations (LC_{50}) (Exs. 5–134, 5–046 and 5–140). For example, the LC_{50}'s observed in mice exposed for 7 hours to 2–EE and 2–ME were 1820 ppm and 1480 ppm, respectively. A LC_{50} of 7000 ppm was observed among rats exposed to 2–MEA for 4 hours. For 2–EEA, a LC_{50} of 4000 ppm was reported for cats exposed from 4 to 6 hours. In most cases deaths were attributed to lung and kidney damage. Pathological examination revealed lung edema, slight liver damage and marked kidney injury. Prior to death animals exhibited difficulty in breathing, sleepiness, weakness and loss of muscular coordination.

Little evidence is available on acute toxicity in humans. Most of the available evidence is limited to case studies of accidental poisonings where glycol ethers have been ingested (Ex. 5–134, pp. 21–24). For example, two men hospitalized after drinking 100 ml of 2–ME, exhibited signs of confusion, disorientation, and progressive muscular weakness. They also suffered from hyperventilation, tachycardia and moderate renal failure. Similarly a woman who drank 40 ml of 2–EE exhibited renal failure and adverse central nervous system effects (e.g., vertigo and unconsciousness). Other effects observed among humans after acute exposures include irritation of the eyes and mucous membranes including the respiratory system.

D. Background Discussion on Reproductive and Developmental Toxicity

Reproductive and developmental effects are the primary health concerns associated with exposure to ethylene glycol ethers. The term reproductive effects refers to effects on the male and female reproductive systems and the term developmental effects refers to effects on the developing organism. Various terms have been used in the field of reproductive and developmental toxicology, many of which are ambiguous and open to different interpretations. In order to provide guidance and assistance in assessing reproductive and developmental risks, the EPA has published proposed guidelines on assessing female and male reproductive toxicity (Exs. 5–122 and 5–123) and developmental toxicity (Exs. 5–106, 5–153). These guidelines discuss many of the critical issues in reproductive and developmental toxicology. Much of the terminology in the following discussion is adopted and modified from the EPA guidelines.

Male reproductive toxicity is generally defined as the occurrence of adverse effects on the male reproductive system that may result from exposure to chemical, biological, or physical agents. The toxicity may be expressed as alterations to the male reproductive organs and/or related endocrine system. For example toxic exposures may interfere with spermatogenesis (the production of sperm), resulting in adverse effects in number, morphology (e.g., size and shape), or function (e.g., motility) of sperm. These effects in turn may adversely affect fertility. The process of spermatogenesis is a cyclical process marked by distinct stages that may be sensitive to toxic agents. In this process germ cells (spermatogonia) differentiate into primary spermatocytes then to secondary spermatocytes, to spermatids and finally into spermatozoa. Men produce sperm continually from puberty throughout life and thus the risk of disrupted spermatogenesis is of concern for the entire adult life of a man. Reproductive toxicity may also include dysfunction in sexual behavior or processes which are integral to reproductive success.

Female reproductive toxicity is generally defined as the occurrence of adverse effects on the female reproductive system that may result from exposure to chemical, biological, or physical agents. This toxicity includes adverse effects in sexual behavior, onset of puberty, ovulation, menstrual cycling, fertility, gestation, parturition, lactation, or premature reproductive senescence (the loss of reproductive capability associated with aging).

Developmental toxicity is defined as adverse effects on the developing organism that may result from exposure prior to conception (either parent), during prenatal development, or postnatally to the time of sexual maturation.

Developmental effects induced by exposures prior to conception may occur, for example, when mutations are chemically induced in sperm. If the mutated sperm fertilizes an egg, adverse developmental effects may be manifested in developing fetuses. Mutations may also be induced in the eggs. Such effects are often referred to as a dominant lethal effects.

The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormality, (3) altered growth, and (4) functional deficiency. Structural abnormalities include malformations and variations. As stated in the EPA Guidelines, a malformation is usually defined as a permanent structural change that may adversely affect survival, development, or function. These types of effects are often referred to as teratogenic effects. The term variation is used to indicate a divergence or a change in structure which is beyond the range of what is generally considered to be normal development. This divergence may not adversely affect survival, or health. However as noted by EPA ints guidelines, distinguishing between variations and malformations is difficult since there exists a continuum of responses from the normal to the extreme deviant. There is no generally accepted classification of malformations and variations. Other terminology that is often used, but no better defined, includes anomalies, deformations, and aberrations.

Altered growth is an alteration in offspring organ or body weight or size. Altered growth can be induced at any stage of development, may be reversible, or may result in a permanent change. Functional deficiency includes alterations in the functional competence of an organ or a variety of organ systems. This functional deficiency may be expressed as behavioral abnormalities. Such effects may often not be apparent at birth but may instead be noted during postnatal development. Similarly, exposure during development may lead to adverse reproductive functioning. For example, a female's entire complement of oocytes (eggs) are formed during gestation, as opposed to males who produce spermatocytes

continually throughout their adult life. Thus toxic insults during gestation may adversely effect oogenesis (the formation of eggs). However because structural and functional maturity of eggs does not occur until puberty, adverse effects may not be manifested until females reach reproductive maturity.

One of the critical phases in development, is the period of gestation referred to as organogenesis. During this phase of gestation, embryonic cells migrate and associate into tissues and organ rudiments and establish the basic organizational patterns of organ systems. Because this is a period marked by rapid cell proliferation and organ development it is vulnerable to the induction of structural defects. It is generally assumed that a single exposure, of sufficient dose, during such critical periods of development, may be sufficient to produce an adverse developmental effect. Thus repeated exposures may not be necessary to induce developmental toxicity. However developing organisms are also known to have the capacity to compensate for or to repair certain amounts of damage at the cellular, tissue or organ level. Thus it is also generally assumed that there may be thresholds for developmental toxins.

The level of concern for a developmental toxic effect is related to several issues, including the relative toxicity of an agent to the offspring versus the adult animal and the long-term consequences of findings in the fetus or neonate. The developing organism is dependent on the maternal animal to provide nutrients and to maintain a protective environment in which the conceptus can grow and develop. Thus any agent which adversely affects the maternal animal may have the potential to adversely affect the offspring. However it is often difficult to differentiate between effects which are a result of stress to the maternal animal and effects which are solely a result of the sensitivity of the developing organism. Those agents which produce developmental toxicity at a dose that is not toxic to the maternal animal are of the greatest concern because the developing organism appears to be more sensitive than the adult. The adult/developmental toxicity ratio (A/D Ratio) was introduced to account or describe the differential susceptibility between the maternal animal and the developing organism (Exs. 4–147 and 5–106). This ratio is calculated by dividing the Lowest Observed Effect Level (LOEL) in the maternal animal by the LOEL observed for the developing organism. A/D ratios greater than 1 suggest that the developing organism is more sensitive to a chemical insult than the mother and is therefore of greater concern. However, there is no consensus on the predictive value of the A/D ratio (Exs. 5–098 and 5–099). One reason is that the A/D ratio can be influenced by the design of the underlying bioassay (e.g., the spacing of doses chosen for study). Secondly, the maternal-developmental relationship may be misrepresented if insensitive developmental endpoints are compared to sensitive maternal endpoints or vice versa. In these cases the power of the experimental study may influence the level at which an effect is observed and thus influence the calculation of the A/D ratio. Thus, developmental effects which are produced only at maternally toxic doses cannot be discounted as being secondary to maternal toxicity. Current information is inadequate to assume that developmental effects at maternally toxic doses result only from the maternal toxicity. Rather, when the lowest observed effect level is the same for the adult and the developing organism, it may simply indicate that both are sensitive to that dose level. Moreover, the maternal effects may be reversible while effects on the offspring may be permanent. These are important considerations for agents to which humans may be exposed at minimally toxic levels in the workplace.

Most of the evidence on the reproductive and developmental toxicity of the four subject glycol ethers, as will be discussed later, is limited to data from experimental studies in mice, rats and rabbits. This, in major part, is due to the difficulty in conducting epidemiological analyses to detect adverse reproductive and/or developmental outcomes. For example, many outcomes such as early embryonic loss, spontaneous abortions, or reproductive capacity of offspring are not easily observed in humans. Epidemiological analysis is also complicated by the fact that, because there is a wide spectrum of inter-related effects, different types of effects may occur at different exposure levels. Thus multiple endpoints may result from a single toxicant. Some reproductive outcomes are rare and thus a large number of births are required to give the study enough power to detect a possible effect. For example, it has been estimated that to detect a two fold increase in spontaneous abortions a sample size of 322 pregnancies (161 exposed and 161 controls) would be required (Ex. 5–135, p. 167). More rare outcomes such as severe mental retardation, neural tube defects and chromosomal abnormalities would require samples sizes of 1,819, 8,986 and 17,907 live births respectively, to detect a two fold increase. Large populations of workers would be required to observe this many pregnancies or live births. Adequate sample sizes may be difficult to obtain due to factors such as marital status, education, age, use of birth control or prior reproductive history. These factors may affect couples' ability or attempts to have children and thus affect the number of outcomes available for study.

Because adequate human data are rarely available for reproductive or developmental outcomes, animal studies have been used and are generally considered to be useful in the prediction of reproductive/developmental toxicity for humans. A basic tenet of toxicology is that if an agent produces adverse effects in experimental animals, this agent may pose potential hazards to humans. This tenet is supported by reviews of studies in both humans and experimental animals on the reproductive effects of selected agents which have shown parallels among the adverse effect observed in animal experiments and effects reported in humans (Exs. 4–103, p. 96 and 5–135, pp. 169–170). For example, disturbances in estrous cycles in rats were observed after exposure to benzene and menstrual disorders were reported among humans exposed to benzene. DBCP induced testicular atrophy and decreased fertility in rats and has also been associated with similar effects in men. EDB has caused sterility in rats and reduced fertility in men. Similar concordance of effects have been observed with other agents such as carbon disulfide, arsenic, lead, alcohol and vinyl chloride.

While there are parallels in observed effects between experimental animals and humans, it is not necessarily assumed that there is site concordance of effects seen in animals and effects potentially occurring in humans. That is, effects observed in experimental animals may not exactly be the same as those which may occur in humans. For example within the period of organogenesis, different organ systems may form at different times. In addition an individual organ system may have a narrow time span when it is vulnerable. Furthermore, the time during organogenesis when a particular organ system develops may vary across species. Therefore, exposures occurring in different developing systems or even in similar systems, but at different times, may result in different types of adverse developmental effects. Thus although a particular adverse effect may not be observed in humans, the

presence of the effect in experimental animals indicates the potential of an agent to perturb development and therefore is an outcome of concern for human development.

E. Effects in Animals

Experimental studies in rats, rabbits, mice and monkeys through inhalation, dermal and oral exposure, have shown clearly and consistently that 2–ME, 2–EE and their acetates cause adverse hematologic, reproductive and developmental effects. These effects include decreased white and red blood cell counts, decreased hemoglobin concentrations, decreased fertility, decreased sperm count, decreased testes size and weight, early embryonic death, fetal malformations, delayed development and behavioral and neurochemical alterations.

1. Male Reproductive Toxicity

a. *2–ME.* 2–ME was shown to induce testicular degeneration in rats by Rao et al. (Ex. 4–142). In this study male rats were exposed, by inhalation, to 0, 30, 100 or 300 ppm 2–ME, 6 hours/day for 13 weeks. These rats were then bred with unexposed females to evaluate male reproductive function and dominant lethality. Dominant lethal tests are conducted to detect mutagenic effects in the spermatogenic process which may lead to fetal effects on the embryo/fetus. Male rats exposed to 300 ppm exhibited significant decreases in testes size and atrophy of the seminiferous tubules. Only 4 of 20 unexposed females mated to this group of exposed males were successfully inseminated and all 4 pregnancies ended in resorptions. The authors stated that at 300 ppm there was a complete suppression of fertility which they attributed to an interference in spermatogenesis. No significant decreases in fertility were reported for males exposed to 100 or 30 ppm 2–ME. Because no litters were produced in the 300 ppm exposure group, the authors stated that dominant lethality could not be assessed. However the authors did not address the issue as to whether the resorptions observed in the 300 ppm group may have been a possible dominant lethal effect. Among the litters from rats exposed to 30 and 100 ppm there were no significant increases in preimplantation loss or resorption rate compared to controls. The authors thus concluded that there was no dominant lethal effect from exposure at these doses. The authors did note that there was a significant increase in the resorption rate at 30 ppm. However because this effect was not observed at 100 ppm, it was not considered to be treatment related. Thus the NOEL for this study was identified as 100 ppm.

In this same study by Rao et al., male rats exposed at 300 ppm were additionally bred with unexposed females 13 and 19 weeks after exposure was terminated. Fifty percent of the males sired litters with viable implantations. Rats bred 13 weeks post exposure had regained 55% fertility. Rats bred 19 weeks post exposure had regained 50% fertility. These results suggest that adverse effects on fertility may be partially reversible after exposure is stopped. However these results also indicate that recovery may not be complete as 50% of the exposed males still showed signs of reduced fertility.

Testicular degeneration was also observed in a study by Miller et al. (Ex. 5–023, see also Ex. 4–045) where both rats and rabbits were exposed to 0, 30, 100, or 300 ppm 2–ME for 6 hours/day, 5 days/week for 13 weeks. Rats exposed to 300 ppm exhibited significant decreases in testes weight as a result of degeneration of the germinal epithelium of the seminiferous tubules. The authors reported that rats exposed to 300 ppm showed reduced numbers of spermatozoa and degenerating spermatozoa in the epididymis. However the authors did not state whether these were significant reductions. No treatment related effects were observed among rats exposed to 30 or 100 ppm 2–ME. A more sensitive response was observed among the exposed rabbits which exhibited testicular effects at 300, 100 and 30 ppm. All male rabbits exposed to 300 ppm had small and flaccid testes. Significant but less severe decreases in testes size were observed in rabbits exposed at 100 and 30 ppm. Histological examination of the rabbits revealed that the testicular effects were related to atrophy of the seminiferous tubules. The effects observed in rabbits at 30 ppm were questioned by the authors as they noted that only a small percentage of the animals (1 of 5 rabbits) were effected and rabbits exposed to 30 ppm in a subsequent study (Ex. 5–057) showed no adverse testicular response.

2–ME has also been shown to induce adverse testicular effects in shorter term tests. In an inhalation study by Doe et al. (Ex. 4–111) male rats were exposed to 100 or 300 ppm 2–ME, 6 hours/day for 10 consecutive days. Adverse testicular effects were only observed among rats exposed at 300 ppm. In these animals the testes were significantly decreased in both size and weight. Histological examination of the testes revealed atrophy of the seminiferous tubules and degeneration of the primary spermatocytes. No significant adverse effects were observed among rats exposed at 100 ppm, and thus this level was identified as the NOEL.

Similarly adverse effects were produced in a short term (9-day) inhalation test conducted by Miller et al. (Ex. 4–132). Male rats and mice were exposed 6 hours/day to 0, 100, 300 or 1000 ppm 2–ME. Severe testicular degeneration was observed in both rats and mice exposed at 1000 ppm. Histopathological examination revealed a degeneration and necrosis of all spermatogenic elements as well as a cessation of spermatogenesis. Similar but less severe testicular effects were observed in the 300 ppm exposure groups. However these effects were not statistically significantly different from control groups. No treatment related changes were observed in the 100 ppm exposed animals.

2–ME also induces adverse testicular effects when administered orally. For example, Nagano et al. (Ex. 4–135) exposed male mice to 62.5, 125, 250, 500, 1000, or 2000 mg 2–ME/kg body weight, 5 days a week for 5 weeks. In the high dose group 4 out of 5 mice died before examination. Significant decreases in testes weight were observed for the 1000, 500, and 250 mg/kg dose groups as a result of seminiferous tubule atrophy. The authors noted that the degree of changes in atrophy were related to increases in dosage thus implying the presence of a dose-response relationship. For example histopathological examination showed that at 1000 mg/kg no germ cells were present. At 500 mg/kg only small numbers of spermatozoa, spermatocytes and spermatids were present.

Similar effects were observed by Foster et al. (Ex. 4–119) where male rats were exposed orally to 50, 100, 250 or 500 mg 2–ME/kg body weight for 11 days. A significant degeneration of the testes was observed in the 100, 250 and 500 mg/kg dose groups. A single dose exposure to 100 mg/kg 2–ME resulted in testicular damage within 24 hours of exposure. In this study meiotic cells of the testes were identified as the primary site of testicular damage. Primary spermatocytes were damaged initially. Prolonged exposure damaged late spermatocytes and led to a depletion of the spermatid population. Results of this study indicated that testicular damage may be partially reversible. After exposure was stopped, testes weight returned to control values and spermatogenesis resumed. However some animals exposed at high doses still exhibited a small proportion of atrophied seminiferous tubules. Thus the authors concluded that prolonged

high exposure may prevent total recovery of testicular function.

Adverse effects in spermatogenesis and mating performance were observed in short term tests conducted by Chapin (Ex. 5–007). In the first phase of this study male rats were exposed to 0, 50, 100 or 200 mg 2–ME/kg body weight for 5 days and then mated with untreated females for 8 weeks. Significant decreases in the percentage of pregnancies and the number of live fetuses were observed among females mated with males from the 200 and 100 mg/kg dose groups. No significant effects were observed among females mated with 50 mg/kg dosed males. Females mated to rats exposed at 200 mg/kg exhibited an increase in the incidence of resorptions but only at weeks 5 and 6. No increases in resorption rates were observed among any other group. Significant increases in preimplantation losses were observed among females mated with males exposed to 200 and 100 mg/kg. The authors noted that the decrease in litter size is a possible indication of a dominant lethal effect. However because there was no significant increase in the number of dead fetuses and only a slightly significant increase in resorptions at weeks 5 and 6 of the high dose group, the authors stated that the decrease in litter size was probably due to decreased number of viable sperm number rather than a dominant lethal effect. The authors added that this conclusion is supported by the evidence of preimplantation loss as well as by the findings of other researchers (e.g., Rao et al., Ex. 4–142).

In the second phase of this study by Chapin, additional groups of male rats were exposed similar to rats in the first phase of the study but this time were not allowed to mate. Rats exposed at 100 and 200 mg/kg showed significant sperm count reductions throughout the study. In addition, these groups showed significant decreases in the percentage of motile sperm and increases in the frequency of abnormal sperm morphology. A reduction in sperm counts was observed in the 50 mg/kg group at week 5 only. In this group sperm motility was unaffected. The findings of this study also indicated that as dose increased, different types of testicular cells were affected. For example, at 100 mg/kg only spermatocytes were affected, while at 200 mg/kg the later stage spermatids and spermatogonia were effected.

In a subsequent study using a similar protocol, Chapin et al. (Ex. 5–006) examined testicular recovery from 2–ME treatment. Again male rats were exposed orally to 0, 50, 100, or 200 mg 2–ME/kg body weight for 5 days and followed for 8 weeks. Rats exposed to 200 and 100 mg 2–ME/kg exhibited significant signs of testicular damage including abnormal sperm morphology, delayed spermatogenesis, and cell death. All animals exposed to 200 mg 2–ME/kg showed significant signs of testicular toxicity during the first week of observation. These animals exhibited widespread death of all stages of spermatocytes and abnormal sperm morphology. By weeks 5–8, 50% of the tubules appeared normal for the 200 mg/kg exposed groups. Cell death and abnormal sperm morphology were also observed at 100 mg/kg. Similarly by week 8 a 50% recovery was noted. In the 50 mg/kg exposure group, changes in morphology were not noted until week 4. By week 8 no treatment related changes were observed.

Similar findings have been reported in more recent studies by Anderson et al. (Ex. 5–100). Male mice and rats were exposed to single doses of 0, 500, 750, 1000 or 1500 mg 2–ME/kg body weight. Selected groups were additionally mated to untreated females to examine dominant lethality. As in earlier studies increasing doses resulted in increased levels of testicular damage. In the rat, testes weight and sperm counts were significantly reduced at all dose levels. Abnormal sperm morphology was also observed among treated rats. In mice, significant decreases in testes weight and sperm count were observed in the 750 mg/kg group at week 3 and in the 500 and 1000 mg/kg groups at week 4. In the dominant lethal studies female rats mated to exposed males, exhibited a significant reduction in the number of implants. No statically significant increase in the incidence of abnormalities in offspring or any other signs of dominant lethality were observed among the rat offspring. In the mice, no significant decreases in fertility or signs of dominant lethality were observed.

b. *2–MEA.* Evidence strongly indicates that 2–MEA will induce adverse reproductive effects similar to its parent glycol ether 2–ME. As was discussed in the section on metabolism, MAA is thought to be the primary metabolite of 2–MEA. Metabolic studies indicate that the adverse reproductive effects of 2–ME are mediated by its primary metabolite methoxyacetic acid (MAA). Therefore it is likely that equal doses of 2–MEA would induce adverse reproductive effects similar to 2–ME, as these two compounds appear to follow similar metabolic pathways.

The metabolic data are supported by the findings of testicular degeneration in mice by Nagano et al. (Ex. 4135). In this study, male mice were orally exposed to 62.5, 125, 250, 500, 1000, or 2000 mg 2–MEA/kg body weight, 5 days/week for 5 weeks. Significant decreases in testicular weight were observed only in the 500 mg/kg dose group. Converting this dosage to mmole/kg the authors noted that on an equimolar basis 2–ME and 2–MEA resulted in similar effects.

c. *2–EE.* Like 2–ME, 2–EE has also been shown to cause male reproductive toxicity in laboratory animals although 2–EE has not been tested as extensively. For example, Barbee and Terrill et al. (Exs. 5–084 and 4–108) exposed male rats and rabbits by inhalation to 25, 100 or 400 ppm of 2–EE, 6 hours/day, 5 days a week, for 13 weeks. In rats the only significant effects observed were decreased pituitary weights at 400 ppm. Pathological examination of these organs did not reveal any lesion indicative of a treatment related effect. Thus the authors concluded that the increased pituitary weight was not likely to be a treatment related effect. Rabbits exhibited a significant decrease in testes weight when exposed to 400 ppm. Based on the pathological analyses this decreased weight was attributed, by the authors, to the degeneration of the seminiferous tubules. No adverse effects were observed at 100 or 25 ppm. From these findings the NOEL for reproductive effects in male rats was identified as 400 ppm while the NOEL for reproductive effects in male rabbits was 100 ppm.

2–EE also induces testicular degeneration after oral exposure. For example, Nagano et al. (Ex. 4–135) exposed male mice to 500, 1000, 2000, or 4000 mg 2–EE/kg body weight, 5 days/week over a 5 week period. At 4000 mg 2–EE/kg, all animals died before examination. Significant decreases in testes weights were observed in the 1000 and 2000 mg/kg exposure groups. Histopathological examinations revealed dosage related degrees of seminiferous atrophy among groups exhibiting a significant reduction in testes weight. For example, at 500 mg/kg no significant effects on the testes were observed. At 1000 mg/kg there were significant reductions in the testes weight and a corresponding decrease in the number of spermatozoa, spermatids and spermatocytes. At 2000 mg/kg there were also a significant decrease in testes weight with a corresponding decrease in spermatozoa and spermatids had completely vanished.

Similar effects were observed in short term oral studies by Foster et al. (Ex. 4–119). In this study male rats were exposed to 250, 500 or 1000 mg 2–EE/kg body weight for 11 days. Significant decreases in testes weight were

observed at 500 and 1000 mg/kg after the 11th day of exposure. The authors noted that rats appeared to be slightly more sensitive than mice. Histological examination of the testes revealed spermatocyte degeneration of the primary and secondary spermatocytes. No significant testicular abnormalities were observed at 250 mg/kg. The NOEL was identified as 250 mg/kg body weight.

d. *2-EEA.* As in the case of 2-MEA, evidence strongly indicates that 2-EEA will induce adverse reproductive effects similar to 2-EE. As discussed earlier, metabolic studies indicate that ethoxyacetic acid (EAA) is the primary metabolite of both 2-EE and 2-EEA and thus 2-EEA is likely to produce similar effects to those of 2-EE. This evidence is supported by the studies of Nagano et al. (Ex. 4-135) who exposed male mice to 500, 1000, 2000, or 4000 mg 2-EEA/kg body weight, 5 days/week, for 5 weeks. Significant decreases in testicular weight were observed in mice exposed to 1000, 2000 and 4000 mg/kg 2-EEA. Histopathological examinations revealed dose related changes in seminiferous tubule atrophy. For example at 200 and 100 mg/kg the exposed groups exhibited a significant reduction in testes weight and a corresponding reduction in the number of spermatozoa, spermatids and spermatocytes. At 400 mg/kg there was also a significant reduction in testes weight but at this dose the spermatozoa and spermatids had completely vanished. Conversion of dosage to mmole/kg revealed that equimolar doses of 2-EE and 2-EEA induced similar effects. Thus the authors concluded that these results suggest that a glycol ether and its corresponding acetate have similar toxic potential.

In summary, the evidence clearly shows that 2-ME, 2-EE and their acetates induce adverse male reproductive effects. Both through inhalation and oral exposure of these compounds, several animal species have exhibited infertility and testicular degeneration.

2. Maternal/Developmental Effects

2-ME and 2-EE and their acetates also induce adverse developmental and maternal effects. Rats, mice, rabbits and monkeys after oral and dermal exposures to these compounds have exhibited adverse effects including decreased maternal weight gain, increased lengths of gestation, increased resorptions, fetal malformations and delayed development.

a. *2-ME.* Hanley et al. (Exs. 4-120, 4-106, and 4-042a) studied the effects of inhaled 2-ME on fetal development in rats, mice and rabbits. Pregnant rats were exposed to 0, 3, 10, or 50 ppm 2-ME for 6 hours/day on days 6 through 15 of gestation. Pregnant mice were exposed to 0, 10 or 50 ppm for 6 hours/day on days 6 through 15 of gestation. Pregnant rabbits were exposed to 0, 3, 10, or 50 ppm for 6 hours/day on days 6 through 18 of gestation. Female rats exposed to 50 ppm exhibited a significant decrease in maternal body weight gain. No other signs of maternal toxicity for any other test doses were noted. A significant decrease in maternal body weight gain was also observed in mice but again only at 50 ppm. The only statistically significant dose-related developmental effects in rats were an increased incidence of lumbar spurs and delayed ossification after exposure to 50 ppm 2-ME. In mice the only significant dose related developmental effects observed were increased incidence of lumbar spurs and unilateral testicular hypoplasia at 50 ppm. No statistically significant effects were observed at 10 or 3 ppm in mice. Rabbits however exhibited a more sensitive response to 2-ME exposure. At 50 ppm significant decreases in maternal body weight gain and increases in maternal liver weight were observed. At 50 ppm rabbits had a significant increase in the incidence of resorptions. Fetuses from this group exhibited a significant decrease in mean fetal body weight and a significant increase in the incidence of malformations of all organ systems (e.g., joint contracture, shortness and absence of digits, ventricular septal defects of the heart, missing paw bones and rib malformations). Despite the strong effect observed at 50 ppm, there was no statistically significant increased incidence of malformations at 10 or 3 ppm for rabbits. However a statistically significant increase in resorption rate was observed at 10 ppm. The authors of the study however dismissed this effect stating that the observed increase was a result of an unusually low concurrent control value for resorptions. The authors stated that the observed increase at 10 ppm was within the range observed among historical controls.

Similar results were observed by Doe et al. (Ex. 4-111). In this study pregnant rats were exposed by inhalation to 0, 100 or 300 ppm 2-ME for 6 hours/day on days 6 through 17 gestation. Rats exposed to 300 ppm exhibited a significant decrease in maternal body weight gains and failed to produce any litters. Nine of the 20 rats exposed to 100 ppm 2-ME produced litters, but the gestation period was significantly increased over controls. Exposure to 100 ppm also induced a significant reduction in the total numbers of pups, the proportion of pups live at birth and the proportion of pups surviving to day 3 postpartum. The authors stated that all pups from the 100 ppm group were normal externally, but no further examination of the pups was performed to determine whether or not there was any other evidence of a developmental effect. Because statistically significant effects were observed at both of the tested doses a NOEL was not established in this study.

Inhalation studies by Nelson et al. (Ex. 4-136) examined the behavioral and neurochemical effects in offspring after parental exposure to 2-ME. In these studies both male and female rats were exposed to 25 ppm 2-ME. Twenty-five ppm was chosen as a test level as this dose represented the current allowable limit of exposure under the OSHA standards. Male rats were exposed for 7 hours/day, 7 days/week, for 5 weeks. These rats were then mated with untreated females which were allowed to deliver their young. Separate groups of pregnant rats were exposed 7 hours/day on days 7 through 13 or days 14 through 20 gestation and were also allowed to deliver their young. Behavioral testing to evaluate central nervous system effects (i.e. motor, sensory and cognitive functions) were conducted on offspring from both groups of rats and the brains from selected offspring were analyzed for neurochemical levels (e.g., dopamine, acetylcholine, and norepinephrine). The only statistically significant effect in behavior observed was the difference in avoidance conditioning in offspring from female rats exposed on days 7-13 gestation. In the neurochemical analyses offspring from both the paternally and maternally exposed rats exhibited significant neurochemical deviations particularly in the brainstem and cerebrum. These results indicate that both paternal and maternal exposure may result in teratogenic effects on the offspring. However only one dose was used in this study and thus no conclusions about dose-response effects or NOEL's can be drawn.

Studies have shown that oral exposure to 2-ME also induces adverse developmental effects. Nagano et al. (Ex. 5-026) orally exposed pregnant mice to 31.25, 62.5, 125, 250, 500 or 1000 mg 2-ME/kg body weight on days 7 through 14 gestation. A significant increase in the incidence of dead fetuses was observed among mice exposed to 250, 500 and 1000 mg/kg 2-ME. There were also significant reductions in fetal weight among fetuses from the 125 and 250 mg/kg dosed groups. At 250 mg/kg

there was a significant increase in the incidence of gross malformations, including exencephaly, umbilical hernia and abnormal fingers. Increased skeletal malformations including fused ribs, fused vertebrae, spina bifida, syndactly (fused fingers), oligodactly (absence of fingers), and polydactly (extra fingers) were observed after exposure to 62.5, 125, and 250 mg/kg. Delayed ossification was observed in fetuses from all dose levels. Thus in this study a NOEL was not established.

Similarly, Toraason et al. (Ex. 5–042) exposed pregnant rats by gavage to 0, 25, 50, or 100 mg 2–ME/kg body weight on days 7 through 13 gestation. At day 20 of gestation fetuses were removed for electrocardiographic (EKG) analysis and later examined for physical defects. The EKG evaluation involved measuring rhythm variations of the heart, the presence or absence of peaks produced by EKG output (i.e., R, QRS, QT and R–R peaks). All fetuses were resorbed at 100 mg/kg 2–ME and thus no EKG analysis was possible at this dose. There was a significant increase in the number of fetuses with abnormal QRS's from both the 25 and 50 mg/kg exposure groups. At these doses no other EKG characteristics were significantly affected by 2–ME exposure. The most prevelant cardiovascular defect, ventricular septal defect and ductus arteriosis, was observed in fetuses from the 50 mg/kg exposure group. However the authors concluded that the abnormal QRS's did not appear to be related to the cardiovascular malformation. For example the authors noted that four fetuses with abnormal QRS's had heart defects but 4 fetuses without heart malformations also had abnormal QRS's. The authors attributed the abnormal QRS's to a delay in conduction. Nevertheless the results of this study indicate that 2–ME exposure may adversely affect fetal heart function.

Adverse developmental effects of 2–ME have also recently been reported in non-human primates. Scott et al. (Ex. 5–125) exposed pregnant monkeys by gavage to 0, 12, 24 or 36 mg/kg body weight, on days 20 to 45 of gestation. Signs of maternal toxicity including a reduction in maternal body weight and loss of appetite were observed at all dose levels. At the highest dose (36 mg/kg) all pregnancies ended in abortion. Three of 10 pregnancies were also aborted in the 24 mg/kg dose group and 3 of 13 pregnancies were aborted in the 12 mg/kg dose group. Fetuses were removed on day 100 of gestation and examined for abnormalities. No malformations were observed among any of the fetuses surviving to day 100 of gestation.

b. *2–MEA.* The studies discussed above clearly show that 2–ME induces adverse maternal and developmental effects. As discussed earlier, metabolic data indicate that the toxicity of 2–ME is mediated by its primary metabolite, methoxyacetic acid (MAA). MAA is also the primary metabolite of 2–MEA and thus it is likely that 2–MEA will induce similar adverse effects to 2–ME.

c. *2–EE.* Similar to 2–ME, 2–EE has also induced adverse developmental effects. Doe and Tinston et al. (Exs. 5–071, 4–038, 4–039 and 4–105) exposed pregnant rats, by inhalation, to 0, 10, 50 or 250 ppm 2–EE for 7 hours/day on days 6 through 15 gestation. Pregnant rabbits were exposed to 0, 10, 50 or 175 ppm 2–EE for 7 hours/day on days 6 through 18 gestation. No adverse maternal effects were observed among either exposed rats or rabbits. Among rats, exposure to 250 ppm induced a significant increase in late interuterine death and a decrease in fetal growth. Fetuses from the 250 ppm group exhibited significant increases in skeletal defects, (e.g., partial and/or nonossification of the skull and the thoracic and lumbar vertebrae) and increases in sternebrae abnormalities. No significant adverse effects were observed in the 50 or 10 ppm exposed groups. In the high dose rabbits (175 ppm) there were no significant increases in late interuterine death or decreases in fetal growth. The only statistically significant effect observed at this dose was an increased number of fetuses with extra ribs. As neither species showed any significant adverse effects at 50 ppm, the authors stated that a clear no effect level of 50 ppm for 2–EE was identified in this study.

Similar findings were reported by Andrew et al. (Exs. 4–065 and 5–069) who exposed pregnant rabbits by inhalation to 0, 160, or 615 ppm 2–EE for 7 hours/day on days 1–18 gestation. Rabbits exposed to 615 ppm exhibited maternal toxicity including severe anorexia, reduced weight gain and an increased incidence of maternal mortality (5 of 19 died). Rabbits exposed to 160 ppm exhibited significant reductions in food consumption and maternal body weight gain. All litters, from the surviving dose, in the 615 ppm exposure group, were resorbed. Resorptions were also significantly increased in the 160 ppm exposure group. In addition there was a significant reduction in the number of live fetuses. Fetuses from the 160 ppm group exhibited a significant increase in malformations including cardiovascular effects (e.g., fused aorta and pulmonary artery), renal effects (e.g., fused kidneys) and skeletal effects (e.g., extra and malformed ribs).

In the Andrew study, female rats were also exposed to 2–EE by inhalation to 0, 150, or 650 ppm for 7 hours/day, 5 days/week for a 3 week pregestational period followed by exposure to 0, 200 or 760 ppm 2–EE during days 1–19 gestation. Pregestational exposure had no effect on maternal toxicity or the establishment of pregnancy. Significant decreases in liver weights and kidney weights were observed in the rats exposed to 760 ppm during gestation. All litters in the 760 ppm exposure group were resorbed. The number of resorptions was not increased in the 200 ppm exposure group. However exposure to 200 ppm during gestation significantly increased the incidence of cardiovascular malformations, and skeletal defects (e.g., extra ribs and vertebrae, and reduced skeletal ossification) in the pups.

Nelson et al. (Ex. 4–138) examined developmental effects in the behavior of offspring from rats exposed to 2–EE. Pregnant rats were exposed by inhalation to 100 ppm 2–EE, 7 hours/day on days 7–13 or days 14–20 of gestation. Behavioral tests were subsequently conducted on offspring from the control and exposed groups to evaluate CNS function (e.g., motor, sensory and cognitive functions). Selected offspring were also used for neurochemical analyses (e.g., acetylcholine, norepinephrine and dopamine levels). The only evidence of any maternal toxicity was a significant increase in the duration of pregnancy compared to controls. Offspring from rats exposed on days 7–13 of gestation exhibited impaired performance in the rotorod and open field test and marginal superiority in the avoidance conditioning test. Offspring from the 14–20 gestation day exposure group had impaired performance in the running wheel and avoidance conditioning tests. Neurochemical analyses revealed that in both the 7–13 and 14–20 day exposure groups, whole brain samples from offspring showed significantly decreased levels of norepinephrine. In the 7–13 day groups the cerebrum and cerebellum had significant elevations in acetylcholine and dopamine. Thus the results of this study indicate that at 100 ppm 2–EE can induce behavioral and neurochemical alterations. Because only one dose was tested the study was not able to evaluate any potential dose-response trend or identify a NOEL.

2–EE has also induced adverse developmental effects after dermal exposure. Hardin et al. (Ex. 4–121) applied 0.25 ml or 0.50 ml 2–EE

dermally four times daily to pregnant rats on days 7–16 gestation. Rats exposed to 0.50 ml 2–EE exhibited ataxia (loss of muscular coordination) and reduced body weight gain during the later days of exposure. No other significant signs of material toxicity were noted. All fetuses from the 0.50 ml exposure group were resorbed. There was also a significant increase in the numbers of resorptions in the 0.25 ml exposure group. The 0.25 ml group also exhibited significantly increased incidence of cardiovascular malformations and skeletal defects (e.g., incomplete ossification, extra and malformed ribs and vertebrae). The results of this study indicate that skin exposure is a significant route of exposure for inducing teratogenic effects.

d. *2–EEA.* Inhalation, dermal and oral studies have clearly shown a teratogenic response from exposure to 2–EE. As discussed earlier, metabolic studies also indicate that it is the primary metabolite, EAA, which is likely to be the active agent. EAA is also the primary metabolite of 2–EEA and thus it is likely that 2–EEA will induce teratogenic effects similar to 2–EE. Several inhalation studies support these conclusions. For example, Nelson et al. (Ex. 5–091) exposed pregnant rats by inhalation to 0, 130, 390, or 600 ppm 2–EEA, 7 hours/day, on days 7–15 gestation. At 600 ppm rats exhibited a significant decrease in maternal body weight. However the authors attributed this reduction in maternal weight at high dose to be due to resorptions. They thus concluded that no significant signs of maternal toxicity were observed. All fetuses from the 600 ppm group ware resorbed. Resorptions were also significantly increased in the 390 ppm exposure group. Fetuses from both the 390 and 130 ppm exposure groups exhibited significant decreases in weight, as well as significant increases in visceral malformations (e.g., septal defects of the heart and umbilical hernia) and skeletal defects (e.g., wavy and fused ribs). A NOEL was not established for this study.

Adverse effects were also reported by Doe et al. (Ex. 5–071) who exposed pregnant rabbits to 0, 25, 100 or 400 ppm 2–EEA for 6 hours/day on days 6 through 18 of gestation. Maternal toxicity was only observed among the 400 ppm exposed rabbits. In this group rabbits exhibited significant decreases in maternal body weight gain and food consumption. Mean live fetal weights were significantly reduced for fetuses from both the 400 and 100 ppm exposure groups. Fetuses from the 400 ppm exposure group exhibited significant increases in visceral defects (e.g., opaque/empty gall bladders, reduced/pale spleens) and skeletal defects (e.g., retarded ossification). Fetuses from the 100 ppm group also showed a significantly increased incidence of partial ossification. The only significant effect observed among fetuses from the low dose exposure group (25 ppm) was an extra center of ossification above the 1st sternebra. However because significant skeletal defects were observed only at 400 and 25 ppm the authors concluded that the effects at 25 ppm were probably not dose related and thus the NOEL for this study was 25 ppm.

More recent investigations by Tyl et al. (Ex. 5–124) have further confirmed the teratogenic potential of 2–EEA. In this inhalation study pregnant rabbits and rats were exposed to 0, 50, 100, 200 or 300 ppm 2–EEA, 6 hours/day for days 6–15 (rats) or days 6–18 (rabbits) of gestation. Rabbits exhibited significant decreases in maternal weight gain at 300, 200 and 100 ppm 2–EEA. After exposure to 300 and 200 ppm rabbits also exhibited significant decreases in gravid uterine weight and increases in absolute liver weight. Rats exposed to 2–EEA exhibited a significant decrease in maternal weight gain and food consumption at 300 and 200 ppm. A significant decrease in absolute liver weight was observed in rats at 100, 200 and 300 ppm. A significantly increased incidence of nonviable implantations was observed at 300 and 200 ppm in rabbits and at 300 ppm in rats. Rabbits also exhibited a significant increase in the incidence of resorptions after exposure to 300 ppm. Significant reductions in fetal body weight per litter were observed only among rats exposed to 300 and 200 ppm 2–EEA. Examinations of rabbit fetuses revealed a significant increase in the incidence of skeletal, cardiovascular and renal effects at 300 and 200 ppm. Similarly rats exhibited significant increases in malformations (e.g., cardiovascular, renal and skeletal effects) at both 200 and 300 ppm. No signs of maternal or fetal toxicity were observed at 50 ppm for either species and thus this exposure dose was identified as the NOEL for this study.

Similar to findings in dermal studies on 2–EE, studies on 2–EEA have also shown that dermal exposure induces teratogenic effects similar to those observed in inhalation studies. Hardin et al. (Ex. 5–073) dermally exposed pregnant rats to 0.35 ml 2–EEA, twice daily for days 7 through 16 of gestation. Dermal exposure induced significant decreases in maternal body weight gain, significant increases in the incidence of dead implants per litter and significant increases in the frequency of resorbed litters. Fetal examination revealed a significant increase in the incidence of cardiovascular and skeletal defects (e.g., reduced ossification and misshaped vertebrae). Thus the findings of this study further demonstrate the teratogenic potential of 2–EEA. In addition these findings indicate that dermal exposure may be a significant route of exposure.

3. Blood Effects

In addition to adverse reproductive and developmental effects, the animal studies provide evidence that 2–ME, 2–EE and their acetates also induce adverse hematological effects. Various studies in rats, rabbits and mice by both inhalation and oral exposure have demonstrated exposure related decreases in various blood parameters including white blood cell counts (WBC), hemoglobin concentration (HGB), platelet count and red blood cell count (RBC).

a. *2–ME and 2–MEA.* Miller et al. (Ex. 4–132) exposed rats and mice to 0, 100, 300 or 1000 ppm 2–ME, 6 hours/day for 9 days. At 1000 ppm both male and female rats exhibited significant decreases in WBCs, RBCs, HGB and packed cell volume. Male mice showed similar significant effects at 1000 ppm while female mice showed a significant decrease in WBC only at 1000 ppm. WBC was also decreased at 300 ppm for male rats and at 100 ppm for female rats.

In a similar study, Doe et al. (Ex. 4–111) exposed male rats to 0, 100 or 300 ppm 2–ME, 6 hours/day for 10 consecutive days. Exposures at 300 ppm resulted in significant reductions in whole blood count, red blood cell count, hemoglobin concentration, hematocrit and mean cell hemoglobin. No significant blood effects were observed among rats exposed to 100 ppm.

Thirteen week inhalation studies by Miller et al. (Ex. 5–023) support the authors' earlier findings (Ex. 4–132) of adverse blood effects. In this study rats and rabbits were exposed to 0, 30, 100 or 300 ppm 2–ME for 6 hours/day, 5 days/week for 13 weeks. Both rats and rabbits, male and female, exposed to 300 ppm 2–ME exhibited significant decreases in WBC, platelet counts, packed cell volume, and HGB. Rabbits exposed to 300 ppm also showed a significant decrease in RBC. No adverse effects in blood were observed at 100 or 30 ppm 2–ME for rats or rabbits.

Similarly, Hanley et al. (Ex. 4–120) exposed pregnant rats, rabbits and mice to 0, 3, 10 or 50 ppm 2–ME for 6 hours/day on days 6–15, 6–18 and 6–15

respectively. Rats exhibited a significant decrease in HGB and packed cell volume at all dose levels and a significant decrease in RBC at 50 ppm only. Neither mice nor rabbits showed any significant dose related blood effects.

Oral studies in mice by Nagano et al. (Exs. 5–026 and 4–135) have observed significant decreases in WBC after high dose exposure. Pregnant mice exposed during days 7–14 gestation to 31.25, 62.5, 125, 250, 500 or 1000 mg 2–ME/kg body weight showed significantly decreased WBCs at 1000 mg/kg (5–026). Male mice exposed at 12.5, 125, 250 500, 1000 or 2000 mg/kg over a five week period also exhibited significant decreases in WBC at 500 mg/kg and above (Ex. 4–135). Nagano et al. also exposed male mice to 2–MEA, resulting in a significant decrease in WBC at 1000 mg/kg. The authors noted that when expressed in equimolar doses, the dose-effect levels are similar for 2–ME and 2–MEA. No other studies have investigated the hematological effects of 2–MEA.

b. *2–EE.* Barbee et al. (Ex. 5–084) exposed male and female, rats and rabbits, to 0, 25, 100 or 400 ppm 2–EE, 6 hours/day for 5 days/week for 13 weeks. Adverse blood effects were only observed among male and female rabbits exposed at 400 ppm. These rabbits exhibited a significant decrease in HGB, hematocrit and RBC.

In their teratology studies Doe et al. (Ex. 5–071) exposed pregnant rats to 0, 10, 50 or 250 ppm 2–EE, 6 hours/day on days 6–15 gestation and rabbits to 0, 10, 50 or 175 ppm 2–EE, 6 hours/day on days 6–18 gestation. Rats exposed to 250 ppm exhibited a decrease in HGB, hematocrit and RBC. It is not stated clearly as to whether or not these effects were statistically significant. No treatment related effects were observed at 50 or 10 ppm. No adverse blood effects were observed at any of the test doses for rabbits.

Nagano et al. (Ex. 4–135) exposed male mice to 500, 1000, 2000 or 4000 mg 2–EE/kg body weight 5 days/week for 5 weeks. Significant decreases in WBC were observed in the 2000 and 4000 mg/kg exposure groups.

c. *2–EEA.* Tyl et al. (Ex. 5–124) exposed pregnant rats and rabbits to 0, 50, 100, 200 or 300 ppm 2–EEA 6 hours/day on 6–15 and days 6–18 gestation, respectively. Rabbits showed significant decreases in platelet counts at 200 and 300 ppm. Rats also had decreased platelet counts at 200 and 300 ppm. In addition rats exhibited a significant increase in WBC at 200 and 300 ppm and a decrease in RBC at 100, 200, and 300 ppm exposure. Barbee et al. (Ex. 5–071) also exposed pregnant rabbits to 2–EEA at doses of 0, 25, 100, or 400 ppm. The only statistically significant effect observed was a decrease in HGB at 400 ppm. Oral studies by Nagano (Ex. 4–135) exposed mice to 500, 1000, 2000, or 4000 mg 2–EEA/kg body weight. The only significant effect in this study was a decrease in packed cell volume in mice exposed at 4000 mg/kg.

F. Adverse Health Effects in Humans

Workers exposed to 2–ME and 2–EE have exhibited adverse effects on the hematologic and male reproductive systems. Blood effects among exposed workers include bone marrow injury, reduced red and white blood cell counts and anemia. The major reproductive effect observed among exposed workers is reduced sperm count. OSHA is unaware of any female reproductive or developmental toxicity data among workers exposed to glycol ethers. OSHA believes however that the lack of data in this area is due in major part, to the difficulty in structuring and conducting analyses to detect these types of adverse effects. Thus, although the human data are limited, there is positive evidence among exposed workers and this evidence supports the strong body of evidence observed in experimental animals.

1. 2–ME

Ohi and Wegman (Ex. 4–139) reported on two workers in a textile printing plant who developed clinical manifestations of encephalopathy (brain disease) after the acetone that was usually used in a hand cleaning operation had been substituted with 2–ME. Protective gloves were not worn. In addition to the neurological symptoms of encephalopathy, both workers had evidence of bone marrow injury. One had pancytopenia (reduction in the numbers of all of the formed elements of the blood). Air samples collected during the washing operation averaged 8 ppm. Although no estimate was made of the magnitude of skin absorption, exposure was characterized as being "predominantly dermal." Thus dermal exposure may have played a significant part in the observed effects. The authors noted that blood counts returned to normal after removal from exposure indicating that blood effects may be reversible.

Cohen (Ex. 5–049) presented a case report of subjective central nervous system complaints and asymptomatic hematopoietic effects following inhalation and skin exposure to 2–ME in a microfilm coating and mixing operator. The worker's job in this case report entailed mixing chemicals, often while standing directly over open 1500 gallon kettles which contained 33% 2–ME. 2–ME was also used in the manual cleaning of the kettles, usually done without gloves. Breathing zone exposures revealed time-weighted average 2–ME levels of 18.2 ppm to 57.8 ppm (average being approximately 35 ppm). Small quantities of methylethyl ketone (MEK) (1–5 ppm) were present. During a periodic examination less than a year after starting his job, it was found that the blood indices of this 32-year-old worker, which had previously been normal, dropped. His white blood cell (WBC) count, red blood cell (RBC) count, hemoglobin, hematocrit, and platlets were all found to have fallen to abnormally low levels. The worker also noted an increase in sleep time, increase in weight, decrease in appetite, increased fatigue, and feelings of apathy. When the worker was removed from skin and inhalation exposure to 2–ME, all hematologic parameters returned to normal.

Cook et al. (Ex. 5–002) conducted a cross-sectional study among male manufacturing and processing employees, 40 with potential exposure to 2–ME, to determine if anemia, leukopenia (reduction in number of white blood cells), or sterility were present and, if so, if they were more prevalent among the exposed workers. Manufacturing of 2–ME was by a continuous enclosed process. In a separate packaging and distribution facility, 2–ME was loaded into drums, tank cars, or rail cars. Drums were filled automatically, but there was manual capping. TWA air samples of 2–ME collected in the packaging and distribution facility in 1980 indicated personal exposures of 5 to 9 ppm 2–ME and area concentrations of 4 to 20 ppm. However, because of the potential for skin contact and absorption, continued use of protective gloves was recommended to avoid skin contact during sampling and maintenance. Workers exposed to 2–ME were also potentially exposed to 2–EE, polyols and polyoxypropylene glycols, brake fluids, butylene oxide, and polyglycols. Complete blood counts (CBC), hormone levels [i.e., Luteinizing hormone (LH), Follicle Stimulating hormone (FSH), testosterone], length and width of testis, and sperm counts were evaluated for frequencies of abnormal outcomes and percentage differences of grouped means in workers exposed to 2–ME and in the unexposed workers. Hematologic variables in 40 exposed and 25 controls were compared to determine prevalence of anemia and/or leukopenia. Clinical fertility indices for a subgroup of 15 (6

exposed, 9 control) were supplemented by medical history and responses to the question: "Looking back, do you feel you have had any trouble having children?"

Study results indicated little difference between exposed and controls. The only difference between means that approached statistical significance was testicular width (p=.08); however, testicular length was also diminished among the total exposed (p=.19). The authors acknowledged a variety of chemical exposures for both study groups. They also suggested the likelihood of interobserver bias, given that one physician consistently measured lower values and examined appreciably more exposed individuals than controls.

2. 2–EE

In 1984 NIOSH conducted a Health Hazard Evaluation of possible reproductive effects among male workers exposed to 2–EE at Precision Castparts Corporation (Ex. 5–003). 2–EE was used as a binder in the preparation of ceramic shells used to cast precision metal parts from wax molds. Approximately 80 male workers engaged in this process were potentially exposed to 2–EE. Full shift breathing zone airborne exposures ranged from non-detectable to 23.8 ppm. Because of the potential for skin exposure to 2–EE, urine measurements of ethoxyacetic acid (EAA), a metabolite of 2–EE, were also determined. Urine excretion of EAA ranged from non-detectable to 163 ug/g creatinine. Blood samples analyzed for 2–EE concentrations did not reveal any detectable levels of 2–EE.

In this study NIOSH also conducted a cross-sectional evaluation of semen quality (sperm concentration, pH, volume, viability, motility, velocity and morphology) among 37 men exposed to 2–EE in this plant. The evaluation included a comparison group of 38 unexposed men from elsewhere in the plant. A questionnaire to determine personal habits, medical and work histories and a brief examination of the genital tract, including measurements of testicular size, were also administered.

The average sperm count per ejaculate among the 2–EE exposed workers was significantly lower than that of the unexposed group (113 v. 154 million sperm per ejaculate; p<0.05). For exposed workers, this difference was statistically highly significant (p<0.001). The two groups did not differ significantly with respect to other semen characteristics or testicular size. Consideration of the other factors (e.g., abstinence, sample age, subject's age, tobacco, alcohol, and caffeine use, history of urogenital disorders, fever, and other illness) which affect semen quality did not alter these results. However the authors noted that the average sperm concentrations of both groups were lower than the average for other occupational populations studied by NIOSH. Historical control sperm concentration is 70 million/ml. In the present study the mean sperm concentration of the unexposed group was 60 million/ml and that of the exposed group was 48 million/ml.

NIOSH concluded that there was a possible effect of 2–EE on sperm count among these workers, and recommended limiting exposure to 2–EE to the fullest extent feasible, given the known testicular toxicity in animals.

In the first of three related papers Sparer, Welch, McManus and Cullen (Ex. 5–103) characterized exposure to ethylene glycol ethers in a group of shipyard painters. Painters employed at the shipyard worked in four crews: shop crew, interior crew, tank crew, and exterior crew. The shop crew worked in the paint shop where they formulated and mixed paints and issued respirators. The majority of men in the shop crew had worked on other crews in the past. Interior, exterior, and tank crews worked on the boats. Assignment of a painter to a crew depended on the stage of completion of the boat. Painters may have been assigned to one crew and worked overtime on another. In any given month a painter may have worked on the interior, exterior, and tank crews.

Much of the painting performed by the interior crews was by brush application. Tanks were primarily spray painted, and air-supplied respirators were always worn during this operation. Half-face filter respirators with organic vapor cartridges and paint filters were worn by painters whenever they sprayed on interior jobs and were available, but seemed to be optional, for those doing brush painting.

One hundred and two air samples from thirty-six painters were analyzed for 2–EE and 2–ME. 2–EE was detected in 90 samples, 2–ME in 81. For 2–ME the mean was 0.8 ± 1.0 ppm; median 0.44 ppm and the range 0–5.6 ppm. The mean value for 2–EE was 2.6 ± 4.2 ppm; the median 1.2; the range 0–21.5 ppm. The mean air exposure of the interior crew was 2.6 ± 4.2 ppm for 2–EE and 0.8 ± 1.0 ppm for 2–ME. Visible paint on the painters indicated that 60% of the men sampled had skin contact. Painters who were using paints without ethylene glycol ethers, or not painting at all, still had exposure to these solvents as demonstrated by air sampling.

Sparer and Welch et al. stated that although these sampling observations do serve to help characterize the exposure of these painters to ethylene glycol ethers, several factors suggest that these measurements may underestimate exposure. A NIOSH investigation of 2–EE exposures reported variable results in recovering analyte from field samples that are shipped to an analytical laboratory and stored for extended periods. Recovery was found to be between 60% and 100% (Ex. 5–003). The painters also reported that, perhaps because of the sampling in progress, work on the study days was much slower than usual. This may have resulted in measured values lower than usual levels.

Welch et al. (Ex. 5–104) conducted semen, hematologic, and fertility studies for the entire study population, 94 painters and 55 nonexposed controls. The workers supplied information on demographic characteristics, medical conditions, personal habits, and reproductive history and underwent a physical examination. The questionnaire elicited basic demographic information and information about medical conditions and personal habits that have been reported to effect semen parameters, including smoking, alcohol consumption, caffeine consumption, medications, radiotherapy or chemotherapy, recent febrile illness, past history of mumps, and genitourinary conditions. Each participant was asked about his work history and hobbies. He was asked if he and his wife ever had difficulty conceiving a child, whether he ever saw a physician for this problem, and the physician's diagnosis.

A sample of blood was obtained for a complete blood count (CBC), and for determination for serum follicular stimulating hormone (FSH), luteinizing hormone (LH) and testosterone. Urine samples were obtained from each painter at the beginning and end of each sampling period. These samples were frozen and transported to the NIOSH laboratories for analysis for the alkoxyacetic acid metabolites of 2–ME and 2–EE.

Semen samples were collected from 73 of the painters and 40 controls to determine whether 2–EE and 2–ME affects the reproductive potential of exposed men. Semen samples were analyzed for pH, volume, turbidity, liquidity, viability, sperm density and count per ejaculate, motility, morphology and morphometry.

The proportion of men with a sperm density <20 million/cc was higher in the exposed group than in the unexposed group, 13.5% (10 painters) vs. 5% (2 controls) (p=0.12). The authors noted

that the proportion found in the controls, 5%, was in agreement with population surveys of sperm density. When oligospermia (deficiency in number of sperm) is defined as a sperm count per ejaculate ≤100 million, 33% (24 painters) and 20% (18 controls) were oligospermic (p=0.20). The rate of oligospermia was analyzed separately for smokers and non-smokers. Among the non-smokers, the exposed group had a higher rate of oligospermia (p=0.05). When smoking was controlled, the odds ratio calculated for a decreased count per ejaculate among the painters was 1.85, with a 95% confidence interval of 0.6–5.6.

Because of the regular rotation of painters from one job to another at the shipyard, the painters could not be classified into dose groups. Because of the cyclical nature of spermatogenesis the authors stated that exposure from two to six months prior to semen analysis was likely to have produced an effect at the time of the study, and it was not possible to determine each man's job and exposure at that time. Therefore, the researchers assumed that all the painters had the same exposure.

Painters were also exposed to two other substances that have been reported in the past to affect semen quality, lead and epichlorohydrin. Lead is known to cause a depression of sperm count. The mean lead levels of the 45 men who had been monitored for lead were mostly below 20 ug/deciliter(dl), and the highest single level in any individual was 40 ug/dl. The authors stated that this level of lead exposure has not been documented to cause a depressed count. Epichlorohydrin was not detected in air sampling during the study.

The authors thus concluded that exposure to the ethylene glycol ethers 2–EE and 2–ME lowered sperm count in this group of painters. The authors pointed out that this finding is consistent with the effect seen in animal studies. Studies in several species show that these glycol ethers cause loss of germinal epithelum and testicular atrophy. Cellular studies show that this effect occurs by inhibition of cell division in the early pachytene stage of spermatogenesis, an effect that would be expected to result in a decreased count rather than an effect on motility or morphology.

Welch and Cullen (Ex. 5–102) undertook a cross-sectional clinical appraisal of a sample of painters and unexposd workers to evaluate the relationship between measurements of peripheral blood of the workers and ethylene glycol ether exposure. The study of hematologic function included: a complete blood count, a manual differential count of 200 cells, and a manual platelet count. In addition, each subject's past medical record from the employer's medical department was requested, including routine blood counts and whole blood levels. Complete records were obtained for two-thirds of the subjects.

The authors reported that the only other compounds known to be toxic to bone marrow or circulating blood cells that painters at the shipyard were exposed to, in addition to ethylene glycol ethers, were lead and benzene. Lead exposure was limited to abrasive blasting operations; the highest lead level detected during brushing or cleaning operations was 10 ug/m^3. Sampled levels during blasting were as high as 11 mg/m^3. Painters engaged in blasting use air-supplied respirators and their blood lead was routinely monitored. Forty-five of 94 painters were categorized by the employer as "lead exposed" and were participating in the routine blood testing; only nine of the forty-five men had a mean lead level greater than 15 ug/dl, and only two had a mean greater than 20 ug/dl, with the highest at 30 ug/dl. The highest single value was 40 ug/dl.

Paints or cleaning solutions containing more than 1% benzene have not been used in the shipyard since 1977. Ten air samples for benzene were obtained by NIOSH during the 1978 survey; levels of 0.08 to 0.53 mg/m^3 were detectable in eight samples. None of the bulk samples of paints or cleaning solutions in the current industrial hygiene survey revealed any benzene. Mean hemoglobin levels did not differ between the painters (15.43 g/dl ± 1.09 S.D.) and controls (15.67 g/dl ± 0.84); p=0.14 in a two-tailed test. Additionally, there were no statistically significant correlations between hemoglobin and cumulative exposure measured as years painting at the shipyard.

The hemoglobin data were rank ordered and analyzed by the Wilcoxon rank order test. There was no significant difference in rank for the entire group. However, when only those study subjects in the lowest quartile for hemoglobin were included in the analysis, the majority of low values were in painters (p=0.028).

Using an a priori standard for anemia in working age adult males of less than 14 grams hemoglobin/dl blood, nine of the 147 subjects with adequately coded data were below this cutoff; all nine were painters. The past medical records of the shipyard for the anemic painters were reviewed; complete medical records were available on 7 of the 9. Normal hemoglobins were noted on hire in four of the seven anemic men with available records. In a fifth, the initial hemoglobin of 13.8 g/dl had dropped steadily to 12 at the time of the study. For the two men for whom there were no preemployment blood counts, their hemoglobins were compared to those of the respondents of the National Health and Nutrition Examination Survey of the same age, sex, and race, and found to be less than the 10th percentile. In the remaining two, hemoglobins were 13.1 and 13.7 g/dl on hire, comparable to those found during the study. After eliminating these two, whose values did not change since first employed, the rate of anemia is significantly different between painters and controls (p=0.04). Two of the anemic painters also had an abnormal semen analysis; one was oligospermic, and one was azoospermic (lack of sperm).

Total polymorphonuclear leukocyte (PMN) count was calculated by multiplying the total white count by the percentage PMNs in the differential count. The mean values did not differ significantly between the two groups (painters, 4,602 cell/ul ± 2,041 S.D.; controls,4,650 ± 1,771). A lower limit of 1,800 cells/ul was used to define "normal" and "abnormal" groups of painters and controls. The lowest total counts were found among painters; five, or 3.4% of the painters had values below 1,800 cell/ul, whereas none of the controls had such low levels (p=0.07).

The authors concluded that the differences in hematologic values seen between the groups of painters and the unexposed controls is significant and that preexisting host factors or rates of participation are not able to explain their results. Welch and Cullen concluded that an analysis of other exposures demonstrates that the difference is attributable to ethylene glycol ethers. They added that the absence of a significant effect on the group as a whole and the inability to detect a dose-response pattern, make strong conclusions unwarranted. The authors called for further research on hematologic effects of these compounds in human populations.

In summary, although limited in part by confounding exposures to other solvents, data among workers exposed to 2–ME and 2–EE have exhibited anemia, reduced white and red blood cell counts, bone marrow injury and reduced sperm counts. In some cases these effects were observed at levels which were reportedly below those of the current permissible exposure limits for 2–ME and 2–EE. These findings support the strong body of experimental animal evidence, which show, in

several species, that 2–ME and 2–EE induce adverse hematologic, reproductive and developmental effects.

G. Mutagenicity

Studies in general indicate a lack of mutagenic potential for 2–ME and 2–EE. Mutagenicity is the ability to induce genetic mutation, i.e., a change in the genetic material. Mutations may give rise to developmental effects in cases where the genetic material of the egg or the sperm has been changed such as to induce abnormal development in the fetus. (Mutations may also give rise to cancer. However, there are substances which may be carcinogenic which are not mutagenic. The carcinogenicity of these glycol ethers has not been tested.)

2–ME and 2–EE have been tested in various tests including Ames tests, unscheduled DNA synthesis (UDS) assays in human embryo fibroblasts, sister chromatid exchange (SCE) tests in hamster ovary cells, cytogenic analyses in rat bone marrow cells, dominant lethal tests in rats, sperm abnormality tests in mice and sex linked recessive (SLR) tests in fruit flies. (Exs. 5–022, 5–056 and 5–076).

Neither 2–ME nor 2–EE induced effects in either the Ames test or UDS assays. 2–EE did induce chromosomal abnormalities in SCE tests. The authors stated that the positive findings in 2–EE are in contrast to the general negative findings in most mutagenic assays. Thus the authors concluded that it may be premature to classify these substances as mutagenic. In the SLR assays 2–EE was found to be negative while inconsistent results were observed for 2–ME. Positive results were observed for 2–ME in the sperm abnormality and dominant lethal tests. For example, 2–ME induced abnormal sperm head morphology and a reduction in male rat fertility. While the dominant lethal test showed a decrease in male fertility, the authors raised the possibility that the reduction in fertility could also be attributed to reduced sperm number rather than a dominant mutation.

Thus, the majority of the available data indicates that 2–ME and 2–EE lack mutagenic potential. However, the presence of positive findings raised the possibility that these substances may have some weak mutagenic potential. No mutagenicity testing has been conducted with 2–MEA or 2–EEA, but the metabolic data discussed earlier suggest that all four compounds are metabolized by similar pathways and are thus likely to induce similar effects. Thus the results observed for 2–ME and 2–EE are predictive of mutagenic potential in their respective acetates.

H. Conclusions

Health effects data from experimental animal studies clearly and consistently show that 2–ME, 2–EE and their acetates produce dose related adverse hematologic, reproductive and developmental effects. These effects include testicular damage, reduced fertility, maternal toxicity, early embryonic death, external, skeletal and visceral malformations, delayed development, and adverse effects on the blood. Evidence also indicates that both inhalation and dermal exposures are significant routes of exposure for glycol ethers and the induction of adverse effects. In addition, persons occupationally exposed to 2–ME and 2–EE through inhalation and dermal exposures have exhibited adverse reproductive and hematologic effects. Although not as extensive, in major part due to methodological limitations, the human data are nevertheless highly consistent with and supportive of the strong body of data in experimental animals showing adverse hematologic, reproductive and developmental effects.

I. Other Glycol Ethers

Past research on the health effects of glycol ether compounds has primarily been concentrated on 2–ME and 2–EE as these two compounds and their acetates have represented a major percentage of the industrial use of glycol ethers.

Although less extensive there is also research on other glycol ether compounds. Much of the concentration in this area has been on substitutes for 2–ME and 2–EE such as 2-Butoxyethanol and the propylene glycol ethers (e.g., propylene glycol monomethyl ether and its acetate).

1. 2-Butoxyethanol (2–BE)

In a series of experiments Carpenter et al. (Ex. 5–146) exposed various animal species (e.g., rats, guinea pigs and mice) to 2–BE by inhalation. Groups of rats and guinea pigs were exposed for 7 hours/day, 5 days/week for 30 days at doses of 54, 107, 203, 314 or 432 ppm (rats) and doses of 54, 107, 203 376, or 494 ppm (guinea pigs). Significant increases in osmotic fragility in red blood cells was observed in rats at doses of 107 ppm 2–BE and higher. Osmotic fragility was also observed at 54 ppm when doses were administered daily for 30 days. No statistically significant evidence of osmotic fragility was observed among the guinea pigs at any of the doses tested. Mice were exposed 7 hours/day for 30, 60 or 90 days to 100, 200 or 400 ppm. No controls were included. Osmotic fragility was observed at all doses tested.

Hematologic analyses were also conducted by Tyl et al. (Ex. 4–152) on pregnant rats and rabbits exposed to 2–BE by inhalation. Rabbits and rats were exposed to 0, 25, 50, 100 or 200 ppm 2–BE on days 6–18 (rabbits) and days 6–15 (rats) of gestation. Red blood cell counts, hemoglobin and hematocrit were analyzed in blood samples from both pregnant rats and rabbits. In rats osmotic fragility of red blood cells were not detected at any of the tested doses. However, significant reductions in red blood cell count and mean corpuscular hemoglobin concentration were observed at both 200 and 100 ppm. Mean cell volume and hemoglobin were significantly increased at 200 and 100 ppm. The only significantly treatment related effects observed among rabbits were increases in hemoglobin content and hematocrit at 100 ppm. However, these same blood effects were not observed at 200 ppm.

Dodd et al. (Ex. 5–050) performed acute, 9-day and 13-week inhalation studies in rats to investigate the toxicity of 2–BE. In the acute study rats were exposed for 4 hours to target concentrations of 200, 500 and 850 ppm 2–BE. The acute 4 hour LC_{50} was 486 ppm for males and 450 ppm for females. Rats exposed to 500 and 850 ppm exhibited loss of coordination. Post mortem examinations of these animals revealed red stained urine and kidney damage. Rats exposed to 200 ppm appeared normal. In the 9-day study rats were exposed 6 hours/day to 0, 25, 100 and 250 ppm 2–BE. At 250 ppm rats exhibited significant decreases in red blood cell count and hemoglobin concentration. Significant effects in the blood were also observed among rats in the 100 ppm exposure group. However, the authors stated that the effects were less profound. No statistically significant adverse hematological effects were observed among the rats exposed to 25 ppm. In the 13-week study, rats were exposed to 0, 5, 25 or 75 ppm 2–BE, 6 hours/day, 5 days a week for 13 weeks. At 75 ppm female rats exhibited significant decreases in red blood cell count and hemoglobin concentration and increases in mean corpuscular hemaglobin after 6 weeks of exposure. However, by the end of the study these decreases had either lessened or returned to controls levels. Male rats exposed at 75 ppm showed a significant decrease only in red blood cell count. No other dose related effects were observed among male or female rats. In particular there were no alterations in testes weight among males exposed to 2–BE, nor were any lesions observed

which would have been indicative of a testicular effect.

A similar lack of testicular effect after exposure to 2–BE was noted by Nagano et al. (Ex. 4–135). In this study mice were orally exposed to 500, 1000, or 2000 mg/kg body weight of 2–BE, 5 days/week for 5 weeks. Animals exposed at 2000 mg/kg died. Decreases in red blood cell count were observed among both the 1000 and 500 mg/kg exposure groups. However, males at 100 and 500 mg/kg 2–BE did not exhibit any statistically changes in testicular weight. This observation was in contrast to results from this same study which showed marked testicular degeneration after exposure to 2–ME, 2–EE and their acetates.

Doe (Ex. 4–112) studied the testicular effects of single high dose exposures to 2–BE, in addition to examining the effects of 2–ME and 2–EE. Rats were exposed for 3 hours to single high doses of 2–BE (800 ppm), 2–ME (7500 ppm), or 2–EE (3500 ppm) and then were followed for 14 days. 2–ME and 2–EE significantly induced testicular atrophy, however, no significant reduction in testes weight were seen among the 2–BE exposed rats.

Similar comparative analyses were performed by Foster et al. (Ex. 5–052). However, in this study the metabolites of 2–BE, 2–ME and 2–EE were administered rather than the parent glycol ethers. Male rats were exposed by gavage to single oral doses of butoxyacetic acid (0, 174, 434 or 868 mg/kg), methoxyacetic acid (0, 118, 296, or 595 mg/kg) or ethoxyacetic acid, (0, 137, 342, or 684 mg/kg). No statistically significant evidence of testicular toxicity was observed at any of the test doses for butoxyacetic acid whereas both methoxy- and ethoxyacetic acid were found to significantly decrease testicular weight (at all doses for 2–ME and at high doses only for 2–EE). As a part of this same study *in vitro* testicular cell cultures were exposed to the above metabolites to investigate the effects on testicular germ cells. Adverse effects in spermatocytes were observed after administration of methoxy- and ethoxyacetic acids. For example, MAA and EAA produced an enhancement of germ cell loss from Sertoli cell cultures. In contrast no specific effects such as those that were observed after administration of butoxyacetic acid.

The developmental effects of 2–BE were studied by Tyl et al. (Ex. 4–152). Pregnant rats and rabbits were exposed to either 0, 25, 50, 100 or 200 ppm 2–BE for 6 hours/day on days 6–15 (rats) or days 6–18 (rabbits) of gestation. Signs of maternal toxicity were observed in rats at 100 and 200 ppm (e.g., significant reductions in body weight, food consumption and absolute and relative organ weights). A significant increase in the number of resorbed litters, a significant decrease in the number of viable implantation per litter and a significant reduction in skeletal ossification were also observed after exposure to 200 ppm 2–BE. No significant increases in the incidence of malformations were observed at any doses among the rats. In rabbits, increases in resorptions and reduced body weight gain were observed at 200 ppm however these effects were not statistically significant. Significant reductions in the number of viable implants were observed at 200 ppm. No evidence of statistically significantly increased incidences of malformations were found among any of the exposed rabbits. The authors concluded that 2–BE induced maternal and fetotoxic effects but not teratogenic effects.

No significant increases in maternal or developmental effects of 2–BE were observed by Nelson et al. (Ex. 5–091). In this study pregnant rats were exposed to 0, 150, or 200 ppm 2–BE for 7 hours/day on days 7–15 gestation. These levels were chosen as earlier findings reported death at doses from 250 to 500 ppm 2–BE. The only significant adverse effect observed was "slight" hematuria among the maternal animals after the first day of exposure. Otherwise, no other significant maternal or developmental adverse effects were observed. Effects examined included resorptions, fetal weights and incidence of malformations. These findings are in contrast to results of this same study in which 2–ME and 2–EE were shown to induce adverse maternal and developmental effects.

Dermal application of 2–BE has also shown a similar lack of maternal or developmental effect. Hardin et al. (Ex. 5–073) exposed pregnant rats by dermal application to 0.35 mL 2–BE, four times daily on days 9–13 of gestation. Deaths occurred through the third and seventh days of exposure. Only one of the 11 rats treated survived. Therefore, tests were repeated at 0.12 mL, four times daily. No significant adverse maternal or developmental effects were observed at this exposure dose.

In the recent final Air Contaminants standard (54 FR 2332) OSHA revised the Permissible Exposure Limit (PEL) for 2–BE from 50 ppm to 25 ppm. OSHA concluded that,

> [T]he former PEL of 50 ppm was insufficiently protective against the risk of 2-butoxyethanol's irritant, hematological, and other potential systemic effects, which constitute material health impairments. The limit of 25 ppm included in the final rule will reduce this significant risk to a level below that at which these toxic effects have been observed in animals and humans. This lower limit will also prevent the discomfort experienced by workers at exposure levels of 40 ppm. (Air Contaminants Final Rule, 54 FR 2554)

In 1990 NIOSH published a Criteria Document for 2–BE and its acetate, 2–BEA (Ex. 5–145). NIOSH reported that data from animals indicate that 2–BE and 2–BEA do not cause adverse reproductive or development effects. However they report that the animal evidence shows that these substances do induce marked adverse effects on the blood. Based on the adverse blood effects observed in animals, NIOSH recommended occupational exposure limits of 5 ppm for both 2–BE and 2–BEA.

2. Propylene Glycol Ethers

The production of propylene glycol ethers is analogous to that of ethylene glycol ethers. Ethylene glycol ethers are made by reacting ethylene oxide and the appropriate alcohol. Propylene glycol ethers are produced by reacting propylene oxide with the appropriate alcohol. As such the propylene and ethylene glycol ethers are structurally analogous. For example, ethylene glycol monomethyl ether (2–ME) is structurally very similar to propylene glycol monomethyl ether. However despite some structural similarities, differences in toxicities have been observed between the two general types of compounds.

For example, in a series of experimental studies Hanley et al. (Exs. 5–068 and 4–120) compared the developmental effects of 2–ME and propylene glycol monomethyl ether (2–PGME). In studies on 2–ME (Ex. 4–120) rats and rabbits were exposed to 0, 3, 10, or 50 ppm 2–ME, 6 hours/day on days 6–15 and days 6–18 of gestation respectively. In rabbits, exposure at 50 ppm 2–ME resulted in a significant decrease in maternal body weight gain, a significant increase in resorption rates and significant increases in major malformations. Increased resorption rates were also observed at 10 ppm compared to concurrent controls, but because the resorption rates were not statistically different from historical control values, the authors did not consider the effects to be dose related. Rats did not show any signs of maternal toxicity after exposure to 50 ppm. However fetuses from this exposure group exhibited a significant increase in the incidence in lumbar spurs and delayed ossification. Neither rats nor rabbits had any other significant adverse effects at 10 or 3 ppm. In comparison,

Hanley et al. (Ex. 5–068) exposed rats and rabbits to 0, 500, 1500 or 300 ppm 2–PGME to similar periods of gestation for 6 hours/day. At 3000 ppm both rats and rabbits exhibited maternal effects including central nervous system depression and a significant decrease in body weight gain. No significant maternal effects were observed at 1500 or 500 ppm for either species. Neither rats nor rabbits exhibited any significant increase in resorption rates or major malformations at any of the dose levels tested. It was noted by the authors that a significant increase in malformations among rat fetuses at 3000 ppm was observed compared to concurrent controls. However this increase was similar to historical control values and thus was not considered to be dose related. The only significant effect observed, delayed sternebral ossification, was observed at 3000 ppm in rats. This result was interpreted by the authors to be an indication of slight fetotoxicity.

Miller et al. (Ex. 5–088) also compared the toxicities of 2–ME and 2–PGME in rats and rabbits. Rats and rabbits were exposed to 0, 30, 100 or 300 ppm 2–ME or 0, 300, 1000 or 5000 ppm 2–PGME, 6 hours/day for 13 weeks. Exposure to 300 ppm 2–ME induced testicular degeneration, decreased sperm count, decreased white blood cell counts and decreased hemoglobin concentrations. No significant effects were observed among the 100 or 30 ppm exposure groups. In contrast, no significant effects on testes weight or blood were observed among rats or rabbits exposed to 2–PGME at any dose tested. The authors attributed the difference in toxicity to differences in metabolism. The authors noted that 2–ME is a primary alcohol and has been shown to be metabolized by an alcohol dehydrogenase mediated pathway to methoxyacetic acid. In addition methoxyacetic acid is considered to be the active metabolite in the induction of reproductive and developmental toxicity. In contrast, 2–PGME is a secondary alcohol and is metabolized by microsomal enzymes to propylene glycol. The authors concluded that this difference in metabolism is most likely to be responsible for the differing toxicities of 2–ME and 2–PGME.

However Miller et al. (Ex. 5–093) have also noted that there are two isomeric forms of 2–PGME; the alpha isomer (which is a secondary alcohol) and the beta isomer (which is a primary alcohol). Because of their differences in structure the two isomers are metabolized differently. The alpha isomer is metabolized by microsomal enzymes to propylene glycol and the beta isomer is metabolized by the alcohol/aldehyde dehydrogenase pathway to 2-methoxypropionic acid. The beta isomer follows a metabolic pathway similar to that of the ethylene glycol ethers, 2–ME and 2–EE, which are also primary alcohol glycol ethers. Thus it was postulated that the beta isomer may have toxic properties different from its alpha isomer and may possibly be more similar to ethylene glycol ethers. These conclusions are supported by studies by Merkle et al. (Ex. 5–092) on the pure beta isomer of 2–PGME Acetate. In this study pregnant rats were exposed to 0, 110, 550 or 2700 ppm 2–PGME Acetate and pregnant rabbits were exposed to 0, 36, 145 or 550 ppm 2–PGME Acetate. In rats, exposure to 2700 ppm resulted in a significant increase in the number of litters with skeletal anomalies (e.g., dumbbell shaped notches of the thoracic vertebrae). A slight, but significant, decrease in fetal body weight was also noted at 2700 ppm. No significant effects were observed at the lower test doses. Rabbits however showed a more sensitive response. At 550 ppm, all fetuses exhibited severe malformations (e.g., heart defects and anomalies of the paw and sternum). No significant increases in malformations were observed at other tested doses. It was concluded from these results that the beta isomer of the 2–PGME Acetate has teratogenic potential. By analogy, the beta isomer of its parent glycol ether, 2–PGME was also considered to have teratogenic potential.

While the beta isomers of the propylene glycol ethers appear to have teratogenic potential Miller et al. (Ex. 5–093) also note in their metabolic study that the commercial product of 2–PGME is usually a mixture of the two isomers, with the alpha isomer accounting for up to 95% of the mixture. In its comment on the ANPR, the ARCO Chemical Company, a primary producer of propylene glycol ethers, has also stated that 2–PGME and its acetate routinely contain less than 2% of the beta isomer (Ex. 7–19). These types of commercial products were used by Miller et al. (Ex. 5–088) and Hanley et al. (Ex. 5–068) in their reproductive and developmental studies and were shown to have a low degree of biological activity in comparison to ethylene glycol ethers.

3. Ethylene Glycol Monopropyl Ether (EGPE)

Katz et al. (Ex. 5–085) conducted a series of acute and subchronic toxicity tests on EGPE and its acetate EGPEA in rats. In single dose oral studies rats were exposed to 1090, 2180, 4360, 8720 mg/kg (EGPE & EGPEA) or 17,470 mg/kg (EGPEA only). The LD_{50} of EGPE and EGPEA were observed to be 3089 and 9456 mg/kg, respectively. Prior to death animals exhibited weakness, anorexia and hemoglobinuria. In single inhalation dose studies rats were exposed to target concentrations of 0, 250, 100 or 200 ppm EGPE and 0, 250, 500 or 100 pp, EGPEA. No lethality was observed at any dose, therefore the LC_{50} was concluded to be greater than 2132 ppm for EGPE and greater than 934 ppm for EGPEA. In six week oral studies male rats were exposed to 0, 195, 390, 780 or 1560 mg/kg body weight EGPE or 0, 1097, 2193, or 4386 mg/kg EGPEA. Adverse blood effects (e.g., significant decreases in hemoglobin concentration and significant increases in platelet counts and nucleated red blood cells) were observed for both compounds at all dose levels. However, only rats exposed to EGPEA at 4386 mg/kg exhibited significant decreases in testicular weight. Pathological examinations revealed atrophy of the seminiferous tubules and degenerated sperm. In the two week inhalation studies both male and female rats were exposed for 6 hours/day to either 0, 100, 200, 400, 800 ppm EGPE or 0, 100, 200, 400 or 800 ppm EGPEA. Slight, but significant changes in red blood cells (e.g., decreased count, and increased corpuscular volume) were observed at 800 and 400 ppm for both compounds. Hemoglobinuria was observed in males and females at 800 ppm EGPE and males only at 400 ppm. Both males (4 out of 5) and females (5 out of 5) exhibited hemoglobinuria after exposure to 400 and 200 ppm EGPEA. A significant increase in spleen weights were observed at 800 and 400 ppm for both compounds. No significant changes in testicular weight were observed for either compound. Based on these results the authors concluded that the NOELs in this study were 200 ppm for EGPE and 100 EGPEA.

Krasavage and Katz (Ex. 5–070) studied the developmental toxicity of EGPEA. In this study pregnant rats were exposed to 100, 200, 400 or 800 ppm EGPEA, 6 hours/day on days 6–15 gestation. Exposure to 800 and 400 ppm resulted in decreases in mean maternal body weight, feed intake, and red blood cell counts. Exposure at 800 ppm also resulted in a significant increase in the incidence in resorptions and a significant reduction in mean fetal body weight. No significant increases in the incidence of major malformations were observed among fetuses exposed up to 800 ppm. The authors stated that significant increases in the incidence of minor skeletal effects (e.g., wavy,

knobby, fused and partially ossified ribs and decreased ossification of the skull) were observed at 800 and 400 ppm. A significant increase in rudimentary ribs was observed in the 200, 400 and 800 ppm exposure groups. The authors concluded that adverse fetal effects occur after exposure to EGPEA. However they stated that these effects occurred only after doses which were overtly toxic to the maternal animal (i.e., 800 and 400 ppm).

4. Di-Ethylene Glycol Monomethyl Ether (DEGME)

In inhalation studies by Miller et al. (Ex. 5–058) male and female rats were exposed to 0, 30, 100 or 216 ppm DEGME, 6 hours/day, five days/week for 13 weeks. No dose related significant effects were observed among the male or female animals for any of the doses tested. Based on the lack of effects the authors concluded that DEGME is unlikely to present the same degree of hazard as its structural homolog 2–ME.

The teratogenic potential of DEGME was examined by Scortichini et al. (Ex. 5–060). In this study pregnant rabbits were exposed by dermal application to 0, 50, 250 or 750 mg/kg day of DEGME on days 6–18 gestation. Rabbits exposed at 750 mg/kg exhibited a significant decrease in maternal weight gain and red blood cell counts. No statistically significant maternal effects were observed at 250 or 50 mg/kg/day. The authors noted an increase in resorptions at 750 mg/kg/day, although this effect was not statistically significantly different from controls. In addition no statistically significant increases in major malformations were observed at any of the doses tested. A significant increase in minor skeletal defects such as forelimb flexure, fused ribs, delayed ossification, forked ribs and cervical spurs were observed among litters from rabbits exposed to 250 and 750 mg/kg DEGME. The authors considered these to be significant signs of fetotoxicity rather than teratogenicity and suggested that these types of fetal defects might be associated with maternal toxicity.

5. Ethylene Glycol Monophenyl Ether (2-Phenoxyethanol)

Scortichini et al. (Ex. 5–059) have also examined the teratogenic potential of 2-Phenoxyethanol. Pregnant rabbits were dermally exposed to 0, 300, 600 or 1000 mg/kg/day of 2-Phenoxyethanol on days 6–18 gestation. Nine of 25 rabbits died after exposure to 1000 mg/kg/day and 5 of 25 rabbits died after exposure to 600 mg/kg/day. Death was attributed to intravascular hemolysis. The animals surviving in these groups showed no statistically significant treatment related effects. In addition no statistically significant signs of maternal toxicity were observed after exposure to 300 mg/kg/day. Among fetuses examined, there were no statistically significant increases in the incidence of external, visceral or skeletal malformations at 300 or 600 mg/kg/day. (Fetal observations were not available at 1000 mg/kg/day due to the high lethality at 1000 mg/kg. Animals were sacrificed with no further observations. In addition, no other reproductive parameters such as resorptions or fetal body measurements were adversely affected at 600 or 300 mg/kg/day. Based on these results the authors concluded that doses up to 600 mg/kg/day produced no significant signs of developmental toxicity.

6. Conclusions

The available data for other glycol ether compounds suggests that there are differential toxicities between the longer chain glycol ethers and shorter chain glycol ethers such as 2–ME, 2–EE and their acetates. For example, in the case of 2-butoxyethanol, there were observations of adverse hematological effects but no observations of adverse reproductive or developmental effects. Similarly for propylene glycol ethers there was little evidence of any reproductive or developmental toxicity except in the case of the beta isomeric forms of these compounds. There are scattered reports on other ethylene glycol ether compounds showing adverse hematological effects and, in some cases, slight evidence of testicular effects and minor skeletal defects. In some studies the authors have suggested that defects observed in some of the fetuses may be due to maternal toxicity rather than a direct effect on the conceptus. However, as discussed earlier, developmental effects observed at maternally toxic doses do not necessarily imply that the developmental effects are secondary to maternal effects.

In general, the toxicities of these compounds appear less potent than those of shorter chain glycol ethers. The results from toxicity tests on other glycol ethers strongly contrast with the evidence observed after exposures to 2–ME and 2–EE. The evidence on 2–ME and 2–EE clearly and consistently show reduced sperm count, decreased fertility, testicular degeneration, early fetal death, major external, visceral and skeletal malformations, delayed development and functional deficiency. These effects have been observed in several species and through various routes of exposure. The totality and consistency of the evidence on 2–ME, 2–EE and their acetates in experimental animals, clearly indicate that these agents are potential reproductive and developmental toxins in humans. However, OSHA reiterates that past research primarily concentrated on 2–ME, 2–EE and their acetates. The lack of evidence on other glycol ethers may be due, in part, because less research has been conducted on these compounds. Thus, OSHA requests data and analyses on other glycol ethers and their potential reproductive and developmental toxicity.

VI. Preliminary Risk Assessment

A. Introduction

The United States Supreme Court, in the "benzene" decision, *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980), has ruled that the OSH Act requires that, prior to the issuance of a new standard, a determination must be made, based on substantial evidence in the record considered as a whole, that there is a significant risk of health impairment at existing permissible exposure limits and that issuance of a new standard will significantly reduce or eliminate that risk. The Court stated that "before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe in the sense that significant risks are present and can be eliminated or lessened by a change in practices." 448 U.S. 642. The Court also stated "that the Act does limit the Secretary's power to require the elimination of significant risks." 448 U.S. 644.

Although the Court in the "cotton dust" case, *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981), rejected the use of cost-benefit analysis in setting OSHA standards, it reaffirmed its previous position in "benzene" that a risk assessment is not only appropriate, but also required to identify significant health risk to workers and to determine if a proposed standard will achieve a reduction in that risk. Although the Court did not require OSHA to perform a quantitative risk assessment in every case, the Court implied, and OSHA as a matter of policy agrees, that assessments should be put into quantitative terms to the extent possible.

The extent to which a risk assessment may be put in quantitative terms is limited in the case of glycol ethers. This is not because there are no data suitable for assessing the risk. On the contrary, there are a number of well conducted rodent bioassays which clearly demonstrate the adverse health effects

associated with exposure to glycol ethers (see the discussion of health effects above). The problem lies in the fact that there is not a quantitative model for extrapolating the risk of developmental and reproductive effects either from high doses to low doses or across species, that is generally accepted in the scientific community. Therefore, unlike other risk assessments which OSHA has prepared in the past, this risk assessment will be far more qualitative than quantitative and will closely follow the guidelines of the Environmental Protection Agency for assessing the risks of suspect developmental and reproductive toxicants (Ex. 5–153) to determine those levels of occupational exposure to the glycol ethers below which significant risk of adverse health outcomes are unlikely. This approach, which is described in detail in the following sections, is one that has been generally accepted in both the scientific and regulatory communities and is generally accepted as the best methodology for assessing the risks associated with reproductive and developmental toxins.

Risk assessment is a process in which scientific judgments are made concerning the potential for toxicity to occur in humans. Because human data are often not available, the risk assessment process often requires the use of models to extrapolate experimental data to humans. These models may be quantitative or qualitative. Quantitative models generally involve mathematical descriptions of dose-response relationships which allow one to calculate numerical estimates of potential risk for a given exposure. Qualitative models, on the other hand, rely more on narrative descriptions of dose-response relationships to describe the likelihood of an adverse effect for a given exposure. However both approaches are based on scientific judgments and scientifically based assumptions about dose response relationships and the predictive value of experimental data. The scientific and regulatory communities have chosen a preference for quantitative models especially in the case of carcinogens. However the scientific and regulatory communities also consider qualitative models as an acceptable means of extrapolating animal data to humans. The No Observed Effect Level-Uncertainty Factor (NOEL–UF) approach, described herein, is such a qualitative model.

As a matter of policy, OSHA has chosen to use the NOEL–UF approach in describing the risks associated with exposure to glycol ethers. OSHA has chosen to use this qualitative approach because it is the most generally well accepted approach for assessing the risks from reproductive and developmental toxins. OSHA's decision to use the NOEL–UF approach is based on agreement in the scientific community that this approach is the best methodology currently available for assessing reproductive health risks. This approach, in addition to its general acceptance in the scientific community, is also the methodology that has been consistently used by both EPA and FDA to assess reproductive health risks in their rulemaking procedures. As such it represents the best evidence available to OSHA for making its risk determinations. However while this is a policy choice it should be kept in mind that OSHA's decision to use the NOEL-UF approach is a scientifically informed choice that is supported by scientific expertise and judgment. The selection of the NOEL–UF approach, as well as the steps involved in the process (e.g., the selection of the size of uncertainty factors to extrapolate from animals to humans) are choices based on underlying scientific data and assumptions to account for certain basic scientific uncertainties and are not choices borne solely from a public health perspective to provide a safe workplace in the face of scientific uncertainty.

B. Assessing the Risk of Developmental and Reproductive Effects

Most OSHA risk assessments have focused on the risk of cancer from occupational exposure to toxic substances. In the case of carcinogen risk assessment, mathematical models are fit to dose-response data, and the fitted models are used to make predictions of risk at a variety of doses. Although there are a number of mathematical models available to fit to carcinogen dose-response data, within the risk assessment community in general, and the regulatory community in particular, a consensus exists as to which are the "best" models.

In the case of non-carcinogen risk assessment, no such generally accepted mathematical models exist for predicting risks. The traditional approach to assessing the risk of non-cancer effects has been first to make a qualitative determination that a toxic substance poses a risk of inducing an adverse effect and then to determine the level of exposure below which that adverse effect is unlikely to be induced in humans using an uncertainty or safety factor approach.

This approach is relatively simple. It is most often applied to experimental (animal) data, but it can be applied to epidemiological data when such data are available. The first step in this approach is to determine whether an effect occurs in each exposure group at a rate which is statistically significantly elevated over the rate at which the effect occurs in the unexposed or control group. The highest exposure level which does not induce the effect at a statistically significantly elevated rate is called the no observed effect level or NOEL. In its most recent guidelines (Ex. 5–153), the EPA uses the term NOAEL or no observed adverse effect level instead of NOEL, to make clear that effects being considered are of toxicological significance. For purposes of this document, NOEL is synonomous with NOAEL. The lowest exposure level which *does* induce the effect at a statistically significantly elevated rate is called the lowest observed effect level or LOEL. (EPA also refers to this level as the LOAEL or Lowest Observed Adverse Effect Level. Again, for purposes of this document, LOEL and LOAEL are synonomous.) In this approach the NOEL is usually the value of interest, but a substance may induce an effect at a statistically significantly elevated rate at each exposure level under study. In that case, the LOEL becomes the value of interest. Determination of the NOEL and/or the LOEL is the purpose of this first step.

The next step in this approach is to divide the NOEL or, in the absence of a NOEL, the LOEL by an uncertainty factor. Choice of the uncertainty factor will depend, in part, upon whether one uses the NOEL or the LOEL, and this is discussed at greater length below. The value

$$\frac{\text{NOEL}}{\text{Uncertainty Factor}}$$

is termed the "acceptable daily intake" or ADI and is considered to represent the level of exposure at which humans are unlikely to experience an adverse effect. (OSHA notes that for purposes of this document, the ADI is not to be interpreted as a regulatory limit, but rather as a health-based level upon which regulatory considerations can be referenced.)

Although this approach requires only two steps, each step introduces uncertainty as to whether the final ADI estimate does indeed represent an exposure level below which an adverse effect is unlikely to be induced. Implicit in the uncertainty factor approach is the assumption that there is a threshold level of exposure below which a toxic

response will not be induced, and the NOEL is an estimate of that threshold. There is debate, however, as to whether non-cancer effects, in particular developmental effects, are indeed threshold phenomena. Brent, for example, has argued that teratogenesis "is by and large a *threshold* phenomena, which means that the vast majority of teratogenic agents have a 'no effect' dose * * *" (Ex. 5–126). He cites thalidomide as an example of a developmental toxin which if administered at 50 mg during the critical gestation period can effect a majority of embryos but which will have no effect on the development of embryos administered at 0.5 mg during the same period.

Others, however, maintain that not all developmental toxins have a threshold. Gaylor et al argue that "if a chemical produces a malformation by different mechanism than spontaneous malformations, then there is a possibility for a threshold dose. However, if a chemical produces a malformation by augmenting or accelerating an already existing mechanism that produces spontaneous malformations, then no population threshold can exist" (Ex. 5–128). Rodricks et al maintain that "in cases in which the mechanisms of toxic or carcinogenic action are not understood, it is not possible to establish or reject the threshold hypothesis or no-threshold hypothesis, at least with the degree of certainty usually sought in scientific proof. There are numerous reasons to believe that thresholds must exist * * *, but generalization to all agents and all effects is not possible" (Ex. 5–130).

In its comments in response to OSHA's Advance Notice of Proposed Rulemaking (ANPR), the Chemical Manufacturer's Association (CMA) argues that acceptance of the existence of thresholds is central to evaluating reproductive and developmental risk (Ex. 7–17). CMA bases its position in part on the "demonstrated regenerative, repair and regulation abilities of an embryo and fetus." In addition, CMA notes that fetuses are protected by maternal placenta and the metabolic processes of the pregnant female that break down, excrete, store, or otherwise inactivate chemicals before they can damage the embryo. CMA concludes that "to make appropriate decisions about potential human reproductive risks, OSHA must focus its attention on studies that determine the threshold below which adverse effects on the adult or the conceptus will not occur" (Ex. 7–17).

While OSHA believes it is likely that most chemically-induced developmental effects have a threshold, it would seem that CMA is confusing the finding of a NOEL in an animal bioassay with the certainty a threshold exists. As noted by Rodricks et al, the existence of a NOEL from experimental data is consistent with the hypothesis of a threshold but is not sufficient to prove it (Ex. 5–130). Furthermore, if a threshold does exist, there is little reason to believe that the NOEL is indeed the threshold as CMA implies. The exposure level at which no effect is observed is not only a function of the potency of the substance under test but also a function of the experimental design of a study. For example, an exposure level which is not tested cannot be a NOEL. If a researcher tests a substance at 10, 25, and 50 ppm, then the NOEL can only be 10, 25, or 50 ppm. As noted by Rodricks et al, "[f]or practical reasons, only a few doses can be used in experimental studies. While these doses may fall above and below the true threshold doses, it is only by chance that any will precisely match the true threshold doses (and this chance is very small)."

The exposure level found to be the NOEL in a study, (and the exposure level found to be the LOEL in a study), will depend not only upon the exposure levels chosen by a researcher but also upon the numbers of animals in each exposure group. This is because exposure group size is an important factor in determining whether an observed excess of an effect is statistically significant. For example, suppose an experiment is run, and an effect is found to occur in 20% of the animals in the unexposed group. If there are 15 animals in each exposure group, then 60% of the animals exposed at some level X, (9 out of 15), must experience the effect in order to find that level X is the LOEL (i.e. 60% is the lowest rate at which the effect can occur in order to be statistically significantly elevated at the p=0.05 level over the 20% rate in the unexposed animals using a Fisher's Exact Test). If level X induces the effect in only 8 of the 15 exposed animals, then the rate for the effect in this exposure group will not be statistically significant.

If, in the example above, the number of animals in each exposure group were larger, then the proportion of exposed animals which must experience the effect to achieve statistical significance over the 20% rate in the unexposed group decreases. Thus, if there were 30 animals in each exposure group, then only 43.3% of the animals exposed to some level Y, (13 out of 30), must experience the effect in order to find that level Y is the LOEL. If there were 1,000 animals in each exposure group, then only 23.2% of the animals exposed to some level Z, (232 out of 1,000), must experience the effect in order to find that level Z is the LOEL.

It is clear from this example that the exposure levels determined to be the NOEL and LOEL will depend on study group size. The "true" NOEL may be lower than the NOEL determined for a particular study, but the study may not be sensitive enough to detect it. Few studies employ 1,000 animals per group in their study design, and thus the direction of uncertainty due to sample size is towards overestimating the NOEL and LOEL; a response rate which is statistically significant for a small number of study animals will always be statistically significant for any large number of animals.

Because small exposure group size and therefore lack of statistical power can lead to the erroneous conclusion that exposure induces no effect, the NOEL is not taken by itself to represent the "acceptable daily intake" (ADI). Instead, the NOEL is adjusted by an uncertainty factor not only to account for uncertainties associated with the experimental design but also to account for uncertainties associated with extrapolation across species (i.e. from experimental animals to humans) and to account for the variability of responses within a human population (i.e. intra-species variability).

In their chapter on risk assessment for effects other than cancer, Rodricks et al provide a brief history of the origins of the uncertainty factor (Ex. 5–130). Referring to uncertainty factors as safety factors, these authors write:

> The safety factor approach was originated by Lehman and Fitzhugh of the FDA who indicated that variability in sensitivity to chemicals (expressed as differences in dose causing similar responses) across several species was usually in the range of two or threefold and did not appear to exceed tenfold. They also indicated that the variability among extensively outbred individuals and individuals of all ages and degrees of susceptibility (e.g., persons in the general population) appeared also to be less than one order of magnitude. They consequently founded the 100-fold safety factor as a general method of dealing with the uncertainties of extrapolation. This incorporated a factor of 10 when extrapolating from animals to humans and an additional factor of 10 to account for differential sensitivities within the human population. When this 100-fold safety factor is applied to the highest experimental animal NOEL, it is considered to approximate a NOEL for humans in the general population, and becomes the ADI.

Since the concept of uncertainty factors was first introduced, it has been modified to derive an ADI from data of varying quality. For example, the FDA has expanded the original 100-fold uncertainty factor approach. When a NOEL is derived from subchronic animal data but that NOEL has been identified in two species, then the FDA recommends an uncertainty factor of 1000. Here, the additional factor of 10 is needed to account for the added uncertainty in estimating a chronic ADI from subchronic data. When a NOEL is derived from subchronic animal data but that NOEL has been identified in only one species, FDA recommends an uncertainty factor of 2000. The additional two-fold factor is intended to account for possible interspecies differences (Ex. 5–130).

If a NOEL cannot be identified from study data, that is, if the lowest exposure level used in a study induces an effect at a rate statistically significantly greater than observed among the unexposed group, then the uncertainty factor is applied to the LOEL instead of the NOEL to derive the ADI. As with the NOEL, the uncertainty factor applied to the LOEL is used to account for the uncertainties and variability described above, but EPA recommends that an additional uncertainty factor, usually between one and 10, be used to account for the fact that no NOEL was identified from the data (Ex. 5–131).

Although the selection of uncertainty factors in the multiples of ten may appear to be arbitrary, there is some experimental support for their selection, and this is discussed at some length in an article by Dourson and Stara (Ex. 4–113). (The scientific basis underlying the selection and use of uncertainty factors is further discussed in OSHA Exhibit 5–155.) In addition, these choices of uncertainty factors as well as the entire uncertainty factor approach for non-cancer health effects have been adopted by a number of governmental agencies and international organizations including the U.S. Environmental Protection Agency (EPA), the U.S. Food and Drug Administration (FDA), the Joint Food and Agricultural Organization of the World Health Organization (FAO/WHO), and the National Academy of Sciences (NAS). The uncertainty factor approach for regulating occupational exposure to glycol ethers is supported by many of the commentors responding to OSHA's ANPR including CMA (Ex. 7–17), DOW Chemical (Ex. 7–21), and Du Pont (Ex. 7–28), among others, although not all agree on the value of the uncertainty factor which should be used.

As CMA points out in its comments, the uncertainty factor approach "has been well established for regulating reproductive risks" (Ex. 7–17). As noted above, the ADI represents an exposure level below which an adverse effect is unlikely, and confidence that the ADI is an exposure level below which an adverse effect is unlikely will depend, to a large extent, upon the quality of the data from which it is derived. If we know something of the mechanism which induces an effect and if we know that that mechanism is activated when exposure exceeds some threshold level, then our confidence that an adverse effect is unlikely at exposure levels at or below the ADI increases further.

C. Assessment of the Developmental Risk From Exposures to Glycol Ethers

1. Introduction

According to the EPA Guidelines for Developmental Toxicity Risk Assessment (Ex. 5–153), the major manifestations of developmental toxicity include (1) death of the developing organism; (2) malformations; (3) altered growth, and (4) functional deficiency. The studies used by OSHA for its assessment of developmental risk from glycol ethers employed a protocol exposing fetuses *in utero* during organogenesis, the phase of gestation during which the major organ systems develop. The pregnant dams were sacrificed at the end of this gestational phase and prior to giving birth. Each of the unborn fetuses was then examined. Under this protocol the endpoints of interest in these studies are the first three of the outcomes listed above.

The endpoint "death of the developing organism" includes resorptions and intra-uterine deaths. Preimplantation loss is not a measure of developmental toxicity in these studies because the pregnant females were not exposed to any glycol ether until after implantation had occurred.

A malformation is usually defined as a permanent structural change that may adversely affect survival, development, or function. A malformation is different than a variation which is usually defined as a divergence beyond the usual range of structural constitution that may not adversely affect survival or health. It is not always possible, however, to distinguish between variations and malformations because, as noted by EPA in its Guidelines, "there exists a continuum of responses from the normal to extreme deviant." Furthermore, there is no generally accepted classification of malformations. Other terminology which is also used includes anomalies, deformations, and aberrations, but, as EPA points out, these terms are no better defined. Nonetheless, these effects indicate toxicity to the developing organism when associated with exposure to a chemical.

Altered growth is defined by EPA as an alteration in offspring organ or body weight or size. This endpoint may be reversible or may result in a permanent change.

As noted by the Interagency Regulatory Liaison Group (IRLG) in its Workshop on Reproductive Toxicity Risk Assessment, "the developmental toxicity endpoints encountered in experimental animals do not and should not be expected necessarily to mimic those observed in humans exposed to the same toxicant" and "the specific agent-related endpoints in humans are not always reproduced in experimental animals" (Ex. 5–018). All substances known to cause developmental effects in humans, however, have also been found to induce developmental effects in animals with the exception of the coumarin anticoagulants which have not been studied extensively in animals (Ex. 4–147).

Schardein has compared the effects of all "known or possible" teratogens in humans with the teratogenic responses observed in laboratory animals exposed to these substances (Ex. 4–147). Each of the developmental toxicants he looked at induced some developmental effect in at least one animal species, but only one class of substances, androgenic hormones, induced the same effect as observed in humans in each species which experienced an effect. Androgenic hormones have been tested in fourteen species, and only one species tested, sheep, experienced no effect.

The more common result in cross-species testing of developmental toxicants can be found in the case of thalidomide which was found to induce limb defects (i.e., missing limbs) in humans. In laboratory animals, the drug was found to induce developmental effects in seventeen species, but an effect concordant to the effect observed in humans was observed in only nine species. Furthermore, eight of these nine species, the rhesus monkey, the marmoset, the baboon, the bonnet monkey, the crab-eating monkey, the green monkey, the Japanese monkey, and the stump-tailed monkey, are not the usual animals used in animal bioassays. The rabbit was the sole rodent species to exhibit an effect concordant to the effect observed in humans (Ex. 4–147).

The IRLG has noted that there is "no evidence that any particular species or

strain more consistently predicts human susceptibility to animal teratogens than any other species or strain" (Ex. 5–018). This is borne out by Schardein (Ex. 4–147). He found that the rabbit, which experienced an effect from thalidomide concordant to the effect induced humans, experienced no adverse developmental effects from alcohol or diethylstilbestrol (DES), both known to cause birth defects in humans. The mouse experienced effects concordant to those in humans for a number of substances including alcohol, diethylstilbestrol, and antithyroid compounds, but neither aminopterin nor streptomycin, substances found to induce developmental effects in humans, induced any developmental effects in this species. Rats experienced adverse developmental effects from exposure to more of the toxicants considered by Schardein, (rats, and mice were the most commonly used animals in tests of the toxicants considered by Schardein), but the effects were concordant with those in humans in only little more than half the substances and at least one substance considered by Schardein, trimethadione, induced no effect in this species.

The response to a developmental toxicant in animal bioassay can be measured in a number of ways. One of these is the number of fetuses affected per number of fetuses exposed. This shall be referred to as the "fetus measure of response". While this measure gives some indication of the potency of a developmental toxicant, it treats each fetus independently of all other fetuses thereby ignoring the "little effect". The litter effect is the tendency for littermates to respond more like each other than like animals from different litters. Furthermore, the fetus measure cannot distinguish between the case where all litters have one or two affected fetuses and the case where all affected fetuses are from only one or two litters, although these two scenarios have different implications for the potency of a developmental toxicant.

An alternative measure of response is number of litters with at least one affected fetus per total number of litters exposed, referred to as the "litter measure of response". This measure treats the litters as the experimental unit because, as noted by EPA in its Guidelines, it is the maternal animal and not the conceptus which is treated during gestation (Ex. 5–153). This is the measure of response favored by EPA for evaluating the potency of a developmental toxicant. The drawback to this measure, however, is that it gives equal weight to a litter with one affected fetus as it gives to a litter with all affected fetuses.

In addition to both of these measures, a third measure which OSHA has considered for evaluating response in animals exposed to developmental toxicants is average number of fetuses affected per affected litter. This shall be referred to as the "fetus/litter measure of response". This measure provides a compliment to the fetus measure of response and the litter measure of response, for, whereas the former indicates only the number of fetuses affected and the latter indicates only the number of litters affected, the fetus/litter measure provides an indication of how severe an effect may be within an affected litter. For example, a fetus/litter value of 1.0 would indicate that only one fetus was affected in each of the affected litters. A fetus/litter value of 2.0 would indicate that *on average*, two fetuses were affected in each of the litters with affected fetuses. Comparison of fetus/litter values across exposure groups would allow one to determine whether more fetuses were affected in each affected litter as dose increases. The limitation of this measure, however, is that unlike the other two measures discussed above, the fetus/litter measure of response has utility only as a descriptive measure and can not be used for statistical inference because the statistical distribution of this measure is unknown.

2. Choice of Data

a. *2–ME.* OSHA has identified three well conducted animal bioassays for 2–ME which are suitable for assessing the risk of developmental effects from occupational exposure to this glycol ether and for determining the acceptable daily intake or ADI. (As noted earlier for purposed of this document, the ADI is not a regulatory limit but rather a health-based level which describes the level at which humans are unlikely to exhibit effects similar to those observed in experimental data.) These studies were chosen because in each of these studies, exposure levels were documented, the routes of exposure were the same as is found in most occupational settings (i.e. inhalation), concurrent controls were used, two or more exposure levels of the test substance were employed, statistically significant excesses of developmental effects were observed in exposed groups, and individual litter data were available.

Hanley and associates of the Dow Chemical Company conducted three animal inhalation bioassays for 2–ME using female rats, rabbits, and mice (Exs. 4–042a and 4–106). Groups of 30 to 31 bred Fisher 344 rats and 20 to 30 bred New Zealand white rabbits were exposed to 2–ME at levels of 3, 10, or 50 ppm. Groups of 30 to 32 bred CF–1 mice were exposed to 2–ME at levels of 10 or 50 ppm. The test article was supplied by Dow and was 99.96% pure. Thirty bred rats, 30 bred rabbits, and 31 bred mice served as controls.

The female rats were bred one to one with male rats of the same strain. The female mice were bred two to one with male mice of the same strain (two females to one male), and the rabbits were bred through artificial insemination. Animals were randomly assigned to exposure groups. Exposure occurred six hours per day through the organogenesis phase of gestation: From day 6 through day 15 of gestation for rats and mice and from day 6 through day 18 gestation for rabbits. All animals were given food and water *ad libitum* except during periods of exposure and were observed daily throughout the experimental period for indications of toxicity and adverse effects of treatment.

Animals found dead or moribund during the course of the study were submitted for gross pathological examination. Surviving mice were sacrificed on day 18 of gestation, surviving rats were sacrificed on day 21 of gestation, and surviving rabbits were sacrificed on day 29 of gestation. Caesarean sections and examinations were preformed on all animals to determine: (1) The number and position of fetuses *in utero;* (2) the number of live and dead fetuses; (3) the number and position of resorption sites; (4) the sex, and body weight, and crown-rump length of each fetus; and (5) any gross external alternations. In addition, the rats and the rabbits were examined for number of corpora lutea. The uteri of apparently non-pregnant animals were stained and examined for evidence of implantation sites to determine whether pregnancy had occurred. One half of each litter was dissected and examined for soft tissue alternations. All fetuses were examined for skeletal alternations.

b. *2–EE.* OSHA has identified two well conducted animal inhalation bioassays for 2–EE which are suitable for assessing the risk of developmental effects from occupational exposure to this glycol ether and for determining the acceptable daily intake or ADI. As with 2–ME, both of these studies were chosen because in each, exposure levels were documented, the routes of exposure were the same as if found in most occupational settings (i.e. inhalation), concurrent controls were used, two or more exposure levels of the test substance were employed, statistically significant excesses of developmental

effects were observed in exposed groups, and individual litter data were available.

Tinston, Doe and associates of Imperial Chemical Industries PLC conducted two animal inhalation studies for 2–EE using rats and rabbits (Exs. 4–038 and 4–039; see also Ex. 5–071). These studies were sponsored by the Chemical Manufacturer's Association (CMA) and followed a protocol similar to the one used by Hanley et al. Groups of 24 bred rats of the Alpk/AP (Wistar-derived) strain were exposed to 2–EE at levels of 10, 50, or 250 ppm. Groups of 24 bred Dutch rabbits were exposed to 2–EE at levels of 10, 50 and 175 ppm. The test article was supplied by Imperial Chemical Industries and was more than 99% pure. Twenty-four bred rats and 24 bred rabbits served as controls.

The female rats were bred one to one with male rats of the same strain, and female rabbits were bred with 2 male rabbits of the same strain. Animals were randomly assigned to exposure groups. Exposure occurred six hours per day throughout the organogenesis phase of gestation: from day 6 through day 15 of gestation for the rats and from day 6 through day 18 of gestation for the rabbits. All animals were given food and water *ad libitum* except during periods of exposure and were observed daily for their clinical condition.

Terminal sacrifice of the animals occurred on day 21 of gestation for the rats and day 29 of gestation for the rabbits. After sacrifice, the number of corpora lutea in each animal's ovaries was counted. The uterus of each animal was cut open and the number of implantations as well as the number of early and late intra-uterine deaths was determined. An intra-uterine death was judged to be late if fetal tissues were distinguishable. Each fetus which had not died *in utero* was removed from the uterus. These fetuses were weighed and examined for gross defects. Half of the rat fetuses and all of the rabbit fetuses were examined for skeletal defects. All fetuses of both species were examined for external and visceral defects.

3. Bioassay Results

a. 2–ME. In measuring the incidence of effects of 2–Me in fetal rats, rabbits, and mice, Hanley et al grouped the effects into three categories: external alternations, soft tissue alterations, and skeletal alterations. Each of these categories of defects was subdivided further into major defects and minor defects. The study authors provided no explanation as to the criteria used to subdivide these categories, and one must assume it was professional judgement (Exs. 4–047 and 4–106).

Table VI–A presents the incidence of developmental effects in fetal rats exposed to 2–ME. Incidence is reported using each of the measures of response discussed above (i.e. fetus, litter and fetus/litter). the only effects presented in this discussion are those which occurred in any exposed group at a rate statistically significantly greater than the rate in the unexposed group at the p=0.05 level using either the fetus measure of response or the litter measure of response. Statistical significance was determined using Fisher's Exact Test.

TABLE VI–A.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN FISHER 344 RATS EXPOSED TO 2–ME DAYS 6 THROUGH 15 OF GESTATION [1]

Minor skeletal alterations	Control	3 ppm	10 ppm	50 ppm
Delayed ossification of centra:				
Fetus [2]	4/287	3/283	6/293	[3] 19/307
Litters [4]	4/29	3/28	5/28	[5] 13/30
Fetus/litter [6]	1.00	1.00	1.20	1.46
Rib spurs:				
Fetus	18/287	13/283	20/293	[3] 57/307
Litters	12/29	10/28	13/28	[3] 26/30
Fetus/litter	1.50	1.30	1.54	2.19
Delayed ossification of sternebrae:				
Fetus	125/287	142/283	131/293	[3] 97/307
Litters	28/29	27/28	27/28	28/30
Fetus/litter	4.46	5.26	4.85	3.40

[1] Data from Hanley et al., Ex. 4–042a.
[2] Incidence is number of fetuses affected divided by the total number of fetuses.
[3] Significantly different than controls at the $p \leq .01$ level.
[4] Incidence is number of litters with at least one fetus affected.
[5] Significantly different than controls at the $p \leq .05$ level.
[6] Average number of affected fetuses per affected litter.

Delayed ossification of the centra and rib spurs are the two developmental effects which occurred at a rate statistically significantly greater in an exposed group than in the controls. Both of these effects were classified as minor skeletal alterations. Both effects were elevated for the 50 ppm group only, but incidence was significant at the p=0.012 level or lower regardless of measure of response, and the fetus/litter measure of response increases with dose. Delayed ossification of the sternebra was significantly reduced for the 50 ppm group when measured using the fetus measure of response, but it was not significant using the litter measure of response and the fetus/litter measure does not show a dose related trend. The authors attribute the observed deficit of delayed ossification of the sternebra to normal variation and not to exposure to 2–ME.

Table VI–B presents the incidence of developmental effects in fetal rabbits exposed to 2–ME. The same measures of incidence presented for the rats are presented for the rabbits, and the same statistical criteria were used for inclusion of an effect in the table.

TABLE VI–B.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN NEW ZEALAND WHITE RABBITS EXPOSED TO 2–ME DAYS 6 THROUGH 18 OF GESTATION[1]

	Control	3 ppm	10 ppm	50 ppm
Resorptions:				
Fetus[2]	7/180	14/186	[3]23/210	[3]46/191
Litters[4]	5/23	10/24	[5]14/24	[3]16/24
Fetus/litter[6]	1.40	1.40	1.64	2.88
Major External Alterations[7]				
Arthrogryposis:				
Fetus	0/173	1/172	0/187	[3]54/145
Litters	0/23	1/23	0/24	[3]15/22
Fetus/litter	0.00	1.00	0.00	3.60
Anonychia:				
Fetus	0/173	0/172	0/187	[3]14/145
Litters	0/23	0/23	0/24	[3]6/22
Fetus/litter	0.00	0.00	0.00	2.33
Brachydactyly:				
Fetus	0/173	0/172	0/187	[3]6/145
Litters	0/23	0/23	0/24	[5]4/22
Fetus/litter	0.00	0.00	0.00	1.50
Ectrodactyly:				
Fetus	0/173	1/172	0/187	[3]6/145
Litters	0/23	0/23	0/24	[5]4/22
Fetus/litter	0.00	0.00	0.00	1.50
Omphalocele:				
Fetus	0/173	0/172	0/187	[5]5/145
Litters	0/23	0/23	0/24	2/22
Fetus/litter	0.00	0.00	0.00	2.50
Thinning of abdominal wall:				
Fetus	0/173	0/172	0/187	[3]6/145
Litters	0/23	0/23	0/24	3/22
Fetus/litter	0.00	0.00	0.00	2.00
Kinky tail:				
Fetus	0/173	0/172	0/187	[5]4/145
Litters	0/23	0/23	0/24	[5]4/22
Fetus/litter	0.00	0.00	0.00	1.00
Minor External Alterations				
Misalignment of palatine rugae:				
Fetus	0/173	0/174	0/187	[3]27/145
Litters	0/23	0/23	0/24	[3]11/22
Fetus/litter	0.00	0.00	0.00	2.45
Narrowed tip of tail:				
Fetus	0/173	0/172	0/187	[3]6/145
Litters	0/23	0/23	0/24	[3]6/22
Fetus/litter	0.00	0.00	0.00	1.00
Major Soft Tissue Alterations[8]				
Coarctation of the aortic arch:				
Fetus	0/95	0/93	0/101	[3]13/80
Litters	0/23	0/23	0/24	[3]6/22
Fetus/litter	0.00	0.00	0.00	2.17
Ventricular septal defect:				
Fetus	0/95	0/93	0/101	[3]34/80
Litters	0/23	0/23	0/24	[3]15/22
Fetus/litter	0.00	0.00	0.00	2.27
Hypoplastic spleen:				
Fetus	0/95	0/93	0/101	[3]25/80
Litters	0/23	0/23	0/24	[3]13/22
Fetus/litter	0.00	0.00	0.00	1.92
Dilated renal pelvis:				
Fetus	0/95	1/93	1/101	[3]28/80
Litters	0/23	1/23	1/24	[3]14/22
Fetus/litter	0.00	1.00	1.00	2.00
Patent ductus arteriosis:				
Fetus	0/95	1/93	0/101	[5]5/80
Litters	0/23	1/23	0/24	[5]4/22
Fetus/litter	0.00	1.00	0.00	1.25
Hypoplastic gall bladder:				
Fetus	0/95	0/93	0/101	[5]4/80
Litters	0/23	0/23	0/24	[5]4/22
Fetus/litter	0.00	0.00	0.00	1.00
Pale spleen:				
Fetus	4/95	2/93	1/101	[3]30/80

TABLE VI–B.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN NEW ZEALAND WHITE RABBITS EXPOSED TO 2–ME DAYS 6 THROUGH 18 OF GESTATION [1]—Continued

	Control	3 ppm	10 ppm	50 ppm
Litters	1/23	1/23	1/24	[3] 16/22
Fetus/litter	4.00	2.00	1.00	1.88
Dilated ureter:				
Fetus	0/95	0/93	0/101	[3] 7/80
Litters	0/23	0/23	0/24	[3] 6/22
Fetus/litter	0.00	0.00	0.00	1.17
Convoluted ureter:				
Fetus	3/95	2/93	0/101	[3] 12/80
Litters	2/23	2/23	0/24	[5] 8/22
Fetus/litter	1.50	1.00	0.00	1.50
Paraovarian cyst:				
Fetus [9]	0/48	1/47	1/53	[3] 9/40
Litters [10]	0/23	1/21	1/24	[3] 8/22
Fetus/litter	0.00	1.00	1.00	1 13
Testicular cyst:				
Fetus [9]	0/47	0/46	0/48	[5] 5/40
Litters	0/22	0/23	0/23	3/22
Fetus/litter	0.00	1.00	1.00	1.13
Shortened nasals, maxillae and mandibles:				
Fetus	0/173	0/172	0/187	[3] 6/145
Litters	0/23	0/23	0/24	1/22
Fetus/litter	0.00	0.00	0.00	6.00
Major Skeletal Alterations [7]				
Missing phalange(s):				
Fetus	0/173	0/172	0/187	[3] 7/145
Litters	0/23	0/23	0/24	[5] 4/22
Fetus/litter	0.00	0.00	0.00	1.75
Missing metacarpal(s):				
Fetus	0/173	0/172	0/187	[5] 4/145
Litters	0/23	0/23	0/24	2/22
Fetus/litter	0.00	0.00	0.00	2.00
Missing metatarsal(s):				
Fetus	0/173	0/172	0/187	[3] 9/145
Litters	0/23	0/23	0/24	[5] 4/22
Fetus/litter	0.00	0.00	0.00	2.25
Shortened ribs:				
Fetus	0/173	0/172	0/187	[5] 4/145
Litters	0/23	0/23	0/24	2/22
Fetus/litter	0.00	0.00	0.00	2.00
Enlarged interparietals:				
Fetus	0/173	0/172	0/187	[5] 5/145
Litters	0/23	0/23	0/24	1/22
Fetus/litter	0.00	0.00	0.00	5.00
Delayed ossification of the hyoid:				
Fetus	1/173	2/172	2/187	[3] 14/145
Litters	1/23	2/23	2/24	[3] 8/22
Fetus/litter	1.00	1.00	1.00	1.75
Delayed ossification of the tarsals(s):				
Fetus	0/173	3/172	1/187	[3] 17/145
Litters	0/23	3/23	1/24	[3] 8/22
Fetus/litter	0.00	1.00	1.00	2.13
Extra lumbar ribs:				
Fetus	0/173	0/172	0/187	[3] 13/145
Litters	0/23	0/23	0/24	[3] 7/22
Fetus/litter	0.00	0.00	0.00	1.86
Shortened lumbar ribs:				
Fetus	0/173	0/172	0/187	[5] 4/145
Litters	0/23	0/23	0/24	2/22
Fetus/litter	0.00	0.00	0.00	1.86
Delayed ossification of the centra:				
Fetus	4/173	2/172	0/187	[5] 11/145
Litters	4/23	2/23	[5] 0/24	8/22
Fetus/litter	1.00	1.00	0.00	1.38
Delayed ossification of the sternebrae:				
Fetus	82/173	93/172	[3] 123/187	[3] 127/145
Litters	23/23	23/23	24/24	22/22
Fetus/litter	3.57	4.04	5.13	5.77
Fused sternebrae:				
Fetus	3/173	2/172	0/187	[5] 11/145
Litters	3/23	2/23	0/24	8/22

TABLE VI–B.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN NEW ZEALAND WHITE RABBITS EXPOSED TO 2–ME DAYS 6 THROUGH 18 OF GESTATION [1]—Continued

	Control	3 ppm	10 ppm	50 ppm
Fetus/litter	3.57	4.04	5.13	1.33
Sternebrae—extra site of ossification:				
Fetus	0/173	0/172	0/187	[5] 4/145
Litters	0/23	0/23	0/24	3/22
Fetus/litter	3.57	4.04	5.13	1.33

[1] Data from Hanley et al, Ex. 4–042a.
[2] Incidence is number of fetuses affected divided by the total number of fetuses.
[3] Significantly different than controls at the $p \leq .01$ level.
[4] Incidence is number of litters with at least one fetus affected.
[5] Significantly different than controls at the $p \leq .05$ level.
[6] Average number of affected fetuses per affected litter.
[7] Denominator (i.e. the number of animals at risk) is adjusted for resorptions.
[8] Only a portion of fetuses in each exposure group were examined for soft tissue alternations.
[9] Denominator not specified by study authors. Number of fetuses at risk estimated by applying male/female ratio for each exposure group to number of fetuses examined for soft tissue alternations.
[10] Denominator is number of litters with at least one female fetus.
[11] Denominator is number of litters with at least one male fetus.

Incidence of resorptions was statistically significantly increased using both the fetus and the litter measures of response for the 10 ppm and the 50 ppm group. The fetus/litter measure of incidence shows a dose related increase. The study authors note that although resorptions are significantly elevated for the 10 ppm group, the observed rate for fetuses (11%) and for litters (58%) are comparable to the historical incidence of resorptions observed in other studies in the same laboratory (7% to 15% for fetuses and 38% to 74% for litters). They attribute the finding of statistical significance of resorptions in this exposure group to the unusually low control group incidence of resorptions (4% for fetuses and 22% for litters) and not to exposure.

Major external alterations in rabbits occurred at a significant excess in the 50 ppm group only. Incidence of arthrogryposis (abnormal flexure of the forelimbs), anonychia (absence of nails), brachydactyly (short digits), ectrodactyly (absence of part or all of a digit), and kinky tail occurred at a statistically significantly elevated rate for both the fetus measure of response and the litter measure of response. Incidence of omphalocele (protrusion of the intestines through the abdominal wall), and thinning of the abdominal wall was significant for fetuses but not for litters.

As with major external alterations, the minor external alterations, misalignment of the palatine rugae and narrowed tip of tail, occurred at a significant excess only in the 50 ppm group. Both were statistically significant using both the fetus and the litter measure of response.

What is most striking about these data is that every external alteration observed, major or minor, was observed only in the 50 ppm group except for one fetus in the 3 ppm group observed with arthrogryposis. The almost total absence of background incidence of these effects reduces the uncertainty as to whether the response in the 50 ppm group could be attributed to chance variation rather than exposure to 2–ME.

While all the fetal rabbits were examined for external alterations, only half were examined for soft tissue alterations. Thus, the study had less power to detect this type of developmental effect. Nonetheless, a large number of soft tissue alterations were observed at a significant excess in 50 ppm group. Incidence of these effects was not significantly elevated over controls in any other exposure group. The major soft tissue alterations were coarctation of the aortic arch, ventricular septal defect, hypoplastic spleen, and dilated renal pelvis, and incidence of these effects in the 50 ppm group were statistically significant using both the fetus and the litter measure of response at the p=0.009 level or lower. All but one minor soft tissue alteration occurred at a statistically significant rate in the 50 ppm group using both measures of response. These alterations were patent ductus arteriosis, hypoplastic gall bladder, pale spleen, dilated ureter, convoluted ureter, and parovarian cysts. Testicular cysts were statistically significant in male fetal rabbits in the 50 ppm group using the fetus measure but not using the litter measure. Here again, the almost total absence of any of these effects in the control group, the 3 ppm group, or the 10 ppm group lends further support to 2–ME as the cause for these effects in the 50 ppm group.

All fetuses were examined for skeletal alterations, yet incidence of all but two of these alterations was significantly elevated in the 50 ppm group only. The major skeletal alterations which occurred at a significantly elevated rate in this group using both measures of response were missing phalanges and missing metatarsal; the minor skeletal alterations were delayed ossification of the hyoid, delayed ossification of the tarsals, and extra lumbar ribs. Incidence of shortened nasals, maxillae and mandibles and shortened ribs, both major external alterations, were significantly elevated in the 50 ppm group also but only when measured in fetuses. Likewise, incidence of enlarged interparietals, shortened lumbar ribs, delayed ossification of the centra, fused sternebra, and extra site of sternebra ossification, all minor external alterations, were significantly elevated in the 50 ppm group but again, only for the fetus measure of response. There was a statistically significant deficit of delayed ossification of the centra in litters in the 10 ppm group, this most likely is attributable to chance variation and not to exposure. Delayed ossification of the sternebra was significantly elevated over controls in fetuses in the 10 ppm and the 50 ppm exposure groups, but the incidence of this effect measured in litters at both exposure levels was the same (100%) as in the control and 3 ppm exposure group.

Exposure to 2–ME did not have as strong an effect in fetal mice as it did in fetal rabbits. Table VI–C presents the results of the mouse bioassay. Criteria for inclusion of an effect in the table in the same as was used for both rats and rabbits. Only one effect, extra lumbar ribs, a minor skeletal alteration, was significantly elevated using both the fetus and the litter measure of response, and this was in the 50 ppm group.

Incidences of resorption, hypoplastic testicle, and extra site of sternebra ossification in the 50 ppm group were significantly elevated over controls but only in fetuses and not in litters. Incidence of testicular hemorrhage and delayed ossification of the sternebra was significantly elevated over controls in the 10 ppm group and the 50 ppm using the fetus measure of response, but incidence of these effects was not significant when response was measured in litters.

TABLE VI–C.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN CF–1 MICE EXPOSED TO 2–ME DAYS 6 THROUGH 15 OF GESTATION [1]

	Control	10 ppm	50 ppm
Resorptions:			
Fetus [2]	25/342	25/285	[3] 35/286
Litters [4]	16/26	14/23	18/24
Fetus/litter [5]	1.56	1.79	1.94
Minor Soft Tissue Alterations [6]			
Hypoplastic testicle:			
Fetus [7]	2/86	3/64	[3] 8/66
Litters [8]	2/26	3/23	6/22
Fetus/litter	1.00	1.00	1.33
Testicular hemorrhage:			
Fetus [7]	2/86	3/64	[3] 8/66
Litters [8]	2/26	3/23	6/22
Fetus/litter	1.00	1.00	1.33
Minor Skeletal Alterations [9]			
Extra lumbar rib:			
Fetus	48/317	49/260	[10] 82/251
Litters	14/26	14/23	[3] 21/24
Fetus/litter	3.43	3.50	3.90
Delayed ossification of the sternebrae:			
Fetus	76/317	[3] 43/260	[3] 77/251
Litters	18/26	13/23	21/24
Fetus/litter	3.43	3.50	3.90
Sternebrae—extra site of ossification:			
Fetus	21/317	9/260	[3] 8/251
Litters	9/26	6/23	4/24
Fetus/litter	3.43	3.50	3.90

[1] Data from Hanley et al, Ex. 4–106.
[2] Incidence is number of fetuses affected divided by the total number of fetuses.
[3] Significantly different than controls at the $p \leq .05$ level.
[4] Incidence is number of litters with at least one fetus affected.
[5] Average number of affected fetuses per affected litter.
[6] Only a portion of fetuses in each exposure group were examined for soft tissue alterations.
[7] Denominator not specified by study authors. Number of fetuses at risk estimated by applying male/female ratio for each exposure group to number of fetuses examined for soft tissue alterations.
[8] Denominator is number of litters with at least one male fetus.
[9] Denominator (i.e. the number of animals at risk) is adjusted for resorptions.
[10] Significantly different than controls at the $p \leq .01$ level.

b. *2–EE.* In their studies of the developmental effects of 2–EE on fetal rats and fetal rabbits, Tinston, Doe et al., (Exs. 4–038 and 4–039; see also Ex. 5–071), classified effects differently than Hanley et al. Abnormalities which were deemed either rare or lethal or both were classified as major external and visceral defects or major skeletal defects while those defects which were judged to be small changes that would not normally impair survival and that occur at a moderate to low frequency in the strain were classified as minor external and visceral defects or minor skeletal defects. A third classification, variant, was used to describe those defects which are common in the species and are not normally deleterious.

Another difference between the 2–EE bioassays and the 2–ME bioassays is that the investigators in the 2–EE bioassays considered much more specific effects than did the investigators in the 2–ME bioassays. For example, Tinston et al. looked at the degree of ossification (i.e. partially ossified or not ossified) of each centrum and sternebra in each fetus examined. Thus, the study authors report the incidence of partial ossification of the first sternebra, partial ossification of the second sternebra, and so forth. In the 2–ME bioassays, on the other hand, Hanley et al. grouped any ossification defect of any sternebra into the category "delayed ossification of the sternebra" and any ossification defect of any centrum into the category "delayed ossification of the centra." The different approaches for measuring the incidence of effects have implications for the inferences which can be drawn from analysis of the study results, and these implications will be discussed in the next section.

Table VI–D presents the incidence of developmental effects in fetal rats exposed to 2–EE. As with the results from the 2–ME bioassays, incidence is reported using the fetus, litter, and fetus/litter measures of response, and only those effects which occurred in any exposed group at a statistically significantly greater rate than in control using either the fetus or the litter measure of response are included.

Again, statistical significance was determined using Fisher's Exact Test with a critical value of p=0.05.

TABLE VI–D.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN WISTAR RATS EXPOSED TO 2–EE DAYS 6 THROUGH 15 OF GESTATION[1]

	Control	10 ppm	50 ppm	250 ppm
All intra-uterine deaths:				
Fetus[2]	16/297	22/277	12/261	[3]32/266
Litters[4]	12/23	15/24	10/22	12/21
Fetus/litter[5]	1.33	1.47	1.20	2.67
Late intra-uterine deaths:				
Fetus[6]	3/284	3/258	2/251	[3]17/251
Litters	2/23	2/24	2/22	[7]7/21
Fetus/litter	1.50	1.50	1.00	2.43
Minor Skeletal Anomalies[8]				
Skull—partially ossified frontals:				
Fetus	1/147	0/131	4/129	[3]14/122
Litters	1/23	0/24	4/22	[7]7/21
Fetus/litter	1.00	0.00	1.00	2.00
Skull—partially ossified parietal:				
Fetus	10/147	[3]1/131	15/129	[3]35/122
Litters	6/23	[7]1/24	8/22	[3]17/21
Fetus/litter	1.67	1.00	1.88	2.06
Skull—partially ossified interparietal:				
Fetus	26/147	[3]3/131	24/129	[3]40/122
Litters	10/23	[7]3/24	12/22	[7]17/21
Fetus/litter	2.60	1.00	2.00	2.35
Skull—odontoid not ossified:				
Fetus	26/147	19/131	32/129	[3]93/122
Litters	13/23	10/24	16/22	[3]20/21
Fetus/litter	2.00	1.90	2.00	4.65
Cervical centrum #3 not ossified:				
Fetus	14/147	21/131	[7]25/129	[3]115/122
Litters	6/23	9/24	[7]12/22	[3]21/21
Fetus/litter	2.33	2.33	2.08	5.48
Cervical centrum #4 not ossified:				
Fetus	10/147	7/131	16/129	[3]109/122
Litters	5/23	4/24	[7]11/22	[3]21/21
Fetus/litter	2.00	1.75	1.45	5.19
Cervical centrum #5 not ossified:				
Fetus	2/147	5/131	[7]9/129	[3]98/122
Litters	1/23	3/24	[7]6/22	[3]21/21
Fetus/litter	2.00	1.67	1.50	4.67
Cervical centrum #6 not ossified:				
Fetus	1/147	2/131	[7]6/129	[3]84/122
Litters	1/23	2/24	4/22	[3]20/21
Fetus/litter	1.00	1.00	1.50	4.20
Cervical centrum #7 not ossified:				
Fetus	0/147	0/131	2/129	[3]26/122
Litters	0/23	0/24	2/22	[3]10/21
Fetus/litter	0.00	0.00	1.00	2.60
Thoracic centrum #8 partially ossified:				
Fetus	0/147	0/131	0/129	[3]6/122
Litters	0/23	0/24	0/22	[3]6/21
Fetus/litter	0.00	0.00	0.00	1.00
Thoracic centrum #9 partially ossified:				
Fetus	0/147	1/131	0/129	[3]7/122
Litters	0/23	1/24	0/22	[7]5/21
Fetus/litter	0.00	1.00	0.00	1.40
Thoracic centrum #10 partially ossified:				
Fetus	0/147	0/131	0/129	[3]18/122
Litters	0/23	0/24	0/22	[3]12/21
Fetus/litter	0.00	0.00	0.00	1.50
Thoracic centrum #11 partially ossified:				
Fetus	5/147	0/131	1/129	[3]19/122
Litters	5/23	0/24	1/22	10/21
Fetus/litter	1.00	0.00	1.00	1.90
Thoracic centrum #12 partially ossified:				
Fetus	2/147	1/131	4/129	[3]17/122
Litters	2/23	1/24	4/22	[3]10/21
Fetus/litter	1.00	1.00	1.00	1.70

TABLE VI–D.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN WISTAR RATS EXPOSED TO 2–EE DAYS 6 THROUGH 15 OF GESTATION[1]—Continued

	Control	10 ppm	50 ppm	250 ppm
Thoracic centrum #13 partially ossified:				
Fetus	1/147	2/131	3/129	[3] 12/122
Litters	1/23	2/24	3/22	[3] 8/21
Fetus/litter	1.00	1.00	1.00	1.50
Lumbar centrum #1 partially ossified:				
Fetus	0/147	0/131	1/129	[3] 9/122
Litters	0/23	0/24	1/22	[3] 6/21
Fetus/litter	0.00	0.00	1.00	1.50
Lumbar traverse process partially ossified—4th right:				
Fetus	0/147	5/131	1/129	[3] 6/122
Litters	0/23	5/24	1/22	[7] 5/21
Fetus/litter	0.00	1.00	1.00	1.20
Lumbar traverse process partially ossified—4th both:				
Fetus	0/147	3/131	0/129	[7] 4/122
Litters	0/23	2/24	0/22	3/21
Fetus/litter	0.00	1.50	0.00	1.33
Sternebra #1 partially ossified:				
Fetus	4/147	2/131	4/129	[3] 35/122
Litters	3/23	2/24	4/22	[3] 14/21
Fetus/litter	1.33	1.00	1.00	2.50
Sternebra #2 partially ossified:				
Fetus	1/147	2/131	[7] 6/129	[3] 10/122
Litters	1/23	2/24	5/22	[7] 7/21
Fetus/litter	1.00	1.00	1.20	1.43
Skeletal Variants				
Sternebra #6 partially ossified:				
Fetus	0/147	0/131	1/129	[3] 8/122
Litters	0/23	0/24	1/22	3/21
Fetus/litter	0.00	0.00	1.00	2.67
Sternebra #4 misaligned:				
Fetus	1/147	0/131	4/129	[7] 6/122
Litters	1/23	0/24	4/22	5/21
Fetus/litter	1.00	0.00	1.00	1.20
Sternebra #5 misaligned:				
Fetus	1/147	0/131	2/129	[7] 6/122
Litters	1/23	0/24	2/22	4/21
Fetus/litter	1.00	0.00	1.00	1.50
Sternebra #1 bipartite:				
Fetus	0/147	0/131	0/129	[3] 9/122
Litters	0/23	0/24	0/22	[3] 8/21
Fetus/litter	0.00	0.00	0.00	1.13
Skull—partially ossified occipitals:				
Fetus	141/147	113/131	124/129	[7] 122/122
Litters	23/23	23/24	22/22	21/21
Fetus/litter	6.13	4.91	5.64	5.81
Cervical centrum #1 not ossified:				
Fetus	28/147	[7] 40/131	[3] 48/129	[3] 94/122
Litters	13/23	15/24	17/22	[3] 21/21
Fetus/litter	2.15	2.67	2.82	4.48
Cervical Centrum #2 not ossified:				
Fetus	52/147	[7] 63/131	[3] 80/129	[3] 118/122
Litters	17/23	22/24	21/22	[7] 21/21
Fetus/litter	3.06	2.86	3.81	5.62
Extra (14th) rib—unilateral left short:				
Fetus	5/147	7/131	4/129	[3] 15/122
Litters	5/23	7/24	3/22	8/21
Fetus/litter	1.00	1.00	1.33	1.88
Extra (14th) rib—bilateral short:				
Fetus	14/147	12/131	[3] 33/129	[3] 75/122
Litters	10/23	6/24	15/22	[3] 18/21
Fetus/litter	1.40	2.00	2.22	4.17
Pelvic girdle moved posteriorly—27 Pre-Sacral Vertebrae: [9]				
Fetus	1/147	3/131	2/129	[3] 15/122
Litters	1/23	2/24	2/22	[7] 7/21
Fetus/litter	1.00	1.50	1.00	2.14
Both calcaneum not ossified: [9]				
Fetus	136/147	115/131	119/129	[3] 122/122
Litters	23/23	24/24	22/22	21/21
Fetus/litter	5.91	4.79	5.41	5.81

TABLE VI–D.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN WISTAR RATS EXPOSED TO 2–EE DAYS 6 THROUGH 15 OF GESTATION[1]—Continued

	Control	10 ppm	50 ppm	250 ppm
Minor External and Visceral Defects[10]				
Renal pelvic dilation:				
Fetus	19/281	25/255	22/249	[7] 30/234
Litters	12/23	14/24	12/22	[7] 18/21
Fetus/litter	1.58	1.79	1.83	1.67
Hydroureter:				
Fetus	13/281	6/255	[7] 4/249	10/234
Litters	5/23	6/24	3/22	5/21
Fetus/litter	2.60	1.00	1.33	2.00
Limb malrotation:				
Fetus	0/281	[3] 9/255	2/249	3/234
Litters	0/23	4/24	1/22	2/21
Fetus/litter	0.00	2.25	2.00	1.50

[1] Data from Tinston. Doe et al., Exs. 4–038. See also Ex. 5–071.
[2] Incidence is number of fetuses affected divided by the total number of fetuses.
[3] Significantly different than controls at the $p \leq .01$ level.
[4] Incidence is number of litters with at least one fetus affected.
[5] Average number of affected fetuses per affected litter.
[6] Denominator (i.e. the number of animals at risk) is adjusted for early intra-uterine deaths.
[7] Significantly different than controls at the $p \leq .05$ level.
[8] Only a portion of fetuses in each exposure group were examined for soft tissue alterations.
[9] This skeletal defect was not classified as either a minor skeletal anomalie or a skeletal variant.
[10] Denominator (i.e. th e number of animals at risk) is adjusted for all intra-uterine deaths.

A significant excess of late intra-uterine deaths occurred in the 250 ppm group using both the fetus and the litter measures of response, but when combined with early intra-uterine deaths (i.e. all intra-uterine deaths) the effect is significant for the 250 ppm group in fetuses only. Early intra-uterine deaths considered separately were not found to be related to exposure.

Most of the minor skeletal defects which occurred at a significantly elevated rate were also in the 250 ppm group. The effects which are significant using both measures of response were partially ossified frontals, partially ossified parietals, partially ossified interparietals, odontoid not ossified, third, fourth, fifth, sixth, and seventh cervical centra not ossified, eighth, ninth, tenth, eleventh, twelfth, and thirteenth thoracic centra partially ossified, first lumbar centrum partially ossified, fourth right lumbar traverse process partially ossified, and first and second sternebrae partially ossified. One minor skeletal defect, fourth right lumbar traverse process partially ossified, was significant for fetuses in the 250 ppm group but not for litters.

Two minor skeletal defects were significant for the 50 ppm group using both measures of response: third cervical centrum not ossified and fifth cervical centrum not ossified. The minor skeletal defects of unossified sixth cervical centrum and partially ossified second sternebra shows a significant excess in this exposure group but only for fetuses. The incidence of unossified fourth cervical centrum was significantly elevated over controls in the 50 ppm group for litters but not for fetuses.

Two minor skeletal defects showed a significant deficit of occurrence in the 10 ppm group. Using both the fetus and the litter measure of response, study results show that fetal rats exposed to 10 ppm of 2–EE were significantly less likely to experience partially ossified parietals or partially ossified interparietals than were controls. The study authors offer no explanation for this, but given the large number of effects for which each fetus was examined, the statistical significance of this deficit can easily be attributed to chance variation.

A number of skeletal variants were observed to be associated with exposure in fetal rats. Those which were found to be statistically significantly elevated over controls using both the fetus and the litter measures of response, bipartite first sternebra, unossified first cervical centrum, and extra (14th) rib—bilateral short, were found only in the 250 ppm group. Interestingly, incidence of unossified first and second cervical centra were also significantly elevated in the 10 ppm group and the 50 ppm group when measured in fetuses but not when measured in litters. The fetus/litter measure shows a dose-related trend for ossified first cervical centrum but not for unossified second cervical centrum. The effect extra (14th) rib—bilateral short showed a significant excess in 50 ppm fetuses but not in 50 ppm litters.

There were an additional number of skeletal variants which were statistically significant in the 250 ppm group but only when response was measured in fetuses. These effects were partially ossified sixth sternebra, misaligned fifth sternebra, partially ossified occipital and extra (14th) rib—unilateral (left) short, and although these effects were not significant when measured in litters, when measured in fetuses these effects were significant at the P=0.035 level or lower.

Three minor external and visceral defects were found to be statistically significant. Renal pelvic dilation occurred at a significantly elevated rate in fetuses and in litters in the 250 ppm group. Incidence of hydroureter was significantly reduced in the 50 ppm fetuses but in no other group of fetuses and in no group of litters. Incidence of limb malrotation was significantly elevated in the 10 ppm group of fetuses but in other group of fetuses and in no groups of litters.

There were two skeletal defects which occurred at a statistically signficant rate in the 250 ppm group which were not classified. "Pelvic girdle moved posteriorly (27 pre-sacral vertebrae)" was not categorized as either a major or minor skeletal defect or as a variant. This effect was significant in both fetuses and litters. Likewise, "both calcaneum not ossified" was not classified as either a major or minor skeletal defect or as a variant. This effect was significant only in fetuses in the 250 ppm group.

The incidence of developmental effects in fetal rabbits exposed to 2-EE are presented in Table VI-E. As for fetal rats, three measures of response are presented, and the same statistical criteria were used for inclusion of an effect in the table.

TABLE VI-E.—INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN DUTCH RABBITS EXPOSED TO 2-EE DAYS 6 THROUGH 18 OF GESTATION [1]

	Control	10 ppm	50 ppm	175 ppm
Minor Skeletal Defects [2]				
Skull—partially ossified hyoid:				
Fetus [3]	15/136	[4] 32/138	12/96	[5] 28/134
Litters [6]	8/21	9/20	5/16	11/22
Fetus/litter [7]	1.88	3.56	2.40	2.55
27 pre-sacral vertebrae:				
Fetus	3/136	7/138	5/96	[4] 31/134
Litters	3/21	4/20	2/16	[5] 10/22
Fetus/litter	1.00	1.75	2.50	3.10
6th sternebra partially ossified:				
Fetus	2/136	1/138	2/96	8/134
Litters	2/21	1/20	2/16	6/22
Fetus/litter	1.00	1.00	1.00	1.33
5th sternebra not ossified:				
Fetus	9/136	[5] 20/138	9/96	13/134
Litters	5/21	7/20	6/16	5/22
Fetus/litter	1.80	2.86	1.00	2.00
Pelvic girdle—pubes not ossified:				
Fetus	0/136	1/138	1/96	[5] 7/134
Litters	0/21	1/20	1/16	4/22
Fetus/litter	0.00	1.00	1.00	1.75
Skeletal Variants				
Extra (13th) rib—unilateral short:				
Fetus	3/136	7/138	7/96	[4] 15/134
Litters	3/21	6/20	7/16	[5] 10/22
Fetus/litter	1.00	1.17	1.00	1.50
Extra (13th) rib—bilateral normal:				
Fetus	10/136	17/138	7/96	[4] 38/134
Litters	5/21	7/20	3/16	[5] 13/22
Fetus/litter	2.00	2.43	2.33	2.92
Extra (13th) rib—bilateral one normal, one short:				
Fetus	4/136	5/138	6/96	[4] 16/134
Litters	4/21	4/20	4/16	9/22
Fetus/litter	1.00	1.25	1.50	1.78
5th sternebra partially ossified:				
Fetus	53/136	61/138	45/96	53/134
Litters	14/21	[4] 20/20	14/16	18/22
Fetus/litter	3.79	3.05	3.21	2.94

[1] Data from Tinston, Doe et al, Exs. 4-039. See also Ex. 5-071.
[2] Only a portion of fetuses in each exposure group were examined for soft tissue alterations.
[3] Incidence is number of fetuses affected divided by the total number of fetuses.
[4] Significantly different than controls at the $p \leq .01$ level.
[5] Significantly different than controls at the $p \leq .05$ level.
[6] Incidence is number of litters with at least one fetus affected.
[7] Average number of affected fetuses per affected litter.

Only one skeletal defect, 27 pre-sacral vertebrae, which Tinston et al classified as minor in rabbits, was statistically significant in fetuses and litters and this was in the 175 ppm group. Three minor skeletal defects, partially ossified hyoid, partially ossified sixth sternebra, and unossified pubes, were significant in fetuses in the 175 ppm group but not in litters. The defect partially ossified hyoid occurred at a significantly elevated rate in 10 ppm fetuses but was not significant in this group when measured in litters. The same result was seen for the defect unossified fifth sternebra which was significant in fetuses in the 10 ppm group but not in litters and not in any other exposure group.

The 175 ppm group had statistically significant excess of two skeletal variants when measured in fetuses and in litters: extra (13th) rib—unilateral short and extra (13th) rib—bilateral normal. The skeletal variant extra (13th) rib—one normal and one short was significantly elevated in fetuses in the 175 ppm group but was not significant in litters.

One skeletal variant was significantly elevated in the 10 ppm group. This variant was partially ossified fifth sternebra. Incidence was significant only when measured in litters but not when measured in fetuses and was not significant for any other exposure group using any measure of response. Incidence of partially ossified fifth sternebra does not show a dose-related trend using the fetus/litter measure of response, and the study authors attribute the observed excess to coincidence because similar increases in this variant were not observed in the 50 and 175 ppm groups.

4. Derivation of the No Observed Effect Level

a. *2-ME.* In reviewing Table VI-A, VI-B, and VI-C, it is clear that almost all effects which occurred in an exposed group at rates statistically significantly elevated over controls occurred in the highest dose group, the 50 ppm 2-ME dose group, in each species. Only one effect, resorptions, was statistically significant in litters at a dose below 50 ppm, but, as noted by the study authors, the rate of resorptions in exposed rabbits fell well within the range of historical controls. It is apparent from these data that 10 ppm is the no observed effect level (NOEL) in each of the species studied by Hanley et al. despite the varying sensitivity of each of the species to 2-ME.

Still, the question arises as to how the incidence of effects can or should be combined to arrive at a measure of overall response. Intuitively, one would have greater confidence in a NOEL derived from an overall measure of response rather than one derived from specific effects which may be statistically significant due to chance alone.

OSHA proposes that an overall measure of the incidence of developmental effects be arrived at by pooling the incidence of effects which occurred at a statistically significant excess in any exposed group when measured in litters. The Agency has chosen litters as the most appropriate unit of measure for a number of reasons. First, as noted above, it is the pregnant female that is exposed to the test substance, therefore it is her litter which is the affected unit. Because dose is administered to the fetus through the pregnant dam, the dose each fetus receives is unknown and may depend upon the individual sensitivity of the mother animal to the test substance. Furthermore, the dose the fetus does receive may be affected by the number of littermates *in utereo.*

Another reason for preferring the litter as the unit of measure is that fetuses in a litter are more likely to respond like each other than like fetuses from other litter (i.e. the litter effect). Therefore, if an effect is observed in some number of fetuses, but all affected fetuses come from only one or two litters, then it is possible to attribute the effect to exposure when in fact it is due to variation among the mother animals.

The use of litters as the unit of measure in studies of developmental effects in animals is recommended by the EPA in its Guidelines (Ex. 5-153), and this unit of measure enjoys wide support in the literature (see, for example, Ex. 5-018).

OSHA's decision to include in an overall measure of response only those effects which are statistically significant when considered individually is based on its belief that by so restricting inclusion of an effect in an overall measure one obtains a more accurate measure of overall response. Inclusion of effects which are not dose related and are attributable solely to chance dilutes the overall measure of the potency of a developmental toxicant.

This position is easily illustrated. Hanley et al counted all the rabbit litters in the control and exposed groups which had at least one fetus with any major malformation. The incidence of major malformations was found to be 5/23 in controls (26%), 4/23 in the 3 ppm group (17%), 3/24 in the 10 ppm group (13%) and 20/22 in the 50 ppm group (91%). If only those major malformations which were statistically significant in exposed litters had been included, the overall incidence of major malformations would have been 0/23 in the control group (0%), 2/23 in the 3 ppm group (13%), 1/24 in the 10 ppm group (4%) and 20/22 in the 50 ppm group (91%). While the NOEL is 10 ppm regardless of how the overall incidence of major malformations is measured, the effect attributable to exposure at 50 ppm is clearer and starker when those major malformations attributable to chance are excluded.

Tables VI-F, VI-G, and VI-H present the overall incidence of developmental effects in rats, rabbits, and mice, respectively. For rabbits, resorptions were not included in the overall measure of response because the rate for all three exposure groups (42% to 67%) was well within the historical range reported by Hanley et al. (mean 55%, range 38% to 74%) and only the rate of resorption among controls (22%) was outside of that range. The tables clearly indicate that 2-ME induces developmental effects in all three species at 50 ppm and that the NOEL for all three species in these studies is 10 ppm.

TABLE VI-F.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF FISHER 344 RATS EXPOSED TO 2-ME DAYS 6 THROUGH 15 OF GESTATION [1]

	Control	3 ppm	10 ppm	50 ppm
Minor skeletal alterations [2]:				
Litters	14/28	12/28	14/28	[3] 27/30

[1] Data from Hanley *et al,* Ex. 4-042a.
[2] The numerator is the number of litters with at least one fetus presenting either delayed ossification of centra or rib spurs; the denominator is the number of litters at risk.
[3] Significantly different than controls at the p≤.01 level.

TABLE VI-G.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF NEW ZEALAND WHITE RABBITS EXPOSED TO 2-ME DAYS 6 THROUGH 15 OF GESTATION [1]

	Control	3 ppm	10 ppm	50 ppm
Major external alterations:[2]				
Litters	0/23	1/23	0/24	[3] 16/22
Minor external alterations:[4]				
Litters	0/23	0/23	0/24	[3] 15/22
Major soft tissue alterations:[5]				
Litters	0/23	1/23	1/24	[3] 20/22
Minor soft tissue alterations:[6]				
Litters	3/23	5/23	2/22	[3] 18/22
Major skeletal alterations:[7]				
Litters	0/23	0/23	0/24	[8] 5/22

TABLE VI–G.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF NEW ZEALAND WHITE RABBITS EXPOSED TO 2–ME DAYS 6 THROUGH 15 OF GESTATION [1]—Continued

	Control	3 ppm	10 ppm	50 ppm
Minor skeletal alterations:[9]				
Litters	1/23	4/23	2/24	[3] 13/22
Any major alterations:[10]				
Litters	0/23	2/23	1/24	[3] 20/22
Any minor alterations:[11]				
Litters	4/23	7/23	4/24	[3] 20/22
Any alterations:[12]				
Litters	4/23	7/23	5/24	[3] 20/22

[1] Data from Hanley *et al*, Ex. 4–042a.
[2] The numerator is the number of litters with at least one fetus presenting any of the following major external alterations: arthrogryposis, anonychia, brachydactyly, ectrodactyly, or kinky tail; the denominator is the number of litters at risk.
[3] Significantly different than controls at the $p \leq .01$ level.
[4] The numerator is the number of litters with at least one fetus presenting any of the following minor external alterations: misalignment of the palatine rugae or narrowed tip of tail; the denominator is the number of litters at risk.
[5] The numerator is the number of litters with at least one fetus presenting any of the following major soft tissue alterations: coarctation of the aortic arch, ventricular septal defect, hypoplastic spleen, or dilated renal pelvis; the denominator is the number of litters at risk.
[6] The numerator is the number of litters with at least one fetus presenting any of the following minor soft tissue alterations: patent ductus arteriosis, hypoplastic gall bladder, pale spleen, dilated ureter, convoluted ureter, or parovarian cyst; the denominator is the number of litters at risk.
[7] The numerator is the number of litters with at least one fetus presenting any of the following major skeletal alterations: missing phalange or missing metatarsal; the denominator is the number of litters at risk.
[8] Significantly different than controls at the $p \leq .05$ level.
[9] The numerator is the number of litters with at least one fetus presenting any of the following minor skeletal alterations: delayed ossification of the hyoid, delayed ossification of the tarsal, or extra lumbar ribs; the denominator is the number of litters at risk.
[10] The numerator is the number of litters with at least one fetus presenting any major external alterations, any major soft tissue alteration or any major skeletal alterations listed above; the denominator is the number of litters at risk.
[11] The numerator is the number of litters with at least one fetus presenting any minor external alterations, any minor soft tissue alteration or any minor skeletal alterations listed above; the denominator is the number of litters at risk.
[12] The numerator is the number of litters with at least one fetus presenting any major or minor external alterations, soft tissue alteration or skeletal alterations listed above; the denominator is the number of litters at risk.

TABLE VI–H.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF CF–1 MICE EXPOSED TO 2–ME DAYS 6 THROUGH 15 OF GESTATION [1]

	Control	10 ppm	50 ppm
Minor skeletal alterations:[2]			
Litters	14/26	14/23	[3] 21/24

[1] Data from Hanley *et al.*, Ex. 4–106.
[2] The numerator is the number of litters with at least one fetus presenting extra lumbar ribs; the denominator is the number of litters at risk.
[3] Significantly different than controls at the $p \leq .05$ level.

In its comments to OSHA's ANPR, Du Pont states that it is "appropriate to look at all adverse effects, but not to accumulate these effects into one endpoint" (Ex. 7–28). OSHA seeks additional information on how the approach suggested by Du Pont could be used for quantitative risk assessment. Specifically, it is unclear how different NOELs for different endpoints from the same study would be treated. In addition, OSHA seeks comment on whether adverse developmental effects should be combined, and if so, how this should be done.

Given that the NOEL for 2–ME has been derived from animal studies, OSHA believes that an uncertainty factor of 100 is appropriate for derivation of the acceptable daily intake (ADI) i.e. the dose at which humans are unlikely to exhibit effects similar to those observed in animals. An uncertainty factor of 100 provides a factor of 10 for interspecies variability and a factor of 10 for intra-species variability (i.e. individual human sensitivity to 2–ME). Therefore, based on the studies of Hanley et al., OSHA estimates the ADI to be 10 ppm/100 or 0.1 ppm. That is, at 0.1 ppm of 2–ME, humans are unlikely to exhibit effects similar to those observed in animals.

b. *2–EE.* Table VI–D and VI–E show clearly that exposure to 2–EE had an effect on developing animals although the results of the 2–EE bioassay are not as strong as those from the 2–ME bioassay. While most of the developmental effects observed in the 2–EE bioassay were observed in the high dose groups for both rats and rabbits (250 ppm and 175 ppm respectively), there were statistically significant effects in the 50 ppm group of rats and the 10 ppm group of rabbits. Thus, determination of the NOEL for 2–EE is more difficult than for 2–ME.

Table VI–I presents the overall incidence of developmental effects in fetal rats exposed to 2–EE. Only those effects which were statistically significant when measured in litters are included in the overall measure of incidence.

TABLE VI–I.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF WISTAR RATS EXPOSED TO 2—EE DAYS 6 THROUGH 15 OF GESTATION [1]

	Control	10 ppm	50 ppm	250 ppm
Late intra-uterine deaths: [2]				
Litters	2/23	2/24	2/22	[3] 7/21
Minor skeletal defects: [4]				
Litters	17/23	21/24	20/22	[3] 21/21
Skeletal variants: [5]				
Litters	20/23	23/24	22/22	21/21
Minor external and visceral defects: [6]				
Litters	12/23	14/24	12/22	[3] 18/21
Unclassified defect: [7]				
Litters	1/23	2/24	2/22	[3] 7/21
Any death, defect or variant: [8]				
Litters	23/23	23/24	22/22	21/21

[1] Data from Tinston, Doe *et al*, Ex. 4–038a.
[2] The numerator is the number of litters with at least one late intra-uterine death; the denominator is the number of litters at risk.
[3] Significantly different than controls at the $p \leq .05$ level.
[4] The numerator is the number of litters with at least one fetus presenting any of the following minor skeletal defects: frontal partially ossified, parietal partially ossified, interparietal partially ossified, odontoid not ossified, third, fourth, fifth, sixth or seventh cervical centrum not ossified, eight, ninth, tenth, twelfth, or thirteenth thoracic centrum partially ossified, first lumbar centrum partially ossified, fourth right lumbar traverse process partially ossified, or first or second sternebra partially ossified; the denominator is the number of litters at risk.
[5] The numerator is the number of litters with at least one fetus presenting any of the following skeletal variants: first sternebra bipartite, first or second cervical centrum not ossified, or extra (14th) rib bilaterally short; the denominator is the number of litters at risk.
[6] The numerator is the number of litters with at least one fetus presenting renal pelvic dilation; the denominator is the number of litters at risk.
[7] The numerator is the number of litters with at least one fetus presenting a posteriorly moved pelvic girdle (27 pre-sacral vertebrae); the denominator is the number of litters at risk. The defect "pelvic girdle moved posteriorly" was not classified as a major or minor external and visceral defect, a major or minor skeletal defect, or a skeletal defect. Thus it is "unclassified."
[8] The numerator is the number of litters with at least one fetus dying late *in utero* or presenting any minor skeletal defect, skeletal variant, minor external or visceral defect, or unclassified defect listed above; the denominator is the number of litters at risk.

The surprising result in table VI–I is that when all the effects are combined, it would appear the 2–EE has no effect on developing rats despite the fact that there is a significant excess of late intra-uterine deaths in the 250 ppm group, a significant excess of minor skeletal defects in the 250 ppm group, and a significant excess of external and visceral defects in the 250 ppm group. Furthermore, Table VI–D shows that there were twenty-four effects that were significantly elevated in the 250 ppm group in both litters and fetuses.

The reason the overall incidence of effects in fetal rats exposed to 2–EE is not significant is that the study authors looked at the developmental effects in such minute detail. While this results in there being a large number of effects which are statistically significant in the 250 ppm group when each effect is considered individually, when combined the incidence of these effects in the other exposure groups dilutes the association between dose and response.

Examination of the data reveals that the incidence of non-ossification of the cervical centra is one effect which is diluting the overall dose-response relationship. When ossification of each of the seven cervical centra is considered individually, it is clear that exposure to 250 ppm of 2–EE in fetal rats results in non-ossification of each of the centrum. Incidence of non-ossification of each of the centrum in the 250 ppm group is statistically significant at the p=.014 level or lower. If all the centra were combined into a category "delayed ossification of the cervical centra", however, this effect would not be statistically significant when measured in litters. The litter incidence of delayed ossification of any cervical centrum is 19/23 in control (83%), 23/24 in the 10 ppm group (96%), 21/22 in the 50 ppm group (95%), and 21/21 in the 250 ppm group (100%). Thus, when each centrum is considered individually, there is clearly a dose-related effect at the 250 ppm level, but when the centra are considered together, this effect disappears. Because of the high background incidence of the effect and the small number of litters in each group, the overall incidence of developmental effects in the 250 ppm group appears to be unrelated to dose.

OSHA does not believe that there is no developmental effect on fetal rats exposed to 2–EE. When the incidence of late intra-uterine deaths is considered, when the overall incidence of minor skeletal defects is considered and when the overall incidence of minor external and visceral defects are considered, it is clear that exposure to 250 ppm of 2–EE results in detrimental effects on the developing fetus. No such effect is seen at 50 ppm or lower, and therefore OSHA concludes that the NOEL for 2–EE is 50 ppm in rats.

The results presented in Table VI–J demonstrate that 50 ppm is also the NOEL for fetal rabbits exposed to 2–EE. The overall incidence of developmental effects is statistically significant for the 175 ppm group at the p=0.004 level. This indicates that exposure below the 250 ppm level, the level observed to have an adverse effect on developing rats, can have an adverse effect on developing rabbits. Although fewer effects were observed in the rabbit at 175 ppm than in the rat at 250 ppm, dose-related adverse effects were nonetheless induced at the 175 ppm level.

TABLE VI–J.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF DUTCH RABBITS EXPOSED TO 2–EE DAYS 6 THROUGH 18 OF GESTATION [1]

	Control	10 ppm	50 ppm	175 ppm
Minor skeletal defects: [2]				
Litters	3/21	4/20	2/16	[3] 10/22

TABLE VI–J.—OVERALL INCIDENCE OF DEVELOPMENTAL EFFECTS OBSERVED IN LITTERS OF DUTCH RABBITS EXPOSED TO 2–EE DAYS 6 THROUGH 18 OF GESTATION [1]—Continued

	Control	10 ppm	50 ppm	175 ppm
Skeletal variants:[4]				
Litters	7/21	10/20	9/16	[5] 18/22
Any defect or variant:[6]				
Litters	8/21	11/20	9/16	[5] 18/22

[1] Data from Tinston, Doe *et al*, Ex. 4–039a.
[2] The numerator is the number of litters with at least one fetus presenting 27 pre-sacral vertebrae; the denominator is the number of litters at risk.
[3] Significantly different than controls at the $p \leq .05$ level.
[4] The numerator is the number of litters with at least one fetus presenting an extra (13th) rib unilaterally short or bilaterally normal; the denominator is the number of litters at risk.
[5] Significantly different than controls at the $p \leq .01$ level.
[6] The numerator is the number of litters with at least one fetus presenting any minor skeletal defect or skeletal variant listed above; the denominator is the number of litters at risk.

Given, as with 2–ME, that the NOEL for 2–EE has been derived from animal studies, OSHA believes that an uncertainty factor of 100 is again appropriate for derivation of the ADI. As with 2–ME, an uncertainty factor of 100 provides a factor of 10 for inter-species variability and a factor of 10 for intra-species variability. Therefore, based on the studies by Tinston et al, OSHA estimates the ADI to be 50 ppm/100 or 0.5 ppm. That is, at 0.5 ppm of 2–EE, humans are unlikely to exhibit adverse effects similar to those observed in animals.

5. Alternative Uncertainty Factors

As discussed in a previous section, an ADI (i.e. the levels at which humans are unlikely to exhibit effects similar to those observed in humans) is derived by dividing a NOEL by an uncertainty factor. To derive ADIs for glycol ethers, OSHA has used an uncertainty factor of 100; a factor of ten to account for inter-species variability and a factor of 10 to account for intra-species variability. Several of the commentors who responded to OSHA's ANPR for glycol ethers advocated use of a lower uncertainty factor (see, for example, Kodak, Ex. 7–16, and Du Pont, Ex. 7–28). In its comments, CMA argues that an uncertainty factor well below 100 should be used to arrive at new PELs (Ex. 7–17). While CMA presents a number of reasons for its position, OSHA does not find any of its reasons sufficiently compelling to depart from the traditional uncertainty factor for derivation of ADIs across species. What follows here is a brief description of each of the arguments presented by CMA and OSHA's response to these arguments.

To begin, CMA states that lower safety factors are appropriate with high quality animal studies. OSHA agrees that the Hanley et al. studies and the Tinston et al. studies are high quality studies, but the Agency does not see how the quality of these studies reduces either inter-species variability or intra-species variability. Both types of variability are issues in determining a "safe" occupational exposure level from animal data even when such studies are of high quality.

CMA argues that lower safety factors are appropriate when NOELs have been established in more than one species. CMA notes that not only have NOELs been established for a number of species but the NOELs and the observed effects have also been quite similar across species.

While OSHA agrees that one has greater confidence in a NOEL determined in more than one species, the Agency is concerned the CMA has confused the finding of the same NOEL in more than one species with the finding of the same threshold in more than one species. The exposure levels employed by Hanley et al. and by Tinston et al. were almost identical in each of the species tested. In the case of 2–ME, for example, rats and rabbits were exposed at identical exposure levels and mice were exposed to two of the three same levels. Given this similarity of exposure, it is not surprising that the same NOEL was identified in all three species. One cannot conclude from this, however, that the exposure threshold for developmental effects is the same in all three species. Based on the data from the Hanley et al bioassays, for example, one cannot reject a hypothesis that the "true" NOELs might be 40 ppm for mice, 25 ppm for rats, and 10 ppm for rabbits. The exposure levels employed do not allow one to reject this hypothesis, thus one cannot conclude there is no inter-species variability for 2–ME. The same is true for 2–EE. In addition, the small number of animals used in each of these bioassays, (no study used more than 30 animals in each exposure group and most used less), limited the power of these bioassays to detect lower NOELs. For these reasons, OSHA cannot support the use of a lower safety factor on these grounds as advocated by CMA.

In addition, OSHA does not agree that the effects observed across species exposed to the same glycol ethers were quite as similar as CMA maintains. In the case of 2–ME, the only effects observed to occur at a statistically significantly greater rate in the high dose groups of rats and mice were minor skeletal defects. In high dose rabbits, however, the effects were far and away more severe including major external alterations, major soft tissue alterations, and major skeletal alterations. In the case of 2–EE, it is difficult to compare effects across species because of differences in exposure levels used for the high dose group.

CMA's third reason for advocating an uncertainty factor well below 100 is that data on inter-species metabolism and pharmacokinetics can be employed to justify this. As discussed in the Health Effects section of this preamble, the evidence indicates that the four glycol ethers of interest here are most likely metabolized via the alcohol dehydrogenase (ADH) pathway in both animals and humans. Although all species seem to share the same metabolic pathway, however, there is also evidence that the species do not metabolize glycol ethers at the same rate. Groeseneken et al found that the biological half-life of 2–EE in humans was 21 to 24 hours compared to the biological half-life of 8 to 12 hours reported in animals (Exs. 5–112, 5–113, and 5–114). This finding led the study authors to conclude that the metabolites of 2–EE will not be cleared from the urine by the next morning following exposure and accumulation of the metabolites may be expected through repetitive exposures. In a study of 2–EEA in humans, Groesenken et al. found

similar results (Ex. 5–115), and these results were confirmed in study of female silk screen operators exposed to 2–EE and 2–EEA by Veulemans et al (Ex. 5–114). The finding of a longer biological half-life for 2–EE and 2–EEA in humans prompted Veulemans et al to note that "it would certainly warrant extra caution in the extrapolation of experimental data from laboratory animals to man, since comparable accumulation effects apparently are not found in all species." Although 2–EE and 2–EEA are the only glycol ethers which have been studied in humans, these findings raise enough questions about the similarities of the metabolism and pharmacokinetics of glycol ethers across species to deter the Agency from reducing the uncertainty factor used based on the similarity of the pharmacokinetics and metabolism of glycol ethers across species.

CMA's fourth argument is that when dose is expressed in the correct units using the correct cross-species scaling factor, then a lower uncertainty factor can be used. OSHA intends to discuss this issue later in this section in its review of the risk assessment performed by Environ et al. (Ex. 4–016f). The Agency does agree with CMA that uncertainty is reduced when dose is expressed in the correct units, but the Agency is not as confident as CMA regarding what are the correct units.

CMA's final argument for supporting a lower uncertainty factor is that lower uncertainty factors should be used because exposure is occupational. In an appendix to CMA's comments, E.M. Johnson argues that the 10-fold factor for intra-species variability can be reduced when the exposed population is less diverse than the total population as in the case of workers who tend to be healthier and more homogeneous than the general population (Ex. 7–17, appendix A).

OSHA cannot agree with this position for a number of reasons. First of all, while it is plausible that a woman who is a worker may be healthier than a woman who is not a worker, CMA presents no evidence that the "healthy worker effect" is conferred upon the developing fetus. Furthermore, a fetus has two parents who contribute to its genetic identity, and there is no reason to assume that the father of a fetus of a working mother is also a "healthy worker". Finally, although "healthy workers" may constitute a homogeneous population, it does not follow that their offspring will constitute a homogenous population, healthy or otherwise.

Although OSHA's approach of using an uncertainty factor of 100 may appear conservative, OSHA believes that the uncertainties associated with deriving an ADI for occupational exposure to glycol ethers require the use of this factor. Some of the uncertainties stem from the qualitative nature of the uncertainty factor approach as outlined earlier in this risk assessment (e.g. the unlikelihood that an exposure level used in a bioassay will be the "true" threshold, varying suscaptibilities across species, etc.). Other uncertainties stem specifically from the data available for assessing the risk from glycol ethers as noted above (e.g. similar exposure levels used across species, possible differences in metabolism and pharmacokinetics across species, etc.). For these reasons, OSHA has used an uncertainty factor of 100. The Agency seeks comment on its choice of uncertainty factor and its justification for this choice. The Agency seeks detailed reasons for either accepting or rejecting the choice of a 100-fold uncertainty factor and any data available to support the position.

D. Assessment of the Reproductive Risk From Exposure to Glycol Ethers

1. Introduction

The Interagency Regulatory Liaison Group, (IRLG), describes reproductive toxicity as dealing with "the effects of toxicants on adult reproductive function and development of the offspring which may be produced by alteration of a wide range of processes in either the female or the male." As noted by the IRLG, these processes include "those associated with the primary and accessory sexual organs and with fertilization, as well as those which impact more indirectly on normal reproductive function; e.g., neuroendocrine control, general physiological and psychological health, and nutrition." The IRLG continues, "[f]ollowing fertilization, processes associated specifically with pregnancy are also vulnerable; e.g., implantation, placental formation and function, conceptal development, and parturation and lactation" (Ex. 5–018).

In its Proposed Guidelines for Assessing Male Reproductive Risk (Ex. 5–123), the EPA identifies a number of measures which may be evaluated to assess the reproductive effects of exposure of males to a potential reproductive toxicant. In animals, these include body weight; weight and histopathology of the testes, epididymides, seminal vesicles, prostate, and pituitary gland; mating ratio and pregnancy ratio; and pregnancy outcomes such as litter size, pre- and post-implantation loss, the ratio of live to dead pups, sex ratios, malformations, birth and postnatal weights, and survival. Supplemental end points of male reproductive toxicity may be identified through sperm and endocrine evaluations. EPA points out that while these measures are useful for evaluating reproductive risk in humans as well as animals, many of these measures such as early fetal loss, reproductive capacity of the offspring, and the invasive measures of reproductive function are not easily observed in humans. The most feasible measures used in studies of reproductive effects in human males are semen evaluations, indirect measures of fertility/infertility, and certain pregnancy outcomes such as fetal loss, birth weight, sex ratio, congenital malformations, postnatal function, and neonatal growth and survival.

The measures recommended by EPA for evaluation to determine reproductive effects in female laboratory animals include capacity to conceive; length of time required for conception; alterations in the onset of puberty; alterations in the reproductive cycle; oocyte toxicity; premature reproductive senescence; weight and histopathology of the ovary, the uterus, and the pituitary gland; and the pregnancy outcomes described for males above. In human females, the feasible measures of reproductive toxicity are the measures of fertility and pregnancy outcomes (Ex. 5–122).

While studies of human populations provide the strongest evidence of the reproductive toxicity of a substance, such studies are usually limited in their ability to detect risk. Like epidemiological studies of cancer mortality and other discrete outcomes, studies of reproductive toxicity in human populations often suffer from lack of statistical power (usually due to small sample size), inexact exposure measurements, and an inability to control for all potential confounding factors. Studies of reproductive toxicity in human populations, however, have additional limitations. Assessment of reproductive endpoints is often dependent upon voluntary participation and self-reporting of outcomes which, in turn, may be influenced by privacy considerations and religious considerations. In addition, there are fewer endpoints which may be feasibly measured in humans than may be measured in laboratory animals. Thus, because of these limitations, reproductive risks are usually assessed from animal studies.

2. 2–ME

A number of studies showing reproductive effects in male animals exposed to 2–ME are described in the

Health Effects section of this preamble. Results from studies of animals exposed to 2–ME through inhalation are supported by the results from studies of animals exposed to 2–ME through ingestion.

The lowest NOEL observed in laboratory animals was observed in a study of New Zeland white rabbits by Miller et al of the Dow Chemical Company (Exs. 4–045 and 5–023). Groups of five male rabbits were exposed to 2–ME at concentrations of 30, 100, or 300 ppm through inhalation for 6 hours per day, 5 days per week, for 13 weeks. A group of 5 male rabbits served as controls. Food and water was provided to the animals *ad libitum* except during periods of exposure when neither was available.

Following 13 weeks of exposure, all surviving animals were sacrificed. Two rabbits in the 300 ppm group died during the exposure phase of the study. The cause of death for one was bronchopneumonia. The cause of death for the second was unknown. All animals were given a complete gross pathological exam, and a histological exam was performed on selected tissues from each animal.

Reduced testes weight was observed in rabbits in the 300 ppm and 100 ppm exposure groups, and although this effect was statistically significant for the 300 ppm group only, the study authors attributed the observation in both groups to exposure. Gross pathological exam showed that all of the rabbits in the 300 ppm group had very small and flaccid testes. A slight to moderate decrease in testes size relative to the control animals was observed in 4 out of 5 of the rabbits in the 100 ppm group ($p=0.024$, Fisher's Exact Test), and 2 out of 5 of the rabbits in the 30 ppm, group ($p > 0.05$). Histopathologic exam confirmed the gross pathological observations. A dose-related increase in both the incidence and severity of testicular degenerative changes was seen in the test animals. In all three of the rabbits on the 300 ppm group, which survived through the end of the study, the degeneration was diffuse and severe with virtually every tubule affected. In the three rabbits with testicular degeneration in the 100 ppm group, more of a spectrum of effects was noted in that within the same testes, some tubules were relatively normal in appearance while others contained no germinal elements at all. In the 30 ppm group, the microscopic degenerative changes were apparent in the testes of only one of the two rabbits observed to have decreased testes size in the gross pathological exam. The microscopic degenerative changes observed in this animal were an excess of tubules in which the germinal epithelium was thinner than normal, with a complete complement of germinal stages but very few spermatozoa.

Histopathologic exam of the epididymis found that the epididymal sperm content generally reflected the degree of testicular damage with noticeable decreases in those cases which were moderately to severely affected. Degenerating spermatic elements were commonly observed, but secondary changes in accessory sex glands were not seen.

Despite the small number of animals in each exposure group, a significant dose-related effect was observed. Based upon the outcome of decreased testes size, one of the outcomes identified by EPA as an adverse reproductive outcome, the NOEL for reproductive effects of 2–ME in rabbits is 30 ppm.

Given that the NOEL for reproductive effects from 2–ME has been derived from animal studies, OSHA believes that an uncertainty factor of 100 is appropriate for derivation of the ADI as was the case for the assessment of developmental risks from exposure to 2–ME. Here again, an uncertainty factor of 100 provides a factor of 10 for inter-species variability and a factor of 10 for intra-species variability. Therefore, based upon this study Miller et al, the ADI for 2–ME would be 30/100 or 0.3 ppm on the basis of reproductive risks. The ADI for 2–ME based on developmental risks is 0.1 ppm, somewhat lower than the ADI based on reproductive risks but the two ADIs are very close. Thus an ADI, of 0.1 ppm would cover both reproductive and developmental effects, i.e. at this level humans are unlikely to exhibit adverse effects (both reproductive and developmental) similar to those observed in animals.

3. 2–EE

There are fewer studies of the reproductive effects of 2–EE in the literature than there are of 2–ME, but like 2–ME, 2–EE has been found to induce adverse reproductive effects in laboratory animals.

This was the finding of Terrill et al who conducted a study for the Chemical Manufacturers Association exposing rabbits to 2–EE (Exs. 4–108 and 5–084). Groups of ten male New Zealand white rabbits were exposed to 2–EE at concentrations of 25, 100, and 400 ppm through inhalation for 6 hours per day, 5 days per week, for 13 weeks. A group of ten male rabbits served as controls. Food and water was provided to the animals *ad libitum* except during periods of exposure when neither was available.

All animals survived the exposure phase of the study. At terminal sacrifice, all animals were given a complete gross post mortem exam. Animals in the control and high dose groups were given a complete histopathological exam, but for the low and middle dose groups, only the bone marrow, the testes with epididymis, the kidneys, the liver, the lymph nodes, the spleen, the thymus, and any observed gross lesion or tissue mass were examined.

In the 400 ppm group, there was a statistically significant decrease in absolute testes weight and in testes weight relative to body weight. Gross postmortem examination revealed that in three of the ten rabbits from this group, there was slight focal tubule degeneration. Based upon decreased testes weight, the NOEL for reproductive effects for 2–EE in rabbits is 100 ppm.

Although there are fewer animal studies of the reproductive effects of exposure to 2–EE than 2–ME, the results of the animal studies are supported by observation in human populations. In a study of male workers at Precision Castparts Corporation, NIOSH reported significantly reduced sperm count among workers exposed to 2–EE compared to workers with no such exposure (Ex. 5–003). Welch et al also found reduced sperm in a group of shipyard painters exposed to 2–EE, but these workers were also exposed to 2–ME, so it is impossible to determine whether the effect was due to 2–EE, 2–ME, or both glycol ethers (Ex. 5–104). These studies are discussed in greater detail in the Health Effects Section of this preamble.

Applying an uncertainty factor of 100 to the NOEL of 100 ppm reported by Terrill et al in their study of New Zealand white rabbits, one would arrive at an ADI of 100/100 or 1 ppm for 2–EE based on reproductive risk. Here again, however, the ADI must be based on developmental risks as well as reproductive risks. The ADI for 2–EE based on developmental risks is 0.5 ppm, lower than the ADI based reproductive risks. As is the case for 2–ME, for 2–EE the ADI based on reproductive risks is very close to the ADI based on developmental risks. At an ADI of 0.5ppm 2–EE humans are unlikely to exhibit effects (both reproductive and developmental) similar to those observed in animals.

E. Assessment of Risk From Exposure to Glycol Ether Acetates

The acetates of 2–ME and 2–EE, 2–MEA and 2–EEA, have not been studied

as extensively as have the parent compounds. As noted in the Health Effects section of this preamble, however, the acetates have been shown to induce adverse reproductive, developmental, and hematological effects in animals similar to those induced by 2–ME and 2–EE. Furthermore, as discussed in the Health Effects section, it has been shown that 2–MEA and 2–EEA are metabolized to the same acetic acids, methoxyacetic acid (MAA) and ethoxyacetic acid (EEA) respectively, by the same mediated pathway, an alcohol dehydrogenase (ADH) mediated pathway, as their parent compounds.

Because of the similarity in induced effects between the acetates and their parent compounds and because of the similarity in metabolism between the acetates and their parent compounds, OSHA proposes that the ADIs derived for the acetates be the same as for their parent compounds. That is, the ADI for 2–MEA is 0.1 ppm and the ADI for 2–EEA is 0.5 ppm.

There is some experimental evidence to support OSHA's proposal. As reproductive toxicants, the acetates have been shown not only to induce similar effects as their parent compounds, but also to induce these effects at equivalent doses. Nagano et al. found that male mice exposed orally to 2–MEA at 500 mg/kg of body weight experienced significant decreases in testicular weight. When this dose was converted to mmole/kg, the authors found that on an equimolar basis, exposure to 2–ME and 2–MEA resulted in similar effects (Ex. 4–135). Likewise, these authors found that on an equimolar basis, male mice exposed to 2–EE and male mice exposed to 2–EEA experienced similar adverse reproductive outcomes (Ex. 4–135).

The acetate 2–MEA has not been tested for its potential to adversely affect reproductive outcomes. Only limited data exist on 2–MEA, according to CMA, because of the small production volume of this acetate (Ex. 7–17). Nonetheless, CMA argues that although detailed evaluation of the developmental toxicity of 2–MEA has not been conducted as it has for 2–ME, "the NOELs determined for 2–ME can be reasonably employed for assessing this compound. The likelihood that any effect it may cause would occur through human metabolism of 2–MEA to 2–ME and then to the active metabolite makes it reasonable to employ the NOELs for 2–ME to protect humans against effects of 2–MEA" (Ex. 7–17). OSHA concurs with CMA's position.

Unlike 2–MEA, 2–EEA has been tested to determine its potential as a developmental toxicant. Nelson et al. reported a statistically significant excess of developmental effects in rats exposed to 2–EEA at levels as low as 130 ppm (Ex. 5–091). This level was the lowest exposure level used in this bioassay; therefore no NOEL was established for this study. Doe et al. exposed pregnant Dutch rabbits to 0, 25, 100, or 400 ppm of 2–EEA, and the fetuses of rabbits exposed to levels as low as 100 ppm showed a dose-related increase in skeletal defects (Ex. 5–071). Tyl et al. exposed pregnant Fischer 344 rats and pregnant New Zealand white rabbits to 0, 50, 100, 200, or 300 ppm of 2–EEA (Ex. 5–124). Here again, 100 ppm was the LOEL for developmental effects in both species. This level, 100 ppm, is OSHA's current PEL for 2–EEA. Fifty ppm was established to be the NOEL for both the rats and the rabbits. Because Doe et al. and Tyl et al. established the same LOEL in two separate studies and in two different species, it is reasonable to use the NOEL from the Tyl et al. study, 50 ppm of 2–EEA, as the NOEL for calculating the ADI. As with the parent compounds, an uncertainty factor of 100 is appropriate, and this would lead to an ADI of 50 ppm/100 or 0.5 ppm. That is, at an ADI of 0.5 ppm 2–EEA, humans are unlikely to exhibit effects similar to those observed in animals.

OSHA's proposal for deriving ADIs for the acetates at the same level as those for the parent compound also has support from a number of commentors who responded to OSHA's ANPR. For example, NIOSH wrote that a separate PEL for each of the acetates and their parent compounds "should not be necessary because of the similarities in the adverse effects, the similarity in route of exposure, and the fact that in many situations, several of the ethers and their acetates are used simultaneously" (Ex. 7–22). Similarly, Du Pont noted that "2-methoxyethanol (2–ME) and its acetate (2–MEA) and the [sic] 2-ethoxyethanol (2–EE) and its acetate (2–EEA) could be regulated together because the toxic effects of these glycol ethers and their respective acetates are the same" (Ex. 7–28), and Kodak proposed the same PELs for 2–ME and 2–MEA and for 2–EE and for 2–EEA, (Ex. 7–23), although the levels proposed are different than those proposed by OSHA. OSHA seeks comment on this approach to deriving ADIs for the glycol ether acetates.

F. Other Approaches to the Assessment of Risk for Glycol Ethers

1. The Crump Risk Assessment

Under contract to OSHA, K.S. Crump and Company performed a risk assessment for developmental and reproductive effects from exposure to 2–ME, 2–EE, and their acetates (Ex. 5–136). The data used for this analysis were from the studies of developmental effects of exposure to 2–ME by Hanley et al. (Exs. 4–042a and 4–106) and to 2–EE by Tinston, Doe et al. (Exs. 4–038 and 4–039; see also Ex. 5–071) and the studies or reproductive effects of exposure to 2–ME by Miller et al. (Ex. 5–057) and to 2–EE by Terrill et al. (Exs. 4–108 and 5–084). At the time Crump performed its analysis, no data were available on the developmental effects of 2–EE as measured in litters. Therefore, Crump limited its analysis of the developmental effects of 2–EE exposure to responses observed in fetuses. No analyses were done on data from studies of the acetates. Crump noted that "2–MEA and 2–EEA are believed to be quickly hydrolized to their corresponding glycol ether. Furthermore, evidence suggests that from that point on, their metabolism and distribution proceed in the same manner as the ether. If that is the case, a mole of an ether will yield the same amounts of products as a mole of the corresponding acetate. Moreover, a given air concentration in ppm contains the same number of moles (1 ppm is about 41 micromoles per cubic meter at standard temperature and pressure), for all chemicals. Consequently, in the absence of data on the acetates needed for risk assessment, it is reasonable to assume that the acetates and their corresponding ethers will produce the same risks at equal air concentrations, in ppm" (Ex. 5–136).

The goal of the Crump risk assessment was to develop dose-response models for developmental and reproductive effects. Only brief descriptions of the models and methods used by Crump are presented here, and the reader is referred to the Crump report (Ex. 5–136) for additional details. Two approaches were taken to develop these models for the outcomes of interest. The first of these applied methods similar to those applied to cancer data, but the dose-response models considered were non-linear or incorporated a threshold. Four models employed this approach: The quantal linear regression (QLR) model, the Weibull model, the continuous linear regression (QCR) model, and the continuous power (CP) model. The QLR and Weibull models were used for incidence data measured in fetuses, and

therefore do not take litter size or intra-litter correlation (e.g. the litter effect) into account. The QCR and CP models were used for incidence data measured in litters, and they account for the litter effect but not for litter size. The QLR and QCR models assume at threshold with a linear response above the threshold. The Weibull and CP models are non-threshold models but can be non-linear if indicated by the data.

The second approach taken by Crump was to consider two models recently developed specifically for assessing developmental effects, (these models use only litter data), and to modify these for the analysis of the glycol ethers data. The first of these was developed by Kodell et al. This model uses the beta-binomial distribution to account for the litter effect and takes into account the effect of litter size on the probability of a developmental effect. The second model considered by Crump was originally put forth by Rai and Van Ryzin. This model takes litter size into account but does not account for the litter effect. In its analysis, Crump used two special cases of the Kodell model, the Kodell-QLR model which assumes a threshold but is linear above the threshold, and the Kodell-Weibull model which assumes no threshold but can be non-linear. Only one case of the Rai and Van Ryzin model was considered. This model assumes no threshold and is linear. Crump felt the shortcomings of the Rai and Van Ryzin model made it less appropriate for assessing risk than the other models considered.

Crump applied the models described here only to data on developmental outcomes. The models developed for use with litter data could not be used with the data Crump had on reproductive outcomes because the data Crump had measured these outcomes in individual animals and not litters. Likewise, the models developed for use with litter data could not be used with the data Crump had on developmental outcomes from 2–EE exposure because, as noted above, litter data for these effects were not available to Crump when it did its analysis. The models developed for use with fetal data could have been used with the data on reproductive outcomes, but Crump did not use models to analyze the data on reproductive effects because of the small number of animals used in these bioassays.

Although the goal of the Crump risk assessment was to develop dose-response models for the outcomes of interest, two additional approaches for determining a "safe" level of exposure were considered. The first of these was to calculate a NOEL using a no-statistical-significance-of-trend or NOSTASOT approach. In this approach, tests of statistical hypothesis were conducted to determine whether the bioassay data provided sufficient statistical evidence to conclude that a dose-related trend existed, (i.e. whether response increased with dose), and if so, to determine the highest dose used in the bioassay such that there was no statistical evidence of a dose-related trend in response at that dose or at lower doses. The highest dose which showed no statistical evidence of a dose-related trend is called the NOSTASOT dose and is considered to be a statistically determined NOEL. This approach was used for both developmental and reproductive outcomes for both 2–ME and 2–EE.

The final approach considered by Crump was calculation of a benchmark dose as an alternative to the NOEL. A benchmark dose is defined as the statistical 95% lower confidence limit on the dose corresponding to a 1% increase in the extra risk. The dose corresponding to a 1% increase in extra risk was estimated using both the QLR model and Weibull model, but only the lower of the two benchmark doses was reported. Crump chose to use only these two models to estimate the benchmark doses because these two models were the only two used to analyze all of the data on adverse reproductive outcomes for both 2–ME and 2–EE.

The NOSTASOT dose and the benchmark dose calculated by Crump are much like the NOELs calculated by OSHA in that neither of these doses alone represents a "safe" level of exposure. Rather, Crump intended an uncertainty factor to be applied to either of these doses, although Crump did not recommend a particular uncertainty factor in his report. Crump argues that either is preferable to a NOEL established using traditional methods because they make use of all of the dose-response data. Crump notes that NOELs "determined by comparing treatment groups individually to the control group * * * have low power because they involve only the animals in two of the treatment groups, when in fact the data from any intermediate doses are also relevant. Thus a common result is that the trend test is significant, but none of the treated groups differ significantly from the control group."

Results of the Crump analysis are presented in Tables VI–K through VI–N. Although the sources of the data used by Crump were the same as those used by OSHA, the adverse outcomes considered and the specific estimates of incidence were different. These data are presented in the Crump report.

Table VI–K shows that for 2–ME, NOELs established using the NOSTASOT approach are identical to those established by OSHA using more traditional methods. For 2–EE, Table VI–L shows that for all but one outcome in rats, total abnormal ribs, Crump's NOSTASOTs are the same as OSHA's NOELs, but for rabbits, Crump's NOELs are lower. This difference is due to the fact that Crump used fetus data for its analysis of 2–EE whereas OSHA used litter data in its analysis to establish the NOEL.

TABLE VI–K.—NOSTASOT AND BENCHMARK DOSES CALCULATED FOR 2–ME DATA SETS[a]

Species	Adverse effect	NOSTASOT[b] exposure (ppm)	Benchmark[c] dose (ppm)
Developmental effects:			
Rats[d]	Delayed ossification of Centra	10	12
	Rib spurs	10	8.5
	Major malformations	10	53
Rabbits[d]	Resorptions	10	2
	Major malformations	10	10
Mice[e]	Resorptions	10	9.3
	Extra lumbar ribs	10	2.5
Reproductive effects:			
Rats[f]	Testicular degeneration	100	[g] N/C
Rabbits[f]	Testicular degeneration	30	N/C

TABLE VI–K.—NOSTASOT AND BENCHMARK DOSES CALCULATED FOR 2–ME DATA SETS[a]—Continued

Species	Adverse effect	NOSTASOT[b] exposure (ppm)	Benchmark[c] dose (ppm)
	Reduced testes size	30	N/C

[a] From the Crump Report, Ex. 5–136.
[b] NOSTASOT=No statistical significance of trend (i.e. the NOSTASOT exposure is the highest dose for which data did not show a statistically significant dose-related trend). See text for details.
[c] Benchmark exposure is the 95% lower limit on doses corresponding to an extra risk of 1%. See text for details.
[d] Data from Hanley et al., Ex. 4–042a.
[e] Data from Hanley et al., Ex. 4–106.
[f] Data from Miller et al., Ex. 4–045.
[g] N/C=Not calculated

TABLE VI–L.—NOSTASOT AND BENCHMARK DOSES CALCULATED FOR 2–EE DATA SETS[a]

Species and adverse effect	NOSTASOT exposure (ppm)[b]	Benchmark dose (ppm)[c]
Developmental Effects		
Rats:[d]		
Minor skeletal defects	50	15.0
Minor visceral defects	50	46.0
Total abnormal ribs	10	1.8
Late intra-uterine deaths	50	18.0
Rabbits:[e]		
Minor skeletal defects	[f]N/D	3.5
Skeletal variants	10	2.2
Reproductive Effects		
Rabbits:[g]		
Focal tubule degeneration	100	[h]N/C
Weights of testes/epididymis	100	N/C

[a] From the Crump Report, Ex. 5–136.
[b] NOSTASOT = No statistical significance of trend (i.e. the NOSTASOT exposure is the highest dose for which data did not show a statistically significant dose-related trend). See text for details.
[c] Benchmark exposure is the 95% lower limit on doses corresponding to an extra risk of 1%. See text for details.
[d] Data from Tinston et al, Ex. 4–038.
[e] Data from Tinston et al, Ex. 4–039.
[f] Not defined. A significant effect was seen at the lowest dose.
[g] Data from Terrill et al, Ex. 4–108.
[h] N/C = not calculated.

For almost every adverse outcome considered, Tables VI–K and VI–L show that the benchmark dose is lower than the NOEL estimated using the NOSTASOT approach. Here again, this could be due to the fact that benchmark doses were estimates from models which use fetal data rather than litter data. Were benchmark doses to be used to calculate the ADIs, the result would be a more conservative estimate of the exposure below which an adverse outcome is unlikely than the estimates derived by OSHA.

Tables VI–M and VI–N show that despite the differences among the models used by Crump, for the majority of data sets the models predict surprisingly consistent risks. The largest difference in predicted risks are found at low doses between the threshold and non-threshold models. Much less difference can be attributed to whether the models use fetal or litter data. Crump suggests one reason that the shape of the dose-response curve is more important in determining a risk estimate than the type of data used may be the low intra-litter correlation estimated for the 2–ME data sets. Crump explains that "[f]or the rat data, intra-litter correlations, as estimated by the Kodell-QLR or Kodell-Weibull models, did not exceed 0.05 * * *. Somewhat larger correlations were observed in some of the rabbit and mouse data sets (ranging up to about 0.27). Apparently, intra-litter correlations of this magnitude are not sufficient to cause maximum-likelihood estimates derived ignoring the litter effect to be seriously in error."

TABLE VI–M.—ESTIMATES OF NUMBER OF EXTRA CASES OF VARIOUS DEVELOPMENTAL EFFECTS PER 1,000 FETUSES FROM EXPOSURE TO 2–ME[a]

Dose[c]	QLR	Weibull	QCR	CP	Kodell-QLR	Kodell-Weibull	Rai and Van Ryzin
Rats—Delayed ossification of the centra:[b]							
25	33	31	30	27	33	31	25
	(50)	(51)	(47)	(47)	(46)	(270)	.....
5	4	4.1	3.8	3.1	4.1	4.1	3.1
	(10)	(10)	(9.3)	(9.4)	(8.2)	(62)	.....
1	0	0.54	0	0.36	0	0.54	0.57
	(2)	(2.1)	(1.9)	(1.9)	(0.48)	(13)	.....
0.5	0	0.23	0	0.14	0	0.23	0.28
	(1)	(1)	(0.93)	(0.94)	(0)	(6.4)	.....
0.1	0	0.03	0	0.016	0	0.03	0.056
	(0.2)	(0.21)	(0.19)	(0.19)	(0)	(1.3)	.....
0.03	0	0.0066	0	0.0033	0	0.0065	0.017
	(0.061)	(0.062)	(0.056)	(0.057)	(0)	(0.38)	.....
Rats—Rib spurs:[b]							
25	89	75	89	86	97	82.4	89

TABLE VI–M.—ESTIMATES OF NUMBER OF EXTRA CASES OF VARIOUS DEVELOPMENTAL EFFECTS PER 1,000 FETUSES FROM EXPOSURE TO 2–ME[a]—Continued

Dose[c]	QLR	Weibull	QCR	CP	Kodell-QLR	Kodell-Weibull	Rai and Van Ryzin
	(120)	(120)	(150)	(150)	(130)	(132)	.....
5	3.8	5.8	0	7.3	6.7	7.2	16
	(24)	(24)	(30)	(30)	(27)	(28)	.....
1	0	0.43	0	0.62	0	0.61	3
	(4.8)	(4.9)	(6.1)	(6)	(5.6)	(5.6)	.....
0.5	0	0.14	0	0.22	0	0.21	1.5
	(2.4)	(2.5)	(3)	(3)	(2.8)	(2.8)	.....
0.1	0	0.011	0	0.018	0	0.018	0.3
	(0.48)	(0.49)	(0.61)	(0.6)	(0.56)	(0.57)	.....
0.03	0	0.0015	0	0.0029	0	0.0028	0.091
	(0.15)	(0.15)	(0.18)	(0.18)	(0.17)	(0.17)	.....
Rats—Total major malformations:[b]							
25	6.2	6.2	6.5	6.5	5.3	5.4	6.2
	(15)	(15)	(10)	(12)	(13)	(N/P)	.....
5	1.3	1.3	1.3	1.3	0.64	0.97	1.3
	(3.1)	(3.1)	(2)	(2.4)	(2.6)	(N/P)	.....
1	0.25	0.25	0.26	0.26	0	0.18	0.25
	(0.62)	(0.62)	(0.41)	(0.47)	(0.53)	(N/P)	.....
0.5	0.13	0.13	0.13	0.13	0	0.084	0.13
	(0.31)	(0.31)	(0.2)	(0.24)	(0.27)	(N/P)	.....
0.1	0.025	0.025	0.026	0.026	0	0.015	0.025
	(0.062)	(0.062)	(0.041)	(0.047)	(0.053)	(N/P)	.....
0.03	0.0075	0.0075	0.0078	0.0078	0	0.0042	0.0075
	(0.019)	(0.019)	(0.012)	(0.014)	(0.016)	(N/P)	.....
Rabbits—Resorptions:[b]							
25	140	140	150	150	150	150	180
	(190)	(190)	(210)	(210)	(240)	(240)	.....
5	31	31	29	29	33	33	49
	(41)	(41)	(43)	(43)	(53)	(53)	.....
1	6.2	6.2	5.8	5.8	6.7	6.7	10
	(8.3)	(8.3)	(8.6)	(8.6)	(11)	(11)	.....
0.5	3.1	3.1	2.9	2.9	3.3	3.3	5.2
	(4.2)	(4.2)	(4.3)	(4.3)	(5.5)	(5.5)	.....
0.1	0.62	0.62	0.58	0.58	0.67	0.67	1.1
	(0.84)	(0.84)	(0.86)	(0.86)	(1.1)	(1.1)	.....
0.03	0.19	0.19	0.18	0.18	0.2	0.2	0.32
	(0.25)	(0.25)	(0.26)	(0.26)	(0.33)	(0.33)	.....
Rabbits—Total major malformations:[b]							
25	430	2.2	360	1.4	420	36	230
	(490)	(290)	(430)	(220)	(520)	(280)	.....
5	0	0	0	0	0	0.0001	19
	(0)	(5.4)	(0)	(3.5)	(0)	(6.3)	.....
1	0	0	0	0	0	0	3.3
	(0)	(0.088)	(0)	(0.056)	(0)	(0.12)	.....
0.5	0	0	0	0	0	0	1.6
	(0)	(0.015)	(0)	(0.0094)	(0)	(0.022)	.....
0.1	0	0	0	0	0	0	0.31
	(0)	(0.00024)	(0)	(0.00015)	(0)	(0.00042)	.....
0.03	0	0	0	0	0	0	0.094
	(0)	(0.00001)	(0)	(0)	(0)	(0.00002)	.....
Mice—Resorptions:[d]							
25	35	35	45	45	44	44	51
	(65)	(65)	(80)	(80)	(78)	(78)	.....
5	7.1	7.1	8.9	8.9	8.9	8.9	19
	(13)	(13)	(16)	(16)	(16)	(16)	.....
1	1.4	1.4	1.8	1.8	1.8	1.8	4.2
	(2.7)	(2.7)	(3.2)	(3.2)	(3.3)	(3.3)	.....
0.5	0.72	0.72	0.89	0.89	0.89	0.89	2.1
	(1.3)	(1.3)	(1.6)	(1.6)	(1.6)	(1.6)	.....
0.1	0.14	0.14	0.18	0.18	0.18	0.18	0.43
	(0.27)	(0.27)	(0.32)	(0.32)	(0.033)	(0.033)	.....
0.03	0.043	0.043	0.054	0.054	0.053	0.053	0.13
	(0.08)	(0.08)	(0.096)	(0.096)	(0.098)	(0.098)	.....
Mice—Extra lumbar ribs:[d]							
25	140	140	160	160	140	140	140
	(190)	(190)	(240)	(240)	(240)	(240)	.....
5	29	29	31	31	30	30	34
	(41)	(41)	(48)	(48)	(52)	(52)	.....

TABLE VI–M.—ESTIMATES OF NUMBER OF EXTRA CASES OF VARIOUS DEVELOPMENTAL EFFECTS PER 1,000 FETUSES FROM EXPOSURE TO 2–ME[a]—Continued

Dose[c]	QLR	Weibull	QCR	CP	Kodell-QLR	Kodell-Weibull	Rin and Van Ryzin
1	4.2	5.7	6.2	6.2	6.2	6.2	7.2
	(8.4)	(8.4)	(9.6)	(9.5)	(11)	(11)	.....
0.5	1.1	2.8	3.1	3.1	3.1	3.1	3.6
	(4.2)	(4.2)	(4.8)	(4.8)	(5.4)	(5.4)	.....
0.1	0	0.54	0.62	0.62	0.62	0.62	0.73
	(0.84)	(0.84)	(0.96)	(0.95)	(1.1)	(1.1)	.....
0.03	0	0.16	0.19	0.19	0.19	0.19	0.22
	(0.25)	(0.25)	(0.29)	(0.29)	(0.32)	(0.32)	.....

[a] From the Crump Report, Ex. 5–136. The models considered are the quantal linear regression (QLR) model, the Weibull model, the continuous linear regression (QCR) model, the continuous power (CP) model, two cases of the Kodell model—the Kodell-QLR model and the Kodel-Weibull model, and the Rai and Van Ryzin model. The numbers in parentheses are the 95% upper confidence limit on risk. No 95% upper confidence limit was calculated for the Rai and Van Ryzin model. See text for details.
[b] Dose is adjusted by a factor of 8/6. See the Crump report for details.
[c] Data from Hanley et al., Ex. 4–042a.
[d] Data from Hanley et al., Ex. 4–106.

TABLE VI–N.—ESTIMATES OF NUMBER OF EXTRA CASES OF VARIOUS DEVELOPMENTAL EFFECTS PER 1000 FETUS FROM EXPOSURE TO 2–EE[a]

Dose[c]	QLR	Weibull
Rats—Minor skeletal defects:[b]		
5	0	1.8
	(0)	(15)
1	0	0.065
	(0)	(1.4)
0.5	0	0.015
	(0)	(0.51)
0.25	0	0.0037
	(0)	(0.19)
0.1	0	0.00056
	(0)	(0.049)
Rats—Minor visceral defects:[b]		
5	1.4	1.4
	(2.8)	(2.8)
1	0.29	0.29
	(0.56)	(0.56)
0.5	0.14	0.14
	(0.28)	(0.28)
0.25	0.072	0.072
	(0.14)	(0.14)
0.1	0.029	0.029
	(0.056)	(0.056)
Rats—Total abnormal ribs:[b]		
5	37	23
	(45)	(44)
1	7.5	3.7
	(9.1)	(8.9)
0.5	3.8	1.7
	(4.6)	(4.5)
0.25	1.9	0.76
	(2.3)	(2.2)
0.1	0.75	0.27
	(0.91)	(0.9)
Rabbits—Minor skeletal defects:[d]		
5	19	0
	(27)	(21)
1	3.9	0
	(5.5)	(4.3)
0.5	1.9	0
	(2.7)	(2.2)
0.25	0.97	0
	(1.4)	(1.1)
0.1	0.39	0
	(0.55)	(0.43)
Rabbits—Skeletal variants:[d]		
5	29	29
	(41)	(41)
1	6	6
	(8.4)	(8.4)
0.5	3	3
	(4.2)	(4.2)
0.25	1.5	1.5
	(2.1)	(2.1)
0.1	0.6	0.6
	(0.84)	(0.84)
Rabbits—Late intrauterine death:[d]		
5	0	0.0035
	(15)	(15)
1	0	0.000022
	(3)	(3)
0.5	0	0.000002
	(1.5)	(1.5)
0.25	0	0
	(0.74)	(0.74)
0.1	0	0
	(0.3)	(0.3)

[a] From the Crump Report, Ex. 5–136. The models considered are the quantal linear regression (QLR) model, the Weibul model, the continuous linear regression (QCR) model, the continuous power (CP) model, two cases of the Kodel model—the Kodel-QLR model and the Kodel-Weibull model, and the Rai and Van Ryzin model. The number in parentheses are the 95% upper confidence limit on risk. No 95% upper confidence limit was calculated for the Rai and Van Ryzin model. See text for details.
[b] Dose is adjusted by a factor of 8/6. See the Crump report for details.
[c] Data from Tinston et al, Ex. 4–038.
[d] Data from Tinston et al, Ex. 4–039.

Crump notes that although the maximum likelihood estimates (MLEs) of risk are similar regardless of whether one accounts for the litter effect, the 95% upper confidence level (UCL) can be noticeably affected. Crump states that for "several data sets for which the maximum likelihood estimates are similar when estimated by the QLR (or Weibull) model and the Kodell-QLR (or Kodell-Weibull) model (e.g. extra lumber ribs in mice, for which the intra-litter correlation estimates are highest), the upper limits are smaller when the litter effect is ignored."

For 2–ME, the models and data sets predict a range of risks of developmental effects from 2.2 to 430 per 1000 fetuses at the current OSHA PEL of 25 ppm. The lowest risk comes from the Weibull model applied to data on total major malformations in rabbits. The highest risk comes from the QLR model applied to these same data. Crump attributes this large spread within the same data set to the non-linearity of the dose-response relationship and "the lack of experimental evidence regarding the dose-response curve between 10 and 50 ppm." Crump concludes that if "there had been an additional experimental exposure between 10 ppm and 50 ppm, the difference among the models would likely have been sharply reduced."

For 2–EE, Crump did not estimate risks at the current OSHA PEL of 200 ppm. The highest dose level which Crump considered for its analysis of 2–EE was 5 ppm. At this exposure level, the models and data sets predict a range of risk of developmental effects from 0 to 37 per 1000 fetuses. The lowest risk comes from the QLR model applied to data on minor skeletal defects in rats. The highest risk comes from the same

model applied to data on total abnormal ribs in rats.

At 0.1 ppm, Table VI–M shows that the predicted risks of developmental effects range from 0 to .67 per 1000 fetuses when derived from models which incorporate thresholds and from approximately zero to 1.1 per 1000 fetuses when derived from models which do not incorporate thresholds. At 0.5 ppm, Table VI–N shows that the predicted risks of developmental effects range from 0 to 3 per 1000 fetuses when derived from the model which incorporates a threshold and from approximately zero to 3 per 1000 fetuses when derived from the model which does not incorporate a threshold.

Although Crump's approach provides methods for quantifying reproductive and developmental risks, none of the methods proposed in the report has been generally accepted within the risk assessment community. The NOEL/ uncertainty factor approach, on the other hand, has broad acceptance for the assessment of reproductive and developmental risks. Furthermore, Crump's risk assessment provides no criteria for selecting one model or method over another. Since none of the models has a biological basis, it is impossible to determine which is the most appropriate model to use. Given the broad range of risks predicted from each of the models, some criteria must be developed for choosing one or another before Crump's approach can be used for quantitative risk assessment. For these reasons, OSHA has not relied upon the Crump report as the basis of its quantitative risk assessment for glycol ethers.

Crump's risk assessment raises a number of issues including whether developmental and reproductive risks can be quantified and these issues deserve serious discussion. In addition to proposing dose-response models for quantifying the risk of developmental effects, Crump has proposed two alternatives, the NOSTASOT dose and the benchmark dose, to the traditional NOEL used by OSHA in its risk assessment. OSHA seeks comment on the issues raised in this report as well as on the specific methodology employed by Crump to quantify the risk of adverse reproductive and developmental effects.

2. The Hattis Risk Assessment

In an attempt to quantify the reproductive and developmental risks associated with glycol ethers exposure, Dale Hattis et al developed three quantitative approaches; one for estimating the risks of adverse effects on male fertility (Ex. 5–109); one for estimating the risks of adverse developmental outcomes (Ex. 5–121); and one for estimating the risks of infant mortality (Ex. 5–121). To estimate risks on male fertility, sperm counts and pharmacokinetically-derived exposures from workers exposed to 2–ME and 2–EE were used as a basis for estimating percentage reductions in fertility. Animal studies in which 2–ME and 2–EE induced fetal death and fetal malformations were used as a basis for estimating the risk of adverse developmental outcomes in human fetuses. Animal studies in which 2–ME and 2–EE induced fetal weight reduction were used as a basis for estimating the risk of infant mortality in humans. The following discussion briefly summarizes these approaches. For a more complete description of these analyses and the underlying assumptions, the original studies should be consulted.

a. *Risk Analysis on Male Fertility Effects* (Ex. 5–109). The goal of this analysis was to quantify the effects on male fertility that could be expected from reductions of sperm counts induced by 2–EE and 2–ME. Thus sperm count was the basic measure used to calculate a risk of infertility. The authors acknowledged that sperm counts are not ideal for this purpose because sperm counts are only one of several parameters (e.g. % normal sperm, % motile sperm, and age of patient) that are known to have an effect on male reproductive potential. In addition the authors stated that a direct relationship between sperm count and male fertility performance may be an over simplification. However the authors chose sperm counts because no other type of sperm quality parameters were available in the underlying data used for this quantitative analysis.

The sources of experimental data used in this analysis included (1) a pharmacokinetic model developed by Hattis et al for 2–EE (Ex. 5–095), (2) worker exposure studies on shipyard painters (Exs. 5–101, 5–102 and 5–103) and foundry workers (Ex. 5–003) and (3) a quantitative model developed by Meistrich (Ex. 4–161) for estimating sperm reduction factors and increases in excess infertility.

In their pharmacokinetic analysis (Ex. 5–095), Hattis et al developed four different pharmacokinetic models using clinical data from studies in which human volunteers were exposed to 2–EE. These models described the uptake and metabolism of 2–EE to its primary metabolite ethoxyacetic acid (EAA). The models also described the urinary excretion of EAA. Mathematical formulas derived from these models were presented as a means for calculating 2–EE equivalent air exposure levels from urinary EAA excretion data.

As a first step in the risk analysis, urinary EAA excretion data from the foundry workers and the shipyard painters were converted to 2–EE equivalent air exposures (ppm) using the formulas derived from the Hattis et al pharmacokinetic model. The authors noted that the shipyard painters also had "appreciable" exposures to 2–ME. Thus 2–EE equivalents for these workers were adjusted to account for 2–ME. This was accomplished by assuming that 2–ME was 4.3 times more potent than 2–EE (based on animal studies) and that workers were exposed to 0.8 ppm 2–ME for every 2.6 ppm 2–EE.

In the second step of this analysis, sperm counts were analyzed and found to decline among both sets of workers although neither of the observations from these groups was statistically significant. The percent reduction in sperm count for these groups of workers was then compared to the calculated 2–EE equivalents air levels:

	2–EE equivalent (ppm–8 hr/day)	Overall percent sperm count reduction
Shipyard Painters:		
Arithmetic mean	6.1	27.5
Geometric mean	4.9	
Foundry workers:		
Arithmetic mean	13.9	14
Geometric mean	12.8	

The authors noted that results from both of these studies reinforced one another showing suggestive declines in sperm counts with 2–EE exposure. However these results indicate that there is a stronger sperm reduction effect with lower dose among the shipyard painters. Possible explanations offered by the authors included (1) chance statistical fluctuations in the data and (2) potential peak exposures prior to sampling the population. Nevertheless, the shipyard painter data was selected for the authors "best estimate" risk projections as this study had more complete exposure data and a larger number of workers, making this study "more likely representative of reality".

In the final step in this analysis, work by Meistrich (Ex. 4–161) was applied to sperm count reductions calculated in

the previous steps to estimate an "excess infertility risk". Meistrich developed a method, using testicular toxicity data in rats and analyses of sperm count distributions in "fertile" and "infertile" couples, to calculate the "risk of infertility" as a function of sperm count. In his model Meistrich defined infertility as the degree of subfertility required to bring about a need to consult a physician. Meistrich assumed that a 1% increase in infertility (i.e. 1 in 100 couples) was an "acceptable risk". He also assumed that the background risk of infertility in the general population was 15%. Using these assumptions and definitions, Meistrich estimated that a 1% increase in excess infertility corresponds to a sperm reduction factor of 1.24. Using this basic relationship, Hattis et al. calculated sperm reduction factors and corresponding increases in excess infertility for the sperm count reductions observed among the shipyard painters at various 2–EE equivalent air exposures:

Geometric mean dose (ppm) 8 hr–TWA	Percent sperm count reduction	Reduction factor	Excess infertility (percent)
0.89	5.70	1.06	0.25
1.72	10.80	1.12	0.50
3.28	19.40	1.24	1.00
4.9	27.5	1.38	1.58
5.97	32.40	1.48	2.00

Based on the results of this analysis Hattis concluded that in order to achieve a goal of having no more than 1 in 100 couples (i.e. 1%) suffering "infertility", exposures to 2–EE must be kept below a geometric mean of 3.3 ppm. Achieving a goal of no more than 1 in 400 couples suffering infertility would require exposures ¼ of that level (i.e. 0.82 ppm). Furthermore assuming that 2–ME is 4.3 times more potent than 2–EE, Hattis estimates that a corresponding dose for 2–ME of 0.46 ppm would be required to assure that no more than 1 in 100 couples will suffer from infertility.

These quantitative estimates must be viewed in light of the uncertainties and assumptions used to calculate them. First, both the shipyard painter and foundry worker studies had a small number of exposed workers with sperm count reductions bordering on statistical significance. Furthermore, as noted by Hattis et al, as well as the original authors of the shipyard painter studies, the EAA excretion levels calculated from these may be a poor proxy for exposures associated with sperm count reduction. The EAA excretion levels represented exposure to 2–EE in the last few days whereas the sperm counts which were measured at approximately the same time would have been effected by exposures weeks earlier. Because the shipyard painters changed tasks at the shipyard frequently, EAA excretion levels representing these workers' exposure within the last few days may not adequately represent exposure levels weeks earlier which would have been responsible for the sperm counts collected.

Second, the Meistrich approach for calculating sperm reduction factors assumes a "one-hit" killing function for sperm which may or may not be biologically correct. Furthermore Meistrich uses a very subjective definition of infertility (i.e. degree of subfertility required to bring about the need to consult a physician).

These sources of uncertainty are compounded by the uncertainty of the 2–EE air equivalents which were calculated using the Hattis pharmacokinetic model. This pharmacokinetic model carries with it its own set of assumptions and uncertainties. Thus considerable uncertainty is associated with the quantitative estimates derived from the risk analysis on male fertility.

b. *Risk Analysis on Developmental Effects* (Ex. 5–121). The goal of this analysis was to quantify the risk of adverse developmental effects associated with *in utero* exposure to glycol ethers. Two separate approaches were employed. In the first approach, quantal effects data from animal studies (e.g. fetal death and malformations) were used to estimate the risk of similar adverse effects in humans. In the second approach, continuous effects data from animal studies (e.g. changes in fetal weight) were used to project changes in birth weight and potential changes in infant mortality in humans.

Quantal Effects Analysis. Hattis et al selected six different animal studies examining the developmental toxicity of various glycol ethers. [Andrew and Hardin (Ex. 5–069), Doe (Ex. 5–0710, Hardin and Eisemann (Ex. 5–097), Weir (Ex. 5–120), Greene (Ex. 5–096), and Hanley et al (Ex. 4–120)]. These studies reported statistically significant increases in the incidence of adverse developmental effects including fetal death, skeletal defects, external malformations and digit or limb malformations. Dose response data from the animal studies were used to calculate an ED_{50} for those effects which were statistically significantly different from the controls. An ED_{50} is the dose at which 50% of an otherwise unaffected proportion of the population suffers an effect. The ED_{50} was derived using a log-probit analysis. This probit analysis assumes that effects occur in individual animals when specific thresholds of dose are exceeded and that there is a lognormal distribution of thresholds in the exposed group of animals or humans. ED_{50}s from the animal studies were then converted to 8 hour human ED_{50}s (ppm). This ED_{50} represents a dose at which 50% of a population will be affected by the chemical after an 8 hour exposure. Overall ED_{50} estimates were derived by taking geometric means of ED_{50}s calculated for 2–ME and 2–EE for individual effects. Six "best estimates" were derived in this manner. These "best estimates" were then used to calculate the doses of 2–ME or 2–EE corresponding to risks of one in a hundred (10^{-2}), one in ten thousand (10^{-4}) and one in a million (10^{-6}) for a particular developmental effect (Table VI–O).

TABLE VI–O.—DOSES (PPM) AT "BEST ESTIMATE" RISKS OF ONE IN A HUNDRED, ONE IN TEN THOUSAND, AND ONE IN A MILLION

Response	ED50 humans 8 hr (ppm)	Dose (ppm) at 10^{-2} risk	Dose (ppm) at 10^{-4} risk	Dose (ppm) at 10^{-6} risk
Post implantation loss:				
2–EE	127	8.7	1.8	0.53
2–ME	16	1.1	0.22	0.067
Minor skeletal defects:				
2–EE	5.3	0.36	0.073	0.022
Malformations:				
2–EE "external"	255	17	3.5	1.1
2–ME "total"	9.9	0.68	0.14	0.042

TABLE VI–O.—DOSES (PPM) AT "BEST ESTIMATE" RISKS OF ONE IN A HUNDRED, ONE IN TEN THOUSAND, AND ONE IN A MILLION—Continued

Response	ED50 humans 8 hr (ppm)	Dose (ppm) at 10^{-2} risk	Dose (ppm) at 10^{-4} risk	Dose (ppm) at 10^{-6} risk
"forepaw"	35	2.4	0.48	0.147

Extracted from Table 3–7, Hattis et al. (Ex. 5–121).

Assuming that a ppm exposure in humans would present the same risk as those observed in animals, Hattis et al. concluded that these projections suggest that doses as low as 0.36 ppm 2–EE would produce a risk of one in a hundred for skeletal defects and doses as low as 0.68 ppm 2–ME would produce a risk of one in a hundred for total malformations. It is interesting to note that from these two estimates 2–ME appears to be less potent than 2–EE which is contrary to most of the experimental data.

Continuous Effects Analysis. In this analysis animal data showing fetal weight reduction after exposure to 2–ME and 2–EE were used to calculate percentage reductions in fetal weight as a function of dose of 2–ME or 2–EE. For purposes of this analysis it was assumed that animals and humans would exhibit equal growth retardation for a given rate of glycol ether exposures expressed in ppm-hours per day. It was further assumed that percentage changes in fetal weight prior to birth would reflect similar percentage changes in birth weight. Percentage reductions in birth weight could then be used to project likely effects on infant mortality.

As a first step, Hattis et al. analyzed birth weight distributions and infant mortality rates from both black and white infants in the United States. These distributions were used to derive a relationship between infant mortality and birth weight changes.

As a second step, the relationship between fetal weight reduction (i.e. birth weight reduction) and the dose of 2–ME or 2–EE from the animal studies were combined with the relationship between birth weight changes and infant mortality from human infants. These two sets of relationships were used together to estimate expected changes in infant mortality for a given 8 hour exposure to 2–EE or 2–ME. Table VI–P presents the projected changes in infant mortality due to possible changes in infant birth weight associated with 2–EE and 2–ME exposures.

TABLE VI–P—PROJECTED CHANGES IN INFANT MORTALITY DUE TO POSSIBLE CHANGES IN INFANT BIRTH WEIGHTS ASSOCIATED WITH 2–ME and 2–EE EXPOSURES

PPM exposure level	Projected percent birthwt reduction	Total excess infant mortality
2–EE:		
0.01	.0003	1.45×10^{-7}
0.1	.003	1.45×10^{-6}
1	.03	1.45×10^{-5}
5	.15	7.3×10^{-5}
25	.75	3.7×10^{-4}
2–ME:		
0.01	.00243	1.18×10^{-6}
0.1	.0243	1.18×10^{-5}
1	.243	1.18×10^{-4}
5	1.215	6.1×10^{-4}
25	6.075	3.6×10^{-3}

Extracted from Table 4–6, Hattis et al. (Ex. 5–121).

As was the case for the male fertility analysis, the quantitative estimates derived from both the quantal and continuous effects data incorporate a number of large assumptions. The largest of these may be the assumption that a particular defect observed in an animal will translate into a similar defect in humans. As discussed earlier in the Health Effects section of this preamble, although adverse developmental effects in animals provide clear evidence of a chemical's potential ability to perturb development in humans, the effects observed in animals may not necessarily be identical to those which could potentially occur in humans. Even the authors themselves acknowledge that the risk calculations are based on a series of assumptions which carry considerable uncertainty. OSHA acknowledges that assumptions are often necessary for quantitative risk analyses. However given the lack of knowledge about the biological processes involved in reproductive and developmental toxicity, OSHA believes that the assumptions of these quantitative analyses may carry much more uncertainty than for other types of health outcomes such as cancer where the biological mechanisms are better understood.

In summary, the quantitative approaches of Hattis et al. are very innovative. These approaches, however, require that a number of large assumptions be made. These assumptions create considerable uncertainty in the quantitative risk estimates which are derived. In addition, the underlying data upon which these approaches are constructed have weaknesses of their own which further compound the uncertainties in the risk estimates. Nevertheless, these approaches do provide a starting point for a discussion of the quantitative risk assessment for reproductive and developmental toxins. Therefore OSHA welcomes all comments and analyses on these approaches for deriving quantitative risk estimates for adverse reproductive and developmental effects.

3. The Environ Risk Assessment

Under contract to the Chemical Manufacturer's Association (CMA), Environ Corporation prepared a report entitled "Scientific Basis for Safety Factors Needed to Protect Workers from Reproductive Toxicities of Glycol Ethers" (Ex. 4–016f). This report contains a brief review of the data available for a qualitative analysis of the health effects associated with glycol ethers and their acetates, but the primary focus of the report is the choice of uncertainty factor for determining an acceptable daily intake (ADI) for each of the substances.

Environ's approach for choosing an uncertainty factor (which Environ refers to as a safety factor), was to compare the lowest effective dose (i.e. the LOEL) in humans measured in milligrams per kilogram per day for ten substances known to cause developmental effects with the lowest effective dose measured in milligrams per kilogram per day in the most sensitive species of animal in which the substance has been tested and in which the observed effects were similar to those in humans. These data come from two sources: a 1981 report from the Council on Environmental Quality (CEQ) entitled "Chemical Hazards to Human Reproduction" and a 1984 report from the National Center for Toxicological Research (NCTR) entitled "Reliability of Experimental Studies for Prediction of Hazards to Human Development." By examining these data on other developmental toxicants,

Environ sought to obtain information which could be "useful for judging the magnitude of the uncertainty factor needed to protect humans from the developmental effects of [glycol ethers]."

Environ drew two conclusions from its analysis:

1. Application of a safety factor of 10 to NOELs from the most sensitive animal species would have been adequate to protect humans from the effects of most developmental toxicants for which quantitative dose-response data are available; and

2. A safety factor of 50, similarly applied, would have been adequate to protect humans from the effects of all developmental toxicants for which quantitative human dose-response data are available, although this factor may not have been adequate for one substance, thalidomide, assuming the rabbit (rather than the most sensitive species) had been chosen as the basis for establishing acceptable human exposures. If the most sensitive species had been chosen for thalidomide, a safety factor of 10–20 would have been adequate.

Environ supplemented this approach with an examination of historical precedents for the selection of uncertainty factors used to protect worker populations from the types of toxicity associated with glycol ethers or from other serious forms of toxicity. Environ stated that such information, "while not strictly scientific in nature, can further assist decision-making because it reveals the range of safety margins which other responsible decision-makers have accepted, and presumably reveals the safety margins that have proved adequate to protect worker populations. Information on the expected relative susceptibilities of the worker and the general populations and on how this has influenced the selection of safety factors will also be useful."

Environ looked at the guidelines or standards for protecting workers from reproductive hazards developed by OSHA, NIOSH, ACGIH, and the American Industrial Hygiene Association (AIHA) "in order to provide an estimation of the margin of safety associated with [their] standards and guidelines." Environ noted that "[u]nlike the case of standards developed for general population exposure to chemicals, [for worker populations] there has been no generic approach we can identify for the application of safety factors to the NOEL identified in experimental animals. This is true for both reproductive and other non-carcinogenic effects."

Environ found that as of 1985, the date of the Environ report, OSHA had regulated five substance principally on the basis of reproductive toxicity. These substances and their respective margins of safety were carbaryl, 5 times lower than the NOEL identified in animals; carbon disulfide, 1.3 times higher than the LOEL identified in animals; DBCP, 38 times lower than the NOEL identified in animals; chloroprene, 5 to 25 times higher than the LOEL identified in humans; and PCBs, 6 times lower than the LOEL identified in humans. (OSHA notes that the Environ report was written prior to promulgation of OSHA's Final Rule for Air Contaminants, 29 CFR Part 1910, published January 19, 1989. In that rulemaking, OSHA reduced the permissible exposure limits for both carbon disulfide and chloroprene.) In comparison, Environ found that NIOSH used uncertainty factors in its recommended standards for the same five substances ranging from 1 for a 15 minute exposure ceiling for chloroprene to 6000 for PCBs. The ACGIH had issued TLVs for all these substances except DBCP, and these TLVs ranged from 2 to 10 times higher than the LOEL identified in humans for chloroprene to 6 times lower than the LOEL identified in animals for PCBs. According to Environ, the AIHA had established a workplace environmental exposure level only for the reproductive toxicant piperidine, and in making its recommendation, the AIHA provided no margin of safety below the NOEL for embryotoxicity in the rat.

On the basis of its analysis of the CEQ data, the NCTR data, and historical precedent, Environ concludes that "the 100-fold [safety] factor has not been used for worker protection" and "there is support for a safety factor of 10 as adequate to protect workers against the developmental toxicities of the [glycol ethers and their acetates]." Environ goes on to note that a safety factor of 10 "appears to be adequate to cover most cases and it also accords with most past occupational risk management practices. If one seeks a margin that has limited historical precedent but which appears more certain to cover all likely cases, then a factor of 50 is recommended."

Noting that the factors 10 and 50 are not alternatives and that "it may be reasonable to settle on a factor between these two values", Environ applied these two uncertainty factors to the NOELs identified for the glycol ethers and their acetates. In its review of the literature, Environ, like OSHA, found the NOELs to be 10 ppm for 2–ME, 10 ppm for 2–MEA, 50 ppm for 2–EE, and 50 ppm for 2–EEA. (Environ found no data on the reproductive effects of 2–MEA, and like OSHA, used the NOEL identified for 2–ME to estimate the ADI for 2–MEA.) In its estimation of the ADI's, however, Environ took a different approach. First, that species most sensitive to the effects of the glycol ethers or their acetates was identified. In each case, this was found to be the rabbit. Next, the NOEL was converted from units of ppm to units of milligrams per kilogram per day. Then, the safety factors of 10 or 50 were applied to the converted NOEL to arrive at two estimates of the ADI. These estimates, in turn, were converted back to units of ppm assuming human parameters. Results of these calculations are presented in Table VI–Q.

TABLE VI–Q.—ESTIMATES OF ACCEPTABLE HUMAN DAILY INTAKES (ADIS) OF FOUR GLYCOL ETHERS BASED ON ANIMAL DATA AND SAFETY FACTORS OF 10 AND 50[a]

Glycol ether	NOEL [b] mg/kg/d	Species	ADI/10 [c] mg/kg/d	ADI/50 [d] mg/kg/d	ADI/10 [e] ppm	ADI/50 [f] ppm
2–ME	4.3	Rabbit	0.43	0.086	0.9	0.18
2–EE	25.5	Rabbit	2.6	0.52	4.6	0.92
2–MEA	[g] 6.7		0.67	0.13	0.9	0.18
2–EEA	18.8	Rabbit	2.6	0.52	4.6	0.92

[a] From the Environ Report (Ex. 4–016f).
[b] The NOEL identified in the most sensitive species converted from units of ppm to units of milligram per kilogram per day.
[c] ADI based on a safety factor of 10 and measured in units of milligrams per kilograms per day.
[d] ADI based on a safety factor of 50 and measured in units of milligrams per kilograms per day.
[e] ADI based on a safety factor of 10 and measured in units of ppm as an 8-hour time weighted average.
[f] ADI based on a safety factor of 50 and measured in units of ppm as an 8-hour time weighted average.
[g] No data available. Assumes 2–MEA is equipotent with 2–ME on a mole basis.

The interesting result in Table VI–Q is that the ADIs estimated by Environ using a uncertainty factor of 50 are not very different than the ADIs estimated by OSHA using an uncertainty factor of 100 without conversion of the NOEL to milligrams per kilogram per day. For 2–ME and 2–MEA, Environ found the ADI to be 0.18 ppm whereas OSHA found the ADI to be 0.1 ppm. For 2–EE and 2–EEA, Environ found the ADI to be 0.92 ppm whereas OSHA found the ADI to be 0.5 ppm. Obviously, the results are not so similar when an uncertainty factor of 10 is used.

Despite the similarity in results, OSHA has a number of concerns about the approach used by Environ to estimate the ADI for the glycol ethers and their acetates. First of all, OSHA questions the appropriateness of using the CEQ data and the NCTR data to establish the magnitude of safety factors needed to protect humans from the developmental effects of glycol ethers. Environ acknowledges a number of the data's limitations including the varying quality and extensiveness of the data bases from which these data were drawn, the subjective determination regarding the meaning of the term "lowest effective dose", the relatively small number of compounds examined, and the difficulty of obtaining accurate estimates of the human doses responsible for producing developmental toxicity.

OSHA believes that these limitations alone make these data unsuitable for the use to which Environ has put them. OSHA, however, sees additional limitations. Environ is comparing experimental LOELs in the most sensitive species to LOELs observed in humans to determine adequate safety factors. Implicit in this approach is the assumption that experimental LOELs are the "true" LOELs and that any exposure below that LOEL for either humans or animals will not result in adverse effects. As noted in a previous section of this risk assessment, there is in fact little reason to believe that the LOEL (or NOEL) identified in any study is indeed the "true" LOEL. Environ's approach makes no allowance for such a possibility.

Another limitation which Environ acknowledges is that it is not known whether the empirical relationships observed in the data reflect only interspecies differences or whether they reflect both interspecies differences and intraspecies differences. Environ concludes that it "seems likely although it is not certain, that the empirical relations discussed above would be protective of the most sensitive members of the human population", but OSHA notes that the opposite conclusion could just as easily be drawn. If the human data represent responses for the mid-range of the distribution of human responses, then, as Environ states, "the empirical relations reflect only interspecies differences, and an additional safety factor would seem necessary to compensate for intraspecies variability."

OSHA is also concerned about Environ's use of historical precedent to determine the margin of safety acceptable for protecting worker populations. Of the five substances reported by Environ to have been regulated by OSHA on the basis of reproductive toxicity, all but one, DBCP, were adopted as consensus standards by the Agency in 1971 under section 6(a) of the Occupational Safety and Health Act of 1970. Under that Section of the Act, Congress directed the Agency to "promulgate as an occupational safety and health standard any national consensus standard, and any established Federal standard, unless [the Secretary of Labor] determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees" (29 U.S.C. 651 et seq). In the case of DBCP, the only one of the five substances to be considered individually in a 6(b) rulemaking, the standard set by OSHA, as Environ acknowledges, was constrained by technological feasibility and not by acceptable margin of safety. In as much as standards for four of these substances were adopted without consideration of the individual substance and the standard for the fifth was constrained by technological feasibility, it is disingenuous of Environ to conclude that OSHA finds any particular margin of safety as acceptable for working populations.

Finally, OSHA questions the appropriateness of Environ's conversion of NOELs from units of ppm to units of milligrams per kilograms per day to estimate an ADI. On the one hand, Environ states that with regard to interspecies differences, "the available data on the ethers show a remarkably consistent pattern among the species tested. This suggests that the 10-fold factor conventionally used for interspecies extrapolation is not indicated." On the other hand, when the NOEL is converted into units of milligrams per kilogram per day, this "remarkable" consistency vanishes. For example, for 2–ME, Environ found that a NOEL of 10 ppm in rabbits corresponds to 4.3 mg/kg/day. For mice, however, the NOEL of 10 ppm found by Hanley et al (Ex. 4–106) corresponds to approximately 9.2 mg/kg/day, (using the mean weight for the 10 ppm exposure group on day 12, half-way through exposure, and assuming, like Environ, 100% absorption), more than two times greater than the NOEL for rabbits measured in the same units. For rats, the NOEL of 10 ppm found by Hanley et al (Ex. 4–042a) corresponds to approximately 5.93 mg/kg/day (also using the mean weight for the 10 ppm group on day 12, half-way through exposure, and assuming 100% absorption.) Thus, if Environ is going to convert the NOEL into units of milligrams per kilogram per day, an adjustment for interspecies variation must be considered.

OSHA seeks comment on whether the NOEL should be expressed in units of ppm or units of milligrams per kilogram per day. A number of commentors support the latter measure including CMA (Ex. 7–17) and NIOSH (Ex. 7–22), but the Agency notes that those commentors who calculated their own ADIs did no such conversion of units (see, for example, Ex. 7–23). Furthermore, the Agency is uncertain as to how one would convert a NOEL from units of ppm to units of milligram per kilogram per day from a study of developmental effects. Animals exposed during gestation are gaining weight rapidly. Thus, as a study progresses, the dose an animal receives decreases in terms of milligrams per kilogram per day. Clearly weight gain will be a function not only of the genetics of an individual animal but also of the number of fetuses a pregnant female is carrying. OSHA seeks comment on whether these factors should be accounted for in measuring dose, and if so, how this should be done.

VII. Significance of Risk

OSHA believes that the type of significant risk analysis the Agency has undertaken in this rulemaking is consistent with the studies generally available and, for the reasons set forth below and in the section on risk assessment, is a valid, accepted and customary scientific approach.

Section 6(b)(5) of the OSH Act vests authority in the Secretary of Labor to issue health standards. This section provides, in part, that the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt

with by such standard for the period of his working life.

OSHA is required to make two threshold findings before it can issue a health standard under section 6(b)(5) of the Act. In accordance with the Supreme Court's decision in the benzene case, *Industrial Union Department, AFL/CIO* v. *American Petroleum Institute*, 448 U.S. 601, 642 (1980), OSHA may promulgate a standard only if it finds that it is at least more likely than not that the risk OSHA seeks to regulate is "significant" and that the change in practices contemplated in the issuance of a standard would reduce or eliminate that risk.

OSHA's analytical approach to making a determination that a significant risk of material impairment exists from exposure to hazardous materials or harmful physical agents in the workplace takes into consideration a number of factors that are consistent with recent court interpretations of the Act and with rational, objective policy formulation. As prescribed by section 6(b)(5) of the Act, OSHA examines the body of the "best available evidence" on the adverse effects of the toxic materials or harmful physical agents to determine the nature and extent of possible health consequences resulting from exposure to the hazard in question. Where possible, quantitative assessments are conducted and the results are considered along with other relevant information, such as the nature and severity of the health consequences, as well as other qualitative evidence and expert opinion, to determine whether a hazard poses a significant risk to workers.

The Court gave some general guidance to the Agency for determining significant risk:

> Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2 percent benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (I.U.D. v. A.P.I., 448 U.S., 607, 655).

The Court indicated, that where possible, the determination of significant risk should be based upon quantitative risk assessment. However, recognizing the uncertainties involved, the Court qualified its predilection for quantitative assessment, saying:

> [T]he requirement that a "significant" risk be identified is "not a mathematical straitjacket. It is OSHA's responsibility to determine, in the first instance, what it considers to be a "significant" risk. *Id.*

The Court also pointed out that:

> OSHA is not required to support its findings that a significant risk exists with anything approaching scientific certainty * * *. [Section] 6(b)(5) [of the Act] specifically allows the Secretary to regulate on the basis of the "best available evidence." * * * Thus, so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions * * * risking error on the side of overprotection rather than under protection. *Id.*, at 656.

The Court noted that the ultimate determination that a particular level of risk is significant "will be based largely on policy considerations." *Id.*, at 655–56, n. 62.

Quantification of risk, the Court understood, cannot be achieved for every hazard. The four-judge plurality, speaking for the Court in the benzene decision, did not intend to require OSHA to do what cannot be done. The concurring opinion of Mr. Justice Powell and the dissenting opinion of Mr. Justice Marshall, speaking for four other members of the Court, confirm this. Mr. Justice Powell stated:

> The statutory preferences for the "best available evidence" * * * implies that OSHA must use the best known techniques for the accurate estimation of risks and benefits when such techniques are available. But neither the statute nor the legislative history suggests that OSHA's hands are tied when reasonable quantification cannot be accomplished by any known methods * * *. In this litigation, OSHA found that "it is impossible to precisely quantify the anticipated benefits * * *" If this finding is supported by substantial evidence, the statute does not prevent the Secretary from finding a significant health hazard on the basis of the weight of expert testimony and opinion. I do not understand the plurality to hold otherwise. *Id.*, at 666–7.

Similarly, Mr. Justice Marshall, in dissent, stated "[i]t is fortunate indeed that at least a majority of the Justices reject the view that the Secretary is prevented from taking regulatory action when the magnitude of a health risk cannot be quantified on the basis of current techniques" and concluded that "the Court appears willing not to require quantification when it is not fairly possible." *Id.*, 690, 716–17.

As a part of the overall significant risk determination, OSHA considers a number of factors. These include the type of risk presented, the quality of the underlying data, the reasonableness of the risk assessments, the statistical significance of the findings and the significance of risk (48 FR 1864; January 14, 1983).

The types of risk posed by exposure to glycol ethers are of the most serious kind. Developing fetuses exposed to glycol ethers may suffer the effects of such exposure for a lifetime, leading to a life of dependency instead of a life as a productive member of society. As noted by the Office of Technology Assessment in its report on Reproductive Hazards in the Workplace, "risk to a fetus may also be a risk to the woman herself. It may be direct, as in the risk of her own reproductive health; less direct, as in the risk to her health posed by spontaneous abortion; or indirect, in that she may suffer psychological damage and diminished life prospects with the occurrence of a miscarriage or on the birth of a dead or damaged baby." (Ex. 5–135, p. 330). It is also important to note that the father may also share the harm caused by the birth of a dead or damaged child.

The reproductive effects from exposure to glycol ethers are not solely loss of fertility, a serious effect in and of itself, but also include major dysfunction of the reproductive organs. Obviously material impairment of health includes not only death, but also impairments in basic biological processes, such as normal reproductive function, which can be of extraordinary personal importance. In its report on Reproductive Hazards in the Workplace, OTA states, and OSHA agrees, that "[c]oncern about reproductive processes is not limited to the brief periods in an individual's life during which reproduction may actually occur. Reproductive function is an integral part of everyday human health and well being. Before, during, and after the child bearing years, reproductive hormones may act, for example, on such variables as resistance to heart disease and cancer, immune function, complexion, bone mineral content, and feeling and mood. Threats to reproductive function can take place at nearly any point during an individual's life span." (Ex. 5–135, p. 43).

The hematological effects associated with exposure to glycol ethers may be reversible but are nonetheless debilitating and may reduce a worker's normal functional capacity. In addition, reduction in the white blood cell count may compromise an individual's capacity to fend off diseases, and for these reasons the hematological effects from exposure to glycol ethers must be considered to represent additional material impairment of health.

The data which support the finding of adverse health effects from exposure to glycol ethers are of the highest quality. As described in the Health Effects Section of this preamble, studies in

several animal species, by various routes of exposure, have consistently shown that exposure to 2–ME, 2–EE and their acetates cause adverse reproductive, developmental and hematological effects. For example, male test animals exposed to 2–ME, 2–EE and their acetates have exhibited interferences in spermatogenesis resulting in reduced sperm count and decreased fertility. Exposed males have also exhibited degeneration of the seminiferous tubules resulting in testicular atrophy. Pregnant females exposed to these glycol ethers exhibited signs of maternal toxicity such as decreases in maternal weight, decreased organ weights and increases in the lengths of gestation. Developmental effects among litters from exposed females include increased rates of resorptions (early embryonic death), decreased litter sizes, decreased fetal weights, visceral malformations, skeletal malformations, heart defects, neurochemical alterations and behavioral abnormalities. Experimental studies have also demonstrated exposure related decreases in several blood parameters including white blood cell counts, red blood cell counts and hemoglobin concentrations. Studies of humans exposed to these agents have reported findings of testicular atrophy, reduced sperm count and blood abnormalities.

In this preamble, OSHA has assessed the risk of adverse health effects from exposure to 2–ME, 2–EE, and their acetates and has determined that exposure to these glycol ethers poses developmental, reproductive, and hematological risks. While the Agency has assessed these risks, the present risk assessment differs from most previous OSHA risk assessments in that the Agency has not quantified the risks in the manner as it usually does. Instead, OSHA has performed a risk assessment using an uncertainty factor approach to determine its proposed permissible exposure limits (PELs).

The uncertainty factor approach entails identifying the most appropriate studies for each glycol ether (i.e., high quality studies using the most sensitive species) and determining the no observed effect level (NOEL) for each study. The NOELs are then divided by an uncertainty factor to arrive at estimates of the acceptable daily intakes (ADIs). These ADIs have been put forth as OSHA's proposed PELs.

For 2–ME, the same NOEL was identified for reproductive effects in three species: rats, rabbits, and mice. The replication of the NOEL in each of these bioassays lends confidence that the finding of any individual bioassay is not a statistical artifact. Likewise the replication of the NOELs for reproductive effects in two species exposed to 2–EE, rats and rabbits, also lends confidence in these studies' results. A NOEL for reproductive effects was identified in only one species for 2–EEA and in no species for 2–MEA, (this last substance has not been tested), but knowledge of the metabolism and pharmacokinetics of 2–ME and 2–EE supports using the results of studies of these substances to assess the risk from exposure to their acetates.

OSHA's approach to the assessment of reproductive and developmental risks is consistent with the approach to noncarcinogenic risk assessment adopted by a number of governmental agencies and international organizations including the U.S. Environmental Protection Agency (EPA), the U.S. Food and Drug Administration (FDA), the Joint Food and Agricultural Organization of the World Health Organization (FAO/WHO), and the National Academy of Sciences (NAS). This approach is favored because it requires no assumptions akin to those underlying carcinogenic risk assessment (i.e., that cancer is a multi-stage process). Little is known about the processes that lead to developmental and reproductive effects from exposure to toxic substances, and there are no generally accepted, biologically-based models for assessing these risks.

In addition, uncertainty factors and qualitative risk assessment have been utilized in other health standards when there have not been quantitative models available like those used to assess carcinogenic risk. (e.g., Hazard Communication, 48 FR 53280; Ethylene Oxide, 49 FR 25734; Field Sanitation, 52 FR 16050; Formaldehyde, 52 FR 46196) [1]. In an analogous context, the Court of Appeals for the District of Columbia Circuit has upheld EPA's use of "margins of safety" in setting ambient air standards to address uncertainties associated with inconclusive scientific and technical information. *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1186–87 (1981), *cert. denied*, 449 U.S. 1042 (1980).

OSHA's choice of an uncertainty factor for estimating a human ADI from animal studies is also consistent with the recommendations of many of these organizations. For example, the FDA recommends using an uncertainty factor of 100 when NOELs are identified in chronic studies (such as those used by OSHA) in animals. Likewise, the NAS recommends an uncertainty factor of 100 when calculating an ADI from a NOEL found in animals. Although the choice of uncertainty factor may appear to be arbitrary, Dourson and Stara have provided a review of experimental evidence supporting this choice (Ex. 4–113).

The 100-fold uncertainty factor used by OSHA in this risk assessment is comprised of two factors: a ten-fold factor to account for inter-species variability (i.e., varying sensitivity across species) and a ten-fold factor to account for intra-species variability (i.e., varying sensitivity among members of a population). By making these adjustments, we increase the certainty that the ADI represents an exposure level below which adverse effects are unlikely.

By choosing a 100-fold uncertainty factor, however, OSHA is not regulating below the level of significant risk. A ten-fold factor for inter-species variability and a ten-fold factor for intra-species variability are necessary to assure that exposure at or below the OSHA proposed PELs will be unlikely to cause adverse health effects.

The ten-fold factor for inter-species variability is necessary to account for the potential differences between species' sensitivity to toxic agents. Differences in sensitivity may result from differences in metabolism or differences in reproductive function. For example, as noted by EPA in their guidelines for assessing male reproductive toxicity (Ex. 5–123), males of most test species produce sperm in numbers that greatly exceed the minimum requirements for fertility. However, human males, in general, produce fewer sperm relative to the number required for fertility. Thus, human males may be more sensitive to a reduction in sperm, as they may function nearer to the threshold for the number of sperm needed to ensure reproductive competence. Also differences in sensitivity may result from differences in metabolism. In the case of glycol ethers, both animals and humans appear to utilize the same metabolic pathway to produce the same

[1] In the update of the air contaminants standard, 54 FR 2332, uncertainty factors were also used in the significant risk analysis for non-carcinogens. On July 7, 1992, the Court of Appeals for the Eleventh Circuit determined that OSHA's use of uncertainty factors was unsupported. OSHA has addressed the concerns raised by the Eleventh Circuit in this preamble. In this and the preceding section, OSHA has provided a detailed analysis of the data and evidence that supports use of the NOEL-Uncertainty Factor approach as well as the appropriateness of an uncertainty factor of 100. In addition, OSHA has requested public comment on the appropriateness of the NOEL-Uncertainty Factor approach for making risk assessment regarding reproductive/developmental health effects and the use of an uncertainty factor of 100. Moreover, OSHA has requested interested parties to discuss alternative safety factors and methodologies for assessing risk of reproductive/developmental health effects.

primary metabolite. This primary metabolite is generally considered to be the active agent in the induction of adverse reproductive and developmental effects. However, the evidence also indicates that the biological half life of the metabolites in humans is greater than in animals. Thus the accumulation rates between animals and humans are not directly comparable. The above reasons reinforce the general support for the use of a ten fold uncertainty factor for inter species variability.

Furthermore, while it may appear that there is no inter-species variation in the NOELs for 2–ME and 2–EE, as discussed in the Risk Assessment Section of this preamble, this is a function of the study designs used by Hanley et al and Tinston et al and does not prove there is no inter-species variation in developmental risk from these glycol ethers. Lastly, although the bounds of normal reproductive function can be very broad, the complexity in the reproductive processes and the difficulty in conducting studies on the broad range of possible outcomes have resulted in experimental studies concentrating for the most part on only a few distinct periods in normal reproductive functioning. OSHA has relied upon these studies to determine the reproductive and developmental risks associated with glycol ethers, but the limitations of these studies provide additional support for a ten-fold factor for inter-species variability.

The ten-fold factor for intra-species variability is also necessary, and use of this factor does not result in reducing insignificant risk. Worker populations exposed to glycol ethers are not as homogeneous as the animal populations used in experimental studies. Furthermore, even if workers are healthier than the general population, it does not necessarily follow that this "healthy worker effect" will be conferred upon a developing fetus. In addition, both parents of the fetus need not necessarily be "healthy workers", and the fetus may inherit the genetic traits of either parent.

In utilizing the uncertainty factors in setting the proper PELs for the glycol ethers under consideration in this rulemaking, it has not been the Agency's objective to apply an uncertainty factor to eliminate all risk. If that had been the Agency's objective or mandate under the act, a much higher uncertainty factor would have to have been applied to ensure elimination of all risks. Rather, the Agency has used uncertainty factors to take into account only the highest uncertainties, such as inter-species and intra-species variability. The Agency believes that it has used the uncertainty factors in a reasonable manner and in utilizing the uncertainty factors the Agency has had as its goal reducing risks that are significant.

After considering the severity of the types of risk as shown by the qualitative analysis of the data, OSHA preliminarily concludes that exposure to 2–ME, 2–EE and their acetates presents a significant risk to employees exposed to these substances at the current PELs. The current PELs for 2–ME and 2–MEA are 25 ppm, two and one-half times larger than the NOEL for 2–ME in three species (i.e., 10 ppm). The current PELs for 2–EE and 2–EEA are 200 ppm and 100 ppm respectively. For 2–EE, this PEL is four times greater than the NOEL identified in two species (i.e., 50 ppm), and for 2–EEA, this PEL is two times greater than the NOEL identified in one species (i.e., 50 ppm). If the NOEL is an estimate of the threshold of exposure resulting in adverse effects in animals, and if humans have the same degree of sensitivity as animals, exposure at the current PELs poses risk of material impairment of health. If humans are more sensitive than animals and respond to exposure in a less homogeneous manner, then the risk is greater still that workers exposed at the current PELs will suffer adverse effects from such exposure.

OSHA also preliminarily concludes that the new glycol ethers standard will result in a reduction of significant risk. However as discussed earlier in the section on Risk Assessment there are uncertainties to the NOEL/Uncertainty Factor approach. It is assumed that at exposure levels derived by dividing an experimental NOEL by an uncertainty factor of 100, humans are unlikely to exhibit effects observed in experimental animals. However the ADI does not represent a level of exposure above which there is significant risk and below which there is no significant risk. For some individuals there may be some remaining risk below the ADI. For these reasons OSHA believes that the ancillary provisions of the standard such as exposure monitoring and medical surveillance will provide greater assurance that workers will not be at significant risk. Thus OSHA believes that these provisions are reasonably necessary.

VIII. Summary of the Regulatory Impact and Regulatory Flexibility Analysis

Introduction

Executive Order 12291 (46 FR 13197, Feb. 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the proposed regulation on small entities.

Consistent with these requirements, OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Analysis (PRIA) for the proposed glycol ethers standard with 8-hour time-weighted average (TWA) permissible exposure limits (PELs) of 0.1 parts per million (ppm) for 2-methoxyethanol (2–ME) and 2-methoxyethanol acetate (2–MEA), and 0.5 ppm for 2–ethoxyethanol (2–EE) and 2–ethoxyethanol acetate (2–EEA) (Ex. 5–165). This analysis describes the industries affected by the standard, the regulatory alternatives considered, some of the potential benefits that will accrue to employees exposed to glycol ethers at their places of work, the costs of the proposed standard, and the technological and economic feasibility of the proposed provisions. The following is a summary of this analysis.

Background

The chemicals 2–ME, 2–EE, 2–MEA, 2–EEA are members of the family of ethylene glycol ethers. Referred to collectively in this analysis as "glycol ethers", these four chemicals have versatile solvent properties that make them useful in a wide variety of industries. The principal uses of glycol ethers are in chemical intermediates, paints and coatings, inks, and electronics.

The current OSHA PELs for 8-hour TWAs are 25 ppm for 2–ME and 2–MEA, 200 ppm for 2–EE, and 100 ppm for 2–EEA. They were established in 1971 based on the 1968 Threshold Limit Values (TLVs) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH). These TLVs were based on hematotoxic and neurotoxic effects and on exposure concentrations reported in the early case reports on human health effects. More recent information from animal studies, however, indicates that adverse reproductive effects may occur at much lower concentrations. The ACGIH now recommends for all four glycol ethers an 8-hour TLV of 5 ppm, plus a "skin" notation to draw attention to the need to prevent cutaneous absorption.

In 1984, the U.S. Environmental Protection Agency (EPA) published an Advance Notice of Proposed Rulemaking (ANPR) regarding 2–ME, 2–

EE, 2–MEA, and 2–EEA. In 1986, the EPA referred the issue of rulemaking for these chemicals to OSHA. Subsequently, OSHA made a preliminary determination that the occupational risks identified by EPA could be eliminated or reduced by a revised OSHA standard. In 1987, OSHA published an ANPR announcing its intention to initiate rulemaking action for four glycol ethers (OSHA Docket, Ex. 6.)

The objective of this analysis is to measure the regulatory impact of the proposed TWAs and associated requirements, including Excursion Limits (ELs) equivalent to five times each TWA and action levels (ALs) equivalent to one-half of each TWA.

The principal source of information for this analysis is a study conducted for OSHA by PEI Associates, Inc., Technological Feasibility and Economic Impact Assessment of a Proposed Revision to the Glycol Ethers Standards, 1990, OSHA Docket, Ex. 5–164. A major source for PEI's report was an earlier study conducted for OSHA by Meridian Research, Inc., Industry Profile and Analysis of Processes, Occupational Exposures, and Substitutes for Glycol Ethers, 1987, OSHA Docket, Ex. 5–108.

PEI conducted three major data collection activities:

(1) All available monitoring data from work establishments were collected, categorized, and tabulated. These historical data were obtained primarily from OSHA, the National Institute for Occupational Safety and Health (NIOSH), and a study that PEI had conducted previously for EPA. Only post-1984 data were used because of a change in the limit of detection in the glycol ether sampling and analytical method in 1984.

(2) A joint PEI/NIOSH team visited nine facilities selected to be representative of the industries currently manufacturing, processing, and/or using at least one of the glycol ethers under consideration. Information was obtained at each site regarding processes, use of engineering and work practice controls and personal protective equipment (PPE), characteristics of the exposed work force, medical and industrial hygiene programs, and experience with substitute chemicals. To characterize full-shift and peak exposures in each job category with potential for exposure to glycol ethers, NIOSH also sampled at least one shift at each site.

(3) PEI mailed a survey questionnaire to approximately 2500 randomly selected potential users of glycol ethers in order to characterize the following:

—Extent of usage of glycol ethers in different industry segments.
—Process operations.
—Demographics of potentially exposed workers.
—Engineering and work practice controls currently in place and those necessary to achieve specified exposure levels.
—PPE currently in place and PPE necessary to achieve specified exposure levels.
—Financial characteristics of the industries.
—Experience with potential substitutes for glycol ethers.

Usable responses were obtained from 1,424 facilities through the mail questionnaire and subsequent telephone followup. Of the establishments submitting usable responses, 70 percent had never handled any of the four glycol ethers which are the subjects of this rulemaking, 13 percent had discontinued handling them, and 17 percent currently handled at least one of them.

Based primarily on data from the survey questionnaire and site visits, PEI developed model plants to represent average establishments in each industry category. The model plants were used to develop an exposure profile and estimate compliance costs. The number of model plants developed for each industry category depended on market structure and work force characteristics, including exposures. PEI also developed model plants for small businesses.

Industry Profile

The estimated 1987 domestic net sales (i.e., production less inventory changes) of the four glycol ethers amounted to 286 million pounds. The most widely distributed chemical was 2–EE (149 million pounds in 1987), followed by 2–EEA (85 million pounds), 2–ME (51 million pounds), and 2–MEA (1 million pounds). The largest consumption category for these chemicals was export (45 percent of sales), followed by use as chemical intermediates (24 percent of sales). The remaining 31 percent of sales of the glycol ethers was primarily for solvent use.

Table VIII–1 presents estimates of the number of glycol ether-using establishments covered by the proposed regulation, percent of small establishments, total employment, and number of exposed workers. Although jet fuel additives consume much 2–ME, they are excluded from this analysis because they are used almost exclusively in military applications. All other miscellaneous uses not addressed in this analysis are estimated to account for less than 1 percent of total usage of the glycol ethers.

Sales of the four glycol ethers have declined steadily over the past decade, probably as a result of increased concern over environmental and health issues.

TABLE VIII–1.—GLYCOL ETHERS INDUSTRY PROFILE

Industry category	Estimated number of establishments using glycol ethers	Percent small establishments*	Estimated total employment	Estimated exposed workers		
				Total	Males	Females under age 45
Manufacture of glycol ethers	4	0	5,120	344	320	24
Manufacture of chemical intermediates	5	0	44,500	80	60	20
Formulation of paints and coatings	183	57	13,176	2,745	2,562	183
Aircraft manufacturing/repainting	54	NA	244,782	1,998	1,998	0
Motor vehicle body manufacturing	16	57	69,920	736	736	0
Other metal applications	366	55	37,698	1,464	1,464	0
Automobile refinishing	8,777	75	43,885	26,331	26,331	0
Wood furniture manufacturing	370	67	27,750	8,140	3,330	2,590
Formulation of inks	86	67	5,848	946	860	86
Application of inks	86	89	11,180	946	516	430
Semiconductor manufacturing	142	54	47,428	1,704	710	852

TABLE VIII–1.—GLYCOL ETHERS INDUSTRY PROFILE—Continued

Industry category	Estimated number of establishments using glycol ethers	Percent small establishments*	Estimated total employment	Estimated exposed workers		
				Total	Males	Females under age 45
Printed circuit board manufacturing	44	61	7,392	352	220	132
Total	10,133		558,679	45,786	39,107	4,317

*Establishments with fewer than 20 employees.
NA=Not Available.
Source: PEI.

Manufacture of Glycol Ethers

Four establishments operated by three companies (Union Carbide, Eastman Chemical, and Oxy Petrochemical) currently produce at least one of the four glycol ethers. (In 1990, Union Carbide, the sole producer of 2–MEA, discontinued its manufacture and sale. A submission by the Chemical Manufacturers Association (CMA) to OSHA reported that "only a very few users" were working off inventories of 2–MEA, OSHA Docket, Ex. 3–002.) Because of similarities in the production processes, plant capacity can be shifted from one of the four chemicals to another, as well as to other ethylene oxide derivatives.

Manufacture of Chemical Intermediates

In addition to the plants that produce 2–EEA and 2–MEA, four major producers of chemicals use 2–EEA or 2–MEA as an intermediate in five other plants: Eastman Chemical, Reichold Chemical, CPS Chemical, and Sartomer Company. The major use of 2–EE (86 percent of domestic consumption) is as a chemical intermediate. Its principal product is 2–EEA; 2–EE is also used as a chemical intermediate in the manufacture of ethoxyethyl methacrylate, ethoxyethyl ricinoleate, ethoxyethyl acrylate, and di(ethoxyethyl) phthalate.

The use of 2–ME as an intermediate to produce other chemicals, including 2–MEA, accounts for 24 percent of its domestic consumption. These chemicals also include di(2-methoxyethyl) phthalate (DEMP), which is used as a plasticizer in the manufacture of 35-mm film, vinyl-tris-B-methoxyethoxysilane, methoxyethylacrylate, 2-methoxyethyl silicate, methoxyethyl oleate, methoxyethyl acetyl ricinoleate, methoxyethyl ricinoleate, and methoxyethyl stearate.

Formulation of Paints and Coatings

Glycol ethers are used in polymerization, as a medium for pigment dispersion, and as a "let down" solvent to achieve desired coating application properties. They are used primarily in the formulation of Original Equipment Manufacture (OEM) paints for automobiles, metal furniture, and appliances and also as special-purpose coatings. The formulation of paints and coatings involves mixing glycol ethers and other solvents with resins, pigments, or base materials.

Aircraft Manufacturing/Repainting

Glycol ethers are contained in aircraft top coat paint and sometimes in paint additives. Aircraft are generally repainted every 4 to 5 years. Painting takes place in open bays in aircraft hangars, where the paints are applied by brush, roller, airless spray, or electrostatic spray. Smaller parts and support equipment are usually spray painted in a separate paint shop.

Motor Vehicle Body Manufacturing

Glycol ethers can be contained in electrocoat primers that are initially applied for corrosion protection, as well as in other primer and exterior color coatings. Electrocoats are applied to vehicle bodies by using conveyors to dip them into tanks containing the primer. Other primers and paints are generally applied by electrostatic guns in spray booths equipped with downdraft flow-through ventilation. Automatic spray guns are used to apply the primer coats on passenger car bodies.

Other Metal Applications

This industry category includes miscellaneous other establishments at which paints and coatings are spray painted onto metal:

- SIC 2514 (Metal Household Furniture)
- SIC 2522 (Metal Office Furniture)
- SIC 3411 (Metal Cans)
- SIC 3412 (Metal Shipping Barrels, Drums, Kegs, and Pails)
- SIC 34421 (Metal Doors, Sash and Frames Except Storm Doors)
- SIC 34699 (Other Stamped and Pressed Metal Products)
- SIC 3523 (Farm Machinery and Equipment)
- SIC 3563 (Air and Gas Compressors)
- SIC 3631 (Household Cooking Equipment)
- SIC 3632 (Household Refrigerators and Home and Farm Freezers)
- SIC 3714 (Motor Vehicle Parts and Accessories)

Automobile Refinishing

Some paints and coatings used in automobile refinishing contain small quantities of glycol ethers. Some spray painting operations take place in a spray booth, while other painting operations occur in the general shop environment.

Wood Furniture Manufacturing

Glycol ethers are used in some wood strains or lacquers because of their solvent properties. In general, the stains or lacquers are applied by spraying in booths, followed by additional hand-padding operations. The stains or lacquers may also be blended prior to the finishing operations.

Formulation of Inks

Glycol ethers are used as a solvent in inks, primarily in gravure, flexographic, and screen inks. They serve as co-solvents for ink resins and dyes in water-based inks. They are also used as solvents for textile printing and as active solvents to dissolve organic dyes. Glycol ethers are used in inks that are typically manufactured in small batches, to achieve the desired viscosity.

Application of Inks

Glycol ethers are used as ink solvents and thinners in silk screen, flexographic, and gravure printing. In silk screening, solvent-based inks are spread over and squeezed through the pores of a screen to print an image. After printing, the screen is washed by hand with a lacquer thinner. In flexographic printing, the plate with the image area is fastened to a cylinder, which is then immersed into the ink-filled reservoir of a letterpress. The image is transferred from the raised surface of the plate to a

flexible substrate. In gravure printing, an image is etched into the surface of a cylinder, which is then immersed in the reservoir of a web rotogravure or sheet-fed press. In a high-speed process, ink is transferred from the cylinder to the substrate by a capillary action. Printing operators may be exposed to glycol ethers during blending of inks and cleaning of printing press rollers.

Semiconductor Manufacturing

Glycol ethers are used primarily as photoresists in the photolithographic portion of the wafer manufacturing process. The photoresist may be applied to the silicon wafer either manually by syringe or in an automated system that pumps the solution directly from storage to a spin coater. Glycol ethers may also be used as components of the inks used for marking the completed devices with a part number. The cleaning compounds used to dissolve the epoxy resin that mounts wafers to polishing fixtures also may contain glycol ethers.

Printed Circuit Board Manufacturing

Glycol ethers are used as a solvent in epoxy resin that is laminated onto fiberglass reinforcement. It is normally applied in enclosed spray chambers. Glycol ethers also may be present in formulations used for marking, bonding, and labeling the printed circuit boards.

Worker Exposures

Workers may be exposed to glycol ethers in many of the activities in the 12 industry categories evaluated in this study. Table VIII–2 lists the principal job categories in each industry category and the current weighted plant geometric mean (GM) exposures and weighted plant arithmetic mean (AM) exposures for each glycol ether.

Geometric means are usually the preferred measure of expressing central tendency for observations which are log-normally distributed. By design, the formula for geometric means suppresses the value of outlying data observations. When used in combination with prescriptions for engineering controls to reduce employee exposure levels, for example, it makes the case for technological feasibility clearer by using geometric means (compared with a single arithmetic mean calculation, in which the values of outlyers are not suppressed).

TABLE VIII–2.—EXPOSURE CHARACTERIZATION BY INDUSTRY AND JOB CATEGORY

Industry category and job category	Estimated number of exposed workers	Weighted plant geometric mean baseline exposure, PPM				Weighted plant arithmetic mean baseline exposure, PPM			
		2–ME*	2–MEA*	2–EE*	2–EEA	2–ME*	2–MEA*	2–EE*	2–EEA
Manufacture of glycol ethers:									
All workers	344								
Loading technician	96	0.046	N/A	0.022	0.027	0.151	(a)	0.047	0.043
Process technician	72	0.032	N/A	0.092	0.049	0.044	(a)	0.177	0.077
Lab technician	68	0.023	N/A	0.015	0.023	0.027	(a)	0.017	0.031
Maintenance technician	92	(b)	N/A	0.057	0.058	(b)	(c)	0.079	0.116
Supervisor	16	0.017	N/A	0.026	0.017	0.017	(a)	0.047	0.017
Manufacture of chemical intermediates**:									
All workers	80								
Loading technician	50	0.046	N/A	0.022	N/A	0.151	N/A	0.047	N/A
Process technician	10	0.032	N/A	0.092	N/A	0.044	N/A	0.177	N/A
Lab technician	10	0.023	N/A	0.015	N/A	0.027	N/A	0.017	N/A
Maintenance technician	10	(b)	N/A	0.057	N/A	(b)	N/A	0.079	N/A
Formulation of paints and coatings:									
All workers	2,745								
Packer	732	(b)	(c)	1.249	1.370	(b)	(c)	1.980	3.643
Batchmaker	1,464	0.354	(a)	0.673	0.870	0.906	(a)	0.714	1.072
Lab technician	549	0.215	(a)	(d)	0.107	0.215	(a)	(d)	0.118
Aircraft manufacturing/repainting:									
Spray painter	1,998	N/A	N/A	(d)	3.781	N/A	N/A	(d)	7.916
Motor vehicle body manufacturing:									
All workers	736								
Spray painter	576	N/A	N/A	(d)	0.005	N/A	N/A	(d)	0.035
Dip painter	64	N/A	N/A	(d)	0.012	N/A	N/A	(d)	0.013
Paint mixer	96	N/A	N/A	(d)	0.010	N/A	N/A	(d)	0.227
Other metal applications:									
Painter	1,464	0.218	0.104	0.052	0.072	0.275	0.364	0.111	0.397
Automobile refinishing***:									
Spray painter	26,331	0.218	0.104	0.052	0.071	0.275	0.364	0.111	0.395
Wood furniture manufacturing:									
Finisher	8,140	(e)	N/A	(d)	0.656	(e)	N/A	(d)	0.830
Forumlation of inks****									
All workers	946								
Packer	86	(b)	(c)	1.249	1.370	(b)	(c)	1.980	3.643
Batchmaker	602	0.354	(a)	0.673	0.870	0.906	(a)	0.714	1.072
Lab technician	258	0.215	(a)	(d)	0.107	0.215	(a)	(d)	0.118
Application of inks:									
Printing operator	946	0.035	(a)	0.056	0.038	0.043	(a)	2.441	2.071
Semiconductor manufacturing:									
Technician	1,704	0.020	(a)	(d)	0.011	0.022	(a)	(d)	0.048
Printed circuit board manufacturing:									
All workers	352								
Coater	176	0.078	(a)	0.017	0.012	0.378	(a)	0.031	0.030
Lab technician	132	(e)	(c)	(d)	0.134	(e)	(c)	(d)	0.217

TABLE VIII–2.—EXPOSURE CHARACTERIZATION BY INDUSTRY AND JOB CATEGORY—Continued

Industry category and job category	Estimated number of exposed workers	Weighted plant geometric mean baseline exposure, PPM				Weighted plant arithmetic mean baseline exposure, PPM			
		2–ME*	2–MEA*	2–EE*	2–EEA	2–ME*	2–MEA*	2–EE*	2–EEA
Manufacturing specialist	44	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	45,786								

*If no monitoring data were available for a substance, PEI assumed that exposures were equal to those for similar glycol ether in the same industry and job category: (a) indicates 2–MEA exposures were assumed to equal 2–ME exposures; (b) indicates 2–ME exposures were assumed to equal 2–EE exposures; (c) indicates 2–MEA exposures were assumed to equal 2–EEA exposures; (d) indicates 2–EE exposures were assumed to equal 2–EEA exposures; (e) indicates 2–ME exposures were assumed to equal 2–EEA exposures.
** Baseline exposures were assumed to equal those for Manufacture of Glycol Ethers.
*** Baseline exposures were assumed to equal those for Metal Applications.
**** Baseline exposures were assumed to equal those for Formulation of Paints and Coatings.
N/A = Not Applicable.
Source: PEI.

But there is a problem for health analysis when the traditional geometric mean representation is used to categorize employee exposures to hazardous substances. Epidemiological and animal studies often document or suggest the greater vulnerability of the human organism to short term high dose exposures to hazardous substances, as opposed to continual, routine exposure at lower doses. In statistical terms, the intermittent, infrequent, high dose exposures represent outlyers in the data. The values which are potentially most threatening or harmful to humans are deliberately suppressed when a geometric mean is used to categorize the data.

In policy terms, because the underlying distribution is normally distributed (lognormal) and susceptible to a geometric mean representation, does not require that this measure of central tendency be used for health benefits calculations. In fact, to the extent that it camouflages or distracts attention from potentially dangerous short term exposure conditions, it probably should not be used for such calculations or used only in combination with information on the distribution of the outlying data. In this analysis, geometric mean analysis is supplemented with arithmetic mean data which better reflect the influence of the outlying observations. In most industry/job categories, average exposures are already below the proposed TWAs (although it is possible that individual exposures may exceed the proposed levels). The lowest average exposures occur during the manufacture of glycol ethers and in the manufacture of semiconductors and printed circuit boards.

There are a total of 45,786 exposed workers in 10,133 establishments in the 12 industry categories. The largest number of exposed workers occurs in the automobile refinishing category, which also has the lowest number of exposed workers per establishment.

Benefits Analysis

The benefits of reducing employee exposure to glycol ethers are estimated using incidence data from animal studies and worker exposure data. The levels above which adverse health effects are likely to occur in humans are developed from the animal studies using an uncertainty factor of 100; that is, each "no observed effect level" (NOEL) observed in the animal studies is reduced by a factor of 100 to yield the corresponding human exposure level.

OSHA's analysis of the benefits that are likely to occur as a result of limiting exposures to glycol ethers does not consider decreases in adverse hematological effects and in behavioral abnormalities in the offspring of exposed adults. Also, OSHA's analysis relies on animal studies that use inhalation as the route of exposure; the dosages of glycol ethers administered in inhalation studies are more readily quantifiable than those in absorption or ingestion studies and the majority of job categories considered at risk involve the inhalation of glycol ether vapors. However, dermal workplace exposures do occur, but these were not quantified. Thus, the benefits in this analysis are underestimated. The health effects estimated in this analysis and shown in Table VIII–3 are the estimated incidence of developmental effects of glycol ether exposure on the pregnancies of females under age 45 and the estimated incidence of adverse reproductive effects in male employees. The benefits were calculated assuming a 45 year working lifetime for both sexes. No effort is directed at delineating the types of fetal defects avoided. Since both 2–ME and 2–MEA are metabolized in humans to methoxyacetic acid, the benefits of limiting exposure to these compounds are displayed together. Similarly, the benefits associated with reductions in 2–EE and 2–EEA exposures are displayed together.

TABLE VIII–3.—PROJECTED BENEFITS OF PROPOSED STANDARD

Effects	Number of workers exposed above proposed PEL	Annual number of adverse effects or cases avoided
Developmental effects/female workers aged 18 to 45:		
From exposure to 2–ME/2–MEA	157	0.4 to 4.5.
From exposure to 2–EE/2–EEA	573	1.7 to 8.0.
Total developmental effects	730	2.0 to 12.4.
Reproductive cases/male workers:		
From exposure to 2–ME/2–MEA	2,604	200 to 490.

TABLE VIII–3.—PROJECTED BENEFITS OF PROPOSED STANDARD—Continued

Effects	Number of workers exposed above proposed PEL	Annual number of adverse effects or cases avoided
From exposure to 2–EE/2–EEA	4,294	63 to 611.
Total reproductive cases	6,898	262 to 1,101.

Note: Other benefits have not been quantified: reductions in hematological effects, behavioral abnormalities in offspring, and effects of dermal exposure.

Sources: PEI, Office of Regulatory Analysis.

An estimated total of 2.0 to 12.4 adverse effects on fetal development per year would be avoided under the proposed standard (TWAs of 0.1 ppm for 2–ME and 2–MEA; 0.5 ppm for 2–EE and 2–EEA). These adverse developmental effects would be avoided principally in ink application, electronics, formulation of paints and coatings, and wood furniture manufacturing.

For male workers, an estimated 262 to 1,101 adverse reproductive conditions (reduced testes size, reduced sperm count and/or other impairment of reproductive functioning) would be avoided per year under the proposed standard. The impairments will persist in exposed workers for as long as they are exposed. New cases will develop among new workers as, over time, work forces turn over and new individuals become exposed. These benefits would occur principally in automobile refinishing, aircraft manufacturing and repainting, and formulation of paints and coatings.

Technological Feasibility

OSHA has preliminarily determined that the proposed standard is technologically feasible. OSHA determines that the proposed TWAs are capable of being achieved in most of the operations most of the time by means of engineering and work practice controls. In certain situations for a very limited number of employees (i.e., under 2% of all full-time equivalent (FTE) workers exposed to glycol ethers in the industries involved) supplementary respiratory protection may be necessary. In most instances, when the 8-hour TWA has been met through engineering controls, no use of respirators would be necessary to meet the 15-minute EL.

For example, in auto refinishing, which employs an estimated 26,331 exposed workers, who constitute 58% of all workers exposed to glycol ethers, OSHA estimates that the exposure levels for 98% of these workers can be reduced to or below the proposed TWAs and ELs by means of substitution, engineering, and work practice controls. OSHA estimates that, on an FTE basis, fewer than 1% of all currently exposed auto refinishing workers would require respiratory protection. In addition, OSHA preliminarily determines that exposure levels, as measured by geometric means, can be controlled to or below the proposed 8-hour TWAs solely by means of engineering and work practice controls in a vast majority of operations across the affected industries. Specifically, geometric mean exposure levels can be controlled to or below the TWAs in 16 of 22 2–ME operations, in 8 of 12 2–MEA operations, in 25 of 26 2–EE operations, and in 17 of 18 2–EEA operations.

The best evidence of technological feasibility is that the proposed levels are already being achieved in the affected industries with current controls. Across industries using glycol ethers, geometric mean exposures are already at or below the proposed TWAs in a majority of operations. These exposure data suggest that relatively few additional controls would be necessary to consistently reduce 8-hour exposures and peak exposures to or below the proposed standard.

In order to assess technological feasibility, PEI considered substitution of other solvents for glycol ethers, other engineering controls, personal protective equipment (PPE), and administrative measures, such as inspections to detect leaks in areas where glycol ethers are handled. PEI applied specific engineering or other controls until the predicted exposure level for each industry/job category was reduced to no more than one-half of each of the proposed alternative TWAs for each glycol ether. The exposure level for determining when additional controls would be necessary was based on weighted plant geometric mean exposures or weighted plant arithmetic mean exposures. The purpose of conducting the technological feasibility analysis using each of the two types of means was to determine if the costs and exposure levels differ significantly with the varying degrees of engineering controls and respirators necessitated by the two different approaches. In most cases, there is little difference.

The technological feasibility of meeting ELs that were equivalent to five times each TWA was assessed separately. During its site visits, PEI was able to collect both short-term and full-shift monitoring data on some individuals whose jobs involved the potential for peak exposures. PEI assumed that job categories with TWA levels that are currently below one-half the proposed TWA would not experience excursions above the EL during normal operations. In establishments that required only engineering controls to meet a proposed TWA, the use of ASRs would be required for about one-quarter of the workers in job categories that had a potential for peak exposures. With both respirators and engineering controls, no additional requirements were assumed to be necessary to meet the EL.

Engineering Controls

The systems which PEI specified were based on American Conference of Governmental Industrial Hygienists (ACGIH) recommendations for good engineering practice. They are conventional, readily available, and in use today. The primary engineering control recommended for most categories was local exhaust ventilation (LEV). Process enclosures, which provide greater exposure control than hoods, were recommended for some operations.

The following incremental engineering controls are considered technically feasible for the industry categories in this study:

- Manufacture of Glycol Ethers:
  - —Closed-loop transfer for loading operations
  - —Enclosed sampling systems with sample coolers
  - —Laboratory hood in quality control (QC) laboratory
- Manufacture of Chemical Intermediates:
  - —Automated drum filling station with LEV
  - —Enclosed sampling systems with sample coolers
  - —Laboratory hood in QC laboratory
- Formulation of Paints and Coatings:

—Closed-loop transfer system
—LEV on packaging line
—LEV on mixing tank
—Drum hoist/scale (small formulator plants)
—Laboratory hood in QC and R&D laboratories
- Aircraft Manufacturing/Repainting:
—Paint spray booth for small parts
—Airless spray guns with "cup collars"
- Motor Vehicle Body Manufacturing:
—LEV on paint mixing tank
—Paint spray booth
- Other Metal Applications:
—Paint spray booth
- Automobile Refinishing:
—Paint spray booth
- Wood Furniture Manufacturing:
—Paint spray booth
- Formulation of Inks:
—Closed-loop transfer system
—LEV on packaging line
—LEV on mixing tank
—Drum hoist/scale (small formulator plants)
—Laboratory hood in QC and R&D laboratories
- Application of Inks:
—LEV at press rollers and inkwell
—Process enclosure of press
- Semiconductor Manufacturing:
—LEV at the application of photoresist
—Process enclosure at the application of photoresist
- Printed Circuit Board Manufacturing:
—LEV on blending/mixing operations
—LEV on masking operation
—LEV on coating operation
—Process enclosure of coating operation

Personal Protective Equipment

When the implementation of engineering controls did not reduce the predicted exposures for a job category to below the target level, ASRs were prescribed. Cartridge respirators are considered inadequate because the odor thresholds of the four glycol ethers do not allow workers to adequately detect breakthrough at concentrations as low as the proposed regulatory alternatives.

Dermal exposure can be reduced through gloves, protective clothing, and eye protection. Evidence indicates that butyl rubber gloves may be appropriate for operations that involve heavy handling and high potential for direct contact. Neoprene gloves may be appropriate for some production-related activities, such as loading rail cars and taking quality control samples. Latex gloves may be appropriate for operations that involve light handling and only occasional contact.

Substitution

Substitution of other chemicals is an option for eliminating exposure to 2–ME, 2–MEA, 2–EE, and 2–EEA, although no single "drop in" substitute exists for all applications. The most common substitutes, according to PEI's survey, are propylene glycol monomethyl ether (PGME), ethylene glycol monobutyl ether (2–BE), ethylene glycol monoproply ether (2–PE), and their acetates. Together, these six chemicals account for almost 90 percent of reported substitutions. Evidence suggests that they would pose a lower hazard in the workplace than the four glycol ethers being considered in this standard.

A substitution rate was assumed for each industry category based on the availability, suitability, and cost of substitutes; the capital and operating and maintenance (O&M) costs of compliance techniques; and the industry category's position in the chain of distribution (i.e., its flexibility in forcing or responding to substitution). The rate of substitution is assumed to be the same for the geometric mean and arithmetic mean exposure approaches. The following substitution rates were developed:

- Manufacture of Glycol Ethers and Intermediates: No substitution; export and chemical intermediate uses represent large proportions of total production of all four glycol ethers.
- Formulation of Paints and Coatings: 90%; most formulators already have or are developing substitutes.
- Aircraft Manufacturing/Repainting: 70%.
- Motor Vehicle Body Manufacturing: 70%.
- Other Metal Applications: 70%.
- Automobile Refinishing: 90%.
- Wood Furniture Manufacturing: 90%; use of glycol ethers is already dropping rapidly.
- Formulation and Application of Inks: 90%; much substitution has already taken place.
- Semiconductors: 10%; acceptable substitutions are not generally available.
- Printed Circuit Boards: 50%; acceptable substitutes are generally available.

Exposure Reduction

Tables VIII–4 through VIII–7 show exposure reductions for each glycol ether after applying engineering controls. In many industry/job categories, no engineering controls would be needed to meet the proposed TWAs, although respirators might be needed to meet the proposed ELs.

Of the workers who are currently exposed to glycol ethers, only five percent (under either the geometric mean approach or the arithmetic mean approach) would require air-supplied respirators. The highest percentages of workers who would require ASRs are found in aircraft manufacturing/repainting and "other" metal applications. On a full-time equivalent basis, only two percent (under either approach) would require ASRs. (See Tables VIII–8 and VIII–9.)

TABLE VIII–4.—EXPOSURE REDUCTIONS FOR 2–ME AFTER APPLYING ENGINEERING CONTROLS

Industry category and job category	Current utilization of engineering controls (percent)	Geometric mean approach		Arithmetic mean approach	
		Baseline weighted plant geometric mean exposure (ppm)	Average exposures after applying engineering controls (ppm)	Baseline weighted plant arithmetic mean exposure (ppm)	Average exposures after applying engineering controls (ppm)
Manufacture of glycol ethers:					
Loading technician	50	0.046	NC	0.151	0.008
Process technician	90	0.032	NC	0.044	NC
Laboratory technician	90	0.023	NC	0.027	NC
Maintenance technician	0	*0.057	NC	*0.079	NC
Supervisor	0	0.017	NC	0.017	NC
Manufacture of chemical intermediates:					
Loading technician	90	0.046	NC	0.151	0.027
Process technician	90	0.032	NC	0.044	NC

TABLE VIII–4.—EXPOSURE REDUCTIONS FOR 2–ME AFTER APPLYING ENGINEERING CONTROLS—Continued

Industry category and job category	Current utilization of engineering controls (percent)	Geometric mean approach		Arithmetic mean approach	
		Baseline weighted plant geometric mean exposure (ppm)	Average exposures after applying engineering controls (ppm)	Baseline weighted plant arithmetic mean exposure (ppm)	Average exposures after applying engineering controls (ppm)
Laboratory technician	90	0.023	NC	0.027	NC
Maintenance technician	0	*0.057	NC	*0.079	NC
Formulation of paints and coatings:					
Packer	10	*1.249	0.250	*1.980	0.396
Batchmaker	70	0.354	0.223	0.906	0.289
Laboratory technician	70	0.215	0.019	0.215	0.025
Other metal applications:					
Painter	90	0.218	0.212	0.275	0.242
Auto refinishing:					
Spray painter	67	0.218	0.060	0.275	0.110
Wood furniture manufacturing:					
Finisher	90	**0.656	0.485	**0.830	0.490
Formulation of inks:					
Packer	20	*1.249	0.431	*1.980	0.532
Batchmaker	80	0.354	0.223	0.906	0.289
Laboratory technician	70	0.215	0.019	0.215	0.025
Application of inks:					
Printing operator	63	0.035	NC	0.043	NC
Semiconductor manufacturing:					
Technician	82	0.020	NC	0.022	NC
Printed circuit board manufacturing:					
Manufacturing specialist	63	0.078	0.021	0.378	0.054
Coater	63	**0.134	0.027	**0.217	0.043

NC = No change from baseline; no use of engineering controls (although respirators may be required to meet EL).
* No data on baseline 8-hour TWA exposure to 2–ME available for this job category. Data for 2–EEA were used.
** No data on baseline 8-hour TWA exposure to 2–ME available for this job category. Data for 2–EEA were used.

Source: PEI.

TABLE VIII–5.—EXPOSURE REDUCTIONS FOR 2–MEA AFTER APPLYING ENGINEERING CONTROLS

Industry category and job category	Current utilization of engineering controls (percent)	Geometric mean approach		Arithmetic mean approach	
		Baseline weighted plant geometric mean exposure (PPM)	Average exposures after applying engineering controls (PPM)	Baseline weighted plant arithmetic mean exposure (PPM)	Average exposures after applying engineering controls (PPM)
Formulation of paints and coatings:					
Packer	10	**1.370	0.274	**3.643	0.729
Batchmaker	70	*0.354	0.223	*0.906	0.289
Laboratory technician	70	*0.215	0.019	*0.215	0.025
Other metal applications:					
Painter	90	0.104	0.043	0.364	0.233
Auto refinishing:					
Spray painter	67	0.104	0.043	0.364	0.233
Formulation of inks:					
Packer	20	**1.370	0.330	**3.643	0.757
Batchmaker	80	*0.354	0.223	*0.906	0.532
Laboratory technician	70	*0.215	0.019	*0.215	0.025
Application of inks:					
Printing operator	63	*0.035	NC	*0.043	NC
Semiconductor manufacturing:					
Technician	82	*0.020	NC	*0.022	NC
Printed circuit board manufacturing:					
Manufacturing specialist	63	*0.078	0.021	*0.378	0.054
Coater	63	**0.134	0.027	**0.217	0.043

NC=No change from baseline; no use of engineering controls (although respirators may be required to meet EL).
* No monitoring data on baseline 8-hour TWA exposure to 2–MEA were available. Data for 2–ME were used.
** No monitoring data on baseline 8-hour TWA exposure to 2–MEA were available. Data for 2–EEA were used.

Source: PEI.

TABLE VIII–6.—EXPOSURE REDUCTIONS FOR 2–EE AFTER APPLYING ENGINEERING CONTROLS

Industry category and job category	Current utilization of engineering controls (percent)	Geometric mean approach		Arithmetic mean approach	
		Baseline weighted plant geometric mean exposure (PPM)	Average exposures after applying engineering controls (PPM)	Baseline weighted plant arithmetic mean exposure (PPM)	Average exposures after applying engineering controls (PPM)
Manufacture of glycol ethers:					
Loading technician	50	0.022	NC	0.047	NC
Process technician	90	0.092	0.049	0.177	0.119
Laboratory technician	90	0.015	NC	0.017	NC
Maintenance technician	0	0.057	NC	0.079	NC
Supervisor	0	0.026	NC	0.047	NC
Manufacture of chemical intermediates:					
Loading technician	90	0.022	NC	0.047	NC
Process technician	90	0.092	0.049	0.177	0.119
Laboratory technician	90	0.015	NC	0.017	NC
Maintenance technician	0	0.057	NC	0.079	NC
Formulation of paints and coatings:					
Packer	10	1.249	0.250	1.980	0.396
Batchmaker	70	0.673	0.324	0.714	0.361
Laboratory technician	70	*0.107	0.041	*0.118	0.056
Aircraft manufacturing/repainting:					
Spray painter	67	*3.781	1.569	*7.916	2.160
Motor vehicle body manufacturing:					
Spray painter	90	*0.005	NC	*0.035	NC
Dip painter	90	*0.012	NC	*0.013	NC
Paint mixer	50	*0.010	NC	*0.227	0.050
Other metal applications:					
Painter	90	0.052	0.051	0.111	0.098
Auto refinishing:					
Spray painter	67	0.052	0.048	0.111	0.080
Wood furniture manufacturing:					
Finisher	90	*0.656	0.485	*0.830	0.490
Formulation of inks:					
Packer	20	1.249	0.431	1.980	0.532
Batchmaker	80	0.673	0.324	0.714	0.361
Laboratory technician	70	*0.107	0.041	*0.118	0.056
Application of inks:					
Printing operator	63	0.056	0.046	2.441	NC
Semiconductor Manufacturing:					
Technician	82	*0.011	NC	*0.048	NC
Printed circuit board manufacturing:					
Manufacturing specialist	63	0.017	NC	0.031	NC
Coater	63	*0.134	0.027	*0.217	0.043

NC = No change from baseline; no use of engineering controls (although respirators may be required to meet EL).
* No data on baseline 8-hour TWA exposure 2–EE available for this job category. Data for 2–EEA were used.
Source: PEI.

TABLE VIII–7.—EXPOSURE REDUCTIONS FOR 2–EEA AFTER APPLYING ENGINEERING CONTROLS

Industry category and job category	Current utilization of engineering controls (percent)	Geometric mean approach		Arithmetic mean approach	
		Baseline weighted plant geometric mean exposure (PPM)	Average exposures after applying engineering controls (PPM)	Baseline weighted plant arithmetic mean exposure (PPM)	Average exposures after applying engineering controls (PPM)
Manufacture of glycol ethers:					
Loading technician	50	0.027	NC	0.043	NC
Process technician	90	0.049	NC	0.077	0.062
Laboratory technician	90	0.023	NC	0.031	NC
Maintenance technician	0	0.058	NC	0.116	NC
Supervisor	0	0.017	NC	0.017	NC
Formulation of paints and coatings:					
Packer	10	1.370	0.274	3.643	0.729
Batchmaker	70	0.870	0.450	1.072	0.581
Laboratory technician	70	0.107	0.041	0.118	0.056
Aircraft manufacturing/repainting:					
Spray painter	67	3.781	1.569	7.916	2.160
Other metal applications:					
Painter	90	0.072	0.063	0.397	0.210

TABLE VIII–7.—EXPOSURE REDUCTIONS FOR 2-EEA AFTER APPLYING ENGINEERING CONTROLS—Continued

Industry category and job category	Current utilization of engineering controls (percent)	Geometric mean approach		Arithmetic mean approach	
		Baseline weighted plant geometric mean exposure (PPM)	Average exposures after applying engineering controls (PPM)	Baseline weighted plant arithmetic mean exposure (PPM)	Average exposures after applying engineering controls (PPM)
Wood furniture manufacturing:					
Finisher	90	0.656	0.485	0.830	0.490
Formulation of inks:					
Packer	20	1.370	0.330	3.643	0.757
Batchmaker	60	0.870	0.450	1.072	0.581
Laboratory technician	70	0.107	0.041	0.118	0.056
Application of inks:					
Printing operator	63	0.038	NC	2.071	0.111
Semiconductor manufacturing:					
Technician	82	0.011	NC	0.048	NC
Printed circuit board manufacturing					
Mfg specialist	63	0.012	NC	0.030	NC
Coater	63	0.134	0.027	0.217	0.043

NC=No change from baseline; no use of engineering controls (although respirators may be required to meet EL).
Source: PEI.

TABLE VIII–8.—METHODS OF CONTROLLING EMPLOYEE EXPOSURES (GEOMETRIC MEAN APPROACH)

Industry category	Estimated total exposed workers	Estimated number of workers with exposures reduced to TWA by substitution or engineering controls	Estimated number of workers in air-supplied respirators due to standard	Percent of total exposed workers in ASRs due to standard	Estimated number of full-time equivalent workers in ASRs due to standard	FTE workers in ASRs due to standard as percent of total workers
Manufacture of glycol ethers	334	330	14	4	7	2
Manufacture of chemical intermediates	80	80	0	0	0	0
Formulation of paints and coatings	2,475	2,637	108	4	26	1
Aircraft manufacturing/repainting	1,998	1,488	510	26	255	13
Motor vehicle body manufacturing	736	736	0	0	0	0
Other metal applications	1,464	1,243	221	15	221	15
Automobile refinishing	26,331	25,893	438	2	54	*0
Wood furniture manufacturing	8,140	7,384	756	9	152	2
Formulation of inks	946	894	52	5	20	2
Application of inks	946	946	0	0	0	0
Semiconductor manufacturing	1,704	1,704	0	0	0	0
Printed circuit board manufacturing	352	306	46	13	12	4
Total	45,786	43,641	2,145	5	795	2

*More than zero, but less than 0.5%.
Source: PEI.

TABLE VIII–9.—METHODS OF CONTROLLING EMPLOYEE EXPOSURES (ARITHMETIC MEAN APPROACH)

Industry category	Estimated total exposed workers	Estimated number of workers with exposures reduced to TWA by substitution or engineering controls	Estimated number of workers in air-supplied respirators due to standard	Percent of total exposed workers in ASRs due to standard	Estimated number of full-time equivalent workers in ASRs due to standard	FTE workers in ASRs due to standard as percent of total workers
Manufacture of glycol ethers	344	315	29	8	10	3
Manufacture of chemical intermediates	80	68	12	15	3	4
Formulation of paints and coatings	2,745	2,637	108	4	26	1
Aircraft manufacturing/repainting	1,998	1,488	510	26	255	13
Motor vehicle body manufacturing	736	736	0	0	0	0
Other metal applications	1,464	1,216	248	17	248	17
Automobile refinishing	26,331	25,600	731	3	91	*0
Wood furniture manufacturing	8,140	7,384	756	9	152	2
Formulation of inks	946	894	52	5	20	2
Application of inks	946	930	16	2	5	1
Semiconductor manufacturing	1,704	1,704	0	0	0	0

TABLE VIII–9.—METHODS OF CONTROLLING EMPLOYEE EXPOSURES (ARITHMETIC MEAN APPROACH)—Continued

Industry category	Estimated total exposed workers	Estimated number of workers with exposures reduced to TWA by substitution or engineering controls	Estimated number of workers in air-supplied respirators due to standard	Percent of total exposed workers in ASRs due to standard	Estimated number of full-time equivalent workers in ASRs due to standard	FTE workers in ASRs due to standard as percent of total workers
Printed circuit board manufacturing	352	306	46	13	12	4
Total	45,786	43,278	2,508	5	822	2

*More than zero, but less than 0.5%.
Source: PEI.

Costs of the Proposed Regulation

OSHA has preliminarily determined that the proposed standard is economically feasible. It is performance-oriented. Employers may choose any combination of engineering and work practice controls, or substitution of other chemicals for glycol ethers, to reduce exposures to or below the proposed TWAs and ELs.

Table VIII–10 shows estimated first year costs by industry category. All substitution costs are expected to be incurred in the first year only. By substituting, establishments would avoid all other costs in the first year, as well as all costs in future years.

Total first-year regulatory costs (substitution and compliance) would be $30.7 million under the geometric mean approach or $30.9 million under the arithmetic mean approach.

Total substitution costs exceed total compliance costs, primarily because of the large amount of substitution that would occur in formulation of paints and coatings. The highest first-year cost is estimated for the paints and coatings formulation category. Substitution occurs in all industry categories except the manufacturing of glycol ethers and chemical intermediates; however, substitution costs occur in only four categories: formulation of paints and coatings, formulation of inks, semiconductor manufacturing, and printed circuit board manufacturing.

TABLE VIII–10.—FIRST YEAR COSTS OF PROPOSED STANDARD, BY INDUSTRY CATEGORY

Industry Category	Geometric mean approach			Arithmetic mean approach		
	Cost of compliance* ($000)	Cost of substitution** ($000)	Cost of regulation ($000)	Cost of compliance* ($000)	Cost of substitution** ($000)	Cost of regulation ($000)
Manufacture of glycol ethers	67	0	67	85	0	85
Manufacture of chemical intermediates .	40	0	40	47	0	47
Formulation of paints and coatings	556	15,400	15,956	559	15,400	15,959
Aircraft manufacturing/repainting	695	0	695	695	0	695
Motor Vehicle Body Manufacturing	57	0	57	66	0	66
Other metal applications	903	0	903	997	0	997
Automobile refinishing	5,866	0	5,866	5,866	0	5,866
Wood furniture manufacturing	997	0	997	997	0	997
Formulation of inks	136	3,900	4,036	139	3,900	4,039
Application of inks	67	0	67	103	0	103
Semiconductor manufacturing	525	650	1,175	525	650	1,175
Printed circuit board manufacturing	217	600	817	249	600	849
Total	10,124	20,550	30,674	10,328	20,550	30,878

*The first year costs of engineering controls are annualized; costs of workplace monitoring, medical surveillance and recordkeeping are estimated to be higher during the first year than they will be in subsequent years.
**Although substitution costs are incurred in only four industry categories, substitution takes place in all industry categories except manufacture of glycol ethers and manufacture of chemical intermediates.
Source: PEI.

Table VIII–11 shows estimated annual costs by industry category. These total $7.2 million (geometric mean approach) or $7.4 million (arithmetic mean approach). The highest annual cost is estimated to be for the automobile refinishing category. This is due to the large number of establishments; other industry categories have higher per-establishment recurring costs.

Table VIII–12 shows estimated first year and annual costs by requirement. Substitution is the most significant component of the first year costs. Engineering controls (annualized) and exposure monitoring are the most significant components of annual costs.

TABLE VIII–11.—ANNUAL COSTS OF PROPOSED STANDARD, BY INDUSTRY CATEGORY

Industry category	Geometric mean approach	Arithmetic mean approach
	Total cost ($000)	Total cost ($000)
Manufacture of glycol ethers .	15	20

TABLE VIII–11.—ANNUAL COSTS OF PROPOSED STANDARD, BY INDUSTRY CATEGORY—Continued

Industry category	Geometric mean approach	Arithmetic mean approach
	Total cost ($000)	Total cost ($000)
Manufacture of chemical intermediates	18	23
Formulation of paints and coatings	418	421
Aircraft manufacturing/repainting	525	525
Motor vehicle body manufacturing	21	21
Other metal applications	683	757
Automobile refinishing	4,254	4,254
Wood furniture manufacturing	762	762
Formulation of inks	106	109
Application of inks	34	59
Semiconductor manufacturing	244	244
Printed circuit board manufacturing	125	157
Total	7,205	7,353

Source: PEI.

TABLE VIII–12.—FIRST YEAR AND ANNUAL COSTS OF PROPOSED STANDARD, BY REQUIREMENT

Regulatory requirement	Geometric mean approach		Arithmetic mean approach	
	First year ($000)	Annual ($000)	First year ($000)	Annual ($000)
Engineering controls	2,611	2,611	2,642	2,642
Protective clothing	707	707	707	707
Exposure monitoring	3,309	1,815	3,377	1,882
Medical surveillance	1,445	618	1,524	641
Respirator protection	763	763	784	784
Respirator fit testing	20	20	20	20
Regulated areas, signs, labels	22	22	23	23
Hygiene facilities	160	160	160	160
Information and training	194	194	194	194
Housekeeping	37	37	37	37
Recordkeeping	857	259	860	262
Total compliance costs	10,124	7,205	10,328	7,353
Substitution costs	20,550	0	20,550	0
Grand total	30,674	7,205	30,878	7,353

Source: PEI.

Economic Feasibility Analysis

OSHA preliminarily determines that companies in the industries involved in this rulemaking should be able to absorb the costs of compliance with the proposed standard without experiencing undue burden. In addition, OSHA also preliminarily determines that the compliance costs of this rulemaking will not threaten massive dislocation in any of the affected industries, will not threaten the competitive stability of any of the affected industries, and will not lead to undue concentration in any of the industries. See *American Iron and Steel Institute* v. *OSHA*, 939 F. 2d 975, 980 (D.C. Cir. 1991; *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1265–66 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981). Therefore, OSHA preliminarily concludes that it is economically feasible to achieve the proposed standard by means of engineering and work practice controls and substitution.

PEI compared regulatory costs to financial and economic parameters to determine the impacts of a revised standard for glycol ethers on affected industries. They examined the extent to which establishments can pass costs of regulation on to their customers, absorb costs that cannot be passed on, and finance capital and up-front regulatory costs. They also analyzed the impacts of regulatory requirements on competition and the differential impacts on small businesses. Information for these analyses was obtained from Dun & Bradstreet industry financial profiles and various reports issued by the Commerce Department. Industrywide impacts of first year and recurring costs of the proposed standard are shown in Tables VIII–13 and VIII–14.

TABLE VIII.–13.—INDUSTRY-WIDE IMPACTS OF FIRST YEAR* COSTS OF PROPOSED STANDARD

Industry category	Geometric mean approach			Arithmetic mean approach		
	First year regulatory costs			First year regulatory costs		
	Thousands	As percent of revenue	As percent of profit	Thousands	As percent of revenue	As percent of profit
Manufacture of glycol ethers	$67	0.04	1.71	$85	0.05	2.17
Manufacture of chemical intermediates	40	0.21	8.25	47	0.24	9.76
Formulation of paints and coatings	15,956	1.05	16.41	15,959	1.05	16.42
Aircraft manufacturing/repainting	695	0.01	0.43	695	0.01	0.43
Motor vehicle body manufacturing	57	0.001	0.02	66	0.001	0.02
Other metal applications	903	0.06	1.07	997	0.07	1.18
Automobile refinishing	5,866	0.02	0.25	5,866	0.02	0.25
Wood furniture manufacturing	997	0.09	0.96	997	0.09	0.96
Formulation of inks	4,036	1.15	27.25	4,039	1.15	27.28
Application of inks	67	0.02	0.25	103	0.03	0.38
Semiconductor manufacturing	1,175	0.04	0.55	1,175	0.04	0.55
Printed circuit board manufacturing	817	0.27	2.77	849	0.28	2.88
Total	30,674	0.05	0.90	30,878	0.05	0.91

* First year costs of engineering controls are annualized; costs of workplace monitoring, medical surveillance, and recordkeeping are estimated to be higher during the first year than they will be in subsequent years.

Source: PEI.

TABLE VIII–14.—INDUSTRY-WIDE IMPACTS OF ANNUAL COSTS OF PROPOSED STANDARD

Industry Category	Geometric mean approach			Arithmetic mean approach		
	Annual regulatory costs			Annual regulatory costs		
	(Thousands)	As percent of revenue	As percent of profit	(Thousands)	As percent of revenue	As percent of profit
Manufacture of glycol ethers	$15	0.01	0.38	$20	0.01	0.51
Manufacture of chemical intermediates	18	0.09	3.68	23	0.12	4.79
Formulation of paints and coatings	418	0.03	0.43	421	0.03	0.43
Aircraft manufacturing/repainting	525	0.01	0.32	525	0.01	0.32
Motor Vehicle body manufacturing	21	0.0004	0.01	21	0.0004	0.01
Other metal applications	683	0.04	0.81	757	0.05	0.90
Automobile refinishing	4,254	0.01	0.18	4,254	0.01	0.18
Wood furniture manufacturing	762	0.07	0.73	762	0.07	0.73
Formulation of inks	106	0.03	0.72	109	0.03	0.74
Application of inks	34	0.01	0.13	59	0.02	0.22
Semiconductor manufacturing	244	0.01	0.11	244	0.01	0.11
Printed circuit board manufacturing	125	0.04	0.42	157	0.05	0.53
Total	7,205	0.01	0.21	7,353	0.01	0.22

Source: PEI.

Substitution is not believed to place a significant burden on those firms which would be able to use that method of responding to the proposed regulation. Substituting firms would fund substitution costs in the first year of the proposed regulation; there would be no recurring substitution costs.

For those firms which do not choose to substitute, compliance costs should not pose a significant problem. In most cases, costs can be recovered through a price increase. Possible exceptions are automobile refinishing and wood furniture manufacturing. If complying wood office furniture makers cannot increase prices, their compliance costs would cause their net income to decline by as much as 11 percent under the proposed standard. If complying automobile repair shops and paint shops cannot increase prices, their net income could decline by as much as 13 percent under the proposed standard. In general, automobile refinishers should be able to accommodate these impacts. However, they would likely present a financial hardship for some operations with marginal profits.

Regulatory Flexibility Analysis

The revised standards would have a greater impact on small than average-sized businesses because compliance costs would not necessarily be proportional to establishment size. Thus, small establishments would have a greater incentive to substitute than would larger establishments. Because of their comparatively small size (revenue of $400,000 or less), small printed circuit board manufacturers within the electronics industry could encounter difficulty financing the up-front costs of substitution. However, small semiconductor operations (also within the electronics sector) should have no trouble complying; at most, a price increase of only 0.2 percent would be needed to recover compliance costs. In the absence of a price increase, net income would decline by 2.4 percent for this industry category.

If small printed circuit board manufacturers cannot achieve price increases of from 0.5 to 0.8 percent to recover costs of the proposed standard, their earnings would decline by 5 to 8 percent.

IX. Environmental Impact

Introduction

OSHA has preliminarily determined that no significant environmental impact will result from the lower PELs and ancillary provisions being considered for the four glycol ethers—2-methoxyethanol (2–ME), 2-methoxyethanol acetate (2–MEA), 2-ethoxyethanol (2–EE), and 2-ethoxyethanol acetate (2–EEA). The principal source for this analysis is a study conducted for OSHA by PEI Associates, Inc., Technological Feasibility and Economic Impact Assessment of A Proposed Revision to the Glycol Ethers Standards, 110, OSHA Docket, Ex. 5–164.

PEI determined on the basis of survey results and site visits that the following six substances (all of them also glycol ethers) are the most frequently used substitutes for 2–ME, 2–MEA, 2–EE and 2–EEA: ethylene glycol monopropyl ether and its acetate, ethylene glycol monobutyl ether and its acetate, and propylene glycol monomethyl ether and its acetate. The potential for environmental impact resulting from these six substitutes is examined.

Air Emissions

The major Federal air pollution regulation that affects glycol ether users or manufacturers is 40 CFR part 60, New Source Performance Standards (NSPS), which covers volatile organic compounds (VOCs). Users or manufacturers of glycol ethers regulated under this standard are Automobile and Light Truck Surface Coating, Graphic Arts and Rotogravure Printing, Synthetic Organic Chemicals Manufacturing and Surface Coating of Large Appliances.

Mono-, di- and tri-ethers of ethylene glycol and their acetates are listed as toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (Title III of the Superfund Amendments and Reauthorization Act of 1986), which requires recordkeeping and reporting of emissions for all chemicals listed for facilities meeting the threshold requirements of the Act. Thus, the major substitutes for the glycol ethers would be covered by Section 313 in the same manner as are the glycol ethers.

For industries that use or manufacture glycol ethers and their substitutes, Federal regulations will prevent increases in emissions beyond those now permitted. Also, the glycol ethers and their major substitutes have low vapor pressures, which results in low concentrations in air exhaust streams. Thus, no incremental air environmental impact is likely to occur as a result of reductions in the workplace exposure limit.

Glycol ether-using industries that are not subject to NSPS Federal regulations (such as the electronics industry) use some engineering controls to control workplace air concentrations, but do not appear to use emission controls. That portion of the glycol ethers used that does not remain with the product eventually evaporates and may enter the environment.

OSHA action to reduce workplace levels is projected to increase the trend to substitute other substances for glycol ethers. This substitution should reduce the quantity of glycol ethers entering the environment. The substitutes are generally less toxic than the four glycol ethers under study and are expected to have little environmental impact.

Water Emissions

Because of the way glycol ethers are used, a water pollution problem does not appear likely. Neither the glycol ethers nor their substitutes are subject to pretreatment standards that regulate discharges of industrial waste or municipal sewage to publicly owned treatment works. State and local standards regarding biological oxygen demand and chemical oxygen demand should be sufficient to prevent any increase in releases to water that might occur as a result of more stringent occupational exposure limits. Thus, no negative impact on the environment is projected.

X. Summary and Explanation of the Proposed Standard

OSHA believes that the proposed requirements set forth in this notice are necessary and appropriate to provide adequate protection to employees exposed to ethylene glycol ethers based on currently available information. Numerous reference works, journal articles, and other data obtained by OSHA have been taken into consideration in the development of this proposed standard.

Scope and Application: Paragraph (a)

The proposed standard would apply to all occupational exposures to the ethylene glycol ethers 2–Methoxyethanol (2–ME), 2–Ethoxyethanol (2–EE), and their respective acetates 2–Methoxyethanol Acetate (2–MEA), and 2–Ethoxyethanol Acetate (2–EEA) except where the exposure occurs from (1) liquid mixtures which contain less than 1%, by volume, of the above compounds unless the employer has reason to believe that such mixtures could release vapors in quantities sufficient to result in an airborne concentration which meets or exceeds the ALs or ELs of the compounds or could present a hazard through dermal contact; and (2) solids made from or containing 2–ME, 2–MEA, 2–EE, or 2–EEA that are incapable of releasing these compounds into the workplace air at or above the ALs or above the ELs.

The exemption for liquids with less than 1% glycol ethers is consistent with the Hazard Communication Standard (HCS), 29 CFR 1910.1200, paragraph (g)(2)(C)(1), which does not require inclusion of a non-carcinogenic chemical on a Material Safety Data Sheet (MSDS) if it comprises less than 1% of the composition of the mixture. However while OSHA believes, in general, that liquid mixtures containing less than 1% glycol ethers may present little hazard, there may be situations where the mixture, despite its low concentration of glycol ethers, might release vapors at or above the action levels or above the excursion levels or present a hazard through dermal contact. For example a large volume of a mixture containing less than 1% of glycol ethers may be released (e.g. spill or tank rupture) and give rise to high airborne levels of the glycol ethers by virtue of the large volume of mixture that is released. Also a work practice involving a prolonged or repeated dermal contact to a mixture containing less than 1% glycol ethers could provide enough exposure to the glycol ethers in the mixture to result in a significant dermal exposure. Thus it is proposed that if an employer has reason to believe that liquid mixtures with less than 1% glycol ethers could release glycol ethers vapors in concentrations at or above the action levels or above the excursion levels or could present a hazard through dermal contact, then that employer must comply with all provisions of the standard for glycol ethers. An employer's belief of the potential for such occurrences may be based on such things as information from a manufacturer or trade association or the employer's knowledge about chemical processes or work practices in his workplace.

OSHA also proposes that solids made from or containing glycol ethers that are capable of releasing those glycol ethers into the workplace air at or above the action levels or above the excursion levels are also exempt from the scope of this standard. In general glycol ethers are used as solvents in compounds which are used in the workplace. During the use of these compounds, the glycol ethers evaporate. Thus upon drying there is no glycol ether left in the

dried compound which could give off gas vapors to the workplace air. Since these solids would present little hazard, it is proposed that they be exempted from the scope of the standard. However, if there are situations where solids containing glycol ethers could release vapors at or above the action levels or above the excursion levels, then these solids would be covered under the scope of the standard. OSHA is unaware of any such situations and requests information on the existence of such occurrences in the workplace.

This proposed standard covers only the four ethylene glycol ethers (2–ME, 2–MEA, 2–EE, and 2–EEA) referred to OSHA by EPA under section 9(a) of the TSCA. In the ANPR for these substances OSHA discussed the possibility of expanding the scope of the rulemaking to cover other glycol ethers. In that notice, OSHA stated that, based on their similarities in structure and routes of metabolism, the adverse effects of at least some of the other glycol ethers may be similar to 2–ME, 2–EE and their acetates. For these reasons OSHA stated that it might be appropriate to include other glycol ethers within the scope of a proposed standard for glycol ethers.

Several commentors to the ANPR (Exs. 7–11, 7–12, 7–13, 7–14, 7–16, 7–17, 7–18, 7–20, 7–21, 7–23, 7–24 and 7–28) did not support expanding the scope of the rulemaking. In general these commentors stated that because of the differences in the toxicities between the four subject glycol ethers and longer chain glycol ethers, they did not believe that it was appropriate to promulgate a generic standard for all glycol ethers. In particular, ARCO (Ex. 7–19) stressed the differences between ethylene glycol ethers and propylene glycol ethers. ARCO presented statements and evidence that propylene glycol ethers are metabolized by different pathways than the ethylene glycol ethers resulting in different primary metabolites of lesser toxicity. Furthermore, ARCO added that the propylene glycol ethers have not been shown to induce adverse reproductive and/or developmental effects similar to 2–ME, 2–EE and their acetates. NIOSH (Ex. 7–22) stated that in general they would support a generic approach to rulemaking. However, in the case of other glycol ethers they stated that the data were limited and therefore they recommended one standard with two PELs, one for 2–ME/2–MEA and one for 2–EE/2–EEA. Two commentors to the ANPR, TVA and Public Citizen (Exs. 7–15 and 7–25), did support a generic glycol ethers standard, stating that the effects may potentially be similar for other glycol ethers.

As discussed in Section V—Health Effects, OSHA believes that the data are limited on the toxicity for glycol ethers other than 2–ME, 2–EE and their acetates. The data which are available, indicate that toxicities, as well as the uses of other glycol ethers, may vary to such an extent that a generic standard for all glycol ethers may be inappropriate. For this reason the scope of this proposal is limited to occupational exposure to 2–ME, 2–EE and their acetates. OSHA requests comments on this approach. In particular, the Agency is interested in health effects data on other glycol ethers.

OSHA is also proposing that construction be included under the scope of the standard, by amending section 1910.19 to add a new paragraph (n) for glycol ethers. OSHA's reasoning is as follows. Firstly, based on current evidence, OSHA believes that the proposed standard would have little impact on construction. However a significant source of exposure may occur in maintenance operations at facilities that manufacture, formulate or use glycol ethers or liquids containing glycol ethers. Exposure during these operations may be relatively high and it is necessary, therefore, that employees wear respirators, receive medical examinations and be protected by the other provisions of the proposed glycol ethers standard. Sometimes such facilities hire outside contractors to perform maintenance operations. The contention is sometimes made that the maintenance operations should be considered to be construction activities and not subject to general industry standards. Employees of such contractors are subject to the same levels of glycol ethers and need the same protection as other exposed employees. OSHA proposes to cover these employees under the glycol ethers standard.

Thus, although the impact of the standard will be limited, OSHA believes that construction should not be exempted from the standard. OSHA believes that a loophole would be opened in the enforcement of the standard if construction were exempted. The distinction between maintenance and construction activities is often an ambiguous one. The independent contractors who perform maintenance clearly need to be covered. If construction were excluded, these maintenance contractors might argue that their work is "construction" and that they are not covered by the standard. By covering construction, this ambiguity does not arise. This approach is consistent with other standards (e.g., Ethylene Oxide, 29 CFR 1910.1047 and Benzene, 29 CFR 1910.1028). OSHA requests comments on this approach for glycol ethers. OSHA also welcomes data on the exposure and use of glycol ethers in the construction industry which may be different from those in general industry.

Definitions: Paragraph (b)

"Action level" is defined as an airborne concentration of 0.05 ppm for 2–ME and 2–MEA and an airborne concentration of 0.25 ppm for 2–EE and 2–EEA, calculated as an 8-hour time weighted average (TWA). For workers exposed at or above the action level, without regard to the use of respiratory protection, medical surveillance and air monitoring are required. Generally, where exposures are determined to be below the action levels of 0.05 ppm (2–ME, 2–MEA) and 0.25 ppm (2–EE, 2–EEA), no further action is required of the employer except provision of training as required by paragraph (m) of this section and provision of appropriate personal protective equipment as required by paragraph (h) of this section.

Measurements of employee exposure can vary considerably for a number of reasons including process variations, sampling and analytical methods limitations, and seasonal changes. Therefore, even if all the measurements taken on a given day fall below the 8-hour time weighted average (TWA) permissible exposure limit, the possibility exists that on unmeasured days an employee's actual exposure may exceed the TWA. More explicitly, when measured exposure levels are over one-half of the TWA, the employer cannot have a high degree of confidence that employees are not overexposed to glycol ethers during unmeasured periods of the work week. Conversely, when the measured concentrations are below the action level, the employer can have a reasonable degree of confidence that the TWA is not being exceeded on days when exposure measurements are not being performed.

Based on the above concept, the action level provides a means of triggering various provisions of the proposed regulation relative to the exposure levels of employees. This approach increases cost-effectiveness and performance orientation of the standard while enhancing employee protection. For example, it is proposed that employers who maintain employee exposure below the action level be relieved of the obligations of further monitoring and medical surveillance of those employees. Employers are thereby encouraged to develop cost-effective,

innovative approaches for reducing employee exposures below the action level in order to eliminate the expense of implementing certain provisions of the standard. Employees will benefit by improved protection since their exposures will be less than one-half of the TWA permissible exposure limit. In addition, employers can focus their attention on employees whose exposure levels may be significant. Those employees exposed at or above the action level will have the added protection of medical surveillance, monitoring, and other provisions of the proposed standard.

The use of action levels to trigger provisions of the proposed standard and the setting of the action level at one-half of the TWA is consistent with other OSHA health standards, such as Asbestos (51 FR 22612, June 20, 1986; 29 CFR 1910.1001), Benzene (52 FR 34460, September 11, 1987; 29 CFR 1910.1028), and Formaldehyde (52 FR 46168, December 4, 1987; 29 CFR 1910.1048). This uniformity provides administrative consistency and continuity in developing and implementing compliance strategies for this and other applicable OSHA health standards at individual worksites.

"Authorized Person" means any person specifically authorized by the employer, whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (d) of this section, or any other person authorized by the Act or regulations issued under the Act. Examples of such people would include, but are not limited to, employees who normally work in the regulated area, union representatives, and OSHA compliance officers.

"Emergency" is defined to mean any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does result in an unexpected release of a significant amount of glycol ethers. Every spill or leak does not automatically constitute an emergency situation. The exposure to employees must be high as well as unexpected. This is a performance-oriented definition relying upon judgment.

"Employee exposure" is defined as that exposure to airborne or liquid glycol ethers which would occur if the employee were not using respiratory protective equipment or other personal protective equipment. This definition is consistent with OSHA's previous use of the term in other standards.

"Ethylene Glycol Ethers" for the purposes of this section, means 2-Methoxyethanol (2-ME) (CAS No. 109-86-4), 2-Methoxyethanol acetate (2-MEA) (CAS No. 110-49-6), 2-Ethoxyethanol (2-EE) (CAS No. 110-80-5), and 2-Ethoxyethanol acetate (2-EEA) (CAS No. 111-15-9). The family of ethylene glycol ethers is comprised of a large number of compounds. At the present time, however, this proposed standard will deal with only those four compounds noted above. These four chemicals are also known by a variety of chemical and trade names. Therefore, to eliminate confusion as to which compounds are being considered for regulation, they have also been identified by their CAS number. This number is assigned by the Chemical Abstract Service and, without regard to system of chemical nomenclature or trade name, is unique to a specific chemical. A detailed discussion of the chemical properties of these compounds can be found in Section IV, "Chemical Identification, Production and Use of Ethylene Glycol Ethers" of this document.

"Glycol Ethers" is defined the same as "Ethylene glycol ethers" above and for the purpose of the document is used interchangeably with the above term.

"Objective Data" means information demonstrating that a particular product or material containing glycol ethers or a specific process, operation, or activity involving glycol ethers cannot release glycol ethers in airborne concentrations at or above the action level or above the excursion limit or result in dermal exposure, even under worst-case release conditions of foreseeable use. A more detailed discussion of "objective data" can be found in paragraph (d), Exposure Monitoring, of this section.

"Regulated Area" means any area where airborne concentrations of glycol ethers exceed or can reasonably be expected to exceed the permissible exposure limits, either the 8-hour time-weighted average (TWA) permissible exposure limits of 0.1 ppm (2-ME, 2-MEA) and 0.5 ppm (2-EE, 2-EEA) or the 15-minute excursion limits (EL) of 0.5 ppm (2-ME, 2-MEA) and 2.5 ppm (2-EE, 2-EEA). Regulated areas must be established anytime the airborne concentration of glycol ethers exceeds or can be expected to exceed the TWAs and/or ELs. Their existence may be of extended duration, such as when currently feasible engineering and work practice controls are inadequate to lower airborne glycol ether concentrations below the PELs, or they may exist for only a short period of time as could be expected during a maintenance operation. Requirements specifically pertaining to regulated areas are found in paragraph (e) of this section.

Permissible Exposure Limits: Paragraph (c)

OSHA proposes, in paragraph (c)(1), to establish new permissible exposure limits for ethylene glycol ethers by amending the current standards found in 29 CFR 1910.1000, Table Z-1-A, which are 8-hour time weighted averages (TWAs) of 200 ppm for 2-EE, 100 ppm for 2-EEA, and 25 ppm for both 2-ME and 2-MEA. OSHA is proposing new permissible exposure limits of 0.1 ppm for 2-ME and 2-MEA and 0.5 ppm for 2-EE and 2-EEA calculated as an 8-hour TWA. In addition, the Agency is proposing, in paragraph (c)(2), 15-minute excursion limits (ELs) of 0.5 ppm (2-ME, 2-MEA) and 2.5 ppm (2-EE, 2-EEA). These limits are the airborne concentration, averaged over a 15-minute sampling period, resulting from monitoring conducted during an employee's anticipated highest level of exposure.

OSHA has proposed to amend the current TWAs based upon evidence that occupational exposure to ethylene glycol ethers at the current standards presents a significant risk of adverse hematologic, reproductive and developmental effects while the proposed TWAs would achieve a significant reduction in that risk. The basis for this action is discussed in the significance of risk, health effects, and feasibility sections preceding this section. Overall, however, OSHA has made the preliminary determination that the proposed TWAs reduce significant risk and are feasible.

In conjunction with the 8-hour TWAs, OSHA is proposing 15-minute excursion limits for these ethylene glycol ethers in paragraph (c)(2). The Agency feels that establishing ELs will further reduce significant risk. As discussed in the preliminary risk assessment section, the proposed TWAs of 0.1 ppm for 2-ME and 2-MEA and 0.5 ppm for 2-EE and 2-EEA were derived by dividing the NOELs from experimental studies by uncertainty factors of 100. OSHA believes that using an uncertainty factor of 100 results in a level at which workers will be less likely to experience adverse reproductive or developmental effects such as those observed in animal studies. However, it should be kept in mind that these levels (0.1 and 0.5 ppm) represent eight-hour time weighted averages. Thus, it is possible that the levels for 2-ME/2-MEA and 2-EE/2-EEA could reach as high as 3.2 ppm or 16.0 ppm, respectively, for any 15-minute period and still meet the 8-hour

TWAs of 0.1 and 0.5 ppm, provided that there are no other exposures in the 8-hour period. Under this exposure scenario, the uncertainty factor is lowered from 100 to approximately 3. This reduction in the margin of safety may be important in the case of reproductive and developmental effects where peak doses rather than cumulative doses may play an important role in the biological effects. For example, peak doses occurring at critical periods of fetal or spermatogenic development may induce adverse effects due to the sensitivity of that particular period of development. Thus, OSHA believes that it is important to reduce peak exposures to the extent possible. Implementing excursion limits five times the TWAs (i.e., 0.5 for 2–ME/2–MEA and 2.5 ppm for 2–EE/2–EEA) will decrease the reduction in the uncertainty factors and thus provide a greater likelihood that workers will not suffer an adverse reproductive or developmental effect from exposure.

While OSHA is proposing 15-minute excursion limits of 5 times the respective TWAs, it should be noted that paragraph (c)(2)(A) prohibits an employee's exposure from exceeding the TWAs through such 15-minute exposures. Therefore, even though an employee receives his/her exposure in short bursts, the overall exposure level cannot exceed the TWAs when the excursion limit exposures are calculated as an 8-hour time weighted average. In addition, when an employee's 15-minute excursion exposures, calculated as an 8-hour time weighted average, are at or above the action level, then all provisions of this section which are triggered at the action level must be implemented for that employee.

In addition to exposure by inhalation, glycol ethers are readily absorbed through the skin. As a result, both the OSHA PELs and the American Conference of Governmental Industrial Hygienists (ACGIH) TLVs carry a "skin" notation for the four glycol ethers under consideration. Studies have shown that dermal absorption of these compounds, either alone or in conjunction with inhalation exposure, is capable of inducing adverse effects in animals and/or humans (Exs. 4–121, 4–139, 5–049, 5–073). The Agency, therefore, has proposed in paragraph (c)(3) that the employer assure that no employee is exposed to glycol ethers through dermal contact.

Exposure Monitoring: Paragraph (d)

Paragraphs (d)(1) through (d)(7) of the proposed standard would impose monitoring requirements pursuant to Section 6(b)(7) of the OSH Act (29 U.S.C. 655) which mandates that any standard promulgated under section 6(b) shall, where appropriate, provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees.

The Agency believes that the employer's knowledge of exposures existing among employees is fundamental to the provision of a healthful workplace. The purposes served by requiring initial and periodic air sampling for employee exposures to glycol ethers include: Prevention of employee overexposure; determination of the extent of exposure at the worksite; identification of the sources of exposure to glycol ethers; collection of exposure data so that the employer can select the proper control methods to be used; and evaluation of the effectiveness of the selected methods. Monitoring enables employers to meet the legal obligation of the standard to ensure that their employees are not exposed to ethylene glycol ethers in excess of the prescribed levels and to notify employees of their exposure levels, as required by section 8(c)(3) of the Act. In addition, collection of exposure monitoring data enables the examining physician to be informed of the existence and extent of potential sources of occupational diseases.

Exposure monitoring is critical to determining the specific levels of glycol ethers to which employees are exposed. A number of obligations are delineated by specific exposure levels above which certain provisions have to be implemented to protect the employees and achieve compliance with the standard. Medical surveillance and exposure monitoring provisions of the standard are triggered, for example, for employees exposed at or above the AL or above the EL. The remaining provisions of the standard are triggered by employee exposure above the TWA.

The exposure monitoring provision of paragraph (d)(1)(i) would require each employer who has a workplace or work operation covered by this section to accurately determine employee exposure to ethylene glycol ethers. While initial evaluation of employee exposure would require either actual monitoring of each employee or the use of objective data, subsequent determinations may be carried out through representative sampling and would not necessarily entail sampling of all exposed employees.

Paragraph (d)(1)(ii) would require that these determinations be made from samples that are taken within the employee's breathing zone (personal samples) and which accurately reflect the employee's exposure, without regard to the use of respirators, to airborne concentrations of glycol ethers over an eight-hour period. This permits the employer to ascertain compliance with the ALs and the TWAs. In addition, the employer must monitor employees over a fifteen minute period to determine whether they are in compliance with the excursion limits (ELs) at operations where there is reason to believe that exposures may be above the ELs. Examples of situations which may present the potential for elevated short term exposures include, but are not limited to, where tanks are opened, filled, unloaded, or gauged; where containers or process equipment are opened; where glycol ethers are transferred between containers or added to mixtures in open systems; and where glycol ethers are used for cleaning or as a solvent in an uncontrollable situation as may be found, for example, in the cleaning of machinery where neither permanent nor temporary engineering or work practice controls are adequate to reduce the levels of glycol ethers to or below the ELs.

Paragraph (d)(1)(iii) would require the employer to determine TWA and EL employee exposures for each employee in each job classification, in each work area, and for each shift whenever exposure to glycol ethers exists. Except for the initial monitoring that would be required by this section, paragraph (d)(1)(iv) states that a representative sampling strategy may be developed which will measure sufficient exposure levels within each job classification or for each job task (if there is task variation within a job classification which could result in different exposure levels within that job classification) for each workshift, in each work area to correctly characterize and not underestimate the exposure of any employee within each exposure group. However, exposure levels shall be determined for each employee in each job classification in each work area for each shift unless the employer can document that exposure levels for a given job classification are equivalent for different work shifts.

Representative exposure sampling is permitted when there are a number of employees performing the same job function in the same job classification under the same conditions. For such employees, it may be sufficient to monitor some fraction of such employees in order to obtain data that are "representative" of the remaining employees. Representative personal sampling of these employees must include that member(s) of the exposed group reasonably expected to have the

highest exposure. This result can then be applied to the remaining employees of the group. In developing a representative sampling strategy, the employer must systematically examine process and workplace variables to identify which employees are to be monitored. Strategy development should include: (1) Investigation of worksites where the nature of the operation or process indicates possible release of glycol ethers into the work environment to identify the sources of these emissions; (2) investigation of worksites where there have been employee complaints or symptoms indicative of possible exposure to glycol ethers; (3) analysis of exposure patterns within the worksite, including each employee's distance from the source of glycol ethers, variations in tasks among employees in the same job classification, employee mobility, air movement patterns, and differences in work habits.

As stated in paragraph (d)(1)(v), objective data [as defined in paragraph (b)] may also be used by the employer to document that the presence of glycol ethers in the workplace or products containing glycol ethers cannot result in the release of airborne concentrations of glycol ethers that would cause any employee to be exposed at or above the action level or above the EL under worst-case release conditions of foreseeable use. If the employer can adequately demonstrate with objective data that the preceding conditions exist, then the employer is relieved of measuring employee exposure to glycol ethers.

A detailed discussion of "objective data" can be found in the final standard for Formaldehyde (52 FR 46255). Pertinent portions of that discussion are reproduced here for the sake of convenience and clarification.

> * * * Employers can use data on physical properties, combined with information as to room dimensions, air exchange rates, and other pertinent data, including, for example, information on work practices, to estimate the maximum exposures that could be anticipated in the workplace. Relying on such an approach to estimate worker exposures from objective data requires the use of safety factors to account for uneven distribution of formaldehyde vapor in the air and the proximity of workers to emissions sources (Ex. 73–176). Objective data could also include historical data on employee exposures, area monitoring conducted to determine ambient formaldehyde levels and emissions from sources of formaldehyde releases, or carefully evaluated monitoring conducted for other than a full shift or 15-minute period. * * * OSHA recognizes that many workplace factors must be taken into account by employers relying on objective data (see 50 FR 50473). * * *
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> In retaining the objective data requirement, OSHA does not intend that employers engage in complex modeling exercises as a substitute for employee exposure monitoring, and the Agency recognizes that, in workplaces where many complex factors must be considered to use objective data, a high degree of uncertainty will be associated with trying to assess employee exposures from objective data. In these instances, employers should conduct exposure monitoring instead of relying on objective data so that they can have confidence that they are in compliance with the standard's provisions.
>
> Moreover, in workplaces where many complex factors combine to influence employee exposures to formaldehyde, employers may find it easier, more useful, and less costly to monitor rather than to try to evaluate employee exposures through generation and evaluation of objective data
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> * * *
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> Briefly summarizing the above discussion, a number of workplace factors must be taken into account when relying on objective data (e.g. temperature, humidity, ventilation rate, employee proximity to contaminant source), however, it is not the Agency's intent that employers engage in complex modeling exercises in place of employee exposure monitoring. In workplaces where a number of complex factors must be considered, the employer should conduct exposure monitoring, rather than relying upon objective data, to increase confidence that they are in compliance with the standard's provisions. Initial monitoring of workplace exposures would be required of all employers who have a place of employment covered under the scope of this standard. Paragraph (d)(2)(i) would require the employer to identify all employees who, without regard to respirator use, are exposed or may reasonably be anticipated to be exposed, at or above the action level or above the EL and to perform initial monitoring to accurately determine the exposure of employees so identified. The initial monitoring must be conducted within 60 days of the effective date of the final standard as set forth in paragraph (o)(2)(i). However, to relieve some of the monitoring burden and associated cost, paragraph (d)(2)(ii) of the proposal would permit an employer who has comparable and adequate workplace monitoring data gathered within 180 days prior to the effective date of the standard to rely on those data to satisfy the requirements of the initial monitoring. To meet the "comparable and adequate" intent of this provision, such monitoring data must have been gathered under conditions closely resembling those currently prevailing in the workplace, each employee must have been monitored, and the monitoring must satisfy all other requirements of this section including accuracy of the analytical method at the proposed action levels.

It should be noted that this provision would require initial monitoring to be performed for all employees who are potentially exposed to glycol ethers at or above the ALs or above the ELs. For the purpose of this section, representative sampling will not be an accepted method of initial monitoring. The reasoning behind this is that the permissible exposure limits for the 8-hour TWAs are being reduced to such an extent (e.g., from 25 ppm to 0.1 ppm for 2–ME) that the Agency does not believe that the initial assessment of employee exposure can be accurately determined through representative sampling. This approach is further supported when one considers that the action levels of these compounds are even lower, 0.05 ppm (2–ME, 2–MEA) and 0.25 ppm (2–EE, 2–EEA). At these levels, minor variations in employee work practices or job tasks, workplace ventilation, compound concentration, and so forth can affect the level of employee exposure and thereby implementation of various provisions of this proposal. It is OSHA's belief, therefore, that employee exposure levels relative to the TWAs, ELs, and ALs can be accurately determined only by conducting initial monitoring for each employee. The only exception to performing initial monitoring is the use of objective data as discussed in paragraph (d)(1)(v). In assembling objective data, however, it should be noted that the Agency would question historical data used to substantiate claims of exposure levels below the proposed action levels, since the proposed action levels are near the level of reliable quantitation of the 1985 OSHA analytical method for these substances (the proposed action level for 2–ME is actually below the level of quantitation or LOQ of the 1985 methodology). The level of quantitation (LOQ)/level of detection (LOD) discussion in the 1985 analytical method states: (Ex. 5–005)

> The reliable quantitation limits and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amounts of analytes. When target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters.

Since the previous permissible exposure limits range from 25 ppm (2–ME/2–MEA) to 200 ppm (2–EE), it is doubtful that normal analytical procedures and apparatus would be optimized to achieve a target concentration at the

method's LOD/LOQ. Therefore, the Agency would seriously question the accuracy and reliability of historical monitoring results at such levels.

The outcome of the monitoring determines what subsequent action must be taken by the employer. If initial or periodic monitoring results show employee exposure to be below the action level, the employer may discontinue monitoring for that employee unless there is a change in production, equipment, process, personnel, control measures, or any other such factor which may result in new or additional exposure to glycol ethers. However, paragraph (d)(3)(i) stipulates that if initial monitoring reveals employee exposure to be at or above the AL or above the EL, then periodic monitoring must be initiated as discussed below and in paragraphs (d)(3)(ii) through (d)(3)(iv) of the proposed standard.

Periodic measurements are one of the most informative ways of detecting hazardous shifts in exposure concentrations, an indicator that engineering controls are not working properly or that good work practices are not being followed. The results of monitoring determine the monitoring frequency which must be adopted by the employer. Paragraph (d)(3)(ii) states that if the initial or periodic monitoring results show employee exposures at or above the AL, but at or below the TWA then the employer must repeat monitoring for these individuals at least every six months. As discussed previously, when monitoring results are above the action level, the employer can no longer be confident that employees are not being exposed over the TWA. Therefore, OSHA feels that periodic monitoring of employees exposed at or above the action level is necessary to assure employers that their employees are not overexposed.

If initial or periodic exposures are above the TWA then the employer must monitor every three months as would be required by paragraph (d)(3)(iii) of this section. Once employee exposures exceeding the TWA have been identified, the employer is obligated to implement measures directed at eliminating or minimizing those exposures. More frequent monitoring is warranted to determine the effectiveness of the measures in protecting workers.

Monitoring for the EL is generally to be carried out simultaneously with, and according to, the required monitoring frequencies discussed above. However, as stated in paragraph (d)(3)(iv), if an employee is exposed in excess of the EL, that employee shall be monitored at least every three months under conditions of highest exposure. As related previously in the discussion on excursion limits, exposure to short bursts of elevated levels of glycol ethers may play an important role in biological effects of these compounds. Therefore, protection against this type of exposure could be of equal concern compared to exposures exceeding the TWA. As a result, the same periodic monitoring frequency has been proposed for exposures in excess of either the TWAs or ELs.

OSHA believes these frequencies, which are similar to those required by other OSHA standards, such as Arsenic (43 FR 19854 May 5, 1978; 29 CFR 1910.1018) and Ethylene Oxide (49 FR 25734 June 22, 1984 and 53 FR 11414 April 6, 1988; 29 CFR 1910.1047), are necessary and sufficient for providing useful information to evaluate employees' exposures. Periodic re-monitoring provides the employer with assurance that employees are not experiencing higher exposures that may require the use of additional controls. In addition, these measurements remind employees and employers of the continued need to protect against the hazards which could result from exposure to glycol ethers.

Employees are further protected because additional monitoring would be required by paragraph (d)(4) when there has been a change in production, equipment, raw materials, process, personnel, or work practices which may result in new or additional exposures to glycol ethers at or above the ALs or above the ELs, or whenever the employer has any other reason to suspect that a change may result in new or additional exposures at or above the ALs or above the ELs.

OSHA recognizes that monitoring can be a time-consuming, expensive endeavor. Therefore, this proposal offers employers the incentive to minimize employees' exposures by allowing employers to discontinue monitoring for employees under certain conditions. It is hoped that such a provision will encourage employers to maintain their employees' exposures to glycol ethers below the Al and the EL, thus maximizing the protection of employees' health.

Paragraph (d)(5)(i) through (d)(5)(iii) would permit the employer to discontinue monitoring for an employee, except as noted otherwise in paragraph (d)(4) of this section, if the initial monitoring results show the employee's exposure to be below the AL and at or below the ELs. If periodic monitoring results indicate, by at least two consecutive measurements taken at least seven days apart, that employee exposures have fallen below the ALs, and are at or below the ELs, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring. However, the results must be statistically representative and consistent with the employer's knowledge of the job and work operation. Also, paragraph (d)(5)(iii) states that if the initial or periodic monitoring reveals the employee to be at or above the AL but, on two consecutive measurements taken at least seven days apart, the employee is not exposed above the EL, no further monitoring for the EL is necessary except as required by paragraph (d)(4) of this section.

When considering termination of monitoring an employee's exposure level, the employer should have reasonable confidence that the employee's exposure has truly been reduced below the AL and/or EL. Variations in job task, daily production, ventilation patterns, and so forth could result in a non-characteristically low exposure measurement and, if only one sample is considered, lead the employer to incorrectly deduce that the employee is no longer overexposed. To minimize the possibility of the occurrence of such an incorrect supposition, increase the employer's confidence in terminating monitoring, and to further protect employees against overexposure, the Agency would require that, at a minimum, the employer monitor the employee's exposure level a second time, at least seven days later, to confirm the reduced exposure level before termination of monitoring. This requirement is consistent with other recent OSHA standards.

Paragraph (d)(6) would require the employer to use monitoring and analytical methods which have an accuracy (at a confidence level of 95%) within plus or minus 25% for airborne concentrations of glycol ethers at or above the level being investigated. This is necessary to assure that 95 percent of the measurements are accurate to within plus or minus 25 percent of the "true" exposure level. OSHA has included this accuracy requirement in other toxic substance standards (Formaldehyde, 29 CFR 1910.1048). A method of measurement is presently available to detect ethylene glycol ethers to this degree of accuracy and is described in appendix (E). The proposed standard, in paragraph (d)(7), would require that employers notify each of their employees individually of the results of personal monitoring samples. This notification is to be given within 15 days of receipt of exposure monitoring results and is to be given in writing and

by posting a notice in an appropriate location accessible to affected employees. A written notice ensures that each employee is notified while posting the results ensures that employers and supervisors are aware of the results. Posting results also permits employees to compare their monitoring results with those of co-workers and results obtained from other shifts.

If the results of the monitoring show employee exposure to be in excess of the TWA and/or EL permissible exposure limits, the written notice to the employees shall include a statement that the TWA and/or EL has been exceeded and a description of the corrective action which is being taken by the employer to decrease the exposure to within the permissible exposure limits. This requirement to inform employees is in accordance with section 8(c)(3) of the OSH Act and is necessary to assure employees that the employer is making efforts to furnish them with a safe and healthful work environment.

As required by section 8(c)(3) of the Act (29 U.S.C. 657(c)(3)), this proposal contains provisions for employee observation of exposure monitoring. Paragraph (d)(8)(i) would require employers to provide affected employees or their designated representative with the opportunity to observe any monitoring of employee exposures to glycol ethers as required by this section. In paragraph (d)(8)(ii), observation procedures are set forth which would require the employer to provide the observer with the personal protective clothing and equipment (e.g. coveralls, gloves, respiratory protection, protective eyewear) that is required to be worn by the employees who are working in the area. In addition, the employer must ensure that the observer uses such clothing and equipment and complies with all other applicable safety and health procedures. This requirement ensures that the observer receives adequate protection from exposure to glycol ethers.

Regulated Areas: Paragraph (e)

In paragraph (e)(1), the proposed standard would require the employer to establish regulated areas wherever exposures to glycol ethers exceed or can be expected to exceed the TWA and/or EL permissible exposure limits. Such areas must be established even though no employee is routinely assigned to the area; the potential for overexposure is the determining factor.

The Agency feels that it is the existence of a hazard which is the basis for determining the need for protective measures rather than the type of operation being performed. Therefore, establishment of a regulated area is to be carried out not only for situations where the concentration of airborne glycol ethers must unavoidably exceed the permissible exposure limits for extended periods but also for areas where exposures are temporarily over either the TWA or EL for short periods, such as might be expected while maintenance is being performed. The establishment of regulated areas is consistent with good industrial hygiene practice as it provides an effective means of limiting excess exposure to as few employees as possible. In addition, the regulated area provision of this standard conforms with similar provisions in other OSHA health standards. It should also be noted that this requirement has additional benefits to employers in that by limiting access to these areas to only authorized persons, the employer's obligation to implement the provisions of this standard triggered by exposure above the TWAs or ELs is limited to a minimum number of employees.

The purpose of designating regulated areas is to ensure that employers make employees aware of the presence of glycol ethers in the workplace at levels above the permissible exposure limits, thereby helping to minimize the number of employees exposed and ensuring that employees who must enter the area are provided with training and appropriate personal protective equipment. Paragraph (e)(1)(i) would require that regulated areas be demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees to the boundary of the regulated area while paragraph (e)(1)(ii) stipulates that these areas be posted at all entrances and accessways with signs meeting the requirements specified in paragraph (m)(1)(i) of this standard. To increase the performance orientation of the standard, no detailed requirements are specified on how regulated areas should be demarcated. However, it must be assured that the manner of demarcation chosen adequately alerts employees to the boundaries of the area. In addition, readily observable signs at all entrances and accessways serve to alert the employee not only to the existence of the regulated area but reminds them to use proper personal protective equipment and respiratory protection and to observe good personal hygiene practices, such as refraining from smoking or eating in regulated areas and washing hands and face after leaving the area.

The proposed standard also states, in paragraph (e)(2), that the employer shall limit access to regulated areas to only authorized persons. By limiting access to authorized persons only, the employer minimizes the number of persons exposed to glycol ethers. In addition, this requirement assures that only those persons who have been properly trained and utilize proper protective equipment are permitted into the area.

In paragraph (e)(3) of the proposal, it is stipulated that whenever an employer at a multi-employer worksite establishes a regulated area, that employer shall communicate the location and restrictions of access to the regulated area to other employers with work operations at that worksite. This requirement would lessen the possibility that unauthorized, unprotected people would enter the area and be inadvertently exposed. OSHA is concerned that employees at nearby sites be aware of the existence of the hazard and remain outside of the regulated area. Even though the signs posted by the first employer serve to warn employees of a second employer to stay out of the area, there is no assigned accountability for these employees. Therefore, if the second employer is aware of the hazards, then it is the responsibility of the second employer to assure that his employees do not enter the regulated area of the first employer without permission and proper protective equipment.

It would be required, under paragraph (e)(4) of the proposal, that each person entering a regulated area be provided with and required to use appropriate personal protective equipment, including respiratory protection selected in accordance with paragraph (g)(3). This provision is also consistent with other OSHA standards (e.g., Asbestos, 29 CFR 1910.1001). This provision applies not only to employees working "full time" in the regulated area but to any person entering the area. This approach provides a number of benefits: (1) "Walk through" by employees will be discouraged since use of appropriate personal protective equipment will be required of all persons entering the area; (2) employees whose duties require them to be in the area for a longer period of time than originally anticipated will be adequately protected since it eliminates the need for employees to estimate length of time in the regulated area and make individual decisions regarding personal protective equipment; and (3) enforcement will be simplified for the employer since the use of personal protective equipment will be uniformly required of all persons in the regulated area, regardless of the length of time they will be present in the area.

Methods of Compliance: Paragraph (f)

Paragraph (f)(1) of the proposed standard would require employers to institute engineering and work practice controls, to the extent feasible, as the primary means to reduce and maintain employee exposures to glycol ethers to levels at or below the TWAs or the ELs and to eliminate dermal exposure. Paragraph (f)(2) also requires employers, whenever they establish that feasible engineering and work practice controls are not sufficient to lower exposures to or below the TWAs or the ELs or to eliminate foreseeable dermal exposure, to nonetheless implement such controls to reduce employee exposures to the lowest levels achievable and then to provide supplemental personal protective equipment to eliminate dermal exposure and/or achieve the TWAs or ELs through the use of respirators that comply with the requirements of paragraph (g) of this proposed standard.

Engineering controls serve to reduce employee exposure in the workplace by either removing or containing the hazard or isolating the worker from exposure. These controls include, but are not limited to, process or equipment redesign (including substitution of glycol ethers with a less toxic chemical), installation of ventilation equipment (localized and/or general), process or equipment enclosure, and employee isolation. In general, engineering controls act on the source of the hazard and eliminate or reduce employee exposure without reliance on the employee taking self-protective action or intervention. Once implemented, engineering controls protect the employee, subject only, to periodic replacement or preventative maintenance.

Engineering controls are: reliable; provide consistent levels of protection to a large number of workers; are not dependent upon individual human performance; can be monitored continually/inexpensively; allow for predictable performance levels; remove hazards from the workplace. Once removed, the health hazard no longer poses a threat to the employee. Engineering controls are preferred by OSHA since they remove hazards from the workplace.

Engineering controls can be grouped into 3 categories: (1) Substitution, (2) isolation, and (3) ventilation, both general and localized. Quite often a combination of these controls can be applied to an industrial hygiene control problem to achieve satisfactory air quality. It may not be, and usually is not, necessary or appropriate to apply all these measures to any specific potential hazard.

Substitution should not be overlooked as an appropriate solution to an industrial hygiene problem. One of the best ways to keep people from being exposed to a toxic substance is to stop using it entirely. This is not always possible, but at least the following question should be asked: "Can a less toxic material be substituted in the process?" Other examples of substitution which may provide effective control of an air contaminant are changing from one type of process equipment to another, or even in some cases changing the process itself.

In general, a change in any process from a batch to a continuous type of operation carries with it an inherent reduction in potential hazard. This is true primarily because the frequency and duration of worker's potential contact with the process materials is reduced when the overall process approach becomes one of continuous operation. The substitution of processes can be applied on a fundamental basis. For example, substitution of airless spray for conventional spray equipment can reduce the exposure of a painter to toxic substances. Substitution of a paint dipping operation for the paint spray operation can reduce the potential hazard even further. In any of these cases the automation of the process can further reduce the potential hazard.

In addition to substitution, the principle of isolation should be considered. Although "isolation" is frequently envisioned as consisting of installation of a physical barrier between a hazardous operation and the workers, isolation can be provided without a physical barrier by appropriately placing the employee at greater distance from the source of the glycol ethers exposure and by controlling employees' exposures by scheduling work assignments when the fewest employees are present. Examples of this latter method would be operating a contaminant-producing operation at night in the absence of most of the employees. Clean-up operations in which toxic substances are involved sometimes can be performed at night in the absence of the usual production staff. Such methods of controlling worker exposures to contaminants by work assignment away from the contaminant are known as administrative controls.

Frequently the application of the principle of isolation maximizes the benefits of additional engineering concepts such as local exhaust ventilation. For example, the charging of mixers is the most significant operation in many processes that use formulated ingredients. When one of the ingredients in the formulation is of relatively high toxicity, it is worthwhile to isolate the mixing operation, that is, install a mixing room, thereby confining the airborne contaminants potentially generated by the operation to a small area rather than having them influence a larger area of the plant. By ensuring containment, the application of ventilation principles to control the contaminant at the source (i.e., the mixer) is much more effective.

Ventilation, applied as either a general or local control, is by far the most important engineering control principle available to the industrial hygienist. Its principal application is to maintain airborne concentrations of contaminants at acceptable levels in the workplace.

A local exhaust system is used to carry off an air contaminant by capturing it at or near its source, before it spreads throughout the workplace. Some examples of local ventilation systems include a canopy hood over a hot process, slot ventilation around the periphery of a vat, and a laboratory hood enclosure. General ventilation, on the other hand, lets the contaminant spread throughout the workroom but dilutes it by circulating large quantities of air into and out of the workroom. A local exhaust system is generally preferred to ventilation-by-dilution (general ventilation only) because it provides a cleaner and healthier work environment.

By comparison, work practice controls reduce the likelihood of exposure through alteration of the manner in which a task is performed such as how an employee positions himself/herself relative to the source and/or engineering control. While work practice controls also act on the source of the hazard, the protection they provide is based upon employer and employee behavior rather than installation of a physical device such as a ventilation system. Examples of some basic work practices include, but are not limited to, (1) limiting access to regulated work areas to authorized and specially-trained personnel with proper personal protective equipment, (2) drawing tank car samples from an upwind position, and (3) performing glycol ether analyses, such as quality checks, within a chemical fume hood.

In many instances, the two control methodologies discussed above work in tandem as it is often necessary to employ work practices to insure effective operation of engineering controls. For example, if an employee inappropriately performs an operation

outside of an exhaust hood then the protection afforded by the engineering control (i.e., the exhaust hood) will be of little or no use. As can be seen, therefore, in many situations it is important not only that an engineering control be functioning properly but also that employees are aware of the work practices that are necessary to assure effectiveness of the control.

Primary reliance on engineering controls and work practices is consistent with good industrial hygiene practice and with the Agency's traditional adherence to a particular hierarchy of preferred controls. This hierarchy specifies that engineering controls and work practices are to be used in preference to respirators. OSHA has traditionally relied less on respirators in the hierarchy of controls because there are so many problems associated with their use. Often work is strenuous and the increased breathing resistance of the respirator reduces its acceptability to employees. Safety problems are presented by respirators since they limit vision. In some difficult and dangerous jobs, effective communication facilitates a safe, efficient operation. Voice transmission through a respirator can be difficult, annoying, and fatiguing. Movement of the jaw in speaking causes leakage thereby reducing the efficiency of the respirator and decreasing the employee's protection against glycol ethers exposures. Also, skin irritation can result from wearing a respirator in hot, humid conditions. Such irritation can cause considerable distress and disrupt work schedules. To be used effectively, respirators must be individually selected and fitted, conscientiously and properly worn, regularly maintained, and replaced as necessary. In many workplaces, these conditions are difficult, if not impossible, to satisfy. For these reasons and others, OSHA has concluded that reliance on respirators should be minimized.

Paragraph (f)(3) of the proposal would require that engineering controls be inspected and maintained or replaced on a regular schedule to ensure their effectiveness. Regularly-scheduled inspections are required to confirm that engineering controls such as protective shields have not been broken or removed; that ventilation systems are operating properly; that filters are being replaced on a sufficiently frequent interval; and that any other physical, mechanical, or replacement-dependent controls are functioning as intended.

In consideration of glycol ethers' ability to be absorbed through the skin and thereby contribute to overall exposure, paragraph (f)(4) would require the employer to permit employees to leave the work area immediately or as soon as feasible to wash skin areas which have had contact with glycol ethers.

Whenever the TWAs and/or ELs are exceeded or dermal exposure exists, paragraph (f)(5)(i) would require employers to establish and implement a written compliance program to reduce employee exposure to or below the TWAs and/or ELs and eliminate dermal exposure. The plan should provide for this reduction to be accomplished, where feasible, through the use of engineering and work practice controls. If engineering and work practice controls cannot reduce exposures to or below the TWA and EL permissible exposure limits and eliminate dermal exposures then the plan shall include the use of whatever respiratory protection equipment is necessary to achieve compliance and all appropriate personal protective equipment necessary to eliminate contact with glycol ethers. In addition, the Agency believes that the emergency plan prescribed in paragraph (k) is inherently a part of the overall compliance program since it addresses prevention of employee exposure in emergency situations. Therefore, paragraph (f) (5) (i) (B) would require that the the written emergency plan be included in the compliance plan.

The written program requirement commits the employer to evaluating employee exposure and setting down an organized and complete plan of reducing employee exposures to permissible limits. Inclusion of personal protective equipment, including respiratory protection, in the plan assures that the appropriate protective equipment is selected, based on level and mode of exposure, and written into the plan for reference.

Paragraph (f)(5)(ii) would require that the written compliance program be reviewed and updated at least annually, or more often if necessary, to reflect significant changes in the employer's compliance status. By requiring, at a minimum, annual review of the compliance program, the Agency assures that the employer will update the program to reflect the current compliance status of the workplace. This review would require the employer to evaluate all new or altered tasks, procedures, processes, and so forth to determine whether they would result in occupational exposure and, if so, what exposure reduction methods must be implemented.

Paragraph (f)(5)(iii) states that the employer's written compliance program shall be submitted upon request for examination and copying to the Assistant Secretary, the Director, affected employees, and authorized employee representatives. Employee and employee representative access allows workers to gain an awareness of where the permissible exposure limits are exceeded, what steps the employer is taking to reduce or eliminate exposure, and the appropriate respiratory protection and personal protective equipment to use in these areas. Access to the plan by the Assistant Secretary is important for compliance enforcement. Access by the Director is required for that agency to carry out the various investigations and research it deems necessary. For example, performing health hazard evaluations of a plant, determining the current exposure patterns and control methodologies in industry use, and conducting epidemiological studies.

Respiratory Protection: Paragraph (g)

Respirators serve as supplemental protection to reduce employee exposures when engineering and work practice controls are not sufficient to achieve the necessary reduction to or below the TWAs and ELs. The proposed standard, in paragraph (g)(1), states that where respiratory protection is required the employer shall provide, at no cost to the employee, and shall assure the proper use of respirators which comply with the requirements of this section to reduce employee exposures to or below the TWA and EL permissible exposure limits.

In paragraph (g)(1)(i) through (g)(1)(iv), the proposed standard would require that respiratory protection be worn (1) during the interval necessary to install or implement feasible engineering and work practice controls; (2) in work operations, such as maintenance and repair activities and during brief or intermittent operations, for which the employer has established that engineering and work practice controls are not yet feasible; (3) in work situations where the employer has implemented all feasible engineering and work practice controls and such controls are not sufficient to reduce exposure to or below the TWA and/or EL permissible exposure limits; and (4) in emergencies.

In some circumstances (e.g., certain maintenance and repair operations, emergencies, or during periods when engineering and work practice controls are being installed and implemented) OSHA recognizes that respirators may be essential to guarantee worker health and safety. Therefore, provision is made in paragraph (g)(1) for their use as

primary controls in these instances where engineering and work practice controls cannot be used to achieve the TWAs or ELs. In other circumstances where engineering and work practice controls alone cannot reduce exposure levels to the TWAs or ELs, respirators may also be used for supplemental protection. However, it must be kept in mind that the burden of proof of infeasibility rests with the employer in those circumstances where respiratory protection is used in lieu of engineering and work practice controls.

It would be required that all employees who wear respiratory protection be medically screened to determine whether any health conditions exist which could affect the employee's ability to wear a respirator. Considering the health problems which may be exacerbated with respirator use and their associated detrimental effects on an employee, the proposal states in paragraph (g)(2) that no employee shall be assigned tasks requiring the use of respiratory protection if, based upon his or her most recent medical examination, an examining physician determines that the employee will be unable to function normally while wearing a respirator. Common health problems which could present difficulty with respirator use include claustrophobia (an intolerance of feeling enclosed and a subjective feeling of breathing difficulty), chronic rhinitis, nasal allergies (necessitating frequent removal of the respirator to deal with nasal discharges), and chronic sinusitis. In addition, difficulties with use of respirators may arise in employees with respiratory or cardiac diseases. Respiratory diseases include chronic obstructive pulmonary disease, emphysema, asthma, and moderate to severe pneumoconiosis. Cardiac or cardiorespiratory diseases that may affect respirator wear include coronary thrombosis, any type of congestive heart disease, other ischemic heart diseases, and hypertension.

This paragraph would also require that such employees be given the opportunity to transfer to a position where no respirator use is required. That position shall be with the same employer, in the same geographical area, and with the same seniority and rate of pay the employee had just prior to such a transfer, if such a position is available. The Agency believes that this provision will minimize the reluctance of all employees, including those experiencing difficulty with respirator use, to participate in the Medical Surveillance Program for fear of losing his or her job due to the possible inability to wear a respirator.

Paragraph (g)(3) specifies the type of respirators that may be used to provide protection from exposure to glycol ethers. This proposal would permit only supplied-air respirators and would prohibit the use of air-purifying respirators equipped with organic vapor cartridges or canisters. The rationale behind this decision relates, in part, to the odor threshold of the glycol ethers. Generally, an employee using an air purifying respirator can detect a poor facepiece seal or sorbent cartridge breakthrough by the odor of a chemical as it finds its way into the respirator, provided the chemical possesses good warning properties. If the odor threshold of a compound exceeds the permissible exposure limit, however, the employee is deprived of such an inherent odor warning and is not aware of a respirator inadequacy until he/she is overexposed to the compound. Consequently, an important factor in the selection of appropriate respiratory protection is the odor threshold of the chemical of concern.

When considering the odor threshold of a substance, one finds that reported values are widely divergent. Two major factors which influence odor detection are differences between individuals in the ability to perceive a particular odor and the methodology employed in conducting the odor threshold determination. In their "Guide to Industrial Respiratory Protection—Appendix C" (Ex. 5–142), NIOSH states:

> Amoore and Hautala (33) found that on average, 95% of a population will have a personal odor threshold that lies within the range from about one-sixteenth to sixteen times the reported mean "odor threshold" for a substance.

In further explanation, Amoore and Hautala state: (Ex. 5–141)

> The ability of members of the population to detect a given odor is strongly influenced by the innate variability of different persons' olfactory powers, their prior experience with that odor, and by the degree of attention they accord the matter.

This statement addresses not only personal factors which influence odor detection but also raises the issue of differences in testing methodology. Examples of methodology differences include: awareness or lack of awareness of the test subject to the purpose of the test (i.e., to detect an odor) thereby increasing his/her attentiveness to odor detection; presentation mode of the odor samples to the test subject; purity of the test compound; vapor modality (liquid or gaseous); and number of trials. As can be seen, lack of standard testing methodology in conjunction with individual differences in odor perception can lead to the wide variation of odor thresholds found in the literature.

OSHA is aware of two documents that have attempted to account for the variabilities of reported odor thresholds—Amoore and Hautala's "Odor as an Aid to Chemical Safety: Odor Thresholds Compared with Threshold Limit Values and Volatilities for 214 Industrial Chemicals in Air and Water Dilution" (Ex. 5–141) and the American Industrial Hygiene Association's (AIHA) "Odor Thresholds for Chemicals with Established Occupational Health Standards" (Ex. 5–143).

Both documents calculated and utilized the geometric means of the odor thresholds reported in their respective data collections to deal with the broad range of values. In the absence of conducting new, standardized testing, the Agency believes that this is a sound approach to obtaining a single odor threshold value which can be used in evaluating warning properties of compounds.

Amoore and Hautala also present a method for comparing the exposure limit of a substance and its odor threshold through calculation of an "odor safety factor" (i.e., exposure limit divided by odor threshold). The odor safety factor can then be used to classify a compound, using the scale shown in Table A, and thereby determine what percentage of attentive persons can detect the compound at the exposure limit and what percentage of distracted persons will detect a warning of the compound at the exposure limit.

TABLE A

Class	Odor safety factor	Interpretation
A	>550	>90% of distracted persons perceive warning of TLV concentration in air.
B	26–550	50–90% of distracted persons perceive warning of TLV concentration in air.
C	1–26	<50% of distracted persons perceive warning of TLV concentration in air.
D	0.18–1	10–50% of attentive persons can detect TLV concentration in air.
E	<0.18	<10% of attentive persons can detect TLV concentration in air.

Utilizing this methodology and the odor thresholds calculated by Amoore and Hautala, the four glycol ethers

under consideration, at the proposed TWA permissible exposure limits, yield the following classifications:

TABLE B

Compound	Proposed TWA (ppm)	Odor threshold (ppm)	Odor safety factor	Class
2–ME	0.1	2.3	0.04	E
2–MEA	0.1	N/A	N/A	N/A
2–EE	0.5	2.7	0.2	D
2–EEA	0.5	0.056	8.9	C

Both 2–ME and 2–EE have very low odor safety factors with resultant classifications of Class E and Class D, respectively, which means that most employees would not be able to detect breakthrough of these compounds at the proposed TWA permissible exposure limits. The highest classification, Class C, is achieved in the case of 2–EEA, in which less than 50% of distracted persons perceive a warning of 2–EEA at the proposed TWA concentration. The Agency does not find this to be adequate warning capability to permit use of air-purifying respirators.

Table C presents the results obtained when the odor thresholds given in the AIHA document are utilized in the above methodology. One should note that the AIHA lists two odor thresholds for the four glycol ethers: (1) The detection threshold (d) which is the lowest concentration at which a specific percentage of the test subjects, usually 50%, can detect the stimulus as different from odor-free blanks and (2) the recognition threshold (r) which is the lowest concentration at which a specific percentage of the test subjects, usually 50%, can ascribe a definite character to the odor (Ex. 5–143). The AIHA detection threshold values are very similar to the odor threshold values presented in Amoore and Hautala's paper and give the same classification results, therefore, only odor safety factors and classifications associated with recognition threshold values appear in Table C.

TABLE C

Compound	Proposed TWA (ppm)	Odor threshold (ppm)	Odor safety factor	Class
2–ME	0.1	2.4(d)	.....	
		4.4(r)	0.011	E
2–MEA	0.1	0.33(d)	.....	
		0.64(r)	0.17	E
2–EE	0.5	2.7(d)	.....	
		6.5(r)	0.008	E
2–EEA	0.5	0.06(d)	.....	
		0.13(r)	3.8	C

Performing the calculations using the recognition thresholds again results in 2–EE and 2–MEA having very low odor safety factors. The AIHA data also yields a low odor safety factor for 2–MEA (Amoore and Hautala present no odor threshold for this substance). 2–EEA once more achieves the highest odor safety factor and classification, Class C, which, as stated previously, can be interpreted to mean that less than 50% of distracted persons will perceive a warning of the compound at the proposed TWA concentration.

Amoore and Hautala state that their thresholds represent the most favorable conditions for odor testing, that is, the subjects were aware of the test, were attentive, and were trying to detect an odor. The studies utilized by the AIHA for determining the odor thresholds of the four glycol ethers also appear to have utilized test subjects who were aware of their objective and therefore would be concentrating on detecting and/or recognizing an odor. OSHA does not believe that such idealized circumstances for odor detection normally occur in the workplace. An employee would be distracted by performing other tasks (e.g., operating machinery, reviewing charts, observing production processes) and would not normally be focusing his/her attention on detecting a minimal odor level. Even the higher recognition threshold values are likely not to be indicative of odor perception of a distracted employee in the workplace with actual odor recognition occurring at even higher concentrations.

Considering the preceding information, the Agency does not feel that any of the four glycol ethers display adequate warning properties at the proposed TWA permissible exposure limits to permit use of air-purifying respirators. Therefore, only supplied-air respiratory protection is deemed appropriate for use with these compounds.

The use of supplied-air respiratory protection is supported by the following NIOSH comments to the ANPR: (Ex. 7–22)

> In NIOSH CIB #39: The Glycol Ethers, with particular reference to 2-methoxyethanol and 2-ethoxyethanol, NIOSH recommended that exposure to the glycol ethers be reduced to the lowest extent feasible. Only the most protective respirators are consistent with tha' recommendation: self-contained breathing apparatus with full facepiece operated in the pressure demand mode, or a combination respirator which includes a Type C supplied-air respirator with a full facepiece operated in the pressure-demand mode and an auxiliary self-contained breathing apparatus operated in the pressure-demand mode.

NIOSH goes on to state that if the proposed permissible exposure limits are below the odor threshold and OSHA decides not to follow their recommendation to permit only supplied-air respiratory protection, then

only cartridge or canister respirators with effective end-of-service-life indicators should be allowed. The Agency is not aware of any NIOSH/MSHA approved cartridges or canisters with end-of-service-life indicators for glycol ethers.

Following a conservative approach and allowing only supplied-air respirators eliminates the question of whether employees could be unknowingly exposed as a result of the compound's actual odor threshold being above the permissible exposure limits since the employee is no longer inhaling ambient air through a sorbent cartridge. While the employer must select the appropriate respirator from the table based upon the airborne concentration of glycol ethers, the employer may always select a respirator providing greater protection (i.e., one prescribed for higher concentrations of glycol ethers than are present in the workplace).

The respirator selection table in the proposed standard lists the type of respiratory protection which, at a minimum, must be provided and used at each airborne concentration of glycol ethers in the workplace. In no circumstance shall a respirator be used in atmospheric concentrations which exceed that respirator's assigned protection factor. The respirators selected by the employer must be approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part II or any future revisions. It should be noted that NIOSH is currently in the process of revising the 30 CFR part 11 respirator testing and certification standards. When published, this revision will be listed as 42 CFR part 84. OSHA will expect employers to base respirator selection on the most recent published standards of the aforementioned agencies.

In those situations in which respirator use is required, the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f) as would be required by paragraph (g)(4) of this proposed standard. This general industry standard (29 CFR 1910.134) includes provisions for the selection, fit, use, cleaning, and maintenance of respirators. In addition, it contains requirements for a written respiratory protection program and minimum air quality standards for supplied-air respiratory protection systems.

A drawback to respirator use is the skin irritation that can develop with some employees, particularly in hot, humid, and/or dirty environments. The Agency recognizes that this irritation adds to the discomfort and inconvenience already experienced by employees wearing respirators and has included paragraph (g)(5) with the intent of minimizing skin irritation and assuring adequate employee protection. This provision states that employers must permit employees to leave the work area to wash their faces and respirator facepieces as needed to prevent skin irritation from respirator use.

Paragraph (g)(6) deals with the fit testing of respirators. The employer would be required, by paragraph (g)(6)(i), to assure that the respirator issued to the employee exhibits the least possible facepiece leakage and that the respirator is fitted properly and will not permit the employee to inhale glycol ethers in excess of either the TWAs or ELs.

Good face fit is critical in assuring proper performance of respiratory protection. When an employee inhales through a respirator which fits poorly, contaminated workplace air can enter the respirator through gaps and leaks in the seal between the face and the facepiece. Obtaining a proper respirator fit may require the fit testing of a variety of different mask sizes from several manufacturers to select the facepiece with the best fit (least leakage around the faceseal) for each employee. This methodology will reduce inhalation leakage to a minimum.

Quantitative fit testing is a procedure whereby the level of penetration of a test agent of a known concentration is measured inside the facepiece of the respirator. It provides a quantitative assessment of the fit (the fit factor). It allows the employer to continue testing different facepieces until the optimum or best fitting respirator is identified and selected for the employee. Quantitative fit testing requires the use of moderately sophisticated testing equipment and is more expensive to perform than qualitative fit testing, which may reduce its availability in some worksites. Also testing services may not be available in all parts of the country to provide quantitative fit testing services for small employers.

Qualitative fit testing does not provide a numerical measure of the quality of the fit but simply determines whether a respirator fits or not. Qualitative fit testing is a technique whereby a person wearing a respirator is tested to see whether a test agent with a detectable odor or taste threshold can be detected inside the respirator. If the test agent is not detected by the employee wearing the respirator, the respirator is said to fit. Qualitative fit testing is more subjective than quantitative testing because it depends on the individual's ability to detect the test agent.

OSHA believes that while quantitative fit testing may have some advantages, qualitative testing conducted in accordance with the protocols described in Appendix F can adequately accomplish the intent of the standard of ensuring that each employee is assigned and wears the respirator that provides a proper fit with the least possible leakage. Comments are requested on all aspects of fit testing.

Paragraph (g)(6)(ii) states that for each employee wearing a tight-fitting supplied-air respirator, the employer shall perform either a qualitative or quantitative fit test. Fit testing may be accomplished by testing the particular facepiece to be used (make, model, and size), without any air supplying equipment or attachments. Testing is conducted by equipping the facepiece with appropriate air purifying elements. Upon obtaining adequate fit with a particular facepiece, then that facepiece is to be used with the supplied-air system (i.e., air-supplying equipment or attachments). When quantitative fit testing is performed, half mask facepieces must exhibit a fit factor of 100 and full facepieces a fit factor of 500, at a minimum. Regardless of the fit testing protocol utilized, qualitative or quantitative, respirator protection factors are to be assigned according to the respirator selection table in the proposed standard.

Paragraph (g)(6)(iii) would require the employer to perform and certify the results of the appropriate fit tests at the time of an employee's initial fitting, at least annually thereafter, when a different size or make of respirator is used, and when a change in facial structure occurs. This frequency of fit testing is necessary to assure that factors which may affect the proper fit of a respirator are detected and necessary adjustments are performed to assure the integrity of the faceseal. For example, the fit of respirators is not standardized between manufacturers. Fit testing would be required, therefore, whenever a different size or make of respirator is used. In addition, a change in an employee's facial structure can compromise a respirator's faceseal. Examples of such changes include loss of weight, cosmetic surgery, facial scarring, and the installation of dentures. Therefore, fit testing is required at least annually and when any facial changes, such as those mentioned above, occur.

In order to assure that employees willingly participate in fit testing and that such procedures are standardized, paragraph (g)(6)(iv) would require that all tests be performed at a reasonable time and place and at no cost to the employee and must be conducted in accordance with Appendix F of this proposal.

Personal Protective Equipment: Paragraph (h)

The underlying premise of personal protective equipment is that its use will protect against exposure during performance of a task. Paragraph (h) of the proposal contains a number of provisions concerned with the use of personal protective equipment. In this paragraph, employers would be required to select and provide appropriate personal protective equipment in accordance with 29 CFR 1910.132 (General Requirements) and 29 CFR 1910.133 (Eye and Face Protection) of the General Industry Standards as often as necessary throughout the work shift to prevent employee exposure to glycol ethers. Based on good industrial hygiene practice, paragraph (h)(1)(i) of the proposed standard would require that selection of personal protective equipment must be based upon the type of exposure anticipated (e.g., hand contact, splashing, spraying, inhalation), conditions of use (i.e. suitability of the equipment to maintain its protective capabilities under the conditions in which it will be used), and the hazard to be prevented (e.g., splashes to the face, eye irritation, dermal exposure, aerosol inhalation). This approach is performance oriented as it requires that the employer evaluate each process or task which could present a possibility of exposure and then implement the most efficient means for protecting against the exposure.

The employer would also be required by paragraph (h)(1)(ii) of the proposal to provide the appropriate personal protective equipment at no cost to the employee and assure that employees use this equipment. Provision of personal protective equipment at no cost to the employee helps assure employees' acceptance of its use in exposure situations. Since it is the employer's obligation to prevent employee exposure to glycol ethers in the workplace, the responsibility to provide personal protective equipment and assure its use rightfully rests with the employer.

In order to prevent employees from being unwittingly exposed and to achieve adequate protection, paragraph (h)(1)(iii) states that personal protective equipment such as, but not limited to, coveralls, gloves, faceshields, and rubber boots, must be made of materials sufficiently impervious to glycol ethers to prevent employee exposure to these compounds. For example, information submitted in response to the ANPR included breakthrough and permeation studies of various glove materials relative to glycol ethers (Exs. 4–017c, 7–22 attachment 17). Both the study by Union Carbide and that of Dow Chemical indicate that butyl rubber gloves provide good protection against exposure to these compounds. The proposed regulation is performance oriented, however, and does not stipulate that protective gloves or other protective equipment be made of a specific material but simply that any equipment selected be adequate to prevent employee contact with glycol ethers. In this way, the proposed standard will not interfere with any developing technology or innovative techniques that may efficiently protect employees from contact with glycol ethers.

Paragraph (h)(1)(iv) is closely related to the preceding provision in that it would require employers to provide uncontaminated personal protective equipment as often as necessary throughout the work shift to prevent employee exposure to glycol ethers.

Removal and storage of personal protective equipment is covered under paragraph (h)(2) of the proposal. Employers would be required to assure that employees remove all personal protective equipment contaminated with glycol ethers prior to leaving the work area or as soon as feasible if the potential for soak-through/breakthrough exists. This paragraph would also require that removal of contaminated personal protective equipment be done in an area which would minimize exposure of other employees to glycol ethers.

Paragraph (h)(2)(ii) states that the employer must assure that no employee takes home glycol ethers contaminated personal protective equipment. In addition, paragraph (h)(2)(iii) would require the employer to assure that no employee takes glycol ether contaminated equipment out of the workplace unless authorized to do so for the purposes of laundering, cleaning, maintenance, or disposal.

As stated previously, the intent of personal protective equipment is to protect the employee against exposure. Therefore, if a situation arises in which glycol ethers may soak through the equipment provided then the employer must assure that the employee removes the equipment as soon as possible to prevent dermal absorption. In addition, contaminated equipment is to be removed prior to leaving the work area and in an area which would minimize exposure of other employees in order to minimize migration of the contaminant away from the worksite and prevent possible exposure of additional individuals such as fellow employees and family members through airborne or dermal routes. Only authorized employees are to be permitted to take contaminated protective equipment out of the workplace and only for the purposes of laundering, cleaning, maintenance, or disposal. It should be noted that the Agency does not intend for employees to be authorized to launder and clean contaminated items at home or at a public laundromat. Therefore, these activities have been specifically prohibited. Instead, only those employees who are trained and informed as required in paragraphs (h)(3)(ii) and (h)(3)(iii) are to be authorized to remove contaminated personal protective equipment from the workplace.

Contaminated personal protective equipment must be stored in such a manner so as to minimize employee exposure and shall not be worn again until cleaned or laundered. Thus, the area where protective equipment dampened with glycol ethers or glycol ether-containing compounds are stored must be sufficiently apart from areas where employees work or congregate to prevent additional exposure to employees. Rewearing of contaminated equipment is prohibited to prevent additional employee exposure and an enhanced potential for dermal absorption. Storage areas or containers with glycol ethers contaminated personal protective equipment must have either a sign or a label, respectively, as specified in paragraph (m)(1)(ii).

Paragraph (h)(3)(i) would require that each employer must clean, launder, repair, or replace, at no cost to the employee, all required personal protective equipment for each affected employee as necessary to assure its effectiveness and stipulates that the employer is responsible for disposal of these items. The requirement to repair or replace the protective equipment is necessary to insure the proper functioning of these items and, thereby, proper employee protection. Requiring that the employer be responsible for cleaning, laundering, repair, and disposal insures that contaminated equipment will be handled only by personnel who have been trained in the proper work practices for handling this equipment as specified in paragraph (h)(3)(ii) and (h)(3)(iii). Overall, this

paragraph assures that contaminated equipment remains under the control of the employer. This approach permits standardized, consistent cleaning, laundering, repair, and replacement of these items thereby maximizing their effectiveness and helping to assure that they are properly disposed of at the end of their service life.

The employer would also be required by paragraph (h)(3)(ii) to assure that only trained persons remove contaminated personal protective equipment from storage for the purpose of laundering, cleaning, repair or disposal. In this way, only those employees who are aware of the hazards of glycol ethers and use proper handling work practices will contact the equipment. Whether the employer has an on-site laundry/cleaning/repair facility or sends the equipment off-site for laundering, cleaning, or repair, the employer shall inform any person who may have contact with such equipment of glycol ethers' potentially harmful effects and of procedures to safely handle the personal protective equipment as would be required by paragraph (h)(3)(iii).

Paragraph (h)(3)(iv) states that the employer shall assure that laundering, cleaning, maintenance, and disposal are performed only at facilities which are appropriate to handle glycol ethers contaminated personal protective equipment. Therefore, as stated previously, activities such as laundering contaminated personal protective equipment at a public laundromat or in an employee's home would be prohibited. This is to assure that these operations are properly performed and to prevent inadvertent exposure of unknowing individuals.

Paragraph (h)(3)(v) stipulates that when contaminated personal protective equipment is destined for disposal, it shall be placed in a sealed container which is labeled in accordance with paragraph (m)(1)(ii) of this section. This provision will assure that those individuals who may come in contact with the container will be protected against exposure and will be warned of the container's contents.

Hygiene Protection: Paragraph (i)

A characteristic of a number of solvents, including glycol ethers, is that they can be readily absorbed through the skin. Therefore, if employees may become splashed with liquids containing glycol ethers, paragraph (i)(1) would require the employer to provide conveniently located quick drench showers and assure that affected employees use these facilities immediately. Quick drench showers must be able to rapidly drench the employee with a forceful flow of water in order to effectively remove the glycol ether, thereby minimizing dermal absorption. These showers must also be located in the immediate work area of an employee who could be splashed so that they may be reached quickly should an accidental splash occur, once again reducing the length of time glycol ethers remain in contact with the skin and consequently the absorption of these compounds into the body. It is particularly important to locate showers in areas where employees do not normally wear full body protective clothing yet could potentially be accidently splashed or in areas where large volume splashes could occur. Criteria for assessing quick-drench showers and eyewashes can be found in consensus standards such as ANSI Z358.1–1981 and NSA Data Sheet 1–686–80. References such as these can be used to evaluate characteristics such as flowrate, accessibility, construction, testing schedules, and so forth.

Paragraph (i)(2) would require the employer to provide eye-wash fountains within the immediate work area of employees whose eyes could possibly be splashed with liquids containing glycol ethers since these compounds are eye irritants. For the same reasons as above, an employee must be able to reach the fountains quickly so that the flushing can be initiated as soon as possible after an accidental eye splash. In addition, eye-wash fountains should be capable of maintaining an appropriate water pressure for an appropriate length of time to remove glycol ethers from the eyes.

OSHA has not proposed that separate change rooms and shower facilities be provided. In addition, showering at the end of the work shift would not be required. Based upon its understanding of glycol ethers usage patterns, the Agency envisions the use of personal protective equipment as a temporary measure utilized intermittently during performance of an employee's duties and worn over the employee's regular work clothes. It is felt that prohibiting removal of this equipment in common areas will provide adequate protection from exposure for other employees. Due to the dermal absorption properties of glycol ethers, the Agency feels that requiring showering at the end of the work shift would not provide added protection since absorption would have already occurred. Minor splashes can be washed off in normal lavatory facilities while quick-drench showers are available for major exposures. In both cases, other provisions of this standard require employers to assure removal of glycol ethers from the skin immediately or as soon as feasible and replacement of contaminated equipment.

Paragraph (i)(3) would prohibit eating, drinking, smoking, and application of cosmetics in areas of glycol ethers exposure. The purpose of this provision is to prevent inadvertent ingestion, inhalation, or dermal application of glycol ethers. In addition, paragraph (i)(4) would prohibit wearing of personal protective equipment in lunch areas to prevent migration of glycol ethers to an area where other employees may be unknowingly exposed.

Housekeeping: Paragraph (j)

Paragraph (j)(1) would require that all surfaces (e.g. floors, working surfaces, exterior surfaces of equipment) be kept free of glycol ethers to the extent feasible. Not only is this consistent with the intent of General Industry Standards 29 CFR 1910.141(a)(3), Housekeeping, but this provision minimizes both the unnecessary spread of glycol ethers in the workplace and an increased potential for employee exposure.

Paragraph (j)(2) would require employers to conduct a program to detect leaks and spills, including visual inspections of operations involving liquids containing glycol ethers. The intent of this provision is to minimize the number of employees who could be inadvertently exposed through either dermal contact with liquid glycol ethers or elevated airborne concentrations evolving from evaporation of such liquids.

In addition to the above program, paragraph (j)(3) would require preventative maintenance of equipment that handle glycol ethers, including surveys for leaks at intervals appropriate to assure proper functioning of equipment. This provision should assist in reducing exposure resulting from leakage caused by items such as cracked joints, corroded tanks, broken gaskets, worn valve packings, malfunctioning equipment, and so forth.

Periodic inspection and maintenance of process equipment and control equipment such as ventilation systems is an important work practice control. In plants where total containment is used as an engineering control, the failure of process equipment or the ventilation system can seriously increase the probable occurrence of exposures. Frequently, equipment which is near failure or in disrepair will not perform normally. Regular inspections can detect abnormal conditions so that maintenance can then be performed. If equipment is routinely inspected, replaced, or repaired before failure is

likely, the risk of exposure occurring will be reduced.

The Agency has intentionally kept inspection and maintenance requirements in performance-oriented terms rather than dictating specific time intervals for these activities. OSHA is aware that different industry sectors and even different manufacturing processes within the same facility may vary in the frequency of occurrence of leaks/spills or the need for preventative maintenance of equipment. The employer, therefore, is afforded the flexibility to determine the frequency of inspection/maintenance and, as a result, gain any cost savings accrued through elimination of an arbitrarily assigned frequency schedule.

In areas where spillage may occur, paragraph (j)(4) stipulates that the employer must make provisions to contain the spill, to decontaminate the work area, and to dispose of the waste generated by the clean-up. Should a spill occur, having such provisions in place will assist in quickly limiting the area affected by the spill, facilitate its clean-up, and will permit more rapid and efficient decontamination of the spill area and proper disposal of clean-up waste. The intent of this proposed requirement is to increase preparedness for the eventuality of a spill, thereby minimizing employee exposure by reducing the time necessary to control and clean up a spill and properly dispose of waste. Since glycol ethers exist in a variety of work environments, it is left to employers to assess what methods are appropriate to their workplace and conditions of use and are protective of their employees.

Paragraph (j)(5) would require that upon discovery of a leak or spill the employer assure that repair of the leak and/or clean up of the spill is initiated promptly in order to limit the area affected and eliminate the source of leakage. The employees performing this repair and clean up must be adequately protected by suitable personal protective equipment, which may include respiratory protection, to prevent exposure during these operations. These employees must also be trained in proper methods for clean-up and decontamination so that such operations can be accomplished safely, efficiently, and without exacerbating the hazard.

The final provision of the housekeeping section, paragraph (j)(6), would require that waste and debris contaminated with glycol ethers be placed in sealed containers bearing a warning label as specified in paragraph (m)(1)(ii). The containers will minimize airborne concentrations resulting from evaporation of glycol ethers from the wastes and prevent possible accidental employee contact or re-spillage of the material. The warning label is necessary to warn employees who may handle the containers of the hazard they contain. The Agency recognizes that wastes destined for disposal may need to meet packaging and labeling requirements of other local, State or Federal regulatory bodies. It is not OSHA's intent to issue duplicative or conflicting regulations. This provision is directed at protecting and warning employees at the worksite. However, OSHA notes that the containers should leave the worksite for final disposal in a form that meets the requirements of the appropriate regulatory bodies.

Emergencies: Paragraph (k)

This paragraph addresses the handling of emergency situations involving glycol ethers. The proposal requires that for each workplace or work operation where there is a possibility of an emergency involving glycol ethers, the employer must develop a written emergency plan including, at a minimum, those elements prescribed in 29 CFR 1910.38(a). For example, 29 CFR 1910.38(a) includes provisions concerning emergency escape procedures and escape route assignments; procedures to be followed by employees remaining to operate critical plant operations before they evacuate; alarm systems; evacuation plans; employee training; fire protection; and so forth. It should be noted that development of this plan is not dependent upon the existence of employee exposure but is based on the possibility of an emergency situation arising. That is, an employee may be exposed to glycol ethers and yet the potential for an emergency may not exist in the employee's work area. Conversely, there may be no employees in an area where there is a large quantity of glycol ethers, such as a storage tank, but the potential for an emergency exists (e.g., rupture of the tank). An emergency could be a massive release affecting a large area or may be a spill or leak which creates an emergency situation only in the immediate area. Emergency situations, therefore, may not be likely to occur in every workplace. Consequently, the Agency has adopted a performance oriented approach which allows the employer to evaluate and tailor the emergency plan to fit the workplace so long as it meets the requirements of 29 CFR 1910.38(a) and the specific provisions of this section.

In addition to requiring that the emergency plan comply with the requirements of 29 CFR 1910.38(a), paragraph (k)(1) also states the provisions of paragraph (q) of the Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120, remain in effect as applicable. Also, an emergency response plan meeting requirements of 29 CFR 1910.120 (q) would be deemed to meet the requirements for an emergency response plan under paragraph (k).

Paragraph (q) of the Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120, deals with emergency responses by employees outside the immediate worksite to releases of hazardous substances that occur at locations other than uncontrolled hazardous waste sites and hazardous treatment, storage and disposal operations conducted under the Resource, Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6901 *et. seq.*). The typical site covered by paragraph (q) would include hazardous substance releases at chemical manufacturing facilities. Paragraph (k)(1) makes clear that this paragraph does not override the provisions of 29 CFR 1910.120(q) and that paragraph (q) remains applicable pursuant to its terms. In addition, paragraph (k)(1) specifies that an emergency response plan meeting the requirements of paragraph (q) shall also be deemed to meet the requirements of paragraph (k) for all employees responding to an emergency.

Paragraph (k)(2) would require that all employees be trained in their responsibilities in the event of an emergency to minimize employee exposure, injury, and loss of life while increasing efficiency in dealing with the situation.

Generally, emergencies entail large quantities of free glycol ethers resulting in elevated airborne concentrations, increased chance of dermal contact, and, in some circumstances, the possibility of fire. In view of this, paragraph (k)(3) would require the employer to assure that only designated personnel furnished with appropriate personal protective equipment, including respiratory protection, and trained in reentry procedures are permitted to correct the emergency conditions. The employer would also be responsible for assuring that the appropriate personal protective equipment, housekeeping, and other emergency equipment and supplies for handling the emergency are located in each area where an emergency could occur so that the situation can be dealt with quickly and safely. As stipulated in paragraph (k)(5), all employees, except those designated to correct the situation, must be evacuated from and normal

operations halted in the area where the emergency has occurred until the emergency conditions have been abated. This will minimize the number of employees exposed and eliminate the presence of untrained personnel in the area. In addition, this provision minimizes the potential for exacerbation of the hazard as a result of attempting to maintain operations during an emergency situation.

Paragraph (k)(6) of this section would require the employer to make provisions for immediate evacuation, transportation, and medical assistance at a designated medical facility for affected employees. This provision will help assure that acutely exposed employees will receive appropriate medical attention as quickly as possible after exposure. By having such arrangements made beforehand, confusion or delay in obtaining prompt medical attention for the employee will be minimized.

Medical Surveillance: Paragraph (l)

Paragraph (l)(1)(i) of the proposal requires each employer to institute a medical surveillance program for all employees who are or will be exposed at or above the action level or above the EL. Providing medical surveillance for employees exposed at or above the action level or above the EL is consistent with other health standards that incorporate an action level or an EL and is considered by OSHA to be necessary and appropriate for monitoring the adequacy of the exposure limit to protect individual employees.

The proposal requires that the medical surveillance program provide each covered employee with an opportunity for a medical examination. Paragraph (l)(1)(ii) provides that all examinations and procedures be performed by or under the supervision of a qualified physician and be provided without cost to the employee. Clearly, a qualified physician is the appropriate person to be supervising and evaluating a medical examination. However, certain parts of the required examination do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

OSHA is proposing to require that persons who administer the pulmonary function tests required by this proposal, must complete a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution. This provision is consistent with other OSHA standards, Benzene (29 CFR 1910.28) and Cotton Dust (29 CFR 1910.1043), and it will assure that employees who must wear respiratory protection will receive adequate assessment of their lung capacity, a vital test in determining if they are capable of wearing a respirator.

This standard provides that all examinations and procedures shall be performed at a reasonable time and place. It is necessary that exams be convenient and be provided during the workday without loss of pay to the employee to assure that they are taken. The employer is required to establish and maintain an accurate record for each employee subject to medical surveillance.

Paragraph (l)(2) would require that the employer provide an initial medical examination to each employee. The purpose of the initial medical examination is to: (1) Establish the current health status of the employee and to determine whether employment in areas with glycol ethers exposure is appropriate; (2) establish essential baseline data against which to measure any change which might be attributable to glycol ethers exposure; and (3) determine whether the individual can safely wear a respirator. OSHA believes that the preplacement examination assessing each worker's state of health prior to the beginning of exposure to glycol ethers is essential to determine whether an employee's health changes over the period of employment and to determine pre-existing conditions that could influence initial job placement.

The medical examination proposed is to include: (1) Medical and work histories with emphasis on the pulmonary and mucous membranes and hematologic system, (2) a reproductive history, (3) a physical examination, (4) a blood analysis including at least a red blood cell count, white cell count, hemoglobin and hematocrit, (5) a pulmonary function test for respirator wearers and (6) any additional tests deemed appropriate by the examining physician.

This information, in conjunction with a complete physical examination, will assist the physician in the determination of the employee's health status, possible past exposures to glycol ethers or other substances that may have damaged organs or systems susceptible to glycol ethers toxicity, and suitability for employment in an area where exposure to glycol ethers will occur. Special emphasis is placed on the portions of the history and physical examination which evaluate organ systems known to be particularly susceptible to glycol ethers toxicity. Emphasis is placed on examination of the skin as evidence indicates that glycol ethers are rapidly absorbed through the skin. Therefore, the skin should be examined for conditions such as dermatitis which might facilitate absorption. Emphasis is also placed on the hematologic system because of the human and animal evidence which has shown adverse effects on various constituents of the blood as a result of glycol ethers exposure. The physical examination should also include attention to the mucous membranes and respiratory systems as these two systems can be nonspecifically irritated by glycol ethers. The pulmonary system takes on added importance with respirator use.

Also included in the initial or preplacement examination are any additional tests deemed appropriate by the examining physician. This provision authorizes the physician to include further tests which could assist the physician in determining the employee's suitability for work in an area in which glycol ethers exposure will occur or in determining whether a worker can safely wear a respirator.

In the proposed medical examination, OSHA has not prescribed any specific tests for the surveillance of adverse reproductive or developmental effects. Information presently available to OSHA is insufficient for the Agency to justify specification of the precise tests to be administered. Few tests are available which can reliably be used to detect the early onset of reproductive/developmental effects. For example, serum hormones such as follicle stimulating hormone (FSH), luteinizing hormone (LH), prolactin, and testosterone, may provide information on alterations in endocrine function which might be early indicators of adverse reproductive functioning. However, due to the cyclical nature of these hormones, multiple and sequential blood samples rather than single time point samples would be required to detect exposure related fluctuations in hormone levels. Furthermore, OSHA is not aware of any data specifically correlating alterations in endocrine function and glycol ethers exposure. Other tests such as sperm count or measurement of testes size are very invasive and the results of these types of tests are highly variable and thus difficult to standardize. For these reasons, employees may be unwilling to submit to testing. Due to the variability, results from individual workers may be difficult to interpret and may not provide meaningful diagnostic information. Because these types of tests are invasive and unlikely to give meaningful information on an individual basis, they have not been included in provisions for a medical

examination. OSHA is seeking comment on the availability of tests which can be used to detect the early onset of adverse reproductive/developmental effects.

OSHA has proposed that the employer provide his/her employees with the opportunity for medical advice or counseling with respect to their ability to produce a healthy child. Glycol ethers have been shown to produce adverse reproductive and developmental effects in several animal species and thus may potentially affect exposed workers' ability to produce healthy children. Therefore, workers who have past or current exposure to glycol ethers and are experiencing difficulties in conceiving a child should be afforded the opportunity for medical advice, counseling, and reproductive testing where it is deemed appropriate by the examining physician. This approach is consistent with other health standards for substances shown to induce adverse reproductive and developmental effects (e.g., Lead, 29 CFR 1910.1025 and Ethylene Oxide, 29 CFR 1910.1047).

OSHA proposes periodic medical examinations to be administered annually. The purposes of the annual examination are: (1) The early detection of biological effects of glycol ethers; (2) the detection of non-occupationally-related diseases that might require reduction of glycol ethers exposure; (3) the assessment of fitness for respirator usage; and (4) the monitoring of general health status and recent illnesses. The requirement that medical examinations be provided annually, as a minimum, is consistent with other OSHA health standards (e.g., Formaldehyde, 1910.1048 and Benzene, 1910.1028). In addition, the adverse effects of overexposure to glycol ethers are subchronic in nature (i.e., the effects may occur within a year). Periodic examinations performed at one-year intervals will allow for the detection of these effects. More frequent reviews of specific biological tests may be performed, if evidence indicates such tests are necessary.

OSHA also proposes a periodic medical re-evaluation of workers required to wear respirators. The re-evaluation is necessary because an illness, a new medication or a change in facial structure may affect and impact on an employee's continuing ability to wear a respirator. The re-evaluation will enable the physician to determine whether the individual can safely continue to wear the same type of respirator, should be re-fitted with another type, or should be removed from any area where respirator use is required.

In addition to routine medical surveillance, the proposal also requires that employers make medical examinations available as soon as possible to all employees who may have been acutely exposed to glycol ethers in an emergency. The emergency surveillance provisions reflect OSHA's concern for those employees who, because of equipment breakdown, container rupture or other causes, may be exposed to higher doses of glycol ethers. Medical evaluations should be made available in the event that such emergencies occur. No specific examination elements have been stipulated in this provision in order to provide the physician with sufficient flexibility to deal with the nature and degree of exposure sustained.

OSHA has not included a medical examination at the termination of employment. Because of the relatively short biological half-life of glycol ethers (i.e., 24–48 hours) and the subchronic nature of the reproductive/developmental effects associated with glycol ethers, an examination at the termination of employment may not be necessary. However, medical records at termination of employment may be useful to physicians to determine the status of an employee's health and to identify any potential future health effects. Thus, OSHA requests comments on whether provisions for medical examinations at termination of employment should be included in a final standard for glycol ethers.

The employer is required, in paragraph (l)(5), to provide the physician with the following information: A copy of this standard and its appendices; a description of the affected employee's former and current duties as they relate to the employee's glycol ethers exposure level; the employee's former and current exposure level or anticipated exposure level; a description of any personal protective and respiratory equipment used or to be used; and information or medical records from the employee's previous medical examinations that were provided or made available by the employer to the affected employee. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, when required.

In paragraph (l)(6), the employer is required to obtain a written opinion from the examining physician containing the results of the medical examination as they relate to occupational exposures; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material health impairment from exposure to glycol ethers; the physician's opinion as to whether the employee is exhibiting any symptoms/signs from overexposure to glycol ethers; any recommended restrictions upon the employee's exposure to glycol ethers or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further evaluation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposures. The employer must provide a copy of the opinion to the affected employee.

The purpose in requiring the employer to obtain a written opinion from the examining physician is to provide the employer with a medical basis to aid in the determination of initial placement of employees and to assess the employee's ability to use protective clothing and equipment. The physician's opinion will also provide information to the employer as to whether the employee may be suffering from overexposure to glycol ethers. The employer can then reassess the employee's exposure and work practices and take steps to reduce that employee's exposure. The requirement that a physician's opinion be in written form will ensure that employers have had the benefit of this information. The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days of its receipt. The requirement that an employee be provided with a copy of the physician's written opinion will ensure that the employee is informed of the results of the medical examination. The requirement that the physician sign the opinion is to ensure that the information that is given to the employer has been seen and read by the physician.

The purpose in requiring that specific findings or diagnoses unrelated to occupational exposures not be included in the written opinion is to encourage employees to participate in the medical surveillance program by removing any concern that the employer will obtain adverse information about the employee's physical condition that is unrelated to occupational exposures.

In the proposed standard, in Appendix D, OSHA has included a non-mandatory, reproductive history questionnaire. The questionnaire which was excerpted and modified comes from

the Office of Technology Assessment's (OTA) report, Reproductive Health Hazards in the Workplace (Ex. 5–135, pp. 382–388) and is included in the standard to give guidance on conducting reproductive histories for workers exposed to glycol ethers. As stated in the OTA report, this questionnaire is a composite derived from several research facilities, it is not a validated questionnaire. Nevertheless it has value in providing guidance and information on pertinent factors which may be important in understanding a worker's medical background.

Communication of Glycol Ethers Hazards to Employees: Paragraph (m)

Paragraph (m) of this proposal entitled: "Communication of Glycol Ethers Hazards to Employees" addresses the issue of transmitting information to employees about the hazards of ethylene glycol ethers through the use of: (1) Signs and labels, (2) material safety data sheets, and (3) information and training. While previous OSHA health standards generally included separate paragraphs on employee information and training and signs and labels, both of these areas have been incorporated into this single paragraph, along with material safety data sheet provisions, to provide consistency with the Hazard Communication Standard (HCS) which addresses these areas.

The Hazard Communication Standard (HCS), 29 CFR 1910.1200, requires all chemical manufacturers and importers to assess the hazards of the chemicals they produce or import, and all employers to provide information concerning the hazards of such chemicals to their employees. The transmittal of hazard information to employees is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training. The HCS also addresses the responsibility of producers of chemicals to provide information to downstream employers.

In paragraph (m) of this proposal, it is the intent of the Agency to avoid repetition of those requirements comprehensively laid out in § 1910.1200, while specifying additional requirements that are directed at protecting employees against the particular hazards associated with exposure to glycol ethers.

The proposed standard, paragraph (m)(1)(i), would require that all entry and accessways to regulated areas be posted with appropriate warning signs which bear, at a minimum, the legend: "Danger, Glycol Ethers [specific chemical name(s)], Blood and Reproductive Hazard, Eye and Respiratory System Irritant, Avoid Inhalation and Skin/Eye Contact, Authorized Personnel Only, Respiratory Protection Required". In addition, these signs should include any other appropriate warnings such as "Flammable—No Smoking, Sparks, or Open Flames" whenever such hazards may exist. It is intended that these signs will serve to warn employees, who may otherwise not know, that they are entering a regulated area. These warning signs are required to be posted whenever a regulated area exists, that is, whenever airborne concentrations exceed or can reasonably be expected to exceed the permissible exposure limits.

It could be possible that at some work sites or operations the airborne concentrations of glycol ethers cannot be reduced below the permissible exposure limits through the use of engineering controls. In such instances, a regulated area may exist for an extended period of time. Signs would be needed in these circumstances to warn employees that entry is permitted only if the employee is authorized, is wearing respiratory protection, and there is a specific need to enter the area.

Regulated areas may also exist on a temporary basis, as would occur during maintenance and/or emergency situations. In these types of situations, the use of warning signs is also important since a maintenance or emergency situation is by nature a new or unexpected source of exposure to employees who are regularly scheduled to work at these sites. It is expected and required by other provisions of this standard that employees will also be provided with any other personal protective equipment and training that is necessary to assure their health and safety while in these areas.

These signs will also supplement the training which employees are to receive under the other provisions of this paragraph, since even trained employees need to be reminded of the locations of regulated areas (or made aware of new ones) and of the precautions necessary to be taken before entering these areas.

The wording of the warning signs for regulated areas has been specified in the proposal in order to ensure that an adequate warning is given to employees. OSHA believes that the use of the word "Danger" is appropriate, based on the evidence of the toxicity of glycol ethers. "Danger" is used to attract the attention of workers, to alert them to the fact that they are in an area where the permissible exposure limits are exceeded, and to emphasize the importance of the message that follows. The use of the word "Danger" is consistent with other recent OSHA health standards such as Formaldehyde (29 CFR 1910.1048). Inclusion of the statements "Blood and Reproductive Hazard" and "Eye and Respiratory System Irritant" is consistent with the effects that have been demonstrated to be associated with these substances (see section V, Health Effects, of this document). The signs are also required to bear the legend, "Respiratory Protection Required". While OSHA recognizes that some employees entering the regulated areas may not be exposed above either the 8-hour TWAs of 0.5 ppm (2–EE, 2–EEA) and 0.1 ppm (2–ME, 2–MEA) or the Els of 2.5 ppm (2–EE, 2–EEA) and 0.5 ppm (2–ME, 2–MEA) as averaged over a 15-minute period, it is still possible that some employees who are assigned to work in these areas without the use of respiratory protection may remain in these locations for long enough periods of time so that they would be needlessly overexposed to glycol ethers. To ensure that these employees are adequately protected, it is necessary to post the sign in order to alert them to the need to wear respirators. The employer should note that in addition to respiratory protection, paragraph (e)(4) requires that all persons entering a regulated area be provided with and required to use appropriate personal protective equipment while paragraph (m)(4) would require training of these persons.

Inclusion of the phrase "Authorized Personnel Only" on these signs serves to notify employees that only those persons specifically authorized by the employer are permitted in the regulated area.

Paragraph (m)(2) would require that warning labels or other appropriate forms of warning complying with the requirements of 29 CFR 1910.1200(f) of the General Industry Standards be affixed to all shipping and storage containers containing glycol ethers or glycol ethers-contaminated materials. These labels must state: "Caution, Contains Glycol Ethers [specific chemical name(s)], Blood and Reproductive Hazard, Eye and Respiratory System Irritant, Avoid Inhalation and Skin/Eye Contact". In addition, the label shall include any other hazard warnings (e.g., "Flammable—Keep away from heat, sparks, and flame") which are appropriate to the contents of the container along with any other information required by the Hazard Communication Standard, 29 CFR 1910.1200. It is proposed that required labels would remain affixed not only to

containers being used at the work site/operation but also those leaving the workplace. The purpose of this requirement is to assure that downstream employers and employees are informed of the presence of glycol ethers, their associated hazards, and that special practices may need to be implemented to insure against exposure. An employer's obligation, under section 6(b)(7) of the Act, to inform employees of hazardous conditions is not limited to the employer's own employees. When an employer manufactures, formulates, or sells a product, it may unavoidably expose the employees of downstream employers to the hazards of glycol ethers. This is especially important when the manufacturer, formulator, or seller is the only employer able, through his knowledge of the product, to provide the information necessary to protect employees. Furthermore, hazard labels alert other employers who, in the absence of such labels, might not know that glycol ethers are present in their workplace and that they have incurred the obligation of complying with the standard.

In addition to being consistent with the requirements of the HCS, these requirements are consistent with the mandate of section 6(b)(7) of the Act, which requires OSHA health standards to prescribe the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed.

OSHA also proposes in paragraph (m)(3) of this standard to require the employer to obtain or develop and to distribute and provide access to material safety data sheets for ethylene glycol ethers in accordance with the requirements of 29 CFR 1910.1200(g). OSHA feels that a properly completed material safety data sheet (MSDS), if readily available to employees, can serve as an excellent, concise source of information regarding the hazards associated with glycol ethers. OSHA's primary intent in this section of the proposed standard, as stated in the Hazard Communication Standard (HCS), is to ensure that employees will receive as much information as is needed concerning the hazards posed by chemicals in their workplaces. The material safety data sheet ensures that this information will be available to them in a usable, readily accessible and concise form. The material safety data sheet also serves as the central source of information to employees and downstream employers who must be provided with an MSDS if glycol ethers or a product containing glycol ethers is produced and shipped out of the plant. In addition, the MSDS serves as the basic source of information on the hazards of ethylene glycol ethers essential to the training provisions of this and other applicable health standards.

Producers and importers have the primary responsibility, under the HCS to develop, update, and distribute the material safety data sheet. The manufacturer or importer is most likely to have the best access to information about the product, and is therefore responsible for disseminating this information to downstream users of the material. The requirements for the information that is to be contained on the material safety data sheet are explained in detail at 29 CFR 1910.1200(g).

All employers with employees potentially exposed to glycol ethers must maintain material safety data sheets and provide their employees with access to them in accordance with 29 CFR 1910.1200(g). For employers whose employees' exposure to glycol ethers is from products received from outside sources, the information necessary for a complete MSDS or the MSDS itself is to be obtained from the manufacturer and made available to affected employees.

Paragraphs (m)(4)(i) through (m)(4)(iii) of this proposed standard would require employers who have a workplace or work operation covered by this section to provide information and training to all employees who are potentially exposed to these chemicals. The training program is to be in accordance with the requirements of the HCS paragraph (h), including specific information required to be provided by that section and those items stipulated in paragraph (m)(4)(iv) of this standard. In addition, paragraph (m)(4)(ii) would require the employer to institute a training program for all employees who are potentially exposed to glycol ethers, to assure each employee's participation in the program and maintain a record of this participation, and to maintain a record of the contents of such programs. This will assist the employer in determining which employees have received training, the information provided to the employees, and those employees who are still in need of such training. Training is to be provided, at no cost to the employee, prior to or at the time of initial assignment to a job invplving potential exposure to glycol ethers, at least annually thereafter, and whenever a new hazard from glycol ethers is introduced into their work area. Examples of a new glycol ethers hazard would include, but are not limited to, use of glycol ethers or glycol ethers-containing mixtures where none were previously utilized and installation of a process which could result in employee exposure to glycol ethers or increase existing exposure levels. These types of situations would warrant additional training to ensure that employees remain apprised of any new or increased glycol ethers exposure hazards and the precautions necessary to protect themselves from exposure.

Paragraph (m)(4)(iv) would require that the training program be conducted in a manner that the employee is able to understand and shall include at least the following: (A) The health hazards associated with glycol ether exposure with special attention to the information in Appendix A of this section; (B) the quantity, location, manner of use, release, and storage of glycol ethers at the worksite and the specific nature of operations that could result in exposure to glycol ethers, especially above the TWAs or ELs; (C) an explanation of the importance of engineering and work practice controls for employee protection and necessary instruction in the use of these controls; (D) the measures employees can take to protect themselves from exposure to glycol ethers, such as diligent personal hygiene, proper use of protective equipment, and specific procedures the employer has implemented to protect employees against exposure, including appropriate work practices, emergency procedures, and personal protective equipment; (E) the details of the hazard communication program developed by the employer, including an explanation of the signs, labeling system, and material safety data sheets and how employees can obtain and use the appropriate hazard information; (F) the purpose, proper selection, fitting, proper use, and limitations of respiratory protection and personal protective clothing and eye protection; (G) the purpose and a description of the medical surveillance program required under paragraph (l) of this proposed section including the right of any employee exposed to glycol ethers at or above the AL or above the EL to obtain (1) medical examinations as required by paragraph (l) of this section at no cost to the employee, (2) the employee's medical records required to be maintained by paragraph (n)(2) of this section, and (3) all air monitoring results representing the employee's exposure to glycol ethers and required to be kept by paragraph (n)(1) of this section; (H) a copy of the final glycol ethers standard and its appendices and a discussion of its contents with an explanation of the contents of the MSDSs for glycol ethers; (I) instructions for the handling of spills and clean-up

procedures; and (J) a review of emergency procedures including specific duties or assignments of each employee in the event of an emergency.

Paragraph (m)(4)(iv)(A) is of primary importance in communicating hazards and training employees. Until employees understand the health hazards of a compound to which they are potentially exposed, the work practices, engineering controls, use of personal protective equipment, and any other precautions which should be taken have little meaning. The Agency feels, therefore, that effectively communicating a compound's health hazards to employees is the initial step in their understanding of other steps necessary to protect them against exposure. OSHA feels strongly that it is important for each worker to be able to recognize how and where he or she might be occupationally exposed to glycol ethers and what steps should be taken to limit exposure. Therefore, the Agency has required, in paragraphs (m)(4)(iv) (B), (C), (D), (E), (F), and (I), that workers be provided information and trained in practices pertinent to location, use, and so forth of glycol ethers in the workplace; work practices and engineering controls; spills and clean-up; self protective measures; the employer's hazard communication program; and personal protective equipment as they apply to glycol ethers and reduction of exposure. Providing a description of the medical surveillance program and its purpose, as stipulated in paragraph (m)(4)(iv)(G), will allow employees to understand what medical follow-up has been initiated and is available to evaluate occupational exposure. This section would also require that employees be informed that the medical examinations required under paragraph (1) are to be provided at no cost to the employee. The Agency anticipates that this fact, along with an understanding of the medical surveillance program, will encourage employees to participate. In addition, employees must be informed of their right to access of their personal medical records and all air monitoring results representing their exposure to glycol ethers since these records are concerned directly with the employee's health as it relates to exposure to glycol ethers. The purpose of paragraph (m)(4)(iv)(H) is to assure that employees are aware of the existence of the standard and material safety data sheet(s) and are familiarized with the information contained in these documents. In order to assist in successfully achieving the goals outlined in the emergency plan, paragraph (m)(4)(iv)(J) states that employees must be trained in emergency procedures including their specific responsibilities should an emergency occur.

Finally, this section would require that employees be informed that the medical examinations required under paragraph (1) are to be provided at no cost to the employee. The Agency anticipates that this fact, along with an understanding of the medical surveillance program, will encourage employees to participate. In addition, employees must be informed of their right to access of their personal medical records and all air monitoring results representing their exposure to glycol ethers since these records are concerned directly with the employee's health as it relates to exposure to glycol ethers.

OSHA has determined during other rulemakings that an information and training program, as incorporated in this proposed standard in an overall "Communication of Hazards to Employees" paragraph, is essential to inform employees of the hazards to which they are exposed and to provide employees with the necessary understanding of the degree to which they themselves can minimize the health hazard potential. Training is essential to an effective overall hazard communication program and serves to explain and reinforce the information presented to employees on signs, labels, and material safety data sheets. These written forms of information and warning will be relevant and meaningful only when employees understand the information presented and are aware of the actions to be taken to avoid or minimize exposures. Active employee participation in training sessions can result in the effective communication of hazard information to employees which can further result in workers taking conscientious protective actions at their job duties, thereby decreasing the possibility of occupationally-induced illnesses and injuries.

OSHA proposes the training provisions of this standard to be in performance-oriented, rather than specified and detailed language. The proposed standard, in requiring training to be in accordance with the requirements of 29 CFR 1910.1200, lists the categories of information to be transmitted to employees and not the specific ways that this is to be accomplished. The Agency believes that the employer is in the best position to determine how the training he or she is providing is being received and absorbed by the employees. OSHA has therefore laid out the objectives to be met and the intent of its training to ensure employees are made aware of the hazards in their workplace and how they can help to protect themselves. The specifics of how this is to be accomplished are left up to the employer. The Agency anticipates that the use of such performance-oriented requirements will encourage employers to tailor their training needs to their specific workplaces, consequently resulting in the most effective training program suitable for each specific workplace.

Recordkeeping: Paragraph (n)

Section 8(c) of the Occupational Safety and Health Act obligates employers to keep and make available such records as the Secretary may prescribe as necessary or appropriate for the enforcement of the Act, or for developing information regarding occupational injuries and illnesses. Accordingly, paragraph (n) of this proposal requires employers to keep several types of records to achieve the intent of this section of the Act. These include records of (1) exposure measurements and all objective data relied on as a basis for exemption from the monitoring requirements, (2) medical surveillance, and (3) training.

Paragraph (n)(1) of the proposal mandates that the employer establish and maintain exposure records consistent with 29 CFR 1910.20, to accurately reflect the extent and duration of employee exposure to glycol ethers. Specifically, records must include the following information: (a) The name, social security number, and job classification of the employee(s) monitored and of all other employees whose exposure the monitoring is intended to represent; (b) the dates of monitoring, sample identification number, sampling duration, time of day, and exposure monitoring results of each of the samples taken including a description of the procedure used to determine representative employee exposures; (c) the operation(s) covered by the monitoring; (d) the sampling and analytical methods used and evidence of their accuracy; (e) the type of respiratory protective devices, if any, worn by the employee; and (f) any other conditions that might have affected the employee monitoring results. Unusual conditions which may affect monitoring results generally stem from, but are not limited to, situations which could cause an abnormal increase/decrease in the airborne concentration of glycol ethers. Examples of such situations are a temporary increase/decrease in production; failure of an engineering control to operate properly; release of glycol ethers in the employee's vicinity

as may occur during an emergency or maintenance operation; seasonal variations caused by increased/decreased air movement resulting from opening or closing of doors and windows or use of fans; or a change in an employee's mobility or proximity to a source of glycol ethers. The proposal would require that employee exposure measurement records be maintained for each measurement taken. The record may represent several employee exposure measurements if representative sampling, as described in paragraph (d), is conducted. The exposure monitoring results that would be required under paragraph (n)(1)(ii)(B) above must be expressed, at a minimum, as either an 8-hour time weighted average (TWA) or a 15-minute excursion limit (EL), whichever is applicable. OSHA believes that this is necessary to allow employees, their designated representatives, and others accessing these records to be able to determine employee exposure levels without performing numerous and sometimes unfamiliar calculations.

This proposal has included a provision for the use of objective data in place of initial monitoring to minimize the costs of initial monitoring in circumstances where the employer can demonstrate that insignificant amounts of glycol ethers are present in the workplace and the potential for exposure to glycol ethers above the ALs or ELs does not exist. OSHA feels that requiring an employer to document objective data determinations and retain them, as stipulated in paragraph (n)(1)(iii), should discourage abuse of this provision since employees and their representatives are permitted access to this information. Access would enable employees and their representatives to ensure that the exemption determination is a reasonable one, thereby encouraging use of objective determinations only in cases where the data warrant such use. Maintaining a record of the data employed for objective determinations will also permit OSHA to ascertain whether compliance with the standard has been achieved.

For the purpose of acquiring the capability of correlating employee exposure level data with an individual's medical surveillance results, OSHA is proposing in paragraph (n)(1)(iv) that exposure monitoring records be maintained for at least duration of employment plus 30 years.

In addition to records on employee exposure measurements, paragraph (n)(2)(i) would require the employer to establish and maintain an accurate individual record for each employee subject to medical surveillance as stipulated by paragraph (1) of the proposed standard, in accordance with 29 CFR 1910.20. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate both to the enforcement of the standard, and to the development of information regarding the causes and prevention of occupational illnesses. Furthermore, medical records are necessary for the proper evaluation of the employee's health.

Paragraph (n)(2)(ii) would require that this record include at least the following: (1) The name and social security number of the employee; (2) the physician's written opinion on the initial, periodic, and additional examinations; (3) any employee medical complaints related to exposure to ethylene glycol ethers; (4) a copy of the information provided by the employer to the physician as required by paragraph (l)(6) of this section; and (5) a copy of the medical and reproductive histories, medical questionnaire responses, and results of any medical tests required by the standard or mandated by the examining physician.

Paragraph (n)(2)(iii) would require the employer to retain these medical records for at least the duration of employment plus 30 years. The extended record retention period is needed because diagnosis of disease in employees is assisted by, and in some cases can only be made by, having present and past exposure data as well as the results of present and past medical examinations. In revising 29 CFR 1910.20 "Access to Employee Exposure and Medical Records" OSHA initially proposed to reduce the retention period for medical records. However, in the final rule the Agency states:

> "Based on the evidence submitted, OSHA has determined that the proposed reduction in the retention period for medical records is not justified. The long-term retention of records is necessary to provide a data base for the detection of occupational diseases that may not manifest themselves for many years after onset of exposure." (53 FR 38154 September 29, 1988)

The Agency therefore believes that maintenance of records for duration of employment plus thirty years is prudent and warranted for developing information regarding the causes and prevention of occupationally-induced illness.

With regard to training records, paragraph (n)(3) would require the employer to retain all employee training records for 1 year beyond the last date of employment for that employee.

Paragraph (n)(4)(i) mandates that the employer assure that all records required to be maintained by this section are made available upon request to the Assistant Secretary and the Director for examination and copying. In addition to being given records access specifically by this section, the Assistant Secretary and the Director are empowered to examine and copy records by Section 8(c)(1) of the OSH Act. This portion of the Act states that each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare [now Health and Human Services (HHS)], such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education and Welfare [HHS], may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illness.

While the Assistant Secretary is empowered to examine and copy records, access to personally identifiable records is subject to Agency rules of practice and procedure which have been published at 29 CFR 1913.10 (45 FR 35384).

Paragraph (n)(4)(ii) would require the employer to provide upon request for examination and copying, all employee exposure monitoring records required to be maintained by paragraph (n)(1) of this section to affected employees, former employees, and designated representatives in accordance with 29 CFR 1910.20 (a) through (e) and (g) through (i). In addition, paragraph (n)(4)(iii) would require employers to provide upon request for examination and copying, all employee medical records required to be maintained by paragraph (n)(2) of this section to the subject employee and to anyone having the specific written consent of the subject employee in accordance with 29 CFR 1910.20.

Section 8(c) of the Act explicitly provides employees and their representatives with the right to have access to monitoring records. Several other provisions of the Act contemplate that employees and their representatives are entitled to have an active role in the enforcement of the Act . Employees and their representatives need the pertinent information concerning exposures to toxic substances and the consequences to the health and safety of the employees if they are to benefit properly from these statutorily-created rights.

In 29 CFR 1910.20, are spelled out the procedures for access to records by

OSHA, employees, and employees' designated representatives. This General Industry Standard was promulgated as the generic rule for access to employee exposure and medical records. It is discussed here to make the employer aware that it applies not only to records created pursuant to specific standards but also to records which are voluntarily created by employers. A more detailed discussion of the rationale and provisions for 29 CFR 1910.20 can be found at 45 FR 35312 (May 23, 1980).

The transfer of employee exposure monitoring and medical records is to be in accordance with the provisions of paragraph (h) of 29 CFR 1910.20. If an employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer is to notify the Director at least 90 days prior to disposal and transmit the records to the Director for retention, if requested by the Director within that period.

Requirements for recordkeeping under the Paperwork Reduction Act are discussed under Section XI—Clearance of Information Collection Requirements.

Dates: Paragraph (o)

It is proposed that the final standard become effective 60 days after its publication in the **Federal Register** (the Effective Date). This will permit time for public distribution of the standard and provides a sufficient period for employers to familiarize themselves with the regulatory provisions. All obligations under the final standard will commence on the Effective Date except those discussed in the following paragraphs, which will be phased-in during the indicated periods of time.

The initial exposure monitoring required by paragraph (d) and the training required by paragraph (m)(4) of this section are proposed to be completed as soon as possible but not later than 90 days after the effective date of the final standard. The Agency believes that this is adequate time to conduct monitoring and train employees, even in those workplaces which operate on a multi-shift work schedule.

Upon receipt and evaluation of the monitoring results, regulated areas can be established; respiratory protection can be selected and provided; and medical surveillance can be implemented. Therefore, those requirements found in paragraphs (e), (g), and (l) respectively, are to be complied with as soon as possible but not later than 120 days after the effective date of the final standard.

Since development of the emergency plan necessitates, among other things, purchase of and distribution/placement of appropriate equipment and supplies, evaluation of potential emergency sites in the facility and appropriate evacuation routes, and additional training of employees, it is proposed that the emergency plan required by paragraph (k) be completed as soon as possible but not later than 180 days after the effective date.

Development of the written compliance plan stipulated in paragraph (f)(6) of this section requires that the employer determine effective and appropriate engineering controls and work practices to reduce employee exposure levels. Since the provisions in this paragraph may require an in-depth analysis of the workplace and could necessitate obtaining outside expertise, a longer period of time has been allotted for compliance. However, the written compliance plan is to be completed no later than 1 year after the effective date.

In addition, the installation of emergency showers and eyewashes required in paragraph (i) may also demand extra time for the completion of necessary plumbing and construction. Therefore, the Agency is proposing that eyewashes and showers be installed and usable as soon as possible but in any event not later than 1 year after the effective date.

The Agency believes that the implementation of engineering controls will be the most time-consuming aspect of the final standard. While the initial evaluation and planning of these controls will have been completed as a result of the development of the compliance plan, OSHA realizes that additional time could be required for ordering and installing the necessary equipment. Therefore, engineering controls are to be implemented as soon as possible but no later than 2 years after the effective date.

Overall, work practices are to be implemented as soon as possible. Those work practices directly related to engineering controls being installed in accordance with the compliance plan are to be implemented as soon as possible after these engineering controls are functional. OSHA solicits comments on the appropriateness of these proposed start-up dates.

Appendices: Paragraph (p)

The proposed standard contains 5 appendices which are designed to assist employers and employees in implementing the provisions of this standard. Appendices A, B, C, D and E are nonmandatory and are included primarily to provide information and guidance. In addition these appendices are not intended to detract from any obligation that the proposed standard imposes.

In particular appendix D, is a sample Reproductive History Questionnaire. This questionnaire was derived from appendix B of the Office of Technology and Assessment's (OTA) report Reproductive Hazards in the Workplace (Ex. 5–135). As noted by the OTA, elements of the questionnaire were derived from various research facilities to develop a composite questionnaire. They also note that it is not a validated questionnaire. Nevertheless, OSHA believes that this sample questionnaire provides useful information which may provide guidance and information on pertinent factors in conducting a reproductive history. OSHA seeks comment on the usefulness of this questionnaire. OSHA also welcomes other information on other reproductive history questionnaires which may be more useful or appropriate.

The appendices which are included in the standard are: Appendix A—Substance Safety Data Sheet for Glycol Ethers; Appendix B—Substance Technical Guidelines for Glycol Ethers; Appendix C—Medical Surveillance Guidelines for Glycol Ethers; Appendix D—Reproductive History Questionnaire; Appendix E—Sampling and Analytical Method for Glycol Ethers; and Appendix F—Qualitative and Quantitative Fit Test Procedures.

XI. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance for collection of information requirements contained in proposed rules to OMB not later than the date of publication of the proposal in the **Federal Register**. It also requires agencies to include a statement in the notice of proposed rulemaking, indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and the regulation issued pursuant thereto (5 CFR part 1320), OSHA certifies that it has submitted the information collection requirements contained in this proposed standard to the Office of Management and Budget (OMB) for review under section 3504(h) of the Act. Paragraph (n) is the provision

that makes the major contribution to the information collection requirements in the proposed standard. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, New Executive Office Building, Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA rulemaking docket, at the following address: Docket Officer, Docket No. H–044, room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Reporting Burden

Public reporting burden for this collection of information is estimated to be approximately 24 hours initially and approximately 24 recurring hours with an average .08 hours per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OSHA rulemaking docket, at the address previously set forth; and to the Office of Information and Regulatory Affairs of OMB.

XII. Public Participation—Notice of Hearing

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked on or before June 7, 1993, and submitted in quadruplicate to the Docket Officer, Docket No. H–044, room N2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 219–5046, provided the original and three copies are sent to the Docket Officer thereafter.

Written submissions must clearly identify the provisions of the proposal which are being addressed and the position taken with respect to each issue. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard will be provided at an informal public hearing scheduled to begin at 10 a.m. on July 20, 1993, in Washington, DC in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Intention to Appear

All persons desiring to participate at the hearings must file in quadruplicate a Notice of Intention to Appear, postmarked on or before June 7, 1993, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–044, room N–3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 219–8615. The Notice of Intention to Appear also may be transmitted by facsimile to (202) 219–5046, provided the original and 3 copies of the Notice are sent to the above address thereafter.

The Notices of Intention to Appear, which will be available for inspection and copying at the OSHA Docket Office (Room N–2625), telephone (202) 219–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearings

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented at the hearing to the OSHA Division of Consumer Affairs. This material must be postmarked by June 28, 1993, and will be available for inspection and copying at the OSHA Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearings

The hearings will commence at 10 a.m. on July 20, 1993. At that time any procedural matters relating to the proceeding will be resolved.

The nature of an informal hearing is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding shall remain informal and legislative in type. The essential intent is to provide an opportunity for effective oral presentations which can proceed expeditiously, in the absence of rigid procedures which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who makes no recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 and the prehearing guidelines, including the powers:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means;

5. At the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

6. At the Judge's discretion, to keep the record open for a reasonable, stated time to written information and additional data, views and arguments from any person who has participated in the oral proceeding.

Certification of Record and Final Determination After Hearing

Following the close of the posthearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

List of Subjects in 29 CFR Part 1910

Chemicals, 2-Ethoxyethanol, 2-Ethoxyethanol acetate, Glycol ethers, 2-Methoxyethanol, 2-Methoxyethanol acetate, Occupational safety and health, Reproductive and developmental toxicity.

XIII. Authority and Signature

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 9th day of March, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

XIV. The Proposed Standard

Part 1910—[AMENDED]

Part 1910 of title 29 of the Code of Federal Regulation is hereby proposed to be amended as follows:

Subpart B—[Amended]

1. The authority citation for subpart B of 29 CFR part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healy Act, 41 U.S.C. 35 et seq; Service Contract Act of 1965, 41 U.S.C. 351 et seq; sec. 107, Contract Work Hours and Safety Standards Acts (Construction Safety Act), 40 U.S.C. 333; sec 41, Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq., Secretary of Labor's Order No., 12–71 (36 FR 8754); 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR part 1911.

Sections 1910.16 and 1910.19 also issued under 29 CFR Part 1911.

2. A new paragraph (n) is proposed to be added to 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(n) *Glycol ethers.* Section 1910.1031 shall apply to the exposure of every employee to glycol ethers, as defined in § 1910.1031, in every employment and place of employment covered by §§ 1910.12, 1910.13, 1910.14, 1910.15, 1910.16, 1910.26 and 1910.28 in lieu of any different standard on exposures to glycol ethers which would otherwise be applicable by virtue of those sections.

Subpart Z—[Amended]

3. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657: Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR Part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 5 U.S.C. 553. Section 1910.1000, the Transitional limits columns of Table Z–1–A. Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 CFR U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

Section 1910.1450 is also issued under sec. 6(b), 8(c) and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657.

§ 1910.1000 [Amended]

4. The entries "2-Ethoxyethanol", "2-Ethoxyethyl acetate (Cellosolve Acetate)", "2-Methoxyethanol; see Methyl Cellosolve", "Methyl Cellosolve (2-Methoxyethanol)" and "Methyl Cellosolve Acetate (2-Methoxyethyl Aceate)" are proposed to be deleted from Table Z–1–A of 1910.1000.

5. A new § 1910.1031 and appendices A, B, C, D, E and F to the section are proposed to be added to subpart Z to read as follows:

§ 1910.1031 Glycol ethers.

(a) *Scope and application*—(1) This section applies to all occupational exposures to 2-Methoxyethanol (2-ME), 2-Methoxyethanol Acetate (2-MEA), 2-Ethoxyethanol (2-EE) and 2-Ethoxyethanol Acetate (2-EEA) Chemical Abstracts Service Registry Nos. 109–86–4, 110–49–6, 110–80–5 and 111–15–9, respectively, except as provided for in paragraph (a)(2) of this section.

(2) This section does not apply to:

(i) Work operations where the only exposure to 2-ME, 2-MEA, 2-EE, or 2-EEA is from liquid mixtures containing less than 1% 2-ME, 2-MEA, 2-EE or 2-EEA, respectively, by volume, unless the employer has reason to believe that such mixtures could release vapors in quantities sufficient to result in an airborne concentration which meets or exceeds the action levels or exceeds the excursion limits for these compounds or could present a hazard through dermal contact.

(ii) Work operations using solid materials made from or containing 2-ME, 2-MEA, 2-EE or 2-EEA that are incapable of releasing 2-ME, 2-MEA, 2-EE or 2-EEA to the workplace air in concentrations at or above the AL or above the EL.

(b) *Definitions.* For purposes of this standard, the following definitions shall apply:

Action Level (AL) means airborne concentrations of 0.05 ppm (2-ME or 2-MEA) and 0.25 ppm (2-EE or 2-EEA) calculated as an 8-hour time-weighted average (TWA).

Assistant Secretary means the Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (d) of this section, or any other person authorized by the Act or regulations issued under the Act.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does result in an unexpected significant release of glycol ethers.

Employee exposure means the exposure to airborne or liquid glycol ethers which would occur if the employee were not using respiratory protective equipment or other personal protective equipment.

Ethylene glycol ethers, for the purposes of this section, means 2-Methoxyethanol (2-ME) (CAS No. 109–86–4), 2-Methoxyethanol acetate (2-MEA) (CAS No. 110–49–6), 2-Ethoxyethanol (2-EE) (CAS No. 110–80–5) and 2-Ethoxyethanol acetate (2-EEA) (CAS No. 111–15–9).

Glycol ethers is defined the same as "Ethylene glycol ethers" above.

Objective Data means information which can be used to reliably calculate the anticipated airborne concentration of a compound in a work area. Such information may include, but is not limited to, physical properties of the compound, room dimensions, air exchange rates, information on work practices, historical data on employee exposures, and employee proximity to emissions sources.

Regulated area means any area where airborne concentrations of glycol ethers exceed or can be reasonably be expected to exceed the permissible exposure limits (PELs), either the 8-hour time weighted average (TWA) limits of 0.1 ppm (2-ME, 2-MEA) and 0.5 ppm (2-EE, 2-EEA) or as the 15-minute excursion limits (ELs) of 0.5 ppm (2-ME, 2-MEA) and 2.5 ppm (2-EE, 2-EEA).

(c) *Permissible exposure limits (PELs)*—(1) *Eight-Hour Time Weighted Average (TWA)* The employer shall assure that no employee is exposed to an airborne concentration of glycol ethers which exceeds 0.1 ppm for 2–ME and 2–MEA or 0.5 ppm for 2–EE and 2–EEA, calculated as an 8-hour time-weighted average (TWA).

(2) *Excursion Limit (EL)* The employer shall assure that no employee is exposed to an airborne concentration of glycol ethers in excess of 0.5 ppm for 2–ME and 2–MEA or 2.5 ppm for 2–EE and 2–EEA, averaged over a sampling period of 15 minutes. Monitoring for EL is to be conducted during the period in which the employee would be expected to receive his/her highest level of exposure.

(3) *Dermal Exposure* The employer shall assure that no employee is exposed to glycol ethers through dermal contact.

(d) *Exposure monitoring*—(1) *General*—(i) Except as provided by paragraph (d)(1)(v) of this section, each employer who has a workplace or work operation covered by this section shall accurately determine the level of employee exposure to glycol ethers.

(ii) Determinations of employee exposure shall be made from personal breathing zone air samples that accurately reflect each employee's average exposures to airborne glycol ethers over an 8-hour period (AL and TWA) and over a 15-minute period at operations where there is reason to believe that exposures may be above the excursion limit (EL).

(iii) The employer shall determine 8-hour TWA employee exposures for each employee in each job classification in each work area during each shift. At operations where there is reason to believe that exposures may be above the excursion limit (EL), the employer shall determine the EL employee exposures for each job classification in each work area during each shift.

(iv) Except for initial monitoring required in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, the employer may develop a representative sampling strategy that sufficiently monitors exposure levels within each job classification or for each job task, for each workshift, in each work area to correctly characterize and not underestimate the exposure of any employee within each exposure group. In representative sampling, the employer shall sample those employees expected to have the highest exposures. Exposure levels shall be determined for each employee in each job classification in each work area for each shift unless the employer can document that exposure levels for a given job classification are equivalent for different workshifts.

(v) Where the employer has objective data, as defined in paragraph (b) of this section, showing the presence of glycol ethers in the workplace or products containing glycol ethers cannot result in the release of airborne concentrations of glycol ethers that would cause any employee to be exposed at or above the AL or above the EL, under worst-case release conditions of foreseeable use, the employer may rely upon such data and is not required to monitor employee exposure levels to glycol ethers.

(2) *Initial Monitoring.* (i) Except as provided in paragraphs (d)(1)(v) or (d)(2)(ii) of this section, each employer shall identify all employees who, without regard to respirator use, are exposed or may reasonably be anticipated to be exposed, at or above the AL or above the EL and shall perform initial monitoring to accurately determine the exposure of all employees so identified.

(ii) Where the employer has monitored an employee who is at or above the AL and/or above the EL after [180 DAYS PRIOR TO EFFECTIVE DATE OF THE FINAL RULE] and the monitoring occurred under conditions closely resembling those currently prevailing and that monitoring satisfies all other requirements of this section, the employer may rely on such monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section with respect to the employee monitored.

(3) *Periodic monitoring.* (i) The employer shall periodically measure and accurately determine exposure to glycol ethers for employees shown by the initial or other monitoring to be exposed at or above the action level (AL) or above the EL.

(ii) If the initial or periodic monitoring results reveal employee exposure to be at or above the AL but at or below the TWA, the employer shall monitor these employees at least every 6 months.

(iii) If the initial or periodic monitoring results reveal employee exposure above the TWA, the employer shall monitor these employees at least every 3 months.

(iv) If the initial or periodic monitoring results reveal employee exposure above the EL, the employer shall monitor these employees at least every 3 months under conditions of highest exposure.

(4) *Additional monitoring.* The employer shall also institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section each time there is a change in production, equipment, raw materials, process, personnel, or work practices that may result in new or additional exposure to glycol ethers at or above the ALs or above the ELs, or whenever the employer has any other reason to

suspect that a change may result in new or additional exposures at or above the ALs or above ELs.

(5) *Termination of Monitoring.* (i) If the initial monitoring reveals employee exposure to be below the ALs and at or below the ELs, the employer may discontinue monitoring for that employee, except as noted otherwise in paragraph (d)(4) of this section.

(ii) If the periodic monitoring indicates that employee exposures are below the ALs and at or below the ELs and that result is confirmed by the results of another monitoring taken at least 7 days later, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring. The results must be statistically representative and consistent with the employer's knowledge of the job and work operation.

(iii) If initial or periodic monitoring reveals employee exposure at or above the AL, but on two consecutive measurements taken at least seven days apart, the employee exposure is not above the EL, no further monitoring for the EL is necessary except as required by paragraph (d)(4) of this section.

(6) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis that shall be accurate, (to a 95 percent confidence level), to within plus or minus 25 percent for airborne concentrations of glycol ethers at or above the level being investigated.

(7) *Employee notification of monitoring results.* (i) Within 15 working days of receiving the results of exposure monitoring conducted under this section, the employer shall notify each affected employee, individually, of these results in writing. In addition, within the same period, the employer shall post the results in an appropriate location that is accessible to affected employees.

(ii) Whenever monitoring results indicate that employee exposure is over the TWA and/or EL permissible exposure limits, the employer shall include in the written notice a statement that the TWA and/or EL has been exceeded and a description of the corrective action being taken by the employer to decrease the exposure to within the permissible exposure limits.

(8) *Observation of monitoring.* (i) The employer shall provide affected employees or their designated representative an opportunity to observe any monitoring of employee exposure to glycol ethers required by this section.

(ii) When observation of the monitoring of employee exposure to glycol ethers requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide and require the observer to use such clothing and equipment and shall assure that the observer complies with all other applicable safety and health procedures.

(e) *Regulated areas.* (1) The employer shall establish regulated areas wherever exposures to glycol ethers exceed or can be expected to exceed either the TWA or EL permissible exposure limits prescribed in paragraph (c) of this section.

(i) These areas shall be demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees to the boundary of the regulated area.

(ii) Regulated areas shall be posted at all entrances and accessways with signs as specified in paragraph (m)(1)(i) of this section.

(2) The employer shall limit access to regulated areas to authorized persons.

(3) Whenever an employer at a multi-employer worksite establishes a regulated area, that employer shall communicate the location and restrictions of access to the regulated area to other employers with work operations at that worksite.

(4) The employer shall assure that each person entering a regulated area is provided with and required to use appropriate personal protective equipment, including respiratory protection selected in accordance with paragraph (g)(3) of this section.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* Whenever any employee is exposed to glycol ethers above either the TWA or EL permissible exposure limits prescribed in paragraph (c) of this section or may forseeably experience dermal exposure to glycol ethers, the employer shall institute engineering and work practice controls to reduce and maintain employee exposures to glycol ethers at or below the TWAs and the ELs and to eliminate dermal exposure to glycol ethers, except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraph (g) of this section apply.

(2) Whenever feasible engineering and work practice controls which can be instituted are not sufficient to reduce employee exposure to or below the TWA and/or EL permissible exposure limits or eliminate forseeable dermal exposure, the employer shall implement them to reduce employee exposures to the lowest levels achievable and shall supplement such controls with personal protective equipment and/or respiratory protection that complies with the requirements of paragraph (g) of this section.

(3) Engineering controls shall be inspected and maintained or replaced to ensure their effectiveness.

(4) The employer shall permit employees to leave the work area immediately or as soon as feasible to wash skin areas which have had contact with glycol ethers.

(5) *Compliance program.* (i) Where the TWAs and/or ELs are exceeded or dermal exposure exists, the employer shall establish and implement a written compliance program to reduce employee exposure to or below the TWA and/or EL permissible exposure limits and eliminate dermal exposure by means of engineering and work practice controls, as required by paragraph (f) of this section. To the extent that engineering and work practice controls cannot reduce exposures to or below the TWAs and/or ELs and/or eliminate dermal exposure, the employer shall include in the written compliance program the use of appropriate respiratory protection and/or personal protective equipment to achieve compliance. The compliance program shall include the written plan for emergency situations prescribed in paragraph (k) of this section.

(ii) The written compliance programs shall be reviewed and updated at least annually, or more often if necessary, to reflect significant changes in the employer's compliance status.

(iii) Written compliance programs shall be submitted upon request for examination and copying to affected employees, authorized employee representatives, the Assistant Secretary, and the Director.

(g) *Respiratory protection*—(1) *General.* Where respiratory protection is required by this section, the employer shall provide it at no cost to the employee and shall assure its proper use, in compliance with the requirements of this paragraph (g), to reduce employee exposures to or below the TWA and/or EL permissible exposure limits. Respiratory protection shall be used in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls

(ii) In work operations, such as maintenance and repair activities and during brief or intermittent operations, for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where the employer has implemented all feasible engineering and work practice controls and such controls are not sufficient to

reduce exposure to or below the TWA and/or EL permissible exposure limits, and;

(iv) In emergencies.

(2) *Assignment of respiratory protection.* No employee shall be assigned tasks requiring the use of respiratory protection if, based upon his or her most recent medical examination, an examining physician determines that the employee will be unable to function normally while wearing a respirator. Such employee shall be given the opportunity to transfer to a position where no respirator use is required. That position shall be with the same employer, in the same geographical area, and with the same seniority status and rate of pay the employee had just prior to such transfer, if such a position is available.

(3) *Respirator selection.* Where respiratory protection is required under this standard, the employer shall select and provide the appropriate respirator as specified in Table 1–1 of this section. The employer shall select respirators from among those approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11 or any future revisions.

TABLE 1–1. MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST 2–EE, 2–EEA, 2–ME, AND 2–MEA [2]

Condition of use or glycol ether concentration; (ppm 2–EE/2–EEA); (ppm 2–ME/2–MEA)	Minimum required respirator
Up to 10X the PEL (1 ppm) (5 ppm)	Supplied air half-mask respirator in negative pressure (demand) mode.[1]
Up to 25X the PEL (2.5 ppm) (12.5 ppm)	Supplied air respirator with hood or helmet in continuous flow mode.
Up to 50X the PEL (2 ppm) (25 ppm)	Supplied air half-mask in continuous flow mode.[1] Supplied air full facepiece in negative pressure (demand) mode. SCBA full facepiece in negative pressure (demand) mode.
Up to 250X the PEL (25 ppm) (125 ppm)	Supplied air full facepiece in continuous flow mode.
Up to 1000X the PEL (100 ppm) (500 ppm)	Supplied air half-mask or full facepiece in pressure demand mode.[1]
Greater then 1000X the PEL (>100 ppm) (>500 ppm)	SCBA in pressure demand mode.[1] Supplied air full facepiece in pressure demand mode in combination with auxiliary self-contained air supply.
Firefighting	SCBA in pressure demand mode.

[1] Full face piece is required when eye irritation is experienced.

[2] Respirators assigned for high environmental concentrations may be used for lower environmental concentrations.

(4) *Respirator program.* Where respirator use is required by this standard, the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(5) *Respirator use.* Employers shall permit employees to leave the work area to wash their faces and respirator facepieces as needed to prevent skin irritation from respirator use.

(6) *Respirator fit testing.* (i) The employer shall assure that the respirator issued to the employee exhibits the least possible facepiece leakage and that the respirator is fitted properly and will not permit the employee to inhale glycol ethers in excess of either the TWAs or ELs.

(ii) For each employee wearing a tight-fitting supplied-air respirator, employers shall perform either a quantitative or qualitative face fit test of the facepiece while it is equipped with appropriate air purifying elements. When quantitative fit testing is performed, half mask facepieces must exhibit a fit factor of 100 and full facepieces a fit factor of 500, at a minimum.

(iii) The employer shall perform and certify the results of the appropriate fit tests at the time of initial fitting, at least annually thereafter, when a different make or size respirator is used, and when a change in facial structure occurs.

(iv) Fit testing shall be performed at a reasonable time and place and at no cost to the employee and shall be conducted in accordance with appendix F of this section.

(h) *Personal protective equipment—*
(1) *Provision and use.* The employee shall select and provide appropriate personal protective equipment, including clothing and eye protection, in accordance with 29 CFR 1910.132 and 1910.133.

(i) The employer shall select the appropriate personal protective equipment based upon the type of exposure anticipated, conditions of use, and the hazard to be prevented.

(ii) The employer shall provide the appropriate personal protective equipment at no cost to the employee and assure that employees use this equipment.

(iii) Personal protective equipment, such as, but not limited to, coveralls, gloves, faceshields, and rubber boots, shall be made of materials sufficiently impervious to glycol ethers to prevent employee exposure to these compounds.

(iv) The employer shall provide uncontaminated personal protective equipment as often as necessary and at least weekly to prevent employee exposure to glycol ethers.

(2) *Removal and storage.* (i) The employer shall assure that employees remove all personal protective equipment contaminated with glycol ethers prior to leaving the work area or as soon as feasible if the potential for soakthrough/breakthrough exists. This shall be done in an area which minimizes exposure of other employees.

(ii) The employer shall assure that no employee takes home personal protective equipment contaminated with glycol ethers.

(iii) The employer shall assure that no employee takes personal protective equipment contaminated with glycol ethers out of the workplace unless authorized to do so for the purposes of laundering, cleaning, maintenance, or disposal.

(iv) The employer shall assure that personal protective equipment contaminated with glycol ethers shall be stored in a manner so as to minimize employee exposure and not be worn again until cleaned or laundered.

(v) The employer shall assure that storage areas and containers with glycol ethers-contaminated personal protective equipment shall have a sign or label, respectively, as specified in paragraph (m)(1)(ii) of this section.

(3) *Cleaning, replacement, and disposal.* (i) The employer shall clean, launder, repair, and replace, at no cost to the employee, all required personal protective equipment for each affected employee as necessary to assure its effectiveness and shall be responsible for the disposal of these items.

(ii) The employer shall assure that only trained persons remove contaminated personal protective

equipment from storage for the purpose of laundering, cleaning, repair, or disposal.

(iii) The employer shall inform any person who launders, cleans, or repairs personal protective equipment contaminated by glycol ethers of the potentially harmful effects of exposure to glycol ethers and of procedures to safely handle the clothing and equipment.

(iv) The employer shall assure that laundering, cleaning, maintenance, and disposal are performed only at facilities which are appropriate to handle glycol ethers contaminated personal protective equipment.

(v) All contaminated personal protective equipment destined for disposal shall be placed in a sealed container which is labeled in accordance with paragraph (m)(1)(ii) of this section.

(i) *Hygiene protection*—(1) If employee's skin may become splashed with liquids containing glycol ethers, except as provided by paragraph (a)(2)(i) of this section, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately.

(2) If there is any possibility that an employee's eyes may be splashed with liquids containing glycol ethers, except as provided by paragraph (a)(2)(i) of this section, the employer shall provide eye-wash fountains within the immediate work area for emergency use.

(3) Eating, drinking, smoking, and application of cosmetics is prohibited in areas of glycol ethers exposure.

(4) Personal protective equipment shall not be worn in lunch areas.

(j) *Housekeeping*—(1) All surfaces (e.g., floors, working surfaces, exterior surfaces of equipment) shall be kept free of glycol ethers to the extent feasible.

(2) The employer shall conduct a program to detect leaks and spills, including visual inspections of operations involving liquids containing glycol ethers.

(3) Preventative maintenance of equipment, including surveys for leaks, shall be undertaken at intervals appropriate to assure proper functioning of the equipment.

(4) In work areas where spillage may occur, the employer shall make provisions to contain the spill, to decontaminate the work area, and to dispose of waste.

(5) The employer shall assure that all leaks are repaired and spills are cleaned up as soon as possible by employees wearing suitable protective equipment, which may include respiratory protection, and who are trained in proper methods of cleanup and decontamination.

(6) Waste and debris contaminated with glycol ethers shall be placed for disposal in sealed containers bearing a label as specified in paragraph (m)(1)(ii) of this section.

(k) *Emergencies*—(1) The employer shall develop a written emergency plan for each workplace or work operation covered by this section in accordance with the requirements of 29 CFR 1910.38(a). The provisions of 29 CFR 1910.120(q) remain in effect as applicable and an emergency response plan meeting the requirements of 29 CFR 1910.120(q) shall be deemed to meet the requirements for an emergency response plan in this paragraph (k).

(2) All employees shall be thoroughly trained in their responsibilities in the event of an emergency.

(3) The employer shall assure that only designated personnel, furnished with appropriate personal protective equipment which shall include respiratory protection, and who are trained in re-entry procedures shall correct the emergency conditions.

(4) The employer shall assure that appropriate personal protective, housekeeping, and other emergency equipment and supplies shall be located in each area where an emergency could occur.

(5) All employees, except those designated to correct the situation, shall be evacuated from and normal operations shall be halted in the area where the emergency occurred until the emergency has been abated.

(6) The employer shall make provisions for immediate evacuation, transportation, and medical assistance at a designated medical facility for affected employees.

(l) *Medical surveillance*—(1) *General.* (i) *Employees covered.* The employer shall institute medical surveillance programs for all employees who are or will be exposed to airborne concentrations of glycol ethers at or above the action level or above the excursion level.

(ii) *Examination by a physician.* The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician and are provided without cost to the employee, without loss of pay, and at a reasonable time and place. Persons who administer pulmonary function tests required by this standard shall complete a training course in spirometry sponsored by an appropriate governmental, academic or professional institution.

(2) *Initial examinations.* (i) Within 90 days of the effective date of this standard or before the time of assignment, whichever comes later, the employer shall provide each employee covered by paragraph (l)(1)(i) of this section with a medical examination including at a minimum the following elements:

(A) A medical and work history, including a reproductive history, with emphasis on the hematologic system, skin, eyes and symptoms related to pulmonary and mucous membrane irritation.

(B) A physical examination with emphasis given to hematologic and pulmonary system, mucous membranes, skin and eyes.

(C) A complete blood count to include at a minimum a red cell count, a white cell count, hemoglobin, and hematocrit.

(D) Pulmonary function testing for employees who are or will be wearing respiratory protection. As a minimum, these tests shall consist of forced vital capacity (FVC), forced expiratory volume in one second (FEV_1), and forced expiratory flow (FEF).

(E) Any other test which the examining physician deems necessary.

(ii) No initial medical examination is required to satisfy the requirements of paragraph (1)(2)(i) of this section if adequate records show that the employee has been examined in accordance with the procedures of paragraph (1)(2)(i) of this section after [TWELVE MONTHS PRIOR TO THE EFFECTIVE DATE OF THE FINAL RULE]. Results of tests meeting such requirements shall be provided to the physician to complete the written opinion.

(3) *Periodic examinations.* (i) Periodic medical examinations shall be made available at least annually.

(ii) The scope of the medical examination shall be made in conformance with the protocol established in paragraph (1)(2)(i) of this section.

(iii) Where the results of the examination of the respiratory system indicate abnormalities, or the employee experiences difficulty breathing during the use of or fit testing for respirators, the physician will further evaluate the employee's ability to wear a respirator.

(iv) Anytime the employee develops signs and symptoms commonly associated with toxic exposure to glycol ethers, or the employee desires medical advice or tests concerning the effects of current or past exposure to glycol ethers on the employee's ability to produce a healthy child, the employer shall provide the employee with an additional medical examination and/or a consultation which shall include those

elements considered appropriate by the examining physician.

(4) *Emergency Situations.* In addition to medical surveillance required in paragraphs (l)(1) through (l)(3) of this section, the employer shall make medical examinations available as soon as possible to all employees who may have been acutely exposed to glycol ethers in an emergency.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendices;

(ii) A description of the affected employee's former, current and anticipated future duties as they relate to the employee's glycol ethers exposure.

(iii) The employee's former or current occupational representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment and respiratory protection used or to be used by the employee; and

(v) Information from previous medical examinations of the affected employee within the control of the employer.

(6) *Physician's written opinion.* (i) The employer shall obtain a written signed opinion from the examining physician. This written opinion shall contain the results of the medical examination except that it shall not reveal specific findings or diagnoses unrelated to occupational exposure to glycol ethers. The written opinion shall include:

(A) The physician's opinion as to whether the employee has any medical condition that would place the employee at an increased risk of material impairment of health from exposure to glycol ethers or from use of a respirator.

(B) The results of any testing or related evaluation concerning glycol ethers exposure carried out as part of the examination.

(C) The physician's opinion as to whether the employee is exhibiting symptoms and/or signs from overexposure to glycol ethers.

(D) The physician's opinion as to whether there is a need to reevaluate the effectiveness of the respirator used by the employee.

(E) Any recommended limitations on the employee's exposure to glycol ethers or upon the use of personal protective equipment, including respirators.

(F) A statement that the employee has been informed by the physician of any medical conditions which would be aggravated by exposure to glycol ethers, whether these conditions may have resulted from past glycol ethers exposure, and whether there is a need for further evaluation or treatment.

(ii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days of its receipt.

(m) *Communication of glycol ethers hazards to employees*—(1) *Signs.* The employer shall post signs at all entry and accessways to regulated areas that appropriately warn of existing hazards and which bear, at a minimum, the following legend:

DANGER
GLYCOL ETHERS
[Specific chemical name(s)]
BLOOD AND REPRODUCTIVE HAZARD
EYE AND RESPIRATORY SYSTEM IRRITANT
AVOID INHALATION AND SKIN/EYE CONTACT
AUTHORIZED PERSONNEL ONLY
RESPIRATORY PROTECTION REQUIRED
[Any other appropriate warnings—e.g., "Flammable—No Smoking, Sparks, or Open Flame"]

(2) *Labels.* The employer shall assure that shipping and storage containers containing glycol ethers or glycol ethers-contaminated materials bear an appropriate warning label, which complies with the requirements of the Hazard Communication Standard, 29 CFR 1910.1200(f) of the General Industry Standards. At a minimum, these labels shall include the following legend:

DANGER
CONTAINS GLYCOL ETHERS
[Specific chemical name(s)]
BLOOD AND REPRODUCTIVE HAZARD
EYE AND RESPIRATORY SYSTEM IRRITANT
AVOID INHALATION AND SKIN/EYE CONTACT
[Any other appropriate warnings—e.g. "Flammable—Keep away from heat, sparks, and open flame"].

(3) *Material safety data sheets.* Employers who are manufacturers or importers of glycol ethers or glycol ethers-containing compounds shall comply with the requirements regarding development, updating, and distribution of material safety data sheets specified in 29 CFR 1910.1200(g) of OSHA's Hazard Communication Standard. All employers with employees potentially exposed to glycol ethers shall maintain material safety data sheets and provide their employees with access to them, in accordance with the requirements of 29 CFR 1910.1200(g).

(4) *Employee information and training.* (i) Employers who have a workplace or work operation covered by this section shall provide employees who are potentially exposed to glycol ethers with information and training in accordance with the requirements of the Hazard Communication Standard, 29 CFR 1910.1200(h) of the General Industry Standards.

(ii) The employer shall institute a training program for all employees who are potentially exposed to glycol ethers, assure each employee's participation in the program, maintain a record of this participation, and maintain a record of the contents of such program.

(iii) Training shall be provided, at no cost to the employee, prior to or at the time of initial assignment to a job involving potential exposure to glycol ethers, at least annually thereafter, and whenever a new hazard from glycol ethers is introduced into their work area.

(iv) The employer shall conduct the training program in a manner that the employee is able to understand. The employer shall assure that each employee is informed of at least the following:

(A) The health hazards associated with glycol ethers exposure with special attention to the information in appendix A of this section;

(B) The quantity, location, manner of use, release, and storage of glycol ethers at the worksite and the specific nature of operations that could result in exposure to glycol ethers, especially exposures above the TWAs or ELs;

(C) An explanation of the importance of engineering and work practice controls for employee protection and necessary instruction in the use of these controls;

(D) The measures employees can take to protect themselves from exposure to glycol ethers, such as diligent personal hygiene and proper use of personal protective equipment, and specific procedures the employer has implemented to protect employees against exposure, including appropriate work practices, emergency procedures, and personal protective equipment.

(E) The details of the hazard communication program developed by the employer, including an explanation of the signs, labeling system, and material safety data sheets and how employees can obtain and use the appropriate hazard information;

(F) The purpose, proper selection, fitting, proper use, and limitations of respiratory protection and personal protective clothing and eyewear;

(G) The purpose and description of the medical surveillance program

required by paragraph (l) of this section including the right of any employee exposed to glycol ethers at or above the AL or above the EL to obtain:

(*1*) Medical examinations as required by paragraph (l) of this section at no cost to the employee;

(*2*) The employee's medical records required to be maintained by paragraph (n)(2) of this section;

(*3*) All air monitoring results representing the employee's exposure to glycol ethers and required to be kept by paragraph (n)(1) of this section.

(H) A copy of this standard and its appendices with a discussion of its contents;

(I) Instructions for the handling of spills and cleanup procedures;

(J) A review of emergency procedures including the specific duties or assignments of each employee in the event of an emergency;

(n) *Recordkeeping*—(1) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (d) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include at least the following:

(A) The name, social security number, and job classification of the employee(s) monitored and all other employees whose exposure the measurement is intended to represent;

(B) The dates of monitoring, sample identification number, sampling duration, time of day, and exposure monitoring results of each of the samples taken, including a description of the procedure used to determine representative employee exposures. Exposure monitoring results shall be expressed, at a minimum, as either an 8-hour time-weighted-average (TWA) or a 15-minute excursion limit (EL), whichever is applicable;

(C) The operation(s) covered by the monitoring;

(D) The sampling and analytical methods used and evidence of their accuracy;

(E) The type of respiratory protective devices worn, if any; and

(F) Any other conditions that might have affected the employee monitoring results.

(iii) The employer shall maintain a record of the objective data relied upon to support the determination that no employee is exposed to glycol ethers at or above the action level or EL whenever the employer has used objective data to determine that no monitoring is required under this section.

(iv) The employer shall maintain this record for at least the duration of employment plus 30 years in accordance with 29 CFR 1910.20.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (l) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include at least the following information:

(A) The name and social security number of the employee;

(B) The physician's written opinions from the initial, periodic and additional examinations;

(C) Any employee medical complaints related to exposure to glycol ethers;

(D) A copy of the information provided by the employer to the physician as required by paragraph (l)(5)(ii) through (l)(5)(v) of this section;

(E) A copy of the medical and reproductive histories, medical questionnaire responses, and the results of any medical tests required by the standard or mandated by the examining physician.

(iii) The employer shall assure that this record is maintained for at least the duration of employment plus 30 years, in accordance with 29 CFR 1910.20.

(3) *Training.* The employer shall maintain all employee training records for one (1) year beyond the last date of employment of that employee.

(4) *Availability.* (i) The employer shall assure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall provide upon request for examination and copying, all employee exposure monitoring records required to be maintained by paragraph (n)(1) of this section to affected employees, former employees, and designated representatives in accordance with 29 CFR 1910.20 (a) through (e) and (g) through (i).

(iii) The employer shall provide upon request for examination and copying, all employee medical records required to be maintained by paragraph (n)(2) of this section to the subject employee and to anyone having the specific written consent of the subject employee in accordance with 29 CFR 1910.20.

(5) *Transfer of records.* If the employer ceases to do business, the employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1910.20(h).

(o) *Dates*—(1) *Effective date.* This section is effective [60 DAYS AFTER PUBLICATION OF THE FINAL RULE]. All obligations under this section commence on the Effective Date (ED), except as follows:

(2) *Start-up-dates.* (i) *Exposure monitoring.* Initial monitoring required by paragraph (d) of this section shall be completed as soon as possible and in any event not later than [90 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION].

(ii) *Training.* Training required by paragraph (m)(4) of this section shall be completed as soon as possible and in any event not later than [90 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION].

(iii) *Regulated areas.* Regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event not later than [120 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION].

(iv) *Respiratory protection.* Respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event not later than [120 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION].

(v) *Medical surveillance.* Medical surveillance required by paragraph (l) of this section shall be completed as soon as possible or in any event not later than [120 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION].

(vi) *Emergency Plan.* The emergency plan required by paragraph (k) of this section shall be completed as soon as possible and in any event not later than [180 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION].

(vii) *Compliance program.* The written compliance program required by paragraph (f)(5) of this section shall be completed and available for inspection and copying as soon as possible and in any event not later than [1 YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION].

(viii) *Showers and eyewashes.* Showers and eyewashes required by paragraph (i) of this section shall be installed and usable as soon as possible and in any event not later than [1 YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION].

(ix) *Methods of Compliance.* Engineering controls required by this standard shall be implemented as soon as possible, but not later than [2 YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION]. Work practices shall be implemented as soon as possible. Work practice controls that are directly related to engineering controls being installed in accordance with the compliance plan shall be implemented as soon as these engineering controls are functional.

(p) *Appendices.* The information contained in appendices A, B, C, D and

E of this section is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from existing regulations. The protocols on respiratory fit testing in appendix F are part of this section and are mandatory.

Appendix A to § 1910.1031—Substance Safety Data Sheet for Glycol Ethers

I. Substance Identification

A. *Substance:* Glycol Ethers (2-Methoxyethanol, 2-Methoxyethanol acetate, 2-Ethoxyethanol and 2-Ethoxyethanol acetate).

B. *Permissible Exposure:*

1. Airborne:

A. 8-Hour Time Weighted Average (TWA–PEL): 2–ME: 0.1 ppm 2–MEA: 0.1 ppm 2–EE: 0.5 ppm 2–EEA: 0.5 ppm

B. Excursion Limit (EL) 15 Minute: 2–ME: 0.5 ppm 2–MEA: 0.5 ppm 2–EE: 2.5 ppm 2–EEA: 2.5 ppm

2. Dermal: Contact with eyes or skin should be eliminated.

II. Health Hazard Data

A. Glycol ethers can affect your body if you inhale the vapor (breathing), if it comes into contact with your eyes or skin, or if you swallow it.

B. *Effects of over exposure:*

1. *Short term exposure:* Glycol ethers can cause eye and upper respiratory tract irritation. In addition they can be mildly irritating to skin. Ingestion of large doses of glycol ethers may cause vomiting or lead to death. Systemic effects from short-term high exposures may include lung, kidney and brain damage.

2. *Long term exposure:* Repeated or prolonged exposure to glycol ethers may cause kidney, liver and lung damage as well as central nervous system depression and anemia. Glycol ethers have also been shown to cause testicular degeneration, reduced sperm counts, fetal with and malformations, and adverse hematologic effects in several animal species.

III. Emergency First Aid Procedures

A. *Eye exposure:* If glycol ethers get into your eyes, wash immediately with large amounts of water, lifting the lower and upper lids occasionally. If irritation is present after washing, get medical attention. Contact lenses should not be worn when working with glycol ethers.

B. *Skin exposure:* If glycol ethers get on the skin, promptly wash the contaminated skin with water. If glycol ethers soak through your clothing, remove the clothing and wash the skin with water. If irritation persists after washing, get medical attention. Wash the clothing thoroughly before reusing.

C. *Inhalation:* If a person breaths in large amounts of glycol ethers, move the exposed person to fresh air at once. If breathing has stopped perform artificial respiration. Keep the affected person warm and at rest. Get medical attention as soon as possible.

D. *Swallowing:* When glycol ethers have been swallowed, get medical attention immediately. If medical attention is not immediately available, get the afflicted person to vomit by having him touch the back of this throat with his finger or by giving him syrup of ipecac as directed on the package. This non-prescription drug is available at most drug stores and drug counters and should be kept with emergency medical supplies in the workplace. Do not make an unconscious person vomit.

E. *Rescue:* Move the effected person from the hazardous exposure. If the exposed person has been overcome, notify someone else and put into effect the established emergency rescue procedures. Do not become a casualty. Understand the facility's emergency rescue procedures and know the locations of rescue equipment before the need arises.

IV. Protective Clothing and Equipment

A. *Respirators:* Respirators are required for those operations in which engineering controls or work practice controls are not feasible to reduce exposure to the permissible level. If respirators are worn, they must have joint Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) seal of approval. For effective protection, respirators must fit the face and head snugly. Respirators should not be loosened or removed in work situations where their use is required. Glycol ethers do not have detectable odors except at levels above permissible levels. Do not depend on odor to warn you when a respirator is malfunctioning.

If you experience difficulty breathing while wearing a respirator, tell your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided, at no cost to you, by your employer.

B. *Protective Clothing:* You must wear impervious clothing, gloves, face shield, or other appropriate protective clothing to prevent skin contact with liquid glycol ethers. Wherever protective clothing is required, your employer is required to provide, at no cost, clean garments to you as necessary to assure that the clothing protects you from dermal exposure to glycol ethers.

C. *Eye Protection:* You must wear splashproof goggles in areas where liquid glycol ethers may contact your eyes. In addition, contact lenses should not be worn in areas where eye contact with glycol ethers can occur.

V. Medical Requirements

If you are will be exposed to glycol ethers at or above the action level, [0.05 ppm(2–ME/2–MEA) or 0.25 ppm (2–EE/2–EEA) as an 8-hour time weighted average], or above 0.5 ppm[2–ME/2–MEA) or 2.5 ppm(2–EE/2–EEA) as a 15-minute excursion limit, your employer is required to provide a medical examination and history and laboratory tests within 90 days of the effective date of this standard or before the time of assignment to an area at or above the action level or above the excursion limit, which ever comes later and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to glycol ethers (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to constitute toxic exposure to glycol ethers, your employer is required to make a medical examination available to you.

VI. Observation of Monitoring

Your employer is required to make measurements that are representative of your exposure to glycol ethers and you or your designated representative are entitled to observe the steps taken in the measurements procedure, and to record the results obtained. When the monitoring procedure is in an area where respirators or personal protective clothing must be worn you or your representative must also be provided with, and must wear the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to glycol ethers upon written request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

Glycol ether liquids are flammable. They should be stored in closed containers in cool, well ventilated areas. Non sparking tools must be used to open and close containers. Glycol ethers vapors may form explosive mixtures in air. All sources of ignition must be controlled. Fire extinguisher, where provided, must be readily available. Know where they are located and how to operate them. Ask your supervisor where glycol ethers are used in your work area and for additional plant safety rules.

Appendix B to § 1910.1031—Substance Technical Guidelines for Glycol Ethers

I. 2-Methoxyethanol

A. *Physical and Chemical Data*

1. *Substance Identification*

Chemical name: 2-Methoxyethanol

Formula: $CH_3OCH_2CH_2OH$

Molecular Weight: 76

Chemical Abstracts Service (CAS) NO.: 109–86–4

Synonyms: Methyl Cellosolve; Ethylene glycol monomethyl ether; methyl oxitol; Ektasolve; Jeffersol EM.

2. *Physical data*

Boiling point (760 mm Hg): 124. °C

Freezing point: −85.1 °C

Specific Gravity (H_2O=1 @ 20 °C): 0.9663

Vapor Pressure (20 °C): 6 mm Hg

Vapor Density (air=1 @ 20 °C): 2.6

Solubility in H_2O (% by wt @ 20 °C): miscible in all proportions.

Appearance and Odor: colorless liquid with a mild, pleasant ordor.

B. *Fire, Explosion and Reactivity Data*

Large quantities may be collected and atomized in a suitable combustion chamber.

2. *Disposal*. 2–ME may be disposed of by atomizing in a suitable combustion chamber.

II. 2-Methoxyethanol acetate

A. *Physical and Chemical Data*

1. *Substance Identification*

Chemical name: 2-Methoxyethanol acetate
Formula: $CH_3COOCH_2CH_2OCH_3$
Molecular Weight: 118.13
CAS No.: 110–49–6
Synonyms: Methyl Cellosolve acetate, ethylene glycol monomethyl ether acetate,

2 *Physical data*

Boiling point: 144 °C
Freezing point: −70 °C
Specific Gravity (H_2O=1 @ 20 °C): 1.01
Vapor Pressure (20 °C): 2 mm Hg
Vapor Density (air=1 @ 20 °C): 4.1
Solubility in H_2O (% by wt @ 20 °C): completely miscible
Appearance and Odor: Colorless liquid with mild, ether-like odor.

1. *Fire*

Flammable limits in air (% by volume): Lower: 2.3 Upper: 24.5.
Flash point: 39 °C (closed cup)
Extinguishing media: Dry chemical, alcohol foam, carbon dioxide.
Fire and Explosion Hazards: Moderate fire hazard when exposed to heat or flame. Forms explosive peroxides in air. Vapors are heavier than air and may travel a considerable distance to source of ignition and flash back.

2. *Reactivity*

Conditions contributing to instability: Heat
Incompatibilities: Strong oxidizing agents, strong caustics.
Hazardous decomposition products: Thermal decomposition products may include toxic oxides of carbon.

C. *Spill, Leak and Disposal Procedures*

1. *Steps to be taken if the material is released or spilled*. Remove all ignition sources and ventilate the area of spill or leak. Stop leak if you can do it without risk. Use water to reduce vapors. For small quantities, absorb on paper towels and evaporate in a safe place (such as a fume hood). Burn the paper in a suitable location away from combustible materials.

B. *Fire, Explosion and Reactivity Data*

1. *Fire*

Flammable limits in air (% by volume): Lower: 1.7 Upper: 8.2
Flash point: 44 °C (closed cup).
Extinguishing media: Dry chemical, alcohol foam, carbon dioxide.
Fire and Explosion Hazards: Moderate fire hazard when exposed to heat or flame. Forms explosive peroxides in air. Vapors are heavier than air and may travel a considerable distance to source of ignition and flash back.

2. *Reactivity*

Conditions contributing to instability: Heat
Incompatibilities: Strong acids, strong alkalies, strong oxidizers.
Hazardous decomposition products: Toxic vapors and gases (such as carbon monoxide). Thermal decomposition may release acrid smoke or irritating fumes.

C. *Spill Leak and Disposal Procedures*

1. *Steps to be taken if the material is released or spilled*. Remove all ignition sources and ventilate the area of spill or leak. Stop leak if you can do so without risk. Use water to reduce vapors. For small quantities, absorb on paper towels and evaporate in a safe place (such as a fume hood). Burn the paper in a suitable location away from combustible materials. Large quantities may be collected and atomized in a suitable combustion chamber.

2. *Disposal*. 2–MEA may be disposed of by absorbing it in vermiculite, dry sand, earth or a similar material and disposing it in a secured landfill or by atomizing in a suitable combustion chamber.

III. 2-Ethoxyethanol

A. *Physical and Chemical Data*

1. *Substance Identification*

Chemical name: 2-Ethoxyethanol
Formula: $C_2H_0OCH_2CH_2OH$
Molecular weight: 90.12
CAS No.: 110–80–5
Synonyms: Cellosolve, Ethylene glycol monoethyl ether.

2. *Physical data*

Boiling point. 135.6 °C
Freezing point: −70 °C
Specific Gravity (H_2O=1@ 20 °C): .93
Vapor Pressure (20 °C): 4mm Hg
Vapor Density (air=1@ 20 °C): 3.0
Solubility in H_2O (% by wt @ 20 °C): Miscible in all proportions.
Appearance and Odor: Colorless liquid with sweetish odor.

B. *Fire, Explosion and Reactivity Data*

1. *Fire*

Flammable limits in air (% by volume): Lower: 1.7 Upper: 15.6.
Flash point: 43 °C (closed cup)
Extinguishing media: Dry chemical, alcohol foam, carbon dioxide.
Fire and Explosion Hazards: Moderate fire hazard when exposed to heat or flame. Vapor air mixtures are explosive above flash point. Forms explosive peroxides in air. Vapors are heavier than air and may travel a considerable distance to source of ignition and flash back.

2. *Reactivity*

Conditions contributing to instability: Elevated temperatures.
Incompatibilities: Strong oxidizers, acid and alkalies.
Hazardous decomposition products: Toxic vapors and gases (such as carbon monoxide).

C. *Spill Leak and Disposal Procedures*

1. *Steps to be taken if the material is released or spilled*. Remove all ignition sources and ventilate the area of spill or leak. Stop leak if you can do so without risk. Use water to reduce vapors. For small quantities, absorb on paper towels and evaporate in a safe place (such as fume hood). Burn the paper in a suitable location away from combustible materials. Large quantities may be collected and atomized in a suitable combustion chamber.

2. *Disposal*. 2–EE may be disposed of by absorbing it in vermiculite, dry sand, earth or a similar material and disposing it in a secured landfill or by atomizing in a suitable combustion chamber.

IV. 2-Ethoxyethanol acetate

A. *Physical and Chemical Data*

1. *Substance Identification*

Chemical name: 2-Ethoxyethanol acetate
Formula: $C_2H_5OCH_2CH_2OCOCH_3$
Molecular weight: 132.16
CAS No.: 111–15–9
Synonyms: Cellosolve acetate, ethylene glycol monoethyl ether acetate

2. *Physical data*

Boiling point: 156.4 °C
Freezing point: −62 °C
Specific Gravity (H_2O=1@ 20 °C): .98
Vapor Pressure (20 °C): 2 mm Hg
Vapor Density (air=1@ 20 °C): 4.6
Solubility in H_2O (% by wt @ 20 °C): 23
Appearance and Odor: Colorless viscous liquid with a mild, non-residual odor.

B. *Fire, Explosion and Reactivity Data*

1. *Fire*

Flammable limits in air (% by volume): Lower: 1.7 Upper: 13
Flash point: 47 °C (closed cup)
Extinguising media: Dry chemical, alcohol foam, carbon dioxide.
Fire and Explosion Hazards: Moderate fire hazard when exposed to heat or flame. Vapor air mixtures are explosive above flash point. Forms explosive peroxides in air. Vapors are heavier than air and may travel a considerable distance to source of ignition and flash back.

2. *Reactivity*

Conditions contributing to instability: Heat
Incompatibilities: Nitrates, strong oxidizers, strong alkalies, strong acids.
Hazardous decomposition products: Toxic vapors and gases (such as carbon dioxide). Thermal decomposition produces acrid smoke and/or irritating toxic fumes.

C. *Spill Leak and Disposal Procedures*

1. *Steps to be taken if the material is released or spilled*. Remove all ignition sources and ventilate the area of spill or leak. Stop leak if you can do it without risk. Use water to reduce vapors. For small quantities, absorb on paper towels and evaporate in a safe place (such as a fume hood). Burn the paper in a suitable location away from combustible materials. Large quantities may be collected and atomized in a suitable combustion chamber.

2. *Disposal.* 2–EEA may be disposed of by absorbing it in vermiculite, dry sand, earth or a similar material and disposing it in a secured landfill or by atomizing in a suitable combustion chamber.

Appendix C to § 1910.1031—Medical Surveillance Guidelines for Glycol Ethers

I. Toxicology

Studies of inhalation exposures to glycol ethers have shown that these exposures produce adverse reproductive and developmental effects in several animal species. The effects observed include testicular damage, reduced fertility, maternal toxicity and developmental abnormalities of the fetus. Data from experimental animals have also demonstrated that exposure to glycol ethers may result in a variety of hematologic effects including hemolysis, bone marrow depression and reduced red and white blood cell counts. Adverse hematologic and testicular effects have also been observed in humans exposed to glycol ethers. Among these effects are testicular degeneration, reduced sperm count, anemia, lowered white blood cell counts and bone marrow depression. In addition to inhalation exposure, glycol ethers are also readily absorbed dermally and can also be swallowed. Exposure to glycol ethers in liquid form or high air concentrations may cause irritation of the eyes, nose and throat. Ingestion or large does may be fatal. Acute effects from overexposure also include drowsiness, weakness and shaking.

II. Signs and Symptoms of Acute Overexposure

Glycol ethers are only mildly irritating to the skin. Vapor may cause conjunctivitis and upper respiratory tract irritation. Temporary corneal clouding may also result and may last several hours. Acetate derivatives cause greater irritation than the parent compounds. Acute exposure may also result in narcosis, pulmonary edema and severe kidney and liver damage. Symptoms from repeated overexposure to vapors are fatigue and lethargy, headache, nausea, anorexia, and tremor. Anemia and encephalopathy have been reported with 2–ME. Acute poisoning by ingestion resembles glycol ether toxicity, with death from renal failure.

III. Surveillance and Preventative Considerations

As noted above glycol ethers have been connected with adverse reproductive, developmental and hematologic effects. The physician should be aware of the findings of these studies in evaluating the health of employees exposed to glycol ethers.

It is also important for the physician to become familiar with the operating conditions in which exposure to glycol ethers may occur. Employees with skin diseases may not be able to tolerate the wearing of whatever protective clothing may be necessary to protect them from exposure. In addition, employees with chronic respiratory disease may not be able to tolerate the wearing of respirators. The employer is required to institute a medical surveillance program for all employees who are or will be exposed above the action level or above the excursion limit without regard to the use of respirators. The medical surveillance program must provide each covered employee with an opportunity for medical examination. All examinations and procedures must be performed by or under the supervision of a licensed physician and be provided at a reasonable place and time at no cost to the employee. The examining physician is given broad latitude in prescribing specific tests to be included in the medical surveillance program. However, certain elements of an examination are suggested as being appropriate by the health data regarding the reproductive and hematologic effects. These elements include:

(i) Comprehensive medical, work and reproductive histories with special emphasis directed to the hematologic system and symptoms related to pulmonary and mucous membrane irritation.

(ii) A comprehensive physical examination with emphasis given to hematologic and pulmonary systems, mucous membranes, skin and eyes.

(iii) A complete blood count to include at least a red cell count, a white cell count, hemoglobin and hematocrit.

In addition, the physician must determine the worker's suitability for respirator use. Workers or job applicants who have medical conditions that would be aggravated by the use of a respirator need to receive counseling on the increased risk of impairment of their health. In certain cases, to provide sound medical advice to the employer and the employee, the physician must evaluate situations not directly related to glycol ethers. For example, employees with skin diseases, whether or not they are glycol ethers related, may be unable to tolerate wearing protective clothing. In addition, those with chronic respiratory diseases may not tolerate the wearing of respirators. Additional tests and procedures that will help the physician determine which employees are medically unable to wear respirators must include a pulmonary function test with measurement of the employee's forced vital capacity (FVC), and forced expiratory volume at one second (FEV_1). Ratios of FEV_1 to FVC as well as measured FVC and measured FEV_1 to their expected values corrected for variations due to age, sex, race, and height must be calculated. Whether a chest X-ray will provide useful information should be considered.

The employer is required to provide physical examinations to any employee exposed to emergency conditions. While little is known about the effects of high short-term exposures, it appears prudent to monitor such affected employers closely in light of existing health data.

The employer is required to provide the physician with the following information: a copy of this standard and appendices; a description of the affected employee's duties as they relate to the employee's exposure concentration; the exposure concentration from representative monitoring along with the employee's duration of exposure (e.g., 15 hr/wk, three 8-hour shifts a week, full-time); a description of any personal protective equipment, including respirators, used by the employee; and the results of any previous medical determinations related to glycol ethers exposure for the affected employee that are within the employer's control.

The employer is required to obtain the results of the medical examinations and a written statement from the physician. This statement must contain the physician's opinion as to whether the employee has any medical condition which would place the employee at increased risk of impaired health from exposure to glycol ethers or use of respirators. The physician must also state his opinion regarding any restrictions that should be placed on the employee's exposure to glycol ethers or upon the use of protective clothing or equipment such as respirators. The physician's opinion must also contain a statement regarding the suitability of the employee to wear the type of respirator assigned and a recommendation as to whether or not respirator fit testing should be conducted.

Finally, the physician must inform the employer that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion in not to contain any information on specific findings or diagnoses unrelated to occupational exposure to glycol ethers. After the employer has received the physician's statement, the employer is required to make this information available to the affected employee.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to assist the employer in placing employees initially, in determining that their health is, or is not, being impaired by glycol ethers, and to assess the employee's ability to use protective clothing and equipment.

Appendix D to § 1910.1031 (Nonmandatory)—Reproductive History Questionnaire

(Adapted From Appendix B, Office of Technology Assessment Report, Reproductive Health Hazards in the Workplace, Ex. 5–135).

Reproductive History

1. Have there been any pregnancies with your present mate? Yes ____No ____
   If so, when did they occur? _____
2. Have there been any miscarriages, ectopic pregnancies or stillbirths with your present mate? Yes ____No ____
   If so, when did they occur? _____
3. Have you ever had or fathered a child that resulted in any of the following?
   If so, please specify whether it was with your present or a previous mate:
   ____Low birth weight baby (less than 5½ lbs.)
   ____Baby born more than 2 weeks early?
   ____Twins, triplets, etc.
   ____Baby with a birth defect:
   ____Cleft palate
   ____Harelip
   ____Limb deformity
   ____Disease or deformity of the heart, lungs, kidney, genitals, urinary tract, gastrointestinal tract, nervous system

___Malformations of the skull, spine
___Musculoskeletal disorders (e.g., muscular dystrophy)

4 Have you given birth to or fathered children who have any of the following conditions?
Please specify whether these children were born to you with your present or a previous mate.
___Allergy
___Asthma
___Epilepsy
___Downs syndrome
___Cystic fibrosis
___Hemophilia
___Cerebral palsy
___Mental retardation or learning problem
___Leukemia
___Tumor or Cancer
___Tay-Sachs
___Other (specify)

5. Have you and your present or any previous mate had difficulty conceiving? Yes ___ No ___
(Unprotected intercourse for a year or more with no pregnancy)

6. How long have you been trying for a pregnancy with your present mate? _____

7. Have you or your mate ever attended an infertility clinic or had previous treatment for infertility? Yes ___ No ___
If so, please give name of the doctor and the facility: _____

8. Is there any history of fertility problems in your family? Yes ___No ___
(Difficulty conceiving, miscarriage, stillbirth, deformed offspring)
Parents? _____
Brothers/Sisters? _____
Uncles/Aunts? _____

9. How many times per week do you have sexual intercourse with your present mate? _____

10. Do you and your mate use or have you used any of the following types of contraception?
Oral contraceptive pill ___
Permanent sterilization ___
Diaphragm ___
Condom ___
Spermicidal foam or gel ___
IUD ___
Other _____
Tubal ligation ___
Vasectomy ___
Coitus interruptus ___

11. What form of contraception, if any, are you currently using?

12. Do you try to have intercourse during the fertile time of the month? Yes ___ No ___
If so, how do you decide the best time? _____

13. Do you have any physical difficulties with sex that would prevent a conception? Yes ___No ___
(E.g., pain during intercourse sufficient to prevent penetration)

14. Do you use lubricants during sexual intercourse? Yes___No___

15. Have you and your present mate ever had a post coital test (examination of the cervix for sperm after intercourse)? Yes___No___
If so, was any incompatibility noted? Yes_____No_____

Reproductive Health

A. Male

1. Have you ever had any injury or operation to the penis or testicles?
Circumcision Yes___No___
Other operations on penis Yes___No___ explain _____
Varicocele operation (varicose veins near testicles) Yes___No___
Vasectomy Yes___No___
Biopsy of the testicle Yes___No___
Other operations of injuries to the testicles Yes___No___

2. Have you ever had an infection of the:
Bladder Yes___No___
Urethra Yes___No___
Epididymis Yes___No___
Kidney Yes___No___
If so, please give details: _____

3. Has there been any recent change in the size of your testicles? If so, please give details: Yes___No___

4. Have you ever had a hernia operation (even as a baby)? Yes___No___
If so, please give details: _____

5. Are you in the habit of taking very hot baths? Yes___No___

6. Are you in the habit of taking saunas? Yes___No___

7. What sort of underwear do you normally wear?
___Boxer trunks
___Jockey shorts
___Other

8. Have you ever been told by a doctor that you had a prostate problem? Yes___ No___

9. Have you ever gone through a period of several months when you had trouble getting or keeping an erection? Yes___ No___

10. Do you get satisfactory ejaculation of sperm during intercourse? Yes___ No___

11. Have you ever gone through a period of several months when you had little interest in sex? Yes___No___
If so, please give details: _____

12. Do you have any problems urinating? Yes___No___

13. Have you ever been examined by a urologist? Yes___No___
If so when? _____
For what reason? _____
Were any problems identified? _____

14. Have you had genital herpes? Yes___ No ___

15. Have you had sexually transmitted disease? Yes___No___

16. Has your semen been evaluated before? Yes___No___
How many times? _____
When most recently? _____
What were the results? _____
Have any other tests (e.g. antibody, mucous penetration) been done with your semen? Yes___No___
If so, when? _____
What were the results? _____

17. Have any endocrine (hormone) studies been done with your blood? Yes___ No___
If so, when? _____
What were the results? _____

18. Have you ever had a fertility investigation? Yes___No___
If so, what was the diagnosis?
___Anatomical defect
___Hormonal/Glandular disorder
___Other
___No abnormality found

19. Have you ever had surgery for infertility? Yes___No___
If so, give details: _____

B. Female

Menstrual History

1. How old were you when you began to menstruate? _____
2. Are your periods regular? Yes ___No___
3. What is the average length of your cycle? _____
4. Give the date of the 1st day of your last period: _____
5. Give the date of the 1st day of the period before last: _____
6. For how many days do you bleed? _____
7. If you experience any of these symptoms, note how many days before onset of bleeding the symptom begins:
Premenstrual:
Abdominal Bloating _____
Swelling of face, hands or feet_____
Irritability_____
Weight Gain_____
Bowel Changes_____
Urinary Tract Symptoms_____
Headache_____
Breast Tenderness_____
Other_____
During Period:
Cramps_____
Nausea_____
Diarrhea_____
Chills_____
Headaches_____
Fainting_____
Dizziness_____
Hot Flashes_____
Fever_____
Sweats_____
Constipation_____
Rectal Pain_____
Other_____

8. Do you have any bleeding or bloody discharge:
Between Periods Yes___No___
After Intercourse Yes___No___
After Douching Yes___No___

Gynecologic History:

1. Do you have any pain or discomfort associated with intercourse? Yes___ No___
2. Do you have any problems or difficulty related to sexual activity? Yes___ No___
3. Have you ever gone through a period of several months when you had little interest in sex? Yes___No___
If so, give details:___
4. Have you had genital herpes? Yes___ No___
5. Have you had sexually transmitted disease? Yes___No___
6. Have you ever had an abnormal Pap smear? Yes___No___
7. Have you had or do you have recurrent vaginal infection? Yes___No___

8. Have you had or do you have problems with vaginal discharge? Yes____No____
9. Did your mother take Diethylstilbestrol (DES) while pregnant with you? Yes____ No____
10. Have you had any type of pelvic infection, disease, abnormality or surgery of the:
    Vulva ____
    Uterus____
    Urinary Tract____
    Vagina____
    Tubes____
    Urinary Tract____
    Cervix____
    Ovaries____
    Rectum____
    Anus____
11. Have you ever had endometriosis? Yes____No____
    If so, when?____
    How was it treated?____
12. Do you know whether or not your fallopian tubes are open? Yes____ No____
13. Has either tube been removed? Yes____ No____
14. Have you ever had a hysterosalpingogram (Tubal dye study)? Yes____No____
    If so, when?____
    What were the results?____
15. Have you ever had a laparoscopy? Yes____No____
    If so, when____
    What were the results?____
16. Have any endocrine (hormone) studies been done with your blood? Yes____ No____
    If so, when?____
    What were the results?____
17. Have you ever had a fertility investigation? Yes____No____
    If so, what was the diagnosis?
    ____Anatomical defect
    ____Hormonal/Glandular disorder
    ____Other
    ____No abnormality found
18. Have you ever had surgery for infertility? Yes____No____
    If so, give details: ____

Appendix E—Sampling and Analytical Methods for 2-Methoxyethanol, 2-Ethoxyethanol, and Their Acetates

This appendix describes the method presently used at the OSHA Analytical Laboratory in Salt Lake City for measurement of 2-Methoxyethanol, 2-Ethoxyethanol and their acetates. The method is the most sensitive method presently available for measurement of employee exposure. Inclusion of this method in the appendix does not imply that it is the only one which will be satisfactory. Other methods may also be acceptable provided they can determine these glycol ethers at the permissible exposure limit within ±25% of the "true" value at the 95% confidence level. Where applicable, the method must also be able to measure glycol ethers at the action level to ±35% of the "true" value with 95% confidence.

The following is extracted from the OSHA Analytical Laboratory Method No. 79. For a more complete copy of the method see Exhibit 5–139.

Method number: 79
Matrix: Air
Procedure: Samples are collected by drawing air through standard size coconut shell charcoal tubes. Samples are desorbed with 95/5 (v/) methylene chloride/methonal and analyzed by gas chromatography using a flame ionization detector.
Recommended air volume and sampling rate: 48 L at 0.1 L/min for TWA samples; 15 L at 1.0 L/min for STEL samples.

	2ME	2MEA	2EE	2EEA
Target conc.: ppm (mg/m³)	0.1 (0.3)	0.1 (0.5)	0.5 (1.8)	0.5 (2.7)
Reliable quantitation limit: ppb (µg/m³)	6.7 (21)	1.7 (8.4)	2.1 (7.8)	1.2 (6.5)
Standard error of estimate at the target concentration: (Section 4.7) percent	6.0	5.7	6.2	5.7

Special requirements: As indicated in OSHA Method 53 (Ref. 5.1), samples for 2MEA and 2EEA should be refrigerated upon receipt by the laboratory to minimize hydrolysis.
Status of method: Evaluated method. This method has been subjected to the established evaluation procedures of the Organic Methods Evaluation Branch.

1. General Discussion

1.1. Background

1.1.1. History. An air sampling and analytical procedure for 2ME, 2MEA, 2EE, and 2EEA (OSHA Method 53) was previously evaluated by the Organic Methods Evaluation Branch of the OSHA Analytical Laboratory. (Ref. 5.1.) The target concentration for all four analytes in that method was 5 ppm. OSHA is now in the process of 6(b) rulemaking to consider reducing occupational exposure to these glycol ethers. Because the proposed exposure limits may be significantly lower than the target concentrations in Method 53, the methodology was re-evaluated at lower levels.

A number of changes were made to Method 53 to accommodate the lower target concentrations.

(1) The recommended air volume for TWA samples was increased from 10 L to 48 L. This allows for lower detection limits and increases the TWA sampling time to a more convenient 480 min (8 h) when sampling at 0.1 L/min.

(2) A capillary GC column was substituted for a packed column to attain higher resolution. This was especially helpful in achieving better separation of 2ME and methylene chloride, a major component of the desorption solvent.

(3) It was found that the desorption efficiency from wet charcoal was significantly lower for 2ME, and to a lesser extent for 2EE, at these lower concentrations. This problem was overcome by adding about 125 mg of anhydrous magnesium sulfate to each desorption vial to remove the desorbed water. Because charcoal will always collect some water from sampled air, all 2ME and 2EE air samples must be treated in this manner.

Utilizing these three major modifications of Method 53, a successful evaluation was performed for these glycol ethers at the lower target concentrations. Also, a minor modification was made in the determination of desorption efficiencies. Aqueous instead of methanolic stock solutions were used to determine the desorption efficiencies for 2MEA and 2EEA. It was found that at these lower levels, when stock methanolic solutions are spiked on dry Lot 120 charcoal, part of the 2MEA and 2EEA react with the methanol to form methyl acetate and 2ME and 2EE respectively. The reaction, which is analogous to hydrolysis, is called transesterification (alcoholysis) and is catalyzed by acid or base. The surface of dry Lot 120 charcoal is basic and the reaction was verified to occur by quantitatively determining methyl acetate and the corresponding alcohol (2ME for 2MEA samples, 2EE for 2EEA samples) from spiked samples. Transesterification was not observed when methanolic stock solutions were spiked onto wet charcoal. Therefore, transesterification is not expected to occur for samples collected from workplace air containing methanol as well as 2MEA or 2EEA because workplace atmospheres are seldom completely dry.

Because of the number of modifications and the extensive amount of data generated in this evaluation, the findings are presented as a separate method instead of a revision of Method 53. This method supersedes Method 53, although Method 53 is still valid at the higher analyte concentrations. Although hydrolysis of 2MEA and 2EEA does not appear to be a problem at lower concentrations, as a precautionary measure, the special requirement that 2MEA and 2EEA samples should be refrigerated upon receipt by the laboratory was retained from Method 53.

1.1.2. Toxic effects (This section is for information only and should not be taken as the basis of OSHA policy.)

As reported in the Documentation of Threshold Limit Values (Refs. 5.2–5.5.), all four analytes were investigated by Nagano et al. (Ref. 5.6.) in terms of potency for testicular effects. They concluded that on an equimolar basis, the respective acetate esters were about as potent as 2ME and 2EE in producing testicular atrophy and leukopenia (an abnormally lower number of white blood cells) in mice. Based on this study and because 2MEA and 2EEA hydrolyze to 2ME and 2EE respectively in the body, ACGIH suggests lowering the time-weighted TLVs for all four analytes to 5 ppm.

The following is quoted from NIOSH Current Intelligence Bulletin 39. (Ref. 5.7.)

The National Institute for Occupational Safety and Health (NIOSH) recommends that 2-methoxyethanol (2ME) and 2-ethoxyethanol (2EE) be regarded in the workplace as having the potential to cause adverse reproductive effects in male and female workers. These recommendations are based on the results of several recent studies that have demonstrated dose-related

embryotoxicity and other reproductive effects in several species of animals exposed by different routes of administration. Of particular concern are those studies in which exposure of pregnant animals to concentrations of 2ME or 2EE at or below their respective Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) led to increased incidences of embryonic death, teratogenesis, or growth retardation. Exposure of male animals resulted in testicular atrophy and sterility.

In each case the animals had been exposed to 2ME or 2EE at concentrations at or below their respective OSHA PELs. Therefore, appropriate controls should be instituted to minimize worker exposure to both compounds.

On May 20, 1986, EPA referred these four analytes to OSHA in accordance with the Toxic Substances Control Act (TSCA). On April 2, 1987, OSHA issued an Advanced Notice of Proposed Rulemaking (ANPR) which summarized the information currently available to OSHA concerning the uses, health effects, estimates of employee exposure and risk determinations for these glycol ethers. OSHA invited comments from interested parties and based on the gathered information will decide on appropriate action. (Ref. 5.8.)

1.1.3. Workplace exposure. 2ME- It is used as a solvent for many purposes: cellulose esters, dyes, resins, lacquers, varnishes, and stains; and as a perfume fixative and jet fuel deicing additive. (Ref. 5.2.)

2MEA- It is used in photographic films, lacquers, textile printing, and as a solvent for waxes, oils, various gums and resins, cellulose acetate, and nitrocellulose. (Ref. 5.3.)

2EE- It is used as a solvent for nitrocellulose, natural and synthetic resins, and as a mutual solvent for the formulation of soluble oils. It is also used in lacquers, in the dyeing and printing of textiles, in varnish removers, cleaning solutions, in products for the treatment of leather, and as an anti-icing additive for aviation fuels. (Ref. 5.4.)

2EEA- It is used as a blush retardant in lacquers; as a solvent for nitrocellulose, oils and resins; in wood stains, varnish removers, and in products for the treatment of textiles and leathers. (Ref. 5.5.)

1.1.4. Physical properties (Refs. 5.2.–5.5.) chemical formulae: 2ME- $CH_3OCH_2CH_2OH$; 2MEA- $CH_3OCH_2CH_2OOCCH_3$; 2EE- $CH_3CH_2OCH_2CH_2OH$; 2EEA- $CH_3CH_2OCH_2CH_2OOCCH_3$ synonyms: (Ref. 5.9.).

2ME- methyl Cellosolve®; glycol monomethyl ether; ethylene glycol monomethyl ether; methyl oxitol; Ektasolve; Jeffersol EM.

2MEA- methyl Cellosolve® acetate; glycol monomethyl ether acetate; ethylene glycol monomethyl ether acetate.

2EE- Cellosolve® solvent; ethylene glycol monoethyl ether.

2EEA- Cellosolve® acetate; glycol monoethyl ether acetate; ethylene glycol monoethyl ether acetate.

	2ME	2MEA	2EE	2EEA
CAS number	109–86–4	110–49–6	110–80–5	11–15–9
Molecular weight	76.09	118.13	90.11	132.16
Boiling point	124.5°C	145°C	135.6°C	156.4°C
Color	colorless	colorless	colorless	colorless
Specific gravity	0.9663f	1.005	0.931	0.975
Vapor pressure at 20°C	0.8 kPa	0.3 kPa	0.49 kPa	0.3 kPa
Flash point, closed cup	43°C	49°C	40°C	49°C
Odor (ref. 5.9)	mild, nonresidual	mild, ether-like	sweetish	mild nonresidual
Explosive limits (ref. 5.9):				
Lower	2.5%	1.1%	1.8%	1.7%
Upper	19.8%	8.2%	14%	?

The analyte air concentrations throughout this method are based on the recommended TWA-sampling and analytical parameters. Air concentrations listed in the ppm and ppb are referenced to 25 °C and 101.3 kPa (760 mm Hg.)

1.2. Limit defining parameters

1.2.1. Detection limit of the analytical procedure. The detection limits of the analytical procedure are 0.10, 0.04, 0.04, and 0.03 ng per injection (1.0-μL injection with a 10:1 split) for 2ME, 2MEA, 2EE, and 2EEA respectively. These are the amounts of each analyte that will give peaks with heights approximately 5 times the height of baseline noise. (Section 4.1.)

1.2.2. Detection limit of the overall procedure. The detection limits of the overall procedure are 1.0, 0.40, 0.37, and 0.31 μg per sample for 2ME, 2MEA, 2EE, and 2EEA respectively. These are the amounts of each analyte spiked on the sampling device that allow recovery of amounts of each analyte equivalent to the detection limits of the analytical procedure. These detection limits correspond to air concentrations of 6.7 ppb (21 $\mu g/m^3$), 1.7 ppb (8.4 $\mu g/m^3$), 2.1 ppb (7.8 $\mu g/m^3$), and 1.2 ppb (6.5 $\mu g/m^3$) for 2ME, 2MEA, 2EE, and 2EEA respectively. (Section 4.2.)

1.2.3. Reliable quantitation limit. The reliable quantitation limits are the same as the detection limits of the overall procedure because the desorption efficiencies are essentially 100% at these levels. These are the smallest amounts of each analyte that can be quantitated within the requirements of recoveries of at least 75% and precisions (±1.96 SD) of ±25% or better. (Section 4.3.)

The reliable quantitation limits and detection limits reported in the method are based upon optimization of the GC for the smallest possible amounts of each analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters.

1.2.4. Instrument response to the analyte. The instrument response over the concentration ranges of 0.5 to 2 times the target concentrations is linear for all four analytes. (Section 4.4.)

1.2.5. Recovery. The recovery of 2ME, 2MEA, 2EE, and 2EEA from samples used in a 15-day storage test remained above 84, 87, 84, and 85% respectively when the samples were stored at ambient temperatures. The recovery of analyte from the collection medium after storage must be 75% or greater. (Section 4.5, from regression lines shown in Figures 4.5.1.2., 4.5.2.2., 4.5.3.2 and 4.5.4.2.)

1.2.6. Precision (analytical procedure) The pooled coefficients of variation obtained from replicate determinations of analytical standards at 0.5, 1, and 2 times the target concentrations are 0.022, 0.004, and 0.002 for 2ME, 2MEA, 2EE, and 2EEA respectively. (Section 4.6.)

1.2.7. Precision (overall procedure). The precisions at the 95% confidence level for the ambient temperature 15-day storage tests are ±11.7, ±11.1, ±12.3, and ±11.2% for 2ME, 2MEA, 2EE, and 2EEA respectively. These include an additional ±5% for sampling error. The overall procedure must provide results at the target concentration that are ±25% or better at the 95% confidence level. (Section 4.7.)

1.2.8. Reproducibility. Six samples for each analyte collected from controlled test atmospheres and a draft copy of this procedure were given to a chemist unassociated with this evaluation. The samples were analyzed after 12 days of refrigerated storage. No individual sample result deviated from its theoretical value by more than the precision reported in Section 1.2.7. (Section 4.8.)

1.3. Advantages

1.3.1. Charcoal tubes provide a convenient method for sampling.

1.3.2. The analysis is rapid, sensitive, and precise.

1.4. Disadvantage

It may not be possible to analyze co-collected solvents using this method. Most of the other common solvents which are collected on charcoal are analyzed after desorption with carbon disulfide.

2. Sampling Procedure.

2.1. Apparatus

2.1.1. Samples are collected using a personal sampling pump calibrated to within ±5% of the recommended flow rate with a sampling tube in line.

2.1.2. Samples are collected with solid sorbent sampling tubes containing coconut shell charcoal. Each tube consists of two sections of charcoal separated by a urethane foam plug. The front section contains 100 mg of charcoal and the back section, 50 mg. The sections are held in place with glass wool plugs in a glass tube 4-mm I.d. × 70-mm length. For this evaluation, SKC Inc. charcoal tubes (catalog number 226–01, Lot 120) were used.

2.2 Reagents

None required

2.3. Technique

2.3.1. Immediately before sampling, break off the ends of the carcoal tube. All tubes should be from the same lot.

2.3.2. Connect the sampling tube to the sampling pump with flexible tubing. Position the tube so that sampled air first passes through the 100-mg section.

2.3.3. Air being sampled should not pass through any hose or tubing before entering the sampling tube.

2.3.4. Place the sampling tube vertically (to avoid channeling) in the employee's breathing zone.

2.3.5. After sampling, seal the tubes immediately with plastic caps and wrap lengthwise with OSHA Form 21.

2.3.6. Submit at least one blank sampling tube with each sample set. Blanks should be handled in the same manner as samples, except no air is drawn through them.

2.3.7. Record sample volumes (in liters of air) for each sample, along with any potential interferences.

2.3.8. Ship any bulk sample(s) in a container separate from the air samples.

2.4. Sampler capacity

2.4.1. Sampler capacity is determined by measuring how much air can be sampled before breakthrough of analyte occurs, i.e., the sampler capacity is exceeded. Individual breakthrough studies were performed on each of the four analytes by monitoring the effluent from sampling tubes containing only the 100-mg section of charcoal while sampling at 0.2 L/min from atmospheres containing 10 ppm analyte. The atmospheres were at approximately 80% relative humidity and 20–25°C. No breakthrough was detected in any of the studies after sampling for at least 6 h (>70 L). (This data was collected in the evaluation of OSHA Method 53, Ref. 5.1.)

2.4.2. A similar study as in 2.4.1. was done while sampling an atmosphere containing 10 ppm of all four analytes. The atmosphere was sampled for more than 5 h (>60 L) with no breakthrough detected. (This data was collected in the evaluation of OSHA Method 53, Ref. 5.1.)

2.5. Desorption efficiency

2.5.1. The average desorption efficiencies of 2ME, 2MEA, 2EE, and 2EEA from Lot 120 charcoal are 95.8, 97.9, 96.5, and 98.3% respectively over the range of 0.5 to 2 times the target concentrations. Desorption samples for 2MEA and 2EEA must not be determined by using methanolic stock solutions since a transesterification reaction can occur. (Section 4.9.)

2.5.2. Desorbed samples remain stable for at least 24 h. (Section 4.10.)

2.6. Recommended air volume and sampling rate

2.6.1. For TWA samples, the recommended air volume is 48 L collected at 0.1 L/min (8-h samples).

2.6.2. For short-term samples, the recommended air volume is 15 L collected at 1.0 L/min (15-min samples).

2.6.3. When short-term samples are required, the reliable quantitation limits become larger. For example, the reliable quantitation limit is 21 ppb (67 μg/m³) for 2ME when 15 L is sampled.

2.7. Interferences (sampling)

2.7.1. It is not known if any compound(s) will severely interfere with the collection of any of the four analytes on charcoal. In general, the presence of other contaminant vapors in the air will reduce the capacity of charcoal to collect the analytes.

2.7.2. Suspected interferences should be reported to the laboratory with submitted samples.

2.8. Safety precautions (sampling)

2.8.1. Attach the sampling equipment to the employee so that it will not interfere with work performance or safety.

2.8.2. Wear eye protection when breaking the ends of the charcoal tubes.

2.8.3. Follow all safety procedures that apply to the work area being sampled.

3. Analytical Procedure

3.1. Apparatus

3.1.1. A GC equipped with a flame ionization detector. For this evaluation, a Hewlett-Packard 5890 Series II Gas Chromatograph equipped with a 7673A Automatic Sampler was used.

3.1.2. A GC column capable of separating the analyte of interest from the desorption solvent, internal standard and any interferences. A thick film, 60-m×0.32-mm I.d., fused silicia RT_x-Volatiles Column (Cat. nol. 10904, Restek Corp., Bellefonte, PA) was used in this evaluation.

3.1.3. An electronic integrator or some other suitable means of measuring peak areas or heights. A Hewlett-Packard 18652A A/D converter interfaced to a Hewlett-Packard 3357 Lab Automation Data System was used in this evaluation.

3.1.4. Two-milliliter vials with Teflon-lined caps.

3.1.5. A dispenser capable of delivering 1.0 mL to prepare standards and samples. If a dispenser is not available, a 1.0-mL volumetric pipet may be used.

3.1.6. Syringes of various sizes for preparation of standards.

3.1.7. Volumetric flasks and pipets to dilute the pure analytes in preparation of standards.

3.2. Reagents

3.2.1. 2-Methoxyethanol, 2-methoxyethyl acetate, 2-ethoxyethanol, and 2-ethoxyethyl acetate, reagent grade. Aldrich Lot HB062777 2ME, Eastman Lot 701–2 2MEA, Aldrich Lot DB040177 2EE, and Aldrich Lot 04916HP 2EEA were used in this evaluation.

3.2.2. Anhydrous magnesium sulfate, reagent grade. Chempure Lot M172 KDHM was used in this evaluation.

3.2.3. Methylene chloride, chromatographic grade. American Burdick and Jackson Lot AQ098 was used in this evaluation.

3.2.4. Methanol, chromatographic grade. American Burdick and Jackson Lot AT015 was used in this evaluation.

3.2.5. A suitable internal standard, reagent grade. "Quant Grade" 3-methyl-3-pentanol from Polyscience Corporation was used in this evaluation.

3.2.6. The desorption solvent consists of methylene chloride/methanol, 95/5 (v/v) containing an internal standard at a concentration of 20 μL/L.

3.2.7. GC grade nitrogen, air, and hydrogen.

3.3. Standard preparation

3.3.1. Prepare concentrated stock standards by diluting the pure analytes with methanol. Prepare working standards by injecting microliter amounts of concentrated stock standards into vials containing 1.0 mL of desorption solvent delivered from the same dispenser used to desorb samples. For example, to prepare a stock standard of 2ME, dilute 195 μL of pure 2ME (sp gr = 0.9663) to 50.0 mL with methanol. This stock solution would contain 3.769 μg/μL. A working standard of 15.08 μg/sample is prepared by injecting 4.0 μL of this stock into a vial containing 1.0 mL of desorption solvent.

3.3.2. Bracket sample concentrations with working standard concentrations. If samples fall outside of the concentration range of prepared standards, prepare and analyze additional standards to ascertain the linearity of response.

3.4. Sample Preparation

3.4.1. Transfer each section of the samples to separate vials. Discard the glass tubes and plugs.

3.4.2. For 2ME and 2EE samples, add about 125 mg of magnesium sulfate to each vial.

3.4.3. Add 1.0 mL of desorption solvent to each vial using the same dispenser as used for preparation of standards.

3.4.4. Immediately cap the vials and shake them periodically for about 30 min.

3.5. Analysis

3.5.1. GC conditions:

Zone temperatures: column-80°C for 4 min; 10°C/min to 125°C; 125°C for 4 min; injector-150°C; detector-200°C.

Gas flows: hydrogen (carrier)-2.5 mL/min (80 kPa head pressure); nitrogen (makeup)-20 mL/min; hydrogen (flame)-65 mL/min; air-400 mL/min.

Injection volume: 1.0 μL (with a 10:1 split).

Column: 60-m×0.32-mm I.d. fused silica, RT_x-Volatiles, thick film.

Retention times: 2ME-5.0 min; 2MEA-10.0 min; 2EE- 6.7 min; 2EEA- 11.9 min; (3-methyl-3-pentanol- 7.5 min).

3.5.2. Peak areas (or heights) are measured by an integrator or other suitable means.

3.5.3. An internal standard (ISTD) calibration method is used. Calibration

curves are prepared by plotting micrograms of analyte per sample versus ISTD-corrected response of standard injections. Sample concentrations must be bracketed by standards

3.6. Interferences (analytical)

3.6.1. Any compound that responds on a flame ionization detector and has the same general retention time of the analyte or internal standard is a potential interference. Possible interferences should be reported to the laboratory with submitted samples by the industrial hygienist. These interferences should be considered before samples are desorbed.

3.6.2. GC parameters (i.e. column and column temperature) may be changed to possibly circumvent interferences.

3.6.3. Retention time on a single column is not considered proof of chemical identity. Analyte identity should be confirmed by GC/mass spectrometer if possible.

3.7. Calculations

The analyte concentration for samples is obtained from the appropriate calibration curve in terms of micrograms of analyte per sample, uncorrected for desorption efficiency. The air concentration is calculated using the following formulae. The back (50-mg) section is analyzed primarily to determine if there was any breakthrough from the front (100-mg) section during sampling. If a significant amount of analyte is found on the back section (e.g., greater than 25% of the amount found on the front section), this fact should be reported with sample results. If any analyte is found on the back section, it is added to the amount found on the front section. This total amount is then corrected by subtracting the total amount (if any) found on the blank.

$$mg/m^3 = \frac{(\mu g \text{ of analyte per sample})}{(\text{L of air sampled})(\text{desorption efficiency})}$$

where desorption efficiency= 0.958 for 2ME; 0.979 for 2MEA; 0.965 for 2EE; 0.983 for 2EEA.

ppm = $(mg/m^3)(24.46)/(\text{molecular weight of analyte})$ where 24.46 is the molar volume at 25 °C and 101.3 kPa (760 mmHg) and molecular weights =76.09 for 2ME, 118.13 for 2MEA 90.11 for 2EE, 132.16 for 2EEA

3.8 Safety precautions (analytical)

3.8.1. Avoid skin contact and inhalation of all chemicals.

3.8.2. Restrict the use of all chemicals to a fume hood when possible.

3.8.3. Wear safety glasses and a lab coat at all times while in the lab area.

4. Backup Data

(For backup data see Section 4 of OSHA Analytical Method Number 79, Exhibit 5–139).

5. References

5.1. "OSHA Analytical Methods Manual" U.S. Department of Labor, Occupational Safety and Health Administration; OSHA Analytical Laboratory: Salt Lake City, UT, 1985; Method 53; American Conference of Governmental Industrial Hygienists (ACGIH): Cincinnati, OH, ISBN: 0–936712–66–X.

5.2. "American Conference of Governmental Industrial Hygienists: Documentation of the Threshold Limit Values, Supplemental Documentation for 1982", pp. 259–260, Cincinnati, OH (1982).

5.3. "American Conference of Governmental Industrial Hygienists: Documentation of the Threshold Limit Values, Supplemental Documentation for 1982", p. 260, Cincinnati, OH (1982).

5.4. "American Conference of Governmental Industrial Hygienists: Documentation of the Threshold Limit Values, Supplemental Documentation for 1982", p. 171, Cincinnati, OH (1982).

5.5. "American Conference of Governmental Industrial Hygienists: Documentation of the Threshold Limit Values, Supplemental Documentation for 1982", p. 172, Cincinnati, OH (1982).

5.6. Nagano, K.; Nakayama, E.; Koyano, M.; Oobayaski, H.; Adachi, H.; Yamada, T. *Jap. J. Ind. Health* 1979, *21*, 29–35.

5.7. "Current Intelligence Bulletin 39, Glycol Ethers"; May 2, 1983, U.S. Department of Health and Human Services, Public Health Service, Center for Disease Control, NIOSH.

5.8. *Fed. Regist.* 1987, *52* (No. 63, Thursday, April 2), 10586–10593.

5.9. "Pocket Guide to Chemical Hazards", NIOSH/OSHA, Sept. 1978, DHEW (NIOSH) Publ. No. 78–210.

Appendix F to § 1910.1031—Qualitative and Quantitative Fit Testing Procedures-Mandatory

I. Fit Test Protocols

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT).

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece; and units from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) Position of the mask on the nose

(b) Room for eye protection

(c) Room to talk

(d) Position of mask on face and cheeks

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed;

(b) Adequate strap tension, not overly tightened;

(c) Fit across nose bridge;

(d) Respirator of proper size to span distance from nose to chin;

(e) Tendency of respirator to slip;

(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

(a). Positive pressure test. Close off the exhalation valve and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

(b). Negative pressure test. Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted

respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece an to be retested.

12. The employer shall certify that a successful fit test has been administered to the employee. The certification shall include the following information:

(a) Name of employee;

(b) Type, brand and size of respirator; and

(c) Date of test;

(e) Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test, shall be retained with the certification. The certification shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(b) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(C) Turning head side to side. Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) Grimace. The test subject shall grimace by smiling or frowning.

(g) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) Normal breathing. Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Isoamyl Acetate Protocol

(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known at isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA at 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA order detection test shall be prepared in an area separate from where the test is preformed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test*

(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the hood exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. Saccharin Solution Aerosol Protocol

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with

particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts #FT14 and #FT15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The threshold check solution consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) *Saccharin solution aerosol fit test procedure*

(1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one-half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. Irritant Fume Protocol

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantitative Fit Test (QNFT) Protocol

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Definitions

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ration of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitative fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

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(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. Procedural Requirements

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. half mask respirator, full facepiece respirator).

(i) *Calculation of fit factors.*

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) average peak concentration

(ii) Maximum peak concentration

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

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March 23, 1993

Part III

Environmental Protection Agency

40 CFR Parts 72, 73 and 75
Acid Rain Allowance Allocations and Reserves; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73 and 75

[FRL–4603–8]

Acid Rain Allowance Allocations and Reserves

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the "Act"), directs the Environmental Protection Agency ("EPA") to establish an acid rain program to reduce the adverse effects of acidic deposition. The centerpiece of this control program is the allocation of allowances, or authorizations to emit SO_2, which are distributed by the Administrator in limited quantities to existing utility units and which eventually must be held by all affected units to cover their SO_2 emissions. To set the foundation of this program, EPA must: Allocate allowances for those units covered by the SO_2 emissions limitation requirements from 1995 to 1999 (Phase I), publish a list of initial allocations of allowances for affected utility units that must comply with Acid Rain emissions requirements beginning in the year 2000 (Phase II), and establish allowance reserves (for the Phase I Extension program, the energy conservation and renewable energy program, the clean coal technology repowering program, and the Special Allowance Reserve for EPA auctions and sales). On July 7, 1992, EPA proposed these allowance allocations and reserves.

EPA published as final three provisions from the July proposal, relating to Phase I of the Acid Rain program, on January 11, 1993 along with final Acid Rain regulations for the allowance system, permitting, emissions monitoring, excess emissions, and administrative appeals. EPA promulgated the Phase I allowance allocations in 40 CFR 73.10. In addition, the Agency finalized the Special Allowance Reserve for Phase I allowances and the reserve for the Phase I Extension program.

This regulation finalizes the remaining portion of the July 7 proposal, including: Regulations governing allocations of early reduction credits for Phase I and II, all Phase II initial allowance allocation provisions, as well as reserves and set-asides and repowering allocations, rules for small diesel refiners to apply for allowances, and applicability provisions of 40 CFR part 72 regarding co-generators, qualifying facilities and independent power producers, and solid waste incinerators.

Also published elsewhere in the **Federal Register** is the Notice of Availability of the revised final National Allowance Data Base (version 2.11) (NADB version 2.11) and the final Supplemental Data File, which support the allocation of allowances under the Acid Rain Program.

EFFECTIVE DATE: These rules are effective March 23, 1993.

ADDRESSES: All material supporting this notice is available for viewing and copying under Docket A–92–06 at the EPA Air Docket (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, room M–1500 on the first floor of Waterside Mall. Hours are 8:30 to 12 noon and 1:30 to 3:30 p.m., Monday through Friday, excluding legal holidays.

The final NADB, supporting documents, this rule, and the Technical Documentation for Final Phase II Allowance Allocations are available through the EPA's Office of Air Quality Planning and Standard's TTN electronic Bulletin Board free of charge. The bulletin board may be accessed through (919) 541–5742.

Copies of the revised final NADB (on diskette only) and supporting documents (hard copies available on request) may be obtained from the following sources:

U.S. Environmental Protection Agency, Acid Rain Division, 6204J, 401 M Street, SW., Washington, DC, 20460, Attn: NADB.

Serving Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut:
U.S. Environmental Protection Agency, Region 1 (APS), J.F. Kennedy Federal Bldg., room 2203, Boston, MA, 02203, Attn: Ian Cohen.

Serving New York and New Jersey:
U.S. Environmental Protection Agency, Region 2 (2AWM–AP), Jacob Javitz Federal Bldg., 26 Federal Plaza, New York, NY, 10278, Attn: Gerry DeGaetano.

Serving Pennsylvania, Delaware, Maryland, West Virginia, the District of Columbia, and Virginia:
U.S. Environmental Protection Agency, Region 3 (3AT11), 841 Chestnut Bldg., Philadelphia, PA, 19107, Attn: James Topsale.

Serving Kentucky, North Carolina, Tennessee, South Carolina, Georgia, Alabama, Mississippi, and Florida:
U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA, 30365, Attn: Kevin Taylor.

Serving Michigan, Wisconsin, Minnesota, Ohio, Indiana, and Illinois:
U.S. Environmental Protection Agency, Region 5, (5–AE–17J), 77 West Jackson Blvd., Chicago, IL, 60604. Attn: David Schulz.

Serving Arkansas, Oklahoma, Louisiana, Texas, and New Mexico:
U.S. Environmental Protection Agency, Region 6 (6T–AN), First Interstate Bank Tower, 1445 Ross Avenue, suite 1200, Dallas, TX, 75202–2733, Attn: Joe Winkler.

Serving Iowa, Nebraska, Missouri, and Kansas:
U.S. Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, KS, 66101, Attn: Jon Knodel.

Serving North Dakota, South Dakota, Montana, Wyoming, Colorado, and Utah:
U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, CO, 80202–2405, Attn: Mark Komp.

Serving Nevada, California, and Arizona:
U.S. Environmental Protection Agency, Region 9 (A–2–3), 75 Hawthorne Street, San Francisco, CA, 94105, Attn: Michael Stenburg.

Serving Idaho, Washington, and Oregon:
U.S. Environmental Protection Agency, Region 10 (AT082), 1200 Sixth Avenue, Seattle, WA, 98101, Attn: David Bray.

For their members:
American Public Power Association, 2301 M Street, NW., 3rd floor, Washington, DC, 20037, Attn: Larry Mansueti.

Edison Electric Institute, 701 Pennsylvania Avenue, NW., 5th floor, Washington, DC., 20004, Attn: John Kinsman.

National Coal Association, 1130 17th Street, NW., Washington, DC, 20036, Attn: Jerry Karaganis.

National Rural Electric Cooperatives Association, 1800 Massachusetts Avenue, NW., Washington, DC, 20036, Attn: Rae Cronmiller, Environmental Counsel.

State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), 444 North Capitol Street, NW., Washington, DC, 20001, Attn: William Becker.

Utility Air Regulatory Group, 2000 Pennsylvania Avenue, NW., suite 9000,Washington, DC, 20036, Attn: Lynn Johnson.

FOR FURTHER INFORMATION CONTACT: Acid Rain Hotline, (617) 674–7377 or Kathy A. Barylski, Acid Rain Division, telephone (202) 233–9170. The mailing address is US EPA, (6204J), 401 M Street, SW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION:

The contents of this preamble are as follows:

A. Background
B. Applicability Under Phase II of the Program
C. Initial Phase II Allowance Allocation Provisions
D. Method for 1998 Revisions

E. Early Reduction Credits
F. Repowering
G. Reserves
H. Allocations for Small Diesel Refineries
I. Summary of Final Rules
J. Regulatory Impact Analysis (Executive Order 12291)
K. Regulatory Flexibility Act
L. Paperwork Reduction Act

A. Background

The burning of fossil fuels, particularly coal and oil, releases emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x) into the atmosphere. Once in the air, SO_2 and NO_x may undergo various chemical reactions, resulting in transformation of the emissions into sulfates, nitrates, sulfuric acid, and nitric acid. These compounds can fall to earth near the source or be transported hundreds of miles. Referred to as acid deposition or acid rain, these compounds can be either dry (gases, aerosols, and particles) or wet (precipitation such as rain, fog or snow). SO_2 and NO_x emissions and their byproducts damage both ecosystems and materials, are suspected of harming human health at current levels, and reduce visibility.

Of the approximately 23 million tons of SO_2 and 19 million tons of NO_x emitted annually from all sources in the United States in 1985, about 16 million tons of SO_2 and 7 million tons of NO_x were emitted by electric utilities. Title IV of the Clean Air Act requires EPA to establish a national emissions cap of 8.95 million tons per year on electric utility SO_2 emissions and an Acid Rain Program to be implemented in two phases. Phase I (beginning in 1995) requires the 110 highest-emitting utility plants to meet an intermediate SO_2 emissions limitation. By the year 2000 (in which Phase II begins), virtually all utility units will be required to meet stringent emissions limitations. Total annual SO_2 emissions will be reduced by 10 million tons below 1980 levels, beginning in the year 2000, a reduction in total SO_2 emissions of approximately 40%. Title IV also requires that certain coal-fired units reduce their emissions of NO_x to a level achievable through installation of low-NO_x burner technology at the same time that they are required to comply with SO_2 emission limitations.

The centerpiece of the Acid Rain Program is a unique trading system in which allowances (each authorizing the emission of up to one ton of SO_2) are bought and sold at prices determined in a free market. Existing utility units are allocated allowances based on their historic fuel use and the emissions limitations specified in the Act. Utility units are required to limit SO_2 emissions to the number of allowances they hold, but since allowances are fully transferrable, utilities may meet their emissions control requirements in the most cost-effective manner. For instance, a utility may decide to: (1) Switch to a lower sulfur fuel, (2) install flue gas desulfurization equipment (scrubbers) and bank unused allowances or sell them to other utilities or individuals, (3) forego emissions reductions and buy additional allowances (if necessary), or (4) implement energy efficiency measures at the plant or by encouraging customers to undertake them. Other options and combinations are possible, providing an unusually high degree of flexibility for affected sources to comply with the law.

This rulemaking primarily concerns the allocations of allowances for Phase II of the program. Five rules were finalized in January, 1993 [1]: regulations regarding Acid Rain permits (codified at 40 CFR part 72), allowance trading and tracking (codified at 40 CFR part 73), emissions monitoring (codified at 40 CFR part 75), excess emissions penalties and offset requirements (codified at 40 CFR part 77), and administrative appeals procedures (codified at 40 CFR part 78). Also, in November 1992, regulations for the nitrogen oxides (NO_x) control program, pursuant to section 407 of the Act, were proposed (57 FR 55632, November 25, 1992). At a later date, requirements for sources that elect to participate by "opting-in" to the Acid Rain Program, pursuant to section 410 of the Act, will be proposed.

B. Applicability Under Phase II of the Program

1. Background

Unlike Phase I, which affects only 110 plants, Phase II affects a broad group of utility units. Approximately 2,200 existing utility units are affected, and most new utility units will be affected when they commence commercial operation. (See 40 CFR 72.203(c)).

Most Phase II applicability provisions were made final in the Acid Rain permits rule. However, provisions for cogenerators, qualifying facilities and independent power producers, and solid waste incinerators were re-proposed with the proposed allowance allocations rule in July 1992, and are made final today with this rule.

Also, EPA is today amending 40 CFR 72.6(a)(2), which on finalization with the core rules read, in part, "An existing unit that is identified as qualifying for an allowance allocation under regulations implementing sections 403 and 405 of the Act * * * ." Today's allowance allocations rules in 40 CFR part 73 are the rules implementing sections 403 and 405 of the Act. In particular, Tables 2 and 3 of § 73.10 specify the utility units which qualify as eligible for allowance allocations under the Act. Therefore, today's rule amends this paragraph to refer to Tables 2 and 3 of § 73.10.

2. Procedures for Determining Applicability

EPA considered, during development of the proposed rule, whether regulatory procedures for certification of exemption under section 405(g)(6) would be beneficial. EPA proposed that clear, objective criteria provide sufficient notice to all units. A number of commenters, representing several industry sectors (including cogenerators and independent power producers) requested a method by which EPA would certify whether a specific unit is affected. They noted that the lack of EPA certification at the time of financing, which is well before Phase II permitting will begin, could cause projects to fail, even though they may be exempt from the Acid Rain Program requirements. One commenter pointed out that without EPA certification, the States will make decisions during permitting under title V of the Clean Air Act. Individual State action could result in inconsistent determinations across the country, and such potential inconsistency runs counter to EPA's stated need for a nationally consistent program for Acid Rain.

Several procedural options were suggested. An association suggested a streamlined non-evidentiary advisory opinion process. This process would require an advisory opinion to be issued from an EPA program manager, based on the written representations made by the project developers. Another commenter suggested a process similar to Federal Energy Regulatory Commission (FERC) qualifying facility certification, including **Federal Register** notice and comment.

Response: EPA is adopting, in the final regulation in 40 CFR 72.6(c), a procedure by which certifying officials of any potentially affected unit can petition for a determination of applicability for title IV. EPA chose not to require these petitions to be submitted by designated representatives, as these units may not

[1] These rules are called the Acid Rain core rules, 58 FR 3590 (January 11, 1993). Future citations to the **Federal Register** will be omitted unless a specific page will be of assistance. All references in this preamble to January 11 rules are to the rules published at 58 FR 3590. Any reference to the "proposed core rules" or "December 3 proposal" are to the rules proposed at 56 FR 63002 (December 3, 1991).

be affected, but is requiring the petition to meet the procedural requirements of § 72.21 and the certifying official to provide copies of the petition, and the Administrator's response to all owners and operators.

The procedure requires submittal of a written request and relevant and appropriate information about the unit. In response to that request, EPA would produce a letter stating that based on the submittal, the unit is exempt, affected, or EPA cannot make a determination based on the information. If the information submitted was inadequate for such a determination, EPA may request additional data. The petition must be submitted before the unit is issued its Phase II Acid Rain permit. The response letter will constitute final Agency action, will be binding upon the permitting authority, and such determination may be appealed through the Acid Rain Appeals process in 40 CFR part 78.

Although several commenters requested a fixed timeframe for EPA to make such determinations relative to such requests, the Agency declines to adopt a rigid timeframe. Because of the importance of these determinations, the Agency intends to produce responses as rapidly as possible.

3. Retired Units

In the preamble to the proposed allocations rule, EPA discussed the treatment of units that retired prior to 1985 and returned to operation later. EPA stated, at that time, that: "if a unit that was retired or inactive prior to 1985 returns to operation without substantial modification, EPA believes that the unit should be treated as an existing unit with its original on-line date. Thus, for a unit that retired or became inactive prior to 1985 and returned to operation after 1987, in general, no allowances would be allocated." (57 FR 29953, July 7, 1992)

In the final core rules, EPA provided that affected units, retiring prior to being issued a Phase II Acid Rain permit, could avoid installation of continuous emissions monitoring systems otherwise required. The rules did not define "retire."

Two commenters raised the issue that units that did not serve a generator of greater than 25 MWe as of enactment (November 15, 1990) (or thereafter) are exempt from the program, (because they do not meet the definition of an existing unit and, therefore, are not existing affected units for the purposes of title IV), even if prior to enactment the unit did serve a generator of greater than 25 MWe. As a commenter pointed out, the definition of "existing unit," which is tied to the present tense "serve," is independent of operations during the baseline period (1985–1987).

Response: First, EPA agrees with the commenter whose unit served a generator larger than 25 MWe during the baseline period but only served a generator of less than 25 MWe upon enactment. Such a unit did not, as of November 15, 1990, and does not currently serve a generator of greater than 25 MWe. That unit has been deleted from Table 2 (see also discussion of Table 2 at section C. below).

Second, EPA believes that Congress meant to allocate allowances to units in the NADB that operated during the baseline period but retired prior to enactment. In fact, five units in Table A of title IV, which receive Phase I allowance allocations, operated during the baseline period but retired prior to enactment of the Clean Air Act Amendments (as reported to the Energy Information Agency). It would be inconsistent to prevent similarly situated units from receiving Phase II allowance allocations. Therefore, these units are allocated allowances in today's rule.

However, several units proposed to receive allocations of Phase II allowances did not serve a generator selling electricity (and did not have any fuel consumption) during the baseline period (1985 through 1987) and were formally retired prior to enactment, but were not retired prior to 1985. These units do not meet the definition for "existing unit" or "utility unit" and so are exempt from the requirements of the Acid Rain Program. Therefore, these units are ineligible for allowance allocations and are not listed in Table 2.

4. Units on Standby

The proposed rule and preamble did not specifically discuss treatment of units that have been placed on "standby." One commenter stated that these units do not "serve" a generator, and, therefore, should be exempt.

Response: EPA disagrees with the commenter. As the commenter made clear, the purpose of the "standby" designation is so the unit may be operated at any time. The commenter's unit has effective operating permits. EPA believes that the term "serve" should be read to mean either providing steam or capable of providing steam to the generator. The only units EPA can confirm as not serving a generator, through EIA data, are those units that are reported as retired.

EPA notes that utilities may avoid the cost of compliance with the Acid Rain Program by retiring such units and submitting necessary documentation under 40 CFR 72.7.

5. Cogeneration Units

The definition of "utility unit" excludes certain units that cogenerate steam and electricity. Under section 402(17)(C) of the Act, a unit that cogenerates steam and electricity and that was in operation or commenced construction on or before November 15, 1990 is exempt from the Acid Rain Program if it was constructed for the purpose of supplying one-third or less of its potential electric output capacity or 25 MWe or less electrical output to any utility power distribution system for sale. Likewise, a unit that cogenerates steam and electricity and that commenced construction after November 15, 1990 is exempt if it supplies one-third or less of its potential electric output capacity or 25 MWe or less electrical output to any utility power distribution system for sale.

a. Defining "Potential Electrical Output Capacity"

Determination of the one-third of potential electrical output capacity could be ambiguous. For part 73, EPA proposed a definition of "potential electrical output capacity" similar to the definition provided in 40 CFR 60.41a (subpart Da), but not identical. The proposed definition read: "Potential Electrical Output Capacity means the total electrical output (in MWe) over a specified period of time resulting from the operation of the unit at 33 percent of its maximum design heat input." Whereas, the definition in subpart Da reads: "Potential Electrical Output Capacity is defined as 33 percent of the maximum design heat input capacity of the steam generating unit (e.g., a steam generating unit with a 100–MW (340 million Btu/hr) fossil-fuel heat input capacity would have a 33–MW potential electrical output capacity. * * *" Several utilities commented on the change, several in support and one opposed to the change in definition.

Response: The Agency intended in the proposal to maintain the substantive meaning of "potential electric output capacity" as defined in subpart Da, but also to improve the useability of the definition. The final definition reads: "Potential electrical output capacity means the MWe capacity rating for the unit which shall be equal to 33 percent of the maximum design heat input capacity of the steam generating unit, as calculated according to appendix D of part 72." Appendix D includes and expands the example that was included in the subpart Da definition. The

example provides the necessary conversion factors for calculation.

b. Measuring Electrical Output

The statute uses the term "25 MWe electrical output." However, electrical output is not measured in megawatts but in megawatt-hours. For ease in measurement and to conform to the annual nature of the program, EPA proposed 219,000 megawatt-hours electrical output in place of 25 MWe (which is a capacity term) because 219,000 MWe-hrs equals 25 MWe times 8760 hours per year.

Several commenters supported the proposal and one commenter opposed it. The commenter opposed to the provision felt that EPA was enlarging the scope of the exemption because large generators that sell only a small amount of electrical output would be exempt. The supporters appreciated the ease in measuring electrical output, because output records are maintained.

Response: EPA is retaining the proposed term. EPA believes that the method by which output or output capacity is measured is within the Agency's discretion because the statute does not specify a method. EPA believes that operational equivalent to a generator of 25 MWe running at full capacity is a reasonable interpretation of the statute. In fact, the Bush Administration's original submittal did not affect units serving generators less than 75 MWe and included the one-third of potential electrical output capacity and 25 MWe criteria for cogenerators. Apparently, the drafters believed that a unit with potential electrical output capacity of 75 MWe could sell as electricity up to one-third of that potential (25 MWe) and still be exempt. Also, the Agency understands from the utility industry that installed generator capacity is not always associated with any specific need and, in fact, may be substantially larger than the facility needs. Thus, to adopt a standard based on generator nameplate capacity (as done elsewhere in the statute explicitly) would penalize such facilities without purpose. Because the statute is not explicit, EPA believes that the proposed approach properly targets the amount of electricity produced rather than the size of the generator from which the electricity is produced.

c. Net Versus Gross Calculation

The proposed rule did not specify whether the 219,000 MWe-hrs would be a gross figure or net (equal to MWe-hrs purchased from the grid subtracted from the gross sales to the grid), although the proposed language implied gross sales. Several commenters understood the proposal to require gross sales, while noting that the subpart Da program upon which this exemption is based uses net rather than gross sales. EPA has confirmed that understanding of the subpart Da program.

Response: EPA has finalized the rule to be explicit as to gross sales.

First, EPA reviewed the purposes of the two programs to determine if any distinction should be made between them. While subpart Da requires installed control technology on every unit meeting certain requirements and was drafted to encourage the development of cogeneration units, the Acid Rain Program is designed to decrease emissions from an entire sector (the electric generating industry) and to limit the shifting of utilization from affected units to unaffected units (such as cogenerators).

Second, EPA believes the statutory provision was designed to differentiate between cogenerators selling only their excess power and those facilities that operate like a utility unit. Cogenerators that sell large portions of their electricity, and buy back at other times, are operating much like peaking units owned or operated by utilities.

Third, EPA believes that, if the use of net generation was allowed for cogenerators, traditional utilities would claim its use to be unfair. Utility units are unable to be exempted through the use of net generation due to wholesale power arrangements among utilities. EPA considered and rejected comments supporting netting in the development of the core rules. The use of net generation would clearly violate the Congressional intent to consider virtually the entire utility industry affected under the Acid Rain Program.

In conclusion, EPA believes that cogenerators that sell, in gross, more than one-third of their potential electrical output capacity and 219,000 MWe-hrs are in the business of selling electricity and should be treated as affected units under the Act.

d. Determining Purpose of Construction

As previously noted, cogenerators "constructed for the purpose of supplying" less than or equal to one-third of their potential electrical output capacity or less than or equal to 25 MWe are exempt from requirements under title IV. Because of the difficulty in determining such purposes at the time of construction, particularly for older units, EPA proposed the use of 1985 through 1987 data, due to availability of such data and its correspondence with the 1985–1987 baseline. The preamble also proposed that data such as that included on Form EIA–867 listing the maximum number of megawatts a unit is designed to provide to the grid would be considered conclusive and requested comment on this issue.

One utility agreed with the use of 1985–1987 historical information, but commented against using EIA–867 data as conclusive because the EIA–867 lists sales of electricity, not the purpose of construction.

Response: EPA has retained the use of 1985–1987 data when other information on intent is lacking. EPA is not adopting a presumption regarding use of EIA Form 867 in this rule because the form only lists actual sales and is only available for recent years. In determinations of applicability, EPA will consider documentation on a case-by-case basis.

e. Continuing Requirements

EPA discussed in the preamble to the proposed rule that the measurement of electrical output to the grid needs to be a continuing requirement, not measured solely at commencement of operation, in order to prevent compromise of the environmental integrity of the program. One commenter on the Acid Rain proposed core rules specifically recommended such a requirement. Although the preamble for the proposed allocation rule discussed such a requirement as being proposed, the proposed rule language inadvertently did not include implementing language. In the proposed rule, EPA requested comments on whether such continuing requirement should be measured on an annual basis or on a two-year average.

Several utility commenters opposed any continuing requirement, arguing that the emissions from cogenerators remain the same regardless of proportion of energy used to produce electricity. One commenter requested that EPA enforce a continuing requirement.

Two commenters requested multi-year averaging, one requesting three- to five-year averaging. One commenter opposed multi-year averaging.

Response: EPA is adopting in the rule a requirement that cogenerators continue to sell electricity equal to or less than the criteria of one-third potential electrical output capacity or 219,000 MWe-hrs in order to maintain their exemption. EPA believes this continuing requirement (along with the continuing requirements for other exempt units) is necessary to ensure that the 10-million-ton reduction envisioned by Congress is achieved. Otherwise, a utility could simply shift electric generation from affected units to exempt units and cause an overall increase in

emissions from boilers serving generators selling electricity.

EPA is adopting three-year averaging for the continuing requirement for cogenerators and solid waste incinerators (see below). EPA believes that such averaging is necessary and appropriate because these units' requirements are based on operations, rather than physical plant configuration. EPA agrees with commenters that single-year averaging would be onerous in that it would make units affected due to only slight exceedances of the criteria. If the exceedance is a one-time event, the Agency believes it would be arbitrary to require compliance with the Acid Rain Program for all future years. EPA believes that the three-year average is consistent with the baseline period for affected units and is appropriately applied here to issues of facility operations.

To complete the requirements, EPA has added provisions to § 72.30 Requirements to Apply and § 75.4 Compliance Dates. Cogenerators and solid waste incinerators that do not meet the continuing requirements for exemption will be required to submit a complete Acid Rain permit application no later than the later of January 1, 1998 or March 1 of the year after the three-calendar-year period in which the exemption requirements have not been met. While EPA considered making the Acid Rain Program requirements applicable January 1 following the three-year period, as with other aspects of the Program, the Agency felt such immediate compliance was onerous. EPA believes that 60 days following the three-year period should suffice for development and submittal of the Acid Rain permit application.

Certification tests for continuous emission monitoring systems and continuous opacity monitoring systems will be required no later than the later of January 1, 1995 or 90 days after the unit becomes subject to the Acid Rain Program requirements (that is, the day after the unit fails to qualify for an exemption).

6. Solid Waste Incinerators

Section 129(h)(4) of the Act specifies that solid waste incinerators are exempt from title IV if more than 80 percent (on a Btu basis) of the annual fuel consumed at such units is other than fossil fuels. This provision requires that the Administrator determine a baseline period in which to measure this average fuel consumption. Because section 129(h)(4) relates only to the Acid Rain Program, EPA proposed, for solid waste incinerators that began operation before January 1, 1985, to use the same time frame (that is, 1985–1987) as is used to determine baselines for allocation of allowances in section 402(4) of the Act. For solid waste incinerators that began operation after January 1, 1985, EPA proposed to average the first three years (36 months) of operation. Also, EPA proposed that, should a solid waste incinerator during any year in Phase II of the Acid Rain Program burn twenty percent or more (on a Btu basis) of fossil fuel, the incinerator will be considered affected under the Acid Rain regulations but will not be allocated allowances. This is similar to the treatment of existing units serving generators under 25 MWe (see 40 CFR 72.6).

Only one comment was received regarding the annual basis of such a continuing requirement. That comment supported a one-year basis for eligibility. However, several comments were received on a similar provision for cogenerators (above).

Response: EPA believes that any continuing requirement for solid waste incinerators should correspond with that selected for cogenerators because both are based on plant operations (as opposed to physical plant configuration). As discussed above, EPA believes that a three calendar year average is reasonable, as with the cogenerators, and has revised the rule accordingly.

7. Qualifying Facilities and Independent Power Producers

a. Background

Section 405(g)(6) of the Act provides an exemption from title IV requirements for qualifying facilities (QFs) and new independent power production plants (IPPs) that meet criteria set forth in clauses (A)(i)–(iv), regarding power purchase commitments. As discussed by Senator Wirth when offering the IPP amendments (see Congressional Record, March 22, 1990, S3027), the basic requirement of these provisions is that the source has already committed to generate electricity at a fixed price and is unable to pass through to the purchaser the costs of compliance with title IV. In today's rule, EPA is providing clear criteria by which such sources can determine whether they are affected units under title IV and what changes to the source project could result in the facility being treated as affected, and, as noted in section B.2., a certification process to obtain determinations of applicability.

b. Date of Certification of QF Status

In the proposed rule, the Agency included a requirement that QFs, to be exempt under section 405(g)(6), must have been certified by the Federal Energy Regulatory Commission (FERC) prior to enactment of title IV, November 15, 1990. EPA received a number of comments opposing this requirement because the FERC certification process is often late in the process of project development, after the power purchase commitment. Also, the commenters noted that QFs could not abuse the exemption from title IV due to the November 15, 1990 requirement for the power purchase commitment. No comments supported this provision.

Response: EPA agrees with the comments and has deleted this requirement.

c. Method of QF Certification

The proposed rule stated that a qualifying source "as certified by FERC under the Federal Power Act," is not affected if it meets the criteria for a power purchase commitment by November 15, 1990. Several commenters noted that the quoted language implies that only FERC's formal certification procedures will suffice and excludes the informal self-certification procedure contained in the Federal Power Act.

Response: EPA did not intend to limit the method of certification. As made clear by the commenters, a facility is a QF no matter which process it was certified or approved under. The final regulatory language does not require a specific certification procedure.

d. IPP or QF Ownership Prior to 11/15/90

EPA proposed to "close a loophole" that would allow an IPP or QF to be exempt from title IV requirements although the unit was previously owned by a traditional utility. EPA felt that the prior ownership indicated that the exemption was being misused and compliance costs could potentially be passed through to the utility. A number of comments requested modification or deletion of this provision stating that facilities that should otherwise be exempted would, due to this provision only, be affected by the Acid Rain Program requirements. No comments supported the provision as written.

Response: EPA is persuaded by the comments that prior ownership by a utility does not imply a misuse of the exemption nor does it suggest an ability to pass through compliance costs. Thus, EPA is deleting this provision.

e. Effect on Existing Independent Power Production Facilities

One issue raised in the re-proposal was whether only "new" independent power production facilities are exempt

from title IV due to the use of the term "new independent power production facility" in section 405(g)(6)(A) and the reference to clause "(iii)" of section 416(a)(2). EPA proposed to interpret clause "(iii)" to mean clause (D) of 416(a)(2) in order to exempt "existing" independent power projects. Commenters uniformly rejected this interpretation and cited earlier drafts of the Act which support a reference to clause (C) of section 416(a)(2).

Response: EPA agrees with the commenters. While the Agency's concern about existing IPPs was rational, there are, in fact, no IPPs that fit the definition of "existing unit" in title IV of the CAA. Thus, EPA has redrafted the IPP section to reflect a reference to clause 416(a)(2)(C).

However, one facility, believed to be the first IPP in the country, supplied subsequent comments. As the facility correctly assessed, the plant does not meet *either* the definition of "existing unit" or "new unit" in title IV of the CAA because it commenced commercial operation of a simple combustion turbine in October of 1990 and commenced operation of a combined cycle system in December of 1990. The facility agrees that, except for the IPP grandfathering, the plant would be affected under the Acid Rain Program. As EPA stated in the preamble to the proposed core rules (57 FR 63008), this unit would be treated as a new unit for the purposes of the Acid Rain Program. Therefore, EPA considers this facility (and any other similarly situated facilities) to be eligible for the exemption as new units.

f. Level of Commitment

In order to establish an objective program that exempts only those projects that are unable to pass through compliance costs because of significant sales commitments made prior to enactment of title IV, EPA proposed that, to qualify for an exemption, a source have committed a minimum percent of planned power production through any of the methods set forth in section 405(g)(6) clauses (i)–(iv) by the time of enactment. Because EPA believed that the signing of a power sales agreement represents a higher level of commitment than the other three conditions, with little room for negotiation by the parties, EPA proposed that a lower minimum percentage of planned power production be required in that instance than for other power purchase commitments. Using an analysis of the independent power and qualifying facility industry projects potentially affected by this provision, EPA proposed a 30% threshold for power sales agreements and 50% for other power purchase commitments.

Industry comments unanimously requested a common threshold for all power purchase commitments. The commenters stated that no one form of power purchase commitment signifies a project that is more advanced, or more likely to develop successfully, than another form of commitment. Most commenters also recommended the threshold to be set at 10% or 15% of planned capacity, because it represents a level at which the project is fairly certain.

Response: EPA is persuaded by the representations made in the comments. Congress did not indicate any difference between the types of power purchase commitments and it appears that any one could represent a firm agreement. Thus, there appears to be no reason for EPA to distinguish between the types of power purchase commitments.

Also, EPA understands that the thresholds for commitment proposed were unrealistically high and would have made some facilities affected even though they likely could not pass through compliance costs. From the data submitted, EPA believes the threshold should be set at 15% in order to ensure: (1) That the facility is viable, and (2) that compliance costs cannot be passed through.

g. Defining the Facility

While the Acid Rain Program is implemented on a unit (or boiler) basis, the section 405(g)(6) exemption is on a facility basis. EPA proposed to read "facility" (or "source" as stated in the proposal) to include all units in the QF or IPP designed for a common purpose and constructed for the generation of the electrical capacity proposed in the power purchase commitment. However, EPA understood from the IPP and QF industry that the actual electrical capacity constructed may vary up to 20 percent beyond the potential described in the power purchase commitments. EPA proposed that all units in the facility will be exempt from the program, so long as the installed electrical capacity is within 20% of the planned capacity, but units added to the facility at a later time would be required to comply with the Acid Rain Program.

Several commenters disagreed with the 20% figure and also requested clarification on which units at the facility would be required to comply with the Acid Rain Program requirements.

Response: First, a few commenters noted that most power purchase commitments specify net power to the grid, not gross power produced by the generator. Internal power use (such as for fuel conveyance systems and emissions control equipment) use the difference between gross and net power. EPA agrees that the power purchaser would care only about net power not gross. Thus, for the purposes of the QF and IPP provision, EPA has drafted the rule to refer to net planned output capacity and net installed output capacity.

Second, EPA agrees that the 20% value proposed was too low considering improvements in generation technology, possible changes in fuel sources, and increased efficiency due to fuel pretreatment. EPA does not want to discourage efficiency improvements, in general. Also, actual installed generator output capacity often is greater than that specified by the developer (because the manufacturer must ensure a minimum capacity). Thus, in response to comments, EPA will allow a 30 percent increase in net capacity from the planned level on November 15, 1990 to the actual installation.

Third, one commenter noted that not all power purchase commitments include planned capacity and that EPA should allow contemporaneous documents (such as submissions to state environmental authorities or construction contracts) to demonstrate planned capacity. EPA has adopted the comment as meeting the intent of the provision.

Fourth, EPA is improving the language regarding which units at a facility will be affected by the Acid Rain Program requirements, should the installed facility capacity exceed the 30 percent limit. Because of the infinite possibility of facility configurations, EPA believes that the facility owner or operator may decide which units and generators will remain grandfathered and which affected, so long as the total grandfathered generator capacity is below the 30% threshold. Where units at a facility have differing emissions rates, EPA reserves the right to select which units are part of the exempt facility. If the facility is composed of one unit, the entire unit would become affected.

h. Facility Changes/Project Modification

QF and IPP project plans may be altered in many ways as the project develops, even after the signing of a power sales agreement. For example, partners may be added, the exact site of the source may be changed, or the size or type of the units may be increased or decreased. Several commenters requested clarification of EPA's position on the modifications in general and the

addition of regulatory language regarding what changes would cause a facility to become affected by the Acid Rain Program requirements.

Response: EPA agrees that additional regulatory language would assist the facilities in applicability determinations. EPA's primary concern in developing factors that may change or not change is that there be a commonality between the facility exempted and the facility as installed. Based on the legislative history, EPA believes that changes that would allow compliance costs to be passed through should result in forfeiture of the exemption.

Based on information provided in the comments on the QF and IPP industry, EPA believes that the key principle is the continuity of the agreement. For facilities selling electricity, the identity of the electric output purchaser is the most important factor. For steam sales, the identity of the purchaser and the location of facility should be constant, because the location of the facility is indicative of continuity of the steam host. Today's rule makes these requirements clear (at § 72.2 "Qualifying power purchase commitment" definition).

On the other hand, EPA believes a number of factors may legitimately change from planning stages to installation without jeopardizing the exemption. Such factors include the amount of electrical capacity (subject to the 30% limit on net production), location or name of the source, identity of the project owners or developers, configuration and operation of the source, and date of commencement of commercial operation. In general, terms and conditions of the power purchase commitment may change, so long as such changes do not affect the ability of the facility to pass through the costs of compliance with the Acid Rain Program. Because of the wide variety of potential changes that may be made, EPA is choosing not to list permissible changes to projects in the regulation.

However, QFs and IPPs are subject to a continuing requirement regarding ownership. Under the Federal Power Act, a qualifying facility may not be majority owned by a public utility. Similarly, the definition of IPP in Part 72 does not allow an IPP to have over 50 percent direct public utility ownership. If a public utility (or several public utilities) acquires more than 50% direct ownership of a QF or IPP, that facility will be subject to the Acid Rain Program requirements. Such a facility will be required to submit an Acid Rain permit application under § 72.30 and comply with the Acid Rain Program requirements.

C. Initial Phase II Allowance Allocation Provisions

1. Introduction

As provided in section 403(a)(1) of the Act, EPA is publishing the final allocations for Phase II allowances. These allocations consist of the basic allowances, bonus allowances, and other miscellaneous allocations provided for by the Act and promulgated in part 73, subpart B. Two allocations are specified for each existing affected unit and for units eligible for allowances under sections 405(g) (1), (2) and (3): one for the years 2000 through 2009, the other beginning in the year 2010.

EPA will revise the final allowance allocations by June 1, 1998, as provided in section 403(a)(1), to accommodate the actual number of allowances necessary for the repowered units under section 409 of the Act. In addition, as discussed in section C.3. of this preamble, EPA will accommodate allowance allocations for units which commence commercial operation before January 1, 1996 under section 405(g)(4). Also, the 1998 revised allowances will account for additional basic allowances to be allocated to units eligible for allowances under section 405(i)(2) of the Act. Units expected to be eligible for these allowances are listed in Table 4 of § 73.10.

Phase II allowances are calculated using 29 different equations in the statute. Of these equations, 23 calculate basic allowances, 5 calculate bonus allowances, and one provides permanent allowances. Most of these equations and the eligibility requirements for them are straightforward. EPA has prepared a report, "Technical Documentation for Phase II Allowance Allocations," which lists the statutory eligibility requirements for each equation and explains the equation. The Technical Documentation also includes the summary tables for the allowance allocations and is available from the sources listed in **ADDRESSES.**

2. Basis for Allowance Allocation Calculations

a. National Allowance Data Base and Data Files

In section 402(4)(C) of the Act, the Administrator is provided the opportunity to develop a corrected data base and to use that data base for the allocation of allowances. That data base is the National Allowance Data Base version 2.11 (NADB version 2.11), made final today elsewhere in the **Federal Register**. This data base has undergone public review and comment procedures, analogous to an informal rulemaking (see 56 FR 33278, July 19, 1991). The final NADB version 2.11, in conjunction with all previous elections and notifications, has been used to determine the allowance allocations for each existing affected unit for Phase II.

In addition to permitting data corrections in the NADB, section 402(4)(C) authorizes the Administrator to supplement the data base with "data needed in support of this title." Sections 404 and 405 of the Act include a number of provisions that require data that is not in the NADB in order for the Administrator to make certain allowance allocations. For example, section 405(c)(3) requires data on the number of electrical customers served. The additional data is contained in the Supplemental Data File (see the Notice regarding the NADB) and, along with data in the NADB, is "corrected data" for the purposes of section 402(4)(C).

The July 1992 Notice also allowed comment on the Adjunct Data File (ADF) which included information on electric generating sources linked to the grid but not owned by traditional utilities. These sources, called non-traditional utility units, could be affected by the Acid Rain Program requirements. For the final database, EPA has added those units from the ADF to the NADB in cases where the units are clearly affected by the Acid Rain Program requirements. EPA has discontinued development of the ADF.

Section 402(4)(C) does not require the Administrator to follow rulemaking procedures in correcting the data base and provides that corrected data are not subject to judicial review. EPA has attempted to develop the most accurate and fair data base by providing public review and comment on the National Allowance Data Base. EPA received over 200 documents in response to the NADB Version 2.0 and over 60 in response to Version 2.1. Section 402(4)(C) also expressly precludes judicial review of "(s)uch corrections" of, or "failure * * * to correct," data. EPA believes that this preclusion of judicial review, by its terms, applies to all "corrected data * * * used for the purposes of issuing allowances." This includes data in the NADB, the Supplemental Data File, and the Adjunct Data File. The preclusion of judicial review is designed to expedite the process by which EPA will allocate allowances and to avoid court involvement in highly technical issues. (For example, see Report of House Committee on Energy & Commerce, May 17, 1990, p. 371.) Consistent with this statutory purpose,

EPA's reading of section 402(4)(C) would prevent piecemeal and protracted review of all the relevant data, thus permitting the allowance allocations process to continue on schedule, providing certainty to the parties involved as to their future allowance allocations and, thereby, allowing utility planning and the development of an allowance market.

One commenter claimed that EPA had not followed the proper rulemaking procedures and is subject to judicial review on data issues.

Response: EPA disagrees with the commenter. Rulemaking was not required by the Act for the development of data upon which allowance allocations would be based. Contrary to the commenter's assertions, Congress clearly did not foresee such a rulemaking effort because they:

(1) Believed the data effort to be nearly complete with version 1.0 of the NADB;

(2) Provided no such requirement and no deadlines for such rulemaking (as was done for all other significant rulemakings to implement title IV); and

(3) Provided such a short deadline for the finalization of the allocations themselves, so short that intermediate data rulemakings would have precluded compliance.

In addition, EPA has done far more than required in the development of the data. The July 19, 1991 (56 FR 33278) Notice of NADB version 2.0 met the requirements of the Administrative Procedures Act for informal rulemaking. EPA docketed all comments and provided responses to these comments either in the July 7, 1992 Notice (57 FR 30034) or in the docket, in accordance with section 307 of the CAA. Again, contrary to the commenter's assertions, detailed responses to each individual comment are not required, particularly when the comment has been responded to as a class.

Also, today EPA has provided notice of the revised final NADB (version 2.11). That version and notice respond to comments made on version 2.1 which specified errors made by EPA in finalizing the NADB.

In summary, EPA believes that judicial review of data in the NADB and supplemental files is precluded by statute in order to avoid protracted litigation which would forestall the allocation of allowances. EPA believes the NADB is one of the most accurate and heavily reviewed databases ever developed by the Agency.

b. Elections

"Elections" are choices to be made by utilities, operating companies, or State Governors to utilize certain allowance calculation algorithms under Phase II. Utility elections are required for calculations to be performed under sections 404(h), 405(d)(3), 405(d)(4), and 405(g)(2). EPA published guidance for section 405 elections in the Federal Register (56 FR 10427, March 12, 1990). Certain states must also make an election to receive allowances under section 406(a), for which EPA also established guidance in the Federal Register (56 FR 28891, June 25, 1991).

During the comment period on the proposed allocations, state governors and utilities that had reserved their elections until the data was final or that made elections which, due to final data, were not the most beneficial to the utility were given the opportunity to complete or modify their elections.

No comments were received regarding EPA's proposal to follow a Governor's or utility's election even if the election did not result in the most favorable allocation of allowances.

After reviewing all elections received, EPA determined the allowance allocations for the eligible units. In order to give meaning to the elections, EPA has finalized the allocations to follow the elections specified by the unit, utility system, or state, as appropriate, even if the election does not result in the optimum (largest) number of allowances allocated.

3. Listing of Units for Phase II Allocations

a. Units Listed in Table 2

Section 73.10 Table 2, as proposed, was intended to list existing affected units (and units under section 405(g) of the Act) and their Phase II allowance allocations and reserve deductions. EPA intended to include only affected units from the NADB and all units on the ADF, but, due to an error, listed all units in both the NADB and ADF.

Table 2, as promulgated today, includes only units that EPA currently believes are affected. However, Table 2 may not list all units affected during Phase II of the Acid Rain Program (for example, units which will commence commercial operation on or after January 1, 1996). Any unit not listed in Table 2 but meeting the applicability requirements of 40 CFR 72.6 must meet all applicable requirements and will not receive allowance allocations under part 73, subpart B.

b. Treatment of Units Under Section 405(g)(4)

EPA proposed zero allocations in section 73.10 Table 2 for units that are expected to be eligible for allocations under section 405(g)(4) of the Act. EPA proposed that these units would be allocated allowances with the June, 1998 revised allowance allocations if they provided documentation that they commenced construction before December 31, 1990. No comments were received.

EPA has finalized the provisions for these units as proposed. However, to provide certainty for these units, EPA is providing Table 3 in the final rule which lists the allocations these units will receive if they supply the required documentation and if they commence commercial operation between January 1, 1993 and December 31, 1995, as required by the statute. The 1998 recalculation methodology is also modified to reflect the addition of this table.

4. Allocation to Units Under Section 405(g)(2)

The proposed rule treated allocations to units listed in Table B (section 405(g)(2) of the Act) the same as calculated ("unadjusted") basic allocations. These allocations were ratcheted and had reserves taken from them.

Utility owners of virtually all the plants listed in Table B claim that their plants are exempt from the ratchet. They supplied legislative history from the House Conference Committee reading: "These allowances shall not be subject to the reallocation, reduction, or redistribution mechanisms of this title." (Rep. Fields, Congressional Record, H12868, October 26, 1990). Also, one utility claimed these units are exempt from *all* allowance deductions (such as, the 2.8% for auction and sales reserves), based on this legislative history.

Response: EPA is not changing its treatment of allocations to these units. The statutory language is clear and does not treat basic allowances under section 405(g)(2) different from other basic allowances. Section 403(a)(1) provides limited exceptions to the 8.9 million allowance cap, and these exceptions do not include section 405(g)(2) allocations. The legislative history, however, is vague and fails to delineate from what provisions in the Act these allocations were to be exempt. Thus, EPA is not persuaded that the legislative intent was to exempt these basic allowances from provisions applicable to other basic allowance allocations.

5. Bonus Allowance Cap

Section 405(a)(2) of the Act allows EPA to allocate up to 530,000 bonus allowances annually for the years 2000 through 2009. However, this section provides no direction, as section

403(a)(1) does for the basic allowances, as to how the Agency is to allocate allowances if the number of bonus allowances otherwise would exceed 530,000. Congress clearly assumed that the 530,000 would not be exceeded. Since the proposed calculations of bonus allowance allocations slightly exceeded the 530,000 level, the Agency proposed provisions to deal with this exceedance. EPA proposed a pro rata reduction, similar to that required for basic allowances under section 403(a)(1); however, the proposed pro rata reduction for bonus allowances was only between 1 and 2 percent. The proposal treated section 406 "clean states" bonus allowances the same as all other bonus allowances for the purpose of the reduction.

The final bonus allowances, in aggregate, do not exceed 530,000, therefore, no pro rata reduction was necessary.

D. Method for 1998 Revisions

1. Introduction

Section 403(a)(1) requires the Administrator to publish, no later than June 1, 1998, a revised final statement of allowance allocations which includes the set-aside for repowering extension allowances and allowances for repowering units.

The proposed rule articulated the method that the Agency will use in publishing the revised list.

The final rule modifies the proposal for enhanced clarity and to account for newly added Tables 3 and 4. Also, EPA notes that the redistribution of allowances and proceeds from the allowance auction and sale, as proposed, did not account for the change in reserve deductions in 1998. EPA has finalized that section (§ 73.27) to properly reflect the revision of allowance allocations in 1998.

2. Repowering Set-Aside

The proposed allocations contained a set-aside for repowering extensions, which is approximately 500,000 allowances in total or 50,000 basic allowances for each of the years 2000 through 2009. The estimate that the Agency chooses to use for withholding allowances otherwise allocated to affected units is important because of its effect in the 1998 revision to the Phase II allowances. Because the allowances allocated for repowering are in excess of the 8.9 million limit on basic allowances, section 405(a)(2) provides a method to recapture some of the allowances from Phase II units' basic allowances. Section 405(a)(2) provides that for repowering extension allowances granted for calendar year 2000, one-tenth of that total will be taken from Phase II units' basic allowances for calendar years 2000 through 2009. If the Agency overestimates the number of allowances necessary to apply to the repowering projects, Phase II facilities would receive back any excess allowances as part of the 1998 revision of allowance allocations.

Given the wide range of estimates of the amount of repowering expected to occur, and the uncertainties associated with them, the Agency proposed to use a repowering estimate of approximately 10 gigawatts. Based on the 10-gigawatt estimate, EPA proposed to hold a total of 496,300 allowances in reserve, resulting in a pro-rata reduction of 49,630 each year from 2000 through 2009 from basic Phase II allowances.

Several commenters suggested various levels of repowering, ranging from 5 GWe to 25 GWe, based on policy considerations and not on technical evaluations. Two commenters felt that the Agency estimate of 10 GWe was satisfactory.

Response: EPA has maintained its estimate of 10 GWe for repowering, based on its previous studies (see Chapter 3 of the Technical Documentation for Phase II Allowance Allocations) and review of trade literature for plants planning to repower. Presently, less than 10 GWe expect to repower under Phase II. Also, EPA believes it is necessary to over-deduct allowances for this set-aside, rather than under-deduct because of the hardship that could result when plants have already traded their Phase II allowances. In addition, because the set-aside is an estimation rather than an exact calculation, EPA is rounding the annual set-aside to 50,000 allowances.

E. Early Reduction Credits

1. Background

Under section 404(e), certain Phase I and Phase II units may receive additional allowances, if they reduce their SO_2 emissions before the time they are required under the applicable section of the Acid Rain Title. These reductions must represent physical changes in the operation of the unit made after the date of enactment and may include changing the type or quality of the fuel being burned.

The procedures for applying for early reduction credits and the methodology used for calculating these credits are made final in today's rule.

2. Eligibility for Phase II-only Systems

EPA proposed to allow all units listed in Tables 1 or 2 of the July, 1992 **Federal Register** notice, whose utility met the eligibility criteria as provided under §§ 73.16(a) and 73.20(a), to be eligible for early reduction credits.

One commenter objected to the availability of early reduction credits to utilities that do not operate any Phase I units in their systems. This commenter cited a purported typographical error in section 404(e) that invalidates a condition of eligibility intended by Congress. The text is as follows:

> The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 405 (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 405 * * *.

The commenter suggested that, as written, the sentence is overly ambiguous, and requires the second section 405 reference to read section 404. That is, Phase II units (section 405) are only eligible for utilities that have at least one Phase I unit (section 404) in its system.

Response: EPA acknowledges the redundancy in section 404(e) as enacted, but believes that the statute is clear as to the eligibility requirements. Therefore, the Agency must follow the statute as enacted. EPA will not restrict the eligibility of early reduction credits and will allow utilities, even those operating only Phase II units, the opportunity to apply for such credits during the 1995 through 1999 period.

3. Eligibility for Substitution or Compensating Units

Upon review of the promulgated Acid Rain Permits rule, EPA recognized that certain Phase II affected units could be allocated allowances during Phase I under *both* the early reduction credit program and as either a substitution unit (under 40 CFR 72.41) or a compensating unit (under 40 CFR 72.43). Thus, such units would receive double allocations for the same reductions in emissions. Therefore, EPA has finalized the Phase II early reduction credit eligibility so that substitution units and compensating units are not eligible.

4. Comparison Year for Early Reduction Credits

EPA proposed, in its July, 1992 **Federal Register** notice, the use of calendar year 1990 as the "year prior to enactment" to provide the basis against which reductions in SO_2 and early reduction credits would be determined. EPA requested comments on using the calendar year 1990 versus the literal year prior to enactment from November 15, 1989 to November 15, 1990.

Commenters did not express a preference for these alternatives, but instead suggested other alternatives against which emissions reductions would be measured. One commenter proposed the use of the calendar year 1985, because baseline information, allowance allocations and other provisions of the Acid Rain Program are based on emissions in calendar year 1985. A second commenter suggested that the utility should be allowed to estimate the level of SO_2 emissions that would have occurred without the imposition of emission controls. The commenter asserts that SO_2 emissions for the utility would have been lower without the Clean Air Act Amendments of 1990 and that EPA should give credit for reductions from the higher projected levels resulting from the Act.

Response: EPA rejects both suggested alternative baselines and maintains its choice of calendar year 1990 as the year against which future emission reductions will be compared. Section 404(e)(2) makes clear that early reduction credits should be granted for reductions taking place after the date of enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). Using the 1985 rate for the baseline would not differentiate reductions made from 1985 to 1990 and those made after calendar year 1990, that is, after enactment.

EPA also cannot accept a projected emissions rate for assessing reductions. A projected rate would be an estimated figure and therefore the reduction itself would be estimated rather than measured. Such estimation would be contrary to the overall rigor required by the Acid Rain Program for monitored emissions, except in those areas in which Congress specifically authorized other approaches. In addition, estimation could be performed differently at different units, and, therefore, the awarding of early reduction credits may not be consistent across utility units.

The commenter cited EPA's use of projected estimates for units applying for allowances under the Phase I extension reserve and questioned why such estimation is appropriate for the reserve and not appropriate for early reduction credits. The Agency believes that these two provisions are, in fact, different. First, section 404(d)(4) specifically mandates the allowance calculation for the Phase I extension reserve to be based, at least in part, on the projected emissions tonnage for 1995 and 1996. Section 404(e) does not contain an explicit provision to do so, though Congress could have chosen to include one. By not specifying the year against which to compare emission reductions, Congress gave EPA the discretion to consider appropriate years.

Second, the projected SO_2 tonnage estimates for 1995 and 1996 are capped under the Phase I extension reserve by historic emissions at the individual units from 1988 and 1989; clearly, Congress felt such estimates had to be limited. The commenter suggested no such limits for the early reduction credit program.

Third, the total number of allowances allocated under the Phase I extension reserve is capped at 3.5 million, which Congress established as an upper limit based on estimates of actual SO_2 reductions. No such cap exists for the early reduction credit program. EPA believes that the approach developed for early reduction credits is consistent with the overall criteria used by Congress in allocating allowances.

5. Calculation Approach for Early Reduction Credits

In the July, 1992 **Federal Register** notice, EPA requested comment on the merits of alternative approaches for determining the eligible emissions reductions used in allocating early reduction credits: a tonnage approach and an emissions rate approach. The tonnage approach compares an absolute level of SO_2 emissions in the prior year to emissions in 1990. This approach would cap emissions from these units, but would require further restrictions to prevent reductions in utilization from generating early reduction credits. Under the emissions rate approach, emission reductions are determined based on a reduction in the unit's emission rate. Rate reductions are not dependent on utilization levels, but EPA proposed to restrict credits in circumstances where undesirable shifts from clean to dirty units occur.

One commenter favored the tonnage approach as more consistent with the section's intent than EPA's proposed emission rate approach. Other commenters supported EPA in its selection of the emission rate approach, but some objected to the Agency's limiting of early reduction credits in circumstances where shifts in generation to higher emitting units occurred.

Response: EPA maintains its methodology for calculating early reduction credits as proposed. The Agency believes that the tonnage approach fails to recognize that ERC units, as a group, experienced low utilization during the baseline period, and that the tonnage approach would overly hamper future utilization of these units. In developing the emission rate approach, the Agency has sought to avoid restricting the economic operations of the utility's system.

On the other hand, EPA believes that some limitations on early reduction credits are warranted to prevent a utility from utilizing its ERC and non-ERC units in a manner that would increase the emission rate of ERC units relative to non-ERC units or would increase the emission rate at non-ERC units over time.

Congress intended that early reduction credits would encourage and reward utilities for undertaking real emissions reductions before they are required to under the Acid Rain Program. Congress did not intend early reduction credits to be created from shifts in operation among a utility's units nor did they seek to impose restrictions on growth or overall emissions through these provisions. EPA believes that the emission rate approach is consistent with Congressional intent.

6. Utilization Restrictions Related to the Emissions Rate Approach

As mentioned above, simple comparison of the emissions rates between the prior year and 1990 might encourage utilities to increase their reliance on units with greater emissions that are not eligible for ERC credits, in order to maximize possible credits at eligible units.

One commenter supported EPA's concern about such operations and suggested additional restrictions on the emission rate methodology:

(1) Include non-fossil units within the category of non-ERC units; and

(2) Require utilities to offset increased utilization at ERC units, unless total emissions could be shown to be lower as a result of such utilization.

Response: EPA rejects the inclusion of non-fossil units in its definition of non-ERC units. By including only fossil units in its definition of non-ERC units, the Agency wishes to compare fossil unit emissions with and without emission control measures and to avoid masking increases in utilization at higher emitting units. In addition, the inclusion of non-fossil units as non-ERC units could discourage utilities from shifting generation from non-ERC fossil units to non-fossil units; such shifts could cause the heat input for ERC units to become restricted.

As stated in the proposed rule, EPA believes the early reduction credit provision of the Act is designed to compensate those utility systems that shifted their electrical generation from coal-fired units to non-coal fired sources during the 1980's. By reducing their

coal-fired unit utilization and therefore their SO_2 emissions, these systems qualify for fewer allowances than they would have had they not shifted their generation. The early reduction credit provisions allow these systems to earn additional allowances if they undertake further emissions reductions before they are required to under title IV. These provisions allow for growth in the utilization of these units and were not intended to restrict total emissions from these sources. The Agency, therefore, believes that the suggested offset provisions are overly restrictive and not compatible with the Congressional intent of the provisions.

7. Other Issues Related to Early Reduction Credits

a. Qualification of ERC Units for Specific Years

One commenter requested the ability to qualify and disqualify units as ERC units in different years. ERC units would be units that qualify as in the EPA proposal but for which the designated representative has specifically requested early reduction credits only for a specific year(s). Units could therefore be ERC units in one year and then non-ERC units in the next. EPA rejects this request. Under such a system, utilities could alter the ERC status of their units and strategically manipulate the amount of early reduction credits they are awarded in a given year.

b. Weighted Capacity Factor Criteria

The weighted capacity factor proposed for all coal units in §§ 73.16 and 73.20 was misspecified in the proposed rule and is corrected in today's rule.

c. Use of Pre-Existing Monitors

A commenter requested the use of pre-existing continuous emission monitoring systems (CEMS) for units which have not installed and received certification under part 75 for their SO_2 CEMS prior to the calendar years for which credits for reductions are requested. The commenter preferred the use of its existing CEMS rather than EPA's proposed use of data from EIA Form 767. EPA denies the use of pre-existing CEMS for this purpose. Pre-existing CEMS are calibrated to prevent exceedances relative to the source's allowable limit, but for a unit operating well below that limit, it is unclear how accurate such data would be and how that accuracy would compare to the data reported on the EIA Form-767. EPA believes that an apportionment of data from the plant level to the unit level will be necessary whether or not pre-existing CEMS are in place (*e.g.*, for units sharing a stack and for calculations of heat input). Therefore, for purposes of consistency across ERC units and with the NADB, the Agency insists that EIA–767 data be used.

d. Filing Dates

One commenter expressed concern regarding the annual dates by which units must file to qualify for early reduction credits, especially for utilities who do not yet have certified CEMs and are applying for early reduction credits for the years preceding or directly following the final rulemaking. EPA is persuaded that these utilities should be granted additional time until the date by which the EIA Form 767 must be filed. Therefore, the final rule will allow utilities applying for early reduction credits for 1991 or 1992 until May 1, 1993, to apply for such credits. Utilities applying for early reduction credits for 1993 will have until May 1, 1994. Thereafter, utilities must file by March 1 of the following year.

Another commenter found the published notice confusing and requested clarification on the conditions under which the restricted heat input would apply in calculating early reduction credits. The equations remain the same, but have been reformatted in the rule to enhance clarity.

F. Repowering

Utilities considering repowering under section 409 of the Act were required to notify EPA by March 31, 1991. "Repowering" involves the installation of certain clean coal technology is defined at section 402(12) of the Act and in the final core rules under "qualifying repowering technology" (40 CFR 72.2). Section 409 is designed, through additional allowance allocations (repowering extension allowances), to encourage higher-emitting coal plants to meet their Acid Rain emissions limitations through repowering. Under section 409, repowering extension allowances are available to each eligible unit from January 1, 2000 through December 31, 2003. EPA is required to withhold allowances from Phase II basic allowances equal to the number of repowering extension allowances estimated to be necessary for the year 2000, in accordance with section 405(a)(2). Repowering extension allowances for calendar years 2001 through 2003 are not withheld from Phase II basic allowances and are additional allowance allocations (above the 8.95 million ton cap).

The July 19, 1992 proposal (57 FR 29940) reproposed the allowance allocation portion of the repowering program, but did not affect the procedural aspects of the program (contained in 40 CFR 72.44). EPA proposed to split the allocation of allowances to repowering units into two parts: (1) A basic allocation based on the unit's baseline times a rate of 1.2 lb/mmBtu, and (2) an incremental allocation based on the difference of the unit's baseline times the lesser of the unit's 1995 SIP (or Federally enforceable emission limitation) or its actual emissions and the unit's basic allocation. The actual number of allowances granted during the extension period is equivalent to that provided for in section 409(c)(1). This method contains critical features necessary for the operation of the allowance reserves and the 1998 revision.

No comments were received on these provisions and EPA has finalized them as they were proposed with slight modifications to make the provisions consistent with the final core rules. Also, today's rule amends § 72.44 to concisely refer to the allocation of allowances under § 73.21.

G. Reserves

The statute provides for the establishment of two reserves—the Conservation and Renewable Energy Reserve and the Special Allowance Reserve. Both reserves are established by deducting allowances from each unit's basic allowance allocations.

Only one comment was received on these provisions. That commenter seemed to believe that the deduction of allowances for reserves should be made *before* the basic allowances are reduced to the 8.9 million level. Thus, units would be allocated 8.9 million basic allowances and the reserves would be allocated additional allowances above the 8.9 million ton cap.

Response: The commenter is incorrect. Section 403(a)(1) of the Act precludes the Administrator from allocating more than 8.9 million basic allowances in any given year, starting in 2000. (The Administrator also must allocate 50,000 allowances under section 405(a)(3), bonus allowances, allowances for opt-in units, and allowances for repowering extensions.) Allocations to the reserves are allocations in the same sense as allocations to unit accounts. Allowances deducted from unit allowance allocations for reserves are available for use in the same year as they would have been for the unit. Thus, the sum of the unit basic allocations and the reserve allocations totals 8.95 million (the 8.9

million cap plus 50,000 allowances under section 405(a)(3)).

H. Allocations for Small Diesel Refineries

1. Background

Title IV allocates allowances for sulfur dioxide reductions to small refineries that desulfurize both on- and off-road diesel fuel. This program is designed to assist small refiners in defraying the capital costs of installing desulfurization equipment at their refineries. Small refineries are defined as those having a crude oil throughput of less than 50,000 barrels per day and whose parent company owns refineries with a total throughput of less than 137,500 barrels per day. Annual allowances are limited to 1,500 per refinery and to 35,000 for this entire category of refineries. (See CAA section 410(h).)

2. General Opposition to the Section 410(h) Program

Several large U.S. oil companies oppose the small diesel refiners program, because it subsidizes small refiners that merely meet diesel fuel standards. In general, they view this program as a misuse of the sulfur dioxide allowance program, which is aimed primarily at utilities. A subset of these large oil companies oppose the program on equity grounds, but accept that EPA has a responsibility to implement the Act.

Response: EPA has no choice but to implement the program that Congress intended, which is specifically designed for small refiners. It should be noted that the Act requires participants in this program to desulfurize both on- and off-road diesel fuel, which is more than the national sulfur standard requirement of the Clean Air Act Amendments.

3. "Portion of a Refinery"

Several large oil refineries are concerned that the phrase "portion of a refinery" under the eligibility requirements in the preamble and rule might inadvertently expand eligibility for the program beyond the threshold intended by Congress.

Response: EPA agrees that the phrase "portion of a refinery" is ambiguous. The legislative history of this provision makes reference only to "small refiners" and "small refineries" when referring to eligible facilities. (See, Congressional Record, S16959–16960, October 27, 1990.) However, because of the limitation on total throughput by the refinery owner, EPA does not believe the "portion of a refinery" clause enlarges the eligibility. At this time, EPA does not see a need to define the term and maintains the statutory language.

4. Qualifying Criteria

Section 410(h) makes small refineries eligible for allowance allocations if they, as of the date of enactment (November 15, 1990), (1) had crude oil throughput of less than 18,250,000 barrels per year, and (2) were owned or controlled by refiners with total combined throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy. The proposed rule interpreted these eligibility requirements to be based on calendar year 1990 data.

One association of refineries commented that the proposed interpretation was not in accordance with Congressional intent and that the rule should include eligibility criteria based on calendar years 1988 and 1989. The association pointed out that section 410(h) superseded an EPA rulemaking (55 FR 34127, August 21, 1990), and, because the statute advanced the date that small refineries have to desulfurize fuel, provided the economic benefit through the allowance allocations. The association notes that Congress must have intended to provide the benefit to those refineries which were affected by the EPA rulemaking. For a refinery to be affected under the 1990 EPA rule, its average daily throughput was calculated for calendar years 1988 and 1989.

Response: EPA has modified the final rule to clarify the eligibility criteria and to incorporate the criteria from the 1990 rulemaking. However, because section 410(h) specifies "as of the date of enactment," EPA is utilizing the average of calendar years 1988 through 1990 refinery throughput.

Also, EPA agrees with a comment that only diesel fuel for motor use (on-highway and off-) is eligible for allowance allocations. Diesel fuel for heating purposes is not eligible. The definition of "small diesel refinery" has been modified accordingly.

5. Desulfurization Issues

In the preamble and rule for the proposed small diesel refiners rule, EPA states that allowances will be allocated only to those refiners that certify that they are desulfurizing both on- and off-road diesel fuel. An industry trade associate believes this allocation to be unfair as the national desulfurization standard of 0.05% applies only to on-road diesel fuel. This same organization also requests clarification that the installation of desulfurization equipment prior to the promulgation of the Clean Air Act Amendments of 1990 does not make that facility ineligible for allowances under this program.

Response: The Act states "* * * that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of section 211(i) of the Act [the desulfurization standard]." The legislative history of this provision is equally insistent that participation in this program is based on a willingness to desulfurize both on- and off-road diesel fuel. (See remarks of Senator Simpson, Congressional Record, S16959, October 27, 1990.)

Additionally, any facility that meets the throughput and other eligibility requirements can receive allowances for desulfurizing fuel regardless of when the equipment was installed. It is certainly not the intention of EPA to punish those facilities that undertake desulfurization earlier than 1993. The program is merely designed to help defray the cost to those small facilities that take on the financial burden of desulfurization whether doing so independently of this provision or as a result of it.

6. Allowance Distribution for the Partial 1993 Year

The small diesel refiners provision does not go into effect until October 1, 1993 meaning there will only be three months of eligibility for allowances in that calendar year. An industry trade association desires that EPA allocate allowances based on actual desulfurization during those three months rather than a maximum of one-quarter of the 35,000 allowances set aside annually for this program (8,750 allowances).

Response: EPA accepts this comment and the rule has been adjusted to clarify this point. Refiners requesting allowances during this first cycle will be required to submit documentation for the entire year, but will only be allocated allowances for desulfurization taking place during the final three months. The total allocation can exceed 8,750 (one-quarter of 35,000), but not the annual cap of 35,000 allowances.

7. Pro-rata Versus First-Come, First Served Distribution

EPA sought comment on a distribution system should the program be oversubscribed in any given year. An industry trade association and a series of refiners commented in strong terms that the only equitable system is a pro-rata distribution in the event of oversubscription. No comments were received suggesting that a first-come

first-served approach would better suit the needs of all interested parties.

Response: EPA accepts the comment. A pro-rata distribution is consistent with the intent of both Congress and the Act to encourage desulfurization by as many small refiners as possible. EPA also notes that, unlike the Phase I extension provision which the statute specifies to be distributed in order of receipt (section 404(d)(3)), the small diesel refinery provision does not specify a method for distributing the allowances.

8. Blending

A series of small refiners desire a clarification of the blending issue. They are concerned that the normal blending that goes on in the production of petroleum products is not allowed under this rule.

Response: A review of the legislative history provides the following guidance and clarification: "The Conference did not intend for facilities to earn allowances if distillate is brought in from outside sources and blended or finished to the 0.05 standard. Process activities which are not contiguous to crude oil production runs at the refinery are not eligible for allowances." (Remarks of Senator Simpson, Congressional Record, S16960, October 27, 1990.) EPA has changed the definition of "desulfurization" to more clearly state that the prohibited activity is blending of low sulfur feedstocks from ineligible facilities with high sulfur feedstocks at eligible facilities for the purpose of earning allowances. On a related point, normal production practices will not be affected. This program is designed to assist small businesses defray the high costs of installing equipment that *removes* sulfur.

9. Program Undersubscription

A series of refiners commented in strong terms that a mechanism should be established to allow refiners to earn extra allowances in the event that the 35,000 allowance cap is not met. Because a number of companies are leaving the industry and the emerging value of allowances has decreased relative to original expectations, some commenters believe that the 35,000 allowance cap will not come into force and that eligible refiners should be able to request additional allowances up to the cap. Furthermore, these commenters believe that such a mechanism would be consistent with Congressional intent to help small diesel refiners. One company proposed several methods by which this "re-capturing" could be accomplished.

Response: Although it is clear that Congress intended this program to help small businesses defray costs that larger companies can more easily justify through economies of scale, EPA was given explicit instruction by Congress to allocate only up to 1500 allowances annually to any one refinery, and EPA may not circumvent the refinery caps or program formulas even in the event of undersubscription. It has been the position of the EPA in all of its rule-makings that the Agency will not allocate any allowances that it has not been given authority to issue. This position was adopted to ensure that the national cap on SO_2 allowances would not be exceeded and actual reductions in SO_2 emissions would be realized. Given these constraints, it is necessary to reject these requests.

I. Summary of Final Rules

a. Part 72 Subpart A—Acid Rain Program General Provisions

Section 72.2 is amended to include definitions for the terms "Desulfurization," "Direct public utility ownership," "Qualifying facility," "Independent power production facility," "Generator output capacity," "Qualifying power purchase commitment," "Power purchase commitment," "Potential electrical output capacity," "Solid waste incinerator," "Planned/installed total net output capacity," and "Small diesel refinery" for the purposes of determining applicability and for the small diesel refineries provisions. Also, the definition for "existing unit" is revised.

The definitions of "power sales agreement," "steam sales agreement," and "utility competitive bid solicitation" are revised to include qualifying facilities and independent power production facilities, as well as new IPPs.

The definition of "simple combustion turbine" is revised to conform to the core rules preamble discussion regarding combined cycle units that have installed auxiliary firing but did not use auxiliary firing during the baseline period, 1985 through 1987, and will not use the auxiliary firing at any time after November 15, 1990.

Section 72.6 is amended to provide applicability requirements for cogenerators, certain qualifying facilities (QFs) and independent power producers (IPPs), and solid waste incineration units. In addition, one paragraph in § 72.6 is added to conform to the preamble of the final core rules, regarding treatment of simple combustion turbines that add auxiliary firing or begin to use auxiliary firing. Also, § 72.6(a)(2) is amended to refer to Tables 2 and 3 of § 73.10.

A new paragraph (c) is added to § 72.6 that provides for certifying officials to apply for determinations of applicability for the Acid Rain Program.

To conform the final core rules to the preamble discussion on simple combustion turbines, a paragraph in § 72.30(b)(2) is also added. Additional paragraphs for § 72.30(b) are added to conform to the new applicability provisions for cogenerators, QFs and IPPs, and solid waste incinerators.

b. Part 73 Subpart A—Background and Summary

A paragraph is added to the purpose statement in § 73.1 to reference the small diesel refinery program.

c. Part 73 Subpart B—Allowance Allocations

Section 73.10(b) is finalized to include allocations for Phase II, paragraph (c) is added to incorporate Table 3 with allocations for section 405(g)(4) units, and paragraph (d) is added to incorporate Table 4 with allocations for section 405(i)(2) units.

Section 73.11 finalizes the procedures for the revising and adjusting of allowance allocations no later than June 1, 1998. Included in this section is the repowering adjustment. This section has been reorganized for clarity.

Section 73.12 describes the procedures for rounding allocations.

Section 73.13 provides the address for submittal of material by the designated representatives and sets out the appeals procedure for the allocations rule.

Section 73.16 finalizes the Phase I early reduction credits program. This provision includes unit eligibility requirements, emissions reduction requirements, initial certification of eligibility procedures, and certification requirements. Additionally, the rule outlines procedures for requesting and being allocated allowances under the provisions of this section.

Section 73.18 provides the eligibility requirements for units commencing operations between January 1, 1993, and December 31, 1995 to receive allowances.

Section 73.19 finalizes the eligibility and application procedures for receipt of allowances by certain units with decreasing SO_2 rates.

Section 73.20 provides for the Phase II early reduction credits program. This proposal includes unit eligibility requirements, emissions reduction requirements, initial certification of eligibility procedures, and certification requirements. Additionally, the rule

outlines procedures for requesting and being allocated allowances under the provisions of this section.

Section 73.26 establishes the conservation and renewable energy reserve.

Section 73.27 establishes the special allowance reserve and provides for the distribution of proceeds and the reallocation of allowances.

d. Part 73 Subpart G—Small Diesel Refineries

Section 73.90 finalizes the small diesel refineries program, which includes refinery eligibility and data submittal requirements, procedures by which refiners may request allowances, and allocation procedures.

e. Part 75

Sections 75.2 Applicability and 75.4 Compliance Dates are revised to conform with and completely refer to the general applicability section, § 72.6.

J. Regulatory Impact Analysis (Executive Order 12291)

A Regulatory Impact Analysis was prepared for the entire Acid Rain Program and made available with the January 11, 1993 core rules. While the core rules were judged to be "major rules," EPA judges this rule to be non-major because it has no specific costs or effect on the economy that have not been accounted for with the core rules. This rule has been submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by E.O. 12291.

K. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." A Regulatory Flexibility Analysis was prepared for the entire Acid Rain Program and made available with the January 11, 1993 core rules. Today's rule does not add any requirements that would burden small entities.

L. Paperwork Reduction Act

The information collection requirements of this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. An Information Collection Request has been prepared by EPA (ICR No. 1584.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW., (PM–223Y), Washington, DC, 20460 or by calling (202) 260–2740.

This rule minimizes the reporting burden upon the affected industry. A small reporting burden is placed on the operators of fossil fuel-fired electric utility units which commence operation in the early 1990s. The estimated total burden is 80 hours based on 20 eligible units. The reporting burden is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

A small reporting burden is also imposed on the voluntary small diesel refineries program. The estimated total burden is based on 80–85 total potentially eligible refineries. The reporting burden is estimated to be 270 hours for the entire industry, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

List of Subjects in 40 CFR Parts 72, 73 and 75

Air pollution control, Compliance plans, Continuous emissions monitoring, Electric utilities, Nitrogen oxides, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 5, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 72, 73, and 75 are amended as set forth below.

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7651, et.seq.

2. Section 72.2 is amended by adding the following definitions and by revising the definitions of *existing unit, power sales agreement, simple combustion turbine, steam sales agreement,* and *utility competitive bid solicitation* to read as follows:

§ 72.2 Definitions.

* * * * *

Desulfurization refers to various procedures whereby sulfur is removed from petroleum during or apart from the refining process. "Desulfurization" does not include such processes as dilution or blending of low sulfur content diesel fuel with high sulfur content diesel fuel from a diesel refinery not eligible under 40 CFR part 73, subpart G.

* * * * *

Direct public utility ownership means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

* * * * *

Existing unit means a unit (including a unit subject to section 111 of the Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an "existing unit."

* * * * *

Generator Output capacity means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

* * * * *

Independent Power Production Facility (IPP) means a source that:

(1) Is nonrecourse project financed, as defined by the Secretary of Energy at 10 CFR part 715;

(2) Is used for the generation of electricity, eighty percent or more of which is sold at wholesale; but only if direct public utility ownership of the equipment comprising the facility does not exceed 50 percent; and

(3) Is a new unit required to hold allowances under Title IV of the Clean Air Act.

* * * * *

Potential electrical output capacity means the MWe capacity rating for the units which shall be equal to 33 percent of the maximum design heat input capacity of the steam generating unit, as calculated according to appendix D of part 72.

* * * * *

Power purchase commitment means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

(1) A power sales agreement;

(2) A state regulatory authority order requiring a utility to:

(i) Enter into a power sales agreement with the facility;

(ii) Purchase from the facility; or

(iii) Enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;

(3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992 or, where the letter of intent does not specify a timeframe, a power sales agreement applicable to the source is executed on or before November 15, 1992; or

(4) A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

Power sales agreement is a legally binding agreement between a QF, IPP, new IPP, or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

* * * * *

Qualifying facility (QF) means a "qualifying small power production facility" within the meaning of section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of section 3(18)(B) of the Federal Power Act.

* * * * *

Qualifying power purchase commitment means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

(1) The identity of the electric output purchaser; or

(2) The identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation; and

(3) The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the Acid Rain Program to be shifted to the purchaser.

* * * * *

Simple combustion turbine means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

* * * * *

Small Diesel Refinery means a domestic motor diesel fuel refinery or portion of a refinery that, as an annual average of calendar years 1988 through 1990 and as reported to the Department of Energy on Form 810, had bona fide crude oil throughput less than 18,250,000 barrels per year, and the refinery or portion of a refinery is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year.

* * * * *

Solid Waste Incinerator means a source as defined in section 129(g)(1) of the Act.

* * * * *

Steam sales agreement is a legally binding agreement between a QF, IPP, new IPP, or firm associated with such facility and an industrial or commercial establishment requiring steam that establishes the terms and conditions under which the facility will supply steam to the establishment.

* * * * *

Total planned net output capacity means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990; "Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

* * * * *

Utility competitive bid solicitation is a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new IPP may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

* * * * *

3. Section 72.6 is amended by revising paragraph (a)(2) and by adding paragraphs (a)(3) (iii) through (vii), (b)(4), (b)(5), (b)(6), (b)(7), and (c) to read as follows):

§ 72.6 Applicability.

(a) * * *

(2) A unit that is listed in Table 2 or 3 of § 73.10 of this chapter and any other existing utility unit, except a unit under paragraph (b) of this section.

(3) * * *

(iii) Was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;

(iv) Was an exempt cogeneration facility under paragraph (b)(4) of this section but during any three calendar year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

(v) Was an exempt qualifying facility under paragraph (b)(5) of this section but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(vi) Was an exempt IPP under paragraph (b)(6) of this section but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(vii) Was an exempt solid waste incinerator under paragraph (b)(7) of this section but during any three calendar year period after November 15, 1990 consumes 20 percent or more (on a Btu basis) fossil fuel.

(b) * * *

(4) A cogeneration facility which:

(i) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, the Administrator will presume that actual operation from 1985 through 1987 is consistent with such purpose. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program; or

(ii) For units which commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that

unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

(5) A qualifying facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator may exercise discretion to designate which units are exempt.

(6) An independent power production facility that:

(i) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the Administrator may exercise discretion to designate which units are exempt.

(7) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For solid waste incinerators which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For solid waste incinerators which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

* * * * *

(c) A certifying official of any unit may petition the Administrator for a determination of applicability under this section.

(1) *Petition Content.* The petition shall be in writing and include identification of the unit and relevant and appropriate facts about the unit. The petition shall meet the requirements of § 72.21. In accordance with § 72.21(d), the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Administrator's response.

(2) *Timing.* The petition shall be submitted to the Administrator prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit as a final agency action.

(3) *Submission.* All submittals under this section shall be made by the certifying official to the Director, Acid Rain Division, (6204J), 401 M Street, SW., Washington, DC, 20460.

(4) *Response.* The Administrator will issue a written response based upon the factual submittal meeting the requirements of paragraph (c)(1) of this section.

(5) *Administrative Appeals.* The Administrator's determination of applicability is a decision appealable under 40 CFR part 78 of this chapter.

(6) *Effect of Determination.* The Administrator's determination of applicability shall be binding upon the permitting authority, unless the petition is found to have contained significant errors or omissions.

4. In § 72.30 paragraphs 72.30(b)(2)(iv) through (viii) are added to read as follows:

§ 72.30 Requirements to apply.

* * * * *

(b) * * *

(2) * * *

(iv) For any source with a unit under § 72.6(a)(3)(iii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

(v) For any source with a unit under § 72.6(a)(3)(iv), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

(vi) For any source with a unit under § 72.6(a)(3)(v), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

(vii) For any source with a unit under § 72.6(a)(3)(vi), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

(viii) For any source with a unit under § 72.6(a)(3)(vii), the designated representative shall submit a complete Acid Rain permit application governing such unit to the permitting authority before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

* * * * *

5. Section 72.44 is amended by revising paragraphs (f)(3)(i) and (ii) and the second sentence of paragraph (g)(1)(ii) to read as follows:

§ 72.44 Phase II repowering extensions.

* * * * *

(f) * * *

(3) * * *

(i) To the existing unit under the approved plan, in accordance with § 73.21 of this chapter during the repowering extension under paragraph (f)(2)(ii) of this section; and

(ii) To the existing unit under the approved plan under paragraph (b)(1) of this section or, in lieu of any further allocations to the existing unit, to the new unit under the approved plan under paragraph (b)(2) of this section, in accordance with § 73.21 of this chapter, after the repowering extension under paragraph (f)(2)(ii) of this section ends.

(g) * * *

(1) * * *

(ii) * * * The Administrator will deduct allowances (including a pro rata deduction for any fraction of a year) from the Allowance Tracking System account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with § 73.21(c)(1) of this chapter.

* * * * *

6. Appendix D of part 72 is added to read as follows:

Appendix D to Part 72—Calculation of Potential Electric Output Capacity

The potential electrical output capacity is calculated from the maximum design heat input from the boiler by the following equation:

$$\frac{\text{max. design heat input}}{3} \times \frac{\times 1 \text{ kw-hr}}{3413 \text{ Btu}} \times \frac{\times 1 \text{ MWe}}{1000 \text{ Kw}}$$

For example:

(1) Assume a boiler with a maximum design heat input capacity of 340 million Btu/hr.

(2) One-third of the maximum design heat input capacity is 113.3 mmBtu/hr. The one-third factor relates to the thermodynamic efficiency of the boiler.

(3) To express this in MWe, the standards conversion of 3413 Btu to 1 kw-hr is used: 113.3×10^6 Btu/hr×1 kw-hr / 3413 Btu×1 MWe / 1000 kw=33.2 MWe

PART 73—[AMENDED]

7. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7651, et. seq.

8. Section 73.1 is amended by adding paragraph (f) to read as follows:

§ 73.1 Purpose.

* * * * *

(f) The application for, and distribution of, allowances for desulfurization of fuel by small diesel refineries.

§ 73.72 [Amended]

9. Section 73.72 is amended by redesignating Table 2 as Table 1.

10. Subpart B of part 73 is amended by adding § 73.10 (b), (c), and (d), §§ 73.11 through 73.13, § 73.16, §§ 73.18 through 73.21, § 73.26, and § 73.27 (a) (2) and (3), (b) (2) through (5), and (c) (2) through (5) to read as set forth below. The table of contents for subpart B, as mended, is set forth below for the convenience of the reader.

Subpart B—Allowance Allocations

Sec.
73.10 Initial allocations for phase I and II.
73.11 Revision of allocations.
73.12 Rounding procedures.
73.13 Procedures for submittals.
73.14 [Reserved]
73.15 [Reserved]
73.16 Phase I early reduction credits.
73.17 [Reserved]
73.18 Submittal procedures for units commencing commercial operation during the Period from January 1, 1993 through December 31, 1995.
73.19 Certain units with declining SO_2 rates.
73.20 Phase II early reduction credits.
73.21 Phase II repowering allowances.
73.22 [Reserved]
73.23 [Reserved]
73.24 [Reserved]
73.25 Phase I extension reserve.
73.26 Conservation and renewable energy reserve.
73.27 Special allowance reserve.

Subpart B—Allowance Allocations

§ 73.10 Initial allocations for phases I and II.

* * * * *

(b) *Phase II Allowances.* (1) The Administrator will allocate allowances to the unit account for each unit listed in Table 2 of this section in the amount specified in Table 2 Column E to be held in the future year subaccounts representing calendar years 2000 through 2009; except that units listed in both Table 2 and 4 will be allocated allowances as specified in Table 4 Column C, multiplied by .9011, reduced by 1.3185 times Table 2 Column B, and increased by Table 2 Columns C and D.

(2) The Administrator will allocate allowances to the unit account for each unit listed in Table 2 of this section in the amount specified in Table 2 Column I to be held in the future year subaccounts representing calendar years 2010 and each year thereafter, except that units listed in both Table 2 and 4 will be allocated allowances as specified in Table 4 Column F, multiplied by .8987, reduced by Table 2 Column G, and increased by Table 2 Column H.

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TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Alabama	Barry	1	4,437	112	0	0	3,851	4,437	112	0	3,876
Alabama	Barry	2	4,904	124	0	0	4,255	4,904	124	0	4,283
Alabama	Barry	3	10,069	255	0	0	8,736	10,069	254	0	8,795
Alabama	Barry	4	11,486	291	0	0	9,966	11,486	290	0	10,033
Alabama	Barry	5	28,381	718	0	0	24,625	28,381	716	0	24,790
Alabama	Charles R Lowman	1	1,350	34	0	671	1,843	1,350	34	0	1,178
Alabama	Charles R Lowman	2	8,028	203	0	0	6,966	8,028	203	0	7,012
Alabama	Charles R Lowman	3	6,737	171	0	0	5,846	6,737	170	0	5,885
Alabama	Chickasaw	110	126	3	0	0	110	126	3	0	110
Alabama	Colbert	1	6,515	165	152	0	5,805	6,515	164	152	5,843
Alabama	Colbert	2	7,348	186	171	0	6,548	7,348	186	171	6,589
Alabama	Colbert	3	7,393	187	172	0	6,588	7,393	187	172	6,629
Alabama	Colbert	4	7,399	187	172	0	6,593	7,399	187	172	6,636
Alabama	Colbert	5	17,846	452	415	0	15,901	17,846	451	415	16,002
Alabama	E C Gaston	1	8,687	220	202	0	7,740	8,687	219	202	7,790
Alabama	E C Gaston	2	8,900	225	207	0	7,930	8,900	225	207	7,981
Alabama	E C Gaston	3	8,769	222	205	0	7,832	8,769	222	205	7,882
Alabama	E C Gaston	4	9,254	234	215	0	8,245	9,254	234	215	8,296
Alabama	E C Gaston	5	28,724	726	669	0	25,591	28,724	726	669	25,758
Alabama	Future Fossil	**1	0	0	0	0	0	0	0	0	0
Alabama	Gadsden	1	2,237	57	0	0	1,941	2,237	56	0	1,954
Alabama	Gadsden	2	2,313	59	0	0	2,006	2,313	58	0	2,021
Alabama	Gorgas	5	1,427	36	0	507	1,746	1,427	36	0	1,246
Alabama	Gorgas	6	2,547	64	0	808	3,016	2,547	64	0	2,225
Alabama	Gorgas	7	2,852	72	0	843	3,116	2,852	72	0	2,491
Alabama	Gorgas	8	5,369	136	0	80	4,719	5,369	136	0	4,689
Alabama	Gorgas	9	5,307	134	0	103	4,706	5,307	134	0	4,635
Alabama	Gorgas	10	25,647	649	0	0	22,252	25,647	647	0	22,402
Alabama	Greene County	1	9,699	246	0	0	8,416	9,699	245	0	8,472
Alabama	Greene County	2	9,054	229	0	0	7,856	9,054	229	0	7,906
Alabama	James H Miller Jr	1	13,827	350	0	2,117	14,115	13,827	349	0	12,077
Alabama	James H Miller Jr	2	20,304	514	0	0	17,618	20,304	513	0	17,734
Alabama	James H Miller Jr	3	19,906	504	0	0	17,275	19,906	503	0	17,388
Alabama	James H Miller Jr	4	9,197	233	0	0	7,980	9,197	232	0	8,033
Alabama	Mcintosh–Caes	**1	1,071	27	0	0	930	1,071	27	0	936
Alabama	Mcintosh–Caes	**2	0	0	0	0	0	0	0	0	0
Alabama	Mcwilliams	**CT1	0	0	0	0	0	0	0	0	0
Alabama	Mcwilliams	**CT2	0	0	0	0	0	0	0	0	0
Alabama	Mcwilliams	**CT3	0	0	0	0	0	0	0	0	0
Alabama	Widows Creek	1	2,757	70	0	927	3,319	2,757	70	0	2,406
Alabama	Widows Creek	2	2,416	61	0	1,097	3,194	2,416	61	0	2,110
Alabama	Widows Creek	3	2,803	71	0	903	3,335	2,803	71	0	2,446
Alabama	Widows Creek	4	3,064	78	0	773	3,431	3,064	77	0	2,677
Alabama	Widows Creek	5	3,360	85	0	624	3,540	3,360	85	0	2,936
Alabama	Widows Creek	6	2,601	66	0	1,003	3,260	2,601	66	0	2,272
Alabama	Widows Creek	7	6,357	161	0	2,241	7,757	6,357	160	0	5,553
Alabama	Widows Creek	8	6,035	153	0	2,178	7,414	6,036	152	0	5,272

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Arizona	Agua Fria	1	1	0	0	53	54	39	1	0	34
Arizona	Agua Fria	2	1	0	0	84	85	44	1	0	39
Arizona	Agua Fria	3	1	0	0	76	77	77	2	0	67
Arizona	Apache Station	1	376	10	0	0	329	376	10	0	331
Arizona	Apache Station	2	1,620	41	0	191	1,567	1,620	41	0	1,415
Arizona	Apache Station	3	3,235	82	0	180	2,987	3,235	82	0	2,825
Arizona	Cholla	1	2,321	59	0	192	2,206	2,321	59	0	2,027
Arizona	Cholla	2	5,779	148	0	386	5,401	5,778	148	0	5,048
Arizona	Cholla	3	5,541	140	0	286	5,106	5,541	140	0	4,849
Arizona	Cholla	4	8,879	226	0	562	8,266	8,879	224	0	7,756
Arizona	Cholla	**4	0	0	0	0	0	0	0	0	0
Arizona	Coronado	U1B	5,830	150	0	344	5,860	5,830	150	0	5,178
Arizona	Coronado	U2B	6,234	158	0	447	5,856	6,234	157	0	5,448
Arizona	De Moss Petrie	4	0	0	0	0	0	0	0	0	0
Arizona	Gila Bend	**GT1	0	0	0	0	0	0	0	0	0
Arizona	Gila Bend	**GT2	0	0	0	0	0	0	0	0	0
Arizona	Gila Bend	**GT3	0	0	0	0	0	0	0	0	0
Arizona	Gila Bend	**GT4	0	0	0	0	0	0	0	0	0
Arizona	Irvington	1	0	0	0	16	16	16	0	0	13
Arizona	Irvington	2	1	0	0	27	28	46	1	0	38
Arizona	Irvington	3	0	0	0	0	0	2	0	0	2
Arizona	Irvington	4	3,200	81	0	54	2,831	3,200	81	0	2,765
Arizona	Kyrene	K-1	6	0	0	2	7	8	0	0	7
Arizona	Kyrene	K-2	8	0	0	11	18	18	0	0	16
Arizona	Navajo	1	26,462	721	0	1,314	26,000	26,462	719	0	24,880
Arizona	Navajo	2	26,641	674	0	947	24,082	26,641	673	0	23,270
Arizona	Navajo	3	27,026	684	0	1,366	24,840	27,026	682	0	23,606
Arizona	Ocotillo	1	10	0	0	47	56	46	1	0	40
Arizona	Ocotillo	2	113	3	0	32	130	147	4	0	126
Arizona	Saguaro	1	216	6	0	18	200	216	5	0	184
Arizona	Saguaro	2	5	0	0	19	24	26	1	0	22
Arizona	Springerville	1	6,857	170	0	478	6,516	6,857	170	0	6,078
Arizona	Springerville	2	6,577	166	0	0	5,708	6,577	166	0	5,746
Arizona	West Phoenix	4	8	0	0	4	11	10	0	0	9
Arizona	West Phoenix	5	14	0	0	9	22	17	0	0	15
Arizona	Yuma Axis	1	1	0	0	41	42	46	1	0	36
Arkansas	Carl Bailey	01	0	0	0	2	10	0	0	0	0
Arkansas	Cecil Lynch	1	0	0	0	0	0	0	0	0	0
Arkansas	Cecil Lynch	2	0	0	0	0	0	0	0	0	0
Arkansas	Cecil Lynch	3	0	0	0	3	3	0	0	0	0
Arkansas	Flint Creek	1	16,894	420	0	661	15,000	16,804	419	0	14,503
Arkansas	Hamilton Moses	1	0	0	0	0	0	0	0	0	0
Arkansas	Hamilton Moses	2	0	0	0	7	7	3	0	0	3
Arkansas	Harvey Couch	1	0	0	0	103	111	129	3	0	113
Arkansas	Harvey Couch	2	0	0	0	1,661	16,611	19,883	493	0	17,066
Arkansas	Independence	1	19,088	484	0	1,299	16,257	19,554	484	0	17,079
Arkansas	Independence	2	19,554	485	0						

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Arkansas	Lake Catherine	1	0	0	0	0	0	0	0	0	0
Arkansas	Lake Catherine	2	0	0	0	0	0	0	0	0	0
Arkansas	Lake Catherine	3	4	0	0	4	8	7	0	0	8
Arkansas	Lake Catherine	4	130	3	0	42	155	385	10	0	336
Arkansas	Mcclellan	01	14	0	0	2	15	14	0	0	13
Arkansas	Na 2 -- 7246	**1	0	0	0	0	0	0	0	0	0
Arkansas	Robert E Ritchie	1	7	0	0	47	53	76	2	0	66
Arkansas	Robert E Ritchie	2	2,439	62	0	13	2,130	2,439	62	0	2,130
Arkansas	Thomas Fitzhugh	1	0	0	0	1	1	1	0	0	1
Arkansas	White Bluff	1	22,946	581	0	859	20,768	22,946	579	0	20,043
Arkansas	White Bluff	2	26,304	666	0	881	23,703	26,304	664	0	22,976
California	Alamitos	1	3,083	78	0	76	2,751	3,083	78	0	2,693
California	Alamitos	2	3	0	0	102	105	19	0	0	17
California	Alamitos	3	15	0	0	276	290	92	2	0	81
California	Alamitos	4	618	16	0	276	814	618	16	0	539
California	Alamitos	5	4,410	112	0	366	4,193	4,410	111	0	3,852
California	Alamitos	6	1,066	27	0	549	1,476	1,068	27	0	933
California	Avon	1	0	0	0	17	17	15	0	0	13
California	Avon	2	0	0	0	0	0	16	0	0	14
California	Avon	3	0	0	0	0	0	16	0	0	14
California	Broadway	B1	142	4	0	3	126	142	4	0	124
California	Broadway	B2	176	4	0	10	163	176	4	0	154
California	Broadway	B3	12	0	0	63	74	81	2	0	71
California	Contra Costa	1	1	0	0	124	125	17	0	0	14
California	Contra Costa	2	2	0	0	0	2	26	0	0	23
California	Contra Costa	3	0	0	0	0	0	23	0	0	20
California	Contra Costa	4	0	0	0	0	0	16	0	0	14
California	Contra Costa	5	0	0	0	0	0	17	0	0	14
California	Contra Costa	6	0	0	0	0	0	14	0	0	13
California	Contra Costa	7	3	0	0	25	28	32	1	0	28
California	Contra Costa	8	1	0	0	52	53	46	1	0	40
California	Contra Costa	9	20	1	0	339	356	346	9	0	302
California	Contra Costa	10	4,536	115	0	315	4,252	4,536	115	0	3,963
California	Cool Water	1	2	0	0	8	10	12	0	0	11
California	Cool Water	2	1	0	0	5	6	9	0	0	8
California	El Centro	2	312	8	0	15	285	312	8	0	272
California	El Centro	3	661	17	0	36	610	661	17	0	577
California	El Centro	4	639	16	0	27	582	639	16	0	558
California	El Segundo	1	407	10	0	83	437	407	10	0	356
California	El Segundo	2	13	0	0	78	90	71	2	0	62
California	El Segundo	3	35	1	0	151	182	195	5	0	170
California	El Segundo	4	74	2	0	305	370	414	10	0	362
California	Encina	1	509	13	0	48	487	509	13	0	444
California	Encina	2	1,188	30	0	92	1,123	1,188	30	0	1,038
California	Encina	3	776	20	0	58	731	776	20	0	677
California	Encina	4	2,071	52	0	134	1,932	2,071	52	0	1,808
California	Encina	5	2,738	69	0	100	2,474	2,738	69	0	2,390

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
California	Etiwanda	1	107	3	0	23	115	107	3	0	93
California	Etiwanda	2	3	0	0	26	29	20	1	0	17
California	Etiwanda	3	1,334	34	0	205	1,362	1,334	34	0	1,166
California	Etiwanda	4	59	1	0	214	261	309	8	0	270
California	Glenarm	16	0	0	0	0	0	0	0	0	0
California	Glenarm	17	0	0	0	0	0	0	0	0	0
California	Grayson	4	100	3	0	15	101	100	3	0	87
California	Grayson	5	26	1	0	14	38	48	1	0	42
California	Harbor Gen Station	1	70	2	0	7	68	70	2	0	61
California	Harbor Gen Station	2	122	3	0	14	120	122	3	0	107
California	Harbor Gen Station	3	98	2	0	8	94	98	2	0	88
California	Harbor Gen Station	4	112	3	0	6	103	112	3	0	98
California	Harbor Gen Station	5	175	4	0	18	170	175	4	0	153
California	Haynes Gen Station	1	652	17	0	111	677	652	16	0	570
California	Haynes Gen Station	2	374	8	0	10	335	374	9	0	327
California	Haynes Gen Station	3	1,281	33	0	115	1,234	1,291	33	0	1,127
California	Haynes Gen Station	4	971	25	0	152	994	971	25	0	848
California	Haynes Gen Station	5	1,375	33	0	198	1,391	1,375	35	0	1,201
California	Haynes Gen Station	6	1,448	37	0	258	1,516	1,448	37	0	1,265
California	Highgrove	1	3	0	0	1	4	3	0	0	3
California	Highgrove	2	0	0	0	1	1	0	0	0	0
California	Highgrove	3	0	0	0	1	1	1	0	0	1
California	Highgrove	4			0	2	3	3	0	0	3
California	Humboldt Bay	1	389	10	0	18	358	389	10	0	340
California	Humboldt Bay	2	2	0	0	22	24	30	1	0	28
California	Hunters Point	3	5	0	0	71	76	53	1	0	47
California	Hunters Point	4	5	0	0	0	5	54	1	0	48
California	Hunters Point	5	2	0	0	72	74	46	1	0	42
California	Hunters Point	6		0	0	0	1	42	1	0	37
California	Hunters Point	7	6		0	184	182	194	5	0	169
California	Huntington Beach	1	1,315	33	0	173	1,314	1,315	33	0	1,148
California	Huntington Beach	2	1,106	28	0	186	1,126	1,106	28	0	966
California	Huntington Beach	3	29	1	0	141	161	71	2	0	62
California	Huntington Beach	4	28	1	0	152	176	87	2	0	76
California	Kern	1	0	0	0	3	3	2	0	0	2
California	Kern	2	0	0	0	0	0	3	0	0	3
California	Kern	3	0	0	0	13	13	3	0	0	3
California	Kern	4	0	0	0	0	0	3	0	0	3
California	Magnolia	M4	38	1	0	4	37	38	1	0	33
California	Mandalay	1	1,321	33	0	223	1,369	1,321	33	0	1,154
California	Mandalay	2	1,243	31	0	204	1,283	1,243	31	0	1,066
California	Martinez	1	1	0	0		1	1	0	0	1
California	Martinez	2	1	0	0	0	1	1	0	0	1
California	Martinez	3	1	0	0	0	1	1	0	0	1
California	Morro Bay	1	1,609	41	0	153	1,548	1,609	41	0	1,405
California	Morro Bay	2	4	0	0	135	139	112	3	0	96
California	Morro Bay	3	3,880	101	0	332	3,793	3,988	101	0	3,483

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
California	Morro Bay	4	3,289	83	0	173	3,027	3,289	83	0	2,673
California	Moss Landing	1	0	0	0	121	121	16	0	0	16
California	Moss Landing	2	0	0	0	0	0	16	0	0	15
California	Moss Landing	3	0	0	0	0	0	21	0	0	18
California	Moss Landing	4	0	0	0	0	0	23	0	0	20
California	Moss Landing	5	0	0	0	0	0	22	0	0	19
California	Moss Landing	6	0	0	0	0	0	15	0	0	14
California	Moss Landing	7	5	0	0	74	79	59	1	0	52
California	Moss Landing	8	497	13	0	32	462	497	13	0	434
California	Moss Landing	8-1	9,268	235	0	812	8,654	9,268	234	0	8,095
California	Moss Landing	7-1	88	2	0	916	975	792	20	0	892
California	Oleum	1	140	4	0	24	146	140	4	0	122
California	Oleum	2	158	4	0	0	138	158	4	0	138
California	Oleum	3	278	8	0	0	240	276	8	0	242
California	Oleum	4	116	2	0	0	102	116	2	0	102
California	Oleum	5	200	6	0	0	172	200	6	0	174
California	Oleum	6	232	6	0	0	202	232	6	0	202
California	Olive	01	137	3	0	12	131	137	3	0	120
California	Olive	02	10	0	0	18	25	53	1	0	47
California	Ormond Beach	1	4,317	109	0	742	4,466	4,317	109	0	3,771
California	Ormond Beach	2	4,666	118	0	500	4,550	4,666	118	0	4,077
California	Pittsburg	1	1,704	43	0	149	1,628	1,704	43	0	1,466
California	Pittsburg	2	1,401	35	0	124	1,340	1,401	35	0	1,224
California	Pittsburg	3	1,648	42	0	145	1,573	1,648	42	0	1,437
California	Pittsburg	4	1,656	42	0	132	1,569	1,656	42	0	1,448
California	Pittsburg	5	10	0	0	276	285	328	8	0	287
California	Pittsburg	6	4,081	103	0	183	3,725	4,081	103	0	3,565
California	Pittsburg	7	26	1	0	718	740	713	18	0	623
California	Potrero	3-1	16	0	0	307	321	304	8	0	265
California	Redondo Beach	5	13	0	0	68	80	144	4	0	125
California	Redondo Beach	6	11	0	0	95	105	117	3	0	102
California	Redondo Beach	7	49	1	0	511	554	551	14	0	481
California	Redondo Beach	8	50	1	0	552	596	565	14	0	494
California	Redondo Beach	11	0	0	0	36	36	4	0	0	4
California	Redondo Beach	12	0	0	0	0	0	2	0	0	2
California	Redondo Beach	13	0	0	0	0	0	4	0	0	4
California	Redondo Beach	14	0	0	0	0	0	4	0	0	4
California	Redondo Beach	15	0	0	0	0	0	3	0	0	3
California	Redondo Beach	16	0	0	0	0	0	5	0	0	5
California	Redondo Beach	17	0	0	0	0	0	6	0	0	6
California	San Bernardino	1	120	3	0	13	117	120	3	0	105
California	San Bernardino	2	7	0	0	11	17	22	1	0	19
California	Scattergood Gen Sta	1	732	19	0	112	747	732	18	0	640
California	Scattergood Gen Sta	2	652	17	0	66	654	652	16	0	570
California	Scattergood Gen Sta	3	4	0	0	258	262	285	7	0	249
California	Silver Gate	1	0	0	0	0	0	0	0	0	0
California	Silver Gate	2	0	0	0	0	0	0	0	0	0

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
California	Silver Gate	3	0	0	0	0	0	0	0	0	0
California	Silver Gate	4	0	0	0	0	0	0	0	0	0
California	Silver Gate	5	0	0	0	0	0	0	0	0	0
California	Silver Gate	6	0	0	0	0	0	0	0	0	0
California	South Bay	1	2,627	66	0	193	2,473	2,627	66	0	2,285
California	South Bay	2	1,920	49	0	95	1,760	1,920	46	0	1,676
California	South Bay	3	2,309	58	0	157	2,161	2,309	58	0	2,017
California	South Bay	4	632	16	0	50	566	632	16	0	552
California	Valley Gen Station	1	115	3	0	21	121	115	3	0	100
California	Valley Gen Station	2	136	3	0	21	140	136	3	0	119
California	Valley Gen Station	3	444	11	0	0	386	444	11	0	386
California	Valley Gen Station	4	337	9	0	57	349	337	9	0	294
Colorado	Arapahoe	1	237	6	0	14	220	237	6	0	207
Colorado	Arapahoe	2	262	7	0	18	245	262	7	0	228
Colorado	Arapahoe	3	196	5	0	10	180	196	5	0	171
Colorado	Arapahoe	4	2,086	53	0	101	1,911	2,086	53	0	1,822
Colorado	Cameo	2	972	25	0	54	897	972	25	0	849
Colorado	Cherokee	1	2,322	59	0	106	2,120	2,322	59	0	2,028
Colorado	Cherokee	2	3,105	79	0	119	2,813	3,105	78	0	2,713
Colorado	Cherokee	3	4,063	103	0	205	3,730	4,063	103	0	3,548
Colorado	Cherokee	4	8,135	206	0	416	7,475	8,135	206	0	7,106
Colorado	Comanche	1	8,399	213	0	348	7,835	8,399	212	0	7,336
Colorado	Comanche	2	7,357	186	0	476	6,861	7,357	186	0	6,426
Colorado	Craig	C1	8,758	222	0	554	8,153	8,758	221	0	7,650
Colorado	Craig	C2	8,387	212	0	506	7,785	8,387	212	0	7,326
Colorado	Craig	C3	2,451	62	0	456	2,584	2,451	62	0	2,141
Colorado	Hayden	H1	6,589	167	0	296	6,014	6,589	166	0	5,756
Colorado	Hayden	H2	10,050	254	0	435	9,155	10,050	254	0	8,778
Colorado	Martin Drake	5	1,242	31	0	63	1,141	1,242	31	0	1,085
Colorado	Martin Drake	6	2,180	55	0	122	2,013	2,180	55	0	1,904
Colorado	Martin Drake	7	3,471	88	0	182	3,193	3,471	88	0	3,031
Colorado	Nucla	1	1,282	33	0	0	1,113	1,282	33	0	1,118
Colorado	Pawnee	1	15,698	397	0	705	14,327	15,698	396	0	13,712
Colorado	Pawnee	**2	0	0	0	0	0	0	0	0	0
Colorado	Rawhide	101	1,542	39	0	451	1,789	1,542	39	0	1,347
Colorado	Ray D Nixon	1	4,811	122	0	267	4,441	4,811	121	0	4,203
Colorado	Ray D Nixon	**NA1	0	0	0	0	0	0	0	0	0
Colorado	Valmont	5	3,403	86	0	158	3,112	3,403	86	0	2,972
Colorado	Valmont	11	0	0	0	4	4	0	0	0	0
Colorado	Valmont	12	0	0	0	0	0	0	0	0	0
Colorado	Valmont	13	0	0	0	0	0	0	0	0	0
Colorado	Valmont	14	0	0	0	0	0	0	0	0	0
Colorado	Valmont	21	20	0	0	0	20	20	0	0	16
Colorado	Valmont	22	0	0	0	0	0	0	0	0	0
Colorado	Valmont	23	0	0	0	0	0	0	0	0	0
Colorado	Valmont	24	0	0	0	0	0	0	0	0	0
Colorado	Zuni	1	389	10	0	0	338	389	10	0	340

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Colorado	Zuni	2	0	0	0	0	0	7	0	0	6
Colorado	Zuni	3	3	0	0	2	5	10	0	0	9
Connecticut	Bridgeport Harbor	BHB1	2,375	60	0	0	2,081	2,375	60	0	2,074
Connecticut	Bridgeport Harbor	BHB2	5,401	137	0	0	4,667	5,401	136	0	4,718
Connecticut	Bridgeport Harbor	BHB3	13,119	332	0	0	11,384	13,119	331	0	11,459
Connecticut	Devon	3	1,119	28	0	0	971	1,119	28	0	978
Connecticut	Devon	6	1,026	26	0	0	891	1,026	26	0	896
Connecticut	Devon	7	3,208	81	0	0	2,784	3,208	81	0	2,802
Connecticut	Devon	8	3,431	87	0	0	2,978	3,431	87	0	2,996
Connecticut	Devon	4A	195	5	0	0	169	195	5	0	170
Connecticut	Devon	4B	196	5	0	0	170	196	5	0	171
Connecticut	Devon	5A	177	4	0	0	154	177	4	0	155
Connecticut	Devon	5B	177	4	0	0	154	177	4	0	155
Connecticut	English	EB13	129	3	0	0	112	129	3	0	113
Connecticut	English	EB14	180	5	0	0	155	180	5	0	157
Connecticut	South Meadow	11	506	12	0	0	442	506	12	0	444
Connecticut	South Meadow	12	466	12	0	0	404	466	12	0	406
Connecticut	South Meadow	13	812	20	0	0	706	812	20	0	710
Connecticut	Middletown	1	527	13	0	0	457	527	13	0	461
Connecticut	Middletown	2	1,519	38	0	0	1,318	1,519	38	0	1,327
Connecticut	Middletown	3	3,816	97	0	0	3,311	3,816	96	0	3,333
Connecticut	Middletown	4	2,730	69	0	0	2,369	2,730	69	0	2,384
Connecticut	Montville	5	1,380	35	0	0	1,198	1,380	35	0	1,205
Connecticut	Montville	6	6,486	164	0	0	5,628	6,486	164	0	5,665
Connecticut	New Haven Harbor	NHB1	14,934	378	0	0	12,956	14,934	377	0	13,044
Connecticut	Norwalk Harbor	1	5,875	149	0	0	5,097	5,875	148	0	5,132
Connecticut	Norwalk Harbor	2	6,236	158	0	0	5,410	6,236	157	0	5,447
Delaware	Edge Moor	3	4,065	103	0	0	3,527	4,065	103	0	3,550
Delaware	Edge Moor	4	7,194	182	0	0	6,243	7,194	182	0	6,283
Delaware	Edge Moor	5	7,384	187	0	0	6,406	7,384	186	0	6,450
Delaware	Hay Road	**3	181	5	0	0	156	181	5	0	156
Delaware	Indian River	1	3,425	87	0	0	2,972	3,425	86	0	2,992
Delaware	Indian River	2	3,636	92	0	0	3,156	3,636	92	0	3,176
Delaware	Indian River	3	6,218	157	0	0	5,396	6,218	157	0	5,431
Delaware	Indian River	4	15,326	388	0	0	13,300	15,326	387	0	13,386
Delaware	Mckee Run	3	2,110	53	0	739	2,570	2,110	53	0	1,843
Delaware	Vansant	**11	157	4	0	0	136	157	4	0	137
District Of Colun	Benning	15	591	15	0	0	513	591	15	0	516
District Of Colun	Benning	16	978	25	0	0	848	978	25	0	854
Florida	Anclote	1	11,740	297	0	2,744	12,931	11,737	296	0	10,252
Florida	Anclote	2	12,421	314	0	2,075	12,853	12,416	313	0	10,847
Florida	Arvah B Hopkins	1	51	1	0	35	80	96	2	0	84
Florida	Arvah B Hopkins	2	6,311	160	0	0	5,476	6,310	159	0	5,512
Florida	Avon Park	2	561	14	0	0	487	560	14	0	489
Florida	Big Bend	BB01	13,864	351	0	0	12,030	13,863	350	0	12,109
Florida	Big Bend	BB02	13,938	353	0	0	12,094	13,937	352	0	12,173
Florida	Big Bend	BB03	13,076	331	0	0	11,348	13,077	330	0	11,422

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Florida	Big Bend	BB04	10,036	254	0	0	8,709	10,035	253	0	8,786
Florida	C D McIntosh Jr	1	1,033	26	0	0	897	1,032	26	0	901
Florida	C D McIntosh Jr	2	1,175	30	0	0	1,019	1,175	30	0	1,026
Florida	C D McIntosh Jr	3	11,348	287	0	0	9,848	11,346	286	0	9,913
Florida	Cape Canaveral	PCC1	4,821	122	0	0	4,183	4,816	122	0	4,208
Florida	Cape Canaveral	PCC2	5,664	143	0	0	4,915	5,662	143	0	4,946
Florida	Crist	1	40	1	0	0	35	40	1	0	35
Florida	Crist	2	0	0	0	3	3	3	0	0	3
Florida	Crist	3	0	0	0	4	4	4	0	0	4
Florida	Crist	4	2,818	71	0	0	2,446	2,819	71	0	2,462
Florida	Crist	5	2,776	70	0	0	2,410	2,776	70	0	2,425
Florida	Crist	6	9,595	243	0	0	8,325	9,594	242	0	8,380
Florida	Crist	7	14,307	362	0	0	12,415	14,305	361	0	12,495
Florida	Crystal River	1	14,198	359	0	0	12,320	14,197	358	0	12,401
Florida	Crystal River	2	16,334	413	0	0	14,173	16,334	412	0	14,268
Florida	Crystal River	4	27,029	684	0	0	23,452	27,026	682	0	23,607
Florida	Crystal River	5	28,861	732	0	0	25,040	28,860	730	0	25,207
Florida	Ct	**1	0	0	0	0	0	0	0	0	0
Florida	Ct	**2	0	0	0	0	0	0	0	0	0
Florida	Ct	**3	0	0	0	0	0	0	0	0	0
Florida	Ct	**4	0	0	0	0	0	0	0	0	0
Florida	Cutler	PCU5	0	0	0	0	0	4	0	0	4
Florida	Cutler	PCU6	0	0	0	0	0	10	0	0	9
Florida	Debary	**7	805	20	0	0	699	805	20	0	703
Florida	Debary	**8	805	20	0	0	699	805	20	0	703
Florida	Debary	**9	805	20	0	0	699	805	20	0	703
Florida	Debary	**10	805	20	0	0	699	805	20	0	703
Florida	Deerhaven	B1	44	1	0	59	98	130	3	0	114
Florida	Deerhaven	B2	9,451	239	0	0	8,201	9,450	239	0	8,254
Florida	Deerhaven	**NA1	0	0	0	0	0	0	0	0	0
Florida	Deerhaven	**NA2	0	0	0	0	0	0	0	0	0
Florida	F J Gannon	GB01	3,829	97	0	490	3,812	3,828	97	0	3,343
Florida	F J Gannon	GB02	4,730	120	0	283	4,387	4,729	119	0	4,131
Florida	F J Gannon	GB03	6,472	164	0	0	5,615	6,472	163	0	5,653
Florida	F J Gannon	GB04	7,055	179	0	50	6,171	7,055	178	0	6,182
Florida	F J Gannon	GB05	7,471	189	0	0	6,482	7,471	189	0	6,525
Florida	F J Gannon	GB06	11,520	292	0	0	9,998	11,520	291	0	10,062
Florida	Fort Myers	PFM1	3,639	92	0	0	3,158	3,637	92	0	3,177
Florida	Fort Myers	PFM2	10,803	273	0	0	9,374	10,800	273	0	9,433
Florida	G E Turner	2	92	2	0	461	542	92	2	0	81
Florida	G E Turner	3	820	21	0	0	712	819	21	0	715
Florida	G E Turner	4	698	18	0	0	603	698	18	0	608
Florida	Henry D King	7	64	2	0	7	63	74	2	0	65
Florida	Henry D King	8	6	0	0	21	26	39	1	0	34
Florida	Higgins	1	481	12	0	0	418	481	12	0	420
Florida	Higgins	2	541	14	0	0	469	541	14	0	472
Florida	Higgins	3	495	13	0	536	984	494	12	0	432

TABLE 2. —— PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Florida	Hookers Point	HB01	201	4	0	0	177	201	4	0	177
Florida	Hookers Point	HB02	231	5	0	0	202	231	5	0	202
Florida	Hookers Point	HB03	530	13	0	0	461	529	13	0	462
Florida	Hookers Point	HB04	799	20	0	0	692	796	20	0	695
Florida	Hookers Point	HB05	1,422	36	0	0	1,234	1,418	36	0	1,238
Florida	Hookers Point	HB06	545	14	0	0	472	544	14	0	475
Florida	Indian River	1	1,359	34	0	0	1,180	1,356	34	0	1,186
Florida	Indian River	2	1,791	45	0	0	1,555	1,790	45	0	1,564
Florida	Indian River	3	4,183	105	0	0	3,612	4,162	105	0	3,635
Florida	Indian River	**C	0	0	0	0	0	0	0	0	0
Florida	J D Kennedy	8	223	6	0	0	193	222	6	0	194
Florida	J D Kennedy	9	630	16	0	0	547	630	16	0	550
Florida	J D Kennedy	10	2,257	57	0	0	1,959	2,257	57	0	1,971
Florida	J R Kelly	JRK8	44	1	0	19	58	77	2	0	67
Florida	Smith	1	7,402	187	0	0	6,424	7,402	187	0	6,465
Florida	Smith	2	8,688	220	0	0	7,539	8,686	219	0	7,589
Florida	Larsen Memorial	7	350	9	0	0	303	350	9	0	306
Florida	Larsen Memorial	**8	759	19	0	0	659	759	19	0	663
Florida	Larsen Memorial	**9	0	0	0	0	0	0	0	0	0
Florida	Lauderdale	PFL4	896	23	0	0	778	895	23	0	781
Florida	Lauderdale	PFL5	918	23	0	0	796	918	23	0	802
Florida	Manatee	PMT1	15,738	398	0	0	13,654	15,734	397	0	13,743
Florida	Manatee	PMT2	14,499	367	0	0	12,581	14,494	368	0	12,660
Florida	Martin	PMR1	5,813	147	0	0	5,044	5,811	147	0	5,075
Florida	Martin	PMR2	6,895	175	0	0	5,982	6,892	174	0	6,020
Florida	Na 1 —— 7238	**1	0	0	0	0	0	0	0	0	0
Florida	Northside	1	5,586	141	0	1,334	6,182	5,586	141	0	4,879
Florida	Northside	2	1,189	30	0	5,220	6,251	1,186	30	0	1,038
Florida	Northside	3	7,586	192	0	4,478	11,061	7,584	191	0	6,625
Florida	P L Bartow	1	2,801	71	0	355	2,785	2,800	71	0	2,445
Florida	P L Bartow	2	2,773	70	0	534	2,941	2,772	70	0	2,421
Florida	P L Bartow	3	6,203	157	0	0	5,383	6,202	157	0	5,417
Florida	Port Everglades	PPE1	2,672	68	0	0	2,318	2,671	67	0	2,333
Florida	Port Everglades	PPE2	2,755	70	0	0	2,391	2,754	70	0	2,405
Florida	Port Everglades	PPE3	6,718	170	0	0	5,830	6,717	170	0	5,867
Florida	Port Everglades	PPE4	6,811	172	0	0	5,911	6,810	172	0	5,946
Florida	Putnam	HRSG11	1,879	48	0	0	1,629	1,879	47	0	1,642
Florida	Putnam	HRSG12	1,879	48	0	0	1,629	1,879	47	0	1,642
Florida	Putnam	HRSG21	1,791	45	0	0	1,555	1,790	45	0	1,564
Florida	Putnam	HRSG22	1,791	45	0	0	1,555	1,790	45	0	1,564
Florida	Riviera	PRV2	106	3	0	0	92	106	3	0	92
Florida	Riviera	PRV3	4,081	103	0	0	3,542	4,080	103	0	3,564
Florida	Riviera	PRV4	4,048	102	0	0	3,514	4,047	102	0	3,535
Florida	S O Purdom	7	506	13	0	0	436	506	13	0	442
Florida	Sanford	PSN3	1,236	31	0	0	1,073	1,234	31	0	1,078
Florida	Sanford	PSN4	3,776	96	0	5,290	8,568	3,771	95	0	3,294
Florida	Sanford	PSN5	3,662	93	0	0	3,177	3,656	92	0	3,194

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basis	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Florida	Scholz	1	2,236	57	0	0	1,842	2,236	56	0	1,865
Florida	Scholz	2	2,343	56	0	0	2,033	2,343	56	0	2,047
Florida	Seminole	1	21,011	532	0	0	18,232	21,011	530	0	18,353
Florida	Seminole	2	21,011	532	0	0	18,232	21,011	530	0	18,353
Florida	Southside	1	1,063	27	0	0	923	1,063	27	0	928
Florida	Southside	2	1,100	28	0	0	954	1,099	28	0	960
Florida	Southside	3	256	7	0	0	223	257	6	0	225
Florida	Southside	4	704	18	0	0	610	704	18	0	615
Florida	Southside	5	2,070	52	0	0	1,797	2,070	52	0	1,808
Florida	St Johns River Power	1	13,237	336	0	0	11,488	13,236	334	0	11,561
Florida	St Johns River Power	2	12,998	329	0	0	11,279	12,998	328	0	11,353
Florida	Stanton Energy	1	12,906	327	0	0	11,199	12,906	326	0	11,273
Florida	Stanton Energy	2	0	0	0	0	0	0	0	0	0
Florida	Stock Island	1	2,839	74	0	0	2,560	2,839	74	0	2,567
Florida	Stock Island D 1	**NA1	114	3	0	0	99	114	3	0	99
Florida	Stock Island D 2	**NA2	114	3	0	0	99	114	3	0	99
Florida	Suwannee River	1	288	7	0	0	251	288	7	0	253
Florida	Suwannee River	2	288	7	0	0	251	288	7	0	252
Florida	Suwannee River	3	730	19	0	0	641	730	19	0	644
Florida	Tom G Smith	S-3	1	0	0	8	9	12	0	0	11
Florida	Tom G Smith	S-4	75	2	0	14	80	91	2	0	80
Florida	Turkey Point	PTP1	6,705	170	0	0	5,818	6,704	168	0	5,856
Florida	Turkey Point	PTP2	6,736	171	0	0	5,881	6,754	171	0	5,899
Florida	Vero Beach Municipal	3	360	9	0	0	312	360	9	0	315
Florida	Vero Beach Municipal	4	97	2	0	21	108	132	3	0	118
Florida	Vero Beach Municipal	**5	362	9	0	0	314	362	9	0	316
Georgia	Arkwright	1	1,472	37	0	160	1,438	1,472	37	0	1,288
Georgia	Arkwright	2	1,544	39	0	118	1,458	1,544	39	0	1,349
Georgia	Arkwright	3	1,759	45	0	0	1,528	1,759	44	0	1,537
Georgia	Arkwright	4	1,433	36	0	0	1,244	1,433	36	0	1,252
Georgia	Atkinson	A2	1	0	0	3	4	4	0	0	4
Georgia	Atkinson	A3	2	0	0	4	6	6	0	0	5
Georgia	Atkinson	A4	2	0	0	3	5	5	0	0	4
Georgia	Atkinson	A1A	1	0	0	1	2	2	0	0	2
Georgia	Atkinson	A1B	1	0	0	1	2	2	0	0	2
Georgia	Bowen	1BLR	26,898	665	612	0	23,421	26,286	664	612	23,573
Georgia	Bowen	2BLR	27,036	694	629	0	24,067	27,036	663	629	24,244
Georgia	Bowen	3BLR	34,448	873	803	0	30,685	34,442	870	803	30,887
Georgia	Bowen	4BLR	34,434	873	802	0	30,677	34,434	870	802	30,879
Georgia	Hammond	1	4,215	107	98	0	3,756	4,218	106	98	3,780
Georgia	Hammond	2	4,436	112	103	0	3,943	4,424	112	103	3,967
Georgia	Hammond	3	4,277	108	100	0	3,811	4,277	108	100	3,836
Georgia	Hammond	4	18,066	457	421	0	16,100	18,066	456	421	16,203
Georgia	Harllee Branch	1	11,265	285	0	0	9,775	11,265	284	0	9,840
Georgia	Harllee Branch	2	13,325	337	0	0	11,564	13,325	336	0	11,636
Georgia	Harllee Branch	3	18,333	464	0	0	15,907	18,333	463	0	16,013
Georgia	Harllee Branch	4	18,193	461	0	0	15,786	18,193	459	0	15,891

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Georgia	Jack Mcdonough	MB1	9,556	242	222	0	8,514	9,556	241	222	8,569
Georgia	Jack Mcdonough	MB2	9,890	250	230	0	8,812	9,890	250	230	8,868
Georgia	Mcintosh	1	6,346	161	0	0	5,506	6,346	160	0	5,545
Georgia	Mcmanus	1	102	3	0	755	843	102	3	0	89
Georgia	Mcmanus	2	226	6	0	1,062	1,278	226	6	0	197
Georgia	Mitchell	3	6,242	156	0	0	5,416	6,242	156	0	5,452
Georgia	Port Wentworth	1	1,746	44	0	0	1,517	1,746	44	0	1,527
Georgia	Port Wentworth	2	1,672	42	0	46	1,496	1,672	42	0	1,461
Georgia	Port Wentworth	3	3,386	86	0	1	2,939	3,386	85	0	2,956
Georgia	Port Wentworth	4	499	13	0	0	432	499	13	0	435
Georgia	Riverside	12	5	0	0	0	5	5	0	0	4
Georgia	Scherer	1	24,092	610	0	0	20,904	24,092	606	0	21,044
Georgia	Scherer	2	24,263	614	0	0	21,052	24,263	613	0	21,192
Georgia	Scherer	3	24,302	615	0	0	21,086	24,302	614	0	21,227
Georgia	Scherer	4	24,274	614	0	0	21,062	24,274	613	0	21,202
Georgia	Wansley	1	33,969	861	791	0	30,262	33,969	856	791	30,461
Georgia	Wansley	2	31,404	796	731	0	27,977	31,404	794	731	28,161
Georgia	Yates	Y1BR	3,456	88	81	0	3,061	3,456	87	81	3,103
Georgia	Yates	Y2BR	3,379	86	79	0	3,011	3,379	85	79	3,031
Georgia	Yates	Y3BR	3,337	84	78	0	2,974	3,337	84	78	2,993
Georgia	Yates	Y4BR	4,276	108	100	0	3,812	4,276	108	100	3,837
Georgia	Yates	Y5BR	4,515	114	105	0	4,023	4,515	114	105	4,049
Georgia	Yates	Y6BR	11,885	301	277	0	10,590	11,885	300	277	10,658
Georgia	Yates	Y7BR	11,691	296	272	0	10,416	11,691	295	272	10,484
Illinois	Baldwin	1	20,165	510	469	0	17,967	20,165	509	469	18,083
Illinois	Baldwin	2	21,320	540	496	0	18,995	21,320	538	496	19,119
Illinois	Baldwin	3	20,425	517	475	0	18,199	20,425	516	475	18,315
Illinois	Coffeen	01	5,660	143	132	0	5,043	5,660	143	132	5,078
Illinois	Coffeen	02	17,119	433	399	0	15,253	17,119	432	399	15,352
Illinois	Collins	1	1,516	38	0	0	1,315	1,516	38	0	1,324
Illinois	Collins	2	1,295	33	0	0	1,123	1,295	33	0	1,131
Illinois	Collins	3	2,266	58	0	0	1,963	2,266	58	0	1,998
Illinois	Collins	4	1,866	47	0	0	1,620	1,866	47	0	1,630
Illinois	Collins	5	2,067	52	0	0	1,795	2,067	52	0	1,806
Illinois	Crawford	7	4,126	104	0	3,626	7,208	4,126	104	0	3,804
Illinois	Crawford	8	6,390	162	0	4,257	9,802	6,390	161	0	5,582
Illinois	Dallman	31	1,583	40	0	0	1,373	1,583	40	0	1,383
Illinois	Dallman	32	1,791	45	0	0	1,555	1,791	45	0	1,565
Illinois	Dallman	33	5,941	150	0	0	5,156	5,941	150	0	5,189
Illinois	Duck Creek	1	12,799	324	0	0	11,106	12,799	323	0	11,180
Illinois	E D Edwards	1	2,754	70	0	489	2,879	2,754	70	0	2,405
Illinois	E D Edwards	2	7,711	195	0	168	6,860	7,711	195	0	6,735
Illinois	E D Edwards	3	9,882	250	0	477	9,052	9,882	249	0	8,632
Illinois	Fisk	19	4,109	104	0	6,436	10,002	4,109	104	0	3,569
Illinois	Grand Tower	07	263	7	0	0	246	263	7	0	247
Illinois	Grand Tower	08	269	7	0	0	233	269	7	0	235
Illinois	Grand Tower	09	2,835	72	66	0	2,526	2,835	72	66	2,542

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Illinois	Havana	1	40	0	0	0	35	40	0	0	35
Illinois	Havana	2	50	0	0	0	45	50	0	0	45
Illinois	Havana	3	40	0	0	0	35	40	0	0	35
Illinois	Havana	4	40	0	0	0	35	40	0	0	35
Illinois	Havana	5	40	0	0	0	35	40	0	0	35
Illinois	Havana	6	40	0	0	0	35	40	0	0	35
Illinois	Havana	7	40	0	0	0	35	40	0	0	35
Illinois	Havana	8	40	0	0	0	35	40	0	0	35
Illinois	Havana	9	7,879	194	0	2,065	8,749	7,879	194	0	8,707
Illinois	Hennepin	1	2,307	58	0	0	2,002	2,307	58	0	2,015
Illinois	Hennepin	2	8,837	224	206	0	7,873	8,837	223	208	7,925
Illinois	Hutsonville	05	2,540	64	0	0	2,204	2,540	64	0	2,210
Illinois	Hutsonville	06	2,631	67	0	0	2,283	2,631	66	0	2,299
Illinois	Joliet 29	71	6,659	169	0	1,752	7,530	6,659	168	0	5,817
Illinois	Joliet 29	72	5,427	137	0	1,428	6,136	5,427	137	0	4,740
Illinois	Joliet 29	81	6,241	158	0	1,834	7,249	6,241	158	0	5,451
Illinois	Joliet 29	82	6,466	164	0	1,900	7,519	6,466	163	0	5,648
Illinois	Joliet 9	5	6,714	170	0	2,800	8,628	6,714	169	0	5,865
Illinois	Joppa Steam	1	6,042	153	0	0	5,243	6,042	153	0	5,277
Illinois	Joppa Steam	2	5,168	131	0	0	4,484	5,168	130	0	4,515
Illinois	Joppa Steam	3	5,888	149	0	0	5,109	5,860	148	0	5,143
Illinois	Joppa Steam	4	5,454	138	0	0	4,732	5,454	138	0	4,764
Illinois	Joppa Steam	5	5,479	139	0	0	4,753	5,479	138	0	4,788
Illinois	Joppa Steam	6	5,096	129	0	0	4,422	5,096	129	0	4,451
Illinois	Kincaid	1	15,134	383	352	0	13,464	15,134	382	352	13,571
Illinois	Kincaid	2	16,676	422	388	0	14,856	16,676	421	388	14,964
Illinois	Lakeside	7	722	18	0	0	627	722	18	0	631
Illinois	Lakeside	8	371	9	0	0	322	371	9	0	324
Illinois	Lakeside	GT2	0	0	0	0	0	0	0	0	0
Illinois	Marion	1	534	14	0	0	462	534	13	0	467
Illinois	Marion	2	547	14	0	0	474	547	14	0	478
Illinois	Marion	3	593	15	0	0	514	593	15	0	518
Illinois	Marion	4	7,817	198	0	0	6,782	7,817	197	0	6,826
Illinois	Meredosia	01	341	9	0	0	295	341	8	0	297
Illinois	Meredosia	02	387	9	0	0	319	387	8	0	321
Illinois	Meredosia	03	320	8	0	0	277	320	8	0	280
Illinois	Meredosia	04	291	7	0	0	253	291	7	0	255
Illinois	Meredosia	05	6,988	169	155	0	5,941	6,888	168	155	5,980
Illinois	Meredosia	06	52	1	0	0	46	52	1	0	46
Illinois	Newton	1	17,854	452	0	0	15,493	17,854	451	0	15,569
Illinois	Newton	2	15,919	403	0	0	13,813	15,919	402	0	13,905
Illinois	Powerton	51	9,631	244	0	2,275	10,632	9,631	243	0	9,412
Illinois	Powerton	52	9,515	241	0	2,247	10,503	9,515	240	0	9,311
Illinois	Powerton	61	9,787	248	0	1,951	10,442	9,787	247	0	9,549
Illinois	Powerton	62	9,864	250	0	1,996	10,525	9,864	249	0	9,616
Illinois	R S Wallace	9	70	2	0	840	901	70	2	0	91
Illinois	R S Wallace	10	202	5	0	2,255	2,430	202	5	0	177

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Illinois	Venice	1	5	0	0	0	5	5	0	0	5
Illinois	Venice	2	2	0	0	0	2	2	0	0	2
Illinois	Venice	3	18	0	0	0	17	19	0	0	17
Illinois	Venice	4	18	0	0	0	14	16	0	0	14
Illinois	Venice	5	11	0	0	0	10	11	0	0	9
Illinois	Venice	6	10	0	0	0	10	10	0	0	8
Illinois	Venice	7	2	0	0	0	2	2	0	0	2
Illinois	Venice	8	2	0	0	0	2	2	0	0	2
Illinois	Vermilion	1	3,239	82	0	0	2,811	3,239	82	0	2,829
Illinois	Vermilion	2	4,264	108	99	0	3,798	4,264	108	88	3,823
Illinois	Waukegan	7	7,203	182	0	1,911	8,162	7,203	182	0	6,291
Illinois	Waukegan	8	5,710	145	0	2,843	7,797	5,710	144	0	4,988
Illinois	Waukegan	17	1,712	43	0	1,605	3,091	1,712	43	0	1,498
Illinois	Will County	1	2,914	74	0	2,772	5,300	2,914	74	0	2,548
Illinois	Will County	2	2,857	72	0	2,351	4,831	2,857	72	0	2,486
Illinois	Will County	3	5,928	150	0	1,807	6,951	5,928	150	0	5,178
Illinois	Will County	4	10,418	264	0	4,687	13,726	10,418	263	0	9,100
Illinois	Wood River	1	0	0	0	3	3	3	0	0	3
Illinois	Wood River	2	0	0	0	3	3	3	0	0	3
Illinois	Wood River	3	0	0	0	3	3	3	0	0	3
Illinois	Wood River	4	2,009	51	0	501	2,244	2,009	51	0	1,755
Illinois	Wood River	5	10,634	274	0	0	9,401	10,634	274	0	9,463
Indiana	A B Brown	1	6,123	155	0	0	5,313	6,123	155	0	5,348
Indiana	A B Brown	2	5,178	131	0	0	4,491	5,178	131	0	4,521
Indiana	A B Brown	**4	730	18	0	0	634	730	18	0	638
Indiana	Bailly	7	5,355	136	125	0	4,772	5,355	135	125	4,803
Indiana	Bailly	8	7,648	194	178	0	6,814	7,648	193	178	6,858
Indiana	Breed	1	8,878	225	207	0	7,910	8,878	224	207	7,962
Indiana	Cayuga	1	16,016	405	373	0	14,272	16,016	404	373	14,365
Indiana	Cayuga	2	16,360	415	381	0	14,594	16,360	414	381	14,688
Indiana	Clifty Creek	1	9,673	245	0	0	8,394	9,673	244	0	8,448
Indiana	Clifty Creek	2	9,511	241	0	0	8,253	9,511	240	0	8,306
Indiana	Clifty Creek	3	9,797	248	0	0	8,500	9,797	247	0	8,556
Indiana	Clifty Creek	4	9,638	244	0	0	8,363	9,638	243	0	8,419
Indiana	Clifty Creek	5	9,292	235	0	0	8,063	9,292	235	0	8,116
Indiana	Clifty Creek	6	9,781	248	0	0	8,486	9,781	247	0	8,543
Indiana	Dean H Mitchell	4	1,661	43	0	1,645	3,103	1,661	42	0	1,468
Indiana	Dean H Mitchell	5	2,122	54	0	1,161	3,002	2,122	54	0	1,853
Indiana	Dean H Mitchell	6	1,907	48	0	1,301	2,955	1,907	48	0	1,666
Indiana	Dean H Mitchell	11	1,397	35	0	1,435	2,648	1,397	35	0	1,221
Indiana	Edwardsport	6–1	0	0	0	0	0	0	0	0	0
Indiana	Edwardsport	7–1	397	10	0	0	345	397	10	0	347
Indiana	Edwardsport	7–2	404	10	0	0	351	404	10	0	353
Indiana	Edwardsport	8–1	429	11	0	0	372	429	11	0	375
Indiana	Elmer W Stout	1	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	2	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	3	0	0	0	0	0	0	0	0	0

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Indiana	Elmer W Stout	4	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	5	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	6	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	7	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	8	0	0	0	0	0	0	0	0	0
Indiana	Elmer W Stout	9	1	0	0	0	1	1	0	0	1
Indiana	Elmer W Stout	10	2	0	0	0	2	2	0	0	2
Indiana	Elmer W Stout	50	1,864	47	43	0	1,681	1,864	47	43	1,671
Indiana	Elmer W Stout	60	2,291	58	53	0	2,040	2,291	58	53	2,054
Indiana	Elmer W Stout	70	11,332	287	264	0	10,096	11,332	286	264	10,162
Indiana	F B Culley	1	945	24	0	0	920	945	24	0	825
Indiana	F B Culley	2	1,958	50	46	0	1,744	1,958	49	46	1,757
Indiana	F B Culley	3	8,146	206	190	0	7,256	8,146	206	190	7,305
Indiana	Frank E Ratts	1SG1	4,000	101	93	0	3,565	4,000	101	93	3,587
Indiana	Frank E Ratts	2SG1	4,073	103	95	0	3,629	4,073	103	95	3,652
Indiana	Gibson	1	19,380	491	451	0	17,276	19,380	489	451	17,388
Indiana	Gibson	2	19,683	498	458	0	17,537	19,683	497	458	17,650
Indiana	Gibson	3	19,717	499	459	0	17,568	19,717	498	459	17,681
Indiana	Gibson	4	19,355	490	451	0	17,245	19,355	489	451	17,357
Indiana	Gibson	5	20,781	526	0	0	18,032	20,781	525	0	18,151
Indiana	H T Pritchard	1	0	0	0	0	0	0	0	0	0
Indiana	H T Pritchard	2	1	0	0	0	1	1	0	0	1
Indiana	H T Pritchard	3	274	7	0	0	236	274	7	0	238
Indiana	H T Pritchard	4	609	15	0	0	526	609	15	0	532
Indiana	H T Pritchard	5	661	17	0	0	582	661	17	0	585
Indiana	H T Pritchard	6	2,769	70	64	0	2,467	2,769	70	64	2,483
Indiana	Merom	1SG1	17,055	432	0	0	14,799	17,055	431	0	14,887
Indiana	Merom	2SG1	16,939	429	0	0	14,698	16,939	426	0	14,795
Indiana	Michigan City	4	1,039	26	0	0	902	1,039	26	0	908
Indiana	Michigan City	5	1,154	29	0	0	1,001	1,154	29	0	1,008
Indiana	Michigan City	6	1,165	30	0	0	1,010	1,165	30	0	1,017
Indiana	Michigan City	12	11,189	283	260	0	9,966	11,189	282	260	10,034
Indiana	Na 1 -- 7221	**1	0	0	0	0	0	0	0	0	0
Indiana	Na 1 -- 7221	**2	0	0	0	0	0	0	0	0	0
Indiana	Na 1 -- 7221	**3	0	0	0	0	0	0	0	0	0
Indiana	Na 1 -- 7221	**4	0	0	0	0	0	0	0	0	0
Indiana	Na 1 -- 7226	**4	0	0	0	0	0	0	0	0	0
Indiana	Na 1 -- 7226	**5	0	0	0	0	0	0	0	0	0
Indiana	Noblesville	1	75	2	0	0	66	75	2	0	66
Indiana	Noblesville	2	62	2	0	0	54	62	2	0	53
Indiana	Noblesville	3	46	1	0	0	40	46	1	0	40
Indiana	Petersburg	1	7,869	200	184	0	7,029	7,869	199	184	7,075
Indiana	Petersburg	2	15,544	393	362	0	13,850	15,544	392	362	13,940
Indiana	Petersburg	3	18,296	466	0	0	16,743	18,296	467	0	16,865
Indiana	Petersburg	4	18,460	467	0	0	16,019	18,460	466	0	16,124
Indiana	R Gallagher	1	3,238	82	75	0	2,885	3,238	82	75	2,903
Indiana	R Gallagher	2	3,494	88	81	0	3,113	3,494	88	81	3,133

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Indiana	R Gallagher	3	3,134	78	73	0	2,792	3,134	78	73	2,811
Indiana	R Gallagher	4	3,285	83	76	0	2,906	3,285	82	76	2,929
Indiana	R M Schahfer	14	5,553	141	0	5,496	10,318	5,553	140	0	4,851
Indiana	R M Schahfer	15	5,089	129	0	6,239	10,655	5,089	128	0	4,448
Indiana	R M Schahfer	17	5,969	151	0	0	5,180	5,969	151	0	5,213
Indiana	R M Schahfer	18	5,930	150	0	0	5,148	5,930	150	0	5,179
Indiana	Rockport	MB1	37,716	956	0	0	32,722	37,716	953	0	32,944
Indiana	Rockport	MB2	37,716	956	0	0	32,722	37,716	953	0	32,944
Indiana	State Line	3	3,938	100	0	1,280	4,607	3,936	99	0	3,440
Indiana	State Line	4	6,862	174	0	902	6,874	6,862	174	0	6,011
Indiana	Tanners Creek	U1	2,324	59	0	742	2,756	2,324	59	0	2,030
Indiana	Tanners Creek	U2	2,439	62	0	663	2,760	2,439	62	0	2,130
Indiana	Tanners Creek	U3	2,609	66	0	1,797	4,061	2,609	66	0	2,279
Indiana	Tanners Creek	U4	11,915	302	277	0	10,616	11,915	301	277	10,884
Indiana	Wabash River	1	1,918	48	45	0	1,706	1,918	48	45	1,721
Indiana	Wabash River	2	1,546	39	36	0	1,380	1,546	39	36	1,389
Indiana	Wabash River	3	1,799	46	42	0	1,603	1,799	45	42	1,614
Indiana	Wabash River	4	1,750	44	0	0	1,516	1,750	44	0	1,529
Indiana	Wabash River	5	1,761	45	41	0	1,569	1,761	44	41	1,580
Indiana	Wabash River	6	5,894	149	137	0	5,251	5,894	148	137	5,295
Indiana	Warrick	4	11,698	296	272	0	10,422	11,698	295	272	10,490
Indiana	Whitewater Valley	1	2,557	65	0	0	2,216	2,557	65	0	2,233
Indiana	Whitewater Valley	2	7,650	194	0	0	6,638	7,650	193	0	6,682
Iowa	Ames	7	460	12	0	0	400	460	12	0	401
Iowa	Ames	8	2,095	53	0	0	1,818	2,095	53	0	1,830
Iowa	Burlington	1	5,141	130	0	0	4,461	5,141	130	0	4,490
Iowa	Council Bluffs	1	748	19	0	456	1,104	748	19	0	851
Iowa	Council Bluffs	2	1,058	27	0	724	1,843	1,058	27	0	925
Iowa	Council Bluffs	3	18,234	462	0	0	15,822	18,234	460	0	15,927
Iowa	Des Moines	10	187	5	0	0	162	187	5	0	163
Iowa	Des Moines	11	278	7	0	0	242	278	7	0	244
Iowa	Des Moines	**5	0	0	0	0	0	0	0	0	0
Iowa	Dubuque	1	1,278	32	0	0	1,111	1,278	32	0	1,117
Iowa	Dubuque	5	348	9	0	0	302	348	9	0	305
Iowa	Earl F Wisdom	1	438	11	0	0	378	433	11	0	378
Iowa	Fair Station	2	6,370	161	0	0	5,528	6,370	161	0	5,564
Iowa	George Neal	1	2,640	67	0	0	2,291	2,640	67	0	2,306
Iowa	George Neal	2	5,025	127	0	4,685	9,046	5,025	127	0	4,388
Iowa	George Neal	3	9,760	247	0	3,755	12,224	9,760	246	0	8,525
Iowa	George Neal	4	17,305	438	0	0	15,015	17,305	437	0	15,115
Iowa	Grastinger	**5	11	0	0	0	10	11	0	0	10
Iowa	Grinnell	**2	217	6	0	0	186	217	5	0	160
Iowa	Lansing	3	547	14	0	0	474	547	14	0	478
Iowa	Lansing	4	4,956	125	0	292	4,593	4,956	125	0	4,329
Iowa	Lime Creek	**1	291	7	0	0	253	291	7	0	255
Iowa	Lime Creek	**2	291	7	0	0	253	291	7	0	255
Iowa	Louisa	101	17,817	451	0	0	15,460	17,817	450	0	15,562

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Iowa	Maynard Station	1	35	1	0	0	31	35	1	0	30
Iowa	Milton L Kapp	2	6,622	188	0	0	5,745	6,622	187	0	5,784
Iowa	Muscatine	8	1,556	39	0	0	1,350	1,556	39	0	1,359
Iowa	Muscatine	9	2,316	59	0	0	2,009	2,316	58	0	2,023
Iowa	Na 1 -- 7230	**2	0	0	0	0	0	0	0	0	0
Iowa	Ottumwa	1	21,819	552	0	0	18,934	21,819	551	0	19,058
Iowa	Pella	6	865	22	0	0	750	865	22	0	756
Iowa	Pella	7	1,116	28	0	0	969	1,116	28	0	975
Iowa	Pella	8	31	1	0	41	68	31	1	0	28
Iowa	Prairie Creek	3	829	21	0	0	719	829	21	0	724
Iowa	Prairie Creek	4	3,924	99	0	0	3,405	3,924	99	0	3,428
Iowa	Riverside	9	1,994	50	0	0	1,731	1,994	50	0	1,742
Iowa	Sixth Street	1	930	24	0	0	807	930	24	0	811
Iowa	Sixth Street	2	201	6	0	0	177	201	6	0	175
Iowa	Sixth Street	3	177	6	0	0	154	177	6	0	154
Iowa	Sixth Street	4	85	1	0	0	77	85	1	0	74
Iowa	Sixth Street	5	352	10	0	0	307	352	10	0	308
Iowa	Streeter Station	7	633	16	0	0	549	633	16	0	553
Iowa	Sutherland	1	226	6	0	0	197	226	6	0	198
Iowa	Sutherland	2	429	11	0	0	373	429	11	0	375
Iowa	Sutherland	3	2,505	63	0	0	2,173	2,505	63	0	2,188
Kansas	Arthur Mullergren	3	0	0	0	1	1	1	0	0	1
Kansas	Cimarron River	1	0	0	0	12	12	12	0	0	11
Kansas	Coffeyville	4	1	0	0	10	11	11	0	0	10
Kansas	East 12Th St	4	1	0	0	9	10	9	0	0	9
Kansas	Garden City	S-2	0	0	0	0	0	0	0	0	0
Kansas	Gordon Evans	1	1	0	0	63	64	64	2	0	58
Kansas	Gordon Evans	2	1	0	0	24	25	24	1	0	21
Kansas	Holcomb	SGU1	4,583	116	0	0	3,977	4,583	116	0	4,003
Kansas	Hutchinson	1	0	0	0	0	0	0	0	0	0
Kansas	Hutchinson	2	0	0	0	0	0	0	0	0	0
Kansas	Hutchinson	3	0	0	0	0	0	0	0	0	0
Kansas	Hutchinson	4	0	0	0	18	18	18	0	0	16
Kansas	Jeffrey Energy Centr	1	18,555	495	0	0	16,969	19,555	494	0	17,060
Kansas	Jeffrey Energy Centr	2	20,668	523	0	0	17,934	20,668	522	0	18,053
Kansas	Jeffrey Energy Centr	3	23,560	597	0	0	20,460	23,560	595	0	20,597
Kansas	Judson Large	4	1	0	0	38	39	39	1	0	34
Kansas	Kaw	1	900	23	0	0	780	900	23	0	786
Kansas	Kaw	2	707	18	0	0	613	707	18	0	617
Kansas	Kaw	3	590	15	0	0	512	590	15	0	515
Kansas	Kingman	**3	58	1	0	0	51	58	1	0	51
Kansas	La Cygne	1	16,432	416	0	3,586	17,824	16,432	415	0	14,353
Kansas	La Cygne	2	17,210	436	0	0	14,933	17,210	434	0	15,033
Kansas	Lawrence	2	2	0	0	0	2	2	0	0	2
Kansas	Lawrence	3	713	18	0	1,524	2,143	713	18	0	823
Kansas	Lawrence	4	1,081	27	0	872	1,811	1,081	27	0	945
Kansas	Lawrence	5	4,279	108	0	1,633	5,346	4,279	108	0	3,736

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Kansas	Mcpherson 2	1	1	0	0	0	1	1	0	0	1
Kansas	Mulvane	**7	6	0	0	0	5	6	0	0	5
Kansas	Mulvane	**8	6	0	0	0	5	6	0	0	5
Kansas	Murray Gill	1	0	0	0	1	1	1	0	0	1
Kansas	Murray Gill	2	0	0	0	5	5	5	0	0	4
Kansas	Murray Gill	3	1	0	0	49	50	50	1	0	44
Kansas	Murray Gill	4	1	0	0	61	62	62	2	0	54
Kansas	Nearman Creek	N1	7,919	200	0	0	6,872	7,919	200	0	6,917
Kansas	Neosho	7	14	0	0	0	13	14	0	0	13
Kansas	Quindaro	1	2,322	59	0	0	2,014	2,322	59	0	2,028
Kansas	Quindaro	2	2,375	60	0	0	2,061	2,375	60	0	2,074
Kansas	Ripley	**2	0	0	0	0	0	0	0	0	0
Kansas	Ripley	**3	0	0	0	0	0	0	0	0	0
Kansas	Riverton	39	1,187	30	0	0	1,030	1,187	30	0	1,037
Kansas	Riverton	40	2,015	51	0	0	1,749	2,015	51	0	1,760
Kansas	Russell	**11	35	1	0	0	31	35	1	0	30
Kansas	Russell	**12	34	1	0	0	30	34	1	0	30
Kansas	Tecumseh	9	1,051	27	0	1,336	2,248	1,051	27	0	916
Kansas	Tecumseh	10	1,677	42	0	2,449	3,905	1,677	42	0	1,465
Kentucky	Big Sandy	BSU1	7,347	186	0	0	6,378	7,347	185	0	6,418
Kentucky	Big Sandy	BSU2	21,199	537	0	1,167	19,562	21,199	535	0	18,517
Kentucky	Cane Run	3	44	1	0	0	39	44	1	0	39
Kentucky	Cane Run	4	3,110	79	0	1,800	4,499	3,110	79	0	2,716
Kentucky	Cane Run	5	4,939	125	0	18	4,304	4,939	125	0	4,314
Kentucky	Cane Run	6	6,201	157	0	73	5,454	6,201	157	0	5,416
Kentucky	Cane Run	**12	0	0	0	0	0	0	0	0	0
Kentucky	Cane Run	**13	0	0	0	0	0	0	0	0	0
Kentucky	Coleman	C1	5,402	137	126	0	4,814	5,402	136	126	4,845
Kentucky	Coleman	C2	6,162	156	143	0	5,490	6,162	156	143	5,525
Kentucky	Coleman	C3	5,925	150	138	0	5,279	5,925	150	138	5,313
Kentucky	Cooper	1	3,574	90	83	0	3,185	3,574	90	83	3,205
Kentucky	Cooper	2	7,355	186	171	0	6,554	7,355	186	171	6,595
Kentucky	D B Wilson	W1	14,244	361	0	0	12,360	14,244	360	0	12,441
Kentucky	Dale	3	1,931	49	0	294	1,999	1,931	49	0	1,686
Kentucky	Dale	4	1,596	40	0	451	1,836	1,596	40	0	1,394
Kentucky	E W Brown	1	3,413	86	79	0	3,042	3,413	86	79	3,060
Kentucky	E W Brown	2	6,465	164	150	0	5,759	6,465	163	150	5,797
Kentucky	E W Brown	3	12,526	317	292	0	11,162	12,526	316	292	11,233
Kentucky	East Bend	2	20,936	530	0	0	18,166	20,936	529	0	18,266
Kentucky	Elmer Smith	1	3,122	79	73	0	2,782	3,122	79	73	2,800
Kentucky	Elmer Smith	2	6,916	175	161	0	6,162	6,916	175	161	6,201
Kentucky	Ghent	1	13,636	345	317	0	12,152	13,636	344	317	12,230
Kentucky	Ghent	2	11,450	290	0	2,717	12,652	11,450	289	0	10,001
Kentucky	Ghent	3	15,953	404	0	0	13,843	15,953	403	0	13,834
Kentucky	Ghent	4	15,675	397	0	0	13,601	15,675	396	0	13,691
Kentucky	Green River	1	2	0	0	128	130	2	0	0	2
Kentucky	Green River	2	17	0	0	835	851	17	0	0	15

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Kentucky	Green River	3	14	0	0	731	744	14	0	0	13
Kentucky	Green River	4	3,220	82	0	0	2,802	3,220	82	0	2,820
Kentucky	Green River	5	3,753	95	87	0	3,344	3,753	95	87	3,365
Kentucky	H L Spurlock	1	10,935	277	255	0	9,744	10,935	276	258	9,806
Kentucky	H L Spurlock	2	18,958	480	0	0	16,451	18,958	479	0	16,860
Kentucky	Henderson I	6	926	23	0	0	803	926	23	0	809
Kentucky	Hmp&L Station 2	H1	6,410	162	148	0	5,712	6,410	162	148	5,746
Kentucky	Hmp&L Station 2	H2	6,907	167	154	0	5,886	6,907	167	154	5,925
Kentucky	J K Smith	1	0	0	0	0	0	0	0	0	0
Kentucky	Mill Creek	1	8,778	222	0	401	8,018	8,778	222	0	7,867
Kentucky	Mill Creek	2	8,980	227	0	300	8,075	8,980	226	0	7,826
Kentucky	Mill Creek	3	12,549	318	0	0	10,686	12,549	317	0	10,991
Kentucky	Mill Creek	4	15,585	394	0	0	13,506	15,585	393	0	13,595
Kentucky	Ns 1 -- 7220	**3	0	0	0	0	0	0	0	0	0
Kentucky	Ns 1 -- 7220	**4	0	0	0	0	0	0	0	0	0
Kentucky	Ns 1 -- 7220	**5	0	0	0	0	0	0	0	0	0
Kentucky	Paradise	1	12,388	313	0	0	10,729	12,388	312	0	10,801
Kentucky	Paradise	2	14,060	356	0	0	12,200	14,060	358	0	12,261
Kentucky	Paradise	3	28,401	720	661	0	25,302	28,401	717	661	25,488
Kentucky	Pineville	3	483	12	0	491	911	483	12	0	422
Kentucky	R D Green	G1	6,049	153	0	0	5,249	6,049	153	0	5,263
Kentucky	R D Green	G2	7,266	184	0	0	6,324	7,266	184	0	6,306
Kentucky	Robert Reid	R1	1,078	27	0	0	936	1,078	27	0	940
Kentucky	Shawnee	1	2,991	76	0	1,026	3,681	2,991	76	0	2,812
Kentucky	Shawnee	2	3,062	78	0	975	3,649	3,062	78	0	2,892
Kentucky	Shawnee	3	3,471	88	0	671	3,682	3,471	88	0	3,031
Kentucky	Shawnee	4	3,450	87	0	576	3,571	3,450	87	0	3,014
Kentucky	Shawnee	5	3,368	85	0	576	3,602	3,368	85	0	2,943
Kentucky	Shawnee	6	3,690	94	0	475	3,884	3,690	93	0	3,231
Kentucky	Shawnee	7	4,065	103	0	65	3,819	4,065	103	0	3,566
Kentucky	Shawnee	8	3,909	99	0	150	3,542	3,909	99	0	3,414
Kentucky	Shawnee	9	4,159	106	0	0	3,636	4,159	106	0	3,659
Kentucky	Shawnee	10	5,446	138	127	0	4,883	5,446	138	127	4,885
Kentucky	Trimble County	1	11,009	279	0	0	9,553	11,009	278	0	9,618
Kentucky	Tyrone	1	0	0	0	0	0	0	0	0	0
Kentucky	Tyrone	2	0	0	0	0	0	0	0	0	0
Kentucky	Tyrone	3	0	0	0	0	0	0	0	0	0
Kentucky	Tyrone	4	0	0	0	0	0	0	0	0	0
Kentucky	Tyrone	5	771	20	0	1,038	1,707	771	18	0	674
Louisiana	A B Paterson	3	0	0	0	7	7	4	0	0	4
Louisiana	A B Paterson	4	0	0	0	8	8	7	0	0	6
Louisiana	Arsenal Hill	5A	0	0	0	30	30	21	1	0	18
Louisiana	Big Cajun 1	1B1	8	0	0	20	27	42	1	0	37
Louisiana	Big Cajun 1	1B2	8	0	0	20	27	39	1	0	34
Louisiana	Big Cajun 2	2B1	16,337	414	0	571	14,748	16,337	412	0	14,270
Louisiana	Big Cajun 2	2B2	16,132	408	0	822	14,520	16,132	407	0	14,081
Louisiana	Big Cajun 2	2B3	16,091	407	0	875	14,536	16,091	406	0	14,055

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Louisiana	Coughlin	6	0	0	0	46	46	39	1	0	34
Louisiana	Coughlin	7	2	0	0	126	126	159	4	0	139
Louisiana	D G Hunter	3	0	0	0	0	0	10	0	0	9
Louisiana	D G Hunter	4	1	0	0	31	32	28	1	0	24
Louisiana	Doc Bonin	1	4	0	0	8	12	19	0	0	17
Louisiana	Doc Bonin	2	1	0	0	23	24	34	1	0	30
Louisiana	Doc Bonin	3	1	0	0	44	45	102	3	0	89
Louisiana	Dolet Hills	1	23,424	593	0	3	20,327	23,424	591	0	20,460
Louisiana	Houma	15	1	0	0	9	10	16	0	0	14
Louisiana	Houma	16	0	0	0	14	14	32	1	0	28
Louisiana	Lieberman	3	2	0	0	84	86	96	2	0	84
Louisiana	Lieberman	4	1	0	0	71	72	72	2	0	63
Louisiana	Little Gypsy	1	47	1	0	203	244	254	6	0	222
Louisiana	Little Gypsy	2	77	2	0	310	377	400	10	0	349
Louisiana	Little Gypsy	3	102	3	0	454	542	540	14	0	471
Louisiana	Louisiana 1	1A	2	0	0	114	116	19	0	0	17
Louisiana	Louisiana 1	2A	2	0	0	0	2	19	0	0	17
Louisiana	Louisiana 1	3A	2	0	0	0	2	19	0	0	17
Louisiana	Louisiana 2	10	0	0	0	0	0	0	0	0	0
Louisiana	Louisiana 2	11	0	0	0	0	0	0	0	0	0
Louisiana	Louisiana 2	12	0	0	0	0	0	0	0	0	0
Louisiana	Michoud	1	2	0	0	69	71	94	2	0	82
Louisiana	Michoud	2	2	0	0	104	106	157	4	0	137
Louisiana	Michoud	3	52	1	0	445	491	532	13	0	465
Louisiana	Monroe	11	2	0	0	11	13	13	0	0	12
Louisiana	Monroe	12	7	0	0	39	45	43	1	0	38
Louisiana	Morgan City	4	1	0	0	4	5	6	0	0	5
Louisiana	Natchitoches	10	0	0	0	0	0	0	0	0	0
Louisiana	Ninemile Point	1	25	1	0	39	61	74	2	0	65
Louisiana	Ninemile Point	2	30	1	0	86	112	118	3	0	103
Louisiana	Ninemile Point	3	27	1	0	73	96	99	3	0	86
Louisiana	Ninemile Point	4	134	3	0	573	690	697	18	0	606
Louisiana	Ninemile Point	5	173	4	0	775	926	925	23	0	806
Louisiana	Opelousas	10	1	0	0	0	1	1	0	0	1
Louisiana	R S Nelson	1	2	0	0	26	30	39	1	0	34
Louisiana	R S Nelson	2	1	0	0	32	33	37	1	0	32
Louisiana	R S Nelson	3	1	0	0	36	39	30	1	0	26
Louisiana	R S Nelson	4	5	0	0	118	123	318	8	0	276
Louisiana	R S Nelson	6	21,332	540	0	900	19,410	21,332	539	0	18,632
Louisiana	Rodemacher	1	3,394	86	0	277	3,222	3,394	86	0	2,964
Louisiana	Rodemacher	2	18,462	467	0	728	16,749	18,462	466	0	16,126
Louisiana	Ruston	2	1	0	0	3	4	7	0	0	6
Louisiana	Ruston	3	0	0	0	5	5	26	1	0	22
Louisiana	Sterlington	10	43	1	0	136	174	178	4	0	156
Louisiana	Sterlington	7AB	15	0	0	58	72	82	2	0	72
Louisiana	Teche	2	0	0	0	27	27	25	1	0	21
Louisiana	Teche	3	5	0	0	441	446	420	11	0	388

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Louisiana	Waterford 1 & 2	1	4,869	123	0	293	4,518	4,869	123	0	4,253
Louisiana	Waterford 1 & 2	2	3,760	96	0	226	3,508	3,760	95	0	3,302
Louisiana	Willow Glen	1	8	0	0	97	89	189	8	0	97
Louisiana	Willow Glen	2	0	0	0	25	25	83	1	0	20
Louisiana	Willow Glen	3	0	0	0	93	93	97	1	0	32
Louisiana	Willow Glen	4	4	0	0	296	290	397	0	0	294
Louisiana	Willow Glen	5	26	1	0	436	458	499	13	0	435
Maine	Graham Station	5	393	10	0	0	341	393	10	0	343
Maine	Mason Steam	3	2	0	0	0	2	2	0	0	2
Maine	Mason Steam	4	1	0	0	0	1	1	0	0	1
Maine	Mason Steam	5	1	0	0	0	1	1	0	0	1
Maine	William F Wyman	1	538	13	0	694	1,155	538	13	0	485
Maine	William F Wyman	2	629	18	0	618	1,158	628	16	0	547
Maine	William F Wyman	3	3,078	78	0	257	2,922	3,078	78	0	2,663
Maine	William F Wyman	4	7,169	181	0	0	6,221	7,169	181	0	6,262
Maryland	Brandon Shores	1	21,151	535	0	0	18,354	21,151	534	0	18,475
Maryland	Brandon Shores	2	8,907	225	0	0	7,729	8,907	225	0	7,780
Maryland	C P Crane	1	4,969	126	0	0	4,318	4,969	125	0	4,341
Maryland	C P Crane	2	4,619	117	0	0	4,009	4,619	117	0	4,034
Maryland	Chalk Point	1	10,515	266	0	0	9,124	10,515	265	0	9,185
Maryland	Chalk Point	2	11,677	296	0	0	10,132	11,677	295	0	10,199
Maryland	Chalk Point	3	5,965	151	0	7,282	12,456	5,965	151	0	5,210
Maryland	Chalk Point	4	2,971	75	0	0	2,578	2,971	75	0	2,595
Maryland	Chalk Point	**GT3	806	20	0	0	702	808	20	0	706
Maryland	Chalk Point	**GT4	806	20	0	0	702	808	20	0	706
Maryland	Chalk Point	**GT5	1,022	26	0	0	887	1,022	26	0	892
Maryland	Chalk Point	**GT6	1,022	26	0	0	887	1,022	26	0	892
Maryland	Coal Gas Cc 1	**CT1	1,236	31	0	0	1,073	1,236	31	0	1,080
Maryland	Coal Gas Cc 1	**CW1	0	0	0	0	0	0	0	0	0
Maryland	Coal Gas Cc 2	**CT3	0	0	0	0	0	0	0	0	0
Maryland	Coal Gas Cc 2	**CT4	0	0	0	0	0	0	0	0	0
Maryland	Dickerson	1	6,683	169	0	0	5,799	6,683	169	0	5,837
Maryland	Dickerson	2	6,265	159	0	0	5,456	6,265	159	0	5,488
Maryland	Dickerson	3	6,680	169	0	0	5,797	6,650	169	0	5,834
Maryland	Easton 2	**26	0	0	0	0	0	0	0	0	0
Maryland	Easton 2	**27	0	0	0	0	0	0	0	0	0
Maryland	Gould Street	3	939	24	0	0	814	936	24	0	820
Maryland	Herbert A Wagner	1	1,474	37	0	0	1,280	1,474	37	0	1,296
Maryland	Herbert A Wagner	2	1,465	38	0	0	1,287	1,465	36	0	1,297
Maryland	Herbert A Wagner	3	9,577	242	0	0	8,311	9,577	242	0	8,365
Maryland	Herbert A Wagner	4	1,737	44	0	0	1,507	1,737	44	0	1,517
Maryland	Morgantown	1	19,348	490	0	0	16,788	19,348	488	0	16,900
Maryland	Morgantown	2	18,498	468	0	0	16,051	18,498	467	0	16,157
Maryland	Nanticoke	**ST1	0	0	0	0	0	0	0	0	0
Maryland	Perryman	**52	0	0	0	0	0	0	0	0	0
Maryland	Perryman	**61	0	0	0	0	0	0	0	0	0
Maryland	Perryman	**62	0	0	0	0	0	0	0	0	0

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Maryland	R P Smith	9	386	10	0	0	335	386	10	0	337
Maryland	R P Smith	11	2,592	66	0	46	2,295	2,592	65	0	2,264
Maryland	Riverside	1	216	5	0	0	186	216	5	0	189
Maryland	Riverside	2	196	5	0	0	170	196	5	0	171
Maryland	Riverside	3	404	10	0	0	351	404	10	0	353
Maryland	Riverside	4	520	13	0	0	451	520	13	0	454
Maryland	Riverside	5	337	9	0	0	292	337	9	0	294
Maryland	Vienna	8	2,075	53	0	1,829	3,629	2,075	52	0	1,813
Maryland	Westport	3	213	5	0	0	185	213	5	0	188
Maryland	Westport	4	295	7	0	0	257	295	7	0	258
Massachusetts	Brayton Point	1	9,692	245	0	0	8,411	9,692	245	0	8,466
Massachusetts	Brayton Point	2	10,182	258	0	0	8,834	10,182	257	0	8,884
Massachusetts	Brayton Point	3	21,263	536	0	0	18,467	21,263	537	0	18,580
Massachusetts	Brayton Point	4	13,256	336	0	536	12,040	13,256	335	0	11,578
Massachusetts	Canal	1	14,081	356	0	930	13,151	14,081	356	0	12,282
Massachusetts	Canal	2	20,568	521	0	0	17,847	20,568	519	0	17,966
Massachusetts	Cannon Street	3	427	11	0	0	371	427	11	0	373
Massachusetts	Cleary Flood	8	163	4	0	0	142	163	4	0	142
Massachusetts	Cleary Flood	9	1,799	46	0	1,105	2,866	1,799	45	0	1,972
Massachusetts	Kendall Square	1	225	5	0	0	196	225	5	0	197
Massachusetts	Kendall Square	2	237	5	0	0	206	237	5	0	206
Massachusetts	Kendall Square	3	481	12	0	0	418	481	12	0	420
Massachusetts	Mount Tom	1	6,412	162	0	0	5,565	6,412	162	0	5,601
Massachusetts	Mystic	4	2,979	75	0	0	2,585	2,979	75	0	2,602
Massachusetts	Mystic	5	3,534	89	0	0	3,067	3,534	88	0	3,067
Massachusetts	Mystic	6	3,516	89	0	0	3,048	3,516	88	0	3,070
Massachusetts	Mystic	7	19,704	499	0	0	17,087	19,704	497	0	17,211
Massachusetts	New Boston	1	7,037	178	0	0	6,106	7,037	178	0	6,148
Massachusetts	New Boston	2	7,228	183	0	0	6,270	7,228	182	0	6,312
Massachusetts	Salem Harbor	1	3,818	97	0	0	3,311	3,818	96	0	3,333
Massachusetts	Salem Harbor	2	3,895	99	0	0	3,379	3,895	98	0	3,402
Massachusetts	Salem Harbor	3	6,240	158	0	0	5,414	6,240	156	0	5,450
Massachusetts	Salem Harbor	4	14,083	356	0	246	12,467	14,083	356	0	12,301
Massachusetts	Somerset	1	0	0	0	0	0	0	0	0	0
Massachusetts	Somerset	2	0	0	0	0	0	0	0	0	0
Massachusetts	Somerset	3	0	0	0	0	0	0	0	0	0
Massachusetts	Somerset	4	0	0	0	0	0	0	0	0	0
Massachusetts	Somerset	5	0	0	0	0	0	0	0	0	0
Massachusetts	Somerset	6	0	0	0	0	0	0	0	0	0
Massachusetts	Somerset	7	3,160	80	0	0	2,742	3,160	80	0	2,760
Massachusetts	Somerset	8	4,554	115	0	0	3,952	4,554	115	0	3,978
Massachusetts	Waters River	**2	282	7	0	0	245	282	7	0	246
Massachusetts	West Springfield	1	432	11	0	0	376	432	11	0	377
Massachusetts	West Springfield	2	406	10	0	0	353	406	10	0	355
Massachusetts	West Springfield	3	3,441	87	0	0	2,987	3,441	87	0	3,005
Michigan	B C Cobb	1	504	13	0	701	1,136	504	13	0	440
Michigan	B C Cobb	2	542	13	0	755	1,225	542	13	0	474

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Michigan	B C Cobb	3	539	13	0	752	1,218	539	13	0	472
Michigan	B C Cobb	4	5,226	132	0	0	4,535	5,226	132	0	4,565
Michigan	B C Cobb	5	5,364	136	0	0	4,655	5,364	135	0	4,686
Michigan	Belle River	1	21,145	535	0	0	18,348	21,145	534	0	18,469
Michigan	Belle River	2	21,446	543	0	0	18,609	21,446	541	0	18,733
Michigan	Conners Creek	15	672	17	0	3,696	4,281	662	17	0	578
Michigan	Conners Creek	16	662	17	0	3,700	4,275	662	17	0	570
Michigan	Conners Creek	17	631	15	0	3,482	4,031	631	15	0	552
Michigan	Conners Creek	18	512	13	0	2,905	3,348	512	13	0	447
Michigan	Dan E Karn	1	8,926	226	0	0	7,745	8,926	225	0	7,797
Michigan	Dan E Karn	2	9,789	248	0	0	8,493	9,789	247	0	8,550
Michigan	Dan E Karn	3	1,167	30	0	0	1,012	1,167	29	0	1,020
Michigan	Dan E Karn	4	1,062	27	0	0	940	1,062	27	0	945
Michigan	Delray	7	0	0	0	0	0	0	0	0	0
Michigan	Delray	8	0	0	0	12	12	14	0	0	12
Michigan	Delray	9	0	0	0	0	0	0	0	0	0
Michigan	Delray	10	0	0	0	14	14	16	0	0	14
Michigan	Delray	11	0	0	0	0	0	0	0	0	0
Michigan	Delray	12	0	0	0	14	14	14	0	0	12
Michigan	Eckert Station	1	1,341	34	0	124	1,287	1,341	34	0	1,171
Michigan	Eckert Station	2	1,387	35	0	131	1,344	1,387	35	0	1,221
Michigan	Eckert Station	3	1,273	32	0	213	1,318	1,273	32	0	1,112
Michigan	Eckert Station	4	2,540	64	0	0	2,204	2,540	64	0	2,219
Michigan	Eckert Station	5	3,046	77	0	0	2,844	3,046	77	0	2,660
Michigan	Eckert Station	6	2,677	68	0	0	2,322	2,677	68	0	2,338
Michigan	Endicott Generating	1	2,069	52	0	0	1,798	2,069	52	0	1,807
Michigan	Erickson	1	7,565	192	0	0	6,591	7,565	192	0	6,634
Michigan	Greenwood	1	617	16	0	0	535	617	16	0	539
Michigan	Harbor Beach	1	1,627	41	0	2,096	3,508	1,627	41	0	1,421
Michigan	J B Sims	3	1,696	43	0	0	1,471	1,696	43	0	1,481
Michigan	J C Weadock	7	5,423	137	0	0	4,707	5,423	137	0	4,737
Michigan	J C Weadock	8	5,360	136	0	0	4,651	5,360	135	0	4,682
Michigan	J H Campbell	1	9,254	234	0	0	8,030	9,254	234	0	8,083
Michigan	J H Campbell	2	11,087	280	0	0	9,603	11,087	279	0	9,687
Michigan	J H Campbell	3	31,405	796	0	0	27,247	31,405	794	0	27,431
Michigan	J R Whiting	1	3,899	99	0	0	3,383	3,899	98	0	3,406
Michigan	J R Whiting	2	3,992	101	0	0	3,464	3,992	101	0	3,487
Michigan	J R Whiting	3	5,107	129	0	0	4,431	5,107	129	0	4,461
Michigan	James De Young	5	1,197	30	0	0	1,039	1,197	30	0	1,046
Michigan	Marysville	9	640	16	0	1,078	1,831	640	16	0	560
Michigan	Marysville	10	493	13	0	831	1,256	493	13	0	430
Michigan	Marysville	11	514	13	0	866	1,311	514	13	0	449
Michigan	Marysville	12	414	11	0	696	1,056	414	11	0	360
Michigan	Mistersky	5	283	7	0	0	255	283	7	0	256
Michigan	Mistersky	6	500	13	0	0	433	500	13	0	436
Michigan	Mistersky	7	555	14	0	0	481	555	14	0	485
Michigan	Monroe	1	27,243	690	0	0	23,636	27,243	688	0	23,796

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Michigan	Monroe	2	26,273	716	0	0	24,531	26,273	714	0	24,695
Michigan	Monroe	3	26,466	670	0	0	22,963	26,466	668	0	23,117
Michigan	Monroe	4	29,065	737	0	0	25,216	29,065	735	0	25,386
Michigan	Presque Isle	2	260	7	0	382	635	260	7	0	245
Michigan	Presque Isle	3	2,179	55	0	0	1,891	2,179	55	0	1,903
Michigan	Presque Isle	4	1,906	48	0	7	1,662	1,906	48	0	1,667
Michigan	Presque Isle	5	3,352	85	0	0	2,909	3,352	85	0	2,927
Michigan	Presque Isle	6	3,360	85	0	0	2,916	3,360	85	0	2,935
Michigan	Presque Isle	7	2,479	63	0	47	2,197	2,479	63	0	2,165
Michigan	Presque Isle	8	2,338	59	0	145	2,174	2,338	58	0	2,042
Michigan	Presque Isle	9	1,724	44	0	837	2,333	1,724	44	0	1,905
Michigan	River Rouge	1	80	2	0	0	78	80	2	0	78
Michigan	River Rouge	2	7,075	179	0	132	6,271	7,075	179	0	6,179
Michigan	River Rouge	3	10,402	263	0	0	9,026	10,402	263	0	9,066
Michigan	Shiras	3	572	14	0	0	496	572	14	0	500
Michigan	St Clair	1	4,189	106	0	0	3,635	4,189	106	0	3,668
Michigan	St Clair	2	4,049	103	0	0	3,513	4,049	102	0	3,537
Michigan	St Clair	3	4,027	102	0	0	3,495	4,027	102	0	3,517
Michigan	St Clair	4	3,860	98	0	0	3,366	3,860	98	0	3,390
Michigan	St Clair	5	0	0	0	0	0	0	0	0	0
Michigan	St Clair	6	8,360	212	0	0	7,261	8,360	212	0	7,326
Michigan	St Clair	7	15,378	388	0	0	13,344	15,378	388	0	13,463
Michigan	Trenton Channel	16	2,619	66	0	1,000	3,272	2,619	66	0	2,296
Michigan	Trenton Channel	17	610	16	0	233	761	610	16	0	532
Michigan	Trenton Channel	18	2,835	72	0	1,082	3,543	2,836	71	0	2,477
Michigan	Trenton Channel	19	556	14	0	212	696	556	14	0	486
Michigan	Trenton Channel	9A	16,577	420	0	0	14,384	16,577	418	0	14,460
Michigan	Wyandotte	5	625	15	0	412	995	625	15	0	546
Michigan	Wyandotte	7	621	15	0	408	948	621	15	0	543
Michigan	491 E. 48Th Street	**7	341	9	0	0	295	341	9	0	297
Michigan	491 E. 48Th Street	**8	341	9	0	0	295	341	9	0	297
Minnesota	Allen S King	1	17,857	452	0	0	15,495	17,857	451	0	15,597
Minnesota	Black Dog	1	378	10	0	1,563	1,911	378	10	0	330
Minnesota	Black Dog	2	522	13	0	3,226	3,678	522	13	0	456
Minnesota	Black Dog	3	1,129	29	0	1,287	2,266	1,129	29	0	986
Minnesota	Black Dog	4	2,430	62	0	1,929	4,036	2,430	61	0	2,123
Minnesota	Clay Boswell	1	1,424	36	0	560	1,816	1,424	36	0	1,244
Minnesota	Clay Boswell	2	1,356	34	0	614	1,790	1,355	34	0	1,184
Minnesota	Clay Boswell	3	11,273	285	0	0	9,782	11,273	286	0	9,848
Minnesota	Clay Boswell	4	11,797	298	0	0	10,236	11,797	296	0	10,304
Minnesota	Fox Lake	3	1,218	31	0	1,003	2,060	1,218	31	0	1,064
Minnesota	Future Base	**1	0	0	0	0	0	0	0	0	0
Minnesota	High Bridge	3	907	23	0	1,324	2,110	907	23	0	792
Minnesota	High Bridge	4	701	18	0	845	1,453	701	18	0	612
Minnesota	High Bridge	5	1,240	31	0	1,109	2,165	1,240	31	0	1,083
Minnesota	High Bridge	6	2,116	54	0	0	1,836	2,116	53	0	1,849
Minnesota	Hoot Lake	2	354	9	0	932	1,239	354	9	0	309

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Minnesota	Hoot Lake	3	1,229	31	0	903	1,969	1,229	31	0	1,074
Minnesota	M L Hibbard	3	34	1	0	957	987	34	1	0	30
Minnesota	M L Hibbard	4	11	0	0	1,084	1,094	11	0	0	10
Minnesota	Minnesota Valley	3	71	2	0	876	936	71	2	0	62
Minnesota	Na 1 -- 7237	**2	0	0	0	0	0	0	0	0	0
Minnesota	Northeast Station	NEPP	1,203	30	0	0	1,044	1,203	30	0	1,051
Minnesota	Riverside	6	260	7	0	2,849	3,075	260	7	0	227
Minnesota	Riverside	7	103	3	0	1,249	1,336	103	3	0	90
Minnesota	Riverside	8	4,310	109	0	1,296	5,036	4,310	109	0	3,764
Minnesota	Sherburne County	1	14,960	379	0	0	12,981	14,960	378	0	13,067
Minnesota	Sherburne County	2	15,065	381	0	0	13,073	15,065	380	0	13,159
Minnesota	Sherburne County	3	14,805	375	0	0	12,846	14,805	374	0	12,831
Minnesota	Silver Lake	4	3,580	91	0	0	3,106	3,580	90	0	3,127
Minnesota	Syl Laskin	1	366	9	0	1,371	1,689	366	9	0	320
Minnesota	Syl Laskin	2	158	4	0	1,510	1,647	158	4	0	138
Mississippi	Baxter Wilson	1	53	1	0	313	360	366	9	0	320
Mississippi	Baxter Wilson	2	4,072	103	0	0	3,533	4,072	103	0	3,557
Mississippi	Delta	1	19	0	0	9	26	28	1	0	24
Mississippi	Delta	2	33	1	0	21	50	64	1	0	48
Mississippi	Gerald Andrus	1	3,750	95	0	0	3,254	3,750	95	0	3,275
Mississippi	Jack Watson	1	197	5	0	0	171	197	5	0	172
Mississippi	Jack Watson	2	208	5	0	0	179	208	5	0	180
Mississippi	Jack Watson	3	312	8	0	0	270	312	8	0	272
Mississippi	Jack Watson	4	8,596	218	0	0	7,460	8,596	217	0	7,510
Mississippi	Jack Watson	5	17,615	446	0	0	15,294	17,615	445	0	15,396
Mississippi	Moselle	1	18	0	0	21	35	38	1	0	33
Mississippi	Moselle	2	39	1	0	42	76	80	2	0	70
Mississippi	Moselle	3	10	0	0	33	42	43	1	0	36
Mississippi	Moselle	**6	0	0	0	0	0	0	0	0	0
Mississippi	Moselle	**7	0	0	0	0	0	0	0	0	0
Mississippi	Natchez	1	2	0	0	0	2	3	0	0	3
Mississippi	R D Morrow	1	5,485	139	0	0	4,759	5,485	138	0	4,791
Mississippi	R D Morrow	2	6,003	152	0	0	5,209	6,003	152	0	5,243
Mississippi	Rex Brown	3	6	0	0	34	41	42	1	0	37
Mississippi	Rex Brown	4	2	0	0	157	159	159	4	0	139
Mississippi	Rex Brown	1A	0	0	0	6	6	6	0	0	5
Mississippi	Rex Brown	1B	0	0	0	6	6	6	0	0	5
Mississippi	Sweatt	1	69	2	0	0	76	89	2	0	78
Mississippi	Sweatt	2	96	2	0	0	86	98	2	0	86
Mississippi	Victor J Daniel Jr	1	11,312	286	0	1,328	11,145	11,312	286	0	9,880
Mississippi	Victor J Daniel Jr	2	16,315	413	0	0	14,156	16,315	412	0	14,250
Mississippi	Wright	W4	0	0	0	0	0	0	0	0	0
Missouri	Asbury	1	7,770	196	175	0	6,918	7,770	196	175	6,992
Missouri	Blue Valley	3	5,336	135	0	0	4,830	5,336	135	0	4,661
Missouri	Chamois	2	6,235	158	0	0	5,410	6,235	157	0	5,446
Missouri	Columbia	6	1,033	26	0	0	865	1,033	26	0	902
Missouri	Columbia	7	4,149	104	0	0	3,601	4,149	104	0	3,624

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Missouri	Columbia	6	142	3	0	0	125	142	3	0	124
Missouri	Combustion Turbine 1	**NA4	0	0	0	0	0	0	0	0	0
Missouri	Combustion Turbine 1	**NA5	0	0	0	0	0	0	0	0	0
Missouri	Combustion Turbine 1	**NA6	0	0	0	0	0	0	0	0	0
Missouri	Combustion Turbine 1	**NA7	0	0	0	0	0	0	0	0	0
Missouri	Combustion Turbine 3	**3	0	0	0	0	0	0	0	0	0
Missouri	Empire Energy Center	**4	0	0	0	0	0	0	0	0	0
Missouri	Empire Energy Center	**NA2	0	0	0	0	0	0	0	0	0
Missouri	Empire Energy Center	**NA3	0	0	0	0	0	0	0	0	0
Missouri	Grand Avenue	**7	12	0	0	0	11	12	0	0	11
Missouri	Grand Avenue	**8	14	0	0	0	13	14	0	0	13
Missouri	Hawthorn	5	14,041	355	0	485	12,869	14,041	354	0	12,265
Missouri	Iatan	1	18,520	469	0	0	16,070	18,520	468	0	16,178
Missouri	Iatan	**2	0	0	0	0	0	0	0	0	0
Missouri	James River	3	3,802	96	0	0	3,299	777	20	0	678
Missouri	James River	4	6,826	173	0	0	5,924	1,429	36	0	1,248
Missouri	James River	5	2,374	60	55	0	2,115	2,374	60	55	2,129
Missouri	James River	**GT2	691	18	0	0	599	691	17	0	604
Missouri	Jim Hill	**1	0	0	0	0	0	0	0	0	0
Missouri	Labadie	1	19,538	495	455	0	17,408	19,536	493	455	17,821
Missouri	Labadie	2	18,213	461	424	0	16,228	18,213	460	424	16,332
Missouri	Labadie	3	19,464	493	453	0	17,342	19,464	491	453	17,455
Missouri	Labadie	4	17,346	439	404	0	15,455	17,346	438	404	15,555
Missouri	Lake Road	6	692	18	0	0	600	692	17	0	605
Missouri	Meramec	1	1,174	30	0	1,716	2,736	1,174	30	0	1,025
Missouri	Meramec	2	1,261	32	0	1,675	2,769	1,261	32	0	1,101
Missouri	Meramec	3	2,894	66	0	3,700	6,036	2,894	66	0	2,353
Missouri	Meramec	4	2,914	74	0	4,625	7,153	2,914	74	0	2,545
Missouri	Montrose	1	3,549	90	83	0	3,162	3,549	90	83	3,163
Missouri	Montrose	2	3,935	100	92	0	3,506	3,935	99	92	3,528
Missouri	Montrose	3	4,841	123	113	0	4,312	4,841	122	113	4,342
Missouri	Ns 1 -- 7223	**1	0	0	0	0	0	0	0	0	0
Missouri	Ns 1 -- 7223	**2	0	0	0	0	0	0	0	0	0
Missouri	Ns 1 -- 7223	**3	0	0	0	0	0	0	0	0	0
Missouri	Ns 1 -- 7226	**1	0	0	0	0	0	0	0	0	0
Missouri	New Madrid	1	13,554	343	316	0	12,077	13,554	342	316	12,155
Missouri	New Madrid	2	15,593	395	363	0	13,893	15,593	394	363	13,983
Missouri	Rg 1 & 2	**1	0	0	0	0	0	0	0	0	0
Missouri	Rg 1 & 2	**2	0	0	0	0	0	0	0	0	0
Missouri	Rush Island	1	15,856	401	0	1,083	14,842	15,856	400	0	13,850
Missouri	Rush Island	2	17,702	448	0	160	15,520	17,702	447	0	15,462
Missouri	Sibley	1	583	15	0	0	514	583	15	0	518
Missouri	Sibley	2	726	18	0	0	632	726	18	0	636
Missouri	Sibley	3	8,498	215	198	0	7,572	8,498	215	198	7,620
Missouri	Sikeston	1	7,760	196	0	0	6,734	7,760	196	0	6,778
Missouri	Sioux	1	12,048	305	280	0	10,734	12,048	304	280	10,804
Missouri	Sioux	2	10,585	267	246	0	9,414	10,585	267	246	9,474

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basis	Special allowance reserve deduction	Additional basic (§ 405(a)(·))	Total annual phase II
Missouri	Southwest	1	4,707	119	0	84	4,149	4,707	119	0	4,111
Missouri	Thomas Hill	MB1	4,921	125	115	0	4,364	4,921	124	115	4,414
Missouri	Thomas Hill	MB2	8,272	209	193	0	7,371	8,272	209	193	7,418
Missouri	Thomas Hill	MB3	20,862	526	0	0	18,102	20,862	527	0	18,222
Montana	Colstrip	1	8,409	213	0	500	7,796	8,409	212	0	7,345
Montana	Colstrip	2	8,383	212	0	535	7,810	8,383	212	0	7,322
Montana	Colstrip	3	4,195	106	0	733	4,373	4,195	106	0	3,884
Montana	Colstrip	4	3,334	84	0	0	2,893	3,334	84	0	2,912
Montana	Frank Bird	1	0	0	0	0	0	0	0	0	0
Montana	J E Corette	2	5,571	141	0	186	5,020	5,571	141	0	4,866
Montana	Lewis & Clark	B1	1,801	41	0	43	1,432	1,801	40	0	1,399
Nebraska	Bluffs	4	21	1	0	0	18	21	1	0	18
Nebraska	C W Burdick	B-3	0	0	0	0	0	0	0	0	0
Nebraska	Canaday	1	716	18	0	0	621	716	18	0	625
Nebraska	Gerald Gentleman Sta	1	10,221	259	0	1,860	10,728	10,221	258	0	8,828
Nebraska	Gerald Gentleman Sta	2	20,060	506	0	0	17,424	20,060	507	0	17,539
Nebraska	Harold Kramer	1	3	0	0	35	38	3	0	0	3
Nebraska	Harold Kramer	2	3	0	0	37	40	3	0	0	3
Nebraska	Harold Kramer	3	191	5	0	884	1,051	191	5	0	186
Nebraska	Harold Kramer	4	225	6	0	1,881	2,077	225	6	0	196
Nebraska	Hastings Energy Ctr	1	2,668	68	0	0	2,314	2,668	67	0	2,331
Nebraska	Lon Wright	8	1,350	34	0	882	2,034	1,350	34	0	1,179
Nebraska	Na 1 -- 7019	**NA2	0	0	0	0	0	0	0	0	0
Nebraska	Nebraska City	1	15,077	382	0	0	13,082	15,077	381	0	13,189
Nebraska	North Omaha	1	1,192	30	0	1,345	2,378	1,192	30	0	1,041
Nebraska	North Omaha	2	1,841	47	0	1,677	3,274	1,841	46	0	1,608
Nebraska	North Omaha	3	2,167	55	0	1,312	3,192	2,167	55	0	1,893
Nebraska	North Omaha	4	2,869	73	0	1,339	3,827	2,869	72	0	2,506
Nebraska	North Omaha	5	3,471	88	0	1,610	4,621	3,471	88	0	3,031
Nebraska	Platte	1	3,345	85	0	0	2,902	3,345	84	0	2,922
Nebraska	Sheldon	1	904	23	0	1,377	2,181	904	23	0	788
Nebraska	Sheldon	2	964	24	0	1,436	2,873	964	24	0	842
Nevada	Clark	1	16	0	0	6	20	28	1	0	22
Nevada	Clark	2	296	8	0	13	271	296	8	0	280
Nevada	Clark	3	1	0	0	17	18	16	0	0	16
Nevada	Fort Churchill	1	406	10	0	15	366	406	10	0	355
Nevada	Fort Churchill	2	621	16	0	34	573	621	16	0	542
Nevada	Harry Allen	**1	0	0	0	0	0	0	0	0	0
Nevada	Harry Allen	**2	0	0	0	0	0	0	0	0	0
Nevada	Harry Allen	**3	0	0	0	0	0	0	0	0	0
Nevada	Harry Allen	**4	0	0	0	0	0	0	0	0	0
Nevada	Harry Allen	**GT3	0	0	0	0	0	0	0	0	0
Nevada	Harry Allen	**GT4	0	0	0	0	0	0	0	0	0
Nevada	Mohave	1	29,849	757	0	541	26,437	29,849	755	0	26,071
Nevada	Mohave	2	29,728	753	0	543	26,336	29,728	751	0	25,966
Nevada	North Valmy	1	7,493	190	0	403	6,904	7,493	189	0	6,545
Nevada	North Valmy	2	4,594	116	0	303	4,226	4,534	114	0	3,952

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Nevada	Reid Gardner	1	2,264	57	0	191	2,156	2,264	57	0	1,978
Nevada	Reid Gardner	2	2,311	59	0	160	2,185	2,311	58	0	2,019
Nevada	Reid Gardner	3	2,245	57	0	161	2,109	2,245	57	0	1,961
Nevada	Reid Gardner	4	2,672	68	0	476	2,794	2,672	67	0	2,334
Nevada	Sunrise	1	29	1	0	25	50	60	2	0	52
Nevada	Tracy	1	15	0	0	1	15	15	0	0	13
Nevada	Tracy	2	46	1	0	4	46	48	1	0	42
Nevada	Tracy	3	347	9	0	10	311	347	9	0	303
New Hampshire	Merrimack	1	4,900	124	0	0	4,252	4,900	124	0	4,260
New Hampshire	Merrimack	2	10,560	267	0	0	9,164	10,560	267	0	9,223
New Hampshire	Newington	1	12,107	306	0	1,088	11,574	12,107	306	0	10,575
New Hampshire	Schiller	4	1,643	42	0	76	1,502	1,643	41	0	1,436
New Hampshire	Schiller	5	1,461	38	0	162	1,446	1,461	37	0	1,294
New Hampshire	Schiller	6	1,878	48	0	0	1,626	1,878	47	0	1,641
New Jersey	B L England	1	4,355	110	0	0	3,779	4,355	110	0	3,804
New Jersey	B L England	2	5,634	143	0	0	4,888	5,634	142	0	4,921
New Jersey	B L England	3	2,765	70	0	0	2,400	2,765	70	0	2,415
New Jersey	Bergen	1	2,260	57	0	0	1,962	2,260	57	0	1,974
New Jersey	Bergen	2	2,335	59	0	0	2,026	2,335	59	0	2,039
New Jersey	Burlington	7	641	16	0	0	557	641	16	0	560
New Jersey	Butler	**4	0	0	0	0	0	0	0	0	0
New Jersey	Deepwater	1	1,330	34	0	0	1,154	1,330	34	0	1,161
New Jersey	Deepwater	3	12	0	0	0	11	12	0	0	11
New Jersey	Deepwater	4	67	2	0	0	58	67	2	0	58
New Jersey	Deepwater	5	6	0	0	0	5	6	0	0	5
New Jersey	Deepwater	6	67	2	0	0	58	67	2	0	58
New Jersey	Deepwater	8	3,137	79	0	0	2,722	3,137	78	0	2,740
New Jersey	Deepwater	9	2,073	52	0	0	1,800	2,073	52	0	1,811
New Jersey	Gilbert	01	69	2	0	0	60	69	2	0	60
New Jersey	Gilbert	02	43	2	0	0	37	43	2	0	37
New Jersey	Gilbert	03	799	20	0	0	694	799	20	0	698
New Jersey	Gilbert	04	685	17	0	0	595	685	17	0	599
New Jersey	Gilbert	05	681	17	0	0	592	681	17	0	595
New Jersey	Gilbert	06	677	17	0	0	588	677	17	0	591
New Jersey	Gilbert	07	692	18	0	0	600	692	17	0	605
New Jersey	Hudson	1	1,366	35	0	0	1,187	1,366	35	0	1,194
New Jersey	Hudson	2	17,350	439	0	766	15,843	17,350	438	0	15,155
New Jersey	Kearny	7	166	4	0	0	144	166	4	0	145
New Jersey	Kearny	8	175	4	0	0	152	175	4	0	153
New Jersey	Linden	2	736	19	0	0	638	736	18	0	642
New Jersey	Linden	4	482	12	0	0	419	482	12	0	421
New Jersey	Linden	11	1,106	28	0	0	960	1,106	28	0	966
New Jersey	Linden	12	759	19	0	0	659	759	19	0	663
New Jersey	Linden	13	1,002	25	0	0	870	1,002	25	0	876
New Jersey	Mercer	1	8,668	220	0	80	7,619	8,668	219	0	7,569
New Jersey	Mercer	2	7,992	202	0	445	7,381	7,992	202	0	6,981
New Jersey	Na 3 -- 7141	**1	0	0	0	0	0	0	0	0	0

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
New Jersey	Na 3 -- 7141	**2	0	0	0	0	0	0	0	0	0
New Jersey	Na 4 -- 7142	**1	0	0	0	0	0	0	0	0	0
New Jersey	Na 5 -- 7217	**1	0	0	0	0	0	0	0	0	0
New Jersey	Na 5 -- 7217	**2	0	0	0	0	0	0	0	0	0
New Jersey	Na 6 -- 7218	**1	0	0	0	0	0	0	0	0	0
New Jersey	Na 6 -- 7218	**2	0	0	0	0	0	0	0	0	0
New Jersey	Sayreville	02	2	0	0	0	2	2	0	0	2
New Jersey	Sayreville	03	2	0	0	0	2	2	0	0	2
New Jersey	Sayreville	05	46	0	0	0	41	46	0	0	41
New Jersey	Sayreville	06	42	0	0	0	39	42	0	0	37
New Jersey	Sayreville	07	875	22	0	0	759	875	22	0	764
New Jersey	Sayreville	08	1,019	26	0	0	884	1,018	26	0	880
New Jersey	Sewaren	1	133	3	0	0	116	133	3	0	117
New Jersey	Sewaren	2	389	10	0	0	338	389	10	0	340
New Jersey	Sewaren	3	290	7	0	0	252	290	7	0	254
New Jersey	Sewaren	4	656	17	0	0	569	656	17	0	573
New Jersey	Sewaren	5	0	0	0	0	0	0	0	0	0
New Jersey	Werner	04	223	6	0	0	193	223	6	0	194
New Mexico	Cunningham	1218	2	0	0	40	42	50	1	0	44
New Mexico	Cunningham	1228	4	0	0	265	269	232	6	0	203
New Mexico	Escalante	1	1,872	42	0	410	1,862	1,872	42	0	1,461
New Mexico	Escalante	**2	0	0	0	0	0	0	0	0	0
New Mexico	Four Corners	1	3,790	96	0	277	3,565	3,790	96	0	3,310
New Mexico	Four Corners	2	3,791	96	0	272	3,561	3,791	96	0	3,311
New Mexico	Four Corners	3	4,747	120	0	323	4,443	4,747	120	0	4,148
New Mexico	Four Corners	4	13,552	343	0	847	12,406	13,552	342	0	11,837
New Mexico	Four Corners	5	14,037	355	0	990	13,170	14,037	354	0	12,261
New Mexico	Maddox	**3	97	2	0	0	95	97	2	0	95
New Mexico	Maddox	0518	2	0	0	166	170	140	4	0	122
New Mexico	North Lovington	52	0	0	0	0	0	0	0	0	0
New Mexico	Person	3	0	0	0	0	0	0	0	0	0
New Mexico	Person	4	0	0	0	0	0	0	0	0	0
New Mexico	Reeves	1	0	0	0	4	4	7	0	0	6
New Mexico	Reeves	2	0	0	0	7	7	5	0	0	4
New Mexico	Reeves	3	104	3	0	13	103	115	3	0	100
New Mexico	Rio Grande	6	0	0	0	3	3	5	0	0	4
New Mexico	Rio Grande	7	0	0	0	1	1	1	0	0	1
New Mexico	Rio Grande	8	1	0	0	79	80	71	2	0	67
New Mexico	San Juan	1	8,423	213	0	570	7,878	8,423	213	0	7,357
New Mexico	San Juan	2	6,171	156	0	522	5,877	6,171	156	0	5,360
New Mexico	San Juan	3	14,832	375	0	897	13,768	14,832	374	0	12,856
New Mexico	San Juan	4	13,917	352	0	887	12,944	13,917	351	0	12,158
New York	Albany	1	2,057	52	0	0	1,798	2,057	52	0	1,797
New York	Albany	2	1,777	45	0	0	1,542	1,777	45	0	1,552
New York	Albany	3	1,821	46	0	0	1,580	1,821	46	0	1,591
New York	Albany	4	1,928	49	0	0	1,672	1,928	49	0	1,684
w York	Arthur Kill	20	1,699	43	0	0	1,485	1,699	43	0	1,475

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
New York	Arthur Kill	30	2,705	68	0	0	2,348	2,705	68	0	2,363
New York	Astoria	10	1,369	35	0	0	1,206	1,369	35	0	1,213
New York	Astoria	20	1,775	45	0	0	1,541	1,775	45	0	1,550
New York	Astoria	30	3,456	87	0	0	3,000	3,456	87	0	3,019
New York	Astoria	40	2,715	69	0	0	2,356	2,715	69	0	2,371
New York	Astoria	50	3,065	78	0	0	2,677	3,065	78	0	2,690
New York	Bowline Point	1	4,845	123	0	0	4,203	4,845	122	0	4,232
New York	Bowline Point	2	4,846	123	0	0	4,204	4,846	122	0	4,233
New York	C R Huntley	63	2,812	71	0	196	2,836	2,812	71	0	2,456
New York	C R Huntley	64	2,993	76	0	45	2,842	2,993	76	0	2,614
New York	C R Huntley	65	3,077	76	0	0	2,670	3,077	76	0	2,687
New York	C R Huntley	66	3,116	79	0	0	2,706	3,116	78	0	2,723
New York	C R Huntley	67	6,599	167	0	0	5,727	6,599	167	0	5,764
New York	C R Huntley	68	6,149	156	0	0	5,335	6,149	156	0	5,371
New York	Charles Poletti	001	7,357	186	0	0	6,385	7,357	186	0	6,426
New York	Danskammer	1	1,063	27	0	0	941	1,063	27	0	946
New York	Danskammer	2	1,051	27	0	0	912	1,051	27	0	918
New York	Danskammer	3	3,576	91	0	0	3,102	3,576	90	0	3,124
New York	Danskammer	4	6,891	174	0	0	5,980	6,891	174	0	6,018
New York	Dunkirk	1	3,248	82	0	0	2,819	3,248	82	0	2,837
New York	Dunkirk	2	3,690	93	0	0	3,202	3,690	93	0	3,223
New York	Dunkirk	3	6,046	153	0	0	5,246	6,046	153	0	5,261
New York	Dunkirk	4	6,749	171	0	0	5,856	6,749	170	0	5,895
New York	E F Barrett	10	2,710	69	0	0	2,351	2,710	68	0	2,368
New York	E F Barrett	20	2,671	68	0	0	2,317	2,671	67	0	2,333
New York	East River	50	1,586	40	0	0	1,385	1,586	40	0	1,384
New York	East River	60	1,633	41	0	0	1,418	1,633	41	0	1,427
New York	East River	70	1,161	30	0	0	1,024	1,161	30	0	1,031
New York	Far Rockaway	40	537	14	0	0	466	537	14	0	469
New York	Glenwood	40	1,072	27	0	0	931	1,072	27	0	936
New York	Glenwood	50	1,032	26	0	0	896	1,032	26	0	901
New York	Goudey	11	905	23	0	0	785	905	23	0	790
New York	Goudey	12	892	23	0	0	773	892	23	0	779
New York	Goudey	13	3,756	95	0	0	3,260	3,756	95	0	3,281
New York	Greenidge	4	1,121	28	0	0	973	1,121	28	0	979
New York	Greenidge	5	1,119	28	0	0	971	1,119	28	0	976
New York	Greenidge	6	3,639	92	0	0	3,158	3,639	92	0	3,178
New York	Hickling	1	808	20	0	18	720	808	20	0	706
New York	Hickling	2	808	20	0	18	720	808	20	0	706
New York	Hickling	3	969	25	0	47	867	969	24	0	847
New York	Hickling	4	1,010	26	0	49	925	1,010	26	0	902
New York	Jennison	1	684	17	0	51	645	684	17	0	598
New York	Jennison	2	712	18	0	53	671	712	18	0	622
New York	Jennison	3	714	18	0	99	718	714	18	0	624
New York	Jennison	4	714	18	0	99	718	714	18	0	624
New York	Lovett	3	256	7	0	0	223	256	7	0	225
New York	Lovett	4	5,222	132	0	0	4,532	5,222	132	0	4,561

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
New York	Lovett	5	5,700	144	0	0	4,948	5,700	144	0	4,979
New York	Milliken	1	5,631	143	0	0	4,885	5,631	142	0	4,918
New York	Milliken	2	5,959	151	0	0	5,171	5,959	150	0	5,205
New York	Northport	1	9,510	241	0	0	8,252	9,510	240	0	8,307
New York	Northport	2	11,575	293	0	0	10,044	11,575	292	0	10,111
New York	Northport	3	12,710	322	0	0	11,028	12,710	321	0	11,102
New York	Northport	4	6,620	168	0	0	5,743	6,620	167	0	5,782
New York	Oswego	1	0	0	0	0	0	0	0	0	0
New York	Oswego	2	0	0	0	0	0	0	0	0	0
New York	Oswego	3	103	3	0	0	89	103	3	0	90
New York	Oswego	4	455	12	0	0	395	455	11	0	398
New York	Oswego	5	9,499	240	0	8,929	17,172	9,499	240	0	8,297
New York	Oswego	6	5,494	139	0	0	4,767	5,494	139	0	4,799
New York	Port Jefferson	1	543	14	0	0	470	543	14	0	474
New York	Port Jefferson	2	569	14	0	0	494	569	14	0	497
New York	Port Jefferson	3	5,025	127	0	0	4,361	5,025	127	0	4,389
New York	Port Jefferson	4	5,920	150	0	0	5,137	5,920	149	0	5,171
New York	Ravenswood	10	3,617	92	0	0	3,138	3,617	91	0	3,160
New York	Ravenswood	20	3,060	77	0	0	2,656	3,060	77	0	2,673
New York	Ravenswood	30	5,704	144	0	0	4,950	5,704	144	0	4,982
New York	Rochester 3	1	0	0	0	0	0	0	0	0	0
New York	Rochester 3	2	0	0	0	0	0	0	0	0	0
New York	Rochester 3	3	2	0	0	0	2	2	0	0	2
New York	Rochester 3	4	0	0	0	0	0	0	0	0	0
New York	Rochester 3	7	71	2	0	139	201	71	2	0	62
New York	Rochester 3	8	0	0	0	0	0	0	0	0	0
New York	Rochester 3	12	2,593	66	0	0	2,250	2,593	65	0	2,265
New York	Rochester 7	1	1,249	32	0	0	1,084	1,249	32	0	1,080
New York	Rochester 7	2	1,856	47	0	0	1,612	1,856	47	0	1,623
New York	Rochester 7	3	1,813	46	0	0	1,573	1,813	46	0	1,583
New York	Rochester 7	4	2,529	64	0	0	2,194	2,529	64	0	2,209
New York	Roseton	1	16,577	420	0	1,077	15,461	16,577	418	0	14,480
New York	Roseton	2	14,786	374	0	1,972	14,802	14,786	373	0	12,915
New York	S A Carlson	9	759	19	0	0	659	759	19	0	663
New York	S A Carlson	10	766	19	0	0	667	766	19	0	671
New York	S A Carlson	11	486	13	0	0	421	486	12	0	425
New York	S A Carlson	12	1,457	36	0	0	1,266	1,457	36	0	1,273
New York	Somerset	1	15,871	402	0	0	13,772	15,871	401	0	13,862
New York	Waterside	41	288	7	0	0	251	288	7	0	252
New York	Waterside	42	283	7	0	0	246	283	7	0	247
New York	Waterside	51	476	13	0	0	413	476	13	0	415
New York	Waterside	52	476	12	0	0	414	476	12	0	415
New York	Waterside	61	492	12	0	0	426	492	12	0	430
New York	Waterside	62	578	14	0	0	503	578	14	0	505
New York	Waterside	80	1,288	33	0	0	1,118	1,288	33	0	1,125
New York	Waterside	90	1,409	35	0	0	1,223	1,409	35	0	1,231
New York	59Th Street	110	73	2	0	0	64	73	2	0	64

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
New York	74Th Street	120	511	13	0	0	443	511	13	0	447
New York	74Th Street	121	513	13	0	0	445	513	13	0	448
New York	74Th Street	122	511	13	0	0	443	511	13	0	447
North Carolina	Asheville	1	7,567	192	0	0	6,566	7,567	191	0	6,810
North Carolina	Asheville	2	6,012	152	0	0	5,218	6,012	152	0	5,251
North Carolina	Belews Creek	1	35,325	895	0	0	30,648	35,325	893	0	30,855
North Carolina	Belews Creek	2	37,208	943	0	0	32,282	37,208	940	0	32,500
North Carolina	Buck	5	2	0	0	1,029	1,031	2	0	0	2
North Carolina	Buck	6	1	0	0	588	589	1	0	0	1
North Carolina	Buck	7	393	10	0	714	1,056	393	10	0	343
North Carolina	Buck	8	686	17	0	1,721	2,317	686	17	0	600
North Carolina	Buck	9	2,074	53	0	1,056	2,856	2,074	52	0	1,812
North Carolina	Cape Fear	3	0	0	0	599	599	0	0	0	0
North Carolina	Cape Fear	4	0	0	0	589	599	0	0	0	0
North Carolina	Cape Fear	5	3,303	84	0	492	3,357	3,303	83	0	2,885
North Carolina	Cape Fear	6	3,378	86	0	957	3,866	3,378	85	0	2,951
North Carolina	Cliffside	1	1	0	0	897	898	1	0	0	1
North Carolina	Cliffside	2	1	0	0	871	872	1	0	0	1
North Carolina	Cliffside	3	24	1	0	1,270	1,291	24	1	0	21
North Carolina	Cliffside	4	20	1	0	1,286	1,305	20	1	0	17
North Carolina	Cliffside	5	13,530	342	0	2,199	13,940	13,530	342	0	11,816
North Carolina	Dan River	1	415	11	0	1,546	1,906	415	10	0	363
North Carolina	Dan River	2	381	10	0	2,446	2,776	381	10	0	332
North Carolina	Dan River	3	681	17	0	2,196	2,796	681	17	0	585
North Carolina	G G Allen	1	35	1	0	2,396	2,427	35	1	0	30
North Carolina	G G Allen	2	39	1	0	2,779	2,813	39	1	0	34
North Carolina	G G Allen	3	5,123	130	0	1,636	6,082	5,123	129	0	4,475
North Carolina	G G Allen	4	3,659	93	0	2,542	5,716	3,659	92	0	3,196
North Carolina	G G Allen	5	4,432	112	0	2,093	5,940	4,432	112	0	3,871
North Carolina	L V Sutton	1	824	21	0	1,330	2,046	824	21	0	720
North Carolina	L V Sutton	2	1,360	34	0	1,080	2,261	1,360	34	0	1,188
North Carolina	L V Sutton	3	5,831	146	0	3,195	8,253	5,831	147	0	5,068
North Carolina	Lee	1	741	19	0	987	1,630	741	19	0	647
North Carolina	Lee	2	946	24	0	855	1,877	946	24	0	826
North Carolina	Lee	3	5,536	140	0	918	5,723	5,536	140	0	4,837
North Carolina	Marshall	1	8,225	208	0	1,567	8,704	8,225	208	0	7,184
North Carolina	Marshall	2	9,282	235	0	1,133	9,196	9,282	235	0	8,116
North Carolina	Marshall	3	17,013	431	0	976	15,736	17,013	429	0	14,861
North Carolina	Marshall	4	15,255	386	0	1,786	15,023	15,255	385	0	13,325
North Carolina	Mayo	1A	14,609	370	0	0	12,677	14,609	369	0	12,760
North Carolina	Mayo	1B	14,609	370	0	0	12,677	14,609	369	0	12,760
North Carolina	Riverbend	7	1,539	39	0	605	2,140	1,539	39	0	1,344
North Carolina	Riverbend	8	1,420	36	0	670	2,103	1,420	36	0	1,240
North Carolina	Riverbend	9	406	10	0	1,911	2,284	406	10	0	355
North Carolina	Riverbend	10	1,339	34	0	1,454	2,616	1,339	34	0	1,168
North Carolina	Roxboro	1	12,671	321	0	0	10,995	12,671	320	0	11,068
North Carolina	Roxboro	2	22,445	566	0	0	19,476	22,445	567	0	19,605

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
North Carolina	Roxboro	3A	10,154	257	0	210	9,021	10,154	256	0	9,670
North Carolina	Roxboro	3B	10,154	257	0	210	9,021	10,154	256	0	9,670
North Carolina	Roxboro	4A	11,892	301	0	0	10,319	11,892	300	0	10,367
North Carolina	Roxboro	4B	11,892	301	0	0	10,319	11,892	300	0	10,367
North Carolina	W H Weatherspoon	1	533	13	0	656	1,116	533	13	0	486
North Carolina	W H Weatherspoon	2	540	14	0	653	1,121	540	14	0	471
North Carolina	W H Weatherspoon	3	1,069	27	0	690	1,818	1,069	27	0	934
North Dakota	Antelope Valley	B1	13,652	346	0	0	11,846	13,652	345	0	11,924
North Dakota	Antelope Valley	B2	12,720	322	0	0	11,037	12,720	321	0	11,111
North Dakota	Coal Creek	1	26,637	674	0	0	23,111	26,637	672	0	23,267
North Dakota	Coal Creek	2	24,212	613	0	0	21,007	24,212	611	0	21,149
North Dakota	Coyote	B1	18,490	468	0	0	16,044	18,490	467	0	16,150
North Dakota	Dakotas	**1	0	0	0	0	0	0	0	0	0
North Dakota	Leland Olds	1	10,404	263	0	0	9,027	10,404	263	0	9,087
North Dakota	Leland Olds	2	30,171	765	0	0	26,175	30,171	763	0	26,352
North Dakota	Milton R Young	B1	14,799	375	0	0	12,841	14,799	374	0	12,928
North Dakota	Milton R Young	B2	18,152	459	0	0	15,751	18,152	458	0	15,855
North Dakota	R M Heskett	B2	3,659	93	0	0	3,174	3,659	92	0	3,196
North Dakota	Stanton	1	8,510	215	0	0	7,385	8,510	215	0	7,433
North Dakota	Stanton	10	1,525	39	0	0	1,322	1,525	39	0	1,332
Ohio	Acme	9	1	0	0	0	1	1	0	0	1
Ohio	Acme	11	7	0	0	0	7	7	0	0	7
Ohio	Acme	13	10	0	0	1,837	1,846	10	0	0	9
Ohio	Acme	14	15	0	0	2,506	2,519	15	0	0	14
Ohio	Acme	15	21	0	0	3,346	3,365	21	0	0	19
Ohio	Acme	16	2,316	59	0	394	2,403	2,316	58	0	2,023
Ohio	Acme	91	886	22	0	1,236	2,007	886	22	0	778
Ohio	Acme	92	794	20	0	1,105	1,794	794	20	0	694
Ohio	Ashtabula	7	8,036	203	167	0	7,160	8,036	203	167	7,206
Ohio	Ashtabula	8	2,669	67	0	0	2,317	2,669	66	0	2,332
Ohio	Ashtabula	9	2,276	58	0	0	1,974	2,276	58	0	1,967
Ohio	Ashtabula	10	2,054	52	0	0	1,778	2,054	52	0	1,794
Ohio	Ashtabula	11	2,160	54	0	0	1,873	2,160	54	0	1,886
Ohio	Avon Lake	9	2,933	74	0	0	2,545	2,933	74	0	2,562
Ohio	Avon Lake	10	2,575	65	0	0	2,234	2,575	65	0	2,249
Ohio	Avon Lake	11	5,594	142	130	0	4,984	5,594	141	130	5,016
Ohio	Avon Lake	12	16,918	426	394	0	15,074	16,918	427	394	15,171
Ohio	Bay Shore	1	5,392	136	0	0	4,880	5,392	136	0	4,710
Ohio	Bay Shore	2	5,136	130	0	0	4,456	5,136	130	0	4,486
Ohio	Bay Shore	3	4,887	124	0	0	4,240	4,887	123	0	4,269
Ohio	Bay Shore	4	8,042	204	0	0	6,978	8,042	203	0	7,024
Ohio	Cardinal	1	16,449	416	383	0	14,657	16,449	415	383	14,751
Ohio	Cardinal	2	18,395	466	426	0	16,389	18,395	464	426	16,496
Ohio	Cardinal	3	19,104	484	0	583	17,159	19,104	482	0	16,667
Ohio	Conesville	1	2,019	51	47	0	1,799	2,019	51	47	1,811
Ohio	Conesville	2	2,349	59	55	0	2,094	2,349	59	55	2,107
Ohio	Conesville	3	2,636	67	61	0	2,350	2,636	67	61	2,365

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Ohio	Conesville	4	23,410	583	545	0	20,656	23,410	591	545	20,983
Ohio	Conesville	5	8,190	207	0	1,858	8,965	8,190	207	0	7,153
Ohio	Conesville	6	9,070	230	0	1,457	9,326	9,070	229	0	7,922
Ohio	Dover	**6	175	4	0	0	152	175	4	0	153
Ohio	Eastlake	1	3,746	95	87	0	3,338	3,746	95	87	3,359
Ohio	Eastlake	2	4,146	105	97	0	3,694	4,146	105	97	3,716
Ohio	Eastlake	3	4,806	122	112	0	4,264	4,806	121	112	4,312
Ohio	Eastlake	4	6,966	176	162	0	6,207	6,966	176	162	6,248
Ohio	Eastlake	5	16,483	468	430	0	16,468	16,483	467	430	16,574
Ohio	Edgewater	11	1,003	25	0	0	871	481	12	0	420
Ohio	Edgewater	12	1,081	27	0	0	939	519	13	0	453
Ohio	Edgewater	13	2,426	61	56	0	2,162	2,426	61	56	2,175
Ohio	Gen J M Gavin	1	37,957	962	885	0	33,817	37,957	959	886	34,039
Ohio	Gen J M Gavin	2	38,666	980	901	0	34,450	38,666	977	901	34,676
Ohio	Gorge	25	1,711	43	0	0	1,485	821	21	0	717
Ohio	Gorge	26	1,917	49	0	0	1,662	920	23	0	804
Ohio	Hamilton	9	1,326	34	0	505	1,855	1,326	33	0	1,150
Ohio	J M Stuart	1	22,433	568	0	0	19,465	22,433	566	0	19,585
Ohio	J M Stuart	2	21,267	538	0	0	18,453	21,267	537	0	18,578
Ohio	J M Stuart	3	21,087	534	0	0	18,297	21,087	532	0	18,410
Ohio	J M Stuart	4	22,287	564	0	0	19,338	22,287	563	0	19,467
Ohio	Killen Station	2	19,344	490	0	0	16,784	19,344	488	0	16,897
Ohio	Kyger Creek	1	9,256	234	0	0	8,032	9,256	234	0	8,084
Ohio	Kyger Creek	2	8,909	226	0	0	7,730	8,909	225	0	7,782
Ohio	Kyger Creek	3	8,597	218	0	0	7,459	8,597	217	0	7,509
Ohio	Kyger Creek	4	8,981	227	0	0	7,794	8,981	227	0	7,844
Ohio	Kyger Creek	5	8,997	228	0	0	7,808	8,997	227	0	7,858
Ohio	Lake Road	6	0	0	0	1,340	1,340	0	0	0	0
Ohio	Lake Shore	18	5,720	145	0	1,027	5,990	5,720	144	0	4,997
Ohio	Lake Shore	91	53	1	0	0	47	53	1	0	47
Ohio	Lake Shore	92	95	2	0	0	84	95	2	0	83
Ohio	Lake Shore	93	74	2	0	0	65	74	2	0	65
Ohio	Lake Shore	94	122	3	0	0	108	122	3	0	107
Ohio	Miami Fort	6	5,464	138	127	0	4,866	5,464	138	127	4,900
Ohio	Miami Fort	7	16,485	408	430	0	16,469	16,485	467	430	16,576
Ohio	Miami Fort	8	20,834	527	0	0	18,079	20,834	526	0	18,196
Ohio	Miami Fort	5-1	159	4	4	0	142	159	4	4	143
Ohio	Miami Fort	5-2	159	4	4	0	142	159	4	4	143
Ohio	Muskingum River	1	7,140	181	166	0	6,361	7,140	180	166	6,403
Ohio	Muskingum River	2	6,800	172	156	0	6,059	6,800	172	156	6,087
Ohio	Muskingum River	3	6,698	170	156	0	5,966	6,698	169	156	6,007
Ohio	Muskingum River	4	5,653	143	132	0	5,037	5,653	143	132	6,069
Ohio	Muskingum River	5	19,423	492	452	0	17,306	19,423	490	452	17,416
Ohio	Niles	1	3,333	84	78	0	2,970	3,333	84	78	2,999
Ohio	Niles	2	4,367	111	102	0	3,891	4,367	110	102	3,917
Ohio	O H Hutchings	H-1	453	11	0	1,339	1,733	453	11	0	396
Ohio	O H Hutchings	H-2	353	9	0	1,362	1,686	353	9	0	308

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Ohio	O H Hutchings	H-3	667	17	0	1,018	1,586	667	17	0	582
Ohio	O H Hutchings	H-4	732	16	0	983	1,618	732	16	0	640
Ohio	O H Hutchings	H-5	566	15	0	1,116	1,626	566	15	0	512
Ohio	O H Hutchings	H-6	424	11	0	1,289	1,657	424	11	0	370
Ohio	Picway	9	2,368	60	55	0	2,110	2,368	60	55	2,123
Ohio	Poston	1	900	23	0	0	760	900	23	0	786
Ohio	Poston	2	836	21	0	0	725	836	21	0	730
Ohio	Poston	3	1,093	28	0	0	948	1,093	28	0	954
Ohio	R E Burger	1	1,409	36	0	0	1,223	676	17	0	561
Ohio	R E Burger	2	1,378	35	0	0	1,196	661	17	0	577
Ohio	R E Burger	3	1,423	36	0	0	1,235	683	17	0	567
Ohio	R E Burger	4	1,457	37	0	0	1,265	700	18	0	611
Ohio	R E Burger	5	1,478	37	34	0	1,319	1,478	37	34	1,326
Ohio	R E Burger	6	1,474	37	34	0	1,314	1,474	37	34	1,322
Ohio	R E Burger	7	5,174	131	120	0	4,609	5,174	131	120	4,636
Ohio	R E Burger	8	5,967	151	138	0	5,317	5,967	151	138	5,351
Ohio	Refuse & Coal	001	486	12	0	0	423	486	12	0	426
Ohio	Refuse & Coal	002	435	12	0	0	378	435	12	0	378
Ohio	Refuse & Coal	003	459	12	0	0	399	459	12	0	402
Ohio	Refuse & Coal	004	501	12	0	0	432	501	12	0	436
Ohio	Refuse & Coal	005	429	12	0	0	372	429	12	0	379
Ohio	Refuse & Coal	006	417	12	0	0	360	417	12	0	363
Ohio	Richard Gorsuch	1	7,030	178	0	0	6,096	7,030	178	0	6,140
Ohio	Richard Gorsuch	2	5,786	146	0	0	5,020	5,786	146	0	5,054
Ohio	Richard Gorsuch	3	7,662	196	0	0	6,822	7,662	196	0	6,696
Ohio	Richard Gorsuch	4	1,602	40	0	0	1,392	1,602	40	0	1,400
Ohio	Tidd	**1	816	21	0	0	706	816	21	0	712
Ohio	Toronto	9	2,140	54	0	0	1,856	1,027	26	0	897
Ohio	Toronto	10	3,820	97	0	0	3,314	1,834	47	0	1,602
Ohio	Toronto	11	4,126	105	0	0	3,581	1,982	49	0	1,732
Ohio	W H Sammis	1	7,130	180	0	0	6,187	7,130	180	0	6,226
Ohio	W H Sammis	2	6,253	158	0	0	5,426	6,253	158	0	5,462
Ohio	W H Sammis	3	7,129	180	0	0	6,186	7,129	180	0	6,227
Ohio	W H Sammis	4	6,317	160	0	0	5,481	6,317	159	0	5,516
Ohio	W H Sammis	5	11,600	294	270	0	10,335	11,600	293	270	10,402
Ohio	W H Sammis	6	22,210	562	517	0	19,790	22,210	561	517	19,916
Ohio	W H Sammis	7	20,747	525	483	0	18,486	20,747	524	483	18,605
Ohio	W H Zimmer	1	18,458	467	0	0	16,017	18,458	466	0	16,122
Ohio	Walter C Beckjord	1	539	14	0	1,363	1,830	539	14	0	470
Ohio	Walter C Beckjord	2	812	21	0	1,148	1,853	812	21	0	709
Ohio	Walter C Beckjord	3	1,228	31	0	1,455	2,521	1,228	31	0	1,073
Ohio	Walter C Beckjord	4	2,442	62	0	1,125	3,245	2,442	62	0	2,133
Ohio	Walter C Beckjord	5	4,294	109	100	0	3,825	4,294	109	100	3,851
Ohio	Walter C Beckjord	6	11,048	280	257	0	9,843	11,048	279	257	9,907
Ohio	Woodsdale	**GT1	337	9	0	0	292	337	9	0	294
Ohio	Woodsdale	**GT2	337	9	0	0	292	337	9	0	294
Ohio	Woodsdale	**GT3	337	9	0	0	292	337	9	0	294

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Ohio	Woodsdale	**GT4	337	9	0	0	292	337	9	0	294
Ohio	Woodsdale	**GT5	337	9	0	0	292	337	9	0	294
Ohio	Woodsdale	**GT6	0	0	0	0	0	0	0	0	0
Ohio	Woodsdale	**GT9	0	0	0	0	0	0	0	0	0
Ohio	Woodsdale	**GT10	0	0	0	0	0	0	0	0	0
Ohio	Woodsdale	**GT11	0	0	0	0	0	0	0	0	0
Ohio	Woodsdale	**GT12	0	0	0	0	0	0	0	0	0
Oklahoma	Anadarko	3	0	0	0	0	0	1	0	0	1
Oklahoma	Arbuckle	ARB	1	0	0	44	45	58	1	0	49
Oklahoma	Comanche	7251	2	0	0	330	332	164	4	0	143
Oklahoma	Comanche	7252	2	0	0	0	2	164	4	0	143
Oklahoma	Conoco	**1	253	6	0	0	220	253	6	0	221
Oklahoma	Conoco	**2	253	6	0	0	220	253	6	0	221
Oklahoma	Grda	1	15,939	403	0	694	14,525	15,939	402	0	13,923
Oklahoma	Grda	2	9,550	242	0	38	8,325	9,550	241	0	8,342
Oklahoma	Horseshoe Lake	6	4	0	0	169	173	183	5	0	158
Oklahoma	Horseshoe Lake	7	5	0	0	226	231	236	6	0	206
Oklahoma	Horseshoe Lake	8	8	0	0	306	313	408	10	0	357
Oklahoma	Hugo	1	13,090	331	0	421	11,780	13,090	330	0	11,434
Oklahoma	Inola	**1	0	0	0	0	0	0	0	0	0
Oklahoma	Mooreland	1	0	0	0	0	0	1	0	0	1
Oklahoma	Mooreland	2	1	0	0	43	44	65	2	0	56
Oklahoma	Mooreland	3	0	0	0	8	8	19	0	0	17
Oklahoma	Muskogee	3	3	0	0	138	141	166	4	0	136
Oklahoma	Muskogee	4	10,130	256	0	446	9,236	10,130	256	0	8,848
Oklahoma	Muskogee	5	8,837	226	0	456	8,211	8,837	226	0	7,806
Oklahoma	Muskogee	6	15,662	402	0	516	14,307	15,662	401	0	13,661
Oklahoma	Mustang	1	1	0	0	31	32	30	1	0	26
Oklahoma	Mustang	2	1	0	0	25	26	29	1	0	25
Oklahoma	Mustang	3	1	0	0	0	1	82	2	0	81
Oklahoma	Mustang	4	5	0	0	158	163	216	6	0	190
Oklahoma	Na 1 -- 5030	**1	0	0	0	0	0	0	0	0	0
Oklahoma	Na 1 -- 5030	**2	0	0	0	0	0	0	0	0	0
Oklahoma	Na 1 -- 5030	**3	0	0	0	0	0	0	0	0	0
Oklahoma	Northeastern	3301	1,878	48	0	90	1,727	1,878	47	0	1,641
Oklahoma	Northeastern	3302	6,363	161	0	366	5,868	6,363	161	0	5,556
Oklahoma	Northeastern	3313	15,113	383	0	606	13,721	15,113	382	0	13,200
Oklahoma	Northeastern	3314	16,354	414	0	572	14,762	16,354	413	0	14,285
Oklahoma	Ponca	2	0	0	0	0	0	0	0	0	0
Oklahoma	Riverside	1501	6	0	0	514	519	476	12	0	416
Oklahoma	Riverside	1502	5	0	0	290	295	382	10	0	333
Oklahoma	Seminole	1	14	0	0	399	412	437	11	0	382
Oklahoma	Seminole	2	8	0	0	447	452	492	12	0	430
Oklahoma	Seminole	3	44	1	0	455	494	577	15	0	504
Oklahoma	Sooner	1	11,336	287	0	550	10,367	11,336	286	0	9,902
Oklahoma	Sooner	2	10,781	273	0	545	9,899	10,781	272	0	9,417
Oklahoma	Southwestern	8002	0	0	0	15	15	20	1	0	17

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Oklahoma	Southwestern	6003	3	0	0	161	164	168	5	0	164
Oklahoma	Southwestern	601N	0	0	0	3	3	5	0	0	4
Oklahoma	Southwestern	601S	0	0	0	0	0	3	0	0	3
Oklahoma	Tulsa	1402	0	0	0	98	98	51	1	0	45
Oklahoma	Tulsa	1403	0	0	0	4	4	3	0	0	3
Oklahoma	Tulsa	1404	1	0	0	57	56	73	2	0	64
Oregon	Boardman	1SG	15,286	387	0	0	13,265	15,286	386	0	13,352
Pennsylvania	Armstrong	1	6,918	175	161	0	6,164	6,918	175	161	6,203
Pennsylvania	Armstrong	2	7,407	188	172	0	6,596	7,407	187	172	6,642
Pennsylvania	Bruce Mansfield	1	14,532	368	0	0	12,609	14,532	367	0	12,693
Pennsylvania	Bruce Mansfield	2	16,077	407	0	0	13,950	16,077	406	0	14,043
Pennsylvania	Bruce Mansfield	3	16,538	419	0	0	14,350	16,538	418	0	14,445
Pennsylvania	Brunner Island	1	13,326	337	310	0	11,874	13,326	336	310	11,950
Pennsylvania	Brunner Island	2	14,930	378	348	0	13,303	14,930	377	348	13,389
Pennsylvania	Brunner Island	3	25,836	654	601	0	23,018	25,836	652	601	23,168
Pennsylvania	Cheswick	1	18,800	476	438	0	16,751	18,800	475	438	16,859
Pennsylvania	Conemaugh	1	28,874	732	672	0	25,723	28,874	730	672	25,891
Pennsylvania	Conemaugh	2	32,005	811	745	0	28,513	32,005	809	745	28,700
Pennsylvania	Cromby	1	2,516	64	0	0	2,164	2,516	64	0	2,166
Pennsylvania	Cromby	2	2,411	61	0	0	2,093	2,411	61	0	2,106
Pennsylvania	Delaware	71	850	22	0	0	737	850	21	0	743
Pennsylvania	Delaware	81	614	16	0	0	532	614	16	0	536
Pennsylvania	Eddystone	1	2,920	74	0	290	2,823	2,920	74	0	2,550
Pennsylvania	Eddystone	2	2,856	72	0	506	2,985	2,856	72	0	2,496
Pennsylvania	Eddystone	3	2,166	55	0	0	1,879	2,166	55	0	1,892
Pennsylvania	Eddystone	4	2,298	58	0	0	1,994	2,298	58	0	2,007
Pennsylvania	Elrama	1	812	21	0	939	1,844	812	21	0	709
Pennsylvania	Elrama	2	755	19	0	955	1,810	755	19	0	660
Pennsylvania	Elrama	3	1,743	44	0	42	1,556	1,743	44	0	1,522
Pennsylvania	Elrama	4	2,948	75	0	0	2,556	2,948	74	0	2,575
Pennsylvania	F R Phillips	1	164	3	0	518	662	164	3	0	144
Pennsylvania	F R Phillips	2	125	3	0	394	504	125	3	0	109
Pennsylvania	F R Phillips	3	290	8	0	911	1,162	290	8	0	252
Pennsylvania	F R Phillips	4	276	7	0	870	1,111	278	7	0	242
Pennsylvania	F R Phillips	5	281	7	0	884	1,130	281	7	0	245
Pennsylvania	F R Phillips	6	1,265	32	0	915	2,013	1,265	32	0	1,105
Pennsylvania	Front Street	7	337	9	0	0	292	337	9	0	294
Pennsylvania	Front Street	8	337	9	0	0	292	337	9	0	294
Pennsylvania	Front Street	9	1,344	36	0	0	1,164	1,344	32	0	1,176
Pennsylvania	Front Street	10	1,344	36	0	0	1,164	1,344	32	0	1,176
Pennsylvania	Hatfield'S Ferry	1	18,157	480	423	0	16,178	18,157	458	423	16,283
Pennsylvania	Hatfield'S Ferry	2	17,815	453	417	0	15,983	17,815	452	417	16,085
Pennsylvania	Hatfield'S Ferry	3	19,329	489	450	0	17,222	19,329	488	450	17,333
Pennsylvania	Holtwood	17	4,061	103	0	0	3,542	4,061	103	0	3,565
Pennsylvania	Homer City	1	20,293	514	0	0	17,808	20,293	512	0	17,726
Pennsylvania	Homer City	2	17,613	446	0	901	16,184	17,613	445	0	16,364
Pennsylvania	Homer City	3	31,573	800	0	0	27,392	31,573	798	0	27,578

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Pennsylvania	Hunlock Power	6	2,579	65	0	0	2,238	2,579	65	0	2,253
Pennsylvania	Keystone	1	32,247	817	0	0	27,978	32,247	815	0	28,167
Pennsylvania	Keystone	2	34,335	870	0	0	29,789	34,335	868	0	29,990
Pennsylvania	Marcus Hook Refinery	1	0	0	0	0	0	0	0	0	0
Pennsylvania	Martins Creek	1	6,075	154	141	0	5,412	6,075	153	141	5,446
Pennsylvania	Martins Creek	2	6,154	156	143	0	5,483	6,154	155	143	5,518
Pennsylvania	Martins Creek	3	15,084	381	0	0	13,072	15,084	380	0	13,158
Pennsylvania	Martins Creek	4	13,857	351	0	0	12,024	13,857	350	0	12,103
Pennsylvania	Mitchell	1	0	0	0	0	0	0	0	0	0
Pennsylvania	Mitchell	2	1	0	0	0	1	1	0	0	1
Pennsylvania	Mitchell	3	0	0	0	0	0	0	0	0	0
Pennsylvania	Mitchell	33	3,540	90	0	431	3,502	3,540	89	0	3,092
Pennsylvania	Montour	1	27,398	693	0	215	23,867	27,398	692	0	23,931
Pennsylvania	Montour	2	28,204	714	0	0	24,470	28,204	712	0	24,635
Pennsylvania	New Castle	1	1,476	37	0	0	1,282	709	18	0	819
Pennsylvania	New Castle	2	1,643	41	0	0	1,426	769	20	0	889
Pennsylvania	New Castle	3	3,248	82	0	0	2,819	3,248	82	0	2,837
Pennsylvania	New Castle	4	2,973	75	0	215	2,795	2,973	75	0	2,987
Pennsylvania	New Castle	5	5,158	131	0	0	4,478	5,158	130	0	4,508
Pennsylvania	Portland	1	2,850	72	66	0	2,539	2,850	72	66	2,555
Pennsylvania	Portland	2	4,913	124	114	0	4,377	4,913	124	114	4,405
Pennsylvania	Richmond	63	0	0	0	0	0	0	0	0	0
Pennsylvania	Richmond	64	0	0	0	0	0	0	0	0	0
Pennsylvania	Schuylkill	1	654	17	0	0	567	654	17	0	571
Pennsylvania	Seward	12	1,253	32	0	0	1,087	1,253	32	0	1,094
Pennsylvania	Seward	14	1,253	32	0	0	1,087	1,253	32	0	1,094
Pennsylvania	Seward	15	5,715	145	0	0	4,956	5,715	144	0	4,992
Pennsylvania	Shawville	1	4,930	125	115	0	4,393	4,930	124	115	4,422
Pennsylvania	Shawville	2	4,980	126	115	0	4,419	4,980	125	115	4,446
Pennsylvania	Shawville	3	6,803	172	156	0	6,061	6,803	172	156	6,100
Pennsylvania	Shawville	4	6,757	171	157	0	6,020	6,757	171	157	6,059
Pennsylvania	Southwark	11	0	0	0	0	0	0	0	0	0
Pennsylvania	Southwark	12	0	0	0	0	0	0	0	0	0
Pennsylvania	Southwark	21	0	0	0	0	0	0	0	0	0
Pennsylvania	Southwark	22	0	0	0	0	0	0	0	0	0
Pennsylvania	Springdale	77	0	0	0	0	0	0	0	0	0
Pennsylvania	Springdale	88	0	0	0	0	0	0	0	0	0
Pennsylvania	Sunbury	3	4,554	115	43	0	3,995	4,554	115	43	4,020
Pennsylvania	Sunbury	4	5,844	148	138	0	5,208	5,844	148	138	5,240
Pennsylvania	Sunbury	1A	2,077	52	0	0	1,802	2,077	52	0	1,815
Pennsylvania	Sunbury	1B	2,076	52	0	0	1,801	2,076	52	0	1,814
Pennsylvania	Sunbury	2A	2,077	52	0	0	1,802	2,077	52	0	1,815
Pennsylvania	Sunbury	2B	2,077	52	0	0	1,802	2,077	52	0	1,815
Pennsylvania	Titus	1	2,169	55	0	252	2,134	2,169	55	0	1,894
Pennsylvania	Titus	2	2,466	63	0	97	2,253	2,466	63	0	2,171
Pennsylvania	Titus	3	2,275	58	0	204	2,177	2,275	57	0	1,966
Pennsylvania	Warren	1	823	21	0	0	714	823	21	0	719

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Pennsylvania	Warren	2	823	21	0	0	714	823	21	0	719
Pennsylvania	Warren	3	845	21	0	0	733	845	21	0	738
Pennsylvania	Warren	4	845	21	0	0	733	845	21	0	738
Pennsylvania	Williamsburg	11	1,068	27	0	0	927	1,068	27	0	933
Rhode Island	Manchester Street	6	749	19	0	37	687	749	19	0	654
Rhode Island	Manchester Street	7	497	13	0	24	454	497	13	0	434
Rhode Island	Manchester Street	12	553	14	0	28	507	553	14	0	483
Rhode Island	South Street	121	1,195	30	0	41	1,080	1,195	30	0	1,044
Rhode Island	South Street	122	1,083	28	0	0	939	1,083	28	0	946
South Carolina	Canadys Steam	CAN1	3,350	85	0	316	3,223	3,350	85	0	2,926
South Carolina	Canadys Steam	CAN2	2,834	67	0	674	2,960	2,834	66	0	2,301
South Carolina	Canadys Steam	CAN3	3,542	90	0	1,124	4,167	3,542	89	0	3,094
South Carolina	Cross	1	6,401	162	0	0	5,555	6,401	162	0	5,561
South Carolina	Cross	2	10,216	259	0	0	8,864	10,216	258	0	8,923
South Carolina	Dolphus M Grainger	1	3,556	90	0	0	3,067	3,556	90	0	3,108
South Carolina	Dolphus M Grainger	2	316	8	0	0	274	316	8	0	276
South Carolina	H B Robinson	1	3,317	84	0	912	3,790	3,317	84	0	2,897
South Carolina	Hagood	**4	1,084	27	0	0	942	1,084	27	0	947
South Carolina	Hagood	HAG1	3	0	0	0	3	3	0	0	3
South Carolina	Hagood	HAG2	2	0	0	449	451	2	0	0	2
South Carolina	Hagood	HAG3	7	0	0	781	787	7	0	0	6
South Carolina	Jefferies	1	0	0	0	0	0	0	0	0	0
South Carolina	Jefferies	2	1	0	0	0	1	1	0	0	1
South Carolina	Jefferies	3	3,854	96	0	514	3,857	3,854	97	0	3,367
South Carolina	Jefferies	4	3,599	91	0	593	3,718	3,599	91	0	3,143
South Carolina	Mcmeekin	MCM1	4,862	118	0	0	4,045	4,862	118	0	4,072
South Carolina	Mcmeekin	MCM2	4,814	117	0	0	4,004	4,814	116	0	4,031
South Carolina	Ns 4 -- 7210	**ST1	0	0	0	0	0	0	0	0	0
South Carolina	Urquhart	URQ1	2,509	64	0	0	2,178	2,509	63	0	2,162
South Carolina	Urquhart	URQ2	1,922	49	0	245	1,912	1,922	48	0	1,878
South Carolina	Urquhart	URQ3	3,329	84	0	0	2,869	3,329	84	0	2,908
South Carolina	W S Lee	1	1,027	26	0	1,234	2,125	1,027	26	0	897
South Carolina	W S Lee	2	1,292	33	0	1,147	2,267	1,292	33	0	1,126
South Carolina	W S Lee	3	2,022	51	0	1,874	3,429	2,022	51	0	1,766
South Carolina	Wateree	WAT1	11,104	281	0	0	9,635	11,104	280	0	9,699
South Carolina	Wateree	WAT2	10,292	261	0	263	9,193	10,292	260	0	8,990
South Carolina	Williams	WIL1	18,079	456	0	0	15,687	18,079	456	0	15,792
South Carolina	Winyah	1	8,655	219	0	0	7,510	8,655	218	0	7,560
South Carolina	Winyah	2	5,849	148	0	1,115	6,190	5,849	148	0	5,109
South Carolina	Winyah	3	2,862	72	0	1,106	3,590	2,862	72	0	2,500
South Carolina	Winyah	4	3,916	99	0	0	3,396	3,916	99	0	3,420
South Dakota	Big Stone	1	14,799	375	0	784	13,605	14,799	374	0	12,926
South Dakota	Huron	**2A	91	2	0	0	80	91	2	0	80
South Dakota	Huron	**2B	117	3	0	0	101	117	3	0	102
South Dakota	Mobile	**2	20	1	0	0	17	20	1	0	17
South Dakota	Pathfinder	11	12	0	0	0	11	12	0	0	11
South Dakota	Pathfinder	12	2	0	0	0	2	2	0	0	2

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
South Dakota	Pathfinder	13	2	0	0	0	2	2	0	0	2
Tennessee	Allen	1	7,355	186	171	0	6,554	7,355	186	171	6,595
Tennessee	Allen	2	8,049	204	187	0	7,171	8,049	203	187	7,218
Tennessee	Allen	3	7,520	190	175	0	6,701	7,520	190	175	6,743
Tennessee	Bull Run	1	28,623	725	0	0	24,634	28,623	724	0	25,000
Tennessee	Cumberland	1	41,616	1,054	970	0	37,077	41,616	1,052	970	37,320
Tennessee	Cumberland	2	45,523	1,153	1,061	0	40,559	45,523	1,150	1,061	40,824
Tennessee	Gallatin	1	8,485	214	197	0	7,542	8,485	214	197	7,581
Tennessee	Gallatin	2	8,306	210	193	0	7,403	8,306	210	193	7,450
Tennessee	Gallatin	3	9,611	243	224	0	8,564	9,611	243	224	8,619
Tennessee	Gallatin	4	10,204	258	238	0	9,092	10,204	258	238	9,150
Tennessee	John Sevier	1	7,268	184	0	0	6,306	7,268	183	0	6,349
Tennessee	John Sevier	2	7,265	184	0	0	6,304	7,265	183	0	6,346
Tennessee	John Sevier	3	7,450	189	0	0	6,463	7,450	186	0	6,507
Tennessee	John Sevier	4	7,620	193	0	0	6,612	7,620	192	0	6,656
Tennessee	Johnsonville	1	3,736	95	87	0	3,330	3,736	94	87	3,352
Tennessee	Johnsonville	2	3,857	98	90	0	3,436	3,857	97	90	3,459
Tennessee	Johnsonville	3	4,037	102	94	0	3,598	4,037	102	94	3,620
Tennessee	Johnsonville	4	3,833	97	89	0	3,415	3,833	97	89	3,437
Tennessee	Johnsonville	5	3,954	100	92	0	3,523	3,954	100	92	3,546
Tennessee	Johnsonville	6	3,789	96	88	0	3,375	3,789	96	88	3,397
Tennessee	Johnsonville	7	4,309	109	100	0	3,839	4,309	109	100	3,864
Tennessee	Johnsonville	8	4,178	106	97	0	3,722	4,178	105	97	3,747
Tennessee	Johnsonville	9	3,387	86	79	0	3,027	3,387	86	79	3,046
Tennessee	Johnsonville	10	3,625	92	84	0	3,230	3,625	92	84	3,250
Tennessee	Kingston	1	4,743	120	0	0	4,116	4,743	120	0	4,143
Tennessee	Kingston	2	4,524	115	0	33	3,956	4,524	114	0	3,952
Tennessee	Kingston	3	5,430	137	0	0	4,713	5,430	137	0	4,743
Tennessee	Kingston	4	5,761	146	0	0	4,999	5,761	145	0	5,032
Tennessee	Kingston	5	7,079	179	0	0	6,142	7,079	179	0	6,183
Tennessee	Kingston	6	7,253	184	0	0	6,293	7,253	183	0	6,336
Tennessee	Kingston	7	7,072	179	0	0	6,137	7,072	179	0	6,177
Tennessee	Kingston	8	6,609	167	0	0	5,736	6,609	167	0	5,773
Tennessee	Kingston	9	7,319	185	0	0	6,351	7,319	185	0	6,393
Tennessee	Watts Bar	A	0	0	0	0	0	0	0	0	0
Tennessee	Watts Bar	B	0	0	0	0	0	0	0	0	0
Tennessee	Watts Bar	C	0	0	0	0	0	0	0	0	0
Tennessee	Watts Bar	D	0	0	0	0	0	0	0	0	0
Texas	Barney M Davis	1	29	1	0	470	495	470	12	0	410
Texas	Barney M Davis	2	26	1	0	378	398	436	11	0	383
Texas	Big Brown	1	22,996	582	0	856	20,813	22,996	581	0	20,068
Texas	Big Brown	2	21,999	557	0	825	19,714	21,999	555	0	19,218
Texas	Bryan	6	14	0	0	6	19	26	1	0	22
Texas	C E Newman	BW5	0	0	0	3	3	4	0	0	4
Texas	Cedar Bayou	CBY1	16	0	0	798	813	601	20	0	700
Texas	Cedar Bayou	CBY2	8	0	0	918	921	978	25	0	854
Texas	Cedar Bayou	CBY3	17	0	0	710	725	808	20	0	704

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Texas	Coleto Creek	1	15,750	399	0	938	14,604	15,750	398	0	13,757
Texas	Coleto Creek	**2	0	0	0	0	0	0	0	0	0
Texas	Collin	1	54	1	0	44	92	107	3	0	93
Texas	Concho	2	0	0	0	4	4	0	0	0	0
Texas	Concho	4	0	0	0	0	0	0	0	0	0
Texas	Concho	5	0	0	0	0	0	0	0	0	0
Texas	Concho	6	0	0	0	0	0	0	0	0	0
Texas	Concho	7	6	0	0	0	7	14	0	0	13
Texas	Dallas	3	7	0	0	21	27	27	1	0	73
Texas	Dallas	9	8	0	0	19	26	29	1	0	25
Texas	Dansby	1	34	1	0	84	94	121	3	0	106
Texas	Decker Creek	1	2	0	0	126	126	171	4	0	160
Texas	Decker Creek	2	2	0	0	193	195	206	5	0	180
Texas	Decordova	1	29	1	0	992	1,017	1,004	25	0	877
Texas	Deepwater	DWP1	0	0	0	0	0	0	0	0	0
Texas	Deepwater	DWP2	0	0	0	0	0	0	0	0	0
Texas	Deepwater	DWP3	0	0	0	0	0	0	0	0	0
Texas	Deepwater	DWP4	0	0	0	0	0	0	0	0	0
Texas	Deepwater	DWP5	0	0	0	0	0	0	0	0	0
Texas	Deepwater	DWP6	0	0	0	0	0	0	0	0	0
Texas	Deepwater	DWP9	1	0	0	27	28	42	1	0	37
Texas	E S Joslin	1	2	0	0	257	259	238	8	0	209
Texas	Eagle Mountain	1	7	0	0	46	52	49	1	0	43
Texas	Eagle Mountain	2	24	1	0	119	140	132	3	0	116
Texas	Eagle Mountain	3	2	0	0	97	99	124	3	0	108
Texas	Forest Grove	**1	0	0	0	0	0	0	0	0	0
Texas	Fort Phantom	1	8	0	0	119	126	147	4	0	128
Texas	Fort Phantom	2	37	1	0	155	187	220	6	0	182
Texas	Generic Stat	**1	0	0	0	0	0	0	0	0	0
Texas	Generic Stat	**2	0	0	0	0	0	0	0	0	0
Texas	Gibbons Creek	1	15,861	401	0	534	14,296	15,861	400	0	13,854
Texas	Graham	1	4	0	0	231	235	222	6	0	194
Texas	Graham	2	44	1	0	457	496	463	12	0	404
Texas	Greens Bayou	GBY1	0	0	0	1	1	3	0	0	3
Texas	Greens Bayou	GBY2	0	0	0	2	2	3	0	0	3
Texas	Greens Bayou	GBY3	0	0	0	15	15	7	0	0	6
Texas	Greens Bayou	GBY4	0	0	0	19	19	9	0	0	8
Texas	Greens Bayou	GBY5	31	1	0	324	351	352	9	0	307
Texas	Gt 98	**1	0	0	0	0	0	0	0	0	0
Texas	Gt 98	**2	0	0	0	0	0	0	0	0	0
Texas	Gt 99	**1	0	0	0	0	0	0	0	0	0
Texas	Gt 99	**2	0	0	0	0	0	0	0	0	0
Texas	Gt 99	**3	0	0	0	0	0	0	0	0	0
Texas	Handley	2	0	0	0	21	21	17	0	0	15
Texas	Handley	3	21	1	0	404	422	448	11	0	382
Texas	Handley	4	16	0	0	104	116	126	3	0	112
Texas	Handley	5	22	1	0	117	138	145	4	0	128

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Texas	Handley	1A	0	0	0	7	7	3	0	0	3
Texas	Handley	1B	0	0	0	0	0	3	0	0	3
Texas	Harrington Station	061B	8,796	223	0	536	8,167	8,796	222	0	7,663
Texas	Harrington Station	062B	9,350	237	0	537	8,651	9,350	236	0	8,167
Texas	Harrington Station	063B	9,971	252	0	542	9,195	9,971	252	0	8,709
Texas	Hiram Clarke	HOC1	0	0	0	0	0	0	0	0	0
Texas	Hiram Clarke	HOC2	0	0	0	0	0	0	0	0	0
Texas	Hiram Clarke	HOC3	0	0	0	3	3	2	0	0	2
Texas	Hiram Clarke	HOC4	0	0	0	2	2	1	0	0	1
Texas	Holly Ave	1	1	0	0	58	59	81	2	0	71
Texas	Holly Ave	2	1	0	0	70	71	87	2	0	76
Texas	Holly Street	1	0	0	0	49	49	19	0	0	17
Texas	Holly Street	2	0	0	0	31	31	21	1	0	18
Texas	Holly Street	3	1	0	0	67	68	75	2	0	65
Texas	Holly Street	4	2	0	0	41	43	93	2	0	82
Texas	J K Spruce	**1	7,847	184	0	0	8,635	7,847	183	0	8,679
Texas	J K Spruce	**2	0	0	0	0	0	0	0	0	0
Texas	J L Bates	1	1	0	0	47	48	52	1	0	46
Texas	J L Bates	2	2	0	0	122	124	115	3	0	100
Texas	J T Deely	1	14,339	363	0	586	13,029	14,339	362	0	12,525
Texas	J T Deely	2	14,958	379	0	815	13,594	14,958	378	0	13,065
Texas	Jones Station	151B	2	0	0	123	125	84	2	0	73
Texas	Jones Station	152B	4	0	0	89	93	77	2	0	67
Texas	Knox Lee	2	0	0	0	0	0	0	0	0	0
Texas	Knox Lee	3	0	0	0	5	5	2	0	0	2
Texas	Knox Lee	4	0	0	0	29	29	14	0	0	13
Texas	Knox Lee	5	2	0	0	249	251	170	4	0	149
Texas	La Palma	7	2	0	0	176	178	174	4	0	152
Texas	Lake Creek	1	1	0	0	38	39	33	1	0	29
Texas	Lake Creek	2	4	0	0	187	191	161	4	0	141
Texas	Lake Hubbard	1	25	1	0	146	170	229	6	0	200
Texas	Lake Hubbard	2	93	2	0	521	603	660	17	0	576
Texas	Laredo	1	0	0	0	15	15	18	0	0	16
Texas	Laredo	2	0	0	0	14	14	16	0	0	14
Texas	Laredo	3	6	0	0	80	85	132	3	0	116
Texas	Leon Creek	3	0	0	0	2	2	2	0	0	2
Texas	Leon Creek	4	0	0	0	10	10	9	0	0	8
Texas	Lewis Creek	1	4	0	0	313	317	301	8	0	263
Texas	Lewis Creek	2	4	0	0	267	271	293	7	0	256
Texas	Limestone	LIM1	27,065	685	0	102	23,585	27,065	683	0	23,641
Texas	Limestone	LIM2	16,178	409	0	0	14,036	16,178	408	0	14,131
Texas	Lon C Hill	1	0	0	0	8	8	8	0	0	7
Texas	Lon C Hill	2	0	0	0	10	10	8	0	0	7
Texas	Lon C Hill	3	2	0	0	177	179	104	3	0	90
Texas	Lon C Hill	4	4	0	0	193	197	272	7	0	237
Texas	Lone Star	1	0	0	0	0	0	11	0	0	10
Texas	Malakoff	**1	1,759	45	0	0	1,526	1,759	44	0	1,537

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Texas	Malakoff	**2	0	0	0	0	0	0	0	0	0
Texas	Martin Lake	1	36,738	931	0	1,084	32,956	36,738	928	0	32,088
Texas	Martin Lake	2	35,617	903	0	1,096	32,000	35,617	900	0	31,110
Texas	Martin Lake	3	36,994	937	0	1,084	33,161	36,994	935	0	32,313
Texas	Mission Road	3	0	0	0	3	3	0	0	0	0
Texas	Monticello	1	25,984	657	0	918	23,447	25,984	656	0	22,679
Texas	Monticello	2	25,188	637	0	915	22,751	25,188	636	0	21,882
Texas	Monticello	3	38,838	984	0	1,249	34,943	38,838	981	0	33,922
Texas	Morgan Creek	3	0	0	0	8	8	7	0	0	6
Texas	Morgan Creek	4	13	0	0	60	72	84	2	0	56
Texas	Morgan Creek	5	17	0	0	139	154	187	5	0	183
Texas	Morgan Creek	6	218	6	0	648	834	888	22	0	774
Texas	Mountain Creek	2	1	0	0	3	4	3	0	0	3
Texas	Mountain Creek	6	22	1	0	44	63	84	2	0	73
Texas	Mountain Creek	7	4	0	0	58	62	87	2	0	68
Texas	Mountain Creek	8	58	1	0	475	527	810	15	0	533
Texas	Mountain Creek	3A	2	0	0	9	11	8	0	0	4
Texas	Mountain Creek	3B	2	0	0	0	2	5	0	0	4
Texas	Na 1 -- 7218	**1	0	0	0	0	0	0	0	0	0
Texas	Na 1 -- 7218	**2	0	0	0	0	0	0	0	0	0
Texas	Na 1 -- 7219	**1	0	0	0	0	0	0	0	0	0
Texas	Na 1 -- 7219	**2	0	0	0	0	0	0	0	0	0
Texas	Na 2 -- 4274	**NA1	0	0	0	0	0	0	0	0	0
Texas	Nechas	11	0	0	0	0	0	0	0	0	0
Texas	Nechas	13	0	0	0	0	0	0	0	0	0
Texas	Nechas	15	0	0	0	0	0	0	0	0	0
Texas	Nechas	16	0	0	0	0	0	0	0	0	0
Texas	Newman	1	0	0	0	14	14	21	1	0	18
Texas	Newman	2	1	0	0	28	29	42	1	0	41
Texas	Newman	3	1	0	0	87	88	107	3	0	83
Texas	Newman	**4	2	0	0	87	89	157	4	0	127
Texas	Nichols Station	1418	1	0	0	76	77	93	2	0	76
Texas	Nichols Station	1428	1	0	0	85	86	87	2	0	81
Texas	Nichols Station	1438	0	0	0	50	50	36	1	0	28
Texas	North Lake	1	45	1	0	91	131	148	4	0	141
Texas	North Lake	2	43	1	0	112	150	181	4	0	236
Texas	North Lake	3	84	2	0	236	294	291	7	0	35
Texas	North Main	4	9	0	0	34	42	40	1	0	8
Texas	North Texas	3	0	0	0	13	13	9	0	0	1
Texas	Nueces Bay	5	0	0	0	1	1	1	0	0	0
Texas	Nueces Bay	6	2	0	0	138	140	130	3	0	114
Texas	Nueces Bay	7	7	0	0	488	495	491	12	0	428
Texas	O W Sommers	1	83	2	0	405	478	544	14	0	478
Texas	O W Sommers	2	4	0	0	184	188	367	9	0	321
Texas	Oak Creek	1	16	0	0	92	108	122	3	0	107
Texas	Oklaunion	1	8,980	227	0	0	7,793	8,980	227	0	7,843
Texas	P H Robinson	PHR1	8	0	0	636	644	497	13	0	434

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Texas	P H Robinson	PHR2	7	0	0	487	493	560	14	0	486
Texas	P H Robinson	PHR3	7	0	0	679	685	578	15	0	504
Texas	P H Robinson	PHR4	10	0	0	779	786	707	18	0	617
Texas	Paint Creek	1	3	0	0	8	11	11	0	0	10
Texas	Paint Creek	2	3	0	0	8	11	12	0	0	11
Texas	Paint Creek	3	21	1	0	10	28	61	2	0	53
Texas	Paint Creek	4	1	0	0	104	105	118	3	0	103
Texas	Parkdale	1	11	0	0	24	34	41	1	0	38
Texas	Parkdale	2	16	0	0	48	62	75	2	0	65
Texas	Parkdale	3	21	1	0	43	61	87	2	0	76
Texas	Permian Basin	5	2	0	0	101	103	120	3	0	106
Texas	Permian Basin	6	310	8	0	526	800	945	24	0	825
Texas	Pirkey	1	22,587	572	0	757	20,364	22,587	570	0	19,736
Texas	Plant X	111B	0	0	0	0	0	0	0	0	0
Texas	Plant X	112B	0	0	0	2	2	1	0	0	1
Texas	Plant X	113B	0	0	0	89	89	34	1	0	30
Texas	Plant X	114B	0	0	0	0	0	3	0	0	3
Texas	Powerlane Plant	2	522	13	0	2	454	533	13	0	466
Texas	Powerlane Plant	3	39	1	0	3	37	43	1	0	38
Texas	R W Miller	1	2	0	0	53	55	62	2	0	54
Texas	R W Miller	2	0	0	0	98	98	112	3	0	96
Texas	R W Miller	3	1	0	0	217	218	206	5	0	189
Texas	Ray Olinger	BW2	5	0	0	55	60	60	2	0	52
Texas	Ray Olinger	BW3	8	0	0	71	79	96	2	0	88
Texas	Ray Olinger	CE1	8	0	0	34	42	38	1	0	33
Texas	Rio Pecos	5	1	0	0	63	64	79	2	0	69
Texas	Rio Pecos	6	2	0	0	177	179	186	5	0	171
Texas	River Crest	1	32	1	0	33	61	80	2	0	70
Texas	Sabine	1	3	0	0	149	152	233	6	0	203
Texas	Sabine	2	2	0	0	162	164	225	6	0	196
Texas	Sabine	3	7	0	0	568	575	574	14	0	502
Texas	Sabine	4	8	0	0	496	503	714	18	0	624
Texas	Sabine	5	4	0	0	318	322	447	11	0	391
Texas	Sam Bertron	SRB1	0	0	0	57	57	55	1	0	48
Texas	Sam Bertron	SRB2	0	0	0	18	18	38	1	0	33
Texas	Sam Bertron	SRB3	7	0	0	114	120	103	3	0	90
Texas	Sam Bertron	SRB4	3	0	0	76	79	90	2	0	79
Texas	Sam Seymour	1	17,210	436	0	846	16,782	17,210	434	0	16,033
Texas	Sam Seymour	2	16,746	475	0	986	17,255	16,746	473	0	16,376
Texas	Sam Seymour	3	11,992	304	0	0	10,405	11,992	303	0	10,474
Texas	San Angelo	2	2	0	0	159	161	167	5	0	163
Texas	San Miguel	**2	0	0	0	0	0	0	0	0	0
Texas	San Miguel	SM-1	16,994	481	0	564	17,075	16,994	479	0	16,391
Texas	Sandow	4	26,423	719	0	826	26,486	26,423	718	0	24,826
Texas	Seaholm	9	1	0	0	3	4	3	0	0	3
Texas	Sim Gideon	1	1	0	0	46	47	56	1	0	51
Texas	Sim Gideon	2	1	0	0	55	56	66	2	0	57

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Texas	Sim Gideon	3	7	0	0	271	277	366	9	0	320
Texas	Spencer	4	6	0	0	12	18	20	1	0	17
Texas	Spencer	5	11	0	0	13	23	26	1	0	22
Texas	Stryker Creek	1	19	0	0	153	170	157	4	0	137
Texas	Stryker Creek	2	25	1	0	503	525	642	16	0	581
Texas	T C Ferguson	1	3	0	0	250	253	288	7	0	253
Texas	T H Wharton	THW1	0	0	0	7	7	6	0	0	5
Texas	T H Wharton	THW2	5	0	0	92	97	93	2	0	82
Texas	Tnp One	U1	2,426	61	0	0	2,106	2,426	61	0	2,119
Texas	Tnp One	U2	4,000	101	0	0	3,472	4,000	101	0	3,484
Texas	Tnp One	**3	0	0	0	0	0	0	0	0	0
Texas	Tnp One	**4	0	0	0	0	0	0	0	0	0
Texas	Tolk Station	1718	16,035	406	0	746	14,662	16,035	405	0	14,006
Texas	Tolk Station	1728	15,884	402	0	542	14,326	15,884	401	0	13,874
Texas	Tradinghouse	1	19	0	0	575	592	589	15	0	514
Texas	Tradinghouse	2	45	1	0	954	994	1,030	26	0	900
Texas	Trinidad	7	1	0	0	5	6	4	0	0	4
Texas	Trinidad	8	1	0	0	0	1	3	0	0	3
Texas	Trinidad	9	2	0	0	133	135	131	3	0	115
Texas	Twin Oak	1	9,158	232	0	0	7,947	9,158	231	0	7,999
Texas	Twin Oak	2	6,457	163	0	0	5,603	6,457	163	0	5,640
Texas	V H Braunig	1	2	0	0	75	77	140	4	0	122
Texas	V H Braunig	2	3	0	0	118	121	160	4	0	140
Texas	V H Braunig	3	5	0	0	411	416	447	11	0	391
Texas	Valley	1	7	0	0	71	77	111	3	0	97
Texas	Valley	2	48	1	0	476	518	616	16	0	538
Texas	Valley	3	2	0	0	122	124	148	4	0	129
Texas	Victoria	5	7	0	0	0	6	7	0	0	6
Texas	Victoria	6	0	0	0	6	6	4	0	0	4
Texas	Victoria	7	1	0	0	109	110	116	3	0	101
Texas	Victoria	8	3	0	0	235	236	255	6	0	223
Texas	W A Parish	WAP1	1	0	0	56	57	58	1	0	51
Texas	W A Parish	WAP2	1	0	0	55	56	51	1	0	45
Texas	W A Parish	WAP3	0	0	0	245	245	161	5	0	156
Texas	W A Parish	WAP4	7	0	0	551	557	563	15	0	509
Texas	W A Parish	WAP5	24,960	632	0	1,036	22,693	24,960	630	0	21,802
Texas	W A Parish	WAP6	22,569	572	0	992	20,593	22,569	570	0	19,731
Texas	W A Parish	WAP7	16,388	415	0	802	15,020	16,388	414	0	14,312
Texas	W A Parish	WAP8	7,325	185	0	878	7,233	7,325	185	0	6,396
Texas	W B Tuttle	1	0	0	0	2	2	3	0	0	3
Texas	W B Tuttle	2	0	0	0	19	19	20	1	0	17
Texas	W B Tuttle	3	0	0	0	11	11	15	0	0	13
Texas	W B Tuttle	4	1	0	0	47	48	60	2	0	52
Texas	Webster	WEB1	0	0	0	14	14	6	0	0	6
Texas	Webster	WEB2	0	0	0	17	17	8	0	0	7
Texas	Webster	WEB3	4	0	0	339	343	365	9	0	316
Texas	Welsh	1	14,569	369	0	579	13,221	14,569	368	0	12,725

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Texas	Welsh	2	14,089	356	0	533	12,741	14,089	356	0	12,269
Texas	Welsh	3	16,589	419	0	727	15,097	16,589	419	0	14,485
Texas	Wilkes	1	8	0	0	23	30	88	2	0	57
Texas	Wilkes	2	1	0	0	117	118	128	3	0	92
Texas	Wilkes	3	1	0	0	128	129	94	2	0	73
Utah	Bonanza	1–1	10,050	255	0	1,982	10,709	10,050	254	0	8,788
Utah	Carbon	1	2,188	55	0	0	1,897	2,188	55	0	1,910
Utah	Carbon	2	2,855	72	0	0	2,478	2,855	72	0	2,484
Utah	Gadsby	1	39	1	0	0	34	39	1	0	34
Utah	Gadsby	2	488	12	0	1,282	1,887	488	12	0	497
Utah	Gadsby	3	1,736	44	0	747	2,552	1,736	44	0	1,516
Utah	Hale	1	1	0	0	0	1	1	0	0	1
Utah	Hunter (Emery)	1	8,817	218	0	0	7,200	8,817	218	0	7,438
Utah	Hunter (Emery)	2	9,086	230	0	0	7,883	9,086	230	0	7,944
Utah	Hunter (Emery)	3	12,859	326	0	0	11,159	12,859	325	0	11,332
Utah	Huntington	1	9,057	229	0	0	7,859	9,057	229	0	7,811
Utah	Huntington	2	11,145	282	0	0	9,671	11,145	281	0	9,738
Utah	Intermountain	1SGA	3,285	83	0	0	2,850	3,285	83	0	2,869
Utah	Intermountain	2SGA	3,298	84	0	0	2,870	3,298	84	0	2,889
Vermont	J G Mcnell	1	43	1	0	66	104	43	1	0	38
Virginia	Bremo Bluff	3	2,017	51	0	284	2,015	2,017	51	0	1,782
Virginia	Bremo Bluff	4	5,897	149	0	0	5,117	5,897	149	0	5,191
Virginia	Chesapeake	1	871	22	0	1,358	2,111	871	22	0	791
Virginia	Chesapeake	2	1,141	29	0	1,211	2,291	1,141	29	0	996
Virginia	Chesapeake	3	5,210	132	0	0	4,521	5,210	132	0	4,556
Virginia	Chesapeake	4	6,695	169	0	22	5,823	6,695	169	0	5,839
Virginia	Chesterfield	3	2,118	54	0	707	2,545	2,118	53	0	1,850
Virginia	Chesterfield	4	5,330	135	0	0	4,630	5,330	135	0	4,661
Virginia	Chesterfield	5	10,474	265	0	0	9,088	10,474	264	0	9,160
Virginia	Chesterfield	6	18,786	476	0	697	16,899	18,786	474	0	16,411
Virginia	Chesterfield	**6A	1,585	40	0	0	1,378	1,585	40	0	1,384
Virginia	Chesterfield	**6B	471	12	0	0	409	471	12	0	411
Virginia	Clinch River	1	6,048	153	0	55	5,309	6,048	153	0	5,268
Virginia	Clinch River	2	6,966	177	0	0	6,061	6,966	176	0	6,109
Virginia	Clinch River	3	6,456	163	0	0	5,694	6,456	163	0	5,661
Virginia	Clover	1	3,357	85	0	0	2,913	3,357	85	0	2,932
Virginia	Clover	2	3,357	85	0	0	2,913	3,357	85	0	2,932
Virginia	Glen Lyn	5	5,866	152	0	293	5,491	5,866	151	0	5,232
Virginia	Glen Lyn	51	930	24	0	329	1,145	930	23	0	913
Virginia	Glen Lyn	52	896	23	0	329	1,109	896	23	0	784
Virginia	Possum Point	1	0	0	0	0	0	0	0	0	0
Virginia	Possum Point	2	0	0	0	0	0	0	0	0	0
Virginia	Possum Point	3	3,578	65	0	398	2,698	3,578	65	0	2,245
Virginia	Possum Point	4	7,884	184	0	0	6,588	7,884	184	0	6,712
Virginia	Possum Point	5	4,955	135	0	0	4,300	4,955	135	0	4,326
Virginia	Potomac River	1	1,883	48	0	687	2,320	1,883	48	0	1,844
Virginia	Potomac River	2	1,812	46	0	838	3,295	1,812	46	0	1,870

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Virginia	Potomac River	3	3,150	80	0	0	2,733	3,150	80	0	2,751
Virginia	Potomac River	4	3,471	86	0	0	3,011	3,471	86	0	3,031
Virginia	Potomac River	5	3,326	84	0	0	2,886	3,326	84	0	2,907
Virginia	Yorktown	1	5,337	135	0	0	4,631	5,337	136	0	4,661
Virginia	Yorktown	2	5,137	130	0	176	4,635	5,137	130	0	4,487
Virginia	Yorktown	3	7,205	182	0	0	6,253	7,205	182	0	6,293
Washington	Centralia	BW21	21,797	552	0	0	18,914	21,797	550	0	19,038
Washington	Centralia	BW22	23,240	588	0	0	20,164	23,240	587	0	20,299
Washington	Kettle Falls	1	1	0	0	95	96	96	2	0	94
Washington	Shuffleton	1	0	0	0	0	0	0	0	0	0
Washington	Shuffleton	2	0	0	0	0	0	0	0	0	0
Washington	Shuffleton	3	0	0	0	0	0	0	0	0	0
West Virginia	Albright	1	2,256	57	0	0	1,956	2,256	57	0	1,970
West Virginia	Albright	2	2,347	59	0	0	2,037	2,347	59	0	2,050
West Virginia	Albright	3	5,119	130	119	0	4,560	5,119	129	119	4,591
West Virginia	Fort Martin	1	19,963	505	465	0	17,787	19,963	504	465	17,902
West Virginia	Fort Martin	2	19,776	501	460	0	17,620	19,776	499	460	17,734
West Virginia	Harrison	1	23,337	591	543	0	20,792	23,337	589	543	20,927
West Virginia	Harrison	2	22,152	561	516	0	19,738	22,152	559	516	19,865
West Virginia	Harrison	3	19,922	504	464	0	17,750	19,922	503	464	17,865
West Virginia	John E Amos	1	25,814	653	0	0	22,998	25,814	652	0	22,547
West Virginia	John E Amos	2	29,597	750	0	0	25,678	29,597	746	0	25,851
West Virginia	John E Amos	3	47,438	1,202	0	0	41,159	47,438	1,199	0	41,435
West Virginia	Kammer	1	8,996	228	209	0	8,015	8,996	227	209	8,067
West Virginia	Kammer	2	9,339	236	217	0	8,322	9,339	236	217	8,374
West Virginia	Kammer	3	8,347	211	194	0	7,436	8,347	211	194	7,486
West Virginia	Kanawha River	1	4,541	115	0	486	4,426	4,541	115	0	3,966
West Virginia	Kanawha River	2	4,043	102	0	753	4,262	4,043	102	0	3,531
West Virginia	Mitchell	1	21,108	534	491	0	18,807	21,108	533	491	18,926
West Virginia	Mitchell	2	21,842	553	508	0	19,460	21,842	551	508	19,587
West Virginia	Mountaineer (1301)	1	40,253	1,020	0	0	34,924	40,253	1,017	0	35,190
West Virginia	Mt Storm	1	20,987	531	488	0	18,700	20,987	530	488	18,820
West Virginia	Mt Storm	2	19,689	498	458	0	17,542	19,689	497	456	17,656
West Virginia	Mt Storm	3	20,365	516	474	0	18,145	20,365	514	474	18,262
West Virginia	Phil Sporn	11	2,776	70	0	700	3,110	2,776	70	0	2,425
West Virginia	Phil Sporn	21	2,336	59	0	920	2,947	2,336	59	0	2,040
West Virginia	Phil Sporn	31	3,345	85	0	386	3,266	3,345	84	0	2,922
West Virginia	Phil Sporn	41	2,626	66	0	755	3,034	2,626	66	0	2,294
West Virginia	Phil Sporn	51	11,999	304	0	117	10,529	11,999	303	0	10,481
West Virginia	Pleasants	1	20,115	509	0	0	17,454	20,115	508	0	17,570
West Virginia	Pleasants	2	23,076	584	0	0	20,022	23,076	583	0	20,156
West Virginia	Rivesville	7	794	20	0	542	1,231	794	20	0	694
West Virginia	Rivesville	8	2,379	60	0	446	2,511	2,379	60	0	2,078
West Virginia	Willow Island	1	1,097	28	0	536	1,486	1,097	28	0	956
West Virginia	Willow Island	2	4,595	116	0	663	4,651	4,595	116	0	4,014
Wisconsin	Alma	84	1,363	34	0	0	1,163	1,363	34	0	1,191
Wisconsin	Alma	85	2,178	55	0	0	1,890	2,178	55	0	1,902

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Wisconsin	Bay Front	1	583	14	0	537	1,043	583	14	0	569
Wisconsin	Bay Front	2	808	16	0	0	524	808	16	0	529
Wisconsin	Bay Front	3	0	0	0	0	0	0	0	0	0
Wisconsin	Bay Front	4	17	0	0	17	33	17	0	0	14
Wisconsin	Bay Front	5	155	4	0	144	279	155	4	0	135
Wisconsin	Blount Street	3	8	0	0	0	8	8	0	0	8
Wisconsin	Blount Street	5	7	0	0	0	7	7	0	0	8
Wisconsin	Blount Street	6	7	0	0	0	7	7	0	0	7
Wisconsin	Blount Street	7	122	4	0	0	118	122	4	0	114
Wisconsin	Blount Street	8	812	21	0	0	705	812	21	0	709
Wisconsin	Blount Street	9	1,042	28	0	0	905	1,042	26	0	910
Wisconsin	Blount Street	11	1	0	0	0	1	1	0	0	1
Wisconsin	Columbia	1	17,894	448	0	0	15,353	17,894	447	0	15,486
Wisconsin	Columbia	2	10,007	253	0	0	8,684	10,007	252	0	8,740
Wisconsin	Combustion Turbine	**2	0	0	0	0	0	0	0	0	0
Wisconsin	Commerce	25	2	0	0	2	4	4	0	0	4
Wisconsin	Edgewater	3	1,413	36	0	0	1,226	1,413	36	0	1,234
Wisconsin	Edgewater	4	11,880	301	0	0	10,306	11,880	300	0	10,377
Wisconsin	Edgewater	5	13,094	331	0	0	11,362	13,094	331	0	11,437
Wisconsin	Genoa	1	9,164	232	0	0	7,952	9,164	231	0	8,003
Wisconsin	J P Madgett	B1	8,235	208	0	229	7,375	8,235	208	0	7,193
Wisconsin	Manitowoc	6	766	18	0	0	666	766	18	0	669
Wisconsin	Manitowoc	7	929	24	0	0	805	929	23	0	812
Wisconsin	Manitowoc	8	27	0	0	0	24	27	0	0	24
Wisconsin	Manitowoc	9	0	0	0	0	0	0	0	0	0
Wisconsin	Na -- 7222	**1	0	0	0	0	0	0	0	0	0
Wisconsin	Na 1 -- 7203	**CT3	0	0	0	0	0	0	0	0	0
Wisconsin	Na 1 -- 7203	**CT4	0	0	0	0	0	0	0	0	0
Wisconsin	Na 1 -- 7205	**1	0	0	0	0	0	0	0	0	0
Wisconsin	Na 1 -- 7205	**2	0	0	0	0	0	0	0	0	0
Wisconsin	Na 1 -- 7205	**3	0	0	0	0	0	0	0	0	0
Wisconsin	Na3	**1	0	0	0	0	0	0	0	0	0
Wisconsin	Na4	**1	0	0	0	0	0	0	0	0	0
Wisconsin	Nelson Dewey	1	2,884	73	0	0	2,502	2,884	73	0	2,519
Wisconsin	Nelson Dewey	2	3,208	81	0	0	2,784	3,208	81	0	2,802
Wisconsin	North Oak Creek	1	2,420	61	0	0	2,101	2,420	61	0	2,114
Wisconsin	North Oak Creek	2	2,377	60	0	0	2,063	2,377	60	0	2,076
Wisconsin	North Oak Creek	3	2,434	62	0	0	2,112	2,434	61	0	2,126
Wisconsin	North Oak Creek	4	2,837	72	0	0	2,462	2,837	72	0	2,478
Wisconsin	Pleasant Prairie	1	13,486	341	0	0	11,703	13,486	340	0	11,780
Wisconsin	Pleasant Prairie	2	19,060	482	0	0	16,540	19,060	481	0	16,648
Wisconsin	Port Washington	1	604	15	0	0	524	604	15	0	526
Wisconsin	Port Washington	2	1,179	30	0	0	1,022	1,179	30	0	1,030
Wisconsin	Port Washington	3	981	25	0	0	851	981	25	0	857
Wisconsin	Port Washington	4	919	23	0	0	797	919	23	0	803
Wisconsin	Port Washington	5	1,213	31	0	0	1,052	1,213	31	0	1,059
Wisconsin	Pulliam	3	159	4	0	0	138	159	4	0	139

TABLE 2. -- PHASE II ALLOWANCE ALLOCATIONS

State	Plant Name	Boiler [1]	Allowances for years 2000–2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Wisconsin	Pulliam	4	238	6	0	0	206	238	6	0	206
Wisconsin	Pulliam	5	694	18	0	0	601	694	18	0	606
Wisconsin	Pulliam	6	904	23	0	0	784	904	23	0	789
Wisconsin	Pulliam	7	2,326	59	0	0	2,018	2,326	59	0	2,031
Wisconsin	Pulliam	8	3,603	91	0	0	3,127	3,603	91	0	3,147
Wisconsin	Rock River	1	1,782	45	0	0	1,547	1,782	45	0	1,557
Wisconsin	Rock River	2	1,693	43	0	0	1,469	1,693	43	0	1,479
Wisconsin	South Oak Creek	5	4,440	112	0	0	3,854	4,440	112	0	3,878
Wisconsin	South Oak Creek	6	5,555	141	0	0	4,820	5,555	140	0	4,852
Wisconsin	South Oak Creek	7	7,433	188	0	0	6,449	7,433	186	0	6,492
Wisconsin	South Oak Creek	8	7,303	185	0	0	6,337	7,303	184	0	6,379
Wisconsin	Stoneman	B1	202	6	0	0	175	202	6	0	176
Wisconsin	Stoneman	B2	255	6	0	0	222	255	6	0	223
Wisconsin	Valley	1	1,790	45	0	238	1,792	1,790	45	0	1,564
Wisconsin	Valley	2	1,809	46	0	241	1,811	1,809	46	0	1,580
Wisconsin	Valley	3	1,858	42	0	503	1,942	1,858	42	0	1,448
Wisconsin	Valley	4	1,813	41	0	489	1,889	1,813	41	0	1,409
Wisconsin	West Marinette	**33	0	0	0	0	0	0	0	0	0
Wisconsin	Weston	1	871	22	0	0	756	871	22	0	761
Wisconsin	Weston	2	2,068	52	0	0	1,796	2,068	52	0	1,807
Wisconsin	Weston	3	11,089	281	0	0	9,622	11,089	280	0	9,686
Wyoming	Dave Johnston	BW41	5,155	130	0	195	4,686	5,155	130	0	4,503
Wyoming	Dave Johnston	BW42	5,015	127	0	183	4,535	5,015	127	0	4,380
Wyoming	Dave Johnston	BW43	9,711	246	0	332	8,759	9,711	245	0	8,482
Wyoming	Dave Johnston	BW44	7,278	184	0	435	6,750	7,278	184	0	6,357
Wyoming	Jim Bridger	BW71	22,967	581	0	814	20,742	22,967	580	0	20,081
Wyoming	Jim Bridger	BW72	22,486	569	0	791	20,303	22,486	568	0	19,640
Wyoming	Jim Bridger	BW73	21,533	545	0	746	19,431	21,533	544	0	18,808
Wyoming	Jim Bridger	BW74	3,797	96	0	741	4,036	3,797	96	0	3,316
Wyoming	Laramie River	1	4,823	122	0	891	5,076	4,823	122	0	4,212
Wyoming	Laramie River	2	4,095	104	0	719	4,272	4,095	103	0	3,577
Wyoming	Laramie River	3	3,660	93	0	620	3,795	3,660	92	0	3,197
Wyoming	Naughton	1	5,672	144	0	239	5,160	5,672	143	0	4,954
Wyoming	Naughton	2	7,301	185	0	352	6,687	7,301	184	0	6,377
Wyoming	Naughton	3	5,566	141	0	345	5,175	5,566	141	0	4,861
Wyoming	Wyodak	BW91	20,226	512	0	616	18,167	20,226	511	0	17,666

Notes:

[1] ** In the boiler identifier denotes a planned unit or a unit for which the boiler number is unavailable.

[2] The unadjusted allowances shown in columns (A) and (F) for the Twin Oak unit 2 in Texas and Clover units 1 and 2 in Virginia assume that these units fully qualify for §405(g)(4). If they do not, then Twin Oak 2 will receive 1,760 unadjusted basic allowances, Clover 1 will receive 2,796 unadjusted basic allowances, and Clover 2 will receive 2,796 unadjusted basic allowances pursuant to §405(g)(2).

[3] Column (E) is calculated as follows:
Column (E) = Adjusted Basic Allowances for 2000 (*not shown*) – Column (B) – Conservation/Renewable reserve deduction (*not shown*) – Repowering deduction (*not shown*) + Column (C) + Column (D). The adjusted basic allowances can be estimated as: Column (A) * 0.9011. The total deduction for both the

Conservation/Renewable reserve and for Repowering can be estimated as: Column (B) * 0.3185. The results may not agree exactly with those presented in this table due to rounding.

Note: 0.9011 = factor used to pro rate the allowances in Column (A) to produce the U.S. total of 8.9 million adjusted basic allowances.
(8,900,000 ÷ U.S. total unadjusted basic allowances for 2000–2009 = 0.9011).
0.3185 = factor used to subtract the allowances withheld for the conservation/renewable energy and repowering reserves not shown in this table (30,000 and 50,000 allowances annually, respectively).
((30,000 + 50,000) ÷ 250,000 = 0.3185)

[4] Column (I) is calculated as follows:

Column (I) = Adjusted basic allowances for 2010 (*not shown*) – Column (G) + Column (H). The adjusted basic allowances for 2010 can be estimated as: Column (F) * 0.8987. The results may not agree exactly with those presented in this table due to rounding.

Note: 0.8987 = factor used to pro rate the allowances in Column (F) to produce the U.S. total of 8.9 million adjusted basic allowances.
(8,900,000 ÷ U.S. total unadjusted basic allowances for 2010 and thereafter = 0.8987).

BILLING CODE 6560–50–C

(c) *Allowance allocation for units under § 73.18.* Upon adequate submittal of information under § 73.18(b) and confirmation of unit eligibility under § 73.18(c), the Administrator will allocate allowances to the unit account:

(1) In the amount specified in Table 3 Column E to be held in the future year subaccounts representing calendar years 2000 through 2009; and

(2) In the amount specified in the Table 3 Column I to be held in the future year subaccounts representing calendar years 2010 and each year thereafter.

BILLING CODE 6560-50-M

TABLE 3. -- PHASE II ALLOWANCE ALLOCATIONS FOR §405(g)(4) ELIGIBLE UNITS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
Alabama	Mcwilliams	**4	973	25	0	0	844	973	25	0	849
Arizona	Springerville	3	2,234	57	0	0	1,936	2,234	56	0	1,952
California	Harbor Gen Station	**10	451	11	0	0	392	451	11	0	394
California	Harbor Gen Station	**10A	798	20	0	0	693	798	20	0	697
California	Harbor Gen Station	**10B	798	20	0	0	693	798	20	0	697
Florida	G W Ivey	**22	63	2	0	0	55	63	2	0	55
Florida	Indian River	**D	730	18	0	0	634	730	18	0	638
Florida	Intercession City	**7	805	20	0	0	699	805	20	0	703
Florida	Intercession City	**8	805	20	0	0	699	805	20	0	703
Florida	Intercession City	**9	805	20	0	0	699	805	20	0	703
Florida	Intercession City	**10	805	20	0	0	699	805	20	0	703
Florida	Lauderdale	**4GT1	1,083	27	0	0	941	1,083	27	0	946
Florida	Lauderdale	**4GT2	1,083	27	0	0	941	1,083	27	0	946
Florida	Lauderdale	**5GT1	1,083	27	0	0	941	1,083	27	0	946
Florida	Lauderdale	**5GT2	1,083	27	0	0	941	1,083	27	0	946
Florida	Martin	**3ST	960	24	0	0	833	960	24	0	839
Florida	Martin	**4ST	960	24	0	0	833	960	24	0	839
Florida	Martin	**3GT1	1,457	37	0	0	1,265	1,457	37	0	1,272
Florida	Martin	**3GT2	1,457	37	0	0	1,265	1,457	37	0	1,272
Florida	Martin	**4GT1	1,457	37	0	0	1,265	1,457	37	0	1,272
Florida	Martin	**4GT2	1,457	37	0	0	1,265	1,457	37	0	1,272
Illinois	Lakeside	GT1	350	9	0	0	303	350	9	0	306
Indiana	Ns 1 -- 7228	**1	1,265	32	0	0	1,098	1,265	32	0	1,105
Indiana	Ns 1 -- 7228	**2	1,265	32	0	0	1,098	1,265	32	0	1,105
Indiana	Ns 1 -- 7228	**3	1,265	32	0	0	1,098	1,265	32	0	1,105
Iowa	Ns 1 -- 7230	**1	487	12	0	0	424	487	12	0	426
Kansas	Wamego	**NA1	19	0	0	0	17	19	0	0	17
Maryland	Coal Gas Cc 1	**CT2	1,236	31	0	0	1,073	1,236	31	0	1,080
Maryland	Easton 2	**25	73	2	0	0	64	73	2	0	64
Maryland	Perryman	**51	1,304	33	0	0	1,131	1,304	33	0	1,139
Minnesota	Ns 1 -- 7237	**1	973	25	0	0	844	973	25	0	849
Mississippi	Moselle	**4	779	20	0	0	676	779	20	0	680
Mississippi	Moselle	**5	237	6	0	0	206	237	6	0	207
Missouri	Combustion Turbine 1	**1	1,022	26	0	0	887	1,022	26	0	892
Missouri	Combustion Turbine 2	**2	1,022	26	0	0	887	1,022	26	0	892
Missouri	Empire Energy Center	**3	641	16	0	0	557	641	16	0	560
Missouri	Lake Road	**6	730	18	0	0	634	730	18	0	638
Nebraska	Ns 1 -- 7019	**NA1	779	20	0	0	676	779	20	0	680
Nevada	Clark	**9	534	14	0	0	462	534	13	0	467
Nevada	Clark	**10	534	14	0	0	462	534	13	0	467
Nevada	Harry Allen	**GT1	681	17	0	0	592	681	17	0	595
Nevada	Harry Allen	**GT2	681	17	0	0	592	681	17	0	595
New Jersey	Butler	**1	341	9	0	0	295	341	9	0	297
New Jersey	Butler	**3	114	3	0	0	99	114	3	0	99
New Jersey	Ns 1 -- 7138	**1	973	25	0	0	844	973	25	0	849
New Jersey	Ns 2 -- 7140	**1	2,920	74	0	0	2,533	2,920	74	0	2,550
Ohio	Dover	**7	171	4	0	0	148	171	4	0	150
Ohio	Woodsdale	**GT6	337	9	0	0	292	337	9	0	294
Ohio	Woodsdale	**GT7	337	9	0	0	292	337	9	0	294
Pennsylvania	Trenton Cogen Proj	**1	1,386	35	0	0	1,203	1,386	35	0	1,211
South Carolina	Ns 1 -- 7108	**GT1	905	23	0	0	785	905	23	0	790

TABLE 3. -- PHASE II ALLOWANCE ALLOCATIONS FOR §405(g)(4) ELIGIBLE UNITS

State	Plant Name	Boiler [1]	Allowances for years 2000-2009					Allowances for years 2010 and thereafter			
			(A) [2]	(B)	(C)	(D)	(E) [3]	(F) [2]	(G)	(H)	(I) [4]
			Unadjusted basic	Special allowance reserve deduction	Additional basic (§405(a)(3))	Total Bonus	Total annual phase II	Unadjusted basic	Special allowance reserve deduction	Additional basic (§ 405(a)(3))	Total annual phase II
South Carolina	Na 2 -- 7107	**GT2	805	23	0	0	765	805	23	0	760
South Carolina	Na 3 -- 7106	**GT3	805	23	0	0	765	805	23	0	760
South Dakota	Ct	**5	369	10	0	0	336	369	10	0	340
Texas	R W Miller	**4	873	25	0	0	844	873	25	0	848
Texas	R W Miller	**5	873	25	0	0	844	873	25	0	848
Texas	Twin Oak	2	6,457	183	0	0	5,803	6,457	183	0	5,840
Utah	Bonanza	**2	3,416	66	0	0	2,965	3,416	66	0	2,984
Virginia	Clover	1	3,357	65	0	0	2,913	3,357	65	0	2,932
Virginia	Clover	2	3,357	65	0	0	2,913	3,357	65	0	2,932
Virginia	East Chandler	**2	19	0	0	0	17	19	0	0	17
Wisconsin	Combustion Turbine	**1	701	18	0	0	608	701	18	0	612
Wisconsin	Concord	**1	144	4	0	0	125	144	4	0	125
Wisconsin	Concord	**2	144	4	0	0	125	144	4	0	125
Wisconsin	Concord	**3	144	4	0	0	125	144	4	0	125
Wisconsin	Concord	**4	144	4	0	0	125	144	4	0	125
Wisconsin	Na 1 -- 7203	**CT1	730	18	0	0	634	730	18	0	638
Wisconsin	Na 1 -- 7203	**CT2	44	1	0	0	39	44	1	0	39
Wisconsin	Na2	**1	874	22	0	0	758	874	22	0	763
Wisconsin	Paris	**1	142	4	0	0	123	142	4	0	124
Wisconsin	Paris	**2	142	4	0	0	123	142	4	0	124
Wisconsin	Paris	**3	142	4	0	0	123	142	4	0	124
Wisconsin	Paris	**4	142	4	0	0	123	142	4	0	124

Notes:

[1] ** in the boiler identifier denotes a planned unit or a unit for which the boiler number is unavailable.

[2] The unadjusted allowances shown in columns (A) and (F) for the Twin Oak unit 2 in Texas and Clover units 1 and 2 in Virginia assume that these units fully qualify for §405(g)(4). If they do not, then Twin Oak 2 will receive 1,760 unadjusted basic allowances, Clover 1 will receive 2,796 unadjusted basic allowances, and Clover 2 will receive 2,796 unadjusted basic allowances pursuant to §405(g)(2).

[3] Column (E) is calculated as follows:
Column (E) = Adjusted Basic Allowances for 2000 (*not shown*) - Column (B) - Conservation/Renewable reserve deduction (*not shown*) - Repowering deduction (*not shown*) + Column (C) + Column (D). The adjusted basic allowances can be estimated as: Column (A) * 0.9011. The total deduction for both the Conservation/Renewable reserve and for Repowering can be estimated as: Column (B) * 0.3185. The results may not agree exactly with those presented in this table due to rounding.
Note: 0.9011 = factor used to pro rate the allowances in Column (A) to produce the U.S. total of 8.9 million adjusted basic allowances.
(8,900,000 ÷ U.S. total unadjusted basic allowances for 2000-2009 = 0.9011).
0.3185 = factor used to subtract the allowances withheld for the conservation/renewable energy and repowering reserves not shown in this table (30,000 and 50,000 allowances annually, respectively).
((30,000 + 50,000) ÷ 250,000 = 0.3185)

[4] Column (I) is calculated as follows:
Column (I) = Adjusted basic allowances for 2010 (*not shown*) - Column (G) + Column (H). The adjusted basic allowances for 2010 can be estimated as: Column (F) * 0.8987. The results may not agree exactly with those presented in this table due to rounding.
Note: 0.8987 = factor used to pro rate the allowances in Column (F) to produce the U.S. total of 8.9 million adjusted basic allowances.
(8,900,000 ÷ U.S. total unadjusted basic allowances for 2010 and thereafter = 0.8987).

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(d) *Allowance allocation for units under § 73.19.* (1) Upon submittal of adequate information under § 73.19(b) and confirmation of unit eligibility under § 73.19, the Administrator will allocate allowances to the unit account:

(i) In the amount specified in Table 2 Column E to be held in the future year subaccounts representing calendar years 2000 through 2009; and

(ii) In the amount specified in the Table 2 Column I to be held in the future year subaccounts representing calendar years 2010 and each year thereafter.

(2) Units listed in Table 4 which do not submit adequate information under § 73.19(b) or which are not eligible under § 73.19 will be allocated allowances as calculated under § 73.11.

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TABLE 4. -- PHASE II ALLOWANCE ALLOCATIONS FOR §405(i)(2) ELIGIBLE UNITS [1]

State	Plant Name	Boiler	Allowances for years 2000–2009			Allowances for years 2010 and thereafter		
			(A) [2]	(B)	(C) [3]	(D) [4]	(E)	(F) [5]
			Unadjusted basic	Increment for §405(i)(2)	Unadjusted basic, less §405(i)(2) increment	Unadjusted basic	Increment for §405(i)(2)	Unadjusted basic, less §405(i)(2) increment
Florida	Anclote	1	11,742	1,403	10,339	11,739	1,403	10,336
Florida	Anclote	2	12,422	1,529	10,893	12,420	1,529	10,891
Michigan	Monroe	1	27,243	198	27,045	27,243	198	27,045
Michigan	Monroe	2	28,273	495	27,778	28,273	495	27,778
Michigan	Monroe	3	26,466	445	26,021	26,466	445	26,021
Michigan	Monroe	4	29,065	930	28,135	29,065	930	28,135

Notes:

[1] The unadjusted allowances shown in columns (A) and (D) for the units in this table and in columns (A) and (F) of Table 2 assume that these units fully qualify for §405(i)(2). If they do not, then they will receive the unadjusted basic allowances shown in columns (C) and (F) of this table. Please note that the unadjusted basic allowances shown will be adjusted to reach the 8.9 million ton overall cap on allowances, and furthermore that deductions for the Conservation and Renewable Energy Reserve, the Repowering Reserve, and the Special Allowance Reserve will also be deducted from the allowances shown herein.

[2] Equal to the Unadjusted basic allowances shown in column (A) of Table 2.

[3] Equal to column (A) minus column (B).

[4] Equal to the Unadjusted basic allowances shown in column (F) of Table 2.

[5] Equal to column (D) minus column (E).

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§ 73.11 Revision of allocations.

No later than June 1, 1998, the Administrator will allocate allowances to the unit accounts for each unit listed in Tables 2 or 3 of § 73.10, instead of the number of allowances specified in Tables 2, 3, and 4, as follows:

(a) The Administrator will allocate allowances to be held in the future year subaccounts representing calendar years 2000 through 2009 as follows:

(1) Units eligible for allowances under § 73.19(a) and that documentation according to § 73.19(b) will have unadjusted basic allowances as listed in Table 2 Column A.

(2) The Administrator will calculate unadjusted basic allowances (Year 2000) for existing units with approved repowering extension plans under § 72.44 of this chapter according to the following equation, instead of unadjusted basic allowances listed in Table 2 Column A:

$$\text{Unit's Unadjusted Basic Allowances (Year 2000)} = \text{Baseline} \times 1.2 \,/\, 2000$$

(3) Adjustment of basic allowances. The Administrator will adjust each unit's unadjusted basic allowances as listed in Table 2 Column A, Table 3 Column A and Table 4 Column C, and as stated in paragraphs (a) (1) and (2) of this section, as follows:

$$\text{Unit's Adjusted Basic Allowances (Year 2000)} = \text{Unit's Unadjusted Basic Allowances (Year 2000)} \times \frac{8{,}900{,}000}{\text{Sum of All Unit's Unadjusted Basic Allowances (Year 2000)}}$$

(4) Repowering adjustment. The Administrator will calculate a repowering deduction according to the following equation:

$$\text{Repowering Deduction} = \text{Annual Set Aside} \times \frac{\text{Unit's Adjusted Basic Allowances (Year 2000)}}{8{,}900{,}000}$$

where:

Set Aside=Sum of all repowering allowances for the year 2000 under 40 CFR 73.21

Annual Set Aside=Set Aside/10

(5) Special allowance reserve deduction. The Administrator will calculate a Special Allowance Deduction according to the following equation:

$$\text{Special Allowance Deduction} = 250{,}000 \times \frac{\text{Unit's Adjusted Basic Allowances (Year 2000)}}{8{,}900{,}000}$$

(6) Conservation and renewable energy reserve. The Administrator will calculate the Conservation Deduction according to the following equation:

$$\text{Conservation Deduction} = 30{,}000 \times \frac{\text{Unit's Adjusted Basic Allowances (Year 2000)}}{8{,}900{,}000}$$

(7) Final allowance allocations. (i) (A) According to paragraphs (a) (1) through (6) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 2 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2000 through 2009 Final Revised Phase II Allowances according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2000)} = \text{Unit's Adjusted Basic Allowances (Year 2000)} + \text{Number for Unit in Table 2 Column C} - \text{Repowering Deduction} - \text{Conservation Deduction} - \text{Special Allowance Deduction} + \text{Number for Unit in Table 2 Column D}$$

(B) According to paragraphs (a) (1) through (6) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 3 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2000 through 2009 Final Revised Phase II Allowances according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2000)} = \text{Unit's Adjusted Basic Allowances (Year 2000)} + \text{Number for Unit in Table 3 Column C} - \text{Repowering Deduction} - \text{Conservation Deduction} - \text{Special Allowance Deduction} + \text{Number for Unit in Table 3 Column D}$$

(C) According to paragraphs (a) (1) through (6) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 4 of § 73.10 (and not eligible for allocations under Table 2) and will allocate to each unit's subaccount representing calendar years 2000 through 2009 Final Revised Phase II Allowances according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2000)} = \text{Unit's Adjusted Basic Allowances (Year 2000)} + \text{Number for Unit in Table 4 Column C} - \text{Repowering Deduction} - \text{Conservation Deduction} - \text{Special Allowance Deduction} + \text{Number for Unit in Table 4 Column D}$$

(ii) (A) If, as of January 1, 1998, both the auction and sales under subpart E of this part are terminated as provided for in subpart E, instead of allowances under paragraph (a)(7)(i) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 2 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2000 through 2009 Final Revised Phase II Allowances according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2000)} = \text{Unit's Adjusted Basic Allowances (Year 2000)} + \text{Number for Unit in Table 2 Column C} - \text{Repowering Deduction} - \text{Conservation Deduction} + \text{Number for Unit in Table 2 Column D}$$

(B) If, as of January 1, 1998, both the auction and sales under subpart E of this part are terminated as provided for in subpart E, instead of allowances under paragraph (a)(7)(i) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 3 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2000 through 2009 Final Revised Phase II Allowances according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2000)} = \text{Unit's Adjusted Basic Allowances (Year 2000)} + \text{Number for Unit in Table 3 Column C} - \text{Repowering Deduction} - \text{Conservation Deduction} + \text{Number for Unit in Table 3 Column D}$$

(b) The Administrator will allocate allowances to be held in the future year subaccounts representing calendar years 2010 and each year thereafter as follows:

(1) Units eligible for allowances under § 73.19(a) and that documentation according to § 73.19(b) will have unadjusted basic allowances as listed in Table 2 Column A.

(2) The Administrator will calculate unadjusted basic allowances (Year 2010) for units with approved repowering extension plans under § 72.44 of this chapter according to the following equation, instead of unadjusted basic allowances listed in Table 2 Column F:

$$\text{Unit's Unadjusted Basic Allowances} = \text{Baseline} \times 1.2 / 2000 \text{ (Year 2010)}$$

(3) *Adjustment of basic allowances.* The Administrator will adjust each unit's unadjusted basic allowances as listed in Table 2 Column F, Table 3 Column F, and Table 4 Column F, and as stated in paragraphs (a) and (b) of this section, as follows:

$$\text{Unit's Adjusted Basic Allowances (Year 2010)} = \text{Unit's Unadjusted Basic Allowances (Year 2010)} \times \frac{8{,}900{,}000}{\text{Sum of All Unit's Unadjusted Basic Allowances (Year 2010)}}$$

(4) *Repowering adjustment.* The Administrator will calculate a repowering deduction according to the following equation:

$$\text{Repowering Deduction} = \text{Annual Set Aside} \times \frac{\text{Unit's Adjusted Basic Allowances (Year 2010)}}{8{,}900{,}000}$$

where:

Set Aside=Sum of all repowering allowances for the year 2000 under 40 CFR § 73.21

Annual Set Aside=Set Aside/10

(5) *Special allowance reserve deduction.* The Administrator will calculate a Special Allowance Deduction according to the following equation:

$$\text{Special Allowance Deduction} = 250{,}000 \times \frac{\text{Unit's Adjusted Basic Allowances (Year 2010)}}{8{,}900{,}000}$$

(6) *Conservation and renewable energy reserve.* The Administrator will calculate the Conservation Deduction according to the following equation:

$$\text{Conservation Deduction} = 30{,}000 \times \frac{\text{Unit's Adjusted Basic Allowances (Year 2010)}}{8{,}900{,}000}$$

(7) *Final allowance allocations.* (i) (A) According to paragraphs (b) (1) through (6) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 2 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2010 and each year thereafter according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2010)} = \text{Unit's Adjusted Basic Allowances (Year 2010)} + \text{Number for Unit in Table 2 Column C} - \text{Special Allowance Deduction}$$

(B) According to paragraphs (b) (1) through (6) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 3 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2010 and each year thereafter according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2010)} = \text{Unit's Adjusted Basic Allowances (Year 2010)} + \text{Number for Unit in Table 3 Column C} - \text{Special Allowance Deduction}$$

(ii)(A) If, as of January 1, 1998, both the auction and sales under subpart E of this part are terminated as provided for in subpart E, instead of allowances under paragraph (b)(7)(i) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 2 of § 73.10 and will allocate to unit's subaccount representing calendar years 2010 and each year thereafter according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2010)} = \text{Unit's Adjusted Basic Allowances (Year 2010)} + \text{Number for Unit in Table 2 Column C}$$

(B) If, as of January 1, 1998, both the auction and sales under subpart E of this part are terminated as provided for in subpart E, instead of allowances under paragraph (b)(7)(i) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 3 of § 73.10 and will allocate to each unit's subaccount representing calendar years 2010 and each year thereafter according to the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2010)} = \text{Unit's Adjusted Basic Allowances (Year 2010)} + \text{Number for Unit in Table 3 Column C}$$

(C) If, as of January 1, 1998, both the auction and sales under subpart E of this part are terminated as provided for in subpart E, instead of allowances under paragraph (a)(7)(i) of this section, the Administrator will revise the allowances allocated to each unit listed in Table 4 of § 73.10 (and not eligible for allocations under Table 2) and will allocate to each unit's subaccount representing calendar years 2010 and thereafter according the following equation:

$$\text{Unit's Final Revised Phase II Allowances (Year 2010)} = \text{Unit's Adjusted Basic Allowances (Year 2010)} + \text{Number for Unit in Table 4 Column C}$$

§ 73.12 Rounding procedures.

(a) *Calculation rounding.* All allowances under this part and part 72 of this chapter shall be allocated as whole allowances. All calculations for such allowances shall be rounded down for decimals less than 0.500 and up for decimals of 0.500 or greater.

(b) *Achieving exact allowance reserves and allowance totals.* (1) If the sum of adjusted basic allowances exceeds 8,900,000; the sum of the deductions for the repowering annual set aside is less than the annual set aside; the sum of the deductions for the Energy Conservation and Renewable Energy Reserve is less than 30,000 allowances per year; or the sum of the deductions for the special allowance reserve is less than 250,000, then the Administrator will withdraw one allowance from each unit, beginning with the unit receiving the largest number of allowances, in descending order, until the allocated allowances balance with the number of allowances available.

(2) If the sum of adjusted basic allowances is less than 8,900,000; the sum of the deductions for the repowering annual set aside exceeds the annual set aside; the sum of the deductions for the Energy Conservation and Renewable Energy Reserve exceeds 30,000 allowances per year; or the sum of the deductions for the special allowance reserve exceeds 250,000, then the Administrator will distribute one allowance for each unit, beginning with the unit receiving the largest number of allowances, in descending order, until the allocated allowances balance with the number of allowances required.

§ 73.13 Procedures for submittals.

(a) *Address for submittal.* All submittals under this subpart shall be made by the designated representative to the Director, Acid Rain Division, (6204J), 401 M Street, SW., Washington, DC 20460 and shall meet the requirements specified in 40 CFR 72.21.

(b) *Appeals procedures.* The designated representative may appeal the decision as to eligibility or allocation of allowances under §§ 73.16, 73.18, 73.19, and 73.20, using the appeals procedures of part 78 of this chapter.

§ 73.16 Phase I early reduction credits.

(a) *Unit eligibility.* Units listed in Table 1 of § 73.10 are eligible to receive allowance allocations under this section if:

(1) The unit is authorized by the Governor of the State in which the unit is located to make reductions in emissions of sulfur dioxide prior to calendar year 1995; and

(2) The unit is part of a utility system (which, for the purposes of this section only, includes all electrical generators operated by a utility, including those that are not fossil fuel-fired) that has decreased its total coal-fired generation, as a percentage of total system generation, by more than twenty percent between January 1, 1980 and December 31, 1985; and

(3) The unit is part of a utility system that during calendar years 1985 through 1987 had a weighted capacity factor for all coal-fired units in the system of less than fifty percent. The weighted capacity factor is equal to:

$$\text{Weighted Capacity Factor} = \frac{\text{Sum of actual generation of all coal-fired units in the utility system}}{\text{Sum of all coal generators' nameplate capacity} \times 8760}$$

(b) *Emissions reductions eligibility.* Sulfur dioxide emissions reductions eligible for allowance allocations shall:

(1) Be made no earlier than calendar year 1991 and no later than calendar year 1994; and

(2) Be due to physical changes to the plant or be a result of a change in the method of operating the plant including but not limited to changing the type or quality of fuel being burned.

(c) *Initial certification of eligibility.* The designated representative for a unit listed in Table 1 of § 73.10 that seeks allowances under this section shall apply for certification of unit eligibility prior to or accompanying a request for allowances under paragraph (d) of this section. A completed application for this certification shall be submitted according to the requirements of § 73.13 of this part and shall include the following:

(1) A letter from the Governor of the State in which the unit is located authorizing the unit to make reductions in emissions of sulfur dioxide prior to calendar year 1995;

(2) A report listing all units in the utility system, each fossil fuel-fired unit's fuel consumption and fuel heat content for calendar year 1980, and each generator's total electrical generation for calendar years 1980 and 1985 (including all generators whether fossil fuel-fired, nuclear, hydroelectric, or other.)

(d) *Request for allowances.* (1) The designated representative for the requesting unit shall submit the request for allowances according to the procedures in § 73.13 and shall include the following information:

(i) The calendar year for which credits for reductions are requested and the actual SO_2 emissions and fuel consumption in that year. For units that have not installed and received certification of their SO_2 continuous emission monitoring system prior to the calendar year(s) for which credits for reductions are requested, the designated representative shall submit photocopies of the units' Form EIA–767 for the calendar year of the requested reductions in emissions; and

(ii) A letter signed by the designated representative: (A) Stating and documenting the specific physical changes to the plant or changes in the method of operating the plant (including but not limited to changing the type or quality of fuel being burned) which resulted in the reduction of emissions; and

(B) Certifying that all photocopies are exact duplicates.

(2) The designated representative shall submit any request for allowances for years prior to 1993 no later than May 1, 1993. The designated representative shall submit any request for allowances for 1993 no later than May 1, 1994. For 1994 and after, the designated representative shall submit any request for allowances no later than March 1 of the calendar year following the year in which the reductions were made.

(e) *Allowance allocation.* The Administrator will allocate allowances to the eligible unit upon satisfactory submittal of information under paragraphs (c) and (d) of this section in the amount calculated by the following equations. Such allowances will be allocated to the eligible unit's 1995 future year subaccount. The following provisions shall apply to the allocation:

(1) "Prior year" means a single calendar year selected by the eligible unit from 1991 to 1994 inclusive.

(2) One "credit" equals one ton of eligible SO_2 emissions reductions.

(3) "ERC units" are units eligible for early reduction credits, and "non-ERC units" are fossil fuel-fired units that are part of the same utility system but are not eligible for early reduction credits.

(4) Calendar year 1990 data will be used as the basis against which early reduction credits are determined.

(5) Early reduction credits will be calculated at the unit level, subject to

the restrictions in paragraph (e)(6) of this section.

(6) The number of credits for eligible Phase I units will be calculated as follows:

(i) *Comparison of the prior year utilization of ERC units to the 1990 utilization, as a percentage of system utilization.* If, as calculated below, system-wide prior year utilization of ERC units exceeds systems-wide 1990 utilization of ERC units on a percentage basis, then paragraphs (e)(6)(ii) and (iii) of this section apply. If not, the ERC units are eligible to receive early reduction credits as calculated in paragraph (e)(6)(v)(A) of this section.

$$\text{Prior year utilization} = \frac{\sum_{\text{ERC units}} \text{Heat input}_{\text{prior year}} \quad (\text{in mmBtu})}{\sum_{\text{all system units}} \text{Heat input}_{\text{prior year}} \quad (\text{in mmBtu})}$$

$$\text{1990 utilization} = \frac{\sum_{\text{ERC units}} \text{Heat input}_{1990} \quad (\text{in mmBtu})}{\sum_{\text{all system units}} \text{Heat input}_{1990} \quad (\text{in mmBtu})}$$

(ii) *Comparison of the prior year average emission rate of all ERC units to the prior year average emission rate of all non-ERC units.* If, as calculated below, the system-wide average SO_2 emission rate of ERC units exceeds that of non-ERC units, then a unit's prior year utilization will be restricted in accordance with paragraph (e)(6)(iv) of this section. If not, then paragraph (e)(6)(iii) of this section applies.

$$\text{ERC unit prior year emissions rate} = \frac{\sum_{\text{ERC units}} SO_2 \text{ emissions}_{\text{prior year}} \quad (\text{in pounds})}{\sum_{\text{ERC units}} \text{Heat input}_{\text{prior year}} \quad (\text{in mmBtu})}$$

$$\text{Non-ERC unit prior year emissions rate} = \frac{\sum_{\text{non-ERC units}} SO_2 \text{ emissions}_{\text{prior year}} \quad (\text{in pounds})}{\sum_{\text{non-ERC units}} \text{Heat input}_{\text{prior year}} \quad (\text{in mmBtu})}$$

(iii) *Comparison of the emission rate of the non-ERC units in the prior year to the emission rate of the non-ERC units in 1990.* If, as calculated in paragraph (ii) of this section, the prior year system average non-ERC SO_2 emission rate increases above the 1990 system average non-ERC SO_2 emission rate, as calculated below, then a unit's prior year utilization will be restricted in accordance with paragraph (e)(6)(iv) of this section. If not, the ERC units are eligible to receive early reduction credits as calculated in paragraph (e)(6)(v)(A) of this section.

$$\text{Non-ERC unit 1990 emission rate} = \frac{\sum_{\text{non-ERC units}} SO_2 \text{ emissions}_{1990} \quad (\text{in pounds})}{\sum_{\text{non-ERC units}} \text{Heat input}_{1990} \quad (\text{in mmBtu})}$$

(iv) *Calculation of the utilization limit for restricted units.* The limit on utilization for each unit eligible for early reduction credits subject to paragraphs (e)(6) (ii) and (iii) of this section will be calculated as follows:

$$\text{ERC unit's Heat input}_{\text{prior year}} \text{ (in mmBtu)} \times \frac{\left(\frac{\sum_{\text{ERC units}} \text{Heat input}_{1990} \text{ (in mmBtu)}}{\sum_{\text{all units}} \text{Heat input}_{1990} \text{ (in mmBtu)}}\right)}{\left(\frac{\sum_{\text{ERC units}} \text{Heat input}_{\text{prior year}} \text{ (in mmBtu)}}{\sum_{\text{all units}} \text{Heat input}_{\text{prior year}} \text{ (in mmBtu)}}\right)}$$

This result, expressed in million Btus, is the restricted utilization of the ERC unit to be used in the calculation of early reduction credits in paragraph (e)(6)(v)(B) of this section.

(v)(A) *Calculation of the unit's early reduction credits where the unit's prior year utilization is not restricted.*

$$\frac{\left(\begin{array}{c}\text{ERC unit's} \\ SO_2 \text{ emission rate}_{1990} \\ \text{(in lb/mmBtu)}\end{array} - \begin{array}{c}\text{ERC unit's} \\ SO_2 \text{ emission rate}_{\text{prior year}} \\ \text{(in lb/mmBtu)}\end{array}\right) \times \begin{array}{c}\text{heat input}_{\text{prior year}} \\ \text{(in mmBtu)}\end{array}}{2000}$$

(B) *Calculation of the unit's early reduction credits where the unit's prior year utilization is restricted.*

$$\frac{\left(\begin{array}{c}\text{ERC unit's} \\ SO_2 \text{ emission rate}_{1990} \\ \text{(in lb/mmBtu)}\end{array} - \begin{array}{c}\text{ERC unit's} \\ SO_2 \text{ emission rate}_{\text{prior year}} \\ \text{(in lb/mmBtu)}\end{array}\right) \times \begin{array}{c}\text{restricted heat input from (iv)} \\ \text{(in mmBtu)}\end{array}}{2000}$$

(vi) The Administrator will allocate to the ERC unit allowances equal to the lesser of the calculated number of credits in paragraphs (e)(6)(v)(A) or (v)(B) of this section and the following limitation:

$$\frac{\left(\begin{array}{c}\text{ERC unit's actual} \\ SO_2 \text{ emission rate}_{1985} \\ \text{(in lb/mmBtu)}\end{array} \times \text{baseline (in mmBtu)}\right)}{2000} - \begin{array}{c}\text{Allowances} \\ \text{from Table A of the Act} \\ \text{(in tons)}\end{array}$$

§ 73.18 Submittal procedures for units commencing commercial operation during the period from January 1, 1993 through December 31, 1995.

(a) *Eligibility.* To be eligible for allowances under this section, a unit shall commence commercial operation between January 1, 1993 and December 31, 1995 and have commenced construction before December 31, 1990.

(b) *Application for allowances.* No later than December 31, 1995, the designated representative for a unit expected to be eligible under this provision must submit a photocopy of a signed contract for the construction of the unit.

(c) *Commencement of commercial operation.* The Administrator will use EIA information submitted by the utility for the boiler on-line date as commencement of commercial operation.

§ 73.19 Certain units with declining SO_2 rates.

(a) *Eligibility.* A unit is eligible for allowance allocations under this section if it meets the following requirements:

(1) It is an existing unit that is a utility unit;

(2) It serves a generator with nameplate capacity equal to or greater than 75 MWe;

(3) Its 1985 actual SO_2 emissions rate was equal to or greater than 1.2 lb/mmBtu;

(4) Its 1990 actual SO_2 emissions rate is at least 50 percent less than the lesser of its 1980 actual or allowable SO_2 emissions rate;

(5) Its 1997 actual SO_2 emission rate is less than 1.2 lb/mmBtu;

(6) It commenced commercial operation after January 1, 1970;

(7) It is part of a utility system whose combined commercial and industrial kilowatt-hour sales increased more than 20 percent between calendar years 1980 and 1990; and

(8) It is part of a utility system whose company-wide fossil-fuel SO_2 emissions rate declined 40 percent or more from 1980 to 1988.

(b) *Submittal Procedures.* Not later than March 1, 1998, in order to be

eligible for allowance allocations under this section, the designated representative for the unit must submit a photocopy of the unit's 1997 Form EIA–767 and a letter certifying that the photocopy is a true copy.

§ 73.20 Phase II early reduction credits.

(a) *Unit eligibility.* Units listed in Tables 2 or 3 of § 73.10 are eligible for allowances under this section if:

(1) The unit is not a unit subject to emissions limitation requirements of Phase I and is not a substitution unit (under 40 CFR 72.41) or a compensating unit (under 40 CFR 72.43);

(2) The unit is authorized by the Governor of the State in which the unit is located;

(3) The unit is part of a utility system (which, for the purposes of this section only, includes all generators operated by a single utility, including generators that are not fossil fuel-fired) that has decreased its total coal-fired generation, as a percentage of total system generation, by more than twenty percent between January 1, 1980 and December 31, 1985; and

(4) The unit is part of a utility system that during calendar years 1985 through 1987 had a weighted capacity factor for all coal-fired units in the system of less than fifty percent. The weighted capacity factor is equal to:

$$\text{Weighted Capacity Factor} = \frac{\text{Sum of actual generation of all coal-fired units in the utility system}}{\text{Sum of all coal generators' nameplate capacity} \times 8760}$$

(b) *Emissions reductions eligibility.* Sulfur dioxide emissions reductions eligible for allowance credits at units eligible under paragraph (a) of this section must meet the following requirements:

(1) Be made no earlier than calendar year 1995 and no later than calendar year 1999; and

(2) Be due to physical changes to the plant or are a result of a change in the method of operating the plant including but not limited to changing the type or quality of fuel being burned.

(c) *Initial certification of eligibility.* The designated representative of a unit that seeks allowances under this section shall apply for certification of unit eligibility prior to or accompanying a request for allowances under paragraph (d) of this section. A completed application for this certification shall be submitted according to § 73.13 and shall include the following:

(1) A letter from the Governor of the State in which the unit is located authorizing the unit to make reductions in sulfur dioxide emissions; and

(2) A report listing all units in the utility system, each fossil fuel-fired unit's fuel consumption and fuel heat content for calendar year 1980, and each generator's total electrical generation for calendar years 1980 and 1985 (including all generators, whether fossil fuel-fired, nuclear, hydroelectric or other).

(d) *Request for allowances.* (1) The designated representative of the requesting unit shall submit the request for allowances according to the procedures of § 73.13 and shall include the following information:

(i) The calendar year for which credits for reductions are requested and the actual SO_2 emissions and fuel consumption in that year;

(ii) A letter signed by the designated representative stating and documenting the specific physical changes to the plant or changes in the method of operating the plant (including but not limited to changing the type or quality of fuel being burned) which resulted in the reduction of emissions; and

(iii) A letter signed by the designated representative certifying that all photocopies are exact copies.

(2) The designated representative shall submit each request for allowances no later than March 1 of the calendar year following the year in which the reductions were made.

(e) *Allowance allocation.* The Administrator will allocate allowances to the eligible unit upon satisfactory submittal of information under paragraphs (c) and (d) of this section in the amount calculated by the following equations. Such allowances will be allocated to the unit's 2000 future year subaccount.

(1) "Prior year" means a single calendar year selected by the eligible unit from 1995 to 1999 inclusive.

(2) One "credit" equals one ton of eligible SO_2 emissions reductions.

(3) "ERC units" are units eligible for early reduction credits, and "non-ERC units" are fossil fuel-fired units that are part of the same operating system but are not eligible for early reduction credits.

(4) Calendar year 1990 data will be used as the basis against which early reduction credits are determined.

(5) Early reduction credits will be calculated at the unit level, subject to the restrictions in paragraph (e)(6) of this section.

(6) The number of credits for eligible Phase II units will be calculated as follows:

(i) *Comparison of the prior year utilization of ERC units to the 1990 utilization, as a percentage of system utilization.* If, as calculated below, system-wide prior year utilization of ERC units exceeds systems-wide 1990 utilization of ERC units on a percentage basis, then paragraphs (e)(6)(ii) and (iii) of this section apply. If not, the ERC units are eligible to receive early reduction credits as calculated in paragraph (e)(6)(v)(A) of this section.

$$\text{Prior year utilization} = \frac{\sum_{\text{ERC units}} \text{Heat input}_{\text{prior year}} \text{ (in mmBtu)}}{\sum_{\text{all system units}} \text{Heat input}_{\text{prior year}} \text{ (in mmBtu)}}$$

$$1990\ utilization = \frac{\sum_{ERC\ units} Heat\ input_{1990}\ (in\ mmBtu)}{\sum_{all\ system\ units} Heat\ input_{1990}\ (in\ mmBtu)}$$

(ii) *Comparison of the prior year average emission rate of all ERC units to the prior year average emission rate of all non-ERC units.* If, as calculated below, the system-wide average SO_2 emission rate of ERC units exceeds that of non-ERC units, then a unit's prior year utilization will be restricted in accordance with paragraph (e)(6)(iv) of this section. If not, then paragraph (iii) of this section applies.

$$ERC\ unit\ prior\ year\ emissions\ rate = \frac{\sum_{ERC\ units} SO_2\ emissions_{prior\ year}\ (in\ pounds)}{\sum_{ERC\ units} Heat\ input_{prior\ year}\ (in\ mmBtu)}$$

$$Non\text{-}ERC\ unit\ prior\ year\ emissions\ rate = \frac{\sum_{non\text{-}ERC\ units} SO_2\ emissions_{prior\ year}\ (in\ pounds)}{\sum_{non\text{-}ERC\ units} Heat\ input_{prior\ year}\ (in\ mmBtu)}$$

(iii) *Comparison of the emission rate of the non-ERC units in the prior year to the emission rate of the non-ERC units in 1990.* If, as calculated in paragraph (ii) of this section, the prior year system average non-ERC SO_2 emission rate increases above the 1990 system average non-ERC SO_2 emission rate, as calculated below, then a unit's prior year utilization will be restricted in accordance with paragraph (e)(6)(iv) of this section. If not, the ERC units are eligible to receive early reduction credits as calculated in paragraph (e)(6)(v)(A) of this section.

$$Non\text{-}ERC\ unit\ 1990\ emission\ rate = \frac{\sum_{non\text{-}ERC\ units} SO_2\ emissions_{1990}\ (in\ pounds)}{\sum_{non\text{-}ERC\ units} Heat\ input_{1990}\ (in\ mmBtu)}$$

(iv) *Calculation of the utilization limit for restricted units.* The limit on utilization for each unit eligible for early reduction credits subject to paragraphs (e)(6) (ii) and (iii) of this section will be calculated as follows:

$$ERC\ unit's\ Heat\ input_{prior\ year}\ (in\ mmBtu) \times \frac{\left(\frac{\sum_{ERC\ units} Heat\ input_{1990}\ (in\ mmBtu)}{\sum_{all\ units} Heat\ input_{1990}\ (in\ mmBtu)}\right)}{\left(\frac{\sum_{ERC\ units} Heat\ input_{prior\ year}\ (in\ mmBtu)}{\sum_{all\ units} Heat\ input_{prior\ year}\ (in\ mmBtu)}\right)}$$

This result, expressed in million Btus, is the restricted utilization of the ERC unit to be used in the calculation of early reduction credits in paragraph (e)(6)(v)(B) of this section.

(v)(A) *Calculation of the unit's early reduction credits where the unit's prior year utilization is not restricted.*

$$\frac{\left(\begin{array}{c}\text{ERC unit's}\\ SO_2\text{ emission rate}_{1990}\\ \text{(in lb/mmBtu)}\end{array} - \begin{array}{c}\text{ERC unit's}\\ SO_2\text{ emission rate}_{\text{prior year}}\\ \text{(in lb/mmBtu)}\end{array}\right) \times \begin{array}{c}\text{heat input}_{\text{prior year}}\\ \text{(in mmBtu)}\end{array}}{2000}$$

(B) *Calculation of the unit's early reduction credits where the unit's prior year utilization is restricted.*

$$\frac{\left(\begin{array}{c}\text{ERC unit's}\\ SO_2\text{ emission rate}_{1990}\\ \text{(in lb/mmBtu)}\end{array} - \begin{array}{c}\text{ERC unit's}\\ SO_2\text{ emission rate}_{\text{prior year}}\\ \text{(in lb/mmBtu)}\end{array}\right) \times \begin{array}{c}\text{restricted heat input from (iv)}\\ \text{(in mmBtu)}\end{array}}{2000}$$

(vi) The Administrator will allocate to the ERC unit allowances equal to the lesser of the calculated number of credits in paragraphs (e)(6)(v) (A) or (B) of this section and the following limitation:

$$\frac{\text{ERC unit's heat input}_{\text{prior year}} \times \text{the lesser of} \left[\begin{array}{c}2.5\\ \text{or}\\ \text{the most stringent SIP emissions limit (in lb/mmBtu)}\end{array}\right]}{2000} - \begin{array}{c}\text{ERC unit's}\\ SO_2\text{ emissions}_{\text{prior year}}\\ \text{(in tons)}\end{array}$$

§ 73.21 Phase II repowering allowances.

(a) *Repowering allowances.* In addition to allowances allocated under § 73.11, the Administrator will allocate, to each existing unit (under § 72.44(b)(1) of this chapter) with an approved repowering extension plan, allowances for use during the repowering extension period approved under § 72.44(f)(2)(ii) of this chapter (including a prorated allocation for any fraction of a year) equal to:

$$\begin{array}{c}\text{Unit's Repowering}\\ \text{Allowances}\end{array} = \frac{\text{Unit's Baseline} \times \text{the lesser of} \left[\begin{array}{c}1995\ SIP\\ \text{or}\\ 1995\ \text{Actual Rate}\end{array}\right]}{2000} - \text{Unit's Adjusted Basic Allowances}$$

Where:

1995 SIP=Most stringent federally enforceable state implementation plan SO_2 emissions limitation for 1995.
1995 Actual Rate=1995 actual SO_2 emissions rate
Unit's Adjusted Basic Allowances=Unit's Year 2000 Adjusted Basic Allowances as calculated at § 73.11(a)(3)

(b) Upon commencement of commercial operation of a new unit (under § 72.44(b)(2) of this chapter) with an approved repowering extension plan, allowances for use during the repowering extension period approved will end and allocations under § 73.11(a) and (b) for the existing unit will be transferred to the subaccounts for the new unit.

(c) (1) If the designated representative for a repowering unit terminates the repowering extension plan in accordance with § 72.44(g)(1) of this chapter, the repowering allowances allocated to that unit by paragraph (a) of this section will be terminated and any necessary allowances from that unit's account forfeited, calculated in the following manner:

$$\begin{array}{c}\text{Forfeited Repowering}\\ \text{Allowances}\end{array} = \text{Forfeiture Period} \times \left[\frac{\text{Unit's Baseline} \times \text{the lesser of} \left[\begin{array}{c}1995\ SIP\\ \text{or}\\ 1995\ \text{Actual Rate}\end{array}\right]}{2000} - \begin{array}{c}\text{Unit's Adjusted}\\ \text{Basic Allowances}\end{array}\right]$$

Where:

Forfeiture Period=difference (as a portion of a year) between the end of the approved repowering extension and the end of the repowering extension under § 72.44(g)(1)(ii)
1995 SIP=Most stringent federally enforceable state implementation plan SO_2 emissions limitation for 1995.
1995 Actual Rate=1995 actual SO_2 emissions rate

Unit's Adjusted Basic Allowances=Unit's Year 2000 Adjusted Basic Allowances as calculated at § 73.11(a)(3)

(2) The Administrator will reallocate the allowances forfeited in paragraph (b)(1) of this section to all Table 2 and 3 units' years 2000 through 2009 subaccounts in the following manner:

$$\text{Reallocation} = \frac{\text{Forfeited Repowering Allowances}}{10} \times \frac{\text{Unit's Repowering Deduction}}{\text{Sum of All Table 2 and 3 Units' Repowering Deductions}}$$

§ 73.26 Conservation and renewable energy reserve.

The Administrator will allocate 300,000 allowances to the Conservation and Renewable Energy Reserve subaccount of the Acid Rain Data System. Allowances from this Reserve will be allocated to units under subpart F of this part. Termination of this Reserve and reallocation of allowances will be made under § 73.80(c).

§ 73.27 Special allowance reserve.

(a) * * *

(2) The Administrator will allocate 200,000 allowances annually for calendar years 2000 and each year thereafter to the Auction Subaccount of the Special Allowance Reserve.

(3) The Administrator will allocate 50,000 allowances annually for calendar years 2000 and each year thereafter to the Direct Sale Subaccount of the Special Allowance Reserve.

(b) * * *

(2) Until June 1, 1998, monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2000 through 2009 will be distributed to the designated representative of each unit listed in Table 2 or 3 according to the following equations:

$$\text{Unit Proceeds} = \left[\frac{\text{Table 2 Column B}}{250000}\right] \times \text{Total Proceeds}$$

$$\text{Unit Proceeds} = \left[\frac{\text{Table 3 Column B}}{250000}\right] \times \text{Total Proceeds}$$

(3) On or after June 1, 1998, monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2000 through 2009 will be distributed to the designated representative of each unit listed in Table 2 or 3 according to the following equation:

$$\text{Unit Proceeds} = \left[\frac{\text{Unit's Special Allowance Deduction under §73.11(a)(5)}}{250000}\right] \times \text{Total Proceeds}$$

(4) Until June 1, 1998, monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2010 and thereafter will be distributed to the designated representative of each unit listed in Table 2 or 3 according to the following equations:

$$\text{Unit Proceeds} = \left[\frac{\text{Table 2 Column G}}{250000}\right] \times \text{Total Proceeds}$$

$$\text{Unit Proceeds} = \left[\frac{\text{Table 3 Column G}}{250000}\right] \times \text{Total Proceeds}$$

(5) On or after June 1, 1998, monetary proceeds from the auctions and sales of allowances from the Special Allowance Reserve (under subpart E of this part) for use in calendar years 2010 and thereafter will be distributed to the designated representative of each unit listed in Table 2 or 3 according to the following equation:

$$\text{Unit Proceeds} = \left[\frac{\text{Unit's Special Allowance Deduction under §73.11(b)(5)}}{250000}\right] \times \text{Total Proceeds}$$

(c) * * *

(2) Until June 1, 1998, allowances, for use in calendar years 2000 through 2009, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equations:

$$\text{Unit Allowances} = \left[\frac{\text{Table 2 Column B}}{250000}\right] \times \text{Allowances Remaining}$$

$$\text{Unit Allowances} = \left[\frac{\text{Table 3 Column B}}{250000}\right] \times \text{Allowances Remaining}$$

(3) On or after June 1, 1998, allowances, for use in calendar years 2000 through 2009, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Special Allowance Deduction under §73.11(a)(5)}}{250000}\right] \times \text{Allowances Remaining}$$

(4) Until June 1, 1998, allowances, for use in calendar years 2010 and thereafter, remaining in the Special Allowance Reserve at the end of each year following that year's auction and sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equations:

$$\text{Unit Allowances} = \left[\frac{\text{Table 2 Column G}}{250000}\right] \times \text{Allowances Remaining}$$

$$\text{Unit Allowances} = \left[\frac{\text{Table 3 Column C}}{250000}\right] \times \text{Allowances Remaining}$$

(5) On or after June 1, 1998, allowances, for use in calendar years 2010 and thereafter, remaining in the Special Allowance Reserve at the end of each year, following that year's auction and sale (under subpart E of this part) will be reallocated to the unit's Allowance Tracking System Account according to the following equation:

$$\text{Unit Allowances} = \left[\frac{\text{Unit's Special Allowance Deduction under §73.11(b)(5)}}{250000}\right] \times \text{Allowances Remaining}$$

* * * * * * *

11. Subpart G of part 73 consisting of § 73.90 is added to read as follows:

Subpart G—Small Diesel Refineries

§ 73.90 Allowance allocations for small diesel refineries.

(a) *Initial certification of eligibility.* The certifying official of a refinery that seeks allowances under this section shall apply for certification of its facility eligibility prior to or accompanying a request for allowances under paragraph (d) of this section. A completed application for certification, submitted to the address in § 72.13 of this chapter, shall include the following:

(1) Photocopies of Form EIA–810 for each month of calendar year 1990 for the refinery;

(2) Photocopies of Form EIA–810 for each month of calendar year 1990 for each refinery that is owned or controlled by the refiner which owns or controls the refinery seeking certification; and

(3) A letter certified by the certifying official that the submitted photocopies are exact duplicates of those forms filed with the Department of Energy for 1990.

(b) *Request for allowances.* (1) In addition to the application for certification, prior to, or accompanying, the request for allowances, the certifying official for the refinery shall submit an Allowance Tracking System New Account/New Authorized Account Representative Form.

(2) The request for allowances shall be submitted to the address in § 72.13 and shall include the following information:

(i) Certification that all motor fuel produced by the refinery for which allowances are claimed meets the requirements of subsection 211(i) of the Clean Air Act;

(ii) For calendar year 1993 desulfurized diesel fuel, photocopies of Form 810 for October, November and December 1993;

(iii) For calendar years 1994 through 1999, inclusive, photocopies of Form 810 for each month in the respective calendar year.

(3) For joint ventures, each eligible refinery shall submit a separate application under paragraph (b)(2) of this section. Each application must include the diesel fuel throughput applicable to the joint agreement and the requested distribution of allowances that would be allocated to the joint agreement. If the applications for refineries involved in the joint agreement are inconsistent as to the throughput of diesel fuel applicable to the joint agreement or as to the distribution of the allowances, all involved applications will be considered void for purposes of the joint agreement.

(4) The certifying official shall submit all requests for allowances by April 1 of the calendar year following the year in which the diesel fuel was desulfurized to the Director, Acid Rain Division, under the procedures set forth in § 73.13 of this part.

(c) *Allowance allocation.* The Administrator will allocate allowances to the eligible refinery upon satisfactory submittal of information under paragraphs (a) and (b) of this section in the amount calculated according to the following equations. Such allowances will be allocated to the refinery's non-unit subaccount for the calendar year in which the application is made.

(1) Allowances allocated under this section to any eligible refinery will be limited to the tons of SO_2 attributable to the desulfurization of diesel fuel at the refinery. (2) The refinery will be allocated allowances for a calendar year and, in the case of 1993, for the period October 1 through December 31, calculated according to the following equation, but not to exceed 1500 for any calendar year:

$$\text{Allowances Requested} = \frac{\left[\frac{(a)}{\text{Diesel Fuel Production}}\right] \times \left[\frac{(b)}{(302)}\right] \times \left[\frac{(c)}{(0.00224)}\right] \times \left[\frac{(d)}{(2)}\right]}{\left[\frac{2000}{(e)}\right]}$$

Where:

a=diesel fuel in barrels for the year (or for October 1 through December 31 for 1993)
b=lbs per barrel of diesel
c=lbs of sulfur per lbs of diesel
d=lbs of SO_2 per lbs of sulfur
e=lbs per short ton

(3) If applications for a given year request, in the aggregate, more than 35,000 allowances, the Administrator will allocate allowances to each refinery in the amount equal to the lesser of 1500 or:

$$\text{Refinery Allowances} = \text{the lesser of} \left[\begin{array}{c} \text{Allowances Requested} \times \dfrac{\text{Total Allowances Requested}}{35{,}000} \\ \text{or} \\ 1{,}500 \end{array}\right]$$

PART 75—[AMENDED]

12. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7651,*et seq.*

13. Section 75.2 is amended by revising paragraph (b)(2) and (3) to read as follows:

§ 75.2 Applicability.

* * * * *

(b) * * *

(2) Any unit not subject to the requirements of the Acid Rain Program due to operation of any paragraph of § 72.6(b) of this chapter; or

(3) An affected unit for which a written exemption has been issued under § 72.8 of this chapter and an

exception granted under § 75.67 of this part.

* * * * *

14. Section 75.4 is amended by revising paragraph (c) to read as follows:

§ 75.4 Compliance dates.

* * * * *

(c) In accordance with § 75.20, the owner or operator of any unit affected under any paragraph of 40 CFR 72.6(a)(3) (ii) through (vii) shall ensure that all certification tests for the required continuous emission monitoring systems and continuous opacity monitoring systems are completed on or before the later of the following dates:

(1) January 1, 1995; or

(2) Not later than 90 days after the date the unit becomes subject to the requirements of the Acid Rain Program.

* * * * *

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Part IV

Environmental Protection Agency

Notice of Availability of the National Allowance Data Base; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4604–6]

Notice of Availability of the National Allowance Data Base

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is informing the public and interested parties that EPA is making available a revised version of the final National Allowance Data Base (NADB) and accompanying support documents. The Administrator of EPA is authorized to issue a final data base to support the development of acid rain program under section 402(4)(C) of the Clean Air Act (CAA).

EPA requested comment on three areas noted in the most recent notice: A categorization scheme for outage requests under section 402(4) of the CAA; the Supplemental Data File, which compiles information needed to classify eligible units for allocation purposes and calculate allowances under various provisions under sections 404 and 405, and the Adjunct Data File, which lists many non-traditional utility units that might be affected units under title IV

This notice announces final determinations on the three issues listed above, and makes some limited changes to the data contained in NADB version 2.1. These data changes are being made only in response to comments, verified by EPA, that either changes were made to the data which, based on the data in the possession of EPA at the time, were known to be incorrect or the Agency failed to make a correction requested by a commenter that was true and properly documented at the time.

The NADB, as published today, contains the final data base upon which the Agency is basing the allowance allocations promulgated concurrently with this notice, and contains the data that the Agency will rely on for permitting and other compliance decisions as they relate to the use of data for the Acid Rain Program and the implementing regulations found in 40 CFR parts 72, 73, 75, 77 and 78.

Inclusion in the NADB does not imply that a unit is or is not affected under title IV of the Act, although the data for such units will be used, at least in part, to determine whether a unit is affected.

ADDRESSES: All material supporting this notice is available for viewing and copying under Docket A–92–07 at the EPA Air Docket (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, room M–1500 on the first floor of Waterside Mall. Hours are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday, excluding legal holidays.

The final NADB, supporting documents, and final allowance allocations rule is available through the EPA's Office of Air Quality Planning and Standard's TTN electronic Bulletin Board free of charge. The bulletin board may be accessed through (919) 541–5742.

Copies of the revised final NADB (on diskette only) and supporting documents (hard copies available of request) may be obtained from the following sources:

U.S. Environmental Protection Agency, Acid Rain Division, 6204J, 401 M Street, SW., Washington, DC 20460, Attn: NADB.

Serving Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut:

U.S. Environmental Protection Agency, Region 1 (APS), J.F. Kennedy Federal Bldg., room 2203, Boston, MA 02203, Attn: Ian Cohen.

Serving New York and New Jersey:

U.S. Environmental Protection Agency, Region 2 (2AWM–AP), Jacob Javitz Federal Bldg., 26 Federal Plaza, New York, NY 10278, Attn: Gerry DeGaetano.

Serving Pennsylvania, Delaware, Maryland, West Virginia, the District of Columbia, and Virginia:

U.S. Environmental Protection Agency, Region 3 (3AT11), 841 Chestnut Bldg., Philadelphia, PA 19107, Attn: James Topsale.

Serving Kentucky, North Carolina, Tennessee, South Carolina, Georgia, Alabama, Mississippi, and Florida:

U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, Attn: Kevin Taylor.

Serving Michigan, Wisconsin, Minnesota, Ohio, Indiana, and Illinois:

U.S. Environmental Protection Agency, Region 5 (5–AE–17J), 77 West Jackson Blvd., Chicago, IL 60604, Attn: David Schulz.

Serving Arkansas, Oklahoma, Louisiana, Texas, and New Mexico:

U.S. Environmental Protection Agency, Region 6 (6T–AN), First Interstate Bank Tower, 1445 Ross Avenue, suite 1200, Dallas, TX 75202–2733, Attn: Joe Winkler.

Serving Iowa, Nebraska, Missouri, and Kansas:

U.S. Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, Attn: Jon Knodel.

Serving North Dakota, South Dakota, Montana, Wyoming, Colorado, and Utah:

U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, CO 80202–2405, Attn: Mark Komp.

Serving Nevada, California, and Arizona:

U.S. Environmental Protection Agency, Region 9 (A–2–3), 75 Hawthorne Street, San Francisco, CA 94105, Attn: Michael Stenburg.

Serving Idaho, Washington, and Oregon:

U.S. Environmental Protection Agency, Region 10 (AT082), 1200 Sixth Avenue, Seattle, WA 98101, Attn: David Bray.

For their members:

American Public Power Association, 2301 M Street, NW., 3rd floor, Washington, DC 20037, Attn: Larry Mansueti.

Edison Electric Institute, 701 Pennsylvania Avenue, NW., 5th floor, Washington, DC 20004, Attn: John Kinsman.

National Coal Association, 1130 17th Street, NW., Washington, DC 20036, Attn: Jerry Karaganis.

National Rural Electric Cooperatives Association, 1800 Massachusetts Avenue, NW., Washington, DC 20036, Attn: Rae Cronmiller, Environmental Counsel.

State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), 444 North Capitol Street, NW., Washington, DC 20001, Attn: William Becker.

Utility Air Regulatory Group, 2000 Pennsylvania Avenue, NW., suite 9000, Washington, DC 20036, Attn: Lynn Johnson.

FOR FURTHER INFORMATION CONTACT: Craig Hillock, Acid Rain Division (202) 223–9105. The mailing address is U. S. EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Background

A. The Acid Rain Program

The burning of fossil fuels, particularly coal and oil, releases emissions of sulfur dioxide (SO_2) and nitrogen oxide (NO_x) into the atmosphere. Once in the air, SO_2 and NO_x may undergo various chemical reactions, resulting in transformation of the emissions into sulfates, nitrates, sulfuric acid and nitric acid. These compounds can fall to earth near the emission sources of SO_2 and NO_x or can be transported hundreds of miles. Referred to as acidic deposition or acid rain, these compounds can be in either dry or wet forms. Dry deposition includes gases, aerosols, and particles, and wet deposition is found in precipitation such as rain, fog, or snow. SO_2 and NO_x emissions and their byproducts damage ecosystems and materials, are suspected harming human health at current levels, and can reduce visibility.

Of the approximately 23 million tons of SO_2 and 19 million tons of NO_x emitted annually from all sources in the United States in 1985, about 16 million tons of SO_2 and 7 million tons of NO_x were emitted by electric utilities. Title

IV of the Act requires EPA to establish a national emissions cap of 8.95 million tons per year on electric utility SO_2 emissions and an Acid Rain Program to be implemented in two phases. Phase I (beginning in 1995) requires the 110 highest-emitting utility plants to meet an intermediate SO_2 emissions limitation. By the year 2000 (in which Phase II begins), virtually all other utility units with generator capacity greater than 25 megawatts and most new utility units will be required to meet emissions limitations as well. Total annual SO_2 emissions will be reduced by 10 million tons below 1980 levels beginning in the year 2000, a reduction of total SO_2 emissions of approximately 40%. Title IV also requires that certain coal-fired electric utility boilers reduce their emissions of NO_x through installation of low NO_x burner technologies at the same time as they are required to comply with the SO_2 limitations. However, today's rules do not address the NO_x reduction provisions of the Act and the NADB does not contain information relating to NO_x emissions.

The centerpiece of the Acid Rain Program is a unique trading system in which allowances (each authorizing the emission of up to one ton of SO_2) are bought and sold at prices determined in a free market. Existing utility sources are allocated allowances based on their historic fuel use and the emissions limitations specified in the Act. Utility units are required to limit SO_2 emissions to the number of allowances they hold, but since allowances are fully transferable, utilities may meet their emissions control requirements in the most cost-effective manner possible. For instance, a utility may decide to: (1) Switch to a lower sulfur fuel, (2) install flue gas desulfurization equipment (scrubbers) and bank unused allowances or sell them to other utilities/individuals, (3) forego emissions reductions and buy additional allowances (if necessary) or (4) implement energy efficiency measures at the plant or encourage customers to undertake them. Other options and combinations of options are possible, providing an unusually high degree of flexibility for affected sources to comply with the law.

In order to operate, each affected source must apply for a permit in which the source certifies that it will hold a sufficient number of allowances to cover its SO_2 emissions, and specifies the source's planned method of compliance. In addition, in order to ensure the achievement of the nationally mandated reductions in SO_2 and NO_x emissions, each affected source must install a system to continuously monitor its emissions and to collect, record, and report emissions data.

If an affected unit exceeds its emissions limitation for either SO_2 or NO_x, the Act requires the affected source to pay penalties and, for SO_2, to submit a plan detailing both how and when the excess SO_2 emissions will be offset. These requirements act as a strong incentive for compliance with the mandated emissions reductions of the Acid Rain Program.

B. Purpose and Development of the National Allowance Data Base

For Phase II of the program, the Act provides a number of calculations which must be used to determine an affected unit's initial allowance allocations. Section 402(4)(C) of the CAA authorizes the EPA to supplement data needed in support of the Acid Rain program and to correct factual errors. Certain data necessary for the development of the allowance allocations are also necessary for operation of the Acid Rain program as provided in the implementing regulations in 40 CFR parts 72, 73, 75, 77 and 78 (58 FR 3590).

EPA developed the NADB from a variety of sources, including the National Utility Reference File (NURF), which is a subset of the National Acid Precipitation Assessment Program (NAPAP) Report Version 2, and Energy Information Agency (EIA) forms.

EPA made available NADB version 2.0 through a **Federal Register** notice on July 19, 1991 (56 FR 33278), and requested comment from the public regarding the data contained in the database. Over 200 comment documents were received.

In response, the Agency published NADB version 2.1 on July 7, 1992 (57 FR 30034), which the Agency stated was the final version to be used in the development of Phase II allocations, with three issues left open for public comment. First, the Agency requested comment on the categorization of outage requests for baseline adjustments. The notice also announced the availability for public review of two additional data files to be used in the calculation of Phase II allowances. The first, the Supplemental Data File, contains information needed to classify units for certain allocation formulas and data necessary for certain allowance calculations. The second, the Adjunct Data File, was a listing of non-traditional utility boilers that EPA believed might be affected under title IV, but had not previously identified.

II. Response to Public Comments

A. Comments Received

In response to the July 1992 Notice of Availability, EPA received 67 comments on the National Allowance Data Base. EPA reviewed these comments, and has included responses to the comments in the docket listed under **ADDRESSES** at the front of this notice.

B. Reason for Revised Final NADB

EPA is issuing a revised version of the NADB for two reasons. First, the resolution of the three issues opened for comment in the July 1992 notice required EPA to modify the NADB and the associated data files. Second, EPA received a number of comments from interested parties stating that EPA had failed to correct data errors for which comments had been submitted in the previous comment period on the NADB, or made changes that resulted in errors based on the information previously submitted.

Thus, while it was EPA's intent to have a complete and final NADB at publication last July, EPA believes that the adjustments made today to the NADB, as discussed below, are appropriate. EPA is maintaining the policy outlined in the July notice of not accepting any *new* corrections to the NADB, including outage hour requests.

C. Corrections to NADB

Of the comments received, most included requests for data changes to the NADB version 2.1. The majority of these comments were new data change requests, however several comments pointed out data errors that were introduced during finalization of NADB. EPA determined that it would correct such data errors provided that one of the following criteria was met: (1) No request for a data change was submitted in response to NADB version 2.0, but data in NADB version 2.1 were different (in error) from data contained in NADB version 2.0, (2) a data change was requested in response to NADB version 2.0 but was not addressed by EPA, or (3) a data change was requested in response to NADB version 2.0, reviewed and accepted by EPA, but not correctly implemented in NADB version 2.1.

EPA is also revising the Phase I allowances listed in NADB version 2.1 in order to be consistent with the final Phase I allowances in the Acid Rain core regulations (40 CFR 73.10)(58 FR 3590). NADB versions 2.0 and 2.1 listed allowances for Phase I units from Table A contained in the Act. Today's release of NADB version 2.11 lists the final allowance allocation for Phase I units as promulgated under the core regulations.

EPA is not making data changes in response to the following categories of comments, all of which involve new requests: Revisions to basic methodologies for calculation of various parameters, such as heat input at 60 percent capacity factor and averaging times for emission limits; new requests for EPA to grant discontinuous outages totaling four or more months in duration; new requests for changes to the existing data or inclusion of new units into the database; and reiterations, in whole or in part, of previous requests made to change data that EPA decided in NADB version 2.1. Specific responses to such comments are contained in the docket under ADDRESSES at the front of this notice.

Several commenters requested either changes to data not previously submitted or inclusion of units not contained in NADB version 2.1. EPA is not accepting new data requests received during the NADB version 2.1 comment period in order not to delay even further the finalization of the NADB, which had a statutory deadline of December 31, 1991. EPA believes that adequate public notice and comment was provided for development and finalization of the NADB through the comment period provided on NADB version 2.0, which was equivalent to informal rulemaking and was more than what was required by the Act. However, EPA believes that it is appropriate to correct errors of omission and commission in NADB version 2.1, and a good faith effort should be made to ensure that data change requests submitted during the public comment period for NADB version 2.0 and accepted by EPA are accurately reflected in the final NADB.

Several commenters brought to EPA's attention that the baseline heat input data (NADB data field BASE8587) for units at certain plants decreased from NADB version 2.0 to NADB version 2.1 when no request to change the data had been submitted in response to NADB version 2.0. EPA determined that a computer programming error resulted in a lower total baseline for a small number of plants with a unique configuration where multiple boilers served multiple generators. EPA determined which units were affected by this error and made corrections for both the units that commented and also for the units for which no comment was received. In this case, EPA decided that all units affected by the error must be treated in an equitable and consistent manner and so the correction of the data for all the units was warranted.

Two commenters stated that the allowable emission limits (NADB data field ANNLIM85) for certain units were incorrectly calculated based on their comments on NADB version 2.0. The units in question were all planned to commence commercial operation after the enactment of title IV. The comments addressed EPA's conversion of the site emission limit to a unit-level annualized emission limit based on the total number of planned units at the plant, and, if a unit was permitted to use more than one fuel type, selecting the most stringent emission limit applicable to the fuel with the highest sulfur content. EPA determined that the requested data changes had been incorrectly implemented in NADB version 2.1, and has corrected the emission limits for these units.

EPA finalized the allowances allocated to Phase I units in Table 1 of the recently promulgated Acid Rain Core Regulations (40 CFR 73.10)(58 FR 3590). The initial Phase I allowances were originally published in Table A of title IV and incorporated into NADB version 2.1 (data field PHASE1AL). Subsequently, these initial Phase I allowances were adjusted for certain units that receive additional allowances pursuant to sections 404(a)(3) and 404(h) and then reduced by the amount specified in section 416(b) to produce the total final Phase I allowances. These figures were published in the Acid Rain core regulations. In order to ensure consistency between the final NADB published with this notice and the recently finalized Acid Rain core regulations, EPA decided to replace the initial Phase I allowances in NADB version 2.1 with the final total Phase I allowances.

Other commenters brought minor errors of omission and commission to EPA's attention which met the criteria stated above, and therefore were corrected. The details of these changes are contained in the docket.

D. Supplemental Data File

EPA proposed the Supplemental Data File (SDF) in the July 7, 1992 Notice of Availability. The SDF contains additional information required to determine which units qualify for certain special provisions of title IV and to calculate allowances for those units. EPA requested comment only on the unique data fields contained in the SDF. No revisions would be made to data fields also contained in the final NADB version 2.1. EPA received several comments on data contained in the SDF, some of which are discussed below. The comments are discussed in more detail in the docket under **ADDRESSES** at the front of this notice.

One commenter requested that a data change be made for the number of utility customers served in 1990 (SDF data field UCUST90). The utility in question generates and sells electricity to several utility wholesalers, who then sell the power to a much larger number of ultimate customers. EPA did not grant this request because the immediate customers of the utility, in this case the utility wholesalers, are counted as the utility customers, not the ultimate customers served by the wholesalers.

EPA received two requests to revise the date of commencement of commercial construction for certain planned units. Data are provided in the SDF to enable EPA to determine whether a planned unit is eligible for allowances under section 405(g)(4) of title IV. To be eligible for this provision, units planning to commence commercial operation on or after January 1, 1993 and no later than December 31, 1995 must have begun a continuous program of construction before December 31, 1990. The SDF data field "CONSTYR" indicates whether or not a planned unit began construction before 1991. In the July 7, 1992 proposed rules for Acid Rain Allowance Allocations and Reserves, 40 CFR part 72 (57 FR 29940) EPA proposed that, for units which are potentially eligible for this provision and have not yet provided documentation regarding construction dates, a certifying official be required to submit documentation before December 31, 1995 that construction was commenced on the unit before December 31, 1990. The documentation must be unit-specific in order for EPA to determine if the unit is eligible for allowances under section 405(g)(4). One commenter submitted adequate unit-specific data to support its requested data change. The other commenter submitted documentation that construction had commenced on the overall generation facility before 1991, but did not provide unit-specific information. Again, EPA encourages units that are potentially eligible for section 405(g)(4) to submit the appropriate information required by 40 CFR 73.18 by the December 31, 1995 deadline.

One commenter agreed that the data contained in the SDF correctly classified units operated by the commenter for the purposes of allowance calculations, but that if EPA were to use the SDF in the future for any purpose other than for allowance calculations, that EPA should re-promulgate the SDF for review and comment. EPA does not plan to use the SDF for any other purpose but is leaving

open the possibility that it may be appropriate to do so in the future.

E. Outage Hours

1. Background

Section 402(4)(A) of the Act provides the Administrator with discretion to adjust baseline calculations for units shutdown for a continuous period of four months or more and for units that experienced accidents which caused prolonged outages. In its development of the proposed rule, EPA considered the importance of consistency in adjusting baselines for all affected units and developed categories to clearly define circumstances in which the Administrator would allow or disallow such adjustments. In a July, 1992 **Federal Register** notice, EPA solicited comments on its handling of outages and its proposed categorization.

In that same **Federal Register** notice, EPA clearly stated that it would not accept new modifications to the NADB version 2.1, having previously provided for a comment period during 1991 for NADB version 2.0. Comments relating to the outage fields in the NADB were considered only if they had been submitted to EPA in the original comment period on NADB version 2.0 and were affected by the Agency's subsequent response to comments on the proposed outage classifications.

Outage adjustments to baseline calculations are made final today and are reflected in the allowance allocations promulgated in today's rule.

2. Accidents Which Caused Prolonged Outages

a. Definition of Accident. In developing clear criteria for adjustments, EPA proposed in the July, 1992 **Federal Register** notice to define accidents which caused prolonged outages. "Accidents" were interpreted to mean acts of God; that is, the occurrence of natural phenomena, such as a tornado, which cause the unit to go off-line. Specifically excluded from this definition of accidents were incidents related to the operation of the unit, such as worker error, since they were covered already by the overall definition of a forced outage.

Commenters requested that EPA reconsider the definition of accident. One commenter maintained that the definition adopted by EPA is inconsistent with the common language usage of the term accident. The alternative definition that was suggested would consider any event that was unexpected, unintentional and undesirable to qualify as an accident Such events would include natural phenomena and mechanical failures as well as worker error.

Response: In its final determinations for outages, EPA retains its definition for accident as the occurrence of a natural phenomenon or an incident unrelated to the operation of the unit that is unpreventable, unforeseeable and not caused by worker error. EPA finds little legislative history relating to the definition of accident and believes that its definition is consistent with general industry practice, which identifies accidents as distinct from other types of forced outages. For example, such a distinction is made within the North American Electric Reliability Council's (NERC) Generating Availability Data System (GADS), the source the Agency is to use, according to the Senate conference report, for assessing the type and duration of outages. The GADS system identifies forced outages caused by external catastrophes as a separate class. Without this distinction, there would be no difference between forced, unplanned outages and accidents.

b. Definition of Prolonged. In order to qualify for an adjustment under this provision, the accident must also result in a "prolonged" outage. EPA proposed in July, 1992 to define "prolonged" to be four months or longer.

Several commenters suggested that EPA's interpretation of prolonged is too rigid, makes the two types of outage adjustments indistinguishable and therefore is inconsistent with Congressional intent. They claim that defining prolonged to be four months or more makes the second clause of section 402(4)(A), allowing adjustments for accidents that caused prolonged outages, unnecessary and redundant. The first basis for adjustment already excludes shutdowns for a continuous period of four calendar months or longer.

Response: In the final regulation, EPA has modified its definition of prolonged. Prolonged is now defined as three months or greater. An examination of the distribution of forced outages at fossil steam units between 1986 and 1990 illustrates that three months is sufficiently greater than the average duration of a forced outage and can be considered prolonged. (In the language of statistics, an outage of three months would be an outlier among points in the distribution of such outages because it lies greater than three units of standard deviation from the mean.)

Although a duration of four months could also be considered extreme, a duration of three months achieves the same purpose and creates a greater distinction with other types of outages. The Agency does not allow any additional requests based on this change in definition.

3. Categorization of Outages.

As mentioned above, EPA proposed the use of six categories to create a framework to evaluate requests for baseline adjustments consistent with Congressional intent and equitable across all affected units. Two categories were not related to outages and are finalized as proposed. The other four categories are discussed below.

Most commenters favored the use of classification categories. Some recommended that the Agency adopt the categories presented in the July, 1992 **Federal Register** notice as proposed, while others offered various modifications. A few commenters believed that Congressional colloquies directed the Agency to consider special circumstances on a case by case basis and not use broadly based categories.

Response: EPA is retaining the categorization approach in making determinations regarding outage adjustments. Contrary to the commenters' assertions, nothing in the legislative history implies that the Administrator must decide on outage hour requests on a case-by-case basis. The use of categories is within the Administrator's discretion as expressed in section 402(4)(A) which states that *"The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period for four calendar months or longer * * *."*

EPA believes that categorization provides a rational and factual basis for the Agency's decisions on outage hours and believes such categorization treats similarly situated units in a consistent manner. EPA is choosing to use categories not because they are easy to develop and apply to the particular units, but because it is appropriate to use published criteria that have been subject to open debate and comment.

4. Outage Categories

A number of commenters believed the use of categories to be appropriate, but felt that EPA had not incorporated essential defining characteristics used by Congress during debate. Such characteristics included physical and operating characteristics of the unit (e.g. age, emissions rate), the unit's role in the operating utility's system (e.g single unit systems, only coal-fired unit in utility's system, total fossil capacity of system, type of replacement power, etc.) and the impact on the utility for denying requested outage adjustments.

Response: EPA is adopting, for the NADB version 2.11, a revised classification scheme for outage adjustments for calculated baselines.

The categories have been modified from the July, 1992 **Federal Register** notice in two ways: (1) The Agency has modified former category III (Outages less than 4 months) to reflect the change of definition for "prolonged", when considering accidents resulting in prolonged outages, as discussed above; (2) the Agency has allowed a certain number of adjustments for units with relatively low emissions that would experience a severe allowance impact if their requests were disallowed. This modification is discussed below under the section entitled "Other Outages Four Months or Greater".

Table 1 summarizes the six categories to which EPA now classifies all outage adjustment requests. Tables 2, 3 and 4 list the units with outage requests and the Agency's determination to allow or disallow such requests. Table 2 includes three new requests that qualify as discontinuous but related outages, but because they were not submitted during the comment period for changes to the NADB version 2.0, these requests were disallowed, as discussed in section C of this notice.

TABLE 1.—OUTAGE ADJUSTMENT CLASSIFICATION CATEGORIES

Category	Outage type	Adjustment
I	Forced/planned non-routine maintenance, greater than or equal to 4 months	Allow.
II	Discontinuous but related outages for forced/planned non-routine maintenance, where total duration was 4 months or greater. Discontinuous but related outages for accidents, where total duration was 3 months or greater.	Allow.
III A	Outages 3 months or greater caused by accidents	Allow.
III B	Outages less than 3 months, not caused by an accident, or less than 4 months, not caused by forced/planned non-routine maintenance.	Disallow.
IV A	Outages 4 months or greater, which were not caused by forced/planned non-routine maintenance or accidents, in which the unit's emission rate is less than 1.2 lbs/mmBtu and the allowance impact by not providing allowances to the operating utility is severe.	Allow.
IV B	All other outages 4 months or greater that were economic outages and other outages not classified as forced/planned non-routine maintenance or accidents.	Disallow.

TABLE 2.—SUMMARY OF REQUESTS FOR DISCONTINUOUS BUT RELATED OUTAGES (CATEGORY II)

Operating utility	Plant name(s)	Additional basic allowances	Petition on adjustment before closure of comment period	EPA action
Commonwealth Edison Co	Collins, Joliet 9	366	Yes	Allow.
Taunton, City of	Cleary Flood	255	Yes	Allow.
Jamestown, City of	S A Carlson	121	Yes	Allow.
Cleveland Electric Illum Co	Avon Lake, Bay Shore, Eastlake.	2,369	Yes	Allow.
Pennsylvania Power & Light Co	Holtwood	13	Yes	Allow.
Iowa Public Service Co	George Neal	898	Yes	Allow.
Fort Pierce Utilities	Henry D. King	12	No	Disallow.
Iowa-Illinois Gas and Electric	Riverside	78	No	Disallow.
Springfield, City of	Lakeside	73	No	Disallow.

TABLE 3.—SUMMARY OF REQUESTS FOR OUTAGES LESS THAN FOUR MONTHS (CATEGORIES IIIA AND IIIB)

Operating utility	Plant name(s)	Additional basic allowances	Classification	EPA action
Century Power Corp	Springerville	1,070	III B	Disallow.
Key West, City of	Stock Island	121	III B	Disallow.
Commonwealth Edison Co	Collins	54	III B	Disallow.
Southern Indiana Gas & Electric Co	F B Culley	297	III B	Disallow.
Central Louisiana Elec. Co. Inc	Rodemacher	2,208	III B	Disallow.
Lansing, City of	Eckert Station	331	III B	Disallow.
Texas Municipal Power Agency	Gibbons Creek	871	III B	Disallow.

TABLE 4.—SUMMARY OF REQUESTS FOR OUTAGES FOUR MONTHS OR GREATER THAT DO NOT QUALIFY AS FORCED, NON-ROUTINE MAINTENANCE OR ACCIDENTS (CATEGORIES IV A AND IV B)

Operating utility	Plant name(s)	Additional basic allowances	Classification	EPA action
Central Nebraska Pub P&I Dist	Canaday	533	IV A	Allow.
Portland General Electric Co	Boardman	10,299	IV A	Allow.
Arizona Electric Power Coop Inc	Apache	1,742	IV B	Disallow.
Connecticut Light & Power Co	Devon	946	IV B	Disallow.
Tampa Electric Co	Hookers Point	764	IV B	Disallow.

TABLE 4.—SUMMARY OF REQUESTS FOR OUTAGES FOUR MONTHS OR GREATER THAT DO NOT QUALIFY AS FORCED, NON-ROUTINE MAINTENANCE OR ACCIDENTS (CATEGORIES IV A AND IV B)—Continued

Operating utility	Plant name(s)	Additional basic allowances	Classification	EPA action
Southern Indiana Elec & Gas	F B Culley	297	IV B	Disallow.
Corn Belt Power Coop	Earl F. Wisdom	2,055	IV B	Disallow.
Cedar Falls, City of	Streeter Station	2,642	IV B	Disallow.
Wisconsin Electric Power Co	Presque Isle	547	IV B	Disallow.
Otter Tail Power Co	Hoot Lake	369	IV B	Disallow.
Duke Power Co	Buck, Cliffside, Dan River, G G Allen, Riverbend.	14,348	IV B	Disallow.
PacificCorp	Centralia	2,776	IV B	Disallow.

As noted above, the changed definition of prolonged modifies the categories for adjusting outages, but does not change the status of any unit's request.

5. Other Outages Four Months or Greater.

EPA proposed, in its July, 1992 **Federal Register** notice, not to adjust baselines for outages four months or greater that do not qualify as forced, non-routine maintenance or accidents. Included within this category are outages resulting from loss of load within the utility's system and/or underutilization of a particular unit because cheaper replacement power was available ("economic outages").

Many commenters questioned both the Agency's decision to exclude these types of outages from adjustment and the rationale offered by the Agency in the July, 1992 **Federal Register** notice. Commenters suggested that Congress sought to distinguish the operation of the units under question from peaking units, rather than preclude operations during the baseline period from adjustment.

EPA justified excluding economic outages on the basis that actual operation during the baseline period was considered by the Agency to be "normal" operations, and that utilities should not receive adjustments for units they chose not to operate during the baseline period. Commenters argued that the operation of their particular units was not normal during the baseline period and the Agency's assumption of normalcy is unfounded and misguided. Some commenters contended that their systems experienced an uncharacteristic loss of overall load during the baseline period due to adverse economic conditions. Several commenters requested that the Agency examine historical operating records or even future load expectations to judge what might be considered normal operation over a more representative time horizon than the three years of the baseline period.

The EPA expressed concern, however, in the July, 1992 **Federal Register** notice, regarding adjusting outages for units that were underutilized and at the same time granting allowances to units that supplied the incremental power (that is, giving credit for the same unit of power twice, or double counting). Commenters responded that in many instances such double counting would not in fact occur, because of loss of overall load, replacement with non-sulfur emitting generation or replacement with a unit whose allocation was not based on actual generation but on a fixed capacity factor. Some commenters noted that some cases of Category IV outages result in double counting.

Response: The Agency believes that there must be compelling reasons for it to adjust baselines based on outage requests. In general, EPA maintains that underutilization of units during the baseline period (1985–1987), resulting from either losses in the operating utility's system load or the utility's economic choice to divert generation from one unit to another, are part of a unit's normal operations. Congress, in establishing the baseline, developed a three year period (1985–1987) to standardize what is normal operations for all units and to accommodate fluctuations across multiple years of operation. For circumstances in which Congress felt that the baseline period was not reflective of normal operations, it provided alternative formulations. For example, in section 405(i), phase II units in high growth states are awarded additional basic allowances based on average fuel consumption for any three consecutive calendar years from 1980 to 1989 inclusive. The Agency believes, therefore, that outage adjustments for units experiencing economic or other types of outages are generally unwarranted.

EPA is persuaded, however, that units experiencing a severe allowance impact from a denial of their requested outage adjustment deserve further consideration. In developing the NADB version 2.11, EPA reconsidered the outage requests made in response to NADB version 2.0 and ultimately granted the requests of units that met the following two criteria: (1) Units that had actual 1985 SO_2 emissions rates below 1.2 lbs/mmBtu and (2) units that were operated by a utility that would receive less than half the total number of allowances, if an outage adjustment were denied.

Units with actual 1985 SO_2 emission rates below 1.2 lbs/mmBtu already meet the Phase II limitation imposed by Congress through section 405(b). The allowance trading system encourages units to reduce emissions below that level, but units already below that rate were not generally targeted for reductions. The Agency believes that utilities with these units will need the allocation of allowances primarily to cover their emissions rather than to generate large allowance surpluses through further emission reductions. The Agency does not intend to predict how individual units will meet their acid rain requirements, but believes that utilities with such units that are already operating them with relatively low emissions will be less likely to invest in emission reduction measures and more likely to cover their emissions through their allowance allocation or allowance purchases. Table 5 lists the units requesting outage adjustments and their 1985 SO_2 emissions rates.

TABLE 5.—1985 ACTUAL SO_2 EMISSION RATES FOR UNITS SEEKING OUTAGE ADJUSTMENTS

Plant name; BLR #	Operating utility	1985 actual SO_2 emissions rate (lbs/mmBtu)
Buck 5, 6, 7.	Duke Power Co.	0.00
Cliffside 1, 2.	Duke Power Co.	0.00

TABLE 5.—1985 ACTUAL SO_2 EMISSION RATES FOR UNITS SEEKING OUTAGE ADJUSTMENTS—Continued

Plant name; BLR #	Operating utility	1985 actual SO_2 emissions rate (lbs/mmBtu)
Canaday 1	Central Nebraska Pub P&I Dist.	0.01
Presque Isle 1, 2.	Wisconsin Electric Power Co..	0.21
Apache 2 .	Arizona Electric Power Coop Inc.	0.61
Boardman 1.	Portland General Electric Co..	0.80
Devon 4A .	Connecticut Light & Power Co..	1.05
Devon 3, 4B, 5A, 5B, 6.	Connecticut Light & Power Co..	1.06
Hookers Point 6.	Tampa Electric Co. ..	1.06
Hookers Point 1, 4.	Tampa Electric Co. ..	1.07
Dan River 2.	Duke Power Co.	1.08
Hookers Point 2.	Tampa Electric Co. ..	1.09
Hookers Point 3, 5.	Tampa Electric Co. ..	1.10
GG Allen 2	Duke Power Co.	1.38
GG Allen 1	Duke Power Co.	1.39

TABLE 5.—1985 ACTUAL SO_2 EMISSION RATES FOR UNITS SEEKING OUTAGE ADJUSTMENTS—Continued

Plant name; BLR #	Operating utility	1985 actual SO_2 emissions rate (lbs/mmBtu)
Buck 8	Duke Power Co.	1.41
Dan River 1.	Duke Power Co.	1.41
Cliffside 3 .	Duke Power Co.	1.48
Dan River 3.	Duke Power Co.	1.49
Cliffside 4 .	Duke Power Co.	1.50
Riverbend 9.	Duke Power Co.	1.57
Riverbend 10.	Duke Power Co.	1.64
Centralia BW21.	PacificCorp	1.67
Hoot Lake 2.	Otter Tail Power Co .	1.75
Streeter Station 6.	Cedar Falls, City of ..	5.34
F B Culley 1, 2.	Southern Indiana Elec & Gas.	5.68
Earl F. Wisdom 1.	Corn Belt Power Coop.	5.95

For these units with relatively low emissions, the operating utility will have varying abilities to cover their emissions with allowances. The Agency appreciates the shortfall in allowances that utilities may experience without adjustments to their baseline, but believes that only in the severest circumstances is it warranted for the Agency to use its discretion and accept such adjustments. Utilities with small impacts have the flexibility under the Acid Rain Program to shift emissions across units in their system, their power pool and throughout the allowance trading market. Utilities with large impacts require a significant number of allowances to cover their emissions and have fewer options to generate or acquire allowances. The Agency will therefore adjust for outages where the allowance impact, as calculated below, exceeds 100 percent. In quantifying this effect, the Agency developed the following measure for allowance impact:

$$\text{Allowance Impact (in Percent)} = \frac{\text{Allowances With Outage Adjustment—Allowances Without Outage Adjustment}}{\text{Allowances Without Outage Adjustment}}$$

This measure assesses, on a percentage basis, the number of permanent allowances a utility would receive when the Agency granted or denied its outage adjustment requests. The measure is for the utility as a whole, includes a utility's partial ownership of units within its system, and assumes that operating utilities will receive allowances in proportion to their share of plant ownership. Under title IV, the Agency allocates allowances to the affected unit and, as a matter of policy, does not involve itself in the distribution of those allowances among the owners of the unit. Therefore, this measure of allowance impact is approximate, and in no way does it suggest nor does the Agency endorse a preferred arrangement for distributing allowances. These assumptions were made to identify utilities experiencing severe shortfalls in allowances without adjustments to their baselines.

Table 6 ranks the allowance impact for utilities requesting outage adjustments and operating these units with relatively low emissions. The threshold at which outage adjustments are granted is at 100%. Two plants clearly exceed this threshold, Canaday and Boardman, while the remaining units are significantly below this level. Despite the estimated attribution of allowances to the unit's operating utility, the demarcation between Canaday and Boardman and the other units is sufficiently distinctive to make this threshold level robust.

TABLE 6.—ALLOWANCE IMPACT ON THE OPERATING UTILITY FOR UNITS WITH RELATIVELY LOW EMISSIONS SEEKING OUTAGE ADJUSTMENTS

Operating utility	Plant name(s)	Allowance impact (percent)
Central Nebraska Pub P&I Dist.	Canaday	293
Portland General Electric Co.	Boardman ..	154

TABLE 6.—ALLOWANCE IMPACT ON THE OPERATING UTILITY FOR UNITS WITH RELATIVELY LOW EMISSIONS SEEKING OUTAGE ADJUSTMENTS—Continued

Operating utility	Plant name(s)	Allowance impact (percent)
Arizona Electric Power Coop Inc.	Apache	33
Connecticut Light & Power Co.	Devon	2
Tampa Electric Co ..	Hookers Point.	<1
Wisconsin Electric Power Co.	Presque Isle.	<1
Duke Power Co	Buck, Cliffside, Dan River, Riverbend.	1

F. Adjunct Data File

With publication of the final NADB last July, EPA provided notice that it had created an Adjunct Data File (ADF) which contained non-confidential

information from Form EIA–867 on non-traditional utilities, some of which might be affected under title IV. Although the ADF listed 304 utilities, EPA believed that only a small percentage were affected by the Acid Rain Program requirements. Because the data on Form EIA–867 was insufficient to make applicability determinations, EPA requested comments from utilities listed on the ADF and from other non-traditional utilities that could be affected.

In response to the request for comments, several utilities provided additional information for their ADF units and approximately ten utilities commented that their units are unaffected and should be deleted from the ADF.

Based on the comments submitted, EPA believes that only 3 units listed in the draft ADF are affected, two of which were already listed in the NADB under a prior utility owner. EPA has worked with the various utilities to complete their data submittals.

Because the ADF has the same data elements as the NADB and because the Agency would prefer to have one database listing potentially affected units, these ADF units are now included in the version of NADB published today. ADF units that are affected and have submitted the necessary data will receive allowance allocations if they are eligible (see final allowance allocations rule).

As stated in past notices, the omission of a unit from the NADB does not indicate that the unit is not or will not be affected by the Acid Rain Program requirements. Applicability will be determined under the rules in 40 CFR 72.6.

G. Regulatory Impact Analysis

There is no regulatory impact, per se, from this data base. Economic impacts arise upon the allocation of allowances and the beginning of compliance with the Acid Rain Program in 1995. A regulatory impact analysis has been prepared for the entire Acid Rain program, including the allowance system.

H. Regulatory Flexibility Act

This data base has no effect, per se, on small entities and small communities. The final core acid rain regulations contained a small entity and small community analysis within the regulatory impact analysis.

I. Paperwork Reduction Act

This notice does not request information. Therefore, the Paperwork Reduction Act 44 U.S.C. 3501, *et seq.*, does not apply and no Information Collection Request was prepared.

Dated: March 5, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–5855 Filed 3–22–93; 8:45 am]

BILLING CODE 6560–50–M

Tuesday
March 23, 1993

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
Pilot Operating and Experience Requirements; Proposed Rule

federal register

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27210; Notice No. 93–1]

RIN 2120–AD68

Pilot Operating and Experience Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to amend its pilot qualification requirements for air carrier pilots by upgrading existing operating experience requirements, establishing a new kind of operating experience requirement, and adding requirements that would reduce the potential for an inexperienced pilot in command to be scheduled to fly with an inexperienced second in command pilot. These amendments are needed because the FAA has determined that the pairing of inexperienced pilots poses a potential safety problem. The proposed requirements would ensure that pilots are given the opportunity within a limited time period to use newly developed knowledge and skills in actual line operations.

DATES: Comments must be submitted on or before June 21, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27210, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27210. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Youngblut, Project Development Branch (AFS–240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27210." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On November 15, 1987, an air carrier operating under Part 121 was involved in an accident which was found by the NTSB to be partly due to the combined inexperience of the two pilots. This accident involved a Continental Airlines McDonnell Douglas DC–9–14 which crashed on takeoff in Denver. The NTSB found that while the aircraft's pilot in command (PIC) was an experienced pilot with apparently better-than-average flying skills, he was relatively inexperienced as captain on air carrier turbojet airplanes, and he had very little total flying time in the DC–9. In addition, according to the NTSB, the PIC was not seasoned in supervising or judging first officers. The NTSB found that the second in command (SIC) had little experience in the DC–9 or in any swept-wing turbojet airplane. In addition, the SIC, who had not flown for the previous 24 days, was flying the aircraft when it crashed. Of the 82 passengers and crewmembers, 29 were fatally injured.

On January 21, 1988, the FAA issued Air Carrier Operations Bulletin (ACOB) 8–88–1 which provided voluntary guidelines for certificate holders operating under Part 121 in the scheduling and pairing of pilots on flights, as well as recommended actions for pilots with low experience levels.

On July 19, 1988, the FAA issued further guidance to FAA field staff as a follow-up to the operations bulletin. This guidance requested that principal operations inspectors (POIs) review their certificate holders' policies on crew pairing and scheduling and send copies of these policies (from the certificate holder's operations manual) to FAA headquarters.

On November 3, 1988, the NTSB issued its findings and recommendations on the Denver accident, stating that the pairing of the pilots on this flight "was a factor in the accident." The NTSB recommended (Recommendation A–88–137) that the FAA issue requirements that establish minimum experience levels for each PIC and SIC that would, in effect, "prohibit the pairing on the same flight of pilots who have less than the minimum experience in their respective positions."

The FAA considered these recommendations and decided that it would have been premature to issue mandatory crew pairing requirements at that time. Only ten months previously, the FAA had issued its latest guidance documents containing specific crew pairing guidelines for certificate holders operating under part 121. The FAA, therefore, wanted to allow more time for air carriers to put these guidelines into effect.

On September 20, 1989, a second air carrier operating under part 121 was involved in an accident which the NTSB found was partly due to the inexperience of the pilots. This accident involved a USAir B–737 that aborted its takeoff and skidded into the East River in New York City. The NTSB found that the PIC, while having some 3,000 hours as an SIC in a B–737, had only 138 hours as a PIC in air transport aircraft; the SIC had been recently hired and had just qualified for B–737 service. The NTSB also found that the SIC "was conducting his first non-supervised line takeoff in a B–737, and also his first

takeoff after a 39-day non-flying period." Of the 61 passengers and crewmembers on this flight, 2 were fatally injured.

Past Practices and Current and Future Trends

The FAA has reviewed accident data and NTSB recommendations related to crew experience, and in addition has reviewed past and present practices and trends in the aviation environment that are affecting and will increasingly affect crew experience levels. Recent practices and trends necessitate revising current pilot qualification regulations to upgrade minimum crew experience and to require pilots to use newly acquired knowledge and skills in actual operations within a short time after training is completed and proficiency is demonstrated.

One practice generally followed by air carriers is the use of a bidding system to schedule flight crews. Pilots generally bid on those flights that are the most favorable to the pilot (e.g., time of day). Once all pilots have bid, schedules are assigned based on seniority. Pilots with the most seniority, and thus the most experience, usually win their bids and are awarded the most desirable flight schedules. Pilots having the least seniority and experience with the airline, or with the pilot duty position, usually do not win their bids and therefore receive the least desirable flight schedules. Moreover, as another problem, the least experienced pilots may be also assigned to a reserve pool. In the reserve pool these pilots may have to wait their turn for days or even weeks before they receive a flight assignment. This system often prevents newly qualified pilots from using and perfecting their new flight skills immediately after qualifying on a new aircraft. It also increases the likelihood of pairing inexperienced pilots on the same flight.

Also, in recent years manufacturers have introduced a greater number of new aircraft containing more equipment and systems variations within type. This has been in response to air carrier requirements for increasingly varied and sophisticated aircraft needed to cope with different routes and technology changes. As a result, pilots must not only learn the aircraft handling characteristics, they must also be able to work with a variety of aircraft equipment such as automated flight control and flight management systems and software.

Crew Pairing Committee

In response to the accidents, practices, and trends described above, and because many air carriers were not implementing the FAA guidelines on crew experience, the FAA requested the Joint Government/Industry Task Force on Flight Crew Performance, which was established in 1987, to form a committee to develop recommendations for establishing crew pairing requirements.[1]

The FAA received recommendations from a majority of the Task Force Committee, from the NTSB, and separate recommendations from the two pilot associations that were members of the committee. In addition to considering these recommendations, the FAA internally reviewed the identified problems and possible solutions. This proposal is based on the FAA's internal review and the recommendations previously referenced.

On September 13, 1990, the committee recommended requiring all certificate holders operating under part 121 to provide a minimum level of experience for pilot crews. Specifically, the committee recommended rule changes in three areas:

1. It recommended adding a requirement that PICs or SICs who are trained to fly new equipment obtain a minimum number of flight hours (100) within a reasonably short period of time (120 days) after a pilot demonstrates his or her piloting skills (i.e., from initiation of the airline transport pilot certificate (ATPC) type rating practical test or completion of the proficiency check). This will allow the pilot to obtain enough flying hours in the airplane to ensure that those skills are not lost once the training and testing have ended.

The committee referred to the concept of ensuring that newly-acquired skills are used in actual operations as soon as possible after they are acquired as "consolidation." The FAA has decided to use this term in this proposal and to refer to the proposed 120-day period as the "consolidation period." The FAA recognizes that this use of the word "consolidation" is broader than its application in psychology textbooks where it is usually meant to identify a period of time that is part of the training/learning process or that occurs almost immediately after completion of a training or teaching session. Consolidation or consolidation period as used by the committee and in this rulemaking includes the early stages of the actual reinforcement phases that follow after the end of the formal training.

Under the committee recommendation, a pilot who does not meet the minimum number of flight hours within the 120-day consolidation period would be required to complete some type of Line Oriented Flight Training (LOFT) period in a flight training device or flight simulator, airplane training period, or actual flight under observation of a pilot check airman before the pilot would be allowed to fly the new equipment again. The committee recommendation also included minor changes in the supervised operating experience requirements for PICs and SICs in turbojet powered airplanes currently contained in the FAR.

2. It recommended adding several operating restrictions generally relating to weather or runway conditions that would apply to an SIC who has fewer than 100 hours of flight time in the type of airplane being flown.

3. It recommended adding crew pairing limitations that would require either the PIC or SIC assigned to a flight to have at least 75 hours of flight time in that position on the airplane type being flown. However, committee members Air Line Pilots Association (ALPA) and Allied Pilots Association (APA) submitted separate views on elements of this recommendation. Their views are addressed in the discussion which follows on "Pairing Restrictions."

In response to these recommendations, the FAA has issued additional advisory material and is proposing regulatory changes to enhance crew experience levels. The proposed changes in this NPRM are designed to work with other rulemaking activities as part of an overall effort to improve flight crewmember performance. Other recent rulemaking activities completed or underway include the following: (1) The FAA issued Special Federal Aviation Regulation No. 58 establishing a voluntary Advanced Qualification Program (AQP), which gives operators the option of designing training programs that are proficiency-based, i.e., based on successful completion of training, checking, and qualification activities rather than completion of a set number of training hours. The AQP provides for Cockpit Resource Management (CRM) training which trains PICs and SICs to operate successfully as a crew through effective communication and coordination. (2) The FAA is considering rulemaking on Air Carrier Training Programs which would require CRM training for crewmembers and certain operations

[1] This task force was later subsumed by the Air Transportation Personnel Training and Qualifications Advisory Committee, established by FAA Order 1110.115, May 2, 1990. Today it continues to function as a subcommittee by the same name under the Aviation Rulemaking Advisory Committee.

personnel of certificate holders operating under part 121 and part 135 and require certain certificate holders operating under part 135 to comply with part 121 training, checking, and qualification requirements.

Discussion of FAA Proposal

In this NPRM, the FAA proposes the following crew experience requirements:

1. A PIC or SIC qualifying to fly an airplane for which an airline transport pilot (ATP) certificate with type rating, additional type rating, or § 121.441 proficiency check is required would be required to complete 100 hours of line operating flight time, including supervised operating experience, within a 120-day consolidation period beginning with initiation of an airman certification practical test or upon completion of a proficiency check in the new airplane (proposed new § 121.434(g)).

2. Operating experience requirements for PICs and SICs would be increased and modified (§ 121.434(c)).

3. Operating restrictions for inexperienced SICs would be imposed (proposed new § 121.438(a)).

4. Flight hour requirements in airplane type for pairing PICs and SICs would be applied (proposed new § 121.438(b)).

The specific proposed requirements are discussed below.

Consolidation Period

Under present requirements of Part 121, PICs and SICs who have completed training and demonstrated their proficiency to operate an airplane type for the first time must, in most cases, perform their duties under supervision. That is, they must operate the airplane for a certain number of hours under the supervision of a pilot check airman designated by the certificate holder. The required number of supervised hours of operating experience ranges from 10 to 25 hours. Under the present rules, a pilot may obtain his or her supervised operating experience immediately after qualifying (i.e., after successfully completing a type rating practical test or proficiency check) or several months after qualifying. In such a case, the first 10–25 hours, as applicable, of flight assignment under Part 121 would be under the supervision of a pilot check airman. Once a pilot has completed the required supervised hours, the pilot may operate that airplane in any operations permitted by the certificate holder's operations specifications. Thus, under present rules a PIC or an SIC may meet the regulatory requirements for a flight assignment under Part 121 without having operated the airplane for several months after having demonstrated proficiency. In this instance, the pilot would not have consolidated those skills demonstrated during qualification.

Pilots who have satisfactorily completed training and demonstrated proficiency in an airplane and who do not soon thereafter have an opportunity to consolidate the newly acquired knowledge and skills in actual operations may lose some proficiency in the newly acquired knowledge and skills. The loss of knowledge and skills is particularly acute if a pilot who has just completed training and qualification in an airplane is then assigned to an airplane for which he or she was previously qualified; that is, the pilot returns to a situation in which the pilot uses old skills after having just been trained in new skills. The loss of knowledge and skills can be particularly acute, in this case, because the return to use of previously acquired knowledge and skills can block newly acquired knowledge and skills before the pilot has fully absorbed the new knowledge and skills, that is, before the new knowledge and skills have been consolidated.

The committee concluded and the FAA agrees that it is important for a pilot who has qualified in an airplane to have an opportunity to consolidate the newly developed piloting skills and procedural knowledge through substantial line experience in the airplane within a reasonably short period of time after completing training and satisfactorily demonstrating proficiency. Therefore, the FAA proposes in new § 121.434(g) the following:

- For each airplane for which an ATPC with type rating, an additional type rating, or a proficiency check is required, a PIC or SIC would be required to obtain 100 hours of line operating flight time within a 120-day consolidation period after initiation of a practical test or completion of a proficiency check. This 100 hours would include the hours of operating experience when the PIC or SIC would be under the supervision of a pilot check airman under present § 121.434(c). (See below for supervised operating experience requirements.)
- In cases where a PIC or SIC performs flight time in another type airplane operated by the certificate holder at any time after the 120-day consolidation period begins, the pilot could not be assigned to the type airplane on which the pilot must complete the consolidation requirement until the pilot receives refresher training as provided in the certificate holder's approved training program and conducted by a proficiency pilot check airman.

Each certificate holder must develop training objectives for refresher training for each make and model airplane used in Part 121 operations. Refresher training should ensure that pilots have retained, or are allowed to regain, the level of proficiency needed to serve in part 121 operations. This training should focus on, among other things, procedural knowledge regarding the operation of the aircraft (e.g., programming the aircraft's flight management system) and critical skills such as engine inoperative approaches and missed approaches. Refresher training may consist of Special Purpose Operational Training or an airplane flight training period when a flight simulator or flight training device is unavailable. Special Purpose Operational Training is described in AC 120–35b, "Line Operational Simulations: Line-Oriented Flight Training, Special Purpose Operational Training, and Line Operational Evaluation."

- In cases where a PIC or SIC fails to complete 100 hours of line operating flight time in the airplane within the 120-day consolidation period, a certificate holder would be able to extend the period for up to 30 days for a maximum of 150 days if the following requirements are met:

1. The pilot continues to meet all other applicable requirements of subpart O of part 121; and

2. On or before the 120th day the pilot completes refresher training conducted by an appropriately qualified pilot check airman. However, the pilot need not receive this refresher training as provided in the certificate holder's approved training program if it is determined that the pilot has retained an adequate level of proficiency after having performed pilot duties on a supervised line observation flight conducted by a pilot check airman.

If a pilot has not completed one of the options described above, to ensure that the newly acquired knowledge and skills are consolidated, the pilot would have to be requalified under the certificate holder's approved training program.

These proposed requirements differ from the committee's recommendation, which seems to imply that the 120-day period might be extended indefinitely if a pilot completed one of the refresher options. The proposed limitations are consistent with a recommendation made by ALPA that continuation of the consolidation period should not be open

ended. The FAA specifically invites comments on the feasibility and adequacy of the 120-day period and on the related issues discussed above and may revise these requirements in light of comments received.

The FAA also recognizes that there are categories of individuals, who because of previous experience in a particular type airplane, should not be required to complete a consolidation period. Thus, new paragraphs § 121.434(h) (1) and (2) provide for exceptions to the consolidation rule.

Supervised Operating Experience

In accordance with the committee recommendations, this proposal would amend the requirements on supervised operating experience in § 121.434(c)(3) (i) and (ii) and § 121.434(f) as follows:

- For PICs and SICs who have completed initial training, the minimum hours of supervised operating experience would remain the same, but the proposed rule would require that each PIC or SIC complete at least 4 operating cycles in his or her respective duty positions. Each operating cycle is a complete flight segment consisting of a takeoff, climb, an enroute cruise portion, descent, and a landing. In addition the proposed rule would require that the PIC or SIC be the pilot flying the aircraft in at least two of these cycles.
- For PICs who have completed transition training, the requirement for supervised operating experience would be increased from 15 to 25 hours for Group II (turbojet powered) airplanes and for all airplanes the PIC would be required to complete at least four operating cycles in the PIC seat. The PIC would have to be the pilot flying the aircraft in at least two of these cycles.
- For SICs who have completed transition training, the hourly requirements for supervised operating experience would remain the same and the SIC would be required to complete at least four operating cycles in the SIC seat. The SIC would have to be the pilot flying the airplane in at least two of these cycles.
- For PICs who have completed transition training, up to 50% of the hours of supervised operating experience could be reduced by 1 hour for each takeoff and landing. PICs or SICs who have received initial training and SICs who have received transition training could not reduce supervised operating experience requirements in this manner. This is a change from present § 121.434(f), which permits reductions for all categories of flight crewmember hours of supervised operating experience required by that section.

The proposal to require that each pilot complete at least four operating cycles in his or her respective duty position (at least two as the pilot flying the airplane) is included to ensure that qualifying pilots obtain experience in all critical phases of a flight operation. In the case of some long range flights the minimum number of supervised operating experience hours may be met after two or three flights, without the pilot having obtained sufficient experience in takeoffs and landings. Under the proposed rule, the minimum number of cycles must be completed even if the supervised operating experience hours have already been accomplished.

The FAA is proposing three additional changes to the supervised operating experience requirements that were not addressed by the committee but are necessary to make the new consolidation rule work effectively. The proposed changes are as follows:

- Present § 121.434(a) prohibits a certificate holder from using any person "as a required crewmember on an airplane unless he has completed, on that type airplane and in that crewmember position, the operating experience requirements required" by that section. The word "satisfactorily" would be added before "completed" to make it clear that more than just meeting the minimum number of hours of operating experience is required. This change will ensure that the intent of this rule is met, namely, that the operating experience must not only be under appropriate supervision but also that the person supervising an individual's performance must be assured that the individual being supervised has the required knowledge and skills and is competent to perform assigned duties in revenue operations and to continue the consolidation period.
- In paragraph (c)(1)(ii) of § 121.434 the words "the certificate holder's approved training program includes a course of training in an airplane simulator under § 121.409(c) and" would be removed. The effect of this change would be to require that whenever a PIC is completing initial or upgrade training under § 121.434 at least one flight leg that includes a takeoff and landing must be observed by an FAA inspector. Under the present rule observance by an FAA inspector is required only when the approved training program includes a course of training in an airplane simulator.
- A third change to the present operating experience rule would be in paragraph (c)(2) of § 121.434. At present, this paragraph allows a SIC to obtain credit for operating experience hours during which the SIC is performing the duties of a SIC under the supervision of a pilot check airman or observing from the flight deck the performance of those duties by another SIC. Under this proposed change an SIC would not be authorized to gain credit for any observation hours, only for those hours during which the SIC has performed the actual duties of an SIC. This change is necessary to ensure that the newly trained SIC immediately begins consolidating newly developed knowledge and skills by actually performing line operations. This change was one of the NTSB recommendations (Recommendation A–88–138) issued following the November 1987 Continental Airlines Inc. crash in Denver discussed above.

Operating Restrictions

In cases where an SIC has fewer than 100 flight hours in the airplane being flown, and in certain situations, the PIC would be required, under proposed § 121.438(a) to make all takeoffs and landings, unless the PIC is a check airman. Those situations would include FAA designated special airports requiring special airport qualification, those special airports designated by the certificate holder, and any airport when one or more of the following conditions exist either for the airport or the runway to be used, as appropriate:

- The prevailing visibility value in the latest weather report is at or below ¾ mile.
- The runway visual range for the runway to be used is at or below 4000 feet.
- The runway to be used has water, snow, slush or similar conditions which may adversely affect airplane performance (e.g., takeoff, directional control, climbout, obstacle clearance, stopping).
- The braking action on the runway to be used is reported to be less than "good".
- The crosswind component for the runway to be used is in excess of 15 knots.
- Windshear is reported in the vicinity.
- Other conditions in which the PIC determines it to be prudent to exercise the PIC's prerogative.

This amendment is intended to ensure that an SIC with limited experience does not make a takeoff or landing in adverse conditions where a problem may arise that would require a more experienced pilot at the controls.

Pairing Restrictions

Under proposed § 121.438(b), a PIC and an SIC could not be assigned to the same flightcrew if each has fewer than 75 hours of line operating flight time, including supervised operating experience, on the airplane type. This means that the PIC or SIC would have to have at least 75 hours of line operating flight time on the airplane type. It would allow the pairing of a pilot with 75 hours of flight time with a pilot having zero hours of flight time (although the pilot with zero hours would have to be accompanied by a pilot check airman). For a PIC who has upgraded from the SIC position in the same airplane type, the required 75 hours of line operating flight time would include hours flown both as PIC and as SIC. The proposal would also provide for relief from these pairing restrictions in the form of a deviation authority granted by the Administrator.

Both the APA and ALPA stated that the committee's recommendations were too low. ALPA recommended that "an initial PIC and an initial SIC should not be paired together if both have fewer than 100 hours in their respective positions on the airplane in which they have most recently qualified." The FAA may, in the final rule, increase the minimum crew pairing experience requirements to the number of hours recommended by ALPA, and is therefore specifically inviting comments on this issue. The FAA would consider an increase to as many as 100 hours as within the scope of this notice.

The committee recommendation applies these crew pairing restrictions only to PICs and SICs who are qualifying for those positions for the first time. The committee recommendation does not apply the restrictions if a pilot is upgrading from SIC to PIC on the same airplane type or is transitioning from one airplane type to another. Under the committee recommendation, a new PIC in a particular type airplane with only 25 hours of operating experience in that airplane could be paired with an SIC who has transitioned from another airplane type and who has only 15 hours of operating experience in the airplane type. This is in contrast to the ALPA recommendation that the restrictions also apply to transitioning pilots.

The FAA would like public comment on these recommendations for applying the crew pairing restrictions. The FAA is proposing in this NPRM that the 75-hour minimum crew pairing restrictions also apply to transitioning pilots, as recommended by ALPA, in order to allow this option to be considered for the final rule.

The amendment is intended to prevent the pairing of two pilots both of whom may not be experienced enough with that airplane type to handle a problem if one arises.

Deviation Authority

Because the proposed requirements could be impractical for certificate holders in certain situations, the FAA proposes to include deviation authority within the consolidation period rule and the crew pairing rule (proposed §§ 121.434(h) and 121.438(b)). Deviations would be available only when: (1) A new certificate holder hires pilots who are also new to Part 121 operations, or to the type of airplane being operated, or (2) a certificate holder is adding new airplanes to its fleet or reassigning pilots to a new domicile where they will be operating different aircraft.

Definitions

The following definitions are proposed for inclusion in § 121.431.

Consolidation is the process by which a person through practice and practical experience becomes proficient in newly acquired knowledge and skills.

Line operating flight time is flight time performed in operations under this part.

Operating cycle is a complete flight segment consisting of a takeoff, climb, enroute portion, descent, and a landing.

Effective Date

For most of the proposed requirements the FAA assumes that more than a 30 day effective date would be needed to allow time for certificate holders to plan and implement a system for scheduling flight crews to meet the new requirements.

Under the proposed rule the requirement for increased supervised operating experience (§ 121.434(c)(3)); the consolidation requirement (§ 121.434(g)); and the prohibition against SICs acquiring operating experience while observing the performance of those duties by another SIC from the flight deck (§ 121.434(c)(2)) would all apply only to pilots who satisfactorily complete any portion of an airman certification practical test or satisfactorily complete a proficiency check on or after the effective date.

Under the SIC operating limitations and crew pairing requirements of proposed § 121.438, the specified number of hours must have been accumulated before any flight scheduled on or after the effective date.

The FAA invites public comment on the length of time needed between the issuance of the final rule and its effective date.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, or to have a significant adverse effect on competition.

The FAA has determined that this proposal is not major as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the proposal has not been prepared. Instead, the Agency has prepared a more concise regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Cost/Benefit Analysis

The primary objective of this proposed rule is to enhance aviation safety. The costs and benefits associated with the proposed amendments to the flight crewmember operating experience requirements of part 121 are presented below.

Costs

The proposed amendments add several requirements which would result in increased costs to Part 121 air carriers. The requirement that SICs

receive supervised operating experience while performing the duties of a copilot, rather than merely observing that function from a jump seat, would add $31.2 million over the years 1993–2002, or $17.7 million, discounted at 10 percent and expressed in 1991 dollars. The additional operating experience requirements for transitioning turbojet PICs would cost $44.7 million over the same 10-year period, or $25.6 million discounted. Initial and transitioning SICs in Group I (propeller driver) airplanes could reduce the operating experience requirements by substituting takeoffs and landings; this is expected to result in cost savings of $370,000 over the 10-year period, or $160,000 discounted, for those SICs who would have used observation, rather than actual flight experience, to meet the operating experience requirements under the existing rule. Transitioning PICs in Group I airplanes could also realize a cost savings of $4.5 million over 10 years, or $2.6 million, discounted, by the substitution of takeoffs and landings for some of the hours of operating experience.

The proposed rule would require initial and transitioning PICs and SICs to consolidate their skills by acquiring 100 hours of operating experience over a 120-day period. Those who failed to do so could be allowed an additional 30 days to complete this requirement, provided a check airman conducted a line observation flight to determine whether the PIC or SIC candidate had shown sufficient progress toward consolidation of skills and knowledge. If necessary, refresher training would also be required. The FAA estimates that 10 percent of the pilots would not complete their consolidation in the requisite time and that half of these pilots would need refresher training before they continued their consolidation. The cost of line observation flights and refresher training would be $5.7 million over 10 years, or $3.3 million discounted at 10 percent.

The requirement that PICs make all takeoffs and landings under adverse weather and runway conditions when the SIC has fewer than 100 flight hours in the airplane being flown is not expected to interfere with the proposed consolidation requirements for SICs, therefore, no costs were attributed to this requirement. The crew pairing requirement, which would prohibit two pilots from flying together if each of them has fewer than 75 hours in the airplane, would impose one-time costs on some air carriers to develop a software program to prevent such pairing. Many air carriers already have such programs. The FAA estimates that the cost of this requirement would be $91,000 in 1993.

The total costs of the proposed amendments are $78.0 million over the years 1993–2002, or $44.6 million discounted at 10 percent and expressed in 1991 dollars.

Benefits

The potential benefits of the proposed rule are based on the possibility of preventing fatalities, injuries, and property damage from accidents due to the inexperience of flight crewmembers.

The FAA has conducted an analysis of past accidents and actions that have already been undertaken to address the probable causes and contributing factors of those accidents. The FAA's analysis of regulations normally assumes that, in the absence of action on the part of the FAA, past accident trends serve as a sound basis for projecting future trends, and thus, for projecting the likely benefits of the action under consideration.

Although the two accidents described above were found to have been related, in part, to the inexperience of the flight crew, the FAA does not have sufficient information to quantify the benefits of avoiding future accidents that may result from pilot inexperience. However, if the requirements were effective in averting the equivalent of the damages of one accident (represented by an average of the two accidents described above), the benefits would be $63.5 million or $37.2 million discounted over the years 1993–2002.

The rule would be cost-beneficial if it were to avert the equivalent of 1.2 accidents of the type that have been caused in the past decade in part as a result of pilot inexperience. The rule also addresses a range of experience requirements that the FAA believes would make a cost-effective contribution to accident reduction through improved crewmember experience. The FAA, however, solicits comments about how the rule can be maximally cost-effective, so as to achieve the highest net benefit.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines [2] for rulemaking officials to apply when determining whether a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The entities that would be affected by this rule are air carriers operating under part 121. These air carriers are within the general classification of "operators of aircraft for hire." Based on the Regulatory Flexibility Criteria and Guidance, the size threshold for operators of aircraft for hire is nine aircraft owned, while the cost threshold varies from about $4,300 to $110,100 in 1991 dollars, depending on type of service and/or fleet seating capacity. A substantial number of carriers is a number of carriers that is not fewer than 11 or which is more than one-third of affected small entities.

The FAA has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Approximately 40 air carriers operating under part 121 could be considered small entities. The costs of the proposed rule to carriers operating either large turbojet or turboprop aircraft would not exceed the threshold limits given above. Only 3 small air carriers operating unscheduled reciprocating engine airplanes would incur costs of approximately $6,000. Although this amount exceeds the threshold of $7,400 in 1991 dollars established in the FAA's Criteria and Guidance, a significant number of carriers would not be affected. Therefore, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would have little or no impact on international trade. U.S. air carriers operating in international markets would incur additional costs, primarily for supervised operating experience requirements, whereas foreign air carriers operating in the same markets would not be affected by the proposed rule. If the cost of the proposed rule were borne entirely by U.S. carriers serving international markets it would still represent a negligible amount of the projected 10-year revenues from international operations.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

[2] U.S. Department of Transportation, Federal Aviation Administration. Regulatory Flexibility Criteria and Guidance. FAA Order 2100.14A. September 16, 1986.

it is determined that this regulation will not have federalism implications sufficient to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 121

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.431(b) is revised to read as follows:

§ 121.431 Applicability.

* * * * *

(b) For the purpose of this subpart, the airplane groups and terms and definitions prescribed in § 121.400 of this part and the following definitions apply:

Consolidation is the process by which a person through practice and practical experience becomes proficient in newly acquired knowledge and skills.

Line operating flight time is flight time performed in operations under this part.

Operating cycle is a complete flight segment consisting of a takeoff, climb, enroute portion, descent, and a landing.

3. Section 121.434 is amended by revising the title; removing the flush paragraph at the end of paragraph (b); removing the words "the certificate holder's approved training program includes a course of training in an airplane simulator under § 121.409(c) and" in paragraph (c)(1)(ii); revising the introductory text of paragraphs (a), (b), and (c); revising paragraphs (b)(2), (c)(2), (c)(3) introductory text, (c)(3)(i), (c)(3)(ii), and (f); and adding new paragraphs (a)(3), (g) and (h) before the flush paragraph to read as follows:

§ 121.434 Operating experience, operating cycles, and consolidation of knowledge and skills.

(a) No certificate holder may use a person nor may any person serve as a required crewmember on an airplane unless the person has satisfactorily completed, on that type airplane and in that crewmember position, the operating experience, operating cycles, and the line operating flight time for consolidation of knowledge and skills required by this section, except as follows:

* * * * *

(3) Separate operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills are not required for variations within the same type airplane.

(b) In acquiring the operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills, crewmembers must comply with the following:

* * * * *

(2) The operating experience, operating cycles, and line operating flight time for consolidation of knowledge and skills must be acquired after satisfactory completion of the appropriate ground and flight training for the particular airplane type and crewmember position.

* * * * *

(c) Pilot crewmembers must acquire operating experience and operating cycles as follows:

* * * * *

(2) A second in command pilot must perform the duties of a second in command under the supervision of an appropriately qualified pilot check airman.

(3) The hours of operating experience and operating cycles for all pilots are as follows:

(i) For initial training, 15 hours in Group I reciprocating powered airplanes, 20 hours in Group I turbopropeller powered airplanes, and 25 hours in Group II airplanes. Operating experience in both airplane groups must include at least 4 operating cycles (at least 2 as the pilot flying the airplane).

(ii) For transition training, except as provided in paragraph (c)(3)(iii) of this section, 10 hours in Group I reciprocating powered airplanes, 12 hours in Group I turbopropeller powered airplanes, 25 hours for pilots in command in Group II airplanes, and 15 hours for second in command pilots in Group II airplanes. Operating experience in both airplane groups must include at least 4 operating cycles (at least 2 as the pilot flying the airplane).

* * * * *

(f) Except for pilots meeting requirements in Group II airplanes, flight crewmembers may substitute one additional takeoff and landing for each hour of flight to meet the operating experience requirements of this section, up to a maximum reduction of 50% of flight hours. The hours of operating experience for pilots in command meeting transition training requirements in Group II airplanes under paragraph (c)(3)(ii) of this section may be reduced to 50 percent of the hours required by this section by the substitution of one additional takeoff and landing for each hour of flight.

(1) The hours of operating experience for pilots in command meeting initial training operating experience requirements in Group II airplanes and for second in command pilots meeting either initial or transition training operating experience requirements in Group II airplanes may not be reduced under this paragraph.

(2) Notwithstanding the reductions in programmed hours permitted under §§ 121.405 and 121.409 of subpart N of this part, the hours of operating experience for flight crewmembers are not subject to reduction other than as provided in paragraphs (e) and (f) of this section.

(g) Except as provided in paragraph (h) of this section, pilot in command and second in command crewmembers must acquire at least 100 hours of line operating flight time for consolidation of knowledge and skills (including operating experience required under paragraph (c) of this section) within 120 days after the satisfactory completion of:

(1) Any part of the flight maneuvers and procedures portion of either an airline transport pilot certificate with type rating practical test or an additional type rating practical test, or

(2) A § 121.441 proficiency check.

(h) The following exceptions apply to the consolidation requirement of paragraph (g) of this section:

(1) Pilots who have qualified and served as second in command on a particular type airplane before the effective date are not required to complete line operating flight time for consolidation of knowledge and skills as pilot in command.

(2) Pilots who have completed line operating flight time for consolidation of knowledge and skills while serving as second in command on a particular type airplane after the effective date are not required to repeat line operating flight time for consolidation of knowledge and skills before serving as pilot in command on the same type airplane.

(3) If, before completing the required 100 hours of line operating flight time, a pilot serves as a pilot in another airplane type operated by the certificate holder, the pilot may not serve as a pilot in the airplane for which the pilot has newly qualified unless the pilot satisfactorily completes refresher training as provided in the certificate holder's approved training program and that training is conducted by an appropriately qualified pilot check airman.

(4) If the required 100 hours of line operating flight time are not completed within 120 days, the certificate holder may extend the 120-day period to no more than 150 days if—

(i) The pilot continues to meet all other applicable requirements of subpart O of this part; and

(ii) On or before the 120th day the pilot satisfactorily completes refresher training conducted by an appropriately qualified pilot check airman as provided in the certificate holder's approved training program, or a pilot check airman determines that the pilot has retained an adequate level of proficiency after observing that pilot in a supervised line operating flight.

(5) The Administrator, upon application by the certificate holder, may authorize deviations from the requirements of paragraph (g) of this section by an appropriate amendment to the operations specifications in any of the following circumstances:

(i) A newly certificated certificate holder does not employ any pilots who meet the minimum requirements of paragraph (g) of this section.

(ii) A certificate holder adds to its fleet a type airplane not before proven for use in its operations.

(iii) A certificate holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the airplanes operated from that domicile.

4. Section 121.438 is added to subpart O to read as follows:

§ 121.438 Pilot operating limitations and pairing requirements.

(a) If the second in command has fewer than 100 hours of flight time as second in command in the type airplane being flown, and the pilot in command is not an appropriately qualified pilot check airman, the pilot in command must make all takeoffs and landings.

(1) At special airports designated by the Administrator or at special airports designated by the certificate holder; and

(2) In any of the following conditions:

(i) The prevailing visibility value in the latest weather report for the airport is at or below ¾ mile.

(ii) The runway visual range for the runway to be used is at or below 4000 feet.

(iii) The runway to be used has water, snow, slush or similar conditions that may adversely affect airplane performance.

(iv) The braking action on the runway to be used is reported to be less than "good".

(v) The crosswind component for the runway to be used is in excess of 15 knots.

(vi) Windshear is reported in the vicinity of the airport.

(vii) Any other condition in which the PIC determines it to be prudent to exercise the PIC's prerogative.

(b) No person may conduct operations under this part unless, for that type airplane, either the pilot in command or the second in command has at least 75 hours of line operating flight time, either as pilot in command or second in command. The Administrator may, upon application be the certificate holder, authorize deviations from the requirements of this paragraph by an appropriate amendment to the operations specifications in any of the following circumstances:

(1) A newly certificated certificate holder does not employ any pilots who meet the minimum requirements of this paragraph.

(2) An existing certificate holder adds to its fleet a type airplane not before proven for use in its operations.

(3) An existing certificate holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the airplanes operated from that domicile.

Issued in Washington, DC on March 11, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93–6247 Filed 3–22–93; 8:45 am]

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Part VI

Department of Transportation

Coast Guard

46 CFR Parts 31 and 32

Longitudinal Strength, Plating Thickness, and Periodic Gauging for Tank Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31 and 32

[CGD 91–209]

RIN 2115–AD99

Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging for Certain Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish minimum longitudinal strength and plate thickness standards for tank vessels that carry oil cargoes. The proposed regulations also would require the periodic gauging of these vessels after they reach the age of thirty years. The regulations are proposed in accordance with the Oil Pollution Act of 1990 (OPA 90). The purpose of the regulations is to reduce the likelihood of oil spills from structural failure of tank vessels, particularly in the case of unclassed tank barges.

DATES: Comments must be received by May 7, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 90–071a), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Thomas Jordan, Project Manager, (202) 267–6751.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify both this rulemaking (CGD 91–209) and the specific section of the rulemaking to which each comment applies, and give the reason for the comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address listed under "**ADDRESSES**." If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Thomas Jordan, Project Manager, and Pamela M. Pelcovits, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Statutory Basis and Purpose

Section 4109 of the Oil Pollution Act of 1990 (Pub. L. 101–380) (OPA 90), found as a statutory note following 46 U.S.C. 3703, requires the issuance of regulations on two matters related to the structural integrity of vessels that carry oil in bulk as cargo or cargo residue. These new regulations will: (1) Establish minimum standards for plating thickness, and (2) requfre periodic gauging of the plating thickness of all tank vessels over 30 years old operating on the navigable waters of the United States or the waters of the Exclusive Economic Zone.

The purpose of the regulations is to ensure adequate structural integrity of tank vessels throughout their service life. This will reduce the likelihood of a vessel breaking apart and spilling a substantial quantity of its cargo oil. The statute also requires the regulations to be consistent with generally recognized principles of international law. Additionally, the legislative history of the section stipulates that the Coast Guard should consider gaugings by classification societies, if equivalent to the Secretary's requirements, to be acceptable evidence of compliance.

In accordance with its authority under section 4109 of OPA 90 and its additional authority to establish standards for structural integrity under 46 U.S.C. 3306, the Coast Guard is proposing requirements in this notice of proposed rulemaking (NPRM) that address these matters.

Background and Discussion of Proposed Regulations

1. Legislative Origin of Section 4109

The specific incident that prompted section 4109 of OPA 90 was the structural failure of Tank Barge 565. While under tow in August 1988, this thirty-seven year old barge broke almost in half and spilled 4,000 barrels of petroleum into the Chesapeake Bay. The accident occurred two weeks after the required periodic drydock and internal inspections of the barge were conducted by the Coast Guard. The Coast Guard was unable to determine the proximate cause of the structural failure. However, the investigation report stated that the most probable cause was fatigue due to the age of the vessel and the type of construction. The report recommended establishing minimum plate thickness standards and periodic gauging requirements for older vessels. Two years later, Congress incorporated these two recommendations into section 4109 of OPA 90.

2. Oil Pollution Risk Group

Section 4109 of OPA 90 applies to all types of vessels that carry bulk oil cargoes; however, the group of vessels with the greatest risk of structural failure is unclassed tank barges, like Tank Barge 565. Currently, the gauging of unclassed barges is left to the discretion of owners/operators and the Coast Guard. Vessels classed by the American Bureau of Shipping (ABS), in contrast, are subject to class rules which require periodic gaugings and evaluation of the vessel's structural integrity.

3. Vessel Applicability

Section 4109 of OPA 90 applies to all vessels that carry oil in bulk as cargo, not just those inspected under 46 CFR subchapter D as tank vessels. In addition to subchapter D tankers and barges, oil also can be carried as bulk cargo aboard a variety of other non-tank vessels such as passenger ships, container and other cargo ships, certain fishing industry vessels and offshore supply vessels (OSVs). However, neither the language of OPA 90 nor its legislative history imply that Congress was concerned about vessels other than tank vessels. At this time, therefore, the Coast Guard is proposing regulations that will apply only to subchapter D tank vessels, including double-hulled ones. At a future date, the Coast Guard may expand the scope of the regulations to encompass the other types of vessels if necessary.

4. OPA 90 Definition of Oil

The definition of "oil" in OPA 90 includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes (except dredged spoil). This definition also includes non-petroleum oils such as animal and vegetable oils. However, the Coast Guard is not proposing regulations that encompass all of these oils at this time. Under the International Convention for the Prevention of Pollution by Ships (MARPOL 73/78), to which the United States is a signatory, two different definitions of oil are used for purposes of preventing pollution of the marine environment: petroleum oils are defined in Annex I of MARPOL, and other oils (animal and vegetable) in Annex III. Presently, the international community is focusing on the Annex I (petroleum) oils. Therefore, in accordance with the statutory intent of section 4109 that the regulations be as consistent with generally recognized principles of international law, the Coast Guard has determined that it is appropriate that the proposed regulations of this rulemaking apply only to petroleum oil cargoes (listed in 46 CFR Table 30.25–1 as pollution category I cargoes). However, at a future date, the Coast Guard may extend the regulations to encompass other oils if necessary.

5. Classification Societies

The legislative history of section 4109 stipulates that gaugings by classification societies, if equivalent to the Coast Guard's requirements, should be considered as acceptable evidence of compliance. There are more than 40 classification societies worldwide, eleven of which are members of the International Association of Classification Societies (IACS). The American Bureau of Shipping (ABS) is one of the major classification societies, and its standards are recognized by the U.S. Coast Guard. Classification societies historically began as independent assessors of a vessel's seaworthiness for insurance purposes. Today, these societies are also used by vessel owners and many flag states to carry out the provisions of international maritime agreements, such as the International Convention on Load Lines (ICLL), Safety of Life at Sea Convention (SOLAS), and the International Convention for the Prevention of Pollution by Ships (MARPOL). The Coast Guard, for example, has authorized ABS to perform certain administrative functions on its behalf with respect to these international conventions.

Based on its own engineering calculations and experience, each classification society publishes rules for vessel scantling design requirements, including those for plating thicknesses. Even though there are broad international regulations for inspections, each society also has its own specific guidelines for conducting hull surveys, gauging plate thicknesses, and evaluating corrosion. The Coast Guard has never completed a comprehensive review of all classification societies' particular design and inspection criteria. Accordingly, it is not feasible at this time to establish the equivalency of all other classification societies to ABS.

6. Load Line Certificates

U.S. vessels engaged in domestic voyages by sea (between U.S. ports via offshore or coastwise routes), Great Lakes voyages, or international voyages, are required by law to have an appropriate load line certificate. The United States, as do many other nations, also requires any foreign vessel entering its waters to have a load line certificate. This may be an international load line certificate issued by its flag state under the International Convention on Load Lines (ICLL), or a U.S. "Form B" load line certificate issued to a foreign-flag vessel that does not have an ICLL certificate. In order to be issued a load line certificate, the vessel must undergo a survey of its material condition. This survey includes, among many other items, evaluation of its structural integrity.

For international load lines, Article 1 of the ICLL specifically requires that the flag nation assure itself of the structural integrity of the vessel to which it is issuing the certificate. Most flag nations, including the United States, have delegated this function to classification societies to perform on their behalf. To issue a load line certificate to a U.S. flag vessel, or a Form B load line certificate to a foreign vessel, 46 CFR 42.09–30 specifically requires that, where deemed necessary, the vessel's shell and deck plating be gauged to ascertain its thickness. Load line certificates are valid for a period of five years, and the vessel must be surveyed again before the certificate is reissued.

For these reasons, the proposed regulations allow the Coast Guard to accept an international load line certificate or a Form B load line certificate as satisfactory evidence that a foreign tank vessel meets the structural integrity standards of the proposed regulations. For U.S. flag vessels, the Coast Guard may similarly accept a current load line certificate.

It is important to note, however, that domestic tank vessels navigating inside the U.S. boundary lines, as well as rivers, waterways, and some bodies of water that are designated as lakes, bays and sounds (LBS), are not required to have load lines. Accordingly, most U.S. tank barges and a few small harbor tankers do not have load lines.

7. Design and Inspection Regulations

Current Federal regulations for U.S. tank vessels, found in 46 CFR subchapter D, require that the design and construction be at least equivalent to the requirements of the American Bureau of Shipping (ABS) or other recognized classification societies.

With respect to inspections, 46 CFR subchapter D provides that the current standards established by the ABS shall be accepted as standard by the Coast Guard (46 CFR 31.10–1(a)). Further, in the event a tank vessel is classed by the ABS or other recognized classification society, the approved plans and certificates of the society may be accepted by the Coast Guard as evidence of the structural efficiency of the hull (46 CFR 31.10–5(c)). At present, ABS is the only classification society recognized by the Coast Guard for these purposes. The proposed regulations therefore allow the Coast Guard to accept classification with ABS as satisfactory evidence that the vessel meets the structural integrity standards of the proposed regulations.

It is important to note, however, that although the Federal regulations require the vessels to be initially built to ABS standards, there is no requirement for the vessels to actually be ABS-classed once in service. For unclassed or non-load lined vessels, subsequent material condition surveys are performed solely by owners and Coast Guard inspectors in accordance with the regulations in 46 CFR subchapter D. Currently, guidance to inspectors in determining whether or not to require gauging of unclassed vessels is contained in the Marine Safety Manual (MSM). The guidance is general and inspectors exercise wide latitude in applying the provisions of the MSM, unless the local Officer in Charge of Marine Inspection (OCMI) has provided other direction. Section 4109 of OPA 90 essentially replaced this discretionary practice with mandatory gauging requirements.

8. International Regulations

Present international regulations concerning the structural integrity of tank vessels are only generally addressed in MARPOL regulations. In March, 1992, the Marine Environmental Protection Committee (MEPC) of the

United Nations' International Maritime Organization (IMO) adopted Regulation 13G to MARPOL Annex I, which calls for enhanced inspection standards for older tank vessels. Specific guidelines for conducting inspections, gauging surveys, and evaluating structural integrity of tank vessels are expected to be finalized at IMO's Marine Safety Committee meeting (MSC 62) in May, 1993 and MEPC 34 in July, 1993. They will then be presented to the IMO assembly for adoption as a Resolution in October, 1993, and would be effective immediately. However, the major classification societies have already announced their intention to apply the guidelines to their respective rules commencing in July, 1993.

9. Plating Thickness

As previously discussed, tank vessels must be designed in accordance with ABS Rules or equivalent standards acceptable to the U.S. Coast Guard. The ABS Rules include numerous equations for determining sizes and dimensions of all structural elements of a hull. For example, the ABS Rules for Building and Classing Steel Vessels, which would be used as a structural standard for tankships, has more than 30 equations for plate thickness alone, depending upon the type of vessel (e.g., cargo, tanker), hull design (e.g., single- or double-hulled), location of the plating (e.g., main deck, sheer strake, sides, bottom, keel, forebody, midships, superstructure, etc.), type of steel (e.g., ordinary strength or high-tensile strength), and other naval architectural considerations. The ABS design equations for plate thicknesses also include appropriate margins for corrosion losses, generally 20 or 25 percent of design thickness. When gauging surveys find steel thicknesses that are below the allowable limits, then the structural member must be replaced, or the lost strength otherwise restored.

Presently, the Coast Guard uses ABS standards and guidelines found in Navigation and Vessel Inspection Circular (NVIC) 7–68 when evaluating gauging data and determining whether or not steel must be renewed or replaced. The proposed regulation lists minimum plate thicknesses, as a percentage of original plate thicknesses, for different areas on the hull.

10. Section Modulus Standards

In addition to plating thickness, the appropriate engineering approach to ensure adequate structural integrity of older tank vessels is to establish minimum "section modulus" standards which the vessel must maintain throughout its service life. Section modulus is a calculated measure of the bending strength of a structure. It is applicable both to simple structures (such as a single beam) and to composite structures that are composed of many smaller structural members (such as plating stiffened by beams). For composite structures, section modulus takes into account the strength contributions of the individual members and determines the overall bending strength of the total structure. With respect to ship or barge hulls (which are composite structures), the important strength concerns are those caused by hogging/sagging stresses due to waves or loading/discharging operations. The composite longitudinal strength of the vessel must be sufficient to withstand these bending stresses, which are usually at a maximum in the midship region of the hull. All classification society rules require a minimum midship section modulus, which applies to the middle 40 percent-length of the hull. Their rules also require minimum section modulus for some individual structural members (such as girders, stiffeners, beams, etc.).

When newly-constructed to classification standards, all vessels are strong enough to withstand the normal bending stresses expected for their intended service. As the vessel ages, however, corrosion will erode the structure and reduce the section modulus. If unchecked, the hull will eventually buckle or break apart.

Section modulus standards must be included in the proposed regulations because the original design strength of a hull was based upon both hull plating and the internal structure (such as longitudinal bulkheads, girders, stiffeners). To focus on plating thickness alone will not guarantee adequate strength; the other structural members must also be assessed for their material condition. The International Association of Classification Societies (IACS) published a requirement that in-service midship section modulus for ocean-going tankers should be at least 90 percent of the original, as-built, section modulus; most classification societies use this standard as well.

The proposed regulations require a minimum midship section modulus of 90 percent of the original, as-built, section modulus.

11. Oversized Plating and Scantling Considerations

A tank vessel is built in accordance with ABS rules, which in turn are based upon the intended service. For example, ocean-going tankers are built in accordance with ABS Rules for Steel Vessels, ocean-going barges are built in accordance with ABS Rules for Steel Barges, and inland barges are built in accordance with ABS Rules for Steel Vessels for Service on Rivers and Intracoastal Waterways. These Rules are periodically revised as appropriate to reflect changes in construction techniques, improved methods of structural analysis, new corrosion protection technology, etc. Generally, scantlings for ocean-going service are much heavier than required for inland service, because of the more-corrosive and stressful ocean environment.

It is possible that an older tank vessel, originally built for more-severe service, could be transferred into inland service. Although its scantlings may be below allowable limits for ocean service, it may still have adequate strength for the more-sheltered inland service. Requiring these vessels to maintain their original as-built strength may not be appropriate and might penalize owners/operators unnecessarily. It is more appropriate to structurally evaluate these vessels against the strength requirements of their new service. In order to account for this situation, the proposed regulations allow owners/operators of vessels built to rules other than for service on Great Lakes, rivers and intracoastal waterways to request that their case be reviewed by the cognizant Officer in Charge of Marine Inspection (OCMI) for possible consideration with request to alternative standards.

12. Periodic Gauging

Although section 4109 of OPA 90 specifically mandates periodic gauging of vessels once they are more than 30 years old, classification societies actually begin requiring tank vessels to undergo two or three midship transverse (girth) belt gaugings at 20 years of age. These belt gaugings are for the purpose of evaluating the midship section modulus. Additional gaugings are also required on other longitudinal members to assess their individual strength condition. The classification societies require subsequent re-gaugings every five years thereafter.

Unclassed vessels, such as river barges and harbor tankers, are not subjected to explicit gauging requirements but are required (by 46 CFR subchapter D) to be drydocked at least once every five years, with gaugings generally done at the discretion of the USCG (using ABS, MSM, NVIC 7–68 and local OCMI policies for guidance).

The proposed regulations require that a tank vessel be gauged before its 31st year, and re-gauged every five years thereafter.

13. Implementation Period

The regulations are expected to go into effect in mid-1993. It is estimated that approximately 1,194 unclassed tank vessels will be more than 30 years old at that time. In order to minimize the economic impact on owners/operators, and to prevent the overloading of marine industry and Coast Guard resources, the periodic gauging requirements will be implemented over approximately three and a half years. By the end of the first 18 months that the regulations are in effect, all vessels more than 40 years old (estimated to be 441 vessels) will have to undergo their first gauging survey. The next 12 months will capture all vessels more than 35 years old (estimated to be 376 vessels), and the last 12 months will capture all vessels more than 30 years old (estimated to be 408 vessels).

The proposed minimum thickness standards are already used by the Coast Guard in evaluating the structural integrity of unclassed tank vessels. Therefore, because these standards are already in practice, there is no need to delay implementation of these requirements.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation (RE) for this rulemaking is available in the docket (CGD 91–209) for inspection or copying, as indicated in the "**ADDRESSES**" section of this preamble.

A copy of the draft RE also has been placed in a special file (CGD 91–207) established to facilitate review of the programmatic Regulatory Impact Analysis for titles IV and V of OPA 90. Any public comments received will also be placed in that file.

Summary of Draft Regulatory Evaluation (RE)

There are already regulations in effect which require tank vessels to be drydocked at least once every five years, and to undergo general plate gauging to the satisfaction of the local Coast Guard OCMI. The scope and cost of these general gauging surveys can vary significantly from vessel to vessel, depending upon how well it has been maintained and how satisfied the OCMI is with its material condition. The proposed regulations will impose a very specific gauging requirement in addition to the general gaugings already required. The draft RE analyzes the new gauging costs.

The proposed regulations will most significantly impact owners/operators of unclassed tank barges and small harbor tankers. As of June, 1992, the age profile of the present unclassed tank vessel fleet (2,643 barges and 37 tankers) shows that 45 percent of the fleet is more than 30 years old, but only 9 percent is more than 50 years old. The draft RE therefore assumes that the service life of an unclassed tank vessel is 50 years. It is noted that no unclassed harbor tankers have been built since 1979, which suggests that, as these tankers are retired from service, industry is replacing them with tank barges.

The existing unclassed tank vessel fleet includes 232 vessels (9 percent) that are already more than 50 years old; by 1994, that number is expected to be 309. It is assumed that owners/operators of these older vessels will retire them from service rather than incur the gauging survey costs. The removal of these barges, however, is not expected to disrupt the overall supply/demand balance of the oil transportation market for three reasons. First, there is presently an oversupply of tank barges. Second, since the passage of OPA 90 there has been a resurgence of new tank barge construction orders; it is expected that industry will match the pace of replacement construction to meet market demand. Third, the retired barges are not necessarily scrapped; owners/operators must put them into lay-up until market rates offset reactivation costs (this is already common practice within the industry).

It is assumed that the original midship section drawing for these older tank vessels will no longer be available; therefore, a vessel's first gauging survey will require additional efforts to "reverse-engineer" the "as-built" drawing and section modulus. This will be a one-time-only cost, however, because the results will be available for subsequent surveys. Accordingly, the first gauging survey is estimated to cost $3,990 and the subsequent surveys $2,990. Commercial business loans are not generally available for these purposes because there is usually no suitable collateral or other equity available to secure a loan. Therefore, for most companies, the gauging survey costs will be an out-of-pocket capital expenditure that will come from current operating revenues and be recovered over the subsequent five years before the vessel must be regauged again. The draft RE calculates that a capital recovery rate of $3.33 per day is required in order to amortize the $3,990 gauging survey cost over five years, assuming a tank vessel work year of 292 days (i.e., 20% idle or out-of-service time per calendar year).

The section modulus and plate thickness standards are already in practice; therefore, they do not represent any new costs to industry. It is recognized that some owners/operators may have been maintaining their vessels below current standards (until discovered by Coast Guard), and will now have to expend additional funds to bring their vessels up to the required levels. However, the Coast Guard views this potential expenditure as deferred maintenance costs that properly should have been expended previously.

Over the 22-year period from mid-1993 (when the regulations are expected to go into effect) to 2015 (when all existing tank vessels must be double-hulled or removed from service), an estimated total of 4,446 gaugings will be accomplished. This estimate is based on the current fleet size and age profile, and certain assumptions regarding vessel retirement rates. Discounted at a rate of 7 percent adjusted to 1992 dollars, the total present value cost of the program is estimated to be $8.6 million, of which $4.6 million (53 percent) will occur in the first five years. The costs of the program are relatively high during the first five years because of the large number of existing vessels that will have to comply within that period. Thereafter, the annual cost will decline steadily as these existing tank vessels are retired and replaced by new ones that will not require gauging until they are 30 years old.

The effect of the proposed regulation will be to prevent catastrophic hull failures which would otherwise result in the spillage of several hundred tons of oil into the marine environment. However, this type of casualty is infrequent. Although tank barges have broken apart in the past, the failures are most often associated with improper loading/discharge operations, which can seriously overstress even a sound hull. The sole casualty which the Coast Guard has so far identified as clearly attributable to inadequate longitudinal strength and poor maintenance is the original Tank Barge 565 failure that prompted section 4109 of OPA 90. Accordingly, there is no statistical basis for projecting how much oil might otherwise be spilled without the proposed regulations. Therefore, the draft RE assumes that at least one such casualty will be prevented at some time over the 22-year program period, averting a spill of 4,000 barrels.

The monetary benefits of the proposed regulations include avoided clean-up costs, third-party compensation (lost earnings to

fishermen, etc.) and natural resource damages. Historically, these costs have varied enormously from spill to spill because of the great range of factors affecting the impact of oil spills, such as type of product, environment, time of year, location, weather conditions. Accordingly, it is not possible to establish a definitive monetized (dollar) benefit value for "unspilled" oil. Therefore, the draft RE does not perform benefit calculations using dollar amounts. Instead, it uses the "unspilled oil" quantity, discounted at 7 percent back to 1992 barrels. If the averted 4,000-barrel spill were to occur in the first full program year (1994), the discounted quantity would be 3,494 barrels. If it were to occur in the last program year (2015), the discounted quantity would be 844 barrels.

Therefore, the draft RE determines that the cost of the proposed regulations ranges from $2,465 to $10,208 per barrel of unspilled oil.

Although it is not statistically possible to predict when the "averted spill" is most likely to occur, the draft RE notes that the projected age profile of the fleet shows that the oldest of the existing vessels will be removed from service relatively early in the program period (more than 900 vessels by 1999). This age group represents the most at-risk group of vessels; hence, it is more likely that the benefit would occur sooner than later. Furthermore, the draft RE assumes that only one casualty will be averted, but it is possible that the regulations could avert several catastrophic failures, thereby reducing the benefit costs dramatically.

The regulatory burden on the Coast Guard will be the review and approval of the gauging reports. This is estimated to be $192 (6 man-hours) per report.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (5 U.S.C. 632).

Summary of Small Entity Impact

There are an estimated 1,163, unclassed tank barges and 31 unclassed harbor tankers in service that are already more than 30 years old. Because of this, and because the tank barge industry is largely comprised of one- and two-barge companies, the proposed regulations will impact several hundred small companies over the first five years that they are in effect. The specific impact on any particular company will depend upon the age profile of its fleet. Owners of vessels more than 40 years old will be immediately affected, and owners of barges more than 30 years old will be affected within three and a half years of the date when the proposed regulations are expected to go into effect. If a company owns several older vessels that must be gauged in the same year, and operating revenues cannot cover the gauging survey costs, then it may have to temporarily remove some vessels from service until funds are available.

This economic impact is unavoidable: The statute clearly targets older vessels. The Coast Guard has attempted to minimize the impact by implementing the periodic gauging regulations over a three and a half year period. Further, the five-year re-gauging interval is intended to coincide with the periodic drydock inspections already required by regulation, thus, preventing additional time out of service.

If a company affected by the proposed regulations thinks it qualifies as a small entity, and that the proposed regulations will have a more-adverse economic impact than discussed above, then it should submit a comment (see "**ADDRESSES**") explaining why it qualifies as a small entity, and in what way and to what degree the proposed regulations will affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3051 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains collection of information requirements in the following section: 46 CFR 31.10–21a. The following particulars apply:

DOT No.: 2115
OMB Control No.: 2115–XXXX
Administration: U.S. Coast Guard.
Title: Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging for Certain Tank Vessels
Need for Information: The proposed regulations are intended to ensure the structural integrity of older tank vessels by establishing minimum standards for plating thickness and requiring periodic gauging of the plating thickness of tank vessels over 30 years old. The collected information (survey data and associated engineering analysis) is needed in conjunction with the periodic gauging requirement.
Proposed Use: The Coast Guard will use the collected information to verify the structural integrity and regulatory compliance of older tank vessels.
Frequency: First time when a tank vessel is 30 years of age, then every five years thereafter.
Burden Estimate: The annual average burden on industry is 23,683 hours per year for the first three years.
Respondents: Owners/operators of unclassed tank vessels more than 30 years old (estimated to be 1,225 vessels in first three years).
Average Burden Hours Per Respondent: 58 hrs per vessel for the first survey, as follows:
16 hrs—Gauging survey (technician)
40 Hrs—Data calculations and analysis, report preparation (professional engineer)
1 hr—Review by owner/operator (manager)
1 hr—Processing by owner/operator (secretary)
Form(s): None

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "**ADDRESSES**."

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This NPRM proposes standards for structural strength and requirements for the periodic gauging of certain cargo tank vessels. The authority to regulate tank vessel design, construction and inspection is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute. Because tank vessels move between U.S. ports in the national marketplace, and between U.S. and foreign ports in the international marketplace, standards for structural strength, and periodic confirmation thereof, are a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. The Coast Guard intends that these regulations preempt State action addressing the same subject matter.

Environment

The Coast Guard has considered the environmental impact of this proposal under COMDTINST M16475.1B. A draft Environmental Assessment (EA) is available in the docket for copying and inspection as indicated in the "ADDRESSES" section of this preamble. The draft EA discusses and compares the proposed action and alternatives, subsequent expected environmental impacts, and overall need for the action.

Summary of Draft Environmental Assessment (EA)

Section 4109 of OPA 90 is intended to protect the environment by assuring adequate structural integrity of tank vessels throughout their service lives, thereby preventing catastrophic hull failures and resultant oil spillage. Several alternatives towards achieving this end were considered and rejected:

1. Take no action

This alternative would rely on improved self-vigilance by owners and operators, perhaps motivated by market forces (for example, shippers being more selective about the material condition of vessels that they hire, and willing to pay premium rates for better vessels) or regulatory pressure (for example, the threat of unlimited liability under other provisions of OPA 90). This approach was rejected, however, because: (1) The statue explicitly requires issuance of regulations; (2) it would put more-responsible owners/operators at a competitive disadvantage against less-responsible ones who did not expend the same efforts in maintenance; and (3) left to their own judgment, owners/operators are likely to implement differing standards, resulting in uneven practices and undermining the overall effectiveness of the environmental protection measures. Clearly-defined standards that are equally imposed on all vessels are considered the most effective approach towards protecting the environment and maintaining fair competition within the industry.

2. Regulate all vessels carrying all oils

This option would exercise the full scope of the statute by requiring all vessels, including non-tank vessels, that carry all oils, including animal and vegetable oils, to comply with the new regulations. The Coast Guard decided to limit the proposed regulations to only subchapter D tank vessels carrying MARPOL Annex I (petroleum) oils because: (1) The international community is presently focusing on petroleum oil pollution by tank vessels; (2) the volume of animal and vegetable oil movements is extremely small compared to petroleum oil movements, no significant spillage has occurred in the past, nor are such spills as potentially devastating to the environment. Similarly, non-tank vessels are not causing significant pollution. Therefore, including these oils and vessels imposes costs without commensurate benefits; (3) neither OPA 90 nor the legislative history of section 4109 imply that Congress was concerned about vessels other than tank vessels or oils other than petroleum oils; and (4) this rulemaking does not preclude the Coast Guard from extending the regulations to encompass these vessels or oil if warranted by future events.

3. Require classification of all tank vessels

This approach would assure a high level of structural integrity. However, it was rejected because classification imposes other requirements on a vessel that exceed the statutory concerns of section 4109. Furthermore, the costs of bringing an existing, unclassed vessel into class are much greater than the costs of the proposed regulations, while not providing any greater environmental protection.

4. Require load line assignments for all tank vessels, regardless of routes

This would ensure that the structural integrity of the vessel was periodically evaluated. However, it was rejected for the same reasons as the classification alternative: load line requirements exceed the mandate of section 4109, are more expensive than the proposed regulations, but do not provide any greater environmental benefit.

As previously discussed, structural hull failures like that which occurred to Tank Barge 565 are infrequent. The draft EA has no statistical basis for projecting how much oil spillage will be prevented by the proposed regulations. Therefore, although some reduction in environmental damage will probably accrue, the actual benefits cannot be reasonably predicted beyond making an assumption of effectiveness. The draft EA assumes that the regulations will prevent at least one catastrophic hull failure, averting a spill of 4,000 barrels. (This quantity is the approximate capacity of a set of port/starboard cargo tanks on a typical barge.)

Although this averted spillage may be significant to a local environment, generally, the proposed regulations are not expected to result in significant impact on the quality of the human environment. Therefore, the Coast Guard expects to issue a Finding of No Significant Impact.

List of Subjects

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire protection, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 31 and 32 as follows:

SUBCHAPTER D—TANK VESSELS

PART 31—INSPECTION AND CERTIFICATION

1. The authority citation for 46 CFR part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. app. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46; sec. 4109, Pub. L. 101–380, 104 Stat. 515.

2. Section 31.10–21a is added as follows:

§ 31.10–21a Periodic gauging of tank vessels more than 30 years old that carry certain oil cargoes—TB/ALL.

(a) All tank vessels carrying a pollution category I oil cargo listed in 46 CFR Table 30.25–1 must undergo periodic gauging surveys as follows:

(1) Tank vessels originally delivered on or after January 1, 1967 must undergo the gauging survey in paragraph (b) of this section before their 31st year, and be re-gauged at intervals not exceeding five years thereafter.

(2) Tank vessels originally delivered between January 1, 1961 and December 31, 1966 must undergo the gauging survey in paragraph (b) of this section no later than January 1, 1997, and be re-gauged at intervals not exceeding five years thereafter.

(3) Tank vessels originally delivered between January 1, 1955 and December 31, 1960 must undergo the gauging survey in paragraph (b) of this section no later than January 1, 1996, and be re-gauged at intervals not exceeding five years thereafter.

(4) Tank vessels originally delivered before January 1, 1955 must undergo the gauging survey in paragraph (b) of this section no later than January 1, 1995, and be re-gauged at intervals not exceeding five years thereafter.

(b) The gauging survey shall comprise at least three transverse (girth) belts of deck, bottom, side, inner hull, trunk and longitudinal bulkhead plating within

the 40-percent midship length, together with attached longitudinal members. The number and specific locations of the gauging points shall be to the satisfaction of the OCMI.

(c) Except as provided in paragraph (e) of this section, within 60 days of the vessel's required compliance date the owner/operator shall submit to the OCMI that issued the vessel's current Certificate of Inspection:

(1) The gauging survey results, and

(2) An engineering analysis, signed by a registered Professional Engineer licensed by one of the 50 U.S. States or the District of Columbia, certifying the vessel's compliance with respect to the minimum section modulus and plate thickness requirements of subpart 32.59 of this chapter, or proposing structural repairs and/or modifications that will bring the vessel up to the required strength standards.

(d) The vessel owner/operator shall keep a permanent copy of the Coast Guard-approved gauging report available for inspection by the OCMI.

(e) Instead of the submittals required by paragraph (c) of this section, current classification with the American Bureau of Shipping, or a load line certificate issued in accordance with the International Convention on Load Lines, the International Load Line Act or the Coastwise Load Line Act, may be submitted as evidence of compliance with the requirements of this section.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

3. The authority citation for 46 CFR part 32 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; sec. 4109, Pub. L. 101–380, 104 Stat. 515.

4. Subpart 32.59 is added consisting of § 32.59–1 as follows:

Subpart 32.59—Minimum Longitudinal Strength and Plate Thickness Requirements for Unclassed Tank Vessels That Carry Certain Oil Cargoes—TB/ALL

§ 32.59–1 Minimum longitudinal strength and plate thickness requirements—TB/ALL.

(a) Except as provided in paragraph (b) of this section, all unclassed tank vessels carrying a pollution category I oil cargo listed in 46 CFR Table 30.25–1 must meet the longitudinal strength and plate thickness requirements as follows:

(1) The minimum midship section modulus must be at least 90 percent of the vessel's original, as-built midship section modulus;

(2) Within the 40-percent midship length, the average flange and web thicknesses of each structural stiffener shall be at least 85 percent of original thickness unless a buckling analysis demonstrates that lesser thicknesses can be safely tolerated. However, the average minimum thickness for any stiffener web or flange shall never be less than 80 percent of original thickness; and

(3) Within the 40-percent midship length, the minimum plate thickness for individual longitudinal strength plates must be as follows:

(i) Weather deck: 75 percent of original thickness

(ii) Trunk/hatch: 70 percent of original thickness

(iii) Sheer strake: 75 percent of original thickness

(iv) Outer sideshell: 75 percent of original thickness

(v) Inner sideshell: 75 percent of original thickness

(vi) Outer bottom: 75 percent of original thickness

(vii) Inner bottom: 70 percent of original thickness

(viii) Keel: 75 percent of original thickness

(ix) Bulkheads: 75 percent of original thickness

(b) Where a vessel was originally built to heavier plating and section modulus standards than required for its present service, it may be structurally evaluated against the strength requirements of its present service. Owners or operators of a vessel may request the cognizant OCMI to review the current condition of the vessel and its intended service for possible consideration with respect to alternative standards.

Dated: March 16, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–6497 Filed 3–22–93; 8:45 am]

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federal register

Tuesday
March 23, 1993

Part VII

Department of Education

34 CFR Part 232
Drug-Free Schools and Communities Emergency Grants; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 232

RIN 1810–AA65

Drug-Free Schools and Communities Emergency Grants Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations governing the Emergency Grants Program in 34 CFR part 232 to add projects that combat drug and alcohol abuse by students in the most troubled areas of a local educational agency (LEA) to the list of types of projects the Secretary may assist; to clarify eligibility requirements; and to ensure that applicants are able to demonstrate the basis of their eligibility to receive a grant.

DATES: Comments must be received on or before May 7, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Madeline Bosma, U.S. Department of Education, 400 Maryland Avenue, SW., room 2123, FOB 6, Washington, DC 20202–6439.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Madeline Bosma. Telephone: (202) 401–1258. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Part 232 governs the administration of the Drug-Free Schools and Communities Emergency Grants Program. The proposed changes to part 232 would add to the list of the types of projects the Secretary may assist (in § 232.5) comprehensive programs to combat drug and alcohol abuse by students in the most troubled areas of an LEA. The Secretary is especially interested in receiving public comment on the validity and feasibility of using the following factors to assist applicants in identifying the most troubled areas of an LEA for purposes of implementing § 232.5(e) of the proposed regulations. These factors are—

(1) Open-air drug markets;
(2) High unemployment;
(3) High homicide rates;
(4) Overcrowded housing conditions;
(5) Boarded-up businesses and dwellings; or
(6) Limited access to basic goods, health, and other social services.

The Secretary intends to incorporate one or more of these factors, or other factors received in public comment, into a list of factors that applicants for grants under this program may use to identify the most troubled areas of an LEA.

The Secretary is also particularly interested in receiving public comment on other factors that applicants could use to identify troubled areas. Because the Secretary wants to ensure that these factors are valid measures, commenters should supply supporting documentation, including citations of research findings and correlations between drug use and suggested factors, with their comments. To the extent that commenters suggest alternative factors as indicators of the most troubled areas of an LEA, the Secretary is interested in receiving comments on those alternative factors. These comments will be available for public inspection as noted in the **INVITATION TO COMMENT** section of this NPRM to allow the public the opportunity to review and comment on possible alternative factors.

The proposed changes to part 232 would also (1) clarify the emergency grants eligibility requirements by including statutory language regarding the conditions of eligibility based on section 1006 of chapter 1 of title I of the Elementary and Secondary Education Act; and (2) require that applicants include in their applications a statement of how they meet these requirements. These changes are needed to ensure that applicants understand and demonstrate their eligibility to receive an emergency grant.

The Drug-Free Schools and Communities Emergency Grants Program supports recipients in their efforts to attain drug-free schools under National Education Goal Six.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The proposed regulations do not impose burdensome requirements on applications or grantees. They establish requirements for participation in the program and would not have a significant economic impact on entities participating in the program.

Paperwork Reduction Act of 1980

Section 232.4 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Annual public reporting and recordkeeping burden for this collection of information is estimated to average one-half hour per response for 200 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding any of the provisions in these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period in room 2123, FOB #6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirements of reducing the regulatory burden, the Secretary also invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 232

Drug abuse, Drug-free schools and communities, Education department, Elementary and secondary education, Grant programs—Education, Local educational agencies, Reporting and recordkeeping.

Dated: March 2, 1993.

Richard W. Riley,

Department of Education.

(Catalog of Federal Domestic Assistance Number 84.233A Emergency Grants Program)

The Secretary proposes to amend part 232 of title 34 of the Code of Federal Regulations as follows:

PART 232—DRUG-FREE SCHOOLS AND COMMUNITIES EMERGENCY GRANTS PROGRAM

1. The authority citation for part 232 continues to read as follows:

Authority: 20 U.S.C. 3216, unless otherwise noted.

2. Section 232.2 is revised to read as follows:

§ 232.2 What parties are eligible for a grant under this program?

A local educational agency is eligible to receive a grant if it—

(a)(1) Receives, or is eligible to receive, assistance under section 1006 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2712); or

(2) Meets the criteria of clauses (i) and (ii) of section 1006 (a)(1)(A) of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2712); and

(b) Serves an area—

(1) In which there are a large number or a high percentage of—

(i) Arrests for, or while under the influence of, drugs or alcohol; or

(ii) Convictions of youth for drug- or alcohol-related crimes;

(2) In which there are a large number or a high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(3) That has a significant drug and alcohol abuse problem.

(Authority: 20 U.S.C. 3216)

3. Section 232.4 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding a new paragraph (a) to read as follows:

§ 232.4 What must an application include?

* * * * *

(a) A statement of the basis for the applicant's eligibility under § 232.2(a)(1) or (2);

* * * * *

(Authority: 20 U.S.C. 3216)

4. Section 232.5 is amended by removing the word "or" at the end of paragraph (c), by removing the period at the end of paragraph (d) and adding in its place "; or", and by adding a new paragraph (e) to read as follows:

§ 232.5 What types of projects may the Secretary assist under this program?

* * * * *

(e) Implement comprehensive programs to combat drug and alcohol abuse by students in the most troubled areas of a local educational agency.

* * * * *

[FR Doc. 93–6564 Filed 3–22–93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 54

Tuesday, March 23, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22
15415–15750.....23

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12183 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12800 (See DOL final rule of March 15).....15402
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12836 (See DOL final rule of March 15).....15402
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13189
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413

Administrative Orders:

Presidential Determinations:
No. 93–15 of February 27, 1993.....13183

Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
307.....12145
432.....13191
532.....12146, 13193, 13194, 15415
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332, 15416
1421.....14495
1427.....12332, 15261
1434.....14495
1464.....11960
1493.....11786, 13684
1703.....13194
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071, 15417
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130
58.....13130
59.....13130
61.....13130
68.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634

1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
50.....12339
50.....15303
60.....12342
110.....14344
810.....13427, 15441
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
614.....11792
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
121.....12334

14 CFR

25.....12537
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264
93.....12128
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118
121.....15730
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

305.....15086
1030.....12335

Proposed Rules:

305.....12818
308.....13370

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
240.....11804, 11806
250.....13719
259.....13719

18 CFR

2.....15418
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

284.....14530, 15311

19 CFR

4.....12538, 13195

20 CFR

Proposed Rules:

209.....11811
211.....11811
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
234.....13534, 13950
236.....13007
240.....13534
570.....13686
582.....13884
583.....13870
882.....13828
905.....13916
968.....13916
3500.....13705

25 CFR

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274
52.....14517
602.....13409, 13413

Proposed Rules:

1.....14531, 15312, 15313
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964

Proposed Rules:

650.....11814

29 CFR

470.....15402
1910.....15089
2619.....13706
2676.....13707

Proposed Rules:

103.....15314
825.....13394
1910.....15526
2619.....15315
2676.....15315
2700.....12158

30 CFR

920.....15275

Proposed Rules:

56.....14492
57.....14492
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
935.....15315
938.....15456
950.....15318, 15319

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
988.....13007

33 CFR

1.....15228

100.....13214
110.....12539
117.....12540, 15419, 15420, 15421
154.....13550
155.....13708
165.....14151, 15089
Proposed Rules:
117.....12568

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
609.....13335, 15523
668.....14152
682.....13335
Proposed Rules:
50.....11924
232.....15748
649.....11928
674.....13356
682.....13356

36 CFR

Proposed Rules:
242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174

39 CFR

111.....13551
Proposed Rules:
3001.....12196

40 CFR

50.....13008, 15278, 15281, 15282
52.....11967, 14153, 15277, 15422, 15431
55.....14157
72.....15634
73.....15634
75.....15634
80.....13413, 14476
81.....12541, 15422
86.....13413
88.....11888
180.....14314, 14316
261.....15284
268.....14317
271.....12174, 14319, 14321
300.....12142, 15287
435.....12454
712.....13556
716.....13556
761.....15435
Proposed Rules:
Ch. 1.....12199, 12352, 13571, 13739
51.....13836
52.....12006, 12913, 12914, 13230, 13572, 13575, 14194
61.....15467
68.....13174
69.....13579
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
180.....12199, 12200, 13234, 13236, 13238, 13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
761.....12352, 13128

41 CFR

Ch. 301.....12890
301–7.....12890
302–11.....15436

43 CFR

Public Land Orders:
86.....11816
6958.....11968
6959.....14323
Proposed Rules:
3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11960, 14159
65.....14323, 15091
67.....14325
Proposed Rules:
67.....14350

45 CFR

400.....11793
1303.....13019
1611.....12335

46 CFR

10.....15228
12.....15228
15.....13360
25.....13364
552.....13414
Proposed Rules:
31.....15740
32.....15740
67.....12352

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795
5.....14328
13.....12832
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
73.....12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440
74.....11795
76.....11970, 11972
90.....12176, 12177
Proposed Rules:
Ch. I.....12915, 13041, 14367, 15120, 15461
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535
61.....13435
64.....12204, 13435, 14371
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436, 13437, 15321, 15461, 15462
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140

49 CFR

1.....12543
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463
582.....12545
591.....12905
1007.....15290
Proposed Rules:
23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316
180.....12316
195.....12213
571.....12921, 13042, 13243, 13424, 15132
813.....12064, 12084
814.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853, 12864, 14169, 14248, 14330
20.....15096
611.....14170
625.....13560
641.....13560
646.....11979
652.....14340
663.....11984
672.....11985, 11988, 13214, 13561
674.....12336
675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291
685.....14170
Proposed Rules:
17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541
100.....14350
625.....12017, 15463
641.....12018, 15132
646.....13732
663.....14543, 14549

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 11, 1993

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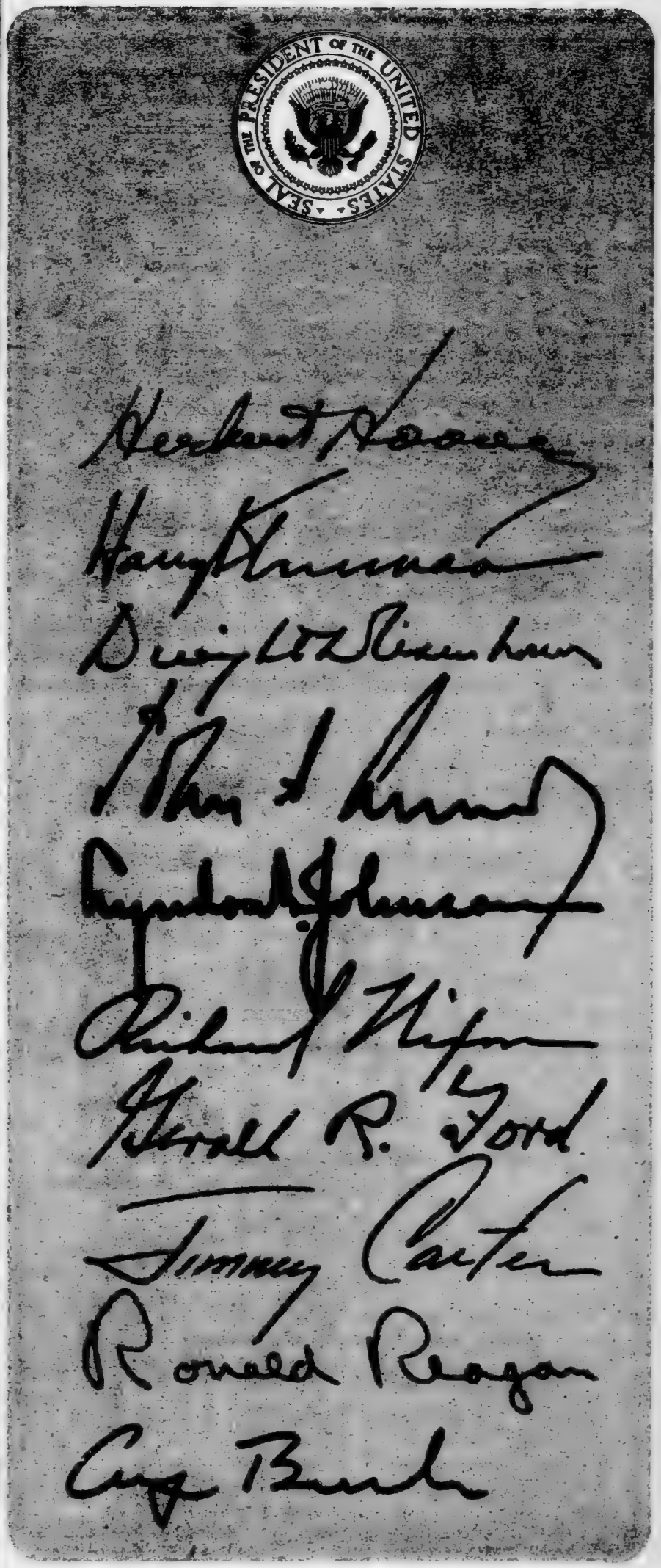

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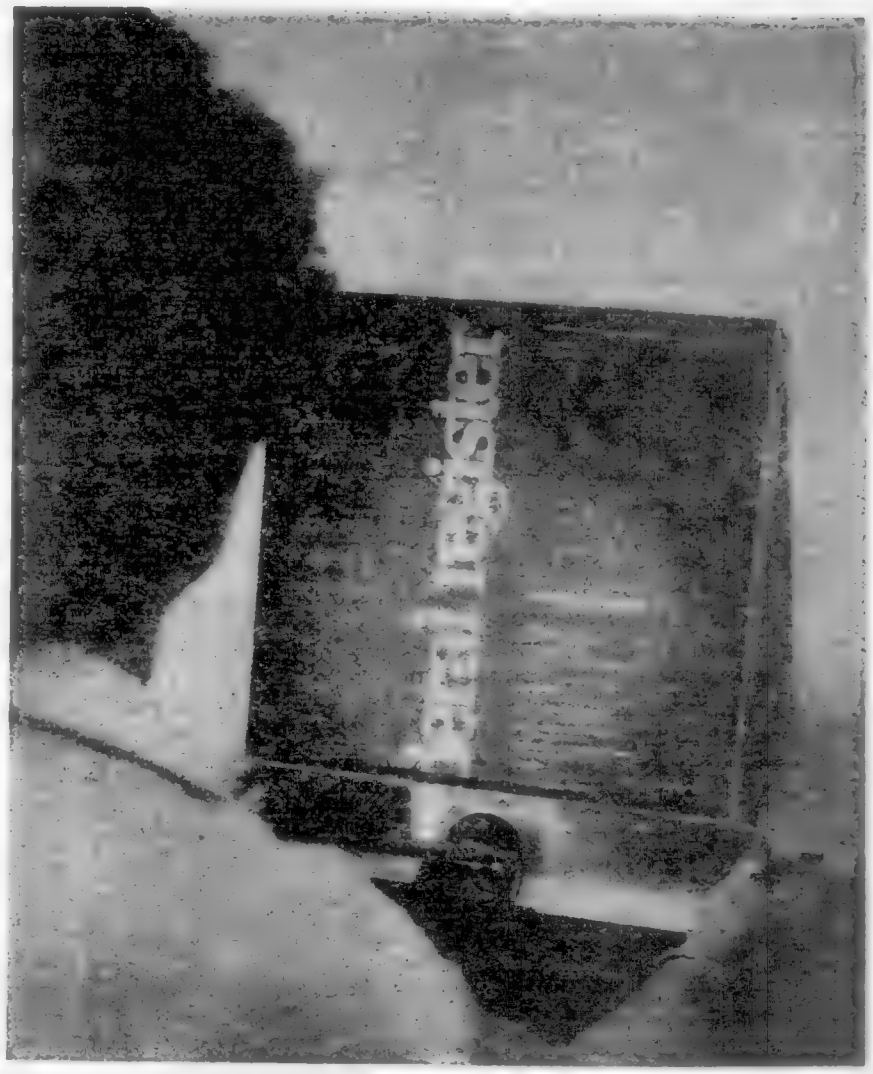

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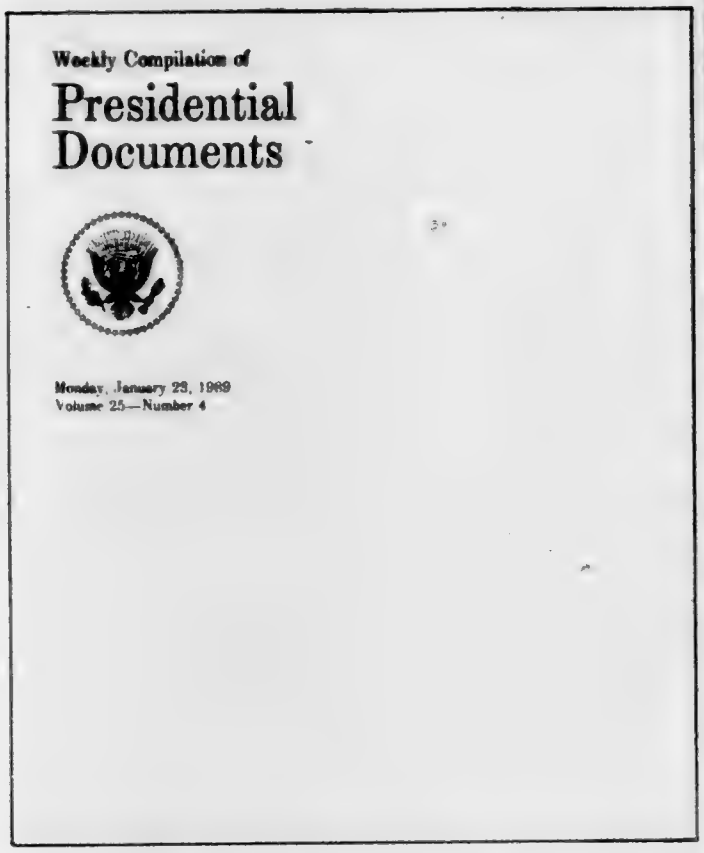

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3–24–93
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Contents

Federal Register

Vol. 58, No. 55

Wednesday, March 24, 1993

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food and Nutrition Service

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Palmdale Regional Airport, CA; commercial operations increase, 15843

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Rinderpest, foot-and-mouth disease, hog cholera, and swine vesicular disease; disease status change for France
Correction, 15901

Antitrust Division
NOTICES
National cooperative research notifications:
Advanced Lead-Acid Battery Consortium, 15882

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Merchant marine officers and seamen:
Marine licensing, certificate of registry, and merchant marine documentation; user fees
Correction, 15901
Ports and waterways safety:
Upper Mississippi River; safety zone, 15775
PROPOSED RULES
Ports and waterways safety:
Narragansett Bay, RI; safety zone, 15821, 15822
NOTICES
Committees; establishment, renewal, termination, etc.:
Lower Mississippi River Waterway Safety Advisory Committee, 15891
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 15891, 15892
Lower Mississippi River Waterway Safety Advisory Committee, 15892
National Offshore Safety Advisory Committee, 15892

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Telecommunications and Information Administration
NOTICES
Agency information collection activities under OMB review, 15840

Commodity Credit Corporation
RULES
Export programs:
Emerging democracies facilities guarantees
Correction, 15901
Upland cotton marketing certificate provisions, 15775

Consumer Product Safety Commission
PROPOSED RULES
Omnidirectional citizens band base station antennas:
Regulatory Flexibility Act; review of existing rules, 15815

Customs Service
RULES
Fingerprints submission; fees, 15770
NOTICES
Trade name recordation applications:
Modular Computer Systems, Inc.; rescission, 15896
Wemco, Inc., 15896

Defense Department
See Air Force Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 15841, 15842
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 15844
Grants and cooperative agreements; availability, etc.:
Defense technology conversion, reinvestment, and transition assistance program, 15842

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Motamed, Michael, M.D., 15882

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
Geo. E. Keith Co., Inc., et al., 15840

Education Department
PROPOSED RULES
Postsecondary education:
Higher Education Amendments of 1992—
Patricia Roberts Harris fellowship program; correction, 15824

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Atomic energy agreements; subsequent arrangements, 15846
Natural gas exportation and importation:
Centra Gas Ontario Inc., 15846
Nuclear waste management:
Waste isolation pilot plant test phase plan and waste retrieval plan; availability, 15845
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Harriman Energy Partners, Ltd., 15846

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Gasoline- and methanol-fueled light-duty vehicles and trucks; evaporative emission regulations, 16002
Urban buses; particulate emissions standards; and heavy-duty engines; nitrogen oxides emissions standards, 15781
Air quality planning purposes; designation of areas:
Minnesota, 15776
Hazardous waste program authorization:
Guam, 15806
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, 15803
Metalaxyl, 15804
Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer, 15802
Tolerance processing fees, increase, 16094
Toxic substances:
Polychlorinated biphenyls (PCB's) and asbestos; nomenclature change, 15808
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 15824
NOTICES
Agency information collection activities under OMB review, 15872
Pesticide, food, and feed additive petitions:
DowElanco, 15873
Pesticide registration, cancellation, etc.:
Mite-a-Salt, 15873
Pesticides; temporary tolerances:
Entomopathogen Beauvaria bassiana, 15872
Mitsui Petrochemicals Ltd., 15872

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 15757
Cessna, 15758
McDonnell Douglas, 15760
Jet routes, 15762
VOR Federal airways, control areas, and jet routes, 15763
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 15813

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 15874
Flood insurance program:
Mortgage portfolio protection program, 15874

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Annual charges; billing procedure revision, 15765
PROPOSED RULES
Energy Policy Act:
Oil pipeline regulations revisions; staff proposal, 15816
NOTICES
Electric rate, small power production, and interlocking directorate filings:
Louis Dreyfus Electric Power, Inc., et al., 15847
Environmental statements; availability, etc.:
Georgia Power Co., 15848
Meetings; Sunshine Act, 15898
Natural gas certificate filings:
Southern Natural Gas Co. et al., 15863
Natural Gas Policy Act:
Self-implementing transactions, 15849
State jurisdictional agencies tight formation recommendations; preliminary findings—
Texas Railroad Commission, 15865
Applications, hearings, determinations, etc.:
Central Louisiana Electric Co., Inc., 15866
CNG Transmission Corp., 15866
Eastern Shore Natural Gas Co., 15866
East Tennessee National Gas Co., 15866
El Paso Natural Gas Co., 15867
Great Lakes Gas Transmission Limited Partnership, 15867
Multitrade of Pittsylvania County, L.P., 15868
Panhandle Eastern Pipe Line Co., 15868, 15869
Phillips Gas Pipeline Co., 15869
Public Service Co. of Colorado, 15869
Williams Natural Gas Co., 15869

Federal Highway Administration
PROPOSED RULES
Metropolitan planning, Statewide transportation planning, and management systems; meetings, 15816

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 15900

Federal Maritime Commission
NOTICES
Agreements filed, etc., 15875
Casualty and nonperformance certificates:
Delphin Seereisen GmbH, 15875
Delphin Seereisen GmbH et al., 15875

Federal Trade Commission
RULES
Conflict of interests, 15763
NOTICES
Meetings; Sunshine Act, 15900
Premerger notification waiting periods; early terminations, 15875

Federal Transit Administration
PROPOSED RULES
Metropolitan planning, Statewide transportation planning, and management systems; meetings, 15816

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Covenant Mutual Insurance Co., 15896
Navigators Insurance Co., 15897
Underwriters Reinsurance Co., 15897

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Amaranthus brownii, etc. (three plants from Nihoa, HI), 15828
Findings on petitions, etc.; correction, 15901

Food and Drug Administration
NOTICES
Human drugs:
Export applications—
Gabapentin (bulk); correction, 15877
Medical devices; premarket approval:
Spectranetics CVX-300 Excimer Laser System, 15877

Food and Nutrition Service
NOTICES
Child nutrition programs:
Women, infants, and children; special supplemental food program; poverty income guidelines, 15836
Food distribution program:
Commodity supplemental food program; elderly proverty income guidelines, 15838

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 15844

Health and Human Services Department
See Food and Drug Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 15869

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Annual income definition; Holocaust reparations, 15773

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Partnerships; treatment as qualified tax exempt organizations; hearing cancellation, 15818
Research or experimental expenditures, 15819
Hearing, 15818

International Trade Administration
NOTICES
Export trade certificates of review, 15841

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost recovery percentage, 15881

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Alabama, 15878
Environmental statements; availability, etc.:
Phoenix Resource Area et al., AZ, 15879
Meetings:
Lakeview District Grazing Advisory Board, 15879
Prineville District Grazing Advisory Board, 15879
Realty actions; sales, leases, etc.:
Idaho, 15879
North Dakota, 15880

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 15881

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 15844

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 15900

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Visual Arts Advisory Panel, 15883

National Highway Traffic Safety Administration
NOTICES
Alternate odometer disclosure requirements; approval petitions, 15893
Insurance cost information booklet; availability, 16098

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities planning and construction program, 16072

Navy Department
NOTICES
Meetings:
Naval Academy, Board of Visitors, 15843
Navy Exchange System Advisory Committee, 15844

Nuclear Regulatory Commission
PROPOSED RULES
Program requirements:
Fitness-for-duty, modifications, 15810
NOTICES
Agency information collection activities under OMB review, 15884
Export and import license applications for nuclear facilities or materials, 15884
Generic letters:
Design bases information; availability and adequacy, 15885
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 15886

Applications, hearings, determinations, etc.:
Amax, Inc., 15886

Presidential Documents
PROCLAMATIONS
Special observances:
National Agriculture Day (Proc. 6538), 15753
Women's History Month (Proc. 6537), 15751

Public Health Service
See Food and Drug Administration
NOTICES
Meetings:
ICD-9-CM Coordination and Maintenance Committee, 15878

Research and Special Programs Administration
NOTICES
High pressure composite hoop wrapped cylinders; safety advisory, 15895

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 15886
Depository Trust Co., 15887
Midwest Stock Exchange, Inc., 15888
Options Clearing Corp., 15889

Small Business Administration
RULES
Loans to State and local development companies, 15756
NOTICES
Meetings:
National Small Business Development Center Advisory Board, 15890

State Department
NOTICES
Meetings:
International Radio Consultative Committee, 15890

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Customs Service
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 15895

Separate Parts In This Issue

Part II
Environmental Protection Agency, 16001

Part III
Department of Commerce, National Telecommunications and Information Administration, 16071

Part IV
Environmental Protection Agency, 16093

Part V
Department of Transportation, National Highway Traffic Safety Administration, 16097

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6537.....15751
6538.....15753

7 CFR
1413.....15755
1427.....15755
1493.....15901

9 CFR
Proposed Rules:
94.....15901

10 CFR
Proposed Rules:
26.....15810

13 CFR
108.....15756

14 CFR
39 (3 documents).....15757, 15758, 15760
71 (2 documents).....15762, 15763
Proposed Rules:
39.....15813

16 CFR
4.....15763
5.....15763
Proposed Rules:
1204.....15815

18 CFR
11.....15765
Proposed Rules:
Ch. I.....15816

19 CFR
19.....15770
111.....15770
112.....15770
122.....15770
146.....15770

23 CFR
Proposed Rules:
Ch. I.....15816

24 CFR
215.....15773
236.....15773
813.....15773
905.....15773
913.....15773

26 CFR
Proposed Rules:
1 (3 documents).....15818, 15819

33 CFR
1.....15901
165.....15775
Proposed Rules:
165 (2 documents).....15821, 15822

34 CFR
Proposed Rules:
649.....15824

40 CFR
80.....16002
81.....15776
86 (2 documents).....15781, 16002
180 (4 documents).....15802, 15803, 15804, 16094
271.....15806
761.....15808
763.....15808
Proposed Rules:
52.....15824

46 CFR
10.....15901
12.....15901

49 CFR
Proposed Rules:
Ch. VI.....15816

50 CFR
Proposed Rules:
17 (2 documents).....15828, 15901

L
8
S
5
R
4
93
II

Federal Register
Vol. 58, No. 55
Wednesday, March 24, 1993

Presidential Documents

Title 3—

The President

Proclamation 6537 of March 19, 1993

Women's History Month, 1993

By the President of the United States of America

A Proclamation

As we celebrate Women's History Month, we reflect on the American women who throughout history have proudly served in shaping the spirit of our Nation.

Women like Harriet Tubman, Harriet Beecher Stowe, and Sojourner Truth embraced the struggle for human freedom, dignity, and justice. They opposed slavery and inequality at critical moments in history. Their courageous leadership helped pave the way for future generations who would strive to secure equal rights for women.

We are inspired by women like Jane Addams, the first female Nobel prize winner, who at the turn of the century founded Chicago's Hull House to help newly arrived immigrants adapt to a foreign culture. We admire women such as Belva Lockwood, who became the first woman admitted to practice before the United States Supreme Court in 1879. And we cannot forget the long struggle of women like Frances Perkins, whose work to protect the health and safety of America's workers culminated in her service as Secretary of Labor, the Nation's first woman Cabinet officer.

These courageous and pioneering women worked tirelessly to achieve new opportunities for all. Today, empowered by this great legacy, American women serve in every aspect of American life, from social services to space exploration. The opportunities for American women are growing, and their efforts as mothers and volunteers, corporate executives and senators, police officers and administrators, construction workers and cab drivers, and teachers and scientists enrich all of us and make our country great. Women continue to strengthen our Nation's social fabric as leaders in the home, the community, the workplace, and the government.

The challenges facing women in the next century are many. Families are increasingly called upon to care for their grown children and elderly relatives. Many women are compelled to support families as single parents. The social stresses of our era demand the incredible resourcefulness, devotion, and energy of millions of women. Through their endeavors, women are producing a heightened national consciousness and more responsive public policies that meet the needs of our people.

As we honor the courageous legacy of our Nation's women, we celebrate the diversity of their backgrounds, their talents, and their contributions, which breathe life into our democracy and sustain our prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1993 as Women's History Month. I invite all Americans to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-6909
Filed 3-22-93; 2:23 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6538 of March 20, 1993

National Agriculture Day, 1993

By the President of the United States of America

A Proclamation

On this first day of spring, it is appropriate that we reflect on America's agricultural heritage. Our history and our future are intertwined with the farmland and the farmers who help nourish and clothe us. Farming, an integral and pervasive aspect of our economy, is critically important in the daily lives of all Americans.

In our markets, farmers offer us the world's safest and most diverse food supply. But agriculture also touches every other facet of our lives: from shirts to schoolbooks, from prescription drugs to the lumber in our homes. The quality of our lives is due in large measure to the efficient productivity of agricultural workers.

Agriculture, America's number one industry, provides 21 million jobs and is the single largest contributor to our net trade balance. The average American farmer produces enough every year to feed and clothe 129 other people.

As efficient and productive as they are in meeting our citizens' basic needs, our farmers have contributed just as much to our culture. They helped found and build our Nation, and our calendar and holidays still reflect the seasons around which they weave their lives. When American food alleviates the hunger of starving children at home or abroad, we are all enriched. Farmers and farmworkers have always exemplified the virtues of patient hard work, of respect for the land, with an understanding of our responsibility as stewards of the Earth, of careful management of limited resources, and of resiliency in the face of natural disasters.

On this day, I ask all Americans to consider our reliance on agriculture—the farmers, scientists, processors, shippers, grocers, and others who spend their days providing us with the basics of a good life.

The Congress, by Senate Joint Resolution 36, has designated March 20, 1993, as "National Agriculture Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 20, 1993, as National Agriculture Day. I urge the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-6910
Filed 3-22-93; 2:25 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 58, No. 55
Wednesday, March 24, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1413 and 1427

RIN 0560–AC63

1993 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On September 29, 1992, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1993 Upland Cotton Production Adjustment Program, which is conducted by the CCC in accordance with the Agricultural Act of 1949 (1949 Act), as amended. The 1993 upland cotton Acreage Reduction Program (ARP) percentage has been determined to be 7.5 percent. This final rule amends the regulations to set forth the ARP and the price support rate for the 1993 crop of upland cotton. No paid land diversion (PLD) program will be implemented for the 1993 crop of upland cotton. These actions are required by section 103B of the 1949 Act, as amended.

EFFECTIVE DATE: March 24, 1993.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementing of the provisions of this final rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1427 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of the selected options is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the 1993 ARP and PLD programs, and 7 CFR part 1427 to set forth the determination of the 1993 price support level. General descriptions of the statutory basis for the 1993 upland cotton ARP percentage determination in this final rule were set forth at 57 FR 44709 (September 29, 1992).

Fifteen comments about the ARP level were received during the comment period. Seven respondents recommended that the ARP be set at no greater than 5 percent, and another specified 5 percent. One farm organization representative recommended that the ARP be set at zero. Another individual representing a farming firm recommended that it be set as high as possible. Two respondents recommended a 15-percent ARP, two recommended 5 to 10 percent, and one recommended 10 percent.

Seven respondents commented on the price support level. Five favored a price support level based on spot market prices while two supported determining a price support level based on the Northern Europe price formula.

After considering these comments, the Secretary of Agriculture (Secretary) on November 2, 1992, announced a 7.5-percent ARP level and a price support level of 52.35 cents per pound for the 1993 marketing year. On January 5, 1993, a final ARP requirement of 7.5 percent was announced for the 1993 crop of upland cotton. The Secretary determined that, based upon the most recent projection of carryover and total disappearance, a 7.5-percent ARP would result in a ratio of carryover to total disappearance of 30 percent.

Acreage Reduction. In accordance with section 103B(c)(1) of the 1949 Act, an ARP of 7.5 percent has been established for the 1993 crop of upland cotton. Accordingly, producers will be required to reduce their 1993 acreage of upland cotton for harvest from the crop acreage based established for upland cotton by at least this established percentage in order to be eligible for price support loans and payments.

Paid Land Diversion. In accordance with 103B(e)(5) of the 1949 Act, a PLD

program will not be implemented for the 1993 crop of upland cotton.

Price Support Rate. In accordance with section 103B(a)(1)–(3) of the 1949 Act, the price support rate has been established with respect to the 1993 crop of upland cotton at 52.35 cents per pound.

List of Subjects

7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1427 are amended as follows:

PART 1413—FEED GRAIN, RICE UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:
A. Revising paragraph (a)(3)(ii),
B. Adding paragraph (a)(3)(iii),
C. Revising paragraph (d)(3)(iv), and
D. Adding paragraph (d)(3)(v) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *
(3) * * *
(ii) 1992 upland cotton, 10 percent; and
(iii) 1993 upland cotton, 7.5 percent.
* * * * *
(d) * * *
(3) * * *
(iv) Shall not be made available to producers of rice, and
(v) Shall not be made available to producers of upland cotton.
* * * * *

PART 1427—COTTON

3. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

4. Section 1427.8(a)(1) is amended by:
A. Revising paragraph (a)(1)(ii), and
B. Adding paragraph (a)(1)(iii) to read as follows:

§ 1427.8 Amount of loan.

(a) * * *
(1) * * *
(ii) 1992 upland cotton, 52.35 cents per pound, and
(iii) 1993 upland cotton, 52.35 cents per pound.
* * * * *

Signed at Washington, DC, on March 17, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–6737 Filed 3–23–93; 8:45 am]

BILLING CODE 3410–05–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; CDC Designations and Valuation of Land

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The rule gives SBA the right to approve the name of new 503 companies and proposed name changes for existing 503 companies. This rule also allows the use of land with improvements as a 503 company's injection. Until now, only unimproved land could be used for this purpose. This rule change allows real estate owned by a borrower or 503 company to serve as the injection even if there is a structure present, so long as it is valued at the price of the improved land.

EFFECTIVE DATE: March 24, 1993.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington, DC 20416, telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: On September 18, 1992 (at 57 FR 43157) a proposed rule including the changes listed in the summary above was published. The only comment received was supportive of both items although it raised the issue of how long a CDC must wait for approval of a proposed name change. The current regulatory scheme does not provide deadlines, but SBA has not experienced backlogs in processing other CDC requests. Therefore, no undue delays are expected in this context and no deadlines are imposed by regulation. Standard operating procedures do set time frames for responding to 503 companies and they will be amended to include this procedure.

By this final rule, 13 CFR 108.4 is amended by adding a new paragraph to give SBA the right to approve the names of new 503 companies and proposed name changes for existing 503 companies. This rule is necessary because many 503 companies across the country are selecting identical designations such as "Small Business Finance Corporation". This increases the chance of posting and other errors in administering the program. In order to avert a growing problem, the rule is amended to allow for approval of 503 company designations. SBA will use this authority to require that local identification, such as city, country or region, be made part of CDCs' names where necessary to avoid confusion.

This final rule also allows the use of land with improvements as a 503 company's injection. Until now, only unimproved land could be used for this purpose. This rule change allows real estate owned by a borrower or 503 company to serve as the injection even if there is a structure present, so long as it is valued at the price of unimproved land.

The market value of commercial structures is frequently difficult to determine with accuracy. Therefore SBA has not permitted either land or building(s) to be counted as part of the owner's equity injection when a building is present. SBA is narrowing the exclusion in order to accommodate such cases, while protecting the government against the risk of over-valuation of commercial structures.

Compliance With Executive Orders 12291, 12612, and 12778, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy cannot attain $100 million because the first item is administrative and the second has no monetary consequences because the injection is and will continue to be the borrower's responsibility in all transactions. While adoption of this rule gives the borrower more flexibility in providing the injection the net effect on SBA's loan making is neutral.

This rule does not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and does not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that this rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of the Paperwork Reduction Act, Public Law 98–115, 44 U.S.C. ch. 35, SBA certifies that this rule imposes no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs—business, Small businesses.

For the reasons set forth above, part 108 of title 13 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.4 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively, and adding new paragraph (c) to read as follows:

§ 108.4 Operational requirements.

* * * * *

(c) *Name of 503 development company.* In order to avoid confusion caused by identical designations, the name of each development company and/or any subsequent request for name change is subject to prior approval by SBA.

* * * * *

3. Section 108.503–5(d)(2) is amended by adding a new sentence immediately following the second sentence and by republishing the first two sentences to read as follows:

§ 108.503–5 Eligible and ineligible uses of 503 loan proceeds.

* * * * *

(d) *Expenditures made in anticipation of a 503 loan.* * * *

(2) Land previously acquired by the small concern or the 503 company may be contributed as the 503 company's injection in a project involving new construction. The value of the contribution shall be the contributor's equity in such land. The value of any structure on such land shall not be considered for purposes of this paragraph. * * *

* * * * *

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans)

Dated: February 16, 1993.

Dayton J. Watkins,

Acting Administrator.

[FR Doc. 93–6544 Filed 3–23–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–ASW–42; Amendment 39–8401; AD 92–23–01]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, 212, and Restricted Category Military Model UH–1B, UH–1F and UH–1H Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 204B, 205A, 205A–1, 205B, 212, and restricted category military Model UH–1B, UH–1F, and UH–1H helicopters, that requires establishing a mandatory replacement schedule for the main rotor pillow block bolts, washers, and nuts. This amendment is prompted by reports of five cases of main rotor pillow block bolt fatigue cracks. The actions specified by this AD are intended to prevent failure and separation of the main rotor hub assembly, which could result in loss of the main rotor and subsequent loss of control of the helicopter.

EFFECTIVE DATE: April 23, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Fort Worth, Texas 76193–0170, telephone (817) 624–5168, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to BHTI Model 204B, 205A, 205A–1, 205B, 212, and restricted category military Model UH–1B, UH–1F and UH–1H helicopters was published in the **Federal Register** on February 5, 1991 (56 FR 4581). That action proposed to require a retirement life of 1,200 hours time in service for the main rotor pillow block bolts, washers, and nuts. That Notice of Proposed Rulemaking (NPRM) was prompted by reports of at least five cases of pillow block bolt fatigue cracks on BHTI Model 205A–1 and 212 helicopters. Failure of all four bolts will allow separation of the main rotor from the helicopter.

As a result of comments received on the NPRM, a Supplemental Notice of Proposed Rulemaking (SNPRM) was published in the **Federal Register** on January 2, 1992 (57 FR 18). The SNPRM revised the NPRM to further propose that the bolts and associated hardware from the pillow blocks be removed and replaced with new bolts, washers, and nuts within 300 hours time in service, but not later than the next scheduled replacement of the hub retention straps, and thereafter at each strap replacement or overhaul of the hub assembly. Also, additional bolt torque requirements were detailed in the SNPRM.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the later proposal or the FAA's determination of the cost to the public. However, two small editorial changes have been made: Paragraphs (d) and (e) have been reversed, and a Note has been added to paragraph (d). The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the two editorial changes. The FAA has determined that these changes will neither increase the economic burden on the operator nor increase the scope of the AD.

The FAA estimates that approximately 1,250 helicopters of U.S. registry will be affected by this AD, that it will take approximately ¼ of a work hour per helicopter to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $130 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $179,688.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92–23–01. Bell Helicopter Textron, Inc. (BHTI); California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Pilot Personnel International, Inc.; Southern Aero Corporation; and Southwest Florida Aviation: Amendment 39–8401. Docket No. 90–ASW–42.

Applicability: All BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters, certificated in any category, and military Model UH–1B, UH–1F, and UH–1H helicopters, certificated in the restricted category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the main rotor pillow blocks from the hub assembly as a result of bolt cracking, which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours time in service after the effective date of this AD; or at the next main rotor hub retention strap change; or at the next hub assembly overhaul; whichever occurs first, remove the four bolts, part number (P/N) 204–011–171–003, joining the two pillow blocks to the main rotor yoke assembly. Reinstall the pillow blocks using new (zero time) bolts, P/N 204–011–171–003; nuts, P/N EB080 or 42FLW–820; and washers, P/N 140–007–33S28–3 as follows:

(1) Coat the shank of the bolts with corrosion prevention compound, such as MIL–C–16173 Grade 1, and dry torque the bolts and nuts 65 to 79 foot-pounds. Retorque nuts within 15 to 30 hours time in service after the initial installation. If the torque has reduced below the minimum value of 65 foot-pounds, repeat the torque check at intervals of 15 to 30 hours time in service until the torque remains at or above 65 foot-pounds or until the torque check has been accomplished four times. If during the fourth check the torque has reduced below 65 foot-pounds, remove and replace the bolts, washers, and nuts and repeat the torque check procedure of this paragraph.

(2) After initial installation or retorque, apply sealant, such as BHTI P/N 299–947–107 TYIII CL7, to the four bolt heads, washers, nuts and yoke mating surfaces to prevent moisture from entering the pillow block retention area.

(b) Thereafter, remove the bolts and associated hardware from the pillow block and replace with new bolts, washers, and nuts as described in paragraph (a) of this AD at each hub assembly overhaul, at each change of the main rotor hub retention strap, or whenever the bolts are removed for any reason.

Note: Bell Helicopter Textron, Inc., Alert Service Bulletins 204–90–27, Revision A; 205–90–38, Revision A; and 212–90–62, Revision A, all dated October 11, 1990, pertain to this AD. A copy of the service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

(c) Rework or repair of the bolts, P/N 204–011–171–003; nuts, P/N EB080 or 42FLW–820; and washers, P/N 140–007–33S28–3, is not authorized.

(d) An alternative method of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170. Operators shall submit their request through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective April 23, 1993.

Issued in Fort Worth, Texas, on March 4, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–6667 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–155–AD; Amendment 39–8519; AD 93–05–15]

Airworthiness Directives; Cessna Citation Model 500/501 and 550/551 Series Airplanes, Equipped With Thrust Reversers; and Model S550, 560, and 650 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Citation Model 500/501, 550/551, S550, 560, and 650 series airplanes, that requires modification of the thrust reverser throttle load limiter. This amendment is prompted by an incident in which crew members attempted to advance the throttle control levers during transition of the thrust reverser, which resulted in activation of the spring-loaded limiter device in the power control system and subsequent displacement of the load limiter to a position that severely reduced engine power control authority. The actions specified by this AD are intended to prevent severely reduced engine power control authority.

DATES: Effective April 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 23, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jack Pearson, Aerospace Engineer, Propulsion Branch, ACE–140W, FAA, Wichita Aircraft Certification Office,

1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4140; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Cessna Citation Model 500/501, 550/551, S550, 560, and 650 series airplanes was published in the **Federal Register** on December 1, 1992 (57 FR 56873). That action proposed to require modification of the thrust reverser throttle load limiter.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that the words "as revised" be added after the Cessna service bulletins referenced in the AD. The commenter notes that since the service bulletins will most probably be revised sometime in the future, those future revisions of the service bulletins should also suffice as additional sources of service information. The FAA does not concur. Where a service bulletin is referenced in an AD (or incorporated by reference), the use of the term "as revised" to connote later revisions of the service bulletin violates Federal Register regulations and is not acceptable, since revisions often include new repairs or inspection requirements. This practice may add new requirements to the AD, or may be relaxatory in nature, and, thus, would constitute "rulemaking" action without prior notice and opportunity for public comment. However, affected operators may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (b) of the final rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 433 Model 500/501 series airplanes, 412 Model 550/551 series airplanes, 160 Model S550 series airplanes, 118 Model 560 series airplanes, and 217 Model 650 series airplanes of the affected design in the worldwide fleet, a total of 1,340 airplanes.

The FAA estimates that 301 Model 500/501 series airplanes, 246 Model 550/551 series airplanes, 126 Model S550 series airplanes, 66 Model 560 series airplanes, and 168 Model 650 series airplanes, a total of 907 airplanes of U.S. registry, will be affected by this AD.

The FAA estimates that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $114 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $228,111, or $252 per airplane.

The FAA has been advised that the required modification has already been accomplished on 599 affected airplanes. Therefore, the future economic cost impact of this rule on U.S. operators is now only $77,616.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–15. Cessna Aircraft Company: Amendment 39–8519. Docket 92–NM–155–AD.

Applicability: Citation Model 500/501 series airplanes, unit numbers –0001 through –0689, inclusive, equipped with thrust reversers; Citation Model 550/551 series airplanes, unit numbers –0002 through –0678, inclusive, equipped with thrust reversers; Citation Model S550 series airplanes, unit numbers –0001 through –0160, inclusive; Citation Model 560 series airplanes, unit numbers –071A, –092A, –109A, and –0001 through –0118, inclusive; Citation Model 650 series airplanes, serial numbers –0001 through –0217, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent severely reduced controllability of engine power authority, accomplish the following:

(a) Within 150 hours time-in-service after the effective date of this AD, modify the thrust reverser throttle load limiter in accordance with Cessna Citation Service Bulletin SB500–78–11, dated September 13, 1991 (for Model 500/501 series airplanes); Cessna Citation Service Bulletin SB550–78–03, dated September 13, 1991 (for Model 550/551 series airplanes); Cessna Citation Service Bulletin SBS550–78–04, dated September 13, 1991 (for Model S550 series airplanes); Cessna Citation Service Bulletin SB560–78–02, dated September 13, 1991 (for Model 560 series airplanes); or Cessna Citation Service Bulletin SB650–78–05, Revision 1, dated June 12, 1992 (for Model 650 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the following Cessna Citation Service Bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Shown on page
500–78–11, September 13, 1991	1–7	Original	Sept. 13, 1991.
SBS550–78–04, September 13, 1991	1–7	Original	Sept. 13, 1991.
SB550–78–03, September 13, 1991	1–7	Original	Sept. 13, 1991.
SB560–78–02, September 13, 1991	1–7	Original	Sept. 13, 1991.
SB650–78–05, Revision 1, June 12, 1992	1–3	1	June 12, 1992.
	4–6	Original	Feb. 14, 1992.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 23, 1993.

Issued in Renton, Washington, on March 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6650 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–142–AD; Amendment 39–8520; AD 93–05–16]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires inspection of the rudder power control valve to determine if a lockwire is installed and, if not installed, adjustment of the retention nut and installation of a lockwire. That action was prompted by reports of loss of rudder control on final approach and landing. This amendment adds airplanes to the applicability statement of the rule; these additional airplanes are also subject to the addressed unsafe condition. The actions specified by this AD are intended to prevent loss of rudder control.

DATES: Effective April 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 23, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–18–03, Amendment 39–8006 (56 FR 41058, August 19, 1991), which is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, was published in the **Federal Register** on October 2, 1992 (57 FR 45586). The action proposed to continue to require inspection of the rudder power control valve to determine if a lockwire is installed and, if not installed, adjustment of the retention nut and installation of a lockwire. It also proposed to add additional airplanes to the applicability statement of the rule.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of two of its member operators, requests that the FAA clarify the requirements for terminating action of this proposal. One member comments that, as the proposal is currently written, an operator may assume that modification of the rudder power control valve is the final terminating action, to be accomplished after installation of a lockwire. However, ATA believes that lockwire installation alone is a safe and effective method for ensuring retention of the nut. The FAA concurs that clarification is warranted. The FAA has determined that either installation of a lockwire or modification of the rudder power control valve would adequately ensure the proper operation of the rudder pedal and would constitute terminating action for the requirements of this AD. Therefore, once the requirements of paragraph (a)(2), which includes installation of a lockwire, have been accomplished, no further action is required by this AD. Paragraph (a)(2) of the final rule has been revised to include this clarification.

McDonnell Douglas and ATA request that the requirement for retightening the end cap to a specified torque, as required by paragraph (b) of the proposal, be deleted. The commenter maintains that opening the end cap to inspect for the presence of a lockwire on the control valve slide and nut introduces the possibility of insufficient torque being applied during reassembly, due to incorrect torque specifications that were listed in the original issues of McDonnell Douglas DC–9 Alert Service Bulletin A27–327 and MD–80 Alert Service Bulletin A27–317. The commenter does not believe that a loose cap and the subsequent potential fluid loss would result in a hazardous condition, since fluid loss would be readily detected and would not be related to the unsafe condition identified in the notice as loss of rudder control. After consideration of this data provided by the commenter, the FAA concurs, and has removed the end cap retightening requirement from the final rule. Further, the economic impact information, below, has been revised to exclude the labor costs associated with the end cap retightening procedure.

One commenter requests that the installation of cotterpins be accepted as an alternative replacement to replacement of lockwire with a locking tab washer. The commenter asserts that both stainless steel and nickel-copper cotterpins are readily available. The FAA does not concur, since there is no evidence that cotterpins may be adjusted to proper torque settings. However, the FAA may consider approval of an alternative method of compliance, in accordance with paragraph (b) of this AD, if such data were provided to justify the request.

Two commenters note that 226 U.S. registered airplanes have already been inspected in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992. One commenter notes that its entire fleet of 153 airplanes has been inspected. The other commenter notes that 73 of its airplanes have been inspected. The FAA has taken this updated information into consideration and has noted it in the economic impact information, below.

Paragraph (a) of the final rule has been revised to specify that airplanes on which the retention nut on the slide assembly of the rudder power control valve has been inspected previously in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992, or Revision 2, dated July 14, 1992, do not need to be reinspected. Reference to the later revisions of that service bulletin had been omitted inadvertently from paragraph (a) of the NPRM.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,950 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) airplanes of the affected design in the worldwide fleet. (The existing AD affected 101 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes.) The FAA estimates that 1,150 airplanes of U.S. registry will be affected by this AD. (The existing AD affected 60 U.S.-registered airplanes.) The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the inspection requirement. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $63,250.

However, the FAA has been advised that 226 U.S.-registered airplanes already have been inspected in accordance with the requirements of this AD. Therefore, the future economic impact of this AD on U.S. operators is actually only $50,820.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8006 (56 FR 41058, August 19, 1991), and by adding a new airworthiness directive (AD), amendment 39–8520, to read as follows:

93–05–16. McDonnell Douglas: Amendment 39–8520. Docket 92–NM–142–AD. Supersedes AD 91–18–03, Amendment 39–8006.

Applicability: Model DC–9 and C–9 (Military) airplanes; as listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; and Model DC–9–80 series airplanes and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder control, accomplish the following:

(a) For airplanes on which the retention nut on the slide assembly of the rudder power control valve has not been inspected in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, dated December 2, 1991, or Revision 1, dated March 9, 1992, or Revision 2, dated July 14, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, dated June 17, 1991, or Revision 1, dated January 14, 1992, or Revision 2, dated May 22, 1992: Within 90 days after the effective date of this AD, inspect the retention nut on the rudder power control valve slide assembly to determine if a lockwire is installed, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–327, Revision 1, dated March 9, 1992; or McDonnell Douglas MD–80 Alert Service Bulletin A27–317, Revision 2, dated May 22, 1992; as applicable.

(1) If a lockwire is installed, no further action is required by this AD.

(2) If a lockwire is not installed, prior to further flight, adjust the retention nut, install a lockwire, and functionally check the rudder power control valve in accordance with the applicable service bulletin. No further action is required by this AD.

(b) Modification of the rudder power control valve by replacing the lockwire with a locking tab washer, in accordance with McDonnell Douglas Service Bulletin 27–321, dated May 18, 1992, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, installation, and functional check shall be done in accordance

with McDonnell Douglas DC-9 Alert Service Bulletin A27-327, Revision 1, dated March 9, 1992; or McDonnell Douglas MD-80 Alert Service Bulletin A27-317, Revision 2, dated May 22, 1992; as applicable. The modification shall be done in accordance with McDonnell Douglas Service Bulletin 27-321, dated May 18, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 23, 1993.

Issued in Renton, Washington, on March 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-6651 Filed 3-23-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ANE-45]

Alteration of VOR Federal Airways, Control Areas and Jet Routes; MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the descriptions of various Federal airways, control areas, and jet routes in the Hyannis, MA, area. The action is necessary because of the decommissioning of the Hyannis (HYA) very high frequency omnidirectional range/tactical air navigation (VORTAC) and the commissioning of the Marconi, MA (LFV), VORTAC in North Truro, MA.

EFFECTIVE DATE: 0901 U.T.C., May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On January 21, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter various Federal airways, control areas, and jet routes in the Hyannis, MA, area (58 FR 5301). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Domestic VOR Federal airways, control areas, and Jet routes are published, respectively, in §§ 71.123, 71.161, and 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Federal airways, control areas, and jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters various VOR Federal airways, control areas, and jet routes in the Hyannis, MA, area. The alterations are necessary because the Hyannis VORTAC was decommissioned and relocated to North Truro, MA. The commissioning of the new navigational aid, Marconi VORTAC in North Truro, MA, necessitate the changes to VOR Federal airways, control areas, and jet routes in that airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control areas, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-141 [Revised]

From Nantucket, MA; INT Nantucket 334° and Boston, MA 138° radials; to Boston. From Manchester, NH; Concord, NH; Lebanon, NH; Burlington, VT; to Massena, NY.

* * * * *

V-151 [Revised]

From INT Nantucket, MA, 334° and Providence, RI, 079° radials; Providence; Putnam, CT; Gardner, MA; Keene, NH; Lebanon, NH; Montpelier, VT; Burlington, VT.

* * * * *

V-167 [Revised]

Fron Hancock, NY; INT Hancock 117° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Providence, RI; INT Providence 101° and Marconi, MA, 211° radials; Marconi; INT Marconi 346° and Kennebunk, ME, 161° radials; to Kennebunk. The airspace outside the United States below 2,000 feet MSL, including the portion within Warning Area W-103, is excluded.

* * * * *

Section 71.161 Control Areas Associated With Jet Routes Outside the Continental Control Area

* * * * *

J-150 [Revised]

From Robbinsville, NJ, via Hampton, NY; Marconi, MA; to the INT of Marconi 082° and Boston, MA, 097° radials.

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* * * * *

J-174 [Revised]

From Snow Hill, MD, via Hampton, NY; Marconi, MA: to HERIN INT. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°43'59" W. Airspace

above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Section 71.607 Jet Routes

* * * * *

J–79 [Revised]

From Key West, FL, via Miami, FL; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 360° and Charleston, SC, 210° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Marconi, MA, 205° radials; Marconi; INT Marconi 006° and Bangor, ME, 206° radials; Bangor.

* * * * *

J–150 [Revised]

From Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Coyle, NJ; INT Coyle 075° and Hampton, NY, 231° radials; Hampton; INT Hampton 069° and Marconi, MA, 228° radials; Marconi; to the INT Marconi 082° and Boston, MA, 097° radials.

* * * * *

J–174 [Revised]

From Craig, FL, via INT Craig 020° and Charleston, SC, 210° radials; Charleston; Wilmington, NC; Dixon NDB, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Hampton, NY; INT Hampton 069° and Marconi, MA, 228° radials; Marconi, to the INT of Marconi 090° and Nantucket, MA, 066° radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°43'59" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Issued in Washington, DC, on March 17, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–6721 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–38]

Establishment of Jet Route J–590; LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Jet Route J–590 located in the vicinity of Lake Charles, LA. The new jet route provides a more efficient routing for aircraft en route to northeastern destinations. Also, the jet route eliminates the opposite direction traffic now encountered by departure and arrival traffic in the Houston, TX, terminal area. This action also reduces controller workload.

EFFECTIVE DATE: 0901 U.T.C., May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On December 1, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish J–590 between Lake Charles, LA, and Montgomery, AL (57 FR 56875). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in § 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes J–590 between Lake Charles, LA, and Montgomery, AL. This new jet route provides a more efficient routing for traffic departing the Houston, TX, terminal area, to destinations in the northeastern United States. Currently, northeastbound Houston departures conflict with southwestbound New Orleans traffic. The new jet route provides an alternative routing for Houston area traffic. This route will be 12 miles shorter than the current route. This action will also reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet Routes

* * * * *

J–590 [New]

From Lake Charles, LA; INT Lake Charles 081° and Greene County, MS, 252° radials; Greene County; to Montgomery, AL.

* * * * *

Issued in Washington, DC, on March 17, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–6722 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 4 and 5

Miscellaneous Rules; Standards of Conduct

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This document amends 16 CFR part 4 (Miscellaneous Rules) and 16 CFR part 5 (Standards of Conduct). This action is necessary because portions of 16 CFR part 5 have been superseded by regulations on "Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees" that were issued by the Office of Personnel Management (OPM) and the Office of Government Ethics

(OGE), and by the "Standards of Ethical Conduct for Employees of the Executive Branch" that were issued by OGE. The Standards establish uniform standards of ethical conduct that are applicable to all executive branch personnel. This action, in turn, requires 16 CFR part 4 to be amended in order to conform to the new provisions under the Standards of Conduct.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Kathleen A. Rittner (202) 326–2498 or Ira S. Kaye (202) 326–2426, Office of General Counsel, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: .

I. Analysis of Regulation

On April 7, 1992, the United States Office of Government Ethics (OGE) published interim rules pertaining to, *inter alia*, the public and confidential financial disclosure systems applicable to executive branch employees. 57 FR 11800 ("interim regulation"). The interim regulation combines the requirements for both the public and confidential financial disclosure system into a single rule that is codified at 5 CFR part 2634, and supersedes individual agency regulations based on earlier versions of the financial disclosure rules. The interim regulation contemplates that agencies will promulgate internal written procedures and guidelines for filing, as required by the Ethics in Government Act. Accordingly, the FTC is revising part 5 (Standards of Conduct) of its Rules of Practice, 16 CFR, to reflect this change and will publish its procedures and guidelines for filing in the FTC Administrative Manual.

The Office of Government Ethics also published, on August 7, 1992, a Final Rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards) at 57 FR 35006 (to be codified at 5 CFR part 2635). The Standards, effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel, and supersede portions of the Federal Trade Commission's Standards of Conduct found at 16 CFR part 5. Accordingly, the FTC is further revising part 5 to cross-reference the Standards, and to remove, reserve, and/or redesignate affected portions of part 5. Finally, conforming corrections are made to part 4 (Miscellaneous Rules) of the Commission's Rules of Practice.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small business entities because it affects only Federal employees.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 16 CFR Parts 4 and 5

Administrative practice and procedure, Conflicts of interest.

For the reasons set forth in the preamble, Parts 4 and 5 of Title 16 of the Code of Federal Regulations are amended to read as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46

2. Section 4.9 is amended by revising paragraph (a)(2) to read as follows:

§ 4.9 Public records.

(a) *General.*

(2) Records that are exempt from disclosure or are otherwise not available from the Commission's public record may be made available for inspection and copying only upon request under the procedures set forth in § 4.11 of this part, or as provided in §§ 4.10 (d) through (g), 4.13, and 4.15(b)(3) of this part, or by the Commission.

* * * * *

3. In § 4.11, paragraph (g) is added to read as follows:

§ 4.11 Requests for disclosure of records.

* * * * *

(g) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, or regulation. However, an employee shall not use information obtained as a result of his Government employment, except to the extent that such information has been made available to the general public or will be made available on request, or when the General Counsel gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

PART 5—STANDARDS OF CONDUCT

1. The table of contents and authority citation for part 5 are revised to read as follows:

PART 5—STANDARDS OF CONDUCT

Subpart A—Employee Conduct Standards and Financial Conflicts of Interest

Sec.
5.1 Cross-reference to executive branch-wide regulations.
5.2 Exemption of insubstantial financial conflicts.

Subpart B—Financial Disclosure Requirements

5.10 Cross-reference to executive branch-wide regulations.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Disciplinary Actions Concerning Postemployment Conflict of Interest

5.51 Scope and Applicability.
5.52 Nonpublic proceedings.
5.53 Initiation of investigation.
5.54 Referral to the Office of Government Ethics and to the Department of Justice.
5.55 Conduct of investigation.
5.56 Disposition.
5.57 Order to show cause.
5.58 Answer and request for a hearing.
5.59 Presiding official.
5.60 Scheduling of hearing.
5.61 Prehearing procedures; motions; interlocutory appeals; summary decision; discovery; compulsory process.
5.62 Hearing rights of respondent.
5.63 Evidence; transcript; in camera orders; proposed findings of fact and conclusions of law.
5.64 Initial decisions.
5.65 Review of initial decision.
5.66 Commission decision and reconsideration.
5.67 Sanctions.
5.68 Judicial review.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 46(g); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR Part 2635, unless otherwise noted.

2. Subpart A of part 5 is revised to read as follows:

Subpart A—Employee Conduct Standards and Financial Conflicts of Interest

§ 5.1 Cross-reference to executive branch-wide regulations.

Commissioners and employees, including special government employees, of the Federal Trade Commission (FTC) are subject to and should refer to the "Standards of Ethical Conduct for Employees of the Executive Branch" at 5 CFR part 2635 ("executive

branch-wide Standards of Conduct") and to the FTC regulations at 5 CFR 5701.101 that supplements the executive branch-wide Standards of Conduct.

§ 5.2 Exemption of insubstantial financial conflicts.

(a) An employee or special Government employee will not be subject to remedial or disciplinary action or to criminal prosecution under 18 U.S.C. 208(a), if he makes a full disclosure in writing to the official responsible for his appointment of the nature and circumstances of the particular matter involved and of his conflicting financial interest relating thereto, and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the employee or special Government employee.

(b) For the purposes of paragraph (a) of this section, the "official responsible for appointment" shall be the Executive Director in all cases where the employee is classified at grade GS–15 or below, or at a comparable pay level, except that each Commissioner shall be the "official responsible for appointment" of advisors in the Commissioner's immediate office.

(c) In all other cases, the Chairman shall be the "official responsible for appointment."

(d) The financial interests described below are exempted from the provisions of 18 U.S.C. 208(a) as being too remote or too inconsequential to affect the integrity of an employee's services: Stocks and bonds of a diversified mutual fund or investment company *Provided*, that the fair market value of the employee's holdings in the fund or company does not exceed one percent of the value of its reported assets.

3. Subpart B of part 5 is revised to read as follows:

Subpart B—Financial Disclosure Requirements

§ 5.10 Cross-reference to executive branch-wide regulations.

Commissioners and employees, including special government employees, of the Federal Trade Commission are subject to and should refer to the executive branch-wide financial disclosure regulations at 5 CFR Part 2634, and to the procedures for filing and review of financial disclosure reports found in Chapter 3 of the FTC *Administrative Manual*.

Subparts C and D [Removed]

4. Subparts C through D of part 5 are removed and reserved.

5. Subpart E is amended by revising § 5.51 to read as follows:

Subpart E—Disciplinary Actions Concerning Postemployment Conflict of Interest

Authority: 15 U.S.C. 41 *et seq.*

§ 5.51 Scope and applicability.

These regulations establish procedures for investigating and determining alleged violations of 18 U.S.C. 207 (postemployment restrictions applicable to federal employees) or regulations issued by the Office of Government Ethics, set forth in 5 CFR Parts 2637 and 2641, reflecting the views of the Office of Government Ethics and the Department of Justice as to the requirements of 18 U.S.C. 207.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–6745 Filed 3–23–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM93–5–000; Order No. 551]

Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act

Issued March 18, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising the billing procedures for assessing annual charges for administering part I of the Federal Power Act to enable the Commission to fully recover its costs of administering that Part during the fiscal year in which they were incurred. The final rule also provides that in order to avoid undue burden in the transition period, the costs incurred by the Commission during fiscal year 1992 will be billed in fiscal year 1994, and the licensee may elect to be billed under a three-year installment plan. Finally, the Commission is also adopting a procedure of current-year billing of annual charges for the use of tribal land on Indian reservations.

EFFECTIVE DATE: April 23, 1993.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

On December 17, 1992, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking (NOPR)[1] in which it proposed to revise the billing procedures for assessing annual charges for administering Part I of the Federal Power Act (FPA).[2] Comments in response to the NOPR were received from 22 commenters.[3] The Commission has decided to implement the proposal in the NOPR, with certain modifications, as discussed below.

Under the revised procedures, the assessment of annual charges will be based on an estimate derived from the Commission's appropriation for that year of the costs that will be incurred by the Commission during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs;

[1] IV FERC Stats. & Regs. ¶32,492. The NOPR was published in the **Federal Register** on December 29, 1992 (57 FR 61850).

[2] 16 U.S.C. 792–823b.

[3] The commenters are identified in appendix A.

and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year. For the initial allocation of costs among the licensees, the Commission will use the authorized capacity to date and the data supplied by the licensees with respect to the preceding fiscal year. For the recalculation using actual costs, the Commission will use the authorized capacity and generation data for the year that corresponds to the year of actual costs. In order to avoid undue burden in the transition period, the costs incurred by the Commission in administering part I of the FPA during fiscal year 1992 will be billed in fiscal year 1994, but at the request of each licensee may be payable in three equal installments in fiscal years 1994, 1995 and 1996, with interest from 1994. Finally, the Commission is also adopting a procedure of current-year billing of annual charges for the use of tribal land on Indian reservations.

II. Background

The Commission is required by section 10(e) of the FPA [4] to collect, among other things, annual charges for the cost of administering part I of the FPA. Part 11 of the Commission's regulations [5] provides the manner in which licensees are charged for such costs.[6] The reimbursable costs are determined on a fiscal year basis.

As discussed in the NOPR, the Commission's prior regulations did not specify how the reimbursable costs were to be determined, and neither did the FPA. The Commission's past practice has been to determine the annual charges billed to the licensees after the end of the fiscal year in which the costs were incurred. The total costs are then allocated among the licensees based on the amount of each licensee's horsepower, or horsepower and generation, during the preceding fiscal year. The allocation is based on the ratio of each licensee's horsepower (or horsepower and generation) to the total of all of the licensees' horsepower (or horsepower and generation).[7]

There was, however, a substantial lag between the time the costs were incurred and the time they were recovered. In addition, there was a variation from year to year in the costs incurred by the Commission in administering part I of the FPA. Therefore, in the NOPR the Commission proposed to revise its billing practices in such a manner as to enable it to fully recover its costs during the fiscal year in which those costs are incurred.

The NOPR proposed to achieve this objective by adding to § 11.1 of the current regulations a new paragraph (g). This provision adopts a practice of basing the assessments on an estimate of the costs that will be incurred by the Commission in the current fiscal year (rather than basing the assessments on the costs actually incurred in the preceding fiscal year). The estimate of costs will be based on the Commission's current-year budget appropriation, and will be assessed to the licensees using prior-year generation data from the licensees and authorized capacity to date.

The new paragraph (g), as adopted herein, also provides for an adjustment in the subsequent fiscal year. After the end of the current fiscal year, the estimated costs will be compared to the actual costs; the assessments will be recalculated based on the costs actually incurred, using actual generation data and capacity; and the difference between estimated and actual costs will be carried over as an adjustment to the assessment for the subsequent fiscal year.

In the NOPR, the Commission explained that it currently uses the same current-year billing procedures to recover the costs it incurs in administering the Natural Gas Act (NGA), the Natural Gas Policy Act (NGPA), the Interstate Commerce Act (ICA), and parts II and III of the FPA itself. Those costs are recovered through the assessment of annual charges against gas and oil pipelines and public utilities pursuant to the mandate of section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA),[8] which requires the Commission to recover all of its costs for the fiscal year through annual charges and fees.[9] The annual charges assessed pursuant to OBRA are based on an estimate of the Commission's current-fiscal-year costs, with subsequent adjustments based on actual costs.[10]

Under the final rule, the bills issued by the Commission in fiscal year 1993 will assess annual charges for the costs incurred by the Commission (in administering part I of the FPA) in fiscal year 1993, the current year. The NOPR noted that the Commission also incurred costs in fiscal year 1992, which it will not be able to recover unless it also assesses charges for fiscal year 1992. In the NOPR, the Commission invited comments as to whether the billing of the costs for both fiscal years 1992 and 1993 in the same year would cause hardship for the hydropower industry, and if so, invited suggestions as to how to mitigate that hardship, consistent with law. The NOPR noted that one method under consideration was to bill fiscal year 1992 costs in three annual installments, starting in either fiscal year 1993 or 1994, and that this method would be consistent with the method used for phasing in U.S. lands charges in Order No. 469, issued May 8, 1987.[11]

The NOPR noted that in 1986 the Commission began including in its assessments of annual charges to licensees, the costs incurred by other federal agencies in the performance of their own responsibilities to administer part I of the FPA.[12] The NOPR also noted that Congress recently enacted section 1701(a) of the Energy Policy Act of 1992,[13] which provides for the recovery through annual charges of "any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under" part I of the FPA. The NOPR stated that the Commission intends to address the implementation of section 1701(a) in a separate rulemaking, and that those issues are beyond the scope of this rulemaking.

Finally, the NOPR proposed to add a new paragraph (c) to § 11.4, to indicate

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[4] 16 U.S.C. 803(e).

[5] 18 CFR part 11.

[6] Prior to the adoption of the current regulations in 1958 and 1963, administrative charges were in the nature of set fees that were billed for a calendar year. The present system of basing the annual charges on actual costs was adopted in Order No. 205, 19 F.P.C. 907 (1958) (with respect to municipal licensees only) and in Order No. 272, 30 F.P.C. 1333 (1963) (all other licensees); see also Order No. 272A, 31 F.P.C. 1555 (1964).

[7] The allocations are performed separately for municipal and non-municipal licensees. For municipal licensees, the allocation is based solely on the project's authorized horsepower. For non-municipal licensees, the allocation is based on a combination of the project's authorized horsepower and the power actually generated. See 18 CFR 11.1.

[8] Public Law No. 99–509, title III, subtitle of E, section 3401 (1986) (codified as amended at 42 U.S.C. 7178). OBRA is implemented in part 382 of the Commission's Regulations, 18 CFR part 382.

[9] See Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, *reprinted in* 1986 U.S.C.C.A.N. 3607, 3883.

[10] The procedures for estimating the costs and later adjusting the assessments are described in Order No. 472, 52 FR 18201 (May 14, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶30,746 at pp. 30,612 and 30,616–17 (1987).

[11] FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,741 at p. 30,591.

[12] The background is described in the preamble to the above-referenced 1987 final rule on annual charges to recover hydroelectric administration costs and land use fees, FERC Stats. & Regs. ¶ 30,741 at pp. 30,591–92.

[13] Public Law 102–486, October 24, 1992.

that the annual charges for the use of tribal land within an Indian reservation will be billed during the year in which the land is used. The Commission's past practice had been to issue bills for the preceding year's use of such land. The Commission believed that the reasoning applicable to current-year billing for administrative charges was equally applicable to current-year billing for the use of tribal land. The NOPR proposed to bill in fiscal year 1993 the charges for both the fiscal year 1992 and the fiscal year 1993 use of tribal land.[14]

III. Discussion

A majority of the commenters[15] express concern over whether costs incurred by Federal and State resource agencies would be billed on a current-year basis in the same manner as the costs incurred by the Commission. This topic drew far more comment than any other topic, and many of these comments[16] urge the Commission to delay or terminate this proceeding and to combine the proposals in the NOPR with broad comprehensive rulemaking proceeding on annual charges that includes consideration of how to implement section 1701(a) of the Energy Policy Act of 1992.

In particular, NHA and PG&E[17] contend that a determination to use current-year billing procedures with respect to the Commission's costs would set a precedent (in the commenters' view, a bad precedent) that would in some manner influence or foreclose the determination of whether to use current-year billing for Federal and State resource agency costs as well. EEI contends that it would be impractical or unduly complicated for the Commission to use current-year billing for the Commission's costs while using prior-year billing for the resource agency costs, while APPA requests an explanation of how the Commission and resource agency costs will be integrated in the billing process. These and other commenters contend that the resource agency costs must be billed on a basis of actual costs incurred, and not on a basis of estimates, and that the billing of the Commission's costs is so closely related to the billing of the resource agency costs that the two should be considered together in the same proceeding.

A number of commenters[18] suggest that the NOPR did not provide an adequate explanation of the Commission's reasons for its proposal. Grant inquires as to whether the Commission would "gain greater flexibility or have more options in budgeting for future actions," whether the proposal "would decrease FERC's cost of doing business," and whether "there are advantages to a uniform billing and cost allocation scheme at FERC."[19]

The purpose of the proposed rule was clearly stated in the NOPR: "to revise the Commission's billing practices in such a manner as to enable it to fully recover its costs during the fiscal year in which those costs are incurred."[20] As we explained in the NOPR, in recent years there has been a significant fluctuation in the Commission's costs of administering Part I of the FPA. As several commenters noted, the recent sizable increase in costs is attributable at least in part to the large number of licenses that expired simultaneously, thus generating an unusually large number of applications for relicense in the same time frame. Assessing annual charges, and receiving the payments of those charges, in the same fiscal year in which the administrative costs are incurred will better enable the Commission to recover its costs. In short, it will eliminate the year's lag between the incurrence and the recovery of administrative costs, so that any increase or decrease in such costs will be reflected in the current year's assessment instead of in the ensuing year's assessment.

In response to Grant's inquiries, the change will not provide "greater flexibility * * * in budgeting" nor will it either increase or decrease the Commission's "cost of doing business." The Commission's budget is determined by Congress in its appropriations, and the change in billing procedures will not alter it. We don't expect any significant change in the Commission's cost of doing business due to this rule. The purpose of the final rule is to eliminate the one-year lag in recovery of the Commission's costs of administering Part I of the FPA.

We recognize that the recovery of costs incurred by State and Federal Resource agencies is not unrelated to the recovery of the Commission's costs. We also recognize that various aspects of the Commission's annual charges allocation scheme were adopted many decades ago and may merit a fresh look in light of the evolution of the hydropower industry since that era.[21] As the commenters themselves recognize, however, section 1701(a) of the Energy Policy Act of 1992 raises difficult and perplexing issues that may not lend themselves to quick resolution. Comprehensive reconsideration of the annual charges program would be comparably time-consuming. As a practical matter, such a rulemaking proceeding could not be completed in time to affect the billing procedures for the current fiscal year, and we are unwilling to defer until next year the adoption of the final rule that is the subject of the instant proceeding.

The Commission emphasizes, however, that it does not regard the final rule adopted herein as in any way serving as a precedent with respect to the implementation of section 1701(a) of the Energy Policy Act of 1992. That Act raises numerous issues that must be considered independently on their own merits. The assessments for fiscal year 1993 will be based on estimates of the Commission's FY 1993 costs, to which will be added certain FY 1992 costs incurred by Federal agencies (*i.e.*, the Federal agency costs will be calculated in the same manner as in prior years). We will not speculate here on how the Commission will integrate State and Federal resource agency costs into the billing process in future years.

Several commenters[22] contend that the analogy of OBRA to section 10(e) of the FPA is inapt. Several commenters[23] argue that the reference to "reimbursement" in section 10(e) precludes use of bills based on estimates of costs; these commenters contend that the bills must be based solely on actual costs that have already been incurred.

EEI and Consumers point out that section 3401(a)(2) of OBRA states that: "(2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act." They contend, therefore, that section 10(e) of the FPA governs the assessment of annual charges unencumbered by any requirements of OBRA. NHA and Consolidated point out

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[14] No comments were received on the proposed revision of § 11.4, and these charges will be billed as proposed in the NOPR.

[15] NHA, EEI, APPA, Alabama, Consolidated, Consumers, Cowlitz, Danville, Douglas, Georgia, Grant, Haiecrest, PG&E, Pool, Puget, Tacoma, and Washington.

[16] NHA, APPA, Alabama, Grant, Consolidated, Consumers, Cowlitz, PG&E, Pool, and Tacoma.

[17] Comments of NHA at 8–9; comments of PG&E at 2–3.

[18] NHA, Consolidated, Grant, Pool, Puget, and Tacoma.

[19] Comments of Grant at 2.

[20] IV FERC Stats. & Regs. at p. 32,681.

[21] The use of horsepower as a measure of capacity, for instance, reflects the hydropower industry of the prior century, and the variations in the different allocation formulae for different classes of licensees might also be outmoded.

[22] *See* comments of NHA at 3–5, comments of EEI at 4–5, comments of Consolidated at 4–5, and comments of Consumers Power at 2–3.

[23] *See* comments of Consumers at 3–6 and comments of Danville at 1–4; *cf.* comments of Consolidated at 4–7.

that section 10(e) of the FPA, as amended by the Energy Policy Act of 1992, is broader in scope than OBRA, in that the former involves recovery of costs incurred by other agencies as well as by the Commission, while OBRA applies only to recovery of costs incurred by the Commission. We agree with both of these points, but that does not require a change to this rule. Our reference to OBRA was by analogy, and not as a source of legal authority for the proposed rule. Under OBRA, the Commission assesses annual charges on a current-year basis; that billing process has worked well; we believe that it would work equally well for the recovery of costs incurred to administer Part I of the FPA; and we believe that section 10(e) of the FPA permits comparable use of current-year billing to recover those costs.

This brings us to the argument advanced by Consumers and Danville that section 10(e) does not authorize use of estimates in the annual charges assessment process. They cite to the text of section 10(e), which provides in pertinent part that "the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of *reimbursing* the United States for the costs of the administration of this part [Part I of the FPA] * * *" (emphasis added) Consumers cites the consistent use of the word "reimburse" in the legislative history of section 10(e). Danville draws a distinction between the use of the word "reimbursing" in the above-quoted clause of section 10(e) and the use of the word "recompensing" in the next clause ["for recompensing it for the use, occupancy, and enjoyment of its lands or other property"), contending that (citing Webster's dictionary) "reimburse" means "to repay" or "to pay back or compensate * * * for money spent," whereas "recompense" means "payment in return for something given or done, as services." Danville also cites the Commission's long-standing practice of implementing the administrative costs portion of section 10(e) by billing on a prior-year basis.

We believe that the billing procedures adopted in the final rule constitute "reimbursement" within the meaning of the first clause of section 10(e). The annual charges are designed to reimburse the United States for the administrative costs that are incurred. The adjustment in the ensuing year's bill will ensure that the assessments do not exceed the costs that were actually incurred. The Commission's costs are incurred pursuant to annual appropriations by Congress, and the annual charges that are received from the licensees are transferred to the U.S. Treasury. Both of these events will now occur in the same fiscal year. We do not read section 10(e) to require use to defer the assessment until the ensuring fiscal year the costs were incurred.

EEI and Puget contend that the current practice has worked well for decades, and therefore that there is no need to change it. They also contend that using current-year data to determine the total charges while using prior-year costs to allocate those charges among the licensees is less precise and less equitable than using the same year's costs and data. EEI contends that the present system is simpler and less burdensome for both the licensees and the Commission, in that it avoids the two-step procedure and uncertainties inherent in estimates. APPA contends that the transition from prior-year billing to current-year billing could be disruptive and burdensome to licensees, both by increasing the assessment and by changing its timing. Danville suggests that use of current-year billing would discourage cost control at the Commission.

In the past there was less annual fluctuation in the Commission's costs. Given the changed circumstances, however, we believe that the change to current-year billing is now appropriate. We agree that the previous billing procedures were somewhat simpler for the Commission than the procedures adopted in the final rule, and that the transition to the new procedures may in some degree be temporarily burdensome to the licensees. We believe, however, that eliminating the delay in recovering the Commission's costs justifies the change in the procedure and outweighs the temporary burden to the licensees.

We agree with EEI and Puget that using the same year's costs and licensee data is more equitable and precise than the proposed method. Therefore, for the calculation using actual costs, the Commission will use generation data from the same year as the actual costs.

We disagree with Danville's suggestion that the use of current-year billing will discourage cost control at the Commission. As discussed above, the Commission cannot lawfully incur costs in excess of its appropriation from Congress; the annual charges paid by the licensees go to the U.S. Treasury, not the Commission; and the annual charge assessment and billing procedures cannot be used to increase the funds available to the Commission for expenditure.

In response to the Commission's inquiry in the NOPR, many commenters[24] express the view that assessment of the costs that were incurred during fiscal year 1992 would be burdensome if such costs were billed in addition to, and in the same year as, the costs incurred during the then-current year. No commenter suggests that it wouldn't be burdensome. Danville characterizes the burden as "confiscatory," describing how (depending on the timing of the bills in relation to its fiscal year) the City of Danville might have to pay three years' bills in its same fiscal year.[25] Danville contends that those costs are not legally required to be billed.[26] NHA and Danville characterize the billing of the FY 1992 costs in addition to the then-current year's costs as constituting a "windfall" for the Commission. Several commenters[27] note that State regulatory commissions may treat the special payments for FY 1992 costs as non-recurring costs such as to disallow those costs in test-year rate cases; this would preclude utilities from recovering those costs from their ratepayers.

Approximately half of the commenters[28] urge us to defer the billing of the FY 1992 costs until FY 1994,[29] so as to provide an opportunity to budget for those extra costs. They also urge us to spread the FY 1992 costs over a period of several years, to reduce the burden and to increase the possibility of recovering some or all of these costs in rates approved by State commissions.

Virginia suggests spreading the FY 1992 costs over two or three years. Colorado, Sacramento, and Tapoco suggest three years. Washington suggests three or four years. Georgia suggests three "or more" years. Pool suggests three years, but four or five if warranted by the circumstances of particular licensees. Grant, PG&E, and Puget suggest four years. Cowlitz suggests four or five years. APPA and Alabama suggest five years. EEI suggests up to five or six years, based on the regulatory circumstances of the State involved. Pool suggests tailoring the period to the individual circumstances of the licensee. Danville suggests spreading the FY 1992 costs over the remaining years of the license, however many years that may be, for each individual licensee.

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[24] NHA, EEI, APPA, Alabama, Consolidated, Danville, and Colorado.

[25] See comments of Danville at 6–7.

[26] *Id.* at 5.

[27] EEI, Georgia and Puget.

[28] EEI, APPA, Alabama, Consumers, PG&E, Colorado, Puget, Tapoco, and Virginia.

[29] In a related suggestion, Consumers recommends deferring until FY 1994 the change in billing procedure from prior-year costs to current-year costs.

In this regard, PG&E notes that, for it, the bill for FY 1992 administrative costs will be ten times larger than the bill for an extra year of land use charges that was mandated in the above-mentioned Order No. 469 and that was itself spread over three years. EEI believes that use of a five-year period might improve the opportunity for regulated utilities to recover the FY 1992 costs in a rate case before a State commission.

The FY 1992 costs do not constitute a "windfall" to the Commission or to the United States. Each licensee is obligated (by its license and by section 10(e) of the FPA) to pay annual charges for each year of its license. Fiscal year 1992 is one of those years. If the license runs for 50 years, the payment of charges attributable to FY 1992 in addition to the charges billed annually on a current-year basis will not add an extra year of charges to the license; the licensee will still pay for 50 years of administrative costs.

In light of the above, we see no reason why State regulatory commissions would not treat the separate charges for the FY 92 costs as a legitimate and integral part of the annual charges paid by the licensees, and approve rate structures that will enable the licensees to recover those costs.

The comments have convinced us that billing the charges for FY 1992 in the same year with the charges for FY 1993 would indeed be burdensome, and that the most serious aspect of the burden would result from imposing those charges immediately without providing the licensees an adequate period of time in which to budget for those extra costs. Therefore, we will defer the billing of those supplemental charges until FY 1994, and will allow each licensee the option of spreading those charges over a three-year period, in FY 1994, FY 1995, and FY 1996, with interest accruing from 1994. We are providing the initial deferred billing and the optional three-year payment plan in recognition of the fact that the previous billing procedure was lawful and was dutifully complied with by the licensees, and that the extra charges would be unduly burdensome to many licensees. Under these circumstances, we believe that the deferral of the FY 1992 bills as described above is both lawful and reasonable.

A number of commenters [30] request more information on how the new billing procedures will work, including the mechanics and the timing. EEI asks for a sample calculation. Pool asks how the costs will be estimated.

To arrive at the estimated billing basis, the Commission will start with an estimate of costs based on the Commission's current-year appropriation. Next, the Commission will deduct estimated administrative costs to be recovered from other sources, based on prior-year receipts. The net estimated costs will be divided among the hydropower projects as prescribed in § 11.1, using prior-year generation data as reported by the licensees, and authorized capacity to date.

After the end of the fiscal year, the Commission will calculate the actual costs for the program for that fiscal year. The difference between estimated and actual costs will be assessed to the hydropower projects as follows. The Commission will calculate the total costs, using the actual program costs (less actual administrative recoveries). The net actual costs will be redivided among the hydropower projects as described in § 11.1. For each project, we will then compare the charge derived from the estimated costs to the charge derived from the actual costs, and adjust that project's subsequent year's bill for the difference. In order to implement the changes made by this final rule, the issuance of the FY 1993 bills will be delayed, but not beyond June.

EEI suggests delaying the issuance of the bills until August or September of each year, when costs for the fiscal year can be estimated with greater accuracy and certainty. EEI also recommends providing a notice to the licensees by June or July of what the percentage increase might be vis-a-vis the prior year's bills, so that the licensees would have more time to budget for the increase.[31] Pool offers a comparable suggestion, that the estimate of current-year costs be based on the prior year's actual costs adjusted by a percentage factor, with the percentage announced in advance.

The Commission cannot delay issuance of the bills until August or September, because the Federal fiscal year ends on September 30 and the Commission needs to receive the payments by that date. To ensure timely receipt of payments within the fiscal year, the Commission will continue its present practice of issuing the bills in March.

Several commenters [32] ask us to clarify whether the rule proposed in the NOPR, as adopted herein, will in any way alter the present regulatory framework for determining the eligibility of States and municipalities for exemption from annual charges.[33] For the assessment based on estimated costs, municipal exemptions will be based on the prior year's generation or lack of profits. For the recalculated assessment, municipal exemptions will reflect the licensees' data for the year corresponding to the actual costs.

Grant inquires whether a "prorated true-up" will be performed if there is a change in the licensee's authorized capacity after the estimated bill is issued. The answer is yes. The change in capacity will be reflected in the ensuing recalculation using actual costs.

Finally, EEI urges us to adopt a schedule of filing fees for preliminary permit applications and original license applications, while Halecrest urges us to use this rulemaking proceeding to change the billing procedures so as to assess annual charges only after project construction has been completed and the project has commenced operating. Both of these suggestions fall well beyond the scope of this proceeding, as defined in the NOPR, and therefore will not be considered herein.

IV. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [34] generally requires a description and analysis of proposed regulations that will have a significant economic impact on a substantial number of small entities.[35] In the NOPR, and pursuant to section 605(b) of the RFA, the Commission certified that the regulations proposed therein would not have a significant economic impact on a substantial number of small entities. One commenter questioned that determination, [36] but its comment was predicated in part on costs incurred by the Federal and State resource agencies rather than the Commission. As discussed above, those costs fall beyond the scope of this rulemaking. The Commission certifies that the final rule adopted herein will not have a significant impact on a substantial number of small entities.

V. Environmental Statement

Issuance of this final rule does not constitute a major federal action having a significant adverse impact on the

[30] EEI, Douglas, Grant, PG&E, Pool, and Tacoma.

[31] EEI also provides some suggestions on how the Commission might control costs. Although beyond the scope of the rulemaking, the Commission welcomes such suggestions and will give them serious consideration.

[32] Douglas, Grant, and Pool.

[33] See 18 CFR 11.6.

[34] 5 U.S.C. 601–612.

[35] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprises, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operating." 15 U.S.C. 632(a).

[36] Comments of Pool at 4.

quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act.[37] The regulations adopted herein are procedural in nature and therefore fall within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[38]

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[39] However, the regulations adopted herein contain no information collection requirements and therefore are not subject OMB approval.

VII. Effective Date

This rule is effective April 23, 1993.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 11 of chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for part 11 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In § 11.1, a new paragraph (g) is added, to read as follows:

§ 11.1 Cost of administration.

* * * * *

(g) With respect to costs incurred by the Commission, the assessment of annual charges will be based on an estimate of the costs of administration of part I of the Federal Power Act that will be incurred during the fiscal year in which the annual charges are assessed. After the end of the fiscal year, the assessment will be recalculated based on the costs of administration that were actually incurred during that fiscal year; the actual costs will be compared to the estimated costs; and the difference between the actual and estimated costs will be carried over as an adjustment to the assessment for the subsequent fiscal year. The issuance of bills based on the administrative costs incurred by the Commission during the year in which the bill is issued will commence in 1993. The annual charge for the administrative costs that were incurred in fiscal year 1992 will be billed and payable in 1994. At the licensee's option, the charge may be paid in three equal annual installments in fiscal years 1994, 1995, and 1996, plus any accrued interest. If the licensee elects the three-year installment plan, the Commission will accrue interest (at the most recent yield of two-year Treasury securities) on the unpaid charges and add the accrued interest to the installments billed in fiscal years 1995 and 1996.

3. In § 11.4, a new paragraph (c) is added, to read as follows:

§ 11.4 Use of government dams for pumped storage projects, and use of tribal lands.

* * * * *

(c) Commencing in 1993, the annual charges for any project using tribal land within Indian reservations will be billed during the fiscal year in which the land is used, for the use of that land during that year.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix A—List of Commenters

Alabama Power Company (Alabama)
American Public Power Association (APPA)
Consolidated Pumped Storage, Inc. (Consolidated)
Consumers Power (Consumers)
City of Danville, Virginia Electric Department and Merced Irrigation District, California (Danville)
Edison Electric Institute (EEI)
Georgia Power Company (Georgia)
Halecrest, Inc.
National Hydropower Association (NHA)
Pacific Gas and Electric Company (PG&E)
Public Generating Pool (Pool)
Public Service Company of Colorado (Colorado)
Public Utility District of Cowlitz County, Washington (Cowlitz)
Public Utility District No. 1 of Douglas County, Washington (Douglas)
Public Utility District No. 2 of Grant County, Washington (Grant)
Puget Sound Power & Light Company (Puget)
Sacramento Municipal Utility District (Sacramento)
Tacoma Public Utilities (Tacoma)
Tapoco, Inc.
Virginia Electric and Power Company (Virginia)
Washington Water Power Company (Washington)
Yuba-Bear River Project (Yuba)

[FR Doc. 93–6686 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[37] See Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[38] See 18 CFR 380.4(a)(1).

[39] 5 CFR part 1320.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 111, 112, 122, 146

[T.D. 93–18]

Submission of Fingerprints

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends several parts of the Customs Regulations to clarify Customs position regarding the submission of fingerprints when applying for certain occupations or requesting various identification cards which necessitate a fingerprint records check. Moreover in this connection, where permissible, a fee will be collected to recover both the fee now charged Customs by the Federal Bureau of Investigation for performing the fingerprint check, and Customs administrative costs. The amendments will allow Customs to continue providing, in a cost-effective manner, services which necessitate a fingerprint records check.

EFFECTIVE DATE: May 24, 1993.

FOR FURTHER INFORMATION CONTACT: Esther Mandelay, Office of Inspection and Control (202–927–0520).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to a provision in Public Law 101–162, the Federal Bureau of Investigation (FBI) was authorized to establish a fee for processing fingerprint identification records for non-law enforcement employment and licensing purposes. This authorization is mentioned in a note to 28 U.S.C. 534 and indicates that the provision concerning fees was reenacted in Public Law 101–515.

On January 1, 1990, the FBI began charging Customs a $14.00 user fee whenever the fingerprints of various applicants for Customs related occupations or identification cards were submitted for processing. On October 1, 1990, the fee was raised to $17.00. Customs sought exemption from the fee, but the FBI denied the request on the basis that the underlying reason for the check was employment or licensing purposes.

Accordingly, by notice published in the **Federal Register** on December 11, 1991 (56 FR 64580), amendments were proposed to the Regulations which would allow Customs to charge a fee to recover the $17 charged Customs by the FBI, plus an additional 15% of that

amount to cover Customs administrative overhead. Customs may assess such a fee pursuant to 31 U.S.C. 9701. Thus, the total charge would be $19.55, which consists of $17 (the FBI fee) plus $2.55 (15% to cover overhead). However, this fee would change whenever the amount charged by the FBI changes. District directors would inform those required to submit the fee in the correct amount. At present, Customs estimates that it may be billed more than $1 million per year by the FBI for fingerprint checks considered necessary to carry out Customs duties.

The proposed amendments would permit the recovery of these costs, together with Customs administrative overhead, whether the submission of fingerprints is required with the particular application, or whether it is a matter for the district director's discretion.

In this regard, under the proposed amendments, the submission of fingerprints either could, or would, be required, as applicable, from those wanting to establish a bonded warehouse (§ 19.2) or obtain a broker's license (§ 111.12), from licensed cartmen, lightermen or employees thereof needing an identification card (§ 112.42), and from those seeking to gain unescorted access to Customs security areas at an airport (§ 122.182) or activate a foreign trade zone (§ 146.6). The fingerprint fee would be due from broker applicants who pass the related examination (§ 111.96), from licensed cartmen, lightermen and employees thereof, as part of an application to secure an identification card (§ 112.42), and from those seeking unescorted access to Customs security areas at an airport (§ 122.182), but pursuant to 19 U.S.C. 58c(e)(6)(C) (i) and (ii), Customs would be effectively precluded from collecting the fee from those establishing a warehouse or activating a zone.

Thirty-nine commenters from the public responded to the notice of proposed rulemaking. A description, together with Customs analysis, of the issues they raised, is set forth below.

Analysis of Comments

Comment: By far, the majority of commenters responding to the notice of proposed rulemaking focused on the Customs Airport Security Program, and proposed § 122.182, which would require the submission of fingerprints, along with the related fee, for those seeking unescorted access to Customs security areas at airports.

Many of these commenters recommended that Customs delay or defer action on the proposed amendment and, in order to avoid redundancies in the cost and processing of fingerprints, coordinate its program with the one to be implemented by the Federal Aviation Administration (FAA) under the Aviation Security Act of 1990, which requires a criminal history records check for those wanting unescorted access to and around domestic, as well as foreign, air carrier aircraft. It was stated that almost every person applying for Customs access would already have been fingerprinted under the FAA program, once implemented, and that both Customs and the FAA could achieve their goals through a single, joint program. One commenter declared that its airport charged a fee for conducting its own criminal background and fingerprint records check, and, thus, both the FAA and Customs programs were redundant.

A few commenters asserted that airport operators should be exempt from payment of fingerprint fees, because they assist federal inspection agencies in their respective duties. One commenter suggested that it would be costly to fingerprint the high number of emergency response personnel who must have access to Customs security areas. Another commenter thought that the proposed rule would have a significant impact on small businesses under the Regulatory Flexibility Act, and that it constituted a major rule under Executive Order (E.O.) 12291.

Response: Customs has concluded that it would not be advisable to delay or defer action on the final rule at this time pending FAA implementation of its program, inasmuch as it is important that Customs be able to recover, as soon as possible, the fees currently charged by the Federal Bureau of Investigation (FBI) on fingerprints Customs submits pursuant to its Airport Security Program. It is also believed that the final rule will serve to reduce confusion with the FAA regulations (14 CFR parts 107 and 108).

However, although it was initially proposed to require the submission of fingerprints, in all cases, as part of an application to obtain unescorted access to Customs security areas at an airport, Customs believes it prudent, upon further consideration, to simply retain the existing practice of requiring their submission, when found necessary in the discretion of the district director. Section 122.182(d) is therefore changed simply to make it clear that it is the district director who may require the submission of fingerprints from a given applicant, and that he may do so either at the time of, or following, the filing of the application. Such decisions are often based on different mission requirements than those of the FAA, or of a private airport operator. The overriding purpose of the regulation, therefore, is to permit Customs to recoup both the fee charged it by the FBI for submitting the fingerprint cards, plus its own administrative overhead.

Nevertheless, Customs agrees that it needs to coordinate with the FAA to avoid redundancies, and is committed to taking action in this respect, which would minimize or eliminate any redundancies once the FAA program is fully operational, and Customs is satisfied that its own requirements are addressed by the FAA program. In fact, Customs has endeavored to work extensively with the FAA towards the goal of interfacing with its prospective program, in order to obviate redundancies in the costs and processing of background criminal investigations. However, Customs wants to ensure that the criminal background checks required by the FAA will fulfill its requirements in relation to persons seeking access to Customs-secured areas. Customs will continue to seek to interface with the FAA program, but until such time as that goal is reached, it must ensure that adequate safeguards exist in Customs security areas.

The expenses incurred in necessary background fingerprint records checks of airport or air carrier employees needing access, for whatever reason, to Customs security areas are properly reimbursable to Customs. Such employees do not perform Customs functions, nor do they perform the functions of any federal border inspection agency. The duties which they perform are those relative to the operations of the airport and the airlines. It is also observed that Customs has contingency plans in place at airports to address emergency response personnel who must have access to Customs security areas. In any event, it is estimated that in the Airport Security Program roughly a total of 60,000 fingerprint cards from personnel seeking unescorted access to Customs security areas may be processed annually, at a cost of approximately $1.2 million.

A certification was previously made by the agency in the notice of proposed rulemaking (56 FR at 64581), from which no persuasive reason has been given to depart, that the amendment would neither have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, nor constitute a major rule within the contemplation of E.O. 12291, thereby removing the rule from the regulatory analysis requirements of those laws. Parenthetically, such determinations fall

within the exclusive, nonreviewable province of the agency.

Comment: Several commenters objected to the proposed change to § 146.6, which would include the possible submission of fingerprints as part of an application to activate a foreign trade zone. Some of these commenters also asked for an extension of the comment period so that they could examine the proposed amendment in greater depth.

Response: Customs intent by this regulation is not to change its policy or practice regarding the submission of fingerprints for foreign trade zone grantees or operators. Customs already has the authority to require fingerprints in this connection. The regulation merely clarifies this existing authority, and thus does not create an undue burden for these parties. In light of this, and inasmuch as there is no fee requirement under § 146.6, it was decided that no extension of the comment period was warranted here.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined that the amendments, modified as discussed above, should be adopted. In addition, § 111.12 is changed to confirm that it is likewise the district director who has the discretion to require the submission of fingerprints from broker applicants. Also, for editorial consistency, "will" is changed to "shall" in the last sentence of § 111.96(a), the third sentence of § 112.42, and the sixth sentence of § 122.182(d).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. It is the applicant himself who would be responsible for paying the fee. Thus, the amendments are not subject to the regulatory requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Exports, Imports, Surety bonds, Warehouses.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

19 CFR Part 112

Administrative practice and procedure, Common carriers, Customs duties and inspection, Exports, Freight forwarders, Imports, Motor carriers.

19 CFR Part 122

Air carriers, Airports, Customs duties and inspection, Imports.

19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 19, 111, 112, 122 and 146, Customs Regulations (19 CFR parts 19, 111, 112, 122, and 146), are amended as set forth below.

PART 19—CUSTOMS, WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

* * * * *

2. Section 19.2 is amended by adding a sentence to the end of paragraph (f) to read as follows:

§ 19.2 Applications to bond; bond; annual fee.

* * * * *

(f) * * * The district director may require an individual applicant to submit fingerprints on Standard Form 87 at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on Standard Form 87, of all officers and managing officials of the business entity.

* * * * *

PART 111—CUSTOMS BROKERS

1. The authority citation for part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641, unless otherwise noted.

* * * * *

Section 111.96 also issued under 31 U.S.C. 9701.

2. Section 111.12 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 111.12 Application for license.

(a) * * * The district director may require the applicant to submit fingerprints on Standard Form 87 at the time of filing the application, or after the applicant obtains a passing score on the broker examination.

* * * * *

3. Section 111.96 is amended by revising the heading of paragraph (a) and adding two sentences at the end of the paragraph to read as follows:

§ 111.96 Fees.

(a) *License fee; fingerprint fee.* * * * Applicants receiving notice that they achieved a passing score on an examination are then liable for payment of a fingerprint fee. The district director shall inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be paid to Customs before further processing of the application shall occur.

* * * * *

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. Section 112.42 is revised to read as follows:

§ 112.42 Application for identification card.

An application for an identification card required pursuant to § 112.41 of this part, shall be filed personally by the applicant with the district director on Customs Form 3078 together with two 1¼" × 1¼" color photographs of the applicant. The fingerprints of the applicant shall also be required on Standard Form 87 at the time of filing the application. The district director shall inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered with the application. The application may be referred for investigation and report concerning the character of the applicant.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.182 is amended by revising the fifth sentence of paragraph (d) and adding a sentence immediately thereafter to read as follows:

§ 122.182 Security provisions.

* * * * *

(d) * * * The district director may require the applicant to submit fingerprints on form FD–258 either at the time of, or following, the filing of the application. If required, the district director shall inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered with the application. * * *

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–u, 1202 (General Note 8, Harmonized Tariff Schedule of the Untied States), 1623, 1624.

* * * * *

2. Section 146.6 is amended by adding three sentences to the end of paragraph (a) to read as follows:

§ 146.6 Procedure for activation.

(a) *Application.* * * * The district director may also require the operator or grantee to submit fingerprints on Standard Form 87 at the time of filing the application. If the operator is an individual, that individual's fingerprints may be required. If the operator or grantee is a business entity, fingerprints of all officers and managing officials may be required.

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: January 8, 1993.

Nancy Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93-6647 Filed 3-23-93; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 236, 813, 905, and 913

[Docket No. R-93-1654; FR-3494-F-01]

Definition of Annual Income: Holocaust Reparations

AGENCY: Office of the Secretary.

ACTION: Final rule.

SUMMARY: HUD takes family income into account in determining eligibility and the level of benefits in certain housing assistance programs. The purpose of this rule is to exclude from family income reparation payments made by foreign governments in connection with the Holocaust.

EFFECTIVE DATE: April 23, 1993.

FOR FURTHER INFORMATION CONTACT: Issues related to 24 CFR parts 215, 236, and 813: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3944. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

Issues related to 24 CFR parts 905 and 913: Casimir Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, room 4224, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0444. A telecommunications device for deaf persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: HUD provides means-tested housing assistance to eligible lower income families under the Rent Supplement,[1] Section 236,[2] and section 8 and Public and Indian Housing programs.[3] In these programs, HUD takes family income into account in determining initial program eligibility, and uses periodic income reexaminations to determine the level of benefits to be provided eligible families.

The statute governing each program defines "income" to mean—

* * * income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.[4]

In establishing criteria for calculating income, HUD has historically provided that the full amount of periodic payments received by program applicants and participants must be counted.[5] Since reparation payments made by foreign governments in connection with the Holocaust are made periodically (normally on a monthly basis), they have been included in family income.

HUD has reviewed its position and has determined, as a matter of agency discretion, to exclude these reparation payments from income with respect to the Rent Supplement, section 236, section 8, and Public and Indian Housing programs. The Department believes that the Holocaust—both in its scope and severity—represents a unique situation, and that payments by foreign governments intended to atone for atrocities committed during the Nazi era should not be taken into account with respect to the housing assistance programs involved.

It should be noted that this rule does not affect any other income-related provision in the programs involved. Specifically, all forms of periodic payments that are currently counted toward income will continue to be so counted.

In addition, this rule is prospective only. It applies to all initial and continuing income determinations conducted on or after its effective date. It also makes clear that any assisted housing residents who have been asked to repay assistance because of their failure to include past reparation payments in income will be excused from further repayment on or after the rule's effective date.

The rule does not provide retroactive relief to those for whom reparation payments have been included in income under HUD's long-standing policy. The Department is reviewing the feasibility, practicality, and desirability of making this new policy retroactive, and will advise the public of its conclusions in

[1] Section 101 of the Housing and Urban Development Act of 1965.

[2] Section 236 of the National Housing Act.

[3] The United States Housing Act of 1937.

[4] Rent Supplement: Section 101(c)(2) of the Housing and Urban Development Act of 1965; section 236: Section 236(m) of the National Housing Act; section 8 and Public Housing: Section 3(b)(4) of the United States Housing Act of 1937.

[5] Rent Supplement: 24 CFR 215.21(b)(4); section 236: 24 CFR 236.3(b)(4); section 8: 24 CFR 81.106(b)(4); and Public Housing: 24 CFR 913.106(b)(4).

Periodic payments are to be distinguished from lump sum payments, that are excluded from income. Rent Supplement: 24 CFR 215.21(c)(3); section 236: 24 CFR 236.3(c)(3); section 8: 24 CFR 81.106(c)(3); and Public Housing: 24 CFR 913.106(c)(3).

a Federal Register publication in the near future.

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirements is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is both unnecessary and contrary to public interest because the rule's only effect is to confer a benefit on a relatively small number of assisted housing tenants.

Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), in the absence of congressional waiver, this final rule cannot become effective for 30 calendar days after its publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-day period. Whether or not the statutory period has expired, this rule will not become effective until HUD publishes a separate notice announcing a specific effective date.

Findings and Certifications

A. Economic Impact

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

This action is categorically excluded from the NEPA requirements at 24 CFR part 50 in accordance with 24 CFR 50.20(k) because it relates to an internal administrative procedure whose content does not constitute a development decision nor affect the physical condition of project areas or building sites.

C. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule only changes the way in which a limited class of payments are treated for purposes of determining income in HUD assisted housing projects, and it will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

D. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being.

The rule affects only a limited class of assisted tenants, and to the extent it produces any family impact, the effect is likely to be positive. Thus, the rule is not subject to review under the Order.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on small entities. The rule only provides a benefit to a small class of individuals, and does not have the requisite impacts to trigger the law's applicability.

This rule was not listed on any Semiannual Agenda of Regulations published under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Parts 215, 236, 813, 905, and 913 as set forth below:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

2. In § 215.21, paragraph (c)(10) is redesignated as paragraph (c)(11), and paragraph (c)(9) is revised, and new paragraphs (c)(10) and (e) are added, to read as follows:

§ 215.21 Annual income.

* * * * *

(c) * * *

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; or

* * * * *

(e) Any family receiving reparation payments referred to in paragraph (c)(10) of this section that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

3. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

4. In § 236.3, paragraph (c)(10) is redesignated as paragraph (c)(11), and

paragraph (c)(9) is revised, and new paragraphs (c)(10) and (e) are added, to read as follows:

§ 236.3 Annual income.

* * * * *

(c) * * *

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; or

* * * * *

(e) Any family receiving the reparation payments referred to in paragraph (c)(10) of this section that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

5. The authority citation for 24 CFR part 813 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n and 3535(d).

6. In § 813.106, paragraph (c)(10) is redesignated as paragraph (c)(11), and paragraph (c)(9) is revised, and new paragraphs (c)(10) and (e) are added, to read as follows:

§ 813.106 Annual income.

* * * * *

(c) * * *

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; or

* * * * *

(e) Any family receiving the reparation payments referred to in paragraph (c)(10) of this section that has been requested to repay assistance. under this chapter as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

PART 905—INDIAN HOUSING PROGRAMS

7. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee and 3535(d).

8. In § 905.320, paragraph (c)(10) is redesignated as paragraph (c)(11), and paragraph (c)(9) is revised, and new paragraphs (c)(10) and (e) are added, to read as follows:

§ 905.320 Annual income.

* * * * *

(c) * * *

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; or

* * * * *

(e) Any family receiving the reparation payments referred to in paragraph (c)(10) of this section that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

9. The authority citation for 24 CFR part 913 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

10. In § 913.106, paragraph (c)(10) is redesignated as paragraph (c)(11), and paragraph (c)(9) is revised, and new paragraphs (c)(10) and (e) are added, to read as follows:

§ 913.106 Annual income.

* * * * *

(c) * * *

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; or

* * * * *

(e) Any family receiving the reparation payments referred to in paragraph (c)(10) of this section that has been requested to repay assistance under this chapter as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

Dated: March 18, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–6625 Filed 3–23–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis Regulation 93–07]

Safety Zone Regulations: Upper Mississippi River Between Mile 179.0 and 184.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 179.0 and 184.0, requiring minimum horsepower and restricting the length of southbound tows during night transit. The safety zone is necessary to protect structures and commercial vessels from hazards associated with high water conditions.

EFFECTIVE DATES: This regulation is effective on March 5, 1993 and will remain in effect until March 31, 1993 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander Scott P. Cooper, Captain of the Port, St. Louis, Missouri at 314–539–3823.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area.

Drafting Information

The drafter of this regulation is Lieutenant (Junior Grade) T. Y. Deal, Assistant Chief, Port Operation under the Captain of the Port.

Discussion of Regulation

The circumstance requiring this regulation is the rapid rise in the Upper Mississippi River water level. This regulation will be in effect from March 5, 1993 and remain in effect until the river water recedes to a safe level, or until March 31, 1993, whichever is sooner. This regulation is required to

protect structures and commercial vessels from dangers associated with high water levels on the Upper Mississippi River. Entry into this zone is prohibited for towing vessels unless they have at least 250 horsepower for each 1,500 tons of cargo. Southbound tows greater than 600 feet in length (excluding the tow boat) may transit the safety zone during daylight hours only. Questions can be directed to Coast Guard Group Upper Mississippi River on VHF channel 16. Reopening broadcasts will be made by Coast Guard Group Upper Mississippi River. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0210 is added to read as follows:

§ 165.T0210 Safety Zone: Upper Mississippi River.

(a) *Location.* The following area is a safety zone: Upper Mississippi River between mile 179.0 through 184.0.

(b) *Effective Date.* This regulation becomes effective at 1 pm local time on March 5, 1993 and will remain in effect until March 31, 1993 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* Entry into this zone by towing vessels is prohibited unless the following restrictions are complied with:

(1) Towing vessel must have a minimum of 250 horsepower for each 1,500 tons of cargo.

(2) Southbound tows greater than 600 feet in length (excluding the towboat) may transit the safety zone during daylight hours only.

Dated: 4 March 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–6706 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MN9–1–5375: FRL–4554–2]

Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of action on direct final rule.

SUMMARY: USEPA is withdrawing its October 26, 1992, direct final rulemaking (57 FR 48461), which, effective December 28, 1992, would have redesignated all areas in the State currently designated nonattainment for total suspended particulate (TSP) to unclassified, except for portions of Ramsey County. Additionally, it would have changed the attainment designations from a Statewide basis to a county-wide basis. The rulemaking has been withdrawn on USEPA's own initiative for further USEPA review. The USEPA expects to publish a new direct final rulemaking notice in the near future. This document restores the appropriate text in the Code of Federal Regulations.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: This withdrawal of the October 26, 1992, rulemaking (57 FR 48461), as amended (57 FR 56771, Nov. 30, 1992), is effective as of December 24, 1992. The withdrawal is due to an USEPA concern regarding consistency of the action with the requirement for attainment area redesignations specified in 40 CFR 52.21(b)(15)(ii) that no redesignated area intersect or be smaller than the area of impact of existing major stationary sources or major modifications subject to the prevention of significant deterioration program. USEPA is working with Minnesota to resolve this concern and expects to issue a new direct final rulemaking notice in the near future.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 2 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Dated: December 24, 1992.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 81, is amended as follows:

PART 81—DESIGNATION OF AREA FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

2. Section 81.324 is revised to read as follows:

§ 81.324 Minnesota.

MINNESOTA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 131 (comprised of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington Counties)				
Anoka County:				
Cities of Fridley, Columbia Heights, Hill Top, and Spring Lake Park		X		
Remainder of the county				X
Carver County				X

MINNESOTA—TSP—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Dakota County:				
Cities of West St. Paul, South St. Paul, Mendota Heights, Sunfish Lake, Rosemount, Inver Grove Heights, Hastings, Mendota, and Lilydale.		X		
Remainder of the county				X
Cities of Minneapolis and St. Louis Park	X			
Cities of Richfield, Edina, Golden Valley, New Hope, Crystal, Robbinson, Brooklyn Center, and Brooklyn Park.		X		
Remainder of the county				X
Ramsey County:				
City of St. Paul	X			
Cities of North Oaks, White Bear, and White Bear Lake				X
Remainder of the county		X		
Scott County				X
Washington County:				
Cities of Oakdale, Newport, St. Paul Park, Cottage Grove, and Grey Cloud Island		X		
Remainder of the county				X
City of International Falls		X		
The City of Duluth (starting point is the south corner of the Duluth Arena. Go northwest on Commerce Street to I–35 corridor. Continue northeast on proposed I–35 corridor to Second Avenue East. Cotninue northwest on Second Avenue East to Superior Street (Minnesota U.S. 61). Go southwest on Superior Street to I–35 corridor. Follow I–35 corridor to 41st Avenue West. Continue southeast on 41st Avenue West to dock line. Follow dock line and harbor lines to the south corner of the Duluth Arena).	X			
The City of Duluth (starting point is Superior Street and Second Avenue East. Go northwest on Second Avenue East to Second Street (Minnesota 281). Continue southwest on Second Street to Fourth Avenue West. On Fourth Avenue West go northwest to Third Street. Continue southwest to Mesaba Avenue. On Mesaba Avenue go south to Second Street. Go southwest on Second Street to Eighth Avenue West. On Eighth Avenue West continue southeast to First Street. Follow First Street southwest to Tenth Avenue West. On Tenth Avenue West go northwest to Second Street. Continue southwest on Second Street to 14th Avenue West. On 14th Avenue West go southeast to First Street. Follow First Street southwest to 17th Avenue West. Go northwest on 17th Avenue West to Second Street. On Second Street continue southwest to 30th Avenue West. Follow 30th Avenue West to Vernon Street. Continue west on Vernon Street to Grand Avenue. On Grand Avenue go southwest to 34th Avenue West. On 34th Avenue West continue southeast to Second Street. From Second Street go southwest to the Northern Pacific Railway Line. Follow the Northern Pacific Railway Line to 61st Avenue West. From 61st Avenue West go to the dock line. Follow the dock line to 41st Avenue West. On 41st Avenue West continue northwest to the I–35 corridor. Go northeast along the I–35 corridor to Superior Street (Minnesota U.S. 61). On Superior Street go northeast to Second Avenue East).		X		
City of Red Wing		X		X
City of East Grant Forks				X
City of Cloquet				X
City of Silver Bay				X
Mesabi Iron Range Identified by county and township and range numbers:				
St. Louis County:				
T57N, R17W, Section 5		X		
T57N R21W, Section 13		X		
T57N, R22W, Section 17		X		
Sherburne County			X	
St. Clouds Township (Stemes County			X	
City of Springfield and Burnstown Township (Brown County)			X	
Remainder of State				X

MINNESOTA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 131	X			
City of Rochester	X			
Sherburne County			X	
Remainder of State				X

MINNESOTA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Duluth area:				
St. Louis County (part)				
City of Duluth	1/6/92	Nonattainment	1/6/92	Moderate ≤ 12.7 ppm.
Minneapolis-St. Paul area:				
Anoka County		Nonattainment		Moderate ≤ 12.7 ppm.
Carver County (part):				
Carver, Chanhassen, Chaska, Hamburg, Norwood, Victoria, Waconia, Watertown, Young America, Chaska Township, Laketown Township, Waconia Township, Watertown Township, Young America Township.		Nonattainment		Moderate ≤ 12.7 ppm.
Dakota County (part):				
Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemount, South St. Paul, Sunfish Lake, West St. Paul.		Nonattainment		Moderate ≤ 12.7 ppm.
Hennepin County		Nonattainment		Moderate ≤ 12.7 ppm.
Ramsey County		Nonattainment		Moderate ≤ 12.7 ppm.
Scott County (part):				
Belle Plaine, Elko, New Market, New Prague, Prior Lake, Savage, Shakopee, Credit River Township, Jackson Township, Louisville Township, New Market Township, Spring Lake Township.		Nonattainment		Moderate ≤ 12.7 ppm.
Washington County (part):				
All cities and townships except Denmark Township		Nonattainment		Moderate ≤ 12.7 ppm.
Wright County (part):				
Albertville, Annandale, Buffalo, Clearwater, Cokato, Delano, Hanover, Monticello, Montrose, Rockford, St. Michael, South Haven, Waverly, Dayton (Wright Co. part), Buffalo Township, Chatham Township, Clearwater Township, Cokato Township, Corinna Township, Frankfort Township, Maple Lake Township, Franklin Township, Marysville Township, Monticello Township, Ostego Township, Rockford Township, Silver Creek Township, Southside Township.		Nonattainment		Moderate ≤ 12.7 ppm.
AQCR 131 Minneapolis-St. Paul Intrastate (Remainder of)		Unclassifiable/Attainment.		
Carver County (part) Remainder of County				
Dakota County (part) Remainder of County				
Scott County (part) Remainder of County				
Washington County (part) Denmark Township				
Best of State		Unclassifiable/Attainment.		

MINNESOTA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Aitkin County, Becker County, Beltrami County, Benton County,[2] Big Stone County, Blue Earth County, Brown County, Carlton County, Cass County, Chippewa County, Chisago County, Clay County, Clearwater County, Cook County, Cottonwood County, Crow Wing County, Dodge County, Douglas County, Faribault County, Fillmore County, Freeborn County, Goodhue County, Grant County, Houston County, Hubbard County, Isanti County, Itasca County, Jackson County, Kanabec County, Kandiyohi County, Kittson County, Koochiching County, Lac qui Parle County, Lake County, Lake of the Woods County, Le Sueur County, Lincoln County, Lyon County, Mahnomen County, Marshall County, Martin County, McLeod County, Meeker County, Mille Lacs County, Morrison County, Mower County, Murray County, Nicollet County, Nobles County, Norman County, Olmsted County, Otter Tail County, Pennington County, Pine County, Pipestone County, Polk County, Pope County, Red Lake County, Redwood County, Renville County, Rice County, Rock County, Roseau County, Sherburne County,[2] Sibley County, Stearns County,[2] Steele County, Stevens County, St. Louis County (part) Remainder of County, Swift County, Todd County, Traverse County, Wabasha County, Wadena County, Waseca County, Watonwan County, Wilkin County, Winona County, Wright County (part) Remainder of County, Yellow Medicine County				

[1] This date is November 15, 1990, unless otherwise noted.

[2] The City of St. Cloud, which comprises portions of Benton, Sherburne, and Stearns Counties, was designated nonattainment for CO under the preamended Act. See 43 FR 8962 (March 3, 1978), 40 CFR part 81. As such, the St. Cloud area retained its designation of nonattainment upon enactment of the CAAA on November 15, 1990. CAA section 107(d)(1)(C), 42 U.S.C. 7407(d)(1)(C). However, EPA expects to imminently publish a direct-final notice in the FEDERAL REGISTER redesignating the City of St. Cloud from nonattainment to attainment for CO. If EPA receives notification within 30 days of the direct-final action that a party wishes to comment adversely on the redesignation, EPA will withdraw the direct-final action and issue a proposed rule redesignating St. Cloud to attainment. Based on the comments the Agency receives and the underlying facts, EPA then will decide whether to issue a final redesignation to attainment. If EPA determines in the final notice to retain St. Cloud's nonattainment designation, this table will be revised at that time. If EPA does not receive notification of any adverse comments, then St. Cloud will be redesignated to attainment 60 days from publication of the direct-final redesignation action, and the attainment designation indicated in this notice for those portions of Benton, Sherburne, and Stearns Counties that comprise the City of St. Cloud will stand. However, until such time as the redesignation to attainment becomes final pursuant to EPA's action on the redesignation request, the attainment listing for those portions of Benton, Sherburne, and Stearns Counties that comprise the City of St. Cloud has no force or effect.

MINNESOTA—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
Dakota County (part)	1/6/92	Nonattainment		
Lone Oak Road (County Road 26) to the north, County Road 63 to the east, Westcott Road to the south, and Lexington Avenue (County Road 43) to the west				
Rest of State Not Designated				

MINNESTOA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Carlton County		Unclassifiable/ Attainment		
Lake County		Unclassifiable/ Attainment		
Olmsted County		Unclassifiable/ Attainment		
Sherburne County		Unclassifiable/ Attainment		
St. Louis County		Unclassifiable/ Attainment		

MINNESOTA—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
AQCR 131 Minneapolis-St. Paul Intrastate	.....	Unclassifiable/ Attainment	.....	
Anoka County, Carver County, Dakota County, Hennepin County, Ramsey County, Scott County, Washington County				
Rest of State	.....	Unclassifiable/ Attainment	....	
Aitkin County, Becker County, Beltrami County, Benton County, Big Stone County, Blue Earth County, Brown County, Cass County, Chippewa County, Chisago County, Clay County, Clearwater County, Cook County, Cottonwood County, Crow Wing County, Dodge County, Douglas County, Faribault County, Fillmore County, Freeborn County, Goodhue County, Grant County, Houston County, Hubbard County, Isanti County, Itasca County, Jackson County, Kanabec County, Kandiyohi County, Kittson County, Koochiching County, Lac qui Parle County, Lake of the Woods County, Le Sueur County, Lincoln County, Lyon County, Mahnomen County, Marshall County, Martin County, McLeod County, Meeker County, Mille Lacs County, Morrison County, Mower County, Murray County, Nicollet County, Nobles County, Norman County, Otter Tail County, Pennington County, Pine County, Pipestone County, Polk County, Pope County, Red Lake County, Redwood County, Renville County, Rice County, Rock County, Roseau County, Sibley County, Stearns County, Steele County, Stevens County, Swift County, Todd County, Traverse County, Wabasha County, Wadena County, Waseca County, Watonwan County, Wilkin County, Winona County, Wright County, Yellow Medicine County				

[1] This date is November 15, 1990, unless otherwise noted.

MINNESOTA—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
Ramsey County:				
The area bounded by the Mississippi River from Lafayette to Route 494, Route 494 east to Route 61, Route 61 north to I–94, I–94 west to Lafayette, and Lafayette south to the Mississippi River.	11/15/90	Nonattainment ..	11/15/90	Moderate.
Olmsted County:				
The area bounded on the south by U.S. Highway 14; on the west by U.S. Highway 52; on the north by 14th Street NW. between U.S. Highway 52 and U.S. Route 63 (Broadway Avenue), U.S. Route 63 north to Northern Heights Drive, NE., and Northern Heights Drive NE. extended east to the 1990 City of Rochester limits; and on the east by the 1990 City of Rochester limits.	11/15/90	Nonattainment ..	11/15/90	Moderate.
Rest of State	11/15/90	Unclassifiable		

[FR Doc. 93–6148 Filed 3–23–93; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 86

[AMS–FRL 4602–5]

RIN 2060–AD37

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Particulate Emission Regulations for 1993 Model Year Buses, Particulate Emission Regulations for 1994 and Later Model Year Urban Buses, Test Procedures for Urban Buses, and Oxides of Nitrogen Emission Regulations for 1998 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule implements several provisions of the Clean Air Act, as amended in 1990, related to buses and heavy-duty engines (HDEs). First, for model year 1993, EPA expands the applicability of the 0.10 gram per brake horsepower-hour (g/bhp-hr) particulate matter (PM) standard currently required of urban bus engines to a broader group of HDEs used in other types of buses. Second, for model year 1994 and 1995 HDEs used in urban buses, EPA promulgates a PM standard of 0.07 g/bhp-hr. (For model year 1996 and later HDEs used in urban buses, the certification and SEA standard is lowered to 0.05 g/bhp-hr, the in-use standard remains at 0.07 g/bhp-hr.) Third, EPA retains the current heavy-duty transient test procedure for emissions testing of urban bus engines.

Fourth, in addition to the bus requirements listed above, this final rule also promulgates an oxides of nitrogen (NOx) standard of 4.0 g/bhp-hr for all 1998 and later model year HDEs. Finally, for the two new emission standards promulgated in this action (1994 urban bus PM standard and 1998 HDE NOx standard), the useful life is extended from eight years to ten years. The items contained in this action are intended to reduce the ambient levels of particulate matter in oxides of nitrogen in urban areas.

EFFECTIVE DATE: This final rule is effective on April 23, 1993.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket A–91–28. This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Philip N. Carlson, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone: (313) 668–4270.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Today's action finalizes regulations implementing four regulatory programs required by the Clean Air Act (CAA), as amended in 1990, to control: (1) Particulate matter (PM) emissions from Model Year (MY) 1993 buses; (2) PM emissions from MY 1994 and later urban buses; (3) testing procedures for urban buses; and (4) emissions of oxides of nitrogen (NOx) from MY 1988 and later heavy-duty engines (HDEs). EPA published a notice of proposed rulemaking (NPRM) on September 24, 1991 (56 FR 48350) proposing to implement these programs. The NPRM also contained a proposed retrofit/rebuild program for 1993 and earlier MY urban buses. EPA recently reopened the comment period to accept public comment on two new options under consideration for the retrofit/rebuild program and also proposed and requested comments on the change in the useful life for new HDE standards from eight years to ten years (57 FR 33141, July 27, 1992). EPA will issue a separate final rulemaking for the urban bus retrofit/rebuild program at a later date. As noted earlier, today's action implements changes to the useful life requirements for the two new HDE standards promulgated in this final rulemaking.

This preamble provides a description of today's action and includes a summary of the major comments received on relevant portions of the NPRM and EPA's responses to those comments. This preamble also includes a summary of the environmental and economic impacts of today's action. Additional discussion of comments and detailed EPA analyses for this final rule are in the Final Regulatory Support Document (FRSD) which is available in Docket A–91–28 (see "**ADDRESSES**," above). A limited number of copies of the FRSD are also available from the contact person listed above (see "**FOR FURTHER INFORMATION CONTACT**").

B. Requirements of the Clean Air Act

Today's action implements several requirements of the CAA. These requirements are as follows:

1. 1993 Model Year Bus PM Standard

Section 202(f) [1] establishes a 0.10 gram per brake horsepower-hour (g/bhp-hr) PM standard in the 1993 MY for buses other than those subject to standards under section 219. Because section 219 applies to urban buses and section 202(f) is not limited to urban buses, section 202(f) appears to apply to buses other than urban buses. However, the Act does not specifically distinguish the term "buses" from "urban buses", and the Act does not make clear what vehicles are included in the term "buses."

2. 1994 and Later Model Year Urban Bus PM Standard

Section 219(b) requires a 0.05 g/bhp-hr PM standard for 1994 and later MY urban buses. However, it also requires that if EPA determines that 0.05 g/bhp-hr is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors, EPA must relax the PM standard to a value no higher than 0.07 g/bhp-hr.

3. Urban Bus Test Procedure

Section 219(e) requires that testing procedures for urban buses reflect actual operating conditions.

4. 1998 and Later Model Year HDE NO_x Standard

Section 202(a)(3)(B)(ii) requires a 4.0 g/bhp-hr NO_x standard for all gasoline-fueled and diesel-fueled 1998 and later MY HDEs.

5. Useful life requirements

Section 202(d)(2) requires that regulations prescribing useful life for certain classes of motor vehicles, including urban buses and HDEs, be the same period as that required in paragraph 202(d)(1) for light-duty vehicles (10 years or 100,000 miles, whichever comes first), unless the Administrator determines that a period of use of greater duration or mileage is appropriate in lieu thereof.

II. Public Participation

EPA held a public hearing on the proposal for this rulemaking on October 9, 1991 and received written comments

[1] The Clean Air Act Amendments of 1990 amend section 202 of the Act by adding a new section 202(f). However, the previously existing section 202(f) in the CAA was not omitted by the amendments. "Section 202(f)" will be used in this rule to refer solely to the new subsection added by the amendments.

through November 8, 1991. EPA also held a public workshop on August 6, 1992 on the revisions to the useful life requirements for the new HDE standards and received written comments until September 8, 1992. Each submittal received by EPA has been placed in Docket A–91–28 (see "ADDRESSES" above); the FRSD fully summarizes the comments and EPA's response to them.

The following sections describe each of the five requirements that EPA is promulgating with today's action. Each section begins with a brief summary of what was proposed in the NPRM, followed by a summary of the major comments raised on each of the proposed requirements and EPA's response to the comments. As mentioned above, a more in-depth summary of the comments received on the NPRM, along with EPA's response to the comments, is contained in the FRSD associated with this rulemaking.

A. 1993 model year bus PM standard

1. Summary of proposal

As described in the NPRM, EPA believes the most straightforward interpretation of section 202(f) of the amended CAA is that Congress intended to include more than urban buses in its scope. However, because there is no indication that Congress intended to include all possible buses, from small shuttle buses to large inter-city passenger buses, the CAA allows considerable flexibility in how broadly EPA defines the scope of section 202(f).

For these reasons, EPA examined three options for the applicability of the 1993 bus PM standard. The options considered were: (1) Applying the standard to only urban buses, (2) applying the standard to urban buses plus those buses capable of being centrally fueled that use the same class of engines as urban buses (normally heavy heavy-duty diesel engines); and (3) applying the standard to all buses (including school buses, shuttle vans and others). The NPRM proposed the second option.

EPA did not propose any changes to the HDE averaging, trading and banking program as a result of the MY 1993 bus PM standard. EPA did propose changes in the nonconformance penalty (NCP) program for the additional buses that would be covered under the standard. Because the additional buses required to meet the 0.10 g/bhp-hr standard likely would use the same types of emission controls as urban buses (such as particulate trap oxidizers), EPA proposed that the NCPs and NCP parameters contained in the rule that set the interim PM standard for MY 1991 and 1992 urban buses be extended to all buses required to meet the 0.10 g/bhp-hr PM standard in MY 1993. The reader is directed to the NPRM which delayed the 1991 urban bus PM standard for a detailed discussion of the proposed NCP regulations (56 FR 24242, May 29, 1991).

EPA also proposed a slightly revised "urban bus" definition that would be effective beginning with MY 1993. The existing definition was promulgated as part of the final rule for the HDE emissions banking and trading program (55 FR 30584, July 26, 1990). As proposed, the urban bus definition was modified to include buses of a type normally powered by heavy HDDEs in addition to buses which are actually powered by heavy HDDEs. The proposed revision to the urban bus definition was intended to close a loophole that might encourage the use of medium heavy-duty diesel engines (HDDEs) in large buses to avoid classification as an urban bus (and avoid the more stringent urban bus PM standards).

Under the proposed definition, an urban bus would be defined as "a passenger-carrying vehicle powered by a heavy HDDE, or of a type normally powered by a heavy heavy-duty engine, with a load capacity of fifteen or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or tokens, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., rest rooms, large luggage compartments, and facilities for stowing carry-on luggage."

2. Summary and Analysis of Comments

a. Scope of Section 202(f). The main comments on the 1993 bus standard concerned the expanded applicability of the 0.10 g/bhp-hr PM standard. The Manufacturers of Emission Controls Association (MECA) commented that Congress intended to expand the applicability of the 1993 urban bus PM standard beyond urban buses. MECA also noted that trap oxidizers could be made available for other buses not included in the proposed definition.

On the other hand, some engine manufacturers commented that it was not the intent of the CAA to expand the 1993 urban bus PM standard beyond urban buses. Cummins Engine Company cited the House Committee Report on the Act that interchangeably refers to "urban buses", "diesel-fueled buses" and "buses" when it discussed the American Public Transit Association (APTA) petition to delay the 1991 urban bus PM standard. In addition, engine manufacturers commented that Congress would not have intended to delay the 0.10 g/bhp-hr PM standard for urban buses, while accelerating the standard for other buses. They point out that no other types of buses (other than urban buses) have ever been controlled separately from HDEs. They also claim that Congress would have given clearer direction on this issue rather than casually referring to "buses" just once in the CAA.

In response, EPA continues to believe that Congress intended to require buses other than urban buses to meet the 0.10 g/bhp-hr PM standard in 1993. The plain terminology used in the CAA and the difficulty in finding a purpose for this provision in the CAA if a contrary interpretation is assumed, both support this interpretation. As stated above, Section 202(f) of the CAA requires EPA to establish a 1993 PM standard of 0.10 g/bhp-hr for buses other than those subject to standards under section 219. Section 219 applies at the manufacturing stage only to 1994 and later MY urban buses. Therefore, the plain meaning of section 202(f) indicates that any other group of buses are subject to consideration for inclusion in the 1993 0.10 g/bhp-hr PM standard. However, EPA continues to believe that while some broadening of applicability appears to have been intended, there is no indication that Congress intended all buses to be subject to this standard, and therefore there is flexibility in how broad the definition should be.

b. Practical Difficulties in Expanding the Scope of the 0.10 g/bhp-hr PM Standard in 1993. All engine manufacturers who submitted comments were opposed to the option considered in the NPRM that would expand the 1993 urban bus PM standard to all buses. The engine manufacturers cited lead time and feasibility concerns for many engines. In addition, the current urban bus engine manufacturers (Cummins and Detroit Diesel Corporation (DDC)) and APTA were opposed to EPA's proposed option that would expand the standard to all buses that use the same class of engines as urban buses (normally heavy HDEs) and that furthermore are capable of being centrally fueled. They recommended

that EPA limit the extension of the standard to those buses which use engines of the same engine families as urban buses and that are actually centrally fueled.

In support of their comments, engine manufacturers submitted information showing typical duty cycle and particulate composition differences between heavy HDEs used in urban buses and heavy HDEs used in other types of buses. Because of these differences, manufacturers claimed that the 0.10 g/bhp-hr PM standard would not be feasible in 1993 for non-urban buses due to the shortened amount of lead time, because manufacturers have not designed buses other than urban buses to be subject to the 0.10 g/bhp-hr PM standard until 1994, when low sulfur diesel fuel would be available for certification.

Further, Cummins and DDC also questioned whether it was feasible for engines that are used in other types of buses to meet the standard in 1993, even if the engines are of the same engine models as those used in urban buses. Again, they were concerned because power and duty cycle requirements for heavy HDEs used in non-urban buses are higher than those required for engines from the same engine model used in urban buses. Cummins suggested that EPA should limit the extension of the 1993 0.10 g/bhp-hr PM standard to those buses that are centrally fueled and which use HDDEs of the same model and power rating as used in urban buses.

Engine manufacturers and APTA also requested that EPA allow 0.05 weight percent sulfur fuel to be used for certification and audit testing in 1993. Manufacturers noted that since low sulfur diesel fuel will be required beginning in October 1993, these buses will be operated on fuel with a 0.05 weight percent maximum sulfur content for nearly all of their life.

EPA continues to believe the engine manufacturers will be able to comply with the 0.10 g/bhp-hr PM standard for the additional buses proposed in the NPRM. For buses that use the same type engines as urban buses, there should be little concern since engines used in urban buses must already meet the 0.10 g/bhp-hr PM standard in 1993 under current regulations. Additionally, driving cycles for the additional buses that will be covered under the 1993 bus PM standard are generally similar to those normally experienced for urban buses. Particulate trap systems developed for engine families used in urban buses should be applicable to the same type engines used in other buses. For any additional heavy HDEs that may not be used in urban buses, but that would be covered under the bus definition, EPA believes that manufacturers have engaged in significant research and development work and that, as a result, the 0.10 g/bhp-hr PM standard is feasible for such engines in the 1993 MY.[2]

Regarding test fuel sulfur content, EPA cannot allow 0.05 weight percent sulfur diesel fuel for certification or audit testing for MY 1993 buses. Section 211(i)(3) of the amended CAA clearly specifies a 0.10 weight percent diesel fuel for MY 1991 through 1993. However, under the central fueling provisions discussed below, EPA has set the bus definition to ensure that any additional buses covered by the 0.10 g/bhp-hr standard would be fueled with low sulfur fuel under in-use conditions.[3]

c. "Centrally Fueled". Engine manufacturers and APTA also submitted comments noting that the "capable of being centrally fueled" terminology used in the proposed bus definition is vague and must be clarified. The Engine Manufacturers Association (EMA) proposed a definition in which a "vehicle capable of being centrally fueled" would be a vehicle that operates from and returns daily to a single refueling terminal and that operates exclusively within a distance of one-half the vehicle's operating range from the refueling terminal.

In response, EPA agrees that it is important to clarify the meaning of "centrally fueled." In theory, any bus is capable of being centrally fueled, but in reality, only certain buses are centrally fueled. However, EPA believes that EMA's central fueling definition which would require that a vehicle be refueled at one location all of the time and never travel outside of one half of the vehicle's operating range is too stringent. EPA does not believe that it is necessary for a vehicle to be exclusively fueled at one location or operate exclusively within a distance one half of its operating range from the refueling terminal. The occasional use of higher sulfur fuel should not cause serious problems with particulate trap systems which might be used on these non-urban buses in 1993. Therefore, EPA is adopting a definition in which a vehicle would be considered centrally fueled if the vehicle is refueled at least 75 percent of the time at one refueling facility that is owned, operated, or controlled by the vehicle operator.

d. Revised "Urban Bus" Definition Comments were also received on the proposed revision to the urban bus definition. DDC supported EPA's revised definition noting that it would prevent engine manufacturers from circumventing the stringent urban bus PM standards. However, DDC suggested that the definition should take effect immediately instead of in 1993 to prevent the exchange of credits between medium HDEs used in trucks and medium HDEs used in urban buses. Bus Industries of America commented that the urban bus definition should be clarified as not to include buses of 34 feet or less in length, since these are not full sized buses. It noted that some buses are equipped with heavy HDEs instead of medium HDEs because there is no other choice of engines for the bus.

EPA continues to believe that placing a medium HDE in a type of bus that normally uses a heavy HDE to avoid being classified as an urban bus (and meeting a more stringent emission regulation) goes against the intent of the urban bus provisions of the CAA and EPA's regulations. Therefore, EPA believes it is necessary to require buses of a type that normally are powered by heavy HDDEs to be considered as urban buses, even if a medium HDDE is used in the bus. At this time, it is too late to apply the revised urban bus definition for MY 1992 because manufacturers have already certified MY 1992 engines. Therefore, as proposed in the NPRM, the revised urban bus definition will become applicable with MY 1993 urban buses.

In response to the comment regarding a minimum length for urban buses, EPA originally chose not to set a length requirement for urban buses as part of the rule establishing the urban bus definition. Instead, EPA decided to base its urban bus definition on the size of the engine that powers the vehicle. EPA's intent is to regulate bus engines, not to dictate bus design parameters. Additionally, EPA did not want to give incentive to transit companies to buy smaller urban buses. With today's action, the urban bus definition leaves intact the bus chassis related parameters that EPA believes are important, such as the passenger load capacity, and typical physical characteristics.

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[2] It should be noted that engine manufacturers can use banked credits from other HDEs to meet the standard if such credits are available. This is especially true for such a limited number of additional, centrally-fueled buses. In fact, one engine manufacturer commented that it expects banked credits to be available in 1993, and that it will use them to meet the standard for these additional buses, if necessary.

[3] 0.05 weight percent sulfur diesel fuel is available today; although development of production capacity to fuel all diesel vehicles may take additional time, EPA believes that a sufficient supply of low sulfur fuel will be available to fuel the additional buses included under the 1993 PM standard.

e. Averaging, Banking and Trading. EPA received comments regarding the averaging, banking and trading provisions for the 1993 MY bus PM standard. Engine manufacturers commented that EPA should clarify whether any additional (non-urban) buses that must meet the 0.10 g/bhp-hr PM standard in 1993 would be able to continue using emission credits generated by other non-urban bus HDEs (not covered under this standard). Southern California Edison Company requested that EPA clarify whether electric buses could participate in the averaging, trading and banking program.

EPA makes no changes to the current averaging, banking and trading program with today's action. Engine manufacturers will be allowed to use credits generated from non-urban bus HDEs to demonstrate compliance with the 0.10 g/bhp-hr PM standard in MY 1993 for the additional bus engines covered under 0.10 g/bhp-hr standard, but not for urban bus engines. As with the current program, engine manufacturers will not be allowed to use credits generated from non-urban bus engines to comply with the 0.10 g/bhp-hr PM standard for engines used in urban buses. Regarding the comments from Southern California Edison Company, EPA does not consider an electric trolley to be an urban bus because it does not meet the definition of an urban bus. Therefore, electric trolleys are not included in the current averaging, trading and banking program. However, EPA has proposed a clean fuel fleets program that may allow fleet operators to earn emission credits for purchasing vehicles with low or zero emissions (October 3, 1991, 56 FR 50196). The reader is directed to the NPRM for the clean fuels fleet program for further details of the proposed program.

f. Nonconformance Penalties (NCPs). Engine manufacturers supported the proposed expansion of NCPs to the additional buses covered under the 0.10 g/bhp-hr PM standard in 1993. Based on the comments received, EPA continues to believe that any additional buses required to meet the 0.10 g/bhp-hr standard would use essentially the same types of emission controls as urban buses. Therefore, for the additional buses covered by today's action, EPA is adopting the NCP provisions as finalized in the recent rulemaking that delayed the 0.10 g/bhp-hr PM urban bus standard from 1991 to 1993 (56 FR 64704, December 12, 1991).

g. Enforcement. EPA also received comments regarding the enforcement of the 1993 bus PM standard. DDC noted that the proposed regulations require buses capable of being centrally fueled to meet the 0.10 g/bhp-hr PM standard in 1993 while similar non-centrally fueled buses would have to meet a 0.25 g/bhp-hr PM standard. DDC commented that vehicle operators should be responsible for purchasing the properly certified engines. DDC also commented that vehicle operators should be responsible for proper fueling, and that any misfueled engine should be considered improperly maintained and excluded from in-use testing.

As with all emission standards, it is the responsibility of the engine manufacturer to ensure that their engines comply with the emission standards set by EPA. However, EPA agrees that the responsibility for selecting a vehicle with the properly certified engine should rest on the vehicle purchaser and not the engine manufacturer. In response to DDC's comment on in-use liability, vehicle operators will be considered responsible for proper fueling of the vehicle. Any vehicle required by the engine manufacturer to be operated on a low sulfur fuel that is not fueled with a low sulfur diesel fuel will be considered improperly maintained and excluded from in-use testing.

h. Labelling. A final area in which comments on the 1993 0.10 g/bhp-hr bus PM standard were received related to the labeling requirements for urban bus engines. General Motors (GM) commented that the labeling regulations for urban bus engines needed to be revised to refer to the proper section of the regulations containing the 0.10 g/bhp-hr urban bus PM standard. As required by the CAA, EPA delayed the 0.10 g/bhp-hr PM standard from 1991 until 1993 (see 56 FR 64704, December 12, 1991.) Today's action implements the changes to the labeling requirements necessary to require engines used in buses (for MY 1993) and engines used in urban buses (for MY 1994 and later) to be labeled as bus and urban bus engines, respectively.

B. 1994 and Later Model Year Urban Bus PM Standard

1. Summary of Proposal

EPA proposed a PM standard of 0.05 g/bhp-hr for 1994 and later MY engines used in urban buses. EPA concluded that at that time the 0.05 g/bhp-hr PM level was technologically achievable for urban buses, taking into account durability, costs, lead time, safety, and other relevant factors. EPA requested comments on its assessment of the technological achievability of the 0.05 g/bhp-hr PM standard.

Because urban bus engine manufacturers had expressed concerns about the feasibility of complying with the 0.05 g/bhp-hr PM standard in use, EPA also requested comments on two alternatives for the 1994 and later MY urban bus PM standard. The intent of the alternatives contained in the NPRM was to account for the differences between certification and in-use emissions. Factors such as test to test variability (variability that occurs when the same engine tested multiple times using the same test receives different results from the tests), engine to engine variability, (variability which occurs when different engines of the same engine type receive different results using the same test procedure) and usage variability (variability that arises from differences in the usage patterns of urban buses) force manufacturers to provide a margin to ensure in-use compliance.

The first alternative was a PM standard of 0.05 g/bhp-hr for the first half of the useful life of an urban bus and a PM standard of 0.07 g/bhp-hr for the second half of the useful life. (The useful life period for which manufacturers must certify urban bus engines is 290,000 miles.) The second alternative was a certification PM standard of 0.05 g/bhp-hr and an in-use PM standard of 0.07 g/bhp-hr. (Certification testing is typically performed on prototype or relatively new production-type engines, under conditions that are controlled to a large degree by the engine manufacturer. In-use testing, on the other hand, is performed on engines that have been used by consumers and thus have been operated under widely varying conditions that are uncontrolled by the engine manufacturer.)

EPA did not propose any changes to the current emissions averaging, banking and trading program for 1994 and later MY engines. Regarding NCPs, the proposal noted that EPA would propose changes to the NCP program for PM emissions from 1994 and later MY urban buses as part of a separate rulemaking.

2. Summary and Analysis of Comments

a. Feasibility of Standard/Lead Time. The main area of comment on the 1994 and later MY urban bus PM standard was the feasibility of the proposed standard. Commenters supporting the feasibility of the 0.05 g/bhp-hr PM standard included Donaldson Company and Engine Control Systems, both of which are manufacturers of particulate traps, and MECA, a trade group that represents manufacturers of exhaust aftertreatment equipment (e.g., traps and

catalysts), among others. Both trap manufacturers claimed that the 0.05 g/bhp-hr level is achievable with current design particulate traps on current urban bus engines. Engine Control Systems claimed that its passive trap has tested as low as 0.017 g/bhp-hr over the Federal test procedure (FTP), which is used to determine compliance with federal emissions standards. However, as documented by the Urban Mass Transportation Administration (the agency responsible for many of the federal government's mass transit programs within the Department of Transportation), the initial traps supplied by Emission Control Systems to the South Eastern Pennsylvania Transit Authority (SEPTA) did not perform successfully under in-use conditions and were removed from service.[4]

Engine manufacturers stated their belief that the 0.05 g/bhp-hr PM level is not achievable, because of variability that occurs in emissions measurement (both test-to-test variability and engine-to-engine variability), as well as the unknown durability of particulate trap systems. They noted that complete information on the durability of trap systems is not available for in-use trap-equipped vehicles because of the limited in-use experience with such systems. Engine manufacturers also claimed that there is insufficient lead time to develop durable aftertreatment systems and integrate them into urban bus chassis designs, which are manufactured by separate manufacturers, to meet a 0.05 g/bhp-hr PM standard in MY 1994. Engine manufacturers and APTA recommended that EPA relax the 1994 and later MY urban bus PM standard to 0.07 g/bhp-hr.

Cummins submitted comments stating that in order to ensure compliance with the 0.05 g/bhp-hr PM standard, it would need to design an engine that would emit at levels between 0.03 and 0.035 g/bhp-hr to account for emissions variability and SEA compliance requirements. Cummins also noted that its estimated design level assumed no deterioration in the PM emissions performance of trap systems, though Cummins believes that in-use durability of traps is extremely uncertain. For these reasons, Cummins commented that a standard of 0.05 g/bhp-hr PM level would not be technologically achievable.

DDC submitted data that shows it has obtained PM levels as low as 0.04 g/bhp-hr using a dual trap (non-bypass) system. However, DDC commented that its testing has found differences of seven percent in the trapping efficiency of two nominally identical trap cores.[5] DDC also expects tests variability to increase for trap-equipped engines. This is because, in order to determine the overall emissions from a trap-equipped engine, the trap will need to be tested in various stages of particulate accumulation and trap regeneration and the test results then weighted to determine an overall emission value. Therefore, DDC stated that, because of test variability and the unknown extent of trap deterioration in use[6], compliance with a 0.05 g/bhp-hr PM standard is not assured.

Comments were also submitted on the feasibility of the 0.05 g/bhp-hr PM standard using alternatively-fueled engines. DDC provided information on its currently certified methanol-fueled urban bus engine, equipped with a catalytic converter, that was certified at a 0.06 g/bhp-hr PM level. Accounting for SEA and in-use compliance, DDC expects it could meet a PM standard of 0.07 to 0.08 g/bhp-hr. DDC noted that additional emission reductions may be possible but the feasibility of meeting the 0.05 g/bhp-hr PM standard is still uncertain. Cummins, which has been investigating natural gas-fueled engines, stated in its comments that it does not believe that the 0.05 g/bhp-hr PM standard will be feasible for natural gas-fueled engines either.

Regarding the alternatives considered in the NPRM, DDC commented that it could support a PM standard of 0.05 g/bhp-hr for certification testing and a PM standard of 0.07 g/bhp-hr for in-use testing as long as the PM standard for SEA testing was also 0.07 g/bhp-hr. DDC stated that the 0.07 g/bhp-hr requirement is necessary for SEA because of the "need for an SEA audit compliance margin." DDC did not elaborate on this point. Donaldson noted that, even though there are demonstration programs involving many in-use urban buses with trap systems, complete information on test variability and trap durability is not available at this time. For this reason, Donaldson also supported the alternative that would set a certification PM standard of 0.05 g/bhp-hr and a 0.07 g/bhp-hr standard for SEA and in-use compliance.

EPA received no comments on the alternative that would have set different half-life and full-life emissions standards.

DDC has recently provided additional comments to EPA on the development of new engine and oxidation catalyst technology directed toward meeting the 1994 proposed urban bus PM standard.[7] DDC has been developing a new diesel engine for the urban bus market, known as the Series 50 engine. DDC noted in its submittal that it planned to certify the Series 50 engine for MY 1993 at 0.08 g/bhp-hr PM without any exhaust aftertreatment. With the addition of an oxidation catalyst, DDC believes it can meet a certification standard of 0.05 g/bhp-hr in MY 1994 but has concerns over meeting such a standard under SEA and in-use testing. For these reasons, DDC reiterated its previous comments that EPA should consider a 0.07 g/bhp-hr PM standard for SEA and in-use testing. (Subsequent to providing these additional comments, DDC formally submitted certification information for its MY 1993 Series 50 diesel urban bus engine. The emissions test results ranged from 0.07 to 0.13 g/bhp-hr of PM for its Series 50 engine without aftertreatment.)

Certification/SEA Standard Feasibility

In response to the comments noted above, EPA has reassessed its earlier conclusion that a 0.05 g/bhp-hr PM standard is technologically feasible by model year 1994 and has instead concluded that a 0.05 g/bhp-hr PM level is technologically achievable for certification and SEA testing of engines used in urban buses, including alternatively-fueled engines, for model year 1996. As discussed in detail below, this conclusion is based on recognition

[4] "Status of Particulate Trap Developments Related to the Transit Industry," U.S. DOT Technical Report UMTA–OH–06–0056–91–6, May 1991

[5] For an engine-out PM level of 0.25 g/bhp-hr, a seven percent difference in filtering efficiency could result in a variability of about 0.02 g/bhp-hr of PM.

[6] DDC stated that trap deterioration could result either from loss of trap filtering efficiency or from increases in engine-out particulate concentration due to higher exhaust backpressure induced by the trap. DDC noted its concerns regarding plugging of trap cores due to the accumulation of ash from both fuel and lubricating oil. DDC noted that the electrically regenerating dual trap system that it was focusing on has over 170 mechanical and electrical components, many of which had never previously been used in vehicular applications; thus, their ability to operate reliably in this environment had not been demonstrated. DDC stated that it had encountered a number of component reliability problems, but that many of these problems had been resolved. DDC stated that though it believed the remaining problems could be overcome by 1994, it could not be certain that these problems, or new problems that may occur later, would be resolved by 1994.

[7] The letter to William G. Rosenberg, Assistant Administrator for Air and Radiation, U.S. EPA, from Roger Penske, Chairman, Detroit Diesel Corporation, September 10, 1992 was placed in the docket for this rulemaking (A–91–28). EPA has been in contact with a number of companies and organizations and has discussed DDC's comments regarding its ability to use oxidation catalysts to meet the 1994 urban bus PM standard.

of the significant improvements urban bus engine manufacturers are making in engine-out emission controls, as well as the important breakthroughs that have occurred in exhaust aftertreatment technology. This conclusion was made, as described below, with consideration of recent engine testing that shows PM levels near or below the 0.05 g/bhp-hr level, as shown by the information contained in the NPRM, the comments, and recent testing of 1993 MY engines.

Engine manufacturers have significantly reduced engine-out PM levels through improved engine design, combustion chamber design and fuel injection controls, as well as the addition of turbocharging and charge air cooling to the air intake system. With the addition of exhaust aftertreatment, such as particulate traps or oxidation catalysts, even lower PM levels are achievable. Using a new particulate trap with 85 percent efficiency at filtering diesel particulate emissions, an urban bus with an engine-out PM level of 0.30 g/bhp-hr would be expected to emit at a level just below 0.05 g/bhp-hr. In fact, the 0.04 g/bhp-hr PM emission level of a trap-equipped engine, cited by DDC, supports this. In addition, in more recent testing of DDC's 6V–92TA urban bus engines for MY 1993 certification, DDC has achieved PM levels lower than 0.05 g/bhp-hr for both a trap-equipped diesel-fueled engine and a methanol-fueled engine.

As noted earlier, some of the commenters supporting a 0.05 g/bhp-hr certification standard also requested a less stringent standard for SEA and in-use testing. EPA does not believe that such a differentiation between standards for certification and SEA is consistent with the purposes of SEA testing. Both certification and SEA testing involve engines that have not been used in actual service. Certification testing is largely conducted by manufacturers in accordance with EPA-specified procedures, while SEA testing is monitored by EPA personnel. As such, SEA testing is meant to be an enforcement audit of the manufacturer's certification testing.[8] Thus, emission levels measured in certification and SEA testing should generally be comparable if manufacturers have adequately implemented their prototype's emission control strategies. Because of the connection between certification and SEA testing, EPA believes that the SEA standard should be set at the same level as the certification standard. Thus, the relevant question is whether a 0.05 g/bhp-hr PM standard is appropriate for both certification and SEA testing, or whether it is appropriate for neither certification or SEA testing.

EPA believes that a relaxed standard of 0.07 g/bhp-hr PM, the maximum level allowed by the CAA, is justified in the near term for certification and SEA testing (and in-use testing as well, as described below). Recent information submitted by DDC on the development of a low-emitting urban bus engine shows that it should be possible for an engine equipped with an oxidation catalyst, but no trap, to achieve a PM standard of 0.07 g/bhp-hr in the short term. DDC also commented that, as more experience is gained with this technology, it will be possible to achieve a 0.05 g/bhp-hr PM standard for certification testing, but requested a 0.07 g/bhp-hr PM standard for SEA and in-use testing. Based on DDC's comments and the short amount of lead time before the 1994 model year begins, it appears highly unlikely that manufacturers can develop oxidation catalyst technology to meet a 0.05 g/bhp-hr urban bus PM standard in 1994 production line urban buses. Although DDC's comments indicate that urban bus engines equipped with oxidation catalysts should be capable of meeting a PM standard of 0.07 g/bhp-hr, EPA believes that manufacturers will require additional time to implement any necessary improvements in the technology to meet a 0.05 g/bhp-hr PM standard for certification and SEA testing.

The application of oxidation catalysts to HDEs used in urban buses in a new development and potentially much less costly as a method of particulate emissions control compared to particulate traps. Based on comments from urban bus operators, current trap systems cost over $15,000. In recent comments on the urban bus retrofit/rebuild program, Donaldson noted that, as trap production increases, trap costs are likely to decrease to between $5,000 and $6,500 per system. This is the price at which Donaldson expects to wholesale market a trap system and would not include any distribution mark-up (typically around 36 percent for engine manufacturers as estimated by EPA[9]). Including such a mark-up would raise costs to the purchaser of the urban bus to around $8,800 per system, a significant increase considering new urban bus engines cost around $20,000. Moreover, Donaldson's cost projections assume that a significant number of new particulate traps will be purchased for several years, allowing Donaldson to recover the cost associated with developing traps at a fairly low markup. If, as DDC indicates, oxidation catalysts that can meet the 0.05 g/bhp-hr PM standard become available within the next few years and capture a significant share of the market, then trap costs would likely be even higher in order to recover development costs over a smaller number of trap systems.

In addition to raising the initial purchase price of a bus, traps will also increase the expense of operating the bus. The use of a trap is expected to result in a fuel economy penalty of around one to two percent because of increases in exhaust backpressure and electrical regeneration. Such a decrease in fuel economy could increase the overall expense of a trap-equipped urban bus by over $2,000 over its life.

EPA believes that, because of the simpler design of oxidation catalysts, the price of oxidation catalysts will be significantly lower than that of trap systems. Oxidation catalysts consist of a flow-through container that is filled with an inert material on which an oxidizing catalyst, such as platinum or palladium, has been loaded. The catalyst is located in the exhaust stream of the vehicle and oxidizes the particulate in the exhaust. Because a catalyst does not require regeneration and has little to no impact on exhaust backpressure, there should be no decrease in fuel economy as a result of the catalyst system.

EPA examined the cost of oxidation catalysts for HDEs in support of two different programs, the low-sulfur diesel fuel regulations and the NCP rules for the 1994 HDE PM standards. Based on information received on the loading and volume requirements of prototype catalyst systems, EPA estimated a cost of $317 for a heavy HDE oxidation catalyst system in the Draft Regulatory Impact Analysis for the diesel sulfur rulemaking.[10] (The estimate includes the cost of the catalyst and related hardware as well as amortized fixed costs.) In a more recent analysis supporting the development of

[8] The SEA program inherently considers engine variability by requiring that at least sixty percent of the engines tested meet the certification standards. Thus, an engine family will still pass an SEA even if up to forty percent of the engines tested emit at levels higher than the emission standard applicable to that engine family. However, individual engines that are found to be emitting above the applicable standard must be corrected.

[9] "Update of EPA's Motor Vehicle Emission Control Equipment Retail Price Equivalent (RPE) Calculate Formula," Jack Faucett Associates for U.S., EPA, September 4, 1985.

[10] Draft Regulatory Impact Analysis, "Control of Sulfur and Aromatics Contents of On-Highway Diesel Fuel," U.S. EPA, OAR, OMS, July 1989. This document is available in EPA Docket A–86–03 as well as the docket for this rulemaking (A–91–28).

proposed NCPs for the 1994 HDE PM standards, EPA estimated catalyst costs based on discussions with engine manufacturers. The cost estimate for a heavy HDE oxidation catalyst, including amortized fixed costs, was determined to be $816.[11]

One additional catalyst cost estimate was available from a study performed by Acurex for the California Air Resources Board. In that report, Acurex estimated that an oxidation catalyst would add approximately 10 percent to the cost of a HDE, but provided no supporting information for the estimate. For urban bus engines which cost around $20,000 per engine, the added cost would therefore be around $2000.[12]

Based on the cost estimates presented above, the purchase price of a catalyst-equipped bus is estimated to be $6,800 to $8,500 less (and could be as much as $14,000 less if trap costs were to remain at current levels) than that of a trap-equipped bus, a substantial difference for transit authorities already operating under significant budget constraints. Considering a fuel economy penalty of two percent over the lifetime of a trap-equipped bus, EPA estimates the total discounted cost of meeting a 0.05 g/bhp-hr PM standard with traps, incremental to the cost of meeting a 0.07 g/bhp-hr PM standard with catalysts, is approximately $8,700 to $10,400 per bus.

EPA has examined the environmental impact and cost effectiveness of implementing a 0.07 g/bhp-hr PM standard versus a 0.05 g/bhp-hr PM standard in 1994. Assuming all of the urban buses purchased in a given model year emit 0.07 g/bhp-hr of PM, the nationwide emission reduction will be only 20 metric tons per year less than if all of the buses purchased emit 0.05 g/bhp-hr of PM. (This calculation assumes that of the nationwide urban bus fleet of 44,000, one-fifteenth will be replaced each year, based on the average urban bus life of 15 years as determined by the Federal Transit Administration.) By dividing the incremental costs discussed above by the discounted emission reduction of approximately 50 kilograms over the lifetime of an urban bus, EPA calculated the incremental cost effectiveness of meeting a 0.05 g/bhp-hr PM standard compared to a 0.07 g/bhp-hr PM standard in 1994 to range from $176,000 to $210,000 per ton. EPA believes that such cost effectiveness levels, considerably higher than any other mobile source programs previously considered for PM control, justify a delay in the 0.05 g/bhp-hr PM standard.

EPA believes that, in addition to the high cost of reducing emissions by a relatively small amount, the tight financial condition of the transit industry further justifies setting a 0.07 g/bhp-hr PM standard in 1994. Considering comments from APTA and several individual transit companies, EPA believes that many transit operators would be unable, without significant financial hardship or increase in fares, to incur large increases in the purchase price of new buses due to the addition of traps.[13] Raised fares would likely cause significant public dissatisfaction and typically involves a difficult process, according to transit companies. Raised fares would shift costs to mass transit customers, which could result in reduced ridership. Cost increases could also force reductions in transit service and lead to greater use of single-occupant automobiles. EPA believes that fostering the development of low cost emissions control technology for the urban bus market by implementing a 0.07 g/bhp-hr PM standard in 1994 will limit the impact on an industry already under significant financial burden.[14]

As noted above, EPA does not believe that there will be a significant negative environmental impact from a short delay in implementing the 0.05 g/bhp-hr PM standard. In fact, EPA believes that implementing a 0.05 g/bhp-hr PM standard in 1994 could actually result in less environmental benefits than implementing a 0.07 g/bhp-hr PM standard in 1994, due to the significantly higher costs of meeting the more stringent standard in 1994. One possible response to higher new bus costs, particularly if less expensive emission control equipment is expected by 1995 or 1996, is that transit authorities would delay the purchase of new buses and keep older, dirtier buses on the road longer. Another possible response to significantly higher new bus costs, as discussed above, would be an increase in the fares charged to passengers, which could result in increased use of privately owned vehicles. Both of these responses would reduce the environmental benefit of the lower standard. Under either standard, engine manufacturers should be able to certify trap-equipped urban bus engine. However, the 0.07 g/bhp-hr PM standard should allow manufacturers to certify oxidation catalyst-equipped engines, with only a small increase in emissions over the levels that a 0.05 g/bhp-hr PM standard would produce.[15]

EPA believes that a relaxed PM standard of 0.07 g/bhp-hr is justified for urban buses in 1994 notwithstanding the role that emissions averaging, trading and banking could play in meeting a 0.05 g/bhp-hr PM standard or the potential for manufacturers to pay NCPs in lieu of meeting a 0.05 g/bhp-hr PM standard. EPA does not believe that urban bus engine manufacturers will be able to take advantage of averaging to comply with a 0.05 g/bhp-hr PM standard. Under the averaging program, an urban bus engine manufacturer may certify an engine above the PM standard as long as the sales-weighted average of its urban bus engines is at or below the applicable standard. However, because of the difficulty of attaining levels much below g/bhp-hr, as well as the need to account for test to test and engine to engine variability when certifying an engine, EPA believes engine manufacturers will not likely be able to certify any urban bus engines below 0.05 g/bhp-hr. In regard to trading and banking, EPA does not expect that engine manufacturers will have sufficient credits available to demonstrate compliance with a 0.05 g/bhp-hr PM standard. This conclusion is based on the fact that manufacturers have not been able to generate significant credits in the last few years because of the rapid lowering of the urban bus PM standards.

EPA does not believe that the availability of NCPs would make a 0.05 g/bhp-hr standard reasonable because their cost would be based on traps and so would be relatively high. In addition, under the proposed regulations, an

[11] "Calculation of Nonconformance Penalty Rates for 1994 and Later Model Year Heavy-duty Diesel Particulate Matter (PM) Standards;" prepared by Engine, Fuel, and Emissions Engineering and ICF Incorporated, for U.S. EPA, OAR, OMS, MOD, April 9, 1992. A copy of this report is available in EPA docket A–91–29 and has also been placed in the docket for this rulemaking (A–91–28).

[12] "Technical Feasibility of Reducing NOx and Particulate Emissions from Heavy-duty Engines," Draft Final Report prepared by Acurex Environmental Corporation for California Air Resources Board, July 27, 1992. A copy of this report has been placed in the docket for this rulemaking (A–91–28).

[13] Current trap-equipped urban bus programs have been financed primarily by grants from state and federal agencies, thereby minimizing the impact of the increased costs on transit authorities. It is unclear to what extent future urban bus purchases will be financed in this way.

[14] See comments of American Public Transit Association, September 24, 1992, A–91–28, IV–D–68; and New York City Transit Authority, September 1, 1992, A–91–28, IV–D–69.

[15] EPA recognizes the potential for a competitive disadvantage to engine manufacturers who use traps instead of oxidation catalysts to comply with the standards. However, it is not certain that such a disadvantage will arise. EPA believes that all urban bus engine manufacturers should be able to use catalyst technology to comply with the standards contained in today's action, as discussed later in this section.

engine must meet at least a 0.10 g/bhp-hr PM standard to be able to use NCPs. (Based on the proposed regulations, EPA estimates that if EPA promulgates a 0.05 g/bhp-hr PM standard, the NCP for an engine certifying at 0.09 g/bhp-hr PM would be over $5,000 per engine, and the NCP for an engine certifying at 0.10 g/bhp-hr would be over $10,000 per engine for the first year. NCPs during succeeding years would be significantly higher.[16]) Because part of EPA's objective in choosing a 0.07 g/bhp-hr standard is to keep costs reasonable, it would not make sense to set a 0.05 g/bhp-hr standard and force manufacturers to pay high-cost NCPs.

While EPA believes that the standard for certification and SEA testing should be set at 0.07 g/bhp-hr in 1994, EPA also believes that engines equipped with oxidation catalysts should be able to achieve a 0.05 g/bhp-hr PM standard in the long run. Engine manufacturers have been in the process of developing oxidation catalyst technology for non-urban bus applications in preparation for meeting the 1994 HDE PM standard of 0.10 g/bhp-hr. Recent information from DDC indicates that emissions from urban bus engines equipped with oxidation catalysts can be reduced to 0.07 g/bhp-hr in the 1994 MY. However, as noted earlier, the potential for using oxidation catalysts to meet a 0.05 g/bhp-hr standard for urban buses has only recently begun to be investigated. In order to provide manufacturers with an opportunity to fully develop the technology to meet PM levels below 0.07 g/bhp-hr and to develop the production capacity for application to urban buses, EPA believes that a short delay in implementing the lower standard is warranted.

EPA also believes that the standard for certification and SEA testing should be lowered to 0.05 g/bhp-hr at the earliest possible time. Based on the information available, EPA has decided that, beginning with model year 1996, urban bus engines must meet a 0.05 g/bhp-hr PM standard in certification and SEA testing. EPA believes that two years is the minimum period of delay that will allow engine manufacturers to gain additional experience with catalyst technology and to develop improved catalyst systems capable of meeting a 0.05 g/bhp-hr PM standard over the useful life of an urban bus.

EPA has applied the specified statutory criteria in reaching its decision on the urban bus PM standards. Section 219(b) of the CAA requires that EPA take into account durability, costs, lead time, safety and other relevant factors in determining whether the 0.05 g/bhp-hr PM standard is technologically achievable for the 1994 MY. As discussed above, EPA believes that the imposition of the 0.05 g/bhp-hr PM standard in the 1994 MY would increase costs of urban bus engines by an unreasonable amount, particularly in light of the questionable environmental benefits of imposing that standard in the near term and the significant cost savings of imposing a 0.07 g/bhp-hr standard. The increased costs of meeting a 0.05 g/bhp-hr standard could also have detrimental effects on the urban transit companies with the counterproductive results discussed above. EPA believes that emission control technologies will be available to meet the 0.07 g/bhp-hr standard in the 1994 MY and the 0.05 g/bhp-hr standard in the 1996 MY, at significantly lower costs (both in terms of purchase price and performance impacts). The additional lead time provided by the two-year delay of the 0.05 g/bhp-hr standard will aid in the development and use of these emission control technologies and, as discussed above, will not cause a significant loss of environmental benefits. On the basis of this information, EPA believes that, taking into account the factors listed in the CAA, the 0.05 g/bhp-hr PM standard is not technologically achievable for MY 1994 and MY 1995.[17]

In-Use Standard Feasibility

For the reasons discussed above regarding why a 0.07 g/bhp-hr PM standard is appropriate for certification and SEA testing for model years 1994 and 1995, and also because the CAA specifies that the 1994 urban bus PM standard shall be no higher than 0.07 g/bhp-hr, EPA believes that the in-use standard should also be 0.07 g/bhp-hr for those model years. EPA has examined the feasibility of meeting a 0.05 g/bhp-hr PM standard under in-use conditions in model year 1996, when the certification and SEA standard will be reduced to 0.05 g/bhp-hr. In response to the comments received on the September 1991 NPRM, EPA does not believe that a 0.05 g/bhp-hr PM level is technologically achievable under in-use conditions. As discussed in detail below, this conclusion is based on concerns with the in-use durability characteristics of exhaust aftertreatment as well as the variability associated with in-use engine testing.

EPA recognizes that achieving a PM level below 0.05 g/bhp-hr in certification and SEA testing of urban bus engines does not ensure that such engines could meet a PM standard of 0.05 g/bhp-hr in use. To comply with EPA standards (and to ensure compliance with in-use testing requirements), an engine must meet a standard over its entire useful life. Therefore, engine manufacturers typically design an engine so that, when new, it emits at a level below the standard to account for potential emissions deterioration over the engine's useful life. Moreover, as noted in this section, engine manufacturers must take into consideration the differences between certification and in-use emissions. Factors such as test to test variability, engine to engine variability, and usage variability force manufacturers to provide a margin to ensure in-use compliance.

Because of the recent development of oxidation catalyst technology for HDEs used in urban buses, durability information on such oxidation catalysts is very limited. However, oxidation catalysts for diesel engines are expected to be similar to those used for gasoline engines. Based on the testing of light-duty gasoline vehicles equipped with catalysts, catalyst conversion efficiency has been shown to degrade with increasing mileage. The amount of deterioration varies from vehicle to vehicle, but some amount of deterioration typically occurs. EPA has tested properly maintained in-use vehicles to compare the conversion efficiency of in-use catalysts to the efficiency of catalysts known to be good. (The good catalysts were taken from vehicles of the same model that were known to meet the applicable emissions standards.) The results of the testing show a decrease in catalyst efficiency ranging from less than five percent to over ten percent, depending on the pollutant, for vehicles which have accumulated close to their useful life of 50,000 miles.[18] Extrapolating to the

[16] The proposed NCP rulemaking was published in the Federal Register on May 29, 1992 (57 FR 23,675).

[17] Although a 0.07 g/bhp-hr PM certification standard for 1994 and later MY urban buses was not specifically proposed by EPA in the September 1991 NPRM, the Act clearly provides that EPA may consider an urban bus PM standard as high as 0.07 g/bhp-hr. The September 1991 NPRM provided notice that EPA considered a 0.07 g/bhp-hr PM standard and also highlighted other options which included a 0.07 g/bhp-hr full-life PM standard (with a 0.05 g/bhp-hr half-life PM standard) and a 0.07 g/bhp-hr in-use PM standard (with a 0.05 g/bhp-hr certification PM standard). EPA also believes that the number of comments which discussed and/or supported a 0.07 g/bhp-hr PM standard makes it clear that this standard was the topic of serious consideration in the notice and public comment period. In addition, EPA contacted several commenters regarding the information provided in DDC's September 10, 1992 letter.

[18] "In Use Performance of Catalytic Converters on Properly Maintained High Mileage Vehicles," by

useful life for urban bus HDEs of 290,000 miles, the deterioration in urban bus catalyst conversion efficiency would be expected to be much higher over the useful life compared to the deterioration in catalyst efficiency from these light-duty vehicles. Any such decreases in conversion efficiency will make it exceedingly difficult for engine manufacturers to comply with a 0.05 g/bhp-hr PM standard over the full useful life of an urban bus engine under in-use conditions.

In addition to the difference in useful life, there are other differences between gasoline and diesel engines that could negatively affect the durability of an oxidation catalyst. The diesel catalyst, unlike current gasoline engine catalysts, will be required to operate at low temperatures, will be required to oxidize heavy hydrocarbons, and could be affected by the sulfur in diesel fuel over the 290,000 mile useful life of an urban bus engine versus the 50,000 mile useful life of current light-duty gasoline vehicles. Given the expected similarity of oxidation catalysts for both gasoline and diesel engine and the effect that differences between the operating conditions of diesel versus gasoline engines could have on the durability of oxidation catalysts for diesel engines, EPA believes that some degradation in the performance of oxidation catalysts is likely.

Concerns also exist regarding the durability of trap systems. The main source of information on the durability of trap systems is from NYCTA's trap-equipped urban buses. The 400 trap-equipped urban buses currently in operation in New York City were placed into service in early 1991 and have accumulated an average of 45,000 miles per bus (individual buses have accumulated up to approximately 80,000 miles). After experiencing (and correcting) initial problems with the trap systems, NYCTA has found the low mileage durability of the trap system to be promising. However, none of these urban buses has achieved a mileage accumulation near the useful life requirement of 290,000 miles.

EPA believes that, although the low mileage durability of the New York City traps is promising, the long term durability of particulate traps remains unproven and an area of concern. A particulate trap system is a complex system that includes the trap and related hardware which filter the particulate in the exhaust, and the electrical and microprocessor systems which control the regeneration process. Urban bus engine manufacturers have certified trap-equipped engines for model year 1993 that tested at levels below 0.05 g/bhp-hr PM. However, certification testing is performed on a well maintained engine that has been run solely on an engine dynamometer, whereas in-use testing is performed on engines that experience widely varying degrees of maintenance and that have been operated under in-use conditions potentially more demanding than certification. EPA believes that many of the problems that in-use trap-equipped buses have experienced can be attributed to the differences between controlled certification testing and more stringent in-use operation. Therefore, EPA believes that the long-term in-use durability of traps is not proven at this time.

In addition to durability concerns, in order to meet a given standard under in-use conditions, engine manufacturers must take test-to-test, engine-to-engine, and usage variability into consideration when designing an engine to meet the applicable standard in in-use testing. The need for an in-use margin will impact the ability of engine manufacturers to achieve the urban bus PM standard in use. Based on tests performed by EPA and industry, the standard deviation on a current engine (with engine-out PM of around 0.17 g/bhp-hr) tested at the same laboratory over the heavy-duty transient test appears to be around 0.01 g/bhp-hr for PM.[19] Even though urban bus engines designed to meet the 1993 PM standard and the 1994 and later PM standards will have lower PM emissions than current engines, some level of test variability is inherent and EPA does not expect that test-to-test variability will decrease appreciably in the future.

In addition, as noted by DDC in its comments, the testing of two identical trap filters showed trap efficiency differences of as much as seven percent. For an urban bus with an engine-out PM level of 0.25 g/bhp-hr, such a difference in filter efficiency could result in a variability in PM emissions of approximately 0.02 g/bhp-hr. Although trap manufacturers should be able to improve the consistency of traps through improved quality controls, EPA believes that some level of equipment variability will continue to exist in the 1994 model year.

Because of these concerns over the long term performance characteristics of exhaust aftertreatment systems, as well as engine, test and usage variability, EPA believes that it may not be feasible for urban bus engines to meet a PM standard of 0.05 g/bhp-hr in in-use testing. Therefore, EPA is setting a separate urban bus PM standard of 0.07 g/bhp-hr for in-use compliance. This is the maximum level allowed by the CAA. EPA does not believe that an in-use standard set at a level between 0.05 and 0.07 g/bhp-hr would be sensible because of engine and test variability and the difficulty in measuring such a small difference in emissions. As required by the CAA, EPA will monitor the in-use compliance of 1994 and later model year urban bus engines with this standard. If EPA finds that engines are not in compliance, EPA is required to implement a low polluting fuels program for urban buses.

As discussed earlier, the NPRM also contained an alternative suggested by industry that would set a half-life PM standard of 0.05 g/bhp-hr and a full-life standard of 0.07 g/bhp-hr. Because deterioration is the major concern with both candidate technologies, and an initial 0.05 g/bhp-hr standard might force higher cost traps, EPA does not believe that such an approach would offer an in-use benefit over the standards contained in today's action. Additionally, EPA received no comments recommending the alternative.

EPA shall continue to evaluate the in-use performance of urban buses equipped with aftertreatment systems. If EPA believes that an in-use standard of 0.05 g/bhp-hr appears to be achievable, EPA will revisit this issue in a future rulemaking.

Legal Authority for Two-Tiered Standard

Section 202(a) of the Act does not require that standards applicable to new motor vehicles be uniform over the useful life of such vehicles. Also, neither section 206 nor 207 requires a single standard for certification and in-use compliance. In fact, section 207(c)(4) specifically mandates separate in-use standards for certain motor vehicles.

As required by section 219(a) of the Clean Air Act, the standard promulgated by EPA for urban buses under section 202(a) "shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account." Section 219(b) requires that EPA

Michael Sabourin, Robert Larson and Kimberly Donahue, U.S. EPA, SAE Paper 860568. The deterioration per mile could not be determined from the data.

[19] "Heavy-Duty Engine Testing Report, EMA Particulate Correlation Program Test Results—1990," EPA Technical Report, EPA–AA–SDSB–91–01.

mandate a PM standard for urban bus engines of 0.05 g/bhp-hr unless EPA determines that such standard is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. A determination as to whether the 0.05 g/bhp-hr level is technologically achievable must accompany this rulemaking.

Based on existing test data, it appears that the best technology expected to be available, considering costs and leadtime, will allow engines to achieve a certification PM level of 0.05 g/bhp-hr by the 1996 MY. However, the standard must be considered under in-use conditions as well, since durability is a factor and failure to comply with the standard has important consequences. As described above, EPA cannot conclude from current information that a 0.05 g/bhp-hr PM standard is feasible under in-use conditions over the vehicle's full useful life. As a result, EPA cannot now make a determination that a 0.05 g/bhp-hr PM standard is technologically achievable, taking into account the factors listed in the CAA, under in-use conditions. Therefore, it is appropriate for EPA to set a standard for in-use testing that is different from the 0.05 g/bhp-hr PM standard for certification and SEA. EPA believes the two-tiered emission standard will force the use of advanced particulate emission control technology, as envisioned by the CAA, while providing engine manufacturers with a separate in-use standard necessary to implement this technology in the available lead time.

Leadtime

In response to the comments on the lead time for implementing the more stringent PM standard for urban buses, section 219(b) of the CAA specifically requires compliance with the standard beginning with the 1994 model year. In any case, based on 1993 MY certification applications, EPA believes that the same control strategies used to meet the MY 1993 urban bus PM standard of 0.10 g/bhp-hr (e.g., particulate traps) can be used to meet the PM standards adopted today. In addition, based on the information described above, it appears that an urban bus equipped with an oxidation catalyst should be capable of meeting the standards contained in today's action. For these reasons, EPA believes that there is adequate lead time for engine manufacturers to meet the urban bus PM standards contained in today's rule by MY 1994.

b. Averaging, Banking and Trading. Related to emissions averaging, banking and trading, DDC commented that EPA should modify the current program to allow for the exchange of particulate credits between truck and urban bus engines. Southern California Edison Company commented that EPA should make explicit the ability of urban electric trolley and shuttle buses to generate, bank, trade and use emission credits among manufacturers.

In response to these comments, EPA is not adopting any changes to the current emissions averaging, banking and trading provisions for the reasons discussed below. However, EPA is modifying its approach to the current averaging, banking and trading program in response to the two-tiered urban bus PM standard promulgated with today's action.

The current averaging, banking and trading program was intentionally developed in such a way that engine manufacturers could not average, bank or trade emission credits between urban bus engines and other HDEs. Urban buses have been set apart from the other HDEs for averaging, banking and trading purposes because urban buses operate primarily in urban areas where ambient particulate levels tend to be high (50 FR 10653, March 15, 1985). Allowing PM emission credits earned with truck HDEs to be used for urban bus engines would reduce the potential impact of lower urban bus emission standards on urban ambient particulate levels, because many of these trucks operate primarily outside urban areas. As stated earlier, EPA does not consider an electric trolley to be an urban bus, and thus it is not included in the current HDE averaging, trading and banking program. However, as mentioned earlier, EPA recently proposed a program that may allow fleet operators to earn emission credits for purchasing vehicles with low or zero emissions (October 3, 1991, 56 FR 50196). The reader is directed to the NPRM for the clean fuels fleet program for further details.

In response to the two-tiered PM standard promulgated with today's action, EPA is modifying its approach to the current averaging, trading and banking program for 1996 and later MY urban buses. Under the current program, urban bus engine manufacturers may declare a family emission limit (FEL) different than the certification PM standard. In such a case, the engine manufacturer is held responsible for meeting the FEL during all testing, including certification, SEA, and in-use testing. However, because EPA is adopting a two-tiered PM standard beginning with the 1996 model year (0.05 g/bhp-hr for certification/SEA testing, 0.07 g/bhp-hr for in-use testing), EPA does not believe that a manufacturer should be required to meet the same FEL level under in-use testing as for certification and SEA.

Therefore, as a result of today's action, engine manufacturers may still declare an FEL for their urban bus engine families different than the certification/SEA PM standard. Beginning with the 1996 model year, engines of such an engine family will be responsible for meeting the FEL under both certification and SEA testing. However, for in-use testing, urban bus engines participating in the averaging, banking and trading program will be responsible for meeting a PM level that is 0.02 g/bhp-hr higher than the FEL declared by the engine manufacturer at the time of certification. Engine manufacturers will still be required to show that the sales-weighted average of their FELs meets the 0.07 g/bhp-hr certification standard for MY 1994 and 1995 urban buses and the 0.05 g/bhp-hr certification standard for 1996 and later MY urban buses.

c. Non-Conformance Penalties (NCPs). With regard to NCPs, engine manufacturers commented that EPA should establish NCPs for PM emissions from 1994 and later urban buses immediately to help them plan for MY 1994. EPA recently proposed NCP provisions for the 1994 and later urban bus engine PM standard on May 29, 1992 (57 FR 22675). The reader is directed to that proposal for complete details of the proposed NCP provisions.

d. Fuel Quality. Two additional comments were received from DDC related to the 1994 urban bus PM standard. DDC recommended that EPA study the need for low ash fuels for trap-equipped engines, and allow the use of test fuels with oxygenates or other PM-reducing additives, contingent on assurance that vehicles will be operated on such fuels under in-use conditions. DDC believes that such fuel changes would assist manufacturers in meeting the stringent PM standards. No data was submitted regarding the feasibility, the environmental impact, or the cost related to these changes.

In response to these comments on diesel fuel quality, EPA does not at this time have sufficient evidence indicating a need for such changes to diesel fuel to ensure compliance with the urban bus PM standard contained in today's action. However, EPA is open to making cost-effective changes that would have a beneficial impact on the environment. In order to further such concepts, EPA would encourage joint industry efforts such as the joint effort that resulted in

EPA's promulgation of the low-sulfur diesel fuel regulations.

C. Urban Bus Test Procedure

1. Summary of Proposal

EPA examined three options for establishing urban bus test procedures that reflect actual operating conditions: (1) Retain the current engine-based heavy-duty transient test procedure, (2) adopt a new engine-based urban transient test procedure specific to urban buses, and (3) adopt a vehicle-based urban bus test procedure. As explained in the NPRM, EPA noted that the current heavy-duty transient test procedure contains elements that reflect actual urban bus operating conditions, including both freeway and non-freeway operating conditions. At this time, EPA has deemed the current test procedure to be adequate for the limited number of vehicles being covered by this test procedure. For these reasons, EPA proposed to retain the heavy-duty transient test procedure for all urban bus testing.

2. Summary and analysis of comments

Nearly all commenters supported retaining the heavy-duty transient test procedure, noting that the current test is sufficiently representative of in-use urban bus operations. DDC and APTA supported a separate urban bus test cycle more representative of in-use operation noting that such a bus-specific cycle could result in the use of different emission control technologies that could have a beneficial effect on air quality. Southern California Rapid Transit District (SCRTD) commented that EPA should recognize a separate chassis-based test procedure in the long term since it would allow a more accurate simulation of typical urban bus operating conditions.

After reviewing all of the comments received on this issue, EPA continues to believe that the current heavy-duty transient test cycle reflects actual urban bus operating conditions adequately for today's purposes. Based on previous analyses and the lack of emissions data in support of a new urban but test cycle (engine or chassis based), EPA continues to believe that a change in the test procedure for urban buses would not result in a significant difference in in-use emissions or result in the use of different emission control strategies.[20] For these reasons, EPA plans to retain the current heavy-duty transient test for all testing of urban buses. If data should become available that would support a change in test procedures from an environmental standpoint, EPA would be open to re-examining the need for a separate urban bus test procedure. The reader is directed to the FRSD for a complete summary and analysis of the urban bus test procedure comments.

D. 1998 and Later Model Year HDE NO_x Standard

1. Summary of Proposal

EPA proposed the 4.0 g/bhp-hr NO_x standard for 1998 and later MY HDEs as required by the amended CAA. Consistent with past practice, the standard was proposed to apply to all HDEs fueled by gasoline, diesel fuel, or methanol.

EPA did not propose any changes to the current emissions trading, banking and averaging program for 1998 and later MY engines. In addition, EPA did not propose NCPs for the proposed 4.0 g/bhp-hr NO_x standard. The proposal noted that any regulatory actions necessary for NCPs would be undertaken by EPA at a later date.

2. Summary and Analysis of Comments

The American Gas Association (AGA) submitted comments stating their belief that the proposed 4.0 g/bhp-hr NO_x standard does not meet the Congressionally mandated requirements of the CAA. They claim that Section 202(a)(3)(A)(i) of the CAA requires that HDE regulations shall contain standards that "reflect the greatest degree of emission reduction achievable with technology that the Administrator determines will be available for the model year to which such standards apply." Based on supporting information, they commented that EPA is required to adopt a more stringent NO_x standard for 1998 and later HDEs.

Upon reexamination, EPA still believes that the CAA requires a 4.0 g/bhp-hr NO_x standard for all 1998 and later MY HDEs. Section 202(a)(3)(A)(i) begins with the words, "Unless the standard is changed as provided in subparagraph (B)" and then continues with the language noted in the AGA comments. Section 202(a)(3)(B)(ii) states that "effective for the model year 1998 and thereafter, the regulations under [section 202(a)(1)] applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower-hour." Section 202(a)(1) does not contain the "greatest degree of emission reduction" language cited by AGA. Therefore, EPA believes that the promulgation of the 4.0 g/bhp-hr NO_x standard is appropriate, given the language of section 202(a)(3)(B)(ii) and section 202(a)(1).

Engine manufacturers commented that the feasibility of meeting has 4.0 g/bhp-hr NO_x standard is not clear at this time, although GM commented that the standard will be feasible for their engines. All engine manufacturers noted that EPA should consider and implement additional commercial fuel and certification fuel regulations for specifications such as cetane, aromatics content and volatility to assist engine manufacturers in meeting the 4.0 g/bhp-hr NO_x standard. Engine manufacturers also commented that the 4.0 g/bhp-hr NO_x standard will result in a fuel economy penalty. GM submitted comments claiming a two to four percent fuel economy penalty when a HDDE is calibrated for a 4.0 g/bhp-hr NO_x level compared to the current 5.0 g/bhp-hr NO_x standard. However, GM noted that the potential fuel penalty may be reduced with refinements to combustion and fuel system designs.

AGA, MECA and particulate trap manufacturers supported the feasibility of the 4.0 g/bhp-hr NO_x standard. They noted that lean NO_x catalyst technology currently is being investigated and may play a role in meeting the 4.0 g/bhp-hr NO_x standard. In addition, they note particulate traps can be utilized to control increased PM levels that may result from various engine control strategies employed to reduce NO_x emissions.

Despite the concerns raised by engine manufacturers, EPA continues to believe that the 4.0 g/bhp-hr NO_x standard is feasible with improvements in existing technology with little or no effect on fuel economy. Significant attention has been paid to HDE NO_x control techniques in recent years as a result of EPA's adoption of the 5.0 g/bhp-hr NO_x standard for MY 1991, along with the increasingly stringent PM standards starting in MY 1991 and 1994. As a result, engine manufacturers have been successful in developing various means to lower NO_x emissions significantly while at the same time avoiding adverse impacts on fuel economy and particulate emissions that were characteristic of older engines. In any case, the CAA explicitly requires a NO_x standard of no greater than 4.0 g/bhp-hr for all 1998 and later MY gasoline and diesel-fueled HDEs. Therefore, EPA is adopting the 4.0 g/bhp-hr NO_x standard for such engines. The reader is directed to the FRSD for today's action for a complete summary and analysis of the

[20] The reader is directed to the NPRM for this rulemaking and the document "Summary and Analysis of Comments to the NPRM: 1983 and Later Model Year Heavy-Duty Engines; Proposed Gaseous Emission Regulations", both found in the docket for this rulemaking, for further information on the effect of the test procedure on in-use emissions.

comments received on the 4.0 g/bhp-hr NO_x standard.

In response to the requested changes to in-use fuel and certification fuel properties, EPA does not believe that such changes currently are warranted based on the information available at this time. If engine manufacturers develop data showing that fuel changes will be necessary to assure compliance with the 4.0 g/bhp-hr NO_x standard, EPA would encourage engine manufacturers to work jointly with fuel producers toward implementing such changes. Recently, such a joint agreement between engine manufacturers and fuel producers resulted in EPA's adoption of the low-sulfur diesel fuel regulations that are set to begin in 1993.

On the issue of trading, banking and averaging for the 1998 NO_x standard, EPA received no significant comments. Regarding NCPs, engine manufacturers commented that EPA should set NCPs for the 1998 HDE NO_x standard at the time the standard is finalized. EPA stated in the NPRM that it did not intend to address the establishment of NCPs in this action. However, EPA is currently analyzing the need to establish NCPs for the 1998 HDE NO_x standard and will issue a notice of proposed rulemaking in the future addressing the NCP issue.

E. Useful Life Requirements

1. Summary of Proposal

On July 27, 1992 EPA issued a notice which contained proposed changes to the useful life requirements for the 1994 and later MY urban bus PM standard and the 1998 and later MY HDE NO_x standard (57 FR 33141). As required by the amended CAA, EPA proposed to extend the useful life of the new standards from eight years to ten years, the useful life mileage requirements were not affected.

As noted in the July 1992 notice, the emission standards already in place for HDEs will not be affected by this proposed change in useful life. The CAA states that the revised useful life requirements are only for new standards promulgated after the enactment of the 1990 Amendments. Therefore, the only standards which are affected in today's action are the urban bus PM standard and the HDE NO_x standard.

2. Summary and Analysis of Comments

Engine manufacturers supported EPA's change in the useful life provisions and recommended that EPA add an equivalent hours of operation for the 1994 and later MY urban bus PM standard. EMA predicated their support for the change in useful life on the condition that EPA add an equivalent hours of operation to the useful life. All of these commenters pointed out that many heavy-duty vehicles that have low average speeds, large amounts of idle time, and are used considerably more than the miles accumulated would otherwise indicate. Therefore, such vehicles accumulate the same hours of operation as high average speed vehicles in a significantly shorter period of miles. The engine manufacturers claim that the result of this difference in vehicle operating characteristics is standards that are more stringent for such low speed vehicles. EMA recommended that EPA add "9,000 hours of operation" to the proposed useful life definition. The 9,000 hours recommended by EMA is based on EPA's allowable maintenance schedule for heavy-duty engines (150,000 miles or 4,500 hours of operation) projected to 300,000 miles.

In response to these comments, EPA does not believe that it is practical to set an equivalent hours of operation for the new HDE standards. Because each type of heavy-duty vehicle has different operating characteristics, the number of hours of operation that would be equivalent to the year and mileage requirements of the useful life would differ for each type of heavy-duty vehicle. If EPA chose a single hours of operation equivalent useful life for all HDEs, it would have to be set in a manner such that no vehicle typically met the hours of operation limit before they met the year or mileage requirements. (In order to comply with section 202(d) of the CAA, EPA must set any such requirements so that they are equivalent to the years and mileage requirements of the useful life.) EPA does not have sufficient information on the operating characteristics of all types of heavy-duty vehicles to develop equivalent hours of operation.

In addition, the useful life requirements for HDE emissions standards have not had an hours of operation since EPA adopted the three classes of HDDEs in 1984. Engine manufacturers have complied with the current requirements and no comments were received on why it is now necessary to add such a requirement. Therefore, EPA is adopting the ten year useful life requirement for the new HDE standards contained in today's action and is not incorporating an equivalent hours of operation into the useful life provisions.

III. Final Rule Requirements

A. 1993 Model Year Bus PM Standard

With today's action, EPA is adopting a slightly revised "bus" definition compared to that contained in the proposal. Under the provisions of today's rule, all urban buses plus those additional buses that are centrally fueled and which are powered by a heavy heavy-duty diesel powered engine will be required to meet the 0.10 g/bhp-hr PM standard beginning in MY 1993. For purposes of this regulation, EPA is defining centrally fueled to mean that a vehicle is refueled at least 75 percent of the time at one refueling facility that is owned, operated or controlled by the bus operator.

Furthermore, EPA is adopting the slightly revised definition of "urban bus" proposed in the NPRM. The revised definition will eliminate the loophole that potentially allows manufacturers to place medium HDDEs in a bus normally powered by heavy HDDEs to avoid being classified as an urban bus. Under the "urban bus" definition promulgated today, such a bus would be classified as an urban bus and would be required to meet the more stringent urban bus PM standards.

EPA is not making any changes to the current averaging, trading and banking provisions as a result of today's action. Regarding NCPs, EPA is promulgating the provisions as proposed in the NPRM. The revised upper limit for NCP availability, the average and ninetieth percentile incremental costs, and the engineering and development factor that were adopted in the final rulemaking delaying the MY 1991 urban bus PM standard until MY 1993 (56 FR 64704, December 12, 1991) will also apply to the additional buses required to meet the 1993 bus PM standard under today's action.

B. 1994 and Later Model Year Urban Bus PM Standard

For MY 1994 and 1995, EPA is adopting a 0.07 g/bhp-hr PM standard for HDDEs used in urban buses. Beginning in MY 1996, EPA is adopting a two-tiered set of PM standards for HDDEs used in urban buses. For certification and SEA testing, the PM standard will be 0.05 g/bhp-hr. For in-use testing, the PM standard will be 0.07 g/bhp-hr. In addition, the useful life for the urban bus PM standard is extended to ten years for 1994 and later MY engines.

EPA is adopting changes to the current averaging, trading and banking provisions as a result of the two-tiered standard contained in today's action. Regarding NCPs, EPA proposed NCP

provisions for the 1994 and later MY urban bus PM standard on May 29, 1992 (57 FR 22675). The reader is directed to that proposal for complete details of the proposed NCP provisions.

C. Urban Bus Test Procedure

With today's action, EPA retains the heavy-duty transient test procedure for all emissions testing of urban buses.

D. 1998 and Later Model Year HDE NO_x Standard

EPA is promulgating a 4.0 g/bhp-hr NO_x standard for all 1998 and later MY HDES, as required by the CAA. In addition, the useful life for the HDE NO_x standard is increased to ten years for 1998 and later MY HDEs. No change in the trading and banking program will occur as a result of today's action. Regulatory actions necessary for NCPs may be undertaken by EPA at a later date.

E. Useful Life Requirements

With today's action, EPA revises the useful life requirements for the 1994 and later MY urban bus PM standard and the 1998 and later MY HDE NO_x standard to ten years. The useful life mileage requirements are not affected by today's action.

IV. Environmental Impact

The following section summarizes the environmental impacts expected to result from today's action. The reader is directed to the FRSD for a more detailed analysis of the environmental impact of today's action. As detailed further below, continuing reductions in urban ambient levels of diesel particulate are expected to result from the MY 1993 bus PM standard and the 1994 and later MY urban bus PM standard. Such particulate reductions will help many of the areas of the country designated to be in nonattainment with the National Ambient Air Quality Standard for PM10 move closer to attainment and have other potential health benefits. Diesel particulate is a possible human carcinogen, and, at high levels of exposure, can cause other negative health effects, including lung disease and neurotoxic effects. Therefore, the diesel particulate reductions expected from the programs contained in today's rule potentially could reduce the number of expected cancer incidences associated with exposures to overall diesel particulate emissions and lower the potential for exposures that could result in other adverse effects.

A. 1993 Model Year Bus PM Standard

The only change that will occur as a result of this final rule would be requiring a number of additional buses to meet the 0.10 g/bhp-hr PM standard in MY 1993. Under current regulations, these additional buses are required to meet a 0.25 g/bhp-hr PM standard in MY 1993. Therefore, EPA would expect to achieve an additional emissions benefit from moving the implementation of the standard forward by one model year for these buses. Based on comments from engine manufacturers, EPA estimates the maximum number of additional buses covered by the 1993 bus PM standard is around 1900 vehicles. EPA estimates that the expansion in the applicability of the 0.10 g/bhp-hr PM standard for MY 1993 could result in an additional reduction of between 19 and 100 metric tons of particulate emissions for 1993.

B. 1994 and Later Model Year Urban Bus PM Standard

The September NPRM contained EPA's estimated environmental impact of the proposed 0.05 g/bhp-hr PM standard for 1994 and later MY urban buses. EPA received no comments on the analysis. Therefore the environmental analysis summarized below has been performed in the same manner as the NPRM. However, because EPA is adopting a certification PM standard of 0.05 g/bhp-hr and an in-use/SEA PM standard of 0.07 g/bhp-hr (with the SEA standard reduced to 0.05 g/bhp-hr in 1997), EPA is presenting a range in the expected benefit of the 1994 urban bus PM standard.

EPA estimates that a discounted lifetime per-vehicle PM emission reduction of 60 to 100 kilograms (assuming a 10-percent discount rate) will result from the urban bus PM standards promulgated with today's action. Once the entire fleet is made up of urban buses meeting the 1994 PM standard, the annual emission reduction resulting from this regulation will range from 350 to 600 metric tons of particulate matter nationwide. The lower end of the range is based on the assumption that all urban buses emit at the 0.07 g/bhp-hr PM level allowed in use. The upper end of the range assumes that these urban buses emit at the 0.05 g/bhp-hr certification/SEA level.

C. Heavy-Duty Engine NO_x Standard

The September 1991 NPRM contained EPA's estimated environmental impact of the 4.0 g/bhp-hr NO_x standard for 1998 and later MY HDEs. EPA received no comments on the analysis and is relying on the same analysis for today's action.

As detailed in the FRSD, the 4.0 g/bhp-hr NO_x standard is expected to lower NO_x emissions from heavy duty vehicles on the order of 16 to 19 percent in the 2005 to 2010 time frame. When factored into the national NO_x inventory, the 4.0 g/bhp-hr HDE NO_x standard is expected to yield a reduction of approximately two percent in the 2005 to 2010 time frame.

V. Economic Impact

A. 1993 Model Year Bus PM Standard

For the additional buses included under the MY 1993 bus standard, there will be increased costs. In order to meet the lower PM standard, engine manufacturers will likely use exhaust aftertreatment technology such as particulate traps. As noted in the September 1991 NPRM, based on current cost estimates and manufacturer projected cost estimates, EPA expects the cost for these additional buses to meet a 0.10 g/bhp-hr PM standard by use of a particulate trap to be between $1,500 and $9,000 per bus. For all of the additional buses covered under the 0.10 g/bhp-hr PM standard in 1993, the total cost is estimated to range from around $0.5 million to $17 million.

B. 1994 and Later Model Year Urban Bus PM Standard

Based on the feasibility analysis of a 0.05 g/bhp-hr urban bus PM standard, EPA believes that one means of meeting such a standard is to equip urban buses with dual-trip non-bypass trap systems. Based on its analysis, EPA has projected the incremental cost (five model year discounted total cost) of meeting the statutory 1994 and later MY PM standards (over the 1993 urban bus PM standard) to be $1,650 per vehicle for a trap-equipped urban bus. The discounted five model year cost to manufacturers if all urban buses were trap-equipped is estimated to be around $24 million. The discounted five model year cost effectiveness of the 1994 and later model year urban bus PM standards is estimated to range from $21,000 to $36,000 per ton for a trap-equipped urban bus.

EPA has also estimated the cost effectiveness of meeting the 1994 and later MY urban bus PM standards for a catalyst-equipped urban bus. Based on its analysis, EPA projects the five model year total cost to manufacturers of complying with the 1994 and later MY urban bus PM standard to be $730 per vehicle for a catalyst-equipped urban bus. The discounted five model year cost to manufacturers if all urban buses were catalyst equipped is estimated to be around $11 million. The discounted five model year cost effectiveness of the 1994 and later model year urban bus PM standards is estimated to range from

$10,000 to $16,000 per ton for a catalyst-equipped urban bus.

C. Heavy-duty Engine NO_x Standards

Comments were received from engine manufacturers claiming that EPA underestimated the cost of complying with the 4.0 g/bhp-hr NO_x standard. However, the manufacturers did not submit any cost information in support of their comments. Based on EPA's technological feasibility analysis summarized earlier, EPA believes that the economic analysis presented in the September 1991 NPRM is still applicable.

The Agency expects the cost impacts of the 4.0 g/bhp-hr standard to be similar to those of the 5.0 g/bhp-hr standard, after accounting for inflation. When adjusted for the consumer price index for new vehicle first year price, the projected first costs for compliance with the 4.0 g/bhp-hr NO_x standard per new Otto-cycle and diesel engines are estimated to be $16 and $78 per engine respectively.

EPA estimates that total costs to the nation of the 4.0 g/bhp-hr standard should result only from first cost increases in new engines. EPA believes that manufacturers will comply with the 4.0 g/bhp-hr NO_x standard without significant effect on the fuel economy of the engines. The anticipated annual costs to the nation resulting from the first year price increase of HDEs in the three years following implementation of the 4.0 g/bhp-hr NO_x standard for HDEs will be just under $50 million each year. The cost effectiveness of the 4.0 g/bhp-hr standard, over the useful life of a typical heavy-duty Otto-cycle engine and an average heavy-duty diesel engine is estimated to be $260 per ton and $210 per ton, respectively.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The elements of this rulemaking, individually and together, do not constitute major rules according to the established criteria. Therefore, I have determined that this rulemaking does not constitute a "major" regulation.

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA responses to those comments have been placed in the public docket for this rulemaking.

VII. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to consider potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

There will not be a significant impact on a substantial number of small entities due to the new PM or NO_x standards since none of the engine manufacturers affected by these regulations are small business entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VIII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This final rule does not create any new information requirements or contain any new information collection activities.

IX. Statutory Authority

Authority for actions promulgated in this final rule are granted to EPA by Sections 202, 219, and 301 of the Clean Air Act as amended.

X. Judicial Review

Under section 307(b) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Environmental protection, Imports, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 26, 1993.

Carol M. Browner,

Administrator.

APPENDIX TO THE PREAMBLE.—TABLE OF CHANGES MADE TO VARIOUS SUBPARTS OF PART 86

Section	Change	Reason
1. Authority	None	
2. § 86.093–2	Add Section 86.093–2	Incorporation of definition for separate class of buses.
3. § 86.093–11 Revise paragraph (a)(1)(iv).	Addition of new bus particulate standard.	Incorporation of separate bus particulate standard.
4. § 86.093–35	Add Section 86.093–35	Incorporation labeling requirements for urban bus engines.
5. § 86.094–2	Revision of useful life provisions	Incorporation of ten year useful life for 1994 and later model year urban bus particulate standards.
6. § 86.094–11 Revise paragraph (a)(1)(iv).	Addition of new urban bus particulate standard.	Implement CAAA of 1990.
7. § 86.094–35 Add paragraph	Addition of urban bus labeling requirement.	Incorporate labeling requirement for urban bus engines.
8. § 86.095–35 Add paragraph	Addition of urban bus labeling requirement.	Incorporate labeling requirement for urban bus engines.
9. § 86.096–11	Addition of new urban bus particulate standard.	Implement CAAA of 1990.
10. § 86.098–2	Add Section 86.098–2	Incorporation of ten year useful life for 1998 and later model year heavy-duty engine oxides of nitrogen standard.

APPENDIX TO THE PREAMBLE.—TABLE OF CHANGES MADE TO VARIOUS SUBPARTS OF PART 86—Continued

Section	Change	Reason
11. § 86.098–10	Addition of new heavy-duty engine oxides of nitrogen standard.	Implement CAAA of 1990.
12. § 86.098–11	Addition of new heavy-duty engine oxides of nitrogen standard.	Implement CAAA of 1990.
13. § 86.1105–87	Revise Section 86.1105–87(d)	Change NCPs to reflect new bus PM standard.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The Authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)).

2. A new § 86.093–2 is added to subpart A, to read as follows:

§ 86.093–2 Definitions.

The definitions of § 86.092–2 continue to apply. The definitions listed in this section apply beginning with the 1993 model year.

Bus means a heavy heavy-duty diesel-powered passenger-carrying vehicle with a load capacity of fifteen or more passengers that is centrally fueled, and all urban buses. This definition only applies in the context of §§ 86.093–11 and 86.093–35.

Centrally fueled bus means a bus that is refueled at least 75 percent of the time at one refueling facility that is owned, operated, or controlled by the bus operator.

Urban bus means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen or more passengers and intended primarily for intracity operation, *i.e.*, within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or tokens, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, *e.g.*, rest rooms, large luggage compartments, and facilities for stowing carry-on luggage. The useful life for urban buses is the same as the useful life for other heavy heavy-duty diesel engines.

3. Section 86.093–11 of subpart A is amended by revising paragraphs (a)(1)(iv) (A) and (C) to read as follows:

§ 86.093.11 Emission Standards for 1993 and Later Model Year Diesel Heavy-duty Engines.

(a)(1) * * *

(iv) * * * (A) For diesel engines to be used in buses, 0.10 grams per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(B) * * *

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094.15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed:

(*1*) 0.25 gram per brake horsepower-hour (0.093 gram per megajoule) for diesel engines intended for use in urban buses.

(*2*) 0.60 gram per brake horsepower-hour (0.22 gram per megajoule) for diesel engines *not* intended for use in urban buses.

(*3*) The ceiling values in paragraphs (a)(1)(iv)(C) (*1*) and (*2*) of this section apply whether credits for the family are derived from averaging, trading or banking programs.

* * * * *

4. A new § 86.093–35 is added to subpart A to read as follows:

§ 86.093–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described in this section, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.091–30(a). Where blanks appear in this section, manufacturers are required to fill in the appropriate information in the blanks.

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedures and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.090–8(h):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude; and

(*3*) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at high altitude;

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.090–8(i):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only; and

(*2*) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at low altitude;

(I) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided in this section; and

(J) Vehicles granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510.

(2) *Light-duty truck and heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family emission limits, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude, or both;

(E) (*1*) Light-duty trucks. One of the prominent statements, as applicable:

(*i*) Labels for light-duty trucks certified to the oxides of nitrogen standard of 1.12 grams per vehicle mile shall include the following statement: "This vehicle conforms to U.S. EPA regulations applicable to 19____ Model Year New Light-Duty Trucks."

(*ii*) Labels for light-duty trucks certified to the oxides of nitrogen standard of 1.7 grams per vehicle mile shall include the following statement: "This vehicle conforms to U.S. EPA regulations applicable to 19____ Model Year New Light-Duty Trucks with a curb weight greater than 3,450 pounds."

(*2*) Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions. "This heavy-duty vehicle conforms to U.S. EPA regulations applicable to 19____ Model Year New Light-Duty Trucks under the special provision of 40 CFR 86.092–1(b).";

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.091–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of ____ years or _____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only);

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified;

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser;

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.091–9(g)(2).

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude; and

(*3*) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at high altitude;

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(K) For vehicles which are included in the light-duty truck NO_x averaging program, the family NO_x emissions limit to which the vehicle is certified;

(L) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided by this section;

(M) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and

numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For Otto-cycle engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and value lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines.";

(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.901–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of _____ miles or _____ hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only);

(J) For diesel engines. The prominent statement: "This engine has a primary intended service application as a _____ heavy-duty engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.902–2.);

(K) For Otto-cycle engines. One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.09–10(a)(1) (i) or (iii), the statement: "This engine is certified for use in all heavy-duty vehicles.";

(*2*) For gasoline-fueled engines certified under the provisions of § 86.091–10(a)(3)(i), the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.091–10(a)(3)(i).";

(*3*) For engines certified to the emission standards under § 86.091–10(a)(1) (ii) or (iv), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs.";

(L) For all heavy-duty engines which are included in diesel heavy-duty particulate trading, banking or averaging programs, the particulate family emission limit to which the engine is certified;

(M) For all heavy-duty engines which are included in NO_x trading, banking or averaging programs, the NO_x family emission limit to which the engine is certified;

(N) Engines granted final admission under § 85.1505 must comply with the labeling requirements contained in § 85.1510; and

(O) For diesel engines which have been certified to comply with the particulate standard of 40 CFR 86.093–11(a)(1)(iv)(A), the statement "This engine is certified for use in a bus as defined at 40 CFR 86.093–2." Unless waived by the Administrator on the basis of impracticality, for diesel engines not certified to comply with the particulate standard 40 CFR 86.093–11(a)(1)(iv)(A), the statement "This engine is not certified for use in a bus as defined at 40 CFR 86.093–2. Sales of this engine for use in a bus is a violation of Federal law under the Clean Air Act."

(iv) The label may be made up of one or more pieces: Provided, That all pieces are permanently attached to the same engine or vehicle part as applicable.

(4) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) The maximum nominal fuel tank capacity (in gallons) for which the evaporative control system is certified; and

(E) One of the following, as appropriate:

(*1*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations (40 CFR part 86) which apply to gasoline-fueled heavy-duty vehicles;

(*2*) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations (40 CFR part 86) which apply to methanol-fueled heavy-duty vehicles;

(F) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: "Vehicle Emission Control Information."

(ii)(A) For light-duty vehicles, The statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19____ Model Year New Motor Vehicles."

(B) For light-duty trucks:

(*1*) The statement: "This vehicle conforms to U.S. EPA regulations

applicable to 19____ Model Year New Light-Duty Trucks."

(2) If the manufacturer is provided an alternate useful life period under the provisions of § 86.091–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of ____ years or _____ miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: "Non-Catalyst".

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "Catalyst—Approved for Import".

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "Catalyst".

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions shall have one of the following prominent statements, as applicable, printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section.

(1) Light-duty trucks. (i) Labels for light-duty trucks certified to the oxides of nitrogen standard of 1.2 grams per vehicle mile shall include the following statement: "This vehicle conforms to U.S. EPA regulations applicable to 19____ Model Year New Light-Duty Trucks when it does not exceed ____ pounds in curb weight, ____pounds in gross vehicle weight rating, and ____ square feet in frontal area."

(ii) Labels for light-duty trucks certified to the oxides of nitrogen standards of 1.7 grams per vehicle mile shall include the following statement: "This vehicle conforms to U.S. EPA regulations applicable to 19____ Model Year New Light-Duty Trucks when it is between 3,450 pounds and ____ pounds in curb weight and it does not exceed ____ pounds in gross vehicle weight rating nor ____ square feet in frontal area."

(2) Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions. "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19____ Model Year Light-Duty Trucks under the special provision of 40 CFR 86.085–1(b) when it does not exceed ____ pounds in curb weight, ____ pounds in gross vehicle weight rating, and ____ square feet in frontal area."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19____ Model Year Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(g)(1) (i) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19____Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed _____ gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.092–35(g)(2)."

(ii) Incomplete methanol-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19____ Model Year New Methanol-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed _____ gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.091–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{T.\ Vol.}{Max.\ Vol.} \right)$$

Where:

Capf=final amount of fuel tank vapor storage material, grams.

Capi=initial amount of fuel tank vapor storage material, grams.

T. Vol.=total fuel tank volume of completed vehicle, gallons.

Max. Vol.=maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same absorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Submit a written statement to the Administrator that paragraphs (g)(2)(i) through (g)(2)(iv) of this section have been complied with.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

(h)(1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in

paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the PCA.

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is _____." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a).)

(ii) [Reserved]

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the engine or vehicle owner with a label as described in paragraph (h) of this section to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

5. In § 86.094–2 of subpart A, the definition for "useful life" is amended by revising paragraph (d)(3), and adding paragraph (d)(4) to read as follows:

§ 86.094–2 Definitions.

* * * * *

Useful life means * * *

(d) * * *

(3) For heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever first occurs, except as provided in paragraph (d)(4) of this definition.

(4) for heavy heavy-duty diesel engines used in urban buses, for the particulate standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

* * * * *

6. Section 86.094–11 of subpart A is amended by revising paragraph (a)(1)(iv), to read as follows:

§ 86.094–11 Emission Standards for 1994 and Later Model Year Diesel Heavy-duty Engines.

(a)(1) * * *

(iv) *Particulate.* (A) For diesel engines to be used in urban buses, 0.07 gram per brake horsepower-hour (0.026 gram per megajoule), as measured under transient operating conditions.

(B) For all other diesel engines only, 0.10 gram per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed:

(*1*) For engine families intended for use in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule).

(*2*) For engine families *not* intended for use in urban buses, 0.60 gram per brake horsepower-hour (0.22 gram per megajoule).

(*3*) The ceiling values in paragraphs (a)(1)(iv)(C) (*1*) and (*2*) of this section apply whether credits for the family are derived from averaging, trading, or banking programs.

* * * * *

7. Section 86.094–35 of subpart A is amended by adding paragraph (a)(3)(iii)(O), to read as follows:

§ 86.094–35 Labeling.

* * * * *

(a) * * *

(3) * * *

(iii) * * *

(O) For diesel engines which have been certified to comply with the urban bus particulate standard of 40 CFR 86.094–11(a)(1)(iv)(A), the statement "This engine is certified for use in an urban bus as defined at 40 CFR 86.093–2." Unless waived by the Administrator on the basis of impracticality, for diesel engines not certified to comply with the urban bus particulate standard, the statement "This engine is not certified for use in an urban bus as defined at 40 CFR 86.093–2. Sales of this engine for use in an urban bus is a violation of Federal law under the Clean Air Act."

* * * * *

8. Section 86.095–35 of subpart A is amended by adding paragraph (a)(3)(iii)(O), to read as follows:

§ 86.095–35 Labeling.

* * * * *

(a) * * *

(3) * * *

(iii) * * *

(O) For diesel engines which have been certified to comply with the urban bus particulate standard of 40 CFR 86.094–11(a)(1)(iv)(A), the statement "This engine is certified for use in an urban bus as defined at 40 CFR 86.093–2." Unless waived by the Administrator on the basis of impracticality, for diesel engines not certified to comply with the urban bus particulate standard, the statement "This engine is not certified for use in an urban bus as defined at 40 CFR 86.093–2. Sales of this engine for use in an urban bus is a violation of Federal law under the Clean Air Act."

* * * * *

9. A new § 86.096–11 is added to subpart A, to read as follows:

§ 86.096–11 Emission Standards for 1996 and Later Model Year Diesel Heavy-duty Engines.

(a) Exhaust emissions from new 1996 and later model year diesel heavy-duty engines shall not exceed the following:

(1)(i) *Hydrocarbons (for petroleum-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Organic Material Hydrocarbon Equivalent (for methanol-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(2) *Carbon monoxide.* (i) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(ii) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(3) *Oxides of Nitrogen.* (i) 5.0 grams per brake horsepower-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(ii) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(4) *Particulate.* (i) For diesel engines to be used in urban buses, 0.05 gram per brake horsepower-hour (0.019 gram per megajoule) for certification testing and selective enforcement audit testing, and 0.07 gram per brake horsepower-hour (0.026 gram per megajoule) for in-use testing, as measured under transient operating conditions.

(ii) For all other diesel engines only, 0.10 gram per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(iii) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed:

(A) For engine families intended for use in urban buses, 0.25 gram per brake

horsepower-hour (0.093 gram per megajoule).

(B) For engine families not intended for use in urban buses, 0.60 gram per brake horsepower-hour (0.22 gram per megajoule).

(C) The ceiling values in paragraphs (a)(4)(iii) (A) and (B) of this section apply whether credits for the family are derived from averaging, trading or banking programs.

(b) (1) The opacity of smoke emission from new 1996 and later model year diesel heavy-duty engine shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with these procedures.

(3) *Evaporative emissions* (total of non-oxygenated hydrocarbons plus methanol) from 1996 and later model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed:

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs, 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs, 4.0 grams per test.

(4)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in subpart M of this part and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs, the standard set forth in paragraph (b)(3)(ii) of this section refers to the manufacturers engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1996 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or supercharges for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), (c), and (d) of this section.

10. A new § 86.098–2 is to be added to subpart A to read as follows:

§ 86.098–2 Definitions.

The definitions of § 86.094–2 continue to apply. The definitions listed in this section apply beginning with the 1998 model year.

Useful life means:

(1) For an Otto-cycle heavy-duty engine family:

(i) For hydrocarbon and carbon monoxide standards, a period of use of 8 years or 110,000 miles, whichever first occurs.

(ii) For the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(2) For a diesel heavy-duty engine family:

(i) For light heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 110,000 miles, whichever first occurs.

(ii) For light heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(iii) For medium heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 185,000 miles, whichever first occurs.

(iv) For medium heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 185,000 miles, whichever first occurs.

(v) For heavy heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 290,000 miles, whichever first occurs, except as provided in paragraph (2)(vii) of this definition.

(vi) For heavy heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

(vii) For heavy heavy-duty diesel engines used in urban buses, for the particulate standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

11. A new § 86.098–10 is added to subpart A, to read as follows:

§ 86.098–10 Emission Standards for 1998 and Later Model Year Otto-cycle Heavy-duty Engines and Vehicles.

Section 86.098–10 includes text that specifies requirements that differ from § 86.096–10. Where a paragraph in § 86.096–10 is identical and applicable to § 86.098–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–10."

(a)(1) Exhaust emissions from new 1998 and later model year Otto-cycle heavy-duty engines shall not exceed:

(i) *For gasoline-fueled Otto-cycle engines* intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph.

(A) *Hydrocarbons.* 1.1 grams per brake horsepower-hour (0.41 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(*2*) *For gasoline-fueled Otto-cycle heavy-duty engines utilizing after-treatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen* (*1*) 4.0 grams per brake horsepower-hour (1.49 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its gasoline-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(ii) *For gasoline-fueled Otto-cycle engines* intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs.

(A) *Hydrocarbons.* 1.9 grams per brake horsepower-hour (0.71 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon Monoxide.* (*1*) 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(*2*) *For gasoline-fueled Otto-cycle heavy-duty engine utilizing after-treatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen* (*1*) 4.0 grams per brake horsepower-hour (1.49 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its gasoline-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty

engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iii) *For methanol-fueled Otto cycle heavy-duty engines* intended for use in all vehicles, except as provided in paragraph (a)(3) of this section.

(A) *Organic Material Hydrocarbon Equivalent.* 1.1 gram per brake horsepower-hour (0.41 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(*2*) 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 4.0 grams per brake horsepower-hour (1.49 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its methanol-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) *For methanol-fueled Otto-cycle heavy-duty engines* intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs.

(A) *Organic Material Hydrocarbon Equivalent.* 1.9 grams per brake horsepower-hour (0.71 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(*2*) 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* (*1*) 4.0 grams per brake horsepower-hour (1.49 grams per megajoule), as measured under transient operating conditions.

(*2*) A manufacturer may elect to include any or all of its methanol-fueled Otto-cycle heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3) (i) A manufacturer may certify one or more gasoline-fueled Otto-cycle heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraph (a)(1)(ii) of this section: *Provided*, That the total model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than 5 percent of total model year sales of all gasoline-fueled Otto-cycle heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) A manufacturer may certify one or more methanol-fueled Otto-cycle heavy-duty engine configurations intended for use in all vehicles to the emissions standards set forth in paragraph (a)(1)(iv) of this section: *Provided*, That the total model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(iv) of this section represent no more than 5 percent of total model year sales of all methanol-fueled Otto-cycle heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(iii) The configurations certified to the emission standards of paragraphs (a)(1)(ii) and (iv) of this section under the provisions of paragraphs (a)(3) (i) and (ii) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i), (b)(2)(i), and (b)(3)(i) of this section.

(b) [Reserved]. For guidance see § 86.096–10.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1998 or later model year Otto-cycle heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

12. A new section 86.098–11 is added to subpart A, to read as follows:

§ 86.098–11 Emission Standards for 1998 and Later Model Year Diesel Heavy-duty Engines.

(a) Exhaust emissions from new 1998 and later model year diesel heavy-duty engines shall not exceed the following:

(1)(i) *Hydrocarbons (for petroleum-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Organic Material Hydrocarbon Equivalent (for methanol-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(2) *Carbon monoxide.* (i) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(ii) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(3) *Oxides of Nitrogen.* (i) 4.0 grams per brake horsepower-hour (1.49 grams per megajoule), as measured under transient operating conditions.

(ii) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(4) *Particulate.* (i) For diesel engines to be used in urban buses, 0.05 gram per brake horsepower-hour (0.019 gram per megajoule) for certification testing and selective enforcement audit testing, and 0.07 gram per brake horsepower-hour (0.026 gram per megajoule) for in-use testing, as measured under transient operating conditions.

(ii) For all other diesel engines only, 0.10 gram per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(iii) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions

described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed:

(A) For engine families intended for use in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule).

(B) For engine families *not* intended for use in urban buses, 0.60 gram per brake horsepower-hour (0.22 gram per megajoule).

(C) The ceiling values in paragraphs (a)(4)(iii) (A) and (B) of this section apply whether credits for the family are derived from averaging, trading or banking programs.

(b)(1) The opacity of smoke emission from new 1998 and later model year diesel heavy-duty engine shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(3) *Evaporative emissions* (total of non-oxygenated hydrocarbons plus methanol) from 1998 and later model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed:

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs, 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs, 4.0 grams per test.

(4)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs, the standard set forth in paragraph (b)(3)(ii) of this section refers to the manufacturers engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1998 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or supercharges for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), (c), and (d) of this section.

13. Section 86.1105–87 of subpart L is amended by revising paragraph (d)(1) introductory text to read as follows:

§ 86.1105–87 Emissions Standards for Which Nonconformance Penalties Are Available.

* * * * *

(d) * * *

(1) Petroleum-fueled diesel bus engine (as defined in § 86.093–2) particulate emission standard of 0.10 grams per brake horsepower-hour.

* * * * *

[FR Doc. 93–5259 Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–P–M

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40 CFR Part 180

[OPP–300270A; FRL–4189–3]

RIN 2070-AB78

Methyl Methacrylate-2-Sulfoethyl Methacrylate-Dimethylaminoethyl Methacrylate-Glycidyl Methacrylate-Styrene-2-Ethylhexyl Acrylate Graft Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This regulation was requested by DowElanco.

EFFECTIVE DATE: This regulation becomes effective March 24, 1993.

ADDRESSES: Written objections, identified by document control number, [OPP-300270A], may be submitted to: Hearing Clerk (A110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711-I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 31, 1992 (57 FR 62540), EPA issued a proposed rule that gave notice that at the request of DowElanco, P.O. Box 1706, Midland, MI 48641-1706, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), proposed to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on information considered by EPA and discussed in detail in the December 31, 1992 proposal and in this final rule, EPA is establishing the exemption from the requirment of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is

requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat 1164; 5 U.S.C. 601 *et seq.*), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 9, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer (minimum average molecular weight 9,600).	.....	Carrier
* * * * *		

* * * * *

[FR Doc. 93-6388 Filed 3-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E3844/R1131; FRL-3946-8]
RIN 2070-AB78

Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone (also referred to as clomazone) in or on the raw agricultural commodity winter squash. This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective March 24, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3844/R1131], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 1, 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1991 (56 FR 42574), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3844 to EPA on behalf of the IR-4 and the Agricultural Experiment Stations of New Jersey, North Carolina, and Tennessee.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity winter squash at 0.1 part per million (ppm).

There were no requests for referral to an advisory committee received in response to the proposed rule.

However, one comment was received opposing the proposed establishment of the tolerance in or on winter squash. The commenter, generally, asserts that EPA has failed to conclude that the tolerance would be protective of the public health. EPA disagrees. The proposed rule states, and supports by analysis, that the tolerance would result in a negligible increase in dietary exposure to residues of clomazone. The tolerance process is highly protective in that it is based on the most sensitive animal test results available and a combination of highly conservative assumptions and risk assessment practices.

The commenter asserts that the tolerance is unnecessary since there is "no actual demonstrated need" for the proposed use of clomazone in order to produce an adequate or safe food supply and no emergency condition which is uncontrollable with herbicides for

which tolerances already exist. The commenter implies that EPA should not allow the tolerance or use of clomazone on winter squash unless EPA can "conclusively and effectively" demonstrate that other herbicides, already registered and with tolerances for winter squash, are inadequate to provide for a safe and reliable supply of that food commodity.

EPA believes that the commenter has incorrectly interpreted the standard for approval of tolerances under FFDCA section 408. EPA construes the requirement in sec. 408 to consider the "necessity for the production of an adequate, wholesome, and economical food supply" to prevent the Agency from denying a tolerance solely on the basis of a calculation of the risks posed by pesticide residues on agricultural products. Instead, the Agency must balance these risks against the benefits of the pesticide for food production. The commenter's reading of the FFDCA would negate this balancing by preventing issuance of a tolerance solely on the basis of failure of the pesticide to meet one possible aspect of the benefits consideration, i.e., essentiality. Although essential pesticides would clearly provide large benefits for food production, the statute in no way suggests that only essential pesticides provide benefits worthy of consideration in the risk/benefit weighing mandated by section 408.

This construction of FFDCA sec. 408 is supported by sec. 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA must consider the provisions of the FFDCA and the FIFRA together and construed in a manner that is harmonious if possible, given EPA's overlapping responsibilities under the two statutes—to regulate the use of pesticides under FIFRA and to regulate pesticide residues in food under FFDCA. FIFRA sec. 3(c)(5) provides in part the following:

> The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other. * * *

If EPA were to deny a pesticide tolerance under FFDCA solely because there are other adequate pesticides for the affected crop, EPA's registration decisions under FIFRA would be negated by the tolerance determination. Thus, the FIFRA language on essentiality would become a nullity.

The commenter is further concerned that the tolerance would allow the unnecessary introduction of clomazone residues into the environment and ground and surface waters of the U.S.

The Agency points out that the FFDCA is not the mechanism through which EPA considers pesticide effects on public health that occur through other than dietary routes. FFDCA section 408 only refers to tolerances on raw agricultural commodities. Other pesticidal effects are appropriately considered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) when a pesticide is registered. Under sec. 4(c)(5) of FIFRA, the Agency registers a pesticide, generally, if it will not cause "unreasonable adverse effects on the environment." FIFRA sec. 2(j) defines "environment" to include "water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these."

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.425 is amended in the table therein by adding and alphabetically inserting the raw agricultural commodity winter squash, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodity	Parts per million
• • • • •	
Squash, winter	0.1
• • • • •	

[FR Doc. 93-6727 Filed 3-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1E3926/R1133; FRL-3947-1]
RIN 2070-AB78

Pesticide Tolerances for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the fungicide metalaxyl and its metabolites in or on the raw agricultural commodity ginseng. This regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity

was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective March 24, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 1E3926/R1133], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 1, 6th Floor, CS #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1991 (56 FR 42577), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 1E3926 to EPA on behalf of the Agricultural Experiment Stations of North Carolina and Virginia.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the fungicide metalaxyl, [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxy methyl-6-methyl)-N-(methoxyacetyl)-alanine methyl ester, in or on the raw agricultural commodity ginseng at 3.0 parts per million.

There were no requests for referral to an advisory committee received in response to the proposed rule.

However, one comment was received opposing the proposed establishment of the tolerance in or on ginseng. The commenter, generally, asserts that EPA has failed to conclude that the tolerance would be protective of the public health. EPA disagrees. The proposed rule states, and supports by analysis, that the tolerance would result in a negligible increase in dietary exposure to resiudes of metalaxyl. The tolerance process is highly protective in that it is based on the most sensitive animal test results available and a combination of highly conservative assumptions and risk assessment practices.

Specifically, the commenter asserts that EPA has not concluded that metalaxyl is useful for the purpose for which the tolerance is sought and that the tolerance is unnecessary since there is "no actual demonstrated need" for the proposed use of metalaxyl in order to produce an adequate or safe food supply and no emergency condition which is uncontrollable with fungicides for which tolerances already exist. The commenter implies that EPA should not allow the tolerance or use of metalaxyl on ginseng unless EPA can "conclusively and effectively" demonstrate that other fungicides, already registered and with tolerances for ginseng, are inadequate to provide for a safe and reliable supply of that food commodity.

EPA believes that the commenter has incorrectly interpreted the standard for approval of tolerances under FFDCA sec. 408. EPA construes the requirement in sec. 408 to consider the "necessity for the production of an adequate, wholesome and economical food supply" to prevent the Agency from denying a tolerance solely on the basis of a calculation of the risks posed by pesticide residues on agricultural products. Instead, the Agency must balance these risks against the benefits of the pesticide for food production. The commenter's reading of the FFDCA would negate this balancing by preventing issuance of a tolerance solely on the basis of failure of the pesticide to meet one possible aspect of the benefits consideration, i.e., essentiality. Although essential pesticides would clearly provide large benefits for food production, the statute in no way suggests that only essential pesticides provide benefits worthy of consideration in the risk/benefit weighing mandated by section 408.

This construction of FFDCA sec. 408 is supported by sec. 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA must consider the provisions of the FFDCA and the FIFRA together and construed in a manner that is harmonious, if possible, given EPA's overlapping responsibilities under the two statutes—to regulate the use of pesticides under FIFRA and to regulate pesticide residues in food under FFDCA. FIFRA sec. 3(c)(5) provides in part the following:

> The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other. * * *

If EPA were to deny a pesticide tolerance under FFDCA solely because there are other adequate pesticides for the affected crop, EPA's registration decisions under FIFRA would be negated by the tolerance determination. Thus, the FIFRA language on essentiality would become a nullity.

The commenter is also concerned that the tolrance would allow the unnecessary introduction of metalaxyl residues into the environment and ground and surface waters of the U.S.

The Agency points out that the Federal Food, Drug, and Cosmetic Act (FFDCA) is not the mechanism through which EPA considers pesticide effects on public health that occur through other than dietary routes. FFDCA section 408 only refers to tolerances on raw agricultural commodities. Other pesticidal effects are appropriately considered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) when a pesticide is registered. Under sec. 3(c)(5) of FIFRA, the Agency registers a pesticide, generally, if it will not cause "unreasonable adverse effects on the environment." FIFRA sec. 2(j) defines "environment" to include "water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these."

The commenter is further concerned, in the case of metalaxyl on ginseng, that EPA's conclusion concerning utilization of RfD for the overall population and resulting negligible nature of the dietary population exposure "fails to take into account of the unusual consumptive patterns connected with the use of ginseng in certain portions of the population."

Before making tolerance decisions on a pesticide, EPA uses a Dietary Risk Evaluation System (DRES) to calculate the theoretical maximum residue contribution and risk estimates for the general population and a number of subgroups. If the DRES analysis indicates that exposure, and thus estimated risk, to a subgroup is so high that adverse effects are likely to occur, the Agency will not approve a tolerance even if the estimated risks to the average population are acceptable. None of the population subgroups examined in EPA's DRES analysis had consumption patterns that raised risk concerns from metalaxyl on ginseng assumed that metalaxyl would be present on all ginseng consumed at the tolerance level. This is a very conservative assumption. Metalaxyl is unlikely to be used on all ginseng, and studies have shown that the level of residues on foods, when they reach the consumer, is typically well below the established tolerance level. Accordingly, EPA believes that the tolerance is protective of public health.

It also appears that the commenter is asserting that a certification of usefulness under section 408(l) is required before EPA may issue a tolerance regulation for metalaxyl on ginseng. This is incorrect. The metalaxyl tolerance is issued in response to a petition pursuant to section 408(e) of the FFDCA on behalf of the Agricultural Experiment Stations of North Carolina and Virginia. Tolerances issued in response to section 408(e) petitions, from persons other than registrants of the pesticides, do not require certifications of usefulness. Moreover, EPA believes the tolerance is protective of public health in view of the negligible increase in dietary exposure even assuming metalaxyl is present on all ginseng consumed.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408(a) is amended in the table therein by adding and alphabetically inserting the raw agricultural commodity ginseng, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Ginseng	3.0
* * * * *	

* * * * *

[FR Doc. 93-6730 Filed 3-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-4607-9]

Guam; Final Authorization of Territorial Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The Territory of Guam has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Guam's application and has made a decision, subject to public review and comment, that Guam's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Guam's hazardous waste program revisions. Guam's application for program revision is available for public review and comment.

DATES: Final authorization for Guam shall be effective May 24, 1993, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Guam's program revision application must be received by the close of business April 23, 1993.

ADDRESSES: Copies of Guam's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Guam Environmental Protection Agency, Solid and Hazardous Waste Management, Harmon Plaza, Complex Unit D-107, 103 Rojas Street, Harmon, Guam 96911, Phone: (671) 646-8863/4/5.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-1510.

Written comments should be sent to April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, California 94105, Phone: 415/744-2026.

FOR FURTHER INFORMATION CONTACT: April Katsura at 415/744-2030 and the address listed in the **ADDRESS** section.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260 through 266, 268, 124 and 270.

B. Guam

Guam initially received final authorization on January 27, 1986. Guam received authorizations for revisions to its program on May 22, 1989, August 11, 1989, March 3, 1992, and March 18, 1992. On February 1,

1993, Guam submitted a program revision application for additional program approvals. Today, Guam is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Guam's application, and has made an immediate final decision that Guam's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Guam. The public may submit written comments on EPA's immediate final decision up until April 23, 1993. Copies of Guam's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Guam's program revision shall become effective in 60 days unless an adverse comment pertaining to the Territory's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Guam is applying for authorization for the following Federal hazardous waste regulations:

Federal responsibility	Territory authority
Settlement Agreement (53 FR 7740, March 10, 1988)	10 Guam Code Annotated (GCA) §51103(a)(8) & (11); Hazardous Waste Management Regulations (HMWR) Parts II.B+C, VI.A+B, VII.A+B, and X.A+B.
Listing of Spent Pickle Liquor (K062) (51 FR 33612, September 22, 1986; 52 FR 28697, August 3, 1987).	10 GCA §51103(a)(8) & (11); HWMR Part III.A+B.
Amendments to Part B Information Requirements for Land Disposal Facilities (52 FR 33936, September 9, 1987).	10 GCA §51103(a)(8) & (11); HWMR Part X.A+B.
Exception Reporting for Small Quantity Generators of Hazardous Waste (52 FR 35894, September 23, 1987).	10 GCA §51103(a)(8) & (11); HWMR Part IV.A,B,J+K.
Permit Application Requirements Regarding Corrective Action (52 FR 45788, December 1, 1987).	10 GCA §51103(a)(8) & (11); HWMR Part X.A+B.
Corrective Action Beyond the Facility Boundary (52 FR 45788, December 1, 1987).	10 GCA §51103(a)(8) & (11); HWMR Part VI.A,B+G.
Corrective Action for Injection Wells (52 FR 45788, December 1, 1987)	10 GCA §51103(a)(8) & (11); HWMR Parts VII.A+B and X.A+B.
Permit Modification (52 FR 45788, December 1, 1987)	10 GCA §51103(a)(8) & (11); HWMR Part X.A+B.
Permit as a Shield Provision (52 FR 45788, December 1, 1987)	10 GCA §51103(a)(8) & (11); HWMR Part X.A+B.
Permit Conditions to Protect Human Health and the Environment (52 FR 45788, December 1, 1987).	10 GCA §51103(a)(8) & (11); HWMR Part X.A+B.
Post-Closure Permits (52 FR 45788, December 1, 1987)	10 GCA §51103(a)(8) & (11); HWMR Part X.A,B+C.
Identification and Listing of Hazardous Waste: Technical Correction (53 FR 27162, July 19, 1988).	10 GCA §51103(a)(8) & (11); HWMR Part III.A,B+G.
Farmer Exemption: Technical Corrections (53 FR 27164, July 19, 1988)	10 GCA §51103(a)(8) & (11); HWMR Parts IV.A+B, VI.A+B, VII.A+B, IX.A, and X.A+B.
Delay of Closure Period for Hazardous Waste Management Facilities (54 FR 33376, August 14, 1989).	10 GCA §51103(a)(8) & (11); HWMR Parts VI.A+B, VII.A+B, and X.A+B.
Mining Waste Exclusion I (54 FR 36592, September 1, 1989)	10 GCA §51103(a)(8) & (11); HWMR Part III.A+B.
Testing and Monitoring Activities (54 FR 40260, September 29, 1989)	10 GCA §51103(a)(8) & (11); HWMR Parts II.A–D and III.A+B.
Reportable Quantity Requirement Methyl Bromide Production Wastes (54 FR 41402, October 6, 1989).	10 GCA §51103(a)(8) & (11); HWMR Part III.A+B.
Reportable Quantity Adjustment (54 FR 50968, December 11, 1989)	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Changes to Part 124 Not Accounted for by Present Checklists (48 FR 14146, April 1, 1983; 48 FR 30113, June 30, 1983; 53 FR 28118, July 26, 1988; 53 FR 37396, September 26, 1988; 54 FR 246, January 4, 1989).	10 GCA §521103(a)(8) & (11); HWMR Part XI.A,C,D,E,I+K.
Mining Waste Exclusion II (55 FR 2322, January 23, 1990)	10 GCA §521103(a)(8) & (11); HWMR Parts II.A–D. III.A+B, and IV.A+B.
Modification of FO19 Listing (55 FR 5340, February 14, 1990)	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Testing and Monitoring Activities; Technical Corrections (55 FR 8948, March 9, 1990).	10 GCA §521103(a)(8) & (11); HWMR Parts II.A–D and III.A+B.
Listing of 1,1–Dimethylhydrazine Production Wastes (55 FR 18496, May 2, 1990).	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Criteria for Listing Toxic Wastes; Technical Amendment (55 FR 18726, May 4, 1990).	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
HSWA Codification Rule, Double Liners; Correction (55 FR 19262, May 9, 1990).	10 GCA §521103(a)(8) & (11); HWMR Part VI.A+B.
Organic Air Emission Standards for Process Vents and Equipment Leaks (55 FR 25454, June 21, 1990).	10 GCA §521103(a)(8) & (11); HWMR Parts II.A–D, III.A,B+I, VI.A+B, VII.A+B and X.A+B.
Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (FO37 and FO38) (55 FR 46354, November 2, 1990; 55 FR 51707, December 17, 1990).	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Wood Preserving Listings (55 FR 50450, December 6, 1990)	10 GCA §521103(a)(8) & (11); HWMR Parts III.A–D, III.A+B, IV.A+B, VI.A+B, VII.A+B, and X.A+B.
Toxicity Characteristics; Hydrocarbon Recovery Operations (56 FR 5910, February 13, 1991).	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Burning of Hazardous Waste in Boilers and Industrial Furnaces (56 FR 7134, February 21, 1991).	10 GCA §521103(a)(8) & (11); HWMR Parts II.A–D, III.A+B, VI.A+B, VII.A+B, VIII.A, and X.A+B.
Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment (56 FR 7567, February 25, 1991).	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.

Federal responsibility	Territory authority
Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment (56 FR 19290, April 26, 1991).	10 GCA §521103(a)(8) & (11); HWMR Parts VI.A+B, VII.A+B and X.A+B.
Administrative Stay for K069 Listing (56 FR 19951, May 1, 1991)	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Revision to FO37 and FO38 Listings (56 FR 21955, May 13, 1991)	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Mining Exclusion III (56 FR 27300, June 13, 1991)	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B.
Administrative Stay for FO32, FO34 and FO35 Listings (56 FR 27332, June 13, 1991).	10 GCA §521103(a)(8) & (11); HWMR Part III.A+B, VI.A+B and VII.A+B.
Sharing of Information with the Agency for Toxic Substances and Disease Registry (HSWA 3019(b)).	5 GCA §§ 10101–10104.
Hazardous and Used Oil Fuel Criminal Penalties (HSWA 3006(h), 3008(d) and 3014).	10 GCA §51113(c).
Land Disposal Restrictions (51 FR 40572, November 7, 1986; 52 FR 21010, June 4, 1987; 52 FR 25760, July 8, 1987; 52 FR 41295, October 27, 1987; 53 FR 31138, August 17, 1988; 54 FR 8264, February 27, 1989; 54 FR 18836, May 2, 1989; 54 FR 26594, June 23, 1989; 54 FR 36967, September 6, 1989; 55 FR 22520, June 1, 1990; 55 FR 23935, June 13, 1990; 56 FR 3864, January 31, 1991).	10 GCA §521103(a)(8) & (11); HWMR Parts III.A+B, IV.A+B, VIII.A, IX.A,B,C+D and X.A+B.
Toxicity Characteristic Revisions (55 FR 11798, March 29, 1990; 55 FR 26986, June 29, 1990; 55 FR 40834, October 5, 1990; 56 FR 3978, February 1, 1991; 56 FR 5910, February 13, 1991; 56 FR 13406, April 2, 1991).	10 GCA §521103(a)(8) & (11); HWMR Parts III.A+B, VI.A+B, VII.A+B and IX.A+B.

Guam will not have issued any Territorial hazardous waste permits prior to being authorized for the above program revisions. The Territorial program does not include jurisdiction over Indian Lands; there are no Indian Lands on Guam.

C. Decision

I conclude that Guam's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Guam is granted final authorization to operate its hazardous waste program as revised. Guam has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984. Guam also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Guam's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the Territory. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 16, 1993.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 93–6723 Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 761 and 763

[OPPTS–00130; FLR 4187–5]

Nomenclature Changes for the Polychlorinated Biphenyls and Asbestos Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing nomenclature changes to the polychlorinated biphenyl (PCB) and asbestos regulations under the Toxic Substances and Control Act (TSCA). These nomenclature changes are necessary because of the reorganization of the Office of Pollution Prevention and Toxics (OPPT) on October 4, 1992. Changes are being made to 40 CFR parts 761 and 763.

EFFECTIVE DATE: The amendments to parts 761 and 763 as set forth in this Notice are effective on March 24, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under general rulemaking authority, 5 U.S.C. 552, EPA is issuing this technical amendment to make nomenclature changes to the regulations in 40 CFR part 761 and to update information resources listed at 40 CFR part 763.

In part 761, EPA is changing the names of the Exposure Evaluation Division and the Chemical Regulation Branch to the Chemical Management Division and the Operations Branch, respectively. References throughout part 761 to either the Director, Exposure Evaluation Division or Director, EED are being replaced with references to Director, Chemical Management Division and Director, CMD, respectively. References to the Chemical Regulation Branch at § 761.205 are being replaced with references to the Operations Branch.

Additionally, the toll free telephone number cited in 40 CFR part 763 for obtaining documents on analyzing asbestos bulk samples, reducing asbestos exposure, and asbestos-containing materials in schools has been changed. These materials may now be

obtained by calling (202) 554–1404. The toll free telephone number for obtaining a list of laboratories capable of conducting analyses of friable materials has also been changed. This material is now available from the National Voluntary Accreditation Program of the National Institute of Science and Technology at (301) 975–4016.

EPA is promulgating this technical amendment as an immediately effective final rule. Because this rule makes no changes in substantive requirements, EPA believes that notice and an opportunity for comment are unnecessary. Similarly, EPA finds, for good cause, that the rule should take effect on the date of publication, rather than being delayed for 30 days, because the rule does not modify any substantive requirements and essentially only affects internal Agency processing within OPPT.

I. Public Record

A public record for the action has been established under docket number "OPPTS–00130." The public record is available for inspection from 8 am to 12 noon, and 1 pm to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in the OPPT Public Docket Room, Room G004, Northeast Mall, 401 M St., SW., Washington, DC 20460. The public record for this action consists of a copy of this document and a copy of the document, "Reorganization for the Office of Pollution Prevention and Toxics."

II. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to determine whether a rule is "major" and subject to a Regulatory Impact Analysis. EPA has determined that this action is not major as that term is defined in section 1(b) of Executive Order 12291, and that it will not have any impact on the economy.

This rule was not submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

EPA has determined that this rule is not subject to review under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

C. Paperwork Reduction Act

EPA has determined that this rule is not subject to OMB review under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Incorporation by reference, Occupational health and safety, Recordkeeping, Schools.

Dated: March 17, 1993.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

Therefore, based on the general rulemaking authority in 5 U.S.C. 552, 40 CFR parts 761 and 763 are amended as follows:

PART 761—[AMENDED]

1. In part 761:

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

§§ 761.30, 761.60 and 761.70 [Amended]

b. In §§ 761.30, 761.60 and 761.70 by revising "Director, Exposure Evaluation Division" wherever it appears to read "Director, Chemical Management Division".

§ 761.65 [Amended]

c. By revising "Director, EED" and "Director of the Exposure Evaluation Division" to read "Director, CMD" and "Director of the Chemical Management Division", respectively, wherever the terms appear in § 761.65.

§ 761.205 [Amended]

d. By revising "Chemical Regulation Branch" to read "Operations Branch" wherever it appears in § 761.205(a)(3) and (d).

PART 763—[AMENDED]

2. In part 763:

a. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

§ 763.109 [Amended]

b. By revising § 763.109 to read as follows:

§ 763.109 Analyzing friable material.

Local education agencies shall have all samples of friable material analyzed for asbestos using Polarized Light Microscopy (PLM), supplemented where necessary by X-ray Diffraction, in accordance with "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples," which is found under appendix A of this Subpart. Persons interested in analyzing bulk samples for asbestos can obtain copies of the document by calling 202–554–1404. A list of laboratories capable of conducting analyses of friable materials can be obtained by calling the National Voluntary Accreditation Program of the National Institute of Science and Technology at 301–975–4016. Officials should consult "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, Chapter 6, for further information on analysis of friable materials.

§ 763.114 [Amended]

c. By revising the telephone number "800–424–9065" to read "202–554–1404" wherever it appears in § 763.114(a)(5).

[FR Doc. 93–6729 Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 58, No. 55
Wednesday, March 24, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AE36

Modifications to Fitness-for-Duty Program Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to modify current Fitness-for-Duty Program (FFD) requirements. The proposed amendments would apply to all licensees authorized to construct or operate a nuclear power reactor pursuant to 10 CFR part 50. The proposed rule is intended to permit licensees to reduce the random testing rate for licensee employees but maintain the 100 percent random testing rate for contractor and vendor employees.

DATES: The comment period expires June 22, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 am and 4:15 pm on Federal workdays.

Copies of SECY–92–271, the draft regulatory analysis, and the comments received may be examined at: the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Copies of NUREG/CR–5758 (Volumes 1 and 2) and NUREG/CR–5784 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Loren L. Bush, Jr., Reactor Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–2944.

SUPPLEMENTARY INFORMATION:

Background

The NRC is proposing to amend its regulations governing "Fitness-for-Duty Programs," as part of its continuing effort to improve its regulations.

The NRC has reviewed experiences gained since publication of the current rule on June 7, 1989 (54 FR 24468) and implementation by power reactor licensees on January 3, 1990. The NRC has determined that it is appropriate to permit a reduction in the random testing rate for utility employees but maintain the 100 percent random testing rate for contractors and vendors.

During the FFD rulemaking process, the NRC had specifically invited the public to comment on the rates of random testing (53 FR 36795 at 36796; September 22, 1988). Public comments strongly opposed a proposed 300 percent rate; the Nuclear Management and Resources Council (NUMARC) and most licensees proposed a 100 percent rate. These commenters also recommended that this rate be reevaluated on the basis of utility experience and be reduced to 25 percent, if warranted (54 FR 24468 at 24472; June 7, 1989). As a result, the Commission indicated that it would consider reducing testing rates after several years if it obtained information that experience in the industry with the existing rate had been positive (54 FR 24468 at 24474; June 7, 1989). On November 7, 1991, the Commission directed the staff to report on work that has been done on the deterrent effect of different testing rates with recommendations of the applicability of the work to the nuclear industry.

SECY–92–271 informed the Commission that no research exists that directly addresses the issue of whether reducing the random testing rate affects the deterrent effect of drug testing and presented options for consideration by the Commission. On October 20, 1992, the Commission instructed the staff to prepare a change to 10 CFR part 26 that would permit licensees to randomly test their employees at a rate equal to 50 percent.

Discussion

The purpose of random testing was discussed in the **Federal Register** in the Commission's notice of proposed rulemaking published on September 22, 1988 (53 FR 36795 at 36810). An extract of that discussion follows:

"The purpose of random (unannounced) testing is to provide reasonable assurance that employees are fit for duty by identifying current drug users and by deterring drug users from further use or potential users from initial use. The frequency with which an individual is tested is relevant to both the identification and deterrence goals of the drug testing program. Generally, the more frequent the testing, the greater the deterrent effect and the better the detection capabilities. However, very frequent testing may result in unacceptable economic or social costs. Although there is no research upon which the testing frequency may be based, it seems reasonable to assume that:

- Any form of unannounced testing would provide some level of deterrence.
- There would be little deterrent if the testing dates were predictable and the drug user knew he was not immediately susceptible to another test.
- Testing each day would provide more of a deterrent than testing once each week or month, especially if the daily activity was highly visible.
- Deterrence is related to either the actual or perceived probability of detection.
- The actual probability of detection is related to the type of drug, dose, frequency of use, rate of metabolism and excretion from the body, and the frequency of testing.
- The perceived probability of detection is related to the frequency of testing, the "publicity" given positive findings and sanctions imposed, and the abuser's knowledge of the rate of metabolism and actual probability of detection."

The NRC recognizes that not all workers are deterred and that random testing does contribute significantly to the detection of substance abuse by those few who are not deterred. The workforce may be divided into three

groups concerning the deterrent effect of random testing.

- The vast majority of workers do not abuse substances because of any of several reasons, usually concerns for health. Random testing does not influence the behavior of this group. There would be no deterrent effect.
- A small percentage of workers are chronic abusers. Random testing would have little, if any, influence on this group. There would be no deterrent effect. Random testing would eventually detect these people.
- An unknown percentage of workers are, or could be tempted to be, occasional users and may be able to abstain if properly encouraged. The deterrence effect of random testing would cause them to refrain from initial use or to modify their behavior if they are occasional users. Random testing would have the greatest influence on this group.

The random testing rate has been an issue with other Federally regulated or administered random testing programs. The issue is the balancing of program goals. The optimal random drug testing program is one that maximizes both detection and deterrence of substance abuse while minimizing monetary and social costs (e.g., adverse impacts on employee morale). To maximize detection, other factors remaining constant, it is assumed that more testing will result in more detection. In maximizing deterrence, random testing rates have been influenced by assumptions that the probability of being selected for testing would have a deterrent effect and that the higher the testing rate the greater the deterrent effect (although the incremental deterrent effect would likely diminish as test rates increase). These assumptions are based on both intuition and earlier efforts by the Department of Defense that indicated a greater deterrent effect at higher random testing rates. In minimizing monetary and social costs when establishing a minimum random testing rate, factors such as the level of intrusion on an individual's privacy and the incremental costs of additional testing are considered. In attempting to establish optimal testing rates that are reasonable and consistent with each agency's unique needs, Federal agencies have established programs with random testing rates that vary from 4 percent to 200 percent.

Perceptions of risk are believed to play a large role in deterring substance abuse. For example, from studies of drunk driving and deterrence measures, researchers conclude that the risk of incurring strong sanctions appears to have a strong deterrent effect on substance abuse. In addition, research on human decisionmaking and risk assessment suggests that an individual's perceptions of the risk of being tested and the risk of drug use being detected are not based on rational calculations of probabilities alone. Individuals tend to overestimate the likelihood of low probability events (being selected for testing) and tend to incorporate into their decisionmaking the information that is most easily recalled.

Deterrence is believed to be a function of the perceived risk of being detected, the severity of the sanction, and the swiftness with which it is applied compared with the gratification derived from the illicit behavior. Several conclusions may be drawn from review of the available literature:

(1) The deterrent effect of random drug and alcohol testing programs may not be sensitive to incremental adjustments in random test rates. While random testing remains critical in deterring drug abuse, it is only one of the forces acting to deter drug use. Other important factors include the elements of a broadbrush program (e.g., awareness training, pre-access and for-cause testing, behavioral observation, counseling, and removals) as well as organizational and workforce demographic factors and drug-specific factors.

(2) Assuming equal testing rates and procedures, there will be a greater deterrent effect when the risks of drug abuse—including the probability of detection—are well understood than when they are not.

(3) Some users will remain undeterred. Based on the findings of the military and research on drunk drivers, some part of the population continues to abuse drugs or alcohol even when detection and sanctions are highly certain. Regardless of the random testing rate, some users may not cease their drug use under any condition. Thus, other program elements, such as behavioral observation, for-cause testing, and employee assistance programs, are important to provide additional assurances to detect and remove chronic drug abusers from the workforce. However, a higher random testing rate would more rapidly detect these undeterred users (see Appendix C to NUREG/CR–5784).

Studies on random testing have found that higher testing and discharge rates may result in higher overall detection of drug abuse in the workforce (see Durbin, et al., 1991). In terms of deterrence, continued drug use by identified users has been shown to be a substantial factor in overall drug use rates, suggesting that a substantial number of those testing positive for drugs are not deterred (Osborn & Sokolov, 1990; Stoloff, 1985).

The NRC considered several alternatives in determining the appropriate random drug testing rate for the nuclear power industry. The NRC considered conducting a study that would reduce the random testing rate of some licensees to 50 percent (experimental sites) and analyze that data against the data of licensees who would continue a 100 percent testing rate (control sites). The experiment would have to run for several years to allow for delayed effects caused by adjusted testing rates and to obtain a sufficient number of test results. The design of the study and the analysis of the results would have taken an additional year. The NRC has decided not to conduct such a study because: (i) The relatively long period of time required to collect and analyze the data would delay the Commission's action on this issue, and (ii) variables from site to site could mask any statistical differences between data from two test groups in the small absolute number of expected positive tests.

The NRC considered conducting an attitudinal study which would attempt to show worker attitudes toward, and their understanding of, random testing. It was hoped that this study would provide a better understanding of how this particular component of the FFD program deters substance abuse and would help determine whether the perceived deterrent effect varies as the rate of random testing varies. The NRC has decided not to conduct this study because:

(i) The appreciable time that would be required to design and administer the survey and obtain OMB approval would delay the Commission's action on the issue, (ii) the study would tap worker attitudes rather than their behavior, and (iii) the results of the survey, by themselves, would not provide a solid basis for changes in the random testing rate.

The NRC also considered awaiting and evaluating the results of the Federal Railroad Administration's test program (56 FR 22905; May 17, 1991) which is now expected to be completed in late 1993. The NRC has decided not to await the results of this study because several factors may limit the application of the study to the nuclear industry:

(i) The railroad industry has fewer units (i.e., there are fewer carriers than there are utilities) and more employees per unit than the nuclear power industry;

(ii) The flexibility provided in part 26 regarding cutoff levels, sanctions, and so forth suggests a potential for substantial variability of the deterrent effects within the nuclear power industry;

(iii) A rail line's employees are located across the country and, thus, are subject to a range of local drug-use patterns and contexts. By contrast, the employees of a particular nuclear power plant tend to be located within a single geographic region, with one prevailing set of local drug-use patterns; and

(iv) The recently reported rate of substance abuse detected through random testing in the railroad industry is quadruple that in the nuclear power industry (approximately 1 percent as against 0.25 percent for power reactor licensee employees for the first 2 years).

Taking into account the uncertainties involved and the low rate of positive tests, the NRC has concluded that lowering the random testing rate from 100 percent to 50 percent would cause little, if any, decrease in the deterrent effect of random testing when applied to licensee employees, and that the rate of positive random tests for licensee employees is not likely to increase. However, experiences with random testing gained since publication of the rule have shown contractor and vendor employees testing positive at a rate approximately double that for licensee employees. Because of the higher rate of positive tests for contractor and vendor employees, the NRC is not proposing, at this time, to lower the rate for that population. See chart.

RANDOM TESTING

	1990 #tests/# positive	1991 #tests/# positive	2-year totals #tests/# positive	2-year positive rate (percent)
Long-Term Contractors/Vendors	8,910/044	7,500/023	16,410/067	0.41
Short-Term Contractors/Vendors	39,596/229	45,277/267	84,873/496	.58
All Contractors/Vendors	48,506/273	52,777/290	101,283/563	[1].56
Licensee Employees	100,237/277	101,041/220	201,278/497	[2].25

[1] The range for contractor employees during CY 1991 was between 0% and 1.53%, with 7 sites having rates greater than 1.0%
[2] The range for licensee employees during CY 1991 was between 0% and 0.87%, with 5 sites having rates higher than 0.5%.

In conclusion, the NRC believes that the fitness-for-duty program can be revised to permit licensees to lower the random testing rate for licensee employees without significant impact on the overall effectiveness of the program. Therefore, the Commission is proposing that § 26.24(a)(2) be modified to permit licensees to randomly test their employees at an annual rate equal to at least 50 percent. This would not preclude licensees from testing the employee workforce, or portions thereof, at a higher rate. For the present, the minimum rate of testing for contractor and vendor employees, whether under the licensee's program or an approved contractor or vendor program will remain at 100 percent. The NRC will continue to monitor implementation of the rule and will modify the rule in response to industry experience, advances in technology, or other considerations to ensure that the rule is achieving the general performance objectives set forth in 10 CFR 26.10.

Assuming that the deterrent effect of the 50 percent random testing rate were to be about the same as that for a 100 percent rate, the proposed rule could result in a reduction in the number of cases of drug and alcohol use by licensee employees detected each year through random testing. Recognizing this potential reduction in individuals being detected, the NRC is specifically interested in comments as to whether certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators, should be excluded from any reduction of the random testing rate.

Bibliography

Durbin, N., Moore, C., Grant, T., Fleming, T., Hunt, P., Martin, R., Murphy, S., Hauth, J., Wilson, R., Bittner, A., Bramwell, A., Macaulay, J., Olson, J., Terrill, E., & Toquam, J. (1991). "Fitness for Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues (NUREG/CR–5784)," Washington, DC: Nuclear Regulatory Commission.

Osborne, C.E., & Sokolov, J.J. (1990). "Drug Use Trends in a Nuclear Power Facility: Data From a Random Screening Program." In S.W. Gust, J.M. Walsh, L.B. Thomas, and D.J. Crouch, (Eds.), Drugs in the Workplace: Research and Evaluation Data, Volume II. NIDA Research Monograph No. 100. Rockville, MD: National Institute on Drug Abuse, 25–43.

Stoloff, P.H. (1985). The Effectiveness of Urinalysis as a Deterrent to Drug Use, p.11, Washington, DC: Department of the Navy.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Since the proposed rule would reduce the random drug testing rate for licensee employees from 100 percent to 50 percent, public reporting and recordkeeping burden for the collection of information is expected to be reduced. The resulting reduction in burden is estimated to average 146 hours per site, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for further reducing reporting burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed rule. The analysis examines the benefits, cost savings, and costs of the alternatives considered by the Commission. The draft analysis is available for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Single copies of the analysis may be obtained from Loren L. Bush, Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants and activities associated with the possession or transportation of Category I material. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards issued by the Small Business Administration in 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not impose more stringent safety requirements on 10 CFR part 50 licensees.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements, Sanctions.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 26.

PART 26—FITNESS FOR DUTY PROGRAMS

1. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 26.24, paragraph (a)(2) is revised to read as follows:

§ 26.24 Chemical testing.

(a) * * *

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing of contractor and vendor employees must be conducted at an annual rate equal to at least 100 percent of that workforce. Random testing of licensee employees must be conducted at an annual rate equal to at least 50 percent of that workforce.

* * * * *

Dated at Rockville, Maryland, this 18th day of March, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–6680 Filed 3–23–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–221–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires the implementation of a Structural Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. This action would, among other things, revise the existing SID sampling program to include some new inspection procedures for certain Principal Structural Elements (PSE). This proposal is prompted by new data submitted by the manufacturer indicating that certain revisions to the SID program are necessary in order to increase the confidence level of the statistical program to ensure timely detection of fatigue cracks in PSE's. The actions specified by the proposed AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: Comments must be received by May 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications

received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–221–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 27, 1991, the FAA issued AD 92–02–08, Amendment 39–8144 (57 FR 3931, February 3, 1992), to require structural inspections to detect fatigue cracking, reporting of the inspection results, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. That action was prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in Principal Structural Elements (PSE's). The requirements of that AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

Since the issuance of that AD, the manufacturer has issued McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Volume I, Revision 3, dated December 1992; Volume II, Revision 3, dated December 1992; and Volume III–92, dated October 1992. This revision of the SID revises the sampling program by:

a. Clarifying some PSE titles;

b. Moving portions of some PSE's under a different PSE designator;

c. Clarifying some non-destructive inspection (NDI) procedures;

d. Including some new NDI procedures for previously existing PSE's; and

e. Updating the planning data contained in Volume III.

The FAA has reviewed and approved the revised SID and has determined that these revised procedures must be incorporated into the affected operators' SID programs in order to provide an acceptable level of confidence that cracks in PSE's do not exist in the fleet.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–02–08 to clarify some PSE titles and NDI procedures, add certain new NDI procedures for previously existing PSE's, and update the planning data. The actions would be required to be accomplished in accordance with the revised SID described previously.

There are approximately 426 Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 269 airplanes of U.S. registry and 10 U.S. operators would be affected by this proposed AD. Incorporation of the SID program into an operator's maintenance program, as required by AD 92–02–08, is estimated to necessitate 1,250 work hours (per operator), at an average labor cost of $55 per work hour. Based on these figures, the cost to the 10 affected U.S. operators to incorporate the SID program is estimated to be $687,500.

The incorporation of the additional procedures proposed in this AD action would require approximately 20 additional work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 10 affected U.S. operators to incorporate these additional procedures into the SID program into an operator's maintenance program is estimated to be $11,000.

The recurring inspection costs, as required by AD 92–02–08, are estimated to be 355 work hours per airplane per year, at an average labor cost of $55 per work hour. Based on these figures, the recurring inspection costs required by AD 92–02–08 is estimated to be $19,525 per airplane, or $5,252,225 for the affected U.S. fleet.

The recurring inspection procedures added to the program by this proposed AD action would require approximately 10 additional work hours per airplane per year to accomplish. The average labor charge would be $55 per work hour. Based on these figures, the additional recurring inspection cost impact added by this AD on U.S. operators is estimated to be $550 per airplane, or $147,950 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $5,411,175 for the first year, and $5,390,825 for each year thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8144 (57 FR 3931, February 3, 1992), and by adding

a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 92–NM–221–AD. Supersedes AD 92–02–08, Amendment 39–8144.

Applicability: Model DC–10 series airplanes and KC–10A (Military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after March 9, 1992 (the effective date of AD 92–02–08, Amendment 39–8144), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the Principal Structural Elements (PSE's) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Revision 1, dated May 1990, in accordance with Section 2 of Volume III–90, dated May 1990, or Section 2 of Volume III–91, dated December 1991, of the SID. The non-destructive inspection (NDI) techniques set forth in Section 2 and Section 4 of Volume II, Revision 1, dated May 1990, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–90, dated May 1990; or Section 2 of Volume III–91, dated December 1991, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Managment and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(b) Within 6 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD, with a revision that provides for inspection(s) of the PSE's defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Revision 3, dated December 1992, in accordance with Section 2 of Volume III–92, dated October 1992, of the SID. The NDI techniques set forth in Section 2 and Section 4 of Volume II, Revision 3, dated December 1992, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–92, dated October 1992, of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Any cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program that is required by this AD should include a damage tolerance assessment for that PSE repair.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 18, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6670 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISION

16 CFR Part 1204

Regulatory Flexibility Act Review, Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review and availability of report.

SUMMARY: The Commission has completed its review of the Safety Standard for Omnidirectional Citizens Band Base Station Antennas in accordance with provisions of the Regulatory Flexibility Act. The purpose of this review is to determine if this rule should be modified or revoked to minimize any significant economic impact it may have on small businesses.

The Commission has considered provisions of the standard, its economic impact on firms subject to its requirements, and other relevant information. The Commission has determined that the standard has not had a significant economic impact on small businesses, and for that reason no further action is warranted by the Regulatory Flexibility Act. A report on this rule review, entitled "Regulatory Flexibility Act Review, Consumer Product Safety Rule on Omnidirectional Citizens Band Base Station Antennas," is available upon request.

ADDRESSES: Requests for copies of the report should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Anthony C. Homan, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0962; or Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) became effective on January 1, 1981, and generally requires Federal agencies to consider the economic impact of their rules on small entities. The term "small entity" is defined by the RFA to include small businesses, small not-for-profit organizations, and small counties, cities and other local governmental jurisdictions. Additionally, section 610 of the RFA requires agencies to review periodically those rules issued after the effective date of the RFA which have a "significant economic impact upon a substantial number of small entities." The purpose of this review is to determine whether the rules under consideration should be continued without change, amended, or revoked, consistent with the purposes of the statutes which they implement, to minimize any significant economic impact which they may have on small entities.

In the **Federal Register** of July 16, 1992 (57 FR 31467), the Commission announced that it would review the Safety Standard for Omnidirectional Citizens Band Base Station Antennas in accordance with provisions of section 610 of the RFA. The standard was issued under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) and is codified at 16 CFR part 1204.

The notice of July 16, 1992, gave a brief description of the provisions of the standard, the need for the rule, and its legal basis. The notice also invited written comment on the rule under consideration. No comments were received.

After considering the provisions of the standard and information about their economic effect on the regulated industry, the Commission finds that the standard has not had a significant economic impact on a substantial number of small entities, including

small businesses. For that reason, the Commission concludes that no further action with regard to the standard is warranted by section 610 of the RFA.

The Commission has prepared a report of this RFA rule review. This report, entitled "Regulatory Flexibility Act Review, Consumer Product Safety Rule on Omnidirectional Citizens Band Base Station Antennas," is available without charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207, or by calling (301) 504-0800.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-6747 Filed 3-23-93;8:45 am]

BILLING CODE 6355-01-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM93-11-000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

Issued: March 18, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Commission staff proposal.

SUMMARY: The Federal Energy Regulatory Commission Staff has made available to the public a Staff proposal for revision of the regulation of oil pipelines to implement the requirements of the Energy Policy Act of 1992.

DATES: An original and 14 copies of written comments must be received on or before May 3, 1993.

ADDRESSES: All comments should refer to Docket No. RM93-11-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208-0696.

SUPPLEMENTARY INFORMATION:

Notice to the Public

The Federal Energy Regulatory Commission Staff has made available to the public a Staff proposal for revision of the regulation of oil pipelines to implement the requirements of the Energy Policy Act of 1992.

Copies of the Staff's proposal can be obtained from the Office of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 not later than May 3, 1993, and should refer to Docket No. RM93-11-000.

The full text of the Staff's proposal also is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service, which provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, communications software should be set to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this proposal will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-6658 Filed 3-23-93; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA/FTA Docket Nos. 92-14, 93-4, 93-5]

Federal Transit Administration

49 CFR Chapter VI

FHWA RIN 2125-AC97; FTA RIN 2132-AA47; FHWA RIN 2125-AC95; FTA RIN 2132-AA44; FHWA RIN 2125-AC94; FTA RIN 2132-AA48

Traffic Congestion, Public Transportation Facilities and Equipment, and Intermodal Transportation Facilities and Systems Management Systems; Metropolitan Planning; Statewide Transportation Planning; Public Meetings

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Request for comments and notice of public meetings.

SUMMARY: The FHWA and the FTA announce that they will hold four meetings on three recently issued proposed regulations on metropolitan planning, Statewide transportation planning, and management systems. The purpose of the meetings is to obtain public input for development of final rules. Moreover, the FHWA and the FTA are soliciting additional comments on several specific issues related to the proposed metropolitan and statewide transportation planning requirements.

DATES: Comments should be submitted on or before May 3, 1993. The public meetings will be held at the following locations and dates:

March 31-April 1, 1993

San Francisco Marriott Airport Hotel, 1800 Old Bayshore Highway, Burlingame, California 94010

April 7-8, 1993

Atlanta Airport Marriott, 4711 Best Road, College Park, Georgia, 30337

April 14-15, 1993

Wyndham Franklin Plaza, 17th and Race Street, Philadelphia, Pennsylvania 19103

April 20-21, 1993

Kansas City Convention Center, 301 West 13th Street, Kansas City, Missouri 64105

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC-31), (202) 366-1372 or Mr. Sheldon Edner, Planning Operations Branch (HEP-21), (202) 366-4066. For the FTA: Mr. Paul Verchinski, Resource Management Division (TGM-

21), (202) 366–6385. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for FHWA are 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Sections 1024, 1025 and 3012 of Public Law 102–240, 105 Stat. 1914, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), amended sections 134 and 135 of title 23 U.S.C. and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) which require continuing, comprehensive, and coordinated metropolitan and statewide transportation planning processes. Section 1034 of the ISTEA also added section 303, Management Systems, to title 23 U.S.C. The FHWA and the FTA have issued NPRMs (see **Federal Register** March 2, 1993, Parts II, III, and IV) for the purposes of revising existing regulations on metropolitan planning and issuing new regulations for statewide planning and the management systems. To facilitate and encourage public input to the development of final rules, these meetings are being held to receive oral and written suggestions regarding the proposed rules. Summaries of the meetings announced in this notice will be placed in the appropriate rulemaking dockets.

Meeting Itinerary

The first day of each 1½-day meeting will cover the proposed metropolitan and Statewide transportation planning regulations. The relationship of the management systems to the planning processes will also be discussed. The morning of the second day will cover the traffic congestion, public transportation facilities and equipment, and intermodal transportation facilities and systems management systems as well as the general provisions in the proposed regulations.

The schedule for each 1½-day meeting is as follows (all times are local):

Day 1

9 a.m.

Overview of Metropolitan Planning and Statewide Planning NPRMs and Coordination of Management Systems with the Planning Processes

10 a.m.

Session for Comments on Metropolitan Planning and Statewide Planning (If attendance warrants, two concurrent sessions, metropolitan and statewide, will be held.)

12 p.m.

Break for Lunch

1 p.m.

Session for Comments (continued)

Day 2

8:30 a.m.

Overview of General, Traffic Congestion, Public Transportation, and Intermodal Management Systems provisions of the Proposed Regulations

9:30 a.m.

Comments on General, Traffic Congestion, Public Transportation, and Intermodal Management Systems provisions of the Proposed Regulations

It should be noted that the meetings are scheduled to end no later than 5 p.m. on the first day and noon on the second day, but that they will end sooner if no additional commenters remain to be heard. Therefore, anyone desiring to comment should plan to attend the entire session of interest. Scheduling conflicts at the Philadelphia location will require that the first day session end no later than 4 p.m. The second day schedule will be extended until 1 p.m. to accommodate this change, if necessary.

The FTA and the FHWA may hold a fifth meeting to consider further the issues raised in the meetings announced in this notice. The meeting would be held in Washington, DC, at a time and location to be announced.

Meeting Procedures

1. The meetings will involve brief presentations by the FHWA and the FTA staff on the legislative requirements and proposed rules on the metropolitan and statewide planning and on the general, traffic congestion, public transportation facilities and equipment, and intermodal transportation facilities and systems subparts of the proposed management systems regulations.

2. The meetings are designed to solicit public views and information on the implementation of sections 1024, 1025, 3012, and 1034 of the ISTEA. The meetings will be conducted in an informal and nonadversarial manner.

3. Oral statements will be received from the public during the meetings as time permits. All speakers, exclusive of the FHWA and the FTA representatives, will be limited to a five-minute statement to provide an opportunity for as many individuals as possible to make statements at the meetings. If time permits, speakers may be allowed additional time.

4. Speakers are encouraged to submit written statements. Written statements from attendees who do not speak will be accepted at the meetings.

5. Any statements made by the meeting officers or any Federal representative to clarify issues during the meeting should not be construed as the position of the FHWA or the FTA with respect to the content of the final rules.

6. Copies of written statements and a summary of the oral testimony will be placed in the appropriate docket (or dockets) according to subject area: 92–14 for Management Systems; 93–4 for Metropolitan Planning; or 93–5 for Statewide Transportation Planning.

In addition to issues noted in the preambles of the metropolitan and statewide planning NPRMs, the FTA and the FHWA are soliciting comments on the following additional issues:

1. The approach to certification of planning processes in Transportation Management Areas (TMA) proposed in the metropolitan planning NPRM would permit the FHWA and the FTA to recognize the diversity of State and local operating contexts. In the final regulation, an option might be to specify in detail the minimum criteria and processes that must be met for certification. If such an option were adopted, should failure to comply with every provision of the criteria or step of the process automatically lead to not certifying the TMA planning process? Is this the preferable option?

2. States and Metropolitan Planning Organizations (MPOs) would be required by the proposed regulations to develop programs and, for MPOs, plans based on funding sources that can reasonably be expected to be available. Comments are sought on what funding sources can reasonably be expected to be available. Should only funding sources that are currently in place be considered reasonably available?

3. The proposed rule would allow for locally defined procedures for ensuring public participation in the planning process. Should a more detailed requirement for public participation, including federally specified minimum requirements, be adopted?

4. In order to recognize the diversity of organizational structure and procedures among the States, the proposed rules would permit the Governor to delegate approval authority for certain aspects of transportation planning and programming. The FHWA and the FTA believe that this approach reflects the appropriate partnership relation between the Federal government and the individual States, conforms to the requirements of Executive Order 12612 on Federalism, and is consistent with the approach taken by the agencies in other similar situations. Nevertheless, concerns have been raised as to whether this approach provides sufficient opportunity for

participation by other interested parties, including public health, environmental, economic development, and land use agencies. Should the DOT agencies adopt an alternative that would require that Governors exercise this authority personally, without delegation? Alternately, if delegation by the Governor is permitted, should there be a public or interagency coordination process required?

5. In an effort to structure a phase-in process, as required by 23 U.S.C. 134(i), and to recognize the legislatively mandated deadline for developing the required management systems, the proposed rules specify an interim congestion management system (CMS). We invite comments on this approach and any suggestions for other approaches to phasing-in the CMS provision. We also seek comments as to whether projects that significantly increase capacity for single occupant vehicles in TMAs that are non-attainment for carbon monoxide and ozone should be deferred until a CMS is fully implemented or if these projects should be allowed to proceed with Federal funds if they result from an interim CMS.

6. The metropolitan and statewide planning NPRMs are designed around a cooperative linkage between MPO and State transportation agencies. Does the proposed linkage provide a workable arrangement to accommodate the diversity of processes and authority across all States?

7. Provision is made in the proposed metropolitan planning NPRM for "simplified" planning procedures in small urbanized areas that have not been designated nonattainment areas for ozone or carbon monoxide. Should the proposed rules provide more detailed specifications as to where this option can be utilized?

8. The metropolitan planning NPRM retains the current policy on the make-up of MPOs that relies on the Governor and officials of general purpose governments cooperatively agreeing to form and procedures followed. In the spirit of a cooperative planning process, state and local officials are expected to develop a mutually acceptable organizational structure and representation. Recent correspondence to the Department has raised questions regarding this approach, specifically in the light of the new programming responsibilities of the MPOs. Comments on the desirability of the present approach, possible alternatives, and the role of the FHWA and the FTA in specifying alternatives are being solicited.

Both agencies encourage comments on these and any other issues of concern to the general public and agencies/interests involved or concerned with transportation issues. The FHWA and the FTA recently received an undated paper, entitled Key Concerns with ISTEA Metropolitan Planning, prepared by the Surface Transportation Policy Project, that addresses some of the issues discussed above. A copy of this has been placed in all three Dockets (92–14, 93–4, 93–5) for public review.

Authority: 23 U.S.C. 134, 135, 303, and 315; 49 U.S.C. app. 1607; 49 CFR 1.48.

Issued on: March 19, 1993.

E. Dean Carlson,

Executive Director, Federal Highway Administration.

Robert H. McManus,

Acting Administrator, Federal Transit Administration.

[FR Doc. 93–6902 Filed 3–22–93; 2:59 pm]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–002–89]

RIN 1545–AM92

Research or Experimental Expenditures; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations that clarify the definition of research or experimental expenditures and provide a new rule interpreting the reasonableness requirement of section 174(e), added to the Code by the Revenue Reconciliation Act of 1989.

DATES: The public hearing will be held on Friday, June 18, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, May 28, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–002–89], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 174 of the Internal Revenue Code of 1986 (Code) and supersedes the amendments to the regulations proposed in 1989. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, May 28, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–6641 Filed 3–23–93; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[PS–56–90]

RIN 1545–AO78

Application of Section 514(c)(9)(E) of the Internal Revenue Code to Partnerships in Which One or More (But Not All) of the Partners Are Qualified Organizations Within the Meaning of Section 514(c)(9)(C); Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the application of section 514(c)(9)(E) of the Internal Revenue Code to partnerships in which one or more (but not all) of the partners are qualified tax-exempt organizations within the meaning of section 514(c)(9)(C).

DATES: The public hearing originally scheduled for Wednesday, March 31, 1993, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202 622–8452 or 202 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 514(c)(9)(E) of the Internal Revenue Code. A notice of public hearing appearing in the **Federal Register** for Wednesday, December 30, 1992 (57 FR 62250), announced that the public hearing on the proposed regulations would be held on Wednesday, March 31, 1993, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Wednesday, March 31, 1993, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–6626 Filed 3–23–93; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[PS–002–89]

RIN 1545–AM92

Research or Experimental Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the Income Tax Regulations under section 174 of the Internal Revenue Code of 1986 (Code) and supersedes the amendments to the regulations proposed in 1989. The amendments proposed in this document clarify the definition of research or experimental expenditures. The proposed amendments also provide a new rule interpreting the reasonableness requirement of section 174(e), added to the Code by the Revenue Reconciliation Act of 1989.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for June 18, 1993, at 10 a.m., must be received by May 28, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attention: CC:CORP:T:R (PS–002–89), Room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Michael Slaughter, at 202–622–7190 (not a toll-free number); concerning the proposed regulations, David S. Hudson, 202–622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 174 of the Code provides two alternative methods that taxpayers may use to account for research or experimental expenditures. A taxpayer may either deduct the expenditures in the year in which they are paid or incurred, or treat the expenditures as deferred expenses, amortizable over a period of at least 60 months. In 1957, the Internal Revenue Service (Service) adopted § 1.174–2(a)(1), which defines the term research or experimental expenditures as expenditures "which represent research and development costs in the experimental or laboratory sense." 22 FR 7901 (1957).

In 1981, as part of the Economic Recovery Tax Act of 1981 (ERTA), Congress enacted section 44F of the Code, which provided a tax credit to taxpayers for incremental expenditures for qualified research. Section 44F provided that the term qualified research generally had the same meaning as the term research or experimental, as used in section 174. In its report on ERTA, the Senate Finance Committee expressed its anticipation that the Treasury Department and the Service "will provide additional guidance, not inconsistent with the existing regulations, defining qualifying research for purposes of new section 44F and section 174." S. Rep. No. 144, 97th Cong., 1st Sess. 81 (1981).

In 1983, the Service proposed a new regulation defining the term research or experimental expenditures for purposes of section 174. See 48 FR 2790 (1983). The Service received comments on the 1983 proposed regulation, and, on April 14, 1983, held a public hearing concerning the proposed regulation.

In 1989, in response to comments received on the 1983 proposed regulation, the Service proposed another new regulation that superseded the 1983 proposed regulation. See 54 FR 21224 (1989). The Service received comments on the 1989 proposed regulation, and, on December 5, 1989, held a public hearing concerning the proposed regulation.

Explanation of Provisions

A. Definition of Research or Experimental Expenditures

The 1989 proposed regulation provided that research or experimental expenditures generally did not include costs paid or incurred for developing a new product or property after the basic design specification of the product or property was met. After that time, expenditures would have qualified as research or experimental only if the expenditures were made to cure significant design defects, obtain significant cost reductions, or achieve significantly enhanced function or performance levels. Thus, the 1989 proposed regulation conditioned qualification under section 174 on the stage in the product development process in which expenditures were incurred. Commentators argued that the "time-line" approach of the 1989 proposed regulation was unrealistic because progress in research and development is often achieved only in small, incremental steps. Thus, the commentators argued that it would be difficult to determine when a basic design specification is established, and whether subsequent design changes are significant.

The Service has determined that the definition of research or experimental expenditures provided in the existing regulations should be retained. The few amendments to section 174 since its enactment do not require any modification of that long-standing definition. Further, Congress, in enacting the research credit in 1981, anticipated that any additional guidance regarding the definition not be "inconsistent with the existing regulations." S. Rep. No. 144, 97th Cong., 1st Sess., 81 (1981). Thus, the amendments proposed by this document do not adopt the time-line approach of the 1989 proposed regulation, and continue to define research or experimental expenditures as expenditures "which represent research and development costs in the

experimental or laboratory sense." The proposed amendments merely provide further guidance regarding the application of the existing definition of research or experimental expenditures. The Proposed amendments clarify that expenditures represent research and development costs in the experimental or laboratory sense if the expenditures are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information reasonably available to the taxpayer does not establish the capability or method for developing or improving the product.

Although the proposed amendments merely clarify, rather than change, the definition of research or experimental expenditures, the further guidance provided by the proposed amendments serves three important functions. First, the proposed amendments focus the determination of whether expenditures qualify as research or experimental expenditures. Second, by focusing this determination, the proposed amendments implicitly alert taxpayers to the type of supporting documentation that is helpful in substantiating the treatment of expenditures as research or experimental expenditures. Third, as is implicit under the existing regulations, the proposed amendments provide that the determination of whether expenditures qualify as research or experimental expenditures is based on the nature of the activities funded by the expenditures. The proposed amendments make clear that the nature of the product or improvement being developed and the level of technological advancement brought about by the research activities are not considered in determining if the costs for the activities are research or experimental expenditures.

B. Treatment of Computer Soft vare

In Revenue Procedure 69–21, 1969–2 C.B. 303, the Service announced that, as a matter of administrative practice, it would allow taxpayers to treat software development costs in a manner similar to the manner research or experimental expenditures are treated under section 174. The 1983 proposed regulation, however, would have provided additional conditions on the qualification of software development costs as research or experimental expenditures beyond those applicable to other products.

In the preamble to the 1989 proposed regulation, the Service announced that it is studying the continuing validity of Rev. Proc. 69–21. The Service has no present intention of changing its administrative position contained in Rev. Proc. 69–21, but continues to study its viability. Taxpayers may continue to rely on Rev. Proc. 69–21. The amendments proposed in this document do not provide additional conditions applicable to computer software development costs. The Service again invites comments on the proper tax accounting treatment of software development costs that do not qualify as research or experimental expenditures.

C. Excluded Expenditures

Section 1.174–2(a)(3) of the 1989 proposed regulation provided a list of activities the costs of which would not qualify as research or experimental expenditures. Although some of these exclusions are already provided in the existing regulations, six of the exclusions proposed in 1989 were new. Among the six new excluded activities were activities relating to the taxpayer's internal management functions, activities not directed at the functional aspects of a product, and the adaptation of an existing capability to a particular requirement or customer's need.

The amendments proposed by this document retain the exclusions provided in the existing regulations and do not contain the six additional exclusions proposed in 1989. Therefore, expenditures for any of these six activities qualify as research or experimental expenditures if they fall within the general definition of the term and are not covered by one of the existing exclusions. For example, expenditures for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product qualify as research or experimental expenditures even though the product is intended for the taxpayer's own internal use for management functions, or the expenditures relate to nonfunctional aspects of the product. Similarly, expenditures incurred in connection with the adaptation of a product to a particular requirement or customer's needs would qualify as research or experimental expenditures if the taxpayer is uncertain as to the capability or method of accomplishing the adaptation.

D. Reasonableness of Research or Experimental Expenditures

The amendments proposed by this document provide guidance regarding section 174(e) of the Code. Section 174(e) was added to the Code by the Revenue Reconciliation Act of 1989 to clarify that research expenditures are deductible under section 174 only to the extent that they are reasonable under the circumstances. Congress intended that the reasonableness requirement of section 174(e) parallel the reasonable allowance requirement for salaries and other compensation in section 162(a)(1), in that, amounts supposedly paid for research may be recharacterized as disguised dividends, gifts, loans, or other similar payments. Congress did not intend that the reasonableness requirement be used to question whether research activities themselves are of a reasonable type or nature. See H.R. Rep. No. 247, 101 Cong., 1st Sess. 1203 n.12 (1989). The proposed amendment relating to section 174(e) closely follows the language of the legislative history.

E. Withdrawal of Prior Proposed Regulations

The amendments to the regulations proposed in 1983 (47 FR 2790) and 1989 (54 FR 21224) are withdrawn by this document.

Proposed Effective Date

These amendments are proposed to be effective for taxable years beginning after [the date the amendments are published as final regulations in the **Federal Register**].

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely to the Internal Revenue Service (preferably a signed original and eight copies). All comments will be available for public inspection and copying. Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for June 18, 1993, at 10 a.m., must be received by May 28, 1993. See the notice of public hearing

published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David S. Hudson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.161–1 Through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.174–2 is amended as follows:

1. Paragraph (a)(1) is revised.
2. Paragraphs (a) (2) and (3) are redesignated as paragraphs (a) (7) and (8), respectively.
3. New paragraphs (a) (2) through (6) are added.
4. Paragraph (c) is amended by removing the reference "sections 615" and adding "sections 617" in its place.
5. The additions and revisions read as follows:

§ 1.174–2 Definition of research and experimental expenditures.

(a) *In general*—(1) The term *research or experimental expenditures*, as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term generally includes all such costs incident to the development or improvement of a product. The term includes the costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information reasonably available to the taxpayer does not establish the capability or method for developing or improving the product. Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.

(2) For purposes of this section, the term *product* includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

(3) The term *research or experimental expenditures* does not include expenditures for—

(i) The ordinary testing or inspection of materials or products for quality control;

(ii) Efficiency surveys;

(iii) Management studies;

(iv) Consumer surveys;

(v) Advertising or promotions;

(vi) The acquisition of another's patent, model, production or process; or

(vii) Research in connection with literary, historical, or similar projects.

(4) See section 263A and the regulations thereunder for cost capitalization rules which apply to expenditures paid or incurred for research in connection with literary, historical or similar projects involving the production of property, including the production of films, sound recordings, video tapes, books, or similar properties.

(5) Section 174 applies to a research or experimental expenditure only to the extent that the amount of the expenditure is reasonable under the circumstances. In general, the amount of an expenditure for research or experimental activities is reasonable if the amount would ordinarily be paid for like activities by like enterprises under like circumstances. Amounts supposedly paid for research that are not reasonable under the circumstances may be characterized as disguised dividends, gifts, loans, or similar payments. The reasonableness requirement of this paragraph (a)(5) does not apply to the reasonableness of the type or nature of the activities themselves.

(6) This paragraph (a) applies to taxable years beginning after [the date the final regulations are published in the **Federal Register**].

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Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–6642 Filed 3–23–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CDG1 93–003]

Safety Zone: Narragansett Bay, East Passage, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary moving safety zone around the band of swimmers involved in the 17th annual Swim the Bay, on Saturday, August 14, 1993, between 11 a.m. and 1 p.m. This zone is needed to protect the swimmers from personal injury that may result if vessel traffic were allowed to transit the East Passage of Narragansett Bay, in the vicinity of the swim, while the event is in progress.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office Providence, John O. Pastore Federal Building, Providence, Rhode Island, 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office Providence maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Joseph Snowden at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 93–003) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting

acknowledgment of receipt of comments should enclosed a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing, but one may be held if written requests are received and it is determined that the opportunity to make an oral presentation will aid in the rulemaking.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Joseph Snowden, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office.

Background and Purpose

On August 14, 1993, the Save the Bay organization will be sponsoring the 17th annual "Swim the Bay." For this event, approximately 130 people will swim across the East Passage of Narragansett Bay, from Coaster's Harbor Island Beach, Newport, to Jamestown Island in the vicinity of Potter's Cove. Each swimmer will be escorted by a rowboat with a spotter onboard, and orange pylons will be placed along the swim route, outside of the main ship channel, to facilitate swimming/rowing a straight course. The swim will take place between 11 a.m. and 1 p.m. on August 14, 1993. If postponed due to adverse weather, then the event will be held between 11 a.m. and 1 p.m. on August 15, 1993. Approximately a total of 85 rowboats and spectator craft are expected to attend.

The Coast Guard is proposing to establish a temporary moving safety zone around the band of swimmers and escort craft involved in Swim the Bay. The zone would encompass a three hundred yard radius around the swimmers as they cross East Passage from Coaster's Harbor Island Beach (position 41–31N, 071–19.8W) to Potter's Cove (position 41–31N, 071–22W). The safety zone will be in effect between the hours of 11 a.m. and 1 p.m. on August 14, 1993. If postponed due to adverse weather, the same safety zone would be established on August 15, 1993 between the hours of 11 a.m. and 1 p.m. This safety zone will be necessary to protect the participants and associated craft involved in Swim the Bay from inherent dangers (personal injury or property damage due to collision) associated with vessels transiting the area.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Although the proposed safety zone affects the main shipping channel through the East Passage of Narragansett, the impact is expected to be minimal for several reasons. First the large commercial vessel traffic interest that would normally use the affected waterway have been given five months advance notice of the event and the pending safety zone time period. Second, the other interest to be affected, the recreational vessels, spectator craft, small passenger vessels, and perhaps fishing vessels, will not endure hardship because they have unlimited amount of alternate water, outside the limits of the safety zone in which they may safely operate. Lastly, the impact of the proposed safety zone on any particular area of the waterway will be of limited duration due to the short time frame of the event and also due to the nature of a moving safety zone. Once the moving zone has passed, vessels desiring to use the channel will have the opportunity to transit.

Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this proposal to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*) that this proposal does not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and had determined that this proposal did not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action under the Coast Guard statutory authority to protect public safety and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.2.

2. A temporary § 165.T01–003 is added to read as follows:

§ 165.T01–003 Safety Zone: Narragansett Bay, East Passage, RI.

(a) *Location.* The following area is a safety zone: A moving safety zone encompassing a three hundred yard radius around the swimmers and escort row boats participating in Swim the Bay, as they transit from Coaster's Harbor Island Beach position (41–31N, 071–19.8W), to Potter's Cove position (41–31N, 071–22W).

(b) *Effective date.* This regulation becomes effective from 11 a.m. to 1 p.m. or until the event is completed on August 14, 1993. If the event is postponed due to weather, then this regulation will be effective between 11 a.m. and 1 p.m., on August 15, 1993, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: March 9, 1993.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 93–6703 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 93–004]

Safety Zone; Narragansett Bay, Quonset Point, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on May 29, and May 30, 1993 at Quonset

Point, North Kingstown, RI, while aerial demonstrations, including those by the USAF Thunderbirds, are performed in preparation for, and during the "Rhode Island National Guard Open House". This action is necessary to protect spectator/pleasure craft, as well as other vessels in the vicinity, from the risks of low flying aircraft and aerial demonstrations.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office Providence, John O. Pastore Federal Building, Providence, Rhode Island, 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office Providence maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT:
LTJG Joseph Snowden at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 93–004) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing, but one may be held if written requests are received and it is determined that the opportunity to make an oral presentation will aid in the rulemaking.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Joseph Snowden, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office.

Background and Purpose

The purpose of this proposal is to protect spectators and pleasure craft, as well as other vessels, from potential hazards such as damage or personal injury, associated with low level flight demonstrations by several aircraft, including the USAF Thunderbirds. In addition, the USAF Thunderbirds require for safety purposes that a safety zone be established underneath their demonstrations. The demonstrations will take place in the airspace over the Quonset State Airport, North Kingstown, RI, a portion of the Naval Construction Battalion Center in Davisville, RI, as well as a small area of Narragansett Bay that is adjacent to the Quonset State Airport.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The entities most likely affected are pleasure craft, fishing vessels and to an extent large commercial vessels in or outbound from the Davisville depot, that would normally use the waters contained in the safety zone. The impact is expected to be minimal because the restricted area is not heavily trafficked by large commercial vessels or commercial fishing vessels. Approximately one to two large commercial freight ships transit the Quonset Channel, a portion of the area to be restricted, per week. Commercial vessels will be notified in advance to minimize economic and scheduling concerns. Because of the infrequent visits of these type vessel and that they will be notified in advanced to plan accordingly, they will not be heavily impacted by the proposed safety zone. Commercial fishing vessels are able to conduct operations outside the Quonset Channel because they are not constrained by their draft. They have alternate areas available outside of the proposed safety zone where they may fish and conduct normal operations. Therefore, restricting access to the area as proposed will not cause undue hardship to any entity.

Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this proposal to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*) that this proposal does not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and had determined that this proposal did not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action under Coast Guard statutory authority to protect public safety and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.2.

2. A temporary § 165.T01–004 was added to read as follows:

§ 165.T01–004 Safety Zone: Narragansett Bay, Quonset Point, RI.

(a) *Location.* The following area is a safety zone: The area of water enclosed in a line from the end of the Quonset Point Jetty (41–35–10N, 071–24–29W), extending southeast to Quonset Channel buoy #7 (41–34–54, 071–23–50.5W), northeast to (41–35–07N, 071–23–21W), and northwest to the south corner of Pier #1, Davisville Deport (41–36–42N, 071–24–17W).

(b) *Effective date.* This regulation becomes effective from 8:30 a.m. to 4 p.m. on May 29, 1993, and from 8:30 a.m. to 4 p.m. on May 30 and, 1993, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: March 9, 1993.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 93–6704 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 649

RIN 1840–AB67

Patricia Roberts Harris Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects an error made in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on March 1, 1993 (58 FR 11928) for the Patricia Roberts Harris Fellowship Program by restoring language inadvertently deleted from the definition of "Minority" in § 649.6(b) of the proposed regulations.

DATES: Comments must be received on or before March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Wrenn, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–9403.

Dated: March 17, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.904—Patricia Roberts Harris Fellowship Program)

The following correction is made in FR Doc. 93–4623, published on March 1, 1993 (58 FR 11928):

§ 649.6 [Amended]

1. On page 11931, column 1, in the definition of "Minority", remove the words "or Pacific Islander" and add, in their place, "Pacific Islander, or other ethnic group underrepresented in master's level, professional, or doctoral study, as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary".

[FR Doc. 93–6806 Filed 3–23–93; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 35–1–5368; FRL–4605–2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA today is proposing to approve revisions to Illinois' State Implementation Plan (SIP) for sulfur dioxide (SO_2). These revisions to 35 Illinois Administrative Code (IAC) Section 214 provide SO_2 emission limitations for the Shell Oil complex in Roxana, Wood River Township, Illinois. The revised rules were submitted to USEPA by the State on January 4, 1989, to satisfy a September 28, 1984, notice of SIP deficiency.

DATES: Comments on this revision and on the proposed USEPA action must be received by April 23, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mary Onischak at (312) 353–5954, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 28, 1984, USEPA informed the Governor of Illinois that the Illinois SO_2 SIP was inadequate to protect the National Ambient Air Quality Standards (NAAQS) in Alton [1] and Wood River Townships, Madison County, and requested that the State submit a revision to the SIP to address the inadequacy. The determination that the SIP was inadequate and needed to be revised was based on modeling performed by the Illinois Environmental Protection Agency (IEPA) for a regional study which included Madison County. Originally, Illinois was given one year, until September 28, 1985, in which to correct the SIP. Subsequent discussions with USEPA extended the submittal due date to June 30, 1986. On June 26, 1986, IEPA submitted to USEPA a rule it had proposed to the Illinois Pollution Control Board for Wood River Township, as a revision to the SIP. USEPA identified several deficiencies in the June 26, 1986, SIP submittal, which Illinois corrected before adopting its final revised rule. Illinois then withdrew its submission of June 26, 1986, and on January 4, 1989, submitted its final revised rule to USEPA as a revision to the SO_2 SIP to satisfy the requirements of the September 28, 1984, notice of SIP deficiency for Wood River Township. Today's rulemaking action addresses the adequacy of this January 4, 1989, SIP revision request, which would incorporate 35 IAC section 214.382 into the Illinois SO_2 SIP.

[1] On June 26, 1986, Illinois addressed the inadequacies in both the Alton Township and Wood River Township SO_2 rules. USEPA will take rulemaking action on the Alton Township portion of the submittal in a subsequent **Federal Register** notice. USEPA will take rulemaking action today only on the Wood River Township submittal.

II. Summary of State Submittal

Background

USEPA's notice of SIP deficiency for Wood River Township was based upon modeled violations of the SO_2 NAAQS. IEPA attributed these potential NAAQS violations primarily to the Shell Oil refinery complex in Roxana, Illinois. IEPA was able to demonstrate NAAQS attainment in the Wood River area through significant emission reductions at the Shell Oil complex. The January 4, 1989, SIP submittal sets forth SO_2 emission limits for the Shell Oil facility in 35 IAC section 214.382.

In order to reduce its SO_2 emissions, Shell Oil agreed to retire some old SO_2 process sources. The company relinquished its operating permits for three of its Asphalt Convertors. Shell Oil also modified an old sulfur recovery unit process line (known as the D-train) to reduce its SO_2 emissions. The D-train was originally designed, according to the common practice of the time, to allow its exhaust gases to vent directly to the atmosphere. As an SO_2 control measure, Shell Oil rerouted the D-train's exhaust to an existing tailgas cleanup unit, which now removes much of the SO_2 from the exhaust stream.

Combustion units at the Shell Oil facility burn either natural gas, refinery fuel gas (RFG), or refinery flasher pitch. Combustion of RFG or refinery flasher

pitch may cause SO_2 emissions from the facility. Shell Oil prefers to retain permission to use RFG and refinery flasher pitch when possible, as these fuels, which are by-products of the refining process, are readily available at the plant. Shell Oil has the capability of removing some of the sulfur from these fuels before combustion in order to meet the sulfur emission limitations in Section 214.382.

Fuel Quality Restrictions

Section 214.382(c) places a fuel quality restriction for fuels used in any individual boiler or heater at the facility as follows: Refinery flasher pitch used at Shell Oil may not contain more than 3.0% sulfur by weight, and refinery fuel gas may not contain more than 39 grains hydrogen sulfide per 100 dry standard cubic feet.

Source Operating Groups

The oil refining process at Shell Oil is made up of many separate operations. The operating schedule of each component of the refining process at the large, complex facility depends upon seasonal and market-based variations in product demand. When preliminary modeling showed that additional SO_2 controls would be necessary to ensure attainment of the NAAQS at Shell Oil, the facility worked with Illinois to devise a system whereby emissions of SO_2 into the atmosphere could be decreased without hindering the facility's ability to change production focus as seasonal and market demands changed. In order to grant Shell Oil the production flexibility necessary to meet changing product demands in different seasons and different economic climates without compromising air quality, the concept of Source Operating Groups (SOGs) was developed for regulatory purposes. SOGs are groups of individual SO_2 emission sources such as boilers or heaters which are located close together and usually operate within the same process units. The SOGs at Shell Oil consist of small clusters of boilers and heaters which produce heat and steam for different parts of the refining process. Section 214.382(c)(3) regulates the SO_2 emissions of Shell Oil combustion units by SOG rather than by individual unit. The total SO_2 emissions from any SOG are limited to a level below that of the sum of the maximum emissions possible from the individual units within the SOG. The SOG emission limits reduce Shell Oil's overall SO_2 emissions but allow the facility to vary the operation of individual refining systems as necessary. While some sources in a SOG operate at rates necessary to produce the required products, the other sources in the SOG will operate at lowered rates to keep the SO_2 emissions within the SOG limit. This arrangement allows Shell Oil to continue using its refinery byproducts as fuel, which eliminates the necessity for flaring off or disposing of those products, and helps Shell Oil stay economically competitive.

The January 4, 1989, SIP revision request includes overall emission limitations for nine different SOGs at Shell Oil. The following is a brief summary of the emission limits set forth in section 214.382 for the total emission of SO_2 from the SOGs at the Shell Oil facility. It is important to note that the fuel quality limits which were discussed earlier must always be met regardless of overall SOG limits. In addition, section 214.382(f) states that process sources, whether included in SOGs or not, are still required to comply with the emission limit set forth in section 214.301.

Section 214.382 establishes these limits for the total SO_2 emissions from the SOGs below:

All process heaters at distilling unit 1: 459 pounds per hour (lb/hr).

All process heaters at distilling unit 2: 1260 lb/hr.

All gas plant process heaters: 159 lb/hr.

All vacuum flasher unit heaters: 378 lb/hr.

All process heaters at the alkylation, benzene extraction unit, and catalytic feed hydrotreating units: 346 lb/hr.

All boilers generating steam for general plant use: 2400 lb/hr.

All heaters serving the hydrocracker unit catalytic reformer 1 and the saturates gas plant: 1660 lb/hr.

All process heaters at the aromatics east process: 768 lb/hr.

All catalytic cracking units: 3420 lb/hr.

All asphalt converters, distilling unit 1, the aromatics east process, all boilers generating steam for general plant use, and all gas plant process heaters: 2710 lb/hr.

The following sections discuss USEPA's analysis of the air quality modeling demonstration for Wood River Township and the enforceability of Section 214.382. For a more detailed discussion of USEPA's analysis, see the January 19, 1992, technical support document.

III. Analysis of State Submittal

Preliminary modeling data was submitted to USEPA in 1986. USEPA requested additional information and additional model runs to support the Wood River attainment strategy. IEPA supplied this information along with the final January 4, 1989, SIP revision submittal. The modeling exercises in both the 1986 and the 1989 submittals were performed according to the recommendations in the most current USEPA guidance available.

IEPA's SO_2 SIP development efforts for the Wood River Township area have spanned nearly a decade. USEPA modeling guidance was revised several times over this period. Each necessary SO_2 modeling study was performed by IEPA according to the most current guidance available. The final modeling study for the January 4, 1989, Wood River Township submittal was completed in early 1988. IEPA consulted the 1986 version of USEPA's Guideline on Air quality Models in preparing this study. While USEPA guidance on modeling has again changed in the time since 1986, USEPA proposes to accept the IEPA modeling for the January 4, 1989, submittal under the grandfathering policy. The modeling included in the January 4, 1989, submittal meets the requirements for grandfathering described in the June 6, 1988, grandfathering guidance memorandum from the Director of the Office of Air Quality Planning and Standards to the Regional Air Division Directors. The 1986 guidance was current when the modeling study was performed, and IEPA has shown evidence of good faith in using the most current available modeling guidance. While it must be noted that any future revisions to Section 214.382 must be supported by a modeled demonstration of attainment which comports with current USEPA guidance, the modeling information submitted by Illinois in support of the January 4, 1989, SIP submittal is acceptable to USEPA as an adequate demonstration that the NAAQS will be attained in Wood River Township under Section 214.382.

Model Selection

The January 4, 1989, submittal described the numerous modeling runs which were necessary to characterize the worstcase emission scenario at Shell Oil and demonstrate that the ambient air quality standards would be protected during those conditions. Illinois used the short-term version of the Industrial Source Complex (ISC) model to determine what SO_2 emission controls were necessary to bring Wood River Township into attainment of the NAAQS. The rural option of the model was selected, based on the population and land usage of the township. Since the Wood River area is flat or gently rolling, terrain effects were not considered in the modeling study. IEPA used 5 years of representative

meteorological data as an input to the model. The effect of pollutant downwash was considered for all sources, including background sources, with stacks lower than Good Engineering Practice height. In the January 4, 1989, submittal, Illinois also considered the effects of direction-dependent building downwash, in accordance with USEPA guidance. All modeling was performed by IEPA in accordance with USEPA requirements.

Receptor Grid Selection

Because of computer limitations at IEPA, it was necessary to limit the total number of receptors modeled to keep computer operating times reasonable. Therefore, IEPA used its initial model runs to establish a set of critical receptors to focus upon in the development of the attainment strategy for Shell Oil. In response to comments from USEPA, IEPA placed receptor grids with 100 meter resolution around critical receptors in the 1988 modeling study. These tighter grids helped ensure that the points of greatest air quality impacts were identified.

Emissions Inventory

The Wood River SIP SO_2 emissions inventory consisted of the major SO_2 sources in the Wood River and Alton areas. These companies include St. Joseph's Hospital, Olin Corporation, Alton Mental Health, LaClede Steel, Owens Illinois, Alton Packaging, Illinois Power Company, Clark Oil, Amoco Oil, Alton Memorial Hospital, and Lewis and Clark College. The Shell Oil complex was modeled using the emission limits contained in the January 4, 1989, SIP submittal. All other facilities, including sources at Shell Oil not specifically limited by Section 214.382, were modeled at the emission limits allowed them by existing federally approved SO_2 regulations, with the following notable exception. Coal-fired combustion sources included in the Wood River Township modeled attainment demonstration were modeled at emission rates corresponding to 1.8 pounds SO_2 per million British Thermal Units (lb/MMBTU). While Illinois' SO_2 rules had originally been approved by USEPA, court proceedings in 1978 invalidated certain portions of Illinois' SO_2 rules and rendered the emission limits for coal-fired sources in Wood River Township unenforceable at the Federal level. When the January 4, 1989, SIP revision submittal was received, the 1.8 lb/MMBTU emission limit had not been reinstated at the federal level for sources in the St. Louis (Illinois) metropolitan area. On March 13, 1985, Illinois resubmitted the SO_2 emission limits for coal-fired sources in Wood River Township and other areas to USEPA as a SIP revision. USEPA approved these emission limits on September 3, 1992 (57 FR 40333). Therefore, it is now acceptable that the coal-fired sources included in the Wood River Township attainment demonstration were modeled at the 1.8 lb/MMBTU emission limit.

Background Concentrations

SO_2 emissions from significant facilities near Shell Oil were explicitly modeled in order to accurately reflect the actual ambient air quality in Wood River Township. Illinois used local air quality monitor data to characterize the impact of smaller or more distant SO_2 sources to the ambient SO_2 levels in Wood River Township.

Modeling SOG Limits

Shell Oil sources which were not included in SOGs were simply modeled at their maximum allowable emission rates, but the SOG limits complicated the development of representative SOG source emissions data for input into the model. Ordinarily, individual sources must be modeled at their maximum allowable emission rates. Each source within a SOG has an inherent maximum allowable emission rate, that of peak capacity operations fed by fuel with the highest allowable sulfur content. However, the SOG limits preclude the individual sources from operating simultaneously at peak capacity, because the total emissions of the individual sources are capped at a level below the sum of their maximum potential emissions. Therefore, SOG operations could not be characterized by modeling each source at its maximum allowable emission rate. It could not realistically be assumed the certain sources would always operate at full load, or that other sources would never operate at full load. Illinois thus was faced with the task of developing a set of SOG source emission rates for modeling purposes which would characterize the worst-case ambient impact of SO_2 emissions at the numerical SOG emission limits.

IEPA performed an impact analysis on the SO_2 sources at Shell oil in order to rank each source within its SOG by the level of ambient impact predicted for the source. The SO_2 emissions allowed in total for each SOG were apportioned to the individual SOG boilers and heaters according to the impact ranking. The SOG source causing the highest impacts was modeled either at its full capacity allowable emission rate, or at the overall SOG emission limit, whichever was lower. If the SOG limit allowed still further SO_2 emissions from the SOG, the source with the second highest impacts was assumed to emit SO_2 up to its peak rate, but again no further than the SOG limit. Remaining allowable emissions are allocated amount the other SOG sources similarly, until the overall SOG limit has been reached. Thus, a worst-case emissions inventory was developed for modeling the maximum impact of each SOG. Although some SOG sources might have been modeled at emission rates much lower than their potential allows (or even at zero emissions), the model can be expected to predict the worst possible ambient concentrations under the SOG limits because emissions were assumed to come primarily from the highest-impacting sources. These apportionments were only used as impacts to the models to represent the emission scenario at each SOG which could be expected to cause maximum concentrations. They do not necessarily represent Shell Oil's typical operating conditions.

Further Reductions

The SOG limits established in Section 214.382(c)(3)(A–I) did not eliminate every modeled exceedance. In order to address the remaining violations, Shell Oil proposed further reducing the total emissions from a certain group of sources, which included several complete SOGs. This overall emission limit is set forth in Section 214.382(c)(3)(J), and it regulates the #5 Asphalt Converter, the Distilling Unit 1 SOG, the Gas Plant SOG, the Boiler House SOG, and the Aromatics East SOG together. IEPA performed a source culpability analysis and used a rollback technique to determine the level of further emission reduction that had to be obtained from the group of sources to demonstrate attainment. Illinois calculated the maximum emission reductions necessary to eliminate the modeled exceedances at each receptor and used the greatest reduction to set the overall emission limit for the group of sources. Illinois then modeled all critical receptors under the full attainment strategy to verify that the limits set forth in Section 214.382 would provide for attainment of the SO_2 NAAQS.

Modeling Results

IEPA demonstrated that worst-case emissions under Section 214.382 will not violate the SO_2 NAAQS. This demonstration was performed in a manner acceptable to USEPA.

IV. Stack Height Regulations

IEPA reviewed the SO_2 sources in Illinois for consistency with the July 8, 1985, stack height regulations as required by USEPA. Three sources in the Wood River area were identified for further consideration. These included the merging of the effluent from four process heaters into one common stack (Catalytic Reformer 3, Heaters, 2, 4, 5, and 6); the merging of the Catalytic Reformer 1, Heater 7 (CR 1, H–7) effluent to the hydrocracking unit complex (HCU) stack; and the increase in stack height for that process heater due to merging. Both mergings were found to be in accordance with the July 8, 1985, regulations. The HCU stack is grandfathered at its height of 107 meters (m), since it was built before December 30, 1970, but the increase in the CR 1, H–7 emission height due to the merging with the HCU stack occurred in 1982 and cannot be grandfathered. The emissions from the CR 1, H–7 must therefore be modeled at the appropriate Good Engineering Practice height of 65m, rather than the actual stack height of 107m. IEPA's modeling study used the correct stack heights for these emission points.

V. Enforcement Issues

In the January 4, 1991, submittal, Illinois submitted revisions to State rules which support the previously discussed revisions to Section 214.382. The addition to Section 214.101(h) establishes test procedures for the measurement of hydrogen sulfide in refinery fuel gas. This new section provides for the use of the Tutwiler procedure in determining compliance with Section 214.382(c). Abbreviation definitions and conversion factors associated with the hydrogen sulfide measurement procedure were added to Sections 214.102 (a) and (b). The test procedures were incorporated by reference from 40 CFR part 60 in Sections 214.104 (b)(2) and (c). These State rule changes are necessary for the enforcement of amended Section 214.382 and are approvable.

The general SO_2 compliance methodology that existed in Illinois' rules in 1989 was considered inadequate for federal enforcement, and SIP revisions which relied upon it for the determination of compliance with emission limitations could not be approved by USEPA. On February 8, 1991, Illinois submitted to USEPA a corrected SO_2 compliance methodology as a revision to the Illinois SO_2 SIP. These revisions were approved by USEPA on June 26, 1992 (57 FR 28617).

Under the revised compliance methodology, Illinois' SO_2 SIP provides for a stack test to show compliance with SO_2 emission limits. The regulation of SO_2 sources at Shell Oil by SOG, however, complicates the process of assuring compliance through stack testing. In order to adequately determine each SOG's compliance with its overall limit, stack testing would need to be done simultaneously on all operating sources in the SOG. This test condition would be extremely difficult to meet. The Shell Oil facility currently monitors its fuel quality and usage closely in order to maintain compliance with its SO_2 emission limitations. Data from continuous monitoring of the hydrogen sulfide content of the refinery fuel gas and from daily analysis of the sulfur content in the refinery flasher pitch is recorded and retained at the plant for use in calculating SO_2 emission rates. Therefore, Shell Oil is capable of assuring continuous compliance with the emission limits in section 214.382 even without performing stack tests under Section 214.101.

A discussion of the enforceability of the January 4, 1989, submittal of revised section 214.382 can be found in a June 1, 1989, technical support document. The June 1, 1989, TSD stated that the submittal did not contain adequate recordkeeping or reporting requirements to ensure that the limits for percent sulfur content of the refinery flasher pitch and hydrogen sulfide content of the refinery fuel gas would be met at all times. In addition, while the rule did state that permit conditions would require the maintenance of data to ensure compliance with the limits on a 3 hour block averaged basis, there was no information provided to indicate what data the State would consider sufficient.

While the January 4, 1989, submittal did not contain recordkeeping and reporting requirements to adequately ensure that the emission limits at the facility would be met, it is apparent that Shell Oil is able to supply the necessary information. The facility performs extensive fuel monitoring and calculates SO_2 emissions to determine continuous compliance with its SO_2 limits. USEPA would consider the revisions to Section 214.382 set forth in the January 4, 1989, submittal federally enforceable if Shell Oil were required to report its fuel quality monitoring data, SO_2 emission calculations, and any exceedances of its SO_2 emission limitations.

Rather than pursuing the lengthy process of revising and readopting section 214.382 to include recordkeeping requirements, Illinois chose to establish a set of specific recordkeeping and reporting requirements as conditions in a federally enforceable operating permit for the Shell Oil facility. On December 17, 1992, Illinois' operating permit program was approved by USEPA and incorporated into the Illinois SIP. Permits issued under this federally enforceable State operating permit program (FESOP) may serve as part of the SIP and may be used to address certain SIP deficiencies. USEPA agrees that the addition of specific recordkeeping and reporting requirements to the requirements within a federally enforceable State operating permit is an acceptable approach to ensure compliance with the requirements of the SIP.

In a June 12, 1992, letter, USEPA informed IEPA of the specific permit conditions which must be included in Shell Oil's federally enforceable operating permit in order to ensure that the facility will maintain and report adequate compliance records. USEPA and IEPA have discussed these conditions and developed a set of operating permit requirements which would satisfy USEPA's recordkeeping and reporting requirements. Currently, Shell Oil's operating permit requires that analysis data, the amount of refinery flasher pitch and RFG burned per hour, and the amount of SO_2 emitted from each heater and boiler in each SOG be recorded and the records retained for 2 years. The permit also requires that the total monthly emissions of SO_2 from the entire facility and the highest and second highest SO_2 emission rates for each month must be reported quarterly. The provisions which must be added to the existing requirements in Shell Oil's operating permit, as listed in the June 12, 1992, letter, include, but are not necessarily limited to, the following.

Records which must be kept for each separate SOG for three years:

—The amount of hydrogen sulfide in the refinery fuel gas as measured by the continuous emissions monitoring system on the RFG fuel line.

—The percent sulfur in the refinery flasher pitch as measured in daily lab analysis.

—The amount of each fuel burned in each boiler or heater in the SOG on an hourly basis, from process data.

—The hourly calculated SO_2 emissions from each heater or boiler in each SOG in units that correspond to the limit in the permit.

Report this information quarterly for each separate SOG:

—Summaries of any 3-hour exceedances of the SO_2 limit for the SOG.

Report these flags as they occur:

—Measured refinery flasher pitch sulfur content over 3 percent.
—Continuous emission monitoring system measurements of RFG hydrogen sulfide content over 39 grains per 100 dry standard cubic feet.
—Hours during which any fuel other than natural gas is burned in boilers subject to the New Source Performance Standards (NSPS).

It must also be noted in specific language in the permit that if any fuel other than natural gas is burned in the boilers or heaters which are regulated by the New Source Performance Standards (NSPS boilers), the requirements of 40 CFR part 60 will apply. This will assure that the permit does not shield the source from enforcement of the NSPS. It should be noted in the permit that if Shell Oil decides to start burning other fuels than natural gas in the NSPS boilers, the NSPS requirements will change the recordkeeping and reporting requirements for those boilers, possibly necessitating separate fuel input and pollutant emissions measurements for the NSPS boilers.

A federally enforceable operating permit that includes these requirements would address the enforcement deficiencies identified in the above cited June 1, 1989, technical support document to USEPA's satisfaction.

VI. Proposed Rulemaking Action and Solicitation of Public Comment

USEPA proposes to approve the January 4, 1989, submittal as a revision to the Illinois SO_2 SIP for Wood River Township. The submittal consists of amended 35 IAC Sections 214.101, 214.102, 214.104, and 214.382. The emission limits set forth in the submittal have been shown to protect the NAAQS, and the enforceability deficiencies in the rule have been addressed through federally enforceable operating permit conditions. When a federally enforceable operating permit for Shell Oil which includes the reporting and recordkeeping requirements identified by USEPA has been issued and has become effective, USEPA will finalize approval of the January 4, 1989, SIP submittal. If Illinois fails to issue an adequate federally enforceable operating permit for Shell Oil, USEPA will disapprove the January 4, 1989, submittal. Upon final USEPA approval of these rules, the September 28, 1984, SIP call is considered to be satisfied for Wood River Township.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to approve the requested revision. Public comments received by April 23, 1993 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules as USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 2, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–6724 Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants from the Island of Nihoa, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants: *Amaranthus brownii* (no common name (NCN)), *Pritchardia remota* (loulu), and *Schiedea verticillata* (NCN). These three species are endemic to the island of Nihoa, Hawaiian Islands. Two of the species are threatened by competition with the one widespread alien plant that has established on the island. Two of the species grow in steep, rocky habitats and are threatened by natural and human-caused substrate loss such as erosion and rock slides. Because of the steep and easily disturbed habitat, these species are threatened by degradation of their environment due to human impact. Because of the small numbers of existing individuals and populations and their narrow distributions, which are limited to the 0.25 square mile (sq mi) (0.65 sq kilometer (km)) island, these species are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by May 24, 1993. Public hearing requests must be

received by May 10, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Amaranthus brownii, Pritchardia remota, and *Schiedea verticillata* are endemic to the island of Nihoa, Hawaii. Nihoa is the largest and highest of the uninhabited islands of Hawaii. The Hawaiian Archipelago is made up of 132 islands, reefs, and shoals forming an arch 1,600 statute mi (2,580 km) long in the middle of the Pacific Ocean. The eight major Hawaiian Islands occur in the southeast 400 mi (650 km) of the arch. Northwest of Niihau, small islands and atolls are widely scattered over the remaining 1,100 mi (1,750 km) of the arch and make up the Northwestern Hawaiian Islands (NWHI) (formerly called the Leeward Islands) (Department of Geography 1983, Macdonald *et al.* 1983, Walker 1990). Nihoa, the largest of the lava islands west of Niihau, is the closest to the main islands, situated 170 mi (275 km) northwest of Kauai. Over many years, waves driven by prevailing trade winds eroded the island into its current shape, which is the remnant southwest quadrant of the original huge volcanic cone. The east, west, and north sides of Nihoa are sheer cliffs, and the south coast comprises low cliffs with rock benches and one small beach (Cleghorn 1987, Gagne and Conant 1983, Macdonald *et al.* 1983). The island, formed about 7.5 million years ago by a single shield volcano, now measures only 0.85 mi (1.4 km) long, an average of 0.3 mi (0.5 km) wide, and 156 acres (ac) (63.1 hectares (ha)) in area (Macdonald *et al.* 1983, Walker 1990). The highest point, 896 feet (ft) (273 meters (m)) in elevation (Conant 1985), is located at one of the two peaks on Nihoa, which are separated by a depression dissected by six valleys (Macdonald *et al.* 1983). The elevation of the island is not sufficient to increase precipitation from that which would fall on a flat island, and the yearly rainfall of 20 to 30 inches (in) (508 to 762 millimeters (mm)) per year, usually concentrated in the winter months, is the result of unpredictable rain squalls passing over the island (Carlquist 1980, Cleghorn 1987). Valleys are deep and have little sediment, indicating that their streams were once powerful, but the only water on the island now is found in three freshwater seeps (Cleghorn 1987).

Nihoa, with the most diverse flora and fauna of any of the NWHI, presents a relatively intact low-elevation dryland ecosystem with a complement of plants, arthropods, and birds (Gagne 1982). Such areas were probably common in the main Hawaiian Islands prior to their disturbance by Polynesian agricultural practices (Cuddihy and Stone 1990). Nihoa was inhabited, beginning in the thirteenth century by a small group of Polynesian settlers, who terraced and cultivated most of the gently sloping area of the island, a total of 12 to 31 ac (4.9 to 12.5 ha) or 7.7 to 20 percent of the area of the island. Most of the island was unsuitable for cultivation, and habitation did not persist for a long period of time, so much of the natural ecosystem remained intact (Cleghorn 1987, Emory 1928, Harrison 1990). Animals now found on or near Nihoa include: a small, resident population of *Monachus schauinslandi* (Hawaiian monk seal), a listed endangered species; *Chelonia mydas* (green sea turtle), a listed threatened species; 17 species of breeding seabirds; several migratory seabirds; 2 endemic land birds, *Acrocephalus familiaris* (Nihoa millerbird) and *Telespyza ultima* (Nihoa finch), both listed endangered species; 6 species of endemic land snails; and 35 endemic and 26 indigenous arthropods, many only recently discovered. A total of 26 vascular plant species have been found on Nihoa: 3 species endemic to Nihoa, *Amaranthus brownii, Pritchardi remota* (loulu), and *Schiedea verticillata*; 9 species endemic to the Hawaiian Islands, *Chamaesyce celastroides* var. *celastroides* ('akoko), *Chenopodium oahuense* ('aheahea), *Eragrostis variabilis* (kawelu), *Panicum torridum* (kakonakona), *Portulaca villosa* ('ihi), *Rumex albescens* (hu'ahu'ako), *Sesbania tomentosa* ('ohai), *Sicyos pachycarpus* (kupala), and *Solanum nelsonii* (popolo); 8 species indigenous to Hawaii, *Boerhavia diffusa* (alena), *Heliotropium curassavicum* (seaside heliotrope), *Ipomoea indica* (koali 'awa), *Ipomoea pes-caprae* ssp. *brasiliensis* (pohuehue), *Portulaca lutea* ('ihi), *Sida fallax* ('ilima), *Solanum americanum* (glossy nightshade), and *Tribulus cistoides* (nohu); and 6 alien species which have naturalized in Hawaii, *Cenchrus echinatus* (common sandbur), *Nephrolepis multiflora* (sword fern), *Paspalum* sp., *Portulaca oleracea* (pigweed), *Setaria verticillata* (bristly foxtail, and *Tetragonia tetragonioides* (New Zealand spinach) (Conant 1985, Conant and Herbst 1983, Gagne and Conant 1983, Harrison 1990, Herbst 1977).

Bare rock and unvegetated soil make up about one-third of the surface of Nihoa. All vegetation is classified as being part of Coastal Communities, including Coastal Dry Communities and a Coastal Mesic Community. Coastal Dry Shrublands include two forms of 'Ilima (*Sida*) Shrubland; prostrate plants near the shore and erect plants in more sheltered sites. The 'Aweoweo (*Chenopodium* or 'aheahea) Coastal Shrubland includes 'aheahea and popolo as codominants, as well as 'ilima and several other less frequent species. The Loulu (*Pritchardia*) Coastal Forest, a type of Coastal Mesic Forest, contains *Pritchardia remota* as the only dominant (Gagne and Cuddihy 1990).

Nihoa is owned by the Federal government and is included within the boundaries of the City and County of Honolulu. It is part of the State of Hawaii Wildlife Refuge and is classified as Conservation District land, the island itself in the Protective Subzone and the surrounding water in the Resource Subzone. Nihoa is part of the Hawaiian Islands National Wildlife Refuge, which is managed by the Service, and has been designated a Research Natural Area (Clapp *et al.* 1977; Conant 1985; Department of the Interior 1986a, 1986b; Harrison 1990; Honolulu 1988; Miller 1983).

Discussion of the Three Species Proposed for Listing

Amaranthus brownii was first collected by Edward L. Caum during the Tanager Expedition in 1923. Erling Christophersen and Caum named it in honor of Dr. F.B.H. Brown in 1931.

Amaranthus brownii, a member of the amaranth family (Amaranthaceae), is an annual herb with leafy upright or ascending stems, 1 to 3 ft (30 to 90 centimeters (cm)) long. The slightly hairy, alternate leaves are long and narrow, 1.6 to 2.8 in (4 to 7 cm) long, 0.06 to 0.16 in (1.5 to 4 mm) wide, and more or less folded in half lengthwise. Flowers are either male or female, and both sexes are found on the same plant. The green flowers are subtended by two oval, bristle-tipped bracts about 0.04 in (1 mm) long and 0.03 in (0.7 m m) wide. Each flower has three bristle-tipped sepals which are lance-shaped and 0.05 in (1.3 mm) long by 0.03 in (0.8 mm) wide in male flowers and spatula-

shaped and 0.03 to 0.04 in (0.8 to 1 mm) long by 0.01 to 0.02 in (0.2 to 0.5 mm) wide in female flowers. Male flowers have three stamens; female flowers have two stigmas. The flattened, oval fruit, which does not split open at maturity, is 0.03 to 0.04 in (0.8 to 1 mm) long and 0.02 to 0.03 in (0.6 to 0.8 mm) wide and contains one shiny, lens-shaped, reddish black seed. This species can be distinguished from other Hawaiian members of the genus by its spineless leaf axils, its linear leaves, and its fruit which does not split open when mature (Wagner *et al.* 1990).

When *Amaranthus brownii* was first collected in 1923, it was "most common on the ridge leading to Millers Peak, but abundant also on the ridges to the east" (Herbst 1977). The 2 known populations are separated by a distance of 0.25 mi (0.4 km) and contain approximately 35 plants: about 23 plants near Millers Peak and about a dozen plants in Middle Valley. During its growing season of December through July, *Amaranthus brownii* typically grows on rocky outcrops in fully exposed locations at elevations between 390 and 700 ft (120 and 213 m). Associated species include 'aheahea, kakonakona, and kupala. Pigweed, an invasive alien species, is widespread on Nihoa and grows in habitat similar to *Amaranthus brownii*. Because it grows on rocky outcrops, *Amaranthus brownii* is more likely to be affected by substrate changes. Due to the small numbers of populations and individuals and its limited distribution, this species is threatened by stochastic extinction and/or reduced reproductive vigor. This species may have experienced a reduction in total numbers due to disturbances resulting from Polynesian settlement of Nihoa. Seeds have been collected for cultivation, but resulting germination and survival rates were very low, indicating that there may have been a reduction in the reproductive vigor of the species (Hawaii Heritage Program (HHP) 1990a1, 1990a2; Wagner *et al.* 1985, 1986, 1990).

In 1858, Dr. Rooke brought seed of a palm from Nihoa and planted it on the palace grounds in Honolulu (Hillebrand 1888). A Hillebrand specimen, probably collected from this cultivated tree, was used by Odoardo Beccari (1890) to describe *Pritchardia remota*. Otto Kuntze transferred the species to other genera, resulting in *Washingtonia remota* (Kuntze 1891) and later *Eupritchardia remota* (Kuntze 1898). In their 1921 monograph of the genus, Beccari and Joseph Rock included the species in *Pritchardia*, as do the authors of the current treatment (Read and Hodel 1990).

Pritchardia remota, a member of the palm family (Arecaceae), is a tree 13 to 16 ft (4 to 5 m) tall with a ringed, wavy trunk about 5.9 in (15 cm) in diameter. The rather ruffled, fan-shaped leaves are about 31 in (80 cm) in diameter and are somewhat waxy to pale green with a few tiny scales on the lower surface. The flowering stalks, up to 12 in (30 cm) long, are branched and have flowers arranged spirally along the hairless stalks. Below each flower is a bract 0.08 to 0.1 in (2 to 3 mm) long. The flower consists of a cup-shaped, three-lobed caly (fusxed sepals); three petals, each about 0.2 in (6 mm) long; six stamens; and a three-lobed stigma. The pale greenish brown fruit is almost globose, 0.7 to 0.8 in (1.9 to 2 cm) long and about 0.7 in (1.8 to 1.9 cm) in diameter. This is the only species of *Pritchardia* on Nihoa and can be distinguished from other species of the genus in Hawaii by its wavy leaves; its short, hairless inflorescences; and its small, globose fruits (Beccari and Rock 1921, Read and Hodel 1990).

Pritchardia remota is known from two presently extant populations along 0.1 mi (0.2 km) of the length of each of two valleys which are about 0.4 mi (0.6 km) apart on opposite sides of Nihoa. Including seedlings, 680 plants are found in scattered groups: 387 plants in West Palm Valley and 293 in East Palm Valley (Herbst 1977). Earlier totals were somewhat smaller, probably because younger seedlings were not counted (Herbst 1977). An uncollected palm, no longer extant, was observed growing on Laysan Island and may have been this species (Ely and Clapp 1973, Rock 1913). Most of the populations of *Pritchardia remota* are crowded into scattered, small groves on abandoned agricultural terraces lower in the valleys. A few trees also grow at the bases of basaltic cliffs on the steep outer slopes of each of the two valleys. Plants grow from 660 to 2600 ft (200 to 800 m) in elevation (Wagner *et al.* 1990). *Pritchardia remota* is unusual among Hawaiian members of the genus in that it occurs in a dry area. Fossil loulu stems have been found near sea level on Oahu, which may indicate that the genus was more widespread before so much lowland habitat was altered for human use (Carlquist 1980, Cuddihy and Stone 1990). Within the Loulu Coastal Forest Community, *Pritchardia remota* assumes complete dominance with a closed canopy and thick layers of fallen fronds in the understory (Gagne and Cuddihy 1990). Plants growing near the groves and in association with the single individuals include 'aheahea, 'ilima, popolo, and some 'ohai. Lichens grow on the trunks of the trees (Sheila Conant, University of Hawaii, pers. comm., 1991; Derral Herbst, U.S. Fish and Wildlife Service (USFWS), pers. comm., 1991). *Pritchardia remota* provides nesting and other habitat for *Sula sula rubipes* (red-footed boobies) as well as occasional perching space for *Anous stolidus pileatus* (brown noddies), two of the resident seabirds on Nihoa (Conant 1985). *Pritchardia remota* is in cultivation in several botanical gardens. The species is threatened by stochasitc extinction due to the small number of populations and the plant's narrow range (Conant 1985; Karen Shigematsu, Lyon Arboretum, pers. comm., 1991).

The first specimens of *Schiedea verticillata* were collected near Derbys Landing in 1923. Brown (in Christophersen and Caum 1931) chose the specific epithet to refer to the verticillate (whorled) arrangement of the leaves. Although Sherff (1944) transferred the species to the genus *Alsinidendron*, current workers (Wagner *et al.* 1990) consider it to be a species of *Schiedea*.

Schiedea verticillata, a member of the pink family (Caryophyllaceae), is a perennial herb which dies back to an enlarged root during dry seasons. The stems, which can reach 1.3 to 2 ft (0.4 to 0.6 m) in length, are upright or sometimes pendent. The stalkless leaves are fleshy, broad, and pale green; are usually arranged in threes; and measure 3.5 to 5.9 in (9 to 15 cm) long and 2.8 to 3.5 in (7 to 9 cm) wide. Flowers are arranged in open, branched clusters, usually 6.7 to 9.8 in (17 to 25 cm) long. Opposite or whorled pale green bracts, located at inflorescence branches and underneath the flowers, measure 0.2 to 1.6 in (6 to 40 mm) long at the central branch and 0.1 to 0.2 in (3.5 to 6 mm) long on the side branches and underneath the flowers. Each petalless flower is positioned on a stalk 0.2 to 0.8 in (5 to 20 mm) long and has 5 lance-shaped sepals 0.3 to 0.4 in (8 to 10 mm) long, 5 nectaries, 10 stamens, and 4 or 5 styles. The ovoid capsule measures 0.3 to 0.4 in (7 to 9 mm) long and releases reddish to grayish brown seeds, about 0.03 in (0.7 to 0.8 mm) long. This species, the only member of its genus to grow in the NWHI, is distinguished from other species of the genus by its exceptionally large sepals and the usually three leaves per node (Wagner *et al.* 1990).

All historically known populations of *Schiedea verticillata* are known to be extant. Five populations are scattered in the western 10 percent of the island in an area about 0.06 mi (0.1 km) by 0.4 mi (0.6 km), and a sixth population is

found on the far eastern end of the island 0.7 mi (1.2 km) away. The 6 populations contain a total of 385 to 414 individuals: At Dogs Head, at least 95 plants have been observed; a population at Devils Slide consists of 96 to 100 plants; in West Palm Valley, 2 or 3 plants have been seen in the upper portion and 30 to 38 plants have been counted in the lower portion; the Pinnacle Peak population contains 12 to 25 individuals; at Millers Peak, 2 to 5 plants have been observed; and another population on the east spur of the island contains 148 plants (HHP 1990b1 to 1990b6). *Schiedea verticillata* typically grows in soil pockets and cracks on coastal cliff faces at elevations between 100 and 890 ft (30 and 270 m) (Wagner *et al.* 1990, Weller *et al.* 1990). Associated species include 'aheahea, beach morning glory, koali 'awa, kupala, kawelu, and lichens on surrounding rock. *Schiedea verticillata* is threatened by competition with pigweed, which is widespread on Nihoa and grows in habitats similar to this species. It is also threatened by stochastic extinction due to its very restricted range and the vulnerability of plants to disturbance events in their steep, rocky habitat (Conant 1985; S. Conant, pers. comm., 1991).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Pritchardia remota* was considered to be endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa. *Amaranthus brownii* and *Schiedea verticillata* were considered to be endangered in the proposed rule, but *Pritchardia remota* was not included. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Amaranthus brownii and Schiedea verticillata*, which were in the proposed rule, were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The two taxa that were proposed as endangered in the June 16, 1976, proposed rule were considered Category 1 candidates on all three of these notices. *Pritchardia remota* was included as a Category 1 species on the 1980 notice and remained so on the 1985 and 1990 notices.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on the date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposal constitutes the final 1-year finding for these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these three species are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Rats	Alien plants	Fire	Substrate loss*	Human impacts	Limited numbers**
Amaranthus brownii		X	P	X	X	X[1,2]
Pritchardia remota	P	P	P		X	X[1]
Schiedea verticillata	P	X	P	X	X	

X = Immediate and significant threat.
P = Potential threat.
* = Substrate loss includes erosion, rock slides, and landslides.
** = No more than 100 individuals and/or no more than 5 populations.
1 = No more than 5 populations.
2 = No more than 50 individuals.

These factors and their application to *Amaranthus brownii* Christoph. & Caum (NCN), *Pritchardia remota* Becc. (loulu), and *Schiedea verticillata* F. Brown (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Nihoa's plant populations, as well as its many birds, are vulnerable to the intentional or inadvertent introduction of alien animals. The difficulty in landing on the island provides a degree of protection from animal introductions, but a wrecked fishing boat might accidentally introduce rats, which could cause a severe and rapid degradation of both the flora and fauna of Nihoa.

Alien plant species naturalizing on Nihoa compete with native plant species for space, water, nutrients, and light and would disturb ecosystems which include not only native plants, but also native arthropods and birds. Six alien plant species, which are naturalized in other parts of the Hawaiian Islands, have been found on Nihoa. Three alien plant species were first recorded in the area of Millers Peak, where a military installation was located during the 1960s. Common sandbur was first noticed between 1961 and 1969. In 1962, a soldier's towel at the military camp was found with six sandbur fruits stuck to it. This was burned, but it illustrates how easily alien propagules can be brought to Nihoa by human visitors. Service policy has been to destroy all sandbur plants, and none were seen after 1969 until 1981, when 1 plant with fewer than 10 fruits was discovered and destroyed. An unidentified species of the grass genus *Paspalum* was observed in 1962 near the military camp, but it has not been found since so has evidently not established. Three small colonies of pigweed were found in 1977 near the military installation. It has now spread over the entire island, having become the only widespread exotic plant present. Pigweed grows in shallow soil pockets, especially near ridge tops, the sort of habitat in which *Amaranthus brownii* and *Schiedea verticillata* grow. It may be replacing individuals of two native species of *Portulaca* and potentially could threaten *Amaranthus brownii* and *Schiedea verticillata*. Two introduced species have been found near the southern coast. Bristly foxtail was found in 1969 but has not been collected since, so it has probably not become established. New Zealand spinach was collected in 1977 and again in 1991. In 1981 one colony of sword fern, an alien species established in the main Hawaiian Islands, was found in the southern part of Nihoa some distance from the usual landing site. Two other colonies were found in 1983 in the northwestern part of the island. This is the first fern naturalized in the main Hawaiian Islands to have reached the NWHI and is thought to have arrived by wind dispersal. Caution on the part of personnel working on the island and frequent monitoring of the vegetation and removal of alien plants have helped keep established exotics to a minimum on Nihoa (Conant 1983a, 1983b, 1985; Herbst 1980; Marshall 1964).

With its low amount of rainfall, Nihoa often has much dry vegetation, which is very susceptible to fire. An 1885 trip to Nihoa by a group led by Queen Liliuokalani illustrates this vulnerability. The group had to leave the island abruptly after they started a fire which quickly swept across the island (Culliney 1988). Fires caused by smoking or cooking remain potential threats.

Erosion, landslides, rock slides, and flooding due to natural causes potentially could result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges, including all three proposed species. Evidence of heavy flash floods has been noted in the lower part of East Palm Valley, where there are specimens of *Pritchardia remota* (Kramer 1962). *Amaranthus brownii* and *Schiedea verticillata* grow on rocky outcrops and cliff faces, making these plants vulnerable to substrate changes. This process can be exacerbated by human disturbance.

Because of the steep slope and rocky nature of Nihoa, people walking from place to place on the island can cause a great deal of damage. Currently, the only legal visitors are those with Service approval, usually Refuge personnel or scientific researchers who are very aware of the fragile nature of the island's environment (Conant 1985). Access to this island for Hawaiian religious ceremonies would be a permitted action, but visitors would be accompanied by Refuge personnel (Jerry Leinecke, USFWS, pers. comm., 1991). With increased commercial fishing in the NWHI, a policy adopted by the State of Hawaii and supported by the Department of Land and Natural Resources (Harrison 1985), there is a greater possibility of mishaps and unauthorized landings on Nihoa (Gagne and Conant 1983). Recreational boaters might be tempted to land illegally on the island. Conant (pers. comm., 1991) related a 1981 incident in which people on a yacht had an inflatable boat ready to approach the island, but, upon seeing the camp of researchers working on the island, they made a hasty retreat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or visits by individuals interested in seeing rare plants could result from increased publicity, and would threaten these three species, especially *Amaranthus brownii* and *Schiedea verticillata*. The limited legal access to Nihoa and the island's distance from the inhabited main Hawaiian Islands reduces the effect of this impact. However, the island's isolation also decreases the amount of monitoring which can be provided by Federal and State authorities.

C. Disease or Predation

Rattus spp. (rats) and *Mus musculus* (house mouse), which have made their way to several small islands and islets in the Hawaiian chain (Tomich 1986), could be introduced to Nihoa from a nearby ship. Rodent predation could prove disastrous for *Pritchardia remota*; predation of seeds by rodents has reduced the reproductive capacity of other Hawaiian *Pritchardia* species (Center for Plant Conservation (CPC) 1990b, Cuddihy and Stone 1990). Rodents might also find the fleshy roots of *Schiedea verticillata* palatable (CPC 1990a). The former presence of *Felis catus* (house cat) and the current presence of *Lepidodactylus lugubris* (gecko) and at least 70 species of alien insects are proof that introductions to the island occur (Beardsley 1966; Bryan 1978; Conant *et al.* 1984; John Strazanac, Bishop Museum, pers. comm., 1991). *Tetranychus cinnabarinus* (carmine spider mite) has been collected several times on Nihoa and could threaten *Schiedea verticillata* (CPC 1990a; J. Strazanac, pers. comm., 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4).

All populations of the three proposed species are located on Federal land which is within the boundaries of the City and County of Honolulu and the State of Hawaii and is managed as a National Wildlife Refuge by the Service. The land is also classified as a State Wildlife Refuge (Miller 1983), although all management is performed by the Federal government. All populations of the three proposed species occur on land classified within conservation districts. Lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources (HRS., sect. 205–2). The State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If these species were listed, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Despite the existence of various State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. Listing of these three plant species would reinforce and supplement the protection available under the State Act and other laws.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The very limited range of all three of the proposed species, the small number of populations of two of the species, and the small number of individuals of one of the species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population. All three of the proposed species, *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata*, are restricted in their natural range to small portions of an island with an area of only 0.25 sq mi (0.65 sq km). Two of the species, *Amaranthus brownii* and *Pritchardia remota*, have only two populations each. Fewer than 40 individuals of *Amaranthus brownii* have ever been counted. Attempts to grow *Amaranthus brownii* in cultivation have not succeeded, with only a few seeds germinating and those seedlings not surviving (Conant 1985).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list these three plant species as endangered. Two of the species proposed for listing are known from only two populations; the other species is known from only one population. One of the species numbers fewer than 40 individuals. Each of the three species is threatened by one or more of the following: Competition with the alien plant pigweed, substrate loss, and increased likelihood of extinction and/or reduced reproductive vigor due to small numbers of individuals and populations and their extremely limited range. Because these three species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these three plant species appears warranted.

Critical habitat is not being proposed for these species for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not presently prudent for *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata*. Such a determination would result in no known benefit to the species. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants by making them more vulnerable to take or vandalism and their fragile habitat more susceptible to damage. The listing of these species as endangered also publicizes their rarity and, thus, can make these plants attractive to researchers, collectors, and those wishing to see rare plants. This could contribute to their decline and/or increase enforcement problems. The only known populations of the proposed species occur on land owned and managed by the Federal government, which is aware of the general location and importance of protecting the plants and their habitat. Protection of the species' habitat will be addressed through the recovery process and, in some cases, through the section 7 consultation process. All the plants are located on a National Wildlife Refuge, one of the policies of which is to conserve native vegetation, so it is unlikely that Federal activities would negatively affect the continued existence of these plants.

Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act, requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All populations of the three proposed species occur on land managed by the Service as a National Wildlife Refuge. There are no other known Federal activities that occur within the present known habitat of these three plant species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three plant species from the island of Nihoa, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant, for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Zella E. Ellshoff, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•		•
Amaranthaceae—Amaranth family:						
• •	•	•	•	•		•
Amaranthus brownii	None	U.S.A. (HI)	E	NA	NA	
• •	•	•	•	•		•
Arecaceae—Palm family:						
• •	•	•	•	•		•
Pritchardia remota	Loulu	U.S.A. (HI)	E	NA	NA	

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •	•	•	•	•		•
Caryophyllaceae—Pink family:						
• • •	•	•	•	•		•
Schiedea verticillata	None	U.S.A. (HI)	E	NA	NA	
• • •	•	•	•	•		•

Dated: March 11, 1993.

Richard N. Smith

Acting Director, Fish and Wildlife Service.

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children (WIC): Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Poverty income guidelines.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations, 7 CFR part 246.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The final action has been reviewed under Executive Order 12291 and has been determined to be not major. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Further, this action will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

Section 17 (d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal poverty income guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1993 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on February 12, 1993 at 58 FR 8287. The guidelines published by DHHS are referred to as the poverty income guidelines.

Section 246.7(c)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9(b) of the National School Lunch Act for reduced price school meals, or which are less than 100 percent of the Federal poverty income guidelines.

Consistent with the method used to compute eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1993 through June 30, 1994. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1993–JUNE 30, 1994

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	6,970	12,895

EFFECTIVE JULY 1, 1993–JUNE 30, 1994—Continued

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185% of PIG)
2	9,430	17,446
3	11,890	21,997
4	14,350	26,548
5	16,810	31,099
6	19,270	35,650
7	21,730	40,201
8	24,190	44,752
For each additional family member add	2,460	4,551
Alaska:		
1	8,700	16,095
2	11,780	21,793
3	14,860	27,491
4	17,940	33,189
5	21,020	38,887
6	24,100	44,585
7	27,180	50,283
8	30,260	55,981
For each additional family member add	3,080	5,698
Hawaii		
1	8,040	14,874
2	10,860	20,091
3	13,680	25,308
4	16,500	30,525
5	19,320	35,742
6	22,140	40,959
7	24,960	46,176
8	27,780	51,393
For each additional family member add	2,820	5,217

Dated: March 16, 1993.

Andrew P. Hornsby,

Acting Administrator.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1993 to June 30, 1994]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	6,970	581	135	12,895	1,075	248	9,061	756	175
2	9,430	786	182	17,446	1,454	336	12,259	1,022	236
3	11,890	991	229	21,997	1,834	424	15,457	1,289	298
4	14,350	1,196	276	26,548	2,213	511	18,655	1,555	359
5	16,810	1,401	324	31,099	2,592	599	21,853	1,822	421
6	19,270	1,606	371	35,650	2,971	686	25,051	2,088	482
7	21,730	1,811	418	40,201	3,351	774	28,249	2,355	544
8	24,190	2,016	466	44,752	3,730	861	31,447	2,621	605
For each add'l family member add	+2,460	+205	+48	+4,551	+380	+88	+3,198	+267	+62
Alaska									
1	8,700	725	168	16,095	1,324	310	11,310	943	218
2	11,780	982	227	21,793	1,817	420	15,314	1,277	295
3	14,860	1,239	286	27,491	2,291	529	19,318	1,610	372
4	17,940	1,495	345	33,189	2,766	639	23,322	1,944	449
5	21,020	1,752	405	38,887	3,241	748	27,326	2,278	526
6	24,100	2,009	464	44,585	3,716	858	31,330	2,611	603
7	27,180	2,265	523	50,283	4,191	967	35,334	2,945	680
8	30,260	2,522	582	55,981	4,666	1,077	39,338	3,279	757
For each add'l family member add	+3,080	+257	+60	+5,698	+475	+110	+4,004	+334	+77

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective from July 1, 1993 to June 30, 1994]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
Hawaii									
1	8,040	670	155	14,874	1,240	287	10,452	871	201
2	10,860	905	209	20,091	1,675	387	14,118	1,177	272
3	13,680	1,140	264	25,308	2,109	487	17,784	1,482	342
4	16,500	1,375	318	30,525	2,544	588	21,450	1,788	413
5	19,320	1,610	372	35,742	2,979	688	25,116	2,093	483
6	22,140	1,845	426	40,959	3,414	788	28,782	2,399	554
7	24,960	2,080	480	46,176	3,848	888	32,448	2,704	624
8	27,780	2,315	535	51,393	4,283	989	36,114	3,010	695
For each add'l family member add	+2,820	+235	+55	+5,217	+435	+101	+3,666	+306	+71

[FR Doc. 93–6663 Filed 3–23–93; 8:45 am]
BILLING CODE 3410–30–M

Commodity Supplemental Food Program: Elderly Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Elderly poverty income guidelines.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These poverty income guidelines are to be used in conjunction with the CSFP Regulations, 7 CFR part 247.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and has been determined to be not major. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Further, this action will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99–198). This legislation amended section 5 (f) and (g) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Public Law 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Public law 99–198, the Department published interim rules on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988 at 58 8287. These regulations defined "elderly persons" as those who are 60 years of age or older. The final rule further stipulated that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services" (7 CFR 247.7(a)(3)).

These poverty income guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1993 was published by the Department of Health and Human Services (DHHS) in the Federal Register for February 12, 1993 at 58 FR 8287. At this time the Department is publishing the income limit of 130 percent of the poverty income guidelines by household size to be used for elderly certification in the CSFP for the period July 1, 1993–June 30, 1994.

The poverty income guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar. The first table in this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all the Territories including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1993–JUNE 30, 1994

Family size	Annual FNS poverty income guidelines for elderly in CSFP (130% of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:	
1	9,061
2	12,259
3	15,457
4	18,655
5	21,853
6	25,051
7	28,249
8	31,447
For each additional family member add	3,198
Alaska:	
1	11,310
2	15,314
3	19,318
4	23,322
5	27,326
6	31,330
7	35,334
8	39,338
For each additional family member add	4,004
Hawaii:	
1	10,452
2	14,118
3	17,784
4	21,450
5	25,116
6	28,782
7	32,448
8	36,114
For each additional family member add	3,666

Dated: March 16, 1993.

Andrew P. Hornsby,

Acting Administrator.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1993 to June 30, 1994]

Household size	Federal poverty guidelines			Reduced price meals—185%			Free meals—130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 Contiguous United States, District of Columbia, Guam and Territories									
1	6,970	581	135	12,895	1,075	248	9,061	756	175
2	9,430	786	182	17,446	1,454	336	12,259	1,022	236
3	11,890	991	229	21,997	1,834	424	15,457	1,289	298
4	14,350	1,196	276	26,548	2,213	511	18,655	1,555	359
5	16,810	1,401	324	31,099	2,592	599	21,853	1,822	421
6	19,270	1,606	371	35,650	2,971	686	25,051	2,088	482
7	21,730	1,811	418	40,201	3,351	774	28,249	2,355	544
8	24,190	2,016	466	44,752	3,730	861	31,447	2,621	605
For each add'l family member add	+2,460	+205	+48	+4,551	+380	+88	+3,198	+267	+62
Alaska									
1	8,700	725	168	16,095	1,342	310	11,310	943	218
2	11,780	982	227	21,793	1,817	420	15,314	1,277	295
3	14,860	1,239	286	27,491	2,291	529	19,318	1,610	372
4	17,940	1,495	345	33,189	2,766	639	23,322	1,944	449
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6	24,100	2,009	464	44,585	3,716	858	31,330	2,611	603
7	27,180	2,265	523	50,283	4,191	967	35,334	2,945	680
8	30,260	2,522	582	55,981	4,666	1,077	39,338	3,279	757
For each add'l family member add	+3,080	+257	+60	+5,698	+475	+110	+4,004	+334	+77
Hawaii									
1	8,040	670	155	14,874	1,240	287	10,452	871	201
2	10,860	905	209	20,091	1,675	387	14,118	1,177	272
3	13,680	1,140	264	25,308	2,109	487	17,784	1,482	342
4	16,500	1,375	318	30,525	2,544	588	21,450	1,788	413
5	19,320	1,610	372	35,742	2,979	688	25,116	3,093	483
6	22,140	1,845	426	40,959	3,414	788	28,782	2,399	554
7	24,960	2,080	480	46,176	3,848	888	32,448	2,704	624
8	27,780	2,315	536	51,393	4,283	990	36,114	3,010	695
For each add'l family member add	+2,820	+235	+55	+5,217	+435	+101	+3,666	+306	+71

[FR Doc. 93-6662 Filed 3-23-93; 8:45 am]
BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Statement of Financial Interests.

Agency Form Number: NOAA 88-195.

OMB Approval Number: 0648-0192.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 25 hours.

Number of Respondents: 50.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Magnuson Fishery Conservation Act requires disclosure of financial interests in any harvesting, processing, or marketing activities by nominees for the position of Executive Director and Membership on the Fishery Management Councils. The information is intended to inform the public and the Secretary of Commerce of any potential "conflicts of interest."

Affected Public: Individuals.

Frequency: Once every 3 years per respondent.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395-3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: March 18, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93-6657 Filed 3-23-93; 8:45 am]
BILLING CODE 3510-CW-F

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Geo. E. Keith Company, Inc	31 Perkins Street, Bridgewater, MA 02324.	01/25/93	Footwear—Men's Shoes of Leather and Suede.
Kibak Tile aka Susanne Kibak-Redfield	334 Southwest Glacier Street, Redmond, OR 97756.	02/17/93	Handpainted ceramic wall tiles.
Stallion Oil Company	909 NE. Loop 410, Suite 715, San Antonio, TX 78209.	02/18/93	Hydrocarbons (Crude oil and natural gas).
Coiling Technologies, Inc	7777 Wright Road, Houston TX 77041	02/22/93	Helical springs.
Barry Avenue Plating Company, Inc	2210 Barry Avenue, Los Angeles, CA 90064.	02/25/93	Aluminum and alloy aerospace body components such as: Wing spans, landing gear, wing spars and struts.
Gowanda Electrons Corp	1 Industrial Place, Gowanda, NY 14070	02/25/93	Inductors (filters out noise from electronic components).
PDQ Manufacturing Co., Inc	P.O. Box 37, Route 9, Staatsburg, NY 12508.	02/25/93	Sheet metal fabricated enclosures weldments for computer industry.
OCHS Industry, Inc	849 Scholtz Drive, Vandalia, OH 45337	03/02/93	Stamped metal parts for desk top computer processing units.
Toombs County Mfg. Co.	Hwy. 292 West, Lyons, GA 30436	03/02/93	Ladies sleepwear and lingerie made of MMF.
Electri-Wire Corporation	N26 W23315 Paul Road, Pewaukee, WI 53072-4061.	03/03/93	Medical cables used for patient monitoring, wire hamesses.
Charter Technologies, Inc	5533 New Perry Highway, Erie, PA 16509.	03/04/93	Telephone power systems and line interface devices and magnetic power conversion units.
Circuit Services, Inc	1300 Bel-Red, #105, Bellevue, WA 98005.	03/04/93	Electronics—Printed circuit boards.
Condar Company	10500 Industrial Drive, Box 287, Garrettsville, OH 44231.	03/05/93	Thermometers of Aluminum and porcelain, catalytic combustors, cast-iron fireplaces and ceramic title.
Eastern Rochester Mfg. Co., Inc	850 St. Paul Street Rochester, NY 14605	03/08/93	Roller Assemblies and heat sinks (heat dispersion apparatus).
Decorative Novelty Co., Inc	70 20th Street, Brooklyn, NY 11232	03/08/93	Plastic Christmas garland, ornaments and trees.
Verlink Corporation	145 Baytech Drive, San Jose, CA 95134	03/08/93	Channel service units for use in telecommunications network.
Petro Chem Industries, Inc	5629 Cheswood, Houston, TX 77087	03/09/93	Machinery and Equipment—compressor parts.
La'Spec Industries, Inc	2328 E. 49th Street, Los Angeles, CA 90058.	03/09/93	Custom lighting.
Advanced Controls, Incorporated	16901 Jamboree Boulevard, Irvine, CA 92714.	03/09/93	Machinery and Equipment—spindle drilling machines.

Firm name	Address	Date petition accepted	Product
Dynasound Organizer, Inc	1801 Old Highway 8, suite 124, New Brighton, MN 55112.	03/09/93	Racks, cases and organizers of plastics and carrying cases and totes of nylon.
W.H. Autopilots, Inc	655 Northeast Northlake Place, Seattle, WA 98105.	03/11/93	Machinery & equipment—Marine autopilots, electronic boxes, cables, compasses, Remote controls, etc.
Quiet Sport, Inc	60 Southeast Kennedy Drive, Duvall, WA 98019.	03/11/93	Neoprene waders and hip boots.
Orion Instruments, Inc	180 Independence Drive, Menlo Park, CA 94025.	03/15/93	Electronic—Electronic Test and Measurement Equipment.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 17, 1993.

David L. McIlwain,

Acting Deputy Assistant Secretary for Program Operations.

[FR Doc. 93-6656 Filed 3-23-93; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of export trade certificate of review no. 84-00009.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Opti-Copy, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Opti-Copy, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("Act") (Pub. L. No. 97-290, 15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("Regulations") are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on November 26, 1984 to Opti-Copy, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018; § 325.14(a) of the Regulations). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14(b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations).

An annual report was due from Opti-Copy, Inc. on January 10, 1992. No annual report was received. On February 10, 1992, the Department of Commerce contacted Opti-Copy, Inc. to remind it that the January 10, 1992 annual report was overdue, and an additional set of the annual report questions was sent by facsimile. On April 10, 1992, the Department of Commerce contacted Opti-Copy, Inc. again, and another set of the annual report questions was sent to it by facsimile. On November 10, 1992, the Department of Commerce contacted Opti-Copy, Inc. one more time to remind it that the Department still had not received its response to the annual report questions. The Department has received no written response from Opti-Copy, Inc. to any of these contacts.

On January 29, 1993, in accordance with § 325.10(c)(2) of the Regulations, a letter was sent by certified mail to notify Opti-Copy, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action was being taken for the certificate holder's failure to file an annual report, and that Opti-Copy, Inc. had thirty days to respond.

In addition, a summary of this letter was published in the **Federal Register** on February 5, 1993 (58 FR 7212). Pursuant to § 325.10(c)(2) of the Regulations, the Department considers the failure of Opti-Copy, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Opti-Copy, Inc. for its failure to file an annual report. The Department has sent a letter, dated March 18, 1993, to notify Opti-Copy, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations).

Dated: March 18, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93-6700 Filed 3-23-93; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Food/Exercise Diary; AF Form 3528.

Type of Request: Existing collection.

Average Burden Hours/Minutes Per Response: 15 minutes.
Responses Per Respondent: 1.
Number of Respondents: 3,000.
Annual Burden Hours: 750.
Annual Responses: 3,000.
Needs and Uses: The information collected on AF Form 3529 is used in conjunction with Air Force Pamphlet 166–27, "Improving Eating Habits," to teach persons on the U.S. Air Force Weight Control Program, and those on calorie-controlled diets, to make an accurate and objective self-analysis of their own food habits, as well as motivate them to take control of their own behavior.
Affected Public: Individuals or households; Federal agencies or employees.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Joseph F. Lackey. Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer for DoD, room 3002, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: March 18, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–6645 Filed 3–23–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.
ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).
Title, Applicable Form, and Applicable OMB Control Number: Nutritional Medicine Service Patient's Evaluation; AF Form 2503.
Type of Request: Existing collection.
Average Burden Hours/Minutes Per Response: 5 minutes.
Responses Per Respondent: 1.
Number of Respondents: 3,000.
Annual Burden Hours: 240.
Annual Responses: 3,000.
Needs and Uses: The information collected on AF Form 2503 is used to determine patient perceptions of how well Nutritional Medicine Service provides food and nutrition education services.
Affected Public: Individuals or households; Federal agencies or employees.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Joseph F. Lackey. Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer for DoD, room 3002, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: March 18, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–6646 Filed 3–23–93; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Technology Conversion, Reinvestment, and Transition Assistance

AGENCY: Advanced Research Projects Agency, DOD.
ACTION: Notice.

SUMMARY: This announces plans for the execution of the technology portion of the Defense Conversion, Reinvestment, and Transition Act of 1992. This is a broad-reaching program that will invest $600 million (including some FY 1992 funds) in dual-use technology partnerships, manufacturing technology, regional technology alliances, manufacturing extension and assistance programs, and manufacturing education initiatives. The effort is being planned and conducted by the Technology Reinvestment Project (TRP), and interagency team led by the Department of Defense (Advanced Research Projects Agency), which includes the Department of Commerce (through NIST), Department of Energy (Defense Programs), National Aeronautics and Space Administration, and the National Science Foundation. Funds will be invested (as outlined below) to develop critical dual-use technologies, deploy existing technologies which address defense needs and have potential for commercial viability, and stimulate the integration of military and commercial research and production bases. A total of eleven programs are authorized under title IV of the FY 1993 DoD Authorization Act. Three of these programs—Agile Manufacturing and Enterprise Integration ($30 million), Advanced Materials Synthesis and Processing ($30 million), and U.S. Japan Management Training ($10 million)—will be executed by mechanisms outside of this announcement. Each of the remaining eight statutory programs covered by this announcement has a unique focus, however, three statutory requirements remain: All programs require competitive awards; all programs have specific requirements on the types of proposing and participating organizations; all require cost sharing of at least 50%. The eight programs covered in this announcement are:

(1) Defense Dual Use-Critical Technology Partnerships will support the research and development of critical technologies that meet defense needs and have commercial potential.

(2) Commercial-Military Integration Partnerships will develop and mature dual-use technologies with clear commercial viability in and potential military applications.

(3) The Regional Technology Alliances Assistance Program will support regional efforts to apply and commercialize critical dual-use technologies. These alliances will bring state, industry and federal resources together to provide key infrastructural service to regional clusters of associated firms.

(4) Defense Advanced Manufacturing Technology Partnerships will encourage research and development of advanced manufacturing technologies with the potential for a broad range of military and dual-use applications.

(5) The Manufacturing Extension Program will assist small manufacturers in upgrading their capabilities to serve both commercial and defense needs. Modelled after the Agricultural Extension Service, this effort will build on manufacturing extension programs sponsored by regional, state, or local governments and private, nonprofit organizations.

(6) The Dual-Use Assistance Extension Program will assist businesses economically dependent on Department of Defense expenditures to acquire dual-use capabilities through a variety of assistance mechanisms.

(7) The Manufacturing Engineering Education Grant Program will support the enhancement of existing programs and the establishment of new programs

in manufacturing engineering education and training. Grants will be made under this program to institutions of higher education and consortia of such institutions. Eligible firms and other support entities may participate.

(8) Manufacturing Experts in the Classroom will support teaching, curriculum development, and other activities of manufacturing experts at institutions of higher education. Eligible firms and other support entities may participate in this program. As mandated by Public Law 102–564, 1.5% of all program funds is set aside for Small Business Innovative Research (SBIR). The TRP will solicit, separate from the existing SBIR programs of the participating agencies, Phase I proposals that address scientific and technical innovation in areas specifically identified as relevant to the Technology Reinvestment Project. The eight statutory programs will involve key R&D and service activities. Each activity is designed to stimulate the integration of the military and commercial industrial bases as follows: Technology Development Activities will create new or apply existing technologies to demonstrate the viability of new products and processes and include (1) Spin-off activities that demonstrate commercial feasibility of technologies originally developed for defense, (2) Dual-Use activities that develop technologies that have both defense and commercial utility, and (3) Spin-on activities that demonstrate the defense feasibility of technologies already developed commercially. Technology Deployment Activities will disseminate existing technology for commercial and military products and processes and involve: (1) Manufacturing Extension Service activities that target small business with an emphasis on assisting enterprises currently dependent upon defense to increase their competitiveness through technical and management advancement, redirection or restructuring of business practices, assistance in accessing training and consulting services, and the transition of technologies from research to commercially viable products and processes, (2) Extension Enabling Services that demonstrate activities that link together providers of extension services with each other as well as with the developers of technology, (3) Alternate Deployment Pilot Projects that explore innovative modes of technology deployment which are alternatives to traditional extension services, and (4) Technology Access Services to assist the private sector to acquire existing and emerging dual-use and commercial technologies from defense and government sources. Manufacturing Education and Training Activities will strengthen education and work force capabilities necessary to maintain and improve competitive industrial bases—ideas that improve the general state of U.S. competitiveness and productivity and provide a high quality work force for the 21st century. Emphasis will be on teaming of industry and organizations of higher education to enhance the development of dual-use technical capabilities at the university, college, and vocational levels. The use of experienced manufacturing experts and engineers in classroom settings, including the structuring of alternative curricula, will be encouraged. Regional meetings are planned for the week of April 12–17 in New York, NY; Orlando, FL; Dallas, TX; Detroit, MI; and Los Angeles, CA. Specific times and locations will be published as details become available. An official solicitation is planned for publication in both the Commerce Business Daily and the **Federal Register** in May 1993 with full proposals due in July. Questions at this time will not be accepted, however as indicated in the Program Information Package, ample opportunity for dialogue will be provided prior to the official release of the solicitation. Interested parties are invited to request a complete Program Information Package. To obtain a complete information package: Call—1–800–DUAL–USE, (8 a.m. through 7 p.m. e.s.t., Monday through Friday) or Write—The Technology Reinvestment Program, 3701 N. Fairfax Drive, Arlington, VA. 22203–1714, or Fax—703–461–2372 (Addressed to: TRP, PA 93–21), or Electronic Mail—Internet Address: PA93–21@darpa.mil. Interested parties may expect the Program Information Package within ten (10) days from written or oral request unless overnight mail account information is provided.

Dated: March 18, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–6644 Filed 3–23–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Intent to Prepare an Environmental Impact Statement for Increased Commercial Operations at Palmdale Regional Airport, CA

In an effort to provide for increased commercial aircraft operations in and around Los Angeles, CA, the City of Los Angeles Department of Airports (LADOA) in cooperation with the US Air Force is proposing to increase commercial operations at the Palmdale Regional Airport located at Air Force Plant 42. The proposed action will increase in stages, based on monthly averages, the number of daily commercial flights from the current level of 50 to a potential 400.

The proposed action will consist of the following; construction of a new terminal building of up to 700,000 square feet; increased automobile parking for up to 9,000 vehicles; construction of apron and taxiway for existing runway 4/22 along with 36 new aircraft parking positions; ground access improvements including entrance enhancements; additional traffic lanes in and out of the terminal; and the addition of edge and runway lighting as well as approach lighting for runway 4/22.

There are four preliminary identified alternatives that have been considered to the proposed action. These alternatives include: expansion of existing commercial airports; establishment of a new airport at a deactivated Air Force base; construction of a new airport on adjacent Los Angeles property; and the no action alternative.

A public scoping meeting will be held: Thursday, April 8, 1993 at 7 p.m. Ramada Inn, 300 West Palmdale Blvd., Palmdale, CA.

Public inputs and comments are solicited to determine the environmental impacts of the proposed program. To be included in the draft EIS, written comments must be received no later than forty-five (45) days from the publication of this notice. The Air Force is open to public comments on this EIS throughout the environmental impact analysis process.

Interested persons who wish to comment or seek more information on this proposed action and the EIS should contact: Mr. Peter K. Mok, Chief of Engineering, Air Force Plant 42, Det 1 ASC/EM, 2503 East Avenue P, Palmdale CA, 93550–2196.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–6629 Filed 3–23–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet April

26, 1993, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 2:30 p.m., April 26, 1993, in the Bo Coppedge Dining Room of Alumni Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Lieutenant Commander Craig M. Diffie, U.S. Navy, Secretary to the Board of Visitors, Administration Building, United States Naval Academy, Annapolis, Maryland 24102, Telephone (410) 267-2402.

Dated: March 15, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-6634 Filed 3-23-93; 8:45 am]

BILLING CODE 3810-AE-F

Navy Exchange System Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) notice is hereby given that the Navy Exchange System Advisory Committee will meet March 26, 1993, in the Macklowe Conference Center, New York City. The meeting will commence at 9:00 a.m. and will be closed to the public because it is likely to relate solely to internal agency personnel rules and practices; may disclose confidential commercial or financial information, and may involve information which, if disclosed prematurely would be likely to significantly frustrate implementation of proposed agency action. The Secretary of the Navy has determined, in writing, that the public interest requires the meeting be closed to the public because it will be concerned with matters listed in subsection 552b(c)(4) and (9)(B) of title 5, United States Code.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: Captain Roger J. Blood, SC, USN, Naval Supply Systems Command (SUP 09B), 1931 Jefferson Davis Highway, Crystal Mall 3, Room 508, Arlington, VA 22202, Telephone Number: (703) 607-0072/3.

March 17, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-6853 Filed 3-23-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0069]

Clearance Request for Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0069).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Indirect Cost Rates.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 9,800; responses per respondent, 1; total annual responses, 9,800; preparation hours per response, 1; and total response burden hours, 9,800.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0069, Indirect Cost Rates, in all correspondence.

Dated: February 23, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93-6635 Filed 3-23-93; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0074]

Clearance Request for Limitation of Costs/Funds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0074).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Limitation of Costs/Funds.

FOR FURTHER INFORMATION CONTACT: Beveraly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a

part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 63,456; responses per respondent, 1; total annual responses, 63,456; preparation hours per response, 5; and total response burden hours, 31,728.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds, in all correspondence.

Dated: February 23, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–6636 Filed 3–23–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Availability of the Waste Isolation Pilot Plant Test Phase Plan and Waste Retrieval Plan

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of the Waste Isolation Pilot Plant Test Phase Plan and Waste Retrieval Plan.

SUMMARY: The Department of Energy (DOE) announces the public availability of the Waste Isolation Pilot Plant (WIPP) Test Phase Plan and the WIPP Waste Retrieval Plan. These two plans were recently submitted to the Environmental Protection Agency (EPA) for review in accordance with section 5(a) of Public Law 102–579, the Waste Isolation Pilot Plant Land Withdrawal Act (the Act).

The WIPP Test Phase Plan: (1) Describes the Test Phase activities to be conducted at WIPP; (2) specifies the quantities and types of transuranic waste required for such activities; (3) describes how the activities will provide information directly relevant to a certification of compliance with the final disposal regulations or compliance with the Solid Waste Disposal Act (SWDA); and (4) provides justification for the activities.

The WIPP Waste Retrieval Plan describes the plan for the removal of the waste emplaced during the WIPP Test Phase, if such removal is required under the Act.

EPA will now review these plans and determine, through a rulemaking, whether to approve, in whole or in part, or disapprove the Test Phase Plan and whether to approve or disapprove the Waste Retrieval Plan.

ADDRESSES: Requests for copies of the WIPP Test Phase Plan and the WIPP Waste Retrieval Plan should be directed to W. John Arthur, III, Project Director, WIPP Project Integration Office, U.S. Department of Energy, One Park Square, 6501 Americas Parkway, NE., suite 903, Albuquerque, New Mexico 87110, (505) 845–5977. Copies of each plan have also been placed in the DOE Public Reading Rooms and libraries listed below.

SUPPLEMENTARY INFORMATION:

1. Background

The Department of Energy National Security and Military Applications Act of 1980 (Public Law 96–194) authorized DOE to construct a research and development facility to demonstrate the safe disposal of transuranic radioactive waste generated in national defense activities. The WIPP facility has been constructed in Eddy County in southeastern New Mexico, 26 miles east of Carlsbad, New Mexico, on land owned by the Federal Government. The site encompasses 10,240 acres in a sparsely populated area. WIPP consists of surfaces structures, underground facilities and four connecting shafts to the underground. The primary surface structure is the waste handling building, which supports the primary operations of receiving and inspecting waste containers and preparing those containers for transfer to the underground. The underground facilities are 2,150 feet below the surface in the bedded salt of the Salado Formation.

In October 1992, the WIPP site was withdrawn from the public domain under the Act, which also provides additional authorization to continue the project and establishes a statutory framework for subsequent phases of the project. For example, the EPA must certify that the WIPP facility will comply with certain regulations before the facility can be used to dispose of transuranic waste. It is the view of the Department of Energy that the WIPP Test Phase Plan results will aid EPA in making that determination.

2. Document Availability

Copies of the Test Phase Plan for the Waste Isolation Pilot Plant (DOE/WIPP 89–011, Rev. 1, dated 3/93) and the Waste Retrieval Plan (DOE/WIPP 89–022, Rev. 1, dated 3/93) already have been distributed to individuals who have shown an interest in the WIPP Project in the past. In addition, a copy of each of the documents has been placed in the following DOE Public Reading Rooms and libraries.

U.S. Department of Energy—HQ, Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

U.S. Department of Energy—Idaho, Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–1144.

U.S. Department of Energy—Nevada, Public Reading Room, 2753 South Highland Street, Las Vegas, Nevada 89109, (702) 295–1274.

U.S. Department of Energy—Oak Ridge, Public Reading Room, Federal Building, 200 Administration Road, Oak Ridge, Tennessee 37830, (615) 576–1216.

U.S. Department of Energy—Richland, Public Reading Room, Hanford Science Center, 825 Jadwin Avenue, Richland, Washington 99352, (509) 376–8583.

U.S. Department of Energy—Savannah River, FOI Publication/Document Room, University of South Carolina-Aiken, Gregg-Graniteville Library, 171 University Parkway, Aiken, South Carolina 29801, (803) 725–1406.

U.S. Department of Energy—San Francisco, Public Reading Room, 1333 Broadway, 7th Floor, Oakland, California 94612, (415) 273–4426.

U.S. Department of Energy—Chicago, Public Document Department, University of Illinois at Chicago, 801 South Morga Street, Chicago, Illinois 60607, (312) 996–2738.

U.S. Department of Energy—Rocky Flats, Public Reading Room, Front Range Community College, 3645 West 112th Avenue, Westminster, Colorado 80030, (303) 469–4435.

National Atomic Museum, Public Reading Room, Wyoming Boulevard South, Kirtland Air Force Base, Albuquerque, New Mexico 87115, (505) 844–4376.

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20585, (202) 208–6400.

Office of Scientific and Technical Information, Technical Information Center, Post Office Box 62, Oak Ridge, Tennessee 37830, (615) 576–2268.

Thomas Brannigan Memorial Library, 200 E. Pichaco, Las Cruces, New Mexico 88005, (505) 625–1045.

New Mexico State Library, 325 Don Gaspar, Santa Fe, New Mexico 87503, (505) 827–3800.

Pannell Library, New Mexico Junior College, 5317 Lovington Highway, Hobbs, New Mexico 88240, (505) 392–4510.

Carlsbad Public Library, 101 S. Halagueno, Carlsbad, New Mexico 88220, (505) 885–6776.

Zimmerman Library, Government Publications Department, University of New Mexico, Albuquerque, New Mexico 87138, (505) 277–5441.

Martin Speare Memorial Library, New Mexico Tech, Campus Station, Socorro, New Mexico 87801, (505) 835–5614.

The documents may be obtained by contacting the WIPP Project Integration

Office Project Director at the address given above.

Issued in Washington, DC on March 19, 1993.

Paul D. Grimm,

Acting Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–6739 Filed 3–23–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–154, for the transfer from the Federal Republic of Germany to Sweden of 4 fuel assemblies containing 946 kilograms of uranium enriched to approximately 4.93 percent in the isotope uranium-235 for use as fuel in the Oskarshamn 3 power reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 19, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–6744 Filed 3–23–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–155, for the transfer from the Federal Republic of Germany to Sweden of 140 fuel elements, containing approximately 2,151 kilograms of natural uranium and approximately 24,446 kilograms of uranium enriched to an average of 3.38 percent in the isotope uranium-235 for use as fuel in the Forsmark 1 power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 19, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–6743 Filed 3–23–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–27–NG]

Centra Gas Ontario, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Centra Gas Ontario, Inc. authorization to export up to 16 billion cubic feet of natural gas to Canada over a two-year term beginning on the date of first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 16, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–6741 Filed 3–23–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 93–04-Certification Notice-114]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Harriman Energy Partners, Ltd. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing is available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Harriman Energy Partners, Ltd., Saddle Brook, NJ

Operator: Harriman Energy Partners, Ltd.

Location: Orange County, New York

Plant Configuration: Combined cycle, cogeneration

Capacity: 57 megawatts
Fuel: Natural gas
Purchasing Utilities: Orange and Rockland Utilities, Inc.
Expected In-Service Date: early 1995.

Issued in Washington, DC on March 3, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-6740 Filed 3-23-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-850-002, et al.]

Louis Dreyfus Electric Power, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92-850-002]

March 12, 1993.

Take notice that on February 1, 1993, Louis Dreyfus Electric Power, Inc. (Dreyfus) filed certain information as required by the Commission's letter order dated December 2, 1992 in this proceeding. 61 FERC ¶ 61,303. Copies of Dreyfus' informational filing are on file with the Commission and are available for public inspection.

2. Boston Edison Company

[Docket No. ER93-437-000]

March 16, 1993.

Take notice that on December 28, 1993, Boston Edison Company (Boston) tendered for filing the 1991 true up to actual for the Substation 402 Agreement (FPC Rate No. 149).

Comment date: March 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Western Massachusetts Electric Company

[Docket Nos. ER92-66-000 and ER93-219-000]

March 17, 1993.

Take notice that on March 11, 1993, Massachusetts Electric Company (WMECO) submitted additional information in support of its distribution transformation rate for service to Groton Electric Light Department (Groton).

WMECO states that copies of its submission have been mailed or delivered to each of the parties.

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER93-445-000]

March 17, 1993.

Take notice that on March 11, 1993, Portland General Electric (PGE) tendered for filing an amended Exhibit D to the General Transfer Agreement Between the Bonneville Power Administration (BPA) and PGE. This amendment will permit BPA to compensate PGE for the actual costs of a distribution level 13 kV feeder line that PGE constructed at BPA's request to accommodate BPA's wholesale power service to the Canby Utility Board. PGE requests waivers and a March 12, 1993 effective date.

Copies of this agreement have been served on BPA.

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Union Electric Company

[Docket No. ER93-440-000]

March 17, 1993.

Take notice that on March 11, 1993, Union Electric Company (Union) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 88.

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER93-438-000]

March 17, 1993.

Take notice that on March 10, 1993, Arizona Public Service Company tendered for filing the proposed Principles for the Continuation of Wholesale Power Supply (Principles) to the Navajo Tribal Utility Authority (NTUA). The Principles propose to provide existing services to NTUA through midnight May 31, 1993.

No change to the current rate or revenue levels presently on file with the Commission is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on NTUA and the Arizona Corporation Commission.

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Gulf States Utilities Company

[Docket No. ES93-24-000]

March 17, 1993.

Take notice that on March 12, 1993, Gulf States Utilities Company (Gulf States) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than 1.5 million shares of New Preferred Stock, $100 par value, or 6 million shares of New Preference Stock, without part value, or a combination thereof, in an aggregate amount of not more than $150 million over a two-year period. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Comment date: April 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. EL93-24-000]

March 17, 1993.

Take notice that Delmarva Power & Light Company (DP&L) on March 8, 1993, tendered for filing a petition for waiver of § 35.14 of the Regulations.

The affected customers and their FERC rate schedules are as follows:

Customers	FERC rate schedule Nos.
Old Dominion Electric Cooperative	51, 52, 53
Lewes, Delaware	61
Seaford, Delaware	62
Berlin, Maryland	63
Clayton, Delaware	64
Middletown, Delaware	65
New Castle, Delaware	66
Milford, Delaware	67
Smyrna, Delaware	68
Newark, Delaware	69

The proposed changes would modify the fuel adjustment clause so that the fuel adjustment charges will not be affected by energy produced by facilities undergoing test operation.

The proposed modification is required to ensure that the value of test power produced by the Company's Hay Road No. 4 during its test operation in 1993 will be accounted for properly. Copies of the filing were served upon Delmarva's jurisdictional customers named above and upon the Delaware and Maryland Public Service Commissions, as well as the Virginia State Corporation Commission.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Arkansas Power & Light Company

[Docket No. ER93-436-000]

March 17, 1993.

Take notice that on March 9, 1993, Entergy Services, Inc., on behalf of Arkansas Power & Light Company (AP&L) filed revised rates and revised transmission loss factors in accordance with the 1992 Settlement Agreement in Docket No. ER92-341-000; the Power

Coordination, Interchange and Transmission Service Agreements between AP&L and Conway, West Memphis, and Osceola, Arkansas; Campbell and Thayer, Missouri; City of Water & Light Plant of Jonesboro, Arkansas; Arkansas Electric Cooperative Corporation; the Power Coordination, Interchange and Transmission Service Agreement between AP&L and Entergy Power, Inc.; the Transmission Service Agreement between AP&L and the Louisiana Energy & Power Authority; the Transmission Service Agreement between AP&L and the City of Distribution Service Agreement between AP&L and the City of North Little Rock, Arkansas; and the Interchange Agreement between AP&L and Oglethorpe Power Corporation.

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas Gas and Electric Company

[Docket No. ER93–439–000]

March 17, 1993.

Take notice that on March 11, 1993, Western Resources, Inc., on behalf of Kansas Gas and Electric Company (KG&E), tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 93 between KG&E and the KPL division of Western Resources, Inc. (KPL). KG&E states that the proposed change is to add one additional year of the current Short Term Peaking Capacity Service Schedule, effective June 1, 1993.

Copies of the filing have been served upon KPL and the Kansas Corporation Commission

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Union Electric Company

[Docket No. ER93–441–000]

March 17, 1993.

Take notice that on March 11, 1993, Union Electric Company (Union) tendered for filing an Amendment dated September 25, 1992, to the Interchange Agreement dated June 28, 1978, between Associated Electric Cooperative, Incorporated and UE. UE asserts that the Amendment primarily provides for new and revised interconnection points, delivery points and intertie points.

Comment date: March 31, 1993, in accordance with Standard Paragraph E end of the notice.

12. United Illuminating Company

[Docket No. ER93–3–000]

March 17, 1993.

Take notice that on March 8, 1993, United Illuminating Company (UI) tendered for filing an amendment in the above-referenced docket.

Comment date: March 31, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER93–447–000]

March 17, 1993.

Take notice that on March 12, 1993, Entergy Services, Inc. on behalf of Arkansas Power & Light Company (AP&L), filed the First Amendment to Interconnection Agreement between Arkansas Power & Light Company and Associated Electric Cooperative, Inc., dated Feburary 10, 1993 (First Amendment). Entergy Services states that the purpose of the First Amendment is to amend Section 11.07, "Successors and Assigns," of the Interconnection Agreement between AP&L and Associated Electric Cooperative, Inc., to conform to the requirements of the Rural Electrification Administration. Entergy Services requests that the Commission grant waiver of its notice requirements and make the First Amendment effective as of February 10, 1993.

Comment date: April 1, 1993, in accordance with Standard Paragraph E end of this notice.

14. Public Service Company of Colorado

[Docket No. ER93–446–000]

March 17, 1993.

Take notice that on March 12, 1993, Public Service Company of Colorado tendered for filing proposed changes in its FERC Electric Service Rate Schedule, FERC No. 52. The net effect of the proposed changes would reduce revenues by $602,400 from jurisdictional sales and service based on the 12 month period ending December 1993.

Public Service requests an effective date of April 15, 1992, for certain of the changes to Rate Schedule FERC No. 52, and an effective date of January 1, 1993, for others. Accordingly, Public Service requests waiver of the Commission's notice regulations for good cause shown. 18 CFR 35.3, 35.11.

Copies of the filing were served upon Holy Cross Electric Association, Inc. and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: April 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6654 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2336–009 Georgia]

Georgia Power Co.; Availability of Environmental Assessment

March 18, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new major license for the existing Lloyd Shoals Project, located on the Ocmulgee River in Butts, Henry, Jasper, and Newton Counties, Georgia, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the project and has concluded that issuance of a new license for the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6687 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93-2021-000 through ST93-2454-000]

United Gas Pipe Line Co.; Self-Implementing Transactions

March 18, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,
Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-2021	United Gas Pipe Line Co.	Shell Gas Trading Co.	01-04-93	G-S	209,000	N	I	12-17-92	04-16-93
ST93-2022	United Gas Pipe Line Co.	Chevron U.S.A., Inc.	01-04-93	G-S	78,600	N	I	12-16-92	04-15-93
ST93-2023	United Gas Pipe Line Co.	Mobil Natural Gas, Inc.	01-04-93	G-S	54,400	N	I	12-17-92	04-16-93
ST93-2024	United Gas Pipe Line Co.	Vesta Energy Co .	01-04-93	G-S	104,800	N	I	12-17-92	04-16-93
ST93-2025	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	01-04-93	G-S	1,000	N	F	12-01-92	Indef.
ST93-2026	ONG Transmission Co.	Natural Gas Pipeline Co. of America.	01-05-93	C	50,000	N	I	12-10-92	Indef.
ST93-2027	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	01-05-93	C	50,000	N	I	11-01-92	10-31-97
ST93-2028	ONG Transmission Co.	Williams Natural Gas Co.	01-05-93	C	50,000	N	I	12-12-92	Indef.
ST93-2029	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	01-05-93	C	50,000	N	I	12-16-92	Indef.
ST93-2030	Arkansas Western Gas Co.	Arkla Energy Resources.	01-05-93	G-HT	5,000	N	I	11-01-92	Indef.
ST93-2031	Kern River Gas Transmission Co.	Chevron U.S.A., Inc.	01-06-93	G-S	100,000	N	F	12-11-92	Indef.
ST93-2032	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	01-06-93	C	20,000	N	I	12-09-92	Indef.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2033	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	01–06–93	C	12,000	N	I	12–10–92	Indef.
ST93–2034	Northwest Pipeline Corp.	Ranch Oil Co	01–06–93	G–S	1,000	N	I	09–13–92	Indef.
ST93–2035	United Gas Pipe Line Co.	Prior Intrastate Corp.	01–06–93	G–S	524,000	N	I	12–22–92	04–21–93
ST93–2036	United Gas Pipe Line Co.	United Gas Services Co.	01–06–93	G–S	628,000	Y	I	12–22–92	04–21–93
ST93–2037	United Gas Pipe Line Co.	KCS Energy Marketing, Inc.	01–06–93	G–S	78,600	N	I	12–22–92	04–21–93
ST93–2038	Great Lakes Gas Transmission LP.	Transcanada Pipelines Limited.	01–06–93	G–S	450,000	A	I	09–05–92	Indef.
ST93–2039	Great Lakes Gas Transmission LP.	Coenergy Ventures, Inc.	01–06–93	G–S	100,000	N	I	12–23–92	Indef.
ST93–2040	Great Lakes Gas Transmission LP.	Unigas Energy Inc	01–06–93	G–S	400,000	A	I	12–01–92	Indef.
ST93–2041	Southern Natural Gas Co.	Stone Savannah River.	01–07–93	G–S	7,000	N	F	12–11–92	12–31–92
ST93–2042	Southern Natural Gas Co.	James River Corp	01–07–93	G–S	10,000	N	F	01–01–93	02–28–93
ST93–2043	Southern Natural Gas Co.	AMAX Gas Marketing.	01–07–93	G–S	50,000	N	I	12–19–92	Indef.
ST93–2044	Southern Natural Gas Co.	Howard Energy Co., Inc.	01–07–93	G–S	200,000	N	I	12–23–92	Indef.
ST93–2045	Sea Robin Pipeline Co.	Mid Louisiana Gas Co.	01–07–93	G–S	6,000	N	F	01–01–93	08–31–97
ST93–2046	Sea Robin Pipeline Co.	Sonat Marketing Co.	01–07–93	G–S	12,983	N	F	01–01–93	01–31–93
ST93–2047	Algonquin Gas Transmission Co.	Yuma Gas Corp ..	01–07–93	G–S	71,000	N	I	12–12–92	Indef.
ST93–2048	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	01–07–93	G–S	50,000	N	I	12–11–92	Indef.
ST93–2049	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	01–07–93	G–S	50,000	N	I	12–10–92	Indef.
ST93–2050	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	01–07–93	G–S	50,000	N	I	12–11–92	Indef.
ST93–2051	Texas Eastern Transmission Co.	Winnie Pipeline Co.	01–07–93	B	9,000	N	I	12–10–92	Indef.
ST93–2052	Texas Eastern Transmission Co.	Ocean State Power.	01–07–93	G–S	120,000	N	I	12–18–92	Indef.
ST93–2053	Texas Eastern Transmission Co.	T.W. Phillips Gas & Oil Co.	01–07–93	G–S	20,000.	N	I	12–13–92	Indef.
ST93–2054	Transcontinental Gas P/L Corp.	ARCO Natural Gas Marketing, Inc.	01–07–93	G–S	8,459,000	N	I	12–23–92	Indef.
ST93–2055	Transcontinental Gas P/L Corp.	MG Natural Gas Corp.	01–07–93	G–S	900,000	N	I	12–23–92	Indef.
ST93–2056	Transok, Inc	Arkla Energy Resources.	01–07–93	C	50,000	N	I	12–09–92	Indef.
ST93–2057	Williams Natural Gas Co.	Kansas Gas Supply.	01–07–93	G–S	260	N	I	12–12–92	Indef.
ST93–2058	Tennessee Gas Pipeline Co.	Xenergy, Inc	01–07–93	G–S	7,500	N	I	12–14–92	Indef.
ST93–2059	Lone Star Gas Co	Northern Natural Gas Co., et al.	01–08–93	C	100,000	N	I	12–09–92	Indef.
ST93–2060	ANR Pipeline Co .	Torch Energy Marketing, Inc.	01–08–93	G–S	365,000	N	I	12–11–92	Indef.
ST93–2061	ANR Pipeline Co .	Wisconsin Power & Light Co.	01–08–93	G–S	50,000	N	I	12–17–92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2062	ANR Pipeline Co .	NGC Transportation, Inc.	01–08–93	G–S	300,000	N	F	12–15–92	Indef.
ST93–2063	ANR Pipeline Co .	Unigas Energy, Inc.	01–08–93	G–S	50,000	N	F	12–15–92	Indef.
ST93–2064	ANR Pipeline Co .	Monterey Pipeline Co.	01–08–93	B	100,000	N	I	12–08–92	Indef.
ST93–2065	ANR Pipeline Co .	Valero Gas Marketing, L.P.	01–08–93	G–S	200,000	N	I	12–11–92	Indef.
ST93–2066	Tennessee Gas Pipeline Co.	Encina Transmission Co.	01–08–93	G–S	3,500	N	I	01–01–93	Indef.
ST93–2067	Tennessee Gas Pipeline Co.	Seagull Marketing Services, Inc.	01–08–93	G–S	250,000	N	I	01–01–93	Indef.
ST93–2068	Tennessee Gas Pipeline Co.	Encina Transmission Co.	01–08–93	G–S	1,688	N	F	12–09–92	03–31–93
ST93–2069	Viking Gas Transmission Co.	Peoples Natural Gas Co.	01–08–93	B	1,098	N	F	12–19–92	02–28–93
ST93–2070	Trunkline Gas Co	Town of Colfax	01–08–93	G–S	500	N	I	12–09–92	Indef.
ST93–2071	Natural Gas P/L Co. of America.	Nichols-Homeshield.	01–08–93	G–S	20,000	N	F	01–01–93	11–30–93
ST93–2072	Trailblazer Pipeline Co.	Mobil Natural Gas Inc.	01–08–93	G–S	353,000	N	I	12–23–92	Indef.
ST93–2073	Transok, Inc	ANR Pipeline Co., et al.	01–08–93	C	100,000	N	I	12–15–92	Indef.
ST93–2074	Transok, Inc	ANR Pipeline Co., et al.	01–08–93	C	30,000	N	I	12–11–92	Indef.
ST93–2075	Delhi Gas Pipeline Corp.	Williams Natural Gas Co.	01–08–93	C	375,000	N	I	12–08–92	Indef.
ST93–2076	Arkla Energy Resources.	Jerrico Energy, Inc.	01–08–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2077	Arkla Energy Resources.	Reynolds Metals Co.	01–08–93	G–S	7,100	N	F	01–01–93	Indef.
ST93–2078	Arkla Energy Resources.	Vesta Energy Co .	01–08–93	G–S	2,800	N	F	01–01–93	Indef.
ST93–2079	Houston Pipe Line Co.	Black Marlin Pipeline Co.	01–08–93	C	50,000	N	I	12–16–92	Indef.
ST93–2080	Houston Pipe Line Co.	Natural Gas P/L Co. of America.	01–08–93	C	50,000	N	I	12–01–92	Indef.
ST93–2081	Houston Pipe Line Co.	Transcontinental Gas P/L Corp.	01–08–93	C	5,000	N	I	12–11–92	Indef.
ST93–2082	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	01–08–93	C	5,000	N	I	11–06–92	Indef.
ST93–2083	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	01–08–93	C	50,000	N	I	12–08–92	Indef.
ST93–2084	Houston Pipe Line Co.	Natural Gas P/L Co. of America.	01–08–93	C	15,000	N	I	12–24–92	Indef.
ST93–2085	Houston Pipe Line Co.	United Gas Pipe Line Co.	01–08–93	C	20,000	N	I	12–15–92	Indef.
ST93–2086	Williams Natural Gas Co.	Anadarko Trading Co.	01–08–93	B	5,779	N	I	12–17–92	04–01–93
ST93–2087	National Fuel Gas Supply Corp.	Mid American Natural Gas Res., Inc.	01–08–93	G–S	3,000	N	I	12–08–92	04–07–93
ST93–2088	National Fuel Gas Supply Corp.	Meridian Marketing & Transmission.	01–08–93	G–S	5,000	N	I	12–22–92	04–21–93
ST93–2089	Tennessee Gas Pipeline Co.	Continental Energy Marketing, Inc.	01–11–93	G–S	735	N	F	01–01–93	Indef.
ST93–2090	Tennessee Gas Pipeline Co.	Kerr McGee Corp	01–11–93	G–S	1,215,000	N	I	01–01–93	Indef.
ST93–2091	Tennessee Gas Pipeline Co.	Selkirk Cogen Partners, L.P.	01–11–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2092	Texas Gas Transmission Corp.	Bridgeline Gas Distribution Co.	01–11–93	B	100,000	N	I	12–16–92	Indef.
ST93–2093	Texas Gas Transmission Corp.	Conoco, Inc	01–11–93	G–S	10,000	N	I	12–19–92	Indef.
ST93–2094	Northern Natural Gas Co.	Iowa Electric Light & Power Co.	01–11–93	G–S	4,480	N	F/I	01–01–93	Indef.
ST93–2095	Northern Natural Gas Co.	Coastal Gas Marketing Co.	01–11–93	G–S	100,000	N	F/I	09–01–92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2096	Northern Natural Gas Co.	Anadarko Trading Co.	01–11–93	G–S	10,000	N	F/I	12–01–92	Indef.
ST93–2097	Northern Natural Gas Co.	Mobil Natural Gas, Inc.	01–11–93	G–S	150,000	N	F/I	12–01–92	Indef.
ST93–2098	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	01–11–93	G–S	100,000	A	I	12–14–92	Indef.
ST93–2099	Transwestern Pipeline Co.	Wallace Oil & Gas, Inc.	01–11–93	G–S	5,000	N	I	12–11–92	Indef.
ST93–2100	Williston Basin Inter. P/L Co.	Wyoming Gas Co	01–11–93	B	3,620	N	I	12–11–92	09–30–93
ST93–2101	Transcontinental Gas P/L Corp.	Coastal Eagle Point Oil Co.	01–11–93	G–S	16,000	N	I	12–12–92	Indef.
ST93–2102	Louisiana Resources Pipeline Co.	Louisiana Gas Pipeline Co., L.P.	01–11–93	C	30,000	N	I	01–01–93	12–31–94
ST93–2103	Columbia Gas Transmission Corp.	Binghamton Cogeneration L.P.	01–11–93	G–S	40,000	N	I	12–24–92	Indef.
ST93–2104	Columbia Gas Transmission Corp.	Riley Natural Gas Co.	01–11–93	G–S	160	N	F	01–01–93	Indef.
ST93–2105	Columbia Gas Transmission Corp.	Global Petroleum Corp.	01–11–93	G–S	10,000	Y	I	12–23–92	Indef.
ST93–2106	Columbia Gas Transmission Corp.	Stand Energy Corp.	01–11–93	G–S	200	N	F	01–01–93	03–31–93
ST93–2107	Columbia Gas Transmission Corp.	Access Energy Corp.	01–11–93	G–S	400	N	F	12–15–92	03–31–93
ST93–2108	Columbia Gas Transmission Corp.	Access Energy Corp.	01–11–93	G–S	1,230	Y	F	12–15–92	03–31–93
ST93–2109	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	01–11–93	B	6,535	Y	F	01–01–93	Indef.
ST93–2110	Columbia Gas Transmission Corp.	Centran Corp	01–11–93	G–S	78	Y	F	01–01–93	Indef.
ST93–2111	Panhandle Eastern Pipe Line Co.	Centra Gas Ontario Inc.	01–12–93	G–S	15,331	N	F	11–02–92	Indef.
ST93–2112	Panhandle Eastern Pipe Line Co.	Village of Divernon.	01–12–93	G–S	1,300	N	I	12–01–92	Indef.
ST93–2113	Panhandle Eastern Pipe Line Co.	Vesgas Co	01–12–93	G–S	5,000	N	I	12–12–92	Indef.
ST93–2114	Panhandle Eastern Pipe Line Co.	Snyder Oil Corp ..	01–12–93	G–S	10,000	N	I	12–18–92	Indef.
ST93–2115	Enogex Inc	Arkla Energy Resources.	01–12–93	C	50,000	N	I	12–24–92	Indef.
ST93–2116	Enogex Inc	Panhandle Eastern Pipeline Co.	01–12–93	C	50,000	N	I	12–30–92	Indef.
ST93–2117	Colorado Interstate Gas Co.	Chevron USA, Inc	01–12–93	G–S	20,000	N	I	12–11–92	Indef.
ST93–2118	Colorado Interstate Gas Co.	Williams Gas Marketing Co.	01–12–93	G–S	20,000	N	I	12–11–92	Indef.
ST93–2119	Colorado Interstate Gas Co.	Conoco, Inc	01–12–93	G–S	20,000	N	I	12–11–92	Indef.
ST93–2120	Colorado Interstate Gas Co.	Marathon Oil Co ..	01–12–93	G–S	500	N	I	12–11–92	Indef.
ST93–2121	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	01–12–93	G–S	100,000	Y	I	12–06–92	Indef.
ST93–2122	Texas Eastern Transmission Corp.	Polaris Corp	01–12–93	G–S	25,200	N	I	12–18–92	Indef.
ST93–2123	Tennessee Gas Pipeline Co.	Entrade Corp	01–12–93	G–S	12,000	A	F	01–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2124	Tennessee Gas Pipeline Co.	Monterey Pipeline Co.	01–12–93	G–S	35,000	N	I	12–21–92	Indef.
ST93–2125	CNG Transmission Corp.	Iroquois Gas Trans. System, L.P.	01–12–93	G	30,000	N	I	12–16–92	Indef.
ST93–2126	CNG Transmission Corp.	Transcontinental Gas Pipe Line Corp.	01–12–93	G	10,000	N	I	12–21–92	Indef.
ST93–2127	CNG Transmission Corp.	New York State Ele & Gas Corp.	01–12–93	B	10,000	N	I	12–16–92	Indef.
ST93–2128	CNG Transmission Corp.	Peoples Natural Gas Co.	01–12–93	B	30,000	N	I	12–16–92	Indef.
ST93–2129	CNG Transmission Corp.	Baltimore Gas & Electric Co.	01–12–93	B	12,000	N	I	12–16–92	Indef.
ST93–2130	CNG Transmission Corp.	Virginia Natural Gas, Inc.	01–12–93	B	10,000	N	I	12–16–92	Indef
ST93–2131	CNG Transmission Corp.	Niagara Mohawk Power Corp.	01–12–93	G–S	50,000	N	I	12–12–92	Indef.
ST93–2132	CNG Transmission Corp.	Hanley & Bird, Inc	01–12–93	B	100,000	N	I	12–19–92	Indef.
ST93–2133	Gateway Pipeline Co.	Brooklyn Interstate Nat. Gas Corp.	01–13–93	G–S	75,000	N	I	01–01–93	05–01–93
ST93–2134	El Paso Natural Gas Co.	Western Natural Gas & Trans. Corp.	01–13–93	G–S	103	N	I	01–01–93	Indef.
ST93–2135	Northern Natural Gas Co.	Mobil Natural Gas Inc.	01–13–93	G–S	150,000	N	F/I	12–23–92	Indef.
ST93–2136	Transcontinental Gas P/L Corp.	Howard Energy Co., Inc.	01–13–93	G–S	200,000	N	I	12–23–92	Indef.
ST93–2137	United Gas Pipe Line Co.	Louis Dreyfus Energy Corp.	01–13–93	G–S	104,800	N	I	01–04–93	04–04–93
ST93–2138	United Gas Pipe Line Co.	American Hunter Exploration Ltd.	01–13–93	G–S	50,000	N	I	01–12–93	05–12–93
ST93–2139	United Gas Pipe Line Co.	Mobil Natural Gas Inc.	01–13–93	G–S	52,400	N	I	01–04–93	05–04–93
ST93–2140	United Gas Pipe Line Co.	Oryx Gas Marketing Ltd., Partner.	01–13–93	G–S	62,880	N	I	12–30–92	04–29–93
ST93–2141	United Gas Pipe Line Co.	Endevco Oil & Gas Co.	01–13–93	G–S	26,200	N	I	01–07–93	05–07–93
ST93–2142	United Gas Pipe Line Co.	Aquila Energy Marketing Corp.	01–13–93	G–S	28,600	N	I	12–16–92	04–17–93
ST93–2143	United Gas Pipe Line Co.	MG Natural Gas Corp.	01–13–93	G–S	41,920	N	I	12–30–92	04–29–93
ST93–2144	United Gas Pipe Line Co.	Hadson Gas Systems, Inc.	01–13–93	G–S	20,000	N	I	01–05–93	05–05–93
ST93–2145	United Gas Pipe Line Co.	Brooklyn Interstate Nat. Gas Corp.	01–13–93	G–S	104,800	N	I	01–06–93	05–06–93
ST93–2146	United Gas Pipe Line Co.	Western Gas Resources, Inc.	01–13–93	G–S	75,000	N	I	01–06–93	05–06–93
ST93–2147	United Gas Pipe Line Co.	Enron Gas Marketing, Inc.	01–13–93	G–S	524,000	N	I	12–30–92	04–29–93
ST93–2148	Channel Industries Gas Co.	Corpus Christi Industrial P/L Co.	01–13–93	C	50,000	N	I	12–14–92	Indef.
ST93–2149	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	01–13–93	G	200,000	N	I	01–01–93	Indef.
ST93–2150	Tennessee Gas Pipeline Co.	Columbia Gulf Transmission Co.	01–13–93	G	200,000	N	I	12–22–92	Indef.
ST93–2151	Tennessee Gas Pipeline Co.	Mobil Natural Gas, Inc.	01–13–93	G–S	100,000	N	I	12–24–92	Indef.
ST93–2152	ANR Pipeline Co .	Peoples Gas Light and Coke Co.	01–13–93	G–S	50,000	N	I	12–25–92	Indef.
ST93–2153	ANR Pipeline Co .	Kaztex Energy Management, Inc.	01–13–93	G–S	1,295	N	F	12–17–92	03–31–94
ST93–2154	ANR Pipeline Co .	Continental Natural Gas, Inc.	01–13–93	G–S	30,000	N	I	12–24–92	Indef.
ST93–2155	ANR Pipeline Co .	Central Illinois Light Co.	01–13–93	B	11,000	N	F	12–15–92	12–14–00

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2156	ANR Pipeline Co .	Clinton Gas Marketing, Inc.	01–13–93	G–S	10,000	N	I	12–31–92	Indef.
ST93–2157	ANR Pipeline Co .	Anadarko Trading Co.	01–13–93	G–S	10,000	N	I	12–23–92	Indef.
ST93–2158	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	01–13–93	B	32,000	N	I	12–24–92	Indef.
ST93–2159	Colorado Interstate Gas Co.	Fuel Resource Development Co.	01–13–93	G–S	15,000	N	I	12–17–92	Indef.
ST93–2160	Colorado Interstate Gas Co.	Western Natural Gas & Trans. Corp.	01–13–93	G–S	10,000	N	I	12–18–92	Indef.
ST93–2161	Colorado Interstate Gas Co.	Conoco, Inc	01–13–93	G–S	10,000	N	I	12–16–92	Indef.
ST93–2162	Texas Gas Transmission Corp.	Amerada Hess Corp.	01–14–93	G–S	100,000	Y	I	12–19–92	Indef.
ST93–2163	Texas Gas Transmission Corp.	City of Jasonville .	01–14–93	G–S	1,850	N	I	01–01–93	Indef.
ST93–2164	Texas Gas Transmission Corp.	City of Hardin	01–14–93	G–S	509	N	I	01–01–93	Indef.
ST93–2165	Texas Gas Transmission Corp.	Tejas Power Corp	01–14–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2166	Texas Gas Transmission Corp.	Village of Flat Rock.	01–14–93	G–S	541	N	I	01–01–93	Indef.
ST93–2167	Texas Gas Transmission Corp.	CNG Producing Co.	01–14–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2168	ONG Transmission Co.	Arkla Energy Resources.	01–14–93	C	50,000	N	I	12–20–92	Indef.
ST93–2169	Valero Transmission, L.P.	El Paso Natural Gas Co.	01–14–93	C	20,000	N	I	12–11–92	Indef.
ST93–2170	Williston Basin Inter. P/L Co.	Hiland Partners ...	01–14–93	G–S	76,350	A	I	12–23–92	05–31–93
ST93–2171	Sabine Pipe Line Co.	Western Gas Resources, Inc.	01–14–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2172	Sabine Pipe Line Co.	GGR Energy	01–14–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2173	Sabine Pipe Line Co.	Panhandle Trading Co.	01–14–93	G–S	75,000	N	I	01–01–93	Indef.
ST93–2174	Sabine Pipe Line Co.	Enron Gas Marketing, Inc.	01–14–93	G–S	100,000	N	I	11–21–92	Indef.
ST93–2175	Sabine Pipe Line Co.	Yuma Gas Corp ..	01–14–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2176	Sabine Pipe Line Co.	Commodity Trading.	01–14–93	G–S	500,000	N	I	01–01–93	Indef.
ST93–2177	Sabine Pipe Line Co.	Enermax	01–14–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2178	Sabine Pipe Line Co.	IGM Pipeline Co ..	01–14–93	G–S	50,000	N	I	12–23–92	Indef.
ST93–2179	Magnolia Pipeline Corp.	Transcontinental Gas Pipe Line Corp.	01–14–93	C	150,000	N	I	06–22–92	06–22–04
ST93–2180	Trunkline Gas Co	George R. Brown Partnership.	01–14–93	G–S	600	N	I	12–31–92	Indef.
ST93–2181	Trunkline Gas Co	Enron Gas Marketing, Inc.	01–14–93	G–S	150,000	N	I	12–23–92	Indef.
ST93–2182	Trunkline Gas Co	Centran Corp	01–14–93	G–S	50,000	N	I	12–29–92	Indef.
ST93–2183	Trunkline Gas Co	Marathon Oil Co ..	01–14–93	G–S	30,000	N	I	12–20–92	Indef.
ST93–2184	Trunkline Gas Co	Polaris Pipeline Corp.	01–14–93	G–S	25,000	N	I	12–19–92	Indef.
ST93–2185	Trunkline Gas Co	O&R Energy, Inc .	01–14–93	G–S	50,000	N	I	12–18–92	Indef.
ST93–2186	Trunkline Gas Co	Fuel Services Group, Inc.	01–14–93	G–S	11,000	N	I	12–18–92	Indef.
ST93–2187	Trunkline Gas Co	CMS Gas Marketing Co.	01–14–93	G–S	30,000	N	I	12–17–92	Indef.
ST93–2188	Williston Basin Inter. P/L Co.	Marathon Oil Co ..	01–15–93	G–S	10,200	A	I	12–16–92	01–31–94
ST93–2189	Williston Basin Inter. P/L Co	Unigas Corp	01–15–93	G–S	150,000	N	I	12–18–92	12–14–94
ST93–2190	Tennessee Gas Pipeline Co.	Entrade Corp	01–15–93	G–S	350,000	N	I	12–29–92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2191	El Paso Natural Gas Co.	Aquila Energy Marketing Corp.	01–15–93	G–S	50,000	N	I	12–24–92	Indef.
ST93–2192	Webb/Duval Gatherers.	Texas Eastern Transmission Co.	01–15–93	C	30,000	N	I	07–01–92	Indef.
ST93–2193	Webb/Duval Gatherers.	Natural Gas P/L Co. of America.	01–15–93	C	30,000	N	I	08–01–92	Indef.
ST93–2194	Webb/Duval Gatherers.	Tennessee Gas Pipeline Co.	01–15–93	C	30,000	N	I	07–01–92	Indef.
ST93–2195	Acadian Gas Pipeline System.	Natural Gas P/L Co. of Am., et al.	01–15–93	C	50,000	N	I	01–01–93	Indef.
ST93–2196	Valero Transmission, L.P.	Northern Natural Gas Co.	01–15–93	C	10,000	N	I	12–18–92	Indef.
ST93–2197	Transok Gas Transmission Co.	Arkla Energy, Inc., et al.	01–15–93	C	10,000	N	I	01–01–93	Indef.
ST93–2198	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	01–15–93	G–S	25,000	N	F	03–01–92	11–30–95
ST93–2199	Northern Border Pipeline Co.	Unigas Corp	01–15–93	G–S	100,000	Y	I	12–18–92	02–28–94
ST93–2200	Northern Border Pipeline Co.	Minnegasco	01–15–93	B	200,000	Y	I	12–24–92	10–31–07
ST93–2201	Questar Pipeline Co.	Universal Resources Corp.	01–19–93	G–S	350,000	Y	I	12–20–92	Indef.
ST93–2202	Dow Pipeline Co .	Natural Gas P/L Co. of America.	01–19–93	C	35,000	Y	I	12–01–92	11–30–94
ST93–2203	East Tennessee Natural Gas Co.	AFC Industries	01–19–93	G–S	25,000	Y	I	01–01–93	Indef.
ST93–2204	K N Energy, Inc ...	Cimarron Gas Companies, Inc.	01–19–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2205	Monterey Pipeline Co.	Columbia Gulf Transmission Co.	01–19–93	C	80,000	N	I	11–18–92	Indef.
ST93–2206	Monterey Pipeline Co.	Texas Eastern Gas Pipe Line Co.	01–19–93	C	80,000	N	I	10–09–92	Indef.
ST93–2207	Monterey Pipeline Co.	Trunkline Gas Co	01–19–93	C	80,000	N	I	10–09–92	Indef.
ST93–2208	Monterey Pipeline Co.	Tennessee Gas Pipeline Co.	01–19–93	C	80,000	N	I	10–31–92	Indef.
ST93–2209	Algonquin Gas Transmission Co.	Coastal Gas Marketing Co.	01–19–93	G–S	7,900,000	N	I	12–24–92	Indef.
ST93–2210	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	01–19–93	G–S	10,200,000	N	I	12–24–92	Indef.
ST93–2211	Trunkline Gas Co	NGC Transportation, Inc.	01–19–93	G–S	5,000	N	I	01–06–93	Indef.
ST93–2212	Trunkline Gas Co	Tylex, Inc	01–19–93	G–S	1,200	N	F/I	01–01–93	Indef.
ST93–2213	Trunkline Gas Co	KCS Energy Marketing, Inc.	01–19–93	G–S	20,000	N	I	01–01–93	Indef.
ST93–2214	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	01–19–93	C	100,000	N	I	01–01–93	Indef.
ST93–2215	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America.	01–19–93	C	14,500	N	I	01–01–93	Indef.
ST93–2216	Northern Natural Gas Co.	Oxy USA, Inc	01–19–93	G–S	32,600	N	F/I	01–01–93	Indef.
ST93–2217	Northern Natural Gas Co.	Great Falls Gas Co.	01–19–93	G–S	2,000	N	F/I	01–01–93	05–31–93
ST93–2218	Viking Gas Transmission Co.	City of Lake Park	01–19–93	G–S	357	N	F	01–01–93	11–01–02
ST93–2219	Viking Gas Transmission Co.	City of Argyle	01–19–93	G–S	369	N	F	01–01–93	11–01–02
ST93–2220	Tennessee Gas Pipeline Co.	NGC Transportation, Inc.	01–19–93	G–S	600,000	N	I	01–01–93	Indef.
ST93–2221	Tennessee Gas Pipeline Co.	Yuma Gas Corp ..	01–19–93	G–S	125,000	N	I	01–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2222	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	01–19–93	G–S	200,000	N	I	01–01–93	Indef.
ST93–2223	Tennessee Gas Pipeline Co.	Equitable Resources Marketing Co.	01–19–93	G–S	307,500	N	I	01–01–93	Indef.
ST93–2224	Williams Natural Gas Co.	Farmland Industries,Inc.	01–19–93	G–S	500,000	N	I	12–15–92	Indef.
ST93–2225	Williams Natural Gas Co.	City of Granby	01–19–93	G–S	718	N	F	01–01–93	11–01–93
ST93–2226	Arkla Energy Resources.	Aquila Energy Marketing Corp.	01–19–93	G–S	100,000	N	I	01–13–93	Indef.
ST93–2227	Transcontinental Gas P/L Corp.	Heath Petra Resources, Inc.	01–19–93	G–S	846,000	N	I	02–22–92	Indef.
ST93–2228	Transcontinental Gas P/L Corp.	Utilities, Inc	01–19–93	B	1,300	N	F	12–22–92	07–31–01
ST93–2229	Transcontinental Gas P/L Corp.	Endevco Marketing Co.	01–19–93	G–S	4,246,420	N	I	12–22–92	Indef.
ST93–2230	United Gas Pipe Line Co.	United Gas Services Co.	01–19–93	G–S	31,556	Y	F	12–23–92	04–22–93
ST93–2231	El Paso Natural Gas Co.	Enserch Gas Co ..	01–19–93	G–S	300,000	N	I	10–07–92	Indef.
ST93–2232	El Paso Natural Gas Co.	Chevron U.S.A. Production Co.	01–19–93	G–S	5,923	N	I	10–01–92	Indef.
ST93–2233	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipeline Co.	01–19–93	G–S	3,150	N	I	12–18–92	Indef.
ST93–2234	East Texas Gas Systems.	Texas Gas Transmission Corp.	01–19–93	C	50,000	N	I	12–17–92	Indef.
ST93–2235	Monterey Pipeline Co.	United Gas Pipe Line Co.	01–19–93	C	25,000	N	I	12–01–92	Indef.
ST93–2236	Questar Pipeline Co.	NGC Transportation, Inc.	01–21–93	G–S	90,000	N	I	01–14–93	Indef.
ST93–2237	Transcontinental Gas P/L Corp.	CNG Trading Co .	01–21–93	G–S	420,000	N	I	12–14–93	Indef.
ST93–2238	Northern Border Pipeline Co.	Enron Gas Marketing, Inc.	01–21–93	G–S	500,000	A	I	01–12–93	02–14–94
ST93–2239	Northern Border Pipeline Co.	Minnegasco	01–21–93	B	200,000	Y	I	01–13–93	10–31–07
ST93–2240	Northern Border Pipeline Co.	Amerada Hess Corp.	01–21–93	G–S	50,000	Y	I	01–13–93	01–11–95
ST93–2241	Tennessee Gas Pipeline Co.	Entrade Corp	01–21–93	G–S	1,310,000	Y	I	01–01–93	Indef.
ST93–2242	Tennessee Gas Pipeline Co.	Exxon Corp	01–21–93	G–S	200,000	N	I	01–18–93	Indef.
ST93–2243	Tennessee Gas Pipeline Co.	National Fuel Gas Supply Corp.	01–21–93	B	100,000	N	I	01–14–93	Indef.
ST93–2244	Tennessee Gas Pipeline Co.	Vintage Gas, Inc .	01–21–93	G–S	601	N	I	01–01–93	Indef.
ST93–2245	Viking Gas Transmission Co.	City of Stephen ...	01–21–93	G–S	408	N	F	01–01–93	11–01–02
ST93–2246	Viking Gas Transmission Co.	City of Hallock	01–21–93	G–S	774	N	F	01–01–93	11–01–02
ST93–2247	Channel Industries Gas Co.	NGC Transportation, Inc.	01–21–93	G–I	25,000	N	I	01–01–93	Indef.
ST93–2248	Westar Transmission Co.	Northern Natural Gas Co.	01–21–93	C	10,000	N	I	12–01–92	Indef.
ST93–2249	Transok Gas Transmission Co.	ANR Pipeline Co, et al.	01–21–93	C	100,000	N	I	01–01–93	Indef.
ST93–2250	Natural Gas P/L Co of America.	Koch Hydrocarbon Co.	01–21–93	G–S	50,000	N	I	12–23–92	Indef.
ST93–2251	Natural Gas P/L Co of America.	Polaris Pipeline Corp.	01–21–93	G–S	200,000	N	I	12–23–92	Indef.
ST93–2252	Natural Gas P/L Co of America.	Philbro Energy, Inc.	01–21–93	G–S	100,000	N	I	12–30–92	Indef.
ST93–2253	Panhandle Eastern Pipe Line Co.	Amgas. Inc	01–21–93	G–S	100	N	I	12–22–92	Indef.
ST93–2254	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipeline Co.	01–21–93	C	20,000	N	I	12–21–92	Indef.
ST93–2255	Enogex Inc	Williams Natural Gas Co.	01–21–93	C	50,000	N	I	01–07–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2256	Enogex Inc	Arkla Energy Resources.	01–21–93	C	5,000	N	I	01–01–93	Indef.
ST93–2257	Enogex Inc	Panhandle Eastern Pipeline Co.	01–21–93	C	50,000	N	I	01–01–93	Indef.
ST93–2258	Enogex Inc	Panhandle Eastern Pipeline Co.	01–21–93	C	50,000	N	I	01–01–93	Indef.
ST93–2259	High Island Offshore System.	ANR Pipeline Co .	01–21–93	K	2,900,000	N	I	01–19–93	Indef.
ST93–2260	United Texas Transmission Co.	Transcontinental Gas P/L Corp.	01–22–93	C	7,000	N	I	12–21–92	Indef.
ST93–2261	Acadian Gas Pipeline System.	Natural Gas P/L Co of Am., et al.	01–22–93	C	50,000	N	I	01–18–93	Indef.
ST93–2262	Questar Pipeline Co.	Nephi City Corp ...	01–22–93	B	2,000	N	I	01–01–93	11–30–93
ST93–2263	Neches Pipeline System.	Sabine Pipe Line Co.	01–22–93	C	20,000	N	I	12–01–92	Indef.
ST93–2264	ANR Pipeline Co .	Tenaska Marketing Ventures.	01–22–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2265	ANR Pipeline Co .	Enron Gas Marketing, Inc.	01–22–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2266	ANR Pipeline Co .	AGIP Petroleum Co., Inc.	01–22–93	G–S	100,000	N	F	01–01–93	Indef.
ST93–2267	ANR Pipeline Co .	Gas Energy Development Co.	01–22–93	G–S	20,000	N	F	01–01–93	Indef.
ST93–2268	ANR Pipeline Co .	O & R Energy, Inc	01–22–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2269	ANR Pipeline Co .	Ohio Gas Co	01–22–93	B	70,000	N	I	01–01–93	Indef.
ST93–2270	ANR Pipeline Co .	Natural Gas Marketers, Inc.	01–22–93	B	2,000	N	F	01–01–93	05–31–06
ST93–2271	Valero Transmission, L.P.	Natural Gas P/L Co. of America.	01–22–93	C	6,427	N	I	01–01–93	Indef.
ST93–2272	Northern Natural Gas Co.	Terra International, Inc.	01–22–93	G–S	35,000	N	FI	09–22–92	04–30–93
ST93–2273	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	01–22–93	G–S	250,000	Y	I	01–06–93	Indef.
ST93–2274	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	01–22–93	G–S	100,000	N	I	01–02–93	Indef.
ST93–2275	Transwestern Pipeline Co.	Integrated Services, Inc.	01–22–93	B	2,000	N	I	01–04–93	Indef.
ST93–2276	Transwestern Pipeline Co.	Gas Co. of New Mexico.	01–22–93	G–S	70,000	N	I	01–11–93	Indef.
ST93–2277	Transwestern Pipeline Co.	Yuma Gas Corp ..	01–22–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2278	Transwestern Pipeline Co.	Schuller International, Inc.	01–22–93	G–S	10,000	N	I	01–14–93	Indef.
ST93–2279	Transwestern Pipeline Co.	NGC Transportation, Inc.	01–22–93	G–S	750,000	N	I	01–07–93	Indef.
ST93–2280	United Gas Pipe Line Co.	Enermax, Div. of Nukem, Inc.	01–22–93	G–S	140,800	N	I	01–12–93	05–12–93
ST93–2281	United Gas Pipe Line Co.	Texaco Gas Marketing Inc.	01–22–93	G–S	41,920	N	I	01–11–93	05–11–93
ST93–2282	United Gas Pipe Line Co.	Trunkline Gas Co	01–22–93	G–S	209,600	N	I	01–09–93	05–09–93
ST93–2283	United Gas Pipe Line Co.	Western Gas Resources, Inc.	01–22–93	G–S	75,000	N	I	01–11–93	05–11–93
ST93–2284	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co.	01–22–93	B	7,423	N	I	12–23–92	Indef.
ST93–2285	Panhandle Eastern Pipe Line Co.	K N Energy, Inc ...	01–22–93	G–S	300,000	N	I	12–30–92	Indef.
ST93–2286	Tennessee Gas Pipeline Co.	American Central Gas Marketing Co.	01–22–93	G–S	200,000	N	I	12–31–92	Indef
ST93–2287	Natural Gas P/L Co. of America.	Tristar Gas Co	01–22–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2288	Natural Gas P/L Co. of America.	TXO Gas Marketing Corp.	01–22–93	G–S	250,000	N	I	12–30–93	Indef.
ST93–2289	Columbia Gas Transmission Corp.	Dayton Power and Light Co.	01–22–93	B	500	N	F	10–01–92	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2290	Columbia Gas Transmission Corp.	Timken Co	01–22–93	G–S	1,000	N	F	11–01–92	Indef.
ST93–2291	Columbia Gas Transmission Corp.	Timken Co	01–22–93	G–S	5,000	N	F	11–01–92	Indef.
ST93–2292	Texas Gas Transmission Corp.	Power Authority of the State of NY.	01–22–93	G–S	200,000	N	I	01–14–93	Indef.
ST93–2293	Texas Gas Transmission Corp.	Polaris Pipeline Corp.	01–22–93	G–S	100,000	N	I	01–09–93	Indef.
ST93–2294	Texas Gas Transmission Corp.	NGC Transportation, Inc.	01–22–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2295	Texas Eastern Transmission Corp.	Western Gas Resources, Inc.	01–25–93	G–S	300,000	N	I	01–14–93	Indef.
ST93–2296	Texas Eastern Transmission Corp.	Ledco, Inc	01–25–93	G–S	160,000	N	I	01–09–93	Indef.
ST93–2297	Algonquin Gas Transmission Co.	Gaslantic Corp	01–25–93	G–S	100,000	N	I	01–02–93	Indef.
ST93–2298	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	01–25–93	B	290	N	I	01–03–93	Indef.
ST93–2299	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	01–25–93	G–S	10,200,000	N	I	01–09–93	Indef.
ST93–2300	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	01–25–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2301	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	01–25–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2302	Algonquin Gas Transmission Co.	Coastal Gas Marketing Co.	01–25–93	G–S	7,900,000	N	I	01–02–93	Indef.
ST93–2303	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	01–25–93	G–S	230,000	N	I	11–01–92	Indef.
ST93–2204	Midwestern Gas Transmission Co.	American Central Gas Cos., Inc.	01–25–93	G–S	10,000	N	F	01–01–93	Indef.
ST93–2305	Tennessee Gas Pipeline Co.	Centran Corp	01–25–93	G–S	20,000	N	I	01–06–93	Indef.
ST93–2306	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	01–25–93	C	60,000	N	I	01–24–92	Indef.
ST93–2307	Oasis Pipe Line Co.	El Paso Natural Gas Co.	01–25–93	C	100,000	N	I	01–02–93	Indef.
ST93–2308	Oasis Pipe Line Co.	El Paso Natural Gas Co.	01–25–93	C	50,000	N	I	01–15–93	Indef.
ST93–2309	Oasis Pipe Line Co.	Natural Gas P/L Co. of America.	01–25–93	C	100,000	N	I	01–02–93	Indef.
ST93–2310	Houston Pipe Line Co.	Transcontinental Gas P/L Corp.	01–25–93	C	100,000	N	I	12–31–92	Indef.
ST93–2311	Houston Pipe Line Co.	Texas Eastern Transmission Corp.	01–25–93	C	100,000	N	I	01–13–93	Indef.
ST93–2312	Houston Pipe Line Co.	Trunkline Gas Co	01–25–93	C	15,000	N	I	01–16–93	Indef.
ST93–2313	Houston Pipe Line Co.	Trunkline Gas Co	01–25–93	C	15,000	N	I	01–16–93	Indef.
ST93–2314	Kentucky West Virginia Gas Co.	John B. and Nancy J. Ballard.	01–25–93	G–S	100	N	I	01–01–93	Indef.
ST93–2315	Ozark Gas Transmission System.	Brooklyn Interstate Nat. Gas Corp.	01–25–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2316	Ozark Gas Transmission System.	Seagull Marketing Services, Inc.	01–25–93	G–S	10,000	N	I	01–06–93	Indef.
ST93–2317	Northwest Pipeline Corp.	Grand Valley Gas Co.	01–25–93	G–S	7,250	N	I	01–02–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2318	South Georgia Natural Gas Co.	Peoples Gas System, Inc.	01–25–93	B	10,000	N	I	11–10–92	04–30–04
ST93–2319	South Georgia Natural Gas Co.	Petroleum Source & Systems Group.	01–25–93	G–S	4,000	N	I	11–01–92	Indef.
ST93–2320	South Georgia Natural Gas Co.	City of Andersonville.	01–25–93	G–S	5,000	N	I	12–24–92	Indef.
ST93–2321	High Island Offshore System.	Panhandle Eastern Pipe Line Co.	01–25–93	K	1,000	N	I	11–03–92	Indef.
ST93–2322	El Paso Natural Gas Co.	Anthem Energy Co., L.P.	01–26–93	G–S	50,000	N	I	12–17–92	Indef.
ST93–2323	Viking Gas Transmission Co.	City of Warren	01–26–93	G–S	824	N	F	01–01–93	11–01–02
ST93–2324	Viking Gas Transmission Co.	City of New York Mills.	01–26–93	G–S	644	N	F	01–01–93	11–01–02
ST93–2325	United Gas Pipe Line Co.	Mid Louisiana Gas Transmission Co.	01–26–93	B	25,000	N	I	12–29–92	Indef.
ST93–2326	Arkla Energy Resouces.	Agriculture Minerals Corp.	01–26–93	G–S	45,000	A	I	01–01–93	Indef.
ST93–2327	Arkla Energy Resouces.	Trans Arkoma Gas Corp.	01–26–93	G–S	20,000	N	I	01–01–93	Indef.
ST93–2328	Arkla Energy Resources.	Boyde Rosene & Associates.	01–26–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2329	Arkla Energy Resources.	Cibola Corp	01–26–93	G–S	100,000	N	I	01–01–93	Indef.
ST93–2330	Arkla Energy Resources.	Seagull Marketing Services Inc.	01–26–93	G–S	15,000	N	I	01–01–93	Indef.
ST93–2331	Arkla Energy Resources.	VHC Gas System, Ltd..	01–26–93	G–S	200,000	N	I	01–01–93	Indef.
ST93–2332	Arkla Energy Resources.	Gaylord Container Corp.	01–26–93	G–S	2,000	N	F	01–01–93	Indef.
ST93–2333	Arkla Energy Resources.	Con Agra Frozen Foods.	01–26–93	G–S	1,000	N	F	01–01–93	Indef.
ST93–2334	Arkla Energy Resources.	Red River Gas Co	01–26–93	G–S	20,000	N	I	01–01–93	Indef.
ST93–2335	Arkla Energy Resources.	Mid Con Marketing Corp.	01–26–93	G–S	30,000	N	I	01–01–93	Indef.
ST93–2336	Arkly Energy Resources.	Texaco Gas Marketing Inc.	01–26–93	G–S	30,000	N	I	01–01–93	Indef.
ST93–2337	Arkla Energy Resources.	Georgia Pacific Ashdown Operations.	01–26–93	G–S	23,000	N	F	01–01–93	Indef.
ST93–2338	Arkla Energy Resources.	Arkansas Electric Cooperative.	01–26–93	G–S	16,560	N	I	01–01–93	Indef.
ST93–2339	Arkla Energy Resources.	Enrow Gas Marketing, Inc.	01–26–93	G–S	150,000	N	I	01–01–93	Indef.
ST93–2340	Arkla Energy Resources.	Amoco Energy Trading Corp.	01–26–93	G–S	16,606	N	F	01–01–93	Indef.
ST93–2341	Arkla Energy Resources.	Calumet Refining Co.	01–26–93	G–S	4,000	N	F	01–01–93	Indef.
ST93–2342	Arkla Energy Resources.	Clinton Gas Transmission Inc.	01–26–93	G–S	2,000	N	I	01–01–93	Indef.
ST93–2343	Arkla Energy Resources.	Arkla Energy Marketing Co.	01–26–93	G–S	458	A	F	01–01–93	Indef.
ST93–2344	Arkla Energy Resources.	Arkla Energy Marketing Co.	01–26–93	G–S	25,000	A	F	01–01–93	Indef.
ST93–2345	Arkla Energy Resources.	Arkla Energy Marketing Co.	01–26–93	G–S	150,000	A	I	01–01–93	Indef.
ST93–2346	Arkla Energy Resources.	Arkla Energy Marketing Co.	01–26–93	G–S	115,000	A	F	01–01–93	Indef.
ST93–2347	Arkla Energy Resources.	Arkla Energy Marketing Co.	01–26–93	G–S	125,000	A	I	01–01–93	Indef.
ST93–2348	Sabine Pipe Line Co.	Neste OY	01–26–93	G–S	200,000	N	I	01–01–93	Indef.
ST93–2349	Natural Gas P/L Co. of America.	Panhandle Trading Co.	01–26–93	G–S	50,000	N	I	03–01–93	Indef.
ST93–2350	Natural Gas P/L Co. of America.	Northern Illinois Gas Co.	01–26–93	G–S	35,000	N	I	03–01–93	11–30–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-2351	Natural Gas P/L Co. of America.	Midcon Marketing Corp.	01-26-93	G-S	200,000	N	I	01-10-93	Indef.
ST93-2352	Natural Gas P/L Co. of America.	O & R Energy, Inc	01-26-93	G-S	100,000	N	I	01-08-93	Indef.
ST93-2353	Natural Gas P/L Co. of America.	TXO Gas Marketing Corp.	01-26-93	G-S	75,000	N	I	01-10-93	Indef.
ST93-2354	Natural Gas P/L Co. of America.	Centran Corp	01-26-93	G-S	30,000	N	I	01-06-93	Indef.
ST93-2355	Natural Gas P/L Co. of America.	Mercando Gas Services, Inc.	01-26-93	G-S	10,000	N	I	12-16-92	Indef.
ST93-2356	Natural Gas P/L Co. of America.	Seagull Marketing Services, Inc.	01-26-93	G-S	60,000	N	I	12-10-92	Indef.
ST93-2357	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	01-26-93	G-S	150,000	N	I	01-08-93	Indef.
ST93-2358	Natural Gas P/L Co. of America.	Texas-Ohio Gas, Inc.	01-26-93	G-S	30,000	N	I	01-02-93	Indef.
ST93-2359	Natural Gas P/L Co. of America.	CNG Producing Co.	01-26-93	G-S	30,000	N	I	01-02-93	Indef.
ST93-2360	Columbia Gulf Transmission Co.	Victoria Gas Corp	01-26-93	G-S	100,000	N	I	12-30-92	Indef.
ST93-2361	Columbia Gulf Transmission Co.	Tennessee Corp ..	01-26-93	G-S	55,000	N	I	01-01-93	Indef.
ST93-2362	Columbia Gulf Transmission Co.	Seagull Marketing Services, Inc.	01-26-93	G-S	75,000	N	I	01-01-93	Indef.
ST93-2363	Columbia Gulf Transmission Co.	J. Aron & Co	01-26-93	G-S	150,000	N	I	01-01-93	Indef.
ST93-2364	Columbia Gulf Gas Corp.	Enmark Gas Corp	01-26-93	G-S	50,000	A	I	01-01-93	Indef.
ST93-2365	ANR Pipeline Co .	Aquila Energy Marketing Corp.	01-26-93	G-S	50,000	Y	I	01-01-93	Indef.
ST93-2366	ANR Pipeline Co .	Howard Energy Co.	01-26-93	G-S	10,000	N	I	01-01-93	Indef.
ST93-2367	Mid Louisiana Gas Co.	International Paper Co.	01-27-93	G-S	50,000	N	I	01-13-93	06-02-93
ST93-2368	Mid Louisiana Gas Co.	Mid Louisiana Gas Transmission Co.	01-27-93	G-S	50,000	A	I	01-01-93	12-31-93
ST93-2369	United States Pipe Line Co.	Yuma Gas Corp ..	01-27-93	G-S	78,600	N	I	01-18-93	05-18-93
ST93-2370	United States Pipe Line Co.	Amoco Energy Trading Corp.	01-27-93	G-S	317,544	N	I	01-20-93	05-20-93
ST93-2371	United States Pipe Line Co.	Texaco Gas Marketing Inc.	01-27-93	G-S	104,800	N	I	01-20-93	05-20-93
ST93-2372	United States Pipe Line Co.	Texaco Gas Marketing Inc.	01-27-93	G-S	41,920	N	I	01-20-93	05-20-93
ST93-2373	Nycotex Gas Transport.	Columbia Gas Transmission Corp.	01-27-93	C	10,000	N	I	01-01-93	Indef.
ST93-2374	Panhandle Eastern Pipe Line Co.	K N Gas Marketing, Inc.	01-27-93	G-S	50,000	N	I	01-01-93	Indef.
ST93-2375	Panhandle Eastern Pipe Line Co.	Barrett Resources Corp.	01-27-93	G-S	10,000	N	I	01-01-93	Indef.
ST93-2376	Panhandle Eastern Pipe Line Co.	O & R Energy, Inc	01-27-93	G-S	25,000	N	I	01-01-93	Indef.
ST93-2377	Panhandle Eastern Pipe Line Co.	Amgas, Inc	01-27-93	G-S	200	N	I	01-01-93	Indef.
ST93-2378	Panhandle Eastern Pipe Line Co.	Amgas, Inc	01-27-93	G-S	40	N	I	01-01-93	Indef.
ST93-2379	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	01-27-93	B	5,211	Y	F	01-01-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2380	Columbia Gas Transmission Corp.	Continental Reserves Oil Co.	01–27–93	G–S	6,826	N	F	01–01–93	Indef.
ST93–2381	Columbia Gas Transmission Corp.	Panhandle Trading Co.	01–27–93	G–S	6,225	Y	F	01–06–93	02–28–93
ST93–2382	Columbia Gas Transmission Corp.	Access Energy Corp.	01–27–93	G–S	50	Y	F	01–13–93	03–13–93
ST93–2383	Columbia Gas Transmission Corp.	Columbus Hobbs .	01–27–93	G–S	2,932	Y	F	01–01–93	Indef.
ST93–2384	Columbia Gas Transmission Corp.	Columbia Gas Development Corp.	01–27–93	G–S	80	A	F	01–01–93	03–31–93
ST93–2385	Columbia Gas Transmission Corp.	Shangas Marketing Co.	01–27–93	G–S	25	N	I	01–01–93	Indef.
ST93–2386	Columbia Gas Transmission Corp.	Stand Energy Corp.	01–27–93	G–S	61,000	N	I	12–26–93	Indef.
ST93–2387	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	01–27–93	G–S	500	A	F	01–01–93	12–31–93
ST93–2388	Colorado Interstate Gas Co.	CNG Producing Co.	01–27–93	G–S	12,000	N	F	01–01–93	12–06–02
ST93–2389	Colorado Interstate Gas Co.	Snyder Oil Co	01–27–93	G–S	20,000	N	I	01–01–93	Indef.
ST93–2390	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	01–27–93	G–S	50,000	N	I	01–01–93	Indef.
ST93–2391	Transok, Inc	ANR Pipeline Co, et al.	01–27–93	C	20,000	N	I	01–01–93	Indef.
ST93–2392	Transok, Inc	ANR Pipeline Co, et al.	01–27–93	C	200,000	N	I	01–02–93	Indef.
ST93–2393	Transok, Inc	ANR Pipeline Co, et al.	01–27–93	C	50,000	N	I	01–15–93	Indef.
ST93–2394	Transok Gas Transmission Co.	ANR Pipeline Co, et al.	01–27–93	C	1,000	N	I	01–14–93	Indef.
ST93–2395	Transok, Inc	ANR Pipeline Co, et al.	01–27–93	C	50,000	N	I	01–01–93	Indef.
ST93–2396	Transok, Inc	ANR Pipeline Co, et al.	01–27–93	C	100,000	N	I	01–05–93	Indef.
ST93–2397	Gulf States Transmission Corp.	Gulf States Pipeline Corp.	01–27–93	G–S	100,000	Y	I	01–07–93	Indef.
ST93–2398	Overland Trail Trans. Co.	Kern River Gas Transmission Co.	01–28–93	C	50,000	Y	I	01–05–93	Indef.
ST93–2399	Tennessee Gas Pipeline Co.	Highland Energy Co.	01–28–93	G–S	544	N	I	01–01–93	Indef.
ST93–2400	El Paso Natural Gas Co.	GPM Gas Corp ...	01–28–93	G–S	41,200	N	I	01–25–93	Indef.
ST93–2401	El Paso Natural Gas Co.	National Gas Resources L.P.	01–28–93	G–S	103,000	N	I	01–18–93	Indef.
ST93–2402	Trunkline Gas Co	CNG Producing Co.	01–28–93	G–S	30,000	N	I	01–07–93	Indef.
ST93–2403	Trunkline Gas Co	Peoples Gas, Light and Coke Co.	01–28–93	G–S	48,544	N	F	01–01–93	Indef.
ST93–2404	Trunkline Gas Co	Vesta Energy Co .	01–28–93	G–S	30,000	N	I	01–01–93	Indef.
ST93–2405	Trunkline Gas Co	Peoples Gas, Light and Coke Co.	01–28–93	G–S	48,544	N	F	01–01–93	Indef.
ST93–2406	Texas Eastern Transmission Corp.	Central Illinois Public Service Co.	01–28–93	G–S	8,000	N	F	01–01–93	Indef.
ST93–2407	Texas Eastern Transmission Corp.	North Alabama Gas District.	01–28–93	B	200,000	N	I	01–01–93	Indef.
ST93–2408	Florida Gas Transmission Co.	Citrus Marketing, Inc.	01–28–93	G–S	600,000	N	I	01–06–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-2409	Louisiana Resources Pipeline Co.	Texas Eastern Transmission Co.	01-28-93	C	10,000	N	I	01-09-93	Indef.
ST93-2410	Louisiana Resources Pipeline Co.	Texas Gas Transmission Corp.	01-28-93	C	20,000	N	I	01-08-93	Indef.
ST93-2411	Panhandle Eastern Pipe Line Co.	Yuma Gas Corp ..	01-28-93	G-S	20,000	N	I	01-16-93	Indef.
ST93-2412	Panhandle Eastern Pipe Line Co.	City of Hazelton ...	01-28-93	G-S	100	N	I	01-01-93	Indef.
ST93-2413	Panhandle Eastern Pipe Line Co.	Midland Cogeneration Venture, L.P.	01-28-93	G-S	35,000	N	I	01-11-93	Indef.
ST93-2414	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	01-28-93	G-S	9,500	N	I	01-01-93	Indef.
ST93-2415	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	01-28-93	G-S	50,000	A	I	01-06-93	Indef.
ST93-2416	Panhandle Eastern Pipe Line Co.	Coenergy Ventures, Inc.	01-28-93	G-S	100,000	N	I	01-01-93	Indef.
ST93-2417	Northwest Pipeline Corp.	Brymore Energy Inc.	01-28-93	G-S	200,000	N	I	01-01-93	Indef.
ST93-2418	Northwest Pipeline Corp.	LFC Gas Co	01-28-93	G-S	30,000	N	I	01-01-93	Indef.
ST93-2419	Natural Gas P/L Co. of America.	MG Natural Gas Corp.	01-28-93	G-S	25,000	N	I	01-15-93	Indef.
ST93-2420	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co.	01-28-93	G-S	100,000	N	I	12-29-92	Indef.
ST93-2421	Natural Gas P/L Co. of America.	Energy Dynamics, Inc.	01-28-93	G-S	25,000	N	I	01-07-93	Indef.
ST93-2422	Natural Gas P/L Co. of America.	Midcon Marketing Corp.	01-28-93	G-S	100,000	N	I	01-20-93	Indef.
ST93-2423	Natural Gas P/L Co. of America.	Tristar Gas Marketing Co.	01-28-93	G-S	50,000	N	I	12-09-92	Indef.
ST93-2424	Natural Gas P/L Co. of America.	Intercon Gas, Inc .	01-28-93	G-S	85,000	N	I	08-04-88	Indef.
ST93-2425	Valero Transmission, L.P.	El Paso Natural Gas Co.	01-29-93	C	9,000	N	I	01-13-93	Indef.
ST93-2426	Valero Transmission, L.P.	Transwestern Pipeline Co.	01-29-93	C	7,800	N	I	01-01-93	Indef.
ST93-2427	Valero Transmission, L.P.	Natural Gas P/L Co. of America.	01-29-93	C	15,000	N	I	01-01-93	Indef.
ST93-2428	Lone Star Gas Co	Tennessee Gas Pipeline Co., et al.	01-29-93	C	25,000	N	I	12-30-92	Indef.
ST93-2429	Lone Star Gas Co	El Paso Natural Gas Co.	01-29-93	C	25,000	N	I	01-01-92	Indef.
ST93-2430	Overthrust Pipeline Co.	Questar Pipeline Co.	01-29-93	G	400,000	Y	I	01-04-93	07-31-01
ST93-2431	KN Energy, Inc	Panhandle Eastern Pipe Line Co.	01-29-93	G	300,000	N	I	12-30-92	Indef.
ST93-2432	El Paso Natural Gas Co.	Colorado Interstate Gas Co.	01-29-93	G	30,900	N	I	01-21-93	Indef.
ST93-2433	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	01-29-93	G-S	14,257	N	F	01-01-93	Indef.
ST93-2434	Williston Basin Inter. P/L Co.	Marion Oil & Gas Corp.	01-29-93	G-S	5	N	I	01-01-93	12-31-94
ST93-2435	Williston Basin Inter. P/L Co.	Amerada Hess Corp.	01-29-93	G-S	45,000	N	I	01-01-93	12-31-94
ST93-2436	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	01-29-93	C	100,000	N	I	12-18-92	Indef.
ST93-2437	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	01-29-93	C	20,000	N	I	01-01-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–2438	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	01–29–93	C	1,100	N	I	01–01–93	Indef.
ST93–2439	Delhi Gas Pipeline Corp.	KN Energy, Inc., et al.	01–29–93	C	4,000	N	I	01–01–93	Indef.
ST93–2440	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	01–29–93	C	5,000	N	I	01–01–93	Indef.
ST93–2441	Columbia Gas Transmission Corp.	Access Energy Corp.	01–29–93	G–S	2,000	Y	F	01–15–93	03–31–93
ST93–2442	Columbia Gas Transmission Corp.	Access Energy Corp.	01–29–93	G–S	2,355	Y	F	01–15–93	03–31–93
ST93–2443	Columbia Gas Transmission Corp.	Elizabethtown Gas Co.	01–29–93	B	20,000	Y	F	12–01–92	Indef.
ST93–2444	Columbia Gas Transmission Corp.	Bluefield Gas Co .	01–29–93	B	2,000	Y	F	01–01–93	Indef.
ST93–2445	Columbia Gas Transmission Corp.	Kalida Natural Gas Co.	01–29–93	B	400	N	F	02–01–93	Indef.
ST93–2446	Northern Natural Gas Co.	City of Tipton	01–29–93	G–S	969	N	F/I	01–01–93	Indef.
ST93–2447	Northern Natural Gas Co.	Wisconsin Gas Co	01–29–93	G–S	57,440	N	F/I	01–01–93	Indef.
ST93–2448	Northern Natural Gas Co.	Peoples Natural Gas Co.	01–29–93	G–S	5,000	N	F/I	01–01–93	01–02–96
ST93–2449	Natural Gas P/L Co. of America.	Tejas Power Corp	01–29–93	G–S	60,000	N	I	04–01–88	Indef.
ST93–2450	Panhandle Eastern Pipe Line Co.	K N Energy, Inc ...	01–29–93	G	15,000	N	I	01–13–93	Indef.
ST93–2451	Panhandle Eastern Pipe Line Co.	MG Natural Gas Corp.	01–29–93	G–S	21,030	N	F	01–01–93	Indef.
ST93–2452	ANR Pipeline Co .	International Specialty Prod. Inc.	01–29–93	G–S	1,200	N	F	01–01–93	Indef.
ST93–2453	Colorado Interstate Gas Co.	Gulf Gas Utilities Co.	01–29–93	G–S	500	N	I	01–01–93	Indef.
ST93–2454	Colorado Interstate Gas Co.	SDS Petroleum Products, Inc.	01–29–93	G–S	1,000	N	I	01–14–93	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated Maximum Daily Volumes Includes Volumes Reported by the Filing Company in MMBTU, MCF and DT.
[3] Affiliation of Reporting Company to Entities Involved in the Transaction. A "Y" Indicates Affiliation, an "A" Indicates Marketing Affiliation, and a "N" Indicates No Affiliation.

[FR Doc. 93–6685 Filed 3–23–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP93–247–000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP93–247–000]

March 16, 1993.

Take notice that on March 12, 1993, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–247–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon four segments of pipeline crossing the Mississippi River, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Southern requests authority to abandon four 12¾ inch outside diameter Duck Lake-Franklinton Line River Crossing pipelines located in Iberville Parish, Louisiana. Southern states that the river crossings as well as its 20-inch Duck Lake-Franklinton Line were constructed in 1953 in order to deliver natural gas from wells in the Duck Lake gas field near Verdunville, St. Mary Parish, Louisiana. It is also stated that the United States Corps of Engineers and the State of Louisiana (collectively known as the agencies) are presently planning the implementing of the second phase of their Mississippi River Deepening Project (Deep Draft Project). Southern states that the agencies project that work on the Deep Draft Project would commence during the summer of 1993 and would consist of the deepening channel of the Mississippi River to a depth of fifty-five feet.

Southern asserts that the proposed limits of the Deep Draft Project would impact Southern's Duck Lake-Franklinton River Crossing at White Castle to the extent that the existing four 12¾ inch river lines must be removed and abandoned. Southern submits that since it has a 24-inch and a 30-inch pipeline crossing at the same location and that those pipelines have existing

operational capacity and capacity sufficient to flow the remaining natural gas volumes to Southern's system, abandonment of the four river crossing segments would have a *de minimis* impact on Southern's operations. It is indicated that, upon receipt of abandonment authorization, Southern proposes to abandon the segments by removal.

Comment date: April 6, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP93–244–000]

March 16, 1993.

Take notice that on March 11, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–244–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm transportation service to Midwest Gas Company, a division of Midwest Power Systems Inc. (Midwest Gas), pursuant to Rate Schedule T–17 in Northern's FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it entered into a gas transportation agreement with Midwest Gas on June 10, 1975. Northern states that the Commission granted a certificate to Northern authorizing the transportation service on March 31, 1976 in Docket No. CP76–4. According to Northern, Midwest Gas advised Northern by letter dated January 5, 1993, that Midwest Gas desired to abandon Rate Schedule T–17. Northern further states that no facilities are proposed to be abandoned.

Comment date: April 6, 1993 in accordance with Standard Paragraph F at the end of the notice.

3. Equitrans, Inc.

[Docket No. CP93–241–000]

March 16, 1993.

Take notice that on March 11, 1993, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in Docket No. CP93–241–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a sales tap, under the blanket certificate issued in Docket No. CP83–508–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Equitrans proposes that the new sales tap be constructed on its transmission line in Center Township, Greene County, Pennsylvania to provide gas service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans projects that the quantity of gas to be delivered through the new sales tap will be approximately 1 Mcf on a peak day.

Comment date: April 30, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP93–236–000]

March 16, 1993.

Take notice that on March 8, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–236–000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving abandonment of a certificated exchange agreement with KN Energy, Inc. (KN), under Rate Schedule E–16 of Panhandle's FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that Panhandle and KN have mutually agreed to terminate the subject exchange service, effective March 1, 1993. Panhandle further states that the existing interconnections with KN will continue to be available for open access transportation service. No facilities are proposed to be abandoned herein.

Comment date: April 6, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. Florida Gas Transmission Company

[Docket No. CP93–242–000]

March 17, 1993.

Take notice that on March 11, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–189–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an existing delivery point to two existing sales service agreements under which FGT is currently serving West Florida Natural Gas Company (West Florida), under the authorization issued in Docket No. CP82–553–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

At the request of West Florida, FGT proposes to add the Okaloosa County delivery point located in Okaloosa County, Florida to the firm sales for resale service agreement dated November 1, 1989, as amended (Rate Schedule G) and the preferred sales for resale service agreement dated November 1, 1989 (Rate Schedule I) under which FGT is currently serving West Florida. It is stated that West Florida and Okaloosa County Natural Gas District (Okaloosa) have advised FGT that their pipeline systems are physically connected downstream of the subject delivery point and that Okaloosa has agreed to provide firm transportation service for West Florida from the subject delivery point to the interconnection between Okaloosa's and West Florida's pipeline systems. It is further stated that adding the subject delivery point will not increase FGT's contractual gas deliveries to West Florida and therefore, will not impact FGT's peak or annual deliveries, nor will it disadvantage FGT's other existing customers.

Comment date: April 30, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. ANR Pipeline Company

[Docket No. CP93–248–000]

March 17, 1993.

Take notice that on March 15, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–248–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service for Trunkline Gas Company (Trunkline), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is states that as part of the negotiations in Docket No. RP89–161, et al., ANR and Trunkline have agreed to terminate Rate Schedule X–151, under Original Volume No. 2 of ANR's FERC Gas Tariff and have agreed to replace it with open-access transportation. It is stated that Rate Schedule X–151 represents an agreement dated June 15, 1984, which was authorized in Docket No. CP85–329–000 wherein ANR is authorized to transport for Trunkline up to 4,000 Mcf of natural gas per day from High Island Block A–355 to High Island Block A–343. ANR requests that the abandonment be made effective November 1, 1992, coincident with the effective date of ANR's Interim Settlement in Docket No. RP89–161, et al.

Comment date: April 7, 1993, in accordance with Standard Paragraph F at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP93–243–000]

March 17, 1993.

Take notice that on March 11, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–243–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon partially the sale of natural gas to the Producers Utilities Corp. (PUC), a local distribution company serving customers in Armstrong and Carson Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to abandon the sale of 2,935 Mcf of natural gas per day to PUC on a firm basis during the period from April through October of each year and the sale of 2,600 Mcf of gas per day on an interruptible basis for the period from November through March of each year. It is stated that the proposed abandonment would reduce PUC's daily entitlements from Northern from 3,000 Mcf to 65 Mcf on a firm basis and from 3,000 to 400 Mcf on an interruptible basis. It is explained that Northern makes sales to PUC under the terms of Northern's Rate Schedule X–16.

It is asserted that no facilities are proposed to be abandoned herein. It is further asserted that on approval of the proposed abandonment Northern would file new tariff sheets to reflect the reduced level of service to PUC.

Comment date: April 7, 1993, in accordance with Standard Paragraph F at the end of this notice.

8. Midwestern Gas Transmission Company

[Docket No. CP93–246–000]

March 17, 1993.

Take notice that on March 12, 1993, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–246–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon the portable use of certain compressor facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it was authorized to use, on a temporary basis, a portable 3,500 horsepower compressor unit at various existing permanent compressor stations during routine maintenance procedures. Midwestern further states that it desires to upgrade the horsepower of the portable unit and use it on a permanent basis to replace a 4,000 horsepower unit that is being retired. Midwestern therefore seeks abandonment of only the authorization to operate the compressor unit on a portable basis.

Midwestern asserts that the requested abandonment will allow it to operate the compressor on a permanent basis and eliminate the need to buy a new compressor unit.

Comment date: April 7, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6655 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–05557T Texas–127]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 18, 1993.

Take notice that on March 15, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Frio M–50 Sand Formation, La Sal Vieja Field, underlying a portion of Willacy County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 underlying approximately 4,400 acres in the Harding-Lindahl Subdivision of the San Juan de Carricitos Grant A–8, as shown on Exhibit 2 of the application.

The notice of determination also contains Texas' findings that the referenced portion of the Frio M–50 Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6697 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA92-9-000]

Central Louisiana Electric Co., Inc.; Consent to Shortened Procedures

Issued March 18, 1993.

On January 26, 1993, Chief Accountant issued a report on the examination of the books and records of Central Louisiana Electric Company, Inc. (the Company) for the period January 1, 1987 through December 31, 1991. 62 FERC ¶ 62,054. As noted in that report, the Company disagrees with Exception No. 1 in Part I of the report. By letter filed February 23, 1993, the Company consented to disposition of this matter under the shortened procedures set forth in 18 CFR part 41.

Under those procedures, initial memoranda of facts and arguments shall be due on or before April 19, 1993. Replies shall be due on or before May 10, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-6688 Filed 3-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-2-22-000; TM93-4-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 16, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on March 10, 1993, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's regulations, and Sections 12, 15, and 16 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six copies of the following tariff sheets for its FERC Gas Tariff, First Revised Volume No. 1:

Twenty-Eighth Revised Sheet No. 31
Twentieth Revised Sheet No. 32
Eighth Revised Sheet No. 33
Twenty-Fourth Revised Sheet No. 34
Nineteenth Revised Sheet No. 35

The tariff sheets are proposed to become effective April 1, 1993. CNG states that the purpose of this filing is to institute a PGA rate to be effective for the period April 1, 1993, through June 30, 1993.

CNG requests the following waivers in the filing:

(1) Waiver of § 154.305(d) of the Commission's Regulations to allow CNG to remove the commodity gas cost surcharge component from its rates.

(2) Waiver of § 154.304 of the Commission's Regulations to allow CNG to consider April through June, 1993 as CNG's three-month quarterly PGA period.

(3) Waiver of § 154.308 of the Commission's Regulations to allow this rate change to take effect before the end of the normal 30 day notice period.

(4) Waiver of Section 15 of the General Terms and Conditions of CNG's Tariff to allow CNG to base its Transportation Cost Recovery Adjustment on the three month period beginning April 1993 instead of the annual period beginning April 1993.

CNG states that copies of the filing are being mailed to CNG customers and interested parties.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 285.214 and 385.211. All motions or protests should be filed on or before March 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-6652 Filed 3-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-4-2-000]

East Tennessee Natural Gas Co.; Rate Filing

March 18, 1993.

Take notice that on March 15, 1993, East Tennessee Natural Gas Company ("East Tennessee"), P.O. Box 2511, Houston, Texas 77252, filed its Third Revised Tariff Sheet No. 7 with a proposed effective date of April 1, 1993. The purpose of this filing is to pass through take-or-pay transition costs assessed to East Tennessee by Tennessee Gas Pipeline Company (Tennessee) pursuant to Section 26.5 of the General Terms and Conditions of Volume 1 of East Tennessee's tariff. Tennessee made its filing assessing costs against East Tennessee in Docket No. RP93-37-000 on December 1, 1992 for a proposed effective date of January 1, 1993. The provision of Section 26.5 of East Tennessee's tariff require East Tennessee to file to pass through the Tennessee charges within thirty days of billing by Tennessee. Tennessee billed East Tennessee for the increase on February 15, 1993.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-6696 Filed 3-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 18, 1993.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on March 15, 1993 certain revised tariff sheet included in Appendix A attached to the filing. Such sheet is proposed to be effective April 1, 1993.

ESNG states that the purpose of the instant filing is to revise the fuel retention percentages applicable to its storage rate schedules effective April 1, 1993. ESNG is "tracking" the revised fuel retention percentages from a filing made by Transco on March 2, 1993. (See Transco's Second Revised Sheet No. 29).

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 26, 1993. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6690 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–249–000]

El Paso Natural Gas Co.; Application

March 18, 1993.

Take notice that on March 15, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–249–000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon two certificated exchange services with Warren Petroleum Company, a division of Chevron U.S.A. Inc. (Warren), all as more fully set forth in the application which is open to public inspection.

El Paso requests permission and approval to abandon exchange services with Warren under El Paso's FERC Rate Schedules X–57 and X–58. El Paso states that via letter dated December 3, 1992, Warren and El Paso agreed to terminate their respective exchange services. El Paso also states that it would then transport natural gas volumes for Warren under part 284 of the Commission's Regulations upon abandonment of their exchange services. El Paso indicates that Warren will file a separate application with the Commission to abandon its corresponding services for El Paso.

No facilities would be abandoned in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6693 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–186–054 and RP90–20–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

March 18, 1993.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on March 9, 1993, tendered to the Federal Energy Regulatory Commission ("Commission") for filing as part of its FERC Gas Tariff, the following primary and alternate tariff sheets, to become effective on April 1, 1993:

Primary Tariff Sheets

First Revised Volume No. 1

Twenty-Fifth Revised Sheet No. 4
Forty-First Revised Sheet No. 57(i)

Original Volume No. 2

Twenty-Seventh Revised Sheet No. 53
First Revised Sheet No. 53–G.1
Nineteenth Revised Sheet No. 77
Fifth Revised Sheet No. 78
Fifteenth Revised Sheet No. 151
Twelfth Revised Sheet No. 223
Twelfth Revised Sheet No. 245
Sixth Revised Sheet No. 269
Twelfth Revised Sheet No. 294
Seventh Revised Sheet No. 603
Fourth Revised Sheet No. 604
Fifth Revised Sheet No. 865
Fifth Revised Sheet No. 866
Fourth Revised Sheet No. 905
Fifth Revised Sheet No. 906
Second Revised Sheet No. 1008

Original Volume No. 3

Sixth Revised Sheet No. 2
Second Revised Sheet No. 2–A
Seventh Revised Sheet No. 3

Alternate Tariff Sheets

First Revised Volume No. 1

Alternate Twenty-Fifth Revised Sheet No. 4
Alternate Forty-First Revised Sheet No. 57(i)

Original Volume No. 2

Alternate Twenty-Seventh Revised Sheet No. 53
Alternate First Revised Sheet No. 53–G.1
Alternate Nineteenth Revised Sheet No. 77
Alternate Fifth Revised Sheet No. 78
Alternate Fifteenth Revised Sheet No. 151
Alternate Twelfth Revised Sheet No. 223
Alternate Twelfth Revised Sheet No. 245
Alternate Sixth Revised Sheet No. 269
Alternate Twelfth Revised Sheet No. 294
Alternate Seventh Revised Sheet No. 603
Alternate Fourth Revised Sheet No. 604
Alternate Fifth Revised Sheet No. 865
Alternate Fifth Revised Sheet No. 866
Alternate Fourth Revised Sheet No. 905
Alternate Fifth Revised Sheet No. 906
Alternate Second Revised Sheet No. 1008

Original Volume No. 3

Alternate Sixth Revised Sheet No. 2
Alternate Second Revised Sheet No. 2–A
Alternate Seventh Revised Sheet No. 3

Great Lakes states that the purpose of its filing is to comply with Opinion Nos. 368, Great Lakes Gas Transmission Limited Partnership, "Opinion and Order Affirming in Part and Reversing in Part Initial Decision" 57 FERC ¶ 61,141 (1991), and 368–A, Great Lakes Gas Transmission Limited Partnership, "Opinion and Order Denying Rehearing" Docket Nos. RP89–186–008, et al. (issued February 3, 1993). In this regard, Opinions Nos. 368 and 368–A resolved three issues previously reserved for hearing and decision by the settlement in Great Lakes' prior general rate case proceeding:

—Whether Great Lakes' rates for firm transportation services authorized in Docket Nos. CP88–542–000 and CP88–805–000 be determined on an incremental or rolled-in cost basis;
—The rate design methodology to be utilized to determine Great Lakes' interruptible and authorized overrun transportation rates; and
—Whether Great Lakes should continue to utilize the Modified Fixed Variable (MFV) methodology to design its system rates.

Great Lakes states that its primary tariff proposal reflects incremental rates for the services authorized under Docket Nos. CP88–542–000 and CP88–805–000, a 140 percent load factor design for its Rate Schedules IT and AOS interruptible and authorized overrun transportation rates, respectively, and

use of the Straight Fixed Variable (SFV) rate methodology.

Great Lakes further states that although no party raised the matter on rehearing, there is a sentence in Opinion 368–A which could be read as suggesting implementation of SFV rates will be accomplished as part of Great Lakes' restructuring under Order No. 636. In light of this uncertainty, it avers, Great Lakes is including alternate tariff sheets which reflect incremental rate treatment and 140 percent load factor design basis for its Rate Schedule IT and AOS rates, but retains its existing Modified Fixed Variable rate methodology.

Both the primary and alternate rate proposals utilize the settlement cost of service and throughput levels approved by the Commission's order issued to Great Lakes on February 3, 1993 at Docket No. RP91–143–000, it is stated.

Great Lakes states that it is tendering the proposed tariff sheets without prejudice to: (1) Its position, on appeal, that its system rates should be designed on a rolled-in basis; (2) its position as to the implementation of incremental ratemaking on the Great Lakes' system in the litigation phase of Docket No. RP91–143–000; and (3) Great Lakes' position in its restructuring proceedings in Docket No. RS92–63–000.

Great Lakes states that copies of this filing were posted and served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6691 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES93–20–000, ES93–20–001 and ES93–20–002]

Multitrade of Pittsylvania County, L.P.; Issuance of Commission Letter Order and Comment Period

March 16, 1993.

Take notice that on March 12, 1993, the Chief Accountant, pursuant to delegated authority, issued a Letter Order to Multitrade of Pittsylvania County L.P. (MPC) conditionally granting blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by MPC.

The March 12, 1993 Letter Order, in ordering paragraphs (B)(1), (B)(2) and (B)(3), reads as follows:

(B)(1) Within 30 days of the date of this letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by MPC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

(B)(2) Absent a request for hearing within the period set forth above, MPC is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(B)(3) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of MPC's issuances of securities or assumption of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is April 12, 1993.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6653 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–62–000]

Panhandle Eastern Pipe Line Co.; Filing In Compliance With Section 18.9 of Panhandle's Tariff

March 18, 1993.

Take notice that on March 10, 1993, Panhandle Eastern Pipe Line Company (Panhandle) filed in compliance with the provisions of Section 18.9 of the General Terms and Conditions of Original Volume No. 1 of its FERC Gas Tariff to recover from certain former sales customers and refund to certain former sales customers their proportional share of the total unrecovered amounts remaining in Panhandle's Account 191 at the time Section 18 through 18.8 of Panhandle's General Terms and Conditions became inapplicable to them. Panhandle requests immediate authority to direct bill or issue refunds for the amounts included in Appendix A of its filing, without further notice, notice of the applicability of this tariff provision having already been provided.

Panhandle states that it has previously filed for and received authority to abandon sales service to the affected parties and thus, the provisions of Section 18.9 of its tariff are applicable to them. Panhandle has included in its filing workpapers setting forth the calculation of the former sales customers direct bill responsibility to Panhandle or the refunds due such former sales customers. Panhandle states that its filing is without prejudice to its rights to the full recovery of the costs encompassed by section 18.9 of the General Terms and Conditions in the event of changes in Commission orders.

Panhandle states that copies of this filing is being mailed to each affected customers and the appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6695 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–185–007]

Panhandle Eastern Pipe Line Co.; Response of Panhandle Eastern Pipe Line Co. to Order on Remand

March 18, 1993

Take notice that on March 1, 1993, Panhandle Eastern Pipe Line Company (Panhandle) submitted information required by the Commission's Order on Remand issued January 21, 1993, in Docket No. RP89–185–007.

The Commission's January 21 order on remand directed Panhandle to file information regarding the recovery of fuel costs under the Seasonal Sales Program (SSP). The SSP was in effect for the period July 1989 through March 1991. Panhandle's response provides support for the fuel component of the SSP rate, claiming this information shows there is no overrecovery of fuel costs during the 21 months the SSP was in effect.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6694 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–5–004]

Phillips Gas Pipeline Co.; Filing of Revised Tariff Sheets

March 18, 1993

Take notice that on March 5, 1993, Phillips Gas Pipeline Company ("PGPL") tendered for filing the following revised tariff sheets Third Revised Sheet No. 4; Third Revised Sheet No. 4A; Third Revised Sheet No. 4B; Third Revised Sheet No. 4D; and First Revised Sheet No. 4E, all to be effective on April 2, 1993.

PGPL states that the revised tariff sheets are required to reflect: (1) The significant enhancement of PGPL's interactive electronic bulletin board; and (2) reorganization changes to permit PGPL to enter into intercorporate service contracts with employees of a marketing affiliate of PGPL, Seagas Pipeline Company. PGPL states that this filing reflects no changes in its transportation rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6698 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA91–47–000]

Public Service Company of Colorado; Consent to Shortened Procedures

Issued March 18, 1993.

On January 19, 1993, Chief Accountant issued a report on the examination of the books and records of Public Service Company of Colorado (the Company) for the period January 1, 1986 through December 31, 1990. 62 FERC ¶ 62,049. As noted in that report, the Company disagrees with certain matters discussed in Part I of the report. By letter filed February 25, 1993, the Company consented to disposition of this matter under the shortened procedures set forth in 18 CFR part 41.

Under those procedures, initial memoranda of facts and arguments shall be due on or before April 19, 1993. Replies shall be due on or before May 10, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6689 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–43–001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 18, 1993.

Take notice that Williams Natural Gas Company (WNG) on March 10, 1993, tendered for filing Sixteenth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that it filed its Annual PGA on March 1, 1993 in the above referenced docket. The sheet No. 9 included in the Annual PGA did not reflect a tariff filing made February 1, 1993 in Docket No. CP92–351–000, in which WNG removed tariff references to its Rodman gathering area. Sixteenth Revised Sheet No. 9 is being filed to reflect tariff changes proposed in Docket No. CP92–351–000, which were approved by Commission letter order dated February 25, 1993.

WNG states that the magnetic tape included with the Annual PGA contained an old version of Schedule D–1, Code 0. A revised magnetic tape is being filed which includes the correct Schedule D–1, Code 0.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6692 Filed 3–23–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals, Cases Filed During the Week of February 19, Through February 26, 1993

During the Week of February 19 through February 26, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be

aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 18, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 19 through Feb. 26, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 4, 1992	True/Little America Refining Co., Salt Lake City, UT.	RR195–3	Request for modification/rescission in the true refund proceeding. If granted: The October 22, 1987 Decision and Order (Case No. RF195–8) issued to Little America Refining Company would be modified regarding the firm's application for refund submitted in the True Refund Proceeding.
Feb. 23, 1993	Marathon/Independent Oil & Tire Company, Washington, D.C.	RF250–9	Request for modification/rescission in the Marathon refund proceeding. If granted: The January 22, 1992 Decision and Order (Case No. RF250–2750) issued to Independent Oil & Tire Company would be modified regarding the firm's application for refund submitted in Marathon Refund Proceeding.
Feb. 24, 1993	David Rodriquez Soler, Cranbury, NJ	LFA–0272	Appeal of an information request denial. If granted: David Rodriquez Soler would receive sections of a contractor's Personnel Manual and EEO–1 reports pertaining to him from the years 1985 through 1991.
Do	Gulf/Associated Radio Service Company, Washington, D.C.	RR300–243	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RR300–5068) issued to Associated Radio Service Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Carlsbad Oil Company, Washington, D.C.	RR300–238	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 21, 1989 Decision and Order (Case No. RF300–4260) issued to Carlsbad Oil Company would be modified regarding the firm's application for refund submitted in Gulf Refund Proceeding.
Do	Gulf/Dee & Dee Oil Company, Washington, D.C.	RR300–241	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300–5087) issued to Dee & Dee Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/General Aviation of New Orleans, Inc., Washington, D.C.	RR300–327	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 7, 1988 Decision and Order (Case No. RF300–4995) issued to General Aviation of New Orleans, Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Gogel's Gulf Service, Washington, D.C.	RR300–245	Request for modification/rescission in the Gulf refund proceeding. If granted: The June 21, 1991 Decision and Order (Case No. RF300–11637) issued to Gogel's Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Horn Distributing Co., Inc., Washington, D.C.	RR300–242	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 15, 1989 Decision and Order (Case No. RF300–5762) issued to Horn Distributing Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/L.E. Shifflet, Washington, D.C	RR300–234	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 2, 1990 Decision and Order (Case No. RF300–6038) issued to L.F. Shifflet would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Meador Oil Company, Washington, D.C.	RR300–240	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300–5201) issued to Meador Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Morgan Oil Company, Washington, D.C.	RR300–235	Request for modification/rescission in the Gulf refund proceeding. If granted: The September 28, 1989 Decision and Order (Case No. RF300–5315) issued to Morgan Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 19 through Feb. 26, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Do	Gulf/Ortego Services, Inc., Washington, D.C.	RR300–236	Request for modification/rescission in the Gulf refund proceeding. If granted: The April 23, 1990 Decision and Order (Case No. RF300–8767) issued to Ortego Services, Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Purmax Oil Company, Washington, D.C.	RR300–231	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 15, 1989 Decision and Order (Case No. RF300–5704) issued to Purmax Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/R.F. White Co., Inc., Washington, D.C.	RR300–239	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 18, 1989 Decision and Order (Case No. RF300–8397) issued to R.F. White Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Reinhart Oil, Inc., Washington, D.C	RR300–229	Request, for modification/rescission in the Gulf refund proceeding. If granted: The February 26, 1990 Decision and Order (Case No. RF300–6099) issued to Reinhart Oil Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Silco Oil Company, Washington, D.C.	RR300–233	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 10, 1989 Decision and Order (Case No. RF300–3583) issued to Silco Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Sturdy Oil Company, Washington, D.C.	RR300–230	Request for modification/rescission in the Gulf refund proceeding. If granted: The May 10, 1989 Decision and Order (Case No. RF300–3733) issued to Sturdy Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/Swansea Oil Co., Inc., Washington, D.C.	RR300–244	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 18, 1993 Dismissal Letter (Case No. RF300–15167) issued to Swansea Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/T.W. Brown Oil Company, Washington, D.C.	RR300–232	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 15, 1989 Decision and Order (Case No. RF300–5763) issued to T.W. Brown Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 19 through Feb. 26, 1993

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/22/93	Vickers/Kansas.	RQ1–587.
2/19/93	C.A. Beard Memorial Sch.	RA272–53.
2/22/93	Bancroft Oil Co.	RF321–19616.
2/22/93	Campti Texaco.	RF321–19617.
2/22/93	Opelousas Canal.	RF346–35.
2/22/93	West End Canal.	RF346–36.
2/22/93	Lee Street Canal.	RF346–37.
2/22/93	Youngsville Canal.	RF346–38.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 19 through Feb. 26, 1993

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/23/93	Ed Yarbrough Texas Service.	RF321–19618.
2/23/93	Nabisco Brands, Inc.	RC272–170.
2/24/93	Annie L. Anderson.	RF321–19619.
2/25/93	San Jose Mercury-News.	RC272–171.
2/25/93	Village Texaco	RF321–19620.
2/19/93 thru 2/26/93.	Gulf Oil Refund Applications Received.	RF300–21091 thru RF300–21313.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 19 through Feb. 26, 1993

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/19/93 thru 2/26/93.	Crude Oil Refund Applications Received.	RF272–84244 thru RF272–84376.
2/19/93 thru 2/26/93.	Atlantic Richfield Applications Received.	RF304–13616 thru RF304–13646.

[FR Doc. 93–6742 Filed 3–23–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00352A; FRL-4578-5]

Agency Information Collection Activities Under OMB Review; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of March 12, 1993 (58 FR 13591), EPA issued in compliance with the Paperwork Reduction Act, a notice announcing a Information Collection Request (ICR), which had been forwarded to the Office of Management and Budget (OMB) for review and comment. On page 13594, column 1, paragraph 7, line 9, the EPA's requested OMB clearance date was incorrectly stated. The date should have read, "April 12, 1993."

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, Information Policy Branch, Environmental Protection Agency (PM-223Y), 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-2740.

Dated: March 17, 1993.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy Planning and Evaluation

[FR Doc. 93-6605 Filed 3-23-93; 8:45 am]

BILLING CODE 6560-50-F

[PP 2G4157/T635; FRL 4571-6]

Entomopathogen; Establishment of an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established an exemption from the requirement of a tolerance for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain, in or on certain raw agricultural commodities.

DATES: This temporary exemption from the requirement of a tolerance expires January 18, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM 18), Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7690).

SUPPLEMENTARY INFORMATION: Fermone Corporation, Incorporated, 2620, 37th Drive, Phoenix, AZ 85009, has requested in pesticide petition (PP) 2G4157 the establishment of an exemption from the requirement of a tolerance for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain, in or on the following raw agricultural commodities: Cotton seed; peanuts; peanut forage; peanut hay; tomatoes; lettuce; cantaloupe; and lettuce for control of boll weevil, whiteflies and leafhoppers.

This temporary exemption from the requirements of a tolerance will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 53871-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Fermone Corporation, Incorporated must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires January 18, 1994. Residues remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 12, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-6603 Filed 3-23-93; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G4012/T633; FRL 4189-9]

Mitsui Petrochemicals Ltd., Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide PAL6000 (UMP-488) in or on certain raw agricultural commodities. These temporary tolerances were requested by Mitsui Petrochemicals (America), Ltd.

DATES: These temporary tolerances expire December 22, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-7830.

SUPPLEMENTARY INFORMATION: Mitsui Petrochemicals (America), Ltd., 250 Park Avenue, Suite 950, New York, NY 10177, has requested in pesticide petition (PP) 1G4012 the establishment of temporary tolerances for use of 49.95 pounds of the herbicide PAL6000 (UMP-488) in or on the raw agricultural commodities field corn grain, forage, fodder and silage. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 63098-EUP-2, which is being issued under the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Mitsui Petrochemicals (America), Ltd., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 22, 1993. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: March 12, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–6602 Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–572; FRL–4572–3]

DowElanco; Pesticide Petition Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that DowElanco has filed an amendment to pesticide petition (PP) 1F3991 for the pesticide triclopyr. DowElanco has requested changes in the petition to establish tolerances for triclopyr in or on rice grain, rice straw, poultry meat, fat and meat byproducts (except liver and kidneys), and eggs.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM 25), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location/telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA has received an amended pesticide petition for PP 1F3991. In the **Federal Register** of December 13, 1991 (56 FR 65080), EPA issued notice of PP 1F3991 filed by DowElanco, 9200 Purdue Rd., Indianapolis, IN 46268-1189, proposing to amend 40 CFR 180.417 by establishing a regulation to permit combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyloxy acetic acid) and its metabolite, 2-methoxy-3,5,6-trichloro pyridine, in or on a number of agricultural commodities.

Dow Elanco has amended PP 1F3991 to request tolerances as follows: A tolerance for combined residues of the herbicide triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolites, 2-methoxy-3,5,6-trichloropyridine and 3,5,6-trichloro-2-pyridinol, is proposed in addition to tolerances established under 40 CFR 180.417 as follows: Rice grain at 0.30 part per million (ppm) and rice straw at 8.00 ppm. A tolerance for combined residues of the herbicide trichlopyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolite, 3,5,6-trichloro-2-pyridinol, is proposed as follows: Poultry meat, fat, and mbyp (except liver and kidneys) at 0.10 ppm and eggs at 0.05 ppm.

The analytical method used is gas chromatography.

Authority: 7 U.S.C. 136a.

Dated: March 12, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–6728; Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30349; FRL 4574–9]

Allergy Control Products, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register the pesticide product, Mite-a-Salt, a miticide containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 23, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30349] and the file symbol (65640–R) to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received an application from Allergy Control Products, Inc., 96 Danbury Road, Ridgefield, CT 06877, to conditionally register the pesticide product Mite-a-Salt, (File Symbol 65640–R). This miticide contains the active ingredient sodium chloride at 98.5 percent and involves a change in use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. The product was classified for general use to include in its presently registered use, a new use to kill dust mites in carpets and upholstery. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: March 17, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–6725 Filed 3–23–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before May 24, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0001.

Title: National Defense Executive Reserve Personal Qualifications Statement.

Abstract: The National Defense Executive Reserve (NDER) is a Federal Government program coordinated by the Federal Emergency Management Agency. The program provides a reserve of highly qualified individuals from industry, organized labor, professional groups, and academia to serve in executive positions in time of national emergency. FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement, is used by the sponsors of NDER units to fill their NDER vacancies with skilled individuals possessing the expertise needed for their unit.

Type of Respondents: Individuals and households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 50 hours.

Number of Respondents: 100.

Estimated Average Burden Time per Response: 30 minutes.

Frequency of Response: On occasion.

Dated: March 18, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–6717 Filed 3–23–93; 8:45 am]

BILLING CODE 6718–01–M

Adjustments to the Mortgage Portfolio Protection Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Insurance Administration (FIA) requests public comments on its pilot Mortgage Portfolio Protection Program (MPPP). Lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios use the MPPP to bring applicable loans into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

DATES: April 23, 1993.

ADDRESSES: Comments on the MPPP or any recommended changes to the MPPP are invited and may be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: H. Joseph Coughlin, Jr., Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2780.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administration (FIA) developed the Mortgage Portfolio Protection Program (MPPP) to encourage property owners whose structures are located on floodplains to purchase flood insurance or to have the lending institution purchase flood insurance on the owner's behalf. The MPPP is a means to bring lending institutions' mortgage loan portfolios into compliance with the flood insurance purchase requirements of the National Flood Insurance Act, as amended, 42 U.S.C. 4001 et seq.

During 1990, all insurance companies participating in FIA's National Flood Insurance Program (NFIP) were notified of the MPPP. The MPPP was introduced on January 1, 1991 and has been in

effect for two years. Notice of the MPPP was published in the **Federal Register** on March 1, 1991, 56 FR 8882.

In order to assess the MPPP's effectiveness as a compliance tool, FIA requests that those with an interest in the MPPP submit their views on the program. FIA is particularly interested in comments on these questions:

(1) Does the MPPP work as designed?

(2) What improvements should be made to the program?

(3) Should the MPPP become a permanent part of the National Flood Insurance Program? and

(4) What data and indicators are available for determining how many conventionally underwritten flood insurance policies have been written as a result of the pilot MPPP?

Background

The MPPP policy is a compliance tool of last resort for lenders. Notification by lenders that they intend to purchase the MPPP policy serves as an incentive for property owners to purchase conventionally underwritten flood insurance policies in lieu of more expensive MPPP policies. At the end of 1992, about 1600 MPPP policies were in effect throughout the country. FEMA estimates, however, that an additional 5,000–10,000 conventionally underwritten policies have been purchased as a result of the incentives created by the MPPP.

Interest in the MPPP has come from two principal sources. First, Federal entities responsible for the supervision, approval, regulation, or insuring of banks and savings and loan associations and similar institutions which must ensure compliance of member lending institutions with the flood insurance purchase requirements to the National Flood Insurance Act, as amended. Second, recently proposed legislation addressing lender compliance with flood insurance requirements. In spite of industry interest in the MPPP, a number of lenders have indicated that they await the outcome of these legislative initiatives before using the program. FEMA intends to use the lessons learned from the two-year pilot test of the MPPP to improve its current implementation pending legislative action on lender compliance.

Dated: March 16, 1993.

Francis V. Reilly,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 93–6716 Filed 3–23–93; 8:45 am]

BILLING CODE 6718–05–M

FEDERAL MARITIME COMMISSION

Agreement Filed; ATFI Advisory Group Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011405

Title: ATFI Advisory Group Agreement

Parties:

Caribbean and Central America Discussion Agreement
Crowley American Transport, Inc.
The "8900" Lines Agreement
Israel Trade Conference
Seaboard Marine Ltd.
Sea-Land Service, Inc.
South Europe/U.S.A. Freight Conference
Transpacific Westbound Rate Agreement
United States Atlantic & Gulf/Western Mediterranean Rate Agreement
United States/Southern and Eastern Africa Conference
Wilhelmsen Lines AS
Zim-Israel Navigation Co.

Synopsis: The proposed Agreement establishes an advisory group of common carriers, conference and other agreements to pursue common industry approaches regarding the Commission's implementation of the Automated Tariff Filing and Information System ("ATFI") in the trade between the United States and worldwide ports and points. Adherence to any agreement reached on rate or service items subject to tariff filing shall be strictly voluntary by each party.

Dated: March 18, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–6659 Filed 3–23–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Delphin Seereisen GmBH and Black Sea Shipping Company, Blumenstrasse 20, 6050 Offenback am Main, Germany. Vessel: KAZAKHSTAN

Dated: March 18, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–6671 Filed 3–23–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Delphin Seereisen GmbH, Blumenstrasse 20, 6050 Offenbach am Main, Germany. Vessel: KAZAKHSTAN.

Dated: March 18, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–6672 Filed 3–23–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before

consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 03-01-93 AND 03-12-93

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Steven M. Rales, Richard Eaton Trust, United Broadcasting Company, Inc	93-0597	03/01/93
Mitchell P. Rales, Richard Eaton Trust, United Broadcasting Company, Inc	93-0598	03/01/93
Tosco Corporation, Exxon Corporation, Exxon, Corporation	93-0635	03/01/93
Big B, Inc., J.C. Penney Company, Inc., Thrift Drug, Inc	93-0640	03/01/93
UAL Corporation, UAL Corporation, Covia Partnership	93-0647	03/01/93
USAir Group, Inc., UAL Corporation, Covia Partnership	93-0648	03/01/93
FPL Group, Inc., Dr. Frank B. Stanton, National Cable Ltd	93-0664	03/01/93
Franz Haniel & Cie. GmbH, Office Commercial Pharmaceutique, Office Commercial Pharmaceutique	93-0681	03/01/93
OCLC OnLine Computer Library Center, Incorporated, Battelle Memorial Institute, Information Dimensions, Inc	93-0691	03/01/93
Aon Corporation, Booke & Company, Booke & Company	93-0699	03/01/93
Illinois Tool Works, Inc., The Miller Group, Ltd., The Miller Group, Ltd	93-0703	03/01/93
Antti Aarnio-Wihuri, Consolidated Enfield Corporation, Portion Packaging, Inc	93-0641	03/02/93
Alexander M. Vik, American Reliance Insurance Company, American Reliance Insurance Company	93-0689	03/02/93
Union Pacific Corporation, East Carbon Development Corporation, East Carbon Development Corporation	93-0566	03/03/93
Petrolite Corporation, Amoco Corporation, Welchem Inc	93-0616	03/03/93
Siemens Aktiengesellschaft, Ceridian Corporation, EMPROS Systems International Division	93-0623	03/03/93
Scripps Institutions of Medicine and Science, EPIC Holdings, Inc., Valley Medical Center (Hospital)	93-0659	03/03/93
Nelson Peltz, DWG Corporation, DWG Corporation	93-0680	03/03/93
Honmachi Central Industry Corp., Itoman Corp., Itoman (America) Inc	93-0675	03/04/93
Marubeni Corporation, Masaru Tsuzuki, Swift Spinning Mills, Inc	93-0692	03/04/93
New World Development Company Limited, Deutsche Lufthansa A.G., Penta Hotels Florida, Inc	93-0667	03/05/93
Ryland Group, Inc., Scott Felder, Inc., Scott Felder, Inc	93-0679	03/05/93
Atlantic Equity Partners, L.P., Kyotaru Co., Ltd., Center of the Plates Food Inc., Best Western Foods Inc	93-0690	03/05/93
Burton E. Sorensen, Marks & Spencer p.l.c., Brooks Brothers, Inc	93-0696	03/05/93
Abraxas Petroleum Corporation, Mobil Corporation, Mobil Producing Texas & New Mexico Inc	93-0702	03/05/93
Joseph Littlejohn & Levy Fund, L.P., Doskocil Companies Incorporated, Doskocil Companies Incorporated	93-0704	03/05/93
Cox Enterprises, Inc., Keith Samples, RYSHER Entertainment, Inc	93-0705	03/05/93
Bausch & Lomb Incorporated, Ralph Stern and Suzanne Stern, Steri-Oss Inc	93-0706	03/05/93
Ford Motor Company, Winterthur Swiss Insurance Company, Allied Finance Company	93-0713	03/05/93
MDU Resources Group, Inc., Alaska Basic Industries, Inc., Alaska Basic Industries, Inc	93-0714	03/05/93
Ekco Group, Inc., Kellogg Brush Manufacturing Co., Kellogg Brush Manufacturing Co	93-0723	03/05/93
Water Street Corporate Recovery Fund I, L.P., Jack E. Brown, Insilco Corporation	93-0735	03/05/93
Water Street Corporate Recovery Fund I, L.P., Cyril Wagner, Jr., Insilco Corporation	93-0736	03/05/93
Robert Stephen Holdings Limited, Alfred and Deanna Stauder, Woods Wire Products Inc	93-0668	03/08/93
P.M.I. Holdings N.V., Royal Dutch Petroleum Company, Shell Oil Company	93-0688	03/08/93
Mr. Keith Rupert Murdoch, Warburg, Pincus Capital Company, L.P., Renaissance Communications Corp	93-0701	03/08/93
MLGA Fund II, L.P., Sebastiano Cameli, Quaker Fabric Corporation	93-0707	03/08/93
MLGA Fund II, L.P., Luigi Regis-Milano, Quaker Fabric Corporation	93-0740	03/08/93
Johnson Controls, Inc., JMB Realty Corporation, Urban Engineering Co	93-0715	03/09/93
Robert Castello, Aaron H. Brenner, M. Brenner and Sons Inc	93-0738	03/09/93
Federal Signal Corporation, Powerscreen International, PLC, Guzzler Manufacturing, Inc	93-0652	03/10/93
Hanson PLC, Santa Fe Pacific Corporation, Cerrillos Land Company	93-0636	03/11/93
Santa Fe Pacific Corporation, Hanson PLC, Hanson Natural Resources Company	93-0638	03/11/93
IDB Communications Group, Inc., PacifiCorp, TRT Communications, Inc	93-0654	03/12/93
PacifiCorp, IDB Communications Group, Inc., IDB Communications Group, Inc	93-0656	03/12/93
InterMedia Capital Management V, L.P., John Hancock Mutual Life Insurance Company, Daniels Communications Partners, L.P	93-0700	03/12/93
Sumitomo Metal Industries, Ltd., Itoman Corporation, Itoman (USA) Inc	93-0718	03/12/93
Hellman & Friedman Capital Partners II, L.P., Century Communications Corp., Century Neb. Cellular Corp. & Century Lin. Cellular Corp	93-0731	03/12/93
Morgan Stanley Leveraged Equity Fund II, PageMart, Inc., PageMart, Inc	93-0759	03/12/93
AMERCO, Paul F. Schoen, Pafran, Inc	93-0767	03/12/93
TIG Holdings, Inc., Transamerica Corporation, Transamerica Insurance Group	93-0773	03/12/93

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-6746 Filed 3-23-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0061]

Drug Export; Gabapentin (Bulk); Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of February 22, 1993 (58 FR 9567), that announced that Parke-Davis Holland Chemical Facility, Warner Lambert Co., has filed an application requesting approval for the export of the human drug Gabapentin in bulk. The docket number provided in the heading was incorrect. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Robin Thomas Johnson, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 93–4024, appearing on page 9567, in the **Federal Register** of Monday, February 22, 1993, the following correction is made: On the same page, in the third column, the docket number "93–0061" is corrected to read "93N–0061".

Dated: March 17, 1993.

Paul F. Vogel,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 93–6675 Filed 3–23–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93M–0086]

Spectranetics Corp.; Premarket Approval of the Spectranetics CVX–300™ Excimer Laser System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Spectranetics Corp., Colorado Springs, CO, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Spectranetics CVX–300™ Excimer Laser System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 19, 1993, of the approval of the application.

DATES: Petitions for administrative review by April 23, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brad C. Astor, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

SUPPLEMENTARY INFORMATION: On June 6, 1991, Spectranetics Corp., Colorado Springs, CO 80907, submitted to CDRH an application for premarket approval of the Spectranetics CVX–300™ Excimer Laser System, including the Models PC1014 and PC1017 Laser Catheters. This system is indicated for use in patients with single or multivessel coronary artery disease either as a stand alone modality or in conjunction with Percutaneous Transluminal Coronary Balloon Angioplasty (PTCA) and who are acceptable candidates for coronary artery bypass graft (CABG) surgery. Adjunctive balloon angioplasty was performed, at the clinical investigator's discretion, in 84 percent of the lesions treated. Clinical experience has provided reasonable assurance that the Spectranetics CVX–300™ Excimer Laser System and multifiber laser catheters are safe and effective for the following indications: (1) Occluded saphenous vein bypass grafts, (2) ostial lesions, (3) long lesions (greater than 20 millimeters in length), (4) moderately calcified stenoses (Heavily calcified stenoses are those lesions that demonstrate complete calcification when identified under fluoroscopy prior to the procedure. Moderately and slightly calcified stenoses are all others.), (5) total occlusions traversable by a guidewire, and (6) lesions which have previously failed balloon angioplasty (This includes those lesions that were treated unsucessfully by PTCA. Lesions that have undergone a complicated PTCA procedure are not included in this category.). These lesions must be traversable by a guidewire and composed of atherosclerotic plaque and/or calcified material. The lesions should be well defined by angiography.

On November 26, 1991, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On February 19, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 15, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–6673 Filed 3–23–93; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

[GN 2022]

The ICD–9–CM Coordination and Maintenance Committee

AGENCY: National Center for Health Statistics, PHS, HHS.

ACTION: Notice of meeting.

SUMMARY: The ICD–9 CM Coordination and Maintenance Committee (C&M) will be holding its first meeting of the year on May 6, 1993. The C&M is a public forum for the presentation of proposed modifications to the International Classification of Diseases, ninth-revision, clinical modification.

DATES: The meeting will be held on May 6, 1993 from 9 a.m. to 4 p.m.

ADDRESSES: The Hubert H. Humphrey building, room 703–A, 200 Independence Avenue., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Amy Blum (301) 436–4216.

SUPPLEMENTARY INFORMATION: Tentative Agenda—
Chronic viral hepatitis
Fragile X syndrome
Pain/sympton codes
Defibrillators
Iatrogenic pneumothorax
Ulcerative colitis
Excludes notes
Cerebrovascular disease.

Dated: March 17, 1993.

Sue Meads,

R.R.A., Co-chair, ICD–9–CM Coordination and Maintenance Committee.

[FR Doc. 93–6702 Filed 3–23–93; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–943–01–4120–14–241A; ALES 44853]

Alabama: Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Coal Lease Application ALES 44853

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing and comment period.

SUMMARY: The Bureau of Land Management requests public comments on the fair market value, maximum economic recovery and the environmental assessment of certain coal resources it proposes to offer for competitive lease sale. The coal to be offered is underground-minable, bypass coal. The lands included in Coal Lease Application ALES 44853 are located on scattered tracts in Jefferson, Tuscaloosa and Walker Counties, Alabama and are more particularly described as follows:

Jefferson County

T. 18 S., R. 7 W., Huntsville Meridian,
Sec. 19, NESE, SENE;
Sec. 20, E2NE NESE, W2SW;
Sec. 21, SWNW;
Sec. 33, NW.

Tuscaloosa County

T. 18 S., R. 7 W., Huntsville Meridian,
Sec. 5, S2NW;
Sec. 7, NWNW.
T. 17 S. R. 8 W., Huntsville Meridian,
Sec. 25, SENE, NESE;
Sec. 26, NENE.
T. 18 S., R. 8 W., Huntsville Meridian,
Sec. 1, S2SW, NWSW, SWNW;
Sec. 11, N2NE, SWNE, NESW, SENE, E2SE, NWSE;
Sec. 13, Fractional NWNW.

Walker County

T. 17 S., R. 7 W., Huntsville Meridian,
Sec. 30, N2NE, N2NW, SWNW, NWSW;
Sec. 32, NW.

Containing 1,609.50 acres.

The proximate analysis of the coal in the proposed lease is as follows:

Mary Lee-Blue Creek Seam

Estimated recoverable coal	8.065 million short tons

Proximate Analysis (%) Dry Basis

Moisture	
Ash	9.44
Volatile	25.34
Fixed Carbon	65.20
Btu/lb	13,872
Sulfur	0.66

(Float composite for the two coal beds)

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract. In addition, notice is also given that a public hearing will be held on April 27, 1993 on the environmental assessment, the proposed sale, the fair market value and the maximum economic recovery of the proposed lease tracts.

DATES: Written comments must be received on or before April 23, 1993.

ADDRESSES: The public hearing will be held on April 27, 1993 at the Residence Inn, Number 3 Greenhill Parkway at Highway 280 in Birmingham, Alabama 35203 at 1 p.m. in the Inverness Room.

FOR FURTHER INFORMATION CONTACT: For more complete data on this lease application, please contact Pearl Flaver Tillman at (703) 440–1531 or Ian J. Senio at (703) 440–1526, at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management Regulations 43 CFR 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on the fair market value appraisal and maximum economic recovery and on factors which may effect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management, Eastern States, at the above address, in response to solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing confidentiality of such information.

A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as confidential by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Eastern States, at the above address and should address, but not necessarily be limited to the following information:

1. The method of mining to be employed in order to obtain maximum economic recovery of the coal;
2. The impact that mining the coal in the proposed leasehold may have on the area, including, but not limited to, impacts on the environment; and
3. Methods of determining the fair market value of the coal to be offered.

The coal characteristics given above may or may not change as a result of comments received from the public and changes in market conditions that occur between now and the time at which final economic evaluations are completed.

Dated: March 17, 1993.

Larry Hamilton,

Associate State Director.

[FR Doc. 93–6699 Filed 3–23–93; 8:45 am]

BILLING CODE 4310–GJ–M

[AZ-020-4333-01]

Intent To Prepare an Environmental Assessment To Amend the Phoenix Resource Management Plan and the Lower Gila North Management Plan and To Invite Participation in the Identification of Issues for Determining the Eligibility of Segments of the Agua Fria and the Hassayampa Rivers for Possible Inclusion in the National Wild and Scenic River System

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent To Prepare an Environmental Assessment To Amend a Resource Management Plan and a Management Framework Plan.

SUMMARY: The Bureau of Land Management, Phoenix District, is preparing an Environmental Assessment to amend the Phoenix Resource Management Plan and the Lower Gila North Management Framework Plan to determine the eligibility of identified River Areas for potential inclusion in the National Wild and Scenic Rivers System. The action complies with Public Law 91-190 (National Environmental Policy Act), Public Law 94-579 (Federal Land Policy and Management Act), and Public Law 90-542 (Wild and Scenic Rivers Act).

Management actions proposed in the Environmental Assessment for the Resource Management Plan and the Management Framework Plan amendments include the analysis of criteria to determine the eligibility/non-eligibility of segments of the Agua Fria River and Hassayampa River associated with lands administered by the Phoenix District, Phoenix Resource Area.

DATES: Comments related to the identification of issues will be accepted until April 30, 1993. The draft Environmental Assessment will be available May 15, 1993, for a 30-day comment period, ending June 14, 1993.

ADDRESSES: Send comments to: Bureau of Land Management, Phoenix Resource Area, Attn: Gail Acheson, Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Kathryn Pedrick, Phoenix Resource Area, (602) 780-8090.

SUPPLEMENTARY INFORMATION: Public scoping meeting for river eligibility will be held from 2 p.m. until 7 p.m. in Wickenburg on April 7, 1993, at the Wickenburg Community Center, and in Phoenix on April 14, 1993, at the Bureau of Land Management Arizona State Office. Suitability issues and concerns pertaining to recommendations for designation of the river segments to the National Wild and Scenic Rivers System will also be encouraged. This is consistent with the initiation of a Legislative Environmental Impact Statement for suitability/non-suitability recommendations for inclusion of Arizona rivers in the National Wild and Scenic Rivers System. (See **Federal Register** Notice Vol. 58, No. 37, Friday, February 19, 1993).

The Environmental Assessment to amend the Resource Management Plan and the Management Framework Plan will identify a proposed action, and a no action alternative, for each identified river segment. An analysis of specific direct and indirect impacts, and cumulative impacts of the identified alternatives will be documented in the Environmental Analysis.

The Environmental Assessment to amend the Resource Management Plan and the Management Framework Plan and complete records of the environmental analysis process will be available for public review at the Phoenix District Office.

Dated: March 15, 1993.

Paul Buff,

Acting District Manager.

[FR Doc. 93-6631 Filed 3-23-93; 8:45 am]

BILLING CODE 4310-32-M

[OR-010-02-4320-02: GP3-146]

Lakeview District Advisory Board; Meeting

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: The meeting of the Lakeview District Grazing Advisory Board is scheduled for April 28, 1993, beginning at 10 a.m. in the Lakeview District Office, located at 1000 South Ninth Street, Lakeview, Oregon. The purpose of this meeting is to examine the new administration's initiatives, elect officers, update the board on allotment evaluations & Allotment Management Plans for both the Lakeview and Klamath Falls Resource Areas, look at the recent Wood River Ranch acquisition and finally, determine a date and consider an itinerary for a June tour. The public is welcome.

DATES: Wednesday, April 28, 1993, 10 a.m.

FOR FURTHER INFORMATION CONTACT: Judy Nelson or Lisa Swinney, Lakeview District Office, Post Office Box 151, 1000 South Ninth Street, Lakeview, OR 97630, (Telephone 503-947-2177).

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 93-6666 Filed 3-23-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-050-4410-10:GP3-143]

Meeting of Prineville District Crazing Advisory Board

March 11, 1993.

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: There will be a meeting of the Prineville District Grazing Advisory Board on Tuesday, April 20, 1993. Instead of a traditional meeting, the Board will meet at the BLM office at 9 a.m. and travel to the Bridge Creek/Sutton Mountain area (west of Mitchell) for a resource tour and discussion. Participants may also join the group at the junction of U.S. Highway 126 and the Bridge Creek Road at 10 a.m. Topics for discussion will include the status of the Bridge Creek area since the volunteer project in 1990; results of individual projects including juniper thinning, fish habitat improvement, riparian fencing and tree planting; proposed projects and management direction for the area; Salmon Summit funding and work priorities related to anadromous fisheries; and the current status of the drought. All participants need to contact the Prineville District Manager at 503-447-4115 prior to the tour. The meeting is open to the public; however, public transportation will not be provided.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 93-6628 Filed 3-23-93; 8:45 am]

BILLING CODE 4310-33-M

[ID-060-03-4210-04; IDI-28748]

Realty Action; Exchange of Public Lands in Kootenai and Bonner County, Idaho.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District of the Bureau of Land Management has determined that the following described public lands are suitable for disposal by exchange to DAW Forest Products, L.P., under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho:

T.48N., R.1E.,
Sec. 21, W½SE¼ ..... 80.00 acres

Sec. 22, NW¼NW¼ . 40.00 acres.
T.55N., R.2W.,
Sec. 9, lots 1,2, S½NE¼. 155.96 acres.
Sec. 32, SE¼SW¼, SW¼SE¼. 80.00 acres.
T.55., R.3W.,
Sec. 2, SE¼NE¼ ..... 40.00 acres.
Sec. 10, E½NE¼ ..... 80.00 acres.
Sec. 17, NW¼NE¼ .. 40.00 acres.
Sec. 18, E½E½ ..... 160.00 acres.
T.57N., R.3W.,
Sec. 22, NE¼NE¼ .... 40.00 acres.

The area described above contains approximately 715.96 acres in Kootenai and Bonner County.

In exchange for these lands, the United States will acquire the following described lands from DAW Forest Products Co., L.P.:

Boise Meridian, Idaho
T.49N., R.3W.,
Sec. 1, Tax lot #3468 contained in Government lots 1,2,4,&5

The area described above contains approximately 57.78 acres of private land in Kootenai County.

The purpose of the land exchange is to benefit the public interest by obtaining important resource values. The public lands to be exchanged are isolated and difficult to manage parcels with limited resource values. The private lands being offered have important values for access, wildlife, and recreation that merit acquisition for public ownership. There are no grazing leases, grazing permits, or range improvements on any of the above described public lands. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by completing this exchange. Final determination on disposal will await completion of an environmental analysis, which will be made available to the public. The value of the lands to be exchanged will be approximately equal.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 2, 1993.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 93-6632 Filed 3-23-93; 8:45 am]

BILLING CODE 4310-GG-M

[MT-030-4210-05]

Realty Action, Sale of Public Land in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in North Dakota.

SUMMARY: The following lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated Minimum Bid Price.

DATES: June 2, 1993.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickinson District Office, 701-225-9148.

SUPPLEMENTARY INFORMATION:

Parcel	Legal description
NDM81969	Fifth Principal Meridian T. 139 N., R. 70 W., sec. 10: Lot 4, 7.54 acres, Kidder County, Minimum Bid Price $940.
NDM81970	T. 137 N., R. 71 W., sec. 24: Lot 5, 8.58 acres, Kidder County, Minimum Bid Price $990.
NDM81971	T. 141 N., R. 72 W., sec. 22: Lot 1, 25.2 acres, Kidder County, Minimum Bid Price $690.
NDM81972	T. 142 N., R. 72 W., sec. 34: NESE, 40.0 acres, Kidder County, Minimum Bid Price $620.
NDM81973	T. 143 N., R. 72 W., sec. 6: Lot 3, 22.0 acres, Kidder County, Minimum Bid Price $220.
NDM81974	T. 153 N., R. 77 W., sec. 25: E2SW, 80.0 acres, McHenry County, Minimum Bid Price $825.
NDM81975	T. 153 N., R. 77 W., sec. 23: SWSE, 40.0 acres, McHenry County, Minimum Bid Price $50.
NDM81976	T. 153 N., R. 75 W., sec. 3: Lot 6, 18.7 acres, McHenry County, Minimum Bid Price $560.
NDM81977	T. 154 N., R. 75 W., sec. 17: SESW, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM81978	T. 154 N., R. 75 W., sec. 30: Lot 3, 38.12 acres, McHenry County, Minimum Bid Price $1,330.
NDM81979	T. 155 N., R. 76 W., sec. 14: SENE, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM81980	T. 155 N., R. 77 W., sec. 7: SWSE, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM81981	T. 155 N., R. 77 W., sec. 18: NENE, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM81982	T. 156 N., R. 77 W., sec. 15: NWNE, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM81983	T. 156 N., R. 77 W., sec. 31: Lot 1, 35.83 acres, McHenry County, Minimum Bid Price $1,250.
NDM81984	T. 156 N., R. 77 W., sec. 31: Lot 2, 35.51 acres, McHenry County, Minimum Bid Price $1,240.
NDM81985	T. 152 N., R. 74 W., sec. 8: Lot 1, 4.57 acres, Pierce County, Minimum Bid Price $50.
NDM81986	T. 154 N., R. 74 W., sec. 30: NESW, 40.0 acres, Pierce County, Minimum Bid Price $50.
NDM79599	T. 152 N., R. 87 W., sec. 1: Lot 6, 16.50 acres, Ward County, Minimum Bid Price $1,300.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 a.m., MDT, on Wednesday, June 2, 1993, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m., MDT, on Tuesday, June 1, 1993. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised Minimum Bid Price specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the United States Department of the Interior, BLM, for not less than 10 percent or more than 30 percent of the amount of the bid. Applicants should submit a Statement of Eligibility form with the bid.

Bids on unsold parcels will be opened each Wednesday after the date of the sale at 10 a.m., MDT, until the parcels are sold. The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1980, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale. Failure to submit the full bid price prior to, but not including the 180th day following the day of sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

COMMENTS: For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: March 18, 1993.

Donald J. Burger,

District Manager.

[FR Doc. 93–6668 Filed 3–23–93; 8:45 am]

BILLING CODE 4310–DN–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest for the reason given below. Approval has been requested by March 31, 1993. Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the proposal should be made directly to the bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202–395–7340.

Title: Gas Contract Settlement Agreements

OMB approval number: None

Abstract: Information is to be collected on settlements reached by purchasers and pipeline companies who have negotiated, or are negotiating, to rescind, terminate, limit, or otherwise modify gas sales contracts under dispute. The information is to be used to determine the extent to which any proceeds paid to settle disputes are royalty bearing and whether royalties have been paid on those proceeds. The Minerals Management Service will require that all companies involved in gas sales contract settlements provide a list of all settlements taking place after January 1, 1980

Reason for expedited review: Some gas sales contracts are nearing the end of time limits set by the Federal Statute of Limitations. This information collection must be implemented quickly in order to determine if audits of some settlements are necessary. Some proceeds paid to settle contractual obligations may be royalty bearing. Royalties may be lost to the Federal Treasury, States, Indian tribes, and Indian allottees if royalty determinations are not made promptly

Fequency: One time only

Description of respondents: Companies holding gas sales contracts.

Estimated completion time: 1.5 hours per settlement

Estimated responses: 1,600 settlements

Estimated burden hours: 2,400

Bureau Clearance Officer: Arthur Quintana, 703–787–1238

Dated: March 9, 1993.

William D. Bettenburg,

Acting Director, Office of Program Analysis.

[FR Doc. 93–6570 Filed 3–23–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Publication of the Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Publication of the Cost Recovery Percentage.

SUMMARY: Section 202 of the Staggers Rail Act of 1980 requires the Commission to calculate an annual Cost Recovery Percentage (CRP) for all railroad traffic. The CRP is a revenue to variable cost percentage calculated

using Uniform Railroad Costing System (URCS) railroad unit costs and a statistical sample (the I.C.C. Waybill Sample) of railroad traffic. If the CRP falls between 170 percent and 180 percent it becomes the jurisdictional threshold for rate regulation of market dominant traffic. The Commission found that it was not possible to calculate a CRP for 1993 because 1991 railroad revenues, upon which the calculation was based, did not exceed total 1991 costs. Therefore, the jurisdictional threshold remains at 180 percent.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmitz (202) 927–5720, H. Jeff Warren (202) 927–6242, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10709, 5 U.S.C. 553.

Decided: March 15, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6731 Filed 3–23–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on March 4, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of five members to and the withdrawal of one member from the ALABC. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that written commitments to become members of the ALABC have been received from Bridgestone Corporation, Toyko, JAPAN; Hammond Lead Products, Pittsburgh, PA; and Sumitomo Metal Mining Company (originally listed as a verbal commitment), Tokyo, JAPAN. Verbal commitments to become members of the ALABC have been received from Teledyne Battery Products, Redlands, CA and W.R. Grace & Company, Lexington, MA. Heubach & Lindgens of Langelehelm, GERMANY has withdrawn their written commitment to the ALABC.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992, 57 FR 33522. The last notification was filed with the Department on December 7, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 1993, 58 FR 5758.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–6637 Filed 3–23–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 92–15]

Michael Motamed, M.D.; Granting of Registration

On November 7, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Motamed, M.D. (Respondent), of Los Angeles, California proposing to deny his application for registration as a practitioner. The statutory basis for seeking the denial of the registration was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause alleged that Dr. Motamed had been convicted before the United States District Court for the Central District of California on March 23, 1981, for the unlawful distribution of heroin; that as a result of this felony conviction the Administrator, Drug Enforcement Administration, revoked the Respondent's prior DEA Certificate of Registration on October 18, 1983; and that subsequently on March 5, 1986, and April 1, 1988, the States of New York and Pennsylvania, respectively, revoked his license to practice medicine.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Costa Mesa, California on May 19, 1992. On August 21, 1992, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended that the Respondent's application for a DEA Certificate of Registration be granted upon completion of a course of appropriate content and length on the proper prescribing of controlled substances.

No exceptions were filed to Judge Tenney's opinion. On September 25, 1992, the administrative law judge transmitted the record to the Administrator. On November 16, 1992, the administrative law judge forwarded to the Administrator, for inclusion in the record, a letter indicating that Dr. Motamed had completed a 47 hour mini-residency on the proper prescribing of controlled dangerous substances at the University of Medicine and Dentistry of New Jersey on October 19–24, 1992.

The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent graduated medical school at the University of Paris and returned to the United States where he completed an internship and a residency in general surgery. He entered private practice in Philadelphia and subsequently moved to California.

The administrative law judge found that the Administrator, Drug Enforcement Administration, previously revoked the Respondent's registration. 48 FR 49392 (1983). Following a hearing in that proceeding the Administrator found that the Respondent and his wife, during the late 1970's and into 1980, were abusers of the controlled substances heroin and cocaine. During an investigation, the DEA learned that the Respondent was selling heroin in Los Angeles and subsequently arranged

an undercover purchase of heroin from him. The Respondent ultimately pled guilty before the United States District Court for the Central District of California on March 23, 1981, to one count of distributing a controlled substance in violation of 21 U.S.C. 841(a)(1).

As a result of this conviction and the DEA revocation, several states took action against Respondent's medical license. The States of California, New York, and Pennsylvania revoked his medical license. The State of California stayed its revocation and placed Respondent on five years probation. After completion of probation, the State of California restored Respondent's medical license on October 12, 1989.

The administrative law judge found that the Respondent has accepted full responsibility for his past conduct. In the previous proceeding, the Administrator commented that it was commendable that Respondent had taken steps toward rehabilitation, which included a six month voluntary admission into a rehabilitation and mental health facility. Respondent also entered a halfway house after completion of twelve months in prison. The Respondent acknowledged that he did violate his probation on one occasion by ingesting cocaine.

In this proceeding, the Respondent presented testimony from a clinical psychologist who had treated Respondent in his first residential treatment program and who has continued to treat him since 1986. This psychologist concluded that Respondent was capable of handling controlled substances without posing a threat to the public. The administrative law judge credited this opinion testimony on the basis of the psychologist's background and long term treatment of the Respondent. Further testimony was presented by a former State Medical Board of California investigator who had supervised the Respondent. He concluded that the Respondent was rehabilitated and could safely handle a DEA registration. The Respondent also presented physician witnesses who praised his work ethic and professional manner and presented opinions that Respondent could competently handle a DEA registration. The government argued that Dr. Motamed's rehabilitation was incomplete since he had not shown that he had educated himself on the responsibilities of properly handling controlled substances.

The administrative law judge concluded that Respondent had successfully rehabilitated himself based upon the extensive and uncontested testimony regarding Respondent's rehabilitative efforts.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found that all five factors were pertinent and found that as to the first factor, the State of California has restored the Respondent to full medical privileges; as to the second factor that there was no indication that Respondent improperly used this DEA registration, but was involved in personal abuse of illicit street drugs; that as to the third factor, the Respondent was convicted of the felony of distributing the controlled substance heroin; that as to the fourth factor, the Respondent violated State and Federal law by his use of cocaine in 1982; and that as to the fifth factor, the Respondent has exhibited a decade of commitment to his personal and professional rehabilitation.

The Administrator agrees that the prior conduct of the Respondent in unlawfully distributing the Schedule I controlled substance heroin is grave in nature. The passage of over twelve years since this crime is not adequate in itself to enable a favorable ruling. The offense is extremely serious and is entitled to great weight in evaluating the public interest in licensing an individual to prescribe and dispense controlled substances, even after the lapse of considerable time. The fact that the Respondent's rehabilitative efforts have been constant and extensive has changed the balance in favor of the public interest.

The Government did not object to the inclusion on the record of documents evidencing that the Respondent and recently completed a course on the proper prescribing of controlled substances. Accordingly, the Administrator also finds that the Respondent has satisfied the recommendation of the Government and administrative law judge that he complete such a course.

The Administrator concurs with the administrative law judge's findings of fact, conclusions of law, and recommended ruling in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration of Michael M. Motamed, M.D., be, and it hereby is, granted. This order is effective March 24, 1993.

Dated: March 18, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–6732 Filed 3–23–93; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Other Genres Fellowships Section) to the National Council on the Arts will be held on April 12–15, 1993 from 9 a.m.–8 p.m. and April 16 from 9:30 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 16 from 3:30 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on April 12–15 from 9 a.m.–8 p.m. and April 16 from 9 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of

section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meetings.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–6627 Filed 3–23–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB); Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Proposed Rule, "10 CFR part 26: Modification to the Random Drug Testing Rate for Licensee Employees".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required to report: Nuclear power plant licensees.

6. An estimate of the number of reports annually: A reduction of 50,000 drug tests and associated records.

7. An estimate of the total number of hours needed annually to complete the requirement: 10,833 hours of burden reduction (an average of 146 hours of burden reduction per site).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

9. Abstract. 10 CFR part 26 of NRC's regulations: "Fitness-for-Duty Programs," requires licensees authorized to construct or operate a nuclear power plant pursuant to Part 50 to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events. A proposed amendment to this regulation would permit licensees to reduce the random testing rate of licensee employees for drugs and alcohol to 50 percent but maintain the 100 percent random testing rate for contractor and vendor employees.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0146), NEOB–3019, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of March, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–6683 Filed 3–23–93; 8:45 am]

BILLING CODE 7590–01–M

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following request to amend Export License XR137. A copy of the amendment request is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of a request to amend a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this request to amend follows:

NRC Export License Amendment

Name of applicant, date of appl., date received, application number	Description	Value	End use	Country of destination
ABB Combustion Eng., 03/09/93, 03/11/93, XR137/02.	$3,700,000,000	4128 MWt, Taiwan Power Nuclear Units, Lungmen 1 and 2	Amended to increase power to 4128 MWt (~1350 MWe); increase $ value from $600,000,000 to $3,700,000,000; change names from Taiwan Power Nuclear Units 7 and 8 to Taiwan Power Nuclear Units Lungmen 1 and 2; and revise description of items authorized for export..	Taiwan.

Dated this 18th day of March 1993 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assitant Director for Exports, Security, and Safety Cooperation Office of International Programs.

[FR Doc. 93–6682 Filed 3–23–93; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication; Availability and Adequacy of Design Bases Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. A generic letter is an NRC document that (1) Requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures. This draft generic letter requests power reactor licensees to describe the programs that are implemented or planned to ensure design information for their facilities is correct, accessible, and maintained.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 229 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the Public Document Rooms under accession number 9303090140. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires April 23, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Imbro at (301) 504–2967.

SUPPLEMENTARY INFORMATION:

Availability and Adequacy of Design Bases Information

The Commission recently issued a policy statement [1] describing its expectations and the Agency's future actions to verify the availability and adequacy of design information. In the policy statement, the Commission concluded that maintaining current and accessible design documentation is important to ensure that (1) plant physical and functional characteristics are maintained and are consistent with the design bases as required by U.S. Nuclear Regulatory Commission (NRC) regulations; (2) systems, structures, and components can perform their intended functions; and (3) the plant is operated in a manner consistent with the design bases.

In October 1990, the Nuclear Management and Resources Council (NUMARC) issued NUMARC 90–12, "Design Basis Program Guidelines," containing guidance for organizing and collating the design bases for each nuclear power plant in a manner consistent with the definition of design bases information in § 50.2 of title 10 of the Code of Federal Regulations (10 CFR 50.2). NUMARC issued this document for voluntary use by NUMARC member organizations as a basis against which they could review their existing or planned efforts to collate supporting design information. On November 9, 1990, the NRC staff sent comments on the guidelines to NUMARC.[2]

To ensure that the NRC is apprised of the industry's activities, the NRC hereby requests power reactor licensees to describe the programs that are implemented or planned to ensure design information is correct, accessible, and maintained.

To assist the staff in prioritizing its inspection program, the NRC requests that each addressee voluntarily submit the following information which would be particularly useful if submitted within 120 days:

1. Submit a description of any programs already completed, planned, or being conducted to ensure the correctness and accessibility of the design bases information for your facility and to ensure that it is maintained current.

2. If you are not implementing a design reconstitution program at your facility, submit your rationale for not implementing such a program and submit a description of the extent of the design information you have obtained from the nuclear steam supply system (NSSS) vendor and architect-engineer (A/E). Describe the extent of any information not obtained from the NSSS vendor or A/E, but which is accessible at the NSSS vendor or A/E offices.

3. If your design reconstitution program is planned or being conducted but has not been completed, submit your schedule for implementation and the expected completion date.

This generic letter does not impose any new requirements or modify any existing regulatory requirements.

This request is covered by the Office of Management and Budget Clearance Number 3150–0011, which expires June 30, 1994. The estimated average number of burden hours is 200 person hours for each licensee response.

Backfit Discussion

This generic letter is a request to submit information voluntarily. This letter does not require modifications or additions to systems, structures, or components of a facility, the design of a facility, or the procedures or organization to design, construct, or operate a facility. Therefore, this letter does not impose any backfits, as defined in 10 CFR 50.109(a). The staff evaluated this letter in accordance with the charter of the Committee to Review Generic Requirements (CRGR) and will place a copy of that evaluation in the public document room with the minutes of the CRGR meeting 229 at which this letter was considered.

Dated at Rockville, Maryland, this seventeenth day of March, 1993.

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[1] "Availability and Adequacy of Design Bases Information at Nuclear Power Plants," **Federal Register**, Volume 57, Number 154, page 35455, August 10, 1992.

[2] Letter from W.T. Russell, NRC, to W.H. Rasin, NUMARC, November 9, 1990.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–6676 Filed 3–23–93; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice; correction.

SUMMARY: We are withdrawing the publication of the Biweekly notice of March 17, 1993 (58 FR 14433) and replacing it with a new Biweekly notice to be published in the near Future.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

Dated at Bethesda, Maryland, this 19th day of March 1993.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–6770 Filed 3–23–93; 8:45 am]

BILLING CODE 7590–01–M

License Termination for the Amax Site, Parkersburg, WV

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination.

This notice is to inform the public that the United States Nuclear Regulatory Commission (the Commission) is terminating the Material License No. SMB–1418 issued to Amax, Inc. for rare earth recovery operations near Parkersburg, WV. The Commission will terminate the license upon receipt of appropriate closing or conveyance documents from the Department of Energy (DOE). Receipt of the documents will result in the site being transferred to DOE under authority of the Nuclear Waste Policy Act (NWPA) section 151(c). The Amax, Inc. site is listed in the Commission's Site Decommissioning Management Plan.

The Amax, Inc. site is subject to a provision of NWPA that requires DOE to assume title and custody of low-level radioactive waste that originated in the processing of zirconium, hafnium or rare earth ores. The legislation stipulates that DOE assume title and custody of the site, once the owner of the site requests transfer, the site is "decontaminated and stabilized" in accordance with the Commission requirements, and the owner has made financial arrangements, approved by the NRC, for the "long-term maintenance and monitoring" of the site.

These conditions have been satisfied for the Amax, Inc. site and the staff proposes to terminate the Amax license upon formal notification from DOE that it has assumed title and custody.

Dated at Rockville, Maryland this 17th day of March, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–6679 Filed 3–23–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32002; File No. SR–CBOE–93–04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating To Capped Index Options With Quarterly Expirations

March 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to provide that capped-style index options ("CAPS") [1] on the Standard & Poor's Corporation ("S&P") 100 and 500 stock indexes may include those subject to quarterly expiration ("QIXs") [2] and that series of such options may be introduced with expirations of up to eight near-term quarters.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the Exchange to list capped-style quarterly index expiration options ("CAPS QIXs") on the S&P 100 and 500 stock indexes. QIX options generally have the same contract terms as regular options, except that they expire on the first business day of the month following the end of a calendar quarter. The proposed rule change reflects this difference by providing for up to eight near-term quarterly expirations for CAPS on the S&P 100 and 500 stock indexes.

The CBOE believes that the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to provide a basis for trading CAPS QIX options in a manner that promotes just and equitable principles of trade, perfects the mechanism of a free and open market, and protects, investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] See Securities Exchange Act Release No. 29865 (October 28, 1991), 56 FR 66255.

[2] See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-6714 Filed 3-23-93; 8:45 am]

BILLING CODE 8010-01-M

[3] 17 CFR 200.30-3(a)(12) (1992)

[Release No. 34-32004; File No. SR-DTC-92-10]

Self-Regulatory Organizations; The Depository Trust Co.; Order Approving Proposed Rule Change Relating to DTC's Proposal To Add Valued Pledges and Releases to Its Next-Day Funds Settlement System

March 16, 1993.

I. Introduction

On June 18, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] concerning the addition of valued pledges and releases to its Next-Day Funds Settlement ("NDFS") system. On September 22, 1992, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

The proposed rule change would allow DTC participants to make valued pledges on DTC's NDFS system, eliminating the need for DTC participants to use facilities outside DTC to move funds. Currently, DTC allows its participants to effect valued and unvalued pledges on its Same-Day Funds Settlement ("SDFS") system. However, only unvalued pledges may be effected on DTC's NDFS system. Consequently, participants effecting pledges or releases in the NDFS system must make arrangements outside DTC to move funds related to the pledge.

DTC will institute the change by adding a new service called "NDFS Valued Pledge Services" to its Collateral Loan Services function. The new service will utilize a combination of the delivery versus payment function and the pledge function. The valued pledge will be entered by the pledgor with the securities being moved to a pledged position and a debit and credit applied to the pledgee's and pledgor's money settlement accounts. Upon the approval of the pledgee, securities will move from the pledgor's pledged account to its free account and DTC will debit its settlement account. The pledgee's associated participant settlement account will be credited for the pledged securities. Although DTC will not have a lien on the securities, should a pledgee fail to settle its money obligations with DTC, DTC has the right to reverse the transaction pursuant to existing DTC rules and procedures.[3]

For pledges in the NDFS system, DTC will not effect a valued pledge until the pledgee has seen and agreed to its value. DTC also will not effect the valued release in the NDFS system (return of the pledged securities for value) unless the pledgor, by initiating the release, has seen and agreed to its value. These controls were built into the function so that the pledgee and pledgor, respectively, can exercise control over the buildup of cash debits in their accounts.[4] The controls are necessary because the NDFS system does not have the kinds of controls on cash debits to a receiver that are pervasive in the SDFS system.

III. Discussion

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F).[5] Those sections require a clearing agency to be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The Commission believes that the proposal provides a more efficient means of effecting pledges by eliminating the movement of funds for pledges or releases effected on DTC's NDFS system outside of DTC. Under the current system, DTC participants effect pledges without value in the NDFS system and then must transfer funds by some other means outside of DTC (e.g., check or Fedwire). Under the proposed rule, this process is greatly simplified and the risk substantially reduced, as the pledge or release and the movement of funds can be effected at DTC with a single instruction.[6]

[1] 15 U.S.C. section 78s(b)(1).

[2] Securities Exchange Act Release No. 31177 (September 11, 1992), 57 FR 43758.

[3] DTC Rule 9.

[4] DTC will not, however, place a cap on the value of participants' cash debits in their accounts.

[5] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[6] The Commission previously urged DTC to reduce the risk associated with free pledges in the NDFS system by instituting a valued pledge program and eliminating free pledges. See Securities Exchange Act Release No. 28515 (October 11, 1990), 55 FR 41401 (File No. SR-DTC-90-08). Although DTC will continue to allow free pledges in the NDFS system, the Commission encourages DTC to explore the risk associated with and the need for free pledges. As part of DTC's review of the need for free pledges, DTC will report at the end of six months and one year of implementing this rule the usage volume of the new valued pledges and the free pledge services. See letter from Richard B. Nesson, General Counsel, DTC, to Francois

Continued

The Commission also believes that the controls proposed by DTC will afford effective protection to DTC members and to the NDFS system. DTC will not effect a valued pledge until the pledgee has seen and agreed to its value, nor will it effect a valued release unless the pledgor has seen and agreed to its value. Moreover, although DTC will not have a lien on the pledged securities, DTC's ability to reverse a transaction will protect the NDFS system should there be a failure to settle. This is possible because all aspects of the transaction remain within the NDFS system.

Consequently, the Commission believes the proposed rule enhances the prompt and accurate clearance and settlement of securities transactions by reducing the steps required in effecting valued pledges and releases in the NDFS system. Similarly, the proposed rule is consistent with DTC's duty to facilitate the safeguarding of securities and funds which are in DTC's custody or control or for which it is responsible under the Act.

IV. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–92–10) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6712 Filed 3–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32011; File No. SR–MSE–92–10]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc. Proposing To Establish Rules To Allow for and Govern the Trading of Standardized Baskets and To Trade a Specific Basket of Stocks, the Midwest Basket

March 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to establish rules allowing for and governing the trading of standardized baskets on the Exchange floor. The Exchange also is seeking Commission approval to trade a specific basket product on the MSE.

The specific basket product which the Exchange proposes to trade, which will be known as the "MWB" basket, represents a new trading product for the securities industry. The MWB will offer a highly correlative hedge to the Chicago Board of Trade's ("CBOT") stock index futures contract traded under the ticker symbol "BC."[1] The MWB will be comprised of the 20 stocks included in the CBOT's BC futures contract in such quantity (the same number of whole shares of each stock) as to approximate one-fifth of the settlement value of the BC futures contract as calculated by the CBOT Clearing Corporation.

The text of the proposed rule change is available at the MSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish rules allowing for and governing the trading of standardized baskets on the Exchange floor and to seek Commission approval to trade a specific basket of stocks on the MSE. The specific basket product which the Exchange proposes to trade will be known as the "MWB" Basket.

The MWB Basket represents a new trading product for the securities industry conceived by the MSE in consultation with the CBOT. The MWB is a basket of stocks that offers a highly correlative hedge to the CBOT's BC futures contract. The MWB will be comprised of the 20 stocks included in the BC futures contract which is based on an index comprised of 20 stocks from various industries, which stocks are listed and traded on the New York Stock Exchange ("NYSE") in such quantity (the same number of whole shares of each stock) as to approximate one-fifth of the settlement value of the BC futures contract as calculated by the CBOT Clearing Corporation.

The CBOT has for many years traded the BC futures contract as well as options on that futures contract. Since the beginning of trading in the BC futures contract there was expressed an interest and need for an efficient way to hedge the futures contract with the equity cash market. Based upon this need, the MSE in consultation with the CBOT developed the equity cash market trading facility in order to create an offsetting position with the BC futures contract.

The MWB essentially represents a trading facility. That is, the MWB is a product which will allow the buyer or seller of the basket to purchase or sell a defined group of stocks in a single transaction which will require the payment for, or delivery of, each of the securities underlying the basket.

The trading market for the MWB on the MSE floor will consist of a registered specialist, to be known as a Designated Primary Market Maker ("DPM") and Registered Market Makers ("RM"). DPMs will be required to continuously quote a two-sided market for five MWB baskets. RMs will be required to continuously quote a two-sided market for one MWB basket. The DPM will be required to maintain $250,000 in excess net capital. All members of the MSE will have access to buy and sell the MWB.

The MWB will be traded at a specific, fixed location of the MSE trading floor. The floor will be configured to accommodate a sizeable "crowd" without disrupting others on the trading floor. Facilities will be visible to the crowd to display information from the futures and options markets. The displays also will show market information for the MWB.

The MWB will be traded in a price of whole dollars and fractions of one dollar with a minimum variation of 1/8th and in quantities of 100 shares where 100

Mazur, Staff Attorney, Division of Market Regulation, Commission, dated March 12, 1993.

[7] 17 CFR 200.30–3(a)(12) (1990).

[1] The terms "BC" refers to the CBOT stock index futures contract which is based on the American Stock Exchange's Major Market Index ("MMI"). The MMI is traded on the Amex and is a broad-based, price-weighted index based on 20 stocks listed on the New York Stock Exchange, Inc.

shares equals 1 MWB basket.[2] One hundred shares shall be the minimum unit of trade for the MWB. In the price expression, one point will equal one dollar.

The MSE's automated order routing system ("MAX") may be used to enter orders and send reports as with any other issue; however, the MAX system will only be used for its order routing capability and not for automatic execution.

MWB Basket trades and quotes will be available on "Network B." As with any other MSE exclusive issue, the DPM will disseminate quotes through Autoquote. A goal of the MWB trading facility is to quote a tighter spread than the sum of the individual stock prices.

The MWB will be traded for next day settlement on the MSE (T+1 settlement). This means that a trade of MWB must be paid for or the underlying securities delivered on the next business day. The reason for this shortened settlement period is to keep the settlement activity approximately equal between the MWB and the BC futures contract and options on the BC futures contract. Settlement of an MWB trade will cause the delivery of the formula quantity (currently 32 shares of each of the underlying stocks) of the formula securities (currently 20 stocks) between the seller and the buyer.

At the end of the trading day, all MWB transactions within one account will be aggregated as will all sell transactions in the Midwest Clearing Corporation ("MCC"). These two aggregated transactions will be burst into the 20 component stocks in the formula quantities. Percent values will be assigned to each individual stock based upon each stock's relative percentage of the total closing value of the MWB Basket based on the NYSE closing price. This percent value will be used to assign values to each of the underlying stocks based upon the combined actual basket value for buy transactions and sell transactions.[3]

MWB trades will be netted by the MCC on trade date after bursting both buy side and sell side aggregations. Because MWB basket trades will settle on T+1, each netted component stock will be reflected as transactions in the same component securities which settle on the following day. Once the basket trades have been burst into the component stocks and netted, these transactions will be entered into the MCC's Continuous Net Settlement system (i.e., the MCC's normal trade processing system) just as any other transactions are cleared and settled through MCC. However, because of the short settlement period, these transactions must be settled at MCC. Once these trades are settled, the positions may be moved to another registered depository.

It is the objective of the MSE to maintain a close value relationship between MWB and the CBOT's BC futures contract at the ratio of 500 shares of MWB (5 MWB Baskets) to approximate 1 BC futures contract. MSE will reserve the right to modify and change the formula for the MWB at its sole discretion. However, the MSE will strive to minimize the number of formula changes in order to maintain position continuity with the trading market.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–92–10 and should be submitted by April 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6715 Filed 3–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32010; File No. SR–OCC–92–35]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Approving Proposed Rule Change Relating to Clarifying a Competency Requirement

March 17, 1993.

On November 12, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC") a proposed rule change (File No. SR–OCC–92–35) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act").[1] The proposed rule change would make a clarifying amendment to OCC's By-Laws[2] and Rules.[3] The Commission published notice of the proposed rule change in the **Federal**

[2] On June 25, 1992, 100 shares of MWB was equal to 640 individual equity shares (32 shares of each stock) and this was approximately equal to one-fifth of the CBOT's BC futures contract. Five hundred shares of MWB is approximately equal to one BC futures contract. The closing value of the MWB on June 25 would have been approximately 349. The closing value multiplied by 100 (the number of shares) equals $34,900, which is approximately one-fifth of that day's closing value of the BC futures contract of $174,510.

[3] For a more detailed description of the algorithm and clearing methods the MCC proposes to use in conjunction with MWB transactions, see Securities Exchange Act Release No. 31858 (February 16, 1993), 58 FR 9381 (February 22, 1993) (notice of filing of MCC proposed rule change to permit the processing of basket trades).

[1] 15 U.S.C. 78s(b)(1).

[2] Article V, Section 1, Interpretation and Policy .03 of OCC's By-laws.

[3] Chapter II, Rule 214(a) of OCC's Rules.

Register on December 18, 1992.[4] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change would make a clarifying amendment to OCC's By-laws and Rules that require U.S. broker-dealer applicants for membership and existing domestic clearing members to employ one associated person who is registered with the National Association of Securities Dealers ("NASD") as a "Limited Principal—Financial and Operations" (a "FINOP").[5] Under the amendment, such requirement could be met by employing a person who has passed the appropriate NASD qualification examination even if such person is not registered with the NASD.

In January 1992, the Commission approved an OCC rule change (the "January 1992 Rule Change") which, among other things, requires that at least one associated person of a Clearing Member be registered with the NASD as a FINOP.[6] OCC was later advised by the NASD that it does not deem a person who has passed the NASD FINOP examination, but who is associated with a broker-dealer that is not an NASD member, to be registered as a FINOP. Instead, the NASD would consider such person to be qualified as a FINOP. Because the January 1992 Rule Change requires that an associated person be registered as a FINOP, this interpretation could affect Clearing Members and applicants who are not NASD members (i.e., firms doing a proprietary business), but who have or employ an associated person who has passed the FINOP qualification examination for registration as such. The amendment would require a Clearing Member to employ one associated person who is either registered with NASD as a FINOP or qualified to be a FINOP.

II. Discussion

The Commission believes that OCC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F) thereunder.[7] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to enable it to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

Prior to the January 1992 Rule Change, the competency of each applicant for clearing membership was determined on a subjective basis. The Commission, in approving the FINOP requirement, stated that "the FINOP examination is designed to provide an objective measure of competency in, among other things, clearing securities transactions."[8] In proposing the requirement, OCC stated that the requirement is "not unduly burdensome and is non-discriminatory because the FINOP examination is standard within the U.S. securities industry."[9] It is apparent from both releases that the focus of the new competency requirement was the FINOP examination. Instead, as a result of the NASD's interpretation, the January 1992 Rule Change has the unintended effect of requiring all Clearing Members to be NASD members. As clarified, OCC's competency requirement is satisfied if the Clearing Member is associated with a person who has passed the FINOP examination, as originally contemplated by the proposed rule change.

The Commission believes that this proposal is consistent with the provisions of section 17A(b)(3)(F) of the Act because it enables OCC to determine that its members have the competency needed to facilitate the prompt and accurate settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–OCC–92–35) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6713 Filed 3–23–93; 8:45 am]

BILLING CODE 8010–01–M

[4] Securities Exchange Act Release No. 31592 (December 11, 1992), 57 FR 60262.

[5] Under Schedule C, Part II, Section (2)(b) of NASD's By-laws, every NASD member must designate a FINOP to perform certain financial reporting functions. All persons designated as a FINOP must take a qualification examination administered by the NASD.

[6] Securities Exchange Act Release No. 30169 (January 8, 1992), 57 FR 1776.

[7] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[8] Securities Exchange Act Release No. 30169 (January 8, 1992), 57 FR 1776.

[9] Securities Exchange Release No. 29162 (May 3, 1991), 56 FR 22031.

[10] 15 U.S.C. 78s(b)(2).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting; Notice of Cancellation of Meeting

The National Small Business Development Center Advisory Board, public meeting scheduled for 9 a.m. on Monday, March 22, through noon Tuesday, March 23, 1993, at the Small Business Administration (SBA), 409 3d St., SW., Washington, DC, has been cancelled.

For further information, write or call Judith Dunn, SBA, 5th Flr., 409 3d Street, SW., Washington, DC 20416, telephone 202/205–7301.

Dated: March 19, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–6738 Filed 3–23–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1779]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Notice of Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on April 14, 1993, at the Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC, from 9:30 a.m. to 12:30 p.m. in the 8th Floor Conference Room.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is to (1) deal with administrative matters, (2) review the activities of the Working Parties and Task Groups, (3) identify and discuss priority issues such as (a) coexistence of networks in geostationary and non-geostationary orbits, and (b) the sharing aspect of inclined-orbit satellite operation in networks having geostationary-orbit assignments, and finally (4) discussion of issues related to the November Radiocommunication Assembly and World Radiocommunication Conference.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Hans Weiss, Communications Satellite Corporation, 22300 Comsat Drive, Clarksburg, MD 20871, phone (301) 428–4777 or to Mr. Robert Huang, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC, phone (202) 863–6790.

Dated: March 10, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 93–6630 Filed 3–23–93; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–93–02]

Lower Mississippi River Waterway Safety Advisory Committee; Solicitation for Membership

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee. Present appointments will expire October 1, 1993.

DATES: Requests for applications should be received no later than March 31, 1993. Completed applications should be returned no later than April 30, 1993.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

SUPPLEMENTARY INFORMATION: The Committee shall consist of twenty-four members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the waters of the Lower Mississippi River:

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the head of passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations which operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Cresent River Port Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels which utilize the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Lower Mississippi River area as required by the Coast Guard. The committee normally meets four times a year. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 1, 1995.

Dated: March 17, 1993.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 93–6708 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–93–06]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 29, 1993, at the Houston Yacht Club, 3620 Miramar, Shoreacres, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 10, 1993.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 93–6710 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–93–05]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Inshore

Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 29, 1993, at the Houston Yacht Club, 3620 Miramar, Shoreacres, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M. M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 10, 1993.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 93–6709 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–93–07]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II) notice is hereby given of the thirtieth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 20, 1993, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 10, 1993.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 93–6711 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD8–93–04]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, April 20, 1993, in the 29th floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Minutes of the October 20, 1992 meeting.
3. Old Business.
4. New Business.
5. Report from the VTS Subcommittee.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

All meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 10, 1993.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 93–6707 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 92–018]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: A meeting of the National Offshore Safety Advisory Committee (NOSAC) will be held on Friday, April 23, 1993, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to run from 8:30 a.m. to 12 noon. Attendance is open to the public. The agenda will include discussion on the following topics:

(a) Revisions to OCS Regulations (33 CFR subchapter N).
(b) Clean Air Act Amendments.
(c) Periodic Verification of Lightship.
(d) Task on Additional Guidelines for Towing Jackup Rigs.
(e) International Safety Management Code (ISM).

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the NOSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Commander Michael Ashdown, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–2307.

Dated: March 16, 1993.

Joseph J. Angelo,

Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–6705 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 92–20; Notice 2]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of final denial.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) denies the petition submitted by the State of Oregon for approval of alternate odometer disclosure requirements. The comments received in response to the agency's notice of preliminary denial do not provide sufficient justification for NHTSA to grant the petition. Consequently, Oregon must continue to conform its procedures to the odometer disclosure requirements of 49 CFR part 580.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Office of the Chief Counsel, room 5219, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Mileage Act of 1986 (Pub. L. 99–579), 15 U.S.C. 1981 *et seq.*, (TIMA) requires each person transferring ownership of a motor vehicle to disclose the vehicle's mileage on the title. The law permits the administrative approval by NHTSA of alternate methods of odometer disclosure, provided those methods are consistent with the purposes of the Act. NHTSA's implementing regulations (49 CFR part 580) set forth the procedures that must be followed to comply with odometer disclosure requirements and to seek approval of alternate disclosure requirements. Pursuant to § 580.11 of those regulations, Oregon submitted a petition for approval of alternate disclosure requirements.

Basis for the Petition

Oregon seeks to allow a titled motor vehicle owner to use a separate disclosure/reassignment document for the odometer disclosure statement in order to accommodate the interests of security holders. According to Oregon, a security interest in a vehicle is perfected in the State when the title is submitted to the Motor Vehicles Division (MVD), and perfection must occur within the ten-day period allowed by Federal bankruptcy law in order to ensure that security interests are properly protected. Oregon maintains that it is not always possible to obtain the odometer disclosure on the title within the ten-day period and that Oregon law does not allow a title certificate to be returned to the submitter, once received by the MVD, when the transfer involves the holder of a security interest.

Accordingly, Oregon requests that buyers and sellers be permitted to use a separate secure odometer disclosure/reassignment form when the MVD has possession of the title certificate. The title certificate would be retained in division headquarters until receipt of the completed secure odometer disclosure/reassignment form. Upon receipt, the form would be processed with the title certificate and become part of the title history of the vehicle.

Notice of Preliminary Determination

On December 22, 1992, NHTSA published a notice in the **Federal Register** (57 FR 60834) preliminarily denying Oregon's petition. NHTSA determined that Oregon had provided insufficient justification for deviating from Congress' intent that odometer disclosures be made on the titles to vehicles and that separate disclosures be used as little as possible. NHTSA noted that Oregon had provided no reason why the required disclosure could not be made on the title, and concluded that the proposed approach would reward buyers and sellers for negligence—the seller for failing to make the disclosure and the buyer for accepting a title without the disclosure. NHTSA further noted that the seller's signature block on the title is normally used for both odometer disclosure and transfer of ownership. Consequently, a seller seeking to effect transfer by signing the title but not completing the odometer disclosure would be essentially signing a false odometer disclosure statement.

NHTSA also expressed concern about the integrity of the proposed system. NHTSA reasoned that a buyer who was unable to obtain a properly completed title from the seller at the time of transfer would be no more successful after the transfer, when the seller no longer had a stake in the transaction. NHTSA further reasoned that a system which did not discourage sellers from failing to provide the proper written mileage disclosure undermined Congressional intent that buyers receive written accurate mileage information useful in making purchasing decisions. Such a system could, moreover, allow a seller who had verbally misrepresented the mileage of a vehicle to avoid making any written statements on the title or even on the proposed post-transaction assignment form.

Comments

In response to the notice preliminarily denying Oregon's petition, NHTSA received comments from the following organizations: The Oregon Auto Dealers Association (OADA); the Oregon Independent Auto Dealers Association (OIADA); the Oregon Bankers Association (OBA); the Oregon Department of Transportation, Motor Vehicles Division (ODOT); the Oregon Credit Union League & Affiliates (OCUL); the California Business, Transportation and Housing Agency, Department of Motor Vehicles (CDMV); the Missouri Department of Revenue, Division of Motor Vehicle and Drivers Licensing (MDR); and the Wisconsin Department of Transportation (WDOT).

Various commenters recounted the process by which a security interest in a motor vehicle is perfected in Oregon. OADA explained that, in order to protect against fraudulent alterations, the MVD is prohibited by statute from returning an incomplete title. OBA and ODOT argued that, due to the ten-day time constraint, it is critical to the interest of the lender that titles be submitted in certain instances without completed odometer statements. OCUL echoed that concern, stating that incomplete titles are submitted in order to expedite the process. CDOT explained that the ten-day period begins when the contract of sale is signed or the buyer takes possession of the vehicle, not when the title is endorsed. OIADA expressed concern about the potential risk to a dealer's security interest if an odometer disclosure statement could not be obtained on the title in a timely manner. None of these commenters adequately explained why a seller is unable to complete the odometer disclosure statement on the title before conveying it or how completing that portion of the title along with other applicable portions would delay the process.

In support of Oregon's petition, some commenters stressed that titles often are not present when a vehicle is sold, that buyers and sellers may be in different locations, or that buyers sometimes travel great distances to purchase motor vehicles. OADA believes it would be unreasonable to require parties to again travel great distances in order to secure the benefits of a purchased vehicle when the required odometer information can be obtained by mail. However, the comments do not explain why the seller, in executing the transfer of ownership on the title document, is unable to complete the required odometer disclosure statement at the same time. Issues of distance or exact

location of the title are not responsive to this fundamental question. Two commenters appear to agree with this point. MDR concurs that allowing the use of a separate secure odometer disclosure/reassignment form simply because the seller fails to make the required disclosure is inappropriate. To do so, according to MDR, would be condoning the transfer of an "open" title, and would introduce the opportunity for fraud. CDMV acknowledges that both the transferor and the transferee have access to the title prior to its receipt by the MVD, and asks why the transferor is unable to make the proper disclosure or, indeed, why the lienholder does not demand that it be made. However, CDMV supports Oregon's petition for a secure disclosure document because "both the title and the vehicle have been seen by the transferee."

We note that NHTSA's regulation provides for the use of a secure power of attorney in cases where the title is held by a lienholder. Congress has expressly provided for such a procedure. In the other instances described by the commenters, requiring the odometer disclosure statement to appear on the title does not impose an undue burden. OADA's comment that the information can be obtained by mail, CDMV's comment that the title (without the odometer disclosure information) has been seen by the transferee, and similar comments that the process would not be compromised because the odometer readings would eventually appear on the title misconceive Congress' fundamental intent under the TIMA. The odometer disclosure statement and certification are intended to aid purchasers of motor vehicles in their purchasing decisions and protect them from fraudulent misrepresentations. In order to properly accomplish these objectives, the information must be available at the time a transfer agreement is consummated, not sometime thereafter.

Several commenters argued that Oregon's proposed alternate procedure would apply only in limited circumstances. There is no indication from the petition that the procedure would, in fact, apply infrequently or that it would necessarily be limited to transactions involving security interests. Rather, the procedure would seem to apply on any occasion when the MVD receives a title without a completed odometer disclosure statement. In effect, the seller (by failing to complete the statement), and not the MVD, would control the frequency with which the proposed alternate procedure would be invoked. Such a course of events is squarely inconsistent with Congressional intent, and would render the TIMA essentially meaningless.

ODOT and OBA argued that denial of the petition might have an adverse impact on the financing industry, and prevent persons from obtaining financing for motor vehicles. They also claimed that consumers would be harmed if Oregon was required to withhold authority to operate motor vehicles because the title was temporarily unavailable for completing the odometer disclosure statement. NHTSA does not believe that financing institutions are likely to discontinue offering financing under the existing procedures. It is more likely that, in the exercise of prudent business judgment, financing is and will continue to be made conditional on the timely submission of a properly completed title that includes an odometer disclosure statement. Moreover, as previously discussed, we believe that the seller has access to the title and is able to complete the odometer disclosure statement without hardship or inconvenience. Consequently, we conclude that the existing procedures protect, rather than harm, the interests of consumers.

Various other arguments were advanced in support of the petition. ODOT argued that, given the realities of vehicle purchases and sales, one Federal law should not hamper the operation of another. NHTSA assumes that the Federal laws to which ODOT is referring are the TIMA and Federal Bankruptcy law. In our view, neither of these Federal laws hampers the operation of the other. Rather, the problem lies in the failure of the seller, without apparent reason, to complete the odometer disclosure statement on the title. To the extent that this problem requires attention in Oregon, NHTSA agrees with the solution proposed by MDR that Oregon law be amended to allow the return of incomplete titles after perfecting the security interest. The MVD could retain a copy of the title for comparison to the eventually returned original, thereby ensuring against fraudulent alterations.

WDOT strongly objected to returning title documents, once submitted, arguing that this would create a potential conflict with Wisconsin registration laws, and perhaps result in a loss of revenue to the State if the applicant failed to resubmit an application. WDOT's comment appears to be general in nature, and does not specifically address the situation involving a security interest perfected through the titling process. Under the TIMA, a State may not accept a conforming title that does not contain the required odometer disclosure statement unless one of several narrow exceptions applies. Presumably, States would choose to return non-compliant documents to the submitter, along with an appropriate explanation. Moreover, NHTSA does not believe that the potential for lost revenue is a realistic concern, as it would pose a problem only if vehicle owners routinely chose to operate vehicles in violation of State titling or registration laws.

In response to concerns advanced by NHTSA in the preliminary determination, ODOT argued that it is the inconsistencies among states in dealing with odometer disclosure statements on titles, rather than its proposed alternate procedure, that threaten the integrity of the odometer disclosure requirements. The TIMA and implementing regulations, with limited exceptions, require a seller to complete an odometer disclosure statement on a conforming title incident to the transfer of a motor vehicle. This requirement is specific and unambiguous, and NHTSA believes that its proper implementation promotes uniformity among the States rather than inconsistency. It is the failure to follow the odometer disclosure requirements that results in inconsistencies which threaten the integrity of the system.

Final Determination

None of the commenters has provided specific information as to why the seller is unable to complete the odometer disclosure statement on the title in the course of the transfer. Though not articulated, it appears that the situation is one in which the seller simply forgets or chooses not to complete the odometer statement. Such a situation provides inadequate justification to support the proposed alternate procedure, in light of Congress' intent that buyers receive a statement of mileage directly on the title. Accordingly, NHTSA reaffirms its preliminary determination and denies Oregon's petition for approval of alternate odometer disclosure requirements.

Issued on: March 18, 1993.

John Womack,

Acting Chief Counsel.

[FR Doc. 93-6661 Filed 3-23-93; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Notice No. 93–8]

Safety Advisory; High Pressure Composite Hoop Wrapped Cylinders (4500 PSIG Marked Service Pressure; DOT–E 7235)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify persons using cylinders authorized under DOT–E 7235 and not fitted with neckrings that serious personal injury, death, or property damage could result from rupture of these cylinders. Persons finding cylinders marked "DOT–E 7235 4500", without the required neckrings, are requested to take the precautionary measures outlined in this notice.

FOR FURTHER INFORMATION CONTACT: Charles H. Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Office hours are: 8:30 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: RSPA has been notified of the rupture of a cylinder authorized under DOT–E 7235 on March 13, 1993. The cylinder, with a marked service pressure of 4500 psig, ruptured while it was being charged, resulting in the death of a firefighter. While the cause of the cylinder rupture has not been determined, it appears that this cylinder was not fitted with a steel neckring as required by DOT–E 7235.

RSPA alerted users of cylinders authorized under DOT–E 7235, in a **Federal Register** notice published on August 15, 1985 (50 FR 32944) that RSPA had "amended DOT–E 7235 to require that any cylinder manufactured under exemption DOT–E 7235, which is not equipped with a neckring be removed from service, prior to October 1, 1985." This restriction was based on a series of hydro-pneumatic burst tests performed by the cylinder manufacturer. Those tests showed that all test cylinders with neckrings failed by leakage only, while a considerable number of test cylinders without neckrings failed by rupturing.

Users of DOT–E 7235 cylinders again are reminded that serious personal injury, death, or property damage could result from the rupture of a cylinder without a neckring. Accordingly, all persons owning, using, or having access to DOT–E 7235 4500 psig cylinders should examine those cylinders immediately to ensure that the cylinders are fitted with the required neckring. Persons finding cylinders without the required neckring should immediately take the following precautions.

1. If a cylinder has been filled, its entire contents should be vented in order to relieve internal pressure.

2. The vented cylinders should be segregated from all other cylinders by being placed in a secured area and marked conspicuously with a tag bearing the notation "Do Not Use" or similar warning.

3. Under no circumstances should any of the cylinders in question be sold or otherwise transferred, filled, refilled or used for any purpose.

Once the above procedures have been taken, persons finding cylinders without neckrings should contact the company, or distributor from whom they were purchased, for their disposition.

Issued in Washington, DC, on March 19, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–6720 Filed 3–23–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 18, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0181
Form Number: IRS Form 4768
Type of Review: Resubmission
Title: Application for Extension of Time To File A Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes
Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 18,500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 minutes
Learning about the law or the form—16 minutes
Preparing the form—22 minutes
Copying, assembling, and sending the form to the IRS—20 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 22,015 hours
OMB Number: 1545–1038
Form Number: IRS Form 8703
Type of Review: Resubmission
Title: Rental Residential Project Annual Certification by an Operator
Description: Operators of qualified residential projects will use this form to certify annually that their project meet the requirements of IRC section 142(d). Operators are required to file this certification under section 142(d)(7).
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 6,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hours, 50 minutes
Learning about the law or the form—35 minutes
Preparing and sending the form to the IRS—41 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 30,660 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–6735 Filed 3–23–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

March 18, 1993.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1189
Form Number: IRS Form 8819
Type of Review: Extension
Title: Dollar Election Under Section 985
Description: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 1,500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 52 minutes
Learning about the law or the form—24 minutes
Preparing and sending the form to the IRS—28 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 5,595 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–6736 Filed 3–23–93; 8:45 am]
BILLING CODE 4830–01–M

Customs Service

[T.D. 93–19]

Rescission of Trade Name: "Modular Computer Systems, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Rescission of trade name "Modular Computer Systems, Inc."

SUMMARY: On November 27, 1992, a notice of recordation for the trade name "Modular Computer Systems, Inc." was published in the **Federal Register** (57 FR 56402). The notice advised that the trade name was used by Modular Computer Systems, Inc., a/k/a Modcomp, in connection with computers, computer peripherals, computer programs and computer systems, all manufactured in the United States.

Following the publication of the notice of recordation, Customs was made aware that a prior recordation, effective December 18, 1991, had been made with the Customs Service for the trademark "Modular Computer Systems, Inc." (U.S. Trademark Registration No. 1,648,688).

The Customs Regulations at 19 CFR 133.11 provide that "[w]ords and designs used as trademarks, whether or not registered in the U.S. Patent and Trademark Office shall not be accepted for recordation as a trade name." Inasmuch as the trade name "Modular Computer Systems, Inc." is used (and registered) as a trademark, the recordation of "Modular Computer Systems, Inc." as a trade name was in error. Customs therefore rescinds the recordation of "Modular Computer Systems, Inc." as a trade name. The recordation of the trademark "Modular Computer Systems, Inc.", TMK 91–00664, remains in effect.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Karl Wm. Means, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Franklin Court, Washington, DC 20229, (202) 482–6960.

Dated: March 18, 1993.

John F. Atwood,
Chief, Intellectual Property Rights Branch.
[FR Doc. 93–6649 Filed 3–23–93; 8:45 am]
BILLING CODE 4820–02–M

[T.D. 93–20]

Recordation of Trade Name: "Wemco, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: On Friday, November 27, 1992, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Wemco, Inc.," was published in the **Federal Register** (57 FR 56402). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received no later than January 26, 1993. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14) the name "Wemco Inc.," is recorded as the trade name used by Wemco Inc., a corporation organized under the laws of the State of Louisiana, located at 966 South White Street, New Orleans, Louisiana 70125.

The trade name is used in connection with mens and boys neckties, ready ties, bow ties, ties and handkerchief sets and formal wear.

EFFECTIVE DATE: March 24, 1993.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (Franklin Court) (202–482–6960).

Dated: March 18, 1993.

John F. Atwood,
Chief, Intellectual Property Rights Branch.
[FR Doc. 93–6648 Filed 3–23–93; 8:45 am]
BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Covenant Mutual Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Covenant Mutual Insurance Company, of Hartford, CT, under the United States Code, title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective March 3, 1993.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29368, July 1, 1992.

With respect to any bonds currently in force with Covenant Mutual Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, D.C. 20227, telephone (202/FTS) 874–6507.

Dated: March 3, 1993.

Diane E. Clark,
Assistant Commissioner, Financial Information, Financial Management Service.
[FR Doc. 93–6639 Filed 3–23–93; 8:45 am]
BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Navigators Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29383 to reflect this addition:

Navigators Insurance Company. Business Address: 123 William St., New York, NY, 10038. Underwriting Limitation [b]: 7,004,000. Surety Licenses [c]: AK, AZ, DE, DC, GA, IN, IL, IA, KS, KY, MD, MA, MI, MS, MO, NE, NJ, ND, OH, OK, OR, PA, RI, SD, TN, TX, VA, WA, WI. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6507.

Dated: March 16, 1993.

Charles F. Schwan III,

Director, Funds Management Division.

[FR Doc. 93–6640 Filed 3–23–93; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992 Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds; Underwriters Reinsurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision on page 29396 to reflect this addition:

Underwriters Reinsurance Company. Business Address: P.O. Box 4030, Woodland Hills, CA 91365.

Underwriting Limitation [b]: $17,140,000. Surety Licenses [c]: AZ, CA, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MT, NE, NV, NJ, NM, NY, OH, PA, TX, UT. Incorporated: New Hampshire.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6765.

Dated: March 16, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–6638 Filed 3–23–93; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 55
Wednesday, March 24, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: March 26, 1993, 10 a.m.

PLACE: 825 North Capitol Street, NE, Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 976th Meeting—March 26, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 3451–024, Beaver Falls Municipal Authority
CAH–2.
Omitted
CAH–3.
Project No. 10813–002, Town of Summersville, West Virginia
CAH–4.
Project No. 10900–001, Thomas Hodgson & Sons, Inc.
CAH–5.
Project No. 10909–002, Kinderhook Hydro, Inc.
CAH–6.
Project No. 8142–022, Henwood Associates, Inc.
CAH–7.
Project No. 6287–002, Rainsong Company
CAH–8.
Project No. 2179–019, Merced Irrigation District

Consent Agenda—Electric

CAE–1.
Docket No. ER92–67–002, Western Massachusetts Electric Company
CAE–2.
Docket Nos. ER91–569–000, 001, 002, ER92–761–000 and ER93–250–000, Entergy Services, Inc.
CAE–3.
Docket No. EC90–10–007, Northeast Utilities Service Company
Docket No. ER93–294–000, Northeast Utilities Service Company
CAE–4.
Docket Nos. ER93–59–001, ER93–65–001 and EL91–29–002, Southern Company Services, Inc.
CAE–5.
Docket No. PL93–2–002, Prior Notice and Filing Requirements Under Part II of the Federal Power Act
CAE–6.
Docket No. ER91–457–004, Central Maine Power Company
Docket Nos. ER92–286–002, ER92–484–001, ER92–512–001, ER92–817–001, ER93–130–000 and 001, New England Power Company
CAE–7.
Docket No. EL92–15–002, Florida Power & Light Company
CAE–8.
Docket No. EG93–13–000, InterAmerican Energy Leasing Company
CAE–9.
Docket No. EG93–16–000, JMC Ocean State Corporation
Docket No. EG93–17–000, TCPL Power Ltd.
CAE–10.
Docket No. EG93–18–000, LG&E Power 20 Incorporated
CAE–11.
Omitted
CAE–12.
Docket No. EG93–20–000, Southern Electric Wholesale Generators, Inc.
Docket No. EG93–22–000, SEI Birchwood, Inc.
Docket No. EG93–23–000, Birchwood Development Corporation
Docket No. EG93–24–000, Birchwood Power Partners, L.P.
Docket No. EG93–25–000, SEI Hawaiian Cogenerators, Inc.
CAE–13.
Docket No. EG93–21–000, Vermont Yankee Nuclear Power Corporation
Docket No. EL93–22–000, Maine Yankee Atomic Power Company
Docket Nos. ER93–85–000 and EL93–7–000, Connecticut Yankee Atomic Power Company
CAE–14.
Docket No. EL93–6–000, Municipal Resale Service Customers v. Ohio Power Company
CAE–15.
Docket No. ER92–67–003, Western Massachusetts Electric Company
CAE–16.
Docket No. ER92–516–002, Entergy Power, Inc.
CAE–17.
Docket No. ER93–251–001, Wisconsin Electric Power Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP93–87–000, Natural Gas Pipeline Company
CAG–2.
Docket Nos. RP93–90–000 and 001, CNG Transmission Corporation
CAG–3.
Docket Nos. RP93–56–000 and RP93–86–000, Transwestern Pipeline Company
CAG–4.
Docket No. TA93–1–7–000, Southern Natural Gas Company
CAG–5.
Docket No. RP93–88–000, Arkla Energy Resources
CAG–6.
Docket Nos. TA93–1–31–000 and 001, Arkla Energy Resources, a division of Arkla, Inc.
CAG–7.
Omitted
CAG–8.
Omitted
CAG–9.
Omitted
CAG–10.
Docket No. TM93–11–29–000, Transcontinental Gas Pipe Line Corporation
CAG–11.
Docket No. TM93–2–37–000, Northwest Pipeline Corporation
CAG–12.
Docket No. RP89–137–010, Northwest Pipeline Corporation
CAG–13.
Docket Nos. RP93–37–002 and TM93–2–9–001, Tennessee Gas Pipeline Company
CAG–14.
Docket Nos. RP93–41–001 and RP92–179–002, Florida Gas Transmission Company
CAG–15.
Omitted
CAG–16.
Docket No. RP92–229–000, Northwest Pipeline Corporation
CAG–17.
Docket No. RP91–54–009, Trunkline Gas Company
CAG–18.
Docket No. RP93–89–000, MIGC, Inc.
CAG–19.
Docket No. RP93–78–000, Texas Gas Transmission Corporation
CAG–20.
Docket No. RP93–4–000, Mississippi River Transmission Corporation
CAG–21.
Docket No. RP93–82–000, Northern Natural Gas Company
CAG–22.
Docket No. RP93–61–001, U–T Offshore System
CAG–23.

Docket No. RP93–6–004, Paiute Pipeline Company
CAG–24.
Docket No. RP93–53–003, Carnegie Natural Gas Company
CAG–25.
Docket No. RP93–59–001, High Island Offshore System
CAG–26.
Docket No. IS92–25–002, Amoco Pipeline Company
CAG–27.
Docket Nos. TM92–2–21–001, RP91–41–009, 010, 014, TM92–3–21–001, TM92–11–21–001 and RP88–187–020, Columbia Gas Transmission Corporation
CAG–28.
Docket No. RP93–23–002, Transcontinental Gas Pipe Line Corporation
CAG–29.
Docket No. RP92–48–001, Viking Gas Transmission Company
CAG–30.
Docket Nos. RP88–259–062, RP88–262–063, 064, CP89–1227–016, CP89–1951–001, RP89–136–027 and RP90–124–012, Northern Natural Gas Company
CAG–31.
Docket Nos. RP89–137–008, RP89–219–006, TM90–1–37–004, RP90–50–006 and TM90–4–37–003, Northwest Pipeline Corporation
CAG–32.
Docket No. RP93–3–001, Arkla Energy Resources
CAG–33.
Docket Nos. CP89–195–014 and CP89–638–009, CNG Transmission Corporation
CAG–34.
Docket Nos. RP89–183–041 and TC89–8–005, Williams Natural Gas Company
CAG–35.
Docket Nos. RP89–183–043, TC89–8–007, RP91–43–007, TM91–3–43–007 and RP91–152–021, Williams Natural Gas Company
CAG–36.
Docket Nos. RP90–48–002, 003, RP88–191–019, 021, RP91–29–003, 005, 007, 009 and TA90–1–9–004, Tennessee Gas Pipeline Company
CAG–37.
Omitted
CAG–38.
Docket No. TM91–7–28–002, Panhandle Eastern Pipe Line Company
CAG–39.
Docket No. PR93–3–000, Montana Power Company
CAG–40.
Docket No. PR93–4–000, Transok, Inc.
CAG–41.
Docket No. PR93–5–000, Pontchartrain Natural Gas System
CAG–42.
Docket No. PR93–6–000, Dow Pipeline Company
CAG–43.
Omitted
CAG–44.
Docket Nos. RP91–161–011, *et al.*, RP92–3–000, *et al.*, RP90–108–016, RP91–82–008, and RS92–5–000, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–000, *et al.*, RP92–2–000, *et al.*, RP90–107–013 and RS92–6–000, Columbia Gulf Transmission Company
CAG–45.
Docket No. IS90–11–000, *et al.*, Amerada Hess Pipeline Corporation
Docket No. IS90–12–000, *et al.*, ARCO Transportation Alaska, Inc.
Docket No. IS90–13–000, *et al.*, BP Pipelines (Alaska) Inc.
Docket No. IS90–14–000, *et al.*, Exxon Pipeline Company
Docket No. IS90–15–000, *et al.*, Mobil Alaska Pipeline Company
Docket No. IS90–16–000, *et al.*, Phillips Alaska Pipeline Corporation
Docket No. IS90–17–000, *et al.*, Unocal Pipeline Company
CAG–46.
Docket No. IS92–39–001, IS93–21–001 and OR92–8–000, SFPP, L.P.
CAG–47.
Docket No. GP90–11–001, NICOR Exploration Company
CAG–48.
Docket Nos. RP93–80–000, RP93–81–000 and RS92–14–000, CNG Transmission Corporation
CAG–49.
Docket No. RS92–87–000 and 012, Transwestern Pipeline Company
CAG–50.
Docket Nos. RP93–6–001 and RS92–75–001, Paiute Pipeline Company
CAG–51.
Docket Nos. RP92–237–003, 001 and RS92–27–001, Alabama-Tennessee Natural Gas Company
CAG–52.
Docket Nos. RP92–226–000 and RS92–65–000, Kern River Pipeline Company
CAG–53.
Docket No. CP91–2704–004, Blue Lake Gas Storage Company
CAG–54.
Docket No. RS92–1–004, ANR Pipeline Company
CAG–55.
Docket No. RS92–8–001, Northern Natural Gas Company
CAG–56.
Docket No. CP80–34–010, Panhandle Eastern Pipe Line Company
Docket No. CP80–35–010, Colorado Interstate Gas Company
CAG–57.
Docket No. CP93–75–001, Sunrise Energy Company v. Transwestern Pipeline Company
CAG–58.
Omitted
CAG–59.
Docket No. CP92–448–001, ANR Pipeline Company
CAG–60.
Docket Nos. CP91–595–007, TQ91–4–28–004, CP92–677–003, GT93–3–001 and CP92–576–003, Panhandle Eastern Pipe Line Company
CAG–61.
Docket No. CP92–190–001, Panhandle Eastern Pipe Line Company
Docket No. CP92–203–001, KN Wattenberg Transmission Limited Liability Company
Docket No. CP92–208–001, KN Front Range Gathering Company
CAG–62.
Docket No. CP92–570–000, Arkansas Western Pipeline Company
CAG–63.
Docket No. CP93–11–000, Michigan Gas Storage Company
CAG–64.
Docket No. CP93–35–000, CNG Transmission Corporation
CAG–65.
Docket No. CP92–502–000, Florida Gas Transmission Company
CAG–66.
Docket Nos. CP93–121–000, 001 and CP93–123–000, Williston Basin Interstate Pipeline Company
Docket No. CP93–125–000, KN Energy, Inc.
Docket No. CP93–126–000, Northern Gas Company
Docket No. CP93–130–000, Wind River Gathering Company
CAG–67.
Docket Nos. RP85–39–011 and RS92–90–001, Wyoming Interstate Company, Ltd.
CAG–68.
Docket Nos. RP90–109–010, RP87–62–017 and RP86–148–012, Pacific Gas Transmission Company
CAG–69.
Docket No. RP93–85–000, Southern Natural Gas Company and South Georgia Natural Gas Company
CAG–70.
Docket Nos. CP93–180–001, RP92–214–006 and RS92–60–010, El Paso Natural Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. RM93–10–000, New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714. Proposed rule specifying requirements for information gathering regarding transmission.
E–2.
Docket No. RM92–1–000, Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A. Final rule specifying requirements for Clean Air Act Amendments accounting standards.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RM91–8–002, Bureau of Land Management, Department of Interior and Railroad Commission of Texas. Order on request for extension of time for filings by jurisdictional agencies.

II. Restructuring Matters

RS–1.
Docket Nos. RS92–60–002, 003, 004 and 008, El Paso Natural Gas Company.

Order on compliance filing and rehearing.

RS–2.
Docket No. RS92–70–000, OkTex Pipeline Company. Order on compliance filing and rehearing.

RS–3.
Omitted.

RS–4.
Docket Nos. RS92–15–000, RP93–62–000 and 001, Equitrans, Inc. Order on compliance filing.

RS–5.
Docket No. RS92–42–000, MGC, Inc. Order on compliance filing.

RS–6.
Docket No. RS92–78–000, Sabine Pipe Line Company. Order on compliance filing.

RS–7.
Docket No. RS92–20–000, Mid Louisiana Gas Company. Order on compliance filing.

RS–8.
Omitted

RS–9.
Omitted

RS–10.
Omitted

RS–11.
Docket Nos. RS92–22–003 and 004, Panhandle Eastern Pipe Line Company. Order on compliance filing and requests for rehearing of December 22, 1992 order in Docket No. RP92–22–002.

RS–12.
Docket No. RS92–5–002, Columbia Gas Transmission Corporation
Docket No. RS92–6–002, Columbia Gulf Transmission Company. Order on request for rehearing of February 10, 1993.

III. Pipeline Certificate Matters

PC–1.
Docket No. CP91–1910–000, Southwestern Public Service Company v. Red River Pipeline. Order on complaint alleging undue discrimination by Red River Pipeline in refusing to provide transporation.

PC–2.
Docket No. CP91–1925–002, Southwestern Glass Company, Inc. v. Arkla Energy Resources, a division of Arkla, Inc. Order on request for rehearing of February 1, 1993 order.

Dated: March 19, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–6864 Filed 3–22–93; 1:03 pm]

BILLING CODE 6717–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 14625, March 18, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 8:30 a.m. Wednesday, March 24, 1993.

CHANGES IN THE MEETING: The following topic was deleted from the agenda during the open portion of the meeting.

3. Examination and Regulatory Oversight Division

A. Advances Regulations

1. Approval of Final Rule
2. Approval of Interim Final Rule on Advances to Non-Member Mortgagees
3. Notification to Finance Board that a Proposed Rule on Advances to Capital Deficient and Tangibly Insolvent Members will be Presented in April

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–6804 Filed 3–22–93; 9:09 am]

BILLING CODE 6725–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, April 22, 1993.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Adventist Health System/West, Docket 9234.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Adventist Health System/West, Docket 9234.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Jansen, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 93–6799 Filed 3–22–93; 9:11 am]

BILLING CODE 6750–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced closed meeting (Federal Register, Vol. 58, No. 50, Wednesday, March 17, 1993, page 14473) scheduled for 9:30 a.m., Tuesday, March 23, 1993, will include the following additional item, which is closed to public observation:

6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously to add this item to the closed agenda. Earlier announcement of this change was not possible.

The previously announced items are:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Request from State for Exemption from Section 701.21(h), NCUA's Rules and Regulations. Closed pursuant to exemptions (9)(A)(ii) and (9)(B).
4. Requests from Credit Unions for Waivers from Part 704, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
5. Administrative Actions under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–6865 Filed 3–22–93; 1:04 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register

Vol. 58, No. 55

Wednesday, March 24, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92-126-1]

Change in Disease Status of France Because of Rinderpest and Foot-and-Mouth Disease

Correction

In proposed rule document 93-5986 beginning on page 14174 in the issue of Tuesday, March 16, 1993, make the following correction:

On the same page, in the third column, in the **DATES:** paragraph, "April 15, 1993." should read "May 17, 1993.".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

Commodity Credit Corporation Emerging Democracies Facilities Guarantees

Correction

In rule document 93-4501 beginning on page 11786 in the issue of Monday, March 1, 1993, make the following correction:

§ 1493.220 [Corrected]

On page 11789, in the third column, in the section heading "§ 1493.200" should read "§ 1493.220".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Virgin Spinedace as Endangered

Correction

FR Doc. 93-5964 was published beginning on page 14169 in the issue of Tuesday, March 16, 1993. This document was a notice of petition finding and initiation of status review. It was published in the Rules section of the **Federal Register**. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMEMT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

46 CFR Parts 10 and 12

[CGD 91-002]

User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation

Correction

In rule document 93-6364 beginning on page 15228, in the issue of Friday, March 19, 1993, make the following corrections:

1. On page 15231, in the table:

a. In the first column, under "License", in the fourth entry, "Endorsement" should read "Endorsements".

b. In the third column, in the first entry, footnote 3 should read footnote 1.

§ 10.109 [Corrected]

2. On page 15237, in the second column, the second § 10.109(c)(3) should read § 10.109(c)(4).

BILLING CODE 1505-01-D

federal register

Wednesday
March 24, 1993

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86
Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Evaporative Emission Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[FRL–4556–9]

RIN 2060–AC64

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates requirements for revised test procedures intended to reduce evaporative emissions from motor vehicles as authorized by the 1990 amendments to the Clean Air Act and the Act's general standard-setting provisions. Proposals for revised test procedures were published on August 19, 1987 and on January 19, 1990. Since then EPA has held two public workshops, announced December 3, 1990 and December 17, 1991, for further discussion of available test procedure options. The revised test procedures are scheduled for implementation beginning with the 1996 model year, with phase-in completed in the 1999 model year. This action will result in significant reductions of volatile organic compound emissions. Such emissions are a major contributor to the nation's ground-level ozone problem, which is responsible for harm to human health and public welfare.

This action also limits fuel pump dispensing rates. Effective January 1, 1996 for most facilities, dispensing rates for gasoline and methanol pumps may not exceed 10 gallons (37.9 liters) per minute. For facilities with low sales volumes, implementation is delayed for two years. This action will ensure that vehicles designed to prevent spitback during refueling will not experience in-use fueling rates beyond the design basis rate.

DATES: This regulation is effective April 23, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 23, 1993.

The information collection requirements contained in §§ 86.096–7, 86.096–8, 86.096–9, 86.096–10, 86.096–14, 86.096–21, 86.096–23, 86.096–26, 86.096–30, 86.096–35, 86.097–9, 86.098–23, 86.099–8, 86.099–9, and 86.099–10 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. A technical amendment will be published in the **Federal Register** when OMB has approved the information collection requirements.

ADDRESSES: Materials related to this rulemaking have been placed in Docket A–89–18 by EPA. The docket is located at: Air Docket Section (LE–130), U.S. Environmental Protection Agency, 1st Floor, Waterside Mall, room M–1500, 401 M Street, SW., Washington, DC 20460 (Telephone 202–260–7548), and is available for inspection between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stout, Engine and Vehicle Regulations Branch 313–741–7805 or Mr. Tom Ball, Compliance Programs Branch 313–668–4280.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Description of This Action
  A. Evaporative Emission Test Procedures
  B. Heavy-Duty Vehicles and Engines
  C. Liability Periods
  D. Spitback
  E. Lead Time
  F. In-use Performance
  G. Certification Testing
  H. In-use and Assembly Line Testing
III. Public Participation
  A. Diurnal Emission Test
  B. Sequence of Test Segments
IV. Remaining In-use Concerns and Options for Further Action
V. Environmental and Economic Impacts
  A. Environmental Impact
  B. Economic Impact
  C. Cost-effectiveness
VI. Energy and Safety Issues
VII. Administrative Requirements
  A. Administrative Designation and Regulatory Analysis
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
VIII. Judicial Review

I. Introduction

EPA's concern regarding the control of volatile organic compound (VOC) emissions has grown over the years as exceedances of the health-based ozone standard have continued to be a problem in many areas. On hot, sunny days VOC emissions react in the air to form ground-level ozone, which causes respiratory problems and is associated with urban smog. Based on the most recently available information for 1989 to 1991, there are 97 areas that fail to meet the National Ambient Air Quality Standard for ozone (0.12 parts per million).[1] According to ozone monitoring data, based on 1991 only, 70 million people continue to live in U.S. counties exceeding the ozone standard. Evaporative emissions from motor vehicles are a significant source of VOCs and, as a result, EPA has initiated action aimed at reducing these emissions.

In addition, the Clean Air Act, as amended in 1990, states in section 202(k) that: The Administrator shall promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—(1) during operation; and (2) over 2 or more days of nonuse; under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility and to cost, energy and safety factors associated with the application of the appropriate technology. (42 U.S.C. 7521)

In 1971 EPA began testing motor vehicles for evaporative emissions by subjecting test vehicles to typical drive and park conditions. The test procedure, which has changed little since then, measures emissions from fuel evaporation during a simulated parking experience (diurnal emissions) and immediately following a drive (hot soak emissions).

This final rule establishes changes to the test procedure that effectively require vehicles to meet current standards under a more challenging set of conditions in order to prompt more effective evaporative emission control technology. The revised test procedures include a sequence of three basic elements: an initial loading of the evaporative canister with fuel vapor, a period of driving to provide an opportunity to purge the canister, and a simulation of repeated hot days of parking. By following this sequence and sampling for emissions during the parking simulation, the test ensures that the vehicle can quickly regain canister storage capacity during driving, and that the canister's total capacity is sufficient. An additional test element that measures evaporative emissions during vehicle operation (running losses), provides further assurance that vehicles can control the fuel vapors generated in use.

[1] "National Air Quality and Emissions Trends Report, 1991" EPA, October, 1992.

The changes to the regulations contained in this final rule reflect the public comments received throughout this rulemaking process. EPA published Notices of Proposed Rulemakings (NPRMs) to revise the evaporative test procedure on August 19, 1987 (52 FR 31274), and on January 19, 1990 (55 FR 1914). Since then EPA has held two public workshops, announced December 3, 1990 (55 FR 49914) and December 17, 1991 (56 FR 65461), for further discussion of available options in finalizing a test procedure. The series of public meetings involved very detailed discussions of the proposed test requirements. Each subsequent time period for written comments was extended to allow additional opportunity for participants to prepare their input.

EPA has particularly benefitted from extensive participation by the automotive industry and the California Air Resources Board (CARB). During the development of this final rule, EPA has incorporated many of the substantive revisions to the proposed test suggested by commenters, and, in fact, the final test procedure is based largely on a procedure suggested by General Motors (GM).[2] Most of the revisions, however, have been made to improve the simulation and repeatability of testing; the basic hardware and vehicle configuration requirements have changed little since the January 1990 NPRM. The resulting test procedure is expected to ensure that properly functioning vehicles will effectively control evaporative emissions for most in-use events.

This action applies to both gasoline- and methanol-fueled vehicles (proposed in the January 1990 NPRM and at the January 1992 public workshop). Although section 202(k) of the Clean Air Act applies specifically to gasoline-fueled vehicles, EPA is promulgating these regulations for methanol-fueled vehicles as well, pursuant to section 202(a) of the Act. EPA has established the practice of applying evaporative emission standards consistently to both gasoline- and methanol-fueled vehicles, including flexible-fueled vehicles (54 FR 14426, April 11, 1989). Also, methanol-fueled vehicles can have significant evaporative emissions.[3]

The regulations also apply to both light- and heavy-duty vehicles, and to heavy-duty engines. The revised test for heavy-duty vehicles is the same as that for light-duty vehicles, except that different driving schedules are specified because of the variation in driving patterns for the different classes of vehicles (proposed in the January 1990 NPRM, and at the December 1990 and January 1992 public workshops). Also, the heavy-duty engine test now requires attachment of a loaded evaporative canister before testing for exhaust emissions (proposed in the August 1987 NPRM and at the January 1992 public workshop).

This final rule also deals with fuel spitback during refueling, pursuant to Clean Air Act sections 202(a) and 211(c). Fuel spitback can be a problem when the design of fuel fill necks is inadequate to accommodate in-use fuel fill rates. The result can be fuel spillage, which is both an environmental and a safety hazard. This action institutes a vehicle test to ensure that no spillage occurs when a vehicle is refueled at a rate of up to 10 gallons (37.9 liters) per minute (as proposed at the January 1992 public workshop).[4] Also, to ensure that the resulting vehicle designs will be effective under in-use conditions, EPA is limiting fuel pump dispensing rates for gasoline and methanol to a maximum rate of 10 gallons (37.9 liters) per minute, pursuant to sections 202(a)(1) and 211(c) of the Act (as proposed in the August 1987 and January 1990 NPRMs, and at the January 1992 public workshop).

The remainder of this document is divided into several sections. Section II provides a detailed description of the test procedures and other provisions contained in this final rule. Section III includes a summary and analysis of public comments on the main issues involved in the rulemaking. Sections IV through VIII describe some remaining concerns and summarize an analysis of the estimated impacts of this action.

This document provides a brief discussion of key issues and other information relevant to EPA's final decisions. Detailed discussions of the basis for this rule and of the many considerations that went into past proposals are contained in the previously mentioned NPRMs and workshop notices. Detailed analyses of the impacts of this rule and issues raised during the rulemaking process are included in the Final Regulatory Impact Analysis and Summary and Analysis of Comments: Control of Evaporative Hydrocarbon Emissions from New Motor Vehicles ("Final RIA"). This document is available in Docket A–89–18 as item V–B–1; a limited number of individual copies are also available through Mr. Alan Stout (see "For Further Information Contact" above).

II. Description of This Action

A. Evaporative Emission Test Procedures

This action will improve the evaporative emission test for gasoline- and methanol-fueled vehicles, and, taken as a whole, satisfies the statutory requirement of ensuring "the greatest degree of emission reduction achievable by means reasonably expected to be available." The test sequence, shown in Figure 1, consists of vehicle preconditioning, exhaust emission testing, a running loss test, a hot soak test, and three diurnal heat builds (this test sequence is referred to in this notice as the three-diurnal test).

Each of these test elements corresponds to an aspect of in-use vehicle operation in ozone-prone summertime conditions. The exhaust emission testing following vehicle preconditioning corresponds to vehicle operation while the vapors from a loaded evaporative canister are being purged into the engine, as might occur during driving after a long parking period. The running loss test element corresponds to sustained vehicle operation on a hot day, the hot soak element corresponds to the emission-prone period immediately following engine shut-off, and the diurnal heat builds correspond to successive days of parking in hot weather. Diurnal testing also serves to control fuel system permeation emissions, called resting losses.

A supplemental procedure with two diurnal heat builds after the exhaust emission test verifies sufficient purging of the evaporative canister during the exhaust emission test (this supplemental test sequence is sometimes referred to in this notice as the two-diurnal test). The reasons for selecting this approach to testing are discussed in detail in section III. The following paragraphs describe the specifications for the new test requirements; more extensive discussion of the test specifications is included in the Final RIA.

The three-diurnal test begins with a draining and refilling of the fuel tank. The vehicle is filled to 40 percent of capacity with a test fuel having a volatility of 9 psi (62 kPa) Reid vapor pressure (RVP). For high-altitude testing, the specified fuel volatility is 7.8 psi (53.8 kPa) RVP. The refueling is followed by a soak (park) period to stabilize the vehicle, and then by vehicle operation over an Urban

[2] Letter from Lisa Fior, GM, to Tad Wysor, EPA, March 26, 1990 (Docket A–89–18, item IV–D–19).

[3] "An Overview of the Technical Implications of Methanol and Ethanol as Highway Motor Vehicles Fuels," Frank Black, SAE 912413.

[4] Rounded metric equivalents to U.S. units are provided in parentheses throughout this notice.

Dynamometer Driving Schedule (UDDS). The UDDS is the conventional simulation of urban driving for the Federal Test Procedure. After the drive, the vehicle's tank is drained and refueled. The vehicle then soaks again for a minimum of 12 hours, during which the evaporative canister is purged and loaded with a butane-nitrogen mix. The canister loading is terminated when the mass of butane supplied to the canister reaches 1½ times the canister's working capacity.[5] The exhaust emission test, unchanged from the current procedure (40 CFR 86.135 to 86.137), follows the soak period. (Various aspects of this preconditioning sequence were proposed in the January 1990 NPRM, and at the December 1990 and January 1992 public workshops.)

After the exhaust emission test, the vehicle is stabilized at 95 °F (35 °C) and driven through the running loss test. The running loss test consists of vehicle operation at 95 °F (35 °C) over a UDDS cycle, two consecutive New York City Cycles (NYCC), and one more UDDS. The NYCC simulates urban driving with substantial low-speed and idle operation. Fuel temperatures are controlled during the running loss test according to a profile determined during a drive at representative summer conditions, as described below. Fuel tank pressure during the running loss test may not exceed 10 inches of water (2.5 kPa), unless manufacturers show that fuel vapors, other than refueling emissions, are vented to the evaporative canister when the fuel cap is removed. Running loss tests may be conducted by either the point-source or the enclosure method. Hot soak emissions are measured at an ambient temperature of 95 °F (35 °C) for one hour after the running loss test. (The running loss test and the high-temperature hot soak test were proposed at the December 1990 and January 1992 public workshops.)

The vehicle is then stabilized at 72 °F (22.2 °C) and begins the series of three 24-hour ambient temperature cycles, from 72° to 96 °F (22.2° to 35.6 °C), which comprise the diurnal emission test. Sampling for emissions over 24-hour periods ensures that resting losses will be measured and controlled. EPA may adjust the fan configuration to ensure sufficient air circulation around the fuel tank. Furthermore, EPA may compare a vehicle's fuel temperatures under outdoor, summertime conditions with test fuel temperatures, and may adjust ambient temperatures or air circulation as necessary during testing to correct any demonstrated discrepancy. (The various aspects of diurnal emission testing were proposed in the January 1990 NPRM, and at the December 1990 and January 1992 public workshops.)

Auto manufacturers must separately develop a fuel temperature profile for the running loss test (proposed at the December 1990 and January 1992 public workshops). The fuel temperature profile is used as a target during the running loss test to duplicate the heating of the vehicle's fuel tank during onroad driving in representative summer conditions. Each fuel temperature profile is generated by obtaining a fuel temperature vs. time trace as the vehicle is driven over the prescribed running loss driving cycle on the road. Manufacturers must develop a fuel temperature profile for the vehicle model in each evaporative emission family expected to have the greatest temperature increase during driving. They must also select vehicles equipped with any optional features that limit underbody airflow. Manufacturers may generate additional profiles for individual engine families, or for individual models. Multiple runs on any vehicle model must be averaged to yield a composite profile and all valid profile data must be submitted to EPA. EPA may conduct its own testing to establish a vehicle's fuel temperature profile.

In the supplemental two-diurnal procedure, the evaporative canister is loaded with a mixture of butane and nitrogen until the two-gram breakthrough point is reached. The canister may also be loaded to this point by conducting repeated diurnal heat builds. No additional canister purging is performed after the preconditioning drive. Following canister loading, the vehicle is driven through the exhaust emission test, followed by a moderate-temperature hot soak test and two 24-hour ambient temperature cycles from 72° to 96 °F (22.2° to 35.6 °C) for the diurnal emission test. EPA's handling of fuel temperatures for the diurnal emission test, described above, also applies to the supplemental procedure. (The two-diurnal procedure is nearly identical to that proposed by EPA in the January 1990 NPRM.)

As discussed in Section III, adoption of the procedure described above results from a desire expressed by all participants in this rulemaking to have consistent federal and California test procedures, as well as to achieve the statutory goals. EPA has worked with the CARB staff to design a procedure based on the test that CARB adopted in August 1990, which was based in large part on a procedure recommended by GM.[6,7] (CARB's test procedure, which has not yet been implemented, is referred to in this document as CARB's adopted test procedure.) EPA is adding the supplemental test sequence that CARB proposed in March 1992.[8] This action does not incorporate the CARB test procedure specifications in every detail, though it does so wherever there is no compelling reason to do otherwise. For example, CARB's adopted procedure involves different fuel volatility and ambient temperatures than those required in this action. These and other differences between CARB's adopted test and the procedure in this final rule are described in the Final RIA.

It should be noted that the Clean Air Act requires CARB to obtain a waiver of federal preemption from EPA to implement its test. EPA has received a waiver request from CARB regarding its August 1990 test procedure. This waiver request is under evaluation by EPA according to the criteria set forth in section 209 of the Clean Air Act.

Two evaporative emission standards must be met for a vehicle to pass the three-diurnal evaporative emission test. First, a vehicle must emit no more than a total of 2 grams of hydrocarbon (or, in the case of methanol-fueled vehicles, hydrocarbon and methanol), measured during the 24-hour cycle with the highest emissions from the diurnal emission test, plus that measured during the one-hour hot soak test. Second, the vehicle must meet a running loss test standard of 0.05 g/mi (0.03 g/km) (these standards were proposed in the January 1990 NPRM and at the January 1992 public workshop). These standards apply to light-duty vehicles. Light-duty trucks must meet the same standards, except that light-duty trucks of gross vehicle weight rating (GVWR) between 6,000 and 8,500 pounds (2,700 to 3,900 kg) which have nominal fuel tank sizes of 30 gallons (110 liters) or more are subject to a relaxed diurnal/hot soak standard of 2.5 grams. This relaxed standard results from EPA's analysis of comments on the proposals and is considered to be a reasonable extension of EPA's approach to applying slightly higher evaporative emission standards to larger vehicles, as discussed in the Final RIA. Heavy-duty vehicle standards are discussed in the subsection below.

[5] For the purposes of the test procedure, the working capacity is the amount of vapor that a canister, starting from a purged condition, would retain in loading to the two-gram breakthrough point (that is, 2 grams of vapor emitted from the canister).

[6] Letter from Lisa Fior, GM, to Tad Wysor, EPA, March 26, 1990 (Docket A–89–18, item IV–D–19).

[7] CARB Mail-Out #92–10, March 3, 1992 (Docket A–89–18, item IV–D–83).

[8] CARB Mail-Out #92–13, March 6, 1992 (Docket A–89–18, item IV–D–84).

The light-duty standard for the supplemental two-diurnal procedure is 2.5 grams for emissions measured during the 24-hour diurnal cycle with the highest emissions, plus emissions measured during the moderate-temperature, one-hour hot soak. Again, a 0.5 relaxation of the standard, to 3.0 grams, applies to light-duty trucks of GVWR between 6,000 and 8,500 pounds (2,700 to 3,900 kg) which have nominal fuel tank sizes of 30 gallons (110 liters) or more. As discussed in the Final RIA, manufacturers requested these relaxed supplemental test standards (compared to the corresponding standards for the three-diurnal test) to help ensure that the supplemental test does not introduce a net increase in stringency. EPA does not believe that these relaxed standards will compromise in-use control because manufacturers must also design vehicles to meet the lower standards for the full three-diurnal test, and because EPA testing can be done using either procedure.

All evaporative standards apply equally for all altitudes. EPA removed separate standards for high-altitude testing, starting with 1995 model year vehicles, as part of the action to implement Tier 1 exhaust emission standards (56 FR 25724, June 5, 1991). This action does not, however, affect EPA's current policy of allowing an engineering evaluation, in lieu of test data, to demonstrate compliance with high-altitude requirements.

Evaporative emission measurements, and the associated standards, include both fuel and nonfuel emissions, consistent with established Agency policy (41 FR 35626, August 23, 1976). Because the levels of the standard already account for the possibility of nonfuel background emissions, any attempt to separate fuel and nonfuel emissions would be inappropriate. These standards apply equally to vehicle certification and recall testing. The Final RIA includes a detailed discussion of this issue. The measurement of exhaust emissions occurs during the running of the test procedure being promulgated in this final rule and, of course, applicable exhaust emission standards must be met.

In addition to the above test requirements, EPA is requiring that all fuel vapor generated during in-use operation be routed exclusively to the evaporative canister or the engine to prevent vapor venting under any foreseeable in-use conditions (proposed in the January 1990 NPRM and at the January 1992 public workshop). The requirement does allow for exceptions in emergency situations and does not include vehicle refueling.

B. Heavy-Duty Vehicles and Engines

In this action, EPA is also promulgating revised regulations for testing heavy-duty vehicles and heavy-duty engines. The revised test for heavy-duty vehicles is the same as that for light-duty vehicles, except that the driving sequence for the running loss test consists of three consecutive heavy-duty UDDS cycles, in order to reflect the different driving patterns of heavy-duty vehicles. The heavy-duty UDDS cycle includes adequate low-speed driving so that a separate cycle like the NYCC is not needed for heavy-duty testing.

The testing of heavy-duty engines, which occurs without a vehicle chassis or body, obviously cannot make full use of the vehicle test procedure. However, the heavy-duty engine test for exhaust emissions now requires that the test engine be equipped with a loaded evaporative canister, ensuring that exhaust emissions will not increase due to canister purge. Engine manufacturers must test with one or more canisters representing the largest capacity expected for the range of applications for each engine. Heavy heavy-duty vehicles not subject to vehicle testing for evaporative emissions will be expected to demonstrate a sufficient level of purge during engine testing.

The standard for the three-diurnal evaporative emission test for heavy-duty vehicles has the same form as the standard for light-duty vehicles, but has a numerical value of 3 grams for vehicles with GVWR up to 14,000 pounds (6,400 kg), and 4 grams for heavier vehicles, consistent with the regulations being replaced by this action. For the two-diurnal procedure, the standards are set at 3.5 and 4.5 grams, respectively, consistent with the approach taken for light-duty vehicle testing, discussed above. The running loss standard of 0.05 g/mi (0.03 g/km) applies to all heavy-duty vehicles.

C. Liability Periods

In this action, EPA is promulgating revisions to the useful life and recall and warranty periods for evaporative emission controls, to incorporate liability periods specified by the amended Clean Air Act. EPA indicated at the time of the January 1992 workshop that it would conform its rules to the statute and received no comments. The following changes to liability periods apply to any vehicles subject to the new evaporative test requirements.

For new light-duty vehicles, evaporative emission controls must have useful lives of 10 years or 100,000 miles (160,000 km) (or the equivalent), with recall testing allowed up to 7 years or 75,000 miles (120,000 km) (or the equivalent), whichever occurs first (Clean Air Act section 202(d)(1); 42 U.S.C. 7521(d)(1)). Pursuant to section 207(i), existing designs for evaporative emission controls are not "specified major emission control components," because they cost less than $200. Therefore, unless more expensive components are utilized, manufacturers need only warrant them for 2 years or 24,000 miles (39,000 km) (or the equivalent), whichever occurs first. If, at some time in the future, the Administrator should determine that the evaporative emission controls are "specified major emission control components," manufacturers must warrant them for 8 years or 80,000 miles (130,000 km) (or the equivalent), whichever occurs first (Clean Air Act section 207(i)(2); 42 U.S.C. 7541(i)(2)).

For light light-duty trucks with loaded vehicle weight up to 3,750 pounds (1,700 kg), the defined useful life is decreased from 11 years or 120,000 miles (190,000 km) to 10 years, or 100,000 miles (160,000 km) (or the equivalent), whichever occurs first (Clean Air Act section 202(d)(1); 42 U.S.C. 7521(d)(1)). All other light-duty trucks retain a useful life requirement of 11 years or 120,000 miles (190,000 km) (or the equivalent), whichever occurs first. This change is consistent with the Agency's action to implement Tier 1 exhaust emission standards (56 FR 25724, June 5, 1991).

The only change in liability periods for manufacturers of heavy-duty gasoline-fueled vehicles is an increase in the useful life from 8 to 10 years (or the existing requirement of 110,000 miles (180,000 km), or the equivalent) for those vehicles (Clean Air Act section 202(d)(2); 42 U.S.C. 7521(d)(2)).

D. Spitback

This action institutes a vehicle test to ensure that no spitback occurs when a gasoline- or methanol-fueled vehicle is fueled at a rate of up to 10 gallons (37.9 liters) per minute. The spitback test consists of draining the vehicle's fuel tank, filling the tank to 10 percent of its nominal capacity, operating the vehicle over one UDDS, and promptly refueling the vehicle to at least 95 percent of capacity at 10 gallons (37.9 liters) per minute. Spitback emissions are measured by determining the mass of liquid fuel trapped in a plastic bag placed around the dispensing nozzle during the refueling event. A vehicle may not release more than one gram of liquid emissions. One gram of measured

emissions is considered to be a clear indicator that appreciable spitback is occurring. The small air quality benefit potentially derived from adopting a tighter standard would not justify the extra precautions and complexity needed to conduct a more precise measurement.

Heavy-duty vehicles over 14,000 pounds (6,400 kg) GVWR are typically designed with filler necks so short that fuel can be dispensed directly into the fuel tank. These vehicles would therefore not be expected to experience spitback and are exempt from spitback test requirements.

Also, to ensure that the resulting vehicle designs will be effective under in-use conditions, EPA is limiting in-use dispensing rates to a maximum rate of 10 gallons (37.9 liters) per minute. This action ensures that emissions from spitback will not occur in use, and thus will not contribute to air pollution capable of endangering public health or welfare within the meaning of Clean Air Act section 211(c). The limit applies to all retailers' and wholesale purchaser-consumers' fuel pumps for gasoline or methanol, except those dedicated to servicing heavy-duty vehicles.

In addition to achieving an environmental benefit, the control of spitback emissions through the combination of in-use dispensing rate limits and vehicle testing will have a number of secondary societal impacts, both negative and positive. On the negative side, some refuelings currently performed at higher dispensing rates will take slightly longer. A vehicle owner who currently fills a 16-gallon (61-liter) tank from empty at the maximum rate of 13 gallons (49 liters) per minute, once a week, would spend an additional 22 seconds a week refueling at the lower rate. However, most refuelings are carried out at less than 10 gallons (37.9 liters) per minute and, of those that are not, it is expected that only a small portion occur at rates as high as 13 gallons (49 liters) per minute.

Spitback control should shorten refueling times in three ways, however. These reductions will offset the increase in refueling time described above. First of all, Exxon found that 20 percent of the customers at high volume locations refuel at less-than-full flow rates because of concern over spitback.[9] This dispensing is likely performed manually and cautiously. It is reasonable to expect that essentially all of these customers will switch to full flow rate refueling when the spitback concern has been eliminated. Secondly, testing done by EPA on a representative sample of vehicles found that most vehicles exhibit spitback at fuel dispensing rates over 10 gallons (37.9 liters) per minute.[10] Thus, the majority of service station owners who depend on return customers have an incentive to keep flow rates below this level to minimize customer complaints. Vehicles designed to preclude spitback at 10 gallons (37.9 liters) per minute will eliminate uncertainty for these service station owners and prompt an increase in dispensing rates to the full 10 gallons (37.9 liters) per minute. Finally, the spitback test procedure will likely result in vehicle designs that are not prone to premature pump shutoff, due to the potential for spitback from premature shutoffs during the test. By eliminating the time wasted by premature shutoffs, this change will also tend toward faster refuelings overall.

Additional benefits are expected from a reduction in the safety hazard caused by fires involving spilled gasoline, and from a reduction in the health hazard caused by breathing gasoline vapors. Furthermore, the inconvenience and cleaning costs resulting from fuel spilling on clothing will be largely eliminated.

EPA does not believe that requiring vehicle spitback controls without concurrently adopting a dispensing rate limit is a viable option because it would not achieve the desired environmental benefit. In the absence of dispensing rate regulation, dispensing rates appear to depend on a station operator's interest in serving customers quickly, but without excessive complaints due to spitback. Vehicle designs which eliminate spitback at dispensing rates of up to 10 gallon (37.9 liters) per minute would be likely to inadvertently encourage higher dispensing rates, because station operators would be likely to set flow rates that result in the same complaint frequency they previously found acceptable. Thus spitback emissions would continue at about the same levels. Even if one were to conclude that this produces a net benefit to society from faster refuelings, EPA could not justify such action without an environmental benefit.

E. Lead Time

Section 202(k) of the amended Clean Air Act, in directing EPA to promulgate new regulations to control evaporative emissions from all gasoline-fueled motor vehicles, provides that "the regulations shall take effect as expeditiously as possible." The new evaporative test procedure is also being adopted for methanol-fueled vehicles, including flexible-fueled vehicles, pursuant to section 202(a) of the Act, which requires EPA to provide lead time as "necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Moreover, for heavy-duty methanol-fueled vehicles, section 202(a)(3)(C) also applies; this paragraph provides for a minimum of four years lead time for the implementation of new heavy-duty vehicle and engine standards being promulgated pursuant to section 202(a).

Based on EPA's assessment of lead time requirements under these statutory provisions, discussed in detail in the Final RIA for this rule, the test procedures in this action will be phased in for gasoline-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles and engines according to the schedule in Table 1. This implementation schedule will also apply to methanol-fueled light-duty vehicles and light-duty trucks. Testing with the new procedures will apply to a manufacturer's production of methanol-fueled heavy-duty vehicles and engines starting in model year 1998. These vehicles may be averaged in with other vehicles produced by the manufacturer to demonstrate compliance with the 90 percent requirement for the 1998 model year.

TABLE 1.—IMPLEMENTATION SCHEDULE

Model year	Percent of production
1996	20
1997	40
1998	90
1999	100

EPA's approach to administering the phase-in will be consistent with that of the Tier 1 exhaust emission standards (56 FR 25724, June 5, 1991). Percentage requirements are applied to a manufacturer's actual sales, or to production figures if manufacturers demonstrate that sales and production figures are equivalent.

Manufacturers may combine light-duty vehicle, light-duty truck, and heavy-duty vehicle and engine families to demonstrate compliance with the phase-in requirements. Providing this flexibility will not significantly affect emission reductions because light-duty

[9] Letter from Harry T. Gibson, Exxon Company, to EPA Air Docket, June 4, 1990 (Docket A–89–16, item IV–D–28).

[10] "Application of Onboard Refueling Emission Control System to a 1988 Ford Taurus Vehicle," EPA technical report, EPA–AA–SDSB–91–06, Tables 6 and 7, (Docket A–87–11, item IV–A–6).

vehicles and light-duty trucks have fairly similar operating and evaporative control system design characteristics, and gasoline-fueled heavy-duty vehicles comprise only a small portion of affected manufacturers' production volume. In addition, manufacturers may combine methanol-fueled vehicle and engine families with gasoline-fueled vehicle and engine families to demonstrate compliance. Small-volume manufacturers (10,000 annual units or less) may delay certification under the revised test until the 1999 model year for all of their vehicles.

The limitation on dispensing rates to 10 gallons (37.9 liters) per minute becomes effective January 1, 1996 for retailers or wholesale purchaser-consumers that handle over 10,000 gallons (38,000 liters) per month. For those with a lower volume, the dispensing limitation becomes effective January 1, 1998. For those nozzles that will need modification, the high turnover rate of nozzles and the minimal cost of the change ensure a negligible economic impact on the industry.

F. In-use Performance

The control of evaporative emissions is highly dependent on vehicle operating and environmental factors such as vehicle speed and ambient temperature. EPA recognizes, therefore, that simply passing a test procedure cannot always ensure vehicle designs that achieve good control under the in-use conditions being targeted by the Clean Air Act. Put another way, although EPA believes that the test adopted in this final rule reasonably fulfills the statutory goals, the test alone cannot be expected to yield invariable effectiveness in use.

EPA is not expecting that manufacturers will intentionally design vehicles that pass the test, but fail to perform well in use. However, in order to best meet the statutory requirement for control under ozone-prone summertime conditions, the Agency will, if necessary, make full use of existing regulations against defeat devices. Thus, EPA may deny certification upon determination that a particular evaporative control system design constitutes a defeat device (40 CFR 86.094–16).[11] EPA could also invoke the defeat device regulations in selective enforcement audit (SEA) and recall testing.

A *defeat device* is defined in 40 CFR 86.094–2 as:

> An auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless (1) such conditions are substantially included in the Federal emission test procedure; (2) the need for the AECD is justified in terms of protecting the vehicle against damage or accident; or (3) the AECD does not go beyond the requirements of engine starting.

An *AECD* is defined as:

> Any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

An *element of design* is defined as:

> Any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.

The following discussion provides examples of potential defeat devices related to compliance with evaporative emission standards.

EPA's main concern is that some purge strategies used to pass emission tests may be ineffective over a wide range of in-use driving patterns. To help preclude this, the Agency plans to evaluate purge strategies in the certification process to identify vehicle designs that, though capable of passing emission tests, may not function effectively in use. This would include designs that substantially delay purging after the start of closed-loop vehicle operation (or designs with purge increases after initiation so slow as to virtually prolong the delay). Such vehicles, when operated in short trip driving patterns frequently experienced in use, would probably not achieve good control. Likewise, EPA would examine designs which delay closed-loop operation beyond a reasonable initial warm-up period of two minutes or so. Designs that purge intermittently without justification would also be considered potential defeat devices.

EPA also will consider to be defeat devices those designs that purge at substantially higher rates during high-speed operation than during low-speed operation, such that they primarily depend on the high-speed purge to pass emission tests. Even if such designs do pass the test, they would produce potentially high evaporative emissions if designed to purge substantially less during typical nonfreeway urban driving than during the evaporative emission test on average. Also, designs that shut purge off at any time for other than safety reasons would be closely examined by EPA for possible classification as defeat devices.

Finally, since the generation of vapors from the fuel tank increases at higher temperatures, no vehicle should experience less aggressive purging of the evaporative canister with increasing ambient temperatures. Similarly, any technique used to limit fuel tank temperatures during driving should not be less effective with higher temperatures. For example, if a vehicle's recirculating fuel can be cooled by the vehicle's air conditioner components, it should not be designed to bypass the air conditioner beyond some maximum temperature.

G. Certification Testing

This action does not change the overall certification process. Manufacturers must demonstrate compliance with emission standards before EPA issues certificates. Manufacturers test light-duty emission-data vehicles (EDVs) at their facilities, and submit test data to EPA for possible certification confirmatory testing. Of course, the type of data and test procedures used to generate test data will change with this action. The following paragraphs summarize the Agency's certification and fuel economy data requirements.

For light-duty EDVs used in evaporative testing (evaporative EDVs), this action requires manufacturers to submit data to EPA according to the prescribed phase-in schedule for the full test procedure (three-diurnal sequence), the supplemental procedure (two-diurnal sequence), and the spitback test. For evaporative EDVs, exhaust emission data also must be submitted for each evaporative test sequence to demonstrate compliance with exhaust emission standards. If a vehicle model is subject to the new evaporative testing requirements, any EDVs used in exhaust testing (exhaust EDVs) representing that model must also be tested using canisters preconditioned according to one of the methods described above. EPA may perform certification confirmatory testing for exhaust emissions on those vehicles using any of the canister preconditioning methods described above, or, to reduce test burden, EPA may use the preconditioning specified in the current test. Since the current test, with less initial loading of the evaporative canister, has more lenient requirements than the new procedure, continued use of the current test for this purpose does

[11] "Prohibition of Use of Emission Control Defeat Devices," MSPC Advisory Circular No. 24, December 11, 1972.

not affect manufacturers' design requirements.

This action does not change manufacturers' data submission requirements for heavy-duty engines or heavy-duty vehicles. It will, however, require manufacturers to perform exhaust emission tests using a loaded canister for these vehicles and engines. This will require close cooperation between vehicle manufacturers and engine manufacturers, since vehicle manufacturers are responsible for meeting the phase-in schedule discussed above for both exhaust and evaporative testing. Engine manufacturers should contact the EPA Compliance Programs Branch if they are unable to determine when the new test requirements apply to their engine models (see "FOR FURTHER INFORMATION CONTACT" above).

This action does not directly impact fuel economy labeling, Corporate Average Fuel Economy (CAFE), or gas guzzler data submission requirements. Because the changes to the test procedure promulgated in this action may affect fuel economy measurements, EPA will not require use of the new procedure for fuel economy testing. Manufacturers may use either the previously established Federal Test Procedure or the test procedure established with this action to measure city fuel economy. EPA's certification confirmatory testing on each fuel economy data vehicle will use the same procedure that manufacturers use.

Current regulations require that fuel economy data vehicles comply with applicable exhaust emission standards (40 CFR 600.007–80(b)(4)). Compliance with exhaust emission standards for fuel economy data vehicles may be demonstrated with either the current test, or with the test procedures promulgated in this final rule. In a future action, the Agency may require that fuel economy and all emission testing be done with the test procedure promulgated in this final rule.

EPA reserves the right to conduct certification confirmatory testing on any vehicle using any test procedure or test condition allowable under the regulations. Further, EPA may truncate a test procedure after any emission measurement, such as the measurement of exhaust, running loss, or hot soak emissions. (Implicit in truncating testing in this way is the recognition that portions of testing can yield valid data, even if the test sequence is not run to the end, and similarly, that if a vehicle fails a part of EPA's test, the test need not be run to completion for that result to be valid.) Also, if EPA conducts the three-diurnal test sequence, emissions from the running loss test need not be measured to continue with hot soak and diurnal emission tests, provided that EPA meets all of the specifications of the running loss test unrelated to emission measurement. Durability demonstrations should be completed using the appropriate new test procedures (i.e., evaporative vehicles run using both the two-diurnal and three-diurnal test sequences and exhaust durability vehicles run with one consistent canister preconditioning method for all tests on a vehicle). For vehicles that have established durability data with the current test procedure (with less canister preconditioning), EPA will evaluate requests for carryover of exhaust deterioration factors on a case-by-case basis, consistent with established policy.

H. In-use and Assembly Line Testing

This action also does not contain any major changes to the Agency's practices for in-use or assembly line testing. EPA tests newly assembled vehicles and heavy-duty engines at manufacturing facilities in a selective enforcement audit. EPA tests vehicles and heavy-duty engines from the in-use fleet for the recall program.

In the SEA program, EPA will evaluate exhaust emissions, using either the current test procedure or the test procedures in this final rule, for light-duty vehicles, light-duty trucks, and heavy-duty engines. SEA testing involves no measurement of evaporative emissions, consistent with current policy, due to the concern that nonfuel background emissions from new vehicles will interfere with the evaporative emission measurement. EPA may specify the test procedure and corresponding canister preconditioning method to be used when testing exhaust emissions from SEA vehicles or engines. EPA may require SEA testing of heavy-duty engines with a loaded canister of any size that may be reasonably expected to be installed in in-use applications. Additionally, EPA may require that spitback testing be performed on SEA vehicles which are subject to the spitback requirements.

In the recall testing program, all test requirements for certification will apply. Specifically, EPA may test light-duty vehicles, light-duty trucks, or heavy-duty vehicles for evaporative emissions with the full three-diurnal test sequence or the supplemental two-diurnal test sequence. The Agency expects, however, to depend primarily on the two-diurnal sequence to test in-use vehicles for evaporative emissions, because it provides an adequate evaluation of system performance with a much smaller burden on Agency resources. Vehicles must meet exhaust emission standards when tested with either test sequence for evaporative emissions. As in certification, EPA may truncate a test procedure after any emission measurement, such as the measurement of exhaust, running loss, or hot soak emissions. As noted above, there is no valid technical reason not to use data from completed portions of the test, provided the test is conducted properly up to that point. Also, if EPA conducts the three-diurnal test sequence, EPA reserves the right to measure evaporative emissions only from the hot soak and diurnal emission tests, and not from the running loss test, provided that EPA meets all the specifications of the running loss test unrelated to emission measurement. Invalidation of an evaporative emission measurement will not necessarily result in invalidation of exhaust emission measurement, and vice versa (provided all specifications related to the valid measurement are met). EPA may also conduct recall testing for vehicle spitback.

Recall testing for exhaust emissions will also be consistent with certification requirements. EPA may test any light-duty vehicles, light-duty trucks, or heavy-duty engines for exhaust emissions, using any of the preconditioning procedures described above. EPA may also test vehicles for exhaust emissions using the current procedure, which utilizes a one-hour heat build to load the evaporative canister before the exhaust emission test; this represents a more lenient test requirement, as described above, and provides more flexibility for Agency testing without compromising the test's value. Finally, EPA expects to test gasoline- or methanol-fueled heavy-duty engines with evaporative canisters that have been loaded with butane or fuel vapors.

EPA expects to use the vehicle or engine data submitted by manufacturers (during certification) throughout the vehicle's useful life, i.e., in all testing for certification, SEA, and recall. Thus, EPA expects to use fuel temperature profiles submitted by manufacturers at certification for the whole life of the vehicle, unless EPA develops its own profile for a test vehicle. Similarly, EPA expects to use the canister working capacities submitted by manufacturers (during certification) to determine the appropriate canister loading for certification, SEA, and recall testing, unless EPA separately determines a canister's working capacity.

The Agency may measure running losses with the point-source or the

enclosure method, but expects to depend primarily on the enclosure method when using the three-diurnal test for recall programs. As explained in the Final RIA, this method is better able to measure any emissions from unexpected sources in the vehicle.

EPA will in all cases discontinue the current practice of performing additional vehicle preconditioning before conducting an initial test for recall. Manufacturers requested the additional preconditioning to correct for excessively loaded in-use canisters, caused by unusual vehicle usage, or by in-use fuels with much higher volatility than that of test fuels. This rule specifies that the evaporative canister start the test in a fully loaded condition. Also, EPA's action to control in-use fuel volatility should minimize the possibility that in-use fuels would cause any unrepresentative loading of the evaporative canister (55 FR 23658, June 11, 1990).

Manufacturers have expressed concerns that use of oxygenated fuels prior to testing may increase the permeability of some fuel system components, or otherwise increase evaporative emissions. However, gasoline containing oxygenated compounds is commercially available for in-use vehicles, several blends either having been found "substantially similar" or having been granted waivers under section 211 of the Clean Air Act. Operation of in-use vehicles with these legal fuels cannot be considered improper maintenance or use. While EPA will continue to use the specified test fuel during compliance testing (including certification, SEA, and recall), manufacturers should take into account any effect on evaporative emissions resulting from the use of legally available fuels through appropriate material selection and component or vehicle design, so that properly used and maintained in-use vehicles will meet emission standards. Moreover, past use of illegal fuels would not, in itself, be adequate cause to invalidate a test. Manufacturers must demonstrate that illegal fuels had a lasting effect on a test vehicle's emission performance. For example, if a vehicle were fueled with gasoline exceeding volatility standards prior to procurement for testing, that vehicle would not be exempt from testing.

III. Public Participation

EPA has benefitted from extensive public participation throughout this rulemaking. Comments from participants have led to major revisions in EPA's proposed test procedures. EPA has fully considered all of the comments and has modified the proposed procedures to reflect many of the suggestions received. The following discussion focuses on the key issues: The method of conducting diurnal heat builds and the sequencing of test segments. For a thorough treatment of other issues raised by commenters, the reader is referred to past notices published in the **Federal Register**, referenced in section I, and to the Final RIA available in Docket A–89–18.

A. Diurnal Emission Test

The generation of vapors from diurnal heating is a straightforward phenomenon that can be simulated for laboratory testing. When a vehicle is not driven but is exposed to outdoor conditions, its fuel temperature follows daily ambient temperatures. The increase in fuel temperature causes evaporation of liquid fuel, driving fuel vapors from the tank. The current test method, a rapid, direct heating of the fuel from an initial to a final temperature, is a simple procedure that simulates the actual diurnal heat build. Over the course of the rulemaking the Agency has considered various changes that would not only make the test more representative of actual conditions, but also increase the sophistication of the simulation.

EPA Proposal

In the January 1990 NPRM, EPA proposed to conduct heat builds with the conventional method of directly heating the fuel tank. The test procedure that EPA proposed at the time of the January 1992 workshop included the new diurnal test method advocated by GM and adopted by CARB, in which the whole test vehicle would be exposed to ambient temperatures cycled in three 24-hour periods ("real time").

Summary of Comments

GM promoted its method of slowly heating the whole vehicle primarily as a better way of duplicating a vehicle's outdoor experience, thereby improving the accuracy and repeatability of test results. Other automakers largely agreed with GM. Achieving harmony with CARB, which adopted the real time method, was also cited by these commenters as a reason for using real time testing.

Analysis of Comments

The Agency is adopting the approach recommended by industry, although EPA believes that full 24-hour temperature cycling may not be necessary for an effective diurnal emission test. Conducting the diurnal emission test either by directly heating the fuel tank in one or two hours, or by exposing the vehicle to an accelerated temperature-cycling process, would be adequate to prompt the changes in vehicle designs necessary to improve in-use performance. In contrast, real time testing for diurnal emissions is more complex and facility-intensive, and would likely yield no substantial additional improvement in vehicle design above that achieved by directly heating the fuel tank. On the other hand, the real time test is fully capable of prompting the improved control of evaporative emissions desired by the Agency and required by section 202(k) of the Clean Air Act. Also, any possible emission sources that may not currently be identified would more likely be measured and controlled with the real time test. EPA therefore has no technical objection to real time testing for diurnal emissions. Based on the broad support for this method and EPA's desire to achieve consistency with CARB's test procedure (where that procedure satisfies the section 202(k) requirement), EPA considers real time testing to be an acceptable method for diurnal emission measurement.

B. Sequence of Test Segments

EPA Proposal

The test sequence described in the December 1990 **Federal Register** notice established the driving time between the canister loading and the diurnal emission test at about 30 minutes, the amount driven during the exhaust emission test (Figure 2). This test sequence involved canister loading just before the exhaust emission test, which was in turn followed by the diurnal emission test. A new running loss test was added at the end of the test sequence, not affecting the driving time before the diurnal emission test.

EPA's proposed test sequence was different than that finalized by CARB. CARB's adopted procedure included a 70-minute running loss test between the exhaust and diurnal emission tests, allowing a total of approximately 100 minutes of driving for vehicles to purge their canisters.

Summary of Comments

Manufacturers objected to EPA's proposal, arguing primarily that the proposed test sequence, compared to in-use driving patterns, represented a rare and rather extreme scenario of vehicle operation. Manufacturers claimed that because the specific drive-park sequence represented in the test would so rarely happen in real driving, EPA's approach was invalid. They reinforced their position with the observation that

EPA's MOBILE model estimates that vehicles from the in-use fleet average approximately 30 miles (48 km) of driving per day, much more than the 11 miles (18 km) of driving for the exhaust emission test.[12] Most auto manufacturers recommended that EPA adopt CARB's test procedure.

After considering EPA's technical objections to its procedures, however, CARB acknowledged that its procedure could lead to inadequate purge during short trips. In a March 1992 letter, CARB thus stated,

> As written, the [CARB] procedure may not necessarily ensure adequate purge during short trips, and canister saturation is a possibility. This could occur even on a vehicle which would pass the ARB procedure. ARB and Environmental Protection Agency (EPA) analyses have confirmed significant in-use emissions benefits from requiring adequate purge during the exhaust testing portion of the current test.[13]

To address these concerns, CARB suggested in the same letter adding one of two alternative methods to verify purge during the exhaust emission test. In the first method, purge airflow would be measured and compared with a similar measurement during the running loss test to verify a consistent purge rate. In addition, the change in canister mass during the exhaust emission test would be measured to ensure that approximately 70 percent of the canister's working capacity before breakthrough had been made available. In the second method, CARB would conduct a special test with two diurnal heat builds directly following the exhaust emission test. CARB proposed that these additional test requirements would apply to certification and, potentially, in-use testing. In addition, CARB identified the possibility of adopting EPA's proposed test sequence if its other proposed changes were found not to be viable.

Auto manufacturers had varying responses to CARB's proposed approaches. Some argued that current language in EPA rules that prohibits defeat devices would be effective in ensuring sufficient purge under CARB's adopted test. These manufacturers suggested a requirement to state at certification that they had employed no defeat devices in designing their purge strategy.

Manufacturers opposed CARB's suggestion of weighing canisters during a test run. They commented that such an operation could jeopardize the repeatability, reliability, and validity of test results because of the need to remove and handle components of a vehicle's emission control system.

Commenters who did not object outright to the idea of a purge-verification strategy generally supported the concept of measuring purge airflow. These commenters noted that measuring purge airflow would be the least burdensome strategy, and would give a direct measure of purge behavior. Various formulas for specifying a purge requirement were discussed.

Ford and Chrysler came forward with nearly identical approaches for a potential compromise, consistent with CARB's proposed option for a special two-diurnal test to ensure sufficient purge in short-trip driving patterns.[14,15] Ford and Chrysler recommended that EPA finalize CARB's adopted procedure, with minor modifications, for certification testing. For recall testing, they suggested an abbreviated test, consisting of the preconditioning and exhaust emission test, followed by a moderate-temperature hot soak test, and two diurnal heat builds. Since Ford and Chrysler offered no explanation of the differences for recall and certification testing, EPA understands that they were merely responding to EPA's desire to adopt an enforceable in-use test that would ensure adequate purge rates. The standard for recall testing would be 2.5 grams for vehicles with fuel tank capacity less than 30 gallons (110 liters), and would allow for exclusion of nonfuel emissions. Vehicles with larger fuel tanks would be subject to a 3-gram standard. No explanation of the basis for these relaxed standards was stated.

GM opposed the use of any alternate emission measurement to verify purge.[16] GM claimed that the alternate procedures under consideration would overburden the industry and increase the severity of the full evaporative test procedure. GM claimed, though without explanation, that an alternate emission measurement, with the existing 2-gram standard, would increase the overall purge requirement by 25 percent—with no air quality benefit.

Several commenters recommended a streamlined version of CARB's adopted procedure to facilitate EPA's in-use testing (e.g., see GM's March 23, 1992 letter, page 11). Commenters suggested driving through the running loss test without measuring evaporative emissions to avoid installation of thermocouples and to prevent the need for running loss measurement facilities. Significant fuel heating (and thus vapor generation) would be prevented by holding ambient temperatures at 80 °F (26.7 °C) and circulating air around the fuel tank.

Analysis of Comments

After considering all of the comments, EPA still believes that CARB's adopted test procedure, by allowing 100 minutes of driving time to purge the evaporative canister, does not ensure effective emission control. Most importantly, the majority of the driving time, and therefore purging time, in CARB's test occurs when there is no measurement of exhaust emissions. Vapors purged from the canister during the running loss test could simply pass unburned out the vehicle's tailpipe as exhaust emissions, without detection. CARB's test sequence thus gives manufacturers an important incentive to minimize the amount of purge during the early part of the test's driving time, when exhaust emissions are measured. An inadequate purge requirement would result in reduced evaporative control effectiveness for vehicles experiencing mostly short trips, and could also cause increased exhaust emissions in use, compared to current vehicles.

In addition, CARB's adopted procedure would be very difficult to use as the exclusive test for in-use enforcement for three reasons. First, CARB's adopted procedure would require that a full running loss test be conducted before every diurnal emission test. EPA believes that the diurnal emission test is of primary importance in verifying the key parameters of canister purge and storage capacity. EPA expects that the resource-intensive running loss test can be reserved for vehicle designs with higher vapor loads to the engine, such as those with high fuel temperatures during driving. CARB's adopted test would remove this flexibility, and would require a greater investment in running loss facilities, significantly increasing the cost and effort of testing. Second, some of CARB's running loss test specifications are very difficult to maintain, increasing the likelihood of invalid tests. This would also apply to certification confirmatory testing. Third, in-use vehicles would likely need to have fuel tanks removed for installation of thermocouples for the running loss

[12] The series of MOBILE models is used to characterize the emission behavior of the in-use fleet and to estimate the effectiveness of various control programs.

[13] CARB Mail-Out #92–13, March 6, 1992 (Docket A–89–18, item IV–D–84).

[14] Letter from Gordon E. Allardyce, Chrysler Corporation, to Docket A–89–18, March 23, 1992 (item IV–D–76).

[15] Letter from Donald R. Buist, Ford Motor Company, to Richard D. Wilson, EPA, March 27, 1992 (Docket A–89–18, item IV–D–77).

[16] Letter from Samuel A. Leonard, General Motors, to Richard D. Wilson, EPA, March 23, 1992 (Docket A–89–18, item IV–D–78).

test. Thermocouple installation is a time-consuming procedure, and may call into question the validity of test results if installation affects the integrity of the vehicle's emission control system.

EPA believes that its proposed test, with three diurnal heat builds following the exhaust emission test, is a feasible requirement that would achieve good in-use control. EPA has evaluated the emission benefits of its proposed test sequence relative to CARB's (described further in Section V below). This evaluation is described in a draft technical report and was the subject of the January 1992 public workshop.[17] The draft report concluded (as noted above) that CARB's test had so much driving time before the diurnal emission test that manufacturers could substantially delay purging.

Refinements made to the analysis, documented in the Final RIA for this rule, only reinforce that concern. If vehicles designed for CARB's adopted test delay purging, in-use emissions may actually increase from current levels, contrary to the requirements of Clean Air Act section 202(k) (or section 202(a) for methanol-fueled vehicles). The analysis shows that these vehicles would perform poorly in use, because many in-use driving patterns involve short trips with less driving time than is present in CARB's adopted test procedure. In comparison, the analysis shows that vehicles designed to pass EPA's proposed test sequence with three diurnal heat builds would almost completely control emissions for a wide range of in-use driving patterns.

EPA has, however, made a concerted effort to achieve common test requirements for federal and California-only vehicles, within the constraints of its legal obligation under section 202(k) of the Act. EPA has considered possible modifications to the CARB procedure to ensure effective in-use emission control, while addressing manufacturers' expressed concerns about the relative stringency and associated costs of test options, and the desirability of avoiding the expense and administrative complication of maintaining different federal and California-only tests. The following discussion evaluates the various proposed or suggested modifications to CARB's test.

Merely relying on existing requirements aimed at preventing defeat devices, as suggested by some commenters, is insufficient to ensure adequate emission control. Most participants, including CARB (particularly in its March 6, 1992 letter), have acknowledged that CARB's adopted test sequence allows manufacturers flexibility that could result in poor in-use performance. Defeat device regulations rely on a subjective evaluation of designs to identify possible defeat devices. As much as possible, the test itself should ensure effective in-use performance and so avoid the need for such subjective inquiries. Moreover, this is the Agency's legal mandate under section 202(k).

The various suggested improvements to CARB's adopted test sequence are also not satisfactory. Measuring a change in canister mass during the exhaust emission test is an inappropriate way to verify purge during short trips. Any requirement for a change in canister mass would effectively be a design standard, because it would dictate requirements for certain vehicle components rather than demonstrating the vehicle's performance to an emission standard. EPA strongly prefers performance standards over design standards because design standards can unnecessarily constrain manufacturers' design options, and may not be effective in improving in-use performance in that they may not address possible unforeseen mechanisms by which emissions occur. Also, the removal of a canister to determine its mass change would involve an unnecessary intrusion into the control system, both before and after the exhaust emission test.

Measurement of purge airflow is also an inappropriate way to verify purge. Requiring some specified distribution of purge in different driving conditions would effectively be a design standard, and therefore not a preferred alternative for the reasons just noted. Also, there is an enormous degree of latitude in defining the criterion for acceptable purge distribution, so that setting such a criterion would require a subjective evaluation of what constitutes an optimum strategy, to the exclusion of other reasonable strategies. The nature of design standards virtually ensures that any such criterion would either be ineffective in ensuring in-use emission control, or would unnecessarily restrict manufacturers' flexibility in vehicle design, or both. EPA believes the goals of establishing an effective, yet nonrestrictive purge flow criterion are irreconcilable, as evidenced by the fact that CARB has been unable to reach an agreement with manufacturers. Measurement of purge airflow may also require temporary, intrusive vehicle modifications that could impact vehicle evaporative emissions and call into question the test results.

Manufacturers' suggestions to perform the running loss segment of the test without measuring emissions, in order to increase testing capacity, does not address EPA's primary concern: that manufacturers would minimize purge rates during the exhaust emission test. In fact, removing the vapor generation component from the running loss test by holding the vehicle and its fuel at low nominal temperatures would only increase the incentive for manufacturers to delay substantial purge until the running loss test.

A special test measuring vehicle emissions from two diurnal heat builds immediately after the exhaust emission test is the only suggested modification to CARB's test procedure that addresses EPA's need for assurance of adequate purge. This assurance comes from the fact that such a test measures emissions following a relatively short amount of driving, as is common in use. Measuring emissions is necessary to establish a performance standard, and to prevent the need for any intrusive measurement of secondary variables such as canister mass or purge airflow. A supplemental procedure could verify sufficient purge for short trips without being more stringent overall than the full three-diurnal test. Such a procedure would only change the overall test requirements for vehicles that are indeed insufficiently purging early in the test.

In addition to verifying adequate purge, a supplemental test procedure is also the best way of dealing with EPA's other concerns regarding CARB's test. The simpler supplemental procedure measures the performance of vehicles' evaporative emission controls with much lower resource requirements than the full sequence. Also, the supplemental procedure can prevent the possibility of a significant increase in exhaust emissions by ensuring that exhaust emissions are measured while the canister is being purged.

EPA thus considers the fundamental elements of the alternate procedure suggested by CARB, and developed further in the Ford and Chrysler comments, to be effective and reasonable. The approach taken in defining this procedure helps to ensure that it does not introduce challenges to vehicle designers beyond those already imposed by the three-diurnal test, except for ensuring that vehicles can purge effectively to control evaporative emissions. For example, eliminating a diurnal heat build, initially loading the evaporative canister only to breakthrough, measuring a moderate-

[17] "Emission Evaluation of the GM Real Time Evaporative Test Procedure," draft EPA report by Julie Hayden, September 25, 1991 (Docket A–89–16, item III–B–2).

temperature hot soak, and increasing the standard from 2 to 2.5 grams all contribute significantly to making the supplemental procedure effective in its limited objective of ensuring proper purge without requiring additional design modifications (such as increased canister size). Also, EPA believes that the vehicle hardware that would be needed to meet the test requirements proposed in EPA's January 1990 NPRM (e.g., canisters, purge valves) will be sufficient to meet the requirements of the supplemental test.

The supplemental test procedure would not in itself provide assurance that a vehicle could meet all requirements of the longer three-diurnal test. For example, there is no measurement of running losses and the final diurnal heat build is omitted in the supplemental test. Thus, the supplemental procedure is not a replacement for the three-diurnal test. However, the opportunity for EPA to run the longer test, in both confirmatory certification and in-use testing, provides the necessary assurance that vehicle designs will achieve optimum control.

Because neither test sequence is sufficient in itself to demonstrate adequate control of evaporative emissions, manufacturers would have to perform certification testing using both sequences. Reserving the supplemental test only for EPA's testing of in-use vehicles, as suggested by Ford and Chrysler, would therefore be inappropriate. EPA recognizes that this adds some testing burden to the certification process. However, the record established in the docket for this rulemaking makes it amply clear that the industry views consistency with CARB's requirements (with potential implications for vehicle designs and costs) to be of more critical importance than minimizing test burden for federal testing. A test based on the CARB procedure, with the addition of the supplemental test, deals with manufacturers' concerns and, because it allows EPA to meet statutory requirements, is acceptable to EPA.

In conclusion, CARB's test sequence, with the essential addition of the supplemental test to verify adequate purge, is an acceptable procedure for controlling evaporative emissions. There is also substantial consensus to use this approach in achieving the statutory objectives, rather than using EPA's proposal. Thus, unlike the previous EPA proposals, the basic elements of the test procedure finalized in this action are supported by a segment of the industry. CARB also views this approach favorably. The CARB staff has expressed its willingness to recommend the adoption of this approach to the Air Resources Board following action by EPA.[18] This should achieve the consistency of regulations sought by all parties involved in this rulemaking, and still achieve optimized control of evaporative emissions as required by sections 202(k) and 202(a) of the Act.

IV. Remaining In-use Concerns and Options for Further Action

EPA is concerned about manufacturers' potential reliance on pressurized fuel tanks to control evaporative emissions. In the January 1990 NPRM, EPA proposed to remove fuel caps during the hot soak test to discourage the use of high pressures in fuel tanks (55 FR 1914). Industry strongly opposed the provision to remove the fuel cap. EPA has not yet determined the best way to resolve this issue. Rather than delay current action, EPA is separating the issue of pressurized fuel tanks for future study and possible action.

More stringent exhaust and evaporative test requirements may increase the incentive for manufacturers to use pressurized tanks to contain fuel vapors. The pressure limit described in section II above prevents fuel emissions when a vehicle's fuel cap is removed, but does not disallow high pressures. Moreover, vehicles using pressurized systems may be more likely to fail with age. Failure to hold pressure may be caused by a loss of integrity of fuel caps, vapor lines, or several other fuel system components. High fuel tank pressures could also be a safety hazard.

Because failures result in such high emission rates, these vehicles could dominate the fleet's contribution to the evaporative VOC emission inventory—even as a minority of the in-use fleet. Test results from the inspection and maintenance lane in Hammond, Indiana, obtained by Automotive Testing Labs (ATL), show that about 15 percent of in-use vehicles do not hold pressure.[19,20] Summer diurnal emissions for these vehicles would be in the range of 20 to 30 grams per day (approximately 1 g/mi (0.6 g/km) equivalent on average); running losses could reach as high as 10 g/mi (6 g/km) (according to testing at ATL). In contrast, properly operating vehicles should be emitting less than 0.25 g/mi (0.16 g/km) of exhaust emissions, and 0.05 g/mi (0.03 g/km) of running losses.

To avoid these high emission rates, vehicles would need either to prevent failures or to rely on low-pressure systems. Manufacturers could take steps to increase the durability of in-use systems. Alternatively, manufacturers could avoid a buildup of pressure in the fuel tank. An unpressurized system could avoid high emission rates even if there were some loss of system integrity, because the fuel vapors would have a very low-resistance path from the fuel tank to the evaporative canister. Recall testing, inspection and maintenance programs, and onboard diagnostics can also be expected to impact this problem, but they deal primarily with finding and correcting such vehicles after the problems occur.

EPA intends to continue work on issues arising from this rulemaking by holding a public workshop, to be announced in a future **Federal Register** publication. The Agency intends to present specific proposals to deal with the problems associated with pressurized fuel tanks. EPA may at that time also deal with any other in-use concerns that have arisen since the initial proposal.

V. Environmental and Economic Impacts

EPA has done extensive modeling to evaluate the expected reductions in VOC emissions associated with this rule. EPA has also quantified the costs and calculated the cost-effectiveness involved in achieving the estimated benefits. These analyses, described in detail in the Final RIA, are summarized below.

Throughout the development of this final rule, EPA's intent regarding emission control performance and air quality improvements has been consistent. There is no substantial change in EPA's estimates of the environmental or economic impacts of this rule. The costs and benefits described below, while responsive to comments received, do not represent any fundamental change from previous estimates shared with the public.

A. Environmental Impact

Baseline emission levels are estimated on a per-vehicle basis using recently developed projections from MOBILE5. Projections are made for the year 2020 in order to provide benefit predictions for a fully turned-over fleet and to factor in other known trends, such as the effects of other new Clean Air Act programs. These new programs include

[18] Letter from Thomas Cackette, CARB, to Charles L. Gray, EPA, September 15, 1992 (Docket A–89–18, item IV–D–88).

[19] "I/M Costs, Benefits, and Impacts," EPA, November 1992, Appendix A, pg 31 (Docket A–91–75, item V–B).

[20] "Supplement A to AP–42 Volume II: Compilation of Mobile Source Emission Factors," January 1991, NTIS Accession No. PB 91 167692, page H–10.

high-technology inspection and maintenance and reformulated gasoline. Reformulated gasoline achieving a 25 percent overall VOC emission reduction standard is assumed to be used in 40 percent of the nation. This coverage level corresponds to the nine cities specified in the Clean Air Act, all of California, several areas that are likely to opt in to the Clean Air Act program, and some additional areas that will be included due to the spillover of fuel distribution systems.

As indicated in Table 2, the baseline evaporative emission level projected in MOBILE5 for light-duty vehicles (LDVs) is 0.63 g/mi (0.39 g/km). The corresponding projection for vehicles designed to meet the new evaporative control requirements is 0.23 g/mi (0.14 g/km), a reduction of 0.40 g/mi (0.25 g/km). Emission estimates for light-duty trucks (LDTs) and heavy-duty vehicles (HDVs) are also summarized in Table 2. Overall, MOBILE5 estimates that average motor vehicle VOC emissions will be reduced from 1.67 g/mi (1.04 g/km) to 1.32 g/mi (0.82 g/km) as a result of the new evaporative test procedure.

TABLE 2.—EVAPORATIVE EMISSION REDUCTIONS IN G/MI (G/KM)

	LDV	LDT	HDV
Baseline	0.63 (0.39)	0.45 (0.28)	2.98 (1.85)
Post-control	0.23 (0.14)	0.20 (0.12)	1.94 (1.21)
Net reduction	0.40 (0.25)	0.25 (0.16)	1.04 (0.65)

In terms of total VOC reductions, EPA estimates that implementation of the new evaporative emission test procedure will result in emission reductions from light-duty vehicles, light-duty trucks, and heavy-duty vehicles of 710,000, 240,000, and 170,000 metric tons of VOC, respectively, in calendar year 2020. This is a total of 1,120,000 metric tons, representing a 20 percent reduction in the annual motor vehicle VOC emission inventory.

In addition to the modeling performed with MOBILE5, EPA has done extensive modeling of in-use evaporative emissions. The model, documented in the Final RIA to this rule, uses a database of in-use driving patterns to estimate evaporative emissions over a wide range of drive and park combinations. This supplemental modeling recognizes that fleet-averaged driving patterns, such as those inherent in the MOBILE5 methodology, may not provide a clear picture of the emission contribution of the vehicles that experience atypical driving patterns, such as those that make only short trips or that park for long periods.

The results of this modeling support EPA's position that vehicles designed to CARB's adopted test could have very high in-use emissions if manufacturers substantially delayed canister purging at the beginning of a trip. The current results reinforce the findings of the modeling presented at the January 1992 workshop. The modeling indicates that the addition of the supplemental test sequence, as described above, provides assurance that vehicles will be designed to perform well under in-use driving conditions. In fact, the results show that the test procedure finalized in this action, by protecting against excessive purge delays, will provide air quality benefits very near those projected for the last EPA proposal.

B. Economic Impact

Cost estimates from the January 1990 NPRM have been updated to reflect modifications to test requirements, further technological developments, and inflation. These changes are described in detail in the Final RIA for this rule and are summarized below.

Vehicles will require new or upgraded components to comply with the new test requirements. Larger evaporative canisters are estimated to add about $3 to a light-duty vehicle's sale price, in 1992 dollars. Purge valves will be larger and more complex ($1). Materials for nonmetallic components of the fuel system will need improved resistance to fuel permeation ($1). Some vehicle designs may need some modification to reduce fuel temperatures during driving to reduce running losses. Auto manufacturers will incur additional costs for research, testing, and capital investment in test facilities. Total light-duty vehicle costs, in retail price equivalent, are estimated to average $10 per vehicle. EPA expects similar changes for light-duty trucks and heavy-duty vehicles, resulting in total per vehicle costs of $13, and $11, respectively. The Agency views these costs as reasonable and further believes that these costs will not impede the reasonable availability of evaporative emission control technology, within the meaning of section 202(k) of the Clean Air Act. The Agency also views these costs to be reasonable for methanol-fueled vehicles for purposes of section 202(a) of the Act.

Manufacturers have estimated the cost of compliance with the CARB procedure, upon which the procedure in this final rule is based, to be approximately $100 per vehicle. Only GM gave any justification for its estimate, claiming the need for "a larger canister, running loss control by thermal management techniques, and a 'smart purge' system." [21] No other detail was provided to justify this figure. GM said it would need more hardware to meet the more stringent requirements of EPA's proposed procedure, for a total cost of $200. This latter estimate is no longer relevant because this action does not adopt EPA's proposed procedure. EPA believes the lower estimate of $100 greatly overestimates costs. As described in the Final RIA and summarized above, a limited number of components need fairly inexpensive modification. Although manufacturers provided cost estimates differing markedly from EPA's estimates (with little or no substantiation), EPA has received little comment on its detailed analysis of the extent and cost of the necessary vehicle modifications.

The increased cost to the consumer is offset by an increase in fuel economy. Containing the evaporated fuel allows it to be burned in the engine to power the vehicle. Total savings over the life of a vehicle, discounted to the year of sale and expressed in 1992 dollars, are estimated to be $9, $5, and $24 for light-duty vehicles, light-duty trucks, and heavy-duty vehicles, respectively. This results in net costs to consumers of near zero over a vehicle's lifetime, as summarized in Table 3.

TABLE 3.—COST SUMMARY

[Net present value in year of sale, in 1992 dollars]

	LDV	LDT	HDV
Cost to manufacturer	$8	$11	$9
Cost to consumer	10	13	11

[21] Letter from Samuel A. Leonard, General Motors, to Richard D. Wilson, EPA, March 23, 1992 (Docket A–89–18, Item IV–D–78).

TABLE 3.—COST SUMMARY—Continued

[Net present value in year of sale, in 1992 dollars]

	LDV	LDT	HDV
Net Fuel savings	9	5	24
Net cost to consumer ..	1	8	−13

Assuming that 10 to 15 million vehicles requiring improved evaporative controls are sold per year, and conservatively using the light-duty truck costs of $13 per vehicle, EPA estimates an annual total program cost of $130 to 200 million. This estimate does not include the offsetting fuel savings.

C. Cost-effectiveness

Comparing benefits and costs yields an estimated overall cost-effectiveness of this action. Future emission reductions are discounted at a ten percent annual rate to calculate a vehicle's cumulative emission reductions in present terms.

The discounted lifetime total emission reductions are 26, 16, and 68 kg of VOC for light-duty vehicles, light-duty trucks, and heavy-duty vehicles, respectively. Dividing the consumer costs in Table 3 by benefits gives cost-effectiveness figures of $380, $810, and $160 per metric ton for light-duty vehicles, light-duty trucks, and heavy-duty vehicles, respectively, and an overall weighted average cost-effectiveness (based on projected vehicle registrations) of $500 per metric ton.

These figures are conservative in that they do not factor in the cost savings over the lifetime of the vehicle caused by improved fuel economy. Applying these fuel consumption credits (Table 3) results in an overall cost-effectiveness of $170 per metric ton.

Even considering GM's cost estimate of $100 per vehicle, which was insufficiently substantiated, the cost-effectiveness would be $3,800 per metric ton for light-duty vehicles.

VI. Energy and Safety Issues

The Clean Air Act also requires EPA to consider energy and safety factors associated with the vehicle technology resulting from the enhanced test procedure for evaporative emissions (Clean Air Act section 202(k) (42 U.S.C. 7521)).

All the control measures described above promote conservation of energy, since they reduce fuel loss from evaporation. By containing fuel vapors inside the fuel system and burning them as fuel in the engine, vehicles will be more fuel efficient. This conservation of fuel for the motor vehicle fleet represents a net benefit to society and reinforces the justification for the changes promulgated in this action.

With respect to safety, the changes to test procedures promulgated by this action do not require any fundamental change in vehicle design. EPA expects vehicle manufacturers to upgrade their systems by increasing the size of their evaporative canisters, by adjusting the strategy for purging vapors from the canister, and by decreasing in-tank fuel temperatures. No data or comments have been submitted to the public docket for this rulemaking (A–89–18) suggesting negative impacts on safety as a result of the proposed action.

As part of the rulemaking activity for onboard refueling vapor recovery (EPA Docket A–87–11), various groups raised the concern that evaporative emission controls on current vehicles carry some safety risk. However, when questioned, auto representatives stated that removing current evaporative control technologies would create more safety problems than currently existed.[22]

Furthermore, this rule adds tangible safety benefits, by preventing spitback during refueling and reducing fuel tank temperatures during driving.

VII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

The Administrator has determined that this action is a major regulation, under the provisions of Executive Order 12291. Accordingly, EPA has completed a Regulatory Impact Analysis of issues pertinent to this action. The analysis is titled Final Regulatory Impact Analysis and Summary and Analysis of Comments: Control of Vehicular Evaporative Emissions. The analysis is available in Docket A–89–18 as item V–B–1; a limited number of individual copies are also available through Mr. Alan Stout (see **FOR FURTHER INFORMATION CONTACT** above).

This regulation was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this rule (ICR number 783.24) have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

The increased public reporting burden for this collection of information is estimated to average 1,900 additional hours per manufacturer, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA, 401 M St., S.W. (PM–223–Y); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Regulatory Flexibility Act

The Regulatory Flexibility Act requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

EPA has determined that the test requirements for motor vehicles in this final rule will not have a significant impact on a substantial number of small entities. Small manufacturers have been granted a delayed phase-in of test requirements.

Many small entities must comply with the limitations on the in-use fuel dispensing rate. The long lead time, especially for small-volume facilities, is adequate to comply with the new requirement with the normal turnover of dispensing nozzles. Compliance with this regulation will have a negligible effect on most entities.

Therefore, to meet the requirements of section 605 of the Regulatory Flexibility Act 5 U.S.C. 601 *et. seq.*, I certify that this regulation does not have a significant adverse impact on a substantial number of small entities.

VIII. Judicial Review

Under section 307(b) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements that are the

[22] Transcript of public hearing held on September 26 and 27, 1991, volume I, page 230 (Docket A–87–11, item IV–F–19).

subject of this notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 80

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicle pollution.

40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: January 20, 1993.

William K. Reilly,

Administrator.

Figures to Preamble

BILLING CODE 6560-60-P

Figure 1
Evaporative Emissions Test

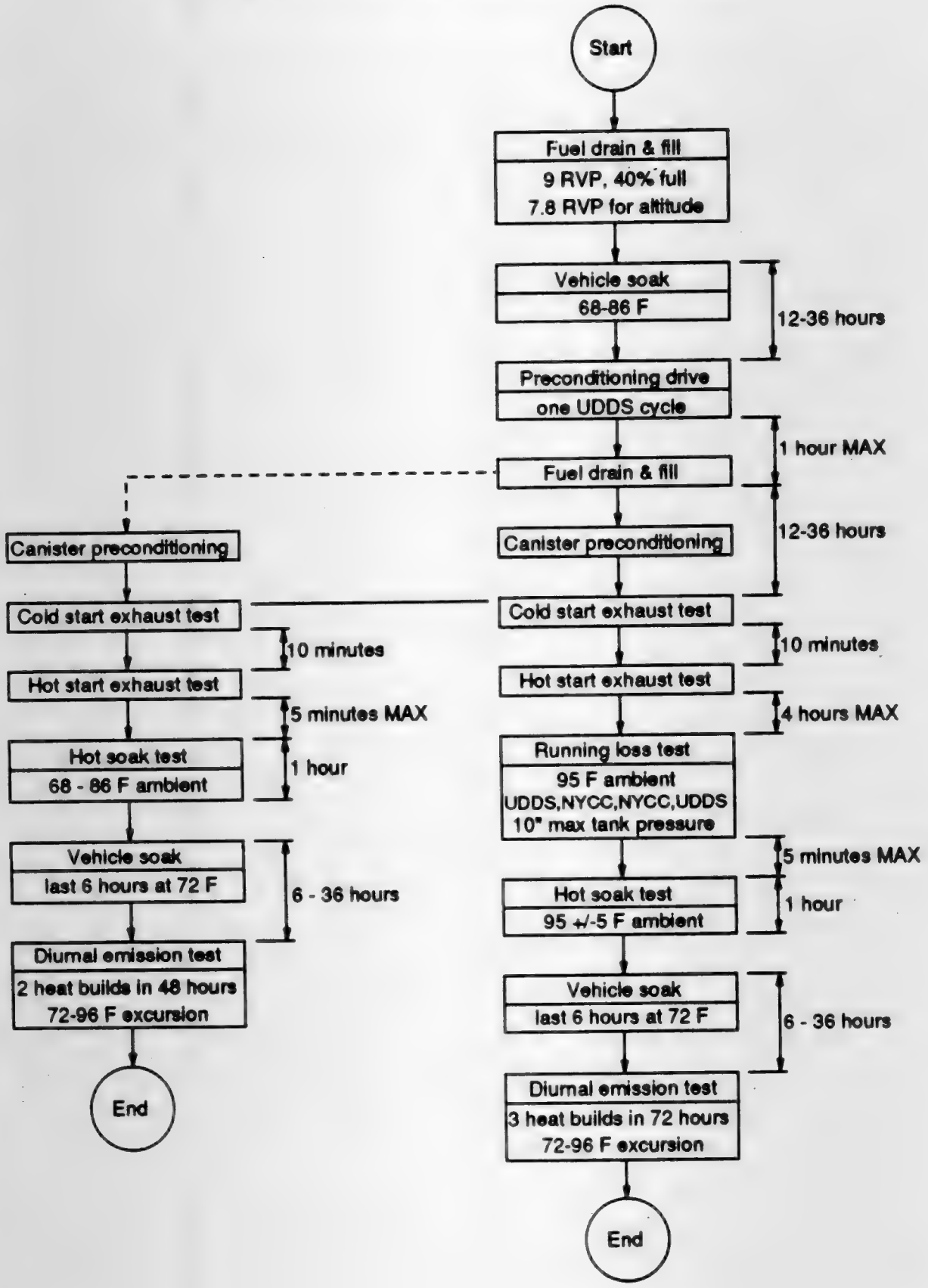
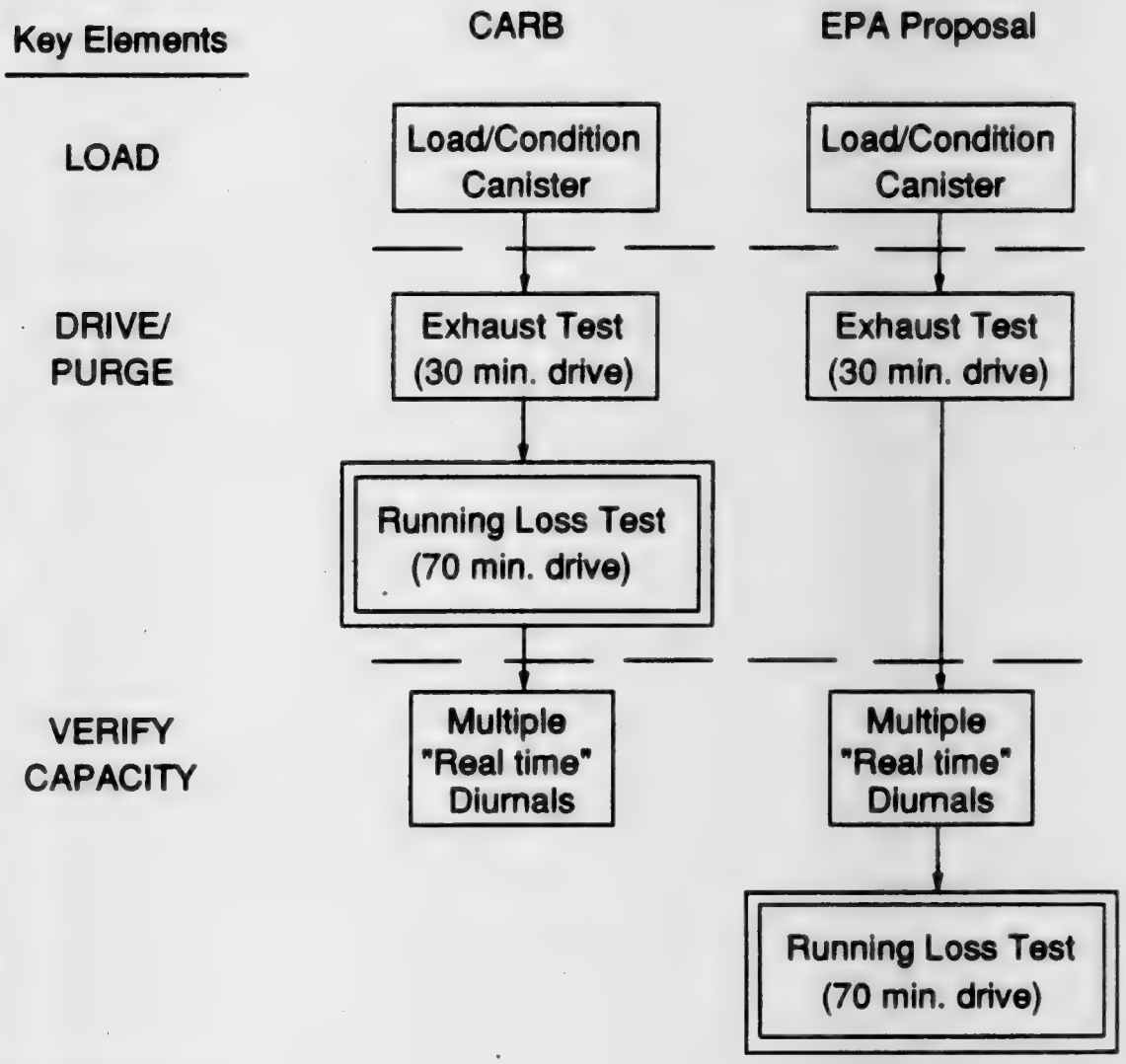


Figure 2

Basic Elements of CARB and EPA Proposed Sequences



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APPENDIX TO THE PREAMBLE—TABLE OF CHANGES TO VARIOUS SUBPARTS

Section	Change	Reason
1. Authority, part 80	Updated	Clean Air Act Amendments of 1990.
2. § 80.22	Limit in-use gasoline dispensing rates to ten gal/min	Prevents spitback for in-use refueling.
3. Authority, part 86	Updated	Clean Air Act Amendments of 1990.
3a. Part 86	Remove old sections	Obsolete.
4. § 86.1	Create new section to index documents incorporated by reference in part 86	Simplification of CFR format.
5. § 86.091–29	Revise to allow EPA to truncate testing	Clean Air Act Amendments of 1990.
6. § 86.095–35	Add requirement to identify evap family on label	Do.
7. § 86.096–2	Add definitions	Do.
8. § 86.096–7	Revised to reflect test changes	Do.
9. § 86.096–8	Prohibit direct release of fuel vapor into the atmosphere during in-use operations. Change "fuel evaporative emissions" in (b) to "evaporative emissions." Add standard for running loss and spitback tests. Add standard for supplemental evaporative test.	Do.
10. § 86.096–9	Prohibit direct release of fuel vapor into the atmosphere during in-use operations. Change "fuel evaporative emissions" in (b) to "evaporative emissions." Add standard for running loss and spitback tests. Add standard for supplemental evaporative test.	Do.
11. § 86.096–10	Prohibit direct release of fuel vapor into the atmosphere during in-use operations. Add standard for running loss and spitback tests. Add standard for supplemental evaporative test.	Do.
12. § 86.096–14	Require submission of additional vehicle parameters	Do.
13. § 86.096–21	Require submission of additional vehicle parameters	Do.
14. § 86.096–23	Revised to reflect test changes	Do.
15. § 86.096–26	Revised to reflect the use of evaporative canisters for heavy-duty engine testing	Do.
16. § 86.096–30	Revised to reflect test changes	Do.
17. § 86.096–35	Revised to require vehicle label to identify the applicable evaporative test during the phase-in of new test requirements.	Do.
17a. § 86.097–9	Revised to reflect test changes	Do.
18. § 86.098–23	Revised to reflect test changes	Do.
19. § 86.099–8	Prohibit direct release of fuel vapor into the atmosphere during in-use operations. Change "fuel evaporative emissions" in (b) to "evaporative emissions." Add standard for running loss and spitback tests. Add standard for supplemental evaporative test.	Do.
20. § 86.099–9	Prohibit direct release of fuel vapor into the atmosphere during in-use operations. Change "fuel evaporative emissions" in (b) to "evaporative emissions." Add standard for running loss and spitback tests. Add standard for supplemental evaporative test.	Do.
21. § 86.099–10	Prohibit direct release of fuel vapor into the atmosphere during in-use operations. Add standard for running loss and spitback tests. Add standard for supplemental evaporative test.	Do.
22. § 86.105	Revise to reflect test changes	Do.
23. § 86.106–96	Delete restriction from conducting exhaust-only emission tests. Allow evaporative testing without exhaust measurement. Add text for canister-loading equipment.	Do.
24. § 86.107–96	Add specifications for variable-temperature diurnal enclosures and running loss test facilities	Do.
25. § 86.113–94	Change fuel RVP specification for evaporative emission testing at high-altitude	Do.
26. § 86.115–78	Specify the speed tolerances for the spitback test and the procedure for generating fuel temperature profile. Revise speed tolerances to allow more flexibility for outdoor driving.	Do.
27. § 86.117–96	Add calibration of variable-temperature diurnal enclosure and running loss facilities	Do.
28. § 86.127–96	Update description of evaporative emission test	Do.
29. § 86.128–79	Allow transmission to be in "neutral" during extended idles	Do.
30. § 86.129–94	Add procedure to determine fuel temperature profile for the running loss test	Do.
31. § 86.130–96	Revise flowchart of test sequence	Do.
32. § 86.131–96	Add requirement to repair leaks in the exhaust system for running loss testing. Add step to prepare for canister preconditioning.	Do.
33. § 86.132–96	Add canister preconditioning after initial drive	Do.
34. § 86.133–96	Delete heat build immediately before exhaust emission test. Revise diurnal emission test to include three consecutive, high-temperature diurnal heat builds, with 24-hour ambient temperature cycling, following running loss test.	Do.
35. § 86.134–96	Add running loss test after exhaust emission test, using either SHED or point-source measurement.	Do.
36. § 86.136–90	Revise treatment of restarting	Do.
37. § 86.137–96	Revise to reflect test changes	Do.
38. § 86.138–90	Adjust time between exhaust emission test and start of hot soak test	Do.
39. § 86.138–96	Move hot soak test after new running loss test. Change ambient temperature to 95 °F	Do.
40. § 86.143–96	Add calculations for running loss test. Revise calculations for variable-temperature enclosures	Do.
41. § 86.146–96	Add vehicle test for spitback	Do.
42. § 86.608–90	Revise to reflect test changes	Do.
43. § 86.609–84	Revise to reflect test changes	Do.
44. § 86.610–84	Revise to reflect test changes	Do.

APPENDIX TO THE PREAMBLE—TABLE OF CHANGES TO VARIOUS SUBPARTS—Continued

Section	Change	Reason
45. Table of contents, subpart K.	Revise title to add heavy-duty vehicles (for SEA spitback testing)	Do.
46. § 86.1008–90	Revise to reflect test changes	Do.
47. § 86.1009–84	Revise to reflect test changes	Do.
48. § 86.1010–84	Revise to reflect test changes	Do.
49. § 86.1205–90	Revise to reflect test changes	Do.
50. § 86.1206–96	Revise to reflect test changes	Do.
51. § 86.1207–96	Add specifications for variable-temperature diurnal enclosures and running loss test facilities	Do.
52. § 86.1215–85	Revise speed tolerances to allow more flexibility for outdoor driving	Do.
53. § 86.1217–96	Add calibration of variable-temperature diurnal enclosure and running loss facilities	Do.
54. § 86.1227–96	Update description of evaporative emission test	Do.
55. § 86.1229–85	Add procedure to determine fuel temperature profile for the running loss test	Do.
56. § 86.1230–96	Revise flowchart of test sequence	Do.
57. § 86.1231–96	Add requirement to repair leaks in the exhaust system for running loss testing. Add step to prepare for canister preconditioning.	Do.
58. § 86.1232–96	Add canister preconditioning after initial drive	Do.
59. § 86.1233–96	Delete heat build immediately before exhaust emission test. Revise diurnal emission test to include three consecutive, high-temperature diurnal heat builds, with 24-hour ambient temperature cycling, following running loss test.	Do.
60. § 86.1234–96	Add running loss test after exhaust emission test, using either SHED or point-source measurement.	Do.
61. § 86.1235–96	Revise text to reflect test changes	Do.
62. § 86.1236–85	Revise treatment of restarting	Do.
63. § 86.1237–96	Revise text to reflect test changes	Do.
64. § 86.1238–90	Adjust time between exhaust emission test and start of hot soak test	Do.
65. § 86.1238–96	Move hot soak test after new running loss test. Change ambient temperature to 95 °F	Do.
66. § 86.1243–96	Add calculations for running loss test. Revise calculations for variable-temperature enclosures	Do.
67. § 86.1246–96	Add spitback test	Do.
68. § 86.1306–96	Revise to reflect test changes	Do.
69. § 86.1327–96	Revise to reflect test changes	Do.
70. § 86.1336–84	Revise to reflect test changes	Do.
71. § 86.1337–96	Add step to attach loaded evaporative canister to engine	Do.
72. Appendix I to part 86	Add EPA New York City Cycle	Do.
73. Appendix II to part 86.	Add temperature profile for diurnal emission test	Do.

For the reasons set out in the preamble, title 40, chapter I, parts 80 and 86 of the Code of Federal Regulations, are amended as set forth below.

PART 80—[AMENDED]

1. The authority citation for part 80 is revised to read as follows:

Authority: Secs. 144, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

Subpart B—[Amended]

2. Section 80.22 of subpart B is amended by adding a new paragraph (j) to read as follows:

§ 80.22 Controls applicable to gasoline retailers and wholesale purchaser-consumers.

* * * * *

(j) After January 1, 1996 every retailer and wholesale purchaser-consumer handling over 10,000 gallons of fuel per month shall equip each pump from which gasoline or methanol is introduced into motor vehicles with a nozzle that dispenses fuel at a flow rate not to exceed 10 gallons per minute. After January 1, 1998 this requirement applies to every retailer and wholesale purchaser-consumer. Any dispensing pump shown to be dedicated to heavy-duty vehicles is exempt from this requirement.

PART 86—[AMENDED]

3. The authority citation for part 86 is revised to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

3a. Part 86 is amended by removing the following sections:

Sec.

86.107–78	86.1233–85
86.113–82	86.1234–85
86.113–87	86.1238–85
86.113–90	86.1242–85
86.117–78	86.1243–85
86.127–82	86.1301–84
86.131–78	86.1301–88
86.132–82	86.1304–84
86.133–78	86.1305–84
86.135–82	86.1306–84
86.136–82	86.1306–88
86.137–82	86.1313–84
86.138–78	86.1313–87

Sec.—Continued

86.143–78	86.1313–90
86.1201–85	86.1316–84
86.1205–85	86.1320–88
86.1206–85	86.1321–84
86.1207–85	86.1326–84
86.1213–85	86.1327–84
86.1213–87	86.1327–88
86.1216–85	86.1332–84
86.1217–85	86.1333–84
86.1221–85	86.1337–84
86.1227–85	86.1337–88
86.1231–85	86.1339–88
86.1232–85	86.1340–84

4. A new § 86.1 is added immediately preceding subpart A to read as follows:

§ 86.1 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part.

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 86.1, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

Document No. and name	40 CFR part 86 reference
ASTM E29–67 (Reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures Are To Be Considered Significant In Specified Limiting Values.	86.094–26; 86.094–28; 86.1105–87.
ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	86.609–84; 86.1009–84.

(2) *SAE material.* The following table sets forth material from the Society of Automotive Engineers that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 86.1, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA, 15096–0001.

Document No. and name	40 CFR part 86 reference
SAE J1349 June 1990, Engine Power Test Code—Spark Ignition and Compression Ignition.	86.094–8; 86.096–8.

Subpart A—[Amended]

5. Section 86.091–29 of subpart A is amended by revising paragraphs (a)(3)(i) and (c)(3)(i) to read as follows:

§ 86.091–29 Testing by the Administrator.

(a) * * *

(3)(i) Whenever the Administrator conducts a test segment on a test vehicle, the results of that test segment, unless subsequently invalidated by the Administrator, shall comprise the official data for that test segment for the vehicle at the prescribed test point and the manufacturer's data for that test segment for that prescribed test point shall not be used in determining compliance with emission standards (or family emission limits, as appropriate). The Administrator may stop a test after any evaporative test segment and use as official data any valid results obtained up to that point in the test, as described in subpart B of this part.

* * * * *

(c) * * *

(3)(i) Whenever the Administrator conducts a test segment on an evaporative emission family-system combination, the results of that test segment, unless subsequently invalidated by the Administrator, shall comprise the official data for that test segment for the evaporative emission family-system combination, and the manufacturer's data, analyses, etc., for that test segment shall not be used in determining compliance with emission standards. The Administrator may stop a test after any evaporative test segment and use as official data any valid results obtained up to that point in the test, as described in subpart B of this part.

* * * * *

6. Section 86.095–35 of subpart A is amended by revising paragraph (a)(2)(iii)(C) to read as follows:

§ 86.095–35 Labeling.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative family identification;

* * * * *

7. A new § 86.096–2 is added to subpart A to read as follows:

§ 86.096–2 Definitions.

The definitions listed in this section apply beginning with the 1996 model year. The definitions of § 86.094–2 continue to apply to 1996 and later model year vehicles.

Diurnal breathing losses means diurnal emissions.

Diurnal emissions means evaporative emissions resulting from the daily cycling of ambient temperatures.

Hot soak emissions means evaporative emissions after termination of engine operation.

Hot-soak losses means hot soak emissions.

Resting losses means evaporative emissions that may occur continuously, that are not diurnal emissions, hot soak emissions, running losses, or spitback emissions.

Running losses means evaporative emissions that occur during vehicle operation.

Spitback emissions means evaporative emissions resulting from the loss of liquid fuel that is emitted from a vehicle during a fueling operation.

Useful life means:

(1) For light-duty vehicles, and for light light-duty trucks not subject to the Tier 0 standards of § 86.094–9(a), intermediate useful life and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 10 years or 100,000 miles, whichever occurs first, except as otherwise noted in § 86.094–9. The useful life of evaporative emission control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96 is defined as a period of use of 10 years or 100,000 miles, whichever occurs first.

(2) For light light-duty trucks subject to the Tier 0 standards of § 86.094–9(a), and for heavy light-duty truck engine families, intermediate and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 11 years or 120,000 miles, whichever occurs first. The useful life of evaporative emission control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96 is also defined as a period of 11 years or 120,000 miles, whichever occurs first.

(3) For an Otto-cycle heavy-duty engine family, a period of use of 8 years or 110,000 miles, whichever occurs first, except for the portion of evaporative emission control systems subject to the evaporative emission test requirements of § 86.1230–96, for which the applicable period of use is 10 years or 110,000 miles, whichever occurs first.

(4) For a diesel heavy-duty engine family:

(i) For light heavy-duty diesel engines, period of use of 8 years or 110,000 miles, whichever occurs first.

(ii) For medium heavy-duty diesel engines, a period of use of 8 years or 185,000 miles, whichever occurs first.

(iii) For heavy heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever occurs first, except as provided in paragraph (4)(iv) of this definition.

(iv) For heavy heavy-duty diesel engines used in urban buses, for the particulate standard, a period of use of

10 years or 290,000 miles, whichever occurs first.

(5) As an option for both light-duty trucks under certain conditions and heavy-duty engine families, an alternative useful life period assigned by the Administrator under the provisions of § 86.094–21(f).

(6) The useful-life period for purposes of the emissions defect warranty and emissions performance warranty shall be a period of 5 years/50,000 miles, whichever occurs first, for light-duty trucks, Otto-cycle heavy-duty engines and light heavy-duty diesel engines. For all other heavy-duty diesel engines the aforementioned period is 5 years/100,000 miles, whichever occurs first. However, in no case may this period be less than the manufacturer's basic mechanical warranty period for the engine family.

8. A new § 86.096–7 is added to subpart A to read as follows:

§ 86.096–7 Maintenance of records; submittal of information; right of entry.

Section 86.096–7 includes text that specifies requirements that differ from those specified in §§ 86.091–7 and 86.094–7. Where a paragraph in § 86.091–7 or § 86.094–7 is identical and applicable to § 86.096–7, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–7." or "[Reserved]. For guidance see § 86.094–7."

(a) Introductory text through (a)(2) [Reserved]. For guidance see § 86.091–7.

(a)(3) Through (h)(5) [Reserved]. For guidance see § 86.094–7.

(h)(6) *Voiding a certificate.* (i) EPA may void ab initio a certificate for a vehicle certified to Tier 0 certification standards or to the respective evaporative test procedure and accompanying evaporative standards as set forth or otherwise referenced in §§ 86.090–8, 86.090–9, or § 86.091–10 for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(ii) EPA may void ab initio a certificate for a 1994 or 1995 model year light-duty vehicle or light-duty truck that is not certified in compliance with the cold temperature CO standard for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(iii) Any voiding ab initio of a certificate under § 86.091–7(c)(6) and paragraph (h)(6) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or under § 86.1014 for light-duty trucks and heavy-duty engines.

(7) The manufacturer (or contractor for the manufacturer, if applicable) of any new model 1996 through 1998 light-duty vehicle, light-duty truck or heavy-duty vehicle that is certified shall establish, maintain and retain the following adequately organized and indexed records for each such vehicle:

(i) EPA engine family;
(ii) Vehicle identification number;
(iii) Model year and production date;
(iv) Shipment date;
(v) Purchaser;
(vi) Purchase contract; and
(vii) EPA evaporative family.

9. Section 86.096–8 of subpart A is amended by revising paragraph (b) to read as follows:

§ 86.096–8 Emission standards for 1996 and later model year light-duty vehicles.

* * * * *

(b) Evaporative emissions from light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) *Hydrocarbons (for gasoline-fueled vehicles).* (i)(A) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams per test.

(B) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Running loss test:* 0.05 grams per mile.

(iii) *Fuel dispensing spitback test:* 1.0 gram per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* (i)(A) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams carbon per test.

(B) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams carbon per test.

(ii) *Running loss test:* 0.05 grams carbon per mile.

(iii) *Fuel dispensing spitback test:* 1.0 gram carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart B of this part.

(4) All fuel vapor generated in a gasoline- or methanol-fueled light-duty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(5)(i) A minimum of the percentage shown in Table A96–15 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled light-duty vehicles shall be tested with the procedures in subpart B indicated for 1996 model year, and shall not exceed the standards described in paragraph (b) of this section. The remaining vehicles shall be tested with the procedures in subpart B of this part for 1995 model year light-duty vehicles and be subject to the standards described in § 86.090–8(b).

TABLE A96–15.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR EVAPORATIVE EMISSION TESTING

Model year	Sales percentage
1996	20
1997	40
1998	90
1999 and following	100

(ii) Optionally, a minimum of the percentage shown in Table A96–15 of a manufacturer's combined sales of the applicable model year's gasoline- and methanol-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles shall not exceed the applicable standards.

(iii) Small volume manufacturers, as defined in § 86.092–14(b)(1) and (2), are exempt from the implementation schedule of Table A96–15 of this section for model years 1996, 1997, and 1998. For small volume manufacturers, the standards of § 86.090–8(b), and the associated test procedures, continue to apply until model year 1999, when 100 percent compliance with the standards of this section is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

* * * * *

10. A new § 86.096–9 is added to subpart A to read as follows:

§ 86.096–9 Emission standards for 1996 and later model year light-duty trucks.

Section 86.096–9 includes text that specifies requirements that differ from § 86.094–9. Where a paragraph in § 86.094–9 is identical and applicable to § 86.096–9, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–9."

(a) [Reserved]. For guidance see § 86.094–9.

(b) Evaporative emissions from light-duty trucks shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) *Hydrocarbons (for gasoline-fueled vehicles).* (i)(A) For heavy light-duty trucks with nominal fuel tank capacity of at least 30 gallons:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 3.0 grams per test.

(B) For all other light-duty trucks:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Running loss test:* 0.05 grams per mile.

(iii) *Fuel dispensing spitback test:* 1.0 gram per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* (i)(A) For heavy light-duty trucks with nominal fuel tank capacity of at least 30 gallons:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 3.0 grams carbon per test.

(B) For all other light-duty trucks:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams carbon per test.

(ii) *Running loss test:* 0.05 grams carbon per mile.

(iii) *Fuel dispensing spitback test:* 1.0 gram carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart B of this part.

(4) All fuel vapor generated in a gasoline- or methanol-fueled light-duty truck during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(5) (i) A minimum of the percentage shown in Table A96–16 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled light-duty trucks shall be tested with the procedures in subpart B of this part indicated for the 1996 model year, and shall not exceed the standards described in paragraph (b) of this section. The remaining vehicles shall be tested with the procedures in subpart B of this part for 1995 model year light-duty trucks and be subject to the standards described in § 86.090–9(b).

TABLE A96–16.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY TRUCKS FOR EVAPORATIVE EMISSION TESTING

Model year	Sales percentage
1996	20
1997	40
1998	90
1999 and following	100

(ii) Optionally, a minimum of the percentage shown in Table A96–16 of a manufacturer's combined sales of the applicable model year's gasoline- and methanol-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles shall not exceed the applicable standards.

(iii) Small volume manufacturers, as defined in § 86.092–14(b)(1) and (2), are exempt from the implementation schedule of Table A96–16 of this section for model years 1996, 1997, and 1998. For small volume manufacturers, the standards of § 86.090–9(b), and the associated test procedures, continue to apply until model year 1999, when 100 percent compliance with the standards of this section is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(c) through (k) [Reserved]. For guidance see § 86.094–9.

11. A new § 86.096–10 is added to subpart A to read as follows:

§ 86.096–10 Emission standards for 1996 and later model year Otto-cycle heavy-duty engines and vehicles.

Section 86.096–10 includes text that specifies requirements that differ from § 86.091–10. Where a paragraph in § 86.091–10 is identical and applicable to § 86.096–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–10."

(a) [Reserved]. For guidance see § 86.091–10.

(b) Evaporative emissions from heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) *Hydrocarbons (for vehicles equipped with gasoline-fueled engines).* (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A) (*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(C) Fuel dispensing spitback test: 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A) (*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(2) Organic Material Hydrocarbon Equivalent (for vehicles equipped with methanol-fueled engines). (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A) (*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(C) Fuel dispensing spitback test: 1.0 gram carbon per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A) (*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(3) (i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000

lbs, the standards set forth in paragraphs (b)(1) and (b)(2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(4) All fuel vapor generated in a gasoline- or methanol-fueled heavyduty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(5)(i) A minimum of the percentage shown in Table A96–17 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled heavy-duty vehicles shall not exceed the standards described in paragraph (b) of this section, except that methanol-fueled heavy-duty vehicles are exempt for the 1996 and 1997 model years. The remaining vehicles shall be subject to the standards described in § 86.091–10(b).

TABLE A96–17.—IMPLEMENTATION SCHEDULE FOR HEAVY-DUTY VEHICLES FOR EVAPORATIVE EMISSION TESTING

Model year	Sales percentage
1996	20
1997	40
1998	90
1999 and following	100

(ii) Optionally, a minimum of the percentage shown in Table A96–17 of a manufacturer's combined sales of the applicable model year's gasoline- and methanol-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles shall not exceed the applicable standards.

(iii) Small volume manufacturers, as defined in § 86.092–14(b)(1) and (2), are exempt from the implementation schedule of Table A96–17 of this section for model years 1996, 1997, and 1998. For small volume manufacturers, the standards of § 86.091–10(b), and the associated test procedures, continue to apply until model year 1999, when 100 percent compliance with the standards of this section is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(c) and (d) [Reserved]. For guidance see § 86.091–10.

12. A new § 86.096–14 is added to subpart A to read as follows:

§ 86.096–14 Small-volume manufacturer certification procedures.

Section 86.096–14 includes text that specifies requirements that differ from those specified in §§ 86.094–14 and 86.095–14. Where a paragraph in § 86.094–14 or § 86.095–14 is identical and applicable to § 86.096–14, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–14" or "[Reserved]. For guidance see § 86.095–14." Where a corresponding paragraph of § 86.094–14 or § 86.095–14 is not applicable, this is indicated by the statement "[Reserved]."

(a) through (c)(11)(ii)(B)(*15*) [Reserved]. For guidance see § 86.094–14.

(c)(11)(ii)(B)(*16*) through (c)(11)(ii)(B)(*18*) [Reserved]. For guidance see § 86.095–14.

(c)(11)(ii)(B)(*19*) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative emission family, a description of any unique procedures required to perform evaporative emission tests (including canister working capacity, canister bed volume, and fuel temperature profile for the running loss test) for all vehicles in that evaporative emission family, and a description of the method used to develop those unique procedures.

(*20*) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative emission family:

(*i*) Canister working capacity, according to the procedures specified in § 86.132–96(h)(1)(iv);

(*ii*) Canister bed volume; and

(*iii*) Fuel temperature profile for the running loss test, according to the procedures specified in § 86.129–94(d).

(c)(11)(ii)(C) through (c)(11)(ii)(D)(*5*) [Reserved]. For guidance see § 86.095–14.

(c)(11)(ii)(D)(*6*) [Reserved]

(c)(11)(ii)(D)(*7*) through (c)(15) [Reserved]. For guidance see § 86.094–14.

13. A new § 86.096–21 is added to subpart A to read as follows:

§ 86.096–21 Application for certification.

Section 86.096–21 includes text that specifies requirements that differ from § 86.094–21. Where a paragraph in § 86.094–21 is identical and applicable to § 86.096–21, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–21."

(a) through (b)(8) [Reserved]. For guidance see § 86.094–21.

(b) (9) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative emission family, a description of any unique procedures required to perform evaporative emission tests (including canister working capacity, canister bed volume, and fuel temperature profile for the running loss test) for all vehicles in that evaporative emission family, and a description of the method used to develop those unique procedures.

(10) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative emission family:

(i) Canister working capacity, according to the procedures specified in § 86.132–96(h)(1)(iv);

(ii) Canister bed volume; and

(iii) Fuel temperature profile for the running loss test, according to the procedures specified in § 86.129–94(d).

(c) through (g) [Reserved]. For guidance see § 86.094–21.

14. A new § 86.096–23 is added to subpart A to read as follows:

§ 86.096–23 Required data.

Section 86.096–23 includes text that specifies requirements that differ from those specified in § 86.094–23. Where a paragraph in § 86.094–23 is identical and applicable to § 86.096–23, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–23."

(a) through (l) [Reserved]. For guidance see § 86.094–23.

(m) Additionally, except for small-volume manufacturers, manufacturers certifying vehicles shall submit for each model year 1996 through 1998 light-duty vehicle, light-duty truck, and gasoline-fueled heavy-duty vehicle evaporative family:

(1) In the application for certification the projected sales volume of evaporative families certifying to the respective evaporative test procedure and accompanying standards as set forth or otherwise referenced in §§ 86.090–8, 86.090–9, and 86.091–10 or those set forth or otherwise referenced in §§ 86.096–8, 86.096–9, and 86.096–10. Volume projected to be produced for U.S. sale may be used in lieu of projected U.S. sales.

(2) End-of-year reports for each evaporative family.

(i) These end-of-year reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(ii) These reports shall indicate the model year, evaporative family and the actual U.S. sales volume. The manufacturer may petition the Administrator to allow volume produced for U.S. sale to be used in lieu of U.S. sales. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that production volume is functionally equivalent to sales volume.

(iii) The U.S. sales volume for end-of-year reports shall be based on the location of the point of sale to a dealer, distributor, fleet operator, broker, or any other entity that comprises the point of first sale.

(iv) Failure by a manufacturer to submit the end-of-year report within the specified time may result in certificate(s) for the evaporative family(ies) certified to the certification standards set forth in §§ 86.090–8, 86.090–9, and 86.091–10 being voided ab initio plus any applicable civil penalties for failure to submit the required information to the Agency.

(v) The information shall be organized in such a way as to allow the Administrator to determine compliance with the Evaporative Emission Testing implementation schedules of §§ 86.096–8, 86.096–9, and 86.096–10.

15. A new § 86.096–26 is added to subpart A to read as follows:

§ 86.096–26 Mileage and service accumulation; emission measurements.

Section 86.096–26 includes text that specifies requirements that differ from those specified in §§ 86.094–26 and 86.095–26. Where a paragraph in § 86.094–26 or § 86.095–26 is identical and applicable to § 86.096–26, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–26." or "[Reserved]. For guidance see § 86.095–26."

(a) through (b)(4)(i)(C) [Reserved]. For guidance see § 86.094–26.

(b)(4)(i)(D) through (b)(4)(ii)(D) [Reserved]. For guidance see § 86.095–26.

(b)(4)(iii) through (c)(3) [Reserved]. For guidance see § 86.094–26.

(c)(4) The manufacturer shall determine, for each engine family, the number of hours at which the engine system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 125 hours on each test engine within an engine family without making a determination. Any engine used to represent emission-data engine selections under § 86.094–24(b)(2) shall be equipped with an engine system combination that has accumulated at least the number of hours determined under this paragraph. Complete exhaust emission tests shall be conducted for each emission-data engine selection under § 86.094–24(b)(2). Evaporative emission controls must be connected, as described in § 86.1337–96(a)(1). The Administrator may determine under § 86.094–24(f) that no testing is required.

(d) [Reserved]. For guidance see § 86.094–26.

16. A new § 86.096–30 is added to subpart A to read as follows:

§ 86.096–30 Certification.

Section 86.096–30 includes text that specifies requirements that differ from those specified in §§ 86.094–30 and 86.095–30. Where a paragraph in § 86.094–30 or § 86.095–30 is identical and applicable to § 86.096–30, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–30." or "[Reserved]. For guidance see § 86.095–30."

(a)(1)(i) through (a)(2) [Reserved]. For guidance see § 86.094–30.

(a)(3)(i) through (a)(4)(ii) introductory text [Reserved]. For guidance see § 86.095–30.

(a)(4)(iii)(A) through (a)(4)(iii)(C) [Reserved]. For guidance see § 86.094–30.

(a)(4)(iv) introductory text [Reserved]. For guidance see § 86.095–30.

(a)(4)(iv)(A) through (a)(12) [Reserved]. For guidance see § 86.094–30.

(a)(13) [Reserved]. For guidance see § 86.095–30.

(a)(14) [Reserved]. For guidance see § 86.094–30.

(a)(15) For all light-duty vehicles certified to evaporative test procedures and accompanying standards specified under § 86.096–8:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.096–8 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.096–8 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(16) For all light-duty trucks certified to evaporative test procedures and accompanying standards specified under § 86.096–9:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.096–9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.096–9 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(17) For all heavy-duty vehicles certified to evaporative test procedures and accompanying standards specified under § 86.096–10:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.096–10 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.096–10 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b) through (e) [Reserved]. For guidance see § 86.094–30.

17. A new § 86.096–35 is added to subpart A to read as follows:

§ 86.096–35 Labeling.

Section 86.096–35 includes text that specifies requirements that differ from § 86.095–35. Where a paragraph in § 86.095–35 is identical and applicable to § 86.096–35, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–35."

(a) introductory text through (a)(1)(iii)(L) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(M) For model years 1996 through 1998 light-duty vehicles, a clear

indication of which test procedure was used to certify the evaporative family, e.g., "Evaporative Family xx (§ 86.130–96 procedures)" or "Evaporative Family xx (§ 86.130–78 procedures)."

(a)(2) Heading through (a)(2)(iii)(N) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(O) For model years 1996 through 1998 light-duty trucks, a clear indication of which test procedure was used to certify the evaporative family, e.g., "Evaporative Family xx (§ 86.130–96 procedures)" or "Evaporative Family xx (§ 86.130–78 procedures)."

(a)(3) through (a)(4)(iii)(F) [Reserved]. For guidance see § 86.095–35.

(a)(4)(iii)(G) For model years 1996 through 1998 gasoline-fueled and methanol-fueled heavy-duty vehicles, a clear indication of which test procedure was used to certify the evaporative family, e.g., "Evaporative Family xx (§ 86.1230–96 procedures)" or "Evaporative Family xx (§ 86.1230–85 procedures)."

(b) through (h) [Reserved]. For guidance see § 86.095–35.

17a. Section 86.097–9 of subpart A is amended by revising paragraph (b) to read as follows:

§ 86.097–9 Emission standards for 1997 and later model year light-duty trucks.

* * * * *

(b) [Reserved]. For guidance see § 86.096–9.

* * * * *

18. A new § 86.098–23 is added to subpart A to read as follows:

§ 86.098–23 Required data.

Section 86.098–23 includes text that specifies requirements that differ from those specified in § 86.094–23. Where a paragraph in § 86.094–23 is identical and applicable to § 86.098–23, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–23."

(a) through (l) [Reserved]. For guidance see § 86.094–23.

(m) Additionally, except for small-volume manufacturers, manufacturers certifying vehicles shall submit for each model year 1998 light-duty vehicle, light-duty truck, and gasoline- and methanol-fueled heavy-duty vehicle evaporative family:

(1) In the application for certification the projected sales volume of evaporative families certifying to the respective evaporative test procedure and accompanying standards as set forth or otherwise referenced in §§ 86.090–8, 86.090–9, and 86.091–10 or those set forth or otherwise referenced in §§ 86.096–8, 86.096–9, and 86.096–10. Volume projected to be produced for U.S. sale may be used in lieu of projected U.S. sales.

(2) End-of-year reports for each evaporative family.

(i) These end-of-year reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

(ii) These reports shall indicate the model year, evaporative family and the actual U.S. sales volume. The manufacturer may petition the Administrator to allow volume produced for U.S. sale to be used in lieu of U.S. sales. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that production volume is functionally equivalent to sales volume.

(iii) The U.S. sales volume for end-of-year reports shall be based on the location of the point of sale to a dealer, distributor, fleet operator, broker, or any other entity that comprises the point of first sale.

(iv) Failure by a manufacturer to submit the end-of-year report within the specified time may result in certificate(s) for the evaporative family(ies) certified to the certification standards set forth in §§ 86.090–8, 86.090–9, and 86.091–10 being voided ab initio plus any applicable civil penalties for failure to submit the required information to the Agency.

(v) The information shall be organized in such a way as to allow the Administrator to determine compliance with the Evaporative Emission Testing implementation schedules of §§ 86.096–8, 86.096–9, and 86.096–10.

19. A new § 86.099–8 is added to subpart A to read as follows:

§ 86.099–8 Emission standards for 1999 and later model year light-duty vehicles.

Section 86.099–8 includes text that specifies requirements that differ from § 86.096–8. Where a paragraph in § 86.096–8 is identical and applicable to § 86.099–8, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–8."

(a) [Reserved]. For guidance see § 86.096–8.

(b) Evaporative emissions from light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) *Hydrocarbons (for gasoline-fueled vehicles).* (i)(A) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams per test.

(B) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) Running loss test: 0.05 grams per mile.

(iii) Fuel dispensing spitback test: 1.0 gram per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* (i)(A) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams carbon per test.

(B) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams carbon per test.

(ii) Running loss test: 0.05 grams carbon per mile.

(iii) Fuel dispensing spitback test: 1.0 gram carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart B of this part.

(4) All fuel vapor generated in a gasoline- or methanol-fueled light-duty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(c) through (k) [Reserved]. For guidance see § 86.096–8.

20. A new § 86.099–9 is added to subpart A to read as follows:

§ 86.099–9 Emission standards for 1999 and later model year light-duty trucks.

Section 86.099–9 includes text that specifies requirements that differ from § 86.097–9. Where a paragraph in § 86.097–9 is identical and applicable to § 86.099–9, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.097–9." Where a corresponding paragraph of § 86.097–9 is not applicable, this is indicated by the statement "[Reserved]."

(a) [Reserved]. For guidance see § 86.097–9.

(b) Evaporative emissions from light-duty trucks shall not exceed the following standards. The standards apply equally to certification and in-use

vehicles. The spitback standard also applies to newly assembled vehicles.

(1) *Hydrocarbons (for gasoline-fueled vehicles).* (i)(A) For heavy light-duty trucks with nominal fuel tank capacity of at least 30 gallons:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 3.0 grams per test.

(B) For all other light-duty trucks:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) Running loss test: 0.05 grams per mile.

(iii) Fuel dispensing spitback test: 1.0 gram per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* (i)(A) For heavy light-duty trucks with nominal fuel tank capacity of at least 30 gallons:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 3.0 grams carbon per test.

(B) For all other light-duty trucks:

(*1*) For the full three-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.0 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.130–96, diurnal plus hot soak measurements: 2.5 grams carbon per test.

(ii) Running loss test: 0.05 grams carbon per mile.

(iii) Fuel dispensing spitback test: 1.0 gram carbon per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart B of this part.

(4) All fuel vapor generated in a gasoline- or methanol-fueled light-duty truck during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(c) [Reserved]. For guidance see § 86.097–9.

(d) through (f) [Reserved].

(g) through (k) [Reserved]. For guidance see § 86.097–9.

21. A new § 86.099–10 is added to subpart A to read as follows:

§ 86.099–10 Emission standards for 1999 and later model year Otto-cycle heavy-duty engines and vehicles.

Section 86.099–10 includes text that specifies requirements that differ from § 86.098–10. Where a paragraph in § 86.98–10 is identical and applicable to § 86.099–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.098–10."

(a) [Reserved]. For guidance see § 86.098–10.

(b) Evaporative emissions from heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) *Hydrocarbons (for vehicles equipped with gasoline-fueled engines).* (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(C) Fuel dispensing spitback test: 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(2) *Organic Material Hydrocarbon Equivalent (for vehicles equipped with methanol-fueled engines).* (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(C) Fuel dispensing spitback test: 1.0 gram carbon per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(3)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraphs (b)(1) and (b)(2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(4) All fuel vapor generated in a gasoline- or methanol-fueled heavy-duty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(c) and (d) [Reserved]. For guidance see § 86.098–10.

Subpart B—[Amended]

22. Section 86.105 of subpart B is amended by revising paragraph (b) to read as follows:

§ 86.105 Introduction; structure of subpart.

* * * * *

(b) Three topics are addressed in this subpart. Sections 86.106 through 86.115 set forth specifications and equipment requirements; §§ 86.116 through 86.126 discuss calibration methods and frequency; test procedures and data requirements are listed in §§ 86.127 through 86.146.

23. A new § 86.106–96 is added to subpart B to read as follows:

§ 86.106–96 Equipment required; overview.

(a) This subpart contains procedures for exhaust emission tests on petroleum-fueled and methanol-fueled light-duty vehicles and light-duty trucks, and for evaporative emission tests on gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks. Certain items of equipment are not necessary for

a particular test, e.g., evaporative enclosure when testing diesel-cycle vehicles. Alternate sampling systems and calculation methods may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator. Equipment required and specifications are as follows:

(1) *Evaporative emission tests, gasoline-fueled and methanol-fueled vehicles.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must undergo testing according to the test sequences described in § 86.130–96; however, the Administrator may omit measurement of exhaust emissions to test for evaporative emissions. The Administrator may truncate a test after any valid emission measurement without affecting the validity of the test. Further, unless the evaporative emission test is waived by the Administrator under § 86.090–26, all gasoline-fueled and methanol-fueled vehicles must undergo both exhaust and evaporative emission tests. (Diesel vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

(2) *Exhaust emission tests.* All vehicles subject to this subpart are subject to testing for both gaseous and particulate exhaust emissions using the CVS concept (see § 86.109), except where exemptions or waivers are expressly provided in subpart A of this part. Vehicles subject to the "Tier 0" (i.e., phase-out) standards described under subpart A of this part are exempted from testing for methane emissions. Otto-cycle vehicles subject to the "Tier 0" standards are waived from testing for particulates. For vehicles waived from the requirement for measuring particulate emissions, use of a dilution tunnel is not required (see § 86.109). The CVS must be connected to the dilution tunnel if particulate emission sampling is required (see § 86.110). Petroleum- and methanol-fueled diesel-cycle vehicle testing requires that a PDP–CVS or CFV–CVS with heat exchanger be used. (This equipment may be used with methanol-fueled Otto-cycle vehicles; however, particulates need not be measured for vehicles that are waived from the requirement). All gasoline-fueled and methanol-fueled vehicles equipped with evaporative canisters are preconditioned by loading the canisters with hydrocarbon vapors. Petroleum-fueled diesel-cycle vehicles are excluded from this requirement. Equipment necessary and specifications appear in §§ 86.108 through 86.114.

(3) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust and evaporative emissions testing and for mileage accumulation for petroleum-fueled and methanol-fueled vehicles are specified in § 86.113. Analytical gases are specified in § 86.114. The EPA Urban Dynamometer Driving Schedule (UDDS), for use in exhaust emission tests, and the New York City Cycle (NYCC), for use with the UDDS in running loss tests, are specified in § 86.115 and appendix I of this part.

(b) [Reserved]

24. A new § 86.107–96 is added to subpart B to read as follows:

§ 86.107–96 Sampling and analytical systems; evaporative emissions.

(a) *Testing enclosures*—(1) *Diurnal emission test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.117–96. Interior surfaces must be impermeable and nonreactive to hydrocarbons (and to methanol, if the enclosure is used for methanol-fueled vehicles). The temperature conditioning system shall be capable of controlling the internal enclosure air temperature to follow the prescribed temperature versus time cycle as specified in § 86.133–96 and appendix II of this part, within an instantaneous tolerance of ±3.0 °F of the nominal temperature versus time profile throughout the test, and an average tolerance of ±2.0 °F over the duration of the test. The control system shall be tuned to provide a smooth temperature pattern that has a minimum of overshoot, hunting, and instability about the desired long-term ambient temperature profile. Interior surface temperatures shall not be less than 40 °F, nor more than 130 °F at any time during the diurnal emission test. To accommodate the volume changes due to enclosure temperature changes, either a variable-volume or fixed-volume enclosure may be used for diurnal emission testing:

(i) *Variable-volume enclosure.* The variable-volume enclosure expands and contracts in response to the temperature change of the air mass in the enclosure. Two potential means of accommodating the internal volume changes are movable panel(s), or a bellows design, in which impermeable bag(s) inside the enclosure expand and contract in response to internal pressure changes by exchanging air from outside the enclosure. Any design for volume accommodation must maintain the integrity of the enclosure as specified in § 86.117–96 over the specified temperature range. Any method of volume accommodation shall limit the differential between the enclosure internal pressure and the barometric pressure to a maximum value of ±2.0 inches of water. The enclosure shall be capable of latching to a fixed volume. A variable-volume enclosure must be capable of accommodating a ±7 percent change from its "nominal volume" (see § 86.117–96(b)), accounting for temperature and barometric pressure variation during testing.

(ii) *Fixed-volume enclosure.* The fixed-volume enclosure shall be constructed with rigid panels that maintain a fixed enclosure volume, and meet the following requirements.

(A) The enclosure shall be equipped with an outlet flow stream that withdraws air at a low, constant rate from the enclosure throughout the test. An inlet flow stream may provide make-up air to balance the outgoing flow with incoming ambient air. Inlet air must be filtered with activated carbon to provide a relatively constant hydrocarbon level. Any method of volume accommodation shall maintain the differential between the enclosure internal pressure and the barometric pressure between 0 and −2 inches of water.

(B) The equipment shall be capable of measuring the mass of hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) in the inlet and outlet flow streams with a resolution of 0.01 gram. A bag sampling system may be used to collect a proportional sample of the air withdrawn from and admitted to the enclosure. Alternatively, the inlet and outlet flow streams may be continuously analyzed using an on-line FID analyzer and integrated with the flow measurements to provide a continuous record of the mass hydrocarbon and methanol removal.

(2) *Running loss test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.117–96. The enclosure may be equipped with a personnel door, provided that the enclosure can still meet the requirements of § 86.117–96 with the door installed. Interior surfaces must be impermeable and nonreactive to hydrocarbons and to methanol (if the enclosure is used for methanol-fueled vehicles). Interior surface temperatures shall not be less than 40 °F. If a running loss enclosure meets all the requirements of paragraph (a)(1) of this section, it may be used as a diurnal evaporative emission enclosure. The

enclosure must contain a dynamometer that meets the requirements of § 86.108. Provisions shall be made to remove exhaust gases from the enclosure. The running loss enclosure shall be equipped to supply air to the vehicle, at a temperature of 95±5 °F, from sources outside of the running loss enclosure directly into the operating engine's air intake system. Supplemental air requirements (e.g., for an air pump) shall be supplied by drawing air from the engine intake source. During the running loss test, ambient temperatures must be maintained at 95±5 °F (95±2 °F on average). An air or oxygen cylinder with an attached self-contained breathing apparatus may be provided for the vehicle operator.

(3) *Hot soak test.* The hot soak test may be conducted by holding the vehicle in an enclosure that meets the requirements for either diurnal emission or running loss tests. The enclosure shall be configured to provide an internal enclosure ambient temperature of 95±10 °F for the first 5 minutes, and 95±5 °F (95±2 °F on average) for the remainder of the hot soak test.

(i) If the hot soak test is conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70 °F, nor above 125 °F for the last 55 minutes of the hot soak test.

(ii) If the hot soak test is not conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70 °F, nor above 125 °F for the duration of the hot soak test.

(b) *Evaporative emission hydrocarbon and methanol analyzers.* (1) For gasoline- and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID) (235°±15 °F (113±8 °C))) is required for methanol-fueled vehicles). Provided evaporative emission results are not affected, a probe may be used to detect or verify hydrocarbon sources during a running loss test. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds.

(2) For methanol-fueled vehicles, a methanol sampling and analyzing system is required in addition to the FID analyzer. The methanol sampling equipment shall consist of impingers for collecting the methanol sample and appropriate equipment for drawing the sample through the impingers. The analytical equipment shall consist of a gas chromatograph equipped with a flame ionization detector.

(c) *Evaporative emission hydrocarbon and methanol data recording system.* (1) The electrical output of the FID used for measuring hydrocarbons (or hydrocarbons plus methanol, as appropriate) shall be recorded at least at the initiation and termination of each running loss and hot soak test, and at the initiation and termination of the enclosure sampling period(s) for the diurnal emission test, as described in § 86.133. The recording may be taken by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each hot soak, running loss, or diurnal emission test (including initiation and completion of sampling period(s)), along with the time elapsed during each soak.

(2) For the methanol sample, permanent records shall be made of the following: the volumes of deionized water introduced into each impinger, the rate and time of sample collection, the volumes of each sample introduced into the gas chromatograph, the flow rate of carrier gas through the column, the column temperature, and the chromatogram of the analyzed sample.

(d) *Fuel temperature control system.* Fuel temperatures of the test vehicle shall be controlled, as specified in § 86.134(g)(1)(xv), with the following combination of fans. The control system shall be tuned and operated to provide a smooth and continuous fuel tank temperature profile that is representative of the on-road temperature profile.

(1) A vehicle underbody fan shall discharge air from the front of the vehicle, as necessary to control fuel temperatures. The fan shall be a roadspeed modulated fan that is controlled to a discharge velocity that follows the dynamometer roll speed, at least up to speeds of 30 mph, throughout the driving cycle. Discharge velocities may temporarily depart from dynamometer roll speed if necessary to control fuel temperatures. The system shall provide a total discharge airflow not to exceed 8,000 cfm.

(2) Additional fans may be used to route heating or cooling air directly at the bottom of the vehicle's fuel tank. The air supplied to the tank shall be between 70° and 160 °F, with a total discharge airflow not to exceed 1,000 cfm.

(e) *Temperature recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means shall be used to record enclosure ambient temperature during all evaporative emission test segments, as well as vehicle fuel tank temperature during the running loss test. The recording system shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving temperature to ±0.75 °F (±0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3 °F(±1.7 °C). The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. Two ambient temperature sensors, connected to provide one average output, shall be located 3 feet above the floor at the approximate mid-length of each side wall of the enclosure and within 3 to 12 inches of each side wall. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature. Vehicles shall be equipped with 2 temperature sensors installed to provide an average liquid fuel temperature. The temperature sensors shall be placed to measure the temperature at the mid-volume of the liquid fuel at a fill level of 40 percent of nominal tank capacity. In-tank temperature sensors are not required for the supplemental two-diurnal test sequence specified in § 86.130–96.

(f) *Pressure recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means, shall be used to record the enclosure gauge pressure for any testing in an enclosure, as well as the vehicle's fuel tank pressure during the running loss test. The Administrator may omit measurement of fuel tank pressure. The recording system shall record each pressure at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving pressure to ±0.1 inches of water. The pressure recording system (recorder and sensor) shall have an accuracy of ±1.0 inches of water. The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. The pressure transducer shall be installed to measure the pressure in the vapor space of the fuel tank.

(g) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon and/or methanol concentration from the test level to the ambient level between tests.

Actual flow capacity will depend upon the time available between tests.

(h) *Mixing blower.* Blowers or fans shall be used to mix the enclosure contents during evaporative emission testing. The inlets and outlets of the air circulation blower(s) shall be configured to provide a well dispersed air circulation pattern that produces effective internal mixing and avoids significant temperature or hydrocarbon stratification. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of testing.

(1) *Diurnal emission test.* Blowers or fans shall have a capacity of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume for mixing in the enclosure. Additional fans may be used to maintain a minimum wind speed of 5 mph (8 km/h) under the fuel tank of the test vehicle.

(2) *Running loss test.* Blowers or fans shall have a total capacity of at least 1.0 cfm per cubic foot of the nominal enclosure volume.

(3) *Hot soak test.* Blowers or fans must have a capacity of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume. Circulated air shall not be aimed directly at the vehicle.

(i) *Point-source running loss measurement facility.* Some system requirements pertain specifically to running loss testing by the point-source method, in which emissions from potential sources are collected and routed to a sampling system. Emissions are sampled with the same equipment and techniques as for exhaust emission measurement. The test environment must contain a dynamometer that meets the requirements of § 86.108. During the running loss test, ambient temperatures must be maintained at 95±5 °F (95±2 °F on average). An air or oxygen cylinder with an attached self-contained breathing apparatus may be provided for the vehicle operator.

(1) The running loss vapor vent collection system shall be configured to collect all running loss emissions from each of the discrete point sources that function as vehicle fuel system vapor vents, and transport the collected vapor emissions to a CFV- or PDP-based dilution and measurement system. The collection system shall consist of a collector at each vehicle vapor vent, lengths of heated sample line connecting each collector to the inlet of the heated sample pump, and lengths of heated sample line connecting the outlet of the heated sample pump to the inlet of the running loss fuel vapor sampling system. Up to 3 feet of unheated line connecting each of the vapor collectors to the heated sample lines shall be allowed. Each heated sample pump and its associated sample lines shall be maintained at a temperature between 175 °F and 200 °F to prevent condensation of fuel vapor in the sample lines. The heated sample pump(s) and its associated flow controls shall be configured and operated to draw a flow of ambient air into each collector at a flow rate of at least 0.67 cfm. The flow controls on each heated sampling system shall include an indicating flow meter that provides an alarm output to the data recording system if the flow rate drops below 0.67 cfm by more than 5 percent. The collector inlet for each discrete vapor vent shall be placed in proximity to the vent as necessary to capture any fuel vapor emissions without significantly affecting flow or pressure of the normal action of the vent. The collector inlets shall be designed to interface with the configuration and orientation of each specific vapor vent. For vapor vents that terminate in a tube or hose barb, a short length of tubing of an inside diameter larger throughout its length than the inside diameter of the vent outlet may be used to extend the vent into the mouth of the collector. For those vapor vent designs that are not compatible with such collector configurations, the vehicle manufacturer shall supply a collector that is configured to interface with the vapor vent design and that terminates in a fitting that is capable of capturing all vapor emitted from the vent. The Administrator may test for running losses by the point-source method without heating sample lines or pumps.

(2) The running loss fuel vapor sampling system shall be a CFV- or PDP-based dilution and measurement system that further dilutes the running loss fuel vapors collected by the vapor vent collection system(s) with ambient air, collects continuously proportional samples of the diluted running loss vapors and dilution air in sample bags, and measures the total dilute flow through the sampling system over each test interval. In practice, the system shall be configured and operated in a manner that is directly analogous to an exhaust emissions constant volume sampling system, except that the input flow to the system is the flow from the running loss vapor vent collection system(s) instead of vehicle exhaust flow. The system shall be configured and operated to meet the following requirements:

(i) The running loss fuel vapor sampling system shall be designed to measure the true mass of fuel vapor emissions collected by the running loss vapor vent collection system from the specified fuel vapor vents. The total volume of the mixture of running loss emissions and dilution air shall be measured and a continuously proportioned sample of volume shall be collected for analysis. Mass emissions shall be determined from the sample concentration and total flow over the test period.

(ii) The PDP–CVS shall consist of a dilution air filter and mixing assembly, heat exchanger, positive-displacement pump, sampling system, and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

(A) The gas mixture temperature, measured at a point immediately ahead of the positive-displacement pump, shall be within ±10 °F of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ±10 °F during the entire test. The temperature measuring system shall have an accuracy and precision of ±2 °F.

(B) The pressure gauges shall have an accuracy and precision of ±1.6 inches of water (±0.4 kPa).

(C) The flow capacity of the CVS shall not exceed 350 cfm.

(D) Sample collection bags for dilution air and running loss fuel vapor samples shall be sufficient size so as not to impede sample flow.

(iii) The CFV sample system shall consist of a dilution air filter and mixing assembly, a sampling venturi, a critical flow venturi, a sampling system and assorted valves, and pressure and temperature sensors. The CFV sample system shall conform to the following requirements:

(A) The temperature measuring system shall have an accuracy and precision of ±2 °F and a response time of 0.100 seconds of 62.5 percent of a temperature change (as measured in hot silicone oil).

(B) The pressure measuring system shall have an accuracy and precision of ±1.6 inches of water (0.4 kPa).

(C) The flow capacity of the CVS shall not exceed 350 cfm.

(D) Sample collection bags for dilution air and running loss fuel vapor samples shall be of sufficient size so as not to impede sample flow.

(3) An on-line computer system or strip-chart recorder shall be used to record the following additional parameters during the running loss test sequence:

(i) CFV (if used) inlet temperature and pressure.

(ii) PDP (if used) inlet temperature, pressure, and differential pressure.

25. Section 86.113–94 is amended by revising footnote 4 in the table of paragraph (a)(1) to read as follows:

§ 86.113–94 Fuel specifications.

(a) * * * (1) * * *

* * * * *

[4] For testing at altitude above 1,219 m (4,000 ft.) the specified range is 7.6–8.0 psi (52–55 kPa).

* * * * *

26. Section 86.115–78 of subpart B is amended by revising paragraphs (a) and (b) to read as follows:

§ 86.115–78 EPA urban dynamometer driving schedules.

(a) The EPA Urban Dynamometer Driving Schedule and the EPA New York City Cycle are listed in appendix I of this part. The driving schedules are defined by a smooth trace drawn through the specified speed vs. time relationships. They each consist of a distinct nonrepetitive series of idle, acceleration, cruise, and deceleration modes of various time sequences and rates.

(b) The driver should attempt to follow the target schedule as closely as possible. The speed tolerance at any given time for these schedules, or for a driver's aid chart approved by the Administrator, are as follows:

(1) The upper limit is 2 mph (3.2 km/h) higher than the highest point on the trace within 1 second of the given time.

(2) The lower limit is 2 mph (3.2 km/h) lower than the lowest point on the trace within 1 second of the given time.

(3)(i) Speed variations greater than the tolerances (such as may occur during gear changes or braking spikes) are acceptable, provided they occur for less than 2 seconds on any occasion and are clearly documented as to the time and speed at that point of the driving schedule.

(ii) When conducted to meet the requirements of § 86.129, up to three additional occurrences of speed variations greater than the tolerance are acceptable, provided they occur for less than 15 seconds on any occasion, and are clearly documented as to the time and speed at that point of the driving schedule.

(4) Speeds lower than those prescribed are acceptable, provided the vehicle is operated at maximum available power during such occurrences.

(5) When conducted to meet the requirements of §§ 86.129, 86.132, or § 86.146, the speed tolerance shall be as specified above, except that the upper and lower limits shall be 4 mph (6.4 km/h).

* * * * *

27. A new § 86.117–96 is added to subpart B to read as follows:

§ 86.117–96 Evaporative emission enclosure calibrations.

The calibration of evaporative emission enclosures consists of three parts: initial and periodic determination of enclosure background emissions (hydrocarbons and methanol); initial determination of enclosure internal volume; and periodic hydrocarbon and methanol retention check and calibration. Methanol measurements may be omitted when methanol-fueled vehicles will not be tested in the evaporative enclosure.

(a) *Initial and periodic determination of enclosure background emissions.* Prior to its introduction into service, annually thereafter, and after any repair that can affect the enclosure background emissions, the enclosure shall be checked to determine that it does not contain materials that will themselves emit hydrocarbons or methanol. When methanol as well as hydrocarbons are present in the evaporative enclosure, the HFID hydrocarbon concentration measurement includes the partial response of the HFID to methanol plus the hydrocarbons. Determination of the HFID response to methanol, § 86.121, prior to its being placed in service is required for the determination of hydrocarbons. Proceed as follows:

(1) Prepare the enclosure. (i) Variable-volume enclosures may be operated in either latched or unlatched volume configuration, as described in paragraph (b)(1) of this section. Ambient temperatures shall be maintained at 96±3 °F throughout the 4-hour period.

(ii) Fixed-volume enclosures shall be operated with inlet and outlet flow streams closed. Ambient temperatures shall be maintained at 96±3 °F throughout the 4-hour period.

(iii) For running loss enclosures ambient temperatures shall be maintained at 95±3 °F throughout the 4-hour period.

(2) The enclosure may be sealed and the mixing fan operated for a period of up to 12 hours before the 4-hour background sampling period begins.

(3) Zero and span (calibrate if required) the hydrocarbon analyzer.

(4) Prior to the background determination, purge the enclosure until a stable background hydrocarbon reading is obtained.

(5) Turn on the mixing blower (if not already on).

(6) Seal enclosure and measure background hydrocarbon concentration, background methanol, temperature, and barometric pressure.

These are the initial readings C_{HCi}, C_{CH_3OHi}, and P_{Bi}, T_i for the enclosure background determination.

(7) Allow the enclosure to stand undisturbed without sampling for four hours.

(8) Measure the hydrocarbon concentration on the same FID and the methanol level. These are the final concentrations, C_{HCf} and C_{CH_3OHf}. Also measure final temperature and barometric pressure.

(9) Calculate the mass change of methanol, hydrocarbons, and hydrocarbons plus methanol in the enclosure according to the equations in paragraph (d) of this section.

(i) *Diurnal enclosures.* The enclosure background emissions (hydrocarbons plus methanol) shall not be greater than 0.05g for the 4 hours.

(ii) *Running loss enclosures.* The enclosure background emissions (hydrocarbons plus methanol) shall not be greater than 0.2 grams for the 4 hours.

(b) *Initial determination of enclosure internal volume.* Initial determination of enclosure internal volume. Prior to its introduction into service the enclosure internal volume shall be determined by the following procedure:

(1) Carefully measure the internal length, width and height of the enclosure, accounting for irregularities (such as braces) and calculate the internal volume. For variable-volume enclosures, latch the enclosure to a fixed volume when the enclosure is held at an ambient temperature of 84 °F; this nominal volume shall be repeatable within ±0.5 percent of the reported value.

(2) Perform an enclosure calibration check according to paragraph (c) of this section.

(3) If the calculated mass does not agree within 2 percent of the injected propane mass, then corrective action is required.

(c) *Hydrocarbon and methanol retention check and calibration.* The hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) retention check provides a check upon the calculated volume and also measures the leak rate. The enclosure leak rate shall be determined prior to its introduction into service, following any modifications or repairs to the enclosure that may affect the integrity of the enclosure, and at least monthly thereafter. If six consecutive monthly retention checks are successfully completed without corrective action, the enclosure leak rate may be determined quarterly thereafter as long as no corrective action is required.

(1) An enclosure to be used for the diurnal emission test (see § 86.133–96) shall be calibrated according to the following procedure.

(i) Zero and span (calibrate if required) the hydrocarbon analyzer.

(ii) Purge the enclosure until a stable background hydrocarbon reading is obtained.

(iii) Turn on the mixing blowers (if not already on).

(iv) On variable-volume enclosures, latch the enclosure to the nominal volume position. On fixed-volume enclosures close the outlet and inlet flow streams.

(v) Turn on the ambient temperature control system (if not already on) and adjust it for an initial temperature of 96 °F (36 °C).

(vi) When the enclosure stabilizes at 96±3 °F (36±2 °C), seal the enclosure and measure background hydrocarbon concentration, background methanol, temperature, and barometric pressure. These are the initial readings C_{HCi}, C_{CH_3OHi}, T_i, and P_{Bi} for the enclosure calibration.

(vii) Inject into the enclosure 2 to 6 grams of pure propane and 2 to 6 grams of pure methanol in gaseous form; i.e., at a temperature of at least 150 °F (65 °C). The propane and methanol may be measured by volume flow or by mass measurement. The method used to measure the propane and methanol shall have an accuracy and precision of ±0.2 percent of the measured value.

(viii) After a minimum of 5 minutes of mixing, analyze the enclosure atmosphere for hydrocarbon and methanol content, also record temperature and pressure. These measurements are the final readings for the enclosure calibration as well as the initial readings for the retention check.

(ix) To verify the enclosure calibration, calculate the mass of propane and the mass of methanol using the measurements taken in paragraphs (c)(1)(vi) and (viii) of this section. See paragraph (d) of this section. This quantity must be within ±2 percent of that measured in paragraph (c)(1)(vii) of this section.

(x) For variable-volume enclosures, unlatch the enclosure from the nominal volume configuration. For fixed-volume enclosures, open the outlet and inlet flow streams.

(xi) Start cycling the ambient temperature from 96 °F to 72 °F and back to 96 °F over a 24-hour period, according to the profile specified in § 86.133–96 and appendix II of this part, within 15 minutes of sealing the enclosure.

(xii) At the completion of the 24-hour cycling period, analyze the enclosure atmosphere for hydrocarbon and methanol content; determine the net withdrawn methanol (in the case of diurnal emission testing with fixed volume enclosures); record temperature and barometric pressure. These are the final readings for the hydrocarbon and methanol retention check. The final hydrocarbon and methanol mass, calculated in paragraph (d) of this section, shall be within 3 percent of that determined in paragraph (c)(1)(viii) of this section.

(2) An enclosure to be used for the running loss test (see § 86.134–96) shall meet the calibration and retention requirements of § 86.117–90(c).

(3) Enclosures calibrated according to the procedures specified in either paragraph (c)(1) or (c)(2) of this section may be used for hot soak testing (see § 86.138).

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, the net withdrawn methanol (in the case of diurnal emission testing with fixed-volume enclosures), and initial and final temperature and pressure according to the following equation:

$$M_{CH_3OH} = \left(\frac{V_n \times C_{MR}}{A_{MR}}\right) \times \left(\frac{T_{E_f}}{V_{E_f} \times T_{SHED_f}} \times [(A_{MS1f} \times AV_{1f}) + (A_{MS2f} \times AV_{2f})] - \frac{T_{E_i}}{V_{E_i} \times T_{SHED_i}} \times [(A_{MS1i} \times AV_{1i}) + (A_{MS2i} \times AV_{2i})]\right) + (M_{CH_3OH,out} - M_{CH_3OH,in})$$

Where,

(i) M_{CH_3OH}=mass change, μg.

(ii) V=Enclosure volume, ft^3, as measured in paragraph (b)(1) of this section.

(iii) C_{MR}=Concentration of methanol in standard sample for calibration of gas chromatograph (GC), μg/ml.

(iv) A_{MR}=GC peak area of standard sample.

(v) T_E=Temperature of sample withdrawn, R.

(vi) T_{SHED}=Temperature of enclosure, R.

(vii) V_E=Volume of sample withdrawn, ft^3.

(viii) P_B=Barometric pressure at time of sampling, in. Hg.

(ix) A_{MS}=GC peak area of test sample.

(x) AV=Volume of absorbing reagent in impinger (ml).

(xi) i=Initial sample.

(xii) f=Final sample.

(xiii) 1=First impinger

(xiv) 2=Second impinger.

(xv) $M_{CH_3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, μg.

(xvi) $M_{CH_3OH,in}$=mass of methanol entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, μg.

(2) The hydrocarbon mass change is calculated from the initial and final FID readings of hydrocarbon concentration, methanol concentration with FID response to methanol, the net withdrawn hydrocarbon and methanol (in the case of diurnal emission testing with fixed-volume enclosures), and initial and final temperature and pressure according to the following equation:

$$M_{HC} = (kV_n \times 10^{-4}) \times \left(\frac{(C_{HC_f} - rC_{CH_3OH_f})P_{B_f}}{T_f} - \frac{(C_{HC_i} - rC_{CH_3OH_i})P_{B_i}}{T_i} \right) + M_{HC,out} - M_{HC,in}$$

Where,

(i) M_{HC}=Hydrocarbon mass change, g.

(ii) C_{HC}=FID hydrocarbon concentration as ppm carbon, that is, ppm propane × 3, including FID response to methanol in the sample.

(iii) C_{CH_3OH}=Methanol concentration as ppm carbon.

$$C_{CH_3OH} = \left(\frac{1.501 \times 10^{-3} C_{MR} \times T}{A_{MR} \times P_B \times V_n} \right) \times [(A_{S1} \times AV_1) + (A_{S2} \times AV_2)]$$

(iv) V=Enclosure volume ft^3 (m^3), as measured in paragraph (b)(1) of this section.

(v) r=FID response factor to methanol.

(vi) P_B=Barometric pressure, in. Hg. (kPa).

(vii) T=Enclosure ambient temperature, R(K) .

(viii) i=Indicates initial reading.

(ix) f=Indicates final reading.

(x)(A) k=3.05.

(B) For SI units, k=17.60.

(xi) $M_{HC,out}$=mass of hydrocarbon exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(xii) $M_{HC,in}$=mass of hydrocarbon entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(e) *Calibration of equipment for point-source testing of running losses.* For the point-source method, the running loss fuel vapor sampling system shall be calibrated as a CVS system, as specified in § 86.119, with the additional specification that the vapor sampling system verification be conducted as follows:

(1) The following "gravimetric" technique can be used to verify that the vapor sampling system and analytical instruments can accurately measure a mass of gas that has been injected into the system. If the vapor sampling system will be used only in the testing of petroleum-fueled engines, the system verification may be performed using propane. If the vapor sampling system will be used with methanol-fueled vehicles as well as petroleum-fueled vehicles, the system verification performance check must include a methanol check in addition to the propane check. (Verification can also be accomplished by constant flow metering using critical flow orifice devices.)

(i) Obtain a small cylinder that has been charged with pure propane gas. Obtain another small cylinder that has been charged with pure methanol if the system will be used for methanol-fueled vehicle testing. Since this cylinder will be heated to 150–155 °F, care must be taken to ensure that the liquid volume of methanol placed in the cylinder does not exceed approximately one-half of the total volume of the cylinder.

(ii) Determine a reference cylinder weight to the nearest 0.01 grams.

(iii) Operate the vapor sampling system in the normal manner and release a known quantity of pure propane into the most frequently used fuel vapor vent collector during the sampling period (approximately 5 minutes).

(iv) Continue to operate the vapor sampling system in the normal manner and release a known quantity of pure methanol into the system during the sampling period (approximately 5 minutes).

(v) The calculations of § 86.144 are performed in the normal way, except in the case of propane. The density of propane (17.30 g/ft^3/carbon atom (0.6109 kg/m^3/carbon atom)) is used in place of the density of exhaust hydrocarbons. In the case of methanol, the density of 37.71 g/ft^3 (1.332 kg/m^3) is used.

(vi) The gravimetric mass is subtracted from the vapor sampling system measured mass and then divided by the gravimetric mass to determine the percent accuracy of the system.

(vii) The cause for any discrepancy greater than ±2 percent must be found and corrected.

(2) This procedure shall be conducted in the point-source running loss test environment with the collector installed in a vehicle in the normal test configuration. The fuel of the test vehicle shall either be diesel, or it shall be kept under 100 °F (38 °C). Two to six grams of pure propane and two to six grams of pure methanol shall be injected into the collector while the vehicle is operated over one Urban Dynamometer Driving Schedule (UDDS), as described in § 86.115 and Appendix I of this part. The propane and methanol injections shall be conducted at the ambient temperature of 95±5 °F (35±3 °C).

28. A new § 86.127–96 is added to subpart B to read as follows:

§ 86.127–96 Test procedures; overview.

The procedures described in this and subsequent sections are used to determine the conformity of vehicles with the standards set forth in subpart A of this part for light-duty vehicles and light-duty trucks.

(a) The overall test consists of prescribed sequences of fueling, parking, and operating conditions. Vehicles are tested for any or all of the following emissions:

(1) Gaseous exhaust THC, CO, NO_x, CO_2 (for petroleum-fueled vehicles), plus CH_3OH and HCHO for methanol-fueled vehicles, plus CH_4 (for vehicles subject to the NMHC and OMNMHCE standards).

(2) Particulates.

(3) Evaporative HC (for gasoline-fueled and methanol-fueled vehicles) and CH_3OH (for methanol-fueled vehicles). The evaporative testing portion of the procedure occurs after the exhaust emission test; however, exhaust emissions need not be sampled to complete a test for evaporative emissions.

(4) Fuel spitback.

(b) The Otto-cycle exhaust emission test is designed to determine gaseous THC, CO, CO_2, CH_4, NO_x, and particulate mass emissions from

gasoline-fueled and methanol-fueled Otto-cycle vehicles as well as methanol and formaldehyde from methanol-fueled Otto-cycle vehicles, while simulating an average trip in an urban area of 11 miles (18 kilometers). The test consists of engine start-ups and vehicle operation on a chassis dynamometer through a specified driving schedule. A proportional part of the diluted exhaust is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler.

(c) The diesel-cycle exhaust emission test is designed to determine particulate and gaseous mass emissions during a test similar to the test in § 86.127(b). For petroleum-fueled diesel-cycle vehicles, diluted exhaust is continuously analyzed for THC using a heated sample line and analyzer; the other gaseous emissions (CH_4, CO, CO_2, and NO_X) are collected continuously for analysis as in § 86.127(b). For methanol-fueled vehicles, THC, methanol, formaldehyde, CO, CO_2, CH_4, and NO_X are collected continuously for analysis as in § 86.127(b). THC, methanol, and formaldehyde are collected using heated sample lines, and a heated FID is used for THC analyses. Simultaneous with the gaseous exhaust collection and analysis, particulates from a proportional part of the diluted exhaust are collected continuously on a filter. The mass of particulate is determined by the procedure described in § 86.139. This testing requires a dilution tunnel as well as the constant volume sampler.

(d) The evaporative emission test (gasoline-fueled vehicles and methanol-fueled vehicles) is designed to determine hydrocarbon and methanol evaporative emissions as a consequence of diurnal temperature fluctuation, urban driving, and hot soaks following drives. It is associated with a series of events that a vehicle may experience and that may result in hydrocarbon and/or methanol vapor losses. The test procedure is designed to measure:

(1) Diurnal emissions resulting from daily temperature changes (as well as relatively constant resting losses), measured by the enclosure technique (see § 86.133);

(2) Running losses resulting from a simulated trip performed on a chassis dynamometer, measured by the enclosure or point-source technique (see § 86.134); and

(3) Hot soak emissions, which result when the vehicle is parked and the hot engine is turned off, measured by the enclosure technique (see § 86.138).

(e) Fuel spitback emissions occur when a vehicle's fuel fill neck cannot accommodate dispensing rates. The vehicle test for spitback consists of a short drive followed immediately by a complete refueling event.

(f) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.090–25.

29. Section 86.128–79 of subpart B is amended by revising paragraph (c) to read as follows:

§ 86.128–79 Transmissions.

* * * * *

(c) Idle modes less than one minute in length shall be run with automatic transmissions in "Drive" and the wheels braked; manual transmissions shall be in gear with the clutch disengaged, except for the first idle mode (see §§ 86.134, 86.136, and 86.137). The first idle mode and idle modes longer than one minute in length may be run with automatic transmissions in "Neutral;" manual transmissions may be in "Neutral" with the clutch engaged (clutch may be disengaged for engine start-up). If an automatic transmission is in "Neutral" during an idle mode, it shall be placed in "Drive" with the wheels braked at least 5 seconds before the end of the idle mode. If a manual transmission is in "Neutral" during an idle mode, it shall be placed in gear with the clutch disengaged at least 5 seconds before the end of the idle mode.

* * * * *

30. Section 86.129–94 of subpart B is amended by revising the section heading and adding paragraph (d) to read as follows:

§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(d) *Fuel temperature profile*—(1) *General requirements.* To be tested for running losses, as specified in § 86.134, a vehicle must have a fuel temperature profile. The following procedure is used to generate the fuel temperature profile, which serves as a target for controlling fuel temperatures during the running loss test. This profile represents the fuel temperature change that occurs during on-road driving. If a vehicle has more than one fuel tank, a profile shall be established for each tank. If manufacturers use a vehicle model to develop a profile to represent multiple models, the vehicle model selected must have the greatest expected fuel temperature increase during driving of all those models it represents. Also, manufacturers must select test vehicles with any available vehicle options that increase fuel temperatures during driving (for example, any feature that limits underbody airflow). The Administrator may conduct testing to establish any vehicle's fuel temperature profile.

(2) *Vehicle instrumentation.* (i) The vehicle must be equipped with temperature sensors and pressure transducers, as described in § 86.107–96 (e) and (f), and a driver's aid, which shall be configured to provide the test driver with the desired vehicle speed vs. time trace and the actual vehicle speed.

(ii) A computer, data logger, or strip chart data recorder shall record the following parameters at a minimum during the test run:

(A) Desired speed;

(B) Actual speed;

(C) Instantaneous average liquid fuel temperature (T_{liq}); and

(D) Vapor space pressure (the Administrator may omit measurement of fuel tank pressure).

(iii) The data recording system described in paragraph (d)(2)(ii) of this section shall be capable of resolving time to ±1 s, capable of resolving temperature to ±2 °F, capable of resolving pressure to ±1.0 inch of water, and capable of resolving speed to ±0.1 mph. The temperature and pressure signals shall be recorded at intervals of up to 1 minute; speed signals shall be recorded at intervals of up to 1 second.

(3) *Ambient conditions.* The procedure shall be run under the following ambient conditions. Conditions should be representative of sunny summer days.

(i) Starting ambient temperature ($T_{amb,o}$) shall be at least 95 °F, steady or increasing (no more than 2 °F drop) during the procedure. Ambient temperature shall be measured and recorded in regular intervals of at least once every 5 minutes. Measure ambient temperature with the following requirements (based on *Federal Standard for Siting Meteorological Sensors at Airports*, FCM–S4–1987). The sensors shall be mounted 5±1 feet (1.5±0.3 meters) above ground level. The sensors shall be protected from radiation from the sun, sky, earth, and any other surrounding objects, but at the same time be adequately ventilated. The sensors shall be installed in such a position as to ensure that measurements are representative of the free air circulation in the locality and not influenced by artificial conditions such as large buildings, cooling towers, and expanses of concrete and tarmac. Keep any grass and vegetation within 100 feet (30 meters) of the sensor clipped to a

height of about 10 inches (25 centimeters) or less.

(ii) Wind conditions shall be calm to light with maximum wind speed of 15 mph. Wind speed shall be measured and recorded in regular intervals of at least once per minute. Measure wind speed with the following requirements (based on *Federal Standard for Siting Meteorological Sensors at Airports*, FCM–S4–1987). The site should be relatively level, but small gradual slopes are acceptable. The sensor shall be mounted 30 to 33 feet (9 to 10 meters) above the average ground height within a radius of 500 feet (150 meters). The sensor height shall not exceed 33 feet, except as necessary to be at least 15 feet (5 meters) above the height of any obstruction (e.g. vegetation, buildings, etc.) within a 500 foot (150 meter) radius. An object is considered to be an obstruction if the included lateral angle from the sensor to the ends of the object is 10 degrees or more.

(iii) Road surface temperature shall be at least 30 °F above ambient temperature throughout the driving period. Pavement temperature shall be measured and recorded in regular intervals of at least once per minute. The track temperature may be measured with an embedded sensor, a portable temperature probe, or an infrared pyrometer that can provide an accuracy of ±2 °F. Temperatures must be measured on a surface representative of the surface where the vehicle is driven.

(iv) Conditions shall be sunny or mostly sunny with a maximum cloud cover of 25 percent.

(v) Reported cloud cover, wind speed, and ambient temperature should be consistent with that reported by the nearest weather station; the Administrator may request justification of any discrepancy.

(4) *Profile determination procedure.* (i) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2.

(ii) The vehicle shall be moved to the location where the data is to be collected. It may be driven a maximum distance of 5 miles and may be transported by other means. The vehicle shall be parked for a minimum of 12 hours in an open area on a surface that is representative of the test road. The orientation of the front of the vehicle during parking (e.g., N, SW, etc.) shall be documented.

(iii) Once the 12 hour minimum parking time has been achieved and the ambient temperature, weather conditions, and track surface temperature are within the allowable ranges, the vehicle engine shall be started. The vehicle air conditioning system (if so equipped) shall be set to the "normal" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in "automatic" temperature and fan modes with the system set at 72 °F.

(iv) The vehicle may be operated at minimum throttle for a period up to 60 seconds prior to the start of the driving schedule, as necessary to move from the parking location onto the road surface. The driver's aid shall be started and the vehicle operated over the driving cycle specified in § 86.134–96(b) with the transmission operated in the same manner as specified in § 86.128–79. The data recording system shall provide a record of the required parameters over the entire period of driving.

(5) *Records required.* In addition to the vehicle data recording, the following parameters shall be documented for the determination of the fuel temperature profile:

(i) Date and time of vehicle fueling;

(ii) Odometer reading at vehicle fueling;

(iii) Date and time vehicle was parked, parking location and orientation;

(iv) Odometer reading at parking;

(v) Date and time engine was started;

(vi) Time of initiation of first UDDS;

(vii) Time of completion of the driving cycle;

(viii) Ambient temperatures throughout the period of driving (T_{amb});

(ix) Wind speed throughout the period of driving;

(x) Track surface temperatures throughout the period of driving cycle (T_{sur});

(xi) Percent cloud cover during the period of driving; and

(xii) Ambient temperature, wind speed, and percent cloud cover reported by the nearest weather station for the time corresponding most closely to the period of driving.

(6) *Fuel tank pressure.* Tank pressure shall not exceed 10 inches of water at any time during the temperature profile determination unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal.

(7) *Calculation of temperature profiles.* (i) The traces from the driving schedule shall be verified to meet the speed tolerance requirements of § 86.115. The following conditions shall be verified:

(A) $T_{amb,i} \geq T_{amb,o} - 2$ °F.

Where,

(*1*) i=instantaneous measurement throughout the drive; and

(*2*) o=initial measurement at the start of the specified driving schedule.

(B) $T_{amb,o} \geq 95$ °F.

(C) $T_{sur,i} - T_{amb,i} \geq 30$ °F.

(D) $W_{max} \leq 15$ mph.

(ii) Failure to comply with any of these requirements shall result in invalidation of the data and require that the procedure be repeated, beginning with the fuel drain at paragraph (d)(4)(i) of this section.

(iii) If all these requirements are met, the following calculations shall be performed:

$T_{i,profile} = T_i - T_o$.

Where,

(A) $T_{i,profile}$=the series of temperatures that comprise the relative fuel temperature profile.

(B) T_i=the series of observed liquid fuel temperatures during the drive.

(C) T_o=the liquid fuel temperature observed at the start of the specified driving schedule.

(iv) The relative fuel temperature profile consists of the set of temperatures at each 1-minute interval. If multiple valid test runs are conducted for any model, then all the collected data shall be used to calculate a composite profile, based on the average temperatures at each point. The absolute fuel temperature profile is determined by adding 95 °F (35 °C) to each point of the relative profile.

31. A new § 86.130–96 is added to subpart B to read as follows:

§ 86.130–96 Test sequence; general requirements.

(a) The test sequence shown in figure B96–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. The full three-diurnal sequence depicted in figure B96–10 tests vehicles for all sources of evaporative emissions. The supplemental two-diurnal test sequence is designed to verify that vehicles sufficiently purge their evaporative canisters during the exhaust emission test. Sections 86.132–96, 86.133–96, and 86.138–96 describe the separate specifications of the supplemental two-diurnal test sequence.

(b) The vehicle test for fuel spitback during fuel dispensing is conducted as a stand-alone test (see § 86.146).

(c) Ambient temperature levels encountered by the test vehicle shall be not less than 68 °F nor more than 86 °F, unless otherwise specified. If a different

ambient temperature is specified for soaking the vehicle, the soak period may be interrupted once for up to 10 minutes to transport the vehicle from one soak area to another, provided the ambient temperature experienced by the vehicle is never below 68 °F. The temperatures monitored during testing must be representative of those experienced by the test vehicle.

(d) The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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Federal Test Procedure

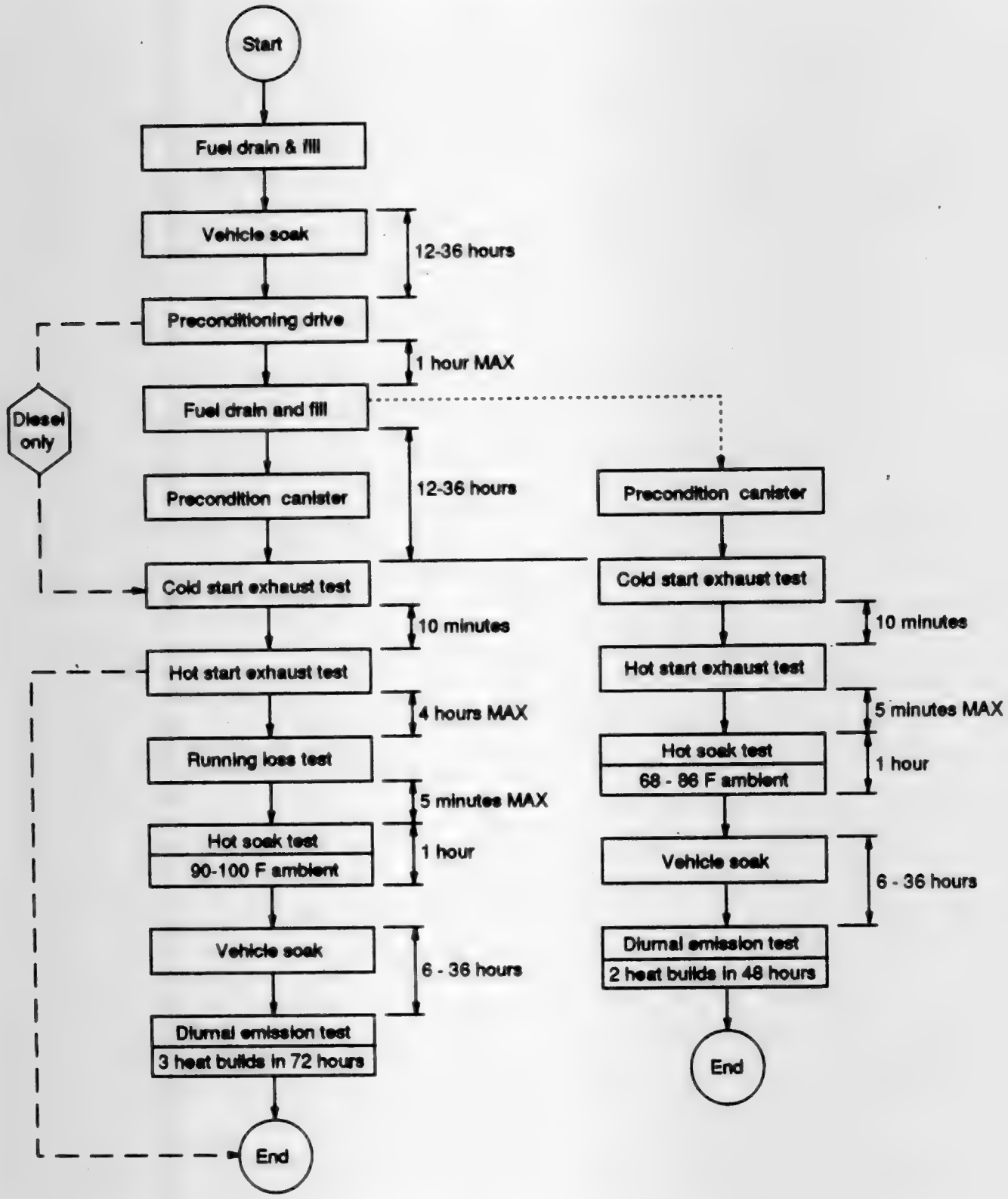

Figure B96-10 Test sequence

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32. A new § 86.131–96 is added to subpart B to read as follows:

§ 86.131–96 Vehicle preparation.

(a) For gasoline- and methanol-fueled vehicles prepare the fuel tank(s) for recording the temperature of the prescribed test fuel, as described in § 86.107–96(e).

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(c) For preconditioning that involves loading the evaporative emission canister(s) with butane, provide valving or other means as necessary to allow purging and loading of the canister(s).

(d) For vehicles to be tested for running loss emissions, prepare the fuel tank(s) for measuring and recording the temperature and pressure of the fuel tank as specified in § 86.107–96 (e) and (f). The Administrator may omit measurement of fuel tank pressure.

(e) For vehicles to be tested for running loss emissions, prepare the exhaust system by sealing or plugging all detectable sources of exhaust gas leaks. The exhaust system shall be tested or inspected to ensure that detectable exhaust hydrocarbons are not emitted into the running loss enclosure during the running loss test.

33. A new § 86.132–96 is added to subpart B to read as follows:

§ 86.132–96 Vehicle preconditioning.

(a) Fuel tank cap(s) of gasoline- and methanol-fueled vehicles shall be removed during any period that the vehicle is parked outdoors awaiting testing, to prevent unusual loading of the canisters. During this time care must be taken to prevent entry of water or other contaminants into the fuel tank. During storage in the test area while awaiting testing, the fuel tank cap(s) may be in place. The vehicle shall be moved into the test area and the following operations performed.

(b) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The fuel cap(s) shall be installed within 1 minute after refueling.

(c) Between 12 and 36 hours (or, at the Administrator's option, between 6 and 36 hours) after being refueled, the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule (UDDS), specified in § 86.115 and appendix I of this part. The test vehicle may not be used to set dynamometer horsepower.

(d) For unusual circumstances where the need for additional preconditioning is demonstrated by the manufacturer, such preconditioning may be allowed with the advance approval of the Administrator.

(e) The Administrator may also choose to conduct or require to be conducted additional preconditioning to ensure that the evaporative emission control system is stabilized in the case of gasoline-fueled and methanol-fueled vehicles, or to ensure that the exhaust system is stabilized in the case of petroleum- and methanol-fueled diesel vehicles. The preconditioning shall consist of one of the following:

(1) *For gasoline- and methanol-fueled vehicles.* (i) Additional preconditioning shall consist of no more than 50 miles of mileage accumulation under typical driving conditions, either on the road or on a dynamometer.

(ii) In the case of repeat testing on a flexible-fueled vehicle, in which the test fuel is changed, the following preconditioning procedure shall be used. This additional preconditioning allows the vehicle to adapt to the new fuel before the next test run.

(A) Purge the vehicle's evaporative canister for 60 minutes at 0.8 cfm.

(B) Drain the fuel tank(s) and fill with 3 gallons of the test fuel.

(C) Start the vehicle and allow it to idle for 1 minute.

(D) Drain the fuel tank(s) and fill with the new test fuel to the "tank fuel volume" defined in § 86.082–2. The average temperature of the dispensed fuel shall be less than 60 °F.

(E) Conduct a heat build according to the procedure specified in § 86.133–90.

(F) The vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one UDDS, specified in § 86.115 and appendix I of this part.

(G) Following the dynamometer drive, the vehicle shall be turned off for 5 minutes, then restarted and allowed to idle for 1 minute. The vehicle shall then be turned off for 1 minute, and allowed to idle again for 1 minute.

(H) After the vehicle is turned off the last time, it may be tested for evaporative and exhaust emissions, starting with paragraph (a) of this section.

(2) *For petroleum-fueled diesel vehicles.* The preconditioning shall consist of either of the following:

(i) An initial one hour minimum soak and, one, two, or three driving cycles of the UDDS, as described in paragraph (c) of this section, each followed by a soak of at least one hour with engine off, engine compartment cover closed and cooling fan off. The vehicle may be driven off the dynamometer following each UDDS for the soak period; or

(ii) For abnormally treated vehicles, as defined in § 86.085–2, two Highway Fuel Economy Driving Schedules, found in Appendix I of part 600, run in immediate succession, with the road load power set at twice the value obtained from § 86.129.

(f) Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. For gasoline- and methanol-fueled vehicles, drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The vehicle shall be refueled within 1 hour of completion of the preconditioning drive. The fuel cap(s) shall be installed within 1 minute after refueling.

(g) The vehicle shall be soaked for not less than 12 hours nor more than 36 hours between the end of the refueling event and the beginning of the cold start exhaust emission test.

(h) During the soak period for the three-diurnal test sequence described in § 86.130–96, evaporative canisters, if the vehicle is so equipped, shall be preconditioned according to the following procedure. For vehicles with multiple canisters, each canister shall be preconditioned separately.

(1) (i) Prepare the evaporative emission canister for the canister purging and loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system.

(ii) The canister purge shall be performed with ambient air of humidity controlled to 50±25 grains per pound of dry air. This may be accomplished by purging the canister in a room that is conditioned to this level of absolute humidity. The flow rate of the purge air shall be maintained at a nominal flow rate of 0.8 cfm and the duration shall be determined to provide a total purge volume flow through the canister equivalent to 300 canister bed volume exchanges. The bed volume is based on the volume of adsorbing material in the canister.

(iii) The evaporative emission canister shall then be loaded by sending to the canister an amount of commercial grade butane vapors equivalent to 1.5 times its nominal working capacity. The canister shall be loaded with a mixture composed of 50 percent butane and 50 percent nitrogen by volume at a rate of 15±2 grams butane per hour. If the canister loading at that rate takes longer

than 12 hours, a manufacturer may determine a new rate, based on completing the canister loading in no less than 12 hours. The new rate may be used for all subsequent canister loading according to paragraph (h) of this section. The time of initiation and completion of the canister loading shall be recorded.

(iv) The determination of a canister's nominal working capacity shall be based on the average capacity of no less than five canisters that are in a stabilized condition.

(A) For stabilization, each canister must be loaded no less than 10 times and no more than 100 times to 2-gram breakthrough with a 50/50 mixture by volume of butane and nitrogen, at a rate of 15 grams butane per hour. Each canister loading step must be preceded by canister purging with 300 canister bed volume exchanges at 0.8 cfm.

(B) For determining working capacity, each canister must first be purged with 300 canister bed volume exchanges at 0.8 cfm. The working capacity of each canister shall be established by determining the mass of butane required to load the canister from the purged state so that it emits 2 grams of hydrocarbon vapor; the canister must be loaded with a 50/50 mixture by volume of butane and nitrogen, at a rate of 15 grams butane per hour.

(2) For vehicles designed to use only fuel consisting of at least 80 percent methanol by volume, canister preconditioning shall be performed with a fuel vapor composition representative of the composition of the vapor space in the vehicle's fuel tank under in-use conditions. Manufacturers shall develop a procedure to precondition the evaporative canister, if the vehicle is so equipped, for the different fuel. The procedure shall represent a canister loading equivalent to that specified in paragraph (h)(1) of this section and shall be approved in advance by the Administrator.

(i) [Reserved]

(j) For the supplemental two-diurnal test sequence described in § 86.130–96, one of the following methods shall be used to precondition evaporative canisters during the soak period specified in paragraph (g) of this section. For vehicles with multiple canisters, each canister shall be preconditioned separately. Canister emissions are measured to determine breakthrough. Breakthrough is here defined as the point at which the cumulative quantity of hydrocarbons emitted is equal to 2 grams.

(1) *Butane loading to breakthrough.* The following procedure provides for emission measurement in an enclosure. Breakthrough may also be determined by measuring the weight gain of an auxiliary evaporative canister connected downstream of the vehicle's canister, in which case, the following references to the enclosure can be ignored. The auxiliary canister shall be well purged with dry air prior to loading.

(i) Prepare the evaporative emission canister for the canister loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system.

(ii) The evaporative emission enclosure shall be purged for several minutes. Warning: If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(iii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the canister loading procedure.

(iv) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(v) Place the vehicle in a sealed enclosure and measure emissions with a FID.

(vi) Load the canister with a mixture composed of 50 percent butane and 50 percent nitrogen by volume at a rate of 40 grams butane per hour (0.010 cfm butane at lab temperatures).

(vii) As soon as the canister reaches breakthrough, the vapor source shall be shut off.

(viii) Reconnect the evaporative emission canister and restore the vehicle to its normal operating condition.

(2) *Load with repeated diurnal heat builds to breakthrough.* The following procedure provides for emission measurement in an enclosure. Breakthrough may also be determined by measuring the weight gain of an auxiliary evaporative canister connected downstream of the vehicle's canister, in which case, the following references to the enclosure can be ignored. The auxiliary canister shall be well purged with dry air prior to loading.

(i) The evaporative emission enclosure shall be purged for several minutes. **Warning:** If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(ii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the diurnal heat builds.

(iii) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(iv) The fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The average temperature of the dispensed fuel shall be 60±12 °F (16±7 °C). The fuel tank cap(s) shall be installed within 1 minute after refueling.

(v) Within one hour of being refueled, the vehicle shall be placed, with the engine shut off, in the evaporative emission enclosure. The fuel tank temperature sensor shall be connected to the temperature recording system. A heat source, specified in § 86.107–90(a)(4), shall be properly positioned with respect to the fuel tank(s) and connected to the temperature controller.

(vi) The temperature recording system shall be started.

(vii) The fuel may be artificially heated to the starting diurnal temperature.

(viii) When the fuel temperature reaches at least 69 °F (21 °C), immediately: turn off purge blower (if not already off); close and seal enclosure doors; and initiate measurement of the hydrocarbon level in the enclosure.

(ix) When the fuel temperature reaches 72±2 °F (22±1 °C), start the diurnal heat build.

(x) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±4 °F (±3 °C):

$F=T_o+0.4t$; or
for SI units,
$C=T_o+(2/9)t$.

Where,
F=fuel temperature, °F;
C=fuel temperature, °C;
t=time since beginning of test, minutes; and
T_o=initial temperature in °F (°C for SI units).

(xi) As soon as breakthrough occurs or when the fuel temperature reaches 96 °F (36 °C), whichever occurs first, the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If breakthrough has not occurred by the time the fuel temperature reaches 96 °F (36 °C), the

heat source shall be removed from the vehicle, the vehicle shall be removed (with engine still off) from the evaporative emission enclosure and the entire procedure outlined in paragraph (j)(2) of this section shall be repeated until breakthrough occurs.

(xii) After breakthrough occurs, the fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The fuel shall be stabilized to a temperature within 3 °F of the lab ambient before beginning the driving cycle for the exhaust emission test.

(k) The Administrator may conduct the vehicle preparation and preconditioning for measurement of fuel economy or exhaust emissions according to the procedures specified in §§ 86.132–90 and 86.133–90, in lieu of the procedures specified in this section.

(l) Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.135 through 86.137. Vehicles to be tested for evaporative emissions shall be processed in accordance with the procedures in §§ 86.133 through 86.138, starting with § 86.135.

(m) Vehicles to be tested for evaporative emissions with the supplemental two-diurnal test sequence described in § 86.130–96, shall proceed according to §§ 86.135 through 86.137, followed by the supplemental hot soak test (see § 86.138–96(k)) and the supplemental diurnal emission test (see § 86.133–96(p)).

34. A new § 86.133–96 is added to subpart B to read as follows:

§ 86.133–96 Diurnal emission test.

(a) (1) The diurnal emission test for gasoline- and methanol-fueled vehicles consists of three 24-hour test cycles following the hot soak test. Emissions are measured for each 24-hour cycle, with the highest emission level used to determine compliance with the standards specified in subpart A of this part. The Administrator may truncate a test after any 24-hour cycle without affecting the validity of the collected data. Sampling of emissions from the running loss and hot soak tests is not required as preparation for the diurnal emission test. The diurnal emission test may be conducted as part of either the three-diurnal test sequence or the supplemental two-diurnal test sequence, as described in § 86.130–96.

(2) For the full three-diurnal test sequence, the diurnal emission test outlined in paragraphs (b) through (o) of this section follows the high-temperature hot soak test concluded in § 86.138–96(j).

(3) For the supplemental two-diurnal test sequence, the diurnal emission test outlined in paragraph (p) of this section follows the alternate hot soak test specified in § 86.138–96(k).

(b) The test vehicle shall be soaked for not less than 6 hours nor more than 36 hours between the end of the hot soak test and the start of the diurnal emission test. For at least the last 6 hours of this period, the vehicle shall be soaked at 72°±3 °F. The temperature tolerance may be waived for up to 10 minutes to allow purging of the enclosure or transporting the vehicle into the enclosure at the beginning of the diurnal emission test.

(c) The test vehicle shall be exposed to ambient temperatures cycled according to the profile specified in § 86.133 and appendix II of this part with a maximum deviation of 3 °F at any time. The average temperature deviation from the profile, calculated using the absolute value of each measured deviation, shall not exceed 2 °F. Ambient temperatures shall be measured at least every minute. Temperature cycling shall begin when time=0 minutes, as specified in paragraph (i)(5) of this section.

(d) The diurnal enclosure shall be purged for several minutes prior to the test. **Warning:** If at any time the concentration of hydrocarbons, of methanol or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(e) The test vehicle, with the engine shut off and the test vehicle windows and luggage compartment(s) opened, shall be moved into the diurnal enclosure.

(f) [Reserved]

(g) [Reserved]

(h) Prior to sampling for emissions and throughout the period of cycled ambient temperatures, the mixing fan(s) shall circulate the air at a rate of 0.8±0.2 cfm per cubic foot of ambient volume. The fans shall also maintain a minimum air circulation of 5 mph (8 km/hr) under the fuel tank of the test vehicle. The Administrator may adjust fan speed and location to ensure sufficient air circulation around the fuel tank.

(i) Emission sampling may begin as follows:

(1) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the sampling.

(2) Impingers charged with known volumes of pure deionized water shall be placed in the methanol sampling system (methanol-fueled vehicles only).

(3) Turn off purge blowers (if not already off).

(4) Close and seal enclosure doors (if not already closed and sealed).

(5) Within 10 minutes of closing and sealing the doors, analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143.

(6) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the initial methanol concentration, C_{CH_3OHi}, required in § 86.143. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses. If the test is conducted in a fixed-volume enclosure that allows airflow into and out of the enclosure, the effect of makeup air dilution must be factored into the analysis.

(j) If testing indicates that a vehicle design may result in fuel temperature responses during enclosure testing that are not representative of in-use summertime conditions, the Administrator may adjust air circulation and temperature during the test as needed to ensure that the test sufficiently duplicates the vehicle's in-use experience.

(k) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of each emission sampling period.

(l) Fresh impingers shall be installed in the methanol collection system immediately prior to the end of each emission measurement, if applicable.

(m) The end of the first, second, and third emission sampling period shall occur 1440±6, 2880±6, 4320±6 minutes, respectively, after the beginning of the initial sampling, as specified in paragraph (i)(5) of this section.

(1) At the end of each emission sampling period, analyze the enclosure atmosphere for hydrocarbons and record. This is the final hydrocarbon concentration, C_{HCf}, required in § 86.143. The emission measurement at the end of each period becomes the initial hydrocarbon concentration, C_{HCi}, of the next emission sampling period.

(2) Analyze the enclosure atmosphere for methanol, if applicable, and record.

The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the final (time=1440 minutes) methanol concentration, $C_{CH_3OH_f}$, required in § 86.143. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses. If the test is conducted in a fixed-volume enclosure that allows airflow into and out of the enclosure, the effect of makeup air dilution must be factored into the analysis.

(n) At the end of the temperature cycling period the enclosure doors shall be unsealed and opened, the test vehicle windows and luggage compartments may be closed and the test vehicle, with the engine shut off, shall be removed from the enclosure.

(o) This completes the full three-diurnal evaporative emission test sequence described in § 86.130–96.

(p) For the supplemental two-diurnal test sequence described in § 86.130–96, the following steps shall be performed in lieu of the steps described in paragraphs (b) through (n) of this section.

(1) For the supplemental two-diurnal test sequence, the test vehicle shall be soaked for not less than 6 hours nor more than 36 hours between the end of the hot soak test described in § 86.138–96(k), and the start of the two-diurnal emission test. For at least the last 6 hours of this period, the vehicle shall be soaked at 72±3 °F.

(2) The vehicle shall be tested for diurnal emissions according to the procedures specified in paragraphs (c) through (n) of this section, except that the test includes only two 24-hour periods. Therefore the end of the first and second emission sampling periods shall occur 1440±6 and 2880±6 minutes, respectively, after the initial sampling.

(3) This completes the supplemental two-diurnal test sequence for evaporative emission measurement.

35. A new § 86.134–96 is added to subpart B to read as follows:

§ 86.134–96 Running loss test.

(a) *Overview.* Gasoline- and methanol-fueled vehicles are to be tested for running loss emissions during simulated high-temperature urban driving. During operation, tank temperatures are controlled according to a prescribed profile to simulate in-use conditions. If the vehicle is determined to have exceeded the standard before the end of the running loss test, the test may be terminated without invalidating the data. The test can be run either in a sealed enclosure or with the point-source method, as specified in paragraph (g) of this section.

(b) *Driving schedule.* Conduct the running loss test by operating the test vehicle through one Urban Dynamometer Driving Schedule (UDDS), a 2-minute idle, two New York City Cycles, another 2-minute idle, another UDDS, then another 2-minute idle (see § 86.115 and appendix I of this part). Fifteen seconds after the engine starts, place the transmission in gear. Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule. The transmission shall be operated according to the specifications of § 86.128 during the driving cycles.

(c) *Dynamometer Operation.* (1) The exhaust from the vehicle must be routed outside the test cell or enclosure. Exhaust gases may, but need not, be collected and sampled.

(2) Provisions of § 86.135–90(c) shall apply.

(3) Practice runs over the prescribed driving schedule may not be performed at test point.

(4) Provisions of § 86.135–90 (e) and (f) shall apply.

(5) If the dynamometer horsepower must be adjusted manually, it shall be set within 1 hour prior to the running loss test phase. The test vehicle shall not be used to make this adjustment. Dynamometers using automatic control of preselectable power settings may be set any time prior to the beginning of the emissions test.

(6) Dynamometer roll or shaft revolutions shall be used to determine the actual driving distance for the running loss test, D_{RL}, required in § 86.143. The revolutions shall be measured on the same roll or shaft used for measuring the vehicle's speed.

(7) Provisions of § 86.135–90(i) shall apply.

(8) The test run may be stopped if a warning light or gauge indicates that the vehicle's engine coolant has overheated.

(d) *Engine Starting and Restarting.* (1) Provisions of § 86.136–90(a) shall apply.

(2) If the vehicle does not start after the manufacturer's recommended cranking time (or 10 continuous seconds in the absence of a manufacturer's recommendation), cranking shall cease for the period recommended by the manufacturer (or 10 seconds in the absence of a manufacturer's recommendation). This may be repeated for up to three start attempts. If the vehicle does not start after three attempts, the reason for failure to start shall be determined. If failure to start is an operational error, the vehicle shall be rescheduled for testing, starting with the soak period immediately preceding the running loss test.

(3) If failure to start is caused by a vehicle malfunction, corrective action of less than 30 minutes duration may be taken (according to § 86.090–25), and the test continued, provided that the ambient conditions to which the vehicle is exposed are maintained at 95±5 °F (35±3 °C). When the engine starts, the timing sequence of the driving schedule shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, and corrective action may be taken according to § 86.090–25. The reason for the malfunction (if determined) and the corrective action taken shall be reported to the Administrator.

(4) Provisions of § 86.136–90(e) shall apply.

(e) *Pressure checks.* No pressure checks of the evaporative system shall be allowed. Under no circumstances will any changes/repairs to the evaporative emissions control system be allowed.

(f) *Temperature stabilization.* Immediately after the hot transient exhaust emission test, the vehicle shall be soaked in a temperature controlled area for a maximum of 4 hours until the fuel temperature is stabilized at 95±3 °F. Cooling or heating of the fuel tank may be induced to bring the fuel tank to 95±3 °F.

(g) *Running loss test.* The running loss test may be conducted either by the enclosure method, or by the point-source method.

(1) *Enclosure method.* (i) The running loss enclosure shall be purged for several minutes immediately prior to the test. **Warning:** If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(ii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(iii) If not already on, the running loss enclosure mixing fan(s) shall be turned on at this time. Throughout the test, the mixing fan(s) shall circulate the air at a rate of at least 1.0 cfm per cubic foot of ambient volume.

(iv) The test vehicle, with the engine off, shall be moved onto the dynamometer in the running loss enclosure. The vehicle engine compartment cover shall be unlatched, but closed as much as possible, allowing for the air intake equipment specified in paragraph (g)(1)(vii) of this section. The vehicle engine compartment cover may be closed if alternate routing is found for the air intake equipment. Any windows, doors, and luggage compartments shall be closed. A window may be opened to direct cooling air into the passenger compartment of the vehicle, if the vehicle is not equipped with its own air conditioning.

(v) Fans shall be positioned as described in §§ 86.135–90(b), 86.107–96(d), and 86.107–96(h).

(vi) The vehicle air conditioning system (if so equipped) shall be set to the "normal" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in "automatic" temperature and fan modes with the system set at 72 °F.

(vii) Connect the air intake equipment to the vehicle. This connection shall be made to minimize leakage.

(viii) The temperature and pressure recording systems shall be started. The Administrator may omit measurement of fuel tank pressure.

(ix) Turn off purge blowers (if not already off).

(x) The temperature of the liquid fuel shall be monitored and recorded at least every 15 seconds with the temperature recording system specified in § 86.107–96(e).

(xi) Close and seal the enclosure doors.

(xii) When the ambient temperature is 95±5 °F (35±3 °C) and the fuel tank temperature is 95±3 °F (35±2 °C) the running loss test may begin. Measure the initial ambient temperature and pressure.

(A) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143.

(B) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the initial (time=0 minutes) methanol concentration, $C_{CH_3OH_i}$, required in § 86.143. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(xiii) Start the engine and begin operation of the vehicle over the drive cycle specified in paragraph (b) of this section.

(xiv) The ambient temperature shall be maintained at 95±5 °F (95±3 °F on average) during the running loss test; it shall be recorded at least every 60 seconds.

(xv) The fuel temperature during the dynamometer drive shall be controlled to match the fuel tank temperature profile determined in § 86.129. Measured fuel temperatures must be within ±3 °F of the profile temperatures during the first 4306 seconds of the running loss test, and within ±2 °F for the remaining 120 seconds of the test run. If the test vehicle has more than one fuel tank, the fuel temperatures for both fuel tanks shall follow the temperature profiles determined in § 86.129. The control system shall be tuned and operated to provide a smooth and continuous fuel tank temperature profile that is representative of the on-road profile.

(xvi) Tank pressure shall not exceed 10 inches of water at any time during the running loss test unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal.

(xvii) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior the end of the test.

(xviii) Fresh impingers shall be installed in the methanol collection system immediately prior to the end of the test, if applicable.

(xix) The running loss test ends with the completion of the third 2-minute idle period.

(xx) At the end of the running loss test:

(A) Analyze the enclosure atmosphere for hydrocarbons and record. This is the final hydrocarbon concentration, C_{HCf}, required in § 86.143.

(B) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start prior to the end of the test and continue for 4.0±0.5 minutes. The methanol sampling must be completed within 2 minutes after the end of the running loss test. This is the final methanol concentration, $C_{CH_3OH_f}$, required in § 86.143. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(xxi) Turn off any CVS apparatus (if not already turned off).

(2) *Point-source method.* (i) The test vehicle, with the engine off, shall be moved onto the dynamometer. The vehicle engine compartment cover and any windows, doors, and luggage compartments shall be closed.

(ii) Fans shall be positioned as described in §§ 86.135–90(b) and 86.107–96(d).

(iii) The running loss vapor vent collection system shall be properly positioned at the potential fuel vapor vents or leaks of the vehicle's fuel system. Typical vapor vents for current fuel systems are the ports of the evaporative emission canister and the pressure relief vent of the fuel tank (typically integrated into the fuel tank cap).

(iv) The running loss vapor vent collection system may be connected to a PDP–CVS or CFV–CVS bag collection system. Otherwise, running loss vapors shall be sampled continuously with analyzers meeting the requirements of § 86.107–96(b).

(v) Measured emissions must be compared with background hydrocarbon levels to determine the reported running loss emissions.

(vi) The vehicle air conditioning system (if so equipped) shall be set to the "normal" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in "automatic" temperature and fan modes with the system set at 72 °F.

(vii) The temperature and pressure recording systems shall be started. The Administrator may omit measurement of fuel tank pressure.

(viii) The temperature of the liquid fuel shall be monitored and recorded at least every 15 seconds with the temperature recording system specified in § 86.107–96(e).

(ix) When the ambient temperature is 95±5 °F (35±3 °C) and the fuel tank temperature is 95±3 °F the running loss test may begin.

(x) The ambient temperature shall be maintained at 95±5 °F (95±3 °F on average) during the running loss test; it

shall be recorded at least every 60 seconds.

(xi) Fuel temperatures shall be controlled according to the specifications of paragraph (g)(1)(xv) of this section.

(xii) Tank pressure shall not exceed 10 inches of water at any time during the running loss test unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal.

(xiii) The running loss test ends with completion of the third 2-minute idle period.

(xiv) If emissions are collected in bags, the sample bags must be analyzed within 20 minutes of their respective sample collection phases, as described in § 86.137–94(b)(15). The results of the analysis are used in § 86.143 to calculate the mass of hydrocarbons emitted.

(h) Following the completion of the running loss drive, the vehicle may be tested for hot soak emissions as specified in § 86.138–96.

36. Section 86.136–90 of subpart B is amended by revising paragraph (c) to read as follows:

§ 86.136–90 Engine starting and restarting.

* * * * *

(c) If the vehicle does not start after the manufacturer's recommended cranking time (or 10 continuous seconds in the absence of a manufacturer's recommendation), cranking shall cease for the period recommended by the manufacturer (or 10 seconds in the absence of a manufacturer's recommendation). This may be repeated for up to three start attempts. If the vehicle does not start after three attempts, the reason for failure to start shall be determined. The gas flow measuring device on the constant volume sampler (usually a revolution counter) or CFV (and the hydrocarbon integrator and particulate sampling system when testing petroleum-fueled diesel vehicles and the particulate sampling system when testing methanol-fueled diesel vehicles, see § 86.137) shall be turned off and the sampler selector valves, including the methanol sampler, placed in the "standby" position during this diagnostic period. In addition, either the CVS should be turned off, or the exhaust tube disconnected from the tailpipe during the diagnostic period. If failure to start is an operational error, the vehicle shall be rescheduled for testing from a cold start.

* * * * *

37. A new § 86.137–96 is added to subpart B to read as follows:

§ 86.137–96 Dynamometer test run, gaseous and particulate emissions.

Section 86.137–96 includes text that specifies requirements that differ from those specified in §§ 86.137–90 and 86.137–94. Where a paragraph in § 86.137–90 or § 86.137–94 is identical and applicable to § 86.137–96, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.137–90." or "[Reserved]. For guidance see § 86.137–94."

(a) through (b)(15) [Reserved]. For guidance see § 86.137–94.

(b)(16) through (b)(23) [Reserved]. For guidance see § 86.137–90.

(b)(24) Vehicles to be tested for evaporative emissions will proceed according to § 86.134; vehicles to be tested with the supplemental two-diurnal test sequence for evaporative emissions will proceed according to § 86.138–96(k). For all others this completes the test sequence.

38. Section 86.138–90 of subpart B is amended by revising paragraph (i) to read as follows:

§ 86.138–90 Hot-soak test.

* * * * *

(i) The enclosure doors shall be closed and sealed within two minutes of engine shutdown and within five minutes after the end of the exhaust emission test.

* * * * *

39. A new § 86.138–96 is added to subpart B to read as follows:

§ 86.138–96 Hot soak test.

(a) For gasoline- and methanol-fueled vehicles, the hot soak test shall be conducted immediately following the running loss test. However, sampling of emissions from the running loss test is not required as preparation for the hot soak test.

(b) The hot soak test may be conducted in the running loss enclosure as a continuation of that test or in a separate enclosure.

(1) If the hot soak test is conducted in the running loss enclosure, the driver may exit the enclosure after the running loss test. If exiting, the driver should use the personnel door described in § 86.107–96(a)(2), exiting as quickly as possible with a minimum disturbance to the system. The final hydrocarbon and methanol concentration for the running loss test, measured in § 86.134–96(g)(1)(xx), shall be the initial hydrocarbon and methanol concentration (time=0 minutes) C_{HCl} and C_{CH_3OH}, for the hot soak test.

(2) If the vehicle must be moved to a different enclosure, the following steps must be taken:

(i) The enclosure for the hot soak test shall be purged for several minutes prior to completion of the running loss test. WARNING: If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(ii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(iii) Fresh impingers shall be installed in the methanol sample collection system immediately prior to the start of the test, if applicable.

(iv) If not already on, the mixing fan(s) shall be turned on at this time. Throughout the hot soak test, the mixing fan(s) shall circulate the air at a rate of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume.

(v) Begin sampling as follows:

(A) Analyze the enclosure atmosphere for hydrocarbons and record. This is the initial (time = 0 minutes) hydrocarbon concentration, C_{HCl}, required in § 86.143.

(B) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the initial (time=0 minutes) methanol concentration, C_{CH_3OH}, required in § 86.143. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(vi) The vehicle engine compartment cover shall be closed (if not already closed), the cooling fan shall be moved, the vehicle shall be disconnected from the dynamometer and any sampling system, and then driven at minimum throttle to the enclosure for the hot soak test. These steps should be done as quickly as possible to minimize the time needed to start the hot soak test.

(vii) The vehicle's engine must be stopped before any part of the vehicle enters the enclosure.

(viii) The vehicle shall enter the enclosure; the enclosure doors shall be closed and sealed within 2 minutes of engine shutdown and within five minutes after the end of the running loss test.

(ix) The test vehicle windows and any luggage compartments shall be opened (if not already open). The vehicle engine compartment cover shall be closed (if not already closed).

(c) [Reserved]

(d) The temperature recording system shall be started and the time of engine shutoff shall be noted on the evaporative emission hydrocarbon data recording system.

(e) For the first 5 minutes of the hot soak test, the ambient temperature shall be maintained at 95±10 °F. For the remainder of the hot soak test, the ambient temperature shall be maintained at 95±5 °F (95±2 °F on average).

(f) The 60±0.5 minute hot soak begins when the enclosure doors are sealed (or when the running loss test ends, if the hot soak test is conducted in the running loss enclosure).

(g) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the test.

(h) Fresh impingers shall be installed in the methanol collection system immediately prior to the end of the test, if applicable.

(i) [Reserved]

(j) At the end of the 60±0.5 minute test period:

(1) Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time=60 minutes) hydrocarbon concentration, C_{HCf}, required in § 86.143.

(2) Analyze the enclosure atmosphere for methanol and record, if applicable. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the final (time=60 minutes) methanol concentration, C_{CH_3OHf}, required in § 86.143. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(k) For the supplemental two-diurnal test sequence (see § 86.130–96), the hot soak test described in § 86.138–90 shall be conducted immediately following the hot transient exhaust emission test. This test requires ambient temperatures between 68° and 86 °F at all times. The equipment and calibration specifications of §§ 86.107–90 and 86.117–90 may apply for this testing. Enclosures meeting the requirements of §§ 86.107–96 and 86.117–96 may also be used. This hot soak test is followed by two consecutive diurnal heat builds, described in § 86.133–96(p).

(l) If the vehicle is to be tested for diurnal emissions, follow the procedure outlined in § 86.133–96.

40. A new § 86.143–96 is added to subpart B to read as follows:

§ 86.143–96 Calculations; evaporative emissions.

(a) The following equations are used to calculate the evaporative emissions from gasoline- and methanol-fueled vehicles.

(b) Use the measurements of initial and final concentrations to determine the mass of hydrocarbons and methanol emitted. For testing with pure gasoline, methanol emissions are assumed to be zero.

(1) For enclosure testing of diurnal, hot soak, and running loss emissions:

(i) Methanol emissions:

$$M_{CH_3OH} = \left(\frac{V_n \times C_{MR}}{A_{MR}}\right) \times \left(\frac{T_{E_f}}{V_{E_f} \times T_{SHED_f}} \times [(A_{MS1f} \times AV_{1f}) + (A_{MS2f} \times AV_{2f})] - \frac{T_{E_i}}{V_{E_i} \times T_{SHED_i}} \times [(A_{MS1i} \times AV_{1i}) + (A_{MS2i} \times AV_{2i})]\right) + (M_{CH_3OH,out} - M_{CH_3OH,in})$$

Where,

(A) M_{CH3OH}=Methanol mass change, µg.

(B) V_n=Net enclosure volume, ft^3, as determined by subtracting 50 ft^3 (1.42 m^3) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft^3) with advance approval by the Administrator, provided the measured volume is determined and used for all vehicles tested by that manufacturer.

(C) C_{MR}=Concentration of methanol in standard sample for calibration of GC, µg/ml.

(D) A_{MR}=GC peak area of standard sample.

(E) T_E=Temperature of sample withdrawn, °R.

(F) V_E=Volume of sample withdrawn, ft^3.

(G) T_{SHED}=Temperature of enclosure, °R.

(H) A_{MS}=GC peak area of sample.

(I) AV=Volume of absorbing reagent in impinger.

(J) P_B=Barometric pressure at time of sampling, in. Hg.

(K) i=Initial sample.

(L) f=Final sample.

(M) 1=First impinger.

(N) 2=Second impinger.

(O) $M_{CH_3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, µg.

(P) $M_{CH_3OH,in}$=mass of methanol entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, µg.

(ii) Hydrocarbon emissions:

$$M_{HC} = (kV_n \times 10^{-4}) \times \left(\frac{(C_{HC_f} - rC_{CH_3OH_f})P_{B_f}}{T_f} - \frac{(C_{HC_i} - rC_{CH_3OH_i})P_{B_i}}{T_i} \right) + M_{HC,out} - M_{HC,in}$$

Where,

(A) M_{HC}=Hydrocarbon mass change, g.

(B) C_{HC}=FID hydrocarbon concentration as ppm carbon including FID response to methanol in the sample.

(C) C_{CH_3OH}=Methanol concentration as ppm carbon.

$$C_{CH_3OH} = \left(\frac{1.501 \times 10^{-3} C_{MR} \times T}{A_{MR} \times P_B \times V_n} \right) \times [(A_{S1} \times AV_1) + (A_{S2} \times AV_2)]$$

(D) V_n=Net enclosure volume ft^3 (m^3) as determined by subtracting 50 ft^3 (1.42 m^3) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft^3) with advance approval by the Administrator, provided the measured volume is determined and used for all vehicles tested by that manufacturer.

(E) r=FID response factor to methanol.

(F) P_B=Barometric pressure, in Hg (Kpa).

(G) T=Enclosure temperature, °R(°K).

(H) i=initial reading.

(I) f=final reading.

(J) 1=First impinger.

(K) 2=Second impinger.

(L) Assuming a hydrogen to carbon ratio of 2.3:

(*1*) k=2.97; and

(*2*) For SI units, k=17.16.

(M) $M_{HC,out}$=mass of hydrocarbons exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(N) $M_{HC,in}$=mass of hydrocarbons entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(2) For running loss testing by the point-source method, the mass emissions of each test phase are calculated below, then summed for a total mass emission for the running loss test. If emissions are continuously sampled, the following equations can be used in integral form.

(i) Methanol emissions:

$M_{CH_3OH} = \rho_{CH_3OH} V_{mix} \times (C_{CH_3OH,rl} - C_{CH_3OH,d})$

Where,

(A) M_{CH_3OH}=methanol mass change, µg.

(B) ρ_{CH_3OH}=36.85 g/ft^3, density of pure vapor at 74 °F.

(C) V_{mix}=total dilute sample volume, in ft^3, calculated as appropriate for the collection technique used.

(D) $C_{CH_3OH,rl}$=methanol concentration of diluted running loss sample, in ppm carbon equivalent.

(E) $C_{CH_3OH,d}$=methanol concentration of dilution air, in ppm carbon equivalent.

(ii) Hydrocarbon emissions:

$M_{HC} = \rho_{HC} V_{mix} 10^{-6} \times (C_{HC,rl} - C_{HC,d})$

Where,

(A) M_{HC}=hydrocarbon mass change, g.

(B) ρ_{HC}=16.46 g/ft^3, density of pure vapor at 74 °F (for hydrogen to carbon ratio of 2.3).

(C) V_{mix}=total dilute sample volume, in ft^3, calculated as appropriate for the collection technique used.

(D) $C_{HC,rl}$=hydrocarbon concentration of diluted running loss sample, in ppm carbon equivalent.

(E) $C_{HC,d}$=hydrocarbon concentration of dilution air, in ppm carbon equivalent.

(c) Calculate the adjusted total mass emissions for each test segment.

(1) $$M_{DI} = \left(M_{HC} + \frac{14.3594}{32.042} \times 10^{-6} M_{CH_3OH} \right)_{DI}$$

where M_{DI}=mass emissions from the diurnal emission test (see § 86.133), g.

(2) $$M_{HS} = \left(M_{HC} + \frac{14.2284}{32.042} \times 10^{-6} M_{CH_3OH} \right)_{HS}$$

where M_{HS}=mass emissions from the hot soak test (see § 86.138), g.

(3) $$M_{RL} = \left(M_{HC} + \frac{14.2284}{32.042} \times 10^{-6} M_{CH_3OH} \right)_{RL}$$

where M_{RL}=mass emissions from the running loss test (see § 86.134), g.

(d) (1) For the full three-diurnal test sequence, there are two final results to report:

(i) The sum of the adjusted total mass emissions for the diurnal and hot soak tests ($M_{DI}+M_{HS}$); and

(ii) The adjusted total mass emissions for the running loss test, on a grams per mile basis=M_{RL}/D_{RL}, where D_{RL}=miles driven for the running loss test (see § 86.134–96(c)(6)).

(2) For the supplemental two-diurnal test sequence, there is one final result to report: the sum of the adjusted total mass emissions for the diurnal and hot soak tests ($M_{DI}+M_{HS}$), described in §§ 86.133–96(p) and 86.138–96(k), respectively.

41. A new § 86.146–96 is added to subpart B to read as follows:

§ 86.146–96 Fuel dispensing spitback procedure.

(a) The vehicle is fueled at a rate of 10 gal/min to test for fuel spitback emissions. All liquid fuel spitback emissions that occur during the test are collected in a bag made of a material impermeable to hydrocarbons or methanol. The bag shall be designed and used so that liquid fuel does not spit back onto the vehicle body, adjacent floor, etc., and it must not impede the free flow of displaced gasoline vapor from the orifice of the filler pipe. The bag must be designed to permit passage of the dispensing nozzle through the bag. If the bag has been used for previous testing, sufficient time shall be allowed for the bag to dry out. The dispensing nozzle shall be a commercial model, not equipped with vapor recovery hardware.

(b) Ambient temperature levels encountered by the test vehicle shall be not less than 68 °F nor more than 86 °F. The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

(c) Measure and record the mass of the bag to be used for collecting spitback emissions to the nearest 0.01 gram.

(d) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to 10 percent of the reported nominal fuel tank capacity. The fuel cap(s) shall be installed immediately after refueling.

(e) The vehicle shall be soaked at 80±6 °F (27±3 °C) for a minimum of six hours, then placed, either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule (specified in § 86.115 and appendix I of this part). The test vehicle may not be used to set dynamometer horsepower.

(f) Following the preconditioning drive, the vehicle shall be driven at minimum throttle to the refueling area.

(g) All areas in proximity to the vehicle fuel fill orifice and the dispenser nozzle itself shall be completely dry of liquid fuel.

(h) The fuel filler neck shall be snugly fitted with the vented bag to capture any fuel emissions. The fuel nozzle shall be inserted through the bag into the filler neck of the test vehicle to its maximum penetration. The plane of the nozzle's handle shall be perpendicular to the floor of the laboratory.

(i) The fueling procedure consists of dispensing fuel through a nozzle, interrupted by a series of automatic shutoffs. A minimum of 3 seconds shall elapse between any automatic shutoff and subsequent resumption of dispensing. Dispensing may not be manually terminated, unless the test vehicle has already clearly failed the test. The vehicle shall be fueled according to the following procedure:

(1) The fueling operation shall be started within 4 minutes after the vehicle is turned off. The average temperature of the dispensed fuel shall be 65±5 °F (18±3 °C).

(2) The fuel shall be dispensed at a rate of 10.0±0.1 gallons/minute (37.9±0.4 ℓ/min) until the automatic shutoff is activated.

(3) If the automatic shutoff is activated before the nozzle has dispensed an amount of fuel equal to 70 percent of the tank's nominal capacity, the dispensing may be resumed at a reduced rate. Repeat as necessary until the nozzle has dispensed an amount of fuel equal to at least 70 percent of the tank's nominal capacity.

(4) Once the automatic shutoff is activated after the nozzle has dispensed an amount of fuel equal to 70 percent of the tank's nominal capacity, the fuel shall be dispensed at a rate of 5±1 gallons/minute (19±4 ℓ/min) for all subsequent dispensing. Dispensing shall be restarted two additional times.

(5) If the nozzle has dispensed an amount of fuel less than 85 percent of the tank's nominal capacity after the two additional dispensing restarts, dispensing shall be resumed, and shall continue through as many automatic shutoffs as necessary to achieve this level. This completes the fueling procedure.

(j) Withdraw the nozzle from the vehicle and the bag, holding the tip of the nozzle upward to avoid any dripping into the bag.

(k) Within 1 minute after completion of the fueling event, the bag shall be folded to minimize the vapor volume inside the bag. The bag shall be folded as quickly as possible to prevent evaporation of collected emissions.

(l) Within 5 minutes after completion of the fueling event, the mass of the bag and its contents shall be measured and recorded (consistent with paragraph (c) of this section). The bag shall be weighed as quickly as possible to prevent evaporation of collected emissions.

Subpart G—[Amended]

42. Section 86.608–90 of subpart G is amended by revising paragraphs (a)(2)(ii), (iv), and (vi) to read as follows:

§ 86.608–90 Test procedures.

(a) * * *

(2) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131–96(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturers and shall be made available to the Administrator upon request.

* * * * *

(iv) If the Administrator elects to use the evaporative canister preconditioning procedure described in § 86.132–96(k), the manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in § 86.133–90(a). All references in § 86.133–90 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

* * * * *

(vi) If the Administrator elects to use the evaporative canister preconditioning procedure described in § 86.132–96(k), the cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133–90 by not more than one hour.

* * * * *

43. Section 86.609–84 of subpart G is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 86.609–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in § 86.608(a). Round the initial test results to the number of decimal places contained in the applicable emission standard, expressed to one additional significant figure. Rounding shall be done in accordance

with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(b) Final test results for each test vehicle shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test vehicle, dividing by the number of tests conducted on the vehicle, and rounding to the same number of decimal places contained in the applicable emission standard expressed to one additional significant figure. Rounding shall be done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(c)(1) The final deteriorated test results for each test vehicle shall be calculated by multiplying the final test results by the appropriate deterioration factor derived for the certification process for the engine family and model year to which the selected configuration belongs, and rounded to two significant figures. Rounding shall be done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1). For the purposes of this paragraph, if a deterioration factor as computed during the certification process is less than one, that deterioration factor shall be one.

(2) There are no deterioration factors for light-duty vehicles tested in accordance with § 86.146–96 of subpart B of this part. Accordingly, for the fuel dispensing spitback test the term "final deteriorated test results" shall mean the final test results derived in paragraph (b) of this section for each test vehicle, rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

* * * * *

44. Section 86.610–84 of subpart G is amended by revising paragraph (b) to read as follows:

§ 86.610–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

* * * * *

(b) A failed vehicle is one whose final deteriorated test results pursuant to § 86.609–84(c), for one or more of the applicable pollutants, including fuel spitback, exceed the applicable emission standard.

* * * * *

Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines, Heavy-Duty Vehicles, and Light-Duty Trucks

45. The title of subpart K is revised to read as set forth above.

46. Section 86.1008–90 of subpart K is amended by revising paragraphs (a)(1) and (a)(3) (ii), (iv), and (vi) to read as follows:

§ 86.1008–90 Test procedures.

(a)(1) (i) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure, as described in subparts N, I, and P of this part.

(ii) For heavy-duty vehicles with a GVW of less than 14,000 pounds (6,400 kilograms), the prescribed test procedure is the Fuel Dispensing Spitback Test as described in 86.1246–96 of this part. The test for fuel spitback is conducted as a stand-alone test, thus all references to the test sequence described in figure M96–1 of subpart M of this part can be ignored.

* * * * *

(3) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131–96(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturers and shall be made available to the Administrator upon request.

* * * * *

(iv) If the Administrator elects to use the evaporative canister preconditioning procedure described in § 86.132–96(k), the manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in § 86.133–90(a). All references in § 86.133–90 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

* * * * *

(vi) If the Administrator elects to use the evaporative canister preconditioning procedure described in § 86.132–96(k), the cold start exhaust test described in § 86.137 shall follow the heat build procedure described in § 86.133–90 by not more than one hour.

* * * * *

47. Section 86.1009–84 of subpart K is amended by revising paragraphs (a), (b), and (c)(3), and adding paragraph (c)(4) to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in § 86.1008–94(a). Round the initial test results to the number of decimal places contained in the applicable emission standard, expressed to one additional significant figure. Rounding shall be done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(b) Final test results for each test vehicle shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding to the same number of decimal places contained in the applicable emission standard, expressed to one additional significant figure. Rounding shall be done in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(c) * * *

(3) There are no deterioration factors for light-duty trucks tested in accordance with § 86.146–96 of subpart B of this part or for heavy-duty vehicles tested in accordance with § 86.1246–96 of subpart M of this part. Accordingly, for the Fuel Dispensing Spitback Test the term "final deteriorated test results" shall mean the final test results derived in paragraph (b) of this section for each test vehicle, rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

(4) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1).

* * * * *

48. Section 86.1010–84 of subpart K is amended by revising paragraphs (b) and (c) to read as follows:

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for selective enforcement audits.

* * * * *

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to § 86.1009(c), for one or more of the applicable pollutants, including fuel spitback, exceed the applicable emission standard.

(c) The manufacturer shall test heavy-duty engines, heavy-duty vehicles, or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as described in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in appendix X of this part appropriate to the projected sales as made by the heavy-duty engine or heavy-duty vehicle manufacturer in its Application for Certification, or as made by the light-duty truck manufacturer in its report submitted under 40 CFR 600.207–80(a)(2). In the tables in appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant shall not be considered any further for the purposes of the audit.

* * * * *

Subpart M—[Amended]

49. Section 86.1205–90 of subpart M is amended by revising paragraph (b) to read as follows:

§ 86.1205–90 Introduction; structure of subpart.

* * * * *

(b) Three topics are addressed in this subpart. Sections 86.1206 through 86.1215 set forth specifications and equipment requirements; §§ 86.1216 through 86.1226 discuss calibration methods and frequency; test procedures and data requirements are listed in §§ 86.1227 through 86.1246.

50. A new § 86.1206–96 is added to subpart M to read as follows:

§ 86.1206–96 Equipment required; overview.

This subpart specifies procedures for testing gasoline- and methanol-fueled heavy-duty vehicles. Equipment required and specifications are as follows:

(a) *Evaporative emission tests.* Section 86.1207 specifies the necessary equipment.

(b) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for emission testing and for service accumulation are specified in § 86.1213. Analytical gases are specified in § 86.1214. Evaporative testing requires vehicle operation on a chassis dynamometer. The driving cycle (EPA Heavy-Duty Vehicle Urban Dynamometer Driving Schedule) is specified in § 86.1215.

51. A new § 86.1207–96 is added to subpart M to read as follows:

§ 86.1207–96 Sampling and analytical systems; evaporative emissions.

(a) *Testing enclosures*—(1) *Diurnal emission test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–96. Interior surfaces must be impermeable and nonreactive to hydrocarbons (and to methanol, if the enclosure is used for methanol-fueled vehicles). The temperature conditioning system shall be capable of controlling the internal enclosure air temperature to follow the prescribed temperature versus time cycle as specified in § 86.1233–96 and appendix II of this part, within an instantaneous tolerance of ±3.0 °F of the nominal temperature versus time profile throughout the test, and an average tolerance of ±2.0 °F over the duration of the test. The control system shall be tuned to provide a smooth temperature pattern that has a minimum of overshoot, hunting, and instability about the desired long-term ambient temperature profile. Interior surface temperatures shall not be less than 40 °F, nor more than 130 °F at any time during the diurnal emission test. To accommodate the volume changes due to enclosure temperature changes, either a variable-volume or fixed-volume enclosure may be used for diurnal emission testing:

(i) *Variable-volume enclosure.* The variable-volume enclosure expands and contracts in response to the temperature change of the air mass in the enclosure. Two potential means of accommodating the internal volume changes are moveable panel(s), or a bellows design, in which impermeable bag(s) inside the enclosure expand and contract in response to internal pressure changes by exchanging air from outside the enclosure. Any design for volume accommodation must maintain the integrity of the enclosure as specified in § 86.1217–96 over the specified temperature range. Any method of volume accommodation shall limit the differential between the enclosure internal pressure and the barometric pressure to a maximum value of ±2.0 inches of water. The enclosure shall be capable of latching to a fixed volume. A variable-volume enclosure must be capable of accommodating a ±7 percent change from its "nominal volume" (see § 86.1217–96(b)), accounting for temperature and barometric pressure variation during testing.

(ii) *Fixed-volume enclosure.* The fixed-volume enclosure shall be constructed with rigid panels that maintain a fixed enclosure volume, and meet the following requirements.

(A) The enclosure shall be equipped with an outlet flow stream that withdraws air at a low, constant rate from the enclosure throughout the test. An inlet flow stream may provide make-up air to balance the outgoing flow with incoming ambient air. Inlet air must be filtered with activated carbon to provide a relatively constant hydrocarbon level. Any method of volume accommodation shall maintain the differential between the enclosure internal pressure and the barometric pressure between 0 and −2 inches of water.

(B) The equipment shall be capable of measuring the mass of hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) in the inlet and outlet flow streams with a resolution of 0.01 gram. A bag sampling system may be used to collect a proportional sample of the air withdrawn from and admitted to the enclosure. Alternatively, the inlet and outlet flow streams may be continuously analyzed using an on-line FID analyzer and integrated with the flow measurements to provide a continuous record of the mass hydrocarbon and methanol removal.

(2) *Running loss test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–96. The enclosure may be equipped with a personnel door, provided that the enclosure can still meet the

requirements of § 86.1217–96 with the door installed. Interior surfaces must be impermeable and nonreactive to hydrocarbons and to methanol (if the enclosure is used for methanol-fueled vehicles). Interior surface temperatures shall not be less than 40 °F. If a running loss enclosure meets all the requirements of paragraph (a)(1) of this section, it may be used as a diurnal evaporative emission enclosure. The enclosure must contain a dynamometer that meets the requirements of § 86.108. Provisions shall be made to remove exhaust gases from the enclosure. The running loss enclosure shall be equipped to supply air to the vehicle, at a temperature of 95±5 °F, from sources outside of the running loss enclosure directly into the operating engine's air intake system. Supplemental air requirements (e.g., for an air pump) shall be supplied by drawing air from the engine intake source. During the running loss test, ambient temperatures must be maintained at 95±5 °F (95±2 °F on average). An air or oxygen cylinder with an attached self-contained breathing apparatus may be provided for the vehicle operator.

(3) *Hot soak test.* The hot soak test may be conducted by holding the vehicle in an enclosure that meets the requirements for either diurnal emission or running loss tests. The enclosure shall be configured to provide an internal enclosure ambient temperature of 95±10 °F for the first 5 minutes, and 95±5 °F (95±2 °F on average) for the remainder of the hot soak test.

(i) If the hot soak test is conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70 °F, nor above 125 °F for the last 55 minutes of the hot soak test.

(ii) If the hot soak test is not conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70 °F, nor above 125 °F for the duration of the hot soak test.

(b) *Evaporative emission hydrocarbon and methanol analyzers.* (1) For gasoline- and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID) (235°±15 °F (113±8 °C))) is required for methanol-fueled vehicles). Provided evaporative emission results are not affected, a probe may be used to detect or verify hydrocarbon sources during a running loss test. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds.

(2) For methanol-fueled vehicles, a methanol sampling and analyzing system is required in addition to the FID analyzer. The methanol sampling equipment shall consist of impingers for collecting the methanol sample and appropriate equipment for drawing the sample through the impingers. The analytical equipment shall consist of a gas chromatograph equipped with a flame ionization detector.

(c) *Evaporative emission hydrocarbon and methanol data recording system.* (1) The electrical output of the FID used for measuring hydrocarbons (or hydrocarbons plus methanol, as appropriate) shall be recorded at least at the initiation and termination of each running loss and hot soak test, and at the initiation and termination of the enclosure sampling period(s) for the diurnal emission test, as described in § 86.1233. The recording may be taken by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each hot soak, running loss, or diurnal emission test (including initiation and completion of sampling period(s)), along with the time elapsed during each soak.

(2) For the methanol sample, permanent records shall be made of the following: the volumes of deionized water introduced into each impinger, the rate and time of sample collection, the volumes of each sample introduced into the gas chromatograph, the flow rate of carrier gas through the column, the column temperature, and the chromatogram of the analyzed sample.

(d) *Fuel temperature control system.* Fuel temperatures of the test vehicle shall be controlled, as specified in § 86.1234(g)(1)(xv), with the following combination of fans. The control system shall be tuned and operated to provide a smooth and continuous fuel tank temperature profile that is representative of the on-road temperature profile.

(1) A vehicle underbody fan shall discharge air from the front of the vehicle, as necessary to control fuel temperatures. The fan shall be a roadspeed modulated fan that is controlled to a discharge velocity that follows the dynamometer roll speed, at least up to speeds of 30 mph, throughout the driving cycle. Discharge velocities may temporarily depart from dynamometer roll speed if necessary to control fuel temperatures. The system shall provide a total discharge airflow not to exceed 8,000 cfm.

(2) Additional fans may be used to route heating or cooling air directly at the bottom of the vehicle's fuel tank. The air supplied to the tank shall be between 70° and 160 °F, with a total discharge airflow not to exceed 1,000 cfm.

(e) *Temperature recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means shall be used to record enclosure ambient temperature during all evaporative emission test segments, as well as vehicle fuel tank temperature during the running loss test. The recording system shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving temperature to ±0.75 °F (±0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3 °F (±1.7 °C). The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. Two ambient temperature sensors, connected to provide one average output, shall be located 3 feet above the floor at the approximate mid-length of each side wall of the enclosure and within 3 to 12 inches of each side wall. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature. Vehicles shall be equipped with 2 temperature sensors installed to provide an average liquid fuel temperature. The temperature sensors shall be placed to measure the temperature at the mid-volume of the liquid fuel at a fill level of 40 percent of nominal tank capacity. In-tank temperature sensors are not required for the supplemental two-diurnal test sequence specified in § 86.1230–96.

(f) *Pressure recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means, shall be used to record the enclosure gage pressure for any testing in an enclosure, as well as the vehicle's fuel tank pressure during the running loss test. The Administrator may omit measurement of fuel tank pressure. The recording system shall record each pressure at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving pressure to ±0.1 inches of water. The pressure recording system (recorder and sensor) shall have an accuracy of ±1.0 inches of water. The recorder (data processor) shall have a

time accuracy of ±15s and a precision of ±15s. The pressure transducer shall be installed to measure the pressure in the vapor space of the fuel tank.

(g) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon and/or methanol concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(h) *Mixing blower.* Blowers or fans shall be used to mix the enclosure contents during evaporative emission testing. The inlets and outlets of the air circulation blower(s) shall be configured to provide a well dispersed air circulation pattern that produces effective internal mixing and avoids significant temperature or hydrocarbon stratification. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of testing.

(1) *Diurnal emission test.* Blowers or fans shall have a capacity of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume for mixing in the enclosure. Additional fans may be used to maintain a minimum wind speed of 5 mph (8 km/h) under the fuel tank of the test vehicle.

(2) *Running loss test.* Blowers or fans shall have a total capacity of at least 1.0 cfm per cubic foot of the nominal enclosure volume.

(3) *Hot soak test.* Blowers or fans must have a capacity of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume. Circulated air shall not be aimed directly at the vehicle.

(i) *Point-source running loss measurement facility.* Some system requirements pertain specifically to running loss testing by the point-source method, in which emissions from potential sources are collected and routed to a sampling system. Emissions are sampled with the same equipment and techniques as for exhaust emission measurement. The test environment must contain a dynamometer that meets the requirements of § 86.108. During the running loss test, ambient temperatures must be maintained at 95±5 °F (95±2 °F on average). An air or oxygen cylinder with an attached self-contained breathing apparatus may be provided for the vehicle operator.

(1) The running loss vapor vent collection system shall be configured to collect all running loss emissions from each of the discrete point sources that function as vehicle fuel system vapor vents, and transport the collected vapor emissions to a CFV- or PDP-based dilution and measurement system. The collection system shall consist of a collector at each vehicle vapor vent, lengths of heated sample line connecting each collector to the inlet of the heated sample pump, and lengths of heated sample line connecting the outlet of the heated sample pump to the inlet of the running loss fuel vapor sampling system. Up to 3 feet of unheated line connecting each of the vapor collectors to the heated sample lines shall be allowed. Each heated sample pump and its associated sample lines shall be maintained at a temperature between 175 °F and 200 °F to prevent condensation of fuel vapor in the sample lines. The heated sample pump(s) and its associated flow controls shall be configured and operated to draw a flow of ambient air into each collector at a flow rate of at least 0.67 cfm. The flow controls on each heated sampling system shall include an indicating flow meter that provides an alarm output to the data recording system if the flow rate drops below 0.67 cfm by more than 5 percent. The collector inlet for each discrete vapor vent shall be placed in proximity to the vent as necessary to capture any fuel vapor emissions without significantly affecting flow or pressure of the normal action of the vent. The collector inlets shall be designed to interface with the configuration and orientation of each specific vapor vent. For vapor vents that terminate in a tube or hose barb, a short length of tubing of an inside diameter larger throughout its length than the inside diameter of the vent outlet may be used to extend the vent into the mouth of the collector. For those vapor vent designs that are not compatible with such collector configurations, the vehicle manufacturer shall supply a collector that is configured to interface with the vapor vent design and that terminates in a fitting that is capable of capturing all vapor emitted from the vent. The Administrator may test for running losses by the point-source method without heating sample lines or pumps.

(2) The running loss fuel vapor sampling system shall be a CFV- or PDP-based dilution and measurement system that further dilutes the running loss fuel vapors collected by the vapor vent collection system(s) with ambient air, collects continuously proportional samples of the diluted running loss vapors and dilution air in sample bags, and measures the total dilute flow through the sampling system over each test interval. In practice, the system shall be configured and operated in a manner that is directly analogous to an exhaust emissions constant volume sampling system, except that the input flow to the system is the flow from the running loss vapor vent collection system(s) instead of vehicle exhaust flow. The system shall be configured and operated to meet the following requirements:

(i) The running loss fuel vapor sampling system shall be designed to measure the true mass of fuel vapor emissions collected by the running loss vapor vent collection system from the specified fuel vapor vents. The total volume of the mixture of running loss emissions and dilution air shall be measured and a continuously proportioned sample of volume shall be collected for analysis. Mass emissions shall be determined from the sample concentration and total flow over the test period.

(ii) The PDP–CVS shall consist of a dilution air filter and mixing assembly, heat exchanger, positive-displacement pump, sampling system, and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

(A) The gas mixture temperature, measured at a point immediately ahead of the positive-displacement pump, shall be within ±10 °F of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ±10 °F during the entire test. The temperature measuring system shall have an accuracy and precision of ±2 °F.

(B) The pressure gauges shall have an accuracy and precision of ±1.6 inches of water (±0.4 kPa).

(C) The flow capacity of the CVS shall not exceed 350 cfm.

(D) Sample collection bags for dilution air and running loss fuel vapor samples shall be sufficient size so as not to impede sample flow.

(iii) The CFV sample system shall consist of a dilution air filter and mixing assembly, a sampling venturi, a critical flow venturi, a sampling system and assorted valves, and pressure and temperature sensors. The CFV sample system shall conform to the following requirements:

(A) The temperature measuring system shall have an accuracy and precision of ±2 °F and a response time of 0.100 seconds of 62.5 percent of a temperature change (as measured in hot silicone oil).

(B) The pressure measuring system shall have an accuracy and precision of ±1.6 inches of water (0.4 kPa).

(C) The flow capacity of the CVS shall not exceed 350 cfm.

(D) Sample collection bags for dilution air and running loss fuel vapor

samples shall be of sufficient size so as not to impede sample flow.

(3) An on-line computer system or strip-chart recorder shall be used to record the following additional parameters during the running loss test sequence:

(i) CFV (if used) inlet temperature and pressure.

(ii) PDP (if used) inlet temperature, pressure, and differential pressure.

52. Section 86.1215–85 of subpart M is amended by adding a sentence to the end of paragraph (a), revising paragraph (b), and removing paragraph (c) to read as follows:

§ 86.1215–85 EPA heavy-duty vehicle (HDV) urban dynamometer driving schedule.

(a) * * * The Administrator will use this driving schedule when conducting evaporative emission tests, as described in § 86.1230–96.

(b) The driver should attempt to follow the target schedule as closely as possible. The speed tolerance at any given time for these schedules, or for a driver's aid chart approved by the Administrator, are as follows:

(1) The upper limit is 4 mph (6.4 km/h) higher than the highest point on the trace within 1 second of the given time.

(2) The lower limit is 4 mph (6.4 km/h) lower than the lowest point on the trace within 1 second of the given time.

(3) (i) Speed variations greater than the tolerances (such as may occur during gear changes or braking spikes) are acceptable, provided they occur for less than 2 seconds on any occasion and are clearly documented as to the time and speed at that point of the driving schedule.

(ii) When conducted to meet the requirements of § 86.1229, up to three additional occurrences of speed variations greater than the tolerance are acceptable, provided they occur for less than 15 seconds on any occasion, and are clearly documented as to the time and speed at that point of the driving schedule.

(4) Speeds lower than those prescribed are acceptable, provided the vehicle is operated at maximum available power during such occurrences.

53. A new § 86.1217–96 is added to subpart M to read as follows:

§ 86.1217–96 Evaporative emission enclosure calibrations.

The calibration of evaporative emission enclosures consists of three parts: initial and periodic determination of enclosure background emissions (hydrocarbons and methanol); initial determination of enclosure internal volume; and periodic hydrocarbon and methanol retention check and calibration. Methanol measurements may be omitted when methanol-fueled vehicles will not be tested in the evaporative enclosure.

(a) *Initial and periodic determination of enclosure background emissions.* Prior to its introduction into service, annually thereafter, and after any repair that can affect the enclosure background emissions, the enclosure shall be checked to determine that it does not contain materials that will themselves emit hydrocarbons or methanol. When methanol as well as hydrocarbons are present in the evaporative enclosure, the HFID hydrocarbon concentration measurement includes the partial response of the HFID to methanol plus the hydrocarbons. Determination of the HFID response to methanol, § 86.1221, prior to its being placed in service is required for the determination of hydrocarbons. Proceed as follows:

(1) Prepare the enclosure. (i) Variable-volume enclosures may be operated in either latched or unlatched volume configuration, as described in paragraph (b)(1) of this section. Ambient temperatures shall be maintained at 96±3 °F throughout the 4-hour period.

(ii) Fixed-volume enclosures shall be operated with inlet and outlet flow streams closed. Ambient temperatures shall be maintained at 96±3 °F throughout the 4-hour period.

(iii) For running loss enclosures ambient temperatures shall be maintained at 95±3 °F throughout the 4-hour period.

(2) The enclosure may be sealed and the mixing fan operated for a period of up to 12 hours before the 4-hour background sampling period begins.

(3) Zero and span (calibrate if required) the hydrocarbon analyzer.

(4) Prior to the background determination, purge the enclosure until a stable background hydrocarbon reading is obtained.

(5) Turn on the mixing blower (if not already on).

(6) Seal enclosure and measure background hydrocarbon concentration, background methanol, temperature, and barometric pressure. These are the initial readings C_{HCi}, C_{CH_3OHi}, and P_{Bi}, T_i for the enclosure background determination.

(7) Allow the enclosure to stand undisturbed without sampling for four hours.

(8) Measure the hydrocarbon concentration on the same FID and the methanol level. These are the final concentrations, C_{HCf} and C_{CH_3OHf}. Also measure final temperature and barometric pressure.

(9) Calculate the mass change of methanol, hydrocarbons, and hydrocarbons plus methanol in the enclosure according to the equations in paragraph (d) of this section.

(i) *Diurnal enclosures.* The enclosure background emissions (hydrocarbons plus methanol) shall not be greater than 0.05g for the 4 hours.

(ii) *Running loss enclosures.* The enclosure background emissions (hydrocarbons plus methanol) shall not be greater than 0.2 grams for the 4 hours.

(b) *Initial determination of enclosure internal volume.* Initial determination of enclosure internal volume. Prior to its introduction into service the enclosure internal volume shall be determined by the following procedure:

(1) Carefully measure the internal length, width and height of the enclosure, accounting for irregularities (such as braces) and calculate the internal volume. For variable-volume enclosures, latch the enclosure to a fixed volume when the enclosure is held at an ambient temperature of 84 °F; this nominal volume shall be repeatable within ±0.5 percent of the reported value.

(2) Perform an enclosure calibration check according to paragraph (c) of this section.

(3) If the calculated mass does not agree within 2 percent of the injected propane mass, then corrective action is required.

(c) *Hydrocarbon and methanol retention check and calibration.* The hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) retention check provides a check upon the calculated volume and also measures the leak rate. The enclosure leak rate shall be determined prior to its introduction into service, following any modifications or repairs to the enclosure that may affect the integrity of the enclosure, and at least monthly thereafter. If six consecutive monthly retention checks are successfully completed without corrective action, the enclosure leak rate may be determined quarterly thereafter as long as no corrective action is required.

(1) An enclosure to be used for the diurnal emission test (see § 86.1233–96) shall be calibrated according to the following procedure.

(i) Zero and span (calibrate if required) the hydrocarbon analyzer.

(ii) Purge the enclosure until a stable background hydrocarbon reading is obtained.

(iii) Turn on the mixing blowers (if not already on).

(iv) On variable-volume enclosures, latch the enclosure to the nominal volume position. On fixed-volume enclosures close the outlet and inlet flow streams.

(v) Turn on the ambient temperature control system (if not already on) and adjust it for an initial temperature of 96 °F (36 °C).

(vi) When the enclosure stabilizes at 96±3 °F (36±2 °C), seal the enclosure and measure background hydrocarbon concentration, background methanol, temperature, and barometric pressure. These are the initial readings C_{HCi}, C_{CH_3OHi}, T_i, and P_{Bi} for the enclosure calibration.

(vii) Inject into the enclosure 2 to 6 grams of pure propane and 2 to 6 grams of pure methanol in gaseous form; i.e., at a temperature of at least 150 °F (65 °C). The propane and methanol may be measured by volume flow or by mass measurement. The method used to measure the propane and methanol shall have an accuracy and precision of ±0.2 percent of the measured value.

(viii) After a minimum of 5 minutes of mixing, analyze the enclosure atmosphere for hydrocarbon and methanol content, also record temperature and pressure. These measurements are the final readings for the enclosure calibration as well as the initial readings for the retention check.

(ix) To verify the enclosure calibration, calculate the mass of propane and the mass of methanol using the measurements taken in paragraphs (c)(1)(vi) and (viii) of this section. See paragraph (d) of this section. This quantity must be within ±2 percent of that measured in paragraph (c)(1)(vii) of this section.

(x) For variable-volume enclosures, unlatch the enclosure from the nominal volume configuration. For fixed-volume enclosures, open the outlet and inlet flow streams.

(xi) Start cycling the ambient temperature from 96 °F to 72 °F and back to 96 °F over a 24-hour period, according to the profile specified in § 86.1233–96 and appendix II of this part, within 15 minutes of sealing the enclosure.

(xii) At the completion of the 24-hour cycling period, analyze the enclosure atmosphere for hydrocarbon and methanol content; determine the net withdrawn methanol (in the case of diurnal emission testing with fixed-volume enclosures); record temperature and barometric pressure. These are the final readings for the hydrocarbon and methanol retention check. The final hydrocarbon and methanol mass, calculated in paragraph (d) of this section, shall be within 3 percent of that determined in paragraph (c)(1)(viii) of this section.

(2) An enclosure to be used for the running loss test (see § 86.1234–96) shall meet the calibration and retention requirements of § 86.1217–90(c).

(3) Enclosures calibrated according to the procedures specified in either paragraph (c)(1) or (c)(2) of this section may be used for hot soak testing (see § 86.1238).

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, the net withdrawn methanol (in the case of diurnal emission testing with fixed-volume enclosures), and initial and final temperature and pressure according to the following equation:

$$M_{CH_3OH} = \left(\frac{V_n \times C_{MR}}{A_{MR}}\right) \times \left(\frac{T_{E_f}}{V_{E_f} \times T_{SHED_f}} \times [(A_{MS1f} \times AV_{1f}) + (A_{MS2f} \times AV_{2f})] - \frac{T_{E_i}}{V_{E_i} \times T_{SHED_i}} \times [(A_{MS1i} \times AV_{1i}) + (A_{MS2i} \times AV_{2i})]\right) + (M_{CH_3OH,out} - M_{CH_3OH,in})$$

Where,

(i) M_{CH_3OH}=mass change, μg.

(ii) V=Enclosure volume, ft^3, as measured in paragraph (b)(1) of this section.

(iii) C_{MR}=Concentration of methanol in standard sample for calibration of gas chromatograph (GC), μg/ml.

(iv) A_{MR}=GC peak area of standard sample.

(v) T_E=Temperature of sample withdrawn, R.

(vi) T_{SHED}=Temperature of enclosure, R.

(vii) V_E=Volume of sample withdrawn, ft^3.

(viii) P_B=Barometric pressure at time of sampling, in. Hg.

(ix) A_{MS}=GC peak area of test sample.

(x) AV=Volume of absorbing reagent in impinger (ml).

(xi) i=Initial sample.

(xii) f=Final sample.

(xiii) 1=First impinger

(xiv) 2=Second impinger.

(xv) $M_{CH_3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, μg.

(xvi) $M_{CH_3OH,in}$=mass of methanol entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, μg.

(2) The hydrocarbon mass change is calculated from the initial and final FID readings of hydrocarbon concentration, methanol concentration with FID response to methanol, the net withdrawn hydrocarbon and methanol (in the case of diurnal emission testing with fixed-volume enclosures), and initial and final temperature and pressure according to the following equation:

$$M_{HC} = (kV_n \times 10^{-4}) \times \left(\frac{(C_{HC_f} - rC_{CH_3OH_f})P_{B_f}}{T_f} - \frac{(C_{HC_i} - rC_{CH_3OH_i})P_{B_i}}{T_i} \right) + M_{HC,out} - M_{HC,in}$$

Where,

(i) M_{HC}=Hydrocarbon mass change, g.

(ii) C_{HC}=FID hydrocarbon concentration as ppm carbon, that is, ppm propane x 3, including FID response to methanol in the sample.

(iii) C_{CH_3OH}=Methanol concentration as ppm carbon.

$$C_{CH_3OH} = \left(\frac{1.501 \times 10^{-3} C_{MR} \times T}{A_{MR} \times P_B \times V_n} \right) \times [(A_{S1} \times AV_1) + (A_{S2} \times AV_2)]$$

(iv) V=Enclosure volume ft^3 (m^3), as measured in paragraph (b)(1) of this section.

(v) r=FID response factor to methanol.

(vi) P_B=Barometric pressure, in. Hg. (kPa).

(vii) T=Enclosure ambient temperature, R(K) .

(viii) i=Indicates initial reading.

(ix) f=Indicates final reading.

(x)(A) k=3.05.

(B) For SI units, k=17.60.

(xi) $M_{HC,out}$=mass of hydrocarbon exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(xii) $M_{HC,in}$=mass of hydrocarbon entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(e) *Calibration of equipment for point-source testing of running losses.* For the point-source method, the running loss fuel vapor sampling system shall be calibrated as a CVS system, as specified in § 86.119, with the additional specification that the vapor sampling system verification be conducted as follows:

(1) The following "gravimetric" technique can be used to verify that the vapor sampling system and analytical instruments can accurately measure a mass of gas that has been injected into the system. If the vapor sampling system will be used only in the testing of petroleum-fueled engines, system verification may be performed using propane. If the vapor sampling system will be used with methanol-fueled vehicles as well as petroleum-fueled vehicles, the system verification performance check must include a methanol check in addition to the propane check. (Verification can also be accomplished by constant flow metering using critical flow orifice devices.)

(i) Obtain a small cylinder that has been charged with pure propane gas. Obtain another small cylinder that has been charged with pure methanol if the system will be used for methanol-fueled vehicle testing. Since this cylinder will be heated to 150–155 °F, care must be taken to ensure that the liquid volume of methanol placed in the cylinder does not exceed approximately one-half of the total volume of the cylinder.

(ii) Determine a reference cylinder weight to the nearest 0.01 grams.

(iii) Operate the vapor sampling system in the normal manner and release a known quantity of pure propane into the most frequently used fuel vapor vent collector during the sampling period (approximately 5 minutes).

(iv) Continue to operate the vapor sampling system in the normal manner and release a known quantity of pure methanol into the system during the sampling period (approximately 5 minutes).

(v) The calculations of § 86.1244 are performed in the normal way, except in the case of propane. The density of propane (17.30 g/ft^3/carbon atom (0.6109 kg/m^3/carbon atom)) is used in place of the density of exhaust hydrocarbons. In the case of methanol, the density of 37.71 g/ft^3 (1.332 kg/m^3) is used.

(vi) The gravimetric mass is subtracted from the vapor sampling system measured mass and then divided by the gravimetric mass to determine the percent accuracy of the system.

(vii) The cause for any discrepancy greater than ±2 percent must be found and corrected.

(2) This procedure shall be conducted in the point-source running loss test environment with the collector installed in a vehicle in the normal test configuration. The fuel of the test vehicle shall either be diesel, or it shall be kept under 100 °F (38 °C). Two to six grams of pure propane and two to six grams of pure methanol shall be injected into the collector while the vehicle is operated over one Heavy-Duty Vehicle Urban Dynamometer Driving Schedule, as described in § 86.1215 and Appendix I of this part. The propane and methanol injections shall be conducted at the ambient temperature of 95±5 °F (35±3 °C).

54. A new § 86.1227–96 is added to subpart M to read as follows:

§ 86.1227–96 Test procedures overview.

(a) The overall test consists of prescribed sequences of fueling, parking, and operating conditions. Vehicles are tested only for evaporative emissions.

(b) The evaporative emission test (gasoline-fueled vehicles and methanol-fueled vehicles) is designed to determine hydrocarbon and methanol evaporative emissions as a consequence of diurnal temperature fluctuation, urban driving, and hot soaks following drives. It is associated with a series of events that may be experienced by in-use vehicles that results in hydrocarbon and/or methanol vapor losses. The test procedure is designed to measure:

(1) Diurnal emissions resulting from daily temperature changes (as well as relatively constant resting losses), measured by the enclosure technique (see § 86.1233);

(2) Running losses resulting from a simulated trip on a chassis dynamometer, measured by the enclosure or point-source technique (see § 86.1234); and

(3) Hot soak losses, which result when the vehicle is parked and the hot engine is turned off, measured by the enclosure technique (see § 86.1238).

55. Section 86.1229–85 of subpart M is amended by revising the section heading, adding and reserving paragraph (c), and adding paragraph (d) to read as follows:

§ 86.1229–85 Dynamometer load determination and fuel temperature profile.

* * * * *

(c) [Reserved]

(d) *Fuel temperature profile*—(1) *General requirements.* To be tested for running losses, as specified in § 86.1234, a vehicle must have a fuel temperature profile. The following procedure is used to generate the fuel temperature profile, which serves as a target for controlling fuel temperatures during the running loss test. This profile represents the fuel temperature change that occurs during on-road driving. If a vehicle has more than one fuel tank, a profile shall be established for each tank. If manufacturers use a vehicle model to develop a profile to represent multiple models, the vehicle model selected must have the greatest expected fuel temperature increase during driving of all those models it represents. Also, manufacturers must select test vehicles with any available vehicle options that increase fuel temperatures during driving (for example, any feature that limits underbody airflow). The Administrator may conduct testing to establish any vehicle's fuel temperature profile.

(2) *Vehicle instrumentation.* (i) The vehicle must be equipped with temperature sensors and pressure transducers, as described in § 86.1207–96(e) and (f), and a driver's aid, which shall be configured to provide the test driver with the desired vehicle speed vs. time trace and the actual vehicle speed.

(ii) A computer, data logger, or strip chart data recorder shall record the following parameters at a minimum during the test run:

(A) Desired speed;

(B) Actual speed;

(C) Instantaneous average liquid fuel temperature (T_{liq}); and

(D) Vapor space pressure (the Administrator may omit measurement of fuel tank pressure).

(iii) The data recording system described in paragraph (d)(2)(ii) of this section shall be capable of resolving time to ±1 s, capable of resolving temperature to ±2 °F, capable of resolving pressure to ±1.0 inch of water, and capable of resolving speed to ±0.1 mph. The temperature and pressure signals shall be recorded at intervals of up to 1 minute; speed signals shall be recorded at intervals of up to 1 second.

(3) *Ambient conditions.* The procedure shall be run under the following ambient conditions. Conditions should be representative of sunny summer days.

(i) Starting ambient temperature ($T_{amb,o}$) shall be at least 95 °F, steady or increasing (no more than 2 °F drop) during the procedure. Ambient temperature shall be measured and recorded in regular intervals of at least once every 5 minutes. Measure ambient temperature with the following requirements (based on Federal Standard for Siting Meteorological Sensors at Airports, FCM–S4–1987). The sensors shall be mounted 5±1 feet (1.5±0.3 meters) above ground level. The sensors shall be protected from radiation from the sun, sky, earth, and any other surrounding objects, but at the same time be adequately ventilated. The sensors shall be installed in such a position as to ensure that measurements are representative of the free air circulation in the locality and not influenced by artificial conditions such as large buildings, cooling towers, and expanses of concrete and tarmac. Keep any grass and vegetation within 100 feet (30 meters) of the sensor clipped to a height of about 10 inches (25 centimeters) or less.

(ii) Wind conditions shall be calm to light with maximum wind speed of 15 mph. Wind speed shall be measured and recorded in regular intervals of at least once per minute. Measure wind speed with the following requirements (based on Federal Standard for Siting Meteorological Sensors at Airports, FCM–S4–1987). The site should be relatively level, but small gradual slopes are acceptable. The sensor shall be mounted 30 to 33 feet (9 to 10 meters) above the average ground height within a radius of 500 feet (150 meters). The sensor height shall not exceed 33 feet, except as necessary to be at least 15 feet (5 meters) above the height of any obstruction (e.g. vegetation, buildings, etc.) within a 500 foot (150 meter) radius. An object is considered to be an obstruction if the included lateral angle from the sensor to the ends of the object is 10 degrees or more.

(iii) Road surface temperature shall be at least 30 °F above ambient temperature throughout the driving period. Pavement temperature shall be measured and recorded in regular intervals of at least once per minute. The track temperature may be measured with an embedded sensor, a portable temperature probe, or an infrared pyrometer that can provide an accuracy of ±2 °F. Temperatures must be measured on a surface representative of the surface where the vehicle is driven.

(iv) Conditions shall be sunny or mostly sunny with a maximum cloud cover of 25 percent.

(v) Reported cloud cover, wind speed, and ambient temperature should be consistent with that reported by the nearest weather station; the Administrator may request justification of any discrepancy.

(4) *Profile determination procedure.* (i) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2.

(ii) The vehicle shall be moved to the location where the data is to be collected. It may be driven a maximum distance of 5 miles and may be transported by other means. The vehicle shall be parked for a minimum of 12 hours in an open area on a surface that is representative of the test road. The orientation of the front of the vehicle during parking (e.g., N, SW, etc.) shall be documented.

(iii) Once the 12 hour minimum parking time has been achieved and the ambient temperature, weather conditions, and track surface temperature are within the allowable ranges, the vehicle engine shall be started. The vehicle air conditioning system (if so equipped) shall be set to the "normal" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in "automatic" temperature and fan modes with the system set at 72 °F.

(iv) The vehicle may be operated at minimum throttle for a period up to 60 seconds prior to the start of the driving schedule, as necessary to move from the parking location onto the road surface. The driver's aid shall be started and the vehicle operated over the driving cycle specified in § 86.1234–96(b) with the transmission operated in the same manner as specified in § 86.128–79. The data recording system shall provide a record of the required parameters over the entire period of driving.

(5) *Records required.* In addition to the vehicle data recording, the following parameters shall be documented for the determination of the fuel temperature profile:

(i) Date and time of vehicle fueling;

(ii) Odometer reading at vehicle fueling;

(iii) Date and time vehicle was parked, parking location and orientation;

(iv) Odometer reading at parking;

(v) Date and time engine was started;

(vi) Time of initiation of first Heavy-Duty Vehicle UDDS;

(vii) Time of completion of the driving cycle;

(viii) Ambient temperatures throughout the period of driving (T_{amb});

(ix) Wind speed throughout the period of driving;

(x) Track surface temperatures throughout the period of driving cycle (T_{sur});

(xi) Percent cloud cover during the period of driving; and

(xii) Ambient temperature, wind speed, and percent cloud cover reported by the nearest weather station for the time corresponding most closely to the period of driving.

(6) *Fuel tank pressure.* Tank pressure shall not exceed 10 inches of water at any time during the temperature profile determination unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal.

(7) *Calculation of temperature profiles.* (i) The traces from the driving schedule shall be verified to meet the speed tolerance requirements of § 86.1215. The following conditions shall be verified:

(A) $T_{amb,i} \geq T_{amb,o} - 2$ °F.

Where,

(*1*) i=instantaneous measurement throughout the drive; and

(*2*) o=initial measurement at the start of the specified driving schedule.

(B) $T_{amb,o} \geq 95$ °F.

(C) $T_{sur,i} - T_{amb,i} \geq 30$ °F.

(D) $W_{max} \leq 15$ mph.

(ii) Failure to comply with any of these requirements shall result in invalidation of the data and require that the procedure be repeated, beginning with the fuel drain at paragraph (d)(4)(i) of this section.

(iii) If all these requirements are met, the following calculations shall be performed:

$T_{i,profile} = T_i - T_o$.

Where,

(A) $T_{i,profile}$=the series of temperatures that comprise the relative fuel temperature profile.

(B) T_i=the series of observed liquid fuel temperatures during the drive.

(C) T_o=the liquid fuel temperature observed at the start of the specified driving schedule.

(iv) The relative fuel temperature profile consists of the set of temperatures at each 1-minute interval. If multiple valid test runs are conducted for any model, then all the collected data shall be used to calculate a composite profile, based on the average temperatures at each point. The absolute fuel temperature profile is determined by adding 95 °F (35 °C) to each point of the relative profile.

56. A new § 86.1230–96 is added to subpart M to read as follows:

§ 86.1230–96 Test sequence; general requirements.

(a) The test sequence shown in figure M96–1 of this section shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. The full three-diurnal sequence depicted in figure M96–1 tests vehicles for all sources of evaporative emissions. The supplemental two-diurnal test sequence is designed to verify that vehicles sufficiently purge their evaporative canisters during the dynamometer run. Sections 86.1232–96, 86.1233–96, and 86.1238–96 describe the separate specifications of the supplemental two-diurnal test sequence.

(b) The vehicle test for fuel spitback during fuel dispensing is conducted as a stand-alone test (see § 86.1246).

(c) Ambient temperature levels encountered by the test vehicle shall be not less than 68 °F nor more than 86 °F, unless otherwise specified. If a different ambient temperature is specified for soaking the vehicle, the soak period may be interrupted once for up to 10 minutes to transport the vehicle from one soak area to another, provided the ambient temperature experienced by the vehicle is never below 68 °F. The temperatures monitored during testing must be representative of those experienced by the test vehicle.

(d) The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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Federal Test Procedure

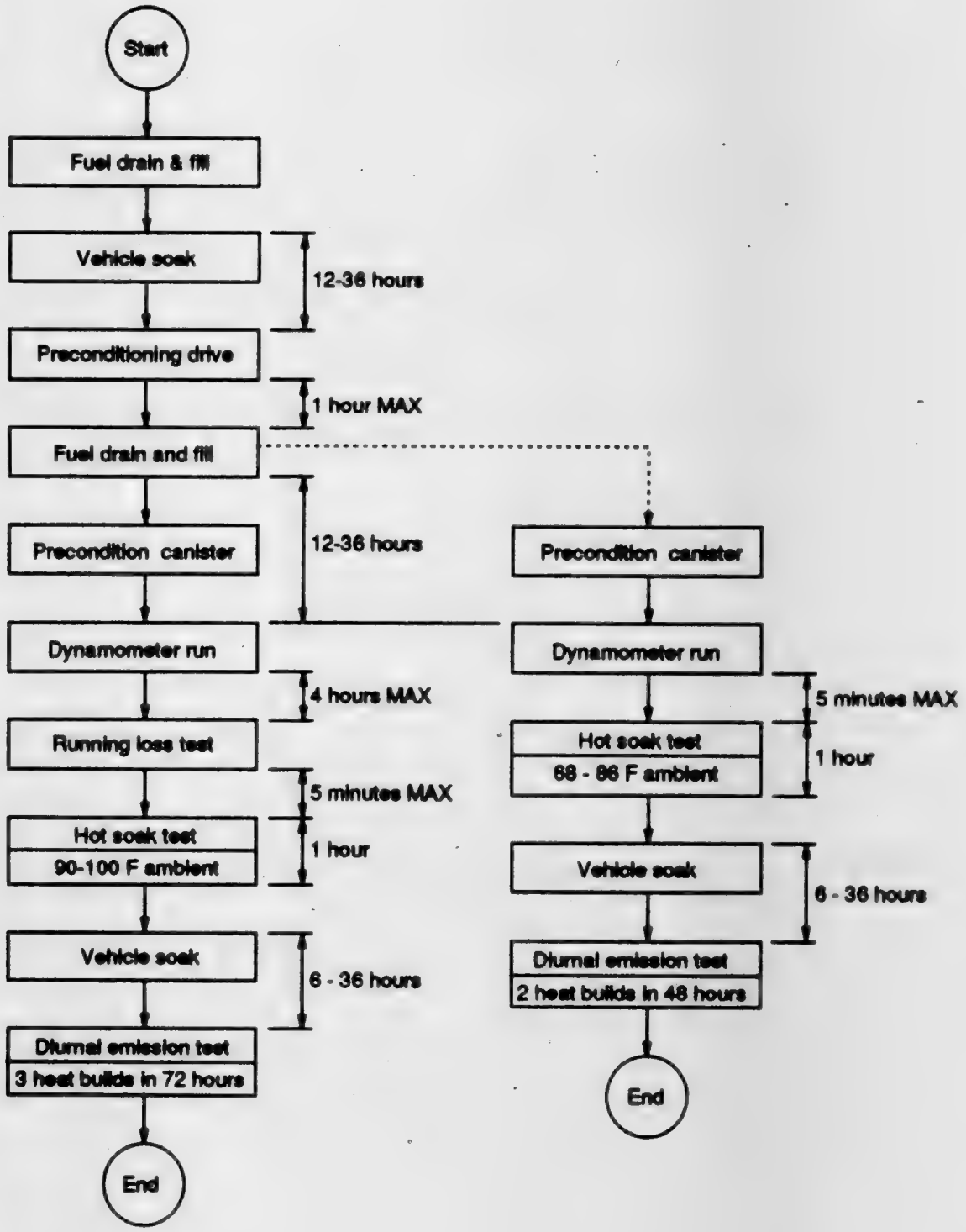

Figure M96-1 Test sequence

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57. A new § 86.1231–96 is added to subpart M to read as follows:

§ 86.1231–96 Vehicle preparation.

(a) For gasoline- and methanol-fueled vehicles prepare the fuel tank(s) for recording the temperature of the prescribed test fuel, as described in § 86.1207–96(e).

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(c) For preconditioning that involves loading the evaporative emission canister(s) with butane, provide valving or other means as necessary to allow purging and loading of the canister(s).

(d) For vehicles to be tested for running loss emissions, prepare the fuel tank(s) for measuring and recording the temperature and pressure of the fuel tank as specified in § 86.1207–96 (e) and (f). The Administrator may omit measurement of fuel tank pressure.

(e) For vehicles to be tested for running loss emissions, prepare the exhaust system by sealing or plugging all detectable sources of exhaust gas leaks. The exhaust system shall be tested or inspected to ensure that detectable exhaust hydrocarbons are not emitted into the running loss enclosure during the running loss test.

58. A new § 86.1232–96 is added to subpart M to read as follows:

§ 86.1232–96 Vehicle preconditioning.

(a) Fuel tank cap(s) of gasoline- and methanol-fueled vehicles shall be removed during any period that the vehicle is parked outdoors awaiting testing, to prevent unusual loading of the canisters. During this time care must be taken to prevent entry of water or other contaminants into the fuel tank. During storage in the test area while awaiting testing, the fuel tank cap(s) may be in place. The vehicle shall be moved into the test area and the following operations performed.

(b) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The fuel cap(s) shall be installed within 1 minute after refueling.

(c) Between 12 and 36 hours (or, at the Administrator's option, between 6 and 36 hours) after being refueled, the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Heavy-Duty Vehicle Urban Dynamometer Driving Schedule, specified in § 86.1215 and appendix I of this part. The test vehicle may not be used to set dynamometer horsepower.

(d) [Reserved]

(e) The Administrator may choose to conduct additional preconditioning to ensure that the evaporative emissions control system is stabilized. The additional preconditioning shall consist of an initial one hour minimum soak and one, two or three driving cycles of the dynamometer driving schedule, as described in paragraph (c) of this section, each followed by a soak of at least one hour with engine off, engine compartment cover closed and cooling fan off. The vehicle may be driven off the dynamometer for the soak period that follows each driving cycle.

(f) Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. For gasoline- and methanol-fueled vehicles, drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The vehicle shall be refueled within 1 hour of completion of the preconditioning drive. The fuel cap(s) shall be installed within 1 minute after refueling.

(g) The vehicle shall be soaked for not less than 12 hours nor more than 36 hours between the end of the refueling event and the beginning of the cold start exhaust emission test.

(h) During the soak period for the three-diurnal test sequence described in § 86.1230–96, evaporative canisters, if the vehicle is so equipped, shall be preconditioned according to the following procedure. For vehicles with multiple canisters, each canister shall be preconditioned separately.

(1)(i) Prepare the evaporative emission canister for the canister purging and loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system.

(ii) The canister purge shall be performed with ambient air of humidity controlled to 50±25 grains per pound of dry air. This may be accomplished by purging the canister in a room that is conditioned to this level of absolute humidity. The flow rate of the purge air shall be maintained at a nominal flow rate of 0.8 cfm and the duration shall be determined to provide a total purge volume flow through the canister equivalent to 300 canister bed volume exchanges. The bed volume is based on the volume of adsorbing material in the canister.

(iii) The evaporative emission canister shall then be loaded by sending to the canister an amount of commercial grade butane vapors equivalent to 1.5 times its nominal working capacity. The canister shall be loaded with a mixture composed of 50 percent butane and 50 percent nitrogen by volume at a rate of 15±2 grams butane per hour. If the canister loading at that rate takes longer than 12 hours, a manufacturer may determine a new rate, based on completing the canister loading in no less than 12 hours. The new rate may be used for all subsequent canister loading according to paragraph (h) of this section. The time of initiation and completion of the canister loading shall be recorded.

(iv) The determination of a canister's nominal working capacity shall be based on the average capacity of no less than five canisters that are in a stabilized condition.

(A) For stabilization, each canister must be loaded no less than 10 times and no more than 100 times to 2-gram breakthrough with a 50/50 mixture by volume of butane and nitrogen, at a rate of 15 grams butane per hour. Each canister loading step must be preceded by canister purging with 300 canister bed volume exchanges at 0.8 cfm.

(B) For determining working capacity, each canister must first be purged with 300 canister bed volume exchanges at 0.8 cfm. The working capacity of each canister shall be established by determining the mass of butane required to load the canister from the purged state so that it emits 2 grams of hydrocarbon vapor; the canister must be loaded with a 50/50 mixture by volume of butane and nitrogen, at a rate of 15 grams butane per hour.

(2) For vehicles designed to use only fuel consisting of at least 80 percent methanol by volume, canister preconditioning shall be performed with a fuel vapor composition representative of the composition of the vapor space in the vehicle's fuel tank under in-use conditions. Manufacturers shall develop a procedure to precondition the evaporative canister, if the vehicle is so equipped, for the different fuel. The procedure shall represent a canister loading equivalent to that specified in paragraph (h)(1) of this section and shall be approved in advance by the Administrator.

(i) [Reserved]

(j) For the supplemental two-diurnal test sequence described in § 86.1230–96, one of the following methods shall be used to precondition evaporative canisters during the soak period specified in paragraph (g) of this section. For vehicles with multiple canisters, each canister shall be preconditioned separately. Canister emissions are measured to determine breakthrough. Breakthrough is here

defined as the point at which the cumulative quantity of hydrocarbons emitted is equal to 2 grams.

(1) *Butane loading to breakthrough.* The following procedure provides for emission measurement in an enclosure. Breakthrough may also be determined by measuring the weight gain of an auxiliary evaporative canister connected downstream of the vehicle's canister, in which case, the following references to the enclosure can be ignored. The auxiliary canister shall be well purged with dry air prior to loading.

(i) Prepare the evaporative emission canister for the canister loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system.

(ii) The evaporative emission enclosure shall be purged for several minutes. **Warning:** If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(iii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the canister loading procedure.

(iv) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(v) Place the vehicle in a sealed enclosure and measure emissions with a FID.

(vi) Load the canister with a mixture composed of 50 percent butane and 50 percent nitrogen by volume at a rate of 40 grams butane per hour (0.010 cfm butane at lab temperatures).

(vii) As soon as the canister reaches breakthrough, the vapor source shall be shut off.

(viii) Reconnect the evaporative emission canister and restore the vehicle to its normal operating condition.

(2) *Load with repeated diurnal heat builds to breakthrough.* The following procedure provides for emission measurement in an enclosure. Breakthrough may also be determined by measuring the weight gain of an auxiliary evaporative canister connected downstream of the vehicle's canister, in which case, the following references to the enclosure can be ignored. The auxiliary canister shall be well purged with dry air prior to loading.

(i) The evaporative emission enclosure shall be purged for several minutes. **Warning:** If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(ii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the diurnal heat builds.

(iii) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(iv) The fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The average temperature of the dispensed fuel shall be 60±12 °F (16±7 °C). The fuel tank cap(s) shall be installed within 1 minute after refueling.

(v) Within one hour of being refueled, the vehicle shall be placed, with the engine shut off, in the evaporative emission enclosure. The fuel tank temperature sensor shall be connected to the temperature recording system. A heat source, specified in § 86.1207–90(d), shall be properly positioned with respect to the fuel tank(s) and connected to the temperature controller.

(vi) The temperature recording system shall be started.

(vii) The fuel may be artificially heated to the starting diurnal temperature.

(viii) When the fuel temperature reaches at least 69 °F (21 °C), immediately turn off purge blower (if not already off); close and seal enclosure doors; and initiate measurement of the hydrocarbon level in the enclosure.

(ix) When the fuel temperature reaches 72±2 °F (22±1 °C), start the diurnal heat build.

(x) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±4 °F (±3 °C):

$F = T_o + 0.4t$; or
for SI units,
$C = T_o + (2/9)t$.

Where,
F=fuel temperature, °F;
C=fuel temperature, °C;
t=time since beginning of test, minutes; and
T_o=initial temperature in °F (°C for SI units).

(xi) As soon as breakthrough occurs or when the fuel temperature reaches 96 °F (36 °C), whichever occurs first, the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If breakthrough has not occurred by the time the fuel temperature reaches 96 °F (36 °C), the heat source shall be removed from the vehicle, the vehicle shall be removed (with engine still off) from the evaporative emission enclosure and the entire procedure outlined in paragraph (j)(2) of this section shall be repeated until breakthrough occurs.

(xii) After breakthrough occurs, the fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The fuel shall be stabilized to a temperature within 3 °F of the lab ambient before beginning the driving cycle for the dynamometer run.

(k) The Administrator may conduct the vehicle preparation and preconditioning for measurement of fuel economy or exhaust emissions according to the procedures specified in §§ 86.1232–90 and 86.1233–90, in lieu of the procedures specified in this section.

(l) Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.1235 through 86.1237. Vehicles to be tested for evaporative emissions shall be processed in accordance with the procedures in §§ 86.1233 through 86.1238, starting with § 86.1235.

(m) Vehicles to be tested for evaporative emissions with the supplemental two-diurnal test sequence described in § 86.1230–96, shall proceed according to §§ 86.1235 through 86.1237, followed by the supplemental hot soak test (see § 86.1238–96(k)) and the supplemental diurnal emission test (see § 86.1233–96(p)).

59. A new § 86.1233–96 is added to subpart M to read as follows:

§ 86.1233–96 Diurnal emission test.

(a) (1) The diurnal emission test for gasoline- and methanol-fueled vehicles consists of three 24-hour test cycles following the hot soak test. Emissions are measured for each 24-hour cycle, with the highest emission level used to determine compliance with the standards specified in subpart A of this part. The Administrator may truncate a test after any 24-hour cycle without affecting the validity of the collected data. Sampling of emissions from the running loss and hot soak tests is not required as preparation for the diurnal emission test. The diurnal emission test may be conducted as part of either the three-diurnal test sequence or the

supplemental two-diurnal test sequence, as described in § 86.1230–96.

(2) For the full three-diurnal test sequence, the diurnal emission test outlined in paragraphs (b) through (o) of this section follows the high-temperature hot soak test concluded in § 86.1238–96(j).

(3) For the supplemental two-diurnal test sequence, the diurnal emission test outlined in paragraph (p) of this section follows the alternate hot soak test specified in § 86.1238–96(k).

(b) The test vehicle shall be soaked for not less than 6 hours nor more than 36 hours between the end of the hot soak test and the start of the diurnal emission test. For at least the last 6 hours of this period, the vehicle shall be soaked at 72±3 °F. The temperature tolerance may be waived for up to 10 minutes to allow purging of the enclosure or transporting the vehicle into the enclosure at the beginning of the diurnal emission test.

(c) The test vehicle shall be exposed to ambient temperatures cycled according to the profile specified in § 86.133 and Appendix II of this part with a maximum deviation of 3 °F at any time. The average temperature deviation from the profile, calculated using the absolute value of each measured deviation, shall not exceed 2 °F. Ambient temperatures shall be measured at least every minute. Temperature cycling shall begin when time=0 minutes, as specified in paragraph (i)(5) of this section.

(d) The diurnal enclosure shall be purged for several minutes prior to the test. **Warning:** If at any time the concentration of hydrocarbons, of methanol or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(e) The test vehicle, with the engine shut off and the test vehicle windows and luggage compartment(s) opened, shall be moved into the diurnal enclosure.

(f) [Reserved]

(g) [Reserved]

(h) Prior to sampling for emissions and throughout the period of cycled ambient temperatures, the mixing fan(s) shall circulate the air at a rate of 0.8±0.2 cfm per cubic foot of ambient volume. The fans shall also maintain a minimum air circulation of 5 mph (8 km/hr) under the fuel tank of the test vehicle. The Administrator may adjust fan speed and location to ensure sufficient air circulation around the fuel tank.

(i) Emission sampling may begin as follows:

(1) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the sampling.

(2) Impingers charged with known volumes of pure deionized water shall be placed in the methanol sampling system (methanol-fueled vehicles only).

(3) Turn off purge blowers (if not already off).

(4) Close and seal enclosure doors (if not already closed and sealed).

(5) Within 10 minutes of closing and sealing the doors, analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243.

(6) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the initial methanol concentration, C_{CH_3OHi}, required in § 86.1243. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses. If the test is conducted in a fixed-volume enclosure that allows airflow into and out of the enclosure, the effect of makeup air dilution must be factored into the analysis.

(j) If testing indicates that a vehicle design may result in fuel temperature responses during enclosure testing that are not representative of in-use summertime conditions, the Administrator may adjust air circulation and temperature during the test as needed to ensure that the test sufficiently duplicates the vehicle's in-use experience.

(k) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of each emission sampling period.

(l) Fresh impingers shall be installed in the methanol collection system immediately prior to the end of each emission measurement, if applicable.

(m) The end of the first, second, and third emission sampling period shall occur 1440±6, 2880±6, 4320±6 minutes, respectively, after the beginning of the initial sampling, as specified in paragraph (i)(5) of this section.

(1) At the end of each emission sampling period, analyze the enclosure atmosphere for hydrocarbons and record. This is the final hydrocarbon concentration, C_{HCf}, required in § 86.1243. The emission measurement at the end of each period becomes the initial hydrocarbon concentration, C_{HCi}, of the next emission sampling period.

(2) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the final (time=1440 minutes) methanol concentration, C_{CH_3OHf}, required in § 86.1243. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses. If the test is conducted in a fixed-volume enclosure that allows airflow into and out of the enclosure, the effect of makeup air dilution must be factored into the analysis.

(n) At the end of the temperature cycling period the enclosure doors shall be unsealed and opened, the test vehicle windows and luggage compartments may be closed and the test vehicle, with the engine shut off, shall be removed from the enclosure.

(o) This completes the full three-diurnal evaporative emission test sequence described in § 86.1230–96.

(p) For the supplemental two-diurnal test sequence described in § 86.1230–96, the following steps shall be performed in lieu of the steps described in paragraphs (b) through (n) of this section.

(1) For the supplemental two-diurnal test sequence, the test vehicle shall be soaked for not less than 6 hours nor more than 36 hours between the end of the hot soak test described in § 86.1238–96(k), and the start of the two-diurnal emission test. For at least the last 6 hours of this period, the vehicle shall be soaked at 72±3 °F.

(2) The vehicle shall be tested for diurnal emissions according to the procedures specified in paragraphs (c) through (n) of this section, except that the test includes only two 24-hour periods. Therefore the end of the first and second emission sampling periods shall occur 1440±6 and 2880±6 minutes, respectively, after the initial sampling.

(3) This completes the supplemental two-diurnal test sequence for evaporative emission measurement.

60. A new § 86.1234–96 is added to subpart M to read as follows:

§ 86.1234–96 Running loss test.

(a) *Overview.* Gasoline- and methanol-fueled vehicles are to be tested for running loss emissions during simulated high-temperature urban driving. During operation, tank temperatures are controlled according to a prescribed profile to simulate in-use conditions. If the vehicle is determined to have exceeded the standard before the end of the running loss test, the test may be terminated without invalidating the data. The test can be run either in a sealed enclosure or with the point-source method, as specified in paragraph (g) of this section.

(b) *Driving schedule.* Conduct the running loss test by operating the test vehicle through three Heavy-Duty Vehicle Urban Dynamometer Driving Schedules (see § 86.1215 and appendix I of this part). Fifteen seconds after the engine starts, place the transmission in gear. Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule. The transmission shall be operated according to the specifications of § 86.1228 during the driving cycles.

(c) *Dynamometer operation.* (1) The exhaust from the vehicle must be routed outside the test cell or enclosure. Exhaust gases may, but need not, be collected and sampled.

(2) Provisions of § 86.1235–85(c) shall apply.

(3) Practice runs over the prescribed driving schedule may not be performed at test point.

(4) Provisions of § 86.1235–85 (e) and (f) shall apply.

(5) If the dynamometer horsepower must be adjusted manually, it shall be set within 1 hour prior to the running loss test phase. The test vehicle shall not be used to make this adjustment. Dynamometers using automatic control of preselectable power settings may be set any time prior to the beginning of the emissions test.

(6) Dynamometer roll or shaft revolutions shall be used to determine the actual driving distance for the running loss test, D_{RL}, required in § 86.1243. The revolutions shall be measured on the same roll or shaft used for measuring the vehicle's speed.

(7) Provisions of § 86.1235–85(i) shall apply.

(8) The test run may be stopped if a warning light or gauge indicates that the vehicle's engine coolant has overheated.

(d) *Engine starting and restarting.* (1) Provisions of § 86.1236–85(a) shall apply.

(2) If the vehicle does not start after the manufacturer's recommended cranking time (or 10 continuous seconds in the absence of a manufacturer's recommendation), cranking shall cease for the period recommended by the manufacturer (or 10 seconds in the absence of a manufacturer's recommendation). This may be repeated for up to three start attempts. If the vehicle does not start after three attempts, the reason for failure to start shall be determined. If failure to start is an operational error, the vehicle shall be rescheduled for testing, starting with the soak period immediately preceding the running loss test.

(3) If failure to start is caused by a vehicle malfunction, corrective action of less than 30 minutes duration may be taken (according to § 86.090–25), and the test continued, provided that the ambient conditions to which the vehicle is exposed are maintained at 95±5 °F (35±3 °C). When the engine starts, the timing sequence of the driving schedule shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, and corrective action may be taken according to § 86.090–25. The reason for the malfunction (if determined) and the corrective action taken shall be reported to the Administrator.

(4) Provisions of § 86.1236–85(b) shall apply.

(e) *Pressure checks.* No pressure checks of the evaporative system shall be allowed. Under no circumstances will any changes/repairs to the evaporative emissions control system be allowed.

(f) *Temperature Stabilization.* Immediately after the dynamometer run, the vehicle shall be soaked in a temperature controlled area for a maximum of 4 hours until the fuel temperature is stabilized at 95±3 °F. Cooling or heating of the fuel tank may be induced to bring the fuel tank to 95±3 °F.

(g) *Running loss test.* The running loss test may be conducted either by the enclosure method, or by the point-source method.

(1) *Enclosure method.* (i) The running loss enclosure shall be purged for several minutes immediately prior to the test. **Warning:** If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(ii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(iii) If not already on, the running loss enclosure mixing fan(s) shall be turned on at this time. Throughout the test, the mixing fan(s) shall circulate the air at a rate of at least 1.0 cfm per cubic foot of ambient volume.

(iv) The test vehicle, with the engine off, shall be moved onto the dynamometer in the running loss enclosure. The vehicle engine compartment cover shall be unlatched, but closed as much as possible, allowing for the air intake equipment specified in paragraph (g)(1)(vii) of this section. The vehicle engine compartment cover may be closed if alternate routing is found for the air intake equipment. Any windows, doors, and luggage compartments shall be closed. A window may be opened to direct cooling air into the passenger compartment of the vehicle, if the vehicle is not equipped with its own air conditioning.

(v) Fans shall be positioned as described in §§ 86.1235–85(b), 86.1207–96(d), and 86.1207–96(h).

(vi) The vehicle air conditioning system (if so equipped) shall be set to the "normal" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in "automatic" temperature and fan modes with the system set at 72 °F.

(vii) Connect the air intake equipment to the vehicle. This connection shall be made to minimize leakage.

(viii) The temperature and pressure recording systems shall be started. The Administrator may omit measurement of fuel tank pressure.

(ix) Turn off purge blowers (if not already off).

(x) The temperature of the liquid fuel shall be monitored and recorded at least every 15 seconds with the temperature recording system specified in § 86.1207–96(e).

(xi) Close and seal the enclosure doors.

(xii) When the ambient temperature is 95±5 °F (35±3 °C) and the fuel tank temperature is 95±3 °F (35±2 °C) the running loss test may begin. Measure the initial ambient temperature and pressure.

(A) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243.

(B) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the initial (time=0 minutes) methanol

concentration, $C_{CH_3OH_i}$, required in § 86.1243. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(xiii) Start the engine and begin operation of the vehicle over the drive cycle specified in paragraph (b) of this section.

(xiv) The ambient temperature shall be maintained at 95±5 °F (95±3 °F on average) during the running loss test; it shall be recorded at least every 60 seconds.

(xv) The fuel temperature during the dynamometer drive shall be controlled to match the fuel tank temperature profile determined in § 86.1229. Measured fuel temperatures must be within ±3 °F of the profile temperatures during the first 3420 seconds of the running loss test, and within ±2 °F for the remaining 120 seconds of the test run. If the test vehicle has more than one fuel tank, the fuel temperatures for both fuel tanks shall follow the temperature profiles determined in § 86.1229. The control system shall be tuned and operated to provide a smooth and continuous fuel tank temperature profile that is representative of the on-road profile.

(xvi) Tank pressure shall not exceed 10 inches of water at any time during the running loss test unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal.

(xvii) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior the end of the test.

(xviii) Fresh impingers shall be installed in the methanol collection system immediately prior to the end of the test, if applicable.

(xix) The running loss test ends with the completion of the third 2-minute idle period.

(xx) At the end of the running loss test:

(A) Analyze the enclosure atmosphere for hydrocarbons and record. This is the final hydrocarbon concentration, C_{HCf}, required in § 86.1243.

(B) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start prior to the end of the test and continue for 4.0±0.5 minutes. The methanol sampling must be completed within 2 minutes after the end of the running loss test. This is the final methanol concentration, $C_{CH_3OH_f}$, required in § 86.1243. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(xxi) Turn off any CVS apparatus (if not already turned off).

(2) *Point-source method.* (i) The test vehicle, with the engine off, shall be moved onto the dynamometer. The vehicle engine compartment cover and any windows, doors, and luggage compartments shall be closed.

(ii) Fans shall be positioned as described in §§ 86.1235–85(b) and 86.1207–96(d).

(iii) The running loss vapor vent collection system shall be properly positioned at the potential fuel vapor vents or leaks of the vehicle's fuel system. Typical vapor vents for current fuel systems are the ports of the evaporative emission canister and the pressure relief vent of the fuel tank (typically integrated into the fuel tank cap).

(iv) The running loss vapor vent collection system may be connected to a PDP–CVS or CFV–CVS bag collection system. Otherwise, running loss vapors shall be sampled continuously with analyzers meeting the requirements of § 86.1207–96(b).

(v) Measured emissions must be compared with background hydrocarbon levels to determine the reported running loss emissions.

(vi) The vehicle air conditioning system (if so equipped) shall be set to the "normal" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in "automatic" temperature and fan modes with the system set at 72 °F.

(vii) The temperature and pressure recording systems shall be started. The Administrator may omit measurement of fuel tank pressure.

(viii) The temperature of the liquid fuel shall be monitored and recorded at least every 15 seconds with the temperature recording system specified in § 86.1207–96(e).

(ix) When the ambient temperature is 95±5 °F (35±3 °C) and the fuel tank temperature is 95±3 °F the running loss test may begin.

(x) The ambient temperature shall be maintained at 95±5 °F (95±3 °F on average) during the running loss test; it shall be recorded at least every 60 seconds.

(xi) Fuel temperatures shall be controlled according to the specifications of paragraph (g)(1)(xv) of this section.

(xii) Tank pressure shall not exceed 10 inches of water at any time during the running loss test unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal.

(xiii) The running loss test ends with completion of the third 2-minute idle period.

(xiv) If emissions are collected in bags, the sample bags must be analyzed within 20 minutes of their respective sample collection phases, as described in § 86.137–94(b)(15). The results of the analysis are used in § 86.1243 to calculate the mass of hydrocarbons emitted.

(h) Following the completion of the running loss drive, the vehicle may be tested for hot soak emissions as specified in § 86.1238–96.

61. A new § 86.1235–96 is added to subpart M to read as follows:

§ 86.1235–96 Dynamometer procedure.

Section 86.1235–96 includes text that specifies requirements that differ from § 86.1235–85. Where a paragraph in § 86.1235–85 is identical and applicable to § 86.1235–96, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1235–85."

(a) The dynamometer run consists of one HDV urban dynamometer driving schedule cycle starting not less than 12 nor more than 36 hours after completion of the drive specified in § 86.1232–96. This run includes engine startup (with all accessories turned off) and operation over the driving schedule.

(b) through (i) [Reserved]. For guidance see § 86.1235–85.

62. Section 86.1236–85 of subpart M is amended by revising paragraph (a)(4) to read as follows:

§ 86.1236–85 Engine starting and restarting.

(a) * * *

(4) If the vehicle does not start after the manufacturer's recommended cranking time (or 10 continuous seconds in the absence of a manufacturer's recommendation), cranking shall cease for the period recommended by the

manufacturer (or 10 seconds in the absence of a manufacturer's recommendation). This may be repeated for up to three start attempts. If the vehicle does not start after three attempts, the reason for failure to start shall be determined. If failure to start is an operational error, the vehicle shall be rescheduled for the dynamometer run. If failure to start is caused by a vehicle malfunction, corrective action of less than 30 minutes duration may be taken, and the test continued. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, and corrective action may be taken. The reasons for the malfunction (if determined) and the corrective action taken shall be recorded.

* * * * *

63. A new § 86.1237–96 is added to subpart M to read as follows:

§ 86.1237–96 Dynamometer runs.

Section 86.1237–96 includes text that specifies requirements that differ from § 86.1237–85. Where a paragraph in § 86.1237–85 is identical and applicable to § 86.1237–96, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1237–85."

(a) The vehicle shall be either driven or pushed onto the dynamometer; however, if driven, the total time of engine operation during the 12 to 36 hour soak period shall not exceed 3 minutes, and the vehicle shall be driven at minimum throttle. The vehicle shall be stored prior to dynamometer operation in such a manner that it is not exposed to precipitation (e.g., rain or dew).

(b) [Reserved]. For guidance see § 86.1235–85.

64. Section 86.1238–90 of subpart M is amended by revising paragraph (i) to read as follows:

§ 86.1238–90 Hot soak test.

* * * * *

(i) The enclosure doors shall be closed and sealed within 2 minutes of engine shutdown and within 5 minutes after the end of the dynamometer run.

* * * * *

65. A new § 86.1238–96 is proposed to be added to subpart M to read as follows:

§ 86.1238–96 Hot soak test.

(a) For gasoline- and methanol-fueled vehicles, the hot soak test shall be conducted immediately following the running loss test. However, sampling of emissions from the running loss test is not required as preparation for the hot soak test.

(b) The hot soak test may be conducted in the running loss enclosure as a continuation of that test or in a separate enclosure.

(1) If the hot soak test is conducted in the running loss enclosure, the driver may exit the enclosure after the running loss test. If exiting, the driver should use the personnel door described in § 86.1207–96(a)(2), exiting as quickly as possible with a minimum disturbance to the system. The final hydrocarbon and methanol concentration for the running loss test, measured in § 86.1234–96(g)(1)(xx), shall be the initial hydrocarbon and methanol concentration (time=0 minutes) C_{HCi} and C_{CH_3OHi}, for the hot soak test.

(2) If the vehicle must be moved to a different enclosure, the following steps must be taken:

(i) The enclosure for the hot soak test shall be purged for several minutes prior to completion of the running loss test. **Warning:** If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides at least a 4:1 safety factor against the lean flammability limit.

(ii) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(iii) Fresh impingers shall be installed in the methanol sample collection system immediately prior to the start of the test, if applicable.

(iv) If not already on, the mixing fan(s) shall be turned on at this time. Throughout the hot soak test, the mixing fan(s) shall circulate the air at a rate of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume.

(v) Begin sampling as follows:

(A) Analyze the enclosure atmosphere for hydrocarbons and record. This is the initial (time = 0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243.

(B) Analyze the enclosure atmosphere for methanol, if applicable, and record. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the initial (time=0 minutes) methanol concentration, C_{CH_3OHi}, required in § 86.1243. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(vi) The vehicle engine compartment cover shall be closed (if not already closed), the cooling fan shall be moved, the vehicle shall be disconnected from the dynamometer and any sampling system, and then driven at minimum throttle to the enclosure for the hot soak test. These steps should be done as quickly as possible to minimize the time needed to start the hot soak test.

(vii) The vehicle's engine must be stopped before any part of the vehicle enters the enclosure.

(viii) The vehicle shall enter the enclosure; the enclosure doors shall be closed and sealed within two minutes of engine shutdown and within five minutes after the end of the running loss test.

(ix) The test vehicle windows and any luggage compartments shall be opened (if not already open). The vehicle engine compartment cover shall be closed (if not already closed).

(c) [Reserved]

(d) The temperature recording system shall be started and the time of engine shutoff shall be noted on the evaporative emission hydrocarbon data recording system.

(e) For the first 5 minutes of the hot soak test, the ambient temperature shall be maintained at 95±10 °F. For the remainder of the hot soak test, the ambient temperature shall be maintained at 95±5 °F (95±2 °F on average).

(f) The 60±0.5 minute hot soak begins when the enclosure doors are sealed (or when the running loss test ends, if the hot soak test is conducted in the running loss enclosure).

(g) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the test.

(h) Fresh impingers shall be installed in the methanol collection system immediately prior to the end of the test, if applicable.

(i) [Reserved]

(j) At the end of the 60±0.5 minute test period:

(1) Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time=60 minutes) hydrocarbon concentration, C_{HCf}, required in § 86.1243.

(2) Analyze the enclosure atmosphere for methanol and record, if applicable. The methanol sampling must start simultaneously with the initiation of the hydrocarbon analysis and continue for 4.0±0.5 minutes. This is the final

(time=60 minutes) methanol concentration, $C_{CH_3OH_f}$, required in § 86.1243. Record the time elapsed during this analysis. If the 4-minute sample period is inadequate to collect a sample of sufficient concentration to allow accurate GC analysis, rapidly collect the methanol sample in a bag and then bubble the bag sample through the impingers at the specified flow rate. The time elapsed between collection of the bag sample and flow through the impingers should be minimized to prevent any losses.

(k) For the supplemental two-diurnal test sequence (see § 86.1230–96), the hot soak test described in § 86.1238–90 shall be conducted immediately following the dynamometer run. This test requires ambient temperatures between 68° and 86 °F at all times. The equipment and calibration specifications of §§ 86.1207–90 and 86.1207–90 may apply for this testing. Enclosures meeting the requirements of §§ 86.1207–96 and 86.1217–96 may also be used. This hot soak test is followed by two consecutive diurnal heat builds, described in § 86.1233–96(p).

(l) If the vehicle is to be tested for diurnal emissions, follow the procedure outlined in § 86.1233–96.

66. A new § 86.1243–96 is added to subpart M to read as follows:

§ 86.1243–96 Calculations; evaporative emissions.

(a) The following equations are used to calculate the evaporative emissions from gasoline- and methanol-fueled vehicles.

(b) Use the measurements of initial and final concentrations to determine the mass of hydrocarbons and methanol emitted. For testing with pure gasoline, methanol emissions are assumed to be zero.

(1) For enclosure testing of diurnal, hot soak, and running loss emissions:

(i) Methanol emissions:

$$M_{CH_3OH} = \left(\frac{V_n \times C_{MR}}{A_{MR}}\right) \times \left(\frac{T_{E_f}}{V_{E_f} \times T_{SHED_f}} \times [(A_{MS1f} \times AV_{1f}) + (A_{MS2f} \times AV_{2f})] - \frac{T_{E_i}}{V_{E_i} \times T_{SHED_i}} \times [(A_{MS1i} \times AV_{1i}) + (A_{MS2i} \times AV_{2i})]\right) + (M_{CH_3OH,out} - M_{CH_3OH,in})$$

Where,

(A) M_{CH_3OH}=Methanol mass change, µg.

(B) V_n=Net enclosure volume, ft³, as determined by subtracting 50 ft³ (1.42 m³) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft³) with advance approval by the Administrator, provided the measured volume is determined and used for all vehicles tested by that manufacturer.

(C) C_{MR}=Concentration of methanol in standard sample for calibration of GC, µg/ml.

(D) A_{MR}=GC peak area of standard sample.

(E) T_E=Temperature of sample withdrawn, °R.

(F) V_E=Volume of sample withdrawn, ft³.

(G) T_{SHED}=Temperature of enclosure, °R.

(H) A_{MS}=GC peak area of sample.

(I) AV=Volume of absorbing reagent in impinger.

(J) P_B=Barometric pressure at time of sampling, in. Hg.

(K) i=Initial sample.

(L) f=Final sample.

(M) 1=First impinger.

(N) 2=Second impinger.

(O) $M_{CH_3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, µg.

(P) $M_{CH_3OH,in}$=mass of methanol entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, µg.

(ii) Hydrocarbon emissions:

$$M_{HC} = (kV_n \times 10^{-4}) \times \left(\frac{(C_{HC_f} - rC_{CH_3OH_f})P_{B_f}}{T_f} - \frac{(C_{HC_i} - rC_{CH_3OH_i})P_{B_i}}{T_i}\right) + M_{HC,out} - M_{HC,in}$$

Where,

(A) M_{HC}=Hydrocarbon mass change, g.

(B) C_{HC}=FID hydrocarbon concentration as ppm carbon including FID response to methanol in the sample.

(C) C_{CH_3OH}=Methanol concentration as ppm carbon.

$$C_{CH_3OH} = \left(\frac{1.501 \times 10^{-3} C_{MR} \times T}{A_{MR} \times P_B \times V_n}\right) \times [(A_{S1} \times AV_1) + (A_{S2} \times AV_2)]$$

(D) V_n=Net enclosure volume ft³ (m³) as determined by subtracting 50 ft³ (1.42 m³) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft³) with advance approval by the Administrator, provided the measured volume is determined and used for all vehicles tested by that manufacturer.

(E) r=FID response factor to methanol.
(F) P_B=Barometric pressure, in Hg (Kpa).
(G) T=Enclosure temperature, °R(°K).
(H) i=initial reading.
(I) f=final reading.
(J) 1=First impinger.
(K) 2=Second impinger.
(L) Assuming a hydrogen to carbon ratio of 2.3:
(*1*) k=2.97; and
(*2*) For SI units, k=17.16.
(M) $M_{HC,out}$=mass of hydrocarbons exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.
(N) $M_{HC,in}$=mass of hydrocarbons entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, g.

(2) For running loss testing by the point-source method, the mass emissions of each test phase are calculated below, then summed for a total mass emission for the running loss test. If emissions are continuously sampled, the following equations can be used in integral form.
(i) Methanol emissions:

$$M_{CH_3OH} = \rho_{CH_3OH} V_{mix} \times (C_{CH_3OH,rl} - C_{CH_3OH,d})$$

Where,
(A) M_{CH_3OH}=methanol mass change, µg.
(B) ρ_{CH_3OH}=36.85 g/ft^3, density of pure vapor at 74 °F.
(C) V_{mix}=total dilute sample volume, in ft^3, calculated as appropriate for the collection technique used.
(D) $C_{CH_3OH,rl}$=methanol concentration of diluted running loss sample, in ppm carbon equivalent.
(E) $C_{CH_3OH,d}$=methanol concentration of dilution air, in ppm carbon equivalent.

(ii) Hydrocarbon emissions:

$$M_{HC} = \rho_{HC} V_{mix} \times 10^{-6} \times (C_{HC,rl} - C_{HC,d})$$

Where,
(A) M_{HC}=hydrocarbon mass change, g.
(B) ρ_{HC}=16.46 g/ft^3, density of pure vapor at 74 °F (for hydrogen to carbon ratio of 2.3).
(C) V_{mix}=total dilute sample volume, in ft^3, calculated as appropriate for the collection technique used.
(D) $C_{HC,rl}$=hydrocarbon concentration of diluted running loss sample, in ppm carbon equivalent.
(E) $C_{HC,d}$=hydrocarbon concentration of dilution air, in ppm carbon equivalent.

(c) Calculate the adjusted total mass emissions for each test segment.

(1) $$M_{DI} = \left(M_{HC} + \frac{14.3594}{32.042} \times 10^{-6} M_{CH_3OH} \right)_{DI}$$

where M_{DI}=mass emissions from the diurnal emission test (see § 86.1233), g.

(2) $$M_{HS} = \left(M_{HC} + \frac{14.2284}{32.042} \times 10^{-6} M_{CH_3OH} \right)_{HS}$$

where M_{HS}=mass emissions from the hot soak test (see § 86.1238), g.

(3) $$M_{RL} = \left(M_{HC} + \frac{14.2284}{32.042} \times 10^{-6} M_{CH_3OH} \right)_{RL}$$

where M_{RL}=mass emissions from the running loss test (see § 86.1234), g.

(d) (1) For the full three-diurnal test sequence, there are two final results to report:

(i) The sum of the adjusted total mass emissions for the diurnal and hot soak tests (M_{DI}+M_{HS}); and

(ii) The adjusted total mass emissions for the running loss test, on a grams per mile basis=M_{RL}/D_{RL}, where D_{RL}=miles driven for the running loss test (see § 86.1234–96(c)(6)).

(2) For the supplemental two-diurnal test sequence, there is one final result to report: the sum of the adjusted total mass emissions for the diurnal and hot soak tests (M_{DI}+M_{HS}), described in §§ 86.1233–96(p) and 86.1238–96(k), respectively.

67. A new § 86.1246–96 is added to subpart M to read as follows:

§ 86.1246–96 Fuel dispensing spitback procedure.

(a) The vehicle is fueled at a rate of 10 gal/min to test for fuel spitback emissions. All liquid fuel spitback emissions that occur during the test are collected in a bag made of a material impermeable to hydrocarbons or methanol. The bag shall be designed and used so that liquid fuel does not spit back onto the vehicle body,

adjacent floor, etc., and it must not impede the free flow of displaced gasoline vapor from the orifice of the filler pipe. The bag must be designed to permit passage of the dispensing nozzle through the bag. If the bag has been used for previous testing, sufficient time shall be allowed for the bag to dry out. The dispensing nozzle shall be a commercial model, not equipped with vapor recovery hardware.

(b) Ambient temperature levels encountered by the test vehicle shall be not less than 68 °F nor more than 86 °F. The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

(c) Measure and record the mass of the bag to be used for collecting spitback emissions to the nearest 0.01 gram.

(d) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to 10 percent of the reported nominal fuel tank capacity. The fuel cap(s) shall be installed immediately after refueling.

(e) The vehicle shall be soaked at 80±6 °F (27±3 °C) for a minimum of six hours, then placed, either by being driven or pushed, on a dynamometer and operated through one Heavy-Duty Vehicle Urban Dynamometer Driving Schedule (specified in § 86.1215 and appendix I of this part). The test vehicle may not be used to set dynamometer horsepower.

(f) Following the preconditioning drive, the vehicle shall be driven at minimum throttle to the refueling area.

(g) All areas in proximity to the vehicle fuel fill orifice and the dispenser nozzle itself shall be completely dry of liquid fuel.

(h) The fuel filler neck shall be snugly fitted with the vented bag to capture any fuel emissions. The fuel nozzle shall be inserted through the bag into the filler neck of the test vehicle to its maximum penetration. The plane of the nozzle's handle shall be perpendicular to the floor of the laboratory.

(i) The fueling procedure consists of dispensing fuel through a nozzle, interrupted by a series of automatic shutoffs. A minimum of 3 seconds shall elapse between any automatic shutoff and subsequent resumption of dispensing. Dispensing may not be manually terminated, unless the test vehicle has already clearly failed the test. The vehicle shall be fueled according to the following procedure:

(1) The fueling operation shall be started within 4 minutes after the vehicle is turned off. The average temperature of the dispensed fuel shall be 65±5 °F (18±3 °C).

(2) The fuel shall be dispensed at a rate of 10.0±0.1 gallons/minute (37.9±0.4 ℓ/min) until the automatic shutoff is activated.

(3) If the automatic shutoff is activated before the nozzle has dispensed an amount of fuel equal to 70 percent of the tank's nominal capacity, the dispensing may be resumed at a reduced rate. Repeat as necessary until the nozzle has dispensed an amount of fuel equal to at least 70 percent of the tank's nominal capacity.

(4) Once the automatic shutoff is activated after the nozzle has dispensed an amount of fuel equal to 70 percent of the tank's nominal capacity, the fuel shall be dispensed at a rate of 5±1 gallons/minute (19±4 ℓ/min) for all subsequent dispensing. Dispensing shall be restarted two additional times.

(5) If the nozzle has dispensed an amount of fuel less than 85 percent of the tank's nominal capacity after the two additional dispensing restarts, dispensing shall be resumed, and shall continue through as many automatic shutoffs as necessary to achieve this level. This completes the fueling procedure.

(j) Withdraw the nozzle from the vehicle and the bag, holding the tip of the nozzle upward to avoid any dripping into the bag.

(k) Within 1 minute after completion of the fueling event, the bag shall be folded to minimize the vapor volume inside the bag. The bag shall be folded as quickly as possible to prevent evaporation of collected emissions.

(l) Within 5 minutes after completion of the fueling event, the mass of the bag and its contents shall be measured and recorded (consistent with paragraph (c) of this section). The bag shall be weighed as quickly as possible to prevent evaporation of collected emissions.

Subpart N—[Amended]

68. A new § 86.1306–96 is added to subpart N to read as follows:

§ 86.1306–96 Equipment required and specifications; overview.

(a) *Exhaust emission tests.* All engines subject to this subpart are tested for exhaust emissions. Petroleum- and methanol-fueled Otto-cycle and diesel engines are tested identically with two exceptions. First, the systems used to measure hydrocarbon, nitrogen oxide, methanol, formaldehyde, and particulate depend on the type of engine being tested; petroleum-fueled diesel engines require a heated, continuous hydrocarbon detector and a heated, continuous nitrogen oxide detector (see § 86.1310); methanol-fueled engines require a heated hydrocarbon detector, a methanol detector and a formaldehyde detector; gasoline-fueled and methanol-fueled Otto-cycle engines are not tested for particulate emissions (see § 86.1309). Second, if a gasoline-fueled and methanol-fueled engine is to be used in a vehicle equipped with an evaporative canister, the test engine must have a loaded evaporative canister attached for the exhaust emission test. Necessary equipment and specifications appear in §§ 86.1308, 86.1309, 86.1310 and 86.1311.

(b) *Fuel, analytical gas, and engine cycle specifications.* Fuel specifications for exhaust emission testing are specified in § 86.1313. Analytical gases are specified in § 86.1314. The EPA heavy-duty transient engine cycles for use in exhaust testing are described in § 86.1333 and specified in Appendix I to this part.

69. A new § 86.1327–96 is added to subpart N to read as follows:

§ 86.1327–96 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, particulate (petroleum-fueled and methanol-fueled diesel engines), and methanol and formaldehyde (for methanol-fueled diesel engines). The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in §§ 86.1334 and 86.1335, respectively. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x), or in sample collection impingers for methanol (CH_3OH) and sample collection impingers (or capsules) for formaldehyde (HCHO). A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen and, if appropriate, methanol and formaldehyde. In addition, for petroleum-fueled and methanol-fueled diesel engines, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

(b) Engine torque and rpm shall be recorded continuously during both the cold- and hot-start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals, integrate the brake horsepower with respect to time for the cold and hot cycles. This produces a brake horsepower-hour value that enables the brake-specific emissions to be determined (see §§ 86.1342, and 86.1343).

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) For gasoline- and methanol-fueled engines, evaporative emission canisters must be loaded with fuel vapors and connected to the engine. The canisters used for testing must be of the same design as those used in engine applications.

(3) On air-cooled engines, the fan shall be installed.

(4) Additional accessories (e.g., oil cooler, alternators, air compressors, etc.) may be installed or their loading simulated if typical of the in-use application.

(5) The engine may be equipped with a production-type starter.

(e) Means of engine cooling that will maintain the engine operating temperatures (e.g., temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. An auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer. Antifreeze mixtures and other coolants typical of those approved for use by the manufacturer may be used.

(f) *Exhaust system.* The exhaust system shall meet the following requirements:

(1) *Gasoline-fueled and methanol-fueled Otto-cycle engines.* A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) *Petroleum-fueled and methanol-fueled diesel engines.* Either a chassis-type or a facility-type exhaust system or both systems simultaneously may be used. The exhaust back pressure or restriction shall be typical of those seen in the actual average vehicle exhaust system configuration and may be set with a valve (muffler omitted).

(i) The engine exhaust system shall meet the following requirements:

(A) The total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel should not exceed 32 feet (9.8 m).

(B) The initial portion of the exhaust system may consist of a typical in-use (i.e., length, diameter, material, etc.) chassis-type exhaust system.

(C) The distance from the exhaust manifold flange(s) to any exhaust after-treatment device shall be the same as in the vehicle configuration unless the manufacturer is able to demonstrate equivalent performance at another location.

(D) If the exhaust system tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel exceeds 12 feet (3.7 m) in length, then all tubing in excess of 12 feet (3.7 m) (chassis and/or facility type) shall be insulated.

(E) If the tubing is required to be insulated, the radial thickness of the insulation must be at least 1.0 inch. The thermal conductivity of the insulating material must have a value no greater than 0.75 BTU-in/hr/ft²/°F measured at 700 °F.

(F) A smoke meter or other instrumentation may be inserted into the exhaust system tubing. If this option is exercised in the insulated portion of the tubing, then a minimal amount of tubing not to exceed 18 inches may be left uninsulated. However, no more than 12 feet of tubing can be left uninsulated in total, including the length at the smoke meter.

(ii) The facility-type exhaust system shall meet the following requirements:

(A) It must be composed of smooth tubing made of typical in-use steel or stainless steel. This tubing shall have a maximum inside diameter of 6.0 in (15 cm).

(B) Short sections (altogether not to exceed 20 percent of the entire tube length) of flexible tubing at connection points are allowed.

70. Section 86.1336–84 of subpart N is amended by revising paragraph (e) to read as follows:

§ 86.1336–84 Engine starting, restarting, and shutdown.

* * * * *

(e) *Test equipment malfunction—(1) Gasoline- and methanol-fueled engines.* If a malfunction occurs in any of the required test equipment during the test run, the test shall be voided.

(2) *Diesel-fueled engines.* (i) If a malfunction occurs in any of the required test equipment during the cold cycle portion of the test, the test shall be voided.

(ii) If a malfunction occurs in any of the required test equipment (computer, gaseous emissions analyzer, etc.) during the hot cycle portion of the test, complete the full engine cycle before engine shut-down then resoak for 20 minutes.

(A) If the test equipment malfunction can be corrected before the resoak period has been completed, the hot cycle portion of the test may be rerun.

(B) (*1*) If the test equipment malfunction is corrected after the completion of the resoak period, then the preconditioning cycle must be run before the hot cycle. This consists of a full 20 minute transient cycle followed by a 20 minute soak and then the for-record hot cycle.

(*2*) In no case can the start of the cold cycle and the start of the hot cycle be separated by more than 4 hours.

* * * * *

71. A new § 86.1337–96 is added to subpart N to read as follows:

§ 86.1337–96 Engine dynamometer test run.

(a) The following steps shall be taken for each test:

(1) *Prepare for the cold-start test.* (i) For gasoline- and methanol-fueled engines only, evaporative emission canisters shall be prepared for use in this testing in accordance with the procedures specified in § 86.1232–96 (h) or (j). The size of the canisters used for testing shall correspond with the largest canister capacity expected in the range of vehicle applications for each engine. The Administrator may, at his discretion, use a smaller canister capacity. Attach the evaporative emission canister(s) to the engine, using the canister purge plumbing and controls employed in vehicle applications of the engine being tested. Plug the canister port that is normally connected to the fuel tank.

(ii) Prepare the engine, dynamometer, and sampling system.

(iii) Change filters, etc., and leak check as necessary. For a single dilution particulate system, a propane check will not reveal a pressure side leak (that portion of the system downstream of the pump) since the volume concentration in ppm will not change if a portion of the sample is lost. A separate leak check is needed. A leak check of a filter assembly that has only one seal ring in contact with the filter media will not detect a leak when tested under vacuum. A pressure leak test should be performed.

(2) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(3) For methanol-fueled vehicles, install fresh methanol and formaldehyde impingers (or capsules) in the exhaust and dilution air sample systems for methanol and formaldehyde. A single dilution air sample covering the total test period may be utilized for formaldehyde background.

(4) Attach the CVS to the engine exhaust system any time prior to starting the CVS.

(5) Start the CVS (if not already on), the sample pumps (except for the particulate sample pump(s), if applicable), the engine cooling fan(s), and the data collection system. The heat exchanger of the constant volume sampler (if used), and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. (See § 86.1340(e) for continuous sampling procedures.)

(6) Adjust the sample flow rates to the desired flow rates and set the CVS gas flow measuring devices to zero. CFV–CVS sample flow rate is fixed by the venturi design.

(7) For petroleum-fueled and methanol-fueled diesel engines, carefully install a clean particulate sample filter into each of the filter holders and install the assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(8) Follow the manufacturer's choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For petroleum-fueled diesel engines (and methanol-fueled diesels, if used) turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrator (if used), and turn on the particulate sample pumps and indicate the start of the test on the data collection medium.

(9) As soon as it is determined that the engine is started, start a "free idle" timer.

(10) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle time is included in the 25±1 seconds.

(i) During diesel particulate testing without the use of flow compensation, adjust the sample pump(s) so that the flow rate through the particulate sample probe or transfer tube is maintained at a value within ±5 percent of the set flow rate.

(ii) During diesel particulate sampling with the use of flow compensation (i.e., proportional control of sample flow), it must be demonstrated that the ratio of main tunnel flow to particulate sample flow does not change by more than ±5.0 percent of its set point value (except for the first 10 seconds of sampling). For double dilution operation, sample flow is the net difference between the flow rate through the sample filters and the secondary dilution airflow rate.

(iii) Record the average temperature and pressure at the gas meter(s) or flow instrumentation inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate and/or a larger diameter filter.

(11) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle time is included in the 25±1 seconds. During particulate testing without the use of flow compensation, adjust the sample pump(s) so that the flow rate through the particulate sample probe or transfer tube is maintained at a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter(s) or flow instrumentation inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate and/or a larger diameter filter.

(12) On the last record of the cycle, cease sampling. Immediately turn the engine off and start a hot-soak timer. Also turn off the particulate sample pumps, the gas flow measuring device(s) and any continuous analyzer system integrator and indicate the end of the test on the data collection medium. Sampling systems should continue to sample after the end of the test cycle until system response times have elapsed.

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the "cold start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. For petroleum-fueled and methanol-fueled diesel engines, carefully remove the filter holder from the sample flow apparatus, remove each particulate sample filter from its holder, and place each in a petri dish and cover.

(14) Allow the engine to soak for 20±1 minutes.

(15) Prepare the engine and dynamometer for the hot start test.

(16) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(17) Install fresh methanol and formaldehyde impingers (or capsules) in the exhaust and dilution air sample systems for methanol and formaldehyde.

(18) Start the CVS (if not already on) or connect the exhaust system to the CVS (if disconnected). Start the sample pumps (except the particulate sample pump(s), if applicable), the engine cooling fan(s) and the data collection system. The heat exchanger of the constant volume sampler (if used) and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. See § 86.1340(e) for continuous sampling procedures.

(19) Adjust the sample flow rates to the desired flow rate and set the CVS gas flow measuring devices to zero.

(20) For petroleum-fueled and methanol-fueled diesel engines, carefully install a clean particulate filter in each of the filter holders and install assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(21) Follow the manufacturer's choke and throttle instruction for hot starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrator (if used), indicate the start of the test on the data collection medium, and turn on the particulate sample pump(s).

(22) As soon as it is determined that the engine is started, start a "free idle" timer.

(23) Allow the engine to idle freely with no-load for 24±1 seconds. The provisions and interpretations of paragraph (a)(10) of this section apply.

(24) Begin the transient-engine cycle such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle is included in the 25±1 seconds.

(25) On the last record of the cycle, allow sampling system response times to elapse and cease sampling. Turn off the particulate sample pump(s) (if appropriate), the gas flow measuring device(s) and any continuous analyzer system integrator and indicate the end of the test on the data collection medium.

(26) As soon as possible, transfer the "hot start cycle" exhaust and dilution

air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analyze the methanol and formaldehyde samples within 24 hours. (If it is not possible to perform analysis within 24 hours, the samples should be stored in a cold (approximately 0 °C) dark environment until analysis can be performed). For petroleum-fueled and methanol-fueled diesel engines, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place in a clean petri dish and cover as soon as possible. Within 1 hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

(27) The CVS and the engine may be turned off, if desired.

(b) The procedure in paragraph (a) of this section is designed for one sample bag for the cold start portion and one for the hot start portion. It is also permissible to use more than one sample bag per test portion.

(c) If a dynamometer test run is determined to be void, corrective action may be taken. The engine may then be allowed to cool (naturally or forced) and the dynamometer test rerun per paragraph (a) or (b) of this section.

72. Appendix I of part 86 is amended by adding paragraph (e) to read as follows:

Appendix I to Part 86—Urban Dynamometer Schedules

* * * * *

(e) EPA New York City Cycle for Light-Duty Vehicles and Light-Duty Trucks.

EPA NEW YORK CITY CYCLE

[Speed versus time sequence]

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
0	0	1	0	2	0
3	0	4	0	5	0
6	0	7	0	8	0
9	0	10	0	11	0
12	0	13	0	14	0
15	0	16	0	17	0
18	0	19	0	20	0
21	0	22	0	23	0
24	0	25	0	26	0
27	0	28	0	29	0
30	0	31	0	32	0
33	0	34	0	35	0
36	0	37	0	38	0
39	0	40	0	41	0
42	0	43	0	44	0
45	0	46	0	47	0.4
48	2.8	49	5.6	50	7.0
51	7.6	52	7.6	53	6.2
54	6.4	55	7.6	56	9.5
57	8.9	58	8.6	59	9.6
60	12.4	61	15.0	62	17.8
63	21.0	64	22.9	65	21.7
66	18.2	67	14.5	68	10.2
69	5.6	70	2.5	71	2.1
72	3.1	73	5.7	74	9.0
75	10.8	76	10.8	77	9.5
78	6.5	79	3.9	80	2.6
81	1.0	82	0.8	83	0.1
84	0	85	0	86	0
87	0	88	0	89	0
90	0	91	0	92	0
93	0	94	0	95	0
96	2.7	97	8.3	98	12.4
99	15.7	100	17.4	101	17.3
102	17.2	103	15.1	104	11.2
105	8.6	106	5.9	107	5.4
108	6.8	109	6.9	110	4.8
111	5.7	112	7.1	113	6.8
114	5.9	115	6.0	116	6.0
117	5.9	118	5.6	119	5.5
120	7.2	121	9.9	122	10.8
123	11.4	124	11.9	125	12.1
126	12.6	127	12.3	128	10.6
129	9.9	130	9.4	131	8.9
132	7.6	133	6.1	134	5.0
135	3.7	136	2.6	137	1.0
138	0.8	139	0.1	140	0.4
141	0.2	142	0	143	0
144	0	145	1.3	146	6.0
147	10.2	148	12.1	149	13.8
150	15.1	151	16.2	152	15.9

EPA NEW YORK CITY CYCLE—Continued

[Speed versus time sequence]

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
153	16.0	154	16.8	155	17.5
156	18.0	157	19.6	158	21.7
159	23.1	160	23.7	161	24.1
162	24.5	163	25.0	164	25.2
165	24.6	166	24.3	167	23.3
168	22.7	169	22.1	170	21.6
171	21.1	172	20.3	173	19.2
174	17.0	175	13.9	176	14.1
177	14.6	178	14.6	179	14.5
180	14.4	181	14.2	182	14.2
183	13.2	184	11.5	185	8.4
186	5.5	187	3.7	188	2.9
189	1.3	190	0.8	191	0.3
192	0.1	193	0.1	194	0
195	1.3	196	3.9	197	9.9
198	15.9	199	19.3	200	20.7
201	21.4	202	21.4	203	20.5
204	19.0	205	16.7	206	13.1
207	11.2	208	14.9	209	19.8
210	23.8	211	25.7	212	26.2
213	26.4	214	23.3	215	19.6
216	18.9	217	19.3	218	19.4
219	18.5	220	17.5	221	16.4
222	15.6	223	15.6	224	16.0
225	16.8	226	17.5	227	18.0
228	19.6	229	21.7	230	23.5
231	24.6	232	25.0	233	24.3
234	23.1	235	20.7	236	17.2
237	13.5	238	9.2	239	3.3
240	0	241	0	242	0
243	0	244	0	245	0
246	0	247	0	248	0
249	0	250	0	251	0
252	0	253	0	254	0.2
255	2.0	256	4.5	257	6.4
258	7.2	259	7.6	260	7.2
261	6.6	262	6.5	263	5.1
264	4.4	265	5.5	266	3.0
267	3.4	268	3.0	269	2.9
270	1.3	271	0.8	272	0.3
273	0	274	0	275	0.3
276	4.7	277	9.7	278	13.9
279	16.7	280	19.1	281	20.5
282	20.5	283	19.7	284	19.9
285	20.4	286	20.9	287	21.4
288	21.9	289	22.4	290	22.1
291	21.4	292	20.8	293	20.3
294	20.5	295	19.3	296	17.3
297	17.1	298	16.7	299	14.3
300	11.9	301	10.7	302	10.2
303	9.4	304	10.6	305	12.8
306	13.7	307	12.3	308	10.4
309	8.6	310	5.5	311	3.2
312	2.0	313	0.6	314	0
315	0	316	0	317	0
318	0	319	0	320	0
321	0	322	0	323	2.5
324	6.1	325	5.5	326	3.2
327	3.6	328	6.1	329	9.1
330	9.8	331	8.6	332	6.8
333	5.9	334	5.6	335	6.0
336	7.2	337	8.4	338	9.3
339	7.6	340	5.5	341	2.5
342	0.1	343	0	344	0
345	0	346	0	347	0
348	0	349	0	350	0
351	0	352	0	353	0
354	0	355	0	356	0
357	0	358	0	359	0
360	0	361	0	362	0
363	0	364	0	365	0

EPA NEW YORK CITY CYCLE—Continued

[Speed versus time sequence]

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
366	0	367	0	368	0
369	0	370	0	371	0
372	0	373	0	374	0
375	0	376	0	377	0
378	0	379	0	380	0
381	0	382	0	383	0
384	0	385	0	386	0
387	0	388	0	389	0
390	0	391	0	392	0
393	0	394	0	395	0.2
396	1.6	397	3.0	398	3.0
399	2.1	400	2.3	401	4.6
402	7.8	403	9.9	404	10.7
405	10.2	406	10.1	407	10.7
408	10.9	409	11.4	410	11.1
411	10.0	412	8.8	413	8.2
414	8.6	415	10.2	416	11.8
417	13.0	418	13.3	419	12.8
420	11.7	421	11.7	422	12.4
423	13.7	424	14.4	425	14.3
426	14.7	427	15.1	428	15.3
429	15.8	430	14.5	431	12.2
432	11.1	433	12.0	434	13.1
435	12.2	436	8.9	437	7.7
438	7.6	439	8.0	440	5.5
441	3.3	442	2.4	443	1.4
444	0.6	445	0	446	0
447	0	448	0	449	0
450	0	451	0	452	0
453	0	454	0	455	0
456	0	457	0	458	0
459	0	460	0	461	0
462	0	463	0	464	0
465	0	466	0	467	0
468	0	469	0	470	0
471	0	472	0	473	0
474	0	475	0	476	0
477	0	478	0	479	0
480	0	481	0	482	0
483	0	484	0	485	0
486	0	487	0	488	0
489	0	490	0	491	0
492	0	493	0	494	0
495	1.0	496	4.1	497	7.4
498	10.2	499	11.3	500	11.8
501	12.2	502	14.3	503	16.0
504	17.8	505	18.6	506	19.6
507	20.2	508	19.9	509	19.7
510	20.8	511	21.0	512	18.8
513	17.6	514	13.0	515	7.5
516	2.9	517	0.8	518	0
519	0.2	520	0.7	521	1.4
522	2.3	523	2.7	524	3.0
525	2.6	526	1.2	527	0.1
528	0.7	529	1.8	530	3.1
531	3.9	532	5.3	533	7.8
534	9.7	535	10.3	536	10.2
537	9.4	538	7.1	539	6.8
540	8.9	541	10.6	542	11.9
543	15.5	544	19.6	545	22.8
546	25.1	547	26.0	548	26.7
549	27.3	550	27.7	551	27.6
552	27.3	553	25.7	554	23.3
555	20.6	556	17.8	557	14.9
558	11.3	559	7.4	560	4.6
561	1.7	562	0.7	563	0
564	0	565	0	566	0
567	0	568	0	569	0
570	0	571	0	572	0
573	0	574	0	575	0
576	0	577	0	578	0

EPA NEW YORK CITY CYCLE—Continued

[Speed versus time sequence]

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
579	0	580	0	581	0
582	0	583	0	584	0
585	0	586	0	587	0
588	0	589	0	590	0
591	0	592	0	593	0
594	0	595	0	596	0
597	0	598	0	599	0
600	0				

* * * * *

73. A new appendix II is added to part 86 to read as follows:

Appendix II to Part 86—Temperature Schedules

(a) Ambient temperature cycle for the diurnal emission portion of the evaporative emission test (see § 86.133).

TABLE I.—TEMPERATURE VERSUS TIME SEQUENCE

Use linear interpolation between hourly temperatures

Time (min)	Temp. (°F)	Time (min)	Temp. (°F)	Time (min)	Temp. (°F)
0	72.0	60	72.5	120	75.5
180	80.3	240	85.2	300	89.4
360	93.1	420	95.1	480	95.8
540	96.0	600	95.5	660	94.1
720	91.7	780	88.6	840	85.5
900	82.8	960	80.9	1020	79.0
1080	77.2	1140	75.8	1200	74.7
1260	73.9	1320	73.3	1380	72.6
1440	72.0	1500	72.5	1560	75.5
1620	80.3	1680	85.2	1740	89.4
1800	93.1	1860	95.1	1920	95.8
1980	96.0	2040	95.5	2100	94.1
2160	91.7	2220	88.6	2280	85.5
2340	82.8	2400	80.9	2460	79.0
2520	77.2	2580	75.8	2640	74.7
2700	73.9	2760	73.3	2820	72.6
2880	72.0	2940	72.5	3000	75.5
3060	80.3	3120	85.2	3180	89.4
3240	93.1	3300	95.1	3360	95.8
3420	96.0	3480	95.5	3540	94.1
3600	91.7	3660	88.6	3720	85.5
3780	82.8	3840	80.9	3900	79.0
3960	77.2	4020	75.8	4080	74.7
4140	73.9	4200	73.3	4260	72.6
4320	72.9				

[FR Doc. 93–5415 Filed 3–23–93; 8:45 am]

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Federal Register

Wednesday
March 24, 1993

Part III

Department of Commerce

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing

I. New Applications and Major Amendments to Deferred Applications

Notice is hereby given that the following described applications for Federal financial assistance are accepted for filing under provision title III, part IV, of the Communications Act of 1934, as amended (47 U.S.C. 390–393, 397) and in accordance with 15 CFR part 2301. All of the applications listed in this section were received by January 14, 1993. The effective date of acceptance of these proposals, unless otherwise indicated herein, is "Date Received". Applications are listed by their State.

The acceptance of applications for filing is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications. Acceptance of an application does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provision of either the Act or 15 CFR part 2301, or if the applicant fails to file any additional information requested by the Public Telecommunications Facilities Program (PTFP).

Acceptance for filing does not ensure that an application will be funded; it merely qualifies that application to compete for funding with other applications which have also been accepted for filing.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in 15 CFR 2301.5(a).

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

Dennis R. Conners,

Associate Administrator.

AK (Alaska)

File No. 93080 CRB Raven Radio Foundation, 102–B Lincoln St., P.O. Box 520, Sitka, AK 99835. Signed By: Mr. Richard V. McClear, Chief Operation Officer. Funds Requested: $131,130. Total Project Cost: $174,840. To extend and improve the transmission and programming capabilities of public radio station KCAW–FM operating on 104.7 Mhz, Sitka, Alaska, by constructing translators in Elfin Cove and Yakutat to bring first public radio service to 13,500 residents of the Alaska panhandle. The other items requested will replace worn out and obsolete studio and test equipment.

File No. 93091 CTB Capital Community Brdcstg., Inc., 224 Fourth Street, Juneau, AK 99801–1198. Signed By: Mr. Bill Legere, President. Funds Requested: $176,062. Total Project Cost: $234,750. To upgrade the production and transmission capability of public television station KTOO–TV operating on channel 3 in Juneau, Alaska, by replacing worn out and obsolete equipment including video tape recorders, master control switcher and audio distribution amplifiers to better serve 50,000 residents of the Alaska panhandle.

File No. 93157 CTN Alaska Public Broad. Commission, 333 Willoughby Ave., Juneau, AK 99801–. Signed By: Mr. Douglas P. Samimi-Moore, Executive Director. Funds Requested: $949,830. Total Project Cost: $1,983,400. To construct a C-band satellite interconnection system that employs digital compression technology to serve the state's distance delivery needs in education, training and other programs, and public broadcasting. The system would lease a transponder for three full-time video channels, one each for public television, education (University of Alaska and the Department of Education) and government.

File No. 93191 CRB Kashunamiut School District, 985 KSD Way, Chevak, AK 99563. Signed By: Mr. B.A. Weinberg, Superintendent. Funds Requested: $67,524. Total Project Cost: $90,032. To extend the signal of noncommercial station KCUK–FM operating on 88.1 Mhz in Chevak, Alaska, by increasing the power of their transmitter power to 6 Kw and replacing an existing translator with a new solar powered unit. These changes will improve radio service to 1900 existing listeners and add 450 additional listeners in Scammon and Hooper Bays.

File No. 93199 CRB Rainbird Cmty. Brdcstg. Corp., 123 Stedman Street, Ketchikan, AK 99901. Signed By: Mr. Paul Crowl, President. Funds Requested: $42,592. Total Project Cost: $56,790. To improve the production and transmission facilities of public radio station KRBD–FM operating on 105.9 Mhz in Ketchikan, Alaska, by replacing obsolete studio production equipment to better serve the 25,000 residents of the Ketchikan Gateway Borough.

File No. 93233 CRB Kuskokwim Public Brdcstg. Corp., Box 70, Mile 389, Iditarod Trail, McGrath, AK 99627. Signed By: Ms. Helen Wittenkeller, President. Funds Requested: $43,185. Total Project Cost: $57,580. To improve the transmission and programming capability of public radio station KSKO–AM, operating on 870 Khz McGrath, Alaska, by installing a diesel generator and dummy load at the transmitter site, and an automation equipment package and test equipment at the studio. This equipment will be used as a demonstration project for full time operation of remote stations throughout the state.

File No. 93234 CRB Kuskokwim Public Brdcstg. Corp., Box 70, Mile 389, Iditarod Trail, McGrath, AK 99627. Signed By: Ms. Helen Wittenkeller, President. Funds Requested: $35,925. Total Project Cost: $47,900. To extend the signal of public radio station KSKO–AM operating on 870 Khz in McGrath, Alaska by placing a translator in Anvik to provide a first public radio service to 725 residents of Anvik, Grayling, Holy Cross and Shageluk.

File No. 93259 CTBN University of Alaska-Fairbanks, Fairbanks North Star Borough, Fairbanks, AK 99775–1420. Signed By: Dr. Charles E. Graham, Director, Sponsored Prog. Off. Funds Requested: $231,000. Total Project Cost: $308,000. To upgrade the fiber optic inter-building link and purchase replacement video tape equipment, an ITFS microwave STL, and items of test equipment for public television station KUAC, ch. 9, Fairbanks, AK. The equipment will allow the station to provide new services via ITFS to public schools.

File No. 93268 CRB Bethel Broadcasting, Inc., 640 Radio St., P.O. Box 468, Bethel, AK 99559. Signed By: Mr. Andrew Guy, President. Funds Requested: $96,075. Total Project Cost: $128,100. To extend and improve the signal of public radio station KYUK–AM operating in 640 Khz in Bethel, Alaska, by constructing a translator in St. Mary to bring first public radio service to 1,850 residents of the lower Yukon area. The application also requests a replacement for their remote pickup unit, STL and various studio production items to better serve the 20,000 residents of the entire lower Yukon region.

AL (Alabama)

File No. 93009 CTB Alabama ETV Commission, 2112 11th Avenue S, suite 400, Birmingham, AL 35205–2884. Signed By: Ms. Judy Stone, Executive

Director. Funds Requested: $2,057,468. Total Project Cost: $2,758,000. To improve the service of Alabama Public Television by replacing basic transmission equipment, including new transmitters at WCIQ–TV, Channel 7, Mt. Cheaha, AL; WIIQ–TV, Channel 41, Demopolis; and WFIQ–TV, Channel 36, Florence. The WCIQ transmitter was installed in 1978; the WIIQ transmitter in 1970; and the WFIQ transmitter in 1966. In addition, Alabama Public Television plans to replace an antenna and transmission line at the Demopolis site, and install surge protection equipment at Mt. Cheaha. Alabama Public Television serves approximately 4 million viewers; the antenna replacement at Demopolis will bring first signal to approximately 12,642 viewers.

File No. 93084 CTB Auburn University, Auburn Television, Auburn, AL 36849–5423. Signed By: Mr. Paul F. Parks, Vice President for Research. Funds Requested: $339,399. Total Project Cost: $678,798. To purchase diverse production equipment, including color cameras, lenses, switchers, recorders, monitors, and test equipment, for the Auburn Studio, which operates as an affiliate of the Alabama Public Television Network. The project would improve the Studio's capability of providing instructional and other programming to the Network, as well as to the Public Broadcasting System.

File No. 93192 PTN Shelton State Community College, 1301 15th Street East, Tuscaloosa, AL 35404–. Signed By: Dr. Thomas E. Umphrey, President. Funds Requested: $77,784. Total Project Cost: $77,784. To develop a telecommunications plan using a variety of technologies to provide interactive video, audio and computer-based distance learning services to individuals who may be disadvantaged and may not normally take courses ranging from GED preparation to college-level instruction. Businesses will also be included in the project by participating in the preparation and offering of training courses for workers. The plan will examine the telecommunications technologies that seem practical for an interconnection system, including ITFS, T–1 Lines, and use of an existing satellite downlink for teleconferences.

AR (Arkansas)

File No. 93130 CTB Arkansas ETV Commission, 350 South Donaghey, Conway, AR 72032. Signed By: Ms. Susan Howarth, Executive Director. Funds Requested: $591,244. Total Project Cost: $1,182,489. To improve the services of the Arkansas Educational Television Network by replacing outmoded ¾" U-Matic video equipment with state-of-the-art Beta SP equipment, as well as to acquire video editing equipment and a router to facilitate the format change. The project also would add a character generator to broadcast news, weather, and emergency bulletins over the AETN's five-transmitter network. Arkansas Educational Television serves approximately 2.3 million viewers.

File No. 93131 CTB Arkansas ETV Commission, 350 South Donaghey, Conway, AR 72032. Signed By: Ms. Susan Howarth, Executive Director. Funds Requested: $706,148. Total Project Cost: $1,412,296. To purchase a portable Ku-band satellite uplink and related television production equipment. The project will address direct instruction to pre-school, elementary, secondary and post secondary schools, in-service training for educators and state employees, statewide town meetings and training and teleconferencing for businesses.

File No. 93175 CTN University of Arkansas, 120 Ozark Hall, Fayetteville, AR 72701. Signed By: Mr. John K. Stokes, Dir., Research & Spon. Prog. Funds Requested: $591,120. Total Project Cost: $788,160. To purchase a mobile Ku-band satellite uplink and related television production equipment. The project will address the distance learning needs of the University, other Arkansas institutions of higher education, public schools, state agencies and business groups.

AS (American Samoa)

File No. 93243 CTB American Samoa Government, KVZK, Office of Public Info., Pago Pago, AS 96799. Signed By: Ms. Vaoita Savali, Director. Funds Requested: $614,859. Total Project Cost: $614,859. To improve the transmission and production facilities of KVZK–TV, Ch. 2, in Pago Pago, American Samoa. The project will repair/replace the antenna, tower, and transmitter air conditioning that were damaged by Hurricane Val. The project will also replace obsolete test equipment, video and audio distribution equipment necessary to maintain KVZK–TV program services to 47,000 residents of American Samoa.

AZ (Arizona)

File No. 93056 CRB Northern Arizona University, Riordan Road, Flagstaff, AZ 86011–. Signed By: Ms. Jeanette S. Baker, Assoc. V.P., Univ. Relations. Funds Requested: $98,477. Total Project Cost: $131,303. To improve the facilities of public radio station KNAU–FM by acquiring a remote pickup system to enhance the news gathering and remote production capability. In addition, will equip a second production control room at the station in Flagstaff.

File No. 93067 CTB University of Arizona, KUAT, Modern Language Building, Tucson, AZ 85721. Signed By: Mr. William Noyes, Associate Vice President. Funds Requested: $25,308. Total Project Cost: 50,616. To improve the facilities of public television station KUAT–TV, Channel 6, in Tucson by replacing old, obsolete film and slide chain equipment with digital still store equipment. Area is also served by KUAS–TV, Channel 27.

File No. 93107 CTN Northern Arizona University, P.O. Box 5751, Flagstaff, AZ 86011–5751. Signed By: Dr. Jeanette S. Baker, Assoc. Vice President. Funds Requested: $2,143,789. Total Project Cost: $2,858,386. To extend the existing duplex microwave distance learning system of Northern Arizona University to three Native American reservation educational institutions, one Native American non-reservation educational institution, and three neighboring community colleges.

File No. 93148 CTB Arizona State University, Stauffer Hall, Tempe, AZ 85287–1903. Signed By: Ms. Janice D. Bennett, Asst. Dir., Research. Funds Requested: $166,205. Total Project Cost: $332,410. To improve the facilities of public television station KAET–TV, Channel 8, in Phoenix by replacing worn-out and obsolete basic production and broadcast operations equipment. Equipment requested includes a lighting board, 2½ inch VTR's, 1 frame synchronizer. 2 waveform monitors, 6 video monitors and a routing switcher.

CA (California)

File No. 93017 CRB Univ. of California, Santa Barbara, 3227 Cheadle Hall, Santa Barbara, CA 93106–. Signed By: Mr. David Mayo, Contracts & Grants Officer. Funds Requested: $44,494. Total Project Cost: $59,326. To upgrade the programming capability of student operated public radio station KCSB–FM operating on 91.9 Mhz in Santa Barbara, CA, by installing a satellite receive dish to provide a first national public radio service to 750,000 residents of Ventura, Santa Barbara and San Luis Obispo Counties.

File No. 93031 CTB KTEH Foundation, 100 Skyport Drive, MC 54, San Jose, CA 95110–. Signed By: Mr. Thomas E. Fanella, President. Funds Requested: $482,450. Total Project Cost: $964,900. To improve the facilities of public television station KTEH–TV, operating on channel 54 San Jose, CA, by replacing aging quadruplex video

tape recorders needed for continued station operation.

File No. 93038 CTB KQED, Inc., 2601 Mariposa Street, San Francisco, CA 94110–1400. Signed By: Mr. Anthony S. Tiano, President and CEO. Funds Requested: $465,975. Total Project Cost: $931,950. To improve the production and transmission facilities of public television station KQED–TV operating on channel 9 in San Francisco, California, by replacing obsolete video tape and master control equipment with an automated master control switching system and digital video recorders to better serve 7 million residents of the greater San Francisco bay area.

File No. 93040 CRB Nevada City Cmnty Broadcast Group, P.O. Box 1327, Nevada City, CA 95959–. Signed By: Mr. Steve Ramsey, General Manager. Funds requested: $61,583. Total Project Cost: $123,166. To upgrade the production and programming capability of public radio station KVMR–FM operating on 89.5 Mhz in Nevada City, California, by replacing the present transmission system, satellite downlink, production and master control studio equipment to better serve 250,000 residents of Nevada County, Placer County and Sierra County.

File No. 93407 CTN California State Univ. Foundation, 400 Golden Shore, Suite 122, Long Beach, CA 90802–. Signed By: Mr. Robert D. Maners, President, CSU Foundation. Funds Requested: $927,368. Total Project Cost: $1,901,868. To establish a two-way interactive telecommunications system consisting of a high-speed data network for three Model Schools in the K–12 range. The schools will be interconnected with each other and with the California State University system via switching centers operated by the Regional Bell Operating Company.

File No. 93073 CTB Valley Public TV, Inc., 1544 Van Ness Avenue, Fresno, CA 93721. Signed By: Mr. Colin Dougherty, General Manager. Funds Requested: $506,808. Total Project Cost: $1,055,851. To upgrade the production and program origination capability of public television station KVPT–TV, operating on channel 18 in Fresno, California, by replacing obsolete and worn out equipment including transmitter monitoring, master control and production switchers, studio and field video recorders, audio processors and recorders and video test systems. This equipment will be used to continue the only public television service to 1.6 million residents of the California central valley.

File No. 93125 CRB Mendocino Cty. Public Broadcasting, 9300 Hwy 128, P.O. Box 180, Philo, CA 95466. Signed By: Mr. Carrol Pratt, Treasurer, Board of Directors, Funds Requested: $45,187. Total Project Cost: $60,250. To extend the signal of public radio station KZYX–FM operating on 90.7 Mhz in Philo, California by installing a repeater station in Willits to serve 50,000 residents of Redwood Valley, Little Lake Valley, Potter Valley, and Ukiah Valley.

File No. 93126 CRB Mendocino Cty. Public Broadcasting, 9300 Hwy 128, P.O. Box 180, Philo, CA 95466. Signed By: Mr. Carrol Pratt, Board Treasurer. Funds Requested: $9,974. Total Project Cost: $13,298. To upgrade the production capability of public radio station KZYX–FM operating on 90.7 Mhz in Philo, California, by acquiring equipment for a news production studio. The equipment will bring the three year old station to minimum equipment standard. This station is the only public radio service in this section of the north coast of California.

File No. 93132 CRB Pataphysical Broadcasting Fdn., P.O. Box 423, 203 8th Avenue, Santa Cruz, CA 95062–. Signed By: Ms. Marcia Kraus, Station Manager. Funds Requested: $168,590. Total Project Cost: $224,787. To expand and improve the transmission and programming capabilities of public radio station KUSP–FM, operating on 88.9 Mhz in Santa Cruz, California, by replacing their 19 year old transmitter, upgrading two ten year old translators, adding a booster station and replacing worn out and obsolete studio production equipment. These activities will increase the station audience by 37,000 and improve service to 1 million residents of the central coast of California.

File No. 93139 CTB San Diego St. University Found., 5164 College Avenue, San Diego, CA 92182. Signed By: Mr. Lawrence B. Feinberg, Assoc. Dean, Grad Div. & Res. Funds Requested: $675,840. Total Project Cost: $1,126,400. To improve the transmission and production capability of public television station KPBS–TV operating on channel 15, in San Diego, California by replacing an obsolete master control routing system, studio video and audio switchers, still store and editing systems. The replacement equipment will be installed in a new studio facility.

File No. 93144 CTB San Bernardino Community College, 701 S. Mount Vernon Avenue, San Bernardino, CA 92410. Signed By: Mr. Stuart M. Bundy, Chancellor. Funds Requested: $345,000. Total Project Cost: $690,000. To upgrade the production capability of public television station KVCR–TV, operating on channel 24, San Bernardino, California by replacing worn out and obsolete studio and field production cameras, video tape recorders and an editing control unit to better serve 3.5 million residents of the San Bernardino area.

File No. 93176 PRTN California Community Colleges, 1107 Ninth Street, Sacramento, CA 95838–. Signed By: Mr. Ernest Leach, Deputy Chancellor. Funds Requested: $764,856. Total Project Cost: $1,031,892. To develop a strategic telecommunications plan for a statewide, community college "virtual network" capable of video, voice and data interaction among the community colleges in the state of California for distance learning applications and for training the state's workforce. The California community college system is one of three public systems of higher education in the state, and one out of every seventeen adults in the state attends classes at a community college. The plan will explore all possible technologies that may be appropriate and feasible for such a statewide network.

File No. 93207 CTN Sandigan California Inc., 6489 47th St., Sacramento, CA 95823–. Signed By: Ms. Leni M. Lacson, Executive Director. Funds Requested: $41,804. Total Project Cost: $55,738. To establish a video production center to originate instructional course work designed to meet the needs of migrant workers throughout California. The center will also create programming targeted for the Filipino community. The programming will be distributed by over-the-air broadcast facilities and cable television systems in many California communities.

File No. 93212 CTN Community TV of S. California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Signed By: Mr. Donald B. Youpa, Executive Vice President. Funds Requested: $165,761. Total Project Cost: $331,523. To equip public television station KCET, Ch. 28, Los Angeles, with basic authoring and playback/demonstration equipment for its Interactive Media Center. The station will use the equipment to begin producing multimedia interactive educational programming for K–12 and post-secondary schools.

File No. 93218 CTB Community TV of S. California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Signed By: Mr. Donald G. Youpa, Executive Vice President. Funds Requested: $322,288. Total Project Cost: $429,718. To extend the signal of public television station KCET–TV, operating on channel 28, Los Angeles, California by constructing a microwave fed translator system which will bring a first over the air public

television service to 400,000 residents of Kern County including 11,000 residents of Lake Isabella who have no public television service what so ever.

File No. 93219 CRB Cal. State Univ., Sacramento, 3416 American River Dr. suite B, Sacramento, CA 95864. Signed By: Mr. Phil Corriveau, General Manager. Funds Requested: $106,602. Total Project Cost: $213,204. To construct a Ku-band uplink to distribute programming from the applicant's public radio stations KXPR and KXJZ, Sacramento, to a series of repeater stations and translators which will serve communities in northern California. Satellite downlinks will be placed at the applicant's public radio stations KXSR, Groveland, CA, KXKB, Kings Beach, CA, and a proposed translator for St. Helena, CA. Small studios will also be constructed at KXSR and KXKB to originate local news programming. The applicant also intends to use the Ku-band uplink to distribute news coverage from the state capitol to other public radio stations in California.

File No. 93223 CRB Radio Bilingue, Inc., 1111 Fulton Mall, #700, Fresno, CA 93721. Signed By: Mr. Hugo Morales, Executive Director. Funds Requested: $64,520. Total Project Cost: $86,027. To expand the capabilities of existing Hispanic public radio stations to receive the satellite distributed national Spanish language program service offered by the applicant. The project will construct C-band downlink facilities at the following public radio stations: KERU, Blythe, CA; KHDC, Salinas, CA; KTQX, Bakersfield, CA; and KXCR, El Paso, TX. Additional equipment will also be purchased for downlink facilities at public radio stations KBBF, Santa Rosa, CA and KDNA, Granger WA, to make them compatible with the network. A microwave will also be constructed to interconnect public radio station WIPR, Hato Rey, PR to an existing downlink at WRTU, San Juan, so WIPR can access the network.

CO (Colorado)

File No. 93032 CRB Leadville Cmnty Broadcast Assoc., 229 West 6th Street, Leadville, CO 80461–. Signed By: Ms. Kathy Bedell, President. Funds Requested: $109,985. Total Project Cost: $146,645. To activate a new public radio station in Leadville. Station would provide a first public radio service to approximately 6,000 residents of Leadville and Lake County.

File No. 93037 CTB Univ. of Southern Colorado, 2200 Bonforte Boulevard, Pueblo, CO 81001–4901. Signed By: Dr. Robert C. Shirley, President, Univ. of So. CO. Funds Requested: $434,684. Total Project Cost: $869,369. To extend and improve the facilities of public television station, KTSC–TV, Channel 8, in Pueblo by constructing four new translators, a microwave interconnection system and improving some of the station's origination equipment by replacing worn, obsolete equipment and acquiring a variety of test equipment. KTSC–TV will be upgraded to broadcast in stereo. New translator stations will serve Grand Junction (Ch. 53), Durango (Ch. 29), Ignacio (Ch. 15) and Cortez-Red Mesa (Ch. 64). Project will provide first public television service to 24,670 residents in western and southern CO.

File No. 93055 CRB Region 1 Translator Association, County Commissioner's Office, Wray, CO 80758–. Signed By: Mr. Stanley Shafer, Secretary-Treasurer. Funds Requested: $38,850. Total Project Cost: $51,806. To extend the signal of KUNC–FM (91.5 MHz) in Greeley, CO, by constructing three new 100-watt FM translators located in Holyoke (89.9 MHz), Julesburg (89.1 MHz) and Wray (93.5 MHz). In addition, project would relocate existing translator, K204BH, licensed to the University of Northern Colorado, and increase the translator's power to 100 watts. Project would provide first service to about 13,000 residents of Phillips, Sedgwick and Yuma counties.

File No. 93059 CRB Denver Ed. Broadcasting, Inc., 2246 Federal Blvd., PO Box 11111, Denver, CO 80211 . Signed By: Ms. Florence Hernandez-Ramos, President & General Manager. Funds Requested: $217,518. Total Project Cost: $290,025. To improve the facilities of public radio station KUVO–FM, 89.3 MHz, in Denver by acquiring a backup studio-to-transmitter link (STL), a new transmitter. The old 1985 transmitter which will be used as a backup. KUVO–FM will replace a variety of master control room equipment including a new console. Project will also replace console and other origination equipment such as reel-to-reel recorders, CD players/recorders, DAT machines and a variety of associated equipment in the station's production/news rooms. KUVO–FM also seeks a selection of test equipment. The replacement and upgrading of KUVO–FM's equipment will allow it to better serve its multi-cultural audience. The Denver area is also served by KCFR–FM and KGNU–FM (Boulder).

File No. 93072 CTB Front Range Educ. Media Corp., 2246 North Federal Blvd., Denver, CO 80211. Signed By: Mr. Ted Krichels, General Manager. Funds Requested: $224,561. Total Project Cost: $320,802. To improve the facilities of public television station KBDI–TV, Channel 12, Bloomfield by replacing its old 2 GHz microwave studio-to-transmitter link (STL) with a new 7 GHz microwave system. This will reduce the risk of interference with broadcasting mobile operations. KBDI–TV also seeks to replace its obsolete ¾" format origination equipment with the newer BETA format by acquiring new video cassette recorder/players. In addition, a new routing switcher and some test equipment will also be acquired. KBDI–TV serves the Bloomfield/Denver market and surrounding area.

File No. 93079 CRB Public Brdcstg. of Colorado, Inc., 2249 South Josephine Street, Denver, CO 80210. Signed By: Mr. Max Wycisk, General Manager. Funds Requested: $62,772. Total Project Cost: $102,772. To activate a new full-service public radio station on 89.9 MHz, in Vail by increasing the power of an existing translator station from 10 watts to 1,500 watts and adding local origination. Existing translator was installed in 1992 as an interim step leading to the establishment of the full-service station. Current translator covers about 7,603 persons while the new station will cover about 16,955 residents. Station will also serve as the applicant's third radio production center.

File No. 93210 PTN University of Colorado, Campus Box 19, Boulder, CO 80309–0019. Signed By: Mr. Laurence D. Nelson, Director, Grants and Contracts. Funds Requested: $90,000. Total Project Cost: $100,905. To plan for the application of telecommunications technologies to innovative forms of distance education. The capabilities of modern communications facilities to meet educational needs, particularly in the area of the sciences, will be studied and planned. The project will examine and design educationally appropriate interfaces and equipment configurations using the Telecommunications Education and Research Network (TERN), INTERNET, ITFS systems, fiber optic lines, satellite distribution, cable TV systems, and private line and public switched networks. Coordination with faculty members and educational specialists at the K–12 and college levels will be included to develop a schedule for representative courses and lessons to test the results of the plan.

File No. 93221 CTB Rio Grand County, Sixth & Cherry, Del Norte, CO 81132–. Signed By: Mr. Vern Rominger, Chairman of the Board. Funds Requested: $33,075. Total Project Cost: $44,100. To construct two new public television translator stations in Del Norte/South Fork (Channel 41) and

South Fork (K18DE, Channel 18). The new translators will re-broadcast the signal of KTSC–TV, Channel 8, in Pueblo. Stations will provide first service to about 2,500 permanent residents and as many as 6,000 during the summer months and the ski season.

File No. 93252 PTN Community Information Center-2000, 14302 North 107th, Longmont, CO 80501–. Signed By: Mr. Paul H. Spieker, Secretary. Funds Requested: $85,700. Total Project Cost: $184,400. To plan for Community Information Centers in Boulder County, Colorado that would incorporate telecommunications technologies to provide strategic programs and services in education and training to educational, medical, governmental, social and business organizations. The services provided at these centers would benefit all aspects of the communities in sharing information and interacting over long distances to remote locations, to improve the economic conditions and environmental health of the area. These proposed pilot Community Information Centers might then serve as models for centers elsewhere.

File No. 93287 CTN National Technological Univ., 700 Centre Avenue, Fort Collins, CO 80526. Signed By: Dr. Lionel V. Baldwin, President. Funds Requested: $341,467. Total Project Cost: $616,467. To expand the services of the National Technological University by adding five channels of compressed digital video programming for distribution by Ku-band satellite. The equipment will permit the establishment of "on-demand" overnight delivery of instructional programming to students at their place of work.

CT (Connecticut)

File No. 93226 CRN Connecticut Radio Info. Service, 589 Jordan Lane, Wethersfield, CT 06109–1041. Signed By: Mr. David W. Judy, Executive Director. Funds Requested: $66,150. Total Project Cost: $100,500. To extend the Connecticut Radio Information System (CRIS) network by activating two satellite studios, one at 198 Main Street in Danbury, CT and one at the University of New Haven in West Haven, CT, and by activating an SCA transmitting facility in New London County in cooperation with WCNI–FM at Connecticut College in New London, which plans to provide the applicant with its SCA. Completion of this project would complete SCA service to all the major areas of the state.

File No. 93293 CTB Connecticut Public Brdcstg., Inc., 240 N. Britain Ave., Hartford, CT 06106–0240. Signed By: Mr. Jerry Franklin, President. Funds Requested: $227,371. Total Project Cost: $454,742. To complete the move of the WEDW–TV studio from its former site at Harbor Plaza in Stamford to the Stamford Center for the Arts in downtown Stamford. WEDW–TV operates on Channel 49 in Bridgeport, CT. Requested equipment would provide stereo/DVS broadcast capability, studio cameras, character generator, a Beta VTR, master control switcher, additional m/w equipment necessary to reach the WEDW–TV transmitter, plus monitoring equipment, and related studio items.

DC (District of Columbia)

File No. 93060 CTN Video/Action Inc., 3034 Q Street, NW., Washington, DC 20007–. Signed By: Ms. Raeanne Hytone, Treasurer. Funds Requested: $273,966. Total Project Cost: $365,288. To establish a community-based, digital post-production studio facility that will create programming for local public television and nonbroadcast entities. Among its objectives would be the reconfiguration of traditional broadcast-style video programs into interactive programs for educational and institutional use nationwide.

File No. 93227 PTN CTNA Telecommunications, Inc., 3211 4th Street, NE., Washington, DC 20017–1194. Signed By: Ms. Christine Irvin, Acting President. Funds Requested: $81,000. Total Project Cost: $81,000. To plan for the expansion of the applicant's existing nationwide satellite service to serve the needs of immigrants and refugees. CTNA currently serves downlinks at 199 locations at diocesan centers, hospitals and colleges. The proposed service would provide services to immigrants and refugees by combining the educational capability of national television with already established community-based sites, such as parishes, churches and schools throughout America. The project would concentrate on five states, New York, Texas, Florida, California and Illinois, which receive the most immigrants and refugees. CTNA is owned by the United States Catholic Conference, but the programming would not be dogmatic and would be directed at the non-religious audience.

FL (Florida)

File No. 93001 CRB Bascomb Memorial Brdcstg. Fdn., 4848 SW., 74th Court, Miami, FL 33155. Signed By: Ms. Margarita Pelleyá, President. Funds Requested: $20,139. Total Project Cost: $26,852. To restore the services of community radio station WDNA–FM, 88.9 MHz, serving the Greater Miami area, through replacement of an antenna, STL, and transmission line destroyed by Hurricane Andrew.

File No. 93010 PTN St. Petersburg Junior College, 6605 5th Avenue North, St. Petersburg, FL 33710–. Signed By: Mr. Carl M. Kuttler, President. Funds Requested: $43,734. Total Project Cost: $87,468. To plan for the possible expansion of an ITFS system in order for St. Petersburg Jr. College to reach community sites and groups that have a need for credit and non-credit distance learning courses. A planning grant would help the college identify the equipment and costs for an expanded nonbroadcast system that would provide distance learning opportunities for a number of professional, support and community groups, and "at risk" audiences in Florida's most densely-populated county—Pinellas County.

File No. 93025 CTB University of South Florida, 4202 Fowler Avenue, WRB 219, Tampa, FL 33620. Signed By: Mr. Richard B. Streeter, Director, Sponsored Research. Funds Requested: $83,308. Total Project Cost: $166,616. To improve the service of public television station WUSF–TV, Ch. 16, Tampa, FL, by replacing a worn-out 27-year-old transmission line and associated equipment. Failure in the present transmission line caused the station to be off the air for six days in 1992. WUSF–TV is one of two public television stations serving the 3.5 million residents of the Tampa area.

File No. 93043 CRB Florida State University, 2561 Pottsdamer Street, Tallahassee, FL 32310–. Signed By: Mr. Robert M. Johnson, Vice President for Research. Funds Requested: $9,075. Total Project Cost: $18,150. To improve the service of public radio station WFSQ–FM, 91.5 MHz, Tallahassee, FL, by replacing the present studio-to-transmitter (STL) microwave link, which is 18 years old and unreliable. The current STL employs dual Marti STL–8 microwave receivers and transmitters, with a 6-foot Marti transmit dish antenna and 8-foot Mark receive dish antenna; the new system will replace the analog Marti transmitters and receivers with a Mosely DSP6000/PCL6020 digital system. WFSQ–FM serves approximately 305,000 listeners in the Tallahassee area.

File No. 93048 CRB University of South Florida, 4202 Fowler Avenue, WRB 219, Tampa, FL 33620–6860. Signed By: Ms. Priscilla Pope, Assoc. Dir., Sponsored Res.: Funds Requested: $69,112. Total Project Cost: $138,223. To improve the service of public radio station WUSF–FM, 89.7 MHz, Tampa, FL, by installing a new transmission line and upgrading the antenna system.

The current transmission line is 27 years old and close to failure; the existing antenna system produces a broadcast signal coverage pattern inadequate to meet the needs of the station's listeners. WUSF–FM is one of two public radio stations serving 3 million listeners in the Tampa area.

File No. 93050 PRTN Miami-Dade Community College, 11011 SW., 104 Street, Miami, FL 33176–3393. Signed By: Dr. Robert McCabe, President. Funds Requested: $80,250. Total Project Cost: $138,575. To plan and conduct a feasibility study of existing and potential interactive telecommunications capabilities for distance learning applications in and around the greater Miami and Homestead, Florida areas. This planning project would examine telecommunications resources and explore alternative technologies to determine ways of providing interactive video, audio, and data distance learning and training services to a large population of ethnically and racially diverse people, many of them disadvantaged.

File No. 93112 CRB University of Florida, 219 Grinter Hall, Gainesville, FL 32611. Signed By: Mr. Dillard Marshall, Assistant Director. Funds Requested: $93,937. Total Project Cost: $188,874. To extend the service of public radio station WUFT–FM, 89.1 MHz, Gainesville, FL, by constructing a 2,500 watt repeater station to be located in Citronelle, FL, that would serve approximately 153,515 unserved listeners in Citrus County, as well as parts of Hernando and Sumter Counties. WUFT–FM currently serves approximately 1.4 million listeners in Gainesville, FL, and a 16-county area.

File No. 93153 CTN National Technical Association, 835 Sycamore Street, Titusville, FL 32780–. Signed By: Mr. Eric C. Green, President. Funds Requested: $2,092,800. Total Project Cost: $2,794,400. To purchase studio production and test equipment for the National Technical Association's community learning center in Brevard County, Florida. The production studio will be used to provide state-of-the-art training to the County's minority youth.

File No. 93160 CTN Florida Atlantic University, 500 N.W. 20th Street, Boca Raton, FL 33431–. Signed By: Dr. Stanley Andrews, Director of Sponsored Research. Funds Requested: $116,524. Total Project Cost: $233,048. To extend the ITFS service of Florida Atlantic University into the western Palm Beach County region, in and around the communities of Belle Glade, Pahokee, and South Bay. The application would also purchase a satellite receive-only earth station and video classroom equipment.

File No. 93198 CRB University of Central Florida, 4000 Central Florida Boulevard, Orlando, FL 32816–2199. Signed By: Mr. Rusty Okoniewski, Dir., Div. of Sponsored Res. Funds Requested: $112,695. Total Project Cost: $150,260. To improve and expand the service of public radio station WUCF–FM, 89.9 MHz, Orlando, FL, by replacing the existing transmitter and antenna, increasing the power from 7.94 KW to 40 KW, effectively doubling the service area and providing additional public radio service to 325,495 listeners. The station also seeks to acquire an audio console, recorders, and related equipment. WUCF–FM is one of two public radio stations serving the Orlando area.

File No. 93235 CTB Florida Keys Educ Broadcasting, 909 Fleming Street, Key West, FL 33040–. Signed By: Mr. Charles P. Curry, President. Funds Requested: $1,338,078. Total Project Cost: $1,784,105. To activate public television station WWFD–TV, Ch. 8, Key West, FL, to serve approximately 85,000 permanent residents, 121,240 seasonal residents, 13,000 transient residents, and 2,000 outlying residents in Monroe County, FL, 85,047 of whom would be receiving first public television service. Monroe County consists of 43 islands stretching over 126 miles.

File No. 93288 CTB WJCT, Inc., 100 Festival Park Avenue, Jacksonville, FL 32202–1397. Signed By: Mr. Gene Napier, President and General Manager. Funds Requested: $370,780. Total Project Cost: $741,560. To improve the service of public television station WJCT–TV, Ch. 7, Jacksonville, FL, by replacing a 10-year-old, and badly worn-out, master control router, master control on-air switcher, video frame synchronizers, color monitors, modulation monitors, and a spectrum analyzer, in order to restore daily on-air broadcast and instructional services and allow activation and incorporation of an additional educational television technical facility now under construction. WJCT–TV serves approximately 1.3 million viewers in the Jacksonville area.

GA (Georgia)

File No. 93058 PTN Macon College, 100 College Station Drive, Macon, GA 31297–4899. Signed By: Dr. S. Aaron Hyatt, President. Funds Requested: $19,736. Total Project Cost: $20,736. To develop a comprehensive plan for a non-broadcast, two-way interactive video link between Macon College's main campus and its largest off-campus center—Middle Georgia Area Technology Development Center (MGATDC). The proposed facility considered in the plan will provide college credit courses, in-service teacher education, non-credit continuing education courses, and programs that will supplement classroom instruction for elementary and secondary students. Funds are needed for a preliminary engineering design study that will help determine the feasibility, construction cost and operational expenses of a possible system, and to evaluate alternative technologies that may be appropriate.

File No. 93174 CRB GA Public Telecomm. Commission, 1540 Stewart Avenue, SW, Atlanta, GA 30310–. Signed By: Mr. Richard Ottinger, Executive Director. Funds Requested: $80,168. Total Project Cost: $160,336. To improve the service of public radio station WSVH–FM, 91.1 MHz, Savannah, GA, by replacing a worn-out transmitter, antenna, and transmission line. The present equipment was inherited by the Georgia Public Telecommunications Commission when it assumed ownership of the former community station in 1988. This equipment was poorly maintained and located on an inadequately grounded site; frequently lightning strikes have exacerbated the problem, causing the station to be off the air for more than 63 hours in 1992. WSVH–FM is one of nine stations affiliated with Peach State Public Radio and reaches approximately 740,000 listeners.

HI (Hawaii)

File No. 93254 CTN University of Hawaii, 2540 Maile Way, Spalding Hall 253, Honolulu, HI 96822–. Signed By: Dr. Moheb A. Ghali, Director of Research. Funds Requested: $1,005,996. Total Project Cost: $2,724,296. To extend the geographic coverage of the state's distance learning technologies and applications by integrating existing distance learning networks, expanding the capacity of the ITFS system, building new origination and receive sites, and sharing programming resources.

IA (Iowa)

File No. 93120 CRB Iowa State University, 204 Communications Building, Ames, IA 50011–. Signed By: Mr. Richard Hasbrook, Contracts & Grants Officer. Funds Requested: $249,870. Total Project Cost: $333,160. To improve the transmission capabilities of WOI–FM, operating on 90.1 MHz in Ames, IA, by replacing its 23-year-old transmitter, 20-year-old antenna and securing its own

microwave (because using WOI–TV's microwave will be unavailable shortly because this tv station is being sold to a commercial entity). Also, this project would improve the production capabilities of WOI–FM, by upgrading its digital and audio tape recorders. This project would enable WOI–FM to continue to serve as the sole provider of NPR, American Public Radio, Radio Reading Service and local programming to the 12-county area of central Iowa.

File No. 93147 CTB Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. George Carpenter, III, Executive Director. Funds Requested: $164,000. Total Project Cost: $328,000. To upgrade the programming capabilities of KDIN–TV, operating on Channel 11 in Johnston, IA, by replacing three ¾" video cassette machines with six Betacam machines and to expand the capabilities of the audio/video routing switcher. This project would improve the quality of the programs produced by this originating station of the Iowa Public Television State Network, serving over 2,776,755 potential viewers.

ID (Idaho)

File No. 93033 CRB Boise State University, 1910 University Drive, Boise, ID 83725. Signed By: Mr. Asa M. Ruyle, V.P./Finance & Administration. Funds Requested: $367,731. Total Project Cost: $490,308. To extend the signal of station KBSU–AM, 730 KHz, Boise, ID, to provide first public radio service to approximately 22,000 persons, comprised of those living on the Duck Valley Indian Reservation, the members of Idaho's largest concentration of Spanish-speaking people, and in small, widely scattered communities. The project will also equip KBSU–AM to transmit programs in stereo.

File No. 93238 CTN University of Idaho, Moscow, ID 83843–. Signed By: Mr. Jerry Reynolds, Assistant Financial VP. Funds Requested: $1,153,099. Total Project Cost: $1,706,564. To purchase equipment to provide video production and dissemination capabilities for the University of Idaho's National Center for Advanced Transportation Technology. The objective is to use distant learning technologies to transmit courses, seminars and other forms of technology transfer in transportation-related engineering to learning sites throughout the state. In part, the goal is to retrain engineers displaced from the aerospace, defense, and energy industries.

IL (Illinois)

File No. 93027 CRB WBEZ Alliance, Inc., 105 West Adams Street, Chicago, IL 60603–. Signed By: Ms. Carol R. Nolan, President. Funds Requested: $27,500. Total Project Cost: $55,000. To reinstate WBEZ's request to construct an STL link between WBEZ's new broadcast center at Navy Pier in Chicago, IL, with its transmitter on top of the John Hancock Center. The STL was withdrawn by amendment from the equipment list approved for grant #17–01–91227 when PTFP determined that the new facility would not be ready by the end of the grant's project period. WBEZ–FM operates on 91.5 MHz and serves over 7,300,000 residents in the greater metropolitan area of Chicago.

File No. 93042 CTB Eastern Illinois University, Charleston, IL 61920–. Signed by: Mr. David Jorns, President. Funds Requested: $230,627. Total Project Cost: $461,255. To improve the programming capabilities of WEIU–TV, operating on Channel 51 in Charleston, Illinois by replacing 3 TV studio cameras, pedestals and heads, production switcher, character generator, monitors, master control switcher and master control routing switcher. Project will improve the production of local programs for 242,000 potential viewers.

File No. 93106 CTB University of Illinois, 801 South Wright Street, Champaign, IL 61820–6242. Signed by: Mr. Craig Bazzani, Comptroller. Funds Requested: $72,237. Total Project Cost: $144,475. To improve the programming capabilities of WILL–TV, operating on Channel 12 in Champaign, IL, by replacing wornout, malfunctioning studio cameras in order to provide essential local programming services to approximately 1.3 million viewers.

File No. 93135 CTB Chicago Educational TV Assoc., 5400 North St. Louis Avenue, Chicago, IL 60625. Signed by: Mr. Martin J. McLaughlin, V.P. Corporate Affairs. Funds Requested: $427,680. Total Project Cost: $648,000. To improve the transmission capabilities of WTTW–TV, operating on Channel 11, in Chicago, Illinois, by replacing the 20-year old, malfunctioning transmitter to enable this Flagship station to continue to serve the 10.5 million viewers in its coverage area.

File No. 93263 CTN Lake Land Community College Dist., 5001 Lake Land Boulevard, Mattoon, IL 61938–. Signed by: Mr. Robert K. Luther, President. Funds Requested: $659,840. Total Project Cost: $1,127,276. To purchase the equipment required to establish a two-way interactive, fiber optic system that will interconnect the applicant and nine other entities in rural East Central Illinois. The system will provide diverse programming to other institutions of higher learning, public schools, a training facility, and a nursing center.

File No. 93283 CTB Southern Illinois University, 1048 Communications Bldg., SIU–C, Carbondale, IL 62901. Signed By: Mr. Benjamin A. Shepherd, Vice Pres. for Acad. Affairs. Funds Requested: $99,980. Total Project Cost: $199,960. To improve the programming capabilities of WSIU–TV, operating on Channel 8 in Carbonvale, Illinois, by replacing a grossly inadequate routing/switching system. The expanded system requested would enable WSIU–TV to take full advantage of its current production and satellite capabilities and alleviate problems in facilities scheduling.

File No. 93296 CTB Southern Illinois University, 1048 Communications Bldg., SIU–C, Carbondale, IL 62901. Signed By: Mr. Benjamin Shepherd, Vice President. Funds Requested: $97,157. Total Project Cost: $194,314. To improve the program production capability of WUSI–TV, operating on Channel 16 in Olney, IL, by replacing wornout and malfunctioning VTR's for master control, for studio and field production and replace an editing system and character generator. This project would make critical improvements in the quality of the WUSI–TV's broadcast service.

IN (Indiana)

File No. 93089 CTB Metropolitan Indianapolis TV, 1401 North Meridian Street, Indianapolis, IN 46202–2389. Signed By: Mr. Lloyd Wright, President and General Manager. Funds Requested: $250,000. Total Project Cost: $500,000. To improve the operational capability of public television station WFYI–TV, Ch. 20, Indianapolis, IN, by replacing worn-out and obsolete production and test equipment, including video tape recorders and an editor, a still store, camcorders, and a spectrum analyzer.

File No. 93138 CTB Southwest IN Pub. Broad, Inc., 405 Carpenter Street, Evansville, IN 47708–1027. Signed By: Mr. David L. Dial, President and General Manager. Funds Requested: $56,695. Total Project Cost: $113,391. To improve the operation of public television station WNIN–TV, Ch. 9, Evansville, IN, by replacing worn-out and obsolete production and test equipment, including videotape recorders, monitors, waveform vectorscopes, an oscilloscope, and a modulation monitor.

File No. 93149 CRB Purdue University, West Lafayette, IN 47907. Signed By: Mr. Larry E. Pherson, Contract Administrator. Funds Requested: $22,500. Total Project Cost: $45,000. To install an emergency generator at public radio station WBAA–FM, 101.3 MHz, West Lafayette, IN.

File No. 93249 CRB Purdue University, West Lafayette, IN 47907. Signed By: Mr. Larry E. Pherson, Contract Administrator. Funds Requested: $30,000. Total Project Cost: $60,000. To replace an emergency power generator at public radio station WBAA–AM, 920 KHz, West Lafayette, IN.

KS (Kansas)

File No. 93164 CTB Kansas Public TC Service, Inc., 320 West 21st St. N., Wichita, KS 67203–. Signed By: Mr. Zoel Parenteau, President/General Manager. Funds Requested: $41,790. Total Project Cost: $83,580. To improve the facilities of public television station KPTS–TV, Channel 8, in Wichita by acquiring a new character generator, four video tape machines and an edit controller. Requested equipment will replace old, obsolete equipment that is causing the station recurring problems. Station serves approximately 387,773 residents plus those that receive service via cable television.

File No. 93260 CTB Washburn University of Topeka, 301 N. Wanamaker Rd., Topeka, KS 66606–9601. Signed By: Mr. Hugh L. Thompson, President. Funds Requested: $431,675. Total Project Cost: $575,567. To improve the facilities of public television station KTWU–TV, Channel 11, in Topeka by acquiring key items of broadcast dissemination and origination equipment in conjunction with a planned move to a new building under construction on the campus. In addition to acquiring replacement equipment of old, obsolete equipment, station will begin the first steps in implementing stereo conversion. KTWU–TV provides service to about 1.25 million residents of its service area.

File No. 93271 CTB Smoky Hills Public Television, 604 Elm, Bunker Hill, KS 67626–. Signed By: Mr. Nicholas V. Slechta, CEO and General Manager. Funds Requested: $142,800. Total Project Cost: $238,000. To improve and augment the facilities of public television station KOOD–TV, Channel 9, in Hays by acquiring equipment that would permit the use of the secondary audio programming (SAP) channel. This would provide separate audio to the approximately 22,000 Hispanics and Descriptive Video Services (DVS) to the sight-impaired in the station's service area.

File No. 93272 CRB Univ. of Kansas, 1120 W. 11th Street, Box 847, Lawrence, KS 66044–. Signed By: Ms. Kim Mooreland, Director. Funds Requested: $8,076. Total Project Cost: $10,768. To extend a radio reading service for the print-handicapped to public radio station KXCV–FM, 90.5 MHz, in Maryville, Missouri by acquiring a SCA generator/audio processor, a satellite demodulator, 50 SCA radio receivers and a SCA demodulator/test card. This project would extend the University of Kansas Audio-Reader Network to an unserved area in northwest MO.

KY (Kentucky)

File No. 93104 CTN City of Bowling Green, 1001 College Street/P.O. Box 430, Bowling Green, KY 42102–0430. Signed By: Mr. Johnny D. Webb, Mayor. Funds Requested: $12,412. Total Project Cost: $24,825. To equip a small production facility for the City of Bowling Green, KY, for use on the government access channel on the local cable television system. The facility will be used to accommodate the needs of the deaf and hard of hearing and to produce programming to serve the interests of the community's Asian-American populations.

File No. 93169 CTB Kentucky Educational Television, 600 Cooper Drive, Lexington, KY 40502. Signed By: Ms. Virginia G. Fox, Executive Director. Funds Requested: $287,113. Total Project Cost: $382,818. To improve the operations of the statewide Kentucky Authority for Educational Television by replacing worn-out and obsolete transmission, production, and test equipment, including digital videotape recorders, audio processors, line regulators, cart players, studio monitors, waveform monitors, oscilloscopes, and field strength meters. KET operates 15 transmitters and 8 translators across Kentucky.

LA (Louisiana)

File No. 93034 CTN New Orleans Educ. T/C Consortium, 1215 Prytania Street, Suite 205, New Orleans, LA 70130–. Signed By: Dr. Robert J. Lucas, Executive Director. Funds Requested: $98,657. Total Project Cost: $148,612. To purchase portable production and interconnect equipment to allow the applicant to originate programming from any site throughout its system. The New Orleans Educational Telecommunications Consortium comprises seven members, all colleges and universities in greater New Orleans. The schools are interconnected via ITFS and cable television systems to each other and to business sites throughout the area. All member-schools have production equipment. This project would allow the production of programming from any of the business sites.

File No. 93035 CTB Greater New Orleans ETV Found., 916 Navarre Avenue, New Orleans, LA 70124–. Signed By: Mr. Randall Feldman, President and General Manager. Funds Requested: $91,397. Total Project Cost: $182,793. To improve service of public television station WYES-TV, Ch. 12, New Orleans, LA, by replacing two outmoded and obsolete 1" VTRs with state-of-the-art digital machines. WYES-TV is one of two public television stations serving the 1.75 million residents of the New Orleans area.

File No. 93088 PRTB Greater New Orleans Compact, 4440 Jefferson Highway, Jefferson, LA 70121–1309. Signed By: Ms. Carolyn Sanders-O'Hare, Managing Partner. Funds Requested: $37,430. Total Project Cost: $87,130. To plan for six school systems' use of satellite uplinking to communicate and share with the nation ideas and innovations for cost effective and productive management, and effective learning techniques of local school districts through a series of ongoing teleconferences.

File No. 93269 CRB Univ. of Southwest Louisiana, Hebrard Blvd, P.O. Box 42171, Lafayette, LA 70504–. Signed By: Dr. Ray Authement, President. Funds Requested: $159,634. Total Project Cost: $212,846. To extend the signal of public radio station KRVS–FM, 88.7 MHz, Lafayette, LA, by constructing a repeater/satellite station in the area of Lake Charles, LA, in order to provide first public radio service to 151,800 listeners in the parishes of Calcasieu, Beauregard, Laaen, Jeff David, Cameron, and Acadia. This is approximately 23% of the unserved residents of Louisiana. KRVS–FM currently serves approximately 480,000 listeners in southwest Louisiana.

MA (Massachusetts)

File No. 93007 PRTN Newton Public Schools, 100 Walnut Street, Newton, MA 02160–. Signed By: Mr. Irwin Blumer, Superintendent. Funds Requested: $54,000. Total Project Cost: $108,000. To plan for the coordinated use of telecommunications systems in the city of Newton, Massachusetts, through a Telecommunications Master Plan. This proposed plan is to identify existing resources and provide a needs assessment regarding the use of telecommunications in distance learning applications for the school system, municipal government,

educational and cultural institutions, and city residents in general.

File No. 93140 PTN Mass. Corp. for Educational T/C, 38 Sidney Street, Suite 300, Cambridge, MA 02139–4135. Signed By: Dr. Inabeth Miller, Executive Director. Funds Requested: $200,000. Total Project Cost: $424,909. To plan for the feasibility of interactive telecommunications methods for video, voice and data through an interconnection system to educational institutions, libraries, government agencies, prisons, hospitals and other organizations statewide and beyond. The proposed network could potentially incorporate many forms of technology including satellite systems, ITFS, cable television and fiber optic lines for multiple channels of distribution.

File No. 93141 CTN Bunker Hill Community College, 250 New Rutherford Avenue, Boston, MA 02129. Signed By: Mr. C. Scully Stikes, President. Funds Requested: $306,815. Total Project Cost: $409,086. To interconnect three community colleges in the greater Boston area with fiber optics cable and with video classroom equipment to allow them to engage in distance learning. The schools are Bunker Hill Community College, Roxbury Community College, and North Shore Community College/Lynn Campus.

File No. 93142 CRB Lower Cape Communications, Inc., 14 Center Street, Provincetown, MA 02657–. Signed By: Mr. Erraeon W.H. Perry, Station Manager. Funds Requested: $78,612. Total Project Cost: $104,817. To improve the transmission and production capabilities of WOMR–FM, operating on 91.9 MHz in Provincetown, MA, by replacing the wornout transmitter, acquiring the essential satellite downlink, and replacing the main on-air and production studio equipment, especially the audio console.

File No. 93178 CTB WGBH Educational Found., WGBY, 44 Hampden Street, Springfield, MA 01103. Signed By: Mr. Steven Bass, VP and General Manager. Funds Requested: $173,586. Total Project Cost: $347,173. To upgrade the programming capabilities of WGBY–TV, operating on channel 57 in Springfield, MA, by replacing its 13 year old, inadequate routing switcher which will enable WGBY to distribute additional programs for the visually-impaired that use the "Descriptive Video Service", and adding an automation system capable of controlling the distribution of multiple program services to schools and institutions. Both items account for the increase of an estimated 123,788 viewers.

File No. 93225 CRB University of Massachusetts, 100 Morrissey Boulevard, Boston, MA 02125–3393. Signed By: Mr. David Edwards, Associate Vice Chancellor. Funds Requested: $43,000. Total Project Cost: $58,009. To extend the signal of WUMB–FM, operating on 91.9 MHz, in Boston, MA, by activating a transmitter and antenna to provide the first public radio signal for greater Falmouth, MA, which will receive the signal on the same frequency, 91.9 MHz. WUMB will provide 20 hours of programming daily to a potential unserved 40,517 listeners.

File No. 93267 PRTN Bridgewater State College, Bridgewater, MA 02325–. Signed By: Dr. John Bardo, Vice President, Academic Aff. Funds Requested: $90,318. Total Project Cost: $90,318. To develop a strategic plan for the operation of the Center for the Advancement of Research and Teaching to serve Southeastern Massachusetts. The Center is intended to use telecommunications for distance learning and job training services through technologies such as satellite uplink and downlink facilities and fiber optic lines. A consortium has been formed that includes ten organizations in education, public service, telecommunications and business to develop the concept of a Total School Network, to incorporate video, voice and data services into education and training.

MD (Maryland)

File No. 93013 CTN Catonsville Community College, 800 South Rolling Road, Catonsville, MD 21228–. Signed By: Mr. Frederick J. Walsh, President. Funds Requested: $257,402. Total Project Cost: $514,805. To interconnect five Baltimore region community colleges and two extension centers in a compressed video network to extend distance learning.

File No. 93068 PRTN National Info Technology Center, 2092 Gaither Road, Suite 200, Rockville, MD 20850–. Signed By: Mr. Henry Schlenker, VP—Operations. Funds Requested: $91,260. Total Project Cost: $238,260. To plan for the possible interconnection of a number of secondary schools in Maryland for interactive video, voice and data communications, to explore "test bed" possibilities using various educational technology applications, provide teacher training and curriculum enhancements in science and mathematics, and consider the implementation of a "virtual high school" with many member institutions without having to build a high school. Participants in the plan with the National Information Technology Center (NITC) include the University of Maryland, Johns Hopkins University, the Supercomputing Research Center, AT&T, IBM, C&P Telephone, and twenty-two other educational and corporate members of the project.

File No. 93076 CRB Baltimore City Community College, 2901 Liberty Heights Avenue, Baltimore, MD 21215. Signed By: Mr. Carey Smith, General Manager. Funds Requested: $14,760. Total Project Cost: $29,570. To improve the service of public radio station WBJC–FM, 91.5 MHz, Baltimore, MD, by replacing a master control room console and purchasing 5 digital audiotape (DAT) recorders to replace deteriorating equipment originally purchased in 1982 and 1984. WBJC–FM serves 2.1 million listeners in the Baltimore area with a schedule consisting of news and information and classical music.

File No. 93108 CRB Salisbury State University, Route 13 P.O. Box 2596, Salisbury, MD 21801. Signed By: Mr. Henry Hanna, III, Chairman. Funds Requested: $83,871. Total Project Cost: $111,828. To extend the service of public radio station WSCL–FM, 89.5 MHz, Salisbury, MD, by constructing a repeater station at Millington, MD, bringing first public radio service to 70,000 residents of northern Delaware and the northern Eastern Shore of Maryland. WSCL–FM currently serves approximately 280,000 listeners in the lower half of Delaware and all or part of Worcester, Wicomico, Somerset, Dorchester, Caroline, Talbot, and Queen Anne's Counties on Maryland's Eastern Shore.

File No. 93115 PTN Maryland Public Brdcstg. Comm., 11767 Owings Mills Boulevard, Owings Mills, MD 21117. Signed By: Mr. Raymond Ho, President and CEO. Funds Requested: $85,850. Total Project Cost: $159,276. To prepare a comprehensive plan for the use of telecommunications technologies in distance education applications in the State of Maryland. The proposed project would include organizations in all levels of education, with a particular emphasis on providing a two-way interactive video, voice and data service to minority K–12 students and those in remote, rural areas. It would also provide education and training opportunities to adults in these rural areas. The plan will examine the feasibility of alternative technologies to interconnect fourteen sites throughout the state, and is proposed to result in a solution to the educational equity problem in Maryland.

File No. 93156 CTB Maryland Public Brdcstg. Comm., 11767 Owings Mills Boulevard, Owings Mills, MD 21117. Signed By: Mr. Raymond Ho, President and CEO. Funds Requested: $123,942. Total Project Cost: $247,885. To allow Maryland Public Television to modify its receive-only Ku satellite earth station to a transmit/receive Ku satellite system. Such a modification will allow Maryland Public Television to continue to supply programming to its member stations in Maryland, to the PBS system (which is scheduled to begin using the Telstar 401 satellite in December, 1993), and internationally. Maryland Pubic Television is the fourth largest producer and supplier of programs to the nation's public broadcasting system.

ME (Maine)

File No. 93275 CTB Maine Public Broadcasting Corp., 65 Texas Avenue, Bangor, ME 04401. Signed By: Mr. Robert Gardiner, President. Funds Requested: $275,604. Total Project Cost: $459,340. To improve the transmission capabilities of all five Maine network stations: WMEB–TV in Bangor, WMEA–TV in Portland, WCBB–TV in Lewiston, WMED–TV in Calais, and WMEM–TV in Mars Hill, by replacing the 20 year old modulator at Portland, the monitoring equipment in the transmitting plants at Lewiston and Bangor, plus stereo generators for SAP at Calais, Mars Hill, and Bangor and test equipment throughout the system; to improve the programming capabilities at the mother station, WMEB, Bangor, by replacing the 24 year old studio cameras and upgrading the routing system. This project will improve the overall service to the 1,200,000 residents in Maine by this state-wide network.

File No. 93281 CRB Maine Public Broadcasting Corp., 65 Texas Avenue, Bangor, ME 04401. Signed By: Mr. Robert H. Gardiner, President. Funds Requested: $67,920. Total Project Cost: $113,200. To improve the transmission capabilities of the Maine Public Broadcasting Radio Network by replacing the transmitter, stereo generator, transter coaxial switch and digital encoder STL; to improve the origination capabilities of the network by securing RDAT machines, and frequency extenders in order to provide an uninterrupted signal and quality programming to the entire state of Maine numbering 1,200,000 residents.

MI (Michigan)

File No. 93004 CTN Clare-Gladwin Intermed. Sch. Dist., 4041 East Mansiding Road, Clare, MI 48617–. Signed By: Dr. George R. Zubulake, Superintendent. Funds Requested: $742,659. Total Project Cost: $1,027,659. To construct a two-way, interactive fiber optics video system to interconnect school districts in a five-county area of central Michigan. For this project, the applicant will be joined by the Clinton County Intermediate School District, Gratiot-Isabella Regional Education Service District, Mid Michigan Community College, and Central Michigan University.

File No. 93028 CRB Blue Lake Fine Arts Camp, Route 2, Twin Lake, MI 49457. Signed By: Mr. William F. Stansell, President. Funds Requested: $8,794. Total Project Cost: $17,588. To improve the operational quality of public radio station WBLV, 90.3 MHz, Twin Lake, MI, by replacing a worn-out and obsolete audio console.

File No. 93090 CTB Grand Valley State University, 301 West Fulton, Grand Rapids, MI 49504–6492. Signed By: Ms. Jean Enright, Secretary, Board of Control. Funds Requested: $391,808. Total Project Cost: $783,616. To improve the operation of public television station WGVU–TV, Ch. 35, Grand Rapids, MI, by replacing worn-out and obsolete videotape recorders, monitoring equipment, an automation system, and test equipment.

File No. 93116 CTB Michigan State University, 283 Communications Arts Bldg., East Lansing, MI 48824–1212. Signed By: Mr. Richard L. Howe, Asst Dir, Contract & Grant Adm. Funds Requested: $332,174. Total Project Cost: $664,348. To improve the operational capability of public television station WKAR–TV, Ch. 23, East Lansing, MI, by replacing worn-out and obsolete audio and video distribution equipment, including routing, master control, synchronization, and automation systems.

File No. 93179 CRB Central Michigan University, 3965 East Broomfield Road, Mt. Pleasant, MI 48859. Signed By: Mr. Leonard E. Plachta, President. Funds Requested: $380,980. Total Project Cost: $507,974. To activate a public radio station to bring first public radio service to approximately 51,501 persons in and around Oscoda, MI. The station will repeat the programming of public radio station WCMU, 89.5 MHz, Mt. Pleasant, MI.

File No. 93185 CTB Central Michigan University, 3965 East Broomfield Road, Mt. Pleasant, MI 48859. Signed By: Mr. Leonard E. Plachta, President. Funds Requested: $142,000. Total Project Cost: $284,000. To improve the broadcast signal of public television station WCMU–TV, Ch. 14, Mt. Pleasant, MI, by replacing its 27–year–old antenna and transmission line.

File No. 93208 CRTN Wayne Co. Regnl. Ed. Service Agency, 33500 Van Born Road, Wayne, MI 48184–. Signed By: Mr. William Simmons, Superintendent. Funds Requested: $1,207,719. Total Project Cost: $1,610,292. To purchase diverse transmission, interconnection and studio equipment to assist the applicant interconnect the 34 school districts of Wayne County, which includes Detroit, with a telecommunications system that will include six video instructional classrooms, a satellite uplink earth station and 34 satellite receive-only downlinks, an FM radio station, and an ITFS system.

MN (Minnesota)

File No. 93118 CTB Northern Minnesota Public TV, Inc., 1400 Birchmont Drive, Bemidji, MN 56601–2699. Signed By: Ms. Emily K. Lahti, Interim General Manager. Funds Requested: $42,912. Total Project Cost: $57,216. To improve the operation of public television station KAWE, Ch. 9, Bemidji, MN, by replacing worn-out and malfunctioning video tape recorders and monitors.

File No. 93183 CTN Saint Mary's College of Minnesota, 700 Terrace Heights, Winona, MN 55987–. Signed By: Br. Louis DeThomasis, FSC, President. Funds Requested: $565,416. Total Project Cost: $1,130,832. To construct a compressed video network to allow eight colleges and universities within Minnesota to exchange undergraduate course work. The academic institutions to be interconnected are the following: Saint Mary's College of Minnesota, with campuses in Winona and Minneapolis; Bethel College, College of Saint Catherine, and University of St. Thomas, all in St. Paul; College of St. Benedict, St. Joseph; College of St. Scholastica, Duluth; and Saint John's University, Collegeville.

File No. 93184 CTB West Central Minn. Educ. TV Corp., 120 West Schlieman Avenue, Appleton, MN 56208. Signed By: Mr. Phil Greseth, President. Funds Requested: $1,245,497. Total Project Cost: $2,490,995. To activate a public television repeater station on Channel 20 in Worthington, MN, to provide approximately 84,284 persons in southwest Minnesota with their first Minnesota-originated public television service. It will rebroadcast the service of public television station KWCM, Ch. 10, Appleton, MN.

File No. 93273 CRB Center for Communications & Dev., 501 Bryant Avenue, North, Minneapolis, MN 55405. Signed By: Mr. Ronald A. Edwards, President. Funds Requested:

$39,370. Total Project Cost: $52,495. To improve the program service of public radio station KMOJ, 89.9 MHz, Minneapolis, MN, by acquiring a downlink interconnection with the public radio satellite system.

File No. 93289 CRB Minnesota Public Radio, Inc., 45 East 7th Street, St. Paul, MN 55101. Signed By: Mr. Thomas J. Kigin, Vice President. Funds Requested: $355,859. Total Project Cost: $711,719. To improve the signal and service of Minnesota Public Radio by replacing aged, worn-out, and obsolete production equipment used to provide 24-hour-a-day programming for regional and national broadcast. Included are audio consoles, microphones, tape decks, CD players, and a music editing workstation.

MO (Missouri)

File No. 93005 CTB Ozark Public T/C, Inc., 821 North Washington, Springfield, MO 65802. Signed By: Mr. Arthur J. Luebke, President and General Manager. Funds Requested: $550,483. Total Project Cost: $733,978. To extend the service area of public television station KOZJ, Ch. 26, Joplin, MO, by replacing its transmitter and raising the power from 5KW to 30KW, thereby providing first public television service to approximately additional 103,563 persons.

File No. 93109 CTB Public Television 19, Inc., 125 East 31st Street, Kansas City, MO 64108. Signed By: Mr. William T. Reed, President. Funds Requested: $245,950. Total Project Cost: $491,000. To improve public television station KCPT, Ch. 19, Kansas City, MO, by replacing worn-out and obsolete studio cameras, ¾-inch videotape recorders, and its studio-transmitter link.

File No. 93146 CRB Univ. of Missouri—St. Louis, 8001 Natural Bridge Road, St. Louis, MO 63121. Signed By: Mr. Douglas Wartzok, Associate Vice Chancellor. Funds Requested: $21,840. Total Project Cost: $43,680. To improve public radio station KWMU, 90.7 MHz, St. Louis, MO, by replacing worn-out and obsolete production equipment, including an audio console, an audio processor, and a switcher.

File No. 93201 CTB Ozark Public T/C, Inc., 821 North Washington, Springfield, MO 65802. Signed By: Mr. Authur J. Luebke, President and General Manager. Funds Requested: $419,008. Total Project Cost: $838,016. To improve the service and signal reliability of public television station KOZK, Ch. 21, Springfield, MO, by replacing its obsolete, 19-year-old transmitter.

File No. 93242 CRB Missouri Valley College, 500 East College Street, Marshall, MO 65340–. Signed By: Dr. Earl J. Reeves, President. Funds Requested: $104,099. Total Project Cost: $138,798. To extend the signal of public radio station KMVC, 91.7 MHz, Marshall, MO, to approximately 25,000 persons by replacing its 19-year-old transmitter and increasing its power from 10 watts to 3 KW. KMVC–FM is a service of Missouri Valley College, and currently serves approximately 10,000 listeners in central Missouri. The power increase would allow the station to serve the cities of Marshall, Slater, Malta Bend, Arrow Rock, and Sweet Springs, all located in Saline County, MO.

File No. 93278 CTB St. Louis Reg. Educ. Public TV, 6996 Millbrook Blvd., St. Louis, MO 63130. Signed By: Mr. Michael Hardgrove, President and CEO. Funds Requested: $325,362. Total Project Cost: $650,725. To improve the operation of public television station KETC, Ch. 9, St. Louis, MO, by replacing worn-out and obsolete video cassette machines and by acquiring automation equipment.

MS (Mississippi)

File No. 93012 CTB Jackson State University, 1375 Lynch Street, Box 18590, Jackson, MS 39217–0990. Signed By: Mr. James E. Lyons, Sr., President. Funds Requested: $1,171,942. Total Project Cost: $1,562,589. To support the activation of a Low Power television station in Jackson, MS, to be used to train students in the Department of Mass Communication at Jackson State University in all phases of broadcasting, as well as to provide special programming to the approximately 27,000 persons within the proposed station's signal area.

File No. 93134 PTN University of Mississippi, University, MS 38677. Signed By: Dr. Michael R. Dingerson, Assoc. Vice Chancellor/Res. Funds Requested: $112,092. Total Project Cost: $145,571. The University of Mississippi, in conjunction with the Southern Educational Communications Association, proposes a planning project for the creation of a telecommunications infrastructure to distribute workplace literacy, education, and training to the people of Mississippi and to other states in the South, and the nation. The project would expand on the applicant's existing Ku-band satellite uplink which distributes life-coping skills, job preparedness and literacy programming to areas of Mississippi.

File No. 93246 CTB University of Mississippi, 201 Bishop Hall, University, MS 38677. Signed By: Dr. Michael R. Dingerson, Assoc. Vice Chancellor/Res. Funds Requested: $60,000. Total Project Cost: $120,000. To continue the improvement and expansion of the Teleproductions Resource Center of the University of Mississippi, Oxford, by acquiring electronic field production, ENG, and post-production equipment. The Center provides instructional and other programming to the Mississippi Educational Television Network.

MT (Montana)

File No. 93029 CTB Plains—Paradise TV District, 417 Rittenour Street, Plains, MT 95859–. Signed By: Mr. Leo S. Rambur, Chairman. Funds Requested: $47,194. Total Project Cost: $62,925. To upgrade and improve the production and post-production capabilities of noncommercial low power television station K21CA operating on channel 21 in Plains, Montana, by replacing their present ¾" production equipment with a new video editing system, cameras, a video production switcher and related items.

File No. 93030 CRB Montana State University, 325 Strand Union Building, Bozeman, MT 59717. Signed By: Mr. Philip H. Charles, IV, General Manager. Funds Requested: $5,440. Total Project Cost: $10,880. To extend the signal of public radio station KGLT–FM operating on 91.9 MHz, Bozeman, Montana, by installing a translator in Helena which will provide an alternative public radio service to 60,000 residents of Lewis and Clark county.

File No. 93062 CTB Baker School District #12, 1015 S. 3 West, Baker, MT 59313–. Signed By: Mr. James Stanton, Superintendent. Funds Requested: $36,810. Total Project Cost: $49,080. To extend the signal of the RTS low power television station in Plevna, Montana, by feeding the signal via fiber optic cable to a low power transmitter in Baker, Montana, to provide a first public television service to 1,800 residents of Fallon county.

File No. 93077 CRB Fort Belknap College, P.O. Box 159, Harlem, MT 59526–. Signed By: Ms. Margarett Perez, President. Funds Requested: $562,106. Total Project Cost: $775,775. To establish a native controlled noncommercial FM radio station operating on 88.1 MHz in Harlem, Montana, to provide a first public radio service to 25,000 residents of north central Montana.

File No. 93078 CTN Stone Child College, Rocky Boy Route, Box 1082, Box Elder, MT 59521–. Signed By: Ms. Peggy Nagel, President. Funds Requested: $83,250. Total Project Cost:

$111,000. To utilize video satellite uplink technology to broadcast telecourses to residents of the Rocky Boy Indian Reservation, which is in an extremely remote area of north central Montana.

File No. 93110 CTBN Powder River Co. Dist. High School, 500 North Trautman, Broadus, MT 59317–. Signed By: Mr. George Bailey, Superintendent. Funds Requested: $735,724. Total Project Cost: $980,965. To interconnect the applicant with the Rural Television System, Inc., (RTS), which has its headquarters in Carson City, NV, so as to bring the first PBS signal to this area of southeast Montana. Via a donated fiber optic line, the PBS programming will be transmitted to numerous communities in the Broadus-Colstrip-Miles City region. The project will also allow distance learning course work to be transmitted between schools at all levels within this region and between these schools and academic institutions throughout the state. The project involves the Southeast Montana Telecommunications Cooperative, which is an organization composed of eight public school districts and two community colleges.

File No. 93145 CTB Rural Television System, Inc., P.O. Box 84, Cardwell, MT 59721. Signed By: Mr. David Nelson, Board President. Funds Requested: $274,774. Total Project Cost: $366,365. To upgrade the satellite reception and message processing facilities of 19 low power television stations serviced by Rural Television Systems, Inc., the sites are located throughout 5 western states. Existing C band receiver will be replaced by movable Ku band dishes and CPM processors will be replaced by MS–DOS processor at each site.

NC (North Carolina)

File No. 93039 CRB University Radio Foundation, Inc., One University Place, Suite 91, Charlotte, NC 28262–. Signed By: Mr. Roger Sarow, President. Funds Requested: $160,572. Total Project Cost: $214,096. To provide first public service to approximately 47,672 residents of Hickory, NC, by constructing a repeater transmitter to rebroadcast the signal of public radio station WFAE–FM, Charlotte, NC. The community to be served lies in the foothills of the Blue Ridge Mountains, and is just far enough from existing public radio stations to make reception of service difficult or impossible.

File No. 93071 CTN Pembroke State University, Pembroke, NC 28372. Signed By: Mr. Joseph B. Oxendine, Chancellor. Funds Requested: $123,131. Total Project Cost: $164,175. To purchase two microwave links to interconnect the applicant's production studio to the cable television system at Lumberton, NC, and to commercial television station WFCT, Lumber Bridge, NC. The project will also purchase a portable microwave system to allow the applicant to originate programming from sites throughout the school's service area.

File No. 93081 CRB Better Life, Inc., 230–B Roanoke, Roanoke Rapids, NC 27870–. Signed By: Mr. Kenneth Harris, President. Funds Requested: $201,078. Total Project Cost: $269,078. To activate a new public radio station, WZRU–FM, 88.5 MHz, in Roanoke Rapids, NC, to serve the northeastern corner of North Carolina, including Halifax and Northampton Counties. Approximately 160,000 persons would receive first service. The proposed station would serve the area previously served by WVSP–FM, Warrenton, NC, which has ceased operations.

File No. 93085 CRB University of North Carolina, CB No. 6230 Swain Hall, Room 205, Chapel Hill, NC 27599–6230. Signed By: Mr. Robert Lowman, Director, Off. Res. Services. Funds Requested: $270,350. Total Project Cost: $540,700. To improve and extend the service of public radio station WUNC–FM, 91.5 MHz, Chapel Hill, NC, by installing a new antenna, transmission line, STL, transmitter, and STL tower. The upgrade of the station's transmission system is part of a major construction project which also involves construction of a new broadcast facility, beginning in 1993. The improved transmission system will bring first public radio service to 70,270 listeners, and provide additional service to 133,627 listeners. The proposal also seeks to install a new satellite uplink/downlink to maintain interconnection to the public radio system. WUNC–FM currently serves 1.341 million listeners in central North Carolina.

File No. 93295 CTB University of North Carolina, Box 14900, 10 T.W. Alexander Dr., Research Triangle, NC 27709–4900. Signed By: Mr. Tom Howe, Director. Funds Requested: $1,500,000. Total Project Cost: $3,628,200. To improve and extend the service of public television station WUNC–TV, Ch. 4, Chapel Hill, NC, by replacing an obsolete tower (and increasing its height from 750′ to 1,250′), transmitter, antenna, and transmission line. The current tower has been in use since 1955 and is rusting and worn-out; the current transmitter and transmission system were purchased two years ago as a temporary replacement for a 26-year-old RCA transmitter that was no longer serviceable. The present transmitter, though clearly inadequate for the needs of the station, can be refurbished and used as a backup. WUNC–TV serves approximately 2.4 million viewers; by replacing the transmission system, approximately 400,000 additional viewers will receive first service.

ND (North Dakota)

File No. 93170 CTN Central Dakota T/C Consortium, 120 2nd Street S.E., Jamestown, ND 58401–. Signed By: Mr. Frank Fischer, Chairperson. Funds Requested: $550,000. Total Project Cost: $795,078. To construct an 11-site ITFS system that will constitute the Central Dakota Rural Area Network. The Network will serve 11 public school districts that have organized the consortium, primarily, to provide interactive video programming for K–12 schools, but with the intent to interconnect with business, industry, medical and government users.

File No. 93195 CTN Turtle Mountain Community College, Box 340, Belcourt, ND 58316–. Signed By: Mr. Gerald Monette, President. Funds Requested: $76,921. Total Project Cost: $102,563. To purchase studio and compressed video interconnection equipment to allow Turtle Mountain Community College—which serves the Turtle Mountain Chippewa Reservation in north central North Dakota—to link its facilities to the University of North Dakota fiber optics system so as to be able to receive course work transmitted via that system.

File No. 93230 CTB Prairie Public Broadcasting, Inc., P.O. Box 3240, 207 N. 5th St., Fargo, ND 58108–3240. Signed By: Mr. Dennis Falk, President. Funds Requested: $34,246. Total Project Cost: $68,493. To acquire additional television production equipment required to produce and distribute via satellite the nation's first "distance learning" Level III Spanish course for high school students.

NE (Nebraska)

File No. 93075 CRB Native American Public Brdcstg., 1800 North 33rd Street, Room 309, Lincoln, NE 68583–. Signed By: Mr. Frank Blythe, Executive Director. Funds Requested: $34,401. Total Project Cost: $45,869. To purchase C-band satellite downlink terminals to permit four Native American public radio stations to receive programming from the AIROS (American Indian Radio on Satellite) Project. The ARIOS project will distribute programming to public radio stations by and about Native Americans and of interest to Native Americans. The four stations included in this application are: KCIE, Dulce, NM; KGHR, Tuba City, AZ; KIDE, Hoopa, CA; and KSWS, Sisseton, SD.

File No. 93239 CTB Nebraska Educ. T/C Commission, P.O. Box 83111, 1800 N. 33rd St., Lincoln, NE 68501–3111. Signed By: Mr. Paul Few, Assistant Secretary. Funds Requested: $295,250. Total Project Cost: $590,500. To improve the facilities of public television station KHNE–TV, Channel 29, in Hastings by replacing a twenty-five year old RCA transmitter and related items. The current RCA transmitter can not be updated to current technology. In addition, project will replace old, obsolete post-production videotape recording equipment with four state-of-the-art digital recorders. Equipment will serve the state public television network as well as regional and national program services.

File No. 93240 CRB Nebraska Educ. T/C Commission, P.O. Box 83111, 1800 N. 33rd St., Lincoln, NE 68501–3111. Signed By: Mr. Paul Few, Assistant Secretary. Funds Requested: $20,556. Total Project Cost: $41,112. To extend the signal of the Nebraska Public Radio network by constructing two 250-watt FM translators in Harrison, on 89.5 MHz, and Max (Benkelman), on 93.3 MHz, the translators would fill in areas not currently covered by the public radio network's signal. In addition, project would replace the network's twelve year old, obsolete on-air broadcast console with a state-of-the-art unit capable of supporting the statewide network.

File No. 93245 CTN Agricultural Satellite Corp., 1800 North 33rd Street, Lincoln, NE 68583–. Signed By: Mr. Irvin Omtvedt, Chairman. Funds Requested: $620,750. Total Project Cost: $1,241,500. To expand the services of the Agricultural Satellite Corporation network (AG*SAT) operating from Lincoln, NE, which provides agricultural courses to universities and agricultural extension programs nationally by installing two Ku-band satellite uplinks in Arkansas and New Hampshire. The project will also construct 77 Ku/C band satellite downlinks in the following 15 states: Colorado, Delaware, Florida, Illinois, Indiana, Maine, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, Pennsylvania, South Carolina, Tennessee and West Virginia.

NH (New Hampshire)

File No. 93154 CTN Dresden Access Television, Inc., Lebanon Street, Hanover, NH 03755–. Signed By: Mr. Joseph Della Badia, President. Funds Requested: $31,500. Total Project Cost: $63,000. To establish a community access channel capability in the Upper Connecticut River Valley, with programming provided by the communities of Hanover, NH, and Norwich, VT.

File No. 93217 CTB University of New Hampshire, Mast Road, Route 155A Box 1100, Durham, NH 03824. Signed By: Ms. Kathryn Cataneo, Director. Funds Requested: $225,500. Total Project Cost: $451,000. To extend the New Hampshire Public Television signal to the unserved rural areas of the State through the mother station, WENH–TV, C Ch. 11 in Durham, NH, by activating two translators, one in Coos County, the northernmost county, and one in Grafton County, known as the Upper Connecticut River Valley. The second objective is to improve WENH's production and transmission capabilities by replacing video tape recorders, audio mixer, still store, field ENG equipment and a transmission line dehydrator. The NHPTV State Network now serves 1,030,000 viewers, and this project, if funded, would add approximately another 89,444 viewers.

NJ (New Jersey)

File No. 93054 CTN Borough of Metuchen, Main St. & Middlesex Ave., Metuchen, NJ 08840–0592. Signed By: Mr. William Boerth, Borough Business Administrator. Funds Requested: $74,500. Total Project Cost: $104,500. To establish a production studio, with interconnection equipment, for the use of a public/educational/governmental (PEG) channel on cable companies serving six municipalities in Middlesex Co., New Jersey.

File No. 93143 CTN Foundation at NJ Inst. of Tech., 214 Central Avenue, Newark, NJ 07102–. Signed By: Mr. Henry A. Mauermeyer, V.P. for Admin. & Treasurer. Funds Requested: $216,150. Total Project Cost: $432,300. To purchase a Ku-band satellite uplink to allow NJIT to offer instructional video programming in science, engineering and management to students at remote sites throughout the United States.

File No. 93244 CTN New Jersey Intercampus Network, Inc., Castle Point on the Hudson, Hoboken, NJ 07030–. Signed By: Mr. Joseph Moeller, Administrator. Funds Requested: $1,018,596. Total Project Cost: $2,037,192. To establish a two-way microwave system to interconnect existing production and telecommunications resources of forty-one New Jersey schools: 11 colleges, 30 K–12 schools, and a research facility. The project will involve 11 of New Jersey's 21 counties.

File No. 93291 CTB NJ Public Broadcasting Auth., 1573 Parkside Avenue, CN777, Trenton, NJ 08625–0777. Signed By: Mr. Harvey Fisher, Executive Director. Funds Requested: $443,732. Total Project Cost: $887,465. To improve the service of public television station WNJT–TV, Ch. 52, Trenton, NJ, by replacing a 21-year-old transmitter and transmitter test equipment with a high-efficiency transmitter that will reduce energy consumption by fifty percent. WNJT–TV is one of four stations and a system of translators and booster stations of the New Jersey Public Broadcasting Network, serving 7.4 million residents of New Jersey, and an additional 2.4 million residents of neighboring states.

NM (New Mexico)

File No. 93098 CTN University of New Mexico, 1128 University Blvd., NE., Albuquerque, NM 87131–. Signed By: Ms. Ann Powell, Director, Research Administrator. Funds Requested: $477,757. Total Project Cost: $637,010. To add additional uplink capability to an existing Ku-band satellite uplink to provide distance learning to the state of New Mexico. The system will use compressed digital video compatible with the National Technological University to uplink two channels of video from New Mexico University and one channel of video from New Mexico State University. Also included in the application are funds for 20 Ku-band downlink receive terminals to be placed at institutions throughout the state.

File No. 93122 CRB Western New Mexico University, 1000 W. College Avenue, Silver City, NM 88061–. Signed By: Mr. Jerry L. Gallentine, President. Funds Requested: $199,678. Total Project Cost: $266,238. To activate a new 100-watt public radio station on 89.3 MHz in Silver City and five FM translators: Cliff-Gila (92.1 MHz), Lordsburg (92.7 MHz), Reserve-Luna (96.9 MHz), Glenwood (94.7 MHz) and Deming-Columbia Highway (104.1 MHz). The Silver City station will be a Rocky Mt. Alternative Station (RMAS) that will re-broadcast KRWG–FM from Las Cruces, NM. Station will also have local origination capacity. The translators will re-broadcast the new Silver City RMAS station.

File No. 93124 CTN Eastern New Mexico University, 15th and Avenue O, Portales, NM 88130. Signed By: Mr. Duane W. Ryan, Director of Broadcasting. Funds Requested: $332,372. Total Project Cost: $443,163. To purchase the transmission and studio equipment necessary to expand the current one-channel ITFS system of Eastern New Mexico University to four channels, interconnecting the communities of Carlsbad, Hobbs, Roswell, and Ruidoso, all in New Mexico. In addition to the required

dissemination equipment, the project would purchase a second video production classroom at the University's broadcast center in Portales and receive site classrooms in Roswell, Hobbs, and Ruidoso.

File No. 93163 CTB Univ. of NM + Albuq. Public Schools, 1130 University Blvd., N.E., Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Director, Research Adminis. Funds Requested: $78,478. Total Project Cost: $104,650. To extent the signal of public television station KNME–TV, Channel 5, in Albuquerque by constructing two television translators which would be licensed to Santa Fe, etc., K26DU, Channel 26, and Horse Springs, etc., K55GI, Channel 55. K26DU would serve Espanola, Tesuque, Chimay and surrounding areas in Santa Fe County from Tesuque Peak and K55GI would serve Horse Springs, Datil and surrounding area in Catron County from Luera Peak. Translators would provide first off-air public television to about 19,000 people.

File No. 93165 CTB Univ. of NM + Albuq. Public Schools, 1130 University Blvd., N.E., Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Director. Funds Requested: $24,000. Total Project Cost: $48,000. To augment the facilities of public television station KNME–TV, Channel 5, in Albuquerque by acquiring equipment that would permit it to use the Secondary Audio Channel (SAP) to broadcast in Spanish to the Hispanic audience and to provide descriptive video to those that are visually impaired. Project would acquire an SAP generator, router expansion and other related equipment. KNME–TV already broadcasts in stereo.

File No. 93186 CRB New Mexico State University, P.O. Box 3000 Milton Hall Rm 121, Las Cruces, NM 88003. Signed By: Mr. J. Mack Adams, Director. Funds Requested: $5,568. Total Project Cost: $7,424. To extend the signal of public radio station KRWG–FM 90.7 MHz, in Las Cruces by constructing a new 10-watt radio translator station on 93.5 MHz in Deming. Station would provide service to about 15,000 residents not currently receiving an acceptable signal level.

File No. 93264 CTB New Mexico State University, Jordan Street. Milton Hall 100, Las Cruces, NM 88003. Signed By: Mr. J. Mack Adams, Director. Funds Requested: $23,853. Total Project Cost: $31,805. To extend the signal coverage of public television station KRWG–TV, Channel 22, in Las Cruces by installing a 100-watt translator station on Twin Peakes Mountain. The new translator will provide coverage to the unserved communities along the west side of the Mesilla Valley which are located within the shadow area of the main KRWG–TV transmitter. There will be partial overlap with the existing coverage of KRWG–TV as well as KCOS–TV, El Paso, TX.

NV (Nevada)

File No. 93052 CRB University of Nevada, Coll. of Ed./Rm. 117, Evans Ave., Reno, NV 89557–. Signed By: Ms. Mary Husemoller, Manager, Sponsored Projects. Funds Requested: $21,192. Total Project Cost: $42,385. To improve the facilities of public radio station KUNR–FM, 88.7 MHz, in Reno by acquiring a new exciter, antenna alarm, six DAT recorders, transmitter telemetry and remote control equipment, test equipment, an emergency generator and transmitter vent ducting. This equipment will replace old, deteriorating equipment and will improve the quality and reliability of the station's signal. Station serves about 500,000 people.

File No. 93128 CTBN Clark County School District, 4210 Channel 10 Drive, Las Vegas, NV 89119. Signed By: Mr. John K. Hill, Dir. of Television Services. Funds Requested: $440,916. Total Project Cost: $587,888. To extend the existing Instructional Television Fixed Service (ITFS) signal to Boulder City, NV. In addition, project would improve the facilities of public television station KLVX–TV, Channel 10, in Las Vegas by upgrading the station's production and origination facilities by replacing outdated and worn out 2" video tape recorders and other production/origination equipment. Equipment being sought includes 3½" VTR's, a ½" VTR cut only edit bay, cameras, camera pedestals and mount heads, 2 character generators, a portable microwave system and other related origination equipment. Station serves about 854,000 residents.

NY (New York)

File No. 93016 CRB Western NY Public Brdcstg. Assn., 23 North Street, Buffalo, NY 14202. Signed By: Mr. J. Michael Collins, President and CEO. Funds Requested: $176,370. Total Project Cost: $352,740. To replace antiquated, wornout and problem causing production/control and microwave equipment for WEBR–AM/WNED–FM in Buffalo, NY, operating on 970 KHz and 94.5 MHz respectfully. The items are requested in order to increase the technical quality, reliability and work efficiency of the 2 stations.

File No. 93045 CTN Greece Central School District, 750 Maiden Lane, North Greece, NY 14515–0300. Signed By: Mr. Raymond W. Page, Interim Superintendent. Funds Requested: $1,036,922. Total Project Cost: $1,382,563. To purchase video production and fiber optics-related equipment to activate the first phase of a distance learning system. In this phase, the system will interconnect 11 school sites and three administration buildings. The proposed network involves the cooperation of three other Rochester city and suburban high schools as well as Rochester Institute of Technology, Rochester Telephone, Greater Rochester Cablevision, and the Board of Cooperative Educational Services (BOCES).

File No. 93061 CTB NE NY Public T/C Council, Inc., One Sesame Street, P.O. Box 617, Plattsburgh, NY 12901. Signed By: Mr. Gerald K. Bates, President and General Manager. Funds Requested: $78,193. Total Project Cost: $156,387. To upgrade the programming capabilities of WCFE-TV, operating on Ch. 57 in Plattsburgh, NY, by replacing wornout and problem-causing production equipment needed to deliver professional quality programs to residents and schools of the Plattsburgh area.

File No. 93064 CTN Dolgeville Central School District, Slawson Street, Dolgeville, NY 13329–. Signed By: Mr. Robert Smith, Superintendent. Funds Requested: $63,500. Total Project Cost: $84,669. To purchase video classroom production and reception equipment to assist in the interconnection of three public schools, all within the Herkimer County Board of Cooperative Educational Services area: Dolgeville Central School, Little Falls City School District, and Oppenheim-Ephratah Central School.

File No. 93069 CRB WSKG Public T/C Council, 531 Gates Road, Vestal, NY 13850. Signed By: Mr. Michael J. Ziegler, President & CEO. Funds Requested: $161,550. Total Project Cost: $215,400. To extend the signal of public radio station WSKG-FM, operating on 89.3 MHz in Vestal, NY by providing a repeater FM radio transmitter, operating on 91.1 MHz in Corning, NY, which would result in the first public FM radio signal to 101,494 residents over a 1500 square mile area.

File No. 93074 PTN New York Institute of Technology, Building 66, Central Islip, NY 11722–. Signed By: Dr. King V. Cheek, V.P. for Academic Affairs. Funds Requested: $57,920. Total Project Cost: $86,540. To plan for the development of a low cost, nonbroadcast two-way interactive video/audio system, based on compression technologies that will allow for transmission and reception through existing telephone and cable lines. The proposed system will first

focus on medical and health education program sharing with nine rural sites, to expand to fifteen sites or more in the state of New York and eventually to the Northeast in future years. In addition to medical and health care education through telecommunications, the proposed project will also explore other services including teacher in-service training in math and science, literacy courses in the workplace, and college math and science courses for high schools.

File No. 93152 PTN Westchester Community College, 75 Grasslands Road, Valhalla, NY 10595–. Signed By: Mr. Joseph Hankin, President. Funds Requested: $34,021. Total Project Cost: $62,326. To plan for the implementation and expansion of educational television, production, and satellite downlink services to all 40 school districts in Westchester County. The plan will consider possible uses of telecommunications to establish an interactive system among the school districts throughout the County, possibly with the interconnection of cooperating cable systems that may permit Westchester Community College to use educational access channels for video courses.

File No. 93255 CTB WHMT Educational Telecomm., P.O. Box 17, 17 Fern Avenue, Schenectady, NY 12301–0017. Signed By: Mr. William Rogosin, President & General Manager. Funds Requested: $496,897. Total Project Cost: $993,795. To improve the origination capability of WMHT-TV, operating on Channel 17, in Schenectady, NY, by replacing essential TV equipment for the production studio, production control, post-production, master control, and measurement and test equipment, all of which are causing documented problems.

File No. 93301 PRTN Schopeg Access, Inc., 4 Parkway Drive, Cobleskill, NY 12043–. Signed By: Mr. Michael Vandow, President. Funds Requested: $71,258. Total Project Cost: $96,295. To develop a strategic telecommunications plan for the geographic area of the Southern Tier East and Southern Tier Central Regions of New York State. Among the objectives of the plan would be to complete a regional network design for rural implementation of the use of telecommunications for distance learning and workforce training services. The proposed project would provide a needs assessment and develop designs for telecommunications applications in education, government, the workforce, business and industry through cable television and interactive telephone line c istribution.

File No. 93304 CTN Dutchess County BOCES, 578 Salt Point Turnpike, Poughkeepsie, NY 12601–9784. Signed By: Mr. Duane E. Hutton, Chief Executive Officer. Funds Requested: $376,703. Total Project Cost: $753.406. To purchase fiber optic transmission, video classroom, and computer work-station equipment so as to augment and extend an interactive distance learning system interconnecting students in 12 school districts throughout Dutchess Co., New York.

OH (Ohio)

File No. 93127 CTB Greater Dayton Public TV, Inc., 110 South Jefferson Street, Dayton, OH 45402–2402. Signed By: Mr. Jerrold F. Wareham, President and General Manager. Funds Requested: $774,166. Total Project Cost: $1,548,332. To improve public television station WPTO, Ch. 14, Oxford, OH, by replacing its 34-year-old, obsolete transmitter; by constructing a new studio-transmitter link; and by acquiring master control, origination, and test equipment.

File No. 93136 CTB Bowling Green State University, 245 Troup Street, Bowling Green, OH 43403–0060. Signed By: Mr. Louis I. Katzner, Associate V.P. for Research. Funds Requested: $116,050. Total Project Cost: $232,100. To improve the program service of public television station WBGU–TV, Ch. 27, Bowling Green, OH, by replacing worn-out and obsolete items of production equipment, including video tape recorders, an editing system, and a camcorder.

File No. 93155 CTB Educ. TV Assoc. of Metro Cleveland, 4300 Brookpark Road, Cleveland, OH 44134–. Signed By: Ms. Betty Cope, President and General Manager. Funds Requested: $56,127. Total Project Cost: $112,254. To improve the quality and reliability of the signal provided by public television station WVIZ–TV, Ch. 25, Cleveland, OH, from its translator in Ashtabula County, operating on Channel 64, by installing a microwave relay from its translator in Thompson, OH. The Ashtabula translator serves 16 school systems and 39,000 households with a population of 104,215 persons.

File No. 93180 CRB Youngstown State University, 410 Wick Avenue, Youngstown, OH 44555. Signed By: Mr. James M. McCollum, Exec Dir., University Relations. Funds Requested: $34,292. Total Project Cost: $45,723. To extend the service of public radio station WYSU, 88.5 MHz, Youngstown, OH, by installation translators in Salem, OH, and New Wilmington, PA, to bring first public radio service to approximately 270,200 persons.

File No. 93200 CTB Ohio University, 9 South College Street, Athens, OH 45701. Signed By: Mr. T. Lloyd Chesnut, Vice President. Funds Requested: $124,285. Total Project Cost: $248,570. To improve the production capability of public television station WOUB–TV, Ch. 20, Athens, OH, by replacing worn-out and obsolete video tape recorders, field camera/recorder units, editing equipment, and test equipment.

File No. 93222 CRB Xavier University, 3800 Victory Parkway, Cincinnati, OH 45207. Signed By: Mr. John R. Hirte, Vice-President. Funds Requested: $143,886. Total Project Cost: $191,849. To activate a public radio repeater station in Mt. Gilead, OH, on 95.1 MHz, to bring first public radio service to approximately 86,493 persons. The new station will repeat the programming of public radio station WVXU, 89.5 MHz, Cincinnati.

File No. 93237 CTB Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale K. Ouzts, General Manager WOSU Stations. Funds Requested: $478,920. Total Project Cost: $957,840. To improve the production capability of public television station WOSU–TV, Ch. 34, Columbus, OH, by replacing worn-out and obsolete equipment, including 13-year-old studio and field production cameras, 22-year-old videotape recorders, and associated test equipment.

File No. 93256 CRB Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale K. Ouzts, General Manager WOSU Stations. Funds Requested: $113,457. Total Project Cost: $151,276. To improve the remote production capability of WOSU–AM and FM, 820 KHz and 89.7 MHz, Columbus, OH, by replacing worn-out and obsolete equipment, including an audio console, microphones, digital audio recorders, and audio processing items.

File No. 93302 CRB Kent State University, 1613 E. Summit Street, Kent, OH 44242. Signed By: Mr. Harry Tripp, Associate Vice President. Funds Requested: $303,946. Total Project Cost: $530,320. This application from public radio station WKSU, 89.7 MHz, Kent, OH, has four objectives: (1) To activate a repeater station in Thompson, OH, to bring first public radio service to approximately 162,596 persons; (2) to replace and relocate its worn-out and obsolete main transmitter; (3) to provide basic origination equipment for repeater stations WKRW, 89.3 MHz, in Wooster, OH, and WKRJ, 91.5 MHz, in New Philadelphia, OH; and (4) to replace and upgrade worn-out and obsolete production equipment for the main

studio at WKSU, including digital audio tape recorders, cart machines, cassette recorders, and an audio console.

OK (Oklahoma)

File No. 93150 CTN Pottawatomie County T/C Coop., 36000 Clear Pond Road, Shawnee, OK 74801–. Signed By: Ms. Kaye Steele, President. Funds Requested: $678,953. Total Project Cost: $2,445,000. To purchase interconnection and studio equipment required to establish a distance learning system using fiber optics to interconnect eight high schools, a vocational-technical school, and the University of Pottawatomie County. The system will feature two-way interactive video and audio.

File No. 93158 CRB East Central University, 200 Stadium Drive, Ada, OK 74820–6899. Signed By: Dr. Bill Cole, President. Funds Requested: $143,205. Total Project Cost: $190,940. To activate a new 2 KW public radio station on 91.3 MHz in Ada. Station will provide a first public radio signal to an estimated 40,000 residents of Pontotoc County. In addition to providing educational programming, public service announcements and news not currently available, station will also provide university students with the opportunity to gain experience in the operation of a radio station. Project includes a satellite earth station.

File No. 93167 PRTN Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465–. Signed By: Ms. Wilma Mankiller, Principal Chief. Funds Requested: $97,858. Total Project Cost: $97,858. To develop a comprehensive plan for broadcast and nonbroadcast technologies as a means to provide educational programming to serve rural, isolated American Indian communities in a 14 county area of Oklahoma that would include educational sites and rural clinics. The proposed project could include an interactive system using various technologies such as satellite uplink and downlink sites, broadcast radio, and fiber optic lines to carry video, voice and data. The system would provide educational and instructional programming from pre-school through college, adult literacy, and culturally and linguistically appropriate programs.

File No. 93300 CRB Langston University, State Highway 33, Langston, OK 73050–. Signed By: Dr. Ernest L. Holloway, President. Funds Requested: $130,638. Total Project Cost: $174,185. To improve and extend the facilities of public radio station, KALU–FM, on 89.3 MHz, in Langston by increasing the station's power from 10 watts to 151 watts and replacing old, worn out equipment in the station's production, on-air and newsrooms. KALU–FM is licensed to a Historically Black Educational Institution and provides a minority-oriented public radio service. The area is also served by KOSU–FM, Stillwater, and KCSC–FM, in Edmond.

OR (Oregon)

File No. 93024 PRTN KWSO, P.O. Box 489, Warm Springs, OR 97761–. Signed By: Mr. Warren R. Clements, Director of Public Information. Funds Requested: $50,000. Total Project Cost: $50,000. To plan for the creation of a possible Public Telecommunications Center that would serve the Confederated Tribes on the Warm Springs Reservation in Oregon. This proposed Center would incorporate facilities for the present broadcast public radio station, a possible public television station, and an interactive two-way video and audio system. The proposed Telecommunications Center would include educational, interactive and training components that would help meet the needs of Native Americans on the reservation.

File No. 93248 PTN University of Oregon, Allen Hall, Eugene, OR 97403–1275. Signed By: Prof. Alan G. Stavitsky, Assistant Professor. Funds Requested: $14,458. Total Project Cost: $14,458. To develop a plan toward the establishment of U–O–T–V (University of Oregon Television Service), a program service that would be telecast on an educational access channel on the local cable television system in Eugene, Oregon. The University would manage the proposed service, and would provide a regular schedule of programming to include educational, cultural and public affairs series to be developed and produced by University faculty and students.

PA (Pennsylvania)

File No. 93006 CRB Nat. Assoc. of Radio Reading Serv., 2100 Wharton Street, Suite 140, Pittsburgh, PA 15203. Signed By: Mr. Bill Pasco, President, Funds Requested: $103,770. Total Project Cost: $138,360. To construct a production studio for the origination of a national radio reading service for the blind and print handicapped. Programming will be distributed by satellite from South Carolina to the one hundred radio reading services throughout the United States.

File No. 93026 CRB Temple University, Annenberg Hall, Philadelphia, PA 19122–. Signed By: Mr. James S. White, Vice President, Public Affairs. Funds Requested: $185,371. Total Project Cost: $247,161. To provide first public radio service to approximately 411,882 persons in Pennsylvania and New Jersey by activating full-power repeater stations operating at 90.7 MHz in Ephrata, PA, and at 905. MHz in Ocean City, NJ, and a translator operating at 99.1 MHz in Pottsville, PA. The three new stations will repeat the programming of WRTI, 90.1 MHz, Philadelphia, PA.

File No. 93036 CRB Pennsylvania State University, 202 Wagner Building, University Park, PA 16802–3899. Signed By: Mr. James H. Ryan, V.P. for Continuing Education. Funds Requested: $201,226. Total Project Cost: $268,302. To provide first public radio service to approximately 290,298 persons in central Pennsylvania by activating a repeater station in Kane and a translator in Altoona to carry the programing of WPSU, 91.1 MHz, State College, PA. The project will also move the existing transmitter of WPSU to a more favorable location.

File No. 93066 CTB Independence Public Media of Phila., 6117 Ridge Avenue, Philadelphia, PA 19128–1604. Signed By: Mr. Daniel del Solar, General Manager. Funds Requested: $176,980. Total Project Cost: $246,980. To improve public television station WYBE, Ch. 35, Philadelphia, PA, by replacing worn-out and obsolete studio production equipment, including cameras, a switcher, videotape recorders, a video editing controller, an audio board, video monitors, microphones, and production lighting fixtures.

File No. 93105 CTB WHYY, Inc., 150 North 6th Street, Philadelphia, PA 19106. Signed By: Mr. Frederick Breitenfeld, Jr., President. Funds Requested: $495,868. Total Project Cost: $991,736. To improve public television station WHYY–TV, Ch. 12, Philadelphia, PA, by replacing obsolete and worn-out master control and tape origination equipment, including its on-air routing switchers, audio/video distribution amplifiers, videotape recorders, a character generator, still store and monitoring equipment.

File No. 93171 CRB Duquesne University, 1330 Locust Street, Pittsburgh, PA 15282. Signed By: Ms. Judy D. Jankowski, Director. Funds Requested: $77,041. Total Project Cost: $191,930. To improve public radio station WDUQ, 90.5 MHz, Pittsburgh, by replacing worn-out and obsolete transmission and production equipment, including its transmitter, tape recorders, and cart machines.

File No. 93241 CTB NE Pennsylvania Ed TV Association, 70 Old Boston Road, Pittston, PA 18640. Signed By: Mr. A. William Kelly, President & CEO. Funds Requested: $515,215. Total Project Cost: $1,030,430. To improve the signal and

service of public television station WVIA–TV, Ch. 44, Scranton (Pittston), PA, by replacing its 25-year-old transmitter and its 23-year-old master control audio console. The station also seeks to add Descriptive Video Service equipment.

File No. 93277 CTB QED Communications, Inc., 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. Lloyd Kaiser, President. Funds Requested: $384,757. Total Project Cost: $769,595. To improve public television station WQED–TV, Ch. 13, Pittsburgh, PA, by replacing its worn-out Betacart system.

File No. 93299 CRB Pittsburgh Commun. Brdcstg Corp., Box 66, Woodland Road, Pittsburgh, PA 15232. Signed By: Mr. Peter Rosenfeld, President. Funds Requested: $87,995. Total Project Cost: $117,327. To improve the signal and service of public radio station WYEP, 91.3 MHz, Pittsburgh, PA, by replacing its worn-out and obsolete transmitter and antenna.

SC (South Carolina)

File No. 93224 PTB Horry-Georgetown Technical College, P.O. Box 1966, Conway, SC 29526–. Signed By: Mr. D. Kent Sharples, President. Funds Requested: $61,782. Total Project Cost: $77,846. To plan for a telecommunications facility that would be used by the Horry County Communications Consortium, composed of two colleges, the county school district, the county government and other municipal agencies, a telephone cooperative, and business and industry. The plan will explore the use of technologies such as ITFS, cable television, fiber optics and satellite distribution to provide video, voice and data distance learning services to students at all levels, women, minorities, disadvantaged children and adults, the workforce, and business/industry.

File No. 93258 CTN Satellite Ed. Resources Consort., 939 South Stadium Road, Columbia, SC 29201. Signed By: Mr. Gary N. Vance, Executive Director. Funds Requested: $877,250. Total Project Cost: $1,754,500. To extend the use of the applicant's distance learning courses by purchasing 265 receive-only, C and Ku-band steerable satellite earth terminals for predominately small, rural secondary schools in 10 states. Schools covered by this project will be located in: Georgia, Michigan, Mississippi, New York, North Carolina, Ohio, Pennsylvania, Texas, West Virginia and Wisconsin. SERC presently provides specialized instructional materials to more than 5,000 students in 540 schools located in 27 states.

SD (South Dakota)

File No. 93044 CRB Seventh Generation Media Serv. Inc., P.O. Box 32, Little Eagle, SD 57639–. Signed By: Mr. Dave Archambault, Chairperson, Board of Dir.. Funds Requested: $575,606. Total Project Cost: $767,475. To activate a new 90 KW public radio station 89.5 MHz in Little Eagle. Station will be located on the Standing Rock Sioux Reservation and will serve residents of the Standing Rock Sioux Reservation and portions of the Cheyenne River Sioux Reservation as well as the non-Native American residents in the area. Service area will encompass about 5 million acres and provide service to about 18,000 residents, 31% of which we Native Americans. Portions of the new proposed service area are within the existing service areas of KQSD–FM (Lowery, SD), KPSD–FM (Faith, SD) and DCND–FM (Bismarck, ND).

File No. 93100 CRB Sisseton Wahpeton Sioux Tribe, P.O. Box 590—R.R. 2, Agency Village/Sisseton, SD 57262–0509. Signed By: Ms. Lorraine Rousseau, Tribal Chairperson. Funds Requested: $52,732. Total Project Cost: $70,310. To assist in the activation of a new Class A (3 KW) public radio station on 89.3 MHz in Sisseton by purchasing equipment for an on-air control room. Tribe already has FCC construction permit and has done some of the other station construction. There are approximately 8,500 persons, including about 4,000 tribal members, within the proposed service area. Station will broadcast in English and Dakota (Sioux). Station would provide first local origination to areas also served by the South Dakota Public Radio Network.

File No. 93303 CTB SD State Bd. of Dirs. for ETV, Cherry & Dakota Sts, Box 5000, Vermillion, SD 57069–5000. Signed By: Mr. Larry Miller, Acting Executive Director. Funds Requested: $125,000. Total Project Cost: $250,000. To improve the facilities of public television stations KUSD–TV, Channel 2, Vermillion, and KESD–TV, Channel 8, Brookings, by replacing two obsolete, wornout video production switchers. The switchers which were purchased in 1976, will be replaced by two new analog/digital switchers which will serve the production needs of the state public television network.

File No. 93307 CRB So. Dakota Bd. of Dir. for Educ. T/C, Cherry & Dakota Sts, Box 5000, Vermillion, SD 57069–5000. Signed By: Mr. Larry Miller, Acting Executive Director. Funds Requested: $25,000. Total Project Cost: $50,000. To replace one of the two 285 foot towers of public radio station, KUSD–AM, 690 kHz, in Vermillion. The tower fell when two of the tower's guy wires were struck by a motor vehicle. Parts of the station's service area are also served by the network's other Vermillion station, KUSD–FM. KUSD–AM serves approximately 265,000 persons.

TN (Tennessee)

File No. 93137 CTB Metropolitan Board of Pub. Educ., 161 Rains Avenue, Nashville, TN 37203–. Signed By: Mr. Richard C. Benjamin, Director of Schools. Funds Requested: $302,405. Total Project Cost: $504.008. To improve the service of public television station WDCN–TV, Ch. 8, Nashville, TN, by replacing worn-out and obsolete videocassette recorders, video switchers, audio consoles, and related equipment with Beta SP decks, composite and component video switchers, audio consoles, character generators, still stores, and related equipment. WDCN–TV serves approximately 1.8 million viewers in the Greater Nashville area.

File No. 93187 CRB Univ. of Tennessee-Chattanooga, 104 Cadek Hall, 615 McCallie Ave, Chattanooga, TN 37403–2598. Signed By: Mr. Frederick Obear, Chancellor. Funds Requested: $7,775. Total Project Cost: $15,550. To improve the service of public radio station WUTC–FM, 88.1 MHz, Chattanooga, TN, by replacing the station's current analog microwave system with a more modern digital microwave system, thereby eliminating interference with a local station, increasing channel separation, and improving the overall dynamic range and signal-to-noise ratio. WUTC–FM serves approximately 1 million listeners in the Chattanooga area.

File No. 93205 CRB Memphis/Shelby County Pub. Lbry, 1850 Peabody Avenue, Memphis TN 38104. Signed By: Ms. Judith Drescher, Director. Funds Requested: $29,182. Total Project Cost: $38,910. To improve the services of station WYPL–FM, 89.3 MHz, Memphis, TN, by constructing an information/news production studio, updating the station's on-air automation system, and rebuilding the station's satellite receive terminal. WYPL–FM operates as an open-airwaves radio reading service; its target audience is approximately 420,000 of the more than 750,000 persons living in the Memphis area. Although the programming is largely directed toward the hearing impaired, it provides additional informational programming to a wider audience.

File No. 93276 CTB East Tennessee Pub. Comm. Corp., 209

Communications Building, Knoxville, TN 37996–0321. Signed By: Mr. Neal Branch, Chair-Board of Trustees. Funds Requested: $110,378. Total Project Cost: $220,756. To improve the service of public television station WSJK–TV, Ch. 2, Sneedville, TN, by replacing an obsolete and unreliable microwave studio-to-transmitter link (STL) and related equipment. The WSJK–TV transmitter is remotely controlled from studios in Knoxville, TN, and has experienced frequent shut-downs because of the age of the STL. WSJK–TV serves approximately 1.25 million viewers in the Knoxville area.

TX (Texas)

File No. 93003 CTB Alamo Council of the Blind, 1222 N. Main Street Suite L–16A, San Antonio, TX 78212–. Signed By: Mr. Rene Fernandez, President. Funds Requested: $31,077. Total Project Cost: $41,477. To activate a reading service for the print-handicapped using the Pro-channel of public television station KLRN–TV, Channel 9, in San Antonio. Service will benefit an estimated 20,000 persons within the coverage area of KLRN–TV.

File No. 93020 PTN Amarillo Junior College District, 2408 S. Jackson, Amarillo, TX 79109–. Signed By: Mr. W. L. Prather, V.P. Business & Development. Funds Requested: $45,390. Total Project Cost: $51,610. To develop a realistic distance learning plan for 26 counties in the Northern Texas panhandle by considering the feasibility of a number of telecommunications technologies including ITFS, compressed video, fiber optic lines, and VSAT satellite systems. The proposed project would provide a broad-based educational service to school systems, colleges, adult educational and training agencies, businesses, government organizations, and health care providers. A consortium of three colleges will be involved in developing this plan, which will be managed by Amarillo College.

File No. 93065 CTN Alamo Community College District, 1801 Martin Luther King Drive, San Antonio, TX 78203–2098. Signed By: Dr. Douglas S. Harlan, Interim Chancellor. Funds Requested: $410,465. Total Project Cost: $797,348. To purchase interconnection equipment to allow St. Philip's College, a community college in San Antonio, TX, to be linked via T1 technology with Texas A&M University so as to receive the latter's programming, with emphasis on literacy skills course work. The intent is to have the College eventually receive 3rd- and 4th-year college classes from Texas A&M. The project will also purchase video classroom equipment and a satellite receive-only earth station.

File No. 93082 CTB Alamo Public T/C Council, 801 South Bowie, San Antonio, TX 78205–3296. Signed By: Ms. Joanne Winik, President and General Manager. Funds Requested: $79,050. Total Project Cost: $158,100. To improve the facilities of public television station KLRN–TV, Channel 9, in San Antonio by replacing obsolete, worn out equipment. Equipment being requested includes a master control off-air demodulator, a video waveform measurement set and two record/playback videotape machines. In addition, KLRN–TV seeks to obtain a standby aural/visual exciter system for its transmitter. Currently KLRN–TV doesn't have a standby exciter system.

File No. 93086 CRB University of Texas at Austin, 2504 Whitis Street, Austin, TX 78712–1090. Signed By: Mr. Stephen A. Monti, Vice Provost. Funds Requested: $64,303. Total Project Cost: $128,606. To improve the facilities of public radio station KUT–FM, 90.5 MHz, in Austin by replacing and upgrading the following: both the on-air and production audio consoles, two routing switchers and associated equipment used to install the equipment. The current equipment is inadequate for current and future station operations and requires considerable repair and maintenance. The Austin market is served by three other public radio stations: KMFA–FM, KAZI–FM and KNLE–FM located in Round Rock.

File No. 93121 CTB Alliance for Higher Education, 17103 Preston Road, LB107, S–250, Dallas, TX 75248–. Signed By: Dr. Allan Watson, President. Funds Requested: $586,742. Total Project Cost: $1,173,485. To construct a Ku-band satellite uplink to provide distance education to a consortium of 26 colleges and universities in the greater Dallas-Ft. Worth area. The project will include a classroom video production facility at the University of Texas at Dallas uplink site. Also included in the project are funds to purchase eight downlink terminals for colleges in the consortium without such capability.

File No. 93177 PRB Panhandle Area Alliance, 500 South Taylor, Amarillo, TX 79101–. Signed By: Ms. Carol J. Farris, Project Director. Funds Requested: $42,040. Total Project Cost: $52,550. To plan for the activation of a new public radio station in Amarillo to provide the first National Public Radio (NPR) program service to this market. Area is also served by KACV–FM, licensed to Amarillo Junior College in Amarillo, and KWTS–FM, licensed to West Texas State University which is located in Canyon.

File No. 93189 CTB Capital of TX Public T/C Council, 2504–B Whitis Street, Austin, TX 78705. Signed By: Mr. Bill Arhos, President/General Manager. Funds Requested: $141,135. Total Project Cost: $282,270. To improve the facilities of public television station KLRU–TV, Channel 18, in Austin by replacing worn out videotape recorders and a fifteen year old character generator that is no longer supported by the original manufacturer. Project would acquire four video production recorders and associated equipment as well as a new character generator. KLRN–TV produces about 180 hours of programming each year for local, regional and national distribution. KLRU–TV, in addition to serving about one million viewers, also provides daily classroom instructional programs for more than 100,000 students in 27 independent school districts and 10 private schools.

File No. 93266 CRB South Texas Pub. Brdcstg. System, 4455 S. Padre Island Drive #38, Corpus Christi, TX 78411–. Signed By: Mr. Peter Frid, President & General Manager. Funds Requested: $228,937. Total Project Cost: $305,250. To extend the signal of public radio station KEDT–FM, 90.3 MHz, in Corpus Christi by constructing a new 25 KW repeater/satellite station in Victoria on 90.7 MHz. Station would provide a first public radio signal to approximately 190,000 residents. Service would be relayed by fiber optic link from Corpus Christi to Victoria, a distance of about 85 miles.

File No. 93290 CRB South Texas Pub. Brdcstg. System, 4455 S. Padre Island Drive #38, Corpus Christi, TX 78411–. Signed By: Mr. Peter Frid, President & General Manager. Funds Requested: $163,350. Total Project Cost: $217,800. To improve the facilities of public radio station KEDT–FM, 90.3 MHz, in Corpus Christi by replacing studio equipment in the production and master control rooms with 3 audio consoles, 6 cart machines, 4 reel-to-reel recorders, 6 compact disc players and 8 DAT digital recorders, a stereo generator, a EBS generator/receiver and a 30×30 stereo audio routing switcher. In addition, KETD–FM seeks a new hot standby studio-to-transmitter link (STL) and an oscilloscope (test equipment). Station provides the only public radio to about 580,000 residents.

UT (Utah)

File No. 93292 CRTBN University of Utah, Media Services, Building 002, Salt Lake City, UT 84112. Signed By: Mr. Ted R. Capener, Vice President, Univ. Relation. Funds Requested: $138,392. Total Project Cost: $201,390. To extend

and improve the facilities of public television stations KULC-TV, (Ch. 9, Ogden) and KUED-TV, (Ch. 7, Salt Lake City) by installing new translator stations or replacing existing old, worn out units. KULC-TV translators are for Tooele (NEW, Ch. N/A), Dutch John/ Manila (NEW, Ch. 19), Fillmore (NEW, Ch. 44), Parowan (NEW, K46DF) and Utah Hill (Replacement, K21CI). KUED-TV translators are for Morgan (Replacement, Ch. 69) and Beryl (NEW, K25EF). KUER-FM translators include Huntsville (NEW 89.7 MHz). Ticaboo (Batteries Only, 88.1 MHz) and Dutch John (NEW, 90.3 MHz). In addition, funding of a studio equipment package for the Snow College EDNET site is requested. As a result of this project, approximately 29,808 persons will receive a first service of this type.

VA (Virginia)

File No. 93015 CTN National Captioning Institute, 5203 Leesburg Pike, 15th Floor, Falls Church, VA 22041. Signed By: Mr. John E.D. Ball, President. Funds Requested: $38,463. Total Project Cost: $76,927. To improve the services of the National Captioning Institute, Falls Church, VA, by acquiring descriptive video technology to enhance programming for visually disabled Americans. Since 1980, NCI has provided closed captioning services both to commercial and non-commercial broadcasting; to date, NCI has closed captioned more than 60,000 hours of programming, including 3,000 home videos.

File No. 93023 CTN National Captioning Institute, 5203 Leesburg Pike, Suite 1500, Falls Church, VA 22041. Signed By: Mr. John Ball, President. Funds Requested: $245,216. Total Project Cost: $490,433. To improve the services of the National Captioning Institute, Falls Church, VA, by replacing worn-out and obsolete closed captioning equipment. NCI provides captioning services to ABC, NBC, and PBS; to date, NCI has provided both commercial and public broadcasting with over 60,000 program hours of captioned material for the hearing impaired, including 3,000 home videos.

File No. 93097 CTN Black College Satellite Network, 2011 Crystall Drive, Suite 1100A, Arlington, VA 22202–. Signed By: Dr. Mabel P. Phifer, President. Funds Requested: $1,526,486. Total Project Cost: $2,035,315. To construct eight Ku-band satellite uplinks to provide programming to the approximately 100 colleges and universities affiliated with the Black College Satellite Network (BCSN). Uplinks will be located at Grambling State University in Louisiana, Virginia State University in Virginia, Cheyney University in Pennsylvania, Clark Atlanta University in Georgia, Langston University in Oklahoma, University of Maryland Eastern Shore in Maryland, Rust College in Mississippi, and at the BCSN headquarters in Arlington, VA.

File No. 93251 CTB Blue Ridge Public TV, Inc., 1215 McNeil Drive, SW, Roanoke, VA 22015–. Signed By: Mr. Larry A. Dyer, President and General Manager. Funds Requested: $206,652. Total Project Cost: $413,304. To improve and extend the service of public television station WBRA–TV, Ch. 15, Roanoke, VA, by establishing a Descriptive Video Service for the visually disabled. Employing the station's existing transmitter, along with additional Secondary Audio Program (SAP) equipment, WBRA–TV will be able to reach an estimated 6,500 visually impaired "viewers." This proposal also seeks to replace worn and obsolete remote control and monitoring equipment and VCRs. WBRA–TV currently serves approximately 1.5 million viewers in the Roanoke area.

File No. 93257 CTN Old Dominion University, Room 228 Education Building, Norfolk, VA 23529–0228. Signed By: Dr. James C. Phillips, Director, Academic Television. Funds Requested: $250,609. Total Project Cost: $334,145. To construct three electronic classrooms so that Old Dominion University can increase the number of courses it is offering via ITFS and satellite.

VI (Virgin Islands)

File No. 93286 CRB Virgin Islands PTV System, P.O. Box 7879, Barbel Plaza S., St. Thomas, VI 00802–. Signed By: Mr. Patrick Williams, Board Chairman. Funds Requested: $557,735. Total Project Cost: $743,647. To establish a first noncommercial FM radio service for the U.S. Virgin Islands through the construction of a new station operating on 89.1 MHz in Charlotte Amalie, St. Thomas and a full power repeater operating on 88.5 MHz in Christianstead, St. Croix. This service will provide a first public radio service to 100,000 residents of the U.S. Virgin Islands.

WA (Washington)

File No. 93022 CRB Jack Straw Memorial Foundation, 4261 Roosevelt Way, Seattle, WA 98105. Signed By: Ms. Carmen Ray, Executive Director. Funds Requested: $26,620. Total Project Cost: $53,240. To improve the present signal delivery of public radio station KSER–FM, operating on 90.7 MHz in Everett, Washington, by installing two translators in their present coverage area. The translators will be used to provide service to 140,000 residents of the Everett area who cannot now receive the KSER–FM signal.

File No. 93114 CRB Bellevue Cmty. College, KBCS–FM, 3000 Landerholm Circle SE, Bellevue, WA 98007. Signed By: Ms. Jean Floten, President. Funds Requested: $49,358. Total Project Cost: $65,811. To improve the signal of public radio station KBCS–FM operating on 91.3 MHz in Bellevue, Washington, by replacing an aging transmitter and obsolete control room equipment to better serve 1.6 million residents of the greater Seattle area.

File No. 93159 CTB KCTS Television, 401 Mercer Street, Seattle, WA 98109. Signed By: Mr. Burnill F. Clark, President and CEO. Funds Requested: $55,265. Total Project Cost: $110,530. To improve the programming capability of public television station KCTS–TV, operating on channel 9 in Seattle, Washington, by replacing worn out and obsolete analog video tape machines with new digital units. The replacement items will improve service to 3 million residents of the greater Seattle area.

File No. 93161 CTB Central WA Assoc. for Pub. T/C, 1105 So. 15th Ave., Yakima, WA 98902–. Signed By: Mr. Warren D. Starr, President and General Manager. Funds Requested: $42,735. Total Project Cost: $56,980. To extend the signal of public television station KYVE–TV operating on channel 47 in Yakima, Washington, by installing a translator in Cle Elum to provide a first public television service to 7,500 residents of north Kittitas County.

File No. 93284 CRB Washington State University, Murrow Communication Center, Pullman, WA 99164–2530. Signed By: Mr. R.V. Smith, Vice Provost. Funds Requested: $27,570. Total Project Cost: $36,760. To extend the signal of public radio station KRFA-FM operating on 91.7 MHz in Moscow, Idaho by establishing a full power repeater in Cottonwood and two translators in Orfino and Kamiah to bring a first public radio service to 15,600 residents of central Idaho.

WI (Wisconsin)

File No. 93236 CRB Lac Courte Oreilles Ojibwa Broad, Route 2, Box 2788, Hayward, WI 54843. Signed By: Ms. Camille Lacapa-Morrison, General Manager. Funds Requested: $14,450. Total Project Cost: $28,901. To improve the transmission and programming capabilities of WOJB–FM in Hayward, WI, operating on 88.9 MHz, by replacing the STL, remote control, on-air console, reel-to-reel tape recorders, cart machine, turntables and watt meter. This project

would greatly improve the quality of the public radio service provided by this minority station, which is owned and operated by the Lac Courte Oreilles Band of Lake Superior Ojibwa Indians. WOJB–FM's signal serves 4 reservations and 7 surrounding counties in northwest Wisconsin.

File No. 93298 CRB University of Wisconsin-Eau Claire, 105 Garfield Avenue, Eau Claire, WI 54701–. Signed By: Ms. Marjorie R. Smelstor, Vice Chancellor. Funds Requested: $24,125. Total Project Cost: $48,250. To extend the coverage of WUEC–FM, operating on 89.1 MHz in Eau Claire, WI, by replacing its present 13 year old 1Kw transmitter with a higher power 5 Kw transmitter which will increase the station's 1 m/v per meter coverage 15 miles in all directions. This project will provide approximately 40,000 potential listeners with their first program service from WUEC–FM.

WV (West Virginia)

File No. 93018 CRN West Virginia Library Commission, Cultural Center, Capitol Complex, Charleston, WV 25305. Signed By: Mr. David Lewis, Statewide Coordinator, WVRRS. Funds Requested: $2,860. Total Project Cost: $5,720. To improve the operations of the West Virginia Radio Reading Service by replacing cassette machines with broadcast-quality TASCAM recorders and playback machines. The West Virginia Library Commission's radio reading service reaches approximately 4,500 residents of West Virginia through West Virginia Public Radio's subcarriers in Charleston, Huntington, Buckhannon, and Beckley, as well as through cable television in 22 counties. The current equipment is not of fully professional quality.

File No. 93046 CTB WV Educ. Broadcasting Authority, 600 Capitol Street, Charleston, WV 25301–. Signed By: Mr. Kenneth A. Jarvis, Executive Director. Funds Requested: $45,011. Total Project Cost: $90,022. To improve the operations of public television station WSWP–TV, Ch. 9, Grandview, WV, by replacing a badly worn and inadequate master control switcher (with associated monitors, controllers, etc.), and to acquire a new CCD color field camera/VTR (with associated lenses, tripods, etc.). WSWP–TV is one of three public television stations in a statewide system, and serves approximately 900,000 viewers as the sole service in south-central West Virginia.

File No. 93280 CRB Pocahontas Comm. Coop. Corp., State Route 28, Dunmore, WV 24934. Signed By: Mr. Gibbs Kinderman, General Manager. Funds Requested: $154,448. Total Project Cost: $205,931. To extend and improve the service of public radio station WVMR–AM, 1370 Khz, Dunmore, WV, by constructing two repeater transmitters to serve residents of Bath and Highland Counties. WVMR will provide twelve hours per day of programming via STL to the two FM transmitters; local origination studios at the transmitter sites will add up to six hours per day of local programming. WVMR–AM currently serves 10,000 listeners; the new transmitters will bring first public radio service to an additional 7,500 persons.

WY (Wyoming)

File No. 93095 PRTN Western Wyoming Cmty. College, 2500 College Drive, Rock Springs, WY 82902–0428. Signed By: Mr. Tex Boggs, President. Funds Requested: $45,826. Total Project Cost: $166,310. To plan for the possible use of alternative telecommunications technologies as part of Western Wyoming Community College's extended education outreach program to fifteen remote sites in Southwest Wyoming, that potentially could enroll 2000 students in distance learning courses. A feasibility study will be conducted to explore various delivery systems which may be practical in providing a service to these geographically isolated sites, so that potential students could earn an Associate degree from the community college.

File No. 93113 CTB Central Wyoming College, 2660 Peck Avenue, Riverton, WY 82501. Signed By: Dr. Joanne McFarland, President. Funds Requested: $1,188,702. Total Project Cost: $1,584,936. To extend and improve the signal of Wyoming Public Television, operating on channel 4, Riverton, Wyoming, by installing a full power repeater on channel 8 in Laramie and replacing obsolete production and master control equipment. The new repeater station will provide a first public television service to 86,400 residents of the Larimie, Cheyenne area.

AK (Alaska)

File No. 93101 CRB, Old File Nos. 92054, Koahnic Broadcast Corporation, Anchorage, AK.

File No. 93216 CRN, Old File Nos. 92031, Silakkuagvik Communications, Inc, Barrow, AK.

AL (Alabama)

File No. 93173 CTB, Old File Nos. 92183, Alabama A&M University, Normal, AL.

File No. 93181 CRB, Old File Nos. 92200,91129, Alabama State University, Montgomery, AL.

File No. 93193 CRB, Old File Nos. 92141,91184 University of Alabama, Tuscaloosa, AL.

File No. 93262 CRB, Old File Nos. 92126, Troy State University, Troy, AL.

CA (California)

File No. 93019 CRB, Old File Nos. 92288, Santa Monica Community College, Santa Monica, CA.

File No. 93021 CRB, Old File Nos. 92292, Poor Peoples Radio, Inc., San Francisco, CA.

File No. 93041 CRB, Old File Nos. 92270, Rural Cal. Broadcasting Corp., Rohnert Park, CA.

File No. 93049 CTN, Old File Nos. 92167, California State Univ. Foundation, Long Beach, CA.

File No. 93051 CRB, Old File Nos. 92275, Pasadena Area Community College, Pasadena, CA.

File No. 93083 CTB, Old File Nos. 92028, Valley Public TV, Inc., Fresno, CA.

File No. 93093 CRB, Old File Nos. 92290, KQED, Inc., San Francisco, CA.

File No. 93213 CTB, Old File Nos. 92210, Community TV of S. California, Los Angeles, CA.

File No. 93214 CTB, Old File Nos. 92233, Rural Cal. Broadcasting Corp., Rohnert Park, CA.

File No. 93250 CTB, Old File Nos. 92294,91263, Rural Cal. Broadcasting Corp., Rohnert Park, CA.

CT (Connecticut)

File No. 93092 CRB, Old File Nos. 92128, Sacred Heart University, Fairfield, CT.

FL (Florida)

File No. 93162 CTN, Old File Nos. 92155, Brevard Community College, Cocoa, FL.

File No. 93172 CTB, Old File Nos. 92062, Florida West Coast Pub. Brdcstg., Tampa, FL.

File No. 93188 CTB, Old File Nos. 92008, University of Florida, Gainesville, FL.

File No. 93247 CTB, Old File Nos. 92232, Florida State University, Tallahassee, FL.

File No. 93285 CTB, Old File Nos. 92052, Community Communications, Inc., Orlando, FL.

File No. 93297 CRB, Old File Nos. 92115, Key West Public Radio, Inc., Key West, FL.

GA (Georgia)

File No. 93182 CRTB, Old File Nos. 92090, GA Public Telecomm. Commission, Atlanta, GA.

IA (Iowa)

File No. 93103 CTN, Old File Nos. 92204, Indian Hills Community College, Ottumwa, IA.

IL (Illinois)

File No. 93087 CTB, Old File Nos. 92189, Southern Illinois University, Carbondale, IL.

File No. 93279 CRB, Old File Nos. 92188, Southern Illinois University, Carbondale, IL.

IN (Indiana)

File No. 93228 CRB, Old File Nos. 92309, Purdue University, West Lafayette, IN.

LA (Louisiana)

File No. 93008 CRB, Old File Nos. 92317, Friends of WWOZ, Inc., New Orleans, LA.

ME (Maine)

File No. 93261 CRB, Old File Nos. 92230, University of Maine System, Portland, ME.

MI (Michigan)

File No. 93117 CTN, Old File Nos. 92020, 91084, PACE Telecommunications Consortium, Indian River, MI.

MO (Missouri)

File No. 93151 PTN, Old File Nos. 92231, Nat'l Federation TARGET Prog. Inc., Kansas City, MO.

MS (Mississippi)

File No. 93231 CRB, Old File Nos. 92060, Jackson State University, Jackson, MS.

MT (Montana)

File No. 93096 PTB, Old File Nos. 92181, Rural Television System, Inc., Cardwell, MT.

NC (North Carolina)

File No. 93063 CTN, Old File Nos. 92251, NC Agency for Public T/C, Raleigh, NC.

File No. 93253 CRB, Old File Nos. 92114, North Carolina Central University, Durham, NC.

ND (North Dakota)

File No. 93194 CTN, Old File Nos. 92301, Standing Rock College, Fort Yates, ND.

NE (Nebraska)

File No. 93111 CTB, Old File Nos. 92040, University of Nebraska at Omaha, Omaha, NE.

NH (New Hampshire)

File No. 93202 CTN, Old File Nos. 92084, Goffstown School District, Goffstown, NH.

NJ (New Jersey)

File No. 93197 CRB, Old File Nos. 92027, 91033, Burlington County College, Pemberton, NJ.

NV (Nevada)

File No. 93119 CTB, Old File Nos. 92076, Channel 5 Public Brdcstg., Inc., Reno, NV.

NY (New York)

File No. 93011 CRB, Old File Nos. 92193, Fordham University, Bronx, NY.

File No. 93053 CTN, Old File Nos. 92315, Medgar Evers College of CUNY, Brooklyn, NY.

File No. 93070 CTB, Old File Nos. 92050, 91055, WXXI Public Broadcasting Council, Rochester, NY.

File No. 93099 CRB, Old File Nos. 92312, Pacifica Foundation, New York, NY.

File No. 93123 CRB, Old File Nos. 92211, Niagara Frontier Radio Read. Ser. Buffalo, NY.

File No. 93190 CRB, Old File Nos. 92253, Hofstra University, Hempstead, NY.

File No. 93270 CTB, Old File Nos. 92274, Pub. Brdcastg, Council of Cent. NY, Syracuse, NY.

File No. 93294 CRB, Old File Nos. 92245, Board of Coop. Educ. Services, Fairport, NY.

OH (Ohio)

File No. 93211 CTB, Old File Nos. 92063, Public Bdcstg Fndn of NW Ohio, Toledo, OH.

OR (Oregon)

File No. 93057 CRB, Old File Nos. 92168, Sch District 4J, Lane Co. Oregon, Eugene, OR.

File No. 93102 CTN, Old File Nos. 92295, Portland State University, Portland, OR.

File No. 93129 CTB, Old File Nos. 92066, Southern Oregon Public TV, Inc., Medford, OR.

File No. 93166 CTB, Old File Nos. 92279, Oregon Public Broadcasting, Portland, OR.

PA (Pennsylvania)

File No. 93133 CRB, Old File Nos. 92299, 91277, Lehigh Valley Cmty Bdcstrs Assn, Allentown, PA.

File No. 93220 CTB, Old File Nos. 92016, Pennsylvania State University, University Park, PA.

PR (Puerto Rico)

File No. 93014 CRB, Old File Nos. 92156, Univ of Puerto Rico—Rio Piedras, San Juan, PR.

SC (South Carolina)

File No. 93204 CTN, Old File Nos. 92017, South Carolina ETV Commission, Columbia, SC.

TN (Tennessee)

File No. 93206 CTB, Old File Nos. 92045, Upper Cumberland Brdcstg. Cncl., Cookeville, TN.

TX (Texas)

File No. 93094 CTB, Old File Nos. 92083, North Texas Public Brdcstg., Inc., Dallas, TX.

UT (Utah)

File No. 93002 CTN, Old File Nos. 92293, Southern Utah University, Cedar City, UT.

VA (Virginia)

File No. 93168 CTB, Old File Nos. 92100, Shenandoah Valley ETV Corp., Harrisonburg, VA.

File No. 93232 CTB, Old File Nos. 92104, Central VA Educational TV Corp., Falls Church, VA.

WA (Washington)

File No. 93282 CRB, Old File Nos. 92139, Washington State University, Pullman, WA.

WI (Wisconsin)

File No. 93274 CRTB, Old File Nos. 92316, Wisconsin Ed. Communications Bd., Madison, WI.

File No. 93305 CRTB, Old File Nos. 92316, Wisconsin Ed. Communications Bd., Madison, WI.

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Part IV

Environmental Protection Agency

40 CFR Part 180

Increase in Tolerance Processing Fees; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-30072]; FRL-4571-5]

Tolerance Processing Fees; Increase

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3.7 percent increase in pay for civilian Federal General Schedule (GS) employees in 1993.

EFFECTIVE DATE: April 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Ken Wetzel, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 700-E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-305- 5128).

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). (21 U.S.C. 346a). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible. The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the the **Federal Register** (57 FR 34518) and became effective on September 4, 1992. At that time the fees were increased 4.2 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

> (o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale... When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule.

The pay raise in 1993 for Federal General Schedule employees is 3.7 percent; therefore, the tolerance petition fees are being increased 3.7 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $56,175, plus $1,400 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $12,850 plus $875 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $10,350.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $22,450 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,200.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $11,200 plus $875 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $7,025. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,400 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,400 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,800.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $28,050 to cover the costs of the advisory committee. Further advance deposits of $28,050 each shall be made upon request of the

Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (H7505C), Washington, DC 20460. A fee of $1,400 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (H7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

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Part V

Department of Transportation

National Highway Traffic Safety Administration

Insurance Cost Information Booklet; Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 74–40; Notice 5]

Insurance Cost Information Booklet

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Text and Data for 1993 Insurance Cost Information Booklet.

SUMMARY: This notice provides the 1993 text and data that new car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information may assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4936).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 582, *Insurance Cost Information Regulation*, to require dealers of new automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility.

Pursuant to 49 CFR 582.4, new automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in § 582.5. Beginning next January, NHTSA will publish updated annual data in the notices section of the **Federal Register**. The booklets must be revised to reflect the updated data within 30 days from the date of publication of the data in the **Federal Register**.

NHTSA is today mailing a sample copy of the 1993 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by April 21, 1993. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Mr. Nelson Gordy of NHTSA's Office of Market Incentives ((202) 366–4797) to receive a copy of the booklet and to be added to the mailing list.

The required text and data are as follows:

Comparison of Differences in Insurance Costs for Passenger Motor Vehicles on the Basis of Damage Susceptibility

March 1993.

The National Highway Traffic Safety Administration (NHTSA) has provided the information in this booklet in compliance with Federal law as an aid to consumers considering the purchase of a new car. The booklet compares differences in insurance costs for different makes and models of passenger cars on the basis of damage susceptibility. However, it does not indicate a vehicle's relative safety.

The following table contains the best available information regarding the effect of damage susceptibility on auto insurance premiums. It was taken from data compiled by the Highway Loss Data Institute (HLDI) in its December 1992 Insurance Collision Report, and reflects the collision loss experience of passenger vehicles sold in the United States in terms of the average loss payment per insured vehicle year for model years 1990–1992. NHTSA has not verified the data in this table.

The table presents vehicles' collision loss experience in relative terms, with 100 representing the average for all passenger vehicles. Thus, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average while a rating of 96 reflects a collision loss experience that is 4 percent lower (better) than average. The table does not include information about new models, models that have been substantially redesigned, and models without enough claim experience.

Although many insurance companies use the HLDI information to adjust the "base rate" for the collision portion of their auto insurance premiums, the amount of any such adjustment is usually small. It is unlikely that your total premium will vary more than five percent depending upon the collision loss experience of a particular vehicle. If you do not purchase collision coverage or your insurance company does not use the HLDI information, your premium will not vary at all in relation to these rankings.

In addition, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, you should contact insurance companies directly to determine the actual premium that you will be charged for insuring a particular vehicle.

Please Note: In setting auto insurance premiums, insurance companies mainly rely on factors that are not directly related to the vehicle itself (except for its value). Rather, they mainly consider driver characteristics (such as age, gender, marital status, and driving record), the geographic area in which the vehicle is driven, how many miles are traveled, and how the vehicle is used. Therefore, to obtain complete information about insurance premiums, you should contact insurance companies directly.

Insurance companies do not generally adjust their premiums on the basis of data reflecting the crashworthiness of different vehicles. However, some companies adjust their premiums for personal injury protection and medical payments coverage if the insured vehicle has features that are likely to improve its crashworthiness, such as airbags and automatic seatbelts.

Test data relating to vehicle crashworthiness are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal crash protection in new vehicles. Information on vehicles that NHTSA has tested in the NCAP program can be obtained by calling the agency's toll-free Auto Safety Hotline at (800) 424–9393.

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS

Make	Model	Relative loss payment
Small Cars:		
Two-Door Models:		
Suzuki	Swift	74
Dodge	Colt	97
Mitsubishi	Precis	99
Dodge	Shadow Conv.	100
Plymouth	Colt	103
Ford	Festiva	106
Volkswagen	Fox	109
Geo	Metro	115
Volkswagen	Golf/GTI	118
Daihatsu	Charade	120
Saturn	SC	124
Toyota	Celica Conv.	126
Dodge	Shadow	126
Pontiac	Lemans	132
Eagle	Talon	135
Plymouth	Laser	136
Hyundai	Scoupe	137
Dodge	Daytona	139
Eagle	Talon 4WD	146
Geo	Storm	158
Mazda	MX–3 Coupe	170
Isuzu	Impulse	189
Subaru	Justy	86
Subaru	Justy 4WD	98
Mitsubishi	Mirage	100

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Toyota	Tercel	102
Eagle	Summit	105
Mazda	323	108
Toyota	Paseo	111
Plymouth	Sundance	115
Ford	Escort	119
Hyundai	Excel	122
Nissan	Sentra	125
Ford	Probe	126
Volkswagen	Cabriolet	128
Mitsubishi	Eclipse	135
Geo	Metro Conv	136
Mazda	MX–6	137
Mitsubishi	Eclipse 4WD	137
Toyota	Celica	142
Nissan	240SX	157
Nissan	NX	165
Saab	900	176
Volkswagen	Corrado	218
Four-Door Models:		
Subaru	Justy 4WD	88
Toyota	Corolla	96
Plymouth	Sundance	98
Mercury	Tracer	101
Nissan	Sentra	105
Volkswagen	Fox	105
Volkswagen	Golf	109
Geo	Metro	110
Subaru	Loyale	113
Mazda	323 Protege	117
Hyundai	Elantra	120
Daihatsu	Charade	133
Saab	900	157
Ford	Escort	93
Subaru	Loyale 4WD	98
Suzuki	Swift	99
Dodge	Shadow	101
Toyota	Corolla Tercel.	105
Mitsubishi	Mirage	108
Geo	Prizm	110
Eagle	Summit	112
Volkswagen	Jetta	116
Pontiac	Lemans	120
Hyundai	Excel	121
Isuzu	Stylus	156
Station Wagons/ Passenger Vans:		
Mercury	Tracer	68
Ford	Escort	74
Subaru	Loyale 4WD	82
Geo	Storm	160
Subaru	Loyale	72
Toyota	Corolla	79
Toyota	Corolla 4WD	96
Sports Models:		
Mazda	MX–5 Miata Conv.	89
Dodge	Stealth	162
Mitsubishi	3000 GT	172
Alfa Romeo	Spider Conv	184
Saab	900 Conv	195
Nissan	300ZX	229
Mitsubishi	3000 GT 4WD.	238

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Porsche	911 Targa/ Coupe.	315
Mercury	Capri Conv	100
Cadillac	Allante Conv	162
Chevrolet	Corvette	178
Toyota	MR2	188
Mercedes	SL Conv. Series.	216
Chevrolet	Corvette Conv.	233
Porsche	911 Conv	281
Dodge	Stealth 4WD	349
Midsize Cars:		
Two-Door Models:		
Buick	Century	76
Oldsmobile	Cutlass Supreme.	80
Chevrolet	Cavalier Conv.	82
Buick	Regal	92
Pontiac	Grand Am	94
Buick	Skylark	97
Mercury	Topaz	101
Chevrolet	Cavalier	106
Chrysler	LeBaron Conv.	110
Chrysler	LeBaron	116
Acura	Integra	137
Oldsmobile	Achieva	78
Chevrolet	Lumina	81
Pontiac	Sunbird Conv	86
Pontiac	Grand Prix	94
Pontiac	Sunbird	96
Ford	Tempo	99
Honda	Accord	105
Oldsmobile	Cutlass Supr. Conv.	109
Honda	Civic	113
Chevrolet	Beretta	130
Honda	Prelude	180
Four-Door Models:		
Dodge	Dynasty	71
Buick	Century	72
Buick	Regal	74
Oldsmobile	Cutlass Ciera	76
Saturn	SL	78
Dodge	Spirit	79
Mercury	Topaz	81
Plymouth	Acclaim	82
Pontiac	Sunbird	85
Eagle	Premier	87
Chevrolet	Lumina	71
Chrysler	LeBaron	74
Pontiac	Grand Am	76
Oldsmobile	Cutlass Supreme.	78
Pontiac	Grand Prix	79
Chrysler	New Yorker	80
Ford	Tempo	82
Mitsubishi	Galant 4WD	84
Ford	Taurus	85
Mercury	Sable	87
Chevrolet	Cavalier	89
Mitsubishi	Galant	93
Buick	Skylark	94
Dodge	Monaco	95
Oldsmobile	Achieva	99
Subaru	Legacy	104
Volvo	240	106

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Nissan	Stanza	110
Toyota	Cressida	115
Infiniti	G20	121
Volkswagen	Passat	150
Chevrolet	Corsica	92
Mitsubishi	Diamante	93
Honda	Accord	95
Toyota	Camry	96
Subaru	Legacy 4WD	103
Mazda	626	106
Nissan	Maxima	109
Honda	Civic	112
Hyundai	Sonata	117
Acura	Integra	123
Peugeot	405	270
Station Wagons/ Passenger Vans:		
Mitsubishi	Expo	60
Ford	Taurus	77
Oldsmobile	Cutlass Ciera	80
Mercury	Sable	82
Subaru	Legacy 4WD	100
Volkswagen	Passat	144
Buick	Century	66
Chevrolet	Cavalier	78
Honda	Accord	81
Subaru	Legacy	95
Volvo	240	104
Sports Models:		
Chevrolet	Camaro Conv.	124
Chevrolet	Camaro	134
Ford	Mustang	158
Nissan	300ZX 2+2	178
Ford	Mustang Conv.	130
Pontiac	Firebird	145
Toyota	Supra	160
Acura	NSX	221
Luxury Models:		
Buick	Riviera	92
Cadillac	Eldorado	97
Volvo	740/760 SW	110
Volvo	940 4D	115
Oldsmobile	Toronado	125
Volvo	940 SW	143
Saab	9000	155
Lexus	ES 300	165
Mercedes	300CE	186
BMW	318/325i Conv.	203
Audi	80/90 Quattro.	213
BMW	318/325i 4D	236
Alfa Romeo	164	297
Lincoln	Continental	93
Infiniti	M30 Conv	100
Lincoln	Mark VII	112
Volvo	740/760 4D	120
Jaguar	XJ–S Conv	133
Mercedes	190E	146
Audi	80/90	164
BMW	525i/535i/iS	176
Lexus	SC 300/400	192
Infiniti	M30	204
Jaguar	XJ–S	217
Audi	V8 Quattro	258

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Large Cars:		
Two-Door Models:		
Mercury	Cougar	96
Ford	Thunderbird	97
Four-Door Models:		
Buick	LeSabre	76
Chevrolet	Caprice	78
Oldsmobile	Ninety-Eight	85
Oldsmobile	Eighty-Eight	88
Ford	Crown Victoria.	91
Acura	Vigor	126
Pontiac	Bonneville	77
Chrysler	New Yorker	84
Buick	Park Avenue	85
Mercury	Grand Marquis.	90
Buick	Roadmaster	94
Station Wagons/ Passenger Vans:		
Chevrolet	Astro Van 4WD.	50
Dodge	Caravan 4WD.	55
Chevrolet	Astro Van	59
GMC	Safari Van	60
Chevrolet	Lumina APV	71
Pontiac	Trans. Sport	72
Toyota	Previa Van	77
Oldsmobile	Custom Cruiser.	79
Buick	Roadmaster	82
Toyota	Previa Van 4WD.	105
Mazda	MPV Van 4WD.	121
Plymouth	Voyager 4WD.	52
Plymouth	Voyager	59
Dodge	Caravan	60
GMC	Safari 4WD	66
Oldsmobile	Silhouette	72
Ford	Aerostar	74
Chevrolet	Caprice	77
Ford	Aerostar 4WD.	81
Chrysler	Town & Country.	84
Mazda	MPV Van	114
Luxury Models:		
Chrysler	Imperial	77
Cadillac	Seville	94
Cadillac	DeVille 4D	100
Cadillac	DeVille 2D	103
Cadillac	Fleetwood 2D.	117
Acura	Legend 4D	133
Lexus	LS 400	149
Mercedes	300D/E	160
Infiniti	Q45	166
Jaguar	XJ6	182
BMW	735i	219
Cadillac	Brougham	91
Lincoln	Town Car	97
Cadillac	Fleetwood 4D.	101
Mercedes	SD/SE Series.	107
Mercedes	300TE 4WD	126
Mazda	929	146
Mercedes	300TE	156
Acura	Legend 2D	165
Mercedes	300E 4WD	170
BMW	735/750iL	212
Vans, Pickups and Utility Vehicles:		
Cargo Vans and Large Passenger Vans:		
GMC	Rally Wagon 2500.	39
Dodge	B150 Cargo Van.	51
Chevrolet	Chevyvan 30	56
GMC	Vandura 2500.	57
Chevrolet	Astro Cargo Van.	58
Chevrolet	Astro Car. Van 4x4.	59
Chevrolet	Sportvan 20	61
GMC	Vandura 3500.	61
Dodge	B350	82
Dodge	B150	46
Dodge	B250	56
Chevrolet	Chevyvan 10	56
Dodge	B250 Cargo Van.	58
Chevrolet	Chevyvan 20	56
Ford	E–150 Econoline.	59
Dodge	B350 Cargo Van.	61
GMC	Safari Cargo Van.	64
Ford	Aerostar Car. Van.	115
Pickups:		
Small Pickups:		
Dodge	Dakota Series.	69
GMC	T15 Series 4x4.	73
Chevrolet	T10 Series 4x4.	79
Mazda	Reg./Ext Cab 4x4.	80
Ford	Ranger Series.	84
GMC	S15 Series	85
Mitsubishi	Standard Bed 4x4.	90
Ford	Ranger Series 4x4.	94
Dodge	Ram 50 Series.	98
Dodge	Ram 50 Ser. 4x4.	103
Isuzu	Reg./Ext Cab 4x4.	72
Jeep	Comanche	78
Mazda	Regular/Ext Cab.	79
Dodge	Dakota Series 4x4.	81
Jeep	Comanche 4x4.	84
Chevrolet	S10 Series	88
Nissan	Regular/Ext Cab.	94
Mitsubishi	Regular/Ext Cab.	95
Toyota	Regular/Ext Cab.	102
Isuzu	Regular/Ext Cab.	109
Standard Pickups:		
GMC	3500 Series 4x4.	49
GMC	2500 Series	54
Chevrolet	2500 Series 4x4.	57
Ford	F–150 Series	61
GMC	1500 Series 4x4.	65
GMC	1500 Series	67
Ford	F–250 Series	69
Ford	F–250 Series 4x4.	70
Dodge	D150 Series	73
Dodge	D250 Series	78
Chevrolet	3500 Series	84
Nissan	Reg./Ext Cab 4x4.	96
Dodge	D350 Series	121
GMC	3500 Series	51
Chevrolet	3500 Series 4x4.	56
Ford	F–350 Series	59
GMC	2500 Series 4x4.	65
Chevrolet	1500 Series 4x4.	66
Chevrolet	1500 Series	67
Ford	F–150 Series 4x4.	70
Chevrolet	2500 Series	71
Dodge	W150 Series 4x4.	75
Ford	F–350 Series 4x4.	82
Dodge	W250 Series 4x4.	91
Toyota	Reg./Ext Cab 4x4.	112
Dodge	W350 Series 4x4.	157
Utility Vehicles:		
Small Utility Vehicles:		
Daihatsu	Rocky Soft Top.	72
Daihatsu	Rocky Hard Top.	75
Suzuki	Samurai	91
Isuzu	Amigo	101
Isuzu	Amigo 4x4	106
Geo	Tracker 4x4	128
Suzuki	Samurai 4x4	72
Jeep	Wrangler	75
Suzuki	Sidekick 2D 4x4.	93
Suzuki	Sidekick 4D 4x4.	102

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Geo	Tracker	117
Intermediate Utility Vehicles:		
Chevrolet	K10 Blazer 4x4.	51
Ford	Explorer 4D 4x4.	58
Ford	Explorer 2D 4x4.	67
GMC	Jimmy 4D 4x4.	71
Jeep	Cherokee 4D 4x4.	77
GMC	Jimmy 2D 4x4.	79
Chevrolet	Blazer 4D 4x4.	82
Jeep	Cherokee 2D 4x4.	84
GMC	Jimmy 2D 4x4.	89
Chevrolet	Blazer 2D 4x4.	91
Isuzu	Rodeo 4D 4x4.	98
Nissan	Pthfndr 4D 4x4.	106
Toyota	4Runner 4D 4x4.	117
Isuzu	Rodeo 4D 4x4.	129
Toyota	Land Cruiser 4x4.	136
Land Rover	Range Rover 4x4.	248

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Dodge	Ramcharger 4x4.	58
Ford	Explorer 4D 4x4.	65
Ford	Bronco 4x4.	69
GMC	Jimmy 4D 4x4.	71
Ford	Explorer 2D 4x4.	79
Mazda	Navajo 2D 4x4.	81
Chevrolet	Blazer 4D 4x4.	82
Chevrolet	Blazer 2D 4x4.	86
Jeep	Cherokee 4D 4x4.	90
Oldsmobile	Bravada 4D 4x4.	94
Jeep	Cherokee 2D 4x4.	102
Dodge	Ramcharger 4x4.	107
Nissan	Pathfinder 4D.	125
Toyota	4Runner 2D 4x4.	134
Toyota	4Runner 4D 4x4.	140

COLLISION INSURANCE LOSSES 1990–92
PASSENGER CARS—Continued

Make	Model	Relative loss payment
Large Utility Vehicles:		
Chevrolet	Suburban 1500.	38
Chevrolet	Suburban 1500 4x4.	70

If you would like more details about the information in this table, or wish to obtain the complete Insurance Collision Report, please contact HLDI directly, at: Highway Loss Data Institute, 1005 North Glebe Road, Arlington, VA 22201, Tel: (703) 247–1600.

Authority: 15 U.S.C. 1941(e); delegation of authority at 49 CFR 1.50.

Issued on: March 18, 1993.

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 93–6660 Filed 3–23–93; 8:45 am]

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L
8
S
5
R
4
93
II

Reader Aids

Federal Register

Vol. 58, No. 55

Wednesday, March 24, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22
15415–15750.....23
15751–16102.....24

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12193 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12800 (See DOL final rule of March 15).....15402
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12836 (See DOL final rule of March 15).....15402
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13189
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413
6537.....15751
6538.....15753

Administrative Orders:
Presidential Determinations:
No. 93–15 of February 27, 1993.....13183
Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
307.....12145
432.....13191
532.....12146, 13193, 13194, 15415
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332, 15416, 15775
1421.....14495
1427.....12332, 15261, 15755
1434.....14495
1464.....11960
1493.....11786, 13684, 15901
1703.....13194
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071, 15417
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130
58.....13130
59.....13130
61.....13130
68.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634

1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174, 15901
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
26.....15810
50.....12339
50.....15303
60.....12342
110.....14344
810.....13427, 15441
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
614.....11792
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
108.....15756
121.....12334

14 CFR

25.....12537
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515, 15757, 15758, 15760
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264, 15762, 15763
93.....12128
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450, 15813
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118
121.....15730
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

4.....15763
5.....15763
305.....15086
1030.....12335

Proposed Rules:

305.....12818
308.....13370
1204.....15815

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
240.....11804, 11806
250.....13719
259.....13719

18 CFR

2.....15418
11.....15765
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

Ch. I.....15816
284.....14530, 15311

19 CFR

4.....12538, 13195
19.....15770
111.....15770
112.....15770
122.....15770
146.....15770

20 CFR

Proposed Rules:

209.....11811
211.....11811
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

Ch. I.....15816
450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
215.....15773
234.....13534, 13950
236.....13007, 15773
240.....13534
570.....13686
582.....13884
583.....13870
700.....14509
813.....15773
882.....13828
905.....13916, 15773
913.....15773
968.....13916
3500.....13705

25 CFR

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274
52.....14517
602.....13409, 13413

Proposed Rules:

1.....14531, 15312, 15313, 15818, 15819
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964

Proposed Rules:

650.....11814

29 CFR

470.....15402
1910.....15089
2619.....13706
2676.....13707

Proposed Rules:

103.....15314
825.....13394
1910.....15526
2619.....15315
2676.....15315
2700.....12158

30 CFR

920.....15275

Proposed Rules:

56.....14492

57.....14492
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
935.....15315
938.....15456
950.....15318, 15319

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
988.....13007

33 CFR

1.....15228, 15901
100.....13214
110.....12539
117.....12540, 15419, 15420, 15421
154.....13550
155.....13708
165.....14151, 15089, 15775

Proposed Rules:

117.....12568
165.....15821, 15822

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
600.....13335, 15523
668.....14152
682.....13335

Proposed Rules:

50.....11924
232.....15748
649.....11928, 15824
674.....13356
682.....13356

36 CFR

Proposed Rules:

242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174

39 CFR

111.....13551

Proposed Rules:

3001.....12198

40 CFR

50.....13008, 15278, 15281, 15282
52.....11967, 14153, 15277, 15422, 15431
55.....14157
72.....15634
73.....15634
75.....15634
80.....13413, 14476, 16002
81.....12541, 15422, 15776
86.....13413, 15781
88.....11888
180.....14314, 14316, 15802, 15803, 15804, 16094
261.....15284
268.....14317
271.....12174, 14319, 14321, 15806
300.....12142, 15287
435.....12454
712.....13556
716.....13556
761.....15435, 15808
763.....15808

Proposed Rules:

Ch. 1.....12199, 12352, 13571, 13730
51.....13836
52.....12006, 12913, 12914, 13230, 13572, 13575, 14194, 15824
61.....15457
68.....13174
69.....13579
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
180.....12199, 12200, 13234, 13236, 13238, 13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
761.....12352, 13128

41 CFR

Ch. 301.....12890
301–7.....12890
302–11.....15436

43 CFR

Public Land Orders:

86.....11816
6958.....11968
6959.....14323

Proposed Rules:

3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11968, 14159
65.....14323, 15091
67.....14325

Proposed Rules:

67.....14350

45 CFR

400.....11793
1303.....13019
1611.....12335

46 CFR

10.....15228, 15901
12.....15228, 15901
15.....13360
25.....13364
552.....13414

Proposed Rules:

31.....15740
32.....15740
67.....12352

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795
5.....14328
13.....12632
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
73.....12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440
74.....11795
76.....11970, 11972
90.....12176, 12177

Proposed Rules:

Ch. I.....12915, 13041, 14367, 15120, 15461
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535
61.....13435
64.....12204, 13435, 14371
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436, 13437, 15321, 15461, 15462
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140

49 CFR

1.....12543
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463
582.....12545
591.....12905
1007.....15290

Proposed Rules:

23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316
180.....12316
195.....12213
571.....12921, 13042, 13243, 13424, 15132
Ch. VI.....15816
613.....12064, 12084
614.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853, 12864, 14169, 14248, 14330
20.....15093
611.....14170
625.....13560
641.....13560
646.....11979
652.....14340
663.....11984
672.....11985, 11986, 13214, 13561
674.....12336
675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291
685.....14170

Proposed Rules:

17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541, 15828
100.....14350
625.....12017, 15463
641.....12018, 15132
646.....13732
663.....14543, 14549

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S. 400/P.L. 103–7

Aircraft Equipment Settlement Leases Act of 1993. (Mar. 17, 1993; 107 Stat. 36; 1 page)

Last List March 11, 1993

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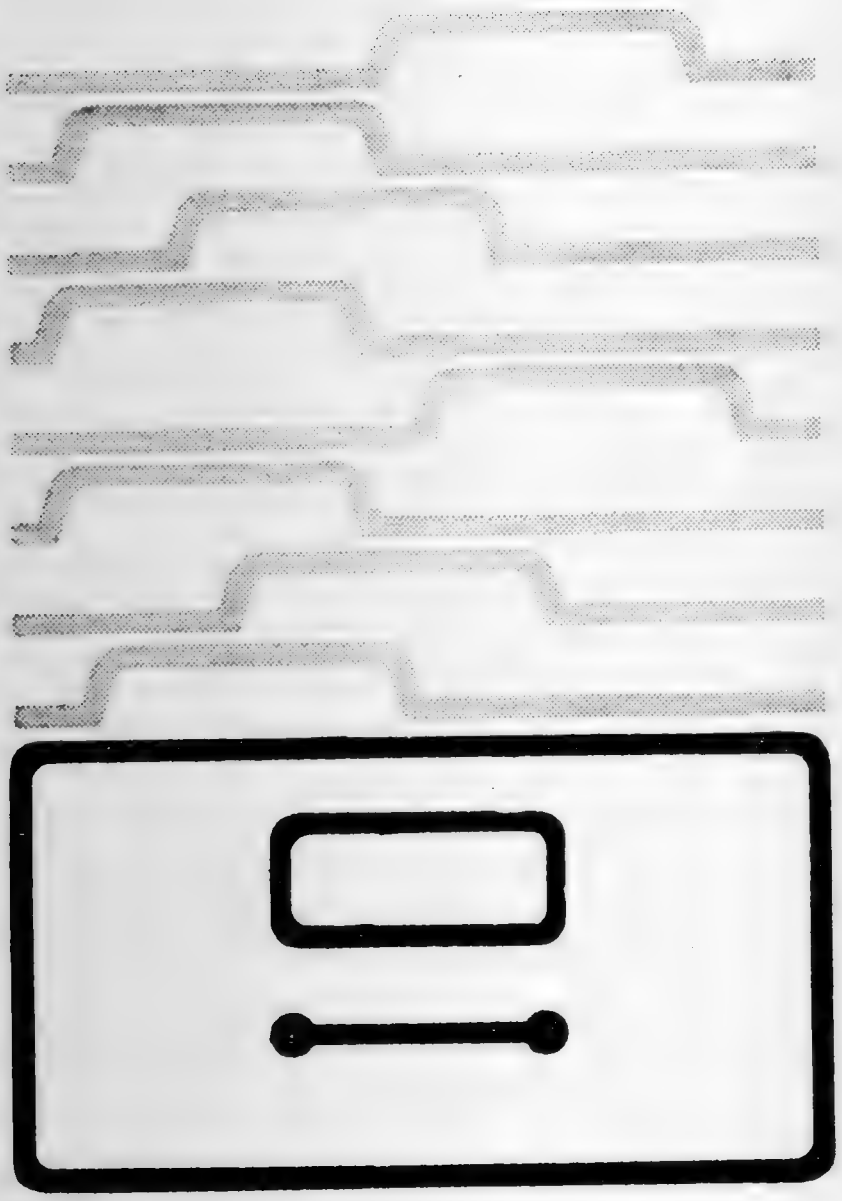

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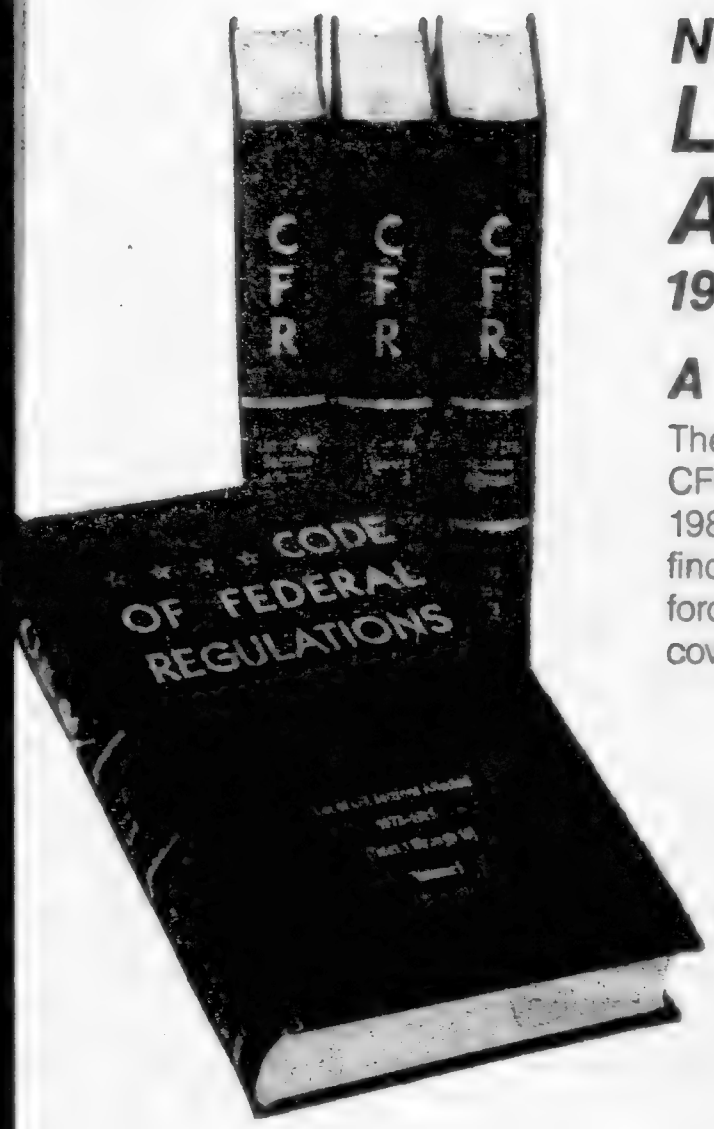

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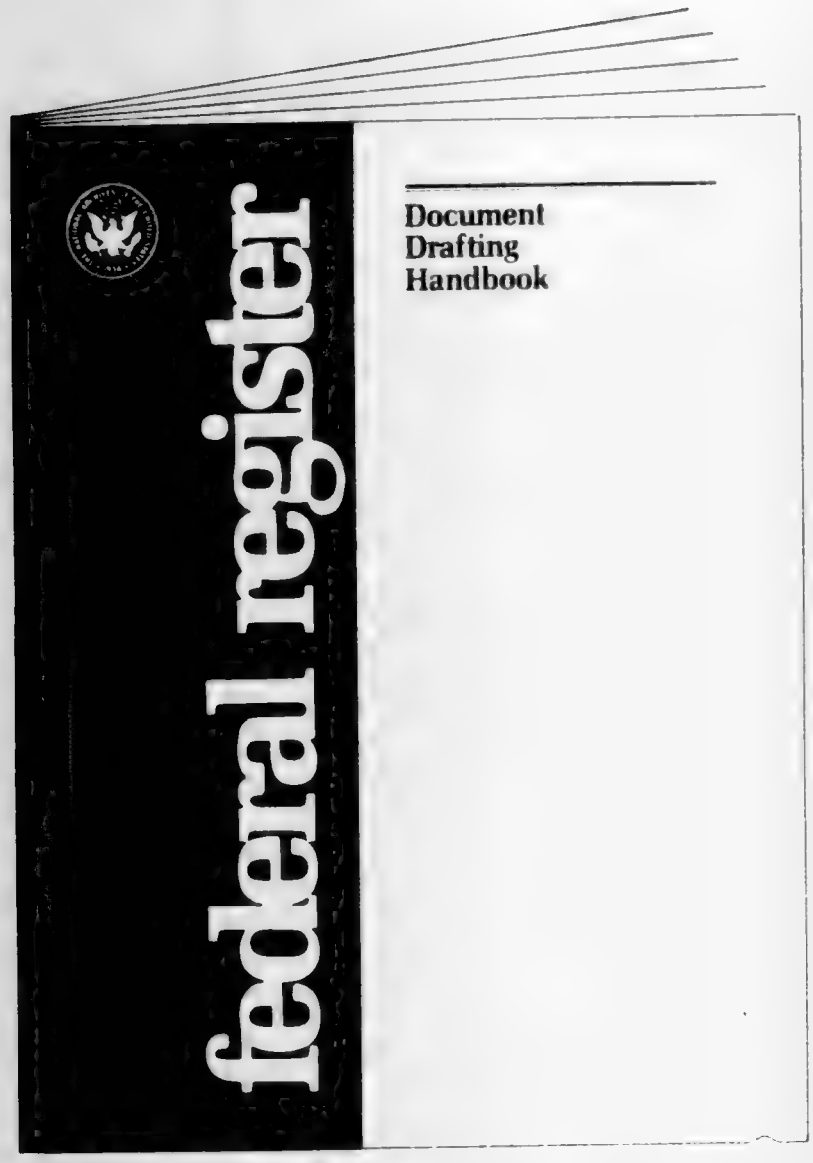

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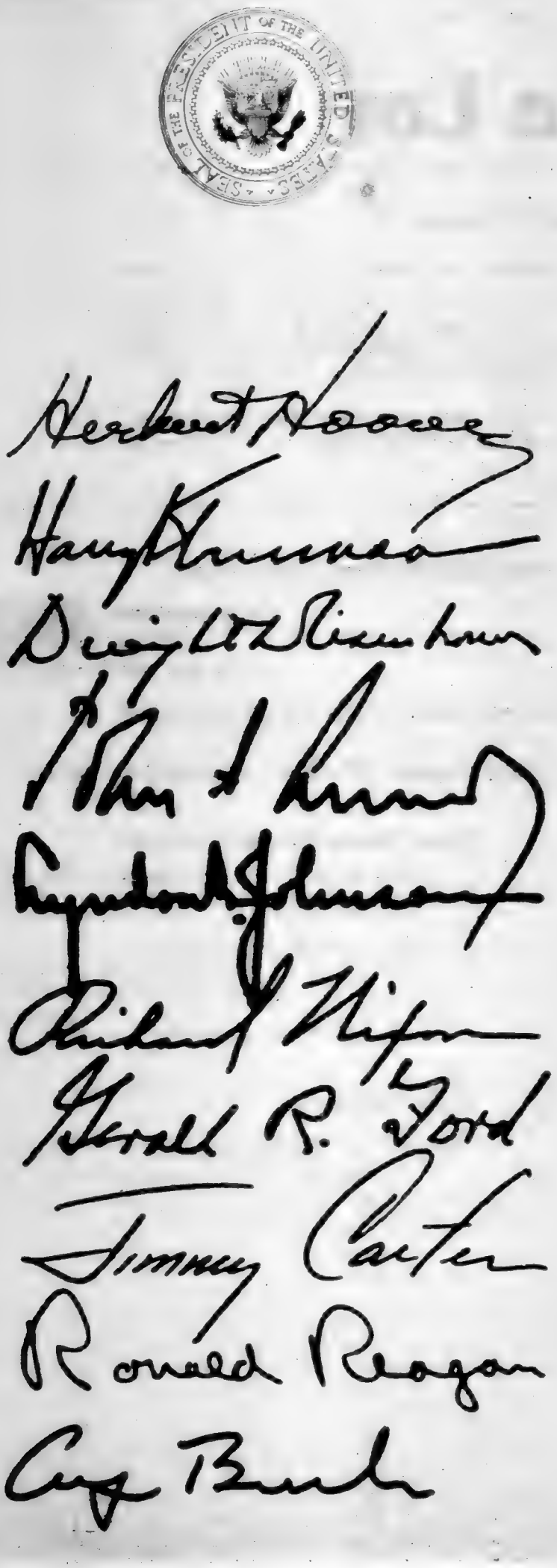

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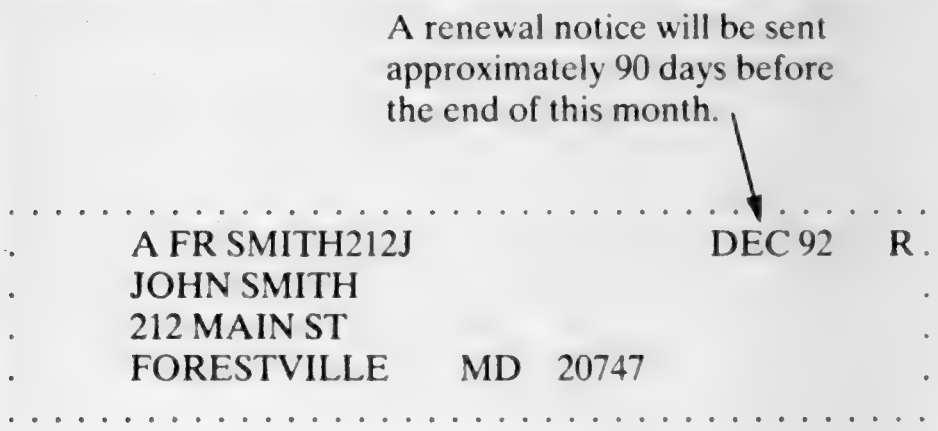

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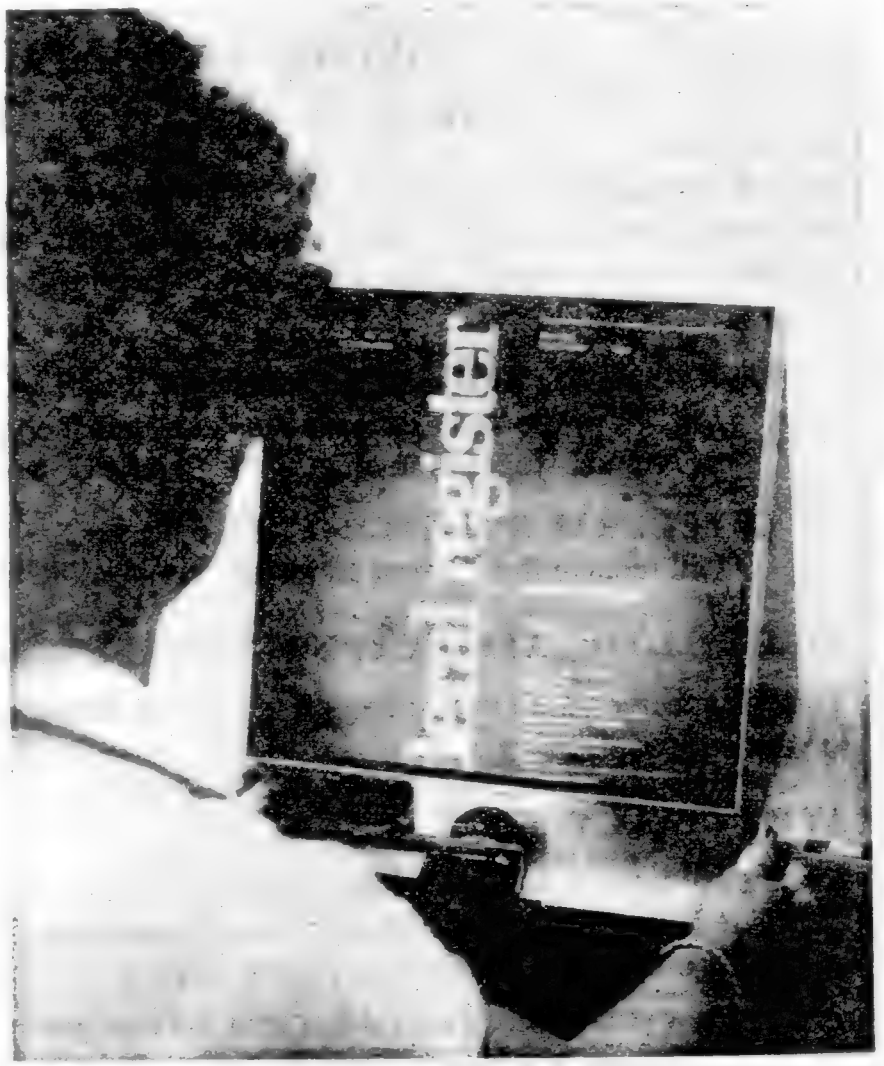

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Contents

Federal Register

Vol 58, No. 56

Thursday, March 25, 1993

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Chemical sensitivity and low level chemical exposure, 16196

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Perten Instruments North America, Inc., 16169

Agriculture Department
See Agricultural Research Service
See Commodity Credit Corporation
See Foreign Agricultural Service
See Forest Service
See Rural Electrification Administration
See Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 16169

Army Department
See Engineers Corps

Census Bureau
NOTICES
Design alternatives, 2000 Census; assessment criteria, 16171

Coast Guard
RULES
Drawbridge operations:
Virginia, 16122
Regattas and marine parades:
Blessing of the Fleet, 16121

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Technical Information Service
See National Telecommunications and Information Administration
See Technology Administration

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Sugar and crystalline fructose; marketing allotments (1992-1996 FYs), 16126

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange, Inc.—
Canadian dollar, etc.; rolling spot futures and options, 16177

Conservation and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 16191

Consumer Product Safety Commission
RULES
Consumer Product Safety Act:
Consumer product involved in death or grievous bodily injury; reporting requirements; interpretative rule, 16119

Defense Department
See Army Department
See Engineers Corps

Education Department
NOTICES
Agency information collection activities under OMB review, 16179

Energy Department
See Conservation and Renewable Energy Office
See Energy Information Administration
See Federal Energy Regulatory Commission
PROPOSED RULES
Radiation protection of public and environment, 16268
NOTICES
Grant and cooperative agreement awards:
University of—
Texas at Austin, 16179
USA-ROC Economic Council, 16179
Natural gas exportation and importation:
Phillips Alaska Natural Gas Corp. et al., 16191

Energy Information Administration
NOTICES
Meetings:
American Statistical Association Committee on Energy Statistics, 16180

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Portugues Dam and Reservoir, Rio Portugues, PR, 16178
Subcontractor claims; Aircraft Maintenance Management Facility, Eielson Air Force Base, AK, 16178

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Farm Credit Administration
RULES
Farm credit system:
Administrative expenses; assessment and apportionment, 16104

Federal Aviation Administration
RULES
Airworthiness directives:
ACS Products Co. et al., 16109

Airbus Industrie, 16110
Allied-Signal Aerospace Co., 16113
Boeing, 16107, 16115
McDonnell Douglas, 16105
Piper, 16109, 16118
PROPOSED RULES
Airworthiness directives:
Beech, 16137

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Allowance for funds used during construction; accounting and ratemaking treatment, 16163
NOTICES
Agency information collection activities under OMB review, 16191
Public safety radio communications plans:
North Dakota, 16192
South Carolina, 16192

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 16265

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 16265

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 16180
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—Texas Railroad Commission, 16189
Applications, hearings, determinations, etc.:
Consolidated Water Power Co., 16189
Energy Alternatives of North America, 16190
Florida Gas Transmission Co., 16190
Ozark Gas Transmission System, 16190
Transcontinental Gas Pipe Line Corp., 16190

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Bradford County, PA, 16259
Kitsap County, WA, 16258

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Unicom Management Services (Cyprus) Ltd. et al., 16192
Freight forwarder licenses:
Ask International, Inc., et al., 16192

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bank Corp. of Georgia et al., 16193
Creditanstalt-Bankverein et al., 16193
Guaranty Financial, M.H.C., 16194
Middletown Savings Bank Employee Stock Ownership Trust et al., 16195
Norwest Corp., 16195

Federal Trade Commission
PROPOSED RULES
Nursery industry guides; proposed revisions, 16139

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Pamakani, 16164
NOTICES
Meetings:
Klamath Fishery Management Council, 16202

Foreign Agricultural Service
RULES
Perishable products from Andean countries; duty-free imports, emergency relief, 16103

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas, 16173

Forest Service
NOTICES
Environmental statements; availability, etc.:
Boise National Forest, ID, 16169
Santa Fe National Forest, NM, 16170

General Services Administration
NOTICES
Environmental statements; availability, etc.:
National Oceanic and Atmospheric Administration; Federal Building, Boulder, CO, 16195
Interagency Committee for Medical Records (ICMR); medical standard forms cancellation, 16195
Multiple Award Federal Supply Schedule Program:
Facsimile paper, 16196

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Emergency medical services for children; demonstration program, 16196

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability etc.:
Emergency medical services for children; demonstration program, 16196

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
El Rancho Substation Project, Santa Fe County, NM, 16336
Indian tribes, acknowledgement of existence determinations, etc.:
Chicora-Siouan-Indian-People, 16338
Liquor and tobacco sale or distribution ordinance:
Flandreau Santee Sioux Tribe, SD, 16330

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Steel wire rope from—
Mexico, 16173
Countervailing duties:
Ball bearings and parts from Thailand, 16174
Applications, hearings, determinations, etc.:
Rutgers University, 16176

International Trade Commission
NOTICES
Import investigations:
Anti-theft deactivatable resonant tags and components, 16202
Circuit board testers, 16202
Cutting tools for flexible plastic conduit and components, 16203
Erasable programmable read only memories, components, products containing memories, and processes for making memories, 16203
In-line roller skates with ventilated boots and with axle aperture plugs and component parts, 16204
Integrated circuit telecommunication chips and products containing same, including dialing apparatus, 16205
Portable electric typewriters from—
Singapore, 16205
Steel wire rope from—
Korea et al., 16206

Interstate Commerce Commission
RULES
Motor carriers:
Interpretations and routing regulations; incidental for-hire transportation
Correction, 16124
NOTICES
Railroad operation, acquisition, construction, etc.:
Colorado & Wyoming Railway Co., 16207
Genesee & Wyoming Industries, Inc., 16207

Land Management Bureau
NOTICES
Closure of public lands:
Colorado, 16197
Environmental statements; availability, etc.:
Safford District, AZ, 16197
Meetings:
San Pedro Riparian National Conservation Area Advisory Committee, 16198
Motor vehicle use restrictions:
Idaho, 16201
Oil and gas leases:
Colorado, 16198
Realty actions; sales, leases, etc.:
California, 16198
Nevada, 16199
Oregon, 16200
Withdrawal and reservation of lands:
Arizona, 16201
Idaho, 16201

Management and Budget Office
NOTICES
Agency information collection activities under OMB review, 16248
Budget rescissions and deferrals, 16324

Mississippi River Commission
NOTICES
Meetings; Sunshine Act, 16265

National Commission on Manufactured Housing
NOTICES
Meetings, 16208

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Suzuki Motor Corp., 16259

National Institute for Literacy
NOTICES
Meetings; correction, 16208

National Institutes of Health
NOTICES
Meetings:
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 16196
National Institute of Diabetes and Digestive and Kidney Diseases, 16197

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Pacific Coast groundfish; correction, 16124
NOTICES
Meetings:
Carribbean Fishery Management Council, 16176
Mid-Atlantic Fishery Management Council, 16176
Pacific Fishery Management Council, 16176

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Special Emphasis Panel, 16208
Biochemistry and Molecular Structure and Function Advisory Panel, 16207
Biological and Critical Systems Special Emphasis Panel, 16209, 16212
Cell Biology Advisory Panel, 16209
Chemical and Thermal Systems Special Emphasis Panel, 16209, 16210
Cross-Disciplinary Activities Special Emphasis Panel, 16210
Cultural Anthropology Advisory Panel, 16210
DOE/NSF Nuclear Science Advisory Committee, 16210
Engineering Education and Centers Special Emphasis Panel, 16210
Federal Network Council Advisory Committee, 16211
Information, Robotics and Intelligent Systems Special Emphasis Panel, 16211
Materials Research Special Emphasis Panel, 16211
Molecular and Cellular Biosciences Special Emphasis Panel, 16211
Networking and Communications Research and Infrastructure Special Emphasis Panel, 16212
Neuroscience Advisory Panel, 16212
Physical Anthropology Advisory Panel, 16212
Physiology and Behavior Advisory Panel, 16212
Social and Economic Sciences Special Emphasis Panel, 16213
Sociology Advisory Panel, 16213
Systematic Biology Advisory Panel, 16213

National Technical Information Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Kyowa Pharmaceutical, Inc., 16177

National Telecommunications and Information Administration
NOTICES
Telecommunications role in hate crime study; report, 16340

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 16214
Meetings:
Reactor Safeguards Advisory Committee et al.
Proposed schedule, 16214
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 16215
Applications, hearings, determinations, etc.:
Gulf States Utilities, 16246
Union Electric Co., 16247

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

President's Commission on Model State Drug Laws
NOTICES
Hearings, 16249

President's Task Force on National Health Care Reform
NOTICES
Hearings, 16264

Public Health Service
See National Institutes of Health

Railroad Retirement Board
PROPOSED RULES
Railroad Retirement Act:
Social security overall minimum guarantee, 16155

Research and Special Programs Administration
NOTICES
Form 41 financial schedules; voluntary automated reporting on diskette or magnetic tape cartridge, 16260

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Palmetto Electric Cooperative, Inc., 16170

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
Open-end management; off-the-page prospectuses, 16141
Securities:
Broker-dealers compliance with self-regulatory organization qualification standards, 16151
NOTICES
Meetings; Sunshine Act, 16266
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 16249
Participants Trust Co., 16253
Applications, hearings, determinations, etc.:
Public utility holding company filings, 16254

Small Business Administration
NOTICES
Disaster loan areas:
Florida et al., 16255
Applications, hearings, determinations, etc.:
Center City Mesbic, Inc., 16256

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Muddy Fork of Silver Creek Watershed, IN, 16170

State Department
NOTICES
Meetings:
Inter-American Tropical Tuna Commission, United States Section Advisory Committee, 16256
Shipping Coordinating Committee, 16257

Technology Administration
NOTICES
Meetings:
National Medal of Technology Nomination Evaluation Committee, 16171

Tennessee Valley Authority
NOTICES
Agency information collection activities under OMB review, 16257

Trade Representative, Office of United States
NOTICES
European Community:
Products and services from Member States; contract award prohibition, 16249

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Aviation Sales, Inc., 16258

Treasury Department
NOTICES
Agency information collection activities under OMB review, 16263
Organization, functions, and authority delegations:
Commissioner of Public Debt, 16264

Separate Parts In This Issue

Part II
Department of Energy, 16268

Part III
Management and Budget Office, 16324

Part IV
Department of the Interior, Bureau of Indian Affairs, 16330

Part V
Department of the Interior, Bureau of Indian Affairs, 16336

Part VI
Department of the Interior, Bureau of Indian Affairs, 16338

Part VII
Department of Commerce, National Telecommunications and Information Administration, 16340

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1540.....16103
Proposed Rules:
1435.....16126

10 CFR
Proposed Rules:
834.....16268

12 CFR
607.....16104
618.....16104

14 CFR
39 (7 documents).....16105, 16107, 16109, 16110, 16113, 16115, 16118
Proposed Rules:
39.....16137

16 CFR
1116.....16119
Proposed Rules:
18.....16139

17 CFR
Proposed Rules:
230.....16141
239.....16141
240.....16151
274.....16141

20 CFR
Proposed Rules:
229.....16155

33 CFR
100.....16121
117.....16122

47 CFR
Proposed Rules:
32.....16163
65.....16163

49 CFR
1004.....16124

50 CFR
663.....16124
Proposed Rules:
17.....16164

Rules and Regulations

Federal Register
Vol. 58, No. 56
Thursday, March 25, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1540

Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The interim rule establishes the procedure by which an entity representative of a U.S. industry producing perishable products can submit a request to the United States Department of Agriculture (USDA) for emergency relief from increased, injurious imports of like perishable products entering the United States duty-free from beneficiary countries under the Andean Trade Preference Act.

DATES: Interim rule effective March 25, 1993. Comments must be received on or before April 26, 1993.

ADDRESSES: Mail comments to Director, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, room 5531, South Building, 14th and Independence Avenue SW., Washington, DC 20205. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Diane Wanamaker, Group Leader for Import Policies, Import Policies and Trade Analysis Division, U.S. Department of Agriculture, Washington, DC 20250. Tel: (202) 720–1330.

SUPPLEMENTARY INFORMATION:

Background

The Andean Trade Preference Act, title II of Public Law 102–182, 105 Stat. 1236 (19 U.S.C. 3201 *et seq.*) (the "Act") provides for duty-free treatment for imports of eligible articles from beneficiary countries designated by Presidential Proclamation. The countries eligible for designation are Bolivia, Ecuador, Colombia, and Peru.

Section 204(e) of the Act provides, in part, that if a petition is filed with the United States International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974, as amended, regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted by the President.

Under the interim rule, a U.S. entity seeking emergency relief would submit a request to the Administrator, Foreign Agricultural Service, USDA, providing such information as is necessary to permit the Secretary of Agriculture to make a determination whether to recommend to the President to take emergency action. The request should identify the perishable product concerned and its country of origin; show that increased imports of such perishable product are the substantial cause of serious injury, or the threat of serious injury, to the domestic industry producing a perishable product like or directly competitive with the imported product; and provide a statement indicating why emergency action would be warranted.

The public is invited to submit comments and suggestions regarding the interim rule to the above address. Each person submitting comments and suggestions regarding the interim rule should include his/her name and address and should give reasons for suggested changes.

Regulatory Requirements

This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major" since the interim rule, if made final, would not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete in domestic or export markets.

The Administrator, Foreign Agricultural Service, USDA, certifies that this interim rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Its effect is to provide to a U.S. industry producing perishable products the opportunity to seek interim relief from imports during such time as its request under section 201 of the Trade Act of 1974, as amended, is under consideration by the United States International Trade Commission. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The public is invited to comment on the impact of this proposed rule on small entities.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials.

List of Subjects in 7 CFR Part 1540

Agricultural commodities, Imports, International agricultural trade.

In accordance with the above, 7 CFR chapter XV is amended by adding the following new subpart C-Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries to part 1540—International Agricultural Trade which reads as follows:

PART 1540—INTERNATIONAL AGRICULTURAL TRADE

Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

Sec.
1540.40 Applicability of subpart.
1540.41 Definitions.
1540.42 Who may file request.
1540.43 Contents of request.
1540.44 Submission of recommendations by the Secretary of Agriculture.
1540.45 Information.

Authority: Title II, sec. 204(e), Pub. L. 102–182, 105 Stat. 1239 (19 U.S.C. 3203(e)); 5 U.S.C. 301.

Cross Reference: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

§ 1540.40 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 204(e) of the Andean Trade Preference Act, title II of Public Law 102–182, 105 Stat. 1236 (19 U.S.C. 3201 *et seq.*) (the "Act").

§ 1540.41 Definitions.

(a) *Perishable product* means:

(1) Live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule (HTS);

(2) Fresh or chilled vegetables provided in heading 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(3) Fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(4) Concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(b) *Beneficiary country* means any country listed in subsection 203(b)(1) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.42 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group of workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.43 Contents of request.

(a) A request for emergency action under section 204(e) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(1) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(2) The beneficiary country(ies) of origin of the allegedly injurious imports;

(3) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(4) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(5) A statement indicating why emergency action would be warranted under section 204(e) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of duty-free treatment accorded under the Act).

(b) A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1505.44 Submission of recommendations by the Secretary of Agriculture.

If the Secretary has reason to believe that the perishable product(s) which is the subject of a petition under § 1504.43 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.43 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary within 14 days after the filing of the petition shall publish a notice of such determination and so advise the petitioner.

§ 1540.45 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 204(e) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Issued at Washington, DC this 19th day of March, 1993.

Charles J. O'Mara,

Acting Under Secretary, International Affairs and Commodity Programs.

[FR Doc. 93–6862 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 607 and 618

RIN 3052–AB19

Assessment and Apportionment of Administrative Expenses; General Provisions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 607 and 618 on February 23, 1993 (58 FR 10939). The final regulation amends 12 CFR parts 607 and 618 to prescribe the method by which the assessments that are required to pay the FCA's annual administrative expenses are apportioned among and paid by Farm Credit System institutions and other entities that are required to pay such expenses. In accordance with 12 U.S.C. 2252, the effective date of the

final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 25, 1993.

EFFECTIVE DATE: The regulation amending 12 CFR parts 607 and 618, published on February 23, 1993 (58 FR 10939) is effective March 25, 1993.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498,

or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: March 22, 1993.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 93–6852 Filed 3–24–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–162–AD; Amendment 39–8512; AD 93–05–07]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that requires a one-time visual inspection to determine if proper clearance exists between the overwing emergency exit door liners and adjacent sidewall linings, and adjustment or modification, if necessary. This amendment is prompted by an investigation conducted by the manufacturer, which revealed that insufficient clearances could exist to create a potential riding condition between the overwing emergency exit door liner and the adjacent sidewall lining. The actions specified by this AD are intended to prevent such a riding condition, which could hinder the opening of the overwing emergency exit door in an emergency situation.

DATES: Effective April 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Los Angeles ACO, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes was published in the **Federal Register** on October 16, 1992 (57 FR 47414). That action proposed to require a one-time visual inspection to determine if proper clearance exists between the overwing emergency exit door liners and adjacent sidewall linings, and adjustment or modification, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the rule as proposed.

Two commenters request that the FAA withdraw the proposed AD. These commenters note that there is an established procedure in the McDonnell Douglas Model MD–80 Maintenance Manual, Chapters 52–21–00 and 52–21–01, which describes procedures for functional testing and adjustment to the overwing exit doors. The commenters further note that any obstruction or interference will be corrected during routine maintenance. During regularly scheduled "heavy C" checks, the entire set of sidewall panels, including the exit door lining, are removed and reinstalled. One commenter notes that it has already inspected its Model DC–9–80 series airplanes and has determined that the lining panels have been correctly installed. In addition, the commenter notes that inspection and adjustment or modification of the sidewall lining panels is a very elementary and logical procedure. The FAA does not concur with the request to withdraw this AD. The FAA notes that the functional testing and adjustment of the overwing emergency exit doors, conducted during regularly scheduled "heavy C" checks, and as recommended by the McDonnell Douglas MD–80 Maintenance Manual, are similar to the inspections required by this final rule; however, all operators may not have yet accomplished these maintenance procedures nor will they within the compliance time of this AD. The FAA notes that the McDonnell Douglas Model MD–80 Maintenance Manual describes procedures for checking:

(1) The exit door seal for wear and installation, (2) the jamb for nicks and burrs, (3) lock pins for alignment, and (4) the exterior door skin and fuselage outer skin for gaps. This portion of the maintenance manual does not, however, describe procedures for checking interference between the overwing emergency exit door and the interior sidewall panels. The FAA asserts that the purpose of this final rule is to correct a potential riding condition between the overwing emergency exit door liner and the adjacent interior sidewall lining. The FAA notes that McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992, which is the service document specified in the proposal, describes procedures for conducting a one-time visual inspection to determine if proper clearance exists between the overwing emergency exit door liners and adjacent sidewall linings. The FAA has determined that this procedure is the appropriate action that must be taken on all affected airplanes in order to ensure continued safety. The appropriate vehicle for mandating such action to correct the identified unsafe condition is the airworthiness directive.

Two commenters request that the compliance time for inspection of the overwing emergency exit doors be extended from the proposed 180 days. One commenter notes that the proposed compliance time is not realistic because of the possibility of necessary alteration and parts requirements if the measured

clearance is found to be below the prescribed limits. Another commenter states that since the necessary part is available only from McDonnell Douglas, it is unlikely that sufficient quantities can be made available to operators to meet the proposed compliance schedule. The commenter suggests that it would be more reasonable to require only the clearance check within the 180 day compliance time, and allow a longer compliance time to make required corrections. The FAA does not concur that there is a problem with the availability of replacement parts. The manufacturer has advised the FAA that there is an adequate supply of replacement parts for modification of the U.S. fleet within the proposed compliance time.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,004 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 556 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,580, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–07 McDonnell Douglas: Amendment 39–8512. Docket 92–NM–162–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a riding condition between the overwing emergency exit door liner and the adjacent sidewall lining, which could hinder the opening of the overwing emergency exit door in an emergency situation, accomplish the following:

(a) Within 180 days after the effective date of this AD, conduct a one-time visual inspection of the overwing emergency exit door to determine whether the door can be opened without restriction, in accordance with McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992. If the door can be opened without restrictions, no further action is required by this AD action.

(b) If the door cannot be opened without restrictions, prior to further flight, inspect for sufficient clearance between the door liner and the adjacent passenger sidewall lining panels, in accordance with McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992. If clearance is within the limits specified in the service bulletin, no further action is required.

(c) If clearance is not within the limits specified in the service bulletin, prior to further flight, adjust the passenger sidewall lining panels and verify the clearance, in accordance with McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992. If clearance is obtained by adjusting the passenger compartment sidewall lining, no further action is required.

(d) If clearance cannot be obtained by adjusting the passenger compartment sidewall lining, prior to further flight, adjust the door liner as shown in Figure 2 of McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992, to obtain proper clearance. If clearance is obtained by adjusting the door liner, no further action is required.

(e) If clearance cannot be obtained by adjusting the door liner, prior to further flight, modify the door installation in accordance with Figure 3 of McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992.

(f) Within 60 days after accomplishing the requirements of this AD, submit a report of all inspection results that indicate restricted opening of the overwing emergency exit door to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. The report must include a description of the discrepancy and the airplane's serial number. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, adjustments, and modification shall be done in accordance with McDonnell Douglas Alert Service Bulletin A52–178, dated July 10, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 8, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6894 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–146–AD; Amendment 39–8513; AD 93–05–08]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, that requires examination of the smoke detectors in the cargo compartment and equipment cooling systems to determine if the correct caution decal is installed, and replacement of the caution decal, if necessary. This amendment also requires inspection of smoke detectors with incorrect decals for the installation of proper smoke detector lamps. This amendment is prompted by reports of incorrectly installed caution decals on the equipment cooling and cargo compartment smoke detectors. The actions specified by this AD are intended to prevent a reduction in sensitivity of the smoke detector to a level that would make it incapable of detecting smoke.

DATES: Effective April 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or from Autronics Corporation, 314 East Live Oak Avenue, Arcadia, California 91006–5617. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton R. Morris, Aerospace Engineer, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2794; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on August 27, 1992 (57 FR 38788). That action proposed to require an examination of the smoke detectors in the cargo compartment and equipment cooling systems to determine if the correct caution decal is installed, and replacement of the caution decal, if necessary. That action also proposed to require inspection for the installation of proper smoke detector lamps.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that the compliance time for inspection of the smoke detectors be reduced from the proposed 24 months because the inspection is not difficult and affects an emergency system. The FAA does not concur with the need for a shorter compliance time. The proposed compliance time of 24 months was determined to be appropriate in consideration of the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of replacement caution decals.

One commenter notes that a clarification is needed in the Summary section of the preamble to the notice regarding an inspection requirement. The commenter requests that the phrase, "inspection for the installation of proper smoke detector lamps," be revised to clarify that only smoke detectors with incorrect decals are required to be inspected for the installation of proper smoke detector lamps. The FAA concurs and the final rule has been changed accordingly.

Several commenters request that proposed paragraph (a) be revised so that inspection of the cargo smoke detectors can be accomplished in accordance with Autronics Service Bulletin 2156204–26–01, dated April 14, 1986, as well as Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992. One commenter notes that the only difference between these two Autronics service bulletins is that the later service bulletin specifies that the smoke detectors are to be marked after inspection. One commenter states that because accomplishment of Autronics Service Bulletin 2156204–26–01, dated April 14, 1986, was required by AD 86–07–09, Amendment 39–5280 (51 FR 11708, April 7, 1986), as amended by AD 86–07–09 R1, Amendment 39–5309 (51 FR 17323, May 12, 1986), operators should not be required to recheck previously inspected units. One commenter also notes that its fleet of Model 767 series airplanes was inspected as required by AD 86–07–09, and that it found no smoke detector with an incorrectly installed caution placard. The FAA does not concur with the commenters' request to allow inspection of the cargo smoke detectors in accordance with Autronics Service Bulletin 2156204–26–01, dated April 14, 1986. It is true that the requirements of AD 86–07–09 R1 (replacement of lamps installed in smoke detectors located in the cargo compartment, and installation of caution decals) are required to be accomplished in accordance with Autronics Service Bulletin 2156204–26–01, dated April 14, 1986. However, since issuance of AD 86–07–09 R1, incorrect caution decals have been found on smoke detectors of airplanes affected by that AD; therefore, the subject unsafe condition still exists on certain Model 757 and 767 series airplanes. In order to best ensure that all of the incorrectly installed caution decals are detected, this final rule expands the inspection area to include the equipment cooling system; procedures for accomplishing this inspection are specified in Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992. (In addition, this final rule requires a functional test, which is neither specified in Autronics Service Bulletin 2156204–26–01, nor required by AD 86–07–09 R1.)

Several commenters request that the proposed rule require that the part number be changed to ensure that an airworthy part can be readily accounted for in the production records. One commenter notes that installing a placard as specified in Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992, will assist in physically distinguishing one part from another, but it does little to assist the operators in distinguishing parts within their production records. Further, the commenter asserts that the only distinguishing feature between an inspected part and an uninspected part is that the inspected part is marked in accordance with Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992. The commenters'

request a more positive method of identification than "marking" parts. The FAA does not concur that the part number should be changed following inspection of the smoke detectors. The FAA considers that a part number change is required only when there is a design change; the requirements of this AD do not incorporate a design change. In order to assist operators in distinguishing between a unit on which the inspection has been accomplished from those on which the inspection has not been accomplished, Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992, which is referenced in the proposal, specifies that the smoke detector cover is to be marked to indicate that inspection has been accomplished. Under the provisions of paragraph (d) of the final rule, the FAA may approve requests for an alternative method of compliance if sufficient justification is presented regarding a different positive means of identification of an approved part.

One commenter requests that proposed paragraph (a) be revised to include an option to replace a suspect smoke detector with one that has been previously inspected and that is in compliance with the specifications listed in Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992. The commenter states that a smoke detector inspected in the shop is equivalent to one inspected on the airplane. The commenter further asserts that replacement of the smoke detectors with a smoke detector that has been inspected previously in accordance with Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992, should constitute terminating action for replacing incorrect caution decals with correct caution decals. The commenter feels that this would reduce the cost impact of this AD. The FAA concurs in part. The rule has been changed by adding a new paragraph (c) to allow replacement of the smoke detector with a smoke detector that has been inspected previously in accordance with Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992. Such replacement would terminate the inspection as required by paragraph (a) of the final rule; however, such replacement does not terminate the requirement to perform the functional test of the smoke detector as required by paragraph (b) of the final rule.

Paragraph (a) of the final rule has been reformatted for clarification purposes.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 401 Model 757 and 408 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 Model 757 and 142 Model 767 series airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,845 ($41,415 for Model 757 series airplanes and $23,430 for Model 767 series airplanes), or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–08 Boeing: Amendment 39–8513. Docket 92–NM–146–AD.

Applicability: Model 757 series airplanes, as listed in Boeing Alert Service Bulletin 757–26A0028, Revision 1, dated April 23, 1992; and Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–26A0081, dated February 13, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced sensitivity of the smoke detector, accomplish the following:

(a) Within 24 months after the effective date of this AD, examine the smoke detectors in the cargo compartment and equipment cooling systems to determine if the correct caution decal is installed, in accordance with Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992.

(1) If the caution decal is incorrect, prior to further flight, apply a correct caution decal over the existing decal and inspect the lamp inside the smoke detector to determine its part number, in accordance with the Autronics Service Bulletin.

(2) If an incorrect lamp is installed, prior to further flight, replace it with one having the correct part number, in accordance with the Autronics Service Bulletin.

Note: Boeing Alert Service Bulletin 757–26A0028, Revision 1, dated April 23, 1992; and Boeing Alert Service Bulletin 767–26A0081, dated February 13, 1992; describe procedures for gaining access to the smoke detectors in the cargo compartment and equipment cooling systems.

(b) If it is necessary to remove any smoke detector during the inspection required by paragraph (a) of this AD, immediately after reinstalling the smoke detector, perform a functional test in accordance with Boeing Alert Service Bulletin 757–26A0028, Revision 1, dated April 23, 1992; or Boeing Alert Service Bulletin 767–26A0081, dated February 13, 1992; as applicable.

(c) Replacement of a smoke detector with a smoke detector that has been inspected previously in accordance with Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992, constitutes terminating action for the requirements of paragraph (a) of this AD, for that smoke detector. However, the functional test required by paragraph (b) of this AD must be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement requirements shall be done in accordance with Autronics Service Bulletin 2156204A–26–02, dated January 17, 1992. The functional test shall be done in accordance with Boeing Alert Service Bulletin 757–26A0028, Revision 1, dated April 23, 1992; or Boeing Alert Service Bulletin 767–26A0081, dated February 13, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or from Autronics Corporation, 314 East Live Oak Avenue, Arcadia, California 91006–5617. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 8, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6896 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–165–AD; Amendment 39–8511; AD 93–05–06]

Airworthiness Directives; ACS and Gerdes Ignition Switches, as Installed in, but not Limited to, Cessna, Piper, and Schweizer Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain ACS and Gerdes ignition switches, that requires repetitive inspections and lubrication of certain ignition switches, replacement of worn or corroded switches, and modification of the starter solenoid, if necessary. This amendment is prompted by numerous reports of ignition switch failures on various airplanes. The actions specified by this AD are intended to prevent the inability to control electrical power supply to the engine.

DATES: Effective April 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from ACS Products Company, P.O. Box 152, 1585 Copper Drive, Lake Havasu City, Arizona 86403–0008; or Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM–140L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5247; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain ACS and Gerdes ignition switches was published in the **Federal Register** on October 30, 1992 (57 FR 49154). That action proposed to require repetitive inspections and lubrication of certain ignition switches, replacement of worn or corroded switches, and modification of the starter solenoid.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that owners/operators of Piper Model PA–38 series airplanes on which ACS or Gerdes switches have been installed or retrofitted be permitted to refer to Piper Service Letter 909, dated June 9, 1981, as an alternative method of compliance with the requirements of this AD. The FAA does not concur. After review of the Piper service letter and the comments received, the FAA has determined that the procedures described in the service letter do not provide an equivalent level of safety since there is no provision for surge suppression.

One commenter notes that the applicability of the proposal incorrectly included Schweizer helicopters. The commenter states that the subject switches are not installed on Schweizer helicopters, but are installed on various models of Schweizer airplanes. The FAA concurs. The final rule has been revised accordingly.

This same commenter states that since some operators may have already installed a starter solenoid diode, paragraph (b) of the proposal should be revised to preclude these operators from having to re-install another diode as required by proposed paragraph (b). The FAA concurs. Paragraph (b) of the final rule has been revised to clarify that the FAA's intent was to require operators to initially verify whether a starter solenoid diode had been installed and to require the installation of a diode only if one had not been installed previously. Additionally, the economic analysis paragraph, below, has been revised to reflect this change.

Since issuance of the proposal, the FAA has verified the installation of these ignition switches on a specific model of Piper airplanes; therefore, the applicability in the final rule has been revised to specify switches installed in Piper Model PA–38–112 series airplanes. Further, the applicability of final rule has been revised to list the serial numbers of various models of Cessna airplanes affected by this AD.

A note has been added to paragraph (b) of the final rule to clarify procedures for installation of the diode in the starter solenoid.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 100,000 Cessna, Piper, and Schweizer airplanes of the affected design in the worldwide fleet. The FAA estimates that 67,000 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,527,500, or $82.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–06 ACS Products Company and Grades Products Company: Amendment 39–8511. Docket 92–NM–165–AD.

Applicability: ACS and Gerdes ignition switches; as installed in, but not limited to, Piper Model PA–38–112 series airplanes, Schweizer Model G–164 series (including Model G–164A, G–164B, and G–164C) airplanes, Schweizer Model 2–37 and 2–37A series airplanes, and the following Cessna airplanes; certificated in any category:

Cessna model	Serial Nos.
150	15074428 through 15079405.
A150	A1500389 through A1500734.
F150	F15001024 through F15001428.
FRA150	FRA1500212 through FRA1500336.
152	15279406 through 15286033.
A152	A1520735 through A1521049.
F152	F15201429 through F15201980.
FA152	FA1520337 through FA1520425.
172	17261486 through 17276673.
R172	R1722000 through R1723454.
172RG	172RG0001 through 172RG1181.
F172	F17201045 through F17202254.
FR172	FR17200441 through FR17200675.
177	17701890 through 17702752.
177RG	177RG0342 through 177RG1366.
F177RG	F177RG0093 through F177RG0177.
180	18052317 through 18053203.
182	18261786 through 18268615.
R182	R18200001 through R18202041.
A182	A182–0137 through A182–0148.
F182	F18200001 through F18200169.
FR182	FR18200001 through FR18200070.
185	18502154 through 18504448.
U206	U20601980 through U20607020.
207	20700222 through 20700788.
210	21059893 through 21065009.
P210	P21000001 through P21000874.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of ignition switches, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, or at the next annual inspection, whichever occurs first, perform an inspection of the ignition switch to detect wear and corrosion, and lubricate the switch, in accordance with ACS Service Bulletin SB92–01, dated August 15, 1992; or Cessna Service Bulletin SEB91–5, Revision 1, June 14, 1991. If wear or corrosion is detected, prior to further flight, replace the switch in accordance with the service bulletin. Repeat this inspection and lubricate the ignition switch in accordance with the service bulletin, thereafter, at intervals not to exceed 2,000 flight hours.

Note: ACS ignition switches that do not have a "start" position (models A–510–1 and A–510–5) or were manufactured on or after February 20, 1989, and have not accumulated 2,000 flight hours, need not be lubricated. The manufacture date is stamped on the switch body. These switches are identifiable by red paint in the screw heads on the back of the switch. However, manufacturer lubricated switches that have a "start" position, but do not have a starter solenoid diode, must be inspected and modified.

(b) Within 100 flight hours after the effective date of this AD, or at the next annual inspection, whichever occurs first, inspect the ignition switch installation to determine if a diode or other surge suppressor is installed on the starter solenoid. If one is not installed, prior to further flight, install a starter solenoid diode in accordance with ACS Service Bulletin SB92–01, dated August 15, 1992; or Cessna Service Bulletin SEB91–5, Revision 1, dated June 14, 1991.

Note: For operators using the Cessna service bulletin to install the diode in the starter solenoid: The procedures for installation are contained in Attachment to Service Bulletin SEB91–5R1, Revision 1, dated June 14, 1991.

An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, lubrication, replacement, and modification shall be done in accordance with ACS Service Bulletin SB92–01, dated August 15, 1992; or Cessna Service Bulletin SEB91–5, Revision 1, dated June 14, 1991, which includes Attachment to Service Bulletin SEB91–5R1, Revision 1, dated June 14, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from ACS Products Company, P.O. Box 152, 1585 Copper Drive, Lake Havasu City, Arizona 86403–0008; or Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 8, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6900 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–112–AD; Amendment 39–8509; AD 93–05–04]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped With General Electric (GE) Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie

Model A300 series airplanes, that requires repetitive visual and eddy current inspections to detect wear or cracks of the inner doublers on the pylon side panel around the fire extinguisher access doors, and replacement of worn or cracked parts, if necessary. This amendment is prompted by reports that wear marks have been detected on the inner doubler of the pylon side panel around the fire extinguisher bottle access doors. The actions specified by this AD are intended to prevent cracks from developing in the pylon side panel, which would result in reduced structural integrity of the engine pylon.

DATES: Effective April 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98056–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 series airplanes was published in the **Federal Register** on December 18, 1992 (57 FR 60143). That action proposed to require repetitive visual and eddy current inspections to detect wear or cracks of the inner doublers on the pylon side panel around the fire extinguisher access doors, and replacement of worn or cracked parts, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 77 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,998, or $468 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–04 Airbus Industrie: Amendment 39–8509. Docket 92–NM–112–AD.

Applicability: Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes; equipped with General Electric (GE) engines on which engine Pylon Modification No. 2434, as described in Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine pylon, accomplish the following:

(a) Prior to the accumulation of 22,400 total hours time-in-service, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later, perform an initial visual and eddy current inspection to detect wear or cracks of the inner doubler on the pylon side panel around the fire extinguisher access doors, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992. If cracks are detected, prior to further flight, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) If cracks less than 5 mm (0.197 inch) are detected, prior to further flight, repair in an accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If cracks greater than or equal to 5 mm (0.019 inch) are detected, accomplish either paragraph (a)(2)(i) or (a)(2)(ii), as applicable:

(i) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD.

(ii) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD; and repeat those inspections thereafter in accordance with paragraphs (b), (c), (d), or (e) of this AD, as applicable.

(b) For airplanes having Configuration No. 1.A.: Repeat the visual and eddy current inspections to detect doubler wear and cracks, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than to 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,400 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,400 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 1,800 hours time-in-service.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Accomplish either paragraph (b)(5)(i), (b)(5)(ii), or (b)(5)(iii) of this AD.

(i) Repeat the visual and eddy current inspection at intervals not to exceed 350 hours time-in-service. Or

(ii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (b) of this AD.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 6 mm (0.236 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) For airplanes having Configuration No. 1.B: Repeat the visual and eddy current inspections for doubler wear and cracks, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,400 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,400 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Accomplish either paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this AD.

(i) Repeat the visual and eddy current inspection at intervals not to exceed 300 hours time-in-service. Or

(ii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after the replacement date of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (c) of this AD.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 4 mm (0.157 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) For airplanes having Configuration No. 1.A. on which the modification described in Airbus Industrie Service Bulletin No. A300–54–008 (door with 4 latches) has been accomplished; and for airplanes having Configuration No. 2.A.: Repeat the visual and eddy current inspections for doubler wear and cracks at zones D1, D2, D3, and D4, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is equal to or greater than 0.1 mm (0.004 inch) and less than or equal to 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 5,800 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 5,800 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,300 hours time-in-service.

(5) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Repeat the visual and eddy current inspection at intervals not to exceed 2,300 hours time-in-service.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 6 mm (0.236 inch) and less than 8 mm (0.315 inch): Accomplish either paragraph (d)(6)(i), (d)(6)(ii), or (d)(6)(iii) of this AD.

(i) Repeat the visual and eddy current inspections at intervals not to exceed 450 hours time-in-service. Or

(ii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (d) of this AD.

(7) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 8 mm (0.315 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) For airplanes having Configuration No. 1.B. on which the modification described in Airbus Industrie Service Bulletin No. A300–54–008 (door with 4 latches) has been accomplished; and for airplanes having Configuration No. 2.B.: Repeat the visual and eddy current inspections for doubler wear and cracks at zones D1, D2, D3, and D4, as required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin A300–54–070, Revision 1, dated March 17, 1992, as follows:

(1) No further action is necessary for the following airplanes:

(i) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.5 mm (0.019 inch).

(ii) Airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, and the measured doubler wear, as detected by any visual inspection required by this AD, is less than 0.1 mm (0.004 inch).

(2) For airplanes on which the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished, if the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.1 mm (0.004 inch) and less than 0.5 mm (0.019 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,500 hours time-in-service.

Note: Subsequent action to be taken (repetitive inspections or inner doubler replacement) will depend upon the "worst finding," defined as the area with the largest amount of measured doubler wear.

(3) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 0.5 mm (0.019 inch) and less than 2 mm (0.078 inch): Repeat the visual and eddy current inspections at intervals not to exceed 4,500 hours time-in-service.

(4) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 2 mm (0.078 inch) and less than 4 mm (0.157 inch): Repeat the visual and eddy current inspections at intervals not to exceed 3,300 hours time-in-service.

(5) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 4 mm (0.157 inch) and less than 6 mm (0.236 inch): Repeat the visual and eddy current inspections at intervals not to exceed 1,800 hours time-in-service.

(6) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than 6 mm (0.236 inch) and less than 8 mm (0.315 inch): Accomplish either paragraph (e)(6)(i), (e)(6)(ii), or (e)(6)(iii) of this AD.

(i) Repeat the visual and eddy current inspections at intervals not to exceed 400 hours time-in-service. Or

(ii) If the modification described in Airbus Industrie Service Bulletin A300–54–046 (screwed doors) has been accomplished: Prior to further flight, replace the doubler. Replacement of the doubler constitutes terminating action for the inspections required by this AD. Or

(iii) If the modification described in Airbus Industrie Service Bulletin No. A300–54–046 (screwed doors) has not been accomplished: Prior to further flight, replace the doubler. Prior to the accumulation of 22,400 hours time-in-service after replacement of the doubler, perform the visual and eddy current inspections in accordance with paragraph (a) of this AD, and repeat those inspections thereafter in accordance with paragraph (e) of this AD.

(7) For airplanes on which the measured doubler wear, as detected by any visual inspection required by this AD, is greater than or equal to 8 mm (0.315 inch): Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) Accomplishment of the replacement of the inner doubler on the pylon side panel around the fire extinguisher access doors; and installation of the modification (screwed doors) in accordance with Airbus Industrie Service Bulletin No. A300–54–046, dated June 24, 1982, and Change Notice, dated July 8, 1985; constitutes terminating action for the visual and eddy current inspections required by this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The modification shall be done in accordance with Airbus Industrie Service Bulletin No. A300–51–046, dated June 24, 1982; and Change Notice, dated July 8, 1985, for Airbus Industrie Service Bulletin No. A300–54–046, dated June 24, 1982. The inspections shall be done in accordance with Airbus Industrie Service Bulletin No. A300–54–070, Revision 1, dated March 17, 1992, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–10, 31–32	1	Mar. 17, 1992.
11–30, 33–34.	Original	Feb. 6, 1992

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6897 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ANE–50; Amendment 39–8503; AD 92–26–09]

Airworthiness Directives; Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) priority letter 92–26–09 that was sent previously to all known U.S. owners and operators of Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan

engines by individual letters. This AD requires an improved, more definitive eddy current inspection, and replacement, if necessary, of certain fan disks for cracks. This amendment is prompted by reports of an uncontained failure of a fan disk. The actions specified by this AD are intended to prevent an uncontained fan disk failure.

DATES: Effective April 9, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 92–26–09, issued on December 22, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 1993.

Comments for inclusion in the Rules Docket must be received on or before May 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–60, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

The applicable service information may be obtained from Garrett General Aviation Services Division, Distribution Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM–140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, FAA, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 22, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–26–09, applicable to Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731 series turbofan engines, which requires an improved, more definitive eddy current inspection of certain fan disks for cracks, and replacement, if necessary, of these fan disks. That action was prompted by reports of an uncontained failure of a fan disk on an Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731–3 turbofan engine. The FAA investigation determined that a fatigue crack originated in the aft acute corner of the dovetail slot. The fan disk had accumulated a total of 5291 cycles in service (CIS) at the time of the failure, and had been eddy current inspected in 1990 when the disk had accumulated 4055 CIS. The fan disk displayed evidence of broaching grooves produced during the manufacture of the blade dovetail slots. These machining grooves may have contributed to the disk failure. From a metallurgical analysis, the FAA has determined that the failed fan disk had dovetail cracks which were not detected at the time of the eddy current inspection. A review of the eddy current inspection process used to inspect this disk and all disks inspected prior to May 1991 determined that the process is no longer acceptable to detect this type of crack on these disks. This condition, if not corrected, could result in an uncontained fan disk failure.

The FAA has reviewed and approved the technical contents of Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB) No. TFE731–A72–3504, dated November 25, 1992, that describes procedures for an improved, more definitive eddy current inspection of these fan disks for cracks.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 92–26–09 to prevent an uncontained fan disk failure. The AD requires an improved, more definitive eddy current inspection of these fan disks for cracks, and replacement, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 22, 1992, to all known U.S. owners and operators of Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731–2, –3, and –3R series turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–60." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be

significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–26–09 Allied-Signal Aerospace Company, Garrett Engine Division: Amendment 39–8503. Docket No. 92–ANE–60.

Applicability: Allied-Signal Aerospace Company, Garrett Engine Division, TFE731–2, –3, and –3R series turbofan engines installed on but not limited to Sabreliner NA–265–65 (Sabreliner 65); Israel Aircraft Industries 1124 series (Westwind); Avions Marcel Dassault Falcon 10, 50, 100 series; Learjet 35, 55, 31 (M31); British Aerospace BAe HS125 series; and Lockheed 1329–23, –25 series (731 Jetstar, Jetstar II) aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained fan disk failure, accomplish the following:

(a) Remove prior to further flight fan disk Part Number (P/N) 3073539–2 or 3072162–2 with Serial Number (S/N) B–18040–6300, in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB) No. TFE731–A72–3504, dated November 25, 1992, and replace with a serviceable disk.

(b) Eddy current inspect fan disks, P/N 3072162–1 through –4, 3073436–1 through –4, 3073539–2, and 3074529–2, in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, and if necessary, replace with a serviceable disk, as follows:

(1) For fan disks listed by S/N in Table 2 of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, inspect, and if necessary, replace with a serviceable disk within 50 cycles in service (CIS) after the effective date of this AD.

(2) For fan disks listed by S/N in Table 3 of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, with 5000 or more CIS since new, inspect, and if necessary, replace with a serviceable disk within the next 50 CIS after the effective date of this AD.

(3) For fan disks listed by S/N in Table 3 of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, with less than 5000 CIS since new, inspect and if necessary, replace with a serviceable disk within the next 100 CIS after the effective date of this AD, or prior to accumulating 5050 CIS, whichever occurs first.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and removal shall be done in accordance with the following service bulletin:

Document No.	Pages	Date
Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504.	1–24	Nov. 25, 1992.

Total Pages: 24.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Garrett General Aviation Services Division, Distribution Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034; telephone (602) 365–2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

(f) This amendment becomes effective on April 9, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 92–26–09, issued December 22, 1992, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on February 19, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–6901 Filed 3-24–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–27–AD; Amendment 39–8510; AD 93–05–05]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Equipped With CFM International CFM56–3 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–300 series airplanes, that currently requires the addition of an operational limitation in the Airplane Flight Manual (AFM) and installation of a placard on the flight compartment instrument panel, both of which are intended to reduce the risk of engine flameout in inclement weather conditions. This amendment requires modifications of the engine, and expands the applicability to include Boeing Model 737–400 and –500 series airplanes that were certificated with the same limitations as imposed by the existing AD. This amendment is prompted by the development of engine modifications that eliminate the need for the operational limitations relative to operation in inclement weather. The actions specified by this AD are intended to prevent engine flameout during airplane descent in moderate to severe inclement weather conditions.

DATES: Effective April 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Aerospace Engineer,

Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88–13–51 R1, Amendment 39–6088 (53 FR 49978, December 13, 1988), which is applicable to Boeing Model 737–300 series airplanes equipped with CFM International CFM56–3 series engines, was published in the Federal Register on July 2, 1992 (57 FR 29451). The action proposed to require modifications of the engine, and to expand the applicability to include Boeing Model 737–400 and –500 series airplanes that were certificated with the same limitations as imposed by the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Several commenters note that the cost estimate presented in the notice was too low and did not take into account the cost of the modification. One commenter notes that the economic analysis only accounts for the cost of revising the Airplane Flight Manual (AFM) and fails to account for the cost of the engine retrofit. This commenter estimates that it will take 80 work hours to modify each engine. After considering the data presented by commenters, the FAA concurs that the number of work hours required did not include the cost to modify the engines; therefore, the economic impact information, below, has been revised to include the costs associated with the required engine modification.

Several commenters request an extension of the compliance time from the proposed 24 months to 36 or 48 months to accomplish modification of the engines. The commenters feel that the proposed compliance time would impose an unnecessary financial and operational burden. The commenters note that an extension of the compliance time to 48 months would allow operators to perform an engine modification at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. One commenter notes that the proposed compliance time may cause them to remove engines prematurely, overload engine repair vendors to the point of being unable to provide modified engines in a timely manner, and subsequently ground airplanes due to a lack of engines. The FAA concurs that the compliance times can be extended somewhat. The FAA's intent was that the modification be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, the FAA now recognizes that 48 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraphs (b) and (c) of the final rule have been revised to reflect a compliance time of 48 months. The FAA does not consider that this extension will adversely affect safety.

One commenter requests that the proposed requirement for both engine ignitors to be functional at dispatch for operation in known or forecast rain, hail or sleet [(paragraph (a)(2)(ii) of the notice] be deleted from the final rule. The commenter notes that this requirement would result in additional dispatch delays because it contradicts the Minimum Equipment List (MEL) provision which allows dispatch with the left ignitor inoperative. The FAA concurs with the commenter's request to eliminate the requirement for both ignitors to be operational. The manufacturer has provided test data which substantiates that ignition configuration does not affect the engine's ability to tolerate precipitation. The FAA has evaluated this data and has determined that control of the ignition system configuration requirements for dispatch would revert to the MEL. Paragraph (a)(2)(ii) has been deleted from the final rule.

One commenter notes a discrepancy in the Discussion section of the notice regarding modification to the engine idle circuitry that would inhibit low idle while in flight. The commenter requests a clarification of this. The FAA concurs that clarification is necessary. The FAA has determined that incorporation of the modification required by AD 89–25–02, Amendment 39–6402 (54 FR 48856, November 28, 1989), does not restore the engine idle control circuit to allow engine operation at low idle in flight. The low flight idle modification by itself does not negate the 45% N_1 operational restriction required by this AD.

One commenter notes that the last sentence in paragraphs (b) and (c) of the notice state that the AFM revision and the N_1 placard, required by paragraph (a) of the notice, are not required after accomplishing the engine modifications required by proposed paragraphs (b) and (c). The commenter further notes that proposed paragraph (a) includes more restrictions than just the AFM revision and the N_1 placard. Therefore, the commenter requests a clarification. The FAA concurs that a clarification is necessary. Paragraph (b) of the final rule has been changed to indicate that accomplishment of the engine modification terminates the requirements of paragraph (a). Paragraph (c) of the final rule has been changed to indicate that accomplishment of the engine modification terminates the operational restrictions and configuration requirements pertaining to operation in inclement weather.

One commenter requests that the phrase "adverse weather conditions," as used throughout the entire notice in describing the addressed unsafe condition, be replaced in the final rule with the phrase "inclement weather conditions." The commenter notes that the Aerospace Industries Association committee investigating aircraft operation in this environment refers to these weather conditions as inclement weather conditions. The FAA concurs with this requested editorial change. The FAA considers that the phrase "inclement weather conditions" best describes the weather environment in which the unsafe condition may occur. The final rule has been changed accordingly.

One commenter requests that the phrase "during airplane descent" be changed to "airplane operation" because it does not accurately describe the situation in which the addressed unsafe condition could occur. The unsafe condition could occur at any time during airplane operation. The FAA does not concur with the commenter's request to change the description of the subject unsafe condition. The FAA has determined that the engine is only vulnerable to flame out as a result of ingesting precipitation at low rotor speeds; therefore, airplane descent is the critical phase of flight in which the unsafe condition could likely occur.

Paragraph (d) of the notice referred to the incorrect Aircraft Certification Office (ACO) to be contacted regarding requests for alternative methods of compliance. The notice lists the Los Angeles ACO; however, the correct office is the Seattle ACO. Paragraph (d) of the final rule has been changed to specify this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 961 Boeing Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that a total of 474 airplanes of U.S. registry will be affected by this AD. (Of this total, 299 airplanes will be affected by the expanded applicability of this AD action.)

Of the total 474 U.S.-registered airplanes, 407 are referred to (in the applicable Boeing service bulletin) as "Group 1" airplanes. For these airplanes, the FAA estimates that it will take approximately 117 work hours to accomplish the actions, at an average labor rate of $55 per work hour. The FAA has been advised by the manufacturer that a majority of the required parts will be supplied at no cost. Based on these figures, the total cost impact of this AD on U.S. operators of Group 1 airplanes is estimated to be $2,619,045, or $6,435 per airplane.

Of the total 474 U.S.-registered airplanes, 67 are referred to (in the applicable Boeing service bulletin) as "Group 2" airplanes. For these airplanes, the FAA estimates that it will take approximately 121 work hours to accomplish the actions, at an average labor rate of $55 per work hour. The FAA has been advised by the manufacturer that a majority of the required parts will be supplied at no cost. Based on these figures, the total cost impact of this AD on U.S. operators of Group 2 airplanes is estimated to be $445,885, or $6,655 per airplane.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $3,064,930. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6088 (53 FR 49978, December 13, 1988), and by adding a new airworthiness directive (AD), amendment 39–8510, to read as follows:

93–05–05 Boeing: Amendment 39–8510. Docket 92–NM–27–AD. Supersedes AD 88–13–51 R1, Amendment 39–6088.

Applicability: Model 737–300, 737–400, and 737–500 series airplanes; equipped with CFM International CFM56–3 series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine flameout during airplane descent in moderate to severe inclement weather conditions, accomplish the following:

(a) For Model 737–300 series airplanes: Within 10 days after December 30, 1988 (the effective date of AD 88–13–51, R1, Amendment 39–6088), accomplish the procedures specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this AD into the AFM. (Where appropriate, remove the previous inserted copy of AD 88–13–51 from the AFM.)

"Operation in Moderate to Heavy Rain, Hail, or Sleet:

When operating in or in the vicinity of (near) moderate to heavy rain, hail, or sleet, accomplish the following:

(i) Engine start switches—FLIGHT.

(ii) Minimum Engine N_1—45%.

(iii) Auto-throttle—OFF.

Note: Operation in or in the vicinity of (near) moderate to heavy rain, hail, or sleet is to be assumed if indicated by any of the following sources: weather radar, reports, or observations.

Operating in Thunderstorm Activity

Cautionary Note

Flight operation should be conducted so that operation within 5 miles of thunderstorm activity is avoided."

(2) For operations in known or forecast rain, hail, or sleet, notwithstanding the Minimum Equipment List (MEL), the weather radar must be operable for dispatch.

(3) Install a placard (red base, white lettering) on the instrument panel in clear view of the flight crew and in close proximity of the engines' N_1 indication gauges, that reads as follows:

"Maintain At Least 45% N_1 When Operating In Or Near Moderate To Heavy Rain, Hail, Or Sleet."

(b) For Model 737–300 series airplanes: Within the next 48 months after the effective date of this AD, accomplish the engine modification described in Boeing Service Bulletin 737–77–1031, Revision 1, dated May 14, 1992. Accomplishment of this modification constitutes terminating action for the requirements of paragraph (a) of this AD; the AFM revision, the MEL configuration requirements, and the N_1 placard may be removed at that time.

(c) For Model 737–400 and 737–500 series airplanes: Within the next 48 months after the effective date of this AD, accomplish the engine modification described in Boeing Service Bulletin 737–77–1031, Revision 1, dated May 14, 1992. Upon accomplishment of this modification, the AFM limitations pertaining to "Operation In Moderate To Heavy Rain, Hail, Or Sleet" may be removed, as well as the related flight compartment instrument panel placard, related MEL configuration requirements, and any related 45% N_1 idle indication/control limitations.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 2: Alternative methods of compliance previously granted for Amendment 39–6088, AD 88–13–51 R1, continue to be considered as acceptable alternative methods of compliance for paragraph (a) of this amendment.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modification shall be done in accordance with Boeing Service Bulletin 737–77–1031, Revision 1, dated May 14, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 29, 1993.

Issued in Renton, Washington, on March 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6899 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–CE–46–AD; Amendment 39–8527; AD 93–06–02]

Airworthiness Directives; Piper Aircraft Corporation PA–23 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Piper Aircraft Corporation (Piper) PA–23 series airplanes that have Met-Co-Aire 48-gallon tip tanks installed. This action requires replacing any existing rubber fuel hose with a hose of improved design that is not susceptible to fuel leakage. The Federal Aviation Administration (FAA) has received a report of fuel leakage from the end fitting of a flexible fuel line that connects one of the 48-gallon tip tanks to the main fuel system on a Piper Model PA–23–250 airplane. This incident resulted in the left wing tip exploding, catching fire, and separating from the airplane. The actions specified by this AD are intended to prevent such fuel leakage and possible fire, which could result in passenger injury.

DATES: Effective May 12, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from Met-Co-Aire, P.O. Box 2216, Fullerton, California 92633; Telephone (714) 870–4610. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806–2425; Telephone (310) 988–5247.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Piper PA–23 series airplanes that have Met-Co-Aire 48-gallon tip tanks installed in accordance with Supplemental Type Certificate (STC) SA1480WE was published in the Federal Register on October 28, 1992 (57 FR 48754). The action proposed to require replacing any existing Parker "Push-Lok" flexible fuel hose, part number (P/N) 11059–4, with a Stratoflex hose, P/N 11059–10. The proposed action would be accomplished in accordance with Met-Co-Aire Service Bulletin No. 23–001, dated July 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter requests that the proposed AD reference the part numbers of the Parker-Hannifin fuel hoses as well as the part numbers of the Met-Co-Aire hoses. The FAA concurs that referencing these part numbers should be included in the proposed AD since the hoses are of identical design. The proposed AD has been revised accordingly.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information including the comment referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the part number addition referenced above and minor editorial corrections. The FAA has determined that these minor corrections and addition will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 3,600 Piper PA–23 series airplanes in the U.S. registry could have two Met-Co-Aire 48-gallon tip tanks installed and therefore could be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $80 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $684,000. This figure takes into account that all Piper PA–23 series airplanes could have Met-Co-Aire 48-gallon tip tanks installed; however, only some of the PA–23 series airplanes have these tanks installed, but the FAA has no available means of determining how many. In addition, the manufacturer has sold approximately 1,000 tip tank modification kits. With this in mind, the FAA estimates that the cost impact of the required AD upon U.S. operators would be much smaller than that presented.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93-06-02 Piper Aircraft Corporation: Amendment 39-8527; Docket No. 92-CE-48-AD.

Applicability: Models PA-23-150, PA-23-160, PA-23-235, and PA-23-250 airplanes (all serial numbers) that have Met-Co-Aire 48-gallon fuel tip tanks installed in accordance with Supplemental Type Certificate SA1480WE, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

Note 1: The compliance time referenced in this AD takes precedence over that referenced in Met-Co-Aire (MCA) Service Bulletin No. 23-001, dated July 1992.

To prevent fuel leakage and possible fire, which could result in passenger injury, accomplish the following:

(a) Replace any existing Parker "Push-Lok" flexible fuel hose, MCA part number (P/N) 11059-4 or Parker-Hannifin P/N 801-6/250PSI, with a Stratoflex hose, MCA P/N 11059-10 or Parker-Hannifin P/N 130001-6S-0154, in accordance with the instructions in Met-Co-Aire Service Bulletin No. 23-001, dated July 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806-2425. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) The replacement required by this AD shall be done in accordance with Met-Co-Aire Service Bulletin No. 23-001, dated July 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Met-Co-Aire, P.O. Box 2216, Fullerton, California 92633. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8527) becomes effective on May 12, 1993.

Issued in Kansas City, Missouri, on March 17, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-6898 Filed 3-24-93; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1116

Reports Under Section 37 of the Consumer Product Safety Act; Revision to Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to interpretative rule.

SUMMARY: The Consumer Product Safety Commission (the "Commission") publishes a final revision to its interpretative rule advising manufacturers subject to section 37 of the Consumer Product Safety Act (CPSA) how to comply with the requirement that they report to the Commission certain information relating to settle civil actions and judgments in favor of plaintiffs who have alleged the involvement of a consumer product in death or grievous bodily injury. The revision provides examples of the types of injuries that constitute "grievous bodily injury" under section 37(e)(1) of the Act.

EFFECTIVE DATE: The revision becomes effective April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Gidding, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207, (301) 504-0626.

SUPPLEMENTARY INFORMATION:

Background

Section 37 of the CPSA (15 U.S.C. 2084) requires manufacturers of consumer products that are the subject of lawsuits for death or grievous bodily injury to file reports with the Commission if the same particular model of a product is involved in three lawsuits that settle or are adjudicated in favor of the plaintiff in any one of the 24-month periods enumerated in section 37(b) of the Act. The reporting requirements of section 37 went into effect on January 1, 1991, the day on which the initial two year window for filing reports began. On August 4, 1992, the Commission published in the **Federal Register** an interpretative rule notifying the public of how the Commission intends to interpret and implement section 37. That rule was issued after giving the public notice and an opportunity to comment.

In the preamble to the final rule, the Commission pointed out that the reporting requirements of sections 37 and the defect reporting obligations imposed by section 15(b) of the CPSA, 15 U.S.C. 2064(b), are two of the most important tools the Commission employs to identify and remedy serious product hazards. It also noted that one principal objective of the enactment of section 37 is to create an "automatic" system for manufacturers to report information concerning settled or adjudicated cases to the Commission without the necessity to perform the types of analyses of potential defects and risks of injury envisioned by section 15(b) of the CPSA. The Commission recognized, however, that analyzing and cataloging lawsuit information under the provisions of section 37 often requires interpretation. For example, in analyzing whether an injury is "grievous bodily injury" under section 37(e)(1), the terms used in the statute, e.g. severe electric shock, severe burns, disfigurement, debilitating internal disorder, loss of important bodily function, and injuries likely to require extended hospitalization, are susceptible to varying interpretations.

To provide clearer guidance as to which settled or litigated lawsuits are reportable under section 37, on August 4, 1992, the Commission published in the **Federal Register** a proposed revision to § 1116.2(b) of the final interpretative rule. The revision sets forth examples of the types of injury that constitute "grievous bodily injury", and, following the express language of section 37(e)(1), also makes clear that the term "grievous bodily injury" includes, but is not limited to, the categories listed in the final rule. To assure that they are consistent with standard commercial practice, the examples are based on information from members of the reinsurance industry on the criteria taken into account in loss compensation and insurance in evaluating the severity of certain types of injuries. By tying the examples to commercial understanding, the Commission also believes that manufacturers will be encouraged to consult with their insurers in determining whether the injuries alleged in a specific lawsuit, but not enumerated in the examples, meet the definition of "grievous bodily injury."

For reinsurance purposes, certain types of injuries must be reported to reinsurers, regardless of defenses, liability limits, or insurance reserves. These include paraplegia, quadriplegia, amputation, brain or brain stem injury

including coma and spinal cord injuries, blindness or serious impairment of vision, third degree burns over ten percent of the body or more, second degree burns over 60 percent of the body or more, and massive internal injuries. In addition, insurers generally consider the following types of traumatic injuries to be serious, recognizing that, unlike sections 15(b) and 37, the industry itself does not distinguish between "serious" and "grievous" injuries: Permanent paralysis or paresis, permanent brain injury to any degree or with any residual disorder, permanent loss, to any degree, of vision, hearing, sense of smell, touch, or taste, permanent facial disfigurement, non-facial scarring that results in permanent restriction of motion, permanent injury to a vital organ, to any degree, total loss or loss of use of any internal organ, injury, temporary or permanent, to more than one internal organ, multiple fractures, compound fracture of any long bone, allegations of traumatically induced disease, any back or neck injury requiring surgery, any injury requiring joint replacement or any form of prosthesis, any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, and any injury requiring 60 or more consecutive days of in-patient care in a rehabilitation facility. In addition, based on its own expertise, the Commission has identified ventricular fibrillation, neurological damage, or thermal damage to internal tissue as constituting examples of injuries associated with severe electric shock.

The Commission believes that all of the types of injuries listed above fall within the definition of grievous bodily injury in section 37(e)(1) of the CPSA. The Commission elected to publish these examples for public comment prior to their incorporation in the final rule. In response to the proposed revision, the Commission received two comments covering three issues. These comments and the Commission's responses are discussed below.

1. Section 37(e)(1) expressly states that "a grievous bodily injury *includes* any of the following [nine] categories of injury * * *" (emphasis added). Accordingly, in the enumeration of the categories of injury and the accompanying examples, the definition of "grievous bodily injury" in § 1116.2(b) contains a provision that recognizes that categories of injury other than those specified in section 37(e)(1) may also constitute grievous bodily injury. As an example of such injury, the revision points to allegations of traumatically induced disease.

One commenter objected to inclusion of such a "catch-all" provision, contending that it undermines any effort at specificity in the rest of the rule. The commenter therefore suggested that the provision be deleted.

The Commission declines to adopt this recommendation. At the outset, the commenter provided no information which indicates that Congress intended to limit the definition of grievous bodily injury to the nine categories of injury enumerated in section 37(e)(1). To the contrary, Congress expressly enacted section 37 to increase reports of potentially hazardous products to the Commission. In view of this purpose, the Commission believes that Congress used the word "includes" as a term of enlargement, rather than one of limitation as the commenter implicitly suggests. Accordingly, the Commission views the definition of grievous bodily injury as encompassing the nine enumerated categories of injury, and other categories of injury of similar magnitude and severity.

2. The proposed revision includes, as an example of the loss of an important bodily function, a compound fracture of any long bone or multiple fractures. One commenter pointed out that not all multiple fractures are sufficiently severe to constitute "grievous bodily injury", citing as an example, two simple or hairline fractures to an arm or finger. The commenter requested that, if the Commission includes multiple fractures as an example of grievous bodily injury, the rule should make clear that such fractures are deemed to be "grievous" only when they in fact involve loss of an important bodily function.

The Commission agrees that not all multiple fractures constitute grievous injury. In determining whether multiple fractures rise to this level, manufacturers should consider the parts of the body whose function is lost, and the degree and length of time of that loss. The number and types of fractures, the types of bones fractured, and the degree of separation in the fractures (if appropriate) are relevant to this inquiry. The Commission has revised the rule accordingly.

3. The proposed revision identified any third degree burn over ten percent of the body or more, or any second degree burn over thirty percent of the body or more as examples of severe burns. One commenter recommended that these examples be expanded to include any second or third degree burn to a toddler-age child (e.g. four years or under) from a product designed for children of this age group. In support of this recommendation, the commenter cited a number of incidents in which children suffered burns from hot surfaces of metal play ground equipment located at fast food restaurants. The Commission declines to adopt this suggestion.

The categories listed in section 37(e)(1) are identical to the categories of injury identified in 16 CFR 1115.12(c) of the Commission's interpretative rule covering substantial product hazard reports as constituting "grievous bodily injury." That section of the rule advises a firm to report information indicating that a noncompliance or defect in a consumer product has caused, may cause, or could cause or contribute to the causing of a death or grievous bodily injury, unless the firm has investigated and determined that the information is not reportable.

The use of identical examples in section 37(e)(1) and in 16 CFR 1115.12(c) suggests that Congress intended section 37 to apply to injuries that are so severe that a firm would report them *per se* to the Commission unless an investigation revealed the absence of a reportable defect. The injuries the commenter describes do not, in the opinion of the Commission, necessarily rise to this level. Furthermore, nothing in the law suggests that the reportability of an injury under section 37 can be tied to whether the product was intended for the use of the victim. Even if the Commission were empowered to adopt the commenter's recommendation, there would be no logical way in which to limit it to injuries involving products intended for use by children. A general extension of the doctrine to require reports only when the victims are the intended users of the products that allegedly caused their injuries would result in the receipt of fewer reports under section 37. The Commission would note, however, that, although the injuries described by the commenter may not necessarily fall within the category of "severe burns", such injuries may be still reportable under section 37 if they fall within the categories of disfigurement or injuries likely to require extended hospitalization. Moreover, additional information submitted by the commenter also supports the conclusion that the injuries the commenter describes could be reportable under section 15(b) (2) or (3) of the CPSA in any event.

4. Although the Commission did not receive comments on the scope of the examples, the Commission emphasizes that the examples are not an exclusive listing of those injuries that fall within the nine categories of grievous bodily injury identified in section 37(e)(1). Manufacturers should carefully analyze

allegations of injury in lawsuits not expressly encompassed by the examples to determine whether they nevertheless fall within one of the enumerated categories of grievous injury or are similar in magnitude and severity to the enumerated categories. If the allegations meet either of these tests, the lawsuits are potentially subject to reporting under section 37.

Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this revision will not have a significant economic impact upon a substantial number of small entities. Section 37 implements Congress's concern and intention to enhance the Commission's ability to detect and remedy serious product hazards. This revision simply clarifies the obligations imposed by the law on manufacturers of consumer products that are the subject of civil lawsuits. The revision, however, will have no economic impact on small business, either beneficial or negative, beyond that which results from the statutory provisions.

Environmental Considerations

The revision to final rule below does not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) which have the potential for producing environmental effects, and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the revision contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the revisions to the rule promulgated below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1116

Administrative practice and procedure, Business and industry, Confidential business information, Consumer protection, Reporting and recordkeeping requirements.

Therefore, in accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2052 *et seq.*, the Commission amends part 1116 of title 16, chapter II, of the Code of Federal Regulations as follows:

PART 1116—REPORTS SUBMITTED PURSUANT TO SECTION 37 OF THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for part 1116 continues to read as follows:

Authority: 15 U.S.C. 2055(e), 2084.

2. Section 1116.2(b) is revised to read as follows:

§ 1116.2 Definitions.

* * * * *

(b) *Grievous bodily injury* includes, but is not limited to, any of the following categories of injury:

(1) Mutilation or disfigurement. Disfigurement includes permanent facial disfigurement or non-facial scarring that results in permanent restriction of motion;

(2) Dismemberment or amputation, including the removal of a limb or other appendage of the body;

(3) The loss of important bodily functions or debilitating internal disorder. These terms include:

(i) Permanent injury to a vital organ, in any degree;

(ii) The total loss or loss of use of any internal organ,

(iii) Injury, temporary or permanent, to more than one internal organ;

(iv) Permanent brain injury to any degree or with any residual disorder (e.g. epilepsy), and brain or brain stem injury including coma and spinal cord injuries;

(v) Paraplegia, quadriplegia, or permanent paralysis or paresis, to any degree;

(vi) Blindness or permanent loss, to any degree, of vision, hearing, or sense of smell, touch, or taste;

(vii) Any back or neck injury requiring surgery, or any injury requiring joint replacement or any form of prosthesis, or;

(viii) Compound fracture of any long bone, or multiple fractures that result in permanent or significant temporary loss of the function of an important part of the body;

(4) Injuries likely to require extended hospitalization, including any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, or 60 or more consecutive days of in-patient care in a rehabilitation facility;

(5) Severe burns, including any third degree burn over ten percent of the body or more, or any second degree burn over thirty percent of the body or more;

(6) Severe electric shock, including ventricular fibrillation, neurological damage, or thermal damage to internal tissue caused by electric shock.

(7) Other grievous injuries, including any allegation of traumatically induced disease.

Manufacturers may wish to consult with the Commission staff to determine whether injuries not included in the examples above are regarded as grievous bodily injury.

* * * * *

Dated: March 10, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–6038 Filed 3–24–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 93–07]

Special Local Regulations: Intercoastal Waterway, St. Augustine, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the "Blessing of the Fleet" ceremony. The event will be held from 11 a.m. e.s.t. (Eastern Standard Time) to 3 p.m. e.s.t. on April 4, 1993. The regulated area includes those waters between the Bridge of Lions and the Fish Island Marina Daybeacon #2, LLNR 33635, position 29–52.15N, 081–18.12W, in the Matanzas River, St. Augustine, Florida. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective from 9 a.m. e.s.t. on Sunday, April 4, 1993, and terminate at 3 p.m. e.s.t. on Sunday, April 4, 1993.

FOR FURTHER INFORMATION CONTACT: QM1 Douglas P. Kuykendall, Coast Guard Group Mayport, at (904) 247–7308.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until January 20, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are QM1 Kuykendall, Marine Event Petty Officer, Coast Guard Group Mayport and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The event requiring this regulation is a "Blessing of the Fleet" ceremony. There will be 250 participating vessels in single file, parade style, transiting the Intracoastal Waterway from the Bridge of Lions south to Daybeacon #2, and returning north to the Bridge of Lions. Approximately 40–50 spectator craft are expected. The total number of vessels in the regatta area create an extra hazard to the safety of life on the navigable waters. The event requires that vessel traffic control be implemented within the area of the Intracoastal Waterway between the Bridge of Lions and Daybeacon #2.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–0707 is added to read as follows:

§ 100.35–0707 Blessing of the fleet ceremony.

(a) *Regulated area:* The regulated area is located in the waters of the Matanzas River, Intracoastal Waterway, St. Augustine, Florida. Its northern boundary consists of the Bridge of Lions. The southern boundary is formed by a line, perpendicular to the centerline of the Matanzas River, drawn from Fish Island Marina Daybeacon # 2, LLNR 33635, position 29–52.15N, 081–18.12W, near the entrance of the San Sebastian River, to the east bank of the Matanzas River. The eastern boundary is formed by the eastern bank of the Matanzas River. The western boundary begins where the Bridge of Lions meets the west bank of the Matanzas River and runs along the west bank of the river to 29–52.34N, 081–18.13W, and then to 29–52.20N, 081–18.09W at the southeast end of the regulated area.

(b) *Special local regulations:* (1) Entry into the regulated area, by other than parade participants or spectator craft, is prohibited, unless authorized by the Patrol Commander. After termination of the "Blessing of the Fleet" ceremony, all vessels may resume normal operations.

(2) Spectator craft will be allowed to enter the regulated area; however, vessel mooring, anchoring, and movement restrictions will be directed by Coast Guard and local law enforcement officials.

(3) The Bridge of Lions will remain in the closed position during the event.

(c) *Effective dates:* These regulations become effective from 9 a.m. e.s.t. to 3 p.m. e.s.t. on April 4, 1993.

Dated: March 10, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–6905 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD5–90–043]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 2.8, in Chesapeake, Virginia, by allowing commercial cargo vessels and tugs and tows passage through the bridge during morning and evening rush hours provided a 2-hour advance notice is given to the Jordan Bridge Office. This final rule also includes a provision that allows public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial or public vessels assisting in an emergency situation passage through the bridge at any time. This is intended to provide for the safety of the public while providing regularly scheduled drawbridge openings.

EFFECTIVE DATES: This rule is effective on April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CAPT M.K. Cain, Project Counsel, Legal Office.

Regulatory History

On July 27, 1990, the Coast Guard published a notice of proposed rulemaking entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (55 FR 30723). It would have closed the Jordan Bridge to all vessels during morning and evening rush hours, Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. Interested persons were given until September 10, 1990, to submit comments. The Commander, Fifth Coast Guard District, also published the proposed rule as a public notice on August 2, 1990. The comment period for the public notice also ended September 10, 1990. Based on requests received, a public notice was issued on August 23, 1990, extending the comment period to October 10, 1990. The Coast Guard received 175 letters commenting on the proposal. Based on comments received from the maritime community and the motoring public, on July 25, 1991, the Coast Guard published a supplemental proposed rule entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (56 FR 34046). The Commander, Fifth Coast Guard District, also published the supplemental proposed rule as a public notice on July 31, 1991, with the comment period ending on September 9, 1991. The public notice was reissued on September 5, 1991, extending the comment period to October 9, 1991. The Coast Guard received 15 letters commenting on the supplemental proposal. As a result of the comments received from the maritime industry and meetings held with them, on June 12, 1992, the Coast Guard published a second supplement to the proposal entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (57 FR 25000). The Commander, Fifth Coast Guard District, published the second supplemental proposed rule as a public notice on June 18, 1992, with the comment period ending on July 27, 1992. The Coast Guard received 58 letters commenting on the second supplemental proposed rule. As a result of the comments received once again from the maritime

industry, the Coast Guard published on December 2, 1992, a third supplement entitled Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, Virginia, in the **Federal Register** (57 FR 57039). The Commander, Fifth Coast Guard District, published the third supplemental proposed rule as a public notice on January 5, 1993, with the comment period ending February 3, 1993. The Coast Guard received 2 letters commenting on the third supplemental proposed rule. A public hearing was not requested and one was not held.

Background and Purpose

The International Federation of Professional and Technical Engineers, Local No. 10, requested that the regulations for this drawbridge be amended to eliminate all bridge openings during morning and evening peak highway traffic hours to help reduce highway traffic congestion, but remain open on signal during the rest of the time.

Currently, only pleasure boats are restricted from requesting bridge openings during morning and evening rush hours. The original notice of proposed rulemaking would have closed the Jordan Bridge to all vessels Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m.

As a result of the third supplemental proposed rule and comments received from the maritime industry and the City of Chesapeake, the Coast Guard is restricting drawbridge openings to recreational traffic from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays. Commercial vessels carrying liquefied flammable gas or other harmful substances will be allowed passage through the bridge at any time. From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays, commercial cargo vessels, and tugs and tows will be allowed passage through the bridge provided they give a 2-hour advance notice to the Jordan Bridge Office. Commercial vessels that do not qualify for exemption will be restricted from passage through the bridge during the morning and evening rush hour. Public vessels of the United States and vessels in distress will be allowed passage through the bridge at any time. Also, commercial and/or public vessels assisting in an emergency situation will be allowed passage through the bridge at any time. The rest of the time the draw will open on signal.

Discussion of Comments and Changes

As a result of the proposed rule and the public notice, comments were received from the maritime community and the motoring public. The motorists were in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion and minor accidents. The commercial maritime industry was opposed to restricting openings of the drawbridge to them based on economic impact concerns, safety and deep-draft vessel navigation requirements. The Coast Guard Marine Safety Office, Hampton Roads, commented in their memorandum dated October 9, 1990, that liquefied flammable gas carriers should be allowed passage through the Jordan Bridge any time with no restrictions due to the need for establishing safety zones and the risk and hazard involved in transporting a loaded liquefied flammable gas vessel.

The Coast Guard issued a supplemental proposed rule including the original proposal with additional provisions which allowed commercial vessels with a draft of 22 feet or greater access through the bridge during morning and evening rush hours, provided they gave a 6-hour advance notice of their arrival, and liquefied flammable gas carriers access through the bridge any time with no restrictions. The decision to allow deep draft vessels access through the Jordan Bridge during peak traffic hours was based on these vessels requiring high tide to transit upstream from the bridge to commercial marine terminals where the channel depths are reduced to as little as 27 feet. Due to the hazards involved in shipping liquefied flammable gas, it was decided to allow liquefied flammable gas vessels unrestricted access through the bridge any time of the day.

Additional comments were received as a result of the supplemental proposed rule. The comments from the motoring public remained the same; however, the maritime industry expressed further concern over the safety factor of transporting any harmful substance through this bridge and requested that the type of ships and harmful substances be expanded to include all flammable products. Also, they requested that the 6-hour advance notice requirement for other commercial vessels be relaxed to 2 hours and include heavily laden cargo vessels, including tugs and tows.

As a result of comments received on the supplemental proposed rule, a second supplemental proposal was issued. The comments received were from the maritime industry expressing further concern over the safety factor involved while transiting the narrow shipping channel in the vicinity of the Jordan Bridge. The Coast Guard Marine Safety Office, Hampton Roads, expressed in their letter dated September 11, 1992, the need to include public and/or commercial vessels access through the bridge at any time when assisting in emergency situations. The Hampton Roads Chamber of Commerce responded to the proposal by presenting the Coast Guard with a resolution requesting that their modifications to the proposed regulations be adopted. Their resolution is similar to the previous proposal except it changed heavily laden cargo vessels to commercial cargo vessels and included tugs and tows in the 2-hour advance notice requirement.

A third supplement to the proposed rule was published as a result of the comments received on the second supplement. Comments were received from the Hampton Roads Maritime Association favoring the proposal. The International Federation of Professional and Technical Engineers, Local No. 10, objected to the 2-hour advance notice requirement stating that the tugs and tows will continue to disrupt rush hour traffic. Since the river banks offer no place for tugs and tows to safely tie up in the proximity of the bridge to wait for a bridge opening, the Coast Guard determined it necessary to include these vessels in the 2-hour advance notice requirement provision.

In developing this final rule, the Coast Guard considered all views. The decision to exempt commercial vessels carrying liquefied flammable gas or other harmful substances during rush hour restrictions is based on the need to maintain safety along the Southern Branch of the Elizabeth River. Commercial cargo vessels and tugs and tows will be allowed passage through the bridge during rush hours provided they give a 2-hour advance notice to the Jordan Bridge Office. This is not considered restrictive to the commercial waterway industry and is a compromise to the highway traffic crossing the Jordan Bridge.

Regulatory Evaluation

This action is considered to be non-major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that

the regulations will not unduly cause a hardship on recreational vessels and commercial vessels that do not qualify for exemption since the bridge will only be closed one hour in the morning and one and a half hours in the afternoon.

Small Entities

No comments were received concerning small entities or on the economic impact this rule would have on small entities. Since the impact on these regulations is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)

2. In section 117.997, paragraph (a) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge, mile 2.8, in Chesapeake:

(1) Shall open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in any emergency situation.

(2) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (a)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs and tows, unless 2 hours advance notice has been given to the Jordan Bridge Office at (804) 545–4695.

(3) Shall open on signal at all other times.

Dated: March 11, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–6906 Filed 3–24–93; 8:45 am]

BILLING CODE 4910-14-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1004

[Ex Parte No. 55 (Sub-No. 87)]

Interpretations and Routing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: By notice published on February 26, 1993 at 58 FR 11549, the Commission eliminated the requirement that private carriers engaged in incidental for-hire transportation must conduct such operations independently of their private operations and maintain separate records for each operation. However, the prior notice erroneously listed the docket number of the proceeding to be "Ex Parte No. MC–55 (Sub-No. 87)" (with "MC" in the number), rather than "Ex Parte 55 (Sub-No. 87)". By this notice we are merely correcting the docket number of the proceeding. Since the same mistake was made in the docket number of the decision served February 25, 1993, a corrected decision will be served with the proper docket number.

DATES: This action is effective on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Maynard Dixon, (202) 927–5293; Joseph Dettmar, (202) 927–5660, [TDD for hearing impaired: 202–927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's corrected decision in Ex Parte No. 55 (Sub-No. 87), which is the same as the prior decision served February 25, 1993 except for the docket number. To purchase a copy of this corrected decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 927–5721.]

List of Subjects in 49 CFR Part 1004

Administrative practice and procedure, Motor carriers.

Decided: February 12, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–6878 Filed 3–24–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920778–2263]

Pacific Coast Groundfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS makes corrections in the final rule to implement conservation and management measures prescribed in Amendment 6 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery. The action is necessary because the implementing regulations do not accurately reflect the initial issuance criteria for "A" and "Provisional A" gear endorsement regarding replacement vessels and upgrading requirements.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Section 663.35(a)(4) is corrected to clarify that its provisions govern only issuance of "provisional A" endorsements for replacement vessels; similar provisions for issuance of "A" endorsements already appear in § 663.34(a)(4). Section 663.35(c)(3)(i) is corrected so that the language governing the upgrading

requirements for trawl landings of whiting is parallel to the language used to govern the other upgrading requirements. In final rule Document 92–27718, beginning on page 54001, in the issue of Monday, November 16, 1992, make the following corrections:

§ 663.33 [Corrected]

1. On page 54007, in the third column, in the second line of § 663.33(f)(1)(i), "§ 663.35(4)(i)(B)" should read "§ 663.35(4)(i)".

§ 663.35 [Corrected]

2. On page 54009, in the first column, in the first and second lines of § 663.35(a)(4) introductory text, replace the words "Persons owning replacement vessels qualify by the following:" with the heading *"Owners of replacement vessels."*

3. On page 54009, in the first column, in § 663.35(a)(4)(i), in the first line, replace the word "The" with "An", and the third and fourth lines replace the words "must choose between: with the words "may qualify for a 'provisional A' endorsement on a limited entry permit with a size endorsements for the replacement vessels, if the vessel meets the criteria in § 663.35(a)(4)(ii)."

4. On page 54009, in the first column, in § 663.35, remove paragraphs (a)(4)(i)(A) and (B).

5. On page 54009, in the third column, in the sixth and seventh lines of § 663.35(c)(3)(i), the phrase"; or 5 days or 938 mt of landings of Pacific whiting." is corrected to read"; or 5 separate days with landings over 500 pounds (227 kg) of Pacific whiting; or 938 mt of landings of Pacific whiting."

§ 663.36 [Corrected]

6. On Page 54010, in the second column, in the tenth and eleventh lines of § 663.36(a)(4), the words "(replacement of smaller vessels)" are corrected to read "(Owners of replacement vessels)".

Dated: March 19, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Services.

[FR Doc. 93–6888 Filed 3–24–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 56
Thursday, March 25, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing regulations to implement the provisions of part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), and further amended by section 111 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (the Technical Corrections Act), with respect to marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996.

DATES: Comments must be received on or before April 15, 1993 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments should be mailed or delivered to the Deputy Administrator for Program Analysis (DAPA), Agricultural Stabilization and Conservation Service (ASCS), room 3090, South Agriculture Building, U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday except holidays, in room 3727, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, ASCS; telephone: 202-720-3391. A Preliminary Regulatory Impact Analysis is available from the above-named person.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as a "major" rule. It has been determined that the provisions of this proposed rule will result in:

(1) An annual effect on the economy of $100 million or more;

(2) Major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States (U.S.)-based enterprises to compete in domestic or export markets.

It has been determined the Regulatory Flexibility Act is applicable to this proposed rule. A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular marketing allotment options considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Purchases; 10.051.

The amendments to 7 CFR part 1435 set forth in this proposed rule imposes information collection and recordkeeping requirements on the public. The information collection requirements will be submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The public reporting burden for these collections of information is estimated to average 90 minutes per response for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and computing and reviewing the collection of information.

The programs covered by this proposed rule are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule preempt State law to the extent such laws are inconsistent with the provisions of this proposed rule. This proposed rule is not retroactive. Before any action may be brought regarding the provisions of this proposed rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

Statutory Background

Title IX of the 1990 Act (Pub. L. 101-624), which was enacted on November 28, 1990, amended subtitle B of title III of the 1938 Act to provide, in a new part VII, under certain circumstances, for the establishment of marketing allotments for sugar and crystalline fructose for fiscal years 1992 through 1996. Title I, section 111, of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102-237) which was enacted on December 13, 1991, amended portions of part VII, of subtitle B of title III of the 1938 Act, pertaining to the establishment of marketing allotments for sugar and crystalline fructose for fiscal years 1992 through 1996. Part VII also provides for the monthly reporting of certain information with respect to the production, imports, distribution, and stock levels of sugar and composite data on distributions of crystalline fructose

for fiscal years 1992 and subsequent years.

Consultations With the Industry

Section 359b(a)(2) of the 1938 Act, as amended, provides that prior to proposing any regulations to implement part VII of subtitle B of title III, the Secretary of Agriculture (the Secretary) shall consult with representatives of domestic sugar processors and producers with regard to ensuring that the regulations achieve the objectives of part VII. Such consultations were held on behalf of the Secretary on April 19, 1991. At that meeting 18 individuals, companies, or organizations presented testimony and written papers regarding the implementation of the sugar program. Comments received have been considered in developing these proposed regulations.

The principal concern of the private sector participants was the weights that would be assigned to the three elements (past marketings, processing and refining capacity, and the ability to market) used to determine the percentage factors for the overall cane sugar and beet sugar allotment. Suggestions for the weight factor to be used for "past marketings" ranged from 100 percent to less than 5 percent, and weight factors for "processing over refining capacity," and "ability to market" ranged from over 47 percent to 0 percent each.

It was suggested that in determining "past marketings" a 5-year average, disregarding the high and low years be used. It was also suggested that the highest production year be used. Other principal suggestions of the participants were as follows:

(1) CCC should count sugar pledged as collateral for CCC price-support loans against a processor's market allocation, but if the sugar is forfeited or put under loan a second time, it should not be counted against the allocation a second time;

(2) CCC should provide for a reasonable amount of carryover stocks when applying the trigger formula for the marketing allotment;

(3) CCC should adjust or suspend marketing allotments once the minimum import level has been reached and allow domestic supplies and reserves to meet further needs, and

(4) USDA should develop a fair and workable sugar equivalency standard for crystalling fructose.

Discussion of Proposed Rule

This proposed rule would implement the provisions of the 1938 Act, with respect to sugar and crystalline fructose marketing allotments and allocations. The 1938 Act contains several provisions that are ambiguous. The proposals set forth in this proposed rule attempt to clarify these issues and to implement the statute in a manner that will result in a viable and effective sugar program. With respect to marketing allotments, the proposed regulations address:

(1) The establishment of marketing allotments for any portion of the fiscal year based on quarterly re-estimates;

(2) Consideration of reasonable carryover stocks when making estimates to determine whether marketing allotments are to be triggered;

(3) Adjustments due to changes in the estimates of consumption, stocks, production, and imports;

(4) Consideration of reasonable carryover stocks when establishing the overall allotment quantity;

(5) Allocation of marketing allotments;

(6) A hearing on the allocation of marketing allotments only if requested by interested parties;

(7) Adjustment of allotments and allocations;

(8) Exclusion of Puerto Rico from proportionate shares;

(9) Assignment of deficits;

(10) Establishment of proportionate shares on a farm basis;

(11) Processor assurances;

(12) Reimbursement for expenses for an appeal hearing by CCC;

(13) Establishment of proportionate shares for producers;

(14) Transfer and preservation of production history;

(15) Assessment of penalties; waiver of penalties, and collection of penalties; and

(16) Appeals.

In developing the proposed regulations, the following assumptions were used:

1. No restriction or allotments shall be established on marketings of any liquid fructose produced from either corn or other source.

2. If a sugar beet processor subject to an allotment is unable to market that allotment, such deficit shall be reassigned proportionately to all other sugar beet processors, not just to processors within the vicinity of the processor.

3. Farm proportionate shares would be established in a sugarcane State whenever an allotment is in effect and there are in excess of 250 sugarcane producers in such State.

4. In determining farm sugarcane acreage bases, sugarcane acreage on a farm that fails and sugarcane acreage that is not harvested due to conditions beyond the control of producers would be considered as planted. Prevented planted acreage would not be considered as planted.

5. The quantity of sugar pledged as collateral by the processor shall be counted against the processor's allotment quantity; however, such sugar shall not be counted a second time when the collateral is subsequently redeemed and marketed.

In addition, section 359c(b) of the 1938 Act requires the Secretary, in establishing the overall allotment quantity for the fiscal year, to deduct 1,250,000 short tons, raw value, and carry-in stocks of sugar including sugar in CCC inventory, from the estimated sugar consumption and reasonable carryover stocks.

Timing of Marketing Allotment Announcement

Section 359b(a)(1) of the 1938 Act, as amended, provides that before the beginning of each of the fiscal years 1992 through 1996, the Secretary shall estimate (1) the quantity of sugar that will be consumed in the U.S. during the fiscal year and the quantity of sugar that would provide for reasonable carryover stocks, (2) the quantity of sugar that will be available for consumption from carry-in stocks or from domestically produced sugarcane and sugar beets, and (3) the quantity of sugar that will be imported for consumption during the year, based on the difference between (i) the sum of the quantity of estimated consumption and reasonable carryover stocks and (ii) the quantity of sugar estimated to be available from domestic production and carry-in stocks. Also, section 359b(a)(2) of the 1938 Act provides that the Secretary shall make quarterly re-estimates of sugar consumption, stocks, production, and imports for a fiscal year no later than the beginning of each of the second through fourth quarters of the fiscal year. Sections 1435.507 and 1435.508 provide for these annual estimates and quarterly reestimates of sugar consumption, production, stocks, and imports.

Sections 359b(b)(1) and 359c(a) of the 1938 Act provide that for any fiscal year for which the Secretary estimates that imports of sugar for consumption in the U.S. (other than sugar imported for the production of polyhydric alcohol or to be refined and reexported in refined form or in sugar-containing products) will be less than 1,250,000 short tons, raw value, the Secretary shall establish allotments for the marketing by processors of sugar processed from domestically produced sugarcane and sugar beets. In addition, section 359c(g) of the 1938 Act requires the Secretary to establish, adjust, or suspend marketing

allotments for a fiscal year or any portion of a fiscal year based on the quarterly re-estimates. Section 1435.509 of the proposed regulations provides for the establishment, calculation, and announcement of the overall marketing allotment in accordance with the statutory requirements. Section 1435.510 of the proposed regulations provides for the adjustment or suspension of the overall marketing allotment based on the quarterly reestimates.

The Agency would like suggestions on alternatives that might help to prevent the necessity of allotments.

Crystalline Fructose Allotments

Section 359b(c) of the 1938 Act provides, for any fiscal year that allotments are established for the marketing of sugar, that the Secretary shall establish for that year appropriate allotments for the marketing by manufacturers of crystalline fructose manufactured from corn, at a total level not to exceed the equivalent of 200,000 tons of sugar, raw value, during the fiscal year, in a manner that is fair, efficient, and equitable to manufacturers. Section 1435.502 of the proposed regulations would provide that 159,757 tons of crystalline fructose is equivalent to 200,000 tons of sugar, raw value. This level was selected because it represents the superior sweetness of crystalline fructose relative to refined sugar (117–to–100 ratio); this ratio can be determined by means of well-established tests, and precludes the controversy about changes in sweetener equivalence when crystalline fructose is used in a diversity of products, each with its own sweetness equivalence to crystalline fructose.

Section 1435.511 provides that, in any year that allotments are established for the marketing of domestically produced sugar, the sum of the individual manufacturer marketing allotments shall not exceed the equivalent of 200,000 tons of sugar, raw value. Allocation to manufacturers of the crystalline fructose allotment will be used on the manufacturer's (1) average of marketings of crystalline fructose manufactured from corn during the years 1985 through 1989, excluding the highest and lowest manufacturing years, (2) manufacturing capacity, and (3) ability to market crystalline fructose covered by that portion of the allotment allocated. Basing the allocation of the crystalline fructose allotment on the preceding three criteria should result in a fair, efficient, and equitable distribution among manufacturers. Also, using the three criteria as a method for allocating the allotment parallels the method proposed to be used to allocate the sugar allotment among cane and beet sugar processors.

Percentage Factors for Allocation of Allotment

Section 359c(d)(1) of the 1938 Act provides that the Secretary shall establish percentage factors for the overall beet sugar and cane sugar allotments applicable for a fiscal year. It further provides that the Secretary shall establish the percentage factors in a fair, equitable, and efficient manner on the basis of past marketings of sugar (considering for such purposes the marketings of sugar processed from sugarcane and sugar beets of any or all of the 1985 through 1989 crops), processing and refining capacity, and the ability of processors to market the sugar covered under the allotments (hereinafter referred to as the "three-factor criteria"). In addition, section 359c(f) of the 1938 Act provides that the allotment for sugar derived from sugarcane shall be further allotted among the five States in which sugarcane is produced in the United States, in a fair and equitable manner on the basis of the "three-factor criteria" with a slight modification. With regard to past marketings of sugar, the Secretary is required to consider a two-year average of processed sugar marketings, using the two highest years of production in each State from the 1985 through 1989 crops.

Section 1435.512(c) and other applicable sections of this proposed rule provide that each year allotments are in effect, the weights for each of the "three-factor criteria" would be established annually. This provides maximum program flexibility and enables the Secretary to establish allotments based on current conditions within the industry. During the aforementioned consultations, representatives of the industry recognized the need for flexibility in setting weights; however, there was a wide disparity in recommended appropriate weights.

Each of the three criteria has limitations that are inherent in a system wherein Government regulation rather than the free market operates to allocate resources and determine prices. The use of "past marketings" provides a degree of fairness and equity by reflecting an established sharing of the market. Over time, however, this criterion becomes a less accurate measure of fairness and equity, and other criteria are needed. Given some weight to both "processing capacity" and "ability to market" may not only be fair and equitable; it would also reward efficiency in the sense that it is the lower-cost or more competitive elements of the industry that tend to expand their processing capacity and ability to market. The downside of encouraging production capacity, however, is that it increases the likelihood of marketing allotments and surplus sugar stocks for disposal.

It was proposed at the sugar consultations that "processing capacity" be defined as the maximum crop-year production achieved since the 1985 crop. This would seem to be reasonable, provided that it be selected from a moving range of years (e.g., for fiscal year 1992, from crop years 1986–1990; for fiscal year 1993, from 1987–1991).

At the consultations, weights recommended for "past marketings" ranged from less than 5 percent to 100 percent, and for "processing capacity" and "ability to market" the recommendations ranged from 0 percent to over 47 percent each. The wide disparity in recommended weights suggests that equal weights (33⅓ percent each) may best meet the need for balance between fairness and equity, on the one hand, and efficiency on the other. However, the targets of fairness, equity, and efficiency are loose concepts whose relative weights are not specified by statute.

Three-Factor Criteria Considerations

The need for some flexibility in establishing weights for the three-factor criteria is underscored by several considerations. While "past marketings" from the 1985–1989 crops is a fixed quantity, "processing capacity" is expected to vary over time, and "ability to market" will not only vary but can be grossly unpredictable because of weather, crop conditions, and processing factors. In the interest of fairness, equity, and efficiency, some consideration may have to be given to circumstances such as, but not limited to:

1. When a substantial increase in "production capacity" and "ability to market" may result in some processors incurring a substantial reduction in their allocation.

2. When the "ability to market" of either the beet sugar or cane sugar sectors of the sugar industry is below their respective preliminary allotment and a second iteration with revised weights is determined to be an efficient way to lower a potential surplus in the other sugar-producing sector. This is to be distinguished from cases of inability to market an allotment quantity, after weights and allotments have been established for the fiscal year. In the latter situation, the Act clearly indicates that imports and not any surplus sugar

in the other sugar-producing sector are to make up the difference.

3. When foreign suppliers of U.S. tariff-rate quota imports are likely to be substantially short of their quota and it may be necessary to assure domestic sugar supplies in sufficient quantity to avoid disruption of the market.

Section 1434.512(b)(1) of the proposed regulations provides that when establishing the percentage factors for allocating the overall beet sugar and cane sugar allotments, the past marketings component of the "three-factor criteria" would be determined using the average marketings for the 1985 through 1989 crops, dropping the highest and lowest years. Use of this formula is consistent with other programs that utilize a 5-year historical period, and will mitigate the impact of anomalous crops. This formula was recommended by the cane industry during the sugar consultations. Percentage weights recommended by sugar representatives at the consultations ranged from 51 to 54 percent for beet sugar and 46 to 49 percent for cane sugar. These values are for illustration purposes only and do not imply that percentage factors, when applicable, would necessarily fall within these ranges.

Public Hearing

Section 359d(a)(2) of the 1938 Act provides that, whenever marketing allotments are established, the Secretary shall make allocations for cane and beet sugar after a hearing, if such a hearing is requested by interested parties. Section 1435.515(e) of the proposed regulations provides for hearing with respect to allocations of the allotments upon the request of interested parties. If allotments are triggered and a hearing is requested by interested parties within 5 working days after the announcement, a hearing will be held to afford processors the opportunity to comment on the proposed allocations. The hearing will commence within 5 working days after the request.

Sections 1435.509–.510, 1435.512–.513, and 1435.515 of the proposed regulations provide for the announcement of the overall marketing allotment and allocation of such allotment to the cane and beet sugar sectors, the cane sugar States, and to cane and beet sugar processors before the beginning of the fiscal year, with quarterly re-estimate announcements. Generally these provisions indicate the calculations required to determine if marketing allotment will be implemented, the size of the overall marketing allotment, and the use of the "three-factor criteria" to allocate the overall allotment.

Reassignment of Deficits Relating to Marketing Allocations

Section 1435.516 of the proposed regulations provides for reassignment of deficits if a sugarcane processor or sugar beet processor is unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect. However, before the Secretary administratively determines the reassignment, the market is given the opportunity to clear the deficit. Section 1435.515(k) would permit a processor to sell sugar in excess of its allocation to another processor so that the purchasing processor can fulfill its allocation. Within each cane sector or beet sector, the market can be expected to correct most, if not all, imbalances between processors with sugar surplus to allocations and processors with deficits relative to allocations. Any residual deficits would be reassigned by the Secretary to surplus processors or to imports.

Section 359e(b) of the 1938 Act explicitly requires the Secretary to reassign residual deficits. A more efficient method of handling the deficits would be to auction off the allocations. Comments are invited on the auction method.

Comments are invited also on the feasibility of permitting sugarcane and sugar beet processors to sell or lease their allocation rights. Sale or lease would be a way of minimizing the extent of administrative reassignment of deficits, while affording processors more flexibility in their production and marketing decisions. The sale or lease of allocations is not explicitly permitted or prohibited in the sugar title of the 1938 Act.

Inclusion of Products in Allotments

Section 359b(b)(2) of the 1938 Act provides that the Secretary may include sugar products, whose majority content is sucrose or crystalline fructose for human consumption and derived from sugar beets, sugarcane, or sugar covered by an allotment, if deemed appropriate.

Sections 1435.508 and 1435.509 of the proposed regulations provide that processed cane and beet sugar used by the processor for intermediate and sugar-containing products will be considered within the allotment allocated to the processor. This discretionary provision is proposed to be implemented because it: (1) Accounts for products having a high sucrose content; (2) includes sugar equivalents that could otherwise be used to circumvent the objectives of the marketing allotment program; and (3) improves program management of domestic supplies and prices. This proposal also conforms with comments by representatives of the industry during the sugar consultations.

Determining U.S. Market Value and Civil Penalty

Sections 359b(d)(3) and 359f(b)(5)(B) of the 1938 Act provide for a civil penalty when: (1) A cane or beet processor markets sugar in excess of the assigned allocation; or (2) a crystalline fructose manufacturer markets crystalline fructose in excess of the allotment. The processor and manufacturer shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time of the commission of the violation, of that quantity of sugar or crystalline fructose involved in the violation. If a sugarcane producer who has received a proportionate share knowingly harvests excess sugarcane acreage, that producer shall be liable to CCC for a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of that processor.

Section 1435.502 of the proposed regulation provides that the U.S. market value for cane producer and cane processor violators would be the daily New York No. 14 contract price; for refined beet sugar violators, it would be the weekly-published Midwest price; for crystalline fructose violators, the price would be the Midwest price, times a factor of 1.5.

Processor Assurances

The first sentence of section 359f(a) of the 1938 Act provides that whenever allotments for a fiscal year are allocated to processors, the Secretary shall obtain from the processors such assurances as are considered adequate that the allocation will be shared among producers served by the processor in a fair and equitable manner that adequately reflects the producers' respective production histories.

Section 1435.521 of the proposed regulations provides that processors would be required to submit a report to the Secretary in sufficient detail to support that their allocation will be shared among producers served by such processors in a fair and equitable manner.

Arbitration by the Secretary

The last sentence of section 359f(a) of the 1938 Act provides that any dispute between a processor and a producer, or group of producers, with respect to the

sharing of the processor's allocation shall be resolved through arbitration by the Secretary on the request of either party.

Section 1435.521(d) of the proposed regulations provides that an ASCS employee at the State level will be designated to initially arbitrate between producers and processors. Review of the State specialist's arbitration decision by the Executive Vice President, CCC, or a designee can be requested by either party. The final administrative appeal is to an Administrative Law Judge as required by the 1938 Act. This process allows State ASCS personnel who have familiarity with the parties and the issues to attempt to resolve the dispute. A review by the Executive Vice President will provide for consistent application of policy.

Per-Acre Yield Goal

Section 359f(b)(3)(A) of the 1938 Act provides that the Secretary shall establish the State's per-acre yield goal for a crop at a level (not less than the average per acre yield in the State for the preceding 5 years, as determined by the Secretary) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data that the Secretary deems relevant. These provisions only apply to sugarcane and only in States where proportionate shares are established.

Section 359f(b)(1)(A) of the 1938 Act provides that proportionate shares apply in a State for which a cane sugar allotment is established and in which there are in excess of 250 sugarcane producers in the State (other than Puerto Rico).

Section 1435.502 of the proposed regulations provides that the State's per-acre yield goal would be set at a minimum of the preceding 5-year average yield per acre for the State, but CCC may increase such yield to achieve program objectives. This process was selected since it provides greater program management flexibility and permits variation in per-acre yield goals to adjust to changing situations.

Appeals

Section 359i(a) of the 1938 Act provides that an appeal may be taken with respect to any decision made under section 359d (Allocation of Marketing Allotments) or under section 359f (Provisions Applicable to Producers) by any person adversely affected by reason of any such decision. Section 359i(b)(2) of the 1938 Act further provides that the Secretary shall provide each appellant an opportunity for a hearing before an Administrative Law Judge and the expenses for conducting such a hearing will be reimbursed by the CCC.

Section 1435.531(b) of the proposed regulations provides that only those issues specifically required by statute to be heard by an Administrative Law Judge would be subject to such review. This procedure is proposed in order to permit ASCS to handle all other sugar issues in the same manner as for other programs. Because of the heavy case load of Administrative law Judges, resolution of cases not specifically required to be heard by an Administrative Law Judge would be handled more promptly by the existing ASCS appeals process.

Producer Requirements

The 1938 Act refers to a producer in sections 359f and 359g. This proposed rule would use the definition for "producer" found at 7 CFR 719.2 ("Person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, and is entitled to share in the crops available for marketing from the farm or would have shared had the crops been produced."). Section 359f of the 1938 Act refers to establishment of an acreage base for a farm. The proposed rule will use the same definition of "farm" as is used for other ASCS programs as provided in 7 CFR 719.3. A State that is subject to proportionate shares will not be allowed to reconstitute sugarcane farms across State lines. This proposed rule will not require submission of yield data for individual sugarcane farms.

Section 359g(a) of the 1938 Act allows the permanent transfer of acreage base history under certain conditions. Such transfer will decrease the acreage base for the base period, the current year, and future years on the transferring farm and increase the acreage base for the base period, the current year, and future years on the receiving farm. The 1938 Act provides that "* * * For the purpose of establishing proportionate shares for sugarcane farms under section 359f, the Secretary, on application of any producer, with the written consent of all owners of a farm, may transfer the acreage base history of the farm to any other parcels of land of the applicant." The proposed rule allows producers to transfer the acreage base history to any farm in the State on which that producer also has an interest. However, the owner would be required to sign an application filed by an operator or tenant. This allows the owner to have the ultimate control of the transfer, while permitting other producers on the farm to utilize unused shares. The transfers may be requested any time during the year and may be for the total acreage or any part of the base.

Section 359g(b) of the 1938 Act allows the preservation of production history for up to 3 consecutive years on a farm where for reasons beyond the control of owner, the owner is unable to use all or a portion of the farm's proportionate share. Production history will be preserved to the extent of the proportionate share involved. The proportionate share may be redistributed to other farm owners or operators. The transfer would be arranged privately between owners and producers. Farm operators would be required to record any transfer at the county ASCS office by a date specified by CCC. However, owners would be required to approve the transfer. This transfer would be effective for one crop year and no production history shall accrue to the recipient of the redistributed proportionate shares by virtue of such redistribution.

The acreage base for any crop shall be the number of acres that is equal to the average of the acreage planted and considered planted for harvest for sugar or seed on the farm in each of the five crop years preceding the crop year. The Act provides that "* * * Acreage planted to sugarcane that producers on a farm were unable to harvest to sugarcane for sugar or seed because of drought, flood, other natural disaster, or other condition beyond the control of the producers shall be considered as harvested for the production of sugar or seed for purposes of this paragraph. * * *" Under this proposed rule an acreage that is prevented from planting will not be included in the planted and considered planted.

Section 359f(b)(7) of the 1938 Act allows, as necessary to enable processors to meet the State allotment and provide a normal carryover, for uniform adjustments or suspension of proportionate shares in any State where the crop of sugarcane is affected by natural disaster or other adverse condition.

Section 359f(b)(5) of the 1938 Act provides that "Whenever proportionate shares are in effect in a State for a crop of sugarcane, no producer in the State may knowingly harvest, or allow to be harvested, for sugar or seed an acreage of sugarcane in excess of the farm's proportionate share for the crop, or otherwise violate proportionate share regulations issued by the Secretary under section 359h(a)." However, no producer shall be considered to be in violation of this provision unless the processor of the sugarcane produced by such producer markets an amount of sugar that exceeds the allocation of such

processor. Civil penalties will be calculated as 1.5 times the U.S. market value of the quantity of sugar marketed by the processor of such sugarcane in excess of the allocation assigned to the processor. However, producers shall not be liable to a penalty if the excess production is diverted to a use other than sugar or seed, as defined in § 1435.530, or if the sugarcane was harvested before the Secretary announced that proportionate shares were in effect.

Section 1435.527 of this proposed rule requires producers of sugarcane to file an acreage report (using the standard form ASCS–578, Report of Acreage), with ASCS concerning the acreage of sugarcane planted on a farm. Such report would include the number of acres, failed acres, and acres harvested for sugar or seed. The reports would be filed at the county ASCS office by the operator of the farm, the farm owner, or duly authorized representative. The applicable final reporting date would be established by Deputy Administrator, State and County Operations (DASCO). The required acreage report would be used to determine program eligibility and benefits and would be filed on forms prescribed and in accordance with instructions issued by DASCO. A late-filed acreage report for a sugarcane crop would be accepted according to § 1435.527 only if evidence is still available for inspection which may be used to make a determination with respect to the existence and use of the sugarcane crop, or the lack of the crop or a disaster condition affecting the crop. The operator filing a late-filed acreage report would be required to pay the cost of a farm visit by an authorized ASCS employee, unless the county Agricultural Stabilization and Conservation (ASC) committee has determined that failure to report in a timely manner was beyond the producer's control. Section 1435.527 permits revision of reports. The revised report would be required to be filed in accordance with instructions issued by DASCO and would be accepted at any time if evidence exists for inspection and determination of the existence and use of the crop, the lack of the crop, or a disaster condition affecting the crop, and until the time that harvesting has begun.

This proposed rule would use the same administrative tolerances for filing acreage as are currently set forth in 7 CFR 718.40. Such tolerance for sugarcane would be the larger of 1.0 acre or 5 percent of the reported acreage, not to exceed 10.0 acres. The sugarcane crop acreage would be considered to meet the requirements of an accurate report if the determined acreage for the crop does not differ from the reported acreage by more than the tolerance.

Filing of a false or inaccurate acreage report would result in an assessment when the difference between the reported acreage and determined acreage for sugarcane exceeds the tolerance. The assessment will be based on the difference between the reported and determined acreage multiplied by the State yield-goal times 25 percent of the national average loan rate for sugar not to exceed $5,000 for each violation.

If the county ASC committee determines that the sugarcane producer did not make a good faith effort to accurately report the sugarcane acreage, the producer will not be eligible for price-support benefits with respect to sugar production from the farm.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Marketing Allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is proposed to be amended by adding a new subpart (§§ 1435.500 through 1435.531) as follows:

PART 1435—SUGAR

Subpart—Marketing Allotments for Sugar and Crystalline Fructose

Sec.

1435.500 Applicability.
1435.501 Administration.
1435.502 Definitions.
1435.503–1435.505 [Reserved]
1435.506 Basis for allotments, estimates, and re-estimates.
1435.507 Annual estimate and quarterly re-estimates.
1435.508 Procedure for estimating imports.
1435.509 Overall marketing allotment.
1435.510 Adjustment of overall marketing allotment.
1435.511 Crystalline fructose allotment.
1435.512 Marketing allotments for cane and beet sugar.
1435.513 State cane sugar allotment.
1435.514 Cane and beet sugar allotment adjustments.
1435.515 Allocation of marketing allotments to processors and manufacturers.
1435.516 Reassignment of deficits.
1435.517–1435.520 [Reserved]
1435.521 Assignment of processor's allocation to producers.
1435.522 Proportionate shares for producers of sugarcane.
1435.523 Establishment of acreage bases.
1435.524 Permanent transfer of acreage base history.
1435.525 Temporary transfer of proportionate shares.
1435.526 Adjustments to proportionate shares.
1435.527 Acreage reports.
1435.528 Farm inspections.
1435.529 Tolerance rules.
1435.530 Penalties and assessments.
1435.531 Appeals.

Authority: 7 U.S.C. 1359aa–1359jj; 15 U.S.C. 714b and 714c.

Subpart—Marketing Allotments for Sugar and Crystalline Fructose

§ 1435.500 Applicability.

(a) The regulations of this subpart are applicable to the establishment and allocation of marketing allotments for:

(1) The marketing by processors during fiscal years 1992 through 1996 of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers, during fiscal years 1992 through 1996, of crystalline fructose manufactured from corn;

(3) The distribution of the processor's allotment allocation to producers; and

(4) The harvesting of sugarcane by producers subject to proportionate shares.

(b) The regulations of this subpart do not apply to:

(1) The marketing of imported raw or refined sugar or imported crystalline fructose;

(2) The marketing of sugar processed from imported sugarcane or sugar beets;

(3) The marketing of liquid fructose from corn; or

(4) The sale of transfer of sugar or crystalline fructose for exportation from the customs territory of the U.S.

(c) The provisions of this subpart are applicable throughout the U.S., including Puerto Rico and the District of Columbia.

§ 1435.501 Administration.

The provisions of this subpart shall be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (Administrator, Agricultural Stabilization and Conservation Service), and shall be carried out in the field by State and county ASC committees (State and county committees), respectively.

(a) State and county committees, and their representatives and employees, do not have authority to modify or waive any provisions of this subpart.

(b) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(c) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, ASCS), or a designee, from determining any questions arising under this subpart or from reversing or modifying any determination made by a State or county committee.

(d) The Executive Vice President, CCC (Administrator, ASCS), or a designee, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of this subpart.

§ 1435.502 Definitions.

The definitions set forth in this section are applicable throughout this subpart. The definitions contained in parts 718 and 719 of this title and part 1413 of this chapter are also applicable and are incorporated by reference.

Ability to market means, for purposes of determining allotments or allocations, the estimated crop-year production for the fiscal year in which marketing allotments have been announced.

Acreage base period means the five crop years preceding the current crop year for which the acreage base is established.

Allocation means the division of the sugar beet allotment among processors of sugar beets in the U.S. and the allocation to a State in which sugarcane is produced among the sugarcane processors of that State.

ASCS means Agricultural Stabilization and Conservation Service.

Available for consumption means sugar capable of being sold for consumption.

Beet sugar means sugar, whether or not principally of crystalline structure, which is processed directly or indirectly from domestically produced sugar beets (including sugar produced from sugar beet molasses.)

Beet sugar allotment means that portion of the marketing allotment allocated to sugar beet processors.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the U.S. (including sugar produced from sugarcane molasses).

Cane sugar refiner means any person who processes raw cane sugar into direct-consumption sugar. The same person may be both a "cane sugar refiner" and either a "sugarcane processor" or "sugar beet processor" or both.

Cane syrup means concentrated cane juice from which no sucrose has been extracted.

Carry-in stocks means inventory on hand at the beginning of the fiscal year.

CCC means the Commodity Credit Corporation.

Crop year means the period beginning July 1 and ending June 30 of the following calendar year, with the customary allowance for a continuous harvest that goes beyond June. The "1991 crop" within the context of this subpart means sugar processed from domestically produced sugar beets or sugarcane harvested during the 1991 crop year. The "1991 crop" includes sugar processed from molasses or thick juice produced from domestically produced sugar beets or sugarcane harvested during the 1991 crop year.

Crystalline fructose means a monosaccharide and reducing sugar, manufactured from field corn, appearing as free-flowing white crystals with the chemical formula $C_6H_{12}O_6$ and molecular weight of 180.16 and meeting the specifications of the *Food Chemicals Codex* (Third Edition, as amended in Third Supplement, 1991) of the National Research Council.

Crystalline fructose allotment means the total quantity of crystalline fructose that each domestic manufacturer of crystalline fructose may market in any fiscal year in which a marketing allotment is in effect. An allotment for crystalline fructose will be imposed whenever allotments are established for cane and beet sugar at a maximum level equivalent to 200,000 tons of sugar, raw value, or 159,757 tons of crystalline fructose, during the fiscal year or other period in which marketing allotments are in effect.

DAPA means the Deputy Administrator for Policy Analysis.

DASCO means the Deputy Administrator, State and County Operations.

Deficit means the estimated quantity of sugar covered by an allocation of an allotment that a processor of sugarcane or sugar beets will be unable to market.

Direct-consumption sugar means any sugar which is not to be further refined or improved in quality, whether such sugar is principally of crystalline structure or is liquid sugar, edible molasses, sugar syrup, or cane syrup.

Distribution means the sale or other disposition of sugar or crystalline fructose, including (but not limited to) the forfeiture of sugar to the CCC and the disposition of sugar or crystalline fructose for retail sale, further processing or refining, production of alcohol or feed, or exportation.

Edible molasses means molasses which is not to be further refined or improved in quality and which is to be distributed for human consumption, either directly or in molasses-containing products.

Farm means that entity as defined in § 719.3 of this title, except that when a State is subject to the implementation of proportionate shares, producers will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining. For example: If a producer farms in Mississippi and has a farm in an adjoining parish in Louisiana, that farm operation may not be reconstituted as a single farming unit.

Fiscal year means the year beginning October 1 and ending the following September 30.

Imports means sugar or crystalline fructose entered into the customs territory of the United States, whether or not the sugarcane processor, sugar beet processor, sugar refiner, or manufacturer of crystalline fructose was the importer of record or consignee of the imported sugar or crystalline fructose.

Invert sugar means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

Liquid sugar means a direct-consumption sugar which is not principally or crystalline structure and which contains, or which is to be used for the production of any sugars principally not of crystalline structure which contain soluble nonsugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 percent or less of the total soluble solids. Liquid sugar is exclusive of cane syrup and edible molasses.

Market or *Marketing* means the sale or disposition of raw cane sugar, beet sugar, or crystalline fructose in commerce in the 50 States, the several territories, the District of Columbia, and Puerto Rico, including, with respect to any integrated processor/refiner, the movement of raw cane sugar into the refining process.

Marketing allotment for sugar means that portion of the overall sugar allotment quantity allotted to:

(1) Sugar processed, directly or indirectly, from domestically grown sugarcane, and

(2) Sugar processed, directly or indirectly, from domestically grown sugar beets.

Minimum import quantity means 1.25 million short tons of sugar, raw value, which must be imported in the prospective fiscal year or other period in

which marketing allotments are in effect.

Molasses means a thick syrup which is a byproduct of processing sugar beets and sugarcane, or of refining raw cane sugar.

Normal carryover inventory means inventory on hand at the end of the fiscal year, calculated as the previous 5-year-average ratio of carryover inventory to production, multiplied by current estimated production.

Overall marketing allotment means, on a national basis, the total quantity of sugar, raw value, which is processed from domestically produced sugarcane or sugar beets, and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a fiscal year or other period in which marketing allotments are in effect.

Past marketings means a combination, as determined by CCC, of the average of marketings between 1985 through 1989 crop years, excluding the highest and lowest years.

Per-acre yield goal means the yield level for a State established at not less than the average per-acre yield in the State for the preceding 5 years or such other higher yield established by CCC that will ensure an adequate net return per pound to producers in the State.

Processing capacity means, for purposes of determining sugar allotments or allocations, the highest crop-year production achieved in the 5-year period prior to the fiscal year for which allotments have been announced. For crystalline fructose allocations, processing capacity means the highest quantity manufactured in a July-June year within the same 5-year period relating to sugar.

Processing facility means a distinct physical facility, at a single location, which processes sugarcane or sugar beets into sugar.

Products of sugar means processed cane and beet sugar used by processors for intermediate and sugar-containing products.

Proportionate share means the total acreage from which a producer can harvest sugarcane in a State with 250 or more producers in which an allotment is in effect.

Raw sugar means any sugar, whether or not principally of crystalline structure, which is to be further refined or improved in quality.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). *Direct-consumption sugar derived from sugar beets* and testing 92 or more sugar degrees by the polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. *Sugar derived from sugarcane* and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: Raw value = actual weight × {[(actual degree of polarization − 92) × 0.0175] + 0.93}. For example, for cane sugar testing 92 sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by 0.93; for cane sugar testing more than 92 sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by the figure obtained by adding 0.93 to the result of multiplying 0.0175 by the number of degrees and fractions of a degree of polarization above 92 degrees. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventory on hand at the end of the fiscal year as determined by the Secretary.

Refined crystalline sugar means centrifugal, crystalline sugar (including "high-priority" sugar from raw cane mills, and "soft" or "brown" sugars) which is not to be further refined or improved in quality.

State means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

State cane sugar allotment means that portion of the cane sugar allotment assigned to Florida, Hawaii, Louisiana, Texas, or Puerto Rico.

Stocks means inventory of sugar or crystalline fructose on hand at the beginning and at the end of the calendar month for which data are being reported.

Sucrose means a disaccharide having the chemical formula $C_{12}H_{22}O_{11}$.

Sugar means any grade or type of saccharine product which is processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses) and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined sugar, liquid sugar, edible molasses, sugar syrup, and cane syrup.

Sugar beet processor means a person who commercially produces refined sugar or liquid sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses). The same person may be both a "sugar beet processor" and either a "cane sugar refiner" or "sugarcane processor", or both

Sugar syrup means a direct-consumption sugar with a sucrose or sucrose-equivalent invert sugar content of less than 94 percent of the total soluble solids.

Sugarcane processor means a person who commercially produces raw sugar or refined sugar, directly or indirectly, from sugarcane (including sugar produced from sugarcane molasses). The same person may be both a "sugarcane processor" and either a "cane sugar refiner" or "sugar beet processor", or both.

Syrup means a viscous, concentrated sugar solution resulting from the evaporation of water, or the remaining liquor after crystallization of sugar from a solution.

Ton means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

USDA means the United States Department of Agriculture.

U.S. market value means for sugarcane the daily New York No. 14 contract price for raw sugar; for sugar beets the weekly-published Midwest price; and for crystalline fructose 1.5 times the Midwest price.

§§ 1435.503–1435.505 [Reserved]

§ 1435.506 Basis for allotments, estimates, and re-estimates.

Calculation of all allotments, allocations, estimates, and re-estimates in this subpart will be made by using the data supplied in reports submitted pursuant to the reporting requirements set forth in §§ 1435.400 and 1435.402 of this part and available USDA statistics and estimates of production, consumption, and stocks.

§ 1435.507 Annual estimates and quarterly re-estimates.

(a) The quantity of sugar that will be consumed; the quantity of sugar that will provide for reasonable carryover stocks; the quantity of sugar that will be available from carry-in stocks and from domestically produced sugarcane and sugar beets; and the quantity of sugar that will be imported in the prospective fiscal year for consumption in the United States will be estimated annually. This estimate will be announced prior to the beginning of the fiscal year.

(b) Sugar consumption, stocks, production, and imports will be re-

estimated and announced on a quarterly basis.

§ 1435.508 Procedure for estimating imports.

The import requirement for the next fiscal year will be calculated by establishing the difference between:

(a) The sum of the quantity of estimated consumption and reasonable carryover stocks; and

(b) The quantity of sugar estimated to be available from domestically grown sugarcane and sugar beets, sugar products, and carry-in stocks.

§ 1435.509 Overall marketing allotment.

(a) If it is estimated prior to the beginning of the fiscal year that the import of sugar will be less than 1.25 million short tons, raw value, for the prospective fiscal year, an overall allotment will be established for that fiscal year at a level that will result in imports of sugar of not less than 1.25 million short tons, raw value.

(b) The overall marketing allotment for the prospective fiscal year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(1) 1,250,000 short tons, raw value; and

(2) Carry-in stocks of sugar, including sugar in CCC inventory and sugar products.

§ 1435.510 Adjustment of overall marketing allotment.

(a) The overall allotment will be adjusted to the maximum extent practicable, upward, downward, or will be suspended, to avoid the forfeiture of sugar to the CCC. Such increase, decrease, or suspension will be effective at the beginning of the quarter of the fiscal year for which the determination is made.

(b) If the overall marketing allotment is reduced under this section and the quantity of sugar marketed for the fiscal year in which the reduction is made, including that pledged as price support loan collateral, exceeds the decreased overall allotment, the quantity of excess sugar marketed will be deducted from the next year's overall marketing allotment, if any.

§ 1435.511 Crystalline fructose allotment.

(a) An allotment for crystalline fructose will be imposed whenever allotments are established for cane and beet sugar at a maximum level equivalent to 200,000 tons of sugar, raw value, or 159,757 tons of crystalline fructose, during the fiscal year or other period in which marketing allotments are in effect.

(b) Allocation to manufacturers of the crystalline fructose allotment will be based on the manufacturer's:

(1) Average of marketings of crystalline fructose manufactured from corn during the years 1985 through 1989 excluding the highest and lowest manufacturing years,

(2) Manufacturing capacity, and

(3) Ability to market crystalline fructose covered by that portion of the allotment allocated.

(c) Each of the three criteria used to determine the percentage factors specified in paragraph (b) of this section will be weighted equally, or as determined appropriate by CCC for each year that an overall allotment is in effect.

(d) At any time a crystalline fructose allotment is in effect, no manufacturer may market crystalline fructose in excess of the manufacturer's allotment.

§ 1435.512 Marketing allotments for cane and beet sugar.

(a) An allotment for beet sugar and an allotment for cane sugar will be established for each year that an overall marketing allotment is in effect. The beet sugar allotment and cane sugar allotment will be calculated as a percentage of the overall marketing allotment. These percentage factors will be announced at the same time as the overall marketing allotment.

(1) Each allotment will be equal to the product of multiplying the overall allotment quantity for the fiscal year by the percentage factor established for beet sugar and cane sugar, respectively.

(2) The sum of the cane allotment and beet allotment may never exceed the total overall marketing allotment.

(b) The overall marketing allotment for sugar will be apportioned between beet sugar and cane sugar based on percentage factors established by taking into consideration:

(1) Past marketings of sugar processed from sugarcane and sugar beets based on the average production for sugarcane and sugar beets from the 1985 through 1989 crops, dropping the highest and lowest production years;

(2) Processing and refining capacity in the beet and cane sectors; and

(3) The ability of the cane and beet sectors to market the allotment assigned to it.

(c) Each of the three criteria used to determine the percentage factors specified in paragraph (b) of this section will be weighted equally, or as determined appropriate by CCC for each year that an overall allotment is in effect.

(d) Except in the case when deficits are reassigned in accordance with § 1435.516 of this subpart, the beet sugar allotment must be filled from sugar processed, directly or indirectly, from domestically produced sugar beets and the cane sugar allotment must be filled from sugar processed, directly or indirectly, from domestically produced sugarcane.

§ 1435.513 State cane sugar allotment.

(a) The allotment for cane sugar will be allotted among cane-producing States, based on:

(1) The average of marketings of sugar processed from sugarcane in the two highest years of production from each State from the 1985 through 1989 crops;

(2) Processing capacity in each State; and

(3) The ability of processors in the State to market the sugar covered under the allotment assigned to the State.

(b) The weights given these criteria will be the same as those used to determine the overall cane allotment in accordance with § 1435.512(c).

(c) A processor may utilize a cane sugar allotment only with sugar processed from sugarcane grown in the State for which the allotment was established.

§ 1435.514 Cane and beet sugar allotment adjustments.

(a) Cane and beet sugar marketing allotments may be established, increased, decreased, or suspended as appropriate based on procedures and considerations specified in accordance with §§ 1435.507 and 1435.510. Such establishment or adjustment will be effective at the beginning of the quarter of the fiscal year for which the determination is made.

(b) If the cane marketing allotment is decreased under paragraph (a) of this section and the quantity of cane sugar marketed for that fiscal year by all processors covered by the allotment, including sugar pledged as loan collateral for a price-support loan, exceeds the reduced allotment, the marketing allotment, if any, next established for cane sugar will be reduced by the excess marketed.

(c) If the beet marketing allotment is decreased under paragraph (a) of this section and the quantity of beet sugar marketed for that fiscal year by all processors covered by the allotment, including sugar pledged as loan collateral for a price support loan, exceeds the reduced allotment, the marketing allotment, if any, next established for beet sugar will be reduced by the excess marketed.

(d) If State marketing allotments are reduced due to a decrease in the cane allotment under paragraph (b) of this

section and the quantity of cane sugar marketed for that fiscal year by all processors covered by a particular State allotment, including sugar pledged as loan collateral for a price-support loan, exceeds the reduced State allotment, the marketing allotment, if any, next established for that State will be reduced by the excess marketed.

§ 1435.515 Allocation of marketing allotments to processors and manufacturers.

(a) Whenever can sugar, beet sugar, and crystalline fructose marketing allotments are established for a fiscal year under this subpart, cane sugar and beet sugar processors and crystalline fructose manufacturers will receive marketing allocations for that fiscal year.

(b) Allocation to processors of the State cane sugar allotment will be based on each processor's:

(1) Average of marketings of sugar processed from sugarcane during the crop years 1985 through 1989, excluding the highest and lowest production years,

(2) Processing capacity, and

(3) Ability to market sugar covered by that portion of the State allotment allocated.

(c) Allocation to processors of beet sugar will be based on each processor's:

(1) Marketings of sugar processed from sugar beets during the crop years 1985 through 1989, excluding the highest and lowest production years,

(2) Processing capacity, and

(3) Ability to market sugar covered by that portion of the allotment allocated.

(d) Each of the three criteria used to determine the percentage factors specified in paragraph (b) of this section will be weighted equally, or as determined appropriate by CCC for each year that an overall allotment is in effect.

(e) Allocation to manufacturers of crystalline fructose will be based on each manufacturer's:

(1) Marketings of crystalline fructose during the crop years 1985 through 1989, excluding the highest and lowest production years,

(2) Manufacturing capacity, and

(3) Ability to market crystalline fructose covered by that portion of the allotment allocated.

(f) A hearing will be held, if requested by interested parties within 5 working days following the announcement of proposed allotments and allocations, to afford all interested persons the opportunity to comment on the proposed allocations. The hearing will commence within 5 working days following request for such a hearing. After consideration of comments obtained at the hearing, a final determination on allocations will be announced.

(g) Each allocation of the allotment to the processor shall be increased or decreased by the same percentage that the allotment was increased or decreased.

(h) At any time allotments are in effect and allocated to processors, the total of:

(1) The quantity of sugar marketed by a processor, and

(2) The quantity of sugar pledged as collateral by the processor for a CCC price-support loan shall not exceed the quantity of the allocation of the allotment made to the processor.

(i) At any time allotments are in effect and allocated to crystalline fructose manufacturers, the total of the quantity of crystalline fructose marketed by a manufacturer shall not exceed the quantity of the allocation of the allotment made to the manufacturer.

(j) Paragraph (h) of this section shall not apply to the marketing during a fiscal year of sugar pledged in that fiscal year as collateral for a CCC price-support loan after the sugar has been subsequently redeemed.

(k) Paragraphs (h) and (i) of this section shall not apply to any sale of sugar or crystalline fructose, by a processor or manufacturer to another processor or manufacturer, that is made to enable the purchasing processor or manufacturer to fulfill its allocation of the allotment.

§ 1435.516 Reassignment of deficits.

(a) Quarterly re-estimates as specified in section 1435.507 will be made to determine whether processors of sugarcane or sugar beets, or manufacturers of crystalline fructose will be able to market sugar covered by the portion of the allotment allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors.

(b) If it is estimated that a sugarcane processor will be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) First, be reassigned proportionately to the allocations of processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be assigned to it and taking into account the interests of producers served by the processors;

(2) If the deficit cannot be eliminated after reassignment within the same State, the deficit will be reassigned to processors in the other cane sugar States based on each State's ability to market the deficit assigned to it, with the reassigned quantity to each State being allocated among its processors in proportion to the initial allocations of the processors; and

(3) If any portion of the deficit remains after paragraphs (b)(1) and (b)(2) of this section have been implemented, it will be assigned to imports.

(c) If it is estimated that a sugar beet processor will be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) First, be reassigned proportionately to the allocations of other sugar beet processors depending on the capacity of the other processors to fill the portion of the deficit to be assigned to them and taking into account the interests of producers served by the processors; and

(2) If any portion of the deficit remains after paragraph (c)(1) of this section has been implemented, it will be assigned to imports.

(d) If it is estimated that a crystalline fructose manufacturer will be unable to market the full amount of the manufacturer's allocation for the fiscal year in which an allotment is in effect, this deficit will be reassigned proportionately to the allocations of other crystalline fructose manufacturers depending on the capacity of the other manufacturers to fill the portion of the deficit to be assigned to them.

(e) The fiscal year allocation of each processor or manufacturer who receives an additional reassigned deficit amount will be increased to reflect the reassignment for that year.

§§ 1435.517–1435.520 [Reserved]

§ 1435.521 Assignment of processor's allocation to producers.

(a) Every cane sugar and beet processor shall share its allocation with every producer served by the processor in a fair and equitable manner.

(b) Whenever allotments for a fiscal year are allocated to processors pursuant to § 1435.515, or when allotments are established or allocations are modified due to re-estimates, every processor of sugarcane or sugar beets must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and adequate manner

which reflects each producer's production history.

(c) Every processor subject to this section will provide CCC with assurances that every producer it serves will be treated the same as every other producer with whom it contracts in that fiscal year. Allocations will be prorated on the basis of production history. Such information must be furnished to CCC within 60 days following the announcement that allotments will be in effect for a fiscal year or the announcement that processor allocations have been modified due to a re-estimate.

(d) Any producer or processor can request arbitration of a dispute with respect to the sharing of the processor's allocation among the producers. Arbitration will be available on behalf of CCC at the State ASCS office for the State in which the processor is located. Subsequent review of the arbitration decision is available at the discretion of the Executive Vice President, CCC, or a designee. Any arbitration will be subject to appeal to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

§ 1435.522 Proportionate shares for producers of sugarcane.

(a) Proportionate shares shall be implemented by CCC in any State, other than Puerto Rico, in which a cane sugar allotment has been established and in which there are more than 250 sugarcane producers. Thus, the proportionate share issue affects only producers in the State of Louisiana.

(b) For each State allotment described in paragraph (a) of this section, CCC will determine whether the production of sugar, in the absence of proportionate shares, will be greater than the quantity needed to enable processors to fill their allotment and provide a normal carryover inventory. If the determination is made that the quantity of sugar produced in the State, plus a normal carryover inventory, will exceed the State's allotment for the fiscal year, a proportionate share shall be established for each sugarcane-producing farm that limits the acreage of sugarcane that may be harvested on the farm for sugar or seed during the fiscal year that the allotment is in effect.

(c) *Method of Determining.* For purposes of determining proportionate shares for any crop of sugar:

(1) CCC shall establish the State's per-acre yield goal;

(2) The State allotment as determined in accordance with § 1435.513 shall be converted into a State acreage allotment by dividing the State allotment by the per-acre yield goal;

(3) A uniform reduction percentage shall be established for the crop by dividing the State acreage allotment by the sum of all adjusted acreage bases in the State as determined under § 1435.523; and

(4) The uniform reduction percentage shall then be applied to the acreage base established for each sugarcane-producing farm in a State covered by a State allotment to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

§ 1435.523 Establishment of acreage bases.

(a) A sugarcane crop acreage base shall be established for a farm as the simple average of the acreage planted and considered planted for harvest for sugar or seed on the farm in each of the five crop years preceding the fiscal year for which proportionate shares are being established.

(b) In establishing crop acreage bases or proportionate shares for sugarcane, CCC will not take into consideration the acreage which producers are prevented from planting, but will credit acreage planted to sugarcane that fails.

(c) In establishing crop acreage bases, producers who have not previously reported their sugarcane acreage will be allowed to do so by a date determined and announced by CCC. Late-filed acreage reports will be accepted as determined by DASCO.

(d) The crop acreage base established for the farm shall be used to determine the farm's proportionate share.

(e) The regulations at 7 CFR parts 718 and 719 of this title shall be applicable to this subpart except: The reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines if one of the States is subject to the implementation of proportionate shares for sugarcane.

§ 1435.524 Permanent transfer of acreage base history.

(a) A sugarcane producer (defined under 7 CFR 719.2) on a farm may transfer the acreage base history of land owned, operated, or controlled by the producer to any other farm in the State that is owned, operated, or controlled by that producer in accordance with instructions issued by DASCO. The transfer will permanently reduce the transferring farm's sugarcane base and increase the receiving farm's crop acreage base.

(b) All owners of the farm must agree to the transfer by signing the application. The application for transfer must be requested on a form approved by CCC.

(c) Producers may transfer sugarcane acreage base history in accordance with this section by the date established annually by the State ASC Committee.

§ 1435.525 Temporary transfer of proportionate shares.

(a) If for reasons beyond the control of an owner of a farm, the owner is unable to use all or a portion of the proportionate share established for the farm, the Secretary may preserve such share for a period of not more than 3 consecutive years the production history of the farm to the extent of the proportionate share involved.

(b) Such proportionate share may be transferred, with the written consent of all owners of the farm, for one crop year to other farm owners or operators subject to the following conditions:

(1) The production history in the transferring farm will be preserved for a period from 1 to 3 years; and

(2) Acreage base history will not be increased on the receiving farm.

(c) Producers who transfer a proportionate share in accordance with paragraph (b) of this section will be required to:

(1) Initiate the transfer in the county ASCS office where the proportionate shares are established; and

(2) Obtain approval from the transferring county ASC committee.

(d) All transfers made in accordance with this section must be completed by the date established by the State ASC Committee.

§ 1435.526 Adjustments to proportionate shares.

Whenever the Secretary determines that, because of natural disaster or other condition adversely affecting a crop of sugarcane, the amount of sugarcane produced by producers subject to proportionate shares will not be sufficient to enable processors in the State to produce sufficient sugar to meet the State's cane sugar allotment and provide a normal carryover of sugar, the Secretary may uniformly allow producers to harvest sugarcane in excess of their proportionate shares, or suspend proportionate shares entirely.

§ 1435.527 Acreage reports.

(a) A report of planted and failed acreage shall be required with respect to farms that produce sugarcane for sugar or seed. Such report shall also specify the total acreage intended for harvest as sugar or seed.

(b) The reports required under paragraph (a) of this section shall be on forms prescribed by the DASCO and shall be filed with the county ASC committee by the applicable final reporting date established by DASCO. Such report shall be filed by the:

(1) Farm operator; or
(2) Farm owner.

(c) Acreage reports will be used to determine compliance with the proportionate share and eligibility for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if physical evidence is still available for inspection which may be used to make a determination with respect to:
(1) The existence of the crop;
(2) The use made of the crop;
(3) The lack of crop; or
(4) A disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized ASCS employee unless the county ASC committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise a report of acreage to change the acreage reported. Revised reports shall be filed in accordance with instructions issued by DASCO and shall be accepted at any time if:
(1) Evidence exists for inspection and determination of:
(i) The existence of the crop;
(ii) The use made of the crop;
(iii) The lack of crop; and
(iv) A disaster condition affecting the crop; and
(2) The farm has not already been inspected and the acreage already determined or harvesting of sugarcane already begun.

§ 1435.528 Farm inspections.

The provisions of 7 CFR Part 718 will apply for field inspections.

§ 1435.529 Tolerance rules.

The provisions of 7 CFR Part 718 will apply for tolerance and variance.

§ 1435.530 Penalties and assessments.

(a) Any processor who markets sugar in excess of the processor's allocation shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, for the year in which the violation was committed, of that quantity of sugar involved in the violation.

(b) Any manufacturer of crystalline fructose who markets crystalline fructose in excess of the applicable marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, for the year in which the violation was committed, of that quantity of crystalline fructose involved in the violation.

(c) Any producer of sugarcane whose farm has been assigned a proportionate share, and who knowingly harvests an acreage of the crop for sugar or seed in excess of the farm's proportionate share, shall pay to CCC a civil penalty in an amount equal to 1.5 times the U.S. market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor, for the year in which the violation was committed. However, civil penalties will not be assessed when the producer has harvested acreage for sugar or seed in excess of the farm's proportionate share, if the excess:
(1) Acreage was harvested prior to CCC's announcement that proportionate shares are in effect; or
(2) The excess harvest is diverted to a use other than sugar or seed if:
(i) The sugarcane producer requests and pays for a field inspection by CCC, and
(ii) A representative of CCC verifies the disposal of the excess harvest.

(d) Any penalty assessed under paragraph (c) of this section shall be prorated among the producers of all sugarcane acquired by the processor from excess acres.

(e) Any person who files a false or inaccurate acreage report which exceeds tolerance will be subject to an assessment calculated by multiplying the difference between the reported and determined acreage of sugarcane, times the State yield-goal, times 25 percent of the National sugar price-support loan rate when the difference between the reported and determined acreage exceeds tolerance. In any case in which the failure of a producer to comply fully with the terms and conditions of the program to which this part is applicable would result in an assessment. However, DASCO may authorize the waiver or reduction of the assessment in such amounts as determined to be equitable in relation to the seriousness of the failure. The provisions of this part shall be applicable only to producers who made a good-faith effort to comply fully with the terms and conditions of the program and rendered substantial performance. Any person who feels that he or she is entitled to consideration under the provisions of this part may file a request therefore with the county ASC committee.

(f) Any person who knowingly violates any provision of this part is subject to the assessment of a civil penalty by CCC of not more than $5,000 for each violation.

§ 1435.531 Appeals.

(a) A manufacturer of crystalline fructose who has been determined to have marketed crystalline fructose in excess of the applicable allotment may request review of such determination pursuant to the ASCS appeal procedure set forth at part 780 of this title by filing an appeal with the National Appeals Division.

(b) A processor of either sugar cane or sugar beets who has been determined to have marketed sugar in excess of the assigned allocation may request review of such determination pursuant to the ASCS appeal procedures set forth at part 780 of this title by filing an appeal with the National Appeals Division.

(c) A processor of either sugarcane or sugar beets who disagrees with the amount of the allocation assigned by CCC may appeal the amount of the allocation to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

(d) Producers who disagree with a determination of excess acreage harvested may appeal the determination to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

(e) An arbitration decision and its review by the Executive Vice President, CCC, will be subject to appeal to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

(f) All appeals must be filed within 15 days after the determination at issue is effective. The appeal must be in writing.

Signed the 15th day of March, 1993 in Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-6738 Filed 3-24-93; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-22-AD]

Airworthiness Directives; Beech Aircraft Corporation 33 and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92-15-06, which currently requires repetitively inspecting the rudder spar on certain Beech 33 and 36 series airplanes for cracks, and repairing any cracks found. It also allows the option of modifying the rudder spar as terminating action for the repetitive inspections. The Federal Aviation

Administration (FAA) has determined that installing a Space Machine Products (SMP) rudder middle-hinge bracket in accordance with Supplemental Type Certificate (STC) SA5870NM should also serve as terminating action for the currently required repetitive inspections. The proposed action incorporates this modification. The actions specified by the proposed AD are intended to prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar.

DATES: Comments must be received on or before June 8, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–22–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92–15–06, Amendment 39–8300 (57 FR29200, July 1, 1992), currently requires repetitively inspecting the rudder spar on certain Beech 33 and 36 series airplanes for cracks, and repairing any cracks found. This action also allows the option of incorporating one of the following three modifications as terminating action for the repetitive inspections:

1. Replacing the rudder assembly with part number 33–630000–137, –139, –141, –167, or –169, as applicable;

2. Installing Kit 33–6001–1 S; or

3. Installing an SMP reinforcement bracket in accordance with STC SA4899NM.

The FAA has continued to examine information that is pertinent to the actions required by AD 92–15–06 and has determined that installing an SMP rudder middle-hinge bracket in accordance with STC SA5870NM should also serve as terminating action for the currently required repetitive inspections.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that further AD action should be taken to prevent the rudder from separating from the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 33 and 36 series airplanes of the same type design, the proposed AD would supersede AD 92–15–06 with a new AD that would (1) retain the inspection, repair, and optional modification requirements of AD 92–15–06; and (2) incorporate the option of installing an SMP rudder middle-hinge bracket in accordance with STC SA5870NM as one of the modifications that would terminate the need for the repetitive inspection requirement.

The FAA estimates that 5,900 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $649,000. AD 92–15–06, which would be superseded by the proposed action, required the same actions as is proposed, except for the addition of an optional modification that would eliminate the need for repetitive inspections. Therefore, there would be no additional cost impact of the proposed AD on U.S. operators than that which is already required by AD 92–15–06.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–15–06, Amendment 39–8300 (57 FR 29200, July 1, 1992), and by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket No. 93–CE–22–AD. Supersedes AD 92–15–06, Amendment 39–8300.

Applicability: The following Beech model and serial numbered airplanes, certificated in any category:

Models	Serial Nos.
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304.
35–C33A, E33A, and F33A.	CE–1 through CE–1425.
E33C and F33C	CJ–1 through CJ–179.
36 and A36	E–1 through E–2518.
A36TC and B36TC	EA–1 through EA–500.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished (compliance with superseded AD 92–15–06 or superseded AD 91–23–07).

To prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar, accomplish the following:

(a) Upon the accumulation of 1,000 hours time-in-service (TIS) or within the next 100 hours TIS, whichever occurs later, inspect the rudder forward spar for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2333, Revision 1, dated November 1991.

(b) If no cracks are found, accomplish one of the following:

(1) Reinspect the rudder forward spar for cracks in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991, at intervals not to exceed 500 hours TIS until either paragraph (b)(2), (b)(3), (b)(4), or (b)(5) of this AD is accomplished;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991;

(3) Install a Spacecraft Machine Products (SMP) reinforcement bracket in accordance with Supplemental Type Certificate (STC) SA4899NM;

(4) Replace the rudder assembly with either part number 33–630000–137, –139, –141, –167, or –169, as applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991; or

(5) Install an SMP rudder middle-hinge bracket in accordance with Supplemental Type Certificate SA5870NM.

(c) If cracks are found, prior to further flight, accomplish one of the following:

(1) Replace the rudder assembly with either part number 33–630000–137, –139, –141, –167, or –169, as applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991; or

(3) If the cracks are only in the area of the upper hinge around the rivets and fasteners as specified in Beech SB No. 2333, Revision 1, dated November 1991, then stop drill the cracks and install either an SMP reinforcement bracket in accordance with SA4899NM or an SMP rudder spar middle-hinge bracket in accordance with STC SA5870NM.

(d) If a modification or replacement has been accomplished in accordance with either paragraph (b)(2), (b)(3), (b)(4), (b)(5), (c)(1), (c)(2), or (c)(3) of this AD, then no repetitive inspections are required by this AD.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 92–15–06, Amendment 39–8300.

Issued in Kansas City, Missouri, on March 16, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6812 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 18

Request for Comments Concerning Guides for the Nursery Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for the Nursery Industry. The Commission is soliciting the comments as a result of receiving a petition seeking to amend one of the guides (Guide 6) and as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until April 26, 1993.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as "16 CFR Part 18—Comment."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant—Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION:

Part I

By petition dated October 15, 1991, the Natural Resources Defense Council (Council) on its own behalf and that of ten other environmental, nursery, and garden club organizations requested the Commission to amend the Guides for the Nursery Industry. The Council seeks to amend Guide 6 to eliminate the use of the term "nursery grown" when used to describe plants collected from the wild state at any time in the plants' lifetime. On May 21, 1992, the American Association of Nurserymen (AAN) wrote a letter generally supporting the Council's petition, but urging instead that the Guide allow the term "nursery propagated" under certain conditions and require disclosure of the fact that plants were collected from the wild.

The Guides for the Nursery Industry were adopted by the Commission in 1979. The Guides address numerous sales practices for outdoor plants, trees and flowers, including deception as to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, growth ability, price and origin or place where grown. Guide 6 (16 CFR 18.6) is the subject of the petition. The guide provides that it is an unfair trade practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state. It further states that if collected plants are grown in the nursery row for at least one growing season before being marketed, such disclosure is not required. Nursery-grown stock is defined as being plants propagated and grown under cultivation, or plants transplanted from the wild and grown under cultivation for at least one full growing season.

The main claim in the petition is that Guide 6 and the definition of nursery-

grown cause consumer confusion about the origin of plants and contributes to the endangering of wild plants. The essence of the argument is that the Guides permit a plant which has been taken from the wild but has been grown in a nursery for one growing season to be called "Nursery Grown." The petition argues that a consumer who, because of environmental concerns or otherwise, wishes to purchase plants that have not been taken from the wild at any stage of their existence, may not be able to identify such plants because of the definition of "Nursery Grown."

The petition also raises the issue of whether or not the Guides conform to standards applied in international law, specifically the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 U.S.T. 1087, T.I.A.S. No. 8249).

The petition requests that the Guides be amended as follows:

Petitioners' Recommended Amendments

The petitioners recommend that the Federal Trade Commission amend its Guides for The Nursery Industry to prohibit use of the misleading term "nursery grown" and require that plants labeled as "propagated" be grown from seeds, cuttings, callus tissue, spores or other propagules (bulblets, bulbils, single cells, leaves) under controlled conditions.

The term "controlled conditions" would include open beds on one's property (including rented property) as long as the propagator is engaging in efforts to promote propagation and growth of the plants, e.g., weeding; fencing out deer, rabbits, or other wild animals; watering; or providing fertilizer.

In May, the American Association of Nurserymen (AAN) sent staff a latter generally supporting the petition. AAN, however, proposed the following specific language to amend Guide 6 (deleted text in brackets, new text in italics):

"It is an unfair trade practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state; [provided, however, that if collected plants are grown in the nursery row for at least one growing season before being marketed, such disclosure is not required.] *provided, however, that plants propagated from plants lawfully collected from the wild state are recognized and may be designated as nursery-propagated.*"

AAN asserts that the above language recognizes the need for initial propagative stock of certain plants to be obtained from the wild, but also addresses the "nursery grown" labelling issue. The "nursery grown" definition in the Guides would also need to be brought into conformance with this change.

The Commission seeks factual information about the need for any amendment of Guide 6, including the nature and extent of the injury alleged, the identity and dollar value of the plants involved, a description of the industry, potential environmental consequences and consumer behavior.

Accordingly, the Commission solicits public comments on the following questions:[1]

(1) How widespread are "nursery grown" claims for plants collected from the wild state?

(2) What is the extent of consumers' knowledge or the nature of their perceptions concerning "nursery grown" claims? (Empirical data would be especially helpful.)

a. Is there any evidence regarding whether consumers expect "nursery grown" plants to be of a higher quality than plants grown in the wild?

b. Are consumers' beliefs and knowledge regarding nursery grown claims changing over time and, if so, what effect would or should this have on government action?

c. Is there evidence to support the claim that "gardeners increasingly question whether plants bought for ornamental horticulture may have been dug from the wild?" (Petition, p. 2)

(3) What are the benefits and costs that result from the Nursery Guide's current definition of the term "nursery grown"?

a. For each species of plant falling within the current definition of the term "nursery grown" in the nursery guides, (i) what is the dollar value of U.S. sales? (ii) what is the average price difference due to origin (nursery versus wild)? and (iii) what is the percentage of the total sales of these species of plants accounted for by plants which originate in the wild?

b. Which, if any, species are close to extinction due to taking plants from the wild? How many years remain before each such species becomes extinct?

c. Is there any evidence available regarding the quality of plants originating from the wild and grown under cultivation for one growing season compared to the quality of plants that (i) originate in the wild and are grown under cultivation for less than one growing season; and (ii) are propagated and grown under cultivation?

d. To what extent do existing laws and regulations ensure the species' survival?

(4) What are the advantages and disadvantages of the proposed amendments to the guides?

a. What effect would each of the proposed changes have on the potential for extinction of the affected species? To what extent, if any, would the number of plants that are harvested from the wild decrease if the guides were amended?

b. Would the amendment of the guides limit or enhance the ability of nurseries to inform consumers of the quality of affected plants?

c. What economic consequences would result from amending the guides and what is the likely magnitude of these consequences? For example, what economic impact would amending the guides have upon domestic plant growers, individuals currently engaged in wildflower picking, plant retailers, plant catalog sellers, consumers, and others?

d. What consequences, if any, could the guide change have on international relations with other countries?

(5) What is the likely nature of and magnitude of the potential environmental consequences associated with the alternative amendments to the guides?

(6) What additional factors should the Commission consider in determining whether to amend the Nursery Guides? For example, is there an alternative to the two existing proposals to amend the Nursery Guides that the Commission should consider and, if so, why?

Part II

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision. The Commission also advises interested members of the public that, if retained, in addition to any revisions identified in this Notice that are deemed appropriate, the legal discussion in the guides will be updated to reflect the commission's current practices.[2]

[1] These questions apply both to the amendment proposed by the Council and to the amendment proposed by AAN.

[2] For example, the references to "it is an unfair trade practice" would be deleted and other pertinent language revised to conform to the deception standard formulations as expressed in the Commission's 1983 Statement on Deception. See appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984).

At this time, the Commission solicits written public comments concerning the Commission's Guides for the Nursery industry, 16 CFR part 18.

These guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

Accordingly, the Commission solicits public comments on the following questions:

(1) Have these guides had a significant economic impact (costs or benefits) or entities subject to their requirements?

(2) Is there a continuing need for these guides?

(3) What burdens does adherence with these guides place on entities subject to their requirements?

(4) What changes should be made to these guides to minimize the economic effect on such entities?

(5) Do these guides overlap or conflict with other federal, state, local government laws or regulations?

(6) Have technology or economic conditions changed since these guides were issued, and, if so, what effect do the changes have on the guides?

(7) Do these guides overlap or conflict with international laws or regulations?

(8) Have environmental conditions changed since these guides were issued and, if so, what effect do the changes have on the guides?

(9) Have consumer perceptions or preferences changed since these guides were issued and, if so, what effect do the changes have on the guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 18

Advertising, Nursery, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–6311 Filed 3–24–92; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, and 274

[Release Nos. 33–6982, IC–19342, File No. S7–11–93]

RIN 3235–AF58

Off-the-Page Prospectuses for Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rule and form, proposed form, and request for comment.

SUMMARY: The Commission is proposing for public comment an amendment to a rule under the Securities Act of 1933 (the "Securities Act") to permit certain advertisements ("off-the-page prospectuses") for shares of open-end management investment companies ("mutual funds") to include an order form if the off-the-page prospectuses contain specified disclosure. The Commission also is proposing for public comment a new form, which would be a cover sheet for certain filings required to be made under the proposed rule amendments. Currently, investors in funds that are marketed directly to the public must wait to receive a longer prospectus, while investors who purchase fund shares through sales representatives may purchase directly, without delay. Under the proposed rule changes, investors in direct marketed funds would be able to make their investments more quickly by purchasing shares directly ("off-the-page") from off-the-page prospectuses. This change also would level somewhat a disparity that exists between direct marketed funds and funds that sell through commissioned sales representatives. This change also should promote increased dissemination of information about mutual funds and reduce total marketing costs for some funds.

DATES: Comments must be received on or before June 23, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–11–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Diane C. Blizzard, Assistant Director, or Robert G. Bagnall, Special Counsel, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, Mail Stop 10–6, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 482(g) [17 CFR 230.482(g)] under the Securities Act of 1933 [15 U.S.C. 77a—77aa] (the "Securities Act"). Proposed rule 482(g) would implement a recommendation made in the report issued last year by the Division of Investment Management, *Protecting Investors: A Half Century of Investment Company Regulation* (the *"Protecting Investors* report"), in Chapter 9, Investment Company Advertising.[1] Proposed Form 482(g) would be used to file definitive copies of off-the-page prospectuses with the Commission, and to request advance review by the Commission of certain off-the-page prospectuses. In addition, the Commission is proposing to delete the instructions for summary prospectuses for open-end management investment companies now contained in Form N–1A.

Executive Summary

The Commission is proposing to amend rule 482 under the Securities Act by adding new paragraph (g), which would permit inclusion of order forms in mutual fund advertisements containing specified disclosure. This change would allow investors the option of purchasing mutual fund shares "off-the-page" directly from certain special "off-the-page prospectuses" by completing order forms included with those prospectuses. Currently, investors in direct marketed funds must wait to receive a longer prospectus that meets the requirements of section 10(a) of the Securities Act,[2] while investors who purchase from commissioned sales representatives may purchase directly, without delay. The new procedure would give investors in direct marketed funds the same option that investors now have only through commissioned sales persons, although the rule would require that off-the-page prospectuses provide core information.

Because off-the-page prospectuses would be required to contain significantly more disclosure than generally appears today in mutual fund advertisements, these changes should promote increased dissemination of information about mutual funds. The off-the-page prospectus would be

[1] *Protecting Investors: A Half Century of Investment Company Regulation*, Chapter 9, *Investment Company Advertising* 347–71 (1992).

[2] 15 U.S.C. 77j(a).

required to contain critical information about the fund, such as risks, levels of fees and expenses, investment objectives and policies, and historical performance data. Off-the-page prospectuses would carry liability under section 12(2) of the Securities Act for misstatements or omissions of material fact.[3] They would also be subject to the anti-fraud provisions of section 17(a) of the Securities Act and section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), including rule 10b-5.[4] Rule 482(g) would not permit the use of off-the-page prospectuses in radio, television, or other broadcast or electronic media, but would permit their use in direct mail, as well as in newspapers, magazines, and other print media.

Rule 482(g) would require off-the-page prospectuses to include legends alerting investors that a section 10(a) prospectus is available and contains more information. Those investors who choose to review the section 10(a) prospectus before investing would be able to request the section 10(a) prospectus by making a telephone call or by checking a box on the order form. The fund would still be required to deliver the section 10(a) prospectus to investors before, or with, the confirmation of the sale.

With limited exceptions, off-the-page prospectuses would be subject to the other requirements of rule 482, including the standards for computing and presenting performance data. Each fund relying on rule 482(g) would be required to submit its proposed off-the-page prospectuses for advance review by the staff of the National Association of Securities Dealers, Inc. ("NASD") (for its members) or the Commission (for non-NASD members) for a one year period beginning with the first use of an off-the-page prospectus for the shares that are being offered.

Proposed rule 482(g) does not represent any change in the Commission's views on advertising or other publicity for issuers other than mutual funds.

I. Background

A. Mutual Fund Advertising

Advertising by investment companies, especially mutual funds, is subject to considerations that generally do not apply to other issuers of securities. Due to these differences, investment companies encounter difficulties under the Securities Act provisions that restrict the advertisement of information regarding securities being sold in a public offering. Because of the nature of their business, the effect of the advertising restrictions is more severe for investment companies than for other types of companies. Other companies, even when engaged in a public offering, are able to advertise their products,[5] and thus gain name recognition with potential investors, because advertising that does not attempt to sell securities is not subject to the Securities Act. Investment companies, in contrast, do not sell products in the usual commercial sense. The very nature of an investment company is so inextricably tied to the securities it offers that almost any advertisement about the company is potentially an offer to sell its securities that must conform to the Securities Act's requirements.[6] Thus, absent an exception, any advertisement about an investment company is a prospectus within section 2(10) of the Securities Act,[7] and its use is subject to the requirements of sections 5 and 10 of the Securities Act.[8]

The advertising restrictions of the Securities Act cause special problems for mutual funds, because they continuously offer and sell their shares to provide a steady stream of capital into their portfolios and to enable them to meet redemption requests from outgoing shareholders. These ongoing distribution practices contrast sharply with more traditional underwritings, which raise fixed amounts of capital through periodic offerings of limited duration. With traditional underwritings, the advertising restrictions end with the offering. With mutual funds, the advertising restrictions never end because the offering process, in effect, never ends.

Accordingly, the Securities Act rules treat investment company advertisements differently than the advertisements of other issuers. Rule 134 under the Securities Act, which excepts "tombstone" advertisements from the definition of prospectus, contains express provisions that are applicable only to registered investment companies.[9] Rule 482, which provides that certain investment company advertisements are omitting "prospectuses" under section 10(b) of the Securities Act, is available only to registered investment companies and business development companies.[10] The summary prospectus rule likewise excepts mutual funds from some of the requirements applicable to other issuers.[11]

The current advertising restrictions under the Securities Act also treat direct marketed funds differently than funds sold through broker networks. Direct marketed funds use print, radio, and television advertising almost exclusively to sell fund shares to investors, while funds sold through a commissioned sales force employ sales personnel who sell fund shares orally. Over the past two decades, direct marketed funds have come to represent a significant part of mutual fund distribution. In 1990, direct marketed funds had sales of $82.6 billion, or thirty-five percent of stock, bond, and income fund sales, while funds sold through a sales force had sales of $140.1 billion, or sixty percent;[12] in 1970, no-load funds, including both direct marketed funds and institutional funds, represented only eleven percent of total fund sales.[13] The advertising restrictions of the Securities Act have a much greater impact on direct marketed funds than on funds sold through a commissioned sales force because the Securities Act does not hold the oral representations of sales personnel to the same prospectus requirements as it does certain written communications.[14]

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[3] 15 U.S.C. 77*l*(2).

[4] 15 U.S.C. 77q(a); Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78a–78*ll*, 78j(b); 17 CFR 240.10b-5.

[5] Of course, information and publicity disseminated about *any* issuer during a public offering could be deemed to be a step in the selling process and constitute an offer, depending on the facts and circumstances surrounding each case. *See, e.g.*, Guidelines for the Release of Information by Issuers Whose Securities are in Registration, Securities Act Release No. 5180 (Aug. 16, 1971), 36 FR 16506; Publication of Information Prior To or After the Filing and Effective Date of a Registration Statement Under the Securities Act of 1933, Securities Act Release No. 5009 (Oct. 7, 1969), 34 FR 16870; Publication of Information Prior To or After the Effective Date of a Registration Statement, Securities Act Release No. 3844 (Oct. 8, 1957), 22 FR 8359.

[6] Section 2(3) of the Securities Act defines the term "offer" to include every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. 15 U.S.C. 77b(3). *See also, e.g.*, In the Matter of Carl M. Loeb, Rhodes & Co., 38 S.E.C. 843, 848 (1950) (holding that the statutory definitions of "offer" and "prospectus" are intentionally broad so as to include any document designed to procure offers for a security).

[7] 15 U.S.C. 77b(10).

[8] 15 U.S.C. 77e, 77j.

[9] 17 CFR 230.134(a)(3)(iii), (a)(13).

[10] 17 CFR 230.482. Section 10(b) of the Securities Act authorizes the Commission to adopt rules and regulations permitting securities to be offered and sold by means of a prospectus which omits in part, or summarizes, information set forth in a preliminary prospectus or the final prospectus complying with section 10(a) of the Securities Act.

[11] 17 CFR 230.431. Investment companies are excepted from the requirements of paragraphs (a)(1) through (a)(4).

[12] Investment Company Institute, Mutual Fund Fact Book: Industry Trends and Statistics for 1991 42–43 (32d ed. 1992).

[13] Investment Company Institute, 1972 Mutual Fund Fact Book 72 (1973).

[14] Oral representations are subject to the liability provisions of section 12(2) of the Securities Act, but

B. Prohibition of Order Form in Rule 482 Advertisements

The chief difference in the requirements for broker sold funds and direct marketed funds is that rule 482 prohibits an application form from accompanying an advertisement under rule 482.[15] Thus, potential investors in direct marketed funds may not purchase shares directly from an advertisement; instead, they first must request and receive a section 10(a) prospectus before they may purchase shares of a fund. Rule 482 also contains requirements for a legend encouraging the investor to request and read the section 10(a) prospectus before investing, as well as information on how to obtain a section 10(a) prospectus.

It is possible, however, and is perhaps the typical case under the Securities Act, to sell a security orally and to send the section 10(a) prospectus later, either with the security or the confirmation of the sale (whichever is earlier). Section 5(b)(1) limits only the use of a prospectus, and "prospectus" is defined to include written—but not oral—communications.[16] Sales representatives who offer orally, either in person or over the telephone, are permitted to deliver the section 10(a) prospectus after an investor has made an investment decision.[17] Investors who are interested in purchasing a fund's shares may place an order on the day they become interested, without waiting for a section 10(a) prospectus. Thus, many investors do not necessarily receive full, or indeed, any written disclosure before they decide to purchase a security.

Direct marketed funds attract investor interest by advertising in accordance with the requirements of a safe harbor rule such as rule 482.[18] Interested investors must request a section 10(a) prospectus by filling out a request form or by making a telephone call. The section 10(a) prospectus is received days, or perhaps even weeks (depending on when the investor has time to complete the form or make the telephone call), after the investor first becomes interested. Finally, either the customer or the fund must initiate further contact to place the order. This process is expensive and time-consuming.

Other countries permit sales directly, or "off-the-page," from advertisements containing specified information. For example, Rule 7.25 of the British Conduct of Business Rules permits off-the-page advertisements if they contain up to eighteen items of information, along with certain statements, if applicable.[19] These items include information regarding the minimum amounts that can be invested, sales charges, reinvestment options, redemption procedures, investment objectives, expenses, fees, and performance. Although these requirements are quite extensive, and the advertisements can take up one-half of a page or more of advertising space, the size of the advertisements has not prevented their use in the British press. Similar procedures are available in Hong Kong and the Netherlands.[20]

The Securities Act does not prohibit the inclusion of order forms; the Act only prohibits the delivery of a security or the sending of a confirmation in interstate commerce unless accompanied or preceded by a section 10(a) prospectus.[21] Thus, the requirements of rule 482 appear to impose unnecessary burdens and delays on investors seeking to invest in direct marketed funds.

II. Discussion

The Commission is proposing to amend rule 482 by adding new paragraph (g), which would permit inclusion of order forms in mutual fund advertisements containing specified disclosure. Those investors who choose to review the section 10(a) prospectus before investing would be able to request the section 10(a) prospectus by making a telephone call or by checking a box on the order form. The off-the-page prospectus would be required to contain critical information about the fund, such as risks, levels of fees and expenses, investment objectives and policies, and historical performance data. The off-the-page prospectus would carry liability under section 12(2) of the Securities Act[22] for false or misleading statements of material fact; it also would carry liability under section 17(a) of the Securities Act and section 10(b) of the Exchange Act, including rule 10b–5, for fraud. The section 10(a) prospectus still would be required to be delivered to investors before, or with, the confirmation of the sale.

Off-the-page prospectuses should increase the amount and quality of information about mutual funds reaching investors. Because the rule for the first time would require the inclusion of core information in mutual fund advertisements, off-the-page prospectuses—especially those appearing in the print media—would provide an additional, widely circulated source of important information that investors could use to make comparative judgments about their investment alternatives. Investors who wish to study the section 10(a) prospectus before making an investment decision would receive it before investing, but investors who choose to purchase off-the-page would receive the section 10(a) prospectus subsequently, along with or preceding written confirmation of the sale. This practice would parallel the current requirements that apply when investors purchase

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not to the provisions of section 11 (15 U.S.C. 77k), which applies to section 10(a) prospectuses because they are part of the registration statement. See *infra* notes 22, 44 and 46, and accompanying text.

[15] The application form, which contains shareholder account information, cannot be sent alone because under section 2(10) it would be an illegal "prospectus" unless preceded or accompanied by the section 10(a) prospectus, and there is no available safe harbor.

[16] 15 U.S.C. 77e(b)(1). Section 5(b)(1) makes it unlawful to transmit in interstate commerce any prospectus relating to any security with respect to which a registration statement has been filed, unless the prospectus meets the requirements of section 10. Section 2(10) was amended in 1954 to include television communications within the definition of the term prospectus. Ch. 667, 68 Stat. 683 (1954).

[17] The Commission addressed issues raised by oral offers when it began requiring, among other things, the broad distribution of preliminary prospectuses to underwriters and participants in selling groups under rule 460 under the Securities Act (which does not apply to sales of certain investment company securities) and, absent an exception, requiring under rule 15c2–8 under the Exchange Act brokers and dealers in initial public offerings to deliver a preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation. 17 CFR 230.460; 17 CFR 240.15c2–8. Preliminary prospectuses are less widely used for sales of mutual fund securities because many mutual funds do not begin marketing until after the registration statement becomes effective, and, in any case, the vast majority of offers as well as sales occur in the post-effective period when preliminary prospectuses are not permitted to be used (because final section 10(a) prospectuses are available).

[18] A fund also may advertise under rule 134, the "tombstone" rule, which permits advertisements containing a broad range of information about the fund other than performance information. 17 CFR 230.134. Rule 135a permits generic advertising that contains information about investment companies generally but not about the securities of any particular investment company. 17 CFR 230.135a.

[19] *See* Securities and Investments Board (United Kingdom), the Financial Services (Conduct of Business) Rules 1987, rule 7.25.

[20] Supplement 1 to Appendix C, Code on Unit Trusts and Mutual Funds (Hong Kong) (October, 1991). Although apparently there is no rule regarding the use of off-the-page advertisements in the Netherlands, according to conversations between Commission staff and regulators in the Netherlands, off-the-page advertising occurs there because it is not prohibited by any section of their statute, and most funds are direct marketed.

[21] 15 U.S.C. 77e(b)(2).

[22] 15 U.S.C. 77*l*(2) Section 12(2) imposes liability on persons who offer or sell a security in interstate commerce by means of a prospectus or oral communication which includes an untrue statement of material fact, or omits to state a material fact that is necessary under the circumstances in order to make the statements made not misleading, subject to a defense that the offeror/seller did not know and, in the exercise of reasonable care, could not have known, of the untruth or omission.

mutual fund shares through brokers, who may sell securities by means of oral, rather than written, communications.[23]

A. Eligible Issuers

Under proposed paragraph (g)(1), only mutual funds satisfying certain requirements would be eligible to use off-the-page prospectuses. Thus, while any registered investment company or any business development company that has filed a registration statement may advertise under rule 482, paragraph (g) of rule 482 would not be available to issuers other than mutual funds: *i.e.*, off-the-page prospectuses would not be available for closed-end funds, unit investment trusts, registered separate accounts,[24] face amount certificate companies, business development companies, open-end companies that are exempt from section 22(e) of the Investment Company Act,[25] or issuers other than investment companies. Thus, proposed paragraph (g) does not represent any change in the Commission's views on advertising or other publicity for issuers other than mutual funds.[26] In addition, mutual funds that issue multiple classes of stock, or are part of a "hub and spoke" arrangement, would not be eligible to use off-the-page prospectuses due to the complexity of the disclosure that would be necessary to meet the requirements of proposed paragraph (g).[27]

The limitation to mutual funds is based in part upon their distinct offering practices. Mutual funds generally offer their shares to the public in a continuous offering of an unlimited number of shares; and many funds offer their shares directly through advertisements. By contrast, investment companies other than open-end companies typically use a more traditional type of underwriting in which set amounts of capital are raised by underwriters through periodic offerings of limited duration; and these other investment companies generally do not advertise or market their shares directly to any significant extent. Moreover, rule 482 contains standardized requirements for uniform computation and presentation of mutual fund performance; such requirements do not yet exist for other investment companies. The Commission requests comment, however, on whether other types of investment companies, such as unit investment trusts or registered separate accounts, should be able to sell off-the-page. Conversely, the Commission requests comment on whether, at least initially, the rule should be limited to certain types of mutual funds that might be regarded as the least complicated, most easily understood, and involving the least risk. For example, should the rule be available only to money market funds?

Limiting the use of off-the-page prospectuses to mutual funds, but not other types of investment companies, also is justified by the vast difference in the amount of information available to retail investors about mutual funds generally and individual funds in particular. Because over one quarter of United States households invest in mutual funds, either directly or indirectly through benefit plans, and the holdings of mutual funds are many times greater than those of closed-end funds, unit investment trusts, or face amount certificate companies,[28] a significant portion of the investing public is generally familiar with what mutual funds are and how they operate. In addition, many publications, both financial and general interest, provide a continuous flow of information about mutual funds generally and about specific funds. Moreover, the requirements of the Investment Company Act and its rules impose a high degree of standardization upon mutual funds, and provisions such as the leverage restrictions of section 18 of the Investment Company Act[29] limit the kinds of securities that mutual funds may offer. There is not the same degree of familiarity, information, or standardization for other investment companies. Accordingly, it is significantly more likely that off-the-page prospectuses for mutual funds could be designed in a way that adequately protects investors.

Paragraph (g)(1) also would limit the use of off-the-page prospectuses to funds that have been in existence at least two years from the first public sale of their shares. This seasoning period, among other things, would allow the Commission staff opportunities to review the disclosure in a fund's registration statement, which would be the basis for the disclosure in an off-the-page prospectus.[30] This period also would provide a financial history on which a fund's performance or other financial data would be based. Moreover, the requirement of a two-year period of operation would increase the likelihood that the financial press and other publications would have provided a flow of information about the fund to the market. The Commission requests comment on this seasoning requirement, in particular on the appropriateness of the length of the two-year period.

Paragraph (g)(1) also requires that a fund intend to comply with Subchapter M of the Internal Revenue Code (26 U.S.C. 851–860) during the coming taxable year so as to avoid taxation at the fund level. A similar requirement currently applies to mutual fund summary prospectuses.[31] Virtually all mutual funds elect to comply with Subchapter M. This requirement should ensure further uniformity and comparability among the funds eligible to use the off-the-page prospectus provisions. The requirement also should make specific disclosure concerning tax consequences of mutual fund investments unnecessary, except for those funds such as tax-exempt funds whose special tax advantages are material to an investment decision.[32]

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[23] *See supra* note 17 and accompanying text.

[24] Paragraph (g)(1) would limit the use of off-the-page prospectuses to open-end companies with an effective registration statement on Form N–1A. While a few separate accounts are organized as open-end companies, they are not eligible to use Form N–1A. *See* Form N–1A, General Instruction A.

[25] 15 U.S.C. 80a–22(e). Thus, if the Commission adopts proposed rule 22e–3 under the Investment Company Act, investment companies relying on that rule would not be able to use off-the-page prospectuses under rule 482(g). *See* Periodic Repurchases by Closed-End Management Investment Companies; Redemptions by Open-End Management Investment Companies and Registered Separate Accounts at Periodic Intervals or with Extended Payment, Securities Act Release No. 6948 (July 28, 1992), 57 FR 34701. In addition, investment companies suspending the right of redemption by other means available under section 22(e) would not be able to use off-the-page prospectuses.

[26] Cf. Investment Company Advertising, Securities Act Release No. 5591 (June 16, 1975), 40 FR 27442 (adoption of amendments to rule 134 for investment companies "is not intended, and should not be construed, to indicate any change in the Commission's views with respect to general publicity concerning other offerings subject to the registration requirements of the Securities Act of 1933").

[27] The Commission in the future will consider a rule that would codify exemptive relief obtained by companies that issue multiple classes of stock. In connection with that rule, the Commission will consider the types of disclosure that should appear in prospectuses and advertisements of such companies and may consider whether multiple class companies and companies participating in a "hub and spoke" arrangement should be able to use off-the-page prospectuses.

[28] The Commission estimates that, as of December 31, 1992 open-end companies had $1.6 trillion in assets; closed-end companies $85.1 billion; unit investment trusts $111.6 billion; and face amount certificate companies approximately $4 billion.

[29] 15 U.S.C. 80a–18.

[30] The *Protecting Investors* report, *supra* note 1, at 361–63, recommends the adoption of a new section 10(g) of the Securities Act, which would permit the Commission to adopt rules for an advertising prospectus. An advertising prospectus would not be limited to summarizing or omitting information contained in the section 10(a) prospectus and hence would not be limited to disclosure the "substance of" which is contained in the section 10(a) prospectus.

[31] *See* Form N–1A, Instructions as to Summary Prospectuses.

[32] *See* proposed paragraph (g)(2)(vi)(B).

B. Disclosure

Proposed paragraph (g)(2) would require off-the-page prospectuses to contain disclosure that is critical to an investment decision. The disclosure requirements in paragraph (g)(2) follow the order of the corresponding items in Form N–1A. The Commission encourages commenters to furnish draft samples of off-the-page prospectuses that show how the proposed disclosure requirements, or any alternatives they may suggest, might work in practice.

Paragraph (g)(2)(i) calls for basic information such as the name of a fund and the type of fund (*e.g.*, money market fund, bond fund, balanced fund, etc.). Subparagraphs (A) and (B) correspond to Items 1(a)(i) and 1(a)(ii) of Form N–1A.

Paragraph (g)(2)(ii) requires disclosure of fees and expenses through inclusion of the fee table called for by Item 2(a)(i) of Form N–1A. In most instances, an off-the-page prospectus should be able to present this information concisely in tabular form. As under the instructions to Item 2(a) of Form N–1A, some brief accompanying text may be necessary to aid comprehension and avoid misleading investors; for example, if advisory or other fees are reduced through waiver, reimbursement, or some other reason, some clarification would be necessary under Instruction 13. The off-the-page prospectus must provide a breakdown of operating expenses in tabular form, as is required under Item 2 of Form N–1A.[33]

The Commission requests comment on whether required disclosure of fund operating expenses should be limited to an aggregate expense figure, as the Investment Company Institute has suggested.[34] Even if other expense items were not to be listed separately, the Commission believes that rule 12b–1 fees would need to be identified separately in order to ensure that investors are notified about any fees that they may be paying for distribution expenses.

The Commission requests comment on whether the fee table example required by Item 2(a)(i) of Form N–1A may be deleted from the off-the-page rule. If the example were deleted, what alternative requirement might allow investors to compare the total costs that they would pay in funds with or without front-end or back-end sales charges?

In addition to that disclosure of fees, paragraph (g)(5) would require off-the-page prospectuses for funds that charge front-end or deferred sales loads to include legends that make clear the consequences of such loads. Because such loads are material to investors and generally are not refunded or waived, off-the-page prospectuses would be required to make prominent[35] disclosure to investors of how much money will not be returned to them or will be charged if they subsequently redeem their investment. Paragraph (g)(5) would require those legends to be modified to the extent that a fund waives or refunds loads for investors who redeem their investment within a specified period after purchase. For such funds, the legend must disclose the terms of such refund or waiver, the possibility that the value of the investment may fluctuate during the waiting period, and the tax consequences of such short-term investment.[36]

Paragraph (g)(2)(iii) calls for prominent disclosure about a fund's performance. A fund would be required to provide performance data in accordance with paragraphs (d), (e), and (f) of rule 482, and the fund's turnover rate in accordance with Item 3(a) of Form N–1A. The performance data must appear separately in a table or in a box.

Paragraph (g)(2)(iv) calls for disclosure about a fund's investment objectives, policies, and risks. Apart from the disclosure about fees and performance, this disclosure generally should receive the greatest space and emphasis in an off-the-page prospectus. Funds would have to take care that risk information is in plain English and presented in ways that average investors would readily comprehend. The risk disclosure must be prominent and must appear next to the discussion of investment objectives and policies. Paragraph (g)(2)(iv) also requires disclosure if a fund is non-diversified under the Investment Company Act or if it has, or intends to have, a policy of concentrating in an industry or group of industries.

Funds may need to devote special attention to achieving a balance between limitations of space and providing potential investors meaningful disclosure about a fund's investments, policies, and risks. The Commission requests comment on whether the rule should require some form of standardized presentation of the degree and kind of risk presented by a fund relative to other mutual funds. One approach might be to describe where the fund fits on a risk continuum from low risk (*e.g.*, a money market fund), to moderate risk (*e.g.*, a growth and income fund investing in S&P 500 stocks and high quality bonds), to high risk (*e.g.*, an emerging market country fund). The Commission also requests comment on the advantages and disadvantages of alternative disclosure formats such as narrative discussion, a numerical scale from 1 (least risky) to 10 (most risky), or other visual or symbolic representations.

Paragraph (g)(2)(vi) calls for disclosure about any options shareholders have regarding the receipt of dividends and distributions.[37] To the extent feasible, a fund might put this disclosure in the order form next to boxes where a prospective investor could mark any option selected. This paragraph also requires disclosure concerning tax consequences of investing in a fund, but such disclosure is required only to the extent that tax consequences are material to investing in the fund; for example, tax-exempt or municipal funds, or government securities funds with tax advantages under state law should discuss tax consequences. The disclosure specifically required by Items 6(g)(i) through (iii) of Form N–1A is not required in an off-the-page prospectus for funds without such tax consequences. Thus, for example, an off-the-page prospectus need not state that a fund will distribute all of its net income and gains to shareholders and

[33] The Investment Company Institute (ICI) has proposed requiring only disclosure of total fund operating expenses and not requiring the presentation of such information in tabular form. *See* The Institute's Submission to Permit the Use of Summary Advertising Prospectuses at 9, enclosed in letter from Craig S. Tyle, Vice President, Investment Company Institute, to Marianne K. Smythe, Director, Division of Investment Management (Oct. 21, 1992) ("ICI Submission"). The ICI argued that the recommendations in the Protecting Investors report for a unified fee investment company support disclosure of only the total expense figure. The unified fee proposal, however, relies fundamentally upon the assumption of competition among funds charging a single annual fee, and no separate sales charges, whereas proposed rule 482(g) would not exclude funds charging front-end loads, contingent deferred sales loads, or more than *de minimis* rule 12b-1 fees. Accordingly, the unified fee proposal does not provide a logical basis for limiting required off-the-page prospectus disclosure to total operating expenses. The Commission believes that disclosure in tabular form should not occupy materially more space than narrative disclosure and is necessary to make such disclosure more conspicuous and easier to compare.

[34] *Id.*

[35] The Division of Investment Management has interpreted a similar requirement to mean that a "statement will be prominent if it appears in some typographically distinctive manner (*e.g.*, boldface, italics, red letters, etc.)." Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants at 3–4 (Jan. 17, 1992) (comment II.B).

[36] *See infra* section II.F for a discussion of such cancellation procedures.

[37] This disclosure corresponds to Item 6(f) of Form N–1A.

that such distributions are taxable income or capital gains.

Paragraphs (g)(2)(vii) and (viii) call for disclosure about purchases and redemptions of shares. In section 10(a) prospectuses, these topics can occupy substantial space, especially if a fund offers a variety of special features. In many respects, such disclosure in section 10(a) prospectuses often serves as a reference manual for existing shareholders and would continue to serve that important function for investors who purchase through off-the-page prospectuses; investors would receive the section 10(a) prospectus with the confirmation of their purchase.

Accordingly, the Commission does not propose that an off-the-page prospectus disclose all possible mechanisms for purchasing or redeeming shares. Instead, it is sufficient to disclose how investors may purchase shares using the order form and to explain how to obtain further information at no cost—for example, through a toll-free telephone number. Similarly, the information required by Item 7(c) of Form N–1A concerning variations in or elimination of sales loads would not be required. Instead, paragraph (g)(2)(vii)(B) would require only a statement that such arrangements are available, together with an explanation of how to obtain information at no cost about such arrangements.[38] Similarly, paragraph (g)(2)(viii) would require only a statement that a fund's shares are redeemable, an explanation of how to obtain information at no cost about redemption procedures, and disclosure of any charges or restrictions[39] upon redemptions. Funds would be able to use follow-up mailings to enable investors to choose redemption options, such as check writing privileges, for which a signature or other information is required.

Paragraph (g)(2)(ix) would require disclosure about pending material legal proceedings. This requirement corresponds to Item 9 of Form N–1A and accordingly should require disclosure only under unusual circumstances.

With the exception of the provision for performance data in paragraph (g)(2)(iii), the wording of the disclosure provisions is based on that used in the requirements for the section 10(a) prospectus under Form N–1A. This is consistent with the off-the-page prospectus' function under section 10(b) of the Securities Act as a prospectus that omits or summarizes the information in the section 10(a) prospectus. The relationship to the Items of Form N–1A also should make it easier for funds to prepare off-the-page prospectuses, since they can refer to their section 10(a) prospectuses. Many funds may be able to base their core off-the-page disclosure on any summary or synopsis included in the section 10(a) prospectus; and their experience in construing the requirements of Form N–1A should be helpful in preparing disclosure for off-the-page prospectuses.

Except as specifically noted in paragraphs (a)(3) and (a)(5), the proposal would not affect the obligation of off-the-page prospectuses to comply with the provisions of the rest of rule 482. For example, under paragraph (a)(6), any advertisement containing performance data must include a legend discussing the limitations of performance data, and any performance data must be computed according to paragraphs (d) through (f); because they would include performance information, off-the-page prospectuses would be subject to those requirements. Under paragraph (a)(7), funds holding themselves out as money market funds must include a specified statement about certain risks of the fund.

Proposed paragraph (g) would add certain format requirements to those already provided in rule 482. Paragraph (g)(2)(iii) would require performance data to appear within a table or a box. Under paragraph (g)(2)(iv) and the General Instruction to paragraph (g)(2), the risk disclosure must be prominent and may not be separated from the disclosure of investment objectives and policies. Paragraph (g)(5) would require legends about sales charges to appear prominently, in a separate paragraph, and within a box. In addition, paragraph (g)(6) would require that the blank and text for indicating interest in investing and the blank and text for requesting the section 10(a) prospectus appear next to each other and be of the same format and type.

Apart from the general requirement of conciseness in paragraph (g)(2), the rule does not impose any express length limit on off-the-page prospectuses.[40] Similarly, proposed paragraph (g) does not mandate any sequence for the response to the indicated disclosure items. The note at the end of paragraph (g)(2) states that the information need not be set forth in the order specified and may be presented in a question and answer format. The proposed provisions would not limit the ability of off-the-page prospectuses to include disclosure other than that specifically required by paragraph (g)(2) as long as the substance of the information is included in the section 10(a) prospectus;[41] under certain circumstances, additional disclosure might be necessary in order for the off-the-page prospectus as a whole not to be misleading. The Commission requests comment whether the rule should contain other format restrictions. For example, should the rule limit the use of footnotes, especially in disclosure concerning performance or fees and expenses? Should the rule contain additional requirements regarding type face or size?[42] Should the rule contain special prominence requirements for direct mail pieces, which will tend to be longer, so that core information is not obfuscated? Should the rule limit what kinds of materials may be mailed together with an off-the-page prospectus?[43]

The Securities Act provides significant protections against the use of a misleading off-the-page prospectus. The provisions of sections 12(2) and 17(a) of the Securities Act apply to rule 482 advertisements as omitting prospectuses used in the offer and sale of securities, and hence would apply to off-the-page prospectuses, as would the anti-fraud provisions of section 10(b) of the Exchange Act and rule 10b–5.[44] Moreover, while section 10(b) of the Securities Act[45] provides that an omitting or summary prospectus does not carry liability under section 11 of

[38] Such two-step procedures for load variations and for redemption procedures were suggested in the ICI Submission, *supra* note 33, at 10 and 13.

[39] Restrictions requiring off-the-page disclosure might include special procedures for certificated shares or requirements for signature guarantees. See Form N–1A, Guide 27 (Redemption or Repurchase).

[40] *Cf.* Advertising by Investment Companies, Securities Act Release No. 6116 (Aug. 31, 1979), 44 FR 52816, 52817 (in adopting rule 434d, the predecessor to rule 482, the Commission eliminated a proposed requirement that advertisements not exceed 600 words).

[41] See Securities Act section 10(b), 15 U.S.C. 77j(b); rule 482. *See also supra* note 30.

[42] Rule 420 under the Securities Act already requires omitting prospectuses under rule 482 to be in at least 8-point type. 17 CFR 230.420.

[43] Section 2(10)(a) of the Securities Act contains an exception from the definition of prospectus for certain selling material that is preceded or accompanied by a section 10(a) prospectus. Off-the-page prospectuses would be section 10(b) prospectuses, and thus, accompanying sales literature would not qualify for the exception.

[44] *See supra* note 22. To prevail in a lawsuit under rule 10b-5, a plaintiff must prove that the defendant acted with scienter. *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 193 (1976). Although section 17(a) essentially prohibits negligent misstatements or omissions, unlike under section 12(2) most courts and commentators believe that an implied private right of action does not exist under section 17(a). See generally *Louis Loss, Fundamentals of Securities Regulation* 975–81 (2d ed. 1988).

[45] Under section 10(b), an omitting or summary prospectus, even if filed as part of the fund's registration statement, is not deemed a part of the registration statement for the purpose of liability under section 11 of the Securities Act.

the Securities Act,[46] section 10(b) authorizes the Commission to suspend the use of a defective summary or omitting prospectus. This administrative remedy supplements the Commission's stop order powers under section 8 of the Securities Act.[47] The Commission requests comment whether these protections are adequate, or whether additional provisions should be added to the rule to control hype or extravagant claims in off-the-page prospectuses.

C. Relationship to Section 10(a) Prospectuses

The current prohibition against including an order form in a rule 482 advertisement was intended to address concerns about the relationship between the advertisement and the section 10(a) prospectus. This prohibition codified a no-action position that sought to prevent confusion between an advertisement and the section 10(a) prospectus.[48] In proposing the amendment to rule 482 to prohibit order forms, the Commission expressed concern about consistency with the legend urging investors to read the section 10(a) prospectus before investing.[49]

In light of further consideration and experience under rule 482, those concerns do not appear to require the maintenance of a blanket prohibition upon the inclusion of an order form. Investor confusion between an off-the-page prospectus and the section 10(a) prospectus is unlikely to occur if, as proposed, an off-the-page prospectus is required to alert investors to the availability of more information in the section 10(a) prospectus. In place of the legend required by paragraph (a)(3) urging investors to read the section 10(a) prospectus before investing, paragraph (g)(3) would require off-the-page prospectuses to state that the section 10(a) prospectus contains more information about the fund, and that investors who are not familiar with mutual funds may wish to obtain the section 10(a) prospectus before investing.

Proposed rule 482(g) would preserve the role of the section 10(a) prospectus as a fund's primary disclosure document, even though it would eliminate the rule's current prohibition on purchasing fund shares directly from an omitting prospectus. Off-the-page prospectuses would supplement—not supplant—the use of section 10(a) prospectuses.[50] As required under the Securities Act, delivery of the section 10(a) prospectus would precede or accompany confirmation of a sale; and paragraph (g)(3) would require that the off-the-page prospectuses include a statement that the section 10(a) prospectus would be sent with the confirmation of purchase. Paragraph (g)(6) would require the order form to include a box that can be checked to request the section 10(a) prospectus; thus, the option of obtaining the section 10(a) prospectus would receive equal emphasis with the option of investing directly from the off-the-page prospectus. Section (g)(4) would require funds to send out section 10(a) prospectuses within two business days of any request, to ensure that investors receive additional information promptly. In addition, off-the-page prospectuses could include a telephone number that investors may call to request the section 10(a) prospectus. The Commission requests comment on whether a telephone number should be required.

D. Filing

Paragraph (c) of rule 482 provides that advertisements made pursuant to rule 482(a) need not be filed as part of a fund's registration statement; it notes, however, that rule 497[51] requires advertisements to be filed with the Commission unless filed with the NASD.[52] This proposal would not amend paragraph (c).

Proposed paragraph (g)(8) would add a requirement that funds pre-file off-the-page prospectuses with the Commission or the NASD.[53] This requirement would apply for "a period ending one year after the first use of any advertisement * * * with respect to the securities that are the subject of the advertisement." The period of one year is intended to provide individual funds and regulators with a period to gain experience with the disclosure issues involved in that particular fund's use of off-the-page prospectuses. The period would apply separately to each security that is the subject of an off-the-page prospectus; thus, the period would run individually for each fund or series. Each security may present unique disclosure issues. Off-the-page prospectuses subject to paragraph (g)(8) would be required to be filed twenty days before they are submitted for publication to give adequate time for advance review. Off-the-page prospectuses submitted to the Commission for advance review would be transmitted with Form 482(g). The Commission anticipates that, like rule 482 advertisements at present, most off-the-page prospectuses would be filed with the NASD.

The Commission requests comment on this filing requirement and on other review arrangements that might achieve the same goals of reducing the likelihood of inadequate or misleading disclosure. For example, should prior review be limited to a period of one year, as proposed, or are off-the-page prospectuses sufficiently closer to section 10(a) prospectuses than to existing rule 482 advertisements that prior review should be required indefinitely? Should the rule provide a procedure by which the Commission or the NASD (or their staff, by delegated authority) could require a fund to resume pre-filing outside the one year period if a fund's disclosure were found deficient? Is the proposed period of twenty days sufficient, or do the proposed disclosure requirements of paragraph (g)(2) justify a longer or shorter period?

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[46] 15 U.S.C. 77k. Section 11 of the Securities Act imposes liability for material misstatements or omissions contained in a registration statement when it becomes effective. That section imposes strict liability on the issuer. Section 11 also imposes liability on a wide variety of other defendants, such as persons who signed the registration statement, directors of the issuer at the time the statement is filed, persons who consented to be named in the statement, experts who consented to be named in the statement, and underwriters.

There are certain differences between liability under section 11 and section 12. For example, section 11 does not impose liability on sellers of securities other than issuers. Moreover, under section 11 issuers do not have the "reasonable care" defense that they have under section 12(2). For an in-depth discussion and comparison of liability under sections 11 and 12(2), *see* Loss, *supra* note 44, at 887–906.

[47] 15 U.S.C. 77h.

[48] Federated Investors, Inc. (pub. avail. June 30, 1985).

[49] Advertising by Investment Companies; Proposed Rules and Amendments to Rules, Forms, and Guidelines, Securities Act Release No. 6660 (Sept. 17, 1986), 51 FR 34384, 34391. Similarly, in adopting the summary prospectus rule, the Commission stated its intention to provide additional means for disseminating information, but not to supplant the section 10(a) prospectus as the primary selling document. Adoption of Summary Prospectus Rule 434A and Amendments to Forms S–1 and S–9, Securities Act Release No. 3722, [1952–1956 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,415 (Nov. 26, 1956) (adopting summary prospectus rule).

[50] Protecting Investors report, *supra* note 1, at 365.

[51] 17 CFR 230.497.

[52] Article III, section 35(c)(1) of the NASD's Rules of Fair Practice requires any advertisement used by a NASD member to be filed with the NASD.

[53] The ICI has recommended that the NASD Rules of Fair Practice be amended to provide for pre-filing and clearance of off-the-page prospectuses on a temporary basis for a one year period after the adoption of the rule. ICI Submission, *supra* note 33, at 13–14. The proposals herein contemplate that the NASD will propose amendments to implement procedures for review of off-the-page prospectuses, but such amendments are not now before the Commission.

Proposed paragraph (g)(9) would require that three copies of an off-the-page prospectus be filed with the Commission within three days after the first use of an off-the-page prospectus unless copies already have been filed with the Commission. These filings would not be subject to advance review or clearance and would not be part of a fund's registration statement, but would be reviewed by the staff on an ad hoc basis for purposes of monitoring compliance with the rule. The definitive copies would be transmitted with Form 482(g). The filing requirement would apply to any use of an off-the-page prospectus, even after the one-year advance review requirement no longer applies.

E. Eligible Media

Paragraph (g)(7) would prohibit the transmission of off-the-page prospectuses to investors by radio, television, or other broadcast or electronic media. The rule would exclude radio, television, and other broadcast media because such media do not give viewers or listeners a sufficient period for continuous examination of all of the disclosure required under paragraph (g)(2).[54] Some electronic media, such as computer bulletin boards, may provide the capacity to read the disclosure for a sufficient period of time and to reproduce the disclosure and order form in print. The Commission, however, has received only limited indications of interest in advertising fund shares through such media or of the special concerns that might arise regarding such media. The Commission requests comment on whether rule 482(g) should permit the use of electronic media, and if so, which media might be used, what format off-the-page prospectuses in such media might take, and how such off-the-page prospectuses might be transmitted to potential investors.

The rule would not otherwise limit the media in which off-the-page prospectuses might be disseminated. Thus, funds could advertise by direct mail, as well as in magazines, newspapers and other print media. Rule 482 now permits advertisements made under paragraph (a) to be sent through direct mail; that would not change under proposed paragraph (g).[55] Direct mail has become a major component of many fund groups' marketing programs and may be particularly useful to smaller fund complexes that cannot easily afford the expense of mass advertising.[56] Direct mail may complicate monitoring and enforcement because direct mail pieces are less public than magazine and newspaper advertisements. Nevertheless, the filing and review requirements under paragraph (c) and paragraphs (g)(8) and (g)(9) should give the Commission sufficient capacity to monitor and enforce compliance with the rule. The Commission requests comment, however, whether it should prohibit the use of off-the-page prospectuses in direct mail. Limiting their use to mass media advertising might deter misleading disclosure, and often an advertiser's competitors can play an important role by drawing possibly deficient advertisements to the attention of regulators.

F. Cancellation

The *Protecting Investors* report recommended considering whether investors who purchase off-the-page should have an opportunity to cancel their purchases for a specified waiting period allowing for review of the section 10(a) prospectus.[57] The report suggested that such cancellation might involve either of two options: first, an escrow arrangement, under which an investor's money would be held in a bank account or money market fund until the end of the waiting period, when it would be invested in the fund the investor sought to purchase; or second, the investor's money would be invested in the fund at once, but if the investor requested redemption by the end of the waiting period, any front-end load would be refunded, and any contingent deferred sales load would be waived.

After further review, the Commission is not proposing to require or permit escrow arrangements, which do not appear consistent with the off-the-page rule's policy of reducing delays in the process of investing in direct marketed funds.[58] The Commission requests comment, however, on whether there is a justification for permitting the use of escrows, and, if so, what changes should be made to rule 22c–1 or other provisions of the securities laws.

Under the second option, an investor would bear the risk of fluctuations in net asset value during the waiting period, but if the investor opted to cancel the purchase, any front-end load would be refunded, or any contingent deferred sales load would be waived. The Commission is not proposing to *require* that funds offer such refunds or waivers to investors who purchase through off-the-page prospectuses. Such refunds or waivers, however, would be variations in or elimination of a fund's sales charges and would be permissible if they comply with the requirements of rule 22d–1.[59]

G. Deletion of Form N–1A Summary Prospectus Instructions

Currently Form N–1A contains instructions for summary prospectuses pursuant to rule 431.[60] The Commission adopted the summary prospectus provisions for investment companies in

[54] The United Kingdom rules contain a comparable requirement. *See* Conduct of Business Rules, *supra* note 19, rule 7.23(4). In addition, broadcast advertisements cannot include an application form.

[55] As originally adopted, rule 434d initially limited omitting prospectuses under the rule to use in bona fide publications. Rule 482 was amended in 1988 to delete that limitation in order to allow use in direct mail. Advertising by Investment Companies, Securities Act Release No. 6454 (Feb. 28, 1983), 48 FR 10297. Rule 494, by contrast, limits "newspaper prospectuses" for foreign government securities to advertisements appearing in newspapers, magazines and other periodicals that are distributed by second class mail. 17 CFR 230.494.

[56] ICI Submission, *supra* note 33, at 5. Typically, an initial direct mailing contains a rule 482 advertisement, and section 10(a) prospectuses are sent only to those recipients who specifically request them. The ICI cites an estimate that the conversion rate for direct mailings (the percentage of recipients who actually invest) is 0.5%. *Id.* at 4 n.10. For that reason, fund representatives have informed Commission staff that generally it is too expensive to send section 10(a) prospectuses in direct mailings.

[57] *Protecting Investors*, *supra* note 1, at 368.

[58] With an escrow, the investor's money would be invested at the end of the waiting period if the investor did not cancel the purchase. That delay in investment would not comply with rule 22c–1, which requires issuers of redeemable securities to price sales of such securities at the next net asset value computed after the receipt of an order to purchase. 17 CFR 270.22c–1. The Division of Investment Management has taken a no-action position under rule 22c–1 with respect to certain arrangements under which a purchase or redemption order would not be executed at the next determined net asset value following receipt of the order but would be determined at the next determined net asset value following a specified contingent event that made compliance highly impractical, if not impossible. *See, e.g.*, Capital Preservation Fund (pub. avail. Sept. 11, 1990); Templeton Global Fund (pub. avail. Sept. 7, 1983). *But see* Dreyfus Index Fund (pub. avail. Sept. 21, 1987) (denying no-action relief for proposal that purchase orders received between noon and 4:00 p.m. be invested at next day's price rather than same day's price at close of New York Stock Exchange). Such no-action relief would not be appropriate for the escrow option.

[59] 17 CFR 270.22d–1. Because the language of rule 22d–1 "contemplates sales loads paid at the time of purchase, the exemption provided by rule 22d–1 does not extend to scheduled variations in deferred sales loads." Exemptions for Certain Registered Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275, 45279. Accordingly, exemptive orders permitting contingent deferred sales loads with scheduled variations have required that such scheduled variations comply with the conditions of rule 22d–1. Proposed rule 6c–10 contains the same requirement. *Id.*

[60] 17 CFR 230.431.

1972.[61] In the intervening twenty years, however, to the best of the Commission's knowledge, no fund has published a summary prospectus. Proposed rule 482(g) should provide mutual funds a basis for publishing a condensed prospectus. Accordingly, the Commission is proposing to delete the summary prospectus instructions in Form N–1A. The Commission previously deleted the summary prospectus instructions in Form N–2, the closed-end fund registration form.[62]

III. Cost/Benefit of Proposed Action

Proposed rule 482(g) would not impose any additional required costs on investment companies. Open-end companies that elect to rely upon the rule may incur some additional costs because off-the-page prospectuses in all likelihood would require more space than existing advertisements under rule 482 or under rule 134. To the extent, however, that a significant number of investors decide to invest from an off-the-page prospectus without requesting a section 10(a) prospectus, a fund's total marketing costs may be reduced.

The Commission requests comment upon the above assessment of costs and benefits associated with the proposed rule changes. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical data.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 482(g). The Analysis explains that the proposal would provide potential investors with the option to purchase mutual fund shares directly from off-the-page prospectuses containing specified prospectus disclosure. Off-the-page prospectuses would be omitting prospectuses under section 10(b) of the Securities Act. The Analysis explains that the proposal is intended to give investors in direct marketed funds the option of investing more directly and quickly than at present, and with lower cost to funds and hence to shareholders. The Analysis states that the Commission considered significant alternatives to the proposal. Those alternatives included simplifying the level of disclosure that small entities would provide in an off-the-page prospectus or exempting small entities from the pre-publication review requirement. The Commission concluded that such alternatives would create the risk that investors would not receive comparable disclosure and not make properly informed investment decisions, or increase the risk that a small entity's off-the-page prospectus might contain inaccurate or misleading disclosure. To obtain a copy of the Initial Regulatory Flexibility Analysis, write to Robert G. Bagnall, at Mail Stop 10–6, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 230, 239 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by revising paragraphs (a)(3) preceding the Note and (a)(5), and by adding paragraph (g) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) * * *

(3) Except as provided in paragraph (g) of this section, it states conspicuously from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing.

* * * * *

(5) Except as provided in paragraph (g) of this section, it does not contain and is not accompanied by any application by which a prospective investor may invest in the investment company; *Provided, however, That* a prospectus meeting the requirements of section 10(a) of the Act by which a unit investment trust offers periodic payment plan certificates may contain a contract application although the prospectus includes another prospectus that, pursuant to this rule, omits certain information required by section 10(a) of the Act regarding investment companies in which the unit investment trust invests.

* * * * *

(g) An advertisement made pursuant to paragraph (a) of this section may contain an application by which a prospective investor may invest in an investment company, or incorporate by reference an attached or enclosed application, if:

(1) The advertisement is with respect to an open-end management investment company that has an effective registration statement on Form N–1A and that:

(i) First publicly sold the shares being offered by the advertisement at least two years prior to publication of the advertisement,;

(ii) Intends to comply with the requirements of subchapter M, sections 851–860, of the Internal Revenue Code (26 U.S.C. 851–860) during the current taxable year;

(iii) Is not exempt from section 22(e) of the Investment Company Act (15 U.S.C. 80a-22(e));

(iv) Is not a management separate account offering variable insurance products; and

(v) Has outstanding only one class of shares and does not invest its assets entirely in the shares of another open-end management investment company.

(2) The advertisement contains the following information more concisely (to the extent feasible) than in the company's section 10(a) prospectus:

(i) (A) The company's name; and

(B) Identification of the type of fund (e.g., money market fund, bond fund, balanced fund, etc.), or a brief statement of the company's investment objectives;

(ii) The fee table called for by Item 2(a)(i) of Form N–1A, including the example, together with any narrative necessary to make the table understandable and not misleading;

(iii) The following information, set out prominently in a table or in one or more boxes or similar border enclosing such data on all four sides:

(A) In the case of a "money market fund," a quotation of current yield and, at the option of the company, effective yield, as permitted by paragraphs (d) and (f) of this section;

(B) In the case of any other type of open-end investment company, quotations of total return as provided for in paragraph (e)(3) of this section and,

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[61] Adoption of Rule Changes Relating to Investment Company Advertising, Amendments to Rules 134 and 434A of the Securities Act of 1933, New Rule 135A under the Act, the Amendment to Form S–5 to Provide for a Summary Prospectus, Securities Act Release No. 5248 (May 9, 1972), 37 FR 10071.

[62] Registration Statement for Closed-End Management Investment Companies, Securities Act Release No. 6842 (Aug. 11, 1989), 54 FR 32993 (proposing release); Securities Act Release No. 6967 (Dec. 1, 1992), 57 FR 56826 (adopting release).

at the option of the company, quotations of yield permitted by paragraphs (e)(1), (e)(2), and (f) of this section; and

(C) The company's portfolio turnover rate pursuant to Item 3(a) of Form N–1A;

(iv) (A) A statement that the company is a mutual fund, and if the company is non-diversified under the Investment Company Act, a statement to that effect;

(B) A concise description of the company's investment objectives and policies, including: a short description of the types of securities in which the company invests or will invest principally, and, if applicable, any special investment practices or techniques that will be employed in connection with investing in such securities; and, if the company has or proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries; and

(C) A brief discussion of the principal risk factors associated with investment in the company, set forth prominently;

(v) The name of the company's investment adviser;

(vi) (A) Any options shareholders may have as to the receipt of such dividends and distributions; and

(B) The tax consequences of investment in the company to the extent that any tax advantages of portfolio securities and of investing in the company are material to investment in the company;

(vii) (A) The procedure by which the company's shares may be purchased using the application, and an explanation of how to obtain information at no cost about additional purchase procedures;

(B) If applicable, a statement that scheduled variations in or elimination of the sales load are available (e.g., large purchases, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans), and an explanation of how to obtain information at no cost about such variations in or elimination of the sales load;

(C) Any minimum initial or subsequent investment;

(D) If applicable, a general statement of the purpose of fees pursuant to § 270.12b–1 of this chapter;

(viii) (A) A statement that the company's shares are redeemable, and an explanation of how to obtain information at no cost about redemption procedures;

(B) A description of any restrictions on redemption and any charges that may be attendant upon redemption;

(C) A statement of any minimum account balance; and

(D) If applicable, a brief description if the company may refuse to honor a request for redemption for a certain time after a shareholder's investment; and

(ix) Any material pending legal proceedings.

General Instruction—The information provided need not be set forth in the order above, may be presented in a question and answer format, and may be presented in the application. The information provided pursuant to paragraphs (g)(2)(iv) (B) and (C) of this section, however, may not be separated by any other disclosure.

(3) In place of the statement required by paragraph (a)(3) of this section, the advertisement contains:

(i) A statement that the advertisement contains key information about the company; and

(ii) A statement that the company's section 10(a) prospectus contains more information about the company and is available free upon request, that investors who are not familiar with open-end companies may wish to obtain the section 10(a) prospectus before investing, and that the section 10(a) prospectus will be sent to investors with the confirmation of an investment (this statement should include instructions about how to obtain the section 10(a) prospectus by any means—such as a toll-free telephone line—other than the blank on the application form discussed in paragraph (g)(6) of this section).

(4) When a request for a section 10(a) prospectus is received by the company, the section 10(a) prospectus is sent within two business days of receipt of the request by first class mail or other means designed to ensure equally prompt delivery.

(5) The advertisement contains one or more of the following legends, as applicable, set forth prominently in a separate paragraph and set off by a box or similar border enclosing the legend(s) on all four sides:

(i) If the company imposes a front-end sales load:

"If you invest in this fund, you will pay a sales commission of [the maximum load, expressed as a percentage of the amount invested] that will not be refunded if you withdraw your investment."

(ii) If the company imposes a contingent deferred sales load:

"If you invest in this fund and you withdraw your investment within [the maximum number of years during which any contingent deferred sales load is imposed], you will be charged a sales commission of up to [the maximum deferred sales load, expressed as a percentage] when you withdraw, depending on how long you stay in the fund. The longer you stay in the fund, the lower that commission will be."

Note: To the extent that a company waives or refunds loads for investors who redeem their investment within a specified period after purchase, the above legends shall be modified to disclose the terms of such refund or waiver, the possibility of fluctuations in net asset value during the specified period, and any tax consequences of redemption within the specified period.

(6) The application contains a blank that investors can mark to request the company's section 10(a) prospectus, together with text stating that the investor does not wish to invest at present but would like to obtain the section 10(a) prospectus. That blank and text must be adjacent to, and in the same format and type as, the blank and text for indicating interest in investing.

(7) The advertisement is not transmitted to investors by radio, television, or other broadcast or electronic media.

(8) During a period ending one year after the first use of any advertisement pursuant to this paragraph (g) with respect to the securities that are the subject of the advertisement, five copies of the advertisement are filed with the Commission in accordance with § 230.497 no later than twenty days before the advertisement is submitted for publication. A national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising may adopt and implement other requirements regarding the timing and procedures for filings made pursuant to this paragraph (g).

Note: Under Rule 497 (17 CFR 230.497) advertisements filed with the NASD are deemed filed with the Commission.

(9) In addition to any filing pursuant to § 230.497 or section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)) and the rules thereunder, including any filing pursuant to paragraph (g)(8) of this section, three copies of the advertisement in definitive form are filed with the Commission within three days after the first use of the advertisement unless copies of the advertisement actually have been filed with the Commission already pursuant to paragraph (g)(8) of this section.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

4. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

5. By amending Form N–1A (§§ 239.15A and 274.11A) by removing the Instructions as to Summary Prospectuses.

Note: The test of Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

6. By adding § 239.482 and Form 482(g) to read as follows:

§ 239.482 Form 482(g), Filing of off-the-page prospectus for pre-publication review, and Notice of use or publication of off-the-page prospectus.

This form shall be filed with respect to copies of off-the-page prospectuses submitted to the Commission as required under rule 482(g) (§ 230.482(g) of this chapter).

Note: See Appendix A to this document for text of Form 482(g). The text of Form 482(g) will not appear in the Code of Federal Regulations.

Dated: March 19, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Form 482(G)

Mark one

[ ] Filing of Off-the-Page Prospectus for Pre-Publication Review

Or

[ ] Notice of Use or Publication of Off-the-Page Prospectus

Pursuant to Securities Act Rule 482(g) [17 CFR 230.482(g)]

1. Investment Company Act File Number 811–

2. Exact name of investment company as specified in registration statement:

3. Address of principal executive office: (number, street, city, state, zip code)

4. Date of Use or Publication of Off-the-Page Prospectus

Instructions

1. This form must be attached to (A) a copy of a draft off-the-page prospectus that is submitted to the Commission for pre-publication review, or (B) a definitive copy of an off-the-page prospectus that is submitted after its first publication, in either case pursuant to rule 482(g).

2. Open-end companies whose principal underwriters are members of the National Association of Securities Dealers, Inc. (NASD) should file draft off-the-page prospectuses with the NASD for pre-publication review.

3. Five copies of submissions for pre-publication review must be filed at least twenty days before the draft off-the-page prospectus is to be submitted for publication.

4. Three copies of submissions for definitive copies shall be filed within three days after the first use or publication of an off-the-page prospectus.

5. Item 4 should be completed only for filings of definitive copies.

[FR Doc. 93–6785 Filed 3–24–93; 8:45 am]

BILLING CODE 8010–01–P

17 CFR PART 240

[Release No. 34–32018; File No. S7–12–93]

RIN 3235–AF76

Requirement of Broker-Dealers To Comply With SRO Qualification Standards

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule under section 15(b)(7) of the Securities Exchange Act of 1934 (the "Exchange Act") prohibiting registered broker-dealers from effecting any securities transaction unless the associated person effecting such transaction is in compliance with the qualification requirements established under the rules of any self-regulatory organizations ("SROs") of which the broker-dealer is a member or to which it is subject. The proposed rule would bolster SROs' efforts in this area, and is necessary in part because in some cases the Commission is the only regulatory authority initially investigating a case in which violations of SRO qualification standards have occurred. The proposed rule would enhance investor protection and ensure adequate competency among securities personnel, and would enhance the Commission's own enforcement program.

DATES: Comments should be received on or before April 26, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–12–93. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Andrew S. Margolin, Staff Attorney, at (202) 272–2844, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Need for the Rule

SRO qualification of associated persons of broker-dealers is of first importance in promoting compliance with the substantive requirements of the federal securities laws. It has been long-standing Commission policy to rely principally on the SROs in the formulation and administration of qualification standards, subject to Commission review and oversight. In general, the Commission has been satisfied with the substantive content of the SROs' entry requirements imposed on securities personnel in the various qualification categories. Nonetheless, since 1975 the Commission has had independent authority under Section 15(b)(7)[1] to adopt and enforce qualification standards and to prohibit broker-dealers from engaging in securities transactions unless their associated persons meet SRO qualification standards.[2]

The Commission does not consider it necessary to develop more demanding qualification standards than currently applied by the SROs. In order to promote investor protection, the Commission believes, however, that it is

[1] Section 15(b)(7) generally prohibits any registered broker-dealer from effecting any transaction in, or inducing the purchase or sale of, any security unless such broker-dealer meets standards of operational capability and it and each of its associated persons meet standards of training, experience, competence, and other qualifications that the Commission finds necessary or appropriate in the public interest or for the protection of investors. The provision grants the Commission authority to establish such standards by rules, which may specify that all or any portion of such standards shall be applicable to any class of broker-dealers and associated persons. The provision further empowers the Commission to cooperate with registered securities associations and national securities exchanges in devising and administering tests and to require registered broker-dealers and associated persons to pass tests administered by or on behalf of any such association or exchange. 15 U.S.C. 78o(b)(7).

[2] See Securities Industry Study House Report of the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1519, 92d Cong., 2d Sess. 22 (1972). Since 1964, the Commission has had authority to promulgate qualification standards for broker-dealers who were not members of the NASD. See Securities and Exchange Commission, Report of the Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963) (hereinafter, the "Special Study").

appropriate to implement existing authority to prohibit registered broker-dealers from effecting securities transactions if their associated persons effecting such securities transactions are not in compliance with SRO qualification standards.[3] The Commission's ability to proceed directly against such broker-dealers would supplement the SROs' own efforts to maintain a high level of competency and training of securities personnel and thereby significantly strengthen the self-regulatory system.

Since 1983, when Congress abolished the SECO ("SECO only") program and the Commission rescinded Rule 15b8–1 under the Exchange Act,[4] the SROs have been the exclusive enforcers of qualification standards. Before the rescission of Rule 15b8–1, the Commission frequently brought proceedings directly against broker-dealers for violating Section 15(b)(7) and the Commission's qualification standards under that rule.[5] The Commission currently may bring injunctive actions in federal court to enforce SRO rules under Section 21 of the Exchange Act.[6] Nevertheless, consistent with the general regulatory scheme of the Exchange Act and congressional intent, the Commission generally has depended on SRO enforcement of SRO rules rather than bringing actions under this provision.[7]

The Commission believes that a rule under Section 15(b)(7), permitting it to bring injunctive actions and administrative proceedings directly against broker-dealers where its associated persons effect securities transactions while not in compliance with the applicable SRO qualification requirements, would enhance investor protection and bolster the SROs' efforts to ensure adequate competency among securities personnel as well as enhance the Commission's own enforcement program. The Commission wishes to emphasize that it generally is satisfied with SRO enforcement of SRO qualification standards. The proposed rule would enable the Commission to enforce SRO qualification standards if unqualified persons are effecting securities transactions, but SROs would remain the primary enforcement authority for compliance with qualification standards. The proposed rule is necessary in part because in some cases the Commission is the only regulatory authority initially investigating a case in which violations of SRO qualification standards have occurred. Finally, the Commission believes that it is necessary to have the ability, in matters where other related securities violations may have occurred, to bring an integrated proceeding against the broker-dealer.

B. Previous Congressional and Commission Action

During the SECO program,[8] the Commission had authority under former Sections 15(b) (8), (9), and (10) to establish a regulatory regime applicable to registered broker-dealers that did not elect NASD membership.[9] In 1965, the Commission adopted Rule 15b8–1, which empowered it to proceed directly against registered SECO broker-dealers for failure to comply with standards of training, experience, and competence that the Commission formulated and implemented with the assistance of the NASD.[10] The Commission frequently charged violations under Rule 15b8–1 in administrative proceedings against SECO broker-dealers that effected securities transactions without having registered their associated persons or filed the appropriate registration forms for associated persons with the Commission, and against associated persons for aiding and abetting such violations.[11]

In 1975, Congress enacted the Securities Acts Amendments of 1975 (the "1975 Amendments") in part in

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[3] The Commission presently does not have authority with respect to qualification standards of government securities broker-dealers.

[4] See Public Law 98–38, Section 3, 97 Stat. 205, 206–07 (1983), codified at Sections 15(b)(8) and 15(b)(9). See also Securities Exchange Act Release No. 20409 (November 22, 1983), 48 FR 53688.

[5] For citations to some of these matters, see *infra* n.11. The Commission initiated the SECO program under Sections 15(b) (8), (9), and (10) of the Exchange Act for registered broker-dealers that were not members of a national securities association, *i.e.*, the NASD ("nonmember" broker-dealers). Enacted in 1964, these provisions empowered the Commission to establish for nonmember broker-dealers and their associated persons a regulatory regime comparable to that adopted by the NASD for its members and their associated persons. In Rules 15b8–1, 15b9–1, and 15b10–1 [17 CFR 240.15b8–1, 15b9–1, and 15b10–1], the Commission established specific procedures and norms of conduct closely paralleling those of the NASD in areas such as qualification of associated persons, fees and assessments, standards for supervision of securities employees, discretionary accounts, and suitability of recommendations. The SECO rules applied to any broker-dealer, including a sole proprietor, registered under Section 15 of the Exchange Act, that was not a member of a national securities association registered with the Commission under Section 15A. For a discussion of the SECO rules, see Securities Exchange Act Release No. 7697 (Sept. 7, 1965), 30 FR 11673; Securities Exchange Act Release No. 8135 (July 27, 1967), 32 FR 11637; Securities Exchange Act Release No. 8308 (May 8, 1968), 33 FR 7075.

[6] 15 U.S.C. 78u. The Commission may, whenever it appears that any person is engaged or is about to engage in any acts or practices violating any SRO rule, bring injunctive actions in federal district court to have the SRO rule enforced under Sections 21 (d) and (e) of the Exchange Act, subject to the requirements imposed by paragraph (f) of that provision. Under that paragraph, the Commission must find that the SRO is unable or unwilling to take appropriate action against such person or that such action is otherwise necessary or appropriate in the public interest or for the protection of investors. 15 U.S.C. 78u (d) through (f). In amending this provision in 1975, Congress stated that it did not expect that the Commission would have frequent recourse to the courts in support of its general oversight responsibilities over the SROs. S. Rep. No. 75, 94th Cong., 1st Sess. 135 (1975).

[7] Section 19(g)(1) of the Exchange Act requires SROs to enforce their own rules. 15 U.S.C. 78s(g)(1).

[8] See *supra* n.5.

[9] See H.R. Rep. No. 1418, 88th Cong., 2d Sess. 24 (1964); Securities Exchange Act Release No. 9420 (December 20, 1971).

[10] Congress enacted the Securities Acts Amendments of 1964 in response to congressional and Commission findings that the qualification and registration requirements for broker-dealers and their associated persons were not stringent enough and that rules of the SROs largely allowed free access and ready entry into the securities business by anyone who had not violated the securities laws. In August 1964, Congress enacted Section 15(b)(8) (appearing currently at Section 15(b)(7), as amended), which authorized the Commission to adopt rules requiring registered broker-dealers that were not members of a national securities association (*i.e.*, the NASD), and persons associated with such broker-dealers, to meet prescribed standards of training, experience, and other qualification standards. Securities Acts Amendments of 1964, Public Law No. 88–467, 78 Stat. 565 (August 20, 1964). In September 1965, under the authority of that provision, the Commission adopted qualification standards in Rule 15b8–1. Securities Exchange Act Release No. 7697 (September 7, 1965), 30 FR 11675.

[11] See, *e.g.*, Universal Securities, Inc., Securities Exchange Act Release No. 19741 (May 9, 1983) (broker-dealer's registration temporarily suspended because it violated Section 15(b)(7) and Rule 15b8–1 by permitting securities sales by unqualified persons and failing to file a Form U–4 with respect to its associated persons); American Capital Corporation of Delaware, Securities Exchange Act Release No. 18720 (May 10, 1982) (broker-dealer's registration suspended due, among other things, to its violation of Section 15(b)(8) [now Section 15(b)(7)] and Rule 15b8–1 by failing to file a Form U–4 with the Commission and paying the initial fee required by that form).

See also David R. Craig, Securities Exchange Act Release No. 18867 (June 30, 1982); Fox Fire Financial Associates, Inc., Securities Exchange Act Release No. 18760 (May 25, 1982); Bay State Securities, Inc., Securities Exchange Act Release No. 13653 (June 21, 1977); Gerald J. Vanderzon, Securities Exchange Act Release No. 12983 (November 16, 1976); IDE Investments, Inc., Securities Exchange Act Release No. 12638 (July 19, 1976); Nationwide Bond, Inc., Securities Exchange Act Release No. 10072 (March 29, 1973); Robert Gerard Dier, Securities Exchange Act Release No. 9772 (September 18, 1972); Rolandi Securities Corporation, Securities Exchange Act Release No. 9567 (April 12, 1972); Milton Gelfand, Securities Exchange Act Release No. 9510 (March 1, 1972); Ben Zenoff Company, Securities Exchange Act Release No. 9416 (December 13, 1971); Rolandi Securities Corporation, Securities Exchange Act Release No. 9397 (November 24, 1971); Alex Kajouras, Securities Exchange Act Release No. 9372 (October 15, 1971); Acme Securities Co., Inc., Securities Exchange Act Release No. 9287 (August 16, 1971); David Tsevi Kleinman, Securities Exchange Act Release No. 9230 (June 29, 1971); Sentinel Securities, Inc., Securities Exchange Act Release No. 9047 (December 24, 1970); Western Guaranty Management Corp., Securities Exchange Act Release No. 8494 (January 15, 1969).

response to the "back-office" crises of 1968–70.[12] A Subcommittee of the U.S. House of Representatives issued a report in which it stated that some of the major causes of broker-dealer failure during this period were inexperience, the lack of knowledge of rules and regulations, and the lack of crucial skills, such as bookkeeping, operational, and financial expertise.[13] The Subcommittee recommended, among other things, more stringent and comprehensive examinations to improve regulators' control over entry into the securities industry and to exclude broker-dealers and individuals lacking the necessary expertise and competency. Thus, one of Congress' overriding objectives in enacting Section 15(b)(7) was to make eligibility criteria for entry into the securities industry more restrictive, not only with respect to financial and operational matters, but also with respect to supervision of employees and management concerning these matters, with a view to preventing improper acts by salespersons.[14]

Section 15(b)(7) granted the Commission rulemaking authority to extend its qualification requirements beyond SECO broker-dealers to include all broker-dealers registered with the Commission. In 1977, the Commission proposed Rule 15b7–1, which it never adopted, to replace Rule 15b8–1.[15] The Commission proposed to continue to rely on the SROs to develop and administer all required examinations, subject to the Commission's review and oversight powers.[16] While Rule 15b7–1 would have established minimum qualification requirements for all registered broker-dealers and their associated persons, because it exempted NASD member firms from its scope and, under certain conditions, members of national securities exchanges, its substantive effect would not have been significantly different from that of Rule 15b8–1.

Since the 1980s, the Commission has found that the SROs have substantially upgraded their examination and other qualification standards and believes that SRO qualification standards are sufficient. In a 1982 release reproposing Rule 15b7–1, the Commission noted that the SROs for the most part had updated their qualification standards and examinations to meet new developments and securities products in the industry, and that it was satisfied with those qualification standards and therefore had determined not to include most broker-dealers that are members of SROs within the scope of the proposed rule.[17] Since that time, the Commission has indicated its continued satisfaction with SRO qualification standards in orders approving SRO rule changes to qualification requirements.[18] For this reason, the Commission, as it had done in Rule 15b8–1, would have limited application of proposed Rule 15b7–1 to SECO broker-dealers.[19] In 1983 Congress abolished the SECO program,[20] and the Commission withdrew proposed Rule 15b7–1 from consideration [21] and rescinded Rule 15b8–1.[22]

C. Objectives of New Rule 15b7–1

The principal objective of the Commission in proposing new Rule 15b7–1 differs from that of former Rule 15b8–1 and previously proposed Rule 15b7–1. The latter two rules were intended to upgrade qualification standards among broker-dealers and to ensure a uniformity of these requirements throughout the securities industry. The rules were necessary because NASD membership at the time was voluntary. As discussed above, the Commission believes that these rules' objectives have largely been accomplished. In enacting Section 15(b)(7), however, Congress was concerned not only with the level of experience and competence of salespersons in the securities industry but also that standards relating to these areas would be effectively enforced by the Commission as well as the SROs as to broker-dealers that effect securities transactions.[23] Proposed new Rule 15b7–1 is intended to fulfill this statutory purpose by making it a violation of the federal securities laws for any registered broker-dealer to effect a securities transaction if the associated person effecting such transaction is not in compliance with applicable SRO qualification standards.[24]

II. Description of the Rule

Proposed Rule 15b7–1 would prohibit any registered broker-dealer from effecting a transaction in, or inducing the purchase or sale of, any security unless the associated person of the broker-dealer effecting [25] such transaction, who is required to be qualified under the rules of any SRO of which the broker-dealer is a member, or under the rules of the Municipal Securities Rulemaking Board ("MSRB"), if the broker-dealer is subject to its rules,[26] is qualified in accordance with

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[12] H.R. Rep. No. 123, 94th Cong., 1st Sess. 78 (1975).

[13] "Review of the SEC Records of the Demise of Selected Broker-Dealers," Staff Study for the Special Subcommittee on Investigations, 92d Cong., 1st Sess. (July 1971) (hereinafter referred to as the "Demise Report"). "We believe the shortcomings of [existing] examinations were directly related to the failure of a number of brokerage firms. The examinations should be improved so as to require a comprehensive knowledge of the securities industry and the related rules and regulations and thereby raise the standards to a quasi-professional level." *Id.* at 7.

[14] See Demise Report at 26. Congress also intended to make qualification standards uniform throughout the industry for all registered broker-dealers and their associated persons. House Report, *supra*, n.13, at 76.

[15] Securities Exchange Act Release No. 13679 (June 27, 1977), 42 FR 34326.

[16] *Id.*

[17] Securities Exchange Act Release No. 18710 (May 4, 1982), 47 FR 20783.

[18] See, e.g., Securities Exchange Act Release No. 28795 (January 17, 1991) (order approving proposed rule change relating to the Cincinnati Stock Exchange's proficiency examinations); Securities Exchange Act Release No. 25920 (July 15, 1988) (order approving Philadelphia Stock Exchange's proposed rule change relating to conditions for membership and association); Securities Exchange Act Release No. 25312 (February 4, 1988) (order approving New York Stock Exchange's proposed rule change relating to registration requirements for securities employees of member firms).

[19] Any nonmember firm that was a member of a national securities exchange and in compliance with its membership qualification rules also would have been exempt, provided that it carried no accounts of customers and its annual gross income derived from purchases and sales of securities otherwise than on an exchange of which it was a member was nominal. This exemption, too, was contained in Rule 15b8–1. The proposed rule, as revised, would not have exempted exchange members who are not members of the NASD and who carried customer accounts or received an annual gross income exceeding $1000 from securities transactions effected otherwise than on the exchange of which the broker-dealer is a member. Securities Exchange Act Release No. 13679 n.38 (June 27, 1977), 42 FR 34326.

[20] See *supra* n.4.

[21] Securities Exchange Act Release No. 20410 (November 22, 1983), 48 FR 53718.

[22] Securities Exchange Act Release No. 20409 (November 22, 1983), 48 FR 53688.

[23] See *supra* n.2.

[24] In addition to advancing other of the Exchange Act's purposes, the Commission believes that the proposed rule furthers the purpose of Section 15(c)(2) of the Exchange Act as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices. 15 U.S.C. 78o(c)(2). The proposed rule serves to prevent fraudulent practices by ensuring that broker-dealers do not engage in securities transactions through unqualified associated persons. See also Sections 9; 10(b); 15(c)(1); and 21 (d), (e) and (f) of the Exchange Act. 15 U.S.C. 78i; 78j(b); 78o(c)(l); and 78u (d) through (f).

[25] The meaning of "effecting" or "involved in effecting" a securities transaction would include any function in connection with the solicitation, receipt, or processing of such transaction including, but not limited to, (1) transmission of an order for execution, (2) execution of the order, (3) clearance and settlement of the transaction, and (4) arranging for the performance of any such function, but would not apply to persons whose function with respect to a particular transaction is solely clerical or ministerial.

[26] The rules of the MSRB apply to municipal securities brokers and dealers, as defined in Sections 3(a)(30) and 3(a)(31) of the Exchange Act 15 U.S.C. 78o(a)(30) and (31). See Rule G–2,

Continued

the standards of training, experience, competence, and other qualification standards of such SRO, including, but not limited to, submitting all required forms and passing any required tests established by the rules of the SRO. The Commission would be able to proceed directly against any registered broker-dealer for violation of the rule. The Commission could also proceed injunctively or through a cease and desist order. In addition, the Commission could proceed administratively against the broker-dealer under Section 15(b)(4)[27] for violating a Commission rule.

As a general matter, the qualification rules of the following SROs would be implicated by the proposed rule: the NASD, the MSRB, the American Stock Exchange ("Amex"), the Boston Stock Exchange ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange ("CSE"), the Midwest Stock Exchange ("MSE"), the New York Stock Exchange ("NYSE"), the Pacific Stock Exchange ("PSE"), and the Philadelphia Stock Exchange ("Phlx").[28]

III. Conclusion and Request for Comments

The Commission believes that the proposed rule enhances investor protection by prohibiting broker-dealers from effecting securities transactions where their associated persons effecting such transactions have not met SRO qualification requirements. The proposed rule would also significantly enhance the Commission's ability to ensure compliance of broker-dealers and associated persons with SRO qualification standards, thus promoting the policy that Congress established in Section 15(b)(7) of the Exchange Act. The Commission solicits comments on proposed Rule 15b7–1. Specifically, the Commission is interested in receiving comments with respect to the completeness of the SRO rules that are listed in connection with the discussion in Part II above, and whether they should be narrowed, or supplemented, by other SRO rules. The Commission also seeks comment regarding what level of involvement by an unqualified associated person in a particular securities transaction should trigger the proposed rule's prohibition?

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[29] requires that the Commission, in adopting rules under the Exchange Act, to consider the impact on competition of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed rule would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, Section 3(a) of the Regulatory Flexibility Act (the "RFA")[30] requires the Commission to undertake an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[31] The application of the RFA to proposed Rule 15b7–1 is limited. Although the rule will enable the Commission to proceed against broker-dealers for effecting securities transactions while not in compliance with SRO standards, they already must comply with such standards. Accordingly, the Chairman has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 240

Broker-Dealers, Securities.

Statutory Basis and Text of Proposed Rule

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.15b7–1 to read as follows:

§ 240.15b7–1 Compliance with qualification requirements of self-regulatory organizations.

No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless the natural person or natural persons associated with such broker or dealer who effects or is involved in effecting such transaction, is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities

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Standards of Professional Qualification, and Rule G–3, Classification of Principles and Representatives; Numerical Requirements; Testing, MSRB Manual (CCH) ¶¶ 3506, 3511.

[27] 15 U.S.C. 78*o*(b)(4).

[28] For example, the qualification rules of the respective SROs would currently include the following:

NASD: Qualifications of Members and Associated Persons; Registered Representatives and Associated Persons; NASD By-Laws, Articles II and IV (including Schedule C), NASD Manual (CCH) ¶¶ 1121–1124, 1151.

MSRB: Classification of Principals and Representatives; Statutory Disqualifications; Information Concerning Associated Persons: MSRB General Rules, Rules G–2, G–3, G–4, and G–7, MSRB Manual (CCH) ¶¶ 3506, 3511, 3516, 3531.

Amex: American Stock Exchange, General and Floor Rules: Denial of Membership, Rule 40 (CCH) ¶ 9244; Examination Requirements, Rule 50 (CCH) ¶ 9245; American Stock Exchange Constitution, Article IV, Membership, Section 2 (b), Approval of Members and Persons Associated with Member Organizations (CCH) ¶ 9032.

BSE: Boston Stock Exchange Constitution, Article IX, Membership, Section 3 (CCH) ¶ 1253.

CBOE: Chicago Board Options Exchange Rules, Membership, Chapter III, Rule 3.5 (CCH) ¶ 2055.

CSE: The Cincinnati Stock Exchange, By-Laws and Rules: Article II, Section 4, Exchange Membership—Membership Eligibility; Article II, Section 5—Restrictions on Admittance to or Continuance in Membership and Association; Article II, Section 6—Application Procedures for Admission as a Member or as an Associated Person of a Member; Article II, Section 7—Procedures for Discontinuance of Exchange Membership or Association with a Member.

MSE: Midwest Stock Exchange Rules: Registration and Approval of Members and Member Organization Personnel, Article VI, Rule 2 (CCH) ¶ 1502; Training and Examination of Registrants, Article VI, Rule 3 (CCH) ¶ 1503.

NYSE: New York Stock Exchange, General Rules: Employees—Registration, Approval, Records, Rule 345 (CCH) ¶ 2345; Limitations—Employment and Association with Members and Member Organizations, Rule 346 (CCH) ¶ 2346; Member and Allied Member Examination Requirements, Rule 304A (CCH) ¶ 2304A.

PSE: Pacific Stock Exchange, Rules: Denial of and Conditions of Membership, Rules 1.4(a), 1.4(b) (CCH) ¶¶ 3063, 3065; Principal Examination, Rule 1.7 (CCH) ¶ 3133; Employee Supervision, Rule 1.15(d) (CCH) ¶ 3199; Notification to Exchange, Rule 1.15(e) (CCH) ¶ 3201; Registered Employees, Rule 1.16(a) (CCH) ¶ 3211; Registration Procedure, Rule 1.16(b) (CCH) ¶ 3213; Examinations, Rule 1.16(c) (CCH) ¶ 3215.

Phlx: Philadelphia Stock Exchange, Rules: Denial of and Conditions to Membership, Rule 901 (CCH) ¶ 2900A.

[29] 15 U.S.C. 78w(a)(2).

[30] 5 U.S.C. 603(a).

[31] 5 U.S.C. 605(b).

Rulemaking Board (if it is subject to the rules of that organization).

Dated: March 19, 1993.

By the Commission,

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6874 Filed 3–24–93; 8:45 am]

BILLING CODE 8010–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 229

RIN 3220–AA60

Social Security Overall Minimum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to add a new part 229 to its regulations which explains under what circumstances an individual's annuity is increased so that it equals a minimum rate provided for in the Railroad Retirement Act. Although such a guarantee is provided for by statute, how and when it applies has never been explained by regulation.

DATES: Comments must be received by April 26, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513; TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 3(f)(3) of the Railroad Retirement Act of 1974 guarantees that the total annuities payable to an employee and spouse, including the vested dual benefit, but not the supplemental annuity, will not be less than 100 percent of the total family benefits payable under the Social Security Act if the employee's railroad service after 1936 were credited as social security earnings. This guarantee is called the Social Security Overall Minimum Guarantee, or sometimes the Special Guarantee or Special Guarantee Rate, and is abbreviated for purposes of this part as O/M or, in the case of a disability overall minimum, DIB O/M. In this part the Board proposes to explain when an annuity can be increased under this guarantee and how the increased amount is determined.

Subpart A—General

Contains an Introduction (proposed § 229.1), Definitions applicable to this part (proposed § 229.2), explains part 229's relations to other parts of the Board's regulations (proposed § 229.3) and how to apply for the O/M (§ 229.4).

Subpart B—Social Security Overall Minimum Guarantee Defined

Defines in general terms what the O/M guarantee is (§ 229.10) and explains in general terms its computation (§ 229.11).

Subpart C—Eligibility for Increase Under the Overall Minimum

Proposed § 229.20 describes when the employee-annuitant is eligible for an increase in his or her annuity under the O/M. Proposed § 229.21 describes when a spouse annuity may be increased under the O/M. Proposed § 220.22 indicates the earliest date on which the O/M may be paid.

Subpart D—Family Members Included in Overall Minimum Computation

In computing the O/M for an employee-annuitant, the formula may include the benefits that would be payable to his or her spouse, divorced spouse, or child had he or she been covered under the Social Security Act. Proposed §§ 229.30–229.33 describe when a spouse, divorced spouse, or child may be included in the O/M computation.

Subpart E—When Entitlement Under the Overall Minimum Ends

Proposed § 229.40 describes when an increase in the employee or spouse annuity under the O/M must terminate. Proposed § 229.41 describes when a spouse can no longer be included in the employee's O/M computation. Proposed § 229.42 and proposed § 229.43 provide when a child and when a divorced spouse may no longer be included in this computation.

Subpart F—Computation of the Overall Minimum Rate

Proposed §§ 229.45–229.47 describe the actual computation of the O/M. Proposed § 229.48 describes the family maximum, which is a provision in the Social Security Act which puts a ceiling on the amount of benefits which may be paid on an individual's wage record. Proposed § 229.49 shows how the O/M may be adjusted for the family maximum as the result of changes in the composition of the family group which is used in the computation of the O/M. Proposed § 229.50 explains when the O/M is reduced for age if it becomes payable before the employee or spouse attain retirement age. The age reduction factor provided for in proposed § 229.50 may itself be adjusted if the O/M is not paid for certain months prior to the employee's attaining retirement age, or if the employee becomes eligible for a DIB O/M before retirement age. Proposed § 229.51 explains this adjustment. Proposed § 229.52 explains that if an employee was receiving a reduced age O/M prior to becoming eligible for a DIB O/M, the age reduction is recomputed as if the employee were retirement age on the effective date of the DIB O/M. Proposed §§ 229.53–229.56 explain how receipt of a social security benefit will reduce any O/M payable. Proposed § 229.57 explains how an O/M is computed if a spouse is eligible for both a spouse annuity and an employee annuity. Proposed § 229.58 explains various rounding rules used in computing the O/M.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

Proposed § 229.65 explains how the DIB O/M is reduced for receipt of a worker's compensation benefit or public disability benefit. Proposed § 229.66 describes how this reduction amount changes as a result of a change in a family group included in the computation of the DIB O/M or as the result of a change in the amount of worker's compensation or public disability benefit. Proposed § 229.67 provides that all benefits reduced for such worker's compensation or public disability benefit must be periodically recomputed. However, the redetermined rate is used only if it is higher than the previous rate. Proposed § 229.68 provides that the reduction for worker's compensation or public disability benefit is applied after any age reduction and reduction for the family maximum.

Subpart H—Miscellaneous Deductions and Reductions

Proposed §§ 229.80–229.85 describe various events which may also cause a reduction in the O/M rate.

Subpart I—Payment of the Overall Minimum Rate

Proposed § 229.90 provides that where both the employee and spouse are entitled to annuities and the O/M rate is higher than the combined annuity rates (a rare instance), the employee receives two-thirds of the O/M rate and the spouse the remaining one-third. Proposed § 229.91 describes how the O/M rate is paid when it is only payable for part of the month.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections imposed by this

part have been approved by the Office of Management and Budget under control number 3220–0083.

List of Subjects in 20 CFR Part 229

Railroad employees, Railroad retirement.

For the reasons set forth in the preamble, title 20, Chapter II of the Code of Federal Regulations is proposed to be amended by adding part 229 to read as follows:

PART 229—SOCIAL SECURITY OVERALL MINIMUM GUARANTEE

Subpart A—General

Sec.
229.1 Introduction.
229.2 Definitions.
229.3 Other regulations related to this part.
229.4 Applying for the overall minimum.

Subpart B—Social Security Overall Minimum Guarantee Defined

229.10 What the social security overall minimum guarantee is.
229.11 100 percent overall minimum.

Subpart C—Eligibility for Increase Under the Overall Minimum

229.20 When an employee is eligible for an increase under the overall minimum.
229.21 When a spouse is eligible for an increase under the overall minimum.
229.22 Beginning date of increase under overall minimum.

Subpart D—Family Members Included in Overall Minimum Computation

229.30 Who can be included in the computation of an annuity under the overall minimum.
229.31 When a spouse can be included in the computation of the overall minimum rate.
229.32 When a child can be included in the computation of the overall minimum rate.
229.33 When a divorced spouse can be included in the computation of the overall minimum rate.

Subpart E—When Entitlement Under the Overall Minimum Ends

229.40 When an annuity increase under the overall minimum ends.
229.41 When a spouse can no longer be included in computing an annuity rate under the overall minimum.
229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.
229.43 When a divorced spouse can no longer be included in computing an annuity under the overall minimum.

Subpart F—Computation of the Overall Minimum Rate

229.45 Employee benefit.
229.46 Spouse or divorced spouse benefit.
229.47 Child's benefit.
229.48 Family maximum.
229.49 Adjustment of benefits under family maximum for change in family group.
229.50 Age reduction in employee or spouse benefit.
229.51 Adjustment of age reduction.
229.52 Age reduction when a reduced age O/M is effective before DIB O/M.
229.53 Reduction for social security benefits on employee's wage record.
229.54 Reduction for social security benefit paid to employee on another person's earnings record.
229.55 Reduction for spouse social security benefit.
229.56 Reduction for child's social security benefit.
229.57 Reduction in spouse overall minimum benefit for employee annuity.
229.58 Rounding of overall minimum amounts.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

229.65 Initial reduction.
229.66 Changes in reduction amount.
229.67 Redetermination of reduction.
229.68 Reduction of DIB O/M.

Subpart H—Miscellaneous Deductions and Reductions

229.80 Earnings Restrictions.
229.81 Refusal to accept vocational rehabilitation.
229.82 Failure to have child in care.
229.83 Deportation.
229.84 Conviction for subversive activities.
229.85 Substantial gainful activity by blind employee or child.

Subpart I—Payment of Overall Minimum Rate

229.90 Proportionate shares of overall minimum.
229.91 Payment of the overall minimum for part of a month.

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 229.1 Introduction.

This part explains when an annuity can be increased under the social security overall minimum guarantee, also sometimes referred to as the "special guaranty", and how the increased amount is determined. Deductions and reductions in the overall minimum rate are explained.

§ 229.2 Definitions.

The following definitions are used in this part:

Annuity means a payment under the Railroad Retirement Act due and payable to an entitled claimant for a calendar month and made to him or her on the first day of the following month. The recipient of an annuity is called an annuitant.

Average Indexed Monthly Earnings or "AIME" means the average of the employee's monthly creditable earnings in both railroad and social security covered employment in the years used in computing the Primary Insurance Amount, after the earnings are adjusted or "indexed". The indexing is a means of expressing prior years earnings in terms of their current dollar value. It is based on increases in the average wages of all wage earners from 1951 through the second year before the year the worker dies or becomes eligible for benefits.

Contribution and benefit base means the maximum earnings used in computing a social security benefit under section 230 of the Social Security Act.

1974 Act means the Railroad Retirement Act approved October 16, 1974, including all amendments.

Railroad formula rate means the amount computed in accord with the regular railroad computations (sections 3(a), 3(b) and 3(h) of the Railroad Retirement Act).

Retirement age means age 65, with respect to an employee or spouse who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse). For an employee or spouse who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

§ 229.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter (listed numerically):

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 222 describes the family relationships which may cause an annuity to be increased under this part.

Part 225 explains how Primary Insurance Amounts (PIA's) are computed.

§ 229.4 Applying for the overall minimum.

The Board may require an annuitant to provide information regarding his or her family and regarding his or her earnings from employment and self-employment in order to determine whether the claimant or annuitant qualifies for the overall minimum.

(Approved by the Office of Management and Budget under control number 3220–0083.)

Subpart B—Social Security Overall Minimum Guarantee Defined

§ 229.10 What the social security overall minimum guarantee is.

The social security overall minimum guarantee is the amount of total family benefits which would be paid under the Social Security Act if the employee's railroad service had been covered by that Act. A 100 percent overall minimum benefit may be paid, as described in § 229.11. A 100 percent overall minimum based on age (age O/M) may be payable when the employee is 62 years old. The age O/M is reduced for age for months in which the O/M is payable before the employee attains retirement age. An overall minimum may also be payable before age 62 based on an employee's disability (DIB O/M). The DIB O/M is not reduced for age.

§ 229.11 100 percent overall minimum.

Section 3(f)(3) of the 1974 Act guarantees that the total annuities payable to the employee and spouse, including the vested dual benefits but not including a supplemental annuity, will not be less than 100 percent of the total family benefits payable under the Social Security Act if the employee's railroad service after 1936 were credited as social security earnings. Subpart F describes how the 100 percent overall minimum rate is computed.

Subpart C—Eligibility for Increase Under the Overall Minimum

§ 229.20 When an employee is eligible for an increase under the overall minimum.

(a) *Overall minimum based on age.* An employee annuity can be increased under the age O/M if all the following conditions are met:

(1) The employee is entitled to an age or disability annuity as shown in part 216 of this chapter.

(2) The employee is at least 62 years old throughout the whole month. The O/M is reduced for each month it is payable before the month the employee attains retirement age.

(3) The employee is fully insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings.

(b) *Overall minimum based on disability.* An employee annuity can be increased under the DIB O/M if the employee is under retirement age, and

(1) Is entitled to an age or disability annuity; and

(2) Is disabled under § 404.1505 of this title; and

(3) Is insured for a disability benefit under § 404.130 of this title based upon combined railroad and social security earnings.

(c) *Spouse with child in care or spouse retirement age or older.* If the employee has not attained the age required to qualify the spouse for a spouse annuity but the employee meets the conditions of paragraph (a) or (b) of this section, the employee annuity can be increased under the overall minimum if:

(1) The employee and spouse complete the required statements concerning the family and earnings as provided for in § 229.4 of this part; and

(2) The spouse meets the marriage requirements as provided for in part 222 of this chapter; and

(3) The spouse has an eligible child in care, or the spouse is retirement age or older.

(d) *Spouse election.* If the employee has not attained the age required to qualify the spouse for a spouse annuity but the employee meets the conditions of paragraph (a) or (b) of this section, the employee annuity can be increased under the overall minimum if:

(1) The employee and spouse complete the required statements concerning the family and earnings as provided for in § 229.4 of this part; and

(2) The spouse meets the marriage requirements as provided for in part 222 of this chapter; and

(3) The spouse is between age 62 and retirement age and does not have a child in care; and

(4) The spouse files an election to be included.

§ 229.21 When a spouse is eligible for an increase under the overall minimum.

Normally, only the employee annuity receives the amount of the overall minimum increase. However, a spouse annuity may be increased under the O/M in cases in which the O/M benefit amount exceeds the total amount of the employee and spouse annuity.

§ 229.22 Beginning date of increase under overall minimum.

(a) *Employee age O/M.* An increase under the overall minimum in an employee annuity based on age can be paid beginning with the later of:

(1) The first day of the first full month throughout which the employee is age 62; or

(2) The beginning date of the employee's age or disability annuity; or

(3) The first month of the quarter in which the employee becomes insured under section 214 or 227 of the Social Security Act based on railroad and social security earnings; or

(4) The month the employee attains retirement age, if a DIB O/M was paid in the previous month. A DIB O/M is changed to an age O/M in the month the employee attains retirement age.

(b) *Employee DIB O/M.* An increase under the overall minimum in an employee annuity based on disability can be paid beginning with the later of—

(1) The beginning date of the employee's disability annuity; or

(2) The month after the month in which the disability waiting period described in § 404.315(d) of this title ends; or

(3) If no disability waiting period is required, the first month in which the employee is disabled and is insured for a disability benefit under § 404.130 of this title.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum can be paid on the later of:

(1) The date the increase in the employee's annuity is paid; or

(2) The date the spouse is both eligible under the O/M and entitled to a spouse annuity.

Subpart D—Family Members Included in Overall Minimum Computation

§ 229.30 Who can be included in the computation of an annuity under the overall minimum.

(a) *Spouse.* In order to be included as a spouse in the computation of the overall minimum rate, a person must be the employee's wife or husband, as defined in part 222 of this chapter, as of the date described in § 229.31 of this part. The spouse must also be 62 years or older throughout the whole month in which he or she is first included or have the employee's child who is under 16 years old or disabled (before attaining age 22) in his or her care. If a spouse is 62 years old or older and under retirement age, and does not have an eligible child in his or her care, the spouse will be included only if he or she requests the payment of a reduced spouse annuity.

(b) *Child.* In order to be included as a child in the computation of the overall minimum, a person must meet the following requirements as of the date described in § 229.32 of this part. The person must be:

(1) The employee's child as defined in part 222 of this chapter; and

(2) Dependent on the employee, as shown in part 222 of this chapter; and

(3) Not married; and either

(4) Under 18 years old, or 18 years old to 19 years old and a full-time student, as defined in part 216 of this chapter, or 18 years old or older and disabled for any regular employment (see part 220 of this chapter) before attaining age 22.

(c) *Divorced spouse.* In order to be included as a divorced spouse in the computation of the overall minimum, a

person must be eligible for a benefit as a divorced spouse under the Railroad Retirement Act as of the date described in § 229.33 of this part.

§ 229.31 When a spouse can be included in the computation of the overall minimum rate.

(a) A spouse who is married to the employee when the employee's application is filed can be included in the computation of the overall minimum rate beginning in the later of the month in which—

(1) The employee first is eligible for an increase in his or her annuity under the overall minimum, as shown in § 229.22 of this part; or

(2) The spouse first becomes eligible to be included under the overall minimum, as shown in § 229.30 of this part.

(b) A spouse who marries the employee after the employee application is filed can be included in the overall minimum computation in the month in which he or she becomes eligible, as shown in § 229.30 of this part, if the overall minimum rate is already payable in the previous month. If the railroad formula rate is payable in the month before the spouse becomes eligible, the spouse can be included in the overall minimum computation in the later of the month in which:

(1) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(2) The spouse annuity begins.

§ 229.32 When a child can be included in the computation of the overall minimum rate.

A child who meets the requirements of § 229.30(b) of this paragraph can be included in the computation of the overall minimum rate in the month in which:

(a) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22 of this part; or

(b) In the case of a child born or adopted by the employee after the employee's annuity beginning date, such child can be included only when the overall minimum rate is already payable in the month before the month in which the child is born, or adopted except where:

(1) The child is born or adopted prior to the employee's attaining age 62 or becoming eligible for a period of disability (see § 220.36 of this chapter); or

(2) The child who is adopted after the employee's annuity beginning date meets the dependency requirements set forth in § 222.53 of this part.

(c) In the case of a child who has attained age 18 and has become re-entitled as a full-time student or disabled child, as described in § 229.30 of this part, such child can only be included when the overall minimum rate is already payable in the month before the month the child becomes re-entitled.

§ 229.33 When a divorced spouse can be included in the computation of the overall minimum rate.

A divorced spouse annuitant can be included in the computation of the overall minimum rate in the later of the month in which:

(a) The employee first is eligible for an increase in his or her annuity rate under the overall minimum, as shown in § 229.22; or

(b) The divorced spouse annuity begins.

Subpart E—When Entitlement Under the Overall Minimum Ends

§ 229.40 When an annuity increase under the overall minimum ends.

(a) *Employee Age O/M.* An increase in an employee's annuity under the overall minimum based on age ends with the month before the month in which the employee dies. If a disability annuity is increased under the overall minimum based on age rather than disability, and the employee is under retirement age, the increase ends with the second month after the month the disability ends as shown in part 220 of this chapter.

(b) *Employee DIB O/M.* An increase in an employee's annuity under the overall minimum based on disability ends with the earlier of:

(1) The month before the month in which the employee dies; or

(2) The month before the month the employee attains retirement age (the DIB O/M is changed to an age O/M); or

(3) The second month after the month the disability ends, as explained in part 220 of this chapter.

(c) *Spouse.* An increase in a spouse annuity under the overall minimum ends when the increase in the employee annuity ends, as shown in paragraphs (a) and (b) of this section, when the spouse can no longer be included in computing the annuity rate under the overall minimum as shown in § 229.41 of this part, or when the spouse annuity ends as shown in part 218 of this chapter.

§ 229.41 When a spouse can no longer be included in computing an annuity rate under the overall minimum.

A spouse's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the spouse dies; or

(b) The month before the month in which the spouse's marriage to the employee legally terminates; or

(c) If the spouse has an eligible child in care, the earlier of the month before the month in which the child leaves the spouse's care, attains age 16 and is not disabled, or, if disabled, recovers from being disabled; or

(d) The month before the month the employee dies.

§ 229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.

A child's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the child dies; or

(b) The month before the month in which the child marries; or

(c) The month before the month the child becomes 18 years old, unless the child is disabled or a full-time student, as shown in part 216 of this chapter; or

(d) The second month after the month the child's disability ends, if the child is 18 years old or older, and not a full-time student; or

(e) The month in which a student child's annuity would end, as shown in part 218 of this chapter, if the child is 18 years old or older, a full-time student in an elementary or secondary school, and not disabled; or

(f) The month before the month the child becomes entitled to an overall minimum benefit or child's annuity on another earnings record, if including the child on the other earnings record would result in higher monthly benefits.

§ 229.43 When a divorced spouse can no longer be included in computing an annuity under the overall minimum.

A divorced spouse's inclusion in the computation of the overall minimum rate ends the earlier of:

(a) The month before the month in which the divorced spouse dies; or

(b) The month before the month the employee dies; or

(c) The month before the month in which the divorced spouse remarries; or

(d) The month before the month in which the divorced spouse becomes entitled to a retirement or disability benefit under the Social Security Act based upon a primary insurance amount which is equal to or exceeds the

divorced spouse annuity before reduction for age.

Subpart F—Computation of the Overall Minimum Rate

§ 229.45 Employee benefit.

The original employee 100 percent overall minimum amount, before adjustment for age, other family members, or other benefits, is the Overall Minimum PIA, as described in part 225 of this chapter. This is the PIA which would be used under the Social Security Act if the employee's railroad service had been covered under that Act instead of the Railroad Retirement Act. The Overall Minimum PIA may be recomputed for additional earnings and adjusted for cost-of-living increases. Delayed retirement credits are added to the Overall Minimum PIA as shown in part 225, subpart D of this chapter.

§ 229.46 Spouse or divorced spouse benefit.

If a spouse or divorced spouse is included in the computation of the overall minimum, a benefit of 50 percent times the Overall Minimum PIA is computed. In the case of a spouse, the benefit may be adjusted for the family maximum, age, or other benefits. In the case of a divorced spouse, the benefit may be adjusted only for age or other benefits.

§ 229.47 Child's benefit.

If a child is included in the computation of the overall minimum, a child's benefit of 50 percent times the Overall Minimum PIA is computed. This amount may be adjusted for the family maximum or other benefits.

§ 229.48 Family maximum.

(a) *Family maximum defined.* Under the Social Security Act, the amount of monthly benefits that can be paid for any month on one person's earnings record is limited. This limited amount is called the family maximum. The family maximum used to adjust the social security overall minimum rate is based on the employee's Overall Minimum PIA. The divorced spouse overall minimum is never reduced because of the family maximum.

(b) *Computation of the family maximum.*—(1) *The employee attains retirement age prior to 1979.* The maximum is the amount appearing in column V of the applicable table published each year by the Secretary of Health and Human Services on the line on which appears in column IV the primary insurance amount of the insured individual whose compensation is the basis for the benefits payable. Where the maximum is exceeded, the total tier I benefits for each month after 1964 are reduced to the amount appearing in column V. However, when any of the persons entitled to benefits on the insured individual's compensation would, except for the limitation described in § 404.353(b) of Title 20 (dealing with the entitlement to more than one child's benefit), be entitled to a child's annuity on the basis of the compensation of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of:

(i) The sum of the maximum amounts of benefits payable on the basis of the compensation of all such insured individuals, or

(ii) The last figure in column V of the applicable table published each year by the Secretary of Health and Human Services. The "applicable" table refers to the table which is effective for the month the benefit is payable.

(2) *The employee attains retirement age in 1979.* The maximum is computed as follows:

(i) 150 percent of the first $230 of the individual's primary insurance amount, plus

(ii) 272 percent of the primary insurance amount over $230 but not over $332, plus

(iii) 134 percent of the primary insurance amount over $332 but not over $433, plus

(iv) 175 percent of the primary insurance amount over $433.

If the total of this computation is not a multiple of $0.10, it will be rounded to the next lower multiple of $0.10.

(3) *The employee attains retirement age after 1979.* The maximum is computed as in paragraph (b)(2) of this section. However, the dollar amount shown there will be updated each year as average earnings rise. This updating is done by first dividing the average of the total wages (see 20 CFR 404.203(m)) for the second year before the individual dies or become eligible, by the average of the total wages for 1977. The result of that computation is then multiplied by each dollar amount in the formula in paragraph (b)(2) of this section. Each updated dollar amount will be rounded to the nearer dollar, if the amount is an exact multiple of $0.50 (but not of $1), it will be rounded to the next higher $1. Before November 2 of each calendar year after 1978, the Secretary of Health and Human Services will publish in the **Federal Register** the formula and updated dollar amounts to be used for determining the monthly maximum for the following year.

(c) *Disability family maximum.* If an employee's first month of entitlement to the DIB O/M is July 1980 or later, the family maximum is 85 percent of the employee's Average Indexed Monthly Earnings but not less than the employee's Overall Minimum PIA, and no more than 150 percent of the employee's Overall Minimum PIA.

(d) *Reduction for family maximum.* The spouse's and child(ren)'s share of the Overall Minimum PIA are reduced if the total benefits are higher than the family maximum amount. These auxiliary shares are adjusted so that they each receive a proportionate share of the family maximum amount over and above the employee benefit. This adjustment is before adjustment for age or other benefits. The spouse and child(ren)'s benefits are computed as follows:

(1) The Overall Minimum PIA is subtracted from the family maximum amount.

(2) The result from paragraph (d)(1) of this section is divided by the total number of auxiliary beneficiaries (spouse and children).

(3) If the amount of each benefit from paragraph (d)(2) of this section is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining the beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(e) *Combined family maximum.* If a child is eligible to be included in the computation of the overall minimum on more than one railroad retirement annuity, a combined family maximum may apply, if it results in higher annuity rates. The combined family maximum is the smaller of:

(1) The sum of the individual family maximums on each earnings record; or

(2) 1.75 times the highest primary insurance amount possible in a year using average indexed monthly earnings equal to one-twelfth of the contribution and benefit base for that year. Average indexed monthly earnings and contribution and benefit base are explained in § 229.2 of this part.

(f) This section may be illustrated by the following examples:

(1) An employee, age 62, applies for an age and service annuity under the Railroad Retirement Act (RRA). His annuity rate is $700. The employee has a son who was disabled for all regular employment prior to his attaining age 18. The RRA does not provide an annuity for a disabled child of a living employee. If the employee had been covered under the Social Security Act he would have received a benefit of $500 (the Overall Minimum PIA) and his child would have received a benefit

of $250 (50 percent of $500), which produces a total family benefit of $750. The family maximum is $804.90. Under the O/M guarantee, the employee would receive $750 since it is higher than his annuity rate of $700. Since $750 is less than the family maximum computed for this employee, there is no reduction for the family maximum.

(2) It is determined that a disabled employee is entitled to a DIB O/M computed as follows:

Overall Minimum PIA	$600
Spouse (50%×600)	300
Child (50%×600)	300
Total	1,200

However, the employee's family maximum is $900 (150 percent of $600). Consequently, the DIB O/M will be paid as follows:

Employee	$600
Spouse	150
Child	150
Total	900

§ 229.49 Adjustment of benefits under family maximum for change in family group.

(a) *Increase in family group.* If an overall minimum rate is adjusted for the family maximum and an additional family member can be included, the benefits payable to previous auxiliary beneficiaries (spouse and children) are reduced to provide a share for the new family member. The difference between the Overall Minimum PIA (see § 225.15 of this part) and the family maximum amount is divided by the increased number of auxiliary beneficiaries. If the amount of each benefit is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining a beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(b) *Decrease in family group.* If an Overall Minimum rate is adjusted for the family maximum and there is a decrease in the number of eligible family members, the benefits for the remaining auxiliary beneficiaries (spouse and children) are increased. If the family maximum still applies, the difference between the Overall Minimum PIA and the family maximum amount is divided by the number of remaining auxiliary beneficiaries. If the amount of each benefit is not a multiple of $0.10, it is rounded to the next lower multiple of $0.10. After determining the beneficiary's share (the amount after reduction for other benefits) the amount is rounded to the next lowest multiple of $1.00, if it is not already a multiple of $1.00.

(c) *Effective date of rate change.* The overall minimum rate changes described in paragraphs (a) and (b) of this section are effective the month in which the number of auxiliary beneficiaries changes.

§ 229.50 Age reduction in employee or spouse benefit.

(a) *When age reduction applies.* The employee overall minimum benefit is reduced for each month the employee is under retirement age on the date the employee becomes eligible for an increase under the overall minimum, as shown in § 229.22 of this part, unless the employee has a period of disability and § 229.52 of this part does not apply, in which case no age reduction is applied. The spouse overall minimum benefit is reduced for each month a spouse, who is not a spouse with the employee's child under 16 years old or disabled before attaining age 22 in his or her care, is under retirement age on the date the spouse is eligible for an increase under the overall minimum (see § 229.21 of this part). If a spouse's overall minimum benefit is reduced for age and he or she later begins caring for an eligible child, no age reduction will apply for the months the child is in his or her care.

(b) *Employee age reduction.* The Overall Minimum PIA plus any delayed retirement credits is reduced by 1/180 for each month the employee is under retirement age on the date the employee becomes eligible for the overall minimum. When the PIA amount is increased, the amount of the increase is reduced by 1/180 for the same number of months used to determine the initial age reduction.

(c) *Spouse age reduction.* The amount of the spouse overall minimum benefit, after any adjustment for the family maximum, is reduced by 1/144 for each month the spouse is under retirement age on the date when he or she become eligible under the overall minimum. When the spouse benefit increases, the amount of the increase is reduced by 1/144 for the same number of months used to compute the initial age reduction.

(d) *Age reduction after 1999.* Beginning in the year 2000 the amount of age reduction shall be as specified in paragraphs (b) and (c) of this section for the first 36 months of the reduction period, as defined in paragraph (e) of this section, and 1/240 for any additional months included in such period.

(e) *Reduction period defined.* The reduction period is the number of months beginning with the first month for which the O/M is payable and ending with the month before the month the beneficiary attains retirement age.

§ 229.51 Adjustment of age reduction.

(a) *General.* If an age reduced employee or spouse overall minimum benefit is not paid for certain months before the employee or spouse attains retirement age, or the employee becomes entitled to a DIB O/M, the age reduction may be adjusted to drop the months for which no payment was made or the overall minimum rate was not reduced for age.

(b) *Employee adjusted age reduction.* The following months are deducted from the months used to determine the age reduction in the Overall Minimum PIA amount, effective the month in which the employee attains retirement age or becomes entitled to a DIB O/M—

(1) Months in which the increase under the overall minimum is completely or partially deducted because of the employee's excess earnings; and

(2) Months in which the employee is entitled to a DIB O/M as well as a reduced O/M.

(c) *Spouse adjusted age reduction.* The following months are deducted from the months used to determine the age reduction in the spouse overall minimum benefit, effective the month in which the spouse attains retirement age—

(1) Months in which the spouse O/M benefit is completely or partially deducted because of the employee's or spouse's excess earnings;

(2) Months after entitlement to a spouse O/M benefit ends for any reason;

(3) Months in which a spouse has in her care the employee's child who is under 16 years old or disabled before age 22;

(4) Months in which a DIB O/M benefit is not payable because the employee refused rehabilitation service (see § 229.80 of this part).

§ 229.52 Age reduction when a reduced age O/M is effective before DIB O/M.

If an employee received a reduced age O/M before the effective date of a DIB O/M, the PIA amount for the DIB O/M is reduced as if the employee had attained retirement age on the effective date of the DIB O/M.

§ 229.53 Reduction for social security benefits on employee's wage record.

The total annuity rate under the overall minimum is reduced, but not below zero, by the total amount of the social security benefits being paid to all family members on the employee's wage record.

§ 229.54 Reduction for social security benefit paid to employee on another person's earnings record.

The employee PIA amount under the overall minimum, after any age reduction, is reduced, but not below zero, by the amount of any social security benefit being paid to the employee on another person's earnings record.

§ 229.55 Reduction for spouse social security benefit.

A spouse benefit under the overall minimum, after any adjustment for the family maximum and for age, is reduced, but not below zero, by the amount of any social security benefit being paid to the spouse on other than the employee's earnings record. If the social security benefit is equal to or higher than the spouse overall minimum benefit and the family maximum applies, the overall minimum rate is recomputed so that the spouse is not included, if it would result in a higher overall minimum rate.

§ 229.56 Reduction for child's social security benefit.

A child's benefit under the overall minimum, after any adjustment for the family maximum, is reduced, but not below zero, by the amount of any social security benefit being paid to the child on other than the employee's earnings record. If the social security benefit is equal to or higher than the child's overall minimum benefit and the family maximum applies, the overall minimum rate is recomputed so that the child is not included, if it would result in a higher overall minimum rate.

§ 229.57 Reduction in spouse overall minimum benefit for employee annuity.

If an annuitant is entitled to both an employee annuity on his or her own earnings record and a spouse annuity on a different earnings record, the total overall minimum rates on both earnings records must be higher than the total railroad formula rates for the overall minimum to apply. The spouse overall minimum benefit amount, after adjustment for the family maximum and for age, is reduced by the employee-only overall minimum rate on the spouse's own earnings record (the employee benefit adjusted for age and social security benefits) plus the amount of any social security benefit payable to the spouse on other than the employee's earnings record.

§ 229.58 Rounding of overall minimum amounts.

The overall minimum amount for each beneficiary which is not a multiple of $0.10 is rounded to the next lower multiple of $0.10. After reducing each beneficiary's share for other benefits, if the result is not a multiple of $1.00 it is rounded to the next lower multiple of $1.00.

Subpart G—Reduction for Worker's Compensation or Disability Benefits Under a Federal, State, or Local Law or Plan

§ 229.65 Initial reduction.

(a) *When reduction is effective.* A benefit computed under the overall minimum based on disability (DIB O/M) is reduced (not below zero) for any month the employee is under 65 years old and is entitled to worker's compensation or disability benefits under a Federal, State, or local law or plan (public disability benefit). The reduction is effective with the month the employee is entitled to worker's compensation or a public disability benefit.

(b) *When reduction is not made.* A reduction for worker's compensation is not made if the law or plan under which the worker's compensation or public disability benefit is paid provides for the reduction of the benefit provided due to entitlement to a social security disability benefit, and so provided on February 18, 1981.

(c) *Amount of reduction.* The reduction in the DIB O/M for worker's compensation or public disability benefit equals the difference between:

(1) The sum of the monthly DIB O/M rate, including benefits for all family members (subject to the family maximum), plus the monthly worker's compensation or public disability benefit; and

(2) The higher of 80 percent of the employee's average current earnings before becoming disabled or the monthly DIB O/M rate (before reduction for worker's compensation or public disability benefit).

(d) *Average current earnings, defined.* Beginning January 1, 1979, an employee's average current earnings for purposes of this section are the highest of:

(1) The average monthly wage (see § 225.2 of this chapter) used to compute the DIB O/M under the Social Security Act rules which were in effect before 1979; or

(2) One-sixtieth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the 5 consecutive years after 1950 in which the earnings were the highest; or

(3) One-twelfth of the employee's total earnings from employment or self-employment under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum used in computing social security benefits) for the year of highest earnings in the period from 5 years before through the year in which the employee became disabled. The result is rounded to the next lower multiple of $1.00.

§ 229.66 Changes in reduction amount.

(a) *Change in DIB O/M.* The amount of the worker's compensation or public disability benefit reduction does not change when there is an increase in the DIB O/M rate because of an amendment or cost of living increase. However, the reduction amount does change if there is a change in the family members included in the DIB O/M. When the number of family members changes and the DIB O/M is still payable, the amount of the reduction is recomputed using the DIB O/M rate, including the changed family group, as if the new family composition had existed when the worker's compensation or public disability benefit reduction first applied. However, this new reduction is not effective until the date of the change of the family group. The worker's compensation or public disability benefit and average current earnings are the same as those used before the change in the family group.

(b) *Change in amount of worker's compensation/public disability benefit.* The amount of the reduction for worker's compensation or public disability benefit changes when there is a change in the amount of the worker's compensation or public disability benefit. If the worker's compensation or public disability benefit increases, the change in the reduction amount is effective with the month of the increase. If the worker's compensation or public disability benefit decreases, the change in the reduction amount is effective with the month of the decrease, no matter when the notice of the decrease is received.

§ 229.67 Redetermination of reduction.

(a) *General.* All cases reduced for worker's compensation or public disability benefit are recomputed in the second year after the year the reduction was first applied and every third year after that. The redetermined rate is effective with January of the year after the year the redetermination is made. The redetermined reduction is used only if it provides an annuity rate that is higher than the previous annuity rate.

(b) *Redetermined average current earnings.* The average current earnings amount used in redetermining a worker's compensation or public disability benefit reduction is determined by multiplying the initial average current earnings amount by:

(1) The average total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year of redetermination, divided by the average total wages for 1977 or, if later, the year before the year the reduction was first computed. If the result is not a multiple of $1.00, it is rounded to the next lower multiple of $1.00; or

(2) If the reduction was first computed before 1978, the average taxable wages reported to the Secretary of Health and Human Services for the first quarter of 1977, divided by the average taxable wages for the first quarter of the year before the year the reduction was first computed. If the result is not a multiple of $1.00, it is rounded to the next lower multiple of $1.00.

§ 229.68 Reduction of DIB O/M.

A reduction for entitlement to worker's compensation or a public disability benefit is applied after the DIB O/M is reduced for age and the family maximum. The spouse and child O/M benefits are first reduced proportionately. The employee O/M benefit is decreased by any remaining reduction amount.

Subpart H—Miscellaneous Deductions and Reductions

§ 229.80 Earnings restrictions.

The O/M may be reduced due to earnings from employment or self-employment in the same manner as a social security benefit. These restrictions on earnings are found at subpart E of part 404 of this chapter. Earnings can never reduce an employee's benefit below the railroad formula rate less the amount that those benefits would be reduced by earnings.

§ 229.81 Refusal to accept vocational rehabilitation.

The DIB O/M is not payable for any month in which the disabled employee refuses, without good reason, to accept vocational rehabilitation services available under an approved state program. A disabled child's benefit under the O/M is not payable for any month in which the child refuses, without good reason, to accept such vocational rehabilitation services, unless the child is a full-time student.

§ 229.82 Failure to have child in care.

(a) *General.* The full amount of the spouse overall minimum benefit is not payable for any month a spouse, who is included in the overall minimum because he or she has a child in his or her care, is under 65 years old and is no longer caring for an eligible child. However, if the spouse is at least 62 years old, a reduced spouse annuity or a reduced overall minimum benefit is payable if the spouse has stated that he or she will accept a reduced benefit.

(b) *Report required.* When the overall minimum, which includes a benefit for a spouse who has the employee's child in his or her care, is payable, both the employee and spouse are responsible for reporting when the child leaves the spouse's care. The report is due before the benefits are paid for the second month after the first month in which the child is no longer in the spouse's care.

(c) *Penalty for failure to report.* If the employee or spouse does not report the fact that a spouse included in the overall minimum no longer has an eligible child in his or her care within the time limit shown in paragraph (b) of this section, a penalty is deducted from the overall minimum amount, unless there is a good reason for the person's failure to report. The penalty deduction for the first failure to make a timely report equals the amount of the overall minimum increase for the first month in which a report should have been made. The deduction for the second failure to make a timely report is twice the amount of the overall minimum increase for the first month in which a report should have been made. The deduction for the third and later failures to make a timely report is three times the amount of the overall minimum increase for the first month in which a report should have been made or, if less, the overall minimum increase times the number of months for which a timely report was not made.

§ 229.83 Deportation.

The age or DIB O/M is not payable for any month after the month the Board receives notice that the employee has been deported for a reason shown in section 202(h) of the Social Security Act. This restriction no longer applies if the employee is later legally admitted to the United States for permanent residence.

§ 229.84 Conviction for subversive activities.

If a person is convicted of subversive activities (under chapter 37, 105, or 115 of title 18 of the U.S. Code or section 4, 112, or 113 of the Internal Security Act of 1950, as amended), the court may order that earnings in the year of the conviction and previous years are to be disregarded in determining whether the person is entitled to social security benefits. These earnings would also be ignored in determining entitlement to the age or DIB O/M.

§ 229.85 Substantial gainful activity by blind employee or child.

A blind employee or child who is 55 years old or older is entitled to an O/M benefit based on disability while he or she is working in substantial gainful activity that does not require skills or ability used in his or her previous work. However, the DIB O/M or child's O/M benefit is not payable for any month in which the employee or child works in any type of substantial gainful activity which requires skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time.

Subpart I—Payment of Overall Minimum Rate

§ 229.90 Proportionate shares of overall minimum.

When both the employee and the spouse are entitled to annuities and the overall minimum rate is higher than the railroad formula rate, the overall minimum amount must be divided between the employee and spouse. The employee receives two-thirds of the total O/M rate. The spouse receives one-third of the total O/M rate.

§ 229.91 Payment of the overall minimum for part of a month.

(a) *Employee annuity payable for part of a month.* If an employee annuity begins after the first day of the month, the O/M amount payable for the partial month is 1/30 of the monthly rate times the number of days in the partial month.

(b) *Spouse annuity payable for part of a month.*—(1) *Spouse not included in O/M before beginning date of spouse annuity and O/M applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month, and the spouse is not includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date exceeds the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of

the month, the amount payable to the employee is:

(i) One-thirtieth of the higher of the railroad formula or the O/M rate, without the spouse included, times the number of days in the month before the spouse annuity begins, plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(2) *Spouse included in O/M before beginning date of spouse annuity and the O/M continues to apply.* If a spouse annuity begins after the first day of a month, and the spouse is includable in the O/M before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date continues to exceed the amounts payable using the benefit formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's share of the O/M rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M rate, with the spouse included, times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

(3) *O/M rate applies before beginning date of spouse annuity and the railroad formula applies as of the spouse annuity beginning date.* If a spouse annuity begins after the first day of a month and the O/M rate applies to the family group, with or without the spouse included, before the beginning date of the spouse annuity, and the O/M rate paid to the family group, including the spouse, as of the spouse annuity beginning date is less than the amounts payable using the formulas under the Railroad Retirement Act, the amount payable to the spouse for the partial month is 1/30 of the spouse's railroad formula rate times the number of days in the month beginning with the spouse's annuity beginning date. In such a case, if the employee annuity is payable from the first day of the month, the amount payable to the employee is:

(i) One-thirtieth of the O/M times the number of days in the month before the spouse annuity begins; plus

(ii) One-thirtieth of the employee's railroad formula rate times the number of days in the month beginning with the spouse's annuity beginning date.

(iii) One-thirtieth of the employee's share of the O/M rate, with the spouse included, times the number of days in the month beginning with the spouse's annuity beginning date.

Dated: March 16, 1993.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93-6643 Filed 3-24-93; 8:45 am]

BILLING CODE 7905-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 65

[CC Docket No. 93-50; FCC 93-126]

Accounting and Ratemaking Treatment for Allowance for Funds Used During Construction (AFUDC)

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission ("FCC" or "Commission") has adopted a Notice of Proposed Rulemaking which proposes to amend parts 32 and 65 of its rules to revise the accounting and ratemaking requirements for the Allowance for Funds Used During Construction (AFUDC). The proposal will revise the accounting and ratemaking rules for interest capitalization for both short and long-term construction projects to make these rules consistent with generally accepted accounting principles (GAAP).

DATES: Comments are due May 13, 1993. Reply comments are due May 28, 1993.

ADDRESSES: All comments should be filed with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy should be sent to Hugh L. Boyle, Accounting and Audits Division, room 812, 2000 L Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh L. Boyle, Common Carrier Bureau, Accounting and Audits Division, 202-634-1861.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Notice of Proposed Rulemaking ("Notice") in Accounting and Ratemaking Treatment for the Allowance of Funds Used During Construction (AFUDC), FCC No. 93-126, CC Docket No. 93-50, adopted March 2, 1993 and released March 22, 1993. The full text of the Notice is available for inspection and copy during normal business hours in the FCC Reference Center, Room 230, 1919 M Street NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, the International Transcription Service, at 2100 M Street NW., suite 140, Washington, DC 20037, telephone number 202-857-3800.

2. To attain full adoption of GAAP for AFUDC capitalization in our accounting rules and conform our ratemaking rules with our accounting rules, the Notice proposes to amend 47 CFR 32.2000, 32.2003, 32.2004, 32.7340, 65.450 and 65.820 to capitalize AFUDC at the cost of debt on all construction, eliminate long-term/short-term dichotomy for plant under construction, include all plant under construction in the rate base, and apply the amount of AFUDC capitalized as a revenue requirement reduction for the period it is capitalized.

3. The Notice also directs the Regional Bell Operating Companies to provide data specified by the Common Carrier Bureau necessary to evaluate the possible revenue requirement impact of the proposed changes.

4. In the Notice, the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposals in this proceeding are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[1] Carriers providing interstate services affected by the proposed rule amendment generally are large corporations or affiliates of such corporations. The Secretary shall send a copy of the NPRM, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of that act.[2]

Ordering Clause

Authority for issuance of the NPRM is contained in sections 4, 219, 220, 303, and 307 of the Communications Act of 1934, as amended 47 U.S.C. Sections 154, 219, 220, 303 and 307.

List of Subjects

47 CFR Part 32

Communications common carriers, Uniform System of Accounts, Reporting and recordkeeping requirements, Allowance for funds used during construction.

[1] 5 U.S.C. 601(3).

[2] 5 U.S.C. 603(a).

47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements, Interest cost capitalized.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

47 CFR Parts 32 and 65 are proposed to be amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220 unless otherwise noted.

2. Paragraph 32.2000(c)(2)(x) is revised to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

* * * * *

(c) * * *

(2) * * *

(x) "Capitalized interest cost" includes the cost of funds used during construction. Capitalized interest cost shall be charged to assets in Account 2003, Telecommunications Plant Under Construction, and, if appropriate under generally accepted accounting principles, on suspended construction projects reclassified to Account 2006 (as provided in § 32.2003(c)) as follows: If financing plans associate a specific new borrowing with an asset, the rate on that borrowing may be used for the asset; if no specific new borrowing is associated with an asset or if the average accumulated expenditures for the asset exceed the amounts of specific new borrowings associated with it, the capitalization rate to be applied to such excess shall be a weighted average of the rates applicable to other borrowings of the enterprise. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the company in that period. Such amounts included in the cost of construction shall be credited to Account 7340, Interest Cost Capitalized.

* * * * *

3. Section 32.2003 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 32.2003 Telecommunications plant under construction.

(a) This account shall include the original cost of construction projects. (Note also § 32.2000(c).)

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account shall be transferred to Account 2006, Nonoperating Plant, without further direction or approval of this Commission. If a project is abandoned, the cost included in this account shall be charged to Account 7370, Special Charges.

* * * * *

§ 32.2004 [Removed]

4. Section 32.2004 is removed.

5. Section 32.7340 is revised in its entirety to read as follows:

§ 32.7340 Interest cost capitalized.

This account shall be credited with such amounts that are charged to plant accounts for the purpose of capitalizing interest cost. (See § 32.2000(c)(2)(x).)

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.450(d) is revised to read as follows:

§ 65.450 Net income.

* * * * *

(d) Except for interest cost capitalized, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300–7450) and interest and related items (Accounts 7500–7540) and extraordinary items (Accounts 7600–7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

3. Section 65.820(a) is revised to read as follows:

§ 65.820 Included items.

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization. Any interest cost for funds used during construction capitalized on assets recorded in these accounts shall be computed in accordance with the procedures in § 32.2000(c)(2)(x).

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–6840 Filed 3–24–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Tetramolopium capillare (Pamakani)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Tetramolopium capillare* (pamakani). Two extant populations containing a total of 12 known individuals of the species remain in the southwestern portion of West Maui. The species and its habitat have been variously affected or are currently threatened by fire and by habitat degradation and competition from invasive alien plant species. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also activate and augment State regulations protecting *Tetramolopium capillare* as an endangered species. Comments and Materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by May 24, 1993. Public hearing requests must be received by May 10, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Tetramolopium capillare was first collected in 1819 on Maui by Charles Gaudichaud-Beaupre. He named this sterile specimen *Seneco capillaris*, choosing the specific epithet to refer to its very narrow involute leaves (with margins rolled under along the edges) (Gaudichaud-Beaupre 1830). Based on a fertile specimen collected on Maui in the 1830s, Sherff (1935) described and named *Tetramolopium bennettii*. After examining and comparing type specimens, St. John (1965) determined that Gaudichaud-Beaupre's *Senecio capillaris* and Sherff's *Tetramolopium bennettii* was actually the same species and that Sherff had placed the taxon in the correct genus; St. John (1965) subsequently made the new combination *Tetramolopium capillare*. Later, St. John (1974) described a new genus, *Luteidiscus*, for species of *Tetramolopium* with yellow dish florets, and formed the combination *Luteidiscus capillaris*. In the current treatment of the genus, Lowrey (1981, 1986, 1990) does not recognize St John's division of the genus.

Tetramolopium capillare is a sprawling shrub with stems measuring 50 to 80 centimeters (cm) (20 to 31 inches (in)) long and covered with many glands when young. The very firm, stalkless leaves are involute and are usually 13 to 25 millimeters (mm) (0.5 to 1 in) long and 0.3 to 0.4 mm (about 0.01 in) wide. Flower heads are situated singly at the ends of stalks 1 to 3.5 cm (0.4 to 1.4 in) long. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in) high and 7 to 10 mm (0.3 to 0.4 in) in diameter. In each flower head, 30 to 50 white, male ray florets, 3.5 to 4 mm (about 0.1 in) long and 0.6 to 8 mm (0.02 to 0.3 in) wide, surround 15 to 25 greenish yellow tinged with red, functionally female florets about 3.6 mm (0.1 in) long. The achenes (dry, one-seeded fruits) measure 2 to 2.6 mm (0.08 to 0.1 in) long and 0.7 to 0.8 mm (0.03 in) wide and are topped by a white pappus comprising a single series of bristles 1.9 to 2.1 mm (0.07 to 0.08 in) long. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *Tetramolopium remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1990).

Historically, *Tetramolopium capillare* is known from Lahainaluna to Wailuku on West Maui (Lowrey 1981). This species is known to be extant near Halepohaku on State land (Hawaii Plant Conservation Center (HPCC) 1992a, 1992b). The two known populations, which are separated by 2.4 kilometers (km) (1.8 miles (mi)), contain a total of 12 known plants (Steve Perlman, HPCC, pers. comms., 1992). *Tetramolopium capillare* typically grows on rock substrates at elevations between 615 and 900 meters (m) (2,020 to 3,000 feet (ft)) in Lowland Dry Mixed Shrub and Grassland and in Montane Dry Shrubland. Plant species associated with the higher elevation population include *Dodonaea viscosa* ('a'ali'i), *Metrosideros polymorpha ('ohi'a), and Styphelia tameiameiae* (pukiawe). 'A'ali'i, *Heteropogon contortus* (pili grass), and *Myoporum sandwicense* (naio) are associates of the other population. The major threats to *Tetramolopium capillare* are fire; competition from alien plant species, particularly *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Rynchelytrum repens* (Natal redtop); and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (HPCC 1992a, 1992b).

Previous Federal Action

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Tetramolopium capillare* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Tetramolopium capillare*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Tetramolopium capillare* was treated as a Category 1* species. Category 1* taxa are those which are possibly extinct. Because the species was rediscovered in 1991, it is now being proposed for listing.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Tetramolopium capillare* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for this species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the criteria and procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tetramolopium capillare* (Gaud.) St. John are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitat of *Tetramolopium capillare* has undergone extreme alteration because of past and present land management practices, including grazing and alien plant introductions. Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, north Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. This animal eats native vegetation, tramples roots and seedlings, causes erosion, creates disturbed areas into which alien plants invade, and spreads seeds of alien plants (Cuddihy and Stone 1990). Feral cattle were formerly found on Maui and affected areas within the historic range of *Tetramolopium capillare* (Lowrey 1981).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to *Tetramolopium capillare*, which has only 2 populations and a total of 12 known individuals. Any collection of whole plants or reproductive parts of this species would cause an adverse impact on the gene pool and threaten the survival of the species.

C. Disease or Predation

No evidence of disease or predation of *Tetramolopium capillare* has been reported.

D. The Inadequacy of Existing Regulatory Mechanisms

Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4). *Tetramolopium capillare* is not presently listed as an endangered species by the State of Hawaii. Both populations of this species occur on State land. State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

Conservation district lands are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting *Tetramolopium capillare*. The Federal Act would offer additional protection to this species because, if it were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of individuals and populations of *Tetramolopium capillare* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population. Erosion due to natural weathering in areas where *Tetramolopium capillare* grows can result in the death of individual plants and habitat destruction. This process especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges, such as *Tetramolopium capillare*, and can be exacerbated by human disturbance and land use practices.

Erosion provides a suitable site for colonization by alien plants. Three alien plant species, naturalized in dry, disturbed areas on all the main Hawaiian islands, compete with *Tetramolopium capillare*. Natal redtop, an annual or perennial grass, is a major threat to both populations of *Tetramolopium capillare* (HPCC 1992a, 1992b; O'Connor 1990). Both koa haole, often the dominant species in dry, disturbed, low elevation areas, and lantana, an aggressive, thicket-forming shrub, have also invaded the habitat of *Tetramolopium capillare* (Geesnick *et al.* 1990; HPCC 1992a; S. Perlman, pers. comm., 1992). Because both populations of *Tetramolopium capillare* grow in dry areas, wildfire poses a threat to the species (HPCC 1992a; S. Perlman, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Tetramolopium capillare* as endangered. This species numbers no more than about 12 individuals in 2 populations and is threatened by habitat degradation, competition from alien plants, fire, and lack of legal protection. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in this Act.

Critical habitat is not being proposed for *Tetramolopium capillare* for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered. The Service finds that designation of critical habitat is not presently prudent for *Tetramolopium capillare*. Such a determination would result in no known benefit to the species. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the

degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the landowner have been notified of the importance of protecting the habitat of *Tetramolopium capillare*, which will be addressed through the recovery process. There are no known Federal activities within the currently known habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to taxa listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities that occur within the habitat of *Tetramolopium capillare*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Tetramolopium capillare*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued. The species is not common in the wild and is only rarely cultivated.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Tetramolopium capillare*;

(2) The location of any additional populations of *Tetramolopium capillare*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Tetramolopium capillare*; and

(4) Current or planned activities in the subject area and their possible impacts on *Tetramolopium capillare*.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cuddihy, L.W., and C.P. Stone. 1990. Alteration of native Hawaiian vegetation; effects of humans, their activities and introductions. Cooperative National Parks Resource Studies Unit, Honolulu, 138 pp.

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Author

The author of this proposed rule is Zella E. Ellshoff, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Asteraceae—Aster family:						
•	•	•	•	•	•	•
Tetramolopium capillare.	Pamakani	U.S.A. (HI)	E		NA	NA
•	•	•	•	•	•	•

Dated: March 11, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–6677 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 56
Thursday, March 25, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 19, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Reinstatement

- *Farmers Home Administration*

7 CFR part 1942–G, Rural Business Enterprise Grants and Television Demonstration Grants.

On occasion; monthly; quarterly; recordkeeping.

State or local governments; non-profit institutions; small businesses or organizations; 6,960 responses; 12,920 hours.

Jack Holston, (202) 720–9736.

- *Food and Nutrition Service*

Summer Food Service Program Claim for Reimbursement.

FNS–143.

Recordkeeping; monthly.

State or local governments; non-profit institutions; 2,370 responses; 1,778 hours.

Kathy Crampton, (703) 305–2870.

- *Food and Nutrition Service*

Negative Quality Control Review Schedule, Statistical Summary of Sample Disposition and Status of Sample Selection and Completion.

FNS–245; FNS–247; FNS–248.

Recordkeeping; on occasion; monthly; annually.

Individuals or households; State or local governments; 35,265 responses; 105,763 hours.

Michelle Perry, (703) 305–2471.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 93–6801 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Intent To Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Perten Instruments North America Inc., Reno, NV, on U.S. Patent No. 5,005,774, "Rapid, Single Kernel Grain Characterization System," issued April 9, 1991, and foreign equivalents thereof. Notice of Availability for licensing the invention was given in the **Federal Register** on February 1, 1991.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the **Federal Register.**

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Baltimore Boulevard, Building 005, Room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Technology Transfer, at the Beltsville address given above; telephone 301–504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument, pursuant to 37 CFR 404.11(c), which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Perten Instruments North America Inc., has been selected as an exclusive patent licensee through a competitive process. All domestic companies known to have a business interest in the technology covered by the invention were requested to submit a patent license application with a business plan. Those companies that responded by the deadline had their applications reviewed and ranked by a panel of experts. Perten Instruments North America Inc., was ranked superior in capacity to develop and market the invention and being able to bring expeditiously the invention into public use.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 93–6803 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Logging Gulch Timber Management Project, Boise National Forest, Boise County, ID

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Logging Gulch Timber Management Project was published in the **Federal Register** on December 11, 1991 (Vol. 56, No. 238, pages 64586 and 64587). After examining the analysis to date in light of the ten points of

significance, 40 CFR 1509.27, I believe there will not be a significant impact on the human environment from the preferred alternative; therefore, an EIS will not be prepared. Alternatives which would have resulted in a significant impact will not be selected. The project analysis will be documented in an Environmental Assessment; scheduled for release March 30, 1993. The Environmental Assessment will be available for public review and comment for 30 days prior to the decision being made. All comments received during the review period will be addressed in the final decision. If you are interested in receiving a copy of the Environmental Assessment, please contact Terry Padilla at the following address.

FOR FURTHER INFORMATION CONTACT:
Terry Padilla, Planning Specialist, Idaho City Ranger District, P.O. Box 129, Idaho City, Idaho 83631, 208–364–4330.

Dated: March 19, 1993.

Richard M. Christensen,

Acting Forest Supervisor, Boise National Forest.

[FR Doc. 93–6810 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–11–M

Oso/Canoncito Timber Sale; Santa Fe National Forest; Santa Fe County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice to cancel preparation of an environmental impact statement.

SUMMARY: On September 11, 1992, The Forest Service, USDA, published a notice of intent to prepare an environmental impact statement (EIS) which would disclose effects of alternative plans for harvesting timber, prescribed burning, tree planting, and road construction, reconstruction and obliteration. Further scoping and analysis has determined that an EIS will not be needed to disclose the effects of the proposed action and the Notice to prepare an EIS is withdrawn.

DATES: Written comments concerning the withdrawal of the Notice to prepare an EIS should be received on or before May 1, 1993.

ADDRESSES: Send written comments to Lori D. Osterstock, District Ranger, P.O. Drawer R, Espanola, NM 87532.

FOR FURTHER INFORMATION CONTACT:
John Bruin, Project Coordinator, Espanola Ranger District. (505) 753–7331.

RESPONSIBLE OFFICIAL: Alan S. Defler, Forest Supervisor, Santa Fe National Forest.

Dated: March 16, 1993.

Alan S. Defler,

Forest Supervisor.

[FR Doc. 93–6886 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Palmetto Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impacts resulting from a proposal by Palmetto Electric Cooperative, Inc., to construct a new headquarters facility northwest of Ridgeland, South Carolina. The FONSI is based on a borrower's environmental report covering the proposed new headquarters prepared by Gilpin Group on behalf of Palmetto Electric Cooperative, Inc., and submitted to REA. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA's Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the borrower's environmental report as its environmental assessment for the new headquarters facility.

FOR FURTHER INFORMATION CONTACT:
Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed headquarters facility is proposed to be located in Jasper County, South Carolina, northwest of Ridgeland on the west side of U.S. Highway 278 south of where it intersects with Route 652.

The headquarters facility will entail the construction of the following:

- a 19,000 square foot combination office, operations center and warehouse building,
- a 19,200 square foot covered vehicle storage shed and annual meeting area with an attached 5,625 square foot fleet maintenance building with a covered open bay truck wash and covered refueling station,
- two 4,000 gallon double walled underground gasoline and diesel fuel storage tanks equipped with leak detection and monitoring equipment,
- a 1,800 square foot food concession building with restrooms,
- a 1,000 square foot wire storage shed,
- a 22,100 square foot asphalt covered pole storage yard,
- a 500 square foot concrete pad for scrap material storage,
- a 1,000 square foot concrete pad for transformer storage,
- a 100 foot lattice type microwave tower,
- a small emergency standby diesel generator,
- a stormwater retention pond,
- paved parking lot for 40 employee vehicles and 50 visitor vehicles with entrance and exit drives, and
- temporary truck parking area around the warehouse for loading and unloading.

Approximately 33 acres of land will be dedicated to this facility. It is anticipated that the site will have enough grassed area to accommodate 2,150 vehicles for annual membership meetings and other system member events.

Alternatives considered to the project as proposed were no action and alternative site locations.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Mr. A. Berl Davis, Jr., Palmetto Electric Cooperative, Inc., 111 Mathews Drive, Hilton Head, South Carolina 29925, telephone (803) 681–5551.

Dated: March 17, 1993.

James B. Huff, Sr.,

Administrator.

[FR Doc 93–6802 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–15–F

Soil Conservation Service

Muddy Fork of Silver Creek Watershed, Clark, Floyd, and Washington Counties, IN

AGENCY: Soil Conservation Service.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: Robert L. Eddleman, State Conservationist, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Indiana, is hereby providing notification that a record of decision to proceed with assistance to the project sponsors for the installation of the Muddy Fork of Silver Creek Watershed project is available. Single copies of this record of decision

may be obtained from Robert L. Eddleman at the address shown below.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, 6013 Lakeside Boulevard, Indianapolis, IN 46278, telephone (317) 290–3200.

(This activity is listed in the Catalog of Federal Domestic Assistance Under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

March 16, 1993.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 93–6761 Filed 3–24–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Medal of Technology Nomination Evaluation Committee

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the forthcoming meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on September 16, 1991.

The Committee's major purpose is to make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology. The Committee met on January 15, 1993 to accomplish that purpose for the year.

The purpose of this meeting will be focussed on concepts and processes that could enhance the prestige of the National Medal of Technology. For example, suggesting improvements to the selection criteria used for determining the relative merits of persons and companies nominated for the National Medal of Technology. The criteria must be periodically updated to remain current with changes in U.S. industry.

TIME AND PLACE: The meeting will begin 4 p.m. and end at 5 p.m. on April 19, 1993. The meeting will be held in Room 6124 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, Room 4418, Washington, DC 20230, (202) 482–5572.

Dated: March 18, 1993.

John W. Lyons,

Acting Under Secretary for Technology.

[FR Doc. 93–6885 Filed 3–24–93; 8:45 am]

BILLING CODE 3510–18–M

Bureau of the Census

[Docket No. 930224–3024]

Request for Comments on the Proposed Criteria for Assessing Design Alternatives for the 2000 Census

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The purpose of this notice is to inform the public about the criteria for assessing design alternatives for the 2000 census.

DATES: Comments from the public should be received no later than April 26, 1993.

ADDRESS: Written comments should be addressed to: Harry A. Scarr, Acting Director, Bureau of the Census, U.S. Department of Commerce, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: James L. Dinwiddie, Program Manager, Year 2000 Research and Development Staff, Bureau of the Census, telephone 301/763–4040.

SUPPLEMENTARY INFORMATION:

I. Purpose and Background

The decennial census is taken every 10 years as mandated by the Constitution. The census provides data for reapportioning the seats in the House of Representatives among the states and establishing districts within each state; it also supplies a wealth of data about the population of the Nation for a variety of other uses, including allocation of funds.

Features of the final design for how to take the 2000 census must be determined by December 1995 to allow for a sound program of operational planning, preparatory activities, and implementation. A major source of information for determining the final design will be a set of full field tests in the spring of 1995. Those tests can effectively implement and evaluate only a small number of design features. Features to be tested must be selected by September 1993 to allow for planning, implementation and evaluation of the tests.

Design features will be evaluated in a series of design alternative recommendations (DARs). The DARs will be evaluated by a wide range of census stakeholders.

Those who wish to be placed on a mailing list to receive DARs as they are developed should write: 2000 Census Research and Development Staff, ATTN: James L. Dinwiddie, room 3525 FB3, Bureau of the Census, Washington, DC 20233.

This notice solicits comment on the criteria for assessing designs.

II. Mandatory and Desirable Criteria for Assessing Designs

The Census Bureau proposes that a common set of mandatory criteria be applied to all designs. In addition, it proposes a set of desirable criteria to be applied to designs or sets of designs to which they are appropriate. Designs that fail any of the mandatory criteria will not be assessed for meeting desirable criteria.

The mandatory and desirable criteria proposed are (numbering is for convenience only and does not necessarily reflect relative importance within the categories):

Mandatory Criteria

Any design that will be considered for the 2000 census must meet all of the following criteria:

1. Not Require a Constitutional Amendment

It is not feasible to seek a Constitutional Amendment between now and the year 2000 to allow the Census Bureau to implement a design. (This does not preclude seeking legislative changes; see Desirable Criteria below.)

2. Meet Data Requirements for Reapportionment

Tabulations of persons in each state, for the purpose of apportioning Representatives among the states, must be provided by the design.

3. Provide Data Defined by Law and Past Practice for State Redistricting

Any selected design must be able to produce counts of the population for small geographic areas (that is, blocks) that are required for state redistricting. This does not necessarily preclude the use of sampling to produce these data.

4. Provide Age and Race/Ethnic Data Defined by Law to Meet the Requirements of Enforcing the Voting Rights Act

Any selected design must be able to produce, for small geographic areas usable for state redistricting, tabulations of the population by: age 18+ and the racial/hispanic origin detail provided in

the 1990 product for purposes of Public Law 94–171 (data for the redistricting program). This does not necessarily preclude the use of sampling to produce these data.

5. Protect the Confidentiality of Respondents

No design is acceptable if it jeopardizes the ability of the Census Bureau to control and protect against release of identifiable individual data.

Desirable Criteria

Each design meeting the mandatory criteria will be assessed for the following:

1. Ability To Reduce the Differential Undercount

Each design must be assessed in terms of its potential to reduce the differential levels of coverage of population groups and geographic areas that have historically occurred in the census.

2. Result in Comparative Cost Effectiveness With Respect to Other Alternatives Under Consideration in Real Terms on a Per Unit Basis

The cost of the census has increased significantly over the last three censuses and it is important to select a design that considers cost in assessing the quality of the results.

3. Provide Data of High and Consistent Quality That is Best and Uniquely Supplied by a Census, as Opposed to Other Sources

The uses of census data require that they be accurate and of uniform quality for various geographic levels. Each design will be assessed for its ability to meet these goals and for the degree to which it collects information that can best be supplied by a census rather than a survey or other sources.

4. Provide a Single, Best Set of Census Results Produced by Legal Deadlines for Reapportionment and Redistricting

The designs under consideration vary in combining direct enumeration and estimation techniques to produce the census results. It is highly desirable to specify a design that has an appropriate combination of these techniques and integrate the results on a time schedule that provides a single set of counts and characteristics by mandated statutory deadlines. Each design must be assessed in terms of the likelihood of meeting these objectives. While the Census Bureau does not necessarily assume that current deadlines will be unchanged, it expects that a convincing case must be made for proposing the legislative actions that would be required to change them.

5. Provide an Overall High Level of Coverage

In addition to reduction of differential coverage, each design must be assessed in terms of the degree to which it ensures the best absolute coverage of the population.

6. Increase the Primary Response Rate to the Census

Public cooperation in responding to the census is a key element in controlling the costs while ensuring the quality of the census. Each design will be assessed in terms of the degree to which it facilitates public participation and compliance. Aspects of improving the response rate include the design of the census questionnaire, the number and type of census questions, and the incorporation of a variety of ways the population can receive and respond to the census inquiry.

7. Level of Respondent Burden

The level of respondent burden attendant to each design will be assessed. Consideration will be given to such measures of burden as the time needed for the public to supply the information.

8. Degree and Type of Changes Needed in Federal or State Law

The Census Bureau will determine, for each design, whether one or more features of the design require changes in existing law. The actions needed to implement such changes, and the viability of doing so, will be evaluated.

9. Reliance on New or Unproven Methods or Capabilities

Several of the designs under consideration are dependent on major changes or improvements in census methodologies and technologies. For example, some of the designs rely on the ability to quickly and accurately unduplicate people who may be enumerated multiple times or appear on multiple administrative records. Other design features require an unprecedented degree of access to administrative records. All the designs, to differing degrees, rely on having a complete and reasonably accurate geographic database linked to a current and comprehensive address control database. These kinds of issues and capabilities are currently undergoing research and development, but will not be fully in place by September 1993 when the Census Bureau must select the design features for the 1995 test. For each design, the Census Bureau will assess the degree to which one or more features rely on methods that are not fully developed, the steps that must be taken to develop the methods, and the risk to the design if full development is unsuccessful.

10. Methods and Procedures Are Understandable and Credible to the Public

The American public and various groups with a stake in the census need to have confidence in the methods and procedures employed in the census process. The features of each design will be assessed to determine compliance with this criterion.

11. Major Design Features Can Be Fully Tested and Developed

The census is a massive, complex, and expensive undertaking. Stakeholders and the public need assurance in the success of its operational implementation and the resultant quality of its products. The Census Bureau must be able to fully test and develop the logistical, technological, and operational requirements for the chosen design. Each design under consideration will be assessed to determine if, taken together, its components produce the desired result.

12. Provision of Opportunities To Involve the U.S. Postal Service, State and Local Governments, National Organizations, and Other Private, Nonprofit, and Commercial Enterprises.

The involvement of organizations outside the Census Bureau can benefit the planning and conduct of the census by bringing expertise and cooperation into the census-taking process. The Census Bureau will assess the features of each design in terms of their ability to support this external participation.

13. Confidence That Related Aspects of the Federal Statistical Structure Will Be in Place To Support the Census

Some of the designs under consideration require clarification or redefinition of aspects of the Federal statistical system. The ability of this system to perform in areas such as providing access to administrative records, and providing or using data collected in ways that differ from past experience, must be ensured to support some of the designs. The relevance of this criterion to each design will be assessed, and the necessary changes will be documented.

Dated: March 19, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–6904 Filed 3–24–93; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket 7–93]

Proposed Foreign-Trade Zone—Texas City, Texas; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Texas City-Gulf Coast, Inc., a Texas non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in Texas City, Texas, within the Houston-Galveston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 2, 1993. The applicant is authorized to make the proposal under Texas Revised Civil Statutes Article 1446.01.

The proposed Texas City project would be the fourth general-purpose zone in the Houston-Galveston Customs port of entry area. The existing zones in the area are: *FTZ 36* in Galveston (Grantee: City of Galveston, Texas, Board Order 129, 43 FR 20525, 5/12/78); *FTZ 84* in Harris County (Grantee: Port of Houston Authority, Board Order 214, 48 FR 34792, 8/1/83); and, *FTZ 171* in Liberty County (Grantee: Liberty County Economic Development Corporation, Board Order 501, 56 FR 1166, 1/11/91).

The proposed new zone would consist of 2 sites (378 acres) in Texas City. Site 1 (2.32 acres) is located at 1002 12th Avenue North, Texas City. Owned by the City of Texas City and currently operated as a municipal storage facility, this site will be available for multi-user public warehousing activities. Site 2 (376 acres) is located at Shoal Point on the Texas Ship Channel, Galveston Bay, in Galveston County. It is part of the City's 9.9 square mile enterprise zone and is owned by the City of Texas City.

The application indicates there is a need for zone services in the Texas City area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as machinery equipment and supplies, toiletries, food products, wearing apparel and paper products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 22, 1993, at 11 a.m., Kenneth T. Nunn City Council Chambers, City Hall, 1801 9th Avenue North, Texas City, Texas.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is on May 24, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 8, 1993).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

U.S. Customs Service, Operations Branch, 1927 Post Office Street, Galveston, Texas 77550.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 11, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–6772 Filed 3–24–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–201–806]

Notice of Antidumping Order: Steel Wire Rope From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Gerry Zapiain or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3793.

Antidumping Duty Order

Scope of Order

The product covered by this order is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090.

Excluded from this investigation is stainless steel wire rope, which is classifiable under the HTS subheading 7312.10.6000, and all forms of stranded wire. Although HTS subheadings are provided for convenience and customs purposes, our own written description of the scope is dispositive.

Orders

On February 8, 1993, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) published its final determination of sales at less than fair value for steel wire rope from Mexico (58 FR 7531). On March 15, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that imports of steel wire rope from Mexico materially injure a U.S. industry.

Therefore, in accordance with section 736(a) of the Act, the Department will direct the Customs Service to assess, upon further advice by the administering authority, antidumping duties equal to the estimated amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of steel wire rope from Mexico. These antidumping duties will be assessed on all unliquidated entries of steel wire rope from Mexico, or withdrawn from warehouse, for consumption on or after September 22, 1992, for steel wire rope from Mexico, the date on which the Department published its preliminary determination in the **Federal Register**. Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated antidumping duty margins as follows:

Manufacturer/producer/exporter	Margin (percent)
Camesa, S.A. de C. V	111.68
All others	111.68

This notice constitutes the antidumping duty order with respect to steel wire rope from Mexico, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records

Units, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: March 22, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–6951 Filed 3–23–93; 8:55 am]

BILLING CODE 3510–DS–M

[C–549–802]

Ball Bearings and Parts Thereof From Thailand; Preliminary Results of Countervailing Duty; administrative review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand. We preliminarily determine the total bounty or grant to be 7.07 percent *ad valorem* for all companies for the period January 1, 1991 through December 31, 1991. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Sarah Givens, Tamara Markowitz or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 19412) of the countervailing duty order on ball bearings and parts thereof from Thailand (54 FR 19130; May 3, 1989). On May 29, 1992, Torrington Company, the petitioner, and Pelmec Thai and NMB Thai, the respondent companies, requested an administrative review of the order. We initiated the review, covering the period January 1, 1991 through December 31, 1991, on June 18, 1992 (57 FR 27212).

Scope of Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, two producers/exporters, NMB Thai Ltd. (NMB) and Pelmec Thai Ltd. (Pelmec), and nine programs.

Calculation Methodology

In the first administrative review, respondents claimed that the value of the subject merchandise entering the United States is greater than the sales revenue received by the companies in Thailand due to a markup charged by the parent company, located in a third country, through which the merchandise is invoiced. Respondents argued that the calculated *ad valorem* rate should be adjusted by the ratio of the Royal Thai Government (RTG) export value over the sales value charged to the U.S. customer by the parent company. Since the markup is not part of the export value upon which the respondents earn subsidies, the Department calculated the *ad valorem* rate as a percentage of Thai export value and then multiplied this rate by the ratio of the original export price from Thailand to the marked-up price of the goods entering the United States. The Department has made this adjustment again in calculating the *ad valorem* rate for these preliminary results.

Analysis of Programs

1. Investment Promotion Act (IPA)—Sections 31, 28 and 36(1)

The Investment Promotion Act of 1977 is administered by the Board of Investment (BOI) and is designed to provide incentives to invest in Thailand. In order to receive IPA benefits, each company must apply to the BOI for a Certificate of Promotion (license), which specifies goods to be produced, production and export requirements, and benefits allowed. These licenses are granted at the discretion of the BOI and are periodically amended or reissued to upgrade benefits. Each IPA section for which a company is eligible must be specifically stated in the license. Both Pelmec and NMB had export requirements contained in their licenses for the review period, and both licenses specifically allowed them to receive tax and duty exemptions under IPA Sections 31, 28, and 36(1).

Under Section 31, an exporting company is allowed an exemption from payment of corporate income tax on profits derived from promoted exports. Under Section 28, an exporting company is allowed to import machinery and equipment (fixed assets) free of import duties and business and local taxes, and under Section 36(1), the company is allowed to import essential materials (non-fixed assets) that are not physically incorporated into the export goods free of the same duties and taxes. Both NMB and Pelmec claimed exemptions under Section 31 on their tax returns filed during the 1991 review period, and they imported both fixed and non-fixed assets duty- and tax-free during the review period. Because the tax and duty exemptions provided in NMB's and Pelmec's BOI licenses are contingent upon export performance, we determine that these exemptions are countervailable.

We calculated the benefit to NMB and Pelmec under Section 31 by multiplying the amount each company saved under this exemption by the corporate income tax rate in effect during the review period, thus obtaining the difference between what each company paid in corporate income tax during the review period, and what it would have paid absent the exemption. We calculated the benefit to NMB and Pelmec under Sections 28 and 36(1) by obtaining the amount of duties and taxes that would have been paid on the imports absent the exemption. We added all duty and tax savings under all the IPA programs and divided this aggregate benefit by the total FOB export value of the subject merchandise. On this basis, we preliminarily determine the net bounty or grant from IPA Sections 31, 28 and 36(1), adjusted for the parent company markup, to be 7.02 percent *ad valorem* during the review period.

2. Tax Certificates for Exporters

The RTG issues to exporters of record tax certificates which are transferable and which rebate indirect taxes and import duties levied on inputs used to produce exports. This rebate program is provided for in the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed based on the *Basic Input-Output Table of Thailand* (I–O table).

Using the I–O table, the Thai Ministry of Finance computes the value of total inputs (both imported and domestic) at ex-factory prices. It also calculates the import duties and indirect taxes on each

input, and calculates an "A" rebate rate, which rebates both import duties and indirect domestic taxes, and a "B" rebate rate, which rebates only indirect domestic taxes. The relevant rebate rate is then applied to the FOB value of the export to determine the amount of rebate that will be provided. Exporters who participate in Thailand's duty drawback or duty exemption programs such as the IPA are ineligible for the "A" rebate rate. Instead, they claim the "B" rebate rate, receiving a rebate of indirect domestic taxes under the tax certificate program.

Under the Tax and Duty Act, rebates are paid to exporters by tax certificates, which can be used to pay the exporter's tax liabilities, or can be sold to another company, usually at less than face value. The rebate rates in effect during the review period were 7.19 percent as the "A" rate, and 0.59 percent as the "B" rate. As determined in Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand (54 FR 19130; May 3, 1989), these rebates are countervailable only to the extent that the remissions of duties and taxes exceed those actually levied on physically incorporated inputs in the sector. Further, in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Steel Wire Rope from Thailand (56 FR 46299; September 11, 1991), the Department calculated the sector-wide overrebate rate for Sector 111, which contains steel wire rope. Since Sector 111 also contains ball bearings, we applied the same sector rate in the 1990 administrative review of the instant case. Because the "A" and "B" rates did not change from 1990 to 1991, we will again use this sector rate in the 1991 review. On this basis, we preliminarily determine the net bounty or grant benefit from this program during the review period to be 0.05 percent *ad valorem*; adjusted for the parent company markup. Effective January 1, 1992, this program was modified, and the "B" rate tax certificate portion of the program was terminated. Therefore, Pelmec and NMB will no longer receive this "B" rate tax certificate benefit, and pursuant to Department practice, we will adjust the cash deposit rate to reflect this change (see Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Extruded Rubber Thread from Malaysia, 57 FR 38472 (August 25, 1992), Lamb Meat from New Zealand: Final Results of Countervailing Duty Administrative Review, 56 FR 38423 (August 13, 1991), and Porcelain-on-Steel Cookingware from Mexico: Final Results of Countervailing Duty Administrative Review, 55 FR 6666 (February 26, 1990); see also (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations)).

3. Other Programs

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not use them during the review period:

- Export Packing Credits.
- Electricity Discounts for Exporters.
- Rediscount of Industrial Bills.
- Export Processing Zones.
- IPA Sections 33 and 36(4).
- Reduced Business Taxes for Producers of Intermediate Goods for Export Industries.
- International Trade Promotion Fund.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 7.07 percent *ad valorem* for the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 7.07 percent of the f.o.b. invoice price on all shipments from Thailand of the subject merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

As provided by section 751(a)(1) of the Act, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 7.02 percent of the f.o.b. invoice price on shipments of the subject merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice.

Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication, in accordance with 19 CFR 355.38(c). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief, in accordance with 19 CFR 355.38(d). Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs (19 CFR 355.38(f)). Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 16, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, constitute the following as outlined below.

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those

where the part will be subject to heat treatment after importation.

[FR Doc. 93–6771 Filed 3–24–93; 8:45 am]
BILLING CODE 3510–DS–F

Rutgers University; Notice of Disposition of Application for Duty-Free Entry of Scientific Instrument

We have been advised that Docket Number 92–062 (See notice at 57 FR 21395, May 20, 1992) was revoked by U.S. Customs Service on October 9, 1992. Therefore processing of this application has been discontinued.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 93–6773 Filed 3–24–93; 8:45 am]
BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee (Committee) will hold a meeting on March 31, 1993, at the Ballroom, Travelodge, Isla Verda, San Juan, Puerto Rico. The meeting will begin at 10 a.m.

The purpose of the meeting is to examine the budget situation for FY–93 and FY–94. In addition, the Committee will examine issues related to the reauthorization of the Magnuson Fishery Conservation and Management Act. The meeting will be conducted in the English language.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, 268 Munoz Rivera Avenue, suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: 809–766–5926.

Dated: March 19, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–6807 Filed 3–24–93; 8:45 am]
BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) will hold a public hearing on April 13, 1993, and meetings of the Council and its Committees from April 14–15, 1993, at the Grand Hotel, Oceanfront & Philadelphia Avenue, Cape May, NJ, telephone: (800) 257–8550.

The Council will hold a hearing on Amendment #4 to the Summer Flounder Fishery Management Plan (FMP) on April 13 at 7 p.m.

On April 14 at 8 a.m. until 3:30 p.m., the Council will begin its regular session. This session will be followed by a Demersal Species Committee/ Atlantic States Marine Fisheries Commission, Summer Flounder Scup & Black Sea Bass Board meeting. Also at 3:30 p.m. on the same day, there will be an Ad Hoc Mapping Committee meeting.

On April 15, the Council will begin meeting at 8 a.m. and is scheduled to adjourn approximately at 12 noon. Following adjournment, there will be a Comprehensive Management Committee meeting. In addition to hearing committee reports, the Council may adopt Amendment #4 to the Summer Flounder FMP for Secretarial approval, adopt Amendment #5 to the Summer Flounder FMP for public hearings, and consider other fishery management matters as deemed necessary. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: March 19, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–6808 Filed 3–24–93; 8:45 am]
BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on April 5–9, 1993, at the Red Lion Hotel-Columbia River, 1401 North Hayden Island Drive, Portland, OR. Except as noted below, the meetings are open to the public.

The Council will begin its meeting on April 6 at 8 a.m. in a closed session (not open to the public) to discuss international negotiations, personnel matters and litigation. Open sessions will begin at 8 a.m. each day thereafter. On April 7 at 4 p.m., the public may address the Council on fisheries issues unrelated to the agenda. Public comments that pertain to action items on the agenda will be heard prior to Council action on each issue.

The Council agenda is as follows:

Salmon management: (1) Tentative adoption of 1993 ocean salmon management measures for technical analysis; (2) clarification of tentative measures, if necessary; (3) plan amendment to establish a new management area between Leadbetter Point, Washington and Cape Falcon, Oregon; (4) plan amendment to change the spawning escapement goal for Oregon coastal natural coho; (5) appointment of groups to assess the causes of decline of Klamath and Sacramento River fall chinook; (6) results of impact analysis for tentative ocean salmon measures for 1993; and (7) adoption of 1993 management measures.

Groundfish management: (1) Status of Federal regulations implementing Council actions; (2) status of fisheries and inseason management measure adjustments; (3) process for making inseason adjustments between April and September 1993; (4) stock assessment process and schedule for 1993 and beyond; (5) draft plan for at-sea observation of the groundfish fisheries; and (6) revision to the definition of legal groundfish gear.

The Council will address individual quotas for sablefish and Pacific halibut. It will also identify the options that it wants analyzed in the draft environmental impact statement/ regulatory impact review. Also, the Council will hear a scientific critique of the stock assessment for Pacific halibut in Area 2A.

The following administrative matters will also be addressed: (1) Budget Committee report; (2) reauthorization of the Magnuson Fishery Conservation and Management Act, the Endangered Species Act and the Marine Mammal Protection Act; (3) appointments to the groundfish permit review board; and (4) work load priorities and the September 1993 agenda.

The Council will receive a report from its Habitat Committee on activities affecting the habitat of stocks managed by the Council.

Other meetings: The Salmon Advisory Subpanel will meet on April 5 at 9 a.m. to develop recommendations to the Council on salmon issues on the Council agenda and will reconvene on April 6, 7, 8, and 9 at 8 a.m.

The Council's other entities will conduct meetings as follows:

The *Salmon Technical Team* will meet as necessary throughout the April 5–9 period to analyze impacts of management measures for the ocean salmon fisheries and to address other salmon issues on the Council agenda.

The *Scientific and Statistical Committee* will meet on April 5 at 11:00 a.m. to address scientific issues on the Council agenda and will reconvene on April 6 at 8 a.m.

The *Groundfish Management Team* will meet on April 5 at 8 a.m. to address groundfish issues on the Council agenda.

The *Groundfish Advisory Subpanel* will meet April 5 at 1 p.m. to comment on groundfish items on the Council agenda and will reconvene on April 6 and 7 at 8:00 a.m.

The *Habitat Committee* will meet on April 5 at 1 p.m. to consider habitat issues affecting stocks of fish managed by the Council.

The *Legislative Committee* will meet on April 5 at 1 p.m. to consider amendments to the Magnuson Fishery Conservation and Management Act.

The *Budget Committee* will meet on April 5 at 3 p.m. to consider budget and personnel issues.

The *Enforcement Consultants* will meet on April 6 at 7 p.m. to consider enforcement issues related to items on the Council agenda.

Detailed agendas for the above meetings will be available to the public after March 25, 1993. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: March 19, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–6809 Filed 3–24–93; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,975,434 (Serial No. 7–307,115), titled "Antiviral and Anticancer Cyclopentenyl Pyrimidines Used for Antiviral and Cancer Chemotherapy," to Kyowa Pharmaceutical, Inc., having a place of business in New York, NY. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention describes cyclopentenyl pyrimidine compounds which have potent anti-viral, anti-tumor and differentiating properties. Of these compounds, cyclopentenyl cytosine has proved to be particularly effective in treating a variety of tumors, and also possess good antiviral activity and potent differentiating properties.

The availability of SN 7–307,115 for licensing was published in the **Federal Register**, Vol. 56, No. 21, p. 3823 (January 31, 1991).

A copy of the instant patent is available for $3.00 (payable by check or money order) from the Commissioner to Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 93–6750 Filed 3–24–93; 8:45 am]

BILLING CODE 3510–04–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rolling Spot Futures Contracts on the Canadian Dollar, Deutsche Mark, Japanese Yen, and Swiss Franc and Options on Those Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in rolling spot futures contracts on the Canadian dollar, Deutsche mark, Japanese yen, and Swiss franc and options on those futures contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before April 26, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME rolling spot Canadian dollar, Deutsche mark, Japanese yen, and Swiss franc futures contracts and options on those futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, send comments to Jean A. Webb, Secretary, Commodity Futures Trading

Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on March 22, 1993.

Gerald D. Gay,

Director.

[FR Doc. 93–6889 Filed 3–24–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers; Department of the Army

Intent To Terminate Preparation of the Supplemental Environmental Impact Statement (SEIS) for a Proposed Dam and Reservoir on the Rio Portugues in the Municipio of Ponce, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, has prepared a Feature Design Memorandum for the construction of the Portugues Dam and Reservoir. A Draft Supplemental EIS (December 1992) was prepared for the project to update the Final EIS (circulated in 1973). Due to the lack of substantive comments or significant issues identified during public review of the draft SEIS, the draft SEIS for the Portugues Dam project will be completed as an Environmental Assessment (EA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Final EA can be answered by William Porter, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232–0019; telephone (904) 232–2259.

SUPPLEMENTARY INFORMATION: The projects for flood control and other purposes on the Portugues and Bucana rivers in Ponce, Puerto Rico, were authorized by section 201 of the Flood Control Act of 1970, Public Law 91–611. A Final Environmental Impact Statement for the entire Portugues-Bucana Project was circulated in 1973. The dam and reservoir on Rio Portugues constitute the last phase of this project, and will, in conjunction with the dam and reservoir on the Rio Cerrillos and channel improvements to the Portugues and Bucana Rivers in Ponce, provide flood control and water supply to the city of Ponce. The dam will be located about 3 miles northwest of Ponce, and will be built in two phases. The first phase, an interim dam to a height of 219.6 feet will provide the flood control features of the project. At this stage maximum pool elevation will be 530.9 ft msl, with a maximum surface area of 215 acres. During the second phase the dam will be completed by the local sponsor to its designed height of 270.6 feet for water supply purposes. Maximum pool elevation will then be 585.6 feet msl, with a maximum surface area of 320 acres. Four sites will be developed under both options for recreational purposes by the general public.

1. Construction of the dam and reservoir will require some relocations of roads and buildings. Other effects include impacts on known cultural sites, on vegetative cover and wildlife habitats in the dam and pool area, and on fish resources of the Rio Portugues and its upstream tributaries.

2. An extensive public involvement program accompanied the formulation of original project plans and circulation of the Draft and Final Environmental Impact Statements for the overall project (during 1973–74). Because of the time elapsed since circulation of the FEIS and subsequent changes in environmental laws and regulations, it is appropriate to review the environmental consequences of the project and update existing information. A letter requesting views and comments was circulated to Commonwealth and federal agencies and interested parties in 1990, announcing the Corps' intent to prepare and circulate a comprehensive environmental document for the dam and reservoir and requesting assistance in identifying significant issues to be addressed.

3. Coordination with the U.S. Fish and Wildlife Service was accomplished in compliance with section 7 of the U.S. Endangered Species Act. Coordination required by applicable federal and Commonwealth laws and policies was conducted.

4. A scoping meeting is not scheduled. The Draft Supplemental EIS was available to the public in December 1992.

5. No substantive comments or significant issues were identified during public review of the draft SEIS.

6. The NEPA process will be completed by the preparation of an Environmental Assessment (EA) and a signed Finding of No Significant Impact (FONSI).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–6753 Filed 3–24–93; 8:45 am]

BILLING CODE 3710–AJ–M

Corps of Engineers; Department of the Army

Deadline for Submitting Subcontractor Claims; Aircraft Maintenance Management Facility, Contract DACA 85–88–C–0025, Eielson Air Force Base, AK

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Public notice.

SUMMARY: The U.S. Army Corps of Engineers, Alaska District, hereby gives notice that the Department of Defense Appropriations Act of 1993, Public Law 102–396, in Section 9169, appropriated $500,000 for settlement of subcontractor claims associated with contract DACA 85–88–C–0025 for construction of an Aircraft Maintenance Management Facility at Eielson Air Force Base, and that such claims must be submitted for consideration no later than April 22, 1993. Claims must be received by this date if hand-delivered or, if mailed, must be postmarked no later than this date.

Section 9160 of the Act provides that the Secretary of the Air Force shall evaluate claims as may be submitted by subcontractors engaged under this contract and may pay such amounts from the funds provided as the Secretary deems appropriate to settle completely any claims the Secretary determines to have merit. On March 9, 1993, the Acting Secretary of the Air Force delegated the authority to implement Section 9160 to the Corps of Engineers.

The purposes of this legislation is to compensate subcontractors for work they performed, or materials they supplied, for contract DACA 85–88–C–0025, for which they were not paid by the prime contractor. The legislation does not apply to any other contract.

Subcontractors who performed work or supplied materials for the above contract and who were not paid for such work or materials by the prime contractor must submit their claims, either hand-delivered or postmarked, no later than April 22, 1993, to: U.S. Army Corps of Engineers, Alaska District, P.O. Box 898, ATTN: CENPA-OC, Anchorage, Alaska 99506–0898.

FOR FURTHER INFORMATION CONTACT: Abigail F. Dunning, District Counsel, (907) 753–2532.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–6964 Filed 3–24–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 26, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708–5174. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: March 19, 1993

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Application for RSA Discretionary Program.
Frequency: Annually.
Affected Public: State or local government; non-profit institutions.
Reporting Burden: Responses: 1,600. Burden Hours: 64,000.
Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the RSA Discretionary Program. The Department will use the information to make grant awards.

Office of Educational Research and Improvement

Type of Review: Regular.
Title: Spring 1993 Follow-Up to the Omnibus Surveys for the National Assessment of Vocational Education Data Collection and Analysis Project.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden: Responses: 818. Burden Hours: 793.
Recordkeeping Burden: Recordkeepers: 0. Burden Hours: 0.
Abstract: The Spring 1993 telephone Follow-Up to the 1992 Omnibus Surveys is denied to assess the progress of a sample of the original Omnibus respondents in the implementation of the 1990 Perkins legislation. It also is designed to try to detect any measurable effects of Perkins observable at this time.

[FR Doc. 93–6805 Filed 3–24–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award (Award of Grant/Renewal)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center (METC), gives notice of its plans to award a grant/renewal to the University of Texas at Austin, Bureau of Economic Geology, P.O. Box X, University Station, Austin, Texas 78713, in the amount of approximately $4.4 Million, of which $2 Million will be funded by the DOE. DOE intends to provide funding of approximately $1 Million for the first budget period of the renewal period. The project period will be extended by two years for a total project period of 6-1/2 years, and will be increased by approximately $4.4 Million, for an estimated total project value of $26.6 Million.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0800, Telephone: (304) 291–4241, Procurement Request No. 21–93MC25031.501.

SUPPLEMENTARY INFORMATION: The purpose of the grant/renewal is to provide continued financial assistance to the Bureau of Economic Geology in support of its program entitled "Secondary Natural Gas Recovery." The activity performed under the current grant was to assess the distribution and improved production strategies of unrecovered natural gas resources in mature fields of the onshore Texas Gulf Coast Basin. The renewal activity is to develop, test, and verify technologies and methodologies with near- to mid-term potential for maximizing additional gas recovery from conventional sandstone reservoirs in the Midcontinent region.

Issued in Washington, DC, March 18, 1993.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–6884 Filed 3–24–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award Intent to Award Grant to USA-ROC Economic Council

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i) (B) and (D) to the USA-ROC Economic Council, Washington,

DC, under Grant Number DE–FG01–93EP24006. The purpose of the grant is to support a conference to inform selected Taiwanese power and energy decision-makers on the latest developments in leading edge technologies for producing and delivering electric power. This effort will have a total estimated cost of $35,000 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, PR–322.4, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the USA-ROC Economic Council to organize and hold a one-day conference to promote U.S. participation in energy projects under Taiwan's six-year National Development Plan which has designated $40 billion for power and energy projects. The conference will be held at the Grand Hyatt, Taipei, Taiwan, on April 7, 1993. The goal of the conference is to promote interaction among representatives from the Ministry of Economic Affairs, Taipower, the Atomic Energy Council, the Council of Economic Planning and Development, the Board of Foreign Trade, the Industrial Development Bureau, the Energy Commission, the DOE, and U.S. private sector to discuss developments in technologies for producing and delivering electric power.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing a forum to enhance prospects for U.S. firms competing for energy projects and contracts in Taiwan by informing Taiwanese power and energy decision-makers on the latest developments in leading edge technologies for producing and delivering electric power. The USA-ROC Economic Council is the only organization with the capability to organize and manage the conference, because it alone: (1) Is comprised of economic experts and representatives of commerce from both the U.S. and the Republic of China; and, (2) has resources fully and exclusively dedicated to trade issues between the two countries. The DOE's support of the conference will enhance the public benefits to be derived, and the DOE knows of no other entity which is conducting or is planning to conduct such a conference.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to promote participation of U.S. firms in Taiwan's energy development by acquainting the Taiwanese with U.S. technological expertise and competitiveness.

Scott Sheffield,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–6970 Filed 3–24–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, April 29, 9:30 a.m.–5:30 p.m.; Friday, April 30, 8:45 a.m.–12:15 p.m.

Place: Holiday Inn-Capitol, 550 C Street SW., Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 254–5507.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 29, 1993

A. Opening Remarks
B. Major Topics
1. Coal and Natural Gas Issues
2. Quality of Energy Price Data: How are taxes reported?
3. Demand Side Management in the National Energy Modeling System (Public Comment)

Friday, April 30, 1993

4. Greenhouse Gases
5. Clean Air Act Amendments
6. Update on Obtaining Monthly from Weekly Data (Public Comment)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Mrs. Antoinette Martin at (202) 254–5409, or Ms. April Young at (202) 254–5380.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 22, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–6883 Filed 3–24–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 18–014, et al.]

Hydroelectric Applications; Idaho Power Co., et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. Type of Application: Amendment of License to Revise Project Boundary and Relocate Operator's Village.

b. Project No: 18–014.

c. Date Filed: December 30, 1992.

d. Applicant: Idaho Power Company.

e. Name of Project: Twin Falls Hydroelectric Project.

f. Location: Snake River, Jerome and Twin Falls Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Laurel Heacock, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707, (208) 383–2918.

i. FERC Contact: John Costello, (202) 219–2914.

j. Comment Date: April 26, 1993.

k. Description of Project: The licensee filed a request to relocate the existing operator's village (three houses) to a site more suitable for family housing. The area surrounding the existing village is dedicated to public park land. During construction of a new powerhouse and related facilities the site will be used for construction offices and laydown area. After project construction is completed the structures will be removed and the site converted to park land. The licensee also requested that the project boundary be revised to include the area where the new operator's village will be located.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

a. Type of Application: New License.

b. Projects Nos.: 2407–006 and 2408–007.

c. Date Filed: December 17, 1991.

d. Applicant: Alabama Power Company.

e. Name of Project: Yates and Thurlow Hydro Projects.

f. Location: On the Tallapoosa River in Tallapoosa and Elmore Counties, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John E. Dorsett, Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291, (205) 250–1000.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Deadline Date: Initial Comments—April 26, 1993; Reply Comments—June 9, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The project as licensed consists of the following two developments.

A. Yates Hydroelectric Project, FERC No. 2407:

The proposed project consists of: (1) An existing dam composed of (a) a non-overflow concrete gravity section, 126.7 feet in length, which ties the spillway section to the east abutment, with a crest width of 10.0 feet at an elevation of 370.0 feet MD (Martin Datum), (b) an ogee spillway gravity section, 618.19 feet in length, with a crest elevation of 344.0 feet MD, constructed of mass concrete and cyclopean masonry, located between the east gravity section and the headworks section, (c) a headworks gravity section, located between the spillway section and the west gravity section, constructed of reinforced and unreinforced concrete portions, 180 feet in length with nine bays, each 10 feet wide, (d) a non-overflow concrete gravity section, 319.12 feet in length, which ties the headworks section to the west abutment with a crest width ranging from 6.0 feet to 10.0 feet at an elevation of 350.67 feet MD; (2) an existing reservoir with a surface area of 2,000 acres and a total volume of 53,890 acre-feet at the normal maximum surface elevation of 344.00 feet MD; (3) an existing powerhouse, 120 feet long, 60 feet wide and 67 feet high, located downstream of the headworks, constructed of brick, steel and concrete, equipped with (a) two existing rehabilitated vertical shaft Francis turbines with a proposed combined maximum hydraulic capacity of 10,200 cfs, manufactured by I.P. Morris Company and rated at 25,000 hp at 55 feet of net head, (b) two existing, rewound, 3-phase, 60-cycle vertical shaft generators, each manufactured by General Electric Company with a proposed capacity of 18,400 Kw (providing a total proposed plant capacity of 36,800 Kw); and (4) existing and proposed appurtenant facilities.

B. Thurlow Hydroelectric Project, FERC No. 2408:

The proposed project consists of: (1) An existing dam composed of (a) a non-overflow concrete gravity section, 354.54 feet in length, which ties the spillway section to the east abutment, with a crest width ranging from 6.0 feet to 10.0 feet at an elevation of 305.0 feet MD (Martin Datum), (b) an ogee spillway gravity section, 1,098.0 feet in length, with a crest elevation of 283.85 feet MD, constructed of mass concrete and cyclopean masonry, surmounted with 36 automatic crest gates, 28 feet wide and 5 feet high, located between the east gravity section and the headworks section, (c) a headworks gravity section, located between the spillway section and the west gravity section, constructed of reinforced and unreinforced concrete portions, 186.3 feet in length with seven bays, each 10 feet wide, (d) a non-overflow concrete gravity section, 288.0 feet in length, which ties the headworks section to the west abutment with a crest width ranging from 6.0 feet to 10.0 feet at an elevation of 305.0 feet MD; (2) an existing reservoir with a surface area of 574 acres and a total volume of 17,980 acre-feet at the normal maximum surface elevation of 288.00 feet MD; (3) an existing powerhouse, 186 feet long, 52 feet wide and 67 feet high, located downstream of the headworks, constructed of brick, steel and concrete, equipped with (a) three existing vertical shaft Francis turbines (The two larger units, units one and two, will be rehabilitated.) with a proposed combined maximum hydraulic capacity of 10,600 cfs, two manufactured by I.P. Morris Company, rated at 36,000 hp at 88 feet of net head, and one manufactured by S. Morgan Smith, rated at 12,000 hp at 88 feet of net head, (b) three, existing, 3-phase, 60-cycle vertical shaft generators (The stators of two larger units, units one and two, will be rewound), two manufactured by Westinghouse Electric Corporation with a proposed capacity of 27,750 Kw, and one manufactured by General Electric Company with an existing capacity of 8,000 Kw (providing a total proposed plant capacity of 63,500 Kw); and (4) existing and proposed appurtenant facilities.

The applicant proposes the rewinding of four of the existing generators to increase the two projects capacity. The combined existing capacity and gross average annual generation of the two projects are 90.0 MWh and 356.402 GWh, respectively. The applicant estimates that the proposed combined capacity and average annual generation of the projects would be 103.5 kW and 423.589 GWH, respectively. There are 9.41 acres of U.S. Federal lands within the Yates Hydro Project No. 2407. The dam and existing project facilities of each development are owned by the applicant.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL or by calling (205) 250–1380.

a. Type of Application: New License.

b. Project No.: 2446–001.

c. Date Filed: December 27, 1991.

d. Applicant: Commonwealth Edison Company.

e. Name of Project: Dixon.

f. Location: On the Rock River, at the town of Dixon, in Lee County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. J. S. Graves, Commonwealth Edison Company, P.O. Box 767, Chicago, IL 60690–0767, (312) 294–3545.

i. FERC Contact: Michael Spencer at (202) 219–2846.

j. Comment Deadline: Initial Comments—April 27, 1993; Reply Comment—June 11, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The project would consist of: (1) The 15.7-foot-high rockfilled timber crib dam; (2) a reservoir with a surface area of 800 acres; (3) a powerhouse containing five generating units with a combined installed capacity of 3,200 kW and an average annual generation of 12,400 MWh; (4) a 1.5-mile-long, 34.5–kV transmission line, and (5) appurtenant facilities.

The licensee is not proposing any changes to the existing project works.

m. Purpose of Project: All project energy generated would be utilized by the licensee.

n. This notice also consists of the following standard paragraphs: D9.

o. Available Locations of Application: A copy of the application, as amended

and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Commonwealth Edison Company, located at 125 South Clark Street, Chicago, Illinois 60690–0767, or by calling Mr. J. S. Graves, at (312) 294–3545.

a. Type of Application: New License.
b. Project No.: 2608–001.
c. Date Filed: December 23, 1991.
d. Applicant: Decorative Specialties International, Inc.
e. Name of Project: West Springfield.
f. Location: On the Westfield River, in Hampden County, Massachusetts.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. David Garwood, Decorative Specialties International Inc., Front Street, West Springfield, MA 01089, (413) 736–4554.
i. FERC Contact: Michael Spencer at (202) 219–2846.
j. Comment Date: Initial Comments April 26, 1993; Reply Comments June 8, 1993.
k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D6.
l. Description of Project: The project would consist of: (1) The 18-foot-high rockfilled timber crib dam; (2) a 2,610-foot-long power canal; (3) a powerhouse containing two generating units with a combined installed capacity of 1,200 kW and an average annual generation of 7,370 MWh; (4) a 600-foot-long transmission line, and (5) appurtenant facilities.

The licensee is not proposing any changes to the existing project works.

m. Purpose of Project: Project energy would be utilized by the licensee.

n. This notice also consists of the following standard paragraphs: B1 and D6.

o. Available Locations of Application: A copy of the application, as amended, and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Licensee's address listed above.

a. Type of Application: Preliminary Permit.
b. Project No.: 11375–000.
c. Date Filed: January 22, 1993.
d. Applicant: Tuttle Creek Hydro Associates.
e. Name of Project: Tuttle Creek.
f. Location: As the existing Corps of Engineers Tuttle Creek Dam on the Big Blue River near Manhattan in Riley and Pottwatomie Counties, Kansas.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–835(r).
h. Contact Person: Mr. Gene Deveraux, 1190 North Spring Creek Place, P.O. Box 870, Springville, UT 84663–0870, (801) 489–0089.
i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.
j. Comment Date: April 26, 1993.
k. Description of Project: The proposed project would consist of: (1) An 18-foot-diameter, 800-foot-long steel penstock; (2) a wye connection with one arm connected to the powerhouse by a 90-foot-long, 18-foot-diameter penstock; (3) a powerhouse containing four generating units with a total rated capacity of 30,000 kW; and (4) a 1-mile-long transmission line. The applicant estimates the average annual energy production to be 210,240,000 kWh and the cost of the work to be performed under the preliminary permit to be $125,000.
l. Purpose of Project: The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

a. Type of Application: Conduit Exemption.
b. Project No.: 11362–000.
c. Date Filed: November 17, 1992.
d. Applicant: Cool Water, Inc.
e. Name of Project: Lower White.
f. Location: On the City of Delta's Dirty George pipeline, Hoosier Ditch, and Hoosier Ditch extension, in Lower White Ranch, Delta, Colorado.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: G.C. Harned, President, Cool Water, Inc., 247 Rim Rock Drive, Durango, CO 81301, (303) 247–8024.
i. FERC Contact: Héctor M. Pérez at (202) 219–2843.
j. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D–4.
k. Comments Deadline: Initial Comments—April 27, 1993, Reply Comments—June 11, 1993.
l. Description of Project: The proposed project would consist of a powerhouse with a 935-kW unit at the end of the existing irrigation pipeline within the Lower White Ranch.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

a. Type of Application: Conduit Exemption.
b. Project No.: 11363–000.
c. Date Filed: November 17, 1992.
d. Applicant: Cool Water, Inc.
e. Name of Project: Upper White.
f. Location: On the City of Delta's Dirty George pipeline, in Lower Ranch, Delta, Colorado.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) 825(r).
h. Applicant Contact: G.C. Harned, President, Cool Water, Inc., 247 Rim Rock Drive, Durango, CO 81301, (303) 247–8024.
i. FERC Contact: Héctor M. Pérez at (202) 219–2843.
j. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D–4.
k. Comments Deadline: Initial Comments—April 27, 1993; Reply Comments—June 11, 1993.
l. Description of Project: The proposed project would consist of a powerhouse with a 565-kW unit.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

a. Type of Application: New License.
b. Project No.: 2320–005.
c. Date Filed: December 24, 18991.
d. Applicant: Niagara Mohawk Power Corporation.
e. Name of Project: Middle Raquette River Hydro Project.
f. Location: On the Raquette River in the Towns of Potsdam, Colton, Parishville, and Pierrepont, St. Lawrence County, New York.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Jerry L. Sabattis, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6215.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Comment Date: April 30, 1993.

k. Status of Environmental Analysis: This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The proposed project would consist of the following four developments:

The Higley Development which includes: (1) An existing 25 foot long east abutment with a height of 26.6 feet; (2) an existing concrete gravity ogee spillway, 209 feet long with a maximum height of 34 feet, topped with three-foot-high wooden flashboards; (3) two existing motor operated vertical flood gates, 21 feet wide by 15 feet high, seated on a concrete gravity ogee spillway; (4) an existing concrete gravity west abutment containing an 8-foot-wide log chute; (5) an existing reservoir with a surface area of 742 acres and a total storage volume of 4,446 acre-feet at the normal maximum surface elevation of 883.6 feet USGS; (6) an existing trashrack, approximately 67 feet long; (7) two existing sliding steel waste gates, each 8 feet wide and 10 feet high; (8) an existing forebay containing a proposed concrete intake structure equipped with a 14-foot by 14-foot headgate; (9) a proposed 13-foot-diameter steel penstock, approximately 225 feet long; (10) a proposed powerhouse with a concrete substructure and a steel superstructure, approximately 90 feet long by 53 feet wide, containing (a) a proposed tubular Kaplan turbine with an efficient hydraulic capacity of 1,625 cfs, rated at 10,100 hp, (b) a 3-phase, 60-cycle generator, rated at 7,300 kW; (11) a proposed excavated tailrace, extending approximately 120 feet to natural channel bed; (12) a proposed 200-foot-long 4,160 V tap, leading from the proposed powerhouse to the existing substation; and (13) existing and proposed appurtenant facilities.

The Colton Development which includes: (1) An existing concrete cut-off wall, 29 feet long; (2) an existing concrete gravity ogee spillway, approximately 204.7 feet long with a maximum height of 27 feet, topped by two-foot-high wooden flashboards; (3) an existing 3 foot long log boom pier; (4) an existing 8-foot-long log chute; (5) an existing concrete gravity gated spillway section containing a Tainter gate, 25 feet long by 10 feet high; (6) an existing concrete gravity non-overflow section, 55 feet long; (7) an existing trash gate section, 6 feet long; (8) an existing reservoir with a surface area of 195 acres and a total storage volume of 620 acre-feet at the normal maximum surface elevation 837.0 feet USGS; (9) an existing pipeline intake structure constructed of concrete and brick, 50 feet long by 30 feet wide and 12 feet high, containing (a) trashrack, (b) a Tainter gate, 16 feet long and 25.5 feet high, and (c) a spare intake bay, approximately 10 feet long; (10) an existing pipeline consisting of (a) 9,890 feet of 13.5 foot diameter steel pipe, (b) 2,100 feet of 12 foot diameter steel pipe, (c) a Johnson differential surge tank, 50 feet in diameter by 80 feet high, with riser, connecting the pipeline to the manifold, (d) a 12-foot-diameter rivetted steel manifold, encased in concrete connecting the pipeline to the steel penstocks; (11) three existing steel penstocks, the first 7.5 feet in diameter and 160 feet long, the second 7.5 feet in diameter and 140 feet long, and the third 9 feet in diameter and 125 feet long; (12) a proposed four-foot-diameter steel pipeline, including a butterfly valve, approximately 1,500 feet long, to divert water from the existing pipeline to the proposed minimum flow unit; (13) a proposed powerhouse for the minimum flow unit, containing (a) a fixed vane, fixed blade, vertical turbine with a hydraulic capacity of 125 cfs, rated at 1,000 hp, (b) a 3-phase, 60-cycle induction generator rated at 712 kW; (14) an existing brick and structural steel powerhouse, 46 feet wide by 165 feet long and 35 feet high, containing (a) three upgraded vertical Francis turbines with a proposed combined efficient hydraulic capacity of 1,561 cfs (providing a total proposed development efficient hydraulic capacity of 1,686 cfs), the first and second manufactured by Allis-Chalmers and rated at 15,080 hp and the third manufactured by I.P. Morris and rated at 15,700 hp, (b) three 3-phase, 60-cycle generators, the first and second manufactured by Allis-Chalmers and rated at 11,014 kW and the third manufactured by General Electric and rated at 11,577 kW (providing a total development rating of 34,326 kW); (15) a proposed 650 foot long 13.8 kV tap leading from the proposed powerhouse to a point of interconnection with the existing 13.8 kV Power and Supervisory (P&S) line; and (16) existing and proposed appurtenant facilities.

The Hannawa Development which includes: (1) An existing stone and concrete gravity spillway, 215.5 feet long with a maximum height of 30 feet, topped with 3.5-foot-high wooden flashboards; (2) an existing concrete gravity abutment, 110 feet long and 38 feet high; (3) an existing 6-foot-wide log chute section; (4) an existing gated concrete gravity ogee spillway section, containing (a) a motor operated Tainter gate, 28 feet long by 14 feet high, (b) a steel sluice gate with an 8-foot-long by 6.5-foot-high opening; (5) an existing non-overflow section, 60 feet long; (6) an existing reservoir with a surface area of 204 acres and a total storage volume of 690 acre-feet at the normal maximum surface elevation of 552.0 feet USGS; (7) an existing concrete canal headworks section, containing (a) five timber sliding gates, all 18 feet high, three 9.7 feet wide, one 9 feet wide and the last 8.8 feet wide, and (b) trashracks; (8) an existing trapezoidal rock lined power canal, 2,700 feet long, with a bottom width of 30 feet, a top width of 120 feet and an average depth of 22 feet; (9) an existing laid-stone with concrete overlay canal sluiceway, approximately 10 feet wide, containing a 6-foot by 6-foot gate; (10) an existing concrete bulkhead forebay, about 66 feet long, consisting of (a) two penstock intake openings, each equipped with timber sliding gates, 12.8 feet wide by 12 feet high, and (b) trashracks; (11) two existing 10-foot-diameter rivetted steel penstocks, each approximately 190 feet long; (12) an existing powerhouse, constructed of Postdam sandstone and structural steel, 66 feet wide by 248 feet long by about 40 feet high, and an extension, 28 feet wide by 73 feet long, containing (a) two upgraded double runner horizontal Francis turbines with a combined efficient hydraulic capacity of 1,500 cfs, each manufactured by Allis-Chalmers and rated at 5,600 hp, (b) two 3-phase, 60-cycle, General Electric generators, each rated at 4,062 kW; (13) an existing trailrace, approximately 750 feet long; (14) a proposed intake structure equipped with trashracks and a headgate structure; (15) a proposed 12-foot-diameter steel penstock, about 300 feet long; (16) a proposed powerhouse containing (a) an inclined tubular semi-Kaplan turbine with an efficient hydraulic capacity of 1,150 cfs (providing a combined efficient development hydraulic capacity of 2,650 cfs), rated at 9,224 hp, (b) a 3-phase, 60-cycle horizontal synchronous generator, rated at 6,551 kW (providing a total development rating of 14,675 kW); (17) a proposed 115 kV tap approximately 200 feet long leading from the powerhouse to a point of interconnection with the existing Colton-Dennison No. 4 115-kV line; (18) an existing 23-kV bus tie line, 995 feet long, leading to the Sandstone

substation; (19) existing and proposed appurtenant facilities.

The Sugar Island Development which includes: (1) An existing concrete gravity non-overflow section, 35 feet long and 35 feet high; (2) an existing concrete gravity spillway, 192 feet long with a maximum height of 37 feet, containing an inspection tunnel; (3) an existing concrete gated ogee spillway section, 64 feet long, containing two Tainter gates, each 28 feet long and 11 feet high; (4) an existing reservoir with a surface area of 29 acres and a total storage volume of 55 acre-feet at the normal maximum surface elevation of 470.0 feet USGS; (5) an existing pipeline intake structure with a concrete substructure and a brick superstructure, approximately 26.5 feet wide by 30 feet long, equipped with (a) trashracks, and (b) a motor operated steel stoney headgate, 14 feet long by 16 feet high; (6) an existing 13.5-foot-diameter rivetted steel pipeline, about 4,700 feet long; (7) an existing Johnson differential surge tank, 45 feet in diameter, 71 feet high with an 8 foot diameter riser; (8) an existing 11-foot-diameter penstock, about 33 feet long; (9) two existing 8-foot-diameter penstocks, about 45 feet and 36 feet long; (10) an existing 9-foot-diameter penstock, about 40 feet long; (11) a proposed 9-foot-diameter penstock, about 40 feet long; (12) an existing brick and structural steel powerhouse, 35 feet wide by 67 feet long and about 30 feet high, and a proposed extension, about 35 feet wide by 25 feet long, containing (a) two upgraded existing vertical Francis turbines with a combined efficient hydraulic capacity of 1,020 cfs, manufactured by James Leffel and rated at 3,445 hp, (b) a proposed inclined pit turbine with an efficient hydraulic capacity of 855 cfs, rated at 5,255 hp, (c) two existing, 3-phase, 60-cycle generators, manufactured by General Electric and rated at 2,569 kW, and (d) a proposed, 3-phase, 60-cycle, horizontal synchronous generator, rated at 3,867 kW; (13) an existing 3,000-foot-long tailrace with a 15-foot minimum bottom width; (14) a proposed minimum flow unit consisting of (a) a steel conical shaped siphon intake, (b) a steel 6.2-foot-diameter penstock, (c) a fixed blade propeller pit turbine with an hydraulic capacity of 300 cfs (providing a total development efficient hydraulic capacity of 2,175 cfs), rated at 690 hp, and (d) a horizontal induction submersible generator, rated at 426 kW (providing a total proposed development rating of 9,431 kW); (15) a proposed 4.4 kV tap, about 500 feet long, leading to a point of interconnection with the existing P&S 4.4 line; (16) existing and proposed appurtenant facilities.

Modifications to the existing project are proposed in this new license application. The applicant estimates that the new total installed capacity would be 65.64-MW with an average annual generation of 352.11 MWH for this project. The dam and existing project facilities are owned by the applicant. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 or by calling (315) 428–6215.

a. Type of Application: New License.
b. Project No.: 2330–007.
c. Date Filed: December 24, 1991.
d. Applicant: Niagara Mohawk Power Corporation.
e. Name of Project: Lower Raquette River Hydro Project.
f. Location: On the Raquette River in the Towns of Potsdam and Norfolk, St. Lawrence County, New York.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Jerry L. Sabattis, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6215.
i. FERC Contact: Ed Lee, (202) 219–2809.
j. Comment Date: April 30, 1993.
k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E.

l. Description of Project: The proposed project would consist of the following four developments:

The Norwood Development which includes: (1) An existing spillway gravity dam, 188 feet long and 23 feet high, topped with a one-foot-high pneumatic flashboard system; (2) an existing concrete intake structure, approximately 36 feet long, equipped with (a) steel trashracks, (b) a skimmer section, and (c) three steel sliding gates; (3) two existing timber floodgates, one 9.7 feet wide by 12 feet high and the other 12 feet wide by 12 feet high; (4) an existing concrete log chute with stop log openings of 11.2 feet wide by 4.5 feet high; (5) an existing reservoir with a surface area of 350 acres and a total storage volume of 1,736 acre-feet at the normal maximum surface elevation of 327.1 feet USGS; (6) an existing concrete and brick powerhouse, 59.75 feet long by 43 feet wide by 34 feet high, containing (a) one vertical fixed blade propeller turbine with an efficient hydraulic capacity of 1,500 cfs, manufactured by I.P. Morris and rated at 2,710 hp, (b) a vertical, 3-phase, 60-cycle, General Electric generator, rated at 2,000 kW; (7) a proposed base flow unit consisting of (a) a siphon intake, (b) an inclined fixed blade propeller pit turbine with a hydraulic capacity of 300 cfs (providing a total proposed development efficient hydraulic capacity of 1,800 cfs), rated at 585 hp, and (c) a 3-phase, 60-cycle induction generator, rated at 412 kW providing a proposed total development rating of 2,412 kW); (8) an existing 23 kV transmission line, approximately three miles long; and (9) existing and proposed appurtenant facilities.

The East Norfolk Development which includes: (1) An existing 32 foot wide oval steel intake flume, approximately 1,408 feet long, preceded a concrete intake structure containing seven timber sluice gates, each 8 feet wide by 9 feet high; (2) an existing stop log section, 28 feet wide with a maximum height of 28 feet; (3) two existing concrete ogee spillway sections, a total length of 245 feet and 16 feet high; (4) an existing concrete abutment retaining wall; (5) an existing reservoir with a surface area of 135 acres and a total storage volume of 360 acre-feet at the normal maximum surface elevation of 287.9 feet USGS; (6) an existing concrete intake structure, integral to the powerhouse, equipped with a steel trashrack, a skimmer section and ice chute with a steel sliding gate; (7) an existing concrete, brick and steel powerhouse, 32.5 feet wide by 71.25 feet long, containing (a) an upgraded vertical fixed blade propeller turbine with an efficient hydraulic capacity of 1,857 cfs, manufactured by S. Morgan Smith and rated at 5,725 hp, (b) a vertical, 3-phase, 60-cycle General Electric generator, rated at 4,175 kW; (8) an existing 32 foot wide tailrace, extending approximately 250 feet to join the river downstream of the bypassed

reach; (9) a proposed base flow unit, consisting of (a) a siphon intake, (b) a pit turbine with a hydraulic capacity of 300 cfs (providing a total proposed development efficient hydraulic capacity of 2,157 cfs), rated at 450 hp, and (c) a 3-phase, 60-cycle, induction generator, rated at 337 kW (providing a total proposed development rating of 4,512 kW); (10) an existing 23 kV transmission line, 0.86 miles long, and; (11) existing and proposed appurtenant facilities.

The Norfolk Development which includes: (1) An existing concrete ogee spillway, 380 feet long and 20 feet high, topped with ten-inch-high flashboards; (2) an existing reservoir with a surface area of 10 acres and a total storage volume of 25 acre-feet at the normal maximum surface elevation of 254.9 feet USGS; (3) an existing power canal, approximately 1,275 feet long, composed of a concrete wall on the west and an earth embankment on the east, containing (a) an intake structure with three steel intake gates, each 12 feet wide by 10 feet high, and (b) two sluice gates which discharge to the river through 9 foot by 9 foot openings; (4) an existing penstock intake structure, containing (a) two steel trashracks, (b) a skimmer section, and (c) 6 foot by 6 foot ice sluice; (5) an existing 14-foot-diameter wood stave penstock, approximately 700 feet long; (6) an existing 14 foot diameter steel penstock, 103 feet long, with a 14 foot diameter motor operated butterfly valve; (7) an existing concrete, brick and steel powerhouse, 52.5 feet wide by 50.6 feet long and 35 feet high, containing (a) an upgraded vertical fixed blade propeller turbine with a efficient hydraulic capacity of 1,887 cfs, manufactured by S. Morgan Smith and rated at 7,560 hp, (b) a vertical, 3-phase, 60-cycle, General Electric generator, rated at 5,620 kW; (8) an existing tailrace, extending 950 feet to join the river downstream of the bypassed reach; (9) a proposed base flow unit, containing (a) a siphon intake, (b) a fixed propeller pit turbine with a hydraulic capacity of 300 cfs (providing a total proposed development efficient hydraulic capacity of 2,187 cfs), and (c) a 3-phase, 60-cycle, submersible induction generator, rated at 400 kW (providing a total proposed development rating of 6,020 kW); (10) an existing short section of 2.4 kV underground transmission cable and a 115 kV transmission line, 2.32 miles long; and (11) existing and proposed appurtenant facilities.

The Raymondville Development which includes: (1) An existing concrete gravity spillway, 292.5 feet long and 17-feet high, topped with a two-foot-high pneumatic flashboard system; (2) an existing reservoir with a surface area of 50 acres and a total storage volume of 264 acre-feet at the normal maximum surface elevation of 211.6 feet USGS; (3) an existing rectangular concrete power flume, approximately 48 feet wide by 447 feet long with three steel intake gates, each 12 feet wide by 10 feet high; (4) an existing intake structure, integral to the powerhouse, containing (a) steel trashracks, (b) a skimmer section with ice chute, (c) three sliding steel gates, and (d) three sections slotted for stop logs; (5) an existing concrete, brick and steel powerhouse, 59.8 feet wide by 42 feet long and 34 feet high, containing (a) a vertical fixed blade propeller turbine with an efficient hydraulic capacity of 1,526 cfs, manufactured by I.P. Morris and rated at 2,610 hp; (b) a vertical, 3-phase, 60-cycle, General Electric generator, rated at 2,000 kW; (6) a proposed base flow unit, containing (a) a siphon intake, (b) an outdoor inclined fixed blade propeller pit turbine with a hydraulic capacity of 300 cfs (providing a total proposed development efficient hydraulic capacity of 1,826 cfs), (c) a 3-phase, 60-cycle, induction generator, rated at 433 kW, (providing a total proposed development rating of 2,433 kW); (7) an existing 115 kV transmission line, 2.32 miles long; and (8) existing and proposed appurtenant facilities.

Modifications to the existing project are proposed in this new license application. The applicant estimates that the new total installed capacity would be 15.78–MW with an average annual generation of 92,234 MWH for this project. The dam and existing project facilities are owned by the applicant. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 or by calling (315) 428–6215.

a. Type of Application: New License.

b. Projects Nos.: 2404–017 and 2419–007.

c. Date Filed: December 30, 1991.

d. Applicant: Thunder Bay Power Company.

e. Name of Project: Thunder Bay and Hillman Hydro Project.

f. Location: On the Thunder Bay River in Alpena, Alcona, and Montmorency Counties, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Roger Steed, President, Thunder Bay Power Company, 10850 Traverse Hwy., suite 1101, Traverse City, MI 49684, (616) 941–5444.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Comment Date: April 30, 1993.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The proposed project consists of the following:

A. Thunder Bay Hydroelectric Project FERC No. 2404:

This project consists of the following five developments:

The Ninth Street Development which includes: (1) An existing retaining wall, 6 feet high by 285 feet long; (2) an existing buttressed retaining wall, 145 feet long; (3) an existing abandoned fishway; (4) an existing concrete uncontrolled spillway section; 47 feet long; (5) an existing gated spillway section, 131 feet long, containing seven tainter gates, each 14 feet long by 12 feet high; (6) an existing concrete gravity non-overflow section, 47 feet long; (7) an existing reinforced concrete non-overflow section (a retaining wall about 20 feet long); (8) an existing reservoir with a surface area of 700 acres and a total storage volume of 6,000 acre-feet at the normal maximum surface elevation of 598.5 feet NGVD; (9) an existing reinforced concrete and masonry powerhouse, 92 feet long by 84 feet wide, containing (a) three horizontal shaft Sampson runner turbines with a combined hydraulic capacity of 1620 cfs, manufactured by James Leffel Company and rated at 600 hp each, and (b) three General Electric generators, each rated at 400 kW, providing a total plant rating of 1,200 kW; and (10) existing appurtenant facilities.

The Four Mile Development which includes: (1) An existing concrete ogee spillway (constructed immediately downstream from the original rock filled timber dam), 445 feet long, topped by needle beams, containing (a) a log chute bay, and (b) an abandoned fishway bay; (2) an existing reservoir with a surface

area of 90 acres and a total storage capacity of 900 acre-feet at the normal maximum surface elevation of 634.9 feet NGVD; (3) an existing concrete and masonry powerhouse, 72 feet by 72 feet, containing (a) a concrete forebay, (b) three existing horizontal shaft Sampson runner turbines with a combined hydraulic capacity of 1790 cfs, rated at 850 hp each, and (c) three existing General Electric generators, each rated at 600 kW, providing a total existing plant rating of 1,800 kW, (d) a proposed Flygt Corporation generator, rated at 600 kW, providing a total proposed plant rating of 2,400 kW; and (4) existing appurtenant facilities.

Norway Point Development which includes: (1) Two existing earth dikes, 1,460 feet long and 500 feet long yielding a total length of 1,960 feet; (2) an existing abandoned fishway; (3) an existing beartrap gate section, 120 feet long, containing three beartrap gates, each 26 feet long by 27 feet high; (4) an existing mass concrete multiple barrel arch spillway section with removable needle beams, 320 feet long; (5) an existing reservoir with a surface area of 1,700 acres and a total storage volume of 27,550 acre-feet at the normal maximum surface elevation of 671.6 feet NGVD; (6) an existing reinforced concrete and masonry powerhouse, 86 feet long by 49 feet wide, containing (a) two vertical shaft Francis turbines with a combined hydraulic capacity of 1650 cfs, the first manufactured by Wellman-Seaver-Morgan Company and rated at 3,350 hp and the second rated at 1,400 hp, and (b) two General Electric generators, rated at 2,800 kW and 1,200 kW, providing a total plant rating of 4,000 kW; and (7) existing appurtenant facilities.

Hubbard Lake Development which includes: (1) An existing reinforced concrete spillway section, 20 feet long, containing two needle beam controlled bays; (2) two existing 45 foot long earth embankment sections, each overlapped on the upstream and downstream sides with concrete wingwalls extending from both sides of the spillway; (3) an existing reservoir with a surface area of 9,280 acres and a total storage volume of 57,000 acre-feet at the normal maximum surface elevation of 710.5 feet NGVD; and (4) existing appurtenant facilities.

Upper South Development which includes: (1) Two existing earth embankment sections, 220 feet long and 40 feet long for a total length of 260 feet; (2) an existing reinforced concrete spillway section, 40 feet long, containing (a) four needle beam controlled bays, and (b) concrete wingwalls on the upstream and downstream sides overlapping the earth embankments on both sides of the spillway; (3) an existing reservoir with a surface area of 7,000 acres and a total storage volume of 55,000 acre-feet at the normal maximum surface elevation of 731.0 feet NGVD; (4) two proposed submersible Flygt Corporation turbines with a combined hydraulic capacity of 170 cfs, each equipped with a siphon penstock and an elbow draft tube; (5) two proposed Flygt Corporation generators, each rated at 100 kW, providing a total plant rating 200 kW; and (6) existing appurtenant facilities.

B. Hillman Hydropower Project FERC No. 2419: This project consists of: (1) An existing earth fill section, approximately 50 feet long; (2) an existing concrete gated spillway section, approximately 38 feet long, containing (a) three needle beam controlled bays, (b) a concrete training wall extending upstream of the spillway along the right side, and (c) a reinforced concrete apron, constructed along the downstream toe of the spillway; (3) an existing non-overflow section which includes part of the Hillman grist mill house, 26 feet long, constructed of upstream and downstream concrete gravity walls with pressure grouted earth and rock fill between the two walls; (4) an existing concrete uncontrolled spillway section, 27 feet long (formerly the intake structure of the grist mill in the early 1900's); (5) an existing non-overflow section, 20 feet long, constructed of upstream and downstream concrete gravity walls with pressure grouted earth and rock fill between the two walls; (6) an existing reservoir with a surface area of 160 acres and a total storage volume of 500 acre-feet at the normal maximum surface elevation of 747.2 feet NGVD; (7) an existing reinforced concrete and masonry powerhouse, 17 feet by 21 feet, containing (a) a vertical shaft Francis turbine with a hydraulic capacity of 270 cfs, manufactured by James Leffel Company, and (b) a vertical shaft generator, manufactured by Westinghouse and rated at 250 kW; and (8) existing appurtenant facilities.

The applicant estimates the proposed total installed project capacity would be 8.25 MW and the total average annual generation would be 8.26 GWH. The dam and existing project facilities of each development are owned by the applicant. The existing projects would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Thunder Bay Power Company, 10850 Traverse Hwy., suite 1101, Traverse City, MI 49684 or by calling (616) 941–5444.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant

desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

c. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (April 27, 1993 for Project Nos. 11362–000 and 11363–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (June 11, 1993 for Project Nos. 11362–000 and 11363–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 26, 1993 for Project No. 2608–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 8, 1993 for Project No. 2608—001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the

heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 27, 1993 for Project No. 2446–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 11, 1993 for Project No. 2446–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (April 26, 1993 for Project Nos. 2407–006 and 2408–007). All reply comments must be filed with the Commission within 105 days from the date of this notice. (June 9, 1993 for Project Nos. 2407–006 and 2408–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: March 19, 1993.
Lois D. Cashell,
Secretary.
[FR Doc. 93–6684 Filed 3–24–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD93–05556T Texas-126]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 19, 1993.

Take notice that on March 15, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Strawn Formation, (Penn Strawn Prospect Area) underlying Schleicher County, Texas, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 7C and is more fully described on the attached appendix.

The notice of determination also contains Texas' findings that the referenced portions of the Strawn Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

The designated area lies within Railroad Commission District No. 7C and consists of all or part of the following surveys:

Area I

Block A, HE & WT RR Survey:
All of Sec. 169, A–451; Sec. 170, A–1296; Sec. 171, A–452; Sec. 172, A–804; Sec. 173, A–453; Sec. 174, A–801; Sec. 193, A–459; Sec. 194, A–1922, A–1384 and A–1948; Sec. 195, A–460; Sec. 196, A–1385; Sec. 197, A–461; Sec. 198, A–1507; Sec. 199, A–462; Sec. 200, A–882; Sec. 201, A–1492; Sec. 41, A–1228, A-1106 and West 1/3 of A-1773.

Block A, GC & SF RR Survey:
All of Sec. 12, A–1596; Sec. 12 1/2, A–694; Sec. 13, A–156; Sec. 14 1/2, A–716 and A–695; Sec. 14, A–1628; Sec. 15, A–90; Sec. 26, A–824; Sec. 27, A–96; East 1/2 of Sec. 30 1/2, A–697.

All of Sec. 8, A–46; West 2/3 of Sec. 7, A–44, Concho County School Land Survey; Sec. 7 3/4, A–505, K.S. Knowles Survey; Sec. 1, A–26, Joseph Burns Survey; Sec. 7 3/4, A–689, John R. Lay Survey; Sec. 7, A–672, J. Pink Alexander Survey; Sec. 1031, A–704, Mrs. Levicy Boldgood Survey; Sec. 7 1/4, A–529, J.W. Romine Survey; Sec. 20 3/4, A–711, J. McKenzie Survey; Sec. 3 1/4, A–703, C.M. Atwood Survey; Sec. 2, A–884, J.M. Stone Survey.

Block LL, TC RR Survey:
All of Sec. 3, A–583; Sec. 4, A–1473, A–1472, A–1470, A–1474, A–1471, A–1777, A–1562 and A–1563; Sec. 99, A–606 (falling to the west of Sec. 3 and south of Sec. 3 and Sec. 4 within Block LL).

Block TT, TC RR Survey:
All of Sec. 3, A–542; Sec. 4, A–1371; Sec. 5, A–543; Sec. 26, A–886; Sec. 27, A–554; Sec. 33, A–557.

Area II

Block TT, TC RR Survey:
All of Sec. 53, A–570; Sec. 54, A–879; Sec. 55, A–571; Sec. 101, A–194.

HE WT RR Survey:
All of Sec. 34, A–1096; East 2/3 of Sec. 41, A–465; East 1/3 of Sec. 28, A–1186; All of Sec. 41 1/2, A–2009; Sec. 28 1/2, A–2008; Southeast 1/4 of Sec. 25, A–471.

South 1/2 of Sec. 1204, A–1100; Sec. 1157 1/2, A–533; Western portion of Sec. 1216 1/2, A–1457 that lies to the south of Sec. 1157 1/2; All of A–1949.

[FR Doc. 93–6790 Filed 3–24–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD93–05558T Texas-128]

State of Texas—NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 19, 1993.

Take notice that on March 15, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, Bear Grass (Travis Peak) Field, underlying a portion of Leon County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 5 and includes all or portions of the following surveys:

G. Wilson.	A–958	J. Thomas	A–889
W. Roberts.	A–763	J. Tinsley .	A–1250
J. Patton .	A–702	J. Myers ...	A–542
B. Webb .	A–967	J. Russell ..	A–1142 (partial)

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 93–6791 Filed 3–24–93; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 2590–001]

Consolidated Water Power Co.; Notice Denying Late Intervention

March 19, 1993.

On June 26, 1991, Consolidated Water Power Company filed an application for a new license for its Wisconsin River Division Project No. 2590, located on the Wisconsin River in Portage County, Wisconsin. Public notice of the application was issued on September 10, 1991, setting November 7, 1991, as the deadline for the filing of comments, protests, and motions to intervene.

On April 10, 1992, the United States Department of the Interior (Interior) filed a motion to intervene late in this proceeding. Interior acknowledges that its motion is untimely and recites its various statutory responsibilities. Interior states that its position has been known by the other participants in the proceeding, and therefore a grant of late intervention will not prejudice the other participants.

When ruling on a motion for late intervention, the Commission may consider whether the movant has shown good cause for the late filing. 18 CFR 385.214(d)(1) (1992). Interior has given no reason for its late filing and is in essence arguing that its statutory responsibilities give it the right to intervene at any time in a license proceeding. The Commission has previously rejected this argument.[1] Because Interior has not established good cause for its late filing, its motion for late intervention is denied.

[1] Cogeneration, Inc., 54 FERC ¶ 61,178 (1991).

This notice constitutes final agency action. A request for rehearing by the Commission may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (1992).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–6793 Filed 3–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11151–004]

Energy Alternatives of North America; Notice Rejecting Request for Rehearing

March 19, 1993.

On February 8, 1993, the Director, Division of Project Compliance and Administration, Office of Hydropower Licensing, issued an order finding that Energy Alternatives of North America, licensee for the Williams Project No. 11151, located on the east fork of the White River in Lawrence County, Indiana, was in violation of the terms of its license and § 12.42 of the Commission's regulations [1] for failure to install project safety devices. On March 1, 1993, the licensee filed a request for rehearing of the February 8, 1993 order.

Section 313(a) of the Federal Power Act, 16 U.S.C. 825*l* (1991), requires an aggrieved party to file its request for rehearing within 30 days after the issuance of the Commission order and to set forth specifically the ground or grounds upon which such application is based. The licensee's rehearing request raises no specific allegations of error with respect to the Director's order, and is therefore rejected.[2]

This notice constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (1992).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–6792 Filed 3–24–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] 18 CFR 12.42 (1992).

[2] The licensee's March 1, 1993 filing is a one page letter that requests that rehearing be scheduled for consideration at an evidentiary hearing. To the extent the pleading can be considered a request for an extension of the 30-day deadline for seeking rehearing, it must be denied because the deadline is statutorily based.

[Docket No. RP93–94–000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

March 19, 1993.

Take notice that on March 17, 1993, Florida Gas Transmission Company ("FGT") petitioned the Federal Energy Regulatory Commission ("Commission") for a limited waiver of Commission policy and FGT's FERC Gas Tariff, to the extent necessary, to allow FGT to add an additional delivery point to an existing agreement for firm transportation service under Rate Schedule FTS–1 for West Florida Natural Gas Company ("West Florida"), while permitting West Florida to maintain its existing priority date under such agreement.

FGT states that good cause exists for granting the requested waiver in that (i) FGT will continue to serve the same customer, West Florida; (ii) the delivery point is in the same geographic location as West Florida's traditional service area; and (iii) the additional deliver/ point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 26, 1993 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–6794 Filed 3–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–208–006]

Ozark Gas Transmission System; Proposed Changes In FERC Gas Tariff

March 19, 1993.

Take notice that on March 1, 1993, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 4, with proposed effective date of April 1, 1993.

Ozark states that Fourth Revised Sheet No. 4 is being filed in compliance with the Commission orders issued September 6, 1991 [1] and December 6, 1991,[2] that required Ozark to revise the method under which Ozark's Maximum ITS Rate is calculated. Ozark states that the Commission stated to Ozark to submit periodically revised tariff sheets to reflect changes in Ozark's debt service costs, as well as changes in the other cost elements from which the Maximum ITS Rate is derived.

Ozark states that in accordance with the Commission's orders, Attachment A to the filing shows the derivation of the Maximum ITS Rate proposed to be effective April 1, 1993, and consistent with the Commission's December 1991 order, the adjustment to the Maximum ITS Rate is not a Section 4 rate filing made subject to suspension refund.

Ozark states that copies of the filing will be served on Ozark's existing T–1 and ITS Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–6795 Filed 3–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–149–002]

Transcontinental Gas Pipe Line Corp.; Petition for Authority to Direct Bill Order No. 94 Costs

March 19, 1993.

Take notice that on March 15, 1993, pursuant to ordering paragraph (B) of the Commission's February 11, 1993 order, Transcontinental Gas Pipe Line Corporation (Transco) petitioned the Commission for authority to direct bill to Columbia Gas Transmission Corporation (Columbia) Order No. 94 costs paid by Transco to its producer-suppliers.

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[1] 56 FERC ¶61,349.

[2] 57 FERC ¶61,316.

Transco proposes that the production-related costs be billed directly to Columbia in proportion to Columbia's share of all firm contract entitlements under Transco's rate schedules CD, FI, G/OG, ACQ, or PS as of May 22, 1985, the date of Transco's original direct bill filing. Transco states that the amount of the direct bill to Columbia under that methodology would be $8.31 million, an amount greater than the amount that had previously been direct-billed to Columbia. Transco proposes that it be permitted to recover the amounts already collected from Columbia, and that it be permitted to direct bill Columbia for the additional balance.

Transco states that ordering paragraph (B) of the February 11 order directed Transco to either (1) file a petition for authority to direct bill Order No. 94 costs, addressing only the alternative proposals set forth by Columbia in its April 10, 1992 "Motion to Intervene and Protest of Columbia Gas Transmission Corporation" filed in this proceeding, or (2) file a schedule for the Commission's approval for making refunds of all Order No. 94 payments previously paid to Transco by Columbia. Transco states that its petition addresses the alternative proposals set forth in Columbia's intervention.

Transco states that Columbia proposed two alternative methodologies: "Case 3", in which costs would be allocated based on Columbia's proportionate share of the total volumes of gas sold or transported for sales or firm transportation customers, and "Case 4", in which costs would be allocated based on Columbia's proportionate share of the total contractual entitlements of sales and firm transportation customers. Transco believes that the approach based on actual sales and transportation is, with certain modifications, the more appropriate methodology.

Using this approach, as modified, Transco states that the net refund owed Columbia would be $1,256,346.18, as opposed to the figure of $2,695,655 set forth in Columbia's intervention. If such a proposal is ultimately adopted by the Commission, Transco proposes that it be permitted to retain the amounts it previously collected from Columbia, subject to its refunding the net amount of $1,256,346.18 to Columbia.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–6796 Filed 3–24–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–156–LNG]

Phillips Alaska Natural Gas Corp. and Marathon Oil Co.; Order Granting Blanket Authorization to Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Phillips Alaska Natural Gas Corporation and Marathon Oil Company (Phillips/Marathon) blanket authorization to export up to 10 Bcf of liquefied natural gas to various countries over a two-year term, beginning on the date of first export delivery. The gas will be exported at the Kenai, Alaska, LNG facilities of Phillips/Marathon.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 17, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–6881 Filed 3–24–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

State Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: April 1, 1993—9 a.m. to 5 p.m. April 2, 1993—9 a.m. to 5 p.m.

Place: Madison Hotel, 1177—15h Street, NW, Washington, DC 20005 (202) 862–1600.

Contact: Sarah Kirchen, U.S. Department of Energy, Office of Technical and Financial Assistance, CE–52, Office of Conservation and Renewable Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202–586–1893, FAX: 202–586–1605.

Purpose of the Board: To make recommendations to the Assistant Secretary for Conservation and Renewable Energy regarding energy efficiency goals and objectives and programmatic and administrative policies related to these programs, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Purpose of the Meeting: To provide the Department with guiding principles on the programmatic and strategic impact of the Energy Policy Act of 1992 (Pub. L. 102–486) (EPACT), as the Department begins to formulate administrative guidelines and procedures concerning the legislation's implementation.

Tentative Agenda: Presentation and Discussion of EPACT issues; Discussion of Near Term and strategic plans.

Public Participation: The meeting is open to the public. The chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Sarah Kirchen at the address or telephone number listed above. Requests should be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days before the meeting due to last minute delays in finalizing the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 am and 4 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 22, 1993.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–6882 Filed 3–24–93; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0534.
Title: Provision of Access for 800 Service.
Expiration Date: 05/31/93.
Description: In the Second Report and Order in CC Docket No. 86–10, the Commission adopted rate structure and pricing rules for 800 data base access services. It requires basic 800 data base access to be priced on a per query basis and to be treated as a restructured service under Price Cap rules, although it permits local telephone companies to recover specific direct costs of providing the basic service. It also requires optional 800 data base "vertical" features to be treated as new services and priced to reflect the nature of their underlying costs. These rules will permit local telephone companies to file tariffs to provide 800 data base access services. The introduction of 800 data base access services will permit 800 service customers to switch from one 800 service provider to another without changing their 800 telephone numbers. It will also facilitate competition among 800 service providers.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 93–6842 Filed 3–24–93; 8:45 am]
BILLING CODE 6712–01–M

Comments Invited on North Dakota Public Safety Plan

March 19, 1993.

The Commission has received the public safety radio communications plan for North Dakota (Region 32).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 32 consists of the state of North Dakota. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before April 28, 1993 and reply comments on or before May 13, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–77 North Dakota—Public Safety Region 32.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 93–6843 Filed 3–24–93; 8:45 am]
BILLING CODE 6712–01–M

Comments Invited on South Carolina Public Safety Plan

March 19, 1993.

The Commission has received the public safety radio communications plan for South Carolina (Region 37).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 37 consists of the state of South Carolina. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before April 28, 1993 and reply comments on or before May 13, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–78 South Carolina—Public Safety Region 37.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 93–6844 Filed 3–24–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Unicom Management Services (Cyprus) Limited, Maxim Gorkiy Shipping Company Limited, and Belata Shipping Company Limited, C/O Odessa America Cruise Company, 170 Old Country Rd., suite 608, Mineola, New York 11501.

Vessel: MAXIM GORKIY.

Dated: March 19, 1993.

Joseph C. Polking,
Secretary.
[FR Doc. 93–6786 Filed 3–24–93; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3523.
Name: Ask International, Inc.
Address: 1833 Fox Chase Road, Philadelphia, PA 19152–1826.
Date Revoked: December 23, 1992.
Reason: Surrendered license voluntarily.

License Number: 3393.
Name: World Express CFS, Inc.
Address: 2848 E. 208th Street, Long Beach, CA 90810.
Date Revoked: January 20, 1993.
Reason: Failed to furnish a valid surety bond.

License Number: 3022.
Name: West Coast Air Freight, Inc.
Address: 105 Eucalyptus Drive, El Segundo, CA 90245.
Date Revoked: January 21, 1993.
Reason: Surrendered license voluntarily.

License Number: 2694R.
Name: Ruben Cruz, Inc.
Address: P.O. Box 361308, San Juan, PR 00936–1308.
Date Revoked: February 1, 1993.
Reason: Surrendered license voluntarily.

License Number: 2703.
Name: C & R Freight Forwarders.
Address: 132 Nassau St., Ste. 1320, New York, NY 10038.
Date Revoked: February 1, 1993.
Reason: Surrendered license voluntarily.

License Number: 528.
Name: Guy B. Barham Company.
Address: 600 Allied Way, El Segundo, CA 90245.
Date Revoked: February 23, 1993.

Reason: Surrendered license voluntarily.

License Number: 585.

Name: CMB (U.S.A.) Inc. dba AMI Forwarding.

Address: 33–41 Newark St., Hoboken, NJ 07030.

Date Revoked: February 26, 1993.

Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–6787 Filed 3–24–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank Corporation of Georgia, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 19, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank Corporation of Georgia, Macon, Georgia; to retain 33 percent of the voting shares of Americorp, Inc., Savannah, Georgia.

2. First Alabama Bancshares, Inc., Birmingham, Alabama; to acquire 100 percent of the voting shares of Peoples Bank, Dickson, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NJIC, Inc., Naperville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Westbank/Will County, Joliet, Illinois, and 98.3 percent of the voting shares of Westbank/Naperville, Naperville, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First National Bank of Sauk Centre Retirement Savings Plan and Trust, Sauk Centre, Minnesota; to acquire an additional 1.65 percent of the voting shares of Sauk Centre Financial Services, Inc., Sauk Centre, Minnesota, for a total of 29.59 percent, and thereby indirectly acquire The First National Bank of Sauk Centre, Sauk Centre, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri; and its wholly-owned subsidiary, CBI-Central Kansas, Inc., Kansas City, Missouri; to acquire Midwest Bancorporation, Inc., Hays, Kansas, and thereby indirectly acquire Farmers State Bank and Trust Company, Hays, Kansas.

2. CTC Bancorp, Inc., Fayette, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Trust Company of Fayette, Fayette, Missouri.

3. Fourth Financial Corporation, Wichita, Kansas; to acquire 100 percent of the voting shares of F & M Bank Services, Inc., Derby, Kansas, and thereby indirectly acquire The Farmers and Merchants State Bank, Derby, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. BancWest Bancorp, Inc., Austin, Texas; to acquire 100 percent of the voting shares of Kyle State Bank, Kyle, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. TPBC Acquisition Corporation, Oakland, California; to become a bank holding company by acquiring 100 percent of the voting shares of Trans Pacific Bancorp, San Francisco, California, and thereby indirectly acquire Trans Pacific National Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, March 19, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93–6866 Filed 3–24–93; 8:45 am]

BILLING CODE 6210–01–F

Creditanstalt-Bankverein, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Creditanstalt-Bankverein, Vienna, Austria; to engage *de novo* through its

subsidiary, Steinberg Asset Management Company, L.P., New York, New York, in investment advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Rake Bancorporation, Rake, Iowa; to engage *de novo* in making and servicing loans pursuant to § 22.525(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to engage *de novo* through its subsidiary, BA Securities, Inc., Seattle, Washington, in providing a range of investment and financial advice pursuant to § 225.25(b)(4); and providing full service brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 19, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93-6867 Filed 3-24-93; 8:45 am]

BILLING CODE 6210-01-F

Guaranty Financial, M.H.C.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Guaranty Financial, M.H.C., Milwaukee, Wisconsin; to engage indirectly in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y through its subsidiaries, Shelter Mortgage Corporation, Milwaukee, Wisconsin; GN Mortgage Corporation, West Hills, California; Shelter Mortgage Limited Partnership, Rolling Meadows, Illinois; Shelter Mortgage Partnership #500, Reston, Virginia; The Mortgage Company, Bellevue, Washington; Shelter Mortgage Partnership #2, Madison, Wisconsin; Shelter Mortgage Company Appleton II Division, Milwaukee, Wisconsin; Fairfield Mortgage Associates of Gainesville, Gainesville, Georgia; Fairfield Financial Associates of Dalton, Dalton, Georgia; Fairfield Financial Associates of Atlanta, Atlanta, Georgia; Fairfield Financial Associates of Macon, Macon, Georgia; Fairfield Financial Associates of Columbus, Columbus, Georgia; BB&G Mortgage, Milwaukee, Wisconsin; Shelter Mortgage Company, Milwaukee Division, Milwaukee, Wisconsin; Shelter Mortgage Company, Maryland Division, Silver Spring, Maryland; Central Mortgage Group, Milwaukee, Wisconsin; Shelter Mortgage Partnership No. 3, Milwaukee, Wisconsin; Shelter Mortgage Partnership No. 4, Milwaukee, Wisconsin; Shelter Mortgage Partnership No. 5, Milwaukee, Wisconsin; Shelter Mortgage Partnership No. 6, Milwaukee, Wisconsin; Shelter Mortgage Partnership No. 7, Milwaukee, Wisconsin; Shelter Mortgage Company Partnership No. 200; Shelter Mortgage Company Partnership No. 300; Shelter Mortgage Company Partnership No. 40, Silver Spring, Maryland; Shelter Mortgage Company Partnership No. 36, Silver Spring, Maryland; Shelter Mortgage Company Partnership No. 31, Silver Spring, Maryland; Shelter Mortgage Company Partnership No. 33, Silver Spring, Maryland; Shelter Mortgage Company Partnership No. 32, Silver Spring, Maryland; Shelter Mortgage Partnership No. 62, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 46, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 71, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 72, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 43, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 52, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 73, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 70, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 10, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 59, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 57, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 44, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 58, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 69, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 68, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 60, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 40, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 41, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 42, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 53A, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 53B, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 63, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 45, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 61, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 54, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 50, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 74, Rolling Meadows, Illinois; Shelter Mortgage Partnership No. 75, Rolling Meadows, Illinois; and Shelter Mortgage Partnership No. 76, Rolling Meadows, Illinois.

Board of Governors of the Federal Reserve System, March 19, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93-6869 Filed 3-24-93; 8:45 am]

BILLING CODE 6210-01-F

Middletown Savings Bank Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 14, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Middletown Savings Bank Employee Stock Ownership Trust, Middletown, New York; to acquire 10.4 percent of the voting shares of MSB Bancorp, Inc., Middletown, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mary Jo Andrea Larson, to retain 25.4 percent of the voting shares of NoDak Bancorporation, Bismarck, North Dakota, and thereby indirectly acquire First National Bank and Trust Company of Ellendale, Ellendale, North Dakota; First National Bank of Oakes, Oakes, North Dakota; First Southwest Bank-Mandan, Mandan, North Dakota; and First Southwest Bank-Bismarck, Bismarck, North Dakota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Charles F. Irvine, Barry, Texas; to acquire 40.89 percent of the voting shares of Dawson Bancshares, Inc., Dawson, Texas, and thereby indirectly acquire First Bank & Trust Company, Dawson, Texas.

Board of Governors of the Federal Reserve System, March 19, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93-6868 Filed 3-24-93; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire the assets of Columbia Investment Services, Inc., Littleton, Colorado, and thereby engage in full-service brokerage, private placement, limited underwriting, precious metal brokerage, riskless principal and leasing activities in Colorado through Norwest's subsidiary, Norwest Investment Services, Inc. These activities have been approved pursuant to Board Order. *Norwest Corporation*, 76 Federal Reserve Bulletin 79 (1990).

Board of Governors of the Federal Reserve System, March 19, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93-6870 Filed 3-24-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Cancellation of Medical Standard Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the following Standard Form is cancelled.

SF 517, Clinical Record—Anesthesia (8½ × 22″)
SF 542, Specimen Record
SF 544, Medical Record—Statement of Patient's Treatment
SF 560, Medical Record—Electroencephalogram Request and History

DATES: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Freed, GSA Standard and Optional Forms Liaison Officer, (202) 501-0492.

Dated: March 11, 1993.

Johnny T. Young,

Director, Reproduction Services Division.

[FR Doc. 93-6408 Filed 3-19-93; 8:45 am]

BILLING CODE 6820-34-M

Notice of Intent To Prepare an Environmental Impact Statement

To All Interested Agencies, Groups, and Persons:

The General Services Administration (GSA) intends to prepare an Environmental Impact Statement (EIS) for the proposed construction of a new Federal Building to house the National Oceanic and Atmospheric Administration (NOAA) in Boulder, Colorado.

The proposed new building will consist of approximately 236,000 occupiable square feet of laboratory and related space and will be constructed on property owned by the Federal Government at 325 Broadway, Boulder, Colorado. The new building will house approximately 1,015 personnel, and the project will provide 600 outside surface parking spaces. The proposed project is being undertaken to consolidate existing NOAA offices and laboratories, now located in leased space and on the NIST campus, and to provide for expansion space for NOAA.

The EIS will evaluate a range of reasonable alternatives to the proposed action which may include but is not limited to: leasing, constructing at an alternate site(s), and no action.

To identify the scope of issues that will be addressed in the EIS, and to identify potential impacts to the quality of the human environment, public participation is invited by providing written comments to GSA. Comments and any questions regarding the EIS or the scoping process should be directed to: General Services Administration, Public Buildings Service, Planning Staff (8PL), Denver Federal Center/P.O. Box 25546, Denver, Colorado 80225–0546, Attn: Sharon Malloy. Phone: (303) 236–7244. Comments should be directed to GSA within 30 days of the publishing of this notice of intent.

A public meeting was conducted by GSA on October 21, 1992 on the environmental aspects of this proposed project. Comments received at that meeting, and oral and written comments received by GSA before November 30, 1992, regarding this project, will be included in defining the scope of issues to be addressed in the EIS. These comments will also be incorporated into the administrative record for the EIS.

Dated: March 17, 1993.

G.B. Moore,

Acting Regional Administrator, General Services Administration, Region 8.

[FR Doc. 93–6758 Filed 3–24–93; 8:45 am]

BILLING CODE 6820–23–M

Multiple Award Federal Supply Schedule

The General Services Administration, Office Supplies and Paper Products Commodity Center is reviewing Facsimile Paper provided under Special Item Number (SIN) 386–6 on Multiple Award Federal Supply Schedule 75, part I, section D, for the purpose of identifying items which may be candidates for conversion to single award. Some sizes, types, etc., may be removed from the Multiple Award Schedule for competitive award, while others may continue to be supplied from the Schedule. Comments regarding this matter may be directed to Ms. Peggy Alfred, Engineering and Commodity Management Division (2FYEM), 26 Federal Plaza, Room 20–130, New York, NW 10278. Comments should be made within thirty days from the date of this notice and should address the potential impact on small business concerns.

Dated: March 11, 1993.

Harold E. Murrell,

Director, Office Supplies and Paper Products Commodity Center (2 FY).

[FR Doc. 93–6759 Filed 3–24–93; 8:45 am]

BILLING CODE 6820–24–M

Multiple Award Federal Supply Schedule Program

Notice is hereby given that the Office Supplies and Paper Products Commodity Center, Federal Supply Service, is developing technical requirements for various types of Facsimile Paper currently supplied under Special Item Number (SIN) 386–6 on Multiple Award Federal Supply Schedule 75, part I, section D. Some of the paper presently supplied under this SIN may be removed from the Schedule for competitive award, while others may continue being supplied from the Schedule. Upon their availability, the technical requirements will be made available to all interested parties for comment. Requests for the technical requirements should be submitted to Mr. Benny Wong, Engineering and Commodity Management Division (2FYEE), 26 Federal Plaza, room 20–130, New York, NY 10278. Requests for the technical requirements should be made within thirty days from the date of this notice.

Dated: March 12, 1993.

Harold E. Murrell,

Director, Office Supplies and Paper Products Commodity Center (2FY).

[FR Doc. 93–6760 Filed 3–24–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Change of Dates for Chemical Sensitivity and Low Level Chemical Exposure Meeting

In the matter of **Federal Register** Citation of Previous Announcement: 58 FR 12040—dated March 2, 1993.

ORIGINAL TIMES AND DATES: 8:30 a.m.–5 p.m., March 16, 1993; 8:30 a.m.–12 noon, March 17, 1993.

NEW DATES: April 13, 1993; April 14, 1993.

SUMMARY: Notice is given that the meeting for Chemical Sensitivity and Low Level Chemical Exposure has been rescheduled due to inclement weather. The meeting times, location, and purpose announced in the original notice remain unchanged.

CONTACT PERSON FOR MORE INFORMATION: James K. Carpenter, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E33, Atlanta, Georgia 30333, telephone 404/639–6204.

Dated: March 19, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 93–6811 Filed 3–24–93; 8:45 am]

BILLING CODE 4160–70–M

Health Resources and Services Administration

Emergency Medical Services for Children; Demonstration Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Extension of application deadline date.

The Emergency Medical Services for Children: Demonstration Grants notice deadline date, published on March 17, 1993, beginning on page 14406, is herewith extended to April 30, 1993.

The rest of the notice remains as published.

Dated: March 19, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–6845 Filed 3–24–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on April 19, 1993. The meeting will be held at the Washington Marriott, 1221 22nd Street, NW., Washington, DC 20015. The Board will meet April 19, 8:30 a.m. to approximately 4 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National Effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: March 18, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93-6767 Filed 3-24-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the End-Stage Renal Disease Data Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the End-Stage Renal Disease Data Advisory Committee on April 28, 1993. The meeting will begin at approximately 8 a.m. and end at approximately 5 p.m. in Conference Room 9, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting, which will be open to the public is being held to discuss the 1993 Annual Report and other ESRD Data issues. Attendance by the public will be limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations please contact Dr. Ralph Bain, Executive Director, End-Stage Renal Disease Data Advisory Committee, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045. Please note, if you are planning to request special assistance, you must do so two weeks prior to the meeting date. In addition, Dr. Bain's office will provide upon request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Disease and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 18, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-6768 Filed 3-24-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-030-03-4333-04-8364]

Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of Lowry Ruin, Colorado.

SUMMARY: Notice is hereby given in accordance with 43 CFR subpart 8364 that public lands in the following area are closed: Lowry Ruin National Historic Site, W½NW¼, section 2, T.38N., R.19W., NMPM in Montezuma County, Colorado.

DATES: The closure is effective immediately and will be in effect for six months from the date this notice appears in the **Federal Register** unless rescinded at an earlier date, or extended.

ADDRESSES: For further information, contact Sally Wisely, Bureau of Land Management, San Juan Resource Area, Federal Building, 701 Camino del Rio, Durango, Colorado 81301; telephone (303) 247-4082.

SUPPLEMENTARY INFORMATION: Severe winter weather in southwestern Colorado has resulted in structural damage to Lowry Ruin. This damage endangers the integrity of Lowry Ruin and poses a public safety risk. In order to provide for resource protection and public safety until the repairs and stabilization can be accomplished, Lowry Ruin is closed to all public and commercial uses for a period of six months from date of the publication in the **Federal Register.** This closure may be rescinded at an earlier date or extended beyond the initial six months depending on the success of stabilization and repair efforts. Bureau of Land Management (BLM) employees on official duty, law enforcement personnel on official duties, and contractors for the BLM are exempt from the closure.

Dated: March 16, 1993.

Alan L. Kesterke,

District Manager.

[FR Doc. 93-6752 Filed 3-24-93; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-040-01-4333-01]

Notice of Intent To Prepare an Environmental Assessment To Amend the Safford District Resource Management Plan and To Invite Public Participation in the Identification of Issues for Determining the Eligibility of Public Land Portions of Cienega Creek and its Tributaries for Possible Inclusion in the National Wild and Scenic Rivers System

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Assessment to Amend the Safford District Resource Management Plan.

SUMMARY: The Bureau of Land Management, Safford District, is preparing an Environmental Assessment to amend the Safford District Resource Management Plan to determine the eligibility of Cienega Creek and its tributaries for possible inclusion in the National Wild and Scenic Rivers System. This action complies with the Wild and Scenic Rivers Act (Pub. L. 90-542), National Environmental Policy Act (Pub. L. 91-190), and Federal Land Policy and Management Act (Pub. L. 94-579).

DATES: Comments concerning the eligibility of Cienega Creek and its tributaries will be accepted until April 30, 1993.

ADDRESSES: Send comments to Bureau of Land Management, Tucson Resource Area Office, 12661 E. Broadway, Tucson, Arizona 85748, Attention: Jesse Juen, Area Manager.

FOR FURTHER INFORMATION CONTACT: Don Ducote, Tucson Resource Area Office, telephone (602) 722-4289.

SUPPLEMENTARY INFORMATION: Cienega Creek will be identified as eligible or ineligible for inclusion in the National Wild and Scenic Rivers System through this plan amendment/environmental assessment process. Eligible segments will be tentatively classified wild, scenic, or recreational and managed to preserve those classification unless they are studied and found unsuitable or released from further consideration by Congress.

Comments concerning the eligibility of Cienega Creek will also be accepted during public scoping meetings addressing the suitability of other rivers and streams previously determined to be eligible in the Safford District Resource Management Plan. These meetings will be held on the following dates in the following locations:

April 12. Central Arizona College, Aravaipa Campus, Aravaipa Road and Hwy. 77, 11 miles south of Winkelman, AZ.

April 13. Tucson Public Library, Main Branch, Children's Conference Room, 101 N. Stone Avenue, Tucson, AZ.

April 14. BLM Arizona State Office, Conference Room, 3707 7th St., Phoenix, AZ.

April 15. VFW Post 6271, 233 E. 5th Street, Benson, AZ.

April 19. Greenlee Co. Courthouse, 2nd Floor Conference Room, 5th and Leonard, Clifton, AZ.

April 20. BLM District Office, Conference Room, 711 14th Avenue, Safford, AZ.

April 21. Klondyke Store, Klondyke, AZ.

April 22. Oscar Yrun Community Center, Senior Nutrition Center, 3020 Tacoma, Sierra Vista, AZ.

April 23. Sonoita Fairgrounds, Pioneer Hall, Junction of Hwy. 82 and Hwy. 83, Sonoita, AZ.

All meetings will be held from 2 to 8 p.m., except the Klondyke meeting, which will be held from 3 to 7 p.m. and Sonoita meeting, which will be held from 2 to 7 p.m.

Dated: March 19, 1993.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 93-6839 Filed 3-24-93; 8:45 am]

BILLING CODE 4310-32-M

[AZ-040-01-4350-02]

Meeting of the San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Public Law 100-696 and 43 CFR part 1780, that a meeting of the San Pedro Advisory Committee will be held.

EFFECTIVE DATE: Friday, April 30, 1993 at 1 p.m.

DATES: Anyone wishing to make an oral statement must contact the BLM San Pedro Conservation Area Manager by Friday, April 23, 1993. Summary minutes of the meeting will be maintained in the San Pedro Conservation Area and Tucson Resource Area Offices and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

ADDRESSES: Arizona Electric Power Cooperative Inc., North Boardroom, located at 1000 Highway 80, Benson, Arizona.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, San Pedro Conservation Area Manager, Bureau of Land Management, Box 9853, Rural Route #1, Huachuca City, Arizona 85616. Telephone (602) 457-2265; or Diane Drobka, Public Affairs Officer, Safford District, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428-4040.

SUPPLEMENTARY INFORMATION: The agenda for the San Pedro Riparian National Conservation Area (NCA) Advisory Committee meeting includes, but is not limited to, the following items:

1. Update on San Pedro visitor center.
2. Coordinated Resource Management (CRM).
3. San Pedro Habitat Management Plan (HMP).
4. Water Rights.
5. Report to Congress.

The meeting is open to the public. Interested persons may make oral statements to the Advisory Committee between 2-2:30 p.m. or may file written statements for consideration by the Committee.

Dated: March 10, 1993.

Frank Rowley,

Acting District Manager.

[FR Doc. 93-6860 Filed 3-24-93; 8:45 am]

BILLING CODE 4310-32-M

[ID-20-03-4710-06]

Emergency Closure of Roads (Indian Springs, Cherry Springs, and West Dry Creek)

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: Notice is hereby given, effective immediately, the following roads are closed to motorized travel:

Indian Springs Road (BLM road #4214) from the Foothill Road south to the U.S. Forest Service boundary, a distance of approximately eight miles.

Cherry Springs Road (BLM road #4213) from the Rock Creek Road southwest to its intersection with the Indian Springs Road, just north of the Forest boundary. This is a distance of approximately seven miles. Both of the above roads are located in Twin Falls County in T. 12 S., R. 18 E.

West Fork Dry Creek Road (BLM road #1610) from the Tugaw Ranch southwest to the U.S. Forest boundary. Approximately seven miles of road is effected. This road is located in Cassia County in T. 12 S., R. 19 E.

These roads administered by the Bureau of Land Management are closed to motorized vehicle use from the date of notice until April 10, 1993.

Exemptions from this closure is for state and local government personnel on official duty, Auto Phone Corporation personnel, emergency service personnel including search and rescue and the Burley District BLM Ranger may be approved by the Authorized Officer.

The described roads are experiencing muddy conditions following an above normal precipitation winter. Motorized vehicles are cutting ruts in the above mentioned roads, which leads to increased erosion during snow melt and early spring rain storms. The purpose of the closure is to protect the road beds from any further damage and to minimize future maintenance needs.

Dated: March 10, 1993.

Gerald L. Quinn,

District Manager.

[FR Doc. 93-6751 Filed 3-24-93; 8:45 am]

BILLING CODE 4310-GG-M

[CO-920-93-4110-03; COC48858]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease COC48858, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239-3783.

Dated: March 17, 1993

Joan E. Gilbert,

Acting Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93-6856 Filed 3-24-93; 8:45 am]

BILLING CODE 4310-JB-M

[CA-060-65-4210-05, CACA#26838]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; County of Kern, CA

ACTION: Notice of realty action CACA #26838, classification of public lands for lease/conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public lands near the community of California City, County of Kern, California have been examined and found suitable for lease or conveyance pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq., and the regulations promulgated thereunder, title 43 Code of Federal Regulations, part 2912:

Mount Diablo Meridian, California

T. 32S., R. 38E.,
Sec. 20, NW¼NW¼NE¼,
N½SW¼NW¼NE¼.

Totalling approximately 15 acres.

The Mojave Unified School District plans to use these lands for the construction of a new elementary school. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and disposal is deemed to be in the public interest.

The lease/patent, when issued, shall be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and to the following reservations to the United States:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. The terms and conditions as stipulated within the Environmental Assessment and the formal consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of December 18, 1973, 43 U.S.C. 1536, as amended.

3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

For further information contact Mike Hogan, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons or parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, California Desert District, 6221 Box Springs Boulevard, Riverside, CA 92507–0714. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: March 15, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–6749 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–04; N–56458]

Realty Action: Exchange of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action N–56458 for Exchange of Lands in Clark County, Nevada.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, including the mineral estate with no known value, have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716).

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 28, W½NE¼, NE¼NW¼, E½SE¼NW¼, N½SE¼
T. 20 S., R. 60 E.,
Sec. 8, NE¼SW¼SW¼, N½NW¼SW¼SW¼, N½SE¼SW¼SW¼, SE¼NE¼SE¼SW¼, NW¼NW¼SE¼SW¼, N½SW¼SE¼SW¼, SE¼SW¼SE¼SW¼, SE¼SE¼SW¼, SE¼SW¼SW¼SW¼, S½NW¼NW¼SE¼, N½SW¼NW¼SE¼, SW¼NW¼SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, SW¼SW¼SW¼SW¼.
Sec. 9, SE¼NE¼SW¼SW¼, S½NW¼SW¼SW¼, SW¼SW¼SW¼, N½SE¼SW¼SW¼, SE¼SE¼SW¼SW¼, NE¼SE¼SW¼, S½NW¼SE¼SW¼, N½SW¼SE¼SW¼, N½SE¼SE¼SW¼, SW¼SE¼SE¼SW¼, S½NE¼SW¼SE¼, W½NW¼SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, N½SE¼SW¼SE¼, SE¼SE¼SW¼SE¼, S½NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, N½SW¼SE¼SE¼, SE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼, SW¼SE¼SE¼SE¼, NW¼SE¼SE¼SE¼SE¼, S½SE¼SE¼SE¼SE¼.

The area described contains 389.375 acres, more or less.

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Red Rock Canyon National Conservation Area, Nevada, described as follows:

Mount Diablo Meridian, Nevada

T. 22 S., R. 58 E.,
Sec. 1, SW¼SE¼, excluding a parcel of strip of land one hundred-fifty (150) feet in width, being seventy-five (75) feet wide on each side of the surveyed highway centerline of State Route 159 (Blue Diamond Road) (Project RS–159(2)), which centerline is more fully described as follows, to wit:

Beginning at the intersection of the centerline of State Route 159 (Blue Diamond Road) (Project RS–159(2)), at Highway Engineer's Station "E" 228+52.24 P.O.T. and the east one-sixteenth line of Section 1, T. 22 S., R. 58 E., M.D.M.; said point of beginning more fully described as bearing N. 60°58'30" E. a distance of 1415.54 feet from the south quarter of said Section 1; thence N. 54°07'24"W. along said centerline a distance of 1192.03 feet to an intersection with the south one-sixteenth line of said Section 1, the point of ending at Highway Engineer's Station "E" 240+44.27 P.O.T.; said point more fully described as bearing N. 11°06'11" E. a distance of 1411.82 feet from the south quarter corner of said Section 1, said parcel contains an area of 4.10 acres, more or less. The sidelines of said parcel are to be lengthened or shortened to intersect with the east one-sixteenth line and the south one-sixteenth line of said Section 1.

Sec. 2, E½SE¼, excluding Parcel A (containing 9.6 acres).
Sec. 12, NW¼NW¼.

The area described contains 146.3 acres, more or less.

The purpose of the exchange is to acquire the non-federal lands located within the Red Rock Canyon National Conservation Lands. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with local governmental officials. The public interest will be served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon approval of the final appraisal of the lands.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas deposits, compounds of sodium and potassium.

And will be subject to:

1. Easements of varying widths for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands in accordance with the transportation plans for the City of Las Vegas and Clark County.

2. Those rights for highway purposes granted to Nevada Department of Transportation, its successors or assigns, by rights-of-way Nos. CC–018138, pursuant to the Act of November 9, 1921 (42 Stat. 216); Nev–059248, pursuant to the Act of August 27, 1958 (23 U.S.C. 317).

3. Those rights for highway purposes granted to Federal Highway Administration, its successors or assigns, by right-of-way No. N–46063 pursuant to the Act of August 27, 1958 (23 U.S.C. 317).

4. Those rights for underground communication line purposes granted to Central Telephone Company, its successors or assigns, by right-of-way No. CC–021488 pursuant to the Act of March 4, 1911, as amended (formerly 43 U.S.C. 961).

5. Those rights for underground distribution line purposes granted to Nevada Power Company, its successors or assigns, by rights-of-way Nos. N–52801, N–54825 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for power transmission line purposes granted to Nevada Power Company, its successors or assigns, by right-of-way No. Nev–043546 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

7. Those rights for electrical substation purposes granted to Nevada Power Company, its successors or assigns, by right-of-way No. N–48683 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

8. Those rights for water detention basin purposes granted to the City of Las Vegas, its successors or assigns, by right-of-way No. N–37232 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

9. Those rights for road and public utility purposes granted to the City of Las Vegas, its successors or assigns, by right-of-way Nos. N–48698, N–56390, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

10. Those rights for road and public utility purposes granted to Clark County, its successors or assigns, by rights-of-way No. N–55256 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

11. Those rights for underground distribution and communication line purposes granted jointly to Nevada Power Company and Central Telephone Company, their successors or assigns, by rights-of-way Nos. N–56521, N–56379 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

12. Those rights for well site purposes granted to the Las Vegas Valley Water District, its successors or assigns, by right-of-way No. N–53363 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

13. Those rights for water pipeline and access road purposes granted to the Las Vegas Valley Water District, its successors or assigns, by right-or-way No. N–53700 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

14. Those rights for water pipeline purposes granted to the Las Vegas Valley Water District, its successors or assigns, by right-or-way No. N–47871 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

15. Those rights for underground water main purposes granted to the Las Vegas Valley Water District, its successors or assigns, by right-of-way No. N–55369 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89502.

Dated March 22, 1993.

Ben F. Collins,

District Manager.

[FR Doc. 93–7041 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR 44688; OR 030–03–4210–04; GP3–132]

Realty Action; Exchange of Public Lands; Baker County, OR

The following described public lands are determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Willamette Meridian, Oregon

T. 9S., R. 42E.,
Sec. 1, lots 2, 3, 4, SW¼NE¼, S½NW¼, NW¼SW¼, W½SE¼;
Sec. 12, NW¼NE¼.
The area described contains 393.04 acres in Baker County, Oregon.

In exchange for these lands, the United States will acquire the following described private lands from Ralph W. and Sandra J. Bryne.

Willamette Meridian, Oregon

T. 8S., R. 43E.,
Sec. 34, SE¼SE¼;
Sec. 35, NE¼SW¼SW¼.
T. 9S., R. 42 E.,
Sec. 12, NW¼SW¼;
Sec. 24, SE¼SW¼, SW¼SE¼.
T. 9S., R. 43E.,
Sec. 2, lot 4;
Sec. 3, lot 1.

The area described contains 436.52 acres in Baker County, Oregon.

The purpose of this land exchange is to facilitate resource management opportunities in the Baker Resource Area as identified in the Baker Resource Management Plan, resolve unauthorized agricultural use, and improve ownership patterns. The private lands offered possess important values for critical deer winter range, riparian and wetland habitat, reservoir shoreline, water resources, and livestock forage. The public interest will be well served by completing this exchange.

The value of the lands to be exchanged is approximately equal. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of a right-of-way for the Ritter Creek Road, ORE 014711.

3. The reservation to the proponent of rights-of-way for an existing road and irrigation ditch over and across WM, T. 9S., R. 42E., sec. 12, NW¼SW¼.

4. The reservation to the proponent of a right-of-way for Love Reservoir in WM, T. 9S., R. 42E., sec. 24, SE¼SW¼, SW¼SE¼.

5. All valid existing rights, including but not limited to any right-of-way, easement or lease of record.

6. Non-permanent improvements belonging to the proponent may be removed from the offered lands within a period of time specified by the Authorized Officer. If not removed, the improvements will either be authorized by the Bureau of Land Management or become the property of the United States, with the exception of fences located on the boundary between the offered and private lands.

7. Mineral rights may be reserved, depending upon the findings of the mineral report.

When completed, all necessary reports and clearances and other information concerning the exchange will be available for review at the Baker Resource Area Office, 1550 Dewey Ave., Baker City, Oregon 97814.

The publication of this notice in the **Federal Register** will segregate the public lands described above from appropriation under the public land laws, including the mining laws, except from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever comes first.

For additional information concerning this exchange, contact Steve Davidson, BLM Baker Resource Area Office, (503) 523–6391, Ext. 325.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Vale District, 100 East Oregon Street, Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Dated: March 9, 1993.

James E. May,

District Manager.

[FR Doc. 93–6754 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–33–M

[AZ–930–4210–06; A–27699]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service (FS) has filed application A–27699, to withdraw 286.41 acres of National Forest System land from location and entry under the United States mining laws. The purpose of the withdrawal is to protect the area and existing improvements in the Groom Creek Recreation Complex. The total estimated value for improvements located within the complex is $566,000. The withdrawal will be made subject to valid existing rights. This application is in compliance with the regulations found in 43 CFR 2310.1–2 and the Prescott National Forest Plan. Publication of this notice closes the land for up to 2 years from location and entry under the United States mining laws only. Other uses applicable to National Forest System lands will continue to be allowed.

DATES: Comments and requests for a meeting should be received on or before June 23, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–640–5509.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, filed application A–27699, to withdraw the following described land from location and entry, under the United States mining laws only. The proposed withdrawn land is currently utilized for improvements located within the Groom Creek Horsecamp Campground, the Trailhead and the Groom Creek Schoolhouse. The campground was built in 1989 and has an estimated value of $386,000; the Trailhead facilities were constructed in 1990, and have an approximate value of $55,000, and the facilities adjacent to the schoolhouse has been valued at $125,000. The schoolhouse, constructed in 1871, does not have an established value, at this time. Other uses applicable to National Forest System land will be allowed to continue. The withdrawal as requested would be for 20 years and will be issued subject to valid existing rights. Subject land is described as follows:

Gila and Salt River Meridian, Arizona: (Prescott National Forest)

T. 13 N., R. 2 W.,
Sec. 26, Lots 32–34;
Sec. 35, Lots 5–8.

The area described contains 286.41 acres, more or less, in Yavapai County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the subject withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with regulations as set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, cancelled or the withdrawal is approved prior to that date.

The temporary segregation placed on the land in conjunction with this application shall not affect the administrative jurisdiction over it.

Phillip D. Moreland,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93–6762 Filed 3–23–93; 8:45 am]

BILLING CODE 4310–32–M

[ID–943–4210–06; IDI–015280]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that 7265.51 acre withdrawal for Powersite Classification No. 455, continue for an additional 20 years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have been and would remain open to mineral leasing and mining.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

The Bureau of Land Management proposes that the existing land withdrawal made by Public Land Order No. 3793, for Powersite Classification No. 455, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

Payette National Forest

T. 13 N., R. 1 E.,
Sec. 1, SW¼NE¼, SE¼NE¼, SW¼NW¼, SE¼NW¼ and N½S½;
Sec. 2, lots 1 to 3 inclusive and 6 to 8 inclusive, SW¼NE¼, SE¼NE¼, SE¼NW¼, NE¼SW¼ and N½SE¼.
T. 14 N., R. 1 E.,
Sec. 26, SW¼SW¼;
Sec. 27, W½NW¼;
Sec. 28, SE¼SW¼ and N½SE¼;
Sec. 33, SW¼NE¼ and NE¼NW¼;
Sec. 35, E½NE¼NW¼, E½W½NE¼NW¼, SW¼SW¼NE¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, N½SW¼, SE¼SW¼ and SW¼SE¼.
T. 13 N., R. 2 E.,
Sec. 6, lots 9 and 10.

Public Land Administered by BLM

T. 15 N., R. 1 W.
Sec. 5, lots 3 and 4;
Sec. 6, lots 1 and 2.
T. 16 N., R. 1 W.,
Sec. 21, NW¼NE¼;
Sec. 29, NE¼SE¼;
Sec. 31, SW¼NE¼ and W½SE¼;
Sec. 32, SE¼SW¼.
T. 15 N., R. 2 W.,
Sec. 2, SE¼NE¼, SW¼SW¼ and N½SE¼;
Sec. 3, N½SE¼;
Sec. 9, SE¼SE¼.
T. 11 N., R. 3 W.,

Sec. 6, SE¼SW¼ and S½SE¼;
Sec. 7, lot 1, N½NE¼, SW¼NE¼, NE¼NW¼ and NW¼SE¼;
Sec. 8, lot 1, N½NE¼ and NE¼NW¼;
Sec. 9, SW¼NE¼, NW¼NW¼ and S½NW¼;
Sec. 19, lot 4 and SE¼SW¼;
Sec. 30, lots 1 to 3 inclusive, E½NW¼ and NE¼SW¼;
Sec. 31, S½NE¼.
T. 11 N., R. 4 W.,
Sec. 1, SW¼NW¼, SW¼ and SW¼SE¼;
Sec. 2, lots 1 and 2, S½NE¼ and SE¼;
Sec. 3, lot 4, SW¼NE¼, SE¼NW¼ and W½SE¼;
Sec. 11, N½NE¼, SE½NE¼ and SW¼SE¼;
Sec. 12, N½N½;
Sec. 13, N½SW¼, SW¼SW¼ and W½SE¼;
Sec. 14, SW¼NW¼, NW¼SW¼ and SE¼;
Sec. 15, SE¼NE¼;
Sec. 23, N½NE¼, SE¼NE¼, E½NW¼ and SW¼SE¼;
Sec. 24, NW¼NW¼, NE¼SW¼, NW¼SE¼ and SE¼SE¼;
Sec. 25, SW¼NE¼, SE¼NW¼, SW¼ and SE¼;
Sec. 26, SE¼NE¼ and E½SE¼.
T. 12 N., R. 4 W.,
Sec. 10, N½NE¼, SW¼NE¼ and NE¼SW¼;
Sec. 11, W½NE¼ and NW¼NW¼;
Sec. 15, NE¼SW¼ and S½SW¼;
Sec. 22, N½, SW¼, NE¼SE¼ and S½SE¼;
Sec. 23, E½NW¼, NE¼SW¼ and SW¼SW¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½N½ and S½NW¼;
Sec. 28, S½NE¼ and S½SE¼;
Sec. 33, NW¼NE¼;
Sec. 35, SE¼NW¼ and NE¼SW¼.

The areas described aggregate 7,265.51 acres in Adams and Washington Counties.

The withdrawal is essential for protection of potential waterpower development. The existing withdrawal closes the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 16, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–6859 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meetings are open to the public.

DATES: The Klamath Fishery Management Council will meet from 7 p.m. to 9 p.m. on Monday, April 5, 1993, and Tuesday, April 6, 1993.

PLACE: The meeting will be held at the Red Lion-Columbia River, 1401 North Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:

Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The principal agenda items will be to make recommendations to the Pacific Fishery Management Council for 1993 Ocean Salmon Management, and to the tribes and the State of California for in-river salmon management options for 1993. The council will also discuss harvest-management planning for spring chinook.

Dated: March 17, 1993.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–6857 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–347]

Certain Anti-Theft Deactivatable Resonant Tags and Components Thereof; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Alesia M. Woodworth, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: March 15, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–6775 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–342]

Certain Circuit Board Testers; Commission Decision To Deny Motion for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny the complainant's motion for temporary relief in the above-captioned investigation and to vacate the initial determination (ID) issued by the presiding administrative law judge (ALJ) on January 11, 1993. The Commission will issue its own opinion in support of its decision to deny temporary relief. Findings of fact made by the ALJ will be adopted to the extent they are found or referenced in the Commission's opinion.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 25, 1992, Integri-Test, Corp. (Integri-Test) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain circuit board testers allegedly covered by certain claims of Integri-Test's U.S. Letters Patent 4,565,966 (the '966 patent). The notice of investigation instituting an investigation based on Integri-Test's complaint was published in the **Federal Register** on November 2, 1992. 57 FR 49490. Bath Scientific Ltd. of the United Kingdom and BSL North America of Massachusetts were named as respondents. Pursuant to Commission interim rule 210.24(e)(8) (19 CFR 210.24(e)(8)), the Commission also provisionally accepted Integri-Test's motion for temporary relief.

The presiding ALJ held an evidentiary hearing on temporary relief from December 7–11, 1992. On January 4, 1993, all parties filed written submissions on the issues of remedy, the public interest, and respondents' bond, as provided for in Commission interim rule 210.24(e)(18)(ii) (19 CFR 210.24(e)(18)(ii)). On January 11, 1993, the ALJ issued an ID denying complainant's motion for temporary relief. On January 19, 1993, the parties filed written comments concerning the ID. Parties filed reply comments on January 25, 1993. No government agency comments were received.

On February 1, 1993, the Commission determined to designate the temporary relief phase of the investigation "more complicated" to ensure sufficient time to supplement the findings of fact made in the ID and to issue an opinion in support of its determination. 58 FR 7746 (February 5, 1993).

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.24(e) of the Commission's interim rules (19 CFR 210.24(e)).

Issued: March 17, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6780 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–344]

Certain Cutting Tools for Flexible Plastic Conduit and Components Thereof; Commission Determination Not To Review an Initial Determination Amending the Complaint and Investigation To Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 8) in the above-captioned investigation amending the notice of investigation to add Chewink Corporation as a respondent.

FOR FURTHER INFORMATION CONTACT: Robin L. Turner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3103.

SUPPLEMENTARY INFORMATION: On February 10, 1993, the ALJ issued an ID granting a motion by complaints Dawn Industries, Inc., Dextel Inc., and Duane Robertson to amend the complaint and notice of investigation to add Chewink, Corporation as a respondent in the investigation. Chewink Corporation is an alleged foreign exporter of the subject product. No petitions for review or government agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: March 16, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6777 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Order

On March 16, 1989, the Commission issued its final determination in the above-captioned investigation. The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unlicensed importation and sale of certain erasable programmable read only memories (EPROMs), and in particular certain EPROMs manufactured abroad for Microchip Technology Incorporated (Microchip), which infringe valid U.S. patents owned by complainant Intel Corp. (Intel). The Commission determined that a limited exclusion order and six cease and desist orders were the appropriate remedy. One of the cease and desist orders was issued to Microchip. Section V of the cease and desist order imposes an annual reporting requirement on Microchip:

> For purposes of this reporting requirement, each reporting period shall commence on the first day of July, and shall end on the following last day of June. The first report required under this section shall cover the period March 16, 1989, to June 30, 1989. This reporting requirement shall continue in force until the date of expiration of the last of the patents specified in section III above to expire, and failure to report shall constitute a violation of this Order.
>
> Within 30 days of the last day of each reporting period, Respondent shall report to the Commission the following:
>
> (A) Its importations, measured in units, of erasable programmable read only memories, if any, during the reporting period in question, manufactured according to designs and/or process technology provided by Respondent to any person used in the manufacture of erasable programmable read only memories bearing, as of the date of this Order, the product designations GI27256, GI27C256, or GI27C512.
>
> (B) Its sales in the United States, measured in units, of erasable programmable read only memories, if any, during the reporting period in question, manufactured according to designs and process technology provided by Respondent to any person used in the manufacture of erasable programmable read only memories bearing, as of the date of this Order, the product designations GI27256, GI27C256, or GI27C512.
>
> (C) All contracts, whether written or oral, entered into during the reporting period in question, to sell erasable programmable read only memories, if any, during the reporting period in question, manufactured according to designs and process technology provided by Respondent to any person used in the manufacture of erasable programmable read only memories bearing, as of the date of this

Order, the product designations GI27256, GI27C256, or GI27C512.

In connection with the importation and sales referred to in paragraphs (A) and (B) above, Respondent shall provide the Commission with two copies of all invoices, delivery orders, bills of lading, and other document concerning the importation or sale in question. Such copies shall be attached to the reports required by paragraphs (A) and (B) above.

Microchip and Intel have entered into a license agreement which permits Microchip to engage in certain activities prohibited by the limited exclusion and cease and desist orders. The terms of the license agreement, which has been provided to the Commission, are confidential. Microchip has requested that the Commission modify the cease and desist order to make clear that Microchip need not comply with the reporting requirement with respect to conduct permitted by the license. Complainant Intel filed an opposition to Microchip's petition, and the Commission investigative attorney filed a reply in support of Microchip's request.

Having considered the petition and all other documents submitted in connection with this matter, the Commission has determined to deny the petition.

Accordingly, *it is hereby ordered* that—

1. The petition of Microchip Technology Incorporated is hereby denied.

2. A copy of this Order shall be served upon each party of record in this proceeding.

Issued: March 15, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6776 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 18, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Rollerblade, Inc., 5101 Shady Oak Road, Minnetonka, Minnesota 55343. An amended complaint was filed on March 11, 1993. The complaint, as amended, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof by reason of alleged infringement of claims 1–8 of U.S. Letters Patent 5,171,033 and claim 5 of U.S. Letters Patent 5,048,848, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Alesia M. Woodworth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, as amended, the U.S. International Trade Commission, on March 18, 1993, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof by reason of alleged infringement of claims 1–8 of U.S. Letters Patent 5,171,033 or claim 5 of U.S. Letters Patent 5,048,848; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Rollerblade. Inc., 5101 Shady Oak Road, Minnetonka, Minnesota 55343

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Canstar Sports U.S.A., Inc., 50 Jonergin Drive, Swanton, Vermont 05488

California Pro USA Corp., 8810 Recho Road #G, San Diego, California 92121

Brookfield Athletic Company, Inc., 13 Centennial Drive, Peabody, Massachusetts 01961

Maska U.S. Inc., Pierson Industrial Park, PO Box 381, Bradford, Vermont 05033–0381

Exel Marketing, Inc., One Second Street, Peabody, Massachusetts 01960

First Team Sports, Inc., 2274 Woodale Drive, Mounds View, Minnesota 55112–4900

Roller Derby Skate Corporation, 311 West Edwards St., Litchfield, Illinois 62056

Innovative Sport Systems, Inc., 6527 Cecilia Circle, Minneapolis, Minnesota 55439

Variflex, Inc., 5152 North Commerce Avenue, Moorpark, California 93021

National Sporting Goods Corps., 25 Brighton Avenue, Passaic, New Jersey 07055

Risport International Corp., 12 Shakespeare Road, Nashua, New Hampshire 03062

Keys Fitness Products, Inc., 11220 Petal Street, Dallas, Texas 75229

Canstar Sports Group, Inc., 5705, Rue Ferrier, Suite 200, Ville Mony-Royal, Quebec, Canada H4P1N3

Playmaker Co., Ltd., 10F1 #101 Sung Chiang Road, Taipei City, Taiwan 10428

Meran S.R.L., 30135 Crocetta Del Montello, Treviso, Italy

Good Men Associates, Inc., 4F–3, #390, Fu-Hsing S. Rd., Sec. 1, Taipei 10640, Taiwan

Han Kai Co., Ltd., 3F, #51, Alley 19, Lane 291, Sec. 5, Nanking East Road, Taipei, Taiwan

Regal Enterprise Co., Ltd., Third Fl.–1, #156, Yen Chi St., Taipei, Taiwan

Yuh Jou Co., Ltd. No. 17, Lane 39, Sec. 1, San Ho Road, San Chung City, Taipei Hsien, Taiwan

Amula's Enterprise Corp., 35 Jih Hsin St., Tucheng Hsiang, Taipei Hsien, Taiwan

Roces SRL, Via G. Ferraris, Montebeluna, Treviso, Italy

Koflach Sportgerate Gesellschaft, Alte Hauptstrabe 5–7, Koflach, Austria 8580
Sport Maska, Inc., 6375 Picard Street, Saint-Hyacinthe, QCJS21H3, Quebec, Canada
Marco Skates, 9C–D Yiko Industrial Building, 10 Ka Yip Street, Chaiwan, Hong Kong
Speedent Corporation, 38 Changsnu, 2nd Rd., Hsichih, Taipei Hsien, Taiwan
So'-F'fect Ent. Co., 23, Alley 29, Lane 120, Sec. 4, Nan King East Road, Taipei, Taiwan
Pai Hung Sporting Goods, Co., Ltd., 11 F., No. 7, Lane 187, Yung Chi Road, Taipei 11504, Taiwan

(c) Alesia M. Woodworth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Commission determination not to include certain proposed respondents in this Notice of Investigation does not preclude an amendment of this Notice at a later date should sufficient additional information be obtained regarding these proposed respondents' alleged importation into the United States, sale for importation, or sale within the United States after importation of certain in-line roller skates with ventilated boots or in-line roller skates with axle aperture plugs or component parts thereof.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 210.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 18, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6781 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–20–M

[Investigation 337–TA–337]

In the Matter of Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Notice of Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Winbond Electronics Corporation and Winbond Electronics North America Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on March 10, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: March 12, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6774 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–515 (Final)]

Portable Electric Typewriters from Singapore

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–515 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reasons of imports from Singapore of portable electric typewriters, provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States (HTS).[1]

[1] For purposes of this investigation, portable electric typewriters are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria. They must: (1) be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) be electric, regardless of source of power; (3) be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) have a

Continued

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain portable electric typewriters from Singapore are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 18, 1991, by Brother industries (USA), Bartlett, TN.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

keyboard embedded in the chassis or frame of the machine; (5) have a built-in printer; (6) have a platen (roller) to accommodate paper; and (7) only accommodate their own dedicated or captive software, if any. The portable electric typewriters subject to this investigation are those provided for in HTS subheading 8469.21.00 and those with text memory (automatics) provided for in HTS subheading 8469.10.00.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on June 8, 1993, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 25, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 17, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 18, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is June 18, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 6, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 6, 1993. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: March 17, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6779 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–546 and 547 (Final)]

Steel Wire Rope from the Republic of Korea and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from the Republic of Korea ("Korea") and Mexico of steel wire rope,[3]

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner's Brunsdale, Crawford, and Nuzum dissenting.

[3] The subject imported steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from the imports covered by these investigations is stainless steel wire rope, i.e., ropes, cables, and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, provided for in subheading 7312.10.60 of the Harmonized Tariff Schedule of the United States.

provided for in subheading 7312.10.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective September 28, 1992, following preliminary determinations by the Department of Commerce that imports of steel wire rope from Korea and Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 18, 1992 (57 FR 54419). The hearing was held in Washington, DC, on February 19, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 15, 1993. The views of the Commission are contained in USITC Publication 2613 (March 1993), entitled "Steel Wire Rope from the Republic of Korea and Mexico: Determinations of the Commission in Investigations Nos. 731–TA–546 and 547 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: March 16, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–6778 Filed 3–24–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Notice of Exemption; Colorado and Wyoming Railway Co—Acquisition and Operation Exemption—Lines of the Colorado and Wyoming Railway Company

[Finance Docket No. 32263]

Colorado and Wyoming Railway Company (New C&W), a noncarrier, has filed a notice of exemption: (1) To acquire and operate approximately 1 mile of rail line, including associated feeder lines, owned by The Colorado and Wyoming Railway Company (Old C&W) located within the boundaries of the CF&I steel mill property in Pueblo, CO; and (2) to operate over the Comanche Spur, an approximately 4.5-mile line to be acquired by the Public Service Company of Colorado (PSC) from Old C&W.[1] Upon consummation New C&W will become a class III carrier. Parties expected consummation to occur on March 4, 1993.

As part of the acquisition transaction, New C&W will continue to interchange traffic with Denver and Rio Grande Western Railroad, Burlington Northern Railroad, and The Atchison, Topeka, & Santa Fe Railroad as Old C&W did in the past. Current tariff filings and revenue division agreements will be assigned to New C&W. New C&W will also continue to handle freight to, from, and within the CF&I steel mill property and to serve Old C&W customers on the line. As part of the operation transaction over the Comanche Spur, New C&W will continue to serve those customers previously served by Old C&W over the line.

Any comments must be filed with the Commission and served on Fred P. Swanson, Oregon Steel Mills, Inc., P.O. Box 2760, Portland, OR 97208.

This transaction is part of a restructuring of the holdings of Oregon Steel Mills, Inc.[2] pursuant to a plan of reorganization approved by the bankruptcy court.[3] As a condition to the use of this exemption, any employee adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).[4]

This notice is filed under 49 CFR 118.20 and 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 19, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–6879 Filed 3–24–93; 8:45 am]

BILLING CODE 7035–01–M

[1] On March 2, 1993, PSC filed its verified notice of exemption in Finance Docket No. 32264 to acquire the Comanche Spur from Old C&W and, concurrently, filed a motion to dismiss based on its contention that its acquisition of mere assets is not subject to Commission jurisdiction.

[2] On November 7, 1990, CF&I Steel Corporation (Old CF&I) and its subsidiaries, including Old C&W, filed for reorganization under Chapter 11 of the Bankruptcy Code. Prior to reorganization, Oregon Steel Mills, Inc. controlled Old CF&I, which in turn controlled Old C&W. Pursuant to a plan of reorganization approved by the Bankruptcy Court, a limited partnership, consisting of New CF&I, Inc. (the general partner) and the Pension Benefit Guaranty Corporation (the limited partner), will purchase certain assets of Old CF&I and all of the remaining assets of Old C&W. The New C&W will be a wholly owned subsidiary of New CF&I, which in turn will be a wholly owned subsidiary of Oregon Steel Mills, Inc.

[3] Pursuant to 49 CFR 1180 subpart B, transactions under 49 CFR 1172 involving the transfer or operation of lines of bankrupt railroads, by a noncarrier, under a plan of reorganization are governed by the procedures in 49 CFR 1150 subpart D. *See Transfer of Operation of Lines of Railroads in Reorganization, 9 I.C.C.2d 201 (1992) (Reorganization).*

[4] In these types of transactions, pursuant to 49 CFR 1180 Subpart B, the Commission is required under 11 U.S.C. 1172(c)(1) to provide affected employees with adequate protection, as set forth in 49 U.S.C. 11347, unless a need is shown for greater levels of protection. *See Reorganization, supra.*

The United Transportation Union and Transportation Communications International Union (petitioners), jointly filed on March 1, 1993, a petition to revoke, and alternative request for imposition of labor protection. Petitioners have offered no basis for their request that the exemption be revoked. In accordance with 49 CFR 1180.20(c), appropriate labor protective conditions have been imposed providing the alternative relief sought by petitioners.

[Finance Docket No. 32241]

Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Bradford Industrial Rail, Inc., Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the continuance in control by Genesee & Wyoming Industries, Inc. (GWI), of Bradford Industrial Rail, Inc. (BIR), on the latter's becoming a rail common carrier, subject to standard labor protective conditions. GWI presently owns all the outstanding capital stock of six short-line class III rail carriers: (1) Genesee and Wyoming Railroad Company, (2) Dansville and Mount Morris R.R. Co., (3) Rochester & Southern Railroad, Inc., (4) Louisiana & Delta Railroad, (5) Buffalo & Pittsburgh Railroad, Inc., and (6) Allegheny & Eastern Railroad, Inc. BIR has filed a verified notice in Finance Docket No. 32240 to exempt its acquisition and operation of a rail line owned by Consolidated Rail Corporation.

DATES: This exemption will be effective on April 24, 1993. Petitions to stay must be filed by April 5, 1993. Petitions to reopen must be filed by April 14, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32241 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce

Commission, Washington, DC 20423; and
(2) Petitioners' representative: Charles D. Crampton, Harter, Secrest & Emery, 700 Midtown Tower, Rochester, NY 14604.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.].

Decided: March 12, 1993

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–6880 Filed 3–24–93; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting; Cancellation

AGENCY: National Commission on Manufactured Housing.

ACTION: Cancellation of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a change in the forthcoming schedule of meetings of the Commission.

DATES: The Meeting originally scheduled for April 15 and 16, 1993, (58 FR 11642, February 26, 1993) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Carmelita R. Pratt, Administrative Officer, The National Commission on Manufactured Housing, (GSA) 7th & D Street, SW., 7109, Washington, DC 20407 (202) 708–5702.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–6838 Filed 3–24–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board Meeting; Correction

In notice document 93–6383, which announced a closed meeting of the Institute Advisory Board on April 3 and 4, 1993, appearing on page 15167 in the issue of Friday, March 19, 1993, in the second column, under **SUPPLEMENTARY INFORMATION,** in the second paragraph, sixth line, "Institute Director of the Board." should read "Institute Director.".

Dated: March 22, 1993.

Thomas R. Hill,

Executive Officer, National Institute for Literacy.

[FR Doc. 93–6903 Filed 3–24–93; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 12, 1993, 3 p.m. until 5 p.m.; April 13, 1993; 8:30 a.m. until 5 p.m.

Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James P. Wright, Program Director, Division of Astronomical Sciences 1800 G Street, NW., room 615, Washington, DC. Telephone: (202) 357–7304.

Purpose of Meeting: To provide advice and recommendations concerning nominations submitted to NSF for NSF Young Investigator Awards.

Agenda: To review and evaluate unsolicited nominations submitted to the Division of Astronomical Sciences.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6817 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences. (Panel B)

Date and Time: Wednesday, Thursday and Friday, April 14–16, 1993; 9 a.m. to 5 p.m.

Place: The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Robert Uffen and Dr. Todd Martensen, Program Directors, Molecular Biochemistry, room 325, Division of Molecular and Cellular Biosciences, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7945.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6814 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences.

Date and Time: Monday and Tuesday, April 12–13, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 540 on April 12, and room 543 on April 13, 1993.

Type of Meeting: Open.

Contact Person: Dr. Robert Uffen, Program Director Metabolic Biochemistry, room 325, Division of Molecular and Cellular Biosciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7945.

Purpose of Meeting: To provide advice and recommendations concerning research opportunities in microbial biology.

Agenda: To present, discuss, and evaluate research needs and opportunities in microbial biology and to draft a summary of the discussion and recommendations. Summary minutes of the presentations and discussion will be available shortly after the meeting.

Minutes: May be obtained from the contact person listed above.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6827 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: April 12, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation Annex, 1110 Vermont Avenue NW., room 500A, Washington, DC.

Type of Meeting: Closed.

Contact Person: Karen Mudry, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7955.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation proposals, Equipment proposals, Career Advancement proposals, Research Planning proposals, and Regular Research proposals in the area of Biomaterials as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6822 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: Wednesday, April 14, 1993; 8:30 a.m. to 5 p.m.

Place: Room 411, National Science Foundation, 1800 G. Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Fred Heineken, Division of Biological and Critical Systems, room 1132, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–9545.

Purpose of Meeting: To provide advice and recommendations for nominations/applications submitted to NSF for financial support.

Agenda: To review and evaluate Young Investigators nominations/applications as part of the selection process for awards.

Reason for Closing: The nominations/applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6833 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Cell Biology (Sub-Panel B).

Dates and Times: April 14–15, 1993; 8:30 a.m. to 6 p.m.

Place: 1800 G Street, NW., room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Eve Ida Barak, Program Director for Cell Biology Program (Cellular Organization), room 325, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Telephone: 202/357–7474.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Cell Biology Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: To review and evaluate research proposals in the area of Cell Biology (Cellular Organization) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6819 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Thermal Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following eight meetings:

Name: Special Emphasis Panel in Chemical and Thermal Systems.

Date and Time: April 12–13, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 1133, 1800 G Street, NW., Washington, DC; rm. 500B, 1110 Vermont Avenue, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Initiation Awards Program.

Contact Persons: Drs. Edgar O'Rear & Robert Wellek, Program Directors (202) 357–9606.

Date and Time: April 13, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 1133, 1800 G Street, NW., Washington, DC 20550.

Agenda: Review and evaluate nominations for the NSF Young Investigator Awards Program.

Contact Person: Dr. Maria K. Burka, Program Director, (202) 357–9606.

Date and Time: April 16, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 500E, 1110 Vermont Avenue, NW., Washington, DC. 20550

Agenda: Review and evaluate nominations for the NSF Young Investigator Awards Program.

Contact Person: Dr. Edgar O'Rear, Program Director, (202) 357–9606.

Date and Time: April 19–20, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 500C, 1110 Vermont Avenue, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Young Investigator Awards Program.

Contact Persons: Drs. Stephen Traugott & M.C. Roco, Program Directors, (202) 357–9606.

Date and Time: April 20, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 500A, 1110 Vermont Avenue, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Young Investigator Awards Program.

Contact Persons: Drs. Edgar O'Rear & Robert Wellek, Program Directors, (202) 357–9606.

Date and Time: April 26–27, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 500C, 1110 Vermont Avenue, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Equipment Grants Program.

Contact Persons: Drs. Stephen Traugott & M.C. Roco, Program Directors, (202) 357–9606.

Date and Time: May 4–5, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 536, 1800 G Street, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Initiation Awards Program.

Contact Persons: Drs. Stephen Traugott & M.C. Roco, Program Directors, (202) 357–9606.

Date and Time: May 4–5, 1993; 8:30 a.m. to 5 p.m.

Place. NSF, rm. 500C, 1110 Vermont Avenue, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Equipment Grants Program.

Contact Persons: Drs. Edgar O'Rear & Robert Welleck, Program Directors, (202) 357–9606.

Purpose of Meeting: To provide advice and recommendation to the Division of Chemical and Thermal Systems concerning proposals submitted to the Division for financial support.

Type of Meetings: Closed.

Reason for Closing: The nominations and proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations and proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6820 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Thermal Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in the Division of Chemical and Thermal Systems.

Date and Time: April 13, 1993; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1133,Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Maria K. Burka, Program Director, 1800 G Street, NW., room 1133, Washington, DC 20550. Telephone: (202) 357–9606.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate "NSF Young Investigator Awards (NSF 92–116)"; and "Research Initiation Awards (NSF 92–122)" proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(b) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6830 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 14, 1993; 7 p.m. to 9 p.m.; April 15, 1993; 8:30 a.m. to 5 p.m.; April 16, 1993; 8:30 a.m. to 3:30 p.m.

Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Gerald L. Engel, Program Director, Office of Cross-Disciplinary Activities, rm. 436, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7349.

Purpose of Meeting: To provide advice and recommendations concerning nominations submitted to NSF for financial support.

Agenda: To review and evaluate National Science Foundation Young Investigator nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6824 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cultural Anthropology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 15 & 16, 1993; 9 a.m.–5 p.m.

Place: 1110 Vermont Avenue, room 500C, Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Raymond Hames, Program Director, Cultural Anthropology, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7804.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: April 16, 1993, 11 a.m.–4 p.m. Closed session: April 15, 1993, 9 a.m.–5 p.m., April 16, 1993, 9 a.m.–11 a.m. To review and evaluate Cultural Anthropology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6828 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

DOE/NSF Nuclear Science Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 13, 1993 from 1 p.m. to 5 p.m.

Place: Department of Energy, Forrestal Building, room 1E–245, 1000 Independence Ave., NW., Washington, DC 20585.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7992.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Status of DOE and NSF Nuclear Physics Program, DOE Office of Energy Research—Outlook and Trends, Public Comment*.

* Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6835 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Meetings

The National Science Foundation announces the following meetings:

Name: Site Visit Subcommittees of the Special Emphasis Panel in the Engineering Education and Centers Division.

Date	Place	Time
4/13/93 ..	Morgan State University Baltimore, MD.	9–5
4/14/93 ..	Pennsylvania State University State College, PA.	9–5
4/19/93 ..	University of Washington Seattle, WA.	9–5
4/26/93 ..	University of Maryland College Park, MD.	9–5

Date	Place	Time
4/27/93 ..	Howard University Washington, D.C..	9–5
4/28/93 ..	University of Maryland College Park, MD.	9–5

Type of Meeting: Closed.

Contact: Dr. William Butcher, Senior Engineering Advisor, Directorate for Engineering, National Science Foundation, 1800 G Street, NW., room 1126, Washington, DC 20550.

Purpose of Meeting: To conduct an in-depth evaluation of the Ecsel Coalition, per the Cooperative Agreement.

Agenda: Review and evaluation of the Ecsel Coalition's Engineering Education Coalition award.

Reason for Closing: The award being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6837 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Federal Network Council Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Federal Network Council Advisory Committee.

Date and Time: April 14, 1993; 9 a.m. to 4 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Ms. Lynn Behnke, Executive Assistant, Federal Networking Council, 4001 N. Fairfax Drive, suite 200, Arlington, VA 22203–1614, Telephone: (703) 522–6410, Fax: (703) 522–7161. Internet: behnke@darpa.mil. Those planning to attend should contact Ms. Lynn Behnke by April 1, 1993.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The purpose of this meeting is to provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN) Program.

Agenda: Overview of FNC activities, implementation of the National Information Infrastructure, internationalization, IP address space management, NSF Backbone Services Solicitation update, follow-up to last meeting.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6831 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 12–13, 1993; 8:30 a.m. to 5 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Laurence Rosenberg, Deputy Division Director, Robotics and Intelligent Systems, rm. 310, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9572.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research on Scientific Databases proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6823 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Publ. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: Friday, April 16th, 8:30 a.m.

Place: DMR Conference Room, 4th Floor, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Bruce Taggart, DMR; Jeremy Broughton, DMR.

Purpose of Meeting: To provide advice and recommendations concerning support for DMR 1993 National Young Investigator Awards Program proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6836 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and Times: April 14, 1993, 8:15 a.m.–5:30 p.m.

Place: NSF Conference & Training Center, 1110 Vermont Avenue, NW., rooms 500 A, B, and C, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John C. Hurt, Program Director, Materials Research Groups, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

Purpose of Meetings: To provide advice and recommendations concerning support for the Materials Research Groups on Condensed Matter Physics.

Agenda: Examine proposals, reviewers' evaluations, and make recommendations for new and renewal awards for Materials Research Groups in FY 1993 competition.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6815 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Molecular and Cellular Biosciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 15–16, 1993—8.30 a.m.–5 p.m.

Place: River Inn, 924 25th Street, NW., Wash., DC.

Type of Meeting: Closed.

Contact Person: Brenda Flam, Program Manager for Special Projects, National Science Foundation, 1800 G St., NW., room 325, Washington, DC 20550. Telephone: (202) 357–9400.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NSF Young Investigator (NYI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6825 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 16, 1993, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1133, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Karen Mudry, Program Director, Division of Biological and Critical Systems, room 1132, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7217.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate regular research and research initiation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6826 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience.

Dates and Times: April 14–16, 1993; 9 a.m.–5 p.m.

Place: St. James Preferred Residences, 950 24th Street, NW., Washington, DC.

Type of Meeting: Part-Open.

Contact Person: Dr. Steven C. McLoon, Program Director, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7042.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session April 14–15, 1993; 9–5 and April 16, 1993; 11 a.m.–5 p.m. To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Open Session: April 16, 1993, 9 a.m.–11 a.m. To discuss research trends and opportunities in Developmental Neuroscience.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6813 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure.

Date and Time: April 12–13, 1993; 8:30 a.m. to 5 p.m.

Place: Room 411, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mr. David Staudt, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Research and Initiation Awards Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6818 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physical Anthropology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: April 18, 1993, 9 a.m. to 5 p.m.

Place: Toronto Hilton, 145 Richmond Street West, Toronto, Ontario, Canada M5H 2L2

Type of Meeting: Closed.

Contact Person: Jonathan Friedlaender, Program Director Physical Anthropology. National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7804 room 320.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Physical Anthropology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6821 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Date and Time April 28–April 30, 1993, 9 a.m. to 5 p.m.

Place: Room 540, National Science Foundation, 1800 G St. NW., Washington, DC 2055.

Type of Meeting: Part-Open.

Contact Person: Fred Stollnitz, Program Director for Animal Behavior, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7949.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: April 30, 1993; 9:30 a.m.–12 noon. To discuss research trends and opportunities in Animal Behavior. Closed session: April 28–29, 1993; 9 a.m. to 5 p.m. and April 30, 1 p.m.–5 p.m. To review and evaluate Animal Behavior proposals as part of the selection process for awards.

Date and Time: April 12–April 14, 1993; 9 a.m. to 5 p.m

Place: River Inn Hotel, 924 Twenty-Fifth St., Washington, DC 20037.

Type of Meeting: Part—Open.

Contact Person: Vince Gutschick, Program Director for Functional/Physiology Ecology, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7975.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: April 13, 1993 2 p.m.–3 p.m. To discuss research trends and opportunities in Functional/Physiological Ecology, Closed session: April 12–14, 1993; 9 a.m. to 5 p.m. and April 13, 9 a.m.–12 noon; 3 p.m.–5 p.m. To review and evaluate Functional/Physiological Ecology proposals as part of the selection process for awards.

Date and Time: May 3–4, 1993, 9 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G St. NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Barbara Zain, Program Director for Animal Systems Physiology, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone (202) 357–7975.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session: May 3–4, 1993; 9 a.m. to 5 p.m. To review and evaluate Animal Systems Physiology proposals as part of the selection process for awards.

Date and Time: May 3–4, 1993, 9 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Elvira Doman, Program Director for Endocrinology, Division of Integrative Biology and Neuroscience, room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7975.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed sessions: May 3–4, 1993; 9 a.m. to 5 p.m. To review and evaluate Endocrinology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6829 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Social and Economic Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 15–16, 1993, 9 a.m. to 5:30 p.m.

Place: Room 543, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Bonney H. Sheahan, Program Manager, Cross-Directorate Activities, Division of Social, Behavioral and Economic Research, room 336, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7966.

Purpose of Meeting: To provide advice and recommendations concerning nominations submitted to NSF for special awards.

Agenda: To review and evaluate NYI nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6834 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Sociology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 15–16, 1993, 8:30 a.m. to 5 p.m.

Place: Room 523, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person/s: Dr. William Sims Bainbridge and/or Dr. Martin Whyte, Program Directors, Division of Social, Behavioral and Economic Research, room 336, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7802.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6832 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

Division of Environmental Biology; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Systematic Biology.

Dates and Times: April 18–21, 1993 8 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Contact Person: Dr. Rodney Honeycutt, rm 215, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9728.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Population Biology.

Dates and Times: April 27–30, 1993 8 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Contact Person: Dr. Conrad A. Istock, rm 215, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9728.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for

research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act

Dated: March 22, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–6816 Filed 3–24–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* 10 CFR 50.65—Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants.
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* Collection is required on a continuing basis as the information becomes available.
5. *Who will be required or asked to report:* No reporting to the NRC is required. Holders of a power plant operating license under 10 CFR 50.21(b) or 50.22 must maintain certain records or data relating to maintenance.
6. *An estimate of the total number of responses:* No responses to the NRC are required or expected. 110 nuclear power plants will be required to maintain certain records or data.
7. *An estimate of the number of hours needed annually to complete the requirement or request:* This proposed change to § 50.65 is expected to result in a savings to the licensees of approximately 150 staff hours per plant.
8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.
9. *Abstract:* The Commission is proposing to amend its regulations in 10 CFR 50.65 to change the frequency for commercial nuclear power plant licensees to evaluate the effectiveness of maintenance activities for safety significant plant equipment in order to minimize the likelihood of failure and events caused by the lack of effective maintenance. The annual evaluation requirement currently in 10 CFR 50.65 is being amended from annually to once per refueling cycle but not to exceed 24 months because the Commission believes that the quantity and quality of data obtained during refueling outages would be substantially greater than that available on an annual schedule and would provide a more meaningful basis for the recognition and interpretation of trends.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street (lower level) NW., Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0011), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 17th day of March 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–6892 Filed 3–24–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published February 24, 1993 (58 FR 11258). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Planning and Procedures, April 14, 1993, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Thermal Hydraulic Phenomena, April 30, 1993, Bethesda, MD. The Subcommittee will begin its review of the Westinghouse analytical program used in support of the AP600 design certification test program.

Probabilistic Risk Assessment, May 11, 1993, Bethesda, MD. The Subcommittee will discuss the report of the PRA Working Group that summarizes activities of this Group and provides guidance for the staff regarding the application of PRA.

Joint Thermal Hydraulic Phenomena/ Core Performance, May 12, 1993, Bethesda, MD. The Subcommittees will continue their review of the issues pertaining to BWR core power stability.

Planning and Procedures, May 12, 1993, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates

nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Thermal Hydraulic Phenomena, May 26–27, 1993 (tentative), Oregon State University, Corvallis, OR. The Subcommittee will continue its review of the Westinghouse and NRC integal systems and separate effects test programs supporting the AP600 design certification effort.

ACRS Full Committee Meetings

396th ACRS Meeting, April 15–17, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Proposed NRC Staff Plan for Comparing Safety Goals with Regulations (Tentative)*—Review and comment on the NRC staff plan for using the Safety Goal Policy to judge the effectiveness of the NRC regulations. Representatives of the NRC staff and industry will participate.

B. *The SALP Program*—Review and comment on the overall SALP process and the changes made or proposed since the Regulatory Impact Survey that was conducted in 1989. Representatives of the industry and NRC staff will participate.

C. *Commission Paper on Safety Goals/Large Release*—Review and comment on a revised Commission paper on the definition of a large release within the context of the implementation of the Safety Goal Policy. Representatives of the NRC staff will participate.

D. *Maintenance Guidance Documents*—Review and comment on the guidance documents for Implementation of the Maintenance Rule. Representatives of the NRC staff and industry will participate.

E. *Current License Renewal Issues*—Discuss and comment on how the Maintenance Rule might be used as a means to address the activities required of licensees by the License Renewal Rule. Representatives of the industry and NRC staff will participate.

F. *Proposed Final Commission Paper on Resolved SECY–90–016 Follow-on Issues*—Review and comment on the status of the NRC staff's work on resolution of SECY–90–016 follow-on issues. Representatives of the NRC staff will participate.

G. *Regulatory Guide for Implementation of Revised 10 CFR Part 20*—Discuss and comment on the proposed final regulatory guide, DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants." Representatives of the NRC staff will participate, as appropriate.

H. *Prioritization of Generic Issue 152, "Design Basis for Valves that Might be Subjected to Significant Blowdown Loads"*—Discuss proposed ACRS report on the proposed priority ranking of this generic issue. Representatives of the NRC staff will participate, as appropriate.

I. *Organizational Factors Research*—Discuss proposed ACRS report on the Organizational Factors Research Program. Representatives of the NRC staff and industry will participate, as appropriate.

J. *Effects of Hurricane Andrew on the Turkey Point Plant*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding the effects of Hurricane Andrew on the Turkey Point Nuclear Plant. Representatives of the industry will participate, as appropriate.

L. *Meeting with the NRC Commissioners (Tentative)*—Meet with the NRC Commissioners to discuss items of mutual interest.

M. *Meeting with the Director of the Office of Policy Planning (Tentative)*—Meet with the Director of the Office of Policy Planning to discuss matters of mutual interest.

N. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee.

O. *Resolution of ACRS Recommendations*—Discuss replies from the NRC Executive Director for Operations regarding the NRC staff reaction to recent ACRS comments and recommendations.

P. *ACRS Subcommittee Activities*—Hear reports on and hold discussions of the status of ACRS subcommittee assignments, including activities of the NRC Region II Office, Severe Accident issues for the GE ABWR, ABB–CE System 80+ control room mockup, and procedures for the conduct of ACRS business. Representatives of the NRC staff will participate, as appropriate.

* Q. *Appointment of ACRS Members*—Discuss qualifications of candidates proposed for appointment as ACRS members. Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

R. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

397th ACRS Meeting, May 13–15, 1993, Bethesda, MD. Agenda to be announced.

398th ACRS Meeting, June 10–12, 1993, Bethesda, MD. Agenda to be announced.

* Closed.

ACNW Full Committee and Working Group Meetings

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, March 26, 1993, Bethesda, MD. The Working Group/Subcommittee will review the following proposed final regulatory guides related to the implementation of the revised 10 CFR Part 20: (1) DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," (2) DG–8009, "Acceptable Concepts, Models, Equations, and Assumptions for a Bioassay Program," and (3) DG–8013, "ALARA Levels for Effluents from Materials Facilities."

53rd ACNW Meeting, previously announced for April 28–29, 1993, is postponed to May 19–20, 1993, Bethesda, MD. Agenda to be announced.

54th ACNW Meeting is now scheduled for July 21–22, 1993, Bethesda, MD. Agenda to be announced.

Dated: March 19, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–6764 Filed 3–24–93; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or

proposed to be issued from February 20, 1993, through March 5, 1993. The last biweekly notice was published on March 3, 1993 (58 FR 12256).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 26, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: August 21, 1991, as supplemented January 25, 1993

Description of amendment requests: The proposed request supplements the previous amendment request which was published in the Federal Register on November 13, 1991 (56 FR 57689), as a result of NRC inquiries regarding the Train A load and full load rejection testing. The proposed supplemental amendment would revise the kW value to be rejected and the load designation for the largest single load shed from diesel generator Train A in Technical Specification (TS) Surveillance Requirement 4.8.1.1. In addition, the supplemental amendment would incorporate diesel generator full load rejection surveillance testing and recovery surveillance testing into the TS surveillance requirement to conform with Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants, Revision 1, August, 1977."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The previous proposed amendment request provided details regarding diesel generator loading. This information remains valid for the purposes of this supplemental amendment request as well. The non-safety normal water chiller load is already accounted for in the PVNGS diesel load calculation 13-EC-DG-200, and therefore, during a postulated accident condition, the kW margin on the diesel remains 509 kW as discussed in the previous submittal (i.e., the postulated accident load on the diesel remains at 4991 kW, significantly below the rated load (5500kW) of the diesel).

The full load rejection test and recovery test do not change the bases or assumptions contained in the safety analysis for the diesel generator system. This additional periodic testing is intended to ensure the diesel generator system will meet its availability requirements.

As such, this supplemental amendment request will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed supplemental amendment request will not impact (1) the capability of the diesel generator to supply power as required, and (2) the load rejection capability of the diesel generator to reject the single largest load while maintaining voltage and frequency as required. It should be emphasized that previous diesel generator surveillance tests 73ST-XDG01 (where X designates Unit 1, 2, or 3), Class 1E Diesel Generator and Integrated Safeguards Surveillance Test-Train A, have resulted in successful load sheds in excess of the load proposed in this proposed supplemental amendment request.

* * * * *

Thus, no new failure modes will be introduced since the diesel generators have shed more than the proposed 842 kW in previous tests.

The full load rejection test and recovery test do not modify the design or operation of plant equipment or the diesel generators. This testing was initially in the PVNGS Unit 1 Technical Specifications and was performed during preoperational testing. As such, no new or different failure modes will be introduced by this testing.

Therefore, the proposed supplemental amendment request will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

While this supplemental amendment request proposes an increase in the Technical Specification kW value to be rejected for Train A, it should be noted that the refinements within revision 6 to calculation 13-EC-DG-200 (approved April 1991), which warranted the initial amendment request, have resulted in a net increase of 147 kW to the margin for Train A diesel shown in the UFSAR.

The proposed amendment provides for additional surveillance testing to verify emergency diesel generator operation during load rejection. This surveillance testing, performed at 18-month intervals, does not involve a change to safety limits, setpoints, or design margins.

Based on the statements above, the proposed supplemental amendment request does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 8, 1992Description of amendments request: The proposed amendments would revise the neutron monitoring instrumentation surveillance requirements associated with existing footnote (d) to Technical Specification Tables 4.3.1-1 and 4.3.4-1 to clarify that when changing from Operational Condition 1 to Operational Condition 2 the performance of the required surveillance within 12 hours is not required if it was performed within the previous 7 days. In addition, a new footnote (i) replacing footnote (d) on the APRM upscale (fixed) trip function

channel functional test frequency would be incorporated into Table 4.3.4-1 to clarify that when changing from Operational Condition 1 to Operational Condition 2 the required surveillance shall be performed within 12 hours unless the surveillance has been performed within the previous 92 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the obability or consequences of an accident previously evaluated.

The SRMs [Source Range Monitors], IRMs [Intermediate Range Monitors], and APRMs [Average Power Range Monitors] monitor the core neutron flux level and, in some cases, initiate reactor trips to protect against increases in reactor power which could potentially cause fuel damage. The proposed change does not impact the function or the trip setpoints of the neutron monitoring instrumentation. As such, the accidents evaluated in Chapter 15 of the Updated Final Analysis Report (UFSAR) are not affected by the proposed changes; therefore, this amendment request does not involve a significant increase in the probability of an accident previously evaluated.

The proposed amendments make no modifications to neutron monitoring instrumentation. In addition, the function of this instrumentation is not altered; and the trip setpoint limits for this instrumentation remain unchanged. Incorporating the additional information into footnote (d) of Tables 4.3.1-1 and 4.3.4-1 and footnote (i) of Table 4.3.4-1 will clarify the intent of the existing surveillance requirements for both the reactor protection system instrumentation and control rod withdrawal block instrumentation; however, the proposed amendments will not change the current surveillance frequencies.

As stated previously [in Enclosure 1 to the December 8, 1992, letter], the neutron monitoring system surveillance requirements are divided in two parts: the reactor protection system surveillance requirements and the control rod withdrawal block instrumentation surveillance requirements. The reactor protection system initiates a scram to preserve the cladding integrity, preserve the reactor coolant system integrity, minimize the energy which must be adsorbed following a loss-of-coolant accident, and to prevent inadvertent criticality. This amendment request would not affect the consequences associated with these accidents as discussed in Chapter 15 of the UFSAR since the surveillance requirements are not being changed; and thus, the reactor protection system scram functions are not impacted.

The control rod withdrawal block instrumentation provides the appropriate rod block signals when an out of sequence rod is selected for withdrawal when within the preset power level of the rod worth minimizer. It should be noted that this instrumentation is a backup to procedural controls. The surveillance requirements ensure that the required control rod witrawal block instrumentation channels are demonstrated operable at the frequencies shown in Table 4.3.4-1. However, since this amendment request does not change the surveillance requirements, the control rod withdrawal block instrumentation functions are not impacted. As such, the analyses and consequences of the accidents associated with control rod withdrawal errors, evaluated in Chapter 15.4 of the UFSAR (Reactivity and Power Distribution Anomalies), are not affected.

Therefore, the proposed amendments do not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The instrumentation associated with this change, as discussed above, is provided to monitor the core neutron flux. The clarifications proposed for the surveillances on this instrumentation will not modify any safety-related equipment or safety functions and will not alter plant operation. Since the subject instrumentation only monitors reactor parameters and cannot initiate an accident, and this function is not being altered, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Neutron monitoring functions, system surveillance frequencies, and instrumentation setpoints associated with this amendment request are not being changed. The proposed amendments seek to clarify the original intent of footnote (d) to Tables 4.3.1-1 and 4.3.4-1. The intent of this footnote was to allow the surveillance tests to be performed within 12 hours after entering Operational Condition 2 from Operational Condition 1 to ensure operability of the instrumentation in Operational Condition 2 after the unit had been in Operational Condition 1 for a long period of time. The neutron monitoring instrumentation will continue to perform its intended function in the same manner as it currently does. Therefore, the proposed amendments do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Jocelyn A. Mitchell, Acting Director

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: January 19, 1993

Description of amendment request: The proposed amendment would change the submittal frequency (from semiannual to annual) for the formerly titled "Semiannual Radioactive Effluent Release Report." The proposed change eliminates inconsistencies between the present Perry Nuclear Power Plant Technical Specifications and the recently revised 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is designed to conform the PNPP Unit 1 Technical Specifications to changes in the NRC regulations (in this case 10 CFR 50.36a). The proposed change results in no changes to plant systems. The proposed change has no effect on accident conditions or assumptions. The proposed change does not affect possible initiating events for accidents previously evaluated, or any system functional requirements. As described within the discussion of the final rule, the eight proposed actions (one of which involves the frequency of radiological effluent reports) ... "will not reduce the protection of the public health and safety or the common defense and security." Hence, the proposed change is purely administrative in that it is designed to remove inconsistencies between PNPP Unit 1 Technical Specifications and 10 CFR 50.36a and does not affect plant operation in any way. Therefore, the proposed change to the subject Specifications cannot increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed change is administrative in nature and does not increase the possibility of any new or different kind of accident. The proposed change does not create the possibility of a new or different kind of accident since it does not affect the reactor coolant pressure boundary or any other plant systems or structures nor does it affect any system functional requirements or operability requirements and hence could not initiate any new or different kind of accident. Consequently, no new failure modes are introduced as a result of the proposed change.

3. The proposed change does not result in a significant reduction in the margin of safety.

The change does not involve a signicant reduction in the margin of safety because it is administrative in nature, and does not affect any USAR design bases, accident assumptions, or Technical Specification Bases. Therefore, the proposed change does not reduce the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: December 22, 1992

Description of amendment request: The proposed amendment would relocate the Fire Protection Technical Specifications requirements to an owner controlled document and reword the fire protection license condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will not result in any hardware changes. The fire protection equipment and controls are not assumed to be initiators of analyzed events. The affected fire protection equipment and controls are assumed in the mitigation of the effects of a postulated fire. The removal of the Fire Protection Technical Specifications and the addition of a control process does not degrade the requirement to maintain an adequate level of fire protection. The Fire Protection Technical Specifications will be relocated to the Fire Protection Program and controlled by the proposed fire protection license condition and 10 CFR 50.59. These control requirements ensure the level of fire protection will be maintained consistent with that currently existing. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change, which involves relocation of Fire Protection Technical Specifications and the addition of a control process, does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different requirements and adequate control of information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. The proposed change is administrative in nature and ensures the current level of fire protection is maintained. The relocated fire protection requirements will continue to be required to be met. Any changes to these requirements will be evaluated separately in accordance with 10 CFR 50.59 and the proposed license condition. Additionally, the 10 CFR 50.59 process used to control changes to the relocated fire protection Technical Specifications is more stringent in that more conservative questions than those asked by the 10 CFR 50.92 process must be addressed. Therefore this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 25, 1992, as supplemented on February 5, 1993.

Description of amendment request: This amendment request is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** on July 8, 1992, (57 FR 30242), which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Radiation Monitor R-47, Component Cooling Loop
(2) Radiation Monitors R-41 and R-42, Containment Atmosphere
(3) Radiation Monitors R-48 and R-54, Liquid Radwaste Effluent
(4) Radiation Monitor R-49, Steam Generator Blowdown
(5) Radiation Monitor R-52, Steam Generator Blowdown Purification Cooling Water
(6) Radiation Monitor R-51, Steam Generator Blowdown after Purification
(7) Radiation Monitor R-59, Condensate Return to House Boilers
(8) Radiation Monitors R-55A, B, C and D, Steam Generator Sampling
(9) Radiation Monitors R-46 and R-53, Service Water from Containment Fan Coolers
(10) Auxiliary Feedwater System Initiating Logic
(11) Radiation Monitors R-39 and R-40, Service Water from Component Cooling Heat Exchangers
(12) Main Steam Safety Valves Setpoints
(13) Radiation Monitor R-50, Waste Gas Holdup System Noble Gas
(14) Area Radiation Monitors
(15) Toxic Gas Detection System
(16) Main Steam Line Radiation Monitors

The changes requested by the licensee are related to a 24-month fuel cycle and are in accordance with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Radiation Monitor R-47, Component Cooling Loop

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The primary function of R-47 is to monitor the component cooling loop to indicate a breach of the primary system or the residual heat removal loop if it were in operation. If radioactivity was detected in the component cooling loop of sufficient magnitude, an interlock would cause valve closure in the component cooling surge tank. Although drift of this setpoint is of some concern, failure of this valve to close would not result in releases in excess of 10 CFR [Part] 20, as stated in section 4 of the FSAR [Final Safety Analysis Report]. Thus, even though excessive drift would be detected by the monthly channel test, total failure of the monitor would not significantly increase the probability or consequence of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The current setpoint is established sufficiently above background to avoid alarms in non-alarm situations. Drift is not a concern as even with total failure of the monitor to cause valve closure would not result in releases in excess of 10 CFR [Part] 20 limits.

3. There has been no reduction in the margin of safety.

Total loss of function of the monitor has been evaluated and found to have a relative[ly] insignificant impact upon safety.

(2) Radiation Monitors R-41 and R-42, Containment Atmosphere

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

These monitors do not reflect setpoints which are critical to safety. The setpoint is several decades below the allowed instantaneous release rate. This large margin offsets the lack of historical data and would also accommodate gross drift. However, instrument malfunction would be detected by daily checks and monthly tests which would detect abnormal behavior during an extended operating cycle in advance of any operating limit being exceeded. Thus it is concluded that no significant increase in the probability of an accident or consequences would result from an extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The large margin between setpoint and release limit would necessitate gross drift if the release limit were to be exceeded. Abnormal behavior would be detected by daily and monthly checks in an extended operating cycle.

3. There has been no reduction in the margin of safety.

The device is expected to be a reliable device and the limited historical data supports this expectation. Due to monthly checks which would detect gross drift prior to exceedance of release limits, increasing the time interval from 18 months to 24 months would have no significant impact on safety.

(3) Radiation Monitors R-48 and R-54, Liquid Radwaste Effluent

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

These monitors provide a backup function to the grab sample and radiochemical analysis that must be performed prior to discharge of a tank's inventory to the environment. The monitors would only provide a safety function if a major violation of plant procedures occurred. Even then setpoints are established very conservatively with respect to discharge limits such that excessive drift would have to occur to even approach the discharge limit. Accordingly, extending the calibration interval by several months would have minimal impact upon the probability of discharging a tank whose radioactivity content exceeded the discharge limit.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The primary means of determining whether a tank's inventory is acceptable for discharge is by radiochemical analysis. These monitors provide a backup to the radiochemical analysis.

3. There has been no reduction in the margin of safety.

The quarterly functional tests and source check at the time of discharge assure there will be a minimal impact upon safety if the operating cycle were extended by several months.

(4) Radiation Monitor R-49, Steam Generator Blowdown

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Although, there is limited past data for this instrument, there were no unacceptable test results and the monitor is expected to be reliable. The monitor provides automatic isolation of the steam generator blowdown valves in the event of a steam generator tube leak of sufficient magnitude. However, for small leaks, the primary means of detection is the condenser off-gas radiation monitor. For larger tube leaks ranging to a tube rupture, other plant parameters would respond such as pressurizer level which would result in an overall containment isolation signal.

R-49 has a setpoint adjusted for the anticipated radioactivity level in the discharge which is considerably less than any limit. This potential drift could be accommodated before any limit would be exceeded. This drift is more than the device has exhibited to date. Malfunction of the instrument would be detected by the daily, monthly or quarterly tests. In the extreme, total failure of the monitor could be tolerated due to the alternate means of isolating blowdown discussed above.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Based upon limited past test data, and its inherent design features, R-49 has a demonstrated reliability. However, even if excessive drift did develop or the device were to totally fail, alternate means exist to achieve the discharge valve closure caused by R-49. Accordingly, the possibility of creating a new or different kind of accident has not been created.

3. There has been no reduction in the margin of safety.

R-49 is expected to be a reliable device based upon a limited past test data. This fact, together with alternate means of achieving the function provided by R-49, results in minimal impact upon safety by extending the operating cycle several months.

(5) Radiation Monitor R-52, Steam Generator Blowdown Purification Cooling - Water

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Although there is limited data to support reliability of this monitor, it is expected to be a reliable device. In addition, in its application, continued operability is important relative to the drift characteristics of the instrument. As with other monitors of this type its setpoint is established sufficiently low so that a larger amount of drift can be accommodated. Should drift of this magnitude occur, the monthly channel test would detect the abnormal behavior permitting corrective action. The monthly test minimizes the risk.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The monthly channel test which would detect abnormal drift characteristics or monitor failure offsets the limited amount of past test data and provides assurance that a new or different kind of accident will not be created.

3. There has been no reduction in the margin of safety.

Due to the monthly channel test, increasing the time interval from 18 months to 24 months would have no significant impact on safety.

(6) Radiation Monitor R-51, Steam Generator Blowdown after Purification

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Limited past surveillance data indicates that this monitor is a reliable device. In addition, its setpoint is set sufficiently below discharge limits such that excessive drift would have to occur before a discharge limit was exceeded. Malfunction of the instrument would be detected by the monthly or quarterly test and the instrument declared inoperable or the monitor would be repaired. Thus extension of the operating cycle by several months would not increase the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As the setpoint level would accommodate a large degree of drift which would most likely be detected by the monthly or quarterly test permitting corrective action prior to exceeding a discharge limit, a new or different kind of accident has not been created.

3. There has been no reduction in the margin of safety.

As the monthly and quarterly test provides a means of detecting abnormal operating characteristics permitting corrective action, there is minimal impact upon safety due to an operating cycle which has been extended by several months.

(7) Radiation Monitor R-59, Condensate Return to House Boilers

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

This monitor provides no control function for mitigation of an accident. Its function is to detect any activity in the house service boiler system resulting from a breach in the boundary where this system interfaces with a system which could be potentially radioactive. For this purpose, continued operability of the monitor is important rather than its accuracy as it responds to gross radioactivity. The monthly channel test would detect an inoperable instrument during an operating cycle that is extended by several months. Thus, there is virtually no impact upon the probability or consequences of an accident due to an extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Extending the surveillance interval will result in an extended operating cycle. Since a monthly channel test is conducted, a monitor which is behaving abnormally would be detected during the extended cycle permitting corrective action. Continued operability is more important to safety than the monitor's accuracy. Thus, the possibility of a new or different kind of accident has not been created.

3. There has been no reduction in the margin of safety.

As the monthly channel test provides a means of frequently monitoring the instrument's operability, increasing the time interval from 18 months to 24 months would have no significant impact on safety.

(8) Radiation Monitors R-55A, B, C, and D, Steam Generator Sampling

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

For small tube leaks, the condenser off-gas monitor is utilized as the primary means of leak detection. These monitors provide a back up means of trending activity on the secondary side of the steam generator and do not perform a safety function. Isolation of steam generator blowdown is achieved by other radiation monitors. Thus, whether the monitors did or did not continue to function over an extended operating cycle, there would be virtually no impact on the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

These monitors are relatively new and there is limited data to support their projected reliability. However, these monitors provide no direct safety function. In addition, a monthly channel test is conducted which would detect abnormal behavior permitting corrective action in an operating cycle which has been extended by several months.

3. There has been no reduction in the margin of safety.

As these monitors perform no direct safety function their continued operation for an operating cycle extended several months would have minimal impact upon the margin of safety.

(9) Radiation Monitors R-46 and R-53, Service Water from Containment Fan Coolers

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

R-46 and R-53 are redundant monitors. Furthermore, no control function is derived from these monitors for the purpose of mitigating an accident. From the viewpoint of safety, detection of a containment breach is of prime importance and continued monitor operability, rather than maintaining a specific setpoint, is the key monitoring task. The setpoints are set sufficiently high (greater than background) to preclude the generation of false alarms.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Continued operability of the monitors is critical to the detection of a containment boundary breach permitting operator action to isolate the breach. This requirement is met by the provision of two monitors rather than maintaining a specific setpoint.

3. There has been no reduction in the margin of safety.

The margin of safety is maintained by the provision of two monitors. Gross drift of a setpoint is not critical from the viewpoint of safety. Drift could be experienced by the scintillator and/or photomultiplier; the remainder of the channel is digital and not subject to drift. However, during normal operation radioactivity is not present in the service water system and therefore drift is not anticipated.

(10) Auxiliary Feedwater [AFW] System Initiating Logic

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The test results over the last four refuelings were good with only one failure. This failure would not have impaired the ability of the auxiliary feedwater system to perform its intended safety function. The auxiliary feedwater system is redundant and diverse. The failure in the turbine driven pump did not impact the motor driven pumps.

Based on the historical test data it is concluded that no significant increase in the probability or accident consequence would be incurred by extending the operating cycle due to an increased surveillance interval.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The failure noted from the past test data appears random in nature and would not have defeated the redundancy in design that exists in the AFW system. The AFW system would have been capable of performing its intended safety function and therefore a new or different kind of accident would not have been created.

3. There has been no reduction in the margin of safety.

Past historical data demonstrates that the AFW systems would perform their safety function for an extended operating cycle should the surveillance period be extended by several months.

(11) Radiation Monitors R-39 and R-40, Service Water from Component Cooling Heat Exhangers

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

R-39 and R-40 monitor service water to determine whether radioactivity has entered this system. Both monitors are used for gross indication of radioactivity. During normal operation the primary source of radioactivity would be the primary system. Leakage would initially be into the component cooling water system where it would be initially detected by a separate monitor (R-47).

There is limited historical data for these monitors. However, the data which is available indicates good past performance.

The setpoints for these devices are not critical to any safety analyses and are set at high levels to preclude false alarms. Drift could be experienced by the scintillator and/or photomultiplier; the remainder of the channel is digital. Due to the negligible level of radiation seen by this monitor the amount of degradation over time is minimal.

Under these circumstances there would be no significant increase in the probability or consequences of an accident should the operability cycle be extended several months due to an extended surveillance cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

No accident analysis takes credit for these monitors. In addition, during normal plant operation leakage into the component cooling water system must initially occur. This leakage would be detected by a third independent monitor.

3. There has been no reduction in the margin of safety.

Due to the alternate means of monitoring primary leakage as well as monthly checks of these monitors, increasing the time interval from 18 months to 24 months would have no significant impact on safety.

(12) Main Steam Safety Valves Setpoints

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

As stated above the accident analysis conservatively assumes that neither the condenser or the atmospheric steam dumps are operable. In reality other means of steam dumping in addition to the steam generator safeties will most likely be available. In addition, of the eighty tests reviewed only three "as found" settings were high. A high setting does not mean loss of function as they would have provided protection, but at a higher setpoint.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As all of the steam safety valves would have continued to perform their safety function over an 18 month (+25%) cycle as evidenced by past data, it is expected that they would also function in an acceptable manner if the operating cycle were extended by several months. Thus a new or different type of accident would not be created.

3. There has been no reduction in the margin of safety.

Past historical data provides confidence that all of the safeties would perform their intended safety function assuming an extended operating cycle. This fact, together with alternate means of heat rejection that will most likely remain available, minimize any potential reduction in the margin of safety.

(13) Radiation Monitor R-50, Waste Gas Holdup System Noble Gas

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Despite the lack of long term surveillance data, this instrument is subject to other more frequent periodic checks - daily, monthly and quarterly - when the unit is in service to determine operability.

Long term operability of the instrument is not critical to plant operation or safety. Should the instrument be inoperable, the radioactive content of the receiving gas decay tank must be determined daily by a grab sample.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The monitor is not critical to establishing the radioactive inventory of a tank. Alternate means exist and must be used on a daily basis should the monitor be inoperable. Under these circumstances extension of the operating cycle, and therefore the calibration interval, will not result in a new or different accident.

3. There has been no reduction in the margin of safety.

Since the monitor functions for the most part as an operator aid and alternate means must be utilized for determining tank radioactive inventory, increasing the time interval from 18 months to 24 months would have no significant impact on safety.

(14) Area Radiation Monitors

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The area radiation monitors (with the exception of the CCR [Central Control Room] ventilation monitors) are not relied upon for the purpose of mitigating an accident described in the FSAR. Furthermore, they are unrelated to accident initiation. Their function is to provide an early alarm to plant personnel in the event of a radiological release within the confines of the plant. Thus, maintaining an alarm within a given setpoint tolerance is not essential; continued operability is important. The CCR monitor is surveilled on a daily and monthly basis.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

With the exception of the CCR ventilation radiation monitors, the area radiation monitors are not relied upon to detect or mitigate an accident. The setpoint for the CCR monitor is based upon exposure of plant personnel in restricted areas per 10 CFR [Part] 20.

3. There has been no reduction in the margin of safety.

All of the radiation monitors are subjected to a monthly test. In addition the CCR monitor is subjected to a daily channel check. These more frequent surveillances would detect gross monitor malfunction for the proposed longer operating cycle.

(15) Toxic Gas Detection System

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

Due to the new monitoring system installation in May of 1992 there is no historical data base to project drift characteristics over a 24 month (+25%) operating cycle. However, unlike other monitors, the monthly functional tests would detect drift outside of calibration limits permitting readjustment. Therefore, extending the surveillance interval for calibration by several months has virtually no impact upon safety.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Since the monthly functional test provides the opportunity to maintain instrument calibration within specified limits, there is assurance that the toxic gas monitoring system would perform its safety function over an operating cycle extended by several months.

3. There has been no reduction in the margin of safety.

The monthly functional test provides a means of maintaining the toxic gas monitoring system within operating limits for an extended operating cycle.

(16) Main Steam Line Radiation Monitors

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The monitors are not relied upon within the Safety Analysis for mitigation of an accident. Their function is for post accident monitoring only. In this capacity, detection of gross activity levels is important and this is a function of continued monitor operability rather than accuracy. Past historical data indicates that the devices are reliable over an 18 to 22.5 month period. It is expected that their reliability will remain essentially the same for an extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The radiation monitors are not related to accident initiation or mitigation. They do provide a post accident monitoring capability to the operator. In this capacity they provide gross indication of activity. Accuracy is not important but continued function is important. Past historical data supports continued operation of the monitors for an operating cycle extended by several months.

3. There has been no reduction in the margin of safety.

As the monitors can be expected to remain operable over the extended operating cycle, the impact upon safety is minimal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: January 29, 1993

Description of amendment request: The proposed change will revise the Administrative Controls Section of the Technical Specifications (TS) to reflect a restructuring of the Nuclear Operations Department.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change does not affect the probability or consequences of an accident. The changes are to the administrative section of the Technical Specifications [TS] with the significant changes affecting the Plant Review Committee (PRC) composition and changing the method of independent review.

The PRC member titles will be removed from the TS to facilitate not requiring that a Technical Specification Change be submitted for NRC approval when position titles change. PRC member qualifications will still be consistent with those described for the Plant Staff and meet or exceed the minimum qualifications of ANSI N18.1-1971 for comparable positions as endorsed by the NRC in Standard Review Plan 13.4. The Plant Manager will be required to designate the PRC members, chairman and alternate chairman in Administrative Procedures. Appropriate authority is placed over PRC selection. Therefore, these changes will not affect the probability or consequences of an accident.

The review method of the organizational unit functioning as an independent review body (Nuclear Performance Assessment Department) [NPAD], continues to meet the requirements of ANSI N18.7-1976/ANS 3.2 but has changed in that a second level review

is no longer required. When necessary, the depth of review will be enhanced as appropriate either through the past practice of using consultants or by committee review. The independent review body staff tasked with review of the Technical Specification required functional areas will continue to meet or exceed the qualifications described in Section 4.7 of ANSI/ANS 3.1-1987 in accordance with the Standard Review Plan 13.4. This change is administrative and does not increase the probability or consequences of an accident.

Thus the changes proposed do not affect the operation or material condition of the facility. The accident analyses are not affected by this proposed change. Proper review and independent oversight by qualified personnel as recommended or required by the Standard Review Plan and Administrative Procedures will be in place. Therefore, the changes do not increase the probability or consequences of an accident.

2. Will the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The composition of the onsite PRC and the independent review group (NPAD) will be made up of qualified individuals providing functional reviews that are consistent with the Standard Review Plan and administrative program requirements. These changes are administrative in nature and do not affect the material condition, plant operation or accident analyses; and therefore, do not create the possibility of a different type of accident than previously evaluated.

3. Will the proposed change involve a significant reduction in the margin of safety?

The changes to PRC composition provide internal flexibility in changing the organization titles, but do not reduce the PRC function to provide review and advise the Plant Manager on matters of nuclear safety. The PRC will be composed of individuals from appropriate functional areas of Operations, Maintenance, Radiological Services and Engineering departments. They will be designated by the Plant Manager.

The NPAD will continue to provide an independent overview by qualified individuals, or by committee, of the functional areas delineated in the Technical Specifications. These changes are administrative in nature and do not affect the material condition or the operation of the plant, and neither the consequences of an accident nor the fission product boundaries have been affected. Therefore the margin of safety has not been reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: L. B. Marsh

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: December 21, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specifications 3.9.2 and Bases to provide for alternate source range monitors during refueling operations. The changes would allow the use of alternate monitors provided the required visual and audible indications are available. The changes would also allow installation of the reactor upper internals when only one monitor with continuous visual indication in the control room is available. In addition, a requirement to monitor the boron concentration in the reactor coolant system is added for conditions in which both source range monitors are inoperable or not operating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the no significant hazards consideration standards.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment would modify Specification 3.9.2 to permit the use of alternate monitor(s) in place of inoperable source range monitor(s). The alternate monitors will be connected to provide the required indications in the control room and or containment. The alternate monitors may be either an installed spare detector or a portable monitor with the accuracy and sensitivity required to adequately monitor changes in the core reactivity levels during refueling activities. The refueling sequence may be altered slightly by placing a source-bearing assembly near the alternate detector location to ensure an adequate count rate is maintained.

The alternate monitor(s) will provide neutron flux monitoring in place of primary source range monitors thus assuring core monitoring at a level consistent with the current technical specification requirements. Therefore, there is no loss of function or need for additional compensatory actions and the refueling evolutions can be continued while relying on the alternate monitors.

Two operable monitors are required during fuel movement and evolutions that could potentially cause positive reactivity changes. Fuel movement and positive reactivity additions can significantly affect the reactivity condition of the core, therefore, two monitors are required operable during these evolutions. Redundant detectors are required to ensure that two source range neutron flux monitors are available to detect changes in core reactivity. Removal of the upper internals could affect a positive reactivity addition if a control rod drive shaft became stuck in the upper internals and was subsequently lifted which would pull the control rod from a fuel assembly. Pulling a single control rod would not cause a significant reactivity transient due to the small amount of reactivity associated with each individual control rod and the large amount of negative reactivity provided in accordance with Specification 3.9.1 where the reactor coolant system boron concentration is maintained greater than 2000 ppm. However, to assure detection of a potential criticality event in the case of a multiple control rod lift, redundant source range monitors are required to be operable. One monitor will provide continuous visual and audible indication in the containment and control room while the redundant monitor will provide continuous visual indication in the control room. These changes provide those indications consistent with the current technical specification requirements where at least two source range monitors are operating and capable of providing the required control room indications. The function of the source range monitors is to provide direct neutron flux monitoring of the core to detect changes in reactivity which would result in a loss of the required shutdown margin.

One primary or alternate monitor would be required during installation of the upper internals. Installation of the upper internals acts to reflect neutrons back into the core which is recognized as a positive reactivity addition, however, this reactivity addition is sufficiently small when compared to the negative reactivity provided by the required shutdown margin that the effect is negligible and is accounted for in the shutdown margin calculations. The shutdown margin remains essentially unchanged and will be available to preclude a criticality event during this evolution. Inadvertent control rod withdrawal is not a concern during upper internal installation, therefore, one primary or alternate source range monitor can adequately monitor the core neutron flux during this evolution.

Action "b" has been added to address the condition where both source range monitors are inoperable or not operating. This additional action is consistent with the STS [Standard Technical Specifications] and eliminates the need for an exception to Specification 3.0.3.

Bases 3/4.9.2, Instrumentation, has been revised to include the changes to Specification 3.9.2 concerning alternate source range monitors and the number of monitors required operable during Mode 6. The alternate monitors may be either installed spare detectors or portable monitors with sufficient sensitivity to adequately monitor reactivity changes in the core during refueling operations. Core alterations or positive reactivity changes which could lead to core criticality require redundant source

range monitoring to ensure adequate indication is available for the control room operators to recognize a potential event and act to mitigate the consequences. Installing the upper internals does not involve movement of fuel or represent a significant positive reactivity addition to the core. Therefore, redundant source range monitoring is not required during this evolution.

The operability requirements of Specification 3.9.2 will continue to be met when using an alternate monitor in place of a source range neutron flux monitor. No changes are being incorporated that would act to increase the probability of a positive reactivity addition event, therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The function of the source range detectors is to provide direct neutron flux monitoring of the core to detect positive reactivity additions which would result in a loss of the required shutdown margin. The alternate monitors may be either an installed spare detector or a portable monitor with the accuracy and sensitivity required to adequately monitor changes in the core reactivity levels during refueling activities. The alternate monitors will be connected to provide the required indications in the control room and or containment. Therefore, there is no loss of function or need for additional compensatory actions and the refueling evolutions can be continued while relying on the alternate monitors. Redundant monitors are required operable during those evolutions which could lead to criticality. This is consistent with the current technical specification requirements since with one inoperable monitor the action statement requires suspension of all operations involving core alternations or positive reactivity changes. These changes are similar to changes incorporated by other plants and will not affect the reliability of the source range instrumentation to provide the required indications. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes will continue to ensure the required source range instrumentation functions are available during refueling operations. These changes will not reduce the reliability of the source range detectors to monitor the core reactivity condition and provide the appropriate control room and containment indications or affect the required shutdown margin. Plant operation will continue to be maintained within the shutdown margin requirements of Specification 3.9.1. The required visual and audible indications are still maintained in accordance with current technical specification requirements and the shutdown margin is unaffected, therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: February 19, 1993

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specifications and Bases to reduce the minimum required reactor coolant system (RCS) total flow rate by about 1.5 percent. This change is proposed in order to offset the increased RCS loop flow resistance which results from using mechanical plugs in selected tubes of the steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the no significant hazards consideration standards.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

An assessment of the NSSS [Nuclear Steam Supply System] primary components, including the reactor pressure vessel system, reactor coolant pump, steam generator, pressurizer, Control Rod Drive Mechanisms, and RCS piping, concluded that the integrity of the components will be unaffected by the reduction in thermal design flow. Also, evaluations of the Reactor Coolant System, Chemical and Volume Control System, Residual Heat Removal System, and Safety Injection System concluded that the reduced thermal design flow will not adversely impact the adequacy of the auxiliary systems and components. The reduction in thermal design flow does not affect any of the mechanisms postulated in the UFSAR [Updated Final Safety Analysis Report] to cause non-LOCA [loss of coolant accident] and SGTR [steam generator tube rupture] design basis events. Also, the LOCA and LOCA-related events maintain conformance with analysis acceptance criteria (10 CFR 50.46) regulations. Therefore, the probability and consequences of an accident previously analyzed in the UFSAR will not be increased. Since design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid and the consequences of the accidents considered in the Beaver Valley Unit 1 and 2 licensing basis remain unchanged. The proposed deletion of the RCS flow uncertainty value does not involve a significant increase in the probability or consequences of an accident previously evaluated. The RCS flow will continue to be monitored once per 12 hours in accordance with Surveillance Requirement 4.2.5.1. The required RCS total measured flow rate will be administratively controlled to ensure that the actual flow rate is above the value assumed in the safety analyses. No new performance requirements are being imposed on the RCS due to the deletion of flow uncertainty value. RCS flow is an assumed initial condition in the safety analyses and does not act as an initiator for any transient. The accident analyses are not affected by this proposed deletion and therefore no additional fuel failures or mass releases will result.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The reduced thermal design flow and the deletion of the flow measurement uncertainty value does not change the plant configuration in a way which introduces a new potential hazard to the plant. Since design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new failure mode has been created. Therefore, an accident which is different than any already evaluated in the UFSAR will not be created as a result of this change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety with respect to primary pressure boundary is provided, in part, by the safety factors included in the appropriate design codes. Since the components remain in compliance with the codes and standards in effect when Beaver Valley Unit 1 and 2 were originally licensed and the safety analyses acceptance criteria continue to be met, the margin of safety is not reduced by the reduction in thermal design flow.

The proposed deletion of the RCS flow uncertainty does not involve a significant reduction in the margin of safety. The current flow uncertainty value was derived from a plant specific evaluation which includes a review of calibration procedures and in-plant equipment. The flow uncertainty value will be administratively added to the proposed technical specification value. This will ensure that the actual RCS flow is at least

equal to the flow assumed in the accident analyses.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: January 22, 1993

Description of amendment request: These proposed license amendments have been developed utilizing the guidance of Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications" and NUREG 1301, "Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors." As such, the procedural details of the Radiological Effluent Technical Specifications (RETS) have been relocated to the Offsite Dose Calculation Manual (ODCM) or Process Control Program (PCP) as appropriate per the Administrative Controls section of the Technical Specifications. In addition, new programmatic controls for radioactive effluent and radiological environmental monitoring have been added to the Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The standards used to arrive at a determination that a request for amendment involves no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which state that no significant hazards considerations are involved if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

These Proposed License Amendments relocate the operational and surveillance requirements of the existing Technical Specifications to the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP) as appropriate. Programmatic controls have been added to the Administrative Controls section of the Technical Specifications to ensure existing regulatory requirements for RETS are met. No physical change is being made to the facility and all aspects of the safety analysis remain unchanged. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

These Proposed License Amendments are administrative in nature. No changes to operating limits or surveillance requirements have been made. No physical change is being made to the facility and all aspects of the safety analysis remain unchanged. The dose calculation methods which are being relocated by this change remain unchanged. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety

These Proposed License Amendments incorporate programmatic controls in the Administrative Controls section of the Technical Specifications that satisfy the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50. All technical content is preserved. Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety, and therefore does not involve any significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: August 1, 1991

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-72 by modifying the Appendix A Technical Specifications, removing the requirement for NRC staff preapproval of procedures associated with the disposal of accident generated water (AGW). The preapproval of procedures would be replaced with specified operating limits for the processing of the AGW that are consistent with current licensing documents. This is consistent with other technical specifications, in that system operating limits are specified in the Limiting Condition for Operation (LCO) section with a corresponding Action Statement and Surveillance Requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that this Technical Specification Change Request involves no significant hazards consideration as defined by the NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change defines system operating limits for the processing of AGW that are consistent with current licensing commitments. Processing of AGW in accordance with the limits specified in the proposed LCO [Limiting Condition for Operation] and surveillance requirements provides assurance that effluent discharges from the PWDS [Process Water Disposal System] will be well within regulatory limits. Therefore, this change does not increase the probability or occurance or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the PWDS will be as described in the Technical Evaluation Report

for PWDS, which has been reviewed and approved by the NRC. This proposal does not affect any of the accident scenarios or alter the method of operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The activity releases resulting from PWDS processing and discharge of BASE CASE WATER are a small fraction of the releases permissible in accordance with existing regulatory requirements. The PWDS shall be operated in a manner such that the PEIS [Programmatic Environmental Impact Statement] projections of environmental-impact are not exceeded. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The Commission has provided guidelines on the application of the three standards by listing specific examples in 45 FR 14870. The proposed amendment is considered to be in the same category as example (i) of amendments that are considered not likely to involve significant hazards consideration in that these changes are primarily administrative in nature to reflect current licensing commitments. Thus, operation of the facility in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Seymour H. Weiss

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: March 17, 1992, with Revision 1 dated June 18, 1992, and Revision 2 dated December 23, 1992.

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-72 by modifying the Appendix A and B Technical Specifications, relocating requirements related to radiological effluents to a new document called the Offsite Dose Calculation Manual (ODCM) which applies to both Three Mile Island Unit 1 (TMI-1) and TMI-2. The removal of these requirements from the Technical Specifications are in accordance with the guidance in NRC staff issued Generic Letter 89-01 dated January 31, 1989.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to evaluate a No Significant Hazards Consideration. 10 CFR 50.92 states that an amendment to a facility license involves No Significant Hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

The proposed change to relocate the radiological effluent monitoring requirements from the TMI-2 Recovery Technical Specifications to the ODCM has no impact on the safety of the evolutions occurring at TMI-2. This proposed change adheres to the guidance provided in Generic Letter 89-01 by implementing the programmatic controls in the Tech. Specs. and relocating the procedural details to the ODCM.

The proposed change to delete the requirements for quarterly dose assessment and semi-annual radioactive effluent release reporting in favor of an annual reporting is being accomplished in accordance with the provisions of 10 CFR 50.36a(a)(2) made effective October 1, 1992. These changes simplify the radiological effluent Tech. Specs. (RETS) and meet the regulatory requirements for radioactive effluents and radiological environmental monitoring.

Therefore, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The relocation of the RETS to the ODCM does not alter the requirements currently being followed by TMI-2.

Changing the reporting requirements from quarterly and semi-annually to annually simplifies the RETS, meets the regulatory requirements for radioactive effluent and radiological environmental monitoring, and is considered a line-item improvement of the Tech. Specs. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The relocation of the RETS to the ODCM does not alter the requirements currently being followed by TMI-2. Changing the reporting requirements from quarterly and semi-annually to annually simplifies the RETS, meets the regulatory requirements for radioactive effluent and radiological environmental monitoring, and is considered a line-item improvement of the Tech. Specs. Therefore, there is no possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. There is no impact on any margin of safety. The relocation of the RETS to the ODCM does not alter the requirements currently being followed by TMI-2. The administrative revision of the frequency of reporting has no impact on any margin of safety.

Based on the above analysis, it is concluded that the proposed changes involve no significant hazards consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the licensee analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Seymour H. Weiss

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 14, 1993

Description of amendment request: In order to support longer fuel cycle lengths and higher fuel burnups, more reactive cores are needed. However, the current refueling boron concentration minimum of 2500 ppm places a restriction on the design of the reactor core at beginning of core life. In order to support more reactive cores while maintaining the degree of subcriticality required by the technical specifications during refueling, the soluble boron concentration in the reactor coolant system (RCS) and the refueling canal needs to be increased. To accomplish this, the allowable boron concentration in the refueling water storage tank (RWST) needs to be changed. Also, the allowable boron concentration range in the safety injection (SI) accumulators should be adjusted to be consistent with

the proposed RWST boron concentration range. These increased boron concentrations require that the post-LOCA hot leg switchover time be reduced to prevent exceeding the maximum allowable boron concentration in the reactor vessel. The increased boron concentration required in the RCS during shutdown and refueling also requires an increase in the required minimum borated water volume contained in the boric acid storage system during shutdown.

The proposed change revises the minimum soluble boron concentration required in the RCS and refueling canal during refueling (Mode 6), specified in Technical Specification (TS) 3.9.1, from 2500 ppm to 2800 ppm. This change requires an increase in the RWST soluble boron concentration range specified in TS 3.1.2.5, 3.1.2.6, and 3.5.5, from a range of 2500 to 2700 ppm, to a range of 2800 to 3000 ppm. The required soluble boron concentration range specified in TS 3.5.1 for the SI accumulators would be revised from a range of 2400 to 2700 ppm, to a range of 2700 to 3000 ppm. The required minimum borated water volume contained in the boric acid storage system during shutdown specified in TS 3.1.2.5, would be increased from 2900 gallons to 3200 gallons. The associated TS Bases would also be revised to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed increase in boron concentrations increases the amount of boron delivered to the reactor core under accident conditions. This will decrease the reactivity of the core and will not increase the probability or consequences of an accident previously evaluated.

The reduction in the switchover time for the post-LOCA hot leg injection will ensure that the maximum allowable boric acid concentration will not be exceeded, thus maintaining the current margin to safety.

The proposed increase in the required volume of the Boric Acid Storage Tanks is to ensure that sufficient boric acid is available to borate the reactor coolant system and the water in the refueling canal such that the criticality limit during shutdown and refueling can be met for future cores.

The increase in the required minimum boron concentration in the refueling canal in Mode 6 does not modify or replace the K_{eff} reactivity limit. The design of each reload core is checked to ensure that the refueling criticality limit is met.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed increase in boron concentrations increases the amount of boron delivered to the reactor core under accident conditions. This increase in boron will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction in the switchover time for the post-LOCA hot leg injection will ensure that the maximum allowable boric acid concentration will not be exceeded. This reduction in switchover time will maintain the current margin to safety. Therefore, the increase in the boron concentration will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed increase in the required volume of the Boric Acid Storage Tanks during shutdown and refueling is to ensure the reactor coolant system can be adequtely borated during shutdown. This increase in volume does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the required minimum boron concentration in the refueling canal in Mode 6 does not modify or replace the K_{eff} reactivity limit. Therefore, the increase in the boron concentration will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed increase in boron concentrations increases the amount of boron delivered to the reactor core under accident conditions. This will decrease the reactivity of the core and will not cause a decrease in a margin of safety.

The reduction in the switchover time for the post-LOCA hot leg injection will ensure that the maximum allowable boric acid concentration will not be exceeded, thus maintaining the current margin of safety.

The proposed increase in the required volume of the Boric Acid Storge Tanks is to ensure that sufficient boric acid is available to borate the water in the reactor coolant system and the refueling canal such that the criticality limit during shutdown and refueling can be met for future cores. Also, the increase in the required minimum boron concentration in the refueling canal in Mode 6 does not modify or replace the K_{eff} reactivity limit. The design of each reload core is checked to ensure that the refueling criticality limit is met. The proposed changes do not involve a change to the refueling criticality limit and serve to maintain the current margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 13, 1993

Description of amendment request: The proposed amendment would revise the submittal frequency for the Radioactive Effluent Release Report from semiannually to annually, and would provide for the annual report to be submitted by June 30 of each year (Technical Specification 6.8.1.4). Other miscellaneous editorial revisions are proposed for consistency with the above-described changes (Technical Specifications 3.3.3.9, 3.3.3.10, 3.11.1.4, 3.12.1,3.12.2, 6.12, 6.13, and 6.14). Additionally, two footnotes to Technical Specification 6.8.1.4 would be removed. One footnote, applicable only to a multiple-unit station, does not apply to the Seabrook Station; the other footnote, which allows the dose calculations to be submitted in a supplement to the Radioactive Effluent Release Report 30 days later, is no longer required. The changes proposed would be consistent with 10 CFR 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely involve an administrative requirement for report submittal. The changes do not affect the

manner by which the facility is operated and do not change any facility design feature or equipment. Since there is no change to the facility or operating procedures, there is no affect upon the probability or consequences of any accident previously analyzed.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated, do not involve equipment or features which affect the operational characteristics of the facility, and do not introduce any new failure mode. The proposed amendment would merely change the frequency of report submittal to the NRC.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because they do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility. The proposed changes involve only an administrative reporting requirement which does not define any safety margin.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Grey, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 26, 1993

Description of amendment request: The proposed amendment would modify the operating license to remove authorization for reactor power operation and replace it with a possession-only license. The possession-only license would prohibit reactor power operations under all conditions. Issuance of the possession-only license would allow the staff to perform reviews of anticipated licensee requests to remove regulatory requirements associated with operating facilities, with the assurance that the Trojan Nuclear Plant is no longer permitted to operate. Each request for either an amendment to the license or an exemption from the regulations would be accompanied by a safety analysis and would be subject to a safety review by the staff. The staff's safety review of these licensee requests would be performed with the understanding that the facility is no longer permitted to operate and approval of the requests for relief would be predicated on the continued non-operating status of the facility.

As a holder of an operating license or a POL, the licensee may make changes, without prior NRC approval or notice, to structures systems or components under the provisions of 10 CFR 50.59 as long as these changes do not involve an unreviewed safety question or require a change to the technical specifications. Some of these changes could involve initial decommissioning activities that could disable structures, systems, or components that would be necessary for reactor power operation. The application for actual decommissioning of the Trojan Nuclear Plant will be submitted separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the three factor test of 10 CFR 50.92(c), implementation of the requested license amendment is analyzed using the following standards and found not to: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Conformance of the requested amendment to the standards for a determination of no significant hazards as defined in 10 CFR 50.92 is shown in the following:

1. The requested license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested amendment will remove on a permanent basis PGE's authorization to operate the Trojan Nuclear Plant as a nuclear electrical generating station. The requested amendment does not modify the present plant systems or administrative controls necessary to preserve and protect the integrity of the nuclear fuel on site at Trojan. The requested amendment will not increase the probability of occurrence of previously evaluated accidents. With the reactor permanently shutdown and defueled, a number of previously evaluated accidents are no longer credible and thus the probability of their occurrence is reduced. The requested amendment in no way increases the probability of occurrence of fuel handling accidents previously evaluated, and these analyses remain valid. These analyses address the consequences of an accident while fuel is in the spent fuel pool, in the reactor vessel, or in transit during core off-load.

The probability of and consequences from a fuel handling accident remain unchanged and are bounded by the current accident analyses. Therefore, the requested change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The historical information and information no longer considered relevant deleted from Section 2C and Enclosure 1 of the Facility Operating License are considered editorial changes and do not affect the manner in which systems or components are operated or maintained. These changes do not alter the intent of the Facility Operating License and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The requested license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Upon permanent shutdown and defueling under the requested amendment, PGE's authorization to resume power operation is removed on a permanent basis. Any accident associated with this requested change is bounded by current accident analyses. Existing analyses address potential accident scenarios from shutdown conditions through full power operation. There are no new accident scenarios or failure modes created by maintaining the reactor in the defueled condition. In the permanently shutdown, defueled condition with the fuel stored in the spent fuel pool, there are no new credible accident conditions that differ from those previously analyzed. Therefore, the requested change will not create the possibility of a new or different kind of accident.

The historical information and information no longer considered relevant deleted from Section 2C and Enclosure 1 of the Facility Operating License are considered editorial changes and do not affect the manner in which systems or components are operated or maintained. These editorial changes do not alter the intent of the Facility Operating License and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested license amendment does not involve a significant reduction in a margin of safety.

The requested amendment removes on a permanent basis PGE's authorization to operate the Trojan Nuclear Plant as a nuclear electrical generating station. Defueling the reactor and placing the fuel in the spent fuel pool does not adversely impact previously accepted margins of safety. Therefore, the requested change does not involve a significant reduction in a margin of safety.

The historical information and information no longer considered relevant deleted from Section 2C and Enclosure 1 of the Facility Operating License are considered editorial changes and do not affect the manner in which systems or components are operated or maintained. These editorial changes do not alter the intent of the Facility Operating License and, therefore, do not involve a significant reduction in a margin of safety.

On the basis of the preceding analysis, it is concluded that the amendment of Trojan Facility Operating License NPF-1 to a Possession Only License is acceptable and involves no significant hazards considerations as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Seymour H. Weiss

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 25, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TS) would remove the surveillance requirement for monitoring iodine in the drywell atmosphere by the Continuous Atmosphere Monitoring (CAM) system. The drywell CAM system is part of the reactor coolant system leakage detection system incorporating a three-channel combination monitor for counting gross particulate, iodine, and noble gas activities in the drywell atmosphere. The CAM system takes a continuous flow sample and passes it through a shielded assembly containing the detector unit before discharging back into the drywell. Measurements are taken and analyzed to determine if there is abnormal reactor coolant leakage into the drywell. The licensee concluded that monitoring iodine in the drywell atmosphere is not necessary to satisfy the criteria specified in NRC Regulatory Guide (RG) 1.45, "Reactor Coolant Pressure Boundary Leakage Detection Systems," dated May 1973. Specifically, the licensee has concluded that monitoring both particulate and gaseous radioactivity in the drywell atmosphere in conjunction with containment sump flow/level monitoring satisfies the reactor coolant pressure boundary leakage detection criteria established in RG 1.45. Therefore, the licensee proposes to delete the stated iodine analyzer from TS Table 4.6-2, "Minimum Test And Calibration Frequency For Drywell Continuous Atmosphere Radioactivity Monitoring System," and the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes remove[s] the surveillance requirement for monitoring iodine in the drywell atmosphere from the CAM system. These changes do not reduce the CAM system detection ability below regulatory criteria in determining containment atmospheric contamination from coolant leakage. The changes do not affect the ability of the CAM system in performing its intended function. The probability of a coolant leakage is not increased and the ability of plant personnel and equipment to detect and correct such a leakage is not affected. The proposed deletion of the iodine portion of the CAM system will not introduce any additional causes for generating reactor coolant leakage.

In addition, there is no credit taken in the existing accident analyses for the use of the CAM system in detecting and preventing the occurrence of a primary coolant boundary failure or for mitigating the effects of the failure. All existing accident analyses resulting in the release of primary coolant into the drywell/suppression chamber ignore the leak before break scenario and assumes boundary failure without CAM detection. Therefore, this proposed amendment does not alter the probability or consequences of any previously evaluated accident.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The deletion of an unnecessary instrumentation channel from the technical specification's surveillance requirements and bases will not create a new or different kind of accident. Any coolant leakage with entrained iodine would also include radioactive particulates and gases. Either of these two leakage components would be detected by the remaining CAM channels. The changes do not affect the ability of any system in performing its intended function. There are no equipment, system, or structural modifications associated with these changes. These changes, therefore, do not affect the plant accident analyses as documented in the FSAR or the NRC staff SER.

3. involve a significant reduction in a margin of safety.

The removal of an unnecessary instrument channel from the technical specification's surveillance requirements will not reduce the ability of the operators to detect and respond to a reactor coolant leakage. Monitoring iodine by the CAM system was a redundancy established by the Authority prior to finalization of reactor coolant leakage detection criteria by the NRC staff. Removing the iodine monitoring requirements will, therefore, not place FitzPatrick in a position of noncompliance. Operation of the CAM system without monitoring for iodine will not relax any controls or limitations and will still provide the same level of confidence in detecting a reactor coolant leakage.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 18, 1992

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications would revise the surveillance requirements for control rod/control rod drive (CRD) coupling integrity. Coupling verification is performed to ensure the control rod is connected to the CRD. Although the current surveillance requirements confirm coupling integrity following a refueling outage or control rod/CRD maintenance, it does not provide for determination of coupling integrity every time the control rod is fully withdrawn. The purpose of the proposed revision is to provide additional assurance of control rod/CRD coupling by requiring a coupling check every time a control rod is fully withdrawn. Technical Specification Surveillance Requirement 4.3.B.1 and the associated Bases would be revised to reflect the improved control rod/CRD coupling integrity surveillance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment

would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes increase the frequency but not methodology for testing control rod/CRD coupling integrity. The proposed changes involve no hardware changes, no changes to the operation of the CRD systems or method of coupling to the control rods. The proposed Technical Specification amendment does not alter the ability of the CRD system[s] in performing their intended function. Therefore, the changes have no effect on conditions that could affect the consequences of an accident. The increased testing for control rod/CRD coupling integrity will not result in an increased probability of an accident.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will increase testing frequency. They will not require modification of test processes or of any plant structures, systems, or components. The changes will not alter the CRD system function or operability. The changes will not affect any conditions that could result in a new or different type of accident.

3. involve a significant reduction in a margin of safety.

The proposed changes will not adversely affect the margin of safety. The changes provide an increased level of confidence in control rod/CRD coupling integrity and no reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 18, 1993

Description of amendment request: The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested a Technical Specifications (TS) amendment to incorporate the reactor protection system (RPS) changes listed below:

(1) The licensee proposed changing the frequency of reactor coolant loop temperature channel calibration (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the frequency of reactor coolant loop flow instrumentation calibration (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the frequency of 6.9 kV underfrequency relay calibration (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle. In addition, the licensee proposed increasing the minimum reactor coolant pump low frequency trip setting (specified in TS Section 2.3.1.B(6)(b)) from 55 Hz to 57.2 Hz.

(4) The licensee proposed changing the frequency of steam generator level instrumentation calibration (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(5) The licensee proposed changing the frequency of reactor trip and bypass breaker testing (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

These proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes extend the calibration intervals for the reactor coolant loop narrow range and RTD [resistance temperature detectors] temperature instrumentation, the reactor coolant loop flow instrumentation, the 6.9 kV underfrequency relays, and the steam generator level transmitters. Extension of the surveillance test intervals for the reactor trip and bypass breakers is also proposed. These changes are being made to accommodate a 24 month operating cycle. Additionally, a change to Technical Specification 2.3.1.B(6)(b) is proposed, increasing the minimum reactor coolant pump low frequency trip setting to 57.2 Hz. The proposed changes are consistent with NRC guidelines published in Generic Letter 91-04.

Extension of the calibration and surveillance test intervals in question were evaluated and the results documented in the Reactor Protection System (RPS) Surveillance Test Extensions report (Reference 5) [Reference 5 is the RPS Surveillance Test Extension report]. An RPS Instrument Drift Analysis (Reference 4) [Reference 4 is NYPA document No. IP3-RPC-00357, dated November 10, 1992, Instrument Drift Analysis of Reactor Protection System] was performed to evaluate actual past and projected future instrument drift. Safety system loop accuracy/setpoint calculations, which include any additional instrument uncertainties resulting from the proposed calibration interval extensions, show that sufficient margin exists between the analytical and field trip settings for the overpower (OP) delta-T, the overtemperature (OT) delta-T, the reactor coolant (RC) low flow, the 6.9 kV underfrequency, and the steam generator (SG) low-low level trip functions. Reference 5 documents that none of the proposed extensions of calibration and surveillance test intervals degrade performance of the RPS. Additionally, a comprehensive on-line surveillance program demonstrates the operability of the RPS instrumentation and readily detects potential instrument failures.

The proposed changes to the length of the calibration intervals for the reactor coolant loop narrow range and RTD instrumentation, the reactor coolant loop flow instrumentation, and the steam generator level transmitters do not involve hardware modifications or changes to existing safety system setpoints. The changes in the length of the surveillance intervals for the reactor trip and bypass breakers do not involve hardware modifications.

The proposed change in the length of the calibration interval for the 6.9 kV underfrequency relays involves a change to the currently specified minimum trip setting. The field trip setting is 57.5 Hz while the analytical setpoint is 55 Hz. Since current Technical Specification 2.3.1.B(6)(b) specifies a minimum field trip setting equal to the analytical limit, an increase to 57.2 Hz is proposed to ensure sufficient margin is maintained to allow for instrument inaccuracies. No change is being proposed to the field trip setting. The proposed change to the minimum setting specified in the Technical Specifications does not adversely affect RPS operability. The change constitutes an additional limitation.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes extend the calibration intervals for the reactor coolant loop narrow range and RTD temperature instrumentation, the reactor coolant loop flow

instrumentation, the 6.9 kV underfrequency relays, and the steam generator level transmitters. Extension of the surveillance test intervals for the reactor trip and bypass breakers is also proposed. These changes are being made to accommodate a 24 month operating cycle. Additionally, a change to Specification 2.3.1.B(6)(b) is proposed, increasing the minimum reactor coolant pump low frequency trip setting to 57.2 Hz. The proposed changes are consistent with NRC guidelines published in Generic Letter 91-04.

Extension of the calibration and surveillance test intervals in question were evaluated and the results documented in the RPS Surveillance Test Extensions report (Reference 5). An RPS Instrument Drift Analysis (Reference 4) was performed to evaluate actual past and projected future instrument drift. Safety system loop accuracy/setpoint calculations, which include any additional instrument uncertainties resulting from the proposed calibration interval extensions, show that sufficient margin exists between the analytical and field trip settings for the OP delta-T, the OT delta-T, the RC low flow, the 6.9 kV underfrequency, and the SG low-low level trip functions. Reference 5 documents that none of the proposed extensions of calibration and surveillance test intervals degrade performance of the RPS. Additionally, a comprehensive on-line surveillance program demonstrates the operability of the RPS instrumentation and readily detects potential instrument failures.

The proposed changes to the length of the calibration intervals for the reactor coolant loop narrow range and RTD instrumentation, the RC loop flow instrumentation, and the SG level transmitters do not involve hardware modifications or changes to existing safety system setpoints. The changes in the length of the surveillance intervals for the reactor trip and bypass breakers do not involve hardware modifications.

The proposed change in the length of the calibration interval for the 6.9 kV underfrequency relays involves a change to the currently specified minimum trip setting. The field trip setting is 57.5 Hz while the analytical setpoint is 55 Hz. Since current Technical Specification 2.3.1.B(6)(b) specifies a minimum field trip setting equal to the analytical limit, an increase to 57.2 Hz is proposed to ensure sufficient margin is maintained to allow for instrument inaccuracies. No change is being proposed to the field trip setting. The proposed change to the minimum setting specified in the Technical Specifications does not adversely affect RPS operability. The change constitutes an additional limitation.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes extend the calibration intervals for the reactor coolant loop narrow range and RTD temperature instrumentation, the reactor coolant loop flow instrumentation, the 6.9 kV underfrequency relays, and the steam generator level transmitters. Extension of the surveillance test interval for the reactor trip and bypass breakers is also proposed. These changes are being made to accommodate a 24 month operating cycle. Additionally, a change to Specification 2.3.1.B(6)(b) is proposed, increasing the minimum reactor coolant pump low frequency trip setting to 57.2 Hz. The proposed changes are consistent with NRC guidelines published in Generic Letter 91-04.

As required by Generic Letter 91-04, loop accuracy/setpoint calculations must show that sufficient margin exists between the analytical limit and the existing field trip setting in order to be consistent with the assumptions of the safety analysis. The calculations also verify whether technical specification setpoint limits provide sufficient margin over the analytical limit to allow for instrument inaccuracies.

The calculations show that sufficient margin exists between safety system analytical setpoint limits and the field trip settings for the OP delta-T, OT delta-T, RC low flow, 6.9 kV underfrequency, and SG low-low level trip functions even when accounting for and using the conservatively postulated 30 month drift values associated with the longer cycle. Additionally, the calculations show that no changes in safety system setpoints are required for the OP delta-T, OT delta-T, RC low flow, and steam generator low-low level trip functions. Therefore, the proposed changes to extend the calibration interval for the reactor coolant loop narrow range and RTD temperature instrumentation, the reactor coolant loop flow instrumentation, and the steam generator level transmitters do not involve significant reductions in margins of safety assumed in the safety analysis.

However, the calculations show that the currently specified minimum trip setting for the 6.9 kV underfrequency relays must be increased. The field trip setting is 57.5 Hz while the analytical setpoint is 55 Hz. Since current Technical Specification 2.3.1.B(6)(b) specifies a minimum field trip setting equal to the analytical limit, an increase to 57.2 Hz is proposed to ensure sufficient margin is maintained to allow for instrument inaccuracies. No change is being proposed to the field trip setting. The proposed change to the minimum setting specified in the Technical Specifications does not adversely affect RPS operability. The change ensures sufficient margin is maintained to account for instrument inaccuracies and constitutes an additional limitation. Therefore, the proposed change to the minimum specified trip setting ensures that the proposed change to the length of the calibration interval does not involve a significant reduction in the margin of safety assumed in the safety analysis.

The proposed changes to the surveillance test intervals for the reactor trip and bypass breakers do not affect safety system setpoints, and, therefore, do not involve significant reductions in margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 2, 1993

Description of amendment request: This amendment request would change Technical Specification (TS) Table 3.6-1, "Containment Isolation Valves", to add a note modifying the post-maintenance cycling test and verification of isolation time requirements in TS Section 3/4.6.3. The note applies to the main feedwater isolation valves and would allow a partial stroke test to satisfy the surveillance requirements of TS 3/4.6.3 after packing gland adjustments made up to the manufacturer recommended torque value (a type of maintenance) at power. A full-stroke cycling test and verification of isolation time requirements would be required the first time the Unit enters operational MODE 3 following the packing gland adjustment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Packing gland adjustment is not an accident initiator; therefore the probability or consequences of an accident previously evaluated are not increased. The request does not involve an exemption from testing, but rather proposes an alternate test to verify functional operability of the components. The proposed partial stroke test will ensure no stem binding and free movement of the valve and therefore assuring functional ability of the valve to close.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The partial stroke test will ensure that there is no stem binding and that the valve will move freely. The request does not introduce any design or physical configuration changes to the facility which could create new accident scenarios.

3. Does not involve a significant reduction in a margin of safety.

The redundancy in protection afforded by other valves in the feedwater piping loops (BF13 and BF22) assures that positive

isolation can be achieved. Additionally, PSE&G historical data from previous adjustment, supports the conclusion that adjusting the packing gland to the maximum recommended values will not exceed the required Technical Specification isolation times. Therefore the request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: December 23, 1992

Description of amendment request: The proposed amendment adds requirements for four new temperature switches in the Browns Ferry Nuclear Plant, Unit 2 Reactor Water Cleanup (RWCU) Heat Exchanger room. The new switches are required to mitigate postulated high energy line breaks in new RWCU piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

As a result of a design change to be performed for the RWCU [Reactor Water Cleanup] system, a HELB [high energy line break] analysis was performed for the reactor building which identified certain RWCU pipe breaks which could not be automatically detected and isolated in a reasonable time frame. To resolve this issue, qualified temperature detection loops are being added to the RWCU heat exchanger room. These new temperature detection loops consist of environmentally qualified RTDs [resistance thermal detectors] and IEEE Class 1E qualified ATUs [analog trip units] located to detect and isolate critical RWCU pipe breaks.

The safety function of the RTD/ATU temperature loops is to provide an isolation signal to close the RWCU suction line isolation valves (FCV-69-001 and FCV-69-002) and RWCU return line valve (FCV-69-012) on a high area temperature. This ensures RWCU pipe breaks are isolated. No other RWCU safety functions are affected by the change.

Components added by this change are qualified for the environment in which they will operate. This ensures that the system will perform its function in a post accident environment. No additional paths for the release of radiation or contamination are created. The failure modes of the RTDs and ATUs are such that any single failure will result in a gross failure alarm and/or a channel trip. Because of the redundancy, separations, and logic designed into the system, a single failure of any part of the system will not prevent isolation of the primary containment isolation valves and spurious operation is minimized. The RTDs will be located and the instrument setpoints will be set to preclude spurious trips due to ambient temperatures including localized hot areas while assuring a timely trip due to a pipe break. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change is being made to improve the RWCU leak detection/isolation function of the RWCU Primary Containment Isolation System (PCIS). The PCIS will perform its intended safety function in the same manner as the previous installation. There is no effect on the function or operation of any other plant system.

Failure of the new RTD/ATU temperature loops would be no different than failure of existing temperature switches. Since environmental qualification requirements, divisional separation, single failure requirements and one-out-of-two taken twice logic requirements are maintained, the possibility of a RWCU isolation failure on a RWCU line break or of a spurious isolation is no more likely after the change than before.

In the existing design, logic relays are powered from RPS [Reactor Protection System] Bus A or B. The new design also uses RPS Bus A or B to feed the ATUs. Therefore, the consequence of a power failure is unchanged from the present design.

The seismic qualification and proper circuit coordination of the installation is maintained. The system functions and operates in the same manner as previously evaluated in the Safety Analysis Report. No new system interactions other than additional RTDs located in the heat exchanger room to input into the PCIS logic for isolation of the RWCU have been introduced by this activity. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The margin of safety will be enhanced by installing instruments that provide quicker response to a temperature rise indicative of a pipe break. Calculations have been performed to determine the analytical limits for the RTD/ATU temperature loops in each of the monitored areas and to determine the setpoints for the ATUs in each area. The setpoints are set above the maximum expected room temperatures to avoid spurious actuations due to ambient conditions and below the analytical limits to ensure timely detection of a pipe break. This type of design utilizing ATUs has been analyzed by the NRC (NEDO-21617, Analog Transmitter/Trip Unit System for Engineered Safeguard Sensor Trip Input) and has been found to be generically acceptable at BWR facilities. Therefore, the proposed amendment does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Westinghouse Electric Corporation (licensee), Westinghouse Test Reactor, Waltz Mill Site, Westmoreland, Pennsylvania, Docket No. 50-22, License No. TR-2

Date of amendment request: December 8, 1992, supplemented on February 8, 1993.

Description of amendment request: The Westinghouse Test Reactor has been shut down since April 13, 1960. All fuel has been removed from the site and the facility has been partially dismantled. The license is in a possession only status which means that the licensee cannot operate this reactor. There are three soil basins on the site, included in the reactor license, that were used to process contaminated water from the reactor when the reactor was shut down. The soil basins were backfilled in 1963 with the soil which was originally excavated. The licensee is requesting that the soil basins be transferred from the reactor license, TR-2, to an existing Nuclear Regulatory Commission (NRC) Special Nuclear Material License, SNM-770, Docket No. 70-698, at the site. The soil basins and other facilities under SNM-770 are scheduled to go through an assessment and remediation of the soil and groundwater conditions on the Waltz Mill site. A transfer of the soil basins to

license SNM-770 would make the assessment and remediation process more efficient, administratively. Also, the licensee is planning to decommission the facility currently proposed under license TR-2 and to terminate the license. License SNM-770, however, covers all ongoing site activities involving radioactive materials and it is expected this license will be retained into the indefinite future.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff agrees with the licensee's no significant hazards consideration determination for the following reasons:

The TR-2 reactor has been shut down for 30 years and the fuel was removed from the site in 1963. The reactor facility has been partially dismantled and is in a possession only status. There is no physical relationship between the TR-2 reactor and the soil basins since the containment building which houses the remains of the TR-2 reactor is over 900 feet away from the nearest soil basin.

The action being considered is the transfer of three soil basins from one NRC license to another. The NRC requirements regarding the release of radioactivity from the soil basins will be the same as the present license and will apply under the SNM license.

Based on a review of the licensee's analysis, and on the staff's analysis detailed above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent W. Campbell, Esquire, Westinghouse Electric Corporation, Suite 140, Palladium Building, Quadrangle 4400, Alasaya Trail, Orlando, Florida 32826-2399

NRC Project Director: Seymour H. Weiss

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 30, 1991

Description of amendment request: The proposed amendment would revise Specifications 15.3.1.A.5 and 15.3.15 and Tables 15.4.1-1 and 15.4.1-2. The changes would specify more stringent Limiting Conditions For Operation and Surveillance Requirements for pressurizer power-operated relief valves and block valves. These changes were proposed to conform to the NRC's plan for resolution of Generic Issue 70, "Power-Operated Relief Valve and Blocking Valve Reliability," and Generic Issue 94, "Additional Low-Temperature Overpressure Protection for Light Water Reactors," as conveyed in Generic Letter 90-06.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In regards to Specification l5.3.1.A.5, "Pressurizer Power-Operated Relief Valve (PORV) and PORV Block Valves," the proposed change requires no physical change to the facility or its systems, but it does require changes to operating procedures. The proposed changes to Technical Specifications specify electrical power supply requirements to PORVs and block valves while they are inoperable. These changes minimize the potential for the loss of reactor coolant through a PORV or block valve when either is inoperable. The changes also provide operators the procedural flexibility to be able to relieve excessive reactor coolant system pressure when these valves are inoperable. These changes have been made in accordance with the guidance in GL 90-06.

Because the PORV system is not being physically changed, previously analyzed accidents are not adversely affected. Similarly, an increased probability or consequences of an accident previously evaluated cannot result. Because the proposed changes do not alter the function of existing systems, but do enhance the reliability of those systems, a new or different kind of accident from any previously evaluated cannot result.

Specification l5.3.0, "Limiting Conditions of Operation," requires us to place the plant in the shutdown condition within three hours after discovering a situation that is not specified as a permissible condition of an LCO. Since our Technical Specifications do not currently address situations in which two PORVs or two block valves are inoperable, in both cases we are required to shut down the affected unit within three hours. For two inoperable PORVs or block valves, our proposed change allows one hour to restore the first valve; otherwise the unit must be shut down in the following six hours. This new time limit has been established in accordance with the guidelines of GL 90-06, and it is an aggressive limit that ensures that the plant will be kept in a safe condition. The new limit extends the amount of time allowed to restore the first valve to one hour and the amount of time for plant shutdown to six hours. The extension of the time limits results because the situation was not previously addressed. The margin of safety, therefore, is at most only minimally reduced from present levels.

In regards to Table 15.4.1-2 "Minimum Frequencies for Equipment and Sampling Tests," the proposed change requires no physical change to the facility or systems, but does require changes to operating procedures.The proposed change requires that PORVs be cycled every refueling shutdown. Additionally, PORV operating solenoid air control valves and check valves on associated air systems must also be cycled each refueling shutdown. Such surveillance requirements do not increase the probability or consequences of previously evaluated accidents, and they will not create the possibility of a new or different accident. Because the actions contained in these surveillance requirements provide assurance that the PORVs can perform their function, there is actually an increase in the margin of safety by providing additional assurance that the failure of an inoperable PORV will not result in a loss of reactor coolant.

The proposal eliminates the requirement to cycle a block valve that has been shut to isolate a PORV that is inoperable for reasons other than excessive seat leakage. Opening the block valve under these conditions is prohibited by Specification 15.3.1.A.5.a.(2). Failure to cycle the block valves while in this condition will not in crease the probability or consequences of previously evaluated accidents, and it will not create the possibility of any new or different accidents. It the block valves are not cycled, there may be a minimal reduction in the margin of safety because the operability of the block valves would be unknown. Conversely, maintaining the block valves in the closed position while the PORV is inoperable would result in an increase in the margin of safety.

The proposal also includes a position check of block valves when the OMS [overpressure mitigation system] is in operation. This check is a verification of proper system lineup. It does not affect the likelihood or severity of any accidents. Since the check does not alter the function of existing systems, a new or different kind of accident from any previously evaluated cannot result, and there is no reduction in the margin of safety.

In regards to Specification 15.3.15, "Overpressure Mitigating Systems Operations," the proposed change requires no physical change to the facility or its systems, but it does require changes to operating procedures. The proposed change reduces, from 7 days to 32 hours, the time allowed to open the reactor coolant system to atmosphere, when a PORV is inoperable and when the reactor coolant temperature is [less than or equal to] 200 F. These are

administrative changes that will put the facility in a safer condition when the PORVs are inoperable, thus reducing the likelihood of accidents. The proposed change also requires that when the reactor coolant system is open to atmosphere because of an inoperable PORV, the vent path lineup must be checked periodically. Because this check is merely a verification that the vent pathway exists, it would not affect the likelihood or severity of any accidents. Since the proposed changes do not alter the function of existing systems but do enhance the reliability of those systems, a new or different kind of accident from any previously evaluated cannot result and there is no reduction in the margin of safety. In fact, for [less than or equal to] 200 F the requirement to vent the reactor coolant system within 32 hours when a PORV is inoperable will increase the margin of safety.

Specification 15.3.15 currently states that the reactor coolant system must be vented to the pressurizer relief tank when the OMS is not functional. Our proposed change requires the reactor coolant system to be opened to atmosphere when the OMS is not functional. The term "open to atmosphere" is defined in the basis to include openings such as PORVs that are open to the pressurizer relief tank, open steam generator manways, and the top of the reactor vessel when the reactor vessel head has been unbolted or removed. This change was made because there are several different ways to adequately vent the reactor coolant system to atmosphere. It does not affect the likelihood or severity of any accidents, and there is no reduction in the margin of safety.

The proposed change also includes administrative wording changes pertaining to the OMS. Technical Specification 15.3.15.A.1.b has been reworded so that it is more understandable. Additionally, in Table 15.4.1-1 a remark has been added to Item 19 stating that the overpressure mitigation system instrument channel checks need be conducted only when the system is in operation. These changes have been proposed to clarify the wording of the pertinent sections. The changes do not change the meaning or intent of the specifications or current operational procedures. These changes, therefore, have no effect on existing or unevaluated accidents, and the margin of safety is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 6, 1992

Description of amendment request: The proposed amendment would revise Technical Specification Table 15.3.5-5, "Instrument Operating Conditions for Indications," and Technical Specification 15.3.10, "Control Rod and Power Distribution Limits," to reference the rod position in steps instead of inches.

Figure 15.3.10-1, "Control Bank Insertion Limits Point Beach Units 1 and 2," would be revised to reference rod position in steps instead of in percent withdrawn. It is proposed that a note be added to the figure explaining that the "fully withdrawn" parking position range can be used without violating the figure.

In the Basis for Section 15.3.10, the definition of "fully withdrawn" would be revised for clarity.

Item 2 of Section 15.3.10.A, "Bank Insertion Limits," would be revised by adding a reference to existing footnote 1. Footnote 1 includes a definition of "fully withdrawn" which is applicable to control banks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of this facility under the proposed Technical Specification change will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change simply revises all references of rod position in the Technical Specifications, to units of steps. There is a direct correlation between steps, inches, and percent withdrawn. Therefore, this is only a format change, making all references to rod position consistent throughout the Technical Specifications and with control board indications. Additionally, updating the basis of Section 5.3.10 is proposed to clarify the definition of "fully withdrawn" as it concerns Rod Cluster Control Assemblies [RCCA]. This basis change will not change the way that the plant is operated because the parking position of the shutdown and control banks will still be based upon a predetermined schedule that varies parking position on a cycle-to-cycle basis, as appropriate, to minimize RCCA wear. Each core's reload safety evaluation is also used to ensure that this parking position is adequate. There is no physical change to the facility, its systems, or its operation. Therefore, an increased probability or consequences of an accident previously evaluated cannot occur.

Operation of this facility under this proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change simply revises all references of rod position in the Technical Specifications, to units of steps. There is a direct correlation between steps, inches, and percent withdrawn. Therefore, this is only a format change, making all references to rod position consistent throughout the Technical Specifications and with control board indications. Additionally, updating the basis of Section 5.3.10 is proposed to clarify the definition of "fully withdrawn" as it concerns Rod Cluster Control Assemblies. This basis change will not change the way that the plant is operated because the parking position of the shutdown and control banks will still be based upon a predetermined schedule that varies parking position, on a cycle-to-cycle basis, as appropriate, to minimize RCCA wear. Each core's reload safety evaluation is also used to ensure that this parking position is adequate. There is no physical change to the facility, its systems, or its operation. Therefore, a new or different kind of accident cannot occur.

Operation of this facility under this proposed Technical Specification change will not create a significant reduction in a margin of safety. This proposed change simply revises all references of rod position in the Technical Specifications, to units of steps. There is a direct correlation between steps, inches, and percent withdrawn. Therefore, this is only a format change, making all references to rod position consistent throughout the Technical Specifications and with control board indications. Additionally, updating the basis of Section 15.3.10 is proposed to clarify the definition of "fully withdrawn" as it concerns Rod Cluster Control Assemblies. This basis change will not change the way that the plant is operated because the parking position of the shutdown and control banks will still be based upon a predetermined schedule that varies parking position, on a cycle-to-cycle basis, as appropriate, to minimize RCCA wear. Each core's reload safety evaluation is also used to ensure that this parking position is adequate. There is no physical change to the facility, its systems, or its operation. In fact, this change enhances the ability of the operators to safely operate the plant by presenting the operators with Technical Specification information for rod position in units consistent with existing plant instrumentation. A margin of safety may therefore increase. Therefore, a significant reduction in a margin or safety cannot occur.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 29, 1992, as supplemented April 16, 1992

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Test of Instrument Channels," to change the testing interval for reactor protection and safeguards circuits from monthly to quarterly. Other changes would be incorporated to support the requested change to quarterly test intervals. The proposed amendments would also remove the test requirement for analog rod position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Operation of the Point Beach Nuclear Plant in accordance with the proposed license amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

The change in the test frequency for Reactor Protection System and Emergency Safety Feature System instrumentation meets the criteria evaluated in WCAP 10271 and supplements. Implementation of the proposed changes is expected to result in an acceptable increase in the total Reactor Protection System yearly unavailability. This increase, due primarily to less frequent surveillance, results in a similar magnitude increase in the probability of a core melt resulting from an Anticipated Transient Without Scram (ATWS) and also results in a slight increase in the Core Damage Frequency (CDF) due to the slight increase in the Engineered Safety Feature Actuation System (ESFAS) unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in probability of a core melt from inadvertent reactor trips. This reduction in inadvertent trips is primarily attributable to the less frequent surveillance.

The reduction in the core melt frequency is sufficiently large to counter the increase in the core melt probability due to an ATWS event resulting in an overall reduction in the core melt probability.

The values presented in the WCAP and supplement for the increase in CDF were verified by Brookhaven National Laboratory as part of an audit and sensitivity analysis for the NRC staff. Based on the small value of the increase as compared to the uncertainty in the CDF, the increase is considered acceptable.

The addition of separate requirements for the check, calibration, and testing of the reactor trip system interlocks and the logic for the Reactor Protection System and engineered Safety Feature Actuation System do not present new requirements. These specifically define the surveillance required that was being performed as part of the instrumentation surveillance.

Changes to the surveillance test frequencies for the reactor trip system interlocks do not represent a significant reduction in the testing. The currently specified interval, as part of the instrument surveillance, allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance as currently performed addresses the status of the permissive logic and does not address verification of the channel setpoint or operability. Permissives are tested during the present monthly test only when plant conditions allow. Setpoint verification and channel operability are verified during refueling shutdowns. The requirement to verify permissive status is different than verifying the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. Therefore, the change in the surveillance requirement to at least once every eighteen months does not represent a significant increase in the unavailability of the Reactor Protection System.

The elimination of the monthly test of the analog rod position indication cannot result in a new or different kind of accident as this indication serves no protective function. The comparison of the analog rod position and rod position bank counters is performed on a shift basis which is adequate for the detection and correction of any potential problems.

The change in the PORV [power operated relief valve] operability test interval cannot result in a significant increase in the probability or consequences of an accident. The operation of the PORV's is not changed.

The addition of specific requirements for checks, calibration and testing for the reactor trip system interlocks and for the Reactor Protection System and Emergency Safety Feature Actuation System is not a change in the present Technical Specification requirements that the surveillance be performed. Therefore, the addition of the specific requirements is not a change in the present operation of the facility and cannot result in a new or different kind of accident from any previously evaluated.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RPS but does not alter the manner in which protection is afforded or the manner in which limiting criteria are established.

Criterion 2

The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the Reactor Protection System provides plant protection or in which the RPS and ESFAS function. The likelihood or probability of the RPS and ESFAS functioning improperly is affected as described under Criterion 1. Changing the PORV operability test to quarterly does not affect the operation of the PORV. Removing the test requirement for analog rod position also does not affect the operation of the plant.

Therefore the proposed changes do not create the possibility or probability of a new or different type of accident from any accident previously evaluated.

Criterion 3

The proposed amendments do not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties may act.

Implementation of the proposed changes is expected to result in an overall improvement in plant safety by providing for:

a. Less frequent testing which will potentially result in fewer inadvertent reactor trips and actuation of Engineered Safety Features Actuation System components.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is a result of less frequent distraction of the operator and shift supervisor attending to instrumentation testing.

The explicit addition of testing requirements that are presently implied by the Technical Specification is only administrative in nature and cannot reduce a margin of safety.

This analysis demonstrates that the proposed amendments to the Point Beach Nuclear Plant Technical Specifications do not involve a significant increase in the probability or consequences of a previously evaluated accident, do not create the possibility of a new or different type of accident than any accident previously evaluated and do not involve a significant reduction in a margin of safety. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and

Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: December 10, 1992

Description of amendment request: The proposed amendment would make extensive additions to various tables in Sections 15.3.5, "Instrumentation System," and 15.4.1, "Operational Safety Review," and reformat Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Test of Instrument Channels." Section 15.3.5, "Instrumentation System," contains requirements for the instrumentation and safety circuits required to ensure reactor safety and provide for the automatic initiation of the Engineered Safety Features. The tables included in this section are:

Table 15.3.5-1, "Engineered Safety Features Initiation Instrument Setting Limits"

Table 15.3.5-2, "Instrument Operation Conditions for Reactor Trip"

Table 15.3.5-3, "Emergency Cooling"

Table 15.3.5-4, "Instrument Operating Conditions for Isolation Functions"

Table 15.3.5-5, "Instrument Operating Conditions for Indications" Section 15.4.1, "Operational Safety Review" specifies the surveillance requirements for items directly related to safety limits and limiting conditions for operation. The tables included in this section are:

Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Test of Instrument Channels"

Table 15.4.1-2, "Minimum Frequencies for Equipment and Sampling Tests"

The proposed amendment would modify Sections 15.3.5 and 15.4.1 to incorporate items identified by comparing the safety analyses in the Point Beach Nuclear Plant Final Safety Analysis Report (FSAR) and the Limiting Conditions for Operation (LCO) and surveillance sections of the current Technical Specifications. Items would be added which are required by the safety analyses for indication or proper functioning of systems for accident mitigation, but are not currently included in the Point Beach Technical Specifications. The proposed changes are as follows:

1. Modifications to Tables 15.3.5-2, 15.3.5-3, and 15.3.5-4 are proposed to remove Column 4, "Minimum Degree of Redundancy" from the tables. Additionally, the definition of degrees of redundancy in Specification 15.1.C.l, as well as the reference to minimum degree of redundancy in Specification 15.3.5.C, would also be removed since they would no longer be applicable. To ensure that the minimum degree of redundancy is maintained should an instrument channel be declared inoperable, the following endnote would be added to the three tables:

If a channel is determined to be inoperable, resulting in one less than the total number of channels being operable, power operation may continue if the following conditions are met:

1. The minimum number of operable channels is still satisfied.

2. The affected channel is placed in trip within 1 hour."

2. Modifications to the operator action column of Tables 15.3.5-2, 15.3.5-3, and 15.3.5-4 are proposed. This column currently requires the operator, in most cases, to "Maintain hot shutdown" or "Maintain [less than] 50% of rated power." The proposed revision of this column would provide more specific direction to the operator. The column would be modified to read, "Be in hot shutdown in 8 hours" or "Be [less than] 50% of rated power within 4 hours."

3. Additions to Table 15.3.5-2, "Instrument Operation Conditions for Reactor Trip," are proposed. The turbine autostop oil pressure, turbine stop valve position, reactor coolant pump breaker open, and Safety Injection reactor trip features would be added to ensure that the table contains all the features installed at Point Beach that actuate a reactor trip. Surveillance requirements for these four items are also proposed for addition to Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels."

4. The channel requirements, bypass conditions, and associated operator actions for the reactor trip breakers are proposed for addition to Table 15.3.5-2. The proposed bypass conditions and required operator actions are as follows:

"When at power, one channel may be bypassed for up to 8 hours provided that the other channel is operable. When the plant is shutdown and rod withdrawal is possible, restore the inoperable channel to operable status within 48 hours or open the Reactor Trip Breakers within 1 hour."

5. A change to the title of Table 15.3.5-3 is proposed. The title would be changed from "Emergency Cooling" to "Engineered Safety Features."

6. Item 3.b of Table 15.3.5-3, "Trip of Both Main Feedpumps Starts Motor Driven Pumps," is one of the Anticipated Transient Without Scram Mitigating System Actuation Circuitry (AMSAC) features installed at Point Beach. The proposed amendment would remove this item from the Technical Specifications.

7. Additions to Table 15.3.5-4, "Instrument Operating Conditions for Isolation Functions," are proposed. Instrument operating conditions for high steam generator water level and safety injection are being added.

A surveillance to test the logic for high steam generator level is also proposed for addition as part of note 17 in Table 15.4.1-1.

8. A change to the title of Table 15.3.5-5 is proposed. The title would be changed from "Instrument Operating Conditions for Indications" to "Instrument Operating Conditions for Post-Accident Monitoring Instrumentation."

9. The addition of the following explanatory note to Table 15.3.5-5 is proposed:

"The channel requirements in this table refer only to that portion of the instrument channel required for post-accident monitoring. The applicable channels are listed in FSAR Table 7.7-2."

10. The removal of Item 6 in Table 15.3.5-5, "Control Rod Misalignment as Monitored by On-line Computer," and subsequent placement of it in Item 19 of Table 15.4.1-1, "Analog Rod Position," is proposed.

11. The addition of the instrument operating conditions for the following post-accident monitoring instrumentation to Table 15.3.5-5 is proposed: refueling water storage tank level; RCS wide and narrow range pressure; RCS hot and cold leg temperature; pressurizer level; containment wide, intermediate, and low range pressure; condensate storage tank level; steam generator wide and narrow range level; steam generator pressure; and containment isolation valve position indication. Additionally, item 5 of Table 15.3.5-5, "Auxiliary Feedwater Flowrate," would be split into two items, "AFW Pump Discharge Flowrate," and "AFW to Steam Generator Flowrate."

12. Modification of Items 3 and 4 of Table 15.3.5-5, "Safety Valve Position Indicator," and "Reactor Coolant System Subcooling," respectively, is proposed. Column 1 of Table 15.3.5-5 for Items 3 and 4 would be amended to list two channels per valve and two channels, respectively.

13. Reformatting Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels," is proposed. The new table would remove the remarks column from the body of the table and place the

information within the channel description column or at the end of the table in the form of end notes. These end notes would be referenced within the body of the table by their associated surveillances. The new table would also have a column titled "Plant Conditions When Required" that lists all of the plant conditions during which a given surveillance requirement is applicable.

14. The addition of calibration requirements to Items 1, 2, and 3 of Table 15.4.1-1 is proposed. These calibrations would be performed on the source range, intermediate range, and power range nuclear instruments.

15. The addition of surveillance requirements to test the ability to isolate the feedwater system following a safety injection is proposed. The proposed additions to Item 17 of Table 15.4.1-1 would require these functions to be tested every refueling interval.

16. The clarification of the calibration and test requirements for the different turbine overspeed trip functions is proposed. The proposed revision to Item 43 of Table 15.4.1-1 would list each trip function separately for completeness.

17. A new Item 24 would be added to Table 15.4.1-1. This addition would consist of a check each shift and a refueling interval calibration requirement for the level instrumentation. The calibration would also be performed on the low level alarm associated with this instrumentation.

18. The addition of a weekly requirement to verify proper breaker alignment and that the 120 Vac instrument buses are energized is being proposed. This requirement would be included as Item 14 of Table 15.4.1-1.

19. The addition of Note (8) to Item 19 of Table 15.4.1-1 is proposed. This note would state, "Verify that the associated rod insertion limit is not being violated at least once per 4 hours whenever the rod insertion limit alarm for a control bank is inoperable."

20. A modification is proposed to require surveillance each shift of the source and intermediate range nuclear instrument channels to be performed whenever the instrumentation is not blocked. The source range nuclear instrument channels are blocked when 1 of 2 intermediate range channels exceed 10^{-10} amperes. The intermediate range nuclear instrument channels are blocked when 2 of 4 power range channels exceed 10% of full power.

21. Item 1 of Table 15.4.1-1, "Nuclear Power Range," currently specifies a monthly check and quarterly calibration requirement to "Compare incore and excore axial flux difference. Recalibrate if the absolute difference is greater than or equal to 3 percent" and "upper and lower chambers for axial offset." A revision is proposed to clarify these surveillance requirements. The proposed specification would require a monthly check be performed, during power operation, to "Compare the results of the incore detector measurements to NIS axial flux difference." This comparison would be performed using the moveable incore detector system. This specification would additionally require a calibration be performed if the absolute difference is [greater than or equal to] 3 percent.

22. Table 15.4.1-1 currently contains a surveillance interval of "Prior to each startup if not done previous week." It is proposed that this be revised to read, "Prior to reactor criticality if not performed during the previous week."

23. Table 15.4.1-1 currently contains a note that states, "Not required during periods of refueling shutdown, but must be performed prior to starting up if it has not been performed during the previous surveillance period." It is proposed that this be revised to read, "Not required during periods of refueling shutdown, but must be performed prior to reactor criticality if it has not been performed during the previous surveillance period."

24. Table 15.4.1-1 currently contains a note that states, "Not required during periods of refueling shutdown, but must be performed prior to starting up if it has not been performed during the previous surveillance period. Tests of the permissive and low power trip bistable setpoints which cannot be done during power operations shall be conducted prior to startup if not done in the previous two weeks." It is proposed that this be revised to read, "Tests of permissive and low power trip bistable setpoints which cannot be done during power operations shall be conducted prior to reactor criticality if not done in the previous two weeks."

25. Item 32 of Table 15.4.1-1 currently requires the overpressure mitigating system to be checked on a shift basis. The addition of a note to the "Check" column for this item is proposed which would state, "a Shift check is required when the reactor coolant system is not open to the atmosphere and the reactor coolant system temperature is less than the minimum temperature for the in-service pressure test as specified in TS Figure 15.3.1-1."

26. Item 20 of Table 15.4.1-1, "Auxiliary Feedwater Flow Rate," currently requires the flowrate indication to be checked at each unit startup and shutdown. A modification to the check requirement for this item is proposed. The new requirement would state, "An AFW flow path to each steam generator shall be demonstrated operable, following each cold shutdown of greater than 30 days, prior to entering power operation, by verifying AFW flow to each steam generator."

27. Section 15.5.4 of the Technical Specifications requires that the spent fuel storage pool be filled with borated water at a concentration of at least 1800 ppm. There is currently no surveillance requirement for level verification. Therefore, the addition of a weekly requirement to physically verify water level is proposed. This requirement would be added to Item 7 of Table 15.4.1-2, "Minimum Frequencies for Equipment and Sampling Tests."

28. In order to ensure that sufficient shutdown margin exists prior to commencing power operation following a refueling shutdown, the addition of a requirement to perform a measurement of control rod worth is proposed. This requirement would be added to Item 10 of Table 15.4.1-2 and would be required to be performed following each refueling shutdown prior to commencing power operation.

29. A requirement to cycle each atmospheric steam dump on a quarterly basis is proposed to be added as Item 28 of Table 15.4.1-2.

30. A requirement to verify the operability of each crossover steam dump valve by performing a complete valve cycle on a quarterly basis is proposed to be added as Item 29 of Table 15.4.1-2.

31. Section 15.3.1.A.6 of the Technical Specifications requires that at least 100KW of pressurizer heaters be available to ensure operability of the pressurizer during steady state power operation. A quarterly requirement to verify that at least 100KW of heaters are available is proposed to be added as Item 30 of Table 15.4.1

32. A quarterly requirement to verify the operability of the charging pumps is proposed to be added as Item 31 of Table 15.4.1-2.

33. A requirement to verify the operability of the potential-dilution-in-progress alarm prior to placing the plant in a cold shutdown condition is proposed to be added as Item 32 of Table 15.4.1-2.

34. Item 10 of Table 15.4.1-2 requires the partial movement of all rods every two weeks, except during periods of refueling shutdown. A change to this requirement is proposed to require the partial movement of all rods to be performed every two weeks except when the reactor is subcritical.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specification changes will not create a significant increase in the probability or consequences of an accident previously evaluated. These proposed changes will make additions to various tables in Sections 15.3.5 and 15.4.1, and reformat Table 15.4.1-1. These proposed changes will add additional requirements to the Technical Specifications, making the document more restrictive. The majority of the items being added to the Technical Specifications are already being performed at Point Beach. They are being made Technical Specification requirements because of their safety significance. Therefore, the addition of these items will not change the operation of Point Beach. It will, however, put more stringent controls in place to ensure that the associated requirements are met.

This change also proposes to add requirements to the Technical Specifications that are not currently being performed at Point Beach. Their addition can only improve the overall operation of Point Beach. The surveillances and surveillance frequencies for these additional items are consistent with requirements existing in the Standard Technical Specifications or existing Point Beach Technical Specifications.

This change also proposes removing the operating conditions for the motor-driven AFW pump actuation following the trip of both main feed pumps from Table 15.3.5-3. This AMSAC (ATWS Mitigating System Actuation Circuitry) feature is being removed because it does not provide a safety-related function. This system is required by 10 CFR 50.62. Administrative controls will be put in place prior to the implementation of this change to ensure that the requirements for AMSAC are maintained. This change also proposes to reduce the surveillance frequency for verification of AFW flowrate. The current surveillance requires AFW flowrate to be verified during each unit startup and shutdown. The proposed requirement would require this flowrate verification to be performed prior to entering power operation, following each cold shutdown of greater than 30 days. Although this proposed surveillance interval is less frequent than what is currently required, it is consistent with Standard Technical Specification requirements.

The remaining changes are all administrative in nature. The only significant administrative item is the reformatting of Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels." The reformatting of Table 15.4.1-1 will not modify any existing surveillance requirements. However, it will revise the table to make it more user friendly and easier to read. This will enhance the useability of this table and ensure that all of the required surveillances are clearly identified.

There is no physical change to the facility, its systems, or its operation. Thus, an increased probability or consequences of an accident previously evaluated cannot occur.

2. Operation of this facility under the proposed Technical Specification changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. These proposed changes will make additions to various tables in Sections 15.3.5 and 15.4.1, and reformat Table 15.4.1-1. These proposed changes will add additional requirements to the Technical Specifications, making the document more restrictive. The majority of the items being added to the Technical Specifications are already being performed at Point Beach. They are being made Technical Specification requirements because of their safety significance. Therefore, the addition of these items will not change the way Point Beach is operated. It will, however, place more stringent controls in place to ensure that the associated requirements are met.

This change also proposes to add requirements to the Technical Specifications that are not currently being performed at Point Beach. Their addition can only improve the overall operation of Point Beach. The surveillances and surveillance frequencies for these items are consistent with requirements existing in the Standard Technical Specifications or existing Point Beach Technical Specifications.

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There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specification changes will not create a significant reduction in a margin of safety. These proposed changes will make additions to various tables in Sections 15.3.5 and 15.4.1, and reformat Table 15.4.1-1. These proposed changes will add additional requirements to the Technical Specifications, making the document more restrictive. The majority of the items being added to the Technical Specifications are already being performed at Point Beach. They are being made Technical Specification requirements because of their safety significance. Therefore, the addition of these items will not change the overall operation of Point Beach. It will, however, place more stringent controls in place to ensure that the associated requirements are met.

This change also proposes to add requirements to the Technical Specifications that are not currently being performed at Point Beach. Their addition can only improve the overall operation of Point Beach. The surveillances and surveillance frequencies for these items are consistent with requirements existing in the Standard Technical Specifications or existing Point Beach Technical Specification requirements.

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There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur. In fact, the proposed additions may result in an increased margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: January 12, 1993, as supplemented February 8, and March 1, 1993.

Brief description of amendments request: The amendment request proposes five changes to Technical Specification (TS) Section 3/4.3.5.5, Chlorine Detection System, Section 3/4.7.2, Control Room Emergency Filtration System, and their associated Bases sections, to reflect changes made to the actuation logic in the control building emergency ventilation system (CBEVS) chlorine detection logic to revise the present fail-safe design to a single-failure proof design. The modification of the logic requires revision of the Limiting Condition for Operation and Action statements and Surveillance Requirements in the TS to reflect the increased number of detectors being installed in each detection trip system of the CBEVS and the new type of detection equipment. Additionally, deficiencies in the Applicability requirements, as well as a lack of requirements for the radiation protection and smoke protection instrumentation in the CBEVS, are corrected.

Also included is a correction to page 3/4 3-34, issued as Amendment No. 191 to Facility Operating License No. DPR-62 (Unit 2) on February 3, 1993. The page was inadvertently issued misnumbered as page 3/4 3-38. No other changes were made to this page.

Date of publication of individual notice in **Federal Register:** February 11, 1993 (58 FR 8068).

Expiration date of individual notice: March 13, 1993

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 15, 1992, as revised February 5, 1993

Description of amendment request: The proposed amendments would revise the Technical Specifications as required for the operation of Catawba Unit 2 Cycle 6 after the partial reload of the reactor core with 76 fresh fuel assemblies supplied by the Babcock & Wilcox Fuel Company.

Date of publication of individual notice in **Federal Register:** February 24, 1993 (58 FR 11260)

Expiration date of individual notice: March 26, 1993

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 17, 1993

Description of amendment request: The proposed amendment modifies the Clinton Power Station Technical Specifications in order for the Clinton Power Station Radiation Protection Program to incorporate the new requirements of title 10 Code of Federal Regulations Part 20.

Date of publication of individual notice in **Federal Register:** February 24, 1993 (58 FR 11264)

Expiration date of individual notice: March 26, 1993

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: February 8, 1993

Brief description of amendment request: The amendment would provide interim alternate plugging criteria for the Kewaunee steam generators based on eddy current test indications in the tube support plate regions.

Date of individual notice in **Federal Register:** February 19, 1993 (58 FR 9224)

Expiration date of individual notice: March 22, 1993

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina .

Date of application for amendment: April 2, 1992, as supplemented October 14 and December 21, 1992.

Brief description of amendment: The amendment revises Instrumentation Technical Specifications (TS) 3.3.2, 3.3.3.1, and 3.3.3.6 to include editorial corrections, clarify wording and/or simplify the presentation of the requirements. The Action Requirements of TS 3.3.3.1 have also been revised to be consistent with associated TS 3.9.12

Date of issuance: March 3, 1993

Effective date: March 3, 1993

Amendment No.: 35

Facility Operating License No. NPF-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28197) The October 14 and December 21, 1992, supplements submitted some changes of an editorial nature to the proposed TS pages submitted on April 2, 1992, and did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. 50-373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendment: June 5, 1992, as supplemented July 7, July 20, and November 4, 1992.

Brief description of amendment: The amendment would revise Technical Specification 5.6, "Fuel Storage," to permit the storage of up to 3986 fuel assemblies in the Unit 1 spent fuel pool.

Date of issuance: February 24, 1993

Effective date: February 24, 1993

Amendment No.: 90

Facility Operating License No. NPF-11. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 606) The July 7, July 20, and November 4, 1992, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated February 12, 1993, and in a Safety Evaluation dated February 24 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: January 15, 1992, as supplemented on October 2 and 16, 1992

Brief description of amendments: The amendments revise the license condition and the Technical Specifications to increase the spent fuel pool storage capacity from 2112 to 3012 storage cells.

Date of issuance: February 23, 1993

Effective date: February 23, 1993

Amendment Nos.: 142 and 131

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revise a license condition and the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1992 (57 FR 27482) The October 2 and 16, 1992, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated January 25, 1993, and in a Safety Evaluation dated February 23, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: November 12, 1993, as supplemented on January 25, 1993.

Brief description of amendment: TS 4.12, Shock Supressors (Snubbers), to specify a snubber visual inspection schedule which is in accordance with the guidance provided in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The amendment also clarifies a previous administrative correction to TS 4.12.

Date of issuance: February 23, 1993

Effective date: February 23, 1993

Amendment No.: 161

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61110) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 11 and 18, 1992

Brief description of amendment: The amendment revised the Technical Specifications to allow continued operation for 72 hours with more than one full-length or part-length Control Element Assembly (CEA) inoperable due to electronic or electrical problems in the Control Element Drive Mechanism Control System (CEDMCS), provided that all affected CEAs remain trippable.

Date of issuance: February 24, 1993

Effective date: February 24, 1993

Amendment No.: 81

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1993 (58 FR 5431) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 22, 1992

Brief description of amendment: The amendment revised Technical Specification Table 4.4-2, "Steam Generator Tube Inspection," to allow Arkansas Nuclear One, Unit 2, to continue operating with two

uninspected tubes in the "B" steam generator until the next planned steam generator tube inspection.

Date of issuance: February 23, 1993
Effective date: February 23, 1993
Amendment No.: 143
Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 21, 1993 (58 FR 5430) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: December 21, 1992
Brief description of amendment: The amendment deletes two primary containment isolation valves associated with the residual heat removal head spray mode from Hatch Unit 1 Technical Specification Tables 3.7-1, 4.2-1, and 3.7-4. In addition, Table 3.7-3 will be revised to identify Penetration X-17 as a spare.
Date of issuance: March 1, 1993
Effective date: March 1, 1993
Amendment Nos.: 184
Facility Operating License Nos. DPR-57 and NPF-5. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6997) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1993.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 18, 1991, as supplemented March 2, 1992
Brief description of amendments: The amendments revise the TS in response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)," which was issued by the NRC on June 25, 1990.
Date of issuance: February 19, 1993
Effective date: February 19, 1993
Amendment Nos.: 56 and 35
Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** 57 FR 34585 and 57 FR 34587 both dated August 5, 1992. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 19, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 12, 1992
Brief description of amendment: The amendment revises the low condenser vacuum reactor scram function in Technical Specification (TS) Table 3.1.1, Function A.6, to represent the as-built condenser vacuum trip system.
Date of issuance: March 4, 1993
Effective date: March 4, 1993
Amendment No.: 162
Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42775) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 4, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: July 22, 1992
Brief description of amendment: The amendment change would revise Technical Specification Section 6.3, Unit Staff Qualifications, to incorporate requirements prescribed by 10 CFR Part 55.
Date of issuance: February 19, 1993
Effective date: February 19, 1993
Amendment No.: 171
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47138) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 19, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: December 15, 1992
Brief description of amendment: This amendment revises Technical Specification (TS) 4.6.A.2.f and its Acceptance Criteria by rewording and incorporating Condition 1, and deleting Conditions 2 and 3. Condition 4 is reworded and incorporated into the Remedial Action for TS 3.19.A.4. The Basis of TS 3.19.A.4 and 4.6 also is revised to delete reference to the previous operating position of low pressure injection motor operated valves LSI-M-11, 21, and 31, and their use as pressure isolation barriers. (Note that "Remedial Action" is an administrative correction of "Exception".) Finally, the Exception to TS 4.6.A.1.b is deleted and a typographical error is corrected on Page 4.6-3.
Date of issuance: February 23, 1993
Effective date: February 23, 1993
Amendment No.: 137
Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 21, 1993 (58 FR 5433) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1993. No significant hazards consideration comments received: No
Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 4, 1992, as supplemented by letters dated October 15, 1992, and January 13, February 12, and February 24, 1993
Brief description of amendment: The proposed changes removed the Main Steam Line Radiation Monitor reactor scram and Group I Containment Isolation functions, and modified the

Technical Specifications for Cooper Nuclear Station accordingly.

Date of issuance: March 2, 1993
Effective date: March 2, 1993
Amendment No.: 158
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30252) The additional information contained in the supplemental letters dated October 15, 1992, and January 13, February 12, and February 24, 1993, was clarifying in nature and thus within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: December 4, 1992, as supplemented February 12, 1993, and February 17, 1993.

Brief description of amendment: The amendment revises TS 3.6.2, 4.6.2, 3.6.11, and 4.6.11 and associated Bases to increase the surveillance test intervals and add allowable out-of-service times for various instruments. The changes are in accordance with General Electric Company Licensing Topical Reports which have been previously reviewed and approved by the NRC staff. The allowable out-of-service times are consistent with the provisions of NUREG-1433, "Improved Standard Technical Specifications." The changes permit specified instrument channel functional tests to be performed quarterly rather than weekly or monthly. The amendment also makes editorial corrections on TS pages 192, 199, and 210.

Date of issuance: February 24, 1993
Effective date: February 24, 1993
Amendment No.: 139
Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61117) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: January 12, 1993, as supplemented January 19, 1993. The January 19, 1993, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: The amendment allows for temporarily bypassing the Main Steam Line Radiation Monitor (MSLRM) trip function (which results in a reactor scram and Group I isolation), for a period not to exceed 2 hours, in order to allow condensate demineralizers to be returned to service, thereby eliminating the possibility of an inadvertent initiation of the MSLRM trip function.

Date of issuance: February 19, 1993
Effective date: February 19, 1993
Amendment No.: 61
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes. (58 FR 6023 dated January 25, 1993). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by February 24, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 19, 1993.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 30, 1992 (Ref. LAR 92-07)

Brief description of amendments: The amendments revise the combined Technical Specifications 3.8.1, "AC Sources," for the Diablo Canyon Power Plant Units 1 and 2 to allow for a one-time extension of the 7-day allowed outage time for Emergency Diesel Generator (EDG) 1-3. This one time extension allowing EDG 1-3 to be inoperable for up to 14 days allows for the completion of modifications and associated testing to support installation of a new sixth EDG, implementation of Appendix R modifications, and the performance of preplanned maintenance/testing during the Unit 2 fifth refueling outage.

Date of issuance: March 2, 1993
Effective date: March 2, 1993
Amendment Nos.: 76 and 75
Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58247) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: November 30, 1992

Brief description of amendment: This amendment revised the Technical Specifications to authorize operation of the Reactor Water Cleanup (RWCU) System in the current fuel cycle with the non-regenerative heat exchanger discharge high temperature channel substituting for the inoperable 'B' RWCU high flow isolation trip channel.

Date of issuance: March 2, 1993
Effective date: March 2, 1993
Amendment No.: 93
Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 15, 1992 (57 FR 59363) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South

Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 25, 1992

Brief description of amendment: The amendment revises Table 3.2-1, "Instrumentation that Initiates Primary Containment Isolation," to reflect a plant modification which installed two additional temperature elements, associated cabling, temperature switches, and circuitry in the area of the Reactor Water Cleanup (RWCU) pump suction primary containment penetration.

The FitzPatrick equipment qualification program postulated a high energy line break (HELB) in a 19-foot section of RWCU pipe that runs between the containment penetration and the RWCU "A" pump room. As a result, two new temperature instrument channels were added to isolate the RWCU system from the reactor vessel in the event of a line break in this area. Six existing temperature instrument channels monitor other RWCU system areas.

Table 3.2-1 of the FitzPatrick Technical Specifications previously listed six RWCU area high temperature instrument channels when eight channels were installed in the plant. This amendment adds these two new channels to correct Table 3.2-1 and to reflect the modification.

Date of issuance: February 18, 1993

Effective date: February 18, 1993

Amendment No.: 185

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58249) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 25, 1992

Brief description of amendment: The amendment adds operability and surveillance requirements to Tables 3.12.1, "Water Spray/Sprinkler Protected Areas," and 4.12.1, "Water Spray/Sprinkler System Tests," to reflect a plant modification that will improve fire protection at the FitzPatrick plant. The modification installed an automatic fire suppression system in the battery room corridor. The new suppression system is a wet pipe design with fusible link sprinklers that are heat actuated to allow for sectionalized fire suppression capability.

Date of issuance: February 19, 1993

Effective date: February 19, 1993

Amendment No.: 186

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58249) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: August 10, 1992

Brief description of amendment: The amendment to the James A. FitzPatrick Radiological Effluent Technical Specifications changes the offgas system steam dilution flow isolation setpoints. The changes increase the offgas dilution steam low flow and high flow isolation setpoints to 6300 pounds per hour and 7900 pounds per hour, respectively. The steam dilution low setpoint is designed to ensure adequate steam flow through the recombiner during normal plant operation to prevent overheating or ignition of the catalyst. The steam dilution high setpoint is designed to provide recombiner isolation in the event of a break as described in the Final Safety Analysis Report (FSAR). The associated Bases are also revised to describe more accurately the offgas steam dilution function.

Date of issuance: February 23, 1993

Effective date: February 23, 1993

Amendment No.: 187

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42779) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 4, 1991, as supplemented November 13, 1992, and February 10, 1993.

Brief description of amendment: The amendment changes the Technical Specifications (TS) to modify TS 3/4.7.1.1, Turbine Cycle Safety Valves, to increase the setpoint tolerance on the four highest-set main steam safety valves, to remove provisions for use in two loop operation, and to add a footnote to bring the TS into conformance with the new Standard Technical Specifications.

Date of issuance: February 25, 1993

Effective date: February 25, 1993

Amendment No.: 109

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9386) The November 13, 1992, supplement added a footnote that would bring this specification into conformance with the new Standard Technical Specifications, and did not change the staff's finding of no significant hazards considerations. The February 10, 1993 supplement merely forwarded TS pages and contained no changes to the requested amendment. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: November 18, 1992

Brief description of amendment: The amendment changes Technical Specifications 6.9.1.8, "Semiannual Radioactive Effluents Release Report,"

and 6.14, "Offsite Dose Calculation Manual," to extend the Radioactive Effluent Releases Report submittal frequency from semiannual to annual.

Date of issuance: February 17, 1993

Effective date: No later than 30 days from date of issuance

Amendment No.: 153

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992(57 FR 61121) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 16, 1992

Brief description of amendment: The amendment revised Technical Specification 4.6.1.2.a and its associated Bases to allow the third Type A Containment Leakage Rate Tests within the first 10-year service period to be conducted during the Cycle 7 refueling outage.

Date of issuance: February 22, 1993

Effective date: February 22, 1993

Amendment No.: 77

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42780) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 8, 1990, as clarified by letter dated August 8, 1991

Brief description of amendment: The amendment revised Technical Specifications 4.0.3, 4.0.4 and their associated Bases to incorporate changes recommended in Generic Letter 87-09, "SECTIONS 3.0 AND 4.0 OF THE STANDARD TECHNICAL SPECIFICATIONS (STS) ON THE APPLICABILITY OF LIMITING CONDITIONS FOR OPERATION AND SUREVEILLANCE REQUIREMENTS," dated June 4, 1990.

Date of issuance: February 25, 1993

Effective date: February 25, 1993

Amendment No.: 78

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 13, 1990 (55 FR 24007) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 22, 1992

Brief description of amendment: The amendment revises Technical Specification Section 6 to reflect changes to the Wolf Creek Nuclear Operating Corporation organization and titles.

Date of issuance: February 26, 1993

Effective date: February 26, 1993

Amendment No.: Amendment No. 58

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53790). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 1993. No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: September 16, 1992

Brief description of amendment: This amendment deletes: (1) the Main Coolant System water chemistry limits and surveillances, (2) the secondary water chemistry monitoring program, and (3) the requirements for oxygen monitoring of the Waste Gas Holdup System. These changes reflect the permanently shut down and defueled status of the plant.

Date of issuance: February 19, 1993

Effective date: February 19, 1993

Amendment No.: 143

Possession Only License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992, (57 FR 47142). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments

have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 26, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director):

petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: February 16, 1993

Brief description of amendment: This amendment excludes penetrations that are inside containment from surveillance requirements of Technical Specification 4.6.1.1.a.1 for the balance of fuel cycle 11. A Temporary Waiver of Compliance was verbally granted on February 12, 1993, followed by a confirmatory letter dated February 16, 1993.

Date of issuance: February 23, 1993

Effective date: February 23, 1993

Amendment No.: 119

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances and final determination of no significant hazards consideration is contained in a Safety Evaluated dated February 23, 1993.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L St. N.W., Washington DC 20036.

NRC Project Director: Herbert N. Berkow

Dated at Rockville, Maryland, this 22nd day of March 1993.

For the Nuclear Regulatory Commission

Carol A. Harris,

Acting Deputy Director, Division of Information and Publications Services, Office of Administration

[Doc. 93-6893 Filed 3-24-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50-458]

Gulf States Utilities; Consideration of Transfer of Control of Ownership of Licensee and Opportunity for Public Comment on Antitrust Issues

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the transfer of ownership of Gulf States Utilities (GSU), a partial owner and the operator of the NRC licensed River Bend Station, from its present stockholders to the Entergy Corporation. GSU, a current licensee, owns a 70% undivided interest in River Bend with Cajun Electric Power Cooperative, Inc. owning a 30% undivided interest. By letter dated January 13, 1993, GSU submitted its request to transfer, pursuant to 10 CFR 50.80, the ownership of GSU to the Entergy Corporation. Under the proposed transfer, GSU will become a subsidiary of Entergy Corporation, which will own 100% of the common stock of GSU.

By letters dated January 13, 1993, GSU requested amendments to the River Bend license that would recognize the change in ownership of GSU as to permit it to become a subsidiary of Entergy, and to provide that Entergy Operations, Inc. will become a licensee of River Bend with authority to operate the facility on behalf of its owners but without any ownership interest in the River Bend Station. The requests for license amendments to allow the change of operating authority to Entergy Operations, Inc. will be the subject of a separate **Federal Register** notice.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the one to have control is qualified to have control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

By this notice, the Commission is seeking public comment on this proposed transfer of control of ownership. Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Antitrust Issues

Pursuant to 10 CFR 2.101 of the Commission's regulations, the staff is publishing receipt of GSU's request to transfer the above described control of ownership of GSU.

Any person who wishes to submit comments or information relating to any antitrust issues believed to be raised by this transfer request should submit said comments or information within 30 days of the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Inspection and Licensing Policy Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes in the licensees' activities or proposed activities have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments concerning the competitive aspects of the proposed transfer, the staff notes that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC). The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to the subject transfer, see the request for transfer of control dated January 13, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland this 18th day of March, 1993.

For the Nuclear Regulatory Commission.

William D. Reckley,

Acting Director, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-6891 Filed 3-24-93; 8:45 am]

BILLING CODE 7590-01-M

Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50-483]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would revise Technical Specification 3/4.7.8, Surveillance Requirement 4.7.8.d, to allow a one-time schedule extension from the snubber transient event inspection requirement. The snubber is located in the alternate charging line portion of the Chemical and Volume Control System. The inspection is required to be performed by April 30, 1993 (6 months from October 30, 1992) because the alternate charging line experienced an unexpected transient on October 30, 1992. This extension beyond April 30, 1993, is required because the alternate charging line is located within the confines of the bioshield wall and, therefore, is inaccessible during power operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided its analysis of the issue of no significant hazards consideration as required by 10 CFR 50.91(a). The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Callaway FSAR Chapter 15 analysis has been reviewed and has been found to be unaffected by this proposed change. Extending the snubber transient event inspection surveillance interval for the alternate charging line portion of the Chemical and Volume Control system will not increase the probability or consequences of any accident or malfunction of equipment. The alternate charging line is not required in any FSAR Chapter 15 analysis.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. There is no new type of accident or malfunction created and the method and manner of plant operation will not change. The extension to the snubber inspection surveillance only affects the alternate charging line and is not used during normal plant operation. The alternate charging line is not used during normal plant operation. The alternate charging line will remain isolated unless a malfunction occurs in the normal charging line.

(3) The proposed change does not involve a significant reduction in a margin of safety. The margin of safety remains unaffected since no design change is made and plant operation remains the same. As discussed above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any previously evaluated. This change does not result in a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 26, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition and satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq. and Thomas A. Baxter, Esq. Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 5, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 19th day of March 1993.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–6890 Filed 3–24–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

Dated: March 18, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Transmittal Sheet for Phase 2 Cellular Applications for Unserved Areas.

Form Number: FCC 464–A.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 10,000 responses; .166 hours average burden per response; 1,660 hours total annual burden.

Needs and Uses

FCC Form 464–A is a cover sheet to be used to transmit Phase 2 unserved areas applications by those seeking authority to operate a cellular radio station. The applicant must certify on the form that the application is complete and contains all information required by the Commission's Rules. FCC Form 464–A will assist Commission staff in processing cellular applications expeditiously.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–6841 Filed 3–24–93; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of Sanctions With Respect to the European Community Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Postponement of implementation of prohibition of awards of contracts by federal agencies for products and services from Member States of the European Community until April 1, 1993.

SUMMARY: On March 19, 1993, the United States Trade Representative announced that the effective date of the prohibitions of awards of contracts by federal agencies for products and services of some or all member states of the European Community, scheduled to go into effect on March 22, 1993, was being postponed until April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Linscott, Office of GATT Affairs (202–395–3063), or Laura B. Sherman, Office of the General Counsel (202–395–7203), Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–6911 Filed 3–24–93; 8:45 am]

BILLING CODE 3190–01–M

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS

Public Hearing of the President's Commission on Model State Drug Laws

AGENCY: Executive Office of the President.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a public hearing of The President's Commission on Model State Drug Laws. The hearing is open to the public.

DATES: The hearing is scheduled for March 31, 1993 from 9:15 a.m. until 4:30 p.m., e.s.t. The hearing will be held in Washington, DC.

ADDRESSES: The March 31 hearing will be held at the Shiloh Family Life Center, 1510 9th Street, NW., Washington, DC 20001 (next door to the Shiloh Baptist Church).

FOR FURTHER INFORMATION CONTACT: David Osborne, The President's Commission on Model State Drug Laws, 800 Connecticut Avenue, NW., Suite 210, Washington, DC 20006, (202) 467–9640.

SUPPLEMENTARY INFORMATION: As mandated by the Anti-Drug Abuse Act of 1988 (P.L. 100–690), the President appointed the 24-member President's Commission on Model State Drug Laws in November 1992. The mission of the bipartisan commission is to develop comprehensive model state laws to significantly reduce, with the goal to eliminate, illicit drug use in America through effective use and coordination of prevention, education, treatment, enforcement, and corrections. The Commission is currently reviewing model legislation developed to address the spectrum of drug issues at the state and local level.

It is holding a series of public hearings around the country, focusing on the following issues: economic remedies against drug traffickers (January 6); community mobilization and coordinated state drug-planning mechanisms (January 27); crimes code enforcement as a weapon against drug offenders (February 16); drug and alcohol treatment (March 10), and; drug-free workplaces, schools, and families (March 31).

Based on testimony and information gathered during the public hearing process, the Commission will develop a body of recommended state legislation. The Commission will submit a final report, including the recommended legislation, by the end of May 1993. This report will be sent to the governors of all fifty states and disseminated widely through professional conferences and organizations in the prevention, education, treatment, law enforcement, and corrections fields.

The Commission is vice-chaired by Indianapolis Mayor Stephen Goldsmith. Its Commissioners, half Democrats and half Republicans, are: Kent B. Amos, Ramona L. Barnes, Ralph R. Brown, Ronald D. Castille, Kay B. Cobb, Shirley D. Coletti, Sylvester Daughtry, David A. Dean, Stephen Goldsmith, Daniel S. Heit, Judge Rose Hom, Richard P. Ieyoub, Keith M. Kaneshiro, Vincent Lane, Daniel E. Lungren, Robert H. Macy, N. Hector McGeachy, Jr., Edwin L. Miller, Jr., Michael Moore, John D. O'Hair, Jack M. O'Malley, Ruben B. Ortega, and Robert T. Thompson, Jr.

The public hearing in Washington, DC on March 31 will focus on developing and maintaining drug-free families, schools, and workplaces. It will specifically address the impact of drug and alcohol abuse on the family, funding drug-free family initiatives, school-based preventive education, and creating and sustaining drug-free workplaces. Those wishing to submit written testimony to the Commission should contact David Osborne by March 31, 1993. For his name, address, and telephone number, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. All oral testimony slots at the hearing have been filled. The hearing is open to the public but attendance is limited to the space available on a first-come basis.

Gerald Tennis,

Executive Director, The President's Commission on Model State Drug Laws.

[FR Doc. 93–6877 Filed 3–24–93; 8:45 am]

BILLING CODE 3190–02–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32016; International Series Release No. 526; File No. SR–NASD–91–5]

Self-Regulatory Organizations; Filing of Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Operation of the PORTAL Market

March 19, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] notice is hereby given that on January 29, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to Schedule I to the NASD By-Laws ("PORTAL Rules" or "PORTAL Market Rules"),[2] which governs the operation of the PORTAL Market and any trading effected in PORTAL securities. On March 10, 1993, the NASD submitted an amendment to the proposed rule change. This

[1] 15 U.S.C. 78s(b)(1) (1990).

[2] The NASD has filed six amendments to the proposed rule change, dated June 14, 1991, September 30, 1991, November 1, 1991, February 19, 1992, March 14, 1992, and March 10, 1993, respectively. No amendment to the rule language of the PORTAL Market Rules was made in Amendment No. 2 and Amendment No. 5 completely replaced Amendment No. 4. The proposed rule change incorporates the changes originally proposed in File No. SR–NASD–90–49, which would delete the requirements restricting the exit of PORTAL securities from the PORTAL Market to non-PORTAL accounts. See Securities Exchange Act Release No. 28429 (September 12, 1990), 55 FR 38623.

amendment is described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from Interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PORTAL Market was established to provide a marketplace for primary distributions and secondary trading meeting the requirements of rule 144A under the Securities Act of 1933 ("Securities Act").[3] Rule 144A provides an exemption from the registration and prospectus delivery requirements of the Securities Act.

The NASD is filing this Amendment No. 6 to SR–NASD–91–05 to modify the proposed rule change as a result of comments received in response to the SEC's publication for comment of the proposed rule change[4] and the comments of SEC staff on January 27, 1993. The SEC received six comment letters with respect to the proposed rule change.[5] The NASD submitted correspondence dated September 11, 1992 responding to the comments.[6]

Description of Proposed Rule Change

In the Proposing Release, the SEC identified four controls that were proposed as alternative safeguards to limit the leakage of restricted securities into the retail market. The controls are:

(1) Requiring that all NASD members report all trades in PORTAL securities to the NASD;

(2) Limiting the dissemination of trade reports to Rule 144A transactions;

(3) Requiring that all securities included in the system be assigned CUSIP numbers, or other widely accepted identification numbers, that are different from any identification number assigned to any unrestricted securities of the same class; and

(4) Permitting only restricted securities to be quoted in the PORTAL Market.

As a result of the comments received, the NASD has proposed modifications to the controls to facilitate secondary market trading in PORTAL securities while retaining a structure that will continue to limit the leakage of restricted securities into the retail market.

Trade Reporting

The Proposing Release included the proposal of the NASD that members be required to report all transactions in PORTAL securities to the NASD, including transactions in reliance on Rule 144 and sales to, or purchases from, a non-U.S. securities market. The NASD is proposing to amend this requirement with respect to the manner of reporting and certain of the information reported.

PORTAL Market information. The NASD is proposing to delete the requirement that the obligation to report transactions to the PORTAL Market depends on whether the member relies on PORTAL Market information in executing the transaction. Instead, all members of the NASD will be obligated to report transactions in PORTAL securities regardless of whether the transaction was in reliance on information in the PORTAL Market. In this manner, the PORTAL Market will operate like other computer-based market systems of the NASD.

Reporting obligations. The NASD is proposing to modify the information required to be included in the PORTAL transaction report to clarify that the requirement to provide the identity of the account where the transaction will settle is only imposed with respect to transactions that are submitted through the PORTAL Market to the PORTAL clearance and settlement system.[7] Further, the PORTAL transaction report will only require the identity of the contra-party to the transaction where the contra-party is an NASD member.[8] It is normal practice for trade reports to include the identity of both members, if the transaction is between two member firms. The NASD is not requiring that the identity of a member's client be included in the PORTAL transaction report, except, as set forth above, if necessary for clearance and settlement purposes.

The NASD is retaining the requirement that PORTAL dealers and PORTAL brokers submit a PORTAL transaction report with respect to each transaction in a PORTAL security through the PORTAL Market system within 15 minutes after execution of the transaction.[9]

The NASD is proposing to modify the requirement that members that are not participants in the PORTAL Market submit a weekly PORTAL transaction report. Instead, a member that is not a PORTAL dealer or PORTAL broker[10] would be required to submit a PORTAL non-participant report to the Market Surveillance Department of the NASD on a monthly basis. The PORTAL non-participant report will include the same information required for the PORTAL transaction report.[11]

The Proposing Release stated that the PORTAL transaction report must include a representation as to whether the transaction is being made in reliance on Rule 144A and, if the transaction is not in reliance on Rule 144A, whether the buyer is a qualified institutional

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[3] The PORTAL Market was approved by the Commission on April 27, 1990. Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781.

[4] Securities Exchange Act Release No. 30508 (March 24, 1992), 57 F.R. 10933 (March 31, 1992) ("Proposing Release").

[5] See Letter from Dr. W. Judson King, Chairman, Sunshine Securities Corporation, to Kathryn V. Natale, Assistant Director, Division of Market Regulation, SEC (June 10, 1992); Letter from Robin Shelby, Director-Legal Affairs and Assistant General Counsel, First Boston Corporation, to Margaret H. McFarland, Deputy Secretary, SEC (May 19, 1992); Letter from Pamela P. Root, Goldman Sachs, to Johnathan G. Katz, Secretary, SEC (May 18, 1992); Letter from Sullivan & Cromwell, to Margaret H. McFarland, Deputy Secretary, SEC (May 18, 1992); Letter from Robert S. Trefny, Davis Polk & Wardwell, to Jonathan G. Katz, Secretary, SEC (May 18, 1992); Letter from Edmund H. Schenck, Senior Vice President, NationsBank Corporation, to Jonathan G. Katz, Secretary, SEC (April 20, 1992).

[6] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Elizabeth H. MacGregor, Branch Chief, Division of Market Regulation, SEC (September 11, 1992).

[7] The Depository Trust Company has been approved as a PORTAL depository and clearing organization. The PORTAL Market includes a feature that permits a PORTAL dealer or PORTAL broker to direct its trade report through the PORTAL Market system to The Depository Trust Company for clearance and settlement. Currently, the PORTAL Rules make settlement through the PORTAL Market system mandatory. The NASD has proposed, however, that the use of this feature be optional. PORTAL dealers and PORTAL brokers may, therefore, transmit settlement instructions to The Depository Trust Company in a separate action from the entering of the trade report of the transaction into the PORTAL Market system and need not provide settlement details (such as the identity of the account where the transaction will settle) to the PORTAL Market. The NASD continues to believe, however, that the availability of automatic clearance and settlement as a result of entering a PORTAL transaction report is a significant step forward in facilitating securities transactions.

[8] The NASD had not intended to require, as several comment letters indicated, that members provide the identity of their customer in the PORTAL transaction report.

[9] Where each party in a transaction is either a PORTAL dealer or a PORTAL broker, the seller is obligated to submit a PORTAL transaction report. Where only one party to the transaction is a PORTAL dealer or a PORTAL broker, that member is required to submit the PORTAL transaction report.

[10] The amended language of the proposed rule change makes clear that a member would have to register as a PORTAL dealer if it wishes to register as a PORTAL qualified investor.

[11] Where both parties in a transaction are members but are neither a PORTAL dealer nor a PORTAL broker, the seller is obligated to submit the PORTAL non-participant report. Where only one member is a party to the transaction, that member is required to submit the PORTAL non-participant report. As set forth supra, where one member that is a party to the transaction is a PORTAL dealer or a PORTAL broker, it is the obligation of the PORTAL dealer or PORTAL broker to submit a PORTAL transaction report. The PORTAL non-participant report is required to be submitted no later than the fifth day of the month following any month in which the member has effected transactions in PORTAL securities.

buyer ("QIB") under Rule 144A, a non-QIB institution, or a non-QIB individual investor. In response to a number of comments opposing this requirement, the NASD is proposing to adopt a new reporting requirement that the PORTAL dealer or PORTAL broker responsible for submitting a PORTAL transaction report also submit to the Market Surveillance Department of the NASD a PORTAL surveillance report by the fifth day of each month with respect to transactions in the prior month that includes the information in the PORTAL transaction report and a representation as to whether the buyer is a QIB, a non-QIB institution, or an individual investor. The NASD is also proposing that the PORTAL non-participant report include the same representation.[12]

Reporting of primary offering transactions. The NASD is proposing to except from the reporting obligations of a PORTAL dealer or PORTAL broker the requirement to include in the PORTAL transaction report transactions that are part of the primary offering[13] by or on behalf of the issuer or an affiliate thereof.[14] This amendment clarifies that it had not been the intention of the NASD that the PORTAL transaction report requirements apply to the primary offering of an issuer's securities; as a result, only secondary market transactions in PORTAL securities will be required to be reported to the NASD in the PORTAL transaction reports. Such primary offering transactions are, however, proposed to be required to be reported to the NASD in the monthly PORTAL surveillance reports.[15]

Dissemination of Trade Reports

The Proposing Release provided that price and volume information disseminated through the PORTAL Market System would include only trades made in reliance on Rule 144A. A number of the commenters stated that this limitation on last sale price and volume display could unnecessarily distort market information to the detriment of investors. The amendment to the proposed rule change addresses the comments by providing that the last sale price and volume display will include information from all PORTAL transaction reports submitted to the PORTAL Market System.

Security Designation

The Proposing Release provided that the criteria for eligibility as a PORTAL security will apply at the time of initial designation and will constitute continuing requirements for designation as a PORTAL security. It was proposed that one requirement for initial and continued designation as PORTAL security would be that the security remain a restricted security, even though it may be eligible to be resold pursuant to the provisions of Rule 144, including Rule 144(k), but has not been so resold. Another requirement was that the security be assigned a CUSIP or CINS (CUSIP International Numbering System) security identification number that is different from any identification number assigned to any unrestricted securities of the same class.[16] The NASD is proposing to retain these proposed requirements as included in the Proposing Release[17] and to establish additional and alternative criteria.

A new provision is proposed to provide an alternative qualification criteria to the requirement that a PORTAL security be a "restricted security." The alternative criteria would permit a security to be designated as a PORTAL security if the security upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, Rule 144A, or Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to section 4 of the Securities Act and not involving any public offering ("contractual limitations").[18] This alternative contractual limitation criteria would permit a security that otherwise does not come within the definition of a "restricted security" under Rule 144(a)(3) to be eligible for designation in the PORTAL Market if the security by its terms is subject to limitations placed on the resale of the security by the issuer thereof.[19] Such limitations on resale would only permit resale of the security into an offshore securities market under Regulation S, or into the U.S. private market under Rule 144A or in what is colloquially known as a transaction exempt under "Section 4(1–½)" of the Securities Act, or into the U.S. public market under Rule 144.

It is also proposed that the security that is being considered for PORTAL designation is a depositary receipt, the security underlying that depositary receipt must either be a restricted security or be subject to the contractual limitations on resale.

A new provision is also proposed to clarify that if a PORTAL security is sold pursuant to the provisions of Rule 144 (i.e., into the U.S. public market), the security issued in the public market must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.

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[12] Members that are not PORTAL dealers or PORTAL brokers are, therefore, only required to submit one report per month which contains all of the trade report information and the buyer qualification representations with respect to each transaction during the prior month. The obligation to submit a PORTAL surveillance report is only applicable to PORTAL dealers and PORTAL brokers that were obligated to submit a PORTAL transaction report. Both the PORTAL non-participant report and the PORTAL surveillance report are required to be submitted to the Market Surveillance Department of the NASD no later than the fifth day of each month. It is anticipated that the PORTAL surveillance report will be submitted either through the PORTAL Market system or through a computer-to-computer interface ("CTCI") between the member and the NASD. It is anticipated that the PORTAL non-participant report will be submitted in manual form, through the PORTAL Market system, or by CTCI.

[13] The PORTAL Market includes a feature that permits PORTAL dealers and PORTAL brokers to distribute an offering through the PORTAL Market using screens that provide for information regarding the offering, permit PORTAL participants (PORTAL dealers, PORTAL brokers, and PORTAL qualified investors) to submit indications of interest, and allow the manager of the offering to confirm the final allocation of securities out of the offering.

[14] This modification is being made as a result of a number of comments that the fifteen minute reporting deadline for the entry of PORTAL transaction reports in the PORTAL Market System would be difficult to meet. Further discussion with the commenters indicated that the focus of their concern, at least in part, was on the primary distribution period in comparison to secondary market trading in the security.

[15] Similarly, the monthly PORTAL non-participant report would include both primary offering and secondary trading transactions in PORTAL securities.

[16] Alternatively, if the security is issued to investors only in physical form, the security must have a legend placed on each certificate stating that the securities have not been registered under the Securities Act, and cannot be resold without registration under the Securities Act or an exemption therefrom.

[17] The NASD is proposing to modify the language of the requirement that a security be a "restricted security" to clarify that the security must meet the definition of that term in Rule 144(a)(3) of the Securities Act of 1933.

[18] This modification is proposed, in part, to address the comments pointing out that certain of the securities that are part of a class of securities that have a CUSIP number different from the number assigned to unrestricted securities of the same class may not—in fact—meet the definition of being a "restricted security" under Rule 144(a)(3). It was stated that a portion of the American Depositary Receipts in the PORTAL Market were sold pursuant to Regulation S and, therefore, are not "restricted securities" within the meaning of rule 144(a)(3).

[19] Such contractual limitations on the resale of securities into the U.S. are a common feature of Global Depositary Receipt offering structures. The new criteria would also permit an issuer to make an offering offshore of securities that include the required contractual limitations in order to permit the offshore securities to be eligible for designation in the PORTAL Market before and after the expiration of the offshore restricted period mandated by Regulation S.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Because the NASD originally submitted the PORTAL Market Rules to the Commission before the Commission's adoption of Rule 144A, the current PORTAL Market Rules reflect certain expectations that the NASD had about the final version of Rule 144A. The version of Rule 144A that was adopted by the Commission differed from the proposed versions released for comment and from what the NASD had anticipated. The NASD has, therefore, submitted fairly comprehensive changes to the PORTAL Market Rules so that the rules will more closely reflect the adopted version of Rule 144A. The effect of these changes will be that PORTAL participants will no longer be assured of compliance with Rule 144A merely because they have complied with the PORTAL Market Rules. PORTAL participants, themselves, will be responsible for ensuring that the transactions comply with the requirements of Rule 144A.

The NASD believes that the PORTAL Market imposes significantly greater limitations on the resale of securities than does Rule 144A and that many institutional investors, who are unaccustomed to the exposure of their securities transactions, find the continuing oversight provided by the PORTAL Market more intrusive than desired.[20] The NASD is, therefore, proposing to amend the PORTAL Market Rules so that they more closely track the requirements of Rule 144A.

The NASD believes that the new structure will replace the segregated PORTAL account structure with other systems controls that will prevent restricted securities from flowing into the public markets, absent registration under the Securities Act or an appropriate exemption from registration. Moreover, the NASD believes that the restrictions will ensure that investors are not confused as to whether they hold a restricted or unrestricted security.

In its submission, the NASD stated that currently the PORTAL Market is unable to provide the regulatory oversight of PORTAL securities transactions that it had originally anticipated. The NASD believes this is because the current reporting requirements presuppose that the securities that are the subject of the transaction are deposited or will be deposited in a segregated PORTAL account. Most of these securities, however, have been traded outside such accounts. Nevertheless, the NASD believes that the PORTAL Market will perform a vital role in providing a quotation system for Rule 144A securities and in expanding oversight of the market in PORTAL securities through the significantly expanded reporting requirements that the NASD has proposed. The NASD believes that significantly greater information on transactions in restricted PORTAL securities will be available if the amendments are approved.

Effective Date

The NASD will file an amendment to the proposed rule change prior to SEC approval to request a delayed effective date with respect to the proposed revised reporting requirements. The NASD anticipates that such an effective date will be a date announced by the NASD within a stated period after SEC approval in order to permit members to modify their internal procedures to comply with the new PORTAL reporting requirements. The NASD believes that all other aspects of the proposed rule change may, without a negative impact on the membership, become effective on the date of SEC approval.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act because the proposed rule change is designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanisms of, a free and open market. The NASD also believes the proposed rule change is consistent with the provisions of Section 11A(a)(2) of the Exchange Act as it applies to a trading system "for particular types of securities with unique trading characteristics."

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The SEC published the proposed rule change for comment in Securities Exchange Act Release No. 30508 (March 24, 1992), 57 FR 10933. The SEC received six comment letters with respect to the proposed rule change from Davis, Polk & Wardwell, The First Boston Corporation, Goldman, Sachs & Co., NationsBank, Sullivan & Cromwell, and Sunshine Securities Corporation. The NASD submitted correspondence dated September 11, 1992 responding to the comments.[21]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or
B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[20] See Letter from Pamela P. Root, Vice President and Associate General Counsel, Goldman, Sachs & Co., to Brandon Becker, Deputy Director, Division of Market Regulation, SEC, (July 13, 1990), commenting on File No. SR–DTC–90–6. Brandon Becker, Deputy Director, Division of Market Regulation, SEC, (July 13, 1990), commenting on File No. SR–DTC–90–6.

[21] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Elizabeth H. MacGregor, Branch Chief, Division of Market Regulation, SEC (September 11, 1992).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6873 Filed 3–24–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32017; File No. SR–PTC–92–17]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of a Proposed Rule Change Relating to Accounting Procedures for Repurchase Transactions

March 19, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 4, 1993, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would eliminate the requirement that a reason be given by the participant purchasing securities in a repurchase transaction (sometimes referred to as "repo") when it closes out its position in PTC's repurchase accounting records.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) PTC provides its participants with a repo accounting service to facilitate the transfer of securities between the parties to a repurchase agreement. Under this repo accounting facility, the seller of securities in a repurchase transaction ("repo seller") is credited with a repo out position, and the securities purchaser ("repo buyer") is credited with a repo in position to reflect the obligation of the repo seller to repurchase the securities and the repo buyer's corresponding obligation to resell the securities. In addition, PTC disburses the equivalent of principal and interest attributable to the underlying securities to the repo seller, which has the repo out position, to reflect the terms of the standard repurchase agreement contract that provides for the repo seller to receive the principal and interest. Of course, PTC's participant with a repo in position or its participant with a repo out position or both may be acting as a custodian for a nonparticipant party to the repurchase transaction.

In August 1991, it was recognized that there was a misunderstanding among PTC participants of the procedure to be followed to close out a repo accounting position when the repo buyer is entitled to close out the repurchase agreement prior to performing its obligation to resell to the repo seller. This could occur, for example, because the repo seller has defaulted under the terms of the repurchase agreement. In order to clarify the apparent misunderstanding, PTC distributed a notice advising its participants that PTC would eliminate repo out and repo in positions upon receipt of a representation from the repo buyer stating, in essence, that the repo buyer has the legal right to close out the repurchase transaction.

This notice and Form of Representation was filed with the Commission and approved on August 27, 1991,[2] for a period of four months with the understanding that PTC would file a rule change clarifying the specific provisions of its Rules governing repurchase transactions to eliminate any ambiguity as to the method for closing out a repo position. The required rule change was filed on November 1, 1991.[3] That rule change modified PTC Rules, article III, rule 1, section 1(b) to provide that the repo positions will be closed out upon receipt of a representation from the repo buyer stating, in effect, that it has the legal right to close out the repurchase transaction.

Since that proposed rule change, the subject of closing out repo accounting positions has been discussed extensively at PTC's Operations Committee meetings and at the Public Securities Association. These discussions have led to a consensus that article III, rule 1, section 1(b) should be further modified to permit the repo buyer to close out the repo in and repo out positions in PTC's repurchase accounting service without requiring such repo buyer to give any reason for such action. This would, therefore, eliminate from PTC's Rules the present requirement that the repo buyer certify that it is no longer required under the repurchase agreement to resell the subject securities to the repo seller.

PTC will be making corresponding changes in its Participant's Operating Guide to describe this repo in/repo out close out mechanism and to require that the repo buyer's close out instruction to PTC state that the repo buyer has notified its repurchase agreement counterparty, and that party's participant custodian if the counterparty is not a PTC participant, of the action. In the ordinary course of business, PTC will notify the participant holding the repo out position of PTC's actions as described.

(b) Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions, it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has not solicited and does not intend to solicit comments on this proposed rule change. PTC has not received any unsolicited written

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 29617 (August 27, 1991), 56 FR 43827 (File No. SR–PTC–91–12) (order granting accelerated approval of the proposed rule change).

[3] Securities Exchange Act Release No. 30137 (December 31, 1991), 57 FR 947 (File No. SR–PTC–91–13) (notice of filing and order granting accelerated approval of the proposed rule change).

comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to such period that the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–92–17 and should be submitted by April 15, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6872 Filed 3–24–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25763]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 19, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 12, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–8143)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its wholly owned subsidiary companies, National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), Penn-York Energy Corporation ("Penn-York"), Empire Exploration, Inc. ("Empire") and Utility Constructors, Inc. ("Constructors") (collectively, "Subsidiaries"), all located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45, 50 and 50(a) thereunder.

National proposes to issue and sell, through December 31, 1994, in one or more transactions, up to an aggregate principal amount of $350 million in any combination of (a) debentures ("Debentures") and (b) medium-term notes ("MTNs"), such MTNs and Debentures to mature in not more than forty years. National requests authority to issue the Debentures pursuant to the competitive bidding requirements of Rule 50. National also requests authority to issue the Debentures and the MTNs pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). National further requests authority to begin negotiations with underwriters with respect to the issuance and sale of the MTNs and the Debentures. It may do so.

National would not issue MTNs at rates in excess of those generally obtained at the time of pricing for sales of medium-term notes having the same maturity, issued by companies of comparable credit quality and having similar terms, conditions and features. Further, National would not issue the Debentures at rates in excess of 200 basis points above the rate for Treasury obligations having comparable maturities. The complete terms of the Debentures and the MTNs shall be determined when the agreement to sell is made or at the time of delivery.

The Debentures and/or the MTNs will be issued under an Indenture dated as of October 15, 1974, as supplemented, and as it will be supplemented by one or more supplemental indentures. The supplemental indentures which provide for the issuance of the Debentures and/or the MTNs may include provisions for redemption prior to maturity at various percentages of the principal amount and may include restrictions on optional redemption for a given number of years up to the term of the Debentures and/or MTNs.

National proposes to lend from the proposed financing, in exchange for unsecured notes ("Notes"), up to (a) $250 million to Distribution, (b) $150 million to Supply, (c) $100 million to Seneca, (d) $50 million to Penn-York, (e) $40 million to Empire and (f) $15 million to Constructors. Additionally, should Penn-York and Supply complete a planned merger before December 1994, the total amount lent by National to the surviving corporation, together with the amount lent to Penn-York and Supply before the merger, would not exceed $200 million. The total amount lent by National to its Subsidiaries will not exceed the proceeds received by National from the issuance of the Debentures and/or MTNs.

The Notes to be issued by the Subsidiaries will bear interest at the effective interest cost of the principal amount of the Debentures and/or MTNs, in each case rounded to the next highest 1/100th of 1%. The Subsidiaries will use the proceeds from the Notes (i) to reduce their outstanding short-term borrowings under certain lines of credit, (ii) to repay notes issued to National in connection with the sale by National of certain debentures and medium-term notes, (iii) to enter into certain turn-key construction projects, (iv) to invest in the storage and production of natural

gas and (v) for other construction programs and general corporate purposes.

National Fuel Gas Company (70–8153)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, located at 10 Lafayette Square, Buffalo, New York 14203, has filed a declaration under Sections 6(a), 7 and 12(b) of the Act and Rules 45, 50 and 50(a)(5) thereunder.

National proposes to issue and sell, through March 31, 1995, in one or more transactions an aggregate of not to exceed 2.5 million authorized but unissued shares of its common stock, $1.00 par value ("Additional Common Stock"). National proposes to sell the Additional Common Stock pursuant to the competitive bidding requirements of Rule 50 or in a negotiated sale or sales with an underwriter or underwriters pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). National has requested that it be authorized to begin negotiations with an underwriter to sell the Additional Common Stock. It may do so.

National further seeks authority through March 31, 1995 to contribute up to the following percent of the net proceeds of such sale or sales ("Stock Proceeds") to the following subsidiaries: (a) 100% to National Fuel Gas Distribution Corporation ("Distribution"), (b) 100% to National Fuel Gas Supply Corporation ("Supply"), (c) 50% to Seneca Resources Corporation ("Seneca"), (d) 50% to Penn-York Energy Corporation ("Penn-York"), and (e) 50% to Utility Constructors, Inc. ("Constructors") (collectively, "Subsidiaries"); provided, however, that the total amount contributed to each of the Subsidiaries requested herein would not exceed the total amount of Stock Proceeds.

Also, National has proposed in a Form U–1 Application and Declaration (File No. 70–8143) to loan proceeds from the sale of certain medium-term notes and debentures ("Debt Proceeds") to certain subsidiaries pursuant to the terms described therein. However, the combination of the Stock Proceeds contributed by National and of the Debt Proceeds loaned by National to the Subsidiaries would not exceed (a) $325 million to Distribution, (b) $150 million to Supply, (c) $100 million in the case of Seneca, (d) $50 million to Penn-York and (e) $15 million to Constructors.

The proceeds of the capital contributions would be used by the Subsidiaries (a) to reduce outstanding short-term debt levels, (b) for exploration, development and/or construction programs, and/or (c) for general corporate purposes.

Ohio Power Company (70–8155)

Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue SW., Canton, Ohio 44701, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed an application under Sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

As permitted under Rule 52, Ohio Power plans to issue and sell, in one or more series, from time to time through December 31, 1993, up to $30 million aggregate par value of cumulative preferred stock ("Preferred"), at a par value of $25 and/or $100 per share. Ohio Power proposes to include in the terms of the Preferred an optional redemption provision and/or a mandatory sinking fund provision. Ohio Power also proposes to amend its Articles of Incorporation setting forth the terms of the Preferred.

An optional redemption provision may provide for redemption of shares of the Preferred at the option of Ohio Power at a price equal initially to the par value of the Preferred plus the annual dividend per share, which redemption price would then decline to par value not later than the year in which such shares would be retired pursuant to a mandatory sinking fund requirement. The redemption terms of the Preferred may also provide that none of the Preferred may be redeemed pursuant to such redemption terms during the first five years if accomplished through a borrowing or stock issuance at a lower effective cost less than the effective dividend cost of the Preferred.

The terms of the Preferred may also include a sinking fund provision. Under such provision, Ohio Power annually would redeem at a price per share equal to the par value, together with accrued and unpaid dividends, a number of shares of the Preferred equal to between 5% and 20% of the number of shares of the Preferred initially issued. Ohio Power also may, at its option, redeem on an annual basis an additional equivalent amount of the Preferred so retired. Additionally, any such sinking fund provision may give Ohio Power the option to credit against any sinking fund requirement any of the Preferred theretofore purchased or otherwise acquired by Ohio Power and not previously credited against any sinking fund requirement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6871 Filed 3–24–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2636]

Florida (and Contiguous Counties in Georgia); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 13, 1993, I find that the Counties of Alachua, Citrus, Columbia, Dade, Duval, Hamilton, Hendry, Hernando, Hillsborough, Lake, Levy, Manatee, Marion, Martin, Pasco, Pinellas, Polk, Putnam, Sarasota, Taylor, and Volusia in the State of Florida constitute a disaster area as a result of damages caused by excessive rainfall, tornadoes, and flooding which occurred on March 12 and 13, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on May 12, 1993, and for loans for economic injury until the close of business on December 13, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Baker, Bradford, Brevard, Broward, Charlotte, Clay, Collier, DeSoto, Dixie, Flagler, Gilcrest, Glades, Hardee, Highlands, Jefferson, Lafayette, Lee, Madison, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Seminole, St. Lucie, St. Johns, Sumter, Suwannee, and Union in the State of Florida and Clinch, Echols, and Lowndes Counties in the State of Georgia may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625

	Percent
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 263612 and for economic injury the numbers are 787700 for Florida and 787800 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 18, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–6849 Filed 3–24–93; 8:45 am]

BILLING CODE 8025–01–M

Center City Mesbic, Inc.; (License Number 05/05–5153); Filing of an Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing Small Business Investment Companies (13 CFR 107.601) for the transfer of ownership and control of Center City Mesbic, Inc. (the Licensee), 8 North Main Street, Dayton, Ohio 45402–1916, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*). The proposed transfer of control of Center City Mesbic, Inc., which was licensed on July 29, 1981, is subject to the prior written approval of SBA.

At the present time, the control of the Licensee is changing as a result of a proposed stock offering. Currently, all the outstanding common stock of the Licensee is voting stock and is held by 26 different shareholders. As a result of the Amendment of the Articles of Incorporation and sale of the additional stock, the existing stock will convert to non-voting stock, held by 32 different shareholders, and all voting stock will be sold to CityWide Development Corporation (CDC). CDC, the current full-time manager of the Licensee, is a private, non-profit full service development company.

The proposed officers, directors, and shareholders owning 10 or more percent of the common stock of the Licensee will be as follows:

Name	Title	Percent shares owned
Charles Hall, Professional Therapeutic Services, Inc., 45 Riverside Drive, Dayton, Ohio 45405.	Board Chairman/Director.	
Steven J. Budd, CityWide Development Corp., 8 North Main Street, Dayton, Ohio 45402.	President/Director.	
Thomas Graeff, Graeff Hardware, P.O. Box 1598, Dayton, Ohio 45401.	Vice President/Director.	
J. Stephen Herbert, Coolidge, Wall, Womsley & Lombard, 600 IBM Bldg., 33 W. First Street, Dayton, Ohio 45402.	Secretary/Director.	
Edward B. Reilly, First National Bank, Dayton, 6 North Main Street, Dayton, Ohio 45402.	Treasurer/Director.	
Richard T. Flaute, Supply Dayton Corporation, 210 Wayne Avenue, Dayton, Ohio 45402.	Director.	
Mark Beeson, Deloitte & Touche, 1700 Courthouse Plaza, N.E., Dayton, Ohio 45402.	Director.	
Donald McLaurin, Southwest Business Assn. of Dayton, c/o D'Laurin Electric, 2781 Wentworth, Dayton, Ohio 45406.	Director.	
Dr. John Weiler, Minority Business, Development Center, University of Dayton, Center for Business and Economic Research, 300 College Park Drive, Dayton, Ohio 45402.	Director.	
Gary Roan, Society Bank, N.A., 34 N. Main Street, Dayton, Ohio 45402.	Director.	
Sandra Pierce, Bank One, Dayton NA, Kettering Tower, Dayton, Ohio 45401.	Director.	
CityWide Development Corporation, 8 North Main Street, Gem Plaza, 2nd Floor, Dayton, Ohio 45402.	Manager	14
Bank One, Dayton, N.A., Kettering Tower, 40 N. Main Street, Dayton, Ohio 45401.	.....	11

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Dayton, Ohio.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 18, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–6850 Filed 3–24–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1780]

Advisory Committee to the United States Section of the Inter-American Tropical Tuna Commission; Partially Closed Meeting

The Advisory Committee to the United States Section of the Inter-American Tropical Tuna Commission will meet on May 4, 1993, at the Scripps Institute of Oceanography, Martin Johnson House (T–29), 8602 La Jolla Shores Drive, La Jolla, California. This session will discuss the 1992 fishing

year, the status of the tuna and dolphin stocks of the eastern Pacific Ocean, and developments affecting the fishery since the last annual meeting of the Commission. The morning session will be open to the public.

The Advisory Committee will also meet in an afternoon session on May 4, 1993. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the Annual Meeting of the Inter-American Tropical Tuna Commission to be held in Port Villa, Vanuatu, June 8–10, 1993. The members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close the afternoon session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 19(d) and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Fisheries Affairs (OES/OFA), room 5806, U.S. Department of State, Washington, DC 20520–7818. Mr. Hallman can be reached by telephone on (202) 647–2335.

Dated: March 9, 1993.

David A. Colson,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 93–6756 Filed 3–24–93; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice 1781]

Shipping Coordinating Committee (Maritime Safety Committee and Associated Bodies); Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, May 19, 1993, in room 2415, at US Coast Guard Headquarters, 2100 Second Street SW., Washington, DC to finalize preparations for the 62nd Session of the Maritime Safety Committee (MSC–62) and associated bodies of the International Maritime Organization (IMO) which is scheduled for May 24–28, 1993 at the IMO Headquarters in London. At the meeting papers received and the draft US positions will be discussed.

Among other things, the items of particular interest are:

a. Role of the human element in maritime casualties;

b. Prevention and abatement of marine pollution incidents;

c. Piracy and armed robbery against ships;

d. Reports of various Subcommittees (Stability, Load Lines and Fishing Vessels Safety; Radiocommunications; Containers and Cargoes; Life-Saving, Search and Rescue; Ship Design and Equipment; Training and Watchkeeping; Flag State Implementation.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Gene F. Hammel, US Coast Guard (G–CI), room 2114, 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–2280.

Dated: March 5, 1993.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–6755 Filed 3–24–93; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1782]

Shipping Coordination Committee International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) Diplomatic Conference); Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 10 a.m., on Thursday, April 15, 1993, in room 6103 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting is to prepare for the IMO/UNCTAD Diplomatic Conference on Maritime Liens and Mortgages, which will be held in Geneva, April 19 through May 7, 1993. The meeting will review the various papers that will be presented at the Diplomatic Conference and solicit public comment on the papers.

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested. The views of the public and affected interests are requested.

Copies of relevant documents will be distributed prior to the meeting as soon as they are available.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views, contact Captain David J. Kantor or Lieutenant Commander Mark J. Yost, U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: March 16, 1993.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–6757 Filed 3–24–93; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402–2801; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: TVA Procurement Documents, including Invitation to Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 73,500.

Estimated Total Annual Burden Hours: 130,975.

Estimated Average Burden Hours Per Response: 1.78.

Need For and Use of Information: TVA procures goods and services to fulfill its statutory obligations and sells

surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

John J. O'Donnell,

Vice President, Facilities Services.

[FR Doc. 93-6861 Filed 3-24-93; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Aviation Sales, Inc.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 93-3-25, Order to Show Cause

SUMMARY: The Department of Transportation is proposing to find Aviation Sales, Inc., fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 6, 1993.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: March 22, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-6847 Filed 3-24-93; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Kitsap County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project to improve transportation access from the vicinity of the railroad bridge near Gorst to downtown Bremerton in the vicinity of the ferry terminal.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, 711 South Capitol Way, suite 501, Olympia, WA 98501, telephone: (206) 753-9555; or Gary Demich, District Administrator, District 3, Washington State Department of Transportation, PO Box 9327, Olympia, WA 98504, telephone: (206) 357-2605; or Dan Eisses, Engineer, City of Bremerton, 239 4th Street, Bremerton, WA 98310, telephone: (206) 478-5272.

SUPPLEMENTARY INFORMATION: The FHWA, the Washington State Department of Transportation, and the City of Bremerton, in cooperation with Kitsap county, U.S. Department of Defense, and Kitsap Transit will prepare an environmental impact statement (EIS) on a proposal to improve transportation access from the Gorst vicinity to (and through) Bremerton in Kitsap County, Washington. The proposed improvement would involve adding lanes to SR3 along Sinclair Inlet. The project would also include the improvement of traffic flow within the City of Bremerton from the vicinity of Cambrian Avenue to the ferry terminal; this could be achieved through the elimination of on-street parking, the creation of one-way streets, or a combination of both. A final element in this project would be the replacement of the Gorst railroad bridge with a longer span.

The primary purpose of the project is to improve transportation access to and through downtown Bremerton. The downtown area includes the Puget Sound Naval Shipyard and the State ferry terminal, both major regional destinations. The project should relieve traffic congestion on SR 3 and SR 304. It should also improve the movement of traffic on Burwell and/or 6th Street, as well as in the vicinity of the ferry terminal. A third objective of the project would be to encourage the use of high occupancy vehicles (HOV's) and public transit. These improvements are considered necessary to provide both for the existing and projected future traffic demand.

Possible alternatives under consideration include (1) taking no action; (2) widening SR 3 along Sinclair Inlet from the existing four-lane highway to six or eight lanes either adjacent to the existing roadway or with the lanes in one direction added on a separate grade above the existing roadway. Under the eight lane option, the seventh and eighth lanes would be used as HOV lanes. The widened SR 304 would be connected with one-way couplets or a four-lane, two-way traffic flow through Bremerton to the ferry terminal. For purposes of the EIS, the project is subdivided into three geographic segments: (a) Gorst railroad bridge to SR 3/SR 304 interchange, (b) SR 3/SR 304 interchange to the Missouri Gate of the Puget Sound Naval Shipyard, and (c) from the Missouri Gate through the City of Bremerton to the ferry terminal. The (b) segment will include an option to facilitate the flow of traffic southbound to eastbound at the SR 3/SR 304 interchange. Incorporated into and studied with the various build alternatives for all segments will be design variations of lane separation, grade and alignment. Provisions for high occupancy vehicles (HOV) will be considered in all of the build alternatives.

An engineering and environmental feasibility study is currently taking place that looks at the north-south transportation corridors in the central Kitsap area. The project evaluated by the EIS does not conflict with that study and does not preclude the regional transportation corridor alternatives being considered. The proposed project from Gorst to downtown Bremerton addresses existing local transportation needs that would not be addressed by the alternatives being considered in the north-south transportation corridor study.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, affected Indian tribes, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held between November 1992 and May 1993. In addition, a public hearing will be held. Public notice will be given of the time and place of the various meetings. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

[Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding the intergovernmental consultation

on Federal programs and activities apply to this program.]

Issued on: March 17, 1993.

Richard C. Schimelfenyg,

Area Engineer, Federal Highway Administration, Washington Division.

[FR Doc. 93–6858 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Bradford County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed Central Bradford County Traffic Improvement Project in North Towanda Township, Towanda Township, and Towanda Borough, Bradford County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–4422, or Leon J. Liggitt, Project Manager, Pennsylvania Department of Transportation, District 3–0, 715 Jordan Avenue, Montoursville, Pennsylvania 17754–0218, Telephone: (717) 368–4390.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the highway system in Central Bradford County. The proposed project would involve the construction of a relief traffic route through Towanda Borough and North Towanda Township for the following reasons: to improve access to the U.S. Route 220 Bypass west of Towanda, to relieve current congestion, to accommodate projected traffic demands, to improve safety and to enhance natural features of the Towanda area. Alternatives under consideration include: Improving the existing half interchange on the Route 220 Bypass to allow full directional travel, connecting the Route 220 Bypass Access Road at Route 6 with the River Street area near Memorial Hospital, improving River Street along the Towanda Riverfront, and connecting Front Street with the Route 6 Bridge over the Susquehanna River. Also included will be a No-Build Alternative and a Transportation System Management Alternative.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and individuals who have previously expressed, or are known to have, an interest in the proposal.

Upon concurrence by the agencies of the project needs analysis, to be presented at a Transportation Project Development Interagency Committee Meeting (TPDICM) in early 1993, an initial public meeting will be scheduled, and additional public meetings will be held throughout the EIS development. The Draft EIS will be available for public and agency review and comment prior to the public hearing. Public notices will be provided for the dates, times, and locations of these meetings and of the Public Hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Pennsylvania Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 10, 1993.

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 93–6854 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–19; Notice 1]

Suzuki Motor Corporation, Inc. Receipt of Petition for Determination of Inconsequential Noncompliance

The Suzuki Motor Corporation (Suzuki) has determined that some of its replacement seat belts fail to comply with 49 CFR 571.209, Federal Motor Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573. Suzuki has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Between August 1979 and the present, Suzuki produced and distributed approximately 12,000 replacement seat belts which did not include the installation and maintenance instructions required by Standard No. 209.

Standard No. 209, Section S4.1(k) requires that "[a] seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *." In addition, section S4.1(l) requires that "[a] seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened." The instructions pertaining to threading and nonlocking retractors do not apply to Suzuki's belt designs.

Suzuki supports its petition for inconsequential noncompliance with the following:

1. It Is Highly Unlikely That a Replacement Seat Belt Assembly Will Be Installed in the Wrong Vehicle or Wrong Seating Position

Suzuki dealers use a parts ordering system which makes it highly unlikely that an incorrect seat belt assembly would be ordered. To order a replacement seat belt assembly, a dealer must first identify the specific model/model year vehicle that the replacement belt is to be installed in. The dealer then uses the parts catalog or parts microfiche for the specific vehicle model/model year to find an enlarged view of the seat belt assembly and to find the specific part number which corresponds to the specific seating position and trim color (if applicable) of the vehicle. The replacement part that the dealer receives is individually packaged and clearly labeled with its part number so that the dealer can verify

that [the] part received matches the part that was ordered.

Even if an incorrect seat belt assembly were ordered, it is highly unlikely that it would be installed in the wrong vehicle or seating position. There are a number of physical differences among seat belt assemblies for different vehicle models and seating positions which would make it readily apparent to the installer that the seat belt assembly to be installed is not identical to the seat belt assembly being replaced. Among the physical differences are differences in belt type, mounting configuration and location, buckle/buckle latch plate configuration, retractor cover size and shape, color availability for different vehicle models, etc.

2. It Is Highly Unlikely That a Replacement Seat Belt Assembly Will Be Improperly Installed

Suzuki believes that it is highly unlikely that failure to include installation instructions in a replacement seat belt assembly package will result in improper installation of the seat belt assembly. Seat belt installation instructions are contained in Suzuki's service manuals which are provided to all Suzuki dealers and are widely available to independent repair shops and individuals.

Seat belt replacement is typically done at dealerships and independent repair shops; these facilities typically have installation instructions available and the work is usually done by mechanics who have experience doing this kind of job. Regardless of who is doing the work and whether that person is using instructions, the usual procedure for installing a replacement seat belt assembly is for the installer to first remove the seat belt assembly that must be replaced and then to install the new seat belt assembly by reversing the steps used for removal. The process itself, of removing and reinstalling in the same manner, helps ensure that the replacement seat belt will be properly installed.

3. It Is Highly Unlikely That a Person Exists who Must Install a Replacement Seat Belt Assembly and has not Already Been Exposed to or [has] Available Information Concerning Proper Usage and Maintenance of Seat Belts

Information concerning the proper usage and maintenance of seat belts is widely available to the public. The information is provided in owner's manuals for all Suzuki vehicles, owner's manuals for other manufacturer's vehicles, and in publicly available information from a variety of sources. It is highly unlikely that a motorist exists who has not been exposed to or [has] available this information. Even more remote is the possibility that such a person exists and that that person must install a replacement assembly.

Interested persons are invited to submit written data, views, and arguments on the petition of Suzuki, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 26, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 19, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–6848 Filed 3–24–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Notice 93–12]

RSPA Form 41 Financial Schedules; Voluntary Automated Reporting on Diskette or Magnetic Tape/Cartridge

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces that the Research and Special Programs Administration's (RSPA's) Office of Airline Statistics (OAS) will accept U.S. air carriers' submission of Form 41 Schedules B–1, B–1.1, P–1.1, P–1.2, P–5.1, P–5.2, P–6 and P–7 on automated media, either diskette or magnetic tape/cartridge, in lieu of hard-copy reports. Carriers not wishing to take advantage of automated reporting have the option to continue hard-copy submissions. Concurrent with this notice, OAS is issuing Accounting and Reporting Directive No. 165 (Attachment A), which establishes the procedures for automated submissions.

DATES: This action is effective on January 1, 1993, and authorizes automated submission beginning with the applicable Form 41 financial schedules for the first quarter of 1993.

ADDRESSES: Comments and questions should be directed to the Office of Airline Statistics, DAI–10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus or Richard Strite, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC, 20590 (202) 366–4387 or 366–4373, respectively.

SUPPLEMENTARY INFORMATION: Current regulations in 14 CFR part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers*, require U.S. air carriers to file financial information with the Department. Sections 21, 22, 23 and 24 of this part specifically require this information to be submitted on hard-copy schedules. This notice advises carriers that, in lieu of the hard-copy schedules, RSPA will permit carriers to file the financial data for Schedules B–1 or B–1.1 *Balance Sheet*, P–1.1 or P–1.2 *Statement of Operations*, P–5.1 or P–5.2 *Aircraft Operating Expenses*, P–6 *Operating Expenses By Objective Groupings*, and P–7 *Operating Expenses By Functional Groupings—Group III Air Carriers* on automated media.

Submission of the financial data on automated media will expedite transmission of the data to the users while reducing transcription and other errors. The data elements on the financial schedules, as defined in 14 CFR part 241, will not change, except that system totals and 12-month-ended data will no longer be needed with the automated submission of Schedules P–1.1 and P–1.2. This will eliminate the reporting burden for this portion of Schedules P–1.1 or P–1.2.

RSPA will make personal computer software available to air carriers for Form 41 reporting. Use of the software package is at the option of the carriers. Carriers may elect to use their own automated systems or the RSPA-provided software. RSPA's objective is to facilitate automated reporting without imposing significant burdens on carriers. This action is being taken under authority delegated in 14 CFR 385.27(b) of the Department's regulations.

The reporting and recordkeeping requirements associated with this notice and Form 41 are being sent to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35

under OMB NO: 2138–0013. Initially, there will be no measurable change in carriers' reporting burdens. Carriers, that volunteer to submit their financial reports via automated media, will expend limited time in familiarizing themselves with RSPA's software. For those carriers using their own automated systems, there will be little if any additional burden. The initial burden experienced by the volunteer carriers will be offset by a burden reduction from the elimination of system reports (Schedule P–1.2) and 12-month data (Schedules P–1.1 and P–1.2). Also, volunteer carriers will not have to type hard-copy schedules, and the RSPA software program will save them time on data review. Once the automated data processing systems are in place, there should be a burden reduction of at least five hours per carrier per year. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4735. Carriers wishing to comment on this action are encouraged to submit their views to the Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503. It is requested that copies of any comments also be sent to DOT—RSPA, Director of Airline Statistics, DAI–1, Washington DC 20590–0001.

Richard R. John,

Acting Associate Administrator for Research, Technology and Analysis, Research and Special Programs Administration.

Attachment A—Accounting and Reporting Directive

No. 165. Issue Date: March 19, 1993.
Effective Date: January 1, 1993.
Part: 14 CFR Part 241.
Sections: 21 through 24.

RSPA Form 41 Financial Schedules—Voluntary Automated Reporting on Diskette or Magnetic Tape/Cartridge

(Schedules B–1, B–1.1, P–1.1, P–1.2, P–5.1, P–5.2, P–6, and P–7)

Research and Special Programs Administration (RSPA) will begin accepting Form 41. Financial Schedule information on diskette, or magnetic tape/cartridge starting with the first quarter 1993 submissions which are due May 10, 1993.

This directive establishes procedures for the physical change-over from hard copy to diskette or magnetic tape/cartridge, and does not affect the data elements as currently defined in 14 CFR part 241, except to the extent that system totals and 12-month-to-date figures are no longer needed with the automated submission of Schedules P–1.1 or P–1.2. This directive applies to eight schedules: B–1, B–1.1, P–1.1, P–1.2, P–5.1, P–5.2, P–6, and P–7, only three, four or five of which are required from the respective carrier groups. The remaining financial schedules B–7, B–12, B–43, P–1(a), P–2, P–10, P–12(a) shall remain as hard-copy submissions for the time being.

RSPA's objective is to facilitate automated reporting. However, changing established procedures requires some initial effort on each carrier's part, and it may conflict with other priorities. Therefore, the change from hard copy to automated reporting is voluntary.

There are several benefits to be derived by carriers who voluntarily submit automated data: (1) system totals and 12-month-to-date figures are no longer needed (Schedules P–1.1 and P–1.2); (2) the corresponding hard-copy schedule itself is not needed—carriers submit diskette or ADP tape/cartridge only, thus eliminating transcription errors; and (3) RSPA will provide carriers with personal computer software specifically designed to handle input and editing as well as diskette creation. RSPA software will prompt users and give "Help" when necessary—which means that carriers will spend less time on data preparation, proofreading and correction of schedules.

RSPA has received informal requests from several carriers, asking that it consider furnishing personal computer (PC) software for entering and editing financial schedule information, similar in concept to that in use for the T–100 Traffic and Capacity System. The carriers explained that it would be easier for them and would also improve the quality of carriers' data. To satisfy these requests and to assure standardization and consistent quality control, RSPA will provide all carriers with free PC software.

Air carriers presently using proven automated systems for preparing the applicable hard-copy Form 41 Schedules need not use the RSPA software. These carriers may still take advantage of the burden reduction in automated reporting by simply adding a diskette creation step to their existing procedures. This step would create an ASCII diskette file (see record layout under Option 2 below) on their personal computers, or a magnetic tape/cartridge (Option 3 below) for those carriers using mainframe or mini-computers.

There are four options for reporting the applicable schedule information, three of which are for automation, while the fourth is for continued submission of hard-copy schedules, which requires no change in current procedures. Carriers choosing to stay with hard-copy schedules, including computer-generated schedules, later may decide to take advantage of automated submission.

The advantages of using the RSPA software for automated reporting are that it provides user-friendly data entry screens, automatic editing, a useful audit trail, and an efficient record-retention system. This software may be especially appealing to carriers that have been preparing their schedules manually. It will eliminate the time required for typing hard-copy schedules, and it gives carriers the opportunity to move toward full office automation with little direct expense, since the software and complete documentation will be provided free of charge.

Options for Form 41 Financial Schedule Automated Submissions

Option 1—Automated Reporting Using Software Furnished by RSPA

RSPA will furnish a complete software package. The software will run on IBM and compatible personal computers. It will be sent along with this directive to all air carriers currently filing Form 41 Financial Schedules. The package includes executable programs, a "User Manual," and a "Reference Manual" which covers the existing rules and regulations for filing the applicable schedules.

The software included with this directive is user-friendly, intelligent and thoroughly tested. It contains the following features:

1. In addition to the data entry for the applicable schedules, the user may print out hard copies of the schedules on either dot matrix or laser printers.

2. Data entry is controlled by carrier group. Each carrier is given access to only those schedules applicable to its "Group." For example, Schedule P–7 is required by Group III carriers only.

3. Line items which are not applicable according to a carrier's "Group" are protected. For example: Lines 10 through 16 on Schedule P–5.1 should not be filed by Group I carriers with $20 million or more in gross revenues.

4. Data entry of sub-totals is unnecessary. The automatic calculation of sub-totals and totals by the software guarantees that the individual accounts will accurately balance.

5. Although the electronic filing of the data is to be submitted as debits and credits, the data entry software is designed to be done in "financial statement presentation" format (i.e.,

liabilities and revenues are entered as positive amounts).

6. System totals are automatically calculated as a sum of the entities and can be displayed at any time by using a function key.

7. "Total All Equipment Types" is also calculated automatically as a sum of the detail equipment types.

8. Prior to creating the floppy diskette for filing with RSPA, the user may invoke a "Cross-Schedule Validation" function which checks to verify that amounts which should agree between schedules are actually in agreement. Out-of-balance conditions are displayed on the screen designating the schedules, lines/accounts and amounts which do not agree.

9. Equipment types and configurations to be filed are selected from a menu which eliminates many problems associated with the use of incorrect aircraft type codes or nomenclature.

10. Previous filings will be retained and may be retrieved by the data entry software for the purpose of revising a submission by entering only those amounts which must be changed.

The features mentioned here and several others not mentioned have been designed into the software to facilitate data entry and to ensure compliance with reporting requirements. Special effort has been made to strengthen situations which have been continual problems in past reporting. For example: Use of the software assures that carriers will report correct schedules and correct lines/accounts on those schedules. Air carriers choosing to voluntarily use the software will find it easier and more accurate to prepare their quarterly submissions. The voluntary submission of automated data means that this information will be available in a more timely manner for use by the Department and for dissemination to the public.

Option 2—Automated Reporting Using RSPA Diskette Format and Carriers' Own PC Program

Diskette Specifications—Use either 3.5 inch or 5.25 inch diskettes, formatted for IBM and compatible computers.

File Name: F41RSPA.DEL

The data file should be in ASCII delimited format, where each alphanumeric field is enclosed by double quote marks (") and separated by a comma (,), and each numeric field is separated by a comma (,) without surrounding quotes. The required sequence of data elements is as follows:

RECORD LAYOUT FOR DISKETTE

Field No.	Description
1	*Form 41 Carrier Identification.* Alphanumeric, "CCE", Where "CC" is the two-letter carrier code AA = American, etc., may be expanded to accommodate three-letter carrier codes where necessary, followed by the Carrier Entity Indicator as follows: D = Domestic, A = Atlantic, L = Latin American, P = Pacific, I = International, and S = System—for Group I carriers filing semi-annually and having both domestic and international entities.
2	*Form 41 Schedule Identification.* Alphanumeric. One of the following: "B1", "B1.1", "P1.1", "P1.2", "P5.1", "P5.2", "P6", "P7".
3	*Reporting Period.* Alphanumeric, "YYMM", where "YY" = Report Year, and "MM" = Report Month. This is the ending month of the period being reported. (9303 = March 1993 etc.)
4	*Report Frequency.* Alphanumeric, "2" = Quarterly Reporting, and "3" = Semi-annual Reporting.
5	*Account or Line Number.* Alphanumeric, "NNNNS", Where N = Account Number for Schedules B–1, P–1.2, P–5.2, or a Line Number for Schedules B–1.1, P–1.1, P–5.1, P–6, and P–7, and S = Sub-account designator, this is a zero when unused.
6	*Aircraft Type Code.* Alphanumeric, "TTTC", Where "TTT" = Aircraft Type Code and "C" = Cabin Configuration, where 1 = Regular Passenger/Cargo configuration, 2 = All Cargo (Freighter) configuration, and 3 = Mixed configuration (Passengers and Cargo) share divided main deck), same format as Form 41 Traffic and Capacity Reporting. Used for P–5.1 and P–5.2, otherwise leave blank. Continue to use "9999" for the "Total All Types" column.
7	*Dollar Amount.* Numeric, Amounts represent whole dollars (not rounded to ($000)). Debits are Positive and Credits are Negative. Also used for "Number of Shares" on B–1 or B–1.1. Identify the Number of Shares value by entering the applicable Account No. or Line No. with Sub-account designator = "A" in Field No. 5. (See General Note number 2 below for an explanation of how to report "Number of Employees" on Schedules P–1.1 or P–1.2, when applicable.)

Option 3—Automated Reporting on Magnetic Tape or Cartridge Using Mainframe or Mini-Computer

This option is included to accommodate carriers who are currently processing these data on a mainframe or mini-computer. It may be easier to modify their existing procedures than it would be to adopt the RSPA software. Carriers may simply add a routine to their programs that will create the tape/cartridge file based on the specifications provided below.

File Specifications:

—Header Labels Standard, Value of Identification "J3.J3PFXXXX.F41"
—Record Format, Fixed Length Records, Blocked
—Record Length, 38 Bytes
—Block Length, 7600 Bytes
—Recording Density, 6250 bpi for tape, 38k bpi for Cartridge
—Data Format, Extended Binary Coded Decimal (EBCDIC), Character (CH) and Zoned Decimal (ZD).

RECORD LAYOUT FOR MAGNETIC TAPE/CARTRIDGE

Field name	Start	Length	Format	Description
1. Carrier Entity Code ...	1	5	CH	This is the same five-digit code used in the Form 41 Traffic and Capacity reporting. Note: For carriers reporting the quarterly B–1 use Domestic Entity Code.
2. Schedule Ident.	6	4	CH	Schedule Identification. Alphanumeric, Schedule and Value in Field 2.

RECORD LAYOUT FOR MAGNETIC TAPE/CARTRIDGE—Continued

Field name	Start	Length	Format	Description
				B–1 "BO10" B–1.1 "BO11" P–1.1 "PO11" P–1.2 "PO12" P–5.1 "PO51" P–5.2 "PO52" P–6 "PO60" P–7 "PO70"
3. Reporting Period	10	4	CH	Reporting Period. Alphanumeric, "YYMM", Where "YY" = Report Year, and "MM" = Report Month. This is the ending month of the period being reported. (9303 = March 1993 etc.)
4. Frequency	14	1	CH	Report Frequency. Alphanumeric, "2" = Quarterly Reporting, and "3" = Semi-annual Reporting.
5. Account or Line No. ..	15	5	CH	Account or Line Number. Alphanumeric, "NNNNS", Where N = Account Number for Schedules B–1, P–1.2, P–5.2, or a Line Number for Schedules B–1.1, P–1.1, P–5.1, P–6, and P–7, (Enter high-order zeroes where applicable), and S = Sub-account designator, this is a zero when unused.
6. Reserved	20	1	CH	Filler Space.
7. Aircraft Type Code	21	4	CH	Aircraft Type Code. Alphanumeric, "TTTC", Where "TTT" = Aircraft Type Code and "C" = Cabin Configuration, where 1 = Regular Passenger/Cargo configuration, 2 = All Cargo (Freighter) configuration, and 3 = Mixed configuration (Passengers and Cargo share divided main deck), same format as Form 41 Traffic and Capacity Reporting. Used for P–5.1 and P–5.2 otherwise leave blank (spaces). Continue to use "9999" for the "Total All Types" column.
8. Filler	25	2	CH	Always Spaces. (Reserved)
9. Dollar Amount	27	12	ZD	Dollar Amount. Numeric, rounded to nearest whole dollar and appropriately signed. Debits are Positive and Credits are Negative. Also used for "Number of Shares" on B–1 or B–1.1, identify the Number of Shares by entering the applicable Account No. or Line Number with Subaccount "A" in the field number 5. (See General Note number 2 below for an explanation of how to report "Number of Employees" on Schedules P–1.1 or P–1.2, when applicable.

General Notes:

1. Carriers may wish to submit these data in an automated format other than as specified in this directive. RSPA will attempt to accommodate any reasonable request for alternative automated reporting. Call or write to the Office of Airline Statistics to work out the details.

2. Reporting Number of Employees. Any Group I (under $20 million) air carrier that does not file Schedule P–1(a) in accordance with the filing option described in section 22 General Reporting Instructions (14 CFR Part 241) shall for the sixth month of any semi-annual period for which the option is exercised, enter as a part of the data for this statement of operations the *total number of full-time employees* using Line Number "9900" and Subaccount Designator "7" and the *total number of part-time employees* using Line Number "9900" and Subaccount Designator "8". This information was formerly typed in the bottom margin of P–1.1.

Any Group III, II, or Group I (over $20 million) air carrier that does not file Schedule P–1(a) in accordance with the filing option described in section 22 General Reporting Instructions (14 CFR Part 241) shall for the third month of any quarterly period which the option is exercised, enter as a part of the data for this statement of operations the *total number of full-time employees* using Account Number "9900" and Subaccount Designator "7", and the *total number of part-time employees* using Account Number "9900" and Subaccount Designator "8". This information was formerly typed in the bottom margin of P–1.2.

3. Schedule B–1—Balance Sheet, reported by Group III, Group II, and those carriers in Group I with more than $20 million in Operating Revenue.

4. Schedule B–1.1—Balance Sheet, filed by Group I carriers with less than $20 million in Operating Revenue.

5. Schedule P–1.1—Statement of Operations, filed by Group I carriers with less than $20 million in Operating Revenue.

6. Schedule P–1.2—Statement of Operations, filed by Group III, Group II, and those carriers in Group I with more than $20 million in Operating Revenue.

7. Schedule P–5.1—Aircraft Operating Expenses, filed by all Group I carriers.

8. Schedule P–5.2—Aircraft Operating Expenses, filed by Group III and Group II carriers.

9. Schedule P–6—Operating Expenses by Objective Groupings, filed by Group III, Group II, and those carriers in Group I with more than $20 million in Operating Revenue.

10. Schedule P–7—Operating Expenses by Functional Groupings, filed by Group III carriers only.

If you have any questions concerning this Directive, please call the Office of Airline Statistics—Mr. Bernie Stankus (202)366–4387 or Mr. Richard Strite on (202) 366–4373.

[FR Doc. 93–6846 Filed 3–22–93; 1:11 pm]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 19, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1081
Form Number: IRS Form 8809
Type of Review: Revision
Title: Request for Extension of Time to File Information Returns
Description: Form 8809 is used to request an extension of time to file certain information returns. It will be used by IRS to process requests

expeditiously and to track from year to year those who repeatedly ask for an extension.

Respondents: Individuals or households, State or local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 50,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—31 minutes

Learning about the law or the form—14 minutes

Preparing the form—51 minutes

Copying, assembling, and sending the form to the IRS—26 minutes

Frequency of Response: On occasion

Estimated Total Reporting/ Recordkeeping Burden: 119,000 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–6798 Filed 3–24–93; 8:45 am]

BILLING CODE 4830–01–M

[Treasury Directive: 16–51]

Relief for Treasury Obligations

March 18, 1993.

1. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury under 31 U.S.C. 321(b), and by virtue of the authority delegated to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, I hereby delegate to the Commissioner of the Public Debt the authority prescribed under 31 U.S.C. 3125 to:

a. Provide relief for the loss, theft, destruction, mutilation, or defacement of an obligation identified by number and description;

b. Prescribe the form, amount, and surety or security requirements for an indemnity bond required as a condition of relief if the obligation is payable to bearer or assigned so as to become payable to bearer and is not proven clearly to have been destroyed; and

c. Provide relief for interest coupons claimed to have been attached to an obligation upon a determination that the coupons have not been paid and have been destroyed or will not become the basis of a valid claim against the Government.

2. *Redelegation.* The authority delegated above to the Commissioner of the Public Debt may be redelegated to subordinate officials.

3. *Cancellation.* Treasury Directive 16–51, "Relief for Treasury Obligations," dated September 22, 1986, is superseded.

4. *Authority.* TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

5. *Reference.* 31 CFR part 306, subpart N.

6. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 93–6797 Filed 3–24–93; 8:45 am]

BILLING CODE 4810–25–M

[Treasury Directive: 16–52]

Determinations of Liability for Losses, U.S. Savings Bonds and Notes

Date: March 18, 1993.

1. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury under 31 U.S.C. 321(b), and by virtue of the authority delegated to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, I hereby delegate to the Commissioner of the Public Debt the authority prescribed under 31 U.S.C. 3126 to make determination of losses and relief from liability related to redeeming United States Savings Bonds and Notes.

2. *Redelegation.* The authority delegated above to the Commissioner of the Public Debt may be redelegated to subordinate officials.

3. *Cancellation.* Treasury Directive 16–52, "Determinations of Liability for Losses, U.S. Savings Bonds and Notes," dated September 22, 1986, is superseded.

4. *Authority.* TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

5. *Reference.* 31 CFR part 321, subpart E.

6. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 93–6851 Filed 3–24–93; 8:45 am]

BILLING CODE 4810–25–M

PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM

Notice of Hearing

As previously announced in the **Federal Register**, the President's Task Force on National Health Care Reform will hold a public hearing on Monday, March 29, 1993, at which testimony on health care reform will be solicited from consumer groups, insurers, health care providers, small and large business interests, labor, and other interested parties. The meeting will be held at the George Washington University, Charles E. Smith Center, 600 Twenty-second Street, NW., Washington, DC. The meeting will commence at 8 a.m.

Dated: March 24, 1993.

Michael Lux,

Special Assistant to the President for Public Liaison.

[FR Doc. 93–7114 Filed 3–24–93; 12:08 am]

BILLING CODE 3195–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 56
Thursday, March 25, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:26 a.m. on Tuesday, March 23, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the probable failure of a certain insured bank.

In calling the meeting, the Board determined, on motion of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 23, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-7036 Filed 3-23-93; 3:18 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, March 23, 1993, the Corporation's Board of Directors determined, on motion of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of a memorandum and resolution regarding an extension of the comment period for requesting public comment on cost, feasibility, and privacy implications of tracking deposits.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC

Dated: March 23, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-7037 Filed 3-23-93; 3:18 pm]

BILLING CODE 6714-01-M

FEEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 30, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, March 31, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This oral hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Public Hearing on Best Efforts.

DATE AND TIME: Thursday, April 1, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Title 26 Certification Matters.

Advisory Opinion 1993-3: B. Holly Schadler on behalf of Democrats 2000.

Transfers of Funds from State to Federal Campaigns; Announcement of Effective Date.

Administrative Matters.

DATE AND TIME: Thursday, April 1, 1993 at 2:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This oral hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Proposed Revisions to the Interim Ex Parte Communications Rules.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93-6995 Filed 3-23-93; 1:10 pm]

BILLING CODE 6715-01-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:00 p.m., April 26, 1993.

PLACE: On board MISSISSIPPI V at City Front, New Madrid, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93-6952 Filed 3-23-93; 9:16 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 27, 1993.

PLACE: On board MISSISSIPPI V at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from

members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93–6953 Filed 3–23–93; 9:16 am]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 28, 1993.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93–6954 Filed 3–23–93; 9:16 am]

BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 30, 1993.

PLACE: On board MISSISSIPPI V at foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 93–6955 Filed 3–23–93; 9:16 am]

BILLING CODE 3710–GX–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission held the following meeting during the week of March 22, 1993.

A closed meeting was held on Monday, March 22, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled on Monday, March 22, 1993, at 2:30 p.m., were:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Settlement of injunctive actions.

Institution of injunctive actions.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum (202) 272–2300.

Dated: March 23, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–7053 Filed 3–23–93; 4:00 pm]

BILLING CODE 8010–01–M

Federal Register

Thursday
March 25, 1993

Part II

Department of Energy

10 CFR Part 834

Radiation Protection of the Public and the Environment; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 834

[Docket No. EH-RM-93-834]

Radiation Protection of the Public and the Environment

AGENCY: U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The U.S. Department of Energy (DOE) is proposing its primary standards for the protection of the public and environment against radiation. The requirements would be applicable to the control of radiation exposures to the public and to the environment from normal operations under the control of DOE and DOE contractor personnel.

This proposed rule covers four basic areas relating to radiation protection of the public and the environment. It establishes dose limits for exposure of members of the public to radiation and requires the reporting of doses above specified levels. In addition, it requires the assessment of all releases of radioactive material and all doses and potential doses to the public from DOE activities to ensure that they are managed in accordance with the Department's "as low as is reasonably achievable" (ALARA) policy. It provides requirements for the management of radioactive materials in liquid waste discharges, in soil columns, and in selected solid waste containing radioactive materials and requires sites to establish ground water protection programs. It provides requirements for decontamination, survey, management, storage, disposal, and release of buildings, land, equipment, personal property containing residual radioactive material. It requires an Environmental Radiological Protection Program (ERPP) for each DOE activity to set forth the program, plans, and other processes to protect the public from exposures to radiation. In particular, it requires effluent monitoring and environmental surveillance programs as part of the ERPP.

DATES: Written comments (10 copies) should be submitted to the address listed below by June 22, 1993. A hearing will be held on May 13, 1993, beginning at 9 a.m. Requests to speak at the hearing must be submitted on or before May 10, 1993.

ADDRESSES: Written comments (10 copies) and requests to speak at the hearing should be addressed to: Ben McRae, U.S. Department of Energy, Office of General Counsel, GC-31, Docket No. EH-RM-93-834, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-3012.

A hearing will be held at 9 a.m. on May 13, 1993 at: U.S. Department of Energy, Germantown, Auditorium Building, 19901 Germantown Road (Route 118), Germantown, MD 20874.

Written comments and the hearing transcript may be examined between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays, in the U.S. Department of Energy, Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: For legal questions, contact: Ben McRae, U.S. Department of Energy, GC-31, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6975.

For technical questions, contact: Andrew Wallo III, or Harold T. Peterson, Jr., U.S. Department of Energy, EH-232 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2409.

For procedural questions concerning participation in the public hearing or submission of written comments, contact: Andi Kasarsky at (202) 586-3012.

SUPPLEMENTARY INFORMATION:

I. Background
System of dose limitations
Public dose limits
Ground water protection and control of effluents
Environmental monitoring
Remedial activities
II. Nature of Proposed Rule and Rationale
A. Radiation Protection Principles and Dose Limitation
General
Temporary increases
Other limits
Implementation
Interim strategy
Dose evaluations
Committed dose conversion factors
External dose conversion factors
Derived concentration guides
Other methods and alternatives
Parametric considerations
Demonstration of compliance with the dose limits
Supplemental documents
EPA models
B. Liquid Waste
General
Additional limitations
Implementation
Phaseout of soil columns
Tritium
Discharges to sanitary sewers
Demonstration of compliance—liquid waste
C. Residual Radioactive Material
Releases and evaluations
ALARA
Limits for residual radioactive material
Documentation
Surface and volume activity in property
Soil
Indoor radon-222
Specific numerical limits for surface activity
Supplemental limits
Unrestricted use
Restricted use
Justification for supplemental limits
Documentation of need
Reporting level
Control of residual radioactive material
Storage and disposal of residual radioactive material
D. Environmental Radiological Protection Program
ALARA program
BAT plan
BAT selection
Ground-water protection management plan
Environmental monitoring plan
Effluent monitoring
Environmental surveillance
Meteorological data
Preoperational study
Waste plan
Quality assurance program
Table 1 Dose and Concentration Limits and Reporting Levels
Table 2 Surface Contamination Guidelines
III. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
IV. Public Comments
A. Written Comments
B. Public Hearing

I. Background

The DOE owns numerous facilities where production, research, development, and other operations and activities involving radioactive material and radiation are carried out. Radiation protection requirements for these facilities and operations are, for the most part, established through DOE Orders under the authority of the Atomic Energy Act of 1954, as amended (Pub. L. 83-703).

Recently, the DOE has undertaken a thorough review of operations at its nuclear facilities. In particular, the DOE has been examining the performance of its contractors in achieving the goals of protecting the public health and safety and the environment. As a result of its review, the DOE is taking steps to improve its ability to enforce its nuclear safety and radiation protection requirements.

It is DOE's objective to operate its facilities and to conduct its activities so that radiation exposures to members of the public are maintained within acceptable limits and to control

exposures to residual radioactive material through the management of real and personal property. Moreover, DOE strives to operate its facilities in a manner that limits exposures to members of the public so that resultant doses are as far below the limits as is reasonably achievable and that DOE facilities have the capabilities, consistent with the types of operations conducted, to monitor routine and non-routine releases, and to assess doses and potential health impacts to members of the public from such releases.

In addition to providing protection to members of the public, it is DOE's objective to protect the environment from residual radioactive material to the extent practical so that ecosystems and national resources will be protected for future generations.

On February 8, 1990, the DOE issued the Order DOE 5400.5, "Radiation Protection of the Public and the Environment." Order DOE 5400.5 superseded those portions of Order DOE 5480.1A, "Environmental Protection, Safety, and Health Program for DOE Operations" of 8–31–81, chapter XI, that addressed public and environmental radiation protection standards and control practices. The DOE is proposing to promulgate, through this rulemaking, its primary standards for protection of the public and the environment against radiation which are presently found in DOE 5400.5. The proposed rule differs from DOE 5400.5 essentially in format rather than substance. Certain elements of Order DOE 5400.1, "General Environmental Protection Program," applicable to radiation protection, have also been included in the proposed rule.

System of Dose Limitations

A significant element of the Order DOE 5400.5 is the implementation of the recommendations of the International Commission on Radiological Protection (ICRP) contained in ICRP Publications 26 and the recommended dosimetric models and data base contained in ICRP Publication 30. In these reports and related guidance, the ICRP recommended a system of dose limitations that has been adopted and implemented by essentially all countries with nuclear programs. A significant feature of the ICRP dose limitation system is that compliance with the specified dose limits is not, by itself, satisfactory. The doses to workers and to the public must also be kept as low as is reasonably achievable (ALARA).

The dose calculation method is based on the recognition of two basic types of radiation-induced health effects—"non-stochastic" (or "deterministic") and "stochastic" (or "probabilistic"). Non-stochastic health-effects do not occur unless a threshold dose is exceeded. Such health-effects include cataracts, ablation of the thyroid, and sterility. One objective of the radiation protection system is to prevent these health-effects by limiting the radiation dose to less than the threshold dose level associated with these effects. The ICRP stated in Publication 26: "* * * non-stochastic effects will be prevented by applying a dose equivalent limit of 50 rem (0.5 Sv) in a year to all tissues except the lens, for which the Commission recommends a limit of 30 rem (0.3 Sv) in a year." In both the Order on radiation protection of the public and the environment (DOE 5400.5) and this proposed rule, there is no need to provide requirements for protection of the public from non-stochastic health-effects because the DOE has set limits for protection of the public against stochastic effects that are well below the threshold for non-stochastic health-effects. As long as this dose limit is not exceeded, there should be no non-stochastic health-effects.

Stochastic health-effects are probabilistic; the likelihood of their occurrence is assumed to be proportional to the radiation dose, and the severity of the effect is not dose-dependent. For example, cancer is considered to be the predominant stochastic health-effect of radiation exposure, and it is assumed that the greater the dose, the greater the risk (probability) of developing cancer. There is considerable uncertainty in estimating the probability of radiation-induced cancer, owing to the dearth of information on the induction of health-effects in humans exposed to low doses and low dose rates. Since epidemiological data cannot exclude the existence of a threshold for stochastic effects, such as cancer, the possibility that there may be no risk at low dose levels cannot be ruled out.

Notwithstanding the possibility of a threshold effect, in order to ensure the protection of the public and the environment and in setting the radiation protection standards in this proposed rule, the Department assumes that the severity of each type of stochastic (random) health effect, e.g., cancer and genetic disease, is independent of dose and that within the range of exposures normally encountered by the public, the relationship between dose and the probability of a stochastic health effect is without threshold (i.e., it is assumed that any exposure, no matter how low, can cause health effects). On the basis of these assumptions, DOE is requiring that the ALARA process be employed at its facilities. DOE and DOE contractor operations will be conducted in a manner that will ensure that doses to members of the general public and releases of radioactive material to the environment will be ALARA and do not exceed established dose or release limits.

In recommending an annual effective dose equivalent (EDE) limit of 100 mrem (1 mSv), the ICRP concluded that risks associated with this limit were within the public's general "level of acceptance" for everyday risks which was in the range of 10^{-6} to 10^{-5} per year (ICRP 1977). The risk of stochastic effects to workers and to members of the public are further reduced by restricting doses to levels that are as low as is reasonably achievable (ALARA) below the dose limits. Data from DOE operating experience verifies that the maximum doses to members of the public living near facilities which are operated with ALARA considerations, are consistently a small fraction of the 100 mrem (1 mSv) annual limit.

DOE is aware that the ICRP has recently revised the recommendations of ICRP Publication 26 and issued them in ICRP Publication 60. The Department believes it is neither prudent nor necessary to consider these recommendations in this proposal. The recommendations contained in ICRP Publication 60 for protection of the public are not significantly different from those in ICRP Publication 26. The recommended allowable dose for a member of the public in ICRP Publication 60 is expressed in terms of a 5 year increment (i.e., 500 mrem (5 mSv) in 5 years) which is effectively equivalent to the 100 mrem (1 mSv) in a year dose recommended in ICRP Publication 26. However, there are differences in the methods used to calculate dose. It is anticipated that these recommendations will be considered by an interagency committee. It would therefore be premature for DOE to unilaterally consider them at this time. DOE intends to evaluate the recommendations contained in ICRP Publication 60 and to consider possible adjustments in its radiation protection standards following the completion of the interagency review.

Public Dose Limits

The primary public dose limits include consideration of all exposure modes from all routine DOE activities (including remedial actions). The dose limit is expressed as an effective dose equivalent (EDE), a term developed by the ICRP for their risk-based radiation protection system, which requires the risk-based weighted summation of doses

and dose commitments to various organs of the body. The dose limit and other limitations do not include dose received from background radiation or radiation dose received by a patient from diagnostic or therapy treatment.

The DOE is not alone in its effort to update its radiation protection standard. The NRC has adopted the ICRP system of dose limitations and has promulgated revisions of its standards for protection against radiation (10 CFR part 20) to reflect the ICRP recommendations. The EPA utilized elements of the ICRP system in its Federal Guidance "Radiation Protection Guidance to Federal Agencies for Occupational Exposures" of January 1987, Federal Guidance Report No. 11 "Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion" of September 1988, and in the subpart of its 40 CFR part 61 dealing with emissions of radionuclides under the National Air Emissions Standards for Hazardous Air Pollutants (NESHAPs) published December 1989. It also permitted use of the system as an alternative to its standards in subpart A of 40 CFR part 191. Thus, this proposed rule is consistent with DOE Orders as well as regulations of other Federal agencies in adopting and implementing the ICRP recommendations with respect to the system of dose limitations.

Ground Water Protection and Control of Effluents

The U.S. General Accounting Office (GAO) issued a report titled "Nuclear Energy: Environmental Issues at DOE's Nuclear Defense Facilities," GAO/RCED–86–192, September 8, 1986. The report contained a recommendation that the DOE "* * * establish a ground water and soil protection strategy. Such a strategy should reflect DOE policy on the extent ground water and soil can become contaminated and include specific guidelines, to the extent practical, to protect ground water and soil around DOE facilities." In response to this recommendation, Order DOE 5400.1, November 9, 1988, required each DOE field organization to prepare a ground water protection management plan, and Order DOE 5400.5, February 8, 1990, included requirements for DOE facilities to establish Best Available Technology (BAT) programs for the treatment of waste streams prior to release as liquid effluents and to phase out the use of soil columns which retain suspended or dissolved radionuclides from radioactive liquid waste streams. These requirements have been retained in this proposed rule.

Environmental Monitoring

Another GAO report ("Environment, Safety, and Health: Environment and Workers Could be Better Protected at Ohio Defense Plants," GAO/RCED–86–61, December 13, 1985) recommended that DOE establish "mandatory" monitoring guidelines for all DOE facilities. Order DOE 5400.1 provides general guidance for the establishment of environmental monitoring programs including effluent monitoring and environmental surveillance for radiological and non-radiological constituents of all media and meteorological monitoring. The Order also requires the establishment of quality assurance and data verification programs and requires each facility to prepare an Environmental Monitoring Plan by November 1991. These requirements, as they apply to radiological monitoring, are included in this proposed rule. In addition, guidance issued January 1991, "DOE Environmental Regulatory Guide for Radiological Effluent Monitoring and Environmental Surveillance" supporting DOE 5400.5 and the similar requirements contained in this proposed rule, contains more definitive radiological monitoring specifications for the facility environmental radiological monitoring programs.

Remedial Activities

A major activity at many DOE facilities involves the radiological decontamination of facilities, property, and equipment previously used for nuclear operations. DOE 5400.5 contains general requirements for the radiological decontamination and the release of such material and property, and includes some specific minimum requirements with the primary goal being to reduce all exposures and potential exposures of the general public to levels that are as low as is reasonably achievable. This proposed rule contains criteria for the release of such materials and property, and includes some specific minimum requirements with the primary goal being to reduce all exposures and potential exposures of the general public to levels that are as low as is reasonably achievable.

II. Nature of Proposed Rule and Rationale

A. Radiation Protection Principles and Dose Limitation

General

Subpart B of the proposed rule contains requirements for a system of dose limitation that is consistent with the recommendations contained in ICRP Publications 26 and 30 for members of the general public. The proposed system continues the use of DOE requirements for the application of the ALARA process to activities involving exposures to radioactive material and radiation. The ALARA process is also a principal element of the ICRP dose limitation system.

The proposed rule includes the requirement that radiation exposures to individuals in the general public from all radiation sources and exposure pathways combined from routine DOE activities would not exceed an EDE of 100 mrem (1 mSv) in a year (§ 834.101(a)(2)). This dose limit is significantly lower than the 500 mrem (5 mSv) in a year whole body dose equivalent limit contained in the current Federal guidance for protection of the public.[1] Because this primary dose limit applies to all radiation sources and pathways combined (other than background sources) and the DOE ALARA process applies (§ 834.101(a)(1)), the Department expects doses from its operation to be no more than a small fraction of the 100 mrem (1 mSv) in a year EDE limit. Current monitoring programs have demonstrated the success of the ALARA process in lowering doses to levels that are well below the dose limit. The estimated maximum EDE to any individual member of the public for 1988, from DOE activities, was less than 10 mrem (0.1 mSv). Furthermore, data indicated that for most sites (29 of 35) the maximum estimated doses to individuals were less than 1 mrem (0.01mSv). EPA also evaluated air emissions from DOE operations when it promulgated its National Air Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides emissions from DOE facilities (40 CFR part 61, subpart H) on December 15, 1989. After reviewing data on emissions from DOE facilities during 1986, EPA concluded that DOE facilities were controlling air emissions to levels that limited maximum annual individual doses below 10 mrem (0.1 mSv) EDE and that this dose level provided an ample margin of safety for release to the air pathway. EPA concluded that risks of radiation-induced fatal cancer to 98% of

[1] On May 13, 1960 (25 FR 4402), and September 26, 1961 (25 FR 9057), the former Federal Radiation Council (FRC) guidance to Federal agencies for protection of the public and workers were issued. New recommendations for protection of workers, adopting ICRP–26 recommendations, were developed through EPA and approved by the President on January 27, 1987 (52 FR 28822). The FRC guidance for the general public has not yet been updated.

the individuals in the general public within 50 miles (80 km) of the sites were less than 1 in 1,000,000. The DOE believes that recent data from its operating facilities, such as those cited above, demonstrate that the dose limitation system in this proposed rule represents an effective method of regulating radiation exposures to the public and to the environment from its facilities.

The public dose limits in § 834.101 apply to doses from exposures to radiation sources from routine DOE activities, including doses that occur during the conduct of remedial actions. Radionuclides, including source, byproduct, and special nuclear material and naturally occurring and accelerator produced radioactive material (NARM), used at DOE facilities are subject to these limitations. The dose limits also apply to the doses to individuals who are exposed to radiation or contamination by radionuclides at properties subsequent to remedial action and release of the property. Radioactive waste-handling operations, including disposal, storage, transport, and packaging, are subject to the requirements of the proposed rule. DOE facilities and operations, in some instances, are subject to the regulatory requirements of the NRC and the EPA (e.g., 10 CFR parts 60 [high-level waste repository] and 72 [spent-fuel storage] and 40 CFR parts 61 [all DOE facilities], 191 [disposal of high-level waste], and 192 [UMTRA sites]). The Waste Isolation Pilot Plant, for purposes of this part, is considered to be a disposal facility subject to this part and 40 CFR part 191. It is Departmental policy that DOE facilities and operations will comply fully with the requirements of those and other applicable regulatory requirements.

In addition to the general reporting requirements (e.g., annual environmental reports), the proposed rule contains a requirement (§ 834.7) for notification to DOE Headquarters, in particular DOE–EH, if combined annual releases from any facility are causing, or might cause, doses to individual members of the general public to exceed 10 mrem (0.1 mSv) EDE in a year. This reporting requirement is not intended as a limit, but rather an action level that will act to alert DOE to activities that might cause doses that are a significant fraction of the overall dose limit. It will provide a mechanism by which DOE can identify and resolve potential problems in a timely manner to ensure that the dose to any member of the public is ALARA. Similarly, a reporting value for collective dose of 100 person-rem (1 person-Sv) is proposed to provide a timely notification before collective doses become substantial. Such notifications would be made in a timely manner, but within one month of determination of the occurrence, in any case. All reports, notifications, and records developed pursuant to this proposed rule would present data in the units used, or required, in the applicable regulation or DOE Directive. Conventional units would be presented, with appropriate Standard Internationale (SI) units in parentheses following the conventional units.

The ALARA process is required for situations that have potential doses below these reporting levels. The reporting level is the level at which DOE will take special or additional actions to review. The reporting level of 10 mrem (0.1 mSv) EDE in a year was selected because it represents a small fraction (e.g., 10%) of the primary EDE limit for essentially all radiation sources. Intrinsically, the uncertainties in dose estimates are high for doses an order of magnitude below the EDE limit. The uncertainties increase greatly for dose estimates on the order of 1 mrem (0.01 mSv) in a year. Thus, 1 mrem (0.01 mSv) in a year would not be appropriate for the reporting level because it would require considerably more frequent reporting for doses which have greater uncertainties and thereby diluting DOE oversight resources. DOE believes that the routine audit and oversight activity is adequate for doses two orders of magnitude below (e.g., 1% of) the primary EDE limit.

The collective dose reporting requirement was similarly selected. At annual collective dose below 100 person-rem (1 person-Sv) in a year, DOE believes that routine oversight activities are adequate, but above 100 person-rem (1 person-Sv) in a year, special oversight might be useful.

Neither the reporting level of 10 mrem (0.1 mSv) in a year for individuals, nor the 100 person-rem (1 person-Sv) in a year for collective dose, should be confused with "below regulatory concern" (BRC) considerations. DOE has not addressed the use of the BRC concept in this proposed rule. The BRC concept establishes levels of radiation that are associated with such small health risk that further regulatory efforts to reduce these levels are unwarranted because the diversion of associated resources from more critical public protection issues alone exceed the benefits to public health achieved by further regulation and the cost of the regulatory effort. In this proposed rule DOE requires that all releases and doses be reviewed and assessed under the ALARA process.

For purposes of determining compliance with the reporting requirements of 40 CFR parts 302 and 355, releases of source, by-product, and special nuclear material which occur from DOE activities are considered to be "Federally permitted" releases if they do not exceed the limits specified in this part and the operations and releases are in compliance with DOE policies, guidelines, and requirements specified in plans prepared and approved in accordance with this part.

Temporary increases. Situations could occur that would require (for short periods of time) exposure of individual members of the general public in excess of the 100 mrem (1 mSv) EDE in a year limit, but not more than 500 mrem (5 mSv) EDE in the year. Provisions for such a situation are contained in the proposed rule (§ 834.101(b)). If the need can be justified, DOE may approve a temporary higher limit than the 100 mrem (1 mSv) EDE annual limit. An example of such a situation would be a remedial action project which, in the long term, will benefit the general public in the area, but which, in the short term (during remedial action), might cause unavoidable higher doses to individuals. The Department expects requests for increases to the primary dose limit to be rare. The actions must be clearly justified and still would be subject to the ALARA process.

Other limits. In addition to the primary dose limit and requirements for the ALARA process, DOE proposes several pathway and source-specific limits. These include: 10 mrem (0.1 mSv) in a year from airborne effluent (§ 834.102(a)(2)); 25 mrem (0.25 mSv) in a year from all waste handling, storage, and disposal activities (§ 834.109(a)(2)); and radon flux 20 pCi (0.7 Bq)/m^2-sec where radium-226 residues are accepted for storage or disposal, 3 pCi(0.1 Bq)/L at a facility where sources of radon are handled, and concentration of 0.5 pCi/L (0.02 Bq/L) at boundary of the site (§ 834.102(a) (3),(4), and (5)). In general, these additional requirements are consistent with other Federal requirements. In addition, limits for radon and its decay products in air are provided in terms of Working Levels (WL) and concentrations in air rather than dose limits and are addressed independently.

DOE has adopted the public community drinking water standards in 40 CFR part 141, "Interim Primary Drinking Water Regulations, Promulgation of Regulations on Radionuclides," (Safe Drinking Water Act), for DOE drinking water systems (§ 834.103(a) (2),(3), and (4)). It is DOE

policy that the level of protection provided to persons consuming water from a public drinking water supply operated by DOE directly or through a contractor, be equivalent to that provided to the public for non-DOE operated systems. The proposed rule would require that liquid effluents from DOE activities be controlled to ensure that public or private drinking water systems downstream of DOE facilities are not caused to exceed the dose limits in 40 CFR part 141, as a result of DOE operations (§ 834.103(a)(5)).

Implementation

All DOE operations, with the exception of those under the jurisdiction of the Director of Naval Nuclear Propulsion Programs (who is also the Deputy Assistant Secretary for Naval Reactors within DOE), would be required to comply with the dose limits and ALARA requirements of this proposed rule. Section 309 of the Department of Energy Organization Act (Public Law 95–91), Executive Order 12344, and Public Law 98–525 establish the responsibilities and authority of the Director, Naval Nuclear Propulsion Program over all facilities and activities which comprise the Program, a joint Navy-DOE organization solely responsible for military application of nuclear energy in connection with naval warship propulsion. Pursuant to the purpose and direction of these actions, the standards, regulations, and requirements prescribed by the Director continue to apply to Program facilities and activities in lieu of this proposed rule.

DOE facilities will be designed and operated so that doses to members of the public do not exceed the dose limits and other requirements of the proposed rule. However, compliance with these limits is not sufficient to comply with the proposed rule because doses must be reduced as far below these limits as is practicable through the ALARA process. Selected limits and reporting levels in the proposed rule are summarized in Table 1 of this preamble. Compliance with the dose limits will be verified and demonstrated through a combination of measurements, monitoring and calculations to evaluate doses. The proposed rule requires reporting of these data each year in the Annual Environmental Report. While the standards in this proposed rule are not intended to apply to accidents with regard to planning or the design of facilities or their control systems, doses from accidental releases at a subject facility are to be included in that facilities dose assessments for the purpose of evaluating and assessing compliance with this proposed rule and would be reported in the Annual Environmental Reports.

Interim strategy. If the DOE activity cannot comply with the rule within 180 days of the effective date of the rule, an interim strategy to implement the rule requirements to the extent practicable and to provide a plan and schedule for achieving compliance would be required. These items would be submitted to DOE for approval and incorporated into the ERPP. The interim strategy would be required to:

(1) Document the reasons compliance cannot be achieved within the 180 days;

(2) Evaluate and alternative measures which might be taken;

(3) Analyze the effects of non-compliance on members of the public and the environment; and

(4) Provide an interim strategy and schedule for compliance.

Dose evaluations. Data developed to demonstrate that DOE operations comply with applicable standards and requirements should be correct and representative. Accordingly, this proposed rule requires that calculations of dose to the public from exposures resulting from both routine and unplanned activities be performed using standard EPA or DOE dose conversion factors or analytical models prescribed in regulations applicable to DOE operations. Doses to members of the public in the vicinity of DOE activities would be evaluated and documented to demonstrate compliance with the dose limits of this rule and to assess exposures of the public from unplanned events. Collective doses to the public within 50 miles (80 km) of the site boundary would be evaluated and documented at least annually.

Analytical models used for dose evaluations would be appropriate for characteristics of emissions (e.g., gas, liquid, or particle; depositing or non-depositing; buoyant or non-buoyant); mode of release (e.g., stack or vent; crib or pond; surface water or sewer; continuous or intermittent); environmental transport medium (e.g., air or water); and exposure pathway (e.g., inhalation; ingestion of food, water, or milk; direct radiation). Information on dispersion (transport and diffusion) in the environment, demography, land use (including the location and number of dairy and slaughter animals), food supplies, and exposure pathways used in the dose calculations would be appropriate to evaluate actual and potential doses in the environs of DOE facilities. Such information would be updated as necessary to document significant changes that could affect dose evaluations. Dose evaluation models that are codified, approved, or accepted by regulatory or other authorities, such as those codes approved for demonstrating compliance with 40 CFR part 61, subpart H, would be used where appropriate.

Committed dose conversion factors. Radionuclides taken into the body, generally by exposure modes whereby the radionuclide is ingested or inhaled, will continue to irradiate the body as long as they exist and are retained by the body. The dose delivered to a body over the lifetime of the individual from a single intake of a radionuclide is the committed dose. Tables of committed dose conversion factors would be used, as appropriate, based upon the ICRP reference man model, and the committed dose is the dose integrated over an interval of 50 years.

External dose conversion factors. The doses from exposure to external radiation from radionuclide concentrations in air and in water that result from submersion or from exposure to contaminated plane surfaces would be estimated, using the ICRP reference man model and appropriate dosimetry factors. However, for demonstrating compliance with DOE dose limits, external doses may be determined using data from direct measurements with appropriate instrumentation if doses obtained with the direct measurements are found to be at least as accurate as those determined by analytical model evaluations.

Derived concentration guides (DCG). DCG values are presented as reference values in appendix A for each of three exposure modes: inhalation of air containing the radionuclide; submersion in a semi-infinite cloud of air containing the radionuclide; and ingestion of water containing the radionuclide. The DCG tables may be used to evaluate only the three exposure modes upon which they are based.

Other methods and alternatives. Methods and alternatives other than those discussed above and as prescribed in applicable regulations would be submitted to DOE for approval. DOE may approve the alternative method, if appropriate.

Parametric considerations. Dose limits for members of the general public, from routine operation of a DOE activity, would be expressed as a dose received by the individuals during the year (if, for example, the exposure is external to the body) or the committed dose received by the individual over a period of 50 years from radionuclides taken into the body during the year. The limits should not be interpreted as dose

rates per se, especially not in the sense of instantaneous dose rates.

Calculated doses should be as realistic as practicable. Consequently, the individuals subject to the greatest exposure would be identified, to the extent practicable, so that the highest dose might be determined. Dose limits apply to actual or committed doses to real individuals. Consequently, all factors germane to dose determination should be applied. Alternatively, if available data are not sufficient to evaluate these factors, the assumed parametric values would be sufficiently conservative so that it is unlikely that individuals would actually receive a dose that would exceed the dose calculated using the values assumed. Parametric values used in performing dose calculations would be recorded and included with the calculations.

Collective public dose in the environs of a site with multiple emission points may be estimated using the assumption that all emissions occur from a single point centrally located on the site.

The assumption of a single point of emission may be used to calculate public dose for the maximally exposed individuals if the emission points can be combined in accordance with EPA guidance. This assumption may be used provided the procedures do not result in significant underestimates of doses and that the locations of the emission points are close to one another relative to the location of the receptor. Otherwise, the public dose to the maximally exposed individuals should be determined taking into consideration the actual locations of emissions on the site with respect to the offsite locations.

Demonstration of Compliance With the Dose Limits

The proposed rule would require the submission to and the approval by DOE of an Environmental Radiation Protection Plan (ERPP) for a DOE activity. DOE activities will be conducted in compliance with the specifications in these approved site-specific plans. These site-specific specifications will be used to determine when compliance is achieved. Compliance with the dose limits of the proposed, and concentration limits in specific plans, would be demonstrated by documentation of an appropriate combination of measurements and calculations to evaluate potential doses and releases. These data and results of evaluations would be presented in the Annual Environmental Report. The Annual Environmental Report also will contain the status of compliance with other requirements of this rule.

Supplemental documents. The dose conversion factors and derived concentrations needed to make dose evaluations to meet DOE requirements are provided in the proposed rule and in three supplemental documents: EPA–520/1–88–020, Federal Guidance Report No. 11, "Limiting Values of Radionuclide Intake and Air Concentration Factors for Inhalation, Submersion, and Ingestion;" DOE/EH–0070, "External Dose-Rate Conversion Factors for Calculation of Dose to the Public" and DOE/EH–0071, "Internal Dose Conversion Factors for Calculation of Dose to the Public." The dose conversion factors in these documents provide the primary basis for determining compliance with this proposed rule. Compared to previous DOE DCG tables, the table of DCGs in the proposed rule has been expanded considerably to present all classes of uptake and retention.

EPA models. The use of AIRDOS/RADRISK, CAP–88, or AIRDOS-PC models is prescribed by EPA in 40 CFR part 61, subpart H, to evaluate potential doses from airborne releases. In some instances, other models may be deemed more appropriate (e.g., predicts more realistic dose values) for estimating doses from DOE operations. Thus, two evaluations of doses from airborne pathways could be required: One to satisfy 40 CFR part 61 requirements and one for DOE purposes using contemporary dosimetry and site-specific parameters. However, wherever possible, DOE elements should minimize such duplicative analyses. If an alternative model or approach is necessary to develop the required data for demonstrating compliance with 40 CFR part 61, the operator of the DOE facilities should obtain EPA approval for use of the appropriate alternatives.

B. Liquid Waste

General

In addition to the dose limitation system for members of the public established in subpart B of the proposed rule, controls on the release of liquid wastes are imposed in subpart C to reduce the potential for radiological contamination of natural resources such as land, ground and surface water, and ecosystems. The proposed rule would require that the Best Available Technology (BAT) be used for selected liquid waste discharges (§§ 834.201(a)(2) and 834.203(a)(2)).

Section 301(b) of the Clean Water Act (CWA) states * * * for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which shall require application of the best available technology economically achievable (BAT) for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act * * *. This statement is the basis for requiring BAT under the CWA. Section 304(b)(2) of the CWA further states that a discharger must identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources * * *; and * * * specify factors to be taken into account in determining the best measures and practices available to comply * * * Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate * * *.

On the basis of section 304 of the CWA, the EPA established regulations (40 CFR part 125) which require the incorporation of Best Available Technology (BAT) control into National Pollutant Discharge Elimination System (NPDES) Permits required for a facility to discharge into public waters.

The NPDES "permitting system," with its requirement of the application of BAT, applies to DOE facilities discharging nonradioactive pollutants or pollutants with a nonradioactive component into public waters. Since DOE has the responsibility for regulating the discharge of radioactive pollutants into public waters, DOE determined that it was appropriate to have an equivalent requirement of the application of BAT to the discharge of radioactive pollutants into public waters.

Additional limitations. To protect aquatic animal organisms, § 834.205 of the proposed rule includes a dose limit of 1 rad/day (0.01 Gray/day), based on recommendations of the NCRP (NCRP Report No. 109, 1991). As an added

protection to ensure that discharges to public waters do not contain insoluble quantities that might settle in sediment in waterways, the proposed rule would require that concentrations of alpha and beta-gamma emitting radionuclides in settleable solids be less than 5 pCi/gram (0.2 Bq/gram) and 50 pCi/gram (2 Bq/gram), respectively (§ 834.201(a)(3) (i) and (ii)). The ALARA provisions of the proposed rule would be applicable to all discharges and concentrations and settleable solids would be as low as is practicable.

Implementation. Standards for liquid effluents are driven by the DOE ALARA policy and the objective to minimize contamination in the environment to the extent practicable. The proposed rule adopts the BAT as the appropriate level of treatment for liquid wastes containing radioactive material and provides that the use of soil columns be phased out at the earliest practicable time (§ 834.202(a)). Technical and economic considerations are included in determining the BAT. Radioactive waste streams that would otherwise contain radionuclide concentrations of more than the derived concentration guide (DCG) reference values at the point of discharge to a surface waterway are required to implement BAT treatment to further reduce the concentration. BAT treatment also may be required for waste streams with concentrations of radionuclides that are less than the DCGs, if they do not conform to other requirements of the proposed rule. BAT treatment is provided to protect ground water and to prevent radionuclide buildup in soil. DCG values in Appendix A of the proposed rule are not necessarily considered "acceptable" discharge limits. They are provided for the purposes of addressing the need to conduct BAT analyses and to aid in performing dose estimates. The ALARA provisions of this proposed rule are applicable to all liquid discharges containing radioactive material derived from DOE operations, including those that are less than the DCG values and meet BAT requirements.

The operating organization subject to the rule will submit to DOE for approval, within 90 days of the effective date of this rule, a plan and schedule to install waste treatment systems in existing facilities, if justified by a BAT analysis, to permit compliance at the earliest practicable time. The plan will include an ALARA section on tritium, if that isotope is a component of the effluent stream. DOE may make modifications of the proposed BAT plan and schedule or may direct the operating organization to make such modifications, or appropriate, updates. BAT plans will be incorporated into the Environmental Radiological Protection Program (ERPP) (see § 834.401). If the operation of the facility:

(1) Exceeds the reporting requirements specified in § 834.201(2) (e.g., doses to the public exceed 10 mrem (0.1 mSv)/year) and the water pathway is a significant contributor to that dose; or

(2) Does not conform to the ground-water protection requirements in § 834.210, BAT analyses would be conducted.

DCGs are used only as screening values (not discharge limits) for considering BAT requirements for these discharges. In all cases, the ALARA provisions of this part are applicable to all discharges and potential doses to the public.

Phaseout of soil columns. The use of soil columns to retain, by sorption or ion exchange, suspended or dissolved radionuclides from liquid waste streams would be discontinued in favor of an acceptable alternative disposal means (§ 834.202(a)). DOE activities that currently discharge liquids containing radioactive materials to soil columns, would have or develop a DOE approved plan and schedule for implementing acceptable alternate disposal to allow phase out of the soil columns. Interim strategies that include continued use of soil columns may be approved by DOE if alternatives to the use of soil columns would, on balance, be detrimental to the environment or the health and safety of the public. The BAT selection process would be applied to all those processes that will continue, as an interim control measure, to discharged liquid wastes containing process-derived radionuclides to soil columns for indefinite periods. These requirements are intended to prevent the buildup of contamination in soils and ground water and to protect the environment from the spread of contamination from burial trenches and pits.

New or increased discharges of radionuclides in liquid waste to inactive receptors would not be permitted. Contaminated soil columns, drainage systems, and ground water to which contaminated liquid discharges have been discontinued would be managed or decontaminated in accordance with the requirements in the proposed rule and other applicable regulations. Liquid discharges, even though uncontaminated, are prohibited in inactive release areas to prevent the further spread of radionuclides previously deposited.

Tritium. There is no practicable control technology available for removing tritium from dilute liquid waste streams. Therefore this proposed rule does not require that BAT be applied to the control of tritium in liquid effluents. Rather, process alternatives that reduce the amount of tritium entering the liquid waste streams would be identified and evaluated in accordance with the DOE ALARA policy (§ 834.215). Tritium decay in transit in confined ground water may be an acceptable alternative to direct release to the atmosphere or to surface waters. The proposed rule requires operating organizations, within 180 days of the effective date of the final rule, to develop a description and summary of the alternatives considered in the control of tritium releases and to submit it to DOE for approval. The plan may be incorporated into documentation necessary to fulfill waste management planning requirements for the specific facility (e.g., the Ground-Water Protection Management Plan), and reevaluated annually and updated as necessary.

Discharges to sanitary sewers. Provisions in the proposed rule for regulating the releases of liquid wastes to public sanitary sewer systems (§ 834.203) are designed to be generally consistent with requirements imposed by the NRC on its licensees. The BAT selection process would be implemented to reduce discharge concentrations if liquid wastes discharged from DOE activities into sanitary sewerage contain radionuclides at concentrations which, averaged monthly, would otherwise be greater than five times the DCG values for liquids at the point of discharge. When more than one radionuclide is present, the total ratio (sum of the fractions) of the average concentrations for each radionuclide to its respective DCG value would otherwise exceed five. Neither the DCG concentrations in appendix A nor the above five-times DCG concentration limit noted above are necessarily considered acceptable discharge limits. All discharges would be evaluated in accordance with the ALARA process and meet the other criteria and requirements including those stated below. The proposed rule also would require operators to ensure that the total annual discharge of residual radioactive material associated with DOE operations to the sanitary sewer system will not cause exposures to members of the general public that will result in doses that exceed a small fraction of the basic annual dose limit (§ 834.203(a)(4)). Further, the total quantity of radionuclides which may be released in a year to a public sewer system, from a DOE activity, is limited

to 5 Ci (185 GBq) of tritium, 1 Ci (37 GBq) of carbon-14, and 1 Ci (37 GBq) of all other radionuclides (§ 834.203(a)(3)). Discharges to public sewers would be coordinated with the operators of the waste water treatment works.

Discharges of radionuclides to government-owned sewer systems are not subject to the annual quantity limits or the concentration limits which are applicable when the discharge is to a public sewer system, but ALARA considerations still would be required (§ 834.203(b)). Liquid wastes containing concentrations or quantities of radioactive materials that, when averaged monthly, are greater than the limits for discharge into public sewer systems may be discharged into a chemical or sanitary sewerage system (e.g., systems with drain fields excepted) if the system is owned by the Federal Government. However, ALARA process requirements are applicable. Such a sewerage system would provide liquid waste treatment prior to discharge to surface waters in accordance with the requirements of proposed § 834.201(a). Sludge containing radioactive material from the operation of the government-owned sewerage system would be disposed in accordance with the appropriate requirements for solid waste (§ 834.203(b)(2)).

Demonstration of Compliance—Liquid Waste

The selection of the BAT treatment would be based on a BAT analysis prepared by the site operator. The specific plans and schedules for preparing BAT analyses and submitting them to DOE for approval is required will be documented in the BAT plan. The final analyses would be completed in accordance with the schedule in the BAT plan. To ensure that BAT analyses are of good quality and generally consistent in content, a "Guidance Manual for Implementing BAT Analyses" required under the proposed rule has been prepared and is provided as supplementary guidance. The final BAT analysis and selected BAT alternative would require approval by DOE. The BAT treatment alternative selected as a result of the analyses would be designed and operated in accordance with approved designed specification and plans.

Plans for the phaseout of soil columns would be incorporated into waste management plans for the site, or its equivalent, and would be part of the ERPP. The phaseout should be completed at the earliest practical time, and the schedule would require the approval of Program Offices. Phaseout plans would be included in the waste management plans prepared for the site and would be reviewed and updated annually.

Data would be collected and calculations completed to demonstrate that sites are complying with the dose limit for native aquatic animal organisms. These data would be reported in the site Annual Environmental Reports required by the proposed rule. Similarly, data to demonstrate that the sedimentation concentration limits are being achieved would be reported in the Annual Environmental Reports. It is expected that the quantity of radionuclides and settleable solids in effluent streams at most DOE facilities will be very small. If settleable solids are so low that the levels are below detection, periodic environmental sampling would be conducted to ensure that current operations are not contributing significantly to the buildup of residual radioactive material in sediment.

The Department considers protection of the ground water an important element of environmental protection and radiation protection programs. The proposed rule would require each site to prepare a Ground Water Protection Management Plan (§ 834.401(e)) and to implement ground water protection programs in compliance with these plans. The plans should be consistent with applicable Federal and State requirements and must be approved by DOE.

C. Residual Radioactive Material

Releases and Evaluations

Subpart D of the proposed rule contains DOE requirements for the release of property containing residual radioactive material. The proposed rule includes criteria that property containing residual radioactive material from DOE activities must meet if it is to be released from DOE control. These criteria are consistent with the dose limitation system established in the proposed rule. The criteria require that current and future use of the property be assessed and evaluated; authorized limits be established for release actions or remedial actions; and any releases of property be documented.

ALARA. The proposed rule would require that doses to the public from residual radioactive material must be as low as is reasonably achievable below the primary dose limits. A remedial action goal should be to return the levels of residual radioactive material to near-background levels. The Department realizes that in certain cases this may not be practical or even possible. The proposed rule would require that all releases of property be assessed and the ALARA process applied no matter how small the dose. DOE, as with the general dose limitation system, has established a graded level of control and oversight to ensure that doses to the public are low.

The proposed rule would require that assessments of potential doses associated with releases be specific to the particular release being considered. While the proposed rule is limited to regulation of radionuclides, responsible persons should be aware of coincident non-radioactive contaminants and their possible impacts. When non-radioactive contaminants are present coincident with residual radioactive material, decontamination or remedial measures should be rational and effective considering the hazards of both materials and in compliance with other applicable regulations governing such material.

Limits for Residual Radioactive Material

Authorized limits and, where appropriate, supplemental limits would be required to be developed for the release of property. DOE must review and approve authorized limits before properties with residual radioactive material are released to members of the general public for unrestricted use. Supplemental guidance for derivation and selection of these limits would be provided by DOE. The limits would be selected to ensure that doses to individuals using the property under "actual" and "likely use" scenarios[2] will be well below the primary dose limit specified in proposed 834.101(a)(2) and should be on the order of a few mrem in a year, or less, for continuous exposure. To the extent practicable, property to be released for use where close contact is likely, would have no measurable contamination.

The evaluation also would consider the "worst plausible" use[3] of the property over the long term. Allowable doses for release of the properties calculated under this type of scenarios may be a relatively large fraction of the general dose limit if the probability of

[2] *Actual* and *likely use* scenarios are those that have a fairly high probability of occurring. These represent expected use of the property. As a general guide, it should include scenarios that are plausible, unlikely to substantially underestimate the dose, and have a reasonable chance of occurring within at least the first 50 years. Scenarios that are not expected to occur for at least 100 years after release of the property normally need not be considered as likely use.

[3] The *worst plausible use* represents a scenario that is credible over the long term. The period of assessment may extend beyond several hundred years and the probability of the scenario ever occurring must be considered in the review.

the scenario occurring is relatively low. In cases where the probability of the worst plausible scenario is high and reasonably certain, potential doses associated with the release would be limited to a relatively small fraction of the 100 mrem (1 mSv) in a year dose limit.

Specific assessments would estimate collective dose to the public when such doses are potentially significant. In such situations, collective doses also would be considered under the ALARA process and in the establishment of authorized limits.

Documentation. Persons responsible for the decontamination and release of property with residual radioactive material subject to this proposed rule would ensure that the property to be released has been assessed and potential impacts are appropriately documented. The proposed rule would require evaluation of the historical use of property (including land, structures, equipment and recyclable material) prior to release to determine if it has been subjected to radiological contamination. The required documentation would include a description of the property; a description of the survey characterizing the property and the results, its radiological condition; and the quantity and disposition of the waste resulting from the decontamination effort. The documentation would also include the date of the last radiation survey; the identity of the organization and the individual who performed the monitoring operation; the type and identification number of monitoring instruments; the results of the monitoring operation; and the identity of the recipient of the released property. Documentation would be submitted to DOE for review and approval. DOE would ensure that information regarding the release of property is made available to interested parties and archived, as appropriate. Copies of these records would be made available for public review and would be archived in accordance with applicable records management directives.

Surface and volume activity in property. Specific requirements for volumes and surfaces (except for soil contamination) are not delineated in the proposed rule. DOE is presently considering in coordination with other agencies, additional requirements and may propose such requirements in the future. However, the requirements in subpart D are applicable to such material.

The proposed rule would require that property, including equipment, structures, and recyclable material contaminated or potentially having contaminated or potentially contaminated surfaces (e.g., radioactivity per unit surface area) or contaminated in depth, such as activated material or smelted contaminated metals (e.g., radioactivity per unit volume or per unit of mass) be surveyed to characterize the surface or mass concentration of radioactive material present in the material and evaluated in accordance with the ALARA criteria. Such materials may be released only if the authorized limits established for release of the material and survey techniques used to characterize the property are approved by DOE. Non-recyclable materials would be subject to the same requirements; however, development of authorized limits through the ALARA process would consider appropriate pathways based on expected fate of the material. The assessment of individual doses and collective doses would be conducted with appropriate models and dose conversion factors consistent with the requirements of this part and with associated guidance documents.

Soil. Authorized limits for radionuclides in soil will be developed by using survey data to characterize the site, and calculations and models will be used to predict potential doses to the users. Consistent with the general principles provided in proposed subpart D, the concentrations permitted by the authorized limits should ensure that doses to the general public are only a small fraction of the primary dose limit. The Department has developed a model, (the computer code RESRAD), and guidance manual ("A Manual for Implementing Residual Radioactive Material Guidelines," DOE/CH/8901, June 1989), for deriving soil criteria, conducting decontamination efforts, and applying the ALARA process. While other models and approaches are permitted, field elements would identify the differences and rationale for using other approaches in their analyses. The subject model and RESRAD code only consider individual dose; collective dose estimates must be developed using other procedures.

Experience to date indicates that potential doses from release of properties under these criteria, derived authorized limits, and procedures have resulted in low potential doses to the public. Cleanup of 47 properties in New York State by the DOE Formerly Utilized Sites Remedial Action Program (FUSRAP) has been reviewed. The procedures used in the RESRAD Code and associated implementation manual were employed to derive a soil concentration for depleted uranium that would produce a worst case dose of 100 mrem (1 mSv) in a year. It was estimated that this concentration was approximately 120 pCi (4.4 Bq) of uranium/gram of soil. DOE worked with the State and EPA and determined, on the basis of ALARA, that an acceptable authorized limit would be:

(1) Average soil concentrations over any 10 meter by 10 meter area should not exceed 35 pCi (1.3 Bq) of depleted uranium/g of soil; and

(2) 100 pCi/g (4 Bq/g) should not be exceeded over any 1 square meter area.

The cleanup of 47 properties accomplished under this standard were evaluated. The average maximum potential dose from post-remedial action use of the subject properties was less than 1 mrem (0.01 mSv) per year (less than 0.3% of the typical background dose received by someone living in the United States).

The proposed rule would adopt the soil criteria for radium which is provided in 40 CFR part 192 as limits for remedial actions at properties having soil contaminated with these materials. The 40 CFR part 192 standards were derived for the cleanup of properties in the vicinity of uranium mill tailings piles; EPA developed them consistent with the ALARA process. Therefore, when they are applied to the cleanup of uranium mill tailing sites, the requirement for applying the ALARA process during planning or development of the authorized limit already has been achieved. The ALARA process has many site-specific elements, so when these limits are applied to other uses, the ALARA process must be considered in the establishment of the authorized limits and during the implementation of the action. The Department considered requiring the derivation of soil limits for residual radium or thorium consistent with the process required for all other radionuclides, but opted to be consistent with the EPA guidelines and require an additional measure of protection by making the ALARA process applicable. DOE is requesting comments on the continued use of the concentration limits in 40 CFR part 192 with the added requirement for the ALARA process. Field verification of radon emanation rates would be in accordance with the requirements of 40 CFR part 61.

Indoor radon-222. The proposed rule would require that the objective of remedial actions conducted on any occupied or habitable structures would be to make a reasonable effort to reduce residual radioactive material levels such that an annual average (or equivalent) radon decay product concentration would not exceed 0.02 WL, including

background, in the structure. In any case, the radon decay product concentration would not exceed 0.03 WL, including background, in such structures as a result of residual radioactive material.

The requirements of proposed subpart D apply to both DOE-owned facilities and to private properties that are being prepared by DOE for release. Real properties owned by DOE are subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, concerning hazardous substances, and to any other applicable Federal, State, and local requirements. The requirements of 40 CFR part 192 are applicable to properties remediated by DOE under Title I of the Uranium Mill Tailings Radiation Control Act (UMTRA).

Specific Numerical Limits for Surface Activity

Both DOE 5400.5, February 8, 1990, and the "DOE Guidelines for Residual Radioactive Material," March 1987, utilized the values listed in Table 2 of this preamble for maximum contamination levels permitted for release of property having residual radioactive material on its surface. The values were used as "upper limit" standards for the unrestricted release of structures, equipment, personal property and recyclable material. These values were selected to be consistent with the requirements of the NRC guidance in its publications "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source or Special Nuclear Material," July 1982, and with NRC Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," June 1974. In addition to the requirements to meet these maximum contamination levels, the DOE guidance required that the ALARA process be used to bring the concentrations as far below these levels as is practical.

The Department has not included the values in Table 2 in this proposed rule. DOE and other Federal agencies are presently investigating alternatives to Table 2. The Department believes that potential doses associated with release of material at these levels are low, as are assumed risks, especially when the ALARA process is applied in addition to the contamination limits, as DOE has required in its existing Order, DOE 5400.5. However, the values in Table 2 are not internally consistent. They provide levels of protection that vary by orders of magnitude even among radionuclides in a category. Consequently, DOE is seeking comments on the continued use of the values in this table or alternative approaches. The Department, with NRC and EPA, is investigating risk-based approaches to surface contamination limits. The approach in the proposed rule would require the derivation of authorized limits for the release of property that will ensure potential doses to users of the property are low. If risk-based levels are established, should the limits be provided by radionuclide or in categories such as those provided in Table 2? Should separate limits be provided for removable and fixed contamination? What time periods are appropriate for assessing impacts for exposures associated with contaminated building or equipment surfaces?

DOE is seeking comments on mass contamination limits for structures, equipment, and recyclable material. The current DOE requirements and the proposed rule would require reviews of the action, including application of the ALARA process to establish authorized limits for release. DOE is requesting comments on the following: Should DOE establish tables of maximum concentrations (i.e., upper limits) that must not be exceeded or generic release limits that could apply to all sites? Or should the final rule and DOE guidance provide requirements, including scenarios, and parameters that each facility must use to derive authorized limits similar to what is provided in the proposed rule for soil contamination?

The proposed rule would require that all sub-surface contamination, such as contamination in depth (i.e., mass contamination), be assessed and authorized limits be determined, consistent with the principles set forth in proposed subpart D. Comments are requested on the DOE policy, in general, on the release for unrestricted use of personal property containing residual radioactive material (e.g., office furniture, tools, and other reusable items).

Supplemental Limits

Unrestricted use. If special specific property circumstances indicate that the criteria in proposed § 834.305 or authorized limits established for a given property are not appropriate for any portion of that property, then a request may be made to apply supplemental limits. Any supplemental limits would achieve the criteria set forth in proposed § 834.301 for both current and potential unrestricted uses of a property. Supplemental limits may be applied to any portion of a property if, on the basis of a specific property analysis, it is demonstrated that certain aspects of the property were not considered in the development of the established authorized limits for the entire property; and as a result, the established limits either do not provide adequate protection or are unnecessarily restrictive and costly.

The responsible operating organization would document the decision that the subject guidelines or authorized limits are not appropriate and that the alternative action selected will provide adequate protection and allow unrestricted use of the site giving due consideration to health and safety, the environment, costs, and public policy considerations. Prior to release, the approval for specific supplemental limits would be obtained from DOE as specified in proposed § 834.310. The request for supplemental limits must be accompanied by those materials required for the justification as specified in this section. DOE also would be responsible for coordination with the State and local government regarding the limits or exceptions and associated restrictions as appropriate.

Restricted use. Supplemental limits with restrictions on the use may be applied to any portion of the property when it is established that the authorized limits cannot reasonably be achieved and that restrictions on use of the property are necessary. It would be demonstrated that the supplemental limit is justified and that the restrictions will protect members of the public within the basic dose limits of the proposed rule and will comply with the requirements for control of residual radioactive material. Such supplemental limits must be approved by DOE prior to release. The operator and DOE would be responsible for implementing the administrative controls and the cognizant Federal, State, or local authorities should be responsible for enforcing them. The administrative controls include, but are not limited to, periodic monitoring as appropriate; appropriate shielding; physical barriers to prevent access; and appropriate radiological safety measures during maintenance, renovation, demolition, or other activities that might disturb the residual radioactive material or cause it to migrate.

Justification for Supplemental Limits

Documentation of need. The proposed rule would permit the use of supplemental limits when the specific criteria specified in § 834.310 are met. The need for supplemental limits would be documented by the contractor on a case-by-case basis using specific property data. Every reasonable effort

would be made to minimize the use of supplemental limits.

Reporting Level

Approval of authorized limits, survey procedures, certification of radiological condition of released property and oversight of the ALARA process are the responsibility of DOE. DOE, through its audit program, will overview all of these activities. The proposed rule would require notification to DOE if any authorized limits will potentially cause an EDE to exceed 10 mrem (0.1 mSv) in a year or collective dose to exceed 100 person-rem (1 person Sv) in a year. These values represent neither acceptable nor unacceptable doses. They are simply reporting limits that will help DOE concentrate its regulatory and oversight resources on activities of interest, and respond in a timely manner.

Control of Residual Radioactive Material

Property containing residual radioactive material not releasable and residues resulting from the decontamination of property would be managed in accordance with proposed subpart D and with appropriate DOE waste management regulation and directives. Additional requirements for disposal and storage of remedial action residues, primarily those where radium-226 and its decay products represent the significant mode of exposure of the public, are provided below. The disposition of residues from remedial actions associated with inactive uranium mill tailings sites implemented by DOE under Public Law 95–604 is subject to the requirements of 40 CFR part 192. The requirements in § 834.411 are included in the proposed rule to ensure that management of similar materials not subject to 40 CFR part 192 provide equal or greater levels of protection. They include requirements for interim storage, interim management and disposal of such materials.

Storage and disposal of residual radioactive material. Wastes resulting from decontamination projects or containing residual radioactive material may be disposed or stored at existing DOE waste disposal and storage facilities. These facilities are regulated under specific DOE requirements and, in some cases, by EPA or NRC regulations. If residual radioactive material from activities governed by this proposed rule is disposed or stored at such facilities, it will be regulated under the requirements of regulations applicable to the sites and any applicable section of this proposed rule.

The proposed rule includes specific requirements for storage and disposal of radium and thorium residues from decontamination and remedial actions. These requirements are consistent with requirements in 40 CFR part 192 for the management of radium residues from remedial actions at uranium mill tailings sites. In addition to the radon flux limits contained in 40 CFR part 192 and subpart Q of 40 CFR part 61, this proposed rule includes radon concentration limits. These limits are provided to be consistent with past practices of the Department in regulating radon exposures and to provide further assurance that doses associated with radon releases will be minimized. The proposed rule provides requirements for assessing potential effects over the long term (greater than 1,000 years) and to provide special protection against intrusion for residues with unusually high concentrations of radium. Reviewers are requested to comment on the need for such additional limits considering that EPA has reviewed radon-220 emissions from DOE storage and disposal sites under the Clean Air Act (CAA) and has determined that a flux rate of 20 pCi (0.7 Bq)m^{2}sec provides adequate protection with an ample margin of safety.

D. Environmental Radiological Protection Program

All DOE activities would be managed in accordance with an Environmental Radiological Protection Program (ERPP) for the operation. An ERPP would be comprised of the plans, programs, and other procedures or processes by which the DOE activity will protect the general public and the environment. An ERPP would include:

a. ALARA Program;
b. BAT Plan;
c. Ground-Water Protection Management Plan;
d. Environmental Monitoring Plan, including:
(1) Effluent monitoring;
(2) Environmental surveillance;
(3) Meteorological data; and
(4) Preoperational study;
e. Waste Plan; and
f. Quality Assurance Program.

An ERPP would be submitted to DOE for review and approval within 90 days of the effective date of the final rule and updated annually or sooner if there is a change in the activity or operation. The rule would require that the submitted ERPP be approved, revised, or rejected by DOE within 180 days of the effective date of the final rule.

ALARA program. An ALARA program would address the potential radiological impact of the operation on the public and the environment and be approved by DOE. The approved program would include requirements for contractors or DOE personnel to implement the ALARA process for all DOE activities and facilities that cause public doses and releases to the environment. An ALARA program would include requirements for documenting ALARA decisions as well as implementing the ALARA process. ALARA requirements in the proposed rule are for protection of the public and environment; application of the ALARA process for the limitation of occupational exposures at DOE operations are addressed in proposed 10 CFR part 835 (56 FR 64334).

In addition to the considerations discussed below, the ALARA process and associated decisions conducted for the protection of the public and environment should consider the impact on workers. It is not appropriate to ignore large increases in occupational doses in order to achieve small potential reductions in public exposures and visa versa. Both individual exposures and collective exposures over time must be considered. A quantitative cost-benefit analysis (e.g., optimization) could be performed, given the results of the considerations required by the proposed rule. However, the parameters needed to evaluate the cost-benefit analyses are difficult to quantify, and evaluations themselves can be expensive. Furthermore, the evaluations include many additional assumptions, judgments, and limitations that are often difficult to reflect as uncertainties in the analyses. Therefore, considering that most analyses for DOE operations that evaluate potential exposures of the public involve low radiation dose increments (i.e., levels that represent a small fraction of the dose limits and assumed small fraction of acceptable risks), qualitative and semi-quantitative analyses are often acceptable bases for ALARA judgments. The bases for such judgments would be documented in accordance with the requirements of the approved ALARA program. More detailed analyses should be considered if the decisions might result in doses that approach or are a significant fraction of the dose limit. Quantitative analyses also may be necessary if other regulations or statutes, such as the National Environmental Policy Act, require them.

An ERPP would be required to contain an ALARA Program to control releases of radioactive materials and exposures to radiation at levels as low as is reasonably achievable. The extent of the ALARA efforts and evaluations should reflect the magnitude of the potential doses to the maximum dose exposed individual member of the

public and the collective dose to all persons within 50 miles of the site of the DOE activity. An ALARA Program would include, as appropriate:

(1) A statement of commitment to use the ALARA process;

(2) A description of the means to be used to implement the ALARA process;

(3) A process for documenting ALARA decisions;

(4) A training program for the staff on implementation of the ALARA process; and

(5) A listing and evaluation of specific factors considered in arriving at ALARA position, including, as appropriate:

(i) The maximum dose to members of the public;

(ii) The collective dose to the population;

(iii) Applicable alternative processes, such as alternative treatments of discharge streams, operating methods, or controls;

(iv) Doses for each alternative evaluated;

(v) Cost for each of the alternatives evaluated;

(vi) An examination of the changes in cost among alternatives; and

(vi) Changes in societal impact associated with process alternatives, e.g., differential doses from various pathways of exposure.

Interim guidance "DOE Guidance on the Procedures in Applying the ALARA Process for Compliance with DOE 5400.5" was distributed March 8, 1990. The interim guidance is equally applicable for the proposed rule to assist those who must prepare an ALARA Program. The guidance suggests a step-by-step logical procedure to arrive at ALARA judgments.

BAT plan. An ERPP would contain a BAT Plan for those activities conducted at a site for which the proposed rule requires a determination whether to use the BAT for processing liquid waste. A BAT Plan would:

(1) Document the analysis of whether the BAT is required and, if required,

(2) Document the BAT results of (or schedule for) the selection process; and

(3) (Where selected) set forth the schedule for installing the BAT.

BAT selection. Selection of the BAT for a specific application will be made from among candidate alternative treatment technologies which are identified by an evaluation process that includes factors related to technology, economics, and public policy considerations. Factors that are to be considered in selecting BAT, at a minimum, will include: The age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; non-water quality environmental impact (including energy requirements); safety considerations; and policy considerations. BAT analyses are difficult to express quantitatively because the factors do not have a common denominator. However, consideration of these factors should permit qualitative evaluations which will support judgments. A report "Best Available Technology (BAT) Guidance Manual, Application of BAT for Liquid Effluent Releases at Department of Energy Facilities," is being drafted and will be available for those who are responsible for making BAT decisions.

Ground-water protection management plan. Each DOE operation would implement a ground-water protection program and would describe the program in a Ground-water Protection Management Plan. This proposed rule would require Ground Water Protection Management Program to be developed and implemented. While the requirements of this proposed rule are generally limited to the control, measurement, and evaluation of radionuclides and radioactive material, it is not appropriate or effective to separate radiological and non-radiological elements of the management programs for ground water protection. Therefore, to the extent possible, the Ground Water Protection Management Plan should address both. However, only the radiation-related portion of the plan is subject to this proposed rule. Each plan would be reviewed and approved by DOE. The plan must consider relevant Federal and State requirements and must include a monitoring program to characterize ground water at DOE sites. The proposed rule would require that the ERPP contain a Ground-Water Protection Management Plan that would:

(1) Address the potential for radiological and, where appropriate, non-radiological contamination of the ground water by a DOE activity;

(2) Document the quality and quantity of ground water;

(3) Identify possible sources of contamination;

(4) Describe strategies for controlling contamination, including preventive and remediation measures to comply with applicable Federal environmental laws and regulations; and

(5) Describe measures for monitoring the ground-water.

Environmental monitoring plan (EMP). Demonstrations of compliance with requirements of this proposed rule generally will be based upon calculations that make use of information obtained from monitoring and surveillance programs. Subpart E of the proposed rule delineates the requirements of the EMP. The abilities to detect, quantify, and adequately respond to unplanned releases of radioactive material to the environment also rely on in-place effluent monitoring, monitoring of environmental transport and dispersal conditions, and assessment capabilities. This will enable DOE to develop useful data and to collect and analyze pertinent information on unplanned releases in a timely manner. It is the intent of DOE that the monitoring and surveillance programs for the DOE activities, facilities, and locations be of high quality. Although some differences result from specific site or specific activity conditions, uniformity in the methods and performance criteria used to obtain the information will be achieved to the extent practicable.

To ensure that the effluent monitoring and environmental surveillance programs are of good quality at all DOE facilities and sites, requirements and recommendations are provided in the proposed rule and in supplemental guidance for implementation of effluent and environmental monitoring programs. The ERPP would be required to contain an EMP that provides for effluent monitoring to obtain representative measurements of the quantities and concentrations of pollutants in liquid and airborne discharges and environmental surveillance to monitor the effects, if any, of a DOE activity on members of the public, the environment and natural resources.

An EMP would be required to set forth:

(1) The elements of the plan to determine compliance with the requirements of the proposed rule and other applicable Federal environmental laws and regulations;

(2) The rationale and design criteria for each element;

(3) The extent and frequency of monitoring and measurements;

(4) Procedures for laboratory analyses;

(5) Implementation procedures;

(6) Meteorological data; and

(7) For a new facility or new activity at an existing facility, a preoperational study.

Effluent monitoring, in an ERPP, would be required to:

(1) Measure quantities and concentrations of pollutants in liquid and airborne discharges from a DOE activity;

(2) Collect samples in a manner and frequency sufficient to characterize the effluent streams from a DOE activity; and

(3) Analyze samples to the extent necessary.

Environmental surveillance, in an ERPP, would be required to:

(1) Establish background levels of pollutants;

(2) Determine the location and magnitude of concentrations of pollutants from a DOE activity;

(3) Evaluate the effects on the public and the environment of pollutants from a DOE activity;

(4) Utilize monitoring stations on the basis of the type of emission, meteorology, climatology, topography, geography, population distribution, land use, and other relevant considerations;

(5) Collect and analyze samples in a manner and frequency sufficient to characterize the emissions from a DOE activity and their effects; and

(6) Verify whether any unexpected or undetected releases occur.

Meteorological data, collected in accordance with an EMP, would be required to:

(1) Characterize atmospheric transport and dispersion conditions in the vicinity of a DOE activity;

(2) Describe meteorological conditions including precipitation, temperature, wind speed, wind direction, and atmospheric stability that are important to surveillance; and

(3) Support assessment of routine and non-routine emissions.

Preoperational study. A preoperational study would be required to:

(1) Begin at least one year prior to the start-up of a new activity;

(2) Characterize existing physical, chemical, and biological conditions that could be affected;

(3) Establish background levels of radioactive and, as appropriate, chemical components;

(4) Characterize pertinent environment and ecological parameters; and

(5) Identify potential pathways for human exposure or environmental impact.

Waste plan. An ERPP would be required to contain a Waste Plan to manage, dispose, and store radioactive waste, including low-level waste, high-level waste, transuranic waste, spent nuclear fuel, and residual radioactive material.

A Waste Plan for a DOE activity would be required by the proposed rule to:

(1) Provide for controls to ensure compliance with this part and applicable Federal statutes and regulations;

(2) Describe the means used to limit access to waste;

(3) Describe the interim and long-term strategies for dealing with waste;

(4) Describe the administrative safeguards; and

(5) Describe the mechanism for cooperating with State and local officials.

(6) Describe the process for releasing property contaminated or potentially contaminated with residual radioactive material.

Quality assurance program. An ERPP would be required by the proposed rule to contain a Quality Assurance Program that includes:

(1) Organizational responsibility;

(2) Program design;

(3) Procedures;

(4) Field quality design;

(5) Laboratory quality control;

(6) Human factors;

(7) Recordkeeping;

(8) Chain-of-custody procedures;

(9) Audits;

(10) Performance reporting; and

(11) Independent data verification.

TABLE 1.—DOSE AND CONCENTRATION LIMITS [1] AND REPORTING LEVELS

Reference	Limiting value	Exposure mode	Comment
834.101(b) Primary dose (EDE) limit.	100 mrem in a year	Exposed individual, all sources and pathways.	Excludes background and medical exposures.
834.7 Reporting requirement	10 mrem in a year	Exposed individual, all DOE sources and pathways.	Doses and collective doses exceeding these value must be reported to DOE–EH.
	100 person-rem in a year	All DOE sources, pathways, and exposures to persons within 80-km.	
834.101(b) Temporary exemption, maximum EDE.	500 mrem in a year	Exposed individual, all DOE sources and pathways.	Exemption from primary limit only permitted under special circumstances, justified, and approved by DOE–EH.
834.102(a)(2) Air pathway only EDE limit.	10 mrem in a year	Exposed individual, DOE sources only through air pathway.	Excludes radon.
834.102(a) Radon limits	20 pCi $m^{-2}sec^{-1}$	Average flux rate over area of disposal or storage site.	As an alternative, compliance may be demonstrated by showing EDE ≤10 mrem in a year EDE to the exposed individual.
	3 pCi l^{-1}	Maximum concentration at any point on boundary.	
	0.5 pCi l^{-1}	Average concentration at site boundary or beyond.	
834.103(a) Drinking water EDE limit.	4 mrem in a year	From drinking water at the tap.	
	Ra-226 and Ra-228 5×10^{-9} μCi ml^{-1} and gross alpha, excluding uranium, 1.5×10^{-8} μCi ml^{-1}.		
834.110(a) Waste management EDE limits.	25 mrem in a year	Exposed individual, all pathways associated with waste management.	Radon regulated separately, see 834.102, 834.306, and 834.311.

TABLE 1.—DOSE AND CONCENTRATION LIMITS[1] AND REPORTING LEVELS—Continued

Reference	Limiting value	Exposure mode	Comment
834.201(a) Liquid waste controls ..	All discharges controlled by ALARA and if >DCGs, must be reduced by BAT.	Liquid discharges at release point.	
834.201(a)(3) Settleable solids	5 pCi y^{-1} alpha, 50 pCi y^{-1} beta-gamma.	Settleable solids in effluent at discharge point.	
834.203(a) Sanitary sewerage limits.	5×DCG and annual total of 5 Ci H–3, 1 Ci C–14, 1 Ci others combined.	Discharges to sewer	Potential doses must be a small fraction of the primary EDE limit.
834.205 Aquatic animal organisms	1 rad day^{-1}	Limit applies to water on-site as well as water off-site.	

[1] All doses must be as far below the applicable limits as is reasonably achievable.

TABLE 2.—SURFACE CONTAMINATION GUIDELINES

Radionuclides[2]	Allowable total residual surface contamination (dpm/100 cm^2)[1]		
	Average[3,4]	Maximum[4,5]	Removable[4,6]
Transuranics, I–125, I–129, Ra-226, Ac-227, Ra-228, Th-228, Th-230, Pa-231	100	300	20
Th-Natural, Sr-90, I–126, I–131, I–133, Ra-223, Ra-224, U–232, Th-232	1,000	3,000	200
U-Natural, U–235, U–238, and associated decay product, alpha emitters	5,000	15,000	1,000
Beta-gamma emitters (radionuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.[7]	5,000	15,000	1,000

[1] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute measured by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[2] Where surface contamination by both alpha- and beta-gamma-emitting radionuclides exists, the limits established for alpha- and beta-gamma-emitting radionuclides should apply independently.

[3] Measurements of average contamination should not be averaged over an area of more than 1 m^2. For objects of less surface area, the average should be derived for each such object.

[4] The average and maximum dose rates associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/h and 1.0 mrad/h, respectively, at 1 cm.

[5] The maximum contamination level applies to an area of not more than 100 cm^2.

[6] The amount of removable material per 100 cm^2 of surface area should be determined by wiping an area of that size with dry filter or soft absorbent paper, applying moderate pressure, and measuring the amount of radioactive material on the wiping with an appropriate instrument of known efficiency. When removable contamination on objects of surface area less than 100 cm^2 is determined, the activity per unit area, should be based on the actual area and the entire surface should be wiped. It is not necessary to use wiping techniques to measure removable contamination levels if direct scan surveys indicate that the total residual surface contamination levels are within the limits for removable contamination.

[7] This category of radionuclides includes mixed fission products, including the Sr-90 which is present in them. It does not apply to Sr-90 which has been separated from the other fission products or mixtures where the Sr-90 has been enriched.

III. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulation," requires that rules be reviewed to determine whether they are "major rules." DOE has determined that this notice does not involve a major rule and does not require a Regulatory Impact Analysis statement because its promulgation will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) A significant, adverse effect on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete in domestic or export markets.

Although not a major rule, DOE has considered the benefits and costs associated with the proposed rule. The proposed rule provides a base for the establishment of radiation protection programs for the public and the environment. The proposed rule is a regulatory base upon which DOE will build a program of compliance, inspection, and enforcement. DOE believes it will greatly enhance the Department's ability to carry out the mandate of the Price-Anderson Ammendments Act of 1988 (PAAA) and the Atomic Energy Act of 1954 (AEA), as amended. It will provide a set of requirements that have been promulgated by law, thereby permitting enforcement under Federal statutes.

Most of the requirements contained in this proposed rule are the same as those contained in Department Orders, including DOE 5400.5 and DOE 5400.1, which were issued February 1990 and November 1988, respectively. Contractors already are required to comply with most of the requirements of this proposed rule under those Orders. Therefore, compliance with the proposed rule is not expected to have any significant incremental cost over current costs.

The promulgation of the proposed rule does have implicit additional costs for the establishment of a radiation protection enforcement program. It is expected that costs, as associated with this proposed rule, will represent only marginal additional overall cost to the current oversight and inspection programs.

The Department was unable to arrive at any alternatives to this action that could achieve the same regulatory goal at lower cost. Therefore, no alternatives were considered.

Pursuant to section 3(c) of E.O. 12291, this rule was submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the "Regulatory Flexibility Act of 1980," Public Law 96–354, which

requires a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, no analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements in part 834 are not substantially different from existing reporting requirements contained in DOE directives and required by DOE contracts with prime contractors covered by this proposed rule. DOE will submit the collection of any new information requests concerning the proposed rule to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and the procedures implementing that Act, 5 CFR part 1320 *et seq.*

D. Review Under the National Environmental Policy Act

The DOE has reviewed the promulgation of 10 CFR part 384 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA. The Department has completed an Environmental Assessment and, on the basis of that information, has made a finding of no significant impact for this proposed rule. Copies of the Environmental Assessment are available for review at the DOE Freedom of Information Reading Room, the location of which is given in the **ADDRESSES** section of this notice. Comments on this finding of no significant impact should be provided to DOE at the address above.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are any substantial direct effects, then the Executive Order requires the preparation of a federalism assessment. This proposed rule, when promulgated, will not have a substantial direct effect on the institutional interests or traditional functions of States.

IV. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to all or any portion of this proposed rule. Ten copies of written comments should be submitted to the address indicated in the "**ADDRESSES**" section of this notice. All public comments received will be available for inspection in the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. All written comments received by June 22, 1993 will be considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, DOE contractors, or DOE. DOE is particularly interested in comments that discuss whether or not DOE may be subjecting its contractors to additional costs that are not contemplated by existing contractual relations or the PAAA. Comments concerning this subject should address the specific nature and scope of additional costs to which contractors will be subjected and explain why these concerns are not already addressed in the current contractual relationship or PAAA. Furthermore, DOE is interested in any comments which address the overall cost-effectiveness of the measures mandated in this proposal.

B. Public Hearing

1. Requests to speak at the hearing (May 13, 1993) must be submitted to the address or phone number indicated in the **ADDRESSES** section of this notice and received by DOE by May 10, 1993. Requests for oral presentations should contain a telephone number where the requestor may be contacted prior to the hearing. Speakers are requested to bring 10 copies of their statement to the DOE hearing.

2. Oral comments presented at the hearing will be limited to 10 minutes. A longer statement may be submitted for inclusion in the record. To the extent practicable, an oral presentation should summarize the views anticipated to be set forth in the written comments on the proposed rule and, in particular, should indicate what, if any, changes should be made in the proposed rule.

3. Conduct of the hearing. DOE reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes. The hearing begins at 9 a.m.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing.

Any additional procedural rules will be announced at the hearing. The entire record of the rulemaking, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts may be purchased from the court reporter.

List of Subjects in 10 CFR Part 834

Radiation protection, Nuclear safety, Health and safety, Radioactive material, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 10, chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 834 as set forth below.

Issued in Washington, DC, on March 10, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety, and Health.

PART 834—RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Subpart A—General Provisions

Sec.

834.1 Scope.
834.2 Definitions.
834.3 General rule.
834.4 Enforcement.
834.5 Environmental Radiological Protection Program.
834.6 Interim strategy.
834.7 Reporting.
834.8 Records.
834.9 Accidents.
834.10 Dose evaluations.
834.11 ALARA compliance.

Subpart B—Radiation Dose and Concentration Limits and Reporting Levels for Protection of the Public and the Environment

834.101 Public dose and concentration limits.
834.102 Airborne emissions only, all DOE sources of radionuclides.
834.103 Drinking water.
834.104 [Reserved]
834.105 [Reserved]
834.106 [Reserved]
834.107 [Reserved]
834.108 [Reserved]
834.109 Radioactive waste.

Subpart C—Control of Liquid Discharges Containing Radioactive Material

834.201 Liquid discharge.
834.202 Discharges of liquid waste to aquifers and phaseout of soil columns.
834.203 Discharges to sanitary sewerage.
834.204 [Reserved]
834.205 Native aquatic animal organisms.
834.206 [Reserved]
834.207 [Reserved]
834.208 [Reserved]
834.209 [Reserved]
834.210 Ground water protection.
834.211 [Reserved]
834.212 [Reserved]
834.213 [Reserved]
834.214 [Reserved]
834.215 Tritium.

Subpart D—Release of Property Having Residual Radioactive Material

834.301 Release of property containing residual radioactive material.
834.302 Authorized limits.
834.303 [Reserved]
834.304 [Reserved]
834.305 Soil.
834.306 Radon.
834.307 [Reserved]
834.308 [Reserved]
834.309 [Reserved]
834.310 Supplemental limits.
834.311 Control of residual radioactive material.

Subpart E—Environmental Radiological Protection Program

834.401 Composition of the Environmental Radiological Protection Program (ERPP).

Appendix A to Part 834—Derived Concentration Guides for Air and Water

Table A–1a Derived Concentration Guides (DCGs) for Members of the Public from Ingested Water and Inhalation Resulting in an EDE of 100 mrem/yr. [μCi]
Table A–1b Derived Concentration Guides (DCGs) for Members of the Public from Ingested Water and Inhalation Resulting in an EDE of 1 mSv/yr. [Bq]
Table A–2 Alternative Absorption Factors and Lung Retention Classes for Specific Compounds.
Table A–3 Derived Concentration Guides (DCGs) for Members of the Public for External Exposure During Immersion in an Infinite Hemispherical Cloud of uniform Concentration Resulting in an EDE of 100 mrem/yr. [Ci and Bq]

Authority: 42 U.S.C. 2201, 7191.

Subpart A—General Provisions

§ 834.1 Scope.

(a) *General.* The requirements in this part govern activities conducted by, or for, DOE that might result in the release of radioactive material, the exposure of members of the public to radiation, or contamination of the environment with radionuclides from DOE activities.

(b) *Exclusions.* The requirements in this part do not apply to:

(1) Activities that are regulated through a license by the U.S. Nuclear Regulatory Commission (NRC), or by a State under an Agreement with the NRC; or

(2) Activities conducted under the authority of the Director, Office of Naval Reactors, as described in Public Law 98–525.

§ 834.2 Definitions.

(a) As used in this part:

Act means the Atomic Energy Act, as amended.

ALARA means "As Low As is Reasonably Achievable" which is an approach to radiation protection to manage and control exposures (both individual and collective) to the work force and to the general public, and releases of radioactive material to the environment at levels as low as is practicable, taking into account social, technical, economic, practical, and public policy considerations. As used in this part, ALARA is not a dose limit, but rather a process which has the objective of attaining doses as far below the applicable limit of this part as is reasonably achievable.

ALARA Process means a logical procedure for evaluating alternative operations, processes, and other measures, taking into account factors that relate to societal, technological, economic, practical, and public policy considerations in order to make a judgment with respect to what constitutes ALARA.

Background means:

(1) Naturally occurring radioactive materials;

(2) Cosmic and natural terrestrial radiation;

(3) Global fallout;

(4) Radon in concentrations or levels commonly found in buildings or the environment, independent of regulated activities; and

(5) Radiation from consumer products containing nominal amounts of radioactive material.

Best Available Technology (BAT) means the preferred technology for a particular activity, selected from among others after taking into account factors related to technology, economics, public policy, and other parameters. As used in this part, the BAT is not a specific level of treatment, but is the conclusion of a selection process that includes several alternatives.

BAT Selection Process means the evaluation of candidate alternative technologies in order to select the BAT after considering: technology; economics; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; other quality environmental impact (including energy requirements); safety considerations; and policy considerations.

Derived Concentration Guide (DCG) means the concentration of a radionuclide in air or water that, under conditions of continuous exposure for one year by one exposure mode (i.e., ingestion of water, submersion in air, or inhalation), would result in an effective dose equivalent of 100 mrem, 0.1 rem (1 mSv) to reference man. DCGs do not consider decay products when the parent radionuclide is the cause of the exposure.

DOE Activity means an activity taken for, or by, DOE that has the potential to release radioactive material to the environment and result in the exposure of members of the public or the environment to radiation or radioactive material. The activity may be, but is not limited to, design, construction, operation, or decommissioning. To the extent appropriate, the activity may involve a single DOE facility, or a combination of facilities and operations, possibly including an entire site.

Effluent Monitoring means the collection and analysis of samples or measurements of liquid and gaseous effluent for purposes of characterizing and quantifying contaminants, assessing radiation exposures of members of the public, and demonstrating compliance with applicable standards.

Environmental Surveillance means the collection and analysis of samples of air, water, soil, foodstuffs, biota, and other media from DOE sites and their environs and the measurement of external radiation for purposes of demonstrating compliance with applicable standards, assessing radiation exposures to members of the public, and assessing effects, if any, on the local environment.

Members of the Public means persons who are not occupationally associated with a DOE activity.

Nonstochastic (or deterministic) Effects means biological effects, the severity of which, in affected

individuals, varies with the magnitude of the dose above a threshold value.

Person means any individual; corporation; partnership; firm; association; trust; estate; public or private institution; group; Government Agency; any State or political subdivision of, or any political entity within a State; any foreign government or nation or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department of Energy.

Protective Action Guides (PAG) means projected numerical dose values established by EPA, DOE, or States for individuals in the population. These values may trigger protective actions that would reduce or avoid the projected dose.

Radioactivity means the property or characteristic of radioactive material to spontaneously "disintegrate" with the emission of energy in the form of radiation. The unit of radioactivity is the curie (or becquerel).

Reference Man means a hypothetical aggregation of human (male and female) physical and physiological characteristics arrived at by international consensus (ICRP Publication 23). These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult from ionizing radiation to a common base. The "reference man" is assumed to inhale 8400 cubic meters of air in a year and to ingest 730 liters of water in a year for the derivation of DCGs.

Remedial Action means those actions consistent with a permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances.

Residual Radioactive Material means any radioactive material which is in or on soil, air, water, equipment, or structures as a consequence of past operations or activities.

Settleable Solids means those solids suspended in waste water that are determined to be settleable using standard methods for examination of water and waste water.

Sewage means waste matter that passes through sewers.

Sewer means an artificial conduit, usually underground, for carrying off waste water and refuse.

Sewerage means a system of sewers.

Soil Column means an in situ volume of soil down through which liquid wastes percolate from ponds, cribs, seepage basins, or trenches.

Stochastic Effects means biological effects, the probability, rather than the severity, of which is a function of the magnitude of the radiation dose without threshold; i.e., stochastic effects are random in nature.

(b) As used in this part to describe various aspects of radiation dose:

Absorbed Dose means the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest in that material. The absorbed dose is expressed in units of rad (or gray). (1 rad=0.01 gray.)

Collective Dose Equivalent and Collective Effective Dose Equivalent mean the sums of the dose equivalents or effective dose equivalents of all individuals in a specified population. Collective dose equivalent and collective effective dose equivalent are expressed in units of person-rem (or person-sievert). For purposes of this part, the collective dose equivalent and collective effective dose equivalent refer to the population within 50 miles (80 km) of the site boundary.

Committed Dose Equivalent means the predicted dose equivalent to a tissue or organ over a 50-year period after an intake of a radionuclide into the body. It does not include dose contributions from radiation sources external to the body. Committed dose equivalent is expressed in units of rem (or sievert). (1 rem=0.01 Sv.)

Committed Effective Dose Equivalent means the sum of the committed dose equivalents to various organs or tissues in the body from an intake of a radionuclide into the body, each multiplied by the appropriate weighting factor. Committed effective dose equivalent is expressed in units of rem (or sievert).

Deep Dose Equivalent means the dose equivalent at a depth of 1 cm, in tissue, from external exposure.

Dose Equivalent means the product of absorbed dose in rad (or gray) in tissue, a quality factor, and all other modifying factors at the location of interest. Dose equivalent is expressed in units of rem (or sievert).

Effective Dose Equivalent (EDE) means the sum of the products of the dose equivalent received by specified tissues of the body and a tissue-specific weighting factor. The total EDE is the sum of the EDE (or deep dose equivalent, if dosimeter data are used) from exposures to radiation sources external to the body during the year plus the committed EDE from radionuclides taken into the body during the year. For purposes of this rule, a 50-year time interval may be assumed for determining committed dose. Effective dose equivalent is expressed in units of rem (or sievert).

Public Dose means the dose received by member(s) of the public from exposure to radiation and to radioactive material released by a DOE facility or operation, whether the exposure is within a DOE site boundary or offsite. It does not include doses received from occupational exposures, doses received from "background" radiation, doses received as a patient from medical practices, or doses received from consumer products.

Quality Factor means the principal modifying factor used to calculate the dose equivalent from the absorbed dose (the absorbed dose is multiplied by the appropriate quality factor). Typical quality factors for various types of radiation are:

Radiation type	Quality factor
X-rays, gamma rays, beta particles, positrons, and electrons (including tritium)	1
Neutrons, <10 keV	3
Neutrons, >10 keV	10
Protons and other single-charged particles of unknown energy with rest-mass > one atomic mass unit	10
Alpha particles and other multiple-charged particles (and particles of unknown charge) of unknown energy	20

Weighting Factor means tissue-specific factor representing the fraction of the total health risk resulting from uniform, whole-body irradiation attributable to that particular tissue. Weighting factors are given below by organ or tissue type:

Organ or tissue	Weighting factor
Gonads	0.25
Breasts	0.15
Red Bone Marrow	0.12
Lungs	0.12
Thyroid	0.03
Bone Surfaces	0.03
Remainder[1]	0.30

[1] "Remainder" means the five other organs with the highest dose (e.g., liver, kidney, spleen, thymus, adrenal, pancreas, stomach, small intestine, or upper and lower large intestine, but excluding skin, lens of the eye, and extremities). The weighting factor for each of these organs is 0.06. A weighting factor of 0.01 shall be used for skin.

Working Level (WL) means the potential alpha energy concentrations of radon decay products in 1 liter of air, without regard to the degree of equilibrium, that will result in the

eventual emission of 1.3×10^5 MeV of alpha particle energy.

(c) Terms defined in the Act and not defined in this part are used consistent with the meanings given in the Act.

(d) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may be.

§ 834.3 General rule.

(a) No person or DOE personnel shall take, or cause to be taken, any action inconsistent with the requirements of:

(1) This part;

(2) Any program, plan, schedule, or other process established by this part; or

(3) Any applicable Federal statute or regulation concerning the exposure of members of the public to radiation or contaminating the environment with radioactive material.

(b) With respect to a particular DOE activity, the person in charge of the activity shall be responsible for implementation of, and compliance with, the requirements of this part.

(c) Where there is no contractor in charge of a DOE activity, DOE shall act to ensure implementation of, and compliance with, the requirements of this part.

(d) Nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety.

§ 834.4 Enforcement.

The requirements in this part are subject to enforcement by all appropriate means, including the imposition of civil and criminal penalties in accordance with the provisions of proposed rule 10 CFR part 820.

§ 834.5 Environmental Radiological Protection Program.

A DOE activity shall be conducted in accordance with the Environmental Radiological Protection Program (ERPP) for the activity, as prepared and approved pursuant to subpart E of this part, including any modifications made or directed by DOE.

§ 834.6 Interim strategy.

(a) If the person in charge of a DOE activity cannot comply with a requirement of this part within [180 DAYS OF THE EFFECTIVE DATE OF THE FINAL RULE], the person shall submit to DOE an interim strategy for implementing the requirement to the extent practicable and a plan and schedule for achieving compliance with the requirement.

(b) An interim strategy shall:

(1) Document the reasons compliance cannot be achieved;

(2) Evaluate any alternative interim measures; and

(3) Analyze the effects of non-compliance on members of the public and the environment.

(c) An interim strategy, plan, and schedule for complying with a requirement shall:

(1) Be submitted to DOE within [90 DAYS OF THE EFFECTIVE DATE OF THE FINAL RULE];

(2) Be considered approved 120 days after its submission unless approved or rejected by DOE at an earlier date; and

(3) Include any modifications made or directed by DOE.

§ 834.7 Reporting.

(a) A person in charge of a DOE activity shall submit to DOE:

(1) An annual environmental report that sets forth actual levels of releases of radioactive materials and exposures to radiation for which this part establishes requirements;

(2) A report that sets forth any release of radioactive materials or exposure to radiation that exceeds or potentially exceeds the limits established by this part, within one month of determination of the occurrence; and

(3) A report that sets forth any occurrence (including the release of property) that contributes, or potentially contributes, an annual EDE greater than 10 mrem or a collective EDE greater than 100 person-rem, within one month of determination of the occurrence; and

(b) The person in charge of a DOE activity shall identify potential sources of man-made radiation other than the DOE activity and shall report to DOE if the annual combined EDE from the DOE activity and other sources does, or could exceed 100 mrem (1 mSv).

§ 834.8 Records.

Complete and accurate records as necessary to substantiate compliance with the requirements of this part shall be maintained for each DOE activity.

§ 834.9 Accidents.

(a) Actual releases and associated doses due to accidents, or other unanticipated causes, from a DOE activity shall be included in dose assessments to evaluate and demonstrate compliance of that activity with this part.

(b) Dose limits in this part are not applicable to planning and design activities related to accident conditions, where controls of exposures cannot be maintained.

§ 834.10 Dose evaluations.

(a) In calculating dose to the public from exposures resulting from both routine and unplanned activities:

(1) Standard EPA or DOE dose conversion factors or analytical models prescribed in statutes or regulations applicable to a DOE activity or direct measurements shall be used;

(2) Estimates of doses to members of the public in the vicinity of DOE activities shall be evaluated and documented to demonstrate compliance with the dose limits of this part and to assess exposures of the public from unplanned events;

(3) Estimates of collective doses to the public within 50 miles (80 km) of the site boundary shall be evaluated and documented at least annually;

(4) Analytical models used for dose evaluations shall be appropriate for characteristics of emissions (e.g., gas, liquid, or particle; depositing or non-depositing; buoyant or non-buoyant); mode of release (e.g., stack or vent; crib or pond; surface water or sewer; continuous or intermittent); environmental transport medium (e.g., air or water); and exposure pathway (e.g., inhalation; ingestion of food, water, or milk; direct radiation);

(5) Information on dispersion (transport and diffusion) in the environment, demography, land use (including the location and number of dairy and slaughter animals), food supplies, and exposure pathways used in the dose calculations shall be appropriate to evaluate actual and potential doses in the environs of DOE facilities; and

(6) Information shall be updated as necessary to document significant changes that could affect dose evaluations.

(b) In determining compliance with dose limits for members of the general public from routine operation of a DOE activity:

(1) Dose shall be expressed as an EDE received by the individuals during the year for external exposures and as the committed dose (EDE) received by the individual over a period of 50 years from radionuclides taken into the body during the year;

(2) Dose estimates shall be as realistic as practicable;

(3) To the extent practicable, individuals subject to the greatest exposure shall be identified so that the maximum dose might be evaluated; and

(4) All factors germane to dose determination shall be applied.

(c) If available data are not sufficient to evaluate the factors important to performing dose estimates:

(1) The assumed parametric values shall be sufficiently conservative so that it is unlikely that individuals would actually receive a dose that would exceed the dose calculated using the values assumed; and

(2) Parametric values used in performing dose calculations shall be recorded and included with the calculations.

(d)(1) To demonstrate compliance with the requirements of this part:

(i) Tables of committed dose conversion factors shall be used, as appropriate, based upon the reference man model, and the committed dose is the dose integrated over an interval of 50 years;

(ii) Doses from exposure to external radiation from radionuclide concentrations in air and in water that result from submersion or from exposure to contaminated plane surfaces shall be estimated, using the reference man model and appropriate dosimetry factors;

(iii) External doses may be determined using data from direct measurements with appropriate instrumentation if doses obtained with the direct measurements are found to be at least as accurate as those determined by analytical model evaluations;

(iv) Derived Concentration Guides (DCG) values in appendix A of this part for each of three exposure modes (inhalation of air containing the radionuclide; submersion in a semi-infinite cloud of air containing the radionuclide; and ingestion of water containing the radionuclide) shall be used to evaluate only the three exposure modes upon which they are based.

(2) Methods and alternatives other than those discussed in paragraph (d)(1) of this section or prescribed in applicable statutes or regulations shall be submitted to DOE for approval.

§ 834.11 ALARA compliance.

Exposure to radiation, release of radioactive material, and other radiological contamination from a DOE activity shall be deemed to comply with ALARA if the activity is:

(a) Evaluated pursuant to an ALARA program: and

(b) Conducted in accordance with the ALARA program for the activity, as approved and modified by DOE.

Subpart B—Radiation Dose and Concentration Limits and Reporting Levels for Protection of the Public and the Environment

§ 834.101 Public dose and concentration limits.

(a) *Primary dose limit.* A DOE activity shall be conducted in a manner such that the exposure of members of the public to radiation shall:

(1) Comply with ALARA; and

(2) Not cause an effective dose equivalent (EDE) greater than 100 mrem (1 mSv) from all sources and pathways of the activity and in combination with reasonably expected exposures from all other sources—excluding dose from radon and its decay products, dose received by a patient from medical sources of radiation used for diagnostic or therapeutic purposes, dose from consumer products, and dose from background radiation.

(b) *Higher limits.* DOE may authorize temporary dose limits for members of the public in excess of (EDE) 100 mrem (1 mSv) in a year, but not in excess of (EDE) 500 mrem (5 mSv). A request for a temporary authorization shall:

(1) Be submitted as soon as practicable when the need is recognized and, where possible, before the dose limit is exceeded;

(2) Document the need, discuss the alternatives considered, provide an ALARA evaluation, and demonstrate a reasonable assurance the increase will be short-term in nature; and

(3) Show that the annual average lifetime exposure to any member of the public will be less than 100 mrem (1 mSv), evaluated under reasonable exposure scenarios—excluding dose from radon and its decay products, dose received by a patient from medical sources of radiation used for diagnostic or therapeutic purposes, dose from background radiation.

§ 834.102 Airborne emissions only, all DOE sources of radionuclides.

(a) A DOE activity shall be conducted in a manner such that the release to the atmosphere of radioactive materials from the activity or in combination with other DOE activities shall:

(1) Comply with ALARA; and

(2) Not cause an EDE in excess of 10 mrem (0.1 mSv) in a year—excluding dose from radon and its decay products and from background;

(3) Not cause average radon-222 flux rates to exceed 20 pCi (0.7 Bq)/m^2/sec where radium-226 residues are accepted for storage or disposal;

(4) Not cause outdoor boundary concentrations of radon to exceed 3 pCi (0.1 Bq)/L above background at a facility where significant sources of radon are handled; and

(5) Not cause average radon concentration at outdoor boundary of a facility or any offsite location to exceed 0.5 pCi (0.02 Bq)/L above background.

(b) Reserved.

§ 834.103 Drinking water.

(a) The drinking water system for a DOE activity shall be managed in a manner that:

(1) Complies with ALARA;

(2) Shall not cause a person consuming the water to receive an EDE greater than 4 mrem (0.04 mSv) in a year;

(3) Shall not cause combined radium-226 and radium-228 to exceed 5×10^{-9}μCi (1.5×10^{-4}Bq)/mL;

(4) Shall not cause gross alpha activity (including radium-226 but excluding radon and uranium) to exceed 1.5×10^{-8}μCi (5.6×10^{-4}Bq)/mL; and

(5) Shall not cause private or public drinking water systems downstream of the facility discharge to exceed the drinking water radiological limits in 40 CFR part 141.

(b) Reserved.

§ 834.104 [Reserved]

§ 834.105 [Reserved]

§ 834.106 [Reserved]

§ 834.107 [Reserved]

§ 834.108 [Reserved]

§ 834.109 Radioactive waste.

(a) A DOE activity shall be conducted in a manner such that exposure of any member of the public to radiation or radioactive waste from the handling, disposal, storage, transport, and packaging of low-level waste, high-level waste, transuranic waste, spent nuclear fuel, naturally occurring or activated radioactive material (NARM), and residual radioactive material:

(1) Complies with ALARA; and

(2) Does not exceed an EDE of 25 mrem (0.25 mSv) in a year from all pathways.

(b) Reserved.

Subpart C—Control of Liquid Discharges Containing Radioactive Material

§ 834.201 Liquid discharge.

(a) A DOE activity shall be managed in a manner such that liquid release of radioactive materials from the activity shall:

(1) Comply with ALARA; and

(2) Be treated by the BAT if:

(i) The surface waters otherwise would contain, at the point of discharge to surface waters and prior to dilution, annual average concentrations of radioactive material greater than the DCG values in liquids in appendix A to this part; or

(ii) The total annual EDE to the public would otherwise exceed 10 mrem (0.1 mSv) and the liquid discharge

contributes a significant portion of that dose; or

(iii) The activity does not operate in conformance with the ground-water protection plan for the activity.

(3) Not result in the release of settleable solids to natural waterways if the concentration of radioactive material in the solids in the waste stream exceeds:

(i) 5 pCi (0.2 Bq) per gram of settleable solids for alpha-emitting radionuclides; or

(ii) 50 pCi (2 Bq) per gram of settleable solids for beta-gamma-emitting radionuclides.

(b) For purposes of this section, if more than one type of radionuclide A, B, ...N are present in concentrations C_A, C_B, ...C_N, and if the applicable DCG's are DCG_A, DCG_B, ...DCG_N respectively, then the concentration shall be limited so that the following relationship exists:

$(C_A/DCG_A)+(C_B/DCG_B)+...+(C_N/DCG_N) \leq 1$

where: DCG_i is the derived concentration guide value for radionuclide i.

(c) Selected BAT alternatives shall be implemented in accordance with the approved schedules in the BAT Plan.

(d) The BAT process shall be used in the design and construction of new facilities and activities.

§ 834.202 Discharges of liquid waste to aquifers and phaseout of soil columns.

(a) The use of soil columns in connection with a DOE activity to retain, by absorption or ion exchange, suspended or dissolved radionuclides from liquid waste streams shall be discontinued as soon as practicable and no new or increased discharges to active or virgin soil columns shall be permitted.

(b) Soil columns, drainage systems, ground water, and any other areas to which releases of radioactive material in liquids from a DOE activity has been discontinued, shall be managed or decontaminated in a manner that:

(1) Complies with ALARA; and

(2) Prohibits any liquid discharges, including uncontaminated liquids, that could further spread previously deposited radioactive material through the soil column or directly impact ground water.

§ 834.203 Discharges to sanitary sewerage.

(a) A DOE activity shall be conducted in a manner such that the concentration of radionuclides in liquid wastes discharged from the activity into sanitary sewerage shall:

(1) Comply with ALARA;

(2) Be treated by the BAT to reduce the concentration level to less than five times the DCG values for liquids (appendix A to this part) if the average monthly level otherwise would be greater than five times the DCG value at the point of discharge; and

(3) Not result in an annual discharge (above background) into public sewers in excess of:

(i) 5 Ci (200 GBq) of hydrogen-3;

(ii) 1 Ci (37 GBq) of carbon-14; and

(iii) 1 Ci (37 GBq) of all other radionuclides.

(4) Be evaluated through pathway analyses or environmental surveillance to verify that the total annual discharge of radioactive material to the sanitary sewer system will not cause members of the public to receive incremental doses from that source more than a few mrem in a year.

(b) The discharge liquid wastes from a DOE activity into a chemical or sanitary sewerage system owned by the Federal Government shall not be subject to the requirements of § 834.203(a) (2) and (3) of this part if:

(1) The system provides treatment in accordance with an approved interim strategy prior to discharge of liquid wastes to surface waters; and

(2) Sludge from the system is disposed in accordance with all applicable Federal regulations.

(c) A discharge from a DOE activity to a public sewer shall be coordinated with the operators of the waste water treatment works.

§ 834.204 [Reserved]

§ 834.205 Native aquatic animal organisms.

A DOE activity shall be conducted in such a manner that the absorbed dose to a native aquatic animal organism (e.g., fish, crustaceans, mollusks, and benthic invertebrates) shall not exceed 1 rad (0.01 gray) per day from exposure to radioactive material in liquid wastes discharged to natural waterways.

§ 834.206 [Reserved]

§ 834.207 [Reserved]

§ 834.208 [Reserved]

§ 834.209 [Reserved]

§ 834.210 Ground water protection.

(a) A DOE activity shall be conducted in a manner that:

(1) Radiological contamination of the ground water complies with ALARA; and

(2) Protects the ground water from radiological and non-radiological contamination in accordance with the Ground Water Protection Management Plan applicable to the activity.

(b) Reserved.

§ 834.211 [Reserved]

§ 834.212 [Reserved]

§ 834.213 [Reserved]

§ 834.214 [Reserved]

§ 834.215 Tritium.

(a) A DOE activity shall be conducted in a manner that releases of tritium from the facility to the environment by application of the ALARA process to ensure that doses are as low as is reasonably achievable.

(b) Releases of tritium shall not be considered in determining whether a BAT is required by this subpart or in applying the BAT selection process.

Subpart D—Release of Property Having Residual Radioactive Material

§ 834.301 Release of property containing residual radioactive material.

(a) No property contaminated, or potentially contaminated, with residual radioactive material shall be released from a DOE facility unless:

(1) The property is assessed to demonstrate that doses to the public from use of the property will comply with ALARA;

(2) Doses to the public from exposures to the property will not exceed the primary or supplemental limits authorized by DOE pursuant to this subpart;

(3) The property is surveyed to determine mass contamination, removable surface radioactive material, and total surface radioactive material (including contamination present on and under any coating); and

(4) DOE approves documentation that:

(i) Describes the item;

(ii) Describes its radiological history;

(iii) States the DOE-approved criteria for release of the property;

(iv) Describes the survey of the item, including the date, the identity of the surveyor, the type and identification number of the instruments used, and the results of the survey;

(v) Indicates the radiological condition of the property;

(vi) Indicates the quantity and disposition of the waste resulting from any decontamination effort; and

(vii) Identifies the recipient of the property.

(b) Reserved.

§ 834.302 Authorized limits.

(a) DOE may authorize limits for the release of property containing residual radioactive material.

(b) In evaluating and approving authorized limits, DOE shall consider:

(1) The nature of the property and its potential use;

(2) The potential dose to an individual in:

(i) The actual and likely use scenario to ensure that potential doses are not likely to exceed a small fraction of the applicable dose limits in this part; and

(ii) The worst plausible use scenario to ensure that potential doses are not likely to exceed the applicable dose limits in this part;

(3) The collective dose to the affected population; and

(4) Where close contact is likely, the ability and need to decontaminate the property to ensure that there is no measurable contamination.

§ 834.303 [Reserved]

§ 834.304 [Reserved]

§ 834.305 Soil.

(a) Authorized limits for radium-226 and radium-228 shall be less than 5 pCi/gram (0.2 Bq/gram) in the first 15 cm of the surface layer and 15 pCi/gram (0.56 Bq/gram) in any subsequent 15 cm subsurface layer.

(b) Authorized limits for all other radionuclides in soil shall be derived using approved models in accordance with the requirements of this subpart.

§ 834.306 Radon.

(a) Remedial actions shall be conducted on habitable and occupied structures with the objective to reduce residual radioactive material levels such that an annual average radon-222 decay product concentration will not exceed 0.02 WL, including background, in the structure.

(b) In any case, the radon decay product shall not exceed 0.03 WL, including background, in such structures as a result of residual radioactive material.

§ 834.307 [Reserved]

§ 834.308 [Reserved]

§ 834.309 [Reserved]

§ 834.310 Supplemental limits.

(a) DOE may authorize, for a particular DOE activity, supplemental limits for the release of property containing residual radioactive material in lieu of any general limits authorized under this subpart, if:

(1) Remedial action consistent with authorized limits would pose a clear and present risk of injury to workers or members of the public, notwithstanding reasonable measures to avoid or reduce risk;

(2) Remedial action consistent with authorized limits, even after all reasonable mitigative measures have been taken, would produce environmental harm that is clearly excessive compared to the health benefits to persons living on or near affected properties, now or in the future;

(3) It is determined that the scenarios or assumptions used to establish the authorized limits do not apply to the property or portion of the property identified, or where more appropriate scenarios or assumptions indicate that other limits are applicable or appropriate for protection of the public and the environment;

(4) The cost of remedial action for contaminated soil is unreasonably high relative to long-term benefits and where the residual material does not pose a clear present or future risk after taking necessary control measures; or

(5) There is no feasible remedial action that can achieve the authorized limits.

(b) A supplemental limit shall achieve the dose and ALARA requirements of this part for any current or future use of the property and shall contain any restriction necessary to achieve the objectives of this part.

§ 834.311 Control of residual radioactive material.

(a) Control and stabilization features for the interim storage of residual radioactive material shall be designed to meet the applicable dose limits for an effective life of 25 years at a minimum and, to the extent practicable, 50 years. Where applicable, the control shall limit radon-222 concentrations in the atmosphere above facility surfaces or openings to levels that will not exceed:

(1) An annual average concentration of 30 pCi(1 Bq)/L over the facility or site;

(2) An annual average concentration of 0.5 pCi(0.02 Bq)/L above background at or beyond the boundary of the facility or site; 3 pCi(0.1 Bq)/L at or above any single location accessible by the public, as a result of material stored on the site; and

(3) Flux rates from the storage of radon-producing wastes of 20 pCi(0.7 Bq)/m^2/sec, averaged over the storage unit.

(b) A property may be maintained under an interim management arrangement when the residual radioactive material exceeds authorized limits developed for unrestricted release if:

(1) The residual radioactive material is in inaccessible locations;

(2) The residual contamination would be unreasonably costly to remove; and

(3) When needed, administrative controls are instituted by the operating organization to protect members of the public.

(c)(1) Appropriate administrative and physical controls for the management of storage or disposal activities shall be developed and implemented to limit access and use of onsite material contaminated by residual radioactive material. Requirements for such controls shall be appropriately documented.

(2) Controls shall be designed such that concentrations of radionuclides in the groundwater and quantities of residual radioactive material will not cause the requirements of this part to be exceeded.

(d)(1) Long-term management of residual radioactive material residue from a DOE activity shall be in accordance with this section and DOE approved plans.

(2) Control and stabilization features for uranium, thorium, and their decay products shall be designed, to the extent reasonably achievable, to:

(i) Provide an effective life of 1,000 years with a minimum life of at least 200 years;

(ii) Limit radon-222 emanation to the atmosphere from the wastes to less than an annual average release rate of 20 pCi(0.7 Bq)/m^2/sec; and

(iii) Prevent increases in the annual average radon-222 concentration at or above any location outside the boundary of the controlled area by more than 0.5 pCi(0.02 Bq)/L.

(3) In the development of controls and waste management plans, the impacts of various disposal modes should be addressed beyond the 1,000-year period design requirement.

(4) For wastes containing significant concentrations of radium and thorium, special considerations must be given to intruder prevention.

(5) Before any potentially bio-degradable contaminated wastes are placed in a long-term management facility, such wastes shall be properly conditioned so that the generation and escape of biogenic gases will not cause the emission or dose limits to be exceeded and that bio-degradation within the facility will not result in premature structural failure.

Subpart E—Environmental Radiological Protection Program

§ 834.401 Composition of the Environmental Radiological Protection Program (ERPP).

(a) The contents of an ERPP shall be commensurate with the nature of the DOE activity and the potential risk to the public and the environment from the DOE activity.

(b) With respect to each requirement in this part relating to the permissible levels for releases of radioactive

material, exposures to radiation, and other radioactive contamination, an ERPP shall indicate:

(1) What, if any, existing or anticipated activities are subject to the requirement;

(2) The measures to be used in implementing the requirement; and

(3) The methods to be used in monitoring, reporting, and recording compliance with the requirement.

(c) An ERPP shall contain an ALARA Program to control releases of radioactive materials and exposures to radiation at levels as low as reasonably achievable. An ALARA Program shall include:

(1) A statement of commitment to use the ALARA process;

(2) A description of the means to be used to implement the ALARA process;

(3) A process for documenting ALARA decisions;

(4) A training program for the staff on implementation of the ALARA process; and

(5) A listing and evaluation of specific societal, technological, economic, and public policy factors considered in arriving at ALARA decision, including, as appropriate:

(i) The maximum dose to members of the public;

(ii) The collective dose to the population;

(iii) Applicable alternative processes, such as alternative treatments of discharge streams, operating methods, or controls;

(iv) Doses for each alternative evaluated;

(v) Cost for each of the alternatives evaluated;

(vi) An examination of the changes in cost among alternatives; and

(vii) Societal impact associated with alternatives.

(d) An ERPP shall contain a BAT Plan for each activity for which this part requires a determination whether to use the BAT for processing liquid waste. A BAT Plan shall:

(1) Document the analysis of whether the BAT is required and, if required,

(2) Document the BAT selection process; and

(3) Set forth the schedule for installing the BAT.

(e) An ERPP shall contain a Ground-Water Protection Management Plan that shall:

(1) Address the potential for radiological and, where appropriate, non-radiological contamination of the ground water by a DOE activity;

(2) Document the quality and quantity of ground water;

(3) Identify possible sources of contamination;

(4) Describe strategies for controlling contamination, including preventive and remediation measures to comply with applicable Federal environmental laws and regulations; and

(5) Describe measures for monitoring the ground-water.

(f) An ERPP shall contain an Environmental Monitoring Plan (EMP) that provides for effluent monitoring to obtain representative measurements of the quantities and concentrations of pollutants in liquid and airborne discharges and environmental surveillance to monitor the effects, if any, of a DOE activity on members of the public, the environment and natural resources. The EMP shall set forth:

(1) The elements of the plan to determine compliance with the requirements of this part and other applicable Federal environmental laws and regulations;

(2) The rationale and design criteria for each element;

(3) The extent and frequency of monitoring and measurements;

(4) Procedures for laboratory analyses;

(5) Implementation procedures;

(6) Meteorological data; and

(7) For a new facility or new activity at an existing facility, a preoperational study.

(g) Effluent monitoring, in an EMP, shall:

(1) Measure quantities and concentrations of pollutants in liquid and airborne discharges from a DOE activity;

(2) Collect samples in a manner and frequency sufficient to characterize the effluent streams from a DOE activity; and

(3) Analyze samples to the extent necessary.

(h) Environmental surveillance, in an EMP, shall:

(1) Establish background levels of pollutants;

(2) Determine the location and magnitude of concentrations of pollutants from a DOE activity;

(3) Evaluate the effects on the public and the environment of pollutants from a DOE activity;

(4) Utilize monitoring stations on the basis of the type of emission, meteorology, climatology, topography, geography, population distribution, land use, and other relevant considerations;

(5) Collect and analyze samples in a manner and frequency sufficient to characterize the emissions from a DOE activity and their effects; and

(6) Verify whether any unexpected or undetected releases occur.

(i) Meteorological data, collected in accordance with an EMP, shall:

(1) Characterize atmospheric transport and dispersion conditions in the vicinity of a DOE activity;

(2) Describe meteorological conditions including precipitation, temperature, wind speed, wind direction, and atmospheric stability that are important to surveillance; and

(3) Support assessment of routine and non-routine emissions.

(j) A Preoperational Study, in an EMP, shall:

(1) Begin at least one year prior to the start-up of a new activity;

(2) Characterize existing physical, chemical, and biological conditions that could be affected;

(3) Establish background levels of radioactive and, as appropriate, chemical components;

(4) Characterize pertinent environment and ecological parameters; and

(5) Identify potential pathways for human exposure or environmental impact.

(k) An ERPP shall contain a Waste Plan to manage, dispose, and store radioactive waste, including low-level waste, high-level waste, transuranic waste, spent nuclear fuel, and residual radioactive material. The Waste Plan for a DOE activity shall:

(1) Provide for controls to ensure compliance this part and applicable Federal statutes and regulations;

(2) Describe the means used to limit access to waste;

(3) Describe the interim and long-term strategies for dealing with waste;

(4) Describe the administrative safeguards;

(5) Describe the mechanism for cooperating with State and local officials; and

(6) Document any plan for the release of property contaminated, or potentially contaminated, with residual radioactive material, including limits authorized by DOE and the process for ensuring compliance with the plan.

(l) An ERPP shall contain a Quality Assurance Program that includes:

(1) Organizational responsibility;

(2) Program design;

(3) Procedures;

(4) Field quality design;

(5) Laboratory quality control;

(6) Human factors;

(7) Recordkeeping;

(8) Chain-of-custody procedures;

(9) Audits;

(10) Performance reporting; and

(11) Independent data verification.

(m)(1) An ERPP for an existing DOE activity shall be submitted to DOE within [90 DAYS OF THE EFFECTIVE DATE OF THE FINAL RULE].

(2) An ERPP for a new DOE activity shall be submitted to DOE prior to the

initiation of the activity. An update of an existing ERPP may be submitted if the new activity can be integrated into the existing ERPP.

(3) An update of an ERPP shall be submitted to DOE:

(i) Annually;

(ii) Whenever there is a change or addition to the ERPP;

(iii) Within 90 days of the effective date of any modification to this part that should be reflected in the ERPP; or

(iv) Prior to the modification of a DOE activity that is not reflected in the ERPP for that activity.

(4) The initial ERPP or an update shall be considered approved 180 days after its submission, including any modifications made or directed by DOE, unless approved or rejected by DOE at an earlier date.

Appendix A to Part 834—Derived Concentration Guides for Air and Water

1. *Purpose.* The Derived Concentration Guide (DCG) values listed in this appendix are provided as reference values for conducting radiological environmental protection programs at operational DOE facilities and sites. The DCG values in this appendix are not concentration limits or levels of acceptable concentrations for release to the environment. Rather, the concentration values are provided as a tool for estimating potential dose and for determining compliance with other requirements of 10 CFR part 834.

2. *Basis.* The DCG values are presented for each of three exposure modes: (1) Ingestion of water; (2) inhalation of air; and (3) immersion in a semi-infinite cloud of uniform concentration. The DCG values for internal exposure are listed, in the special units of μCi/mL, in Table A-1a (Derived Concentration Guides [DCGs] for Members of the Public from Ingested Water and Inhalation Resulting in an EDE of 100 mrem/yr). The DCGs values are also given in Table A-1b (Derived Concentration Guides [DCGs] for Members of the Public from Ingested Water and Inhalation Resulting in an EDE of 1 mSv/yr) in the SI units of Bq/L for ingestion of water and Bq/m^3 for inhalation of air. The values in these two tables are based on a committed effective dose equivalent (EDE) of 100 mrem (1 mSv) for the radionuclide taken into the body by ingestion or inhalation during one year.

Alternative gastrointestinal-tract (GI-tract) absorption factors (f_1) and lung retention classes (noted as D, W, or Y in the Task Group Lung Model used to produce the inhalation dose factors reported in ICRP Publication 30) are listed for specific compounds, by element, in Table A-2 (Alternative Absorption Factors and Lung Retention Classes for Specific Compounds) for cross-referencing with the internal DCGs in Tables A-1a and A-1b. The data in Table A-2 are listed in alphabetical order, by element name. Removal half-times assigned to the compounds with lung retention classes D, W, and Y are 0.5, 50, and 500 days, respectively. The air immersion DCG values shown in Table A-3 (Derived Concentration Guides [DCGs] for Members of the Public for External Exposure During Immersion in an Infinite Hemispherical Cloud of Uniform Concentration Resulting in an EDE of 100 mrem/yr [1 mSv/yr]) are given in both special (μCi/mL) and SI (Bq/m^3) units and are based on an effective dose equivalent of 100 mrem (1 mSv) from exposure during one year.

Tables A-1a and A-1b each contain six columns of information: Radionuclide/ Chemical Form/Isomer Half-Life; f_1 Value (GI-tract absorption); Ingested Water DCG; Inhaled Air DCG for Lung Retention Class D and Inhaled Air DCG for Lung Retention Class W and Inhaled Air DCG for Lung Retention Class Y. Table A-2 contains five columns of information: Element/Symbol; Atomic Number; compound; f_1 value; and Lung Retention Class. Table A-3 contains four columns of information: Radionuclide; Half-life in units of seconds (s), minutes (min), hours (h), days (d), or years (yr); Air Immersion DCG in units of μCi/mL; Air Immersion DCG in units of Bq/m^3.

a. *Exposure Conditions for Ingestion of Water and Inhalation.* Under conditions of continuous exposure, 24 hours per day, 365 days per year, members of the public are assumed to ingest 730 liters of drinking water (2 Liters per day), and to inhale 8400 cubic meters of air (23 cubic meters per day), as given for the "reference man" in ICRP Publication 23. Only single modes of exposure were considered in the calculation of the DCGs—that is, they apply to either inhalation *or* ingestion, not to a combination of both. For ingestion, DCG values are tabulated for all values of f_1, for each radionuclide given in ICRP Publication 30, Parts 1 through 4 and ICRP 48. For inhalation, DCG values are given for all combinations of f_1 and lung retention class (D, W, or Y) given by the ICRP, as tabulated in Table A–2. For radionuclides with multiple f_1 listings, where specific data for an airborne or liquid release are lacking, the f_1 value that results in the most restrictive DCG for ingested water or inhaled air should be used.

b. *Exposure Conditions for Air Immersion.* The air immersion DCGs were for a continuous, unshielded exposure via immersion in a semi-infinite atmospheric cloud. Exposures of members of the general public to concentrations of radionuclides in air are constrained, by consideration of potential stochastic radiation effects (such as, cancer and hereditary effects), to levels that preclude the occurrence of non-stochastic radiation effects (such as, cataracts in the eye and depression of bone marrow activity) which only occur at radiation doses that are factors of 100 or more times the value of 100 mrem/yr associated with the DCGs listed here.

For most of the radionuclides listed in Table A–3, the DCG value is determined by the limit on annual effective dose equivalent. Thus, the few cases where the DCG value is determined by the limit on annual dose equivalent to skin are indicated in the table by an appropriate footnote. Again, the DCGs listed in Table A–3 account only for immersion in a semi-infinite cloud and do not account for inhalation or ingestion exposures. Three classes of radionuclides are included in the air immersion DCGs given in Table A–3, as described below.

(1) *Class 1.* The first class of radionuclides includes selected noble gases and short-lived activation products that occur in gaseous form. For these radionuclides, inhalation doses are negligible compared to the external dose from immersion in an atmospheric cloud.

(2) *Class 2.* The second class of radionuclides includes those for which a DCG value for inhalation has been calculated (using the ICRP inhalation dose equivalent factors), but for which the DCG value for external exposure to a contaminated atmospheric cloud is more restrictive (i.e., results in a lower DCG value). These radionuclides generally have half-lives of a few hours or less, or are eliminated from the body following inhalation sufficiently rapidly to limit the inhalation dose.

(3) *Class 3.* The third class of radionuclides includes selected isotopes with relatively short half-lives that were not considered in ICRP Publication 30. These radionuclides typically have half-lives that are less than 10 minutes, they do not occur as a decay product of a longer-lived radionuclide, or they lack sufficient decay data to permit internal dose calculations. These radionuclides are also typified by a radioactive emission of highly intense, high-energy photons and rapid removal from the body following inhalation.

c. *Application to Mixtures of Radionuclides.* The DCG values are given for individual radionuclides. For known mixtures of radionuclides, the sum of the ratios of the observed concentration of each radionuclide to its corresponding DCG must not exceed 1.0.

3. *Limitations.* The values given in Tables A–1a, A–1b and A–3 account for only three exposure pathways (ingested water or inhaled air or air immersion) and do not include other potentially significant pathways. When more complex environmental pathways are involved, a more complete pathway analysis is required for calculating public radiation doses resulting from the operation of DOE facilities.

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
H-3 (Water)		2.E–03	(–1)	1.E–07 [2]	
H-3 (Elemental)				2.E–02 [2]	
Be-7	5.E–03	1.E–03		5.E–08	4.E–08
Be-10	5.E–03	3.E–05		4.E–10	3.E–11
C-11 (org)		1.E–02		1.E–06	
C-11 (CO)			3.E–06		
C-11 (CO_2)			2.E–06		
C-14 (org)		7.E–05		6.E–09	
C-14 (CO)			4.E–06		
C-14 (CO_2)			5.E–07		
F-18	1.E+00	1.E–03	2.E–07	2.E–07	2.E–07
Na-22	1.E+00	1.E–05	2.E–09		
Na-24	1.E+00	1.E–04	1.E–08		
Mg-28	5.E–01	2.E–05	4.E–09	3.E–09	
Al-26	1.E–02	1.E–05	1.E–10	2.E–10	
Si-31	1.E–02	3.E–04	6.E–08	7.E–08	6.E–08
Si-32	1.E–02	8.E–05	6.E–10	3.E–10	1.E–11
P-32	8.E–01	2.E–05	2.E–09	9.E–10	
P-33	8.E–01	2.E–04	2.E–08	6.E–09	
S-35	8.E–01	3.E–04	4.E–08	5.E–09	
	1.E–01	2.E–04			
S-35 (Gas)			3.E–08		
Cl-36	1.E+00	5.E–05	6.E–09	6.E–10	
Cl-38	1.E+00	7.E–04	1.E–07	1.E–07	
Cl-39	1.E+00	1.E–03	1.E–07	1.E–07	
K-40	1.E+00	7.E–06	9.E–10		
K-42	1.E+00	1.E–04	1.E–08		
K-43	1.E+00	2.E–04	2.E–08		
K-44	1.E+00	9.E–04	2.E–07		
K-45	1.E+00	2.E–03	3.E–07		
Ca-41	3.E–01	1.E–04		9.E–09	
Ca-45	3.E–01	5.E–05		2.E–09	
Ca-47	3.E–01	2.E–05		2.E–09	
Sc-43	1.E–04	2.E–04			5.E–08
Sc-44m	1.E–04	1.E–05			2.E–09
Sc-44	1.E–04	1.E–04			3.E–08
Sc-46	1.E–04	2.E–05			6.E–10
Sc-47	1.E–04	7.E–05			7.E–09
Sc-48	1.E–04	2.E–05			3.E–09
Sc-49	1.E–04	6.E–04			1.E–07
Ti-44	1.E–02	7.E–06	3.E–11	7.E–11	1.E–11
Ti-45	1.E–02	2.E–04	6.E–08	8.E–08	7.E–08
V-47	1.E–02	9.E–04	2.E–07	2.E–07	
V-48	1.E–02	2.E–05	3.E–09	2.E–09	
V-49	1.E–02	2.E–03	8.E–08	4.E–08	
Cr-48	1.E–01	2.E–04	3.E–08	2.E–08	2.E–08
	1.E–02	2.E–04			
Cr-49	1.E–01	8.E–04	2.E–07	2.E–07	2.E–07
	1.E–02	8.E–04			
Cr-51	1.E–01	1.E–03	1.E–07	6.E–08	5.E–08
	1.E–02	1.E–03			
Mn-51	1.E–01	5.E–04	1.E–07	1.E–07	
Mn-52m	1.E–01	9.E–04	2.E–07	2.E–07	
Mn-52	1.E–01	2.E–05	3.E–09	2.E–09	
Mn-53	1.E–01	1.E–03	6.E–08	3.E–08	
Mn-54	1.E–01	5.E–05	2.E–09	2.E–09	
Mn-56	1.E–01	1.E–04	4.E–08	5.E–08	
Fe-52	1.E–01	3.E–05	7.E–09	6.E–09	
Fe-55	1.E–01	2.E–04	5.E–09	1.E–08	
Fe-59	1.E–01	2.E–05	8.E–10	1.E–09	
Fe-60	1.E–01	9.E–07	2.E–11	4.E–11	
Co-55	5.E–02	3.E–05		7.E–09	6.E· 09
	3.E–01	4.E–05			
Co-56	5.E–02	1.E–05		7.E–10	5.E 10
	3.E–01	1.E–05			
Co-57	5.E–02	2.E–04		7.E–09	2.E· 09
	3.E–01	1.E–04			
Co-58m	5.E–02	2.E–03		2.E–07	2.E–07

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG *(μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
	3.E–01	2.E–03			
Co-58	5.E–02	5.E–05		3.E–09	2.E–09
	3.E–01	4.E–05			
Co-60m	5.E–02	4.E–02		9.E–06	6.E–06
	3.E–01	4.E–02			
Co-60	5.E–02	1.E–05		4.E–10	8.E–11
	3.E–01	5.E–06			
Co-61	5.E–02	5.E–04		2.E–07	1.E–07
	3.E–01	6.E–04			
Co-62m	5.E–02	1.E–03		4.E–07	4.E–07
	3.E–01	1.E–03			
Ni-56	5.E–02	4.E–05	5.E–09	3.E–09	
Ni-56 (Vapor)			3.E–09		
Ni-57	5.E–02	4.E–05	1.E–08	7.E–09	
Ni-57 (Vapor)			1.E–08		
Ni-59	5.E–02	7.E–04	9.E–09	2.E–08	
Ni-59 (Vapor)			4.E–09		
Ni-63	5.E–02	3.E–04	4.E–09	6.E–09	
Ni-63 (Vapor)			2.E–09		
Ni-65	5.E–02	2.E–04	6.E–08	7.E–08	
Ni-65 (Vapor)			4.E–08		
Ni-66	5.E–02	1.E–05	4.E–09	2.E–09	
Ni-66 (Vapor)			7.E–09		
Cu-60	5.E–01	8.E–04	2.E–07	3.E–07	2.E–07
Cu-61	5.E–01	3.E–04	7.E–08	1.E–07	8.E–08
Cu-64	5.E–01	3.E–04	7.E–08	6.E–08	5.E–08
Cu-67	5.E–01	1.E–04	2.E–08	1.E–08	1.E–08
Zn-62	5.E–01	4.E–05			7.E–09
Zn-63	5.E–01	7.E–04			2.E–07
Zn-65	5.E–01	9.E–06			6.E–10
Zn-69m	5.E–01	1.E–04			2.E–08
Zn-69	5.E–01	2.E–03			3.E–07
Zn-71m	5.E–01	2.E–04			4.E–08
Zn-72	5.E–01	3.E–05			3.E–09
Ga-65	1.E–03	2.E–03	4.E–07	5.E–07	
Ga-66	1.E–03	3.E–05	8.E–09	7.E–09	
Ga-67	1.E–03	2.E–04	3.E–08	3.E–08	
Ga-68	1.E–03	4.E–04	1.E–07	1.E–07	
Ga-70	1.E–03	2.E–03	4.E–07	5.E–07	
Ga-72	1.E–03	3.E–05	8.E–09	7.E–09	
Ga-73	1.E–03	1.E–04	4.E–08	4.E–08	
Ge-66	1.E+00	7.E–04	6.E–08	5.E–08	
Ge-67	1.E+00	1.E–03	2.E–07	2.E–07	
Ge-68	1.E+00	1.E–04	9.E–09	2.E–10	
Ge-69	1.E+00	4.E–04	4.E–08	2.E–08	
Ge-71	1.E+00	1.E–02	1.E–06	1.E–07	
Ge-75	1.E+00	2.E–03	2.E–07	2.E–07	
Ge-77	1.E+00	2.E–04	2.E–08	1.E–08	
Ge-78	1.E+00	7.E–04	5.E–08	5.E–08	
As-69	5.E–01	1.E–03		3.E–07	
As-70	5.E–01	4.E–04		1.E–07	
As-71	5.E–01	1.E–04		1.E–08	
As-72	5.E–01	2.E–05		3.E–09	
As-73	5.E–01	2.E–04		4.E–09	
As-74	5.E–01	4.E–05		2.E–09	
As-76	5.E–01	3.E–05		4.E–09	
As-77	5.E–01	1.E–04		1.E–08	
As-78	5.E–01	2.E–04		5.E–08	
Se-70	8.E–01	4.E–04	9.E–08	1.E–07	
	5.E–02	3.E–04			
Se-73m	8.E–01	2.E–03	4.E–07	3.E–07	
	5.E–02	9.E–04			
Se-73	8.E–01	2.E–04	3.E–08	4.E–08	
	5.E–02	9.E–05			
Se-75	8.E–01	2.E–05	2.E–09	1.E–09	
	5.E–02	8.E–05			
Se-79	8.E–01	2.E–05	2.E–09	1.E–09	
	5.E–02	1.E–04			

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Se-81m	8.E–01	1.E–03	2.E–07	2.E–07	
	5.E–02	7.E–04			
Se-81	8.E–01	2.E–03	5.E–07	6.E–07	
	5.E–02	2.E–03			
Se-83	8.E–01	1.E–03	3.E–07	3.E–07	
	5.E–02	9.E–04			
Br-74m	1.E+00	6.E–04	9.E–08	1.E–07	
Br-74	1.E+00	1.E–03	2.E–07	2.E–07	
Br-75	1.E+00	1.E–03	1.E–07	1.E–07	
Br-76	1.E+00	1.E–04	1.E–08	1.E–08	
Br-77	1.E+00	4.E–04	6.E–08	5.E–08	
Br-80m	1.E+00	6.E–04	4.E–08	3.E–08	
Br-80	1.E+00	2.E–03	4.E–07	5.E–07	
Br-82	1.E+00	8.E–05	1.E–08	9.E–09	
Br-83	1.E+00	2.E–03	2.E–07	2.E–07	
Br-84	1.E+00	9.E–04	1.E–07	2.E–07	
Rb-79	1.E+00	2.E–03	3.E–07		
Rb-81m	1.E+00	7.E–03	8.E–07		
Rb-81	1.E+00	1.E–03	1.E–07		
Rb-82m	1.E+00	3.E–04	4.E–08		
Rb-83	1.E+00	2.E–05	2.E–09		
Rb-84	1.E+00	1.E–05	2.E–09		
Rb-86	1.E+00	1.E–05	2.E–09		
Rb-87	1.E+00	3.E–05	4.E–09		
Rb-88	1.E+00	8.E–04	2.E–07		
Rb-89	1.E+00	2.E–03	3.E–07		
Sr-80	3.E–01	1.E–04	3.E–08		
	1.E–02	1.E–04			3.E–08
Sr-81	3.E–01	7.E–04	2.E–07		
	1.E–02	6.E–04			2.E–07
Sr-82	3.E–01	7.E–06	7.E–10		
	1.E–02	6.E–06			2.E–10
Sr-83	3.E–01	8.E–05	2.E–08		
	1.E–02	6.E–05			8.E–09
Sr-85m	3.E–01	6.E–03	2.E–06		
	1.E–02	6.E–03			2.E–06
Sr-85	3.E–01	7.E–05	6.E–09		
	1.E–02	1.E–04			4.E–09
Sr-87m	3.E–01	1.E–03	3.E–07		
	1.E–02	1.E–03			4.E–07
Sr-89	3.E–01	2.E–05	2.E–09		
	1.E–02	2.E–05			3.E–10
Sr-90	3.E–01	1.E–06	5.E–11		
	1.E–02	1.E–05			9.E–12
Sr-91	3.E–01	6.E–05	1.E–08		
	1.E–02	5.E–05			8.E–09
Sr-92	3.E–01	9.E–05	2.E–08		
	1.E–02	7.E–05			1.E–08
Y-86m	1.E–04	6.E–04		1.E–07	1.E–07
Y-86	1.E–04	3.E–05		8.E–09	7.E–09
Y-87	1.E–04	6.E–05		8.E–09	7.E–09
Y-88	1.E–04	3.E–05		6.E–10	6.E–10
Y-90m	1.E–04	2.E–04		3.E–08	3.E–08
Y-90	1.E–04	1.E–05		2.E–09	1.E–09
Y-91m	1.E–04	4.E–03		6.E–07	4.E–07
Y-91	1.E–04	1.E–05		4.E–10	3.E–10
Y-92	1.E–04	7.E–05		2.E–08	2.E–08
Y-93	1.E–04	3.E–05		7.E–09	6.E–09
Y-94	1.E–04	8.E–04		2.E–07	2.E–07
Y-95	1.E–04	1.E–03		4.E–07	3.E–07
Zr-86	2.E–03	4.E–05	9.E–09	6.E–09	6.E–09
Zr-88	2.E–03	1.E–04	5.E–10	1.E–09	7.E–10
Zr-89	2.E–03	4.E–05	8.E–09	6.E–09	6.E–09
Zr-93	2.E–03	9.E–05	4.E–11	1.E–10	2.E–10
Zr-95	2.E–03	4.E–05	6.E–10	9.E–10	6.E–10
Zr-97	2.E–03	2.E–05	5.E–09	3.E–09	3.E–09
Nb-88	1.E–02	2.E–03		5.E–07	5.E–07
Nb-89 (66 min)	1.E–02	3.E–04		1.E–07	9.E–08

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Nb-89 (122 min)	1.E–02	1.E–04		4.E–08	4.E–08
Nb-90	1.E–02	3.E–05		6.E–09	6.E–09
Nb-93m	1.E–02	5.E–03		3.E–08	4.E–09
Nb-94	1.E–02	3.E–05		5.E–10	4.E–11
Nb-95m	1.E–02	7.E–05		6.E–09	5.E–09
Nb-95	1.E–02	6.E–05		3.E–09	3.E–09
Nb-96	1.E–02	3.E–05		6.E–09	6.E–09
Nb-97	1.E–02	6.E–04		2.E–07	2.E–07
Nb-98	1.E–02	4.E–04		1.E–07	1.E–07
Mo-90	8.E–01	1.E–04	2.E–08		
	5.E–02	6.E–05			1.E–08
Mo-93m	8.E–01	3.E–04	4.E–08		
	5.E–02	1.E–04			3.E–08
Mo-93	8.E–01	1.E–04	1.E–08		
	5.E–02	6.E–04			4.E–10
Mo-99	8.E–01	5.E–05	6.E–09		
	5.E–02	3.E–05			3.E–09
Mo-101	8.E–01	2.E–03	3.E–07		
	5.E–02	2.E–03			4.E–07
Tc-93m	8.E–01	2.E–03	4.E–07	7.E–07	
Tc-93	8.E–01	9.E–04	2.E–07	2.E–07	
Tc-94m	8.E–01	5.E–04	1.E–07	1.E–07	
Tc-94	8.E–01	2.E–04	4.E–08	6.E–08	
Tc-95m	8.E–01	1.E–04	1.E–08	5.E–09	
Tc-95	8.E–01	3.E–04	5.E–08	5.E–08	
Tc-96m	8.E–01	4.E–03	7.E–07	6.E–07	
Tc-96	8.E–01	5.E–05	7.E–09	5.E–09	
Tc-97m	8.E–01	1.E–04	2.E–08	3.E–09	
Tc-97	8.E–01	9.E–04	1.E–07	1.E–08	
Tc-98	8.E–01	3.E–05	4.E–09	7.E–10	
Tc-99m	8.E–01	2.E–03	4.E–07	6.E–07	
Tc-99	8.E–01	1.E–04	1.E–08	2.E–09	
Tc-101	8.E–01	4.E–03	8.E–07	9.E–07	
Tc-104	8.E–01	8.E–04	2.E–07	2.E–07	
Ru-94	5.E–02	4.E–04	1.E–07	2.E–07	1.E–07
Ru-97	5.E–02	2.E–04	5.E–08	3.E–08	3.E–08
Ru-103	5.E–02	5.E–05	4.E–09	2.E–09	2.E–09
Ru-105	5.E–02	1.E–04	3.E–08	3.E–08	3.E–08
Ru-106	5.E–02	6.E–06	2.E–10	1.E–10	3.E–11
Rh-99m	5.E–02	5.E–04	1.E–07	2.E–07	2.E–07
Rh-99	5.E–02	7.E–05	7.E–09	5.E–09	5.E–09
Rh-100	5.E–02	5.E–05	1.E–08	9.E–09	9.E–09
Rh-101m	5.E–02	2.E–04	3.E–08	2.E–08	2.E–08
Rh-101	5.E–02	6.E–05	1.E–09	2.E–09	4.E–10
Rh-102m	5.E–02	4.E–05	1.E–09	9.E–10	3.E–10
Rh-102	5.E–02	2.E–05	2.E–10	4.E–10	1.E–10
Rh-103m	5.E–02	1.E–02	3.E–06	3.E–06	3.E–06
Rh-105	5.E–02	1.E–04	3.E–08	1.E–08	1.E–08
Rh-106m	5.E–02	2.E–04	6.E–08	9.E–08	8.E–08
Rh-107	5.E–02	2.E–03	6.E–07	6.E–07	6.E–07
Pd-100	5.E–03	4.E–05	4.E–09	3.E–09	4.E–09
Pd-101	5.E–03	4.E–04	7.E–08	8.E–08	7.E–08
Pd-103	5.E–03	2.E–04	1.E–08	1.E–08	8.E–09
Pd-107	5.E–03	1.E–03	5.E–08	2.E–08	9.E–10
Pd-109	5.E–03	6.E–05	1.E–08	1.E–08	1.E–08
Ag-102	5.E–02	2.E–03	4.E–07	5.E–07	5.E–07
Ag-103	5.E–02	1.E–03	2.E–07	3.E–07	3.E–07
Ag-104m	5.E–02	9.E–04	2.E–07	3.E–07	3.E–07
Ag-104	5.E–02	6.E–04	2.E–07	3.E–07	3.E–07
Ag-105	5.E–02	7.E–05	2.E–09	4.E–09	4.E–09
Ag-106m	5.E–02	2.E–05	2.E–09	2.E–09	2.E–09
Ag-106	5.E–02	2.E–03	4.E–07	5.E–07	4.E–07
Ag-108m	5.E–02	2.E–05	4.E–10	6.E–10	6.E–11
Ag-110m	5.E–02	1.E–05	3.E–10	4.E–10	2.E–10
Ag-111	5.E–02	3.E–05	4.E–09	2.E–09	2.E–09
Ag-112	5.E–02	9.E–05	2.E–08	2.E–08	2.E–08
Ag-115	5.E–02	9.E–04	2.E–07	2.E–07	2.E–07
Cd-104	5.E–02	6.E–04	2.E–07	3.E–07	3.E–07

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Cd-107	5.E–02	6.E–04	1.E–07	1.E–07	1.E–07
Cd-109	5.E–02	1.E–05	1.E–10	3.E–10	3.E–10
Cd-113m	5.E–02	9.E–07	8.E–12	3.E–11	3.E–11
Cd-113	5.E–02	8.E–07	8.E–12	3.E–11	3.E–11
Cd-115m	5.E–02	9.E–06	2.E–10	3.E–10	3.E–10
Cd-115	5.E–02	3.E–05	3.E–09	3.E–09	3.E–09
Cd-117m	5.E–02	1.E–04	3.E–08	4.E–08	3.E–08
Cd-117	5.E–02	1.E–04	3.E–08	4.E–08	3.E–08
In-109	2.E–02	5.E–04	1.E–07	2.E–07	
In-110 (69 min)	2.E–02	4.E–04	1.E–07	1.E–07	
In-110 (5 h)	2.E–02	1.E–04	4.E–08	5.E–08	
In-111	2.E–02	1.E–04	1.E–08	2.E–08	
In-112	2.E–02	6.E–03	2.E–06	2.E–06	
In-113m	2.E–02	1.E–03	3.E–07	5.E–07	
In-114m	2.E–02	9.E–06	1.E–10	2.E–10	
In-115m	2.E–02	4.E–04	1.E–07	1.E–07	
In-115	2.E–02	1.E–06	3.E–12	1.E–11	
In-116m	2.E–02	7.E–04	2.E–07	3.E–07	
In-117m	2.E–02	3.E–04	8.E–08	1.E–07	
In-117	2.E–02	2.E–03	4.E–07	5.E–07	
In-119m	2.E–02	1.E–03	3.E–07	3.E–07	
Sn-110	2.E–02	9.E–05	3.E–08	3.E–08	
Sn-111	2.E–02	2.E–03	5.E–07	6.E–07	
Sn-113	2.E–02	5.E–05	3.E–09	1.E–09	
Sn-117m	2.E–02	5.E–05	5.E–09	3.E–09	
Sn-119m	2.E–02	1.E–04	6.E–09	2.E–09	
Sn-121m	2.E–02	1.E–04	2.E–09	1.E–09	
Sn-121	2.E–02	2.E–04	4.E–08	3.E–08	
Sn-123m	2.E–02	1.E–03	3.E–07	3.E–07	
Sn-123	2.E–02	2.E–05	2.E–09	4.E–10	
Sn-125	2.E–02	1.E–05	2.E–09	8.E–10	
Sn-126	2.E–02	8.E–06	1.E–10	2.E–10	
Sn-127	2.E–02	2.E–04	5.E–08	4.E–08	
Sn-128	2.E–02	3.E–04	6.E–08	9.E–08	
Sb-115	1.E–01	2.E–03	6.E–07		
	1.E–02	2.E–03		7.E–07	
Sb-116m	1.E–01	6.E–04	2.E–07		
	1.E–02	6.E–04		3.E–07	
Sb-116	1.E–01	2.E–03	7.E–07		
	1.E–02	2.E–03		8.E–07	
Sb-117	1.E–01	2.E–03	5.E–07		
	1.E–02	2.E–03		7.E–07	
Sb-118m	1.E–01	2.E–04	5.E–08		
	1.E–02	2.E–04		5.E–08	
Sb-119	1.E–01	4.E–04	1.E–07		
	1.E–02	4.E–04		6.E–08	
Sb-120 (16 min)	1.E–01	5.E–03	1.E–06		
	1.E–02	5.E–03		1.E–06	
Sb-120 (6 d)	1.E–01	3.E–05	5.E–09		
	1.E–02	2.E–05		3.E–09	
Sb-122	1.E–01	2.E–05	5.E–09		
	1.E–02	2.E–05		2.E–09	
Sb-124m	1.E–01	7.E–03	2.E–06		
	1.E–02	7.E–03		1.E–06	
Sb-124	1.E–01	2.E–05	2.E–09		
	1.E–02	1.E–05		6.E–10	
Sb-125	1.E–01	6.E–05	6.E–09		
	1.E–02	5.E–05		1.E–09	
Sb-126m	1.E–01	2.E–03	4.E–07		
	1.E–02	2.E–03		5.E–07	
Sb-126	1.E–01	1.E–05	3.E–09		
	1.E–02	1.E–05		1.E–09	
Sb-127	1.E–01	2.E–05	5.E–09		
	1.E–02	2.E–05		2.E–09	
Sb-128 (9 h)	1.E–01	3.E–05	1.E–08		
	1.E–02	3.E–05		8.E–09	
Sb-128 (10 min)	1.E–01	3.E–03	9.E–07		
	1.E–02	3.E–03		1.E–06	

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Sb-129	1.E−01	8.E−05	2.E−08		
	1.E−02	8.E−05		2.E−08	
Sb-130	1.E−01	5.E−04	2.E−07		
	1.E−02	5.E−04		2.E−07	
Sb-131	1.E−01	5.E−04	9.E−08		
	1.E−02	5.E−04		1.E−07	
Te-116	2.E−01	2.E−04	5.E−08	7.E−08	
Te-121m	2.E−01	2.E−05	9.E−10	1.E−09	
Te-121	2.E−01	9.E−05	1.E−08	7.E−09	
Te-123m	2.E−01	3.E−05	1.E−09	1.E−09	
Te-123	2.E−01	3.E−05	1.E−09	3.E−09	
Te-125m	2.E−01	4.E−05	2.E−09	2.E−09	
Te-127m	2.E−01	2.E−05	1.E−09	6.E−10	
Te-127	2.E−01	2.E−04	5.E−08	4.E−08	
Te-129m	2.E−01	1.E−05	2.E−09	6.E−10	
Te-129	2.E−01	7.E−04	2.E−07	2.E−07	
Te-131m	2.E−01	2.E−05	3.E−09	2.E−09	
Te-131	2.E−01	2.E−04	3.E−08	3.E−08	
Te-132	2.E−01	2.E−05	2.E−09	2.E−09	
Te-133m	2.E−01	2.E−04	3.E−08	3.E−08	
Te-133	2.E−01	9.E−04	1.E−07	1.E−07	
Te-134	2.E−01	7.E−04	1.E−07	1.E−07	
I-120m	1.E+00	3.E−04	5.E−08		
I-120	1.E+00	2.E−04	3.E−08		
I-121	1.E+00	8.E−04	1.E−07		
I-123	1.E+00	3.E−04	4.E−08		
I-124	1.E+00	4.E−06	6.E−10		
I-125	1.E+00	4.E−06	5.E−10		
I-126	1.E+00	2.E−06	3.E−10		
I-128	1.E+00	2.E−03	3.E−07		
I-129	1.E+00	5.E−07	7.E−11		
I-130	1.E+00	3.E−05	5.E−09		
I-131	1.E+00	3.E−06	4.E−10		
I-132m	1.E+00	3.E−04	5.E−08		
I-132	1.E+00	2.E−04	4.E−08		
I-133	1.E+00	1.E−05	2.E−09		
I-134	1.E+00	7.E−04	1.E−07		
I-1353	1.E+00	7.E−05	1.E−08		
Cs-125	1.E+00	2.E−03	3.E−07		
Cs-127	1.E+00	2.E−03	2.E−07		
Cs-129	1.E+00	6.E−04	8.E−08		
Cs-130	1.E+00	3.E−03	4.E−07		
Cs-131	1.E+00	6.E−04	7.E−08		
Cs-132	1.E+00	7.E−05	9.E−09		
Cs-134m	1.E+00	3.E−03	3.E−07		
Cs-134	1.E+00	2.E−06	2.E−10		
Cs-135m	1.E+00	3.E−03	5.E−07		
Cs-135	1.E+00	2.E−05	3.E−09		
Cs-136	1.E+00	1.E−05	2.E−09		
Cs-137	1.E+00	3.E−06	4.E−10		
Cs-138	1.E+00	9.E−04	1.E−07		
Ba-126	1.E−01	2.E−04	4.E−08		
Ba-128	1.E−01	1.E−05	4.E−09		
Ba-131m	1.E−01	1.E−02	3.E−06		
Ba-131	1.E−01	8.E−05	2.E−08		
Ba-133m	1.E−01	7.E−05	2.E−08		
Ba-133	1.E−01	4.E−05	2.E−09		
Ba-135m	1.E−01	9.E−05	3.E−08		
Ba-139	1.E−01	3.E−04	7.E−08		
Ba-140	1.E−01	2.E−05	3.E−09		
Ba-141	1.E−01	7.E−04	2.E−07		
Ba-142	1.E−01	1.E−03	3.E−07		
La-131	1.E−03	1.E−03	3.E−07	4.E−07	
La-132	1.E−03	9.E−05	2.E−08	3.E−08	
La-135	1.E−03	1.E−03	2.E−07	2.E−07	
La-137	1.E−03	3.E−04	2.E−10	6.E−10	
La-138	1.E−03	2.E−05	8.E−12	3.E−11	
La-140	1.E−03	2.E−05	4.E−09	3.E−09	

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
La-141	1.E–03	1.E–04	2.E–08	3.E–08	
La-142	1.E–03	2.E–04	5.E–08	8.E–08	
La-143	1.E–03	1.E–03	2.E–07	2.E–07	
Ce-134	3.E–04	1.E–05		2.E–09	2.E–09
Ce-135	3.E–04	4.E–05		9.E–09	8.E–09
Ce-137m	3.E–04	7.E–05		1.E–08	9.E–09
Ce-137	3.E–04	1.E–03		3.E–07	3.E–07
Ce-139	3.E–04	1.E–04		2.E–09	2.E–09
Ce-141	3.E–04	5.E–05		2.E–09	1.E–09
Ce-143	3.E–04	3.E–05		4.E–09	4.E–09
Ce-144	3.E–04	7.E–06		6.E–11	3.E–11
Pr-136	3.E–04	2.E–03		6.E–07	5.E–07
Pr-137	3.E–04	1.E–03		4.E–07	3.E–07
Pr-138m	3.E–04	3.E–04		1.E–07	1.E–07
Pr-139	3.E–04	1.E–03		3.E–07	2.E–07
Pr-142m	3.E–04	2.E–03		4.E–07	3.E–07
Pr-142	3.E–04	3.E–05		5.E–09	4.E–09
Pr-143	3.E–04	3.E–05		2.E–09	2.E–09
Pr-144	3.E–04	1.E–03		3.E–07	3.E–07
Pr-145	3.E–04	9.E–05		2.E–08	2.E–08
Pr-147	3.E–04	2.E–03		5.E–07	4.E–07
Nd-136	3.E–04	4.E–04		1.E–07	1.E–07
Nd-138	3.E–04	5.E–05		1.E–08	1.E–08
Nd-139m	3.E–04	1.E–04		4.E–08	3.E–08
Nd-139	3.E–04	2.E–03		8.E–07	7.E–07
Nd-141	3.E–04	4.E–03		2.E–06	1.E–06
Nd-147	3.E–04	4.E–05		2.E–09	2.E–09
Nd-149	3.E–04	3.E–04		6.E–08	6.E–08
Nd-151	3.E–04	2.E–03		5.E–07	4.E–07
Pm-141	3.E–04	2.E–03		4.E–07	4.E–07
Pm-143	3.E–04	1.E–04		1.E–09	2.E–09
Pm-144	3.E–04	4.E–05		3.E–10	3.E–10
Pm-145	3.E–04	3.E–04		5.E–10	4.E–10
Pm-146	3.E–04	4.E–05		1.E–10	1.E–10
Pm-147	3.E–04	1.E–04		5.E–10	4.E–10
Pm-148m	3.E–04	2.E–05		7.E–10	7.E–10
Pm-148	3.E–04	1.E–05		1.E–09	1.E–09
Pm-149	3.E–04	4.E–05		5.E–09	4.E–09
Pm-150	3.E–04	1.E–04		5.E–08	4.E–08
Pm-151	3.E–04	5.E–05		8.E–09	7.E–09
Sm-141m	3.E–04	8.E–04		2.E–07	
Sm-141	3.E–04	2.E–03		4.E–07	
Sm-142	3.E–04	2.E–04		6.E–08	
Sm-145	3.E–04	2.E–04		1.E–09	
Sm-146	3.E–04	7.E–07		1.E–13	
Sm-147	3.E–04	8.E–07		2.E–13	
Sm-151	3.E–04	4.E–04		4.E–10	
Sm-153	3.E–04	5.E–05		7.E–09	
Sm-155	3.E–04	2.E–03		5.E–07	
Sm-156	3.E–04	1.E–04		2.E–08	
Eu-145	1.E–03	4.E–05		5.E–09	
Eu-146	1.E–03	3.E–05		3.E–09	
Eu-147	1.E–03	8.E–05		4.E–09	
Eu-148	1.E–03	3.E–05		8.E–10	
Eu-149	1.E–03	3.E–04		7.E–09	
Eu-150 (12 h)	1.E–03	9.E–05		2.E–08	
Eu-150 (34 yr)	1.E–03	2.E–05		4.E–11	
Eu-152m	1.E–03	7.E–05		2.E–08	
Eu-152	1.E–03	2.E–05		6.E–11	
Eu-154	1.E–03	1.E–05		5.E–11	
Eu-155	1.E–03	1.E–04		3.E–10	
Eu-156	1.E–03	2.E–05		1.E–09	
Eu-157	1.E–03	6.E–05		1.E–08	
Eu-158	1.E–03	5.E–04		1.E–07	
Gd-145	3.E–04	1.E–03	4.E–07	4.E–07	
Gd-146	3.E–04	4.E–05	3.E–10	7.E–10	
Gd-147	3.E–04	5.E–05	1.E–08	8.E–09	
Gd-148	3.E–04	7.E–07	4.E–14	1.E–13	

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Gd-149	3.E–04	8.E–05	5.E–09	6.E–09	
Gd-151	3.E–04	2.E–04	2.E–09	3.E–09	
Gd-152	3.E–04	9.E–07	5.E–14	2.E–13	
Gd-153	3.E–04	1.E–04	6.E–10	1.E–09	
Gd-159	3.E–04	7.E–05	2.E–08	1.E–08	
Tb-147	3.E–04	2.E–04		8.E–08	
Tb-149	3.E–04	1.E–04		2.E–09	
Tb-150	3.E–04	1.E–04		5.E–08	
Tb-151	3.E–04	1.E–04		2.E–08	
Tb-153	3.E–04	1.E–04		2.E–08	
Tb-154	3.E–04	5.E–05		1.E–08	
Tb-155	3.E–04	2.E–04		2.E–08	
Tb-156m (24 h)	3.E–04	2.E–04		2.E–08	
Tb-156m (5 h)	3.E–04	4.E–04		6.E–08	
Tb-156	3.E–04	3.E–05		3.E–09	
Tb-157	3.E–04	1.E–03		1.E–09	
Tb-158	3.E–04	3.E–05		5.E–11	
Tb-160	3.E–04	2.E–05		5.E–10	
Tb-161	3.E–04	5.E–05		4.E–09	
Dy-155	3.E–04	2.E–04		6.E–08	
Dy-157	3.E–04	5.E–04		2.E–07	
Dy-159	3.E–04	3.E–04		6.E–09	
Dy-165	3.E–04	4.E–04		1.E–07	
Dy-166	3.E–04	2.E–05		2.E–09	
Ho-155	3.E–04	1.E–03		4.E–07	
Ho-157	3.E–04	7.E–03		3.E–06	
Ho-159	3.E–04	6.E–03		2.E–06	
Ho-161	3.E–04	3.E–03		1.E–06	
Ho-162m	3.E–04	2.E–03		6.E–07	
Ho-162	3.E–04	2.E–02		6.E–06	
Ho-164m	3.E–04	3.E–03		7.E–07	
Ho-164	3.E–04	6.E–03		2.E–06	
Ho-166m	3.E–04	2.E–05		2.E–11	
Ho-166	3.E–04	2.E–05		4.E–09	
Ho-167	3.E–04	4.E–04		1.E–07	
Er-161	3.E–04	4.E–04		2.E–07	
Er-165	3.E–04	2.E–03		4.E–07	
Er-169	3.E–04	1.E–04		6.E–09	
Er-171	3.E–04	1.E–04		2.E–08	
Er-172	3.E–04	4.E–05		3.E–09	
Tm-162	3.E–04	2.E–03		7.E–07	
Tm-166	3.E–04	1.E–04		3.E–08	
Tm-167	3.E–04	7.E–05		5.E–09	
Tm-170	3.E–04	3.E–05		5.E–10	
Tm-171	3.E–04	3.E–04		1.E–09	
Tm-172	3.E–04	2.E–05		3.E–09	
Tm-173	3.E–04	1.E–04		3.E–08	
Tm-175	3.E–04	2.E–03		6.E–07	
Yb-162	3.E–04	2.E–03		7.E–07	7.E–07
Yb-166	3.E–04	4.E–05		5.E–09	4.E–09
Yb-167	3.E–04	8.E–03		2.E–06	2.E–06
Yb-169	3.E–04	5.E–05		2.E–09	2.E–09
Yb-175	3.E–04	9.E–05		8.E–09	8.E–09
Yb-177	3.E–04	4.E–04		1.E–07	1.E–07
Yb-178	3.E–04	3.E–04		9.E–08	9.E–08
Lu-169	3.E–04	7.E–05		1.E–08	1.E–08
Lu-170	3.E–04	3.E–05		5.E–09	5.E–09
Lu-171	3.E–04	5.E–05		4.E–09	5.E–09
Lu-172	3.E–04	3.E–05		3.E–09	3.E–09
Lu-173	3.E–04	1.E–04		1.E–09	8.E–10
Lu-174m	3.E–04	8.E–05		8.E–10	5.E–10
Lu-174	3.E–04	1.E–04		5.E–10	4.E–10
Lu-176m	3.E–04	2.E–04		6.E–08	5.E–08
Lu-176	3.E–04	2.E–05		3.E–11	2.E–11
Lu-177m	3.E–04	2.E–05		3.E–10	2.E–10
Lu-177	3.E–04	7.E–05		5.E–09	5.E–09
Lu-178m	3.E–04	2.E–03		4.E–07	4.E–07
Lu-178	3.E–04	1.E–03		3.E–07	3.E–07

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Lu-179	3.E–04	2.E–04		4.E–08	4.E–08
Hf-170	2.E–03	7.E–05	1.E–08	1.E–08	
Hf-172	2.E–03	3.E–05	4.E–11	1.E–10	
Hf-173	2.E–03	1.E–04	3.E–08	3.E–08	
Hf-175	2.E–03	8.E–05	2.E–09	3.E–09	
Hf-177m	2.E–03	5.E–04	1.E–07	2.E–07	
Hf-178m	2.E–03	7.E–06	6.E–12	2.E–11	
Hf-179m	2.E–03	3.E–05	1.E–09	1.E–09	
Hf-180m	2.E–03	2.E–04	5.E–08	6.E–08	
Hf-181	2.E–03	3.E–05	9.E–10	1.E–09	
Hf-182m	2.E–03	1.E–03	2.E–07	3.E–07	
Hf-182	2.E–03	1.E–05	4.E–12	2.E–11	
Hf-183	2.E–03	5.E–04	1.E–07	1.E–07	
Hf-184	2.E–03	7.E–05	2.E–08	1.E–08	
Ta-172	1.E–03	1.E–03		3.E–07	2.E–07
Ta-173	1.E–03	2.E–04		5.E–08	4.E–08
Ta-174	1.E–03	7.E–04		2.E–07	2.E–07
Ta-175	1.E–03	2.E–04		4.E–08	3.E–08
Ta-176	1.E–03	1.E–04		3.E–08	3.E–08
Ta-177	1.E–03	3.E–04		5.E–08	4.E–08
Ta-178	1.E–03	5.E–04		2.E–07	2.E–07
Ta-179	1.E–03	6.E–04		1.E–08	2.E–09
Ta-180m	1.E–03	6.E–04		2.E–07	1.E–07
Ta-180	1.E–03	4.E–05		1.E–09	6.E–11
Ta-182m	1.E–03	6.E–03		1.E–06	1.E–06
Ta-182	1.E–03	2.E–05		8.E–10	3.E–10
Ta-183	1.E–03	3.E–05		3.E–09	2.E–09
Ta-184	1.E–03	5.E–05		1.E–08	1.E–08
Ta-185	1.E–03	7.E–04		2.E–07	2.E–07
Ta-186	1.E–03	2.E–03		5.E–07	5.E–07
W-176	1.E–02	3.E–04			
	3.E–01	4.E–04	1.E–07		
W-177	1.E–02	6.E–04			
	3.E–01	7.E–04	2.E–07		
W–178	1.E–02	2.E–04			
	3.E–01	2.E–04	5.E–08		
W-179	13.E–02	1.E–02			
	3.E–01	2.E–02	4.E–06		
W-181	1.E–02	4.E–04			
	3.E–01	5.E–04	8.E–08		
W-185	1.E–02	7.E–05			
	3.E–01	1.E–04	2.E–08		
W-187	1.E–02	5.E–05			
	3.E–01	7.E–05	2.E–08		
W-188	1.E–02	1.E–05			
	3.E–01	2.E–05	3.E–09		
Re-177	8.E–01	3.E–03	6.E–07	8.E–07	
Re-178	8.E–01	3.E–03	6.E–07	7.E–07	
Re-181	8.E–01	1.E–04	2.E–08	2.E–08	
Re-182 (64 h)	8.E–01	4.E–05	6.E–09	5.E–09	
Re-182 (12 h)	8.E–01	2.E–04	3.E–08	4.E–08	
Re-184m	8.E–01	6.E–05	7.E–09	1.E–09	
Re-184	8.E–01	6.E–05	8.E–09	3.E–09	
Re-186m	8.E–01	4.E–05	5.E–09	4.E–10	
Re-186	8.E–01	5.E–05	7.E–09	4.E–09	
Re-187	8.E–01	2.E–02	2.E–06	2.E–07	
Re-188m	8.E–01	2.E–03	3.E–07	3.E–07	
Re-188	8.E–01	5.E–05	7.E–09	7.E–09	
Re-189	8.E–01	9.E–05	1.E–08	1.E–08	
Os-180	1.E–02	3.E–03	9.E–07	1.E–06	1.E–06
Os-181	1.E–02	4.E–04	1.E–07	1.E–07	1.E–07
Os-182	1.E–02	6.E–05	1.E–08	1.E–08	9.E–09
Os-185	1.E–02	7.E–05	1.E–09	2.E–09	2.E–09
Os-189m	1.E–02	2.E–03	5.E–07	5.E–07	4.E–07
Os-191m	1.E–02	4.E–04	7.E–08	5.E–08	4.E–08
Os-191	1.E–02	7.E–05	5.E–09	4.E–09	3.E–09
Os-193	1.E–02	4.E–05	1.E–08	7.E–09	6.E–09
Os-194	1.E–02	1.E–05	1.E–10	1.E–10	2.E–11

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Ir-182	1.E–02	1.E–03	3.E–07	4.E–07	3.E–07
Ir-184	1.E–02	2.E–04	6.E–08	8.E–08	6.E–08
Ir-185	1.E–02	1.E–04	3.E–08	3.E–08	2.E–08
Ir-186	1.E–02	7.E–05	2.E–08	1.E–08	1.E–08
Ir-187	1.E–02	3.E–04	7.E–08	7.E–08	6.E–08
Ir-188	1.E–02	5.E–05	1.E–08	8.E–09	8.E–09
Ir-189	1.E–02	2.E–04	1.E–08	9.E–09	9.E–09
Ir-190m	1.E–02	5.E–03	5.E–07	5.E–07	4.E–07
Ir-190	1.E–02	3.E–05	2.E–09	2.E–09	2.E–09
Ir-192m	1.E–02	9.E–05	2.E–10	5.E–10	4.E–11
Ir-192	1.E–02	3.E–05	6.E–10	9.E–10	5.E–10
Ir-194m	1.E–02	2.E–05	2.E–10	4.E–10	2.E–10
Ir-194	1.E–02	3.E–05	7.E–09	5.E–09	4.E–09
Ir-195m	1.E–02	2.E–04	6.E–08	7.E–08	5.E–08
Ir-195	1.E–02	4.E–04	1.E–07	1.E–07	1.E–07
Pt-186	1.E–02	4.E–04	9.E–08		
Pt-188	1.E–02	5.E–05	4.E–09		
Pt-189	1.E–02	3.E–04	7.E–08		
Pt-191	1.E–02	1.E–04	2.E–08		
Pt-193m	1.E–02	8.E–05	1.E–08		
Pt-193	1.E–02	1.E–03	6.E–08		
Pt-195m	1.E–02	6.E–05	1.E–08		
Pt-197m	1.E–02	4.E–04	1.E–07		
Pt-197	1.E–02	9.E–05	2.E–08		
Pt-199	1.E–02	1.E–03	3.E–07		
Pt-200	1.E–02	3.E–05	8.E–09		
Au-193	1.E–01	3.E–04	6.E–08	5.E–08	4.E–08
Au-194	1.E–01	8.E–05	2.E–08	1.E–08	1.E–08
Au-195	1.E–01	1.E–04	3.E–08	3.E–09	1.E–09
Au-198m	1.E–01	3.E–05	6.E–09	3.E–09	3.E–09
Au-198	1.E–01	3.E–05	9.E–09	4.E–09	4.E–09
Au-199	1.E–01	9.E–05	2.E–08	9.E–09	9.E–09
Au-200m	1.E–01	3.E–05	8.E–09	7.E–09	6.E–09
Au-200	1.E–01	7.E–04	2.E–07	2.E–07	2.E–07
Au-201	1.E–01	2.E–03	5.E–07	6.E–07	5.E–07
Hg-193m (Org)	1.E+00	3.E–04	3.E–08		
	4.E–01	1.E–04			
Hg-193m	2.E–02	9.E–05	2.E–08	2.E–08	
Hg-193m (Vapor)			2.E–08		
Hg-193 (Org)	1.E+00	1.E–03	2.E–07		
	4.E–01	5.E–04			
Hg-193	2.E–02	4.E–04	1.E–07	1.E–07	
Hg-193 (Vapor)			7.E–08		
Hg-194 (Org)	1.E+00	5.E–07	7.E–11		
	4.E–01	1.E–06			
Hg-194	2.E–02	2.E–05	1.E–10	3.E–10	
Hg-194 (Vapor)			7.E–11		
Hg-195m (Org)	1.E+00	1.E–04	1.E–08		
	4.E–01	8.E–05			
Hg-195m	2.E–02	6.E–05	1.E–08	9.E–09	
Hg-195m (Vapor)			9.E–09		
Hg-195 (Org)	1.E+00	1.E–03	1.E–07		
	4.E–01	5.E–04			
Hg-195	2.E–02	4.E–04	8.E–08	8.E–08	
Hg-195 (Vapor)			7.E–08		
Hg-197m (Org)	1.E+00	2.E–04	2.E–08		
	4.E–01	1.E–04			
Hg-197m	2.E–02	8.E–05	2.E–08	1.E–08	
Hg-197m (Vapor)			1.E–08		
Hg-197 (Org)	1.E+00	3.E–04	3.E–08		
	4.E–01	2.E–04			
Hg-197	2.E–02	2.E–04	3.E–08	2.E–08	
Hg-197 (Vapor)			2.E–08		
Hg-199m (Org)	1.E+00	3.E–03	4.E–07		
	4.E–01	2.E–03			
Hg-199m	2.E–02	2.E–03	3.E–07	4.E–07	
Hg-199m (Vapor)			2.E–07		
Hg-203 (Org)	1.E+00	1.E–05	2.E–09		

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
	4.E–01	2.E–05			
Hg-203	2.E–02	7.E–05	3.E–09	3.E–09	
Hg-203 (Vapor)			2.E–09		
Tl-194m	1.E+00	2.E–03	4.E–07		
Tl-194	1.E+00	7.E–03	1.E–06		
Tl-195	1.E+00	2.E–03	3.E–07		
Tl-197	1.E+00	2.E–03	3.E–07		
Tl-198m	1.E+00	8.E–04	1.E–07		
Tl-198	1.E+00	5.E–04	7.E–08		
Tl-199	1.E+00	2.E–03	2.E–07		
Tl-200	1.E+00	2.E–04	3.E–08		
Tl-201	1.E+00	5.E–04	5.E–08		
Tl-202	1.E+00	9.E–05	1.E–08		
Tl-204	1.E+00	4.E–05	5.E–09		
Pb-195m	2.E–01	2.E–03	5.E–07		
Pb-198	2.E–01	9.E–04	2.E–07		
Pb-199	2.E–01	6.E–04	2.E–07		
Pb-200	2.E–01	9.E–05	1.E–08		
Pb-201	2.E–01	2.E–04	5.E–08		
Pb-202m	2.E–01	3.E–04	7.E–08		
Pb-202	2.E–01	4.E–06	1.E–10		
Pb-203	2.E–01	1.E–04	2.E–08		
Pb-205	2.E–01	9.E–05	3.E–09		
Pb-209	2.E–01	7.E–04	1.E–07		
Pb-210	2.E–01	3.E–08	9.E–13		
Pb-211	2.E–01	3.E–04	2.E–09		
Pb-212	2.E–01	3.E–06	8.E–11		
Pb-214	2.E–01	2.E–04	2.E–09		
Bi-200	5.E–02	8.E–04	2.E–07	2.E–07	
Bi-201	5.E–02	3.E–04	7.E–08	9.E–08	
Bi-202	5.E–02	4.E–04	9.E–08	2.E–07	
Bi-203	5.E–02	7.E–05	2.E–08	1.E–08	
Bi-205	5.E–02	4.E–05	6.E–09	3.E–09	
Bi-206	5.E–02	2.E–05	3.E–09	2.E–09	
Bi-207	5.E–02	3.E–05	4.E–09	8.E–10	
Bi-210m	5.E–02	2.E–06	1.E–11	2.E–12	
Bi-210	5.E–02	2.E–05	9.E–10	6.E–11	
Bi-212	5.E–02	1.E–04	6.E–10	7.E–10	
Bi-213	5.E–02	2.E–04	7.E–10	8.E–10	
Bi-214	5.E–02	6.E–04	2.E–09	2.E–09	
Po-203	1.E–01	7.E–04	2.E–07	2.E–07	
Po-205	1.E–01	6.E–04	9.E–08	2.E–07	
Po-207	1.E–01	2.E–04	6.E–08	7.E–08	
Po-210	1.E–01	8.E–08	1.E–12	1.E–12	
At-207	1.E+00	2.E–04	6.E–09	5.E–09	
At-211	1.E+00	3.E–06	2.E–10	1.E–10	
Rn-220		[3]	[3]	[3]	[3]
Rn-222		[4]	[4]	[4]	[4]
Fr-222	1.E+00	6.E–05	1.E–09		
Fr-223	1.E+00	2.E–05	2.E–09		
Ra-223	2.E–01	2.E–07		2.E–12	
Ra-224	2.E–01	4.E–07		4.E–12	
Ra-225	2.E–01	4.E–07		2.E–12	
Ra-226	2.E–01	1.E–07		1.E–12	
Ra-227	2.E–01	6.E–04		4.E–08	
Ra-228	2.E–01	1.E–07		3.E–12	
Ac-224	1.E–03	5.E–05	9.E–11	1.E–10	1.E–10
Ac-225	1.E–03	1.E–06	1.E–12	2.E–12	1.E–12
Ac-226	1.E–03	4.E–06	9.E–12	1.E–11	1.E–11
Ac-227	1.E–03	1.E–08	2.E–15	7.E–15	1.E–14
Ac-228	1.E–03	6.E–05	4.E–11	1.E–10	1.E–10
Th-226	2.E–04	2.E–04		4.E–10	3.E–10
Th-227	2.E–04	4.E–06		8.E–13	7.E–13
Th-228	2.E–04	4.E–07		5.E–14	4.E–14
Th-229	2.E–04	4.E–08		6.E–15	7.E–15
Th-230	2.E–04	3.E–07		4.E–14	5.E–14
Th-231	2.E–04	1.E–04		1.E–08	1.E–08
Th-232	2.E–04	5.E–08		7.E–15	1.E–14

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Th-234	2.E–04	1.E–05		5.E–10	4.E–10
Pa-227	1.E–03	1.E–04		3.E–10	2.E–10
Pa-228	1.E–03	3.E–05		5.E–11	3.E–11
Pa-230	1.E–03	2.E–05		1.E–11	8.E–12
Pa-231	1.E–03	1.E–06		9.E–15	1.E–14
Pa-232	1.E–03	4.E–05		1.E–10	2.E–10
Pa-233	1.E–03	4.E–05		2.E–09	1.E–09
Pa-234	1.E–03	7.E–05		2.E–08	2.E–08
U-230	5.E–02	2.E–07	1.E–12	8.E–13	
	2.E–03	1.E–06			6.E–13
U-231	5.E–02	1.E–04	2.E–08	1.E–08	
	2.E–03	1.E–04			1.E–08
U-232	5.E–02	1.E–07	1.E–12	9.E–13	
	2.E–03	2.E–06			2.E–14
U-233	5.E–02	5.E–07	4.E–12	2.E–12	
	2.E–03	5.E–06			9.E–14
U-234	5.E–02	5.E–07	4.E–12	2.E–12	
	2.E–03	6.E–06			9.E–14
U-235	5.E–02	5.E–07	5.E–12	2.E–12	
	2.E–03	5.E–06			9.E–14
U-236	5.E–02	5.E–07	5.E–12	2.E–12	
	2.E–03	6.E–06			9.E–14
U-237	5.E–02	5.E–05	6.E–09	4.E–09	
	2.E–03	5.E–05			4.E–09
U-238	5.E–02	6.E–07	5.E–12	2.E–12	
	2.E–03	6.E–06			1.E–13
U-239	5.E–02	2.E–03	4.E–07	4.E–07	
	2.E–03	2.E–03			4.E–07
U-240	5.E–02	4.E–05	9.E–09	7.E–09	
	2.E–03	3.E–05			6.E–09
U-Natural	5.E–02	6.E–07	5.E–12	2.E–12	
	2.E–03	6.E–06			1.E–13
Np-232	1.E–03	4.E–03		1.E–08	
Np-233	1.E–03	2.E–02		7.E–06	
Np-234	1.E–03	6.E–05		6.E–09	
Np-235	1.E–03	7.E–04		3.E–09	
Np-236 (1.E+5 yr)	1.E–03	2.E–07		1.E–13	
Np-236 (22 h)	1.E–03	1.E–04		2.E–10	
Np-237	1.E–03	3.E–08		2.E–14	
Np-238	1.E–03	4.E–05		4.E–10	
Np-239	1.E–03	5.E–05		5.E–09	
Np-240	1.E–03	6.E–04		2.E–07	
Pu-234	1.E–03	2.E–04		5.E–10	
	1.E–04	3.E–04			
	1.E–05	3.E–04			4.E–10
Pu-235	1.E–03	2.E–02		7.E–06	
	1.E–04	2.E–02			
	1.E–05	2.E–02			6.E–06
Pu-236	1.E–03	1.E–07		8.E–14	
	1.E–04	1.E–06			
	1.E–05	5.E–06			1.E–13
Pu-237	1.E–03	3.E–04		8.E–09	
	1.E–04	3.E–04			
	1.E–05	3.E–04			7.E–09
Pu-238	1.E–03	4.E–08		3.E–14	
	1.E–04	4.E–07			
	1.E–05	5.E–06			4.E–14
Pu-239	1.E–03	4.E–08		3.E–14	
	1.E–04	4.E–07			
	1.E–05	4.E–06			4.E–14
Pu-240	1.E–03	4.E–08[5]		3.E–14	
	1.E–04	4.E–07			
	1.E–05	4.E–06			4.E–14
Pu-241	1.E–03	2.E–06		1.E–12	
	1.E–04	2.E–05			
	1.E–05	2.E–04			2.E–12
Pu-242	1.E–03	4.E–08		3.E–14	
	1.E–04	4.E–07			

TABLE A–1a.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 100 MREM/YR.—Continued

[μCi]

Radionuclide	f_1 value	Ingested water DCG (μCi/mL)	Inhaled air DCG (μCi/mL)		
			D	W	Y
Pu-243	1.E–05	5.E–06			4.E–14
	1.E–03	4.E–04		9.E–08	
	1.E–04	4.E–04			
Pu-244	1.E–05	4.E–04			9.E–08
	1.E–03	4.E–08		3.E–14	
	1.E–04	4.E–07			
Pu-245	1.E–05	3.E–06			4.E–14
	1.E–03	6.E–05		1.E–08	
	1.E–04	6.E–05			
Pu-246	1.E–05	6.E–05			1.E–08
	1.E–03	1.E–05		6.E–10	
	1.E–04	1.E–05			
Am-237	1.E–05	1.E–05			6.E–10
	1.E–03	2.E–03		7.E–07	
Am-238	1.E–03	1.E–03		1.E–08	
Am-239	1.E–03	1.E–04		3.E–08	
Am-240	1.E–03	6.E–05		7.E–09	
Am-241	1.E–03	4.E–08		3.E–14	
Am-242m	1.E–03	4.E–08		3.E–14	
Am-242	1.E–03	1.E–04		2.E–10	
Am-243	1.E–03	4.E–08		3.E–14	
Am-244m	1.E–03	2.E–03		2.E–08	
Am-244	1.E–03	7.E–05		7.E–10	
Am-245	1.E–03	8.E–04		2.E–07	
Am-246m	1.E–03	2.E–03		5.E–07	
Am-246	1.E–03	9.E–04		2.E–07	
Cm-238	1.E–03	4.E–04		3.E–09	
Cm-240	1.E–03	2.E–06		1.E–12	
Cm-241	1.E–03	3.E–05		8.E–11	
Cm-242	1.E–03	1.E–06		7.E–13	
Cm-243	1.E–03	6.E–08		4.E–14	
Cm-244	1.E–03	7.E–08		5.E–14	
Cm-245	1.E–03	4.E–08		3.E–14	
Cm-246	1.E–03	4.E–08		3.E–14	
Cm-247	1.E–03	4.E–08		3.E–14	
Cm-248	1.E–03	1.E–08		7.E–15	
Cm-249	1.E–03	1.E–03		6.E–08	
Cm-250	1.E–03	2.E–09		1.E–15	
Bk-245	1.E–03	6.E–05		3.E–09	
Bk-246	1.E–03	7.E–05		7.E–09	
Bk-247	1.E–03	3.E–08		2.E–14	
Bk-249	1.E–03	1.E–05		9.E–12	
Bk-250	1.E–03	2.E–04		2.E–09	
Cf-244	1.E–03	8.E–04		1.E–09	1.E–09
Cf-246	1.E–03	1.E–05		2.E–11	2.E–11
Cf-248	1.E–03	5.E–07		3.E–13	2.E–13
Cf-249	1.E–03	3.E–08		2.E–14	3.E–14
Cf-250	1.E–03	7.E–08		5.E–14	6.E–14
Cf-251	1.E–03	3.E–08		2.E–14	3.E–14
Cf-252	1.E–03	1.E–07		9.E–14	8.E–14
Cf-253	1.E–03	1.E–05		5.E–12	4.E–12
Cf-254	1.E–03	6.E–08		5.E–14	4.E–14
Es-250	1.E–03	1.E–03		3.E–09	
Es-251	1.E–03	2.E–04		3.E–09	
Es-253	1.E–03	4.E–06		3.E–12	
Es-254m	1.E–03	9.E–06		2.E–11	
Es-254	1.E–03	5.E–07		3.E–13	
Fm-252	1.E–03	1.E–05		3.E–11	
Fm-253	1.E–03	3.E–05		2.E–11	
Fm-254	1.E–03	8.E–05		2.E–10	
Fm-255	1.E–03	1.E–05		5.E–11	
Fm-257	1.E–03	1.E–06		5.E–13	
Md-257	1.E–03	2.E–04		2.E–10	
Md-258	1.E–03	1.E–06		7.E–13	

[1] A dash indicates no values given for this data category.

[2] The inhalation DCG values allow for an additional 50% absorption through the skin, as described in ICRP Publication No. 30: "Limits for Intakes of Radionuclides by Workers, Part 1. For elemental tritium, the lung dose equivalent is used as the basis for the DCG value shown.

[3] DCGs for Rn-220 are being assessed by DOE. Until the review has been completed and new values issued, the value of 3.E−09 μCi/mL given in Figure A–3 shall be used.
[4] DCGs for Rn-222 are being assessed by DOE. Until the review has been completed and new values issued, the value of 3.E−09 μCi/mL given in Figure A–3 shall be used for Rn-222 releases from DOE facilities.

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 MSV/YR.

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
H-3 (Water)		8.E+04	(1)	4.E+03 [2]	
H-3 (Elemental)				7.E+08 [2]	
Be-7	5.E−03	5.E+04		2.E+03	2.E+03
Be-10	5.E−03	1.E+03		1.E+01	1.E+00
C-11 (Org)		4.E+05		4.E+04	
C-11 (CO)			1.E+05		
C-11 (CO_2)			6.E+04		
C-14 (Org)		3.E+03		2.E+02	
C-14 (CO)			2.E+05		
C-14 (CO_2)			2.E+04		
F-18	1.E+00	5.E+04	6.E+03	8.E+03	7.E+03
Na-22	1.E+00	4.E+02	6.E+01		
Na-24	1.E+00	4.E+03	5.E+02		
Mg-28	5.E−01	7.E+02	1.E+02	1.E+02	
Al-26	1.E−02	4.E+02	6.E+00	8.E+00	
Si-31	1.E−02	1.E+04	2.E+03	3.E+03	2.E+03
Si-32	1.E−02	3.E+03	2.E+01	1.E+01	4.E−01
P-32	8.E−01	7.E+02	8.E+01	3.E+01	
P-33	8.E−01	6.E+03	7.E+02	2.E+02	
S-35	8.E−01	1.E+04	2.E+03	2.E+02	
	1.E−01	8.E+03			
S-35 (Gas)			1.E+03		
Cl-36	1.E+00	2.E+03	2.E+02	2.E+01	
Cl-38	1.E+00	3.E+04	4.E+03	4.E+03	
Cl-39	1.E+00	4.E+04	5.E+03	5.E+03	
K-40	1.E+00	3.E+02	4.E+01		
K-42	1.E+00	5.E+03	4.E+02		
K-43	1.E+00	7.E+03	8.E+02		
K-44	1.E+00	4.E+04	6.E+03		
K-45	1.E+00	6.E+04	1.E+04		
Ca-41	3.E−01	4.E+03		3.E+02	
Ca-45	3.E−01	2.E+03		7.E+01	
Ca-47	3.E−01	8.E+02		8.E+01	
Sc-43	1.E−04	7.E+03			2.E+03
Sc-44m	1.E−04	5.E+02			6.E+01
Sc-44	1.E−04	4.E+03			1.E+03
Sc-46	1.E−04	9.E+02			2.E+01
Sc-47	1.E−04	3.E+03			3.E+02
Sc-48	1.E−04	8.E+02			1.E+02
Sc-49	1.E−04	2.E+04			5.E+03
Ti-44	1.E−02	3.E+02	1.E+00	3.E+00	5.E−01
Ti-45	1.E−02	9.E+03	2.E+03	3.E+03	3.E+03
V-47	1.E−02	3.E+04	7.E+03	8.E+03	
V-48	1.E−02	7.E+02	1.E+02	6.E+01	
V-49	1.E−02	1.E+05	3.E+03	2.E+03	
Cr-48	1.E−01	6.E+03	1.E+03	7.E+02	6.E+02
	1.E−02	6.E+03			
Cr-49	1.E−01	3.E+04	7.E+03	9.E+03	8.E+03
	1.E−02	3.E+04			
Cr-51	1.E−01	4.E+04	4.E+03	2.E+03	2.E+03
	1.E−02	4.E+04			
Mn-51	1.E−01	2.E+04	4.E+03	5.E+03	
Mn-52m	1.E−01	4.E+04	8.E+03	9.E+03	
Mn-52	1.E−01	8.E+02	1.E+02	8.E+01	
Mn-53	1.E−01	5.E+04	2.E+03	1.E+03	
Mn-54	1.E−01	2.E+03	8.E+01	7.E+01	
Mn-56	1.E−01	5.E+03	1.E+03	2.E+03	
Fe-52	1.E−01	1.E+03	3.E+02	2.E+02	
Fe-55	1.E−01	9.E+03	2.E+02	4.E+02	
Fe-59	1.E−01	8.E+02	3.E+01	5.E+01	
Fe-60	1.E−01	3.E+01	6.E−01	2.E+00	
Co-55	5.E−02	1.E+03		3.E+02	2.E+02
	3.E−01	2.E+03			

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSv/yr.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Co-56	5.E–02	5.E+02		3.E+01	2.E+01
	3.E–01	4.E+02			
Co-57	5.E–02	8.E+03		2.E+02	6.E+01
	3.E–01	5.E+03			
Co-58m	5.E–02	6.E+04		8.E+03	6.E+03
	3.E–01	7.E+04			
Co-58	5.E–02	2.E+03		1.E+02	6.E+01
	3.E–01	2.E+03			
Co-60m	5.E–02	2.E+06		3.E+05	2.E+05
	3.E–01	2.E+06			
Co-60	5.E–02	5.E+02		2.E+01	3.E+00
	3.E–01	2.E+02			
Co-61	5.E–02	2.E+04		6.E+03	5.E+03
	3.E–01	2.E+04			
Co-62m	5.E–02	5.E+04		2.E+04	1.E+04
	3.E–01	5.E+04			
Ni-56	5.E–02	2.E+03	2.E+02	1.E+02	
Ni-56 (Vapor)			1.E+02		
Ni-57	5.E–02	2.E+03	4.E+02	3.E+02	
Ni-57 (Vapor)			6.E+02		
Ni-59	5.E–02	3.E+04	3.E+02	6.E+02	
Ni-59 (Vapor)			2.E+02		
Ni-63	5.E–02	1.E+04	1.E+02	2.E+02	
Ni-63 (Vapor)			7.E+01		
Ni-65	5.E–02	9.E+03	2.E+03	3.E+03	
Ni-65 (Vapor)			2.E+03		
Ni-66	5.E–02	5.E+02	1.E+02	6.E+01	
Ni-66 (Vapor)			3.E+02		
Cu-60	5.E–01	3.E+04	8.E+03	1.E+04	9.E+03
Cu-61	5.E–01	1.E+04	3.E+03	4.E+03	3.E+03
Cu-64	5.E–01	1.E+04	3.E+03	2.E+03	2.E+03
Cu-67	5.E–01	5.E+03	7.E+02	5.E+02	4.E+02
Zn-62	5.E–01	2.E+03			3.E+02
Zn-63	5.E–01	3.E+04			6.E+03
Zn-65	5.E–01	4.E+02			2.E+01
Zn-69m	5.E–01	4.E+03			6.E+02
Zn-69	5.E–01	6.E+04			1.E+04
Zn-71m	5.E–01	6.E+03			2.E+03
Zn-72	5.E–01	1.E+03			1.E+02
Ga-65	1.E–03	7.E+04	2.E+04	2.E+04	
Ga-66	1.E–03	1.E+03	3.E+02	3.E+02	
Ga-67	1.E–03	7.E+03	1.E+03	9.E+02	
Ga-68	1.E–03	2.E+04	4.E+03	5.E+03	
Ga-70	1.E–03	7.E+04	2.E+04	2.E+04	
Ga-72	1.E–03	1.E+03	3.E+02	3.E+02	
Ga-73	1.E–03	5.E+03	1.E+03	1.E+03	
Ge-66	1.E+00	3.E+04	2.E+03	2.E+03	
Ge-67	1.E+00	5.E+04	8.E+03	9.E+03	
Ge-68	1.E+00	5.E+03	3.E+02	9.E+00	
Ge-69	1.E+00	1.E+04	1.E+03	7.E+02	
Ge-71	1.E+00	5.E+05	4.E+04	4.E+03	
Ge-75	1.E+00	7.E+04	7.E+03	7.E+03	
Ge-77	1.E+00	9.E+03	9.E+02	5.E+02	
Ge-78	1.E+00	3.E+04	2.E+03	2.E+03	
As-69	5.E–01	5.E+04		1.E+04	
As-70	5.E–01	2.E+04		5.E+03	
As-71	5.E–01	4.E+03		4.E+02	
As-72	5.E–01	9.E+02		1.E+02	
As-73	5.E–01	9.E+03		1.E+02	
As-74	5.E–01	2.E+03		7.E+01	
As-76	5.E–01	1.E+03		1.E+02	
As-77	5.E–01	5.E+03		5.E+02	
As-78	5.E–01	8.E+03		2.E+03	
Se-70	8.E–01	2.E+04	3.E+03	4.E+03	
	5.E–02	1.E+04			
Se-73m	8.E–01	7.E+04	1.E+04	1.E+04	
	5.E–02	4.E+04			
Se-73	8.E–01	7.E+03	1.E+03	1.E+03	

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 MSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
	5.E–02	3.E+03			
Se-75	8.E–01	6.E+02	6.E+01	5.E+01	
	5.E–02	3.E+03			
Se-79	8.E–01	6.E+02	7.E+01	5.E+01	
	5.E–02	5.E+03			
Se-81m	8.E–01	4.E+04	6.E+03	6.E+03	
	5.E–02	3.E+04			
Se-81	8.E–01	9.E+04	2.E+04	2.E+04	
	5.E–02	9.E+04			
Se-83	8.E–01	5.E+04	1.E+04	1.E+04	
	5.E–02	3.E+04			
Br-74m	1.E+00	2.E+04	3.E+03	4.E+03	
Br-74	1.E+00	4.E+04	6.E+03	7.E+03	
Br-75	1.E+00	4.E+04	4.E+03	4.E+03	
Br-76	1.E+00	4.E+03	4.E+02	4.E+02	
Br-77	1.E+00	2.E+04	2.E+03	2.E+03	
Br-80m	1.E+00	2.E+04	2.E+03	1.E+03	
Br-80	1.E+00	9.E+04	2.E+04	2.E+04	
Br-82	1.E+00	3.E+03	4.E+02	3.E+02	
Br-83	1.E+00	7.E+04	6.E+03	6.E+03	
Br-84	1.E+00	3.E+04	5.E+03	6.E+03	
Rb-79	1.E+00	6.E+04	1.E+04		
Rb-81m	1.E+00	3.E+05	3.E+04		
Rb-81	1.E+00	4.E+04	4.E+03		
Rb-82m	1.E+00	1.E+04	2.E+03		
Rb-83	1.E+00	7.E+02	9.E+01		
Rb-84	1.E+00	5.E+02	7.E+01		
Rb-86	1.E+00	6.E+02	7.E+01		
Rb-87	1.E+00	1.E+03	1.E+02		
Rb-88	1.E+00	3.E+04	6.E+03		
Rb-89	1.E+00	7.E+04	1.E+04		
Sr-80	3.E–01	5.E+03	1.E+03		
	1.E–02	4.E+03			1.E+03
Sr-81	3.E–01	3.E+04	7.E+03		
	1.E–02	2.E+04			7.E+03
Sr-82	3.E–01	3.E+02	3.E+01		
	1.E–02	2.E+02			8.E+00
Sr-83	3.E–01	3.E+03	6.E+02		
	1.E–02	2.E+03			3.E+02
Sr-85m	3.E–01	2.E+05	5.E+04		
	1.E–02	2.E+05			8.E+04
Sr-85	3.E–01	3.E+03	2.E+02		
	1.E–02	4.E+03			1.E+02
Sr-87m	3.E–01	5.E+04	1.E+04		
	1.E–02	4.E+04			1.E+04
Sr-89	3.E–01	6.E+02	8.E+01		
	1.E–02	6.E+02			1.E+01
Sr-90	3.E–01	4.E+01	2.E+00		
	1.E–02	5.E+02			3.E–01
Sr-91	3.E–01	2.E+03	5.E+02		
	1.E–02	2.E+03			3.E+02
Sr-92	3.E–01	3.E+03	8.E+02		
	1.E–02	3.E+03			6.E+02
Y-86m	1.E–04	2.E+04		5.E+03	5.E+03
Y-86	1.E–04	1.E+03		3.E+02	3.E+02
Y-87	1.E–04	2.E+03		3.E+02	3.E+02
Y-88	1.E–04	1.E+03		2.E+01	2.E+01
Y-90m	1.E–04	8.E+03		1.E+03	1.E+03
Y-90	1.E–04	5.E+02		6.E+01	5.E+01
Y-91m	1.E–04	1.E+05		2.E+04	1.E+04
Y-91	1.E–04	6.E+02		2.E+01	1.E+01
Y-92	1.E–04	3.E+03		7.E+02	7.E+02
Y-93	1.E–04	1.E+03		3.E+02	2.E+02
Y-94	1.E–04	3.E+04		7.E+03	7.E+03
Y-95	1.E–04	5.E+04		1.E+04	1.E+04
Zr-86	2.E–03	2.E+03	4.E+02	2.E+02	2.E+02
Zr-88	2.E–03	4.E+03	2.E+01	4.E+01	3.E+01
Zr-89	2.E–03	2.E+03	3.E+02	2.E+02	2.E+02

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSv/yr.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Zr-93	2.E–03	3.E+03	1.E+00	6.E+00	6.E+00
Zr-95	2.E–03	2.E+03	2.E+01	3.E+01	2.E+01
Zr-97	2.E–03	7.E+02	2.E+02	1.E+02	1.E+02
Nb-88	1.E–02	7.E+04		2.E+04	2.E+04
Nb-89 (66 min)	1.E–02	1.E+04		4.E+03	3.E+03
Nb-89 (122 min)	1.E–02	5.E+03		2.E+03	1.E+03
Nb-90	1.E–02	1.E+03		2.E+02	2.E+02
Nb-93m	1.E–02	2.E+05		1.E+03	1.E+02
Nb-94	1.E–02	1.E+03		2.E+01	1.E+00
Nb-95m	1.E–02	3.E+03		2.E+02	2.E+02
Nb-95	1.E–02	2.E+03		1.E+02	1.E+02
Nb-96	1.E–02	1.E+03		2.E+02	2.E+02
Nb-97	1.E–02	2.E+04		7.E+03	6.E+03
Nb-98	1.E–02	2.E+04		5.E+03	4.E+03
Mo-90	8.E–01	5.E+03	6.E+02		
	5.E–02	2.E+03			4.E+02
Mo-93m	8.E–01	1.E+04	2.E+03		
	5.E–02	5.E+03			1.E+03
Mo-93	8.E–01	4.E+03	5.E+02		
	5.E–02	2.E+04			2.E+01
Mo-99	8.E–01	2.E+03	2.E+02		
	5.E–02	1.E+03			1.E+02
Mo-101	8.E–01	6.E+04	1.E+04		
	5.E–02	6.E+04			1.E+04
Tc-93m	8.E–01	7.E+04	1.E+04	3.E+04	
Tc-93	8.E–01	3.E+04	6.E+03	9.E+03	
Tc-94m	8.E–01	2.E+04	4.E+03	5.E+03	
Tc-94	8.E–01	9.E+03	2.E+03	2.E+03	
Tc-95m	8.E–01	4.E+03	5.E+02	2.E+02	
Tc-95	8.E–01	1.E+04	2.E+03	2.E+03	
Tc-96m	8.E–01	2.E+05	3.E+04	2.E+04	
Tc-96	8.E–01	2.E+03	3.E+02	2.E+02	
Tc-97m	8.E–01	5.E+03	6.E+02	1.E+02	
Tc-97	8.E–01	4.E+04	4.E+03	5.E+02	
Tc-98	8.E–01	1.E+03	1.E+02	3.E+01	
Tc-99m	8.E–01	9.E+04	1.E+04	2.E+04	
Tc-99	8.E–01	4.E+03	5.E+02	6.E+01	
Tc-101	8.E–01	1.E+05	3.E+04	3.E+04	
Tc-104	8.E–01	3.E+04	7.E+03	8.E+03	
Ru-94	5.E–02	2.E+04	4.E+03	6.E+03	5.E+03
Ru-97	5.E–02	8.E+03	2.E+03	1.E+03	1.E+03
Ru-103	5.E–02	2.E+03	2.E+02	9.E+01	6.E+01
Ru-105	5.E–02	5.E+03	1.E+03	1.E+03	1.E+03
Ru-106	5.E–02	2.E+02	8.E+00	5.E+00	1.E+00
Rh-99m	5.E–02	2.E+04	5.E+03	7.E+03	6.E+03
Rh-99	5.E–02	3.E+03	3.E+02	2.E+02	2.E+02
Rh-100	5.E–02	2.E+03	5.E+02	4.E+02	3.E+02
Rh-101m	5.E–02	6.E+03	1.E+03	7.E+02	7.E+02
Rh-101	5.E–02	2.E+03	4.E+01	7.E+01	1.E+01
Rh-102m	5.E–02	2.E+03	4.E+01	4.E+01	1.E+01
Rh-102	5.E–02	6.E+02	8.E+00	2.E+01	5.E+00
Rh-103m	5.E–02	5.E+05	1.E+05	1.E+05	1.E+05
Rh-105	5.E–02	4.E+03	1.E+03	6.E+02	5.E+02
Rh-106m	5.E–02	9.E+03	2.E+03	3.E+03	3.E+03
Rh-107	5.E–02	1.E+05	2.E+04	2.E+04	2.E+04
Pd-100	5.E–03	1.E+03	1.E+02	1.E+02	1.E+02
Pd-101	5.E–03	1.E+04	3.E+03	3.E+03	3.E+03
Pd-103	5.E–03	8.E+03	6.E+02	4.E+02	3.E+02
Pd-107	5.E–03	4.E+04	2.E+03	7.E+02	3.E+01
Pd-109	5.E–03	2.E+03	6.E+02	5.E+02	4.E+02
Ag-102	5.E–02	7.E+04	2.E+04	2.E+04	2.E+04
Ag-103	5.E–02	4.E+04	9.E+03	1.E+04	1.E+04
Ag-104m	5.E–02	3.E+04	8.E+03	1.E+04	1.E+04
Ag-104	5.E–02	2.E+04	6.E+03	1.E+04	1.E+04
Ag-105	5.E–02	3.E+03	9.E+01	2.E+02	1.E+02
Ag-106m	5.E–02	8.E+02	6.E+01	8.E+01	8.E+01
Ag-106	5.E–02	7.E+04	2.E+04	2.E+04	2.E+04
Ag-108m	5.E–02	7.E+02	2.E+01	2.E+01	2.E+00

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 MSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Ag-110m	5.E–02	5.E+02	1.E+01	2.E+01	8.E+00
Ag-111	5.E–02	1.E+03	1.E+02	8.E+01	8.E+01
Ag-112	5.E–02	3.E+03	7.E+02	9.E+02	8.E+02
Ag-115	5.E–02	3.E+04	8.E+03	7.E+03	7.E+03
Cd-104	5.E–02	2.E+04	6.E+03	1.E+04	1.E+04
Cd-107	5.E–02	2.E+04	5.E+03	5.E+03	4.E+03
Cd-109	5.E–02	4.E+02	4.E+00	1.E+01	1.E+01
Cd-113m	5.E–02	4.E+01	3.E–01	1.E+00	1.E+00
Cd-113	5.E–02	3.E+01	3.E–01	9.E–01	1.E+00
Cd-115m	5.E–02	3.E+02	7.E+00	1.E+01	1.E+01
Cd-115	5.E–02	1.E+03	1.E+02	1.E+02	1.E+02
Cd-117m	5.E–02	5.E+03	1.E+03	2.E+03	1.E+03
Cd-117	5.E–02	5.E+03	1.E+03	2.E+03	1.E+03
In-109	2.E–02	2.E+04	4.E+03	6.E+03	
In-110 (69 min)	2.E–02	2.E+04	4.E+03	5.E+03	
In-110 (5 h)	2.E–02	5.E+03	2.E+03	2.E+03	
In-111	2.E–02	4.E+03	6.E+02	6.E+02	
In-112	2.E–02	2.E+05	6.E+04	6.E+04	
In-113m	2.E–02	5.E+04	1.E+04	2.E+04	
In-114m	2.E–02	4.E+02	6.E+00	9.E+00	
In-115m	2.E–02	2.E+04	4.E+03	4.E+03	
In-115	2.E–02	4.E+01	1.E–01	5.E–01	
In-116m	2.E–02	3.E+04	7.E+03	1.E+04	
In-117m	2.E–02	1.E+04	3.E+03	4.E+03	
In-117	2.E–02	6.E+04	2.E+04	2.E+04	
In-119m	2.E–02	5.E+04	1.E+04	1.E+04	
Sn-110	2.E–02	4.E+03	1.E+03	1.E+03	
Sn-111	2.E–02	8.E+04	2.E+04	2.E+04	
Sn-113	2.E–02	2.E+03	1.E+02	5.E+01	
Sn-117m	2.E–02	2.E+03	2.E+02	1.E+02	
Sn-119m	2.E–02	4.E+03	2.E+02	8.E+01	
Sn-121m	2.E–02	4.E+03	8.E+01	5.E+01	
Sn-121	2.E–02	6.E+03	1.E+03	1.E+03	
Sn-123m	2.E–02	5.E+04	1.E+04	1.E+04	
Sn-123	2.E–02	7.E+02	6.E+01	2.E+01	
Sn-125	2.E–02	5.E+02	8.E+01	3.E+01	
Sn-126	2.E–02	3.E+02	5.E+00	6.E+00	
Sn-127	2.E–02	7.E+03	2.E+03	2.E+03	
Sn-128	2.E–02	1.E+04	2.E+03	3.E+03	
Sb-115	1.E–01	8.E+04	2.E+04		
	1.E–02	8.E+04		3.E+04	
Sb-116m	1.E–01	2.E+04	6.E+03		
	1.E–02	2.E+04		1.E+04	
Sb-116	1.E–01	9.E+04	2.E+04		
	1.E–02	9.E+04		3.E+04	
Sb-117	1.E–01	7.E+04	2.E+04		
	1.E–02	7.E+04		3.E+04	
Sb-118m	1.E–01	6.E+03	2.E+03		
	1.E–02	6.E+03		2.E+03	
Sb-119	1.E–01	2.E+04	4.E+03		
	1.E–02	2.E+04		2.E+03	
Sb-120 (16 min)	1.E–01	2.E+05	4.E+04		
	1.E–02	2.E+05		4.E+04	
Sb-120 (6 d)	1.E–01	1.E+03	2.E+02		
	1.E–02	1.E+03		1.E+02	
Sb-122	1.E–01	9.E+02	2.E+02		
	1.E–02	8.E+02		1.E+02	
Sb-124m	1.E–01	3.E+05	7.E+04		
	1.E–02	3.E+05		5.E+04	
Sb-124	1.E–01	6.E+02	8.E+01		
	1.E–02	6.E+02		2.E+01	
Sb-125	1.E–01	2.E+03	2.E+02		
	1.E–02	2.E+03		5.E+01	
Sb-126m	1.E–01	7.E+04	2.E+04		
	1.E–02	7.E+04		2.E+04	
Sb-126	1.E–01	6.E+02	1.E+02		
	1.E–02	5.E+02		4.E+01	
Sb-127	1.E–01	9.E+02	2.E+02		

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSv/yr.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Sb-128 (9 h)	1.E–02	8.E+02		8.E+01	
	1.E–01	1.E+03	4.E+02		
Sb-128 (10 min)	1.E–02	1.E+03		3.E+02	
	1.E–01	1.E+05	3.E+04		
Sb-129	1.E–02	1.E+05		4.E+04	
	1.E–01	3.E+03	8.E+02		
Sb-130	1.E–02	3.E+03		8.E+02	
	1.E–01	2.E+04	6.E+03		
Sb-131	1.E–02	2.E+04		7.E+03	
	1.E–01	2.E+04	4.E+03		
Te-116	1.E–02	2.E+04		4.E+03	
Te-121m	2.E–01	8.E+03	2.E+03	3.E+03	
Te-121	2.E–01	8.E+02	3.E+01	4.E+01	
Te-123m	2.E–01	3.E+03	4.E+02	3.E+02	
Te-123	2.E–01	1.E+03	5.E+01	5.E+01	
Te-125m	2.E–01	1.E+03	4.E+01	1.E+02	
Te-127m	2.E–01	2.E+03	9.E+01	7.E+01	
Te-127	2.E–01	7.E+02	4.E+01	2.E+01	
Te-129m	2.E–01	8.E+03	2.E+03	2.E+03	
Te-129	2.E–01	5.E+02	6.E+01	2.E+01	
Te-131m	2.E–01	3.E+04	6.E+03	7.E+03	
Te-131	2.E–01	6.E+02	1.E+02	8.E+01	
Te-132	2.E–01	6.E+03	1.E+03	1.E+03	
Te-133m	2.E–01	7.E+02	7.E+01	6.E+01	
Te-133	2.E–01	7.E+03	1.E+03	1.E+03	
Te-134	2.E–01	3.E+04	5.E+03	5.E+03	
I-120m	1.E+00	3.E+04	4.E+03	5.E+03	
I-120	1.E+00	1.E+04	2.E+03		
I-121	1.E+00	8.E+03	1.E+03		
I-123	1.E+00	3.E+04	4.E+03		
I-124	1.E+00	1.E+04	2.E+03		
I-125	1.E+00	2.E+02	2.E+01		
I-126	1.E+00	1.E+02	2.E+01		
I-128	1.E+00	7.E+01	1.E+01		
I-129	1.E+00	6.E+04	1.E+04		
I-130	1.E+00	2.E+01	3.E+00		
I-131	1.E+00	1.E+03	2.E+02		
I-132m	1.E+00	1.E+02	1.E+01		
I-132	1.E+00	1.E+04	2.E+03		
I-133	1.E+00	9.E+03	1.E+03		
I-134	1.E+00	5.E+02	8.E+01		
I-135	1.E+00	3.E+04	4.E+03		
Cs-125	1.E+00	3.E+03	4.E+02		
Cs-127	1.E+00	9.E+04	1.E+04		
Cs-129	1.E+00	7.E+04	9.E+03		
Cs-130	1.E+00	2.E+04	3.E+03		
Cs-131	1.E+00	1.E+05	2.E+04		
Cs-132	1.E+00	2.E+04	3.E+03		
Cs-134m	1.E+00	3.E+03	4.E+02		
Cs-134	1.E+00	1.E+05	1.E+04		
Cs-135m	1.E+00	7.E+01	9.E+00		
Cs-135	1.E+00	1.E+05	2.E+04		
Cs-136	1.E+00	7.E+02	1.E+02		
Cs-137	1.E+00	5.E+02	6.E+01		
Cs-138	1.E+00	1.E+02	1.E+01		
Ba-126	1.E+00	3.E+04	5.E+03		
Ba-128	1.E–01	6.E+03	1.E+03		
Ba-131m	1.E–01	5.E+02	2.E+02		
Ba-131	1.E–01	5.E+05	1.E+05		
Ba-133m	1.E–01	3.E+03	7.E+02		
Ba-133	1.E–01	3.E+03	8.E+02		
Ba-135m	1.E–01	2.E+03	7.E+01		
Ba-139	1.E–01	3.E+03	1.E+03		
Ba-140	1.E–01	1.E+04	3.E+03		
Ba-141	1.E–01	6.E+02	1.E+02		
Ba-142	1.E–01	3.E+04	6.E+03		
La-131	1.E–03	5.E+04	1.E+04	2.E+04	

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m^3)		
			D	W	Y
La-132	1.E–03	4.E+03	9.E+02	1.E+03	
La-135	1.E–03	4.E+04	9.E+03	9.E+03	
La-137	1.E–03	1.E+04	6.E+00	2.E+01	
La-138	1.E–03	9.E+02	3.E–01	1.E+00	
La-140	1.E–03	7.E+02	1.E+02	1.E+02	
La-141	1.E–03	4.E+03	8.E+02	1.E+03	
La-142	1.E–03	8.E+03	2.E+03	3.E+03	
La-143	1.E–03	4.E+04	9.E+03	8.E+03	
Ce-134	3.E–04	6.E+02		7.E+01	6.E+01
Ce-135	3.E–04	2.E+03		4.E+02	3.E+02
Ce-137m	3.E–04	3.E+03		4.E+02	3.E+02
Ce-137	3.E–04	5.E+04		1.E+04	1.E+04
Ce-139	3.E–04	5.E+03		7.E+01	6.E+01
Ce-141	3.E–04	2.E+03		6.E+01	5.E+01
Ce-143	3.E–04	1.E+03		2.E+02	1.E+02
Ce-144	3.E–04	3.E+02		2.E+00	1.E+00
Pr-136	3.E–04	8.E+04		2.E+04	2.E+04
Pr-137	3.E–04	4.E+04		1.E+04	1.E+04
Pr-138m	3.E–04	1.E+04		5.E+03	4.E+03
Pr-139	3.E–04	4.E+04		1.E+04	1.E+04
Pr-142m	3.E–04	8.E+04		1.E+04	1.E+04
Pr-142	3.E–04	1.E+03		2.E+02	2.E+02
Pr-143	3.E–04	1.E+03		7.E+01	6.E+01
Pr-144	3.E–04	5.E+04		1.E+04	1.E+04
Pr-145	3.E–04	3.E+03		8.E+02	7.E+02
Pr-147	3.E–04	9.E+04		2.E+04	2.E+04
Nd-136	3.E–04	2.E+04		5.E+03	5.E+03
Nd-138	3.E–04	2.E+03		6.E+02	5.E+02
Nd-139m	3.E–04	5.E+03		2.E+03	1.E+03
Nd-139	3.E–04	9.E+04		3.E+04	3.E+04
Nd-141	3.E–04	2.E+05		6.E+04	5.E+04
Nd-147	3.E–04	1.E+03		8.E+01	7.E+01
Nd-149	3.E–04	1.E+04		2.E+03	2.E+03
Nd-151	3.E–04	7.E+04		2.E+04	2.E+04
Pm-141	3.E–04	6.E+04		2.E+04	2.E+04
Pm-143	3.E–04	5.E+03		5.E+01	6.E+01
Pm-144	3.E–04	1.E+03		1.E+01	1.E+01
Pm-145	3.E–04	1.E+04		2.E+01	2.E+01
Pm-146	3.E–04	2.E+03		4.E+00	4.E+00
Pm-147	3.E–04	5.E+03		2.E+01	1.E+01
Pm-148m	3.E–04	7.E+02		3.E+01	3.E+01
Pm-148	3.E–04	5.E+02		5.E+01	4.E+01
Pm-149	3.E–04	2.E+03		2.E+02	2.E+02
Pm-150	3.E–04	5.E+03		2.E+03	2.E+03
Pm-151	3.E–04	2.E+03		3.E+02	3.E+02
Sm-141m	3.E–04	3.E+04		9.E+03	
Sm-141	3.E–04	6.E+04		2.E+04	
Sm-142	3.E–04	9.E+03		2.E+03	
Sm-145	3.E–04	6.E+03		5.E+01	
Sm-146	3.E–04	3.E+01		6.E–03	
Sm-147	3.E–04	3.E+01		6.E–03	
Sm-151	3.E–04	2.E+04		2.E+01	
Sm-153	3.E–04	2.E+03		3.E+02	
Sm-155	3.E–04	8.E+04		2.E+04	
Sm-156	3.E–04	5.E+03		8.E+02	
Eu-145	1.E–03	2.E+03		2.E+02	
Eu-146	1.E–03	1.E+03		1.E+02	
Eu-147	1.E–03	3.E+03		2.E+02	
Eu-148	1.E–03	1.E+03		3.E+01	
Eu-149	1.E–03	1.E+04		3.E+02	
Eu-150 (12 h)	1.E–03	4.E+03		7.E+02	
Eu-150 (34 yr)	1.E–03	8.E+02		2.E+00	
Eu-152m	1.E–03	3.E+03		6.E+02	
Eu-152	1.E–03	9.E+02		2.E+00	
Eu-154	1.E–03	6.E+02		2.E+00	
Eu-155	1.E–03	4.E+03		1.E+01	
Eu-156	1.E–03	6.E+02		4.E+01	
Eu-157	1.E–03	2.E+03		4.E+02	

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSv/yr.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Eu-158	1.E–03	2.E+04		5.E+03	
Gd-145	3.E–04	5.E+04	1.E+04	2.E+04	
Gd-146	3.E–04	1.E+03	1.E+01	3.E+01	
Gd-147	3.E–04	2.E+03	4.E+02	3.E+02	
Gd-148	3.E–04	3.E+01	1.E–03	5.E–03	
Gd-149	3.E–04	3.E+03	2.E+02	2.E+02	
Gd-151	3.E–04	7.E+03	6.E+01	1.E+02	
Gd-152	3.E–04	3.E+01	2.E–03	7.E–03	
Gd-153	3.E–04	5.E+03	2.E+01	5.E+01	
Gd-159	3.E–04	3.E+03	7.E+02	5.E+02	
Tb-147	3.E–04	9.E+03		3.E+03	
Tb-149	3.E–04	5.E+03		7.E+01	
Tb-150	3.E–04	5.E+03		2.E+03	
Tb-151	3.E–04	4.E+03		8.E+02	
Tb-153	3.E–04	5.E+03		6.E+02	
Tb-154	3.E–04	2.E+03		4.E+02	
Tb-155	3.E–04	6.E+03		7.E+02	
Tb-156m (24 h)	3.E–04	7.E+03		7.E+02	
Tb-156m (5 h)	3.E–04	2.E+04		2.E+03	
Tb-156	3.E–04	1.E+03		1.E+02	
Tb-157	3.E–04	5.E+04		5.E+01	
Tb-158	3.E–04	1.E+03		2.E+00	
Tb-160	3.E–04	8.E+02		2.E+01	
Tb-161	3.E–04	2.E+03		1.E+02	
Dy-155	3.E–04	9.E+03		2.E+03	
Dy-157	3.E–04	2.E+04		6.E+03	
Dy-159	3.E–04	1.E+04		2.E+02	
Dy-165	3.E–04	1.E+04		4.E+03	
Dy-166	3.E–04	8.E+02		7.E+01	
Ho-155	3.E–04	4.E+04		1.E+04	
Ho-157	3.E–04	3.E+05		1.E+05	
Ho-159	3.E–04	2.E+05		9.E+04	
Ho-161	3.E–04	1.E+05		4.E+04	
Ho-162m	3.E–04	6.E+04		2.E+04	
Ho-162	3.E–04	8.E+05		2.E+05	
Ho-164m	3.E–04	1.E+05		3.E+04	
Ho-164	3.E–04	2.E+05		6.E+04	
Ho-166m	3.E–04	7.E+02		6.E–01	
Ho-166	3.E–04	9.E+02		2.E+02	
Ho-167	3.E–04	2.E+04		5.E+03	
Er-161	3.E–04	2.E+04		6.E+03	
Er-165	3.E–04	7.E+04		2.E+04	
Er-169	3.E–04	4.E+03		2.E+02	
Er-171	3.E–04	4.E+03		9.E+02	
Er-172	3.E–04	1.E+03		1.E+02	
Tm-162	3.E–04	7.E+04		2.E+04	
Tm-166	3.E–04	4.E+03		1.E+03	
Tm-167	3.E–04	3.E+03		2.E+02	
Tm-170	3.E–04	1.E+03		2.E+01	
Tm-171	3.E–04	1.E+04		5.E+01	
Tm-172	3.E–04	9.E+02		1.E+02	
Tm-173	3.E–04	4.E+03		1.E+03	
Tm-175	3.E–04	1.E+05		2.E+04	
Yb-162	3.E–04	7.E+04		3.E+04	2.E+04
Yb-166	3.E–04	1.E+03		2.E+02	2.E+02
Yb-167	3.E–04	3.E+05		7.E+04	6.E+04
Yb-169	3.E–04	2.E+03		7.E+01	6.E+01
Yb-175	3.E–04	3.E+03		3.E+02	3.E+02
Yb-177	3.E–04	2.E+04		4.E+03	4.E+03
Yb-178	3.E–04	1.E+04		4.E+03	3.E+03
Lu-169	3.E–04	3.E+03		4.E+02	4.E+02
Lu-170	3.E–04	1.E+03		2.E+02	2.E+02
Lu-171	3.E–04	2.E+03		2.E+02	2.E+02
Lu-172	3.E–04	1.E+03		1.E+02	1.E+02
Lu-173	3.E–04	5.E+03		4.E+01	2.E+01
Lu-174m	3.E–04	3.E+03		3.E+01	2.E+01
Lu-174	3.E–04	5.E+03		2.E+01	1.E+01
Lu-176m	3.E–04	8.E+03		2.E+03	2.E+03

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 MSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Lu-176	3.E–04	8.E+02		1.E+00	7.E–01
Lu-177m	3.E–04	8.E+02		1.E+01	7.E+00
Lu-177	3.E–04	3.E+03		2.E+02	2.E+02
Lu-178m	3.E–04	6.E+04		2.E+04	2.E+04
Lu-178	3.E–04	4.E+04		1.E+04	1.E+04
Lu-179	3.E–04	6.E+03		2.E+03	1.E+03
Hf-170	2.E–03	3.E+03	5.E+02	4.E+02	
Hf-172	2.E–03	1.E+03	2.E+00	5.E+00	
Hf-173	2.E–03	5.E+03	1.E+03	1.E+03	
Hf-175	2.E–03	3.E+03	9.E+01	1.E+02	
Hf-177m	2.E–03	2.E+04	5.E+03	8.E+03	
Hf-178m	2.E–03	3.E+02	2.E–01	8.E–01	
Hf-179m	2.E–03	1.E+03	5.E+01	5.E+01	
Hf-180m	2.E–03	8.E+03	2.E+03	2.E+03	
Hf-181	2.E–03	1.E+03	4.E+01	4.E+01	
Hf-182m	2.E–03	4.E+04	8.E+03	1.E+04	
Hf-182	2.E–03	4.E+02	2.E–01	6.E–01	
Hf-183	2.E–03	2.E+04	4.E+03	5.E+03	
Hf-184	2.E–03	3.E+03	7.E+02	6.E+02	
Ta-172	1.E–03	4.E+04		1.E+04	9.E+03
Ta-173	1.E–03	7.E+03		2.E+03	2.E+03
Ta-174	1.E–03	3.E+04		8.E+03	8.E+03
Ta-175	1.E–03	6.E+03		1.E+03	1.E+03
Ta-176	1.E–03	4.E+03		1.E+03	1.E+03
Ta-177	1.E–03	1.E+04		2.E+03	2.E+03
Ta-178	1.E–03	2.E+04		8.E+03	6.E+03
Ta-179	1.E–03	2.E+04		5.E+02	8.E+01
Ta-180m	1.E–03	2.E+04		6.E+03	5.E+03
Ta-180	1.E–03	2.E+03		4.E+01	2.E+00
Ta-182m	1.E–03	2.E+05		5.E+04	4.E+04
Ta-182	1.E–03	9.E+02		3.E+01	1.E+01
Ta-183	1.E–03	1.E+03		1.E+02	9.E+01
Ta-184	1.E–03	2.E+03		5.E+02	4.E+02
Ta-185	1.E–03	3.E+04		7.E+03	6.E+03
Ta-186	1.E–03	8.E+04		2.E+04	2.E+04
W-176	1.E–02	1.E+04			
	3.E–01	1.E+04	5.E+03		
W-177	1.E–02	2.E+04			
	3.E–01	3.E+04	8.E+03		
W-178	1.E–02	6.E+03			
	3.E–01	8.E+03	2.E+03		
W-179	1.E–02	6.E+05			
	3.E–01	6.E+05	2.E+05		
W-181	1.E–02	2.E+04			
	3.E–01	2.E+04	3.E+03		
W-185	1.E–02	3.E+03			
	3.E–01	4.E+03	6.E+02		
W-187	1.E–02	2.E+03			
	3.E–01	3.E+03	8.E+02		
W-188	1.E–02	6.E+02			
	3.E–01	8.E+02	1.E+02		
Re-177	8.E–01	1.E+05	2.E+04	3.E+04	
Re-178	8.E–01	1.E+05	2.E+04	3.E+04	
Re-181	8.E–01	5.E+03	8.E+02	8.E+02	
Re-182 (64 h)	8.E–01	2.E+03	2.E+02	2.E+02	
Re-182 (12 h)	8.E–01	7.E+03	1.E+03	1.E+03	
Re-184m	8.E–01	2.E+03	3.E+02	4.E+01	
Re-184	8.E–01	2.E+03	3.E+02	1.E+02	
Re-186m	8.E–01	2.E+03	2.E+02	1.E+01	
Re-186	8.E–01	2.E+03	3.E+02	2.E+02	
Re-187	8.E–01	6.E+05	8.E+04	9.E+03	
Re-188m	8.E–01	8.E+04	1.E+04	1.E+04	
Re-188	8.E–01	2.E+03	3.E+02	2.E+02	
Re-189	8.E–01	3.E+03	5.E+02	4.E+02	
Os-180	1.E–02	1.E+05	3.E+04	4.E+04	4.E+04
Os-181	1.E–02	2.E+04	4.E+03	4.E+03	4.E+03
Os-182	1.E–02	2.E+03	5.E+02	4.E+02	4.E+02
Os-185	1.E–02	3.E+03	4.E+01	7.E+01	7.E+01

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Os-189m	1.E–02	8.E+04	2.E+04	2.E+04	2.E+04
Os-191m	1.E–02	1.E+04	3.E+03	2.E+03	2.E+03
Os-191	1.E–02	3.E+03	2.E+02	1.E+02	1.E+02
Os-193	1.E–02	2.E+03	4.E+02	3.E+02	2.E+02
Os-194	1.E–02	6.E+02	4.E+00	5.E+00	7.E–01
Ir-182	1.E–02	4.E+04	1.E+04	1.E+04	1.E+04
Ir-184	1.E–02	8.E+03	2.E+03	3.E+03	2.E+03
Ir-185	1.E–02	5.E+03	1.E+03	1.E+03	9.E+02
Ir-186	1.E–02	2.E+03	7.E+02	6.E+02	5.E+02
Ir-187	1.E–02	1.E+04	3.E+03	3.E+03	2.E+03
Ir-188	1.E–02	2.E+03	4.E+02	3.E+02	3.E+02
Ir-189	1.E–02	6.E+03	4.E+02	4.E+02	3.E+02
Ir-190m	1.E–02	2.E+05	2.E+04	2.E+04	2.E+04
Ir-190	1.E–02	1.E+03	8.E+01	9.E+01	8.E+01
Ir-192m	1.E–02	3.E+03	8.E+00	2.E+01	1.E+00
Ir-192	1.E–02	1.E+03	2.E+01	4.E+01	2.E+01
Ir-194m	1.E–02	6.E+02	8.E+00	2.E+01	9.E+00
Ir-194	1.E–02	1.E+03	3.E+02	2.E+02	2.E+02
Ir-195m	1.E–02	8.E+03	2.E+03	3.E+03	2.E+03
Ir-195	1.E–02	2.E+04	4.E+03	5.E+03	4.E+03
Pt-186	1.E–02	1.E+04	3.E+03		
Pt-188	1.E–02	2.E+03	2.E+02		
Pt-189	1.E–02	1.E+04	3.E+03		
Pt-191	1.E–02	4.E+03	7.E+02		
Pt-193m	1.E–02	3.E+03	5.E+02		
Pt-193	1.E–02	5.E+04	2.E+03		
Pt-195m	1.E–02	2.E+03	4.E+02		
Pt-197m	1.E–02	2.E+04	4.E+03		
Pt-197	1.E–02	3.E+03	9.E+02		
Pt-199	1.E–02	5.E+04	1.E+04		
Pt-200	1.E–02	1.E+03	3.E+02		
Au-193	1.E–01	1.E+04	2.E+03	2.E+03	2.E+03
Au-194	1.E–01	3.E+03	7.E+02	5.E+02	5.E+02
Au-195	1.E–01	5.E+03	1.E+03	1.E+02	4.E+01
Au-198m	1.E–01	1.E+03	2.E+02	1.E+02	1.E+02
Au-198	1.E–01	1.E+03	3.E+02	2.E+02	2.E+02
Au-199	1.E–01	3.E+03	8.E+02	4.E+02	3.E+02
Au-200m	1.E–01	1.E+03	3.E+02	3.E+02	2.E+02
Au-200	1.E–01	3.E+04	6.E+03	7.E+03	6.E+03
Au-201	1.E–01	9.E+04	2.E+04	2.E+04	2.E+04
Hg-193m (Org)	1.E+00	1.E+04	1.E+03		
	4.E–01	4.E+03			
Hg-193m	2.E–02	3.E+03	8.E+02	7.E+02	
Hg-193m (Vapor)			8.E+02		
Hg-193 (Org)	1.E+00	5.E+04	6.E+03		
	4.E–01	2.E+04			
Hg-193	2.E–02	2.E+04	4.E+03	4.E+03	
Hg-193 (Vapor)			3.E+03		
Hg-194 (Org)	1.E+00	2.E+01	3.E+00		
	4.E–01	5.E+01			
Hg-194	2.E–02	9.E+02	4.E+00	1.E+01	
Hg-194 (Vapor)			3.E+00		
Hg-195m (Org)	1.E+00	5.E+03	5.E+02		
	4.E–01	3.E+03			
Hg-195m	2.E–02	2.E+03	5.E+02	3.E+02	
Hg-195m (Vapor)			4.E+02		
Hg-195 (Org)	1.E+00	4.E+04	4.E+03		
	4.E–01	2.E+04			
Hg-195	2.E–02	1.E+04	3.E+03	3.E+03	
Hg-195 (Vapor)			3.E+03		
Hg-197m (Org)	1.E+00	7.E+03	8.E+02		
	4.E–01	4.E+03			
Hg-197m	2.E–02	3.E+03	7.E+02	4.E+02	
Hg-197m (Vapor)			5.E+02		
Hg-197 (Org)	1.E+00	1.E+04	1.E+03		
	4.E–01	7.E+03			
Hg-197	2.E–02	6.E+03	1.E+03	8.E+02	
Hg-197 (Vapor)			8.E+02		

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 MSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Hg-199m (Org)	1.E+00	1.E+05	1.E+04		
	4.E–01	6.E+04			
Hg-199m	2.E–02	6.E+04	1.E+04	2.E+04	
Hg-199m (Vapor)			7.E+03		
Hg-203 (Org)	1.E+00	5.E+02	7.E+01		
	4.E–01	9.E+02			
Hg-203	2.E–02	3.E+03	1.E+02	1.E+02	
Hg-203 (Vapor)			7.E+01		
Tl-194m	1.E+00	7.E+04	1.E+04		
Tl-194	1.E+00	3.E+05	5.E+04		
Tl-195	1.E+00	7.E+04	1.E+04		
Tl-197	1.E+00	8.E+04	1.E+04		
Tl-198m	1.E+00	3.E+04	5.E+03		
Tl-198	1.E+00	2.E+04	3.E+03		
Tl-199	1.E+00	6.E+04	7.E+03		
Tl-200	1.E+00	8.E+03	1.E+03		
Tl-201	1.E+00	2.E+04	2.E+03		
Tl-202	1.E+00	4.E+03	5.E+02		
Tl-204	1.E+00	2.E+03	2.E+02		
Pb-195m	2.E–01	6.E+04	2.E+04		
Pb-198	2.E–01	3.E+04	6.E+03		
Pb-199	2.E–01	2.E+04	6.E+03		
Pb-200	2.E–01	3.E+03	6.E+02		
Pb-201	2.E–01	8.E+03	2.E+03		
Pb-202m	2.E–01	9.E+03	3.E+03		
Pb-202	2.E–01	1.E+02	5.E+00		
Pb-203	2.E–01	5.E+03	9.E+02		
Pb-205	2.E–01	4.E+03	1.E+02		
Pb-209	2.E–01	3.E+04	5.E+03		
Pb-210	2.E–01	1.E+00	4.E–02		
Pb-211	2.E–01	1.E+04	6.E+01		
Pb-212	2.E–01	1.E+02	3.E+00		
Pb-214	2.E–01	9.E+03	7.E+01		
Bi-200	5.E–02	3.E+04	7.E+03	9.E+03	
Bi-201	5.E–02	1.E+04	3.E+03	3.E+03	
Bi-202	5.E–02	2.E+04	4.E+03	7.E+03	
Bi-203	5.E–02	3.E+03	6.E+02	5.E+02	
Bi-205	5.E–02	1.E+03	2.E+02	1.E+02	
Bi-206	5.E–02	7.E+02	1.E+02	8.E+01	
Bi-207	5.E–02	1.E+03	2.E+02	3.E+01	
Bi-210m	5.E–02	6.E+01	6.E–01	6.E–02	
Bi-210	5.E–02	9.E+02	3.E+01	2.E+00	
Bi-212	5.E–02	5.E+03	2.E+01	3.E+01	
Bi-213	5.E–02	8.E+03	3.E+01	3.E+01	
Bi-214	5.E–02	2.E+04	7.E+01	8.E+01	
Po-203	1.E–01	3.E+04	6.E+03	8.E+03	
Po-205	1.E–01	2.E+04	3.E+03	6.E+03	
Po-207	1.E–01	9.E+03	2.E+03	3.E+03	
Po-210	1.E–01	3.E+00	5.E–02	5.E–02	
At-207	1.E+00	6.E+03	2.E+02	2.E+02	
At-211	1.E+00	1.E+02	7.E+00	5.E+00	
Rn-220		(3)	(3)	(3)	(3)
Rn-222		(4)	(4)	(4)	(4)
Fr-222	1.E+00	2.E+03	4.E+01		
Fr-223	1.E+00	6.E+02	7.E+01		
Ra-223	2.E–01	1.E+01		6.E–02	
Ra-224	2.E–01	2.E+01		2.E–01	
Ra-225	2.E–01	2.E+01		6.E–02	
Ra-226	2.E–01	5.E+00		6.E–02	
Ra-227	2.E–01	2.E+04		2.E+03	
Ra-228	2.E–01	4.E+00		1.E–01	
Ac-224	1.E–03	2.E+03	3.E+00	4.E+00	4.E+00
Ac-225	1.E–03	6.E+01	4.E–02	6.E–02	6.E–02
Ac-226	1.E–03	1.E+02	3.E–01	4.E–01	4.E–01
Ac-227	1.E–03	4.E–01	7.E–05	3.E–04	4.E–04
Ac-228	1.E–03	2.E+03	2.E+00	5.E+00	4.E+00
Th-226	2.E–04	6.E+03		1.E+01	1.E+01
Th-227	2.E–04	1.E+02		3.E–02	3.E–02

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 MSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Th-228	2.E–04	1.E+01		2.E–03	1.E–03
Th-229	2.E–04	2.E+00		2.E–04	3.E–04
Th-230	2.E–04	1.E+01		1.E–03	2.E–03
Th-231	2.E–04	4.E+03		6.E+02	6.E+02
Th-232	2.E–04	2.E+00		3.E–04	4.E–04
Th-234	2.E–04	4.E+02		2.E+01	1.E+01
Pa-227	1.E–03	4.E+03		1.E+01	9.E+00
Pa-228	1.E–03	1.E+03		2.E+00	1.E+00
Pa-230	1.E–03	9.E+02		4.E–01	3.E–01
Pa-231	1.E–03	5.E–01		3.E–04	5.E–04
Pa-232	1.E–03	2.E+03		5.E+00	7.E+00
Pa-233	1.E–03	2.E+03		6.E+01	5.E+01
Pa-234	1.E–03	3.E+03		7.E+02	6.E+02
U-230	5.E–02	6.E+00	5.E–02	3.E–02	
	2.E–03	4.E+01			2.E–02
U-231	5.E–02	5.E+03	7.E+02	5.E+02	
	2.E–03	5.E+03			4.E+02
U-232	5.E–02	4.E+00	4.E–02	3.E–02	
	2.E–03	8.E+01			7.E–04
U-233	5.E–02	2.E+01	2.E–01	6.E–02	
	2.E–03	2.E+02			3.E–03
U-234	5.E–02	2.E+01	2.E–01	6.E–02	
	2.E–03	2.E+02			3.E–03
U-235	5.E–02	2.E+01	2.E–01	7.E–02	
	2.E–03	2.E+02			4.E–03
U-236	5.E–02	2.E+01	2.E–01	7.E–02	
	2.E–03	2.E+02			4.E–03
U–237	5.E–02	2.E+03	2.E+02	2.E+02	
	2.E–03	2.E+03			1.E+02
U-238	5.E–02	2.E+01	2.E–01	7.E–02	
	2.E–03	2.E+02			4.E–03
U-239	5.E–02	7.E+04	2.E+04	2.E+04	
	2.E–03	7.E+04			1.E+04
U-240	5.E–02	1.E+03	3.E+02	3.E+02	
	2.E–03	1.E+03			2.E+02
U-Natural	5.E–02	2.E+01	2.E–01	7.E–02	
	2.E–03	2.E+02			4.E–03
Np-232	1.E–03	2.E+05		4.E+02	
Np-233	1.E–03	8.E+05		3.E+05	
Np-234	1.E–03	2.E+03		2.E+02	
Np-235	1.E–03	3.E+04		1.E+02	
Np-236 (1.E+5 yr)	1.E–03	7.E+00		5.E–03	
Np-236 (22 h)	1.E–03	4.E+03		6.E+00	
Np-237	1.E–03	1.E+00		9.E–04	
Np-238	1.E–03	2.E+03		1.E+01	
Np-239	1.E–03	2.E+03		2.E+02	
Np-240	1.E–03	2.E+04		7.E+03	
Pu-234	1.E–03	9.E+03		2.E+01	
	1.E–04	9.E+03			
	1.E–05	9.E+03			2.E+01
Pu-235	1.E–03	9.E+05		3.E+05	
	1.E–04	9.E+05			
	1.E–05	9.E+05			2.E+05
Pu-236	1.E–03	5.E+00		3.E–03	
	1.E–04	4.E+01			
	1.E–05	2.E+02			4.E–03
Pu-237	1.E–03	1.E+04		3.E+02	
	1.E–04	1.E+04			
	1.E–05	1.E+04			3.E+02
Pu-238	1.E–03	2.E+00		1.E–03	
	1.E–04	2.E+01			
	1.E–05	2.E+02			2.E–03
Pu-239	1.E–03	2.E+00		1.E–03	
	1.E–04	2.E+01			
	1.E–05	2.E+02			2.E–036
Pu-240	1.E–03	2.E+00		1.E–03	
	1.E–04	2.E+01			
	1.E–05	2.E+02			2.E–03

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSV/YR.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Pu-241	1.E–03	8.E+01		5.E–02	
	1.E–04	8.E+02			
	1.E–05	7.E+03			9.E–02
Pu-242	1.E–03	2.E+00		1.E–03	
	1.E–04	2.E+01			
	1.E–05	2.E+02			2.E–03
Pu-243	1.E–03	2.E+04		3.E+03	
	1.E–04	2.E+04			
	1.E–05	2.E+04			3.E+03
Pu-244	1.E–03	2.E+00		1.E–03	
	1.E–04	2.E+01			
	1.E–05	1.E+02			2.E–03
Pu-245	1.E–03	2.E+03		4.E+02	
	1.E–04	2.E+03			
	1.E–05	2.E+03			4.E+02
Pu-246	1.E–03	4.E+02		2.E+01	
	1.E–04	4.E+02			
	1.E–05	4.E+02			2.E+01
Am-237	1.E–03	8.E+04		2.E+04	
Am-238	1.E–03	4.E+04		6.E+02	
Am-239	1.E–03	5.E+03		1.E+03	
Am-240	1.E–03	2.E+03		3.E+02	
Am-241	1.E–03	1.E+00		1.E–03	
Am-242m	1.E–03	2.E+00		1.E–03	
Am-242	1.E–03	4.E+03		8.E+00	
Am-243	1.E–03	1.E+00		1.E–03	
Am-244m	1.E–03	8.E+04		6.E+02	
Am-244	1.E–03	3.E+03		3.E+01	
Am-245	1.E–03	3.E+04		7.E+03	
Am-246m	1.E–03	6.E+04		2.E+04	
Am-246	1.E–03	3.E+04		9.E+03	
Cm-238	1.E–03	2.E+04		1.E+02	
Cm-240	1.E–03	8.E+01		6.E–02	
Cm-241	1.E–03	1.E+03		3.E+00	
Cm-242	1.E–03	5.E+01		3.E–02	
Cm-243	1.E–03	2.E+00		2.E–03	
Cm-244	1.E–03	3.E+00		2.E–03	
Cm-245	1.E–03	1.E+00		1.E–03	
Cm-246	1.E–03	1.E+00		1.E–03	
Cm-247	1.E–03	2.E+00		1.E–03	
Cm-248	1.E–03	4.E–01		3.E–04	
Cm-249	1.E–03	6.E+04		2.E+03	
Cm-250	1.E–03	7.E–02		5.E–05	
Bk-245	1.E–03	2.E+03		1.E+02	
Bk-246	1.E–03	3.E+03		3.E+02	
Bk-247	1.E–03	1.E+00		8.E–04	
Bk-249	1.E–03	5.E+02		3.E–01	
Bk-250	1.E–03	9.E+03		7.E+01	
Cf-244	1.E–03	3.E+04		5.E+01	5.E+01
Cf-246	1.E–03	4.E+02		8.E–01	8.E–01
Cf-248	1.E–03	2.E+01		1.E–02	9.E–03
Cf-249	1.E–03	1.E+00		8.E–04	1.E–03
Cf-250	1.E–03	3.E+00		2.E–03	2.E–03
Cf-251	1.E–03	1.E+00		8.E–04	1.E–03
Cf-252	1.E–03	5.E+00		3.E–03	3.E–03
Cf-253	1.E–03	4.E+02		2.E–01	2.E–01
Cf-254	1.E–03	2.E+00		2.E–03	2.E–03
Es-250	1.E–03	4.E+04		1.E+02	
Es-251	1.E–03	8.E+03		1.E+02	
Es-253	1.E–03	2.E+02		1.E–01	
Es-254m	1.E–03	3.E+02		9.E–01	
Es-254	1.E–03	2.E+01		1.E–02	
Fm-252	1.E–03	5.E+02		1.E+00	
Fm-253	1.E–03	1.E+03		9.E–01	
Fm-254	1.E–03	3.E+03		6.E+00	
Fm-255	1.E–03	5.E+02		2.E+00	
Fm-257	1.E–03	4.E+01		2.E–02	
Md-257	1.E–03	7.E+03		8.E+00	

TABLE A–1b.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FROM INGESTED WATER AND INHALATION RESULTING IN AN EDE OF 1 mSv/yr.—Continued

[Bq]

Radionuclide	f_1 value	Ingested water DCG (Bq/L)	Inhaled air DCG (Bq/m³)		
			D	W	Y
Md-258	1.E–03	5.E+01		3.E–02	

[1] A dash indicates no values given for this data category.
[2] The inhalation DCG values allow for an additional 50% absorption through the skin, as described in ICRP Publication No. 30: "Limits for Intakes of Radionuclides by Workers, Part 1." For elemental tritium, the lung dose equivalent is used as the basis for the DCG value shown.
[3] DCGs for Rn-220 are being assessed by DOE. Until the review has been completed and new values issued, the value of 1.E+02 Bq/m³ given in Figure A–3 shall be used.
[4] DCGs for Rn-222 are being assessed by DOE. Until the review has been completed and new values issued, the value of 1.E+02 Bq/m³ given in Figure A–3 shall be used for Rn-222 releases from DOE facilities.

TABLE A–2.—ALTERNATE ABSORPTION FACTORS AND LUNG RETENTION CLASSES FOR SPECIFIC COMPOUNDS

Element/symbol	Atomic number	Compound	f_1	Lung retention class
Actinium/Ac	89	Oxides, hydroxides	1.E–03	Y.
		Halides, nitrates	1.E–03	W.
		All others	1.E–03	D.
Aluminum/Al	13	Oxides, hydroxides, carbides, halides, nitrates, elemental form.	1.E–02	W.
		All others	1.E–02	D.
Americium/Am	95	All forms	1.E–03	W.
Antimony/Sb	51	Oxides, hydroxides, halides, sulphides, sulphates, nitrates.	1.E–01	D.
		All others	1.E–02	W.
Arsenic/As	33	All forms	5.E–01	W.
Astatine/At	85	All (as a halide)	1.E+00	W or D; dependent upon associated element.
Barium/Ba	56	All forms	1.E–01	D.
Berkelium/Bk	97	All forms	5.E–04	W.
Beryllium/Be	4	Oxides, halides, nitrates	5.E–03	Y.
		All others	5.E–03	W.
Bismuth/Bi	83	All except nitrates	5.E–02	W.
		Nitrates	5.E–02	D.
Bromine/Br	35	Bromides	1.E+00	W or D; dependent upon associated element.
Cadmium/Cd	48	Oxides, hydroxides	5.E–02	Y.
		Sulphates, halides	5.E–02	W.
		All others	5.E–02	D.
Calcium/Ca	20	All forms	3.E–01	W.
Californium/Cf	98	Oxides, hydroxides	1.E–03	Y.
		All others	1.E–03	W.
Carbon/C	6	Oxides	([1])	D.
		Organic (^{11}C)	1.E–02	W.
		Organic (^{14}C)	7.E–05	W.
Cerium/Ce	58	Oxides, hydroxides, fluorides	3.E–04	Y.
		All others	3.E–04	W.
Cesium/Cs	55	All forms	1.E+00	D.
Chlorine/Cl	17	Chloride	1.E+00	W or D; dependent upon associated element.
Chromium/Cr	24	Oxides, hydroxides	1.E–01	Y.
		Halides, nitrates	1.E–01	W.
		All others	1.E–01	D.
		Ingestion[2]		
		Trivalent	1.E–02	
		Hexavalent	1.E–01	
Cobalt/Co	27	Oxides, hydroxides, halides, nitrates	5.E–02	Y.
		All others	5.E–02	W.
		Ingestion only	3.E–01	
Copper/Cu	29	Oxides, hydroxides	5.E–01	Y.
		Sulphites, halides, nitrates	5.E–01	W.
		All forms	5.E–01	D.
Curium/Cm	96	All forms	1.E–03	W.
Dysprosium/Dy	66	All forms	3.E–04	W.
Einsteinium/Es	99	All forms	5.E–04	W.
Erbium/Er	68	All forms	3.E–04	W.
Europium/Eu	63	All forms	1.E–03	W.
Fermium/Fm	100	All forms	5.E–04	W.

TABLE A–2.—ALTERNATE ABSORPTION FACTORS AND LUNG RETENTION CLASSES FOR SPECIFIC COMPOUNDS—Continued

Element/symbol	Atomic number	Compound	f_1	Lung retention class
Fluorine/F	9	Fluoride	1.E+00	Y, W, or D; dependent upon associated element.
Francium/Fr	87	All forms	1.E+00	D.
Gadolinium/Gd	64	Oxides, hydroxides, Fluorides	3.E–04	W.
		All others	3.E–04.	
Gallium/Ga	31	Oxides, hydroxides, carbides, halides, nitrates	1.E–03	W.
		All others	1.E–03	D.
Germanium/Ge	32	Oxides, sulphides, halides	1.E+00	W.
		All others	1.E+00	D.
Gold/Au	79	Oxides, hydroxides	1.E–01	Y.
		Halides, nitrates	1.E–01	W.
		All others	1.E–01	D.
Hafnium/Ga	72	Oxides, hydroxides, halides, carbides, nitrates	2.E–03	W.
		All others	2.E–03	D.
Holmium/Ho	67	All forms	3.E–04	W.
Hydrogen/H	1	Water (^3H)	1.E+00	
Indium/In	49	Oxides, hydroxides, halides	2.E–02	W.
		All others	2.E–02	D.
Iodine/I	53	All forms	1.E+00	D.
Iridium/Ir	77	Oxides, hydroxides	1.E–02	Y.
		Halides, nitrates, metallic form	1.E–02	W.
		All others	1.E–02	D.
Iron/Fe	26	Oxides, hydroxides, halides	1.E–01	W.
		All others	1.E–01	D.
Lanthanum/La	57	Oxides, hydroxides	1.E–03	W.
		All others	1.E–03	D.
Lead/Pb	82	All forms	2.E–01	D.
Lutetium/Lu	71	Oxides, hydroxides, fluorides	3.E–04	Y.
		All others	3.E–04	W.
Magnesium/Mg	12	Oxides, hydroxides, carbides, halides, nitrates	5.E–01	W.
		All others	5.E–01	D.
Manganese/Mn	25	Oxides, hydroxides, halides, nitrates	1.E–01	W.
		All others	1.E–01	D.
Mendelevium/Md	101	All forms	5.E–04	W.
Mercury/Hg	80	Oxides, hydroxides, halides, nitrates, sulphites	2.E–02	W.
		Sulphates, elemental form	2.E–02	D.
		Organic forms	1.E+00	D.
		Vapor		D.
Molybdenum/Mo	42	Oxides, hydroxides, MoS_2	5.E–02	Y.
		All others	8.E–01	D
		Ingestion[2]		
		MoS_2	5.E–02	
		All others	8.E–01	
Neodymium/Nd	60	Oxides, hydroxides, carbides, fluorides	3.E–04	Y.
		All others	3.E–04	W.
Neptunium/Np	93	All forms	1.E–03	W.
Nickel/Ni	28	Oxides, hydroxides	5.E–02	W.
		All others (vapor)		D.
Niobium/Nb	41	Oxides, hydroxides	1.E–02	Y.
		All others	1.E–02	W.
Osmium/Os	76	Oxides, hydroxides	1.E–02	Y.
		Halides, nitrates	1.E–02	W.
		All others	1.E–02	D.
Palladium/Pd	46	Oxides, hydroxides	5.E–03	Y.
		Nitrates	5.E–03	W.
		All others	5.E–03	D.
Phosphorus/P	15	Phosphates	8.E–01	W. or D; dependent upon associated element.
Platinum/Pt	78	All forms	1.E–02	D.
Plutonium/Pu	94	Oxides, hydroxides	1.E–05	Y.
		Nitrates	1.E–04	W.
		All others. [Note: Use same values for ingestion]	1.E–03	W.
Polonium/Po	84	Oxides, hydroxides, nitrates	1.E–01	W.
		All others	1.E–01	D.
Potassium/K	19	All forms	1.E+00	D.
Praesodymium/Pr	59	Oxides, hydroxides, carbides, fluorides	3.E–04	Y.
		All others	3.E–04	W.
Promethium/Pm	61	Oxides, hydroxides, carbides, fluorides	3.E–04	Y.
		All others	3.E–04	W.
Protactinium/Pa	91	Oxides, hydroxides	1.E–03	Y.

TABLE A–2.—ALTERNATE ABSORPTION FACTORS AND LUNG RETENTION CLASSES FOR SPECIFIC COMPOUNDS—Continued

Element/symbol	Atomic number	Compound	f_1	Lung retention class
		All others	1.E–03	W.
Radium/Ra	88	All forms	2.E–01	W.
Rhenium/Re	75	Oxides, hydroxides, halides, nitrates	8.E–01	W.
		All others	8.E–01	D.
Rhodium/Rh	45	Oxides, hydroxides	5.E–02	Y.
		Halides	5.E–02	W.
		All others	5.E–02	D.
Rubidium/Rb	37	All forms	1.E+00	D.
Ruthenium/Ru	44	Oxides, hydroxides	5.E–02	Y.
		Halides	5.E–02	W.
		All others	5.E–02	D.
Samarium/Sm	62	All forms	3.E–04	W.
Scandium/Sc	21	All forms	1.E–04	Y.
Selenium/Se	34	Oxides, hydroxides, carbides	8.E–01	W.
		All others	8.E–01	D.
		Ingestion only	5.E–02	
Silicon/Si	14	Ceramic forms	1.E–02	Y.
		Oxides, hydroxides, carbides, nitrates	1.E–02	W.
		All others	1.E–02	D.
Silver/Ag	47	Oxides, hydroxides	5.E–02	Y.
		Nitrates, sulphides	5.E–02	W.
		All others, elemental form	1.E–02	D.
Sodium/Na	11	All forms	1.E+00	D.
Strontium/Sr	38	$SrTiO_3$	1.E–02	Y.
		All others (soluble)	3.E–01	D.
Sulfur/S	16	Sulphates, sulphides	1.E–01	W or D; dependent upon associated element
		All inorganic	8.E–01	
		Elemental form	1.E–01	W.
		Gases	1.E+00	D.
Tantalum/Ta	73	Oxides, hydroxides, halides, carbides, nitrates, nitrides.	1.E–03	Y.
		All others	1.E–03	W.
Technetium/Tc	43	Oxides, hydroxides, halides, nitrates	8.E–01	W.
		All others	8.E–01	D.
Tellurium/Te	52	Oxides, hydroxides, nitrates	2.E–01	W.
		All others	2.E–01	D.
Terbium/Tb	65	All forms	3.E–04	W.
Thallium/Tl	81	All forms	1.E+00	D.
Thorium/Th	90	Oxides, hydroxides	2.E–04	Y.
		All others	2.E–04	W.
Thulium/Tm	69	All forms	3.E–04	W.
Tin/Sn	50	Oxides, hydroxides, halides, nitrates, sulphides, $Sn_3(PO_4)_4$.	2.E–02	W.
		All others	2.E–02	D.
Titanium/Ti	22	$SrTiO_3$	1.E–02	Y.
		Oxides, hydroxides, carbides, halides, nitrates	1.E–02	W.
		All others	1.E–02	D.
Tungsten/W	74	Ingestion/Tungstic acid	1.E–02	
		All others	3.E–01	
Uranium/U	92	UO_2, U_3O_8	2.E–03	Y.
		UO_3, tetravalent compounds	5.E–02	W.
		UF_6, uranyl compounds	5.E–02	D.
Vanadium/V	23	Oxides, hydroxides, carbides, halides	1.E–02	W.
		All others	1.E–02	D.
Ytterbium/Yb	70	Oxides, hydroxides, fluorides	3.E–04	Y.
	.....	All others	3.E–04	W.
Yttrium/Y	39	Oxides, hydroxides	1.E–04	Y.
	All others	1.E–04	W..	
Zinc/Zn	30	All forms	5.E–01	Y.
Zirconium/Zr	40	Carbides	2.E–03	Y.
		Oxides, hydroxides, halides, nitrates	2.E–03	W.
		All others	2.E–03	D.

[1] A dash indicates no data for the value shown.
[2] For ingestion, no lung retention classes are listed.

TABLE A–3.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FOR EXTERNAL EXPOSURE DURING IMMERSION IN AN INFINITE HEMISPHERICAL CLOUD OF UNIFORM CONCENTRATION RESULTING IN AN EDE OF 100 MREM/YR (1 MSV/YR)

[Ci and Bq]

Radionuclide	Half-life	Air Immersion DCG	
		(μ Ci/mL)	(Bq/m^3)
C-11	20.48 min	2.E−08 ..	7.E+02
N-13	9.97 min	2.E−08 ..	7.E+02
N-16	7.13 s	3.E−09 ..	1.E+02
O-15	122.24 s	2.E−08 ..	7.E+02
F-18[1]	109.74 min	2.E−08 ..	7.E+02
Na-24[1]	15.00 h	4.E−09 ..	1.E+02
Mg-27[2]	9.458 min	2.E−08 ..	7.E+02
Al-28[2]	2.240 min	1.E−08 ..	4.E+02
Cl-38[1]	37.21 min	1.E−08 ..	4.E+02
Ar-37	35.02 d	1.E−02 ..	4.E+08
Ar-39	269 yr	4.E−06[3]	1.E+05
Ar-41	1.827 h	1.E−08 ..	4.E+02
K-43[1]	22.6 h	2.E−08 ..	2.E+02
Ca-49[2]	8.719 min	5.E−09 ..	2.E+02
Sc-44[1]	3.927 h	9.E−09 ..	3.E+02
Sc-46m[2]	18.72 s	2.E−07 ..	7.E+03
Ti-45[1]	3.08 h	2.E−08 ..	7.E+02
Tl-51[2]	5.752 min	5.E−08 ..	2.E+03
V-52[2]	3.75 min	1.E−08 ..	4.E+02
Cr-49[1]	42.09 min	2.E−08 ..	7.E+02
Mn-52m[1]	21.4 min	8.E−09 ..	3.E+02
Mn-56[1]	2.5785 h	1.E−08 ..	4.E+02
Mn-57[2]	1.47 min	2.E−07 ..	7.E+03
Co-60m[1]	10.47 min	4.E−06 ..	1.E+05
Ni-57[1,4]	36.08 h	1.E−08 ..	4.E+02
Ni-65[1,5]	2.530 h	3.E−08 ..	1.1E+03
Cu-61[1]	3.408 h	2.E−08 ..	7.E+02
Cu-62[2]	9.74 min	2.E−08 ..	7.E+02
Ga-66[1]	9.40 h	7.E−09 ..	3.E+02
Ga-68[1]	68.0 min	2.E−08 ..	7.E+02
Ga-72[1]	14.1 h	7.E−09 ..	3.E+02
Se-73[1]	7.15 h	2.E−08 ..	7.E+02
Br-77[1]	57.04 h	6.E−08[6]	2.E+03
Br-80[1]	17.4 min	2.E−07 ..	7.E+03
Br-82[1]	35.30 h	7.E−09 ..	3.E+03
Br-84[1]	31.80 min	1.E−08 ..	4.E+02
Br-85[2]	172 s	2.E−07 ..	7.E+03
Kr-79	35.04 h	8.E−08 ..	3.E+03
Kr-81	2.1E+05 yr	2.E−06 ..	4.E+04
Kr-83m	1.83 h	2.E−04 ..	7.E+06
Kr-85	10.72 yr	3.E−06[3]	1.E+05
Kr-85m	4.48 h	1.E−07 ..	4.E+03
Kr-87	76.8 min	2.E−08 ..	7.E+02
Kr-88	2.84 h	9.E−09 ..	3.E+02
Kr-89	3.16 min	1.E−08 ..	4.E+02
Kr-90	32.32 s	1.E−08 ..	4.E+02
Rb-81[1]	4.58 h	3.E−08 ..	1.E+03
Rb-82[2]	1.25 min	2.E−08 ..	7.E+02
Rb-88[1]	17.8 min	3.E−08 ..	1.E+03
Rb-89[1]	15.44 min	9.E−09 ..	3.E+02
Rb-90[2]	147 s	8.E−09 ..	3.E+02
Rb-90m[2]	258 s	5.E−09 ..	2.E+02
Sr-85m[1]	67.66 min	9.E−08 ..	3.E+03
Sr-87m[1]	2.805	6.E−08 ..	2.E+03
Sr-92[1]	2.71 h	1.E−08 ..	4.E+02
Sr-93[2]	7.3 min	8.E−09 ..	3.E+02
Y-86[1]	14.74 h	5.E−09 ..	2.E+02
Y-90m[1]	3.19 h	3.E−08[6]	1.E+03
Y-91m[1]	49.71 min	4.E−08 ..	1.E+03
Nb-90[1]	14.60 h	4.E−09 ..	1.E+02
Nb-94	6.26 min	4.E−06 ..	1.E+05
Nb-97[1]	72.1 min	3.E−08 ..	1.E+03
Nb-97m[1]	60 s	3.E−08 ..	1.E+03
Mo-91[2]	15.49 min	2.E−08 ..	7.E+02
Mo-101[1]	14.61	1.E−08 ..	4.E+02
Tc-95[1]	20.0 h	2.E−08 ..	7.E+02
Tc-96m[1]	51.5 min	5.E−07 ..	3.E+04

TABLE A–3.—DERIVED CONCENTRATION GUIDES (DCGs) FOR MEMBERS OF THE PUBLIC FOR EXTERNAL EXPOSURE DURING IMMERSION IN AN INFINITE HEMISPHERICAL CLOUD OF UNIFORM CONCENTRATION RESULTING IN AN EDE OF 100 MREM/YR (1 MSV/YR)—Continued

[Ci and Bq]

Radionuclide	Half-life	Air immersion DCG	
		(μ Ci/mL)	(Bq/m³)
Tc-99m[1]	6.02 h	1.E−07	4.E+03
Tc-101[1]	14.2 min	6.E−06	2.E+03
Ru-105[1]	4.44 h	2.E−06	7.E+02
Rh-105m[2]	45 s	7.E−07	3.E+04
Rh-106	29.92 s	8.E−06	3.E+03
Ag-108[2]	2.37 min	7.E−07	3.E+04
Ag-109m[2]	39.6 s	4.E−06	1.E+05
Ag-110[2]	24.57 s	4.E−07	1.E+04
Cd-111m[2]	48.7 min	7.E−06	3.E+03
Cd-117[1]	2.49 h	2.E−06	7.E+02
Cd-117m[1]	3.36 h	9.E−09	3.E+02
In-113m[1]	1.658 h	8.E−06	3.E+03
In-114[2]	71.9 s	5.E−07	2.E+04
In-116m[1]	54.15 min	8.E−09	3.E+02
In-117[1]	43.8 min	3.E−06	1.E+03
Sb-117[1]	2.80 h	1.E−07	4.E+03
Sb-126m[1]	19.0 min	1.E−06	4.E+02
Sb-129[1]	4.40 h	1.E−06	4.E+02
Te-133[1]	12.45 min	2.E−06	7.E+02
Te-133[1]	55.4 min	8.E−09	3.E+02
Te-134[1]	42.8 min	2.E−06	7.E+02
I-122[2]	3.62 min	2.E−06	7.E+02
I-128[1]	24.99 min	2.E−07	7.E+03
I-132[1]	2.30 h	8.E−09	3.E+02
I-134[1]	52.6 min	7.E−09	3.E+02
I-135[1]	6.6.1 h	1.E−08[6]	4.E+02
I-136[2]	83 s	7.E−09	3.E+02
Xe-122	20.1 h	3.E−07	1.E+04
Xe-123	2.4 h	3.E−06	1.E+03
Xe-125	16.8 h	8.E−06	3.E+03
Xe-127	36.406 d	7.E−06	3.D+03
Xe-129m	8.89 d	8.E−07	3.E+04
Xe-131m	11.84 d	2.E−06	7.E+04
Xe-133	5.245 d	5.E−07	2.E+04
Xe-133m	2.19 d	6.E−07	2.E+04
Xe-135	9.11 h	8.E−06	3.E+03
Xe-135m	15.36 min	5.E−06	2.E+03
Xe-137	3.83 min	9.E−06	3.E+03
Xe-138	14.13 min	2.E−06	7.E+02
Cs-126[2]	1.64 min	2.E−06	7.E+02
Cs-129[1]	32.06 h	8.E−06[6]	3.E+03
Cs-138[1]	32.2 min	8.E−09	3.E+02
Cs-139[2]	9.40 min	5.E−06	2.E+03
Ba-137[2]	2.552 min	3.E−06	1.E+03
Ba-141[1]	18.27 min	2.E−06	7.E+02
Ba-142[1]	10.70 min	2.E−06	7.E+02
La-142[1]	95.4 min	6.E−09	2.E+02
Pr-144m[2]	7.2 min	4.E−06	1.E+05
Nd-149[1]	1.73 h	5.E−06	2.E+03
Gd-162[2]	9.7 min	5.E−06	2.E+03
Td-162[2]	7.76 min	2.E−06	7.E+02
Dy-157[1]	8.06 h	6.E−06	2.E+03
Re-182m[1]	12.7 h	2.E−06	7.E+02
Os-190m[2]	9.9 min	1.E−06	4.E+02
Ir-190m[1]	3.2 h	5.E−07[6]	2.E+04
Au-195m[2]	30.6 s	1.E−07	4.E+03)
Tl-200[1]	26.1 h	1.E−06	4.E+02
Tl-207[2]	4.77 min	1.E−06	4.E+04
Tl-208[2]	3.053 min	5.E−09	2.E+02
Tl-209[2]	2.20 min	9.E−09	3.E+02
Tl-210[2]	1.30 min	7.E−09	3.E+02
Pb-204m[2]	66.9 min	9.E−09	3.E+02
Bi-211[2]	2.13 min	4.E−07	1.E+04
Po-211[2]	0.516 s	2.E−06	7.E+04
Rn-220	55.61 s	3.E−09	1.E+02
Rn-222	3.82 d	3.E−09	1.E+02
Th-233[2]	22.3 min	5.E−07	2.E+04

TABLE A–3.—DERIVED CONCENTRATION GUIDES (DCGS) FOR MEMBERS OF THE PUBLIC FOR EXTERNAL EXPOSURE DURING IMMERSION IN AN INFINITE HEMISPHERICAL CLOUD OF UNIFORM CONCENTRATION RESULTING IN AN EDE OF 100 MREM/YR (1 MSV/YR)—Continued

[Ci and Bq]

Radionuclide	Half-life	Air immersion DCG	
		(μ Ci/mL)	(Bq/m^3)
Pa-234[1]	6.70 h	1.E–06	4.E+02
Pa-234m[2]	1.17 min	8.E–07[3]	3.E+04
U–239[1]	23.40 min	4.E–07[6]	1.E+04
Np-240[1]	65 min	2.E–06	7.E+02
Np-240m[2]	7.4 min	6.E–06	2.E+03
Am-246[1]	25.0 min	2.E–06	7.E+02

[1] Committed effective dose equivalent from inhalation is calculated in ICRP Publication 30, but the DCG value for external exposure to a contaminated atmospheric cloud is more restrictive than the DCG value for inhalation.
[2] Committed effective dose equivalent from inhalation is not calculated in ICRP Publication 30, but DCG value for external exposure to contaminated cloud should be more restrictive than DCG value for inhalation due to relatively short half-life of radionuclide.
[3] DCG value is determined by limit on annual dose equivalent to skin, rather than limit on annual effective dose equivalent.
[4] DCG value applies to radionuclide in vapor form only; DCG value for inhalation is more restrictive for radionuclide in inorganic form.
[5] DCG value applies to radionuclide in inorganic or vapor form.
[6] DCG value for exposure to contaminated atmospheric cloud is the same as DCG value for inhalation.

[FR Doc. 93–6379 Filed 3–24–93; 8:45 am]
BILLING CODE 6450–01–P

federal register

Thursday
March 25, 1993

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, totaling $46.1 million.

This deferral affects the Department of Agriculture. The details of this deferral are contained in the attached report

March 16, 1993.

William J. Clinton,

The White House.

BILLING CODE 3110-01—M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of Agriculture:	
	Forest Service:	
D93-4B	Expenses, brush disposal.....	46,084
	Total, deferral.....	46,084

Deferral No. D93-4B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D93-4A, which was transmitted to Congress on December 30, 1992.

This revision increases by $7,600 the previous deferral of $46,076,279 in the Department of Agriculture, Forest Service, Expenses, brush disposal account, resulting in a total deferral of $46,083,879. The increase results from a greater-than-anticipated level of unobligated funds being carried over from FY 1992.

Deferral No. 93–4B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of Agriculture	New budget authority..... $ 27,278,000 (16 U.S.C. 490)
BUREAU: Forest Service	Other budgetary resources.....* $ 87,817,879
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources.....* $ 115,095,879
	Amount to be deferred: Part of year..... _____ Entire year.....* $ 46,083,879
OMB identification code: 12–9922–0–2–302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit with the Forest Service the established cost for disposing of brush and other debris resulting from timber cutting operations authorized by 16 U.S.C. 490. The deposits becoming available in the current year are estimated, and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year–to–year program, which will require $69 million in FY 1993. The current fiscal year reserve is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.
1/ This account was the subject of a similar deferral in FY 1992 (D92–10).

[FR Doc. 93–6789 Filed 3–24–93; 8:45 am]
BILLING CODE 3110–01–C

federal register

Thursday
March 25, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Flandreau Santee Sioux Liquor Code; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Flandreau Santee Sioux Liquor Code

March 17, 1993.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586., 18 U.S.C. 1161. This notice certifies that Resolation No. 89–36, adopting Ordinance No. 89–03, the Liquor Control Ordinance, was duly adopted by the Flandreau Santee Sioux Executive Committee on January 9, 1990. The Ordinance provides for the regulation of activities of the manufacture, distribution, sale, and consumption of liquor in the area of Indian Country under the jurisdiction of the Flandreau Santee Sioux Tribe, South Dakota.

DATES: This Ordinance is effective as of March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street NW., MS 2611–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Flandreau Santee Sioux Liquor Ordinance Resolution No. 89–03 reads as follows:

Chapter I—Alcoholic Beverages

Section 1—Definition of Terms

Terms used in this Ordinance, unless the context otherwise plainly requires, shall mean as follows:

(a) "Alcoholic Beverages" shall mean any intoxicating liquor, beer or any wine as defined under the provisions of this Ordinance.

(b) "Application" shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(c) "Bulk Container" shall mean any package, or any container within which container are one or more packages.

(d) "Distillery", "Winery", and "Brewer" shall mean not only the premises wherein alcohol is distilled, or rectified wine is fermented or beer is brewed, but in addition a person owning, representing, or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of intoxicating liquor or beer in any form.

(e) "Intoxicating Liquor" shall mean any liquid either commonly used, or reasonably adopted to use, for beverage purposes, containing in excess of three and two-tenths per centum of alcohol by weight. This shall include any type of wine, regardless of alcohol content.

(f) "Legal Age" shall mean the age requirements as defined in Chapter IV.

(g) "Liquor Store" shall mean any store, established for the sale of alcoholic beverages.

(h) "On-Sale Dealer" shall mean the Flandreau Santee Sioux Tribe, any tribal or non-tribal person or business so licensed by the Flandreau Santee Sioux Tribe that sells, or keeps for sale, any alcoholic beverages authorized under this Ordinance for consumption on the premises where sold.

(i) "On-Sale" shall mean the sale of any alcoholic beverage for consumption only upon the premises where sold.

(j) "Off-Sale" shall mean the sale of any alcoholic beverage for consumption off the premises where sold.

(k) "Package" shall mean the bottle or immediate container of any alcoholic beverage.

(l) "Package Dealer" shall mean the Flandreau Santee Sioux Tribe, or tribal member as distinguished from a distiller, manufacturer, or wholesaler, that sells, or keeps for sale, any alcoholic beverage authorized under the Ordinance for consumption off the premises where sold.

(m) "Public Place" shall mean any place, building, or conveyance to which the public has or is permitted access.

(n) "Retailer" shall mean Flandreau Santee Sioux Tribe or tribal member that sells alcoholic beverages authorized under this Ordinance for other than resale.

(o) "Sacramental Wine" shall mean wines for sacramental purposes only and used by ordained Rabbis, priests, ministers, or pastors, or any church or established religious organization.

(p) "Sale" shall mean the transfer of bottled or canned liquor for a consideration of currency exchange and of title of any alcoholic beverage.

(q) "Stamp" shall mean the various stamps required by this Ordinance to be affixed to the package or bulk container, as the case may be, to evidence payment of the tax prescribed by this Ordinance.

(r) "Committee" shall mean the Executive Committee of the Flandreau Santee Sioux Tribe.

(s) "Vendor" shall be defined as Chapter 1, Section 9 and, in the case of a tribal member, a vendor shall mean any person employed and under the direct supervision of such tribal member to conduct and manage tribal member's liquor stores.

(t) "Wholesaler" shall mean any person other than a brewer or bottler of beer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating liquor or beer; no wholesaler shall be permitted to sell for consumption upon the premises.

(u) "Wine" shall mean any beverage containing alcohol obtained by the fermentation of the natural sugar content of fruits or other agricultural products, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica.

(v) The terms, "the provisions of this Ordinance", "as provided in this Ordinance", or similar terms shall include all rules and regulations of the department adopted to aid in the administration or enforcement of this Ordinance.

Section 2—Public Policy Declared

This Ordinance shall be cited as the "Flandreau Santee Sioux Tribal Liquor Control Ordinance" and under the inherent sovereignty of the Flandreau Santee Sioux Tribe, shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the traffic in alcoholic beverages if it affects the public interest of the people, should be regulated to the extent of prohibiting all traffic of liquor, except as provided in this Ordinance.

Section 3—General Prohibition

It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess or transport intoxicating liquor or beer except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section 4—Director Appointed

The Flandreau Santee Sioux Executive Committee shall appoint one of the trustees to serve as Director of Liquor Control. The Director shall not have an interest directly or indirectly in the transportation or sale of intoxicating liquor or beer, or in any building or property used in connection with such a business. The Director shall review liquor licenses, applications for liquor licenses and shall report to the Council on such matters. The Director shall serve at the pleasure of the Executive Committee.

Section 5—Removal

The Director shall be removed for cause and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of the Tribe or the United States. The Director so removed shall be entitled to an opportunity to be heard before the Flandreau Santee Sioux Executive Committee before removal.

Section 6—Tribal Control of Importation of Liquor

The Committee shall have the sole and exclusive right of authorizing importation, into the reservation, of all forms of intoxicating liquor and beer, except as otherwise provided in this Ordinance, and no person or organization shall so import any such intoxicating liquor or beer into the reservation, unless authorized by the Committee. No licensed wholesaler or distillery shall sell any intoxicating liquor or beer within the reservation to any person or organization unless authorized by the Committee and except as otherwise provided in this Ordinance. It is the intent of this section to retain in the Committee, exclusive control within the Flandreau Santee Sioux Reservation both as authorizer and controller of all alcoholic beverages sold by licensed wholesalers or distilleries within the state of South Dakota or other states or imported therein, and except as otherwise provided in this Ordinance.

Section 7—Individual To Hold License

An individual tribal member may hold a liquor license under the provisions of this Ordinance. It is the intent of this Ordinance to allow individual tribal members to hold liquor licenses, as provided by this Ordinance.

Section 8—Tribal Liquor Stores

Subject to the provisions of Chapter II, the Committee may establish and maintain anywhere on this reservation, the Committee may deem advisable, a tribal liquor store or stores for storage and sale of alcoholic beverages in accordance with the provisions of this Ordinance. The Committee may from time to time, fix the prices of the different classes, varieties, or brands of alcoholic liquor and beer to be sold.

Section 9—Vendor/Cash Sales

In the conduct and management of tribal liquor stores, the Committee is empowered to employ a person who shall be under the direct supervision of the Director, who shall be known as a "vendor" and who shall observe all provisions of this Ordinance and rules and regulations that may be prescribed by the Committee under this Ordinance and rules and regulations that may be prescribed by the Committee under this Ordinance. No vendor shall sell alcoholic beverages to any person or organization except for cash.

Section 10—Storage of Beverages

The Flandreau Santee Sioux Tribe shall not keep or store any alcoholic beverages at any place within the Flandreau Santee Sioux Reservation other than on the premises where they are authorized to operate and except as otherwise provided by this Ordinance.

Section 11—Payment of Fee

There shall be a filing fee on applications for any licenses under this Ordinance, as established by the Committee.

Section 12—Request for Notice of Hearing

If any tribal member shall file with the Committee, a written request that he or she be notified of the time and place of hearing upon any specified application or applications for licenses for the On-or-Off Sale at retail of alcoholic beverages, the Director shall give notice to such person by certified mail and within a sufficient length of time prior to the hearing upon such application as to allow such person a reasonable opportunity to be present. For the purpose of this section, the certified letter must be deposited with the U.S. Post Office at least five (5) days before the scheduled date of the hearing.

Section 13—Time and Place for Hearing

The Committee shall fix a time and place for hearing upon all such applications which may come before the Committee, and the Director shall publish notice once in the official newspaper of the Tribe such notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverage" and shall state the time and place, when and where such applications will be considered by the Committee and that any person interested in the approval or rejection of any such application may appear and be heard, which notice shall be published at least one week prior to such hearing. At the time and place so fixed, the Committee shall consider such applications and all objections thereto, if any, prior to final decision thereon.

Section 14—Transfer of License

No license granted pursuant to the provisions of this Ordinance shall be transferred to another person or organization. If a transfer to a new location is requested by a licensee, the licensee must make application showing all the relevant facts as to such new application, which application shall take the same course and be acted upon as if an original application. No fee shall be required of a licensee who desires to transfer to a new location; however, such licensee must pay the actual costs involved in the Notification of Hearing as published in the official newspaper.

Section 15—Sale of Stock on Termination

Any licensee authorized to deal in alcoholic beverages upon termination of its license may at any time within twenty (20) days thereafter sell the whole or any part of the alcoholic beverages included in its stock in trade at the time of termination, to any licensed wholesaler approved under the provisions of the Ordinance to deal in alcoholic beverages as a wholesaler. A complete report of such purchase and sale must be made by both the wholesaler and licensee to the Committee. At the discretion of the Committee, an additional twenty (20) days extension to sell may be granted to the licensee by the Council.

Section 16—Complaints Authorized

Any person may file with the Committee, a duly notarized complaint as to any violations of the provisions of this Ordinance and immediately upon receipt thereof, the Committee shall cause the director to make a thorough investigation and, if there is evidence to support the charge made in such complaint, the Committee must cause revocation of the license in question and/or take another appropriate action.

Section 17—Revocation Proceedings

The Committee shall on due notice to such licensee, conduct a hearing and on the basis thereof determine whether such license should be revoked.

Section 18—Subpoena by Council

For the purpose of conducting the hearing as prescribed above, the Committee shall have the power to subpoena witnesses and to administer oaths. Witnesses so subpoenaed shall be paid at the then prevailing witness rate for the Flandreau Santee Sioux Tribal Court and said witness fee shall be paid from the Tribal Liquor Control Fund.

Criminal proceedings must be filed in the Tribal Court and may be instituted by the Committee or director as Complainant against any violator except the Flandreau Santee Sioux Tribe.

Section 19—Dismissal or Acceptance of Complaint

If the Committee determines the license should not be revoked, it shall dismiss the complaint. If the Committee determines the license should be revoked and revokes such license, it must make in writing, findings of fact as to every such violation alleged in such complaint before it revokes such license, and must by the time of the next Executive Committee meeting, make a report available consisting of a transcript of the proceedings had, and all findings as to every such violation alleged in such complaint.

Section 20—Suspension in Lieu of Revocation

The Committee may, if the facts warrant, mitigate the revocation to a suspension.

When in any proceedings upon verified complaint, the Committee is satisfied that the nature of such violation and the circumstances thereof were such that a suspension of license would be adequate, it may suspend the license for a period not exceeding sixty (60) days, which suspension shall become effective twenty-four (24) hours after service of notice thereof upon the licensee. During the period of such suspension, such licensee shall exercise no rights or privileges whatsoever under the license.

Section 21—Public Hearing Required

All hearings under the provisions of this Ordinance shall be public, and place of hearing shall be specifically designated in the notice of hearing.

Section 22—Order of Revocation

In any case where the Committee approves a revocation of a license, it shall forthwith make an order for such revocation and upon service of notice thereof on the licensee, all of such licensee's rights under such license shall terminate three (3) days after such notice, except in the event of a Stay on Appeal.

Section 23—Waiting Period for New Licensee

Any licensee, except the Flandreau Santee Sioux Tribe, whose license is revoked, shall not for a period of two (2) years thereafter, be granted any license under the provisions of this Ordinance.

Section 24—Appeal to Tribal Court

Any licensee whose license is revoked by the Committee regardless of how the proceedings were instituted, may appeal from such revocation to the Flandreau Santee Sioux Tribal Court, within five (5) days after notice to the licensee of such revocation, and such appeal shall operate to stay all proceedings for a period of fifteen (15) days thereafter and for such an additional period of time that the Flandreau Santee Sioux Tribal Court may in its discretion extend. Under no circumstances may the Tribal Court extend the stay for a period of more than twenty-five (25) days including the original fifteen (15) day stay period. The Committee shall forthwith, upon such appeal being made, certify to the Tribal Court the complete record in the proceedings and the Court shall thereupon fix a time and place for hearing, due notice of such hearing shall be given to all concerned parties involved in the appeal.

For the purpose of appeal under this Ordinance, the appeal shall be heard by the duly qualified and selected Judge of the Flandreau Santee Sioux Tribal Court.

Section 25—Bootlegging

Any person whom by himself, or through another acting for him, shall keep or carry on his person, or in a vehicle, or leave in a place for another to secure, any alcoholic liquor or beer with intent to sell or dispense of such liquor or beer or otherwise in violation of law, or who shall, within this reservation in any manner, directly or indirectly solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquor or beer in violation of law, or aid in the delivery and distribution of any alcoholic liquor or beer so ordered or shipped, or who shall in any manner procure for, sell, or give any alcoholic liquor or beer to any person under legal age, for any purpose except as authorized and permitted in this Ordinance, shall be guilty of bootlegging and upon conviction thereof shall be subject to a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), and to a jail sentence of not less than three (3) months, nor more than six (6) months, or both such fine and jail sentence plus costs.

Section 26—General Penalties

Any person violating any provision of this Ordinance for which a specific penalty is not provided, shall be punished by a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or by imprisonment in the tribal jail for not more than six (6) months, or by both such fine and imprisonment, plus costs.

Section 27

Nothing in this Ordinance shall be construed to require or authorize the criminal trial and punishment by the Flandreau Santee Sioux Tribal Court of any non-Indian except to the extent allowed by any applicable present or future Act of Congress or any applicable decision of the Supreme Court.

Chapter II—Liquor Licenses and Sales

Section 1—Power To License and Tax

The power to establish licenses and levy taxes under the provisions of this Ordinance is vested exclusively with the Flandreau Santee Sioux Executive Committee.

Section 2—Classes of Licenses

Classes of licenses under this chapter with the fee for each class shall be as follows:

(a) Class A Package Dealers;
(b) Class B On-Sale Dealers;
(c) Class C Solicitors;
(d) Class D Transportation Companies—fees shall be established by the Committee.

Section 3—One License per Application

No more than one Class C or Class D license under this chapter shall be issued to any one licensee, except by approval of the Flandreau Santee Sioux Executive Committee. Nothing in this section shall be construed to apply to the Flandreau Santee Sioux Tribe when it is the licensee.

Section 4—Domestication Requirement for Corporate Licenses

Any corporate Class C or Class D licensee under this chapter must be a corporation organized under the laws of the Flandreau Santee Sioux Tribe, provided that if the applicant is a foreign corporation, the applicant shall be deemed eligible if, prior to the application, it has complied with all the laws of the United States and the Tribe concerning doing business within the Flandreau Reservation. Individuals, partnerships, and other forms of association shall be eligible to obtain Class C and D licenses under this chapter.

Section 5—Ownership of Business

Any Class C or Class D licensee under this Ordinance must be the sole owner of the business to be operated under the license.

Section 6—Discretion of the Committee

Application for licenses under this chapter shall be submitted to the Committee as specified in Chapter I of this Ordinance and the Committee shall have absolute discretion to approve or disapprove the same in accordance with the provisions of this Ordinance.

Section 7—Cancellation of Surety Bond

Any surety may cancel any bond required under this Ordinance as to future liability by giving thirty (30) days notice to the Committee. Unless the licensee gives other sufficient surety by the end of the thirty (30) day period, the license shall be revoked automatically at the end of the thirty (30) days.

Section 8—Surety Bond

(a) Every application for a license under this Ordinance, unless exempted by the Executive Committee, must be accompanied by a bond, which shall become operative and effective upon the issuing of a license unless the licensee already has a continuing bond in force. The bond shall be in the amount of $10,000.00 and must be in a form approved by the Committee and it shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this Ordinance and all existing laws relating to the conduct of its business and will promptly pay to the Flandreau Santee Sioux Tribe when due, all taxes and license fees payable by it under the provisions of this Ordinance and also any costs and cost penalty assessed against it in any judgment for violation of the terms of this Ordinance.

(b) All bonds required by this Ordinance shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account within a legally chartered bank.

Section 9—Action of Bond for Injury

Any person injured by reason of the failure of any licensee to faithfully obey and abide by all the provisions of this Ordinance shall have a direct right of acting upon the bond in Tribal Court for the purpose of recovering the damage sustained by such person, which action may be prosecuted in the name of the injured.

Section 10—Agreement by Licensee To Grant Access

Every application for a license under this Ordinance must include an agreement by the applicant that his premises, for the purpose of search and seizure laws of the Flandreau Santee Sioux Tribe, shall be considered public premises, and that such premises and all buildings, safes, cabinets, lockers, and store rooms thereon will at all times on demand of the Committee or a duly appointed tribal or federal policeman, be open to inspection, and that all its books and records dealing with the sale of ownership of alcoholic beverages shall be open to said person or persons for such inspection, and that the application and the license issued thereon shall constitute a contract between the licensee and the Flandreau Santee Sioux Tribe entitling the Tribe for the purpose of enforcing the provisions of this Ordinance to inspect the premises and books at any time.

Section 11—Duration of Licenses

The period covered by the licenses under this Ordinance shall be from 12 o'clock midnight on the 31st day of December to 12 o'clock midnight on the 31st of the following December, except that the license shall be valid for an additional three (3) days provided that proper application for a new license is in the possession of the Committee prior to midnight on the 31st day of December when the license expires. A full fee shall be charged for any license for a portion of such period, unless otherwise provided by this Ordinance.

Section 12—Refilling Prohibited

No licensee shall buy or sell any package which has previously contained alcoholic beverages sold under the provisions of this Ordinance or refill any such package.

Section 13—Deliveries

No licensee under this Ordinance shall make any delivery of alcoholic beverages outside the premises described in the license.

Section 14—Prohibited Sales

No vendor shall sell any intoxicating liquor:

(a) To any person under legal age;

(b) To any person who is intoxicated at the time, or who is known to the vendor to be a habitual drunkard;

(c) To any person to whom the vendor has been requested in writing not to make such sale, where such request is by the Executive Committee, any police or peace officer, or the husband or wife of the person,

(d) To any mentally ill or mentally retarded person.

Any vendor that violates any of the provisions of this section shall be guilty of an offense and punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment with costs.

Section 15—Minors Barred

No vendor shall permit any person under legal age on the premises where the business under the license is authorized, unless accompanied by an adult who is the legal guardian or parent of said minor.

Section 16—After Hours Sales

No vendor shall sell, serve or allow to be consumed on the premises covered by the license, alcoholic beverages other than in the hours permitted by its license.

Section 17—Prohibited Activity

No licensee shall allow any gambling or gambling devices on its premises unless authorized by the Flandreau Santee Sioux Executive Committee, or permit any lewd or indecent entertainment on said premises.

Section 18—Prohibited Sales

No licensee of an On Sale establishment shall allow to be sold any alcoholic beverages in a package, whether sealed or unsealed, or whether full or partially full.

Section 19—Unsealed Packages in Public

No person shall have an unsealed package containing intoxicating liquor in his possession in any public places, other than in a duly licensed facility authorizing such broken seal.

Section 20—Prohibited Use

No person shall be permitted either to consume any intoxicating liquor or to mix or blend any intoxicating liquor or alcohol with any other beverage whether or not such other beverage is an alcoholic beverage, in any public place other than upon the premises of a licensed on-sale dealer as defined and authorized by this Ordinance, and any vendor who knowingly permits such violation to occur upon the premises shall be equally responsible with the person performing the act for the violation of the terms thereof.

Chapter III—Sales Tax

Section 1—Sales Tax Levies

There shall be a sales tax imposed on any licensee licensed under the provisions of this Ordinance in accordance with rates established by the Committee.

Chapter IV—Age Requirements

Section 1—Furnishing Beverage to Child

It shall be unlawful to sell or give any alcoholic beverage to any person under the age of twenty-one (21) years. Any person who violates this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by imprisonment in the tribal jail for not less than thirty (30) days nor more than one hundred eighty

(180) days, or by both such fine and imprisonment with costs.

Section 2—Purchase, Possession by Minor

It shall be unlawful for any person under the age of twenty-one (21) years of age to purchase, attempt to purchase or possess or consume intoxicating liquor, or to misrepresent his age for the purpose of purchasing or attempting to purchase such intoxicating liquor. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by imprisonment in the tribal jail for a period not less than thirty (30) days nor more than one hundred twenty (120) days, or by both such fine and imprisonment with costs.

Section 3—Evidence of Legal Age Demanded.

Upon attempt to purchase any alcoholic beverages in any tribal or Indian liquor store by any person who appears to the vendor to be under legal age, such vendor shall demand, and the prospective purchaser upon such demand, shall display satisfactory evidence that he or she is of legal age.

Any person under legal age who presents to any vendor, falsified evidence as to his age shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties specified in Section 1 above.

Chapter V—Revision

Section 1—Severability

If any section of any chapter of this Ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of the chapter or Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 2—All Prior Ordinances and Resolutions Repealed

All prior Ordinances and Resolutions or provisions thereof that are repugnant or inconsistent to any provision of this Ordinance are hereby repealed.

Section 3—Amendment or Repeal of Ordinance

This Ordinance may be amended or repealed only by majority vote of the Executive Committee in regular session.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93-6876 Filed 3-24-93; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
March 25, 1993

Part V

Department of the Interior

Bureau of Indian Affairs

Environmental Impact Statement for El Rancho Substation Project, New Mexico; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement (EIS) for the El Rancho Substation Project, Santa Fe County, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs and the Rural Electrification Administration intends to gather information for preparing an Environmental Impact Statement (EIS) for the proposed El Rancho Substation Project to be located in Santa Fe County, New Mexico. A description of the proposed project, potential alternative sites and environmental considerations to be addressed in the EIS are provided below (see **SUPPLEMENTARY INFORMATION**). In addition to this notice, a public scoping meeting regarding the proposal and the preparation of an EIS will be held.

The purpose of the notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

A Draft Environmental Assessment (DEA) that was previously prepared will serve as the basic document for the EIS. Previous comments submitted on the DEA will also be included as part of the scoping process for this project.

DATES: A public scoping meeting will be held on Thursday, April 22, 1993.

ADDRESSES: Comments should be addressed to Mr. Sidney L. Mills, Area Director, Bureau of Indian Affairs, Albuquerque Area Office, 615 First Street, NW., Box 26567, Albuquerque, New Mexico 87125–6567 and Mr. Lawrence R. Wolfe, Rural Electrification Administration, Electric Staff Division, Environmental Compliance Branch, 14th and Independence Avenue, Washington, DC 20250, Telephone (202) 720–1784. The public scoping meeting will be held at the Pojoaque High School, Route 11, Box 207, Santa Fe, New Mexico 87501 on April 22, 1993, at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney L. Mills, Area Director, Bureau of Indian Affairs, Albuquerque Area Office, 615 First Street, NW., Box 26567, Albuquerque, New Mexico 87125–6567, telephone (505) 766–3374 and Mr. Dennis E. Rankin, Rural Electrification Administration, Electric Staff Division, Environmental Compliance Branch, 14th and Independence Avenue, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed project includes the construction of an 0.8 acre 69/14.47 kV distribution substation, a 69 kV overhead subtransmission line and four 12,47 kV threephase distribution feeders. The project will be owned and operated by Jemez Mountains Electric Cooperative, Inc., of Espanola, New Mexico. The purpose of the project is to provide a primary source of electric power to the communities of San Ildefonso Pueblo, El Rancho, Jacona, Jaconita and parts of Pojoaque.

Environmental issues to be addressed in the EIS are expected to include visual resources, cultural resources, biological resources, land use, noise, socioeconomics and health and safety issues. In addition, the EIS will address a number of alternatives including no action, system alternatives and alternative sites.

This notice is published pursuant to § 1501.7 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM–8.

Dated: March 16, 1993.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–6875 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
March 25, 1993

Part VI

Department of Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Bureau of Indian Affairs, Interior

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Chicora-Siouan-Indian-People, c/o Gene Martin, 700–B Highway 17 North, Surfside Beach, SC 29575, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on February 10, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT:

Holly Reckord, (202) 208–3592.

Dated: March 11, 1993.

Stan Speaks,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–6855 Filed 3–24–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
March 25, 1993

Part VII

Department of Commerce

National Telecommunications and Information Administration

Report on the Role of Telecommunications in Hate Crimes; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 930348-3048]

Report on the "Role of Telecommunications in Hate Crimes"

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Inquiry; Request for Comments.

SUMMARY: In response to a statutory directive, NTIA is undertaking a study on the role of telecommunications in hate crimes. Public comment is requested on issues relevant to such a report.

DATES: Comments should be filed on or before April 26, 1993 and reply comments should be filed on or before May 26, 1993 to receive full consideration.

ADDRESSES: Comments (seven copies) should be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce 14th St. and Constitution Ave. NW., room 4725, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: NTIA Office of Policy Analysis and Development, 202–482–1880.

Authority: Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533 (1992)[1]

SUPPLEMENTARY INFORMATION:

I. Authorization for Study

1. The National Telecommunications and Information Administration (NTIA) is the Executive Branch agency principally responsible for developing and articulating domestic and international telecommunications policies. NTIA acts as the principal adviser to the President on telecommunications policies. Accordingly, NTIA conducts studies and makes recommendations regarding telecommunications policies, activities, and opportunities, and presents Executive Branch views on telecommunications matters to the Congress, the Federal Communications Commission (FCC), state and local governments, and members of the public.[1]

2. In its 1992 Authorization Act, NTIA was directed to prepare a report on the role of telecommunications in crimes of hate and violent acts against ethnic, religious, and racial minorities.[2] In issuing this Notice of Inquiry, NTIA is seeking to reach out to individuals, civil rights groups, media organizations, and Government agencies for information on this topic, consistent with legislative intent.[3] This Notice of Inquiry is one part of NTIA's outreach program.

II. Introduction

3. There is growing concern in the United States that as a society we may be experiencing an increase[4] in acts of violence and intimidation motivated by prejudice based on race, religion, sexual orientation, or ethnicity.[5]

4. Many state and local governments have enacted "hate crime" statutes that increase the penalty for criminal acts such as harassment, intimidation, vandalism, assault, or murder if the motive or intent is based on prejudice on the part of the perpetrator during the commission of the criminal act.[6] Other state statutes proscribe the expression of the prejudice or bias itself under certain circumstances, independent of any other criminal act committed.[7] Both types of statutes have recently been subject to constitutional challenges on First Amendment grounds.[8] NTIA requests comment on the extent to which state or local "hate crime" laws apply to acts that use telecommunications and other electronic media.

5. As a first step in addressing the problem of hate crimes on a national level, and to help policy makers address this issue, the Hate Crime Statistics Act (HCSA), adopted in 1990, is designed to provide a national data collection system to determine the exact nature and extent of hate crimes.[9] Pursuant to the HCSA, the Federal Bureau of Investigation (FBI) coordinates the collection and reporting of data on such crimes.

6. The FBI's first report on hate crimes, under the provisions of the HCSA, was released in January 1993.[10] That report compiled hate crime information reported to the FBI by 2,771 state and local law enforcement agencies in 32 states for the calendar year 1991.[11] Among the total reported hate crimes in 1991, racial bias accounted for 6 of 10 offenses,[12] religious bias accounted for 2 of 10 offenses, and ethnic or sexual-orientation bias each accounted for 1 of 10 offenses reported.[13] Among the

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[1] NTIA was established by Executive order in 1978. E.O. 12,046, 3 C.F.R. 1978 Comp. (1978), *reprinted in* 47 U.S.C. § 305 note (1988). NTIA's functions were codified in 1992 by the Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533 (1992) (Authorization Act).

[2] Authorization Act § 135(a). NTIA is directed to analyze information on the use of telecommunications, including broadcast television and radio, cable television, public access television, computer bulletin boards, and other electronic media, to advocate and encourage violent acts and the commission of crimes of hate, as described in the Hate Crimes Statistics Act (HCSA) (28 U.S.C. § 534 note (Supp. III 1991)), against ethnic, religious, and racial minorities. Authorization Act section 135(b)(1). Under the HCSA, crimes of hate also include those based on sexual orientation, see HCSA section (b)(1), and NTIA intends to include those in this study. NTIA is also directed by the Authorization Act to include in its report any recommendations it deems "appropriate and necessary." Authorization Act section 135(b)(2).

[3] *See* 138 Cong. Rec. H11,732 (daily ed. Oct. 5, 1992) (statement of Rep. Markey).

[4] *See, e.g.*, Scott Harris, "Coalition Organized to Fight Hate Crimes," L.A. Times, Mar. 12, 1992, at B1 (reporting a large increase in hate crime reports); "Hate Crimes Rose Sharply in State Last Year," UPI (Regional News), Oct. 26, 1992, *available in* LEXIS, Nexis Library, UPI File (reporting 60% increase in hate crimes in Pennsylvania); Walt Albro, "Anti-Gay Violence Shows Dramatic Increase," UPI, May 20, 1992, *available in* LEXIS, Nexis Library, UPI File.

[5] *See, e.g.* Geoff Fein, "Store Set Ablaze in Latest in Series of Hate Crimes; Thousand Oaks Torched Comic Book Shop Is Desecrated with Swastikas and Anti-Semitic Graffiti," L.A. Times, Sept. 19, 1992, at B1; "Hate Crime Shocks Washington, Shows Race Problems," Reuter, Mar. 4, 1992 (AM Cycle); available in LEXIS, Nexis Library, CURRNT File (black woman beaten, stripped naked, and doused with lighter fluid by two white men); "Justices Tackle Hate-Crime Laws; Court Will Decide if Extra-Long Prison Terms are Lawful," Hous. Chron., Dec. 15, 1992, at A3. *See also State v. Mitchell*, 169 Wis. 2d 153, 485 N.W.2d 807 (1992), *cert. granted sub nom. Wisconsin v. Mitchell*, 113 S. Ct. 810, 61 U.S.L.W. 3431 (Dec. 14, 1992). *See also*, Joan Biskupic, "Hate Crime Laws Face Free-Speech Challenge," Wash. Post, Dec. 13, 1992, at A16 (Supreme Court to hear case involving black teenagers who allegedly beat a white youth after discussing a scene from the movie "Mississippi Burning" that depicted a black youth being beaten).

[6] Courts are divided as to the constitutionality of sentence enhancement statutes for bias motivated crime. Two state supreme courts have found enhancement statutes unconstitutional. *See State v. Mitchell*, 485 N.W.2d at 809; *State v. Wyant*, 64 Ohio St. 3d 566, 597 N.E.2d 450 (Ohio 1992). At least one state court has found an enhancement statute constitutional. *See Dobbins v. State*, 605 So.2d 922 (Fla. Dist. Ct. App. 1992).

[7] Recently, the Supreme Court struck down a city ordinance that made it a misdemeanor to erect a symbol that "arouses anger, alarm or resentment on the basis of race, color, creed, religion or gender . . ." as substantially overbroad and impermissibly content-based and therefore facially invalid under the First Amendment. *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992). Similar laws are being challenged in other jurisdictions on First Amendment grounds. For additional background, see Anti-Defamation League of the B'nai B'rith, "Hate Crime Statutes: A Response to Anti-Semitism, Vandalism and Violent Bigotry" (1991 Update).

[8] *See supra* notes 6–7.

[9] See Pub. L. No. 101–275, 104 Stat. 140, *codified at* 28 U.S.C. 534 note (Supp. III 1991).

[10] See Federal Bureau of Investigation, U.S. Dep't of Justice, (Press Release, Jan. 4, 1993) (containing data available from the FBI's statistical program on hate crime).

[11] Approximately 748, 27%, of the reporting agencies had hate crime incidents to report. *Id.* at 1.

[12] Such bias includes anti-White, anti-Black, anti-American Indian/Alaskan Native, anti-Asian/Pacific Islander, and a category to represent other racial groups not included in the aforementioned. *Id.* at 3.

[13] *Id.* at 2.

incidents reported, intimidation was the most frequently reported crime, accounting for 1 of 3 offenses. The FBI plans to expand its data collection to include reports from law enforcement agencies from all 50 states.[14]

III. Telecommunications and Hate Crimes

7. In analyzing the use of telecommunications to advocate and encourage violent acts and the commission of hate crimes, the scope of the term "telecommunications" must be considered carefully. The Authorization Act identifies the following list of media to be considered in our study: broadcast television and radio, cable television, public access television, computer bulletin boards, and "other electronic media." [15] Each of the specific media mentioned can provide persons or groups the ability to transmit unsolicited messages immediately to a large number of recipients.

8. There have been some well-known incidents relevant to this study involving these media, in which parties have sought or obtained access to broadcast television and radio, or cable public access channels, to promote messages of hate or violence evidencing prejudice toward particular groups. For example, there was controversy over repeated attempts in Kansas City by a chapter of the Ku Klux Klan to obtain access to a cable public access channel to show the program "Race and Reason." [16] In June 1992, authorities in San Diego attempted to determine whether an individual convicted previously of a hate crime had violated the terms of his parole through involvement in the showing of a documentary based on anti-Jewish Nazi propaganda films on a cable public access channel.[17] Messages claiming the Holocaust was a hoax, and other anti-Semitic messages, created a controversy in 1991 over the use of computer bulletin boards.[18]

9. More generally, however, "telecommunications" refers to numerous forms of electronic communications, including both point-to-point, two-way voice and data services, and point-to-multipoint mass media services.[19] There have been some reported incidents involving such services. For example, some white supremacist groups reportedly use telephone hotlines for "espousing white supremacist doctrine" and telephone answering machines for recruiting and merchandising books and other items, and employ methods similar to telemarketing for spreading their messages.[20] NTIA requests comment on the degree to which such services, in addition to the media specifically identified in the Authorization Act, have an effect on the role of telecommunications in hate crimes.

10. Each form of telecommunications in the United States is subject to different degrees of government regulation. For example, broadcasters are subject to certain "public interest" obligations as spectrum licensees. Most point-to-point voice and data service is provided by common carriers subject to the authority of state and federal regulatory agencies, although unregulated private networks increasingly offer such services. Computer bulletin boards are private, unregulated communications systems. To what degree do such legal and regulatory distinctions affect the commission and prevention of hate crimes using telecommunications?

11. Finally, while we have discussed many forms of electronic communications in the preceding paragraphs, we request comment on what, if any, "other electronic media" should be considered in this study.

IV. Data and Observations Regarding The Role of Telecommunications in the Commission of Hate Crimes

A. The Relationship Between Telecommunications and Acts of Hate

12. In light of the definitional issues involving hate crimes and telecommunications discussed above, NTIA seeks information on specific instances in which telecommunications were used to advocate or encourage the commission of hate crimes or violent acts motivated by prejudice or bias. What role do the various forms of telecommunications play regarding such acts of hate?

13. NTIA also seeks information on specific instances in which an act of hate was shown to result from a message transmitted through telecommunications. In some instances, the act of hate may be an intentional consequence of the transmission. In other instances, such as the broadcast of a news program, an act of hate may be unintentionally prompted by the content of the program. Moreover, NTIA seeks quantitative information on the correlation, if any, between the advocacy or encouragement of acts of hate, through the use of telecommunications or otherwise, and their commission. How prevalent are instances in which messages of hate resulted in the commission of violent acts or hate crimes? Given the free speech protection offered by the First Amendment, what is the proper role of government, and specifically telecommunications regulators, with respect to the use of telecommunications to spread messages of hate?

14. Many contend that more speech, rather than government regulation, is the best way to address hate speech.[21] The publicity that often surrounds the use of telecommunications media to promote or encourage violent acts or crimes of hate may, in fact, be valuable in promoting public discussion of the messages being conveyed, and may even

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[14] *Id.* at 1.

[15] Authorization Act § 135(b)(1).

[16] The Missouri Knights of the Ku Klux Klan first attempted to show a television program on a local public access channel in 1987, and were successful in 1990. *See, e.g.*, Ellen Alderman and Caroline Kennedy, "In our Defense: The Bill of Rights in Action," 25–36 (1991). Other groups have attempted to air the same show, "Race and Reason," in other communities. *See, e.g.*, Deborah Schoch, "Controversy Puts the Spotlight on Public Access TV: The Debate over the Airing of A White Supremacist Show has Focused Attention on the Operating Procedures At Torrance's Public Channel," L.A. Times, Jan. 20, 1991, Metro Section, at 3.

[17] *See* Michael Granberry, "Film Spurs Review of Metzger's Probation," L.A. Times, June 5, 1992, at B1. For a review of various instances in which groups attempted to or were successful in obtaining access to cable access channels to show "Race and Reason" or other programming, *see, e.g.*, Anti-Defamation League of the B'nai B'rith, "Electronic Hate: Bigotry Comes to TV" (1991).

[18] In 1991 Prodigy, a joint venture of IBM and Sears, was criticized by the Anti-Defamation League of the B'nai B'rith (ADL) for allowing these messages on its bulletin board system. *See, e.g.*, Sandra Sugawara, "Computer Networks and the 1st Amendment; Advanced Technology Raised New Questions and Concerns About an Age-Old Issue," Wash. Post, Oct. 26, 1991, at A12; Charles Leroux, "Hate Speech Enters Computer Age," Chi. Trib., Oct. 27, 1991, at 4. Prodigy later discovered that its bulletin board operators had repeatedly rejected the most offensive message; still, the company then announced that it had "amplified" its definition of what it considered offensive. *See* Barnaby J. Feder, "Toward Defining Free Speech in the Computer Age," N.Y. Times, Nov. 3, 1991, § 4, at 5. For other examples of the use of computer technology for spreading messages of hate, *see, e.g.*, Anti-Defamation League of the B'nai B'rith, "Computerized Networks of Hate: An ADL Fact Finding Report" (1985) (Computerized Networks of Hate).

[19] *Cf.* National Telecommunications and Information Administration, U.S. Dep't of Commerce, NTIA Special Pub. No. 91-26 "The NTIA Infrastructure Report: Telecommunications in the Age of Information" Ch. 2 (Oct. 1991).

[20] *See* Ian Trontz, "Phone Tapes Carry Racist Messages; White Supremacist Group Apparently Responsible," Minneapolis Star Trib., June 27, 1992, St. Paul ed., at 1B; *see also* ADL, "Computerized Networks of Hate," *supra* note 18, at 5.

[21] *See, e.g.*, Religious News Service, "Computer as a Forum of Hate Poses Problem," L.A. Times, Nov. 16, 1991 (reporting preference among several "religious leaders" for strong responses to offensive messages on computer bulletin boards rather than government regulation).

lessen the incidence of such acts.[22] For example, the controversy surrounding the Ku Klux Klan's efforts to obtain access to a Kansas City cable public access channel, which were successful in 1990, resulted in extensive national media coverage that stimulated significant public opposition to the messages the Klan was attempting to deliver.[23] NTIA seeks comment on the degree to which such extensive coverage and public reaction is typical.

15. Finally, such public discussion may be made possible through the use of the same types of telecommunications media employed to spread the message of hate.[24] NTIA therefore also seeks comment on the extent to which telecommunications plays a positive role in preventing acts of hate.

B. The Use of Telecommunications in Intimidation and Related Hate Crimes

16. The Authorization Act directs NTIA to base its analysis of hate crimes on the description given in the HCSA: crimes such as murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and vandalism that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.[25] In all of these instances, except intimidation, a person cannot commit the offense directly through use of telecommunications media, although such use could, in some cases, assist the commission of such an offense. NTIA seeks comment on the applicability of this description to the subject matter of this report.

17. Moreover, although the HCSA definition does not specifically refer to intimidation using a telephone, a threatening message sent via a telephone or facsimile transmission may constitute a crime of "intimidation" and be subject to reporting under the HCSA.[26] Is there any policy or law enforcement reason to distinguish such intimidation from other forms of intimidation? Do current data gathering activities under the HCSA provide sufficient data to analyze the role of telecommunications in hate crimes?

V. The Role of Technology in Preventing Hate Crimes That Use Telecommunications

A. Methods of Preventing Hate Crimes That Use Telecommunications

18. New developments in telecommunications technologies may offer a means of preventing, or limiting the number or impact of, hate crimes involving the use of telecommunications. For example, new caller identification (caller ID)[27] or call trace services[28] offered by local exchange telephone companies may prevent or discourage the commission of hate-motivated intimidation telephone calls. Likewise, a consumer's ability to block video channels can prevent unsolicited messages from entering that person's home. For example, current technology permits cable operators to block access to specified channels on their systems. Section 10 of the 1992 Cable Act requires cable system operators to block leased access channels that carry indecent (as defined by the FCC) programming.[29] A consumer wishing to view such programming must request, in writing, that the system unblock the channel.

19. Additionally, section 10 of the 1992 Cable Act requires that, when cable operators offer X, R, or NC–17 rated movies free of charge on premium channels, they must provide notice to consumers and the ability to block such movies on request.[30] Also, some new television receivers offer the capability of blocking preselected channels. Finally, with respect to computer bulletin boards, computer software can allow bulletin board operators to eliminate unwanted messages from their systems.[31]

20. NTIA requests information on the use of new telecommunications technology to prevent or limit the transmittal or reception of messages of hate. We request comment on whether variations of such systems could or should also be adapted to allow consumers to control the viewing of unwanted programming such as that carrying messages of hate. Would such technology be an appropriate approach to protecting people from being subjected to messages of hate? What technology is available, and to what telecommunications media is it relevant? What technologies may be available in the future?

21. Often, however, privacy concerns are associated with the use of such new technology. For example, some parties have questioned deployment of caller ID service on privacy grounds because it reveals a calling party's telephone number.[32] Some have questioned whether, if computer bulletin boards become ubiquitous, the operator of a bulletin board system should have the ability to restrict the types of messages listed on it, or should have access to private messages on the system to enforce such restrictions. To what extent do privacy concerns limit the use of new telecommunications technologies to prevent hate crimes?

B. Electronic Data Collection

22. In addition to the FBI's data gathering program under the HCSA,

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[22] First Amendment jurisprudence has long recognized an "enlightenment function" of speech, even noxious speech. *See, e.g., Abrams* v. *United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting); *United States* v. *Associated Press* 52 F.Supp. 362, 372 (S.D.N.Y. 1943) (Learned Hand, J.). An "implicit corollary" of this function is the belief that the proper remedy for "bad" speech is the opportunity to hear more speech. See Melville B. Nimmer, "Nimmer on Freedom of Speech" §§ 1.02[G] (1984); see also Susan Gellman, "Sticks and Stones Can Put You in Jail, But Can Words Increase Your Sentence?: Constitutional and Policy Dilemmas of Ethnic Intimidation Laws," 39 UCLA L. Rev. 333, 381 (1991).

[23] For example, Alderman and Kennedy *supra* note 16 state that the controversy surrounding the Klan's attempt to air a cable program "galvanized" many residents and "empowered them to enter 'the marketplace of ideas,' voice their opinions, and make those opinions count," and note that there has been no further programs shown by the Klan. Alderman and Kennedy, *id.* at 38.

[24] The Alderman and Kennedy book, *id.*, sparked further discussion of the Ku Klux Klan's efforts to show programming on a Kansas City public access channel in various media including cable television. *See, e.g.*, Cable News Network, Inc., "Sonya Live," Mar. 6, 1992 (Transcript 63-2), available on LEXIS, Nexis Library, CURRNT File.

In addition, television can provide a means of reaching a large audience with anti-hate messages. In Washington, D.C., for example, the Gay and Lesbian Task Force Against Defamation is sponsoring a series of public service announcements, narrated by Bob Hope, against hate crimes.

[25] Authorization Act section 138 (b)(1), *citing* HCSA, 28 U.S.C. 534 note.

[26] Most states have statutes prohibiting the use of common carrier facilities to annoy or harass. See generally Wayne F. Foster, Annotation, "Validity, Construction, and Application of State Criminal Statute Forbidding Use of Telephone to Annoy or Harass," 95 A.L.R. 3d 411, 433 (1979). Additionally, federal law prohibits the use of telephones for obscene, annoying, or harassing calls in the District of Columbia or across state lines. 47 U.S.C. 223 (1988).

Although "intimidation" constitutes the largest category of hate crime reported to the FBI, the FBI's data collected under HCSA does not indicate cases in which the hate crime involved telecommunications.

[27] Basic caller ID service permits a subscriber to the service to view a calling party's telephone number via customer-owned display equipment. *See, e.g.*, Reply Comments of the National Telecommunications and Information Administration (filed March 12, 1992) in *Rules and Policies Regarding Calling Number Identification Service*, 6 FCC Rcd 6752 (NTIA Caller ID Reply Comments). For a discussion of current uses of caller ID, *see id.* at 4.

[28] For a description of call trace services, *see, e.g., North American Telecommunications Association*, Memorandum Opinion and Order, 3 FCC Rcd 4385, 4392 (1988).

[29] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, § 10 (1992 Cable Act).

[30] *Id.*

[31] *See, e.g.*, Sandra Sugawara, "Computer Networks and the 1st Amendment; Advanced Technology Raised New Questions and Concerns About an Age-Old Issue," *supra* note, at A12.

[32] Indeed, some states have prohibited common carriers from offering caller ID. *See e.g.*, NTIA Caller ID Reply Comments, *supra* note 27, at 6.

other law enforcement agencies collect a wide variety of data on crime statistics. To what extent could improved data collection technology help law enforcement personnel and policy makers better understand the problem of hate crime using telecommunications? Government data collection on, or monitoring of, acts of hate—in particular, those using media such as telephone lines or point-to-point radio—may also raise privacy concerns. NTIA therefore requests comment on the privacy concerns that arise from the use of data collection on hate crimes involving telecommunications.

VI. Conclusion

23. NTIA hereby requests comments in this inquiry to be filed on or before April 26, 1993, and reply comments to be filed on or before May 26, 1993.

Dated: March 19, 1993.

Thomas J. Sugrue,

Acting Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 93-6887 Filed 3-24-93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 56

Thursday, March 25, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950 1
11951–12144 2
12145–12328 3
12329–12536 4
12537–12900 5
12901–12996 8
12997–13188 9
13189–13400 10
13401–13528 11
13529–13694 12
13695–14144 15
14145–14302 16
14303–14494 17
14495–15070 18
15071–15260 19
15261–15414 22
15415–15750 23
15751–16102 24
16103–16344 25

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12154 (Amended by EO 12841) 13529
12193 (See EO 12840) 13401
12295 (See EO 12840) 13401
12351 (See EO 12840) 13401
12409 (See EO 12840) 13401
12463 (See EO 12840) 13401
12506 (See EO 12840) 13401
12554 (See EO 12840) 13401
12587 (See EO 12840) 13401
12629 (See EO 12840) 13401
12670 (See EO 12840) 13401
12706 (See EO 12840) 13401
12753 (See EO 12840) 13401
12791 (Superseded by EO 12840) 13401
12800 (See DOL final rule of March 15) 15402
12808 (See final rule of Jan. 14) 13199
12810 (See final rule of Jan. 14) 13199
12831 (See final rule of Jan. 14) 13199
12833 (See EO 12841) 13529
12836 (See final rule of Mar. 2) 12140
12836 (See DOL final rule of March 15) 15402
12840 13401
12841 13529

Proclamations:
6491 (Revoked by Proc. 6534) 13189
6531 11951
6532 13185
6533 13187
6534 13189
6535 15441
6536 15413
6537 15751
6538 15753

Administrative Orders:
Presidential Determinations:
No. 93–15 of February 27, 1993 13183

Memorandums:
March 4, 1993 14303

5 CFR

Ch. 14 13695
307 12145
432 13191
532 ..... 12146, 13193, 13194, 15415
752 13191
870 11953
871 11953
872 11953
873 11953

Proposed Rules:
317 11988
412 11988

7 CFR

2 ..... 11954, 11955
321 11957
354 14395
400 13531
702 11783
723 ..... 11959, 11960
729 11962
987 13695
993 13697
1106 14307
1260 12997
1413 ..... 12329, 12332, 15416, 15775
1421 14495
1427 ..... 12332, 15261, 15755
1434 14495
1464 11960
1493 ..... 11786, 13684, 15901
1540 16103
1703 13194
1901 12632
1943 15071
1944 ..... 12632, 14509
1951 ..... 15071, 15417
1980 15071
4284 12632

Proposed Rules:
29 13130
52 13130
55 13130
58 13130
59 13130
61 13130
68 14174
70 13130
90–159 13130
180 13130
1001 12634

1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1435.....16126
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174, 15901
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
26.....15810
50.....12339
50.....15303
60.....12342
110.....14344
810.....13427, 15441
834.....16268
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
607.....16104
614.....11792
618.....16104
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
108.....15756
121.....12334

14 CFR

25.....12537
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515, 15757, 15758, 15760, 16105, 16107, 16109, 16110, 16113, 16115, 16118
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264, 15762, 15763
93.....12128
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450, 15813, 16137
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118
121.....15730
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

4.....15763
5.....15763
305.....15086
1030.....12335
1116.....16119

Proposed Rules:

18.....16139
305.....12818
308.....13370
1204.....15815

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
230.....16141
239.....16141
240.....11804, 11806, 16151
250.....13719
259.....13719
274.....16141

18 CFR

2.....15418
11.....15765
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

Ch. I.....15816
284.....14530, 15311

19 CFR

4.....12538, 13195
19.....15770
111.....15770
112.....15770
122.....15770
146.....15770

20 CFR

Proposed Rules:

209.....11811
211.....11811
229.....16155
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

Ch. I.....15816
450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
215.....15773
234.....13534, 13950
236.....13007, 15773
240.....13534
570.....13686
582.....13884
583.....13870
700.....14509
813.....15773
882.....13828
905.....13916, 15773
913.....15773
968.....13916
3500.....13705

25 CFR

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274
52.....14517
602.....13409, 13413

Proposed Rules:

1.....14531, 15312, 15313, 15818, 15819
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964

Proposed Rules:

650.....11814

29 CFR

470.....15402
1910.....15089

2619.....13706
2676.....13707
Proposed Rules:
103.....15314
825.....13394
1910.....15526
2619.....15315
2676.....15315
2700.....12158

30 CFR

920.....15275
Proposed Rules:
56.....14492
57.....14492
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
935.....15315
938.....15456
950.....15318, 15319

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
988.....13007

33 CFR

1.....15228, 15901
100.....13214, 16121
110.....12539
117.....12540, 15419, 15420, 15421, 16122
154.....13550
155.....13708
165.....14151, 15089, 15775
Proposed Rules:
117.....12568
165.....15821, 15822

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
600.....13335, 15523
668.....14152
682.....13335
Proposed Rules:
50.....11924
232.....15748
649.....11928, 15824
674.....13356
682.....13356

36 CFR

Proposed Rules:
242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174

39 CFR

111.....13551
Proposed Rules:
3001.....12198

40 CFR

50.....13008, 15278, 15281, 15282
52.....11967, 14153, 15277, 15422, 15431
55.....14157
72.....15634
73.....15634
75.....15634
80.....13413, 14476, 16002
81.....12541, 15422, 15776
86.....13413, 15781
88.....11888
180.....14314, 14316, 15802, 15803, 15804, 16094
261.....15284
268.....14317
271.....12174, 14319, 14321, 15806
300.....12142, 15287
435.....12454
712.....13556
716.....13556
761.....15435, 15808
763.....15808
Proposed Rules:
Ch. 1.....12199, 12352, 13571, 13730
51.....13836
52.....12006, 12913, 12914, 13230, 13572, 13575, 14194, 15824
61.....15457
68.....13174
69.....13579
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
180.....12199, 12200, 13234, 13236, 13238, 13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
761.....12352, 13128

41 CFR

Ch. 301.....12890
301-7.....12890
302-11.....15436

43 CFR

Public Land Orders:
86.....11816
6958.....11968
6959.....14323
Proposed Rules:
3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11968, 14159
65.....14323, 15091
67.....14325
Proposed Rules:
67.....14350

45 CFR

400.....11793
1303.....13019
1611.....12335

46 CFR

10.....15228, 15901
12.....15228, 15901
15.....13360
25.....13364
552.....13414
Proposed Rules:
31.....15740
32.....15740
67.....12352

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795
5.....14328
13.....12632
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
73.....12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440
74.....11795
76.....11970, 11972
90.....12176, 12177
Proposed Rules:
Ch. I.....12915, 13041, 14367, 15120, 15461
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535, 16163
61.....13435
64.....12204, 13435, 14371
65.....16163
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436, 13437, 15321, 15461, 15462
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140

49 CFR

1.....12543
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463
582.....12545
591.....12905
1004.....16124
1007.....15290
Proposed Rules:
23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316
180.....12316
195.....12213
571.....12921, 13042, 13243, 13424, 15132
Ch. VI.....15816
613.....12064, 12084
614.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853, 12864, 14169, 14248, 14330
20.....15093
611.....14170
625.....13560
641.....13560
646.....11979
652.....14340
663.....11984, 16124
672.....11985, 11986, 13214, 13561
674.....12336
675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291
685.....14170
Proposed Rules:
17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541, 15828, 16164
100.....14350
625.....12017, 15463
641.....12018, 15132
646.....13732
663.....14543, 14549

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S.J. Res. 36/P.L. 103-9

To proclaim March 20, 1993, as "National Agriculture Day". (Mar. 20, 1993; 107 Stat. 38; 2 pages)

Last List March 24, 1993

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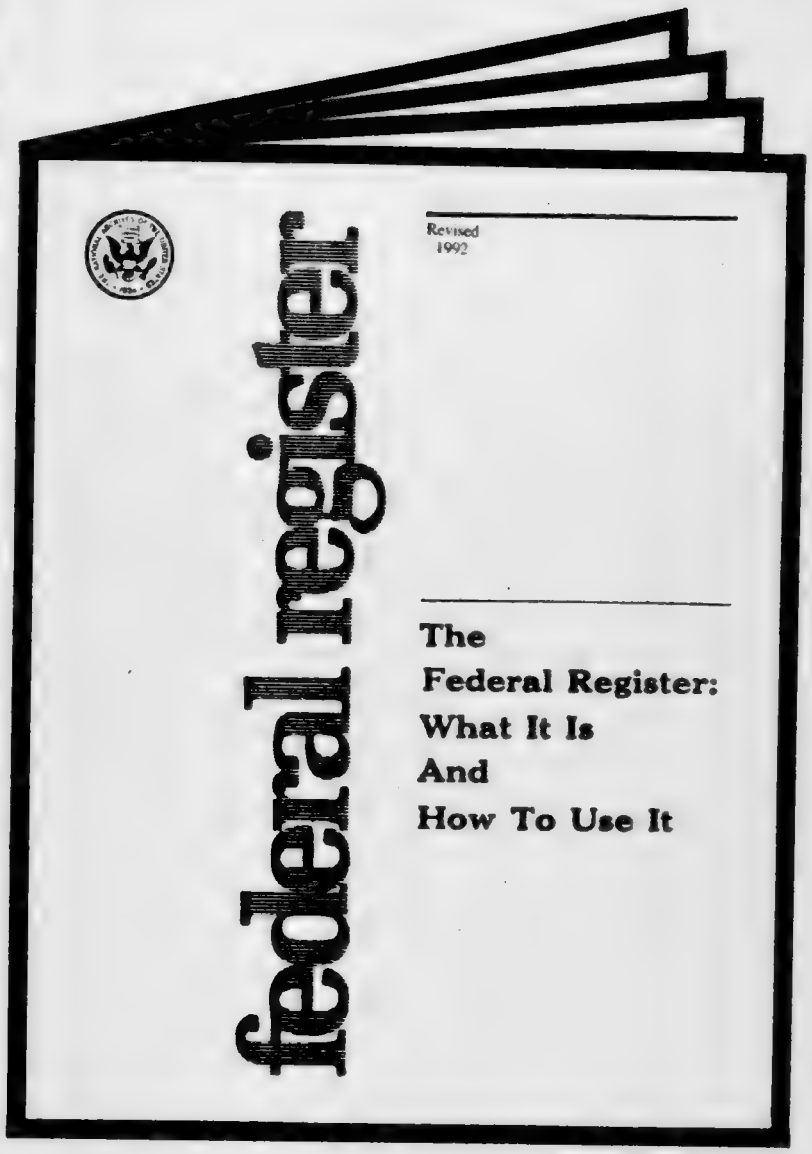

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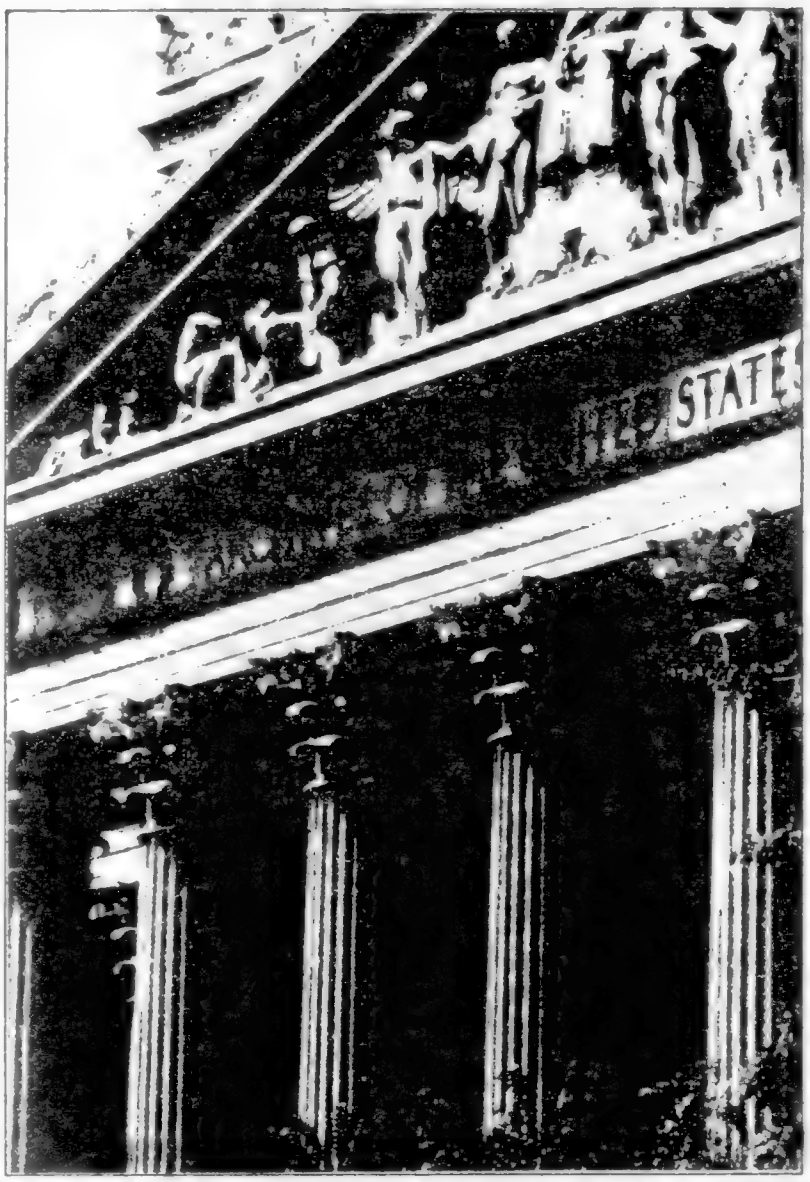

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Friday
March 26, 1993

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Contents

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

Administrative Conference of the United States
PROPOSED RULES
Recommendations:
Discretionary grants award; peer review, 16375

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles), 16410

Agriculture Department
See Forest Service
See Soil Conservation Service
NOTICES
United States-Canada Free-Trade Agreement; fresh fruit and vegetable imports:
Potatoes from Canada, 16394

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Coast Guard
RULES
Regattas and marine parades:
Pony Penning Swim, 16357
PROPOSED RULES
Ports and waterways safety:
Prince William Sound, AK, et al.; escort vessels for certain oil tankers, 16391
NOTICES
Environmental statements; availability, etc.:
Niagara Falls, NY, 16442

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 16401

Customs Service
RULES
Merchandise entry:
Special summary steel invoice elimination, 16349

Defense Department
See Engineers Corps

Employment and Training Administration
NOTICES
Adjustment assistance:
Altoona Steel, 16417
American Welding & Manufacturing Co. et al., 16417
Merrow Machine Co., 16418
Morristown Manufacturing Co., Inc., et al., 16419

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 16421

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
McClellan Air Force Base and City of Sacramento, CA; Magpie Creek diversion improvement project, 16402
Little Goose and Lower Granite Projects, Snake River, WA; reservoir drawdown; damage claims filing and processing procedures, 16403

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 16406
Weekly receipts, 16407
Meetings:
Hazardous Waste Identification System, 16408

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 16444

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Hartzell, 16347
PROPOSED RULES
Airworthiness directives:
Precise Flight, Inc., 16377

Federal Communications Commission
RULES
Frequency allocations and radio treaty matters:
Low-earth orbit satellites below 1 GHz, 16360
NOTICES
Public safety radio communications plans:
Hawaii, 16408
West Virginia, 16408

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Staten Island Cogeneration Corp., 16405
Thermo Power & Electric, Inc., 16404
Hydroelectric applications, 16405

Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
North Dakota Industrial Commission, 16404
Wyoming Oil & Gas Conservation Commission, 16404
Applications, hearings, determinations, etc.:
NW Energy (William Lake) Limited Partnership, 16406
Southern Company Services, Inc., 16406

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 16444

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 16444
Applications, hearings, determinations, etc.:
Cardinal Bancshares, Inc., et al., 16409
Haugo Bancshares, Inc., 16409
Middletown Savings Bank Employee Stock Ownership Trust et al., 16409

Federal Trade Commission
PROPOSED RULES
Octane certification and posting:
Alternative liquid automotive fuels (including diesel fuel oil), 16464
NOTICES
Agency information collection activities under OMB review, 16479

Federal Transit Administration
NOTICES
Grants; FTA sections 3 and 9 obligations, 16442

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida—
General Electric Co.; simulation, testing, and control systems plant, 16395
Texas—
Amoco Oil Co.; refinery, petrochemical and MTBE complex, 16396

Forest Service
NOTICES
Environmental statements; availability, etc.:
Payette National Forest, ID, 16394

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Health Resources and Services Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service
NOTICES
Advisory committees; annual reports; availability, 16411
Meetings; advisory committees:
May, 16411

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 16412

Indian Affairs Bureau
NOTICES
Indian Child Welfare Act; designated tribal agents for service of notice; list, 16450
Metlakatla Indian Community, AK; child custody, jurisdiction reassumption; correction, 16448

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Affiliated group; definition; correction, 16349
NOTICES
Meetings:
Art Advisory Panel, 16443

International Trade Administration
NOTICES
Antidumping:
Steel wire rope from —
Korea, 16397
Antidumping and countervailing duties:
Administrative review requests, 16397
Countervailing duties:
Pig iron from Brazil, 16398

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Gateway Western Railway Co., 16415
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 16416
Railroad services abandonment:
CSX Transportation, Inc., 16416

Justice Department
See Juvenile Justice and Delinquency Prevention Office
See National Institute of Justice

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
Coalition for Juvenile Justice, 16462

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities under OMB review, 16417

Land Management Bureau
NOTICES
Opening of public lands:
Montana, 16413
Realty actions; sales, leases, etc.:
California; correction, 16413
Nevada, 16414
Survey plat filings:
Nevada, 16412
Withdrawal and reservation of lands:
Idaho, 16414

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Advisory Council on the Public Service
NOTICES
Federal Government as employer; hearing, 16422

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 16422

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Program plan (1993), 16416

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 16374
Bering Sea and Aleutian Islands groundfish; correction, 16446
Gulf of Alaska groundfish, 16372, 16373
Gulf of Mexico reef fish, 16371
Marine mammals:
Steller sea lions; navigational transit through rookery buffer zones, 16369
NOTICES
Fishery product inspection and certification; fees and charges, 16399
Meetings:
New England Fishery Management Council, 16401
North Pacific Fishery Management Council, 16401

National Park Service
NOTICES
Cuyahoga Valley National Recreation Area, OH; sale of lands, 16415

National Science Foundation
NOTICES
Meetings:
Arctic Research Plan, third biennial revision, 16423
Elementary, Secondary and Informal Education Special Emphasis Panel, 16423
Interagency Arctic Research Policy Committee, 16423

Nuclear Regulatory Commission
PROPOSED RULES
Reactor site criteria:
Seismic and earthquake engineering criteria for nuclear power plants, 16377
NOTICES
Applications, hearings, determinations, etc.:
Maine Yankee Atomic Power Co., 16423

Personnel Management Office
RULES
Privacy Act; implementation; correction, 16446

Postal Rate Commission
PROPOSED RULES
Practice and procedure rules:
Postal rates and fees changes; four-year strategic rate cycle; implementation; withdrawn; and potential improvements, 16392

Presidential Documents
ADMINISTRATIVE ORDERS
Trade:
European Community discriminatory trade policy against certain U.S. goods, determination of existence and subsequent application or suspension of retaliatory measures; authority delegation to U.S. trade representative (Presidential Determination No. 93-16 of March 20, 1993), 16345

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 16411

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 16445
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 16428, 16436
Options Clearing Corp., 16438
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 16427
Cincinnati Stock Exchange, Inc., 16427
Midwest Stock Exchange, Inc., 16428
Pacific Stock Exchange, Inc., 16439
Philadelphia Stock Exchange, Inc., 16439
Applications, hearings, determinations, etc.:
Health Care REIT, Inc., 16440
Insteel Industries, Inc., 16440
Instrument Systems Corp., 16440
Oneita Industries, Inc., 16441

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 16441

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Lolo/Ford's Creek Agricultural Pollution Abatement Plan, ID, 16395
Lower Pavette River Water Quality Planning Project, ID, 16395

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 16350
West Virginia, 16353
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 16381
Indiana; correction, 16379
Maryland, 16383, 16384, 16386
Ohio, 16388
Pennsylvania, 16389

Thrift Depositor Protection Oversight Board
NOTICES
Meetings; regional advisory boards:
Regions I through VI, 16441

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration

Treasury Department
See Customs Service
See Internal Revenue Service

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Sacred banner of Greek Revolution of 1821, 16443

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Ionizing radiation exposure claims; ovarian cancer and parathyroid adenoma, 16358
Procedural due process and appellate rights, 16359

Separate Parts In This Issue

Part II
Department of the Interior, Bureau of Indian Affairs, 16448

Part III
Department of the Interior, Bureau of Indian Affairs, 16450

Part IV
Department of Justice, Juvenile Justice and Delinquency Prevention Office, 16462

Part V
Federal Trade Commission, 16464

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
Proposed Rules:
305.....16375

3 CFR
Administrative Orders:
Presidential Determination:
No. 93–16 of
March 20, 1993.....16345

5 CFR
297.....16446

10 CFR
Proposed Rules:
50.....16377
52.....16377
100.....16377

14 CFR
39.....16347
Proposed Rules:
39.....16377

16 CFR
Proposed Rules:
306.....16464

19 CFR
141.....16349
178.....16349

26 CFR
1.....16349

30 CFR
917.....16350
948.....16353
Proposed Rules:
914 (3 documents).....16379, 16381
920 (3 documents).....16383, 16384, 16386
935.....16388
938.....16389

33 CFR
100.....16357
Proposed Rules:
168.....16391

38 CFR
3 (2 documents).....16358, 16359

39 CFR
Proposed Rules:
3001.....16392

47 CFR
2.....16360

50 CFR
227.....16369
611.....16446
641.....16371
672 (3 documents).....16372, 16373
675 (2 documents).....16374, 16446

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–16 of March 20, 1993

Delegation of Authority To Modify or Terminate Title VII Trade Action Taken Against the European Community

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. section 301, I hereby delegate to the United States Trade Representative the powers granted the President:

(1) in section 305(g)(2) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(2)) (the Act), to modify or restrict the application of the sanctions which were imposed upon the European Community by Presidential Determination 92–22 of April 22, 1992; and

(2) in section 305(g)(3) of the Act to terminate such sanctions and remove the European Community from the report under section 305(d)(1) of the Act at such time as he determines that the European Community has eliminated the discrimination identified in Presidential Determination 92–22.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, March 20, 1993.

[FR Doc. 93–7155
Filed 3–24–93; 2:39 pm]
Billing code 3190–01–M

Rules and Regulations

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–17; Amendment 39–8463; AD 93–01–09]

Airworthiness Directives; Hartzell Model HC–B4TN–5( )L/LT10282( )( )–5.3R Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Model HC–B4TN–5( )L/LT10282( )( )–5.3R propellers installed on Mitsubishi MU–2 series aircraft. This action requires initial and repetitive inspections of propeller blades for fatigue cracks, and replacement of propeller blades, or rework of the radiused end of the blade bearing bore, as necessary. This action also requires installation of propeller blades modified to a new configuration as a terminating action to the inspection requirements. This amendment is prompted by reports of propeller blade separation that resulted from fatigue cracks. The actions specified in this AD are intended to prevent propeller blade fatigue cracks progressing to the point of propeller blade separation.

DATES: Effective on April 20, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1993.

Comments for inclusion in the Rules Docket must be received on or before May 25, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–17, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, Ohio 45356. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, Small Airplane Certification Directorate, Aircraft Certification Service, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694–7130; fax (312) 694–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received three reports of propeller blades separating from Hartzell Model HC–B4TN–5( )L/LT10282( )( )–5.3R propellers installed on Mitsubishi MU–2 series aircraft. The manu§ facturer's investigation of the failed blades revealed fatigue cracks at the smaller internal bearing bore. Although the specific cause of crack initiation has not been identified, corrosion or other damage could create increased localized stresses in this critical area, which may result in fatigue cracks. This condition, if not corrected, can result in propeller blade fatigue cracks progressing to the point of propeller blade separation.

The FAA has reviewed and approved the technical contents of Hartzell Service Bulletin (SB) No. 136F, dated August 10, 1990; and Hartzell SB No. 136G, dated November 15, 1991. These SB's describe procedures for initial and repetitive inspections for propeller blade fatigue cracks, and replacement of blades or rework of the radiused end of the blade bearing bore, as necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this AD is being issued to prevent propeller blade separation. This AD requires an initial and subsequent repetitive inspections for propeller blade fatigue cracks, and replacement of propeller blades or rework of the radiused end of the blade bearing bore, as necessary. All affected propeller blades showing evidence of cracks or propeller blades not meeting the rework criteria of the service bulletin must be replaced with serviceable blades prior to further flight. The actions are required to be accomplished in accordance with the service bulletin described previously.

Additionally, the AD requires installation of propeller blades modified to the "N" configuration into the propeller assembly within 15 months after the effective date of this AD, or the next overhaul, whichever occurs first. Propeller blades modified to the "N" configuration have design improvements in the internal bearing radius that reduce the susceptibility to corrosion and localized stresses. The modified blades also have additional thickness added to the blade inboard stations to reduce operating stresses. The FAA has determined that long term continued operational safety will be better assured by actual modification of the propeller to remove the source of the problem, rather than by repetitive inspections. Therefore, the installation of propeller blades modified to the "N" configuration constitutes a terminating action to the inspection requirements of this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–17." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–09 Hartzell: Amendment 39–8463. Docket 92–ANE–17.

Applicability: Hartzell Model HC–B4TN–5( )L/LT10282( )( )–5.3R propellers installed on Mitsubishi MU–2 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade fatigue cracks from progressing to the point of propeller blade separation, accomplish the following:

(a) Initially inspect the propeller blade bearing bore area for cracks in accordance with the following:

Propeller blade time in service (TIS) on the effective date of this AD	Compliance time after the effective date of this AD
Greater than 400 hours TIS since the last inspection accomplished in accordance with Hartzell Service Bulletin (SB) No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991; or greater than 400 hours TIS since new, if never inspected.	Within 100 hours TIS or the next annual inspection, whichever occurs first.
Less than or equal to 400 hours TIS since the last inspection accomplished in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G; dated November 15, 1991; or less than or equal to 400 hours TIS since new.	Prior to the accumulation of 500 hours TIS since the last inspection accomplished in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991; or 500 hours TIS since new, if never inspected.

(b) Thereafter, inspect the propeller blade bearing bore area for cracks in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991, at intervals not to exceed 500 hours TIS since the last inspection accomplished in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991.

(c) Prior to further flight, rework or replace propeller blades in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991, based on the inspection results of paragraphs (a) or (b) of this AD, as follows:

(1) Replace with a serviceable propeller blade any cracked blades or blades not meeting the rework criteria of Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991.

(2) Rework the radiused end of the blade bearing bore on propeller blades meeting the rework criteria in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991.

(d) Within 15 months after the effective date of this AD, or at the next overhaul, whichever occurs first, replace Hartzell HC–B4TN–5( )L/LTLT10282( )( )–5.3R propeller blades with new Hartzell HC–B4TN–5( )L/LT10282N( )( )–5.3R propeller blades. Installation of all "N" suffixed blades in a propeller assembly constitutes a terminating action to the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, replacement, and rework shall be done in accordance with:

Document No.	Page No.	Date
Hartzell SB No. 136F. Total pages: 18.	1–18	Aug. 19, 1990.
Hartzell SB No. 136G. Total pages: 18.	1–18	Nov. 15, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, Ohio 45356–2634. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 20, 1993. Issued in Burlington, Massachusetts, on February 25, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–6895 Filed 3–25–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 178

[T.D. 93–21]

Elimination of Special Summary Steel Invoice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to eliminate the Special Summary Steel Invoice (SSSI). The SSSI was originally designed for use in administering the trigger price mechanism as an enforcement procedure under the Antidumping Act of 1921, as amended. This amendment is being made because the trigger price mechanism is no longer being used and the SSSI is not needed for any other purpose.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Textiles & Metals Branch, Trade Programs Division, Office of Trade Operations (202) 927–0162.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision 78–53, published in the **Federal Register** on February 13, 1978 (43 FR 6065), amended § 141.89, Customs Regulations (19 CFR 141.89), by adding a new paragraph (b) to require that a special invoice be presented to Customs for each shipment of certain steel articles having an aggregate purchase price of a minimum dollar amount. The information provided by this special invoice, designated the Special Summary Steel Invoice (SSSI), Customs Form 5520, was originally used to implement the so-called trigger price mechanism. Under this procedure, trigger prices for certain steel mill products were established as the basis upon which imports of such products could be monitored for purposes of determining whether investigations under the Antidumping Act of 1921, as amended, were appropriate.

The value-based trigger price mechanism was replaced by a series of quantitative restrictions on steel imports, the last of which expired on March 31, 1992. Therefore, the SSSI no longer has any use. Elimination of the Special Summary Steel Invoice will provide monetary and manpower savings both for the Federal Government and for the trade community. Accordingly, § 141.89 is being amended by removing paragraph (b). In addition, a conforming change is being made to § 178.2, Customs Regulations (19 CFR 178.2), to reflect the removal of this information collection requirement.

Inapplicability of Public Notice and Comment Procedures

Because this amendment reduces the regulatory paperwork burden on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary and contrary to the public interest.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required by 5 U.S.C. 553(b) or any other law, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

Because this document does not meet the criteria for a "major rule" as specified in E.O. 12291, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was James A. Seal, Metals and Machinery Classification Branch, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects

19 CFR Part 141

Customs duties and inspection, Imports, Invoice requirements.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

Amendment to the Regulations

Parts 141 and 178, Customs Regulations (19 CFR parts 141 and 178), are amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Subpart F also issued under 19 U.S.C. 1481;

* * * * *

§ 141.89 [Amended]

2. Section 141.89 is amended by removing paragraph (b).

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by removing the listing for § 141.89(b).

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 9, 1993

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93–6927 Filed 3–25–93; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Part 1

[T.D. 8462]

RIN 1545–AH09

Definition of Affiliated Group; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8462, which was published in the **Federal Register** for Tuesday, December 29, 1992 (57 FR 61797). The final regulations set forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group.

FOR FURTHER INFORMATION CONTACT: Ken Cohen, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction provide rules under section 1504(a) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8462 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8462), which was the

subject of FR Doc. 92–31058, is corrected as follows:

On page 61800, column 2, in the preamble, the **Special Analyses** paragraph is corrected to read as follows:

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. I has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–6912 Filed 3–25–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Kentucky Revised Statutes Passed by the 1992 Kentucky General Assembly

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment filed by Kentucky on July 30, 1992, (Administrative Record No. KY–1171) consists of seven bills affecting Kentucky Revised Statutes (KRS) chapter 350 that were enacted by the 1992 Regular Session of the Kentucky General Assembly and signed into law by the Governor.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Amendment

By letter of July 30, 1992, (Administrative Record No. KY–1171) Kentucky submitted a proposed program amendment containing seven bills affecting Kentucky Revised Statutes (KRS) Chapter 350 which were enacted by the 1992 Regular Session of the Kentucky General Assembly and signed into law by the Governor. The proposed amendment consists of House Bill 844, and Senate Bills 189, 190, 191, 298, 318 and 381. As submitted on July 30, 1992, the amendment included Senate Joint Resolution (S.J.R.) 108 which covers the same general subject area as Senate Bill 381. Since the resolution does not have any direct effect on Kentucky's program, no further action will be taken on S.J.R. 108 in this rulemaking.

OSM announced receipt of the proposed amendment in the September 23, 1992, **Federal Register** (57 FR 43952), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 23, 1992.

Two of the bills included in the proposed amendment filed on July 30, 1992, refer to areas of Kentucky's program which are the subject of separate program amendments filed recently by Kentucky, and which are currently under review by OSM. Therefore, these two bills are being separated from this final rulemaking and will be considered separately. Senate Bill 191, which makes several amendments to KRS Chapter 350 for consistency with SMCRA as amended by Public Law 101–508, the "Abandoned Mine Reclamation Act of 1990", will be consolidated with the proposed amendment filed by Kentucky on June 24, 1992, (Administrative Records Number K–63) which involves modifications to Kentucky's Abandoned Mine Reclamation Plan. Senate Bill 318, which relates to conferences, hearings, civil penalties, and appeals, will be consolidated with the proposed amendment filed by Kentucky on July 28, 1992 (Administrative Record Number KY–1170) which involves revisions to Kentucky's Administrative Regulations at 405 KAR 7:001, 7:091, 7:092, 8:001, 10:001, 12:001, 12:020, 16:001, 18:001, 20:001, and 24:001.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Kentucky program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. House Bill (H.B.) 844

Section 1 of H.B. 844 creates a new section in KRS Chapter 350 which requires that, prior to the issuance of a permit, if the operation will disturb any roads used as access to an oil or gas well or other oil and gas facility, the permit applicant shall certify that he has met and conferred with, or offered to meet and confer with, the well operator as to the disturbance. While there is no corresponding Federal rule, the Director finds that the proposal is not inconsistent with the requirements of SMCRA and the Federal regulations.

B. Senate Bill (S.B.) 189

S.B. 189 raises the annual production limit for a "small coal operator" from 200,000 tons per year to 300,000 tons per year. This limit is revised at KRS 350.260 where it determines eligibility for several members of the Small Coal Operators Advisory Council; at KRS 350.450(4)(c) where it sets aside 20 percent of abandoned mine land reclamation work for small operators; and at KRS 350.705(1) (b) and (c) where it determines eligibility for several

members of the Kentucky Bond Pool Commission.

This limit is applicable only for these specific purposes under Kentucky law, and is not related to Kentucky's implementation under KRS 350.465(f) and 405 Kentucky Administrative Regulations (KAR) 7:080 of the Federal Small Operator Assistance Program at Section 507(c) of SMCRA. While there are no corresponding Federal rules, the Director finds that the proposals contained in S.B. 189 are not inconsistent with the requirements of SMCRA and the Federal regulations.

C. Senate Bill (S.B.) 190

1. Section 1 of S.B. 190 amends KRS 350.010 to exclude from the definition of "surface coal mining operations" the extraction of 25 to 250 tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution. Since 701(13) of SMCRA effectively provides that SMCRA applies only to those persons who remove or intend to remove more than 250 tons of coal and, the Federal regulations at 30 CFR 700.11 provide that the regulations promulgated under SMCRA do not apply to the extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation, the Director finds that the revised State definition remains no less stringent than SMCRA and no less effective than the Federal regulations.

2. Section 1 of S.B. 190 amends KRS 350.010 by deleting the definition of "fill bench". The term is not used anywhere in KRS Chapter 350 or the regulations issued pursuant thereto. Therefore, the Director finds that the deletion of the definition will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

3. Section 2 of S.B. 190 amends KRS 350.130(1) by deleting a cross-reference to KRS 350.130(2) which is no longer relevant as a result of a revision to the payment provisions of subsection (2) which was made in 1988. Since the reference which is being deleted is meaningless, the Director finds that the deletion will not render Kentucky's rules inconsistent with SMCRA and the Federal regulations.

4. Section 3 of S.B. 190 contains a verbatim listing of KRS 350.990 as currently contained in the Kentucky Surface Mining Law. As submitted, KRS 350.990(8) provides that "except as permitted by law, any person who willfully and knowingly resists, prevents, impedes or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than 1 year, or both." This rule was previously considered by OSM in a program amendment filed by Kentucky on May 8, 1990. At that time, the Director stated, in Findings 12 (d) and (e), 56 FR 4726 (February 6, 1991), "[I]n addressing the protection of government employees at section 704, SMCRA contains only the element of 'willfully'. The addition by Kentucky of a second element, 'knowingly,' requires an additional element of proof, rendering the statute more difficult to use successfully against persons so interfering. Therefore, as the Director finds the amendment to SB–141 section 1(8) that modifies KRS 350.990 to be less stringent than section 704 of SMCRA, he is not approving the amendment of the word 'knowingly'." Inasmuch as the rule, as set forth in S.B. 190 continues to include the term "knowingly", the Director restates his position that the inclusion of this element is not in accordance with section 704 of SMCRA and cannot be approved.

5. Section 4 of S.B. 190 repeals KRS 350.0281, Moratorium on regulations—Exceptions. This moratorium, under its own terms, was effective for only a two year period which ended on July 15, 1988. Therefore, the Director finds that the repeal of KRS 350.0281 will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

D. Senate Bill (S.B.) 298

1. Section 1 of S.B. 298 revises KRS 350.010 by amending the definition of "operator", and adding definitions for "permit applicant" or "applicant", and "permittee".

—Kentucky is revising its statutory definition of "operator" by limiting its application to those instances where more than 25 tons of coal are removed or are intended to be removed from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location. While the Federal definition at section 701(13) of SMCRA refers to removal of more than 250 tons of coal, the 25 ton limitation used by Kentucky is consistent with the limitation contained in the previously approved definition of "surface coal mining operations" (56 FR 4722, February 6, 1991). Therefore, the Director finds the proposed statutory definition of "operator" is no less stringent than its Federal counterpart.

By letter dated November 13, 1992 (Administrative Record Number KY–1198), OSM pointed out to Kentucky that its program did not include the "removal of coal from coal refuse piles" in its definition of operator, as contained in the Federal regulatory definition of operator at 30 CFR 701.5. OSM asked Kentucky for clarification as to whether the State interpreted the term "surface coal mining operations", as contained in the proposed definition of operator, to include removal of coal from coal refuse piles. In its response dated February 8, 1993 (Administrative Record Number KY–1209), Kentucky stated that it believes the definition of "surface coal mining operations" at KRS 350.010 was broad enough to permit the interpretation that it includes removal of coal from coal refuse piles. Kentucky also stated that it was preferable to expressly state this in the statute in order to insure consistency with federal requirements, and it intends to support 1994 legislation to revise the definition of "surface mining operations" accordingly.

—"Permit applicant" or "applicant" is defined to mean a person applying for a permit. "Permittee" is defined as a person holding a permit to conduct surface coal mining and reclamation operations. These definitions are substantively identical to the Federal definitions at sections 701 (16) and (18) of SMCRA. Therefore, the Director finds Kentucky's definitions are no less stringent than the Federal counterparts.

2. Section 17 of S.B. 298 revises KRS 350.130(1) by adding a provision whereby the bonding company, or financial institution providing the bond, may, at any stage of the reclamation process, pay the remaining encumbered balance of the bond and thereby discharge its obligation under the bond. Although there is no direct Federal counterpart to this provision, it is not in conflict with any Federal requirement. As provided by 30 CFR 800.50(d)(1), only the operator or permittee is liable for reclamation costs in excess of the amount of the bond. Therefore, the Director finds that the addition of this provision does not render the Kentucky program less stringent than SMCRA or less effective than the Federal regulations.

3. In numerous sections of S.B. 298, the use of the terms "applicant", "permit applicant", "permittee", "person", and "operator" is revised in order to achieve consistency in use of the terms and to more clearly identify

the entities that are intended to be subject to the particular statutory requirements involved. The Director finds that the revisions add clarity to Kentucky's rules and do not render those rules inconsistent with the requirements of SMCRA. The sections of S.B. 298, and the specific sections of KRS Chapter 350 which are revised, are listed below.

S.B. 298

Section	KRS chapter 350 section
2	350.028(3).
3	350.050(4).
4	350.055(4) and (5).
5	350.060(1)(a), (3), (5) (11), (14)(c) and 14(d).
6	350.062(5) and (6).
7	350.064(1).
8	350.070(2) and (3).
9	350.080.
10	350.090(1), (2) and (3).
11	350.093(2)(a), (3), (4)(a), (4)(b) - and (4)(c).
12	350.095.
13	350.100(1) and (2).
14	350.113(1) and (2).
15	350.117.
16	350.120.
17	350.130(1) and (3).
18	350.135(3).
19	350.150(3).
20	350.151(2).
21	350.230.
22	350.255(2).
23	350.405.
24	350.410.
25	350.415.
26	350.420.
27	350.421(2).
28	350.425.
29	350.430.
30	350.435.
31	350.440.
32	350.445.
33	350.455.
34	350,465(3)(d), (e) and (f).
35	350.990(1), (2), (3), (4), (5), (7), (8) and (11).

E. Senate Bill (S.B.) 381

1. Section 1 of S.B. 381 adds a new section to KRS Chapter 350 that requires the Cabinet to allow the use of a soil test or other simplified procedures to determine if soil productivity on mined prime farmlands has been restored to levels that would allow average crop yields to equal or exceed the average yield of the reference crops, provided the methods are approved by OSM, The Federal regulations at 30 CFR 823.15 require, as the measure of soil productivity, and prior to the release of the operator's performance bond, the actual growth of crops for at least a three-year period. In adopting these regulations, the Secretary pointed out that "OSM has determined that cropping is the only method currently available to test the restoration of the productivity of prime farmland soils because insufficient research has been published that demonstrates the reliability of any other method" (48 FR 21458, May 12, 1983). OSM's position has been supported by the courts in *NWF* v. *Hodel*, U.S. Court of Appeals for the District of Columbia Circuit. Inasmuch as Kentucky's proposal is contingent upon OSM approval and OSM, to date, has only approved actual crop yields, the Director finds that the proposal will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

2. Section 2 of S.B. 381 adds a new section to KRS Chapter 350 that requires the Cabinet to encourage research and data collection to determine the validity of using a soil test or other simplified procedure to determine if mined prime farmland soils will meet yield requirements. As stated in (a) above, currently the only method accepted by OSM to prove restoration of soil productivity of prime farmland is the actual growing of crops for a minimum of three years. However, the Director finds that Kentucky's proposal to encourage research into the validity of other methods that might ultimately be acceptable to OSM will not render Kentucky's rules inconsistent with the requirement of SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing was announced in the September 23, 1992, **Federal Register** (57 FR 43952). The public comment period closed on October 23, 1992. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. On October 26, 1992, the Kentucky Resources Council (KRC) filed comments in response to the proposed rule. Those comments are discussed below.

House Bill 844: KRC stated that it was unclear what effect the amendment to KRS 353.200(1) would have on Kentucky's permanent regulatory program. That provision states, "[t]he department shall exercise supervision over all mining operations in close proximity to any well". The Director has determined that only Section 1 of H.B. 844 pertains to the State surface mining law. The other sections of this legislation apply only to oil and gas drilling operations, which are not regulated under SMCRA. Therefore, they should not be considered part of this amendment, and no OSM review or approval is required.

However, in a letter to OSM dated February 8, 1993 (Administrative Record Number KY–1209), Kentucky pointed out that while it couldn't be guaranteed that the responsibilities of the two departments would never conflict, such conflicts should be resolved consistent with the requirements of SMCRA.

Senate Bill 190: Revised KRS 350.010 Section 1(1) provides an exclusion from the definition of "surface coal mining operations" for the extraction of 25 to 250 tons of coal incidental to privately financed construction where the coal is donated to charitable or educational organizations. KRS requested clarification by Kentucky that the applicant has the burden of demonstrating exemption under the Act. The Director, in approving the revision made by S.B. 190, determined that Kentucky's statutory provisions are no less effective than the Federal requirements set forth at 30 CFR 700.11. The Director does not believe any further clarification by Kentucky is required.

Senate Bill 298: KRC requested clarification of the provisions of Section 17 of the Bill regarding discharging of the obligation of a surety who pays the remaining encumbered balanced of the bond. KRC was concerned about the surety being relieved or responsibility arising from violations created by the surety during reclamation. In response to a request for clarification from OSM (Administrative Record Number KY–1198), Kentucky stated "if the surety itself creates additional violations while working on the site, the surety cannot escape its responsibility for those additional violations by then paying over the bond." The Director believes this response answers KRC's concerns, and, as set forth in Finding D.2. herein, he finds that this provision will not render Kentucky's program less stringent than SMCRA or less effective than the Federal regulations.

Senate Bill 381: KRC indicated its lack of any objections to this bill, while reserving technical concerns until Kentucky actually proposes a specific soil test as a program amendment. No action is required regarding this comment.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The Mine Safety and Health Administration,

the U.S. Forest Service, the Bureau of Land Management, and the Bureau of Mines all generally supported the amendment or had no substantive comments.

V. Director's Decision

Based on the above findings, the Director is approving, with the exception of the issue discussed in Finding C.4, the program amendment as submitted by Kentucky on July 30, 1992, excluding Senate Bills 191 and 318 which have been separated in order to be considered separately by OSM.

The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determination

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 5, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (qq) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(qq) The following amendments to the Kentucky Revised Statutes (KRS) submitted to OSM on July 30, 1992, are approved, with the exception noted herein, effective March 26, 1993. Amendments to KRS Chapter 350 as contained in House Bill 844; amendments to KRS Chapter 350 §§ 350.260, 350.450(4)(c), and 350.705(1) (b) and (c) as contained in Senate Bill 189; amendments to KRS Chapter 350 §§ 350.010, 350.130(1), and 350.0281, as contained in Senate Bill 190; amendments to KRS Chapter 350 §§ 350.010, 350.130(1), and numerous other sections revised to achieve consistency in the use of the terms "applicant", "permit applicant", "permittee", "person", and "operator", as contained in Senate Bill 298; and amendments to KRS Chapter 350 as contained in Senate Bill 381.

[FR Doc. 93–6979 Filed 3–25–93; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 948

West Virginia Abandoned Mine Land Program; Expanded Eligibility Criteria, Acid Mine Drainage Treatment and Abatement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with exceptions, of proposed program amendments to the West Virginia Abandoned Mine Land Reclamation Plan (hereinafter referred to as the West Virginia AMLR Plan), and the West Virginia Abandoned Mine Lands and Reclamation Act (AMLRA), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were filed in response to changes to SMCRA made by the Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508) which was enacted on November 5,

1990, and became effective October 1, 1991. The amendments are intended to revise West Virginia's AMLR Plan and Sections 2 and 4 of the AMLRA to be consistent with the changes to SMCRA.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the West Virginia Program.

The Secretary of the Interior approved the West Virginia AMLR plan on February 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial submission, as well as the Secretary's findings and the disposition of comments can be found in the January 23, 1981, **Federal Register** (46 FR 7324–7327). Subsequent actions taken with regard to the West Virginia AMLR plan can be found in 30 CFR 948.20 and 948.25.

II. Submission of Amendment.

By letter dated October 25, 1991 (Administrative Record Number WVAML–146), West Virginia submitted a proposed amendment to its AMLR plan. The amendment consists of new narratives to be added to the approved West Virginia AMLR plan as provided for by 30 CFR 884.13.

OSM announced receipt of the proposed amendment in the April 13, 1992, **Federal Register** (57 FR 12790), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 13, 1992.

By letter dated September 17, 1991 (Administrative Record Number WVAML–145), West Virginia submitted an amendment to the AMLRA, consisting of House Bill (H.B.) 2492 which was passed by the West Virginia Legislature and became effective on March 9, 1991. The receipt of this amendment was not announced in the April 13, 1992, **Federal Register** notice (57 FR 12790).

OSM announced receipt of the proposed amendment to the AMLR plan and the proposed amendment to the AMLRA in the October 29, 1992, **Federal Register** (57 FR 49052), and in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on November 30, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR Part 884, and 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the West Virginia AMLR Plan and AMLRA. Any minor revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions not specifically discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to West Virginia's AMLR Plan

On October 25, 1991, West Virginia submitted proposed revisions to its AMLR Plan consisting of two new sections (Expanded Eligibility Criteria and Acid Mine Drainage Treatment and Abatement Program). The State subsequently submitted minor changes to the proposed revisions on June 18, 1992, July 21, 1992, and December 15, 1992 (Administrative Record Numbers WVAML–164, WVAML–167, and WVAML–171, respectively), in response to requests for clarification from OSM. The proposed revisions, as adjusted, consist of the following provisions:

1. Expanded Eligibility Criteria

West Virginia is proposing, in this section, to expand eligibility for AML funding to include Priority One or Two sites (as defined in Sections 403 (a)(1) and (a)(2) of SMCRA) abandoned between (a) August 4, 1977 and January 21, 1981 (known as interim program sites), where bonds, other forms of financial guarantees, or any other sources of funding are not sufficient to provide for adequate reclamation or abatement; or (b) August 4, 1977 and November 5, 1990, (known as "surety failure sites") where the surety of the mining operator became insolvent during such period, and funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement. On July 21, 1992 (Administrative Record Number WVAML–167), West Virginia responded to a request for clarification from OSM dated July 9, 1992 (Administrative Record Number WVAL–166), as to whether or not the State's Special Reclamation Fund would be considered an "other source" of funding and would, therefore, be used to reclaim sites covered by the new revisions prior to the expenditure of any AML money. The State responded that "(I)n the case of reclamation of priority one or two surety failures, AML money will be used. In the case of lower priority surety failures, Special Reclamation money will be used to reclaim the site equal to the original bond."

Section 402(g)(4)(B)(i) of SMCRA provides for the use of AML funds in connection with "interim sites" where funds available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site. Section 402(g)(4)(B)(ii) provides for the use of AML funds in connection with "surety failure sites" where funds immediately available from proceedings relating to the insolvency of the surety, or from any financial guarantee or other sources are not sufficient to provide for adequate reclamation or abatement at the site. Pursuant to chapter 22A, article 3, section 11, subsection (g) of the West Virginia Code, West Virginia's regulatory authority is authorized to expend moneys from the special reclamation fund "for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven * * *." Because moneys from the fund are, by law, available for sites described in section 402(g)(4)(B) of SMCRA, AML money may not be used to reclaim these sites until and unless Special Reclamation Fund moneys are not actually available. Therefore, the Director has determined that SMCRA requires the use of funds from West Virginia's Special Reclamation Fund to reclaim "interim" or "surety failure" sites to the extent that such funds are available. Since an actuarial study is currently being conducted to determine the question of the solvency of the Special Reclamation Fund, the Director is deferring further action on that portion of the proposed revision to West Virginia's AMLR Plan which is entitled "Expanded Eligibility Criteria" pending the results of that study.

2. Acid Mine Drainage Treatment and Abatement Program

This proposed new section of West Virginia's AMLR Plan allows for the Expenditure of up to 10% of all AML money received annually, as part of the State share pursuant to section 402(g)(1) of SMCRA and historic coal distribution under section 402(g)(5) of SMCRA, to address acid mine drainage problems on a hydrologic unit basis. The hydrologic units must be significantly affected by acid mine drainage from coal mining practices which adversely impact biological resources. It further provides that the impacts must be created by acid mine drainage from mines eligible for reclamation with AML money (sites must be priority one, two or three, as defined in sections 403 (a)(1), (a)(2) and (a)(3) of SMCRA), and bond forfeiture money or other state funding sources. The State may reclaim certain areas that are severely impacted by acid mine drainage after consultation with the Soil Conservation Service. The proposal points out that the Secretary of the Interior will ask the Director of the Bureau of Mines to comment on each proposed hydrologic unit reclamation plan. Finally, the proposal sets forth a minimum requirement consisting of seven items of information to be included in each hydrologic unit reclamation plan, which are identical to the items identified in section 402(g)(7)(B) of SMCRA. The Director finds that the proposed addition to West Virginia's AMLR Plan identified as "Acid Mine Drainage Treatment and Abatement Program", is consistent with the requirements of the Federal program as set forth at section 402(g) (6) and (7).

B. House Bill (H.B.) 2492 Revisions to the Code of West Virginia

1. H.B. 2492 revises chapter 22, article 3, section 2 of the West Virginia Code by extending the period for collection of the fees on coal produced from surface and underground mine operations until September 30, 1995. This revision is substantively identical to its Federal counterpart at section 402(b) of SMCRA and, therefore, the Director finds it to be no less stringent than its Federal counterpart.

2. H.B. 2492 revises chapter 22, article 3, section 4, subsection (b), by adding paragraphs (2) and (3) which provide as follows:

(a) Paragraph (2) allows the State to expend up to 15% of annual grants made under section 402(g)(1) and (5) of Public Law 95–87 for water supply projects if the State finds that the adverse effects on water supplies are due predominantly to effects of mining processes undertaken prior to August 3, 1977. The Director finds that these provisions are substantively identical to the Federal provisions found in section 403(b)(1) and (2) of SMCRA (which authorize expenditure of up to 30% of 402(g)(1) and (5) grants), except for the state's reference to Public Law (P.L.) 95–87. The changes to the Federal rules, which the State is incorporating in its rules by these revisions, result from revisions to SMCRA contained in Public Law 101–508. Therefore, the Director is approving the addition of paragraph (2) except for the erroneous reference and is requiring the State to amend its rules by referring to the Surface Mining Control and Reclamation Act, rather than a specific public law.

In addition, the reference to "subdivision (3) of this subsection", found in paragraph (2)(B), should read "subsection (c)", and the Director is requiring the State to amend its rules to correct this reference.

(b) Paragraph (3) provides for the State to receive and retain up to 10% of the annual grants made under section 404(g)(1) and (5) of Public Law 95–87, to be expended for administrative and personnel expenses and to achieve the priorities in Chapter 22, Article 3, Section 4(b)(1) of the Code of West Virginia, after September 30, 1995; or, for administrative and personnel expenses and to implement acid mine drainage (AMD) abatement and treatment plans which provide for abatement of the causes and treatment of the effects of AMD within qualified hydrologic units affected by coal mining practices.

The Director finds that these provisions are similar to the Federal rules found in section 402(g)(6) of SMCRA except for the reference to Public Law 95–87 (see discussion in (a) above), and the reference to section 404(g)(1) and (5), which should be 402(g)(1) and (5). Therefore, the Director is approving the addition of paragraph (3) except for the erroneous references and is requiring West Virginia to amend its rules to reflect the correct references. In addition, the Director is requiring the State to amend its rules to clarify references to "administrative and personnel expenses" by restricting these expenses to costs associated with the respective accounts.

3. H.B. 2492 revises section 4(c) to provide for the use of funds allocated under sections 402(g)(1) and (5) of Public Law 95–87 for the reclamation or drainage abatement of a site where (1) the surface mining operation occurred between August 4, 1977 and January 21, 1981 and funds available pursuant to bond or other financial guarantee, or from any other source, are not sufficient to provide adequate reclamation or abatement; or (2) the operations occurred between August 4, 1977 and October 1, 1991, and the surety of such operations became insolvent during that period and as of October 1, 1991, funds immediately available from proceedings relating to such insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation. For the reasons set forth in Finding A.1. herein, the Director is deferring action of this portion of H.B. 2492 pending completion of an actuarial study of West Virginia's Special Reclamation Fund.

Although the Director is deferring action at this time on this portion of H.B. 2492, the following items will have to be corrected before any final action is ultimately taken on this proposal.

—The correct time frame for "surety failure sites" is August 4, 1977 to November 5, 1990, rather than August 4, 1977 to October 1, 1991 as used in H.B. 2492.

—For the same reasons set forth in Finding B.2.(a) above, the reference to P.L. 95.87 must be revised.

—The reference, in West Virginia's proposal, to "paragraphs (A) and (B), subdivision (1), subsection (a) of this section", should read "paragraphs (A) and (B), subdivision (1), subsection (b) of this section."

—The reference to concurrence of the "secretary" should be clarified to show that this is the secretary of the U.S. Department of the Interior.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submission dated October 25, 1991 (Administrative Record Number WVAML–146), in the April 13, 1992, **Federal Register** (57 FR 12790): and (2) For the submission dated September 17, 1991 (Administrative Record Number WVAML–145), in the October 29, 1992, **Federal Register** (57 FR 49052). The comment periods closed on May 13, 1992, and November 30, 1992, respectively. No comments were received and no one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government

agencies with an actual or potential interest in the West Virginia program. The Mine Safety and Health Administration, Bureau of Mines, Soil Conservation Service, and the Army Corps of Engineers acknowledged receipt of the proposed amendment and offered no comments. The Fish and Wildlife Service recommended (1) stronger language to insure that funds are expended to address acid mine drainage problems, and (2) a requirement that the Fish and Wildlife Service and the appropriate state resource agency be solicited for comments for each hydrologic unit reclamation plan. As discussed in Findings A.2. and B.2.(b), the Director finds that the proposed amendment, in the areas discussed by the Fish and Wildlife Service, is consistent with Federal requirements and that no changes are required unless, and until, either SMCRA or the Federal rules are revised in a manner consistent with the recommendations.

V. Director's Decision

Based on the above findings, the Director is approving, with the exception discussed in Finding A.1., the amendments to the West Virginia Abandoned Mine Land Reclamation Plan, as submitted on October 25, 1991 and revised on June 18, July 21 and December 15, 1992; and, with the exceptions discussed in Findings B.2. and B.3., the revisions to the AMLRA, as submitted on September 17, 1991.

The Federal rules at 30 CFR part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 731.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the West Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by West Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval and disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: February 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 948.25, is amended by adding new paragraphs (c) and (d) to read as follows:

§ 948.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(c) The amendments to the West Virginia Abandoned Mine Lands and Reclamation Act contained in House Bill 2492, submitted to OSM on

September 17, 1991, are approved effective March 26, 1993, except for certain erroneous cross-references in section 4(b) and except for section 4(c), which is being deferred pending completion of an ongoing actuarial study of West Virginia's Special Reclamation Fund.

(d) The revisions to West Virginia's Abandoned Mine Land Reclamation Plan submitted to OSM on October 25, 1991, and revised on June 18, 1992, July 19, 1992, and December 15, 1992, are approved effective March 26, 1993, except for the section entitled "Expanded Eligibility Criteria", which is being deferred pending completion of an ongoing actuarial study of West Virginia's Special Reclamation Fund.

(3) Section 948.26 is being added to read as follows:

§ 948.26 Required abandoned mine land reclamation program/plan amendments.

(a) By March 15, 1994, West Virginia shall submit proposed revisions to its Abandoned Mine Lands and Reclamation Act to effect the following changes:

1. In section 4(b)(2)(A), change reference to "Public Law 95–87" to read "Surface Mining Control and Reclamation Act".
2. In section 4(b)(2)(B), change reference to "subdivision (3) of this subsection" to read "subsection (c)".
3. In section 4(b)(3), change reference to "section 404 of Public Law 95–87" to read "section 402 of the Surface Mining Control and Reclamation Act".
4. In section 4(b)(3)(A) and (B), clarify the references to "administrative and personnel expenses" by restricting those expenses to costs associated with the respective accounts.

[FR Doc. 93–6980 Filed 3–25–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–81]

Special Local Regulations for Marine Events; Pony Penning Swim, Assateague Channel, Chincoteague, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the annual Pony Penning Swim held at Chincoteague, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: This regulation becomes effective 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204, or Commander, Coast Guard Group Eastern Shore, (804) 336–2891.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning this regulation in the **Federal Register** on November 25, 1992 (57 FR 55492). Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Pony Penning Swim across Assateague Channel is an annual event sponsored by the Chincoteague Volunteer Fire Company. As part of the application, the Chincoteague Volunteer Fire Company requested that the Coast Guard provide control of the large spectator fleet in the area of the swim.

Discussion of Regulations

This regulation will regulate the area surrounding the Pony Penning Swim. The swim is an annual event held the last Wednesday in July. Ponies swim across Assateague Channel to Chincoteague, Virginia, and the next Friday swim back across the channel to Assateague Island. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area during the times the ponies are in the water. Temporary buoys will mark the regulated area.

Regulatory Evaluation

This regulation is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours each day of the event, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard will certify under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This regulation has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket, and is available for inspection or copying where indicated under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.519 is added to read as follows:

§ 100.519 Assateague Channel, Chincoteague, Virginia.

(a) Definitions: (1) *Regulated area.* The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ North, longitude 75°22′40″ West, to latitude 37°54′50″ North,

longitude 75°22'46" West, and to the west by a line drawn from latitude 37°54'54.0" North, longitude 75°23'00" West, to latitude 37°54'49" North, longitude 75°22'49" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Eastern Shore.

(b) *Special local regulations.* (1) Except for participants in the Pony Penning Swim and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) The Coast Guard Patrol Commander may allow vessels to transit the regulated area up until the ponies are ready to enter the water.

(4) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* This regulation will be effective from 7 a.m. to 2 p.m. on the last Wednesday of July and from 7 a.m. to 2 p.m. the following Friday, unless otherwise specified in the Coast Guard Local Notice to Mariners and a Federal Register Notice.

Dated: March 3, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93-7017 Filed 3-25-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF80

Claims Based on Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning diseases claimed to be the result of exposure to ionizing radiation. This amendment is necessary to implement a recommendation by the Veterans Advisory Committee on Environmental Hazards (VACEH) that ovarian cancer and parathyroid adenoma be considered "radiogenic", and to clarify the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation. The intended effect of this amendment is to add ovarian cancer and parathyroid adenoma to the list of radiogenic diseases, and to clarify the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation.

EFFECTIVE DATE: This amendment is effective March 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.311b(h) to clarify when service connection can be established based upon exposure to ionizing radiation, and to amend § 3.311b(b)(2) to include ovarian cancer as a radiogenic disease, in the Federal Register of March 26, 1992 (57 FR 10449-50). Interested persons were invited to submit written comments, suggestions or objections on or before April 27, 1992. We received one comment from the Disabled American Veterans. VA also published a proposal to amend § 3.311b(b)(2) to include parathyroid adenoma as a radiogenic disease in the Federal Register of March 31, 1992 (57 FR 10853) under RIN 2900-AF73. Interested persons were invited to submit written comments, suggestions or objections on or before April 30, 1992. Since we received no comments concerning this proposal, and since we find no good cause to make recognition of these two additional radiogenic diseases effective on separate dates, we have combined publication of the final rule proposed under RIN 2900-AF73 with the final rule under RIN 2900-AF80.

The commenter objected to the proposed amendment to § 3.311b(h) contending that the proposed regulatory language would restrict application of the basic principles of service connection in a manner which Congress did not intend when it enacted the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Pub. L. 98-542, 98 STAT. 2735 (1984)) by eliminating the possibility of direct service connection under the provisions of 38 CFR 3.303 (a) and (d), as well as precluding application of the reasonable doubt provisions of § 3.102 when VA adjudicates claims based upon exposure to ionizing radiation. The commenter believes that the proposed amendment to § 3.311b(h) exceeds the Secretary's authority to adopt regulations under 38 U.S.C. 501(a), since, in his opinion, it violates the intent of Public Law 98-542.

VA does not concur. 38 CFR 3.311b(b)(2) is meant to be an exclusive list of radiogenic conditions for which service connection may be granted under the provisions of Public Law 98-542. The previous wording of § 3.311b(h) might have been misinterpreted to mean that a veteran, rather than VA, may establish that a disease not included in § 3.311b(b)(2) resulted from exposure to ionizing radiation and should therefore be service-connected based on "sound scientific or medical evidence." Such an interpretation of § 3.311b(h) would be contrary to section 5(b)(2) of Public Law 98-542 which clearly stipulates that VA, after receiving the advice and recommendation of the VACEH, will publish regulations which list each disease for which it finds sound scientific or medical evidence of a connection to ionizing radiation.

Service connection may be established for any condition, regardless of cause, shown to have been incurred or aggravated during active service by applying the provisions of 38 CFR 3.303, 3.304, or 3.306. For certain conditions which manifest themselves within specified periods following a veteran's discharge from active military service, service connection may be established under the provisions of 38 CFR 3.307. Under each of these regulations, service connection is established not by what caused the condition, but by when it becomes manifest, i.e., service connection is established by the appearance of a combination of signs and symptoms sufficient to identify the condition during, or within a specified period following, the veteran's active military service. Service connection for disabilities or deaths alleged to be the result of exposure to ionizing radiation which first manifest themselves after the periods specified in § 3.307, however, must be established under the provisions of 38 CFR 3.311b unless service connection may be established either by applying the presumptions established by Congress in Public Law 100-321 (38 CFR 3.309(d)), or because the condition is proximately due to or

the result of a service-connected disease or injury (38 CFR 3.310(a)).

By enacting Public Law 98–542, Congress clearly intended to establish an avenue for VA to compensate veterans for disabilities or deaths caused by ionizing radiation exposure, since existing statutes and regulations had proven inadequate for that purpose. Just as clearly, 38 CFR 3.311b(h), which implements the radiation provisions of Public Law 98–542, does not preclude awards of service connection under §§ 3.303, 3.304, 3.306, or 3.307, since it is applied only after service connection under those regulations has already been precluded because a condition manifested itself beyond the time frames they impose.

As to the commenter's concern that this amendment would preclude application of the reasonable doubt provisions of § 3.102, we believe those concerns are unfounded because the reasonable doubt provisions are applied at several stages throughout the adjudication of ionizing radiation claims. The initial application of the provisions of § 3.102 occurs when the Secretary, after receiving the advice of the VACEH, determines whether it is at least as likely as not that a significant statistical association exists between a specific condition and exposure to ionizing radiation (38 CFR 1.17 (d) and (f)). When the ionizing radiation dose estimates provided by the Department of Defense are reported as a range of doses to which the veteran may have been exposed, VA applies the provisions of § 3.102 again by using the highest estimated level as the basis for subsequent determinations. VA applies the benefit of doubt provisions of § 3.102 yet again when the Under Secretary for Health renders an opinion as to whether it is as likely as not that a veteran's radiogenic disease resulted from the level of ionizing radiation to which he or she was exposed during military service.

For the reasons set forth above, VA believes that the proposed amendment to § 3.311b(h) is not only consistent with the Secretary's authority under 38 U.S.C. 501(a), but also with the provisions of Public Law 98–542.

VA appreciates the comment submitted in response to both proposed rules, which are now combined and adopted with minor technical amendments.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 3, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.311b(b)(2)(xvi), remove the word "and"; in § 3.311b(b)(2)(xvii), remove the mark ".", and add, in its place, the mark ";".

3. In § 3.311b, add paragraphs (b)(2)(xviii) and (b)(2)(xix), and revise paragraph (h) to read as follows:

§ 3.311b Claims based on exposure to ionizing radiation.

* * * * *

(b) * * *

(2) * * *

(xviii) Ovarian cancer; and

(xix) Parathyroid adenoma.

* * * * *

(h) *Service connection under other provisions.*

Nothing in this section will be construed to prevent the establishment of service connection for any disease or injury shown to have been incurred or aggravated during active service in accordance with §§ 3.304, 3.306, 3.307, or 3.309. However, service connection will not be established under this section, or any other section except for §§ 3.309(d) or 3.310(a), on the basis of exposure to ionizing radiation and the subsequent development of any disease not specified in paragraph (b)(2) of this section.

[FR Doc. 93–6928 Filed 3–25–93; 8:45 am]
BILLING CODE 8320–01–U

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38 CFR Part 3

RIN 2900–AF81

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning procedural due process and appellate rights. This amendment is necessary because the previous regulations limit locations at which VA may hold claimant hearings. The intended effect of this amendment is to allow the Veterans Benefits Administration (VBA) greater flexibility in providing hearing locations for claimants desiring a hearing.

EFFECTIVE DATE: This amendment is effective March 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.103(c)(1) to allow VBA greater flexibility in providing hearing locations for claimants desiring a hearing in the **Federal Register** of June 30, 1992 (57 FR 29052–53). Interested persons were invited to submit written comments, suggestions or objections on or before July 30, 1992. We received one comment from the Paralyzed Veterans of America.

The commenter, while agreeing that the proposed amendment to hold hearings at additional sites would be a convenience to certain claimants, suggested that the practice could be detrimental to the claimant's interest if the services of his or her representative or veterans service organization would be unavailable. For this reason, the

commenter recommended that VA's notice of the place of the hearing include notice as to the availability of the appointed representative and of an alternate site that may be more agreeable to both the claimant and his or her representative.

This amendment to § 3.103(c)(1) allows VA the flexibility to provide hearings at any VA facility or other federal building at which suitable hearing facilities are available, at the option of VA and subject to available resources. The claimant would always have the option to request that the hearing be conducted at the VA regional office having jurisdiction over the claim or at the VA regional office nearest the claimant's home.

VA will exercise its option to offer a hearing at a site other than a VA regional office only after assessing the circumstances and the availability of resources, which may vary significantly from office to office. Hearings will most likely be offered at locations where concentrations of claimants have requested hearings, and service organizations may elect to send a representative to those sites. VA policy is to notify the claimant and his or her representative (38 CFR 1.525(d)) of the date, time and location of the hearing, and whether the claimant's representative will be available is best determined by the claimant and his or her representative after they have been notified of a hearing at an alternate site. While we do not object to notifying claimants that the hearing may be held at the regional office, we believe it is more appropriate to handle this matter procedurally rather than by regulation.

In order to more clearly emphasize that hearings at remote sites will be offered solely at VA's option, we have slightly modified the regulatory language. VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the described amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 3, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(1), the first sentence, remove the numbers "19.174", and add, in their place, the numbers "20.1304".

3. In § 3.103(c)(1), the second sentence, after the words "claimant's home having adjudicative functions," add the words "or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available." Remove the words "and will provide VA personnel" and add, in their place, the words "VA will provide personnel".

[FR Doc. 93–6929 Filed 3–25–93; 8:45 am]

BILLING CODE 8320–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 91–280; FCC 93–29]

Low-Earth Orbit Satellites Below 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order allocates VHF and UHF radio spectrum for mobile-satellite services (MSS) using low-Earth satellites (LEOs). This action responds to decisions made at the 1992 World Administrative Radio Conference (WARC–92) and to petitions for Rule Making filed by Orbital Communications Corporation (ORBCOMM), STARSYS Inc. (STARSYS), and Volunteers in Technical Assistance (VITA). This allocation will be used to provide data messaging and position determination services using non-voice non-geostationary satellites. Provision of such services using LEOs is expected to be cost effective compared to providing comparable services using geostationary satellites.

DATES: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 653–8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 91–280 adopted on January 14, 1993, and released on February 5, 1993. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Public Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington DC 20036, (202) 857–3800.

Summary of Report and Order

1. The Commission concludes that demand warrants allocation of spectrum in the VHF/UHF bands for provision of data messaging and position determination services using LEOs. For these purposes the Commission allocates for LEO–MSS the 137–137.025, 137.175–137.825, and 400.15–401 MHz bands (space-to-Earth) on a primary basis; the 137.025–137.175 and 137.825–138 MHz bands (space-to-Earth) on a secondary basis; and the 148–150.05 and 399.9–400.05 MHz bands (Earth-to-space) on a primary basis. Allocation of these bands is consistent with international frequency allocations made at the World Administrative Radio Conference in March, 1992 (WARC–92). The Commission also adopts specific conditions governing use of these bands for LEO–MSS to avoid interference to existing users. Further, the Commission awards a pioneer's preference to VITA.

2. Parties to this proceeding argue that there is significant demand for data messaging and position determination services and that demand can be met using small portable transceivers at substantial cost savings using LEOs than using existing geostationary satellite. The projected savings are attributed to the low power requirements of LEO space stations and their associated portable transceivers and to advances in launch vehicle technology. In considering the relative advantages and disadvantages of allocating spectrum for LEO satellite systems, we conclude that the possible cost savings using LEOs may be significant.

3. The bands allocated are suitable for LEO–MSS and should lead to LEO services that are both economical and reliable. Although these bands currently are used by government operations, after consultations with government users through the Inter-Departmental Radio Advisory Committee (IRAC), we are convinced that sharing is possible and that no displacement of existing users will be required.

4. The Commission grants a pioneer's preference to VITA based on pioneering work it performed to develop and demonstrate the utility of a small LEO satellite system using VHF frequencies for civilian communications purposes. The requests for pioneer's preference submitted by ORBCOMM and STARSYS are denied because their requests do not demonstrate innovation beyond existing communications technology and VITA's work demonstrating the ability to use these frequencies for data communications purposes significantly predated the work of ORBCOMM and STARSYS.

5. Finally, in accordance with the Regulatory Flexibility Act of 1980, in the Notice we invited comment on the impact of the proposed rule change on small entities. No comments were received that specifically responded to our analysis of this allocation.

6. *Accordingly, it is ordered,* That part 2 of the Commission's Rules and Regulations is amended as specified in the attached Final Rules, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 303 (c), (f), (g), and (r), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303 (c), (f), (g), and (r).

Further, it is ordered, That a pioneer's preference is awarded VITA for a license to construct a LEO-MSS satellite system in the bands allocated in this proceeding.

List of Subjects in 47 CFR Part 2

Frequency allocation, General rules and regulations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

I. Part 2 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read:

Authority: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

§ 2.106 Table of Frequency Allocations.

a. In the band 137–138 MHz add new footnote 599A; in the bands 137–138, 148–149.9, 149.9–150.05, and 400.15–401 MHz add the footnote 599B; in the band 148–149.9 add the footnotes 608A and 608C; in band 149.9–150.05 MHz add the footnote 608B; and in the 400.15–401 MHz band, add the footnotes 647A and 647B (for columns 1, 2, 3, 4, and 5). Also, in the band 149.9–150.05 MHz add the footnote 609B (columns 1, 2, and 3).

b. In the band 137–138 MHz add a new footnote US318 to columns 4 and 5.

c. In the bands 137–138, 148–149.9, 399.9–400.05, and 400.15–401 MHz add a new footnote US319 to columns 4 and 5.

d. In the bands 137–138, 148–149.9, and 400.15–401 MHz add a new footnote US320 to columns 4 and 5.

e. In the bands 137–138, 148–149.9, 149.9–150.05, 399.9–400.05, and 400.15–401 MHz bands, add a reference to mobile-satellite to columns 4 and 5 as shown in the attached tables.

f. In the 149.9–150.05 MHz band add a new footnote US322 to columns 4 and 5.

g. In the band 148–149.9 MHz add a new footnote US323 to columns 4 and 5.

h. In the band 400.15–401 MHz add a new footnote US324 to columns 4 and 5.

i. In the band 148–149.9 MHz add a new footnote US325 to columns 4 and 5.

j. In the band 399.9–400.05 MHz add a new footnote US326 to columns 4 and 5.

BILLING CODE 6712-01-M

§ 2.106 Table of Frequency Allocations.

* * * * *

International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
137.0-137.025 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5998. Fixed. Mobile except aeronautical mobile(R). 596 597 598 599 599A			137.0-137.025 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5998 US318 US319 US320. 599A	137.0-137.025 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5998 US318 US319 US320. 599A	SATELLITE COMMUNICATION (25).	

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
137.025-137.175 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B. Fixed. Mobile except aeronautical mobile (R). 596 597 598 599 599A			137.025-137.175 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320. 599A	137.025-137.175 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320. 599A	SATELLITE COMMUNICATION (25).	

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
137.175-137.825			137.175-137.825	137.175-137.825		
SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5998. Fixed. Mobile except aeronautical mobile(R).			SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5998 US318 US319 US320.	SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5998 US318 US319 US320.	SATELLITE COMMUNICATION (25).	
596 597 598 599 599A			599A	599A		

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
137.825-138			137.825-138	137.825-138		
SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B. Fixed. Mobile except aeronautical mobile (R).			SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320.	SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320.	SATELLITE COMMUNICATION (25).	
596 597 598 599 599A			599A	599A		

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§ 2.106 Table of Frequency Allocations.

International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*		*
148-149.9 FIXED. MOBILE except aeronautical mobile (R). MOBILE-SATELLITE (Earth-to-space) 5998. 608 608A 608C	148-149.9 FIXED. MOBILE. MOBILE-SATELLITE (Earth-to-space) 5998. 608 608A 608C		148-149.9 FIXED. MOBILE. MOBILE-SATELLITE (Earth-to-space) 5998 US319 US320 US323 US325. 608 608A US10 G30	148-149.9 MOBILE-SATELLITE (Earth-to-space) 5998 US319 US320 US323 US325. 608 608A US10	SATELLITE COMMUNICATION (25).	
149.9-150.05 RADIONAVIGATION-SATELLITE. LAND MOBILE-SATELLITE (Earth-to-space) 5998 6098. 608B 609 609A			149.9-150.05 RADIONAVIGATION-SATELLITE MOBILE-SATELLITE (Earth-to-space) 5998 US319 US322. 608B 609A	RADIONAVIGATION-SATELLITE MOBILE-SATELLITE (Earth-to-space) 5998 US319 US322. 608B 609A		
*	*	*	*	*		*

§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
399.9-400.05 RADIONAVIGATION-SATELLITE. 609 645B			399.9-400.05 RADIONAVIGATION-SATELLITE. MOBILE-SATELLITE (Earth-to-space) US319 US326. 645B	399.9-400.05 RADIONAVIGATION-SATELLITE. MOBILE-SATELLITE (Earth-to-space) US319 US326. 645B		

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth) 647A. MOBILE-SATELLITE (space-to-Earth) 5998. Space Operation (space-to-Earth). 647 647B			400.15-401 METEOROLOGICAL AIDS (radiosonde). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth) 647A. MOBILE-SATELLITE (space-to-Earth) 5998 US319 US320 US324. Space Operation (space-to-Earth). 647 647B US70	400.15-401 METEOROLOGICAL AIDS (radiosonde). SPACE RESEARCH (space-to-Earth). 647A. MOBILE-SATELLITE (space-to-Earth). 5998 US319 US320 US324. Space Operation (space-to-Earth). 647 647B US70	SATELLITE COMMUNICATION (25).	
*	*	*	*	*		

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International Footnotes

599A The use of the band 137–138 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in RES46 (WARC–92). However, coordination of a space station of the mobile-satellite service with respect to terrestrial services is required only if the power flux-density produced by the station exceeds −125 dB(W/m²/4 kHz) at the Earth's surface. The above power flux-density limit shall apply until such time as a competent world administrative radio conference revises it. In making assignments to the space stations in the mobile-satellite service in the above band, administrations shall take all practicable steps to protect the radio astronomy service in the 150.05–153 MHz band from harmful interference from unwanted emissions.

599B The use of the bands 137–138 MHz, 148–149.9 MHz and 400.15–401 MHz by the mobile-satellite service and the band 149.9–150.05 MHz by the land mobile-satellite service is limited to non-geostationary-satellite systems.

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608A The use of the band 148–149.9 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in RES46 (WARC–92). The mobile-satellite service shall not constrain the development and use of fixed, mobile and space operation services in the band 148–149.9 MHz. Mobile earth stations in the mobile-satellite service shall not produce a power flux-density in excess of −150 dB(W/m²/4 kHz) outside national boundaries.

608B The use of the band 149.9–150.05 MHz by the land mobile-satellite service is subject to the application of the coordination and notification procedures set forth in RES46 (WARC–92). The land mobile-satellite service shall not constrain the development and use of the radionavigation-satellite service in the band 149.9–150.05 MHz. Mobile earth stations of the mobile-satellite service shall not produce a power flux-density in excess of −150 dB(W/m²/4 kHz) outside a national boundaries.

608C Stations of the mobile-satellite service in the band 148–149.9 MHz shall not cause harmful interference to, or claim protection from stations of the fixed or mobile services in the following countries: Algeria, the Federal Republic of Germany, Saudi Arabia, Australia, Austria, Bangladesh, Belarus, Belgium, Brunei Darussalam, Bulgaria, Cameroon, Canada, Cyprus, Colombia, Congo, Cuba, Denmark, Egypt, the United Arab Emirates, Ecuador, Spain, Ethiopia, the Russian Federation, Finland, France, Ghana, Greece, Honduras, Hungary, Iran, Ireland, Iceland, Israel, Italy, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Malaysia, Mali, Malta, Mauritania, Mozambique, Namibia, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, the Netherlands, Philippines, Poland, Portugal, Qatar, Syria, Romania, the United Kingdom, Singapore, Sri Lanka, Sweden, Switzerland, Suriname, Swaziland, Tanzania, Chad, the Czech and Slovak Federal Republic, Thailand, Tunisia, Turkey, Ukraine, Yemen and Yugoslavia that operate in accordance with the Table of Frequency Allocations.

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609B In the band 149.9–150.05 MHz, the allocation to the land mobile-satellite service shall be on a secondary basis until 1 January 1997.

* * * * *

647A The band 400.15–401 MHz is also allocated to the space research service in the space-to-space direction for communications with manned space vehicles. In this application, the space research service will not be regarded as a safety service.

647B The use of the band 400.15–401 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). However, coordination of a space station of the mobile-satellite service with respect to terrestrial services is required only if the power flux-density produced by the station exceeds −125 dB(W/m²/4kHz) at the Earth's surface. The above power flux-density limit shall apply until such time as a competent world administrative radio conference revises it. In making assignments to the space stations in the mobile-satellite service in the above band, administrations shall take all practicable steps to protect the radio astronomy service in the band 406.1–410 MHz from harmful interference from unwanted emissions.

* * * * *

United States (US) Footnotes

US318 Until January 1, 2000, the use of the 137–138 MHz band by the mobile-satellite service will be secondary to Government satellite operations in the subbands: 137.333–137.367, 137.485–137.515, 137.605–137.635 and 137.753–137.787 MHz.

US319 In the 137–138, 148–149.9, 149.9–150.05, 399.9–400.05, and 400.15–401 MHz bands, Government stations in the mobile-satellite service shall be limited to earth stations operating with non-Government satellites.

US320 Use of the 137–138, 148–149.9, and 400.15–401 MHz bands by the mobile-satellite service is limited to non-voice, non-geostationary satellite systems and may include satellite links between land earth stations at fixed locations.

US322 The 149.9–150.05 MHz band is allocated to the mobile-satellite service (Earth-to-space) on a primary basis after 1 January 1997 and shall be limited to non-voice, non-geostationary satellite systems, including satellite links between land earth stations. Before 1 January 1997 use of this band on a secondary basis for the mobile satellite service is allowed for land earth stations at fixed locations.

US323 In the 148–149.9 MHz band, no individual mobile earth station shall transmit, on the same frequency being actively used by fixed and mobile stations and shall transmit no more than 1% of the time during any 15 minute period; except, individual mobile earth stations in this band that do not avoid frequencies actively being used by the fixed and mobile services shall not exceed a power density of −16 dBW/4kHz and shall transmit no more than 0.25% of the time during any 15 minute period. Any single transmission from any individual mobile earth station operating in this band shall not exceed 450 ms in duration and consecutive transmissions from a single mobile earth station on the same frequency shall be separated by at least 15 seconds. Land earth stations in this band shall be subject to electromagnetic compatibility analysis and coordination with terrestrial fixed and mobile stations.

US324 Government and non-Government satellite systems in the 400.15–401 MHz band shall be subject to electromagnetic compatibility analysis and coordination.

US325 In the band 148–149.9 MHz fixed and mobile stations shall not claim protection from land earth stations in the mobile-satellite service that have been previously coordinated; Government fixed and mobile stations exceeding 27 dBW EIRP, or an emission bandwidth greater than 38 kHz, will be coordinated with existing mobile-satellite service space stations.

US326 The 399.9–400.05 MHz band is allocated to the mobile-satellite service (Earth-to-space) on a primary basis after January 1, 1997 and shall be limited to non-voice, non-geostationary satellite systems, including satellite links between land earth stations.

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[FR Doc. 93–6765 Filed 3–25–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920937–3028]

Threatened Fish and Wildlife; Steller Sea Lions

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: With few exceptions, vessel entry within 3 nautical mile (nm) of listed Steller sea lion rookery sites in the Bering Sea, Aleutian Islands, and Gulf of Alaska is currently prohibited. This prohibition was established concurrent with the listing of the Steller sea lion (*Eumetopias jubatus*) as a threatened species under the Endangered Species Act to aid the species' recovery. NMFS is amending existing regulations to authorize vessel transit through the Steller sea lion rookery buffer zones at Cape Morgan, Akutan Island, Clubbing Rocks, and Outer Island. NMFS has determined that: (1) these navigational routes have

been used traditionally by vessels; (2) vessels transiting these routes that maintain a minimum distance of 1 nm from sea lion rockery boundaries and remain in continuous transit, are not likely to have a significant adverse affect on Steller sea lions; and (3) there are no reasonable and acceptable alternatives for navigation in the vicinity of these locations.

EFFECTIVE DATE: This rule is effective on April 3, 1993.

ADDRESSES: A copy of the Environmental Assessment is available from Protected Resources Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, NMFS Alaska Region, Protected Resources management Division, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

By emergency interim rule (55 FR 12645, April 5, 1990), NMFS listed the Steller (northern) sea lion as a threatened species under the Endangered Species Act (ESA) (16 U.S.C. 1531–1543). Coincident with the listing, NMFS, to aid the species' recovery, established the following protective regulations:

(1) Prohibited, with limited exceptions, vessel entry within 3 nm of listed Steller sea lion rookeries;

(2) prohibited shooting at or near Steller sea lions; and

(3) reduced the allowable level of take incidental to commercial fisheries in Alaskan waters (50 CFR 227.12).

The emergency rule included an exception for transit through rookery buffer zones at 12 listed straits, passes, and narrows. During the comment period on the interim rule, one commenter objected to this navigational transit exception and recommended that advanced approval and a showing of necessity should be required. NMFS responded to the comment in the proposed rule (55 FR 29792, July 20, 1990), and proposed to exclude the navigational transit exception from the final rule. This decision was based on the presumed availability of alternative routes and the buffer zone exception for emergency situations. No comments were received on this portion of the proposed rule, and the final rule did not include an exception for navigational routes (55 FR 49204, November 26, 1990).

Subsequent to these actions, NMFS promulgated additional protection measures for Steller sea lions. Under the Magnuson Fishery Conservation and Management Act, NMFS has prohibited groundfish trawling within 10 nm of listed Steller sea lion rookeries during the Bering Sea and Aleutian Islands winter pollock roe fishery (57 FR 2683, January 23, 1992).

During the North Pacific Fishery Management Council's January 1992 meeting, a representative of the fishing industry testified that the 3-nm no-entry zone around the Akutan/Cape Morgan sea lion rookery created a significant safety hazard to fishing vessels. In a subsequent letter to the Alaska Regional Director, the same representative requested that NMFS reevaluate the specific navigational routes contained in the emergency interim rule.

In response to this request, NMFS evaluated the need for, and the likely effects of, reestablishing navigational routes. Based on a review of the available information, NMFS preliminarily determined that exceptions for the purposes of navigational transit were warranted at Akutan Pass and in the vicinity of Clubbing Rocks. For this reason, as authorized under 50 CFR 227.12(b)(5), the Director, Alaska Region, NMFS, granted an immediate temporary exemption for navigational transit at these two locations on October 15, 1992 (57 FR 47276). In addition, NMFS proposed to permanently amend existing regulations to reflect this exception to the buffer zones (57 FR 53312, November 9, 1992). To provide adequate protection to Steller sea lions, under the temporary exemption, transitting vessels are required to maintain a minimum of 1 nm from the rookery boundaries and are prohibited from all other non-passage activities within the buffer zones, e.g., fishing or anchorage.

Comments on the Proposed Rule

NMFS received four comments in response to the November 9, 1992, notice of proposed rulemaking. Two comments were from private individuals and two comments were from fishing industry representatives. Two commenters expressed support for the proposed transit zones at Akutan Pass and Clubbing Rocks. Three commenters requested additional transit zones; one of these requests was for transit through a buffer zone not created under the ESA for Steller sea lions. These comments are discussed below:

One of the commenters requested permission to operate a vessel within the Sugarloaf Island buffer zone to conduct birding tours and supply a research camp at East Amatuli Island. NMFS' purpose in amending the existing regulations is to allow for safe passage through buffer zones where other routes are not available or are more hazardous. Under the proposed exception, vessels are allowed to transit continuously through the buffer zone, but all other activities, such as anchorage and fishing, are prohibited. The commenter's request is not for transit through a buffer zone for navigational purposes, but to pursue tour activities within a buffer zone. NMFS has previously denied this request (57 FR 26649, June 15, 1992), and maintains that seabird viewing can be accomplished at other locations outside of the sea lion protection areas. Since NMFS has granted an individual exemption for the seabird research being conducted at East Amatuli Island (58 FR 4156, January 13, 1993), an additional exception for this activity is not necessary. Therefore, NMFS has determined that creation of a transit zone within the Sugarloaf Island buffer zone is not warranted.

Another commenter requested a transit zone be established through Wildcat Pass, which runs between Rabbit Island and Ragged Island about 1.5 statute miles north of the Outer Island Steller sea lion rookery. This proposed route would provide a shorter and more protected passage for vessels travelling to and from Seward and points west during severe weather conditions. Since there is an island between Outer Island and this proposed passageway and the route is greater than 1 nm from the rookery, it is unlikely that Steller sea lions would be adversely affected by allowing vessels to transit through this pass. A transit zone through Wildcat Pass is therefore included in this final rule.

Two other commenters both wrote in support of a permanent exception for navigational transit through Akutan Pass and in the vicinity of Clubbing Rocks as proposed in the November 9, 1992, notice of proposed rulemaking. One of these commenters requested that a transit zone be established through the 12-nm buffer zone around the Round Island walrus haulout. This protection area was established under the Magnuson Fishery Conservation and Management Act for walruses, and therefore, is beyond the scope of the action being considered under this rulemaking.

Determination

NMFS has determined that allowing navigational transit through buffer zones around the Cape Morgan-Akutan Island, Clubbing Rocks, and Outer Island Steller sea lion rookeries is warranted, and that existing regulations at 50 CFR 227.12 should be amended to reflect this

exception to the buffer zone restrictions. Vessel traffic has occurred traditionally through waters encompassed by these three buffer zones, particularly by vessels operating out of Dutch Harbor, Sand Point, King Cove, and Seward. Vessels will be required to maintain a minimum distance of 1 nm from the rookery boundaries, and may only engage in continuous navigational transit through the buffer zones. A limited exception to allow transit through these three areas under these conditions is not anticipated to cause significant disruption to sea lion behavior. Alternative routes entail significantly increased safety hazards for vessel operators and crew, and are viewed by NMFS as not being acceptable alternatives. Therefore, NMFS amends the existing regulations at 50 CFR 227.12(b) to provide navigational transit routes through the buffer zones at Cape Morgan-Akutan Island, Clubbing Rocks, and Outer Island.

Classification

Based on an environmental assessment (EA) prepared by NMFS, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that implementation of this final rule will not have a significant impact on the environment. As a result of this determination, an environmental impact statement was not prepared. A copy of the EA is available (see ADDRESSES).

NMFS has determined that the final rule is likely to cause only minimal disruption in normal sea lion behavior and is not likely to imperil the survival or impede the recovery of Steller sea lions. NMFS has conducted a consultation under section 7 of the ESA that concluded that implementation of this exemption for navigation through the buffer zones in these locations is not likely to jeopardize the continued existence of Steller sea lions. The maintenance of a 1-nm minimum approach within the navigational routes, in conjunction with other existing regulations, is expected to provide adequate protection for Steller sea lions.

The Assistant Administrator has determined that this final rule is not a "major rule" that requires a regulatory impact analysis under E.O. 12291. The final rule is expected to reduce economic costs to a sector of the public.

The General Counsel for the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant impact on a substantial number of small entities since the rule will result in reduced economic costs for vessel operators. As a result, a regulatory flexibility analysis was not prepared.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 22, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.12, a new paragraph (b)(6) is added to read as follows:

§ 227.12 Steller sea lion.

* * * * *

(b) * * *

(6) *Navigational transit.* Paragraph (a)(2) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrows, or pass
Akutan Island.	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks.	Between Clubbing Rocks and Chemi Island.
Outer Island	Wildcat Pass between Rabbit and Ragged Islands.

* * * * *

[FR Doc. 93-6959 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 641

[Docket No. 921192-2352]

RIN 0648-AE91

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS increases the annual commercial quota for red snapper in the Gulf of Mexico reef fish fishery from 2.04 to 3.06 million pounds (0.93 to 1.39 million kg) in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The intended effect is to protect the red snapper resource from overfishing and continue the stock rebuilding program while still allowing catches in the commercial and recreational fisheries for red snapper.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The background and rationale for the changes were contained in the proposed rule (57 FR 57129, December 3, 1992) and are not repeated here. The reef fish fishery of the Gulf of Mexico is managed under the FMP, which is prepared and amended by the Gulf of Mexico Fishery Management Council (Council). The FMP is under authority of the Magnuson Fishery Conservation and Management Act; its implementing regulations are at 50 CFR part 641.

In accordance with the FMP's framework procedure for adjustment of management measures, the Council proposed for red snapper an increase in the total allowable catch (TAC) from 4.0 to 6.0 million pounds (1.8 to 2.7 million kg) and a change in the target date for achieving a 20 percent spawning potential ratio from January 1, 2007, to January 1, 2009. Under the established commercial/recreational allocation ratio of 51/49, a TAC of 6.0 million pounds (2.7 million kg) would provide a commercial quota of 3.06 million pounds (1.39 million kg), upon attainment of which the commercial fishery would be closed. A recreational allocation of 2.94 million pounds (1.33 million kg) is proposed, which would equate to a daily recreational bag limit of 7 fish, the current bag limit.

Comments and Responses

One individual provided remarks on various topics, including the 1993 TAC proposed by the Council. A marine conservation organization objected to

both the proposed TAC and extension of the red snapper rebuilding schedule.

Comment: The individual questioned why the Council recommended an increase in TAC from 4.0 to 6.0 million pounds (1.8 to 2.7 million kg) when red snapper are overfished. The marine conservation organization stated that, since red snapper are severely overfished and a 50 percent reduction in shrimp trawl bycatch may not be achieved in 1994, the Council's proposal to increase TAC and extend the recovery period poses inappropriate risk to the resource.

Response: While red snapper are overfished, a stock assessment completed in September 1992 indicated that relatively strong year classes were produced in 1989 and 1990. Based on data in the 1992 assessment, the Council's Reef Fish Stock Assessment Panel calculated a range of acceptable biological catch (ABC) for red snapper, the upper limit being 6.0 million pounds with a target date for recovery of the stock of January 1, 2009.

Although a harvest above ABC range is allowed during the FMP's three-year transition window, which started in 1991, the Council recommended a 1993 TAC at the upper end of the range, 6.0 million pounds, which approximates the 1992 harvest level. Extending the red snapper rebuilding target date from January 1, 2007, to January 1, 2009, is at the upper end of the framework procedure's time limit for rebuilding the resource, which may not exceed 1½ times the biological generation time of red snapper. The proposed 1993 TAC (coupled with the extension of the stock recovery period) is within the range of ABC specified by the Council's Stock Assessment Panel. Moreover, the FMP requires compensatory adjustment of allowable catch in subsequent years should excessive harvest prevent attainment of the recovery schedule. Accordingly, the proposed 1993 TAC and extended target date for stock recovery are consistent with the current rebuilding program.

Although red snapper stock assessments indicate that recovery of the overfished resource is dependent on reducing shrimp trawl bycatch of juvenile red snapper, an amendment to the Magnuson Act in 1990 specified 1994 as the earliest year possible for mandatory reductions of shrimp trawl bycatch. In the interim, NMFS, the Council, the shrimp industry, and Gulf of Mexico state agencies are cooperating to determine the most feasible means of accomplishing the necessary reduction in shrimp trawl bycatch of red snapper. Should a 50 percent reduction in shrimp trawl bycatch prove unattainable in (or shortly after) 1994, the Council recognizes that reductions in directed red snapper harvest may be necessary to comply with the rebuilding program.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of $100 million used as a guideline for a "major rule."

The Council prepared a regulatory impact review (RIR) on this action, the conclusions of which were summarized in the proposed rule and are not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities because the 1993 red snapper harvest is not expected to differ substantially from the 1992 harvest. Accordingly, a regulatory flexibility analysis was not prepared.

Because this final rule establishes the annual commercial quota for red snapper that commenced on February 16, 1993, the Assistant Administrator, under the provisions of section 553(d)(3) of the Administrative Procedures Act, finds, for good cause, namely to provide continuing conservation and management of the red snapper resource, that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule. The commercial red snapper fishery is operating under the 1992 allocation and without this rule in place, the fishery would be closed at an earlier date, creating an economic hardship for the commercial fishermen.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.25, paragraph (a) is revised to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(a) Red snapper—3.06 million pounds (1.39 million kg).

* * * * *

[FR Doc. 93-6999 Filed 3-23-93; 1:37 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 921107-2307]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the interim specification of prohibited species catch (PSC) of Pacific halibut to trawl gear in the GOA has been caught.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), March 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Alaska Region, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(A), the notice of proposed specifications (57 FR 57982, December 8, 1992) established the interim 1993 Pacific halibut PSC limit for trawl gear in the GOA at 500 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the interim 1993 Pacific halibut PSC limit of Pacific halibut. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those

portions of the GOA that remain open to directed fishing for pollock. The closure is effective from 12 noon, A.l.t., March 24, 1993, through 12 midnight, December 31, 1993.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7049 Filed 3–23–93; 4:18 pm]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921107–2307]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by the inshore component in the Central Regulatory area (CG) (statistical areas 62 and 63) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allowance of the interim specification of Pacific cod total allowable catch (TAC) for the inshore component in this area.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), March 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(A), the allowance of the interim specification of Pacific cod TAC for the inshore component in the CG was established by the notice of proposed specifications (57 FR 57982, December 8, 1992) as 7,920 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allowance of the 1993 interim specification of Pacific cod TAC for the inshore component in the CG will be reached soon. Therefore, in accordance with § 672.20(a)(2)(v)(B), the Regional Director has established a directed fishing allowance for vessels catching Pacific cod for processing by the inshore component of 7,420 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the CG. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the CG, effective from 12 noon, A.l.t., March 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7050 Filed 3–23–93; 4:16 am]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921107–2307]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in statistical area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification of pollock total allowable catch (TAC) in this area. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 24, 1993, through 12 noon, A.l.t., March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(A), the interim specification of pollock TAC in statistical area 61 was established by the proposed specifications (57 FR 57982, December 8, 1992) as 6,022 metric tons (mt).

In accordance with § 672.20(c)(2)(ii), the Director of the Alaska Region, NMFS (Regional Director), has determined that the 1993 interim specification of pollock TAC for statistical area 61 will soon be reached. Therefore, the Regional Director has established a directed fishing allowance of 5,420 mt, and has set aside the remaining 602 mt as bycatch to support other anticipated groundfisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in statistical area 61, effective from 12 noon A.l.t., March 24, 1993, through 12 noon, A.l.t., March 29, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Equal Opportunity 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7051 Filed 3–23–93; 4:17 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185-3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the inshore component in the BS.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), March 24, 1993, until the second seasonal allowance of pollock TAC becomes available.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2) the first seasonal allowance of pollock TAC for the inshore component in the BS was established by the final notice of groundfish specifications (58 FR 8703, February 17, 1993) as 174,038 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(5), that the first seasonal allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 170,038 mt, with consideration that 4,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by the inshore component in the BS, effective from 12 noon, A.l.t., March 24, 1993, until the second seasonal allowance of pollock TAC becomes available.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-7052 Filed 3-23-93; 4:19 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Peer Review in the Award of Discretionary Grants

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Administration has under consideration a draft recommendation on peer review procedures in the award of discretionary grants in the arts and sciences. Interested persons are invited to comment on the draft recommendation.

DATES: Please submit comments by April 21, 1993.

ADDRESSES: Send comments to Charles Pou, Jr., Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., 202–254–7020.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Administration has under consideration a draft recommendation concerning procedures that federal agencies employ in peer review processes evaluating proposals for grants in the arts and sciences. The proposed recommendation is based in part on a draft report written by Professor Thomas O. McGarity of the University of Texas. The draft recommendation is set forth in this notice. Copies of the draft report are available from the Office of the Chairman of the Administrative Conference. (Please call Karyn Zaayenga, 202–254–7020.)

The Conference's Committee on Administration will meet in early May for further consideration of the draft recommendation in the light of any comments that may be received. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its plenary session scheduled for June 10 and 11, 1993. Comments should be sent to the address given above, not later than April 21, 1993.

List of Subjects in 1 CFR Part 305

Administrative practice and procedure.

For the reasons set out in the preamble, 1 CFR part 305 is proposed to be amended as follows:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 591–598.

2. New Recommendation to be added to part 305 to read as follows:

§ 305.93–___ Peer review in awarding discretionary grants (Recommendation 93–___).

Governments in most industrialized nations now play a prominent role in assembling and sustaining a sound scientific and engineering infrastructure and in providing financial support for artistic and other endeavors. Although many procedural vehicles exist for making the difficult scientific and artistic judgments that necessarily arise in apportioning limited resources, the United States government has depended to a large degree upon "peer review" systems in which the agency decisionmaker assembles a group of experts for advice.

Under this peer review model, the government does not attempt to persuade researchers to undertake particular research or artists to create particular kinds of art. Instead, a grantmaking agency allocates sums of money to entire fields and invites the researchers, artists, or performers to develop creative proposals for projects. A group of "peers" with expertise in the relevant area then evaluates and ranks proposals, leaving the ultimate funding decisions up to the governmental program officials. Peer review is intended to ensure that public funds are awarded objectively to meritorious scientists, artists, eleemosynary institutions, and, increasingly, for-profit entities in a way that renders the system accountable to the public and its elected representatives.

While peer review has proved remarkably durable in the 30 to 40 years during which federal agencies have employed it, the process has not been without controversy. Some critics suggest that peer review is an expensive waste of time; that it diverts creative minds from productive research to writing, reviewing, and discussing proposals; that it rewards huckstering skills at the expense of solid research; that it is sometimes abused by panelists who breach confidentiality; and that it can be counterproductive in programs designed to explore fresh ideas and innovative approaches. In particular, some peer review systems have been criticized for permitting ad hoc and systematic bias for and against individuals, groups, or new ideas. Decisionmaking bias in the award of discretionary grants can result from favoritism, animus, or conflict of interest. It can stem from the identity of the potential grantee, as, for instance, where an "old boy" network exists or a "halo effect" causes poorly conceived proposals from well-known scientists to be funded, or from conflicts of interest that have to do with the affiliation or position of the decisionmaker. Bias can include personal or professional animus, a lack of regard for mavericks who challenge conventional views, or a systematic refusal to give sufficient weight to particular criteria relevant to the decision. Finally, ex parte lobbying or even political pressure may occasionally cause an otherwise objective process to become biased for or against particular persons or approaches.

To the extent that bias infects it, the decisionmaking process loses objectivity and, consequently, legitimacy. While the incidence and impact of bias are not susceptible to empirical measurement, the Conference believes that, on balance, the peer review model has worked well and is highly appropriate for awarding most discretionary grants in the arts and sciences.[1] The Conference's recommendation is based largely on an examination of programs in the National Institutes of Health, the National Science Foundation, the Environmental Protection Agency, and the National Endowment for the Arts. Although all rely heavily upon the principle of peer review in awarding discretionary grants, these agencies manage the peer review process in diverse ways. None has completely eliminated the potential for bias, though some have made great strides in that direction. Each can learn

[1] Especially in the scientific agencies, a recent trend toward greater openness has been noted. This has been prompted in part through enactment of the Freedom of Information Act (FOIA), the Federal Advisory Committee Act (FACA), and the Privacy Act. FOIA requires every federal agency to make available to any person any record in the agency's possession (subject to several exceptions potentially relevant to the peer review process) upon a request by that person that reasonably describes the record. FACA requires federal agencies that rely on recommendations of advisory committees to charter these committees and to run them according to statutory standards of openness. The Privacy Act requires agencies to protect personal information in agency files from unauthorized disclosure and to give individuals access to review information about themselves and demand that the agency correct inaccuracies. While peer review committees clearly come within FACA's definitions, there have been significant litigation and uncertainty over the effect of these laws.

lessons from the others, and any grantmaking agency not mentioned here can learn a great deal from them. These recommendations draw on their experience to suggest reforms that should further reduce the potential for bias at a relatively low cost.

Recommendation

A. Use of Peer Review

1. In general, peer review mechanisms are appropriate and should be used by agencies that award discretionary grants in the arts and sciences and in other fields where peers are available to evaluate applications.

2. To encourage flexibility, innovation, and a rapid response where warranted, agencies that rely upon peer review to evaluate grant proposals should consider setting aside a small portion of the available funds for awards to innovative proposals based upon recommendations of the staff or decisions of management without peer review. Such awards should be publicly disclosed and subject to appropriate agency oversight, of relatively brief duration, and subject to renewal only through the regular peer review process.

B. Promoting Openness and Accountability

1. Reviewer Meetings

Agencies that rely upon peer review to evaluate grant proposals should generally assemble the reviewers for a meeting in which each reviewer has an opportunity to comment upon the evaluations made by other members in the presence of the other members. Such meetings may be in person or by telephone conference call.

2. Feedback and Rebuttal

(a) Agencies that rely on peer review should prepare and routinely transmit to all applicants brief summaries of the reasons for evaluation results.

(b) If peer reviewers or peer review committees prepare written evaluations of individual applications, agencies should retain these documents for a full funding cycle, and should make available copies of such written evaluations to applicants upon request in a redacted form so that particular evaluations may not be attributed to particular reviewers.

(c) Where practicable, statements and summaries of reasons should be made available to applicants sufficiently far in advance of the agency's final decision so that applicants may review the documents, submit comments and have those comments considered by the peer reviewers or agency staff. Where this is not practicable, agencies should maintain an appropriate reconsideration system.

(d) Agencies that rely on peer review should develop guidelines identifying information that will normally be made available to grant applicants and the public and specifying the procedures under which particular kinds of information will be available to different classes of requesters.

3. Applicant Anonymity

Where feasible and consistent with effective application of merit review criteria, agencies should not reveal the identities of applicants for discretionary grants to peer reviewers. Agencies should consider allowing reviewers to conduct discrete portions of peer reviews under conditions of applicant anonymity in cases in which complete applicant anonymity is not feasible or consistent with effective application of merit review criteria.

4. Reviewer Anonymity

(a) The agency should provide that, although the identities of all members of any peer review panels should be made available to applicants and the public, granting agencies may refuse to disclose information that would allow an applicant to identify the names of the persons who conducted detailed reviews of individual applications.

(b) Agencies that rely on peer review should send all peer review panelists a letter informing them of their Privacy Act obligations and of the penalties that may flow from a breach of confidence. Agencies should consider sanctions, including instituting debarment or suspension procedures, against any panel reviewer who knowingly and willfully breaches confidentiality for personal gain or because of a direct conflict of interest.

5. Contacts With Peer Reviewers, Staff, and Decisionmakers

(a) Agencies that rely on peer review should, for the purpose of conveying information and providing advice, encourage informal contacts between applicants and agency staff.

(b) Agencies should adopt appropriate statements of policy discouraging all ex parte contacts regarding particular grant proposals with peer reviewers and agency decisionmakers which attempt to influence grantmaking decisions outside the normal decisionmaking process.

C. Participants in the Review Process

1. Composition and Structure of Review Committees

(a) Agencies that rely on peer review should not limit the pool of available peers to narrow professional fields, but should instead attempt to appoint some reviewers from related professional fields to peer review panels. Agencies should also consider including on the panels less experienced professionals who have not previously received grants and lay persons without professional training.

(b) To the extent consistent with agency resources and depending on the size and number of the grants awarded in a program, agencies should provide that the membership of peer review panels change on a regular basis, ensure that the number of persons serving on an individual peer review committee is sufficiently large to dilute the impact of any bias, permit duplicate reviews in two or more subcommittees, or allow multiple committees to perform a tiered review.

2. Conflicts of Interest

(a) Agencies that rely on peer review should promulgate guidelines that preclude any person from reviewing or sitting on a panel that reviews his or her own grant application or the application of a close collaborator, a recently graduated former student, or an affiliated institution.

(b) To the extent feasible, agencies should avoid asking a reviewer to evaluate the application of a close competitor or competing institution.

(c) Agencies should provide that when the agency asks a reviewer to review an application where there is a conflict of interest or appearance thereof, that fact must be disclosed to the agency, to other members of any peer review committee and to the applicant before the time to ask for reconsideration or appeal has expired.

(d) If necessary, agencies may provide for specific waivers of the conflict of interest recommendations on a case-by-case basis where there is no other practical means for securing appropriate expert advice on a particular grant application.

3. Opportunity To Challenge Reviewers

Agencies that rely on peer review should provide that any applicant may submit a confidential list containing a small number of potential reviewers that the applicant deems objectionable together with a statement of the reasons for the challenges. Agencies should seriously consider such challenges, unless the agency determines that a qualified group of peers cannot be assembled if all such challenges are honored.

4. Dealing With High and Low Scores

Peer review committees that rely upon scoring systems for evaluating and ranking discretionary grant proposals

should consider developing vehicles for either eliminating or further discussing individual scores that vary widely from the average.

5. Agency Staff

(a) Agencies that rely on peer review should encourage their staff members to play a significant role in ensuring that reviewers are well-informed about, and strictly observe, applicable rules or guidelines on bias and conflict of interest.

(b) Agencies that administer multiple programs for awarding discretionary grants by peer review should consider rotating staff periodically among the programs. Especially in programs in which peer reviewers do not meet to reach collective judgments, agencies should rotate the staff responsible for making initial funding recommendations.

D. Audits for Potential Bias

Agencies that rely on peer review should experiment with random audits of the review process for bias and conflict of interest.

Dated: March 22, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–6924 Filed 3–25–93; 8:45 am]

BILLING CODE 6110–01–W

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

RIN 3150–AD93

Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition From Free Environment, Inc. et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On October 20, 1992, (57 FR 47802) the NRC published for public comment a proposed rule to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The comment period for this proposed rule was to have expired on February 17, 1993.

On January 5, 1993 the public comment period was extended to March 24, 1993 (58 FR 271). The Commission has received a request to once again extend the public comment period based on the fact that the proposed rule presents difficult issues requiring thoughtful and careful analysis if the comments are to be of maximum value to the Commission. In particular, preparation of such comments involves careful consideration of the interplay between the proposed demographic and seismic criteria and the relationship of the proposed criteria to the Commission's Safety Goals, severe accident requirements, and 10 CFR part 52, as well as preparation of supporting analyses.

The Commission therefore finds that it is reasonable to extend the public comment period to June 1, 1993, in order to allow all interested persons adequate time for such consideration.

DATES: The comment period has been extended and now expires June 1, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, and comments received may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3860, concerning the seismic and earthquake engineering aspects and Mr. Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3918, concerning other siting aspects.

Dated at Rockville, Maryland this 22d day of March, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–6969 Filed 3–25–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–14–AD]

Airworthiness Directives; Precise Flight, Inc., Pulselite Units, Model 1210–2405–2; as Installed in Various Small Airplanes; Installed in Accordance With Supplemental Type Certificate (STC) SA4005NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Precise Flight, Inc., pulselite units. This proposal would require removal of certain pulselite units, or replacement of those units with improved units. This proposal is prompted by reports that pulselite units have overheated and failed due to the installation of underrated transistors and the location of these transistors in relation to the heat sink fins. The actions specified by the proposed AD are intended to prevent the presence of smoke in the cockpit, which could prompt the pilot to initiate an emergency landing.

DATES: Comments must be received by May 21, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila I. Mariano, Aerospace Engineer, Seattle Aircraft Certification Office, Special Certification Branch, ANM–190S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2599; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports that certain Precise Flight, Inc., pulselite units, which flash the landing lights, have overheated and failed. Investigation has revealed that the pulselite units failed because the transistors in the units that were installed during production are not rated for the normal operation mode of the airplane. In addition, these transistors are located near the heat sink wall, where heat dissipation is limited. The transistors can overheat due to an influx of current and become heat sources for the surrounding material, which can generate enough heat to burn the material inside the unit and damage nearby wire and components outside the unit. Nylon screws inside the pulselite units can melt onto the circuit board, causing a short circuit, while the coating on the wires inside the units can melt and char. The wires inside the units are coated with poly vinyl chloride (PVC), which tends to burn, smoke, and char at low temperatures, producing a corrosive environment and generating toxic gases. If the pulselite units fail, a burning odor and smoke may be emitted into the cockpit. This condition, if not corrected, could prompt the pilot to initiate an emergency landing.

The FAA has determined that these pulselite units are installed in various small airplanes in accordance with Supplemental Type Certificate (STC) SA4005NM, including (but not limited to) certain airplanes manufactured by: Beech Aircraft Corporation, British Aerospace, Cessna Aircraft Corporation, de Havilland, Inc., Gates Learjet, Gulfstream Aerospace Corporation, Israel Aircraft Industries, Lockheed Aircraft Corporation, Mooney, and Piper Aircraft Corporation.

The FAA has reviewed and approved Precise Flight, Inc., Service Bulletin No. PL9303001, dated March 10, 1993, that describes procedures for removal of certain pulselite units (Model 1210–2405–2), or replacement of those units with improved units (Model 1210–2405–2A). The improved units consist of wiring, heat sink, and transistors that have been upgraded to higher quality material to eliminate the overheating condition. Additionally, the heat sink fins in the improved version of the unit are configured so that heat sufficiently dissipates away from the unit.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal of certain pulselite units, or replacement of those units with improved units. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,200 various small airplanes in the worldwide fleet on which the affected pulselite unit is installed. The FAA estimates that 1,000 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $52.95 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $135,450, or $135.45 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Precise Flight, Inc.: Docket 93–NM–14–AD.

Applicability: Precise Flight, Inc., pulselite units, Model 1210–2405–2; serial numbers X00150 through X01371, inclusive; as installed in various small airplanes in accordance with Supplemental Type Certificate (STC) SA4005NM; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of smoke in the cockpit, which could prompt the pilot to initiate an emergency landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD in accordance with Precise Flight, Inc., Service Bulletin No. PL9303001, dated March 10, 1993.

(1) Remove Precise Flight, Inc., pulselite units, Model 1210–2405–2, from the airplane. Or

(2) Replace Precise Flight, Inc., pulselite units, Model 1210–2405–2, with improved pulselite units, Model 1210–2405–2A.

(b) As of the effective date of this AD, no person shall install a Precise Flight, Inc., pulselite unit, Model 1210–2405–2, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–6960 Filed 3–25–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; correction.

SUMMARY: OSM is correcting an error on the proposed rule announcing the Indiana Abandoned Mine Land Reclamation Program (AMLR) amendment, which was published on January 14, 1993 (58 FR 4374). The correction will change the address at which copies of the Indiana program, the proposed amendment, a listing of any scheduled public meetings, and all written comments received in response to the proposed rule announcement will be available for public review at an Indiana State office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, room 301, Indianapolis, Indiana 46204; Telephone (317) 226–6700.

SUPPLEMENTARY INFORMATION: The following correction is made to the Indiana AMLR proposed rule document which was published on Thursday, January 14, 1993 (58 FR 4374–4376): On page 4374, second column, lines 50 through 53 and under **ADDRESSES**, the address of the Indiana Department of Natural Resources is changed to read as follows: Indiana Department of Natural Resources, Division of Reclamation, P.O. Box 147, Jasonville, Indiana 47438; Telephone: (812) 665–2207.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 26, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–6972 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment 93–1) submitted consists of proposed changes to the Indiana Surface Mining Rules concerning performance standards for restoring soil productivity for surface coal mining and reclamation operations under IC 13–4.1. The amendment is submitted in response to required program amendments, and is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 26, 1993; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on April 20, 1993; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 12, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this document will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated May 22, 1991 (Administrative Record Number IND–0872), the Indiana Department of Natural Resources (IDNR) submitted a

proposed amendment (#91–4) to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12–5. The amendment repealed 310 IAC 12–5–64 and added sections 310 IAC 12–5–64.1, 64.2, and 64.3. The added sections concern surface mining operations and established standards for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland, and statistical methodology to evaluate the success of revegetation. By letter dated May 23, 1991 (Administrative Record Number IND–0874), the IDNR submitted similar amendments (#91–6) to the Indiana rules which govern the surface impacts of underground mining operations. Specifically, Indiana repealed 310 IAC 12–5–65, 12–5–128 and 12–5–129, and added sections 310 IAC 12–5–128.1, 128.2 and 128.3. The program amendments submitted under amendments 91–4 and 91–6 were reviewed and approved, in part, by the Director on May 29, 1992 (57 FR 22653). In addition, in the same **Federal Register** notice, certain required program amendments were codified at 30 CFR 914.16 (i), (j), and (k) and which are intended to require Indiana to revise the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated May 23, 1991 (Administrative Record Number IND–0873), the IDNR submitted program amendment number 91–5 to the Indiana program. The amendment revised 310 IAC 12–5–145, 146, and 148, repealed 310 IAC 12–5–147, and added new 310 IAC 12–5–148.5. The amendments revised the performance standards for restoring soil productivity on prime farmland. The amendments were reviewed and approved, in part, by the Director on September 14, 1992 (57 FR 41869). In the same **Federal Register** notice, the Director codified required amendments at 30 CFR 914.16 (l) and (m) which are intended to require revision of the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated January 4, 1993 (Administrative Record Number IND–1193), Indiana submitted proposed amendments intended to address the required program amendments codified at 30 CFR 914.16 (i), (j), (k), (l), and (m).

The proposed amendment includes changes to the following Indiana rules:

1. 310 IAC 12–5–64.1 Standards for Success for Nonprime Farmland

a. Subsection 64.1(c)(3)(C) and 64.1(c)(6)(C) are amended by deleting the words "alone or."

b. The last sentence in subsection 64.1(g) is being deleted in its entirety. The sentence reads "Small areas which are repaired under this section may be exempted from the success standards if the grading and vegetation blends with the contiguous area which meets the success standards."

2. 310 IAC 12–5–64.2 Sampling Techniques for Nonprime Farmland

In subsection 64.2(a), the words "approved by the director" are added and subsections 64.2(a) (1) and (2) are deleted. In effect, the amendment provides that sampling techniques for measuring success of revegetation must be approved by the director of IDNR.

3. 310 IAC 12–5–64.3 Statistical Methodology

At subsection 64.3(c)(4), Indian is correcting the sample standard deviation formula to read

$s = \sqrt{M + N}$.

4. 310 IAC 12–5–128.1 Underground Mining; Standards for Success

a. Subsections 128.1(c)(3)(C) and 128.1(c)(6)(C) are amended by deleting the words "alone or."

b. In subsection 128.1(g), the last sentence is being deleted in its entirety. The sentence reads, "Small areas which are repaired under this section may be exempted from the success standards if the grading and vegetation blends with the contiguous area which meets the success standards."

5. 310 IAC 12–5–128.3 Underground Mining; Statistical Methodology

At subsection 128.3(c)(4), Indiana is correcting the sample standard deviation formula to read

$s = \sqrt{M + N}$.

6. 310 IAC 12–5–145 Prime Farmland; Scope, Purpose, and Applicability

New subsection 145(c) is added to read as follows: "Soil reconstruction shall be carried out in accordance with the specification of the Soil Conservation Service of the United States Department of Agriculture establishing prime farmland soil reconstruction specifications for Indiana.

7. 310 IAC 12/5–148.5 Prime Farmland; Revegatation and Restoration of Soil Productivity

New subsection 148.5(b)(11) is added to read as follows: "The selection of reference areas shall be guided by section 64.1 of this rule. The selection of an approved reference area must be accomplished with concurrence by the Soil Conservation Service of the United States Department of Agriculture.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on April 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis

Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of the meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1993.

Carl C. Close

Assistant Director, Eastern Support Center.

[FR Doc. 93–6973 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program Amendment; Show Cause Orders

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment 93–2) submitted consists of proposed changes to the Indiana Surface Mining Rules concerning show cause orders and adjudicative proceedings for the suspension or revocation of permits for surface coal mining and reclamation operations under IC 13–4.1. The amendment is submitted in response to required program amendments, and is intended to revise the Indiana program to be consistent with corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 26, 1993; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on April 20, 1993 and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 12, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this document will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1992, the Indiana program was made effective by the conditional approval of the Secretary of the Interior.

Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letters dated August 15, 1989, and December 5, 1989 (Administrative Record Numbers IND–0674 and 0723), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 06 and 310 IAC 12–6–6.5. The amendment proposed changes to the Indiana program concerning suspension or revocation of permits and adjudicative proceedings. The program amendment was reviewed and approved, in part, by the Director on January 18, 1992 (56 FR 1915). In the same **Federal Register** notice, certain required program amendments were codified at 30 CFR 914.16 (d) and (e) which are intended to require Indiana to revise the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated February 24, 1993 (Administrative Record Number IND–1214), the IDNR submitted program amendment number 93–2 in response to the required program amendments. The proposed amendment includes, but is not limited to, the following changes in 310 IAC 0.6–1–5, 310 IAC 0.6–1–13, 310 IAC 0.7–3–5, and 310 IAC 12–6–6.5:

a. The terms "complaint" and "complaint and proposed" are deleted throughout certain sections of the proposed rules to avoid the creation of a "two-tiered" hearing procedure.

b. 310 IAC 0.6–1–5(d) is revised to require an order to show cause to be served by certified mail or by personal delivery.

c. 310 IAC 0.6–1–5(e) is revised to require a permittee's answer to a show cause order to set forth detailed reasons for contesting the order.

d. 310 IAC 0.6–1–5(f) is revised to require the Director to submit a written recommendation to the commission within 45 days of the receipt of a show cause order. In addition, provisions are added to require a minimum permit suspension period of three working days and a 60-day period upon which the administrative law judge shall issue findings and a non-final order after the conclusion of a hearing.

e. 310 IAC 0.6–1–13 is revised to change the award of costs and attorney's fees.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on April 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of the meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–6974 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 920

Maryland Permanent Regulatory Program; Air Resources; Permitting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment limits the air protection standards to air pollution attendant to erosion. The amendment also deletes a number of provisions that either are not covered by Federal rules or will make the regulations consistent with statutory provisions recently approved by OSM.

This notice sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 26, 1993 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on April 20, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 12, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

The Maryland Bureau of Mines (Bureau) submitted a program amendment to OSM on February 5, 1993. The amendment (Administrative Record Number MD–562.00) limits the air protection standards to air pollution attendant to erosion. The amendment also deletes a number of provisions that either are not covered by Federal rules or will make the regulations consistent with statutory provisions recently approved by OSM.

The Code of Maryland Regulations (COMAR), 08.13.09.27A (Air Resources Protection), is changed to read, "All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion." The provision is identical to the Federal rule at 30 CFR 816.95(a). COMAR 08.13.09.27B, is changed to make specified fugitive dust control measures optional as determined by the Bureau. Certain other provisions not required by the Federal regulations have been deleted.

COMAR 08.13.09.04B(3)(c) (Permit Applications: Review Procedures) is amended to require the Bureau to publish notification of a complete permit application in the Maryland Register, including the deadline for submitting comments, objections or requests for a public hearing.

COMAR 08.13.09.04H(1) (Public Hearing) is amended to require the Bureau to hold a public hearing, if requested, in the locality of the proposed operation.

The current regulations require a joint hearing with the Land Reclamation Committee (LRC).

The provisions of COMAR 08.13.09.04I pertaining to decisions by the LRC have been deleted.

New COMAR 08.13.09.04J(3) requires the Bureau to issue an approved permit within fifteen days of receipt of all bonds and fees.

COMAR 08.13.09.04J(4)(c), as amended, requires the Bureau to notify OSM, persons who filed comments or objections and each party to a hearing after the Bureau issues the permit.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of the rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 22, 1993.

Carl Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–6976 Filed 3–25–93; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 920

Maryland Permanent Regulatory Program; Deep Mining; Permit Application; Permit Review

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns changes to Subtitle 13, Chapter 02, Deep Mining of Coal, in the Code of Maryland Regulations (COMAR). The amendment requires that the surface element of the deep mining plan in the permit application be prepared and reviewed in accordance with COMAR 08.13.09 (Surface Coal Mining and Reclamation under Federally Approved Program). The amendment also requires that the surface activities of deep mining operations comply with the performance standards of COMAR 08.13.09. The amendment is intended to make the Maryland regulations consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 26, 1993, to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on April 20, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 12, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Maryland program, the proposed amendment, and all written

comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

The Maryland Bureau of Mines (Bureau) submitted a program amendment to OSM on February 23, 1993. The amendment (Administrative Record Number MD–563.00) requires that the surface element of the permit application for a deep mine contain the applicable provisions of COMAR 08.13.09.02 (Permit Applications: General Requirements) and requires that the application be reviewed by the Bureau in accordance with COMAR 08.13.09.04 (Permit Applications: Review Procedures).

The amendment removes obsolete or unnecessary provisions in COMAR 08.13.02. The amended provisions, except for minor language changes, are listed below.

COMAR 08.13.02.01 (Definitions) is amended by deleting the definition for "abandoned," "disposal area" and "operator."

COMAR 08.13.02.02 (Application Requirements) is amended by deleting the provisions that a permit applicant register with the Bureau of Mines and provide copies of applications for other permits.

COMAR 08.13.09.03 (Quadrangle Maps) is amended by deleting certain identification requirements for topographic maps including names and depths of bodies of water, conditions of adjacent deep mines, and locations of reference monuments.

COMAR 08.13.02.04 (Mining and Reclamation Plan) is amended by replacing section B (including the title, "Provisions of Surface Element of Plan) with the statement: "The surface element of the plan shall be prepared in accordance with the applicable provisions of COMAR 08.13.09."

COMAR 08.13.02.06 (Application Review Procedures) is deleted.

COMAR 08.13.02.07 (Deep-Mining Bonds) section B is replaced by: "Form of Performance Bonds. In accordance with Natural Resources Article § 7–5A–09, the Bureau may accept either: * * *." Subsections (1) and (2) are modified and a new subsection (3) is added. The subsection adds a surety bond as an acceptable financial instrument for the performance bond.

COMAR 08.13.02.08 (Interim Permits) and COMAR 08.13.02.09 (Flagging or Marking Affected Areas) are deleted.

COMAR 08.13.02.10 (Standards Governing Surface Operations and Activities Related to Deep Mining Operations) is amended by referencing COMAR 08.23.09 (Surface Coal Mining and Reclamation under Federally Approved Programs) as the applicable performance standards and Section A (Face-up area) and Section B (Disposal area) were removed. The standards for these two sections are found in COMAR 08.13.09.13 and COMAR 08.13.09.33.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by

section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–6977 File 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 920

Maryland Permanent Regulatory Program; Hydrologic Balance; Impoundments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously prepared amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In accordance with 30 CFR 732.17(h), OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by Maryland on February 19, 1993 (Administration Record Number MD–549.16), to an amendment which was initially submitted by the State on February 7, 1992 (Administrative Record Number MD–549.00). The modifications are in response to an Issue Letter from OSM dated June 24, 1992 (Administrative Record Number MD–549.08). The amendment consists of proposed modifications to surface water monitoring, inspection of impoundments, and stability analysis.

This document sets forth the times and locations that the program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 12, 1993. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on April 5, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 31, 1993.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Mr. Robert Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the proposed amendment, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are in 30 CFR 920.15 and 920.16.

II. Discussion of Amendment

By letter dated February 19, 1993 (Administrative Record Number MD–549.16) Maryland submitted modifications to a proposed program amendment which was originally submitted on February 7, 1992 (Administrative Record Number MD–549.00). The resubmission is in response to an Issue Letter from OSM dated June 24, 1992 (Administrative Record Number MD–549.08).

This resubmission contains the following changes to the February 7, 1992, submission:

1. Regulations COMAR 08.13.09.23E(5)(a) is revised to provide for modification of surface water

monitoring requirements if the operator demonstrates that postmining water quantity and quality is not, and is not expected to, adversely impact identified water users, and the water supply of any adversely impacted water users has been replaced.

2. Regulations COMAR 08.13.09.24H(3)(c) is revised to give consideration to the results of a supplemental stability analysis conducted by Maryland. The revision identifies those factors that must be present in order for impoundments meeting the criteria of COMAR 08.13.09.24(H)(1) and H(3)(b) to be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions.

3. Regulations COMAR 08.13.09.24H(4) is revised to authorize the Bureau of Mines to require a foundation investigation for impoundments not meeting the size criteria of 30 CFR 77.216(a), if the Bureau determines that an investigation is necessary.

4. Regulations COMAR 08.13.09.24H(10) is revised to correct an erroneous cross-reference.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is reopening the comment period on Maryland's revised program amendment to provide the public an opportunity to reconsider the adequacy of the revisions.

Specifically, OSM is seeking comments on Maryland's revised surface mine reclamation regulations submitted on February 19, 1993 (Administrative Record Number MD–549.16). OSM is seeking comments on whether the revised program amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If approved, the amendment will become part of the Maryland permanent regulatory program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 5, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Harrisburg Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental regulations, Surface mining, Underground mining.

Dated: March 12, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–6975 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 60 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program no less effective than the corresponding Federal regulations. The amendment concerns the extraction of more than 250 tons of coal under an exploration permit and the commercial use or sale of coal extracted during exploration.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 26, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on April 20, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 12, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated January 15, 1993 (Administrative Record No. OH–1826), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 60. In this amendment, Ohio proposes to revise Ohio Administrative Code (OAC) rule 1501:13–4–02 to make that rule no less effective than the corresponding Federal rules in 30 CFR Part 772 concerning coal exploration. Ohio is making numerous minor revisions to clarify and reorganize the rule and to renumber and reletter rule paragraphs. The substantive changes to the rule proposed by Ohio are discussed briefly below:

(1) *OAC 1501:13–4–02 paragraph (D):* Ohio is deleting the existing provision that persons who intend to extract more than 250 tons of coal during an exploration operation must obtain a coal mining and reclamation permit as required under Ohio Revised Code § 1513.07. Ohio is adding a new requirement that those persons who intend to extract more than 250 tons of coal during an exploration operation must first submit an application for and obtain an exploration permit. New paragraphs (D)(1) through (D)(13) specify the minimum required information which those persons must include in applications for exploration permits.

(2) *OAC 1501:13–4–02 paragraph (E):* Ohio is adding a new paragraph (E) which establishes requirements for public notice and opportunity to comment on exploration permit applications. Applicants shall publish a newspaper notice in the county of the proposed exploration area and affected persons may file written comments with Ohio within ten days after that notice.

(3) *OAC 1501:13–4–02 paragraph (F):* Ohio is adding a new paragraph (F) which establishes the review procedures and approval criteria which Ohio will use in processing exploration applications.

(4) *OAC 1501:13–4–02 paragraph (G):* Ohio is adding a new paragraph (G) which establishes the procedures by which Ohio will notify applicants and publicly display its decisions on exploration applications.

(5) *OAC 1501:13–4–02 paragraph (K):* Ohio is revising the existing provision that persons who intend to extract coal during an exploration operation for commercial sale or use must obtain a coal mining and reclamation permit as required under Ohio Revised Code § 1513.07. Ohio is adding the provision in new paragraph (K)(2) that, if such commercial sale or use is for coal testing purposes only, those persons need not obtain a coal mining and reclamation permit. Rather, those persons must apply for and receive an exploration permit. New paragraphs (K)(2)(a) through (K)(2)(d) specify the required information on the coal testing, remaining coal reserves, and method of exploration which those persons must provide in the exploration application to justify the commercial sale or use of the extracted coal.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93-6978 Filed 3-25-93; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administrative Record Number PA 818.00) would increase the surface mine permit reclamation fee from $50 per acre to $100 per acre to provide additional revenue for the Surface Mining Conservation and Reclamation Fund (Fund).

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding, if one is requested.

DATES: written comments must be received on or before 4 p.m. on April 26, 1993 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on April 20, 1993. Requests to present testimony at the hearing must be received on or before 4 p.m. on April 12, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone (717) 782-4036.

Pennsylvania Department of Environmental Resources, Bureau of

Mining and Reclamation, room 209 Executive House, 2nd and Chestnut Streets, P.O. 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Proposed Amendment

Section 18(a) of Pennsylvania's Surface Mining Conservation and Reclamation Act provides for the Fund. Moneys derived from bond forfeitures, civil penalties, license fees, permit fees and miscellaneous revenue are deposited into the Fund. The Fund is used to supplement reclamation costs on those sites where the forfeited bonds are inadequate. The Pennsylvania Department of Environmental Resources (PADER) determined that current Fund revenues are insufficient to cover short and projected long-term reclamation obligations of the Fund. Consequently, PADER decided to increase the permit reclamation fee. PADER's rules at 25 PA. CODE 86.17 (e) currently require a $50 per acre fee as permit acreage is authorized for mining. The fee is not assessed on surface acreage of underground mines. The amendment would increase the per acre permit reclamation fee from $50 to $100.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 12, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the

State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93-6971 Filed 3-25-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 168

[CGD 91-202]

RIN 2115-AE10

Escort Vessels for Certain Oil Tankers

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening comment period.

SUMMARY: On July 7, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) to define areas including Prince William Sound, Alaska, and Puget Sound, Washington, where at least two escort vessels will be required for certain tankers. The comment period, which closed on September 8, 1992, is being reopened. The Coast Guard is taking this action to obtain additional information which will be helpful in establishing standards for escort vessels and to determine what other requirements may be appropriate for tanker escort operations.

DATES: Comments must be received by June 24, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Captain G. T. Willis, Project Manager, (202) 267-6732.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-202) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

Drafting Information

The principal persons involved in drafting this document are Captain G. T. Willis, Project Manager, and Ms. Joan Tilghman, Project Counsel, OPA 90 Staff.

Background and Purposes

Section 4116(c) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) requires the Secretary of Transportation to initiate rulemaking to define areas where single hulled tankers over 5,000 gross tons (GT) transporting oil in bulk must be escorted by at least two "towing vessels" as defined in 46 U.S.C. 2101 or by some other vessels which the Secretary considers appropriate. This authority has been delegated to the Coast Guard. These defined areas must include Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction). On July 7, 1992, the Coast Guard published an NPRM (57 30058) to implement section 4116(c) in Prince William Sound and Puget Sound.

The Coast Guard received comments to the NPRM which were not as extensive as expected. It appears that the public may not appreciate the scope of the July 7, 1992 NPRM. The Coast Guard is inviting further public review of those portions of the NPRM (noted below) where additional comments are needed.

(a) Definition of escort vessel. The comments received indicate that the definition of "escort vessel" proposed in the NPRM was not uniformly agreed upon or understood. The Coast Guard invites further comment on whether to redefine the term "escort vessel" by differentiating between the traditional service of berthing and unberthing assistance at extremely slow speeds, and controlling the movement of a large, loaded tanker which may lose power or steering while underway in open waters.

The definition developed will apply in Prince William Sound and Puget Sound and may be used in other areas where escort vessels may be required by the Coast Guard. The Coast Guard solicits comment on an appropriate national definition.

(b) Escort vessel criteria. Congress intended to require maximum safety margins for tankers transiting environmentally sensitive areas, and the Coast Guard solicits additional information on what constitutes an appropriate escort vessel for a tanker.

The most important factor to be considered is the escort vessel's ability to influence a stricken tanker's movement at any given time. That is, the escort vessel must be able to respond to a disabled tanker and apply sufficient maneuvering forces to control the tanker, thereby reducing the risk of grounding or collision. Additional considerations include the different functions that the escort vessel may be required to perform (which as towing, maneuvering assistance, spill response, firefighting), the weather and sea conditions, and the distances that the escort vessel must travel.

Therefore, the Coast Guard is seeking comment on whether the criteria for escort vessels should be performance-based or design-based. Information is also needed on what services an escort vessel should be expected to perform in order to develop our requirements for escort vessels and whether a design-based standard will account for the full spectrum of tanker sizes and other conditions under which the escort vessel actually may operate. Public comment is also needed on the value of a performance-based standard coupled with operating parameters that account for a tanker's motion, weather and sea conditions, as well as geographical peculiarities.

More specific comments are invited on performance standards, especially on how to demonstrate that an escort vessel can meet the performance criteria for

various tanker sizes under a range of weather conditions. Additionally, comments are sought on the use of computer technology which simulates all environmental conditions of concern and matches those conditions with both tanker and escort vessel characteristics. Comment is also sought on whether the results of the computer simulation should be verified with full-scale sea trials.

The Coast Guard has received comments suggesting that the results of escort vessel studies be obtained before issuing a final rule. A Disabled Tanker Towing Study is being conducted in Prince William Sound to evaluate the capability of existing emergency towing equipment and examine the alternatives that could enhance the escort and assist capabilities for disabled tankers. This study is funded by the Regional Citizens' Advisory Council for Prince William Sound (RCAC) and the Prince William Sound Tanker Association. It is being conducted by: Prince William Sound RCAC, Aleyska Pipeline Services Company, the Prince William Sound Tanker Association, the Alaska Department of Environmental Conservation, and the U.S. Coast Guard. The Coast Guard seeks further comments on whether the results of the study should be obtained before completing the rulemaking.

(c) Pre-escort conference. In the NPRM, the Coast Guard proposed that a tanker master use the pre-escort conference, in part, to determine the suitability of escort vessels. Many of the comments received on this section expressed the opinion that the tanker master should not be responsible for making a suitability decision based on the information previously proposed, especially if the tanker is already in the area where the escort is to begin.

The Coast Guard seeks additional, specific comment on the need for and content of the pre-escort conference. Should the principal focus of any conference be to evaluate weather, sea, and other conditions that may affect the safe conduct of the tanker transit? Should it ensure that personnel on each vessel understand and agree as to how the operation will be conducted? Comments are solicited as well on current practice between pilots, masters, and towing vessel operators, regarding pre-escort discussions.

(d) Public hearing. Some responses requested a public hearing. Public hearings are planned for Seattle, Washington, and Valdez, Alaska. Dates, times and locations of the hearings will be published in the **Federal Register**.

The Coast Guard invites specific comment on each issue presented in this document. Previous comments in this docket will be considered in continuing deliberations and need not be resubmitted. However, the Coast Guard is interested in new data or information. The Prince William Sound and Puget Sound escort vessel final rule may, depending on comments received, be proposed to apply, at least in part, to other areas, as selected by the Coast Guard.

Dated: March 17, 1993.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-6907 Filed 3-25-93; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM91-1; Order No. 968]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Proposed Rulemaking; Withdrawing Proposed Rule and Establishing Date for Additional Comments.

SUMMARY: The Postal Rate Commission proposed a new subpart I of its rules of practice in a Notice of Proposed Rulemaking published on August 28, 1992. After receiving the comments of the United States Postal Service on the proposed rules, the Commission has determined to withdraw the proposal from consideration. The Commission is also soliciting additional comments regarding potential improvements in its current rules of practice.

DATES: Comments responding to this document must be submitted on or before May 10, 1993.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Acting Legal Advisor, Postal Rate Commission, suite 300, 1333 H Street NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On August 28, 1992, the Commission published a notice in this proceeding proposing a new subpart I of its rules of practice. The components of the new subpart were crafted primarily in response to the recommendations of the Joint Task Force on Postal Ratemaking, in its report entitled Postal Ratemaking in a Time of Change, and included rules:

(1) Implementing a four-year strategic rate cycle approach to recommending changes in postal rates and fees under 39 U.S.C. ch. 36; (2) providing for a presentation by a Postal Service general policy witness in omnibus rate cases and midcycle rate cases to illuminate the record in such cases; (3) adopting a general policy statement regarding "band rates" for competitive categories of service and implementing the processes by which rate bands could be recommended; and (4) adopting enhancements in periodic data reporting by the Postal Service to provide easy, unambiguous comparisons between estimates made in rate decisions and actual operating results subsequently observed by the Service. See 57 FR 39160-73 (Aug. 28, 1992). In light of the comments made by interested parties, most notably the United States Postal Service, the Commission has decided to withdraw the proposed new subpart I from consideration, and to solicit further comments from interested parties on other possible changes to the Commission's current rules of practice.

The Commission's notice set October 13, 1992, as the deadline for substantive comments upon the proposed rule. 57 FR 39160. Prior to that date, the Commission received several letters sent on behalf of mail users or mailers' groups [1] requesting that the Commission suspend this proceeding, with resumption conditioned on the Postal Service's submission of its views on reforming the ratemaking process prior to a general round of comments from other parties. Reasons advanced for the requested suspension included (i) a concern that leadership and management changes at the Postal Service leave the mailing community without a clear sense of the Service's position; (ii) the onset of the Postal Service's high-volume season; (iii) the apparent postponement of the omnibus rate filing anticipated at earlier stages of this rulemaking; and (iv) lack of ensuing prejudice to any party.

The Commission granted these requests in Order No. 936, issued October 7, 1992. In that order, the Commission suspended the proceeding until December 16, 1992, and stated its expectation that the Postal Service would file comments responsive to the

[1] The Commission received letters requesting a suspension from representatives of the Mailers Council and the Direct Marketing Association, and letters in support of a suspension from counsel or representatives of Time Warner Inc., Magazine Publishers of America, Newspaper Association of America, and the Association of American Publishers.

movants' concerns and addressing the substance of the proposed rule, insofar as possible, by that date. The Commission also invited the Governors of the Postal Service to share their perspective on the Commission's proposal on, or soon after, the December 16 date for Postal Service comments. Finally, the Commission stated its intention to provide other parties an ample amount of time to review submissions by the Postal Service and the Governors and to formulate their positions prior to setting a specific deadline for their comments.

The United States Postal Service filed comments in response to the Notice of Proposed Rulemaking on October 13, 1992. The Service stated that it "does not support the two-phase four-year rate cycle" proposed by the Task Force, and substantively presented in the Notice. According to the Service's comments, "[t]he proposed rules are not consistent with the directions in which postal management is currently moving." Comments at 4 and 6. The Service expressed a preference for a "much more flexible approach" that would involve the selection by the Postal Service's Board of Governors of a multi-year test period, the length of which would be determined on a case-by-case basis. The Postal Service did state its view that the Commission should proceed to consider the various other procedures recommended by the Joint Task Force on Postal Ratemaking. It also stated an expectation that it would be able to furnish suggested rules covering those areas to the Commission and the parties in the near future.

The Governors of the Postal Service have not chosen to submit separate comments on these matters to date.

With considerable reluctance, the Commission has decided to withdraw the proposed new subpart I of its rules from consideration. We are doing so in light of the inescapable conclusion that the Postal Service is fundamentally opposed to the initiative which the Commission's subpart I represents.

In its comments of October 13 on the proposed rules, the Postal Service took pains to identify six ratemaking principles which it believes are implicit in those rules. Postal Service Comments of October 13, 1992, at 2–3. The Service then states that it "is not prepared to commit itself" to those principles, and presented six detailed statements in opposition. Id. at 3–4.

These comments strike at the very heart of the proposed rules. As our commentary accompanying the proposed rules reflects, the four-year strategic rate cycle—and the commitment on the part of the Postal Service's Board of Governors that the approach requires—are the indispensable foundations of the Task Force recommendations, and the new subpart I. As we stated in the Notice of August 28, 1992:

> The indeterminate nature of the present rate cycle, and the tenuity of the connections between the Service's actual plans and results and the test year data we analyze in a rate case, can be corrected by an explicitly plan-linked rate change request tied to an equally explicit cycle of years. If it is clear to all concerned—postal managers and employees, mailers, and outside observers—that by filing a rate case the Service has committed itself to achieving certain planned results and has suggested specific future rate levels tied to that plan, there will be an incentive to achieve the plan which is largely lacking in today's ratemaking practice.

57 FR 39161. If the specified regular rate cycle is removed, the linchpin of the intended improvements in the ratemaking process is missing, and our proposed rules will not function. For this reason, the Postal Service counter-proposal of a multi-year test period of indefinite length, to be determined by the Board of Governors on a case-by-case basis, is not an acceptable revision of our proposed rules. Similarly, without the regular scrutiny of the institutional cost contributions made by competitive categories of service which the regular cycle of omnibus and midcycle rate cases provides, the implementation of band rates would revive concerns expressed by other commenters regarding the risk of predation, exploitation of monopoly customers, and evasion of statutory requirements.[2]

[2] In the Notice of August 28, we made the following observation concerning the proposed rules' provision for band rates:

> This new authority is permissible since the fact that rates in these areas will be reviewed at regular intervals in formal public rate proceedings provides adequate safeguards to both mailers and competitors.

57 FR at 39161.

In summary, without the Postal Service's institutional commitment to the proposed regular cycle of rate cases, the proposed new subpart I lacks a critical form of support, and in our view cannot be recommended. Accordingly, the Commission will withdraw the proposed rules from consideration.

Future Course of This Proceeding

Having withdrawn our proposed rules from consideration, the Commission is mindful that interested parties other than the Postal Service have filed earlier comments in this docket suggesting improvements in the Commission's current rules of practice. Some of the comments concerned potential improvements in the conduct of rate proceedings; others addressed more general or different matters. We appreciate the thought and effort devoted to these comments, and will consider them in the balance of this rulemaking. Also, in view of our withdrawal of the proposed new subchapter I, we will confine our deliberations concerning ratemaking matters in the remainder of this proceeding to potential improvements in the Commission's current rules and procedures generally. Accordingly, we are providing all interested parties an additional opportunity to submit comments on such potential improvements within 45 days of the publication of this notice. We will then evaluate all suggestions and comments received in this docket, and publish proposed changes for further comment.

In addition, while the tenor of the Postal Service's response to the first proposed rules stemming from the Task Force report was not positive, we intend to proceed to explore whether other Task Force proposals can be developed and implemented. Consequently, in a companion to this order we will shortly initiate a new rulemaking proceeding to consider the adoption of rules responsive to other Task Force recommendations.

Issued by the Commission on March 19, 1993.

Charles L. Clapp,

Secretary.

[FR Doc. 93–6962 Filed 3–25–93; 8:45 am]

BILLING CODE 7710–FW–P

Notices

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Special Provisions for Fresh Fruit and Vegetable Imports Under the U.S.-Canada Free-Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination of existence of conditions necessary for imposition of temporary duty on potatoes from Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade agreement Implementation Act of 1988 ("FTA Implementation Act"), this is a notification that the necessary conditions exist with respect to United States acreage and import price criteria for potatoes classifiable to subheadings 0701.10.00, 0701.90.10, and 0701.90.50 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary of Agriculture to consider recommending to the President the imposition of a temporary duty ("snapback duty") by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement (FTA), Special Provisions for Fresh Fruits and Vegetables.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the FTA, authorizes the imposition of a temporary duty (snapback) for a limited group of fresh fruits and vegetables when certain conditions exist. Potatoes, fresh or chilled, classified under subheadings 0701.10.00, 0701.90.10, and 0701.90.50 of the HTS are goods subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the 5 preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the like fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

On February 9, 10, 11, 12, and 16, 1993, the price conditions with respect to potatoes were met.

The most recent revision of planted acreage for potatoes shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, DC the 18th day of March, 1993.

Charles J. O'Mara,

Acting Under Secretary, International Affairs and Commodity Programs.

[FR Doc. 93–7009 Filed 3–25–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Proposed Fourmile Timber Sale Within the French Creek/Patrick Butte Roadless Area, Payette National Forest, Adams County, ID

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service published a notice of intent to prepare an environmental impact statement (EIS) for proposed timber sales in the French Creek roadless area in the **Federal Register** on June 9, 1989 (Vol. 54, No. 110, pp. 24725–24726). That notice is hereby revised to show these changes: (1) prepare separate EIS's for each proposed timber sale, (2) name of the EIS's, and (3) the scheduled of the EIS's.

1. This Notice of Intent is for the proposed Fourmile timber sale which is one of six proposed timber sales within the French Creek/Patrick Butte Roadless Area. All six proposed sales are being analyzed together by one Interdisciplinary Team.

2. This Notice of Intent covers the proposed Fourmile timber sale. Separate NOI revisions have been prepared covering the other 5 proposed sales. They include the following proposed timber sales: Hazard Helicopter, Freight Landing, Jenkins, French Creek, and Lower Elkhorn.

3. Public scoping has included several meetings and written comments. The DEIS is scheduled to be released for public comments in April or May of 1993 and an FEIS released in July or August of 1993.

ADDRESSES: Send written comments to David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Mike Balboni, Team Leader, phone 208–634–0629 or David Spann, District Ranger, phone 208–634–0300.

SUPPLEMENTARY INFORMATION: The USDA Forest Service is proposing to construct roads, harvest and regenerate timber in the Fourmile timber sale area. This sale lies partially within the French Creek/Patrick Butte Roadless Area, Adams County, Idaho. Within the proposed sale area, drainages include: Threemile, Fourmile, and Sixmile creeks which are tributaries to the Little Salmon River.

Preliminary issues include: roadless characteristics, water quality, fisheries, biological diversity, and economics.

Preliminary alternatives being considered include; no action, uneven-age management, intermediate harvest prescriptions, clearcutting, road construction, and no new road construction.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To

be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement, *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: March 18, 1993.

Gary Allen,

Acting Forest Supervisor.

[FR Doc. 93-6921 Filed 3-25-93; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lolo/Ford Creeks; Agricultural Pollution Abatement Plan Clearwater and Idaho Counties

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho, 83705, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lolo/Ford's Creek Agricultural Pollution Abatement Plan, Clearwater and Idaho Counties, Idaho.

The Plan/Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Lolo/Ford's Creek Agricultural Pollution Abatement Plan consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment, and improve the quality of waters entering Lolo/Ford's Creeks and the Clearwater River. Planned land treatment practices include pasture and hayland planting, critical area planting, filter strips, grassed waterways, terraces, sediment basins, nutrient and pesticide management, streambank protection, conservation tillage, spring developments, proper woodland grazing and woodland erosion control systems.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basis data developed during the plan/environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: March 12, 1993.

Paul H. Calverley,

State Conservationist.

[FR Doc. 93-6919 Filed 3-25-93; 8:45 am]

BILLING CODE 3410-16-M

Lower Payette River Water Quality Planning Project; Payette County, ID

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho 83705, telephone (208) 334-1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Payette River Water Quality Planning Project, Payette County, Idaho.

The Plan/Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Lower Payette River Water Quality Planning Project consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment, and improve the quality of waters entering the Payette River Planned land treatment practices include pasture and hayland planting, critical area planting, sediment basins, nutrient and pesticide management, streambank protection, conservation tillage, fencing, waste management system, land leveling, sprinkler systems and channel vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the plan/environmental assessment are on file and may be reviewed by contacting Mr. Paul. H. Calverley. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: March 12, 1993.

Paul H. Calverley,

State Conservationist.

[FR Doc. 93-6920 Filed 3-25-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9-93]

Proposed Foreign-Trade Subzone; GE Aerospace Simulation/Testing/Control Systems Plant; Daytona Beach, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Volusia, Florida, requesting special-purpose subzone status for the aerospace simulation/ testing/control systems manufacturing plant of GE Aerospace Daytona (a department of the Aerospace Group, General Electric Company)

located in Daytona Beach, Florida. The County of Volusia has an application pending with the Board for a general-purpose foreign-trade zone at sites in Volusia and Flagler Counties, Florida (FTZ Doc. 4–93, 58 FR 8930, filed 2–12–93). The subzone application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 18, 1993.

The GE plant (24 acres) is located at 1800 Volusia Avenue (U.S. 92) in Daytona Beach, Florida. The facility employs 1,086 employees and is used to produce automated testing equipment, visual simulation products, and automated digital control systems. The plant's primary products currently include avionics testing modules, flight simulators, ship and tank trainers, and vessel system controls. While these products have been developed primarily for defense applications, the company plans to produce similar items suitable for industrial and commercial uses. Some 10 percent of the components and material inputs are sourced from abroad, including fabricated structures, electric motors, generators, generating sets and parts, automated data processing machines, magnets and batteries, electrical apparatus for line telephony, headphones and parts, recording media, transmission apparatus, electrical capacitors and resistors, printed circuits, cathode ray tubes, diodes and transistors, insulators and fittings, lenses and mirrors, lenses for projection, test instruments, oscilloscopes, analyzers, and measuring and checking instruments. Currently, over 40 percent of the finished equipment is exported.

Zone procedures would exempt GE Aerospace Daytona from Customs duty payments on the foreign components used in its exports. On domestic sales, the company would be able to choose the duty rates that apply to the finished equipment (duty-free to 4.9%). Equipment sold to the U.S. Department of Defense (DOD), would be eligible for duty-free treatment under the provisions of Harmonized Tariff System Chapter 98, Subchapter VIII. The duty rates on most components range from duty-free to 10%. The application indicates that the savings from zone procedures would help improve the company's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 25, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 9, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

County of Volusia, Growth Management Department, 123 West Indiana Avenue, DeLand, Florida 32720–4604.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 19, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–6932 Filed 3–25–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 8–93]

Proposed Foreign-Trade Subzone; Amoco Oil Company; Refinery/Petrochemical/MTBE Complex, Texas City, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Texas City-Gulf Coast, Inc., (FTZTC) requesting special-purpose subzone status for the Texas City oil refinery/petrochemical/MTBE complex of Amoco Oil Company, located in Texas City, Texas. FTZTC has an application pending with the Board for a general-purpose foreign-trade zone in Texas City (FTZ Doc. 7–93, filed 3–2–93). The subzone application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 10, 1993.

The refinery complex consists of 5 sites located in Texas City, on Texas City Harbor: *Site 1* (997 acres)—500,000 barrels per day refinery and petrochemical manufacturing complex; *Site 2* (39 acres)—dock facility, leased from the Texas City Terminal Railway Company, adjacent to the refinery complex on the industrial ship canal and Texas City Harbor; *Site 3* (114 acres)—Borden Property, a Superfund site owned by Amoco Oil Company to be developed for storage facilities, located adjacent to the refinery complex and north of State Highway F.M. 519; *Site 4* (61 acres)—Amoco Chemical Company Site C (undeveloped), owned by Amoco Chemical Company, located south of State Highway F.M. 519; *Site 5* (215 acres)—Landfarm, a waste management site for non-hazardous materials, located west of State Highway Loop 197. The terminals, storage facilities and pipelines operate as an integral part of the refinery. The refinery (2,300 employees) is used to produce gasoline, chemical plant feedstocks, gas oils, fuel oil, jet fuels, distillates, lube oil, and naphtha. The company indicates that MTBE may also be produced at the facility. Chemical products produced include refinery gases such as ethane, propane, butane, butylene, and carbon dioxide; petrochemical feedstocks such as toluene, mixed xylene, ethylene, propylene, and benzene; and refinery byproducts, including sulfur and petroleum coke. All of the petroleum coke is exported, and certain petrochemical feedstocks are transferred to affiliated chemical plants for processing and export. Approximately one-third of the refinery inputs (crude oil, feedstocks, and blendstocks, including methanol and MTBE) are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to choose the finished product duty rate in certain circumstances. For example, the company proposes to choose the zero duty rate that applies to certain petrochemical products, such as ethylene, propylene, butylene, butadiene, benzene, propane, asphalt, sulfur, and petroleum coke. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.)

MTBE (methyl tertiary butyl ether) is one of the blendstocks sourced from abroad. On MTBE which is blended with gasoline at the refinery and then sold in the U.S., Amoco proposes to choose the finished gasoline duty rate (1.25 cents/gallon). The duty rate on MTBE would otherwise be 5.6%. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the

address below. The closing period for their receipt is May 25, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 9, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, Operations Branch, 1927 Post Office Street, Galveston, Texas 77550.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 17, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93-6931 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with February anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, from interested parties as defined in §§ 353.2(k) and 355.2(i) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with February anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than February 28, 1994.

Antidumping duty proceedings and firms	Period to be reviewed
Canada:	
Racing Plates (Aluminum Horseshoes) A-122-050	
Equine Forgings Ltd	2/1/92-1/31/93
Japan:	
Mechanical Transfer Presses A-588-810	
Aida Engineering, Ltd. Hitachi Zosen Corporation, Ishikawajima-Harima Heavy Industries Co., Ltd., Komatsu Ltd.	2/1/92-1/31/93
The People's Republic of China:	
Forged Hand Tools A-570-803	
Fujian Machinery & Equipment Corporation, Shangdong Machinery Import & Export Corporation	2/1/92-1/31/93
Potassium Permanganate A-570-001	
China National Chemicals Import and Export Corporation, Shenzhan Metals Materials Co., Tongji Chemical Plant, Jinan Hualyin Chemical General Factory, Beijing Dayu Chemical Plant, Zunyi Chemical Plant, Chongqing Jialing Chemical Plant, Guangdong Foreign Trading Development, Guangdong Foreign Economics Development Co., Ltd., Guangdong Foreign Economic Relations & Trade Consultancy Corporation; Guangzi Import & Export Trading Corp., Guilin Native Produce & Animal, China Native Produce and Animal By-Products I/E Corporation, Helm Products, China National Chemicals, Calberson Intl, Guilin Prefecture Foreign Economic, China Conic, Gui Da Company Ltd., Yue Pak Co., Ltd., Devoted Cargo Services (HK) Ltd., He-Ro Chemicals Ltd., ICD Group (HK) Ltd., J. A. Moeller (HK) Ltd., Kenwa Shipping Co. Ltd., Vincent Shipping Co., LP & Assoc Intl Freight Service, Pacific Champion Express, Ava International, M & R Forwarding (HK) Ltd., Ceylong Shpg, Helmag Nordkanal Strasse	1/1/92-12/31/92
Countervailing Duty Proceedings	
Saudi Arabia:	
Carbon Steel Wire Rod C-517-501	1/1/92-12/31/92
Suspended Investigations	
Colombia:	
Roses and Other Cut Flowers C-301-003	1/1/92-12/31/92
Miniature Carnations C-301-601	1/1/92-12/31/92
Costa Rica:	
Certain Fresh Cut Flowers C-223-601	1/1/92-12/31/92

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: March 17, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-7016 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-811]

Antidumping Duty Order: Steel Wire Rope From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT: Amy Beargie, Anna Snider or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Scope of Order

The product covered by this order is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090.

Excluded from this investigation is stainless steel wire rope, which is classifiable under the HTS subheading 7312.10.6000, and all forms of stranded wire. Although HTS subheadings are provided for convenience and customs purposes, our own written description of the scope is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on February 12, 1993, the Department of Commerce (the Department) made its final determination that steel wire rope from Korea is being sold at less than fair value. 58 FR 11029 (February 23, 1993). On March 15, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of steel wire rope from Korea materially injure a U.S. industry.

Therefore, in accordance with section 736(a) of the Act, the Department will direct the U.S. Customs Service (Customs) to assess, upon further advice of the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of steel wire rope from Korea. These antidumping duties will be assessed on all unliquidated entries of steel wire rope from Korea entered, or withdrawn from warehouse, for consumption on or after September 30, 1992, the date on which the Department published its preliminary determination notice in the Federal Register (57 FR 45035), except entries of steel wire rope produced and sold by Korea Iron & Steel Wire, Ltd. (now KISWIRE, Ltd.) (KIS), and entries of steel wire rope produced by either Young Heung Iron & Steel Co., Ltd. (YHC) or Dae Heung Industrial Co., Ltd. and sold by YHC. Such entries are excluded from the application of this order pursuant to section 353.21(c) of the Department's regulations. 19 CFR 353.21(c). However, the Department is currently drafting proposed regulations which would eliminate such exclusions. In this case, the Department is concerned about the possibility that numerous small producers of Korean steel wire rope could start to funnel sales of their merchandise through KIS or YHC, thereby evading this antidumping duty order. The Department's proposed regulations will address this problem and the practice of excluding firms from an order that receive a final zero or de minimis rate.

In the interim, the Department wants to make clear that this exclusion will only apply to steel wire rope which is, in the case of KIS, both produced and sold by KIS to the United States, or in the case of YHC, is produced by either YHC or Dae Heung Industrial Co., Ltd. (DHC) and sold by YHC to the United States. We will review import statistics and work closely with Customs to ensure that other producers are not making sales through KIS or YHC to evade this order and to ensure that entry documentation identifies the producer of the steel wire rope.

The Department has the authority to conduct a changed circumstances review to determine whether KIS or YHC is reselling steel wire rope produced by other companies in Korea. We will immediately initiate a review if we have reason to believe that the integrity of the order on Korean steel wire rope is threatened as a result of such evasion. A preliminary or final affirmative finding could result in the suspension of liquidation of all entries of KIS or YHC, as appropriate.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage
Man Ho Rope Manufacturing Co., Ltd.	1.51
All Others	1.51

This notice constitutes the antidumping duty order with respect to steel wire rope from Korea pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–6930 Filed 3–25–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–062]

Pig Iron From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 27, 1993, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil. We have now completed this review and determine the net subsidy to be zero for all firms for the period January 1, 1991 through December 31, 1991.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 6246) the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil (45 FR 23045; April 4, 1980). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments from Brazil of pig iron of basic, foundry, malleable, and low phosphorous grades. During the review period, such merchandise was classifiable under item numbers 7201.10.00, 7201.30.00, and 7306.10.00 of the Harmonized Tariff Schedule

(HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period January 1, 1991 through December 31, 1991 and seven programs: (1) Income Tax Reduction for Export Earnings; (2) CACEX Preferential Working Capital Financing for Exports; (3) FINEX preferential financing; (4) SUDENE Corporate Income Tax Reduction for companies located in the northeast of Brazil; (5) BEFIEX Reduction of Taxes and Import Duties; (6) Accelerated Depreciation on Brazilian-made Capital Equipment program; and (7) FINEP Preferential financing. Twenty-two companies produced and exported the subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be zero for all firms for the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Brazil exported on or after January 1, 1991 and on or before December 31, 1991. The Department will also instruct the Customs Service to collect a cash deposit of zero percent of estimated countervailing duties on all shipments of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 22, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-7015 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 930114-3014]

Inspection and Certification Fees and Charges

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1993 inspection fees.

SUMMARY: NMFS announces a change in the established rates for voluntary Department of Commerce fishery product grading and certification services consistent with its intent to provide inspection services at the lowest appropriate cost. The change represents an increase of 5.9 percent in the basic hourly rates and results from a pay raise of 3.7 percent for Federal employees effective January 1, 1993, as well as higher operating costs resulting from opening additional lot inspection facilities to service program users and increased training of Federal and state inspectors, conversion of inspection staff to a new job series reflecting their duties, an increase in overhead charges assessed by NMFS, and a reduction in overhead waivers.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Richard V. Cano, Chief, Inspection Services Division, National Marine Fisheries Service, Silver Spring, MD 20910, Phone 301/713-2355.

SUPPLEMENTARY INFORMATION:

Regulations at 50 CFR 260.70 authorize the Secretary of Commerce to review and revise annually the rates for voluntary fishery products inspection, grading, and certification services by publishing a notice of fee changes in the **Federal Register**. The revised hourly rates reflect a 3.7-percent salary raise for Federal employees, higher operating costs resulting from opening additional lot inspection facilities to service program users and increased training of Federal and state inspectors, conversion of inspection staff to a new job series reflecting their duties, an increase in overhead charges assessed by NMFS, and a reduction in overhead waivers. Below is the schedule of fees effective January 1, 1993. The fees outlined for the State of Alaska are for services provided by cross-licensed State of Alaska inspectors. Charges for services provided in Alaska by NMFS inspectors will be at the rates specified, plus cost of living allowances. The rates outlined below for the State of Minnesota are for services provided by cross-licensed State of Minnesota inspectors. Charges for services provided in Minnesota by NMFS inspectors will be at the rates specified previously. The rates charged in the State of Minnesota are subject to change based on information supplied by the Minnesota Department of Agriculture.

(a) Type I—Official establishment and product inspection—contract basis:

	Per hour
Regular (except Alaska and Minnesota)	$34.35
Overtime (except Alaska and Minnesota)	51.55
Sunday and legal holidays (2 hrs. minimum) (except Alaska and Minnesota)	68.70

(1) The contracting party will be charged at an hourly rate of $34.35 per hour for regular time;

(2) $51.55 per hour for overtime in excess of 8 hours per shift per day; and

(3) $68.70 per hour for Sunday and national legal holidays for services performed by inspectors at official establishment(s) operating under Federal inspection.

In addition to an hourly services charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6 p.m. and before 6 a.m. The contracting party will be billed monthly for services rendered in accordance with contractual provisions at the rates prescribed in this section. Products designated in a contract will be inspected during processing at the hourly rate for regular time, plus overtime, when appropriate.

(b) Type II—Lot inspection—Official and unofficially drawn samples:

	Per hour
Regular (except Alaska and Minnesota)	$48.10
Overtime (except Alaska and Minnesota)	72.15
Sunday and legal holidays (2 hrs. minimum) (except Alaska and Minnesota)	96.20
Minimum fee (except Alaska and Minnesota)	36.10

(1) For lot inspection services performed between the hours of 7 a.m. and 5 p.m., Monday through Friday—$48.10 per hour.

(2) For lot inspection services performed at times Monday through Friday other than between 7 a.m. and 5 p.m., and on Saturdays (2 hrs. minimum)—$72.15 per hour.

(3) Sunday and national legal holidays (2 hrs. minimum)—$96.20 per hour.

(4) The minimum service fee to be charged and collected for inspection of any lot or lots of products requiring less than 1 hour will be $36.10.

(c) Type III—Miscellaneous inspection and consultative services.

When any inspection or related service such as, but not limited to, initial and final establishment surveys, appeal inspections, contract lot

inspections, sanitation evaluations, Sanitary Inspected Fish Establishment (SIFE) inspections, sampling, product evaluations, and label and product specification reviews, requires charges to which the foregoing sections are clearly inapplicable, charges will be based on the rates set forth below:

	Per hour
Regular (except Alaska and Minnesota)	$42.95
Overtime (except Alaska and Minnesota)	64.45
Sunday and legal holidays (2 hrs. minimum) (except Alaska and Minnesota)	85.90
Minimum fee (except Alaska and Minnesota)	32.20

In keeping with the intent of the authorizing legislation and the policies of the Inspection Program to charge fees to recover, as nearly as possible, the costs of providing inspection services, the hourly rates charged to contract lot inspection users who provide complete and acceptable facilities that are used by U.S. Department of Commerce (USDC) inspectors to conduct the necessary official contract functions will be those delineated under Type I. In all other cases, contract lot inspection users will be charged Type III rates.

(1) For miscellaneous inspection and consultative services performed between the hours of 7 a.m. and 5 p.m., Monday through Friday—$42.95 per hour.

(2) For miscellaneous inspection and consultative services performed Monday through Friday, other than between 7 a.m. and 5 p.m., and on Saturdays (2 hrs. minimum)—$64.45 per hour.

(3) For miscellaneous inspection and consultative services performed on Sunday and national legal holidays (2 hrs. minimum)—$85.90 per hour.

(4) The minimum service fee to be charged and collected for miscellaneous inspection and consultative services requiring less than 1 hour will be $32.20.

(d) The hourly rates for the State of Alaska as performed by cross-licensed State of Alaska inspectors are as follows:

Charges for services provided in Alaska by NMFS inspectors will be at the rate stated previously, plus cost of living allowances. For Type I inspection, in addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6 p.m. and before 6 a.m.

STATE OF ALASKA—AREA [PER HOUR]

	Aleutian Chain, Bristol Bay, Dillingham	South East & South Central Anchorage, Kenai, Juneau, Ketchikan	Remainder of Alaska, Kodiak
Type I:			
Regular time	$49.45	$40.80	$43.70
Overtime	68.30	56.35	60.35
Sunday and legal holidays	85.15	70.20	75.20
Type II:			
Regular time	62.90	52.65	55.55
Overtime	86.75	74.85	78.90
Sunday and legal holidays	113.75	96.40	102.15
Minimum fee	51.60	43.20	46.55
Type III:			
Regular time	54.90	45.65	48.55
Overtime	73.05	61.25	65.60
Sunday and legal holidays	93.95	78.65	85.00
Minimum fee	48.90	40.65	43.70

(e) The hourly rates for the State of Minnesota as performed by cross-licensed State of Minnesota inspectors are as follows:

The rates outlined below for the State of Minnesota are for services provided by cross-licensed State of Minnesota inspectors. Charges for services provided in Minnesota by NMFS inspectors will be at the rates specified previously. The rates charged in the State of Minnesota are subject to change based on information supplied by the Minnesota Department of Agriculture.

State of Minnesota

Type I—Official establishment and product inspection services:
- Regular time $36.25
- Overtime 54.40
- Sunday and Legal Holidays 72.50

Type II—Lot Inspection—Officially and Unofficially drawn samples:
- Regular time $50.75
- Overtime 76.15
- Sunday and Legal Holidays $101.50
- Minimum fee 38.05

Type III—Miscellaneous Inspection and Consultative Services:
- Regular time $45.35
- Overtime 67.95
- Sunday and Legal Holidays 90.65
- Minimum fee 33.95

(f) Analytical services: Applicants requesting specific analyses to be performed in a NMFS laboratory will be charged at the rates identified below.

Analyses performed in a private laboratory will be charged at the current rate of that laboratory. Charges based on these fees will be in addition to any hourly rates charged for lot, miscellaneous, and consultative inspection service, as well as to any hourly rates charged for inspection services provided under a contract at official establishments.

Microbiology:	
Total aerobic plate count	$16.00
Total coliform	12.00
Fecal coliform	[1] 12.00
E. coli	[1] 12.00
Staph. aureus	23.00
Salmonella BAM Method.	
Step 1	23.00
Step 2	[2] 15.00
Step 3	[2] 22.00
Listeria	
Presumptive	23.00
Confirmed	[1] 35.00
Chemistry:	
Histamine	90.00
Indole	75.00
Ammonia	55.00
Sodium bisulfite	90.00

Isoelectric focusing (species identification)	75.00
Methylmercury	90.00
Chlorinated pesticides	175.00
Domoic acid	75.00
Bioassay:	
Paralytic shellfish poison	[1]85.00

[1] Additional. Per sample (minimum of 3 samples).

Notes: The above costs are for analyses only. Sampling and travel time will be assessed using the Type II rates. Mileage costs will be assessed at the current rate. For other analyses not shown or not frequently requested, the charge will be assessed at the Type III hourly rate of $42.95.

All charges are per sample. A surcharge of 20 percent of the total charge will be charged for administrative purposes.

Classification

This action is taken under the authority of 50 CFR 260.70 and complies with E.O. 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

(16 U.S.C. 742e and 7 U.S.C. 1622, 1624)

Dated: March 18, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 93-6783 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on April 7–8, 1993, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA, telephone: 508–774–6800. The meeting will begin at 10 a.m. on April 7 and at 8:30 a.m. on April 8.

On the first day the Council meeting will begin with reports from: the Council Chairman, the Executive Director, the National Marine Fisheries Service Regional Director, the Northeast Fisheries Science Center liaison, the Mid-Atlantic Council liaison, and representatives from the Department of State, the Coast Guard, the Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission. During the early afternoon session, the Monkfish Committee will report on comments from the February 11 and March 2 scoping hearings and on possible management options. A discussion of the Atlantic Sea Scallop public hearings will follow. Finally, the State Department representative will report on U.S. participation in the North Atlantic Organization (NAFO).

On the second day, the Groundfish Committee will review the timetable for completion of Amendment #5. The Lobster Committee will review the progress on stock assessments, the overfishing definition and the Amendment #4 timetable. The afternoon session will include a report from the Habitat Committee and a review of the recent U.S./Canada Herring discussions.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-6997 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (Committee) will meet on April 2, 1993, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., room 2079, Building 4, Seattle, WA. The Committee will begin its meeting at 8:30 a.m.

The Committee will receive a report on recent Alaska Board of Fisheries actions on crab and review recent Tanner crab fisheries.

For more information contact Arni Thomson, Alaska Crab Coalition, 3901 Leary Way NW., suite 6, Seattle, Washington, 98107; telephone: (206) 547–7560.

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-6996 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Rockfish Committee (Committee) will meet on April 12, 1993, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., room 2039, Building 4, Seattle, WA. The meeting will begin at 1 p.m. on April 12, and may continue into the morning of April 13.

The Committee will review draft analyses for rockfish rebuilding plans and also discuss the 1993 total allowable catch for Pacific ocean perch.

For more information contact Chris Oliver, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: March 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-6998 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 26, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List for production by the nonprofit agency listed:

Commodity

Belt, Military Police, 8465–00–543–3378.
Nonprofit Agency: Travis Association for the Blind, Austin, Texas.

Services

Janitorial/Custodial, Federal Building, 200 E. Liberty, Ann Arbor, Michigan.
Nonprofit Agency: Washtenaw County Community Mental Health Board, Ypsilanti, Michigan.
Janitorial/Custodial, Blue Mountain, Crazy Canyon, Patee Canyon, and Howard Creek Trailheads, Missoula Ranger District, Missoula, Montana.
Nonprofit Agency: Missoula Developmental Service Corp., Missoula, Montana.
Janitorial/Custodial, U.S. Army Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, New Hampshire.
Nonprofit Agency: West Central Services, Lebanon, New Hampshire.
Operation of Self Service Retail Store, Naval Supply Center, Puget Sound, Building 467, Bremerton, Washington.
Nonprofit Agency: Peninsula Services, Bremerton, Washington.

E. R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 93–6985 Filed 3–25–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 26, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 12, 1992, the Committee for Purchase from People who are Blind or Severely Disabled published notice (57 FR 25023) of the proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Camp Pendleton and San Onofre Commissaries, Camp Pendleton, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 93–7118 Filed 3–25–93; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Joint Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the Magpie Creek Diversion Improvement Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS/EIR.

SUMMARY: The action being taken is a feasibility investigation to identify and assess the significance of potential measures to provide additional flood protection for McClellan Air Force Base (AFB) and the City of Sacramento west of the AFB. The feasibility investigation area includes lands located within the AFB and the City of Sacramento's North Sacramento Community Plan Area. Measures to be investigated include providing adequate channel and detention capacity to Magpie Creek.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS/EIR should be addressed to Mr. Michael Wolford, Planning Division, Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–6702.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers, together with the non-Federal sponsor, the City of Sacramento, is conducting a feasibility investigation to identify and assess alternative measures of providing additional flood protection along portions of Magpie Creek. Urban development in the approximately 10-square-mile watershed including development and channelization within the AFB has increased peak runoff and flood volume to Magpie Creek increasing the area's flood potential. Increases in runoff are due to the decrease in the amount of land available to store floodwater and to absorb rainfall and runoff resulting from urbanization. The study of Magpie Creek is authorized under the Continuing Authorities Program for Flood Control, Section 205 of the 1948 Flood Control Act, as amended (33 U.S.C. 701S). The study

requires that the portion of Magpie Creek that runs through McClellan AFB be studied for its contribution to area flooding concurrently with the creek's flood potential within the City of Sacramento. This DEIS/EIR discusses alternatives and plan features and impacts both on City of Sacramento and AFB administered lands. The results of the investigation will be presented in a feasibility report submitted to Corps headquarters for approval of a project.

2. Alternatives

The Feasibility Report's DEIS/EIR will address the full range of alternatives discussed in the Reconnaissance Report including further channelization of Magpie Creek, use of concrete-lined channels, expanded use of earthen channels, detention basin construction, and a no project alternative. The Feasibility Report will identify a flood control plan that considers improvements both on and off the AFB in order to effectively control flooding in the study area. Fish and Wildlife mitigation, including possible wetland (vernal pool) mitigation, will be studied and incorporated in to the project in compliance with various Federal and state statutes.

3. Scoping Process

a. A notice of initiation outlining the Magpie Creek investigation and proposed alternatives was sent to public agencies, organization, and individuals in the study area in July of 1990. The notice was an opportunity for the public to identity information on area flooding and significant natural resources in the area. Responses to the notice were used in the preparation of the Reconnaissance Report and Environmental Inventory.

b. The Reconnaissance Report and Environmental Inventory were circulated for public comment in July 1991. Comments were received from the public concerning the flood control alternatives and environmental impacts of those alternatives. Public workshops and coordinating meetings will be held as needed. Additionally, coordination is being maintained with Federal, state and local agencies, concerned individuals and groups. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate in the feasibility investigation process. A DEIS/EIR scoping meeting will be held during March 1993.

c. Significant issues that will be discussed in the DEIS/EIR include the degree of protection offered by the alternatives, hydrology of the area, planning objectives, alternatives analysis, impacts on fish and wildlife resources, recreation, endangered species, vegetation, esthetics, cumulative impacts, cultural resources and, hazardous and toxic waste.

d. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS/EIR.

e. A 45-day review period will be allowed for all interested agencies and individuals to review and comments on the DEIS/EIR. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the DEIS/EIR.

4. Availability

The DEIS/EIR is scheduled to be available for public review and comment in October 1993.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 93–6967 Filed 3–25–93; 8:45 am]

BILLING CODE 3710–08–M

Procedures for Filing and Processing Claims Resulting from the March 1992 Drawdown of Little Goose and Lower Granite Projects, Washington

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Public notice.

SUMMARY: This public notice provides for the administration and payment of claims for the costs of repair, relocation, restoration, or protection of public and private property and facilities in Washington and Idaho damaged by reservoir drawdowns undertaken in March 1992. Payment of damage claims is authorized by the Energy and Water Development Appropriations Act, 1993, Public Law 102–377, (1D6 Stat 1315, 1321), dated October 2, 1992. This notice prescribes the procedure to be used by the Corps of Engineers for processing and payment of such claims.

SUPPLEMENTARY INFORMATION:

Background

During March 1992, the Corps of Engineers, Walla Walla District conducted a test drawdown of the reservoirs behind Lower Granite and Little goose Dams on the Snake river in Washington. The purpose of the test was to determine physical ability to operate at low reservoir levels to benefit salmon species listed as threatened or endangered under the Endangered Species Act. During the test, water levels in both reservoirs were lowered substantially below established minimum operating pool levels. Certain structures in and adjacent to the river were damaged.

On October 2, 1992, the Energy and Water Development Appropriations Act, 1993, Public Law 102–377, (106 Stat 1315, 1321) was enacted authorizing the Chief of Engineers to pay claims for costs of repair, relocation, restoration, or protection of public and private property and facilities in Washington and Idaho damaged by the drawdown undertaken in March 1992. This Public Notice sets forth procedures for payment of claims authorized by the energy and Water Development Appropriations Act.

DATE: This Public Notice is effective upon publications in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Janet S. Smith, Assistant District Counsel, Walla Walla District, Corps of Engineers, Walla Walla, Washington 99363–9255, telephone (509) 522–6080.

Regulations and Authority

These procedures cover submission, processing and payment of claims for damages to public and private property resulting from reservoir drawdown operations at Little Goose and Lower Granite Reservoirs, Washington, Commencing March 1, 1992 and ending March 31, 1992. Authority for such payment is provided for under the Energy and Water Development Appropriations Act, 1993, Public Law 102–377 (106 Stat 1315, 1321), October 2, 1992, which states the following

"• • • That using $2,000,000 of the funds appropriated herein to remain available until expended, the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to pay such sums or under take such measures as are necessary to compensate for costs of repair, relocation, restoration, or protection of public and private property and facilities in Washington and Idaho damaged by the drawdown undertaken in March 1992 by the United States Army Corps of Engineers at the Little Goose and Lower Granite Projects in Washington • • •."

Claims Payable

Claims payable pursuant to Public Law 102–377 are limited to compensation for the costs of repair, relocation, restoration, or protection of public and private property and facilities in the states of Washington and Idaho directly caused by the March 1992 drawdown operation of Little Goose and Lower Granite Reservoirs. Compensation for damages paid pursuant to this authority may not exceed the difference between the value of the property immediately before the damage occurred and the value of the

property immediately after the damage occurred. Compensation for relocation or protection costs may not exceed the value of the property prior to execution of relocation or protection measures.

Claims not Payable

Claims for "loss of business", "loss of use", "mental anguish" and other such non-physical damages to property are not payable pursuant to Public Law 102–377. Costs associated with damages other than those specifically authorized are not payable.

Limitation of Funds

The sum of $2,000,000 has been authorized and appropriated for payment of claims made pursuant to Public Law 102–377.

Priority of Claims

Due to the limit on authorized and appropriated funds available for payment of claims under Public Law 102–377, all claims will be considered in the order in which they are received until such funds as have been made available are expended. Claims which were received by the Walla Walla District prior to the effective date of Public Law 102–377 and which meet requirements identified below will be given a priority date of October 2, 1992.

Drawdown Claims; Where To Submit, What To Submit, Sum Certain, Who May Submit, Time To Submit

For the purposes of the provisions of Public Law 102–377, a claim shall be deemed to have been presented when the U.S. Army Corps of Engineers, Walla Walla District in Walla Walla, Washington receives from a claimant, his/her duly authorized agent, legal representative, or subrogee, written notification of a claim for compensation for the "cost of repair, relocation, restoration, or protection" of property resulting from the March 1992 drawdown operation of Little Goose and Lower Granite Dams, Washington. Claims must conform to the following requirements:

(a) *Where to Submit Claims:* Claims must be submitted in writing to the U.S. Army Corps of Engineers, Walla Walla District, Walla Walla, WA 99362, ATTN: Drawdown Claims Office.

(b) *What to Submit:* Each claim must identify with particularity the damage and/or property for which compensation or protective measures costs are sought.

(c) *Sum Certain:* Each claim must set forth the specific monetary amount of the claim.

(d) *Who May Submit Claims:* Claims must be signed by the owner of the property for which the damage or protective measure claim is submitted, or his or her agent, or legal representative, or subrogee. The title or legal capacity the person signing must be indicated below the signature block on the claim. Evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, insurer, or other representative must accompany such claim.

(e) *Time to Submit Claims:* All claims must be received by the Drawdown Claims Office in the Walla Walla District on or before December 31, 1993.

Evidence and Information To Be Submitted

In support of a claim for compensation for cost repair, relocation, restoration, or protection of real or personal property, the claimant must submit the following evidence or information:

(a) Proof of ownership.

(b) A detailed statement of the amount claimed with respect to each item of property.

(c) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of each such repair.

(d) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(e) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property for which compensation is claimed, including appraisal of property, if requested.

Investigation and Claims Processing Procedures

All claims will be investigated, including conducting site visits, reviewing photographic evidence, reviewing all estimates, statements, expert opinions, and all other available evidence of causation and "cost of repair, relocation, restoration, or protection" to ensure that all amounts paid under this authority are proper. The Claims Investigating Official will prepare a report of investigation summarizing all relevant facts, including specific findings as to the amount of damages compensable under this authority, and make recommendation to the Approving Authority. Copies of all documentary evidence relied upon by the Claims Investigation Official will be attached to the report and forwarded to the Approving Authority.

Delegated Approving Authority

The District Engineer of the Corps of Engineers, Walla Walla District is authorized to approve for payment, in full or in part, to disapprove, and to make final offers of settlement for damages, relocation and property protection claims.

Action of Approved Claims

Any award, compromise, or settlement in any amount shall be paid out of the appropriation available for the Drawdown claims. Before paying a claim, the claimant shall be required to execute an appropriate release or settlement agreement.

Reconsideration of Denial or Final Offer

All requests for reconsideration of a denial or final offer by the District Engineer in which full relief is not granted will be forwarded to the Commander, North Pacific Division. The request must be submitted within 30 days of the final decision of the District Engineer.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–6965 Filed 3–25–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85–110–003]

Thermo Power and Electric, Inc.;

March 22, 1993.

On March 12, 1993, Thermo Power and Electric, Inc. (Applicant), c/o Energy Factors, Incorporated, 401 B. Street, suite 1000, San Diego, California 92101–4219, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located at the University of North Colorado in Greeley, Colorado. The facility consists of two combustion turbine generators, two heat recovery boilers, and an extraction/condensing steam turbine generator. Steam generated by the facility is used for hot water, space heating and cooling, laboratory and other process use. The primary energy source is natural gas. The net electric power production

capacity of the facility is approximately 63.3 MW.

The certification of the facility was originally issued to the Applicant on March 19, 1985 (30 FERC ¶ 62,316 (1985)). The instant recertification is requested by the Applicant to reflect the addition of a combustion turbine generator, a heat recovery boiler and an induction/extraction steam turbine generator to the facility, an increase of the net electric power production capacity to approximately 120 MW, and the addition of a new upstream owner. All other facility characteristics remain unchanged as described in the previous certification.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6936 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–18–000]

Staten Island Cogeneration Corp.; Amendment to Filing

March 22, 1993.

On March 15, 1993, Staten Island Cogeneration Corporation (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 9, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6939 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

March 22, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No:* 6939–030.

c. *Date Filed:* March 8, 1993.

d. *Applicants:* City of Jackson, Ohio and certain Ohio Municipalities.

e. *Name of Project:* Belleville.

f. *Location:* On the Ohio River in Wood County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Peter C. Kissel, Alan I. Robbins, Baller Hammett, P.C., 1225 Eye Street, NW., suite 1200, Washington, DC 20005 (202) 682–3300.

i. *FERC Contact:* Patricia Massie, (202) 219–2681.

j. *Comment Date:* April 15, 1993.

k. *Description of Transfer:* The City of Jackson, Ohio (licensee), proposes to partially transfer its interest in the license for the Belleville Project to include a group of Ohio municipalities with electric distribution systems as co-licensees with Jackson. The Transferees, including Jackson, have executed a joint development agreement whereby each of the municipalities would own an undivided share of the project proportionate to each municipality's commitment and right to purchase power from the project. Operation and management of the project would be overseen by a board consisting of representatives of each of the participating cities. The purpose of the transfer is to allow each of the municipalities to use its share of project output as a power supply source for its electric system, and to facilitate project financing.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Office of Hydropower Licensing, Division of Project Compliance and Administration, Federal Energy Regulatory Commission, ATTN: HL–21, room 1148 UCP, at the above address. A notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6935 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93-05716T North Dakota-3]

State of North Dakota; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 22, 1993.

Take notice that on March 18, 1993, the Oil and Gas Division of the North Dakota Industrial Commission (North Dakota), submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Red River Formation, underlying certain lands in McKenzie County, North Dakota, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as follows:

Township 153 North, Range 95 West
Sections 24–25: All
Township 153 North, Range 94 West
Sections 30–33: All
Township 152 North, Range 95 West
Sections 1–2: All
Township 152 North, Range 94 West
Sections 6: All

The notice of determination also contains North Dakota's findings that the referenced portion of the Red River Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6933 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93-04113T Wyoming-40]

State of Wyoming; NGPA Amended Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 22, 1993.

Take notice that on March 17, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) amended its notice of determination that was filed in the above-referenced proceedings on February 4, 1993 pursuant to section 271.703(c)(3) of the Commission's regulations. The February 4, 1993 notice determined that the Mowry/Belle Fourche Formations underlying a portion of Campbell County, Wyoming, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The amended notice of determination reduces the geographical area recommended for tight formation designation. The amended area covers only the following fee tracts:

Township 51 North, Range 75 West
Section 29: Lots 1–3

The notice of determination also contains Wyoming's findings that the referenced portions of the Mowry/Belle Fourche Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 10 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6934 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93-33-000]

NW Energy (Williams Lake) Limited Partnership; Filing

March 22, 1993.

On March 12, 1993, NW Energy (Williams Lake) Limited Partnership (NW Energy LP), a limited partnership organized under the laws of British Columbia, Canada, whose address is 16 West Hastings Street, suite 2120, Vancouver, British Columbia V6E 3X1, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

NW Energy LP states that it is exclusively in the business of being the owner and operator of certain electric generating facilities currently under construction in Williams Lake, British Columbia, Canada (the Facility). NW Energy states that the Facility, when completed will be a 60 MW (net output), wood waste fired electric generating facility in Williams Lake, British Columbia, Canada. NW Energy LP states that it will sell electricity generated at the Facility exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions or protests must be filed on or before April 6, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6938 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93-59-002]

Southern Company Services, Inc; Filing

March 22, 1993.

Take notice that on March 1, 1993, Southern Company Services, Inc. tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–6937 Filed 3–25–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4597–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 8, 1993 through March 12, 1993 pursuant to the Environmental Review Process (ERP), under Section

309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 10, 1993 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J02027–UT Rating EC2, Chevron Table Top Project Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary: EPA expressed concerns regarding the lack of any baseline water quality data. EPA requested that the water data and additional water quality analysis be included in the Final EIS.

ERP No. D–AFS–J65195–WY Rating EO2, Grand Targhee Ski Area Expansion Master Development Plan, Implementation, Targhee National Forest, Teton County, WY.

Summary: EPA expressed environmental objections based on potential air quality, groundwater and surface water and indirect impacts. EPA requested additional analysis and mitigation be included in the Final EIS.

ERP No. D–AFS–J65197–CO Rating EC1, White River National Forest Land and Resources Management Plan, Oil and Gas Leasing Development, Implementation, Several Counties, CO.

Summary: EPA had environmental concerns based on impacts to water quality and biological resources. EPA recommended that the FEIS include a summary of information to document existing conditions and the potential effects of proposed activities on forest resources.

ERP No. D–AFS–L65185–OR Rating EC2, Hen Moose Timber Sale, Implementation, Timber Harvesting in the Hensley subdrainage, Willamette National Forest, Sweet Home Ranger District, Linn County, OR.

Summary: EPA expressed environmental concerns based on potential water quality impacts; the lack of an air quality impacts analysis; the need for complete monitoring and mitigation discussions; and the need for a broader cumulative effects analysis. Additional information is requested to clarify compliance with state water quality standards; to disclose air quality impacts from prescribed burning; to outline monitoring and mitigation strategies; and to expand the cumulative effects analysis.

ERP No. D–NPS–J61087–WY Rating LO, Fort Laramie National Historic Site, General Management Plan and Development Concept Plan, Implementation, Fort Laramie, Goshen County, WY.

Summary: EPA had no objections to the proposed project.

ERP No. D–SCS–K36108–GU Rating EC2, Northern Guam Watershed Protection Plan, Funding and Implementation, Island of Guam, Territory of Guam, GU.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to the northern Guam sole source aquifer, a special resource protected under the Safe Drinking Water Act. The FEIS should fully discuss potential impacts to the aquifer and mitigation that will be implemented should adverse impacts to the aquifer be identified. EPA also requested documentation in the FEIS to support the statement that the project will have no adverse impacts to threatened or endangered species or their critical habitat areas.

ERP No. DR–COE–B40062–NH Rating EO2, Nashua-Hudson Circumferential Highway Improvements, Approval, Towns of Hudson, Litchfield, Merrimack and Nashua, Hillsborough County, NH.

Summary: EPA had environmental objections regarding the potential adverse impacts to water supply systems, lack of a comprehensive mitigation program to protect the water supply resources, and lack of consideration and discussion of alternatives. EPA recommended project modification or permit denial, as the project would significantly degrade waters in the United States (including wetlands) in violation of EPA's 404 (b) (1) guidelines.

ERP No. DR–DOE–H22000–MO Rating LO, Weldon Spring Site, Remedial Action/Feasibility Study for Chemical Plants, Funding, National Priorities List, St. Charles County, MO.

Summary: EPA had no objections to the proposed project.

ERP No. DS–AFS–J65166–UT Rating LO, Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, New Information, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

Summary: EPA had no objections to the proposed project.

ERP No. DS–NOA–B91017–00 Rating EC2, Atlantic Sea Scallop, Placopecten Magellanicus, (Gmelin), Fishery Management Plan (FMP), Additional Information, Amendment No. 4.

Summary: EPA expressed concerns regarding impacts that scallop dredging may have on aquatic habitat. EPA recommended a fuller analysis of the impacts of scallop dredging and the indirect impacts to non-target fisheries.

Final EISs

ERP No. F–AFS–J02022–WY Shoshone National Forest Oil and Gas Exploration and Development, Leasing, Fremont, Hot Springs Park, Sublette and Teton Counties, WY.

Summary: EPA expressed environmental concerns and recommends identification of priority areas for implementing a forest-level water quality monitoring program. The program should initially focus on areas where the potential for oil and gas development is highest, such as the Wind River and Greybull Districts identified in the EIS.

ERP No. F–SFW–H61020–IA Brushy Creek State Recreation Area (BCSRA) Dam and Lake Project, Implementation, Funding, NPDES Permit and Section 404 Permit, Des Moines River, Webster County, IA.

Summary: EPA had no objection to the proposed project.

ERP No. F1–AFS–J65143–00 Manti-La Sal National Forest Oil and Gas Leasing, Implementation, Sanpete, Utah, Juab, Sevier, Emery, Carbon, Grand and San Juan Counties, UT and Montrose and Mesa Counties, CO.

Summary: EPA continued to express concerns regarding potential air emissions from oil and gas production and water quality issues.

Dated: March 23, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–7022 Filed 3–25–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4597–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly Receipts of Environmental Impact Statements Filed March 15, 1993 Through March 19, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930083, FINAL EIS, BLM, WY, MetFuel Hanna Basin Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, COE Section 404 and EPA RCRA Permits and Right-of-Way Grants, Carbon County, WY, Due:

April 26, 1993, Contact: Bob Tignar (307) 324–7171.

EIS No. 930084, DRAFT SUPPLEMENT, COE, FL, Palm Beach County Beach Erosion Project, Updated Information, Shore Protection Project, Jupiter/Carlin Segment from Martin Co., Line to Lake Worth Inlet and from South Lake Worth Inlet to Broward, General Design Plan, Implementation, Martin and Broward Counties, FL, Due: May 10, 1993, Contact: Michael Dupes (904) 232–1689.

EIS No. 930085, DRAFT EIS, AFS, MT, South Beal Project, Beal Mountain Gold and Silver Mine Expansion Project, Construction and Operation, Plan of Operation, Mining Reclamation, Approval of Permits, Butte Ranger District, Deerlodge National Forest, Silver Bow County, MT, Due: May 10, 1993, Contact: Margie Ewing (406) 494–2147.

EIS No. 930086, FINAL EIS, AFS, CO, Routt National Forest Oil and Gas Exploration and Development, Approval and Leasing, Routt, Moffat, Jackson, Grand, Garfield and Rio Blanco Counties, CO, Due: April 26, 1993, Contact: Richard Hall (303) 879–1722.

EIS No. 930087, FINAL EIS, USA, VA, Fort Belvoir Engineer Proving Ground (EPG), Development and Construction, Implementation, Fairfax County, VA, Due: April 26, 1993, Contact: Janice A. Smith (703) 805–5617.

EIS No. 930088, DRAFT EIS, FTA, OH, Dual Hub Corridor Improvements, Downtown Cleveland to University Circle, Funding, Cuyahoga County, OH, Due: May 18, 1993, Contact: Paul Fish (312) 353–2865.

EIS No. 930089, DRAFT EIS, FHW, TN, TN–69 Highway Improvements, TN–15/US 64 to TN–202 south of Decaturville, Funding, Possible COE Section 404, TVA Section 26a and US Coast Guard Bridge Permits, Decatur, Hardin and Wayne Counties, TN, Due: May 10, 1993, Contact: Dennis Cook (615) 736–5394.

EIS No. 930090, FINAL EIS, FHW, OK, OK–82 Highway Construction, Red Oak to Lequire, Funding and Possible National Pollutant Discharge Elimination System Permit, Latimore and Haskell Counties, OK, Due: April 26, 1993, Contact: Gary E. Larsen (405) 231–4724.

EIS No. 930091, FINAL EIS, FHW, OR, Salem-Dayton Highway/OR–221/Wallace Road Widening, Orchard Heights Road to Oakcrest Drive, Funding, Section 404 Permit, Polk County, OR, Due: April 26, 1993, Contact: Alan R. Steger (503) 399–5749.

EIS No. 930092, DRAFT EIS, AFS, ID, Spruce Creek Timber Sale, Implementation, Boise National Forest, Valley County, ID, Due: May 18, 1993, Contact: Ronn Julian (208) 382–4271.

EIS No. 930093, DRAFT EIS, USN, VA, MD, Dahlgren Division, Naval Surface Warfare Center Base Realignment, New Construction and Renovation, Westmoreland, Stafford, Spotsylvania and King George Counties, VA and Charles County, MD, Due: Mey 10, 1993, Contact: Larry Chernikoff (202) 433–3387.

EIS No. 930094, FINAL EIS, USN, TX, Chase Field Naval Air Station Disposal and Reuse, Implementation, Permits and Approval, City of Beeville, Bee County, TX, Due: April 26, 1993, Contact: Mr. Laurens Pitts (803) 743–0893.

Amended Notices

EIS No. 930013, Draft Supplement, APH, Nationwide Cooperative Animal Damage Control Program, Additional Information, Integrated Pest Management Approach, Implementation, Due: April 28, 1993, Contact: William H. Clay (301) 436–8281. Published FR 1–22–93—Review period extended.

Dated: March 23, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–7021 Filed 3–25–93; 8:45 am]

BILLING CODE 6560–50–U

Notice of Cancellation of a Public Meeting on the Hazardous Waste Identification System

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: We are cancelling the April 1–2 scheduled meeting (58 FR 13757, March 15, 1993) to discuss issues related to contaminated media and treatment residuals and apologize for any inconvenience.

DATES: The meeting was to have been held April 1st and 2nd.

LOCATION: The meeting was to have been held at the Capitol Hilton Hotel, 16th and K Street NW., Washington, DC 20036, [202] 393–1000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should contact William A. Collins, Jr., Office of Solid Waste, OS–333, Environmental Protection Agency, Washington, DC 20460, (202) 260–4791. Persons needing further information on procedural matters should call the meeting Co-facilitator, Denise Madigan, of Endispute, Washington, DC, (202) 429–8782.

Dated: March 23, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–7107 Filed 3–25–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 93–325]

Comments Invited on Hawaii Public Safety Plan

March 22, 1993.

The Commission has received the public safety radio communications plan for Hawaii (Region 11).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 11 consists of the state of Hawaii. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before April 29, 1993 and reply comments on or before May 14, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–80 Hawaii-Public Safety Region 11.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–6986 Filed 3–25–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–324]

Comments Invited on West Virginia Public Safety Plan

March 22, 1993.

The Commission has received the public safety radio communications plan for West Virginia (Region 44).

In accordance with the Commission's Memorandum Opinion and Order in

General Docket 87–112, Region 44 consists of the State of West Virginia. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before April 29, 1993 and reply comments on or before May 14, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–79 West Virginia-Public Safety Region 44.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Search,

Secretary,

[FR Doc. 93–6987 Filed 3–25–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Cardinal Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 19, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Cardinal Bancshares, Inc., Lexington, Kentucky; to acquire 100 percent of the voting shares of F&P Bancshares, Inc., Lexington, Kentucky, and thereby indirectly acquire First & Peoples Bank, Springfield, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rogers Bancshares, Inc., Little Rock, Arkansas; to become a bank holding company by acquiring at least 81.5 percent of the voting shares of Metropolitan National Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire Metropolitan National Bank, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, March 22, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6988 Filed 3–25–93; 8:45 am]

BILLING CODE 6210–01–F

Haugo Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Haugo Bancshares, Inc., Sioux Falls, South Dakota; to acquire 50 percent of the voting shares of Community Trust Company, Sioux Falls, South Dakota, a *de novo* institution, and thereby engage in trust activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of South Dakota.

Board of Governors of the Federal Reserve System, March 22, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6989 Filed 3–25–93; 8:45 am]

BILLING CODE 6210–01–F

Middletown Savings Bank Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Middletown Savings Bank Employee Stock Ownership Trust,

Middletown, New York; to acquire 10.4 percent of the voting shares of MSB Bancorp, Inc., Middletown, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. LeRoy Henry Paris, II, Indianola, Mississippi; to retain 18.16 percent of the voting shares of Planters Holding Company, Indianola, Mississippi, and thereby indirectly acquire Planters Bank and Trust Company, Indianola, Mississippi.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Frank E. Morris, Gainesville, Texas; to acquire 0.63 percent for a total of 2.52 percent, and Estate of Fletcher E. Morris, Gainesville, Texas, to acquire 7.25 percent for a total of 29.25 percent of the voting shares of Red Bancorp, Inc., Gainesville, Texas, and thereby indirectly acquire The First State Bank, Gainesville, Texas.

2. Rockney D. Pletcher, as Trustee, Dallas, Texas; to acquire 36 percent of the voting shares of Brazos Bancshares, Inc., Joshua, Texas, and thereby indirectly acquire First National Bank of Joshua, Joshua, Texas.

Board of Governors of the Federal Reserve System, March 22, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–6990 Filed 3–25–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–64]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final versions of 28 of the 30 toxicological profiles comprising the fourth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Susie Tucker, Agency for Toxic Substances and Disease Registry, Division of Toxicology, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 275 hazardous substances which both agencies determined pose the most significant potential threat to human health. The first list was published in the **Federal Register** on April 17, 1987, (52 FR 12866); the second list on October 20, 1988, (53 FR 41280); the third list on October 26, 1989, (54 FR 43615); and the fourth list on October 17, 1990, (55 FR 42067).

Notice of the availability of drafts of the fourth set (30) of toxicological profiles for public review and comment was published in the **Federal Register** on October 16, 1990, (55 FR 41881), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–29. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, suite 2400, Executive Park Drive, Atlanta, Georgia, between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of 28 of the 30 toxicological profiles in the fourth set of ATSDR's final toxicological profiles. The remaining two profiles are undergoing additional technical review and will be announced in the **Federal Register** as soon as they become available. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5258 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–336–4700. There is a charge for these profiles as determined by NTIS.

Toxicological Profile	NTIS Order No.	CAS No.
1. Aluminum	PB/93/110633/AS	7429–90–5
2. Antimony	PB/93/110641/AS	7440–36–0
3. Barium	PB/93/110658/AS	7440–39–3
4. 2,3-Benzofuran	PB/93/110666/AS	271–89–6
5. Boron*	PB/93/110674/AS	7440–42–8
6. Bromomethane	PB/93/110682/AS	74–83–9
7. 1,3-Butadiene	PB/93/110690/AS	106–99–0
8. 2-Butanone	PB/93/110708/AS	78–93–3
9. Carbon Disulfide	PB/93/110716/AS	75–15–0
10. Cobalt	PB/93/110724/AS	7440–48–4
11. Cresols	PB/93/110752/AS	1319–77–3
o-Cresol		108–39–4
m-Cresol		106–44–5
p-Cresol		95–48–7
12. Dibromochloropropane	PB/93/110906/AS	109–64–8
1,2-Dibromo-3-chloropropane		96–12–8
13 1,2-Dibromoethane	PB/93/110740/AS	106–93–4

Toxicological Profile	NTIS Order No.	CAS No.
14. 2,4-Dichlorophenol	PB/93/110757/AS	120–83–2
15. cis-1,3–Dichloropropene	PB/93/110765/AS	10061–01–5
trans-1,3-Dichloropropene		10061–02–6
16. 2-Hexanone	PB/93/110713/AS	591–78–6
17. Manganese	PB/93/110781/AS	7439–96–5
18. Methyl Mercaptan	PB/93/110799/AS	74–93–1
19. Methyl Parathion	PB/93/110807/AS	298–00–0
20. Mustard "Gas"	PB/93/110815/AS	505–60–2
21. Nitrophenols	PB/93/110823/AS	25154–55–6
2-Nitrophenol		88–75–5
4-Nitrophenol		100–02–7
22. Pyridine	PB/93/110831/AS	110–86–1
23. Styrene	PB/93/110849/AS	100–42–5
24. Thallium	PB/93/110856/AS	7440–28–0
25. Tin	PB/93/110864/AS	7440–31–5
26. 1,2,3-Trichloropropane	PB/93/110872/AS	96–18–4
27. Vanadium	PB/93/110880/AS	7440–62–2
28. Vinyl Acetate	PB/93/110898/AS	108–05–4

Dated: March 19, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–6958 Filed 3–25–93; 8:45 am]

BILLING CODE 4160–70–P

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

Departments of Family Medicine Review Committee

Faculty Development Review Committee

Graduate Training in Family Medicine Review Committee

Residency Training Review Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC. Copies may be obtained from: Ms. Sherry Whipple, Executive Secretary, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Dated: March 22, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–6981 Filed 3–25–93; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1993:

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: May 13–14, 1993 8:30 a.m.–5 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Closed on May 13, 9:30 a.m.–1 p.m.

Open on May 13, 8:30 a.m.–9:30 a.m. and from 1 p.m. for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Education and Practice Improvement Amendments of 1992 (Pub. L. 102–148). The Council also performs final review of selected grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting May 13 will cover announcements; considerations of minutes of previous meeting; the reports of the Administrator, Health Resources and Services Administration, the Director, Bureau of Health Professions, the Director, Division of Nursing; and staff reports. The meeting will be closed to the public on May 13, from 9:30 a.m. to 1 p.m. for the review of grant applications for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds and Nurse Practitioner Grants and Nurse Midwifery. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Agenda Items are subject to change as priorities dictate.

Dated: March 22, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–6982 Filed 3–25–93; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 5, 1993.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests)

1. Metropolitan Atlanta Birth Defect and Risk Factor Surveillance Program—0920–0010—Surveillance of adverse pregnancy outcomes is an important tool in learning about the causes of congenital malformations and other neonatal conditions, in assessing the role played by suspected agents, and in evaluating the effectiveness of control programs for those defects and diseases for which preventive techniques are available. Case/Control will also be performed. *Respondents:* Individuals or households. *Number of Respondents:* 800; *Number of Responses per Respondent:* 1; *Average Burden Per Response:* 1.61 hours; *Estimated Annual Burden:* 1,286 hours.

2. MMWR Readership Survey—New—The purpose of this study is to evaluate the Morbidity and Mortality Weekly Report (MMWR) series of publications. Information about the MMWR and the characteristics of its readership will be collected through a readership survey and a follow-back case study. *Respondents:* Individuals or households. *Number of Respondents:* 1,250; *Number of Responses per Respondent:* 1.01 *Average Burden Per Response:* 0.25 hours; *Estimated Annual Burden:* 317 hours.

3. 1993 Inventory of Local Jail Mental Health Services—New—The Center for Mental Health Services (CMHS) needs the data in order to develop general purpose statistics for use by the Congress, extramural and intramural investigators in both CMHS and National Institute of Mental Health (NIMH), and for program and policy development. Increasing numbers of persons with mental illness are incarcerated in local jails and appropriate data can help to improve mental health service provision to this population. *Respondents:* State or local governments. *Number of Respondents:* 3,316; *Number of Responses per Respondent:* 1; *Average Burden Per Response:* .84 hours; *Estimated Annual Burden:* 2,791 hours.

4. National Hospital Ambulatory Medical Care Survey (1994–95)—0920–0278—Data collected from hospital outpatient departments and emergency departments concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health care work force assessment, epidemiologic studies, and other health care utilization research. *Respondents:* State or local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations. *Number of Respondents:* 448; *Number of Responses per Respondent:* 205; *Average Burden Per Response:* 0.077 hours; *Estimated Annual Burden:* 7,079 hours.

5. Health Education Assistance Loan (HEAL) Program—Lender's Application for Insurance Claim Form—0915–0036—The Department needs the information submitted on this form to determine if a lending institution has complied with the statutory and regulatory requirements for payment of an insurance claim. *Respondents:* Individuals, Business or other for-profit, Non-profit institutions. *Number of Respondents:* 57; *Number of Responses per Respondent:* 19.74; *Average Burden Per Response:* 1.25 hours; *Estimated Annual Burden:* 1,406 hours. Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: March 23, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–7010 Filed 3–25–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 26, 1993.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 19, 1993

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

[FR Doc. 93–6788 Filed 3–25–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–940–02–4212–22]

Filing of Plats of Survey; Nevada

Dated: March 18, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6543.

SUPPLEMENTARY INFORMATION:

1. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on November 17, 1992:

Mount Dfablo Meridian, Nevada

T. 1 S., R. 67 E.—Supplemental Plat of Section 4.
T. 46 N., R. 31 E.—Resurvey.
T. 45 N., R. 30 E.—Resurvey.

2. These surveys were accepted September 28, 1992, and were executed to meet certain administrative needs for Mountain Mines, Inc. and the Bureau of Land Management.

3. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on December 9, 1992:

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.—Supplemental Plat of Section 18.
T. 19 S., R. 61 E.—Supplemental Plat of Section 19.

4. These surveys were accepted November 17, 1992, and were executed to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of land described below was officially filed at

the Nevada State Office, Reno, Nevada on December 17, 1992:

T. 31 N., R. 47 E.—Supplemental Plat of Section 2.

6. This supplemental plat was accepted December 15, 1992, and was executed to meet certain administrative needs of the Bureau of Land Management.

7. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada on May 3, 1993:

T. 12 N., R. 45 E.—Survey.
T. 13 N., R. 45 E.—Dependent Resurvey and Survey.
T. 13 N., R. 46 E.—Dependent Resurvey and Survey.

8. These surveys were accepted February 24, 1993, and were executed to meet certain administrative needs for Western States Minerals Corporation.

9. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described in paragraph 7 are hereby open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to May 3, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

10. All the lands have been and continue to be open under the mining law.

11. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 93–6918 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–HC–M

[MT–930–4210–04; MTM 72221]

Order Providing for Opening of Public Land in Valley County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open land reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq (FLPMA), to the operation of the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: June 1, 1993.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION:

1. The following described lands have been reconveyed by exchange to the United States pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716 from the State of Montana:

Principal Meridian, Montana

T. 32 N., R. 38 E.,
Sec. 36, all.
T. 31 N., R. 39 E.,
Sec. 6, lots 1, 2, 3, and 5, SE¼NW¼, and S½NE¼;
Sec. 19, NE¼, W½SE¼, and E½SW¼;
Sec. 20, NE¼NE¼, SW¼NE¼, and E½SW¼;
Sec. 21, W½SW¼;
Sec. 28, W½W½;
Sec. 29, NE¼NW¼, SW¼NW¼, E½NE¼, SE¼, and W½SW¼;
Sec. 30, W½SE¼ and E½SW¼;
Sec. 32, Lots 1 to 4, inclusive, NE¼, and N½S½;
Sec. 33, lot 1, W½NW¼ and NW¼SW¼.
T. 32 N., R. 39 E.,
Sec. 5, lots 2 to 7, inclusive, 10, 11, 12, and E½SW¼;
Sec. 8, NW¼ and NW¼SW¼;
Sec. 18, lots 1 and 2, and E½NW¼;
Sec. 19, lots 3 and 4, and E½SW¼;
Sec. 30, lots 3 and 4, SE¼, and E½SW¼.
T. 33 N., R. 39 E.,
Sec. 7, NE¼;
Sec. 8, NW¼, SE¼, and E½SW¼;
Sec. 17, N½ and SW¼;
Sec. 18, lots 7 and 12, E½NE¼, and SE¼.
T. 34 N., R. 39 E.,
Sec. 16, N½NW¼, SW¼NW¼, and NW¼SW¼;
T. 36 N., R. 39 E.,
Sec. 16, W½W½ and SE¼NE¼.

Comprising 5,761.36 acres in Valley County.

2. At 9 a.m. on June 1, 1993, the reconveyed lands described above will be opened to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on June 1, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. At 9 a.m. on June 1, 1993, the reconveyed lands described above will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 18, 1993.

John Thompson,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93–6922 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–DN–M

[CA–010–03–3110–10–B002; CACA 20050, 20920, 23587, 25767, 28306, 28381, 28382, 28494]

Realty Action—Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Correction.

SUMMARY: This notice corrects and/or supplements the previously published notices for the following land exchanges:

CACA 20050 published at 52 FR 46005–07 on December 3, 1987, and amended at 53 FR 38984 on September 26, 1988.
CACA 20920 published at 53 FR 5050–51 on February 19, 1988.
CACA 23587 published at 53 FR 48589 on December 1, 1988, and amended at 55 FR 18678 on May 3, 1990.
CACA 25767 published at 54 FR 37837 on September 13, 1989.
CACA 28306 published at 56 FR 29495 on June 27, 1991.
CACA 28381 published at 56 FR 34070 on July 25, 1991.
CACA 28382 published at 56 FR 35872–73 on July 29, 1991.
CACA 28494 published at 57 FR 28534 on June 25, 1992.

This notice more accurately describes the lands that may be acquired by the Bureau of Land Management in the above exchanges. The purpose of the exchanges is to acquire some of the private lands within the Carrizo Plain Natural Area in San Luis Obispo County, California, and to reduce the number of scattered public land parcels

for more efficient management. The lands that may be acquired are somewhere within the following sections:

Mt. Diablo Meridian, California

T. 30S., R.20E,
Sec. 19 to 22, 25 to 31, and 34 to 36.
T. 30S., R.21E,
Sec. 23 to 36.
T. 30S., R.22E,
Sec. 31.
T. 31S., R.19E,
Sec. 1, 2, and 12.
T. 31S., R.20E,
Sec. 1 to 3, 10 to 13, 15, 17, and 22 to 25.
T. 31S., R.21E,
Sec. 1 to 7, 10 to 25, 27 to 29, and 32 to 36.
T. 31S., R.22E,
Sec. 4, 6, 7, 17 to 20, and 30.
T. 32S., R.20E,
Sec. 19, 26, and 27.
T. 32S., R.21E,
Sec. 1 to 5, and 10 to 13.
T. 32S., R.22E,
Sec. 16, 32, 33, and 35.
T. 32S., R.23E,
Sec. 27 and 34.

San Bernardino Meridian, California

T. 12N., R.28W,
Sec. 36.
T. 12N., R.27W,
Sec. 35 and 36.
T. 12N., R.26W,
Sec. 33 to 35.
T. 12N., R.25W,
Sec. 31, 32, and 36.
T. 11N., R.27W,
Sec. 1 to 4, and 10.
T. 11N., R.26W,
Sec. 1 to 6, 8 to 16, and 23 to 25.
T. 11N., R.25W,
Sec. 5, 6, 10, 14, 18 to 20, 22, 24, 30, and 32.
T. 11N., R.24W,
Sec. 19, 20, 29, and 32.
T. 10N., R.24N,
Sec. 4 to 9, 17, and 20.

This notice also amends the previously published notices shown above for CACA 20050 and CACA 20920 by specifying that all mineral rights may be exchanged on the public lands involved in the land exchange.

Interested parties may submit comments to the BLM Area Manager at the following address until May 10, 1993. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

Dated: March 17, 1993.

N.E. Douglas,

Acting Area Manager.

[FR Doc. 93–6669 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–05; Nev–048100]

Intent To Sell Certain Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to allow a 60-day comment period as to the sale of land in Eldorado Valley, Clark County, to the Colorado River Commission.

DATES: Comments are to be received on or before May 25, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM, P.O. Box 26569, Las Vegas, Nevada 89126.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, BLM Las Vegas Office, (702) 647–5000.

SUPPLEMENTARY INFORMATION: The Act of March 6, 1958, (Pub. L. 85–339, referred to as the Eldorado Valley Act), authorized and directed the sale of the following described public land to the Colorado River Commission acting for the State of Nevada:

Mount Diablo Meridian, Nevada

T. 24 S., R. 62 E.,
Secs. 22 to 27, inclusive;
Secs. 34 to 36, inclusive.
T. 25 S., R. 62 E.,
Secs. 1 to 5, inclusive;
Secs. 7 to 36, inclusive.
T. 26 S., R. 62 E.,
Secs. 1 and 2;
Secs. 11 to 14, inclusive.
T. 23 S., R. 63 E.,
Sec. 19, lots 1 to 4, inclusive; NE¼, E½W½, W½SE¼;
Sec. 23, lot 2, N½NW¼;
Sec. 25;
Sec. 26, E½, E½NE¼NW¼, NW¼NE¼NW¼, S½SW¼NE¼NW¼, N½S½NW¼NW¼, S½NE¼SW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, SE¼NW¼, SW¼;
Sec. 27;
Sec. 28, E½;
Sec. 30, lots 1 to 4, inclusive; E½W½, W½E½;
Sec. 31, lots 1 to 4, inclusive; E½W½, W½E½;
Sec. 32, SE¼;
Secs. 33 to 36, inclusive.
T. 24 S., R. 63 E.,
Secs. 1 to 4, inclusive;
Sec. 5, E½, SW¼;
Sec. 6, lots 10 to 14, inclusive, SE¼NW¼, E½SW¼, SE¼;
Sec. 7 to 32, inclusive;
Sec. 33, N½, SW¼;
Sec. 34, N½;
Sec. 35, N½;
Sec. 36.
T. 25 S., R. 63 E.,
Sec. 4, W½;
Secs. 5 to 8, inclusive;
Sec. 9, W½;
Sec. 15, SW¼;
Sec. 16, W½, SE¼;
Secs. 17 to 21, inclusive;
Sec. 22, W½;
Sec. 27, W½;
Secs. 28 to 33, inclusive;
Sec. 34, W½.
T. 26 S., R. 63 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 18, inclusive.
T. 23 S., R. 63½ E.,
Sec. 25, lots 1 to 4, inclusive; S½SE¼;
Sec. 36, lots 1 to 4, inclusive; E½.
T. 23 S., R. 64 E.,
Sec. 30, lot 8, SE¼SW¼;
Secs. 31 and 32, inclusive;
Sec. 33, SW¼NE¼, W½NW¼, SE¼NW¼, S½;
Sec. 34, W½SW¼, SE¼SW¼, SW¼SE¼.
T. 23½ S., R. 64 E.,
Secs. 31 to 35, inclusive.
T. 24 S., R. 64 E.,
Secs. 2 to 11, inclusive;
Secs. 14 to 23, inclusive;
Secs. 26 to 35, inclusive.
T. 25 S., R. 64 E.,
Secs. 1 to 6, inclusive.

The area described contains approximately 107,400 acres.

The Act requires a contract of sale be drawn up between the United States and the Colorado River Commission and approved by the Secretary of the Interior. The Act, as amended, set the purchase price ($1,320,000) at fair market value of the land as of the effective date of the Act. The conveyance will include both surface and subsurface estates, but will be subject to valid existing rights.

Detailed information regarding this sale is available at the BLM Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada.

For a period of 60 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, BLM Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126.

Ben F. Collins,

District Manager.

[FR Doc. 93–6917 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–943–4210–06; IDI–15650]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 3029.61 acre withdrawal for Powersite Reserve No. 165, continue for an additional 20 years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have

been and would remain open to mineral leasing and mining.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

The Bureau of Land Management proposes that the existing land withdrawal made by the Executive Order dated December 19, 1910, for Powersite Reserve No. 165, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

T. 2 S., R. 38 E.,
Sec. 7, lots 3 to 5 inclusive;
Sec. 8, lots 1 and 2;
Sec. 17, lot 1;
Sec. 29, lots 1 to 3 inclusive;
Sec. 33, lots 4 and 5 and NE¼SE¼.
T. 3 S., R. 38 E.,
Sec. 4, lots 8 to 11 inclusive;
Sec. 9, lot 3;
Sec. 10, lots 5 to 9 inclusive;
Sec. 11, lots 3 to 6 inclusive;
Sec. 13, lots 5 to 9 inclusive;
Sec. 14, lot 3;
Sec. 24, lots 6 and 7.
T. 3 S., R. 39 E.,
Sec. 19, lots 2 and 3, SE¼NW¼, SW¼NE¼, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 29, N½NW¼, SE¼NW¼ and SE¼;
Sec. 32, NE¼ and NE¼SE¼;
Sec. 33, N½SW¼ and SE¼SW¼.
T. 4 S., R. 39 E.,
Sec. 4, W½NE¼, NE¼NW¼, S½NW¼, N½SW¼ and SW¼SW¼;
Sec. 5, S½SE¼;
Sec. 7, S½SE¼;
Sec. 8, N½NE¼, NE¼NW¼, S½NW¼ and N½SW¼;
Sec. 17, SW¼NW¼ and NW¼SW¼;
Sec. 20, SW¼NW¼, N½SW¼ and SE¼SW¼.

The areas described aggregate 3029.61 acres in Bingham County.

The withdrawal is essential for protection of potential waterpower development. The existing withdrawal closes the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: March 17, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–6923 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Cuyahoga Valley National Recreation Area

AGENCY: National Park Service; Superintendent, Cuyahoga Valley National Recreation Area.

ACTION: Extension.

SUMMARY: This notice advises of the extension of the Cuyahoga Valley National Recreation Area Sale of Real Property, which was published Wednesday, January 27, 1993, Volume 58, Number 16, Page 6294.

DATES: The Sale of Real Property originally scheduled for acceptance of sealed bids until 2 p.m., April 30, 1993, is now changed to June 3, 1993, 2 p.m.

FOR FURTHER INFORMATION CONTACT: Einar L. Johnson, Assistant Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141.

LEGAL DESCRIPTION: Cuyahoga Valley Tract 109–38, a/k/a 1509 Boston Mills Road, Boston Township, Summit County, Ohio.

CONVEYANCE PROCEDURES, REQUIREMENTS AND TIME SCHEDULE: The original bids were to be accepted until 2 p.m., April 30, 1993. This date is now changed to June 3, 1993, 2 p.m.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 93–7019 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32158]

Gateway Western Railway Company—Construction Exemption—St. Clair County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment.

SUMMARY: The Gateway Western Railway Company (GWWR) has petitioned the Interstate Commerce Commission seeking exemption from the approval requirements of 49 U.S.C. 10901 for construction and operation of a rail line of approximately 4,300 feet at East St. Louis, IL. Nine hundred feet of the 4,300 line is yet to be constructed. The proposed construction would connect the GWWR and SPCSL Corporation's joint track to the CSX Transportation Company's mainline. The Commission has prepared its environmental assessment which concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comments to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by April 8, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 32158 to: (1) Section of Energy and Environment, room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Phillis Johnson-Ball, and one copy of the comments to: (2) Petitioner's representative: Christopher Eric Hagerup, Oppenheimer Wolff and Donnelly, 1020 Nineteenth Street, NW, suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 927–6213 or Elaine K. Kaiser, Chief, Section of Energy and Environment (202) 927–6248. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 927–6213. Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.

By the Commission, Leslie J. Selzer, Acting Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7013 Filed 3–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32229]

Burlington Northern Railroad Co.; Construction and Operation; Rail Line To Thomas Hill Energy Center; In Macon and Randolph Counties, MS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Burlington Northern Railroad Company has filed a petition with the Interstate Commerce Commission seeking exemption from the approval requirements of 49 U.S.C. 10901 for construction and operation of a 17 mile rail line in Macon and Randolph Counties, Missouri to provide railroad service to the Thomas Hill Energy Center. The Commission has prepared its environmental assessment which concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comments to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by April 26, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 32229 to: Section of Energy and Environment, room 3219, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell (202) 927–6215 or Elaine K. Kaiser, Chief, Section of Energy and Environment at (202) 927–6248. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from Mr. John J. O'Connell, Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 927–6245. Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.

By the Commission, Leslie J. Selzer, Acting Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7011 Filed 3–25–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 441X)]

CSX Transportation, Inc.—Abandonment Exemption—In Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903–10904 to permit CSXT to abandon a portion of its Chicago Division, Lake Subdivision, between 100th Street, milepost BIA–257.60, and Rock Island Junction, milepost BIA–258.63, a distance of 1.03 miles in Chicago, Cook County, IL, subject to standard labor protective conditions and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 25, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 5, 1993. Petitions for stay must be filed by April 12, 1993. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by April 15, 1993. Petitions to reopen must be filed by April 20, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 441X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 18, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7012 Filed 3–25–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

National Institute of Justice

National Institute of Justice Program Plan: 1993

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Public announcement of the availability of the National Institute of Justice Program Plan: 1993.

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of its National Institute of Justice Program Plan: 1993.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Michael J. Russell, Acting Director, National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531. To obtain copies of the National Institute of Justice Program Plan: 1993, call the National Criminal Justice Reference Service, 1–800–851–3420, Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice Program Plan: 1993 outlines the NIJ research and evaluation agenda for 1993, provides descriptions of program areas for which research and evaluation proposals will be solicited, provides application instructions and forms, outlines requirements for award recipients, gives deadlines for receipt of proposals, and lists contact persons for program areas.

Michael J. Russell,

Acting Director, National Institute of Justice.

[FR Doc. 93–6963 Filed 3–25–93; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earlier possible date.

New

Employment and Training Administration

Implementation of an Amended Title V of the Job Training Partnership Act (JTPA)

Individuals or household; state or local governments 1 respondent; 1 hour per response; 1 total hour

Title V of the Job Training Partnership Act, Jobs for Employable Dependent Individuals, Incentive Bonus Program establishes a voluntary program which requires a State to collect specific information for certain categories of individuals which will in turn be provided to the Department of Labor to justify the State's request for an incentive bonus award.

Extension

Occupational Safety and Health Administration 1218–0007

Fatality, Catastrophe Reporting

On occasion

State or local governments; farms; businesses or other for-profits; non-profits institutions: small businesses or organization

2,420 respondents; 15 minutes per response; 605 total hours

OSHA currently requires employers to notify OSHA within 48 hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees. Reports are to be made in any manner chosen by the employer and must relate the circumstances of the accident, the number of fatalities and the extent of any injuries.

Signed at Washington, DC, this 23d day of March 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–7001 Filed 3–25–93; 8:45 am]

BILLING CODE 4510–26–M

Employment and Training Administration

[TA–W–27,916]

Altoona Steel, Altoona, PA; Termination of Investigation

Pursant to section 221 of the Trade Act of 1974, an investigation was initiated on October 26, 1992 in response to a petition which was filed on behalf of workers at Altoona Steel, Altoona, Pennsylvania.

The investigation revealed that Altoona Steel, Altoona, Pennsylvania is out of business. The firm ceased operations in February 1992 and no other further information is available to complete the investigation to make a determination for eligibility under Section 221 of the Trade Act of 1974. Since no further information is available to complete the investigation, the investigation has been terminated.

Signed at Washington, DC this 17th day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7005 Filed 3–25–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than April 5, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than April 5, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of March, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
American Welding & Mfg Co (Co)	Warren, OH	03/15/93	03/05/93	28,441	Welded and seamless rings.
Stanley Smith Security, Inc (Wkrs)	Portland, OR	03/15/93	02/25/93	28,442	Security services.
Smith Energy Services (Wkrs)	El Reno, OK	03/15/93	03/02/93	28,433	Oil service.
North American Brine Resources (Co)	Woodward, OK	03/15/93	03/05/93	28,444	Crude iodine.
Neal's Oilfield Service (Co)	Williston, ND	03/15/93	03/05/93	28,445	Oilfield services.
French Oil Mill Machinery Co (Wkrs)	Piqua, OH	03/15/93	03/02/93	28,446	Oil process equipment, hydraulic press.
E-Systems, Inc (Wkrs)	Salt Lake City, UT	03/15/93	01/22/93	28,447	Aircraft electronics and controls.
Atron/High Q (Wkrs)	Lakeview, MI	03/15/93	03/01/93	28,448	Wire harnesses.
Alro Steel Corp/Industrial Supply (Wkrs).	Kalamazoo, MI	03/15/93	02/28/93	28,449	Distribute industrial supplies.
Ambro, Inc (Wkrs)	Humble, TX	03/15/93	03/02/93	28,450	Brokerage services.
A.F. Gallun & Sons Co (UFCW)	Milwaukee, WI	03/15/93	03/02/93	28,451	Tanned leather.
Bell Petroleum Laboratories (Co)	Midland, TX	03/15/93	02/05/93	28,452	Oilfield services.
Palmetto State Dyeing & Finishing (Wkrs).	Greenville, SC	03/15/93	03/03/93	28,543	Bleaching, dyeing and finishing fabric.
Triumph—Lor, Inc (Wkrs)	Houston, TX	03/15/93	03/03/93	28,454	Oilfield equipment.
Anderson Sportwear (ILGWU)	Fairview, NJ	03/15/93	03/03/93	28,455	Sportswear.
Schlumberger/GEOD Prakla (Wkrs)	Houston, TX	03/15/93	03/03/93	28,456	Oil and gas.
Bergstein Oilfield Services (Wkrs)	Lubbock, TX	03/15/93	02/22/93	28,457	Water hauling to oilfield services.
Sonny's Inc (Wkrs)	Hobbs, NM	03/15/93	02/22/93	28,458	Water hauling to oilfield services.
DSW&T Services, Inc (Wkrs)	Lubbock, TX	03/15/93	02/22/93	28,459	Supply services to water hauling.
Boeing Company (The) (Wkrs)	Wichita, KS	03/15/93	03/01/93	28,460	Aircraft and parts

[FR Doc. 93–7003 Filed 3–25–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–26, 111]

Merrow Machine Co., Newington, CT; Negative Determination on Reconsideration

By an order dated January 19, 1993, the United States Court of International Trade (USCIT) in *Former Employees of Merrow Machine Company* v. *Secretary of Labor* (USCIT 92–01–00002) remanded this case to the Department for further investigation.

The remand stated that the Department's survey was inadequate since it did not specifically include sewing machine parts.

The Department is directed to determine whether there are generic sewing machine parts which may be substitutable for Merrow-made parts.

The remand, also, directs the Department to determine whether an expansion of the customer survey to prior customers would be appropriate, instead of focusing on customers who were ordering Merrow sewing machines and parts in the period relevant to the petition.

Company officials stated on remand that shortly after World War II Merrow's domestic market share declined from about 40 percent of the market to a 10 percent share. With the closure of many of the knitting mills along the East Coast during the 1980s, much of Merrow's business became replacement parts for older Merrow Machines, many of which are still in use. The findings show that the replacement parts business accounted for half of Merrow's sales in the first half of 1991.

Findings on remand show Merrow's sales of sewing machine parts to be approximately 70 to 75 percent domestic and the remainder for export. The survey shows that none of the domestic customers reported purchasing imported sewing machine parts in 1990 or 1991. The findings show that most of the decline in sewing machine parts in the first six months of 1991 was in the export market. A decline in sale of parts to the export market would not provide a basis for a worker group certification.

Company officials indicated that although some domestic and foreign parts are substitutable with those of Merrow, they stated that this market is not large enough to attract much competition because none have all the different kinds of parts—loopers, cutters etc., for the many special machines Merrow has produced over the years.

Further, expanding the customer survey to survey former customers in the 1950 through 1989 period would serve little purpose since worker separations from June 28, 1990, the earliest possible coverage date, cannot be related to any former customer shifts to imported sewing machines or parts in the earlier period. To the extent that such shifts may have occurred, they would have influenced past employment displacements and reductions in company employment levels.

Conclusion

After reconsideration, I affirm the original notice of negative determination to apply for adjustment assistance to workers and former workers of the Merrow Machine Company in Newington, Connecticut.

Signed at Washington, DC, this 15th day of March 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-7004 Filed 3-25-93; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February and March 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,198; Morristown Manufacturing Co., Inc., Talbott, TN
TA-W-28,133; Distel Tool & Machine, Warren, MI
TA-W-28,163; Idaho Forest Industries, Inc., St. Anthony, ID
TA-W-28,048, TA-W-28,050; Robertshaw Tennessee, Knoxville, TN & Carthage, TN
TA-W-28,226; Dietzel Aerospace, Inc., Center Point, TX
TA-W-27,973; Philips Electronic Instruments Co., Mahwah, NJ
TA-W-28,188; William Korn, Inc., Buffalo, NY
TA-W-28,244; B & E Manufacturing Co., Inc., Branson West, MO
TA-W-28,047; Treasure Isle, Inc., Dover, FL
TA-W-27,968; Aerospace Systems Co., Fairmont, MN
TA-W-27,851; Piezo Electric Products, Metuchen, NJ
TA-W-28,121, TA-W-28,122; Moline Corp., Belvidere, IL & St. Charles, IL
TA-W-28,281; Ripley Mfg., Inc., Ravenswood, WV

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,976; American National Can Co., Los Angeles, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,119; Hercules, Inc., Burlington, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,147; Midland Southwest Div/ M.A. Hanna Co., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,193; Sequoyah Fuels Corp., Gore, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,167; Nelson Weather-Rite, Secaucus, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,116; Hitachi Zosen Clearing, Inc., Chicago, IL

U.S. imports of numerically controlled metal forming presses declined absolutely in 1991 compared with 1990 and declined absolutely in the eleven month period December-November 1992 as compared to the year earlier.

TA-W-28,192; USDATA Corp., Richardson, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,200; Olofsson Corp., Lansing, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,337; Larry H. Miller Dodge, Service Department, Murray, UT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,225; Pump Unit Service, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,055; G.E., (Evandale Plant), Cincinnati, OH

U.S. imports of turbojet engines for aircraft and turbojet engines other than for aircraft decreased in the latest twelve month period October 1991-September 1992 compared to the previous twelve month period October 1990 through September 1991.

TA-W-28,132; Teledyne Vasco, Latrobe Plant, Latrobe, PA

U.S. imports of cold finished steel bars declined absolutely and relative to domestic shipments in 1990 compared to 1989 and in the twelve month period of December to November 1991-1992 compared to the same period of December to November 1990-1991.

TA-W-28,089; Carter Steel & Fabricating Co., Bellefontaine, OH

U.S. imports of fabricated structural metal declined absolutely and remained the same relative to domestic shipments in 1991 compared to 1990 and increased absolutely and relative to domestic shipments in 1992 compared to 1991. However, the ratio of imports to domestic shipments did not exceed 1.7 percent during the period under investigation.

TA-W-28,044; Unisys Corp., Albany, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,282; Shannopin Mining Co., Pittsburgh, PA

U.S. imports of metallurgical and steam coal are negligible in 1990, 1991 and in the most recent twelve month period compared to the previous twelve month period.

TA-W-28,283; Poland Processing Co., Pittsburgh, PA

U.S. imports of metallurgical and steam coal are negligible in 1990, 1991 and in the most recent twelve month period compared to the previous twelve month period.

TA-W-28,090; Acustar, Inc., Dayton, OH

The investigation revealed that criterion (1), (2) and (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did

not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA-W-28,141A; Cleaver Brooks, Lebanon, PA

A certification was issued covering all workers separated on or after December 8, 1991.

TA-W-27,610 & TA-W-27,610A; Baker Oil Tools, Houston, TX and Odessa, TX

A certification was issued covering all workers separated on or after July 22, 1991.

TA-W-28,107; Big Yank Corp., Dixie Factory, Hattiesburg, MS

A certification was issued covering all workers engaged in the production of slacks and pants separated on or after November 24, 1991.

TA-W-28,240 & TA-W-28,241; Mayronne Drilling Mud & Chemicals, Harvey, LA & The Mayronne Co., Harvey, LA

A certification was issued covering all workers separated on or after January 5, 1992.

TA-W-28,004; Sabrina Coat, Paterson, NJ

A certification was issued covering all workers separated on or after October 29, 1991.

TA-W-28,018; American Design & Fashions, Passaic, NJ

A certification was issued covering all workers engaged in the production of ladies' coats separated on or after October 29, 1991.

TA-W-28,094; Goldstar of America, Inc., Huntsville, AL

A certification was issued covering all workers engaged in the production of color televisions separated on or after December 1, 1991.

TA-W-28,129; The Felters Co., Millburg, MA

A certification was issued covering all workers separated on or after December 8, 1991.

TA-W-28,191; Digital Equipment Corp., Springfield, MA

A certification was issued covering all workers engaged in the production of personal computer system and tape drives separated on or after December 22, 1991.

TA-W-28,026; Malcolm Clothing Corp., Passaic, NJ

A certification was issued covering all workers separated on or after October 29, 1991.

TA-W-28,093; American Cyanamid Co., Bound Brook, NJ

A certification was issued covering all workers engaged in the production of methotrexate separated on or after December 1, 1992.

TA-W-28,138; JIK Ltd, Allentown, PA

A certification was issued covering all workers engaged in the production of women's tops, pants and shirts separated on or after November 27, 1991.

TA-W-28,154; M/A Com, Inc., Amzac Operations, Bangor, ME

A certification was issued covering all workers separated on or after December 8, 1991.

TA-W-28,179; Raymel Corp., Hialeah, FL

A certification was issued covering all workers engaged in the production of men's pants, shorts and pullovers separated on or after December 19, 1991.

TA-W-28,221; Dell Coat Co., Inc., Union City, NJ

A certification was issued covering all workers engaged in the production of automotive components separated on or after January 5, 1992.

TA-W-28,135; Allied Tube & Conduit, Liberty, TX

A certification was issued covering all workers separated on or after October 25, 1992.

TA-W-27,927; Baker Oil Tools, Duncan, OK & Operating at Various Other Locations in the Following States: A; AK, B; AR, C; CA, D; CO, E; FL, F; IL, G; KS, H; LA, I; MI, J; MS, K; MT, L; NM, M; ND, N; OH, O; OK, P; PA, Q; TX (Except Houston, Odessa), R; UT, S; WV, T; WY

A certification was issued covering all workers separated on or after October 15, 1991.

TA-W-28,271; General Motors Corp, Inland Fisher Guide Div., Euclid, OH

A certification was issued covering all workers separated on or after January 22, 1991.

TA-W-28,017; Spot Fashions, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after October 29, 1991.

TA-W-28,185; Variety International, Newark, NJ

A certification was issued covering all workers separated on or after December 30, 1991.

TA-W-28,239; Big Yank Corp., Tyrone, PA

A certification was issued covering all workers engaged in the production of men's slacks and jeans separated on or after October 19, 1991.

TA-W-28,036; Kelsey-Hayes Co., Detroit, MI

A certification was issued covering all workers separated on or after November 9, 1991.

TA-W-28,160; Genicom Corp., Waynesboro, VA

A certification was issued covering all workers separated on or after December 14, 1991.

TA-W-28,275; A & A Materials, Brownsville, TX

A certification was issued covering all workers separated on or after January 21, 1992.

TA-W-28,161; Midwest Portland Cement Co., Zanesville, OH

A certification was issued covering all workers separated on or after December 28, 1991.

TA-W-28,080; Blue Bird East, Buena Vista, VA

A certification was issued covering all workers separated on or after November 23, 1991.

TA-W-28,243; St. Thomas, Inc., Gloversville, NY

A certification was issued covering all workers separated on or after January 20, 1992.

TA-W-28,152; Sharon Steel Corp, Coil Coating Div., Warren, OH

A certification was issued covering all workers separated on or after December 18, 1991.

TA-W-28,048; Sharon Steel Corp., Farrell, PA

A certification was issued covering all workers separated on or after October 16, 1991.

TA-W-28,171 and TA-W-28,182; Utica Corp., Mohawk Street, Whitesboro, NY & Utica Corp., Halsey Road, Whitesboro, NY

A certification was issued covering all workers separated on or after December 23, 1991.

TA-W-28,345; Wiman Apparel, Plymouth, MN

A certification was issued covering all workers separated on or after February 10, 1992.

TA-W-28,059; Allegany Apparel, Inc., Cresson, PA

A certification was issued covering all workers separated on or after November 16, 1991.

TA-W-28,280; Bridal Originals, Bowling Green, MO

A certification was issued covering all workers separated on or after January 18, 1992.

TA-W-28,168; Sharon Steel Corp., Brainard Strapping Div., Warren, OH.

A certification was issued covering all workers separated on or after December 18, 1991.

TA-W-28,204 & TA-W-28,204A; Mayfair Industries, (38th Street), New York, NY and Mayfair Industries, (Broadway), New York, NY

A certification was issued covering all workers separated on or after December 30, 1991.

TA-W-28,233 & TA-W-28,234; Mayfair Industries, Hamburg, PA and New Haven, CT

A certification was issued covering all workers separated on or after January 6, 1992.

TA-W-27,980; Helena Sportwear, West Helena, AR

A certification was issued covering all workers separated on or after October 21, 1991.

TA-W-27,990; Abbott & Co., Iberia, OH

A certification was issued covering all workers engaged in the production of electrical power cords separated on or after November 2, 1991 and before March 1, 1993.

TA-W-27,850; Douglas Aircraft Co., Salt Lake City, UT

A certification was issued covering all workers engaged in the production of commercial transport aircraft component parts separated on or after September 14, 1991.

TA-W-27,872; Douglas Aircraft Co., Long Beach, CA

A certification was issued covering all workers engaged in the production of commercial transport aircraft separated on or after September 25, 1991.

TA-W-28,097; Douglas Aircraft Co., Columbus, OH

A certification was issued covering all workers engaged in the production of commercial transport aircraft component parts separated on or after December 4, 1991.

TA-W-28,292 & TA-W-28,203; Douglas Aircraft Co., Monrovia, CA and Huntington Beach, CA

A certification was issued covering all workers engaged in the production of commercial transport aircraft component parts separated on or after December 23, 1991.

TA-W-28,197; Johnson Controls, Inc., Systems Products Div., Watertown, WI

A certification was issued covering all workers engaged in the production of gas controls separated on or after March 5, 1993.

TA-W-27,995; Eastland Woolen Mill, Inc., Corinna, ME

A certification was issued covering all workers separated on or after February 8, 1992.

TA-W-27,996; Striar Textile Mill, Orono, ME

A certification was issued covering all workers separated on or after October 30, 1991.

I hereby certify that the aforementioned determinations were issued during the month of February and march 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 22, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-7002 Filed 3-25-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions, shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office

document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume III

Utah:
UT93–33 (Mar. 26, 1993) .....

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Georgia:
GA93–23 (Feb. 19, 1993) .
GA93–31 (Feb. 19, 1993) .
GA 93–32 (Feb. 19, 1993)
GA 93–33 (Feb. 19, 1993)
New York:
NY93–26 (Feb. 19, 1993) .
Pennsylvania:
PA 93–24 (Feb. 19, 1993)

Volume II

Indiana:
IN93–18 (Feb. 19, 1993) ...

Volume III

California:
CA93–1 (Feb. 19, 1993) ...
Colorado:
CO93–5 (Feb. 19, 1993) ...
CO93–10 (Feb. 19, 1993) .
Montana:
MT93–8 (Feb. 19, 1993) ...
Nevada:
NV93–5 (Mar. 26, 1993) ...
NV93–10 (Feb. 19, 1993) .
Utah:
UT93–5 (Feb. 19, 1993) ...
Washington:
WA93–1 (Feb. 19, 1993) ..
WA93–2 (Feb. 19, 1993) ..

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of March 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–6766 Filed 3–25–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

NACPS Public Hearing

AGENCY: National Advisory Council on the Public Service (NACPS).

ACTION: NACPS to hold Public Hearing, Monday, April 19, 1993.

SUMMARY: The National Advisory Council on the Public Service will hold a public hearing on the ability of the Federal government to attract individuals of the highest caliber to careers involving national public service. The hearing is scheduled for Monday, April 19, 1993, in the Lawrence Room of the Westin Hotel Tabor Center Denver, 1672 Lawrence Street, Denver, Colorado from 9:30 a.m. to 12 Noon.

Invited witnesses will give testimony to the Council on such issues as agency initiatives in recruiting, downsizing the Federal workforce, placement programs for Federal employees, and innovative approaches that Federal agencies are taking to retain quality employees.

The hearing will be open to the public. Time will be allotted to those persons wishing to make comment to the Council concerning the Federal employment. Any person or organization wishing to reserve time to make public comment during the hearing should pre-register by calling the Council at (202) 724–0796 before April 14, 1993. Those persons who do not pre-register to make comments cannot be guaranteed an opportunity to do so. The Council also welcomes written comments on Federal workforce issues, which should be sent to the Council office at 420 National Press Building, 529 14th Street NW., Washington, DC. 20045.

For more information contact Ross Peterson and for media coverage contact Rhea Farberman at (202) 724–0796.

Issued March 23, 1993.

Jane D. Riddleberger,

Administrative Officer, National Advisory Council on the Public Service.

[FR Doc. 93–6966 Filed 3–25–93; 8:45 am]

BILLING CODE 7525–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–024)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Aeronautics Advisory Committee Task Force on General Aviation Transportation.

DATES: April 12, 1993, 1 p.m. to 5 p.m.; and April 13, 1993, 8:30 a.m. to 5 p.m. (to be held at the Langley Research Center); and April 14, 1993, 8:30 a.m. to 1 p.m. (to be held at the Lewis Research Center).

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 225, Building 1219, 11 Langley Boulevard, Hampton VA 23665; and National Aeronautics and Space Administration, Lewis Research Center, room 100, Building 86, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce J. Holmes, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 804/864–6048.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Task Force Progress and Action Plans
—Langley Research and Facility Reviews
—Lewis Research and Facility Reviews
—Task Force Chairman Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 19, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–6914 Filed 3–25–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Meeting To Comment on the Third Biennial Revision of the U.S. Arctic Research Plan

In accordance with the Arctic Research and Policy Act of 1984, Public Law 98–373, the National Science Foundation announces the following meeting:

Name of Meeting: Third Biennial Revision of the U.S. Arctic Research Plan—Opportunity to Comment.

Date of Meeting: May 5, 1993, 9 a.m. to 12 noon.

Place: Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska.

Purpose of Meeting: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the Plan (due in July 1993). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with a number of groups during development of the Plan. The Interagency Committee and its staff and working groups have prepared a draft revision to the Plan, which will be available for review in the following locations in Alaska prior to May 5, 1993.

Anchorage, Alaska: The Alaska Resource Library, Federal Building, 222 W. 7th St., 1st Floor;

Juneau, Alaska: The Alaska State Library, State Office Building, entrance on 4th Street, Circulation Desk, 8th Floor;

Fairbanks, Alaska: The Rasmusen Library, University of Alaska, Fairbanks, Reserve Desk.

Representatives of the groups named in section 109(a) of the Act (Arctic Research Commission, Governor of Alaska, residents of the Arctic, the private sector and public interest groups) as well as members of the general public, are invited to obtain a copy of the draft revision for review, and to bring any comments they may have to the meeting. Staff of the Interagency Committee will be present to receive comments and answer questions.

The biennial revision to the Arctic Research Plan is organized to address research needs in the following areas:

1. Arctic Oceans and Marginal Seas;
2. Atmosphere and Climate;
3. Land and Offshore Resources;
4. Land-Atmosphere Interactions;
5. Engineering and Technology;
6. Social Science; and
7. Health.

Coordinated interagency efforts and supporting programs are also discussed. These include research in the western Arctic marine environments, geodynamics, and cultural and natural characteristics of the Bering region, monitoring, arctic contamination studies, data and information, logistics, and international activities.

Public Participation: This meeting is open to the public. Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments should be submitted at the public meeting or mailed to the address below by May 19, 1993.

For Further Information Contact: If you would like to review a copy of the biennial revision, but are unable to visit one of the above locations, please write to the following address: Arctic Research Staff, National Science Foundation, 1800 G Street NW., room 620, Washington, DC 20550, or call (202) 357–7818.

Information will be available after April 9, 1993.

Costs: None.

Charles E. Myers,

Head, Arctic Staff, National Science Foundation.

[FR Doc. 93–6983 Filed 3–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 1, from 8:30 a.m. to 5 p.m and April 2, from 8:30 a.m. to 5 p.m.

Place: Saint James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Hyman H. Field, Section Head, Informal Science Education Program, National Science Foundation, 1800 G. St. NW., Washington, DC 20550, Telephone: (202) 357–7076.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging meeting time.

Dated: March 23, 1993.

[FR Doc. 93–6961 Filed 3–25–93; 8:45 am]

BILLING CODE 7555–01–M

Workshop on Arctic Contamination

In accordance with the Arctic Research and Policy Act (Pub. L. 98–373, as amended), the Interagency Arctic Research Policy Committee (IARPC) announces the following meeting:

Date and Time: May 3–7, 1993; 8 a.m. to 5 p.m.

Place: Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska.

Type of Meeting: All sessions will be open to registered Workshop participants.

Contact Person: Bruce F. Molnia, IARPC Technical Committee Chairman, U.S. Geological Survey, 917 National Center, Reston, Virginia 22092. Telephone: (703) 648–4120, FAX: (703) 648–4227.

Purpose of Meeting: This IARPC-convened, international Workshop will identify and summarize existing data, identify data gaps and evaluate needed research and monitoring studies to develop a preliminary estimate of the extent, magnitude, and timing of marine, terrestrial, and atmospheric contamination in the Arctic.

Workshop sessions will evaluate existing data and information about sources, types, and locations of contaminants that have been released into the Arctic environment.

In addition to evaluating the adequacy of data, the Workshop will consider potential effects and impacts, transport pathways, accumulation mechanisms, sinks, and source characteristics of Arctic contaminants. The Workshop will conclude with a panel on risk assessment which will be held to characterize and bound the potential risks, as well as to identify significant data gaps. Information produced by the Workshop will be used by the IARPC to complete a first phase evaluation of the Arctic contamination issue and produce an IARPC "Action Plan for Assessing Arctic Contamination."

Agenda: Registration will begin on Sunday evening, May 2nd, followed by Plenary Sessions on Monday and Tuesday, May 3rd and 4th. Concurrent Technical Sessions with Invited Panels will occur on May 5th and 6th. A Summary Plenary Session (May 7th a.m.) and a Panel on Risk Assessment (May 7th, p.m.) will conclude the Workshop. Combined Poster and Exhibit Sessions will run from May 4th to May 7th.

Meeting registration: Registration will be coordinated by: Eagle Systems, 5243 Clifton Street, Alexandria, Virginia. Telephone: (703) 354–9338. FAX: (703) 354–9334. The registration fee for the Workshop is $200. All participants will receive a summary report of the meeting.

Charles E. Myers,

Head, Arctic Staff, National Science Foundation.

[FR Doc. 93–6984 Filed 3–25–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company for operation of the Maine Yankee Power Station located in Lincoln County, Maine.

The proposed amendment would increase maximum number of spent fuel assemblies stored in the Maine Yankee fuel pool to 2019 from 1476. The proposed increase is required to provide spent fuel storage space through the duration of the current operating license, including the final full core offload.

The ability to store an increased number of spend fuel assemblies will be provided by replacing the existing spent fuel storage racks with spent fuel storage racks that are capable of storing a larger number of spent fuel elements in the same volume. These high density fuel storage racks are similar to fuel storage racks approved for use at other, currently licensed nuclear power plants.

The proposed arrangement will provide the conventional, upright storage of spent fuel in a single tier, rectilinear array of free-standing modules that is compatible with existing fuel handling equipment, procedures and experience at Maine Yankee. The arrangement and design of the racks will create two separate regions in the spent fuel pool. Region I spent fuel racks are designed to accommodate any fuel to be stored (new or spent), regardless of initial enrichment (up to 4.5 weight percent U–235) or burnup level. (Maine Yankee currently is licensed to use fuel with a maximum enrichment of 3.95 weight percent U–235.) Region II spent fuel racks are designed to be used with fuel that has achieved a specified burnup level. Both rack designs use the standard spent fuel storage materials of Boral (trademark) for neutron absorption, 304L stainless steel for structural components.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment has been evaluated against the refueling and fuel pool-related accidents currently postulated in the Maine Yankee Atomic Power Station licensing basis. The currently postulated accidents are related to:

(a) Installation, which includes accidents that could occur during removal of existing fuel storage racks and installation of the new racks;

(b) Criticality, which includes an error in placing a spent fuel assembly on top of, or adjacent to, an occupied storage location;

(c) Thermal-hydraulics, which includes failures of the fuel pool cooling system, or partial loss of fuel pool water inventory; and

(d) Fuel handling, which includes dropping a spent fuel assembly.

The effects of these potential accidents have been fully analyzed and are presented in the Licensing Report for Maine Yankee's High Density Spent Fuel Pool Reracking Project. The analyses demonstrate that the consequences of postulated accidents remain within Maine Yankee's current licensing basis, and are discussed further as follows:

a. Installation

All work in the spent fuel pool will be controlled and performed in strict accordance with specific written procedures that satisfy all applicable regulatory criteria. These controls will be at least as rigorous as those used in the previous two rerackings of Maine Yankee's spent fuel pool. In addition, an installation accident involving damage to spent fuel is precluded by prohibiting the lifting of empty fuel racks (new or old) over stored fuel.

The load handling equipment used during reracking will consist of the fuel building overhead (yard) crane and a temporary crane mounted on and spanning the fuel pool. The temporary crane will move fuel storage racks to areas outside the range of travel of the yard crane hook. The design and use of the load handling equipment will follow the applicable guidance of NRC NUREGs–0800, 0612, and 0554, and American National Standards Institute Standard 14.6. Control of the load handling equipment will be in accordance with the licensee's Heavy Loads Program.

The yard crane will be overhauled, refurbished, and load tested prior to the reracking project. To ensure compliance with NUREGs–0554 and 0612, the yard crane will be limited to lifts weighing a maximum of 30 tons, or slightly less than 25% of its lifting capacity. To minimize the consequences of a load drop accident, the following precautionary measures will be taken:

(1) Fuel will be removed from each storage rack before the rack is moved;

(2) A clear travel path will be established for the rack being moved (i.e., racks will not be lifted over fuel, and the possibility of rack-to-rack and rack-to-wall impacts will be minimized);

(3) When the temporary crane is employed, a four-point rigging scheme will be used, and carrying height will not exceed 12 inches above the fuel pool floor (except when removing racks from the pool); and

(4) A four-point rigging scheme, using both the yard and temporary crane, will lift the spent fuel racks out of the pool and move them to the Radiation Control Area Building.

Installation of the new spent fuel storage racks will follow the same precautionary measures.

Because the performance and preparation requirements for both personnel and equipment used during installation activities will be at least as rigorous as for its two previous reracking efforts, and because Maine Yankee Technical Specification 3.13 requires that fuel storage racks be moved only in accordance with written procedures, the licensee concludes that there will be no increase in either the probability or consequences of an installation accident.

b. Criticality

The licensee has considered the reactivity effects of various fuel storage pool accidents. These accidents include the effects of an error in placing a fuel assembly on top of, or adjacent to, an occupied fuel storage location. In analyzing all of these accidents, credit was taken for the presence of soluble boron in the pool water at the concentration required by Maine Yankee Technical Specifications 1.1.C and 3.13.C. Accounting for the required soluble boron concentration and assuming the fuel racks are fully loaded with new and spent fuel in the worst possible storage configuration, all analyzed criticality accidents resulted in the fuel storage pool remaining subcritical by more than 5 percent delta k/k. Because the acceptable margin to criticality remains unchanged from the current licensing basis, the

consequences of a reactivity accident are not significantly increased from those previously evaluated.

c. Thermal-Hydraulic

The licensee's thermal-hydraulic analysis of the spent fuel confirms that installation of the new spent fuel storage racks will require no modifications to the existing spent fuel pool cooling, makeup, and cleanup systems. The thermal-hydraulic analysis shows that the highest calculated fuel pool and storage cell temperatures remain within the current licensing basis. Three sources of spent fuel pool makeup water are available. These sources are:

1. Normal makeup via the chemical volume control system, which can begin delivering 150 gpm of borated makeup water to the fuel storage pool within 15 minutes;

2. Backup makeup water via three water hose connections, each capable of delivering 20 gpm of reactor coolant system grade water within 15 minutes; and,

3. Emergency makeup via the fire main system, which is capable of providing 150 gpm of water within 20 minutes.

The licensee's analyses show that sufficient time is available to provide corrective action in the event of a loss of all cooling by the spent fuel pool cooling system. Thus, the consequences of this type of accident with the new, high density fuel storage racks are not significantly increased from similar and previously analyzed accidents.

d. Fuel Handling

The new high density spent fuel storage racks have been analyzed for the effect of an object dropped on them. Difference shaped objects were analyzed and, for conservatism, it was assumed that all dropped objects weighed twice the weight of a standard fuel assembly. Analysis of this accident shows that the structural integrity of the racks is maintained and no damage is incurred by the stored fuel.

In the unlikely event of a fuel assembly being dropped on a loaded spent fuel storage rack, damage to stored fuel is minimal and sufficient fuel pool cooling water is free to circulate around and through the fuel rack. Thus, the intended safety function of the rack will continue to be met and the radiological consequences of a dropped fuel assembly remain unchanged from the licensee's current licensing basis.

Maine Yankee's Operating License does not permit the use of a spent fuel shipping cask in or over the spent fuel storage pool. The licensee has previously committed to make an evaluation of spent fuel shipping cask drop accidents when the option to ship spent fuel off-site becomes available. Until that evaluation is performed and all related concerns are addressed to the satisfaction of the Commission, no spent fuel shipping cask will be lifted over the licensee's spent fuel storage pool. (This prohibition currently is included in Maine Yankee's Technical Specifications.)

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee has evaluated its proposed reracking project in accordance with the guidance of the NRC's position paper titled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Application", appropriate NRC Regulatory Guides and Standard Review Plans, and related industry codes and standards. In addition, the licensee has reviewed previous Safety Evaluation Reports prepared by the NRC for similar rerack applications. As a result, the licensee finds that their proposed reracking project does not create the possibility of a new or different kind of accident from any accident previously evaluated for their Spent Fuel Storage Facility.

The change to a two-region spent fuel pool configuration required additional analyses to ensure that the criticality criterion (subcritical by at least 5 percent delta k/k) remained satisfied. These analyses included the limiting criticality condition of misplacing a fresh fuel assembly (enriched to 4.5 weight percent U–235) in a Region II storage location, on top of or adjacent to a loaded Region II spent fuel storage rack. Evaluation of this analysis shows that when spent fuel cooling water meets the Technical Specification requirements for boron concentration, the criticality criterion is satisfied and the accident is bounded by the previously analyzed assembly misplacement accident discussed in item 1.b above. Although the change to a two-region spent fuel pool configuration requires the consideration of these additional aspects of an assembly misplacement accident, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The safety functions of the spent fuel storage pool and its racks are to preclude criticality or an uncontrolled release of fission products. These safety functions are accomplished through the use of a safe, specially designed, underwater storage location for spent fuel. The NRC staff has established that the issue of safety margin, when applied to spent fuel reracking modifications, should address the following topics:

1. Criticality,
2. Thermal-hydraulics, and
3. Mechanical, material and structural considerations

The proposed amendment will not significantly reduce the margin of safety for criticality, because criticality calculations demonstrate that the spent fuel configuration remains subcritical by at least 5 percent delta k/k, as is required by the current licensing basis. Criticality calculations include conservative assumptions to assure at least 5 percent delta k/k subcriticality, with a 95 percent probability at the 95 percent confidence level.

Conservative methods and assumptions were used to calculate the maximum fuel, cladding and local fuel pool water temperatures when the new high-density fuel storage racks are loaded with a normal core discharge, or a full core offload. These thermal-hydraulic evaluations use a mathematical model with appropriate conservatisms to demonstrate that previously approved temperature margins are maintained. Existing procedures restrict the total heat load in the pool to less than the design limit of the spent fuel pool cooling system. Therefore, the fuel pool cooling system remains capable of maintaining the bulk pool water temperature below 154 degrees Fahrenheit, when the new high-density fuel storage racks are loaded with either a normal or a full core offload of spent fuel. The maximum local water temperature along the hottest fuel assembly continues to remain below the nucleate boiling regime. Thus, there is no reduction in the margin of safety for thermal-hydraulic considerations.

The structural and mechanical design of the new spent fuel racks has been analyzed for normal and abnormal conditions, including earthquake, a dropped spent fuel assembly, rack-to-rack loading, and rack-to-spent fuel pool loading. The new high density spent fuel storage racks are designed and constructed to Seismic Category I standards, and are intended to remain functional during a Safe Shutdown Earthquake, as specified by U.S. NRC Regulatory Guide 1.29. Analyses show that the racks will perform their intended function under both seismic and load drop conditions in accordance with U.S. NRC Regulatory Guide 1.124 and NUREG–0800. The rack materials are compatible with both the spent fuel

pool and spent fuel assemblies, and were chosen so as to preclude degradation due to material incompatibility (e.g., galvanic corrosion). Thus, the margin of safety is not reduced by the proposed installation of new high density spent fuel racks.

Based on a review of the licensee's analysis, and on the staff's analysis detailed above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 26, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700).

The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Walter R. Butler: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter [that] the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985), and 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petition to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated January 25, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 19th day of March, 1993.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–6968 Filed 3–25–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange Inc.

March 22, 1993

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Dean Witter, Discover & Co.
Common Stock, $.01 Par Value (File No. 7–10409)
Genesis Health Ventures
Common Stock, $.02 Par Value (File No. 7–10410)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6948 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

March 22, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Advo. Inc.
Common Stock, $.01 Par Value (File No. 7–10411)
Dean Witter, Discover & Co.
Common Stock, $.01 Par Value (File No. 7–10412)
KCS Energy, Inc.
Common Stock, $.01 Par Value (File No. 7–10413)
Manufactured Home Communities
Common Stock, $.01 Par Value (File No. 7–10414)
Salomon, Inc.

Depositary Shares (rep. 1/20 sh. of 8.08% Cum. Pfd. Stock, Ser. D) (File No. 7–10415)
Storage Technology Corp.
$3.50 Conv. Exch. Pfd. Stock, $.01 Par Value (File No. 7–10416)
Texas Utilities Electric Co.
Depository Shares (rep. 1/4 sh. of $8.20 Cum. Pfd. Stock, Without Par Value) (File No. 7–10417)
Wellpoint Health Networks, Inc.
Class A Common Stock, $.01 Par Value (File No. 10418)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 12, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6947 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

March 22, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Aerosonic Corp.
Common Stock, $.40 Par Value (File No. 7–10401)
Columbus Energy Corp.
Common Stock, $.20 Par Value (File No. 7–10402)
Payless Cashways, Inc.
Common Stock, $.01 Par Value (File No. 7–10403)
St. John Knits, Inc.
Common Stock, No Par Value (File No. 7–10404)
Wilshire Technologies, Inc.
Common Stock, No Par Value (File No. 7–10405)
UNC Incorporated
Common Stock, $.20 Par Value (File No. 7–10406)
Blackrock Investment Quality Municipal Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10407)
BioSafety Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–10408)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6941 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32019; File No. SR–NASD–92–45]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change and Amendment No. 1 Relating to the Proposed Operation of a Pricing System for Certain High Yield Fixed Income Securities

March 19, 1993.

I. Introduction

On November 10, 1992, the National Association of Securities Dealers ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change[1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and rule 19b–4 thereunder.[3] The proposed rule change would permit the NASD to establish and operate an electronic facility, the Fixed Income Pricing System ("FIPS"), to collect, process and disseminate, real-time, firm quotations for 30 to 50 of the most liquid high yield bonds and would, for regulatory purposes, require members to report transactions in all high yield bonds traded over-the-counter ("OTC").

Notice of the filing of the proposal appeared in the **Federal Register** on December 10, 1992.[4] Five commentators responded. Two expressed support for the FIPS proposal,[5] two opposed the proposal,[6] and one sought clarification of operational aspects of the proposal without indicating, expressly, support or opposition.[7] The NASD responded to the comments in two letters.[8] On February 4, 1993, the NASD amended the proposal to address certain concerns raised by commentators.[9] One comment letter was received in response to the amendment opposing the proposal, which reiterated and clarified views expressed in an earlier correspondence,[10] and the NASD responded.[11] For the reasons discussed

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[1] File No. SR–NASD–92–45.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] See Securities Exchange Act Release No. 31561 (December 4, 1992), 57 FR 58526.

[5] See letter from Forrest R. Foss, Associate Legal Counsel, T. Rowe Price Associates, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1992, and letter from Matthew P. Fink, President, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1992.

[6] See letters from John H. Sturc, Attorney, Gibson, Dunn & Crutcher on behalf of Cantor Fitzgerald Securities, to Jonathan G. Katz, Secretary, SEC, dated December 31, 1992 ("Cantor December Letter") and to Katherine A. England, Esq., Assistant Director, Office of OTC and the National Market System, Office of Self-Regulatory Oversight ("OSRO"), Division of Market Regulation, dated January 25 ("Cantor January Letter") and February 19, 1993 ("Cantor February Letter"). *See also* letter from Joseph P. Riveiro, Manager, Corporate Bonds, Ernst & Company, to Jonathan G. Katz, Secretary, SEC, dated March 4, 1993.

[7] See letter from Dennis Greeley, Vice President of High Yield Trading, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated December 28 1992.

[8] See letters from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Selwyn Notelovitz, Branch Chief, Branch of OTC Regulation, Office of OTC and the National Market System, OSRO, Division of Market Regulation, dated January 26, 1993 ("NASD Letter No. 1") and to Elizabeth MacGregor, Branch Chief, Branch of the National Market System, Office of OTC and the National Market System, OSRO, Division of Market Regulation, dated February 1, 1993 ("NASD Letter No. 2").

[9] See Securities Exchange Act Release No. 31821 (February 4, 1993), 58 FR 7598.

[10] See Cantor February Letter.

[11] See letter from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Elizabeth MacGregor, Branch Chief, Branch of the National Market System, Office of OTC and the

below, the Commission is approving the proposal.

II. Background

A. Historical Background on the High Yield Debt Market

The recessionary years of the late 1970s, coupled with the volatile interest rates of the early 1980s and a trend away from long-term bank lending to businesses, encouraged a boom in the issuance and purchase of high yield, non-investment grade debt. The total principal amount of the high yield market grew from $24 billion in 1977 to an estimated $183 billion in 1988 and $226 billion in 1991.[12] As of February 1991, approximately 11% of the public high yield market was comprised of so-called fallen angels,[13] 48% represented bonds issued for either recapitalization or leveraged buy-out financing, and 41% represented original issue high yield financing.[14]

During 1989 and 1990, several events adversely affected the high yield market. In 1989, the number of defaults and troubled exchange offers of original issue high yield bonds increased from $2.5 billion to $8.8 billion.[15] In 1990, additional destabilizing events occurred in the high yield market. The number of defaults and troubled exchange offers continued to increase, more than doubling 1989 levels, with approximately $18 billion principal amount of high yield bonds defaulting.[16] High yield prices also declined significantly following the filing for bankruptcy by Drexel Burnham Lambert Group, Inc. ("Drexel"), the parent holding company of the largest underwriter of high yield debt.

Although the high yield market later proved it could survive Drexel's bankruptcy, segmentation (or "tiering") of the market into the top, middle, bottom, and distressed tiers became much more pronounced throughout 1990 and is still apparent.[17] The top tier has remained liquid, while the middle and bottom tiers are experiencing limited activity.[18]

B. Trading of High Yield Bonds

High yield bonds resemble equity securities in many ways. High yield debt prices rise and fall more on news about the particular company, than on news about general interest rates and are reportedly priced more like equities.[19] Spreads range from ¼ to ½ point for top tier issues to 1 to 4 points for middle and distressed tiers. Some high yield bonds are traded reasonably actively, whereas traditional corporate bonds are traded relatively infrequently. Because the fortunes of an issuer can influence the price of its high yield debt significantly, a heightened possibility exists for illegal insider trading.[20]

Notwithstanding the similarities between equities and high yield debt, there are dramatic differences in the information available about trades and quotes in the two markets. In the current environment, there is not existing high yield dealer quotation or trade reporting system, meaning that investors have no way of learning of significant price changes or large volume purchases.[21] As a result, public investors are inhibited in their efforts to validate the quotations they receive, independently value their portfolio holdings, or evaluate the quality of executions they receive. Similarly, the absence of public quote and trade information may act as a barrier to entry for smaller dealers who may not have access to sufficient market information to efficiently price trades.

C. Commission Action in the High Yield Debt Market

The issue of enhanced transparency for high yield debt securities has been actively under examination since the increased importance of high yield debt to the financial industry became apparent. In October 1989, Senator Donald W. Riegle, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, urged the Commission that "thought be given to improving the information about the market for less than investment grade securities so that individual investors and others may be informed on a real-time basis what the bid and ask prices are for these instruments and the extent to which they are liquid and marketable in the secondary market."[22] Senator Riegle added that because public markets had become a central element in high yield bond financing, it was the SEC's responsibility to ensure that a modernized quotation system be put into place.[23]

Although recognizing that an overly intrusive regulatory approach could create other risks and significant costs,[24] Chairman Breeden directed the Division of Market Regulation ("Division") to report to the Commission on efforts to improve transparency in the high yield market.[25]

On September 6, 1991, the Commission released to Congress the Division's report,[26] which recommended a quote and/or trade reporting system for at least the 40 to 50 most actively traded high yield securities. Thereafter, the Commission encouraged the high yield debt community ("Community") to design a proposal to increase transparency and provide for surveillance reporting in the high yield market. The NASD's proposal reflects its effort to respond to the Commission, following extensive discussion with member firms who are the principal brokers and dealers in this segment of the market.

III. Description of the Proposal

The NASD is proposing requirements for members that actively participate in the high yield fixed income securities market. The proposed trade reporting rules will require members to report to the NASD transactions in all high yield bonds traded OTC and also will require real-time trade reporting for securities included in FIPS. The proposal also would authorize the NASD to operate FIPS as a facility of the NASD to facilitate the collection, processing and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high yield

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National Market System, OSRO, Division of Market Regulation, dated March 1, 1993 ("NASD Letter No. 3").

[12] See Securities and Exchange Commission, *The Corporate Bond Markets: Structure, Pricing and Trading* (January 1992) ("Division Report") at 3.

[13] "Fallen angels" is used by the industry to mean an issue whose credit rating has deteriorated from being investment grade to non-investment grade.

[14] Division Report at 3.

[15] *Id.* at 6.

[16] This increase was reflected in a 21% increase in the principal amount of the market's bottom tier. As a result of the increase in defaults, the market's average credit quality declined, with the percentage of bonds rated B or better declining from 61% as of December 31, 1989 to 54% as of December 31, 1990. *Id.* at 7.

[17] *See* Division Report at 7.

[18] *Id.*

[19] *Id.* at 9.

[20] Address by Richard C. Breeden, Chairman, SEC, at the National Association of Securities Dealers in Miami, Florida (May 23, 1991).

[21] *Id.*

[22] Letter from Senator Donald Riegle, Chairman, Senate Committee on Banking, Housing, and Urban Affairs, to Richard C. Breeden, Chairman, SEC, dated October 5, 1989.

[23] *Id.*

[24] Letter from Richard C. Breeden, Chairman, SEC, to Senator Donald Riegle, Chairman, Senate Committee on Banking, Housing, and Urban Affairs, dated March 15, 1990. ("An example of an area that should be explored is the development of centralized price or quotation systems. Improved price information would benefit market participants, investors and regulators * * *.")

[25] Letter from Richard C. Breeden, Chairman, SEC, to Senator Donald Riegle, Chairman, Senate Committee on Banking, Housing, and Urban Affairs, dated March 29, 1991.

[26] See letter from Richard C. Breeden, Chairman, SEC, to Senator Donald Riegle, Chairman, Senate Committee on Banking, Housing, and Urban Affairs, dated September 6, 1991.

fixed income securities.[27] In addition, the proposal would authorize the NASD to disseminate through FIPS, and make available to vendors, high/low trading ranges and accumulated volume in each bond quoted in the system on an hourly basis.[28] The proposal also would authorize the NASD to provide, through FIPS, a trade negotiation and transaction reporting function for member orders in FIPS securities.

A. The Fixed Income Pricing System for Quotations in High Yield Debt Securities

1. Designation of Securities Quoted in FIPS

The proposal would authorize the NASD to designate high yield bonds as "FIPS securities." The NASD would make this designation initially, after consultation with the Advisory Committee, a subcommittee of the NASD's Fixed Income Committee. Both the NASD and the Advisory Committee wil review the designations on a periodic basis.[29] Initial criteria for designation would include the rating, volume, price, name recognition of the issuer, research following and representation from diverse industry groups.[30] The NASD will require, as a condition for inclusion in FIPS that a certain principal amount of bonds[31] be outstanding and that at least two dealers make markets in each FIPS issue. After the first year of operation, the NASD will propose more specific quantitative standards for both the "listing" and "delisting" of FIPS bonds.[32]

The NASD may immediately withdraw a high yield bond's FIPS designation if the bonds have matured, been called,[33] or been upgraded to a rating higher than BB+. The NASD also could withdraw an issue's designation if that issue's trading characteristics no longer warrants its inclusion in the system. The NASD and the Advisory Committee also will conduct periodic reviews of the securities quoted in FIPS to recommend changes as warranted, utilizing the criteria discussed above relating to volume and depth in the security.[34] the NASD will notify participants of the addition and/or deletion of a FIPS bond from the quote system through the FIPS "News" frame.

The NASD will assign a unique identifier to each FIPS security, although members also may use the bond's CUSIP number as an identifier.[35] The NASD identifiers will be configured as mnemonics that relate to the issuer and the specific bond series and will be available to the public in hard copy or on-line to FIPS subscribers.

2. Quotation Reporting Requirements for FIPS

Members holding themselves out as brokers or dealers[36] in FIPS securities will be required to participate in FIPS and transmit their quotations to the system during FIPS operating hours[37] for public dissemination by the NASD through FIPS and vendors. Dealers may submit one-sided or two-sided quotes. Under the proposal, the NASD would require FIPS brokers and dealers to honor their FIPS quotes at published prices and sizes.

Thus, quotes must be continuous[38] and firm to all members submitting offers to trade at the quoted prices and sizes.

The proposal would provide for exceptions in two circumstances from this firm quote obligation.[39] First, if a broker or dealer has communicated to the system a revised bid or offer or quotation size that supersedes the published quotation or size, the broker or dealer will not be obligated to execute a trade at the published quotations in response to an order received thereafter. Second, a broker or dealer in the process of effecting a transaction in a FIPS security (*e.g.*, a purchase) who immediately thereafter communicates to FIPS a revised bid or offer or quotation size will not be obligated to accept an order (*e.g.*, an offer) in the same security at the published quotation. Quotations submitted by members must reflect a minimum size of 100 bonds ($100,000 par value) and be stated in fractional increments of 1/8. Participants may trade at prices other than those quoted, but all quotes must be reasonably related to the prices at which those executions occur.

Registered dealers may enter quotes directly into FIPS or may submit quotes to a registered broker's broker and rely on the broker's broker to transmit those quotes to the NASD. In disseminating quotes to the public through FIPS and vendors, the NASD will notify dealer quotations entered directly as such; dealer's quotations submitted through a broker's broker will be identified as the broker's quotes and the dealer's identity will remain anonymous to other participants and the public. Each individual dealer, however, will be able

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[27] The term "high yield security" includes those fixed income corporate bonds that are rated BB+ or lower by Standard & Poor's Corporation and shall not include convertible debt instruments or medium term notes. See Securities Exchange Act Release No. 31821 (February 4, 1993), 58 FR 7598. "Top tier" means the most liquid tier of high yield securities as designated by the NASD and the Advisory Committee. See *infra* Section III. A(1).

[28] As of the date of this order, the NASD has not completed the systems changes necessary to implement FIPS. Accordingly, the Commission, by this order, approves the proposed rule changes that would permit the NASD to implement FIPS subject to the following conditions: (1) Submission of system change notification consistent with the Commission's Automation Review Policy II [See Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991)]; (2) successful completion of functionality, capacity and stress testing of the system changes; and (3) notification to the Commission staff containing representations regarding the effective completion of those tests and confirming the effectiveness of the system.

[29] See *infra*, note 34.

[30] The NASD has stated that while the number of FIPS securities will begin at approximately 35 bonds the list will grow to 50 bonds by the end of the first year of operation. The system, however, is not designed to limit the number of bonds to 50, and if experience in the high yield bond market demonstrates that the liquidity is present to support additional bonds, more issues could be added. Securities Exchange Act Release No. 31821 (February 4, 1993), 58 FR 7598.

[31] The NASD will specify the principal amount of bonds based on its experience in the high yield market once FIPS is operational.

[32] Any changes to the standards for quotation in FIPS will be subject to Commission review pursuant to Section 19 of the Act. The Commission notes that approval of the FIPS proposal is not conditioned on the filing of a proposed rule change containing specific listing and delisting standards.

[33] The NASD may withdraw bonds subject to a whole call or partial call, to the extent that the partial call reduces the float below the minimum required for designation in FIPS.

[34] The NASD anticipates that review will occur quarterly, but as time and experience with the system grow, the NASD may elect to review the securities on a semi-annual basis, and will alert the Commission to such a change. Securities Exchange Act Release No. 31821 (February 4, 1993), 58 FR 7598.

[35] The NASD will recognize either identifier for purposes of processing quote and trade reports. See Securities Exchange Act Release No. 31821 (February 4, 1993), 58 FR 7598. CUSIP is the acronym for Committee on Uniform Securities Identification Procedures.

[36] The definitions of FIPS "broker" and "dealer" are identical to the definition of those terms in Sections 3(a)(4) and 3(a)(5) of the Act. See Securities Exchange Act Release No. 31561 (December 4, 1992), 57 FR 58526.

[37] FIPS hours of operation for quotations in FIPS securities will be from 9:30 a.m. Eastern Time to 4 p.m. Eastern Time.

[38] The requirement of "continuous quotations" means that a dealer in a particular security (for the definition of a dealer see note 36 *supra*) shall maintain a quote (one-sided or two-sided) in that particular security from 9:30 a.m. Eastern Time to 4:00 p.m Eastern Time. See also *infra*, notes 70–72 and accompanying text. The NASD and the Advisory Committee currently are developing provisions regarding when a FIPS dealer will be excused from meeting this continuous quotation obligation. The NASD will submit a proposed rule change when it develops provisions on withdrawal from FIPS. The Commission notes that approval of the FIPS proposal is not conditioned on a proposed rule change containing specific standards for excused withdrawal.

[39] These exceptions parallel the exceptions available to dealers for NASDAQ/National Market System ("NMS") securities. See 17 CFR 240.11Ac1–1(c) (i) and (ii) (1992) and NASD Securities Dealers Manual, Offers at Stated Prices, Rules of Fair, Practice, Article III, Section 6, CCH, ¶ 2156.

to use FIPS to see its own quote reflected in the broker's quote.[40]

3. Dissemination of Quotation and Size Information

The NASD will disseminate through FIPS bids and offers communicated by brokers and dealers as well as the calculation of an inside market which will include the best bid and the best offer for each FIPS security. Members will be able to view FIPS quotations through a FIPS terminal; quotations will be disseminated to non-members through securities information processors, or vendors, so that they will be generally available to investors.

The NASD will initiate quotation halt procedures in FIPS bonds when the related equities have been halted, or when news has been disseminated by the issuer or other information regarding the issuer comes to light that may affect trading in the bonds. Participants will be alerted to quotation halts via the FIPS News frame and the NASD will withdraw all broker and dealer quotations from the FIPS screen at the commencement of the halt.

The proposal would not expressly require members to halt trading in response to the NASD's issuance of a quotation halt. The description of the text of the amendment[41] notes that a quotation halt does not automatically prohibit trading in the subject bonds but rather serves to alert members and the public that news is out on the issuer. At the conclusion of a quotation halt, the NASD will notify participants when quoting may resume and allow a short period of time for participants to reenter their quotations into FIPS.

B. Trade Execution in High Yield Debt Securities

The proposal would authorize the NASD to provide, through FIPS, a trade negotiation, execution and transaction reporting function for member orders in FIPS securities. Use of the system, however, for trade negotiation and execution would not be mandatory. The NASD anticipates that this system will permit members to broadcast orders to all participants quoting a FIPS security in the system or will permit members to direct an order to a single dealer or broker. The proposal contemplates that orders will be firm for the "time-in-force" and that the time may range from three minutes to a "day order"[42] or a "good-till-cancelled" order. The proposal also contemplates that the system will permit negotiation of the terms of the order, subject to the directions and limitations of the entering member (*e.g.*, "all or none") and will permit acceptance and execution of the order. Members executing trades through this facility will not be required to report these trades separately.[43]

C. Reporting Transactions in High Yield Securities

1. Reporting of FIPS Designated Securities

Members will be required to submit trade reports on all OTC transactions executed in FIPS securities from 9 a.m. Eastern Time to 5 p.m. Eastern Time to the NASD within five minutes after execution.[44] Generally, only one side to a trade will be required to report to the NASD.[45] The NASD will disseminate to non-members through vendors, high/low trading ranges and accumulated volume in each bond on an hourly basis.

2. Reporting of Non-FIPS Designated Securities

Members will be required to report information on all other transactions in high yield bonds to the NASD for surveillance purposes. Trade reporting of non-FIPS securities may be accomplished any time during the trading day, but in any event by 5 p.m. Eastern Time of the trade date, and must include the time of execution on the report. The other trade reporting requirements and information to be submitted to the NASD are identical to those required for FIPS securities

IV. Comments

The Commission received seven comment letters in total, including two follow up letters from one commentator.[46] The Investment Company Institute, representing more than 3,700 open-end investment companies and 280 closed-end investment companies with more than $1.4 trillion in assets under management, and T. Rowe Price Associates, expressed strong support for the proposal and the potential benefits they expect will accrue for them and their investors if the proposal is approved. These commentators believe that a centralized quotation system will be tremendously valuable to investment companies that invest in high yield bonds.[47] They believe that easier access to information about high yield bond prices and trading volume should assist investment company portfolio managers in making informed investment decisions and that increased regulatory surveillance will help assure the integrity of the high yield bond markets with the effect of benefitting investment companies, their shareholders and increasing public confidence.[48]

Two broker's brokers expressed opposition to the FIPS proposal questioning the utility of consolidated quote reporting to the NASD. Ernst & Company noted its belief that entering quotes into FIPS would be burdensome because it was already entering quotes

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[40] Because the broker's broker must transmit to the NASD the dealer's identity along with the dealer's quote, each individual dealer will be able to use the FIPS to see its own quote reflected in the broker's quote. For example, if a broker received two dealer quotes for 100 bonds each, priced at 90, the FIPS system would reflect a single quote of 200 bonds at 90 from the broker. Both of the FIPS dealers would be able to "pierce" that broker quote, however, and see that 100 bonds reflected their own quote and the other 100 bonds was from another unidentified dealer.

[41] See File No. SR–NASD–92–45, Amendment No. 1 at 18 (February 4, 1993).

[42] A "day order" is one that expires at the end of the day.

[43] See Letter from Richard Ketchum, Executive Vice President and Chief Operating Officer, to Selwyn Notelovitz, Branch Chief, Branch of OTC Regulation, Office of OTC and the National Market System, OSRO, Division of Market Regulation, dated February 18, 1993. The NASD is not proposing to implement the execution and trade negotiation facilities at this time in view of the need to complete further systems work. Accordingly, the Commission expects the NASD will submit, for Commission review in accordance with Section 19 of the Act, a proposed rule change setting forth in detail the specifications of the system.

[44] The proposal will require members to "time-stamp," at the time of execution, all trade tickets from transactions in high yield securities. Trade reports for transactions that are not reported within five minutes after execution will be considered late and must include the time of execution on the trade report. The NASD will consider a pattern or practice of late reporting conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice. See NASD Securities Dealers Manual, Business Conduct of Members, Rules of Fair Practice, Article III, Section 1, CCH, ¶ 2151.

[45] The reporting requirements vary according to who executes the trade. For a complete description *See* Securities Exchange Act Release No. 31561 (December 4, 1992), 57 FR 58526.

[46] As noted above, one commentator urged that the NASD clarify certain aspects of the proposal. The commentator sought clarification of such terms as "high yield security," "cross transaction", and "riskless principal transaction". This commentator also urged the NASD to clarify, among other things, the reporting obligations of FIPS dealers that had no volume in a FIPS security on a particular day and that nothing in the FIPS rules would prohibit FIPS participants from charging odd lot differentials. See letter from Dennis Greeley, Vice President of High Yield Trading, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated December 28, 1992. In response, the NASD submitted an amendment to the original filing incorporating several of these recommendations. See Securities Exchange Act Release No. 31821 (February 4, 1993), 58 FR 7598.

[47] See letter from Forrest R. Foss, Associate Legal Counsel, T. Rowe Price Associates, to Jonathan G. Katz, Secretary, SEC, dated December 24, 1992 and letter from Matthew P. Fink, President, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1992.

[48] *Id.*

into the NYSE's ABS system.[49] Cantor Fitzgerald, a broker's broker, expressed opposition to the FIPS proposal.[50] Cantor believes that the proposal, specifically the provision that mandates participation in FIPS, contravenes Section 15A(b)(9) of the Act,[51] This commentator opposed the proposed requirement that all dealers and brokers report their quotes to the NASD for consolidated public dissemination through FIPS and other vendors because, in Cantor's view, such a requirement would preclude potential competition in quotation collection and dissemination systems and could have adverse consequences for competition among broker's brokers and dealers. Cantor urged that the NASD and the Commission consider amending the proposal to allow dealers and brokers to report quotes to systems other than the NASD's FIPS, including systems operated by non-SROs,[52] but retain the trade reporting obligations to permit the NASD to conduct routine surveillance consistent with its statutory obligations.[53] This commentator recommended three specific amendments to the FIPS proposal, which would, in essence, eliminate the requirement for consolidated quote dissemination.[54]

V. Discussion

Under section 19(b) of the Act, the Commission must approve any SRO's proposed rule change if it determines that the proposal is consistent with the requirements of the Act and rules thereunder.[55] Section 15A establishes standards for rulemaking by the NASD. One of those standards is that the proposal does not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[56] In balancing competitive concerns and statutory goals, however, the Commission is not obligated to choose the least anti-competitive approach, but is free to balance the statutory goals.[57]

As described in greater detail below, because the proposal will increase transparency and trading efficiency in the high yield bond market, and provides procedures designed to produce fair and informative quotations and to promote orderly procedures for quote collection and dissemination, the Commission believes the proposal is consistent with Sections 15A(b)(6)[58] and 15A(b)(11)[59] of the Act.

The Commission also believes the proposal will further the goals of section 11A of the Act. That Section directs the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and sets forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the use of new data processing and communication techniques.[60]

A. FIPS Will Increase Transparency in the High Yield Debt Market

The Commission believes that the NASD's proposal will further the goals of investor protection and market efficiency, consistent with sections 15A(b)(6), 15A(b) (11) and 11A of the

[49] See letter from Joseph P. Riveiro, Manager, Corporate Bonds, Ernst & Company, to Jonathan G. Katz, Secretary, SEC, dated March 4, 1993. ABS is an order system, not a quotation system and does not require its members to provide firm, continuous quotations. The average ABS trade during 1991 was approximately 20 bonds. See NYSE, Fact Book (1992). To the extent that FIPS dealers or brokers enter orders in ABS at or above FIPS minimum size (*i.e.*, 100 bonds or greater) the proposal will require those orders to be reasonably related to their FIPS quotes. As discussed below, the Commission believes consolidated quote reporting for sizes at or above the NASD's threshold of 100 bonds is essential to achieving the benefits of the FIPS proposal. The Commission, therefore, urges the NYSE and the NASD to coordinate to eliminate, consistent with consolidated quote dissemination, duplicative obligations.

[50] See Cantor December, January and February letters.

[51] That section provides that the rules of an Association may not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

[52] Self-regulatory organizations ("SROs") are private associations of broker-dealers to which Congress has delegated (a) authority to adopt and enforce rules for the conduct of their members and (b) responsibility to assure compliance by their members with the provisions of the federal securities laws. See Sections 6, 15A and 19 of the Act. The SRO's, however, exercise authority subject to Commission oversight and have no authority to regulate independently of the Commission's oversight. See section 15A(b)(6) of the Act.

[53] It is Cantor's belief that brokers and dealers would have little incentive to participate in an alternative system, even if it provides a better market or lower cost, if the broker or dealer is also required to participate in FIPS. See Cantor December Letter.

[54] The proposed amendments are: (1) Define trading systems as those which had obtained no-action relief from characterization as an exchange; (2) allow a broker or dealer to disseminate quotations in FIPS securities and execute transactions in FIPS securities by submitting quotations and executing transactions either through FIPS, through an exchange, or through a trading system, as defined in amendment 1 above; and (3) clarify that in the event transactions are conducted through a trading system, transaction reports be disseminated and data be made available to the NASD's Market Surveillance Department. See Cantor January Letter.

[55] 15 U.S.C. 78s(b).

[56] Section 15A(b)(9).

[57] See *infra*, note 86 and accompanying text.

[58] Section 15A(b)(6) authorizes the Association to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[59] Section 15A(b)(11) authorizes the Association to adopt rules relating to quotations. Such rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

[60] In connection with this mandate, Congress concluded: "In the securities markets, as in most other active markets, it is critical for those who trade to have access to accurate, up-to-the-second information as to the prices at which transactions in particular securities are taking place (*i.e.*, last sale reports) and the prices at which other traders have expressed their willingness to buy or sell (*i.e.*, quotations). Senate Comm. on Banking, Housing & Urb. Affs., Report to Accompany S. 249: Securities Acts Amendments of 1975, S. Rep. No. 94–75, 94th Cong., 1st Sess. 9, reprinted in [1975] U.S. Code Cong & Ad. News 179, 187 ("S.Rep.").

The 1975 Amendments established as a purpose of the Exchange Act the need to remove impediments and to perfect the mechanism of a national market system for securities. The 1975 Amendments, however, did not define a national market system. Rather, the Congress granted "broad, discretionary powers [to the Commission] to oversee the development of a national market system and to implement its specific components in accordance with [Congressional] findings and to carry out the objectives set forth [in the Exchange Act]." The Amendments were designed to provide "maximum flexibility to the Commission and the securities industry in giving specific content to the general concept of the national market system, and a national market system was to "evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed." See Committee of Conference, Report to Accompany S. 249, H.R. Rep. No. 94–249, 94th Cong., 1st Sess. 92 (1975). See also S. Rep. at 7–9. The Congress expected, however, that "in those situations where competition may not be sufficient, such as the creation of a composite quotation system or consolidated trade reporting system, the Commission will use the power granted to it in [the 1975 Amendments] to act promptly and efficiently to insure that the essential mechanisms of an integrated secondary trading system are put into place as rapidly as possible." *Id.*

A primary objective of the national market system is "the centralization of all buying and selling interest so that each investor will have the opportunity for the best possible execution of his order, regardless of where in the system it originates." S.Rep. at 7. See also House Committee on Interstate and Foreign Commerce, Report to Accompany H.R. 4111, H.R. Rep. No. 94–123, 94th Cong., 1st Sess. 44 (1975). As a consequence of this objective, the national market system was intended to encompass "all segments of the corporate securities markets including all types of common and preferred stocks, bonds, debentures, warrants and options." *Id.* Congress recognized the unique characteristics of other securities and, as a result, gave the Commission the authority and flexibility to establish "subsystems within the national market system which are tailored to the characteristics of the particular types of securities which are to be traded in each subsystem." S. Rep. at 7.

Act, by increasing transparency[61] in the high yield bond market.

The Commission believes that the proposal would address, consistent with the Act, three significant and specific problems that have been attributed to the lack of quote and trade data available in the high-yield market.[62] In this regard, the Commission believes the proposed mandatory quotation reporting requirement and consolidated quote dissemination system are critical components to the success of the proposal.[63]

First, the fragmented nature of the high yield bond market and the lack of disseminated quote and trade information today contributes to pricing inefficiency in the high yield market. Individual market makers cannot gauge the full extent of the supply of and demand for particular high yield securities and their pricing of those securities will not accurately reflect the current supply and demand.[64] Thus, for example, one dealer or broker could be providing a bid that is higher than another dealer's offer, and natural market forces cannot operate to bring these prices in balance efficiently. Because the proposal provides for consolidation and widespread dissemination of all FIPS dealer and broker quotations, brokers will be able to "execute investor's orders in the best market"[65] consistent with section 11A(a)(1)(C) of the Act.

Second, under current market conditions, many smaller institutional and retail investors have limited or no access to market data to monitor execution quality and, particularly retail investors, to value their securities. Investors interested in purchasing or selling high yield securities must expend significant resources searching for the best available quotation on a particular security, and there is frequently a wide divergence among quoted prices.[66] Even if an investor diligently seeks out multiple quotes, nothing currently requires dealers to honor those quotes. Because the proposal mandates participation by all brokers and dealers in FIPS securities, investors can be confident that the executions they receive are reasonably related to other market activity. Moreover, the proposal permits FIPS brokers to submit orders on behalf of customers and FIPS dealers, as well as consolidating all quotes. The proposal, therefore, would provide an opportunity for investors' orders to be executed without the participation of a dealer which is consistent with the goals of the Act.[67]

Finally, the lack of published quote and trade data necessarily makes surveillance of the high yield market more difficult. Abuses can go unnoticed, and even when noticed, investigation requires collecting data from multiple sources, the expense of which alone impedes regulatory coordination and investor protection.[68] Consolidated quote reporting facilitates reconstruction of market activity, which would be critical to investigating fraudulent or manipulative trading activity.

Although the Commission recognizes that real-time quotes without real-time trade reporting to validate those quotes still poses risks to investors,[69] the Commission believes the NASD has developed an appropriate first step to full transparency.[70]

Under the proposal, the NASD periodically will disseminate the high, low and average trades from the previous trading period. Because this data includes information that will enable investors to determine prices of real trades and approximate volume involved, and because this represents more than is currently available, the Commission believes the proposal is nonetheless consistent with the Act.

The Commission acknowledges that the requirement of continuous quotations is a new development in the debt market which will require careful monitoring and possible revisions as deemed necessary with experience in FIPS. In this context, however, the Commission believes the continuous requirement is appropriate for two reasons. First, the number of designated FIPS securities are limited to the most active issues and are selected based upon their attractiveness to dealers for trading.[71] Second, as stated above, the high yield market exhibits several characteristics of the equity market.[72] Thus, unlike other debt markets, generally, where quotations are not required to be "continuous," there is a need in the high yield market, specifically, for continuous, firm quotations so to accurately reflect the market and to assist investors in pricing

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[61] The term transparency can be used to refer to the degree to which last sale (price and volume) and quotation information is made publicly available on a real-time basis. Address by Brandon Becker, Deputy Director, Division of Market Regulation, SEC, before the Financial Times Conference on International Securities Markets: Limiting Market Risk, London England (May 12, 1992). In the equities markets, "real-time" means within 90 seconds of the execution of the trade. For purposes of this filing, however, in the high yield debt market, "real-time" will mean five minutes.

The principle of transparency is a fundamental aspect of investor protection and efficient markets. There are many benefits associated with enhanced market transparency. First, transparency enhances investor protection. Second, by encouraging investor participation in the market, transparency promotes market liquidity. And third, transparency fosters the efficiency of securities markets by facilitating price discovery and open competition, thereby counteracting the effects of fragmentation. Each of these benefits both promotes and is a function of the others. For example, by providing protection for investors, transparency encourages greater participation in securities markets, and therefore enhances the liquidity of those markets. This increase in liquidity, in turn, increases market efficiency. Similarly, by reducing the effects of fragmentation and increasing the pricing efficiency of securities markets, transparency also promotes the fairness of the markets.

[62] See letter from Richard C. Breeden, Chairman, SEC, to Senator Riegle, Chairman, Senate Committee on Banking, Housing and Urban Affairs, dated September 6, 1991. (Enclosing report prepared by the Division of Market Regulation on increasing transparency on high yield debt securities.) Moreover, to the extent that the price of high yield debt is sensitive to issuer specific developments, the absence of transparency in the market increases pricing inefficiency.

[63] The Commission has stated "because of the important role played by principal market quotations in providing public investors with information for purposes of pricing and monitoring broker executions, mandatory dissemination of quotations by principal markets should be retained to ensure that this information is available to the public." See Securities Exchange Act Release No. 18482 (February 11, 1982), 47 FR 7398.

[64] *Id.*

[65] 15 U.S.C. 78(a)(1)(C).

[66] Many high yield debt investors agree that more price information would be useful, because they lack access to accurate prices from a sufficiently broad segment of the dealers. See, *e.g.*, ICI letter, T. Rowe Price letter. These investors were concerned, however, that the enhanced quote and/or trade reporting system for inactive high yield debt, which constitutes a large part of the market, might not be necessary or helpful because of the infrequency of trades in these securities. *Id.*

[67] Section 11A(a)(1)(C).

[68] Section 15A(b)(6).

[69] The Commission believes that "sunshine is the best disinfectant", [L. Brandeis, Other People's Money, and How the Bankers Use It, at 92 (Fredrick A. Stokes Co. ed. 1932)] and this proposal is an important step toward that sunlight by providing investors with many of the tools they need to monitor the quality of their trades. Accordingly, the Commission encourages the NASD to continue to expand the range of securities that are eligible for trade reporting and encourages the NASD to consider, after further experience, the dissemination of more complete trade data.

[70] The approach of increasing transparency in increments by requiring quote and/or trade reporting beginning only with the most active securities is in accordance with the Commission's past approach. In the equity market, to avoid widening spreads and reduced liquidity, the Commission imposed quote and trade reporting only in the most liquid securities, *i.e.*, NYSE, Amex and Nasdaq/NMS securities. Further, this provides not only an opportunity to assess the effects of increased transparency but also an opportunity for the market and its trading mechanisms to adjust. Thus, the benefits that FIPS can bring to the high yield market, namely, efficient pricing and competition within the market, fit squarely within the goals of the Act.

[71] The Commission recognizes, however, that the expansion in the number of FIPS securities may require the Commission to reconsider the continuous quotation obligation.

[72] See Section II.B.

high yield bonds by providing them with more accurate data.[73]

B. A Consolidated Quotation System Is Essential for True Market Transparency and for Effectuating Statutory Goals

The Commission believes that those aspects of the proposal which provide for centralized reporting and dissemination of consolidated information are crucial to enabling market participants and the public to garner real-time information for the most liquid group of high yield bonds. Given the limited volume of daily trades in even the top tier of high yield bonds,[74] as the NASD noted in its response to Cantor, if the NASD did not mandate participation, it could not provide any assurance that the information displayed in FIPS was reflective of the market in a high yield bond.[75] This would diminish the efficacy of the FIPS quotation system and probably would result in failing to meet the goals of investor protection and removal of impediments to the mechanisms of a free and open market.[76]

The Commission consistently has encouraged the development of consolidated quotation systems and has read Sections 11A and 15A to embody a Congressional intent that the Commission and marketplace regulators harness technological advances to foster such systems "as a means of achieving the goals of best execution, [and] full and fair quotation information." The legislative history of the Securities Act Amendments of 1975 indicated that the implementation of a composite quotation system would be necessary in order to "allow stock brokers to ascertain at a glance the market which offers the best price for their customers * * *."[77] Indeed, Congress cited a "composite" quotation system as the kind of a market facility that might require Commission regulatory intervention to establish.

More than two decades ago in its "Statement on the Future of the Securities Markets,"[78] the Commission established consolidated quotation systems as a cornerstone of the national market system structure, noting "an essential step toward formation of a central market system is to make information on prices, volume and quotes for securities in all markets available to all investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell nor sell for less than the highest price at which a buyer is prepared to offer."[79] In the temporary approval of the Consolidated Quotations Systems ("CQS") Plan, the Commission referred to the need for improved dissemination of quotation information as a "fundamental building block of the national market system."[80]

As a result of Commission-directed SRO efforts, all equities markets participate in the CQS for exchange-listed securities,[81] and the NASD has developed a consolidated quote and trade reporting system for Nasdaq/NMS[82] and NASDAQ Small-Cap securities.[83] Moreover, all options markets participate in the Options Price Reporting Authority ("OPRA"). Options markets submit quotations and trade reports to OPRA, regardless of the number and location of market centers trading the options.[84]

The Commission has required foreign currency options to be included within the quotation and reporting auspices of OPRA, even though this market is predominately an institutional market.[85]

C. The Proposal Will Not Impose a Burden on Competition Inconsistent With the Act

Although the Commission believes that FIPS will have a beneficial impact on the high yield debt market, the Commission still must assess its effect on competition. In enacting section 15A(b)(9), Congress obligated the Commission to "balance the perceived anti-competitive effect of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so."[86]

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[73] *Id.* See also ICI and T. Rowe Price letters.

[74] It has been estimated that the average value of secondary trading volume in high yield debt ranges from $500 million to $1.5 billion per day. See Division Report at 2.

[75] NASD Letter No. 1.

[76] NASD Letter No. 2.

[77] Report of the Subcomm. on Com. & Fin. of the Comm. on Interstate & For. Com., Securities Industry Study, H.R. Rept. No. 92–1519, at xiv (1972).

[78] Statement of the Securities and Exchange Commission Future Structure of the Securities Markets (February 2, 1972).

[79] *Id.* at 9. See also Securities Exchange Act Release No. 15671 at note 9 and accompanying text (March 22, 1979) (release assessing the development of a national market system). "[A] functioning consolidated quotation system, long considered a cornerstone of a national market system, has become operational, and quotation information for reported securities is now an integral part of the nation's securities markets."

[80] See Securities Exchange Act Release No. 15009 at note 36 and accompanying text (July 28, 1978).

[81] * * * [o]riginally, stock information was available from individual stock markets. There was no consolidated system for reporting all trades and quotes from all exchanges trading a stock. The Commission, working with the industry, built on existing reporting systems to encourage the development of consolidated transaction and quotation reporting systems to ensure that trades and quotes from any exchange market trading a stock were readily available to brokers, dealers and investors. Accordingly, today trades and quotes in any exchange-traded security, wherever they occur in the United States, are available on a real-time basis.

See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to William J. Anderson, Esq., Assistant Comptroller General, General Government Division, United States General Accounting Office, dated May 22, 1987.

[82] [d]evelopment of trade and quote reporting for over-the-counter ("OTC") stocks [followed a pattern similar to that of exchange-traded stocks]. Initially, the private sector developed the NASDAQ system to provide for more timely quote information regarding OTC securities * * * [c]oncerned, [however], over the differences between exchange and OTC competitive dealer markets, the OTC market participants initially were reluctant to develop real-time transaction reporting for that market. The Commission, therefore, had to take the lead in requiring the introduction of real-time last sale reporting, on a limited basis for OTC stocks. See Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992. While the Commission set the objective—real-time last sale reporting—it looked to the industry to develop the procedures for achieving that objective.

. . . [d]espite initial resistance, professional market participants, as well as OTC investors, today believe that enhanced availability of trade and quote information for OTC stocks has increased the pricing efficiency of the OTC stock market and encouraged greater investor interest. Indeed, the NASD, with active support of the National Securities Traders Association, petitioned the Commission to substantially expand the number of securities for which transaction information would be publicly disseminated.

See letter from S. William Broka, Secretary, NASD, to George Fitzsimmons, Secretary, SEC, dated February 10, 1984. Subsequently, the Commission amended its NMS securities rule to provide for such expansion. Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730.

[83] Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

[84] Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information, section V(a) and (b).

[85] *Id.* at III.

[86] S. Rep., *supra* at 13. The drafters formulated the Commission's duty in this respect variously as the "explicit obligation to balance, against other regulatory criteria and considerations, the competitive implications of self-regulatory and Commission action," and the "responsibility * * * to balance the perceived anticompetitive effects of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so," and the weighing of "the need for and effectiveness of regulatory actions in achieving the purposes (of the Exchange Act) * * * against any detrimental impact on competition." S. Rep. at 13–14. See also *Bradford National Clearing Corporation and Bradford Securities Processing Services, Inc.* v. *SEC ("Bradford")*, 590 F. 2d 1085, 1105.

The Justice Department expressed its views to Congress in Hearings on S. 249 before the Subcomm. on Banking, Housing and Urb. Affs., 94th Cong., 1st Sess. 244–52, 257–62 (1975) Apparently, in response, the Senate Report, which was generally adopted by the Conference Committee, emphasized that the 1975 Amendments do "not * * * require the Commission to justify that such actions be the least anticompetitive manner of achieving a regulatory objective." S. Rep., *supra* at 13. See also *Bradford*, *supra* at 1105.

Although the Commission is sensitive to avoiding unnecessary competitive burdens, the statute does not require the Commission to achieve its objectives in the least anticompetitive manner possible, rather, the statute requires the Commission to decide that any anticompetitive effects of its actions are "necessary or appropriate" to the achievement of its objectives.

The Commission has examined anew its stated objectives in the high yield debt market and has closely scrutinized the potential anti-competitive effect of the NASD's proposal. It is the Commission's determination that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

1. Competitive Effects of a Consolidated Quotation System.

Cantor argues that FIPS will create in the NASD an exclusive transaction and quotation reporting system and preclude the introduction of competing, alternative quotation, execution and/or reporting systems.[87] In order to avoid these effects, this commentator believes it is essential that the proposal permit high yield brokers and/or dealers to elect alternatively to participate only through another high yield bond quotation system.[88] The essence of Cantor's argument is that, by mandating that its members submit their quotations to the NASD, the NASD essentially has foreclosed the possibility for the development of competing quote and trade dissemination systems.

Competition in quote collection, however, is not impeded. While this proposal would require that a NASD member operating a quotation collection system submit quotes to the NASD (*i.e.*, an SRO), the Commission believes that the SRO requirement is appropriate given the obligation to monitor member compliance with the federal securities laws that SROs must undertake. Even if the distinction were to have a chilling effect on quote collection firms, however, the benefits to broker-dealer competition, investor protection, and other statutory goals of fair and orderly collection of information, far exceed that burden. Nothing, however, in the NASD proposal precludes the development and implementation of an alternative system.[89]

Cantor argues that by allowing FIPS participants to delay reporting for five minutes, no one will have the incentive to report more quickly, thereby creating a disincentive to any potential competing quote and trade reporting system.[90] The Commission does not believe such a result is likely, because a competitive quotation system could be designed to compensate for such a delay, and market participants would be willing to participate if the system provided a "better market or lower cost," as Cantor argues.[91] The Commission, however, is willing to approve the filing as proposed to allow time to evaluate the effect of transparency on the market. The five minute delay need not be permanent, and the Commission will monitor the market and review its ability to withstand increased transparency.

2. *Competition Among Execution Systems*

The proposal authorizes the NASD to add to FIPS a voluntary trade negotiation and execution capability.[92] As a voluntary execution system, other firms could develop a proprietary trading system and NASD members would be free to execute orders through that system. As stated above, the NASD has represented that it would work with the sponsors of such a system to consolidate quotation and last sale information without duplication. Nothing in the proposal prevents a broker's broker from acquiring the data feed from the NASD for dissemination in connection with its own trade negotiation and establishing an execution system.[93] Moreover, the NASD's proposed facility maintains the brokers-broker anonymity feature of the market, thereby maintaining the traditional function of brokers' broker. Thus, although the NASD still must develop key aspects of this facility, which will necessitate further Commission review, the Commission preliminarily believes that an SRO sponsored trading facility that attempts to automate current market communication functions is consistent with the Act.

Cantor argues that FIPS will foreclose the development of alternative trading systems by requiring quote reporting and by incorporating a voluntary execution facility. As noted above, however, experience in other markets with mandatory quote reporting has not precluded competing execution systems.[94] Similarly, experience indicates that the existence of an SRO sponsored trade negotiation and execution system also will not "pre-empt" the field.

3. Competition Among Dealers

The Commission believes that the proposal will facilitate competition among broker-dealers, which is an important statutory goal.[95] Thus, even if competition among quotation, collection and dissemination firms is subject to any burden, the Commission believes that burden is both necessary and appropriate to achieve, among other goals, greater market pricing efficiency, enhanced dealer competition and investor protection.

D. Requirements Related to Orderly Market Procedures

As an SRO registered with the Commission, the NASD has an on-going obligation to monitor member trading activity for compliance with the securities laws and to enforce member compliance with NASD rules and the federal securities laws. As an SRO, the NASD also must comply with its own rules and federal securities laws, including the requirement that NASD's rules be designed to promote orderly

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[87] *See* Cantor December and January Letters. Cantor also believes that a consolidated quotation system is unnecessary. Cantor February Letter.

[88] *Id.*

[89] The Commission, in the past, has required the development of consolidated quotation systems. However, the development of NASDAQ, for example, did not inhibit alternative systems such as POSIT and Instinet from developing and actively competing. Moreover, in listed market securities, the requirement of last sale reporting has not stifled innovation and/or competition between proprietary trading systems ("PTSs") or between the regional exchanges.

[90] Cantor February Letter.

[91] *See supra* note 53.

[92] Cantor appears to have misunderstood the nature of this proposed facility. See Cantor January Letter. ("In our comment letter [of December 31, 1992], we noted that the language of the NASD rule proposal appears to make it illegal under NASD rules for any member firm to conduct transactions in FIPS-designated securities outside of the FIPS system, even if there is available an exchange such as AZX, Inc. (the "Wunsch System") or an alternative trading system which meets the Commission's criteria for transparency and surveillance * * *.")

[93] The Commission has long supported access to SRO-sponsored data streams for the purpose of establishing competing systems. See *NASD* v. *SEC*, 801 F.2d 1415 (D.C. Cir. 1986) (Instinet Litigation).

[94] See *supra* note 89.

[95] Transparency helps all market centers assess overall supply and demand. Where there are multiple markets or market makers, transparency keeps prices in line by inhibiting the ability of one market or market maker to trade at noncompetitive prices. Moreover, as noted previously, the absence of public quote and trade information may act as a barrier to entry for small dealers without access to sufficient market information to efficiently price trades. FIPS will make quotation and trade information available through vendors for public dissemination. Thus, new entrants to the market for high yield debt securities will not be unfairly disadvantaged in obtaining information. It is therefore essential that a composite quotation system be put in operation as soon as possible. See generally Policy Statement of the Securities and Exchange Commission on the Structure of a Central Market System at 25 (March 29, 1973).

procedures for collecting, distributing and publishing quotations.[96]

As part of its oversight responsibility, the Commission has encouraged SRO's individually and collectively, to develop competent backup plans to protect against complete system failure.[97] The Commission deems the back-up provision reasonable in light of potential risks and shocks to the markets and the reliance of investors.[98]

The importance of Commission oversight is conceded in Cantor's alternative proposal that would require, for surveillance purposes, competing systems to report to the Market Surveillance Department of the NASD. Indeed, no non-SRO sponsored proprietary trading system has proposed to provide quotation and transaction information to the market in a fair, reasonable and non-discriminatory manner and that issue has yet to be addressed by the Commission. Until a non-SRO sponsored system seeks Commission no-action relief, it is premature to rule on this issue. In the interim, the requirement that certain high yield dealers maintain quotes in FIPS and that all high yield brokers and dealers report all trades to FIPS reflects the present requirements in the equity markets and is fully consistent with the Act.

In sum, the Commission believes it is reasonable in light of the statutory enforcement, as well as monitoring and backup responsibilities of an SRO and the fair access provisions required of an SRO,[99] that an SRO have access to consolidated quotation information with its attendant benefits as described above.

VI. Conclusion

In brief, the Commission believes that FIPS is pro-competitive, not anti-competitive. The system, and in particular its consolidation requirement, will allow investors and dealers to have a more accurate and complete picture of the market. Moreover, the Commission's experience with the development of consolidated quotation systems in the securities market indicates that such systems enhance competition and do not stifle innovation. In addition, the Commission concludes, based on its oversight of the securities markets in general and investigations of the high yield market in particular, that even if an adverse competitive effect resulted for Cantor or other proprietary trading systems, that effect is outweighed by the investor protection objectives of the Act. Specifically, consolidation is a specific goal of the Act and will facilitate best execution of customer orders as well as market efficiency, two other specific goals of the Act. In this regard, the Commission believes that requiring consolidated reporting to an SRO is appropriate. The Commission has a long history of encouraging competitive trading alternatives within the securities industry, nevertheless, those systems generally have sought to avoid designation as an SRO with the concomitant regulatory responsibilities of an SRO, including the duty to enforce compliance with the securities laws.[100] The Commission does not believe it is reasonable to impose these regulatory responsibilities on SROs and then deprive the SRO, in the name of competition, of access to consolidated data with which to carry-out its responsibilities. Rather, consistent with the statute, the Commission has insisted that SROs provide access to their competitors but have not precluded them from fulfilling the goal of providing a consolidated data stream. Finally, and perhaps most importantly, we believe, as the Senate Report on the 1975 Amendments stated, that the "great purposes" [101] of the Exchange Act—investor protection—are best furthered by this proposal, and that these goals, on balance, outweigh any anti-competitive effect on Cantor.

Accordingly, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(b)(6) and 15(b)(11).[102] Sections 15A(b)(6) authorizes the Association to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Section 15(b)(11), moreover, authorizes the Association to adopt rules relating to quotations. Such rules, must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. In addition, the proposed rule change is consistent with the Congressional objectives for the equity markets as stated in Section 11A of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market.

It is therefore ordered pursuant to section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

By the Commission.

Margret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6949 Filed 3–25–93; 8:45 am]

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[Release No. 34–32021; File No. SR–NASD–92–56]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Trade Reporting Requirements

March 22, 1993.

On December 16, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

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[96] Section 15A(b)(11) of the Act.

[97] See *e.g.*, In the Matter of the Application of the National Securities Clearing Corporation for Registration as a Clearing Agency, Order Affirming Registration and Statement of Reasons, File No. 600–15. Securities Exchange Act Release No. 17562 (February 20, 1981); In the Matter of American Stock Exchange, Inc., New York Stock Exchange, Inc., Application Pursuant to Section 11A(a)(3)(B), Temporary Order, File No. 4–281, Securities Exchange Act Release No. 15009 (July 28, 1978).

[98] See Automation Review Policy I, Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 4870 and Automation Review Policy II, Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490.

[99] An SRO is required to permit all broker-dealers membership and provide access to systems on fair and reasonable terms. See section 15A(b)(11). The Commission does not believe that providing quotations to a non-SRO would achieve the above statutory protections to investors.

[100] We recognize, of course, that Cantor proposes to share surveillance operations. Such a system does not allow the SRO to enforce quote halts or have effective supervision of the market.

[101] S. Rep. *supra* at 14.

[102] The Commission, by this order, approves the proposed rule changes that would permit the NASD to implement the FIPS trade negotiation, executive and transaction reporting function subject to the following conditions: (1) Submission of system change notification consistent with the Commission's Automation Review Policy II [See Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991)]; (2) successful completion of functionality, capacity and stress testing of the system changes; (3) notification to the Commission staff containing representations regarding the effective completion of those tests and confirming the effectiveness of the system; and (4) submission, for Commission review in accordance with Section 19 of the Act, a proposed rule change setting forth in detail the specifications of the system.

("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to Parts XII and XIII of Schedule D and section 2 of Schedule G to the By-Laws and to the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules").[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 31735, 58 FR 6032 (January 25, 1993). No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends the NASD By-Laws and the ACT Rules to require members to input the time of execution of late trade reports, to require trade reporting for transactions in NASDAQ securities between the hours of 9 and 9:30 a.m. Eastern Time, and to add a section regarding audit trail data.

Sections 2 of Part XII and Part XIII of Schedule D to the NASD By-Laws govern how and when transactions are reported in NASDAQ/NMS and NASDAQ Small-Cap securities respectively. Currently, Registered Reporting Market Makers and Non-Registered Reporting Members must designate transactions not reported within 90 seconds after execution as late. The proposed rule change would require that late sale trade reports also include the time of execution.

The proposed rule change would add identical language to Schedule G to the By-Laws. Part 2 of Schedule G governs how and when transactions are reported in exchange-listed securities. This section would be amended to require that late trade reports in these securities, transmitted through ACT by Registered Reporting Market Makers and Non-Registered Reporting Members, include the time of execution.

Additonally, to properly account for transactions executed between 9 and 9:30 a.m., the proposed rule change would require that last sale reports for trades in NASDAQ/NMS and NASDAQ/Small-Cap securities be reported through ACT within 90 seconds after execution and be designated as ".T" trades to denote their execution outside normal market hours.[4]

The proposed rule change would also modify the ACT Rules to reflect the same time-of-execution requirements and to adopt an "audit trail" provision. The ACT Rules specifically list the information that must be included in each trade report transmitted through ACT. The proposed rule change would add to the list a requirement that each report also include the execution time for any transaction in NASDAQ or CQS securities not reported within 90 seconds of execution. Similarly, the Audit Trail Requirements section of the ACT Rules is being added to state the obligation of member firms utilizing the ACT Service to input the trade information required by the ACT Rules.

II. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act, and in particular, with sections 15A(b)(6) and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 11A(a)(1)(C) sets forth the objective of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

The proposed rule change will extend real-time reporting of NASDAQ/NMS and NASDAQ Small-Cap securities from 9–9:30. The proposed rule change also will increase real-time trade reporting by Registered Reporting Market Makers and Non-Registered Reporting Members and thus, will reduce the use of paper Form T for reporting transactional data in NASDAQ/NMS and NASDAQ Small-Cap securities for trades effected between 9 and 9:30 a.m.[5]

The proposed rule change will enhance real-time trade reporting of NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities.[6] Real-time trade reports submitted to the NASD pursuant to the proposed rule change will be disseminated through the NASD's NASDAQ system and securities information vendors for NASDAQ/NMS and NASDAQ Small-Cap securities, and through the Consolidated Tape and securities information vendors for exchange-listed securities. This will provide broker-dealers and investors information necessary to make informed judgments about the securities offered for purchase or sale.

Ensuring that trade reports are properly sequenced on the basis of time is critical to constructing an accurate audit trail for surveillance purposes. The new trade reporting requirements will provide an effective means for placing transactions reported late in their proper sequence, thereby improving the quality of the NASD's audit trail because the information will be more timely, complete, and accurate. This will facilitate surveillance of market activity, including compliance with the proposed short sale rule.[7]

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(b)(6) and 11A(a)(1)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(1) of the ACT, that the proposed rule change (SR–NASD–92–56), be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12) (1992).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7014 Filed 3–25–93; 8:45 am]

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[1] 15 U.S.C. 78s.

[2] 17 CFR 240.19b–4 (1992).

[3] ACT is the NASD's post-trade comparison system that among other things, accommodates reporting and dissemination of last sale reports in NASDAQ/NMS, NASDAQ Small-Cap, and exchange-listed securities.

[4] The NASD rules define normal market hours as 9:30 a.m. through 4 p.m. See NASD Rules, Schedule D, Part VI, Section 6, and Part VII, Section 3.

In Securities Exchange Act Release No. 31597 (December 14, 1992), 57 FR 60547, the Commission approved an NASD proposal (SR–NASD–92–37) to extend real-time transaction reporting requirements in NASDAQ/NMS and NASDAQ Small-Cap securities executed after normal market hours between 4 p.m. and 5:15 p.m. The current proposal extends these requirements to trades executed in the morning before normal market hours.

[5] Form T is the form designated by the Board of Governors for submitting last sale reports for transactions executed outside normal market hours. It must be submitted on a weekly basis.

[6] Including the time of execution on late trade reports in exchange-listed securities will enable the NASD to respond more expeditiously and completely to inquiries from exchanges dealing with late trade reports and trade-through allegations.

[7] See Securities Exchange Act Release No. 31003 (August 6, 1992), 57 FR 36421 (SR–NASD–92–12).

[Release No. 34-32020; File No. SR-OCC-93-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Creation of the Small Cap Index Product Group for Cross-Margining Purposes

March 19, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 17, 1993, The Option Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-93-05) as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to create a new product group for cross-margining purposes. Specifically, OCC would create a small cap index product group which would consist of contracts on the following indices: S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, Mini Value Line Index, and the Wilshire Small Cap Index.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this change is to permit OCC to create a new product group [2] for cross-margining. Specifically, OCC proposes to create a small cap stock index product group which would include the following stock indices: S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, Wilshire Small Cap Index (collectively, referred to as "Small Cap Stock Indices"), and the Mini Value Line Index.[3] All class groups which would be included in this proposed product group have exhibited price correlations of greater than 85% over the past ten years,[4] and OCC believes that it is appropriate to organize these class groups into a product group for cross-margining purposes.

Accordingly, OCC would amend Exhibit A to the: (i) Amended and Restated Cross-Margining Agreement between OCC and the Chicago Mercantile Exchange ("CME") to include as Eligible Contracts for OCC put and call options on the Value Line Index and Wilshire Small Cap Index;[5] (ii) Cross-Margining Agreement between OCC and the Board of Trade Clearing Corporation ("BOTCC") to include as Eligible Contracts for OCC put and call options on the S&P MidCap 400 Index, Russell 2000 Index, and Value Line Index;[6] and (iii) Cross-Margining Agreement between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC") to include as Eligible Contracts for OCC put and call options on the S&P MidCap 400 Index, Russell 2000 Index, and Wilshire Small Cap Index.[7] OCC proposes to enter into letter agreements with CME, BOTCC, and KCC to provide for such amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The Commission believes OCC's proposed rule change to permit cross-margining of the above-named products is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and in particular with the requirements of sections 17A(b)(3)(A) and (F) of the Act.[8] Those sections require that a clearing agency be organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the clearing agency's custody or control or for which it is responsible. Additionally, section 17A(a)(1) of the Act [9] sets forth Congress' finding that ineffective procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. The Commission in recent years has dealt in a comprehensive manner with numerous proposals involving OCC's cross-margining programs.[10] For the reasons discussed in those orders [11] and because the Commission believes that this proposal further enhances the efficiency of OCC's

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Under OCC's margin methodology, the Theoretical Intermarket Margin System ("TIMS"), a product group consists of two or more class groups whose underlying assets have been determined by OCC to exhibit sufficient price correlation to warrant margining on a combined basis. A class group consists of all option contracts relating to the same underlying asset.

[3] The proposed small cap stock index product group would not include contracts on the Financial Times 100 Index or the EuroTop Index which are included in OCC's cross-margining program with the Chicago Mercantile Exchange ("CME") and in OCC's cross-margining program with the Commodity Clearing Association, respectively. Each of these indices will continue to be margined as a separate product group.

[4] Given that the correlations (*i.e.*, the r^2 values) among the Small Cap Stock Indexes and the MiniValue Line Index range from 86% to 90%, the offset percentage, or haircut, within the new product group will be 15%.

[5] Put and call options on the S&P MidCap 400 Index and Russell 2000 Index are already listed as Eligible Contracts for OCC. Upon approval of this rule change, OCC-cleared options on the Small Cap Stock Indices would be cross-margined with CME-cleared futures contracts and options on futures contracts on the S&P MidCap 400 Index and Russell 2000 Index.

[6] Put and call options on the Wilshire Small Cap Index are already listed as Eligible Contracts for OCC. Upon approval of this rule change, OCC-cleared options on the Small Cap Stock Indices would be cross-margined with BOTCC-cleared futures contracts and options on futures contracts on the Wilshire Small Cap Index.

[7] Put and call options on the Value Line are already Eligible Contracts for OCC. Upon approval of this rule change, OCC-cleared options on the Small Cap Stock Indices would be cross-margined with KCC-cleared futures contracts and options on futures contracts on the Value Line Index and Mini Value Line Index.

[8] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[9] 15 U.S.C. 78q-1(a)(1) (1988).

[10] *E.g.*, Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 [File No. SR-OCC-90-01] (order approving OCC/CME non-proprietary, market professional cross-margining program); 29888 (October 31, 1991), 56 FR 56680 [File No. SR-OCC-91-07] (order approving OCC/BOTCC non-proprietary, market professional cross-margining program); and 30413 (February 26, 1992), 57 FR 7830 [File No. SR-OCC-9109] (order approving OCC/KCC non-proprietary, market professional cross-margining program).

[11] *Id.*

margining system while providing adequate risk safeguards, the Commission is approving this proposal.

OCC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the Federal Register because accelerated approval would permit OCC to better coordinate its operations with the futures clearing corporations involved in this proposal. The Commission finds good cause for so approving the proposed rule change. Consistent with section 17A of the Act, accelerated approval will allow OCC, CME, BOTCC, and KCC to better coordinate the cross-margining of positions on the S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, Wilshire Small Cap Index, and Mini Value Line Index and should expedite OCC's continuing effort to make its margining system more efficient while providing adequate risk safeguards.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–93–05 and should be submitted by April 16, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–OCC–93–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

[12] 15 U.S.C. 78s(b)(2).

[13] 17 C.F.R. 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6950 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

March 22, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Asia Pacific Fund, Inc.
Rights to subscribe Common Stock (Exp. 2/12/93) (File No. 7–10385)
Berlitz International, Inc.
Common Stock, $.10 Par Value (File No. 7–10386)
Borg Warner Security Corp.
Common Stock, $.01 Par Value (File No. 7–10387)
Castle & Cooke Homes, Inc.
Common Stock, No Par Value (File No. 7–10388)
Emerging Mexico Fund, Inc.
Rights to subscribe Common Stock (Exp. 3/12/93) (File No. 7–10389)
Galen Health Care, Inc.
Common Stock, $.01 Par Value (File No. 7–10390)
Hecla Mining Company
Common Stock, $.25 Par Value (File No. 7–10391)
Integra Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–10392)
Magna International, Inc.
Class A Sub Voting Common Stock, No Par Value (File No. 7–10393)
Maybelline, Inc.
Common Stock, $.01 Par Value (File No. 7–10394)
Revco D.S., Inc.
Common Stock, $.01 Par Value (File No. 7–10395)
Value Health, Inc.
Common Stock, No Par Value (File No. 7–10396)
Atari Corporation
Common Stock, $.01 Par Value (File No. 7–10397)
Davstar Industries, Ltd.
Class A Common Stock, No Par Value (File No. 7–10398)
St. John's Knits, Inc.
Common Stock, No Par Value (File No. 7–10399)
LTV Corporation
15% Senior Notes due 1/15/2000 (File No. 7–10400)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6942 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 22, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Enquirer Star/Group, Inc.
Class A Common Stock, $0.01 Par Value (File No. 7–10419)
St. John Knits, Inc.
Common Stock, No Par Value (File No. 7–10420)
Castle & Cooke Homes, Inc.
Common Stock, No Par Value (File No. 7–10421)
Wilshire Technologies
Common Stock, No Par Value (File No. 7–10422)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission,

450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6946 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Health Care REIT, Inc., Common Stock, $1.00 Par Value) File No. 1–8923

March 22, 1992.

Health Care REIT, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 17, 1992 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual list of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before April 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6945 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Insteel Industries, Inc., Common Stock, No Par Value) File No. 1–9929

March 22, 1993.

Insteel Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 4, 1992 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before April 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6940 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Instrument Systems Corporation, Common Stock, $.25 Par Value; Second Preferred Stock–Series I, $.25 Par Value) File No. 1–6620

March 22, 1993.

Instrument Systems Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include in the following:

According to the Company, in addition to being listed on the Amex, its common stock and Second Preferred Stock—Series I ("preferred stock") are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and preferred stock commenced trading on the NYSE at the opening of business on February 3, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock and preferred stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock and preferred stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and preferred stock and believes that dual listing would fragment the market for these securities.

Any interested person may, on or before April 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms,

if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6943 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw from Listing and Registration; (Oneita Industries, Inc., Common Stock, $.25 Par Value) File No. 1–9734

March 22, 1993.

Oneita Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on February 3, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before April 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–6944 Filed 3–25–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Small Business Institute Counseling Case Report

Form No.: N/A

Frequency: One Per Client

Description of Respondents: Small Business Institute Counselors

Annual Responses: 6,700

Annual Burden: 18,090.

Dated: March 22, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–6991 Filed 3–25–93; 8:45 am]

BILLING CODE 8025–01–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 12 Regional Advisory Board meeting for Regions 1 through 6. The meetings are open to the public.

DATES: The 1993 meetings are scheduled as follows:

1. April 22, 9 a.m. to 12:30 p.m., New Orleans, Louisiana, Region 2 Advisory Board.
2. April 29, 9 a.m. to 12:30 p.m., Chicago, Illinois, Region 3 Advisory Board.
3. May 4, 9 a.m. to 12:30 p.m., Houston, Texas, Region 4 Advisory Board.
4. May 6, 9 a.m. to 3:30 p.m., Tampa, Florida, Region 1 Advisory Board.
5. May 11, 9 a.m. to 12:30 p.m., Sante Fe, New Mexico, Region 5 Advisory Board.
6. May 13, 9 a.m. to 12:30 p.m., Phoenix, Arizona, Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. New Orleans, Louisiana—The Monteleone Hotel, 214 Rue Royale.
2. Chicago, Illinois—Sheraton Chicago, 301 East North Water Street.
3. Houston, Texas—Hyatt Regency Houston, 1200 Louisiana.
4. Tampa, Florida—Hyatt Regency Tampa, Two Tampa City Center.
5. Sante Fe, New Mexico—Picacho Plaza Hotel, 750 North St. Francis Drive.
6. Phoenix, Arizona—Hyatt Regency Phoenix, 122 North Second Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one

national advisory board and six regional advisory boards.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

Topics to be addressed at the six meetings will include: the pooling of performing and nonperforming RTC assets, the proposed transfer of RTC hard-to-sell assets to FDIC, RTC's regional reports on real estate asset recovery against appraised values, RTC's approach to financial and program audits of contractors and subcontractors, an update on improvements to RTC's information management systems, the issue of discounting environmentally significant properties for sale to nonprofit and public agencies, funding sources for RTC's affordable housing properties, RTC financing for single family buyers in high cost areas, and deed restrictions on multifamily affordable housing properties. A detailed agenda will be available to the meeting.

Statements

Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: March 23, 1993.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 93–7006 Filed 3–25–93; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–018]

Draft Environmental Impact Statement; Niagara Falls, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: The U.S. Coast Guard, as the Federal lead agency and in cooperation with the Niagara Falls Bridge Commission (NFBC), intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed international bridge project crossing the Niagara River Gorge within the Whirlpool Rapid Corridor between the United States and Canada. A Coast Guard bridge permit is required for approval of the location and plans for the bridge project before construction can begin. The U.S. Army Corps of Engineers and the U.S. State Department will be cooperating agencies and also will have Federal permitting requirements for various aspects of the project.

DATES: Comments must be received on or before April 26, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Telephone: (216) 522–3993.

SUPPLEMENTARY INFORMATION: This notice of intent is published as required by regulations of the Council on Environmental Quality at 40 CFR 1501.7.

The proposed project would modify the existing bridge across the Niagara River Gorge, mile 11.6. Other planned improvements include a new four-lane international bridge and approximately 6.5 miles of new roadway. The subject of this EIS is the improvements proposed on the United States side of the border. A similar study is being prepared to evaluate environmental impacts on the Canadian side. The primary reason for this project is to improve traffic safety and accommodate future highway traffic volumes between the United States and Canada up to the end of planning period, year 2020.

As a result of earlier scoping meetings with Federal, State and local agencies, the Coast Guard has determined that an EIS would be the appropriate document for assessing impacts of the proposed project under Section 102(2)(C) of the National Environmental Policy Act of 1969. A no-build alternative (no action), alternative alignments within the existing bridge corridor, and various designs will be addressed. Other alternatives identified by the public will be considered. Significant issues to be evaluated include relocation of residential, commercial, industrial and non-profit displacements; relocation of hazardous wastes located within the proposed project right-of-way; existing and future land use and traffic patterns; prime and unique farmland; threatened and endangered species and critical habitat; and impacts on Section 4(f) properties, air quality, cultural resources and navigation. A public hearing may be scheduled after the Draft EIS is issued for public and agency review and comments.

No public scoping meeting is anticipated at this time. Written comments are invited from all interested parties to assure that all significant issues are identified and the full range of alternatives and impacts of the proposed bridge project are addressed.

Dated: March 18, 1993.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–6908 Filed 3–25–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102–338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to Sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized

areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3—GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Metropolitan Dade Transit Agency, Miami-Hialeah, FL	FL–03–0085–02	$25,650,000	02/03/93
Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL	FL–03–0132–00	750,000	02/04/93

SECTION 9—GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Golden Empire Transit District, Bakersfield, CA	CA–90–X528–00	$2,678,820	02/12/93
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA–90–X144–00	1,357,928	02/17/93
St. Cloud Metropolitan Transit Commission, St. Cloud, MN	MN–90–X058–01	122,901	02/16/93
Duluth Transit Authority, Duluth, MN–WI	MN–90–X059–01	69,267	02/23/93
Lane Transit District, Eugene-Springfield, OR	OR–90–X043–00	1,396,930	02/02/93
Wisconsin Dept. of Transportation Bureau of Transit, Wisconsin	WI–90–X174–00	2,118,400	02/17/93
Tri-State Transit Authority, Huntington-Ashland, WV–KY–OH	WV–90–X052–00	312,000	02/08/93

Issued on: March 23, 1993.

Robert H. McManus,

Acting Administrator.

[FR Doc. 93–7000 Filed 3–25–93; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held April 20 and 21, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street SW., Washington, DC 20024. Telephone (202) 401–4128 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 20 and 21, 1993, in room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Michael P. Dolan,

Acting Commissioner.

[FR Doc. 93–6913 Filed 3–25–93; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition Determination; Sacred Banner of Greek Revolution of 1821

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the object to be displayed, "the sacred banner of the Greek Revolution of 1821", imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the objects during the Greek Independence Day celebrations in New York, New York, from on or about Friday March 26 to April 3, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: March 23, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–7145 Filed 3–24–93. 2:46 pm]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 14624, Thursday, March 18, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m. (Eastern Time) Thursday, March 25, 1993.

CHANGE IN THE MEETING:

Open Session

Item No. 3.
Interim Procedural Regulations Implementing Sections 320 & 321 of The Civil Rights Act of 1991 has been removed from the Agenda.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663-4070.

Date: March 24, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93-7153 Filed 3-24-93; 2:41 pm]

BILLING CODE 6750-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, March 25, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the matter announced previously, the Commission will consider and act upon the following:

2. *Reid v. Kiah Creek Mining Co.*, Docket No. KENT 92-237-D, etc. (Issues include whether the Commission should grant the joint petition for discretionary review filed by Reid and Kiah Creek Mining Co.)

No earlier announcement of the addition of this matter to the previously scheduled meeting was possible. Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay / 1-800-877-8339 for toll fee.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93-7168 Filed 3-24-93; 3:48 pm]

BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, March 31, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Gilbert and Ross v. Shamrock Coal Co.*, Docket No. KENT 91-76-D etc. (Issues include whether the judge erred in finding that Shamrock discriminated against Gilbert & Ross in violation of 30 U.S.C. 815(c)(3), and in determining the monetary damages to be awarded.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Gilbert and Ross v. Shamrock Coal Co.*, Docket No. KENT 91-76-D etc. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93-7169 Filed 3-24-93; 3:48 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9 a.m., Wednesday, March 31, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment on proposed rulemaking to revise the Board's risk-based capital guidelines to implement Section 305 of the Federal Deposit Insurance Corporation Improvement Act regarding concentration of credit risk and the risks of nontraditional activities. (Proposed earlier for public comment; Docket No. R-0764)

2. Publication for comment on proposed rulemaking to revise the Board's risk-based capital guidelines to implement Section 305 of the Federal Deposit Insurance Corporation Improvement Act regarding interest rate risk. (Proposed earlier for public comment; Docket No. R-0764)

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: March 24, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-7084 Filed 3-24-93; 10:50 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, March 31, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days

before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 24, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7085 Filed 3–24–93; 10:50 am]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission hold the following meetings during the week of March 29, 1993.

An open meeting will be held on Monday, March 29, 1993, at 2 p.m., in Room 1C30.

A closed meeting will be held on Tuesday, March 30, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, March 29, 1993, at 2:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss a number of issues of mutual interest, including recent developments relating to dividend reinvestment plans, the investor registration option, employee stock option accounting, the Section 16 rules, the revised executive compensation disclosure rules, and the distribution of interim reports to beneficial owners.

For further information, please call James R. Budge at (202) 272–2589.

The subject matter of the closed meeting scheduled for Tuesday, March 30, 1993, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Reject Settlement of administrative proceedings of an enforcement nature.

Settlemen of injunctive action.

Consideration of *amicus* participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr (202) 272–2000.

Dated: March 24, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–7170 Filed 3–24–93; 4:00 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 921185–3021]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93–3579 beginning on page 8703 in the issue of Wednesday, February 17, 1993 make the following correction:

On page 8705, in table 1, in the last column, the final entry for "Other Species" is corrected to read "22,610".

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

RIN 3206–AF03

Privacy Act of 1974; Personnel Records

Correction

In rule document 92–28877 appearing on page 56732 in the issue of Monday, November 30, 1992, make the following correction:

In the first column, under SUPPLEMENTARY INFORMATION:, in the second paragraph, in the third line, "is a party" should read "is not a party".

BILLING CODE 1505–01–D

Federal Register

Friday
March 26, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Approval of Petition for Reassumption of Jurisdiction by the Metlakatla Indian Community Over Indian Child Custody Proceedings; Correction to Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Approval of Petition for Reassumption of Jurisdiction by the Metlakatla Indian Community Over Indian Child Custody Proceedings Involving Indian Children Who Are Enrolled or Eligible for Enrollment With the Metlakatla Indian Community or Who Reside or Are Domiciled on the Annette Islands Reserve in Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to notice.

SUMMARY: This notice is written to correct the Notice published in the **Federal Register**. The Notice document 93–4466, on page 11766 in the issue of Friday, February 26, 1993, Vol. 58, No. 37.

The title of the notice should read: Approval of Petition for Reassumption of Concurrent Jurisdiction by the Metlakatla Indian Community Over Indian Child Custody Proceedings Involving Indian Children Who Are Enrolled or Eligible for Enrollment with the Metlakatla Indian Community or Who Reside or Are Domiciled on the Annette Islands Reserve in Alaska. The word concurrent has been added.

The Summary paragraph on Page 11766, in the first and second columns should read: The Metlakatla Indian Community of Alaska has filed a petition with the Department of the Interior to reassume concurrent jurisdiction over child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the Metlakatla Indian Community or who reside or are domiciled on the Annette Islands Reserve in Alaska. The Assistant Secretary—Indian Affairs has reviewed the petition and determined that tribal exercise of concurrent jurisdiction is feasible and that the tribe has a suitable plan for exercising such jurisdiction. This notice constitutes the official approval of the Metlakatla Indian Community's petition by the Department of the Interior.

The word exclusive is replaced by the word concurrent.

Dated: March 19, 1993.

Patrick A. Hayes,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 93–6925 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Friday
March 26, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

This is the current list of Designated Tribal Agents for service of notice, and includes the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

ADDRESSES: Bureau of Indian Affairs, Division of Social Services, Code 450, Mail Stop 310–SIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David L. Hickman, Chief, Division of Social Services, address given above, telephone, (202) 208–2721.

Designated Tribal Agents

Aberdeen Area: Area Social Worker; 115 4th Avenue, SE., Aberdeen, South Dakota 57401, 605/226–7351.

Cheyenne River Sioux Tribe of the Cheyenne River Reservation; South Dakota, P.O. Box 590, Eagle Butte, South Dakota 57625; Director, Indian Child Welfare Program; 605/964–4155.

Crow Creek Sioux Tribe of the Crow Creek Sioux Reservation, P.O. Box 50, Fort Thompson, South Dakota 57339; Social Services Director; 605/245–2221.

Devil's Lake Sioux Tribe of the Devil's Lake Sioux Reservation, North Dakota, Fort Totten, North Dakota 58335; Social Services Director, Tribal Social Services; 701/766–4221.

Flandreau Santee Sioux Tribe; P.O. Box 283; Flandreau Field Office; Flandreau, South Dakota 57028; Social Services Director; 605/997–3844.

Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Brule, South Dakota 57548; Chairman; 605/473–5561.

Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; P.O. Box 537; Kyle, South Dakota 57752, Administrator, ONTRAC; 605/455–2596.

Omaha Tribe of Nebraska, P.O. Box 368, Macy, Nebraska 68039; Social Services Director; 402/837–5391.

Ponca Tribe of Nebraska; P.O. Box 228; Niobrara, Nebraska 68760; Social Services Director; No phone number listed.

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota, P.O. Box 460, Rosebud, South Dakota 57570; Juvenile Judge, Rosebud Sioux Tribal Court, 605/747–2278 and/or Social Services Director; 605/747–2258.

Santee Sioux Tribe of Nebraska; Route 2; Niobrara, Nebraska 68760; Social Services Director; 402/857–3302.

Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Sisseton-Wahpeton Sioux Tribal Court, P.O. Box 568; Agency Village, South Dakota 57262; Indian Child Welfare Act Specialist/Advocate; 605/698–3120.

Standing Rock Sioux Tribe of North Dakota; P.O. Box D; Fort Yates, North Dakota 58538; Social Services Director; 701/854–7201.

Three Affiliated Tribes of the Fort Berthold Reservation; North Dakota, P.O. Box 669, New Town, North Dakota 58763; Director, Tribal Social Services; 701/627–3731.

Turtle Mountain Band of Chippewa Indians of North Dakota; Turtle Mountain Tribal Office, Community Center Building, Belcourt, North Dakota 58316; Chief Tribal Judge; 701/477–6451.

Winnebago Tribe of Nebraska; P.O. Box 687; Winnebago, Nebraska 68071; Social Services Director; 402/878–2272.

Yankton Sioux Tribe of South Dakota; Box 248; Marty, South Dakota 57361; Social Services Director; 605/384–3641.

Albuquerque Area: Area Social Worker; P.O. Box 26567; Albuquerque, New Mexico; 87125–6567; 505/766–3321.

Pueblo of Acoma; P.O. Box 328; Acomita, New Mexico 87034; Social Services Director; 505/552–6604.

Pueblo of Cochiti; P.O. Box 70; Cochiti, New Mexico 87041; Governor; 505/465–2244.

Pueblo of Isleta; P.O. Box 1270; Isleta, New Mexico 87022; Social Services Director; 505/869–3111.

Pueblo of Jemez; P.O. Box 100; Jemez Pueblo, New Mexico 87024; Tribal Court Clerk; 505/834–7359; Social Services Director; 505/834–7359.

Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Jicarilla Apache Tribal Court, P.O. Box 221, Dulce, New Mexico 87525–0221; Chief Judge; 505/759–3366; Census Office, P.O. Box 507, Dulce, New Mexico 87525–0507; 505/759–3242; Emergencies and After Working Hours, Jicarilla Apache Police Department; P.O. Box 507, Dulce, New Mexico 87528–0507; 505/759–3222.

Pueblo of Laguna; P.O. Box 194; Laguna, New Mexico 87026; Social Services Director; 505/552–9712.

Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Mescalero Apache Tribal Court, P.O. Box 176, Mescalero, New Mexico 88340; Judge; 505/671–4779.

Pueblo of Nambe; Route 1, Box 117–BB, Santa Fe, New Mexico 87501; Community Health Representative; 505/455–7752.

Pueblo of Picuris; P.O. Box 127, Penasco, New Mexico 87553; Tribal Administrator; 505/587–2519.

Pueblo of Pojoaque; Route 11, Box 71; Santa Fe, New Mexico 87501; Governor; 505/455–2278.

Pueblo of Sandia; P.O. Box 6008; Bernalillo, New Mexico 87004; Governor; 505/867–3317.

Pueblo of San Felipe; P.O. Box L; San Felipe Pueblo, New Mexico 87001; Social Services Director; 505/867–9740.

Pueblo of San Ildefonso; Route 5, Box 315–A; Santa Fe, New Mexico 87501; Social Services Director; 505/455–2273.

Pueblo of San Juan; P.O. Box 1099; San Juan Pueblo, New Mexico 87566; 505/852–4400.

Pueblo of Santa Ana; Star Route—Box 37; Bernalillo, New Mexico 87004; Chief Judge; 505/867–3301.

Pueblo of Santa Clara; P.O. Box 580; Espanola, New Mexico 87532; 505/753–7326.

Pueblo of Santo Domingo; P.O. Box 99; Santo Domingo Pueblo, New Mexico 87052; Social Services Director; 505/465–2214.

Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; P.O. Box 737; Ignacio, Colorado 81137; Director, Tribal Social Services; 1/800/772–1236.

Pueblo of Taos; P.O. Box 1846; Taos, New Mexico 87571; Governor; 505/758–9593.

Pueblo of Tesuque; Route 11 Box 1; Santa Fe, New Mexico 87501; 505/983–2667.

Pueblo of Zia; General Delivery; San Ysidro, New Mexico 87053; Social Services Director; 505/867–3304.

Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; General Delivery; Towaoc, Colorado 81334; Director, Tribal Social Services; 303/565–3751 ext. 265.

Ysleta del Sur Pueblo of Texas; P.O. Box 17579, Ysleta Station; El Paso, Texas 79917; Social Services Specialist; 915/859–7913.

Zuni Tribe of the Zuni Reservation, New Mexico; P.O. Box 339, Zuni, New Mexico 87327; Director, Tribal Social Services, 505/782–4481 ext. 141.

Anadarko Area: Area Social Worker; P.O. Box 368; WCD Office Complex; Anadarko, Oklahoma 73005; 405/247–6673 ext. 257.

Absentee-Shawnee Tribe of Indians of Oklahoma; 2025 S. Gordon Cooper Drive, Shawnee, Oklahoma 74801; Governor; 405/275–4030.

Alabama-Coushatta Tribe of Texas; Route 3, Box 640; Livingston, Texas 77351; Chairperson; 409/563–4391.

Apache Tribe of Oklahoma; P.O. Box 1220; Anadarko, Oklahoma 73005; Chairman; 405/247–9493.

Caddo Indian Tribe of Oklahoma; P.O. Box 487; Binger, Oklahoma 73009; Chairman; 405/656–2344.

Cheyenne-Arapaho Tribes of Oklahoma; P.O. Box 38; Concho, Oklahoma 73022; Chairman; 405/262–0345.

Citizen Band Potawatomi Indian Tribe of Oklahoma; 1901 S. Gordon Cooper Drive; Shawnee, Oklahoma 74801; Chairman; 405/275–3125.

Comanche Indian Tribe of Oklahoma; HC–32, P.O. Box 1720; Lawton, Oklahoma 73502; Chairman; 405/492–4988/248–7724.

Delaware Tribe of Western Oklahoma; P.O. Box 825; Anadarko, Oklahoma 73005; President; 405/247–2448.

Fort Sill Apache Tribe of Oklahoma; Route 2, Box 121; Apache, Oklahoma 73006; Chairperson; 405/588–2298.

Iowa Tribe of Kansas; Route 1, Box 58A; White Cloud, Kansas 66094; Chairman; 913/595–3258.

Iowa Tribe of Oklahoma; Iowa Veterans Hall; P.O. Box 190; Perkins, Oklahoma 74059; Chairman; 405/547–2403.

Kaw Indian Tribe of Oklahoma; Drawer 50; Kaw City, Oklahoma 74641; Chairperson; 405/269–2552.

Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; P.O. Box 271; Horton, Kansas 66349; Chairman; 913/486–2131.

Kickapoo Traditional Tribe of Texas; P.O. Box 972; Eagle Pass, Texas 78853; Chairman; 512/773–2105.

Kickapoo Tribe of Oklahoma; P.O. Box 70; McLoud, Oklahoma 74851; Chairman; 405/964–2075.

Kiowa Indian Tribe of Oklahoma; P.O. Box 369; Carnegie, Oklahoma 73015; Chairman; 405/654–2300.

Otoe-Missouria Tribe of Oklahoma; Route 1, P.O. Box 62; Red Rock, Oklahoma 74651; Chairperson; 405/723–4434.

Pawnee Indian Tribe of Oklahoma; P.O. Box 470; Pawnee, Oklahoma 74058; President; 918/762–3624.

Ponca Tribe of Indians of Oklahoma; P.O. Box 2; White Eagle; Ponca City, Oklahoma 74601; Chairman; 405/762–8104.

Prairie Band of Potawatomi Indians of Kansas; Route 2, Box 50A; Mayetta, Kansas 66509; Chairman; 913/966–2255.

Sac & Fox Tribe of Missouri in Kansas and Nebraska; Route 1, P.O. Box 60; Reserve, Kansas 66434; Chairperson; 913/742–7471.

Sac & Fox Nation; Route 2, Box 246; Stroud, Oklahoma 74079; Principal Chief; 918/968–3526.

Tonkawa Tribe of Indians of Oklahoma; P.O. Box 70 Tonkawa, Oklahoma 74653; President; 405/628–2561.

Witchita Indian Tribe of Oklahoma; P.O. Box 729; Anadarko, Oklahoma 73005; President; 405/247–2425.

Billings Area: Area Social Worker; 316 North 26th Street; Billings, Montana 59101; 406/657–6651.

Arapahoe Tribe of the Wind River Reservation, Wyoming; P.O. Box 217; Fort Washakie, Wyoming 82514; Chairman; 307/332–6120.

Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; P.O. Box 850; Browning, Montana 59417; Director, Indian Child Welfare Program; 406/338–7806.

Chippewa-Cree Tribe of the Rocky Boy Reservation of Montana; Rocky Boy Route—P.O. Box 544; Box Elder, Montana 59521; Chairman; 406/395–4282.

Crow Tribe of the Crow Reservation of Montana; P.O. Box 489; Crow Agency, Montana 59022; Chairperson; 406/638–2303.

Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; P.O. Box 525; Harlem, Montana 59034; Tribal Attorney; 406/353–2205.

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; P.O. Box 1027; Poplar, Montana 59255; Chairman; 406/768–5155.

Northern Cheyenne Tribe of the Northern Cheyenne Reservation; P.O. Box 128; Lame Deer, Montana 59043; Director, Tribal Social Services; 406/477–8321.

Shoshone Tribe of the Wind River Reservation, Wyoming; P.O. Box 217; Fort Washakie, Wyoming 82514; Chairman; 307/332–3532.

Eastern Area: Area Social Worker; 3701 N. Fairfax Drive; Mail Stop–260 Virginia Square; Arlington, Virginia 22203; 703/235–2353.

Aroostook Band of Micmac Indians of Maine; P.O. Box 772; Presque Isle, Maine 04769; President; 207/764–1972.

Cayuga Nation of New York, P.O. Box 11, Versailles, New York 14168; Indian Child Welfare Worker; 716/532–4847.

Chitimacha Tribe of Louisiana; P.O. Box 661; Charenton, Louisiana 70523; Health Director; 318/923–7215.

Mississippi Band of Choctaw Indians; P.O. Box 6010; Choctaw Branch; Philadelphia, Mississippi 39350; Chief; 601/656–5251.

Coushatta Tribe of Louisiana; P.O. Box 818; Elton, Louisiana 70532; Chairman; 318/584–2261.

Eastern Band of Cherokee Indians of North Carolina; Qualla Boundary; P.O. Box 455; Cherokee, North Carolina 28719; Principal Chief; 704/497–2771.

Houlton Band of Maliseet Indians of Maine; P.O. Box 576; Houlton, Maine 04730; Chairman; 207/532–4273.

Mashantucket Pequot Tribe of Connecticut; P.O. Box 160; Ledyard, Connecticut 06339; Chairman; 203/536–2681.

Miccosukee Tribe of Indians of Florida; P.O. Box 440021; Tamiami Station; Miami, Florida 33144; Chairman; 305/223–8380.

Narragansett Indian Tribe of Rhode Island; P.O. Box 268; Charleston, Rhode Island 02813; Chief Sachem; 401/364–1100.

Oneida Nation of New York; 101 Canal Street; Canastota, New York 13032; Tribal Leader; 315/697–8251.

Onondaga Nation of New York; P.O. Box 278; Nedrow, New York 13120; Head Chief; 315/469–8507.

Passamaquoddy Tribe of Maine; Indian Township Reservation; P.O. Box 301; Princeton, Maine 04668; Governor; 207/796–2301.

Passamaquoddy Tribe of Maine; Pleasant Point Reservation; P.O. Box 343; Perry, Maine 04667; Governor; 207/853–2551.

Penobscot Nation of Maine; Community Building—Indian Island; Old Town, Maine 04468; Governor; 207/827–7776.

Poarch Band of Creek Indians of Alabama; Route 3, Box 243–A; Atmore, Alabama 36502; Chairman; 205/368–9136.

Seminole Tribe of Florida; 6073 Stirling Road; Hollywood, Florida 33024; Chairman; 305/584–0400.

Seneca Nation of New York; Genevieve Plummer Building; P.O. Box 231, Salamanca, New York 14779; Clerk-SNI; 716/945–5862.

St. Regis Band of Mohawk Indians of New York; St. Regis Reservation, Hogansburg, New York 13655; Director, Human Services, 518/358–2272.

Tonawanda Band of Senecas Indians of New York; 7027 Meadville Road; Basom, New York 14013; Chief; 716/542–9942.

Tunica-Biloxi Indian Tribe of Louisiana; P.O. Box 311; Marksville, Louisiana 71351; Chairman; 318/253–9767.

Tuscarora Nation of New York; 5616 Walmore Road; Lewiston, New York 14092; Chief; 716/297–4990.

Gay Head Wampanoag Indians of Massachusetts; State Road; P.O. Box 137; Gay Head, Maine 02535; Coordinator, Human Services Program; 508/645–9265.

Juneau Area: Area Social Worker, P.O. Box 25520, 9109 Menden Hall Mall Road; Juneau, Alaska 99802–5520; 907/586–7169.

Native Village of Akhiok; Box 5030; Akhiok, Alaska 99615; President; 907/836–2229.

Akiachak Native Community; P.O. Box 70; Akiachak, Alaska 99551; President; 907/825–4626.

Akiak Native Community; P.O. Box 52165; Akiak, Alaska 99552; President; 907/765–7112.

Native Village of Akutan; P.O. Box 89; Akutan, Alaska 99553; President; 907/698–2232 (message).

Village of Alakanuk; P.O. Box 167; Alakanuk, Alaska 99554; President; 907/238–3313.

Alatna Village Council; General Delivery; Alatna, Alaska 99720; Chief; 907/456–0222.

Native Village of Aleknagik; (aka Alegnagik); P.O. Box 115; Aleknagik, Alaska 99555; President; 907/842–2229.

Native Village of Algaaciq (aka St. Mary's); P.O. Box 48; St. Mary's, Alaska; 99658; President; 907/438–2932.

Allakaket Traditional Council; General Delivery; Allakaket, Alaska 99720; First Chief; 907/968–2241 (message).

Ambler Traditional Council; P.O. Box 47; Ambler, Alaska 99706; President; 907/445–2180 (message).

Anaktuvuk Pass Village; General Delivery; Anaktuvuk Pass, Alaska 99721; President; 907/661–3113.

Angoon Community Association; P.O. Box 188; Angoon, Alaska 99820; President; 907/788–3411.

Village of Aniak, P.O. Box 176; Aniak, Alaska 99557; President; 907/675/4349.

Anvik Village; General Delivery; Anvik, Alaska 99558; Chief; 907/663–6335.

Arctic Village Traditional Council; P.O. Box 22050; Arctic Village, Alaska 99722; Chief; 907/587–5320.

Native Village of Atka; Atka Rural Branch; Atka, Alaska 99502; President; 907/767–8001.

Village of Atmautluak; P.O. Box ATT; Atmautluak, Alaska 99559; President; 907/563–5610.

Atqasuk Village Council; General Delivery; via Barrow (Atqasuk), Alaska 99723; President; 907/456–0222.

Native Village of Barrow; P.O. Box 1139; Barrow, Alaska 99723; President; 907/852–4411.

Beaver Village Council; P.O. Box 24029; Beaver, Alaska 99724; 1st Chief; 907/628–6126.

Native Village of Belkofsky (aka Belkofski); General Delivery; Belkofski, Alaska 99695; President; 907/497–2260.

Bethel—See Orutsaramuit Native Council

Native Village of Bill Moore's Slough; General Delivery; Kotlik, Alaska 99620; Tribal Chairman; 907/899–4712.

Birch Creek Village Council; P.O. Box KBC; Fort Yukon, Alaska 99740; Chief; 907/221–9133.

Native Village of Brevig Mission; General Delivery; Brevig Mission, Alaska 99785; President; 907/642–3851.

Native Village of Buckland; General Delivery; Buckland, Alaska 99727; President; 907/494–2121.

Native Village of Cantwell; P.O. Box 94; Cantwell, Alaska 99729; President; 907/768–2151.

Central Council Tlingit and Haida Indian Tribe of Alaska; 320 W. Willoughby Avenue, Suite 300; Juneau, Alaska 99501; President; 907/586–1432.

Chalkyitsik Village Council; P.O. Box 57; Chalkyitsik, Alaska 99788; Chief; 907/848–8893.

Native Village of Chenega; P.O. Box 8079; Chenega Bay, Alaska 99574; President; 907/573–5151.

Chefornak Traditional Council; P.O. Box 29; Chefornak, Alaska 99561; President; 907/867–8850.

Chevak Traditional Council; P.O. Box 5514; Chevak, Alaska 99563; President; 907/858–7428.

Native Village of Chickaloon; P.O. Box 1105; Chickaloon, Alaska 99674; President; 907/746–0505.

Native Village of Chignik; General Delivery; Chignik, Alaska 99563; President; 907/749–8001.

Native Village of Chignik Lagoon; General Delivery; Chignik Lagoon, Alaska 99565; President; 907/840–2206.

Chignik Lake Village; P.O. Box 33; Chingnik Lake, Alaska 99548; President; 907/845–2122.

Chilkat Indian Village of Klukwan; P.O. Box 525, Haines, Alaska 99827–0210; President; 907/767–5505.

Chilkoot Indian Association of Haines; P.O. Box 235; Haines, Alaska 99827; President; 907/766–2310.

Chinik Eskimo Community (aka Golovin); General Delivery; Golovin, Alaska 99762; President; 907/779–3521.

Native Village of Chistochina; P.O. Box 241; Gakona, Alaska 99586; President; 907/882–3503.

Native Village of Chitina; P.O. Box 31; Chitina, Alaska 99566; President; 907/823–2215.

Native Village of Chuathbaluk; P.O. Box CHU; Chuathbaluk, Alaska 99557; Chief; 907/467–4313.

Native Village of Chuloonawick; General Delivery; Chuloonawick, Alaska 99581; President; 907/949–1147.

Circle Native Community; General Delivery; Circle, Alaska 99733; Chief; 907/733–5498 (message).

Village of Clark's Point; P.O. Box 16; Clark's Point, Alaska 99569; President; 907/236–1221.

Copper Center—See Kluti-Kaah

Native Village of Council; P.O. Box 2050; Nome, Alaska 99762; President; 907/443–5715.

Craig Community Association; P.O. Box 244; Craig, Alaska 99921; Vice-President; 907/826–3247.

Native Village of Crooked Creek; P.O. Box 69; Crooked Creek, Alaska 99575; President; 907/432–2227.

Native Village of Deering; General Delivery; Deering, Alaska 99736; President; 907/363–2148.

Native Village of Dillingham; P.O. Box 216; Dillingham, Alaska 99576; President; 907/842–2384.

Native Village of Diomede (aka Inalik); General Delivery; Diomede, Alaska 99762; President; 907/686–3071.

Village of Dot Lake; P.O. Box 2272; Dot Lake, Alaska 99737; President; 907/882–2669.

Douglas Indian Association; P.O. Box 434; Douglas, Alaska 99824; President; No Phone Number Listed.

Village of Eagle; P.O. Box 19; Eagle, Alaska 99378; First Chief; 907/547–2271.

Native Village of Eek; P.O. Box 087; Eek, Alaska 99578; President; 907/536–5426.

Egegik Village; P.O. Box 189; Egegik, Alaska 99579; President; 907/233–2231.

Eklutna Native Village; 26339 Eklutna Village Road; Chugiak, Alaska 99567; President; 907/688–6020.

Native Village of Ekuk; General Delivery; Ekuk, Alaska 99576; President; 907/842–5937.

Ekwok Village; P.O. Box 49; Ekwok, Alaska 99580; President; 907/464–3311.

Native Village of Elim; P.O. Box 39070; Elim, Alaska 99739; President; 907/890–3071.

Emmonak Village; P.O. Box 126; Emmonak, Alaska 99581; President; 907/949–4720.

English Bay—See Nanwalek Village Council

Evansville Village; P.O. Box 26025; Evansville, Alaska 99726; Chief; 907/692–5467 (message).

Eyak Native Village; P.O. Box 1388; Cordova, Alaska 99574; President; 907/464–3622.

Native Village of False Pass; P.O. Box 29; False Pass, Alaska 99583; Vice President; 907/548–2227.

Native Village of Fort Yukon; P.O. Box 126; Fort Yukon, Alaska 99740; Executive Director; 907/662–2581.

Native Village of Gakona; P.O. Box 124; Gakona, Alaska 99586; President; 907/822–3497.

Fortuna Ledge—See Marshall

Galena Village; P.O. Box 182; Galena, Alaska 99741; Chief; 907/656–1666.

Native Village of Gambell; P.O. Box 133; Gambell, Alaska 99742; President; 907/985–5014.

Native Village of Georgetown; General Delivery; Georgetown, Alaska; 907/543–2726.

Golovin—See Chinik Eskimo Community

Native Village of Goodnews Bay; P.O. Box 03; Goodnews Bay, Alaska 99589; President; 907/967–8929.

Organized Village of Grayling (aka Holikachuk); General Delivery; Grayling, Alaska 99590; President; 907/453–5128.

Gulkana Village; P.O. Box 254; Gakona, Alaska 99701; President; 907/822–5113.

Native Village of Hamilton; General Delivery; Kotlik, Alaska 99620; President; 907/899–4313.

Healy Lake Village: P.O. Box 667; Delta Junction, Alaska 99737; President; 907/456–0222.

Holikachuk—See Grayling

Holy Cross Village Council; P.O. Box 203; Holy Cross, Alaska 99602; Chief; 907/476–7134.

Hoonah Indian Association; P.O. Box 144; Hoonah, Alaska 99829; President; 907/945–3600.

Native Village of Hooper Bay; P.O. Box 2193; Hooper Bay, Alaska 99604; President; 907/758–4915.

Hughes Village; P.O. Box 45010; Hughes, Alaska 99745; Chief; 907/899–2206.

Huslia Village Council; P.O. Box 10; Huslia, Alaska 99746; Chief; 907/829–2256.

Hydaburg Cooperative Association; P.O. Box 305; Hydaburg, Alaska 99922; President; 907/285–3761.

Igiugig Village; P.O. Box 4008; Igiugig, Alaska 99613; President; 907/533–3211.

Native Village of Iliamna; P.O. Box 286; Iliamna, Alaska 99606; President; 907/571–1246.

Inalik—See Diomede

Inupiat Community of Arctic Slope; P.O. Box 1232; Barrow, Alaska 99723; President; 907/852–6907.

Ivanoff Bay Village; P.O. Box KIB; Ivanoff Bay, Alaska 99502; President; 907/699–2204.

Kaguyak—See Akhiok

Organized Village of Kake; P.O. Box 316; Kake, Alaska 99830–0316; President; 907/785–6471.

Kaktovik Village; P.O. Box 8; Kaktovik, Alaska 99747; President; 907/640–6120.

Village of Kalskag; General Delivery; Kalskag, Alaska 99607; President; 907/471–2248.

Native Village of Kaltag; P.O. Box 9; Kaltag, Alaska 99748; Chief; 907/534–2230.

Native Village of Kanatak; c/o BIA Anchorage Agency; 1675 "C" Street; Anchorage, Alaska 99501; President; 907/271–4111 (BIA).

Native Village of Karluk; P.O. Box 22; Karluk, Alaska 99608; President; 907/241–2224.

Organized Village of Kasaan; General Delivery; Kasaan, Alaska 99924; President; 907/542–2214.

Native Village of Kasigluk; P.O. Box 19; Kasigluk, Alaska 99609; President; 907/477–6927.

Kenaitze Indian Tribe; P.O. Box 988; Kenai, Alaska 99611; Chairperson; 907/283–3633.

Ketchikan Indian Corporation; 429 Deermount Avenue; Ketchikan, Alaska 99901; President; 907/225–5158.

Native Village of Kiana; P.O. Box 69; Kiana, Alaska 99749; President; 907/475–2109.

Agdaagux Tribe of King Cove; P.O. Box 38; King Cove, Alaska 99612; President; 907/497–2312.

King Island Native Community; P.O. Box 992; Nome, Alaska 99762; Chief; 907/443–5494 (IRA) or 907/443–5487.

Native Village of Kipnuk; P.O. Box 57; Kipnuk, Alaska 99614; President; 907/896–5515.

Native Village of Kivalina; P.O. Box 50051; Kivalina, Alaska 99750; President; 907/645–2153.

Klawock Cooperative Association; P.O. Box 112; Klawock, Alaska 99925; President; 907/755–2265.

Native Village of Kluti-Kaah (aka Copper Center); P.O. Box 68; Copper Center, Alaska 99573; President; 907/822–5541.

Knik Village; P.O. Box 872130; Wasilla, Alaska 99687; President; 907/373–2161.

Native Village of Kobuk; General Delivery; Kobuk, Alaska 99751; President; 907/948–2214.

Kokhanok Village; P.O. Box 1007; Kokhanok, Alaska 99606; President; 907/282–2202.

Koliganek Village; P.O. Box 1007; Koliganek, Alaska 99606; President; 907/282–2202.

Kongiganak Native Village; P.O. Box 5069; Kongiganak, Alaska 99559; President; 907/557–5226.

Village of Kotlik; P.O. Box 20096; Kotlik, Alaska 99620; President; 907/899–4326.

Native Village of Kotzebue; P.O. Box 296; Kotzebue, Alaska 99752; President; 907/442–3467.

Native Village of Koyuk; P.O. Box 30; Koyuk, Alaska 99753; President; 907/963–3651.

Koyukuk Native Village; P.O. Box 49; Koyukuk, Alaska 99754; Chief; 907/927–2214.

Organized Village of Kwethluk; P.O. Box 84; Kwethluk, Alaska 99621; President; 907/757–6714.

Native Village of Kwigillingok; P.O. Box 49; Kwigillingok, Alaska 99622; President; 907/588–8114.

Native Village of Kwinhagak (aka Quinhagak); General Delivery; Quinhagak, Alaska 99655; President; 907/556–8449.

Native Village of Larsen Bay; P.O. Box 35; Larsen Bay, Alaska 99624; President; 907/847–2207.

Levelock Village; General Delivery; Levelock, Alaska 99625; President; 907/287–3030.

Lime Village; General Delivery; Lime Village, Alaska 99627; President; 907/526–5126.

Village of Lower Kalskag; P.O. Box 27, Lower Kalsag, Alaska 99626; President; 907/471–2307.

Manley Hot Springs Village; General Delivery; Manley Hot Springs, Alaska 99756; President; 907/672–3331.

Manokotak Village; P.O. Box 169; Manokotak, Alaska 99628; President 907/289–1027.

Native Village of Marshall (aka Fortuna Ledge); P.O. Box 10; Fortuna Ledge, Alaska 99585; President; 907/679–6215.

Village of Mary's Igloo; P.O. Box 571; Teller, Alaska 99778; President; 907/642–3731.

McGrath Native Village; P.O. Box 134; McGrath, Alaska 99627; President; 907/524–3024.

Native Village of Mekoryuk; P.O. Box 66; Mekoryuk, Alaska 99630; President; 907/827–8828.

Mentasta Lake Village (aka Mentasta Lake); General Delivery; Tok, Alaska 99780; President; 907/291–2319.

Native Village of Minto; P.O. Box 26; Minto, Alaska 99758; Chief; 907/789–7112.

Native Village of Mountain Village; P.O. Box 32249; Mountain Village, Alaska 99632; President; 907/591–2048.

Naknek Native Village; P.O. Box 106; Naknek, Alaska 99633; President; 907/246–4210.

Nanwalek Village Council (aka English Bay); General Delivery; English Bay, Alaska 99603; President; 907/281–9219.

Native Village of Napakiak; General Delivery; Napakiak, Alaska 99634; President; 907/589–2227

Native Village of Napamute; P.O. Box 96; Aniak, Alaska 99557; President; 907/543–2726.

Native Village of Napaskiak; P.O. Box 6109; Napaskiak, Alaska 99559; President; 907/737–7626.

Village of Nelson Lagoon; General Delivery; Nelson Lagoon, Alaska 99571; President; 907/989–2305.

Nenana Native Association; P.O. Box 356; Nenana, Alaska 99760; Chief; 907/832–5662.

Newhalen Village; P.O. Box 207; Iliamna, Alaska 99606; President; 907/571–2410.

New Stuyahok Village; P.O. Box 49; New Stuyahok, Alaska 99636; President; 907/693–3173.

Network Village; General Delivery; Netwok, Alaska 99559; President; 907/237–2314.

Native Village of Nightmute; General Delivery; Nightmute, Alaska 99690; President; 907/647–6427.

Nikolai village; Nikolai Rural Branch; Nikolai, Alaska 99691; First Chief; 907/293–2226.

Village of Nikolski; General Delivery; Nikolski, Alaska 99638; President; 907/576–2208.

Ninilchik Village Traditional Council; P.O. Box 39070; Ninilchik, Alaska 99639; President; 907/567–3313.

Native Village of Noatak; General Delivery; Noatak, Alaska 99761; President; 907/485–2173.

Nome Eskimo Community; P.O. Box 401; Nome, Alaska 99762; President; 907/443–2246.

Nondalton Village Council; General Delivery; Nondalton, Alaska 99640; President; 907/271–2254.

Noorvik Native Community; P.O. Box 71; Noorvik, Alaska 99763; President; 907/636–2144.

Northway Village; P.O. Box 516; Northway, Alaska 99764; President; 907/778–2271.

Native Village of Nuiqsut; General Delivery; Nuiqsut, Alaska 99723; Mayor; 907/480–6714.

Nulato Village Council; General Delivery; Nulato, Alaska 99765; President; 907/898–2231.

Native Village of Nunapitchuk; P.O. Box 130; Nunapitchuk, Alaska 99641; President; 907/557–5705.

Village of Ohogamiut; General Delivery; Fortuna Ledge, Alaska 99585; President; 907/679–6740.

Village of Old Harbor; P.O. Box 62; Old Harbor, Alaska 99643; President; 907/286–2215.

Orutsararmuit Native Council (aka Bethel); 835 Ridgecrest Drive; P.O. Box 927; Bethel, Alaska 99559; Chairman; 907/543–2608.

Oscarville Traditional Council; P.O. Box 1554; Oscarville, AK 99559; President; 907/737–7321.

Village of Ouzinkie; P.O. Box 13; Ouzinkie, Alaska 99644; President; 907/680–2259.

Pedro Bay Village Council; P.O. Box 47020; Pedro Bay, Alaska 99647; President; 907/850–2225.

Native Village of Perryville; P.O. Box 101; Perryville, Alaska 99648; President; 907/853–2203.

Petersburg Indian Association; P.O. Box 1418; Petersburg, Alaska 99833; President; 907/772–3636.

Native Village of Paimuit; General Delivery; Hooper Bay, Alaska 99604; President; 907/758–4420.

Village of Pilot Point; P.O. Box 449; Pilot Point, Alaska 99649; President; 907/797–2208.

Pilot Station Traditional Council; P.O. Box 5040; Pilot Station, Alaska 99650; President; 907/549–3512.

Native Village of Pitka's Point; P.O. Box 127; Pitka's Point, Alaska 99658; President; 907/438–2833.

Platinum Traditional Village; General Delivery; Platinum, Alaska 99651; President; 907/979–8126.

Native Village of Point Hope; P.O. Box 91; Point Hope, Alaska 99766; President; 907/368–2453.

Native Village of Point Lay (IRA); P.O. Box 101; Point Lay, Alaska 99759; Village Coordinator; 907/833–2428.

Port Graham Village; P.O. Box PGM; Port Graham, Alaska 99603; President; 907/284–2227.

Native Village of Port Heiden; P.O. Box 49007; Port Heiden, Alaska 99459; President; 907/284–2218.

Native Village of Port Lions, P.O. Box 253; Port Lions, Alaska 99550; President; 907/454–2234.

Portage Creek Village; General Delivery; c/o Choggiung; Portage Creek, Alaska 99576; President; 907/842–5218.

Pribilof Aleut Communities of St. George and St. Paul Islands (See individual village listings for St. George and St. Paul.)

Rampart Village; P.O. Box 67029; Rampart, Alaska 99767; Chief; 907/358–3312.

Village of Red Devil; P.O. Box 49; Red Devil, Alaska 99656; President; 907/543–2726.

Native Village of Ruby; General Delivery; Ruby, Alaska 99768; President 907/468–4406.

Native Village of Russian Mission (Yukon); P.O. Box 09; Russian Mission, Alaska 99657; President; 907/584–5511.

Village of Salamatof; P.O. Box 2682; Kenai, Alaska 99611; President; 907/283–7864.

Qagun Tayagungin Tribe of Sand Point; P.O. Box 189; Sand Point, Alaska 99661; President; 907/838–3525.

Native Village of Savoonga; P.O. Box 129; Savoonga, Alaska 99769; President; 907/984–6414.

Organized Village of Saxman; Route 2 Box 2; Ketchikan, Alaska 99901; President; 907/255–4166.

Native Village of Scammon Bay; P.O. Box 126; Scammon Bay, Alaska 99662; President; 907/558–5113.

Native Village of Selawik; P.O. Box 59; Selawik, Alaska 99770; President; 907/484–2225.

Native Village of Seldovia; Drawer L; Seldovia, Alaska 99663; President; 907/234–7898.

Shageluk Native Village; General Delivery; Shageluk, Alaska 99665; Chief; 907/473–8239.

Native Village of Shaktoolik; General Delivery; Shaktoolik, Alaska 99771; President; 907/955–3501.

Native Village of Sheldon's Point; General Delivery; Sheldon's Point, Alaska 99666; President; 907/489–4226.

Native Village of Shishmaref; General Delivery; Shishmaref, Alaska 99772; President; 907/649–3821.

Native Village of Shungnak, General Delivery; Shungnak; Alaska 99773; President; 907/437–2170.

Sitka Tribe of Alaska; P.O. Box 1450; Sitka, Alaska 99835; President; 907/747–3207.

Village of Sleetmute; P.O. Box 21; Sleetmute, Alaska 99668; President; 907/449–9901.

Native Village of Solomon; P.O. Box 243; Nome, Alaska 99762; President; 907/443–2844.

South Naknek Village; P.O. Box 70106; South Naknek, Alaska 99670; President; 907/246–6566.

St. George Island; P.O. Box 940; St. George, Alaska 99660; President; 907/859–2205.

St. Mary's Village—See Algaciq Native Village

Native Village of St. Michael; General Delivery; St. Michael, Alaska 99659; President; 907/923–3021.

Aleut Community of St. Paul Island; P.O. Box 86; St. Paul Island, Alaska 99660; President; 907/546–2211.

Stebbins Community Association; P.O. Box 2; Stebbins Village, Alaska 99761; President; 907/934–3561.

Native Village of Stevens; General Delivery; Stevens Village, Alaska 99774; First Chief; 907/456–0222.

Village of Stoney River; P.O. Box SRV; Stoney River, Alaska 99557; President; 907/537–3214.

Takotna Village; P.O. Box TYC; Takotna, Alaska 99675; President; 907/298–2212.

Native Village of Tanacross; P.O. Box 77130; Tanacross, Alaska 99776; Executive Director; 907/366–7160.

Native Village of Tanana; P.O. Box 77093; Tanana, Alaska 99777; President; 907/366–7160.

Native Village of Tatitlek; P.O. Box 171; Tatitlek, Alaska 99677; President; 907/325–2311.

Native Village of Tazlina; P.O. Box 188; Glenallen, Alaska 99588; President; 907/822–5965.

Telida Village; General Delivery; Telida, Alaska 99629; First Chief; 907/843–8115.

Native Village of Teller; P.O. Box 590; Teller, Alaska 99778; President; 907/642–3381.

Native Village of Tetlin; P.O. Box 520; Tetlin, Alaska 99780; President; 907/883–2321.

Traditional Village of Togiak; P.O. Box 209; Togiak, Alaska 99678; President; 907/493–5920.

Native Village of Toksook Bay; Nel. Island; General Delivery; Toksook Bay, Alaska 99637; President; 907/427–7114.

Tuluksak Native Community; P.O. Box 156; Tuluksak, Alaska 99679; President; 907/695–6828.

Native Village of Tuntutuliak; P.O. Box 77; Tuntutuliak, Alaska 99680; President; 907/256–2315.

Native Village of Tununak; P.O. Box 77; Tununak, Alaska 99681; President; 907/652–6527.

Twin Hills Village; General Delivery; Twin Hills, Alaska 99576; President; 907/525–4820.

Native Village of Tyonek; P.O. Box 82009; Tyonek, Alaska 99682–0009; President; 907/583–2201.

Ugashik Village; General Delivery via; King Salmon, Alaska 99613; President; No Phone Number listed.

Umkumiut Native Village; General Delivery; Nightmute, Alaska 99690; President; 907/647–6312.

Native Village of Unalakleet; P.O. Box 70; Unalakleet, Alaska 99684; President; 907/624–3013.

Native Village of Unga; P.O. Box SC8; Jan Point, Alaska 99661; No other information available.

Qawalingin Tribe of Unalaska; P.O. Box 334; Unalaska, Alaska 99685; President; 907/581–2920.

Native Village of Venetie; P.O. Box 22050; Arctic Village, Alaska 99722; First Chief; 907/587–9320.

Village of Wainwright; P.O. Box 184; Wainwright, Alaska 99782; President; 907/763–2726.

Native Village of Wales; General Delivery; Wales, Alaska 99783; President; 907/664–3351.

Native Village of White Mountain; P.O. Box 84082; White Mountain, Alaska 99784; President; 907/638–3651.

Wrangell Cooperative Association; P.O. Box 868; Wrangell, Alaska 99929; President; 907/874–5854.

Native Village of Yakutat; c/o P.O. Box 418; Yakutat, Alaska 99689; President; 907/784–3238.

Minneapolis Area: Area Social Worker; 331 South Second Avenue; Minneapolis, Minnesota 55401; 612/373–1182/1183.

Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; P.O. Box 39; Odanah, Wisconsin 54861; Chairman; 715/682–4212.

Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan; Route 1, Brimley, Michigan 49715; Social Worker; 906/248–3241.

Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; P.O. Box 340; Crandon, Wisconsin 54520; Indian Child Welfare Coordinator/Intervenor; 715/478–2903.

Grand Traverse Band of Ottawa and Chippewa Indians of Michigan; Route 1, Box 135; Suttons Bay, Michigan 49682; Indian Child Welfare Technician; 616/271–3538.

Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan; N14911 Hannahville Bl. Road; Wilson, Michigan 49896; Chairman; 906/466–2342.

Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan; Center Building; Route 1, Box 45; Baraga, Michigan 49908; Chairman; 906/353–6623.

Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin; Route 2, Box 2700; Hayward, Wisconsin 54843; Director, Tribal Social Services; 715/634–8934.

Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; P.O. Box 67; Lac du Flambeau, Wisconsin 54538; Coordinator, Indian Child Welfare Office; 715/588–3303.

Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; P.O. Box 446; Watersmeet, Michigan 49969; Chairman; 906/358–4577.

Lower Sioux Indian Community of Minnesota; Rural Route 1, Box 308; Morton, Minnesota 56270; President; 507/697–6185.

Menominee Indian Tribe of Wisconsin; P.O. Box 397, Keshena, Wisconsin 54135; Director, Tribal Social Services; 715/799–3341.

Minnesota Chippewa Tribe, Minnesota; Box 217; Cass Lake, Minnesota 56633; Director, Human Services; 218/335–8581.

COMPONENT RESERVATIONS OF THE MINNESOTA CHIPPEWA TRIBE

Bois Forte Band; Nett Lake Reservation of Minnesota; P.O. Box 16; Nett Lake, Minnesota 55772; Chairman; 218/757–3261.

Fond du Lac Band, 105 University Road, Cloquet, Minnesota 55720; Coordinator, Social Services; 218/879–4593.

Grand Portage Band; P.O. Box 428; Grand Portage, Minnesota 56605; Director, Human Services; 218/475–2279.

Leech Lake Band; Route 3, Box 100; Cass Lake, Minnesota 56633; Director, Social Services Division; 218/335–8200.

Mille Lacs Band; HRC 67 Box 194; Onamia, Minnesota 56359; Director, Social Services; 612/532–4181.

White Earth Band; P.O. Box 418; White Earth, Minnesota 56591; Director, Indian Child Welfare Program; 218/983–3285.

Oneida Tribe of Wisconsin; P.O. Box 365; Oneida, Wisconsin 54155; Area Manager of Social Services; 414/869–2214.

Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians; 5750 Sturgeon Lake Road; Welch, Minnesota 55089; President; 612/385–2536.

Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; P.O. Box 529, Bayfield, Wisconsin 54814; Director, Indian Child Welfare; 715/779–5805.

Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota; P.O. Box 550; Red Lake, Minnesota 56671; Executive Director, Tribal Social Services; 218/679–3341.

Sac & Fox Tribe of the Mississippi in Iowa; Route 2, Box 56C; Tama, Iowa 52339; Executive Director; 515/484–4678.

Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation; 7070 East Broadway Road; Mt. Pleasant, Michigan 48858; Chief; 517/772–5700.

Sault Ste. Marie Tribe of Chippewa Indians of Michigan; 206 Greenough Street; Sault Ste. Marie, Michigan 49783; Director, Social Services; 906/635–6050.

Shakopee Mdewakanton Sioux Community of Minnesota; 2330 Sioux Trail, NW; Prior Lake, Minnesota 55372; Chairman; 612/445–8900.

Sokagoan Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin; Route 1, Box 625; Crandon, Wisconsin 54520; Indian Child Welfare Worker; 715/478–2604.

St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation; P.O. Box 287; Hertel, Wisconsin 54845; Indian Child Welfare Director; 715/349–2195.

Stockbridge-Munsee Community of Mohican Indians of Wisconsin; Route 1;

Bowler, Wisconsin 54416; Program Director, Indian Child Welfare Director; 715/793–4111.

Upper Sioux Community of the Upper Sioux Reservation, Minnesota; P.O. Box 147; Granite Falls, Minnesota 56241; Chairperson; 612/564–2360.

Wisconsin Winnebago Tribe of Wisconsin; 104 West State Street, Mauston, Wiscónsin 53948; Coordinator, Indian Child Welfare; 608/847–7494.

Muskogee Area: Area Social Worker; Federal Court Building; 101 North 5th Street; Muskogee, Oklahoma 74401; 918/687–2507.

Cherokee Nation of Oklahoma; P.O. Box 948, Tahlequah, Oklahoma 74465; Indian Child Welfare Director; 918/456–0671.

Chickasaw Nation of Oklahoma; P.O. Box 1548, Ada, Oklahoma 74820; Governor; 405/436–2603.

Choctaw Nation of Oklahoma; P.O. Drawer 1210, Durant, Oklahoma 74701; Chief; 405/924–8280.

Creek (Muscogee) Nation of Oklahoma; P.O. Box 580; Okmulgee, Oklahoma 74447; Principal Chief; 918/756–8700.

Eastern Shawnee Tribe of Oklahoma; P.O. Box 350, Seneca, Missouri 64865; Chief; 417/666–2435.

Miami Tribe of Oklahoma; P.O. Box 636, Miami, Oklahoma 74355; Chief; 918/540–2890.

Modoc Tribe of Oklahoma; P.O. Box 939, Miami, Oklahoma 74355; Chief; 918/542–1190.

Osage Tribe of Oklahoma; Osage Agency Campus; Tribal Administration Building; Pawhuska, Oklahoma 74056; Social Services Program; 918/287–4622.

Ottawa Tribe of Oklahoma; P.O. Box 110, Miami, Oklahoma 74355; Chief; 918/540–1536.

Peoria Tribe of Oklahoma; P.O. Box 1527, Miami, Oklahoma 74355; Chief; 918/540–2535.

Quapaw Tribe of Oklahoma, Tribal Business Committee; P.O. Box 765, Quapaw, Oklahoma 74363; Chairman; 918/542–1853.

Seminole Nation of Oklahoma; P.O. Box 1498, Wewoka, Oklahoma 74884; Principal Chief; 405/257–6287.

Seneca-Cayuga Tribe of Oklahoma; P.O. Box 1283, Miami, Oklahoma 74354; Chief; 918/542–6609.

Wyandotte Tribe of Oklahoma; P.O. Box 250; Wyandotte, Oklahoma 74370; Chief; 918/678–2297.

Navajo Area: Area Social Worker; P.O. Box 1060; MC–440; Gallup, New Mexico 87301; 602/871–5151.

Navajo Tribe of Arizona, New Mexico and Utah; Division of Social Services; P.O. Box Drawer "JJ"; Window Rock, Arizona 86515; Social Worker III; 602/871–6832.

Phoenix Area: Area Social Worker; 1 North First Street; P.O. Box 10; Phoenix, Arizona 85001; 602/379–6785.

Ak Chin Indian Community of Papago Indians of the Maricopa Ak Chin Reservation, Arizona; Route 2, Box 27; Maricopa, Arizona 85239; Chief of Police; 602/558–2281 or Court Clerk Dispatcher; 602/588–2307.

Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; P.O. Box 1976; Chemehuevi Valley, California 92363; Chairperson; 619/858–4531.

Cocopah Tribe of Arizona; Bin G, Somerton, Arizona 85350, Tribal Court Coordinator; 602/627–2102.

Colorado River Tribes of the Colorado River Indian Reservation, Arizona and California; Route 1, Box 23–B; Parker, Arizona 85344; Chairman; 602/669–9211.

Confederated Tribes of the Goshute Reservation; Nevada and Utah; P.O. Box 6104, Ibapah, Utah 84034; Chairman; 801/234–1138.

Confederated Tribes of the Umatilla Reservation, Oregon; P.O. Box 638; Pendleton, Oregon 97801; ICWA Coordinator; 503/276–3165.

Confederated Tribes of the Warm Springs of Oregon; P.O. Box C; Warm Springs, Oregon 97761; Chairman; 503/533–1161.

Confederated Tribes of the Bands of the Yakima Indian Nation of the Yakima Reservation, Washington; P.O. Box 151; Toppenish, Washington 98948; Director, Nak-Nu-We-Sha; 509/865–5121.

Duckwater Shoshone Tribe of the Duckwater Reservation; Nevada; P.O. Box 68; Duckwater, Nevada 89314; Social Worker; 702/863–0227.

Ely Indian Colony of Nevada; 16 Shoshone Circle, Ely, Nevada 89301; Chairman; 702/289–3013.

Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; 8955 Mission Road; Fallon, Nevada 89406; Chairman; 702/423–6075.

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada; P.O. Box 457; McDermitt, Nevada 89421; Chairperson; 702/532–8402.

Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Reservation, Arizona; P.O. Box 17779; Fountain Hills, Arizona 85268; President; 602/990–0995.

Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona; P.O. Box 97; Sacaton, Arizona 85247; Governor; 602/562–3311.

Havasupai Tribe of the Havasupai Reservation, Arizona; P.O. Box 10; Supai, Arizona 86435; Chairman; 602/448–2961.

Hopi Tribe of Arizona; P.O. Box 123, Kykotsmovi, Arizona 86039; Hopi Tribal Court, Children's Court Counselor; 602/734–2445.

Hualapai Tribe of the Hualapai Reservation, California; P.O. Box 179; Peach Springs, Arizona 86434; Chairman; 602/769–2216.

Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Tribal Affairs Building; HC65 Box 2; Fredonia, Arizona 86022; Social Services Director; 602/643–7245.

Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; No. 1, Paiute Drive; Las Vegas, Nevada 89106; Chairperson; 702/386–3926.

Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; P.O. Box 878; Lovelock, Nevada 89419; Chairman; 702/273–7861.

Moapa Band of the Paiute Indians of the Moapa River Indian Reservation, Nevada; P.O. Box 340; Moapa, Nevada 89025–0340; Chairman; 702/865–2787.

Paiute Indian Tribe of Utah; 600 North 100 East; Cedar City, Utah 84720; Director, Social Services; 801/586–1111.

Pascua Yaqui Tribe of Arizona; 7474 S. Camino De Oeste; Tucson, Arizona 85746; Chairman; 602/883–2838.

Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; P.O. Box 256; Nixon, Nevada 89424; Chairman; 702/574–0299.

Quechan Tribe of the Fort Yuma Indian Reservation, California; P.O. Box 11352; Yuma, Arizona 85364; President; 619/572–0213.

Reno-Sparks Indian Colony, Nevada; 98 Colony Road; Reno, Nevada 89502; Tribal Court or Director of Social Services; 702/329–2936.

Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Route 1, Box 216; Scottsdale, Arizona 85256; Juvenile Judge, Community Court; 602/941–7212, or Social Services Director; 602/941–7291.

San Carlos Apache Tribe of the San Carlos Reservation, Arizona; P.O. Box 0; San Carlos, Arizona 85550; Chairman; 602/475–2361.

San Juan Paiute Tribe of Arizona; P.O. Box 2656; Tuba City, Arizona 86045; President; 602/283–4583.

Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; P.O. Box 219; Owyhee, Nevada 89823; Social Services Director; 702/757–3211.

Skull Valley Band of Goshute Indians of Utah (Unitah & Ouray); P.O. Box 130; Fort Duchesne, Utah 84026; Chairman 801/722–2406.

Summit Lake Paiute Tribe of Nevada; 510 Melarky—#11; Winnemucca, Nevada 89445; Chairman; 702/623–5151.

Te-Moak Tribe of Western Shoshone Indians of Nevada; 525 Sunset Street, Elko, Nevada 89810; Program Director; 702/738–9251; Elko Band; P.O. Box 748; Elko, Nevada 89801; 702/738–8889.

Tohono O'odham Nation of Arizona; P.O. Box 837; Sells, Arizona 85634; Chairman; 602/383–2221.

Tonto Apache of Arizona; Tonto Reservation #30; Payson, Arizona 85541; 602/474–5000.

Ute Indian Tribe of the Uintah & Quray Reservation, Utah; P.O. Box 190; Fort Duchesne, Utah 84026; Chairman; 801/722–5141.

Walker River Paiute Tribe of the Walker River Reservation, California; P.O. Box 220; Schurz, Nevada 89427; Chairperson; 702/773–2306.

Washoe Tribe of Nevada and California (Carson Colony, Dresslerville and Washoe Ranches); 919 Highway 395 South; Gardnerville, Nevada 89410; Chairman; 702/883–1446.

White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; P.O. Box 700; Whiteriver, Arizona 85941; Juvenile Probation Officer; 602/338–4346.

Winnemucca Indian Colony of Nevada; 420 Pardee; Susanville, California 96130; Chairman; 916/257–7093.

Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona; P.O. Box 1188; Camp Verde, Arizona 86322; Chairman; 602/567–3649.

Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; 530 East Merritt Street; Prescott, Arizona 86301–2038; President; 602/445–8790.

Yerington Paiute Tribe of Yerington Colony and Campbell Ranch, Nevada; 171 Campbell Lane; Yerington, Nevada 89447; Chairperson; 702/463–3301.

Yomba Shoshone Tribe of the Yomba Reservation, Nevada; HC 61, Box 6225; Austin, Nevada 89310; Chairperson; 702/964–2463.

Portland Area: Area Social Worker; 911 NE. 11th Avenue; Portland, Oregon 97232–4169; 503/231–6783/6785.

Burns-Paiute Indian Colony, Oregon, H.C. 71, 100 Pa'Si'Go Street, Burns, Oregon 97720–9303; Chairman, 503/573–2088.

Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Coeur D'Alene Subagency; Idaho, Plummer, Idaho 83851; Coordinator, Indian Child Welfare; 208/274–3101.

Confederated Tribes of the Colville Reservation, Washington; P.O. Box 150; Nespelem, Washington 99155; Deputy Prosecutor; 509/643–4711.

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; P.O. Box 278; Pablo, Montana 59855; Tribal Chairman; 406/675–2700.

Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians of Oregon; P.O. Box 3298; Coos Bay, Oregon 97420; Health Director; 503/888–3536 or 888–9577.

Confederated Tribes of the Grande Ronde Community of Oregon; P.O. Box 38; Grande Ronde, Oregon 97347; Chairman; 503/879–5215.

Confederated Tribes of the Siletz Reservation, Oregon; P.O. Box 549; Siletz, Oregon 97380; Chairperson; 503/444–2513.

Coquille Indian Tribe; 250 Hull Street; Coos Bay, Oregon 97420; Director, Human Services; 503/269–2911.

Cow Creek of Umpqua Indians of Oregon; 2400 Stewart Parkway, suite 300; Roseburg, Oregon 97470; Health Director; 503/672–9405.

Hoh Indian Tribe of the Hoh Indian Reservation, Washington; HC 80, Box 917; Forks, Washington 98331; Chairperson; 206/374–6582.

Jamestown Klallam Tribe of Washington, 305 Old Blyn Highway; Sequim, Washington 98382; Chairman; 206/683–1109.

Kalispel Indian Community of the Kalispel Reservation, Washington; Box 39; Usk, Washington 99180; Tribal Social Worker; 509/445–1147.

Klamath Indian Tribe of Oregon; Box 436; Chiloquin, Oregon 97624; Chairman; 503/783–2219.

Kootenai Tribe of Idaho; P.O. Box 1269; Bonners Ferry, Idaho 83805; Chairperson; 208/267–3519.

Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; 1666 Lower Elwha Road; Port Angeles, Washington 98362; Social Worker; 206/452–8471.

Lummi Tribe of the Lummi Reservation, Washington; 2616 Kwina Road; Bellingham, Washington 98226; Director, Health and Human Services; 206/734–8180.

Makah Indian Tribe of the Makah Indian Reservation; Washington; P.O. Box 115; Neah Bay, Washington 98357; Social Service Manager; 206/645–2201.

Metlakatla Indian Community, Annette Island Reservation, Alaska; P.O. Box 8; Metlakatla, Alaska 99926; Mayor; 907/886–4441.

Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; 39015 172nd Street, Southeast; Auburn, Washington 98002; Chairperson; 206/939–3311.

Nez Perce Tribe of Idaho; P.O. 305; Lapwai, Idaho 83540; Chairman; 208/843–2253.

Nisqually Indian Community of the Nisqually Reservation, Washington; 4820 She-Nah-Num Drive, SE.; Olympia, Washington 98503; Chairman; 206/456–5221.

Nooksack Indian Tribe of Washington, P.O. Box 157, Deming, Washington 98244; Director, Indian Child Welfare; Chairman; 206/592–5176.

Northwest Band of Shoshoni Indians of Utah (Washakie); P.O. Box 145; Fort Hall, Idaho 83203; Chairman; 208/785–7302.

Port Gamble Indian Community of the Port Gamble Reservation, Washington; P.O. Box 280; Kingston, Washington 98346; Director, Health and Human Services; 206/297–2646.

Puyallup Tribe of the Puyallup Reservation, Washington; 2002 East 28th Street; Tacoma, Washington 98404; Chairwoman; 206/597–6200.

Quileute Tribe of the Quileute Reservation, Washington; Box 279; Lapush, Washington 98350; Caseworker; 206/374–6163.

Quinault Tribe of the Quinault Reservation, Washington; Box 198, Taholah, Washington 98587; Director, Social Services; 206/276–8211.

Sauk-Suiattle Indian Tribe of Washington; 5318 Chief Brown Lane; Darrington, Washington 98241; Chairman; 206/435–8366.

Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; P.O. Box 130; Tokeland, Washington 98590; Chairman; 206/267–6766.

Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; P.O. Box 306, Fort Hall, Idaho 83203; Tribal Attorney, 208/238–3700.

Skokomish Indian Tribe of the Skokomish Reservation, Washington; No. 80 Tribal Center Road; Shelton, Washington 98584; ICWA Caseworker; 206/426–4232.

Spokane Tribe of the Spokane Reservation, Washington; P.O. Box 100; Wellpinit, Washington 99040; Chairman; 509/258–4581.

Squaxin Island Tribe of the Squaxin Island Reservation, Washington; S.E. 70 Squaxin Lane; Shelton, Washington 98584; Coordinator, Indian Child Welfare, and/or Tribal Manager; 206/426–9873.

Stillaguamish Tribe of Washington; 3439 Stoluckquamish Lane; Arlington, Washington 98223; Tribal Social Worker; 206/652–7362.

Suquamish Indian Tribe of the Port Madison Reservation, Washington; P.O. Box 498; Suquamish, Washington 98392; ICW; 206/598–3311.

Swinomish Indians of the Swinomish Reservation, Washington; P.O. Box 817; La Conner, Washington 98257; Youth Counselor; 206/466–3163.

Tulalip Tribes of the Tulalip Reservation, Washington; 6700 Totem Beach Road; Marysville, Washington 98270; Chairman; 206/653–4585.

Upper Skagit Indian Tribe of Washington; 2284 Community Plaza; Sedro Wooley, Washington 98284; Director, Social Services; 206/856–5501.

Sacrameto Area: Area Social Worker; Federal Office Building; 2800 Cottage Way; Sacrameto, California 95825; 916/978–4705.

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; 960 E. Tahquitz Way, #106; Palm Springs, California 92262; Chairman; 619/325–5673.

Alturas Rancheria of Pit River Indians of California; P.O. Box 1035; Alturas, California 96101; Chairperson; 916/233–5571.

Barona Group of the Barona Reservation, California; 1095 Barona Road; Lakeside, California 92040; Chairman; 619/443–6612.

Berry Creek Rancheria of Maidu Indians of California; 1779 Mitchell Avenue; Oroville, California 95965; Chairman; 916/5345–3859.

Big Lagoon Rancheria of Smith River Indians of California; P.O. Box 3060; Trinidad, California 95570; Chairman; 707/826–2079.

Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; P.O. Box 700; Big Pine; California 93513; Chairperson; 619/938–2121.

Big Sandy Rancheria of Mono Indians of California; P.O. Box 337, Auberry, California 93602; Chairperson; 209/855–4003.

Big Valley Rancheria of Pomo and Pit River Indians of California; P.O. Box 774; Lakeport, California 95433; Chairman; 707/263–7522.

Blue Lake Rancheria of California; P.O. Box 428; Blue Lake, California 95525; Chairman; 707/668–3005.

Bridgeport Paiute Indian Colony of California; P.O. Box 37; Bridgeport, California 93517; Chairman; 619/932–7083.

Buena Vista Rancheria of Me-Wuk Indians of California; 4650 Carmine Road; Ione, California 95640; Representative. No phone number listed.

Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California; 84–245 Indio Spring Drive; Indio, California 92201; Chairman; 619/342–2593.

Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; P.O. Box 860; Anza, California 92306; Spokesperson; 714/763–5549.

Campo Band of Diegueno Mission Indians of Campo Indian Reservation, California; 1779 Campo Truck Trail; Campo, California 92006; Chairman; 619/478–9046.

Cedarville Rancheria of Northern Paiute Indians of California; P.O. Box 142; Cedarville, California 96104; Chairperson; No phone number listed.

Chicken Ranch Rancheria of Me-Wuk Indians of California; P.O. Box 1699; Jamestown, California 95327; Chairman; 209/984–3057.

Cloverdale Rancheria of Pomo Indians of California; 285 Santana Drive; Cloverdale, California 95424; Representative; 707/894–5773.

Cold Springs Rancheria of Mono Indians of California; P.O. Box 209; Tollhouse, California 93667; Chairman; 209/855–2326.

Cachil De-He Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; P.O. Box 8, Colusa, California 95932; Chairman; 916/458–8231.

Cortina Indian Rancheria of Wintun Indians of California; P.O. Box 41113; Sacramento, California 95841; Chairperson; 916/726–7118.

Coyote Valley Band of Pomo Indians of California; P.O. Box 39; Redwood Valley, California 95470–0039; Chairperson; 707/485–8723.

Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; 4390 La Posta Trucktrail; Pine Valley, California 95470–0039; Chairperson; 707/485–8723.

Death Valley Timbi-sha Shoshone Band of California; P.O. Box 206; Death Valley, California 92328; Chairperson; 619/786–2374.

Dry Creek Rancheria of Pomo Indians of California; P.O. Box 224; Geyserville, California 95441; Chairman; 707/464–4680.

Elem Indian Colony of Pomo Indians; Sulphur Bank Rancheria; P.O. Box 618; Clearlake Oaks, California 95423; Chairman; No telephone number listed.

Elk Valley Rancheria of Smith River Tolowa Indians of California; P.O. Box 1042; Crescent City, California 95531; Chairperson; 707/464–4680.

Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California; P.O. Box 127; Fort Bidwell, California 96112; Chairperson; 916/279–6310.

Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; P.O. Box 67; Independence, California 93526; Chairman; 619/878–2126.

Greenville Rancheria of Maidu Indians of California; P.O. Box 237, Greenville, California 95947; Chairman; 916/284–6446.

Grindstone Indian Rancheria of Wintun-Wailaki Indians of California; P.O. Box 63, Elk Creek, California 95939; Chairman; 916/934–3602.

Guidiville Rancheria of California; P.O. Box 339; Talmage, California 95481; Chairman; 707/462–2477.

Hoopa Valley Tribe of the Hoopa Valley Reservation, California; P.O. Box 1348, Hoopa, California 95546; Chairman; 916/625–4211.

Hopland Band of Pomo Indians of the Hopland Rancheria, California; P.O. Box 610; Hopland, California 95449; Chairman; 707/744–1647.

Inaja Band of Diegueno Mission Indians of the Inaja & Cosmit Reservation, California; 739 A Street, Apt 9; Ramona, California 92065; Chairperson; 619/789–8581.

Jackson Rancheria of Me-Wuk Indians of California; 1600 Bingo Way; Jackson, California 95642; Chairperson; 209/223–3931.

Jamul Indian Village of California; P.O. Box 612; Jamul, California 92035; Chairperson; 619/696–5041.

Karuk Tribe of California; P.O. Box 1016; Happy Camp, California 96039; Chairperson; 916/493–5305.

La Jolla Band of Luiseno Mission Indians of La Jolla Reservation, California; Star Route, Box 158; Valley Center, California 92082; Chairperson; 619/782–9294.

La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; 1064 Barona Road; Lakeside, California 92040; Chairperson; 619/782–9294.

Cahto Indian Tribe of the Laytonville Rancheria, California; P.O. Box 48; Laytonville, California 95454; Chairman; 916/978–4337.

Paiute-Shoshone Indians of the Lone Pine Reservation, California; 101 South Main Street; Lone Pine, California 93545; Chairperson; 619/876–5414.

Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California; P.O. Box 249; Warner Springs, California 92086; Spokesman; 619/782–3269.

Lytton Ranchieria of California; P.O. Box 519; Crescent City, California 95531; Chairperson; 707/464–7752.

Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California; P.O. Box 623; Point Arena, California 95468; Chairman; 707/882–2788.

Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; P.O. Box 1302; Boulevard, California 92005; Chairperson; 619/766–4930.

Mechoopda Indian Tribe of Chico Rancheria, Address and Information Needed

Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; P.O. Box 270; Santa Ysabel, California 92070; Chairman; 619/782–3835.

Middletown Rancheria of Pomo Indians of California; P.O. Box 292;

Middletown, California 95461; Chairman; 916/978–4337.

Mooretown Rancheria of Maidu Indians of California; 1900 Oro Dam Blvd., #8; Oroville, California 95965; Chairperson; 916/533–3625.

Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; 11581 Potrero Road; Banning, California 92220; Chairman; 714/849–4697.

Northfork Rancheria of Mono Indians of California; P.O. Box 120; North Fork, California 93643; Spokesperson; No phone number listed.

Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony; California; P.O. Box 548; Bishop, California 93514; Chairman; 619/873–3584.

Pala Band of Luiseno Mission Indians of the Pala Reservation, California; P.O. Box 43; Pala, California 92059; Chairperson; 619/742–3784.

Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California; P.O. Box 86; Pauma Valley, California 92061; Chairman; 619/742–1289.

Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; P.O. Box 1477; Temecula, California 92390; Spokesperson; 714/676–2768.

Picayune Rancheria of Chukchansi Indians of California; P.O. Box 708; Coarsegold, California 93614; Chairperson; 209/683–6633.

Pinoleville Rancheria of Pomo Indians of California; 367 N. State Street; suite 204; Ukiah, California 95482; Chairperson; 707/463–1454.

Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek and Roaring Creek Rancherias and XL Ranch), P.O. Drawer 1570, Burney, California 96013; Chairperson; 916/335–5421.

Potter Valley Rancheria of Pomo Indians of California; P.O. Box 94; Potter Valley, California 95469; Representative; 707/743–1649.

Quartz Valley Rancheria of Karok, Shasta, and Upper Klammath Indians of California; P.O. Box #25; Fort Jones, California 92314; Chairman; 916/468–5489.

Ramona Band or Village of Cahuilla Mission Indians of California; P.O. Box 26; Anza, California 92306; Representative; 714/276–6624.

Redding Rancheria of Pomo Indians of California; 1786 California Street; Redding, California 96001; Chairperson; 916/241–1871.

Redwood Valley Rancheria of Pomo Indians of California; P.O. Box 499; Redwood Valley, California 95470; Chairperson; 916/241–1871.

Coast Indian Community of the Yurok Indians of Resighini Rancheria, California; P.O. Box 529; Klamath, California 95548; President; 707/482–2431.

Rincon Band of Luiseno Mission Indians of Rincon Reservation, California; P.O. Box 68; Valley Center, California 92082; Chairman; 619/749–1051.

Robinson Rancheria of Pomo Indians of California; P.O. Box 1119; Nice, California 95464; Chairman; 707/275–0527.

Rohnerville Rancheria of Bear River or Mattole Indians of California; P.O Box 108; Eureka, California 95501; Chairperson; 707/442–3931.

Covelo Indian Community of the Round Valley Reservation, California; P.O. Box 448; Covelo, California 95428; President; 707/983–6126.

Rumsey Indian Rancheria of Wintun Indians of California; P.O. Box 18; Brooks, California 95606; Chairman; 916/796–3189.

San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California; 5438 North Victoria Avenue; Highland, California 92346; Chairman; 714/864–3686.

San Pasqual Band of Diegueno Mission Indians of California; P.O. Box 365; Valley Center, California 92082; Spokesperson; 619/749–3200.

Santa Rosa Indian Community of the Santa Rosa Rancheria, California; 16835 Alkali Drive; Lemoore, California 93245; Chairman; 209/924–1278.

Santa Rosa Band of Cahuille Mission Indians of the Santa Rosa Reservation, California; 325 North Western Avenue; Hemet, California 92343; Spokesperson; 619/741–5211.

Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California; P.O. Box 517; Santa Ynez, California 93460; Chairman; 805/688–7997.

Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; P.O. Box 130; Santa Ysabel, California 92070; Chairman; 619/765–0845.

Scotts Valley Band of Pomo Indians, California; 302 Holly Oak Lane; Alameda, California 94501; Co-Chairperson; 415/865–1416.

Sherwood Valley Rancheria of Pomo Indians of California; 2141 S. State Street; Ukiah, California 95482; Chairman; 707/468–1337.

Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; P.O. Box 1340; Shingle Springs, California 95682; Chairperson; 916/423–1753.

Smith River Rancheria of California; P.O. Box 239; Smith River, California 95567; Chairman; 707/487–9255.

Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California; P.O. Box 487; San Jacinto, California 92383; Chairman; 714/654–2765.

Kashia Band of Poma Indians of the Stewarts Point Rancheria, California; P.O. Box 54; Stewarts Point, California 95480; Chairman; 916/978–4337.

Susanville Indian Rancheria of Paiute, Maidu, Pit River and Washoe Indians of California; P.O. Drawer U; Susanville, California 96130; Chairman; 916/257–6264.

Sycuan Band of Diegueno Mission Indians of California; 5429 Dehesa Road; El Cajon, California 95551; Spokesperson; 619/445–2613.

Table Bluff Rancheria of Wiyot Indians of California; P.O. Box 519; Loleta, California 95551; Chairman; 707/733–5583.

Table Mountain Rancheria of California; P.O. Box 243; Friant, California 93626; Chairman; 209/299–4823.

Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; P.O. Box 630; Trinidad, California 95570; Chairperson; 707/677–0211.

Torres-Martinez Band of Cahuilla Mission Indians of California; 66–725 Martinez Road; Thermal, California 92274; Chairman; 619/387–0300.

Tule River Indian Tribe of the Tule River Reservation of California; P.O. Box 589; Porterville, California 93258; Chairman; 209/781–4271.

Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; P.O. Box 696; Tuolumne, California 95379; Chairman; 209/928–4277.

Twenty-Nine Palms Band of Luiseno Mission Indians of California; c/o Glen Calng; 1150 E. Palm Canyon Drive #75; Palm Springs, California 92262; Chairperson; 619/322–7481.

Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California, P.O. Box 20272, Sacramento, California 95820; Vice-Chairperson; 916/371–2576.

Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Star Route 4; Box 56–A; Benton, California 93512; Chairman; 619/933–2321.

Viejas Camp of Capitan Grande Band of Diegueno Mission Indians of the Viejas Reservation, California; P.O. Box 908; Alpine, California 92001; Chairman; 619/445–3810.

Yurok Tribe of California; 517 Third Street, suite 21; Eureka, California 95501; Transition Team; 707/444–0433.

Patrick A. Hayes,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 93–6926 Filed 3–25–93; 8:45 am]

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Federal Register

Friday
March 26, 1993

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coalition for Juvenile Justice; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention; Notice of Meeting of the Coalition for Juvenile Justice

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the meeting of the Coalition for Juvenile Justice. This conference will begin at 9 a.m. on April 17, 1993, and end at noon on April 21, 1993. This advisory committee, currently chartered as the National Conference of State Juvenile Justice Advisory Groups, will meet at the Renaissance Hotel Techworld, 999 9th Street, NW., Washington, DC 20001. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President and the Congress about State perspectives on the operation of the Office of Juvenile Justice and Delinquency Prevention and Federal legislation pertaining to juvenile justice and delinquency prevention. Agenda issues will include topics on "Meeting the Challenge of Serious, Violent, and Chronic Juvenile Offenders." This meeting will be open to the public.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

This is certified to be a true copy of the original.

Olga P. Trujillo,

Acting General Counsel.

[FR Doc. 93–6992 Filed 3–25–93; 8:45 am]

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federal register

Friday
March 26, 1993

Part V

Federal Trade Commission

16 CFR Part 306
Octane Certification and Posting; Proposed Rule and Notice

FEDERAL TRADE COMMISSION

16 CFR Part 306

Octane Certification and Posting

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") seeks comment on a proposal to add alternative liquid automotive fuels (including diesel fuel oil) to the coverage of the Commission's Octane Rule ("Rule").[1] These actions are being taken because the Petroleum Marketing Practices Act ("PMPA"), as amended, directs the Commission to prescribe disclosure requirements under the Rule for alternative liquid automotive fuels and gives the Commission discretionary authority to prescribe disclosure requirements under the Rule for diesel fuel oil.[2]

DATES: Written comments must be submitted on or before April 26, 1993.

Persons desiring a public hearing on the proposed amendments should advise the Presiding Officer by no later than April 16, 1993. If hearings are scheduled, the date and time of the hearings, as well as the date for submission of prepared witness statements and exhibits, will be announced in a subsequent Notice.

ADDRESSES: Written comments and requests for public hearings should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202–326–3642. Comments and requests for public hearings should be identified as "16 CFR part 306—Comment" or "16 CFR part 306—Request for Public Hearing," respectively. If possible, submit comments both in writing and on personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format used).

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, 202–326–3038, or James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA 92 was enacted on October 24, 1992. It establishes a comprehensive national energy policy to increase U.S. energy security gradually and steadily in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports; to conserve energy and use it more efficiently; to reduce our use of oil-based fuels in motor vehicles; and, to provide new energy options. The Act includes programs that encourage the development of alternative fuels and alternative fueled vehicles.

Section 1501 of EPA 92 requires the Commission, within 270 days of enactment, to amend the Commission's Octane Rule. Specifically, the Commission must issue automotive fuel posting and certification requirements, like those that exist now for gasoline, for all liquid automotive fuels (with the exception of diesel fuels, unless provided for by the Commission by Rule).[3] These liquid automotive fuels include gasoline, gasohol (a mixture of 90% gasoline and 10% ethanol) and liquid alternative automotive fuels, such as methanol and ethanol.[4] The Commission has the authority to require ratings, other than octane ratings, for alternative fuels after consultation with the American Society for Testing and Materials ("ASTM"). For diesel fuels, the Commission has the authority to require cetane certification and posting (a rating similar to octane), if the Commission finds this would be appropriate after a rulemaking proceeding. In this proceeding, the Commission is addressing the diesel fuel posting and certification issues along with the other liquid automotive fuels issues.

The Commission has additional rulemaking responsibilities regarding alternative fuels under section 406 of EPA 92. Specifically, section 406 of EPA 92 requires the Commission to propose uniform labeling requirements for alternative fuels and alternative fuel vehicles, including requirements for information about their costs and benefits to enable consumers to make choices and comparisons. The Commission may consolidate this required labeling with other labels. Although the Commission will address the requirements of section 406 in a subsequent proceeding with a different timetable,[5] the Commission seeks comment now on how best to meet the requirements of both sections 1501 and 406.

In accordance with the Commission's modified ten-year regulatory review schedule, the regulatory review of the Octane Rule is being conducted during this rulemaking proceeding. Therefore, the Commission seeks information about the costs and benefits of the Octane Rule and its regulatory and economic impact. See questions in subsection 5 of section D—Questions and Issues, below.

The liquid alternative automotive fuels that the Commission has identified as currently being distributed in the market place, as discussed further in part III, A, 1, below, are methanol; denatured ethanol; M85 (a mixture of 85% methanol and 15% gasoline); E85 (a mixture of 85% denatured ethanol and 15% gasoline); liquefied propane gas (LPG); and, liquefied natural gas (LNG). Proposals relating to certification and posting requirements for such fuels thus are being considered in this rulemaking proceeding. In the future, if other liquid alternative fuels are developed, the Commission has the authority under section 201 of PMPA, as amended by EPA 92, to initiate a rulemaking proceeding to include such fuel in the Octane Rule. In this proceeding, the Commission also seeks comment on requiring cetane ratings for diesel fuels.

In accordance with section 203(d)(1) of PMPA,[6] this rulemaking proceeding is being conducted pursuant to section 553 of the Administrative Procedure Act ("APA").[7] Section 553(b)(3) of the APA provides the Commission with the option of publishing the substance of a proposed rule instead of specific proposed rule language. With the exception of the specifically proposed definitions and label specifications, the Commission seeks comment on the

[1] The Octane Certification and Posting Rule, 16 CFR part 306 (1992).

[2] The amendments to the Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.*, were directed by Congress in section 1501 of the Energy Policy Act of 1992 ("EPA 92"), Public Law 102–486 (Oct. 24, 1992).

[3] Section 1501(a)(6) of EPA 92 defines the term "automotive fuel" to mean liquid fuel of a type distributed for use as a fuel in any motor vehicle. Pursuant to section 301 of EPA 92, the term "alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (but not less than 70 percent) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary of Energy determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and environmental benefits.

[4] Gasohol is viewed by the Commission to be gasoline in the traditional sense. *See* Commission advisory opinion concerning gasohol dated January 8, 1993, issued to the Nebraska Gasohol Committee.

[5] Under section 406 of EPA 92, the Commission must issue a Notice of Proposed Rulemaking within 18 months of the statute's enactment, *i.e.*, by April, 1994. Section 406 grants the Commission the authority to establish labeling requirements for the gaseous alternative fuels compressed natural gas (CNG) and hydrogen. The Commission would welcome comment now on what the labeling requirements for such fuels should be.

[6] 15 U.S.C. 2823(d)(1).

[7] 5 U.S.C. 553.

substance of proposed amendments to the Rule.

As discussed below, the Commission proposes requiring octane ratings for alternative liquid automotive fuels, but notes that other options may better implement the purpose of section 1501 of EPA 92. Consequently, the Commission seeks comment on whether three other ratings in lieu of octane, or some combination of ratings, may be more appropriate and useful to consumers for the alternative fuels. The Commission also seeks comment on whether other options not proposed herein would be more appropriate. For diesel fuel, the Commission seeks comment on requiring cetane ratings.

II. Background

Section 203(c)(1) of Title II of PMPA [8] requires that the Commission prescribe, by rule, a uniform method by which a person may certify to another the octane rating of automotive gasoline, and a uniform method of displaying the octane rating of automotive gasoline at the point of sale to ultimate consumers. On March 30, 1979, the Commission issued the Octane Posting and Certification Rule,[9] which fulfills these requirements. The Rule, which took effect on June 1, 1979, establishes standard procedures for determining, certifying and posting (by means of a label on the fuel dispenser) the octane rating of automotive gasoline intended for sale to consumers.

All automotive gasolines have an octane rating. This number is a measure of how well the gasoline will resist "knocking" in an engine. Engine knocking, which is caused by spontaneous combustion in localized areas of an engine, wastes power and lowers the effectiveness of the engine. Persistent or severe knocking also can seriously damage the engine. Not all engines require gasoline with the same octane rating. For a particular engine, the octane needed to prevent knocking will depend on the engine's compression ratio: the higher the ratio, the higher the octane required. The minimum octane requirement is usually given in automobile owner's manuals or can be determined through trial and error.

The Octane Rule is designed to enable consumers to buy gasoline with an octane rating that is high enough to prevent this engine knock. It is also intended to help consumers avoid buying gasoline with an octane rating that is too high for their needs, a practice known as "octane overbuying." Higher octane gasoline costs more, consumes more energy to produce at the refinery, and often contains more pollutants than lower octane gasoline. Thus, by knowing, as accurately as possible, both the octane requirements of their cars and the octane rating of the gasoline they buy at the pump, consumers simultaneously can save money, conserve energy, reduce air pollution, and protect their cars against possible engine damage.

A. Requirements of the Octane Rule

The Rule covers refiners, producers, importers, distributors and retailers. This coverage parallels the coverage in PMPA's definitions of "refiner," "gasoline retailer" and "distributor." The Rule does not cover common carriers (pipelines, trucks, barges, railroads) that merely transport gasoline for hire. However, the Rule creates an incentive for compliance by common carriers by requiring industry members to give octane certifications to and request certifications from common carriers.

Industry members may determine the octane rating of gasoline for purposes of certification or posting by testing, by mathematical calculation using the prescribed weighted-average formula, or by using the lowest octane rating certified for any of the gasolines in a blend. Refiners, producers and importers must determine the octane rating of the gasoline they distribute in accordance with the PMPA formula. The formula is the sum, divided by two, of the Research Method and the Motor Method, two accepted laboratory test methods for evaluating the antiknock performance of automotive gasoline. Tests using the (R+M)/2 formula must be conducted in accordance with procedures developed and approved by ASTM. For purposes of certification or posting, if distributors and retailers do not blend gasoline, they have the option of using the octane rating certified to them or of determining the octane rating by testing in accordance with the (R+M)/2 method.

If distributors or retailers blend different gasolines, they must either: (1) Test in accordance with the (R+M)/2 method; (2) use the weighted-average formula prescribed by 202(f)(1) of the PMPA; or, (3) use the lowest octane rating certified to them for any of the gasolines in a mixture. The Octane Rule gives industry members the option, in lieu of testing, of certifying or posting a rating that corresponds to the octane rating of the gasoline in the mixture having the lowest rating. Another alternative is for distributors and retailers to use the PMPA weighted-average formula for determining the octane rating of a gasoline consisting of a blend of two or more gasolines with different octane ratings. To use this formula, the industry member takes the average of the octane ratings, weighted by volume, of the gasolines in the blend to arrive mathematically at an octane rating for the mixture. When unleaded gasoline is blended with unleaded gasoline, the relationship between the octane ratings is linear. However, when unleaded gasoline is mixed with a small quantity, proportionately, of ethanol, the resulting octane increase is not linear, but will vary depending upon the octane rating and characteristics of the unleaded gasoline to which the ethanol is added. For these blends, testing is currently needed to determine octane ratings accurately. [10]

The Rule requires that refiners, producers and importers and distributors certify the octane rating of gasoline that they distribute in commerce for resale. Refiners must certify consistent with their determination of the gasoline's octane rating. Distributors must certify consistent with the certification they received or, optionally, the octane rating determined by them. Certification can be accomplished in either of two ways: On a delivery ticket with each transfer of gasoline or by a letter of certification or other written statement. A letter or other written statement constituting certification is valid until gasoline with a lesser octane rating is shipped. In effect, it is an on-going certification of a minimum octane rating.

Retailers must post the octane rating of all gasoline they sell to consumers. They must post a whole or half number, which must be equal to or less than the octane rating certified to them or determined by them. They must post at least one label on each face of each gasoline dispenser, and if more than one kind of gasoline is sold from a single dispenser, separate disclosures for each kind of gasoline must be put on each face of the dispenser.

The octane label must be put on the face of the dispenser as near as possible to the price per gallon of the gasoline and placed so it is in full view of consumers. The label size, type style and dimensions are specified in the Rule. [11] Labels must be printed in black

[8] 15 U.S.C. 2821 *et seq.* (1978).

[9] 44 FR 19160, codified at 16 CFR Part 306.

[10] The Commission's staff is currently considering whether a formula for octane determination for these blends could be developed that would serve adequately in place of testing. The public is welcome to submit comments about this issue.

[11] The Commission has granted several conditional exemptions to the Rule's specific posting requirements to allow use of other labels under certain conditions.

ink on a yellow background. The label must show the octane rating preceded by the words "MINIMUM OCTANE RATING" and "(R+M)/2 METHOD." In addition, section 306.11(d) of the Rule states that no marks or information other than that called for by the Rule may appear on the label.

Refiners, producers, importers, distributors and retailers must keep for one year records of any delivery tickets, letters of certification or tests upon which they based the octane ratings that they certified or posted. These records must be open for inspection by Commission and Environmental Protection Agency ("EPA") staff members or by persons authorized by the Commission or EPA.

B. Section 1501 of the Energy Policy Act of 1992

Section 1501 of EPA 92 amends Title II of the PMPA to extend automotive fuel certification and posting requirements to all liquid automotive fuels. Specifically, under this section, the term "gasoline" is deleted from PMPA and replaced with the term "automotive fuel." This change means that all liquid automotive fuels (with the exception of diesel fuels), including new alternative fuels such as ethanol and methanol, could be required to have an "octane" rating posted on fuel dispensers. However, the amended PMPA allows the Commission latitude to use another form of rating determined by the Commission, after consultation with ASTM, to be more appropriate to carry out the purposes of the Act with respect to the automotive fuel concerned. In the case of diesel fuel, the "cetane" number must be posted if the Commission requires it after conducting a rulemaking proceeding.[12]

C. Section 1502 of the Energy Policy Act of 1992

Section 1502(a) of EPA 92 amends section 204 of PMPA to authorize the states to use whatever investigative and enforcement actions they find necessary to enforce state laws that require the certification and posting of automotive fuel ratings. The purpose of this amendment is to facilitate state enforcement of any state or local regulation pertaining to octane disclosure by permitting the use of any remedy or penalty authorized by law. The Commission proposes amending § 306.3 of the Commission's Rule, which parallels section 204 of PMPA, to conform with EPA 92's amendment of section 204 of PMPA.

Section 1502(b) of EPA 92 amends section 203(e) of PMPA regarding the level of knowledge required for proof of an Octane Rule or PMPA violation. Prior to the amendments to section 203 in EPA 92, section 203(e) of PMPA stated that when the Commission commenced a civil action against a gasoline *retailer* who violated the Octane Rule, it had to prove that such retailer had actual knowledge that its conduct was unfair or deceptive and prohibited by the Rule. In contrast, when the Commission commences actions against refiners and distributors, the standard knowledge requirement of section 5(m)(1)(A) of the FTC Act applies.[13] In those cases, the requisite knowledge can be fairly implied on the basis of objective circumstances. Section 1502(b) eliminates the special distinction for retailers. Because the Commission's Octane Rule does not address this knowledge issue, it does not have to be amended to conform with this amendment to section 203(e) of PMPA.

III. Specific Regulatory Proposals

A. Liquid Alternative Fuels

The term liquid fuels encompasses diesel fuel, certain types of reformulated gasoline, gasohol,[14] methanol, ethanol, liquefied petroleum raw and liquid natural gas.[15] The Commission has discretion regarding whether to regulate diesel fuels, as discussed in Part III, B, below. The Commission already treats gasohol as ordinary gasoline covered by the Rule, and thus it is not being specifically addressed in this proceeding. Similarly, "reformulated gasoline," which will be required to be available by the Clean Air Act in 1995, is not specifically being addressed in this proceeding. The Commission believes that the reformulation (to reduce emissions) will not otherwise change the inherent properties of the fuel. Thus, as with other gasolines, octane ratings can and should be derived and posted. For the other fuels, the Commission, in this rulemaking proceeding, is considering whether to require sellers to post octane or other forms of rating that the Commission, after having consulted with ASTM, finds may be more appropriate for these fuels. The result would be that consumers of these fuels could compare posted ratings with their engine's requirements.

1. Description, Current Use and Availability

The primary alternative liquid fuels at this time are methanol, ethanol, blends of methanol or ethanol with gasoline, liquid petroleum gas (LPG) (primarily liquid propane gas in this country), and liquid natural gas. All these liquid fuel alternatives to gasoline and diesel fuel have lower fuel energy densities, whether per pound or per gallon. This means that to achieve the same driving range compared with gasoline, more fuel must be carried on board or the vehicle must be refueled more often (assuming a comparable engine efficiency). All of them have higher octane ratings for internal combustion engines than gasoline. They also have low cetane numbers, and are thus less suitable for compression ignition engines.[16]

Methanol and ethanol are single molecule chemicals whose properties can be precisely described. In contrast, gasoline, diesel fuel, and to a lesser extent liquid petroleum gas (LPG) or propane, are mixtures of hydrocarbons whose composition and properties may vary considerably.[17] Natural gas and LPG or propane are gases at normal temperatures and air pressures. They require different fuel storage and refueling equipment than gasoline and the alcohol fuels. Propane can be stored

[12] As discussed more fully in section III, B, 1, below, cetane is a measure of the ignition quality of diesel fuel and influences combustion roughness.

[13] 15 U.S.C. 45(m)(1)(A).

[14] "Gasohol" is generally recognized as being a blend of unleaded gasoline and up to 10% ethanol.

[15] EPA 92 does not specifically define "liquid automotive fuel." However, as stated previously (fn. 3, above), section 301 of the Act, for purposes of title IV, V and VI, defines "alternative fuel" to include:

[M]ethanol, ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary (of the Department of Energy), by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; electricity and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]

Although the definition does not directly apply to the amendment of the Octane Rule required by section 1501, it does apply specifically to the ruelmaking proceeding the Commission must conduct under section 406 of EPA 92 to consider labeling requirements for alternative fuels. Further, titles IV, V and VI of EPA 92 cover research, development and incentive programs to promote the use of alternative fuels and alternative fuel vehicles and therefore to the alternatives to gasoline and diesel fuel most likely to be available to the general public in the foreseeable future. Therefore, for purposes of this rulemaking, the Commission will be guided by the definition in section 301. *See* H/R Rep. No. 474, 102d Cong., 2d Sess. 151 (1992).

[16] *First Interim Report of the Interagency Commission on Alternative Motor Fuels*, Sept. 30, 1990, at pg. 1–3. As stated previously, cetane is a measure of how high compression may be before the fuel will ignite. The most common compression ignition engines, by far, as those fueled by diesel fuel oil.

[17] *Id.*

easily as a liquid under modest pressure, but natural gas must be stored either as a compressed gas or cooled to liquid form.[18]

Currently, the availability of these alternative liquid fuels varies among the different types, and there are limited numbers of vehicles designed to use them. Research and development is on-going, however, and the availability of both the fuels and the vehicles to use them is increasing. Among the concerns that are being examined in research and development studies of alternative fuels and the related vehicles are safety and health, both for users and workers.[19]

Although ordinary passenger vehicle use of such fuels either from an original equipment manufacturer (OEM) or based on a conversion of an existing gasoline engine currently is very limited,[20] all the major automakers are involved in development of alternative fuel vehicles.[21] Of the alternative fuel technologies available, vehicles to operate on compressed natural gas (CNG) and flexible fuel vehicles designed to operate on methanol, ethanol, and gasoline appear to be favored by auto markers.[22] Most of these vehicles are destined for the California market, where methane already is more readily available because of the state's efforts to promote alternative fuels.[23]

In addition, EPA 92 promotes the development of these fuels by establishing both federal procurement requirements and fleet vehicle requirements. Likewise, several states have fleet purchase programs or other programs to promote the use of alternative fuel vehicles.[24] Additional information about the availability of these fuels and vehicles that use them appears below.

a. Methanol and methanol/gas blends. Methanol, or "wood alcohol," can be produced from domestic resources, both fossil and renewable. In the U.S., it is most commonly used as a raw material source (feedstock) for producing methyl tertiary butyl ether (MTBE), an octane-enhancing gasoline additive, and as a chemical feedstock, extractant, or solvent. It can be used in neat (100%) form as a gasoline substitute or in a blend with gasoline, most commonly as M85 (85% methanol, 15% gasoline).

The U.S. industry produced approximately 3.3 million gallons of methanol per day in 1991. About 43%, or 33,400 barrels per day (b/d), is used in the transportation sector (32,000 b/d in the production of MTBE). The majority of methanol produced in the U.S. is from natural gas resources. Methanol also can be produced from coal, residual oil, and biomass.[25] DOE is conducting a methanol-from-biomoss program to develop catalysts that can reduced impurities formed during gasification of coal or biomass and produce the desired carbon monoxide-hydrogen mix (thereby reducing production costs), and to demonstrate a full-scale, biomass-to-methanol plant. (The primary biomass feedstock for one production plant, for example, will be sugar cane waste, a major waste product in the area of the plant.) The goal of the DOE program is to reduce the cost of methanol from biomass from its present $0.75/gallon to $0.55/gallon.[26]

Methanol has a higher octane rating than gasoline. It has lower nitrogen oxide emissions and generally lower overall emissions. However, methanol's energy density is about half that of gasoline, so (assuming comparable engine efficiency) the driving range of methanol vehicles is shorter than that of gasoline-powered vehicles (methanol provides fewer miles per gallon). In addition, vehicles using neat methanol at temperatures below 45°F are difficult to start, at least with current engine designs. Engineering solutions to this problem are under development. For example, M-85 significantly reduces the cold start difficulties because of its 15% gasoline component.[27] But, availability of M-85 is limited, with fewer than 100 methanol stations nationwide, located largely in the key, high-population areas of California.

DOE is conducting several methanol projects in which government and private-sector fleets, primarily using M-85 and neat methanol, will be tested and evaluated. DOE will collect and evaluate performance, emissions and other data. Light-duty passenger autos, heavy-duty trucks and buses will be included. In addition, California has sponsored a comprehensive methanol fuel and vehicle program. Approximately 1000 cars, trucks and buses on the road in California are fueled by methanol. Several major automotive and oil companies are participating in these and other alternative fuels demonstration programs across the U.S.[28]

b. Ethanol and ethanol/gas blends. Ethanol is an alcohol product that can be produced from biomass sources. It can be used as a blend or as a pure fuel, with good efficiency and performance. It is a potentially clean-burning fuel that can reduce air pollution problems such as smog and carbon monoxide.

Between 800 million and 850 million gallons of ethanol are produced in the U.S. annually, principally from corn. DOE is concentrating its efforts on developing an ethanol feedstock from various forms of cellulosic biomass. For example, DOE researchers are examining wood and grass species crops that have been genetically altered to require minimum management and produce high yields in several different climatic and soil regions across the country. It is estimated that sufficient cellulosic biomass could be available to produce 170 billion gallons of ethanol annually. DOE has the objective of producing ethanol from biomass at a price competitive with gasoline by the year 2000. Over the last decade, DOE's program has reduced the predicted cost of biomass-derived ethanol from $3.60 per gallon to $1.37 per gallon.

Ethanol use in the U.S. currently is centered primarily in the Midwest, where excess corn and grain can be converted into fuel. Many Midwest service stations sell high octane gasoline blends that contain 10% ethanol (gasohol). A blend, E–85 (85% ethanol and 15% unleaded gasoline), is being tested. Ethanol also can be used as a feedstock to produce ethyl-tertiary-butyl ether (ETBE), which may become an important constituent in reformulated gasoline.

The use of ethanol feedstock fuels may help reduce net greenhouse gases from auto emissions. This is because plants require carbon dioxide for growth, so a "carbon cycle" is created

[18] *Id.* at pg. 1–3 to 1–4.

[19] For more information about alternative liquid fuels, see *Final Report of the Interagency Commission on Alternative Motor Fuels*, U.S. Department of Energy ("DOE"), DOE/EP–0002P (Sept. 1992), pg. 38, *et seq.*, and the DOE fact sheets on individual alternative fuels cited below. The Commission has relied extensively on DOE's work in this area, which provided important information necessary to conduct this proceeding.

[20] *Id.*

[21] *'93 New Car Buyer's Guide*, Motor Trend Magazine, at pg. 42–48 (cited as *"'93 New Car Buyer's Guide"*).

[22] *Id.* at 42. Ford Motor Company, General Motors Corporation and Chrysler Corporation have flexible fuel vehicle programs underway that include building 2000 each of the Ford Taurus; Chevrolet Lumina, and Dodge Spirit/Plymouth Acclaim. Two hundred Ford Econoline/Club Wagon flexible fuel vehicles were to be available in 1992, with further production likely in 1993.

[23] *Id.*

[24] *Id.* at pg. 42.

[25] "Biomass" is a renewable, virtually inexhaustible domestic resource. Corn is the major biomass feedstock being used today to produce alternative liquid fuels. Other biomass sources currently being used, or subject to research as potential feedstocks, include crop residues, forage (grass) crops, wood resources (forest residues and short-rotation wood energy crops), and the cellulosic components of municipal solid waste.

[26] Fact sheet on methanol developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4315, DE91002157, Rev. Feb. 1992 (cited as "DOE Methanol Fact Sheet").

[27] *Id.*

[28] *'93 New Car Buyer's Guide*, note 21, above.

when plant-derived fuels are buried in vehicle engines. In addition, use of ethanol fuels can reduce emissions of carbon monoxide, nitrogen oxides, and unburned hydrocarbons. On the other hand, use of ethanol raises issues of aldehyde emissions, cold start difficulties (i.e., starting problems in cold weather), low energy density, and corrosive properties. Because ethanol is water-soluble, it could precipitate corrosion of many conventional engine components, so appropriate materials need to be used in vehicles operating on ethanol. However, corrosion is not a factor when using ethanol-gasoline blends.[29] And, because ethanol contains about two-thirds the energy per volume of gasoline, the driving range of ethanol vehicles is shorter than that of gasoline-powered vehicles (assuming comparable engine efficiency, ethanol provides fewer miles per gallon). However, efficiently designed engines could increase the range to 80% that of gasoline. The driving range of gasohol blends (10% ethanol and 90% gasoline) is statistically indistinguishable from regular gasoline.

There are far fewer ethanol fuel vehicles than methanol fuel vehicles in the U.S. It is estimated that there are about 2.5 million ethanol fuel vehicles worldwide, mostly in Brazil.[30]

c. Liquefied petroleum gas or liquid propane gas. Liquefied petroleum gas (LPG) is composed primarily of propane and butanes, with smaller amounts of propylene and butylenes. About two-thirds of the LPG available today is a by-product of natural gas processing. It is supplied in four grades of different composition, but HD–5 is the only grade appropriate for use in automobiles. HUD–5 is 95% propane and 5% butanes. The terms LPG and propane are often used interchangeably.

LPG can be burned directly in modified automobile engines. Most gasoline-powered cars and trucks can be converted to operate on LPG in either a single-fuel (LPG only) or a dual-fuel (either gasoline or LPG) configuration.[31] The gas is stored on-board in liquefied form in tanks pressurized to 160 psi. LPG has about 80% of the energy of gasoline by volume, so the driving range of LPG vehicles is shorter than that of gasoline-powered vehicles where engines are of comparable efficiency (LPG provides fewer miles per gallon). LPG has the potential to produce less carbon monoxide and smog-causing reactive hydrocarbons than gasoline.

The U.S. is one of the world's largest producers of LPG, with about 20 billion gallons produced in 1985. About 2% was used for transportation, with the remainder used in applications as an alternative to natural gas (for example, in stationary engines, home heaters, stoves, and other appliances). LPG is readily available in regions with natural gas production or petroleum refining. However, LPD refueling requires specially designed service stations that are found in both urban and rural areas.

About 350,000 LPG-fueled vehicles are in use in the U.S. today, and about 3.5 million worldwide. Most are spark-ignition engines adapted to use either propane or gasoline. Public and private fleets are good candidates for conversion because of their relatively short driving ranges and centrally located refueling facilities. Transit authorities are introducing propane-powered buses into urban transportation systems. Because propane transportation vehicles already are commercially available, DOE has limited involvement in research on LPG applications.[32]

d. Liquid natural gas. Natural gas is a fossil fuel composed primarily of methane, along with other hydrocarbons such as ethane, propane, butane, and inert gases such as carbon dioxide, nitrogen, and helium. It can be burned directly in modified vehicle engines. It is produced both in compressed (CNG) and liquefied (LNG) forms.

This rulemaking proceeding under Section 1501 of EPA 92 covers only the liquefied form. LNG is natural gas that has been liquefied at −259°F. It is stored in insulated tanks that resemble large bottles. The U.S. is one of the world's largest producers of natural gas. About one quarter of the energy consumed in the U.S. is natural gas. Natural gas as a transportation fuel may offer the potential for reducing exhaust emissions.

Most gasoline-powered cars and trucks can be converted to operate on LNG either as a single-fuel (natural gas only) or as a dual-fuel (either gasoline or natural gas) vehicle. Diesel vehicles also can be converted to use either diesel fuel or natural gas in a dual-fuel configuration. However, assuming comparable engine efficiency, the driving range of LNG vehicles is shorter than that of gasoline-powered vehicles (LNG provides fewer miles per gallon) because of the lower energy density of natural gas fuels.

It is estimated that 30,000 natural gas vehicles (both LNG and CNG) are in use today in the U.S., and nearly a million worldwide. However, most of these are CNG dual-fuel vehicles. Public and private fleets are especially conducive to conversion to natural gas because they are used for relatively short driving ranges and use centrally located refueling facilities. Transit authorities are beginning to use hundreds of natural gas buses in urban transportation systems. In addition, DOE is sponsoring demonstrations of natural gas powered automobiles, trucks and buses throughout the U.S., and funds purchases of vehicles that use natural gas.[33]

2. Regulatory Proposals

Section 1501 of EPA 92 recognizes that, for consumers making gasoline purchasing decisions, octane is a crucial performance characteristic that consumers find useful. The evident purpose of section 1501 is to provide consumers with the same or similar information for all liquid automotive fuels.[34] However, the statute implicitly recognizes that octane may not be the most useful measure for liquid fuels other than gasoline. The statute provides that the Commission may consider "another form of rating * * * more appropriate to carry out the purposes of this title with respect to the automotive fuel concerned."[35]

For gasoline, a mixture of hundreds of different hydrocarbon compounds with a resulting wide range of properties, octane ratings allow consumers to choose fuel that will prevent engine knock. However, the physical and chemical properties of each alternative liquid fuel, including their octane ratings, may not vary much. For

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[29] Fact sheet on ethanol developed by the Development and Communications Office Technical Information Program, for the U.S. Department of Energy, NREL SP–220–3587, DE91002129, Rev. Feb. 1992 (cited as "DOE Ethanol Fact Sheet").

[30] *Introduction to Alternative Fuel Vehicles*, prepared by Science Applications International Corp. for the U.S. Department of Energy, Contract No. XF–1–11107–1, March 2, 1992, pg. 5.

[31] Single-fuel or dedicated fuel vehicles are those that can operate only on one type of fuel. Dual-fuel vehicles can operate on two different types of fuels, but must have separate fuel tanks for the different fuels. Flexible-fuel vehicles can operate on various blends of fuel from a single tank. For example, a flexible-fuel vehicle might operate on any percentage of methanol from zero to 85 percent or more.

[32] Fact Sheet on liquefied petroleum gas and propane, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4066, DE91002114, Rev. Feb. 1992 (cited as "DOE LPG Fact Sheet").

[33] Fact sheet on natural gas, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4005, DE90000388, Rev. Feb. 1992 (cited as "DOE Natural Gas Fact Sheet").

[34] H.R. Rep. No. 474, 102d Cong., 2d Sess. 151 (1992).

[35] Section 1501(b)(17)(C) of EPA 92.

example, methanol and ethanol are single-molecule alcohols. In addition, the alternative fuels have inherently high octane ratings that will not be affected much by the small hydrocarbon content differences that could occur in the chemical make-up of the fuels. This being the case, it is also expected that any modified engines for such fuels would also be designed to accommodate these fixed-octane fuels without producing engine knock.[36] Thus, the octane disclosure for pure alternative fuels, or blends containing small amounts of gasoline, may not be particularly useful to consumers in making purchasing decisions.

In addition, there may be practical problems in implementing a reliable octane certification and posting program for alternative fuels. There is no ASTM-approved method, or any other standardized method, for determining the octane ratings of the alternative fuels. The test method and procedure specified in the Octane Rule is an ASTM-approved method for determining the octane rating of gasoline. The high octane ratings that are generally referred to in literature regarding these alternative fuels, however, were derived by modifying that procedure without formal ASTM approval.[37]

Section 1501 authorizes the Commission to identify other crucial performance characteristics of a particular fuel after consultation with ASTM. The Commission staff's consultation with ASTM determined that, except for LPG, ASTM has not approved standardized materials specifications[38] for the alternative fuels that are the subject of this proceeding.[39] ASTM also has not identified crucial performance characteristics or developed rating systems for any of the alternative fuels. However, because, the development and use of the alternative fuels are still emerging, the Commission attempted to determine what would be the most analogous "rating" measures that could be important to consumers attempting to make alternative fuels purchasing decisions.

For at least for the next several years, consumers may need disclosures that direct them to the correct fuel dispenser, and identify whether the fuel satisfies their automobile engine's minimum requirements. Consumers also may be interested in the cost of the fuel and the mileage they can obtain from the fuel compared to the cost of and mileage obtainable from gasoline. While there is no need to require disclosure of price on the pump via this rule, other disclosures may help consumers in making these mileage comparisons. Thus, in addition to octane ratings, the Commission is requesting comment on three other forms of "ratings" that may address these anticipated consumer concerns.

As noted earlier, this rulemaking pursuant to section 1501 of EPA 92 focuses on development of a labeling system concerning the performance characteristics of these fuels, while section 406 of EPA 92 requires the Commission to propose uniform labeling requirements concerning, *inter alia*, cost comparison information for the various fuels. Although the rulemaking under section 406 is subject to a different timetable, the Commission is interested in comment now on how best to design a labeling format that implements the purposes of both sections 1501 and 406. For example, one of the alternatives suggested here—the heating value option—would allow consumers to compare the energy costs of the various alternative fuels.

Since EPA 92 allows the Commission to require posting and certification of another rating that is determined to be "more appropriate [than an octane rating] * * * with respect to the automotive fuel concerned," the Commission may require different ratings for different fuels. For a particular type of fuel, a combination of the following options may be appropriate. For example, an octane rating may be required in addition to a descriptor that certifies the contents of a fuel.

a. Octane rating. Section 1501 of EPA 92 provides for the possibility of extending the octane rating disclosure requirements of the Commission's Octane Rule to alternative liquid fuels. Octane ratings are already familiar to consumers and have been posted on gasoline dispensers since the Octane Rule became effective in 1979. Posting octane ratings for alternative fuels, therefore, may help promote their use and acceptance by consumers.

As previously discussed, however, the Commission is not aware of an established method for determining the octane ratings of the alternative fuels that has been approved by government agencies, ASTM, or other authoritative sources. Thus, it may be quite difficult, if not virtually impossible in terms of cost and technique, for private and state laboratories to determine with precision the accuracy of posted octane ratings for the alternative fuels. Moreover, significant variations of octane levels are not expected within specific classes of alternative fuels such as neat methanol or neat ethanol. Taken together, these considerations argue for simply assigning octane ratings to these fuels, requiring that the fuels' composition at the pump be as stated (e.g., E–85), and requiring that these octane ratings be posted at the pump and certified by suppliers through the chain of distribution.

To this end, the Commission's staff asked DOE's National Renewable Energy Laboratory in Golden, Colorado to try to determine the actual octane ratings, as tested, of the alternative fuels. By modifying the ASTM method for determining the octane ratings of gasoline, in terms of both procedure technique and necessary test engine modifications, the laboratory obtained the following octane ratings for the alternative fuels.[40]

Methanol	98
Ethanol	99
M–85	95
E–85	96
LPG	104
LNG	120

The Commission proposes requiring that the above-listed octane ratings be posted for the alternative fuels.[41] The disadvantages of this option are that the costs of certification and posting octane ratings for these fuels may not be offset by benefits to consumers or competition. For those with dedicated alternative fuel vehicles, the octane ratings of the fuels their vehicles use are not likely to vary significantly. Similarly, consumers with dual fuel or flexible fuel vehicles may not make fuel purchasing decisions on the basis of an octane rating. Indeed, manufacturers of these vehicles do not presently specify a minimum octane rating for the alternative fuels they require. Thus, cost, availability, and energy content

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[36] *The Fuels of the Future*, Consumer Reports, January, 1990, pp. 11–15.

[37] The Commission's staff discussed the octane ratings referred to in DOE's fact sheets and other technical literature extensively with representatives of both DOE and ASTM. These representatives have indicated that the modifications to the test procedure and the test engine to derive the octane ratings have not yet been subjected to the critical review that would occur during an ASTM proceeding to adopt a new or revised standardized test procedure.

[38] ASTM materials specifications may or may not set minimum required values for different product characteristics.

[39] ASTM's specification for LPG does not, however, include a minimum octane rating requirement.

[40] These are not necessarily the same ratings that are cited in some literature about these fuels. The differences occur because there is not yet a standardized procedure for determining octane ratings for these fuels.

[41] Note that, since ASTM specifications do not exist for all of these fuels, this option may need to be combined with the Fuel Composition or Fuel Descriptor Options or the Commission may need to otherwise define each fuel before requiring that particular numerical ratings be posted with each fuel.

may be more important factors than octane in selecting an alternative fuel. Another important factor may be deciding whether to purchase a blend, rather than a neat fuel (E–85 versus E–100), to avoid cold start problems.

Another disadvantage may be that posting the high octane ratings associated with the alternative fuels may contribute to the misperception that high-octane gasoline is always best for everyone's engine. For example, consumers may wrongly infer that there is a necessary correlation between the lower auto emissions benefits of alternative fuels and the higher octane of these products. Thus, posting the octane ratings of the alternative fuels could add to existing problems of gasoline octane overbuying and foster the potential for deception in the market place by misleading consumers with respect to their purchases of gasoline.[42]

The Commission would like to receive comment on whether an octane rating would be a useful disclosure to consumers trying to make alternative fuel purchasing decisions. Among the specific areas of comment described below, the Commission seeks comment on whether it should require the certification and posting of specific octane ratings for the alternative fuels on an interim basis until such time as the Commission, in consultation with ASTM and DOE, determines that other more appropriate ratings exist for the alternative fuels. In such a case, the Commission would initiate another rulemaking proceeding to amend the rating for the alternative fuel concerned after that determination was made.

b. Fuel composition: Hydrocarbon, propane and methane content. As another option, the Commission proposes requiring the disclosure of fuel composition. Specifically, the Commission proposes that the minimum propane content of LPG and the minimum methane content of LNG be certified and posted. LPG and LNG are essentially single component products, with only small percentages of other gases. The LPG appropriate for automotive applications is 95% propane and 5% butanes.[43] LNG is composed of several gases—methane, ethane, propane and nitrogen, with methane accounting for 88–99% of the fuel's composition. Disclosure of the minimum propane content of LPG and the minimum methane content of LNG may provide consumers, in conjunction with information from the vehicle manufacturer or converter, with comparative quality information needed for fuel purchase decisions. Under this option, consumers could compare like fuels. For example, for LNG, one station may post a methane content of 90. Another station may post 95. Depending on their vehicle's requirements, consumers could determine which fuel is better for their purposes. The Commission seeks comment on how such minimum contents could be determined, because the Commission will specify the methodology in a final rule if it selects this option.

For the alcohol fuels, the Commission proposes a requirement to certify and post the hydrocarbon content of the fuel. Hydrocarbon content is important because it relates to the cold start property of the alcohol fuels, which differs significantly from that of gasoline. Alcohol is more difficult to vaporize than gasoline, and therefore more difficult to ignite in a cold engine. The addition of gasoline (or other hydrocarbons) to the alcohol fuels improves their cold start characteristics. For example, cold starts are significantly improved in M–85 and E–85 over the neat alcohols methanol (M–100) and ethanol (E–100).[44] For each alcohol fuel, hydrocarbon content disclosures would give consumers information about the fuel's cold start quality. For example, consumers could select a fuel with a higher or lower hydrocarbon content, depending on climatic conditions or geographic region.

The Commission proposes that the hydrocarbon content of these fuels be certified and posted in terms of a hydrocarbon *range*, rather than a fixed number. Hydrocarbon content could vary, primarily because the fuel could be composed of other hydrocarbon-containing oxygenates (basically, other alcohols and ethers) in varying amounts. Disclosure of a range should eliminate the need for changing labels frequently, which would otherwise arise as a result of the possible variations in the hydrocarbon contents of the alcohol fuels.

The Commission seeks comment on the following labels, each of which is pertinent to a particular alternative fuel, and asks whether they would satisfy EPA 92's intent:

1. "Liquefied Propane Gas/Minimum _____% Propane"
2. "Liquefied Natural Gas/Minimum _____% Methane"
3. "M–100 Fuel Methanol/X%—Y% Hydrocarbons"
4. "E–100 Fuel Ethanol/X%—Y% Hydrocarbons"
5. "M–85 Fuel Methanol/X%—Y% Hydrocarbons"
6. "E–85 Fuel Ethanol/X%—Y% Hydrocarbons"

The Commission solicits comment on the advantages and disadvantages of such a disclosure. The Commission also asks how such hydrocarbon contents for ethanol and methanol could be determined and how the Commission should specify a test method, if this option is viewed as useful.

c. Heating value (energy content). As another option, the Commission proposes requiring the posting of a label comparing the alternative fuel to gasoline in terms of the approximate mileage one would obtain by using an equivalent volume of each fuel. This would be based on the heating value, or energy content, of each of the alternative fuels.

Vehicle range and refueling frequency, combined with refueling convenience (*i.e.*, the availability of refueling stations) will be some of the crucial factors in consumer acceptance of new transportation fuels. Fuels with a high heating value per unit volume, generally expressed as Btu/gallon, allow extended range, which means less time spent in refueling stops. For example, ethanol has only about two-thirds the heating value of an equal volume of gasoline. This means that consumers would need 1.5 gallons of ethanol to drive as far as they could on one gallon of gasoline. To store the same amount of energy, ethanol would take up 50% more space.[45]

The Commission's staff obtained, from the Interagency Commission on Alternative Motor Fuels and the Department of Energy, the approximate heating values of the alternative fuels, which appear in the right-hand column of the chart below. Although the values would be published and used as the basis for certification[46] and for the

[42] As observed by the Government Accounting Office ("GAO"), many consumers already mistakenly assume that high octane offers benefits other than achieving the minimum performance needed to avoid engine knock. *See* GAO's report entitled *Gasoline Marketing, Consumers Have Limited Assurance That Octane Ratings Are Accurate* (April, 1990).

[43] DOE LPG Fact Sheet, fn. 32, above.

[44] *Introduction To Alternative Fuel Vehicles*, Science Applications International Corporation, March 2, 1992, page 11.

[45] *First Interim Report Of The Interagency Commission On Alternative Motor Fuels*, Sept. 30, 1990, page 2–6. However, the engines designed in the future to take full advantage of the properties of the alternative fuels should be inherently more efficient and provide greater power than today's gasoline-powered engines. *Id.* at page 2–7.

[46] Even though these heating values (or other values that would be selected if this option were adopted) will be known as constants in the industry, the amended Rule would have to require that they be certified through the chain of distribution. This is because of the requirements in sections 202(a) and (b) of amended PMPA (15 U.S.C. 2822 (a) and (b)) that refiners and

following alternative labeling options, the values in the chart would not appear on the label.[47]

The Commission proposes for comment the following two alternative label formats:

(1) You will need about (B) gallons of (A) for every gallon of gasoline you usually use. [Metric equivalents may be included.]

(2) One gallon of (A) will take you about (C) as far as you can go on 1 gallon of gasoline. [Metric equivalents may be included.]

HEATING VALUES CHART

[This chart would not appear on labels]

(A)	(B)	(C)	Btu/gallon
LPG	1.25	80%	89,253
Methanol	2.00	50%	56,560
Ethanol	1.50	65%	75,670
M–85	1.75	60%	65,196
E–85	1.40	70%	81,439
LNG	1.40	70%	83,700
Gasoline	.....	.....	114,132

The advantage of this type of label is that the information provided, coupled with the price of the fuel, would give consumers with flexible fuel vehicles the ability to make choices among different fuels. Although vehicle manufacturers may provide vehicles with gauges that show how many miles the vehicle can travel before the tank is empty for a particular fuel, this label option can reinforce that information and allow comparison shopping on the basis of miles obtained per gallon. Because these disclosures are based on objective determinations of the BTU heating values, or energy content, of the alternative fuels, and would provide useful comparative information to consumers, they could serve the purpose that octane ratings do for gasoline.

d. Fuel descriptor. As another option, the Commission also proposes requiring that the alternative fuel pumps identify the fuels for consumers. The fuel descriptors the Commission proposes are based on the terms developed by and included in the California Air Resources Board's proposed specifications for the alternative fuels. Those terms are:

"M–100 fuel methanol;"
"M–85 fuel methanol;"
"E–100 fuel ethanol;"
"E–85 fuel ethanol;"
"Liquefied Propane Gas;"[48] and,
"Liquefied Natural Gas."

Before the descriptors could be posted, the fuels would have to meet technical specifications. For example, for the blends there would need to be specifications for the gasoline that is used in the blend. If octane were the only characteristic of concern, then the specifications could be limited to that. The Commission could require certification and posting of the descriptors and could develop and publish in the final rule minimum specifications for the alternative fuels based on the comments received. In addition to the proposed specifications developed by the State of California, specifications are likely to be developed by alternative vehicle manufacturers and fuel suppliers in conjunction with ASTM (as has been done for gasoline) or, perhaps, by DOE. Unfortunately, ASTM and DOE specifications are unlikely to be completed within the time allotted for this rulemaking. As an alternative, the Commission could adopt specifications analogous to California's as interim specifications until ASTM, or DOE, develops and approves alternative fuel specifications.

Descriptor labeling has the advantage of providing assurance to consumers that they are purchasing a product that meets certain content requirements, which may be specified in their owner's manuals. Further, the descriptors, in conjunction with the specifications, could serve the purpose of octane ratings. As discussed at the beginning of section III, A, 2, the octane rating of each of these fuels does not vary significantly, so that a consumer buying M–100 would have fuel with an octane rating of about 98. For these reasons, this labeling option also can be considered another form of "rating for the alternative fuels pursuant to section 1501(b) of EPA 92.

B. Cetane Ratings of Diesel Fuel

1. Background

Congress drafted the definition for "automotive fuel rating" in section 1501(b) of EPA 92 (which amends PMPA) so that the definition could include the cetane rating of diesel fuel oils "if provided for by the Federal Trade Commission." The ASTM definition for "cetane number" states that the cetane number is "a measure of the ignition quality of the [diesel] fuel and influences combustion roughness."[49] From a practical point of view, an engine operating on a fuel with a higher cetane rating will start better when cold, run cleaner and operate more quietly than one operating on fuel with a lower cetane rating. The effect of this amendment is that the Commission now has discretionary authority under PMPA to add the disclosure of cetane ratings of diesel fuel oils to the requirements of the Octane Rule. Previously, the Commission did not have such authority under PMPA.

The Commission staff has conducted a preliminary analysis of the production, marketing, and end use of diesel fuel oils, and the extent of fluctuation of the range of cetane ratings currently found in the marketplace. A significant quantity of diesel fuel oil is sold for vehicle use nationally, and some information suggests that the posting of cetane ratings for the diesel fuel used for vehicle applications may be helpful. For example, one state, Virginia, already requires cetane posting. Further, because higher cetane fuels can make engines start better in cold weather and run more quietly, there may be market incentives to produce higher cetane fuel and to make available a variety of fuels with different cetane levels. The preliminary analysis also suggests that accurate posting of cetane levels nationwide at retail outlets may be difficult to achieve, and that the costs of posting may outweigh the benefits. But, because posted cetane ratings may be useful to consumers and competition, the Commission is considering amending the Octane Rule to require cetane certification and posting for diesel fuel intended for vehicle use.

2. The Commission's Authority in Section 150(b) of EPA 92

Section 1501(a) of EPA 92 amends section 201(6) of PMPA by replacing the definition of "automotive gasoline" with a definition for "automotive fuel." "Automotive fuel" is defined as "liquid fuel of a type distributed for use as a fuel in any motor vehicle." In subsequent parts of section 1501,

distributors certify automotive fuel ratings to their transferees, and the requirement in section 202(c) (15 U.S.C. 2822(a)) that retailers post on the basis of automotive fuel ratings certified to them. As is currently permitted, however, such certification could be accomplished by a one-time letter, at the industry member's option.

[47] Note that, since ASTM specifications do not exist for all of these fuels, this option may need to be combined with the Fuel Composition or Fuel Descriptor Options or the Commission may need to otherwise define each fuel before requiring that particular numerical ratings be posted with each fuel.

[48] For LPG, the California Air Resources Board uses the term "Liquefied Petroleum Gas." However, based on discussions the Commission's staff has had with Department of Energy staff and staff at the National Propane Gas Association, the Commission proposes using the term "Liquefied Propane Gas."

[49] ASTM Standard Specification for Diesel Fuel Oils, D 975–91, Appendix X1.4. A Cetane number is derived by testing the fuel directly. Cetane index is a cetane rating derived through calculation. See ASTM Standard Test Methods for Calculating Cetane Index of Distillate Fuels, D 976–91.

Congress amended PMPA by substituting "automotive fuel rating")[50] for "octane rating" and "automotive fuel" or "fuel" for "gasoline," with the general result that PMPA now encompasses diesel fuel oil and cetane ratings. This gives the Commission the authority to include requirements for the determination, certification and posting of cetane ratings for diesel fuel oil.

3. Distribution of Diesel Fuel Oil

The diesel fuel for which the Commission is given authority to disclose cetane certification and posting is identified in amended section 201(18)(B)(ii) of PMPA as any grade or type of diesel fuel oils defined in ASTM D975.[51] ASTM D975 defines three types of diesel fuel oils that are commercially available fuel[52]

Grade 1–D diesel, which is for use in high-speed engines in services involving frequent and relatively wide variations in loads and speeds, such as in stop and start bus operations. For use where abnormally low temperatures are encountered.

Grade 2–D diesel, which is for use in high-speed engines in services involving relatively high loads and uniform speeds in climates where cold starting and cold fuel handling are not severe problems. This grade of diesel fuel oil is widely used and satisfies the majority of automotive-type diesel applications. Examples are long-haul trucking, construction equipment, farm tractors and railroad diesels.

Grade 4–D diesel, which is used mostly in large, high-output diesel engines in services involving sustained loads at constant speeds, such as in stationary power plants in ships.

It thus appears that there are two different grades of diesel fuel oil available in the marketplace today that can, and normally will, be used in motor vehicles and therefore are encompassed by amended PMPA's definition of automotive fuel—Grade 1–D diesel and Grade 2–D diesel. Although these two products are chemically similar, their distribution and end uses can be significantly different. Grade 2–D diesel is used for home heating as well as use as a motor fuel for vehicle use;[53] Grade 1–D diesel is primarily for off-highway (farm) vehicle use, and is often mixed with Grade 2–D diesel in cold weather to improve performance. Sales of Grade 2–D diesel are greater than sales of Grade 1–D diesel, because of the wider application of the former, especially with regard to home heating use.[54] Although both grades of diesel fuel oil can be found at retail outlets, Grade 2–D diesel is carried more often by retailers than Grade 1–D diesel. The preferred method of delivery for Grade 1–D diesel appears to be direct delivery to the end user's tank dispenser in a tank truck.[55] Further, Grade 2–D diesel is designed for high-speed vehicle use, and, therefore, often contains detergents and additives not found in Grade 1–D diesel oil.

A regulation of the U.S. Environmental Protection Agency that will become effective in October of this year will reduce the maximum level of sulphur in both grades of diesel fuel. This will result in lower cetane levels than would otherwise be obtained.[56] To compensate for this, the regulation set a minimum cetane level of 40.[57] In setting its maximum sulfur specifications, the U.S. Environmental Protection Agency recognized cetane rating spreads of between 42 and 56 for Grade 1–D diesel and between 30 and 58 for Grade 2–D diesel.[58] But, because the standards set a minimum cetane rating of 40, it will be unlikely after October 1, 1993, that Grades 1–D and 2–D diesel in the market place will have cetane ratings below 40.

Because of the different end uses to which Grade 1–D diesel and Grade 2–D diesel can be put, each is separately identified from the refinery through the chain of distribution. It appears possible, therefore, that certification could be accomplished from batch to batch. Because cetane levels are dependent on the crude product from which the diesel oil is being refined, there can be as much variation as there is among different batches of crude. It appears that refiners may primarily aim to achieve the federally-mandated minimum 40 cetane level or four or five points higher, and not to produce significantly higher cetane diesel. However, some companies nevertheless market, or, are planning to market, diesel fuels with higher cetane levels.[59]

Grade 2–D diesel is generally available at retail outlets throughout the country and is usually dispensed at the same cetane level at any given outlet. This is true to a lesser extent for Grade 1–D diesel. Thus, although there may be several, or many, dispensers at an outlet, the cetane level of the diesel fuel from every dispenser at the outlet will usually be the same.

Cetane ratings and diesel fuel oil marketing are significantly different from octane ratings and gasoline marketing. Cetane levels can fluctuate significantly from batch to batch. Inaccuracy in labeling could be avoided, however, by requiring only that a *minimum* cetane level be posted (40 being a standard minimum). Suppliers could, for example, always safely post at the 40 cetane rating minimum. Refiners that wished to market their fuel as having a higher cetane level for better cold starting and quieter operation could maintain a higher minimum and post to that level, if they wished.

4. Proposed Diesel Fuel Cetane Disclosure

The Commission proposes that the Octane Rule be amended by the addition of the above definitions from the amended PMPA for "automotive

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[50] Section 1501(b) of EPA 92 amends section 201 of PMPA by adding two new subsections (17 and (18). Subsection (17) states in part that: The term "automotive fuel rating" means—

(A) the octane rating of an automotive spark-ignition engine fuel; and

(B) if provided for by the Federal Trade Commission by rule, the cetane rating of diesel fuel oils.

Subsection (18) is described in footnote 51.

[51] Subsection (18) states in part that: (A) The term "cetane rating" means a measure, as indicated by a cetane index or cetane number, of the ignition quality of diesel fuel oil and of the influence of the diesel fuel oil on combustion roughness.

(B) The term "cetane index" and the term "cetane number" have the meanings determined in accordance with the test methods set forth in the American Society for Testing and Materials standard test methods—

(i) designated D976 of D4737 in the case of cetane index: and

(ii) designated D613 in the case of cetane number (as in effect on the date of the enactment of this Act) and shall apply to any grade or type of diesel fuel oils defined in the specification of the American Society for Testing and Materials entitled "Standard Specification for Diesel Fuel Oils" designated D975 (as in effect on such date).

[52] The examples of end uses to which these three grades of diesel fuel oil are put were provided by two pamphlets provided by the American Petroleum Institute ("API"): API Publication 1572, *Questions and Answers—Diesel Fuel for Heavy-Duty Equipment*, and API Publication 1571, *Questions and Answers—Diesel Fuel for Your Car*, both third editions, May, 1988.

[53] *Feasibility of the Use of Dyes and Markers; Final Report*, Submitted to the Department of Transportation by Jack Faucett Associates, JACKFAU–92–389–6, November, 1992, p. 2.

[54] *Fuel Oil and Kerosene Sales, 1990*, Energy Information Administration, Office of Oil and Gas, Department of Energy, DOE/EIA–0535(90), Distribution Category UC–98, October, 1991, Tables 20–21.

[55] *See* 55 Fr 34120, at 34124 (Aug. 21, 1990).

[56] *Id.* at 34120. A minimum cetane level of 40 was set by section 217 of the Clean Air Act Amendments of 1990, Pub. L. 101–549 (Nov. 15, 1990), which amended section 211 of the Clean Air Act, 42 U.S.C. 7545, and will become effective October 1, 1993. The U.S. Environmental Protection Agency made final amendments to its regulations (40 C.F.R. Part 80 (1992)) to bring them into conformance with section 211 of the Clean Air Act on May 7, 1992 (57 *Fed. Reg.* 19535).

[57] *Id.* at 34130–31.

[58] *Id.* at 34148, Table N91–3.

[59] At least one company, Hess, is marketing a 45 cetane diesel fuel oil. Similarly, a recent article in the *Wall Street Journal* (June 6, 1992, p. A–5) noted that Chevron Corp., the nation's largest diesel fuel oil marketer, has developed a significantly less costly formula for meeting reduced diesel fuel aromatics content standards imposed by California. Chevron has said that the new fuel's cetane rating will be 58, which is considerably higher than the national average, estimated to be around 45.

fuel rating,"[60] "cetane rating," and "cetane index." The Commission also proposes, in substance, substituting "automotive fuel rating" for "octane rating" and "automotive fuel" or "fuel" for "gasoline" throughout the Rule to implement the alternative liquid automotive fuels directive in section 1501 of EPA 92. The Commission cannot propose more specific amendments at this time because it has not yet decided which type of rating to require to be disclosed for alternative liquid automotive fuels. For cetane labels, the Commission proposes that the size, type, location and color of the labels themselves be the same as for the currently required octane label.[61] The Commission proposes replacing the words "Minimum Octane Rating" with "Minimum Cetane Rating," and proposes that the ASTM standard identification ("ASTM D975") should replace "(R+M)/2 Method."

If this proposed amendment were promulgated, the effect would be that all the requirements of the Octane Rule would apply to diesel fuel oil and to the parts of the petroleum industry that produce and market it, cetane ratings being substituted for octane rating.[62] The Commission asks whether the resulting regulation would have benefits and costs that correspond to those of the Octane Rule.[63]

C. Disclosure Formats

For each of the four options described above for alternative liquid automotive fuels, and for the cetane ratings for diesel fuel, the Commission proposes that the disclosures be in black type against a yellow background, like the current octane postings. The Commission also proposes the same type size and type face as is specified in the current Octane Ruie. The dimensions of the label would vary as needed to accommodate the length of the various disclosures. The Commission solicits comment on these proposals.

D. Technical Amendments to the Octane Rule

Each of the proposed Octane Rule amendments is discussed briefly below. As discussed above, the Commission proposes definitions for "automotive fuel," "automotive fuel rating," "cetane rating," and "cetane index," as those definitions appear in section 1501 of EPA 92 (with minor changes).[64] The Commission proposes amending section 306.3 (Preemption) to conform with the new language in section 1502(a) of EPA 92. The remaining amendments are proposed in substance only. In addition, the Commission proposes that the name of the Octane Rule be changed to "Automotive Fuel Rating Certification and Posting Rule."

The substance of the amendments to the Octane Rule that the Commission proposes today are as follows:

a. *Section 306.0 What this rule does.*—Change the term "octane rating" to "automotive fuel rating."

b. *Section 306.1 Who is covered.*—Substitute the term "automotive fuel" for the term "gasoline," and add EPA 92's definitions of the terms "automotive fuel" and "automotive fuel rating."

c. *Section 306.3 Preemption.*—Revise this section to conform with section 1502(a) of EPA 92.

d. *Section 306.4 Octane rating.*—Substitute the terms "automotive fuel" and "automotive fuel rating" for the terms "gasoline" and "octane rating." Change the name and number of the ASTM specifications for gasoline.

e. *Section 306.5 Certification.*—Substitute the terms "automotive fuel" and "automotive fuel rating" for the terms "gasoline" and "octane rating."

f. *Section 306.6 Recordkeeping.*—Substitute the term "automotive fuel rating" for the term "octane rating."

g. *Section 306.7 Certification.*—Substitute the terms "automotive fuel" and "automotive fuel rating" for the terms "gasoline" and "octane rating."

h. *Section 306.8 Recordkeeping.*—Substitute the term "automotive fuel rating" for the term "octane rating."

i. *Section 306.9 Octane Posting.*—Substitute the terms "automotive fuel rating" and "automotive fuel" for the terms "octane rating" and "gasoline."

j. *Section 306.10 Recordkeeping.*—Substitute the term "automotive fuel rating" for the term "octane rating."

k. *Section 306.11 Labels.*—This section will be modified for the final rule depending on what automotive fuel ratings the Commission determines to require be certified and posted.

Section A—Regulatory Flexibility Act

This Notice does not contain a regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 603–604) because, based on currently available information, the Commission believes that the amendments, if promulgated, would not have "a significant economic impact on a substantial number of small entities." (5 U.S.C. 605). The amendments, if enacted, would have a minimal effect on all business entities within the affected industries, regardless of their size. The Commission's staff has been informed by members of the alternative liquid fuel and diesel fuel production and marketing industries that very few companies produce and distribute these fuels. Of those that do, most are not "small entities" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR part 121 (1992).

Although there are some "small entities" in the retailer sectors of those industries, the amendments proposed today would likely have only a minimal impact on these small entities. Any such impact would likely consist of some additional recordkeeping and of retailers placing labels on dispensers (to the extent this is not done by distributors for their retailer customers). The impact on small entities appears to be *de minimis* and not, therefore, significant.

Because the amendments are not likely to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and the rules implementing it, the Commission concludes, based on the information presently available, that a regulatory analysis is not now necessary. The Commission requests information, however, on whether the proposed amendments would have a significant impact and substantial number of small entities. After reviewing any comments received on this subject, the Commission will decide whether the preparation of a final Regulatory Flexibility Analysis is appropriate.

In light of the above, the Commission certifies, under Section 605 of the

[60] The definition should be adopted without the words, "if provided for by the Federal Trade Commission by rule," in subsection (17)(B) of amended section 201 of PMPA.

[61] Virginia's cetane posting law requires labels with yellow type against a black background (the reverse of the octane label). This would be preempted by the proposed amendments.

[62] The requirements of the Octane Rule are detailed in Part II, B, above.

[63] For example, the American Petroleum Institute ("API") stated, in prepared testimony for hearings in June, 1991, before the Energy and Power Subcommittee of the House Committee on Energy and Commerce on HR 2578 (an earlier bill granting the Commission authority to require cetane certification and posting), that:

> HR 2578 also grants the FTC the authority, if it determines that it is necessary, to require the posting of cetane rating at diesel pumps. API is not aware of any misleading or misrepresentation of cetane information in the retail market. Most diesel fuel is consumed by over-the-road heavy trucks where fuel supply contracts and agreements should prevent misrepresentation. In addition, unlike engines that run on gasoline, diesel engines are not as sensitive to changes in cetane quality, provided some minimum level of combustion quality is met. A cetane number above the minimum requirement does not necessarily improve anti-knock performance.

[64] See fn. 60, above.

Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments proposed today would not, if promulgated, have a significant impact to a substantial number of small entities.

Section B—Paperwork Reduction Act

The proposed amendments would require refiners, producers, importers, distributors and retailers of alternative liquid automotive fuels and diesel fuel oil to keep, for one year, records of any delivery tickets, letters of certification or tests upon which they based the automotive fuel ratings that they certified or posted. These records would have to be open for inspection by Commission and Environmental Protection Agency ("EPA") staff members or by persons authorized by the Commission or EPA. These requirements, therefore, would, if promulgated, involve the "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB"), 5 CFR 1320.7(c)(1)(1992), and the Commission is required to submit the proposed requirements to OMB for clearance. 5 CFR 1320.13.

The Commission is therefore requesting that OMB approve the "collection of information" requirements included in these proposed amendments under the Paperwork Reduction Act, 44 U.S.C. 3507 (1988). On the basis of available industry figures, the Commission estimates that, under the proposed amendments, a total of approximately 85,000 refiners, producers, importers, distributors and retailers could possibly be affected by the recordkeeping requirements described above. Certifications are usually noted on documents (shipping receipts, etc.) already in use, or are accomplished with a one-time letter of certification. In the case of refiners and importers, test records are typically retained for a period of one year.

In the past, the Commission estimated that the information collection burden associated with the Octane Rule's recordkeeping requirements was 20,000 hours per year (six minutes per year times 200,000 industry members).[65] This estimate was small because the records at issue were likely to be retained by the industry during the normal course of business, and the "burden," for OMB purposes, is defined to exclude effort that would be expended in any event.[66]

The Commission believes that approximately 165,000 industry members currently are covered by the Rule (the drop in total industry members primarily being the result of closings by retail stations over the intervening years). The Commission believes that approximately 85,000 industry members would be affected by the proposed amendments. Of these, the Commission believes that approximately 60,000 currently sell gasoline (as well as some alternative fuels) and thus are already covered by the existing Rule. For these 60,000 industry members, the Commission believes that an estimate of two additional burden minutes per member per year would cover the effort associated with coverage of the additional fuels. The Commission estimates that approximately 25,000 additional industry members not currently covered by the Octane Rule would be covered by the proposed amendments because they sell only alternative fuels. These 25,000 would be affected by the Rule's recordkeeping requirements for the first time under the proposed amendments. The Commission believes that the original estimate of six minutes per year each would be valid for these 25,000 additional industry members.

Based on these figures, the Commission estimates that the *revised current* total yearly burden of the Rule is 16,500 hours (six minutes per year times 165,000 industry members). The Commission estimates that the total *additional* yearly burden that would be imposed by the proposed amendments would be 4,500 hours (two minutes per year times 60,000 industry members, plus six minutes per year times 25,000 industry members). Consequently, the Commission estimates that the total burden associated with complying with the Rule's recordkeeping requirements, if amended as proposed, would be a total of approximately 21,000 hours per year for all affected industry members.

To ensure the accuracy of these burden estimates, however, the Commission solicits comment on the paperwork burden that the proposed requirements may impose, to ensure that no additional burden has been overlooked.

Section C—Invitation to Comment

Interested persons are hereby notified that they may comment on any issue of fact, law or policy that may bear upon the proposed rules. Although the Commission welcomes comments on any aspect of the proposed rules, the Commission is particularly interested in comments on the questions in Section D, below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed rules being discussed.

The Commission requests that commenters provide representative factual data. Individual firms' experiences are relevant to the extent they typify industry experience, in general, or that of similar-sized firms. Comments opposing the proposed rules or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rules. Comments should be supported by a full discussion of all the relevant facts and/or be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting these proposed rules as final rules, consideration will be given to any written comments timely submitted to the Presiding Officer and oral comments on the record of the hearing, if one is held. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

Section D—Questions and Issues

Interested persons are invited to address any questions of fact, law or policy that they believe may bear upon the proposed amendments to the Commission's Octane Rule to bring alternative liquid automotive fuels and diesel fuel oil under the Rule's coverage. The questions concerning issues upon which the Commission particularly desires comment, however, are listed below for the public's convenience.

1. Alternative Automotive Fuels

(A) Section 406 of EPA 92 grants the Commission the authority to establish

[65] *See, e.g.*, Request for OMB Review of January, 1984, and Accompanying Supporting Statement for Information Collection Provisions of the Octane Certification and Posting Rule.

[66] Section 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.7(b)(1), states:

> The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.*, in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

labeling requirements for the gaseous alternative fuels compressed natural gas (CNG) and hydrogen.

To obtain useful information for the future section 406 rulemaking proceeding, the Commission asks what the labeling requirements for such fuels should be. The Commission also requests any general information about these fuels and any other alternative automotive fuels that may be useful to the Commission in conducting either the instant proceeding or the future proceeding to be initiated under section 406 of EPA 92.

(B) The Commission seeks comment on whether liquid automotive fuels other than those discussed in this proceeding exist, and, if so, what they are, and whether this proceeding should be expanded to include labeling requirements for them.

(C) *Octane Rating Option.* By modifying the ASTM method for determining the octane ratings of gasoline, in terms of both procedure technique and necessary test engine modifications, DOE's National Renewable Energy Laboratory obtained the following octane ratings for the alternative fuels:

Methanol	98
Ethanol	99
M–85	95
E–85	96
LPG	104
LNG	120

(i) The Commission seeks comment on whether it should require the certification and posting of DOE's laboratory-determined ratings, whether these are the appropriate ratings for each fuel, and, if not, what they should be.

(ii) Is octane rating a relevant factor or crucial performance characteristic of the alternative liquid automotive fuels? Would posted octane ratings of alternative liquid automotive fuels be useful information for consumers trying to make alternative fuel purchasing decisions?

(iii) For each fuel other than gasoline and diesel, what factors will affect the octane rating (*e.g.*, gasoline content, type of impurity, *etc.*)?

(iv) For each fuel other than gasoline and diesel, will it be more costly to produce fuels with higher octane ratings? Why or why not?

(v) Have other rating systems been developed for the alternative fuels, and, if so, what are they and how are such ratings determined?

(vi) Should the Commission describe, in a final rule, the test method and procedure that was used by DOE's laboratory to determine the above-listed ratings?

(vii) What are the factors to consider in developing a standard method of measuring octane for each of the fuels considered?

(viii) Would posting the octane ratings of alternative fuels be likely to lead consumers into the erroneous perception that higher octane in all fuels, including gasoline, will result in more overall benefits to their vehicles than the reduction of engine knock?

(ix) The Commission also seeks comment on whether it should require the certification and posting of specific octane ratings for the alternative fuels on an interim basis until such time as the Commission, in consultation with ASTM and DOE, determines that other more appropriate ratings exist for the alternative fuels.

(x) Is the posting of octane ratings necessary for the alternative fuels, would such posting promote the use or availability of these fuels and flexible fueled vehicles? Would the absence of a rating hinder their usage?

(D) *Fuel Composition Option.* One disclosure option proposed by the Commission for alternative liquid automotive fuels is disclosure of the minimum propane content of LPG and the minimum methane content of LNG. The Commission also proposes a requirement to disclose a range of the hydrocarbon content of the other alternative fuels (which are alcohol fuels).

(i) The Commission seeks comment on how such minimum contents, or range of contents, could be determined, to enable the Commission to specify the methodology in a final rule if it selects this option.

(ii) Will consumers need to assess the cold start capability of alcohol fuels or will the standard vehicle equipment include a device that allows efficient cold start regardless of conditions?

(iii) Is there some measure, or index, other than hydrocarbon content, that would be a better indicator of cold start capability?

(iv) If hydrocarbon content disclosure is required, should there be an option of disclosing a range or a single number? If a single number is reported, would there be standard tolerances?

(v) If hydrocarbon content disclosure is required, should the Commission also require disclosure of the minimum alcohol content? Should the Commission require only the disclosure of the minimum alcohol content?

(vi) The Commission seeks comment on the following labels, each of which is pertinent to a particular alternative fuel, and asks whether they would satisfy EPA 92's intent:

1. "Liquefied Propane Gas/Minimum _____% Propane"
2. "Liquefied Natural Gas/Minimum _____% Methane"
3. "M–100 Fuel Ethanol/X%-Y% Hydrocarbons"
4. "E–100 Fuel Ethanol/X%-Y% Hydrocarbons"
5. "M–85 Fuel Methanol/X%-Y% Hydrocarbons"
6. "M–85 Fuel Ethanol/X%-Y% Hydrocarbons"

The Commission solicits comment on the advantages and disadvantages of such a disclosure, including whether multiple grades of a particular alternative fuel are likely to be found at a refueling station or different stations in the same area.

(E) *Heating Value (Energy Content) Option.* The Commission proposes requiring disclosure of the comparative values for the alternative fuels listed in columns (B) and (C) in the chart below. The numbers were calculated using the BTU values in the right-hand column of the chart, which were developed by the Interagency Commission on Alternative Motor Fuels and DOE. The Commission proposes for comment the following two alternative label formats:

(1) You will need about *(B)* gallons of *(A)* for every gallon of gasoline you usually use. [Metric equivalents may be included.]

(2) One gallon of *(A)* will take you about *(C)* as far as you can go on 1 gallon of gasoline. [Metric equivalents may be included.]

HEATING VALUES CHART

[This chart would not appear on labels]

(A)	(B)	(C)	Btu/gallon
LPG	1.25	80%	89,253
Methanol	2.00	50%	56,560
Ethanol	1.50	65%	75,670
M–85	1.75	60%	65,196
E–85	1.40	70%	81,439
LNG	1.40	70%	83,700
Gasoline	.....	.....	114,132

(i) The Commission seeks comment on whether there is agreement that these BTU values are accurate and appropriate.

(ii) For each fuel other than gasoline and diesel, how easily is BTU content measured? Is it feasible to provide BTU content information that is specific to a particular batch of fuel rather than based on an average for that type of fuel? What factors would cause the BTU content of a particular batch of fuel to differ from the average for that fuel? How great would the difference be?

(iii) The Commission seeks comment on the wording of the proposed labels,

whether other wording would be better, and which of the options presented for comment is more appropriate.

(iv) The Commission seeks comment on whether vehicle manufacturers may provide vehicles with gauges that show how many miles the vehicle can travel before the fuel tank is empty. Would the availability of such gauges make these proposed labels unnecessary?

(F) *Fuel Descriptor Option.* The Commission also proposes that the alternative fuel pumps identify the fuels for consumers. The fuel descriptors the Commission proposes are based on the terms developed by and included in the California Air Resources Board's proposed specifications for the alternative fuels.[67] Those terms are:

"M–100 fuel methanol;"
"M–85 fuel methanol;"
"E–100 fuel ethanol;"
"E–85 fuel ethanol;"
"Liquefied Propane Gas;" and,
"Liquefied Natural Gas."

(i) The Commission proposes that, for sellers to post these descriptors, the fuels would have to meet technical specifications, and the Commission asks what specifications would be appropriate for each fuel.

(ii) Should the Commission adopt, as an interim measure, specifications analogous to those proposed by California until ASTM, or DOE, develops and approves alternative fuel specifications?

(iii) To the extent automobile manufacturers will specify a type of fuel to be used in a car, what assumptions are the manufacturers making about the composition or performance characteristics of that fuel?

(iv) For each fuel other than gasoline or diesel, how sensitive are automobile engines likely to be to impurities in the fuel(s)? Will engines be standardized or will there be engines with various sensitivity levels?

(v) For each fuel other than gasoline or diesel, does fuel composition have direct implications for octane rating, cold start capability, or energy content? Why or why not? If so, would a description of these implications be most efficiently provided and useful to consumers if made by the vehicle manufacturer or by the fuel retailer?

(vi) Are there appropriate tests for the relevant contents? If so, what are they? If not, what should the interim policy be?

(vii) Would comparative content disclosures for alternative fuels be useful to consumers? Is there reason to consider more than one class of LNG and LPG fuels? *I.e.*, will consumers wish to purchase various formulations of these fuels?

(viii) What are the relative costs of alternative compositions of LPG and LNG?

(ix) Among the specifications developed by the State of California for each fuel, which will be important for consumer decision-making? (For example, "luminosity" is probably not important to consumers.) Which is (are) the most important in this regard?

(G) For each of the four options described above, the Commission proposes that the disclosures be in black type against a yellow background, like the current octane labels. The Commission also proposes the same type size and type face as are specified in the current Octane Rule. The dimensions of the label would vary as needed to accommodate the length of the various disclosures.

(i) The Commission solicits comment on these proposals, and on whether other formats would be more desirable.

(ii) The Commission also asks whether there are any dispenser size, dispenser surface or other issues that should be addressed in specifying a dispenser rating disclosure for these fuels.

(iii) Are there other disclosures specified by law, either Federal, state or local, that would or could affect the placement of disclosures under section 1501 of EPA 92, or that may be preempted by the requirements being proposed today?

2. Diesel Fuel Oil

(A)(i) If there were to be a requirement that cetane ratings for diesel fuel oil be certified and posted (as octane ratings are currently posted for gasoline), should it apply to Grade 1–D diesel, Grade 2–D diesel and Grade 4–D diesel? If so, why? If not, why not? Should it apply to some, but not all, types of diesel fuel oil? If so, to which types should it apply?

(ii) Are there other types of diesel fuel oil that should be subject to cetane certification and posting requirements? If so, what are they?

(B)(i) Would certification of the cetane rating of diesel fuel oil from refiner or importer down through the chain of distribution be useful?

(ii) Would the disclosure, on retail diesel fuel oil dispensers, of the cetane rating of diesel fuel oil be useful?

(iii) To whom would this information be useful?

(iv) How would the information be put to use?

(v) Are consumers willing to pay more for higher cetane diesel fuel? Why, or why not?

(C) Should the Commission require a posting that the diesel fuel has a minimum cetane of 40 after the Clean Air Act Amendments of 1990 requiring this go into effect on October 1, 1993?

(D)(i) What percentage of the diesel fuel sold in the United States is used for vehicle use, and what percentage for other uses?

(ii) At what point in the chain of distribution is the determination made that a particular quantity of diesel fuel oil is to be dedicated for vehicle use?

(iii) Does the cetane rating of a particular quantity of diesel fuel oil stay relatively constant through the chain of distribution?

(iv) If not, what factors affect the cetane rating?

(E)(i) Is there a range of cetane ratings for the diesel fuel oil for vehicle use that is available at retail stations?

(ii) If so, what is the range of cetane ratings?

(iii) Would it be useful to require disclosure of cetane ratings in two, three or four point increments, instead of one point increments?

(iv) If there are different cetane ratings, are the ranges of ratings for Grade 1–D, Grade 2–D and Grade 4–D diesel fuels the same?

(F)(i) If diesel fuel oil for vehicle use is available with different cetane ratings, what factors determine what the cetane rating will be?

(ii) Does it cost more to produce higher cetane diesel fuel? Why, or why not?

(iii) How often do the cetane ratings change at the retail level for diesel fuel oil for vehicle use?

(iv) By how many cetane points do they change?

(G)(i) Is more than one grade or type of diesel fuel oil for vehicle use offered at the same retail station?

(ii) If so, how many grades, or types, are offered?

(iii) Do these different grades or types have different cetane ratings?

(H) The Commission proposes that posted cetane disclosures be in black type against a yellow background, like the current octane labels, and in the same size and type face as are specified in the current Octane Rule. The Commission also proposes replacing the words "Minimum Octane Rating" with "Minimum Cetane Rating," and (R+M)/2 Method" with the ASTM standard identification "ASTM D975". The Commission seeks comment on this proposed cetane label format.

(I)(i) What burden, if any, would be associated with determining the cetane rating of diesel fuel oil for vehicle use? Who would incur those burdens?

(ii) What burden, if any, would be associated with certifying the cetane

[67] But, see fn. 48, above.

rating of diesel fuel oil for vehicle use, and who would incur those burdens?

(iii) What burdens, if any, would be associated with posting the cetane rating of diesel fuel oil for vehicle use at the retail level, and who would incur those burdens?

(iv) How common is the practice of posting cetane ratings for diesel fuel oil for vehicle use?

3. Regulatory Flexibility Act

The Commission has concluded, based on currently available information, that the proposed amendments would not have a significant economic impact on a substantial number of small entities in the alternative liquid automotive fuel industry and the diesel fuel oil industry. See Section A, Regulatory Flexibility Act, above. The Commission requests information about these industries, including the number and size of companies that produce, import and/or market (including the retail level) alternative liquid automotive fuels and diesel fuel oil. Would the proposed amendments, if promulgated, have a significant economic impact on a substantial number of small entities in these industries?

4. Paperwork Reduction Act

The Commission has concluded that the recordkeeping burden associated with these proposed amendments is minimal. See Section B, Paperwork Reduction Act, above. To ensure that no additional burden has been overlooked, however, the Commission requests public comment on the extent of the paperwork burden that the proposed requirements applying to alternative liquid automotive fuels and diesel fuel oil may impose, especially in terms of how many hours per year would be expended by industry members.

5. Regulatory Review

(A) Has the Octane Rule had a significant economic impact (costs or benefits) on entities subject to its requirements? Will the proposed amendments have a significant economic impact on entities subject to their requirements?

(B) is there a continuing need for the Octane Rule as currently promulgated?

(C) What burdens does adherence with the Octane Rule place on entities subject to its requirements? What burdens will be proposed amendments place on entities subject to their requirements?

(D) What changes should be made to the Octane Rule to minimize the economic effect on such entities? How can the proposed amendments be designed to minimize the economic effect on such entities?

(E) Does the Octane Rule overlap or conflict with other federal, state, or local government laws or regulations? Are there other federal, state, or local government laws or regulations that overlap or conflict with the proposed amendments?

(F) Have technology or economic conditions changed since the Octane Rule was issued, and, if so, what effect do the changes have on the rule? What effect do current technology or economic conditions have on the proposed amendments?

6. Metric Usage

(A) The Rule specifies dimensions for the Octane label in inches and picas. See 306.11(b). The Commission solicits comment on whether to specify the dimensions in metric or both metric and inches, or to leave the present specifications unchanged.

(B) One of the options proposed as a disclosure for alternative liquid automotive fuels is to give the equivalent mileage for gasoline and the alternative liquid automotive fuel being dispensed.[66] The Commission solicits comment on whether to require these disclosures to be made in gallons and miles, in metric, or in dual terms.

(C) Are the companies that would be affected by the proposed amendments, if promulgated, sophisticated enough in the use of measurement systems that requiring the metric or dual disclosures discussed above would not be burdensome?

(D) Are consumers knowledgeable enough about metric measurement that metric or dual disclosures would be appropriate?

(E) Would the requirement of metric or dual disclosures be impractical or likely to cause significant inefficiencies of loss of markets to United States firms?

(F) Are there other areas of the Rule that could be affected by this requirement?

Section E—Public Hearings

Persons desiring a public hearing on the proposed amendments should notify the Presiding Officer by no later than April 16, 1993. If there is interest in a hearing, it will take place in room 532 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, Northwest, Washington, DC, at a time and date that will be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify will be required to submit to the Presiding Officer a complete statement in advance. This will be entered into the record in full. However, as a general rule, oral statements should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses. Further instructions to witnesses will be contained in the notice announcing the hearing.

Section F—Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with Henry B. Cabell, the Presiding Officer, who is responsible for the orderly conduct of the proceeding and who shall have all powers necessary to that end, including the authority to rule on all motions or petitions filed.

Applications for review of a ruling will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

Section G—Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), 16 CFR 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. *Written communications*, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. *Oral communications*, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the

[66] See Part III, A, 2, d, above.

public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 306

Energy conservation, Gasoline, Labeling, Reporting and recordkeeping requirements.

Authority

The authority citation for Part 306 is revised to read as follows:

Authority: Sections 1501(d) and 1502 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–7131 Filed 3–25–93; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Octane Certification and Posting

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501–35180) for clearance of information collection requirements contained in proposed amendments to the Commission's Octane Posting and Certification Rule.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in proposed amendments to the Commission's Octane Posting and Certification Rule, 16 CFR part 306.

The Octane Rule establishes standard procedures for determining, certifying and posting the octane rating of automotive gasoline intended for sale to consumers. The proposed amendments would establish, for liquid alternative fuels, certification and labeling requirements like those that exist now for gasoline. The amendments are designed to assist consumers in making informed purchasing choices among such fuels. The proposed amendments require refiners, producers, importers, distributors and retailers to keep, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certified or posted. These records must be open for inspection by Commission and Environmental Protection Agency ("EPA") staff members or by persons authorized by the Commission or EPA.

Estimate of Information Collection Burden

Based on available industry figures, staff estimates that a total of approximately 85,000 refiners, producers, importers, distributors and retailers could possibly be affected by the proposed recordkeeping requirements. Certifications are usually noted on documents (shipping receipts, etc.) already in use, or are accomplished with a one-time letter of certification. In the case of refiners and importers, test records are typically retained for a period of one year.

In the past, the recordkeeping requirements for octane ratings were estimated to be 20,000 hours. This was based on an estimated average of six minutes per year for each industry member, then estimated to total 200,000. This six minute per member estimate was small because the records at issue were likely to be retained by industry members in any event during the normal course of business, and "burden" for OMB purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. *See* 5 CFR § 1320.7(b)(1).

BCP staff believes that approximately 165,000 industry members currently are covered by the Rule (the drop in total industry members is primarily the result of retail station closings during the past several years). Staff believes that approximately 85,000 industry members would be affected by the proposed amendments, of which approximately 60,000 currently sell gasoline (as well as some alternative fuels) and thus are already covered by the existing rule. For those 60,000 industry members, staff believes that an estimate of two additional burden minutes per member will cover the effort associated with the additional fuels. Staff estimates that approximately 25,000 additional industry members not currently covered by the Octane Rule would be covered by the proposed amendments because they sell only alternative fuels. Those 25,000 will incur recordkeeping requirements under the proposed amendments. Staff believes that the original six minute estimate per year each would be valid for these 25,000 additional industry members.

Based on these figures, staff estimates that the current total yearly burden of the Rule is 16,500 hours (six minutes per year times 165,000 industry members). Staff estimates that the total additional yearly burden imposed by the proposed amendments would be 4,500 hours (two minutes per year times 60,000 industry members, plus six minutes per year times 25,000 industry members) for a new burden total of 21,000 hours.

DATES: Comments on this application must be submitted on or before April 26, 1993.

ADDRESS: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB, including the application, may be obtained from the Public Reference Section, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine W. Crockett, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 326–2453.

Donald S. Clark,

Secretary.

[FR Doc. 93–7132 Filed 3–25–93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 57

Friday, March 26, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22
15415–15750.....23
15751–16102.....24
16103–16344.....25
16345–16480.....26

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305.....16375

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12193 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12800 (See DOL final rule of March 15).....15402
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12836 (See DOL final rule of March 15).....15402
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13189
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413
6537.....15751
6538.....15753

Administrative Orders:
Presidential Determinations:
No. 93–15 of February 27, 1993.....13183
No. 93–16 of March 20, 1993.....16345
Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
297.....16446
307.....12145
432.....13191
532.....12146, 13193, 13194, 15415
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332, 15416, 15775
1421.....14495
1427.....12332, 15261, 15755
1434.....14495
1464.....11960
1493.....11786, 13684, 15901
1540.....16103
1703.....13194
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071, 15417
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130
58.....13130
59.....13130
61.....13130

58.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1435.....16126
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174, 15901
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
26.....15810
50.....12339, 15303, 16377
52.....16377
60.....12342
100.....16377
110.....14344
810.....13427, 15441
834.....16268
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
607.....16104
614.....11792
618.....16104
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
108.....15756
121.....12334

14 CFR

25.....12537
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515, 15757, 15758, 15760, 16105, 16107, 16109, 16110, 16113, 16115, 16118, 16347
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264, 15762, 15763
93.....12128
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450, 15813, 16137, 16377
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118
121.....15730
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

4.....15763
5.....15763
305.....15086
1030.....12335
1116.....16119

Proposed Rules:

18.....16139
305.....12818
306.....16464
308.....13370
1204.....15815

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
230.....16141
239.....16141
240.....11804, 11806, 16151
250.....13719
259.....13719
274.....16141

18 CFR

2.....15418
11.....15765
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

Ch. I.....15816
284.....14530, 15311

19 CFR

4.....12538, 13195
19.....15770
111.....15770
112.....15770
122.....15770
141.....16349
146.....15770
178.....16349

20 CFR

Proposed Rules:

209.....11811
211.....11811
229.....16155
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

Ch. I.....15816
450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
215.....15773
234.....13534, 13950
236.....13007, 15773
240.....13534
570.....13686
582.....13884
583.....13870
700.....14509
813.....15773
882.....13828
905.....13916, 15773
913.....15773
968.....13916
3500.....13705

25 CFR

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274, 16349
52.....14517
602.....13409, 13413

Proposed Rules:

1.....14531, 15312, 15313, 15818, 15819
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964

Proposed Rules:

650.....11814

29 CFR

470.....15402
1910.....15089
2619.....13706
2676.....13707

Proposed Rules:

103.....15314
825.....13394
1910.....15526
2619.....15315
2676.....15315
2700.....12158

30 CFR

917.....16350
920.....15275
948.....16353

Proposed Rules:

56.....14492
57.....14492
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
914.....16379, 16381
920.....16383, 16384, 16386
935.....15315, 16388
938.....15456, 16389
950.....15318, 15319

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
988.....13007

33 CFR

1.....15228, 15901
100.....13214, 16121, 16357
110.....12539
117.....12540, 15419, 15420, 15421, 16122
154.....13550
155.....13708
165.....14151, 15089, 15775

Proposed Rules:

117.....12568
165.....15821, 15822
168.....16391

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
600.....13335, 15523
668.....14152
682.....13335

Proposed Rules:

50.....11924
232.....15748
649.....11928, 15824
674.....13356
682.....13356

36 CFR

Proposed Rules:

242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174, 16358, 16359

39 CFR

111.....13551

Proposed Rules:

3001.....12198, 16392

40 CFR

50.....13008, 15278, 15281, 15282
52.....11967, 14153, 15277, 15422, 15431
55.....14157
72.....15634
73.....15634
75.....15634
80.....13413, 14476, 16002
81.....12541, 15422, 15776
86.....13413, 15781
88.....11888
180.....14314, 14316, 15802, 15803, 15804, 16094
261.....15284
268.....14317
271.....12174, 14319, 14321, 15806
300.....12142, 15287
435.....12454
712.....13556
716.....13556
761.....15435, 15808
763.....15808

Proposed Rules:

Ch. 1.....12199, 12352, 13571, 13730
51.....13836
52.....12006, 12913, 12914, 13230, 13572, 13575, 14194, 15824
61.....15457
68.....13174
69.....13579
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
180.....12199, 12200, 13234, 13236, 13238, 13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
761.....12352, 13128

41 CFR

Ch. 301.....12890
301–7.....12890
302–11.....15436

43 CFR

Public Land Orders:

86.....11816
6958.....11968
6959.....14323

Proposed Rules:

3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11968, 14159
65.....14323, 15091
67.....14325

Proposed Rules:

67.....14350

45 CFR

400.....11793
1303.....13019
1611.....12335

46 CFR

10.....15228, 15901
12.....15228, 15901
15.....13360
25.....13364
552.....13414

Proposed Rules:

31.....15740
32.....15740
67.....12352

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795, 16360
5.....14328
13.....12632
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
73.....12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440
74.....11795
76.....11970, 11972
90.....12176, 12177

Proposed Rules:

Ch. I.....12915, 13041, 14367, 15120, 15461
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535, 16163
61.....13435
64.....12204, 13435, 14371
65.....16163
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436, 13437, 15321, 15461, 15462
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140

49 CFR

1.....12543
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463
582.....12545
591.....12905
1004.....16124
1007.....15290

Proposed Rules:

23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316
180.....12316
195.....12213
571.....12921, 13042, 13243, 13424, 15132
Ch. VI.....15816
613.....12064, 12084
614.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853, 12864, 14169, 14248, 14330
20.....15093
227.....16369
611.....14170, 16446
625.....13560
641.....13560, 16371
646.....11979
652.....14340
663.....11984, 16124
672.....11985, 11986, 13214, 13561, 16372, 16373
674.....12336
675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291, 16374, 16446
685.....14170

Proposed Rules:

17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541, 15828, 16164
100.....14350
625.....12017, 15463
641.....12018, 15132
646.....13732
663.....14543, 14549

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 25, 1993

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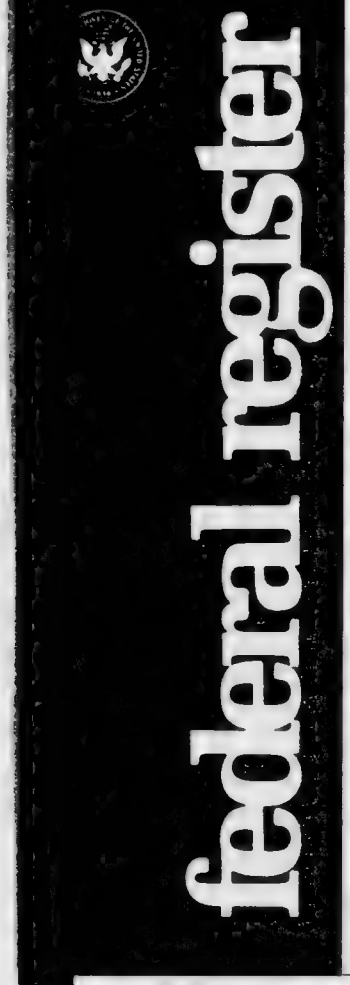

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103d Congress, 1st Session, 1993

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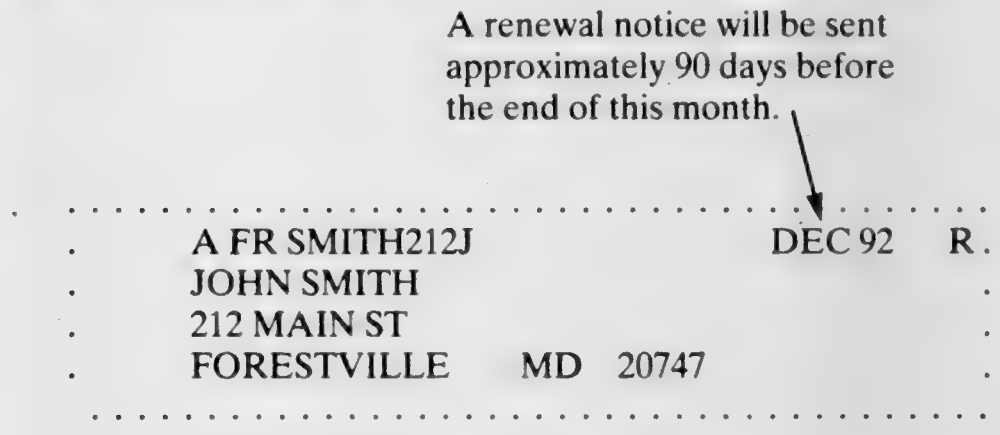

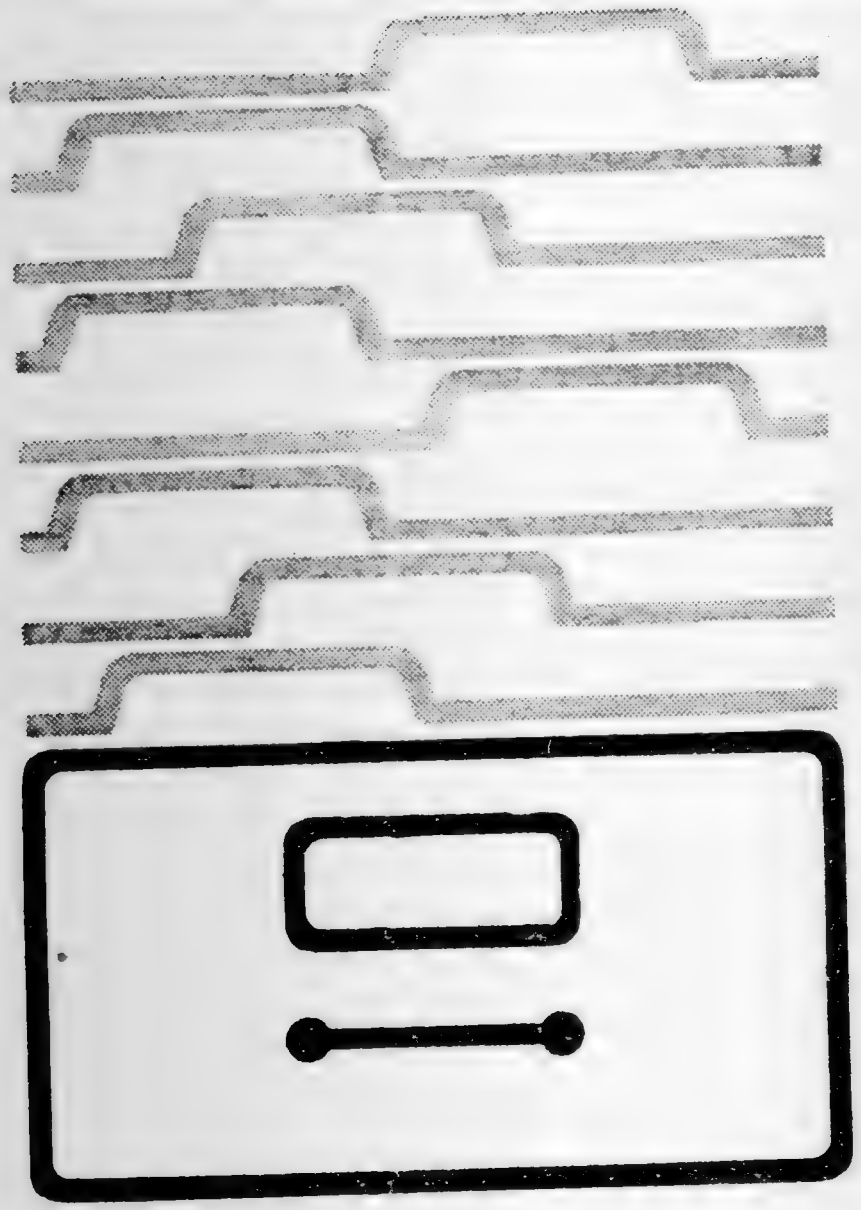

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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Monday
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Contents

Federal Register

Vol. 58, No. 58

Monday, March 29, 1993

Agency for Health Care Policy and Research
NOTICES
Organization, functions, and authority delegations, 16534

Agency for International Development
NOTICES
Committees; establishment, renewal, termination, etc.:
International Food and Agriculture Development and Economic Cooperation Board, 16551

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Animal damage control program, 16520
Veterinary services program, 16520

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
HIV prevention project for minority community-based organizations; preapplication videoconference workshop, 16535
Meetings:
HIV counseling standards, guidelines, and options; consultation, 16535
Vital and Health Statistics National Committee, 16536

Coast Guard
RULES
Drawbridge operations:
Delaware, 16499
NOTICES
Meetings:
New York Harbor Traffic Management Advisory Committee; correction, 16569

Commerce Department
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 16521

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 16524
Indonesia, 16525

Comptroller of the Currency
RULES
Intangible assets; capital treatment, 16481

Defense Department
RULES
Contracting:
Recoupment of nonrecurring costs on sales of U.S. items, 16497
NOTICES
Defense Base Closure and Realignment Commission; investigative hearings, 16526
Meetings:
Electron Devices Advisory Group, 16526

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 16526

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Lake County, ID, 16526

Environmental Protection Agency
PROPOSED RULES
Hazardous waste:
Solid waste and hazardous waste recycling; definition; meeting, 16517

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Gulfstream Aerospace Corp. G-1159 airplanes, 16486
IFR altitudes, 16489
Jet routes, 16488
VOR Federal airways, 16488
PROPOSED RULES
Air carrier certification and operations:
Protective breathing equipment, 16584
Airworthiness directives:
McDonnell Douglas, 16505
Short Brothers, PLC, 16507
Transition areas, 16508
NOTICES
Airport noise effects; report to Congress, 16569
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 16572, 16573, 16574
Environmental statements; availability, etc.:
Newark International Airport, NJ, 16576
Exemption petitions; summary and disposition, 16576
Meetings:
Aviation Rulemaking Advisory Committee, 16577
Informal airspace meetings—
Florida, 16578
Organization, functions, and authority delegations:
McGrath, AK, 16578
Passenger facility charges; applications, etc.:
Philadelphia International Airport, PA, 16578

Federal Communications Commission
RULES
Radio services, special:
Maritime services—
Vessel Traffic Services systems list; San Francisco, CA, addition, 16503
Radio stations; table of assignments:
Arkansas, 16503

Illinois, 16502
Kentucky et al., 16502
PROPOSED RULES
Radio stations; table of assignments:
New Mexico, 16518
South Carolina, 16518
NOTICES
Agency information collection activities under OMB review, 16533
Meetings:
Advanced Television Service Advisory Committee, 16533
Meetings; Sunshine Act, 16581

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Illinois et al., 16500
NOTICES
Agency information collection activities under OMB review, 16533
Meetings:
National Fire Academy Board of Visitors, 16534

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Western Resources, Inc., et al., 16527
Natural gas certificate filings:
Natural Gas Pipeline Co. of America et al., 16529
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 16532
Century Power Corp., 16532
Northern Natural Gas Co., 16532
Tennessee Gas Pipeline Co., 16532

Food and Drug Administration
NOTICES
Toxicological principles for safety assessment of direct food additives and color additives used in food; availability, 16536

General Services Administration
NOTICES
Meetings:
African Burial Ground Steering Committee, 16534

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Traditional Indian housing development program, 16546
Urban revitalization demonstration program, 16590

Interior Department
See Land Management Bureau

Internal Revenue Service
RULES
Income taxes:
Cash in excess of $10,000 received in trade or business: reporting requirements; correction, 16496

International Development Cooperation Agency
See Agency for International Development

International Trade Commission
NOTICES
Meetings; Sunshine Act, 16581

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Connecticut Rail Systems, Inc., 16552

Justice Department
NOTICES
Agency information collection activities under OMB review, 16552
Pollution control; consent judgments:
Boliden Metech, Inc., 16552

Labor Department
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Immigration Nursing Relief Advisory Committee, 16553

Land Management Bureau
NOTICES
Alaska Native claims selection:
Unalakleet Native Corp., 16550
Realty actions; sales, leases, etc.:
Arizona, 16550
Arizona; correction, 16551

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Underground coal mines—
Machinery and equipment operation and maintenance, 16517
NOTICES
Safety standard petitions:
Consolidation Coal Co. et al., 16553

National Council on Disability
NOTICES
Meetings; Sunshine Act, 16581

National Indian Gaming Commission
RULES
Indian Gaming Regulatory Act:
Editorial amendments, 16493
Reporting and recordkeeping requirements, 16495

National Institutes of Health
NOTICES
Meetings:
Alternative Medicine Ad Hoc Panel, 16537

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Summer flounder, 16519

Marine mammals:
Whales, dolphins, porpoises, seals, and sea lions; guidelines for approach by people, vessels, and aircraft; withdrawn, 16519
NOTICES
Permits:
Endangered and threatened species, 16522, 16524

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Illinois Power Co. et al., 16555
Indiana Michigan Power Co., 16555
Portland General Electric Co., 16556
Petitions; Director's decisions:
Florida Power & Light Co., 16558
Applications, hearings, determinations, etc.:
Western Technologies, Inc., 16558

Occupational Safety and Health Administration
RULES
Safety and health standards:
Explosives and blasting agents; CFR correction, 16496
PROPOSED RULES
Construction safety and health standards:
Fall protection, 16515
Scaffolds, 16509

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 16559

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Ithaca, NY, 16559

Presidential Documents
PROCLAMATION
Special observances:
Greek Independence Day: A National Day of Celebration of Greek and American Democracy (Proc. 6539), 16609

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Privacy Act:
Systems of records, 16537

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 16560, 16562
New York Stock Exchange, Inc., 16563
Pacific Stock Exchange, Inc., 16566
Applications, hearings, determinations, etc.:
Reserve Equity Trust, 16568

Social Security Administration
NOTICES
Automated services availability in State offices making disability determinations for SSA; questionnaire, 16537
Social security rulings:
Mental deficiency-intelligence testing; rescission, 16545

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 16568
Certificates of public convenience and necessity and foreign carrier permits; weekly applications, 16568

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 16579

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 16584

Part III
Department of Housing and Urban Development, 16590

Part IV
The President, 16609

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
6539.....16609

12 CFR
3.....16481

14 CFR
25.....16486
71 (2 documents).....16488
95.....16489

Proposed Rules:
39 (2 documents).....16505, 16507
71.....16508
121.....16584

25 CFR
Ch. III.....16493
503.....16495

26 CFR
1.....16496

29 CFR
1910.....16496

Proposed Rules:
1926 (2 documents).....16509, 16515

30 CFR

Proposed Rules:
75.....16517

32 CFR
165.....16497

33 CFR
117.....16499

40 CFR

Proposed Rules:
Ch I.....16517

44 CFR
64.....16500

47 CFR
73 (3 documents).....16502, 16503
80.....16503

Proposed Rules:
73 (2 documents).....16518

50 CFR

Proposed Rules:
216.....16519
218.....16519
222.....16519
625.....16519

Rules and Regulations

Federal Register
Vol. 58, No. 58
Monday, March 29, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93–6]

Capital Treatment of Intangible Assets

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its risk-based capital guidelines with respect to the treatment of intangible assets held by national banks. These amendments delete the three criteria (separability, cash flow, and liquidity) used in determining qualifying intangible assets, and instead replace the criteria with a specific list of qualifying intangible assets; provide that only purchased mortgage servicing rights and purchased credit card relationships are allowed as qualifying intangible assets; increase the limitation on all qualifying intangible assets from 25 percent to 50 percent of Tier 1 capital of which purchased credit card relationships can consist of no more than 25 percent of Tier 1 capital; require that the limitation on qualifying intangible assets be calculated on Tier 1 capital net of goodwill and other disallowed intangible assets; and require that qualifying intangible assets be valued at least quarterly at the lesser of 90 percent of the fair market value or 100 percent of the remaining unamortized book value.

The quarterly valuation requirement implements the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which requires that banks value purchased mortgage servicing rights at no more than 90 percent of fair market value and reevaluate the fair market value no less than quarterly.

These amendments promote greater uniformity in the capital rules of the OCC, Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of Thrift Supervision (OTS) (collectively the federal banking agencies). Further, these amendments increase the total amount of purchased mortgage servicing rights and purchased credit card relationships that a national bank may include in the computation of its regulatory capital.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Salomon, Professional Accounting Fellow, Office of the Chief National Bank Examiner (202) 874–5180; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner (202) 874–5070; Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202) 874–4460, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC's final risk-based capital guidelines were published in the **Federal Register** on January 27, 1989. See 54 FR 4168 (codified at 12 CFR part 3, appendix A). The risk-based capital guidelines, which were developed in cooperation with the FDIC and the FRB, impose capital requirements that are based on the credit risk profiles of the assets held by financial institutions. The guidelines implement the agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (Basle Agreement).

Prior to publishing the risk-based capital guidelines, the OCC specifically included purchased mortgage servicing rights without limitation in the computation of regulatory capital. See 50 FR 10207, 10212 (March 14, 1985); 12 CFR 3.2 (1989). Unlike other intangible assets, purchased mortgage servicing rights were not excluded from capital because they possess characteristics similar to those of many tangible assets.

In developing the risk-based capital guidelines, the OCC determined that it was more appropriate to establish specific criteria for qualifying intangible assets rather than simply listing the types of intangible assets acceptable as capital. See 54 FR 4168, 4175–4176 (January 17, 1989). Consequently, prior to this amendment, under the risk-based capital guidelines, three criteria needed to be satisfied for an intangible asset to qualify as Tier 1 capital: (1) The intangible asset must be able to be separated and sold apart from the bank or from the bulk of the assets of the bank; (2) the market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the bank; and (3) the bank must demonstrate that a market exists which will provide liquidity for the intangible asset. See 12 CFR part 3, subpart A and appendix A, section (c)(2)(i).

In the preamble to the risk-based capital guidelines, the OCC did not specify any intangible assets, other than purchased mortgage servicing rights, that would meet these criteria and, therefore, be considered for regulatory capital purposes. This reflected the OCC's view at the time that other intangible assets were less likely to satisfy the three criteria required for inclusion in regulatory capital. The risk-based capital guidelines also limit the amount of qualifying intangible assets to no more than 25 percent of Tier 1 capital. In other words, if a bank's investment in purchased mortgage servicing rights or other qualifying intangibles exceeds 25 percent of Tier 1 capital, the bank must deduct the excess from both total assets and Tier 1 capital.

On April 9, 1992, the OCC published a notice of proposed rulemaking (NPRM) in the **Federal Register** to amend the risk-based capital guidelines with respect to the treatment of intangible assets held by national banks. See 57 FR 12214. The NPRM proposed to permit the inclusion of purchased credit card relationships as a qualifying intangible asset, increase the capital limitation on all qualifying intangible assets from 25 percent to 50 percent of Tier 1 capital, of which purchased credit card relationships can consist of no more than 25 percent of Tier 1 capital, and impose certain valuation requirements for qualifying intangible assets.

The OCC specifically requested comment on the following issues in the

NPRM: (1) Whether qualifying intangible assets should be limited to 50 percent of Tier 1 capital; (2) whether any intangible assets other than purchased mortgage servicing rights and purchased credit card relationships should be included in Tier 1 capital; (3) whether a 25 percent sublimit should be imposed for purchased credit card relationships; (4) whether certain valuation requirements should be imposed on qualifying intangibles; and (5) whether any changes should be made to the three criteria used by the OCC to determine if an intangible asset qualifies for inclusion in Tier 1 capital.

The OCC received and reviewed 19 comment letters on the NPRM. The commenters represented a diverse group of organizations that included national banks, thrifts, and industry associations. Although many of the commenters favored no capital limitations on qualifying intangibles, the majority supported the overall increase in the limitation from 25 percent to 50 percent of Tier 1 capital and supported the inclusion of purchased credit card relationships as a qualifying intangible asset. However, some of the commenters opposed the separate sublimit for purchased credit card relationships and certain of the valuation requirements proposed in the NPRM. In addition, some of the commenters favored including additional intangible assets as qualifying, particularly core deposit intangibles. After careful consideration of the comments received, the OCC is issuing this final rule to amend the risk-based capital guidelines.

Basis and Purpose

Section 475 of FDICIA, Public Law 102–242, 105 Stat. 2236 (December 19, 1991) (codified at 12 U.S.C. 1828 note), mandates that the federal banking agencies establish a requirement that purchased mortgage servicing rights be valued at no more than 90 percent of fair value. FDICIA also requires the fair value of purchased mortgage servicing rights to be determined at least quarterly. These amendments to the risk-based capital guidelines implement the valuation requirements mandated by FDICIA.

In addition, these amendments will promote greater uniformity in the treatment of intangible assets among the federal banking agencies. Currently, each federal banking agency treats intangible assets differently for purposes of computing regulatory capital. The other federal banking agencies either plan to amend, or have amended, their capital guidelines to make similar changes in an effort to eliminate these inconsistencies.

Discussion of Amendments

I. Qualifying Intangibles

This final rule amends 12 CFR part 3, appendix A, section 2(c) to delete from the risk-based capital guidelines the three criteria used to determine whether an intangible asset qualifies for inclusion in Tier 1 capital. This final rule further amends section 2(c) to state that only purchased mortgage servicing rights and purchased credit card relationships are considered qualifying intangible assets for purposes of computing regulatory capital under the risk-based capital guidelines.

As discussed in the NPRM, the three criteria for qualifying intangible assets have caused some confusion. Some national banks, without prior approval, applied the criteria to make their own determination of the types of intangible assets that qualify as Tier 1 capital. In the NPRM, the OCC proposed to retain the three criteria but amend the guidelines to make clear that the OCC and not the banks determines which intangible assets meet the criteria and, therefore, qualify as Tier 1 capital.

Seven comments were received on this issue. All seven commenters favored retaining the three criteria so that additional intangible assets could be considered qualifying in the future as financial markets and new products continue to develop and evolve. Some of these commenters also favored retaining the criteria so that additional intangible assets could be considered qualifying without amending the leverage ratio and risk-based capital guidelines. One commenter objected to the OCC determining whether an intangible asset satisfied the criteria and instead favored allowing banks to make this determination.

After further consideration, the OCC has decided to delete the three criteria from the specific regulatory language. The OCC believes that deletion of the specific criteria from the regulatory language is the best way to avoid any further confusion as to which intangible assets qualify for inclusion as capital under the risk-based capital guidelines.

The OCC believes that this amendment will result in more uniform and consistently applied capital standards. While the OCC is not retaining the criteria in the text of the risk-based capital guidelines, the OCC agrees generally with the commenters that the criteria would be useful for identifying additional intangible assets which could be considered in the future. The OCC believes that the three criteria provide an appropriate analytical framework to assist in determining whether an intangible asset should qualify as capital for regulatory capital purposes. Therefore, the OCC will continue to use the criteria as guidance in deciding whether to expand the list of qualifying intangible assets. However, just as the development and evolution of financial markets and new products may create other qualifying intangible assets, the OCC may also need to adjust the criteria for qualifying intangible assets.

The OCC specifically requested comment on whether the criteria for qualifying intangible assets should be changed and whether the cash flow criterion should be clarified to indicate that the cash flows had to be predictable and reliable. One commenter opposed changing the cash flow criterion on the basis that the change was unnecessary. Other commenters either did not object or did not comment on the issue. There was no suggestion for other changes to the criteria. As explained above, although the criteria are no longer part of the regulation, they will be used in the future as a guideline for determining whether other intangibles should be considered qualifying. Accordingly, the OCC will consider the predictability and reliability of cash flows when it determines whether other intangible assets qualify for inclusion as capital.

At this time, the OCC believes that only purchased mortgage servicing rights and purchased credit card relationships are qualifying intangible assets for purposes of computing compliance with the risk-based capital guidelines. Therefore, this final rule adopts the amendment, as proposed in the NPRM. No other intangible assets, including core deposit intangibles, currently qualify for inclusion as capital.

No comments were received objecting to the inclusion of purchased mortgage servicing rights and purchased credit card relationships as qualifying intangible assets. Several commenters suggested that additional intangible assets, besides purchased mortgage servicing rights and purchased credit card relationships, should be considered qualifying intangible assets for regulatory capital purposes. Ten of these commenters specifically asked the OCC to consider core deposit intangibles as a qualifying intangible asset.

The commenters generally believed that core deposit intangibles meet the three criteria. Many of the commenters cited the premiums paid for the deposits of failed institutions as support for the inclusion of core deposit intangibles as a qualifying intangible asset. In addition, the commenters believed that the exclusion of core deposit intangibles from the calculation of regulatory

capital would discourage industry consolidation.

The OCC believes that the general characteristics of core deposit intangibles do not satisfy the three criteria. Specifically, the NPRM discussed the OCC's concerns about the separability of core deposit intangibles. The OCC acknowledges the commenters' view that banks may continue operating following the sale of a portion of its core deposit intangibles and related core deposits. However, the OCC continues to have supervisory concerns that the sale of a bank's core deposits could alter significantly the funding and liquidity structure of an otherwise viable institution in an unsafe and unsound manner.

After considering the comments received regarding core deposit intangibles, the OCC believes that no change is warranted at this time. Thus, national banks will continue to deduct core deposit intangibles when calculating their risk-based capital ratios. However, the OCC will discuss this issue further with the other banking and thrift agencies. If the supervisory concerns over the appropriate valuation and separability of core deposit intangibles can be adequately addressed then the current treatment for these assets would be revisited.

Four commenters mentioned other intangible assets that they believed should be considered qualifying, including purchased trust servicing rights, purchased home equity servicing rights, and favorable leasehold intangible assets. The OCC believes that the characteristics of these intangible assets do not satisfy the three criteria, at a minimum because the markets for these intangible assets currently lack the depth and maturity necessary for inclusion in regulatory capital.

II. Capital Limitations

As proposed in the NPRM, this final rule amends 12 CFR part 3, appendix A, section 2(c) by increasing the capital limitation on all qualifying intangible assets from the current 25 percent of Tier 1 capital to 50 percent of Tier 1 capital. This final rule also provides that with respect to the 50 percent limit on total intangible assets, no more than 25 percent of Tier 1 capital can consist of purchased credit card relationships. Therefore, the final rule imposes a further 25 percent sublimit on the amount of purchased credit card relationships that can qualify as capital.

The capital limitation on purchased credit card relationships is a supplemental limit rather than an addition to the 50 percent overall limitation. In other words, a national bank with both purchased mortgage servicing rights and purchased credit card relationships may not include purchased credit card relationships in excess of 25 percent of Tier 1 capital, nor may it include total qualifying intangible assets (purchased mortgage servicing rights plus purchased credit card relationships) in excess of 50 percent of Tier 1 capital in its regulatory capital computations. In addition, this final rule requires that the calculation of the limitation be based on Tier 1 capital net of goodwill and other disallowed intangible assets.

To illustrate, assume that a national bank has Tier 1 capital of $1,300,000. The bank also has qualifying purchased credit card relationships of $300,000 qualifying purchased mortgage servicing rights of $200,000, goodwill of $100,000, and core deposit intangibles of $200,000. To determine the amount of qualifying intangible assets the bank may include in Tier 1 capital, the bank first must subtract goodwill and other disallowed intangible assets from Tier 1 capital.

In this example, goodwill of $100,000 and core deposit intangibles of $200,000 must be subtracted from Tier 1 capital of $1,300,000. This results in "net" Tier 1 capital of $1,000,000 to which the percentage limitations are applied. The amount of purchased credit card relationships that may be included in Tier 1 capital is $250,000 ($1,000,000 × 0.25). As a result, the bank must also deduct $50,000 of $300,000 in purchased credit card relationships from Tier 1 capital of $1,300,000 and from risk-weighted assets.

The overall limit on all qualifying intangible assets that may be included in Tier 1 capital in this example is $500,000 ($1,000,000 × 0.50). The bank is already including $250,000 of purchased credit card relationships, the maximum amount permitted. Therefore, the bank may include up to $250,000 of purchased mortgage servicing rights in Tier 1 capital. Because the bank has only $200,000 of purchased mortgage servicing rights, the full $200,000 may be included in Tier 1 capital. However, note that the bank should be required to deduct from Tier 1 capital and risk-weighted assets any amount of purchased mortgage servicing rights in excess of $250,000, along with the $50,000 excess purchased credit card relationships.

The OCC received ten comments addressing the proposed increase in the limitation on the amount of qualifying intangible assets includable in the calculation of regulatory capital. Four of the commenters favored the increase from 25 percent to 50 percent of Tier 1 capital. Five commenters did not object to the increase but felt that no limitation was more appropriate. One commenter objected to the increase on the basis that the change weakened capital standards.

The OCC believes that both purchased mortgage servicing rights and purchased credit card relationships expose banks to significant amounts of interest rate risk, prepayment risk, credit risk, and operational risk. In light of these risks, and after considering related safety and soundness issues, the OCC believes that, at this time, raising the limitation beyond 50 percent, or eliminating the limitation altogether, is not prudent.

The OCC believes that increasing the limitation on qualifying intangible assets to 50 percent of Tier 1 capital will not expose national banks to unreasonable risks. The FDIC and the OTS have adopted capital rules permitting their supervised institutions to include purchased mortgage servicing rights in the calculation of regulatory capital up to 50 percent of Tier 1 capital. Further, the sublimit on purchased credit card relationships and the valuation requirements discussed below alleviate some of the concerns about the risks inherent in the qualifying intangible assets.

The OCC received one comment in favor of the separate sublimit on purchased credit card relationships. While commenters generally did not oppose including purchased credit card relationships as qualifying intangible assets, four commenters opposed the separate sublimit proposed in the NPRM. These commenters objected to the sublimit on the basis that different limitations for different types of qualifying intangible assets amounted to credit allocation, which should be left up to each institution's management.

As discussed in the NPRM, the OCC bases this more restrictive limitation on purchased credit card relationships on several factors. First, the OCC believes that the market for purchased credit card relationships does not have the depth and maturity of the market for purchased mortgage servicing rights. Second, the OCC believes that the assumptions used in the valuation of purchased credit card relationships generally are more subjective and subject to less market discipline than the assumptions for purchased mortgage servicing rights. Therefore, the OCC continues to believe that the sublimit of 25 percent of Tier 1 capital for purchased credit card relationships is appropriate.

In an October 17, 1990, notice of proposed rulemaking the OCC proposed certain technical and clarifying amendments to the risk-based capital

guidelines. See 55 FR 42017 (October 17, 1990). Of the various issues raised, the OCC specifically requested comment on (1) whether to adopt a case-by-case exception to the 25 percent limitation on qualifying intangible assets and (2) whether the calculation of the limitation should be based on total Tier 1 capital or Tier 1 capital net of goodwill and other disallowed intangible assets.

In the final rule, the OCC decided not to amend the risk-based capital guidelines with respect to these issues. Consequently, the calculation of the 25 percent limitation continued to be based on total Tier 1 capital. See 57 FR 44078, 44081–44082 (September 24, 1992). However, as discussed in the preamble to that final rule, the OCC determined that the whole issue of the capital treatment of intangible assets was too complex to address piecemeal through those technical amendments.

As part of this comprehensive review of the capital treatment of intangible assets, the OCC has reconsidered this issue concerning the method of calculating the capital limitation on qualifying intangible assets. The OCC received three comments on this issue in response to the October 17, 1990, notice of proposed rulemaking. All three commenters favored calculation of the limitation based on total Tier 1 capital. While a less restrictive calculation may have been appropriate with the lower 25 percent limitation, the OCC believes that in view of the increase in the limitation on total qualifying tangible assets and the inclusion of purchased credit card relationships as a qualifying intangible asset, the calculation of the limitation should be done on a more restrictive basis.

III. Other Requirements

This final rule amends 12 CFR part 3, appendix A, section 2(c) to require banks to value qualifying intangible assets, purchased mortgage servicing rights and purchased credit card relationships, for capital adequacy purposes, at the lesser of (1) 90 percent of the asset's fair market value; or (2) 100 percent of the asset's remaining unamortized book value. This final rule also amends section 2(c) to require national banks to determine, at least quarterly, the appropriate fair market value and unamortized book value of qualifying intangible assets to be used in determining the limitations described above.

In the NPRM, the OCC proposed to include guidance for determining the appropriate unamortized book value of qualifying intangible assets as part of the amendments to the risk-based capital guidelines. The OCC has reconsidered this issue and has decided along with the other federal banking agencies that any discussion of the appropriate method for determining the book value of qualifying intangible assets is best suited as part of the Instructions to the Consolidated Reports of Condition and Income (Call Report) instead of the risk-based capital guidelines. Moreover, addressing the proper reporting for the book value of intangible assets in the instructions to the Call Report ensures consistency in application by all financial institutions, regardless of their type of charter.

These changes to the Call Report will require a bank to determine the book value of its qualifying intangible assets based on the discounted amount of future net cash flows related to the intangible asset.

Accordingly, if unanticipated prepayments, account attrition, or other events occur that reduce the amount of expected future net cash flows from the asset, the bank must write down the asset to the extent that the discounted amount of the future net cash flows is less than the asset's carrying amount. Further, the Call Report instructions will specify that the discount rate used in the above quarterly determination of book value should not be less then the original discount rate inherent in determining the fair value of the asset at its original acquisition.

These amendments implement section 475 of FDICIA which requires that purchased mortgage servicing rights be valued at no more than 90 percent of fair market value, and that fair market value be determined at least quarterly. While section 475 of FDICIA technically applies only to purchased mortgage servicing rights, the OCC will apply these requirements to all qualifying intangible assets. Three commenters indicated that extending the 90 percent of fair market value limitation to all qualifying intangible assets was overly restrictive. The OCC believes that valuation issues warrant the consistent application of the 90 percent limitation to all qualifying intangible assets.

The NPRM proposed an additional limitation of 90 percent of original purchase price on the amount of qualifying intangibles that could be included in the calculation of regulatory capital. The OCC received seven comments opposed to this limitation. These commenters opposed this limitation on the basis that it went beyond the requirements of FDICIA and was unnecessary in light of the other valuation requirements proposed in the NPRM. The OCC agrees with these commenters and therefore eliminated this additional limitation from the final rule.

With respect to the other valuation requirements proposed in the NPRM, the OCC received three comments in support of the requirement that the book value of the qualifying intangible asset be based on discounted net cash flows related to the asset, using not less than the original discount rate inherent in determining the original fair value of the asset. The OCC received four comments opposing this requirement as overly restrictive and inconsistent with generally accepted accounting principles (GAAP). The OCC also received four comments that did not object to the requirement to discount the net cash flows but did object to the use of the original discount rate.

The use of a discounted cash flow to determine the book value of purchased mortgage servicing rights is consistent with GAAP. The Financial Accounting Standards Board Emerging Issues Task Force Issue 86–38A specifically indicates that either a discounted or an undiscounted approach could be used when determining whether a writedown is necessary because of unanticipated prepayments. While this conclusion applied only to purchased mortgage servicing rights, the OCC believes that the characteristics of purchased credit card relationships are similar and therefore should be treated consistently. Since the use of discounting is acceptable under GAAP and is more conservative than an undiscounted approach, the OCC believes it is the most appropriate method for determining the book value of qualifying intangible assets.

Those commenters who objected to the use of original discount rate to discount the net cash flows generally favored the use of a market-based rate. These commenters believe that the original discount rate could result in book values that are either overstated or understated relative to the fair value of the intangible asset. However, the OCC believes that amounts that are overstated relative to fair value do not raise safety and soundness concerns because inclusion of the assets in regulatory capital will be limited to 90 percent of their fair value. If 90 percent of fair value is less than the book value, then only this lower amount will be included in regulatory capital. On the other hand, assets that have book values less than fair values ensure a level of capital support to the bank consistent with their inclusion in regulatory capital.

The OCC also believes that use of the original discount rate to determine book value is advantageous because it is an

objectively determinable rate. The original discount rate is based on the original purchase price relative to the estimated future net cash flows at the time of purchase. A market-based discount rate is much less objective than the original discount rate and is subject to greater manipulation and abuse.

The OCC considered establishing a minimum discount rate to overcome the concerns about the subjectivity and manipulation associated with a market-based rate. However, this idea was rejected on the basis that a minimum rate would be arbitrary and would not reflect the economics of the asset. While the original discount rate does not reflect changes in market rates, it does reflect the economics of the transaction at its inception, which is consistent with the historical cost accounting model. The use of a market-based discount rate is more consistent with the concept of market value accounting, which is not consistent with GAAP. In addition, the OCC believes that determining the book value based on expected net cash flows discounted at the original discount rate makes the characteristics of these qualifying intangible assets more similar to those of certain tangible assets (e.g., excess servicing fee receivables) which currently have no specific capital limitations.

Some of the commenters raised other issues related to the valuation requirements proposed in the NPRM. First, several commenters asked if the value of mortgage servicing retained upon the institution's origination (rather than purchase) and sale of mortgage loans could be included in the quarterly determination of the fair value of purchased mortgage servicing rights. Although these comments related only to the fair value calculation and not the recorded value, GAAP does not permit such retained servicing to be recorded as an asset on the books of the bank. The OCC believes that it is inconsistent with the requirements of FDICIA to include the value of retained mortgage servicing arising from the origination and sale of mortgage loans in the quarterly determination of the fair value of any qualifying intangible assets. The OCC believes that inclusion of retained servicing in the calculation of fair value would eliminate the effectiveness of the 90 percent of fair value limitation.

A second issue raised by several commenters was whether the determination of book value should be based on the aggregate portfolio of qualifying intangibles (the aggregate approach) or on each individual qualifying intangible (the pool-by-pool approach). Under GAAP, both the pool-by-pool approach and the aggregate approach are acceptable. The OCC has concerns about the use of the aggregate approach because of past experience with institutions using the aggregate approach to avoid recording a writedown of individual assets merely by purchasing new assets.

The OCC believes that this practice is inconsistent with the inclusion of these assets in regulatory capital and is contrary to the principles of safety and soundness. However, the OCC believes that this issue is best dealt with through accounting and reporting policies, rather than through the capital regulations. Accordingly, the OCC will study the issue further and provide separate guidance in the future.

One commenter asked whether the quarterly valuation proposed in the NPRM must be performed by an independent third party. The OCC believes that, in most cases, the costs to obtain an independent valuation outweigh the benefits to either the OCC or the bank. Further, the OCC believes that a bank engaged in the activities associated with these qualifying intangible assets should have the necessary systems in place to perform its own valuation. Consequently, the OCC is not requiring an independent third party valuation. The OCC does, however, retain the right to require a national bank to obtain an independent third party valuation if considered necessary.

Immediate Effective Date

This final rule is effective March 29, 1993. Pursuant to 12 U.S.C. 553(d)(1) and (3), this final rule is excepted from the 30 day delayed effective date which would otherwise be required under the Administrative Procedure Act. This final rule increases the overall capital limitation on qualifying intangible assets from 25 percent to 50 percent of Tier 1 capital and permits the inclusion of purchased credit card relationships as a qualifying intangible asset, subject to a separate 25 percent sublimit. The changes made by this final rule relieve a restriction imposed by the risk-based capital guidelines. For banks with purchased mortgage servicing rights (in excess of 25 percent of Tier 1 capital) or purchased credit card relationships, the effect of this final rule will allow these banks to report an increase in the amount of regulatory capital.

Further, the OCC believes that there is sufficient good cause to provide for an immediate effective date because the potential increase in capital as a result of this rule will likely have a positive effect on the banking industry and the general economy. The increase in bank capital will permit more lending by national banks, encouraging overall economic growth. In addition, the liberalization of capital treatment of intangible assets should increase the liquidity of the markets for mortgage servicing rights and credit card relationships. Finally, making the rule effective immediately will minimize the regulatory burden and disparate regulatory treatment on national banks with respect to financial institutions supervised by the FRB and the FDIC. The FRB and the FDIC had already promulgated rules making changes similar to this final rule

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required

This final rule permits a greater amount of qualifying intangible assets to be included in the calculation of regulatory capital. Currently, relatively few national banks hold qualifying intangible assets in excess of the current limitations. Therefore, the OCC does not believe that the increase will significantly impact small national banks.

Executive Order 12291

The OCC has determined that this final rule is not a major regulation as defined in Executive Order 12291. Accordingly, a regulatory impact analysis is not required. Because this final rule permits more qualifying intangible assets to be included in the calculation of regulatory capital, this final rule should have a positive effect on national banks. However, these changes should not result in a significant effect on national banks.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In appendix A to part 3, section 2, paragraphs (c)(1)(ii) and (c)(2) are revised to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 2. Components of Capital

* * * * *

(c) * * *

(1) * * *

(ii) Except as provided in section 2(c)(2) of this appendix A, all other intangible assets are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made.

(2) Subject to the following conditions, purchased mortgage servicing rights and purchased credit card relationships need not be deducted from Tier 1 capital.

(i) The total of all intangible assets which are included in Tier 1 capital is limited to 50 percent of Tier 1 capital, of which no more than 25 percent of Tier 1 capital can consist of purchased credit card relationships. Calculation of these limitations must be based on Tier 1 capital net of goodwill and other disallowed intangible assets.

(ii) Each intangible asset which is included in Tier 1 capital must be valued at the lesser of:

(A) 90 percent of the fair market value of the intangible asset, determined in accordance with section 2(c)(2)(iii) of this appendix A; or

(B) 100 percent of the remaining unamortized book value of the intangible asset, determined at least quarterly in accordance with the instructions of the Call Report.

(iii) Banks shall determine the current fair market value of each intangible asset included in Tier 1 capital at least quarterly. The quarterly determination of the current fair market value of the intangible asset must include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates. In determining the current fair market value of the intangible asset, the bank shall apply an appropriate market discount rate to the expected net cash flows of the intangible asset.

* * * * *

Dated: March 2, 1993.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 93–7135 Filed 3–26–93; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–80; Special Conditions No. 25–ANM–68]

Special Conditions: Gulfstream Aerospace Corporation G–1159 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation G–1159 airplane modified by Delta Engineering Corporation. This airplane is equipped with high-technology digital avionic systems that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is March 18, 1993.

Comments must be received on or before May 13, 1993.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–80, 1601 Lind Avenue SW, Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–80. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM–113, 1601 Lind Avenue, SW., Renton, WA 98055–4056, telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–80." The postcard will be date stamped and returned to the commentor.

Background

On February 5, 1993, Delta Engineering Corporation applied to the FAA New York Aircraft Certification Office for a supplemental type certificate (STC) to modify a Gulfstream Aerospace Corporation G–1159 airplane. The Gulfstream Aerospace Corporation G–1159 is a minimum two-crew, two-engine airplane, with a minimum takeoff weight of up to 64,800 lbs. The proposed modification incorporates the installation of an EFIS. The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information present is flight critical. The EFIS as a digital system is vulnerable to high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101, Delta Engineering Corporation must show that the modified Gulfstream Aerospace Corporation G–1159 airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A12EA are as follows: Part 25 of the FAR effective February 1, 1965, and Amendments 25–2 through 25–8, 25–10, 25–12, 25–16 through 25–22, 25–24, 25–26, 25–27, 25–29 through 25–31, 25–34, 25–37, 25–40 (as

applicable to new APU installation); § 25.1309 of Amendment 25–41 and § 25.329 dated February 1, 1966 (as applied to a new autopilot installation); § 25.994 (crashworthiness fuel system components); and § 25.581 (lightning protection) of Amendment 25–23; Special Federal Aviation Regulation (SFAR) 27 through Amendment 2 (fuel venting emission); Part 36 through Amendment 8 (noise requirements), and the special conditions contained in FAA letter to Grumman dated September 27, 1965.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 requirements) do not contain adequate or appropriate safety standards for the modified Gulfstream Aerospace Corporation G–1159 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state-of-the-art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that new technology electrical and electronic systems, such as the EFIS, be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with HIRF protection special conditions is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz– 100 KHz	50	50
100 KHz– 500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz– 30 MHz	200	200
30 MHz– 70 MHz	30	30
70 MHz– 100 MHz	30	30
100 KHz– 200 MHz	150	33
200 MHz– 400 MHz	70	70
400 MHz– 700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz– 2 GHz	5,000	990
2 GHz– 4 GHz	6,680	840
4 GHz– 6 GHz	6,850	310
6 GHz– 8 GHz	3,600	670
8 GHz– 12 GHz	3,500	1,270
12 GHz– 18 GHz	3,500	360
18 GHz– 40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion: This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subject to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Gulfstream Aerospace Corporation G–1159 airplane:

1. *Protection from unwanted effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Function whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 18, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–7095 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91-ANM-25]

Alteration of VOR Federal Airway V-595; Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends Federal Airway V-595 from Deschutes, OR, to Portland, OR. Currently, there is no direct route to Portland from Deschutes. Altering V-595 by extending the airway from Deschutes to Portland will provide a shorter route and save fuel.

EFFECTIVE DATE: 0901 u.t.c., May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend V-595 from Redmond, OR, to Portland, OR (57 FR 37490). Currently, there is no direct airway between these points. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and the incorporation of the new names of the Rogue Valley, OR, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) (formerly Medford, OR) and the Deschutes, OR, VORTAC (formerly Redmond, OR), this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in Section 71.123 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published sequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations extends Federal Airway V-595 from Deschutes, OR, to Portland, OR. Extending V-595 from Deschutes to Portland will provide a shorter route and save fuel.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-595 [Revised]

From Rogue Valley, OR; Deschutes, OR; to Portland, OR.

* * * * *

Issued in Washington, DC, on March 18, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-7093 Filed 3-26-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASW-19]

Establishment of Jet Route J-183; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Jet Route J-183 located in the vicinity of El Paso, TX. Establishment of J-183 will provide an additional route for operation between the El Paso and the Houston, TX, terminal airspace areas. The new jet route will relieve congestion in an area where aircraft are usually radar vectored. This action will also reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c. May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish J-183 located in the vicinity of El Paso, TX (57 FR 29454). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. The commenter was concerned about the number of frequency changes that may occur in the area where the jet routes cross. However, there are only two air traffic control facilities involved, Houston Air Route Traffic Control Center (ARTCC) and Albuquerque ARTCC. The alignment of J-183 enters the airspace of Albuquerque, NM, Fort Worth, TX, and Houston, TX, ARTCC's. However, the Fort Worth segment of that airspace has been delegated to the Houston and Albuquerque ARTCC's thereby eliminating the radio contact with the Fort Worth ARTCC. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in Section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes J–183 located in the vicinity of El Paso, TX. J–183 will provide an additional route for en route operations between the El Paso and the Houston, TX, terminal airspace areas. The current congestion between these areas will be relieved by adding a new jet route in an area where aircraft are usually radar vectored. This action will reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607. Jet Routes

* * * * *

J–183 [New]

From El Paso, TX; Pecos, TX; Llano, TX; to College Station, TX.

* * * * *

Issued in Washington, DC, on March 23, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–7092 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 27192; Amdt. No. 375]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on March 3, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 u.t.c., April 1, 1993.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

PART 95—[AMENDED]

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 375 Effective Date, April 1, 1993]

From	To	MEA
	§ 95.1001 Direct Routes—U.S.	
	Is Added To Read	
Scapa, PR FIX	Crstl, PR FIX	6000
	§ 95.1001 Direct Routes—U.S.	
	Puerto Rico Routes	
G432		
Dorado, PR NDB	*Alask, PR FIX	6000
*4800—MRA		
*Alask, PR FIX	Crstl, PR FIX	6000
*4800—MRA		
Crstl, PR FIX	Amur, PR FIX	6000
	Is Amended To Read In Part	
Route 10		
*Alask, PR FIX	Ponce, PR VOR/DME	3200
*4800—MRA		
	Bahama Routes	
	Is Added To Read	
53V		
Rajay, BF FIX	Prune, BF FIX	4000
Prune, BF FIX	Nassau BF VOR/DME	2000
	Is Amended To Read in Part	
55V		
Prune, BF FIX	Nassau, BF VOR/DME	2000
	Atlantic Routes	
	Is Deleted	
B764		
Daset, FL FIX	Fish Hook, FL NDB	*3000 MAA– 45000
*1300—MOCA		
	Is Added To Read	
G765		
Maxim, FL FIX	Fish Hook, FL NDB	*3000
*1300—MOCA		
	§ 95.6001 VOR Federal Airway 1	
	Is Amended To Read in Part	
Cofield, NC VORTAC	*Drone, NC FIX	2000
*10000—MRA		
	§ 95.6003 VOR Federal Airway 3	
	Is Amended To Read in Part	
Harvy, VA FIX	*Nutts, VA FIX	**3000
*9000—MRA.		
**2000—MOCA		
	§ 95.6013 VOR Federal Airway 13	
	Is Amended To Read in Part	
Humble, TX VORTAC	Cleep, TX FIX	2300
Cleep, TX FIX	*Legge, TX FIX	**5000
*3000—MRA		
**2300—MOCA		
Legge, TX FIX	Lufkin, TX VORTAC	2000
Lufkin, TX VORTAC	Carth, TX FIX	*3800
*2400—MOCA		
	§ 95.6018 VOR Federal Airway 18	
	Is Amended To Read in Part	
Maddi, GA FIX	Corvi, GA FIX	*5000
*2000—MOCA		
	§ 95.6027 VOR Federal Airway 27	
	Is Amended To Read in Part	
Newport, OR VORTAC	Cutel, OR FIX	
	S BND	*3000
	N BND	*5000
*3000—MOCA		
Cutel, OR FIX	Danes, OR FIX	*5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 375 Effective Date, April 1, 1993]

From	To	MEA
*4000—MOCA		
Danes, OR FIX	Astoria, OR VOR/DME	*8000
*5100—MOCA		
§ 95.6036 VOR Federal Airway 36		
Is Amended To Read in Part		
U.S. Canadian Border	Buffalo, NY VORTAC	4500
§ 95.6038 VOR Federal Airway 38		
Is Amended To Read in Part		
Rooky, VA FIX	Richmond, VA VORTAC	2100
§ 95.6044 VOR Federal Airway 44		
Is Amended To Read in Part		
Karrs, NJ FIX	Deer Park, NY VORTAC	*4000
*2000—MOCA		
Gamby, NJ FIX	Camm, NJ FIX	4000
Camm, NJ FIX	*Sates, NJ FIX	4000
*9000—MRA		
Sates, NJ FIX	Deer Park, NY VORTAC	*4000
*2000—MOCA		
§ 95.6097 VOR Federal Airway 97		
Is Amended To Read in Part		
Amapo, GA FIX	*Pratz, GA FIX	**3000
*3000—MRA		
**2000—MOCA		
Atlanta, GA VORTAC	Bappy, GA FIX	*4000
*3000—MOCA		
Bappy, GA FIX	Nello, GA FIX	4800
Nello, GA FIX	Mells, GA FIX	*10000
*5600—MOCA		
Mells, GA FIX	Hinde, TN FIX	7000
§ 95.6194 VOR Federal Airway 194		
Is Amended To Read in Part		
Clunk, LA FIX	McComb, MS VORTAC	2200
§ 95.6212 VOR Federal Airway 212		
Is Amended To Read in Part		
Lufkin, TX VORTAC	Abbas, LA FIX	*4000
*1900—MOCA		
Abbas, LA FIX	Cocos, LA FIX	*3000
*1700—MOCA		
Cocos, LA FIX	Alexandria, LA VORTAC	2000
§ 95.6221 VOR Federal Airway 221		
Is Amended To Read in Part		
Litchfield, MI VORTAC	Jackson, MI VOR/DME	*3000
*2500—MOCA		
§ 95.6222 VOR Federal Airway 222		
Is Amended To Read in Part		
La Grange, GA VORTAC	Tiroe, GA FIX	2500
Corce, GA FIX	Foothills, GA VORTAC	3400
Foothills, GA VORTAC	Sunset, SC FIX	4500
§ 95.6253 VOR Federal Airway 253		
Is Amended to Read in Part		
Litke, ID FIX	Alkal, ID FIX	
	SE BND	*6000
	NW BND	*9500
*5700—MOCA		
§ 95.6266 VOR Federal Airway 266		
Is Amended To Read in Part		
Lawrenceville, VA VORTAC	Mazon, VA FIX	4000
Mazon, VA FIX	Franklin, VA VORTAC	*2000
*1500—MOCA		
Somar, VA FIX	*Drone, NC FIX	8500
*10000—MRA		
§ 95.6322 VOR Federal Airway 322		
Is Amended To Delete		
Cape Newenham, AK NDB	King Salmon, AK VORTAC	*5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 375 Effective Date, April 1, 1993]

From	To	MEA
*4300—MOCA		
	§ 95.6373 VOR Federal Airway 373	
	Is Added To Read	
Greensboro, NC VORTAC	Sandhills, NC VORTAC	3600
	§ 95.6494 VOR Federal Airway 494	
	Is Amended To Read in Part	
Squaw Valley, CA VOR/DME	*Vikes, NV FIX	12000
*11000—MCA Vikes FIX, SW BND		

From	To	MEA	MAA
	§ 95.7029 Jet Route No. 29		
	Is Amended To Read in Part		
Lufkin, TX VORTAC	Elm Grove, LA VORTAC	18000	45000
Elm Grove, LA VORTAC	El Dorado, AR VORTAC	18000	45000
El Dorado, AR VORTAC	Memphis, TN VORTAC	18000	45000
	§ 95.7037 Jet Route No. 37		
	Is Amended To Read in Part		
Spartanburg, SC VORTAC	*Sanny, VA FIX	22000	45000
Sanny, VA FIX	Lynchburg, VA VORTAC	18000	45000
Lynchburg, VA VORTAC	Gordonsville, VA VORTAC	18000	45000
	§ 95.7053 Jet Route No. 53		
	Is Amended To Read in Part		
Dougs, FL FIX	Orlando, FL VORTAC	18000	45000
Pulaski, VA VORTAC	Elkins, WV FIX	21000	45000
Elkins, WV FIX	Ellwood City, PA VORTAC	18000	45000
	§ 95.7101 Jet Route No. 101		
	Is Amended To Read in Part		
Lufkin, TX VORTAC	Elm Grove, LA VORTAC	18000	45000
Elm Grove, LA VORTAC	Little Rock, AR VORTAC	18000	45000
	§ 95.7180 Jet Route No. 180		
	Is Amended To Read in Part		
Daisetta, TX VORTAC	El Dorado, AR VORTAC	18000	45000
El Dorado, AR VORTAC	Little Rock, AR VORTAC	18000	45000
	§ 95.7488 Jet Route No. 488		
	Is Added To Read		
Watertown, NY VORTAC	U.S. Canadian Border	#18000	45000
#For that airspace over U.S. territory.			
	§ 95.7559 Jet Route No. 559		
	Is Amended To Read in Part		
Syracuse, NY VORTAC	Watertown, NY VORTAC	18000	45000
Watertown, NY VORTAC	U.S. Canadian Border	18000	45000

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway segment		Changeover points	
From	To	Distance	From
	V–13		
	Is Amended By Adding		
Lufkin, TX VORTAC	Shreveport, LA VORTAC	64	Lufkin.
	V–23		
	Is Amended To Read In Part		
Paine, WA VOR/DME	Bellingham, WA VORTAC	14	Paine.
	V–113		
	Is Amended By Adding		
Salmon, ID VOR/DME	Coppertown, MT VORTAC	60	Salmon.

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS—Continued

Airway segment		Changeover points	
From	To	Distance	From
	V–212		
	Is Amended By Adding		
Lufkin, TX VORTAC	Alexandria, LA VORTAC	65	Lufkin.
	V–373		
	Is Amended By Adding		
Greensboro, NC VORTAC	Sandhills, NC VORTAC	43	Greensboro.

[FR Doc. 93–7090 Filed 3–26–93; 8:45 am]
BILLING CODE 4910–13–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Editorial Amendments to the National Indian Gaming Commission's Regulations

AGENCY: National Indian Gaming Commission.

ACTION: Final rule; editorial amendments.

SUMMARY: The National Indian Gaming Commission is establishing this rule to inform the public of organizational and grammatical changes made to regulations previously published by the Commission. This regulation is strictly organizational and does not affect the substantive provisions of the Commission's regulations.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003, ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (NIGC, or the Commission). The Commission has promulgated several regulations implementing the IGRA. The purpose of this rule is to organize those regulations into subchapters. The Commission also has made grammatical changes to various sections of the regulations. The revisions contained in this regulation do not change the substance of the regulations.

Editorial Amendments to the Commission's Regulations

The Commission has published six sets of final regulations. On August 19, 1991, the Commission published regulations requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the IGRA (56 FR 40702). On April 9, 1992, the Commission published a regulation that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts) (57 FR 12382).

On January 22, 1993, the Commission published final rules regarding its review and approval of tribal gaming ordinances or resolutions, Privacy Act procedures, compliance and enforcement procedures, and management contract provisions (58 FR 5802).

The regulations are contained in 25 CFR chapter III, parts 500–599. This regulation divides chapter III into subchapters A—I and places parts 500–599 into these subchapters. The Commission believes that organizing chapter III into subchapters will provide readers with easier access to related provisions of the regulations. The Commission also replaced the term "chapter" with "subchapter," where appropriate, clarified and made grammatical changes to the regulations. The Commission also deleted paragraph (b) of § 558.2, which was inadvertently included in the final regulation. For a discussion of § 558.2 see 58 FR 5808–5809 (January 22, 1993). Again, the Commission believes that the revisions contained in this document do not change the substance of the regulations.

Regulatory Matters

Executive Order 12291: Non major.

Regulatory Flexibility Act: No significant impact.

National Environmental Policy Act: Exempt.

Executive Order 12778: Meets the applicable standards.

Dated: March 23, 1993.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

For the reasons set forth in the preamble and under the authority of 25 U.S.C. 2706(b)(10), 25 CFR chapter III is amended as follows:

1. 25 CFR chapter III is amended by designating parts 501 through 519 as subchapter A and adding a subchapter heading; by designating parts 520 through 529 as subchapter B and adding a subchapter heading; by designating parts 530 through 539 as subchapter C and adding a subchapter heading; by adding and reserving subchapter D consisting of parts 540 through 549; by designating parts 550 through 559 as subchapter E and adding a subchapter heading; by adding and reserving subchapter F consisting of parts 560 through 569; by designating parts 570 through 579 as subchapter G and adding a subchapter heading; by adding and reserving subchapter H consisting of parts 580 through 589 and subchapter I consisting of parts 590 through 599 to read as follows:

SUBCHAPTER A—GENERAL PROVISIONS

Part
501 Purpose and scope of this chapter
502 Definitions of this chapter
503–513 [Reserved]
514 Fees
515 Privacy Act procedures
516–518 [Reserved]
519 Service

SUBCHAPTER B—APPROVAL OF CLASS II AND CLASS III ORDINANCES AND RESOLUTIONS

Part
520 [Reserved]

Part
521 [Reserved]
522 Submission of gaming ordinance or resolution
523 Review and approval of existing ordinances or resolutions
524 Appeals
525–529 [Reserved]

SUBCHAPTER C—MANAGEMENT CONTRACT PROVISIONS

Part
530 [Reserved]
531 Content of management contracts
532 [Reserved]
533 Approval of management contracts
534 [Reserved]
535 Post-approval procedures
536 [Reserved]
537 Background investigations for persons or entities with a financial interest in, or having management responsibility for, a management contract
538 [Reserved]
539 Appeals

SUBCHAPTER D—[RESERVED]

Part
540–549 [Reserved]

SUBCHAPTER E—GAMING LICENSES AND BACKGROUND INVESTIGATIONS FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

Part
550–555 [Reserved]
556 Background investigations for primary management officials and key employees
557 [Reserved]
558 Gaming licenses for key employees and primary management officials
559 [Reserved]

SUBCHAPTER F—[RESERVED]

Part
560–569 [Reserved]

SUBCHAPTER G—COMPLIANCE AND ENFORCEMENT PROVISIONS

Part
570 [Reserved]
571 Monitoring and investigations
572 [Reserved]
573 Enforcement
574 [Reserved]
575 Civil fines
576 [Reserved]
577 Appeals before the Commission
578–579 [Reserved]

SUBCHAPTER H—[RESERVED]

Part
580–589 [Reserved]

SUBCHAPTER I—[RESERVED]

Part
590–599 [Reserved]

PART 502—DEFINITIONS OF THIS CHAPTER

2. The heading of part 502 is revised to read as set forth above.

3. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710.

PART 522—[AMENDED]

4. The authority citation for part 522 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

5. The heading of § 522.1 is revised to read as follows:

§ 522.1 Scope of this part.

* * * * *

6. Section 522.2 is amended by revising paragraph (h) to read as follows:

§ 522.2 Submission requirements.

* * * * *

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

PART 523—[AMENDED]

7. The authority citation for part 523 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

8. The heading of § 523.1 is revised to read as follows:

§ 523.1 Scope of this part.

* * * * *

PART 537—[AMENDED]

9. The authority citation for part 537 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

10. Section 537.1 is amended by revising paragraphs (b)(1)(vi), (b)(1)(vii), (c)(2)(v), and (c)(2)(vi) to read as follows:

§ 537.1 Applications for approval.

* * * * *

(b) * * *

(1) * * *

(vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

* * * * *

(c) * * *

(2) * * *

(v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

* * * * *

PART 539—[AMENDED]

11. The authority citation for part 539 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

12. Section 539.1 is revised to read as follows:

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under this subchapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed in part 577 of this chapter.

PART 556—[AMENDED]

13. The authority citation for part 556 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

14. The heading of § 556.1 is revised to read as follows:

§ 556.1 Scope of this part.

* * * * *

PART 558—[AMENDED]

15. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

16. The heading of § 558.1 is revised to read as follows:

§ 558.1 Scope of this part.

§ 558.2 [Amended]

* * * * *

17. Section 558.2 is amended by removing the paragraph (a) designation and by removing paragraph (b).

PART 571—[AMENDED]

18. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2706(b), 2706(b)(2)(C), 2715, 2716.

19. Section 571.2 is amended by revising the introductory text to read as follows:

§ 571.2 Definitions.

As used in this subchapter, the following terms have the specified meanings:

* * * * *

PART 575—[AMENDED]

20. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715.

21. Section 575.9 is amended by revising paragraph (c) to read as follows:

§ 575.9 Final assessment.

* * * * *

(c) The Commission shall transfer civil fines paid under this subchapter to the U.S. Treasury.

[FR Doc. 93–7075 Filed 3–26–93; 8:45 am]
BILLING CODE 7565–01–M

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25 CFR Part 503

Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers and Expiration Dates

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC, or the Commission) is establishing this rule for the purpose of informing the public of the control numbers and expiration dates assigned to information collection requirements in the regulations of the Commission by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003, ext. 34 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Congress enacted the Paperwork Reduction Act of 1980 (the Act), 44 U.S.C. 3501 *et seq.* in an effort to minimize the Federal paperwork burden for individuals, businesses, State and local governments, and other persons. The Act also minimizes the cost to the Federal Government of collecting, maintaining, using, and disseminating information, and creates uniform Federal information policies and practices. Under the Act, federal agencies are required to display current control numbers assigned by the Director of the Office of Management and Budget (OMB), on each agency information collection requirement.

The purpose of this regulation is to inform the public of the control numbers and expiration dates assigned to information collection requirements of the National Indian Gaming Commission (NIGC, or the Commission) by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This regulation is administrative in nature and is intended to comply with all requirements of the Paperwork Reduction Act of 1980. This part, in particular, displays the current control numbers for information collection requirements of the Commission by OMB, along with the expiration dates of those information collection requirements.

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the Commission to regulate class II gaming and certain aspects of class III gaming conducted on Indian lands. The Commission has published several proposed and final regulations containing information collection requirements.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission certain annual fees. The fee regulation contains information collection requirements that have been approved by OMB and assigned a control number and expiration date.

On January 22, 1993, the Commission published final rules regarding its review and approval of tribal gaming ordinances and resolutions, Privacy Act procedures, compliance and enforcement procedures, and management contract provisions. (58 FR 5802) These regulations contain information collection requirements that have been approved by OMB and assigned control numbers and expiration dates.

Also, on November 24, 1992, the Commission published a proposed rule regarding Freedom of Information Act procedures. (57 FR 55212) This proposed rule contains information collection requirements approved by OMB and assigned a control number and expiration date.

This rule contains a list of information collection requirements contained in the Commission's regulations along with the OMB control numbers and expiration dates assigned to the requirements.

Regulatory Matters

Executive Order 12291: Non major.

Regulatory Flexibility Act: No significant impact.

National Environmental Policy Act: Exempt.

Executive Order 12278: Meets applicable standards.

Dated: March 23, 1993.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 503

Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 25 of the Code of Federal Regulations is amended by adding a new part 503 to subchapter A to read as follows:

PART 503—COMMISSION INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS AND EXPIRATION DATES

Sec.

503.1 Purpose of this part.
503.2 Display of control numbers and expiration dates.

Authority: 44 U.S.C. 3501 *et seq.*

§ 503.1 Purpose of this part.

This part displays the control numbers and expiration dates assigned to information collection requirements of the National Indian Gaming Commission (NIGC, or the Commission) assigned by the Director of the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

§ 503.2 Display of control numbers and expiration dates.

Part or section number of title 25 CFR	Currently assigned OMB control numbers	Expiration date
§ 514.1 (submission of fee reports)	3141–0007	6/30/94
§ 515.3 (request for access to records)	3141–0002	10/31/95
§ 515.5 (request for amendment to records)	3141–0002	10/31/95
§ 515.7 (appeals)	3141–0002	10/31/95
Part 519 (designation of agent for service)	3141–0003	10/31/95

Part or section number of title 25 CFR	Currently assigned OMB control numbers	Expiration date
§ 522.2 (submission and approval of new ordinances)	3141–0003	10/31/95
§ 522.3 (amendment)	3141–0003	10/31/95
§ 522.12 (revocation of class III gaming)	3141–0003	10/31/95
§ 523.2 (submission and approval of existing ordinances)	3141–0003	10/31/95
§ 523.4 (amendment)	3141–0003	10/31/95
Part 524 (appeals)	3141–0003	10/31/95
§ 533.3 (approval of management contracts)	3141–0004	10/31/95
§ 533.5 (modifications)	3141–0004	10/31/95
§ 535.1 (post-approval procedures)	3141–0004	10/31/95
Part 537 (background investigations)	3141–0004	10/31/95
Part 539 (appeals)	3141–0004	10/31/95
§ 556.4 (background investigations for class II gaming)	3141–0003	10/31/95
§ 556.5 (background investigations)	3141–0003	10/31/95
Part 558 (gaming licenses)	3141–0003	10/31/95
§ 571.7 (maintenance of records)	3141–0001	7/31/95
§ 571.12 (audits)	3141–0001	7/31/95
§ 571.13 (audits)	3141–0001	7/31/95
§ 571.14 (audit reconciliation)	3141–0001	7/31/95
§ 575.5 (information to Chairman)	3141–0001	7/31/95
§ 575.6 (penalty reduction)	3141–0001	7/31/95
§ 577.3 (notice of appeal)	3141–0001	7/31/95
§ 577.8 (confidentiality)	3141–0001	7/31/95
§ 577.12 (intervention)	3141–0001	7/31/95
§ 577.14 (objections)	3141–0001	7/31/95

[FR Doc. 93–7076 Filed 3–26–93; 8:45 am]
BILLING CODE 7565–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8098]

RIN 1545–AG97

Income Taxes; Returns Relating to Cash Payments in Excess of $10,000 Received in Trade or Business; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting Amendment.

SUMMARY: This document contains a correction to final regulations (T.D. 8098), which were published in the Federal Register for Thursday, September 4, 1986 (51 FR 31610). The final regulations related to the requirement of reporting cash in excess of $10,000 received in a trade or business.

EFFECTIVE DATE: September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Scott, (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correcting amendment were added to part 1 of title 26 of the Code of Federal Regulations under section 6050I of the Internal Revenue Code.

Need for Correction

As published, T.D. 8098 contained an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.6050I–1(d)(4)(i), the second sentence is revised to read as follows:

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

* * * * *

(d) * * *

(4) * * * (i) * * * An entire transaction consists of both the transaction as defined in paragraph (c)(7)(i) of this section and the receipt of cash by the recipient. * * *

* * * * *

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–7143 Filed 3–26–93; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Explosives and Blasting Agents

CFR Correction

In title 29 of the Code of Federal Regulations, parts 1900 to 1910 (§§ 1901.1 to 1910.999), revised as of July 1, 1992, on page 301, in the second column, in § 1910.109 (g)(4)(v), the fifth through eighth lines should read as set forth below.

§ 1910.109 Explosives and blasting agents.

* * * * *

(g) * * *

(4) * * *

(v) * * * Table-21 and separation from other blasting agent storage and explosives storage shall be in conformity with Table H–22.

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 165

Recoupment of Nonrecurring Costs on Sales of U.S. Items

AGENCY: Office of the Secretary of Defense, Department of Defense.

ACTION: Final rule.

SUMMARY: Recoupment of nonrecurring costs for items developed with appropriated funds is eliminated on direct commercial sales of Major Defense Equipment sold on or after October 7, 1992. The Arms Export Control Act still requires recoupment of nonrecurring costs for sales of major defense equipment under the foreign military sales program.

This final rule recognizes that requiring contractors to pay a fee to the Government for products and technologies sold to non-U.S. Government parties unnecessarily imposes a financial burden on U.S. industry and an administrative burden on both the Department of Defense and U.S. industry. This final rule will assist the U.S. defense industry to be more competitive on a global basis by reducing contracting costs through economies of scale, pricing incentives, and reduced administrative burdens.

The Arms Export Control Act currently requires the Department of Defense to collect recoupment fees on sales of major defense equipment through the Foreign Military Sales program, which accounts for most major defense equipment sales.

A Major Defense Equipment is any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test and evaluation cost of more than $50 million or a total production cost of more than $200 million. The definition of Major Defense Equipment is included in the Arms Export Control Act.

EFFECTIVE DATE: January 13, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R. Florence, 703–697–0585.

SUPPLEMENTARY INFORMATION: On July 2, 1992, the Department of Defense published a proposed rule, for public comments, of 32 CFR part 165. The DoD contractual language to implement the nonrecurring cost recoupment policies are incorporated into acquisition regulations, which are also published in the **Federal Register** for public comment. The term, "acquisition regulation," refers to the Defense Acquisition Regulation, the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement. The final rule for DoD recoupment policy is to be incorporated into the DoD FAR Supplement and will be published in the **Federal Register** 48 CFR parts 215, 252, and 270.

Executive Order 12291

On November 26, 1991, the Office of Management and Budget advised that this rule was considered to be a major rule under Executive Order 12291. The original regulatory impact analysis prepared in conjunction with the interim rule has been rescinded. It has been amended to conform with the additional changes in policy presented in the final rule. The information set forth below constitutes the new regulatory impact analysis for purposes of Executive Order 12291 and regulatory flexibility analysis for purposes of the Regulatory Flexibility Act (5 U.S.C. 601).

Accordingly, and in response to the Office of Management and Budget's determination, the purpose of this rule is to limit the recoupment charge to "major defense equipment" sold through the foreign military sales program.

The Comptroller, and Chief Financial Officer, Department of Defense has determined that this rule does not impose paperwork requirements or other regulatory burdens of the type Executive Order 12291 and the Regulatory Flexibility Act were intended to minimize. In fact, the economic impact of this rule is a reduction of amounts due to the U.S. Government and a reduction in work load—both paperwork and accounting efforts—to both the Department of Defense and defense contractors. The reductions would occur due to a lessening of payment requirements and reduced administrative burden costs. These reductions will not have an unreasonable impact on defense contractors or the Department of Defense.

Paperwork Reduction Act Information

The rule contains no new information collection requirements requiring the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 165

Armed Forces, Commercial Sales, Foreign Military Sales, Foreign trade.

Accordingly, 32 CFR part 165 is revised to read as follows:

PART 165—RECOUPMENT OF NONRECURRING COSTS ON SALES OF U.S. ITEMS

Sec.

165.1 Purpose.
165.2 Applicability and scope.
165.3 Definitions.
165.4 Policy.
165.5 Responsibilities.
165.6 Procedures.
165.7 Waivers (including reductions).

Authority: 31 U.S.C. 9701

§ 165.1 Purpose.

This part updates policy to conform with Public Law 90–629, "Arms Export Control Act," October 22, 1968, as amended for calculating and assessing nonrecurring cost recoupment charges on sales of items developed for or by the Department of Defense to non-U.S. Government customers.

§ 165.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) The provisions of this part do not apply to sales of excess property when accountability has been transferred to property disposal activities and the property is sold in open competition to the highest bidder.

(c) The policies and procedures provided for in this part shall apply to all sales on or after January 13, 1993, and supersede application thresholds and charges previously established. Previous versions continue to govern sales made during applicable effective dates. Such previously established nonrecurring cost recoupment thresholds and charges shall be eliminated or revised in accordance with this part.

§ 165.3 Definitions.

(a) *Cost pool.* Represents the total cost to be distributed across the specific number of units. The nonrecurring research, development, test, and evaluation cost pool comprises the costs described in paragraph (f), of this section. The nonrecurring production cost pool comprises costs described in paragraph (e), of this section.

(b) *Foreign military sale.* A sale by the U.S. Government of defense items or defense services to a foreign government or international organization under authority of the "Arms Export Control Act," Public Law No. 90–629 (1968) as amended. Except as waived by the Under Secretary of Defense for Policy,

Foreign Military Sales are the only sales subject to nonrecurring cost recoupment charges.

(c) *Major defense equipment.* Any item of significant military equipment on the United States Munitions List having a nonrecurring research, development, test, and evaluation cost of more than 50 million dollars or a total production cost of more than 200 million dollars. The determination of whether an item meets the major defense equipment dollar threshold for research, development, test, and evaluation shall be based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred by the Department of Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

(d) *Model.* A basic alpha-numeric designation in a weapon system series; e.g., a ship hull series, an equipment or system series, a airframe series, or a vehicle series. For example, the F5A and the F5F are different models in the same F–5 system series.

(e) *Nonrecurring production costs.* Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. Those nonrecurring cost include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the nonrecurring costs recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the DoD FAR Supplement.

(f) *Nonrecurring research, development, test, and evaluation costs.* Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the nonrecurring cost recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

(g) *Pro rata recovery of nonrecurring costs.* Equal distribution (proration) of a pool of nonrecurring cost to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

(h) *Significant change in nonrecurring cost recoupment charge.* A significant change occurs as follows:

(1) A new calculation shows a change of 30 percent of the current system nonrecurring cost charge.

(2) The nonrecurring cost unit charge increases or decreases by 50,000 dollars or more; or

(3) Where the potential for a 5 million dollars change in recoupment exists. The total collections may be estimated based on the projected sales quantities. When potential collections increase or decrease by 5 million dollars, a significant change occurs.

(i) *"Special" research, development, test, and evaluation and nonrecurring production costs.* Costs incurred under a foreign military sale at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

§ 165.4 Policy.

It is DoD policy that:

(a) A nonrecurring cost recoupment charge shall be imposed for sales of major defense equipment only as required by Act of Congress (e.g., Arms Export Control Act).

(b) The Under Secretary of Defense for Policy may grant a waiver to recoupment charges in accordance with § 165.7.

(c) Nonrecurring cost charges shall be based on the amount of the DoD nonrecurring investment in an item.

§ 165.5 Responsibilities.

(a) The Comptroller of the Department of Defense shall provide necessary financial management guidance.

(b) The Under Secretary of Defense (Acquisition) shall take appropriate action to revise the DoD Federal Acquisition Regulation Supplement in accordance with this part.

(c) The Under Secretary of Defense for Policy shall:

(1) Monitor the application of this part.

(2) Review and approve nonrecurring cost recoupment charges and nonrecurring cost recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales.

(3) Ensure publication of a listing of items developed for or by the Department of Defense to which nonrecurring cost recoupment charges are applicable.

(d) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required pro rata calculations in accordance with this part and financial management guidance from the Comptroller of the Department of Defense.

(2) Validate and provide recommended charges to the Under Secretary of Defense for Policy. Supporting documentation will be retained until the item has been eliminated from the nonrecurring cost recoupment charge listing.

(3) Review approved nonrecurring cost recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a nonrecurring cost recoupment charge and, if there is a significant change in a nonrecurring cost recoupment charge, provide a recommended change to the Under Secretary of Defense for Policy.

(4) Collect charges on foreign military sales in accordance with DoD 7290.3–M,[1] "Foreign Military Sales Financial Management Manual" and on other sales, made prior to January 13, 1993, in accordance with DoD 7220.9–M,[2] "DoD Accounting Manual."

(5) Deposit collections to accounts as prescribed by the Comptroller, DoD.

(6) Request guidance from the Under Secretary of Defense for Policy, within 90 days, if an issue concerning a recoupment charge cannot be resolved.

§ 165.6 Procedures.

(a) The nonrecurring cost recoupment charge to be reimbursed shall be a pro rata recovery of nonrecurring cost for the applicable major defense equipment. Recovery of nonrecurring cost recoupment charges shall cease upon the recovery of total DoD costs. Such charges shall be based on a cost pool as defined in § 165.3. For a system that includes more than one component, a "building block" approach (i.e., the sum

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[1] Forward written requests to Defense Institute for Security Assistance Management, ATTN: DISAM–DRP, Wright-Patterson Air Force Base, Ohio 45433.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

of nonrecurring cost recoupment charges for individual components) shall be used to determine the nonrecurring cost recoupment charge for the sale of the entire system.

(b) A nonrecurring cost recoupment charge shall not apply when a waiver has been approved by the Under Secretary of Defense for Policy in accordance with § 165.7 or when sales are financed with U.S. Government funds made available on a nonrepayable basis. Approved revised nonrecurring cost recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

(c) When major defense equipment are sold at a reduced price due to age or condition, the nonrecurring cost recoupment charge shall be reduced by the same percentage reduction.

(d) The full amount of "special" research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special nonrecurring costs exceed 50 million dollars. The pro rata share may be a unit charge determined by the DoD Component as a result of distribution of the total costs divided by the total production. Such reimbursements shall not be collected after 10 years have elapsed since acceptance of DD Form 1513, "U.S. DoD Offer and Acceptance," by the original customer, unless otherwise authorized by the Under Secretary of Defense for Policy. The U.S. Government shall not be charged any nonrecurring costs recoupment charge if it adopts the features for its own use or provides equipment with such features under a U.S. Grant Aid or similar program.

(e) For coproduction, codevelopment and cooperative development, or cooperative production DoD agreements, the policy set forth in this part shall determine the allocation basis for recouping from the third party purchasers the investment costs of the participants. Such DoD agreements shall provide for the application of the policies in this part to sales to third parties by any of the parties to the agreement and for the distribution of recoupments among the parties to the agreement.

§ 165.7 Waivers (including reductions).

(a) The "Arms Export Control Act," Public Law No. 90–629, as amended, requires the recoupment of a proportionate amount of nonrecurring cost of major defense equipment from foreign military sales customers but authorizes consideration of reductions or waivers for particular sales which, if made, significantly advance U.S. Government interests and the furtherance of mutual defense treaties between the United States and certain countries.

(b) Requests for waivers should originate with the foreign government and shall provide information on the extent of standardization to be derived as a result of the waiver.

(c) Blanket waiver requests should not be submitted and shall not be considered. The term "blanket waiver" refers to a nonrecurring cost recoupment charge waiver that is not related to a particular sale; for example, waivers for all sales to a country or all sales of a weapon system.

(d) A waiver request shall not be considered for a sale that was accepted without a nonrecurring cost recoupment charge waiver, unless the acceptance was conditional on consideration of the waiver request.

(e) Requests for waivers shall be processed expeditiously, and a decision normally made to either approve or disapprove the request within 60 days after receipt. A waiver in whole or in part of the recoupment charge or a denial of the request shall be provided in writing to the appropriate DoD Component.

Dated: March 24, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7113 Filed 3–26–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5 93–003]

Drawbridge Operation Regulations; St Jones River, DE

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the regulations for the Barkers Landing, drawbridge, mile 4.5, because the bridge has been removed. Notice and public procedure have been omitted from this action due to the removal of the bridge concerned.

EFFECTIVE DATE: These regulations become effective on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator-New York, Fifth Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In September 1982, a Coast Guard bridge permit was issued to replace the old Barkers Landing bascule bridge with a fixed bridge. The old drawbridge was removed on March 1985.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard certifies under 5 U.S.C. 605(b) that the economic impact is so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact it merely revokes regulations that are now meaningless because they pertain to a drawbridge that no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will not have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of these regulations are Mr. Joe Arca, Jr., Project Manager, and LT Monica Lombardi, Project Counsel, Fifth Coast Guard District, Legal Division.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and

criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying at Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.247 [Removed]

2. Section 117.247 is removed.

Dated: March 9, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–7141 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7567]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 *et. seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Suspensions—Minimal Conversions				
Region V				
Illinois: Kincaid, village of, Christian County.	170858	Apr. 7, 1976, Emerg.; Apr. 1, 1993, Reg.; Apr. 1, 1993, Susp.	Apr. 1, 1993	Apr. 1, 1993.
Indiana: La Porte, city of, La Porte County.	180490	Apr. 28, 1983, Emerg.; Apr. 1, 1993, Reg.; Apr. 1, 1993, Susp.	Apr. 1, 1993	Do.
Regular Conversions—Region I				
Maine:				
Sangerville, town of, Piscataquis County.	230413	July 17, 1975, Emerg.; Nov. 15, 1979, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Apr. 2, 1993.
Sebec, town of, Piscataquis County.	230414	Sept. 21, 1981, Emerg.; Sept. 21, 1981, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Do.
Region IV				
North Carolina:				
Dare County, unincorporated area.	375348	Apr. 9, 1971, Emerg.; Oct. 6, 1978, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Do.
Kill Devil Hills, town of, Dare County.	375353	Feb. 4, 1972, Emerg.; May 4, 1973, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Do.
Kitty Hawk, town of, Dare County.	370439	Apr. 9, 1971, Emerg.; Oct. 6, 1978, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Do.
Nags Head, town of, Dare County,.	375356	Dec. 17, 1971, Emerg.; Nov. 10, 1972, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Do.
Region V				
Illinois:				
Will County, unincorporated areas.	170695	Apr. 22, 1974, Emerg.; Apr. 15, 1982, Reg.; Apr. 1, 1993, Susp.	Apr. 2, 1993	Do.
Huntley, village of, McHenry and Kane Counties.	170480	June 6, 1975, Emerg.; Dec. 15, 1992, Reg.; Apr. 1, 1993, Susp.	Dec. 15, 1992 ...	Do.
Michigan: Kawkawlin, township of, Bay County,.	260658	Jan. 29, 1979, Emerg.; Feb. 1, 1979, Reg.; Apr. 1, 1993, Susp.	Apr. 2, 1993	Do.
Region VII				
Missouri: Lincoln County, unincorporated areas.	290869	June 9, 1980, Emerg.; Mar. 15, 1984, Reg.; Apr. 2, 1993, Susp.	Apr. 2, 1993	Do.
Region I				
New Hampshire: Lyme, town of, Grafton County.	330067	July 1, 1975, Emerg.; Apr. 16, 1993, Reg.; Apr. 16, 1993, Susp.	Apr. 16, 1993	Do.
Region V				
Michigan:				
Standish, township of, Arenac County.	260017	May 25, 1973, Emerg.; Aug. 4, 1987, Reg.; Apr. 16, 1993, Susp.	Apr. 16, 1993	Do.
Buchanan, city of, Berrien County.	260554	Feb. 23, 1976, Emerg.; Apr. 16, 1993, Reg.; Apr. 16, 1993, Susp.	Apr. 16, 1993	Do.
Region X				
Idaho: Boise, city of Ada County .	160002	Apr. 14, 1975, Emerg.; Apr. 17, 1984, Reg.; Apr. 16, 1993, Susp.	Apr. 16, 1993	Do.

Code for reading fourth column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 23, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–7106 Filed 3–26–93; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–535; RM–7520 and RM–7633]

Radio Broadcasting Services; Bowling Green and Elizabethtown, KY, and Ferdinand, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C3 for Channel 253A at Elizabethtown, Kentucky, and modifies the license for Station WQXE(FM) accordingly; substitutes Channel 227A for Channel 252A at Bowling Green, Kentucky, and modifies the license for Station WDNS(FM) to specify Channel 227A; and allots Channel 253A to Ferdinand, Indiana, as a first local FM service, at the request of Hardin County Broadcasting Company, Inc. *See* 55 FR 47895, November 16, 1990, and Supplemental Information, *infra.*

DATES: Effective May 6, 1993. The window period for filing applications for Ferdinand, Indiana, will open on May 7, 1993, and close on June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–535, adopted February 25, 1993, and released March 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

Channel 252C3 can be allotted to Elizabethtown, Kentucky in compliance with the Commission's minimum distance separation requirements with a site restriction 13.8 kilometers (8.6 miles) west, in order to avoid a short-spacing to Station WKQQ(FM), Channel 251C1, Lexington, Kentucky. The coordinates for Channel 252C3 at Elizabethtown are North Latitude 37–40–10 and West Longitude 86–01–00. Channel 227A can be allotted to Bowling Green, Kentucky, at Station WDNS(FM)'s current licensed transmitter site, with a site restriction of 10.3 kilometers (6.4 miles) northeast, in order to avoid a short-spacing to Station WKYQ(FM), Channel 227C1, Paducah, Kentucky. The coordinates for Channel 227A at Bowling Green, Kentucky, are North Latitude 37–02–45 and West Longitude 86–21–53. Channel 253A can be allotted to Ferdinand, Indiana, in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 253A at Ferdinand are North Latitude 38–09–45 and West Longitude 86–50–15. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Channel 253A, Ferdinand.

§ 73.202 [Amended]

3. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 252A and adding Channel 227A at Bowling Green, and by removing Channel 253A and adding Channel 252C3 at Elizabethtown.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7045 Filed 3–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–578; RM–7492, RM–7636, RM–7637, RM–7638, RM–7639]

Radio Broadcasting Services; Carlyle, Dix, Flora, and Mount Vernon, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Carlyle, Illinois, as that community's first local FM service, at the request of Carlyle Broadcasting Company and Carlyle Broadcast Associates (RM–7637, 7638). See 55 FR 49923, December 3, 1990. The coordinates for Channel 244A at Carlyle are North Latitude 38–33–00 and West Longitude 89–21–30. The petition filed by Pathways Broadcasting requesting the allotment of Channel 244A to Mount Vernon, Illinois (RM–7492) is denied. The petition filed by Kenneth W. Kuenzie requesting the allotment of Channel 244A to Dix, Illinois, (RM–7636) and the petition filed by Flora Broadcast Associates requesting the allotment of Channel 243A to Flora, Illinois (RM–7639) are dismissed. With this action, this proceeding is terminated.

DATES: Effective May 6, 1993. The window period for filing applications will open on May 7, 1993, and close on June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–578, adopted February 25, 1993, and released March 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1991 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Carlyle, Channel 244A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 93–7046 Filed 3–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92-224; RM-8074]

Radio Broadcasting Services; Dardanelle, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C3 for Channel 272A at Dardanelle, Arkansas, and modifies the license of Ramsey Communications, Inc. for Station KWKK (FM) as requested. See 57 FR 46839, October 13, 1992. Coordinates for Channel 272C3 at Dardanelle are 35-13-41 and 93-15-20. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-224, adopted March 2, 1993, and released March 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 272A and adding Channel 272C3 at Dardanelle.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-7047 Filed 3-26-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 92-30; FCC 93-118]

Amendment of the Commission's Rules to Add the San Francisco Port Area to the List of U.S. Coast Guard Vessel Traffic Services (VTS) Systems and Designate Marine VHF Channel 14 as the San Francisco Port Area VTS Frequency

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order to amend the Commission's Rules to add the San Francisco, California port area to the United States Coast Guard (Coast Guard) designated radio protection areas and establish marine VHF channel 14 (156.7 MHz) as the VTS frequency for the San Francisco port Area. This Report and Order responds to a request by the Coast Guard which has proposed rules that would require certain vessels to participate in a VTS system in the port of San Francisco. The effect of this action is to enhance protection of the marine environment by preventing vessel collisions and groundings.

EFFECTIVE DATE: April 28, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632-6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 93-118, adopted February 26, 1993; and released March 9, 1993. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 337-1433.

Summary of Report and Order

1. In response to a request from the Coast Guard, this Report and Order adopts minor amendments to the Commission's Maritime Services Rules to add the San Francisco, California port area to the Coast Guard designated radio protection areas for mandatory Vessel Traffic Services (VTS) and to establish marine VHF channel 14 (156.700 MHz) as the VTS frequency for the San Francisco port area.

2. A VTS system is used as an advisory service to coordinate vessel movement and prevent collisions in large, busy port areas. VTS systems use VHF marine radiotelephone equipment to exchange voice communications on channels dedicated to VTS operations in Coast Guard designated VTS areas. Designating San Francisco as a VTS area will allow the Coast Guard to manage vessel traffic in that area more efficiently and improve the safety of life and property at sea.

3. In addition, this Report and Order also adopts minor editorial clarifications, unrelated to VTS operations, to part 80 of the rules. Because the editorial rule amendments are minor and noncontroversial in nature, we find that there is good cause to not comply with the notice and comment provisions of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B).

4. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the type of vessels to which this action applies are not typically owned by small business entities.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

6. *Accordingly, it is ordered,* that part 80 of the Commission's Rules is amended as set forth in the amendatory text effective April 28, 1993.

List of Subjects in 47 CFR Part 80

Marine safety.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.5 is amended by adding a new definition, to appear in alphabetical order, to read as follows:

§ 80.5 Definitions.

* * * * *

Underway. A vessel is underway when it is not at anchor, made fast to the shore or aground.

* * * * *

3. Section 80.148 is amended by revising the introductory text to read as follows:

§ 80.148 Watch on 156.8 MHz (Channel 16).

At least one VHF ship station per compulsory vessel while underway must maintain a watch on 156.800 MHz whenever such station is not being used for exchanging communications. The watch is not required:

* * * * *

4. Section 80.361 is amended by revising paragraph (b) to read as follows:

§ 80.361 Frequencies for narrow-band direct-printing (NBDP) and data transmissions.

* * * * *

(b) The following table describes the frequencies and Channel Series with F1B or J2B emission which are assignable to ship stations for NB–DP and data transmissions with other ship stations and public coast stations. Public coast stations may receive only on these frequencies.

* * * * *

5. Section 80.373 is amended by redesignating the second footnote 14 in paragraph (f) as Footnote 15, and redesignating the current footnote 15 as Footnote 16, to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f) * * *

* * * * *

[14] Available only in the Puget Sound and Strait of Juan de Fuca.

[15] The frequency 156.525 MHz is to be used exclusively for distress, safety and calling using digital selective calling techniques. No other uses are permitted.

[16] The frequency 156.450 MHz is available for intership, ship and coast general purpose calling by noncommercial vessels, such as recreational boats and private coast stations.

* * * * *

6. Section 80.383 is amended by adding San Francisco to the table in paragraph (a) in the list of geographic areas for the carrier frequency 156.700 MHz, by adding a Footnote 2 below the table in paragraph (a), by revising paragraphs (b)(3) and (b)(4), and by adding new paragraph (b)(5), to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
* * * * *	
156.700	New York, New Orleans[1], Seattle, San Francisco.[2]

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard reestablishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

[2] Private coast station licenses for the use of this frequency will not be renewed beyond November 1, 1997. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

(b) * * *

(3) *Houston.* The rectangle between north latitudes 28 degrees 30 minutes and 30 degrees 20 minutes and west longitudes 93 degrees 30 minutes and 96 degrees;

(4) *Seattle (Puget Sound).* The area encompassed between the United States-Canadian border and a line drawn from 49 degrees North 121 degrees West on the United States-Canadian Border, to 46 degrees 30 minutes North 121 degrees West, then to 46 degrees 30 minutes North 125 degrees West, then to 48 degrees 30 minutes North 125 degrees West, and then east to the United States-Canadian Border; and

(5) *San Francisco.* The rectangle between north latitudes 39 degrees and 37 degrees and west longitudes 120 degrees 50 minutes and 123 degrees 20 minutes.

* * * * *

[FR Doc. 93–7117 Filed 3–26–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 58
Monday, March 29, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–08–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9 series airplanes and C–9 (military) airplanes, that currently requires the implementation of a Structural Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. This action would, among other things, revise the existing SID sampling program to require additional visual inspections of all Principal Structural Elements (PSE) on certain airplanes. This proposal is prompted by new data submitted by the manufacturer indicating that certain revisions to the SID program are necessary in order to increase the confidence level of the statistical program to ensure timely detection of cracks in PSE's. The actions specified by the proposed AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: Comments must be received by May 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

FOR FURTHER INFORMATION CONTACT: David Hsu, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5323; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 6, 1988, the FAA issued AD 87–14–07 R1, Amendment 39–6019 (53 FR 46866, November 21, 1988), to require structural inspections to detect fatigue cracking, reporting of the inspection results, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. That action was prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size is necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in Principal Structural Elements (PSE). The requirements of that AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

Since the issuance of that AD, the manufacturer has issued McDonnell Douglas Report No. L26–008, "DC–9 Supplemental Inspection Document (SID)," Volume I, Revision 3, dated April 1991; Volume II–10/20, Revision 3, dated April 1991; Volume II–20/30, Revision 4, dated April 1991; Volume II–40, Revision 3, dated April 1991; Volume II–50, Revision 3, dated April 1991; and Volume III–92, dated July 1992. This revision of the SID revises the sampling program by:

a. Adding visual inspections of all PSE's on certain airplanes listed in the SID planning data, at least once during the interval between the start date (SDATE) and the end date (EDATE) established for each PSE (The additional visual inspections, defined in section 3 of Volume II, are required on airplanes which have not been inspected in accordance with section 2 of Volume II of the SID.);

b. Using a revised inspection reporting form;

c. Reporting the results of the new visual inspections in addition to those required by the existing AD; and

d. Increasing the sample size.

The FAA has reviewed and approved the revised SID and has determined that these revised procedures must be incorporated into the affected operators' SID programs in order to provide an acceptable level of confidence that cracks in PSE's do not exist in the fleet.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 87–14–07 R1 to require additional visual inspections of all airplanes listed in the SID planning data at least once during each inspection interval, a revision of the reporting form and requirements, and an increase in the sample size. The actions would be required to be accomplished in accordance with the revised SID described previously.

There are approximately 920 Model DC–9 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 586 airplanes of U.S. registry and 19 U.S. operators would be affected by this proposed AD. Incorporation of the SID program into an operator's maintenance program, as required by AD 87–14–07 R1, is estimated to necessitate 1,000 work hours (per operator), at an average labor cost of $55 per work hour. Based on these figures, the cost to the 19 affected U.S. operators to incorporate the SID program is estimated to be $1,045,000.

The incorporation of the additional procedures proposed in this AD action would require approximately 62 additional work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 19 affected U.S. operators to incorporate these additional procedures into the SID program into an operator's maintenance program is estimated to be $64,790.

The recurring inspection costs, as required by AD 87–14–07 R1, is estimated to be 341 work hours per airplane per year, at an average labor cost of $55 per work hour. Based on these figures, the recurring inspection costs required by AD 87–14–07 R1 are estimated to be $18,755 per airplane, or $10,990,430 for the affected U.S. fleet.

The recurring inspection procedures added to the program by this proposed AD action would require approximately 21 additional work hours per airplane per year to accomplish. The average labor charge would be $55 per work hour. Based on these figures, the additional recurring inspection cost impact added by this AD on U.S. operators is estimated to be $1,155 per airplane, or $676,830 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $11,732,050 for the first year, and $11,667,260 for each year thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6019 (53 FR 46866, November 21, 1988), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93–NM–08–AD. Supersedes AD 87–14–07 R1, Amendment 39–6019.

Applicability: Model DC–9–10, –20, –30, –40, –50 series airplanes, and C–9 (Military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within one year after December 23, 1988 (the effective date of AD 87–14–07 R1, Amendment 39–6019), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the Principal Structural Elements (PSE) defined in McDonnell Douglas Report No. L26–008, "DC–9 Supplemental Inspection Document (SID)," Section 2 of Volume I (All Series) of Revision 1, dated November 1987, in accordance with Section 2 of Volume III–87, dated November 1987, of the SID. The non-destructive inspection (NDI) techniques set forth in Section 2 of Volume II, dated November 1987, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–87, dated November 1987, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note: Volume II, dated November 1987, of the SID is comprised of the following:

Volume designation	Revision level shown on volume
Volume II–10/20	Original.
Volume II–20/30	1.
Volume II–40	Original.
Volume II–50	Original.

(b) Within 6 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD, with a revision that provides for inspection(s) of the PSE's defined in McDonnell Douglas Report No. L26–008, "DC–9 Supplemental Inspection Document (SID)," Section 2 of Volume I of Revision 3, dated April 1991, in accordance with Section 2 of Volume III–92, dated July 1992, of the SID. Visual inspections of all PSE's on airplanes listed in Volume III–92, dated July 1992, of the SID planning data, are required by the fleet leader-operator sampling (FLOS) program at least once during the interval between the start date (SDATE) and the end date (EDATE) established for each PSE. The visual inspections are defined in Section 3 of Volume II, dated April 1991, of the SID, and are required only for those airplanes that have not been inspected previously in accordance with Section 2 of Volume II, dated April 1991, of the SID. The NDI techniques set forth in Section 2 of Volume II, dated April 1991, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph. All inspection results (negative or positive) must

be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–92, dated July 1992, of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note: Volume II, dated April 1991, of the SID is comprised of the following:

Volume Designation	Revision level shown on volume
Volume II–10/20	3
Volume II–20/30	4
Volume II–40	3
Volume II–50	3

Note: NDI inspections accomplished in accordance with the following Volume II of the SID provide acceptable methods for accomplishing the inspections required by this paragraph:

Volume designation	Revision level	Date of revision
Volume II–10/20.	3	Apr. 1991.
Volume II–10/20.	2	Apr. 1990.
Volume II–10/20.	1	June 1989.
Volume II–10/20.	Original	Nov. 1987.
Volume II–20/30.	4	Apr. 1991.
Volume II–20/30.	3	Apr. 1990.
Volume II–20/30.	2	June 1989.
Volume II–20/30.	1	Nov. 1987.
Volume II–40	3	Apr. 1991.
Volume II–40	2	Apr. 1990.
Volume II–40	1	June 1989.
Volume II–40	Original	Nov. 1987.
Volume II–50	3	Apr. 1991.
Volume II–50	2	Apr. 1990.
Volume II–50	1	June 1989.
Volume II–50	Original	Nov. 1987.

(c) Any cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program that is required by this AD should include a damage tolerance assessment for that PSE.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 23, 1993.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–7070 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–176–AD]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes, equipped with certain main landing gear (MLG) actuators. This proposal would require replacement of certain MLG actuators. This proposal is prompted by a report of a malformed radius on the locking segment slots in the piston rod of the MLG actuators. The actions specified by the proposed AD are intended to prevent failure of the MLG actuator to unlock, which would prevent the extension of the MLG.

DATES: Comments must be received by May 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–176–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Short Brothers Model SD3–60 series airplanes. The CAA advises that it has recently received a report of a malformed radius on the locking segment slots in the piston rod of the main landing gear (MLG) actuator. The radius is located on the rear edge furthest from the seal groove of the four slots that house the locking segments. Damage to the rear edge radius could

result in the locking segments tipping within the slots and subsequently preventing the actuator from unlocking, which would prevent the extension of the MLG.

Dowty Aerospace Gloucester Limited has issued Dowty Aerospace Hydraulics-Cheltenham Service Bulletin 32–69SD, Revision 2, dated January 20, 1993, that describes procedures for replacement of certain MLG actuators having part number 104796004. The removed units are to be returned to Dowty Aerospace Hydraulics-Cheltenham, for production acceptance tests, disassembly, and inspection of the piston rod slots.

This airplane model is manufactured in United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of MLG actuators having part number 104796004 with a serviceable part. Since the malformed units were assembled in June 1986, all units from this batch are required to be replaced with serviceable units. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 6 actuators, installed on airplanes of U.S. registry, would be affected by this proposed AD, that it would take approximately 2 work hours per actuator to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $660, or $110 per actuator.

The FAA has been advised that 5 of the 6 actuators have been replaced. Therefore, the future economic cost impact of this rule on U.S. operators is now only $110.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 92–NM–176–AD.

Applicability: Model SD3–60 series airplanes; equipped with main landing gear (MLG) actuator part number (P/N) 104796004, having serial number DRG/4729/86, DRG/4730/86, DRG/5057/86, DRG/5059/86, DRG/5060/86, or DRG/5061/86; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG actuator to unlock, which would prevent the extension of the MLG, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the MLG actuator with a serviceable actuator that is marked "32–69SD" in accordance with Dowty Aerospace Hydraulics-Cheltenham Service Bulletin 32–69SD, Revision 2, dated January 20, 1993.

(b) As of the effective date of this AD, no person shall install on any airplane a MLG actuator P/N 104796004, having serial number DRG/4729/86, DRG/4730/86, DRG/5057/86, DRG/5059/86, DRG/5060/86, or DRG/5061/86, that is not marked "32–69SD."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–7071 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASO–3]

Proposed Establishment of Transition Area, Boca Raton, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Boca Raton, FL Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Boca Raton Airport based on the Palm Beach VORTAC. This proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the Boca Raton Airport will change from visual flight rules (VFR) only to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: May 31, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–3, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, view or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Boca Raton, FL Transition Area. A VOR/DME–A SIAP has been developed to serve the Boca Raton Airport. This proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport for IFR aeronautical operations. If approved, the operating status of the airport would change from VFR only to include IFR operations concurrent with publication of the SIAP. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation

* * * * *

ASO FL TA Boca Raton, FL
Boca Raton Airport, FL
(lat. 26°22'44" N., long. 80°06'26" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Boca Raton Airport, excluding that airspace within the Pompano Beach, FL Transition Area.

* * * * *

Issued in East Point, Georgia, on March 15, 1993.

Don Case,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–7097 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205A]

RIN 1218 AA40

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed Rule; Limited reopening of rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening its record on the proposed standard for scaffolds used in the construction industry (subpart L) (51 FR 42680, November 26, 1986) in order to solicit comments on the issues specified herein.

First, the Agency believes, based on comments received in this rulemaking, that additional public comment regarding fall protection and safe means of access for employees erecting or dismantling scaffolds will better enable OSHA to determine what can be done to protect such employees.

Second, the Agency is reopening the record to add information on guardrail systems that incorporate crossbraces. The Agency believes that this

information is relevant to OSHA's decision regarding the extent to which crossbraces may be used as members in guardrail systems. Therefore, it is appropriate to provide an opportunity for public comment on this information.

Third, the Agency is reopening the record to seek information concerning a type of scaffolding (called chimney bracket scaffolds) used in demolishing, repairing, and erecting chimneys, stacks, and similar structures.

OSHA will consider the information and comments elicited by this limited reopening of the record before the Agency finalizes its revisions of the scaffold regulations.

DATES: Written comments on these issues must be postmarked by May 28, 1993.

ADDRESSES: Written comments on the data described below should be submitted in quadruplicate to the Docket Office, Docket No. S–205A, Occupational Safety and Health Administration, Room N–2634, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Comments and information received may be inspected and copied in the Docket Office.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210, 202–523–8151.

SUPPLEMENTARY INFORMATION: On November 26, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) on Safety Standards for Scaffolds Used in the Construction Industry (subpart L) (51 FR 42680). The NPRM established a 90-day period, which ended February 23, 1987, during which interested parties could submit written comments or request a hearing regarding the proposal. Several commenters requested an extension of the written comment period based on the complexity of the issues presented. On February 26, 1987, OSHA published a notice (52 FR 5790) extending the comment period to June 1, 1987. Several commenters requested an additional extension of the deadline for the submission of written comments, again because of the complexity of the issues presented. In order to afford the fullest opportunity for the public to comment on the proposal, OSHA extended the comment period a second time to August 14, 1987 (52 FR 20616, June 2, 1987).

In response to the NPRM, OSHA received several requests for a public hearing. Accordingly, pursuant to section 6(b)(3) of the OSH Act, OSHA published a notice of informal public hearing on January 26, 1988 (53 FR 2048). The hearing was held on March 22, 1988, with Administrative Law Judge Joel Williams presiding.

At the close of the hearing, Judge Williams set a period, ending May 9, 1988, for the submission of additional comments and information. On August 11, 1988, Judge Williams certified the rulemaking record, including the hearing transcript and all written submissions to the docket, thereby closing the hearing record for this proceeding.

As discussed below, OSHA has decided to reopen the rulemaking record to receive comments, with supporting information, on the following subjects: the proposed exemption from fall protection requirements and access requirements for employees erecting or dismantling scaffolds; the use of crossbracing in guardrail systems; and the fall protection required for employees working on chimney bracket scaffolds; as well as the requirements for the construction and use of chimney bracket scaffolds.

Fall Protection for Employees Erecting or Dismantling Scaffolds

Proposed paragraph § 1926.451(e)(1) exempted employees from the proposed subpart L fall protection requirements while erecting or dismantling scaffolds. In Issue 8 of the NPRM, OSHA asked whether this proposed exemption should apply to the erection and dismantling of supported scaffolds, but not to suspended scaffolds. While noting that there often is no place on a supported scaffold to which a body belt or body harness system can be attached during scaffold erection or dismantling, the Agency observed that suspended scaffolds are often located so that droplines can be conveniently used to tie-off employees during such operations.

OSHA notes that, while Issue 8 did not explicitly call into question the proposed paragraph (e) exemption for the erection or dismantling of supported scaffolds, several commenters addressed that subject and the need, in general, to protect scaffold erectors and dismantlers from fall hazards. For example, three commenters (Exs. 2–43, 2–45, and 2–497) stated that fall protection should be required during all scaffold erection and dismantling operations. One of these commenters (Ex. 2–45) stated that many structures provide overhead anchorages to which lifelines can be connected to allow vertical and horizontal movement. This commenter added that, during the erection of scaffolds, stone masons use light outrigger scaffold sections on the long sides. These section have guardrails, and can be pushed up the vertical scaffold poles before the employees who erect the scaffolds are exposed to fall hazards at a higher level. (Ex. 2–497) stated that lifelines or perimeter guardrails can be provided even when no overhead anchorage is apparent. The same commenter added that "a bucket truck, manlift or other elevating platform can be used to install lifelines without a fall hazard." The third commenter (Ex. 2–43) stated that "if a fall hazard exists, lifelines or some other fall arrest system should be in place."

In addition, some commenters (Exs. 2–3, 2–12, 2–21 and 2–53) stated that employees erecting or dismantling all types of scaffolds should be exempted from the proposed fall protection requirements of Subpart L. For example, one commenter (Ex. 2–12) stated that fall protection should not be required because, "We have experienced no injuries during this operation. I feel in many instances that certain types of fall protection may actually increase accidents." Another commenter stated that fall protection "would be detrimental to employee safety" because "It would be difficult to attach safety ropes to secure object(s) in most cases, as well as hindering the necessary movement of employees. This practice, if approved, would add a significant cost to all masonry projects." OSHA notes that the factors raised by these commenters apply only when supported scaffolds, not suspended scaffolds, are being erected or dismantled.

Also, four commenters (Exs. 2–29, 2–54, 2–57, and 2–70) indicated that fall protection should be provided where feasible during the erection and dismantling of supported scaffolds. One of these commenters (Ex. 2–57) added that some supported scaffolds can be rigged to provide integral fall protection without undue encumbrance of the work. However, the commenter provided no examples. The same commenter indicated that a broad exemption from fall protection requirements during the erection and dismantling of supported scaffolds would reduce the protection of employees and would discourage future technological developments in this area. An additional commenter (Ex. 2–516) stated that fall protection should be provided unless it creates a greater hazard.

Other commenters (Exs. 2–3, 2–9, 2–15, 2–22, 2–30, 2–69, 2–367, 2–368) indicated that the proposed exemption should apply to supported scaffolds. The SIA (Ex. 2–368) stated that

"individuals erecting or dismantling supported scaffolds do not require fall protection during erection and dismantling." The Scaffolding, Shoring and Forming Institute (SSFI) (Ex. 2–367) stated that safety belts should not be required during the erection and dismantling of supported scaffolds because "there is no appropriate area for safe tie-off, and drop lines would become entangled in the scaffold during the climbing and moving procedures and could pull the erector off the scaffold."

Several commenters (Exs. 2–13, 2–15, 2–29, 2–30, 2–69 and 2–70) stated that the proposed exemption should not apply to suspended scaffolds. For example, one commenter (Ex. 2–13) stated "Persons rigging any suspended scaffold should be protected from the hazard of falling." Another commenter (Ex. 2–29) stated "The regulation should state that fall protection should * * * always be provided when erecting or dismantling suspended scaffolds."

In addition, Department of Labor personnel met (Ex. 18) with representatives of the scaffold industry on May 7, 1992, to discuss the proposed exemption from the proposed fall protection requirements for employees erecting or dismantling scaffolds. The industry representatives stated that it was unnecessary and infeasible to provide fall protection for employees erecting or dismantling scaffolds.

The Agency believes that the input received in response to Issue 8 raises questions about the need for an exemption from fall protection requirements during the erection or dismantling of supported or suspended scaffolds. Therefore, OSHA has reopened the rulemaking, placed the pertinent submissions described below in the record, and has set a comment period for the purpose of receiving comments from interested parties.

Exhibits

[Ex. 18] Record of May 7, 1992, meeting between Department of Labor representatives and scaffold industry representatives. One page with attachment. The industry representatives were D. Victor Saleeby of the Scaffold Industry Association, Joe Puccinelli of Safway Steel Products, and Richard C. Mocny of Patent Scaffolding Co.

The industry representatives stated that providing fall protection for scaffold erectors and dismantlers is neither necessary nor feasible. They provided a document (the attachment) which contained data on the speed of a free-falling body at various fall distances, the amount of time a free-falling body takes to fall various distances, the fall arrest forces on a web lanyard (with and without a shock absorber) for a 220 pound weight falling 6 feet, and the data from two load tests of catenary wire ropes.

[Ex. 19] "Scaffold Erection Fall Arrest Experiments 5/91 & 1/92" (Videotape) from Safway Steel Products (cover letter and tape).

This video tape shows several experiments in which weights were attached to free-standing mobile scaffolds. When the weights were dropped to simulate a falling body, the scaffolds tipped over.

[Ex. 20] State of Washington, Washington Annotated Code WAC 296–155–24510. This regulation requires that employees exposed to a fall hazard of 10 feet or more be protected by fall restraint or fall arrest systems. December 24, 1991.

[Ex. 21] Scaffold Industry Association (SIA) remarks to the Fall Protection Subcommittee of the Construction Advisory Committee for the State of Washington on February 20, 1992, with four attachments providing background information. Thirty-one pages, February, 1992. The SIA ascribed most falls from scaffolds to misuse of equipment, unauthorized alteration of the equipment (particularly removal of guardrail systems), failure to follow safety standards, and lack of training. The SIA stated that the problem of falls from scaffolds lies with users, not with trained scaffold erectors.

The SIA also discussed existing standards, case law, and industry practice. In particular, the SIA stated that requiring tie-off of scaffold erectors is not practical or feasible, will create greater hazards, and is not justified by accident statistics.

The text describes tests performed in which scaffolds were toppled when weights attached by lanyards to free standing rolling scaffold towers were dropped to simulate a falling person.

Attachment A:

An SIA analysis of a Bureau of Labor Statistics survey of scaffold accidents. Regarding Attachment A, the SIA noted, "None of the accidents involved fatalities among 'caffold erectors'."

Attachment B:

An SIA analysis of a survey by the Division of Labor Statistics and Research, State of California, of 114 scaffold fatalities from January, 1964, through June, 1974. Regarding Attachment B, the SIA noted, "None of these accidents were reported as involving scaffold erectors."

Attachment C:

The SIA surveyed its estimated 150 members engaged in the erection and dismantling of scaffolds in order to determine if they had experienced falls by scaffold erectors from 1985 through 1989. Seventy-four members (representing approximately 180 locations) responded. Regarding Attachment C, the SIA noted that a number of the responders were unable to provide information for the earlier years. This survey shows 35 falls and 2 fatalities over the five-year period during which employees worked 10,238,000 hours.

Attachment D:

This is the February 1987 issue of the SIA Newsletter. Photographs on pages 1 and 3 show workers installing scaffolding on the Statue of Liberty without fall protection. Regarding this attachment, the SIA stated that fall protection was not provided or required and that the project was completed without injury to any scaffold erectors.

[Ex. 22] State of Washington, Department of Labor and Industries, Division of Industrial Safety and Health. Cover letter dated June 8, 1992, and minutes of the February 20, 1992, meeting of the State's Construction Advisory Committee's Fall Protection Subcommittee.

The Division of Occupational Safety and Health informed the Subcommittee that the Division would enforce its fall protection standard (see Ex. 20, above) on all employers in the construction industry including those whose employees erect and dismantle scaffolds, except where the employer can demonstrate either that providing fall protection is infeasible or that compliance with the standard creates a hazard greater than that created by non-compliance. The minutes also described efforts by the Division to determine when scaffold industry compliance with the fall protection standard would be infeasible or would pose a greater hazard than non-compliance.

[Ex. 23] OSHA's Office of Management Data Systems, Integrated Management Information System. Abstracts of reports of 42 accidents involving falls during erection or dismantling of supported scaffolds from April 1984 to November 1992. December 10, 1992. OSHA notes that 16 of those accidents resulted in fatalities.

Request for Comments

While OSHA acknowledges that there may be instances where employees erecting or dismantling supported scaffolds cannot be protected from fall hazards, the Agency is considering if, based on the available information, it is appropriate to retain or modify the proposed exemption from fall protection requirements during the erection or

dismantling of supported scaffolds. In particular, the Agency notes that, even without the proposed exemption, employers have the opportunity to raise "impossibility of compliance" and "greater hazard" as defenses against citations for violations of § 1926.451(e). As regards the erection and dismantling of suspended scaffolds, OSHA believes that the rulemaking record supports revision of proposed § 1926.451(e)(1) to remove the proposed exemption.

Accordingly, OSHA requests public comment including supporting information (such as current accident, economic, and engineering data) regarding the following questions:

(1) Should the Agency require employers to provide fall protection for employees erecting or dismantling supported scaffolds, except where the employer can demonstrate that it is not practicable or that it would create a greater hazard than would be created by not providing fall protection?

(2) To what extent are employers able to provide fall protection for employees erecting or dismantling supported or suspended scaffolds?

(3) What procedures and equipment are used to protect employees from fall hazards during the erection or dismantling of supported or suspended scaffolds?

(4) How would the use of fall protection affect the mobility of employees engaged in erecting or dismantling supported or suspended scaffolds?

(5) Would compliance with the proposed fall protection requirement create hazards for employees erecting or dismantling scaffolds? If so, what are those hazards and how could they be prevented?

(6) What criteria should an employer consider in determining if providing fall protection to employees erecting or dismantling supported scaffolds is impracticable or would create a greater hazard than erecting or dismantling supported scaffolds without fall protection? For example, to what extent should the following factors be considered: lack of a structure above or adjacent to the scaffold; height, length, or width of the scaffold, number of employees exposed, duration of employee exposure, and the erection or dismantling procedures followed? Please submit comments and suggestions, with supporting information, regarding any factors that OSHA should consider in drafting the final rule.

(7) If OSHA required employers to provide fall protection, except where it was infeasible or created a greater hazard, what should employers be required to demonstrate in support of their decisions regarding the feasibility of providing fall protection for employees erecting or dismantling scaffolds?

(8) If the Agency retains the proposed exemption from the fall protection requirements for employees erecting or dismantling supported scaffolds, would measures such as fully planking sections on which employees must stand or providing stairway-type ladders inside the scaffold reduce employee exposure to fall hazards?

(9) Should OSHA require fall protection for employees on those sections of supported scaffolds, such as the top level of a multi-level scaffold, that are not being erected or dismantled, while retaining the proposed exemption only for those particular sections that are being erected or dismantled at a particular time?

(10) What would be the impact if OSHA revised § 1926.451(e)(1) to require that employers protect employees erecting or dismantling suspended scaffolds from fall hazards. Please submit supporting information for any comments or suggestions.

Access Requirements for Employees Erecting or Dismantling Scaffolds

Proposed § 1926.451(c) would require that access to and between scaffold platforms more than 2 feet (0.6 m) above or below the point of access be by portable ladders, hook-on ladders, attachable ladders, stairway-type ladders (such as ladder stands), ramps, runways, integral prefabricated scaffold rungs, or equivalent means, or by direct access from another scaffold, structure, personnel hoist, or similar surface. A note to proposed § 1926.451(c) exempted employees erecting or dismantling scaffolds from the proposed access requirements, because OSHA believed at that time that compliance with those proposed requirements would often be infeasible, due to a lack of proper bracing, where a scaffold was being erected or disassembled.

However, OSHA now believes that the concerns raised regarding the proposed exemption from the proposed fall protection requirements of employees erecting or dismantling scaffolds also apply to the proposed exemption from the proposed access requirements. For example, the Agency believes, based on the above-discussed comments received on Issue 8, that the proposed paragraph (c) exemption is unnecessary for employees erecting suspended scaffolds and will not always be necessary for employees erecting or dismantling supported scaffolds. OSHA solicits comments, with supporting information, on this issue.

Request for Comments

The Agency requests comments, including any supporting information (such as current accident, economic, and engineering data), on the following issues:

(1) Should OSHA revise § 1926.451(c) to require that employees erecting or dismantling suspended and/or supported scaffolds have access to and between scaffold platforms that complies with the provisions of proposed § 1926.451(c)?

(2) To what extent are employers able to provide safe access for employees erecting or dismantling supported or suspended scaffolds?

(3) What particular circumstances should OSHA consider in determining if the proposed exemption should be deleted in whole or in part?

(4) Would compliance with the proposed access requirement create hazards for employees erecting or dismantling scaffolds? If so, what are those hazards and how could they be prevented?

(5) If OSHA required employers to comply with the access requirements at all times except where it was infeasible or created a greater hazard, what should employers be required to demonstrate in support of their decisions regarding the feasibility of providing safe access for employees erecting or dismantling scaffolds?

Use of Crossbraces

The NPRM indicated situations where employers would be required to protect employees from fall hazards with guardrail systems. Proposed § 1926.451(e)(4) set guardrail installation criteria, including requirements for toprails and midrails. "Crossbraces" (defined by ANSI A10.8–1988, Scaffolding-Safety Requirements, as "Two diagonal scaffold members joined at their center to form an "X", used between frames or uprights, or both") were not included in the list of acceptable guardrail components. In Issue 13 of the NPRM, OSHA noted that the Scaffold Industry Association (SIA) and other groups supported, within limits, the use of crossbraces as an effective guardrail-type system. Therefore, OSHA requested public comment on the utility of crossbraces for fall protection.

To facilitate comment, Issue 13 presented several sets of criteria which could potentially be applied to crossbraces if they were used in guardrail systems. The criteria covered the height above the work surface at

which braces could cross and provide adequate fall protection in lieu of a midrail (20 to 31 inches or 20 to 30 inches); a toprail (39 to 49 inches, with brace ends no more than 54 inches apart); or in lieu of a midrail and toprail (30 to 48 inches, with brace ends no more than 54 inches apart). Issue 13 also indicated that even if crossbraces were otherwise permitted as guardrails, OSHA was considering whether they should not be permitted to be used in place of either a toprail or a midrail on the top level of any supported scaffold, and whether crossbracing should not be allowed in place of both a toprail and a midrail on the same level of a supported scaffold.

OSHA notes that the American National Standard for Construction and Demolition, Scaffolding Safety Requirements, ANSI A10.8–1988, allows the use of crossbracing in lieu of a midrail when the crossing point of two braces is at least 20 inches, but no more than 30 inches, above the platform (Section 4.5.5). In addition, the ANSI standard provides that crossbracing is acceptable as a guardrail system provided that the crossing point of two braces is between 31 and 48 inches above the work platform and the end points at each upright are no more than 54 inches apart (Section 4.5.6). The ANSI standard does not provide a rationale for the above-cited provisions.

Interested parties have continued to submit information on the use of crossbracing in guardrail systems, even though the record for this rulemaking was formally closed on August 11, 1989. OSHA believes that submissions received subsequent to the closing of the record contain information which would further the resolution of the crossbracing issue. Accordingly, the Agency has determined that it is in the public interest to consider those submissions and to allow the public an opportunity to comment on the contents of those submissions. Therefore, OSHA has reopened the rulemaking record, placed the pertinent submissions described below in the record, and has set a comment period for the purpose of receiving comments from interested parties. The submissions which have been received and inserted into the record are listed and briefly summarized below.

The Scaffold Industry Association (SIA) has stated (Ex. 2–368) that OSHA should permit employers to use crossbracing in lieu of guardrails on fabricated frame scaffolds since such scaffolds are designed to receive crossbracing, but not to receive standard guardrails.

OSHA notes that easily attachable guardrail systems which overcome any such problem are commercially available. For example, there is a system (Ex. 24) that consists of upright members which have connection points for guardrails at the standard heights. These upright members lock in place onto the upright members of the scaffold, leaving the connection points on the frame free for attaching crossbracing. Another system (Ex. 25) consists of guardrail panels which are supported by hooks placed over the horizontal frame members. A third system (Exs. 26 and 27) attaches the midrail to the crossbracing itself, while the toprail attaches to the scaffold uprights by the use of sleeves and also attaches to the crossbrace.

Exhibits

[Ex. 24] Waco Scaffolding and Equipment advertisement on page 13 of the Scaffolding Industry Association Newsletter of May, 1991. This advertisement depicts a scaffold guardrail system in which guardrail posts attach to scaffold uprights. According to the advertisement, this system provides fliplocks to accept both tubular and angle iron guardrails at 21 inches and 42 inches, eliminating the need to attach guardrails to the crossbrace connection points or to tie guardrails to the scaffold frame.

[Ex. 25] Safway Steel Products sectional scaffolding catalogue. 19 pages, undated. Various scaffold guardrail systems are depicted on page 10 of this catalogue. One of those systems attaches to scaffold horizontal members by use of hooks, eliminating the need to attach guardrails to the crossbrace connection points or to tie guardrails to the scaffold frame.

[Ex. 26] Letter and attachment dated October 6, 1989, from Donald E. Nail, Nail Safety Rails, to OSHA regarding a scaffold guardrail system invented by him.

Mr. Nail provided photographs, a drawing, and the patent documents of a scaffold guardrail system in which the toprail attaches to sleeves placed on the scaffold uprights. Each sleeve has a notch that allows it to receive one of the horizontal members connected to each upright. A tab allows each sleeve to be locked in place on a horizontal member. The toprail also attaches to one scaffold crossbrace member by a pivot connection. The midrail attaches directly to the scaffold crossbraces by sliding rings. Mr. Nail noted that, once the guardrails have been attached to a crossbrace assembly, the guardrails remain attached to the assembly in such a manner that they fold up with it for storage.

Mr. Nail noted that the toprail would automatically be positioned for installation after the crossbrace members have been secured during erection of the scaffolding, and actual installation of the toprail involves only placing the sleeves into engagement with the uprights and pivoting them to engage the horizontal members, thus locking the toprail into place. The midrail is automatically positioned as soon as the crossbrace members are connected during the assembly of the scaffolding.

[Ex. 27] Letter and attachment dated July 12, 1990, from Donald E. Nail, Nail Safety Rails. Mr. Nail states that an automatic safety guardrail for scaffolding would be economical and effective. The attachment is a brochure which addresses his automatic safety guardrail, and states that its benefits are as follow: "faster setup of scaffolds, saves money in labor, minimal investment, easy to store, meets OSHA's guidelines, safe work environment".

[Ex. 28] Memorandum from Frank Strasheim summarizing the recommendations of OSHA's Fall Protection Task Force meeting of November 7 and 8, 1989. Three pages, November 27, 1989.

The task force recommended that crossbracing not be accepted as a substitute for a standard guardrail system on scaffolding.

Request for Comments

The Agency requests comments, including any supporting information (such as current accident, economic, and engineering data), on the following issues:

(1) Are the Waco, Safway, or Nail supplemental rail systems feasible to use? Would they provide protection equivalent to that provided by guardrails that comply with proposed subpart L (conventional guardrails)?

(2) To what extent would the use of crossbraces alone provide fall protection equivalent to that provided through the use of either conventional guardrail systems or the supplemental rail systems described above?

(3) Should OSHA permit the use of crossbracing in lieu of a midrail on scaffolding provided that the crossing point of the two braces is at or between 31 inches and 20 inches above the work surface? If so, what should the maximum distance allowed between the end points of the crossbraces at each upright be?

(4) Should OSHA permit the use of crossbracing in lieu of midrails and toprails on scaffolding provided the

cross point of the two braces is at or between 48 inches and 30 inches above the work surface, and the end points of the crossbraces at each upright are not more than 54 inches apart?

(5) Should OSHA permit the use of crossbracing in lieu of a toprail provided the crossing point of the two braces is at or between 39 inches and 49 inches above the work surface, and the end points of the crossbraces at each upright are not more than 54 inches apart?

(6) Should OSHA permit the use of crossbraces in lieu of midrails provided the crossing point of the two braces is at or between 30 inches and 20 inches above the work surface? If so, what should the maximum distance allowed between the end points of the crossbraces at each upright be?

(7) To what extent would the implementation of configuration(s) or design(s) other than those noted above result in crossbracing that adequately protects employees from fall hazards? Please provide detailed descriptions, with supporting information, for any such configuration or design.

(8) Should OSHA prohibit the use of crossbracing in lieu of both a toprail and a midrail on the same level of a scaffold?

(9) Should OSHA prohibit the use of crossbraces in lieu of either a toprail or a midrail on intermediate levels of scaffolding?

(10) Should OSHA prohibit the use of crossbracing in lieu of either a toprail or a midrail on the top level of scaffolding?

Chimney Bracket Scaffolds

Chimney bracket scaffolds consist of platforms supported by brackets which are secured in place by one or more wire ropes placed in an approximately horizontal plane around the circumference of the structure and tensioned by a turnbuckle.

The Agency has recently received information (Exs. 31 and 32) which suggests that the protection of employees working from chimney bracket scaffolds may not be adequately addressed by proposed § 1926.451. For example, OSHA is concerned that proposed § 1926.451(e) may not adequately address chimney bracket scaffold fall hazards.

OSHA is considering whether or not it is necessary to promulgate specific fall protection requirements in Subpart L for protection of employees on chimney bracket scaffolds. The Agency is also considering whether or not it is appropriate to promulgate technical requirements for chimney bracket scaffolds that are more detailed than those proposed for scaffolds in general. Therefore, OSHA believes that it is appropriate to present a series of questions concerning these scaffolds, and to provide an opportunity for public comment on those questions. The record developed on these issues will be used by OSHA in evaluating the need for specific requirements in subpart L for chimney bracket scaffolds, and in determining what those requirements should be.

Exhibits

[Ex. 29] State of Washington, Washington Annotated Code WAC 296–155–485(26). This sets forth the State of Washington's requirements for "chimney, stack and tank bracket scaffolds". Two pages, December 24, 1991.

[Ex. 30] State of Alaska, Alaska Administrative Code, Construction Code, Subchapter 05, paragraph 120(b)(22). This sets forth the State of Alaska's requirements for "chimney and tank bracket scaffolds". Three pages, May 30, 1982.

[Ex. 31] International Chimney Corporation advertisement on page 21 of Demolition Age Magazine of March, 1992.

This advertisement includes a picture of an employee on a chimney bracket scaffold and a picture of other employees on a ladder that provides access to a chimney bracket scaffold.

[Ex. 32] OSHA's Office of Management Data Systems, Integrated Management Information System. Abstracts of reports of 2 accidents involving falls from chimney bracket scaffolds.

One fall occurred when a section of concrete being removed from a 250 foot tall smoke stack fell onto the chimney bracket scaffold, knocking the employee off the scaffold. The employee fell 250 feet to the ground. The other fall occurred when a section of a chimney bracket scaffold fell 46 feet while two employees were raising the safety rope. Neither employee was tied-off although safety belts were present on the scaffold.

Request for Comments

The Agency requests public comment on the following questions, including any supporting information (such as accident, economic, and engineering data), concerning chimney bracket scaffolds:

(1) During which construction activities are chimney bracket scaffolds used?

(2) What are the hazards that are presented by each of these applications?

(3) OSHA has characterized these scaffolds as suspension scaffolds. To what extent is that treatment appropriate?

(4) How are these scaffolds erected or dismantled?

(5) What hazards do employees face during the erection or dismantling of these scaffolds?

(6) To what extent is it feasible to provide fall protection for employees erecting or dismantling these scaffolds? How can such fall protection be provided? Should OSHA require the use of personal fall arrest systems for employees erecting or dismantling these scaffolds?

(7) What procedures are used to raise, lower, or adjust chimney bracket scaffolds?

(8) What hazards do employees face during the raising, lowering, or adjusting of these scaffolds?

(9) To what extent is it feasible to provide fall protection for employees raising, lowering, or adjusting these scaffolds? How can such fall protection be provided? Should OSHA require the use of personal fall arrest systems for these activities?

(10) OSHA is concerned that a fatal accident would be likely to occur if only one wire rope were used to secure the scaffold brackets and that rope were to fail. Should OSHA require that a minimum of two wire ropes be used for securing the brackets in place? Would one wire rope be sufficient if personal fall arrest systems were used?

(11) Should the use of personal fall arrest systems be required once these scaffolds have been secured in place for use, regardless of the number of wire ropes used to support the scaffold?

(12) Should the use of personal fall arrest systems be required, in addition to the use of guardrail systems, once these scaffolds have been secured in place for use?

(13) How can an adequate anchorage be provided for personal fall arrest systems? Should the anchorage be independent of the scaffold in all cases? Can an independent horizontal wire rope around the structure be used as such an anchorage?

(14) Does the number of wire ropes used to secure the brackets in place affect the need for the use of personal fall arrest systems? If so, how?

(15) Are there situations where the use of a personal fall arrest system is not feasible or would create a greater hazard than would arise if employees worked without personal fall arrest systems?

(16) Is it feasible to secure the brackets without using wire ropes? How?

(17) Should crossbracing be required to secure the brackets from lateral or rotational movement? How would

crossbraces be installed to secure the brackets?

(18) What should be the minimum strength requirements for the wire ropes and tensioning devices used to secure the brackets?

(19) What should be the minimum strength requirements for the structure which supports the scaffold?

(20) Should a competent person (as defined in § 1926.32(f)) be required to inspect the supporting structure before scaffold erection begins?

(21) Should a registered professional engineer be required to inspect the supporting structure before scaffold erection begins?

(22) How can employees working below these scaffolds be protected from falling objects?

(23) Should there be a limit on the size or weight of the material removed from the structure in one piece?

(24) Should there be a limit to the size or weight of the material dropped from the scaffold in one piece?

(25) How many different types of chimney bracket scaffolds are there? How do they differ? To what extent do responses to the preceding questions vary according to the type used?

(26) Are there other safety hazards which have not been addressed in the questions above? If yes, what are they, and how can they be abated?

References

A complete set of references is available for examining and copying at the OSHA Docket Office, Docket No. S–205A, Room N–2634, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Public Participation

Written comments regarding the issues raised in this notice must be postmarked by [insert date 60 days from the date of publication in the **Federal Register**]. Four copies of these comments must be submitted to the Docket Office, Docket No. S–205A, U.S. Department of Labor, Occupational Safety and Health Administration, Room S–2634, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for the Subpart L rulemaking regarding the issues set forth in this notice need not be resubmitted.

Authority

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under Section 6(b) of the OSH Act (29 USC 655), Section 107 of CSA (40 USC 333), and 29 CFR part 1911.

Signed at Washington, DC, this 23rd day of March 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–7063 Filed 3–26–93; 8:45 am]

BILLING CODE 4510–26–P

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29 CFR Part 1926

[Docket No. S–206A]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed Rule; Limited reopening of the rulemaking record for comments on precast concrete and residential construction issues.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the comment period for written responses to OSHA's August 5, 1992, (57 FR 34656) limited reopening of the record on fall protection regarding the appropriate fall protection measures for employees engaged in precast concrete construction. Also, OSHA is seeking comments on new issues raised regarding fall protection in residential construction, with particular regard to framing activities.

DATES: Comments on the issues raised in the notice of reopening must be postmarked by May 28, 1993.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. S–206A, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 1986, OSHA proposed to revise the fall protection requirements for construction and to consolidate those provisions in subpart M of part 1926 (51 FR 42718). The Agency held informal public hearings regarding proposed subpart M on March 22–23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearings, Judge Williams set posthearing comment periods which ended on May 9, 1988. On August 11, 1989, the Administrative Law Judge certified the hearing record.

OSHA subsequently received letters from the Precast/Prestressed Concrete Institute (PCI) and Ryland Building Company (Ryland) which raised matters of concern that had not been raised during the public rulemaking process. The issues raised in the late submissions dealt with the appropriate fall protection measures for employees engaged in precast concrete and light residential construction activities. Following is a discussion of those issues, along with questions that solicit information regarding those issues.

Precast Concrete

Proposed subpart M required that employers protect employees from fall hazards primarily through the proper use of "conventional fall protection" (guardrails, safety nets or personal fall arrest systems). In the course of the subpart M rulemaking, OSHA received comments (Exs. 2–44, 2–106 and 2–107) from PCI, an organization representing the manufacturers of precast concrete building materials and both employers and employees in the precast concrete construction industry, which stated that employees who perform the initial connection of concrete structure components need more freedom of movement than the use of conventional fall protection would permit. One comment (Ex. 2–107) suggested that OSHA allow competent persons to monitor the initial connection of hollow core slabs and to warn the connectors of fall hazards, as provided in proposed §§ 1926.501(b)(2), 1926.501(b)(10) and 1926.502(h) for leading edge and built-up roofing work, in lieu of using conventional systems.

In response, OSHA included Issue M–2 in the Notice of informal public hearing for proposed subpart M (53 FR 2054, January 26, 1988), to describe the concerns raised by PCI and to solicit pertinent testimony and information. PCI and a member company, Concrete Erectors, Inc., presented testimony (Tr. 53–82 and 95–100, March 22, 1988) supporting the use of safety monitoring systems to protect precast connectors. PCI also submitted post-hearing comments (Exs. 17 and 19) that reiterated its concerns.

OSHA received several letters from PCI following the close of the subpart M rulemaking record. Those letters provided new information regarding the feasibility of conventional fall protection for precast connectors and suggested ways in which pre-planning

of the erection process could minimize fall hazards.

The Agency determined that it was in the public interest to consider the input from PCI and to allow the public an opportunity to comment on that input. Accordingly, on August 5, 1992, OSHA reopened the rulemaking record for proposed subpart M (57 FR 34656). The notice of limited reopening discussed the new PCI information and suggestions (Exs. 25–1 through 25–6) in detail. The notice also requested comments on the criteria OSHA was considering for precast concrete erectors who seek to establish that conventional fall protection systems would be infeasible for their operations and that they have implemented alternative fall protection measures which adequately protect employees from fall hazards.

The comment period, which ended on November 3, 1992, elicited 10 comments (Exs. 27–1 through 27–10). PCI, which represents employer and employee interests, has requested that OSHA reopen the rulemaking record again so that PCI and its members can more fully respond to the issues raised in the August 5, 1992 notice.

The Agency has determined that it is appropriate to allow additional time for PCI and other interested parties to submit comments, so that OSHA will have a more complete record upon which to base the final rule for subpart M. Therefore, the Agency is reopening the rulemaking record until May 28, 1993, to facilitate the submission of pertinent information and comments on the six issues raised in the August 5, 1992 notice.

Residential Construction

Issue 2 in the preamble to proposed subpart M (51 FR 42729) asked if there were areas or operations which have unique fall protection needs not addressed by the proposed rule. OSHA mentioned carpenters erecting roof trusses during house construction as a possible example. The Agency received no comments on that aspect of Issue 2 during the initial rulemaking period.

After the rulemaking record had closed, OSHA received a letter from Ryland stating that there are no feasible means of protecting employees erecting roof trusses and installing exterior wall panels from fall hazards. In a letter dated December 18, 1992, Ryland stated:

> In light residential construction, erecting roof trusses takes less than two hours on an average roof. The safety standards [§ 1926.104(b)] allow the use of a lifeline and safety belt but then requires that the lifeline be secured to an anchorage above the point of operation. There is no point above the point of operation when installing roof trusses or sheathing, other th[a]n the components being installed. The standards go on to require the anchorage point to withstand a minimum dead load of 5400 pounds[s]. The trusses used in residential construction are not stable enough or str[o]ng enough to meet this requirement.

Ryland also contended that the use of catch platforms, safety nets or scaffolds for roof truss erection would either be infeasible to accomplish or would expose employees to greater hazards for a longer time than would be the case if employers worked without fall protection. Ryland submitted its procedures for both manual and crane installation of roof trusses and the installation of roof sheathing.

OSHA notes that the requirements of proposed subpart M (§ 1926.502(d)(12)) differ from the above-cited requirements of existing § 1926.104(b). In particular, the proposed rule requires that "Body belt/harness systems be secured to anchorages capable of supporting at least twice the potential impact load of an employee's fall."

Regarding fall protection for employees installing exterior wall panels, Ryland stated:

> During the installation of panelized exterior walls the framers for a short time are exposed to a recognized fall hazard. The installation of a guardrail system would in most cases be done by the same employees that would be installing the exterior walls. This would only expose those employees to the same fall hazard three times instead of once. Normally in this type of residential construction the wall panels are installed as soon as the floor sheathing has been installed. The panels themselves become the fall protection after their installation. The installation of any other system would only expose these employees to greater risk. The best protection for employees in this area would be proper training on procedures and the recognition of the hazard.

OSHA believes that Ryland's letter raises issues that should be addressed in the final rule and that the public should have an opportunity to comment on the Ryland submission. Accordingly, the Agency has added the letter to the rulemaking record (Ex. 27–15) and is using this reopening to ask for comments, including any supporting information (such as current accident, economic and engineering data), on the following questions:

(1) What methods of providing fall protection are currently being used by builders to protect employees who are installing walls and erecting roof trusses. In particular, what protection is provided while employees are securing roof trusses to the walls and bracing the roof trusses? If personal fall arrest systems are being used (body belt/harness systems), what are contractors using for an anchorage point?

(2) To what extent is it feasible to protect employees erecting roof trusses (and in particular, when bracing trusses) or installing exterior wall panels from fall hazards through the use of conventional fall protection measures—guardrail systems, safety net systems, or personal fall arrest systems?

(3) If use of conventional fall protection measures is infeasible, to what extent could employers protect employees in residential construction from fall hazards through the implementation of a "fall protection plan" involving compliance with the proposed provisions for control zones (proposed § 1926.502(g)), warning lines (§ 1926.502(f)) or safety monitoring systems (§ 1926.502(h))? What modifications to those provisions, if any, would be necessary?

(4) Do residential construction employers currently use controlled access zones, warning lines or safety monitoring systems to protect employees from fall hazards? What are the costs or other impacts of implementing access restrictions?

(5) What load should an anchorage point be able to withstand for the use of personal fall arrest systems to be feasible in residential construction?

(6) To what extent could employees use ladders or scaffolds to minimize fall hazards while erecting roof trusses or installing exterior wall panels?

(7) What changes in work practices for residential construction would increase protection from fall hazards? For example, requiring a platform or flooring to be placed on the bottom chord of trusses to provide safer footing for the employee or to allow work to be performed from a ladder.

(8) What training and work practices should be required for employees who erect roof trusses or install exterior wall panels? Should such training or work practice requirements be allowed as an alternative for conventional fall protection measures? If yes, under what circumstances?

(9) To what extent could employees installing exterior wall panels be protected from fall hazards through the use of personal fall arrest systems with self-retracting lifelines or horizontal lifelines?

(10) Does the size of a residential construction company (e.g., the number of employees) affect the ability to provide conventional fall protection or to implement a fall protection plan? In what respects?

(11) How many residential structures requiring the erection of roof trusses and the installation of exterior wall panels

are built each year? What are the average number of employees, length of time, and contract value involved in the construction of various type of residential structures? To what extent are such "average" numbers representative of residential construction operations? Insofar as commenters believe that "averages" would not be representative, OSHA requests that those commenters submit project data which would enable the Agency to characterize industry operations accurately.

(12) To what extent do residential construction employers presently develop and implement fall protection plans for each worksite? To what extent do those employers develop generic fall protection plans to cover a number of worksites that have similar circumstances? What is the cost of developing and implementing such plans? What qualifications should the persons who design or implement fall protection plans have?

(13) To what extent do residential construction employers restrict access to areas which pose potential fall hazards? What means are used to restrict access?

(14) To what extent should the fall protection requirements for employees engaging in "residential construction" differ from the requirements for employees engaged in "commercial construction" activities? Should OSHA differentiate between "residential construction" and "light residential construction"? Please explain the basis for any suggested differentiation.

(15) How should OSHA define the term "residential construction" or "light residential construction" for purposes of its requirements if it is determined that different requirements should apply?

II. Public Participation

Comments

Written comments regarding the issues raised in this notice must be postmarked by May 28, 1993. Four copies of these comments must be submitted to the Docket Office, Docket No. S–206A, U.S. Department of Labor, room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for the subpart M rulemaking regarding the issues set forth in this notice need not be resubmitted.

III. Authority.

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), section 107 of the Construction Safety Act (40 U.S.C. 333), and 29 CFR part 1911.

Signed at Washington, DC, this 23rd day of March 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–7062 Filed 3–26–93; 8:45 am]

BILLING CODE 4510–26–P

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA80

Safety Standards for Operation and Maintenance of Machinery and Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Comment period; extension.

SUMMARY: At the request of the mining community, the Mine Safety and Health Administration (MSHA) is further extending the public comment period regarding the Agency's proposed rulemaking on the operation and maintenance of equipment in underground coal mines.

DATES: Written comments must be received on or before May 7, 1993.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 24, 1992, MSHA published a proposed rule (57 FR 61538) to revise its existing safety standard that applies to mechanical work on equipment in underground coal mines (30 CFR 75.1725(c)). The proposed revision would clarify that adding or removing conveyor belting is a maintenance activity covered by the standard. The comment period was scheduled to close on February 22, 1993. The Agency extended the comment period to March 26, 1993 (58 FR 9554) in response to requests from the mining community. The mining community has requested further opportunity for comment. Therefore, the Agency is extending the comment period to May 7, 1993. All interested parties are encouraged to submit comments prior to that date.

Dated: March 22, 1993.

Edward C. Hugler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 93–7116 Filed 3–26–93; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4608–3]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting to develop options to revise the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They also are intended to reduce any possible current underregulation of hazardous waste recycling. The meeting will include presentations by EPA and small group discussions among attendees. All interested parties are welcome to attend. Any person wishing to participate in small group discussions must respond by April 14, 1993 to Mr. K.C. Lincoln of ERM New England at (617) 742–8228 with the name of the organization and the number of participants. Written materials will be available after April 14. For information about obtaining a copy of these materials, call the RCRA Hotline at 1–800–424–9346 or 703–920–9810.

DATES: The meeting will take place on April 28, 1993 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Omni Shoreham Hotel at 2500 Calvert St., NW., Washington, DC 20008, (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Marilyn Goode of EPA's Office of Solid Waste at (202) 260–8104.

Dated: March 24, 1993.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–7108 Filed 3–26–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-47, RM-8188]

Radio Broadcasting Services; Camden, Latta and Marion, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Winfas of Belhaven, Inc., seeking the substitution of Channel 232C3 for Channel 232A at Marion, South Carolina, the reallotment of Channel 232C3 from Marion to Latta, South Carolina, and the modification of Station WWPD's license to specify Latta as its community of license. Channel 232C3 would provide Latta with its first local aural transmission service. To accommodate the allotment of Channel 232C3 at Latta, Winfas of Belhaven also requests the substitution of Channel 274A for Channel 232A at Camden, South Carolina, and the modification of Station WPUB-FM's license to specify the alternate Class A channel. Channel 232C3 can be allotted to Latta in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.7 kilometers (6.6 miles) northwest to avoid a short-spacing to unoccupied but applied-for Channel 231A, Kingstree, South Carolina, and Station WZKB, Channel 232A, Wallace, North Carolina, at coordinates North Latitude 34-25-33 and West Longitude 79-29-57. Channel 274A can be allotted to Camden at Station WPUB-FM's licensed transmitter site, 7.8 kilometers (4.8 miles) southwest, at coordinates 34-13-31; 80-40-44.

DATES: Comments must be filed on or before May 13, 1993, and reply comments on or before May 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., suite 510, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-47, adopted February 25, 1993, and released March 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-7043 Filed 3-26-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-49, RM-8193]

Radio Broadcasting Services; Los Lunas and Espanola, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Elliott McDowell seeking the substitution of Channel 273C for Channel 273C2 at Los Lunas, New Mexico, and the modification of Station KOYT to specify operation on the higher class channel. To accommodate the upgrade at Los Lunas, the Commission also proposes to substitute Channel 225C3 for Channel 272C3 at Espanola, New Mexico, and to modify of Station KIOT's license to specify the alternate Class C3 channel. Channel 273C can be allotted to Los Lunas in compliance with the Commission's minimum distance separation requirements with a site restriction of 51.8 kilometers (32.2 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 35-12-42 and West Longitude 106-26-57. Channel 225C3 can be allotted to Espanola with a site restriction of 16.2 kilometers (10.1 miles) northeast to avoid short-spacings to Stations KRST, Channel 222C, KKOB-FM, Channel 227C, Albuquerque, and KRWN, Channel 225C1, Farmington, New Mexico, at coordinates 36-04-41; 105-56-16. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 273C at Los Lunas or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before May 13, 1993, and reply comments on or before May 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Esq., Jones, Waldo, Holbrook & McDonough, P.C., 2300 M Street, NW., Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-49, adopted March 2, 1993, and released March 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-7044 Filed 3-26-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 218 and 222

[Docket No. 920 106-2006]

RIN 0648-AD30

Approaching Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Withdrawal of proposed rule.

SUMMARY: NMFS announces that it is withdrawing its proposed regulations and guidelines for approaching marine mammals.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Acting Division Chief, Protected Species Management Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: On August 3, 1992, NMFS published proposed regulations (57 FR 34101) and draft guidelines (57 FR 34121) that would provide greater protection for marine mammals by specifying, among other actions, minimum distances that people, vessels and aircraft should maintain from these animals to avoid harming them. To provide opportunity for public response to these proposals, NMFS conducted 10 public hearings and extended the comment period to December 31, 1992 (57 FR 47606).

Because NMFS intends both to conduct a comprehensive evaluation of the numerous comments received and to consider alternatives for addressing the problem of close approach of marine mammals by vessels/persons, it is withdrawing the proposed regulations. If the alternative selected by NMFS involves rulemaking, a new proposed rule will be published in the **Federal Register.**

Authority: 16 U.S.C. 1361-1407 and 1531-1543.

Dated: March 18, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

[FR Doc. 93-7038 Filed 3-26-93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 625

Mid-Atlantic Fishery Management Council; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing on Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public hearing to allow for input on Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery.

(FMP). Amendment 4 is intended to amend commercial landings data for summer flounder in the State of Connecticut which would result in revised quotas.

DATES: Written comments will be accepted until 12 April 1993.

The hearing will be held on April 13, 1993 at 7 p.m.

ADDRESSES: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

The hearing will be held at the Grand Hotel, Oceanfront and Philadelphia Ave., Cape May, NJ 08204.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, (302) 674-2331).

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP, as adopted by the Council and approved by NMFS, included a formula to allocate the commercial summer flounder quota to the states based on their share of commercial landings for the period 1980-1989. Subsequent to approval and implementation of Amendment 2, the member states of the Atlantic States Marine Fisheries Commission (ASMFC) agreed there was underreporting from the early to mid-1980's of Connecticut's commercial landings. The underreporting was due in part to Connecticut's inability to collect data and to the absence of any NMFS port agents. Amendment 4, requested by the ASMFC, would result in a proxy for underreported landings in the State of Connecticut, which would result in revised quotas. The current and revised quota shares, by state, are shown in the following table:

STATE-SPECIFIC QUOTA SHARES (PERCENT) BASED ON CURRENT AND AMENDED LANDINGS DATA

State	Current	Amended	Difference
ME	0.0482	0.0476	-0.0006
NH	0.0005	0.0005	0
MA	6.9111	6.8205	- 0.0906
RI	15.8914	15.6830	-0.2084
CT	0.9532	2.2571	+1.3039
NY	7.7486	7.6470	-0.1016
NJ	16.9473	16.7250	-0.2223
DE	0.0180	0.0178	-0.0002
MD	2.0662	2.0391	-0.0271
VA	21.6001	21.3168	-0.2833
NC	27.8155	27.4458	-0.3697

Source: CT Departmental Memo 11/6/92.

The public hearing is scheduled for 13 April 1993, at the Grand Hotel, Oceanfront and Philadelphia Avenue, Cape May, NJ 08204. The hearing will begin at 7 p.m. and will be tape recorded, with the tapes filed as the official transcript of the hearing.

Dated: March 19, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 93-6994 Filed 3-26-93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 58
Monday, March 29, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-190-3]

Animal Damage Control Program; Availability of Supplement to the Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the time period for the public to comment on a supplement to the draft environmental impact statement (EIS) for the Animal Damage Control program. The draft EIS, prepared in June 1990, evaluated environmental impacts associated with wildlife damage control activities. This extension will provide interested persons with additional time to prepare and submit written comments.

FOR FURTHER INFORMATION CONTACT: Mr. William Clay, Director, Operational Support Staff, Animal Damage Control, APHIS, USDA, room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281.

DATES: Consideration will be given only to comments received on or before April 28, 1993.

ADDRESSES: Please send an original and three copies of your comments to William Clay, Director, Operational Support Staff, Animal Damage Control, APHIS, USDA, room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-190-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

Copies of the supplement to the draft environmental impact statement (EIS) are available for review at the following locations: USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays; Operational Support Staff, Animal Damage Control, APHIS, USDA, room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; Denver Wildlife Research Center, Building 16, Denver Federal Center, Denver, CO 80225; Eastern Regional Office, Animal Damage Control, APHIS, USDA, Suite 370, 7000 Executive Center Drive, Brentwood, TN 37027; and Western Regional Office, Animal Damage Control, APHIS, USDA, 12345 W. Alameda Parkway, Suite 313, Lakewood, CO 80228. Written requests for copies can be sent to Mr. William Clay at the address provided under "FOR FURTHER INFORMATION CONTACT."

SUPPLEMENTARY INFORMATION:

Background

Animal Damage Control (ADC) of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, in cooperation with the Bureau of Land Management of the U.S. Department of the Interior, and the Forest Service of the U.S. Department of Agriculture, is preparing an EIS for the ADC program.

On February 12, 1993, we published in the **Federal Register** (58 FR 8252, Docket No. 92-190-2) a notice advising the public that we had prepared a supplement to the draft EIS for the ADC program. We requested public comment on the supplement to the draft EIS. Comments were due on or before March 29, 1993.

Because of the size and complexity of the document, and in response to a number of requests, we are extending the comment period for our notice, Docket No. 92-190-2, for 30 days. We will consider all written comments on the supplement to the draft EIS that are received on or before April 28, 1993. This action will give interested persons additional time to prepare and submit comments.

It has come to our attention that certain information provided in the supplement to the draft EIS requires clarification or correction.

Specifically, Appendix N ("responses to comments," page N-23), contains a statement that ADC has accepted a 24-hour trap check. This is true only in States that require this mitigation. It is ADC policy that traps will be checked as often as possible, but no less often than required under State law. Appendix N (page N-41) also contains the erroneous statement that ADC will establish minimum husbandry requirements before providing services. This is identified as a "potential" mitigation in chapter 5.

Further, the amounts in Tables 3-18 and 3-19 are in dollars, not thousands of dollars. In Table I-1, the "Destroyed" and "Released" columns are reversed.

Done in Washington, DC, this 23rd day of March 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-7111 Filed 3-26-93; 8:45 am]
BILLING CODE 3410-34-P

[Docket No. 92-110-3]

Veterinary Services Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are announcing the final scope of study for a programmatic environmental impact statement to be prepared for our Veterinary Services Program. Following a review of comments to an earlier notice of scope of study, we have determined to expand the scope of study to include an additional program activity area.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Sweeney, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565; or Dr. Harless McDaniel, Veterinary Services, APHIS, USDA, room 268, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7207.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, intends to prepare a programmatic environmental impact statement (PEIS) on the

Veterinary Services Program. We are preparing the environmental document for the following reasons: (1) To enable the agency to take an overall look at important environmental issues associated with the delivery of essential services in an ongoing Veterinary Services Program; (2) to explore less environmentally stressful strategies and means for delivering those essential services; and (3) to establish procedures that will enable us to respond to future site-specific needs for services in a way that is in compliance with all applicable laws. Many actions associated with the delivery of essential services in an ongoing Veterinary Services Program are of an emergency nature requiring immediate attention.

A Notice of Intent was published in the **Federal Register** on July 23, 1992 (57 FR 32771–32772, Docket No. 92–110–1), and a notice of the proposed scope of study was published in the **Federal Register** on October 9, 1992 (57 FR 46532–46534, Docket No. 92–110–2). In response to the scoping notice, we received more than a dozen comments by the requested November 23, 1992, deadline. We have fully considered the information, views, and suggestions contained in these comments, and they have prompted us to expand the previously published scope of study.

Program Activities

The initial scoping notice identified several program activity areas designed to deal with communicable diseases of livestock and poultry that had the potential to affect environmental quality. These included disease prevention and surveillance practices, as well as disease eradication and control strategies. We are adding laboratory and operational facilities as another program activity area. These laboratory and operational facilities also support other program activities but are sufficiently distinct for purposes of this inquiry to warrant separate consideration.

The PEIS need not develop at length each of the program activity areas identified above, at least from the standpoint of the potential to affect environmental quality. The program activity itself does not have the potential to affect environmental quality; rather, it is the strategies and means used to achieve each activity's objective that require evaluation under the National Environmental Policy Act (NEPA). For example, pesticides and chemicals may be used in several different program activity areas, including prevention, eradication, and control. It is appropriate in the context of a PEIS to examine such programmatic tools that have the potential to adversely affect environmental quality, as well as alternative means that would reduce or avoid such a potential or that would affect the environment in a somewhat different manner.

Issues

Listed below are the major impact-generating issues that will be developed at length in the PEIS.

(1) Pesticides and other chemical agents—

- Availability, use, storage, and disposal.
- Alternatives that would avoid or reduce reliance on and/or risks associated with pesticides and chemical agents.
- Consistency with Federal, State, or local laws or requirements imposed for the protection of the environment.

(2) Depopulation, including disposal of carcasses, contaminated manure, and debris—

- Available alternatives.
- Consistency with Federal, State, or local laws or requirements imposed for the protection of the environment.

(3) Future site-specific activities—

- Defining the timeframe of need for program delivery, especially in "emergency" situations.
- Establishing a procedural mechanism that will meet the timeframe of need and satisfy applicable environmental review requirements to the fullest extent possible and be consistent with Federal, State, or local laws or requirements imposed for the protection of the environment.

(4) Laboratory and operational facilities—

- Compliance with E.O. 12088 (Federal compliance with pollution control standards).

Other issues that will be considered in the PEIS include the following:

(1) Potential for the transmission of diseases between domestic animals and wildlife;

(2) Executive Order No. 11987 (Exotic organisms);

(3) Mitigation; and

(4) Compatibility of available technologies with environmental quality objectives.

Although area or regional "scoping" meetings have been requested, no issues have been referred to us that have not been adequately developed and treated on the basis of the written record. Accordingly, we are not planning to hold any scoping meetings. The public will have another opportunity to address issues and analyses when the draft PEIS is issued. Notice of the availability of that document and an invitation to comment will be published in a subsequent **Federal Register**.

This notice is issued in accordance with: (1) NEPA (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 23rd day of March 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–7110 Filed 3–26–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: DOC—(Administration).

Title: Solicitations: Request for Proposals (RFP) or Invitation for Bids (IFB).

Agency Form Number: Standard Form 33 revised for DOC.

OMB Approval Number: 0605–0010.

Type of Request: Reinstatement.

Burden: 108,000 hours.

Number of Respondents: 2,700.

Avg Hours Per Response: 40 hours.

Needs and Uses: Solicitations are used to request offers to compete for a DOC contract. Federal law requires that solicitations be distributed to the widest number of potential sources. The forms and format of the solicitations are required by the Federal Acquisition Regulation (FAR), the government-wide acquisition regulation required to be followed by all Federal agencies. The costs and burdens imposed by the DOC solicitations are not additional to those imposed by the FAR and Federal acquisition laws.

Affected Public: Businesses or other for-profit institutions; non-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC

Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 23, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–7109 Filed 3–26–93; 8:45 am]

BILLING CODE 3510–CW–F

National Oceanic and Atmospheric Administration (NOAA)

Endangered Species; Incidental Take Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for incidental take permit.

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for a Permit to incidentally take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to implement its state-authorized resident fish stocking program. IDFG requests to stock: (1) Catchable (20–30 cm) hatchery rainbow trout in waters of the upper Salmon River and the Stanley Basin lakes; (2) catchable cutthroat trout in the Stanley Basin lakes, reducing rainbow stocking by the same number; and (3) subcatchable (13–18 cm) rainbow trout into the Salmon and Clearwater Rivers. Rainbow and cutthroat trout may affect juvenile endangered sockeye salmon (*Oncorhynchus nerka*), threatened spring/summer chinook (*O. tshawytscha*), and threatened fall chinook (*O. tshawytscha*) through predation, competition, and transmission of disease.

The applicant has submitted a conservation plan which specifies the anticipated impact of Idaho's fish stocking program on listed salmonids and their habitat; the steps taken to monitor, minimize and mitigate such impacts; the alternatives actions to the activity that were considered; and a list of all sources of data used in preparation of the plan.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Hwy., room 8268, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., SSMC#1, room 8268, Silver Spring, Maryland 20910, Contact: Marta Nammack, TEL: 301/713–2322;

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., room 620, Portland, Oregon 97232, Contact: Karen Holtz, TEL: 503/230–5400.

Dated: March 22, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–7072 Filed 3–26–93; 8:45 am]

BILLING CODE 3510–22–M

Endagered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of applications for scientific research and enhancement permit (P211E, P507D).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF) have applied in due form for scientific research and enhancement permits to take endangered and threatened species as authorized by the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–227). These applications involve the artificial propagation of Pacific salmon species listed under the ESA.

Artificial Propagation of Pacific Salmon Under the ESA

In determining whether to issue Pacific salmon enhancement permits, NMFS will rely heavily on Technical Memorandum NMFS–NWFSC–2, Pacific Salmon and Artificial Propagation under the ESA, October 1992. The memorandum provides guidance on the use of artificial propagation in the conservation of listed Pacific salmon species. The use of artificially propagated Pacific salmon in recovery programs depends on available information regarding the similarity of the naturally and artificially propagated fish in genetic, phenotypic, and life-history traits, and in habitat characteristics. Artificial propagation of listed salmon species for recovery must attempt to avoid risks by preserving the genetic and ecological distinctiveness of the listed species. Artificial propagation of the listed salmon species is not a substitute for eliminating the factors causing or contributing to the species' decline.

Because there is, at present, considerable uncertainty about artificial propagation as a means to conserve natural salmon populations, and because artificial propagation may have profound consequences for the viability of natural salmon populations, consideration of its use should be based on an objective assessment of genetic and ecological risks, balancing the potential for deleterious effects against risk to the population of irreversible harm or extinction if artificial propagation is not implemented.

Genetic problems that may arise through artificial propagation are of three general types. First, taking wild broodstock may contribute directly to the decline of the natural population. A severe reduction in population size may in turn lead to erosion of genetic variability and reduced fitness due to inbreeding depression—both factors that are believed to increase the risk of extinction face by a population. Second, in addition to contributing to the loss of within-population genetic variability, artificial propagation can substantially reduce genetic differences between populations. For example, hatchery fish often stray at a higher rate than natural fish. Breeding between hatchery strays and local, natural fish may erode adaptive genetic differences between populations that are the result of long years of natural selection. Transfers of fish among hatcheries or transplanting fish outside their native area often exacerbate this problem. Finally, adaptation to hatchery conditions can lead to domestication. Because the hatchery environment differs in many ways from that encountered in the wild, the selective pressures experienced by the two types of fish also differ markedly. The general result is genetic change in a hatchery population relative

to its natural ancestors, and such changes may reduce the ability of the population to survive and reproduce in the wild. Moreover, changes that occur during culture magnify the adverse consequences of interbreeding between hatchery and wild fish that results from straying or stock transfers.

Artificial propagation may also pose a variety of ecological risks to salmon populations. These risks include increased competition and predation, displacement of natural fish, altered migratory and spawning behavior, and disease transfer. For example, the release of large numbers of hatchery fish can elevate levels of competition for food, habitat, or mates and may lead to displacement of natural fish from their habitat. Attendant reductions in the size of natural populations may increase the risk of local extinction if abundance or density falls below threshold levels necessary for persistence. Hatchery juveniles are often larger than natural juveniles of the same age and may use resources that are otherwise available to natural fish. The intensity of completion is likely to be an increasing function of the number of hatchery fish released. Predators attracted to concentrations of hatchery fish may also prey on fish from natural populations, which may not be able to sustain the increased predation rates. A similar phenomenon occurs when harvest levels in mixed-stock fisheries are increased to take advantage of abundant hatchery fish. A high abundance of hatchery fish in migration corridors may also alter the migratory behavior of natural fish. Finally, diseases may be transferred between hatchery and natural salmon populations, and the risk of this occurring increases with the number of infected hatchery fish released into the wild.

These genetic and ecological risks of artificial propagation can pose serious threats to natural salmon populations. The viability of natural populations depends on their genetic and ecological diversity, and the use of artificial propagation to restore salmon abundance should not be allowed to erode this diversity.

Use of Hatchery Populations Under ESA Enhancement Permits

Whether a natural population is considered distinct and hence a "species" under the ESA is determined solely by the two criteria that define an evolutionarily significant unit (ESU)—its reproductive isolation and its contribution to the biological species' evolutionary legacy. Genetic resources important to the species' evolutionary legacy may reside in hatchery fish as well as in natural fish, in which case the hatchery fish can be considered part of the biological ESU in question.

If available information indicates that existing hatchery fish can be considered part of the biological ESU, then these hatchery fish could be considered for use in recovery efforts. In this case, integration of natural broodstock of the listed species into the existing hatchery population is possible under and enhancement permit. If the hatchery population is managed for purposes other than ESA recovery efforts, directed take of natural fish from the listed species for broodstock would be prohibited.

If available information indicates that either (1) the hatchery population in question is of a different genetic lineage than the listed natural populations, (2) artificial propagation has produced appreciable changes in the hatchery population in characteristics that are believed to have a genetic basis, or (3) there is substantial uncertainty about the relationship between existing hatchery fish and the natural population, the existing hatchery fish will not be considered part of the biological ESU. In this case, direct take of fish from the listed species for broodstock would not be permitted.

Summary of Applications

The ODFW requests authorization to continue its Imnaha River research and enhancement spring chinook hatchery program for 5 years (P211E). NMFS has made a preliminary determination that the Lookingglass (Imnaha River stock) hatchery population can be considered part of the biological ESU and therefore can be considered for use in enhancement programs (Schiewe, 1993). The ODFW requests a take of no more than 264 adults (both hatchery and natural origin) per year for broodstock purposes. The ODFW plans to spawn the adults at the Imnaha River Facility, using random split-cross mating protocol, transfer the eggs to Lookingglass Hatchery, near the resulting progeny to smolt size, transfer the smolts to the advanced rearing pond on the Imnaha River, acclimate them for 30 days, and release them into the Imnaha River as yearlings.

The WDF has submitted an application to continue for 5 years its Tucannon River spring chinook research and enhancement program (P507D). NMFS has made a preliminary determination that the Tucannon River hatchery population can be considered part of the biological ESU and therefore can be considered for use in enhancement programs (Schiewe, 1993). WDF plans to handle up to 650 adult and jack spring chinook per year, of which it would take up to 50 natural and 50 hatchery origin fish for broodstock purposes. Adults would be captured at the Tucannon River weir and held at Lyons Ferry Hatchery. The WDF plans to limit matings to natural/natural and hatchery/hatchery crosses. Resulting progeny would be reared to yearling stage and released into the Tucannon River. The WDF plans to capture up to 12,000 natural juvenile outmigrants and up to 4,000 hatchery outmigrants; types of take include capture and release, PIT tags, sacrifice, and electrofishing.

Written data or views, or requests for a public hearing on these applications, should be submitted to the Director, Office of Protection Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on any of these particular applications would be appropriate. The holding of such hearings is at the discretion of the Assistant Administrator for Fisheries. Statements and opinions contained in these applications summaries include those of the Applicants and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above applications, the NMFS Technical Memorandum, NMFS–NWFSC–2, Pacific Salmon and Artificial Propagation under the ESA (October 1992), and NMFS' preliminary determinations on the relationship of the hatchery populations to the natural population in the ESU of the listed species (Schiewe, 1993) are available for review by interested persons in the following offices by appointment:

Office of Protection Resources, National Marine Fisheries Services, 1335 East-West Hwy., suite 8268, Silver Spring, Maryland 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, Oregon 97232 (503/230–5400).

Dated: March 19, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–7073 Filed 3–26–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Incidental Take Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for incidental take permit

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for a Permit to incidentally take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to operate its sport fishing program for 5 years (1993–1997) which may incidentally take Snake River sockeye (*Oncorhynchus nerka*), Snake River spring/summer chinook (*O. tshawytscha*) and Snake River fall chinook (*O. tshawytscha*). Activities included in the incidental take permit application are: (1) Idaho sport fishing program covered under IDFG General Fishing Regulations; (2) chinook salmon sport fishing program directed at surplus spring/summer chinook returning to Rapid River Hatchery and Dworshak National Fish Hatchery and covered under IDFG Anadromous Salmon Regulations; and (3) summer steelhead fishing program during fall and spring seasons, covered under IDFG Steelhead Fishing Regulations.

The applicant has submitted a conservation plan which specifies the anticipated impact of Idaho's sport fishing program on listed salmonids and their habitat; the steps taken to monitor, minimize and mitigate such impacts; the alternatives actions to the activity that were considered; and a list of all sources of data used in preparation of the plan.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., SSMC#1, room 8268, Silver Spring, Maryland 20910, Contact: Laurie Sullivan, TEL: 301/713–2322;

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., room 620, Portland, Oregon 97232, Contact: Karen Holtz, TEL: 503/230–5400.

Dated: March 22, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–7074 Filed 3–26–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of permit; The Fish Passage Center (P500B).

On November 6, 1992, notice was published in the **Federal Register** (57 FR 53096) that an application had been filed by the Fish Passage Center, to take Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River fall chinook salmon (*O. tshawytscha*), and Snake River spring/summer chinook salmon (*O. tshawytscha*) for the purposes of scientific research as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

Notice is hereby given that on March 15, 1993 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointments:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Avenue, room 620, Portland, OR 97232 (503/230–5400).

Dated: March 15, 1993.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 93–7039 Filed 3–26–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

March 23, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 60175, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 23, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on March 30, 1993, you are directed to amend the directive dated December 11, 1992 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
338/339	873,323 dozen.
347/348	1,471,900 dozen.
351/651	449,395 dozen.
635	212,667 dozen.
638/639	1,130,250 dozen.
847	468,120 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-7060 Filed 3-26-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

March 23, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6704. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 24597, published on June 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 23, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1992 and extends through June 30, 1993.

Effective on March 25, 1993, you are directed to amend further the directive dated June 5, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	6,357,779 square meters.
300/301	2,942,500 kilograms.
314	43,268,812 square meters.
334/335	175,859 dozen.
338/339	990,640 dozen.
340/640	1,177,000 dozen.
341	721,095 dozen.
347/348	1,177,000 dozen.
359-C/659-C [2]	750,000 kilograms.
359-S/659-S [3]	603,390 kilograms.
604-A [4]	318,386 kilograms.
613/614/615	18,136,500 square meters.
634/635	214,000 dozen.
638/639	1,129,207 dozen.
641	1,528,967 dozen.
Group II	
200, 201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 350, 352-354, 359-O [5], 360-363, 369-O [6], 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465, 469, 603, 604-O [7], 606, 607, 621, 622, 624, 630, 632, 633, 643, 644, 649, 650, 652-654, 659-O [8], 665, 666, 669-O [9], 670-O [10], 831-836, 838, 839, 840, 842-846, 850-852, 858 and 859, as a group.	64,121,921 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1992.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 604-A: only HTS number 5509.32.0000.

[5] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025; 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

[6] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[7] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[9] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–7061 Filed 3–26–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure Commission and Realignment Commission, Meetings

AGENCY: Defense Base Closure Commission and Realignment Commission.

ACTION: Change of Washington, DC, March 29th hearing location and announcement of regional hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces a change of the location of the March 29, 1993 investigative hearing published in the **Federal Register** on March 12 (58 FR 15329) concerning base disposal and reuse, budget impact, and base closure accounting.

The new hearing location is SD50, Dirksen Senate Office Building, corner of First Street and Constitution Avenue, Washington, DC. Start time remains 10 a.m. for this planned half-day session.

Additionally, the Commission has approved the following schedule of regional hearings:

April 20 and 21: National Capitol Region, Northern Virginia.
April 25, 26: Oakland, California.
April 27: San Diego, California.
May 1 and 2: Charleston, South Carolina.
May 3: Orlando, Florida.
May 4: Birmingham, Alabama.
May 9 and 10: New York City, New York.
May 11: Boston, Massachusetts.
May 12: Detroit, Michigan.

Times and Locations will be announced at a later date.

Finally, at the March 29 hearing the Commission may vote whether to consider additional bases to include McClellan AFB CA and Presidio of Monterey, CA, both of which were removed from consideration by the Secretary of Defense. The Commission will hold a classified hearing on March 29 at 2 p.m. concerning issues surrounding the Presidio of Monterey.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Houston, Director of Communications at (703) 696–0504. Please contact the Commission to confirm last minute changes in dates, times, and locations of all upcoming hearings.

Dated: March 23, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 93–7033 Filed 3–26–93; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9 a.m., Wednesday, 7 April 1993.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: March 23, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7034 Filed 3–26–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the Executive Committee of the National Assessment Governing Board scheduled for April 7, 1993, at 800 North Capitol Street, NW., suite 825, Washington, DC, as published in the **Federal Register** on March 23, 1993, Vol. 58, No. 54, page 15491. The teleconference meeting has been rescheduled for April 22, 1993, at 11 a.m.

Dated: March 24, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–7115 Filed 3–26–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance; Lake County, ID

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Field Office, announces that pursuant to the DOE Financial

Assistance Rules 10 CFR 600.7, it intends to award a new start Grant Number DE–FG07–93ID13257 to the County of Lake. The objective of the work to be performed under this grant is to provide funds for engineering design and environmental work on a plan to use treated wastewater effluent for injection as a means of increasing the recovery of energy from the Geysers geothermal field. The County of Lake would use this grant to augment County funds in the preparation of engineering designs for the effluent pipeline and to prepare an environmental impact statement of the project after the designs are available. The Federal Domestic Catalog Number is 81.087.

FOR FURTHER INFORMATION CONTACT:

Ginger L. Sandwina, or Kathleen M. Stallman, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, (208) 526–8698 or (208) 526–7038 respectively.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Geothermal Energy Research, Development & Demonstration Act (Pub. L. 93–410); the Department of Energy Organization Act (Pub. L. 95–91); and the Energy and Water Development Appropriation Bill of 1993 (Pub. L. 102–377). The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR 600.7(b)(2)(i)(C). The applicant represents a unit of government and the activity to be supported is related to the performance of a government function within the subject jurisdiction. The County of Lake is the leader of this project and is the appropriate agency to prepare the environmental impact statement and do the design work since they will be the owner and operator of the pipeline carrying the effluent from the county wastewater treatment plant to The Geysers. The anticipated total project period to be awarded is twelve (12) months. The Office of Utility Technologies will provide the DOE funds for this grant to be cost shared by DOE for $450,000 and the County of Lake for $15,000 for a total project cost of $465,000.

Issued March 18, 1993.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93–7138 Filed 3–26–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–449–000, et al.]

Western Resources, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. ER93–449–000]

March 18, 1993.

Take notice that on March 12, 1993, Western Resources, Inc. (WRI) tendered for filing a proposed change to its FERC Electric Service Tariff No. 206 between WRI and the City of Horton, Kansas (City). WRI states that the proposed change is a ten year Electric Power Supply Agreement that shifts the City from a full requirements municipal to a partial requirements municipal. This proposed change is requested to be effective June 1, 1993.

Copies of the filing have been served upon the City of Horton and the Kansas Corporation Commission.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ES93–23–000]

March 18, 1993.

Take notice that on March 12, 1993, Western Resources, Inc., (Western) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than 2.5 million additional shares of common stock, $5.00 per value, pursuant to a customer stock purchase plan.

Comment date: April 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER93–224–000]

March 18, 1993.

Take notice that on March 12, 1993, Public Service Company of New Hampshire (PSNH) tendered for filing supplemental information regarding various interconnection agreements.

PSNH states that the information was filed in response to a request from the Commission.

PSNH states that copies of this information have been mailed or delivered to each of the affected parties.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. The Connecticut Light and Power Co.

[Docket No. ER93–222–000]

March 18, 1993.

Take notice that on March 15, 1993, The Connecticut Light and Power Company (CL&P) submitted additional information in this Docket.

CL&P states that copies of its submission have been mailed or delivered to the affected parties.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Power Co.

[Docket No. ER93–197–000]

March 18, 1993.

Take notice that Ohio Power Company (OPCo), on March 15, 1993, tendered for filing, information requested by the Staff of the Commission which supports the charges made by OPCo to the City of Clyde, Ohio (Clyde), in connection with a Contributions in Aid of Construction Agreement filed in the referenced docket.

A copy of this filing has been sent to the Public Utilities Commission of Ohio and Clyde.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Co. (Minnesota), Northern States Power Co. (Wisconsin)

[Docket No. ER92–343–003]

March 18, 1993.

Take notice that on March 15, 1993, Northern States Power Company (NSP) tendered for filing its Second Supplement to its Compliance Filing dated September 23, 1992 in Docket No. ER92–343–003. The Second Supplement withdraws certain proposed rate sheets to correct an inadvertent error in NSP's initial Supplement dated December 31, 1992. NSP states that the Supplement proposes to withdraw certain rate sheets NSP proposed to make effective November 1, 1992 for five transmission service customers.

NSP again requests that the reduction in NSP's transmission service loss factors be accepted for filing effective May 1, 1992, and November 1, 1992, and requests waiver of the Commission's notice requirements in order for the loss factor rate changes to be accepted for filing on the date requested.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Co.

[Docket No. ER93–445–000]

March 18, 1993.

Take notice that on March 11, 1993, Portland General Electric Company (PGE) tendered for filing an amended Exhibit D to the General Transfer Agreement Between the Bonneville Power Administration (BPA) and PGE. This amendment will permit BPA to compensate PGE for the actual costs of a distribution level 13 kV feeder line that PGE constructed at BPA's request to accommodate BPA's wholesale power service to the Canby Utility Board. PGE requests waivers and a March 12, 1993 effective date.

Copies of this agreement have been served on BPA.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Electric Light and Power Co.

[Docket No. ER93–444–000]

March 18, 1993.

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on March 11, 1993, tendered for filing an Interchange and Interconnection Agreement dated January 27, 1993, between Associated Electric Cooperative, Inc. (AEC) and Iowa Electric.

The Interchange and Interconnection Agreement provides for coordinated interconnection operation including the interchange of Power and Energy under Emergency Service, Unit Participation, Firm, Short Term, Economy Energy, Excess Energy, System Participation, and Term Energy Schedules. The proposed effective date for the Agreement is the closing date of the sale agreements between the parties and Union Electric.

Copies of this filing have been sent to Associated Electric Cooperative, Inc. and to the Iowa State Utilities Board.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. The United Illuminating Co.

[Docket No. ER93–452–000]

March 18, 1993.

Take notice that on March 15, 1993, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Town of Braintree Electric Light Department (Braintree). The rate schedule corresponds to a letter agreement, dated March 9, 1993, between UI and Braintree. The commencement date for service under the agreement is March 15, 1993. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to Braintree.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corp.

[Docket No. ER93–450–000]

March 18, 1993.

Take notice that on March 15, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission a Negotiated Capacity and Energy Agreement with Manitowoc Public Utilities (MPU). WPSC and MPU request an effective date of 60 days after the date of filing.

WPSC states that a copy of the filing has been provided to MPU and also to the State Commissions where WPSC and MPU serve at retail.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Frank A. Olson

[Docket No. ID–2768–000]

March 18, 1993.

Take notice that on March 15, 1993, Frank A. Olson (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Commonwealth Edison Company
Director, Cooper Industries, Inc.

Comment date: April 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Idaho Power Co.

[Docket No. ER93–455–000]

March 19, 1993.

Take notice that on March 16, 1993, Idaho Power Company (IPC) tendered for filing the Load Control Energy Exchange Agreement executed on January 12, 1993 between Montana Power Company and Idaho Power Company. The Agreement has an initial term of one year and renews for successive one-year terms until terminated by either Party.

Comment date: April 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Colorado

[Docket No. ER93–458–000]

March 19, 1993.

Take notice that on March 17, 1993, Public Service Company of Colorado (Public Service) filed with the Commission an initial rate schedule governing economy energy sales to PacifiCorp. Rates for economy energy sales under the proposed rate schedule are based on Public Service's incremental costs.

Public Service requests that the rate schedule be effective May 1, 1993. Accordingly, Public Service has requested waiver of the Commission's notice requirements, for good cause.

Copies of the filing have been served on PacifiCorp, the Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: April 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Appalachian Power Co.

[Docket No. ER93–200–000

March 19, 1993.

Take notice that on March 5, 1993, Appalachian Power Company (APCO) tendered for filing amendments to its November 18, 1992 filing of the following agreements relating to contributions-in-aid-of-construction (CIAC):

(1) Letter Agreement among APCO, the City of Bedford, Virginia and The Wheelabrator Corporation, dated November 14, 1985;

(2) Letter Agreement between APCO and the City of Radford, Virginia, dated February 5, 1979;

(3) Letter Agreement between APCO and the City of Salem, Virginia, dated August 12, 1982; and

(4) Letter Agreement between APCO and the City of Danville, Virginia, dated June 22, 1977.

The amendments contain certain additional information requested by the Commission Staff in a January 5, 1993 deficiency letter.

Copies of the filing were served upon each of the parties to the above-referenced agreements, the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment date: April 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Power, Inc.

[Docket Nos. ER2–611–001, ER 92–664–001, ER92–843–001, and ER93–45–001]

March 19, 1993.

Take notice that Entergy Power, Inc. (EPI), on March 15, 1993 tendered a

compliance filing which amends interchange agreements filed in the subject dockets. EPI requests that the effective date for these amendments be concurrent with the effective dates of the interchange agreements.

Comment date: April 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Colorado

[Docket No. ER93–442–000]

March 19, 1993.

Take notice that on March 11, 1993, Public Service Company of Colorado tendered for filing, in accordance with 18 CFR 35.13(a)(2)(ii) of the Commission's Rules of Practice and Regulations, modifications to its transmission service to Western Area Power Authority (WAPA). The firm and nonfirm transmission service provided by Applicant to WAPA and the corresponding rates were described in Docket No. ER91–219–000 which contains FERC Electric Tariff No. 47. The proposed modifications to transmission service result in an additional $496 of revenue from jurisdictional service based on the twelve month period ended December 31, 1993.

Copies of the filing were served upon the Western Area Power Authority Loveland Office, the Town of Oak Creek, Colorado, Yampa Valley Electric Association, Inc. and to state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado's Office of Consumer Counsel.

Comment date: April 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. The Union Light, Heat and Power Company

[Docket No. ER93–456–000]

March 19, 1993.

Take notice that The Union Light, Heat and Power Company (ULH&P) on March 17, 1993, tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 which cancel and supersede the rate schedules in said tariff. The proposed changes would increase revenues from jurisdictional sales and service by approximately $381,956 based on the 12 month period ending December 31, 1992.

The reason stated by ULH&P for the change in rate schedule is primarily to recover the cost of the increased purchased power costs to the Company.

Copies of the filing were served upon the City of Williamstown, Kentucky and the Kentucky Public Service Commission.

Comment date: April 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. Montaup Electric Co.

[Docket No. ER93–402–000]

Errata

(March 22, 1993)

Notice of Filing

(March 8, 1993)

Take notice that the Notice of Filing issued on March 8, 1993 should be extended from March 22, 1993 to June 7, 1993.

19. Boston Edison Co.

[Docket No. ER93–437–000]

Errata

(March 22, 1993)

Notice of Filing

(March 16, 1993)

Take notice that the Notice of Filing issued on March 16 1993 in the above-referenced docket should not have been issued.

20. Public Service Company of Oklahoma

[Docket Nos. ER93–435–000 and EC93–11–000]

Errata

(March 22, 1993)

Notice of Filing

(March 12, 1993)

Take notice that the Notice of Filing issued on March 12, 1993 in Docket No. ER93–435–000 should have also included Docket No. EC93–11–000.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7121 Filed 3–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–240–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP93–240–000]

March 18, 1993.

Take notice that on March 10, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–240–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon the daily withdrawal quantity (dwq) of 6,856 Mcf of firm storage service authorized in Docket No. CP75–274 under Natural's Rate Schedule MS–1 for Iowa-Illinois Gas and Electric Company (Iowa-Illinois), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that pursuant to a Rate Schedule MS–1 storage service agreement between Natural and Iowa-Illinois dated March 17, 1975, Natural provided firm storage of dwq of 6,856 Mcf for Iowa-Illinois (the route that the gas moves into and out of storage is quite involved and is fully described in the application). Natural further states that by a letter from Iowa-Illinois to Natural dated March 1, 1993, Iowa-Illinois requested that Natural abandon its storage service performed under Natural's Rate Schedule MS–1 for Iowa-Illinois. Therefore, Natural states if requested authorization in the present application to abandon the dwq of 6,856 Mcf of firm storage service provided by Natural for Iowa-Illinois authorized in Docket No. CP75–274.

Comment date: April 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Co.

[Docket No. CP93–250–000]

March 18, 1993.

Take notice that on March 16, 1993, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No.

CP93–250–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a meter station for the delivery of natural gas to the facilities of Overland Trail Transmission Company (Overland) in Sweetwater County, Wyoming, under CIG's blanket certificate issued in Docket No. CP83–21–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct and operate the Bar-X Meter Station in order to connect its facilities to those of Overland. It is stated that CIG will use the meter station for the delivery of interruptible transportation volumes up to 15,000 Mcf of natural gas per day. It is asserted that the gas transported to the Bar-X Meter Station will be delivered to the Patrick Draw Processing Plant in Sweetwater County. It is estimated that the cost of installing the meter station is $182,600. CIG states that the deliveries would have no impact on its peak day or annual deliveries. It is asserted that CIG's tariff does not prohibit the addition of the new meter station.

Comment date: May 3, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Ormat Inc.

[Docket No. CP93–254–000]

March 19, 1993.

Take notice that on March 15, 1993, Ormat Inc. (Ormat), 980 Greg Street, Sparks, Nevada 89431, filed in Docket No. CP93–254–000 a petition for a Commission order declaring that the Commission lacks jurisdiction pursuant to the Natural Gas Act and the Natural Gas Policy Act of 1978 and the regulations promulgated to implement those laws over the construction, maintenance and operation of Ormat's proposed installation of Ormat Pressure Conversion (OPC) Systems proximate to interstate pipelines, or a request for a limited jurisdiction blanket certificate in the event that the Commission determines that the facilities are jurisdictional, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Ormat requests that the Commission declare that the OPC systems are exempt from Commission jurisdiction because, like gas processing plants, they are not essential to the interstate transportation of natural gas or they qualify as auxiliary installations pursuant to section 2.55(a) of the Commission's regulations. In the alternative, if the Commission determines that the facilities are jurisdictional, Ormat requests that the Commission waive the requirement that individual projects be certificated and that it be issued a blanket certificate to construct and operate any future OPC systems. Ormat also requests waiver of the accounting and reporting requirements imposed on fully-regulated pipelines.

Ormat proposes to develop and install systems to utilize the energy created at pressure reduction sites on interstate natural gas pipelines to generate electricity. It is indicated that Ormat's proposed OPC Systems would be driven by the mechanical energy inherent in high pressure natural gas pipelines, *i.e.*, the waste energy made available by depressurization of high pressure transmission gas on interstate pipelines required to deliver low pressure gas delivered to distribution systems and to direct industrial end-users. It is also indicated that, in most instances, such systems would be operated by a host pipeline pursuant to an operating and maintenance agreement under which the pipeline would be compensated by the owner of the OPC system. Ormat asserts that customers of the host pipelines would not be charged any costs or fees as a result of the construction and operation of an OPC system.

Ormat states that it would commit to each host pipeline to (1) operate the OPC system in a manner consistent with the terms and conditions of the pipeline's own Section 7 certificates; (2) comply with the Commission's regulations and order applicable to the pipeline in question which may affect the operation of the OPC system; and (3) abide by the Commission's environmental terms and conditions applicable to the construction and operation of facilities at a given meter and regulating station. It is indicated that these contractual undertakings would ensure that a host pipeline's certificate requirements, and the Commission's environmental and other regulations applicable to such certificate, are in no way diminished by the construction and operation of an OPC system.

Comment date: April 19, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP93–257–000]

March 19, 1993.

Take notice that on March 17, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–257–000 a request pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point under its blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install a new delivery point to accommodate deliveries of natural gas to West Texas Utilities Company (WTU) in Irion County, Texas, under Northern's transportation rate schedules for use at WTU's San Angelo Power Station, an electric generating plant. Northern advises that peak day and annual equivalent volumes are estimated to be 33,000 MMBtu and 10,220,000 MMBtu, respectively. Northern estimates that the cost of the metering facilities would be $85,000. Northern explains that non-jurisdictional dehydration facilities would also be installed.

Comment date: May 3, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP93–251–000]

March 19, 1993.

Take notice that on March 16, 1993, Northern Natural Gas Company (Northern) 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–251–000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon two compressor units, the Beaver Unit #7 and the Beaver County Unit #5, in Beaver County, Oklahoma, which are no longer required because of declining production from the attached gas reserves, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the Beaver Compressor Station consists of twenty-one compressor units. Northern requests authority to abandon Unit #7, a 1,515 Horsepower (HP) horizontal reciprocating compressor which was installed in 1950 and certificated in Docket No. G–1183, 9 FPC 401. It is stated that gas volumes produced from various fields upstream of the Beaver Station have declined due to depletion of field reservoirs and the associated lower wellhead pressures, thus reducing

the throughput of this station from 370 MMcfd to 200 MMcfd.

It is stated that the Beaver County No. 5 compressor Station consists of three compressor units. Northern requests authority to abandon Unit #5, a 200 HP compressor unit installed in 1978 in Docket No. CP78–188, 3 FERC ¶61,056. Northern states that gas volumes produced from Tonkowa field have declined due to a normal process of depletion without any new wells connected, thus reducing throughput of this station from 2.5 MMcfd at peak production to 1.9 MMcfd currently.

According to Northern, these units have not been utilized for some time because compression had not been needed to maintain deliveries. It is stated that compression from the remaining units at the Compressor Stations provides all the compression required for current production. Therefore, Northern states that abandonment of these units will not result in abandonment of service to any of its existing customers or producers, nor will the proposed abandonment adversely affect capacity since this compression is no longer needed to maintain system supply.

Comment date: April 9, 1993, in accordance with Standard Paragraph F at the end of the notice.

6. Colorado Interstate Gas Co.

[Docket No. CP92–470–001]

March 22, 1993.

Take notice that on March 18, 1993, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92–470–001 a petition to amend the certificate of public convenience and necessity issued December 8, 1992, in Docket No. CP92–470–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG proposes to add a delivery point on its Enterprise Lateral to Snyder Oil Corporation (Snyder) at Snyder's Roggen processing facility in Weld County, Colorado.

The estimated cost of the facilities is $23,000.

No other changes from the original authorization are proposed.

Comment date: April 12, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Mojave Pipeline Co.

[Docket No. CP93–259–000]

March 22, 1993.

Take notice that on March 17, 1993, Mojave Pipeline Company (Mojave), located at 5001 E. Commercenter Drive, Bakersfield, California 93309, filed in Docket No. CP93–259–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations for authorization to construct a sales tap under Mojave's blanket certificate issued in Docket Nos. CP89–001 and CP89–002, as more fully set forth in the request that is on file with the Commission and open to public inspection.

Mojave states that it proposes to deliver 50,000 MMBtu of natural gas per day to Southern California Gas Company (SoCal) at the proposed sales tap, which will be located in San Bernardino County, California. Mojave will transport the gas pursuant to its existing blanket transportation certificate under existing rate schedules.

Comment date: May 6, 1993, in accordance with Standard paragraph G at the end of this notice.

8. Alabama-Tennessee Natural Gas Co.

[Docket No. CP93–256–000]

March 22, 1993.

Take notice that on March 17, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP93–256–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap to Monsanto Company (Monsanto) under Alabama-Tennessee's blanket certificate issued in Docket No. CP85–359–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Alabama-Tennessee asserts that Monsanto is an end user of natural gas presently served indirectly by Alabama-Tennessee through the municipally owned facilities of the City of Decatur, Alabama.

Alabama-Tennessee states that it proposes to add a sales tap on its system in Morgan County, Alabama in order to provide direct natural gas transportation deliveries to Monsanto. Alabama-Tennessee further states that it would deliver up to 6,000 dekatherms of natural gas per day to Monsanto.

Alabama-Tennessee asserts that the proposed service will have no impact on its peak day and annual deliveries.

Comment date: May 6, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 an 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an

application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7122 Filed 3–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–237–000]

Alabama-Tennessee Natural Gas Co.; Informal Settlement Conference

March 23, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on March 31, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1992).

For additional information, please contact Irene E. Szopo at (202) 208–1602, or David R. Cain at (202) 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7055 Filed 3–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–468–000]

Century Power Corp.; Notice of Filing

March 23, 1993.

Take notice that on March 19, 1993 Century Power Corporation (Century), in connection with its proposed sale of a 41.8% ownership interest in San Juan Unit 3 to Southern California Public Power Authority (SCPPA), filed an Assignment and Assumption Agreement assigning its power sale agreement with Nevada Power Company (Nevada) dated April 14, 1992 (FERC Rate Schedule No. 14) to SCPPA. Century requests that the Assignment and Assumption Agreement be made effective as of the closing date of the sale of Century's 41.8% interest in the unit.

Century requests waiver of the 60 day notice requirement to permit the Commission to act upon the filing by April 23, 1993, but if such waiver is not granted, it requests that the Commission act no later than May 24, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7057 Filed 3–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–262–000]

Northern Natural Gas Co.; Notice of Request Under Blanket Authorization

March 23, 1993.

Take notice that on March 19, 1993, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP93–262–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Midwest Natural Gas Company (Midwest), under the blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to upgrade an existing delivery point (Coon Valley #2 town border station) located in LaCrosse County, Wisconsin to accommodate increased natural gas deliveries to Midwest under Northern's currently effective rate schedules. Midwest has requested increased service to commence June 1, 1993, due to the growth of residential and commercial markets served by Midwest in the area. Northern estimates increased peak day and annual volumes through the upgraded town border station of 150 Mcf and 17,465 Mcf, respectively. It is indicated that Midwest's current firm entitlement is sufficient to serve this increased load. Northern estimates a cost of upgrading the delivery point of $24,500 and indicates that Midwest would make a contribution in aid of construction of the total amount.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, it is indicated that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc 93–7056 Filed 3–26–93; 8:45 am]

BILLING CODE 6717–01–M

[RS92–23–005 RP91–203–206 RP92–132–028 (Consolidated, in part)]

Tennessee Gas Pipeline Co.; Telephone Technical Conference

March 23, 1993.

Take notice that a telephone conference will be held beginning at 10 a.m., eastern standard time on Monday April 5, 1993. The only issue to be discussed at the conference is the facts the Commission relied upon in arriving at its determination regarding cost shifts among small customers as a result of Tennessee's use of SFV rate design. Parties to the above captioned proceeding may attend the conference at either of the following two locations: the offices of Fulbright & Jaworski, 1301 McKinney Street, Houston, TX, 42nd floor, south wing conference room or at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. Parties wishing to attend at the former location should contact Mike Manning at (202) 662–4550. Persons wishing to attend at the FERC offices should contact Sharon

Dameron at (202) 208–2017 or Mary Doyle at (202) 208–0927.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7054 Filed 3–26–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 22, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 623–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0443.

Title: Conditional Temporary Authorization to Operate a Part 90 Radio Station.

Form Number: FCC Form 572–C.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 17,023 recordkeepers; .10 hours average burden per recordkeeper; 1,702 hours total annual burden.

Needs and Uses: Applicants are required to complete FCC Form 572–C to have immediate authorizations to operate 2-way radio equipment in Part 90 radio services below 470 MHz or in the 929–930 MHz band. Applicants may use this form as a conditional temporary authorization to operate their equipment during the processing of an application for license or grant.

OMB Number: 3060–0107.

Title: Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information.

Form Number: FCC Form 405–A.

Action: Revision of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,700 responses; .33 hours average burden per response; 891 hours total annual burden.

Needs and Uses: In accordance with FCC Rules, radio stations licensees are required to apply for renewal of their radio station authorization every five years. The Commission issues computer generated renewal notices, however, this form will serve as a short form alternative for licensees who fail to receive that notice for whatever reason. This form is also provided for Land Mobile, General Mobile, Aviation Ground and Marine Coast licensees who wish to cancel their authorization, or file a name and/or address change.

This form is revised to accommodate Land Mobile licensees who wish to make notification of a change in the number of mobiles/pagers at the time of renewal as specified in PR Docket 92–78. Commission personnel will use the data to determine eligibility for an authorization renewal or reinstatement, and issue a radio station license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement purposes and for authorization cancellations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7119 Filed 3–26–93; 8:45 am]

BILLING CODE 6712–01–M

Advisory Committee on Advanced Television Service Planning Subcommittee Meeting; Notice of Change in Location

The meeting of the Planning Subcommittee scheduled for April 2, 1993 at 2:00 p.m. will be held at 2000 L Street NW., room 258, Washington, DC.

Questions regarding this meeting should be directed to William Hassinger at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7120 Filed 3–26–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before May 28, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to. The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, (202) 646–2624.

Type: Extension of 3067–0077.

Title: Post Construction Elevation Certificate/Floodproofing Certificate.

Abstract: The Elevation Certificate/Floodproofing Certificate is an adjunct to the application for flood insurance and is required for proper rating of post-Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. The Elevation Certificate is also needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The standardized formats of the Elevation Certificate (FEMA Form 81–31) and Floodproofing Certificate (FEMA Form 81–65) provide community officials and others documents which they may use to readily record needed information.

The forms are completed by a surveyor, other professional, or owner to record essential building information to establish the basis for charging property owners actuarial insurance rates and/or for use by the community.

Type of Respondents: Individuals or households, State or local governments,

Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 3,008 Hours.

Number of Respondents: 15,040.

Estimated Average Burden Time per Response: 12 Minutes.

Frequency of Response: Other—once per building.

Dated: March 22, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–7112 Filed 3–26–93; 8:45 am]

BILLING CODE 6718–01–M

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting.

NAME: Board of Visitors for the National Fire Academy.

DATES OF MEETING: May 13–14, 1993.

PLACE: National Emergency Training Center, National Fire Academy, Building H, Conference Room, Emmitsburg, MD 21727.

TIME: May 13, 1993, 9 a.m.–5 p.m.; May 14, 1993, 9 a.m.–12 noon.

PROPOSED AGENDA: May 13: Quarterly meeting—review current, approved, and proposed budgets. May 14—Agenda completion.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727. (301) 447–1117, on or before April 30, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 19, 1993

Edward M. Wall,

Deputy Administrator, U.S. Fire Administration.

[FR Doc. 93–7105 Filed 3–26–93; 8:45 am]

BILLING CODE 6718–01–M

GENERAL SERVICES ADMINISTRATION

Steering Committee for the African Burial Ground, New York, NY; Meeting

Notice is hereby given that the Steering Committee for the African Burial Ground, New York, NY, (Steering Committee) will have a special meeting on Monday, April 12, 1993 at 6 p.m. in the 2nd floor archives of the Schomburg Center for Research in Black Culture, New York Public Library, 515 Malcolm X Boulevard (at 135th Street), New York, NY.

The meeting will consider (1) the adoption of recommendations to GSA for a budget for Steering Committee; (2) the adoption of recommendations to GSA for rules of procedure for the Steering Committee as contained in a report of the Steering Committee's subcommittee on rules; and such other matters properly coming before the Steering Committee under its charter and its rules and regulations.

Additional meetings of the Steering Committee will be held at the same time and place on April 26, May 24, and June 28, 1993. Meetings may be continued to the following day(s), if necessary, and shall be so announced during the meeting. Seating may be limited. Please call (212) 264–0456 prior to each meeting to confirm the date, time, and location of the meeting.

All meetings will be open to the public. Members of the public at large, as may be recognized by the Chairman of the Steering Committee, will be able to speak at the meetings at designated times as provided in the resolutions of the Steering Committee. In addition, written comments by any person may be directed to any aspect of the Steering Committee's mission and other questions regarding the Steering Committee's meetings may be directed to: Chairman Howard Dodson, Chief, Schomburg Center for Research in Black Culture, New York Public Library, 515 Malcolm X Boulevard, New York, NY 10037–1801, Tel: (212) 491–2200.

Copies of such written comments may be sent to Robert W. Martin, Acting Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278.

Dated: March 23, 1993.

Robert W. Martin,

Acting Regional Administrator.

[FR Doc. 93–7223 Filed 3–26–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HP (Agency for Health Care Policy and Research), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (55 FR 12286–89, April 2, 1990, as amended at 57 FR 32999, July 24, 1992) is amended to delete the title and statement for the Office of Scientific Review and revise the statement for the Office of Management within the Agency for Health Care Policy and Research.

Agency for Health Care Policy and Research

Under *Section HP–20, Functions,* within the statement for *Office of Planning and Resource Management (HPA2),* the *Office of Management (HPA22),* following item (7) add "(8) provides leadership and coordination in the assignment and peer review of grant applications for the purpose of advising the Administrator, AHCPR, on the scientific and technical merits of these applications and subsequent recommendations for approval or disapproval;" and renumber items (8) through (12) as (9) through (13).

Following the statement for *Office of Planning and Resource Management (HPA2), Office of Program Development (HPA23),* delete the title and statement in its entirety for the *Office of Scientific Review (HPA24).*

Dated: March 22, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–7103 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

Preapplication Videoconference Workshop—Cooperative Agreements for Minority Community-Based Organization(s) Human Immunodeficiency Virus (HIV) Prevention Project—Program Announcement Number 303

The National Center for Prevention Services (NCPS) of the Centers for Disease Control and Prevention (CDC) announces the following preapplication videoconference workshop.

Name: Preapplication Videoconference Workshop—Cooperative Agreements for Minority Community-Based Organization(s) (CBOs) HIV Prevention Project—Program Announcement Number 303.

Time and Date: 11 a.m.–5 p.m. EDT, April 28, 1993.

Status: Open to the public, limited only by the space available; seating preference will be given to minority CBOs.

Place: Contact the CDC National AIDS Clearinghouse at 1–800–458–5231 for the location in your area.

Purpose: To provide information concerning programmatic and business aspects of preparing an application for funding under Program Announcement Number 303.

Eligibility: Congress has authorized funds to provide direct financial and technical assistance so that minority CBOs may work in their own communities to reduce the risky behaviors that lead to HIV transmission. Under Program Announcement Number 303, nonprofit minority CBOs are eligible. A nonprofit minority CBO is a public or private nonprofit organization that has: a governing board composed of more than 50 percent racial or ethnic minority members; a significant number of minorities in key program positions; and an established record of service to a racial or ethnic minority community or communities. A local affiliate of an organization that has a national governing board composed of more than 50 percent racial or ethnic minority members, a significant number of minorities in key program positions, and an established record of service to racial or ethnic minority communities, is also eligible.

Eligible applicants must be nonprofit corporations or associations whose net earnings in no part accrue to the benefit of any private shareholder or person. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are ineligible.

Minority CBOs requesting funds under Program Announcement Number 303 will be categorized into two groups: (1) High prevalence metropolitan statistical areas (MSAs); or (2) lower prevalence geographic areas. High prevalence MSAs are defined by (1) cumulative reports of 1,000 or more acquired immunodeficiency syndrome (AIDS) cases through June 30, 1992; (2) cumulative reports of 300 or more AIDS cases occurring in racial/ethnic minorities (African-Americans, Alaskan Natives, American Indians, Asian Americans, Latinos/Hispanics, and Pacific Islanders) through June 30, 1992; or (3) those MSAs that were previously eligible for funding under Program Announcement Number 202. Eligible high prevalence MSAs are the following:

Arizona: Phoenix
California: Los Angeles-Long Beach, Oakland, Orange County, Riverside-San Bernardino, Sacramento, San Diego, San Francisco, San Jose
Colorado: Denver
Connecticut: Hartford-New Britain, New Haven-Waterbury-Bridgeport
District of Columbia-Maryland-Virginia: Washington, D.C.
Florida: Ft. Lauderdale-Hollywood-Pompano Beach, Ft. Pierce, Jacksonville, Miami-Hialeah, Orlando, Tampa-St. Petersburg-Clearwater, West Palm Beach-Boca Raton-Delray Beach
Georgia: Atlanta
Illinois: Chicago
Louisiana: New Orleans
Maryland: Baltimore
Massachusetts: Boston-Lawrence-Salem
Michigan: Detroit
Missouri-Kansas: Kansas City
Missouri-Illinois: St. Louis
New York: Dutchess County
New York-New Jersey: New York
North Carolina: Greensboro-Winston Salem-High Point, Raleigh-Durham
North Carolina-South Carolina: Charlotte-Gastonia-Rock Hill
Ohio: Cleveland
Pennsylvania-New Jersey: Philadelphia
Puerto Rico: Caguas, Mayaguez, Ponce, San Juan
Tennessee-Arkansas-Mississippi: Memphis
Texas: Austin, Dallas, Ft. Worth-Arlington, Houston, San Antonio
Virginia: Norfolk-Virginia Beach-Newport News, Richmond-Petersburg
Washington: Seattle

Minority CBOs not located in the above list of high prevalence MSAs will be categorized as lower prevalence geographic areas.

Availability of Funds: In fiscal year 1993, CDC expects up to $8,000,000 to be available for funding minority CBOs in high prevalence MSAs and up to $1,000,000 to be available for funding minority CBOs in lower prevalence geographic areas. Program expansion to support activities in lower prevalence areas emanates from the transfer of the HIV/AIDS Prevention Education Grant Program from the Public Health Service's Office of Minority Health to CDC. Funding under Program Announcement Number 303 is for the purpose of supporting minority CBOs that represent and serve minority persons and meet the criteria outlined in the above section entitled "Eligibility."

Matters to be Discussed: CDC staff will discuss programmatic and business aspects related to the development and submission of applications for funding under Program Announcement Number 303. Program consultants will provide information concerning the four priority areas for funding (Street Outreach Programs, Risk Reduction Programs, Community Intervention Programs, and HIV Prevention Case Management Programs) outlined in Program Announcement Number 303.

General Information: This videoconference is expected to last approximately 6 hours (11 a.m.–5 p.m. EDT). You are encouraged to bring two persons (a business representative and a program representative) to the workshop.

CDC staff will address the integration of and provide information on other related programs (e.g., tuberculosis, preschool immunization, sexually transmitted diseases, national and regional organization, women and infants, substance abuse, and the Community Demonstration Projects).

Because regional and national minority organizations often provide technical assistance and other support to minority CBOs, they are encouraged to attend this videoconference.

For More Information Contact: The CDC National AIDS Clearinghouse may be called at 1–800–458–5231 or fax 1–301–738–6616 after March 26, 1993, for information on the location of videoconference sites in your area and registration procedures. Copies of this videoconference will be available from the CDC National AIDS Clearinghouse on May 5, 1993, for a nominal fee (approximately $12 per copy).

Dated: March 23, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–7067 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–18–M

Consultation on Human Immunodeficiency Virus (HIV) Counseling Standards, Guidelines, and Options: Meeting

The National Center for Prevention Services (NCPS) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Consultation on HIV Counseling Standards, Guidelines, and Options.

Times and Dates: 1 p.m.–5 p.m., April 12, 1993. 8:30 a.m.–3 p.m., April 13, 1993.

Place: J.W. Marriott Hotel at Lenox, 3300 Lenox Road, NE., Atlanta, Georgia 30326, telephone 404/262–3344.

Status: Open to the public, limited only by space available.

Purpose: Consultants are composed of State Health Department staff, HIV counselors, HIV trainers, program staff from community-based organizations, a representative from the National Institute on Drug Abuse, and representatives from various national HIV organizations. Invited participants have expertise in HIV counseling and will discuss CDC's proposed HIV Counseling Standards, Guidelines, and Options. Participants will review the proposed guidelines and give their individual recommendations to CDC. CDC will use this information to produce expert guidance in the area of counseling and testing.

Matters to be Discussed: The consultants will focus on a number of important public

health issues within the proposed guidelines, such as:

- What standard messages should be included in HIV counseling?
- What standard procedures should be included in HIV/Sexually Transmitted Diseases programs regarding HIV counseling?

Contact Person for More Information: Carl H. Campbell, Jr., Chief, Program Development and Technical Support Section, NCPS, CDC, MS–E44, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0800.

Dated: March 23, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–7066 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Executive Subcommittee.

Time and Date: 8:30 a.m.–5 p.m., April 14, 1993.

Place: Columbia Square, Seventh Floor, 555 Thirteenth Street, NW., Washington, DC 20004–1109.

Status: Open.

Purpose: The purpose of this meeting is for the Executive Subcommittee to review the work plans of NCVHS and other subcommittees. The Executive Subcommittee will plan the June 8–10, 1993, NCVHS meeting.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: March 23, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–7069 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–18–M

Centers for Disease Control and Prevention (CDC)

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory and Hospital Care Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9:30 a.m.–5 p.m., April 15, 1993.

Place: Room 703A–729A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Status: Open.

Purpose: The subcommittee will consider responses to its proposed revision of the Uniform Hospital Discharge Data Set (UHDDS), review the status of the Interagency Task Force on the UHDDS, and consider other issues included in its charge.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: March 23, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–7068 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0029]

Draft Revised "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revision of the "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" ("Redbook"). FDA is making available the draft version of the revised "Redbook" for public comment before developing a final version.

DATES: Written comments by July 27, 1993.

ADDRESSES: Submit written requests for single copies of the revised "Redbook" to the Center for Food Safety and Applied Nutrition, Division of Product Policy (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the revised "Redbook" to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft revised "Redbook" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington. DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft revision of the "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" ("Redbook"). This revised "Redbook" is intended to provide guidance to petitioners regarding criteria used by FDA for toxicological safety assessment of direct food additives and color additives, and in the agency's evaluation of the generally recognized as safe (GRAS) status of food ingredients.

In 1982, the Center for Food Safety and Applied Nutrition published the "Redbook" to clarify the criteria used by the agency to evaluate the toxicological safety of direct food additives, GRAS ingredients, and color additives used in food. In revising the "Redbook," FDA is taking into account developments in toxicological testing, as well as comments received from the scientific community and the public on the 1982 edition of the "Redbook." The center's goal in revising the "Redbook" is to make it more useful and practical, and to address areas of toxicological safety assessment not covered in the 1982 edition. In addition to conventional toxicological testing procedures, the revised "Redbook" contains new or significantly expanded sections on metabolism and pharmacokinetics, immunotoxicology, neurobehavioral toxicology, alternatives to whole animal testing, unique and specialized additives, pathology considerations, statistical considerations, human testing, epidemiological studies, and risk assessment.

Interested persons may, on or before July 27, 1993, submit to the Dockets Management Branch (address above) written comments on the draft revision of the "Redbook." Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will announce the availability of the final

version of the "Redbook" in the **Federal Register**.

Dated: March 23, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7058 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting; Alternative Medicine Program

The Office of Alternative Medicine in the Office of the Associate Director for Science Policy and Legislation, National Institutes of Health (NIH), announces a meeting of an Ad Hoc Panel on Alternative Medicine. The meeting is scheduled for April 1 and 2, 1993, from 8:30 a.m. until 5 p.m., Renaissance Hotel, Washington/Dulles International Airport, Sully Road (Route 28) at McLearen Road, 13869 Park Center Road, Herndon, VA 22071. This meeting will be open to the public. However, attendance may be limited by seat availability.

There will be an open public session on Friday, April 2, from 8:30 a.m. to 9:30 a.m. Any person wishing to make a presentation at this session should notify the contact person by March 30, 1993. A brief summary of the presentation should accompany the request.

Comments received at the meeting will be used by the Ad Hoc Panel to identify and frame the issues and develop the agenda for a proposed program advisory committee meeting to follow in June 1993. Scheduled agenda items include a discussion of the role and activities of the Office of Alternative Medicine and its relationship with the Division of Research Grants (DRG), the Small Business Innovation Research (SBIR) Program, and the Office of Medical Applications of Research (OMAR) at NIH.

Written requests to participate should be sent to the attention of Ms. Susan Shelton of EEI, 66 Canal Center Plaza, suite 200, Alexandria, Virginia 22314–1538, 703–684–2116, 703–683–4915 (FAX).

For additional information, contact Joseph J. Jacobs, M.D., M.B.A., Director, Office of Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Building 31, Room B1–C35, Bethesda, MD 20892, 301–402–2466.

Dated: March 23, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–7208 Filed 3–26–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health; Privacy Act of 1974; Addition of Routine Uses to an Existing System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notice of addition of new routine uses to an existing system of records.

SUMMARY: The Public Health Service (PHS) is publishing notice of its intent to add 2 new routine uses for the disclosure of information from the following Privacy Act system of records: 09–15–0044, "Health Education Assistance Loan Program (HEAL), Loan Control Master File, HHS/HRSA/BHPr."

DATE: PHS invites public comments on the new routine uses on or before April 28, 1993. These routine uses will become effective without further notice 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to the Privacy Act Officer, Health Resources and Services Administration (HRSA), Parklawn Building, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Chief, HEAL Branch/Division of Student Assistance, Bureau of Health Professions, HRSA, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1173. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA maintains system of records 09–15–0044, "Health Education Assistance Loan Program (HEAL), Loan Control Master File, HHS/HRSA/BHPr," to (1) identify students participating in the HEAL Program; (2) determine eligibility of loan applicants and to compute insurance premiums for Federal insurance; (3) monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and (4) compile and generate managerial and statistical reports.

HRSA is proposing to add 2 new routine uses to permit the following disclosures: (1) Publication in the **Federal Register** of HEAL defaulter's name, city and state (address if it is a matter of public record) and amount of debt; and (2) Disclosure to Federal agencies, schools, school associations, professional and specialty associations, state licensing agencies, hospitals, and any other relevant organizations, of a HEAL defaulter's name, home and business addresses, social security number, and the amount, status, and history of the debt.

The purpose of these disclosures is to obtain assistance in the enforcement of the terms and conditions of HEAL loans. The Agency is directed to make these disclosures by 42 U.S.C. 292h(c) (1 and 2).

These routine uses are compatible with the purpose for which the records were collected.

Dated: March 19, 1993.

Wilford J. Forbush,

Director, Office of Management.

09–15–0044

SYSTEM NAME:

Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

New routine uses, numbers 16 and 17 are added as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

16. In accordance with the directive in 42 U.S.C. 292h(c)(1), the names of HEAL borrowers who are in default will be published in the **Federal Register** by city and State along with the amounts of their HEAL debts. The individual's address also may be published if the address is a matter of public record as a result of legal proceedings having been filed concerning the individual's HEAL debt.

17. In accordance with the directive in 42 U.S.C. 292h(c)(2), disclosure may be made to relevant Federal agencies, schools, school associations, professional and specialty associations, State licensing boards, hospitals with which a HEAL defaulter may be associated and other similar organizations, of a HEAL defaulter's name, home and business addresses, Social Security number, and the amount, status and history of the debt.

* * * * *

[FR Doc. 93–7059 Filed 3–26–93; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Questionnaire To Determine the Status of Automation in the State DDSs

Questionnaire to Determine the Status of Automation in the State DDSs; 0960–NEW; The information on form SSA–54–BK will be used by the Social Security Administration (SSA) to determine what automated services are

now available in the State offices which make disability determinations for SSA. The respondents will be staff members of these offices.

Number of Respondents: 54
Frequency of Responses: 1
Average Burden Per Response: 5 hours
Estimated Annual Burden: 270 hours
OMB Desk Officer: Laura Oliven.

Copy of SSA–54 and instructions attached.

Social Security Administration DDS Automation Survey

Questionnaire Instructions

Task Order No. 1, under contract No. 600–92–0101, requested the contractor to "develop a questionnaire that can be distributed to the State Disability Determination Services (DDSs) to provide data for determining statistical correlations between the degree of baseline automation within the DDSs and previously identified measures of success." The attached questionnaire was produced in fulfillment of the task order. Following are some general comments and specific instructions for its completion.

Per this objective, a major part of the questionnaire is to ascertain the extent of automation in DDS offices. Based on responses to these questions, a scale of automation will be constructed to be used to develop statistical correlations with "success" or performance as measured by such regularly reported indicators as Productivity Per Work Year (PPWY), Processing Time (PT) and Accuracy.

At the same time it is recognized that automation does not take place in a vacuum. Each DDS site operates in an environment comprised of varying degrees of urban density or rural sparseness, predominately English speaking or multi-lingual. Each provides services in a complex of structural characteristics and management initiatives. Some have no unions, others have several. Some are under the auspices of the Department of Labor; others, Education, or Health or Social Services. Some are centralized, others not. All of these attributes contribute to a profile unique to each site. To understand and adequately control for this variation a significant portion of the questionnaire is devoted to achieving a profile of each DDS office. This information will be used in the analysis to logically group or cluster the DDSs.

The questionnaire is designed to be completed in three parts:

Part I—Administrative, is designed for completion by the DDS Administrator. In decentralized states, the top administrators for the state and for each branch office are asked to respond. The questions should be answered for the full organization over which you have administrative responsibility.

Part I includes questions about staff composition, numbers and types of employees, personnel and organizational issues. Several of these questions may require some prior data collection. Data needed to complete the questionnaire include contractor hours, leave time, staff longevity, non-English languages spoken by claimants, district office errors, and C/E scheduling delays. Please look at the following questions before beginning to complete the questionnaire to determine if data must be gathered before responding: 1.3, 1.5, 1.14, 1.15, 1.24, 1.25, 1.27, 1.28, 1.30.

Part II—Operations, is intended to be completed by an examiner unit supervisor, section manager or lead examiner, and also by a support staff supervisor. This section seeks information about the manner in which work is conducted. Responses should reflect activities and operations for the *entire* office, not the individual respondent.

Part III—Systems, should be completed by the lead systems or data processing person. It seeks information about the extent of automated capabilities at a very detailed level. Information is also sought regarding when systems were implemented and the extent to which they are used. In large, decentralized DDSs, a state-level systems person may be either a key resource or lead authority in completing the several site-specific responses.

Unless otherwise stated, data for fiscal year 1992 (October 1, 1991–September 30, 1992) should be supplied.

Please note: This survey and the analysis that will follow depends on your full participation. Accuracy is also very important. With these two prerequisites fulfilled, the resulting information will benefit all involved.

A significant portion of the data to be used in analysis will come from management and other reports at Social Security headquarters. This was seen as being easier than requesting the data on this questionnaire. In order to link the data to questionnaires, it is necessary to know the DDS state and branch or location.

Because different people (administrators, examiners, support staff, systems) will be completing the questionnaire, it is also necessary to know which employment classification each respondent represents. Although it is not necessary to sign your name, your position must be included. However, it would be most appreciated if you would also provide your name, so that follow up for any additional information needs may be more easily accomplished.

Please feel free to annotate the questionnaire as you work through it, or include detailed comments in the space provided at the end of each section of the questionnaire.

If any questions arise while completing the questionnaire, please call either of the two contacts listed below for clarification:

Victor Van De Moortel, Planning Analysis Corporation, (703) 448–4477
Linda Jenks, Williams, Adley and Company, (410) 965–6382.

Thank you for your contribution to this important study!

Privacy Act and Paperwork Act Notice: The Social Security Act (section 221 (42 U.S.C. 421), as appropriate), authorizes the collection of information on this form. The form will be used to elicit organizational and management information and the extent of office automation in the disability determination services (DDS); to determine the extent to which automation has contributed to DDS performance improvements and to what extent additional automation can be expected to result in further improvements. This information is required to plan and execute the national DDS modernization effort; and, failure to complete the form could result in incorrect measurements, and ultimately incorrect modernization requirements, for the non-responding DDS. Because of the limited scope of information being collected, it is unlikely that the form responses will be disclosed to any other party. These responses constitute only the raw data of this survey. It is more likely that if any data are released to any other government agency, it would be the completed analysis and recommendations.

Time it Takes to Complete This Form

We estimate that it will take between 2 and 5 hours to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have any comments or suggestions and how long it takes to complete this form or any other aspect of this form, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Bldg., Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0512), Washington, DC 20503. *Do not send competed forms or information concerning this survey to these offices.*

DDS AUTOMATION SURVEY PART 1—ADMINISTRATIVE

1.1 At your site, what is the maximum number of levels of management or supervision, including yourself, between the top administrator, and any employee in your organization? *(For example, an office in which there is a typing support staff supervisor, examiner, manager, and administrator, would have three levels of supervision, assuming the manager is at a higher level than the supervisor and the examiner has no supervisory responsibilities. You may also wish to provide an organization chart.)* _____

1.2 How many distinct types of operational units do you have? *(Examples would include C/E scheduling or word processing, but multiple examiner units should be counted only once.)* _____

1.3 How many FTEs (*not* employees) were used by the DDS in FY 92? *(If any of these job categories include contracted or volunteer services, e.g. word processing, data processing, please estimate the number of FTEs based on the number of employees replaced or the level of effort represented by the contract or volunteer agreement. If services were provided through indirect costing arrangements with the parent organization, include these estimates with contract FTEs. Compute FTEs by dividing the total number of hours worked in FY 92 by the hours in the work week multiplied by 52, i.e. FTE = total hours/(work week × 52). Do NOT include overtime hours.)*

	FTEs on staff	Contract FTEs	Volunteer FTEs
a. Administrative	_____	_____	_____
b. Examiner	_____	_____	_____
c. Para-professional	_____	_____	_____
d. Clerical	_____	_____	_____
e. Data processing	_____	_____	_____
f. Medical Consultant	_____	_____	_____
g. All Other	_____	_____	_____
Total	_____	_____	_____

1.4 If yours is a decentralized DSS, how many FTEs (*not* number of staff) are dedicated to state-level as opposed to site-specific activities? *(In some of the larger, decentralized states, activities of a core group of staff are dedicated to state-wide or external (e.g. legislative, advocacy) issues. The operation of specific sites is left to another level of administrative management. Often these headquarters staff are located at a physically separate office. This question seeks to know the number of FTE employees who fit this description. Answer N/A if not decentralized.)*

_____

1.5 What was the average number of leave days (e.g. sick, annual, holiday or other time off with or without pay) taken per employee in FY 92? *(Sum the total number of days in each category and divide by the total FTEs as computed in question 1.3 for staff only.)*

_____

1.6 Does your DDS process any state or other non-federal claims? *(Note that this question does not consider claims processing for another state.)*

a. Yes _____
b. No _____

1.7 During FY 92 was it necessary for another state, branch, or federal component to assist in processing your agency's federal claims

a. Yes _____
b. No _____

1.8 Are any employees represented by a collective bargaining agreement? *(Employee organizations are considered unions only if they collect dues and bargain on behalf of their members).*

a. Yes _____
b. No _____(go to 1.13)

1.9 If yes, which employees?

a. Clerical _____
b. Examiners _____
c. Supervisors _____
d. Managers _____
e. Other (who?)_____

1.10 Did you experience any strikes or work stoppage actions in FY 92?

a. Yes _____
b. No _____(go to 1.13)

1.11 If yes, how many employees were involved? _____

1.12 How many days did the work stoppage last? _____

1.13 Are staff trained in functions other than those regularly assigned for back up purposes? *(For example, a support staff who closes cases also knows how to schedule C/Es.)*

a. Yes _____
b. No _____

1.14 How many years, on average, have your examiners been performing adjudicative work? *(Sum their total number of years service through 9/30/92 and divide by the total number of examiners.)* _____

1.15 How many years, on average, have your support staff been performing DDS-related work? *(Sum their total number of years service through 9/30/92 and divide by the total number of support staff.)* _____

1.16 How frequently is program-related training other than initial training offered to your staff? (*Do not include regularly scheduled meetings.*)

	Examiners	*Support Staff*
a. More than once per year	_____	_____
b. Once per year	_____	_____
c. Less than once per year	_____	_____

1.17 What reference materials are available to assist examiners in performing their work? (*Please identify resources developed in addition to those "official" publications and documents provided by SSA.*)

a. POMS extracts, summaries _____
b. Up-to-date procedure manuals _____
c. DOT and current job descriptions _____
d. Merck Manual/medical dictionaries _____
e. Other (please specify) _____

1.18 Do any incentive arrangements exist for employees? (*Some examples are given in question 1.20 below. Raises given solely due to the passage of time (annual, cost of living adjustments) should not be considered an incentive arrangement.*)

a. Yes _____
b. No _____ (go to 1.21)

1.19 If yes, with whom? (*Check if governed by a collective bargaining agreement.*)

	Incentives	*In CBA*
a. Medical Consultants	_____	_____

	Incentives	*In CBA*
b. Examiners	_____	_____
c. Support staff	_____	_____
d. Other (specify)	_____	_____

1.20 What type of incentive arrangements are available for employees? (*Please attach an additional sheet describing incentive arrangements if they differ for different groups of employees.*)

a. Merit pay increase _____
b. Performance bonus _____
c. Time off with pay _____
d. Recognition _____
e. Other _____

1.21 Are productivity goals such as defining specific numbers of cases to be processed set for any of your employees?

a. Yes _____
b. No _____ (go to 1.24)

1.22 If yes, which employees?

a. Medical Consultants _____
b. Examiners_____
c. Clerical staff_____
d. Quality Assurance staff_____
e. Other (specify) _____

1.23 Are performance reviews and/or increases tied to productivity goals? (*Answer yes only if the linkage is direct and understood by both the employee and supervisor.*)

a. Yes _____
b. No _____

1.24 What percent of claimants serviced by your site are non-English speaking? _____

1.25 Please indicate the number of foreign languages spoken by claimants for which the case volumes represent 5% or more of your total cases in FY 92. (*Answer 0 if only English is spoken.*)

_____

1.26 Does your state and/or local jurisdictions provide any welfare benefits which might be available to claimants? (*You may wish to comment regarding level of benefits, eligibility.*)

a. Yes _____
b. No _____

1.27 For how many claims received from SSA district offices in FY 92 was processing delayed due to incomplete or erroneous information? _____

1.28 How many FY 92 cases had to be returned to the district offices for further information or corrections prior to initiating work on the claim? (*Use actual counts if possible.*) _____

1.29 Are there any C/E exams for which the average wait time is over 30 days due to limited availability of certain specialty physicians or other providers in the claimant's area of residence?

a. Yes _____
b. No _____(go to 1.32)

1.30 How many total claimants were affected by these delays?_____

1.31 Please list the physician specialties (or other provider types) for whom delays occurred and estimate the average wait time (in days) for appointments.

	Specialty	*Wait time*
a.	_____	_____
b.	_____	_____
c.	_____	_____
d.	_____	_____

1.32 Do you have any "block time" arrangements with physicians for C/Es? (*These are contractual arrangements for the performance of a certain number of examinations or other services at an agreed to price, for a guarantee of a minimum number of occasions of service.*)

a. Yes _____
b. No _____(go to 1.35)

1.33 If yes, who is responsible for scheduling exams? (*Check all that apply.*)

a. DDS _____
b. Physician _____
c. Contractor _____
d. Claimant _____
e. Other _____

1.34 Who is responsible for follow up?

a. DDS _____
b. Physician _____
c. Contractor _____
d. Other _____

1.35 Is the physician paid for "no shows"? (*A no show is when the person neither cancels the appointment nor meets it.*)

a. Yes _____
b. No _____

1.36 Do you ever use copy services for MER?

a. Yes _____
b. No_____

1.37 Do examiners or support staff ever copy records from treating sources?

a. Yes _____
b. No _____(go to 1.41)

1.38 How many staff were involved copying records in FY 92? _____

1.39 From how many treating sources were records copied in FY 92?

_____

1.40 What percent of total claims involved copying records in FY 92?

_____

1.41 Of those staff who have adequate access to the system, what percent use system capabilities relevant to their jobs?_____

1.42 What percent of determination documents, e.g. Personalized Disability Notices, are generated through the examiner's use of automated capabilities or word processing (direct keying), dictaphone and/or transcribed written notes? (*Please estimate as accurately as possible the proportion generated in each of the different ways. Consider all examiners when making this estimate.*)

a. Direct keying _____
b. Dictaphone _____
c. Written notes _____

Respondent Name _____
Title _____
Phone Number _____
Location _____

If you wish to provide any explanatory notes or substantiating information relating to any of the above questions, please include them on this and as many additional pages as needed. Thank you!

DDS AUTOMATION SURVEY

PART 2—OPERATIONS

2.1 How is mail associated with case files?

a. Clerical staff delivers, files _____
b. Mail delivered to examiners to file _____
c. Mail delivered to examiner unit for support staff to file _____
d. Some other method (Describe) _____

2.2 Is mail distributed on the same day it arrives?

a. Yes _____(% of time) _____
b. Sometimes _____(% of time) _____
c. No _____(% of time) _____

2.3 What is the earliest time of day an examiner may see the day's mail?

_____

2.4 In FY 92, for how many claims received from SSA district offices was processing delayed due to incomplete or erroneous information? _____

2.5 How many cases had to be returned to the district offices for further information or corrections prior to initiating work on the claim? (*Use actual counts if possible.*) _____

2.6 Prior to assigning a new case to an examiner, what type of pre-development work takes place on the file and who does it (clerical, para-professional, examiner)? (*Please indicate if any pre-development work on the claim takes place and if so, by whom).*

	Activity Type	Staff Type
a. No development work done	_____	_____
b. Technical review	_____	_____
c. MER requested	_____	_____

	Activity Type	Staff Type
d. C/E's scheduled ..	_____	_____
e. Other (Describe) ..	_____	_____

2.7 After a case is assigned to an examiner, where does the file reside when not in active use?

a. At the examiner's workstation _____
b. Somewhere else (Where?) _____

2.8 How many times, on average, do file folders change physical locations during the course of DDS case processing (e.g. to the C/E area, the payment area, etc.)?_____

2.9 Are phone calls from claimant screened, and simple inquiries answered by support staff before referring to the examiner?

a. Yes_____ %_____
b. Some_____ %_____
c. No_____ %_____

2.10 What percent of follow-ups are done by phone or FAX as opposed to mail? (*Please consider carefully the proportion of phone follow up by each examiner, and average. Include all examiners and others who might perform follow up activities.*)

	By examiners	*By support staff*
a. 1st follow-up	_____	_____
b. Subsequent follow-ups	_____	_____

2.11 Who is responsible for most of the follow up done in your office?

a. Examiner _____
b. Support staff _____
c. Other (Who?) _____

2.12 Are bills paid as they come in or are they batched for processing?

a. Individually _____
b. Batched _____

2.13 Are cases determined by the examiner without input from a medical consultant prior to the phsycian's final review?

a. Always _____ About what percent of the time? _____
b. Sometimes _____ About what percent of the time? _____
c. Never _____ About what percent of the time? _____

2.14 If a case is selected for quality review *within* the DDS, and no quality issue is identified, how many days does this add to processing time? _____

2.15 How frequently do staff attend program-related training other than initial training? (*Do not include regularly scheduled meetings.*)

	Examiners	*Support Staff*
a. More than once per year	_____	_____
b. Once per year ..	_____	_____
c. less than once per year	_____	_____

2.16 What reference materials are available to assist examiners in performing their work? (Please identify resources developed in addition to those "official" publications and documents provided by SSA.)

a. POMS extracts, summaries _____
b. Up-to-date procedure manuals _____
c. DOT and current descriptions_____
d. Other (Please specify) _____

2.17 Is up-to-date user documentation available for automated systems? (*If you do not have an automated system, please go to question #2.25.*)

a. Yes _____
b. No _____

2.18 On a scale of 1 to 10, rate your system's ease-of-use, with 10 being the greatest ease of use. _____

2.19 What is the response time for your online functions? (*Please state unit of measurement e.g. minutes, seconds.*)

a. On average _____
b. Longest_____What type of function?_____

2.20 How often is the system "down" or inaccessible during normal business hours due to hardware or software errors, and maintenance? (*Please state total amount of time for the past year in hours.*) _____

2.21 What is the total number of staff with hardware and access adequate to use the system to perform their job functions? _____

2.22 How many of those identified above in Question 2.21 have received complete training in how to use the system to perform their job functions? _____

2.23 Of those whose training is incomplete (not accounted for by Question 2.22) how much training would you estimate they have received to date? (0% being no training, 100% being complete)? _____

2.24 Please rate the quality of support provided to the system user for day-to-day operational needs (not major enhancements).

a. Good _____(*Need met within five minutes 80% of the time.*)
b. Adequate _____(*What percent of time.*)
c. Poor _____(*A routine problem takes more than one day to resolve.*)

2.25 What percent of determination documents, e.g. Personalized Disability Notices, are generated through the examiner's use of automated capabilities or word processing (direct keying), dictaphone and/or transcribed written notes? (*Please estimate as accurately as possible the proportion generated in each of the different ways. Consider all examiners when making this estimate.*)

a. Direct keying _____
b. Dictaphone _____
c. Written notes_____

Respondent Name _____
Title _____
Phone Number _____
Location _____

If you wish to provide any explanatory notes or substantiating information relating to any of the above questions, please include them on this and as many additional pages as needed. Thank you!

DDS AUTOMATION SURVEY

PART 3—AUTOMATION

A. SYSTEM DESIGN, ACCESS and PERFORMANCE

3.1 Are all applications or components of the system integrated by a common menu?

a. Yes _____
b. No _____

3.2 Can data entered in one screen be used by all other screens or functions without re-keying? (*Answer yes if this is true more than 90% of the time.*)

a. Yes _____
b. No _____

3.3 Does the system provide on-line, context-sensitive help? (*E.g. can a user press a help key at any point on a screen and get information specific to the item in question?*)

a. Yes _____
b. No _____

3.4 Does the system provide full text translation of coded values, and allow their selection from a menu, with automatic value insertion?

a. Yes _____
b. No _____

3.5 Does the system permit multiple sessions or windowing between applications? (*Answer no if it is necessary to close and exit one application before opening another.*)

a. Yes _____
b. No _____

3.6 Does the system provide word processing capabilities (e.g. assembling blocks of text)?

a. Yes _____
b. No _____

3.7 Can authorized users perform online ad hoc queries of system data? (*Answer no if a programming language*

such as COBOL must be used to obtain information from the system or if only standard, pre-formatted reports are available. Answer yes if a fourth-generation language such as SQL can be used "on-the-ly" to query the data.)

a. Yes _____
b. No _____

3.8 Do authorized users have query access from their workstations to relevant SSA system data? *(Answer no if the user would have to go to a terminal in a different physical location.)*

a. Yes _____
b. No _____

3.9 What percentage of examiners have a terminal or PC at their desk with which to access the system? _____

3.10 What percentage of support staff have a terminal or PC at their desk with which to access the system? _____

3.11 Are staff able to access all system functions necessary in the performance of their job?

a. Yes _____
b. No _____ Why not? _____

3.12 What is the total number of staff with hardware and access adequate to use the system to perform their job functions? _____

3.13 How many of those identified above in Question 3.12 have received complete training in how to use the system to perform their job functions? _____

3.14 Of those whose training is incomplete (not accounted for by Question 3.13) how much training would you estimate they have received to date? (0% being no training, 100% being complete)? _____

3.15 How is user support provided? *(Check all that apply.)*

a. In-house _____
b. Vendor _____
c. Parent agency _____
d. None provided _____
e. Other (Describe) _____

3.16 Of those staff who have adequate access to the system, what percent use system capabilities relevant to their jobs? _____

3.17 Is current data available on the system when needed? If not, state the cause (e.g. batch updates). *(Answer no if you must wait for a system event to occur before you can complete a task.)*

a. Yes _____
b. No _____ Why not? _____

3.18 What is the response time for your online functions? *(Please state unit of measurement e.g. minutes, seconds.)*

a. On average _____
b. Longest _____What type of function? _____

3.19 How long does it take to move from one application to another? *(Please state unit of measurement e.g. minutes, seconds.)*

a. On average _____
b. Longest _____What type of function? _____

3.20 How often is the system "down" or inaccessible during normal business hours due to hardware or software errors, back-up and maintenance? *(Please state total amount of time for the past year in hours.)* _____

3.21 What percent of the system's potential is currently being realized? *(Please take into account hardware constraints, extent of staff training and other factors inhibiting maximization of the system's capabilities.)* _____

3.22 At what percent of full capacity is your computer now operating? *(Please answer in terms of % disk capacity and CPU capacity being used.)*

a. Disk capacity _____%
b. CPU capacity _____%

3.23 Are you able to exchange messages and documents electronically (e.g. E-Mail, FAX gateway) within the office, among state sites (if decentralized), with the SSA district offices and/or with providers?

	Intra-office	*Inter-office*	*DO's*	*Providers*
a. Yes	____	_____	_____	_____
b. No	____	_____	_____	_____

3.24 At what baud rate is data transmitted?

a. 4800 or less _____
b. 9600 or above _____
c. Other _____
d. N/A _____

3.25 What other forms of automation do you use that contribute to claims processing productivity and/or accuracy?

a. Envelope stuffer _____
b. Voice mail _____
c. Barcoding _____
d. Teledictation _____
e. Other (Please describe) _____

B. SYSTEM CAPABILITIES

Please complete the following matrix regarding the availability and use of automated capabilities on your system. For the purpose of this section of the questionnaire, "system" is defined as the group of interrelated computer applications which support the disability determination process. Unless specifically customized and integrated with this system, do not consider generic capabilities such as word processing and spreadsheet applications to be part of the "system."

"Automated capabilities" refer to functions that are performed automatically as a result of some other activity occurring, or as the result of entering a "key" field. For example, duplicate and concurrent claims data are automatically displayed as a result of entering the claimant SSN. Generating a letter by keying in all of the text should be considered a manual, not an automated function.

For each capability described below use the following codes in the "AVAILABLE?" column to indicate how it is implemented in your environment:

A=Provided by the system and *A*vailable for use by staff
M=Provided by the system but performed *M*anually
N=*N*ot provided by the system and performed manually
NA=*N*ot *A*pplicable—function not performed

If the capability is provided by the system, *and was installed within the last two years,* indicate in the "DATE IMPLEMENTED" column when it was implemented (MM/YY).

In the "# POTENTIAL USERS" column, indicate how many staff have access to and might logically make use of the automated capability described.

In the "# ACTUAL USERS" column, indicate how many staff are actually using the capability.

Functions resulting in batch processing would be expected to result in the number of Potential Users being equal to the number of Actual Users unless there is some reason not to use the batch output.

Automated capability	Available?	Date implemented	# potential users	# actual users
MANAGE CASE				
Query claim history				

Automated capability	Available?	Date implemented	# potential users	# actual users
Cross-reference aliases, duplicates, concurrent claims				
Assign unique identifier to case				
Assign unique identifier to documents that are to be returned to the DDS (e.g. vendor voucher).				
Select incoming cases for assignment				
Assign case to examiner by type, workload, schedule				
Transfer/reassign cases(s) to other examiner(s)				
Report caseload by examiner, unit, type, priority, age				
Review of case online by supervisor				
Print case folder label				
Track case movement within office				
Log case-related action performed by system (e.g. transmittal of closure data).				
Log case-related action performed manually (e.g. phone call to claimant)				
Log and tickle Congressional inquiries				
Query case status				
Generate follow-up action tickler based on parameters set by the system or user.				
Allow user override of follow-up date				
Display current follow-up actions				
Display future follow-up actions				
Sort follow-up actions by case or vendor				
Produce case development summary form				
Transmit receipt data to NDDSS				
COLLECT MEDICAL EVIDENCE				
Retrieve vendor data from vendor database/file				
Cross-reference affiliated providers				
Supply standard text for request letter				
Produce voucher for provider				
Obligate funds for MER or CIE to financial system				
Automatic generation of follow-up letter or alert				
Cancel follow-up actions as a result of logging receipt of evidence				
Cancel request for evidence				
List expired MER requests				
Log invoice receipt				
Group invoices by vendor				
Address copies of correspondence for third parties				
Batch bulk mailings to specific vendors				
Accept electronic/facsimile transfer of medical evidence				
Post receipt of evidence				

Automated capability	Available?	Date implemented	# potential users	# actual users
Create payment authorization for financial system				
SCHEDULE CONSULTATIVE EXAM				
Initiate CE request				
Queuing of CE requests (if centrally scheduled)				
CE appointment approval				
Identify specialist by claimant location				
Identify interpreter by claimant location				
Compute travel costs				
Produce travel voucher				
Schedule/reschedule block time appointment				
Select procedure-related fee from fee schedule				
Produce appointment notice for vendor				
Produce appointment notice for claimant				
Address copy of appointment notice for third party				
Cancel appointment				
Prompt for non-attending physician justification				
MAKE DETERMINATION				
Online reference tools: (Directories, etc.)				
Electronically transfer probable allowance alert to DO				
Record case notes and decision rationale				
Select PDN boiler plate based on REG-BASIS code				
Cite medical sources on PDN				
Generate 831				
Address copy of 831 for third party				
Transmit closure data to NDDSS				
REVIEW QUALITY				
Select cases by type, level, body system, determination, examiner, unit, medical consultant, CE vendor, reg-basis, diagnosis, or random.				
Report QA results by body system, medical consultant, examiner, decision, etc.				
Identify and assign returned Federal samples				
Maintain error findings, rates				
CREATE MANAGEMENT REPORTS				
Pending caseload				
Cleared cases				
Aged cases				
Cases by type				
Presumptive determination analysis				
Pending hearings				
Examiner performance				

Automated capability	Available?	Date implemented	# potential users	# actual users
Medical consultant performance				
Hearing officer performance				
Vendor performance				
Support staff usage				
MER and/or CE obligation summary				
Payment summary				
SAOR statistics				
CEMS statistics				
Cost per case				
TRACK HEARINGS				
Schedule hearing				
Produce claimant notification letter				
Produce reminder letter				
Produce re-schedule letter				
Produce cancellation letter				
Address copies of correspondence for third parties				
OTHER CAPABILITIES				

Respondent Name _____
Title _____
Phone Number _____
Location _____

If you wish to provide any explanatory notes or substantiating information relating to any of the above questions, please include them on this and as many additional pages as needed. Thank you!

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 22, 1993.

Carolyn Hunt,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–6993 Filed 3–26–93; 8:45 am]

BILLING CODE 4190–29–M

Social Security Ruling

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Ruling (SSR) 82–54, Titles II and XVI: Mental Deficiency—Intelligence Testing.

SUMMARY: The Principal Deputy Commissioner of Social Security gives notice of the rescission of SSR 82–54.

EFFECTIVE DATE: March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 82–54 was published in 1982 and appears in the 1981–1985 Cumulative Edition of the Rulings on page 342. This Ruling stated the policy and described the standardized intelligence test requirements for evaluating disability in mental retardation cases (adult and childhood) under Title II (Federal Old-Age, Survivors and Disability Insurance) and Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act (the Act).

Social Security Administration (SSA) regulations published on August 28, 1985, at 50 FR 35038 revised the Listing of Impairments regarding the medical evaluation criteria SSA uses to evaluate mental disorders in adults under title II and title XVI of the Act. On June 8, 1992, at 57 FR 24186, SSA extended the expiration date of these regulations for one year, to August 27, 1993. Regulations published on December 12, 1990, at 55 FR 51208, revised the

medical evaluation criteria in the Listing of Impairments used by SSA to evaluate mental disorders in children under age 18 under title II and title XVI of the Act. These revisions reflect advances in medical knowledge, treatment and methods of evaluating mental disorders and provide up-to-date medical criteria for the evaluation of disability claims based on mental disorders. Consequently, SSR 82–54, which was issued prior to these regulations, is obsolete and is rescinded.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: March 16, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

[FR Doc. 93–7123 Filed 3–26–93; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3578; FR–3424–N–01]

NOFA for the Traditional Indian Housing Development Program for Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1993.

SUMMARY: A. This notice announces the availability of funding for Fiscal Year (FY) 1993 for the development of new Indian housing (IH) units and provides the applicable criteria, processing requirements and action timetable. There will be no separate Family Self Sufficiency (FSS) competition this Fiscal Year. Low rent units awarded as a part of the competition described in this NOFA may be considered FSS units. (FSS Program guidelines published in PIH Notice 92–26, June 26, 1992, should be reviewed for program guidance.) All Indian Housing Authorities (IHAs) which have not been determined to be administratively incapable, in accordance with 24 CFR 905.135, are invited to submit applications for Indian housing developments in accordance with the requirements of this NOFA.

B. In this body of this document is information concerning: the purpose of the NOFA; eligibility; available amounts; the procedures that an IHA must follow to apply for new Indian housing units. The procedures for rating, ranking, and funding IHA applications are also in this NOFA.

DATES: Applications must be physically RECEIVED by the Indian field office (FO) having jurisdiction over the applicant on or before 4:15 p.m. (FO local time) May 13, 1993 for new Indian housing units. The applicant shall submit its application(s) for new housing units on Form HUD–52730 with all supporting documentation required by Appendix 2, and for demolition or disposition in accordance with 24 CFR part 905, subpart M.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Indian FO for further information. Refer to Appendix 1, for a complete list of FOs and telephone numbers.

SUPPLEMENT INFORMATION: Paperwork Reduction Act Statement: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements contained in these application procedures for development funds were reviewed by the Office of Management and Budget and assigned OMB control number 2577–0030.

I. New Development

A. Authority

1. Statutory Authority: Secs. 5 and 6, U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d), as amended; U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1993. Sec. 23, U.S. Housing Act of 1937, as added by sec. 554, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Indian housing regulations. Indian housing development regulations are published as a final rule (57 FR 28240) at 24 CFR part 905.

B. Development Allocation Amount

The FY 1993 VA–HUD Appropriations Act (P.L. 102–389) made available $257,320,000 of budget authority for the traditional Indian Housing Development grants program (new Indian Housing units). However, the appropriated funds have been reduced by $7,176,321 to $250,143,679 due to a prorated reduction of $236,300,000 in anticipated recaptured budget authority to make up the full level of the enacted Annual Contributions account in 1993. With the addition of $290,649 in carryover funds from FY 1992, a total of $250,434,328 is currently available for allocation. Up to $10,000,000 of this amount will be made available by the Department in order to provide funds needed to replace units approved for demolition/disposition. Any portion of the $10,000,000 that is not designated for demolition/disposition replacements by July 1, 1993, as well as any amounts of actual recaptures that are realized and reallotted to the program, will be made available to the OIPs on the same basis as the amounts allocated for new units.

Each of the six Office of Indian Program jurisdictions has been designated at the smallest practical area for the allocation of assistance. Funds available for new units will be assigned to the OIPs consistent with 24 CFR 791.403.

The competitive process, described in section 5, page 7, will be used to select IHA applications to be funded for new Indian Housing units. Departmental compliance with the metropolitan/non-metropolitan provisions of section 213(d) of the Housing and Community Development Act of 1974 may require the selection of lower rated metropolitan applications over higher rated non-metropolitan applications. The table below indicates the amount of grant authority available for new units in FY 1993 for the six OIPs; the indicated amounts are inclusive of funds to meet off-site sewer and water requirements.

Chicago	$58,838,600
Oklahoma City	33,922,000
Denver	33,059,000
Phoenix	70,310,979
Seattle	10,646,049
Anchorage	33,657,700
Total	$240,434,328

C. Eligibility for New Housing Units

All IHAs which have not been determined to be administratively incapable in accordance with 24 CFR 905.135, have been organized in accordance with 24 CFR 905.125 and 905.126, and have the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended, are invited to submit applications for new Indian housing units.

All IHAs that have developments assisted under the U.S. Housing Act of 1937, as amended, and meet the requirements of 24 CFR 905 subpart M, may apply for funds for demolition or disposition, whether eligible for new units or not.

D. Development Award Application Process

1. Application due date: An IHA may submit an application(s) for a project at any time after the PUBLICATION DATE of this NOFA, to the Indian FO having jurisdiction over the IHA applicant on or before 4:15 p.m., FO local time, May 13, 1993 for new Indian housing units. The application(s) shall be submitted on Form HUD–52730 and shall be accompanied by all the legal and administrative attachments required by the form and the items specified in the checklist. Where the provisions for the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application. A FAX of the application will NOT constitute physical delivery.

The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

2. Application kit. Application Form HUD–52730 for new IH units and for the FSS program may be obtained from any Indian FO listed in Appendix 1, or from the Indian Housing Development Handbook 7450.1, Chapter 2.

3. Submittal of complete application. Completed applications must be submitted to the Indian FO having jurisdiction of the IHA applicant at the address/location listed in Appendix 1.

4. Action on application. When the application is received by HUD, HUD will provide written notification to the IHA showing the date and time the application was received in the HUD office. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete, and the IHA must not have been disqualified for funding of new projects, as determined in accordance with § 905.135. If it is evident that any application fails to satisfy these technical requirements, the HUD FO will immediately return the application and will identify, in writing, the deficiencies. The IHA will be allowed to cure minor technical deficiencies within 14 calendar days of written notification by HUD. All responses must be in writing and received within 14 calendar days of the date HUD issues a written notification of deficiency. Under no circumstances may an applicant submit information which would affect the rating of the application after the original due date for application submission.

E. Ranking Factors and Selection Criteria

1. Rating and Ranking

Rating and ranking of applications from IHAs for new IH units will be done in accordance 24 CFR 905.220. Applications from new IHAs, or, in the case of an umbrella IHA that has added a new tribe, the application from the new tribe, will receive 100 points. If an IHA that serves more than one tribal government, or, in the case of Alaska, more than one village, submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of points awarded.

For each Region, the rankings will be based on awarding points to each application for the following categories:

a. The relative unmet IHA need for housing units compared to the other eligible applications for that program type (i.e., low rent (LR) or mutual help (MH)), based on IHA waiting lists and the total number of units in management and in the development pipeline. There should be a separate waiting list for each program type. This need will be measured for each program type by dividing the number of families on the waiting list, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40. If the IHA has 500 or more families on the waiting list, it is awarded the 40 points. The maximum number of points an IHA can receive is 40 points.

b. The relative IHA occupancy rate compared to the occupancy rates of other eligible IHA applications for that program type. The occupancy rate for an IHA shall be derived from the most recent data entered in the HUD Management Information Retrieval System (MIRS) national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. The maximum number of points that an IHA can receive is 20 points.

c. Length of time since the last Program Reservation date. The number of days from January 1, 1993 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of days, since the last Program Reservation for any IHA. This ratio shall be multiplied by 20 to calculate an IHA's points for this category. The maximum number of points that an IHA receive is 20 points. FSS fund reservations for FY 1991 or FY 1992 and units received for demolition/disposition purposes will not be counted for rating and ranking purposes for new Indian housing units in FY 1993.

d. Current IHA development pipeline activity. The maximum number of points available for this factor is 20 and each IHA will start with 20 points. For each IHA development that was not completed (submittal of the ADCC documents) on January 1, 1993, points will be deducted as follows:

(1) For each IHA development which, within the past 24 months from the date this application was submitted, has not submitted an approvable Development Program within one year from the Program Reservation date for conventional and 18 months for turnkey development methods, 2 points may be deducted at the discretion of the OIP Director up to a maximum deduction of 20 points.

(2) For each IHA development which, within the past 24 months from the date this application was submitted, has not achieved construction start within 30 months from the date of the Program Reservation (not counting days under statutory exclusions), 2 points may be deducted at the discretion of the OIP up to a maximum deduction of 20 points.

(3) For each IHA development not meeting HUD requirements (during the past 24 months from the date of this application) for administration of development contracts as set forth in the regulations and handbooks, 2 points may be deducted at the discretion of the OIP Director up to a maximum deduction of 20 points.

(4) Computation. Scores for ranking shall be carried out to two decimal places. (xx.xx).

2. Selection Criteria

a. The ranking process will produce an ordered list of IHA applications by Region that may receive funding. The

order is established by the total number of points the application received in the rating process. If any funds remain after the initial funding cycle within the Region, the funds will be provided to more fully fund applications that were reduced due to the Maximum Units Award table shown in paragraph b. below.

b. The number of units awarded shall be based upon the following table to ensure a more equitable distribution and meaningful competition based on need. Exceptions to the maximum number of units awarded based on the table shall be made and approved by the Field Office Director upon proper justification.

Total of all units IHA requested in application(s) by program type	Maximum units awarded (subject to availability)
1,000 and above	300
750 to 999	200
500 to 749	150
400 to 499	100
300 to 399	80
200 to 299	60
199 or fewer	40

If an IHA that serves more than one tribal government, or in the case of Alaska, more than one village, submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of units awarded.

7. Tie breaker. In the case of ties, priority will be given to the application that has the highest ratio of units to:

a. Pre-approved sites, and, if there is still a tie,

b. BIA approved leases for the proposed project site(s).

8. IHA applications for replacement housing. IHA applications for demolition or disposition may require a commitment for replacement housing units on a one-for-one replacement to comply with requirements of Section 18 of the U.S. Housing Act, as amended. IHAs are to process requests for Demolition or Disposition in accordance with 24 CFR 905, Subpart M.

9. FSS Program Guidelines

Since some or all low rent units awarded in accordance with this NOFA may be considered FSS units by the IHAs, they and other interested parties must consult PIH Notice 92–26 and 56 FR 49592 dated September 30, 1991 to acquaint themselves fully with the operational details of the FSS program.

F. Requests for Amendment Funds

1. Amendment funds may not be used for FY '93 approved projects. However, this will not restrict the availability of amendment funds in future years to those applicants approved in FY 93.

2. Amendment funds will not be distributed to FOs on the same basis as funds for new units. Instead, they will be distributed by HUD Headquarters on the basis of (1) emergency requests from FOs, (2) amendment funds related to the impact of the change in calculation to Total Development Cost calculations mandated by Public Law 101–144 (103 Stat. 846), or (3) in response to amendment money need surveys submitted by the FOs as requested. Requests that are not emergency requests and that are not in response to the change in Total Development Cost calculations will be evaluated using the following order of priority:

a. Projects under construction with HUD-approved litigation settlement payable.

b. Projects that require a cost increase to cover immediate HUD-approved correction of a safety or health hazard that is not associated with off-site sewer and water needs.

c. Projects under construction with a cost increase needed to cover a HUD-approved off-site sewer and water component.

d. Projects under construction that require nominal HUD-approved change orders.

e. Projects with active Invitation to Bid or Request for Proposal status that require a nominal HUD-approved cost increase to execute construction contract or contract of sale.

f. Projects with an active Indian Health Service project summary that require a HUD-approved cost increase before a memorandum of agreement can be executed.

g. Projects that require a HUD-approved nominal cost increase to achieve project close-out.

h. Projects that require a HUD-approved cost increase for any reason not listed above.

II. Other Matters

A. Corrections to Deficient Applications

Upon receipt of the application, HUD will note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete, must demonstrate legal sufficiency, and the IHA must not have been disqualified for funding of new projects, as determined in accordance with § 905.135. If it is evident that any application fails to satisfy these technical requirements, the FO will immediately return the application and will identify in writing the deficiencies. The IHA will be allowed to cure minor technical deficiencies within 14 calendar days of written notification by the FO. All responses must be in writing and received within 14 calendar days of the date the FO issues a written notification of deficiency. Under no circumstances may an applicant submit information which would affect the rating of the application after the original due date for application submission. A minor technical correction is one which will not affect the point score which the application receives in the rating process and which is not a threshold requirement. The 14 days begin on the date the FO issues a written notification. An application that does not meet the applicable threshold requirements and all other requirements of this NOFA after the 14 day technical deficiency correction period will be rejected from processing and determined to be unapprovable.

B. HUD Reform Act

1. Required Disclosures by Applicants

a. Disclosures. All applicants are required to disclose information with respect to any additional funds that can reasonably be expected to be received by them as assistance in excess of $200,000 (in the aggregate) during the Fiscal Year that will be related to the project.

Disclosure must be made relative to any related assistance from the Federal Government (agencies or instrumentalities other than HUD), a state, or a unit of general local government that is expected to be made available with respect to the project for which the applicant is seeking assistance.

The assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

b. Updates. The IHA applicant shall update this disclosure within 30 days of any substantial change. This update is required during the period when an application is pending or assistance is being provided.

2. Prohibited Disclosures by HUD Employees

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That

regulation, codified as 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her FO counsel, or headquarters counsel for the IH development program.

C. Lobbying

Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), hereafter referred to as the "Byrd amendment," prohibits grantees from using any federally appropriated funds to influence federal employees, members of Congress, and congressional staff regarding specific grants or contracts. The Department has determined that the requirements of the Byrd amendment do not apply to IHAs established by a Tribal government exercising its sovereign powers with respect to expenditures specifically permitted by other Federal law. The Byrd amendment requires all IHAs established under state law to submit the following documents for applications for grants exceeding $100,000.

1. Certification

A certification that no federal appropriated funds will be used for lobbying purposes. The certification shall be submitted on the Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements," and

2. Disclosure Document

A document disclosing any lobbying activities (on Standard Form—LLL, "Disclosure of Lobbying Activities"), where any funds other than federally appropriated funds will be or have been used to influence federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

D. Conversions

Project conversion between program type (LR or MH) may only be considered where:

1. An IHA submitted projects for mutual help (MH) and low rent (LR), each scored high enough to be funded, and the IHA has the waiting list to support the conversion, or

2. If only one application was submitted and approved, the application upon re-ranking in the other program has to score at least 0.01 higher than the number of points achieved by the highest rated application from any IHA which was not funded. If neither circumstance exists, the request to convert will not be approved.

E. Errors in Ranking and Rating FY 1992

1. Errors made by a FO during the 1992 fiscal year's rating and ranking that resulted in a change of rank order detrimental to an IHA may be corrected as follows:

a. The FO will construct a hypothetical distribution that would have existed if the error had not been made, and

b. The FO will determine what the unit award/funding would have been for the IHA subject to the funds that were available at the time.

2. Remedial action will be taken for errors made by a FO as follows:

a. The FO will deduct any funds needed from the FY 93 fair share assigned to that FO before any FY 93 rating and rankings are completed.

b. A correction of an error for an IHA will not adversely affect the IHA participation on the FY 93 rating and ranking process. The IHA's application will be rated and ranked on the same basis as other applications and as if no error had been made.

F. Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Dated: February 16, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix 1. Listing of Indian Field Offices

1. Region V—Chicago

Chicago Office of Indian Programs, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60606–3507, (312) 353–1282 or (800) 735–3239

2. Region VI—Oklahoma

Oklahoma City Indian Programs Division, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4101

3. Region VIII—Denver

Denver Office of Indian Programs, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–2963

4. Region IX—Phoenix

Indian Programs Office, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2360, (603) 379–4156

Region IX—Albuquerque

Indian Program Office, 421 Gold Avenue S.W., Room 304, P.O. Box 1128, Albuquerque, New Mexico 87103, (505) 766–1372

5. Region X—Seattle

Seattle Office of Indian Programs, 1321 Second Avenue, Seattle, Washington 98101–2054, (206) 442–5298

6. Region X—Anchorage

Anchorage Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513–7537, (907) 271–4170

Appendix 2. New Indian Housing Units. Development Application Submission Checklist

It is the Responsibility of the IHA To Meet the Requirements of the Check List

1. Application Form HUD–52730:

_____Complete application on Form HUD–52730.

_____Attach all exhibits and tables as required.

2. IHA Resolution(s): Each application *must* be accompanied by an IHA Resolution which contains the following, or it will be considered non-responsive. (To correct minor technical deficiencies, refer to section II, A)

_____A statement that authorizes the submission of the application for units.

_____A statement explaining how solid waste disposal for the proposed development will be addressed.

_____A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development.

_____The IHA Resolution *must* advise HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty days of any substantial change.

3. Certifications: Each application *must* contain the following certifications provided by the Executive Director on IHA letterhead. (To correct minor technical deficiencies, refer to section II A.)

_____Certification Regarding Drug-Free Workplace Requirements as directed by 24 CFR 24.630(b).

_____Certification that the IHA will comply with 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973.

_____Certification that the IHA will comply with Uniform Relocation Assistance and Real Property Acquisition Policies act of 1970, as amended.

_____Certification that there is insufficient extisting housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

_____Certification that the IHA will adhere to the Uniform Accessibility Standards/ Architectural Barriers Act of 1968.

_____For IHAs established under state law, a certification that no federal appropriated funds will be used for lobbying purposes. (Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements.")

_____Where applicable, and only for IHAs established under state law, a statement disclosing lobbying activities using other than federal appropriated funds. (Standard Form—LLL, "Disclosure of Lobbying Activities.")

4. Letters: Each IHA application *must* be accompanied by a letter of support signed by the CEO of the general local government indicating (To correct minor technical deficiencies, refer to section II A.):

_____Support for the proposed application and development.

_____An authorization to apply for planning funds for the development.

_____Where applicable, assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR 170; 57 BIAM 4 and Supplement 4; and 24 CFR Part 905 B, appendix I, Item 6).

5. Supporting Documentation: Each application *must* be accompanied by the following supporting documentation:

_____Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

_____Demonstration of Financial Feasibility for the proposed development—that there is a market, and that the required annual operating subsidy corresponds to the performance funding system annual expense level.

_____Statement about the overall and relative need in the area.

_____Waiting List of applicant families by program type (LR or MH) and with a certification that the waiting list is supported by current applications from eligible families.

_____Identify sites in the application in accordance with sections 905.230, 905.245 and 905.407.

6. Items that should be submitted, if not previously submitted:

_____Certified copy of the Transcript of Proceedings containing the IHA resolution pursuant to which the Application is being made.

_____IHA Organization Transcript or General Certificate.

_____Tribal Ordinance.

_____Cooperation Agreements. Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

7. Optional Items:

_____Preliminary Site Reports indicating pre-approved sites, and BIA approved leases for the proposed project site(s), if any.

[FR Doc. 93–7139 Filed 3–26–93; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4230–05, F–14952–A and F–14952–B]

Alaska Native Claims Selections; Unalakleet Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Unalakleet Native Corporation for approximately 296.84 acres. The lands involved are in the vicinity of Unalakleet, Alaska and are located within Tps. 18 S., Rs. 10 & 11 W. and Tps. 19 S., Rs. 10 & 11 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 28, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/ Northwest Adjudication.

[FR Doc. 93–7035 Filed 3–26–93; 8:45 am]

BILLING CODE 4310–JA–M

[AZ–050–03–4210–03; AZA 27305]

Availability of Long-Term Recreation Concession Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is announcing the availability of an existing recreation concession for long-term lease. The concession is located on public lands on the lower Colorado River near Yuma, Arizona. The BLM is seeking a concessioner to redevelop and upgrade the concession.

DATES: Applications will be accepted only at the BLM Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, from April 1, 1993, to May 15, 1993. Section of the successful applicant will be made by June 15, 1993. Lease issuance will occur by August 15, 1993.

FOR FURTHER INFORMATION CONTACT: Supervisory Lands and Minerals Specialist Joy Gilbert or Resource Area Manager Michael A. Taylor, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: The BLM has terminated a long-term recreation

concession contract for a facility formerly known as Imperial Oasis. The facility is located on the lower Colorado River near Yuma, Arizona, and immediately northeast of Imperial Dam. The existing concession consists of a 267-space trailer park, boat-launching and fueling facilities, a marina, gasoline and propane sales facilities, a building which housed a store and restaurant, a laundromat, storage yards, restrooms with shower facilities, and other related facilities.

The existing facilities are substandard. A considerable amount of redevelopment and upgrading must be done to bring the concession up to acceptable standards and to a level consistent with Federal and State, and County codes and regulations. The focus of the redevelopment will be to provide products, facilities, and visitor services for the enhancement of recreational visitors' used and enjoyment.

A long-term lease is available to a qualified applicant who presents a Plan of Development acceptable to the BLM, and which offers a diversity of opportunities and services to the recreating public. The lease term is negotiable (it could range from 20 to 40 years) and will be based on the Plan of Development, the Timetable for Development, and the capital investment involved. The term of the lease is for an extended use of the public lands for development purposes and will provide a reasonable amortization of capital investment.

The concession lease will be offered through a competitive process. The land use authorization will be awarded on the bases of: (1) The public benefits to be provided, (2) a Plan of Development acceptable to the BLM, (3) the financial and technical capability of the bidder to undertake the project, (4) feasibility of the proposal, (5) impacts on the environment, (6) assessment of applicants through the use of established applicant criteria, and (7) the bid offered. No applications will be considered for less than 4 percent of the total gross receipts to be derived annually from products and services offered at the concession. The high bid is part of the criteria for selecting a successful applicant, but it is not an overriding consideration.

The terminated contract requires that the previous concessioner be compensated for existing improvements. The compensation amount is $460,000.00, which must be paid in full by August 15, 1993. Details regarding method, place, and time of payment are contained in a prospectus which is available from the BLM Yuma District Office.

Lease issuance will not be simultaneous with final selection but will occur by August 15, 1993, after the term and other items have been agreed upon by the BLM and the selected applicant.

Applicants may be required to present their plans for the concession before a review committee.

All applications must include a reference to this Notice and a complete description (Plan of Development) of the proposed facilities and services to be offered. Such a Plan of Development must be in sufficient detail to allow evaluation of the feasibility of the proposed land use, impacts on the environment, public benefits from the land use, and the approximate cost of the proposal. This can be accomplished by providing: (1) Details of the proposed use and activities; (2) a description of all facilities and access needs; (3) a map of sufficient scale to be legible; (4) a legal description of the proposed project location, including acreage; (5) schedule of facility construction; and (6) any other information (such as an analysis of projected performance) that may aid in evaluating the proposal. Applicants must furnish evidence satisfactory to the BLM that they have or, prior to commencement of construction, will have the technical and financial capability to construct, operate, maintain, and discontinue the authorized land use.

For more details of application content, refer to title 43, Code of Federal Regulations, subpart 2920, copies of which are available at the BLM Yuma District Office. Also available is a prospectus containing more detailed information about application content, such as parameters and constraints relating to development of the concession.

This Notice of Realty Action is published under the authority of title 43, Code of Federal Regulations, subpart 2920, section 4(c).

Dated: March 18, 1993.

Herman L. Kast,

District Manager.

[FR Doc. 93-7042 Filed 3-26-93; 8:45 am]

BILLING CODE 4310-32-M

[AZ-921-03-5410-10-A023; AZA 27169]

Arizona, Application for Conveyance of Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to FR October 7, 1992.

SUMMARY: 57 FR 46191, October 7, 1992, served notice of receipt of application from Stewart Title and Trust of Tucson, an Arizona Corporation, as Trustee under Trust No. 3411, to purchase the mineral estate for the following described lands in Santa Cruz County:

Gila and Salt River Meridian, Arizona,

T. 20 S., R. 13 E.,

Sec. 12, N½N½, N½SE¼, SE¼SE¼.

Containing 280 acres.

The SE¼NW¼ of the same section has been added to the application, increasing the acreage to 320. This 40 acres is segregated from the public land laws, including the mining laws and the mineral leasing laws, effective the date of this publication. The segregation shall terminate upon issuance of a patent, rejection of the application, or two years from the date of filing of the application. The date of application for the entire 320 acres is changed from August 5, 1992, to August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office, P.O. Box 16563, Phoenix, AZ 85011-6563, (602) 640-5534.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 93-7032 Filed 3-26-93; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Revision and Renewal of BIFADEC Charter

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the Administrator of the Agency for International Development (A.I.D.) and the Chairman of the Board for International Food and Agriculture Development and Economic Cooperation (BIFADEC) have approved the revision and renewal of the Charter of BIFADEC and its subcommittee, the Joint Committee on Research and Development (JCORD), which replaces the Joint Committee on Agriculture Research and Development (JCARD). JCORD will serve as the technical arm of BIFADEC in providing advice to international development and economic cooperation, and to help mobilize U.S. university resources toward that end in all important aspects of development.

C. Stuart Callison will serve as the Designated Federal Officer for BIFADEC, and William Frederick

Johnson will serve as the Designated Federal Officer for JCORD.

Dated: March 10, 1993.

C. Stuart Callison,

Deputy Executive Director, BIFADEC.

[FR Doc. 93–7031 Filed 3–26–93; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32270]

Exemption; Connecticut Rail Systems, Inc.; Trackage Rights Exemption; Danbury Terminal Railroad Co.

Danbury Terminal Railroad Company (DTRR) has agreed to grant to Connecticut Rail Systems, Inc. (CRSI) overhead and local trackage rights over DTRR's so-called Danbury Secondary Line from approximately milepost 104.8±, at or near Derby Junction, CT, to approximately milepost 76.9±, at or near Danbury, CT, to and through Danbury Yard and to the connection between Danbury Yard and the Danbury Branch, a distance of approximately 27.9 miles. The trackage rights became effective on March 17, 1993.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Terence M. Hynes, 1722 Eye Street, NW., Washington, DC 20006.

As condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: March 22, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7104 Filed 3–26–93; 8:45 am]

BILLING CODE 7035–01–M

[1] On March 5, 1993, CRSI filed a notice of exemption for its acquisition of an approximately 10.2-mile line from Consolidated Rail Corporation, along with 74 miles of incidental overhead trackage rights and freight service rights in Connecticut. See Finance Docket No. 32233, Connecticut Rail Systems, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation. CRSI expected to consummate the transaction after March 12, 1993, the effective date of that notice.

DEPARTMENT OF JUSTICE

Information Collections Under Review

March 24, 1993.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the items) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jefferson B. Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115 or facsimile: (202) 514–1534. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Hate Crime Incident Report. Quarterly Hate Crime Report.

(2) Form 11–1. Form 11–2. Federal Bureau of Investigation.

(3) Monthly. Quarterly.

(4) State or local governments. These forms will be used to collect bias motivation of selected offenses. Resulting statistics are published annually.

(5) 64,000 annual responses at .17 hours per response.

(6) 10,880 annual burden hours.

(7) Not applicable under 3504(h).

(1) Age, Sex, Race and Ethnic Origin of Persons Arrested.

(2) 4–924, 4–924A. Federal Bureau of Investigation.

(3) Monthly.

(4) State or local governments. The forms are needed to collect the age, sex, race and ethnic origin of persons arrested. The resulting statistics are published in the annual publication, "Crime in the United States".

(5) 121,776 annual response at .5 hours per response.

(6) 60,888 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: March 24, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–7134 Filed 3–26–93; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of an Amendment to a Consent Decree Pursuant to the Toxic Substances Control Act and the Rivers and Harbors Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Amendment to the Consent Decree (the "Amendment") soon will be lodged in *United States* v. *Boliden Metech, Inc.*, Civil Action No. 88–280–T, a case pending in the United States District Court for the District of Rhode Island. The Amendment partially resolves claims of the United States against the defendant in the above-referenced action under the Toxic Substances Control Act ("TSCA") and the Rivers and Harbors Act ("RHA"). The complaint in the case alleges that the defendant violated a number of provisions of TSCA and RHA with respect to its operation of a metal shredding plant in Providence, Rhode Island (the "Facility"). On January 10, 1991, the Court entered a partial consent decree that, among other things, required Boliden first to characterize piles of shredded metal present at the Facility for PCB content, and then to dispose of any piles containing PCBs in accordance with regulations under TSCA governing such disposal. The characterization has been completed.

Under the proposed Amendment, Boliden may export a portion of the PCB-contaminated shredded metal to Sweden for the purpose of smelting it at a smelter operated by Boliden Mineral AB in Skelleftehamn. The Statens Naturvardsverk of Sweden has issued to Boliden Mineral AB a permit to import and smelt the PCB-contaminated shredded metal.

The proposed Amendment may be examined at the Office of the United States Attorney, 10 Dorrance Street, Providence, Rhode Island 02903; at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. A copy of the Amendment may be obtained in person or by mail from the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed Amendment until fourteen days after the publication date of this notice or until April 14, 1993, which ever is later. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boliden Metech, Inc.*, (DOJ Reference No. 90–5–1–1–3096).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–7083 Filed 3–26–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Immigration Nursing Relief Advisory Committee; Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the renewal of the Immigration Nursing Relief Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by Public Law 101–238, Immigration Nursing Relief Act of 1989.

The Committee will advise the Secretary of Labor on the effectiveness of the Immigration Nursing Relief Act of 1989 (INRA) and on needed changes to that legislation. The Committee will use its expertise to assess: the impact of the INRA on the nursing shortage; programs that medical institutions implement to recruit and retain nurses who are U.S. citizens, or immigrants authorized to perform nursing services; the formulation of State recruitment and retention plans under the INRA; and the advisability of extending the provisions of INRA beyond the 5-year period specified in the Act.

In carrying out its duties, the Committee will:

1. Design and implement effective evaluation methodologies to measure the impact of immigrant nurse employment on retention rates, wages and working conditions of U.S. nurses.

2. Identify and evaluate innovative programs designed to retain and attract greater numbers of U.S. citizens into the nursing profession.

3. Analyze and assess appropriate levels of continued immigrant nurse employment through evaluation of qualifications as well as length of continued employment in the nursing profession once granted immigration under INRA.

The Committee was designed to complete its work within approximately four years and will report its findings to the Secretary of Labor. During the course of the Committee's work, the Secretary of Labor will consult with the Secretary of Health and Human Services, reviewing the Committee's progress and soliciting ideas and insights on issues relevant to retention and increased employment of U.S. registered nurses. The Secretary of Labor will share the Committee's preliminary findings and recommendations with and solicit advice from the Secretary of Health and Human Services and the Attorney General.

The Committee will convene approximately two times per year. The Office of the Assistant Secretary for Policy of the Department will provide the necessary support for the Committee.

The Committee will include representatives of the U.S. Department of Health and Human Services, the Attorney General, hospitals, labor organizations representing registered nurses, and other pertinent organizations. Members not employed by the Federal Government shall not be compensated but may be reimbursed for travel expenses, subsistence and accommodations as allowed by current regulations. These members shall not be deemed to be employees of the United States.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen (15) days from the date of this publication.

Interested persons are invited to submit comments regarding the renewal of the Immigration Nursing Relief Advisory Committee. Such comments should be addressed to: Mr. Gary B. Reed, Director, Office of Program Economics, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2114, Washington, DC 20210, Telephone: (202) 219–6026.

Signed at Washington, DC this 16 day of March, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–7136 Filed 3–26–93; 8:45 am]

BILLING CODE 4510–23–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–93–28–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Arkwright Mine (I.D. No. 46–01452) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the intake aircourse cannot be safely traveled. The petitioner proposes to establish check points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M–93–29–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. Due to deteriorating roof conditions, certain areas of the return aircourse cannot be safely traveled. The petitioner proposes to establish airway check points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Powderhorn Coal Company

[Docket No. M–93–30–C]

Powderhorn Coal Company, P.O. Box 1430, Palisade, Colorado 81526 has filed a petition to modify the application of 30 CFR 75.380(d) (escapeways; bituminous and lignite mines) to its Roadside Mine (I.D. No. 05–00281) located in Mesa County, Colorado. The petitioner requests a modification to allow the already established and constructed secondary escapeway points to remain in place under the provision of former application of standard 30 CFR 75.1704–1 (1991). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Black Beauty Coal Company

[Docket No. M–93–31–C]

Black Beauty Coal Company, P.O. Box 312, Evansville, Indiana 47702–0312 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Air Quality No. 1 Mine (I.D. No. 12–02010) located in Knox County, Indiana. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Keystone Coal Mining Corporation

[Docket No. M–93–32–C]

Keystone Coal Mining Corporation, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.380(d)(4) escapeways; bituminous and lignite mines) to its Urling No. 1 Mine (I.D. No. 36–04852) located in Indiana County, Pennsylvania. The petitioner proposes to continue using the four foot wide passable portion of the escapeway for approximately 70 feet in the No. 4 Entry of the 10 East Section which has been the case since experiencing a cave-in in August 1992 when it was determined that it would be unsafe to bolt the area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Company

[Docket No. M–93–33–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the return aircourse cannot be safely traveled. The petitioner proposes to establish check points to monitor the quantity and quality of air in the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Target Industries, Inc.

[Docket No. M–93–34–C]

Target Industries, Inc., P.O. 376, Carmichaels, Pennsylvania 15320 has filed a petition to modify the application of 30 CFR 75.364(b)(2) and (c)(2) (weekly examination) to its Target Mine (I.D. No. 36–06873) located in Greene County, Pennsylvania. Due to deteriorating roof conditions, certain areas of the return aircourse cannot be safely traveled. The petitioner proposes to establish check points to test for methane and quantity of air in the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Consolidation Coal Company

[Docket No. M–93–35–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Osage No. 3 Mine (I.D. 46–01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, the South side of the Main West entries from the Dolls Portal to the No. 1 Check Point cannot be safely traveled. The petitioner proposes to establish check points 1, 4, 5, 6 and 7 in the affected area and have a certified person test for methane and the quantity of air at check points 1, 4, 5 and 6, and have pressure readings taken at check point 7 at a track overcast along the mainline haulage. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Consolidation Coal Company

[Docket No. M–93–36–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Blacksville No. 2 Mine (I.D. No. 46–01968) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the return aircourse cannot be safely traveled. The petitioner proposes to establish check points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Consolidation Coal Company

[Docket No. M–93–37–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Dilworth Mine (I.D. No. 36–04281) located in Greene County, Pennsylvania. Due to deteriorating roof conditions, the petitioner proposes to have a certified person continue weekly examinations in the Left return aircourse except for the intersection of 41 crosscut and No. 2 parallel entry for a distance of 30 feet in each direction, and have a certified person travel the affected area only to test for methane and quantity of air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Maple Meadow Mining Company

[Docket No. M–93–38–C]

Maple Meadow Mining Company, 315 70th Street, Charleston, West Virginia 25304–2909 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Maple Meadow Mine (I.D. No. 46–03374) located in Raleigh County, West Virginia. Due to deteriorating roof conditions in the return aircourse, the area cannot be safely traveled. The petitioner proposes to establish a monitoring station inby and outby the affected area to monitor the quantity and quality of air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Martinka Coal Company

[Docket No. M–93–39–C]

Martinka Coal Company, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Tygart River Mine (I.D. No. 46–03805) located in Marion County, West Virginia. Due to deteriorating roof conditions, certain areas of the intake aircourse cannot be safely traveled. The petitioner proposes to establish evaluation points to monitor the quantity and qualify of air entering and leaving the affected area and have

a certified person examine the evaluation points on a weekly basis. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Sea "B" Mining Company

[Docket No. M–93–40–C]

Sea "B" Mining Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Seaboard No. 1 Mine (I.D. No. 44–02253) located in Tazewell County, Virginia. Due to a fall outby the seal in the No. 3 entry, the petitioner proposes to install a tube across the fall into the entry immediately outby the seal to allow air samples to be taken at the seal without exposing the mine examiner to the hazardous roof conditions. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1993. Copies of these petitions are available for inspection at that address.

Dated: March 22, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–7137 Filed 3–26–93; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Co., et al., Clinton Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to the Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for recordkeeping to maintain compliance with the new part 20. The changes ensure compliance with 10 CFR 50.36a and 10 CFR 50, appendix I, and result in levels of radioactive materials in effluents being maintained as low as reasonably achievable. The revision to the high radiation area controls and dose measurement distance will ensure areas are conservatively posted as high radiation areas in compliance with 10 CFR 20.1601(a)(1) and provide controls to ensure individuals are not overexposed. In addition, the changes revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302.

The proposed action is in accordance with the licensee's application for amendment dated October 16, 1992, as supplemented February 17, 1993.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regards to the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendment to the TS, any alternative to the amendment will have no significantly different environmental impact nor greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Clinton Power Station, Unit 1, dated May 1982.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated October 16, 1992, as supplemented February 17, 1993, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 23rd day of March 1993.

For the Nuclear Regulatory Commission.

James E. Dyer,

Director, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7082 Filed 3–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix E, to Indiana Michigan Power Company (the licensee), for the operation of the Donald C. Cook Nuclear Plant, Units 1

and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the schedular requirements of appendix E to 10 CFR part 50. On May 24, 1991, the licensee requested an exemption from section IV.F.3, which requires that each licensee at each site shall exercise emergency plans with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ). On September 4, 1991, the Commission granted an exemption from this requirement, with the stipulation that such an exercise be completed by June 1, 1993. On January 15, 1993, the licensee requested an extension of this requirement until June 30, 1993.

The Need for the Proposed Action

The proposed exemption is needed because the Federal Emergency Management Agency (FEMA) has requested that the State of Michigan and the licensee schedule the offsite participation portion of the annual emergency exercise for D.C. Cook Nuclear Plant on June 30, 1993. This date was necessitated by constraints established by FEMA, the State of Michigan, and the other utilities in FEMA Region V. The date was agreed upon by all parties during a scheduling conference on November 12–13, 1992, in order to balance the workload on the FEMA Region V office and the State of Michigan.

Environmental Impacts of the Proposed Action

The proposed exemption will move the date of the emergency plan exercise involving the State and Berrien County from May 1993 until June 30, 1993. The previous full participation emergency preparedness exercise was conducted on April 3, 1990. The next biennial full participation exercise was to have been in November 1992. This is the exercise that moved to May 1993 as a result of the licensee's exemption request of May 24, 1991.

This is a minor schedule adjustment that is supported by the State of Michigan. The NRC's rating of licensee performance during previous emergency exercises at D.C. Cook have generally been good and there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Accordingly, the exemption does not appear to adversely affect either the probability or the consequences of an accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does not affect a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested schedular change. This would not reduce environmental impacts of plant operation and would result in increased operational burden on FEMA Region V.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement for the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

By letter dated April 15, 1991, the State of Michigan documented the need of FEMA Region V Office and the support of FEMA headquarters for the exemption that resulted in the original date of the exercise being moved to May 1993. At that time, the State of Michigan further indicated that neither they nor the affected local jurisdiction, Berrien County, objected to the proposed schedule change. Also, all the principal parties involved in the conduct of the exercise agreed to a June 30, 1993, date during the scheduling conference held November 12–13, 1992. This information was considered by the NRC in the evaluation of the proposed exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the licensee's letter dated May 24, 1991, with the State of Michigan letter dated April 15, 1991, attached, (2) the exemption granted by the Commission dated September 4, 1991, and (3) the licensee's letter dated January 15, 1993, requesting an extension of the previous exemption. These documents are available for public inspection at the Commission's Public Document Room, 2121 L Street, NW, Washington, DC 20555 and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 16th day of March 1993.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7079 Filed 3–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the emergency preparedness requirements of 10 CFR part 50, appendix E, section IV.F.2. This exemption would be granted to the Portland General Electric Company (PGE or the licensee) for the Trojan Nuclear Plant, a pressurized water reactor, located in Columbia County, Oregon, on the banks of the Columbia River.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a one-time exemption, for calendar year 1992, from the annual emergency preparedness requirements of 10 CFR part 50, appendix E, section IV.F.2, which requires each licensee at each site to annually exercise its emergency plan.

PGE requested this exemption in their letter of February 15, 1993.

The Need for the Proposed Action

The Trojan Nuclear Plant shut down on November 9, 1992, when a leak in the "B" steam generator was detected. On January 4, 1993, the Directors of Portland General Electric Company voted to accept the recommendation by the PGE management to permanently cease power operations at the Trojan Nuclear Plant. PGE began defueling the reactor on January 23, 1993, and completed the movement of all fuel elements to the spent fuel pool on January 27, 1993. In a letter dated January 27, 1993, the licensee informed the staff that PGE had decided to permanently cease operations. By letter dated February 17, 1993 the licensee committed to not moving fuel back into the containment building without prior NRC approval, thereby precluding any future power operations or a reactor criticality.

The licensee currently has an emergency plan as required by 10 CFR part 50, appendix E. The emergency plan is designed for use by licensees in attaining an acceptable state of emergency preparedness for a variety of radiological accidents including accidents at full power. 10 CFR part 50, appendix E, section IV.F.2, states that each licensee at each site shall annually exercise its emergency plan. Due to the November 9, 1992 steam generator leak and subsequent shut down at the Trojan Nuclear Plant, the initial scheduled date for the exercise of November 17, 1992 was deferred until December 15, 1992. However, as a result of the continued forced outage, the 1992 annual exercise could not be practicably performed on December 15, 1992. The licensee stated that ongoing outage activities would be hampered by the conduct of an exercise at that time. The plant was not expected to resume operations until after January 1, 1993. By letter dated December 11, 1992, the licensee requested an exemption from 10 CFR part 50, appendix E, section IV.F.2, which would defer conducting its 1992 annual emergency plan exercise, scheduled for December 15, 1992, until the first quarter of 1993. On December 29, 1992, the staff approved the one-time scheduler exemption to defer the 1992 annual emergency plan exercise until the first quarter of 1993.

In a letter dated February 15, 1993, the licensee requested that they be exempted from the requirement in 10 CFR part 50, appendix E, section IV.F.2. for 1992 to conduct an exercise of their emergency plan. The basis for this request is that it would allow the licensee to better allocate available resources in the development of a revised emergency plan that better reflects the permanently shutdown and defueled condition of the Trojan Nuclear Plant. The licensee stated that compliance with this requirement resulting in a full scale exercise would not serve the underlying purpose of the rule requiring the annual emergency plan exercise. PGE concluded that the level of emergency planning and preparedness necessary to provide adequate protection of public health and safety in a permanently shutdown and defueled condition is significantly less than that provided by the current Trojan emergency plan. The licensee submitted on March 8, 1993, a copy of their Permanent Defueled Emergency Plan for NRC staff review. The licensee currently plans to conduct an exercise of their revised plan during the summer of 1993.

Environmental Impact of the Proposed Action

The proposed action is needed to remove the requirement to conduct an annual exercise for the calendar year 1992 by March 31, 1993. The proposed exemption does not have any effect on accident risk and the potential for an environmental impact is remote. The commitment by the licensee to permanently cease operations and to not move fuel into the reactor building without prior NRC approval has significantly reduced the likelihood of an accident resulting in offsite releases which would exceed the current U.S. Environmental Protection Agency protective action guides (PAG) threshold. Until the staff completes its review of the revised emergency plan for the Trojan Plant, the current plan is still in effect. The exemption only exempts the licensee from the requirement to exercise the current plan for 1992. Therefore, the proposed exemption does not increase the probability or consequences of any accidents, no changes are made in the types of any radioactive effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the exemption. This would not reduce environmental impacts of the facility and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Trojan Nuclear Plan, dated August 1973

Agencies and Persons Consulted

The NRC staff discussed the request for exemption with representatives of the U.S. Federal Emergency Management Agency (FEMA) and the State of Oregon Department of Energy. Neither FEMA nor the State of Oregon provided any comments on the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the February 15, 1993, application for exemption by the licensee, which are available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room at the Branford Price Millar Library, Portland State University, 834 SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97202.

Dated at Rockville, Maryland, this 23rd day of March 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7080 Filed 3–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-250 and 50-251]

Florida Power & Light Co., Turkey Point Nuclear Generating Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that, on October 23, 1992, Mr. James P. Riccio submitted a petition to the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 about the nuclear units at the Turkey Point Nuclear Generating Plant of the Florida Power & Light Company (FPL or licensee). The petition was submitted on behalf of Public Citizen, Greenpeace, Nuclear Information & Resource Service, and the Safe Energy Communication Council (petitioners). The petition was referred to the Office of Nuclear Reactor Regulation for a response and appropriate action.

The petitioners alleged a number of deficiencies with emergency planning at Turkey Point Nuclear Units 3 and 4 because of the effects of Hurricane Andrew and requested that the NRC issue an order to show cause to the licensee as to why the nuclear units at Turkey Point should not remain closed or have their operating licenses suspended by the NRC unless and until such time as the licensee demonstrates full compliance with the NRC's emergency planning regulations. The Notice of Petition for Director's Decision under 10 CFR 2.206 was published in the **Federal Register** on December 9, 1992 (57 FR 58264).

The Director of the Office of Nuclear Reactor Regulation has determined that the petition should be denied for the reasons explained in the "Director's Decision under 10 CFR 2.206" (DD-93-04), which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Turkey Point plant located at Florida International University, University Park, Miami, FL 33199.

A copy of this Director's Decision will be filed with the Secretary for the Commission to review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will constitute the final action of the Commission 25 days after the date of the issuance of the decision, unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 23rd day of March, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-7078 Filed 3-26-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket 150-00030; General License EA 92-216]

Order Imposing Civil Monetary Penalty

In the Matter of Western Technologies, Inc., Phoenix, Arizona

I

On October 28, 1992, Western Technologies, Inc. (WTI) conducted radiography activities pursuant to the general license authorized by the Nuclear Regulatory Commission (NRC or Commission) in 10 CFR 150.20. The general license authorizes the performance of radiography in accordance with the terms and conditions specified in a specific license issued by an Agreement State and with the NRC regulations listed in 10 CFR 150.20(b).

II

An inspection of WTI activities in NRC jurisdiction was conducted on October 28, 1992, at White Sands Missile Range in New Mexico. The results of this inspection indicated that WTI had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon WTI by letter dated December 28, 1992. The Notice described the nature of the violations, the provisions of the NRC's requirements that WTI had violated, and the amount of the civil penalty proposed for one of the violations.

WTI responded to the Notice in a letter dated January 26, 1993. In its response, WTI admitted the violation which resulted in the proposed civil penalty, but requested full mitigation for reasons that are summarized in the Appendix to this Order.

III

After consideration of WTI's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

WTI pay a civil penalty in the amount of $8,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

WTI may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If WTI fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event WTI requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether, on the basis of the violation admitted by WTI, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of March 1993.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Material Safety, Safeguards and Operations Support.

Appendix

Evaluation and Conclusion

On December 28, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Western Technologies, Inc., (WTI) responded to the Notice on January 26, 1993. WTI admitted the violation that resulted in the proposed civil penalty, but requested full mitigation. The NRC's evaluation and conclusion regarding WTI's request are as follows:

Restatement of Violation

I. Violation Assessed a Civil Penalty

10 CFR 34.33(a) requires, in part, that: (1) A licensee not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, the individual wears a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD); and (2) pocket dosimeters be recharged at the start of each shift.

Contrary to the above, on October 28, 1992, two radiographers employed by Western Technologies, Inc. (Licensee), did not wear alarm ratemeters while conducting radiographic operations at the White Sands Missile Range, New Mexico, and did not recharge their direct reading pocket dosimeters at the start of the shift.

This is a Severity Level II violation (Supplement VI). Civil Penalty—$8,000.

Summary of WTI's Request for Mitigation

In its January 26, 1993, letter, WTI admitted the above violation but requested full mitigation of the penalty, citing the following reasons: (1) There was no radiation hazard to persons in the area and no harm was done to any person; (2) The involved radiographers were disciplined and all radiographers were reminded that they are not to operate without required safety equipment; (3) This is the only violation that Western Technologies, Inc. has received and the company has an excellent record in the state of Arizona; (4) This was an isolated occurrence and the company's audit programs have not identified any other infractions; (5) The company has spent considerable money to investigate and ensure against a recurrence, including the cost of attending the NRC enforcement conference; and (6) The NRC's announcement of its enforcement action has done considerable damage to the company's reputation and should count as a monetary value against the fine.

NRC Evaluation of WTI's Request for Mitigation

The NRC's evaluation of WTI's arguments for mitigation follows:

1. The NRC agrees with WTI that no actual harm was done. However, the severity level of the violation and the civil penalty amount were determined in accordance with the NRC's Enforcement Policy and the enforcement action was consistent with action taken for similar violations. The NRC has placed great importance on wearing alarm ratemeters because they are designed to prevent significant radiation exposures to radiographers and persons in the vicinity of radiography work. Thus the violation is of significant regulatory concern and given its willful nature was properly categorized at Severity Level II.

2. The NRC recognized the corrective actions taken by WTI and gave WTI the maximum amount of credit permitted by the Enforcement Policy, i.e., a reduction in the penalty by 50 percent of the base value.

3. Regarding WTI's regulatory performance in the Agreement State of Arizona, the guidance in the Enforcement Policy, Section VI.B.2.(c), does provide that mitigation of the base civil penalty may be appropriate where past regulatory performance has been good. However, given the willful nature of the violation, the NRC staff, as an exercise of discretion, did not find that there was an adequate basis for mitigation of the penalty based on the licensee performance factor. The exercise of such discretion in cases involving willfulness is permitted under the Enforcement Policy in Section VII, and is intended to reflect the level of NRC's concern regarding the willful violation and ensure that the enforcement action conveys the appropriate message to the licensee.

4. WTI argues that it has an audit program and that this was an isolated occurrence. However, the central fact in applying the factor for identification is that the NRC inspector identified the violation to the involved radiographers. The NRC escalated the penalty by 50% in accordance with its Enforcement Policy, which provides for such an increase when violations are identified by the NRC, to emphasize that licensees should be identifying and correcting their own violations. By definition (10 CFR 34.2), a radiographer is an individual who is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations. In the case at hand, the radiographers knew that they did not have the required alarm ratemeters; however, they conducted the operation anyway.

5. The NRC recognizes that Western Technologies, Inc., has spend money to investigate the incident, develop corrective actions and attend the enforcement conference. However, corrective actions are expected and required and, as discussed above, were considered in applying the civil penalty adjustment factors. With regard to the expense of attending the enforcement conference, development of corrective actions, and licensee investigation of violations, the Enforcement Policy does not provide for using such expenses as a factor in determining the amount of a civil penalty.

6. The NRC announced its proposed enforcement action consistent with NRC practices for keeping the public informed of regulated activities. While the NRC understands that such announcements may possibly harm a licensee's reputation, this may provide an additional incentive to take lasting corrective action. The NRC Enforcement Policy does not provide for considering the impact of negative publicity as a factor in determining the amount of a civil penalty.

NRC Conclusion

The NRC has concluded that neither an adequate basis for a reduction of the severity level of the violation nor for mitigation of the civil penalty was provided by WTI. Consequently, the proposed civil penalty in the amount of $8,000 should be imposed.

[FR Doc. 93–7081 Filed 3–26–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Revised Form OPM 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. OPM Form 2809, Health Benefits Registration Form, is used by annuitants and former spouses to elect, cancel, or change health benefits enrollment during periods other than the Federal Employee Health Benefits Open Season.

Approximately 34,800 OPM 2809 forms are completed annually. It takes approximately 45 minutes to complete this form. The estimated annual burden is 26,100 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

[FR Doc. 93–7040 Filed 3–26–93; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A93-13]

Notice and Order Accepting Appeal Under 39 U.S.C. 404(b)(5) and Establishing Date for Postal Service Response

March 23, 1993.

In the matter of: Ithaca, New York 14850 (Benjamin Nichols, et al., Petitioners).

Before Commissioners: George W. Haley, Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; H. Edward Quick, Jr.; Wayne A. Schley.

On March 10, 1993, Benjamin Nichols, the Mayor of Ithaca, New York, filed a "Complaint of Services Not In Conformity With 39 U.S.C. 404(b)(1),(3),(4)." In paragraph V of the complaint, Mr. Nichols asserts that the Postal Service has consolidated the post office formerly serving Ithaca with that of Lansing without following the procedure established in 39 U.S.C. 404(b). Mr. Nichols requests that the Commission enjoin the Service's actions and direct it to reinstate the services previously provided by the Ithaca post office pending the completion of the required procedure for consolidating a post office.

On March 12, 1993, Michael J. Oates, on behalf of the American Postal Workers Union, Central New York Area Local, filed a "39 U.S.C. Section 404(b)(1),(3),(4) Appeal," complaining of the same action by the Postal Service and seeking identical relief.

Section 404(b) of title 39 of the United States Code establishes the notice and comment procedure which must be followed before the Postal Service can consolidate a post office. It also lists factors which the Postal Service must consider in making a determination to consolidate a post office. Section 404(b)(5)(C) gives the Commission the authority to suspend the effectiveness of a determination pending the disposition of an appeal, and these requests constitute a plea for suspension.

Consistent with our rule 3001.114 (39 CFR 3001.114), we are giving the Postal Service ten days from the day this Order is issued to respond to the Petitioners' request for suspension. At the same time, the Postal Service should answer the Petitioners' assertion that it has consolidated the Ithaca, New York, post office without observance of the procedures required by law. 39 U.S.C. 404(b)(5)(B). Any further procedural schedule that is required will be established after the Postal Service files its answer.

The Commission orders:

1. The Postal Service is to respond to the Petitioners' assertion that it has consolidated the Ithaca, New York, post office without observance of the procedures required by law, and to the request for a suspension ten days from the day this Order is issued.

2. The Secretary shall publish this Notice and Order in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 93-7065 Filed 3-26-93; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32036; File No. SR-NASD-93-7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Section 3 of Part II to Schedule D of the NASD By-Laws Relating to Initial Inclusion Requirements

March 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule D to the NASD By-Laws, Part II Qualification Requirements for NASDAQ Securities

Sec. 3 Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria

* * * * *

(f) Securities issued in connection with the merger, [or] consolidation, *or other type of acquisition* of at least one issuer of qualifying securities shall be promptly included in the NASDAQ System, provided that the conditions of Sections (1)(c) or 2(e) for securities that have already been included are satisfied. *The Association shall require a NASDAQ issuer to comply with all applicable requirements for initial inclusion under Part II to Schedule D and shall require a NASDAQ National Market System issuer to comply with all applicable requirements for initial inclusion under Parts II and III to Schedule D in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-NASDAQ entity, which results in a change of control and either a change in business or change in the financial structure of the NASDAQ or NASDAQ National Market System issuer.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since the adoption of new Nasdaq SmallCap Market ("Nasdaq SmallCap") maintenance requirements on August 30, 1991,[2] which became effective March 2, 1992, the NASD has noted a marked increase in the mergers, consolidations, or acquisitions of Nasdaq SmallCap companies in connection with non-Nasdaq System[3] companies. A number of such transactions have involved "backdoor listings" wherein a Nasdaq SmallCap issuer that is failing to meet the Nasdaq SmallCap maintenance requirements will sell itself and its listing on Nasdaq SmallCap to a non-Nasdaq System company in a reverse merger transaction that results in the securities of the Nasdaq SmallCap issue remaining outstanding. In such backdoor listings,

[1] The NASD amended the proposed rule change once subsequent to its original filing on February 18, 1993. This amendment clarifies the initial inclusion criteria applicable to Nasdaq NMS issuers and clarifies the distinction among Nasdaq SmallCap securities, Nasdaq NMS securities and non-Nasdaq securities. The substance of this amendment is included in this notice.

[2] Securities Exchange Act Release No. 29638 (August 30, 1991), 56 FR 44108 (September 6, 1991).

[3] The Nasdaq System is comprised of both Nasdaq SmallCap and the Nasdaq National Market System ("Nasdaq NMS") securities. Initial inclusion requirements for Nasdaq SmallCap issuers are contained in Part II of Schedule D to the NASD By-Laws. Nasdaq NMS issuers must comply with both Nasdaq SmallCap initial inclusion requirements contained in Part II and the Nasdaq NMS initial inclusion requirements contained in Part III of Schedule D.

the Nasdaq SmallCap issuer often has minimal assets and/or operations while the non-Nasdaq System company is often a company with a more substantial asset base and some type of ongoing business. Upon merging with the Nasdaq SmallCap issuer, the non-Nasdaq System company becomes listed on the Nasdaq SmallCap Market without having to comply with Nasdaq SmallCap initial inclusion requirements.

The NASD believes that a Nasdaq SmallCap issuer or Nasdaq NMS issuer should be required to comply with applicable initial inclusion criteria in the Nasdaq System in the event such issuer completes a merger, consolidation or other type of acquisition with a non-Nasdaq System entity[4] and NASD staff have determined that the business combination has the characteristics of a backdoor listing. Upon review, the NASD believes most backdoor listings are characterized by a change of control and change in the business of the surviving issuer, or by a change in control and change in the financial structure of the surviving issuer. The NASD, therefore, proposes to amend section 3(f) of Part II to Schedule D of the NASD By-Laws to require a Nasdaq SmallCap issuer to comply with all applicable requirements for initial inclusion under Part II to Schedule D[5] and to require a Nasdaq NMS issuer to comply with all applicable requirements for initial inclusion in the Nasdaq System[6] in the event that the issuer enters into a merger, consolidation, or other type of acquisition[7] with a non-Nasdaq System entity, which results in a change in control and either a change in business or change in the financial structure of the Nasdaq SmallCap or Nasdaq NMS issuer.[8]

The NASD also proposes to add the phrase "or other type of acquisition" to the first sentence of section 3(f) to Part II of Schedule D of the NASD By-Laws to conform with new language contained in the proposed rule change.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest in that proposed rule change requires a Nasdaq SmallCap or Nasdaq NMS issuer to comply with all applicable initial inclusion requirements in connection with a merger, consolidation or other type of acquisition with a non-Nasdaq System issuer if NASD staff has determined that there has been a change of control and either a change in the business or change in the financial structure of the surviving issuer of the business combination. Initial inclusion requirements of the Nasdaq System provide protection for investors and the public interest, but concern has been raised regarding backdoor listings, wherein a non-Nasdaq System entity may avoid the initial inclusion requirements of the Nasdaq System by purchasing the listing of a Nasdaq System issuer. The proposed rule change protects investors and the public interest by eliminating such backdoor listings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 19, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7124 Filed 3–26–93; 8:45 am]

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[4] For purposes of this rule filing, the NASD defines the term "entity" to include domestic and foreign corporations and limited partnerships.

[5] Sections 1 and 3 of Part II to Schedule D contain initial inclusion criteria for domestic and Canadian securities traded on Nasdaq SmallCap. Sections 2 and 3 to Part II of Schedule D contain initial inclusion criteria for non-Canadian foreign securities and American Depositary Receipts traded on Nasdaq SmallCap.

[6] As noted in Footnote 2 to this proposed rule change, the Nasdaq System is comprised of both Nasdaq SmallCap and Nasdaq NMS securities. To comply with initial inclusion criteria in the Nasdaq System, Nasdaq NMS issuers must comply with Sections 1, 2, 3 and 5 of Part III to Schedule D of the NASD By-Laws and with all applicable initial inclusion criteria contained under Part II to Schedule D of the NASD By-Laws. *Id*

[7] For purposes of this proposed rule change, the phrase "merger, consolidation, or other type of acquisition" is intended to be broadly interpreted to encompass most business combinations.

[8] NASD staff provide determinations regarding issuer compliance with Nasdaq SmallCap and Nasdaq NMS qualifications criteria, which staff determinations are subject to appeal pursuant to Article IX of the NASD's Code of Procedure. For purposes of this proposed rule change, a determination that there was a "change of control" would require a staff review of both direct and indirect equity ownership and control, as well as the composition of the issuer's board of directors. A determination that a "change of business" had occurred would be based on a staff review of the issuer's periodic disclosure statements including both the issuer's own description of its business and its financial statements. A determination that there was a "change in the financial structure" would require a staff review of the company's financial statement, including but not limited to a determination of significant change in the issuer's assets, capitalization, debt structure or revenue.

[Release No. 34-32838; File No. SR-NASD-93-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Deletion of Part V to Schedule D of the NASD By-Laws Regarding Publication and Dissemination of Quotations to the News Media

March 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 18, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed deletions are in brackets.

Schedule D to the NASD By-Laws [Part V Publication and Dissemination of Quotations to the News Media]

[The Information Committee shall recommend lists of quotations of NASDAQ securities for dissemination by the news media. The criteria for such lists shall be determined by the Information Committee in light of the space available for publication and the information desired by the news media and the investing public.]

[The criteria shall be based on a combination of the following:

A. Securities outstanding;
B. Market value of securities outstanding;
C. Price;
D. Net worth of the issuer;
E. Net income of the issuer;
F. Operating history of the issuer;
G. Dollar value of securities traded.]

[The Information Committee may, under appropriate circumstances, grant exceptions to its established criteria if it determines that it is in the public interest to do so.]

[Criteria for Inclusion in Quotation Lists]

[I. Bankruptcy and/or Liquidation

A security shall not be included in the National List if the issuer shall have filed under any of the sections of the Bankruptcy Act or announced that liquidation has been authorized by its Board of Directors and that the company is committed to proceed.]

[II. Composition of the Lists

There shall be two recommended lists of NASDAQ securities provided to the media: The "National List" and the "Additional List." Inclusion on the lists shall be determined semi-annually on the basis of information available to the Association on the selection date. All quotations released shall be Level I quotations.]

[III. National Lists

A. Domestic Common Stock

1. Initial Inclusion Criteria: The financial criteria for domestic common stock are separated into two alternative categories detailed below. Issuers which meet either one of the alternative criteria will be included in the National List regardless of their dollar volume. Alternative No. 1 includes a net income requirement while Alternative No. 2 has no income requirement but establishes higher financial requirements for those development companies which have no operating income:]

[Alternative No. 1
1. 350,000 Publicly Held Shares
2. Market Value of Publicly Held Shares of $2,000,000
3. Minimum Bid Price of $3.00
4. Net Income of $300,000 in the previous fiscal year or in two of the last three fiscal years.]

[Alternative No. 2
1. 800,000 Publicly Held Shares
2. Market Value of Publicly Held Shares of $8,000,000
3. Net Worth of $8,000,000
4. Incorporated for 4 Years]

[2. Maintenance Criteria: Upon inclusion in the National List under either of the alternative sets of initial inclusion criteria, issuers must satisfy the maintenance criteria set forth below to remain eligible for inclusion in the National List.

1. 200,000 Publicly Held Shares
2. Market Value of Publicly Held Shares of $2,000,000
3. Either Annual Net Income of $200,000 for the previous fiscal year or in two of the last fiscal years or Net Worth of at least $1,000,000.]

[B. Foreign Securities

Foreign issues and American Depositary Receipts (ADR's) registered pursuant to Section 12(g) under the Securities Exchange Act of 1934, as well as issues for which all relevant information has been filed with the Securities and Exchange Commission pursuant to rule 12g3-2, shall meet the same criteria as domestic common stock except that the publicly held shares requirement for ADR's shall be determined by the number of ADR's outstanding.]

[C. Warrants

Common stock of issuer must be in the National List and all criteria for domestic common stock apply except that the publicly held shares requirement is replaced with 450,000 warrants publicly held at the time of the initial distribution.]

[D. Convertible Debentures

Common stock of issuer must be in the National List and $100 million of the issue must be outstanding.]

[E. Units

All criteria for domestic common stock apply except that the publicly held shares requirement is replaced with 350,000 publicly held units at time of initial distribution.]

[F. Rights

Automatically included if common stock of issuer is quoted in the National List.]

[G. Preferred Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partners Interests, Real Estate Investment Trusts and Closed End Funds

Same criteria as domestic common stock.]

[H. New Issues

Securities that meet the above criteria immediately following an initial distribution or secondary offering will be added to the National List on the day of the distribution.]

[IV. Additional List

All positions in the Additional Lists will be filed on the basis of dollar value of daily volume. To be eligible for the Top Additional List an issue must have current bid price of $1.00 or higher.]

Parts VI to XIV of Schedule D are renumbered Parts V to XIII respectively and the NASD will amend any references to those Parts of Schedule D to reflect the renumbering of the provisions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Part V to Schedule D of the NASD By-Laws ("Schedule D") provides that an Information Committee (the "Committee") shall recommend two lists of quotations of Nasdaq securities for dissemination to the news media. The Committee is authorized to recommend a "National List" based on specified initial inclusion criteria and maintenance criteria, and an "Additional List" based on a dollar value of daily volume and a minimum bid price of $1. Part V also specifies that inclusion on the two lists shall be determined semi-annually on the basis of information available to the Association on the selection date.

The NASD has reviewed Part V to Schedule D and has determined that it is no longer applicable to the current NASD practice of disseminating quotations of issuers in the Nasdaq System [1] to the news media. The NASD no longer utilizes an Information Committee and no longer provides recommendations to the news media regarding National List and Additional List securities. Under current practice, the NASD provides certain new media organizations and other market data vendors with two electronic data lines on information regarding all Nasdaq NMS securities and Nasdaq SmallCap securities contained in the Nasdaq System. One data line provides bid/ask quotes for all Nasdaq System securities, and the other data line provides last sale information for all Nasdaq System securities. Most news media organizations currently receive quotation information regarding all Nasdaq System securities from a media organization or market data vendor that has access to the NASD data lines. Determinations regarding customized publication lists of Nasdaq SmallCap and Nasdaq NMS securities are currently made by individual news media organizations based on their respective publication criteria. The NASD, therefore, proposes to delete Part V, in its entirety, from Schedule D to the NASD By-Laws.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act which requires that the rules of a national securities association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change deletes outdated rule language regarding the NASD practice of disseminating securities in the Nasdaq System to news media. Deletion of such rule language reflects the NASD's determination to end the practice of only disseminating certain securities to the news media in favor of the current practice whereby two electronic data lines disseminate information on all Nasdaq System securities to media organizations and market data vendors, which information is then disseminated to the public to facilitate transactions in Nasdaq System securities. The NASD's electronic data lines provide greater market information to the public than the procedures provided for under Part V to Schedule D. The dissemination of quotations over the NASD electronic data lines, therefore, help perfect a free and open market and national market system, and help to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 19, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7125 Filed 3-26-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32031; File No. SR-NYSE-93-16]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Extension of Its Pilot Program for Stopping Stock Under Amendments to Rule 116.30

March 22, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 18, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The Nasdaq System is comprised of both Nasdaq SmallCap Market ("Nasdaq SmallCap") and Nasdaq National Market System ("Nasdaq NMS") securities.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend amendments to Rule 116.30 for an additional year until March 21, 1994.[1] The amendments permit a specialist, upon request, to grant a stop in a minimum variation market for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The practice of "stopping" stock by specialists on the Exchange refers to a guarantee by the specialist that an order the specialist receives will be executed at no worse a price than the contra side price in the market when the specialist receives the order, with the understanding that the order may in fact receive a better price.

Formerly, Exchange Rule 116.30 permitted a specialist to stop stock only when the quotation spread was at least twice the minimum variation (*i.e.*, for most stocks, at least a ¼ point), with the specialist then being required to narrow the quotation spread by making a bid or offer, as appropriate, on behalf of the order that is being stopped.

On March 21, 1991, and again on March 16, 1992, the Commission approved, on a one-year pilot basis each time, amendments to the rule which permit a specialist to stop stock in a minimum variation market (generally referred to as an "⅛th point market").[2] The Exchange sought these amendments on the grounds that many orders would receive an improved price if stopping stock in ⅛th point markets were permitted. The amendments to Rule 116.30 permit a specialist, upon request, to stop individual orders of 2,000 shares or less, up to an aggregate of 5,000 shares when multiple orders are stopped, in an ⅛th point market. A specialist may stop an order pursuant to a specified larger order size threshold, or a specified larger aggregate share threshold, after obtaining Floor Official approval.

On February 12, 1993, the Exchange requested that the Commission grant permanent approval to the amendments to Rule 116.30.[3] On March 16, 1993, Commission staff requested that the Exchange extend the rule changes to allow the Commission more time to consider the Exchange's request to make the amendments to Rule 116.30 permanent.[4] For this reason, the Exchange is now proposing to extend the effectiveness of the amendments to Rule 116.30 for an additional year.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange proposal to extend amendments to Rule 116.30 is consistent with these objectives in that it permits the Exchange to better serve its customers by enabling specialists to execute customer orders at improved prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–18 and should be submitted by April 19, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5)[5] and Section 11(b)[6] of the Act. The Commission believes that the amendments to Rule 116.30 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.[7]

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[1] The NYSE received approval to amend Rule 116.30, on a pilot basis, in Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12984 (March 28, 1991) (File No. SR–NYSE–90–48) ("1991 Approval Order"). The Commission subsequently extended the NYSE's pilot program in Securities Exchange Act Release No. 30462 (March 16, 1992), 57 FR 10198 (March 24, 1992) (File No. SR–NYSE–92–02) ("1992 Approval Order"). Commission approval of these amendments to Rule 116.30 expires on March 21, 1993. The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated March 17, 1993

[2] See 1991 and 1992 Approval Orders, *supra*, note 1.

[3] See File No. SR–NYSE–93–11.

[4] Telephone conversation between Donald Siemer, Director, Market Surveillance Division, NYSE, and Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, on March 16, 1993.

[5] 15 U.S.C. 78f (1988).

[6] 15 U.S.C. 78k (1988).

[7] For a description of NYSE procedures for stopping stock in minimum variation markets, and of the Commission's rationale for approving those procedures on a pilot basis, see 1991 Approval Order, *supra*, note 1. The discussion in the aforementioned order is incorporated by reference into this order.

In its orders approving the pilot procedures,[8] the Commission asked the NYSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission expressed interest in (1) the percentage of stopped orders executed at the stop price, versus the percentage of such orders receiving a better price; (2) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance, and including an analysis of bid versus offer disparity; (3) whether limit orders on the specialist's book were being bypassed due to the execution of stopped orders at a better price (and, to this end, the Commission requested that the NYSE conduct a one-day review of all book orders in the ten stocks receiving the greatest number of stops); and (4) specialist compliance with the pilot program's procedures.

On February 13, 1992, and November 5, 1992, the Exchange submitted to the Commission monitoring reports concerning the amendments to Rule 116.30.[9] Based on the NYSE's experience, the Commission believes that it is reasonable to extend the pilot program for an additional twelve months. The Commission's rationale for doing so is set forth in more detail below.

First, the November monitoring report indicates that 42% of eligible orders (*i.e.*, orders for 2,000 shares or less) stopped in minimum variation markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. According to the NYSE reports, moreover, 97% of the stopped orders were for 2000 shares or less. In this respect, the amendments to Rule 116.30 should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling of their orders by the specialist. During the pilot extension, the Commission requests that the NYSE continue to monitor the percentage of stopped orders executed at the stop price as compared to the percentage of such orders receiving a better price. The Commission requests that the NYSE report its findings on this matter by September 30, 1993.

In terms of market depth, the NYSE's monitoring reports suggest that stock tends to be stopped in minimum variation markets where there is a disparity between the number of shares bid for and the number offered.[10] The NYSE reports also suggest that, given the depth of the contra side of the market, orders affected by the Rule 116.30 pilot tend to be relatively small.[11] For about 95% of stops granted, the size of stopped order was less than, or equal to, 25% of the size of the opposite side quote. Based on such data, the NYSE concludes that the imbalances on the opposite side of the market from the orders stopped were of sufficient size to suggest the likelihood of price improvement to customers.[12]

The Commission, however, remains concerned that Rule 116.30 only be implemented when it is clear that the imbalance on the opposite side of the market from the order being stopped is of sufficient size to suggest the likelihood of price improvement. The Commission believes that the requirement of a sufficient market imbalance is a critical aspect of the pilot program.[13] Such a requirement should ensure that stops are only granted in a minimum variation market, when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the harm to orders on the specialist's book.[14] To evaluate how this standard is being applied in practice, the Commission requests that the NYSE continue to monitor market depth. As it has done in the past, the NYSE should compare the size of the stopped order to the size of the opposite side of the quote and to any quote size imbalance. In so doing, the NYSE should break individual orders down as follows: 2,000 shares or less; 2,001 to 5,000 shares; 5,001 to 10,000 shares; and over 10,000 shares. The NYSE should provide the requested information for each of the above order size ranges. Furthermore, when a Floor Official approves a stop that causes the total number of stopped shares to exceed 5,000 shares, the NYSE should provide the Commission with information comparing the aggregate size of all orders stopped to the size of the opposite side of the quote and to any quote size imbalance. Finally, in its next monitoring report, the NYSE should calculate, as of the time a stop is granted, the ratio of bid size to offer size.[15] The Commission requests that the NYSE report its findings on this matter by September 30, 1993.

Third, the NYSE does not believe that the amendments to Rule 116.30 significantly disadvantage customer limit orders existing on the specialist's book.[16] This conclusion is based on the Exchange's review of limit orders against which market orders receiving price improvement were stopped. As part of this review, the NYSE determined how often such limit orders were executed by the close of the day's trading.[17] Nevertheless, the NYSE's monitoring could not determine precisely how many book orders were

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[8] See, *supra*, note 1.

[9] See letters from Robert J. McSweeney, Senior Vice President, Market Surveillance, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated February 13, 1993 ("First Monitoring Report"), and to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated November 5, 1992 ("Second Monitoring Report"). The discussion of the First Monitoring Report in the 1992 Approval Order and the discussion of the Second Monitoring Report in File No. SR–NYSE–93–11 are incorporated by reference into this order.

[10] As part of its initial proposed rule change, the NYSE provided the following example illustrating the relationship between quote size imbalance and the likelihood of price improvement: Assume that the market for a given stock is quoted 30 to 30⅛, with 1,000 shares bid for and 20,000 shares offered. The large imbalance on the offer side of the market suggests that subsequent transactions will be on the bid side. Accordingly, the NYSE states that it might be appropriate to stop a market order to buy, since the delay might allow the specialist to execute the buyer's order at a lower price. After granting such a stop, the specialist would be required to increase his quote by the size of the stopped buy order, thereby adding depth to the bid side of the market.

[11] A relatively large order might begin to counteract the pressure the opposite side of the market is putting on the stock's price. Accordingly, it might not be as appropriate to stop such an order.

[12] The NYSE has stated, both to the Commission and to its members, that specialists should only stop stock in a minimum variation market when an imbalance exists on the opposite side of the market and such imbalance is of sufficient size to suggest the likelihood of price improvement. See, *e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; NYSE information memo #1809, dated September 12, 1991.

[13] For a discussion of the relationship between quote size imbalance and the likelihood of price improvement, see *supra*, note 10.

The Commission, when approving a comparable proposal by the American Stock Exchange, re-emphasized the critical nature of the sufficient size standard. See Securities Exchange Act Release No. 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (File No. SR–Amex–91–05).

[14] See, *infra*, text accompanying notes 16–18.

[15] In its 1992 Approval Order, the Commission requested that the NYSE analyze bid versus offer disparity. By this, the Commission meant the ratio of bid size to offer size. This ratio measures the quote size imbalance in relative terms.

[16] When stock is stopped, book orders on the other side of the market entitled to immediate execution lose their priority. If a stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that, where a substantial imbalance exists on the opposite side, it is unlikely that these limit orders would not be executed. The stock would probably trade away from a large imbalance, resulting in the execution of orders on the book.

[17] The Exchange did this for stocks generally and for the ten stocks receiving the greatest number of stops, with roughly comparable results (approximately 30% executed, 70% cancelled or unexecuted).

entitled to, but did not receive, immediate execution.

The Commission has historically been concerned that orders on the specialist's book get bypassed when stock is stopped.[18] Because the Exchange's data has been inconclusive thus far, the Commission requests that the NYSE continue to monitor the overall impact of the Rule 116.30 pilot program on customer limit orders. In addition, the NYSE should conduct another one-day review of all book orders in the ten stocks receiving the greatest number of stops, and should submit both raw data and the final results to the Commission. The Commission requests that the NYSE report its findings on this matter by September 30, 1993.

Finally, the NYSE's reports describe its compliance efforts (e.g., automated surveillance, review of Floor Official records, information memos, continuing education etc.). The Commission believes that these programs provide specialists with adequate notice of their responsibilities. Similarly, the Exchange has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether he obtained Floor Official approval for larger parameters. During the pilot extension, the Commission expects that the NYSE will continue to monitor closely specialist compliance with the pilot procedures. In particular, the NYSE should determine how often orders requiring Floor Official approval to be stopped do not receive such approval, either because the specialist did not ask for permission or because it was denied (and, if so, on what grounds). The Commission requests that the NYSE report its findings on this matter by September 30, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[19]

[18] See, e.g., SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

[19] No comments were received in connection with the proposed rule change which implemented these procedures. See 1991 Approval Order, *supra*, note 1.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSE–93–18) is approved for a one year period ending on March 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7126 Filed 3–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32037; File No. SR–PSE–92–24]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Proposed Amendments to Rule 12, Arbitration, of the Rules of the PSE

March 23, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 13, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On September 1, 1992, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change to clarify certain language in the proposed amendments relating to simplified arbitration for public customers, initiation and adjournment of arbitration proceedings, and pre-dispute arbitration agreements.[1] On November 10, 1992, the PSE submitted to the Commission Amendment No. 2 to the proposed rule change to make further clarifications in the proposed amendment regarding initiation of proceedings.[2] On December 4, 1992, the PSE submitted to the Commission Amendment No. 3 to the proposed rule change to correct clerical errors in Amendment No. 2 regarding consolidation of claims.[3] On February 26, 1993, the PSE submitted to the Commission Amendment No. 4 to the proposed rule change further relating to consolidation of claims.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1991).

[1] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Betsy Prout, Staff Attorney, Commission, dated August 26, 1992, amending the text of proposed PSE Rules 12.2, 12.13, 12.18, and 12.34.

[2] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Betsy Prout, Staff Attorney, Commission, dated November 4, 1992, amending the text of proposed PSE Rule 12.13.

[3] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Betsy Prout, Staff Attorney, Commission, dated November 20, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Subetance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, submits this rule filing to amend Rule 12, *Arbitration*, of the Rules of the PSE.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The following is a summary of the rule changes:

Rule 12.1(d)—Referral of claims to a different forum with claimant's consent
Rule 12.1(e)—Disposition of class action claims
Rule 12.2(b)(ii)&(iii)—Discovery in simplified cases
Rule 12.13(c)—Filing with Director of Arbitration to be same date as service on other parties
Rule 12.13(d)—Power of Director of Arbitration to make preliminary determination regarding consolidation
Rule 12.13(d)(2)—Requirement that preliminary determinations regarding consolidation be considered subsequent to the filing of all responsive pleadings
Rule 12.18(b)—Power of Director of Arbitration to waive adjournment fee and provision for refund if request for adjournment not granted.
Rule 12.23—Power of arbitrators to take action to obtain compliance with arbitrator rulings
Rule 12.34—Requirement that customer agreement include a statement regarding the ineligibility of class actions for submission to arbitration.

[4] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Sharon Lawson, Assistant Director, Commission, dated February 26, 1993.

[5] See discussion below for a description of the amendment.

All of these rule changes reflect amendments to the Uniform Code of Arbitration ("Uniform Code") approved by the Securities Industry Conference on Arbitration ("SICA"). The objective in making these amendments is to make PSE Rule 12, *Arbitration*, consistent with the Uniform Code. The Uniform Code is designed to make arbitration procedures uniform in securities aribitration at the self-regulatory organizations ("SROs").

Rule 12.1(d) *Referral of Claims*

Proposed new subsection (d) of Rule 12.1 would permit the Exchange to refer a claim, with the claimant's consent, to the SRO where the subject transaction occurred. This amendment is proposed to enable the Exchange to more evenly distribute cases to the SRO where the transactions occurred.

Rule 12.1(e), 12.34(5) *Class Action Claims*

The proposed Rule relating to class actions provides that class actions are ineligible for submission to arbitration. The proposal enables brokerage customers to pursue class action claims against their broker-dealers in court notwithstanding any arbitration agreement they might have signed. The proposed Rule also provides that any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non self-regulatory organization arbitration forum for classwide arbitration. However, the proposed Rule provides that such claims shall be eligible for arbitration in accordance with the proposed Rule or pursuant to parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Proposed Rule 12.34(5) will require that all new pre-dispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to arbitration in accordance with the provision of proposed Rule 12.1(e).

Proposed Rules 12.1(e) and 12.34(5) were approved by SICA on January 7, 1992.

Rule 12.2 *Discovery in Simplified Arbitration Cases*

Currently there are no separate provisions dealing with discovery of Simplified Cases, (claims under $10,000). The proposed amendment refers the parties to Rule 12.14, *General Provisions Governing Pre-Hearing Procedures*, for cases in which an oral hearing has been requested and provides shorter time frames for cases administered on the basis of the pleadings alone.

Rule 12.3(c) *Service and Filing with the Director of Arbitration*

This amendment would ensure that parties send their documents to the Exchange at the same time that they are sent to the other parties.

Rules 12.13(d)(3) and 12.13(d)(2) *Consolidation*

This amendment would codify and clarify the Director of Arbitration's power to make a preliminary determination regarding consolidation of claims. In addition, the amendment would provide that such determinations will be considered subsequent to the filing of all responsive pleadings.

Existing Rule 12.13(d)(3) will be renumbered as Rule 12.13(d)(4). Amendments to this subsection will require the arbitration panel to make further determinations with respect to joinder or consolidation, and will substitute the word "joinder" in the place of "joining."[6]

Rule 12.18(a) *Adjournments*

The rule concerning fees for adjournments has been amended to conform to changes made by SICA to provide that the Director of Arbitration can waive the fee, that the arbitrators can also waive or order a refund of the fee, and that the fee would be returned if the adjournment is not granted. Waivers would be considered on a case by case basis.

Rule 12.23 *Interpretation of Rule 12 and Enforcement of Arbitration Rulings*

This amendment codifies and clarifies the arbitrators' existing power to take action to enforce their rulings in the event of non-compliance by a party.

Currently, sanctions for non-compliance are not always ordered or requested because arbitrators and parties may be unaware of an arbitrator's power. The Uniform Code is silent with respect to this issue. The amendment will apply mainly in the area of failure to comply with discovery requests. This amendment was approved by SICA on January 7, 1992.

[6] The title of Rule 12.13(d) would be amended to change "Joining" to "Joinder" and to include reference to "Multiple Parties."

2. Statutory Basis

The proposed filing is consistent with section 6(b)(5) in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by ensuring that members and member organizations and the public have an impartial forum for resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–24

and should be submitted by April 19, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7127 Filed 3–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19347; 811–3795]

Reserve Equity Trust; Application for Deregistration

March 23, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Reserve Equity Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on March 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicant, 810 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and is registered as an open-end non-diversified management investment company under the Act. On July 26, 1983, applicant filed a notification of registration under section 8(a) of the Act. On that same date, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. Applicant's registration statement was declared effective on February 16, 1984. Applicant's initial public offering commenced immediately thereafter.

2. At a meeting held on September 23, 1992, applicant's board of trustees approved and adopted a plan of dissolution, liquidation and termination (the "Liquidation Plan"). The board considered the small amount of assets in, and the expense ratios of, each of applicant's funds, and the substantial amount of fees waived by the investment adviser in deciding to liquidate applicant. In recommending liquidation to its shareholders, applicant also stated that, as a result of the small size of the funds, the income available to promote the funds and increase sales is minimal.

3. In December 1992, applicant mailed to its shareholders proxy materials relating to the proposed liquidation. As of December 24, 1992, there were 247,795 shares of beneficial interest of applicant, consisting of 192,186 shares of the Contrarian Portfolio and 55,610 shares of the Growth Portfolio. Each share of the Contrarian Portfolio had a net asset value of $13.388, and each share of the Growth Portfolio had a net asset value of $10.361. At a Special meeting held on December 22, 1992, applicant's shareholders approved the Liquidation Plan.

4. On December 24, 1992, pursuant to the Liquidation Plan, applicant's assets were completely liquidated and the proceeds were distributed to its shareholders on a *pro rata* basis.

5. All expenses incurred in connection with the Liquidation Plan, consisting of accounting, printing, administrative, and certain legal expenses and which are estimated to be approximately $10,000, will be paid by Reserve Management Company, Inc., applicant's investment adviser.

6. At the time of the application, applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

7. Applicant intends to file a Certificate of Dissolution with the Massachusetts Secretary of State upon the granting of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7128 Filed 3–26–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 19, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48707
Date filed: March 17, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Mail Vote 625 (Charge for PTA Services)
Proposed Effective Date: June 1, 1993
Docket Number: 48708
Date filed: March 17, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Mail Vote 626 (Lebanon-Europe fares)
Proposed Effective Date: April 1, 1993
Docket Number: 48709
Date filed: March 17, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Mail Vote 627 (China-Japan Fares)
Proposed Effective Date: April 15, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–7129 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 19, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a

tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48702
Date filed: March 15, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 12, 1993
Description: Application of Fine Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for issuance of a certificate of public convenience and necessity seeking authority to conduct scheduled service of property and mail authority between Miami, Florida and Santo Domingo, Dominican Republic

Docket Number: 48703
Date filed: March 16, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 13, 1993
Description: Application of Aeromextour, S.A. De C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between points in Mexico and points in the United States pursuant to Annex II of the Air Transport Agreement between the United States and the United Mexican States dated August 15, 1960, as amended

Docket Number: 48712
Date filed: March 19, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 16, 1993
Description: Application of Continental Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Act requests renewal of the Spokane-Vancouver authority in its Route 548 certificate for a period of five years.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93-7130 Filed 3-26-93; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 93013]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.
ACTION: Notice of meeting (correction).

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on April 14, 1993, in Captain Of The Port Conference Room Building 108, First Floor, Governors Island, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Update on Coast Guard regulatory initiatives.
6. 40 foot channel through the Kill Van Kull and Newark Bay.
7. "P.O.R.T.S." update.
8. Charter renewal update.
9. Topics from the floor.
10. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander J. P. Benvenuto, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004-5070; or by calling (212) 668-7429.

L. L. Hereth,
Commander, U.S. Coast Guard, Alternate Captain of the Port New York, NYHTMAC Executive Director.
[FR Doc. 93-7142 Filed 3-26-93; 8:45 am]
BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 27218]

Report to Congress on the Effects of Airport Noise, Pursuant to the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992

AGENCY: Federal Aviation Administration, (DOT).
ACTION: Request for comment and information.

SUMMARY: This notice requests comment and information on a requirement of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 that the Federal Aviation Administration (FAA) conduct a noise study and report the results to the Congress. This study will analyze the social, economic, and health effects of airport noise. The study also will include an evaluation of single event noise on populations. This notice solicits information and comment on specific issues and questions that will be considered in the report to Congress.

DATES: Comments must be received on or before April 28, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to the Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 27218, 800 Independence Avenue, SW., room 915G, Washington, DC 20591. Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27218." The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Connor, Technology Division (AEE-100), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8933, facsimile (202) 267-5594.

SUPPLEMENTARY INFORMATION:

Background

Section 123 of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (49 U.S.C. app. 2102 note; Pub. L. 102-581) requires the FAA to conduct a noise study and report the results to Congress not later than October 31, 1993. This study will analyze the social,

economic, and health effects of airport noise within the Day-Night Average A-weighted Sound Level (DNL) 55, 60, and 65 decibel (dB) contours to determine the actual level at which noise adversely impacts populations. It also will include an evaluation of single event noise analysis on populations. The purpose of the study is to examine whether existing noise impact criteria should be redefined. As part of this process, the FAA must provide notice and an opportunity for public comment before submitting the report to Congress. The FAA is requesting comments at this time so that the report can be published by the statutory deadline. The FAA will publish a notice of availability when the report is complete.

The FAA recently participated in a similar study conducted by the Federal Interagency Committee on Noise (FICON). As a member of the Technical Subgroup, the FAA reviewed technical and scientific matters related to the adequacy of current data and methodology for use in environmental impact analysis of airport operations. This subgroup prepared a technical report that summarized the results of this evaluation and provided the scientific basis for work by other subgroups. The technical report addressed current practices, use of DNL as the principal environmental noise metric, supplemental noise evaluation metrics, single event analysis, ambient sound, relationship of ambient sound levels to lifestyles, scientific research, comparing aircraft DNL to background DNL, summary, and conclusions. Because of its FICON experience, the FAA will be using the FICON's research and recommendations to help fulfill the statutory requirement to conduct a noise study.

The FICON was formed in December 1990, at the request of the Environmental Protection Agency (EPA) and the FAA. Its basic charter was to review specific elements of the assessment of airport noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA), to review the relationship of Federal Aviation Regulation (FAR) part 150 to NEPA, and to make recommendations regarding potential improvements. The FICON was composed of representatives from the Departments of Transportation (Office of the Secretary and the FAA), Defense, Justice, Veterans Affairs, EPA, Housing and Urban Development, and the Council on Environmental Quality (CEQ). The FICON has issued its report, which contains technical findings, conclusions, and policy recommendations. A copy of the FICON report, "Federal Agency Review of Selected Airport Noise Analysis Issues," is available by submitting a written request to Spectrum Sciences and Software, Inc., Code FAA, 242 Vicki Leigh Road, Fort Walton Beach, Florida 32547; Fax No. (904) 862–3031 and Voice No. (904) 862–8111.

The FICON review focused primarily on:

(a) The manner in which noise impacts are determined, including whether airport noise impacts are fundamentally different from other transportation noise impacts;

(b) The manner in which noise impacts are described;

(c) The extent of impacts outside of DNL 65 dB that should be reviewed in a NEPA document;

(d) The range of the FAA-controlled mitigation options analyzed (e.g., noise abatement and flight track procedures); and

(e) The relationship of the part 150 process of the Federal Aviation Regulations (FAR) to the NEPA process; including effect on the NEPA process if they are separate, and exploration of the means by which either or both of the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups focusing on the technical, legal, and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup reviewed the scientific methodologies and metrics to assess airport noise impacts that have evolved since the 1980 meetings of the FICUN. The Policy Subgroup reviewed Federal policies that are used to assess airport noise impacts. The Legal Subgroup reviewed the legal aspects of current and proposed Federal policies to assess airport noise impacts. The Technical Subgroup's products were used as a basis for the policy findings, conclusions, and recommendations in the FICON report.

The FICON recommended establishment of "a Federal interagency committee to assist agencies in providing adequate forums for discussion of public and private sector proposals, identifying needed research, and in encouraging the conduct of Research and Development (R&D) in these areas." The FICON recommends the initial agenda include:

(a) Research into community reactions to aircraft noise, including sleep disturbance, research on nonauditory health effects, speech interference, as well as the development of improved assessment criteria for these efforts;

(b) Investigation of the differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise. There should be further R&D on the "masking" effects of various types of non-aircraft noise when compared to aircraft noise; and

(c) Evaluation of potential modifications to the 1980 Federal Interagency Committee on Urban Noise (FICUN) land use compatibility table to improve its usefulness for both routine land use planning and planning for noise-sensitive land uses.

The FAA fully supports these recommendations and is working with the FICON participants to establish the standing committee. Since the standing committee's R&D effort will be a long-term process, the FAA will include a progress report in its report to Congress.

Request for Information

In supplementing the FICON findings, the FAA is seeking comment and information regarding the following six specific questions. A discussion of each will be incorporated into the FAA report to Congress on the Effects of Airport Noise scheduled for submission by October 1993. Additional comments regarding any of the issues requested by Congress are also invited. Other Federal agencies will review and provide comments on these questions and other relevant issues. For each question, the FAA has provided a paragraph on either its current policy or its viewpoint for future policy and the FICON findings.

Question 1

How should airport noise be measured to determine the effects on people (cumulative and/or single event)?

The FAA uses and recommends continued use of the DNL cumulative metric as the principal means to describe long-term noise exposure for aircraft operations. When appropriate, the FAA supplements cumulative noise analysis with single event noise metrics.

FICON Findings

(a) There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative metric to describe long-term noise exposure for civil and military aircraft operations;

(b) The methodology using DNL as the noise exposure metric and appropriate dose-response relationships (primarily the Schultz curve for "Percent Highly Annoyed") to determine noise impacts on populations is considered the appropriate method for civil and military aviation in the general vicinity of airports;

(c) DNL analysis is supplemented on a case-by-case basis by single event analysis using other metrics, such as

Equivalent Sound Level (Leq), time above a specified level (TA), maximum A-weighted Sound Level (LAmax), Sound Exposure Level (SEL), and Sound Pressure Level (SPL); and

(d) Although single event metrics such as A-weighted Maximum Sound Level are easily understood, they are useful only to analyze responses to single events, not the cumulative effect of multiple events.

Question 2

What are the social effects of airport noise exposure in residential communities?

The FAA has found that the dose-response relationship, as represented by DNL and "Percent Highly Annoyed" (%HA), remains the best available approach to analyze total health and welfare impacts for the vast majority of transportation noise analysis situations.

FICON findings:

(a) Complaints are an inadequate indicator of the full extent of noise effects on a population;

(b) Annoyance is a summary measure of the general adverse reactions of people living in noisy environments, such as speech interference, sleep disturbance, desire for tranquil environment, and interference with hearing telephone, radio, or television satisfactorily;

(c) The dose-response relationship, as represented by the %HA, at a given DNL remains the best available approach to analyze total health and welfare impacts for the vast majority of transportation noise analysis situations;

(d) The 10 dB nighttime adjustment (each event is multiplied by 10) of DNL during the 10 p.m. to 7 a.m. period is designed specifically to account for the intrusiveness of any noise source during this period, and the potential impact on sleep. There are no new data that justify changing this adjustment;

(e) If supplemental analysis for sleep disturbance is desired, an interim dose-response model may be used (developed by the United States Air Force Armstrong Laboratories (FICON Vol. II, Sec. 3.2.2.3), which uses SEL); and

(f) Public health and welfare effects of aircraft noise below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in percent of people highly annoyed.

Question 3

What are the economic effects of airport noise exposure in residential communities?

To quantify the economic impact associated with a decrease in property values, the FAA uses a case study approach to provide a benchmark of the expected benefits over extended periods of time. On the basis of a review of several statistical studies on changes in property values as they relate to airport noise, the FAA has assumed, for evaluation purposes, that property values increase one-half on one percent for every decibel decrease in DNL.

FICON findings:

The FICON report does not directly address the economic effects of airport noise exposure in residential communities. It does contain a discussion on the requirements of airport noise compatibility planning under FAR part 150 and some mitigation actions such as soundproofing, which affects the value of a residence.

(a) The FAA and the Department of Defense aircraft noise criteria for compatible land use around airports is the same criteria used in Housing and Urban Development's (HUD) regulatory guidance for this purpose. A noise level of DNL 55 dB to 65 dB is defined as the area of moderate impact, and is considered compatible for residential use. A noise level of DNL 65 dB to 75 dB is defined as the area of significant impact, which is not compatible for residential use without appropriate sound attenuation measures. And, a noise level of DNL exceeding 75 dB is defined as the area of severe impact, which is not compatible for residential use even with sound attenuation; and

(b) There is a need to update portions and enhance public understanding of the application and interpretation of Federal land use compatibility guidelines.

Question 4

What are the auditory and nonauditory health effects of airport noise exposure in residential communities?

The FAA is aware of a number of isolated studies contending that aircraft noise has nonauditory health effects at high levels; however, none contain sufficient definitive evidence to establish exposure criteria apart from current Federal guidelines for compatible land use around airports. The FAA agrees that additional research is needed to determine if such criteria are appropriate, and if so, at what exposure level.

FICON findings:

(a) The EPA recommended an annual average daily exposure of 70 dB or less to protect hearing for exposures of 40 years or more. Guidelines issued by the Committee on Hearing, Bioacoustics and Biomechanics (CHABA) of the National Academy of Science indicate a level of DNL 75 dB is adequate to protect hearing;

(b) No definitive evidence of nonauditory health effects from aircraft noise was found, particularly at levels below DNL 70 dB; and

(c) Research will continue on community reactions to aircraft noise, including sleep disturbance, nonauditory health effects, speech interference, as well as the development of improved assessment criteria for these effects.

Question 5

What is the role of ambient noise in assessing the effects of airport noise on people?

The FAA considers it appropriate to address ambient noise in circumstances where evidence suggests it will have either a positive or negative effect on community response to aircraft noise.

FICON findings:

(a) Although ambient or background noise effects likely modify community response to aircraft noise exposure, through both masking and enhancement, no specific analysis procedures can be recommended with confidence; and

(b) Additional research to develop an approach for inclusion of ambient sound levels in current aviation noise assessment methodologies is recommended.

Question 6

What level of airport noise creates an adverse impact on people?

The extent of airport noise impacts is associated with the compatibility of existing and planned land uses in the vicinity of the airport. The FAA criteria mirror HUD's regulatory guidance on compatible land use around airports. A level of DNL 65 dB or less is considered compatible for residential use; DNL 65 dB to 75 dB is not compatible without appropriate sound attenuation measures; and DNL exceeding 75 dB is not compatible under any circumstances. The FAA threshold of significant noise impact for a proposed agency action is an increase of DNL 1.5 dB or greater in areas with noise sensitive uses at exposure levels of DNL 65 dB or greater.

FICON findings:

(a) Predicting %HA, is a reasonable measure of the impact of noise on humans at a specified level of DNL;

(b) The DNL methodology takes into account that some people will be highly annoyed at relatively low levels of noise;

(c) Currently, technical knowledge cannot support inference of a causal or consistent relationship, or a quantitative

does-response model, between residential aircraft noise exposure and health consequences. Thus, no technical means are available for predicting extra-auditory health effects of noise exposure. Current findings indicate that further rigorous studies, such as an appropriately designed prospective epidemiological study, are urgently needed; and

(d) Acceptable levels of impact are not clearly defined by scientific research, and are largely policys based in part on community standards.

The FAA encourages public participation in this opportunity to comment to comply with the requirements of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992. The data received from this request will be considered in preparing the report to Congress.

Issued in Washington, DC on March 22, 1993.

Louise E. Maillett,

Director, Office of Environment and Energy.

[FR Doc. 93–7098 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee ; Parts Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the Parts Working Group.

SUMMARY: Notice is given of the establishment of the Parts Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on aircraft certification procedures issues.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established the Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230; February 19, 1993). One area of the ARAC deals with is aircraft certification procedures (57 FR 39267; August 28, 1992). These issues involve the procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (FAR), and Special Federal Aviation Regulation No. 36 (SFAR 36), which are the responsibility of the FAA Director of Aircraft Certification. By this notice, these issues are expanded to include advice on requirements relating to parts found in FAR parts 43, 45, and 145.

Section 601 of the Federal Aviation Act of 1958 provides, among other things, statutory authority for the Administrator to set minimum standards governing the design, materials, workmanship, construction, and performance of aircraft, aircraft engines, and propellers (referred to below as "products"), and for parts for these products. Under this authority, the FAA regulates the manufacture, maintenance, and modification of these products, as well as the design and production of parts used in the manufacture, maintenance, and modification of those products.

Replacement and modification parts are approved in several ways. Parts used during the original manufacture of the product are approved under the type and production certificates, or a technical standard order approval for that product. Thus, a part purchased from the holder of a production certificate or technical standard order approval is approved by virtue of those certificates. An owner-operator may produce parts for maintaining or altering his or her own product. Standard parts such as nuts and bolts which conform to an established industry or U.S. specification are considered to be approved parts. Any replacement or modification part which does not fall into any of the above categories must be produced under the procedures for a Parts Manufacturer Approval (PMA).

The holder of a PMA is authorized to produce replacement and modification parts for sale for installation on aviation products. Regulations in subpart K of FAR part 21, FAR part 43, and FAR part 45, prescribe requirements for obtaining, and the responsibilities of holding a PMA. The regulations governing PMA have remained essentially unchanged since their inception. However, the original intent and scope of the PMA rules no longer respond to industry needs. Today, parts produced under PMA account for a significant portion of all aviation parts sold. There also have been fundamental changes in the aviation industry in the production and distribution of replacement parts. The Parts Working Group is being formed to review and recommend changes to the rules governing PMA, and replacement and modification parts.

Specifically, the Parts Working Group's task is the following:

Task: The Parts Working Group is charged with making recommendations to the ARAC concerning the need for new or revised rules governing Parts Manufacturer Approvals, and for replacement or modification parts in Subpart K of FAR Part 21, FAR part 43, and FAR part 45 (specifically section 45.15) and Part 145. The Parts Working Group will submit recommendations to the ARAC, which will determine whether to forward them to the FAA.

Reports: A. Recommend time line(s) for completion of the task, including rationale, for consideration at the ARAC meeting to consider aircraft certification procedures issues held following publication of this notice.

B. Give a detailed conceptual presentation on the proposed recommendations to the ARAC before proceeding with the work stated in Item C. below.

C. Develop a Notice of Proposed Rulemaking (NPRM) proposing the new or revised rules for PMA holders and for replacement and modification parts, a supporting economic and other required analysis, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition.

D. Given a status report on the task at each meeting of the ARAC held to consider aircraft certification procedures issues.

The Parts Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A Working Group member need not be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under "**FOR FURTHER INFORMATION CONTACT**" expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with Chairs of the ARAC Issue Group and the Parts Working Group; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the ARAC is necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Parts Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to

participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on March 19, 1993.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–7088 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Delegation System Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the delegation system working group.

SUMMARY: Notice is given of the establishment of the Delegation System Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on aircraft certification procedures issues.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established the Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230; February 19, 1993). One area of the ARAC deals with is aircraft certification procedures (57 FR 39267; August 28, 1992). These issues involve the procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (FAR), and Special Federal Aviation Regulation No. 36 (SFAR 36), which are the responsibility of the FAA Director of Aircraft.

Section 314 of the Federal Aviation Act of 1958 provides, among other things, authority for the Administrator to delegate to any properly qualified private person any functions respecting the examination, inspection and testing necessary to the issuance of certificates under Title VI of that Act, and the issuance of such certificates under Title VI of that Act in accordance with standards established by the Administrator. Under this authority, the FAA has established a system of delegations to private persons, including companies, to perform certain aircraft certification functions. Persons holding these delegations are commonly referred to as "Representatives of the Administrator." Federal Aviation Regulations have been promulgated and codified in FAR parts 21 and 183, and SFAR 36 to prescribe the delegations relative to aircraft certification functions. These presently include:

- Delegation Option Authorizations (FAR part 21, subpart J).
- Designated Alteration Station Authorization (FAR part 21), subpart M).
- Designated Engineering Representatives (FAR 183.29).
- Designated Manufacturing Inspection Representatives (FAR 183.31).
- Designated Airworthiness Representatives (FAR 183.33).
- Companies that hold SFAR 36 authority (SFAR 36).

The present system of delegations to private organizations has evolved over the past 41 years of aircraft certification experience and regulatory development. During this period the FAA has not experienced any significant difficulties that would cause the FAA to believe that the high level of safety or the quality of approvals processed by these organizations is any less than the safety or quality of approvals actually processed by FAA aviation safety engineers or aviation safety inspectors. Thus, an opportunity exists to expand the applicability of these delegation concepts to persons, including organizations, that are not presently eligible. This would reduce the cost of the certification process to both industry and the public. This would also provide a permanent replacement regulation for the temporary SFAR 36.

Specifically, the Delegation System Working Group's task is the following:

Task: The Delegation Systems Working Group is charged with reviewing the current system of delegations to perform aircraft certification functions to determine what would improve the safety, quality and effectiveness of the system, and making recommendations to the ARAC concerning new or revised rules and advisory, guidance and other (including legislative and training) collateral materials. The FAA Aircraft Certification Service is seeking a comprehensive, up-to-date, systematic approach for delegating aircraft certification functions to both individuals and organizations, a smooth transition from the delegation systems currently used to the system recommended, and a system as compatible as practicable with the systems used by the civilian aviation authorities of other countries. The Delegation System Working Group will submit recommendations to the ARAC, which will determine whether to forward them to the FAA.

Reports

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the ARAC meeting held to consider aircraft certification procedures issues following publication of this notice.

B. Give a detailed conceptual presentation on the proposed recommendations to the ARAC before proceeding with the work stated in Item C, below. If the task assigned requires the development of more than one Notice of Proposed Rulemaking, identify what proposed amendments will be included in each notice.

C. Develop one or more Notices of Proposed Rulemaking (NPRM) proposing the new or revised rules for delegating aircraft certification functions to both private individuals and organizations supporting economic and other required analysis, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition.

D. Give a status report on the task at each meeting of ARAC held to consider aircraft certification procedures issues.

The Delegation System Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A Working Group member need not be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should *write* the person listed under **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with Chairs of the Issues Group and the Delegation System Working Group; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee is necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the Delegation System Working Group will not be open to the public except to the extent that individuals with an interest and

expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on March 19, 1993.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–7086 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Production Certification Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the production certification working group.

SUMMARY: Notice is given of the establishment of the Production Certification Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on aircraft certification procedures issues.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Aircraft Certification Service (AIR–3), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established the Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230; February 19, 1993). One area of the ARAC deals with is aircraft certification procedures (57 FR 39267; August 28, 1992). These issues involve the procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (FAR), and Special Federal Aviation Regulation No. 36 (SFAR 36), which are the responsibility of the FAA Director of Aircraft Certification.

The FAA has established four kinds of production approvals: Production Certificates, Approved Production Inspection Systems, Technical Standard Order Authorizations, and Parts Manufacturer Approvals. The regulations governing each kind of production approval evolved separately over the years, so each has different quality assurance and procedural requirements. As a result, persons producing the same aviation product or part to the same airworthiness design standards may meet different production requirements depending on the kind of production approval held. These inconsistencies result in different levels of surveillance of the products and parts produced. The differences also create standardization and interpretation problems for both the commercial aviation manufacturing industry and the FAA in administering the production approval system. This has resulted in longstanding industry and FAA concerns with the regulatory structure for the production of aircraft products and parts. A need exists for a single production approval with a single set of cost-effective quality assurance requirements. This production approval regulatory structure needs to adjust to the size and complexity of the manufacturing activity the approval holder engages in, and to respond to the most modern and up-to-date manufacturing practices.

The FAA has also received recommendations concerning the establishment of internal audit systems by the production approval holders. Many production approval holders maintain an internal audit system. There is no regulatory requirement to maintain one, however, and there are no regulatory standards to assure their effectiveness. The wisdom of such internal audit systems was demonstrated to the FAA in Operation Snapshot, a nationwide review of existing quality assurance systems of aviation product and parts manufacturers. The Production Certification Working Group is established to address these issues.

Specifically, the Production Certification Working Group's task is the following:

Task: The Production Certification Working Group is charged with making recommendations to the ARAC concerning the modernization of requirements applicable to production approval holders in subparts F, G, H, J, K and O of FAR Part 21. These recommendations involve streamlining the rules to establish a more modern, standardized set of production approval requirements more responsive to current industry production practices. The Production Certification Working Group will submit recommendations to the ARAC, which will determine whether to forward them to the FAA.

Reports

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the ARAC meeting held to consider aircraft certification procedures issues following publication of this notice.

B. Give a detailed conceptual presentation on the proposed recommendations to the ARAC before proceeding with the work stated in Item C, below.

C. Develop a Notice of Proposed Rulemaking (NPRM) proposing the new standards for production approval holders, supporting economic and other required analysis, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition.

D. Give a status report on the task at each meeting of the ARAC held to consider aircraft certification procedures issues.

The Production Certification Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A Working Group member need not be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under "FOR FURTHER INFORMATION CONTACT" expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with Chairs of the Issue Group and the Production Certification Working Group; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the ARAC is necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Production Certification Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on March 19, 1993.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–7087 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Emergency Locator Transmitter Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the Emergency Locator Transmitter Working Group.

SUMMARY: Notice is given of the establishment of the Emergency Locator Transmitter Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on aircraft certification procedures issues.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–5364.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established the Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230; February 19, 1993). One interest area of the ARAC is aircraft certification procedures (57 FR 39267; August 28, 1992). These issues involve procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director of Aircraft Certification. By this notice, these issues are expanded to include advice on requirements for automatic emergency locator transmitters (ELT) found in FAR part 91, and for survival ELT found in FAR parts 25, 29, 121, 125, and 135.

ELT approved under Technical Standard Order (TSO) C91 during the 1970s and 1980s experienced generally unsatisfactory performance. To deal with the problem, the FAA issued Notice 90–11 (55 FR 12316, April 2, 1990). This notice contained four basic proposals: (1) ELT approved under recently adopted and improved TSO–C91a, or a later issued TSO for ELT, would be required for all newly-manufactured airplanes and for the replacement of existing ELT which became unusable or unserviceable; (2) Newly issued TSO–C126 for 406 MHz ELT (adopted in December 1992) would also constitute compliance with the existing and proposed rules requiring an ELT; (3) Improved standards would be established for survival ELT (although most of the unsatisfactory field experience had been with automatic ELT); and (4) The manufacture of ELT under TSO–C91 would be terminated simultaneously with issuance of the final rule based on Notice 90–11.

In addition to the proposals outlined above, the FAA solicited comments on the need for a fleet-wide ELT replacement program. The FAA is developing a document disposing of the rulemaking proposals in Notice No. 90–11. However, the FAA has chosen to ask the ARAC to consider the issues raised in the comments on that notice dealing with fleet-wide ELT replacement program. This will be accomplished by the Emergency Locator Transmitter (ELT) Working Group whose recommendations will be considered and disposed of by the ARAC Aircraft Certification Procedures Interest Group.

Specifically the ELT Working Group's tasks are the following:

Task 1: The ELT Working Group is charged with reviewing the comments received on FAA Notice of Proposed Rulemaking 90–11 dealing with a fleet-wide ELT replacement program. The review should address at least the following issues: (1) Whether automatic ELT should be installed (retrofit) on all transport and commuter category airplanes; (2) Whether survival ELT should be installed (retrofit) on all aircraft operating over water or in remote areas; (3) Whether all ELT now installed on airplanes should be replaced (retrofit); and (4) Whether ELT to be installed on newly manufactured airplanes or as replacements, or under items (1)–(3), above, should be either the improved 121.5/243 megahertz (TSO–C91a) or the 406 megahertz (TSO–C126) variety, or only the latter. After completing that review, present a report of findings and recommendations to the ARAC for consideration.

Task 2: Based on the results of task 1 and the guidance received from the ARAC, develop recommendations for rulemaking on the subject of ELT installations and the variety or varieties to be used. If rulemaking is not recommended in whole or in part, develop a report recommending disposition of the comments in Notice 90–11, including the issues identified above, and recommending rulemaking not be pursued in whole or in part. In either event, present the working group's final work product to the ARAC for review and final disposition.

Reports

A. Recommend time line(s) for completion of each task, including rationale, for consideration at the ARAC meeting to consider aircraft certification procedures issues held following publication of this notice.

B. Give a detailed presentation on conclusions and recommendations in the report for Task 1 to the ARAC, and receive ARAC approval, before proceeding with the work stated in Item C, below.

C. Develop a Notice of Proposed Rulemaking (NPRM) proposing the new standards for emergency locator transmitters, supporting economic and other required analysis, advisory and guidance material, and any other collateral documents the Working Group determines to be needed. Alternatively, develop a report that recommends disposition of the comments on Notice 90–11, including the specific issues identified, and recommends rulemaking not be pursued. Present these recommendations to the ARAC for further consideration and disposition.

D. Give a status report on the tasks at each meeting of the ARAC held to consider aircraft certification procedures issues.

The ELT Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A Working Group member need not be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under "**FOR FURTHER INFORMATION CONTACT**" expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the Chairs of the Issue Group and the ELT Working Group; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the ARAC is necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the ELT Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on March 19, 1993.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–7102 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Prepare an Environmental Impact Statement (EIS) for an Instrument Landing System (ILS) on Runway 11 at Newark International Airport, Newark, NJ

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice to advise the public, local and State governments, and all interested agencies that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of constructing and operating an Instrument Landing System (ILS) facility on Runway 11 at Newark International Airport, Newark, New Jersey. The purpose of this proposed action is to reduce delays to the aircraft and passengers utilizing Newark International Airport and to provide more efficient use of the existing runways.

ADDRESSES: Comments may be submitted in writing and be mailed or hand delivered to the FAA at the following address: Mr. Herbert Ross (AEA–401), Assistant Manager, Airway Facilities Division, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hom or Mr. Frank Cruz of the Federal Aviation Administration at (718) 553–1508.

SUPPLEMENTARY INFORMATION: An FAA evaluation concluded that the installation of an ILS on Runway 11 at Newark International Airport would reduce aircraft and passenger delays and provide for greater efficiency in the use of the existing runways. The FAA, in cooperation with the Port Authority of New York and New Jersey (PANYNJ), began the preparation of an Environmental Assessment (EA) for an Instrument Landing System/Microwave Landing System (ILS/MLS).

An initial public hearing was held on September 19, 1991 to receive the comments regarding the Draft Environmental Assessment (EA) for the proposed Runway 11 ILS/MLS at Newark International Airport. Both verbal and written comments were received. These comments will be incorporated in the Draft EIS. An MLS is no longer part of the proposed action.

Several alternatives to the proposed action will be evaluated in the EIS, including: Shifting the demand to other airports; restricting aircraft operations during peak operating hours; installing a precision instrument landing system on another runway; and no action.

An analysis of the data used to develop the Environmental Assessment that led to the recommendation to conduct an Environmental Impact Statement (EIS) for the proposed installation of an ILS on Runway 11 at Newark International Airport, shows that this project is separate from the current EIS that is being studied for the Expanded East Coast Plan (EECP). The Runway 11 precision approach is not considered a component of the EECP, rather it is a stand alone project needed to reduce operating delays to Newark International Airport. Thus, the need to prepare a separate EIS is reasonable and appropriate.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from Federal, State, and local agencies, and all other interested parties. Comments or questions concerning this proposed action should be directed to the FAA at the addresses provided above.

Issued in Jamaica, New York, on March 19, 1993.

Herbert Ross,

Assistant Manager, Airway Facilities Division, FAA Eastern Region.

[FR Doc. 93–7096 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 19, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10) Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 18, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 22469.

Petitioner: St. Louis University/Parks College.

Sections of the FAR Affected: 14 CFR 141 appendices A, C, D, and F.

Description of Relief Sought: To extend the termination date of Exemption No. 3495, which expires August 31, 1993, and which allows Parks College to train students to a performance standard in lieu of the minimum flight experience requirements. This exemption does not allow a reduction of the minimum flight experience requirements for solo-cross country flight.

Docket No.: 25974.

Petitioner: Air Transport Association.

Sections of the FAR Affected: 14 CFR 91.27 and 47.49.

Description of Relief Sought: To extend the termination date of Exemption No. 5318, which expires July 30, 1993, and which grants Air Transport Association the authority to temporarily operate registered, airworthy aircraft within the United States without the actual registration or airworthiness certificates on board.

Docket No.: 26847.

Petitioner: Flight Safety International.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To amend Exemption No. 5528 to allow Flight Safety International to recommend graduates of its approved certification courses for flight instructor certificates without having to take the Federal Aviation Administration written or flight tests.

Docket No.: 27093
Petitioner: Mr. John R. Salomone.
Sections of the FAR Affected: 14 CFR 121.547.
Description of Relief Sought: To allow Mr. Salomone to gain access to the forward observer's seat on the flight deck of an air carrier aircraft to observe operations for educational purposes.

Docket No.: 27112.
Petitioner: Rex D. Bentley.
Sections of the FAR Affected: 14 CFR 65.91(c)(1).
Description of Relief Sought: To allow Mr. Rex D. Bentley to take the Inspection Authorization exam after holding an airframe and powerplant (A & P) certificate for one and one half years (in lieu of three years), in addition to having acquired 22 years experience in naval aviation.

Docket No.: 27121
Petitioner: Tower Air, Inc.
Sections of the FAR Affected: 14 CFR 121.434(e).
Description of Relief Sought: To allow Tower Air, Inc., to use flight attendants who have operating experience on the same aircraft type with a foreign carrier, without those attendants receiving the 5 hours of supervised initial operating experience on the petitioner's aircraft.

Docket No.: 27132.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.57(e)(1)(i) and 121.683(a)(1).
Description of Relief Sought: To allow member airlines of the Air Transport Association and similarly situated part 121 operators relief from the 6-month instrument experience and record keeping requirements for pilots serving as pilot in command.

Docket No.: 27161.
Petitioner: Air Transport Association.
Sections of the FAR Affected: 14 CFR 121.417(c)(2)(ii)(B).
Description of Relief Sought: To relieve member airlines of Air Transport Association from the requirement to train crewmembers, initially and every 24 calendar months, on the transfer of aircraft slide/raft packs from one door to another.

Dispositions of Petitions

Docket No.: 26503.
Petitioner: ABX Air, Inc.
Sections of the FAR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5307, which expires May 31, 1993, and which allows ABX Air, Inc., to conduct operations in accordance with the requirements applicable to a domestic air carrier, even though ABX Air, Inc., is a supplemental air carrier.

GRANT, March 11, 1993, Exemption No. 5307A

Docket No.: 27023.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 25.1415(c) and 121.339(c).
Description of Relief Sought/ Disposition: To allow Boeing Commercial Airplane Group to keep stowed those survival kits that are stowed separately from their designated attachment points on the slide/rafts until after a ditching has occurred, and to attach them only after slide/raft deployment.

GRANT, March 5, 1993, Exemption No. 5613

Docket No.: 27086.
Petitioner: Bombardier, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2), (d)(2), and (d)(3); 61.67(d)(2); 61.157(d)(1) and (2), and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: To allow Bombardier, Inc., to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR.

GRANT, March 11, 1993, Exemption No. 5617

Docket No.: 27156.
Petitioner: World Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(2), (3), and (4), and 121.413(a).
Description of Relief Sought/ Disposition: To permit World Airways, Inc. (World), to use Douglas Aircraft Corporation (DAC) MD–11 check airmen to provide operating experience to World's pilots during World's Hadj operations, without DAC's check airmen meeting all of the applicable training requirements of part 121, subpart N.

GRANT, March 11, 1993, Exemption No. 5615

[FR Doc. 93–7100 Filed 3–26–93; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on April 21, 1993 at 9 a.m. Arrange for oral presentations by April 7, 1993.

ADDRESSES: The meeting will be held at the Hilton Inn, Garden Room, University and Manuel Streets, Albuquerque, NM 87110.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on April 21, 1993, at the Hilton Inn, University and Manuel Streets, Albuquerque, NM 87110. The agenda for the meeting will include:

- Opening Remarks.
- Review of Action Items.
- Reports of working groups.
- Discussion of harmonization and working group schedules.
- Status of harmonization activities and organization of working groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by April 7, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on March 22, 1993.

William J. Sullivan,

Assistant Executive Director for Transport Airplane and Engine Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–7091 Filed 3–26–93; 8:45 am]
BILLING CODE 4910–13–M

Proposed Modification of the Terminal Control Area at Miami, FL; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to modify the Miami, FL, Terminal Control Area (TCA), and to provide interested persons an opportunity to discuss the proposal. The TCA modification is being considered due to the increased volume of traffic arriving and departing the Miami and Fort Lauderdale International Airports. All comments received during these meetings will be considered prior to the issuance of a Notice of Proposed Rulemaking.

TIME AND DATE: These meetings will be held from 7 p.m. to 10 p.m., on Wednesday, May 12 and Thursday, May 13, 1993. Comments must be received on or before July 12, 1993.

Date: Wednesday, May 12, 1993.
Place: Miami International Airport, Concourse "B" Auditorium, Miami, FL.

Date: Thursday, May 13, 1993.
Place: Broward Community College—South Campus, Auditorium (room 133), Pembroke Pines, FL, (Adjacent to North Perry Airport).

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

CONTACT PERSON FOR MORE INFORMATION: Jimmy C. Mills; Manager, Airport Traffic Control Tower; Miami International Airport; Miami, FL 33152; telephone: (305) 871–2670.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

Agenda for Each Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on March 18, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–7094 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at McGrath, AK; Change in Facility Operations

Notice is hereby given that on or about April 3, 1993, the Flight Service Station at McGrath, Alaska will be closed. Services to the general aviation public formerly provided by this facility will be provided by the Automated Flight Service Station at Kenai, Alaska. Beginning May 1, 1993, the McGrath FSS will reopen and operate as a seasonal part-time Flight Service Station from May 1 through Sept. 30 annually. This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on March 19, 1993.

David F. Morse,

Deputy Regional Administrator, Alaskan Region.

[FR Doc. 93–7089 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 28, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James DeLong, Director of Aviation of the City of Philadelphia at the following address: Department of Commerce, Division of Aviation, 3751 Island Avenue, Philadelphia, Pennsylvania 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia, Division of Aviation, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, suite 1, Camp Hill, Pennsylvania 17011, (717 782–4548). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 18, 1993, the FAA determined that the application to use the revenue from a PFC submitted by The City of Philadelphia, Division of Aviation, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 20, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1992.

Proposed charge expiration date: July 1, 1995.

Total estimated PFC revenue: $76,169,000.

Brief description of proposed project(s): Rescue Boat Facility, Upgrade Airfield Signage, Fire Alarm System Expansion, Ground Transportation Improvements, Moving Sidewalks.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All Air Taxi/commercial operators filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Philadelphia, Division of Aviation.

Issued in Jamaica, New York on February 25, 1993.

Peter A. Nelson,

Assistant Manager, Airports Division, Eastern Region.

[FR Doc. 7101 Filed 3–26–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 22, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0057.

Form Number: IRS Form 1024.

Type of Review: Revision.

Title: Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120.

Description: Organizations wanting to be exempt from Federal income tax under section 501(a) as an organization described in most paragraphs of section 501(c), or a legal service plan described in section 120 must apply to IRS for a determination or ruling letter. The information collected is used to determine whether the organization qualifies for exempt status.

Respondents: Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 13,532.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
1024	52 hrs., 51 min.	2 hrs., 23 min.	3 hrs., 22 min.
1024 Part IV	58 min.	35 min.	38 min.
1024, Sch. A	58 min.	18 min.	19 min.
1024, Sch. B	1 hr., 40 min.	18 min.	20 min.
1024, Sch. C	58 min.	12 min.	13 min.
1024, Sch. D	4 hrs., 4 min.	18 min.	22 min.
1024, Sch. E	1 hr., 40 min.	18 min.	20 min.
1024, Sch. F	2 hrs., 9 min.	6 min.	8 min.
1024, Sch. G	1 hr., 55 min.	6 min.	8 min.
1024, Sch. H	1 hr., 40 min.	6 min.	8 min.
1024, Sch. I	5 hrs., 30 min.	30 min.	37 min.
1024, Sch. J	2 hrs., 23 min.	6 min.	8 min.
1024, Sch. K	3 hrs., 21 min.	6 min.	10 min.
1024, Sch. L	3 hrs., 7 min.	24 min.	28 min.
1024, Sch. M	1 hr., 26 min.	12 min.	14 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 834,418 hours.

OMB Number: 1545–0134.

Form Number: IRS Form 1128.

Type of Review: Revision.

Title: Application to Adopt, Change, or Retain a Tax Year.

Description: Form is needed in order to process taxpayers' requests to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Farms, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
Parts I and II	9 hrs., 20 min.	2 hrs., 35 min.	2 hrs., 51 min.
Parts I and III	13 hrs., 52 min.	3 hrs., 58 min.	4 hrs., 22 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 354,800 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–7133 Filed 3–26–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 58

Monday, March 29, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, April 1, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 1, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Private Radio—Title: Amendment of the Commission's Rules to Modify Signature Requirements for License Applications in the Private Radio Services. Summary: The Commission will consider adoption of an *Order* concerning application signature requirements to facilitate electronic filing of applications in the private radio services.

2—Office of Plans and Policy—Title: Inquiry into Encryption Technology for Satellite Cable Programming (PP Docket No. 92–234). Summary: The Commission will consider adoption of a *Report* concerning competition in the provision of encryption equipment for satellite cable programming and related technological issues.

3—Mass Media—Title: Implementation of Sections 3, 9, and 14 of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation Provisions (MM Docket No. 92–266). Summary: The Commission will consider the adoption of rules to implement the rate regulation provisions of the Cable Act.

4—Mass Media—Title: Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992—Program Access Provisions (MM Docket No. 92–265). Summary: The Commission will consider the adoption of rules to implement the program access provisions of the 1992 Cable Act.

5—Mass Media—Title: Network Television Financial Interest and Syndication Rules (MM Docket No. 90–162). Summary: The Commission will consider the adoption of a *Report and Order* regarding the network television financial interest and syndication rules and its response to the decision of the Court of Appeals in Schurz Communications, Inc., et al., v. FCC.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: March 25, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7351 Filed 3–25–93; 3:31 pm]

BILLING CODE 6712–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 15521—dated March 23, 1993.

AMENDED AGENDA ITEM 6:

6. Amended FY 1993 Expenditure Plan, amended FY 1994 Budget Request, and FY 1995 Authorization Request.

In conformity with 19 CFR § 201.37(b), Commissioners Nuzum, Crawford, Brunsdale, Rohr, Watson, and Newquist determined by circulation of an action jacket that Commission business required the amendment to the agenda for the meeting of March 30, 1993, to include in item 6 the amended FY 1993 Expenditure Plan, and affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Dated: March 25, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–7294 Filed 3–25–93; 3:30 pm]

BILLING CODE 7020–02–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

DATES: April 26–28, 1993, 8:30 a.m. to 5:00 p.m.

LOCATION: Sheraton Manhattan Hotel, Seventh Avenue and 52nd Street, New York, New York 10019, (212) 581–1000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267–3846, (202) 267–3232 (TDD).

The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. It was established in 1978 as an advisory board within the Department of Education. The Rehabilitation Act Amendments of 1984 transformed the Council into an independent agency. The mission of the National Council on Disability is to provide leadership in the identification of emerging issues affecting people with disabilities and in the development and recommendation of disability policy to the President and the Congress.

The quarterly meeting of the National Council shall be open to the public. The proposed agenda includes:

Release of the report, *Meeting the Unique Needs of Minorities with Disabilities*
Report from the Chairperson and the Executive Director
Update on the release of the report, *ADA Watch—Year One*
Update on the release of the reports on access to health insurance, education of students with disabilities, and the financing of assistive technology
Committee Meetings and Committee Reports
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 24, 1993.

Andrew I. Batavia,

Executive Director.

[FR Doc. 93–7211 Filed 3–25–93; 8:55 am]

BILLING CODE 6820–BS–M

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federal register

Monday
March 29, 1993

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
Protective Breathing Equipment; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27219; Notice No. 93–2]

RIN 2120–AD74

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise the Federal Aviation Regulations (FAR) governing portable protective breathing equipment (PBE) required for crewmembers' use in combatting in-flight fires. In response to a petition from the Air Transport Association (ATA), the FAA proposes, for cargo-only operations, to reduce the number of portable PBE units that are required for the cargo area of the airplane to one unit. For operators of passenger-carrying airplanes, the proposal would eliminate the need for PBE units for cargo compartments and also clarify that a separate PBE unit is required for each required hand fire extinguisher. Lastly, this notice would eliminate the requirement that PBE units indicate the quantity of the gas supply and that a crewmember check the PBE unit to see that it is fully charged. By eliminating unnecessary costs to carriers, this action should accommodate the needs of the air carrier industry while still protecting public safety.

DATES: Comments must be received on or before May 28, 1993.

ADDRESSES: Comments on the proposals may be delivered or mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27219, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked "Docket No. 27219." Comments may be examined in the Rules Docket, room 915G, weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments as they may desire. Comments relating to the potential economic, environmental, energy, or federalism impact of the proposals contained in this notice are also invited.

The comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed amendments, and the proposals contained in this notice may be changed in light of comments received. All comments received, as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for submitting comments. The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27219." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests should be identified by the NPRM number or docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The PBE requirements that specifically apply to part 121 certificate holders are found in § 121.337 of the FAR (14 CFR 121.337). The current form of this regulation was established by FAR Amendment No. 121–193 (52 FR 20956; June 3, 1987), which became effective on July 6, 1987, and FAR Amendment No. 121–212 (55 FR 5551; February 15, 1990).

The PBE required by § 121.337 fall into two categories. The first such category consists of PBE for use by flight crewmembers (i.e., pilots, flight engineers, and flight navigators) at their assigned duty stations on the flight deck. See § 121.337(b)(8). These units may be either fixed or portable; the important thing is that they be easily accessible for immediate use by the flight crewmembers at their duty stations. This type of PBE must be approved to meet the standards in Technical Standards Order (TSO) C–99.

The second category of required PBE, the subject of this NPRM, consists of portable PBE units which are intended for use by all crewmembers (i.e., not just pilots, flight engineers, and flight navigators, but flight attendants also) when they investigate and combat fires throughout the aircraft. See § 121.337(b)(9). This type of PBE must be approved to meet the standards in TSO C–116 and is identified as "portable PBE."

This NPRM deals with both cargo-only operations and passenger-carrying operations. In regard to cargo-only operations, this NPRM discusses the following issues:

(1) Should the regulations continue to require portable PBE units in the cargo area of airplanes that carry only cargo, or are the PBE units on the flight deck sufficient?

(2) If PBE is still needed in the cargo area of cargo-only operations, should the regulations continue to require a separate PBE unit for each individual Class A, B, or E cargo compartment?

As for passenger-carrying operations, this NPRM discusses the following issues:

(1) Should one portable PBE unit be required for each hand fire extinguisher in the passenger compartments of transport category airplanes, or should it be permissible to have one PBE for every two hand fire extinguishers as long as both of the fire extinguishers are within 3 feet of the PBE?

(2) Should the regulations require that there be portable PBE units in the cargo areas of passenger-carrying operations in addition to those in the passenger compartments?

Cargo-Only Operations

Section 121.337(b)(9)(i) requires that one PBE unit with a portable breathing gas supply be easily accessible and conveniently located for immediate use in each Class A, B, and E cargo compartment that is accessible to crewmembers in the compartment during flight. (For definitions of the various classes of cargo compartments, see 14 CFR 25.857).

Under § 121.337(b)(9)(i), a separate PBE unit is required for each Class A, B, and E cargo compartment; thus, if there are a total of seven such compartments, then seven portable PBE units would be required under the current provision.

On behalf of six member airlines operating cargo-only aircraft, ATA

petitioned the FAA on August 14, 1989, for a permanent exemption from § 121.337(b)(9)(i). In its petition, the ATA argued that the current requirement to install a portable PBE unit for each Class E cargo compartment should be eliminated. (A Class E cargo compartment is one on airplanes used only for the carriage of cargo. See § 25.857(e), containing this and further requirements for a compartment to be classified as a Class E cargo compartment.)

In support of its petition, the ATA argued that Class E cargo compartments are generally inaccessible in flight and that established crewmember procedures are to land the aircraft as soon as possible and to combat a fire in the compartment only as a last resort. According to the ATA, the portable PBE unit on the flight deck, as required by § 121.337(b)(9)(iii), would suffice in the unlikely event that a crewmember would have to combat an in-flight fire.

The FAA agreed with the ATA that the PBE requirements for cargo-only airplanes deserved further consideration through the rulemaking process. The agency therefore extended the compliance date for certificate holders operating cargo-only airplanes to install portable PBE units for use in Class A, B, or E cargo compartments from January 31, 1990, to February 18, 1992,[1] and invited interested persons to submit comments on this subject to Docket No. 24792. See FAR Amendment No. 121–212 (55 FR 5548; February 15, 1990), which became effective on February 15, 1990.

The Air Line Pilots Association (ALPA), Airborne Express, and Mid-Pacific Air Corporation responded to the request for public comment set forth in FAR Amendment No. 121–212. Each of the commenters took the position that the portable PBE unit already required on the flight deck by § 121.337(b)(9)(iii) was adequate for investigating and combatting fires in Class E cargo compartments.

The FAA, however, does not agree. While the FAA believes that the current requirement for a separate portable PBE unit for each Class A, B, or E cargo compartment can safely be eliminated, the agency does not agree that the portable PBE unit on the flight deck is sufficient for cargo-only airplanes. Rather, in the FAA's view, safety requires that an additional portable PBE unit be available for possible use in the cargo area of cargo-only airplanes. The FAA thinks it advisable to continue to require a separate PBE unit for each intended use: One for the flight deck, and one for the cargo compartment. An added benefit is that each of these units can serve as a back-up for the other.

Regarding the location of the second portable PBE unit, the proposed amendment would require that it be located in a position that is approved by the Administrator as appropriate to each airplane and the specific type of operation being conducted. This will ensure that the unit is easily accessible and conveniently located for use in the cargo area of the plane.

If a fire is detected in a Class E cargo compartment, the likely source of this warning would be a smoke or fire detector in the compartment that sets off a warning signal at the pilot or flight engineer station. In this situation, the required PBE unit on the flight deck would be immediately available for a crew member to investigate or fight the fire. On the other hand, if the fire is detected by a means other than the warning system, the person making the discovery would have the PBE unit near the cargo compartment, where the discovery occurred, for immediate availability in fighting the fire.

Passenger-Carrying Operations

This NPRM also addresses several issues concerning PBE requirements for passenger-carrying operations. The first issue involves the number of portable PBE units that are required in passenger compartments of transport category airplanes. In its current form, § 121.337(b)(9)(iv) requires a portable PBE to be located "in each passenger compartment, one located within 3 feet of each hand fire extinguisher required by § 121.309 of this part * * *." At least one air carrier has interpreted this provision to mean that one portable PBE would satisfy the requirement for 2 required hand fire extinguishers as long as both of those fire extinguishers are within 3 feet of the PBE. The FAA never intended such a result as evidenced in the preamble to the final rule. In response to several comments regarding the number of PBE required, the FAA stated that one PBE device at each hand fire extinguisher location required by § 121.309 will provide an adequate level of coverage and will avoid any confusing in locating the equipment since it will be near a hand fire extinguisher. Under the proposed change to the rule, the Agency's original intent would be more clearly reflected.

In the FAA's view, safety requires that each hand fire extinguisher be paired with a separate portable PBE. If only one PBE were required for every 2 required hand fire extinguishers, then a crewmember attempting to respond to an in-flight fire might obtain a fire extinguisher from one location, but still be forced to proceed to a different location to obtain a PBE unit to use with the fire extinguisher. Since time is of the essence in responding effectively to fire, this could unduly delay the crewmember, resulting in increased danger to the crew and aircraft. To preclude this possibility, the FAA proposes that the rule clearly state that one portable PBE is required for each required hand fire extinguisher. However, if a carrier chooses to provide an additional fire extinguisher in excess of the number of fire extinguishers required by § 121.309, the carrier is not required to provide an additional PBE unit to be paired with it.

The second issue involving passenger-carrying operations is whether the PBE currently required in the cargo areas of passenger-carrying operations can safely be eliminated. The current § 121.337(b)(9)(i), which requires one portable PBE unit "for use in each Class A, B, and E cargo compartment * * * that is accessible to crewmembers in the compartment during flight," applies to both cargo-only and passenger-carrying operations. (Class E cargo compartments can only be found in cargo-only aircraft, since they are expressly defined by § 25.857 as compartments on airplanes used only for the carriage of cargo. In contrast, Class A and B cargo compartments are not so limited and may be found in both cargo-only and passenger-carrying aircraft.)

The proposed amendment would revise § 121.337(b)(9)(i) so that its requirement of portable PBE units for the cargo area of transport category airplanes would no longer apply to passenger-carrying and cargo-only operations alike but would instead be limited to cargo-only operations. Thus, the effect of this amendment would be to eliminate the current requirement of a portable PBE unit for each Class A and B cargo compartment in passenger-carrying airplanes. The FAA believes that this would not compromise safety since the regulation already requires a portable PBE on the flight deck (§ 121.337(b)(9)(iii)) and a portable PBE for each hand fire extinguisher in passenger compartments (§ 121.337(b)(9)(iv)). In the FAA's view, certificate holders should not be required to have additional portable units located in the cargo areas of passenger-carrying planes since there are sufficient numbers of both fire extinguishers and PBE units already located in the passenger compartment to

[1] Exemption No. 5407, issued to Air Transport Association on February 18, 1992, further extended the date of compliance for cargo only carriers until February 18, 1993. Exemption No. 5407A extended the date of compliance until February 18, 1994.

handle any potential in-flight fire in a cargo compartment.

Serviceability of PBE

When § 121.337 was drafted, portable PBE units had quantity gauges or some other means of determining whether the gas supply was fully charged.

In contrast, the newer portable PBE designs approved by the FAA do not have gauges indicating quantity or charge. They do, however, have vacuum seals and/or tamper-evident seals that allow the user to determine whether the gas supply is fully charged. The user is able to determine whether the unit is in a ready-to-use state (fully charged) based upon whether the seal on the newer designs has been broken. The purpose of the quantity gauges and charges on the old design was not specifically to determine the amount of gas in the portable PBE units as it was to allow a user to determine whether the units were fully charged. However, the vacuum seals and tamper-evident seals now replace the quantity gauges and charges, making them unnecessary by accomplishing basically the same objective.

This change in portable PBE design necessitates two changes in the rule. The first proposed change concerns § 121.337(b)(7)(iii), which requires a means for allowing the crew to readily determine, during flight, the quantity of breathing gas in a portable PBE unit. This provision is no longer needed since the newer PBE designs do not have a quantity gauge. The FAA therefore proposes to delete this section and reserve it for later use.

The second proposed change involves § 121.337(c)(2). This provision requires that a designated crewmember check each portable PBE unit before his or her first trip of the day to ensure that it is properly stowed and serviceable, and, for other than chemical oxygen generator systems, that the breathing supply is fully charged. The FAA proposes to delete the words "and, for other than chemical oxygen generator systems, the breathing gas supply is fully charged."

In the FAA's view, these proposed changes in the rule are needed to reflect the changes in portable PBE design; they will not adversely affect safety, since portable PBE units must still meet the standards of TSO C–116 before they will be approved for use.

Economic Assessment

The FAA finds that the set of proposals in this NPRM are not "major" within the meaning of Executive Order 12291 or the DOT Regulatory Policies and Procedures. In regard to cargo-only operations, the proposed rule would no longer require a separate portable PBE for each Class A, B, and E cargo compartment; instead, it would require only one portable PBE for use in the cargo area of cargo-only airplanes (in addition to the portable PBE already required on the flight deck for use throughout the aircraft).

The proposed rule would eliminate the pending requirement that cargo-only aircraft must have a PBE unit for each of its cargo compartments. An adequate level of safety is met with the existing level of PBE units onboard. Without this proposed rule, the FAA would require about 450 cargo aircraft to add one or more portable PBE units to its onboard equipment. The cost of each unit is approximately $450. The proposed rule would prevent the imposition of more than $200,000 in costs. Hence, the proposal relieves the industry of an unnecessary potential cost burden.

As for passenger-carrying operations, the proposed rule does two things. First, it clarifies the present rule so that air carriers understand that the requirement is not met by one portable PBE for every two hand fire extinguishers if those fire extinguishers are within 3 feet of the PBE. Thus, the amended rule would clearly indicate, in accordance with the FAA's original intent, that there must be one portable PBE unit for each required hand fire extinguisher in the passenger compartments. Since the total number of required portable PBE units would not change as a result of this clarification, it yields no costs or benefits to quantify nor any economic consequences to evaluate.

Second, without the proposed rule, the FAA would require a PBE unit within the cargo areas of passenger-carrying planes. Eliminating this requirement should not reduce passenger or crew safety. The PBE equipment in the passenger compartments and on the flight deck would be sufficient to meet all FAA safety requirements. As with the all cargo aircraft, this proposed rule would relieve the airline industry of an unnecessary potential cost.

The FAA has determined that the proposed rule would result in some small cost reduction because it would prevent the imposition of additional costs on the industry resulting from existing requirements for PBE, i.e., the purchase of additional PBE units to furbish newly acquired aircraft. The FAA, however, has no data on which to estimate this small cost savings. In addition, the FAA has determined that the proposed rule would have a minimal impact on existing airline safety. Because the NPRM would have minimal effect on existing costs and airline safety, the FAA has not prepared a full regulatory evaluation for the docket. The FAA solicits specific cost savings information from commenters.

International Trade Impact Analysis

The FAA finds that this proposed amendment would have no impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to specifically review rules that may have a "significant economic impact on a substantial number of small entities."

This NPRM would impact entities regulated by part 121. The FAA's criteria for "a substantial number" are a number which is not less than 11 and which is more than one third of the small entities subject to this rule. For air carriers, a small entity has been defined as one which owns, but does not necessarily operate, nine or fewer aircraft. The FAA's criteria for "a significant impact" are as follows: At least $4,150 per year for an unscheduled air carrier, $59,100 per year for a scheduled carrier having airplanes with only 60 or fewer seats, and $105,700 per year for a scheduled carrier having an airplane with 61 or more seats.

Using these criteria, the FAA has determined, and therefore certifies, that the proposed amendments to § 121.337, if promulgated, would not have a significant economic impact on a substantial number of small entities. None of the proposed amendments would have a significant affect on air carrier costs. Therefore, the FAA has determined that the proposed amendments to § 121.337, if promulgated, would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The changes proposed by this NPRM would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that the proposed amendments would not have federalism implications requiring the preparation of a Federalism Assessment

Conclusion

The FAA has determined that the proposals in this amendment are not major under Executive Order 12291 since they would not impose any additional costs. However, because they concern a matter in which there is a substantial public interest, the FAA has determined that this action is significant under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The proposed amendments would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. In addition, the amendments, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RFA.

The proposals in this amendment would have no additional economic impact on the public. In fact, in the case of cargo-only operators and passenger-carrying operators with Class A, B, or E cargo compartments, they would relieve costs. The FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full Regulatory Evaluation.

List of Subjects in 14 CFR Part 121

Air carriers, Air Safety, Air transportation, Airplanes, Aviation safety, Safety, Transportation.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 121.337 is amended by deleting the text of (b)(7)(iii) and reserving the paragraph; and by revising paragraphs (b)(9)(i), (b)(9)(iv), and (c)(2) to read as follows:

§ 121.337 Protective breathing equipment.

* * * * *

(b) * * *

(7) * * *

(iii) [Reserved]

(9) * * *

(i) One for cargo-only operations, in addition to the requirement of paragraph (b)(9)(iii) of this section. This unit must be located in a position that is approved by the Administrator as appropriate to each airplane and the specific type of operation being conducted.

* * * * *

(iv) In each passenger compartment, one for each hand fire extinguisher required by § 121.309 of this part, to be located within 3 feet of each required hand fire extinguisher, except that the Administrator may authorize a deviation allowing locations of PBE more than 3 feet from required hand fire extinguisher locations if special circumstances exist that make compliance impractical and if the proposed deviation provides an equivalent level of safety.

(c) * * *

(2) Each item of PBE located at other than a flight crewmember duty station must be checked by a designated crewmember to ensure that it is properly stowed and serviceable. Each certificate holder, in its operations manual, must designate at least one crewmember to perform those checks before he or she takes off in that airplane for his or her first flight of the day.

* * * * *

Issued in Washington, DC, on March 19, 1993.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 93–7099 Filed 3–26–93; 8:45 am]

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March 29, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Revised Notice of Funding Availability for the Urban Revitalization Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3557; FR-3412-N-02]

Revised Notice of Funding Availability (NOFA) for the Urban Revitalization Demonstration—Revised Procedures to Reduce Burdens on Applicants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (HUD, or the Department).

ACTION: Revised Notice of funding availability for Fiscal Year 1993.

SUMMARY: In response to discussions with a number of interest groups and public housing agencies (PHAs), the Department has decided to modify certain portions of the Notice of Funding Availability for Fiscal Year 1993 to address issues and concerns raised. This revised NOFA repeats the original NOFA with modifications, italicized within the text of the republished NOFA to facilitate review, that will serve to expand eligibility for funding and make technical clarifications.

BACKGROUND: The modifications address the following areas:

1. The original NOFA required that applications be submitted by April 5, 1993. In light of the fact that the statute allows for an expanded period of time for application submission and, in recognition of concerns expressed by PHAs, the application submission deadline is extended to May 5, 1993. Additionally, if the required local governing body's certification allowing replacement housing, if applicable, cannot be submitted by May 5, 1993, this certification may be submitted separately but not later than August 4, 1993.

2. The original NOFA required that the provisions of section 412 of the National Affordable Housing Act, 1990, that amended section 18 of the U.S. Housing Act of 1937 (opportunity to purchase where demolition or disposition is proposed), be applied to PHA-wide resident councils. Section 116(a) of the Housing and Community Development Act of 1992 limits this requirement to offer to purchase by the resident management corporation, resident council, or resident cooperative of the development that is to be demolished or disposed of. Accordingly, notification of the right to purchase by PHA-wide resident councils will not be required for applications submitted under this NOFA.

3. The original NOFA stated that no city could receive more than one grant under this NOFA. Since no such limitation exists in the statute, language has been changed to allow a city to receive both an implementation and a planning grant. However, in no case will the total funding exceed $50 million for any one city. Grants will be awarded in up to 15 cities.

4. In light of misunderstandings regarding the extent of the local government certification in the case of replacement housing where demolition or disposition is involved, clarification is provided to note that the certification extends only to *permitting* the replacement of units. Approval of the *actual* replacement housing plan will be done in accordance with section 18 of the Act, as modified by the Appropriations Act of 1993 (see section I.E.5.b. of the NOFA as published below).

5. This NOFA changes the requirement for submission of an implementation schedule, as part of the application for implementation grants to submission of a plan for implementation approved by the local governing body within six months from the date of grant approval. Submission of the approved plan for implementation is not an application requirement, however, submission, or failure to submit, by July 20, 1993 will affect the rating of the factor "extent and involvement of local public and private entities". (See section III.C.1.e.)

6. This NOFA removes the requirement for local governing body approval of the application and instead requires, in connection with implementation grants only, local governing body approval of the plan for implementation within six months from the date of grant approval.

7. This NOFA adds the requirement for a letter from the Mayor in support of the application at the time of submission of the application.

8. This NOFA clarifies that the 500-unit limitation is applicable only to implementation grants, since the statutory language does not impose a unit limitation for planning grants. Planning grants, however, are limited to one development per grant.

9. Where a PHA contemplates unit conversion, the application must contain a description and justification in accordance with Handbook 7486.1.

10. This NOFA sets forth modifications to the required PHA Board Resolution by making the language more applicable to the Urban Revitalization Demonstration (URD) program.

11. Language has been added to allow the Department to consult with a panel of experts when reviewing the planning grant application. This addition conforms with the selection process prescribed for the implementation grants already in the NOFA.

12. This NOFA expands section I.E.5. to include a description of the program requirements for demolition, disposition and conversion activities as well as replacement housing.

13. This NOFA makes a technical correction to sections II.C.4. and III.C.4. by changing the word "may" to "must" to conform to the statute and ensure that each applicant has approval of the Community Service component of the application before grant funds are released.

14. This NOFA removes the requirement that the PHA report on the Cooperation Agreement.

15. This NOFA adds introductory language to section II.B., and clarifies the introductory language to section III.B., in regard to the application submission requirements, to clarify that all applicable program requirements set forth in section I.E. must be included in the application submission and to add certain items which were contained in the program requirements, but were inadvertently left out of the application submission requirements.

16. This NOFA clarifies the requirement to provide a list of developments which the PHA considers severely distressed. The requirement is limited to the PHA providing the number of severely distressed developments, not the actual names and addresses of the developments.

17. This NOFA changes the certification by the local governing body that replacement housing will be permitted to a certification to that effect by the mayor.

Accordingly, the Department's funding notice published January 5, 1993 entitled "Funding Availability for Urban Revitalization Demonstration" is republished, with revisions, to read as follows:

SUMMARY: This NOFA announces the availability of $300 million in funding for implementation and planning grants under the Urban Revitalization Demonstration (URD), which is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (the 1993 Appropriations Act) (Pub. L. 102-389, approved October 6, 1992.) The Urban Revitalization Demonstration was

created for the purpose of revitalizing severely distressed or obsolete public housing developments. The activities in the program include funding of the capital costs of major reconstruction, rehabilitation and other physical improvements, the provision of replacement housing, management improvements, planning and technical assistance, implementation of community service programs and supportive services or the planning of such activities.

This Notice contains information on: eligible applicants, program requirements, rating factors, selection criteria, and contents of applications. In carrying out this demonstration, the Department of Housing and Urban Development (HUD) has chosen to exercise the authority granted in the 1993 Appropriations Act to conform certain program standards and criteria with those set forth in subsequent authorization legislation. For this purpose, the Department has chosen to incorporate certain provisions of sec. 24 of the 1937 Housing Act, as added by sec. 120 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (Revitalization of Severely Distressed Public Housing). The Demonstration is limited to public housing agencies (PHAs) in up to 15 cities, which will be chosen in accordance with the requirements set forth in this NOFA.

DATES: Applications must be received on or before 4 p.m. Eastern Standard Time on May 5, 1993, at the HUD Headquarters Office, 451 Seventh St., SW., room 4138, Washington, DC 20410. Attention: Director, Office of Construction, Rehabilitation, and Maintenance. Applications may be hand-delivered or mailed to the above address. Applications sent by facsimile will not be accepted. If the local government certification required under I.E.8.a.iii. cannot be submitted by the application deadline date of May 5, 1993, said approval and certification may be submitted to HUD Headquarters not later than 4 p.m. E.S.T. on August 4, 1993, without causing the application to be considered deficient under IV.B.1. Failure to submit certification by said time on August 4, 1993 will result in the application being disqualified. HUD will not waive these deadlines for any reason.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Headquarters office at the address indicated under "**DATES**" above. Failure to submit an application to the HUD Headquarters office so that it is received by the deadline date and time will result in the application being disqualified.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, NW., room 4138, Washington, DC 20410. Telephone (202) 708–1800 (This is not a toll free number). Hearing or speech impaired individuals may call HUD's TDD number 1–800–877–TDDY, which is a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The challenge of successfully revitalizing the nation's most severely distressed public housing is a very difficult one. In launching this demonstration, the Department recognizes that there is no one prescription for the ills that affect these developments, and each development will require its own solution. It is the intent of this demonstration to allow the greatest degree of flexibility on the part of the PHA in determining the approach likely to be most successful in treating the development it has selected. The approach selected must be consistent with the overall mandate of providing modestly designed housing for low-income persons and cost-effectiveness in the management of such housing, but should incorporate boldness and creativity in addressing difficult issues such as high density, crime, poor structural design, and oppressive social and economic conditions. PHAs are encouraged to seek a broad spectrum of participation and assistance from local and state governments, neighborhood organizations, business, nonprofit corporations, social service agencies, and residents of the developments.

Paperwork Reduction Act Statement

The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Public reporting burden for the collection of information requirements contained in this document are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Mangement and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by the 1993 Appropriations Act (Pub. L. 102–389 approved on October 6, 1992).

B. Allocation Amounts

The 1993 Appropriations Act made available $300,000,000 of budget authority for this Program.

C. Definitions

1. Targeted Units

The units for which funds are requested by a single applicant in a single city, whether they represent a part of a development, all of a development, or more than one development.

2. Revitalization Plan

All the activities described in the application which are necessary to address the distress in the targeted units and distress in the surrounding area which has a significant effect on the targeted units, whether those activities are proposed to be funded from the grant or from other sources.

3. Plan for Implementation

The document prepared by the PHA in connection with the implementation grant (or application) which summarizes, and establishes a schedule for, the major activities to be undertaken pursuant to the revitalization plan. The plan for implementation must specify, at a minimum, the following anticipated dates: when the first A/E Contract is to be let, when the bid advertisement for the first contract award will be placed, the date by which all contracts will be awarded, and when all contracts will be completed.

D. Eligible Applicants

Applications may be filed by the following PHAs (See appendix A):

1. PHAs located in the 40 most populous United States cities based on 1990 Census data; or

2. PHAs on the Department's Troubled Housing Authority list as of 3/31/92, except that any such PHA will not be eligible if the Secretary certifies to the Congress that the PHA is not making substantial progress to eliminate its troubled status in accordance with section 6(j) of the Housing Act of 1937. The following troubled PHAs will be considered to have made substantial progress:

a. PHAs which have been removed from the troubled list after 3/31/92, or

b. PHAs which have made improvement of at least 5 nonhandicapped points (on a zero-to-one-hundred point scale) in their most recent assessment under the Public Housing Management Assessment Program (PHMAP), as compared to their assessment completed on April 16, 1992.

c. If PHAs have not made at least 5 nonhandicapped points (on a zero-to-one-hundred point scale) improvement in their PHMAP scores, PHAs which can demonstrate to the satisfaction of the Secretary, that they are making substantial progress by a narrative describing actions that have been taken to address deficiencies identified by PHMAP, by the PHA's Memorandum of Agreement with the Department, or by Departmental reviews, audits or surveys, or

d. PHAs which have a binding commitment from another public or private entity to act as administrator of the grant on behalf of the PHA. The alternative administrator must be deemed acceptable by the Department.

E. Program Requirements

1. Severely Distressed

a. Required documentation—i. Documentation that a development in which the targeted units are located is both severely distressed (as compared to citywide information) and among the most severely distressed developments in the PHA's inventory must be based upon the four categories below which were set forth in The Final Report of the National Commission on Severely Distressed Public Housing, dated August 10, 1992: families living in distress, incidence of serious crimes in the development, barriers to managing the environment, and physical deterioration of buildings. The serious lack of data on some of the specific indicators in the extensive and detailed definition of severely distressed public housing found in the Commission's report precludes use of the full Commission definition and rating system. Further, the Commission itself recognized the need for further examination of the definition, modification or discard of some measures based on the availability of data, and use of narrative justifications based on qualitative information where quantitative data is lacking.

ii. Applicants must determine that the development in which the targeted units are located is a severely distressed development and is among the most severely distressed developments in the PHA's inventory, and must document this finding by comparing information about the development to comparable information about the PHA's general occupancy (family) developments and about the city as a whole. Such justification must be made by means of a narrative description containing qualitative information on the categories below and must include specific supporting data relevant to the category where such data is reasonably available to the PHA. HUD fully recognizes that the relevant data may not be available in all cases. Information should be presented in real numbers or percentages as well as percentages of PHA-wide or citywide data, wherever possible. Examples of relevant data are presented below under each category.

iii. The PHA must list in its application the total number of developments in its inventory which the PHA regards as severely distressed. No documentation is required, however, unless funding is requested for a development.

iv. If there is severe distress in one category, that is sufficient to determine a development as severely distressed.

v. HUD will review the documentation provided and will accept the PHA's determination unless:

(a) The facts and data presented are clearly inconsistent with available facts and data on the development in the official records of the Department or the PHA, or

(b) The facts and data presented describe conditions which either are no more distressed than the majority of the family developments in the PHA's inventory or indicate levels of distress that are below average for the city as a whole.

vi. Categories of distress—(a) Families living in distress. Information and data on barriers to self-sufficiency for the families in the development, such as percentage with no earned income, level of average income in the development as a percentage of area median income, or educational data.

(b) Incidence of serious crime. Information and data on the frequency of criminal acts of various types (drug-related, violent crime, thefts, etc.) or total crimes such as data from Federal, State or local law enforcement agencies, or information from the applicant's records on crime in the development including number of lease terminations or evictions for criminal activity, number of police calls to the development, incidence of vandalism or opinions and observations of individuals having direct knowledge of the nature and frequency of crime in the development as compared to the PHA's family developments and the city as a whole. These individuals may include law enforcement officials, youth anti-crime workers, and security personnel.

(c) Barriers to managing the environment. Information and data which reflect lack of management control of the site or failure of the development to meet the needs of residents or would-be applicants, such as the vacancy rate in the development, the turnover rate, the percent of rent collected monthly, and the rate of units rejected by applicants.

(d) Physical deterioration of buildings and sites. Information and data which shows the extent of physical problems at the development, such as the cost of rehabilitation/reconstruction as a percent of Total Development Cost, the density of the development as measured in units per acre, the level of deferred maintenance as measured by annual average work order backlog and number of units that do not meet Housing Quality Standards (HQS) pursuant to 24 CFR 882.109 as amended by the Lead Based Paint regulation at 24 CFR part 35, major system deficiencies, including peeling and chipping lead-based paint in greater than 20% of units, lack of reliable and reasonably efficient heat and hot water, major structural deficiencies, electrical system under code, poor site conditions, leaking roof, deteriorated laterals and sewers, and high number of plumbing leaks.

2. Funding Limitations

a. The maximum number of units for which funds may be provided in any one implementation grant award is 500; however, developments of more than 500 units may be funded by providing funds from a grant for only a portion of the units. No more than three areas of a city, containing the community's most severely distressed developments, may be funded.

b. Grants will be awarded in up to 15 cities. The Department intends to fund both planning and implementation grants. For planning grants, each city may receive no more than $500,000, limited to the units in one development.

Funding of a planning grant does not bind the Department to the future funding of any plans and/or recommendations formulated thereunder (and no assumptions with respect thereto shall arise). For implementation grants, HUD will provide no more than $50 million per city. A city may receive both an implementation and planning grant under the URD from FY 1993 funds, but in no case will total funding exceed $50 million.

c. Only one application for an implementation grant may be made in any one city. The application may not cover more than 500 units in three areas and may not request more than $50 million. A PHA which has within its jurisdiction more than one eligible city may make a separate application for each city. A PHA may apply for a planning grant in the same city for which an implementation grant is requested, but it must be for a different development.

3. Matching Requirement

The City in which the PHA applicant is located must provide contributions for supportive services in an amount equal to at least 15% of the implementation grant funds requested by the PHA for supportive services. This contribution must be from non-federal sources, which may include funding under the Community Development Block Grant Program. Amounts contributed to the match shall be used for eligible supportive services under the URD under section III.A.2.b. and c. Contributions may only be in the form of cash contributions, administrative costs, and the reasonable value of in-kind contributions.

4. Sustainability

The targeted units under an implementation grant must be expected to be sustainable over the long term regardless of whether the application covers an entire development or a portion of a development. In determining sustainability, the Department will consider social and physical problems in the unfunded portion of the development, if any, and in the surrounding neighborhood, the degree to which those problems affect the units to be funded, and the extent to which actions are being taken to ameliorate those problems.

5. Demolition, Disposition, Conversion and Replacement Housing

a. Units to be demolished or disposed of under the demonstration must be replaced on a one-for-one basis. Where the replacement housing need is to be met through conventional public housing units in ii (a), (b) or (c) below, such funds must be provided through this Urban Revitalization Grant. Other forms of replacement housing, e.g., Section 8 Certificates, may be provided from these grant funds. Replacement housing is not required for units lost through reconfiguration of interior space without demolition. However, while replacement housing is not required if a PHA contemplates unit conversion, a description of the conversion activity must be submitted in accordance with III.B.1.b. Section 18 of the U.S. Housing Act of 1937 applies to demolition, disposition and replacement housing under this demonstration. The 1993 Appropriation Act, however, creates an alternative for sections 18(b)(3) (A) and (B), which describe the types of housing that may be used as replacement housing and the circumstances under which Section 8 certificates may be used. In this demonstration, replacement housing may be accomplished by the following programs or as otherwise permitted under section 18 of the Act:

i. One-third by certificates under section 8(b),

ii. The remaining two-thirds by any combination of:

(a) Conventional public housing units consistent with 24 CFR part 941.

(b) Units acquired or otherwise provided for homeownership under section 5(h) of the Act,

(c) Units made available through homeownership programs involving construction or substantial rehabilitation of homes and meeting essentially the same eligibility requirements as those established pursuant to the Nehemiah Housing Opportunity Program, (section 603–607 of the Housing and Community Development Act of 1987, Pub. L. 100–242) or under the HOPE II or III programs as established under sections 421 and 441 of the Cranston-Gonzalez National Affordable Housing Act (NAHA).

b. Within six months of the date of grant approval, the PHA must submit an approvable application prepared in accordance with Handbook 7486.1 for any demolition or disposition which is to be funded under the URD grant.

6. Cost Requirements

a. For implementation grants, the average per unit hard costs (as defined in 24 CFR 968.105) must equal or exceed 62.5 percent of Total Development Costs.

b. For all implementation grants, average per unit hard costs for units to be reconstructed or rehabilitated may not exceed 100 percent of the published Total Development Costs, except that the Department may approve exceptions to this requirement for applications achieving a standard of modest design which include an adequate justification of the higher costs based on:

i. An analysis of the costs, separately identifying costs of lead paint testing and abatement, above average infrastructure replacement, accessibility improvements to meet 504 requirements, asbestos removal, major reconfiguration of streets and sidewalks and other significant improvements; and

ii. An analysis of the cost and feasibility of alternative courses of action, showing that there are no feasible, less expensive alternatives. The alternatives may include demolition of all or a portion of the development with replacement of units on-site, off-site, or a combination. The analysis should describe all the factors that went into the PHS's decision-making and should include evaluation of alternative designs and the feasibility in time and effort of acquiring units or land off-site for replacement housing.

7. Resident Consultation

In consultation with the residents, the PHA shall develop a process which assures that residents are fully briefed and meaningfully involved in developing, implementing, and monitoring the urban revitalization program. The PHA shall give full consideration to the comments and concerns of residents. The process shall include:

a. Consultation with representative residents or resident organizations throughout the PHA in the selection of the units for which funds will be requested in this application.

b. Consultation with the residents of the selected development or, if the development is vacant, with representative residents or resident organizations throughout the PHA, regarding the preparation of the plan under a planning grant or the implementation application under an implementation grant. Such consultation shall include, but not be limited to, identification of the nature and causes of distress, design of appropriate remedies for the causes of distress, the overall redesign, units to be demolished, community service opportunities, supportive services and empowerment opportunities, and replacement housing.

c. Once a draft plan has been developed under a planning grant or a draft application has been prepared under an implementation grant, the PHA shall make a copy available for

reading in the management office; provide copies of the draft to any resident organization representing the residents of the development; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the plan or the application final.

d. Provide to HUD and any resident organization representing the development a summary of the resident comments and its response to them; and notify residents of the development that this summary and response are available for reading in the management office.

e. For implementation grants in which demolition or disposition is planned, the applicant must comply with section 412 of the National Affordable Housing Act, 1990, as amended by section 116(a) of the Housing and Community Development Act of 1992, which requires a PHA to afford the opportunity to purchase to the resident management corporation, resident council or resident cooperative of the development that is to be demolished or disposed of, under certain limited conditions, including total demolition or disposition. A Notice containing procedures for implementation of section 412 is found in the **Federal Register** dated October 6, 1992, 57 FR 46074. Notification to PHA-wide resident councils of a right to purchase under section 412, as provided in said Notice, however, will not be required for applications submitted under this NOFA, because of the 1992 Amendment to section 412. The requirements of the Notice are not applicable to demolition of selected portions of the development in order to reduce density which is essential to ensure the long-term viability of the development or the housing agency, except that this inapplicability should not be used cumulatively to avoid section 412 requirements. In cases where the requirements of the Notice are applicable, applications including plans for demolition or disposition must include a certification of lack of resident interest in acquiring the property in the form required by VII.C. of the Notice.

f. After HUD approval of a grant, notify residents of the development and any representative organizations of the approval of the grant, provide the resident organization with a copy of the HUD-approved Project plan for implementation; and notify the residents of the availability of the plan in the management office for reading.

8. Local Government Certifications

a. The following are required as part of the application. i. certification by the public official, or his or her authorized representative, who submits the Comprehensive Housing Affordability Strategy (CHAS), under section 105 of NAHA, that the proposed activities are consistent with the CHAS;

ii. letter from the Mayor of the applicable jurisdiction in support of the application; and,

iii. for implementation grant applications only, certification by the Mayor that he/she will permit replacement, in accordance with section 18 of the Act and the 1993 Appropriations Act, of any units to be demolished or disposed of. If this certification cannot be submitted by the application deadline date of May 5, 1993, said certification may be submitted to HUD Headquarters until 4 p.m. e.s.t. on August 4, 1993. Failure to submit the certification by said time on August 4, 1993 will result in the application being disqualified.

b. Additional requirements for implementation grants. i. The PHA must submit approval of the plan for implementation by the local governing body within six months of the date of the grant approval. The rating of the "Extent and Involvement of Local Public and Private Entities", as provided in section III.C.1.e, will be affected by whether or not said approval is submitted by 4 p.m. e.s.t. on July 20, 1993. If a PHA does not submit said approval by July 20, 1993, the PHA cannot receive more than 5 points for this rating factor.

ii. The demolition/disposition request, statement of the intent for conversion, and where applicable, the approval of the actual replacement housing plan by the local governing body, in accordance with section 18 of the Act (as modified by the Appropriations Act of 1993), 24 CFR 970, and applicable parts of the Public Housing Demolition, Disposition, and Conversion Handbook, 7486.1 must be received within six months of the date of the grant approval.

9. Community Service Component

Each application for an implementation grant must include a community service component as described in III.A.2.a. below and in Appendix B.

10. Displaced Persons

Under implementation grants, persons displaced by the reconstruction activities funded by URD must be eligible under the plan for occupancy of the replacement units.

11. Planned Use of Comprehensive Grant Program Funds

Any planned use of Comprehensive Grant Program Funds in connection with activities funded under the Urban Revitalization Demonstration must be shown in the Annual Statement and revised Five-Year Action Plan submitted in anticipation of FY 1994 funding.

12. Non-duplication

Grant funds may not be used to duplicate work which is funded under any other Federal program, and the PHA shall establish controls to assure non-duplication of funding.

13. Applicability of Program Regulations

The following activities that may be undertaken with grant funds shall be subject to the cited program requirements, consistent with the 1993 Appropriation Act and this NOFA. If the revitalization plan requires any deviation from these cited requirements, such as local programs for replacement housing through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as the Nehemiah Program or HOPE II or III must be approved by the Department.

a. Demolition and disposition activity under the grant will be governed by 24 CFR part 970;

b. Public housing development activity (including on-site reconstruction as well as off-site replacement housing) will be governed by 24 CFR part 941;

c. Replacement housing activity using section 8 rental certificates will be governed by 24 CFR part 882;

d. Replacement housing activity with units acquired or otherwise provided for homeownership under section 5(h) will be governed by 24 CFR part 906;

e. Replacement housing activities provided through housing opportunity programs of construction or substantial rehabilitation of homes will be governed by 24 CFR part 280 (the Nehemiah Program);

f. Replacement housing activities under HOPE II shall be governed by 24 CFR subtitle A, appendix B;

g. Replacement housing activities under HOPE III shall be governed by 24 CFR subtitle A, appendix C;

h. Rehabilitation and physical improvement activities will be governed by 24 CFR 968.310 (Eligible costs), and 24 CFR 968.335 (Conduct of modernization activity.)

F. Other Program Characteristics

1. Waiver of Departmental Regulations

PHAs may request, for the revitalized development, a waiver of Departmental regulations (not statutory provisions) governing rents, income eligibility, or other areas of public housing management to permit a PHA to undertake measures that enhance the long-term viability of a severely distressed project revitalized under this demonstration. If the application requests a waiver which would permit a separate waiting list for the development, the PHA must adopt a strategy for affirmatively marketing the development, which shall include specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach.

2. Preferences Applicable to Selection of Tenants

PHAs may choose to utilize a local system of preferences for the selection of tenants for the revitalized development. Such preferences shall be established in writing and shall respond to local housing needs and priorities as determined by the PHA after one or more public hearings to obtain the views of low-income residents and other interested parties.

3. Use of Other Sources of Funds

Funds made available under the URD may be used in conjunction with, but not in lieu of, funding provided under the head "Modernization of Low-Income Housing Projects" for the modernization of existing public housing pursuant to section 14 of the Act (42 U.S.C. 14371); for construction or major reconstruction of obsolete public housing, other than for Indian families; for the replacement of public housing units pursuant to section 18 of the Act; and for the HOPE for Public and Indian Housing Homeownership Program as authorized under title III of the Act. (See III.B.3.g.)

4. Failure To Proceed

In the event that an applicant selected to receive URD funding does not proceed in a manner consistent with the approved plan and requirements of this NOFA, HUD may withdraw any unobligated balances of funding.

5. Grant Agreement

After HUD approves an application for a planning or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement will provide that the recipient agrees:

a. To carry out the program in accordance with the provisions of this NOFA, applicable law, the approved application, and all other applicable requirements;

b. To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring and evaluating the program in an effective and efficient manner; and

c. That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved revitalization program in accordance with the terms of the approved application and this NOFA, including failure to provide the contribution towards the match

II. Planning Grants

A. Eligible Activities

A planning grant may be used to plan for the revitalization of severely distressed developments consistent with the requirements of this NOFA, including:

1. Studies of the different options for revitalization, including the feasibility, costs and neighborhood impact of such options;

2. Providing technical or organizational support to ensure resident involvement in all phases of the planning and implementation processes;

3. Conducting workshops to ascertain the attitudes and concerns of the neighboring community;

4. Preliminary architectural and engineering work;

5. Planning for supportive services, including economic development, job training and self-sufficiency activities that promote the economic self-sufficiency of residents under the revitalization program;

6. Planning for community service opportunities;

7. Designing a suitable replacement housing plan, in situations where partial or total demolition is considered;

8. Planning for necessary management improvements; and

9. Conducting environmental studies.

B. Application Submission Requirements

An application for a planning grant shall contain a description of the development and the proposed activities, information relevant to rating the application, submissions to demonstrate compliance with various program requirements, and various required certifications, as required by I.E., including the following:

1. A request for a planning grant, specifying a plan for the activities proposed, the schedule for completing the activities, the personnel necessary to complete the activities and the amount of the grant requested;

2. Identification and description of the development and the targeted units involved, and a description of the composition of the residents, including family size and income;

3. Demonstration that the development meets the description of severely distressed as described in section I.E.1. of this NOFA;

4. Description of the extent of resident interest and involvement in the development of the planning application and the plan for resident involvement during the planning period; and evidence of resident involvement consistent with the program requirements as stated in I.E.7 above to the extent applicable;

5. A description of the extent of involvement of local public and private entities in the development of the planning application and the plan for involvement of local and private entities during the planning period;

6. A description of the process to be used in the development of the community service component;

7. If the PHA is listed on the attached March 31, 1992 list of troubled housing agencies, documentation necessary to demonstrate that the PHA has made substantial progress to eliminate their troubled status as defined in section I.D.2. of this NOFA;

8. a. A certification by the public official responsible for submitting the CHAS under section 105 of NAHA that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the targeted units are located;

b. Letter from the Mayor of the applicable jurisdiction in support of the application.

9. A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing;

10. Form HUD–52825, Comprehensive Assessment/Program Budget (Parts I and II).

11. A narrative statement addressing each of the rating factors.

12. Form HUD–50070, Certification for a Drug-Free Workplace.

13. Form HUD–52820, PHA Board Resolution Approving URD Application.

This form is to be modified by: changing all references to "CIAP" and "modernization" to the term "URD;" and, striking all references to "IHA." All references to chapters or paragraphs in the CIAP Handbook, 7485.1 REV–4, are to be changed to "the URD NOFA".

14. Anti-Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements if request for grant exceeds $100,000.

15. SF-LLL, Disclosure of Lobbying Activities only where any funds, other than federally appropriated funds, will be or have been used to lobby the Executive or Legislative branches of the Federal government regarding specific grants or contracts.

16. Disclosures required by section 102 of the HUD Reform Act of 1989.

17. A certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of local government, or any agency or instrumentality thereof, for the specific activities for which funding is requested in the application.

18. Demonstration that the development meets the description of severely distressed as described in section I.E.1. of this NOFA.

19. A list of the total number of severely distressed developments under the PHA's jurisdiction.

C. Rating and Selection Process

1. Rating Factors

Applications will not be rated until they have been determined to be eligible under section I.D. of this NOFA and to meet the program requirements under I.E. 1, 2, 7, and 12. If an application fails to have an adequate plan for the development of the community service component, rating may proceed. However, a revised plan must be approved by the Commission on National and Community Service (CNCS) before any funds may be disbursed. HUD Headquarters review staff will rate factors "a. through e." below. CNCS will rate factor "f" below and provide the rating to HUD for incorporation into the total score. The Department may establish a panel of experts with whom to consult for advice on elements of the applications which are within their expertise. Such experts will be advisors and will not conduct any part of the rating or selection of grantees.

a. The extent of the need for the revitalization program as defined in III.C.1.a.

b. The capability of the applicant as defined in III.C.1.c;

c. The potential of the applicant for developing a successful and affordable revitalization program as determined by the quality of the plan for the planning process, and the suitability of the development for such a program;

d. The extent of resident interest and involvement in the development of the planning application and the extent of resident involvement planned for the planning period;

e. The extent of involvement of local public and private entities in the development of the planning application and the extent of involvement of local public and private entities planned for the planning period;

f. The likely effectiveness of the process described for the development of the community service component.

2. Selection Criteria

a. Points awarded under section II.C. 3. below for the rating factors.

b. National geographic diversity. The Department, in its discretion, may choose to select a lower-rated, approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications approved under this NOFA.

c. Diversity of development types. HUD may, in its discretion, choose to select a lower-rated, approvable application over a higher-rated application in order to increase the diversity of development types (developments which include family high-rise buildings of five or more stories and those which include only low rise buildings) approved under this NOFA.

3. Rating Values

The following point assignments will be used to rate planning grant applications in accordance with the criteria listed in section II.C.1. above. The Department shall examine the ratings, and where it determines that applications falling below a certain point total are not suitable or not feasible for planning grants, it may establish a minimum number of points for an application to be selected. The Department shall then select the highest rated applications, unless it exercises its discretion to select lower rated, approvable applications in order to promote national geographic diversity and/or diversity of project types in accordance with II.C.2. of this NOFA.

Rating factors	Point range
Extent of Need	0–30
Capability	0–30
Applicant Potential for Success	0–20
Extent of Resident Interest and Involvement	0–15
Extent of Involvement of Local Public and Private Entities	0–10
Likely Effectiveness of Plan for Community Service Component	0–15
Total Maximum Score	120

4. Funding Decisions

After rating, Headquarters will select approvable applications for funding in accordance with the selection criteria set forth in section II.C.2. above. If any selected applications include plans for the development of community service components which have not been approved by the CNSC, the applicants must conform their applications to CNCS requirements after selection in order to obtain release of funds. HUD may approve an application for an amount lower than the amount requested if the application includes an ineligible activity, or if insufficient funds are available to fund the full amount requested and HUD determines that partial funding is a viable option.

5. Duration

Activities funded under planning grants shall be completed within 18 months of the effective date of the planning grant agreement.

III. Implementation Grants

A. Eligible Activities

1. At least 80% of funding awarded in each grant must be used for any combination of the following activities: capital costs of major reconstruction, rehabilitation and other physical improvements, including energy retrofit, capital costs of replacement units, certificates under section 8(b) used for replacement, management improvements for the reconstructed development and planning and technical assistance. Funds may be used for total or partial demolition and/or disposition of units. The following costs may be included:

a. Capital costs may include related administrative costs and temporary relocation necessary for reconstruction, rehabilitation, demolition or disposition.

b. Administrative costs may include the annual premium of LBP insurance incident to approved URD work.

3. Not more than 20% of funding awarded in each grant may be used for

any combination of the following activities and the related administrative expenses:

a. Community service programs, as defined by the Commission on National and Community Service for the URD, specifically, programs organized, administered, overseen or funded by a public housing agency, or its designated representative, engaging individuals in meaningful service on a volunteer basis or through limited stipends to address unmet human, environmental, educational, and/or public safety needs through youth service and conservation corps, residents' associations, community-based organization, K–12 schools, institutions of higher education, churches or other religious entities and other such similar organizations. Such programs must comply with the requirements stated in appendix B.

b. Supportive services, including but not limited to, resident capacity building, literacy training, day care, youth activities, economic development, and resident employment and job training activities such as the Step-Up apprenticeship program (see Federal Register Notice, October 8, 1992, 57 FR 46398);

c. Economic development costs may include a setaside for a revolving loan fund, established and operated in accordance with 25 CFR part 85 (with specific reference to §§ 85.21 and 85.25), and

d. The following services authorized under the Gateway Program: outreach and information services designed to make eligible individuals aware of available services, literacy and bilingual education services, remedial education and basic skills training, employment training and personal management skill development or referrals for such services, child care or dependent care for dependents of eligible individuals during those times when training services are being provided, pre-employment skills training, employment counsel and application assistance, job development services, job training, Federal employment-related activity services, completion of high school or GED program services, transitional assistance, including child care for up to 6 months to enable such individual to successfully secure unsubsidized employment, substance abuse prevention and education, and other support services deemed to be important by the Secretary of Health and Human Services.

B. Application Submission Requirements

Each application must include a request for an implementation grant containing a description of the development and the proposed activities, information relevant to rating the application, submissions to demonstrate compliance with various program requirements, and various required certifications, as required by I.E., including the following:

1. A description of the development and the proposed activities, including:

a. A description of the number of units, by unit size, a site plan, and a statement of the number and location of vacant units; identification of the units to be targeted, if less than the entire development; a description of socio-economic and demographic characteristics of the residents.

b. A description and justification of the proposed treatment of the units, including a narrative description of the extent of rehabilitation/reconstruction of existing units, extent of demolition, description of changes in the sizes and shapes of units and other changes in the use of interior space, including any reduction in the number of units due to reconfiguration or changes in the utilization of interior space, in accordance with the Demolition, Disposition, and Conversion Handbook, 7486.1, Chapter 7.

c. Description of community space alterations, improvements, and/or additions.

d. A description of the changes in the use of the site, and a post-revitalization site plan.

e. A description of proposed management improvements.

f. Description of the surrounding neighborhood, including strengths and weaknesses; proposed treatment of any neighborhood problems, including physical, economic, and security.

g. Description of proposed supportive services.

h. A description of any revolving loan fund for economic development, as permitted under III.A.2.c. of this NOFA, including but not limited to the purpose of the loans, borrower eligibility, and the entity which will administer the fund.

i. Description of proposed community service component.

j. Where the demonstration grant is requested for a vacant development, identification of the residents who will receive the supportive services and participate in community service, and a statement of the reasons why this resident group is appropriate, how residents will be selected to participate and how this plan relates to the physical work planned to be undertaken in connection with this demonstration.

k. A description of the resident involvement in the development of the application and in the execution, implementation and monitoring of the revitalization plan.

l. A description of the number of replacement units to be funded, the nature of the programs to be used, including type and size of unit, tenure, and program descriptions.

m. Management plans describing the management of the revitalization activity and proposed management of the development after revitalization. The post-revitalization management plan must state whether additional or reduced management and maintenance costs will result from the revitalization and how the proposed management differs from the management process utilized prior to revitalization; e.g., resident selection, rent collection, and maintenance.

n. Form HUD–52825, Comprehensive Assessment/Program Budget (Parts I and II), covering units for which funding is requested in the current fiscal year, evidencing that the applicant has not exceeded the cost limits or exceptions granted pursuant to section I.E.6. above

o. Statement of the percentage of the funding to be used for items listed in III.A.1. and in III.A.2. of this NOFA.

p. Modernization Organization and Staffing Plan, stating the proposed organization, staffing and inspection of the modernization program.

2. The following information relevant to rating the application, which is not otherwise requested:

a. Documentation of the extent of need as required by III.C.1.a.

b. An assessment of the causes of distress; an explanation of how the proposed physical changes, management improvements, supportive services, and community service component will remedy the distress; an explanation of how the plan for management after revitalization will correct previous problems; a discussion of why the proposed revitalization plan is likely to be successful.

c. Data necessary for rating of section III.C.1.a.

d. Description of the involvement and commitment of local public and private entitles sufficient to assess section III.C.1.e.

3. The following submissions to demonstrate compliance with various program requirements:

a. Demonstration that the development meets the description of severely distressed as described in section I.E.1. of this NOFA.

b. A list of the total number of severely distressed developments under the PHA's jurisdiction.

c. A certification by the PHA that the targeted units are located in not more than 3 separately defined areas containing the community's most severely distressed projects.

d. Description of the amount and nature of the supportive service funding from non-federal sources to be provided by the city in which the PHA is located and the percentage of the total supportive services funding that this represents; a commitment from the city to provide the contribution for supportive services required under section I.E.3.

e. If the PHA is proposing to revitalize only a portion of the development, a description of the actions to be taken to revitalize the portions which will not be funded under this application, including alternate sources of funding which may be utilized (e.g. Comprehensive Grant Program funds or reprogrammed Comprehensive Improvement Assistance Programs fund); and the basis for the conclusion that the revitalization of the targeted units will be sustainable over the long term.

f. Where average per unit costs for all hard costs will exceed 100% of TDC, a justification of the need for higher costs as required in I.E.6.

g. In order to assure that URD funds are not used in lieu of otherwise available modernization funds, a demonstration that the funds reasonably expected to be available to the PHA over the period of the CGP Five-Year Action Plan are not adequate to address the total modernization needs of the PHA.

h. If the PHA is listed on the attached March 31, 1992 list of troubled housing agencies, documentation necessary to demonstrate that the PHA has made substantial progress to eliminate their troubled status as defined in section I.D.2 of this NOFA.

4. The following submissions, which are necessary only in certain circumstances:

a. Any request for waiver of Departmental regulations governing rents, income eligibility, or other areas of public housing management which will enhance the long term viability of the development, if the PHA desires such waivers. The request must:

i. Identify the specific provisions requested to be waived,

ii. State how the waiver will contribute to the success of the revitalization plan, and

iii. State specifically how the PHA wishes to manage any function for which a waiver is sought, pursuant to applicable law.

b. Narrative description of the local preferences applicable to the selection of tenants for the revitalized development if they are different from the approved tenant selection plan for the entire PHA jurisdiction, and a certification by the PHA that at least one public hearing was held to discuss the proposed local preferences.

5. The following required certifications:

a. Where demolition or disposition of units is contemplated in the application, the PHA must certify that each unit will be replaced in accordance with section 18 of the Act, as modified by the Appropriations Act of 1993 (see I.E.5.) and that they will take all necessary steps to assure that replacement units will be provided within 6 years of approval of the demolition application. In demolition/disposition cases where the requirements of the Section 412 Notice (57 FR 44074) are applicable, applications including plans for demolition or disposition must include a certification of lack of resident interest in acquiring the property, as appropriate in accordance with I.E.7.e. of this NOFA.

b. Commitment from any other public or private entity other than the PHA for any contribution to the development or the surrounding neighborhood which is a part of the revitalization plan.

c. Local government certifications consisting of:

i. a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of NAHA that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the targeted units are located;

ii. letter from the Mayor of the applicable jurisdiction in support of the application;

iii. certification by the Mayor that he/she will permit the replacement housing as required by section I.E.8.a.iii. (which must be submitted no later than August 4, 1993). (The demolition/disposition, statement of the intent for conversion, and where applicable, the approval of the actual replacement housing plan by the local governing body, required pursuant to section I.E.8.b.ii., is not required as part of the application submission but must be received within six months of the date of the grant approval.)

iv. although not required to be submitted as part of the application, the timing of submission of the approval of the plan for implementation by the local governing body will affect the rating of the "Extent and Involvement of Local Public and Private Entities", as provided in section III.C.1.e.

d. Disclosures required by section 102 of the HUD Reform Act of 1989.

e. Form HUD–50070, Certification for a Drug-Free Workplace.

f. Form HUD–52820, PHA Board Resolution Approving URD Application and PHA certification of compliance with minimum resident consultation requirements. This form is to be modified by: changing all references to "CIAP" and "modernization" to the term "URD"; and, striking all references to "IHA." All references to chapters or paragraphs in the CIAP Handbook, 7485.1 REV–4, are to be changed to "the URD NOFA."

g. Anti-Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for grants exceeding $100,000.

h. SF–LLL, Disclosure of Lobbying Activities only where any funds, other than federally appropriated funds, will be or have been used to lobby the Executive or Legislative branches of the Federal government regarding specific grants or contracts.

i. A certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of local government, or any agency or instrumentality thereof, for the specific activities for which funding is requested in the application.

j. A certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

C. Rating and Selection

1. Rating Factors

Applications will not be rated until they have been determined to be eligible under section I.D. of this NOFA. Further, prior to ranking, all applications must meet program requirements I.E.1, 2, 4, 6, 7, 8, and 12. Where applicable, the applications must also meet the following program requirements: I.E.3, 5, 10, and 11. If an application fails to meet the requirements for the community service component found in III.A.2.a. and Appendix B, rating may proceed. However, a revised community service component must be approved by the Commission on National and Community Service (CNCS) before any funds will be disbursed. HUD Headquarters review staff will rate factors "a"-"e" below. The CNCS will

rate factor "f" below. The Department may establish a panel of experts with whom to consult for advice on elements of the applications which are within their expertise. Such experts will be advisors and will not conduct any part of the rating or selection of grantees.

a. Extent of need for revitalization. Points will be awarded for evidence of distress in the development and distress in the surrounding neighborhood that has a significant impact on the development as measured by the information listed below and any qualitative information submitted pursuant to the categories identified in I.E.1. In determining rating points, applicants will be compared to each other. The following information must be submitted for the development:

i. Families living in distress. Percentage of households with no earned income, average income as a percentage of area median.

ii. Incidence of serious crime. Such statistical information as is available on the following: frequency of criminal acts of various types or all criminal acts, number of lease terminations or evictions for criminal activity, average number of police calls to the development monthly, average monthly incidence of vandalism to PHA property in dollars.

iii. Barriers to managing the environment. Vacancy rate, percentage of new residents per year, percent of rent collected monthly.

iv. Physical deterioration. Cost of rehabilitation/reconstruction per unit as a percentage of TDC, density as measured in units per acre, average work order backlog, number of units that do not meet HQS, and major system deficiencies, including peeling and chipping lead-based paint, lack of reliable and reasonably efficient heat and hot water, major structural deficiencies, electrical system under code, poor site conditions, leaking roof, deteriorated laterals and sewers, high number of plumbing leaks.

b. Potential impact of the plan. Points will be awarded to the extent the revitalization plan developed by the PHA appropriately addresses the causes of distress and seems likely to produce fully occupied units providing a satisfactory living environment, both in terms of the physical problems of the units to be funded and the social, educational, and income problems affecting the residents. In making a determination under this factor, the Department will consider the evidence of distress identified in the application, as well as other information available to HUD from previous applications to the Department, site visits, monitoring, and other information in the Department's files. Specifically, the application must demonstrate:

i. That the PHA has accurately assessed the causes of physical, social, educational and economic distress in the targeted units, the development, and the surrounding neighborhood,

ii. That the PHA has designed appropriate remedies to ameliorate the physical, social, educational and economic distress, including appropriate supportive services and service opportunities,

iii. That the plan for management of the development after revitalization will correct previous problems and contribute to the success of the development, and

iv. That, taken together, the sum of all the actions to be taken, whether funded by the grant or by other sources is highly likely to be successful in revitalizing the targeted units, resulting in full occupancy and in the provision of decent, safe, and sanitary housing to the residents over the long term.

c. Capabilities of the applicant. Points will be awarded based upon the PHA's capabilities, as measured by the following indicators:

i. Overall PHA capability.

(a) The PHA's total score under the Public Housing Management Assessment Program (PHMAP), 24 CFR Part 901

(b) The PHA's most recent fiscal audit

(c) Outstanding HUD monitoring findings

(d) For PHAs which were on the 3/31/92 Troubled PHA List, any submission pursuant to I.D.2.

ii. Modernization capability.

(a) The PHA's score for Indicator 2, Modernization, (24 CFR 901.10(b)(2)) under PHMAP

(b) Ability to carry out the implementation schedule in current and previous modernization except for delays beyond the control of the PHA

iii. Quality of management plan for carrying out revitalization activity.

(d) Extent of resident involvement. Points will be awarded based upon the extent of resident involvement, as measured by the following indicators and demonstrated in the plan:

i. Extent of resident consultation in preparation of the application;

ii. Degree of resident training, employment and contracting planned during execution of the revitalization plan (for example, as part of a Step-Up apprenticeship program); and

iii. Level of planned resident involvement in implementation and monitoring progress.

e. Extent of involvement of local public and private entities. Five points will be awarded automatically to a PHA which submits the local governing body approval of the plan for implementation either with the application or otherwise no later than 4 p.m. e.s.t. on July 20, 1993. Any PHA which does not submit the local governing body approval of its plan for implementation by said time will receive no more than 5 points, out of the ten point range, for this rating factor e. The remaining five points will be awarded based upon the extent of involvement of local public and private entities, as measured by the following indicators and demonstrated in the application:

i. Extent of involvement in the development of the application;

ii. Extent of commitment to the provision of supportive services to residents of the development to be revitalized;

iii. Level of commitment of local, non-federal funds to the physical improvement of the development and the surrounding neighborhood; and

iv. Extent of commitment to improvement of supportive services and economic activity in the immediate vicinity surrounding the development to be revitalized.

f. Community service component. Points will be awarded by the Commission based upon the community services component, as provided below, measured by the following indicators:

i. Quality based on:

(a) The program's ability to offer valuable services in the areas where they are needed most and where programs do not exist or where existing service opportunities are too limited to meet community needs;

(b) The program's ability to involve participants, particularly youth, in the design and operation of the program;

(c) The program's ability to involve individuals from diverse backgrounds (including diversity of gender, race, ethnic background, economic background, educational background, age, physical ability) who will serve together;

(d) The leadership and management, as measured by the qualifications of the principal leaders of the program; and

(e) The extent to which the applicant proposes specific and concrete plans for achieving its stated objectives.

ii. Cost effectiveness based on the reasonableness of the budget request relative to the perceived impact of the proposed activity.

iii. Sustainability based on:

(a) Strong and broad-based community support for involvement in the program; and

(b) Evidence that the best efforts will be made to obtain the financial

resources necessary to continue the program beyond the term of the revitalization project.

iv. Innovation based on the ability of the program to advance knowledge about creative and effective community service.

v. Replicability based on the degree to which program design can be broadly applicable in areas beyond program location.

vi. The following rating points will be used by CNCS to create the score for the community service component which will then be incorporated into the overall selection and rating scores assigned in section III.C.3. below:

Ration factors	Point range (points)
Quality	7.5
Cost-effectiveness	2.25
Sustainability	2.25
Innovation	1.5
Replicability	1.5

2. Selection Criteria

a. Points awarded under section III.C.3. below for the rating factors.

b. National geographic diversity. The Department, in its discretion, may choose to select a lower-rated, approvable application over a higher-rated application in order to increase the level of national geographic diversity of applications approved under this NOFA.

c. Diversity of development types. HUD may, in its discretion, choose to select a lower-rated, approvable application over a higher-rated application in order to increase the diversity of development types (developments which include family high-rise buildings of five or more stories and those which include only low rise buildings) approved under this NOFA.

3. Rating Values

The following point assignments will be used to rate applications in accordance with the criteria listed in section III.C.1. above. The Department shall examine the rating, and where it determines that applications falling below a certain point total are not suitable or not feasible for demonstration of successful revitalization of severely distressed developments, it may establish a minimum number of points for an application to be selected.

Rating factors	Point range
Extent of need for revitalization	0–30
Potential impact of the plan	0–30
Capabilities of the applicant	0–20
Extent of resident involvement	0–15
Extent of involvement of local public and private entities	0–10
Community service component	0–15
Total maximum score	120

4. Funding Decisions

After rating, Headquarters will select approvable applications for funding in accordance with the selection criteria set forth in section III.C.1. above. If any selected applications include community service components which have not been approved by the CNCS, the applicants *must* conform their applications to CNCS requirements after selection in order to obtain release of funds. HUD may approve an application for an amount lower than the amount required if the application includes an ineligible activity, or if insufficient funds are available to fund the full amount requested and HUD determines that partial funding is a viable option.

IV. Application Processing

A. Schedule for Submission and Approval

Applications must be received on or before 4 p.m. e.s.t. on May 5, 1993. If the local government's certification required under I.E.8.a.iii. cannot be submitted by the application deadline date of May 5, 1993, said approval and certification must be submitted to HUD Headquarters not later than 4 p.m. e.s.t. on August 4, 1993. Failure to submit the certification by said time on August 4, 1993 will result in the application being disqualified. HUD will select grantees by August 5, 1993 and announcements will be made shortly thereafter.

B. Corrections to Deficient Applications

1. Immediately after the deadline for submission of applications, Headquarters will screen each application to determine whether all items were submitted.

2. If the PHA fails to submit the technical items listed below or the application contains a technical mistake such as an incorrect signatory, the Department shall immediately notify the PHA in writing that the PHA has 14 calendar days from the date of HUD's written notification to submit or correct any of the specified items. The PHA will have no opportunity to correct deficiencies not identified in HUD's written notification. If the items listed below are missing, and the PHA does not submit them within the required time period, the application will be ineligible for further processing.

a. Form HUD–50070, Certification for a Drug-Free Workplace;

b. Form HUD–52820, PHA Board Resolution Approving URD Application;

c. Certification for Contracts, Grants, Loans and Cooperative Agreements;

d. SF–LL, Disclosure of Lobbying Activities;

e. Modernization Organization Staffing Plan.

V. Applicability of Other Federal Requirements

A. Flood Insurance

In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HUD will not approve applications for grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

1. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

2. Flood insurance is obtained as a condition of approval of the application.

B. Coastal Barriers Resources Act

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve grant applications for properties in the Coastal Barrier Resources System.

C. Fair Housing Requirements

The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and regulations pursuant thereto (24 CFR part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR part 107); the fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 109).

D. Nondiscrimination in Housing

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1).

E. Discrimination on the Basis of Age or Handicap

The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR part 146), the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of

1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8) and the Americans with Disabilities Act (P.L. 101–336) and its implementing regulation at 28 CFR part 36.

F. Employment Opportunities

The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135.

G. Minority and Womens' Business Enterprises

The requirements of Executive Orders 11246, 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

H. Disability Requirements

Fair Housing Act and section 504. The recipient must comply with the reasonable modification and accommodation requirements of the Fair Housing Act and the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

I. OMB Circulars

The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by PHAs, and to the remedies for non-compliance, except when inconsistent with the provisions of the Appropriations Act, other Federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A–128 implemented at 24 CFR part 44. Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

J. Drug-Free Workplace

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

K. Anti-Lobbying Certification

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

L. Section 102 of HUD Reform Act of 1989

On March 14, 1991, the Department published in the Federal Register a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

M. Documentation and Disclosures

Since HUD makes assistance under the program available on a competitive basis, 24 CFR part 12 requires HUD to:

1. Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period (§ 12.14(b).) HUD will provide further guidance on how this material may be accessed in a later Notice published in the Federal Register.

2. Publish a notice in the Federal Register at least quarterly indicating the recipients of the assistance (24 CFR 12.16(a).)

3. Subpart C of part 12 requires applicants that seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. Each applicant must complete from HUD 2880, Applicant/Recipient Disclosure/Update Report, and submit the completed form with its application.

N. Section 103 HUD Reform Act of 1989

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–2815; TDD (202) 708–1112. (These are not toll-free numbers.)

O. Section 112 HUD Reform Act of 1989

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second prohibits the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance. Section 13 was implemented by final rule (24 CFR part 86) published in the Federal Register on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A 24 CFR part 86. Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street,

SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

P. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Q. Conflict of Interest

1. In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the PHA and who exercises or has exercised any functions or responsibilities with respect to activities assisted under an URD grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

2. HUD may grant an exception to the exclusion in paragraph (1) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the revitalization demonstration and the effective and efficient administration of the revitalization program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the revitalization program that would otherwise not be available;

b. Whether an opportunity was provided for open competitive bidding or negotiation;

c. Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (1) of this section;

f. Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

R. Labor Standards

Under section 12 of the United States Housing Act of 1937, Davis-Bacon or HUD-determined prevailing wage rates shall apply to activities under this demonstration program. The wage rate requirements do not apply to individuals who perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved (24 CFR part 70). In addition, if other Federal programs are used in connection with the revitalization program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the CDBG program is used in connection with the revitalization program, the labor standards requirements of those programs would apply to the extent required by them.

S. Lead-Based Paint Testing and Abatement

Any property assisted under the revitalization program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is, therefore, subject to 24 CFR part 35, and 24 CFR part 965 (subpart H). Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

T. Relocation

1. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24 are applicable to this program.

2. Temporary Relocation.

The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

U. Records, Reports, and Audit of Recipients

1. General Records

Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

a. The amount and disposition of funds received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

b. The amount and nature of any other assistance, including cash, services, or other items contributed as a condition of receiving a grant;

c. The cost or other value of all in-kind non-Federal contributions towards the supportive services match required by I.E.3.; and

d. Any other proceeds received for, or otherwise used in connection with, the revitalization program.

2. Reports

The PHA shall submit Form HUD–52826, Schedule/Report of Modernization Expenditures (approved by the Office of Management and Budget under control number 2577–0049) no later than 45 calendar days after the end of the quarter. The first report is due 45 calendar days after the end of the quarter in which the ACC amendment is executed.

The PHA shall also submit a quarterly narrative report describing the current status of the work activities in the revitalization plan, including community service or supportive services set forth on Form HUD–52825, Comprehensive Assessment/Program Budget. In this narrative, the PHA shall describe any actions taken during the quarter towards accomplishment of its stated goals and explain any lack of progress or actions.

V. Access by HUD

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any

duly authorized representatives and the Inspector General) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by paragraph (1) of this section.

W. Environmental Requirements

Before HUD approves applications under this demonstration, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) and HUD's implementation regulations at 24 CFR part 50 and the compliance requirements of the related environmental laws and authorities listed in 24 CFR 50.4.

Other Matters

Information Collections

The estimated information collection requirements contained in this NOFA have been sent to the Office of Management and Budget. Information on these requirements is provided as follows:

URBAN REVITALIZATION NOFA-BURDEN HOURS

Submission requirements	Number of respondents	Number of responses	Total annual response	Hours per hours	Total
Planning grant:					
Application (Sec. II(b))	50	1	50	40	2,000
Resident consultation (Sec. I(d)(7))	50	1	50	10	500
Reporting requirements (Sec. IV(s)(2))	9	4	36	4	144
Recordkeeping (Sec. IV(s)(1))	9	1	9	1	9
Implementation Grant:					
Application (Sec. III(c))	50	1	50	275	13,750
Resident consultation (Sec. I(d)(7))	50	1	50	20	1,000
Reporting requirements (Sec. IV(s)(2))	6	4	24	10	240
Recordkeeping (Sec. IV(s)(1))	6	1	6	2	12
Total burden					17,655

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th Street SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the provisions of this NOFA do not have a potential significant impact on the formation, maintenance, and general well-being of the family. To the extent that there is an impact on the family, revitalization of severely distressed public housing developments under the demonstration can be expected to support family values by enabling low-income families to live in decent, safe, and sanitary housing.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions of this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Dated: March 19, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Forty Most Populous U.S. Cities:

Cities
New York, NY
Los Angeles, CA
Chicago, IL
Houston, TX
Philadelphia, PA
San Diego, CA
Detroit, MI
Dallas, TX
Phoenix, AZ
San Antonio, TX
San Jose, CA
Baltimore, MD
Indianapolis, IN
San Francisco, CA
Jacksonville, FL
Columbus, OH
Milwaukee, WI
Memphis, TN
Washington, DC
Boston, MA
Seattle, WA
El Paso, TX
Cleveland, OH
New Orleans, LA
Nashville-Davidson, TN
Denver, CO
Austin, TX
Fort Worth, TX
Oklahoma City, OK
Portland, OR
Kansas City, MO
Long Beach, CA
Tucson, AZ
St. Louis, MO
Charlotte, NC
Atlanta, GA
Virginia Beach, VA
Albuquerque, NM
Oakland, CA
Pittsburgh, PA
PHAS on the Troubled PHA List as of 3/31/92
Boston, MA
Bridgeport, CT
New Haven, CT
Camden, NJ
Newark, NJ
D.C. Department of Public and Assisted Housing
Philadelphia, PA
Chester, PA
Atlanta, GA
Birmingham, AL
Jacksonville, FL
Puerto Rico
Virgin Islands
Cuyahoga, OH
Detroit, MI
Indianapolis, IN
Lucas County, OH
East St. Louis, IL
Chicago, IL
Springfield, IL
New Orleans, LA
Kansas City, MO

Los Angeles, CA
San Francisco, CA

Appendix B

Program Requirements for Community Service Component

Background

The legislation creating the HUD Urban Revitalization Demonstration Program requires that each plan submitted for funding include a community service component to be approved by the Commission on National and Community Service (CNCS). By requiring a community service component in each plan for urban revitalization, the legislation presents HUD and CNCS with a unique opportunity to create a strong and lasting union between physical urban revitalization and community service. Physical urban revitalization cannot be sustained without a revitalization of the spirit of the people of the community such that the people begin to view themselves as collective owners of the community. A sense of collective ownership of the community engenders not only concern for people who live in the community but also caring for and pride in the physical structures in the community. Through community service, the sense of collective ownership of the community can be developed, thereby revitalizing the spirit of the people of the community. Thus, beyond the bricks and mortar of the physical structures, community service can be the glue that holds an urban revitalization program together, sustains it, and nourishes it.

To assist applicants for urban revitalization funds in designing their community service programs, CNCS has set forth below a definition for "community service program" followed by guidance on program requirements, allowable program activities, application content, selection criteria and ranking factors.

I. Definition

For purposes of the HUD Urban Revitalization Demonstration Program, "community service program" is defined as:

A program organized, administered, overseen or funded by a public housing authority or its designated representative, engaging individuals in meaningful service on a volunteer basis or through limited stipends to address unmet human, environmental, educational, and/or public safety needs through youth service and conservation corps, residents' associations, community-based organizations, K–12 schools, institutions of higher education, churches or other religious entities (but see paragraph (II.(13) below) and other such similar organizations.

II. Program Requirements

(1) An applicant that receives assistance under the revitalization program may administer the community service program or may contract with a nonprofit organization or a unit of state or local government, subject to the limitations contained in paragraph 13 below to administer such program.

(2) Each applicant intending to administer a community service program itself, and any organization contracted to administer a community service program by an applicant shall secure the services of a community service coordinator who will have primary responsibility for the design and administration of the applicant's community service program.

(3) In designing a community service program, each applicant shall solicit input from residents of the development to be revitalized—particularly youth-community-based organizations, local businesses, school representatives, representatives of religious organizations, and other interested parties. In order to maximize this level of input, each applicant is encouraged to establish a Community Service Advisory Board comprised of the parties listed in the preceding sentence.

(4) With the assistance of the parties listed in paragraph (3), each applicant shall determine the human, environmental, educational, and/or public safety needs of the housing development to be revitalized as well as the surrounding neighborhood. An applicant may also determine the human, environmental, educational, and/or public safety needs of the city at large.

(5) In light of the determination required in paragraph (4), and in conjunction with the parties listed in paragraph (3), each applicant shall devise strategies or service opportunities for addressing the greatest needs identified and provide a justification for choosing those particular strategies.

(6) Programs may, but are not required to provide, in-service stipends or post-service benefits for participants. If post-service benefits are provided, they shall only be paid at the end of the term of service and shall only be used for education, training, or apprenticeships. In-service stipends and post-service benefits are subject to the following limitations:

(a) Full-time service. (i) In-service stipends shall not exceed 100 percent of the poverty line for a family of two (as defined in 42 USC section 9902(2)); and

(ii) Post-service benefits shall not exceed $100 per week of service or $5,000 per year of service, whichever is less.

(b) Part-time service. (i) In-service stipends shall not exceed an amount equal to a share of such stipend offered to full-time participant under paragraph (a)(i) above, that has been prorated according to the number of hours such part-time participant serves in the program.

(ii) Post-service benefits shall not exceed an amount equal to a share of such post-service benefit offered to a full-time participant under paragraph (a)(ii) above, that has been prorated according to the number of hours worked per week of service or $2000 per year of service, whichever is less.

(c) A participant in a community service program who receives an in-service stipend and/or post-service benefit shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(7) Each applicant shall give preference for participation in service opportunities included in the community service program to residents of the housing development to be revitalized.

(8) Each community service program shall be for a term of no less than the term of the revitalization project. Each applicant shall exercise best efforts to continue the community service plan beyond the term of the revitalization project.

(9) Each applicant shall collect such data as the Commission on National and Community Service (CNCS) directs to enable CNCS to conduct an evaluation of the community service program.

(10) To reflect the importance of the community service component of each application, we recommend that each applicant use between 7 percent and 10 percent of the funds made available under the revitalization program for its community service program. Of the amount of funds reserved for the community service program:

(a) No more than 10 percent may be expended for administrative expenses related to such program; and

(b) No more than 10 percent may be expended for the purchase of major capital equipment related to such program.

(11) Prior to the placement of a participant in a service opportunity, the applicant shall consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out under the community service program.

(12) Each applicant shall ensure that individuals do not drop out of school for the purpose of participating in the community service program.

(13) Applicants shall not contract with any of the following organizations to administer or carry out, in whole or in part, any community service program funded under the demonstration program, neither may any organization selected to carry out service activities use the funds provided to conduct any of the types of activities carried out by any of the organizations listed below:

(a) Business organized for profit;

(b) Labor union;

(c) Partisan political organization;

(d) Organization engaged in religious activities, unless such activities do not involve the use of funds provided under the demonstration program by program participants and program staff to give religious instruction, conduct worship services, or engage in any form of proselytization; or

(e) Domestic or personal service company or organization.

(14) Participants in the community service program shall be citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(15) Supplementation, nonduplication, and nondisplacement—(a) Supplementation. (i) Applicants are advised that funds received for the community service program are to be used only to supplement, not supplant, State and local public funds expended for services of the type assisted under this grant in the previous fiscal year.

(ii) Paragraph (i) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such

program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this grant.

(b) Nonduplication. (i) In general, funds may be used only for a program that does not duplicate, and is in addition to, an activity performed by paid employees in the locality being served by the program; this requirement shall not be construed to bar the replication of an exemplary volunteer or community service program; and

(ii) Funds made available under this grant for the community service program shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of paragraph (c) of this section are met.

(c) Nondisplacement. (i) An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the assistance used by the employer of a participant in a program funded under this grant.

(ii) A service opportunity may not infringe in any manner on the promotional opportunity of an employed individual.

(iii) A participant in a program receiving assistance under this grant shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(iv) Services may not be performed that would supplant the hiring of employed workers or would otherwise be performed by an employee, including an employed worker who recently resigned or was discharged; an employee who is subject to a reduction in force; an employee who is on leave (terminal, temporary, vacation, emergency, or sick); or an employee who is on strike or who is being locked out.

III. Allowable Program Activities

(1) An applicant's community service program shall consist of any activities that directly address the unmet needs identified through the determination required in paragraph (4) above, including, but not limited to, crime prevention, victim assistance, drug abatement, after school programs, tutoring/mentoring programs, community gardens, day care for children and elderly, housing rehabilitation, and community health centers.

(2) Applicants are encouraged to develop programs which combine support services (as defined in section III.A.2.b of this notice) and community service. For example, an applicant may support a youth corps as a means of involving youth in meaningful community service while at the same time such youth can benefit from the education and job training service provided by the youth corps.

(3) Applicants are encouraged to develop service opportunities in connection with the physical revitalization plan. For example, program participants could be involved in rehabilitation activities, planting community gardens, or painting murals.

IV. Application Content

The community service program component of each application shall include:

(1) A description of the objectives of the program;

(2) The experience, accomplishments, and qualifications of the community service coordinator, particularly his/her community service experience;

(3) For a public housing agency that contracts with another organization to administer the community service program, a description of that organization's capacity to administer such program, including the amount and quality of staff time committed to the program, and experience in the area of community service;

(4) The manner in which the program will be coordinated with and build upon existing community service programs;

(5) The process for soliciting community input—particularly from youth—in the planning of the program;

(6) A description of youth involvement in the operation of the program, including leadership roles;

(7) The process for determining the human, environmental, educational and/or public safety needs of the housing development to be revitalized and the findings of such determination;

(8) The service opportunities proposed and how those opportunities will address unmet needs;

(9) The particular target group, if any, of the program, e.g., youth, the elderly. If any particular group is targeted either as providers of service or receivers of service, provide justification for targeting such group;

(10) A plan for recruiting participants for service opportunities;

(11) A plan for placing participants in service opportunities and preparing participants for their placements;

(12) An estimate of the number of participants expected to be involved in the program;

(13) A discussion of whether participants will serve on a volunteer basis of whether some or all will receive in-service stipends and/or post service monetary benefits out of grant proceeds. If stipends and/or post-service benefits will be paid, describe how amounts will be determined;

(14) A discussion of whether the program will offer full-time and/or part-time service opportunities;

(15) A discussion of efforts to create service opportunities that place residents in locations in the community or city at large;

(16) Any efforts to involve non-residents from the surrounding neighborhood or the city at large as co-providers of service with residents of the development to be revitalized;

(17) The extent to which the community service program will be combined with supportive services, and describe such services;

(18) A budget accompanied by a narrative setting forth the grant amounts to be expended in the administration (and, where applicable, the operation) of a community service program.

(19) Such other information as CNCS shall require.

V. Review and Approval

The community service component of each application must be reviewed and approved by the Commission on National and Community Service prior to any final funding determinations.

VI. Selection Criteria

In approving the community service components of applications for funding, CNCS will use the following criteria and ranking factors:

(1) Quality based on:

(a) The program's ability to offer valuable services in the areas where they are needed most and where programs do not exist or where existing service opportunities are too limited to meet community needs;

(b) The program's ability to involve participants—particularly youth—in the design and operation of the program;

(c) The program's ability to involve individuals from diverse backgrounds (including diversity of gender, race, ethnic background, economic background, educational background, age, physical ability) who will serve together;

(d) The leadership and management, as measured by the qualifications of the principal leaders of the program; and

(e) The extent to which the applicant proposes specific and concrete plans for achieving its stated objectives.

(2) Cost-effectiveness based on the reasonableness of the budget request relative to the perceived impact of the proposed activities.

(3) Sustainability based on:

(a) Strong and broad-based community support for and involvement in the program; and

(b) Evidence that best efforts will be made to obtain the financial resources necessary to continue the program beyond the term of the revitalization project.

(4) Innovation based on the ability of the program to advance knowledge about creative and effective community service.

(5) Replicability based on the degree to which program design can be broadly applicable in areas beyond program location.

VII. Ranking Factors

The following point assignment will be used to rank the community service component of applications in accordance with the criteria listed above.

	Points
Quality	7.50
Cost-effectiveness	2.25
Sustainability	2.25
Innovation	1.50
Replicability	1.50
Total Maximum Score	15

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Federal Register

Monday
March 29, 1993

Part IV

The President

Proclamation 6539—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1993

Federal Register
Vol. 58, No. 58
Monday, March 29, 1993

Presidential Documents

Title 3—

The President

Proclamation 6539 of March 25, 1993

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1993

By the President of the United States of America

A Proclamation

The people and Government of the United States join the people and Government of Greece in celebrating Greek Independence Day. The close and cordial ties between our nations are built upon the solid foundation of a common love of democratic values, strong cultural ties between our peoples, and a respect for human rights. Greek influence on American culture extends from the ideas of the great Hellenic thinkers to the many important contributions of Greek Americans today. These ties continue to strengthen the relationship between our nations and provide a solid and promising basis for the future.

Two thousand and five hundred years ago, Cleisthenes succeeded in instituting a series of reforms in Athens and across the Peninsula of Attica that expanded the rule of government to a much broader group of citizens. The concept of democracy was thus created and embodied in a series of rights and laws. The personal freedom that resulted from these reforms sparked a period of cultural growth in philosophy and the arts to which Western culture is eternally indebted.

The United States is proud to acknowledge the enormous debt it owes to the Greek philosophers and politicians. In creating a new Nation, the American Founding Fathers drew upon the Greek writings for inspiration as to the purpose of government and in order to define the common good of society. Hellenic ideals have also shaped our democracy through architecture. Across our Nation and especially in the Nation's Capital, the seats of representative government are housed in buildings inspired by the grand proportions and beautiful lines of Greek temples. In both nations, these buildings remind us of the ideals of truth, justice, and faith in the human ability on which our societies are founded.

Our nations share not only the common bond of democratic philosophy but also the willingness to fight for self-determination and freedom and to be vigilant in protecting these hard-won rights. The Greek struggle for independence 172 years ago has long been admired by American citizens. In this century, the United States and Greece joined together to oppose threats to our democratic values from fascism and communism.

It is fitting, therefore, that our two great democracies pause to realize how much they have benefited and continue to benefit from each other. As part of this effort, the National Gallery of Art in Washington, the Metropolitan Museum of Art in New York, and the Ministry of Culture of Greece have gathered a landmark exhibit of sculptures from the 5th century B.C. These sculptures, many of which have never left Greek soil, document in art the birth of the concept of the individual. In return for these gracious loans from Greece, the two American museums have lent more than 70 major paintings from their permanent collections for an exhibit at the National Gallery of Greece in Athens. This summer the National Archives will also display artifacts from the 5th century B.C. which demonstrate the great degree of participation of Athenians in their government. It is

appropriate that our own Constitution will be juxtaposed against these artifacts.

In recognition of the close bond that has been forged between the nations and peoples of the United States and Greece, the Congress, by Senate Joint Resolution 22, has designated March 25th as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 25, 1993, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day, the 172nd anniversary of the beginning of the Greek revolution against the Ottoman Empire, with appropriate programs, ceremonies, and activities in honor of the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of March, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

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Editorial note: For the President's remarks on signing this proclamation, see the *Weekly Compilation of Presidential Documents* (vol. 29, issue 12).

Reader Aids

Federal Register

Vol. 58, No. 58

Monday, March 29, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22
15415–15750.....23
15751–16102.....24
16103–16344.....25
16345–16480.....26
16481–16610.....29

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305.....16375

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12193 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12800 (See DOL final rule of March 15).....15402
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12836 (See DOL final rule of March 15).....15402
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13189
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413
6537.....15751
6538.....15753
6539.....16609

Administrative Orders:

Presidential Determinations:
No. 92–22 of April 22, 1992 (See Presidential Determination 93–16 of March 20, 1993).....16345
No. 93–15 of February 27, 1993.....13183
No. 93–16 of March 20, 1993.....16345

Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
297.....16446
307.....12145
432.....13191
532.....12146, 13193, 13194, 15415
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332, 15416, 15775
1421.....14495
1427.....12332, 15261, 15755
1434.....14495
1464.....11960
1493.....11786, 13684, 15901
1540.....16103
1703.....13194
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071, 15417
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130
58.....13130

59.....13130
61.....13130
68.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1435.....16126
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174, 15901
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
26.....15810
50.....12339, 15303, 16377
52.....16377
60.....12342
100.....16377
110.....14344
810.....13427, 15441
834.....16268
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

3.....16481
217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
607.....16104
614.....11792
618.....16104
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
108.....15756
121.....12334

14 CFR

25.....12537, 16486
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515, 15757, 15758, 15760, 16105, 16107, 16109, 16110, 16113, 16115, 16118, 16347
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264, 15762, 15763, 16488
93.....12128
95.....16489
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450, 15813, 16137, 16377, 16505, 16507
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118, 16508
121.....15730, 16584
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

4.....15763
5.....15763
305.....15086
1030.....12335
1116.....16119

Proposed Rules:

18.....16139
305.....12818
306.....16464
308.....13370
1204.....15815

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
230.....16141
239.....16141
240.....11804, 11806, 16151
250.....13719
259.....13719
274.....16141

18 CFR

2.....15418
11.....15765
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

Ch. I.....15816
284.....14530, 15311

19 CFR

4.....12538, 13195
19.....15770
111.....15770
112.....15770
122.....15770
141.....16349
146.....15770
178.....16349

20 CFR

Proposed Rules:

209.....11811
211.....11811
229.....16155
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

Ch. I.....15816
450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
215.....15773
234.....13534, 13950
236.....13007, 15773
240.....13534
570.....13686
582.....13884
583.....13870
700.....14509
813.....15773
882.....13828
905.....13916, 15773
913.....15773
968.....13916
3500.....13705

25 CFR

Ch. III.....16493
503.....16495

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274, 16349, 16496

52.....14517
602.....13409, 13413
Proposed Rules:
1.....14531, 15312, 15313, 15818, 15819
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964
Proposed Rules:
650.....11814

29 CFR

470.....15402
1910.....15089, 16496
2619.....13706
2676.....13707
Proposed Rules:
103.....15314
825.....13394
1910.....15526
1926.....16509, 16515
2619.....15315
2676.....15315
2700.....12158

30 CFR

917.....16350
920.....15275
948.....16353
Proposed Rules:
56.....14492
57.....14492
75.....16517
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
914.....16379, 16381
920.....16383, 16384, 16386
935.....15315, 16388
938.....15456, 16389
950.....15318, 15319

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
165.....16497
988.....13007

33 CFR

1.....15228, 15901
100.....13214, 16121, 16357
110.....12539
117.....12540, 15419, 15420, 15421, 16122, 16499
154.....13550
155.....13708
165.....14151, 15089, 15775
Proposed Rules:
117.....12568
165.....15821, 15822
168.....16391

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
600.....13335, 15523
668.....14152
682.....13335
Proposed Rules:
50.....11924
232.....15748
649.....11928, 15824
674.....13356
682.....13356

36 CFR

Proposed Rules:
242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174, 16358, 16359

39 CFR

111.....13551
Proposed Rules:
3001.....12198, 16392

40 CFR

50.....13008, 15278, 15281, 15282
52.....11967, 14153, 15277, 15422, 15431
55.....14157
72.....15634
73.....15634
75.....15634
80.....13413, 14476, 16002
81.....12541, 15422, 15776
86.....13413, 15781
88.....11888
180.....14314, 14316, 15802, 15803, 15804, 16094
261.....15284
268.....14317
271.....12174, 14319, 14321, 15806
300.....12142, 15287
435.....12454
712.....13556
716.....13556
761.....15435, 15808
763.....15808
Proposed Rules:
Ch. 1.....12199, 12352, 13571, 13730, 16517
51.....13836
52.....12006, 12913, 12914, 13230, 13572, 13575, 14194, 15824
61.....15457
68.....13174
69.....13579
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
180.....12199, 12200, 13234, 13236, 13238, 13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
761.....12352, 13128

41 CFR

Ch. 301.....12890
301-7.....12890
302-11.....15436

43 CFR

Public Land Orders:
86.....11816
6958.....11968
6959.....14323
Proposed Rules:
3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11968, 14159, 16500
65.....14323, 15091
67.....14325
Proposed Rules:
67.....14350

45 CFR

400.....11793
1303.....13019
1611.....12335

46 CFR

10.....15228, 15901
12.....15228, 15901
15.....13360
25.....13364
552.....13414
Proposed Rules:
31.....15740
32.....15740
67.....12352

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795, 16360
5.....14328
13.....12632
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
73.....12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440, 16502, 16503
74.....11795
76.....11970, 11972
80.....16503
90.....12176, 12177
Proposed Rules:
Ch. I.....12915, 13041, 14367, 15120, 15461
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535, 16163
61.....13435
64.....12204, 13435, 14371
65.....16163
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436, 13437, 15321, 15461, 15462, 16518
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140

49 CFR

1.....12543
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463
582.....12545
591.....12905
1004.....16124
1007.....15290
Proposed Rules:
23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316
180.....12316
195.....12213
571.....12921, 13042, 13243, 13424, 15132
Ch. VI.....15816
613.....12064, 12084
614.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853, 12864, 14169, 14248, 14330
20.....15093
227.....16369
611.....14170, 16446
625.....13560
641.....13560, 16371
646.....11979
652.....14340
663.....11984, 16124
672.....11985, 11986, 13214, 13561, 16372, 16373
674.....12336
675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291, 16374, 16446
685.....14170
Proposed Rules:
17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541, 15828, 16164
100.....14350
216.....16519
218.....16519
222.....16519
625.....12017, 15463, 16519
641.....12018, 15132

218.....16519
222.....16519
625.....12017, 15463, 16519
641.....12018, 15132
646.....13732
663.....14543, 14549

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List March 25, 1993

ELECTRONIC BULLETIN BOARD

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Contents

Federal Register

Vol. 58, No. 59

Tuesday, March 30, 1993

Agricultural Research Service
NOTICES
Meetings:
National Genetic Resources Advisory Council, 16649

Agriculture Department
See Agricultural Research Service
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Tobacco plants, etc., 16646
Genetically engineered organisms for release into environment; permit applications, 16647

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Canstar Sports USA, Inc., 16695
Southern Pine Association et al., 16698
USAir Group, Inc., 16698
National cooperative research notifications:
Industrial Macromolecular Crystallography Association, 16703
Microelectronics & Computer Technology Corp., 16703
UNIX International, Inc., 16703

Army Department
NOTICES
Meetings:
Military Personal Property and Claims Symposium, 16653

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Voting age population for 1992; estimates, 16649

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Developmental disabilities expenditures; basic support, protection, and advocacy funds; State allotments, 16687
Meetings:
Developmental Disabilities Interagency Committee, 16685

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Wisconsin, 16649

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
China, 16653

Customs Service
PROPOSED RULES
Customs bonds:
Automated surety interface, 16632

Defense Department
See Army Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 16653

Defense Nuclear Facilities Safety Board
NOTICES
Recommendations:
Critical experiment capability need, 16654

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Monroe, Elliott F., M.D., 16704
Zachary, Floyd, D.D.S., 16704

Education Department
NOTICES
Meetings:
National Education Goals Panel, 16655

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Mexus Trading Co., 16656
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Auburndale Power Partners, L.P., 16657

Energy Information Administration
NOTICES
Forms; availability, etc.:
Coordinated regional bulk power supply program report, 16655

Environmental Protection Agency
RULES
Air programs:
Outer Continental Shelf regulations; consistency update, 16625
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois; correction, 16639
Pennsylvania, 16639
Pesticide programs:
Microbial pesticides; experimental use permits and notifications, 16762

NOTICES
Agency information collection activities under OMB review, 16664
Grants and cooperative agreements; availability, etc.:
Financial assistance programs—
Emergency planning and community right-to-know; States and Indian tribes, 16668
Grants, State and local assistance:
Pollution prevention incentives for States program, 16664
Toxic and hazardous substances control:
Premanufacture exemption approvals, 16668, 16670, 16671
Testing consent agreement development—
Tier I chemical substances; meetings, 16669

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 16739

Federal Aviation Administration
RULES
Terminal control areas, 16611

Federal Communications Commission
RULES
Common carrier services:
Access charges—
800 service; policy statement, 16628
PROPOSED RULES
Radio stations; table of assignments:
Maryland, 16644
Missouri, 16643
NOTICES
Meetings:
Network Reliability Council, 16672
Public safety radio communications plans:
Alaska, 16672
Puerto Rico, 16672

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Alabama, 16673
Connecticut, 16673
Delaware, 16674
District of Columbia, 16674
Florida, 16674, 16674
Georgia, 16675
Kentucky, 16676
Maine, 16676
Maryland, 16676
Massachusetts, 16677
New Hampshire, 16677
New Jersey, 16676
New York, 16678
North Carolina, 16679
Pennsylvania, 16679
Rhode Island, 16680
Tennessee, 16680
West Virginia, 16681

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Big Three Industries, Inc., 16660
Interstate Power Co. et al., 16657
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 16660
Century Power Corp., 16660
CNG Transmission Corp., 16660
Kentucky West Virginia Gas Co., 16661
Northwest Pipeline Corp., 16661
Pacific Gas Transmission Co., 16660
Paiute Pipeline Co., 16661
Raton Gas Transmission Co, 16662
Southern Natural Gas Co., 16662
Southwest Gas Corp., 16662
Tampa Electric Co., 16663
Texas Eastern Transmission Corp., 16663
Transcontinental Gas Pipe Line Corp., 16663

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Bucks County, PA, et al., 16734

Federal Maritime Commission
PROPOSED RULES
Practice and procedure:
Alternative dispute resolution, 16641
NOTICES
Practice and procedure:
Alternative dispute resolution; policy statement, 16681

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
C.L.C. Enterprises, 16684
Comm. Bancorp, Inc., et al., 16683
KSB Bancorp, Inc., et al., 16685
Stanly Capital Corp. et al., 16684
Tidwell, Randy G., 16684

Fish and Wildlife Service
RULES
Endangered and threatened species:
Coastal California gnatcatcher, 16742
PROPOSED RULES
Endangered and threatened species:
Coastal California gnatcatcher, 16758
Wild Bird Conservation Act of 1992; implementation; meeting, 16644
NOTICES
Endangered and theatened species:
Recovery plans—
Desert tortoise (Mojave population), 16691
Endangered and threatened species permit applications, 16692

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
Export applications—
Furazolidone aerosol powder; correction, 16687

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Minnesota, 16650
Tennessee—
Nissan Motor Manufacturing Corp. U.S.A.; automobile and pickup truck manufacturing plant, 16650
Virginia—
ABB Power Generation, Inc.; large turbine electric power generator facility, 16650

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 16653

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Privacy Act:
Computer matching programs, 16687

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
April, 16688
May, 16689

Housing and Urban Development Department
NOTICES
Meetings:
Occupancy Standards in Public and Assisted Housing Task Force, 16690

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Inflation adjustment factor and reference price:
Renewable electricity production credit, 16737

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Hanson Natural Resources Co., 16692

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Parole Commission
NOTICES
Agency information collection activities under OMB review, 16693
Pollution control; consent judgments:
Acme Solvents Reclaiming, Inc., et al., 16694
International Crane Co., 16694
Windward Properties, Inc., 16694

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
RULES
Public land orders:
Wyoming, 16628
NOTICES
Meetings:
Lewistown District Advisory Council, 16690
Withdrawal and reservation of lands:
Alaska, 16690

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 16653
Meetings:
Advisory Council task forces, 16715
Research and development contracts; increased contractor liability, 16715

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 16716

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors, 16735
Subaru of America, Inc., 16736

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 16689
President's Cancer Panel, 16689

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Pacific Coast groundfish, 16629
NOTICES
Permits:
Endangered and threatened species, 16650
Marine mammals, 16651, 16652

National Park Service
NOTICES
Meetings:
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 16692

National Science Foundation
NOTICES
Meetings:
Engineering Advisory Committee, 16717
High Performance Computing Blue Ribbon Panel, 16717

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 16717
Kerr-McGee Corp., 16718
Meetings; Sunshine Act, 16739

Occupational Safety and Health Administration
RULES
Safety and health standards:
Hazardous energy sources control (lockout/tagout), 16612

Parole Commission
RULES
Federal prisoners; paroling and releasing, etc.:
Recorded audio and visual material consideration at parole hearings, 16612

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Metropolitan Life Insurance Co. et al., 16709
Society National Bank et al., 16705

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Winchester, TX, 16720

Prospective Payment Assessment Commission
NOTICES
Meetings, 16721

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 16721

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 16721
Applications, hearings, determinations, etc.:
American National Money Market Fund, Inc., 16723
New Germany Fund, Inc., et al., 16723
Separate Account ANA of National Integrity Life Insurance Co., 16726
Western-Southern Life Assurance Co. et al., 16727

State Department
NOTICES
Agency information collection activities under OMB review, 16729
Sovereign immunity; convention (multilateral international agreement), 16729

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Utah, 16623
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Iowa, 16632
Texas, 16634
Wyoming, 16636, 16637

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Air Florida Express, Inc., 16733
Columbia Pacific Airlines, 16734
Four Star Aviation, Inc., 16734
Washington, D.C. (Dulles)-Ottawa service case, 16734

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 16737

United States Information Agency
NOTICES
Agency information collection activities under OMB review, 16738

Separate Parts In This Issue

Part II
Department of Interior, Fish and Wildlife Service, 16742

Part III
Environmental Protection Agency, 16762

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
71.....16611

19 CFR
Proposed Rules:
113.....16632

28 CFR
2.....16612

29 CFR
1910.....16612

30 CFR
944.....16623
Proposed Rules:
915.....16632
943.....16634
950 (2 documents).....16636, 16637

40 CFR
55.....16625
Proposed Rules:
52 (2 documents).....16639
172.....16762

43 CFR
Public Land Order:
6960.....16628

46 CFR
Proposed Rules:
502.....16641

47 CFR
69.....16628
Proposed Rules:
73 (2 documents).....16643, 16644

50 CFR
17.....16742
663.....16629
Proposed Rules:
Ch. I.....16644
17.....16758

Rules and Regulations

Federal Register
Vol. 58, No. 59
Tuesday, March 30, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AWA–5]

Amendment to New York Terminal Control Area, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This action amends the language describing the New York, NY, Terminal Control Area (TCA). A final rule that established the New York TCA was published on July 21, 1971. A portion of "Area F" of the New York TCA is being revised to describe the boundaries that coincide with prominent geographic landmarks. This action involves amending language in the description of "Area F" of the New York TCA and will not alter the TCA's physical dimensions or the TCA airspace as depicted on aeronautical charts.

EFFECTIVE DATE: 0901 U.T.C., May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

A final rule that established the New York TCA was published in the Federal Register on July 21, 1971, with an effective date of September 16, 1971 (36 FR 13376). The description, as then published, for a portion of "Area F" of the New York TCA, indicates that the 6-mile radius circle of the LaGuardia (LGA) Very High Frequency Omnidirectional Range (VOR) intersects the LGA VOR 264° radial at the west bank of the Hudson River. These two lines, however, do not intersect on the west bank but in the middle of the Hudson River. This amendment deletes the reference to the radial intersection and instead uses the landmark of the Hudson's west bank as the point of intersection with the 6-mile arc. The revision to the language in the description of the New York TCA, therefore, does not involve a change to the physical dimensions. The dimensions as depicted on the aeronautical charts are correct. The coordinates depicted in the description of "Area F" have been updated to North American Datum 83. TCA's are published in section 71.401(b) of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The TCA listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the language in the description of "Area F" of the New York TCA by describing the boundaries that coincide with prominent geographic landmarks. The current boundary from the "intersection of the LGA VOR/DME 337° radial and the Erie Lackawanna Railroad tracks, thence south along the railroad tracks to the east branch of the Hackensack River, thence south and west along the river to the LGA VOR/DME 299° radial" will be redefined as from the "intersection of LGA VOR/DME 337° radial and the Conrail Railroad tracks, thence south and west along the railroad tracks to the LGA VOR/DME 299° radial." The Conrail Railroad was formerly named the Erie Lackawanna Railroad and this amendment thus updates the description to reflect that name change. The boundary line will then run south to the 6-mile radius of LGA VOR/DME and the west bank of the Hudson River. The remainder of the description will not require revisions.

Accordingly, since this action does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are necessary.

The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Terminal control areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1956–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.401(b) Terminal Control Areas

* * * * *

AEA NY TCA New York, NY [Revised]

* * * * *

Area F. That airspace extending upward from 1,800 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at the intersection of the LGA VOR/DME 337° radial and the Conrail Railroad tracks, thence south and west along the railroad tracks to the LGA VOR/DME 299° radial, thence direct south to the intersection of the 6-mile radius circle of LGA VOR/DME and the west bank of the

Hudson River, thence south along the west bank of the Hudson River to its intersection with and then counterclockwise along the 6.5-mile radius circle centered at lat. 40°41'30" N., long. 74°09'59" W., to and southwest along the New Jersey Highway Route No. 22 to and clockwise along a 10-mile radius circle centered at lat. 40°41'30" N., long 74°09'59" W., to LGA VOR/DME 283° radial, thence direct to the point of beginning.

* * * * *

Issued in Washington, DC, on March 22, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-7275 Filed 3-29-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Consideration of Recorded Audio and Visual Material at Parole Hearings

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission adopted a procedural rule relating to the consideration of recorded audio and visual material (including audio and video tapes) at parole hearings. The rule requires the submission of recorded audio and visual material prior to the hearing for review and summarization. The rule notes that the Commission will normally consider only verbal and written evidence at hearings but that recorded audio and visual material will be considered if there is no adequate substitute to enable the Commission to make a finding of fact pursuant to 28 CFR 2.19(c).

EFFECTIVE DATE: April 29, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of General Counsel, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The increased frequency with which recorded audio and visual material has been presented for review at parole hearings requires the Commission to establish a procedural rule to govern the consideration of such material. The procedural rule that follows spells out the heretofore unwritten policy of the Commission concerning the submission of recorded audio and visual material. Since the vast majority of hearings are conducted at institutions where time and equipment limit the presentation of recorded audio and visual material, the Commission prefers to consider only verbal and written evidence (e.g., affidavits as opposed to videotaped statements) at hearings.

However, recorded material has occasionally been admitted under the "best evidence" rule in parole revocation hearings and prisoners have sometimes presented recorded material for which no adequate substitute could have been found. The Commission recognizes the value of this material in assisting it in making findings of fact and will continue to consider admitting this type of evidence in all cases as long as it is submitted prior to the hearing for review. However, recorded material will only be reviewed at the hearing if the Commission finds that written or oral evidence is either not available, or inadequate to permit a finding of fact pursuant to 28 CFR 2.19(c). For example, the transcript of a videotaped cross-examination of a witness who is not deceased, would not be an adequate substitute for the tape itself if the Commission found that a credibility determination was essential.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a major rule within the meaning of Executive Order 12291. This rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

Accordingly, the U.S. Parole Commission makes the following amendment to 28 CFR part 2.

The Amendment

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority. 18 U.S.C. 4203(a)(1) and 4204 (a)(6).

(2) 28 CFR part 2, § 2.19 is amended by adding the following new paragraph (b)(4):

§ 2.19 Information considered.

* * * * *

(b) * * *

(4) The Commission will normally consider only verbal and written evidence at hearings. Recorded audio and visual material will be reviewed at hearings only if there is no adequate substitute to permit a finding under paragraph (c) of this section. Otherwise, recorded audio and visual material should be submitted prior to the hearing for review and summarization, pursuant to paragraph (b)(2) of this section.

* * * * *

Dated: February 23, 1993.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 93-7167 Filed 3-29-93; 8:45 am]

BILLING CODE 4410-01-M-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Control of Hazardous Energy Sources (Lockout/Tagout)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; supplemental statement of reasons.

SUMMARY: On September 1, 1989, OSHA promulgated a final standard entitled "Control of Hazardous Energy Sources (Lockout/Tagout)," to protect workers from releases of hazardous energy during servicing or maintenance of machines and equipment. The U.S. Court of Appeals for the District of Columbia Circuit, in *UAW* v. *OSHA*, 938 F.2d 1310, remanded the lockout/tagout standard to OSHA for further consideration on three issues: first, the criteria used by OSHA in setting safety standards under section 3(8) of the Occupational Safety and Health Act of 1970 (the OSH Act); second, justification for the final rule's preference for lockout over tagout; and third, OSHA's determination that the final rule should apply to all general industry workplaces in which hazardous servicing and maintenance operations take place. OSHA has determined that there are clear and definitive criteria which guide and limit the Agency's discretion in establishing safety standards under the OSH Act. In applying these criteria to the lockout/tagout standard, OSHA has determined that the standard complies with the statutory criteria. In addition, on the second remand issue, involving the standard's preference for locks over tags, OSHA has determined that such a preference is warranted by the fact that lock-based safety programs are less susceptible to human error and thus can be expected to save more lives and prevent more injuries than tag-based

programs. On the third remand issue, OSHA reaffirms and further explains its reasons for applying the standard throughout general industry. Finally, the Agency discusses two approaches to regulatory decision-making, formal cost-benefit analysis and risk-risk analysis, which the court suggested in its opinion as possible alternatives for OSHA to consider in setting safety standards.

DATES: The final rule became effective January 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Introduction

On September 1, 1989, the Occupational Safety and Health Administration (OSHA) promulgated a final rule, entitled "Control of Hazardous Energy Sources (Lockout/Tagout)," to protect workers against hazardous energy release during the maintenance and servicing of machines or equipment. 54 FR 36644, codified at 29 CFR 1910.147. The "lockout/tagout" standard "covers the servicing and maintenance of machines and equipment in which the unexpected energization or startup of the machines or equipment, or release of stored energy could cause injury to employees." 29 CFR 1910.147(a)(1)(i) (emphasis in original). The standard requires employers to develop and implement energy control programs that "ensure that before any employee performs any servicing or maintenance on a machine or equipment where the unexpected energizing, startup or release of stored energy could occur and cause injury, the machine or equipment shall be isolated from the energy source, and rendered inoperative." 29 CFR 1910.147(c)(1). OSHA estimated that the standard would prevent approximately 122 fatalities, 28,400 lost workday injuries, and 31,900 non-lost workday injuries each year. 54 FR at 36652/3. OSHA found that the standard would reduce a significant risk of harm to workers and that it would be feasible to implement. *Id.* at 36684–85.

Parties representing both labor and industry filed petitions for review of the standard in the United States Court of Appeals for the District of Columbia Circuit. The court rejected many of the challenges raised to the standard but remanded for OSHA to further explain its reasoning on several issues. *UAW* v. *OSHA*, 938 F.2d 1310 (D.C. Cir. 1991). The principal remand issue concerns the criteria OSHA uses when it sets safety standards. Under section 3(8) of the Occupational Safety and Health Act of 1970 (the OSH Act), such standards must be "reasonably necessary or appropriate to provide safe or healthful employment and places of employment." In response to the National Association of Manufacturers' (NAM) argument that this statutory language is unconstitutionally broad, the court concluded that "the interpretation offered by the Secretary is, in light of nondelegation principles, so broad as to be unreasonable." *UAW* v. *OSHA*, 938 F.2d at 1310. However, the court held that at least one limiting interpretation—cost-benefit analysis—would avoid the overbreadth problem. In addition, the court stated that "there may be other interpretations that conform to nondelegation principles." *Id.* at 1321. Accordingly, the court remanded to OSHA to identify "intelligible principle[s] that could control its discretion under § 3(8) * * *." *Id.* at 1325.

The second remand issue involves what NAM contended was a rulemaking decision by OSHA that required a substantial expenditure to produce little or no benefit. NAM's contention involved a change from the proposed standard, which allowed an unrestricted lockout-tagout option, to the final rule, which prefers lockout (unless equipment is unlockable) but permits employers with lockable equipment to use tagout programs if they can demonstrate that such programs provide a level of safety equivalent to lockout. According to the court, "[NAM] adduces data suggesting that the incremental safety gains from universal lockout were modest (averting 42 injuries, of which fully 26 would not even involve a lost day of work) and the incremental cost not immaterial ($2.3 million in the first year and $400,000 annually thereafter)." 938 F.2d at 1323–24. The court required OSHA to address NAM's argument on remand.

The final remand issue involves OSHA's decision to apply the standard in all general industry workplaces in which hazardous servicing and maintenance operations take place. NAM contended that OSHA should have made industry-by-industry risk findings and only applied the standard to those industries for which it made specific findings of significant risk. The court's remand order requires OSHA "to explain its decision to impose lockout/tagout even where the risk appears to be diminutive or zero." 938 F.2d at 1325.

In response to the court's decision, OSHA has carefully reexamined the criteria it uses to set safety standards and has reevaluated the lockout/tagout standard in light of those criteria. OSHA interprets the Act as requiring safety standards to meet the following criteria. A safety standard must substantially reduce a significant risk of material harm; the standard must be technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; the standard must be economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; the standard must achieve its regulatory goals in the most cost-effective manner; the standard must be at least as protective as existing national consensus standards; and the standard must be supported by the evidence in the rulemaking record and be consistent with prior agency action. These criteria shape and limit the agency's safety rulemaking discretion. OSHA believes this interpretation of the Act responds to the court's constitutional concern and establishes that the Act does not delegate excessive discretionary authority to OSHA.

OSHA applied this interpretation in developing the lockout/tagout standard. Later in this section, the agency explains how the standard conforms to each criterion. OSHA has also reevaluated its rulemaking decisions on the two other issues remanded by the court and reaffirms those decisions. As discussed in section II, the standard's preference for locks over tags is warranted by the fact that lock-based safety programs are less susceptible to human error and thus can be expected to save more lives and avoid more injuries than tag-based programs. Section III explains OSHA's reasons for applying the standard in all general industry workplaces in which hazardous servicing operations take place even though available injury data showed a wide range of accident rates for different industrial sectors.

OSHA has also evaluated two approaches to regulatory decision-making, formal cost-benefit analysis and risk-risk analysis, that are discussed in the opinion as possible interpretations of section 3(8). As described in section IV, OSHA already performs an extensive analysis, which includes estimations of compliance costs and of deaths and injuries prevented, when promulgating a standard. Moreover, the application of the statutory criteria set forth in section I assures that the agency's discretion is confined and that the standard produces substantial safety benefits at a reasonable cost. Given this reality, the

agency believes that formal cost-benefit analysis is not needed to meet the court's constitutional concerns. With respect to risk-risk analysis, OSHA has determined that study of risk-risk theory's empirical basis is needed before the theory can be evaluated for application in the OSHA rulemaking context.

I. The Overbroad Delegation Issue

Section 3(8) of the OSH Act requires that standards be "reasonably necessary or appropriate" to safe or healthful employment:

> The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

In *UAW* v. *OSHA*, the court noted that the Supreme Court's Benzene decision had interpreted the "reasonably necessary or appropriate" language of section 3(8) to require that OSHA find, before issuing any standard, that a significant risk of harm existed and that the standard would materially reduce that risk. *IUD* v. *API*, 448 U.S. 607, 646 (1980).

Standards that regulate toxic materials or harmful physical agents ("health" standards) must also meet criteria in section 6(b)(5) of the Act. That section requires, "to the extent feasible * * * that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life." OSHA has interpreted section 6(b)(5) to mean that health standards must eliminate all significant risk to the extent it is feasible to do so. The Supreme Court upheld that interpretation of section 6(b)(5) in the Cotton Dust case. *ATMI* v. *Donovan*, 452 U.S. 490 (1981).

OSHA interprets section 6(b)(5) to apply only to health standards and not safety standards, such as the lockout/tagout standard. See *UAW* v. *OSHA*, 938 F.2d at 1316. Without the constraint of section 6(b)(5), the court believed that the OSH Act did not limit OSHA's safety rulemaking authority sufficiently to comply with the constitutional requirement that delegations of legislative authority not be overbroad. The court also concluded that OSHA's interpretation that safety standards must be technologically and economically feasible did not adequately narrow the agency's discretion because, as it understood OSHA's position, OSHA viewed feasibility of safety standards "only as a ceiling, and not, as for toxics, as a floor." *Id.* at 1317. Thus, the court thought that OSHA's interpretation of section 3(8) permitted the agency, "once significant risk is found, to require precautions that take the industry to the verge of economic ruin * * * or to do nothing at all." *Id.* The court viewed OSHA as claiming "untrammelled power to dictate the vitality and even survival of whatever segments of American business it might choose," *id.* at 1318, as leaving "opportunities for dangerous favoritism," *id.*, and as permitting imposition of compliance burdens "even where the risk appears to be diminutive or zero." *Id.* at 1325.

Having found OSHA's interpretation unreasonable, the court examined whether any limiting interpretation of the Act would narrow the agency's discretion sufficiently to satisfy the nondelegation doctrine. The court concluded that cost-benefit analysis would be an acceptable limiting interpretation of section 3(8) without specifying any particular form of that methodology. The court also concluded that "there may be other interpretations that conform to nondelegation principles." *Id.* at 1321. Since at least one possible interpretation would satisfy the Constitution, the court remanded for OSHA to either adopt that interpretation or to adopt another interpretation that constrained its safety rulemaking discretion sufficiently.

In response to the court's opinion, OSHA has carefully examined the statutory criteria that apply to safety standards. The agency has paid particular attention to the court's concern that OSHA's interpretation of the statute must not permit the agency free rein to push industries to the "verge of financial ruin" or to do "nothing at all" in the face of a significant risk to worker safety. OSHA certainly did not intend to claim such unfettered authority in the lockout/tagout rulemaking. The preamble to the rule, however, did not contain an explanation of the statutory criteria that apply to safety standards. In light of the court's opinion, OSHA is now setting forth its interpretation of the statutory standards that govern safety rules.

The agency construes the OSH Act as establishing a number of clear principles that limit and guide OSHA's exercise of authority in standards proceedings. OSHA believes that its construction responds to the court's constitutional concerns and establishes that the Act does not vest excessive discretion in the agency. In issuing a standard, OSHA must find that:

(1) The standard will substantially reduce a significant risk of material harm;

(2) Compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed;

(3) Compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability;

(4) The standard employs the most cost-effective protective measures capable of reducing or eliminating significant risk.

In addition:

(5) Under section 6(b)(8) of the OSH Act, any OSHA standard that differs from an existing national consensus standard must effectuate the Act's objectives better than the national consensus standard.

Finally,

(6) Standards must be supported by the evidence in the rulemaking record and be consistent with prior agency practice or supported by some justification for departing from that practice.

These constraints apply to both safety and health rulemaking. The two types of rules differ, however, in that section 6(b)(5) mandates that health rules be as protective as possible: Once significant risk is found, the standard must eliminate that risk to the extent it is technologically and economically feasible to do so. Because section 6(b)(5) does not govern safety rules, OSHA retains more discretion to shape safety standards than health standards. That does not mean, however, that OSHA's discretion to issue safety standards is unconfined. OSHA's discretion is confined at the ceiling because safety standards cannot require of employers more than is feasible. The court thought there was an overbreadth problem because it understood OSHA to claim unbridled discretion below the ceiling to regulate with any degree of stringency it pleased and even to do "nothing at all" in the face of a significant risk to employee safety.

OSHA does not interpret the OSH Act to give it such a wide range of discretion. In setting safety standards, OSHA must act consistently with the Act's overriding purpose, which is to provide a high degree of employee protection. This purpose is evident from a number of statutory provisions. Section 2(b) of the OSH Act expresses the congressional "purpose and policy * * * to assure so far as possible every working man and woman in the Nation safe * * * working conditions * * *." Section 6(a), which applied during the first two years after the Act became

effective, required that when OSHA adopted existing federal and consensus standards the agency must "promulgate the standard which assures the greatest protection of the safety or health of the affected employees" in the event of any conflict. Section 6(b)(8) provides that when promulgating permanent safety or health standards that differ from existing national consensus standards, OSHA must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard." Since the key purpose of the Act is worker protection, a standard that differs from a national consensus standard will only better effectuate the Act's purposes if it is more protective. In addition, the OSH Act's "general duty" clause, section 5(a)(1), requires each employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing death or serious physical harm to his employees." These and other statutory provisions make clear that the Act's purpose is to achieve a high degree of worker protection, and OSHA develops standards with that purpose in mind. The agency does not believe that the Act gives it the discretion to do "nothing at all" if it finds a significant risk to worker safety in a rulemaking proceeding.

The notice-and-comment rulemaking process established by the Act assures that the agency is made aware of relevant evidence, of regulatory alternatives, and of the likely consequences of various courses of action. After issuing a notice of proposed rulemaking, OSHA holds hearings and affords all interested persons an opportunity to submit written evidence. OSHA invariably receives comments that cover the entire spectrum of interests affected by the standard and finds those comments very useful in developing the final standard. The agency evaluates all comments that are submitted and explains the basis for accepting or rejecting all major suggestions for modifications to the proposed standard. The agency must support all of its findings with evidence in the rulemaking record. The need to explain and support its rulemaking decisions in the face of contrary evidence and argument assures that OSHA's rulemaking decisions conform to the statute's protective purpose while avoiding regulatory extremes.

Another constraint on OSHA's rulemaking discretion is that significant departures from prior practice must be justified. OSHA's history of safety rulemaking offers no basis for believing that the agency is inclined to regulatory extremes. OSHA has promulgated numerous safety standards, the vast majority of which were not even challenged and none of which could seriously be described as relying on discretion to impose bankruptcy-threatening costs for minimal benefit or of otherwise threatening the vitality or existence of any industrial sector. The policies that have evolved during OSHA's 21-year history of rulemaking activity limit OSHA's discretion in future rulemakings.

It is certainly true that any individual OSHA standard may impose significant costs on industry. Congress decided, however, that affordable costs of providing safe and healthful workplaces are necessary costs of doing business. As the Supreme Court has pointed out:

> Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business. * * * Indeed, Congress thought that the *financial costs* of health and safety problems in the workplace were as large as or larger than the *financial costs* of eliminating these problems.

ATMI v. *Donovan*, 452 U.S. at 519–522 (emphasis in original).

The legislative history of the Act also demonstrates that Congress knew that some employers would pass compliance costs through to their customers but thought that price increases were justified by the need to achieve safe and healthful workplaces. "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America." S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. (1970), *reprinted in* Senate Committee on Labor and Public Welfare, *Legislative History of the Occupational Safety and Health Act of 1970*, (Committee Print 1971) ("Leg. Hist.") at 444 (Senator Yarborough). "Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country." *Id.* at 324; see also 510–511, 517. Congress also believed that the nation as a whole would receive tangible benefits from the avoidance of workplace injuries and illnesses:

> [T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor. When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses. * * *
> Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures.

Id. at 518–19 (Senator Cranston).

OSHA recognized, however, that the costs an OSHA standard imposes must not exceed the limits of economic feasibility. The *UAW* v. *OSHA* court, lacking a discussion of the agency's interpretation of "economic feasibility" in the lockout/tagout preamble, inferred that the agency equates those limits with "the verge of economic ruin." 938 F.2d at 1317. However, OSHA does not take such a draconian view of economic feasibility under the OSH Act. The Supreme Court has approved OSHA's view that a standard that permits an industry to "maintain long-term profitability and competitiveness" is economically feasible. *ATMI* v. *Donovan*, 452 U.S. at 530 n. 55. Similarly, the D.C. Circuit has stated that "a standard is economically feasible if the cost of compliance does not threaten the 'competitive structure or posture' of the industry." *National Cottonseed Prods. Ass'n* v. *Brock*, 825 F.2d 482, 487 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1020 (1988), quoting *IUD* v. *Hodgson*, 499 F.2d 467, 478 (D.C. Cir. 1974). In specific rulemakings, OSHA has placed the line of economic feasibility considerably below industry-wide economic distress or bankruptcy. See for example, 43 FR 27360 (June 23, 1978) (proposed 200 $\mu g/m^3$ PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 $\mu g/m^3$ level was not feasible for weaving and that 750 $\mu g/m^3$ was all that could reasonably be required). See also 54 FR 29245–46 (July 11, 1989) and *AISI* v. *OSHA*, 939 F.2d 975, 1003 (D.C. Cir. 1991) (OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.)

A standard that is economically feasible may well have a disparate impact on different firms within an industry. A company with older, less efficient, and less safe machines and equipment will face heavier compliance

costs than a competitor that is more efficient or that uses the latest technology. Indeed, for such a company, the cost of retrofitting existing machines in order to comply with OSHA standards may exceed the cost of replacing those machines. However, it is fully consistent with congressional intent for standards to force employers with inefficient and unsafe workplaces to either modernize their operations, becoming safe and efficient competitors, or go out of business. The D.C. Circuit has stated:

> It would appear to be consistent with the purposes of the Act to envisage the economic demise of an employer who has lagged behind the rest of the industry in protecting the health and safety of employees and is consequently financially unable to comply with new standards as quickly as other employers.

IUD v. *Hodgson*, 499 F.2d 467, 478 (D.C. Cir. 1974). Moreover, Congress recognized that a standard that applies uniformly to all employers in an industry will have the beneficial effect of eliminating any competitive advantage that one employer might gain by cutting corners on safety and health. Leg. Hist. at 144, 854, 1188, 1201. Consistent with Congress' intent, OSHA views an economically feasible standard as one that might push industry laggards, but not safety-conscious employers or the industry as a whole, to the "verge of economic ruin."

To summarize, an OSHA safety standard must: (1) materially reduce a significant risk to workers; (2) be both technologically and (3) economically feasible to implement; (4) be cost-effective; (5) effectuate the OSH Act's goals at least as well as any national consensus standard that applies to the same hazard; (6) adequately respond to any contrary evidence and argument in the rulemaking record; and (7) be consistent with past rulemaking policies except to the extent that OSHA justifies a departure from those policies. OSHA believes that these constraints assure that OSHA safety standards are highly protective to workers without imposing an undue burden on employers. The requirement that standards reduce a significant risk at a cost and in a manner that is feasible and cost-effective assures that, even without a formal cost-benefit analysis, OSHA standards "produce a benefit the costs of which are not unreasonable." *NGFA* v. *OSHA*, 866 F.2d 717, 733 (5th Cir. 1989).

OSHA believes that this interpretation effectuates the Act's purposes and resolves the constitutional concerns that animated the court's remand. In short, OSHA is affirming that its discretion in safety rulemakings is limited, and that the Act establishes clear criteria to guide the agency's exercise of its authority.

The lockout/tagout standard illustrates how the statutory constraints operate in practice. To assess the risk presented by hazardous energy, OSHA examined accident data collected by a number of groups, including the Bureau of Labor Statistics, the National Institute for Occupational Safety and Health, and OSHA itself. See 54 FR at 36648–52. OSHA's contractor, the Eastern Research Group (ERG), estimated that inadequate lockout/tagout procedures led to 2% of all workplace injuries and 7.1% of fatalities. From ERG's data, OSHA estimated that in 1984 workers suffered 144 fatal injuries, 33,432 lost workday injuries, and 37,561 non-lost workday injuries due to inadequate lockout/tagout programs. Moreover, ERG had found that lockout/tagout injuries tended to be significantly more severe than other workplace injuries, resulting in 24 lost workdays as compared to 16 lost workdays for the average lost-time occupational injury. Based on this evidence, OSHA determined "that the failure to control hazardous energy results in a significant risk to employees." 54 FR at 36684.

OSHA also analyzed the injury reports to determine the underlying causes of lockout/tagout accidents and to develop measures to prevent similar occurrences. Accident data and other evidence showed that employees are injured or killed by uncontrolled energy during servicing/maintenance of industrial equipment (regardless of industrial sector, establishment size, or equipment type) due to five factors: Failure to stop the machine or equipment, failure to disconnect the machine or equipment from the power source before performing service or maintenance, failure to dissipate residual energy, inadvertent reactivation of equipment, or failure to clear all necessary areas before reactivation. The evidence also showed that the hazard could be substantially reduced if employers were required to take four steps:

(1) Evaluate equipment and servicing practices and develop safe procedures;

(2) Use locks or tags to limit worker ability to by-pass or overlook safety procedures;

(3) Train workers in implementation of the safety program; and

(4) Enforce the safety rules through monitoring and discipline.

29 CFR 1910.147(c)(4); (c)(7)(i)–(ii); (c)(6)(i); (c)(7)(iii); (c)(4)(ii).

OSHA estimated that compliance with the four-part safety program would prevent 85% of lockout/tagout related accidents. Thus, the standard was estimated to prevent approximately 122 fatalities, 28,416 lost workday injuries, and 31,926 non-lost workday injuries annually. OSHA judged this to be a substantial reduction of risk.

OSHA concluded that the standard is technologically feasible because its requirements—locks, tags, procedures, training, periodic inspections, and implementation—are devices and practices already in existence; OSHA found that 90 percent of large firms, 65 percent of medium-sized firms, 45 percent of small firms, and 20 percent of very small firms in high-impact industries already use lockout/tagout procedures. Ex. 71, "Regulatory Impact Analysis" (RIA), pp. IV–3, 4.

To assess economic feasibility, the standard's estimated costs were compared to the gross and net income of affected establishments. Taking into account all costs, including purchase of materials such as locks and tags, modification of equipment and work practices, implementation, planning, administration, training, and periodic inspections, the costs attributable to the standard would total $214.3 million in the first year and $135.4 million in subsequent years. OSHA broke down these total figures into the costs that would be incurred by establishments of different sizes in both high- and low-impact industries. RIA, pp. VI–46, 47. For example, OSHA found that first-year compliance costs for high-impact firms would range from $120 for very small firms to $28,172 for large ones. OSHA concluded that when measured against operating costs and net income, these costs are negligible. On average, costs would not exceed 0.05% of operating costs or 2.2% of net income for the first year, or 0.03% of operating costs or 0.6–1.5% of net income annually. Based on these figures, OSHA concluded that the standard would not have a significant impact on the financial structure or stability of any size manufacturing firm. RIA, p. VII–5. The agency further noted that the firms currently in compliance were able to compete successfully with those that were not, indicating that the net economic costs of lockout/tagout procedures would not be significant.

OSHA assured that the standard would be cost-effective in a number of ways. Having found that lockout would generally be safer than tagout, OSHA required that any new, overhauled, or modified equipment be equipped with lockout-capable energy isolating devices, which are readily available at no extra cost compared to unlockable devices. This provision improves worker protection, at no cost to employers, by providing an increasing

capability for employers to use lockout rather than tagout procedures. The standard is also cost-effective in excluding from coverage cord-and-plug connected equipment for which adequate protection against inadvertent energization can be obtained by unplugging the equipment and maintaining the plug under the exclusive control of the servicing worker. In addition, the standard is written in performance-oriented language that spells out general obligations but leaves employers free to achieve the regulatory goal at the lowest cost for each workplace. In particular, the standard permits employers to choose locks, tags, or a combination of both based on cost considerations, as long as the choice achieves the requisite level of safety.

OSHA found that the standard would not have a disproportionate impact on small business. Indeed, small businesses would tend to experience less rather than more proportional impact because the standard exempts the cord-and-plug connected equipment that OSHA's contractor found is likely to be used in smaller establishments to perform the same types of tasks as manufacturing-type equipment in the largest establishments. Ex. 3–15, p. 3–134; RIA, p. VI–16. Moreover, OSHA's finding that the standard would have a negligible financial impact on all affected firms assures that the standard will not eliminate or threaten the vitality of any business segment.

The rulemaking process assured that OSHA was made aware of regulatory problems and alternatives, enabling the agency to shape the rule to accommodate competing interests. For example, numerous commenters objected to the proposed standard's placement of locks and tags on an equal plane, saying that tags, but not locks, "could be carelessly bypassed without major effort." 54 FR at 36654. Based on the rulemaking record, OSHA determined that "the use of lockout devices will provide employees with a more secure and more effective means of assuring that equipment will not be reenergized while they are working on it." 54 FR at 36655. However, some employers reported that they had used tags successfully, with one company presenting evidence that it had suffered only one lost-time accident that was marginally related to the use of tags in over 488 million man-hours of work. This company suggested that the key to safety lay not in the use of a specific device but in "good procedures and careful training combined with assurance of accountability." 54 FR at 36654. In light of the entire record, OSHA decided that the final standard should prefer the use of lockout when equipment is lockable but permit the use of tagout where the employer can "demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program." 29 CFR 1910.147(c)(3)(i). Thus, the rulemaking process led to a standard that assures employee protection while giving employers flexibility in choosing how to provide that protection.

OSHA's evaluation of the rulemaking record resulted in other decisions that gave industry flexibility to meet the standard's protective goals. These decisions include:

(1) Not requiring immediate replacement of equipment that is incapable of being locked with lockable equipment;

(2) An exemption for minor servicing activities that are routine, repetitive and integral to the production operation (29 CFR 1910.147(a)(2)(ii) (Note));

(3) An exception to the requirement that an employer document the required energy control procedure when certain conditions exist (29 CFR 1910.147(c)(4)(i) (Note)); and

(4) Alternative requirements to the "one person, one lock" principle for complex group operations (29 CFR 1910.147(f)(3)(i)).

The rulemaking process produced a standard whose cost per life saved is clearly reasonable. Dividing the standard's total annual cost of $214 million for the first year and $135 million for subsequent years by the 122 fatalities the standard will avoid annually yields a cost per life saved of between one and two million dollars. This calculation, it should be noted, overstates the standard's cost per life saved, for it does not reflect savings due to accidents avoided or attribute any of the standard's costs to the non-fatal accidents avoided. Moreover, the standard clearly does not impose excessive burdens on employers. The only equipment employers must purchase consists of inexpensive devices such as locks, chains, and tags. The main costs will be for developing lockout/tagout procedures, changing work practices to conform to those procedures, training employees to assure that the procedures are properly implemented, and conducting periodic inspections to assure continued effectiveness of the program. Such administrative and training costs are the type of costs businesses typically incur for a variety of reasons and will obviously not be overly burdensome. Indeed, the fact that many employers voluntarily implemented effective lockout/tagout programs even before the standard was issued demonstrates that compliance will not be unreasonably burdensome.

The costs of lockout/tagout are consistent with other OSHA safety standards. OSHA's excavation standard, for example, eliminates 74 deaths and over 800 lost workday injuries annually at a cost of about $306 million, making the cost per life saved about $4.1 million. 54 FR 45954 (Oct. 31, 1989). OSHA's Grain Handling Facilities standard eliminates 18 deaths and 394 injuries annually at a total net cost of $5.9 to $33.4 million, for a cost-per-life-saved between $0.33 and $1.9 million. 52 FR 49622 (Dec. 31, 1991). The Process Safety Management standard is estimated to prevent 132 fatalities and 767 injuries/illnesses annually in years 1–5 and 264 fatalities and 1534 injuries/illnesses in years 6–10. 57 FR 6402 (Feb. 24, 1992). The compliance costs to achieve these benefits would be $888.7 million in years 1–5 and $405.8 million in years 6–10. *Id.* at 6401. Thus, the cost per life saved would be $6.7 million in years 1–5, would decline to $1.5 million in years 6–10, and would average $3.3 million over the ten-year period.

Finally, the lockout/tagout standard is consistent with section 6(b)(8), which requires that OSHA standards, when they differ substantially from an existing national consensus standard, better effectuate the Act's purpose. The proposed lockout/tagout standard was based on a national consensus standard, ANSI Z244.1–1982, "American National Standard for Personnel Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements." All of the protective provisions in the final standard are an outgrowth of the proposal and the ANSI standard. The main difference between the two is that the ANSI standard, like the standard OSHA proposed, permitted an unrestricted use of lockout or tagout. As described earlier, OSHA changed to a lockout preference in the final standard because the rulemaking record showed that it was more protective. Since the key purpose of the Act is worker protection, this change clearly effectuated the Act's objective. In addition, OSHA concluded that issuance of the lockout/tagout standard better effectuates the Act than sole reliance on 13 national consensus and established federal standards pertaining to equipment maintenance that OSHA summarily adopted in 1971 but whose scope was limited and whose efficacy was impaired by inconsistencies between different equipment and industries and by inadequate protective requirements.

II. The Lockout Preference Issue

The proposed standard afforded employers the option of either locking or tagging energy sources to prevent machines or equipment from being energized while employees perform servicing or maintenance. However, the rulemaking record showed that locks were generally more effective than tags at preventing inadvertent reenergization. When a maintenance worker applies a lock properly, reenergization of the equipment is absolutely precluded until the lock is removed. A tag only provides a warning and does not physically prevent another worker from ignoring the warning and energizing the equipment prematurely. Moreover, tags can become detached or damaged by either environmental conditions or by movement of materials, equipment, and personnel through the workplace. A number of parties to the rulemaking proceeding pointed to these inherent limitations of tags in their comments. Some commenters proposed that the final standard require employers to use lockout exclusively.

OSHA rejected the suggestion that the standard mandate universal lockout for two reasons. First, some energy control devices currently in use are incapable of being locked out, and OSHA found insufficient evidence to show that it would be feasible to immediately replace such devices with lockable ones. Therefore, at a minimum the standard had to permit employers with unlockable equipment to use tagout. Second, some employers provided evidence that they had successfully implemented highly protective tagout programs. OSHA decided that employers with demonstrably successful tagout programs should be permitted to continue to use those programs.

To minimize safety hazards from the inherent limitations of tags while still permitting tagout where it is necessary or adequate, OSHA changed the final standard in three ways. First, the standard requires employers who use tagout to train employees in the limitations of tags and in specific precautions that must be taken to minimize the possibility that human error will render the tags ineffective. Tagout training must include the following:

(A) Tags are essentially warning devices affixed to energy isolating devices, and do not provide the physical restraint on those devices that is provided by a lock.

(B) When a tag is attached to an energy isolating means, it is not to be removed without authorization of the authorized person responsible for it, and it is never to be bypassed, ignored, or otherwise defeated.

(C) Tags must be legible and understandable by all authorized employees, and all other employees whose work operations are or may be in the area, in order to be effective.

(D) Tags and their means of attachment must be made of materials which will withstand the environmental conditions encountered in the workplace.

(E) Tags may evoke a false sense of security, and their meaning needs to be understood as part of the overall energy control program.

(F) Tags must be securely attached to energy isolating devices so that they cannot be inadvertently or accidentally detached during use.

29 CFR 1910.147(c)(7)(ii).

Second, the final standard requires employers with lockable equipment to use lockout unless the employer is able to show that the use of tagout will provide a level of safety equal to that of a lockout program. 29 CFR 1910.147(c)(3). This provision was specifically designed to permit those employers who had already developed and implemented effective tagout procedures to continue to use those procedures. Although all employers were afforded this option, OSHA recognized that few employers were likely to choose it. For employers with lockable equipment who had not already developed successful tagout programs, the cost of a lockout program will be lower than tagout; equipment costs are roughly equal and tagout involves additional costs for the tagout-limitation training that must be offered and for other steps employers must take to assure that tagout is as effective as lockout. The lower cost and generally greater effectiveness of lockout would give employers strong incentives to choose that option.

The third change requires that newly installed machines or equipment, and machines or equipment that are replaced or undergo major repair, must be equipped with lockable energy isolating devices. 29 CFR 1910.147(c)(2)(iii). By requiring that lockable equipment replace unlockable equipment in the ordinary course of industrial modernization, this provision will result in a future increase in the use of lockout instead of tagout. The provision imposes no cost on employers because lockable energy isolating devices are readily available and are no more expensive than unlockable ones. RIA, p. VI–20.

NAM argued to the court that OSHA failed to justify the provision that requires employers to use lockout unless they can demonstrate that their use of tagout provides a level of safety equal to lockout. NAM contended that the change from the unrestricted lockout-tagout option in the proposed rule to the lockout preference in the final rule provided little additional protection while imposing significant additional cost. NAM suggested to the court that the change would avert only 42 injuries annually, of which 26 would not even involve a lost day of work, at a cost of $2.3 million in the first year and $400,000 annually thereafter. 938 F.2d at 1323–24. In its remand order, the court instructed OSHA to reevaluate the lockout preference provision in light of the figures offered by NAM.

OSHA has reevaluated the lockout preference provision as well as the other changes that OSHA made to the final standard in light of its finding that lockout is more protective than tagout. The agency reaffirms its finding that lockout is a superior means of protection. Moreover, OSHA concludes that none of the changes impose costs that are not reasonably related to safety gains. Two of the provisions—the lockout preference provision challenged by NAM and the requirement for eventual installation of lockable energy isolating devices—produce safety gains at no cost to employers. The third provision—the requirement for specific tagout training—assures that employees involved in a tagout program understand the limitations of tags. This information is vital if tagout programs are to achieve an acceptable level of effectiveness.

Under the lockout preference provision, which applies only to employers with lockable equipment, employers can freely use lockout. They can use tagout only if they can demonstrate an equal level of safety to lockout. For employers who use lockout, the final standard imposes no additional duties, and therefore no additional costs, over the proposed standard. Employers who choose tagout under the final standard will incur additional costs over the proposed standard: they must expand employee training to assure that employees are aware of the limitations of tagout and must take other steps to assure an equal level of effectiveness. But no employer with lockable equipment is required to incur these additional costs because all such employers may use the less costly lockout option. Hence, whatever additional costs are incurred by employers who choose tagout are not costs imposed by the standard but are costs incurred through their own choice. Moreover, by affording employers the option of using tagout, the standard expands employer choice and avoids imposing on those employers who have already developed successful tagout programs the costs of converting to

lockout. Thus, the lockout preference provision permits all employers to minimize their costs while assuring that workers are adequately protected.

Although the lockout preference provision imposes no cost on employers, it will produce safety benefits to employees by increasing the use of inherently more protective lockout procedures. The provision gives employers a financial incentive to use lockout by imposing additional safety measures, and associated higher costs, on employers with lockable equipment who choose to use tagout. Moreover, the lockout preference provision encourages use of lockout by putting employers on notice that lockout is generally the more effective means of protection. Allowing an unrestricted lockout/tagout option, as the proposed standard did, would imply that OSHA considered both means of protection to be equally effective and would induce some employers to choose the less protective tagout option.

The provision requiring installation of lockable energy isolating devices also produces safety gains for employees at no cost to employers. The provision does not require employers to retrofit existing equipment but only to install lockable devices when they either install new equipment or when equipment undergoes major repair or replacement. Lockable energy isolating devices are readily available at no extra cost. RIA, p. VI–20. Thus, the provision assures an increase, over time, in the percentage of equipment that is lockable while avoiding costs on employers for converting to lockable equipment. In turn, it assures a gradual increase in the use of lockout, with a corresponding increase in worker protection due to the safety advantages of lockout.

Unlike the lockout preference and lockable-device provisions, the provision on tagout-limitation training imposes costs on employers. In its Regulatory Impact Analysis, OSHA attempted to quantify the impact of tagout-limitation training based on the assumption that 15 minutes would need to be added to general energy control training to train each worker involved with tagout procedures on the specific points listed in the standard. This training increment would amount to $7.2 million in the first year of the standard and would sharply decline thereafter, since the standard requires retraining only when there is a change in job assignments, equipment, or procedures, or when the employer has reason to believe that employee knowledge of energy control procedures is inadequate. RIA, pp. VI–43, VI–45. It is clear, however, that the actual cost of tagout-limitation training will be less. Fifteen additional minutes will rarely be necessary, since the basic training required by the standard would necessitate training in the characteristics and proper use of tags by employers who rely on tags. The specific items of tagout-limitation training required by the final standard simply clarify this already-existing duty and assure that all employees involved in tagout programs are taught certain specific points that are vital to the safe use of tags. Even in establishments where 15 additional minutes are used, the additional time and cost represent a small percentage of total training costs even as they assure a critical step in worker understanding. OSHA believes that such training is a minimum step that employers must take to assure that tagout programs are sufficiently protective and is entirely consonant with cost.

OSHA has examined the figures NAM presented to the court purporting to show the injuries averted and additional costs of the lockout preference provision. For the following reasons, those injury and cost figures do not accurately reflect the effects of the lockout preference provision and do not in any sense offer a meaningful comparison between the proposed and final standards.

NAM obtained the figures it presented to the court by comparing the Preliminary Regulatory Impact Analysis (Preliminary RIA) for the proposed standard to the RIA for the final standard. NAM subtracted the estimated safety benefits in the final RIA from those in the preliminary RIA to conclude that the final standard would prevent 16 more lost-workday and 26 more non-lost-workday injuries than the proposed. Similarly, NAM compared the cost of the final standard to that of the proposed by subtracting the cost figures reported in the respective RIAs. NAM argued to the court that the final standard differed from the proposed in two ways, first, by adding the lockout preference provision, second, by altering language to clarify an exception to the scope of the standard that applies when minor servicing takes place during normal production operations. NAM suggested that the difference in injury and cost estimates between the final and proposed standards had to be attributed to these two changes and that OSHA had therefore not justified the lockout preference provision.

NAM's approach does not lead to an accurate comparison between the costs and benefits of the proposed and final standards. The differences in compliance costs and injuries averted between a proposed and final standard cannot be computed simply by comparing the Preliminary RIA with the final RIA. The final RIA, like the final standard itself, incorporates the information the agency gained during the rulemaking process. It is a more accurate assessment of the standard's regulatory impact and supplants the original RIA, which was necessarily based on less complete information. Indeed, the proposed standard explicitly noted that the figures that were being presented reflected a "Preliminary Regulatory Impact Analysis." 53 FR at 15516. OSHA indicated that those figures were subject to change when it invited "public comment on these estimates for incorporation into the final RIA that will accompany the final rule." OSHA believes that the final RIA contains reasonable estimates of the final standard's compliance costs and injuries averted, and OSHA relied on those figures in developing the final rule. The Preliminary RIA played no role in OSHA's ultimate rulemaking decisions.

OSHA believes that the three changes to the final standard discussed in this section will produce substantial safety benefits by minimizing the use of tagout and upgrading tagout's effectiveness where it is used. Although all employers have the option of using tagout, virtually all employers with lockable equipment will choose to use lockout rather than expend the additional money and effort needed to develop tagout programs that are equally effective. OSHA anticipates that the employers who choose the tagout option will be those who already have extensive experience in developing and implementing tagout programs that are demonstrably protective. Employers with unlockable equipment will use tagout but must assure that employees are trained in tagout's limitations. OSHA estimated that the standard would prevent 85% of hazardous energy accidents. RIA, pp. VI–55, 57. In future years, as the percentage of lockable equipment rises to 100%, industry will move to full use of lockout (or equally effective tagout) procedures. OSHA estimated that full use of lockout would prevent 95% of accidents. RIA, p. VI–50. Thus, the changes to the final standard will provide immediate safety benefits and those benefits will increase over time.

OSHA is confident that the final standard will be significantly more protective than the proposed standard. Although OSHA originally estimated that the proposed standard, with an unrestricted lockout/tagout option, would be 85% effective, the evidence in the rulemaking record demonstrated

that the rule would not reach that level of effectiveness because of the inherent limitations of tags. Therefore, in promulgating the final standard, OSHA readjusted its estimate of the proposal's effectiveness to 80%. RIA at V–5, VI–56. The estimated 5% higher effectiveness level of the final standard compared to the proposed translates into seven fewer deaths annually and a corresponding decrease in both lost-workday and non-lost-workday injuries. Having reevaluated the evidence on the relative effectiveness of lockout and tagout, OSHA reaffirms its finding that lockout is the preferred means of protection and concludes that the modifications to the final standard that reflect this finding are cost-effective ways of providing additional protection compared to the unrestricted lockout/tagout option in the proposed standard.

III. The Disaggregation Issue

The lockout/tagout standard applies in all "general industry" workplaces [1] in which hazards associated with the unexpected energization of machinery and equipment during servicing and maintenance occur. Lockout/tagout hazards are so pervasive and arise during such a wide variety of servicing and maintenance activities that any attempt to define the standard's scope by employer sector within general industry would result in the standard excluding some hazardous servicing and maintenance activities from coverage. To avoid having the standard be underinclusive while at the same time avoiding the imposition of compliance burdens where no hazard exists, OSHA drafted the standard to impose a compliance duty on employers only to the extent that hazardous servicing and maintenance activities in fact take place in their workplaces.

In the rulemaking, OSHA examined records showing that accidents attributable to the failure to control hazardous energy had occurred throughout general industry. See 54 FR at 36646–52. NAM, pointing to evidence that the injury rate varied among industries, contended that OSHA should have eliminated from coverage industry sectors whose reported incident rates were low. The court remanded for OSHA "to explain its decision to impose lockout/tagout even where the risk appears to be diminutive or zero." 938 F.2d at 1325.

OSHA has reevaluated the evidence on which NAM relied that shows variations in injury rates among industries. For the following reasons, OSHA does not believe that this evidence supports the suggestion that the standard should specifically exclude industrial sectors from coverage under the standard.

As explained earlier, OSHA determined that without the protections of the lockout/tagout standard, workers face a significant risk of material harm every time they perform service or maintenance work on powered industrial equipment. 54 FR 36,647–48, 36652–53. OSHA also found that hazardous servicing occurs in almost all industrial sectors. Data gathered by ERG according to Standard Industrial Classification code group showed that all manufacturing industries, SICs 20 through 39, have high concentrations of equipment and servicing accidents. Seventeen low impact groups between SICs 40 and 79 have less equipment that requires servicing and lower accident rates than do the manufacturing sectors, but each does engage in some servicing and maintenance activities that require lockout/tagout protection.

Railroads (SIC 40): servicing of climate-controlled railroad cars, machine-shop operations, and material handling equipment;

Public Transit (SIC 41): servicing of vehicles, tire repair machines, hydraulic lifts and hoists;

Trucking and Warehousing (SIC 42): servicing of conveyors, freight elevators, industrial trucks, forklifts, cranes;

Water Transportation (SIC 44): servicing of engine room equipment, heating plants, cranes, hoists;

Transportation by Air (SIC 45): servicing of airplanes, helicopters, mobile passenger loading tunnels, baggage handling equipment such as conveyors, escalators, elevators;

Pipelines Except Natural Gas (SIC 46): servicing of pipelines transporting hazardous substances or substances under high pressure or temperature;

Transportation Services (SIC 47): servicing of railroad car heating, ventilation and refrigeration, grain leveling and car cleaning equipment, weighing and packing equipment;

Communications (SIC 48): servicing of installation hoisting equipment, high voltage equipment;

Electric, Gas and Sanitary Services (SIC 49): servicing of water, steam, irrigation and sewerage pipelines, hoisting apparatus, power transmission devices;

Wholesale Trade-Durable Goods (SIC 50): servicing of manufacturing operations conducted as a secondary business or as part of a vertically integrated operation, servicing of scrap metal recycling equipment, hoists, conveyors, saws, planers;

Wholesale Trade-Nondurable Goods (SIC 51): servicing of grain elevators and augers, conveyors, hoisting equipment;

Food Stores (SIC 54): servicing of packaging machinery, conveyors, meat cutting equipment, ovens;

Personal Services (SIC 72): servicing of laundry and dry cleaning equipment;

Business Services (SIC 73): servicing of heating, ventilating and air conditioning systems, electrical systems, centrifuges;

Automotive Repair, Services, and Garages (SIC 75): servicing of hoisting equipment, hydraulic lifts, repair machinery;

Misc. Repair Services (SIC 76): servicing of welding repair equipment;

Amusement and Recreation Services (SIC 79): servicing of large rides and other amusement equipment with moving parts.

Summarized at RIA, pp. II–10, 11. Additional sectors with "negligible" concentrations of powered equipment also occasionally have workers involved in servicing or maintenance. RIA summary at pp. II–10, 11.

Low reported accident rates or equipment concentrations for some SIC sectors do not mean that servicing workers in those sectors are not exposed to a significant risk. First, SIC designations reflect only the primary work activity at a workplace, not the entire range of activities. Thus, an accident occurring in an operation in an employer's secondary area of activity may be attributed to the SIC representing the firm's major activity, skewing the data for both SICs. Or an accident may involve employees of a contractor and be reported under the contractor's SIC rather than the SIC in which the hazardous machine or equipment was located. A particular SIC may exhibit a low rate of hazardous energy accidents because relatively little servicing and maintenance takes place in that SIC even though the servicing and maintenance that does take place is just as risky as that in a SIC in which such activities are more common. Moreover, a particular SIC may show a low accident rate because many employers in that SIC are already protecting their employees against lockout/tagout hazards. The fact that responsible employers are protecting their employees would not, however, justify OSHA's failure to issue a standard that requires other employers to provide the same needed protection.

In addition to the inherent limitations of accident data organized by SIC codes, defining the scope of a standard by SIC codes would restrict the standard's ability to adapt to circumstances that cannot be precisely foreseen when the standard is promulgated. As noted above, a workplace's SIC designation is

[1] The standard does not cover construction, agriculture, and maritime employment; installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution; exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations; and oil and gas well drilling and servicing. OSHA determined that these industries and workplaces possessed unique characteristics that required further study. 54 FR 36657–36659.

based on its primary activity, but the primary activity in many workplaces changes over time. The coverage of hazardous servicing activity that takes place in a workplace should not depend on the fortuity of the SIC code it happens to be in at any given time. Moreover, SIC codes themselves are periodically redefined at the 3 and 4 digit levels. If the standard's applicability is defined by SIC codes, such redefinitions will affect coverage in a manner that is unpredictable and that may well deny coverage where it is needed.

Even if SIC designations provided a sound means of defining a standard's coverage, the available accident data did not prove that any industry sectors were free of risk from hazardous energy. The data covered a relatively limited time span and were affected by some degree of mis-reporting and under-reporting. For example, the ERG report, which showed no injuries for five low impact SICs (Ex. 3–15, p. 3–9), reflected incidents from only one set of reports during a four-month period in twenty-five states. See RIA, pp. V–2, V–3; Ex. 3–15, pp. 3–5, 3–8. Given the inherently hazardous nature of servicing operations and the limitations of SIC reporting, the absence of injury reports over a four-month period in a limited geographic area did not support an inference of no or low risk.

Accordingly, OSHA expressed the standard's coverage in performance terms rather than SIC codes. The standard applies to all servicing and maintenance activities during which employees can be injured if machines or equipment become unexpectedly energized or if stored energy is released but not to servicing and maintenance that present minimal and readily controlled risk, such as work on electrical equipment that can be deenergized by simply unplugging it, and minor servicing activities that take place during normal production operations. Thus, each covered employer's burden is determined by the frequency and complexity of servicing actually undertaken.

For similar reasons, OSHA decided not to limit the standard to particular equipment. By its terms the standard applies only when the unexpected energization or release of stored energy could cause injury to employees. Machines and equipment that present no hazard are excluded from coverage. The court referred to sewing machines as a type of equipment that might present less of a hazard than larger, more powerful machinery. For sewing machines like those used at home, not of industrial size and configuration, the standard's cord-and-plug exemption would apply. Industrial sewing machines used in high impact sectors like SIC 23, Apparel Manufacture, plainly present electrical and puncture hazards. Moreover, industrial processes and equipment are constantly changing, and restricting the standard to machines and equipment that are in use at the time of promulgation would fail to recognize that newly developed equipment can be just as hazardous as equipment currently in use. OSHA believes that the best approach is the one it has taken: the standard applies to all machines and equipment for which inadvertent energization during servicing or maintenance will expose employees to injury, and only to such machines and equipment. This approach assures that workers are protected wherever lockout/tagout hazards exist but that compliance burdens are not imposed where there is no hazard.

IV. Cost Benefit Relationship

In *UAW* v. *OSHA*, the D. C. Circuit held that the "reasonably necessary or appropriate" language of section 3(8) could be interpreted to include a cost-benefit balancing formula or other explicit mechanism for judging whether the benefits of safety standards justify the costs. 938 F.2d at 1319. The court ruled that the statutory construction apparently relied on by OSHA in the rulemaking vested unconstitutionally broad discretion in the agency but that the overbreadth could be cured by adoption of a suitably limiting construction. The court stated that adoption of "cost-benefit analysis" would be an acceptable interpretation, but observed that there could be other permissible interpretations that would also cure the overbreadth problem.

Section I sets forth the construction of the statute that OSHA relies on in establishing safety standards. Under OSHA's interpretation, numerous decisionmaking criteria assure that the costs of safety standards are reasonably related to their benefits. Safety standards must substantially reduce a significant risk of material harm with measures that are technologically capable of being done and at costs that most affected employers can absorb or pass on. OSHA must choose the most cost-effective means for meeting the regulatory goals. OSHA's findings as to the costs and benefits of each standard must be supported by substantial evidence based on a rulemaking record. Finally, safety standards must reflect OSHA consideration of significant rulemaking comments, existing consensus standards, and policy changes. The agency believes that this construction addresses the court's concern that the agency not claim unconstitutionally broad discretion and that it not impose large costs for insignificant safety gains.

OSHA's decisionmaking process thus assures that the resulting standard produces substantial benefits at a reasonable cost. OSHA safety standards therefore meet a qualitative cost-benefit test announced by the Fifth Circuit:

> The test under section 3(8) is an intermediate one between the feasibility mandate of section 6(b)(5) and a strict cost-benefit analysis that requires a more formal, specific weighing of quantified benefits against costs. * * * section 3(8) only demands that the expected costs of OSHA regulations be reasonably related to the expected benefits, leaving considerable discretion for the agency as long as it is exercised on substantial evidence and with an adequate statement of reasons.

National Grain & Feed Ass'n v. *OSHA*, 866 F.2d 717, 733 (5th Cir. 1989) (internal quotations omitted). See *National Grain & Feed Ass'n* v. *OSHA*, 903 F.2d 308, 311 (5th Cir. 1990) (approving OSHA's Supplemental Statement of Reasons for grain dust standard as meeting Fifth Circuit's requirement for cost-benefit justification).

The agency specifically finds that the relationship between the benefits secured by the lockout/tagout standard and the costs it imposes is reasonable. The standard will save approximately 122 lives and 28,400 lost workday injuries each year, at a cost of $214 million in the first year and $135 million thereafter. Focusing only on the fatalities the standard is expected to prevent, the cost per life saved is $1.2 million. 54 FR at 36685/2; RIA at VII–1. When compliance costs are adjusted to account for the cost savings to employers from the accidents prevented, the net cost per life saved falls to $0.19 million. *Id.* Even these modest figures overstate the cost per life saved, for they do not take into account the non-fatal injuries that will be prevented. The cost per life saved compares favorably with other OSHA safety standards, and OSHA believes that the cost-benefit relationship is favorable by any reasonable measure.

As noted above, OSHA believes that its existing interpretation of section 3(8) satisfies the D.C. Circuit's concern that its rulemaking discretion not be overbroad. However, in light of the court's opinion, the agency believes it would be useful to explain in more detail the manner in which it gathers and uses economic data in promulgating

safety standards as well as the limitations on its use of such data.

Economic analysis is an essential element of both feasibility and cost-effectiveness analysis and an integral part of OSHA's decisionmaking. Economic analysis begins with the initial crafting of a proposed rule. Data and information are gathered systematically on a variety of elements including the costs of possible control and abatement measures, the prevalence of existing control measures, and the impact of work injuries and safe work practices on productivity. OSHA uses this information in conjunction with information such as any new emerging control technologies to select from among the abatement techniques that appear to be the most affordable and efficacious.

When a proposal is published in the **Federal Register**, the economic component of OSHA's analysis is discussed in the preamble along with OSHA's risk and benefit analysis. The full Preliminary Regulatory Impact Analysis is also made available to the public. Included in such information are the underlying data sources and specific methodologies used that support the economic assessments made by the agency. Once such information is published and made available, OSHA encourages the public to comment on the analysis and to provide any additional data or information that may improve the preliminary estimates. Upon the completion of the comment period, OSHA carefully reviews all the additional economic and technical information that the public has provided and uses such information to develop its Final Regulatory Impact Analysis, which contains the economic assessment that is used in crafting the final rule.

Each final rule is strongly influenced by the comments received as to the accuracy of OSHA's preliminary estimates and any new information. In light of all the available evidence, OSHA determines the costs and benefits of the standard as a whole, assesses the overall cost-effectiveness of the standard, and evaluates its overall economic impact on the regulated community.

The agency's "cost-effectiveness" analysis assures that the standard reduces significant risk at the least cost to employers. "Cost-effectiveness analysis" is defined in *The Dictionary of Modern Economics* (Pearce, 1983) as:

> * * * a technique closely related to cost-benefit analysis. It differs in that it asks a different question, namely, given a particular objective which is the least-cost way of achieving it? It aids choice between options but cannot answer the question whether any of the options are worth doing. It is utilized when there are difficulties in associating monetary values with outcomes of projects but where the outcomes can be quantified along some non-monetary dimension.

The lockout/tagout standard's Regulatory Impact Analysis relied primarily on such cost-effectiveness analysis to identify and provide economic comparisons of the various trade-offs between different versions of the final rule. Such analysis provided the agency with information as to the benefits that could be obtained for a given cost. That information was then used in developing what the agency deemed the most cost-effective regulation to address the workplace hazards identified.

In its lockout/tagout decision, the court discussed a form of cost-benefit analysis (hereinafter "formal cost-benefit analysis") that would systematically monetize and weigh costs and benefits of proposed safety standards both within and outside the workplace. The analysis would attempt, among other things, to assign monetary values to saving a human life and to avoiding suffering and would account for indirect effects of the standard attributable to possible reduced wages or increased consumer prices that resulted from employer compliance costs. 938 F.2d at 1320. The court suggested this sort of formal cost-benefit analysis could assure that the agency did not engage in decision-making that is unconstitutionally unfettered.

The court did not indicate that the exact approach it described is the only approach that would pass constitutional muster. Indeed, the court stressed that it was open to OSHA on remand to identify an alternative construction that conformed to nondelegation principles. 938 F.2d at 1321. OSHA has carefully considered the issue remanded by the court. OSHA believes that when considered in their entirety, the criteria it applies to safety rulemaking assure that OSHA's decision-making process is sufficiently constrained to satisfy constitutional principles. Thus, OSHA believes that it has in fact met the court's constitutional concern even while it has not adopted the specific methodology referred to by the court.

OSHA also believes that problems associated with formal cost-benefit analysis militate against its use in safety rulemaking. The formal cost-benefit analysis discussed by the court is generally understood to require that all the costs and benefits of a particular action be identified, monetized and compared. Each stage of this analysis—selection of relevant costs and benefits, assignment of monetary values, and judgment of relative worth—presents complex policy and factual issues, the resolution of which is not necessarily more precise or rational than resolution of the issues OSHA currently addresses and which could result in significantly protracted agency rulemaking. Even proponents of formal cost-benefit analysis do not consider it a panacea. "There are costs to quantitative analysis * * *. One cost is bad decisions resulting from endowing the estimated numbers with too much confidence and tending to ignore unquantified aspects; this cost is the flip side of dismissing analysis as useless." Lester B. Lave, *The Strategy of Social Regulation: Decision Frameworks for Policy*, The Brookings Institution, Washington, DC (1981) pp. 133–34.

Moreover, in OSHA's judgment, its statutory mandate to achieve safe and healthful workplaces for the nation's employees limits the role monetization of benefits and analysis of extra-workplace effects can play in setting safety standards. Congress enacted the OSH Act for the purpose of "assur[ing] so far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. 2(b). "Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business." *American Textile Mfrs. Inst.* v. *Donovan*, 452 U.S. 490, 519–522 (1981). *See* discussion above at pp. 14–15. In sum, there are significant limitations to formal cost-benefit analysis, both in its capacity to order decision-making and in terms of its relation to achievement of the statutory purposes.

The concurring opinion in *UAW* v. *OSHA* refers to a related approach, termed "risk-risk" analysis, suggested recently by Professor Wildavsky, a political scientist, and others. *See* 938 F.2d at 1326–27. OSHA has previously determined that systematic study of risk-risk theory's empirical validity, advantages and disadvantages is needed before the theory can be evaluated for use in the OSHA rulemaking context. In its proposed standard for Air Contaminants in Construction, Maritime and Agriculture industries, for example. OSHA posed a series of questions relating to the theory's empirical basis. 57 FR 26002, 26005–29009 (June 12, 1992). The questions were framed to test whether, as risk-risk theory posits, the net health benefit of the proposed standard would be positive or negative

for the workers who would be affected by the standard's impact on workplace risk and, possibly, income.

OSHA has also noted that apart from the empirical questions raised by risk-risk theory, serious questions exist about the analysis' appropriateness for OSHA given the specific statutory commands of the OSH Act, particularly the Act's focus on workplace rather than societal risks and benefits. Thus, if and when risk-risk analysis is found to have an empirical basis, the agency would have to evaluate the analysis in light of those statutory considerations.

In the meantime, OSHA is confident that the type, level and sophistication of economic analyses it currently performs assure that its standards are protective, cost-effective, and economically and technologically feasible. The Agency has identified several key advantages in its approach to assessing the costs and benefits of a standard in the context of risk and feasibility determinations:

- A necessary first step in reaching an economic feasibility determination is to develop representative compliance scenarios. These help identify very costly regulatory provisions and areas of duplication or internal discrepancy.
- Cost and benefit estimates, based upon the compliance scenarios, help identify high cost and low benefit provisions that may require additional study. This often results in the development of more efficient regulatory alternatives.
- A comparison of the estimated costs with industry profit and revenue estimates (i.e., economic feasibility assessment) helps to identify sectors where high economic burdens may need to be mitigated through some form of regulatory relief, such as extended compliance dates.

There are, of course, limits to the accuracy of the cost and benefit information OSHA can develop. Such limitations include:

- *Inaccurate or incomplete data*—OSHA frequently is regulating in areas where data are incomplete. For health standards, exposure data are often lacking or do not provide the accuracy that the agency needs. Often, industry data do not record the specific cause of accidents or illnesses. OSHA surveys designed to collect the necessary data are limited by budget and resource constraints. In addition, surveys take time to develop and complete, and require a careful tradeoff of quantity of information requested with the likelihood and accuracy of response. Finally, the accuracy of the results are constrained by data disaggregation problems.
- *Reliance on assumptions*—The Supreme Court, in the *Benzene* decision, required OSHA to demonstrate significant risk. For health standards, such as benzene, risk estimates are commonly based upon mathematical models (e.g., dose response curves) and the benefits are quantified by estimating the number of future fatalities that would be prevented under various exposure reductions. For safety standards risk is based upon the assumption that past accident patterns are representative of future ones. OSHA estimates benefits by determining the percentage of accidents that will be prevented by compliance with the standard (e.g., locking out or tagging out energy sources).
- *Quantification issues*—The anticipated benefits accruing from an OSHA standard are usually understated because many benefits cannot be quantified with any degree of accuracy (e.g., potential productivity gains). In addition, since the quantified benefits are usually in assorted units of measure (e.g., number of lives saved, injuries prevented, etc.) cost-effectiveness ratios are partial or incomplete.
- *Decreasing accuracy as the estimates are disaggregated*—Every model and survey is subject to certain limitations. For example, subsector analysis decreases in accuracy as survey data are disaggregated. Thus, OSHA has more confidence in the accuracy of its estimate of the aggregate annual cost of the lockout/tagout standard than it has in the individual industry estimates. Moreover, costs for individual firms can be expected to vary depending on specific circumstances—some firms may not experience any costs while others would experience costs above the average for their industry.

This effect is also evident in the benefit estimates of a safety standard. As stated above, these estimates are based upon the assumption that past accident patterns are representative of future ones. While at the aggregate this may be true, this can lead to some perverse results if data are disaggregated. Since there are only a finite number of discrete events (e.g., accidents, fatalities, injuries), disaggregation (by industry, size of firm, location) will often reveal the existence of a hazard but no previous history of problems (e.g., zero accidents of the type under consideration). This is one of the reasons that the Department has maintained that quantitative cost-benefit analysis based on such data should not be used to exclude specific groups from protection. At the extreme, it is always possible to find individual firms or workers with no history of accidents even though others using the same or similar practices have incurred problems.

But some technical limitations and resource constraints are unavoidable in any system for gathering and evaluating broad-based cost and benefit data. Overall, the Agency is confident that the Regulatory Impact Analysis provided sufficient detail and guidance for the development of the lockout/tagout standard, resulting in a standard consistent with all constitutional requirements. To the degree that OSHA determines that added forms of economic analysis can improve the decisionmaking process and improve the quality of its regulations, the agency will continue to explore and incorporate new approaches.

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Signed at Washington, DC, this 23rd day of March, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–7077 Filed 3–29–93; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to approve a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah Coal Mining Rules pertaining to termination of jurisdiction. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program.
II. Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah State program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands (the Utah program). General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval, appears in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 5, 1992 (Administrative Record No. UT–801), Utah submitted to OSM a proposed amendment to the Utah program pursuant to the SMCRA, 30 U.S.C. 1201–1328, and the Federal regulations at 30 CFR chapter VII (the Federal regulations). Utah submitted the proposed amendment in response to a required amendment at 30 CFR 944.16(p) that OSM placed on the Utah program in the September 11, 1992, final rule **Federal Register** notice (57 FR 41692, Administrative Record No. UT–777). The provision of the Utah Coal Mining Rules that Utah proposed to amend is Utah Administrative Rule (Utah Admin. R.) 645–100–452, concerning termination of jurisdiction.

OSM published a notice in the January 14, 1993, **Federal Register** (58 FR 4390), announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. UT–822). The public comment period closed February 16, 1993.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that Utah's November 5, 1992, proposed amendment is no less effective than the corresponding Federal regulation.

In response to a required program amendment codified at 30 CFR 944.16(p), Utah proposed to revise Utah Admin. R. 645–100–452, which sets forth those conditions that necessitate reassertion of regulatory jurisdiction over coal mining and reclamation operations after bond release.

Existing Utah Admin R. 645–100–452 provides that, following a termination under Utah Admin R. 645–100–451, the Division will reassert jurisdiction over a site if it is demonstrated that the bond release or written determination referred to under Utah Admin R. 645–100–451 was based upon fraud, collusion, or misrepresentation of a material fact by the permittee. Utah proposed to delete the phrase "by the permittee" from Utah Admin. R. 645–100–452 because fraud or collusion could apply to any party (not just the permittee) involved in the bond release process.

Proposed Utah Admin. R. 645–100–452 is substantively identical to, and is therefore no less effective than, the corresponding Federal regulation at 30 CFR 700.11(d)(2). The Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(p).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from the Administrator of the U.S. Environmental Protection Agency (EPA), the Secretary of the U.S. Department of Agriculture, and the heads of other Federal agencies with an actual or potential interest in the Utah program.

A. Bureau of Land Management

By letter dated December 15, 1992, the U.S. Bureau of Land Management said that it had no concerns regarding the proposed amendment (Administrative Record No. UT–809).

B. Fish and Wildlife Service

By letter dated December 17, 1992, the U.S. Fish and Wildlife Service said that it had no comments on the proposed amendment (Administrative Record No. UT–811).

C. Bureau of Mines

By letter dated December 18, 1992, the U.S. Bureau of Mines said that it had no comments on the proposed amendment (Administrative Record No. UT–810).

D. Department of Labor

By letter dated January 14, 1993, the Mine Safety and Health Administration (MSHA) stated that the proposed amendment does not conflict with current MSHA regulations (Administrative Record No. UT–819).

E. U.S. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with respect to those aspects of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Clean Air Act, as amended, (42 U.S.C. 7401 *et seq.*).

The change that Utah proposed to its rule does not pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment. EPA did not respond to OSM's request for concurrence.

F. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments from the Utah SHPO and ACHP. Neither the SHPO nor the ACHP commented on the proposed amendment.

V. Director's Decision

Based on the above finding, the Director (1) approves Utah's November 5, 1992, proposed revision to the Utah program at Utah Admin. R. 645–100–452 and (2) removes the required amendment 30 CFR 944.16(p).

The Federal regulations at 30 CFR part 944, which codify decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (v) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(v) The revision to Utah Admin. R. 614–100–452, termination of jurisdiction, as submitted to OSM on November 5, 1992, is approved effective March 30, 1993.

§ 944.16 [Amended]

3. Section 944.16 is amended by removing paragraph (p).

[FR Doc. 93–7248 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4602–4]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: The EPA is finalizing the update of the Outer Continental Shelf ("OCS") Air Regulations proposed in the **Federal Register** on December 31, 1992. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by Section 328(a)(1) of the Clean Air Act ("the Act"), as amended by the Clean Air Act Amendments of 1990. The portion of the OCS Air Regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara APCD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. This final action incorporates the requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (March 10, 1993) and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (March 10, 1993).

EFFECTIVE DATE: This action is effective April 29, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1992 in 57 FR 62537, EPA proposed to approve the following requirements into the Outer Continental Shelf Air Regulations: "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (December 15, 1992) and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (December 15, 1992), with some modifications as set forth in the proposal.

These requirements represent the first update of part 55 and are being promulgated in response to the submittal of rules from local air

pollution control agencies. EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious, 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in 57 FR 62537. EPA received one comment letter that did not result in a change to the final rule. Please refer to Docket A–92–70, available at the addresses given above, for the response to comments.

EPA Action

In today's notice, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposal set forth in the December 31, 1992 notice of proposed rulemaking. EPA is approving the submittal as modified in the proposal under section 328(a)(1) of the Act, 42 U.S.C. 7627. The intended effect of approving these requirements is to regulate emissions from OCS sources in accordance with the requirements onshore. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by Section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of final rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 35012 *et seq.* and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 10, 1993.

John C. Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.8 is amended by adding the following parenthetical phrase to the end of the section:

§ 55.8 Monitoring, reporting, inspections, and compliance.

* * * * *

(Approved by the Office of Management and Budget under the control number 2060–0249)

3. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(F) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, March 10, 1993.

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, March 10, 1993.

* * * * *

4. Appendix A to part 55 is amended by revising paragraphs (b) (6) and (8) under the heading California to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, March 10, 1993:

Rule 102—Definitions (Adopted 7/30/91)
Rule 103—Severability (Adopted 10/23/78)
Rule 201—Permits Required (Adopted 7/2/79)
Rule 202—Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203—Transfer (Adopted 10/23/78)
Rule 204—Applications (Adopted 10/23/78)
Rule 205—Standards for Granting Applications (Adopted 7/30/91)
Rule 206—Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207—Denial of Application (Adopted 10/23/78)
Rule 210—Fees (Adopted 5/7/91)
Rule 301—Circumvention (Adopted 10/23/78)
Rule 302—Visible Emissions (Adopted 10/23/78)
Rule 304—Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305—Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306—Dust and fumes-Northern Zone (Adopted 10/23/78)
Rule 307—Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308—Incinerator Burning (Adopted 10/23/78)
Rule 309—Specific Contaminants (Adopted 10/23/78)
Rule 310—Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311—Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312—Open Fires (Adopted 10/2/90)

Rule 317—Organic Solvents (Adopted 10/23/78)
Rule 318—Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321—Control of Degreasing Operations (Adopted 7/10/90)
Rule 322—Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323—Architectural Coatings (Adopted 2/20/90)
Rule 324—Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325—Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 326—Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327—Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328—Continuous Emission Monitoring (Adopted 10/23/78)
Rule 331—Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332—Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333—Control of Emissions from Reciprocating Internal Combustion Engines (12/10/91)
Rule 342—Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (03/10/92)
Rule 505—Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603—Emergency Episode Plans (Adopted 6/15/81)

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, March 10, 1993:

Rule 2—Definitions (Adopted 5/8/90)
Rule 5—Effective Date (Adopted 5/23/72)
Rule 6—Severability (Adopted 11/21/78)
Rule 7—Zone Boundaries (Adopted 6/14/77)
Rule 10—Permits Required (Adopted 7/5/83)
Rule 11—Application Contents (Adopted 8/15/78)
Rule 12—Statement by Application Preparer (Adopted 6/16/87)
Rule 13—Statement by Applicant (Adopted 11/21/78)
Rule 14—Trial Test Runs (Adopted 5/23/72)
Rule 15—Permit Issuances (Adopted 7/5/83)
Rule 16—Permit Contents (Adopted 12/2/80)
Rule 18—Permit to Operate Application (Adopted 8/17/76)
Rule 19—Posting of Permits (Adopted 5/23/72)
Rule 20—Transfer of Permit (Adopted 5/23/72)
Rule 21—Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23—Exemptions from Permits (Adopted 1/8/91)
Rule 24—Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26—New Source Review (Adopted 10/22/91)
Rule 26.1—New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2—New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3—New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6—New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8—New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10—New Source Review—PSD (Adopted 10/22/91)
Rule 28—Revocation of Permits (Adopted 7/18/72)
Rule 29—Conditions on Permits (Adopted 10/22/91)
Rule 30—Permit Renewal (Adopted 5/30/89)
Rule 32—Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)

Appendix II–A—Information Required for Applications to the Air Pollution Control District

Appendix II–B—Best Available Control Technology (BACT) Tables

Rule 42—Permit Fees (Adopted 6/19/90)
Rule 44—Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45—Plan Fees (Adopted 6/19/90)
Rule 45.2—Asbestos Removal Fees (Adopted 8/4/92)
Rule 50—Opacity (Adopted 2/20/79)
Rule 52—Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53—Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54—Sulfur Compounds (Adopted 7/5/83)
Rule 56—Open Fires (Adopted 5/24/88)
Rule 57—Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60—New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7—Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63—Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64—Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66—Organic Solvents (Adopted 11/24/87)
Rule 67—Vacuum Producing Devices (Adopted 7/5/83)
Rule 68—Carbon Monoxide (Adopted 6/14/77)
Rule 71—Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1—Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2—Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3—Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4—Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/16/92)
Rule 72—New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74—Specific Source Standards (Adopted 7/6/76)
Rule 74.1—Abrasive Blasting (Adopted 11/12/91)
Rule 74.2—Architectural Coatings (Adopted 10/21/86)
Rule 74.6—Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1—Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2—Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7—Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8—Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9—Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10—Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11—Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12—Surface Coating of Metal Parts and Products (Adopted 5/16/89)
Rule 74.15—Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16—Oil Field Drilling Operations (Adopted 1/8/91)
Rule 75—Circumvention (Adopted 11/27/78)

Appendix IV–A—Soap Bubble Tests

Rule 100—Analytical Methods (Adopted 7/18/72)
Rule 101—Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102—Source Tests (Adopted 11/21/78)
Rule 103—Stack Monitoring (Adopted 6/4/91)
Rule 154—Stage 1 Episode Actions (Adopted 9/17/91)

Rule 155—Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156—Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158—Source Abatement Plans (Adopted 9/17/91)
Rule 159—Traffic Abatement Procedures (Adopted 9/17/91)

* * * * *

[FR Doc. 93–6863 Filed 3–29–93; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6960

[WY–930–4210–06; WYW–111611]

Withdrawal of Public Mineral Estate for East Fork Elk Winter Range; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 10,535.30 acres of public mineral estate from location or entry under the United States mining laws for a period of 20 years for the Bureau of Land Management to protect the natural elk feeding ground, winter range, and capital investments in the area. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Tamara J. Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public mineral estate is hereby withdrawn from location or entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the East Fork Elk Winter Range and natural feeding ground:

Sixth Principal Meridian

T. 42 N., R. 105 W.,
  Sec. 2, lots and 3 and 4, S½NW¼, and N½SW¼;
  Sec. 3, lots 1 to 4, inclusive, S½N½, S½;
  Sec. 4, lots 1 to 4, inclusive, and S½N½;
  Sec. 5, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, and SW¼SW¼;
  Sec. 6, lots 2 to 7, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
  Sec. 7, lots 1 to 3, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
  Sec. 8, W½, and W½SE¼;
  Sec. 9, NE¼;
  Sec. 10, N½;
  Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
  Sec. 19, lots 1 and 2, E½W½, NW¼NE¼, E½NW¼, NE¼,SW¼, and NW¼SE¼;
  Sec. 30, lot 2.
T. 43 N., R. 105 W.,
  Sec. 31, lots 3 and 4;
  Sec. 32, N½, and SE¼;
  Sec. 33, and 34;
T. 42 N., R. 106 W.,
  Sec. 1, lots 1 to 4, inclusive, S½N½, and SW¼;
  Sec. 2, lots 1 and 2, and S½NE¼;
  Sec. 11, S½;
  Sec. 12, E½, E½W½, NW¼NW¼, E½SW¼NW¼, and E½W½SW¼NW¼;
  Sec. 13, E½, and NE¼NW¼;
  Sec. 14;
  Sec. 22, SE¼SE¼;
  Sec. 23, E½;
  Sec. 24, NE¼;
  Sec. 25, S½;
  Sec. 27, E½E½.
T. 43 N., R. 106 W.,
  Sec. 35, E½NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 10,535.30 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: March 15, 1993.

Bruce Babbit,

Secretary of the Interior.

[FR Doc. 93–7177 Filed 3–29–93; 8:45 am]
BILLING CODE 4310–22–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 86–10; DA 93–294]

Provision of Access for 800 Service

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: The Chief, Common Carrier Bureau (the Bureau) adopted an Order permitting the administrator of the 800 Number Administration Service Center (NASC), upon written customer authorization, to make Responsible Organization (RESPORG) changes in the Service Management System (SMS). The Bureau also concluded that there could be a separate rate element for this service in the SMS tariff. In addition, the Bureau dismissed without prejudice a request that the NASC also be permitted to make 800 traffic routing changes. This action will promote fair competition in the provision of 800 services. This action was taken pursuant to a Petition for Declaratory Ruling filed July 10, 1992 by Sprint Communications Company (Sprint).

EFFECTIVE DATE: This order is effective April 29, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, (202) 632–4047, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order, adopted March 10, 1993, and released March 11, 1993 (DA 93–294). The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of the Order

1. 800 service is an interexchange service in which a subscriber agrees in advance to pay for all calls made to its 800 number from a specified area. Local Exchange Carriers (LECs) will soon implement a new "data base" system of 800 access. Under this system, LECs will identify the 800 service provider for each 800 call by querying a regional data base (Service Control Point or SCP) that contains 800 service information associated with each 800 number. This 800 service information will be loaded into each SCP via the SMS, a centralized data base system. All 800 service records must be loaded into the SMS for downloading to the regional SCPs. In addition, all changes in 800 service records must be entered in the SMS. The NASC administers the 800 SMS.

2. Only one entity—the RESPORG—will be permitted to access each customer record in the SMS to make changes to that record, including a RESPORG change. With the implementation of 800 data base access, a customer's current 800 carrier will generally become that customer's

RESPORG. Subscribers will be able to change RESPORGs, however, at any time, and the FCC has held that they may choose any entity to serve as their RESPORG, provided that entity meets tariffed RESPORG eligibility criteria.

3. On July 10, 1992, Sprint filed a petition for declaratory ruling requesting that the Commission authorize the NASC administrator to make certain 800 traffic routing and RESPORG changes to the SMS. In particular, Sprint asked that the FCC authorize the NASC to make SMS or RESPORG changes that would be contrary to the interests of the incumbent RESPORG. Sprint argued that if a subscriber's 800 service provider is serving as its RESPORG and the subscriber wants to shift some or all of its traffic to another carrier, or if it wants to change RESPORGs, the existing RESPORG would receive advance notice of these changes. Sprint claimed that this situation would raise competitive concerns in that it would give the RESPORG an opportunity to take measures to dissuade its customer from making the changes.

4. The Bureau granted Sprint's petition in part and dismissed it without prejudice in part. Specifically, the Bureau concluded that the NASC should be permitted, with written customer authorization, to make RESPORG changes. The Bureau reasoned that the public interest would not be well served by a system requiring that an 800 service provider acting as RESPORG receive advance notice that a customer is, at a minimum, transferring its 800 account coordination to a third party—often a competitor—and quite possibly shifting most of its 800 business to a competitor as well. The Bureau also concluded that there could be a separate rate element for this service in the SMS tariff. At the same time, however, the Bureau found that the record did not contain sufficient information about the benefits or costs of authorizing the NASC to make traffic routing changes, and it therefore dismissed this request without prejudice.

Ordering Clause

5. Accordingly, pursuant to the authority contained in §§ 0.91(a) and 0.291 of the Commission's Rules, 47 CFR 0.91(a) and 0.291, *It is ordered*, That the Petition for Declaratory Ruling filed July 10, 1992, by Sprint is hereby granted to the extent indicated herein, and otherwise is dismissed without prejudice.

List of Subjects for 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Cheryl A. Tritt,

Chief, Common Carrier Bureau.

[FR Doc. 93-7154 Filed 3-29-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 920372-3054]

RIN 0648-AE07

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) announces implementation of a flexible starting date for the "regular" season for the fixed gear (nontrawl) sablefish fishery off California, Oregon, and Washington, and 72-hour closed periods both immediately before and immediately after the regular season. The flexible starting date for the regular season would precede by 3 days the earliest sablefish fixed gear season opening in the Gulf of Alaska. This action is intended to preserve traditional fishing opportunities for many smaller Pacific coast nontrawl vessels by preventing premature achievement of the nontrawl harvest guideline by intensive early season fishing by large nontrawl vessels prior to the opening of the Gulf of Alaska sablefish fishery. It is necessary to maintain stability in the nontrawl sablefish fishery, to extend the Pacific coast nontrawl sablefish fishery to the maximum extent practicable, and to minimize the safety risks that would arise for operators of small vessels if they were compelled to fish in severe winter weather to assure themselves a portion of the annual harvest guideline.

EFFECTIVE DATE: April 1, 1993.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Pacific Fishery Management Council, 2000 SW First Avenue, suite 420, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 310-980-4030, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) makes recommendations to the Secretary for the management of fisheries under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action is being taken under procedures for addressing socio-economic issues set forth at section III.B.4.(c) of the appendix to 50 CFR part 663. An analysis of the biological, social, and economic impacts involved in changing the beginning of the nontrawl sablefish season is contained in the draft EA/RIR that is available from the Council (see **ADDRESSES**).

Background

Sablefish constitutes one of the most valuable components of the groundfish fisheries off the coast of Washington, Oregon, and California (the Pacific coast) and Alaska. Although taken in both trawl and nontrawl fisheries, sablefish is the principal species harvested by the nontrawl fleet.

Nontrawl fishing effort in the Pacific coast sablefish fishery has increased dramatically during recent years, resulting in shorter seasons. Contributing to this effort increase, especially early in the year, has been participation by large nontrawl vessels that traditionally fish off Alaska. Delayed openings of the Alaska nontrawl sablefish fishery have resulted in a 3-4 month "window" where operators of nontrawl fishing vessels can fish in the Pacific coast sablefish fishery prior to leaving for Alaska. The result has been rapid achievement of the nontrawl sablefish harvest guideline off Washington, Oregon, and California, and preemption of fishing opportunities for many smaller, local vessels that fish only the Pacific coast fishery. These vessel operators traditionally have relied on a longer season that has given them the ability to focus fishing effort during periods of better weather. Now, competition for the available harvest forces operators of smaller vessels to take greater risks fishing in severe winter weather. Increased early season fishing effort for sablefish also encourages the harvest of sablefish nearer to the late winter spawning season when flesh quality and product yield may not be as good as later in the season. A more detailed discussion of the background appears in the preamble to the proposed rule at 57 FR 53313 (November 9, 1992).

The Council considered public comment on several alternative dates at its September and November 1991 meetings and considered the advice of its advisory subpanel, Scientific and Statistical Committee, Groundfish

Management Team, and the public. The Council concluded that by linking the beginning of the Pacific coast regular season with the earliest season opening in the Gulf of Alaska, effort would be distributed more evenly between the two areas, counteracting the recent trend towards increased effort in the Pacific coast area early in the year. Nontrawl fishermen who traditionally fish only the Pacific coast would be afforded longer seasons and be able to fish in better weather, and sablefish yield and quality could be improved.

Consequently, the Council recommended that the regular season for the Pacific coast sablefish nontrawl fishery begin 3 days prior to the earliest scheduled openings of any regulatory district in the Gulf of Alaska. All regulatory districts in the Gulf of Alaska normally open at the same time in order to distribute fishing effort throughout the Gulf of Alaska, thus avoiding adverse biological and social impacts (wastage, gear conflicts, grounds preemption, etc.) that could occur as a result of allowing the entire fishing fleet to concentrate sequentially in each area. The Council recommended near-concurrent openings of the Pacific coast and Gulf of Alaska nontrawl sablefish fisheries for some of the same reasons. The Council chose to begin the Pacific coast regular season 3 days prior to the earliest Gulf of Alaska season opening because it presumed that those boats that choose to fish in Alaska will have departed for Alaska at least 3 days prior to the opening date. In 1992, the Gulf of Alaska nontrawl sablefish fisheries opened on May 15.

The above discussion applies only to the regular sablefish season, which is characterized by the absence of trip landing or frequency limits, except for those necessary to restrict the harvest of undersized (juvenile) sablefish. Limited sablefish landings are allowed both before and after the regular season during "open periods," i.e., when one can legally fish. These landings are regulated under restrictive trip landing and frequency limits, classified as "routine" management measures at 50 CFR 663.23(c)(1)(i)(E), allowing bycatch in non-sablefish fisheries and some very small directed sablefish nontrawl fisheries, mainly off California.

In order to facilitate enforcement of trip landing and frequency limits that are effective prior to and after the regular nontrawl sablefish season, the Council also recommended that the taking and retention, possession, or landing of sablefish be prohibited for 72 hours immediately prior to and immediately after the regular season. This will discourage fishermen from getting a head start on the regular season by stockpiling sablefish caught in excess of the trip limit before the regular season begins, and will facilitate the transition from unlimited landings to landings regulated by trip limit following the close of the regular season.

This rule also provides a procedure by which the NMFS Northwest Regional Director will announce each year the date on which the regular nontrawl sablefish season off the Pacific Coast will begin, once the earliest Gulf of Alaska opening date is known. Normally, the Regional Director will include the regular season opening date and the dates of the initial 72-hour closure in the "Notice of Annual Harvest Specifications and Management Measures" published in the **Federal Register** at the beginning of each fishing year, but may announce the date in a separate **Federal Register** notice, at a later date, if the Alaska season opening changes following publication of the "Notice of Annual Harvest Specifications and Management Measures." The end of the regular season and implementation of the second 72-hour closure also will be announced in the **Federal Register.**

The proposed rule for this action was published in the **Federal Register** at 57 FR 53313, November 9, 1992, and the comment period ended December 7, 1992. No comments were received. The Secretary concurs with the Council's recommendations, and therefore the final rule is substantively the same as proposed, with minor stylistic changes.

Classification

This rule is published under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment and Regulatory Impact Review (EA/RIR) for this rule. Based on the EA/RIR, the Assistant Administrator concluded that there will be no significant impact on the human environment. You may obtain a copy of the EA/RIR from the Council (see **ADDRESSES**).

The Assistant Administrator determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce has certified to the Small Business Administration when this rule was proposed that, if adopted, it would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. The determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State of Washington concurred in this determination. The States of Oregon and California did not comment within the statutory time period, and therefore consistency is assumed.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS issued a Biological Opinion under the Endangered Species Act on August 10, 1990, pertaining to Amendment 4 of the FMP; a second Biological Opinion specific to the whiting fishery impacts was issued on November 26, 1991; a third Biological Opinion analyzing the impact of the entire groundfish fishery on newly listed species of salmon was issued on August 28, 1992. They concluded respectively that implementation of the FMP (including Amendment 4) and the conduct of the groundfish fishery are unlikely to jeopardize the continued existence of any of the listed species considered. Implementation of this rule will not result in impacts that differ from those discussed in these Biological Opinions, and NMFS has concluded that further consultations are not necessary.

This rule does not contain policies with federalism implication sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator, pursuant to section 553(d)(3) of the Administrative Procedure Act, finds good cause for making this rule effective prior to 30 days after its publication as final. If this rule is not effective by April 1, the large-scale target fishery will open on that date under existing regulations and effort is expected to be at least as great as in the past. As a result, the nontrawl allocation would be taken rapidly, in large part by vessels which would then depart for the Alaska fishery, preempting fishing

opportunities for the generally smaller, local fleet. Therefore, a delay in implementation after April 1 is contrary to the public interest.

This action is based on the best available scientific information. The public participated in the November 1991 and November 1992 Council meetings at which this action was considered.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 25, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In section 663.23, paragraph (b)(2) is revised to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(2) *Nontrawl sablefish.* (i) The regular season for the nontrawl sablefish fishery will begin each year 3 days before the earliest opening of the nontrawl sablefish fishery regulated under 50 CFR part 672 (Gulf of Alaska Groundfish).

(ii) Taking and retaining, possession, or landing of sablefish taken by nontrawl gear is prohibited for 72 hours immediately preceding, and immediately following, the regular season for the nontrawl sablefish fishery.

(iii) The dates that the 72-hour closures and the regular season for the nontrawl sablefish fishery begin and end will be announced in the **Federal Register**.

(iv) During the open periods before and after the regular season, trip landing and/or frequency limits may be imposed under paragraph (c) of this section. Trip limits to protect juvenile sablefish also may be imposed, at any time of year, under paragraph (c) of this section.

* * * * *

[FR Doc. 93-7329 Filed 3-29-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 59
Tuesday, March 30, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Automated Surety Interface

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the proposal to amend the Customs Regulations to provide for an automated system, the Automated Surety Interface (ASI), through which participating sureties will electronically provide to Customs acknowledgement that they are liable for transactions identified under their bonds. The comment period is being extended another 30 days.

DATES: Comments are requested on or before April 22, 1993.

ADDRESSES: Comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229 and inspected at Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hundertmark, Office of Automated Commercial Systems (202–927–0355).

SUPPLEMENTARY INFORMATION: A document was published in the **Federal Register** (58 FR 5680) on January 22, 1993, proposing to amend the Customs Regulations to provide for an automated system, the Automated Surety Interface (ASI), through which participating sureties will electronically provide to Customs acknowledgement that they are liable for transactions identified under their bonds. Through ASI, Customs will be able to systemically establish and verify that a surety has recognized its bond liability under an identified bond and participating sureties will be provided certain capabilities to obtain timely information regarding the status of individual transactions for which they have a recognized liability. Customs solicited comments on the proposal and comments were due by March 23, 1993. Customs is particularly interested in receiving comments regarding the data elements that are being proposed to be provided to sureties.

Customs has received a request to extend the comment period because additional time is required to prepare reasonably responsive comments due to the disruption to business that the World Trade Center explosion caused to companies involved with Customs bonds. Customs believes the request has merit. Accordingly, the period of time for the submission of comments is being extended 30 days.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal business days, at the address stated above.

Dated: March 25, 1993.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 93–7323 Filed 3–26–93; 12:19 pm]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Iowa permanent regulatory program (hereinafter, the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a guidance document for the measurement of revegetation success using statistically valid sampling to achieve land use specific revegetation standards. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Iowa program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. April 29, 1993. If requested, a public hearing on the proposed amendment will be held on April 26, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on April 14, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Iowa program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105; telephone: (816) 374–6405.

Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets, Des Moines, Iowa 50319; telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa

program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

II. Proposed Amendment

By letters dated December 30, 1992, and January 5, 1993, (Administrative Record No. IA–374) Iowa submitted a proposed amendment to its program pursuant to SMCRA. Iowa submitted the proposed amendment in response to an August 1, 1986, letter (Administrative Record No. IA–280) that OSM sent in accordance with 30 CFR 732.17(c) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1986.

The guidance document submitted by Iowa is intended to fulfill the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) that standards for revegetation success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

The 33 page guidance document is divided into seven major sections: (1) Introduction; (2) definition of terms; (3) general requirements; (4) revegetation success standards; (5) sampling procedures and techniques; (6) statistical analysis of sampling data; and (7) 31 pages of appendices include the Soil Conservation Service (SCS) productivity data for four counties in Iowa. Due to the length and complexity of the document, only a brief summary of the contents is included in this notice.

The introduction to the document includes a summary of the regulations that apply to the evaluation of revegetation success and the applicability of the guidance document to surface mining permits. The section on definition of terms provides definitions for the terms permit, permittee, reference area, control area, statistically valid, and the acronym USDA–SCS.

The section entitled general requirements and exclusions of revegetation includes applicable regulatory requirements for: (1) The control of erosion; (2) sampling and harvest time periods for different types of crops; (3) required dates for the reporting of revegetation data; (4) the procedures to be used to average test plot data or annual crop data; (5) areas that are to be excluded for the requirements for measuring revegetation success; and (6) the requirements for the establishment and maintenance of reference areas.

The section on revegetation success standards establishes the vegetation production performance standards for all of the approved land uses. For prime farmland, the permittee may either establish a reference area or utilize USDA–SCS county soil survey production data by soil mapping unit to compare with the yields on the reclaimed lands to demonstrate equal or greater average yield for 3 years during the 5 year responsibility period. Iowa proposes to use either corn or soybeans as being the row crops requiring the greatest rooting depth.

For pasture lands, the forage production must be greater than or equal to 90-percent of the pasture reference area or the forage production calculated using the USDA–SCS animal unit month (AUM) data for the county soil mapping units.

For cropland, revegetation success will be achieved when the crop production yields are greater than or equal to 90-percent of that crop's reference area or as calculated using the USDA–SCS crop yield data by soil mapping unit for that crop. This standard must be met for any 2 years of the 5 year responsibility period except for the first year.

For industrial, commercial, residential, recreational, wildlife, and forested land uses, revegetation success will be met when the site achieves a ground cover density of 80-percent composed of approved species for 2 consecutive years. In addition, for forest land uses, there must be at least 80-percent survival of live trees and/or shrubs 3 years after the date of initial planting. There will be a minimum of 200 surviving trees and/or shrubs per acre.

For abandoned mined lands, the revegetation must meet the general requirements for revegetation and the vegetative cover must be capable of stabilizing the soil surface from erosion. The permittee may choose to restore the area to a noncropland land use and meet the revegetation standard of that use or achieve a ground cover density of 70-percent for 2 consecutive years.

Iowa proposes to allow the permittee to establish a control area that could be utilized to calculate a climatic correction factor to adjust yield data. Iowa proposes the methods of establishment and maintenance of the control area and the methods for calculation of the correction factor.

In the section entitled sampling procedures and techniques, Iowa proposes that the permittee must use the methods approved in the guidelines in order to (1) provide random selection of sampling sites, (2) a sampling technique unaffected by the sampler's preference, and (3) sufficient samples to represent the true mean of the vegetation characteristics. Iowa proposes sampling methods to determine row crop and small grain production for corn, soybeans, and wheat. Iowa proposes sampling methods to determine forage crop production and cover.

In the section entitled Statistical Analysis of Sampling Data, Iowa proposes methods for the statistical analysis of production data by a statistical comparison using a standard t-test or using two randomized group t-tests. Iowa proposes a method for statistical analysis of ground cover measurements at a 90-percent confidence statistical interval.

In the appendices, Iowa provides tabular information from the USDA–SCS soil survey crop production data by soil type for the counties of Lucas, Mahaska, Marion, and Monroe. Iowa also provides a copy of the document entitled "Iowa Soil Properties and Interpretations Database" that explains how the USDA–SCS crop production data is generated.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Iowa program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.s.t. April 14, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM

officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–7249 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas regulations pertaining to identification of interests and compliance information, review of permit applications, and review of outstanding permits. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. April 29, 1993. If requested, a public hearing on the proposed amendment will be held on April 26, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on April 14, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135–6548, Telephone: (918) 581–6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background

information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980 **Federal Register** (45 FR 12998).

Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated February 8, 1993 (Administrative Record No. TX–542), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment to satisfy required program amendments at 30 CFR 943.16 (b), (c), (d)(1), (2), and (3), (e), (f), (g), (h) (1) and (2), (i) (1) and (2), and (j) (1), (2), and (3) (57 FR 21600, 21607, May 21, 1992). Texas proposed to amend the Texas Administrative Code (TAC) at 16 TAC 11.221 as follows:

(1) Identification of Interests and Compliance Information

(a) At Texas Coal Mining Regulations (TCMR) 778.116(1), Texas proposed to correct a referenced citation.

(b) At TCMR 778.116(m), Texas proposed to require that an application for a permit to conduct surface coal mining and reclamation operations include information on: (1) Violations received pursuant to any SMCRA approved State programs and OSM Federal programs; and (2) air or water environmental protection violations received pursuant to any non-SMCRA State laws, rules or regulations enacted pursuant to Federal laws, rules, or regulations and incurred by the applicant in any State.

(2) Review of Permit Applications

(a) At TCMR 786.215(e)(1), Texas proposed to correct a referenced citation and to require the Railroad Commission of Texas (the Commission) to deny a permit if the applicant or anyone who owns or controls the applicant is determined to have incurred in connection with any surface coal mining operation any of the listed types of unabated violations, bond forfeitures or delinquent penalties or fees issued pursuant to the State or Federal Act or federally-approved coal regulatory program or pertaining to air or water environmental protection regulations in any State.

(b) At TCMR 786.215(e)(2), Texas proposed to correct a referenced citation.

(c) At TCMR 786.215(f), Texas proposed that no permit shall be issued before a final determination that no pattern of willful violations exists.

(d) At TCMR 786.215(g), Texas proposed to correct a referenced citation and to require the Commission to deny a permit if, after an application is approved but before the permit is issued, the applicant fails or refuses to respond as required or the new compliance information shows that a violation exists.

(3) Commission Review of Outstanding Permits

(a) At TCMR 788.225 (f) and (f)(1)(A) Texas proposed to require the Commission to review a permit under authority of section 22(c) of the Texas Surface Coal Mining and Reclamation Act when it has reason to believe a permit was improvidently issued and after notice and opportunity for a hearing, find that the permit was improvidently issued if certain conditions are met. Texas also proposed to delete language that exempts from consideration certain unabated violations or delinquent penalties or fees.

(b) At TCMR 788.225 (g) and (g)(3), Texas proposed to base implementation of specified remedial measures on a finding that a permit was improvidently issued and to provide decisions on suspensions and rescissions of improvidently issued permits within specified time periods.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on April 14, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR

730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–7245 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to clarify the unique differences in the State's revision, renewal, and amendment process, and improve operational efficiency.

This Notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. April 14, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, the additional explanatory information, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer, Director, Wyoming Department of Environmental Quality, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002. Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78684). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By letter dated July 24, 1992, (Administrative Record No. WY–19–01) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative to improve its program.

The regulations that Wyoming proposes to amend are: Department of Environmental Quality, Land Quality Division Rules and Regulations, chapter XIII, Section 6(a) Exception; chapter I, Section 2(e) Definitions, (Amendments).

OSM published a notice in the September 11, 1992, **Federal Register** (57 FR 41715) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended October 13, 1992. During its review of the amendment, OSM identified various concerns relating to the proposed Rule. OSM notified Wyoming on the concerns by letter dated November 17, 1992. (Administrative Record No. WY–19–08). The issues raised in that letter included: The need to clarify whether Wyoming's definition of amendment would include all procedures, informational needs, and the public notice requirements as specified for a new permit application; a need to clarify the meaning of various terms including, "permit area", "term of permit", "permit renewal", and "permit revision", and clarification of apparent conflicts regarding the detail of information needed for certain items in a permit application. Wyoming responded in a letter dated January 28, 1993, by submitting additional explanatory information (Administrative Record No. WY–19–10). In that letter, Wyoming provided clarification and/or proposed rule changes for the following: That all informational requirements for a permit application also apply to a permit amendment; that all coal mining permit amendments require public notice (associated proposed rule change at chapter XIV, section 6(a)); that a State approved permit area is consistent with the Federal program permit area; that amending a permit by up to 20 percent of the total permit acreage without public notice does not apply to coal

mining operations (associated proposed rule change at chapter XIV, section 2(b)); that the liability under bond shall be for the entire permit area (associated proposed rule change at chapter XII, section 2(a)(vii)); that signs and markers are placed around the perimeter of the permit area; that the phrase "term-of-permit" is parallel in meaning to the Federal "term-of-permit"; and that certain information required in the permit application will apply to the entire permit area (associated proposed rule changes at chapter II, section 3).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–7246 Filed 3–29–93, 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes rules on attorney's fees, intervention, and statutory changes regarding attorneys' fees. Concurrently with its review of the attorneys' fees rules, chapter V, of the Wyoming Department of Environmental Quality (DEQ) Rules of Practices and Procedures, OSM will review chapters II and VI of those same rules as currently promulgated by Wyoming.

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. April 29, 1993. If requested, a public hearing on the proposed amendment will be held on April 26, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on April 14, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Officer.

Guy V. Padgett, Director; Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, Wyoming 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer: Director; Wyoming Department of Environmental Quality; Herschler Building; West 122 West 25th Street; Cheyenne, Wyoming 82002. Telephone: (307) 777–7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, Federal Register (45 FR 78637).

Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated March 9, 1993, (Administrative Record No. WY–22–01), Wyoming submitted proposed rules along with a proposed statutory amendment to its permanent program pursuant to legislation passed by Wyoming's 52nd Legislature (1993 General Session). The Wyoming proposed amendment is submitted to satisfy a condition placed on its program at 30 CFR 950.11(c), (condition "c"); to establish requirements which are consistent with the Federal attorney's fees and intervention regulation at 43 CFR part 4.

Proposed Chapter V of the Department's Rules of Practice and Procedures addresses the attorneys' fees rules portion of condition "c". The Wyoming Legislature also modified Wyoming Statute (W.S.) 35–11–437(f) by requiring that whenever an order is issued under this section, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the director to have been reasonably incurred by the person for or in connection with his participation in the proceeding, including any judicial review of agency actions, may be assessed against either party as the court or the director deems proper. This subsection shall apply only to administrative contested case proceedings under the provisions of this act relating to the regulation of surface coal mining and reclamation operations in accordance with Public Law 95–87, as that law is worded on August 3, 1977. For payments from the department, the following shall apply: (i) The issues resolved in the contested proceeding are those in the original complaint that were raised within the statutory time frames under W.S. 35–11–406(p) or within an enforcement action; (ii) the contribution of a person who did not initiate the proceeding shall be separate and distinct from the contribution made by a person initiating the proceeding; (iii) the person shall establish the existence of specific violation of applicable statute or rule. Additionally the legislature added a new subsection W.S. 35–11–437(g) that requires attorney's fees, expert witness fees or other fees or costs not exceed fifty dollars ($50.00) per hour.

Concurrent with the review of Chapter V of the DEQ Rules of Practice and Procedures, OSM will also conduct a review of chapter II and VI (Administrative Record No. WY–22–2). This review and approval is necessary because Wyoming promulgated the three above referenced Chapters of the Department's Rules of Practice and Procedures on August 3, 1982 and submitted the same to OSM as a formal amendment to its program on August 18, 1982. These permanent rules are to replace emergency rules that had been submitted to OSM for review on May 26, 1982. In that review, OSM found that Wyoming did not fully satisfy condition "c" and therefore extended the deadline for Wyoming to meet the condition (September 27, 1982 **Federal Register** (47 FR 42351)). Wyoming indicated in a letter of August 27, 1992, that the Chapter II or VI had not changed since being issued in August of 1982 (Administrative Record No. WY–22–2).

The proposed rule package is intended to satisfy the condition placed on the approved State Program and bring Wyoming's program into compliance with the purposes and intent of SMCRA.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed Rules and Statutes establish requirements which are consistent with Federal attorneys' fees and intervention regulations at 43 CFR part 4 and the SMCRA section 525(e). If the attorneys' fee rules and statutes are deemed adequate, they will satisfy condition 30 CFR 950.11 and become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the proposed rulemaking and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearings

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. April 14, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–7247 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL-12-27-5806; FRL-4608-4]

Approval and Promulgation of Implementation Plans; Illinois; Correction

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of public hearing; reopening the public comment period; correction.

SUMMARY: USEPA promulgated the Chicago Ozone Federal Implementation Plan (FIP) on June 29, 1990. The FIP requires that certain sources perform tests to demonstrate compliance and that they certify compliance to USEPA by July 1, 1991. Those sources complying by means of an add-on control device are required to test the capture efficiency of each control system. On November 3, 1992 (57 FR 49662), USEPA proposed to extend the date by which sources must certify the capture efficiency of each control system from July 1, 1991, to July 1, 1993. That proposed rule offered an opportunity for a public hearing on the proposed rule. On March 8, 1993 (58 FR 12913–12914), USEPA published a notice which announced that a public hearing on the proposed rule was scheduled for April 19, 1993, and reopened the public comment period from March 8, 1993, until May 19, 1993. Unfortunately, in the **DATES** section of that notice it was incorrectly stated that the hearing was scheduled for April 1, 1993, and that the public comment period would remain open until May 3, 1993. The **DATES** section should have read as set forth below. USEPA regrets any inconvenience this error may have caused.

DATES: A public hearing has been scheduled for Monday, April 19, 1993, at 1:30 p.m. The public comment period is reopened from March 8, 1993, until May 19, 1993.

ADDRESSES: The location of the public hearing is the Lake Huron Room on the 12th Floor of the Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604. Written comments on this proposed rule should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of the November 3, 1992 (57 FR 49662), proposed rule.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, 18th Floor Southwest, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

Dated: March 19, 1993.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 93-7295 Filed 3-29-93; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[PA-16-1-5430; A-1-FRL-4607-6]

Approval and Promulgation of Air Quality Implementation Plans; Allegheny County Portion of the Pennsylvania SIP; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the Allegheny County portion of the SIP. This revision consists of revised volatile organic compound (VOC) emission regulations applicable in Allegheny County, which is part of the Pittsburgh-Beaver Valley ozone nonattainment area. The intended effect of this action is to propose approval of Allegheny County's VOC regulations to correct existing deficiencies and inconsistencies in Pennsylvania's ozone SIP. This action is being taken under section 110 of the Clean Air Act (CAA), as amended in 1990.

DATES: Comments must be received on or before April 29, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 2357, Executive House - 2nd & Chestnut Streets, Harrisburg, PA 17120; Allegheny County Health Department, Bureau of Air Pollution Control, 301 39th Street, Pittsburgh, PA 15201.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, (215) 597-6863, at the Region III address above.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA issued a SIP call to Pennsylvania notifying the State that its SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. See 53 FR 34500 (September 7, 1988). A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the NAAQS. In a June 14, 1988 follow-up letter, EPA more specifically identified deficiencies in Pennsylvania's VOC regulations which need to be corrected in order for the regulations to meet the CAA requirements as interpreted in EPA policy and guidance. The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT. RACT fix-ups were also required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Allegheny County nonattainment area is classified as moderate.[2] On October 16, 1991, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). Therefore, this area is subject

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTG's.

[2] Allegheny County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

to the RACT fix-up requirement and the May 15, 1991 deadline.

The changes to the regulations submitted on October 16, 1991 represent Pennsylvania's response to EPA's 1988 SIP call for the Allegheny County portion of the Pennsylvania SIP. The SIP revision under review consists of amendments to Article XX, Rules and Regulations of the Allegheny County Health Department Air Pollution Control, which includes the following sections:

(1) Section 101, Definitions;
(2) Section 501, Equivalent Compliance Techniques;
(3) Section 504, Temporary Shutdown of Incineration Equipment;
(4) Section 505, Surface Coating Processes;
(5) Section 506, Alternative Standards for Surface Coating and Graphic Arts Sources;
(6) Section 507, Volatile Organic Compound Storage Tanks;
(7) Section 508, Gasoline Loading Facilities;
(8) Section 512, Compliance Schedules;
(9) Section 531, Graphic Arts Systems;
(10) Section 534, Synthetic Organic Chemical and Polymer Manufacturing Fugitive Sources;
(11) Section 801, Definitions; and
(12) Section 806, Installation Permits for new and Modified Major Sources.

This document will address regulatory changes to all of the above sections except sections 801 and 806. Regulatory changes to sections 801 and 806 will be discussed in a separate rulemaking notice.

Content of Revised Regulations

The Allegheny County Health Department, Bureau of Air Pollution Control, made the following changes to the Rules and Regulations of Article XX:

1. Section 101—Definitions

The definitions of the following terms were amended to be consistent with EPA's recommended guidance: Volatile Organic Compounds (VOC), Clear Coat, Bulk Gasoline Plant, Bulk Gasoline Terminal, Capture Efficiency, Miscellaneous Metal Parts and Products, Potential Uncontrolled Emission Rate, and Transfer Efficiency.

2. Section 501—Equivalent Compliance Techniques

This section was amended to eliminate provisions which allowed for the use of alternative control systems without EPA approval. Also, the section was revised to include compliance requirements relating to sources of volatile organic compounds and to establish appropriate recordkeeping, test methods and procedures consistent with EPA guidance. In addition, this section requires all alternative or equivalent compliance methods to be approved by EPA as a SIP revision.

3. Section 504—Temporary Shutdown of Incineration Equipment

This section was amended to replace the term "auxiliary fuel" with the term "natural gas" to reflect current EPA guidance.

4. Section 505—Surface Coating Processes

Subsection A was amended to lower the applicability thresholds for surface coating sources to the following rates: 3 lbs/hour, 15 lbs/day and 2.7 tons/year. In addition, clean-up and purge solvents are now required to be included when determining applicability. Also, the percent reduction equation requires the use of actual solvent density.

Subsection B was amended to require the installation of monitoring devices and recordkeeping of specific parameters for surface coating processes for which EPA has issued Control Techniques Guidelines (CTGs).

Subsection D was amended to correct the cited section number to 501.

Subsection E was amended by changing the emission limits for miscellaneous metal parts (mmp) and products to 3.5 pounds per gallon or .42 kg per liter to be consistent with EPA guidance for extreme performance mmp coatings.

5. Section 506—Alternative Standards for Surface Coatings and Graphic Arts

This section was deleted because sources which have coatings which do not individually comply with the emission standards will be required to obtain approval as a SIP revision to average their emissions across two or more coating lines.

6. Section 507—Volatile Organic Compound Storage Tanks

Subsection B was amended by increasing the VOC reduction requirement for a vapor recovery and disposal system from 80 percent to 90 percent by weight to reduce uncontrolled emissions of VOCs.

7. Section 508—Gasoline Loading Facilities

Subsections C and D were amended to specifically include the vapor collection system requirements for gasoline loading racks and to maintain appropriate daily recordkeeping.

Subsection E was amended to remove a throughput exemption of 60,000 gallons or more of gasoline, and to adopt the new requirement for loading gasoline tanks at facilities with any stationary storage tanks having a capacity of 250 gallons or more when installed on or after January 1, 1979, or facilities with stationary storage tanks having a capacity of 2,000 gallons or more for tanks installed before January 1, 1979. In addition, this subsection contains an exemption from vapor tightness after all vapors have been disposed of from the dispensing delivery tank. Also, for stationary storage tanks having a capacity of 550 gallon or less and used for agricultural purposes; which are equipped with a submerged fill pipe, are exempt from this provision.

Subsection G was amended to make the sentence grammatically correct. The exemption for gasoline tank trucks with a rated capacity of 4,800 gallons or more was deleted from these provisions.

Subsection H was amended to require that records be kept for 2 years.

8. Section 512—Compliance Schedules

New VOC sources subject to this regulation as of August 26, 1991 were required to be in compliance by August 26, 1992.

In Subsection B, grammatical errors were corrected to clarify the regulation.

9. Section 531—Graphic Arts Systems

Subsection A was amended to include sources whose rotogravure and flexographic printing presses have a potential uncontrolled emission rate greater than 100 tons per year of VOC, including emissions from solvents used for clean-up and purging.

Subsection B was amended to specify that an emission control system, in conjunction with an emission capture system, should operate with the best overall reduction in VOC emissions from each ink/press.

Subsection C was amended to exempt presses which are used to check the quality of the image formation of newly etched or engraved printing cylinders provided that emissions are less than 400 pounds in any 30 day running period.

10. Section 534—Synthetic Organic Chemical and Polymer Manufacturing—Fugitive Sources

Subsection B was amended to require that once a source becomes subject to a regulation it remains subject to the regulation even if its throughput should later fall below the applicability level of the regulation.

Subsection C was corrected to include monitoring conditions as part of the detection and repair program for components.

EPA's review of these regulatory changes indicates that the Allegheny County Health Department has

corrected the deficiencies and inconsistencies identified by EPA in its existing VOC regulations. EPA is proposing to approve the Commonwealth of Pennsylvania SIP revision containing the amendments to Article XX, Rules and Regulations of the Allegheny County Health Department, for Air Pollution Control which was submitted on October 16, 1991. The approval of this SIP submittal does not include sections 801 and 806. The Allegheny County Health Department certified that public hearings related to these proposed amendments were held on June 5, 1991, in Pittsburgh, Pennsylvania as required by 40 CFR 51.102. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to approve the revisions to the Allegheny County portion of the Pennsylvania SIP, submitted on October 16, 1991, as meeting the requirements of section 182(a)(2)(A) of the Clean Air Act, 42 U.S.C. 7511 a(a)(2)(4) (RACT fix-up requirement). These revisions includes amendments to sections 101, 501, 504, 505, 506, 507, 508, 512, 531, and 534 of Article XX, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control, which make the County's regulations consistent with EPA guidance.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

This action which proposes to approve revisions to the Allegheny County portion of the Pennsylvania SIP, and consists of amendments to sections 101, 501, 504, 505, 506, 507, 508, 512, 531, and 534 of Article XX, Rules and Regulations of the Allegheny County Health Department, has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) and part D of the CAA, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 22, 1992.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93–7324 Filed 3–29–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 93–06]

Rules of Practice and Procedure; Alternative Dispute Resolution

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its rules to incorporate procedures designed to implement the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act. These amendments will require timely consideration of the use of alternative dispute resolution techniques to resolve disputes without resort to more costly and time-consuming litigation.

DATES: Comments due May 14, 1993.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001, 202–523–5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 202–523–5725.

SUPPLEMENTARY INFORMATION: Public Law No. 101–552, the Administrative Dispute Resolution Act ("ADRA"), and Public Law No. 101–648, the Negotiated Rulemaking Act ("Reg-Neg"), amend the Administrative Procedure Act ("APA"), 5 U.S.C. 551 et seq., to authorize and encourage administrative agencies to permit the voluntary use of consensual alternative dispute resolution ("ADR") techniques—such as settlement negotiations, negotiated rulemaking, mediation and arbitration—in order to achieve faster and procedurally less expensive results in agency adjudications, rulemakings, contract disputes and other actions.

In enacting the ADRA, Congress indicated that administrative proceedings have become too formal and lengthy and that alternative procedures may in some instances be more efficient. Because ADR procedures are not appropriate in every case, the ADRA sets forth situations in which the agency shall consider not using such procedures. These include precedent-setting cases, those where a formal record is essential, and those where maintenance of established policies is of special importance so that variation among individual decisions is not increased.

Similarly, in enacting Reg-Neg, Congress was concerned that traditional rulemaking procedures may discourage

affected parties from meeting and communicating with each other. As a result, the parties may assume extreme conflicting positions, which can result in costly and time-consuming litigation. Reg-Neg is intended as an alternative process, under which the agency may establish and administer committees under the Federal Advisory Committee Act for the development of consensus positions regarding controversial regulations and policies. Reg-Neg establishes several criteria for the use of negotiated rulemaking.

The ADRA requires agencies to adopt a policy that addresses the use of ADR and case management. The ADRA also amends provisions of the APA, at 5 U.S.C. 556(c), which address the role of agency employees presiding at agency hearings. These amendments to the APA prescribe that such presiding officials may (1) hold conferences for the settlement or simplification of the issues by the use of ADR, (2) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods, and (3) require the attendance at any conference held of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy.

The Federal Maritime Commission ("FMC" or "Commission"), by a separate notice published this date, is issuing an interim Commission policy on ADR, in keeping with the requirements of the ADRA that agencies adopt such a policy.

This proposed rulemaking further implements the ADRA and Reg-Neg by proposing amendments to the FMC's Rules of Practice and Procedure to implement the above-described amendments to the APA, and generally to encourage the use of ADR at the Commission to the fullest extent compatible with the law and the agency's mission and resources.

Specific proposed changes to the Rules of Practice are discussed below.

Scope of Rules

Section 502.1 defines the scope of the rules and indicates that they apply to proceedings under the various shipping statutes administered by the Commission. This section already provides that the rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. This guideline thus applies essentially to all proceedings before the Commission conducted under part 502. In order to emphasize the importance the Commission places on the use of ADR in appropriate circumstances, this rule is proposed to be amended to include a reference to the mandatory consideration of the use of ADR in all proceedings.

Negotiated Rulemaking

A new § 502.56 is proposed to be added indicating that the Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule, if, upon consideration of Reg-Neg Act criteria, use of such a committee is determined by the Commission to be in the public interest.

Orders Initiating Proceedings

Section 502.61 currently requires that orders instituting formal proceedings specify dates for commencement of any hearing and for issuance of the initial and final decisions. The Commission also has had a long-standing policy of including a statement in such orders that oral hearings and cross-examination will be utilized only upon a proper showing that they are necessary for the development of an adequate record. See *Informal Statement of Policy*, 17 S.R.R. 457 (1977). In order to emphasize this policy of avoiding trial-type hearings, it is proposed that § 502.61 be amended to codify the requirement of inclusion of such a statement in orders initiating proceedings. It is additionally proposed that this policy be further emphasized by adding to the mandatory language a requirement that "prior to the commencement of oral hearings, consideration must be given by the parties and the presiding officer to the use of alternative forms of dispute resolution."

Opportunity for Informal Settlement

Section 502.91 currently provides parties an opportunity to submit facts, argument and offers of settlement to the presiding officer without prejudice to their rights. It is proposed that this section be amended to further emphasize the availability of ADR procedures and to encourage their use. A specific provision would be added regarding use of mediators and settlement judges.

Prehearing Conferences

Section 502.94 currently provides that a presiding officer may direct the parties to a proceeding to attend a prehearing conference to consider various matters designed to expedite the completion of proceedings, including offers of settlement and simplification of the issues. This section is proposed to be amended to require that, at any prehearing conference which is called, consideration be given to whether the use of ADR would be appropriate or useful.

Functions and Powers of Presiding Officers

Section 502.147 of the FMC's rules describes the functions and powers of presiding officers in formal proceedings. This rule is proposed to be amended to indicate that the presiding officer has authority to inform the parties as to the availability of one or more alternative means of dispute resolution, to encourage use of such methods, and to require consideration of their use at an early stage of the proceeding. As indicated above, the presiding officer has authority to hold conferences for the settlement or simplification of the issues by consent of the parties. This authority to promote settlements is proposed to be enhanced by inclusion in this section of a reference to the use of ADR and by including specific authority for transmittal of a request of parties for the appointment of a settlement judge or a mediator, as provided by § 502.91. The rule is further proposed to be amended to allow the presiding officer to require the attendance at any such conference, pursuant to the ADRA, of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy. Finally, the provision which allows the presiding officer to permit submissions of facts, arguments, and offers of settlement is proposed to be amended to permit the presiding officer, if the parties so request, to issue informal opinions providing tentative evaluations of the evidence submitted.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) an annual effect on the economy of $100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that because this rule deals only with agency

practice and procedure, it will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Penalties, Reporting and recordkeeping requirements.

Therefore, notice is hereby given that the Commission proposes to amend part 502 of title 46 CFR as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6499); 21 U.S.C. 853a.

2. Section 502.1 is amended by adding a new sentence to the end thereof reading as follows:

§ 502.1 Scope of the rules in this part.

* * * * *

To this end, all persons involved in proceedings conducted under the rules of this part shall be required to consider at an early stage of the proceeding whether resort to alternative dispute resolution techniques would be appropriate or useful.

3. A new § 502.56 is added, reading as follows:

§ 502.56 Negotiated rulemaking.

The Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule, if, upon consideration of the criteria of 5 U.S.C. 563, use of such a committee is determined by the Commission to be in the public interest.

4. Section 502.61 is amended by adding a new paragraph (d) reading as follows:

§ 502.61 Proceedings.

* * * * *

(d) All orders instituting a proceeding or noticing the filing of a complaint will contain language requiring that prior to the commencement of oral hearings, consideration shall be given by the parties and presiding officer to the use of alternative forms of dispute resolution, and further requiring that hearings shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

5. Section 502.91 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and by adding new paragraphs (a) and (d) reading as follows:

§ 502.91 Opportunity for informal settlement.

(a) Parties are encouraged to make use of all the procedures of this part which are designed to simplify or avoid formal litigation and to assist the parties in reaching settlements whenever it appears that a particular procedure would be helpful.

(b) * * *

(c) * * *

(d) Any party may request that a mediator or settlement judge be appointed to assist the parties in reaching a settlement. If such a request is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a mediator or settlement judge who is acceptable to all parties. The mediator or settlement judge shall convene and preside over conferences and settlement negotiations and shall report to the Chief Administrative Law Judge, within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling.

6. Section 502.94 is amended by adding a new paragraph (c) reading as follows:

§ 502.94 Prehearing conference.

* * * * *

(c) At any prehearing conference which is called, consideration shall be given to whether the use of alternative means of dispute resolution would be appropriate or useful for the disposition of the proceeding.

7. Section 502.147, *Functions and powers*, paragraph (a), is amended by revising the language which reads "holds conferences for the settlement or simplification of issues by consent of the parties;" to read "inform the parties as to the availability of one or more alternative means of dispute resolution, encourage use of such methods, and require consideration of their use at an early stage of the proceeding; hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution; transmit the request of parties for the appointment of a mediator or settlement judge, as provided by § 502.91 of this part; require the attendance at any such conference pursuant to 5 U.S.C. 556(c)(8), of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;" and by adding at the end of the phrase "permit submission of facts, arguments, offers of settlement, and proposals of adjustment;" the phrase "and, if the parties so request, issue informal opinions providing tentative evaluations of the evidence submitted;".

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–7250 Filed 3–29–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–64, RM–8194]

Radio Broadcasting Services, Asbury, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William Bruce Watcher proposing the substitution of Channel 278C3 for Channel 278A at Asbury, Missouri, and modification of the construction permit for Station KWXD to specify operation on Channel 278C3. The coordinates for Channel 278C3 at Asbury are 37–23–44 and 94–40–42. We shall propose to modify the construction permit for Station KWXD, Channel 278A, to specify operation on Channel 278C3 in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before May 17, 1993, and reply comments on or before June 1, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21705–0113.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–84, adopted March 5, 1993, and released March 24, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) of rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7156 Filed 3–29–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–83, RM–8191]

Radio Broadcasting Services; Pocomoke City, Maryland

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert L. Purcell proposing the allotment of Channel 223A to Pocomoke City, Maryland, as that community's first local service. The coordinates for Channel 223A are 38–04–30 and 75–34–12.

DATES: Comments are due on or before May 17, 1993, and reply comments on or before June 1, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert L. Purcell, 15010 Carrolton Road, Rockville, Maryland 20853.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–83, adopted March 3, 1993, and released March 24, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7157 Filed 3–29–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

Wild Bird Conservation Act of 1992; Notice of Public Meeting on Implementing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Public meeting on proposed rule development.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is notifying the public of a working public meeting to receive input prior to the publication of a proposed rule implementing provisions of the Wild Bird Conservation Act (Act) of 1992.

DATES: A working public meeting will be held on April 15, 1993 from 9:30 a.m.–5:00 p.m. If the work is not completed on April 15, it may continue on April 16, 1993 at 9:30 a.m.

ADDRESSES: The meeting will be held in Conference Room 700 of the Fish and Wildlife Service building at 4401 N. Fairfax Drive, Arlington, Virginia. Comments should be sent to: Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, at the above address, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On October 23, 1992, the President signed into law the Wild Bird Conservation Act of 1992 (Act) (Pub. L. 102–440), the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin. On December 4, 1992, the Service published a Notice in the **Federal Register** which announced the effects of the Act and the Service's intent to promulgate regulations.

The public meeting announced here will serve as a working session to be used by the Service in the development of proposed rules pursuant to the following provisions of the Act: issuance of import permits for exemptions covered by the Act; rules for the promulgation of a list of approved species and countries; rules for the promulgation of a list of qualifying foreign breeding facilities; moratoria on certain bird species not listed in the CITES Appendices; and termination of any moratorium established pursuant to the Act.

Public Input Solicited

The Service solicits the input and participation of organizations and individuals interested in the conservation of wild birds in the development of regulations to

implement the Act. It is the Service's intent that active participation in this process of a broad range of organizations will expedite the development of a proposed rule that fully implements the provisions of the law and the intent of Congress. Interested organizations and individuals that cannot participate in the public meeting may send suggestions to the Service to the address given above (see **ADDRESSES** section) by April 15, 1993, in order to ensure their consideration in the meeting.

Author

The primary author of this notice is Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority.

Dated: March 24, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–7292 Filed 3–29–93; 8.45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 59
Tuesday, March 30, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 93-034-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date Issued	Organisms	Field test location
92-330-02, renewal of permit 91-322-01, issued on 02-04-92.	North Carolina State University.	03-02-93	Tobacco plants genetically engineered to express a coat protein of tobacco etch virus (TEV).	North Carolina.
92-349-01, renewal of permit 90-311-01, issued on 03-12-91.	Frito-Lay, Incorporated	03-02-93	Potato plants genetically engineered to over-express a metabolic enzyme to reduce cold-sensitive sweetening in potato tubers.	Wisconsin.
92-349-03, renewal of permit 91-302-01, issued on 02-14-92.	Frito-Lay, Incorporated	03-02-93	Potato plants genetically engineered to express metabolic enzymes in order to inhibit accumulation of simple sugars in potato tubers.	Wisconsin.
93-012-07, renewal of permit 92-055-01, issued on 05-20-92.	Monsanto Agricultural Company.	03-02-93	Soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Virginia.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3)

USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 25th day of March 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–7287 Filed 3–29–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–035–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 31 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect applications are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–043–01	Miles Incorporated	02–12–93	Cotton plants genetically engineered to express a deltaendotoxin from *Bacillus thuringiensis* for resistance to lepidopteran insects and a gene for tolerance to the herbicide bromoxynil.	Georgia, Mississippi.
93–043–02, renewal of permit 92–080–05, issued on 05–22–92.	Cargill Hybrid Seeds	02–12–93	Corn plants genetically engineered to express a gene for male sterility and tolerance to the phosphinothricin class of herbicides.	Illinois.
93–043–03, renewal of permit 91–302–02, issued on 12–23–91.	Cargill Hybrid Seeds	02–12–93	Corn plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Illinois.
93–047–01	American Cyanamid Company.	02–16–93	Cotton plants genetically engineered to expressed a deltaendotoxin from *Bacillus thuringiensis* for resistance to lepidopteran insects and a gene for tolerance to the herbicide bromoxynil.	Arizona, Louisiana.
93–047–02, renewal of permit 92–043–03, issued on 05–21–92.	Upjohn Company	02–16–93	Soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Arkansas, Illinois, Maryland.
93–047–03, renewal of permit 92–043–02, issued on 05–22–93.	Upjohn Company	02–16–93	Soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Illinois, Iowa, Mississippi, Nebraska.
93–047–04	Upjohn Company	02–16–93	Soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Indiana, Missouri, North Dakota, South Carolina, Virginia.
93–047–05	Calgene, Incorporated	02–16–93	Tomato plants genetically engineered to express an S-adenosyl-methionine hydrolase gene to alter fruit ripening.	California.
93–048–01, renewal of permit 92–073–01, issued on 06–30–92.	American Cyanamid Company.	02–17–93	Tobacco plants genetically engineered to express an acetohydroxy acid synthase gene from *Arabidopsis thaliana* for tolerance to the herbicides sulfonylurea and imidazolinone.	New Jersey.
93–048–02	Cargill Hybrid Seeds	02–17–93	Rapeseed plants genetically engineered to express an industrial enzyme from Aspergillus.	Colorado, Illinois.

Application No.	Applicant	Date received	Organisms	Field test location
93–049–01	Heinz U.S.A.	02–18–93	Tomato plants genetically engineered to express a pectin methylesterase (PME) antisense gene to increase the soluble solid content.	Ohio.
93–049–02	University of Idaho	02–18–93	Rapeseed plants genetically engineered to express genes for control of male sterility and a gene for tolerance to the phosphinothricin class of herbicides.	Idaho.
93–049–03	North Carolina State University.	02–18–93	Tobacco plants genetically engineered to express the coat protein from potato virus Y (PVY) for resistance to PVY.	North Carolina.
93–050–01, renewal of permit 92–085–01, issued on 06–12–92.	Agritope, Incorporated.	02–19–93	Tomato plants genetically engineered to express an S-adenosylmethionine hydrolase gene to alter fruit ripening.	Oregon.
93–053–01, renewal of permit 91–358–01, issued on 04–10–92.	DuPont Agricultural Products.	02–22–93	Cotton plants genetically engineered to express acetolactate synthase genes for tolerance to the herbicide sulfonylurea.	Arkansas, Mississippi, Texas.
93–053–02	Upjohn Company	02–22–93	Cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), watermelon virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to these viruses.	Oregon, Texas.
93–053–03, renewal of permit 92–037–07, issued on 05–19–92.	Upjohn Company	02–22–93	Cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus (CMV), watermelon virus 2 (WMV2), and zucchini yellow mosaic virus (ZYMV) for resistance to these viruses.	Arizona, California, Florida, Georgia, Illinois, Michigan, Ohio, Texas.
93–053–04	Upjohn Company	02–22–93	Soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Arkansas, Indiana, Illinois, Iowa, Mississippi, Missouri, Virginia.
93–053–05	Upjohn Company	02–22–93	Soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides.	Minnesota.
93–053–06, renewal of permit 92–080–02, issued on 05–04–92.	Harris Moran Seed Company.	02–22–93	Cantaloupe plants genetically engineered to express the coat protein from cucumber mosaic virus (CMV) for resistance to CMV.	California.
93–054–01	Monsanto Agricultural Company.	02–23–93	Tomato plants genetically engineered to express a heterologous aminocyclo-propane-1-carboxylic acid (ACC) degradation gene, to alter ripening.	Illinois.
93–055–01	Dairyland Seed Company, Incorporated.	02–24–93	Soybean plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.	Puerto Rico.
93–055–02	U.S. Department of Agriculture, Agricultural Research Service.	02–24–93	Potato plants genetically engineered to express a modified *Galleria mellonella* larval serum protein for reduced incidence of blackspot bruise.	Colorado, Idaho, North Dakota.
93–055–03	U.S. Department of Agriculture, Agricultural Research Service.	02–24–93	Potato plants genetically engineered to express a gene coding for an insect protein (cecropin B) for anti-bacterial activity.	Colorado, Idaho, Minnesota, North Dakota.
93–056–01	DNA Plant Technology Corporation.	02–25–93	Tomato plants genetically engineered to express modified ripening.	California.
93–056–02, renewal of permit 92–010–01, issued on 03–31–92.	Louisiana State University.	02–25–93	Rice plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* for resistance to lepidopteran insects, bean and rice storage proteins.	Louisiana.
93–056–03	Monsanto Agricultural Company.	02–25–93	Potato plants genetically engineered to express a deltaendotoxin from *Bacillus thuringiensis* subsp. *tenebrionis* for resistance to Colorado Potato Beetle.	Maryland.
93–056–04	Monsanto Agricultural Company.	02–25–93	Corn plants genetically engineered to express a deltaendotoxin from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects.	Maryland.
93–056–05	Monsanto Agricultural Company.	02–25–93	Cotton plants genetically engineered to express a deltaendotoxin from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects.	Maryland.

Application No.	Applicant	Date received	Organisms	Field test location
93-056-06	Monsanto Agricultural Company.	02-25-93	Tomato plants genetically engineered to express a coat protein of Tobacco Mosaic Virus (TMV).	Maryland.
93-056-07	Monsanto Agricultural Company.	02-25-93	Soybean plants genetically engineered to express two genes for tolerance to the phosphino- thricin class of herbicides.	Maryland.

Done in Washington, DC, this 25th day of March 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-7289 Filed 3-29-93; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Research Service

National Genetic Resources Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463), the Agricultural Research Service announces the following meeting:

Name: National Genetic Resources Advisory Council.

Date: May 12-13, 1993.

Time: 9 am-5 pm, May 12, 1993; 9 am-5 pm, May 13, 1993.

Place: USDA, Administration Bldg., room 104A (Williamsburg Room), 14th & Jefferson Drive, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advance the development of the National Genetic Resources Program.

Contact Person: Henry L. Shands, Associate Deputy Administrator, National Genetic Resources Program, Bldg. 005, rm. 215, BARC-West, Beltsville, MD 20705.

Telephone: 301/504-5059.

Done at Beltsville, Maryland, this 22nd day of March 1993.

Henry L. Shands,

Director, National Genetic Resources Program.

[FR Doc. 93-7182 Filed 3-29-93; 8:45 am]

BILLING CODE 3410-03-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Wisconsin Advisory Committee to the Commission will be held on Thursday, April 22, 1993, from 8 a.m. to 5 p.m. and Friday, April 23, 1993, from 9 a.m. to 2 p.m., at the Marc Plaza Hotel, 509 West Wisconsin Avenue, Milwaukee, Wisconsin. The purpose of this meeting is to examine police protection of the African American Community in Milwaukee.

Persons desiring additional information should contact Kimberly Shankman, Committee Chairperson at (414) 748-8197 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 22, 1993.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-7184 Filed 3-29-93; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Census Bureau

Estimates of the Voting Age Population for 1992

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, title 2, United States Code, section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1992, for each state and the District of Columbia is as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: March 23, 1993.

Ronald H. Brown,

Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, AND THE DISTRICT OF COLUMBIA: JULY 1, 1992

[In thousands]

	Population 18 and over
United States	188,915
Alabama	3,060
Alaska	401
Arizona	2,785
Arkansas	1,770
California	22,444
Colorado	2,561
Connecticut	2,510
Delaware	517
District of Columbia	472
Florida	10,382
Georgia	4,951
Hawaii	866
Idaho	744
Illinois	8,602
Indiana	4,200
Iowa	2,078
Kansas	1,844
Kentucky	2,791
Louisiana	3,049
Maine	929
Maryland	3,682
Massachusetts	4,614
Michigan	6,928
Minnesota	3,274
Mississippi	1,866
Missouri	3,843
Montana	598
Nebraska	1,166
Nevada	990
New Hampshire	831
New Jersey	5,926
New Mexico	1,113
New York	13,697
North Carolina	5,180
North Dakota	464
Ohio	8,197
Oklahoma	2,355
Oregon	2,211
Pennsylvania	9,165
Rhode Island	772
South Carolina	2,658
South Dakota	507
Tennessee	3,777
Texas	12,584
Utah	1,159
Vermont	426
Virginia	4,815
Washington	3,781
West Virginia	1,374
Wisconsin	3,677
Wyoming	328

SOURCE: Population Estimates Branch, Bureau of the Census, Washington, DC 20233.

These estimates are consistent with Dept. of Commerce Press Release CB92–276. They are based on methodology described in Current Population Reports, P–25 No. 1010. March 8, 1993.

[FR Doc. 93–7164 Filed 3–29–93; 8:45 am]
BILLING CODE 3510–BP–M

Foreign-Trade Zones Board

[Docket 10–93]

Foreign-Trade Zone 119; Minneapolis-St. Paul, MN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area FTZ Commission, grantee of FTZ 119, requesting authority to expand and reorganize its zone in Minneapolis-St. Paul, Minnesota, within the Minneapolis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 19, 1993.

FTZ 119 was approved on July 24, 1985 (Board Order 305, 50 FR 31405; 8/2/85). The zone project currently consists of four sites in the Minneapolis-St. Paul area: *Site 1* (3 acres)—air freight complex, Minneapolis-St. Paul International Airport; *Site 2* (26 acres)—Alpha Business Center within the adjacent Bloomington Airport Industrial Park, Bloomington; *Site 3* (10 acres)—warehouse at Ruth Street and Magnolia Avenue, St. Paul; and Site 4 (23 acres)—Murphy Warehouse complex, 701 24th Avenue, Minneapolis.

The applicant is now requesting authority to expand and reorganize the zone as follows:

—Expand Sites 1 and 2 and consolidate them as Site 1, consisting of two adjacent parts: Site 1a—Minneapolis-St. Paul International Airport complex (3002 acres, 500-acre activation limit); Site 1b—Bloomington Airport Industrial Park (236 acres)
—Expand Site 4 to include the entire Mid-City Industrial Park (960 acres) and redesignate it as Site 2
—Add a new site which will cover the Port of Minneapolis terminal complex in Minneapolis (50 acres), to be designated as Site 3
—Redesignate Site 3 as Site 4 (boundaries unchanged)

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 13, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 108 Federal Building, 110 S. 4th Street, Minneapolis, Minnesota 55401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 24, 1993.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93–7334 Filed 3–29–93; 8:45 am]
BILLING CODE 3510–DS–P

[Order No. 632; FTZ Docket 19–91]

Application of the Nashville Metropolitan Port Authority for Expanded Subzone Authority; Nissan Motor Manufacturing Corporation U.S.A., FTZ Subzone 78A

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), The Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the application of the Metropolitan Nashville Port Authority, grantee of Foreign-Trade Zone 78, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on April 8, 1991, requesting authority to expand the subzone boundary and scope of manufacturing authority at the automobile and pickup truck manufacturing plant of Nissan Motor Manufacturing Corporation U.S.A., located in Smyrna, Tennessee (Subzone 78A), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval in this matter is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 18th day of March, 1993.

Joseph A. Spetrini,
Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–7335 Filed 3–29–93; 8:45 am]
BILLING CODE 3510–DS–M

[Docket No. 3–91]

Foreign-Trade Zone 20; Suffolk, VA; Withdrawal of Application for Subzone Status for ABB Power Generation Facility

Notice is hereby given of the withdrawal of the application submitted by the Virginia Port Authority, grantee of FTZ 20, requesting special-purpose subzone status for the large turbine electric power generator facility of ABB Power Generation, Inc., located in the Richmond, Virginia, area. The application was filed on January 14, 1991 (56 FR 3445, 1/30/91).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: March 22, 1993.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93–7336 Filed 3–29–93; 8:45 am]
BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Endangered Species; Application to Modify Permit

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Receipt of application to modify Permit No. 726 (P45I).

SUMMARY: Notice is hereby given that Dr. Boyd Kynard, Northeast Anadromous Fish Research Lab, U.S. Fish and Wildlife Service, P.O. Box 796, Turners Falls, MA 01376, has requested a modification of Permit No. 726 issued on May 22, 1991 (56 FR 13309), under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Permit No. 726 authorizes the Permittee to capture for tagging purposes shortnose sturgeon (*Acipenser brevirostrum*) from the rivers and streams in New England (Connecticut, Massachusetts, New Hampshire and Maine). Up to 190 fish are authorized to be captured, tagged and released. Up to 50 are authorized to be captured from

the Connecticut River, 20 of which may be tagged with radio and personal identification tags and 30 of which may be held and spawned at the Permittee's facility, tagged with personal identification tags, and released.

The Permittee is requesting a modification to: (1) Capture an additional four (4) fish (1 female/3 males) in the Connecticut River to remove approximately 2500–3000 eggs from the female and sperm from the three males for contaminant analysis; (2) capture, radio-tag and release an additional 10 pre-spawning sturgeon from the Holyoke Dam to continue efforts to define specific movements of pre- and post-spawning adults; and (3) allow the accidental lethal take of up to three shortnose sturgeon per year during gill-net captures.

ADDRESSES: Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, (NOAA), 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the Permit and this modification request are available for review by submitting a written request or by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289); and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 (508/281–9238).

Dated: March 22, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7149 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Scientific Research Permit

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a Scientific Research Permit (P351D).

Notice is hereby given that Mr. Craig O. Matkin, North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603, requests authorization to approach, up to 10 times each, up to 350 killer whales (*Orcinus orca*) annually over a five-year period during the course of photo-identification studies. Activities will be carried out in Alaskan waters.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: March 22, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7150 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for modification to scientific research permit No. 767 (P263B).

Notice is hereby given that Ms. Janice Straley, P.O. Box 273, Sitka, AK 99835, has requested a modification to Permit No. 767 (P263B) issued under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the Regulations Governing Endangered Fish and Wildlife Permits (50 CFR parts 217–222).

Permit No. 767 was issued on March 4, 1992 (57 FR 7735), and subsequently modified on December 3, 1992 (57 FR 58462). It authorizes the inadvertent harassment of up to 500 humpback whales (*Megaptera novaeangliae*), 200 killer whales (*Orcinus orca*), and 20 minke whales (*Balaenoptera acutorostrata*) annually in southeastern Alaskan waters during photo-identification studies over a one-year period.

The permittee is requesting that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.23 of the Regulations Governing Endangered Species (50 CFR part 217–222), the permit be modified to: Extend its duration for an additional four years; increase the number of humpback whales (*Megaptera novaeangliae*) that may be inadvertently harassed to 1000 annually; and authorize the inadvertent harassment of up to 500 gray whales (*Eschrichtius robustus*) annually during photo-identification studies. Individuals of all authorized species may be approached numerous times annually.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee on Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: March 23, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7214 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification No. 2 to permit No. 772 (P475)

SUMMARY: On March 27, 1992, notice was published in the **Federal Register** (57 FR 10650) that Permit No. 772 had been issued to Ms. Dena Matkin, P.O. Box 22, Gustavus, Alaska 99826.

Notice is hereby given that on March 23, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service modified Permit No. 772 to extend the effective date through April 30, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: March 23, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7215 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 2 to Permit No. 767 (P263B).

SUMMARY: On March 4, 1992, notice was published in the **Federal Register** (57 FR 7735) that Permit No. 767 had been issued to Ms. Janice Straley, P.O. Box 273, Sitka, Alaska 99835.

Notice is hereby given that on March 23, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service modified Permit No. 767 to extend the effective date through June 30, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd. suite 6, Juneau, AK 99802 (907/586–7221).

Dated: March 23, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7216 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Receipt of application for permit (P535).

SUMMARY: Notice is hereby given that Mr. Stephen J. Insley and Dr. Peter Marler, Animal Communication Laboratory, University of California, Davis, CA 95616–8761, have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act.

The Applicants request a Permit to conduct scientific research on northern fur seals (*Callorhinus ursinus*) over a two-year period. Up to 100 animals (50 females/50 pups) will be bleach marked and tagged with plastic All-Flex tags or metal monel tags. Video and audio recordings will be made for acoustic playback experiments. An additional 110 animals may be inadvertently harassed during research activities. The purpose of the study is to determine whether females and their pups recognize each other's vocalizations and to describe the acoustic characteristics which are used for communication between fur seal mothers and their offspring.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: March 23, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–7217 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit No. 496 (P79D).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 496 issued to the Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064, has been modified to extend the effective date through June 30, 1993.

The Permit, as modified, is available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: March 23, 1993.

William W. Fox,

Director, Office of Protected Resources.

[FR Doc. 93–7218 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Licensing System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

March 24, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: May 3, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Beginning on May 1, 1993, the Government of the People's Republic of China will begin issuing a new export visa stamp for shipments of textile products, produced or manufactured in China and exported from China on or after May 1, 1993. There will be a one month grace period from May 1, 1993 to May 31, 1993, during which goods exported from China may be accompanied by either the old or the new export visa stamps. Goods exported from China on or after June 1, 1993 must be accompanied by the new export visa stamp.

See 49 FR 7269, published on February 28, 1984; and 52 FR 28741, published on August 3, 1987.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on May 3, 1993, you are directed to amend further the directive dated February 23, 1984 to provide for the use of a new export visa stamp issued by the Government of the People's Republic of China to accompany shipments of textile products, produced or manufactured in China and exported from China on and after May 1, 1993.

Goods exported from China from May 1, 1993 to May 31, 1993 may be accompanied by either the old or the new export visa stamps. Goods exported from China on or after June 1, 1993 must be accompanied be the new export visa stamp.

A facsimile of the visa stamp is enclosed with this letter.[1]

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by the new export visa stamp shall be denied entry.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–7232 Filed 3–29–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Open Meeting; Military Personal Property and Claims Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and AR 15–1, Committee Management, announcement is made of meeting of the Military Personal Property and Claims Symposium. This meeting will be held 26–27 May 1993, at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, Attn: MTOP–Q–S–S, (703) 756–0754, between 0800–1630 hours. Topics to be discussed should be received on or before 16 April 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–7185 Filed 3–29–93; 8:45 am]

BILLING CODE 3710–08–M

[1] The facsimile is not published with this document.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075]

Clearance Request for Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C.), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 45 and section 52.245 of the FAR prescribe policies and procedures for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. Firms provided Government-furnished property under Federal contracts must maintain records of the property and report status. This requests extension of a previously approved clearance for part 45, OMB Control Number 9000–0075.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 18,750; responses per respondent, 10; total annual responses, 187,500; preparation hours per response, 1; and total response burden hours, 187,500.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 10,000; hours per recordkeeper, 40; total recordkeeping burden hours, 400,000; and total annual burden hours, 587,500.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: March 19, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–7186 Filed 3–29–93; 8:45 am]

BILLING CODE 6820–34–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 93–2]

The Need for Critical Experiment Capability

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning The Need for Critical Experiment Capability. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before April 29, 1993.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: March 25, 1993.

John T. Conway,

Chairman.

The Need for Critical Experiment Capability

Dated: March 23, 1993.

The end of the international competition in manufacture of nuclear weapons, and the transition to large scale dismantling of nuclear weapons, have generated strong pressures to reduce the defense nuclear budget and to close down many defense nuclear facilities and operations. At the same time, the development of firm plans for a Complex 21 to serve future nuclear defense needs has slowed. These trends lead to a possibility that capabilities and functions necessary for current and future needs could be terminated along with those no longer required. One of these, important for the avoidance of certain types of accidents, is support of nuclear criticality control.

Because of the importance of avoiding criticality accidents, the Board carefully follows the state of criticality control at DOE's defense nuclear facilities. This interest has been evident as Board members and staff have reviewed practices at the Pantex Plant. The Board believes it is important to maintain a good base of information for criticality control, covering the physical situations that will be encountered in handling and storing fissionable material in the future, and to ensure retaining a community of individuals competent in practicing the control.

In the course of retrenchment of its activities in recent years, the Department of Energy and its predecessor agencies have terminated use of all but one of its general purpose facilities for conducting neutron chain-reacting critical experiments with fissionable material. The research at these facilities had served programmatic purposes of diverse DOE programs, as well as laying a general experimental basis for practices that ensure averting criticality accidents. The Board is informed that there is now a strong possibility that the last DOE facility capable of general purpose critical experiments will be shut down in the near future, due to lack of funding. This possibility arises because no single program of the Department has an overriding need for this remaining facility at the Los Alamos National Laboratory, and therefore no single program office is motivated to provide its financial support in this period of budget stringency. A certain complacency fed by some years of freedom from criticality accidents seems also to underlie this possibility.

The Board observes that the art and science of nuclear criticality control have three principal ingredients. The first is familiarity with factors that contribute to achieving nuclear criticality, and the physical behavior of systems at and near criticality. This familiarity is developed in individuals only through working with critical systems. It cannot be imparted solely through learning theory and using computer codes. The second is theoretical understanding of neutron multiplication processes in critical and subcritical systems, leading to predictability of the critical state of a system by methods that use theory benchmarked against good and well characterized critical experiments. The third is thorough familiarity of nuclear criticality engineers with the first two factors, obtained through a sound program of training that indoctrinates them in the experimental and theoretical aspects.

The Board has reviewed the status of benchmarking the theoretical methods of criticality control against existing critical experiments and has found that there are notable failures of theoretical analysis to account for the results of a number of experiments. It is not known whether this discrepancy results from inadequate nuclear data used in the analysis or from inadequate care in conducing the experiments and recording their physical features. Both factors could contribute. In addition, it seems that on the average there may be a small non-conservative bias in overall predictions of the theory. In spite of these shortcomings, conservatism in methods used to develop the limits to be applied during handling and storage of fissionable material seems to have led to adequate safety in recent years. The Board believes that in the interest of continued safety it is important to clear up the existing discrepancies, which are obstacles to confident understanding of criticality control. To do so will require conduct of further neutron chain-reacting critical experiments targeted at the major sources of discrepancy between the theory and the experiments, as well as careful analysis of the experiments.

Finally, the Board believes that there is no guarantee that the physical circumstances of handling and storage of fissionable material in the future will always be found in the realm of benchmarked theory. This point is especially important under circumstances that will exist for a number of years to come, with increasing amounts of fissionable material to be stored in a variety of chemical and physical forms. This does not appear to be an appropriate time to eliminate an ability to ensure that such activities will be free of criticality hazard. For safety purposes it will be necessary to retain the capability to perform experiments under conditions not foreseen at this time. This capability once lost would be most difficult to reproduce, and it could be approximated only at great cost and

after substantial time, deterring such development even if it were needed badly.

For all the above reasons, the Board believes that continuation of an experimental program of general purpose critical experiments is necessary for continued safety in handling and storing fissionable material. It is needed to improve the basis for the methodology. It is needed as part of the process of properly educating criticality control engineers. It is needed to ensure the capability of answering criticality questions with new and previously researched features.

Therefore the Board recommends that:

1. The Department of Energy should retain its program of general purpose critical experiments.

2. This program should normally be directed along lines satisfying the objectives of improving the information base underlying prediction of criticality, and serving in education of the community of criticality engineers.

3. The results and resources of the criticality program should be used in ongoing departmental programs where nuclear criticality would be an important concern.

John T. Conway,
Chairman.

Appendix—Letter to Secretary of Energy

March 23, 1993.

The Honorable Hazel R. O'Leary,
Secretary of Energy,
Washington, DC 20585.

Dear Madame Secretary: On March 23, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–2 which is enclosed for your consideration. Recommendation 93–2 deals with The Need for Critical Experiment Capability.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

Enclosure

[FR Doc. 93–7210 Filed 3–29–93; 8:45 am]
BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

National Education Goals Panel; Meeting

AGENCY: National Education Goals Panel, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 21, 1993 from 10 a.m. to 12 p.m. and 1:30 p.m. to 4:45 p.m.

ADDRESSES: Cornhusker Hotel, 333 South 13th Street, Lincoln, Nebraska 68508.

FOR FURTHER INFORMATION CONTACT: Public Information Officer, 1850 M Street, NW, suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes consideration of a core set of data elements for use in student record systems, review of new indicator development for Goal 3, discussion of major standards-setting efforts, and a demonstration of the use of technology in achieving the Goals.

Records are kept of all Panel proceedings, and are available for public inspection at the Office of the Goals Panel at 1850 M Street, NW, suite 270, Washington, DC 20036, from the hours of 10 a.m. to 5 p.m.

Dated: March 22, 1993.

Ann V. Bailey,
Committee Management Officer, Department of Education.

[FR Doc. 93–7310 Filed 3–29–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Form OE–411, "Coordinated Regional Bulk Power Supply Program Report"

AGENCY: Energy Information Administration, Department of Energy (DOE).

ACTION: Notice of the proposed extension for one year of data collection on the Form OE–411, "Coordinated Regional Bulk Power Supply Program Report," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed one-year extension to the Form of OE–411, "Coordinated Regional Bulk Power Supply Program Report."

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Dennis K. Taillie, Director, Office of Emergency Planning (OE–20), Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (Phone number (202) 586–3271)

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Request for additional information or copies of the form and instructions should be directed to Mr. Taillie at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of

energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The form collects data relevant to a determination of the projected adequacy and reliability of U.S. bulk electric power supply. Data are collected on existing and projected generating units, peak demands, annual energy requirements, projected transmission lines, historic regional unavailability of generating capacity, operating practices, and wholesale inter-utility capacity transactions at times of peak demand.

II. Current Actions

This is an existing collection. Revisions will be made to take account of administrative changes that have resulted from an internal DOE reorganization. OMB will be requested to extend the currently approved OMB expiration date for one year though October 31, 1994. This will allow time for a thorough review of the data requirements and a determination of any revisions necessary to the form. During the review, consultations will be held with the public and representatives of the electric power industry.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions.

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 1000 hours for reliability councils and 13 hours for individual electric utilities. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the OE–411, "Coordinated Regional Bulk Power Supply Program Report."

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Sections 3506(a) and (c)(1), Paperwork Reduction Act of 1980, as amended, Public Law 96–511, 44 U. S. C. 3506(a) and (c)(1).

Issued in Washington, DC, March 23, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–7328 Filed 3–29–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–29–NG]

Mexus Trading Co.; Application for Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 5, 1993, as amended on March 11, 1993, of an application filed by Mexus Trading Company (Mexus) to export up to 72 Bcf of natural gas from the United States to Mexico over a two-year period commencing on the date of first delivery. The proposed exports will rely on existing pipeline and export facilities.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, April 29, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Mexus is a Texas corporation headquartered in Dallas, Texas. The exported gas would come from production areas in the United States with surplus supplies of natural gas. Mexus states that the short-term nature of the requested authorization protects against the possibility that a national or regional need for the exported gas might develop during the period of the authorization.

In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas to be exported and any other issues determined to be appropriate will be considered, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose the application, should comment on these issues as they relate to the requested export authority.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable.

The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Mexus's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 24, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7327 Filed 3–29–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 93–05—Certification Notice—115]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Auburndale Power Partners, Limited Partnership has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing is available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Auburndale Power Partners, Limited Partnership, Fairfax, VA.

Operator: Auburndale Power Partners, Limited Partnership.

Location: Auburndale, FL.

Plant Configuration: Topping-cycle cogeneration using combined cycle technology.

Capacity: 158.8 megawatts.

Fuel: Natural gas.

Purchasing Utilities: Florida Power Corporation.

Expected In-Service Date: July 1, 1994.

Issued in Washington, DC on March 24, 1993.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7328 Filed 3–29–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES93–25–000, et al.]

Interstate Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Interstate Power Co.

[Docket No. ES93–25–000]

March 23, 1993.

Take notice that on March 17, 1993, Interstate Power Company (Interstate) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization (1) to issue not more than $125 million of debt; (2) to issue not more than 745,000 shares of Preferred Stock, $50 par value; and (3) to issue not more than 500,000 shares of Common Stock, $3.50 per share, pursuant to a Dividend and Stock Purchase Plan. Also, Interstate requests exemption from the Commission's competitive bidding regulations.

Comment date: April 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Interstate Power Co.

[Docket No. ES93–26–000]

March 23, 1993.

Take notice that on March 17, 1993, Interstate Power Company (Interstate) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $60 million of short-term promissory notes and commercial paper on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

Comment date: April 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Indiana Michigan Power Co.

[Docket No. ER93–451–000]

March 23, 1993.

Take notice that on March 15, 1993, Indiana Michigan Power Company (IMP) tendered for filing an Agreement and Maintenance Contract with Wabash Valley Power Association.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER93–448–000]

March 23, 1993.

Take notice that on March 12, 1993, Western Resources, Inc. (Western Resources) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 206.

Western Resources states that the Notice of Cancellation has been served upon the City of Horton and the Kansas Corporation Commission.

Comment date: April 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. The Washington Water Power Co.

[Docket No. ER93–464–000]

March 24, 1993.

Take notice that on March 19, 1993, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12 a Letter Agreement between the Washington Water Power Company and the Bonneville Power Administration (Bonneville). The Letter Agreement provides for WWP to design, construct, own, operate, and maintain certain transmission facilities required to upgrade the transmission capacity across the West of Hatwai cutplane for the benefit of the Bonneville Power Administration.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Co.

[Docket No. ER93–463–000]

March 24, 1993.

Take notice that on March 19, 1993, Portland General Electric Company (PGE) tendered for filing a Staged System Test Agreement between the Bonneville Power Administration and Portland General Electric Company.

PGE has served copies of this filing on The Bonneville Power Administration and The Oregon Public Utility Commission.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Co.

[Docket No. ER93–462–000]

March 24, 1993.

Take notice that on March 19, 1993, Portland General Electric Company (PGE) tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE–11) with Public Utility District No. 1 of Chelan County (Chelan) and City of Vernon (Vernon). Copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Co.

[Docket No. ER93–461–000]

March 24, 1993.

Take notice that New England Power Company, on March 19, 1993, tendered for filing an amendment to its FERC Rate Schedule No. 323. According to NEP, the amendment reflects changes in the rate schedule required by the settlement in Docket No. ER92–113–000.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Co. of New York, Inc.

[Docket No. ER93–254–000]

March 24, 1993.

Take notice that on March 19, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO).

Con Edison states that a copy of this filing has been served by mail upon LILCO and the parties to Docket No. ER93–254–000.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Service Co.

[Docket No. ER93–348–000]

March 24, 1993.

Take notice that on March 3, 1993, New England Power Service Company (NEP) tendered for filing an amendment to its January 29, 1993 filing filed in the above-referenced docket.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER93–457–000]

March 24, 1993.

Take notice that on March 17, 1993, Western Resources, Inc. (Western Resources) tendered for filing a Notice of Cancellation of Supplement 9 and Supplement 1 to Supplement 9 to Rate Schedule FPC No. 72.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Co.

[Docket No. ER93–460–000]

March 24, 1993.

Take notice that on March 18, 1993, Carolina Power & Light Company (CP&L) tendered for filing with the Commission the change outlined below to its agreement with Jones-Onslow EMC.

1. *Jones-Onslow EMC—Dawson Cabin 155 kV POD*—Installation of a new point of delivery including special provisions for purchasing facilities for metering pulse information.

The Company requests that this supplement be made effective June 1, 1993.

A copy of this filing has been sent to the affected party, the North Carolina Utilities Commission, and the South Carolina Public Service Commission

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Orange and Rockland Utilites, Inc.

[Docket No. ER93–328–000]

March 24, 1993.

Take notice that on March 18, 1993, Orange and Rockland Utilities, Inc. tendered for filing an amendment to its January 14, 1993, filing in this docket.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Midwest Power Systems, Inc.

[Docket No. ER93–373–000]

March 24, 1993.

Take notice that on March 17, 1993, Midwest Power Systems, Inc. (Midwest) tendered for filing Amendment in the above-referenced docket. Midwest states that this filing provides additional cost support.

Midwest states that copies of this filing have been served upon the Iowa Utilities Board and the Cites of Breda, Iowa.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Century Power Corp.

[Docket No. ER93–466–000]

March 24, 1993.

Take notice that on March 19, 1993 Century Power Corporation (Century), in connection with its proposed sale of a 41.8% ownership interest in San Juan Unit 3 to Southern California Public Power Authority (SCPPA), filed an Assignment and Assumption Agreement assigning its power sale agreement with San Diego Gas & Electric Company (San Diego) dated December 17, 1990 (FERC Rate Schedule No. 12) to SCPPA. Century requests that the Assignment and Assumption Agreement be made effective as of the closing date of the sale of Century's 41.8% interest in the unit.

Century requests waiver of the 60 day notice requirement to permit the Commission to act upon the filing by April 23, 1993, but if such waiver is not granted, it requests that the Commission act no later than May 24, 1993.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Century Power Corp.

[Docket No. ER93–467–000]

March 24, 1993.

Take notice that on March 19, 1993, Century Power Corporation (Century), in connection with the proposed sale of a 41.8% ownership interest in San Juan Unit 3 to Southern California Public Power Authority (SCPPA), filed (1) an Assignment and Assumption Agreement assigning its power sale agreement with the Cities of Azusa and Colton, California (the Cities) dated July 17, 1991 (FERC Rate Schedule No. 13) to SCPPA and (2) a notice of cancellation of the power sale agreement as a rate schedule. Century requests that the Assignment and Assumption Agreement and notice of cancellation be made effective as of the closing date of the sale of Century's 41.8% interest in the unit. The power sale agreement is cancelled as a rate schedule because SCPPA is a municipal joint powers agency of the State of California not subject to wholesale rate regulation under the Federal Power Act.

Century requests waiver of the 60 day notice requirement to permit the Commission to act upon the filing, by April 23, 1993, but if such waiver is not granted, it requests that the Commission act no later than May 24, 1993.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. The Connecticut Light and Power Co. and Public Service Co. of New Hampshire

[Docket No. ER92–523–000]

March 24, 1993.

Take notice that on March 19, 1993, Northeast Utilities Service Company (NUSCO), on behalf of the Connecticut Light and Power Company (CL&P) and Public Service Company of New Hampshire (PSNH), submitted an Addendum to a Short Term Agreement with New York Power Authority (NYPA).

NUSCO states that copies of its submission have been mailed or delivered to New York Power Authority.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Power & Light Co.

[Docket No. ER93–432–000]

March 24, 1993.

Take notice that on March 8, 1993, Wisconsin Power & Light Company (WP&L) tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 117.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. Tucson Electric Power Co. and Century Power Corp.

[Docket No. ER93–469–000]

March 24, 1993.

Take notice that on March 19, 1993, Tucson Electric Power Company (Tucson) and Century Power Corporation (Century) filed an Assignment and Amendment No. 1 to the Assumption Agreement and an Assignment and Amendment No. 1 to the Amended and Restated Interconnection Agreement. Under these agreements, Tucson provides step-up transformation, transmission, exchange and ancillary services to Century for power produced at San Juan Unit 3 and Century provides certain reciprocal services to Tucson. Century has agreed to sell a 41.8% ownership interest in the unit to Southern California Public Power Authority (SCPPA), and the filed assignments and amendments transfer to SCPPA rights to service under the agreements. The assignments and amendments are to become effective upon the closing of the sale of the interest in the unit. Tucson and Century request waiver of the 60-day notice requirement to permit the Commission to act upon the filing no later than April 23, 1993.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Kansas Gas and Electric Co.

[Docket No. ER93–430–000]

March 24, 1993.

Take notice that on March 8, 1993, Kansas Gas and Electric Company (KG&E) tendered for filing a Notice of Cancellation of Supplement No. 5 to FERC Rate Schedule No. 182.

KG&E states that copies of the Notice of Cancellation have been served upon the City of Girard and the Kansas Corporation Commission.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. The Washington Water Power Co

[Docket No. ER93–345–000]

March 24, 1993.

Take notice that on March 9, 1993, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment 1 to its filing of the Use of Facilities Agreement (WWP Contract No. WP–PS93–4903) between The Washington Water Power Company and Modern Electric Company (Modern). WWP states that this Amendment 1 provides additional cost support for the Fourth and Herald Substation use of facilities charges. This information was requested by Commission staff.

A copy of the filing was served upon Modern.

Comment date: April 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7194 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92-46-000]

Pacific Gas Transmission Co.; Settlement Conference

March 24, 1993.

Notice is hereby given that a settlement conference will be convened in the above-captioned restructuring proceeding at 10 a.m on Wednesday, March 31, 1993. The conference will be held at the offices of the Federal Energy Regulatory Commission (Commission), 810 North Capitol Street, NE., Washington, DC, in a hearing room to be designated.

The purpose of the conference is to address, with the Commission Staff and the intervenors in this proceeding, a proposed Offer of Settlement to resolve certain issues related to the Order No. 636 Compliance Filing of Pacific Gas Transmission Company filed with the Commission on December 1, 1992.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Marilyn L. Rand at (202) 208-0327 or John Robinson at (202) 208-0691.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7290 Filed 3-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-161-028]

ANR Pipeline Co.; Report of Refunds

March 24, 1993.

Take notice that on March 2, 1993, ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds, made in compliance with Article II of the Stipulation and Agreement dated March 10, 1992, and approved by the Commission's August 5, 1992 Order issued in Docket No. RP89-161-000 *et al.*

ANR states that the report shows that ANR refunded $7,436,182.70, including interest calculated through December 30, 1992, to its jurisdictional customers for services performed in November, 1989 thru November, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7195 Filed 3-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF93-40-000]

Big Three Industries, Inc.; Amendment to Filing

March 24, 1993.

On March 15, 1993, Big Three Industries, Inc. tendered for filing supplemental information in this docket.

The supplemental information pertains to the ownership structure and certain technical aspects of the application. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by April 8, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7193 Filed 3-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-459-000]

Century Power Corp.; Notice of Filing

March 24, 1993.

Take notice that on March 17, 1993, Century Power Corporation (Century) tendered for filing an executed Service Agreement No. 24 under its short-term Tariff For Power Sales, FERC Electric Tariff, Original Volume No. 1. The other party to the service agreement is Louis Dreyfus Electric Power, Inc. (Dreyfus).

In order to accommodate Dreyfus' request to purchase capacity and energy under Century's tariff as of May 1, 1993, Century requests waiver of the 60-day notice requirement so that the service agreement can take effect on that date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7196 Filed 3-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-77-001]

CNG Transmission Corp.; Compliance Filing

March 24, 1993.

Take notice that CNG Transmission Corporation (CNG) on March 19, 1993 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, each with a proposed effective date of February 1, 1992:

Substitute Original Sheet No. 240
Substitute Original Sheet No. 243
Substitute Original Sheet No. 248
Substitute First Revised Sheet No. 260B
Substitute Original Sheet No. 260G

CNG states that the tariff sheets are being filed in compliance with the Director's letter order dated March 12, 1993, which directed CNG to correct certain items on the tariff sheets, as enumerated in the letter order.

CNG states that copies of the transmittal letter and its enclosures have been mailed to CNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7197 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–46–000]

Kentucky West Virginia Gas Co.; Proposed Changes in Tariff

March 24, 1993.

Take notice that Kentucky West Virginia Gas Company ("Kentucky West") on March 19, 1993, tendered for filing with the Federal Energy Regulatory Commission ("Commission") its Forty-Eighth Revised Sheet No. 41 to become effective on May 1, 1993. The tariff sheet implements Kentucky West's annual PGA filing and reflects a deferred gas cost adjustment of ($0.0565) and ($0.0008) current adjustment decrease based on an average cost of purchased gas effective May 1, 1993, of $2.1706 per dth.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7198 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–85–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 24, 1993.

Take notice that on March 19, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets with a proposed effective date of April 1, 1993:

Second Revised Volume No. 1

Third Substitute Twenty-First Revised Sheet No. 10
Original Sheet No. 17
Sheet No. 18
Second Substitute First Revised Sheet No. 20
Original Sheet No. 24–A
Original Sheet No. 24–B

First Revised Volume No. 1–A

Third Substitute Sixteenth Revised Sheet No. 201
Substitute First Revised Sheet No. 313
Original Sheet No. 313–A
Substitute Second Revised Sheet No. 314
Fourth Revised Sheet No. 320
Original Sheet No. 321
Sheet No. 322

Northwest states that the purpose of this filing is to establish an Account No. 858 recovery mechanism to allow Northwest to receive reimbursement for the payment of Account No. 858 charges to Pacific Gas Transmission Company (1) by establishing Account No. 858 demand and commodity charges applicable to Rate Schedules ODL–1 and TF–1 deliveries from off-delivery points.

Northwest states that copies of the filing has been served upon all parties of record in Docket No. RP93–5, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 31, 1993.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7199 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–5–004 and RP93–5–006]

Northwest Pipeline Corp.; Technical Conference

March 24, 1993.

Take notice that Commission staff will convene a technical conference in these proceedings on Thursday, April 1, 1993, at 10 a.m. The purpose of the conference is to review the assumptions and projections underlying Northwest Pipeline Company's (Northwest) study of cost shifts caused by its proposed adoption of straight-fixed-variable (SFV) rate design and its proposed method for minimizing the effect of such cost shifts.

The conference will take place in a room to be designated at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7200 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–202–004]

Paiute Pipeline Co.; Refund Report

March 24, 1993.

Take notice that on December 16, 1992, Paiute Pipeline Company (Paiute) filed its report of refunds that were made to its jurisdictional transportation and storage customers under the terms of an offer of Settlement (settlement) filed with the Commission on April 22, 1992, and approved by Commission order issued October 9, 1992.

Paiute states that on November 20, 1992, it distributed refunds, including interest calculated at the Commission approved rates, to its jurisdictional transportation and storage customers pursuant to the settlement. Paiute states that the settlement provides that the refund amount would be calculated as the excess of the total revenues which Paiute actually collected from each customer, exclusive of applicable surcharge amounts, above the total revenues which Paiute would have collected from each customer pursuant to the base tariff rates established by a final Commission order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulation Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7201 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–116–004]

Raton Gas Transmission Co.; Compliance Filing

March 24, 1993.

Take notice that on January 27, 1993, Raton Gas Transmission Company (Raton) submitted a filing in compliance with an order issued by the Commission on June 8, 1992, in the referenced docket.

The Commission's June 8, 1992 order directed Raton within 30 days of the date of the order to terminate its PGA Account No. 191, unrecovered purchased gas costs, and refund any surplus or direct bill any deficit. Raton states that this filing is submitted in satisfaction of that requirement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules and Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7202 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–245–000]

Southern Natural Gas Co.; Application

March 24, 1993.

Take notice that on March 11, 1993, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP93–245–000 an application pursuant to section 7(b) of the Natural Gas Act, and the rules and regulations of the Federal Energy Regulatory Commission (Commission), seeking authorization to abandon certain pipeline, metering, regulating and tap facilities, and an associated direct sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it requests authority to abandon approximately four miles of 16-inch pipeline and the associated tap, metering and regulating facilities providing sales service to the Point Lookout Hunting Club in East Carroll Parish, Louisiana. It is asserted that the facilities proposed to be abandoned were authorized in Docket No. G–296 on October 1942. It is maintained that the pipeline is located on the Mississippi River and, as a result thereof, presents significant maintenance problems. Southern also requests authorization to abandon service to the Point Lookout Hunting Club since it is the only customer served by the facilities to be abandoned and has consented to the abandonment because it has switched to propane.

Southern states that the proposed abandonment would not affect the capacity of Southern's pipeline system or require termination of service to any other customer.

Upon receipt of such authorization, the above-ground metering the regulating facilities would be removed and junked, while the underground pipeline would be filled with water and capped, according to Southern.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7203 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–41–003]

Southwest Gas Corp.; Report of Refunds

March 24, 1993.

Take notice that on December 1, 1992, Southwest Gas Corporation (Southwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) its refund report detailing refunds made to its customers on October 1, 1992.

Southwest states that a recent audit of its records show two refunds (RP85–13 refund and 65 TBTU) received from Northwest Pipeline Corporation during 1988 were inadvertently recorded in Account No. 253 instead of Account No. 191. Thus, these two refunds were not transferred in 1988 to Paiute Pipeline Company, the successor in interest to Southwest's northern Nevada interstate transmission system.

Southwest states that in accordance with Section 9.8 of the Commission's Gas Tariff that was in effect during the time period applicable to the refunds, Southwest distributed the refunds to its former customers on October 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7204 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–488–000]

Tampa Electric Co.; Filing

March 24, 1993.

Take notice that on March 18, 1993, Tampa Electric Company (Tampa) tendered for filing a supplement to its initial filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7205 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–177–104]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 24, 1993.

Take notice that Texas Eastern Transmission Corporation ("Texas Eastern") on March 12, 1993 submitted for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Proposed To Be Effective November 29, 1992

3rd Sub Fifteenth Revised Sheet No. 802

Proposed To Be Effective January 1, 1993

Eighth Revised Sheet No. 426
Eleventh Revised Sheet No. 427
Tenth Revised Sheet No. 428
Fourth Revised Sheet No. 435
Sixteenth Revised Sheet No. 802
Twelfth Revised Sheet No. 804

Texas Eastern states that on October 28, 1992, in Docket No. RP85–177–097, Texas Eastern submitted tariff sheets 1) to eliminate the GSIRC in compliance with the Commission's August 31, 1992 "Order Denying Consolidation, Setting Termination Date for Gas Inventory Charge, and Denying Rehearing", 2) to resolve a remaining GSIRC issue and 3), as a result of elections made by Elizabethtown Gas Company ("Elizabethtown") to revert back to service under Rate Schedules DCQ and GS effective November 1, 1992, to reinstate Rate Schedule GS and to reflect such elections by Elizabethtown.

Texas Eastern states that Central Illinois Public Service Company ("CIPS"), through a timely election dated October 30, 1992, requested a reversion back to Rate Schedules DCQ and GS, effective November 29, 1992, and a termination date for these service agreements of November 1, 1993. Texas Eastern states that it filed tariff sheets with the Commission on December 21, 1992 in Docket Nos. RP85–177–101 and RP93–13–002 to reflect specific portions of the election by CIPS. The tariff sheet filed herewith which is proposed to be effective November 29, 1992 reflects the date of the Service Agreement resulting from the election by CIPS.

Texas Eastern states that in addition, pursuant to section 284.10 of the Commission's Regulations and as permitted by the Commission's November 25, 1992 Order in Docket Nos. RP85–177–097, RP85–177–098, RP93–13–000, RP93–22–000 and CP90–2154–003, Elizabethtown and CIPS converted from sales entitlements to firm Part 284 transportation effective January 1, 1993. Elizabethtown elected to convert approximately 62 percent of its total sales entitlements under Rate Schedules DCQ and GS to Rate Schedule FT–1 with the remaining sales entitlements under Rate Schedule GS. CIPS elected to convert approximately 30 percent of its sales entitlements under Rate Schedule GS to Rate Schedule FT–1. The tariff sheets filed herewith which are proposed to be effective January 1, 1993 update the Quantity Entitlements in Section 12 of the General Terms and Conditions and the Index of Purchasers of Texas Eastern's FERC Gas Tariff, Fifth Revised No. 1, in accordance with certain of the Service Agreements listed in appendix A which are being filed March 12, 1993 in a companion filing.

The proposed effective date of the tariff sheets is November 29, 1992 or January 1, 1993 as listed above.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7206 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–760–015]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

March 24, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on March 19, 1993 certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are proposed to be effective as indicated in Appendix A attached to the filing.

TGPL states the purpose of the instant filing is to comply with the Commission's March 4, 1993 "Order on Rehearing" (March 4 Order) in the referenced docket. The March 4 Order directed TGPL to file within 15 days revised tariff sheets reflecting straight fixed-variable rates for TGPL's Southern Expansion (SEP) firm transportation service effective November 1, 1991 in lieu of the July 5, 1991 effective date approved by the Commission's December 6, 1991 Order in Docket No. CP88–760–008, *et al.*

TGPL served copies of the instant filing to its SEP Customers and interested State Commissions. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before March 31, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7207 Filed 3–29–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4608–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 29, 1993.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Spill Prevention, Control, and Countermeasures (SPCC) Plans (EPA No. 0328.03; OMB No. 2050–0021).

Abstract: This ICR is a reinstatement of an expired collection for Spill Prevention, Control, and Countermeasures (SPCC) planning requirements in support of the Clean Water Act at paragraph (1) section 311 (j), and described at 40 CFR 112. The information will be used by the EPA to ensure that oil spill prevention planning occurs, thereby ensuring compliance with the requirements of 40 CFR 112.

Under this ICR, owners or operators of affected facilities must: (1) Prepare the SPCC plan (40 CFR 112.3 and 112.7), (2) maintain the plan and appropriate records (40 CFR 112.3 and 112.7(e)) if they begin operations or significantly modify their facilities during the approval period, (3) submit the plan in the event of certain discharges of oil (40 CFR 112.4), (4) revise the plan following modification of the facility (40 CFR 112.5(a)), and (5) conduct a triennial review of the SPCC plan (40 CFR 112(b)).

The SPCC plan should describe: (1) Possible equipment failures that could lead to a discharge of oil from the facility (40 CFR 112.7(b)); (2) the use of required preventive measures such as appropriate containment and/or diversion structures or equipment (40 CFR 112.7(c)), or if containment is not available, an oil spill contingency plan and a written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged (40 CFR 112.7(d)); and (3) a discussion of the more detailed planning requirements (40 CFR 112.7(c)).

In addition to these general requirements, onshore facilities must maintain records of maintenance and usage of bypass valves and comparison records on past inspections of aboveground storage tanks. Offshore facilities must maintain written procedures for inspecting and testing pollution prevention equipment, keep records of well shut-in valves, prepare written instructions for contractors and subcontractors, and maintain records of inspection of submarine pipelines.

Currently there are 445,900 facilities subject to this regulation, with an estimated increase in the regulated universe of 9100 facilities per year over the next three years. Facility records related to compliance must be maintained for three years.

Burden Statement: Public reporting burden for new facilities subject to this collection of information is estimated to range between 39.7 and 100.6 hours per response, with an average of 43.8 hours including time for reviewing the Oil Pollution Prevention regulations, searching existing data sources, gathering and maintaining data, and preparing and reviewing the SPCC plan. The annual recordkeeping burden for existing facilities is estimated to range from 5.1 to 14.1 hours per respondent, with an average recordkeeping burden of 5.6 hours including time for maintaining, reviewing and updating the SPCC plan.

Respondents: Owners or operators of subject facilities as defined at 40 CFR 112.

Estimated Number of Respondents: 9,100 new facilities will be required to prepare a plan; an annual average of 454,900 existing facilities over the next three years will be required to maintain records and submit amendments as needed.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,934,200 hours.

Frequency of Collection: On occasion (as described at 40 CFR 112.4).

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: March 22, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–7296 Filed 3–29–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00132; FRL–4571–8]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately $4.5 million in FY 93 grant/cooperative agreement funds under the Pollution Prevention Incentives for States grant program. The purpose of this program is to support State, Tribal and regional-based programs that address the reduction or elimination of pollution across all environmental media: air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under unit IV.

SUPPLEMENTARY INFORMATION:

I. Background

Since its inception in 1989, approximately $20 million has been awarded to 62 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program. In March 1989, EPA awarded approximately $4 million to 13 States and one regional organization. At that time, the program was called the Source Reduction and Recycling Technical Assistance (SRRTA) State grant program. In 1990, the program was renamed Pollution Prevention

Incentives for States (PPIS) to acknowledge EPA's increased emphasis on multimedia pollution prevention. EPA awarded approximately $7 million to 26 State organizations in May 1990 under the PPIS program. In October 1991, $4.5 million was awarded to 16 State agencies and in October 1992, still an additional $3 million was awarded to 16 State agencies.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Public Law 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices, that reduce or eliminate the creation of pollutants through:

- increased efficiency in the use of raw materials, energy, water or other resources, or

- protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State programs will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorizes EPA to establish a national source reduction clearinghouse, expands EPA's authority to collect data to better track source reduction activities, and requires EPA to report periodically to Congress on EPA's progress in implementing the Act.

II. Pollution Prevention Strategy

In January 1991, EPA formally announced its Pollution Prevention Strategy, a comprehensive document designed to provide guidance and direction for incorporating pollution prevention within EPA's existing regulatory and non-regulatory programs. The Strategy affirms EPA's belief that pollution prevention can benefit both the environment and the economy. The Strategy discusses several activities that form the basis for implementing EPA's program, including identifying and overcoming obstacles to prevention, expanding public participation, enhancing State capabilities in pollution prevention, providing outreach and training, and using the existing regulatory framework to provide incentives for prevention. The Strategy also outlines EPA's approach to facilitating pollution prevention initiatives in several sectors. This includes EPA's 33/50 Project for the industrial sector. The 33/50 Project targets for reduction specific high-risk chemicals in the industrial sector that are reported and tracked in the Toxics Release Inventory. The Agency is seeking voluntary commitments to reduce environmental releases through prevention practices. EPA's goal is to release aggregate environmental releases of these targeted chemicals by at least 50 percent by 1995. Other sectors being addressed include agriculture, transportation, energy, Federal facilities, and consumer.

Consistent with the Act, the Strategy includes using State grants to foster exchange of information about source reduction techniques, to disseminate such information to businesses, and to provide technical assistance to businesses.

III. Availability of FY 93 Funds

With this publication, EPA is announcing the availability of approximately $4.5 million in grant/cooperative agreement funds for FY 1993. The Agency is currently in the process of pursuing a delegation of grant authority to the EPA Regional offices which would formally transfer the decisionmaking authority and awarding process for the PPIS grants to the Regions. Apart from this formal delegation process, the Regional offices will be assuming greater responsibility for the solicitation of interest, screening of proposals and the actual selection of awards. This fifth round of awards will represent a more direct and active Regional role in determining FY '93 awardees. PPIS national guidance will be provided to all applicants, along with any supplemental guidance the Regions may wish to provide. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information.

In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, and the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally-recognized Indian tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. Organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

1. *The Catalogue of Federal Domestic Assistance.* The number assigned to the PPIS program is 66.900. Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50 percent. For example, the Federal government will provide half of the total allowable cost of the project, the State half of the total allowable cost of the project. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars and/or in-kind goods and services.

2. *Eligible activities.* In general, the purpose of the PPIS grant program is to support the establishment and expansion of State-, regional-, or local-based multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State- or region-wide. States might focus on, for example:

a. Developing other multimedia pollution prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine progress in pollution

prevention; and identifying regulatory and nonregulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

b. Institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the State or region.

c. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

3. *National eligibility criteria.* Proposals accepted for review under this program must qualify as pollution prevention as defined by section 6603 of the Act. In May of 1992, EPA released a "Statement of Definition" as the formal embodiment of the Agency's working definition of pollution prevention, consistent with the Act and the Strategy (see unit VI). Copies of this definition are also available through your Regional Pollution Prevention Coordinator. Grant/cooperative agreement applications must address the following national criteria in order to be eligible to apply for an award.

a. The proposal should seek to build State pollution prevention capabilities or test, at the State level, innovative pollution prevention approaches and methodologies.

b. Multimedia opportunities and impacts should be identified. A multimedia pollution prevention program addresses the prevention of pollution in and across all environmental media (air, land, and water) and endeavors to reduce or eliminate transfers.

c. Significant needs of the State or region should be addressed and areas for significant risk reduction are targeted and integrated into overall pollution prevention goals and implementation strategies. Proposals are encouraged to address the goals of EPA's Pollution Prevention Strategy and to support participation in EPA voluntary programs such as Green Lights (fosters use of energy-efficient lighting) or the 33/50 Program.

d. The pollution prevention activities of other programs or organizations in the State or region should be integrated and leveraged into the proposed program, as appropriate. Proposed activities augment and complement pollution prevention activities already underway in the State.

e. Measures of success should be identified. There is a reasonable expectation for significant accomplishments in pollution prevention and there is an adequate system planned for measuring progress with environmental and/or programmatic indicators.

f. Proposals should also identify plans for long-term implementation of a multimedia pollution prevention program beyond the initial project funding period.

4. *Program management.* Awards for FY 1993 funds will be managed through the EPA Regional Offices.

5. *Contact.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under unit IV to obtain specific instructions and guidance for submitting proposals. For general information on EPA's Pollution Prevention grant program, contact: Lena Hann, Pollution Prevention Division (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260–2237.

6. *Other grant programs.* EPA's Pollution Prevention Strategy recognizes that there are substantial opportunities to promote prevention in the sectors, including agriculture, energy, and transportation, and commits the Agency to work with other Federal agencies to develop specific strategies for these sectors. To support this goal, EPA has established separate pollution prevention grant programs to target the following sectors with a high potential for risk reduction and for significant gains in pollution prevention:

a. Agriculture. EPA and the U.S. Department of Agriculture are jointly administering a State grant program focused on sustainable agriculture. The program, Agriculture in Concert with the Environment (ACE), supports initiatives focused on the economic implications of sustainable agriculture, training, demonstrations of promising sustainable farming practices, and research on the effect of agricultural chemicals on wildlife and fish habitat.

b. Energy. The U.S. Department of Energy and EPA are jointly managing a State grant program entitled National Industrial Competitiveness through Efficiency: Energy, Environment, and Economics (NICE^3). The goals of the NICE^3 program are to foster new industrial processes and/or equipment that can significantly reduce the generation of wastes in industry, to improve energy efficiency, and to enhance the competitiveness of U.S. industry.

The ACE and NICE^3 grant initiatives are funded and managed separately from the PPIS grant program discussed in this notice. For further information on these programs, please contact the following persons:

ACE: Harry Wells, EPA, (202) 260–4472

NICE^3: Dave Bassett, EPA, (202) 260–2720

c. Indian tribes. Though Indian tribes are encouraged to apply for a PPIS grant, many may experience difficulty in providing the 50 percent match which is required. Potential applicants from Indian tribes should be aware that as an alternative they are eligible to receive grants/cooperative agreements under EPA's Multimedia Assistance Agreements for Indian Tribes Program. The primary purpose of these multimedia assistance agreements is to directly assist tribes in developing the capacity to manage their environmental programs. Pursuant to Agency policy, pollution prevention should be the strategy of first choice in these programs. Only a 5 percent match is required in this program. Tribal governments should contact the Indian Coordinator in the EPA Regional Offices for more information.

IV. Regional Pollution Prevention Contacts

Mark Mahoney (PAS), US EPA Region 1, JFK Federal Bldg Room 2203, Boston, MA 02203, (617) 565–1155

Janet Sapadin (2–PPIB–OPM), US EPA Region 2, 26 Federal Plaza, New York, NY 10278, (212) 264–1925

Kathy Libertz (3ES43), US EPA Region 3, 841 Chestnut Bldg, Philadelphia, PA 19107, (215) 597–0765

Carol Monell, US EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347–7109

Cathy Allen, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590, (312) 353–3387

Dick Watkins (6M–PP), US EPA Region 6, 1445 Ross Ave. 12th Floor, Suite 1200 Dallas, TX 75202, (214) 655–6580

Steve Wurtz, US EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551–7315

Sharon Childs (8PM-SIPO), US EPA Region 8, 999 18th St., Suite 500, Denver, CO 80202–2405, (303) 293–1471

Jesse Baskir/Hilary Lauer (H1B), US EPA Region 9, 75 Hawthorne Ave., San Francisco, CA 94105, (415) 744–2190, (415) 744–2189

Robyn Meeker, US EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101 (206) 553–8579

V. Media State Grants

In November of 1992, in support of both the Act and the Strategy and to further integrate pollution prevention

into the Agency's existing regulatory programs, EPA released a Guidance for the Integration of Pollution Prevention into Media State Grants. The Agency-wide pollution prevention Guidance, beginning with the FY 1994 State grants cycle has four goals:

1. Promoting pollution prevention in State programs supported through Federal grants by establishing National Principles to guide workplans negotiated between Regional Offices and States.

2. Ensuring that grant requirements as interpreted by EPA/State workplans are flexible enough to support innovative State pollution prevention activities.

3. Establishing a simple accounting process to share information on successful State projects, and identify statutory or other barriers to funding State proposals.

4. Building sustained State capacity in pollution prevention to the extent consistent with statutory grant requirements.

The new Guidance is designed to help integrate pollution prevention into the Agency's activities as required by the Act. In other words, it will now be possible, as a result of this guidance to use traditional media State grants to support pollution prevention purposes. By emphasizing flexibility, the Guidance complements other Agency efforts to build a productive environmental management system in partnership with the States, and improve coordination with existing State pollution prevention programs.

EPA's FY 1994 grant programs, in conjunction with the States, should build on the Agency's many successful pollution prevention efforts to explicitly promote pollution prevention in State workplans (also called agreements). This Guidance will be incorporated into the annual Agency Operating Guidance as well as program-specific Guidance developed in conjunction with the State/EPA Operations Committee. Program Guidance, intended to tailor the Agency-wide commitment to each grant program, will be applied by EPA Regional offices and States in the development of grant-assisted work. In general, the Guidance applies to all of the Agency's media-specific State grant programs.

For further information, or for a copy of the Guidance, contact the Pollution Prevention Policy Staff in the Office of the Administrator, at (202) 260–8621.

VI. Definition of Pollution Prevention

EPA's "Statement of Definition" as released in May of 1992 follows:

The following EPA "Statement of Definition" is a formal embodiment of what has been the Agency's working definition of pollution prevention, and is consistent with the Pollution Prevention Act of 1990 and the Agency's 1991 Pollution Prevention Strategy. It makes clear that prevention is our first priority within an environmental management hierarchy that includes: 1) prevention, 2) recycling, 3) treatment, and 4) disposal or release.

While it is subject to further refinement, this definition should provide a common reference point for all of us. As you review and apply the definition in your work, please keep the following points in mind:

• As always, whether the pollution prevention option is selected in any given situation will depend on the requirements of applicable law, the level of risk reduction that can be achieved, and the cost-effectiveness of that option.

• Accordingly, the hierarchy should be viewed as establishing a set of preferences, rather than an absolute judgment that prevention is always the most desirable option. The hierarchy is applied to many different kinds of circumstances that will require judgment calls.

• Drawing an absolute line between prevention and recycling can be difficult. "Prevention" includes what is commonly called "in-process recycling", but not "out-of process recycling." Recycling conducted in an environmentally sound manner shares many of the advantages of prevention, e.g. energy and resource conservation, and reducing the need for end-of-pipe treatment or waste containment.

As EPA looks at the "big picture" in setting strategic directions for the decade ahead, it is clear that prevention is key to solving the problems that all our media programs face, including the increasing cost of treatment and cleanup. In the common-sense words of Benjamin Franklin, "an ounce of prevention is worth a pound of cure."

Please use the Statement of Definition of Pollution Prevention in all of your EPA activities.

POLLUTION PREVENTION: EPA STATEMENT OF DEFINITION

(pursuant to the Pollution Prevention Act of 1990 and the Pollution Prevention Strategy)

Under the Pollution Prevention Act of 1990, Congress established a national policy that:

• pollution should be prevented or reduced at the source whenever feasible;

• pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;

• pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and

• disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

Pollution prevention means "source reduction", as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through:

- increased efficiency in the use of raw materials, energy, water or other resources, or
- protection of natural resources by conservation.

The Pollution Prevention Act defines "source reduction" to mean any practice which:

- reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants.

The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

Under the Pollution Prevention Act, recycling, energy recovery, treatment, and disposal are not included within the definition of pollution prevention. Some practices commonly described as "in process recycling" may qualify as pollution prevention. Recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention – it can reduce the need for treatment or disposal, and conserve energy and resources.

Pollution prevention approaches can be applied to all pollution-generating activity: including energy, agriculture, Federal, consumer as well as industrial sectors. The impairment of wetlands, ground water sources, and other critical resources constitutes pollution, and prevention practices may be essential for preserving these resources. These practices may include conservation techniques and changes in management practices to prevent harm to sensitive ecosystems. Pollution prevention does not include practices that create new risks of concern.

In the agricultural sector, pollution prevention approaches include:

- reducing the use of water and chemical inputs;
- adoption of less environmentally harmful pesticides or cultivation of crop strains with natural resistance to pests; and
- protection of sensitive areas.

In the energy sector, pollution prevention can reduce environmental damages from extraction, processing, transport and combustion of fuels. Pollution prevention approaches include:

- increasing efficiency in energy use;
- substituting environmentally benign fuel sources; and
- design changes that reduce the demand for energy.

Dated: March 23, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7302 Filed 3–29–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS-400079; FRL-4574-7]

Emergency Planning and Community Right-to-Know Act, Section 313 Enforcement Program; Notice of Availability of Financial Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA's Office of Compliance Monitoring is announcing the availability of $95,000 in funds for two cooperative agreements under the EPCRA Section 313 Enforcement Program. Funds under this program may be used to assist States to establish programs to uncover nonreporters and/or inaccurate reporting of Toxic Release Inventory (TRI) data submissions and to bring enforcement actions to prevent or eliminate toxic chemical risks. Eligible applicants are the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, America Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and federally recognized Indian tribes. ("States" is used in this document to refer to all eligible applicants.) Awards to all recipients except Indian tribes will be made under the authority of section 28 of the Toxic Substances Control Act (TSCA). Awards to federally recognized Indian tribes will be made under section 10 of TSCA. All recipients must provide a match of at least 25 percent of the total project cost.

DATES: Applicants are requested to send five to six page proposals to their Regional Section 313 Coordinator by April 19, 1993.

ADDRESSES: Addresses for the Region Section 313 Coordinators are listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Ellen P. Amtower, Policy and Grants Division (EN-342), Office of Compliance Monitoring, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone (202) 260-7422.

SUPPLEMENTARY INFORMATION: A detailed guidance document is available from the following Regional Section 313 Coordinators.

Regional 313 Coordinators:

Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Linda Marinilli, Pesticides and Toxics Branch (APT 2311), JFK Federal Building, Boston, MA 02203, (617) 565-3230.

Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands), Nora Lopez, Pesticides and Toxics Branch (MS 105), 2890 Woodbridge Ave., Edison, NJ 08837, (908) 906-6890.

Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Mikal Shabazz, Toxics and Pesticide Branch (3AT31), 841 Chestnut St., Building, Philadelphia, PA 19107, (215) 597-3659.

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Carlton Hailey, Pesticide and Toxic Substances Branch, 345 Courtland St., Atlanta, GA 30365, (404) 347-1033.

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Robert Allen, Pesticide and Toxic Substances Branch (5 SPT-7), 77 West Jackson, Chicago, IL 60604, (312) 353-5907.

Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Warren Layne, Pesticides and Toxics Branch (6T-PT), 1445 Ross Ave., Dallas, TX 75202-2733, (214) 655-7244.

Region 7 (Iowa, Kansas, Missouri, Nebraska), Jim Hirtz, Congressional and Intergovernmental Liaison (CIGL), 726 Minnesota Ave., Kansas City, KS 66101, (913) 236-2806.

Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Kathy Atencio, Toxic Substances Branch (8 AT-TS), 999 - 8th St., Denver, CO 80202-2405, (303) 293-1735.

Region 9 (Arizona, California, Hawaii, Nevada, America Samoa, Guam, Northern Mariana Islands, Pacific Trust Territories), Pam Tsai, Pesticides and Toxics Branch (A-4-3), 75 Hawthorne St., San Francisco, CA 94115, (415) 744-1112.

Region 10 (Alaska, Idaho, Oregon, Washington), Phil Wong, Pesticides and Toxic Substances Branch (AT-083), 1200 Sixth Ave., Seattle, WA 98101, (206) 553-4016.

Dated: March 22, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93-7304 Filed 3-29-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59318A; FRL-4579-5]

Certain Chemical; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-93-8. The test marketing conditions are described below.

EFFECTIVE DATES: March 18, 1993.

FOR FURTHER INFORMATION CONTACT: Gail A. Cooper, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-1855.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-93-8. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-93-8. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–93–8

Date of Receipt: January, 25, 1993.
Notice of Receipt: February 18, 1993 (58 FR 8947).
Applicant: Confidential.
Chemical: (G) Modified polyamide.
Use: (G) Polymeric material; open, non–dipersive use.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: March 18, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7309 Filed 3–29–93; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–42052M; FRL–4186–3]

Testing Consent Agreement Development for Tier I Chemical Substances; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA is initiating a testing consent agreement development program under section 4 of the Toxic Substances Control Act (TSCA). To allow the Agency to make greater use of enforceable consent agreements (ECAs), EPA conducted an "open season" initiative and solicited testing consent agreement proposals for chemical substances or groups of chemicals identified by the public, industry, the Interagency Testing Committee (ITC), and EPA as being of mutual concern. Having reviewed the proposals received, EPA is now initiating the formal ECA process for some of the chemical substances/groups. This notice serves three purposes. First, it identifies and gives a tiered priority ranking to those chemical substances or categories of chemical substances for which EPA has chosen to pursue ECA negotiations. Second, it requests interested parties who want to monitor or participate in negotiations to develop ECAs for the first tier substances to identify themselves to EPA. Third, it outlines proposed target schedules for the first tier of chemical substances.

DATES: To be designated an "interested party" for the Tier I substances, written notice must be received by EPA on or before April 29, 1993. EPA will contact all interested parties who have expressed a desire to participate in or monitor negotiations in accordance with 40 CFR 790.22(b)(3) to advise them of meeting dates. Tentative meetings dates for the Tier I substances are set forth in Unit IV below.

ADDRESSES: Submit written request to be an "interested party" in triplicate, identified by the document control number (OPPTS– 42052M) to: TSCA Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET–G102, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 1992, (57 FR 31714, document control number OPPTS–42052K), EPA established an "open season" or period of time for industry and others to submit testing consent agreement proposals on any substances for which the Agency has not issued final test rules. The Agency offered this "open season" because EPA has been approached by chemical companies interested in negotiating consent agreements for substances that are, or expected to be, the subject of proposed test rules.

EPA's procedures for requiring the testing of chemical substances and mixtures under section 4 of TSCA include the adoption of ECAs and the promulgation of test rules. See 40 CFR part 790. ECAs may be adopted where timely consensus on a testing program can be reached by EPA, affected manufacturers or processors, and other interested parties. If timely consensus cannot be reached or seems unlikely, and the Agency makes certain statutory findings under TSCA, then EPA will issue a test rule under TSCA section 4.

This notice describes the ranking of the "open season" proposals received and the criteria used in establishing the ranking tiers. Additionally, it requests all "interested parties" who wish to monitor or participate in testing negotiations for the Tier I substances, listed below, to identify themselves in writing to EPA. As per the July 17, 1992 notice, persons who submitted testing program proposals are already considered "interested parties" of record.

II. Ranking of Testing Proposals

The Agency has received 22 testing program proposals for 12 chemical substances and 4 chemical categories. EPA has evaluated all the proposals and, because of the number received, has established three tiers of priorities for handling them. The factors considered in establishing these tiers included: (1) Comparison of the testing program proposal with EPA's views concerning testing needs; (2) the likelihood of success in negotiating an ECA; and (3) the Agency's programmatic priorities for action on given chemical substances or categories. Further, while all the proposals have been evaluated and all but one has been ranked, EPA will consider additions or modifications to the proposals in the second and third tier of substances before soliciting interested parties. EPA is interested in further consideration of proposals regarding members of the glycidol and its derivatives category beyond those already identified in Tier II below. The three tiers and the chemical substances under each tier are shown in the following table:

Chemical substance	CAS No.
1. Tier I. Most factors considered favorable to proceed to negotiations for ECAs:.	
N-Methylpyrrolidone (NMP).	872–50–4
Diglycidyl Ether of Bisphenol*A*.	1675–54–3
Aryl Phosphates	115–86–6 1330–78–5 25155–23–1 28108–99–8 68952–35–2 68952–33–0 38638–05–0 34364–42–6 56803–37–3 59800–46–3 1241–94–7 26967–76–0
Cyclohexane	110–82–7
2. Tier II. Some factors considered favorable to proceed towards negotiating ECAs..	
Phenol	108–95–2
Glycidyl Methacrylate.	106–91–2

Chemical substance	CAS No.
Silicon-based Glycidyl Ethers.	2530-83-8, 2897-60-1 17963-04-1 7422-52-8 71808-64-5 126-80-7 69155-42-8
3. Tier III. Most factors not considered favorable to proceed toward negotiating ECAs..	
Carbon Disulfide	75-15-0

Two additional proposals, on the proposed Brominated Flame Retardants and the Multi-Chemical Neurotoxicity Endpoint Rules, were submitted after the formal "open season" closing date. Both proposals have been evaluated. The Brominated Flame Retardants proposal has not yet been ranked. The proposal submitted regarding the Neurotoxicity Endpoint Rule was concluded to have a low likelihood of success in negotiating an ECA. This conclusion was based on the remote likelihood of achieving a consensus on the many issues raised in the proposal, particularly in developing an agreement on an alternative methodology for memory and learning, and the judgment that any such negotiation would involve significant amounts of time and resources. Further, the voluntary testing proposal restricted the scope of the chemical substances to be tested to only a subset of the substances in EPA's proposed rule. This decision also applies to the separate proposal received on Tetrahydrofuran (CAS No.109-99-9), which is part of the proposed Multi-Chemical Neurotoxicity Endpoint Rule. EPA has therefore decided to proceed with rulemaking for the chemical substances in the Multi-Chemical Neurotoxicity Endpoint Rule.

III. Other Substances Subject to Voluntary Testing

The following chemical substances were the subject of offers to conduct voluntary testing through participation in the Organization for Economic Cooperation and Development (OECD)/ Screening Information Data Set (SIDS) testing program: 1-Butanol (CAS No.71-36-3) Isobutanol (CAS No.78-83-1) Di(2-ethylhexyl) Adipate (CAS No.103-23-1) Dimethyl Terephthalate (CAS No.120-61-6).

The OECD/SIDS program is a voluntary international testing effort designed to obtain a basic level of test data on chemical substances produced in the largest quantities worldwide. For more information on the OECD/SIDS program, refer to "For Further Information Contact" in this notice.

EPA has tentatively decided to proceed with the OECD/SIDS voluntary testing program for the substances listed above and has so informed the offerors. These substances were all designated for priority testing consideration by the Interagency Testing Committee (ITC) in its 28th Report. EPA is working with the ITC to have it reconsider its' designations in light of the OECD/SIDS testing offers. If the ITC does not alter its' designations, the Agency will proceed with negotiation of ECAs.

IV. Identification of Interested Parties for Tier I Substances

EPA is soliciting interested parties to monitor or participate in testing negotiations for the substances listed in Tier I. These negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Submitters of testing proposals in response to the **Federal Register** notice of July 17, 1992 are already considered interested parties and do not have to respond to this notice. Additionally, any persons who respond to this notice on or before April 29, 1993 will be given the status of "interested parties" and will be afforded opportunities to monitor or participate in the negotiation process. These "interested parties" will not incur any obligations by being so designated.

Negotiations will be conducted in meetings open to the public. The negotiation time schedule for each chemical will be established at the first negotiation meeting. If a consent agreement is not established in principle within the agreed upon time-frame and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under a test rule.

V. Public Meetings and General Schedules for N-Methylpyrrolidone, Diglycidyl Ether of Bisphenol A, Aryl Phosphates, and Cyclohexane

Public meetings will be held to initiate negotiations for the above chemical substances at EPA headquarters, 401 M St., SW., Washington, DC 20460, from either 9 a.m. to 12 noon or 1 p.m. to 4 p.m., in Rm. 101, Northeast Mall. Proposed dates for the meetings are shown in the table below. Persons interested in attending these meetings should notify Stephanie Roan, (202) 260-1105, two weeks before the meeting for their specific chemical substance. The deadline to be designated an interested party for all Tier I chemical substances is 30 days from the publication of this notice. Note that the negotiating meeting schedules are staggered to accomodate the varying complexities of the chemical substance proposals and to allow sufficient time for all parties to reach consensus. EPA will use its best effort to send a draft consent agreement to each of the interested parties approximately three weeks before the public meeting for their particular chemical substance. Further, to facilitate attendance at these meetings, EPA will contact all interested parties who have expressed a desire to participate in or monitor negotiations and advise them of the exact meeting dates and times. The Agency expects to reach agreement in principle within 8 weeks of these public meetings.

The following is a tentative general meeting schedule to initiate negotiations for the Tier I chemical substances:

Chemical Substance	Meeting Date
N-Methylpyrrolidone	April 28, 1993 (p.m. meeting)
Diglycidyl Ether of Bisphenol A	May 5, 1993 (p.m. meeting)
Aryl Phosphates	June 2, 1993 (p.m. meeting)
Cyclohexane	June 30, 1993 (a.m. meeting)

VI. Future Meetings

Future **Federal Register** notices will announce the solicitation of interested parties for the substances in Tiers II and III as well as outline the ranking of the proposal on the Brominated Flame Retardants. EPA's decision to solicit interested parties to monitor or participate in negotiations for Tier II and Tier III proposals will depend on the pace of development of ECAs for Tier I substances, as well as EPA's determination, based on further review of the Tier II/III proposals, including any additions or modifications received prior to April 2, 1993, that all or most factors continue to be considered favorable to proceed to negotiations.

Dated: March 16, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93-7307 Filed 3-29-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59321; FRL-4579-4]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances

Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–93–12. The test marketing conditions are described below.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Laura A. Stalter, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–0028.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–93–12. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the applications was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, ET–G102 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–93–12. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–93–12

Date of Receipt: February 23, 1993 .

Close of Review Period: April 9, 1993. The extended comment period will close April 14, 1993.

Applicant: Ausimont USA, Inc.

Chemical: (G) Polymer of ethylene and chlorotrifluoroethylene.

Uses: (S) Media for filtration, membranes for electrolytic cells and composites.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 30 days, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 22, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7303 Filed 3–29–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59320; FRL–4575–7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–93–11. The test marketing conditions are described below.

EFFECTIVE DATES: March 22, 1993. Written comments will be received until April 14, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–59320]" and the specific TME number "[TME–93–11]" should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency,Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 382–2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–93–11. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Docket Office, ET–G102 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal

holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–93–11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.

2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–93–11

Date of Receipt: February 11, 1993.

Close of Review Period: March 27, 1993. The extended comment period will close April 14, 1993.

Applicant: Confidential.

Chemical: (G) Toluene diisocyanate polyether polyol polymer.

Use: (G) Component in a two component polyurethane.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 61 days, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant environmental concerns. EPA identified potential human health concerns for lung toxicity and pulmonary sensitization based on data on an analogous chemical substance. However, the health concerns were mitigated by negligible inhalation exposures. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: March 22, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7308 Filed 3–29–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability Council Meeting

March 25, 1993.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the Network reliability Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, April 14, 1993 at 1 p.m.

ADDRESSES: Federal Communications Commission, room 856, 1919 M Street, NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic and consumer organizations to explore and recommend measures that would enhance network reliability.

The agenda for the seventh meeting is as follows. Final recommendations of the Signaling Systems Focus Team, the Switching Systems Focus Team, the E911 Systems Focus Team and a final update of the recommendations of the Fiber Systems Focus Team will be presented for Council consideration. The Steering Team will make recommendations on the continuity of work performed by the Focus Teams and the future of the Council. The Council may also address other issues. The Council will adjourn.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to James Keegan, the Council's designated Federal Officer, before the meeting.

For additional information, contact Robert Kimball at (202) 634–7150.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7226 Filed 3–29–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–326]

Comments Invited on Alaska Public Safety Plan

March 23, 1993.

The Commission has received the public safety radio communications plan for Alaska (Region 2).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 2 consists of the state of Alaska. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before April 30, 1993 and reply comments on or before May 17, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–81 Alaska-Public Safety Region 2.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7228 Filed 3–29–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–327]

Comments Invited on Puerto Rico Public Safety Plan

March 23, 1993.

The Commission has received the public safety radio communications plan for Puerto Rico (Region 47).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 47 consists of the Commonwealth of Puerto Rico. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may

file comments on or before April 30, 1993 and reply comments on or before May 17, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92–82 Puerto Rico-Public Safety Region 47.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7229 Filed 3–29–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3096–EM]

Alabama; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA–3096–EM), dated March 15, 1993, and related determinations.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 15, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistant Act (42 U.S.C. 5121 *et seq.*), as follows.

I have determined that the emergency conditions in certain areas of the State of Alabama, resulting from severe snowfall and other winter storm conditions beginning on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Alabama.

You are authorized to coordinate all emergency relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, Dekalb, Elmore, Excambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, and Winston.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7262 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3098–EM]

Connecticut; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3098–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et. seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Connecticut, resulting from severe blizzard conditions, high winds, and record snowfalls on March 13–17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Connecticut.

You are authorized under title V of the Stafford Act to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: New London, Windham, Tolland, Hartford, Middlesex, New Haven, Fairfield, and Litchfield.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7264 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3111-EM]

Delaware; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Delaware (FEMA-3111-EM), dated March 18, 1993, and related determinations.

EFFECTIVE DATE: March 18, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 18, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Delaware resulting from extreme snowfall and a winter storm on March 13-17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Delaware.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Kent, New Castle, and Sussex.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7253 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3108-EM]

District of Columbia; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the District of Columbia (FEMA-3108-EM), dated March 17, 1993, and related determinations.

EFFECTIVE DATE: March 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in the District of Columbia resulting from severe snowfall and a winter storm on March 13-17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the District of Columbia.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the District of Columbia to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the District of Columbia.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7256 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-982-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA-982-DR), dated March 13, 1993, and related determinations.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated March 13, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 13, 1993:

The counties of Dixie and Suwannee for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–7252 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–982–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–982–DR), dated March 13, 1993, and related determinations.

EFFECTIVE DATE: March 13, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 13, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms, tornadoes, flooding, high tides, and high wind on March 12, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

The counties of Alachua, Citrus, Columbia, Dade, Duval, Hamilton, Hendry, Hernando, Hillsborough, Lake, Levy, Manatee, Marion, Martin, Pasco, Pinellas, Polk, Putnam, Sarasota, Taylor, and Volusia for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7251 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3097–EM]

Georgia; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA–3097–EM), dated March 15, 1993, and related determinations.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 15, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Georgia, resulting from severe snowfall and a winter storm on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Georgia.

You are authorized under title V of the Stafford Act to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Clayton, Cobb, Dade, Dawson, DeKalb, Douglas, Elbert, Forsyth, Franklin, Fulton, Fannin, Floyd, Gilmer, Gordon, Gwinnett, Habersham, Hall, Hart, Haralson, Jackson, Lumpkin, Murray, Paulding, Pickens, Polk, Rabun, Rockdale, Stephens, Towns, Union, White, Whitfield, and Walker.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7263 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3104–EM]

Kentucky; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Kentucky (FEMA–3104–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 16, 1993.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Kentucky resulting from severe snowfall and winter storm conditions on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Kentucky.

You are authorized, under Title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Kentucky to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Adair, Barren, Bath, Bell, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carter, Casey, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Hart, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Marion, Martin, Mason, McCreary, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott, Simpson, Taylor, Warren, Washington, Wayne, Whitley, Wolfe, and Woodford.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,
Acting Director.

[FR Doc. 93–7260 Filed 3–29–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–3100–EM]

Maryland; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maryland (FEMA–3100–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 16, 1993.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Maryland resulting from severe snowfall and winter storm conditions on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Maryland.

You are authorized under title V of the Stafford Act to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,
Acting Director

[FR Doc. 93–7266 Filed 3–29–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–3099–EM]

Maine; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an

emergency for the State of Maine (FEMA–3099–EM), dated March 15, 1993, and related determinations.

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 15, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Maine resulting from severe blizzard conditions, severe snowfall, coastal flooding, and high winds on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Maine.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington, and York.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7265 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3103–EM]

Massachusetts; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Massachusetts (FEMA–3103–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Massachusetts resulting from severe blizzard conditions, high winds, and record snowfall on March 13, 1993, through March 17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized under title V of the Stafford Act to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Massachusetts to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Barnstable, Berkshire, Bristol Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7269 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3101–EM]

New Hampshire; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3101–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as follows:

I have determined that the emergency conditions in certain areas of the State of New Hampshire, resulting from severe blizzard conditions, high winds, and record snowfall on March 13, 1993, through March 17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of New Hampshire.

You are authorized under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer of this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7267 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3106–EM]

New Jersey; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA–3106–EM), dated March 17, 1993, and related determinations.

EFFECTIVE DATE: March 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of New Jersey resulting from severe blizzard conditions on March 13–17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of New Jersey.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Ihor Husar of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Sommerset, Sussex, Union, and Warren.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7258 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3107–EM]

New York; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3107–EM), dated March 17, 1993, and related determinations.

EFFECTIVE DATE: March 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from severe blizzard conditions on March 13–17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistant Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of New York.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Ihor Husar of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7257 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3110-EM]

North Carolina; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA-3110-EM), dated March 17, 1993, and related determinations.

EFFECTIVE DATE: March 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina resulting from severe snowfall and a winter storm on March 13-17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of North Carolina.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Wake, Durham, Granville, Person, Vance, Warren, Franklin, Alamance, Orange, Guilford, Rockingham; Caswell, Davidson, Rowan, Davie, Forsyth, Stokes, Alleghany, Surry, Yadkin, Avery, Caldwell, Watauga, Ashe, Wilkes, Cleveland, Gaston, Lincoln, Alexander, Catawba, Iredell, Burke, McDowell, Mitchell, Rutherford, Buncombe, Madison, Yancey, Henderson, Polk, Transylvania, Haywood, Jackson, Swain, Cherokee, Clay, Graham, and Macon.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7254 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3105-EM]

Pennsylvania; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Pennsylvania (FEMA-3105-EM), dated March 16, 1993, and related determinations.

DATES: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Pennsylvania resulting from severe snowfall and winter storm conditions on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Pennsylvania.

You are authorized under title V of the Stafford Act to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Pennsylvania to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Adams, Allegheny, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Bucks, Butler, Cambria, Cameron, Carbon, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin Delaware, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Leigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7259 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3102–EM]

Rhode Island; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA–3102–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Rhode Island, resulting from severe blizzard conditions, high winds, and record snowfall on March 13, 1993, through March 17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Rhode Island.

You are authorized under title V of the Stafford Act to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13, for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13, to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Providence, Newport, Kent, Bristol, and Washington.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7268 Filed 3–29–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3095–EM]

Tennessee; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Tennessee (FEMA–3095–EM), dated March 14, 1993, and related determinations.

EFFECTIVE DATES: March 14, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Tennessee, resulting from severe snowfall and other winter storm conditions beginning on March 13, 1993, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Tennessee.

You are authorized to coordinate all emergency relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing

Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Franklin, Coffee, Cannon, DeKalb, Smith, Trousdale, Macon, Clay, Jackson, Putnam, White, Warren, Van Buren, Grundy, Marion, Sequatchie, Bledsoe, Hamilton, Cumberland, Overton, Pickett, Fentress, Rhea, Meigs, Bradley, Polk, McMinn, Roane, Morgan, Scott, Campbell, Anderson, Loudon, Monroe, Blount, Knox, Union, Claiborne, Hancock, Grainger, Jefferson, Hamblen, Cocke, Hawkins, Greene, Washington, Sullivan, Unicoi, Carter, and Johnson.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7261 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3109-EM]

West Virginia; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of West Virginia (FEMA-3109-EM), dated March 17, 1993, and related determinations.

EFFECTIVE DATE: March 17, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of West Virginia resulting from severe snowfall and a winter storm on March 13-17, 1993, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of West Virginia.

You are authorized, under title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared emergency:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of: Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-7255 Filed 3-29-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Docket No. 93-07]

Alternative Dispute Resolution; Interim Policy Statement

AGENCY: Federal Maritime Commission.

ACTION: Notice of interim alternative dispute resolution ("ADR") policy and opportunity for comment.

SUMMARY: The Federal Maritime Commission ("Commission") has developed an interim policy describing how it intends to implement the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act. The Commission's policy is designed to encourage the consensual use of ADR mechanisms to resolve disputes, in appropriate circumstances.

DATES: Comments are due by May 14, 1993.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Public Law 101-552, the Administrative Dispute Resolution Act ("ADRA"), and Public Law 101-648, the Negotiated Rulemaking Act ("Reg-Neg"), amend the Administrative Procedure Act, 5 U.S.C. 551 et seq., to authorize and encourage administrative agencies to permit the voluntary use of consensual ADR mechanisms—such as settlement negotiations, negotiated rulemaking, mediation and arbitration—in order to achieve faster and less expensive results in agency adjudications, rulemakings, contract disputes and other actions. ADR procedures may not be appropriate in every case. Section 5 U.S.C. 572(b) of the ADR sets forth situations in which the agency shall consider not using ADR, including precedent-setting cases, those where a formal record is essential, and those where maintenance of established policies is of special importance so that variation among individual decisions is not increased.

Reg-Neg is intended as an alternative to the traditional rulemaking process, under which the agency may establish and administer committees under the Federal Advisory Committee Act for the development of consensus positions regarding controversial regulations and policies. Reg-Neg establishes several criteria for the use of negotiated rulemaking, including: (1) There are a limited number of identifiable interests;

(2) these can be adequately represented; (3) the parties are willing to negotiate in good faith; (4) the agency has the resources to undertake the process; and (5) the agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

The ADRA specifically requires agencies to adopt a policy that addresses the use of alternative means of dispute resolution and case management. It also requires that a senior agency official be designated as the agency's Dispute Resolution Specialist and that training be provided for that official and for other employees involved in implementing that agency's policy on ADR.

The Secretary of the Commission has been designated as the agency's Dispute Resolution Specialist and is responsible for coordinating the Commission's ADR activities and procedures. Inquiries and suggestions regarding the Commission's ADR functions may be made to the Dispute Resolution Specialist ((202) 523–5725).

The Dispute Resolution Specialist and the Chief Administrative Law Judge have attended training on the theory and practice of ADR. Similar training is being provided to other Commission employees whose responsibilities will call for consideration of the use of ADR.

The Commission has developed an interim ADR policy which is described below. Interested persons are encouraged to comment on this policy statement and to provide suggestions for other specific uses of ADR at the Commission or other procedures to facilitate the use of ADR.

ADR Policy and Procedures

It is the Commission's policy to encourage the use of ADR to the fullest extent compatible with the law and the agency's mission and resources. Commission employees and all other persons involved in disputes before the Commission are required to consider at an early stage whether the use of ADR techniques would be appropriate and useful in a particular matter. Prior to enactment of the ADRA the Commission already had in place several different alternative methods for resolving disputes without resort to formal hearings. In consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service, the Commission has developed additional procedures designed to enhance the use of ADR. The Commission envisions that the application of these procedures could be enlarged even further as experience is gained and welcomes suggestions from the public in this regard.

The Commission's policy regarding the use of ADR is reflected in the following rules and procedures.[1]

General philosophy. Rule 1 of the Commission's Rules of Practice and Procedure, which defines the scope of the rules, states that all of the Commission's rules "shall be construed to secure the just, speedy and inexpensive determination of every proceeding." 46 CFR § 502.1. This guideline thus applies to all proceedings before the agency conducted under Part 502. In order to emphasize the importance the Commission places on the use of ADR in appropriate circumstances, Rule 1 includes a reference to the mandatory consideration of the use of ADR in all proceedings. ADR concepts also can be promoted by application of Rule 10 which states that the requirements of a particular rule may be waived "to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires." 46 CFR 502.10.

Time limits for hearings and decisions; avoidance of oral hearings. In orders instituting a formal investigation or noticing the filing of a complaint, the Commission specifies dates for commencement of any hearing, and issuance of the initial decision and final Commission decisions. 46 CFR 502.61. Further, it is the policy of the Commission to seek to avoid costly and time-consuming litigation by providing in all orders initiating proceedings that:

> prior to the commencement of oral hearings, consideration must be given by the parties and the presiding officer to the use of alternative forms of dispute resolution. Hearings shall include oral testimony and cross-examination, in the discretion of the presiding officer, only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Opportunity for settlements. The Commission encourages settlements of formal proceedings. Interested parties are urged to make use of all the procedures set forth in the Commission's Rules of Practice and Procedure which are designed to simplify or avoid formal litigation and to assist the parties in reaching settlements. Parties may submit facts, argument and offers of settlement to the presiding officer without prejudice to their rights. In addition, the rules specifically provide for the consensual use of settlement judges and mediators to assist the parties in achieving a settlement. 46 CFR 502.91.

Prehearing conferences. Under the Commission's rules, the Commission or a presiding officer may direct the parties to a formal proceeding to attend a prehearing conference, at which there may be considered the following: Offers of settlement; simplification of the issues; use of admissions of fact and documents that will avoid unnecessary proof; limitation on the numbers of witnesses; and consolidation of the examination of witnesses by counsel. 46 CFR 502.94(a). This rule also provides that, at any prehearing conference which is called, consideration be given to whether the use of ADR would be appropriate or useful. Informal conferences may be called at any time during a proceeding for similar purposes. 46 CFR 502.94(b).

Functions and powers of presiding officers. Rule 147 of the Commission's rules describes the functions and powers of presiding officers in formal proceedings. This rule provides that the presiding officer has authority to inform the parties as to the availability of one or more alternative means of dispute resolution, to encourage use of such methods, and to require consideration of their use at an early stage of the proceeding. As indicated in paragraph (d) of this section, the presiding officer has authority to hold conferences for the settlement or simplification of the issues by consent of the parties. This authority to promote settlements is further enhanced by the inclusion in this rule of a reference to the use of ADR and of a provision for transmittal of a request of parties for the appointment of a settlement judge or a mediator, as provided by § 502.91. The rule further allows the presiding officer to require the attendance at any such conference, pursuant to 5 U.S.C. 556(c)(8), of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy. Finally, the presiding officer is permitted, if the parties so request, to issue informal opinions providing tentative evaluations of the evidence submitted. 46 CFR 502.147.

Negotiated rulemaking. The Commission's rules dealing with rulemaking procedures specifically authorize the use of negotiated rulemaking. This rule provides that the Commission, either upon petition of interested persons or upon its own motion, may establish a negotiated rulemaking committee to negotiate and develop consensus on a proposed rule,

[1] Some of the procedures described herein are the subject of a proposed rulemaking in Docket No. 93–06, and have not yet been adopted.

if the Commission, upon consideration of Reg-Neg criteria, determines that use of such a committee would be in the public interest. 46 CFR 502.56.

Informal procedure for adjudication of small claims. The Commission provides an informal procedure for adjudication of claims for $10,000 or less. Similar to binding arbitration, this procedure is conducted by a settlement officer. The record consists of written record and argument. The decision of the settlement officer is not subject to appeal by the parties, but may be reviewed by the Commission on its own motion. 46 CFR 502.301–305.

Shortened procedure. For claims over $10,000, the Commission offers a shortened procedure whereby the parties may consent to have the complaint resolved by an administrative law judge upon a written record without oral hearing. The parties have the right to appeal the initial decision to the Commission. 46 CFR 502.181–187.

Nonadjudicatory investigations. The Commission conducts nonadjudicatory fact-finding investigations to aid it in discharging its responsibilities and in determining whether formal rulemakings or adjudicatory investigations are necessary. Such investigatory proceedings are usually non-public and voluntary cooperation is encouraged. 46 CFR 502.281–291.

Conciliation service. The Commission provides a conciliation service under the direction of the Dispute Resolution Specialist. This procedure requires the consent of the parties to the particular dispute, and provides for the appointment of a conciliator who prepares a non-binding advisory opinion for the guidance of the parties. 46 CFR 502.401–406.

Civil penalty settlement and compromise procedures. In formal, docketed proceedings, the parties may enter into settlements whereby a civil penalty for statutory violations is agreed to. Such settlement agreements must be approved by the presiding officer and are subject to review by the Commission. As an alternative to formal adjudications, the Commission's Bureau of Hearing Counsel is authorized to conduct compromise negotiations which may result in an agreement for the payment of a civil penalty without admission of violations of law. 46 CFR 505.1–505.5. This form of dispute resolution has been widely used at the Commission and has successfully resulted in the avoidance of many possible protracted formal adjudications.

Informal inquiries and complaints. The Commission's Office of Informal Inquiries, Complaints and Informal Dockets is available to assist shipping consumers and small businesses in resolving informal complaints, difficulties and misunderstandings with ocean carriers, terminal operators, freight forwarders, port authorities and other persons. Aggrieved persons or entities are encouraged to avail themselves of this assistance prior to or in lieu of initiating formal proceedings. The Office can be contacted at (202) 523–5807.

Use of nonattorneys. Section 9 of the ADRA requires each agency to develop a policy with regard to the representation by nonattorneys of parties in ADR proceedings. The Commission's rules permit practice before the agency on behalf of others by qualified nonattorneys who have been admitted to practice. 46 CFR 502.27–502.31. Practice is defined very broadly to include the rendering of advice and assistance in the presentation of any matter before the Commission, not just ADR proceedings. Persons may also appear on behalf of themselves or on behalf of their employer without having been admitted to practice. 46 CFR 502.27(c). The ADRA also requires that each agency that permits nonattorneys to practice shall ensure that any rules pertaining to disqualification of attorneys also apply, as appropriate, to other persons who provide representation or assistance. The Commission's rules at 46 CFR 502.30, regarding suspension or disbarment from practice, have equal application to attorneys and nonattorneys.

Contract review. The ADRA requires each agency to review its standard agreements for contracts, grants, and other assistance and to determine whether to amend such agreements to authorize and encourage the use of ADR techniques. This provision has limited application to the Commission in that the agency provides no grants or other assistance. In regard to the few contracts that the Commission utilizes, the agency in the past has included standard Federal Acquisition Regulation ("FAR") procedures regarding resolution of disputes that may arise about the contracts. The ADRA requires that within one year the FAR be amended, as necessary, to carry out the Act. All future Commission contracts will conform to the amended FAR in regard to resolution of disputes.

Miscellaneous. Either party to a filed service contract may request permission to correct clerical or administrative errors appearing in the contract's essential terms. 46 CFR 581.7(b). The Commission oversees the obligation of carrier conferences to provide for independent neutral body policing if a conference member so requests, to provide for a shipper consultation process, and to establish procedures for promptly and fairly considering shippers' requests and complaints. 46 U.S.C. 1704(b)(4)–(6).

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–7244 Filed 3–29–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Comm. Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Comm. Bancorp, Inc., Forest City, Pennsylvania; to engage *de novo* in community development activities by making an equity investment, as the sole limited partner with two other general partners, in Rothtown Associates, a Pennsylvania limited partnership whose purpose is to develop, manage and operate a residential low-income housing project in Oliver Township, Mifflin County, Pennsylvania, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Financial Corporation, Vicksburg, Mississippi; to engage *de novo* through its subsidiary, DeVille 1991 Limited Partnership, Vicksburg, Mississippi, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. The proposed activity will be conducted in Vicksburg, Mississippi.

Board of Governors of the Federal Reserve System, March 24, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-7220 Filed 3-29-93; 8:45 am]

BILLING CODE 6210-01-F

Stanly Capital Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 23, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Stanly Capital Corp., Albemarle, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stanly, Albemarle, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Bancorp, Gainesville, Georgia; to merge with Villa Rica Bancorp, Inc., Villa Rica, Georgia, and thereby indirectly acquire Bank of Villa Rica, Villa Rica, Georgia.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. 215 Holding Co., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Southwest Bancorporation, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First American State Bank of Brownsdale, Brownsdale, Minnesota, and First American State Bank, Grand Meadow, Minnesota.

Board of Governors of the Federal Reserve System, March 24, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-7222 Filed 3-29-93; 8:45 am]

BILLING CODE 6210-01-F

Randy G. Tidwell; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Randy G. Tidwell, Glenwood, Arkansas; to acquire 100 percent of the voting shares of Caddo Holding Company, Inc., Glenwood, Arkansas, and thereby indirectly acquire Caddo First National Bank, Glenwood, Arkansas.

Board of Governors of the Federal Reserve System, March 24, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-7221 Filed 3-29-93; 8:45 am]

BILLING CODE 6210-01-F

C.L.C. Enterprises; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than April 19, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. C.L.C. Enterprises, Nelson, Nebraska; to engage in direct lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7165 Filed 3–29–93; 8:45 am]

BILLING CODE 6210–01–F

KSB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 22, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. KSB Bancorp, Inc., Kingfield, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Kingfield Savings Bank, Kingfield, Maine.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Community Bancshares, Inc., Winnfield, Louisiana; to become a bank holding company by acquiring 95.7 percent of the voting shares of Winn Bancshares, Inc., Winnfield, Louisiana, and thereby indirectly acquire Winn State Bank and Trust Company, Winnfield, Louisiana.

Board of Governors of the Federal Reserve System, March 23, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7166 Filed 3–29–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1994

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of the Fiscal Year 1994 Federal allotments to states for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the Fiscal Year 1994 individual allotments to States administering the Basic Support and Protection and Advocacy programs, pursuant to section 125 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotments for the States published herein are based upon Fiscal Year 1993 funding levels, and are contingent upon Congressional appropriations for FY 1994. If Congress enacts and the President approves an amount different from the Fiscal Year 1993 funding levels, the allotments will be adjusted accordingly.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 690–7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the data elements for issuance of Fiscal Year 1994 allotments for the Developmental Disabilities formula grant programs. The data elements used in the update are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1991, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1992" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under "Abroad" in the Table, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1986–91, are from Table 1, page 38 of the "Survey of Current Business," August 1992, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1991, are from "Current Population Reports: Population Estimates and Projections, Series P–25, Number 1010, issued by the Bureau of the Census, U.S. Department of Commerce. Estimates for the Territories are no longer available, therefore, the Territories population data are from the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

ESTIMATED FY 1994 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Basic support	Protection and advocacy
Total	$67,371,689	$22,506,496
Alabama	1,302,888	397,833
Alaska	420,475	214,470
Arizona	877,852	275,389
Arkansas	720,370	229,944
California	5,532,464	1,766,687
Colorado	698,412	230,734
Connecticut	656,002	223,901
Delaware	420,475	214,470
District of Columbia	420,475	214,470
Florida	2,805,853	905,631
Georgia	1,592,807	517,291
Hawaii	420,475	214,470
Idaho	420,475	214,470
Illinois	2,551,063	803,151
Indiana	1,389,201	449,540
Iowa	763,070	238,397
Kansas	575,870	214,470
Kentucky	1,212,408	364,397
Louisiana	1,348,393	418,178
Maine	420,475	214,470
Maryland	902,461	292,132
Massachusetts	1,269,026	387,723
Michigan	2,342,196	737,823
Minnesota	969,329	314,705
Mississippi	926,378	285,211
Missouri	1,277,158	410,045
Montana	420,475	214,470
Nebraska	420,475	214,470
Nevada	420,475	214,470
New Hampshire	420,475	214,470
New Jersey	1,488,301	448,267
New Mexico	440,633	214,470
New York	4,119,145	1,230,935
North Carolina	1,743,822	559,033
North Dakota	420,475	214,470
Ohio	3,509,735	1,138,807
Oklahoma	850,173	262,677
Oregon	676,685	223,174
Pennsylvania	3,080,071	940,485
Rhode Island	420,475	214,470
South Carolina	995,634	321,075
South Dakota	420,475	214,470
Tennessee	1,406,114	441,152
Texas	4,101,602	1,248,837
Utah	500,002	214,470
Vermont	420,475	214,470
Virginia	1,326,767	430,887
Washington	1,041,986	324,842
West Virginia	756,106	242,058
Wisconsin	1,246,116	339,820
Wyoming	420,475	214,470
American Samoa	220,750	114,741
Guam	220,750	114,741
Marshall Islands [1]	220,750	0
Micronesia [1]	220,750	0
Palau [1]	220,750	0
Puerto Rico	2,323,302	811,570
Trust Territories [2]	0	114,741
Virgin Islands	220,750	114,741
Northern Marina Islands	220,750	114,741

[1] The 1990 Amendments to the Development Disabilities Assistance and Bill of Rights Act (the Act) provided that the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau (formerly the Trust Territories of the Pacific Islands (TTPI)) each would receive a minimum allotment under the Basic Support formula program.

[2] Prior to the Act, TTPI has been eligible for a single minimum allotment under both programs, Basic Support and Protection and Advocacy. Under the 1990 Amendments, TTPI continues to be eligible for a single minimum amount under the Protection and Advocacy program; however, under the Compact of Free Association, Public Law 99–239, only the Republic of Palau continues to be eligible to receive funds under the Protection and Advocacy program. Therefore, the Republic of Palau will receive its proportional share of the TTPI allotment, and the remainder will be withheld for reallotment in accordance with section 142(b)(1) of the Act.

Dated: March 18, 1993.

Will Wolstein,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 93–7224 Filed 3–29–93; 8:45 am]

BILLING CODE 4130–01–M

Interagency Committee on Developmental Disabilities; Meeting

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Committee on Developmental Disabilities (ICDD) was established in 1984 by section 108(b) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (42 U.S.C. 6007(b)) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." In 1990, the Act was amended to provide that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. Under section 107(c)(1)(E) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6006(c)(1)(E)), the Secretary must annually report on "the accomplishments of the interagency committee in comparison to the goals and objectives of such committee." The ICDD is chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

MISSION AND GOALS: The mission of the ICDD is to promote the collaboration of appropriate Federal departments and agencies to improve the effectiveness of Federal programs in assisting persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community and in such other ways that assist people with developmental disabilities to attain a more normalized and higher quality of life.

The ICDD has adopted the following goals:

- To exchange information on Federal activities that affect people with developmental disabilities so that each agency is able to utilize this information in managing and directing its programs;
- To identify the needs of people with developmental disabilities and barriers to achieving the goals of the Developmental Disabilities Act and to recommend solutions for meeting these needs and removing these barriers.
- To establish coordinated planning, when appropriate, for activities that are complementary or similar;
- To stimulate joint activities (e.g., joint research, joint development of policies and regulations, joint demonstration or evaluation projects) among the affected Federal agencies.

The ICDD meets regularly on the first Tuesday in December, April and August. The meeting is open to the public.

DATES: Tuesday, April 6, 1993, from 9:30 a.m. to 11:30 a.m.

ADDRESSES: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201.

FOR FURTHER INFORMATION CONTACT: John L. Pride, room 325D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (202) 690–6989.

SUPPLEMENTARY INFORMATION: At the meeting the ICDD will discuss: (1) Role, responsibilities and composition of the ICDD; (2) update on agency activities to identify sources of funding for extended services under supported employment for persons with developmental disabilities.

If a sign language interpreter is needed please notify John Pride at (202) 690–6989 by April 1.

Dated: March 1, 1993.

Will Wolstein,

Acting Commissioner, Administration on Developmental Disabilities.

[FR Doc. 93–7225 Filed 3–29–93; 8:45 am]

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 93N–0073]

Animal Drug Export; Furazolidone Aerosol Powder; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 4, 1993 (58 FR 12366). The document announced that Vetoquinol Canada, Inc., had filed an application requesting approval for export to Canada of the animal drugs Topazone and Norizone (furazolidone aerosol powders) which are manufactured and packaged at Heartland Industries, Industry, CA. The document was published with a typographical error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Robin Thomas Johnson, Regulations Editorial Staff (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 93–4933, appearing on page 12366, in the **Federal Register** of Thursday, March 4, 1993, the following correction is made: On the same page, in the second column, under the caption "ADDRESSES:", in line 5, "rm. 1–3" is corrected to read "rm. 1–23".

Dated: March 12, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–7148 Filed 3–29–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of a Matching Program—Between HCFA and the Oregon Bureau of Worker's Compensation—HCFA will receive information from the State concerning work-related injuries and diseases.

SUMMARY: Section 1862(b)(2) of the Social Security Act (42 U.S.C. 1395(b)(2)) prohibits Medicare payment with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made promptly, under a workers' compensation law or plan of the United States or a State.

HCFA has developed a model agreement to be used in negotiating individual agreements with State Workers' Compensation Boards. This agreement will allow HCFA to seek recovery of identified mistaken payments that are the liability of workers' compensation agencies.

The matching report set forth below is in compliance with the Computer Matching and Privacy Protection Act of 1988 (Pub. L. No. 100–503).

EFFECTIVE DATE: No match will begin sooner than 30 days after the date of publication in the **Federal Register**, (April 29, 1993), and a copy of the model Data Match Agreement will be sent to the Senate Committee on Governmental Affairs, the House Committee on Government Operations and the Office of Management and Budget (OMB). Any individual Matching Agreement will remain in effect for 18 months from the date a

notice is published in the **Federal Register**.

ADDRESSES: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Health Care Financing Administration, Office of Budget and Administration, Room 2–H–4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

FOR FURTHER INFORMATION CONTACT: Herb Shankroff, Division of Operational Initiatives, Bureau of Program Operations, Room 368 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. His telephone number is 410–966–7171.

SUPPLEMENTARY INFORMATION: One of the priorities of HCFA is to encourage high quality and effective health care while pursuing strategies to contain or moderate health care costs and Medicare program expenditures. As required by the Social Security Act, one approach that HCFA employs to limit Medicare expenditures is the implementation of the Medicare Secondary Payer (MSP) provisions (42 U.S.C. 1395y(b)).

HCFA primarily relies upon providers, physicians or other suppliers, and beneficiaries themselves, to identify situations where payment should be made by workers' compensation. In addition, Medicare contractors are instructed to identify and investigate claims for which the diagnosis or procedure is suggestive of accidental injury or of work-related illness. Often, however, Medicare contractors are unaware of the availability of workers' compensation and make primary payment by mistake. In these situations, the Medicare contractors must recover the mistaken primary payments to restore them to the Medicare Trust Funds. The identification of MSP situations and the recovery of mistaken Medicare payments frequently entails demonstrating to the other third party payer, such as a workers' compensation agency, its primary liability under 42 U.S.C. 1395y(b).

The purpose of this matching program is to allow HCFA to identify workers' compensation cases that otherwise have gone undetected by the Medicare contractors. HCFA will receive, on a quarterly basis, computer listings of approved workers' compensation cases from the State of Oregon. These listings will be matched against the Carrier Medicare Claims Records (System of Records No. 09–70–0501) and the Intermediary Claims Records (System of Records No. 09–70–0503).

After the match, HCFA will further develop the situation and determine whether a mistaken payment of Medicare funds has been made. Such determinations generate demand letters to the identified insurer or payer. If the insurer or payer proves that it did pay primary, in addition to Medicare's mistaken primary payment, the beneficiary or provider is contacted by Medicare with a request for return of the duplicate payment. At this time, the beneficiary or provider will be provided an opportunity to respond to HCFA's finding that a mistaken payment was made and will be given an explanation of appeal rights. The determination that the beneficiary or provider is responsible to refund Medicare is subject to all the appropriate Medicare review and due process procedures.

In addition, HCFA will add what is known as an auxiliary record indicating those beneficiaries identified as being entitled to workers' compensation. This will prevent future erroneous Medicare payments.

The Privacy Act permits disclosure of information from HCFA's records without a beneficiary's consent if the information is used for purposes that are consistent with the purpose for which the information was collected, such as establishing a beneficiary's claim for Medicare benefits and determining the correct amount of the Medicare payment. The information must also be collected and used in a manner consistent with Privacy Act procedures. Disclosure of information is permitted when the benefit of the use of the information outweighs the effect, or risk of an effect, on the privacy of individuals.

Set forth below is the information required by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. No. 100–503). A copy of this notice will be provided to the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Government Affairs of the Senate and the Acting Administrator of the Office of Information and Regulatory Affairs in OMB.

Dated: March 22, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Computer Matching Notice

A. *Name of participating agencies:* Health Care Financing Administration (HCFA) and the State of Oregon Bureau of Worker's Compensation.

B. *Purpose of the match:* The match will allow HCFA to identify claims for which workers' compensation was the primary payer, but Medicare made primary payments by mistake. It will also facilitate HCFA's attempts to seek recovery of identified mistaken Medicare payments that are the primary responsibility of workers' compensation. It will also assist HCFA from making mistaken primary payments on future claims.

C. *Authority for the match:* The match is require to enable HCFA to implement more fully section 1862(b)(2) of the Social Security Act (42 U.S.C. 1395(b)(2)).

D. *Records to be matched:* The Oregon Worker's Compensation Board will disclose to HCFA records of the identity of individuals who have been approved for workers' compensation reimbursement.

HCFA will match information from these records against the Carrier Medicare Claims Records, HHS/HCFA/BPO No. 09–70–0501, and the Intermediary Medicare Claims Records, HHS/HCFA/BPO No. 09–70–0503, to identify possible erroneous Medicare payments.

E. *Period of the match:* Beginning no sooner than 30 days from the date of this notice and lasting 18 full calendar months from the beginning date.

F. *Address of contact:* Herb Shankroff, Division of Operational Initiatives, Bureau of Program Operations, room 368 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. His telephone number is 410–966–7171.

[FR Doc. 93–7160 Filed 3–29–93; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1993.

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines.

Date and Time: April 29, 1993, 9 a.m.–5 p.m.

Place: Conference Room N, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioners' attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and

procedures used by the various parties involved in the VICP.

Agenda: The Subcommittee will review and clarify the findings and recommendations contained in its previous reports to the full Commission.

Public comment will be permitted prior to the lunch break and at the end of the meeting. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation by April 22 to Mr. Matthew B. Barry, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room N before 10:00 a.m. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew B. Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: March 25, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–7321 Filed 3–29–93; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1993:

Name: National Advisory Council on Migrant Health.

Date and Time: May 8–9, 1993–8:00 a.m.

Place: The Radisson Hotel, 1550 Court Place, Denver, Colorado 80202.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda includes an overview of Council general business activities and priorities. Also, a review and discussion of 1993 National Advisory Council on Migrant Health Recommendations.

The Council meeting is being held in conjunction with the National Conference on Migrant and Seasonal Farmworkers, May 10–13, Denver, Colorado. The Council will have a workshop at this conference to hear of administrative and clinical needs of the section 329 projects, and the health needs of the farmworker community.

Anyone requiring information regarding the subject Council should contact Mr. Antonio E. Duran, Executive Secretary, National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration Room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: March 25, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–7322 Filed 3–29–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board Subcommittee on Interactions With Voluntary Organizations

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Interactions with Voluntary Organizations, April 19, 1993, at the Hyatt Regency Hotel, One Metro Center, Bethesda, Maryland 20815.

The entire meeting will be open to the public from 10 a.m. to 3 p.m. to discuss options for improving ongoing communications with voluntary organizations. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892–9903 (301/496–5708) will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Millie Jacobus, (303) 496–6631 in advance of the meeting.

Mr. Paul Van Nevel, Executive Secretary, Subcommittee on Interactions with Voluntary Organizations, National Cancer Advisory Board, National Cancer Institute, Building 31, room 10A31, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6631) will furnish substantive program information.

Dated: March 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7209 Filed 3–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, April 29, 1993, at Loews Hotel New York, Embassy Rooms C&D, 569 Lexington at East 51st, New York, New York 10022.

The entire meeting will be open to the public from 8:30 a.m. to approximately 5 p.m. The topics will include: (1) Research on possible environmental causes of breast cancer; (2) Delivery of breast cancer care and the role of the payer.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301/496–1148), in advance of the meeting.

Ms. Iris Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31A, room 11A48, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5534) will furnish substantive program information.

Dated: March 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7210 Filed 3–29–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Fair Housing and Equal Opportunity

[Docket No. N-93-3595]

Task Force on Occupancy Standards in Public and Assisted Housing; Subcommittee Meetings

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of location of subcommittee meetings.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and to make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. The Task Force has established an Executive Committee and three additional subcommittees—Admission, Occupancy and Evictions. This is a notice announcing the location of meetings for the subcommittees of the Task Force.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3727, (TDD) (202) 708–0113. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Notice of the following meetings was published in the **Federal Register** on February 25, 1993 at 58 FR 11415.

Monday, March 29, 10 a.m. to 5 p.m., Admissions
Tuesday, March 30, 9 a.m. to 5 p.m., Occupancy
Wednesday, March 31, 9 a.m. to 12 noon, Evictions
Wednesday, March 31, 1 p.m. to 5 p.m., Executive

These meetings will be held at the Washington office of the National Corporation for Housing Partnerships, 1225 Eye Street, NW., room C–1, Washington, DC.

Agenda

The Admissions, Occupancy and Evictions Subcommittee meetings will consider drafts prepared by their members regarding the Department's occupancy standards in public and assisted housing, and develop proposals to be considered by the full Task Force, circulated to the public and considered at public hearings. The Executive Committee will recommend the time, place and logistics for the public hearings and make such other recommendations to the full Task Force as may be appropriate.

Public Participation

These are open meetings. The public is also invited to submit written comments on any aspect of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., suite 1212, Washington, DC 20005–2765.

Dated: March 18, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–7189 Filed 3–29–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. MT–060–4830–12]

Lewiston District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: District Advisory Council meeting.

SUMMARY: The Lewistown District Advisory Council will meet on April 21, 1993 at 10 a.m. in the Lewistown District Office, 1160 Airport Road, Lewistown, Montana. The agenda will include:

1. Introductions
2. Election of Officers
3. A review of the district's automation capabilities
4. A review of the appeals filed concerning the Judith Valley Phillips Resource Management Plan and Environmental Impact Statement
5. A review of the mining exploration application in the Sweet Grass Hills
6. A review of the mining expansion application in the Little Rocky Mountains
7. A review of the dedication plans for the Missouri Breaks National Back Country Byway

LOCATION: Lewistown District BLM Office, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and interested persons may make oral comments at the conclusion of the meeting or may file written comments for the council's consideration. Those wishing to make oral comments must notify the District Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457. The Lewistown District Advisory Council is authorized under section 309 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1739.

Dated: March 15, 1993.

David L. Mari,

District Manager.

[FR Doc. 93–7270 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–DN–M

[AK–932–4210–06–P; F–90576]

Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 2,560 acres of public land for protection of the Paleoindian site known as Mesa Site. This notice closes the land for up to 2 years from surface entry and mining, but not mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 28, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907–271–5477.

SUPPLEMENTARY INFORMATION: On March 24, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land

laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Umiat Meridian

T. 12 S., R. 17 W. (Unsurveyed),
Secs. 11 to 14, inclusive.

The area described contains approximately 2,560 acres.

The purpose of the withdrawal is to protect the archaeological, historical, and cultural resource integrity of the Paleoindian site known as Mesa Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Alaska State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The segregation made by this order shall overlap but not otherwise affect the segregation established by Public Land Order No. 5860.

The temporary uses which will be permitted during this segregative period would be for discretionary land use authorizations, as allowed by an Authorized Officer of the Bureau of Land Management.

Dated: March 24, 1993.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 93–7219 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Desert Tortoise (Mojave Population) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the desert tortoise (Mojave population), *Gopherus agassizii*. This species occurs in parts of Inyo, Kern, Los Angeles, San Bernardino, Riverside, and Imperial Counties in California; the western part of Mohave County in Arizona; Clark County, and the southern parts of Esmeralda, Nye, and Lincoln Counties in Nevada; and part of Washington County, Utah. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before June 1, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Nevada Ecological Services Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502 (Telephone: 702–784–5227), or Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (Telephone: 503–231–6241). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada, address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada, address.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Barrett at the above Reno, Nevada, address (Telephone: 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Mojave population of the desert tortoise occurs north and west of the Colorado River in parts of Inyo, Kern, Los Angeles, San Bernardino, Riverside, and Imperial Counties in California; the western part of Mohave County in Arizona; Clark County, and the southern parts of Esmeralda, Nye, and Lincoln Counties in Nevada; and part of Washington County, Utah. The principle causes of decline for this species are deterioration and loss of habitat, collection for pets or other purposes, elevated levels of predation, loss of desert tortoises from disease, and the inadequacy of existing regulatory mechanisms to protect desert tortoises and their habitat. The recovery strategy includes: (1) Identification of six desert tortoise recovery units; (2) establishment of a system of Desert Wildlife Management Areas (DWMAs) within recovery units where management actions are recommended to effect recovery; and (3) implementation of specific recovery actions within DWMAs. Desert tortoise habitat is administered by the United States Department of Agriculture, Forest Service; United States Department of the Interior, Bureau of Land Management, Fish and Wildlife Service, National Park Service, Bureau of Indian Affairs, and Bureau of Reclamation; United States Department of Defense; and other Federal, State, and local entities.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 24, 1993.

David L. McMullen,

Acting Regional Director.

[FR Doc. 93–7325 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Alan Wilkins, Middleton, MA. PRT–776548

The applicant requests a permit to purchase in interstate commerce 3 female and 3 male captive-hatched Nene geese (*Neosochen branta sansvicensis*) from Walter Sturgeon Jr. of Lee, New Hampshire, for propagation.

Applicant: Anne Frantzen, Maplewood, MN. PRT–776825

Applicant requests a permit for a multiple export/reimport permit for one male captive-born leopard (*Panthera pardus*) for enhancement of propagation and survival of the species.

Applicant: A. Robert Thomas, Mt. Pleasant, NJ. PRT–776873

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. Lewes Tonks, Graaff-Reinet, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Marco Peters, Venice, FL. PRT–775531

Mr. Peters has withdrawn his application published in the **Federal Register** on March 18, 1993, for a permit to export and reimport two male captive born tigers (*Panthera tigris*).

Applicant: San Antonio Zoological Gardens, San Antonio, TX. PRT–776927

The applicant request a permit to export one female captive-born golden lion tamarin (*Leontopithecus r. rosalia*) to Metro Toronto Zoo in Ontario, Canada, for propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 25, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–7291 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: April 28, 1993 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Freemansburg Borough Hall, 600 Monroe Street, Freemansburg, PA 18017.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Dated: March 14, 1993.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93–7020 Filed 3–29–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32248]

Hanson Natural Resources Co.—Non-Common Carrier Status—Petition for a Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of declaratory order; extension of comment due date.

SUMMARY: By decision served March 1, 1993 (58 FR 12052, March 2, 1993), the Commission sought public comment by March 22, 1993, on a petition for declaratory order filed by Hanson Natural Resources Company (HNRC), that HNRC will not, upon consummation of certain anticipated transactions, become a common carrier by railroad. By motion filed March 19, 1993, HNRC requests a two-week extension to April 5, 1993, to file comments. HNRC states the extension is needed to facilitate discussions with Chaco Energy Company (Chaco) that may resolve the need for Chaco to file comments. HNRC states that Santa Fe Entities joins in this request. HNRC also states this extension will not prejudice any party. The request will be granted.

DATES: Comments must be filed by April 5, 1993.

ADDRESSES: Send an original and 15 copies of comments, referring to Finance Docket No. 32248 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, send one copy to HNRC's representative: C. Michael Loftus, SLOVER & LOFTUS, 1224 Seventeenth St., NW., Washington, DC 20036, (202) 374–7170.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721].

Decided: March 24, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7293 Filed 3–29–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) how often the form must be filled out or the information is collected;
(4) who will be asked or required to respond, as well as a brief abstract;
(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) an estimate of the total public burden (in hours) associated with the collection; and,
(7) an indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jefferson B. Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115 or facsimile: (202) 514–1534. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

New Collection

(1) Survey of Adults on Probation (Pretest)
(2) Form SAP–1X, SAP–15X, SAP–16X, SAP–20LX, SAP–25X, SAP–27X, SAP–30X, SAP–32X/32AX, SAP–33X/33AX, SAP–35X. Office of Justice Programs.
(3) Once.
(4) Individuals or households. State or local governments. This is a pretest for the Survey of Adults on Probation. The full survey will provide data on demographic characteristics, offenses, sentencing, prior sentences, prior alcohol and drug abuse and treatment, current supervision and programs, and social/family background of persons on probation. Pretest date will be used to refine procedures for the full survey.
(5) 264 annual responses at 1.0 hour per response
(6) 264 annual burden hours
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: March 25, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–7332 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

March 24, 1993.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jefferson B. Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115 or facsimile: (202) 514–1534. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Application for permission to reapply into the United States after deportation or removal

(2) I–212. Immigration and Naturalization Service

(3) On occasion

(4) Individuals or households. This form provides information to be used to determine eligibility for a waiver for an inadmissable alien who is applying for a visa to enter the United States.

(5) 7,250 annual responses at .33 hours per response

(6) 2,392 annual burden hours

(7) Not applicable under 3504(h)

(1) 1993 Census of Jails

(2) CJ–3. Bureau of Justice Statistics

(3) Every five years

(4) State or local governments. Federal agencies or employees. The 1993 Census of Jails will provide current information on inmate population and jail facilities throughout the country, especially population growth and its effects on confinement space in local jails.

(5) 3,400 annual responses at 1.0 hour per response

(6) 3,400 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: March 24, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–7161 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Consent Decree; Acme Solvents Reclaiming, Inc., et al.

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, Case No. 89 C 7748, was lodged on March 17, 1993, with the United States District Court for the Northern District of Illinois.

The proposed partial consent decree resolves claims of the United States against defendant Rockford Coatings Corporation in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, brought under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Acme Solvents Reclaiming hazardous waste site ("Acme Site") in Winnebago County, Illinois. Under the terms of the decree, Rockford Coatings Corporation ("Rockford") will pay the United States $101,500 in settlement of the United States' past costs claims against Rockford.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, DOJ Ref. # 90–11–2–177.

The proposed partial consent decree may be examined at the Office of the United States Attorney, 219 S. Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–7173 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a partial consent decree resolving three of the five counts in *United States* v. *Windward Properties, Inc.*, No. 1:91–CV–348–JEC, was lodged with the United States District for the Northern District of Georgia on March 16, 1993.

The proposed partial consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344, as a result of unpermitted discharges of fill material into creeks and wetlands on property owned by Windward Properties, Inc. ("Windward") in Alpharetta, Georgia. Under the partial consent decree, Windward will pay a $75,000 civil penalty to the U.S. Treasury, will restore a portion of the property in accordance with a specified three-year restoration and monitoring plan, and will preserve approximately 55 acres of wetlands as mitigation. The partial consent decree will not affect litigation on two remaining counts of the complaint, which involve the construction of a dam and artificial lake, and the construction of a sports park.

The Department of Justice will receive written comments relating to this consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Jon M. Lipshultz, Attorney, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice, room 7220, 10th & Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to *United States* v. *Windward Properties, Inc.*, DJ Reference Number 90–5–1–1–3561.

The partial consent decree and accompanying exhibits may be examined at the Clerk's office, United States District Court for the Northern District of Georgia, 2211 U.S. Courthouse, 75 Spring Street, SW., Atlanta, Georgia, 30335, or a copy may be requested from Jon M. Lipshultz at the Department of Justice, (202) 514–0461.

Myles E. Flint,

Acting Assistant Attorney General, Environmental & Natural Resources Division.

[FR Doc. 93–7172 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Clean Air Act Enforcement Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *International Crane Company*, Civil Action No. K92–1544 was lodged with the United States District Court for the District of Maryland on March 5, 1993.

On June 1, 1992, the United States filed a Complaint against International Crane Company (International Crane), alleging violations of the Clean Air Act National Emission Standards for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP). This proposed Consent Decree resolves International Crane's liability for the violations alleged in the Complaint and requires International Crane to comply with the requirements of the Clean Air Act and the Asbestos NESHAP, and to pay a civil penalty of $25,000.00.

The Department of Justice will accept written comments relating to this Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *International Crane Company*, DOJ No. 90–5–2–1–1695.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Maryland, 101 West Lombard Street, Baltimore, Maryland, 21201; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $25.75 (including exhibits) (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division U.S. Department of Justice.

[FR Doc. 93–7274 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Canstar Sports USA, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Vermont in *United States* v. *Canstar Sports USA, Inc.*, Civil Action No. 2–93CV77.

The complaint in this case alleges that Canstar Sports USA, Inc., a seller of hockey skates, engaged in a conspiracy with its retail dealers to fix the retail price at which certain of its hockey skates were to be resold in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendant from directly or indirectly continuing or renewing the kind of conspiracy alleged in the complaint.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, room 3630, 26 Federal Plaza, New York, New York 10278 (Telephone: 212–264–0390).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. Defendant shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

3. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendant in this or any other proceeding that Section 1 of the Sherman Act, 15 U.S.C. 1, or any other provision of law has been violated.

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

John W. Clark,

Acting Assistant Attorney General.

Constance K. Robinson,

Ralph T. Giordano,

Attorneys, Antitrust Division, U.S. Department of Justice.

Philip F. Cody,

John H. Clark,

Jeffrey J. Corrigan,

Attorneys, Antitrust Division, U.S. Department of Justice, room 3630, 26 Federal Plaza, New York, New York 10278, (212) 264–0394.

Philip V. Chiarella,

President, Canstar Sports USA, Inc., 50 Janergin Drive, Swanton, VT.05488.

Anne Cramer,

Attorney for Defendant, Miller, Eggleston & Rosenberg, Ltd., 150 South Champlain Street, P.O. Box 1489, Burlington, Vermont 05402–1489.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on March 17, 1993, and plaintiff and defendant, Canstar Sports USA, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

(B) "Retail Dealer" means any person, not wholly owned by Canstar, who purchases or acquires hockey skates manufactured or sold by Canstar for resale.

(C) "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to hockey skates sold by retail dealers.

III

(A) This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any retail dealer to fix, stabilize, or maintain the resale prices at which hockey skates sold or distributed by defendant may be sold or offered for sale in the United States by any retail dealer; provided that nothing in this paragraph shall be deemed to prohibit defendant from adopting suggested resale prices of hockey skates, communicating such prices to retail dealers or terminating, unilaterally and without any agreement or understanding with any other person, any dealer that departs from the suggested resale price.

V

Defendant is ordered and directed:

(A) To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty (60) days of the entry of this Final Judgment, to 1) each retail dealer who participated in or received information from defendant regarding defendant's 1990 Advertising and Distribution Policy for Select Professional Products and 2) each retail

dealer who purchased hockey skates with V2 blades from defendant in either 1991 or 1992;

(B) To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each retail dealer who purchases hockey skates with V2 blades from defendant within three (3) years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty (30) days after the shipment of hockey skates with V2 blades is made to such dealer by the defendant; and

(C) To furnish a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of its officers and directors and each of its employees, representatives, or agents whose duties include supervisory or direct responsibility for the sale or advertising of hockey skates in the United States, except those employees whose functions are purely clerical or manual.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege or any order issued under Section VI (E), from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant at its principal office, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence and other records and documents in the possession or under the control of defendant, who may have counsel present, regarding any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of defendant and without restraint or interference by it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

(E) Within ten (10) days after receiving any request under Sections VI(A) or VI(B), defendant may apply to this Court for an order to quash or limit the scope of the request, and after providing plaintiff with an opportunity to respond to such application, this Court shall enter such order or directions as may be necessary or appropriate for carrying out and ensuring compliance with this Final Judgment.

VII

This Final Judgment shall remain in effect until 10 years from the date of entry.

VIII

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

IX

Entry of this Final Judgment is in the public interest.

Appendix A

Dear Retailer: In March 1990, Canstar announced its 1990 Advertising and Distribution Policy for Select Professional Products ("the Policy") which applied to the marketing of its new V–2 blades. The policy was ultimately not enforced and was withdrawn in the fall of 1990.

The Antitrust Division of the United States Department of Justice filed a civil suit, alleging that the policy violated the antitrust laws. Canstar has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain retail pricing practices in the United States. A copy of the Order is enclosed.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,

Phil Chiarella,

President, Canstar Sports USA, Inc., 50 Jonergin Drive, Swanton, VT 05488.

The United States of America, pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 17, 1993 the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the defendant Canstar Sports USA, Inc. (Canstar USA) and certain of its retail dealers who are unnamed co-conspirators, had, beginning at least as early as February 1990 and continuing at least through November 1990, engaged in a combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, to fix the retail price of hockey skates with V2 blades (V2 skates) sold by Canstar USA to retail dealers throughout the United States. The complaint alleges that, in furtherance of this conspiracy, Canstar USA:

(a) Established and communicated to retail dealers a minimum retail price for V2 skates purchased from Canstar USA; and

(b) Obtained agreements from retail dealers to maintain the minimum retail price as a condition of receiving and continuing to receive V2 skates from Canstar USA.

The complaint also alleges that as a result of the combination and conspiracy, retail prices of hockey skates with V2 blades have been fixed and maintained, and competition in sales of V2 skates has been restrained.

The complaint seeks an adjudication that the alleged combination and conspiracy is illegal, and an injunction to enjoin Canstar USA from continuing or renewing the alleged combination or conspiracy and prohibiting Canstar USA from engaging in any combination or conspiracy or adapting any practice or plan having a similar purpose or effect.

The United States and Canstar USA have stipulated that the proposed Final Judgment may be entered after

compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Judgment, or to punish violations of any of its provisions.

II

Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

Canstar USA, a Vermont corporation, is a leading seller of hockey skates in the United States. Hockey skates sold by Canstar USA are manufactured in Canada by Canstar USA's parent corporation. Canstar USA sells hockey skates to retail dealers which in turn sell them to consumers.

In or about February 1990, Canstar USA began to announce its "1990 Advertising and Distribution Policy for Select Professional Products" (Policy) to its retail dealers. The Policy covered the sale of Bauer 2000 and Mega 10–90 hockey skates with a V2 blade option (V2 skates) to the general public. The V2 skate represented a new design in that its stainless steel V2 blade was tapered to permit greater speed, agility and maneuverability.

The Policy announced a suggested retail price and a discount price (or minimum retail price) for V2 skates and provided that retailers who advertised V2 skates below the minimum resale price would have their allocation of such skates interrupted without prior notice for 90 days for a first violation, 180 days for a second violation, and an indefinite number of days (but in no event less than 180 days) for a third or more violations.

After its announcement of the Policy, Canstar USA obtained agreements from certain retailers to maintain a minimum retail price on these skates.

An investigation into Canstar USA's Policy was begun by the Antitrust Division of the Department of Justice in mid 1990. In November 1990, Canstar USA advised its retail dealers by letter that it had not implemented any of the restrictions outlined in its Policy and that it was cancelling the Policy, effective December 1, 1990.

III

Explanation of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment, in the form they negotiated, may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint. Specifically, Section IV enjoins and restrains the defendant from entering into, adhering to, maintaining, furthering, or enforcing any contract, agreement, understanding, plan or program with any retail dealer to fix or maintain the resale prices at which hockey skates sold or distributed by the defendant may be sold or offered for sale in the United States by any retail dealer. Section IV provides that nothing in the section shall be deemed to prohibit the defendant from adopting suggested resale prices of hockey skates, communicating such prices to retail dealers or terminating, unilaterally and without any agreement or understanding with any other person, any dealer that departs from the suggested resale price.

Section V of the proposed Final Judgment requires the defendant to send notices and copies of the Judgment to each retail dealer who participated in or received information from the defendant regarding its Policy and to each retail dealer who purchased V2 skates from Canstar in either 1991 or 1992. In addition, the defendant is required to send notice and copies of the Judgment to every other retail dealer who purchases V2 skates from Canstar USA within three years of the date of entry of the proposed Final Judgment. The defendant is also required to furnish a copy of the Judgment to each of its officers and directors and each of its non-clerical employees, representatives, or agents with supervisory or direct responsibility for the sale or advertising of hockey skates in the United States.

In addition, the proposed Final Judgment provides methods for determining and securing the defendant's compliance with its terms. Section VI provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents of the defendant.

Section VII makes the Judgment effective for ten years from the date of its entry.

Section IX of the proposed Final Judgment states that entry of the Judgment is in the public interest. Under the provisions of the APPA, entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Ralph T. Giordano, New York Office, Antitrust Division, United States Department of Justice, room 3630, 26 Federal Plaza, New York, New York 10278.

Under section VIII of the proposed Final Judgment, the Court will retain jurisdiction over this matter for the

purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Judgment, or for the punishment of any violations of the Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternatives to the proposed Final Judgment considered by the Government were (1) a full trial on the merits and on relief and (2) a Judgment containing relief ancillary to that provided in the proposed Final Judgment. In the view of the Government, such litigation would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides appropriate relief against the violations alleged in the complaint. The Government also believes that ancillary provisions are not necessary to achieve fully adequate and appropriate relief against any future violations of the nature alleged in the complaint.

VII

Determinative Materials and Documents

No materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the Government has not attached any such materials or documents to the proposed Final Judgment.

Dated: New York, New York, March 17, 1993.

Respectfully submitted,

Philip F. Cody,

John H. Clark,

Jeffrey J. Corrigan,

Attorney, Antitrust Division, U.S. Department of Justice, room 3630, 26 Federal Plaza, New York, New York 10278, (212) 264–0394.

[FR Doc. 93–7273 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

Proposed Modification of Final Judgment

Notice is hereby given that defendant, Southern Pine Inspection Bureau ("SPIB"), has filed with the United States District Court for the Eastern District of Louisiana a motion to modify the Judgment in *United States* v. *Southern Pine Association, et al.*, Civil Action No. 275, and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to modification of the Judgment but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed February 21, 1940) alleged that the Southern Pine Association ("SPA") and its lumber company members had fixed prices, curtailed output, enforced an agreed policy of distribution and excluded others from engaging in trade and commerce.

On February 21, 1940, a Judgment was entered against the SPA and its members which *inter alia* created the SPIB as a separate entity to perform lumber grading and standards activities. In 1969, the Judgment was amended to allow SPIB to incorporate in Louisiana as a non-profit corporation.

SPIB proposes to make three technical amendments to the 1940 Judgment: The first would allow SPIB to incorporate in any state it desires, not just Louisiana; the second would make two changes in the SPIB Board of Governors membership and selection designed to allow a mix of Governors representing both large corporate lumber mills, and smaller proprietary (or family) lumber mills; the third would delete a provision, never used, which allowed certain trade associations to claim a seat on the Board of Governors of SPIB.

The Department has filed with the court a memorandum setting forth the reasons why the Government believes that modification of the Judgment would serve the public interest. Copies of the Complaint and Judgment, SPIB'S motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the Eastern District of Louisiana, 500 Camp Street, New Orleans, Louisiana 70130. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Government. Such comments must be received by the Division within sixty (60) days and will be filed with the court by the Government. Comments should be addressed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone: (415) 556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–7271 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

United States v. USAir Group, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *USAir Group, Inc.*, Civil Action No. 93–0530. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h).

The complaint in this case alleges that the effect of proposed transactions between USAir Group, Inc. ("USAir") and British Airways, Plc ("British Airways"), pursuant to which British Airways has invested $300 million in USAir for approximately 20 percent of USAir's stock and the two carriers will initiate joint operations to provide U.S.-London air transportation services, may be substantially to lessen competition in the provision of non-stop scheduled airline passenger service between Philadelphia and London and the Baltimore/Washington metropolitan area and London, and in the provision of scheduled airline passenger service between interior U.S. points and London, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

By international agreement, airline service between the United States and London may be operated only from certain designated gateway cities, and the number of airlines that may serve each gateway is limited. USAir and British Airways are the only two airlines permitted to provide nonstop service on the Philadelphia-London routes and are two of three airlines permitted to serve the Baltimore/Washington-London route. In addition, the two airlines are among eight U.S. or British airlines that can provide connecting or one-stop service to passengers travelling between London and cities located in the Eastern and Mid-Atlantic regions of the United States. The proposed Final Judgment requires USAir to sell to another U.S. Airline its authority to serve London from each of its three gateways (Philadelphia, Baltimore/Washington

and Charlotte) within 45 days of the date it and British Airways begin joint operations from that gateway. The proposed Final Judgment further provides that if such sale is not made, USAir must surrender its authority to serve the route to the United States Department of Transportation which can then designate another United States airline to serve the route.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark C. Schechter, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

3. Defendant shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment;

4. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendant in this or any other proceeding that section 7 of the Clayton Act, 15 U.S.C. 18, or any other provision of law has been violated;

5. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: March 15, 1993.

For Plaintiff United States of America:

John W. Clark,

Acting Assistant Attorney General.

Constance K. Robinson,

Mark C. Schechter,

Roger W. Fones,

Attorneys, Antitrust Division, U.S. Department of Justice.

Robert D. Young,

DC Bar #248260

Stephen B. Donovan,

Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 555 Fourth Street, NW., Washington, DC 20001, (202) 307-6318.

For Defendant USAir Group, Inc.

Covington & Burling,

Charles Rule,

A Member of the Firm.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint here on March 15, 1993, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "USAir" means USAir Group, Incorporated, a Delaware corporation with headquarters in Arlington, Virginia.

B. The "U.S.–U.K. Routes" means USAir's existing rights to operate scheduled airline passenger service on airline routes between Philadelphia and London, Baltimore-Washington International and London, and Charlotte, North Carolina and London.

C. The "Transaction" means the Investment Agreement between USAir Group, Inc. and British Airways Plc, dated as of January 21, 1993.

D. The "Commencement Date" means, with respect to each U.S.–U.K. Route, the date upon which USAir and British Airways Plc begin holding out to the public code-sharing service at the U.S. gateway for that route.

E. "Code-Sharing Service" means scheduled airline passenger service between cities, all or part of which is operated by one airline but which is identified with the airline designator code of another airline.

III

Applicability

A. The provisions of this Final Judgment shall apply to the defendant, to its successors and assigns, to its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale or other disposition of all or substantially all or its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV

Divestiture of U.S.-U.K. Routes

A. USAir is hereby ordered and directed to divest each U.S.-U.K. Route to a purchaser and on terms approved by plaintiff within 45 days of that route's Commencement Date or such additional time as may be granted pursuant to Section IV.B of this Final Judgment.

B. USAir shall take all reasonable steps to comply with section IV.A of this Final Judgment. USAir's obligation to complete the Divestiture of each U.S.-U.K. Route as required by section IV.A of this Final Judgment shall be tolled during the period commencing on the filing by USAir with the U.S. Department of Transportation of an application for approval of the transfer of that route to the approved purchaser, and ending upon the issuance by the U.S. Department of Transportation of a final order approving or disapproving

such transfer, dismissing the petition, or otherwise discontinuing the proceeding. In its sole discretion, plaintiff may extend, upon USAir's request, the date by which USAir must divest any of the U.S.-U.K. Routes.

V

Relinquishment of U.S.-U.K. Routes

In the event that USAir does not divest a U.S.-U.K. Route within the period prescribed by section IV of this Final Judgment, USAir is hereby ordered and directed to relinquish all licenses, certificates, and authorities for that U.S.-U.K. Route to the U.S. Department of Transportation.

VI

Notification

Immediately following entry of a binding contract to effect any proposed divestiture pursuant to section IV of the Final Judgment, defendant shall notify plaintiff of the proposed divestiture. The notice shall set forth the details of the proposed transaction. Plaintiff shall notify the defendant in writing, stating whether or not the plaintiff objects to the proposed divestiture, (1) within fifteen (15) days after the receipt of the notice from the defendant, or (2) within fifteen (15) days of the receipt of additional information from the defendant or purchaser, if the plaintiff deems it necessary to obtain additional information to evaluate the transaction and if the plaintiff requests such information from the defendant or purchaser within ten (10) days of the receipt of the notice. If plaintiff provides written notice to defendant that it does not object, then the divestiture may be consummated. Upon objection by plaintiff, a divestiture proposed under section IV shall not be consummated unless approved by the Court.

VII

Preservation of Assets

Until the divestiture or relinquishment required by the Final Judgment has been accomplished, defendant shall refrain from taking any action that would jeopardize the divestiture of the divestiture assets.

VIII

Visitorial Clause

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Upon written notice of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division and after reasonable notice made to defendant's principal office, duly authorized representatives of the Department of Justice shall be permitted;

1. Access during office hours of defendant to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

IX

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X

Termination

This Final Judgment will expire on the fifth anniversary of the date of its entry.

XI

Public Interest

Entry of this Final Judgment is in the public interest.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of USAir Group, Inc. in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 15, 1993, the United States filed a Complaint alleging that a proposed partial stock acquisition of USAir Group, Inc. (hereafter "USAir") by British Airways Plc (hereafter "BA") and proposed joint operation between the two companies would violate section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the transaction may be substantially to lessen competition in the provision of scheduled airline passenger service and nonstop scheduled airline passenger service in various U.S.-London city pair markets. Both USAir and BA provide such service. The Complaint seeks, among other relief, a permanent injunction ordering USAir to divest its authority to provide nonstop scheduled airline passenger service between Baltimore and London, between Philadelphia and London and between Charlotte and London.

On March 15, 1993, the United States and the defendant filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive efforts of the transportation. Under the proposed Final Judgment, as explained more fully below, USAir would be required to sell, within 45 days of its beginning to operate code-sharing service with BA from any of its getaways, its authority to fly scheduled passenger service from the gateway to London. If it should fail to do so, and the United States, in its sole discretion, has not granted a request by defendants for additional time to effect

the divestiture, the route authority would be surrendered by USAir to the Department of Transportation for designation of other U.S. airlines to serve these routes.

The United States and the defendant have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Final Judgment, and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

A. The Proposed Transaction

On January 21, 1992, USAir and BA entered into an agreement whereby BA acquired approximately 20% of USAir's equity for $300 million. USAir and BA have also agreed to begin jointly providing connecting air service between interior U.S. points and London using shared airline designator codes. USAir flights between interior U.S. points and the Baltimore, Philadelphia, Charlotte and Pittsburgh gateways will be designated with a BA flight number for connections to BA flights between the gateways and London.

In addition, the agreement permits BA to make additional stock purchases and acquire more control over USAir within the next 5 years, to the extent permitted by U.S. law. If BA makes the additional purchases, the two companies have agreed to further integrate their operations.

B. Analysis

The Complaint alleges that the proposed transaction would violate section 7 of the Clayton Act (15 U.S.C. 18) because its effect will be to lessen competition between USAir and BA in the provision of scheduled airline passenger service and the provision of nonstop scheduled airline passenger service in multiple U.S.-London city pair markets, and may be substantially to lesson competition generally in the provision of such service.

Air transportation between the United States and London is governed by a bilateral air services agreement between the governments of the United States and United Kingdom of Great Britain and Northern Ireland ("U.K.") pursuant to which air service must be provided via a limited number of gateway cities. The bilateral also limits the number of airlines allowed to provide nonstop service between two gateways (usually to one airline from each country), and the number of flights each airline may provide. As a result, service to all non-gateway points must connect or stop at a gateway.

Most people travelling between U.S. cities and London have no substitute for scheduled airline passenger service to which they could turn if there were a small but significant and nontransitory increase in the price of scheduled airline passenger service. Scheduled airline passenger service can be provided either without stops at intermediate points or with stops or changes of planes at one or more intermediate points. Many passengers are particularly time-sensitive and value the greater speed and reliability provided by nonstop service. Such passengers would not substitute one-stop or connecting service for nonstop service in response to a small but significant and nontransitory increase in the price of nonstop service.

BA serves London on a nonstop basis from fourteen U.S. gateways, including Philadelphia and Baltimore/Washington. It is the largest provider of U.S.-London scheduled passenger air transportation, providing approximately 38% of all seats offered on nonstop flights between U.S. gateways and London. It provides service to non-gateway U.S. points through interline connections with flights operated by U.S. airlines. USAir serves London from three U.S. gateways: Philadelphia, Baltimore, and Charlotte. It provides roughly 3% of all nonstop seats offered between the U.S. and London.

The complaint alleges that USAir and BA compete in the provision of two relevant products, each offered in multiple geographic markets. First, they are the only two airlines providing nonstop service in the Philadelphia-London city pair, and two of only three airlines providing nonstop service between Baltimore/Washington and London.

Second, they compete in providing one-stop or connecting scheduled airline passenger service between nongateway U.S. points, particularly those located in the northeastern and Mid-Atlantic U.S. regions, and London. USAir and BA are two of eight U.S. or British carriers authorized to serve London from eastern U.S. gateways at which passengers travelling to and from points in the Northeastern and Mid-Atlantic regions of the U.S. could make convenient connections to London.

As measured by the number of seats on nonstop flights operated from the gateways offering reasonably convenient connections for northeastern passengers (Boston, New York, Newark, Philadelphia and Baltimore/Washington), the Herfindahl-Hirschman Index (HHI) of concentration for scheduled airline passenger service between northeastern U.S. cities and London is 2150. A combination of BA's 38% market share of available seats and USAir's 4.5% market share of available seats would increase the HHI by 349 to 2499. Mid-Atlantic passengers can conveniently travel via Charlotte and Atlanta in addition to the northeastern gateways listed above. Using capacity measures (i.e., seats available on nonstop flights), a combination of BA and USAir would increase the HHI from 1993 to 2459.

Using gateway capacity (i.e., seats available on nonstop flights from gateways serving the region) to measure changes in concentration may overstate the adverse effects of this transaction on competition for interior U.S. passengers, however. BA is not permitted under the bilateral agreement to operate service to interior U.S. points on its own aircraft (i.e., "online service"). Passengers wishing to use BA's transatlantic service must instead travel between the U.S. interior point and the U.S. gateway on flights operated by U.S. carriers and make an interline connection to the BA flight at the gateway. Because passengers prefer online service and because it is frequently more expensive for airlines to serve passengers on an interline basis than on an online basis, BA's gateway market shares, and the HHI measurements based on them, may overstate BA's competitive impact in these markets.

Even if BA's competitive importance in interior markets is overstated by market share measurements based on seats available from gateways, the market for such services is nonetheless concentrated, and a combination of USAir and BA would increase concentration levels by a significant degree. Increases in concentration in these markets are particularly likely to harm consumers because the airlines serving them are permitted to meet under the aegis of the International Air Transport Association ("IATA") to agree on the prices they will charge. The IATA cartel makes it significantly easier for the carriers jointly to exercise market power.

The Complaint alleges that the transaction may eliminate competition between USAir and BA and may substantially lessen competition in the relevant markets. Under the transaction, BA has purchased a 20% equity position and has the right to purchase up to 49% of USAir's equity. The airlines intend to coordinate their respective services at Philadelphia, Baltimore, Charlotte and Pittsburgh and

to offer code-sharing connecting service at those points. The joint service in combination with the substantial equity ownership will give each carrier a substantial interest in the other's traffic and profits on the routes between those gateways and London, and will thereby reduce each carrier's incentive to engage in competition which may negatively affect the other carrier's traffic and profits. The reduced incentive to compete, along with the lack of reasonable substitutes for airline service in those city-pairs and the barriers to entry by other airlines, indicates that the effect of the transaction may be substantially to lessen competition in violation of section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed transaction between USAir and BA may be substantially to lessen competition in the provision of scheduled airline passenger service between numerous U.S. cities and London in violation of section 7 of the Clayton Act. On the other hand, the transaction also promises to increase efficiency and competition in a number of significant respects. The joint operations by the two carriers will permit the introduction of nonstop service between Pittsburgh and London, will result in new online competition between interior U.S. points and points beyond London, and promises new or improved online service between interior U.S. points and London. These efficiencies are unlikely to be realized by either carrier acting independently because of provisions in the U.S.-U.K. bilateral agreement that restrict service to and beyond gateways.

The risk to competition posed by the transaction can be significantly reduced and the significant procompetitive benefits preserved if USAir's route authority between its U.S. gateways and London is transferred to one or more U.S. airlines with an incentive to compete in U.S.-London city pair markets. To this end, the provisions of the proposed Final Judgment are designed to accomplish either (1) the sale of USAir's authority to serve U.S.-London routes to another U.S. airline or (2) in the absence of such a sale, the surrender of USAir's authority to serve that route and designation of another U.S. airline by the Department of Transportation.

Section IV of the proposed Final Judgment would direct USAir to sell its authority to serve each of its U.S.-London routes within 45 days of the date the two carriers begin to provide joint code-sharing service at the U.S. gateway for that route to a purchaser approved by the United States Department of Justice. By making the requirement to divest contingent on the initiation of joint service, this provision ensures that the competitive harm of the transaction (loss of an independent competitor) is not suffered until the machinery that can generate the anticipated procompetitive benefits (the new online joint service) is in place.

Section V provides that if USAir does not complete a sale as required under Section IV of the proposed Final Judgment, it shall surrender the route authority to the United States Department of Transportation, which will then award to another United States airline the route authority that enabled USAir to serve Baltimore-London, Philadelphia-London and/or Charlotte-London.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured in his business or property as a result of conduct forbidden by the antitrust laws (including section 7 of the Clayton Act) may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought.

V

Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United State written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mark C. Schechter, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., room 9104, Washington, DC 20001.

VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment requires that USAir sell its Baltimore-London, Philadelphia-London and/or Charlotte-London international route authority within a specified time after commencement of joint code-sharing operations with BA on any of those routes, or surrender the authority for designation by the Department of Transportation to another airline. Thus, compliance with the proposed Final Judgment would resolve the competitive concerns raised by the transaction with respect to nonstop and connecting service at the Philadelphia-London and Baltimore/Washington-London gateways and connecting service at the Charlotte gateway.

Under the terms of the U.S.-U.K. bilateral aviation agreement, a U.S. carrier holding authority to serve London from the Baltimore/Washington or Charlotte gateways may seek permission from the Department of Transportation to transfer that authority to another U.S. gateway point. If permission is sought from and approved by the Department of Transportation, the transfer of USAir's Baltimore or Charlotte required by the Final Judgment may result in service patterns that differ from those that exist today. The United States considered a remedy that would require the transferee carrier to use the authority to serve specified gateways. However, that alternative was rejected because such a restriction in this case could harm airline passengers traveling to London as a whole by producing an inefficient allocation of the limited authority to serve London.

Also, litigation is an alternative to a consent decree in a Section 7 Clayton Act case. The United States rejected this alternative because the sale or surrender of USAir's route authority required under the proposed Final Judgment, which likely would result in a transfer to a U.S. carrier that already provides

London service and possibly could result in the transfer to a new gateway, nonetheless would reduce the anticompetitive effects of the transaction while preserving the significant procompetitive effect discussed in Part III above. With the proposed relief, the procompetitive benefits of the transaction clearly outweigh its anticompetitive effects. Seeking to enjoin the transaction, which is the only other relief practicably available, would therefore not advance the public interest.

The United States is satisfied that the proposed Final Judgment sufficiently resolves the antitrust violation alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (15 U.S.C. 16(b)–(h)) have been satisfied, the public will benefit immediately from the requirements of the proposed Final Judgment because the defendants have stipulated to comply with its terms pending its entry by the Court.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: March 15, 1993.

Respectfully submitted,

Robert D. Young,

Attorney, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001, 202/307–6318.

[FR Doc. 93–7272 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

Nafional Cooperative Research Act of 1984; Industrial Macromolecular Crystallography Assoc.

Notice is hereby given that, on March 3, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Industrial Macromolecular Crystallography Association ("IMCA"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Parke-Davis Pharmaceutical Research, a division of Warner-Lambert Corporation, Morris Plains, NJ, has become a member of the IMCA, and E. I. DuPont de Nemours and Company, Inc. has withdrawn as a member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMCA intends to file additional written notification disclosing all changes in membership.

On October 23, 1990, IMCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 3, 1990, (55 FR 49952).

The last notification was filed with the Department on January 16, 1992. A notice was published in the **Federal Register** pursuant to section (b) of the Act on February 21, 1992, (57 FR 6247).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–7176 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; Microelectronics and Computer Technology Corp.

Notice is hereby given that, on February 4, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows:

(1) Zenith Electronics Corporation, Melrose Park, IL, has become a participant in MCC's Field Emission Display Project;

(2) Tamarack Storage Devices, Inc., Austin, TX, has agreed to participate in MCC's holostore commercialization research;

(3) MCC is conducting research on the application of volume holographic storage to high definition systems and Tamarack Storage Devices, Inc., has agreed to participate in this research;

(4) Hughes Training, Inc., Arlington, TX, and TeleVideo Services, Incorporated, Summit, NJ, have become associate members in MCC's "First Cities" technology study;

(5) Kopin Corporation, Taunton, MA, and MCC have entered into a Joint Venture Research Agreement to conduct research and development relating to scalable high density electronic packaging technology based on thin film modules;

(6) Unisys Corporation, San Diego, CA, has become an Associate Member of MCC and a participant in the Open Systems 2 Project within MCC's Packaging/Interconnect Technology Program.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on November 6, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 28, 1993 (58 FR 6420).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–7174 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; UNIX International, Inc.

Notice is hereby given that, on February 3, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of UNIX effective on January 25, 1993: Simula S.R.L., Lucca, Italy; Applix, Inc., Westboro, MA; Mafatlal Consultancy Services, Bombay, India; Eagle Financial Network, Kingston, Jamaica, West Indies; Consensys Corp., Markham, Ontario, Canada; Tellabs Operations, Inc., Lisle, IL; Charles University, Praha, Czechoslovakia; Bull, Echirolles Cedex, France; Defense Research & Development Organization, New Delhi, India; Emerging Technologies Group, Inc., Dix Hills, NY; ITT Hartford Insurance, Hartford, CT; Independence Technologies, Inc., Freemont, CA; Data Logic Ltd., Harrow, Middlesex, Great Britain; The London Parallel Applications, London, Great Britain; Societe Nationale ELF Aquintaine, Paris La Defense, France; and Peerless Technologies Ltd., Calcutta, India.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608).

The last notification was filed with the Department on November 5, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on December 31, 1992 (57 FR 62584).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–7175 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Denial of Application; Elliot F. Monroe, M.D.

On November 5, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Elliott F. Monroe, M.D. at 2236 Dogwood, Pampa, Texas, proposing to deny his DEA application executed on January 22, 1992. The Order to Show Cause alleged that Dr. Monroe's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Monroe by registered mail, return receipt requested. The receipt indicates that the Order to Show Cause was received by Dr. Monroe on November 27, 1992. More than thirty days have passed since the Order was received and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Monroe has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Administrator finds that on December 30, 1991, the Florida Medical Board revoked Dr. Monroe's license to practice medicine due to findings of unprofessional conduct, incompetence and negligence. Based on his lack of authorization to handle controlled substances in the State of Florida, Dr. Monroe's previous DEA Certificate of Registration was revoked. See 57 FR 23246 (June 2, 1992).

The Administrator also finds that Dr. Monroe filed a DEA application for registration, dated January 22, 1992, and indicated that he never had a state professional license revoked, suspended, denied, restricted or placed on probation. In fact, Dr. Monroe knew, or should have known, that the Florida Board of Medicine suspended his medical license on June 13, 1989, and revoked his medical license on December 30, 1991. Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated. Absent any explanation from Dr. Monroe, the Administrator is drawn to the inescapable conclusion that Dr. Monroe intended to make the material false statements on his DEA application for registration. The Administrator further finds that Dr. Monroe also falsified his DEA renewal applications, dated March 11, 1992, and April 8, 1992, for his previous DEA registration.

On September 22, 1992, in the United States District Court for the Northern District of Texas, Dr. Monroe was charged in a three count indictment with knowingly and intentionally furnishing false and fraudulent information on his DEA applications in violation of 21 U.S.C. 843(a)(4)(A). On December 2, 1992, Dr. Monroe was found guilty on one count and, on February 2, 1993, was sentenced to a term of three months incarceration, to be followed by a term of supervised release for a period of one year.

Having concluded that there is a lawful basis for the denial of Dr. Monroe's application, and having concluded that his pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed by Elliott F. Monroe, M.D., on January 22, 1992, be, and it hereby is, denied. The order is effective March 30, 1993.

Dated: March 22, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–7162 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–09–M

Revocation of Registration; Floyd Zachary, D.D.S.

On December 9, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Floyd Zachary, D.D.S., of 3022 Sanders Road, Live Oak, California 95953, and #H46735, P.O. Box W, Represa, California 95671. The Order to Show Cause sought to revoke his DEA Certificate of Registration, BZ2391415, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that effective June 11, 1992, the California State Board of Dental Examiners revoked Dr. Zachary's license to practice dentistry, and as a result, he is no longer authorized by State law to handle controlled substances. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Zachary by registered mail. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Zachary is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that, during the period of 1982 to 1985, Dr. Zachary experienced substantial emotional problems, including a "paranoid personality disorder". As a result, he was ordered by the California State Board of Dental Examiners to be examined by a physician and surgeon. Dr. Zachary failed to comply with the board's order, and effective August 28, 1986, the board revoked Dr. Zachary's license to practice dentistry.

On November 2, 1989, the board reinstated Dr. Zachary's dental license after he submitted himself to a board-approved psychiatrist, who found him to be competent and who deemed it advisable for Dr. Zachary to undergo ongoing therapy. The reinstatement of Dr. Zachary's dental license was subject to a five-year probation, commencing on March 20, 1990, and a condition that he continue to undergo psychotherapy administered by a board-approved therapist.

Dr. Zachary violated the terms of his probation by failing to continue psychotherapy, and as a result, the Board vacated its November 1989 order, and again revoked Dr. Zachary's dental license effective June 11, 1992.

The Administrator finds that as of June 11, 1992, Dr. Zachary's license to practice dentistry in the State of California has been revoked, and he is without authority to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See, James H. Nickens, M.D., 57 FR 59847 (1992); Elliott Monroe, M.D.,

57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988).

Based on the foregoing, it is clear that Dr. Zachary's DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BZ2391415, previously issued to Floyd Zachary, D.D.S., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective March 30, 1993.

Dated: March 22, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–7163 Filed 3–29–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–9291, et al.]

Proposed Exemptions; the Society National Bank and the Society Corporation, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Society National Bank and the Society Corporation, Located in Cleveland, Ohio

[Application No. D–9291]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (a) through (e) of the Code, shall not apply to: (1) The proposed extension of credit (the Advances) by the Society Corporation (the Corporation) to the Managed Guaranteed Investment Contract Fund (the Fund), the trustee of which is the Society National Bank (the Bank), a subsidiary of the Corporation, and in which the investors are employee benefit plans covered by the Act, regarding guaranteed investment contract No. GA–5005 (the GIC) issued to the Fund by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the Fund's potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Fund than those which the Fund could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Fund with respect to the Advances or the Repayments;

(C) The Advances are made only in lieu of payments due from Mutual Benefit with respect to the GIC;

(D) The Repayments shall not exceed the total Advances; and

(E) The Repayments shall in no event exceed the amounts actually received by the Fund from Mutual Benefit, any conservator, trustee or other person performing similar functions with respect to Mutual Benefit, and/or any state guaranty fund or other entity, other than the Corporation, acting as surety or insurer with respect to Mutual Benefit.

Summary of Facts and Representations

1. The Corporation is a bank holding company incorporated in Ohio. Among its subsidiaries is the Bank, located in Cleveland, Ohio. As a result of a merger (the Merger) of the Bank with Ameritrust Company National Association (Ameritrust) effective July 13, 1992, the Bank is the trustee of the Fund, which is a group trust of which Ameritrust was the predecessor trustee. The Corporation represents that the Bank maintains the Fund as a bank collective investment fund pursuant to regulations adopted by the Office of the Comptroller of the Currency (OCC), and as a group trust pursuant to procedures promulgated by the Internal Revenue Service (the Service), for the investment

of assets of employee benefit plans covered by the Act. The Fund invests primarily in unsecured debt obligations of insurance companies, known as guaranteed investment contracts. As of October 30, 1992, the Fund had total assets of approximately $358,230,000, representing the investments of approximately 235 investing plans (the Plans). One of the Plans, the Ameritrust Corporation Employees' Savings and Investment Plan (the Ameritrust Plan), is sponsored by the Bank as a result of the Merger, and covers employees of the Bank who were formerly employed by Ameritrust. As of October 30, 1992, approximately 2.03 percent of the assets of the Ameritrust Plan was invested in the Fund.

2. Among the assets in the Fund is the GIC, which was issued to the Fund by Mutual Benefit on July 7, 1989. The GIC provides for a single principal deposit of $5 million, and interest accrues on principal at the annual rate of 9.15 percent. The GIC requires Mutual Benefit to make annual payments of interest on January 31 of each year through 1996, a partial principal payment on January 31, 1992, and a final principal payment on January 31, 1996. The Corporation represents that Mutual Benefit timely paid the interest due under the GIC on January 31 of 1990 and 1991.

3. On July 16, 1991 Mutual Benefit was placed in conservatorship by the insurance commissioner of the State of New Jersey, and the Superior Court of New Jersey imposed a moratorium on maturity and most other payments with respect to Mutual Benefit group annuity contracts, including the GIC held by the Fund.[1] Mutual Benefit failed to pay the Fund the principal amount of $2.5 million and interest of $457,000, which was due January 31, 1992 under the terms of the GIC. However, on October 5, 1992, Mutual Benefit paid the Fund $84,552.39 with respect to its obligations under the GIC. Mutual Benefit failed to pay the Fund the interest payment which was due January 31, 1993. The Corporation represents that various plans for liquidation of Mutual Benefit's assets and payment of its obligations are under consideration, and that it is unknown whether, when and under what terms the holders of Mutual Benefit contracts, including the Fund, will recover the principal and interest due under such contracts.

As a result of these developments, the Corporation represents that the Fund is exposed to risk of loss on its investment in the GIC. The Corporation proposes to guarantee that the Fund will recover its principal investment in the GIC as well as the interest due under the terms of the GIC through its final maturity, and to make the Advances to provide the Fund with the GIC payments which are due but not timely or fully remitted. The Corporation is requesting an exemption for the Advances and the potential Repayments of the Advances under the terms and conditions described herein.

4. The proposed transactions are detailed in a restorative payment agreement (the Agreement) between the Corporation and the Fund, represented by the Bank, under which the Corporation agrees to make the Advances as restorative payments to the Fund if, when, and to the extent that Mutual Benefit does not timely perform its obligations under the GIC. The Corporation's obligations to make the Advances pursuant to the Agreement are conditioned upon the Corporation's obtaining the exemption proposed herein, a private letter ruling from the Service, and a waiver of enforcement action from the OCC.

Under the terms of the Agreement, the Corporation agrees to make an initial advance (the Initial Advance) in the amount of the sum of the following: (a) The total principal and interest payments due January 31 of 1992 and 1993 under the GIC, reduced by the amounts actually received by the Fund with respect to such payments, as of the date of the Initial Advance, from Mutual Benefit, any conservator, trustee or other person performing similar functions with respect to Mutual Benefit, and/or any state guaranty fund or other entity, other than the Corporation, acting as surety or insurer with respect to Mutual Benefit or otherwise paying Mutual Benefit's obligations (collectively, the GIC Payors); plus (b) Interest thereon after the dates due under the GIC through the date of the Initial Advance at a rate equal to the average annual short-term yield earned by the Fund's assets during that period (the Fund's Average Rate), not to exceed a rate of 9.15 percent.

Subsequent to the Initial Advance, the Corporation is obligated under the Agreement to make additional Advances to the Fund any time the GIC Payors fail to pay the Fund in full any payment of principal or interest when due under the GIC, in the amount of the unpaid portion of the payment due. The Agreement requires the Bank to promptly notify the Corporation of the Fund's failure to receive any payments in full when due under the GIC, and the Corporation is obligated to make the Advance required under the Agreement within three business days of such notice.

5. The Agreement also provides for the Repayments of the Advances, specifying that the Corporation shall have no recourse against the Fund, the Bank or any of their respective assets for repayment of any Advance except as specified therein. The Repayments are restricted to amounts paid with respect to the GIC by Mutual Benefit or any other GIC Payors (the GIC Proceeds). To the extent that the total GIC Proceeds exceed the sum of all Advances, such excess amounts shall remain in the Fund, and the Corporation shall have no rights to any such excess amounts. The Corporation will not charge or receive any interest on the Advances, and the total Repayments are limited to the total Advances under the Agreement. The Agreement provides that the Bank shall apply any GIC Proceeds received from the GIC Payors as follows: If GIC Proceeds are received at a time when a payment is due under the GIC terms, yet prior to an Advance with respect to such payment due, the GIC Proceeds shall be applied first to reduce the Corporation's obligation to make an Advance with respect to such payment due. If such GIC Proceeds received are in excess of the payment then due under the GIC terms, such excess shall be applied as a Repayment of the Advances previously made by the Corporation. If GIC Proceeds are received at a time when no GIC payment is due and unpaid, such GIC Proceeds shall be applied as Repayment of the Advances previously made by the Corporation.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

(1) The Fund will be relieved of risk and uncertainty with respect to payments due from Mutual Benefit under the GIC;

(2) The proposed transaction will enable the Fund to recover its principal investments in the GIC plus all interest due thereunder;

(3) In the Initial Advance, the Fund will receive the full amounts of principal and interest payments under the GIC for 1992 and 1993, which are past due, plus interest thereon at the Fund's Average Rate;

(4) The Fund will not pay any interest or other expenses with respect to the Advances; and

(5) The Repayments of the Advances by the Fund will not exceed the

[1] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

amounts actually received by the Fund from Mutual Benefit and other GIC Payors.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fletcher Printing Co. Profit Sharing Plan (the Plan), Located in Lakeland, Florida

[Application No. D–9065]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the new lease of office space (the Office) from the Plan to Fletcher Printing Co. (the Employer), a party in interest with respect to the Plan, effective on the date following the expiration date of the initial lease of the Office between these parties, provided:

(1) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party;

(2) That the new lease agreement is amended to provide that the rental rate under the new lease will be adjusted every five years to equal the greater of (a) the rent as automatically adjusted each year by the independent fiduciary name in 4, below, based on increases in the Consumer Price Index specified in the new lease, or (b) the fair market rental value of the Office as determined at that time by a qualified appraiser who is not related to the Employer or any of its principals or affiliates; and

(3) That the new lease has been approved by an independent fiduciary (the Independent Fiduciary) acting on behalf of the Plan who will also monitor the terms of the new lease and the exemption and enforce the Plan's rights with respect to the new lease.

Effective Date: If the proposed exemption is granted, the exemption will be effective September 25, 1992.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 18 participants as of April 7, 1992, and total assets of approximately $1,400,000 as of the same date. The persons having investment direction over the Plan assets affected by the transaction are the trustees of the Plan, Ralph L. Fletcher and Marguerite A. Fletcher, who are also members of the Plan's Advisory Committee. Ralph L. Fletcher is also the President, a Director, and the majority shareholder of the Employer.

2. The Office comprises 840 square feet of office space in a building (the Building) erected by the Plan in January 1981 and located at 1425 N. Broadway, Bartow, Polk County, Florida. The Building, the value of which represents aprpoximately 11% of the Plan's assets, was divided into three rentable offices: 840 square feet, 780 square feet, and 720 square feet, respectively. The Plan initially leased the Office to the Employer for an initial term of five years, which ended September 24, 1987, plus an additional five years, which ended September 24, 1992. In response to an exemption application filed by Ralph L. Fletcher, the Department granted an exemption covering the initial lease, including the five-year extension thereof (the Initial Lease): Prohibited Transaction Exemption 82–154 (PTE 82–154), 47 FR 42212 (September 24, 1982).[2] For the years 1984 through 1991, the Plan realized an average annual rate of return of 12.07% under the Initial Lease. It is represented that since the inception of the Initial Lease, the Employer has always paid its rent on time and otherwise complied with all of the terms and conditions of the Initial Lease and PTE 82–154. The remaining two offices in the Building were leased to unrelated parties.

3. William H. Loftin, S.I.O.R. (the Appraiser), president of Loftin Real Estate, Inc. in Lakeland, Florida, has appraised the fair market rental value of the Office on a triple-net basis as $8.50 per square foot as of June 22, 1992. The Appraiser states that in a triple-net basis the tenant pays for all maintenance inside the building, his own insurance, his prorata share of the taxes, utilities, and janitorial service, but that the landlord is responsible for all outside maintenance. The Appraiser represents that he has no personal interest or bias with respect to the Office, the Building, or the parties involved. The Appraiser states that he has 30 years experience as president of Loftin Real Estate, Inc., which engages in marketing, sales, and financing real estate, with specialization in industrial and commercial property.

4. The new lease has an initial term of five years, beginning September 25, 1992, and provides for the appointment of an Independent Fiduciary. Mr. Knowlton H. Shelnut, Jr. has been appointed to act as the Independent Fiduciary on behalf of the Plan with respect to the Plan's rights and obligations under the new lease, to insure compliance with all terms and conditions of the new lease, and to take any steps necessary to enforce the rights of the Plan thereunder. Paragraph 1(c) of the new lease specifies that the Independent Fiduciary shall be empowered to direct the Plan trustees with respect to this lease, including the Plan's rights thereunder and the enforcement of such rights, provided such directions are consistent with the terms of the Plan and the Act. The new lease contains two options to renew, each for an additional five-year period (10 additional years total),. subject to a determination by the Independent Fiduciary, in his sole discretion, that the proposed exercise of each renewal option is in the best interest of the Plan. Paragraph 4 of the new lease provides that if the Independent Fiduciary shall determine that any proposed extended term is not in the best interest of the Plan, then the lease shall automatically terminate at midnight on the last day of the lease term or current extended term, as the case may be.

5. The rent for the first 12 months of the initial term of the new lease equals $8.50 per square foot per year, the fair market rental value of the Office, as determined by the Appraiser. The rent for each subsequent 12 months under the new lease during its initial term and also during each extended term (see preceding paragraph) will be adjusted automatically by the Independent Fiduciary based on changes in the Consumer Price Index specified in the new lease. In no event will such adjustment be less than the rental determined as of the previous adjustment. The anticipated rate of return to the Plan under the new lease is approximately 13% per year, according to the applicant. The applicant represents that if the proposed exemption is granted, the new lease agreement will be amended to provide that the rental rate under the new lease will be adjusted every five years to equal the greater of (a) the rent as automatically adjusted by the Independent Fiduciary based on increases in the Consumer Price Index

[2] From July 1990 until approximately April 1, 1991, Mr. Fletcher engaged in another prohibited transaction not covered by PTE 82–154: the leasing from the Plan of land located at 612 S. Florida Avenue in Lakeland, Florida for the purpose of constructing a billboard on that land. Mr. Fletcher has filed Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with the Internal Revenue Service reporting the 1990 portion of this prohibited transaction and represents that he will file Form 5330 reporting the 1991 portion of this prohibited transaction to the IRS within 60 days of the date the Department concludes its action on the instant exemption application and will pay any excise taxes due within that period.

specified in the new lease, as described earlier in this paragraph, or (b) the fair market rental value of the Office as determined at that time by a qualified appraiser who is not related to the Employer.

6. The new lease is a "triple-net lease", requiring the Employer to pay for all costs, expenses and obligations relating to the Office during the term of the new lease (including any extended term), such as taxes, insurance, maintenance, repairs, utilities, telephone, cable television, garbage removal, and other services in connection with the Office. The Employer's prorata share of casualty insurance premiums and real property taxes paid by the Plan with respect to the Building will be the fraction determined by dividing the total floor area of the Office by the total floor area of the Building. The Employer is also required to maintain comprehensive general liability insurance with respect to the Office, naming the Plan and the Employer as insured, for at least $1,000,000 and in a form satisfactory to the Plan.

7. Mr. Knowlton H. Shelnut, Jr. (the Independent Fiduciary), confirms that he has agreed to serve as an independent fiduciary on behalf of the Plan with respect to the new lease. He states that he is an attorney at law licensed to practice in the State of Florida and that as part of his law practice, he has had extensive experience in the qualified retirement plan area since 1972 and with the Act since 1974, providing legal services in establishing, maintaining, and amending such qualified plans. He stated further that a substantial portion of his law practice is devoted to real estate law and that he has represented sellers, purchasers, and lenders in a substantial number of real estate transactions, including the sale, purchase, and financing of office buildings. Moreover, the Independent Fiduciary owns a professional office building in Lakeland, Polk County, Florida (the same county in which the Building is located) and has negotiated a number of office space leases, as an owner, as well as in his capacity as an attorney. The Independent Fiduciary states that through experience as both an office building owner and also a legal representative of real estate investors, he is generally familiar with the real estate market in Polk County, Florida, including that in Bartow, Polk County, Florida (where the Building is located). He represents that he understands and acknowledges his duties, responsibilities, and liabilities in acting as the Independent Fiduciary with respect to the Plan. The Independent Fiduciary also represents that he has no relationship whatever to any of the parties involved in the exemption transaction and that he does not represent and has never represented the Employer, the Plan, the applicant, or any of their relatives, affiliates, principals, or relatives of such principals.

8. The Independent Fiduciary states that he has reviewed the exemption application, the terms and provisions of the new lease, the Appraiser's determination of the current fair rental value of the Office, the terms and provisions of another lease in the Building to an unrelated party (the U.S. Government), and the pertinent provisions of the Plan. The Independent Fiduciary also represents that he has been advised of the terms and provisions of the remaining lease in the Building and that he is familiar with the Building. Based upon his review, he makes the following representations:

(a) In his opinion, the terms of the new lease compare very favorably with the terms of similar transactions between unrelated parties.

(b) In his opinion, the new lease is in the best interests of the Plan and its participants and beneficiaries. He states that he is familiar with the stable financial condition of the Employer, who has timely paid all required rent and otherwise complied with all of the terms and conditions of the Initial Lease during its ten year term (including its extended term). The Independent Fiduciary expresses the belief that it would be extremely difficult for the Plan to replace the Employer with another tenant willing to lease the Office under the same terms and conditions as set forth in the new lease.

(c) In his opinion, in light of the relatively small portion of the Plan's total assets involved in the new lease, the transaction will have no adverse effect upon the projected liquidity requirements of the Plan or upon the diversification of the Plan's assets and will comply with the Plan's investment objectives and policies.

(d) The Independent Fiduciary agrees to monitor the exemption transaction on behalf of the Plan, to ensure that the Employer fully performs and complies with all conditions required under the new lease, throughout the duration of the exemption transaction. In addition he agrees to take all appropriate actions to safeguard the interests of the plan with respect to the exemption transaction.

9. In summary, the applicant represents that the transaction satisfies the exemption criteria set forth in section 408(a) of the Act because:

(a) The rent for the first 12 months of the initial term of the new lease equals the fair market rental value of the Office, as determined by a qualified, independent appraiser;

(b) The rent for each subsequent 12 months under the new lease will be adjusted automatically by the Independent Fiduciary based on changes in the Consumer Price Index specified in the new lease, but in no event will the adjusted annual rent be less than the annual rent for the preceding 12 months; further, the rental rate under the new lease will be adjusted every five years to equal the greater of:

(i) The rent as automatically adjusted each year by the Independent Fiduciary based on increases in the Consumer Price Index specified in the new lease, as described above, or (ii) the fair market rental value of the Office as determined at that time by a qualified appraiser who is not related to the Employer or any of its principals or affiliates;

(c) The new lease requires the Employer to pay all expenses relating to the Office;

(d) The Employer is also required to maintain comprehensive general liability insurance and casualty insurance with respect to the office;

(e) The transaction involves only approximately 4% of the Plan's assets;

(f) The Independent Fiduciary has determined that the transaction is in the best interests of the Plan and its participants and beneficiaries; and

(g) The Independent Fiduciary has agreed to act on behalf of the Plan with respect to the Plan's rights and obligations under the new lease, to insure compliance with all terms and conditions of the new lease, and to take any steps necessary to enforce the rights of the Plan thereunder.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404

of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of March, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–7158 Filed 3–29–93; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 93–19; Exemption Application No. D–8469, et al.]

Grant of Individual Exemptions; Metropolitan Life Insurance Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Metropolitan Life Insurance Company (Metropolitan), Located In New York, NY

[Prohibited Transaction Exemption 93–19; Exemption Application No. D–8469]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective February 20, 1984, to the past and continued leasing by Metropolitan's Separate Account RE (Account RE), a pooled separate account sponsored by Metropolitan in which employee benefit plans (Plans) invest, of office space in Commerce Plaza, a commercial development located in Oakbrook, Illinois, to Metropolitan, provided that the terms and conditions of the transaction were and remain at least as favorable to Account RE as those available in similar transactions between unrelated parties.

Effective Date: February 20, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 5, 1993, at 58 FR 7253.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 219–7901. (This is not a toll-free number.)

Metropolitan Life Insurance Company (Met), Located in New York, NY

[Prohibited Transaction Exemption 93–20; Exemption Application No. D–7603]

Exemption

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Units of the Separate Account by Met

The restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the following transactions described below, if each of the conditions set forth in Section III is met.

(a) The purchase of Units of the Separate Account by Met, during the Start Up Period, in the event of net withdrawals from the Separate Account;

(b) The sale of Units by Met, during the Start Up Period, following any purchases described in Section I(a) above, in the event of net contributions to the Separate Account; and

(c) The purchase and sale of Units of the Separate Account by Met in the event of net withdrawals from the Separate Account or net contributions to the Separate Account, following the termination of the Start Up Period.

Section II—Exemption for Certain Transactions Involving Sales of Properties in the Separate Account and the Purchase of Met's Units of the Separate Account

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply

to the use of Available Cash in the Separate Account, or to the sale of Properties owned by the Separate Account, for the purpose of the Separate Account's purchasing Units held by Met in connection with a decrease in Met's participation in the Separate Account after the Trigger Point has been met or during the Wind Down of the Separate Account; provided that the conditions set forth in Section III are met.

Section III—General Conditions

The exemption is conditioned upon Met's adherence to the material facts and representations described in the Notice of Proposed Exemption (the Notice) as amended by this exemption and upon satisfaction of the following requirements:

(a) The decision to participate in the Separate Account by a plan, other than the Met Savings Plans, has been and will be made by Plan Fiduciaries who are unrelated to Met and its Affiliates;

(b) Each of the Properties in the Separate Account has been and will be valued at least annually by an independent appraiser;

(c) No Properties have been purchased for the Separate Account during the Start Up Period with plan contributions or monies other than Met's Seed Money or Available Cash after all of Met's Seed Money has been expended to acquire Properties, and neither Available Cash nor the proceeds from sales of Properties in the Separate Account have been used to redeem Met's Units during the Start Up Period;

(d) Prior to investment in the Separate Account by any plan, except as otherwise specified below in paragraph (d)(9) of this Section III, Met will furnish the Plan Fiduciaries with:

(1) Full disclosure concerning the investment guidelines, structure, manner of operation, administration of the Separate Account, the method of valuation applicable to the Units, and the method of valuation applicable to the assets of the Separate Account,

(2) A written description of potential conflicts of interest that may result from Met's acquisition, purchase, retention, redemption, or sale of Units in the Separate Account,

(3) The rules and procedures for withdrawal, transfer, redemption, distribution, and payout applicable throughout the term of the Separate Account to Met, to the Participating Plans in the Separate Account, and to individual participants of the Participating Plans,

(4) The expense and fee provisions of the Separate Account, (including but not limited to a description of any services rendered by Met, a schedule of fees for such services, and an estimate of the amount of fees paid by the Separate Account annually),

(5) A list of all assets in the Separate Account, as of the end of the most recent fiscal period of the Separate Account, and a list of the Properties which the Separate Account has bought or has sold within twelve months prior to the end of the most recent fiscal period of the Separate Account,

(6) The appropriate financial statements pertaining to the Separate Account, (including but not limited to the most recent audited annual report, an income statement, and a balance sheet),

(7) Copies of the most recent valuation statements for the Separate Account and copies of the most recent reports on the Separate Account that have been provided to Participating Plans,

(8) Any reasonably available information which Met believes to be necessary or which the Plan Fiduciaries reasonably request in order to determine whether any plan should acquire Units in the Separate Account, and

(9) A copy of the Notice, as it appeared in the **Federal Register**, was provided upon publication to Plan Fiduciaries for all Participating Plans which had been or were at that time invested in the Separate Account. The Plan Fiduciaries of all Participating Plans which have been invested or which were at the time invested in the Separate Account shall also receive upon publication of the grant a copy of such grant, as it appears in the **Federal Register**. If subsequent to the grant, any plans choose to invest in the Separate Account, such plans will be provided, at least thirty (30) days prior to the investment in the Separate Account by such plans, with copies of both the Notice and the grant, as such documents appeared upon publication in the **Federal Register**.

(e) Met periodically makes available information which Met reasonably believes to be necessary or which the Plan Fiduciaries reasonably request in order to determine whether any plan should buy, sell or continue to hold Units in the Separate Account.

(f) An Independent Fiduciary has been appointed coincident with the start of operations of the Separate Account. The Independent Fiduciary's responsibilities include but are not limited to:

(1) Reviewing and approving investment guidelines established by Met for the Separate Account and approving any changes to such guidelines;

(2) Monitoring the conformity of the Properties acquired for the Separate Account to the requirements of such guidelines;

(3) Reviewing and approving the valuation procedures for the Separate Account and approving changes in such procedures;

(4) Reviewing and approving the valuation of the Units in the Separate Account and of the Properties held in the Separate Account, as described in the Summary of Facts and Representations in the Notice;

(5) Approving the appointment of all independent appraisers retained by Met to perform periodic valuations of the Properties in the Separate Account;

(6) Requiring appraisals in addition to those normally conducted whenever the Independent Fiduciary believes that the characteristics of any of the Properties have changed materially, or with respect to any of the Properties, whenever it deems an additional appraisal to be necessary or appropriate in order to assure the correct valuation of the Separate Account;

(7) Reviewing the purchases and sales of Units by Met and the Participating Plans in the Separate Account to assure that the correct values of the Units and of the Separate Account are applied;

(8) Following the termination of the Start Up Period, determining the appropriate Trigger Point with respect to Met's ongoing ownership of Units, establishing a method to implement any changes in such Trigger Point, adjusting the percentage which serves as the Trigger Point, approving or requiring any reduction of Met's interest in the Separate Account, and approving the manner in which such reduction of Met's participation in the Separate Account in excess of the Trigger Point is to be effected;

(9) In the event the Trigger Point is reached, participating in the planning of any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, the guidelines to be followed in making such sales, and the approval of such sales, if in the opinion of the Independent Fiduciary, such sales are desirable at the Trigger Point to reduce Met's ownership of Units in the Separate Account or to facilitate the Wind Down;

(10) Supervising the operation of the Separate Account during the Wind Down;

(11) During the Wind Down, planning any program of sales of the assets of the Separate Account, including the selection of the Properties to be sold, the guidelines to be followed in making such sales, and approving the sale of the

Properties in the Separate Account, in the event of the termination of the Separate Account, if in the opinion of the Independent Fiduciary, such sales are desirable to facilitate the Wind Down; and

(12) Reviewing any other transactions or matters involving the Separate Account that are submitted to the Independent Fiduciary by Met and determining whether such transactions or matters are fair to the Separate Account and in the best interest of the Separate Account.

(g) The exemption is also subject to the condition that the following transactions involving the Separate Account have not occurred and will not occur:

(1) Participation by Met, any Affiliate of Met, Met's general account, or any other separate account over which Met has investment control in any joint venture with the Separate Account, or in the ownership of any of the Properties of the Separate Account, either alone or together with a joint venture partner.

(2) Lending of funds by Met's general account to the Separate Account in order to leverage any purchase of any of the Properties, or otherwise.

(3) Acquisition of any Properties from or sale of any Properties to Met's general account or any other separate account over which Met has investment control.

(h) Met must maintain for a period of six (6) years from the date of any transaction, the records necessary to enable the persons described in paragraph (i) of this section III to determine whether the conditions of this exemption have been met. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Met or its Affiliates, the records are lost or destroyed prior to the end of the six-year period, and no parties in interest, other than Met and its Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i) (1) Except as provided in subparagraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (h) of this Section III are unconditionally available at their customary location for examination during normal business hours by

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any Plan Fiduciary of a Participating Plan in the Separate Account who has authority to acquire or dispose of the interests of such Participating Plan, or any duly authorized employee or representative of such Plan Fiduciary,

(C) Any contributing employer to any Participating Plan in the Separate Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan in the Separate Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (i) shall be authorized to examine trade secrets of Met, any of its Affiliates, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) *Affiliate* of Met includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Met,

(2) Any officer, director or employee of Met, or of a person described above in paragraph (a)(1) of section IV, and

(3) Any partnership in which Met is a partner.

(b) *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) *Available Cash* means the income and other amounts received by the Separate Account from rents and other sources, such as temporary investments, that are not required to be held for projected expenses with respect to the Separate Account. Such term does not include net contributions from Participating Plans.

(d) *Independent Fiduciary* means a person who:

(1) Is not an Affiliate of Met, as defined in Section IV(a);

(2) Does not have an ownership interest in Met or its Affiliates, other than an interest acquired as the result of a policy of insurance or annuity contract or other generally available insurance product;

(3) Is not a corporation or partnership in which Met or any of its Affiliates has an ownership interest;

(4) Is not a fiduciary with respect to any Participating Plan in the Separate Account;

(5) Has acknowledged in writing acceptance of fiduciary responsibility; and

(6) Is either:

(i) A business organization which has at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience;

(ii) A committee comprised of three to five individuals who each have had at least five (5) years of experience with respect to commercial real estate investments or other appropriate experience, or

(iii) A committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (d)(1–5) of Section IV above.

For purposes of this definition, no organization or individual may serve as an Independent Fiduciary for the Separate Account for any fiscal year, if the gross income received from Met or its Affiliates by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the 5% limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an Independent Fiduciary. The income limitation will include services rendered to the Separate Account as Independent Fiduciary, as described in this exemption.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may:

(1) Acquire any property from, sell any property to, or borrow any funds from, Met, its Affiliates, or any separate account maintained by Met or its Affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an Independent Fiduciary; or

(2) Negotiate any such transaction, described above in paragraph (d)(1) of section IV during the period that such organization or individual serves as Independent Fiduciary.

No Plan Fiduciary or sponsor of a Participating Plan or a designee of such Plan Fiduciary, sponsor, or Participating

Plan may serve as the Independent Fiduciary with respect to the Separate Account.

(e) *Met Savings Plans* means the Metropolitan Savings and Investment Plan sponsored by Met and similar defined contribution plans sponsored by Met's subsidiaries.

(f) *Participating Plan* or *Participating Plans* means plans qualified pursuant to section 401(a) or 403(b) of the Code which may participate in ownerships of Units in the Separate Account and which are subject to section 406 of the Act and section 4975 of the Code.

(g) *Plan Fiduciary* or *Plan Fiduciaries* means the individual fiduciary or fiduciaries acting on behalf of each of the Participating Plans that invest in the Separate Account.

(h) *Properties* means the geographically dispersed small- to medium-sized retail and office buildings, light industrial facilities, and residential apartment space with good operating income (and such other properties that may be acquired pursuant to changes in the investment guidelines for the Separate Account that are approved by the Independent Fiduciary) which Met has acquired or will acquire on behalf of the Participating Plans that invest in the Separate Account.

(i) *Seed Money* means the total amount (not to exceed $100 million) actually contributed by Met to the Separate Account for the purpose of acquiring Properties.

(j) *Separate Account* means the real estate equity pooled separate account invested in by plans, as described herein.

(k) *Startup Period* means a period which began on December 21, 1988, the date on which Properties were first acquired by the Separate Account, and ended on the expiration of four year following the beginning of the Startup Period.

(l) *Trigger Point* means the point at which Met's ownership in the Separate Account will be decreased with the approval of or as required by the Independent Fiduciary. The Independent Fiduciary, acting on behalf of the Plans in the proposed transactions, sets the percentage of Met's ownership of Units in the Separate Account which serves as the Trigger Point. In this regard, the Trigger Point will arise only after the end of the Startup Period.

(m) *Units* means the units of interest into which equity participation in the Separate Account is divided.

(n) *Wind Down* means the period which begins on the date on which Met notifies all the Participating Plans in the Separate Account that it has decided to terminate the Separate Account and concludes on the date on which no Units are held by any of the Participating Plans.

The exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Effective Date: This exemption is effective on September 21, 1989, the first date a transaction described in Section I(a) herein occurred.

Written Comments

In the Notice, the Department invited interested persons to submit written comments and any requests for a hearing on the proposed exemption within forty-five (45) days of the date of publication of the Notice in the **Federal Register**. 58 FR 354, January 5, 1993. All comments and requests for hearing were due by February 19, 1993.

The Department received no requests for hearing. However, the Department did receive one written comment with respect to the Notice from the applicant, Met. Met's comment requests certain modifications and clarifications of the conditions of the exemption contained in section III and the definitions contained in section IV. Met also requests certain corrections of the language of the Summary of Facts and Representation of the Notice.

Met requests modification of the language in section III(c) which provides, in part that, "No Properties have been or will be purchased for the Separate Account during the Start Up Period with plan contributions or monies other than Met's Seed Money * * *." Met suggests adding after the words, "Seed Money," the phrase, "or Available Cash after all of Met's Seed Money has been expended to acquire Properties." Met states that this change is necessary to conform the language of the condition to the actual operation of the Separate Account. It is represented that during the Start Up Period, the purchase price of the last of the Properties acquired by Met for the Separate Account exceeded by a small amount the remaining Seed Money available for purchases. In order to close the sale, Met supplemented the amount remaining in Seed Money with cash from the accumulated income from the operations of the Separate Account. Met states that this action was acceptable, as Available Cash is an appropriate source of funds for the Separate Account to use to acquire Properties. The Department has no objection to Met's proposed modification, and accordingly, has amended the language of section III(c).

Met requests clarification of the requirement in section III(d)(5), that prior to the investment by any plan in the Separate Account, such plan be provided with a list of all the assets in the Separate Account, as of the end of the most recent fiscal period. Met points out that statements prepared at the end of each month do not provide a specific listing of the actual short-term or temporary investments held by the Separate Account. It is the view of the Department that an aggregate list of short-term or temporary investments on statements of assets for the Separate Account, will satisfy the condition set forth in section III(d)(5).

Met requests modification of the requirement of section III(d)(7), that copies of the most recent monthly reports on the Separate Account and the most recent monthly reviews and the quarterly updates of the valuation of the Separate Account, including a list of the holdings of the Separate Account during the periods, be disclosed to any plan prior to its investment in the Separate Account. Met states that because the monthly reviews and quarterly updates are internal working documents it is not necessary or appropriate for this information to be provided Participating Plans on a regular basis. Further, Met notes that the list of holdings of the Separate Account are already required under section III(d)(5). A substitute condition in section III(d)(7), Met suggests the following, "copies of the most recent valuation statements for the Separate Account and copies of the most recent reports on the Separate Account that have been provided to Participating Plans." The Department concurs with Met's request and has amended the language of section III(d)(7).

Met requests modification of the definition of "Independent Fiduciary," as set forth in section IV(d)(2), which prohibits the Independent Fiduciary from having an ownership interest in Met or its affiliates. Because Met is a mutual life insurance company that offers various types of individual and group insurance policies, Met is concerned that this definition would preclude an "ownership interest" acquired by the Independent Fiduciary as a Met policyholder. In order to avoid such a result, Met proposes that the phrase, "other than an interest acquired as the result of a policy of insurance or annuity contract or other generally available insurance product," be incorporated into the language of the definition. The Department concurs and

has amended the language of section IV(d)(2).

Met requests modification of the language of section IV(d)(4) which states that the Independent Fiduciary may not also serve as a fiduciary of a Participating Plan. Met believes it is quite possible that an Independent Fiduciary may have, or may obtain, other advisory or asset management relationships with a Participating Plan that affect assets other than those invested in the Separate Account. Met believes that these other relationships should not affect the ability of a firm or individual to serve as Independent Fiduciary.

The Department notes that one of the most important safeguards that can be built into transactions of this type is the appointment of the Independent Fiduciary who can objectively act on behalf of all the Participating Plans and who is otherwise independent of all the parties involved. The Department does not believe that Met's proposed modification is consistent with the Department's concept of an Independent Fiduciary under these circumstances and, accordingly, has determined not to revise the exemption in this regard.

Met proposes modification of section IV(g) which defines "Plan Fiduciary or Plan Fiduciaries," as the individual fiduciary or fiduciaries acting on behalf of each of the Participating Plans that invest in the Separate Account. Met, in its comment, proposes to modify the definition by deleting the words, "that invest in the Separate Account," and adding to the end of the definition the phrase, "with respect to their investment or participation in the Separate Account." For reasons stated above with respect to the proposed modification of section IV(d)(4), the Department does not believe that section IV(g) should be modified.

Met requests clarification of the definition of "Participating Plan," as set forth in section IV(f), and the definition of "Separate Account," as set forth in section IV(j), which indicate that plans that participate in the ownership of Units in the Separate Account are qualified pursuant to section 401(a) or 403(b) of the Code and are subject to section 406 of the Act and 4975 of the Code. Met is concerned that these definitions will be read to limit the types of plans that will be permitted to participate in the Separate Account. In this regard, it is the view of the Department that these definitions should not be read to preclude other plans not covered by the Act or the Code, such as government plans, from investing in the Separate Account.

Met requests that the definition of "Properties" in section IV(h) be amended to eliminate the reference to a specific $15 million dollar limitation on the purchase price of any of the Properties and to permit flexibility in the selection of appropriate Properties for the Separate Account, pursuant to future alterations in the investment guidelines for the Separate Account that are approved by the Independent Fiduciary. The Department concurs with Met. Accordingly, the Department has deleted specific reference to the $15 million dollar limitation in the definition. The Department also has modified the definition to make clear that the Separate Account may acquire other properties so long as there are changes in the investment guidelines for the Separate Account that are approved by the Independent Fiduciary.

Met requests modification of the language in the third sentence of the second subparagraph of Paragraph #7, of the Notice which states that Annual Appraisals are to be prepared by an independent qualified appraiser each year "on the anniversary date" of purchase for each of the Properties in the Separate Account. Met would prefer that Annual Appraisals be prepared at any time during the month in which the anniversary date of purchase occurs. In this way, Met suggests that the independent appraiser would have more latitude within which to prepare his report. In the view of the Department, the language in the second subparagraph of Paragraph #7 was not intended to unduly hamper the independent appraiser. However, we also believe that valuations as of the "anniversary date of purchase" provides a consistent bench mark each year. Accordingly, we concur with Met's request for flexibility, and therefore, are of the view that each of the Properties may be appraised at any time during the month of the anniversary date as long as the appraisal reflects the value of the Property on the anniversary date.

Met also requests modification of the language of the first sentence in the second subparagraph of Paragraph #5 which states that in the event of an increase beyond the Trigger Point through liquidity purchases of Units by Met from the Separate Account, Met "proposes to reduce its percentage ownership in the Separate Account," through various stated methods. Met further states that similar language is contained in the last sentence of the second subparagraph of Paragraph #11. Met believes this language implies that it automatically would begin a program to reduce its ownership of Units, as soon as its percentage ownership exceeds the Trigger Point after the completion of the Start-Up Period.

Met is of the view that these representations overstate the actions that are required under the exemption after the Trigger Point has been reached. It is Met's belief that once the Trigger Point is exceeded after the Start Up Period, Met is required to provide the Independent Fiduciary its recommendations as to what actions, if any, should be taken to reduce the level of Met's participation in the Separate Account. Thereafter, no action would be taken with regard to reduction without the approval of the Independent Fiduciary. Accordingly, Met requests that the language of Paragraphs #5 and #11 be replaced by the phrase, "Met will provide a recommendation to the Independent Fiduciary regarding whether its percentage of ownership in the Separate Account should be reduced."

The Department does not agree with Met's interpretation of the relevant language of Paragraphs #5 and #11. Nor does the Department believe such interpretation is consistent with prior representations of Met and the Independent Fiduciary as summarized in those paragraphs. In the Department's view, the proposed modification suggests that once the Trigger Point has been exceeded, the Independent Fiduciary may act only after a recommendation by Met. Further, the proposed modification suggests that such recommendation by Met need not involve a plan to reduce its holdings in the Separate Account.

It is the view of the Department, consistent with prior representations of Met and the Independent Fiduciary, that once the Trigger Point is reached, it is the responsibility of the Independent Fiduciary to take action on behalf of the Separate Account, regardless of whether Met offers or fails to offer specific recommendations. Once having determined that a reduction of Met's ownership in the Separate Account is in the interest of the Participating Plans, the Independent Fiduciary would have the further responsibility to decide the appropriate method by which such reduction would be accomplished. According to the representations of the applicant, Met's ownership in the Separate Account can be reduced either by using Available Cash in the Separate Account to purchase Met's Units or by selling Properties in the Separate Account to obtain cash proceeds for the same purpose. It is the obligation of the Independent Fiduciary to choose between these two alternatives. If, on the other hand, once the Trigger Point has been reached, the Independent

Fiduciary determines that it is not in the interest of the Separate Account to use Available Cash or to sell Properties to reduce Met's ownership, then it is within the discretion of the Independent Fiduciary to decide to maintain the status quo with respect to Met's ownership in the Separate Account. In the event the Independent Fiduciary makes such a decision, the Independent Fiduciary has within its discretion, under the exemption, the ability to adjust or raise the level of the Trigger Point.

With respect to further modifications of the language of the Summary of Facts and Representations in the Notice, as published in the **Federal Register**, the Department concurs with the following:

(a) In footnote 3, the Department recognizes that as of June 1991, the General Account of Met had contributed Seed Money in the amount of $100,000,000 to the Separate Account, and that the word "approximately" should be deleted;

(b) The Department acknowledges in the second sentence of the third subparagraph of paragraph #14, that Landauer Associates, Inc. has five rather than seven fully-staffed offices in the United States providing professional real estate counseling services nationwide;

(c) In the last subparagraph of Paragraph #16, the Department acknowledges that the investment guidelines of the Separate Account were established by Met, but were subject to the approval of the Independent Fiduciary; and

(d) In the last sentence of the third subparagraph of Paragraph #7, the Department notes that the words, "quarterly updates," should be inserted after the phrase, "Met's annual appraisals."

Finally, two typographical corrections were made in the Notice, as published in the **Federal Register**. First, in the table in the fifth subparagraph of Paragraph #18, the date in item 4 should be February, 1992, rather than 1991. Second, a phrase inadvertently omitted from the fifth and sixth sentences of the last subparagraph of Paragraph #12 in the Notice should be restored. The two sentences should read as follows:

During the Wind Down period in order to provide further flexibility for Participating Plans, the Separate Account provides that any Participating Plan may elect to defer redemption with respect to its Units in the Separate Account and maintain its participation in the Separate Account until the end. It is anticipated that the final distribution of money in the Separate Account to the Participating Plans who choose to remain will occur only after all the Properties have been sold.

After giving full consideration to the entire record, including the written comment from Met, the Department has decided to grant the exemption.

All comments submitted to the Department are included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on January 5, 1993, at 58 FR 354.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Digital Wizards, Inc., Profit Sharing Plan (the Plan), Located in San Diego, California

[Prohibited Transaction Exemption 93–21; Exemption Application No. D–9012]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain limited partnership interests (the Property) by the Plan to Digital Wizards, Inc., the sponsoring employer and a party in interest with respect to the Plan, provided that: (1) The Plan incurred no fees, commissions, or other expenses in connection with the Sale, and (2) the Plan received as consideration from the Sale no less than the fair market value of the Property as determined by a qualified, independent securities broker/dealer, as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1993, at 58 FR 5028.

Effective Date: This exemption is effective as of July 1, 1991.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This nis not a toll-free number.)

The Retirement Income Plan for Employees of the Colonial Williamsburg Foundation (the Plan), Located in Williamsburg, Virginia

[Prohibited Transaction Exemption 93–22; Exemption Application No. D–9055]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain parcels of real property (the Property) to the Colonial Williamsburg Foundation, a party in interest with respect to the Plan, provided that: (a) The Plan receives not less than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, and (b) the Plan will not incur any expenses incident to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 5, 1993, at 58 FR 7252.

Written Comment: The Department received one written comment in response to the proposed exemption. The comment dealt with spousal retirement benefits rather than the merits of the proposed transaction. Accordingly, the Department has determined to grant the exemption as it was proposed.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

ELK Promotions, Inc. Pension Plan (the Plan), Located in Worthington, Ohio

[Exemption No. 93–23; Exemption Application No. D–9061]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of its interests in certain notes (collectively, the Notes) to Fred N. Egelhoff, Jr. (Egelhoff), a party in interest with respect to the Plan, provided that:

(a) The Plan receives a price equal to the greater of the outstanding balance of the Notes plus any accrued interest, or the fair market value of the Notes as determined by an independent, qualified appraiser;

(b) The sale will be a one-time sale for cash; and

(c) The Plan will pay no fees in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant the exemption, refer to the notice of proposed exemption (the Notice) published on February 5, 1993 at 58 FR 7251.

Written Comments: The applicant submitted the following clarification with respect to the Notice: The correct address of Cedarwood apartments of Belpre II, Ltd., is Belpre, Ohio in lieu of 431 East Broad Street, Columbus, Ohio. The Department concurs with the aforementioned clarification. Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 24th day of March, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–7159 Filed 3–29–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–025]

NASA Advisory Council (NAC) Task Force on National Facilities; Space R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Space R&D Facilities Task Group.

DATES: April 7, 1993, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC 5, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. John Mankins, Code C National Aeronautics and Space Administration, Washington, DC 20546–0001 (202/453–2739).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Discussion of Terms of Reference, Future Plans and Actions

—Review of Previous Department of Defense Facilities Studies

—Review of Previous Department of Energy Facilities Studies

—Review of Working Group Charter and Membership

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

John W. Gaff,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 93–7230 Filed 3–29–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–026]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: April 22, 1993, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 6H46A, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864–8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 24, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–7231 Filed 3–29–93; 8:45 am]

BILLING CODE 7510–01–M

Request for Comments on Increasing Contractor Liability on Research and Development Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: Public Law 102–588 requires that NASA carry out an assessment of the allocation of risk between NASA and its contractors for research and development contracts in order to identify options for allocating risk for correction of defects in materials and workmanship or other failures to conform to contract requirements.

The genesis of the Congressional concern is the perception that contractors may not be accepting

sufficient responsibility for the consequences of their actions. Congressional interest was heightened by some well-publicized shortfalls on some major NASA programs. The discussion below covers one option being considered for increasing contractor liability. Public comment is requested on the validity of the approach.

If the option below is selected for implementation, the proposed rule will be published for public comment prior to implementation.

DATES: Comments are due on or before April 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, Procurement Policy Division, (202) 358–0431.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Acquisition Regulation, the Government currently assumes the total responsibility for all costs under cost type contracts except in cases of fraud, willful misconduct, lack of good faith on the part of the contractor's senior management, or where the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified. This concept is utilized in the inspection and acceptance clauses for cost type contracts for supplies and R&D (See paragraph (h), FAR 52.246–3 and –8).

After initial review of potential approaches to increasing contractor liability, several tenets became clear. The first was that we are not trying to penalize the contractor for failure to successfully accomplish research and development (R&D). The inherent riskiness of R&D is recognized, and it is unrealistic to require a contractor to guarantee its success. The contractor is normally rewarded or penalized for end item performance on research and development through the use of award fees or incentive fees. Second, it was recognized that in all cost type contracts, even R&D, there are routine tasks for which the contractor could be held to a higher level of responsibility. These routine tasks include such things as moving and handling pieces of gear, machine shop operations, and packing and packaging of equipment. A third tenent was that NASA should not pay the cost of insurance either directly or indirectly for the additional risk that a contractor would incur by assuming a higher level of responsibility. This would not shift responsibility to contractors but merely change the vehicle for paying for the corrections. Finally, realistic bounds should be placed on the contractor's liability. For example, a contractor could not be expected to agree to a test contract for $100,000 if as part of the contract he assumed total responsibility for a $500M piece of Government equipment.

Based upon these tenets, an approach was developed which increases contractor liability for the manner in which the effort under the contract is accomplished. The following principles would be incorporated into the current inspection and acceptance clauses referenced above:

a. The clause would impose liabilities on the Contractor for failure to comply with the requirements of the contract. The liabilities imposed are above and beyond those currently imposed. Failures include the delivery of defective supplies or services.

b. In agreeing to the liabilities imposed, the parties recognize that the Contractor is required to perform a variety of tasks, some of which involve research and development efforts, the success of which cannot be reasonably predicted, others which involve more routine operations subject to well-defined and generally accepted industrial practices. The Contractor will not be liable if, despite best efforts, the Contractor fails to achieve the contract's objectives of research and development, the success of which could not reasonably be predicted at the time of award.

c. The Contractor will not be liable for losses which occur in routine operations if the Contractor has adopted and its employees were following generally accepted industrial practices for the activities in question. The Contractor shall have the burden of demonstrating to the Contracting Officer's satisfaction that liability should not attach under this clause.

d. The Contractor will be fully liable for failure to comply with the requirements of this contract in accordance with paragraph (h) of the inspection and acceptance clauses cited above. In addition, the Contractor shall be liable for any failure to comply with the requirements of this contract as specified below.

e. No additional liability would be imposed beyond that imposed by other clauses of this contract if the Contractor can demonstrate to the Contracting Officer by clear and convincing evidence that the Contractor failed, despite best efforts, to achieve research and development objectives of this contract, the outcome of which could not have been reasonably predicted at the time of award, or that the failure occurred notwithstanding that the Contractor had adopted and its employees were following generally accepted industrial practices at the time of the failure to comply with the requirements of the contract.

f. If the Contracting Officer determines that the Contractor is liable under this clause, the Contractor shall be responsible for the lesser of either of the following:

(1) 50 percent of the cost to rectify any failure to comply with the requirements of this contract; or

(2) 10 percent of the contract value at the time the failure occurred.

g. The cost of insurance to cover potential liabilities imposed by this clause shall not be an allowable cost under this contract.

h. These concepts would be used in fairly high dollar value cost type R&D contracts; it is currently assumed the threshold dollar value would be $50M.

Deidre A. Lee,

Associate Administrator for Procurement.

[FR Doc. 93–7277 Filed 3–29–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed

meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 20, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after October 1, 1993.
2. *Date:* April 27, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Special Opportunity in Foreign Language Education (Higher Education), submitted to the Division of Education Programs, for projects beginning after October 1, 1993.
3. *Date:* April 28, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after October 1, 1993.
4. *Date:* April 29, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Special Opportunity in Foreign Language Education (Mixed), submitted to the Division of Education Programs, for projects beginning after October 1, 1993.
5. *Date:* April 29–30, 1993
   Time: 9 a.m. to 5:30 p.m.
   Room: 430
   Program: This meeting will review applications in Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs, for projects beginning after October 1, 1993.
6. *Date:* April 30, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Special Opportunity in Foreign Language Education (Elementary and Secondary), submitted to the Division of Education Programs, for projects beginning after October 1, 1993.
7. *Date:* April 30, 1993
   Time: 9 a.m. to 5:30 p.m.
   Room: M–14
   Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1994 in the field of History, submitted to the Division of Fellowships and Seminars, for projects beginning after June, 1994.

David C. Fisher, Jr.,

Advisory Committee Management Officer.

[FR Doc. 93–7183 Filed 3–29–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Blue Ribbon Panel on High Performance Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L: 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Blue Ribbon Panel on High Performance Computing.

Date and Time: April 17, 1993; 8:30 a.m. to 5 p.m.; and April 18, 1993; 8:30 a.m. to 2:30 p.m.

Place: Room 540, 1800 G Street, NW., Washington, DC 20550. Because access to the building is restricted on weekends, persons wishing to attend this meeting must call the contact person before 3 p.m., Thursday, April 15, 1993 to arrange for entrance.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7936.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To discuss and analyze previously gathered data; develop draft report with recommendations to the National Science Board on NSF's possible future role in supercomputing.

Agenda: Discuss and draft final report.

Dated: March 25, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7298 Filed 3–29–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: April 15 and 16, 1993; 9:30 a.m.–5 p.m., Thursday April 15; and 8:45 a.m.–12 Noon, Friday April 16.

Place: National Science Foundation, 1800 "G" Street, NW., room 540, Washington, DC 20550.

Type of Meeting: Open.

Contract Person: Dr. William S. Butcher, Advisory Committee for Engineering, room 1126, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9571.

Minutes: Dr. William S. Butcher at the above address.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: March 25, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7297 Filed 3–29–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295]

Commonwealth Edison Co.; Zion Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Section III.D.1.(a) of appendix J to 10 CFR part 50 to Commonwealth Edison Company (the licensee), for the Zion Nuclear Power Station, Unit 1, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from section III.D.1.(a) of appendix J to 10 CFR part 50, which requires a set of three Type A tests (Containment Integrated Leakage Rate Test or CILRT) to be performed at approximately equal intervals during each 10-year service period and specifies that the third test of each set shall be conducted when the plant is shut down for the 10-year plant inservice inspections (ISI). The licensee's request is for a one-time exemption that will allow the third Type A test of the current 10-year service period to be performed, independent of the current 10-year

service period and the 10-year plant ISI, during a refueling outage in September 1995, approximately 43 months after the last one. Without the exemption the licensee would be required to perform the next Type A test during a refueling outage in October 1993, when the plant is shut down for the 10-year plant ISI, which means the last two Type A tests of the second 10-year service period would be performed 19 months apart.

The exemption is in response to the licensee's application for exemption dated January 12, 1993.

The Need for the Proposed Action

The proposed exemption is needed because the requirements of 10 CFR part 50, appendix J, and the licensee's current refueling outage schedule, would require the third CILRT for the second 10-year service period to be performed when Unit 1 is shut down for the refueling outage in October 1993—which also is the 10-year plant ISI. This circumstance has arisen partially because NRC staff concerns with the validity of the test results from the second and third Type A tests of the first 10-year service period led the licensee to perform a fourth test for the first 10-year service period on July 7, 1984, approximately eight months into the second 10-year service period. The first test of the second service period was performed in March 1988, 43 months after the last test and 51 months into the service period. The second test was not performed until 48 months later due to a 29 month fuel cycle which resulted from two major forced outages in which the unit was down for a total of 265 days. Without this exemption, the licensee would be required to perform the third CILRT during the October 1993 refueling outage, 19 months after the second Type A test.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected primary containment leakage and that containment integrity would, thus, be maintained. Although the requirements in Section III.D.1.(a) that three Type A tests be performed in each 10-year service period and that the third test be conducted when the unit is shut down for the 10-year plant ISI would not be met, performing the third Type A test of the second 10-year service period approximately 43 months after the last one would meet the intent to perform the tests at approximately equal intervals of about a third of a 10-year service period, to ensure containment integrity. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission's staff concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility and would not meet the intent of the rule to perform CILRT at approximately equal intervals during each 10-year service period.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated January 12, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC and at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 23rd day of March 1993.

For the Nuclear Regulatory Commission.

James E. Dyer,

Director, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7285 Filed 3–29–93; 8:45 am]

BILLING CODE 7590–01–M

Kerr-McGee Corp.; Cushing Refinery Site; Environmental Assessment, Finding of No Significant Impact, and Opportunity for a Hearing

[Docket No. 70–3073]

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a Special Nuclear Material (SNM) License No. SNM–1999 for Kerr-McGee Corporation (Kerr-McGee) to possess uranium and thorium at the former Cushing Refinery Site (Cushing Site). The uranium and thorium currently exists at the Cushing Site in the form of contaminated soil, sludge, sediment, trash, building rubble, and on building surfaces.

Introduction

Kerr-McGee submitted an SNM license application (application) on October 17, 1991, a revised application on September 25, 1992, and supplements on December 18, 1992, January 14, 1993, and February 23, 1993, to possess uranium and thorium at the Cushing Site. Kerr-McGee proposes to possess the licensed material during preliminary remediation activities in preparation for the decommissioning of the Cushing Site.

The Cushing Site is located halfway between Oklahoma City and Tulsa, two miles north of State Highway 18 and a half mile east of Deep Rock Road. Under Atomic Energy Commission (AEC) licenses SNM–695 and SMB–664, Kerr-McGee chemically processed enriched, normal, and depleted uranium and natural thorium at the Cushing Site from 1962 through 1966. The licensed activities were conducted on a Kerr-McGee owned site, approximately 400 acres in size, that was also the location of a Kerr-McGee oil refinery operation. Materials were received in the form of UF_6, mill concentrates, unirradiated scrap fuel elements, and various other chemical compounds. The licensee converted uranium to other compounds suitable for use in the nuclear fuel cycle and produced metal alloys of uranium and thorium.

In 1966, the site was decommissioned in accordance with practices at the time and the license was terminated. Between 1972 and 1982, Kerr-McGee further decontaminated the site by shipping the more highly radioactive materials off site, and disposing of unknown quantities of contaminated soils and trash in an existing refinery sludge pit (Pit 4), in trenches located in the northeast corner of the site, and in inactive tank berms in the northwest portion of the site. The contaminated soil land trash disposed of on the Cushing Site remain at the original disposal locations in concentrations exceeding Option 1 of the Branch Technical Position (BTP) on "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations" (46 FR 52061). There are also areas of contamination, exceeding BTP Option 1 limits, around and under the former uranium processing building and in the soils and sediments of Skull Creek, which was a discharge point for effluent from the uranium processing facility.

Proposed Action

The primary purpose for issuing SNM–1999, is to authorize the possession of the uranium and thorium on the Cushing Site. The license covers all uranium and thorium that exists at the site in concentrations and surface contamination levels that exceed natural background. Kerr-McGee proposes to possess the licensed materials during preliminary remediation activities.

The proposed preliminary remediation activities are intended to: (1) Identify all areas on the Cushing Site that contain uranium and thorium in concentration levels above natural background, (2) excavate from the identified areas those materials that contain radioactivity in excess of NRC unrestricted release limits, and (3) consolidate the excavated material at designated temporary storage areas located on the Cushing Site or ship the material to a licensed low-level waste disposal facility. The proposed final disposition of the uranium and thorium to be consolidated in the temporary storage areas will be described in a decommissioning plan, which Kerr-McGee has committed to submit at later date. The decommissioning plan will describe the proposed procedures for completing the decommissioning and releasing the Cushing Site for unrestricted use.

The Need for Proposed Action

Uranium and thorium exist on the Cushing Site in concentration and surface contamination levels that potentially pose a long term risk to the public health and safety. Uranium and thorium have been identified in concentrations up to 968 pCi/g and 279 pCi/g, respectively. Also, exposure rates in excess of 500 uR/hr have been identified at limited areas on the Cushing Site. The issuance of SNM–1999 will ensure that the contamination at the Cushing Site will be possessed in accordance with NRC regulations, and that the contamination will be reduced to levels that pose acceptably low risks to public health and safety, thereby allowing the release of the Cushing Site for unrestricted use.

Alternatives to Proposed Action

There are no alternatives to the proposed action. The Code of Federal Regulations, 10 CFR 70.20, requires a specific SNM license to possess, use, or transfer SNM.

Environmental Impacts of Proposed Action

The activities that the staff proposes to authorize through the issuance of SNM–1999 are expected to have an insignificant impact on the environment. In fact, the activities are anticipated to improve environmental conditions through the identification and consolidation of the contaminated material on the Cushing Site into known, controlled locations. Contamination currently exists at locations and in concentrations that are not known with certainty. The consolidation and control of the contaminated material should reduce the potential for the release of the material to the environment. In addition, the areas from which contamination will be removed will eventually be available for unrestricted use.

During the proposed activities, the primary impact on the environment would be the release of airborne radioactivity during excavation and handling of contaminated materials. Using methods described in NUREG/CR–1759, Vol. 3, "Data Base for Radioactive Waste Management, Impact Analysis Methodology Report," November 1981, the staff estimated that the concentration of airborne radioactivity generated during excavation and handling of contaminated material should be on the order of 4E–14 uCi/ml. This airborne concentration is two percent of the unrestricted release limit for natural thorium listed in appendix B, table II to 10 CFR part 20 (i.e, 2E–12 uCi/ml). The limit for natural thorium is used since it is the most conservative limit applicable to the Cushing site.

The estimated airborne radioactivity applies to the immediate area where the materials are being handled and does not account for the dust suppression measures Kerr-McGee has committed to employ to keep exposure to airborne radioactivity as low as is reasonably achievable (ALARA). In addition, the concentration of airborne radioactivity should decrease as the material is dispersed in the atmosphere enroute to unrestricted areas or areas where members of the public reside. However, the staff conservatively estimated the dose to a member of the public from the proposed action to be 25 mrem, assuming that a member of the public is exposed to the full 4E–14 uCi/ml of airborne radioactivity. The 4E–14 uCi/ml estimated airborne concentration also applies to workers, and is 0.07 percent of the occupational maximum permissible concentration (MPC) listed in appendix B, table I to 10 CFR part 20.

The proposed action is not anticipated to result in the release of non-radiological hazardous material to the environment. However, thorium is known to exist in one of the five pits on the Cushing Site, i.e., Pit 4, that contains acidic, oily sludge that resulted from the refinery operation on the site. Kerr-McGee has entered into a consent Order with the State of Oklahoma, No. C–90–91–H, to perform a remedial investigation/feasibility study for the five oily sludge pits, including Pit 4. The proposed action does not authorize any activity involving the thorium contaminated acidic sludge in Pit 4. The staff expects Kerr-McGee to submit a license amendment request, at some time in the future, requesting approval to remediate the thorium contaminated sludge. The potential environmental impact of non-radiological material will require additional consideration at that time.

The proposed action will entail transportation of low-level radioactive waste to a licensed disposal facility. Methods to assess the radiological impacts of transportation for routes of similar length and nature as may be used in the proposed action, are described in NUREG–0170, "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," December 1975. Using the methods and assumptions in NUREG–0170, the population dose resulting from the transportation of waste estimated to be generated during the proposed action is conservatively estimated as 1.04 person-rem, and the maximum individual dose, to a member of the public, is estimated to be less than .002 mrem

The proposed action would result in the irreversible use of energy resources during excavation and handling of contaminated material and transporting of wastes to a licensed disposal facility. A small amount of land at the low-level waste facility would be irreversibly committed for waste disposal. There are no reasonable alternatives to these resource uses and there are no unresolved conflicts concerning alternative uses of available resources.

Agencies and Persons Consulted

This environmental assessment (EA) was prepared entirely by NRC staff. No other sources were used beyond those referenced in this EA.

Conclusions

The environmental impacts from the proposed action are expected to be insignificant. The primary effluent anticipated from the operation (i.e., airborne radioactivity) is conservatively predicted to be released, to unrestricted areas, in concentrations that are approximately 2 percent of unrestricted release limits in appendix B, table 2 of 10 CFR part 20. The impacts, from non-radiological materials, and the transportation and disposal of radioactive materials are expected to be minor.

Finding of No Significant Impact

The Commission has prepared an EA related to the issuance of SNM–1999. On the basis of the EA, the Commission has concluded this licensing action would not significantly affect the environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room in the Gelman Building, 2120 L Street NW., Washington, DC 20037.

Opportunity for a Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The licensee, Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, OK 73125;

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 23rd day of March, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 93–7286 Filed 3–29–93; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A93–14; Order No. 969]

In the Matter of: Winchester, Texas 78964 (David Mitschke, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: George W. Haley, Chairman; John W. Crutcher; W. H. "Trey" LeBlanc III; H. Edward Quick, Jr., and Wayne A. Schley.

Issued March 24, 1993.

Docket Number: A93–14.
Name of Affected Post Office: Winchester, Texas 78964.
Name(s) of Petitioner(s): David Mitschke.
Type of Determination: Closing.
Date of Filing of Appeal Papers: March 22, 1993.
Categories of Issues Apparently Raised: 1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders: (A) The record in this appeal shall be filed on or before April 6, 1993.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

March 22, 1993—Filing of Petition.
March 24, 1993—Notice and Order of Filing of Appeal.
April 16, 1993—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
April 26, 1993—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
May 17, 1993—Postal Service Answering Brief (see 39 CFR 3001.115(c)).
June 1, 1993—Petitioner's Reply Brief should Petitioner choose to file one (see 39 CFR 3001.115(d)).
June 28, 1993—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).

July 20, 1993—Expiration of 120-day decisional schedule (see 39 U.S.C. § 404(b)(5)).

[FR Doc. 93-7212 Filed 3-29-93; 8:45 am]
BILLING CODE 7710-FW-P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, April 13-14 1993, at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The Full Commission will convene on both days at 9 a.m. in Executive Chambers 1, 2 and 3.

The meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 93-6115 Filed 3-29-93; 8:45 am]
BILLING CODE 6820-BW-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Availability for Work.

(2) *Form(s) submitted:* UI-38, UI-38s, and ID-8k.

(3) *OMB Number:* 3220-0164.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, Non-profit institutions.

(8) *Estimated annual number of respondents:* 14,900.

(9) *Total annual responses:* 14,900.

(10) *Average time per response:* .14396 hours.

(11) *Total annual reporting hours:* 2,145.

(12) *Collection description:* Under section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work. The collection obtains information needed by the RRB to determine whether a claimant is willing and ready to work.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93-7178 Filed 3-29-93; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32041; File No. SR-NASD-93-12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Quantitative Designation and Maintenance Criteria for Nasdaq National Market System ("Nasdaq NMS") Securities

March 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD subsequently filed on March 22, 1993, Amendment No. 1 to the filing which clarifies and further explains the NASD's statutory basis for the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized, proposed deletions are in brackets.

SCHEDULE D TO THE NASD BY-LAWS

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PART III—DESIGNATION OF NASDAQ NATIONAL MARKET SYSTEM SECURITIES

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Sec. 2.1 Quantitative Designation Criteria

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(b) Alternative 2

(1) The issuer of the security has net tangible assets of at least $12 million.

(2) There are at least 1 million publicly held shares.

(3) The market value of publicly held shares is at least $15 million.

(4) The price per share on each of the five business days prior to the date of application by the issuer is $3 or more.

Subsections (4)-(6) are renumbered (5)-(7) respectively.

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Sec. 4 Quantitative Maintenance Criteria

After designation as a NASDAQ National Market System security, a security must substantially meet the criteria set forth below to continue to be designated as a national market system security.

(a) Common Stock, Preferred Stock, shares or Certificates of Beneficial Interest of Trusts and Limited Partnership Interests in Foreign or Domestic Issues

1. 200,000 shares publicly held.

2. Market value of publicly held shares of $1 million.

3. The issuer has net tangible assets of at least:

(a) $1 million; or

[(a)] *(b)* $2 million if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years[:]; *or*

[(b)] *(c)* $4 million if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years.

4. 400 shareholders or 300 shareholders of round lots.

5. Minimum bid price per share of $1 or, in the alternative, market value of public float of $3 million and $4 million of net tangible assets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In is filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Quantitative Designation Criteria

An issuer applying for the designation of its securities in the Nasdaq NMS must comply with at least one of two sets of quantitative designation criteria ("Alternative 1" and "Alternative 2") contained in Section 2 to Part III of Schedule D to the NASD By-Laws ("Schedule D").[1] The NASD also requires a Nasdaq NMS issuer to comply with the entry requirements to trade in the Nasdaq System[2] as a Nasdaq SmallCap security.[3]

The security of an issuer applying for designation in the Nasdaq SmallCap Market is expressly required to have a $3 minimum bid price per share. While Alternative 1 of the Nasdaq NMS entry requirements contains a $5 minimum bid price per share, Alternative 2 is silent on this point. Nonetheless, the NASD applies the entry requirements for the Nasdaq SmallCap Market to issuers seeking designation of their securities on the Nasdaq NMS under Alternative 2. The NASD, therefore, proposes to amend Section 2(b) of part III to Schedule D to require a $3 minimum bid price per share for designation in Nasdaq NMS to clarify the current NASD practice.

Quantitative Maintenance Criteria

Net Tangible Assets. Nasdaq NMS maintenance requirements do not require an issuer to comply with a minimum net tangible asset test unless the issuer has sustained certain losses in past years. Specifically, if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years, it must maintain net tangible assets of at least $2 million. If the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years, it must maintain net tangible assets of at least $4 million.[4] Upon review, the NASD believes that a Nasdaq NMS issuer should maintain $1 million minimum net tangible assets in the current fiscal year independent of past earnings and losses. The NASD believes such a requirement is appropriate to the status of an issuer of securities in the Nasdaq NMS. The proposed rule change also would eliminate the possibility for a Nasdaq NMS issuer to fall below the $1 million capital and surplus maintenance requirement for the Nasdaq SmallCap Market[5] but appear to be in compliance with Nasdaq NMS maintenance requirements.[6] The NASD, therefore, proposes that Section 4(a) to Part III of Schedule D require Nasdaq NMS issuers to maintain at least $1 million in net tangible assets.

Minimum Bid Price or the Alternative Public Float and Net Tangible Assets Criteria. Nasdaq NMS maintenance criteria do not require an issuer of Nasdaq NMS securities to maintain a minimum bid price per share or, in the alternative, to maintain a higher minimum public float or net tangible assets. In comparison, Nasdaq SmallCap maintenance criteria require an issuer of Nasdaq SmallCap securities to maintain a minimum bid price of $1 or in the alternative, a $1 million public float and $2 million in capital and surplus.[7] The NASD believes Nasdaq NMS maintenance criteria should clarify that the NASD dose apply the Nasdaq SmallCap $1 minimum bid price as a maintenance requirement to a Nasdaq NMS security. The NASD also believes Nasdaq NMS maintenance criteria should provide for alternative public float and net tangible assets requirements that are similar to but higher than the levels required for Nasdaq SmallCap issuers. Upon review, the NASD has determined that if an Nasdaq NMS issuer fails to meet a $1 minimum bid price, it should be required to meet an alternative public float test of $3 million[8] and an alternative net tangible assets test of $4 million.[9] The NASD, therefore, proposes that Section 4 to Part III of Schedule D require a Nasdaq NMS issuer to maintain a $1 minimum bid price per share, or in the alternative, maintain a market value of public float of $3 million and $4 million of net tangible assets.

The NASD is requesting that the proposed rule change be effective within 45 days of SEC approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change amends the Alternative 2 Nasdaq NMS initial inclusion criteria to require a minimum price per share requirement of $3 or more. The proposed rule change amends the Nasdaq NMS quantitative maintenance criteria to require that the issuer maintain at least $1 million net tangible assets. The proposed rule change also amends the Nasdaq NMS quantitative maintenance criteria to require the issuer to maintain a minimum bid price of $1 or, in the alternative, a market value of public float of $3 million and $4 million of net tangible assets. The proposed rule change reflects the NASD's past and current initiatives to increase and clarify the initial and continued inclusion criteria of securities traded in the Nasdaq System and specifically, for purposes of this rule filing, the securities within the Nasdaq System that are traded on Nasdaq NMS. By amending the designation and maintenance criteria of the Nasdaq National Market System, the proposed rule change further perfects a mechanism of a free and open market and a national market system, and in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not

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[1] See, Section 2(a) of Part III to Schedule D to the NASD Manual for the Alternative 1 set of designation criteria and Section 2(b) of Part III for the complete Alternative 2 set of designation criteria.

[2] The Nasdaq System is comprised of both the Nasdaq SmallCap Market ("Nasdaq SmallCap") and the Nasdaq NMS. Nasdaq SmallCap issuers must comply with entry and maintenance requirements contained in Part II of Schedule D. Nasdaq NMS issuers must comply with both the Nasdaq SmallCap entry and maintenance requirements contained under Part II, and with the Nasdaq NMS entry and maintenance requirements contained in Part III of Schedule D.

[3] NASD staff provide determinations regarding issuer compliance with Nasdaq NMS and Nasdaq SmallCap qualifications criteria, which determinations are subject to appeal pursuant to Article IX of the NASD's Code of Procedure.

[4] See, Section 4(a)3 to Part III of Schedule D.

[5] See, sections 1(c)(3) and 2(e)(3) of Part II to Schedule D to the NASD By-Laws.

[6] Net tangible assets equals capital and surplus minus goodwill. Therefore, even if goodwill were zero, a Nasdaq NMS issuer could not have $1 million net tangible assets if its capital and surplus were less than $1 million.

[7] See, Sections 1(c)(4) to Part II of Schedule D.

[8] In comparison, as noted above, the Nasdaq SmallCap provides an alternative public float requirement of $1 million for issuers that do not meet a $1 minimum bid price. See Section 1(c)(4) to Part II of Schedule D.

[9] The NASD notes that Alternative 1 of the Quantitative Designation Criteria for Nasdaq NMS requires at least $4 million net tangible assets. See, Section 2(a)(5) to Part III of Schedule D.

necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7279 Filed 3–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19352; 811–3282]

American National Money Market Fund, Inc.; Application for Deregistration

March 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: American National Money Market Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 4, 1992, and amended on March 16, 1993 and March 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two Moody Plaza, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company. On October 7, 1981, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. Applicant's registration statement was declared effective and its initial public offering commenced on December 2, 1981.

2. On April 2, 1992 applicant's board of directors authorized the liquidation of applicant. Proxy materials seeking shareholder approval of the liquidation were filed with the SEC and distributed to shareholders on April 21, 1992. Applicant's shareholders approved the liquidation at a meeting held on May 15, 1992.

3. Applicant's portfolio securities and other assets were sold at market value. No brokerage commissions were paid in connection with such sales. Beginning on June 30, 1992, applicant distributed $1,702,045 *pro rata* to those shareholders who confirmed their ownership interest in applicant.

4. Expenses incurred in connection with the dissolution of applicant in the amount of $9,557 were paid by applicant's investment adviser, Securities Management & Research, Inc.

5. Applicant filed articles of dissolution with the State of Maryland on July 13, 1992, and the articles were approved on August 14, 1992.

6. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7280 Filed 3–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19353; International Series Rel. No. 527; 812–7507]

The New Germany Fund, Inc., et al.; Application

March 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The New Germany Fund, Inc., The Future Germany Fund, Inc., and each other registered investment company for which Deutsche Bank Capital Corporation ("DBCC"), Deutsche Asset Management GmbH ("DBAM"), Deutsche Bank AG ("Deutsche Bank") or any of Deutsche Bank's other subsidiaries or affiliates may in the future serve as investment adviser ("Applicants").

RELEVANT ACT SECTIONS: Order requested under section 10(f) for an exemption from that section.

SUMMARY OF APPLICATION: Applicants request an order permitting them to purchase securities in public offerings in the Federal Republic of Germany ("Germany") in which affiliates of their investment advisers participate as principal underwriters.

FILING DATES: The application was filed on April 9, 1990 and amended on July 31, 1990, July 30, 1991, December 24, 1991, and April 23, 1992 and March 4, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 31 West 52nd Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The New Germany Fund, Inc. and the Future Germany Fund, Inc. (collectively, the "Existing Funds") are non-diversified, closed-end management investment companies registered under the Act. The investment objective of the Existing Funds is to seek long-term capital appreciation through investment in equity and equity-linked securities of companies domiciled in Germany. The New Germany Fund seeks to invest primarily in medium or small-sized German companies; however, up to 35% of its assets may be invested in the 20 largest German companies. The Future Germany Fund will invest in German companies of any size. It also may invest up to 25% of its total assets in debt securities denominated in German Deutsche Marks.

2. Applicants request that relief extend to funds that are registered investment companies for which DBCC, DBAM, Deutsche Bank or any of the other subsidiaries or affiliates of Deutsch Bank may in the future serve as investment adviser.

3. DBAM, a corporation organized under the laws of Germany, and DBCC, a corporation organized under the laws of the State of New York, both serve as investment advisers to the Existing Funds. Both are registered as investment advisers under the Investment Advisers Act of 1940. Pursuant to investment advisory agreements with the Existing Funds, DBAM makes recommendations to DBCC with respect to the Existing Funds' investments. Upon instructions from DBCC as to suitable securities for investment by the Existing Funds, DBAM transmits purchase and sale orders and selects brokers and dealers to execute portfolio transactions on behalf of the Existing Funds. Pursuant to a management agreement with each of the Existing Funds, DBCC acts as the corporate manager and administrator of the Existing Funds and, subject to the supervision of each of the Existing Fund's board of directors and pursuant to recommendations made by DBAM, determines the securities suitable for investment by the Existing Funds.

4. Deutsche Bank is a member of all eight of the German stock exchanges and frequently acts as lead manager or co-manager for underwritten public offerings in Germany of both debt and equity securities. DBAM and DBCC are wholly-owned subsidiaries of Deutsche Bank. Accordingly, DBAM and DBCC are affiliated persons with Deutsche Bank within the meaning of section 2(a)(3) fo the Act.

Applicants' Legal Analysis

5. Section 10(f) of the Act provides, in part, that no registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an investment adviser of such registered company, or is a person of which any such investment adviser is an affiliated person. Because applicants' investment advisers are affiliated with Deutsche Bank, applicants are prohibited from purchasing securities from an underwriting syndicate in which Deutsche Bank or any of its affiliates participate as a principal underwriter.

6. Rule 10f-3 exempts a transaction from the provisions of section 10(f) if certain conditions are met. Subparagraph (a)(1) of rule 10f–3 requires that the securities purchased be part of an issue registered under the Securities Act of 1933 (the "Securities Act"). Applicants intend to invest in equity securities of German companies that are not required to be registered under the Securities Act. Accordingly, applicants cannot meet the above condition; however, applicants represent that they will satisfy all other conditions of rule 10f–3 with regard to public offerings in Germany. In addition, applicants submit that all securities purchased in Germany under circumstances subject to section 10(f) will be purchased in public offerings conducted in accordance with the laws of Germany and the rules and regulations of the German stock exchanges, and all subject German issuers will have available to prospective purchasers financial statements, audited in accordance with the standards of Germany, for the two years prior to purchase.

7. Public offerings in Germany take the form of public subscription, in which the underwriters invite the public or their customers to make offers to subscribe to the new securities, or by outright sale, where the underwriters acquire and resell the securities allotted to and subscribed to by them. With respect to subsequent issuances of equity or equity-linked securities of German corporations, existing shareholders generally have statutory pre-emptive rights to these securities. Subscription rights that are not exercised by the existing shareholders are sold on the open market.

8. The public offering price of a security is fixed at the time of initial issuance and is published in the prospectus. However, applicants represent that, theoretically, securities may be offered to and purchased by affiliates of issuers and underwriters as part of a public offering on terms more favorable than those available to unaffiliated offerees and subscribers in the offering. Applicants contend that this is unlikely to happen in practice because it makes the new stock less attractive to potential investors. Applicants represent that the German Stock Exchange Admission Regulation (promulgated under the German Stock Exchange Act) and the Securities Sales Prospectuses Act require such a variance between the offering terms to affiliates and non-affiliates be disclosed in the offering prospectus. Consequently, applicants will not purchase securities in any offering

where the offering prospectus discloses that any portion of the securities being sold in the offering may be sold to any other investor at a price more favorable than the price available to applicants.

9. Applicants state that the number of subscribers participating in a public offering in Germany will vary significantly depending on the means of distribution selected in a particular offering and the nature of the existing trading market for an issuer's securities. Accordingly, securities that are admitted for trading on the official market of a German stock exchange may have a greater number of subscribers than securities admitted for trading on the regulated, unlisted market due to the comparatively greater size of the official market. Applicants assert that regardless of whether the securities are admitted for trading on the official market or the regulated, unlisted market, and regardless of whether the securities are purchased by public subscription or outright sale, a public offering is not limited to a few participants. Applicants will not participate in offerings in which the securities are not widely disseminated. Applicants state that securities purchased pursuant to the relief granted will be admitted for trading on the official market, the regulated unlisted market on one or more of the German stock exchanges, or have been approved for admission to the official or the regulated unlisted market but are not yet admitted or listed.

10. For a security to be officially listed on the German stock exchanges, the German Stock Exchange Law requires publication of a prospectus which contains all information considered material to an evaluation of the securities to be listed. Applicants applying for official listing on the exchanges must provide complete details of the issue including the latest annual financial statements with explanatory notes and disclosure of any liabilities not shown therein, and have available financial statements for the last three consecutive years. Applications for admission to trading in the regulated unlisted market must contain essentially similar information as that required for official listing, but in a condensed form that may be submitted as a memorandum.

11. Applicants represent that German public offerings may be conducted under three principal forms: the purchase contract, the commission agreement, and the agency contract. With respect to initial public offerings conducted on a "purchase contract" basis, the underwriting banks commit to purchase all of the securities at a fixed price and hold them either individually or as joint owners. With respect to subsequent issuances of securities of existing corporations, such offerings conducted on a purchase contract basis also will commit the underwriting bank to purchase all the securities issued, including those subject to preemptive rights, at a fixed price. Accordingly, the underwriting banks fully assume the risk of not finding sufficient third party purchasers for the securities subscribed under a purchase agreement. Under a "commission agreement" the banks are commission agents and sell the issue to investors in their name, but for the account of the issuer, whereas with an "agency contract" the banks sell the securities as representatives of the issuer in the name and for the account of the issuer. In either a "commission agreement" or an "agency contract," the marketing risk generally remains with the issuer. Because clause (3) of paragraph (a) of rule 10f–3 requires the underwriters to purchase all the securities being offered (except those purchased by others pursuant to a rights offering), applicants undertake not to purchase securities in any offering where the offering prospectus discloses that the securities are subject to a "commission agreement" or "agency contract" rather than a "purchase contract."

12. The only condition of rule 10f–3 that applicants cannot satisfy is that the securities will be registered under the Securities Act. Applicants assert that this registration requirement is largely a by-product of the requirement that the investment company purchase the securities at the public offering price (which ordinarily would not exist absent registration). In addition, registration tends to indicate that the securities were issued more or less in the "ordinary course" of business. Applications note that the registration requirement appears in the same subparagraph as the requirements that a registered investment company purchase the securities in firm commitment underwriting, on the first day of the public offering, and for no more than the public offering price, indicating that registration is closely related to these requirements. Applicants believe that purchasing the securities at issue pursuant to a public offering conducted in accordance with German law, together with a requirement that audited financial statements for the previous two years be available to all prospective purchasers, provide an adequate substitute for the registration requirement. The availability of such financial statements, as well as other disclosure required of issuers under German law, provide applicants' investment advisers with sufficient information to make informed investment decisions. Taken together with the requirement that securities subject to section 10(f) be purchased in public offerings conducted in accordance with German law, investors can be assured that the securities are issued in the "ordinary course of business." In light of these requirements, as well as the protection afforded by the other provisions of rule 10f–3, applicants believe that such purchases will not raise any of the concerns addressed by section 10(f) and that applicants' shareholders will be adequately protected.

13. In light of the foregoing, applicants request that an order be entered, pursuant to section 10(f), exempting applicants on the conditions set forth below to permit purchases of securities in public offerings in Germany in which Deutsche Bank or any of its affiliates participate as a principal underwriter. Applicants conclude that granting of this exemptive order is consistent with the protection of investors and the purposes intended by the conditions set forth in rule 10f–3.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With the exception of paragraph (a)(1) of rule 10f–3, all other conditions set forth in rule 10f–3 be satisfied;

2. The foreign securities subject to section 10(f) will be purchased in a public offering conducted in accordance with the laws of Germany and the rules and regulations of the German stock exchanges;

3. All subject German issuers will have available to prospective purchasers financial statements, audited in accordance with the standards of Germany, for the two years prior to the purchase; and

4. The securities purchased are admitted for trading on the official market, the regulated unlisted market on one or more of the German stock exchanges, or have been approved for admission to the official or the regulated unlisted market but are not yet admitted or listed.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7281 Filed 3–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19354; No. 811–5441]

Separate Account ANA of National Integrity Life Insurance Co.

March 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Separate Account ANA of National Integrity Life Insurance Company (the "Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on March 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Deborah Swinford Becker, Esq., National Integrity Life Insurance Company, 1325 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney, on (202) 272–2676, or Wendell Faria, Deputy Chief, on (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, registered as a unit investment trust under the 1940 Act, is a separate account of National Integrity Life Insurance Company ("National"). Applicant was organized under the provisions of New York insurance law on December 23, 1987, for the purpose of issuing variable annuity contracts.

2. On December 30, 1987, Applicant filed a notification of registration as an investment company on Form N–8A under the 1940 Act. Also on that date, the Applicant filed a registration statement on Form N–4 (File No. 33–19362) ("December 1987 Form N–4") under both the 1940 Act and the Securities Act of 1933. The December 1987 Form N–4 registration statement, which never became effective, was withdrawn on September 1, 1989 by Order Consenting to the Withdrawal of the Registration Statement Under the Securities Act of 1933, as Amended.

On January 19, 1990, Applicant filed another Registration Statement on Form N–4 (File No. 33–33119) ("January 1990 Registration Statement"), and filed a pre-effective amendment thereto on June 27, 1990, registering six classes of units of interest, each corresponding to one of Applicant's six investment divisions, under National's flexible payment variable annuity contracts ("Contract") funded through Applicant. The six divisions correspond to investment portfolios of the Shearson VIP Fund ("VIP Fund"), the underlying investment medium for the Contracts. The registration statement became effective on July 2, 1990, and the initial public offering of the Contracts and all classes of units thereunder commenced immediately.

3. Contract sales were significantly lower than originally anticipated. As of December 31, 1991, fifty-eight Contracts were outstanding. The minimal level of sales was primarily due to financial difficulties experienced by the manager for the VIP Fund and its subsidiary, First Capital Life Insurance Company ("First Capital"), which also issued variable annuity contracts for which the VIP Fund was the underlying investment medium. First Capital was placed in rehabilitation by California insurance authorities in mid-1991. Subsequently, Shearson Lehman Brothers, Inc., the exclusive distributor of the Contracts and an affiliate of First Capital, essentially ceased selling the Contracts.

4. National terminated the offering of the Contracts in February 1992 and supplemented the prospectus for the Contracts by "Supplement Dated February 18, 1992 to Prospectus Dated May 1, 1991" (the "Supplement"). The Supplement advised Contract holders that National would waive the contingent deferred withdrawal charge that otherwise would be applicable upon a surrender of an existing Contract.

5. Applicant had no remaining assets as of October 1, 1992, and there were no Contracts outstanding.

6. Applicant's assets were liquidated by redemption of shares of the VIP Fund and payment to Contract owners of the surrender values under their Contracts, except that National waived any contingent deferred withdrawal charges that would have been applicable upon surrender.

7. Due to the discontinuance of sales and the low number of Contracts outstanding, National and Applicant did not file a post-effective amendment to the January 1990 Registration Statement in 1992, in accordance with the Commission's position set forth in *Great-West Life & Annuity Insurance Company* (pub. avail. Oct. 23, 1990).

8. All expenses incurred in connection with Applicant's liquidation and deregistration under the federal securities laws, consisting primarily of administrative, legal, accounting, and telephone expenses, including waiver of the contingent deferred sales charge, have been or will be borne by National.

9. Applicant has no securityholders to whom distributions in complete liquidation of their interests have not been made.

10. Applicant intends to engage in no further business other than that necessary for the winding up of its affairs.

11. Applicant has not, during the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

12. Applicant is not a party to any litigation or administrative proceedings.

13. Applicant filed its final Rule 24f–2 Notice on February 26, 1993, and its final report on Form N–SAR on March 1, 1993.

Applicant's Legal Analysis

1. Applicant represents that it is not and has no plans for engaging in the business of investing, reinvesting, or trading in, or holding securities, or of issuing face amount certificates of the installment type. Applicant is not making and does not propose to make a further public offering of security interests in the Contracts and currently has no assets. Applicant, therefore, is no longer within the definition of an investment company set forth in Section 3(a) of the 1940 Act and has ceased to be an investment company within the meaning of Section 8(f) of the 1940 Act.

2. Applicant, therefore, requests an order pursuant to Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7282 Filed 3-29-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19350; File No. 812-8272]

Western-Southern Life Assurance Co., et al.

March 23, 1993

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Western-Southern Life Assurance Company (the "Company"), Western-Southern Life Assurance Company Separate Account 1 (the "Variable Account"), the Interactive Financial Solutions, Inc. ("Interactive"), referred to collectively as the "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as the funding medium for certain flexible payment, tax-deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed originally on February 11, 1993. An amended and restated application was filed on March 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Western & Southern Life Insurance Company, 400 Broadway, Cincinnati, Ohio 45202, Attention: Donald J. Wuebbling, Esq.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The compete application is available for a fee from the SEC's Public Reference Branch.

Applicants Representations

1. The Company, a wholly-owned subsidiary of the Western & Southern Life Insurance Company, is a stock life insurance company organized under the laws of the State of Ohio.

2. The Company established the Variable Account under Ohio law on July 27, 1992. The Variable Account currently consists of ten subaccounts, each of which invests solely in the shares of a corresponding investment portfolio of The Managers Variable Insurance Trust, a Massachusetts business trust. On February 11, 1993, the Company filed a Form N-4 Registration Statement with the Commission to register the Variable Account under the 1940 Act as a unit investment trust, and to register the Contracts under the Securities Act of 1933.

3. Interactive, a wholly-owned subsidiary of IFS Financial Services, Inc. (which, in turn, is a wholly-owned subsidiary of the Company), is the distributor of the Contracts. Interactive is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts may be purchased on a non-tax qualified basis ("Non-Qualified Contracts") or in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment ("Qualified Contracts"). The purchase of a Non-Qualified Contract requires a minimum initial purchase payment of $2000; the minimum initial purchase payment for a Qualified Contract is $1000. Initial payments of $50 ($600 annualized) are permitted if made pursuant to certain automatic or scheduled installment plans. Subsequent purchase payments under both Qualified and Non-Qualified Contracts must be at least $100 and may be made at any time. The maximum cumulative total of all purchase payments under any Contract may not exceed $500,000 without prior approval of the Company.

5. Allocations of purchase payments will be according to the instruction given by the Contract owner. Purchase payments under the Contracts may be allocated exclusively to the Variable Account, exclusively to the Company's general account (the "Fixed Account"), or in part to both of those accounts.

6. While the Contract is in force, and prior to the date on which annuity payments begin (the "Income Date") or the death of the annuitant, a Contract owner may withdraw all or a portion of the Contract value. During the first seven years following the receipt of a purchase payment, such withdrawals generally will be subject to a contingent deferred sales charge. Certain tax penalties and restrictions may apply to full or partial surrenders.

7. Subject to certain conditions, a Contract owner may transfer all or part of the Contract value among the subaccounts and the Fixed Account. The Company currently imposes no charges for any such transfer, but reserves the right to modify availability of and the conditions for transfers, as well as the right to charge transfer fees. Any transfer charge assessed will not be designed to yield a profit to the Company.

8. If the annuitant dies before the Income Date, the Company will pay a death benefit to the beneficiary designated by the Contract owner. If the annuitant dies during the first seven Contract years and prior to the first day of the calendar month after the annuitant's eighteenth birthday, the death benefit will be the greater of: (i) The total value of the Contract on the date satsifactory proof of death and death benefit payout instructions are received by the Company; [1] and (ii) the sum of all purchase payments made under a Contract less any amounts withdrawn (including any surrender charge thereon). If an annuitant dies on or after the seventh Contract anniversary and prior to the first day of the calendar month after the annuitant's eightieth birthday, the death benefit will equal the greatest of: (i) The Contract Value on the date satisfactory proof of death and death benefit payout instructions are received by the Company; (ii) the sum of all purchase payments made under the Contract less any amounts withdrawn (including any surrender charge); and (iii) the Contract Value on the most recent septennial Contract anniversary, plus purchase payments made since such Contract anniversary,

[1] The total value of the Contract represents the sum of the combined values of amounts allocated to the Variable and Fixed Accounts (the "Contract Value").

and less any amounts withdrawn since such Contract anniversary. If an annuitant dies on or after the first day of the calendar month after such annuitant's eightieth birthday, the death benefit will equal the Contract Value on the date satisfactory proof of death and death benefit payout instructions are received by the Company.

9. The Company will deduct from the Contract Value an annual maintenance charge of $35 per Contract, and from the assets of the Variable Account a Contract administration charge at an effective annual rate of .15 percent. The Company will not raise either of these charges for the duration of the Contracts. The Company expects that the total revenues from these charges will not exceed the expected costs of administering the Contracts. The Company will monitor the relationship of the annual maintenance charge and the Contract administration charge and the proceeds collected from those charges for compliance with Rule 26a–1 under the 1940 Act.

10. No front-end sales charge will be imposed when purchase payments are applied under the Contracts. However, a contingent deferred sales charge (the "Surrender Charge") will be assessed against certain full or partial withdrawals. For the purpose of assessing a Surrender Charge, the following transactions will be considered withdrawals: Full withdrawal, partial withdrawal, and commencement of an annuity payment option within the first seven Contract years.

11. For purposes of computing the Surrender Charge, the earliest purchase payments will be deemed to be withdrawn first. The amount of the Surrender Charge, expressed as a percentage of each purchase payment amount withdrawn, is as follows:

Years since premium was paid	Surrender change (percent)
Fewer than 2	7
2	6
3	5
4	4
5	2
6	1
7 or more	0

12. No Surrender Charge shall be assessed: (i) At the death of an annuitant; (ii) to the extent permitted by applicable law if, at the time of withdrawal, an annuitant has been confined to a long-term care facility or hospital for at least thirty days; or (iii) if at least two years after the date on which the Contract became effective, annuity payments begin under a payout plan which provides for payments which will be made for at least five years. The Company reserves the right to reduce or eliminate the Surrender Charge when Contracts are sold to a trustee, an employer, or a similar entity pursuant to a retirement plan, or to a group such that the Company saves sales expenses.

13. In any Contract year, the Contract owner may withdraw an amount equal to ten percent of all purchase payments that have not been withdrawn previously and have been credited to the Contract for a least one year without paying a Surrender Charge.

14. The Surrender Charge may be insufficient to cover all costs relating to the distribution of the Contracts. If the Surrender Charge is insufficient to cover the distribution expenses, the deficiency may be met from amounts derived from the charge for mortality and expense risks (described below).

15. In those jurisdictions that assess a premium tax when annuity payments begin, the Company will deduct the applicable tax from the Contract value at the Income Date. In jurisdictions that assess a premium tax at the time purchase payments are made, the Company will deduct the applicable tax upon receipt of a purchase payment. The Company will not make a profit on deductions for premium taxes.

16. The Company will assess a daily change for bearing mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.25 percent of the value of the assets of the Variable Account. Of the 1.25 percent charge, 0.80 percent is charged for assuming the mortality risk and 0.45 percent is charged for assuming the expense risk. The Company guarantees that it will not raise the mortality and expense risk charge for the duration of the Contracts.

17. The mortality risk borne by the Company arises primarily from the Company's: (i) Contractual obligation to pay a death benefit upon death of the annuitant prior to the Income Date; and (ii) contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity payment options involving life contingencies.

18. The expense risk assumed by the Company is the risk that the Company's actual administrative costs will exceed the amounts recovered through the annual maintenance charge and the Contract administration charge.

19. If the mortality and expense risk charge is insufficient to cover the expenses and costs assumed, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be profit to the Company. The Company may earn a profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conclusions

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as the funding medium for the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the assessment to the Contracts of a 1.25 percent mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate the Company for the risks that: (i) The Contract value will be less than the death benefit; (ii) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; and (iii) administrative expenses will be greater than amounts derived from the annual administrative charge and the Contract administration charge assessed by the Company.

4. Applicants represent that the level of the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. The representation is based upon the Applicants' analysis of publicly available information regarding products of other companies, taking into consideration such factors as: Guaranteed minimum death benefits, guaranteed annuity purchase rates, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, investment options under

contracts, and availability to qualified and non-tax-qualified plans. The Company represents that it will maintain at its principal office, and make available to the Commission and its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of the Company's comparative review.

5. Applicants acknowledge that the Surrender Charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Surrender Charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. The Company concludes that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and Contract owners. The Company represents that it will maintain at its principal office, and make available on request to the Commission and its staff, a memorandum setting forth the basis for such conclusion.

6. The Company represents that the Variable Account will invest only in underlying mutual funds that undertake, in the event such mutual funds adopt a plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees)—the majority of whom are not interested persons of the Company—formulate and approve any such plan under Rule 12b–1.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7283 Filed 3–29–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 1783]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511.

SUMMARY: Exemption from taxes on goods, services and utilities for foreign diplomatic and consular missions is a benefit under the Foreign Missions Act (22 USC 4301 *et seq.*), which must be obtained through the Office of Foreign Missions. The proposed tax exemption application forms are required to obtain the information necessary to provide and administer the benefits efficiently. The following summarizes the information collection proposals submitted to OMB:

1. *Type of request*—Reinstatement.
   Originating office—Office of Foreign Missions.
   Title of information collection—Application for Exemption from Taxes on Utilities/Gasoline.
   Form No.—DSP–99/99A.
   Frequency—On occasion.
   Respondents—Foreign Diplomatic and Consular Missions and eligible personnel and dependents in the United States.
   Estimated number of respondents—8,000.
   Average number of responses per respondent—5.
   Average hours per response—1 minute.
   Total estimated burden hours—664.
2. *Type of request*—Reinstatement.
   Originating office—Office of Foreign Missions.
   Title of information collection—Tax Exemption Card Application.
   Form No.—DSP–106.
   Frequency—On occasion.
   Respondents—Foreign Diplomatic and Consular Missions and eligible personnel and dependents in the United States.
   Estimated number of respondents—8,500.
   Average number of responses per respondent—1.
   Average hours per response—20 minutes.
   Total estimated burden hours—2,550.

44 U.S.C. 3504(h) does not apply, as no rulemaking is being conducted in connection with this information collection.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Jeff Hill (202) 395–7340.

Dated: March 17, 1993.

Jerome F. Tolson, Jr.,

Acting Assistant Secretary for Administration.

[FR Doc. 93–7179 Filed 3–29–93; 8:45 am]

BILLING CODE 4710–24–M

Office of the Legal Adviser

[Public Notic 1784]

Draft Convention on Sovereign Immunity; Invitation for Public Comment

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Invitation for public comment.

FOR FURTHER INFORMATION CONTACT: Linda Jacobson, Department of State, Office of the Legal Adviser for Special Functional Problems, 2201 C Street, NW.; Washington DC 20520, 202–647–1074.

SUPPLEMENTARY INFORMATION:

Draft Convention on Sovereign Immunity

Invitation for Public Comment

The International Law Commission, an organ of the United Nations, has presented draft articles on the Jurisdictional Immunities of States and their Property to the General Assembly for possible adoption as a convention. The convention, a multilateral international agreement, would establish uniform rules concerning the extent to which a State may invoke sovereign immunity before the courts of another State. At the forty-seventh session of the General Assembly, a working group of the Sixth Committee met between September 25 and November 6, 1992, to study the draft articles and the written comments of governments, in order to facilitate the

conclusion of a convention. The United States submitted written comments and also participated in the working group. The General Assembly decided to re-establish the working group in the Sixth Committee at its forty-eighth session in September, 1993.

In its written and oral comments, the United States supported the efforts of the International Law Commission to reflect the "restrictive theory" of sovereign immunity, embodied in the United States Foreign Sovereign Immunities Act, but expressed concerns about certain articles. The U.S. concerns related, *inter alia*, to: The definition of the term "State", especially with reference to "political subdivisions" and "agencies or instrumentalities" (Article 2, paragraphs 1(b) (iii) and (iv)); the subsidiary "purpose" test to determine whether a contract or transaction is "commercial" (Article 2, paragraph 2); the limitation on the ability of private parties, in exceptional circumstances, to obtain jurisdiction over a State that creates a separate State-controlled commercial entity (Article 10, paragraph 3); the operation of *in rem* proceedings and other limitations on immunity for ships and cargo (Article 16); limitations in the area of arbitration, including the absence of an exception to immunity for judicial enforcement of agreements to arbitrate and confirmation of arbitral awards (Article 17); the failure to provide adequately for immunity from pre-judgment attachments (Article 18); the requirement that State commercial property to be executed upon must be related to the underlying claim (Article 18).

The text of the draft articles is reproduced below for public comment. Comment may be addressed to the Assistant Legal Adviser for Special Functional Problems, room 5420, Department of State, Washington, DC 20520. All public comments should be received on or before July 1, 1993, to ensure consideration. The written comments of the United States, as well as the report of the working group on its meeting in the fall of 1992, are available upon request from the office of the Assistant Legal Adviser for Special Functional Problems (202–647–1074).

Dated: March 24, 1993.

Michael Matheson,

Acting Legal Adviser.

Draft Articles on Jurisdictional Immunities of States and Their Property

Part I—Introduction

Article 1—Scope of the Present Articles

The present articles apply to the immunity of a State and its property from the jurisdiction of the courts of another State.

Article 2—Use of Terms

1. For the purposes of the present articles:
   (a) "Court" means any organ of a State, however named, entitled to exercise judicial functions;
   (b) "State" means:
   (i) The State and its various organs of government;
   (ii) Constituent units of a federal State;
   (iii) Political subdivisions of the State which are entitled to perform acts in the exercise of the sovereign authority of the State;
   (iv) Agencies or instrumentalities of the State and other entities, to the extent that they are entitled to perform acts in the exercise of the sovereign authority of the State;
   (v) Representatives of the State acting in that capacity;
   (c) "Commercial transaction" means:
   (i) Any commercial contract or transaction for the sale of goods or supply of services;
   (ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;
   (iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.
2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if, in the practice of the State which is a party to it, that purpose is relevant to determining the non-commercial character of the contract or transaction.
3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

Article 3—Privileges and Immunities Not Affected by the Present Articles

1. The present articles are without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:
   (a) Its diplomatic missions, consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences; and
   (b) Persons connected with them.
2. The present articles are likewise without prejudice to privileges and immunities accorded under international law to Heads of State *ratione personae*.

Article 4—Non-Retroactivity of the Present Articles

Without prejudice to the application of any rules set forth in the present articles to which jurisdictional immunities of States and their property are subject under international law independently of the present articles, the articles shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present articles for the States concerned.

Part II—General Principles

Article 5—State Immunity

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present articles.

Article 6—Modalities for Giving Effect to State Immunity

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.
2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:
   (a) Is named as a party to that proceeding; or
   (b) Is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that

other State.

Article 7—Express Consent to Exercise of Jurisdiction

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:
   (a) By international agreement;
   (b) In a written contract; or
   (c) By a declaration before the court or by a written communication in a specific proceeding.
2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

Article 8—Effect of Participation in a Proceeding Before a Court

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:
   (a) Itself instituted the proceeding; or
   (b) Intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.
2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:
   (a) Invoking immunity; or
   (b) Asserting a right or interest in property at issue in the proceeding.
3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.
4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

Article 9—Counter-Claims

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counter-claim arising out of the same legal relationship or facts as the principal claim.
2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counter-claim arising out of the same legal relationship or facts as the claim presented by the State.
3. A State making a counter-claim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

Part III—Proceeding in Which State Immunity Cannot be Invoked

Article 10—Commercial Transactions

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.
2. Paragraph 1 does not apply:
   (a) In the case of a commercial transaction between States; or
   (b) If the parties to the commercial transaction have expressly agreed otherwise.
3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by the State which has an independent legal personality and is capable of:
   (a) Suing or being sued; and
   (b) Acquiring, owning or possessing and disposing of property, including property which the State has authorized it to operate or manage.

Article 11—Contracts of Employment

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.
2. Paragraph 1 does not apply if:
   (a) The employee has been recruited to perform functions closely related to the exercise of governmental authority;
   (b) The subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;
   (c) The employee was neither a national nor a habitual resident of the State of the forum at the time when the contract of employment was concluded;
   (d) The employee is a national of the employer State at the time when the proceeding is instituted; or
   (e) The employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

Article 12—Personal Injuries and Damage to Property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

Article 13—Ownership, Possession and Use of Property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) Any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) Any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or

(c) Any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding-up.

Article 14—Intellectual and Industrial Property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) The determination of any right of the State in a patent, industrial design, trade name or business name, trade mark, copyright or any other form of intellectual or industrial property, which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) An alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

Article 15—Participation in Companies or Other Collective Bodies

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:
   (a) Has participants other than States or international organizations; and
   (b) Is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.
2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

Article 16—Ships Owned or Operated by a State

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship, if at the time the cause of action arose, the ship was used for other than government non-commercial purposes.
2. Paragraph 1 does not apply to warships and naval auxiliaries nor does it apply to other ships owned or operated by a State and used exclusively on government non-commercial service.
3. For the purposes of this article, "proceeding which relates to the operation of that Ship" means, *inter alia*, any proceeding involving the determination of a claim in respect of:
   (a) Collision or other accidents of navigation;
   (b) Assistance, salvage and general average;
   (c) Repairs, supplies or other contracts relating to the ship;
   (d) Consequences of pollution of the marine environment.
4. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.
5. Paragraph 4 does not apply to any cargo carried on board the ships referred to in paragraph 2 nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.
6. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.
7. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

Article 17—Effect of an Arbitration Agreement

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) The validity or interpretation of the arbitration agreement;

(b) The arbitration procedure; or

(c) The setting aside of the award;

unless the arbitration agreement otherwise provides.

Part IV—State Immunity From Measures of Constraint in Connection With Proceedings Before a Court.

Article 18—State Immunity From Measures of Constraint

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:
   (a) The State has expressly consented to the taking of such measures as indicated:
   (i) By international agreement;
   (ii) By an arbitration agreement or in a written contract; or
   (iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen;
   (b) The State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or
   (c) The property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum and has a connection with the claim which is the object of the proceeding or with the agency or instrumentality against which the proceeding was directed.
2. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary.

Article 19—Specific Categories of Property

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under paragraph 1(c) of article 18:
   (a) Property, including any bank account, which is used or intended for use for the purposes of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences;

(b) Property of a military character or used or intended for use for military purposes;
(c) Property of the central bank or other monetary authority of the State;
(d) Property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;
(e) Property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to paragraph 1 (a) and (b) of article 18.

Part V—Miscellaneous Provisions

Article 20—Service of Process

1. Service of process by writ or other document instituting a proceeding against a state shall be effected:
(a) In accordance with any applicable international convention binding on the State of the forum and the State concerned; or
(b) In the absence of such a convention:
(i) By transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or
(ii) By any other means accepted by the State concerned, if not precluded by the law of the State of the forum.
2. Service of process referred to in paragraph 1(b)(i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.
3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.
4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service if process did not comply with the provisions of paragraphs 1 and 3.

Article 21—Default Judgement

1. A default judgement shall not be rendered against a State unless the court has found that:
(a) The requirements laid down in paragraphs 1 and 3 of article 20 have been complied with;
(b) A period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with paragraphs 1 and 2 of article 20; and
(c) The present articles do not preclude it from exercising jurisdiction.
2. A copy of any default judgement rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in paragraph 1 of article 20 and in accordance with the provisions of that paragraph.
3. The time-limit for applying to have a default judgement set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgement is received or is deemed to have been received by the State concerned.

Article 22—Privileges and Immunities During Court Proceedings

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.
2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a party before a court of another State.

Annex II—Proposal on Settlement of Disputes

Part V—Dispute Settlement

Article 23—Disputes in Respect of a Proceeding Instituted Before a Domestic Court

(1) Any dispute between two or more States Parties concerning the interpretation or application of this Convention in respect of a proceeding instituted before a court of one of the parties to the dispute against the other party or parties to the dispute shall be submitted to the International Court of Justice on the application of one of the parties to the dispute or by special agreement.
(2) If the dispute is submitted to the International Court of Justice on the application of one of that parties to it, the party shall request that the case be dealt with by the chamber of summary procedure formed in pursuance of Article 29 of the Statute of the Court.
(3) The States Parties to this Convention agree that disputes to which this article applies shall be dealt with by the chamber of summary procedure formed in pursuance of Article 29 of the Statute of the International Court of Justice and that oral proceedings shall be dispensed with.
(4) A State against which a proceeding has been instituted before a court of another State shall not submit a dispute to the International Court of Justice pursuant to paragraph (2) unless:
(a) Default judgment has been given against it by the court of the other State; or
(b) The dispute arises out of the rejection by the court of the other State of a claim of immunity under this Convention.
(5) In a case to which paragraph (4)(b) applies, the State may not raise any question before the International Court of Justice which has not first been the subject of a decision by the court of the other State.
(6) Where a dispute is submitted to the International Court of Justice pursuant to paragraph (2), proceedings before the municipal court and measures of constraint in connection with such proceedings shall be suspended pending the judgment of the International Court of Justice.

Article 24—Other Disputes

Any dispute between two or more States Parties concerning the interpretation or application of this Convention (other than a dispute to which article 23 applies) which is not settled by negotiation shall be submitted to the International Court of Justice on the application of one of the Parties to the dispute or by special agreement unless the parties agree on a different method of peaceful settlement of the dispute.

[FR Doc. 93-7276 Filed 3-29-93; 8:45 am]
BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Air Florida Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 93–3–30. Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Air Florida Express, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: March 25, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–7333 Filed 3–29–93; 8:45 am]

BILLING CODE 4910–62–M

Fitness Redetermination of Columbia Pacific Airlines

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Redetermination—Order 93–3–28, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that, subject to certain restrictions/limitations, Thomas G. Packard d/b/a Columbia Pacific Airlines continues to be fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: March 23, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–7152 Filed 3–29–93; 8:45 am]

BILLING CODE 4910–62–M

Fitness Determination of Four Star Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 93–3–27, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Four Star Aviation, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: March 23, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–7151 Filed 3–29–93; 8:45 am]

BILLING CODE 4910–62–M

Order Instituting Washington, DC (Dulles)-Ottawa Service Case

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Institution of the Washington (Dulles)-Ottawa Service Case (Docket 48719), Order 93–3–29.

SUMMARY: The Department has decided to institute the Washington (Dulles)-Ottawa Service Case, Docket 48719, to select one primary and one backup U.S. carrier application for endorsement to engage in foreign air transportation of persons, property, and mail between Washington, DC (Dulles) and Ottawa, Ontario, Canada, using aircraft with no more than 60 seats. The case will be decided using written, nonoral evidentiary hearing procedures under Rule 1750 of the Department's Regulations. The Department is inviting interested air carriers to file applications for authority to serve the market at issue.

DATES: Applications for (Dulles)-Ottawa authority, motions to consolidate, and petitions for reconsideration of Order 93–3–29 should be filed in Docket 48719 by March 31, 1993. Answers to the motions to consolidate and petitions for reconsideration shall be filed by April 5, 1993.

ADDRESSES: Applications, motions to consolidate, and petitions for reconsideration should be filed in Docket 48719, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590, and should be served on all parties in Docket 48719.

Dated: March 24, 1993.

Patrick V. Murphy, Jr.,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–7227 Filed 3–29–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Bucks County, PA, and Burlington County, NJ

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Bucks County, Pennsylvania and Burlington County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, FHWA, Pennsylvania Division Office, 228 Walnut Street, P.O. Box 1086, Harrisburg, PA 17108–1086. Telephone: (717) 782–4422. James B. Wilson, P.E. Associate Executive Director and Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 8531, Harrisburg, PA 17105. Telephone: (717) 949–9551.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission (PTC) will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for a direct linkage of I–95 and the Pennsylvania Turnpike (I–276). This direct linkage would involve the redesignation of the portion of the Turnpike east of the proposed new interchange as "I–95". Such a redesignation would eliminate the

current "missing link" thereby making I–95 continuous through the mid-Atlantic region. The study limits includes I–276 (PA Turnpike) from U.S. 1 (Exit 28 in Pennsylvania) to Route 130 (in New Jersey), and I–95 from PA Route 413 to Business Route 1. A two-phased study approach will be used to identify and evaluate alternatives.

The initial phase of this process is for scoping and alternative selection. The study will involve the development of potential alternatives through the study area. Each of the alternatives will be developed such that a means of comparison of each can be made along with the No Build Alternative. The following alternatives are under consideration: A new, direct interchange between I–95 and I–276 and I–95 from four to six lanes, a new bridge across the Delaware River; a reconfiguration of the existing toll collection facilities, and a new location for toll collection facilities.

Concurrent with the development of the alternatives, various types of data will be gathered which will describe the study area as it relates to the alternatives. The following environmental areas will be investigated for EIS preparation: Traffic, air quality, noise and vibration; surface water resources; aquatic environments; floodplains; groundwaters; soils and geology; wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities, historic and archaeological structures and sites; Section 4(f) evaluation; and wild and scenic rivers. The above information will be utilized to refine the alternatives or eliminate a particular alternative from further considerations because of the potential for negative socioeconomic, environmental, or engineering impacts.

The second phase will utilize the alternatives selected in the initial phase and perform a detailed analysis on each. These alternatives will be the basis for the detailed environmental and engineering studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which meets the needs of traffic demand, and satisfies the environmental, socioeconomic, engineering and evaluations and public feedback.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to provide organizations and citizens who express interest in the project. Public meetings will be held in the area throughout the study process. Public notices of the time and place of these meetings and any required public hearings will be given. Public involvement and interagency coordination will be maintained through the development of the EIS.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to FHWA or PTC at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on March 18, 1993.

George L. Hannon,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 93–7187 Filed 3–29–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–22; Notice 1]

General Motors; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors (GM) of Warren, Michigan has determined that some of its vehicles fail to comply with 49 CFR 571.102, Federal Motor Vehicle Safety Standard No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect," and has filed an appropriate report pursuant to 49 CFR part 573. GM has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

GM manufactured a total of 13,732 1992 Buick Skylarks which may not comply with the display requirements of Standard No. 102. On some of the subject vehicles (the precise number affected is a function of production variability and, therefore, not determinable by GM) the electronic park, reverse, neutral, drive, and low (PRNDL) display might not be illuminated when the ignition switch is in the rearmost portion of the "Off" position. Section S3.1.4.1 of Standard No. 102 requires that "* * * if the transmission shift lever sequence includes a park position, identification of shift lever positions in relation to each other and the position selected [PRNDL display], shall be displayed in view of the driver whenever any of the following conditions exist: (a) The ignition is in a position where the transmission can be shifted. (b) The transmission is not in park."

If the vehicle operator turns the ignition switch to the rearmost "Off" position without the transmission being placed in the "Park" position, the transmission shift interlock is activated The transmission shift interlock, required by Section S4.2 of Standard No. 114, prevents a vehicle's key from being removed from the ignition if the transmission is not in the "Park" position. In this situation on the noncompliant vehicles, the electronic PRNDL display would not be illuminated. Thus, the operator would not be aware that the key is locked in place due to the transmission being in a position other than "Park." On these noncompliant vehicles, if the key is turned slightly forward, within the "Off" position, the electronic PRNDL display will be illuminated, thus informing the operator of the necessary information.

GM supports its petition for inconsequential noncompliance with the following:

Two factors are key. First, GM has no record of any customer complaint or accident report that could be associated with or attributed to this condition. Second, all of the 13,732 vehicles comply with S3.1.4.1 of FMVSS 102 during normal ignition activation and vehicle operation. As NHTSA recognized in proposing the standard (49 FR 32409–32411 (August 25, 1988)), the purpose of the display requirement for PRNDL information is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." Thus, in all but the rarest circumstances, the primary function of the PRNDL display is to inform the driver of gear selection and relative position of the gears while the engine is running. All of the subject vehicles display PRNDL information whenever the ignition switch is in the "On" or "Run" position.

In fact, the only condition where PRNDL information would not be displayed as required by FMVSS 102 is when the ignition switch is in the rearmost portion to the "Off" position prior to the interlock. In order for this condition to be present, a vehicle would have to be affected with the [noncompliance] and then, a driver would have to shut the

vehicle's engine off without shifting the transmission to "Park." In such a case, there are two possible outcomes:

1. The driver exits the vehicle (leaving the key in the ignition), or

2. The driver remains in the vehicle.

Paralleling NHTSA's analysis in the Final Rule promugating the standard, the first outcome represents more of a theoretical possibility than an actual problem. Compared, for example, to drivers leaving their vehicles with their lights on, NHTSA recognized that the sort of driver behavior addressed here "would be limited to the rare situation." (54 FR 29042, 29044 (July 11, 1989)). Indeed, as emphasized above, GM is aware of no complaint or claim that this rare situation has actually occurred with respect to the subject vehicles.

Furthermore, as required by S4.5 of FMVSS 114, GM provides an audible warning to the driver that activates whenever the key has been left in the locking system and the driver's door is opened.

In the second outcome, where a driver remains in the vehicle, his or her next action will be either an attempt to restart the vehicle's engine or an attempt to remove the key to exit the vehicle. If an attempt is made to restart the engine, S3.1.3 Starter Interlock of FMVSS 102 requires that the starter be inoperative whenever the vehicle's transmission is in gear. The driver rotating the ignition switch forward attempting to start the engine will definitely activate the PRNDL display. Therefore, the driver will have all the necessary information to conclude that the vehicle did not start because the transmission was not in "Park" or "Neutral." With regard to the second potential action, GM's ignition locking system is designed so that upon key removal the transmission becomes locked in the "Park" position to meet S4.2 of FMVSS 114. Because both of these situations are covered by FMVSS requirements, a lack of PRNDL information in either of these cases may constitute a minor inconvenience, but will have no consequence to safety.

GM recognizes that there may be isolated non-driving situations in which a person may desire to know gear selection or the relative position of the gears with the engine off, such as when placing the vehicle in tow. However, these cases occur infrequently and do not occur during a crisis or panic situation. If the noncompliant condition is present during these infrequent non-driving situations when PRNDL information may be desired, gear selection and relative positioning can easily be determined by rotating the ignition switch slightly forward to activate the electronic display without starting the vehicle's engine. Given the nature of these non-driving situations and since the information can be readily obtained with a slight key rotation, GM believes that the noncompliant condition will have no influence on safety.

Interested persons are invited to submit written data, views, and arguments on the petition of GM, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 28, 1993.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: March 25, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-7331 Filed 3-29-93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93-04, Notice 2]

Subaru of America, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

Subaru of America, Inc. (Subaru) of Cherry Hill, New Jersey, determined that some of its replacement seat belts fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and filed an appropriate report pursuant to 49 CFR part 573. Subaru also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety. This notice grants Subaru's petition.

Notice of receipt of the petition was published on February 3, 1993, and an opportunity afforded for comment (58 FR 7033).

Between October 1984 and November 1992, Subaru produced and sold approximately 25,000 sets of replacement seat belts which did not include installation instructions. Subaru sold approximately 1,000,000 vehicles to which these replacement seat belt assemblies are applicable and is unable to determine which of these vehicles contain the replacement belt assemblies.

Paragraph S4.1(k) of Standard No. 209, requires that

> [a] seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *

In addition, paragraph S4.1[l] requires that

> [a] seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened.

The instructions pertaining to threading and nonlocking retractors do not apply to Subaru's belt designs.

Subaru supported its petition for inconsequential noncompliance with the following:

I. Mismatch of Belt Assembly in Vehicle Seating Positioning

Subaru replacement seat belts are offered as exclusive parts, unique to each model, vehicle configuration, and seating position. Those parts have specific part numbers identified in Subaru parts catalogs with illustrations. The item numbers shown in each illustration enable the ordering dealer to specify the replacement seat belt assembly (s)he is ordering by referring to the corresponding page which shows the applicable part number, specific vehicle model type, location applicable model year, etc. When ordering Subaru replacement parts, the dealer must refer to the Subaru parts catalog to identify the ordering part number with the information on the specific vehicle model type, location, and model year. Each replacement seat belt assembly is packaged individually with a specific part number label clearly attached on the package to ensure shipping the correct parts. Also, the dealer routinely checks to see that the part received matches the one ordered.

There are a variety of significant physical differences among Subaru seat belt assemblies, which include various mounting configuration and location differences, differences in buckle latch plate configuration and retractor locking device, webbing length and housing configuration differences, and differences in motorized seat belt guide track shapes. Given these variances in physical properties, [Subaru feels] it is not possible that a mechanic would install a replacement seat belt assembly in the wrong seating position.

Thus, [Subaru believes] that the ordering and shipping procedures for Subaru replacement seat belts make it

highly unlikely that a wrong seat belt assembly will be delivered to a dealer and, should the wrong seat belt be delivered, the above mentioned physical differences make it virtually impossible to install the seat belt in the wrong model vehicle or at an incorrect seating position.

II. Improper Installation of Belt Assembly

Subaru dealers install replacement seat belt assemblies in accordance with the instructions in Subaru service manuals for Subaru vehicles. Subaru service manuals are provided to every Subaru dealer and are widely available to the public and independent repair facilities. Therefore, [Subaru feels] improper installation of replacement seat belt assemblies is highly unlikely.

In most cases of installation of a replacement seat belt, the installer will first remove the seat belt that needs to be replaced from the vehicle. After removal of the old seat belt, the installer will then reverse the steps of removal to properly locate and install the replacement belt. [Subaru feels that there] is no need to specify instructions for threading the webbing or finding locations for the drilling anchorage holes because replacement seat belt assemblies are furnished ready for installation in the vehicle's preexisting anchorage holes with a few simple steps.

No comments were received on the petition.

With respect to the failure to provide installation instructions, Subaru has argued that a mismatch of a replacement seat belt assembly in the wrong vehicle or seating position is highly unlikely, and therefore that it is unimportant to specify whether the assembly is for universal or specific application. Subaru's parts ordering and shipping procedures appear to ensure that the correct replacement parts are received by the dealer. Further, even if the wrong parts are purchased it will be obvious to the installer that the replacement is of a different shape than the belt being replaced, and the physical differences between the two belts make it virtually impossible for the wrong one to be installed. After reviewing these arguments, NHTSA concurs with them.

With respect to the failure to provide usage and maintenance instructions, Subaru has argued that this information is contained in its operator manuals, and for this reason the noncompliance is inconsequential. NHTSA does not necessarily agree with this argument. Subaru assumes that the vehicle will retain its operator's manual throughout it's life, or that the manual will be replaced by an operator if missing.

Instead, the agency has a different approach. In its view, the most likely person to be affected by Subaru's failure to provide this information is the person who, for the first time, has brought a Subaru vehicle lacking its operator's manual, and who must replace its seat belt assemblies. The probability of this combination of events happening appears to be slight, justifying an inconsequentiality determination.

NHTSA notes that it has recently granted the petition by Nissan Motor Company Ltd. covering the same types of noncompliances with Standard No. 209 (58 FR 8651). Accordingly, petitioner has met its burden of persuasion that the noncompliances herein described are inconsequential as they relate to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: March 24, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–7180 Filed 3–29–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 24, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New
Form Number: PD F 5336
Type of Review: New collection
Title: Application For Disposition—United States Savings Bonds/Notes And/Or Related Checks Owned by Decedent Whose Estate Is Being Settled Without Administration
Description: PD F 5336 is used by person(s) entitled to a decedent's estates not being administered to request payment or reissue of Savings Bonds/notes and/or related checks.
Respondents: Individuals or households
Estimated Number of Respondents: 80,000
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 40,000 hours
Clearance Officer: Vicki S. Ott (304) 420–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–7288 Filed 3–29–93; 8:45 am]

BILLING CODE 4810–40–M

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1993

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 1993 as required by section 45(d)(2)(A) of the Internal Revenue Code (Code) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 1993 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a) of the Code.

DATES: The 1993 inflation adjustment factor and reference prices apply to calendar year 1993 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1993 is 1.

PRICE: The reference prices for calendar year 1993 are 4.74¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass. The reference price for electricity generated from closed-loop biomass is based on a determination by the Internal Revenue Service under section 45(d)(2)(C) of the Code that in calendar year 1992 there were no sales of electricity under contracts entered into after December 31, 1989. The renewable electricity

production credit is available for a facility that originally is placed in service after December 31, 1992, in the case of a facility producing electricity from closed-loop biomass, and after December 31, 1993, in the case of a facility producing electricity from wind.

Because the 1993 reference price for closed-loop biomass-produced electricity does not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) of the Code does not occur for electricity sold during calendar year 1993. There is no 1993 phase-out calculation for wind-produced electricity because availability of the credit starts for sales of the electricity after 1993.

CREDIT: The renewable electricity production credit for calendar year 1993 is 1.5¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass. There is no renewable electricity production credit for calendar year 1993 on the sale of electricity produced from wind.

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, Internal Revenue Service, CC:P&SI:6, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3110 (not a toll-free call).

Marlene Gross,

Acting Associate Chief Counsel (Domestic).

[FR Doc. 93–7330 Filed 3–29–93; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is requesting approval for a proposed new information collection entitled "USIA Travel Survey", IAP–128. Estimated burden hours per response is ten minutes. Respondents will be required to respond only one time.

DATES: Comments are due on or before April 28, 1993.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. Jeffery Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: USIA Travel Survey.

Form Number: IAP–128.

Abstract: To assess the reliability and performance of the Travel Management Center (TMC) contracted by the General Services Administration (GSA). Respondents are the travelers who use the services of TMC. The travelers include US Government employees, non-profit grantee institutions, individual grant recipients and private citizens.

Proposed Frequency of Responses:

No. of Respondents—1680

Recordkeeping Hours—80

Total Annual Burden—361

Dated: March 23, 1993.

Rose Royal,

Federal Register Liaison.

[FR Doc. 93–7278 Filed 3–29–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 59
Tuesday, March 30, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on March 9, 1993 (58 FR 13127) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for March 11, 1993. This notice is to amend the agenda to remove an item from the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for March 11, 1993, is amended by removing the following item from the open session:

Open Session

B. New Business

1. Regulations

a. Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations—Capital (Proposed).

Dated: March 26, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–7492 Filed 3–26–93; 3:44 pm]

BILLING CODE 6705–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 29, April 5, 12, and 19, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 29

Tuesday, March 30

10:00 a.m.
Briefing on Status of Technical Specification Improvement Program (Public Meeting)
(Contact: Chris Grimes, 301–504–1161)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Advanced Medical Systems, Inc.—Petition for Review of LBP–92–36 (Tentative)
(Contact: Cecelia Carson, 301–504–1625)
b. Babcock and Wilcox—Appeal of Presiding Officer's Memorandum and Order Denying Hearing Request and Terminating Proceeding (LBP–93–4, Docket No. 70–135–DCOM) (Tentative)
(Contact: Roland Frye, 301–504–3505)
c. Appeal of LBP–92–37—Texas Utilities Electric Co. (Construction Permit Amendment) (Tentative)
(Contact: Stephen Burns, 301–504–2184)

Week of April 5—Tentative

Tuesday, April 6

10:00 a.m.
Briefing by IIT on Unauthorized Forced Entry into the Protected Area at TMI–1 (Public Meeting)
(Contact: Sam Collins, 817–860–8183)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 12—Tentative

Thursday, April 15

8:00 a.m.
Briefing on Review of SALP Process and Assessment of NRC Inspection Program (Public Meeting)
(Contact: Gary Zech, 301–504–1017)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 19—Tentative

Thursday, April 22

2:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:35 p.m.
Briefing on Design Basis Threat Reevaluation (Public Meeting)
(Contact: Robert Burnett, 301–504–3365)

4:00 p.m.
Briefing on Design Basis Threat Reevaluation (Closed—Ex. 1)

Friday, April 23

2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: ABB/CE, 301–881–7040)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: March 26, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–7491 Filed 3–26–93; 3:46 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
March 30, 1993

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Coastal California Gnatcatcher; Final Rule and Proposed Special Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the coastal California gnatcatcher (*Polioptila californica californica*) to be a threatened species throughout its historic range in southern California and northwestern Baja California, Mexico, pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is not being designated. This small, insectivorous songbird occurs almost exclusively in several distinctive subassociations of the coastal sage scrub plant community and is threatened by habitat loss and fragmentation occurring in conjunction with urban and agricultural development. This rule implements Federal protection provided by the Act for the coastal California gnatcatcher. A proposed special rule that defines the conditions associated with certain land-use activities under which the incidental take of gnatcatchers would not be a violation of section 9 of the Act is published in this same **Federal Register** separate part.

EFFECTIVE DATE: This rule is effective on March 25, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey D. Opdycke, Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The California gnatcatcher (*Polioptila californica*) is a small, long-tailed member of the thrush family Muscicapidae. Its plumage color is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap that is absent during the winter. Both sexes have a distinctive white eye-ring. Vocalizations of this species include a call consisting of a rising and falling series of three, kitten-like, mew notes (National Geographic Society 1983).

The California gnatcatcher (*Polioptila californica*) was originally described as a distinct species by Brewster (1881) based on specimens collected by F. Stephens in 1878. However, based on the analysis of Grinnell (1926), *P. californica* was classified in 1926 as three subspecies of the black-tailed gnatcatcher (*Polioptila melanura*), which is widely distributed throughout the Sonoran and Chihuahuan deserts of the southwestern United States and Mexico (American Ornithologists' Union 1983, Atwood 1988). Subsequent scientific publications (American Ornithologists' Union 1931, Grinnell and Miller 1944, Friedmann 1957, American Ornithologists' Union 1957) adhered to the species limits as defined by Grinnell (1926). Atwood (1988) concluded that *P. californica* was specifically distinct from *P. melanura*, based on differences in ecology and behavior. This finding was subsequently adopted by the American Ornithologists' Union Committee on Classification and Nomenclature (American Ornithologists Union 1989). A comprehensive overview of the nomenclatural history of the California gnatcatcher is provided by Atwood (1988, 1990, 1991).

Polioptila californica californica (hereafter referred to as the coastal California gnatcatcher) is one of three subspecies of the California gnatcatcher and is restricted to coastal southern California and northwestern Baja California, Mexico, from Los Angeles County (formerly Ventura and San Bernardino Counties) south to El Rosario at about 30° north latitude (American Ornithologists' Union 1957, Atwood 1991, Phillips 1991, Banks and Gardner 1992). Two other subspecies of the California gnatcatcher (*P. c. pontilis* and *P. c. margaritae*) occur in the central and southern portions of the Baja peninsula, respectively (American Ornithologists' Union 1957, Atwood 1988). Atwood (1990, 1991) concluded that the subspecific nomenclature of California gnatcatchers south of 30° north latitude should "* * * properly revert to that initially proposed by Grinnell (1926), with *P. c. margaritae* being distributed in central Baja California from 30° N. south to 24° N., and *P. c. abbreviata* occurring in the Cape Region of Baja California south of 24° N. latitude."

A general analysis of the historic range of the coastal California gnatcatcher indicates that about 41 percent of its latitudinal distribution is within the United States and 59 percent within Baja California, Mexico (Atwood 1990). A more detailed analysis, based on elevational limits associated with gnatcatcher locality records, reveals that 65 to 70 percent of the coastal California gnatcatcher's historic range was located in southern California rather than Baja California (Atwood 1992a).

The coastal California gnatcatcher occurs almost exclusively in the coastal sage scrub plant community (occasionally, it is also found in chaparral). The southern limit of its range coincides with the distributional boundary of this distinctive vegetation type. Coastal sage scrub vegetation is composed of relatively low-growing, summer (dry-season) deciduous, and succulent plants. Characteristic plants of this community include coastal sagebrush (*Artemisia californica*), various species of sage (*Salvia* spp.), California buckwheat (*Eriogonum fasciculatum*), lemonadeberry (*Rhus integrifolia*), California encelia (*Encelia californica*), prickly pear and cholla cactus (*Opuntia* spp.), and various species of *Haplopappus* (Munz 1974, Kirkpatrick and Hutchinson 1977, Mooney 1988, O'Leary 1990). The coastal California gnatcatcher commonly occurs in coastal sage scrub vegetation dominated by coastal sagebrush (Atwood 1980, 1990; Mock and Jones 1990) although in some portions of its range (e.g., western Riverside County) other plant species may be more abundant.

A comprehensive overview of the life history and ecology of the coastal California gnatcatcher is provided by Atwood (1990) and is the basis for much of the discussion presented below. The coastal California gnatcatcher is non-migratory and defends breeding territories ranging in size from 2 to 14 acres (1 to 6 hectares (ha)). Home ranges vary in size from 13 to 39 acres (5 to 15 ha) (Mock and Jones 1990). The breeding season of the coastal California gnatcatcher extends from late February through July with the peak of nest initiations occurring from mid-March through mid-May. Nests are composed of grasses, bark strips, small leaves, spider webs, down, and other materials, and are often placed in coastal sagebrush about 3 feet (ft) (1 meter (m)) above the ground. Nests are constructed over a 2 to 10 day period. Clutch size averages four eggs. The incubation and nestling periods encompass about 14 and 16 days, respectively. Juveniles are dependent upon, or remain closely associated with, their parents for up to several months following departure from the nest, and may disperse up to 9 mi (14 km) from their natal territory.

Both sexes participate in all phases of the nesting cycle. Although the coastal California gnatcatcher may occasionally produce two broods in one nesting season, the frequency of this behavior is not known.

Coastal California gnatcatchers were considered locally common in the mid-1940's, although a decline in the extent of its habitat was noted (Grinnell and Miller 1944). By the 1960's, this species had apparently experienced a significant population decline in the United States that has been attributed to widespread destruction of its habitat. Pyle and Small (1961) reported that "the California subspecies is very rare, and lack of recent records of this race compared with older records may indicate a drastic reduction in population." McCaskie and Pugh (1964) commented that the coastal California gnatcatcher "had been driven from most of its former range along the coast of the region." Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remain in the United States. He also noted that remnant portions of its habitat were highly fragmented, and that most remaining patches are bordered on at least one side by rapidly expanding urban centers. Subsequent reviews of coastal California gnatcatcher status by Garrett and Dunn (1981) and Unitt (1984) paralleled the findings of Atwood (1980).

Atwood (1990, 1992b) estimated that approximately 1,811 to 2,291 pairs of coastal California gnatcatchers remain in southern California. Of these, 24 to 30 pairs occur in Los Angeles County, 224 to 294 pairs in Orange County, 724 to 916 pairs in Riverside County, and 837 to 1,061 pairs in San Diego County. Michael Brandman Associates (1991) estimated that 1,645 to 1,880 pairs of California gnatcatchers occur in the United States (20 to 30 pairs in Los Angeles County, 325 to 350 pairs in Orange County, 300 to 400 pairs in Riverside County, and 1,000 to 1,100 pairs in San Diego County).

Based on information received after the proposed rule was published, the Service estimates that about 2,562 pairs of coastal California gnatcatchers remain in the United States. Of these, 30 pairs occur in Los Angeles County, 757 pairs in Orange County, 261 pairs in Riverside County, and 1,514 pairs in San Diego County. Approximately 2,800 pairs of *P. c. californica* occur in the Mexican portion of its range (J. Newman, Regional Environmental Consultants (RECON), pers. comm., 1992).

Most populations of the coastal California gnatcatcher in the United States occur on private lands. About 21 percent (81,992 of 393,655 acres) of coastal sage scrub in southern California (south of metropolitan Los Angeles) is publicly owned (California Department of Fish and Game 1992). Of that, about 52,500 acres or 64 percent occurs within military reservations. Major private landholdings containing known or suspected populations of the coastal California gnatcatcher include properties owned by: The Irvine Company, Rancho Santa Margarita Company, and Mission Viejo Company in Orange County; Baldwin Company, The Fieldstone Company, Home Capital, Los Montanas, McMillin Company, San Miguel Partners, and Southwest Diversified in San Diego County; and Domenigoni Brothers Ranch, Ranpac Engineering Corporation, and S.I.C. Corporation in Riverside County. Major public landowners or jurisdictions with gnatcatcher populations include the California Department of Parks and Recreation, Camp Pendleton Marine Corps Base, El Toro Marine Corps Air Station, Fallbrook Naval Annex, Miramar Naval Air Station, the cities of San Diego and Lake Elsinore, the Metropolitan Water District (MWD) of Southern California, and the counties of Orange, Riverside, and San Diego.

Previous Federal Action

In 1982, the Service designated the coastal black-tailed gnatcatcher (*Polioptila melanura californica*) as a category 2 candidate for addition to the List of Endangered and Threatened Wildlife and solicited status information (47 FR 58454). In subsequent **Federal Register** Notices of Review, the coastal black-tailed gnatcatcher was retained in category 2 (50 FR 37958, 54 FR 554). This taxon is now recognized as a subspecies of *Polioptila californica*.

Category 2 comprises taxa for which information in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. Essentially, no data were submitted in response to Service solicitations (published in **Federal Register** Notices of Review in 1982 and 1985) for gnatcatcher status information. To resolve the issue of whether conclusive data on biological vulnerability and threat exist, the Service conducted a status review (Salata 1991) of the coastal California gnatcatcher.

On September 21, 1990, the Service received petitions from the Palomar Audubon Society and the San Diego Biodiversity Project to list the nominate subspecies of the California gnatcatcher as an endangered species. A third petition for the same action was received on December 17, 1990. This petition, submitted by the Manomet Bird Observatory and the Natural Resources Defense Council, also requested the Service to emergency list the coastal California gnatcatcher. On January 24, 1991, the Service found that substantial information had been presented indicating that the petitioned action may be warranted (56 FR 12146). The Service's status review indicated that proposing the coastal California gnatcatcher for listing under the normal procedures of section 4 was warranted. A proposed rule to list the gnatcatcher as endangered was published in the **Federal Register** on September 17, 1991 (56 FR 47053). A notice of extension and reopening of the comment period for 30 days to obtain additional information on gnatcatcher taxonomy was published in the **Federal Register** on September 22, 1992 (57 FR 43688). A second petition to emergency list the coastal California gnatcatcher was submitted by the Natural Resources Defense Council on February 3, 1993, and received by the Service on February 4, 1993. This petition was regarded as a fourth request for the same action and a separate finding was not made. On February 11, 1993, the Service published a notice in the **Federal Register** announcing the reopening of the public comment period on the proposed rule for 20 days and the availability of a report prepared by Service taxonomists on the taxonomic validity of *P. c. californica* (58 FR 8032).

Summary of Comments and Recommendations

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. On September 5, 1991, the Service announced its decision to propose the coastal California gnatcatcher for listing as an endangered species and held congressional briefings in Washington, DC, and Carlsbad, California. Twenty-eight members of Congress or their staff were invited to attend. Press notices describing this proposed action were also released on this date by the Service's Public Affairs Office in Washington, DC, and Portland, Oregon. Appropriate elected officials (including the Governor of California and 28 congressional representatives), 3 State agencies, 4 county and 50 city governments, 7 Federal agencies, and 50 landowners and other potentially affected or interested parties were contacted and requested to comment. A

letter of notification and a copy of the proposed rule were also sent to the government of Mexico.

The Service held two public hearings on the proposed rule. Notification of the hearings was published in the Federal Register on February 7, 1992 (57 FR 4747). A legal notice announcing the hearings and inviting general public comment on the proposal was also published on February 7, 1992, in the *Los Angeles Daily News, Los Angeles Times, Riverside Press-Enterprise*, and *San Diego Union-Tribune*. Public hearings were conducted in Anaheim, California, on February 25, 1992, and in San Diego, California, on February 27, 1992. About 400 people attended the hearings. An additional notification reopening the public comment period for 30 days and extending, by not more than 6 months, the deadline for a final decision on the proposal was published in the Federal Register on September 22, 1992 (57 FR 43686). A legal notice announcing these actions and inviting general public comment on the proposal was published in the *Riverside Press-Enterprise* and the *San Diego Union-Tribune* on October 6, 1992. The Service published a notice in the Federal Register announcing the reopening of the public comment period on the proposed rule for 20 days on February 11, 1993 (58 FR 8032).

A total of 770 comments were received during the three comment periods, which encompassed almost 6 months. (Multiple comments, whether written or oral from the same party on the same date, are regarded as one comment.) That total includes 99 comments received between March 17 and September 22, 1992, when the public comment period was extended for an additional 30 days. Of these, 309 (40 percent) supported listing, 366 (48 percent) opposed listing; and 95 comments (12 percent) neither supported nor opposed listing.

In addition, a petition containing 9,000 signatures supported listing on an emergency basis. A petition containing 6,000 signatures opposed the listing. A total of 312 comments were received prior to the September 17, 1991, publication of the proposed rule in the Federal Register. Of these, 229 (73 percent) supported listing and 71 (23 percent) did not; 12 comments (4 percent) neither supported nor opposed listing.

One congressional representative, two elected local officials, over 30 conservation groups, 3 scientific organizations, and the government of Mexico supported listing. Several labor and building industry organizations, one congressional representative, and a number of landowners opposed listing.

The Service has reviewed all of the written and oral comments described above including those that were received outside of the formal comment periods. Based on this review, 20 relevant issues have been identified and are discussed below. These issues are representative of the comments questioning or opposing the proposed listing action.

Issue 1: The Service should not carry out this listing action because the California gnatcatcher and its northern, nominate subspecies are not valid taxa. Many commenters questioned the legitimacy of the recent change in the taxonomy of the black-tailed gnatcatcher (*Polioptila melanura*) and the existence of a distinct subspecies in southwestern California and northwestern Baja California, Mexico, north of 30° north latitude.

Service Response: The Service and the American Ornithologists' Union (AOU) have concluded that *Polioptila californica californica* is a valid taxon. Atwood (1988) re-examined the issue of species limits within the black-tailed gnatcatcher and concluded, based on differences in ecology and behavior (vocalizations), that the coastal southwestern California and northwestern, central, and southern Baja California, Mexico, populations constitute a separate species which he referred to as the California gnatcatcher, *Polioptila californica*, returning to Brewster's 1881 treatment. Atwood (1988) reported that in those few areas where California and black-tailed gnatcatchers co-occur, they do not interbreed, which is a fundamental isolating mechanism that separates species.

The conclusion that California and black-tailed gnatcatchers are separate species was formally accepted by the AOU Committee on Classification and Nomenclature in 1989 (American Ornithologists' Union 1989). This committee and its publication, *Check-list of North American Birds*, are recognized as authorities on avian taxonomy in North America.

No additional data or published information on this issue were submitted or otherwise available to the Service since publication of the proposed rule. Four letters from representatives of the AOU Committee on Classification and Nomenclature (including its chairman) were submitted during the public comment period that reiterated the AOU's formal acceptance of Atwood's conclusion that the California gnatcatcher is specifically distinct.

The existence of a distinct subspecies of gnatcatcher in coastal southern California and northwestern Baja California, Mexico, has been recognized by Grinnell (1926, 1928), van Rossem (1931), American Ornithologists' Union (1931), Friedmann (1957), American Ornithologists' Union (1957), Paynter (1964), Atwood (1991), and Phillips (1991). Although Atwood (1988) initially recommended merging *P. c. californica* and *P. c. pontilis* of central Baja California into one subspecies, he later retracted this position after re-examining intraspecific variation within the California gnatcatcher using a more appropriate statistical treatment as suggested by two members of the AOU Committee on Classification and Nomenclature (Banks 1989, Johnson 1989). This revised analysis (Atwood 1991) has been peer-reviewed by several recognized taxonomists (including one member of the AOU Committee on Classification and Nomenclature) and published. It supports the long-accepted distribution of *Polioptila melanura* (=*californica*) *californica* that was first described by Grinnell (1926) over 60 years ago.

In response to comments that questioned the taxonomic validity of the subspecies, Service taxonomists were directed to independently evaluate this issue and to prepare a report summarizing their findings. Their review concluded that the coastal California gnatcatcher is a valid subspecies whose range extends to about 30° north latitude in Baja California, Mexico (Banks and Gardner 1992).

Issue 2: Several commenters questioned the validity of the statistical analysis used by Atwood (1991) to evaluate intraspecific morphological variation within the California gnatcatcher. They concluded that he pooled data into three broad groups along a latitudinal gradient prior to performing statistical tests that were used to define subspecies limits. One commenter also submitted that the method used by Atwood (1991) of initially pooling data into 9 sample areas may have biased the results of his statistical analysis and subsequent subspecies determinations.

Service Response: Atwood's methods have been peer-reviewed and there has been no indication that he used inappropriate statistical methods. The 31 morphological characters examined by Atwood (1991) were initially segregated into 7 groups or clusters of characters that showed similar patterns of geographic variation. At this stage of the analysis, sample area data were not grouped or pooled. Next, univariate

multiple comparison tests were done on the non-pooled data from nine sample areas to identify where significant differences between groups may occur.

The results of the two analyses described above indicated that an abrupt change or "step" occurs at 30° north latitude with respect to several morphological characters, "especially those related to darkness of body plumage and the amount of white on rectrices 5 and 6" (Atwood 1991).

Two multivariate cluster analyses were then made based on different combinations of morphological variables. The first used nine variables that were selected based on a stepwise discriminant function analysis that identified those characters most effective in separating the nine sample areas. The second involved the same 22 morphological characters used by Atwood (1988) to analyze interspecific variation within the "black-tailed" gnatcatcher group. These cluster analyses did not involve grouping or pooling of data among the nine sample areas. The results of these two independent analyses were virtually identical and distinguished three geographic groups of California gnatcatchers. Atwood (1991) based his conclusions regarding subspecies limits on the abrupt changes in morphological variation revealed by these analyses.

Finally, data from the nine sample areas were pooled into three groups based on the results of the cluster analyses described above and statistically analyzed by analysis of variance for differences between geographically adjacent groups. A number of statistically significant differences were found but these were not used to make determinations regarding subspecies limits.

The method used by Atwood (1991) of initially defining nine sample areas is not considered unconventional with respect to ornithological taxonomy. Banks and Gardner (1992), who independently reviewed this issue, reported that "Atwood's (1991) procedures and methods are well within the norm for systematic/taxonomic reviews of geographic variation in birds. It appears that all readily available pertinent specimen material was used, population samples were assembled properly, all important variable morphological characters were examined, and statistical treatments were appropriate."

Issue 3: Several commenters submitted that the taxonomic conclusions reported by Atwood (1991) are not valid because they are based largely on variations in plumage color that may be environmental and not genetic in origin.

Service Response: Whether or not the abrupt changes in morphological variation reported by Atwood (1991) for the California gnatcatcher are genetically-based is not known at this time. The traditional scientific approach to defining avian subspecies has been based almost exclusively on the identification of morphological differences in body measurements and plumage characters between geographically distinct populations of a species irrespective of whether these differences have a demonstrated genetic origin, although environmental and dietary factors can affect plumage coloration in birds to varying degrees. The distributional limits of subspecies have been traditionally determined largely by the correlation between diagnostic morphological characters (including those associated with color) and the environment (May 1971).

Atwood's conclusions are strengthened by congruent patterns in geographic variation among several species at 30° north latitude, which represents the southern range limit of the coastal sage scrub community and an important transition zone for various birds, plants, terrestrial insects, land mammals, reptiles, and scorpions (Atwood 1991 and references cited therein).

Issue 4: Many commenters expressed the position that the report entitled "A Rangewide Assessment of the California Gnatcatcher (*Polioptila californica*)" by Michael Brandman Associates (MBA), dated July 23, 1991, rebuts the Service's finding that listing of the coastal California gnatcatcher is warranted.

Service Response: The Service has considered the findings of the MBA report in determining to list the coastal California gnatcatcher. MBA (1991) reported that fewer than 2,000 pairs of coastal California gnatcatchers occur in the United States, two-thirds of coastal sage scrub vegetation in California has been destroyed, a 140-km (87 mi) gap exists between the United States and Mexican populations due to urban and agricultural development, and only 1 percent of the Mexican population of *Polioptila californica* occurs north of 30° north latitude, which represents the southern range limit of *P. c. californica*. These findings are consistent with published and unpublished reports on coastal California gnatcatcher status that were used by the Service in determining to propose and list this subspecies.

MBA (1991) also reported that "at least 100 square miles of coastal sage scrub habitat, much of which is suitable for the California gnatcatcher, is protected or currently committed to be preserved in public and private open space in Orange and San Diego Counties alone." However, the MBA report does not contain a discussion of the methods used to derive the 100 square mile value, and insufficient or incorrect data are presented to support this conclusion. No data are presented with respect to gnatcatcher distribution within "protected open space areas." No distinction is made between "dedicated" and "designated" open space. The latter is subject to zoning changes for urban development, which is one of the reasons why the Service found that existing regulatory mechanisms do not adequately protect the gnatcatcher or its habitat. In some cases, even dedicated open space does not confer sufficient protection; two examples are discussed under factor "D" in the "Summary of Factors Affecting the Species" section of this rule.

Atwood (1992a) reported that 94 percent of all gnatcatcher locality records (n=306) for Orange and San Diego Counties occur below 250 m (820 ft) in elevation (Atwood 1992a). Based on a much larger sample size (n=781) for the same geographic area, MBA (1991) reported that 91 percent of all gnatcatcher records occur at or below 250 m (820 ft) and 99 percent occur at or below 300 m (98 ft) in elevation. These data have important implications for gnatcatcher conservation. Although protection of coastal sage scrub above 250 m to 300 m (800 to 1000 ft) in Orange and San Diego Counties is important for other biological reasons, it may contribute little to the long-term maintenance of viable gnatcatcher populations (Atwood 1992a). Of approximately 19,000 acres of coastal sage scrub in Orange County found below 300 m in elevation, 36 percent (6,800 acres) is preserved, 21 percent (4,000 acres) is approved or proposed for development, and 43 percent (8,300 acres) is of uncertain status (Roberts 1992).

Only 9 of 148 pairs of gnatcatchers, or 6 percent, presently occur in "open space dedication areas" in the Rancho Mission Viejo area of Orange County based on a map submitted to the Service by the Coalition for Habitat Conservation (1992). Of the 7,000 acres "preserved in the Lomas Ridge/Limestone/Whiting Ranch greenbelt" (MBA 1991), only 1,400 acres are currently protected; the balance of the set-aside is contingent upon construction of housing and transportation facilities. Only 6 pairs of coastal California gnatcatchers occur in 2,800 acres of coastal sage scrub found

within the Whiting Ranch and Limestone Canyon areas of Orange County (unpublished data on file at the Carlsbad Field Office of the Fish and Wildlife Service). These data do not support the finding of MBA (1991) for Orange County that "in all, coastal sage scrub in existing or committed open space encompasses most existing populations of California gnatcatcher in the county."

In addition, MBA (1991) reported that 168 acres of coastal sage scrub are preserved in Upper Newport Bay in Orange County. However, this area contains only about 35 acres of coastal sage scrub (F. Roberts, Fish and Wildlife Service, pers. comm.).

Furthermore, the discussion of habitat fragmentation in the MBA report is entirely qualitative and fails to consider the effects of fragmentation on rates of nest predation and brown-headed cowbird (*Molothrus ater*) nest parasitism. Methods and data are not presented to support or allow independent verification of the stated conclusions.

Issue 5: An assessment of the degree of coastal sage scrub loss and fragmentation should not be based on a comparison between older and recent vegetation maps because of differences in scale and mapping techniques. Several commenters questioned the validity of assessing the extent of coastal sage scrub loss and fragmentation based on a comparison of vegetation maps by Kuchler (*in* Barbour and Major 1977), Oberbauer (1979), Kirkpatrick and Hutchinson (1980), San Diego Association of Governments (1986), RECON (1990a,b), Roberts (1990), and County of Orange (1991a).

Service Response: The Service has attempted to use all available information in assessing the threats to the coastal California gnatcatcher and the ecosystem upon which it depends. The intent in citing the references listed above in the proposed rule was to provide supporting documentation for the finding that a widespread pattern exists with respect to the progressive loss and fragmentation of habitat in which this species occurs. The Service agrees that differences in scale and mapping techniques preclude a rigorous quantitative analysis of this issue and that Kuchler's published map is hypothetical, in part, since no comprehensive empirical data are available from which to completely reconstruct the original extent of coastal sage scrub in southern California. However, based on the sources listed above, as well as maps presented by the U.S. Forest Service (1934), Minnich (1990), MBA (1991), and the County of Orange (1992), the Service finds that although the historic distribution of coastal sage scrub and gnatcatcher habitat were undoubtedly patchy to some degree, this condition has been exacerbated by urban and agricultural development. The most conservative estimate of coastal sage scrub loss (relative to the pristine condition) within the existing range of the gnatcatcher in the United States, has been reported as 66 percent by MBA (1991).

Additional supporting documentation is provided by Wieslander and Jensen (1946). They reported that in 1945 there were 95,000 acres of "coastal sagebrush" in Orange County, 279,000 acres in Riverside County, and 381,000 acres in San Diego County. As of 1990, the Service estimates there were about 48,000 acres of "coastal sagebrush" in Orange County (Roberts 1990), 114,000 acres in Riverside County (based on maps by Minnich 1990 and RECON 1990a), and 135,000 to 152,000 acres in San Diego County (Oberbauer and Vanderwier 1991, San Diego Association of Governments 1992). These data represent coastal sage scrub losses of 50, 59, and 60 to 65 percent for Orange, Riverside, and San Diego Counties, respectively, since 1945. Overall, 58 to 61 percent of the coastal sage scrub present within this geographic area in 1945 had been lost by 1990.

Issue 6: A listing action is unnecessary because the Coastal Sage Scrub Natural Community Conservation Planning Program (NCCP), established by the California Resources Agency under the Natural Community Conservation Planning Act of 1991, adequately protects and provides for the conservation of the coastal California gnatcatcher.

Service Response: The Coastal Sage Scrub NCCP is a voluntary, collaborative effort between landowners, local jurisdictions, and the State of California. The Service is cooperating with the California Department of Fish and Game (Department) in the development of this program and has entered into a Memorandum of Understanding with the Department that formalizes this commitment.

Based on the findings presented below under Factor D in the section entitled, "Summary of Factors Affecting the Species," the Service concludes that the NCCP Program does not currently provide adequate conservation of the coastal California gnatcatcher to the degree that a listing action is not warranted. However, the Service recognizes the potential benefits to the gnatcatcher that may occur from this program, and finds that the overall participation in the program has contributed to reducing some of the short-term threats to this species in portions of its range in the United States.

Issue 7: Listing of the coastal California gnatcatcher as endangered is not warranted because there are 1.5 million pairs of this species in Baja California, Mexico.

Service Response: Many commenters raised this issue, which is based entirely on an unpublished, draft report entitled, "Distribution and Population Estimates of the California gnatcatcher (*Polioptila californica*) in Baja California, Mexico" prepared for the Building Industry Association of Southern California by RECON (1991a). This draft report, dated June 26, 1991, was not formally submitted to the Service until October 20, 1992, by the Coalition for Habitat Conservation during the second public comment period on the proposed rule.

The technique used by RECON to census gnatcatchers was the variable-strip transect method (Emlen 1971), as modified by Franzreb (1981). Two hundred transects located at about 5-mile intervals adjacent to roads between Tijuana and Ciudad Insurgentes were censused for gnatcatchers using playback of taped gnatcatcher vocalizations and sampled for selective floristic data. Gnatcatcher densities were calculated for each of 13 vegetation types by multiplying observed densities by a coefficient of detectability (Emlen 1971) based on the total sample. Gnatcatcher population estimates for each vegetation type were calculated by multiplying the adjusted gnatcatcher densities by the extent of each vegetation type derived from a 1:1,000,000 scale vegetation map.

A total of 396 California gnatcatchers were detected in the RECON study; 99 percent of which were found south of 30° north latitude, which represents the southern range limit of *Polioptila californica californica*. No gnatcatchers were observed north of Santo Tomas, which is about 140 km (87 mi) south of the international border, and 87 percent of all gnatcatcher detections occurred below 300 m (984 ft) in elevation. A total of 26 gnatcatchers were detected north of 30° north latitude (J. Newman, pers. comm., 1992). California gnatcatchers occurred in coastal sage scrub habitat which "* * * closely resembles that found in the United States in terms of structure and species composition * * *" north of 30° north latitude (RECON 1991a). South of 30° north latitude, RECON reported that California gnatcatchers occur in open

desert habitats but "* * * were more often detected in the relatively densely vegetated areas along washes and drainages * * *", although south of the Magdalena Plain and Vizcaino Desert they reported California gnatcatchers as "* * * widely distributed within suitable habitat, not being restricted to the vegetation found in drainages." The low number of California gnatcatchers found north of 30° north latitude is attributed by RECON to habitat loss, degradation, and fragmentation. RECON also reported that the habitat connection between the United States and Mexico populations of the California gnatcatcher is "tenuous."

The accuracy of the variable-strip transect method is dependent on the degree to which a variety of assumptions are satisfied (Franzreb 1981). These assumptions include: (1) Birds are uniformly and randomly distributed; (2) birds do not move in response to the observer's presence prior to being detected; and (3) there are no measurement errors. The competence of the observer is also a major factor influencing the accuracy of transect censusing methods (Franzreb 1981).

In the RECON study, assumption 1 was violated by the finding that: (1) Gnatcatcher presence "* * * is strongly correlated with large shrub cover, tree cover, and shrub height" and (2) south of 30° north latitude, California gnatcatchers occurred in open desert habitats but "* * * were more often detected in the relatively densely vegetated areas along washes and drainages * * *". Extrapolation of gnatcatcher density values based on these findings to all potential gnatcatcher habitat on the peninsula would result in highly inflated population estimates. Other field biologists who have surveyed sites repeatedly for California gnatcatchers, using taped vocalizations to increase their detectability, have found their distribution within coastal sage scrub habitats in northwestern Baja California, Mexico, to be patchy (D. Grout, Fish and Wildlife Service, pers. comm.). Similar results have been reported for the gnatcatcher in the United States (Atwood 1980, 1990).

The use of tapes to increase gnatcatcher detectability significantly increases the probability that assumption 2 was violated. California gnatcatchers have been observed moving long distances toward an observer in response to taped vocalizations or "pishing" calls. Thus, taped vocalizations, or "pishing" calls may briefly result in increased local densities of California gnatcatchers. Extrapolating these densities to broader areas would result in excessively high population estimates.

With respect to assumption 3, the draft report by RECON acknowledges that measurement errors were made. Moreover, only one of six biologists affiliated with the RECON study had any previous experience with the variable-strip transect method and only one brief "training" session (in the Anza Borrego desert) was held prior to initiation of the study (J. Newman, pers. comm., 1992). The effects of this potential source of bias on the density and population estimates are unknown.

Contrary to the recommendation of Emlen (1971), no replicate censuses and no comparative surveys using other census techniques were done in the RECON study to calibrate the accuracy of the results because of funding constraints. This factor also influenced the decision to use taped vocalizations of gnatcatchers to increase their detectability and the decision against censusing gnatcatchers south of 25° north latitude (P. Fromer and J. Newman, RECON, pers. comm.).

The extremely small scale (1:1,000,000) vegetation map used by RECON to derive estimates of available gnatcatcher habitat, coupled with the faulty assumption that California gnatcatchers are uniformly distributed within a given vegetation type and the acknowledgement by RECON (1991a) that "The inability to clearly identify the extent of coastal sage scrub versus chaparral, and therefore, California gnatcatcher habitat, is problematic," further reduces the reliability of the results of the RECON study.

The population estimates presented in the draft report by RECON are based on a coefficient of detectability (CD) value of 0.25, even though the CD values for the three arbitrarily defined regions of study (north, central, and south) varied by an order of magnitude (0.06, 0.15, and 0.56, respectively) (J. Newman, pers. comm., 1992). Artificially low CD values would result in inflated density and population estimates. CD values are not necessary in order to calculate avian density (Franzreb 1981). Based on observed densities, RECON estimates that about 2,800 pairs of *P. c. californica* occur in Baja California, Mexico (J. Newman, pers. comm., 1992).

RECON has emphasized in discussions with the Service that the population estimates presented in the draft report were meant to be interpreted in a relative manner, e.g., 99 percent of all California gnatcatchers in Baja California, Mexico, are south of 30° north latitude, and not as exact numbers (P. Fromer and J. Newman, pers. comm.). This interpretation is consistent with that of Verner (1985), who concluded that bird census techniques such as the variable-strip transect method, can provide useful information on the relative abundance of bird species but that density estimates based on such methods are not as reliable as those derived from other techniques.

In summary, no scientific basis exists for concluding that 1.5 million pairs of California gnatcatchers occur in Baja California, Mexico. Furthermore, the Service's conclusion that a listing action is warranted is supported, in part, by the findings of RECON that: (1) 99 percent of California gnatcatchers in Mexico occur south of 30° north latitude; (2) the low number of *Polioptila californica californica* in Mexico is attributable to habitat loss, degradation, and fragmentation; and (3) the habitat connection between United States and Mexico gnatcatcher populations is tenuous. The government of Mexico also formally supports a listing action (Garcia 1992).

Issue 8: The results of Audubon Christmas Bird Counts in southern California indicate that the California gnatcatcher population is increasing. One commenter submitted a summary of Audubon Christmas Bird Count results from 1960 through 1989 for 20 localities in southern California. The data were presented in a tabular format as 10-year averages of annual count totals (with standard deviations and ranges) for the California gnatcatcher. These results are based on 9,814 observer-hours expended in the 1960–69 period, 17,575 observer-hours expended in the 1970–79 period, and 21,723 observer-hours expended in the 1980–89 period. The commenter concluded, based, in part, on this analysis, that the California gnatcatcher population in the United States is increasing and should not be listed under the Endangered Species Act.

Service Response: Although the Audubon Christmas Bird Count is considered to be the "single, most popular, voluntary, early winter bird continental inventory in the world" (Drennan 1981), its methods are "weakly standardized" (Bock and Root 1981) and of limited use in analyzing changes in bird population sizes. The results are subject to much bias associated with variation in observer experience, sampling effort, weather, and an emphasis on particular species. Christmas bird counts must be "normalized" to be meaningful indicators of winter bird population sizes (Bock and Root 1981 and papers cited therein).

The analysis submitted as public comment that discusses gnatcatcher

population changes within Christmas Bird Count areas did not involve normalized data or include inferential statistics that provide the degree of confidence in the accuracy of the measurements. For these reasons, the Service finds that the analysis of Christmas Bird Count results does not support the conclusion that the California gnatcatcher population increased between 1960 and 1989. The greater sampling effort in the 1980–89 period (2.2 times the effort expended in the 1960–69 period) coupled with a relatively greater emphasis on gnatcatcher status during this time (especially in the latter half of the 1980's; which probably resulted in more effort being directed at locating gnatcatchers) probably accounts for the perceived population increases noted at 6 of the 20 sites examined.

Issue 9: The estimate of an 81 percent loss of coastal sage scrub for Riverside County between 1930 and 1990 is incorrect. One commenter submitted (without supporting documentation) that 304,000 acres of coastal sage scrub were present in Riverside County in 1930, rather than the 410,000 acres reported by the Service in the proposed rule. This commenter also pointed out that 74,000 acres of mixed European annual grassland/coastal sage scrub identified by Minnich (1990) was not taken into consideration in calculating the loss estimate stated above. The commenter concluded that using the correct figures, only a 50 percent loss has occurred since 1930. Other commenters questioned the estimate of coastal sage scrub loss for San Diego County. One commenter considered the 70 percent loss estimate for coastal sage scrub in San Diego County to be excessive and recommended that it be reexamined.

Service Response: Mr. Paul Fromer of RECON provided the Service with unpublished data on coastal sage scrub status in Riverside County for the years 1930 and 1990. The 1930 figure was based on a geographic information system analysis of digitized data from a variety of sources (RECON 1990c). The 1990 estimate of the extent of coastal sage scrub in Riverside County was based on a composite vegetation map of Riverside County prepared by RECON (1990a) from a large number of sources in conjunction with the Riverside County Multispecies Habitat Conservation Plan.

The most recent information on the extent of coastal sage scrub in Riverside County was reported by RECON (1991b) based on Minnich (1990) after the proposed rule was published. RECON (1991b) reported that 74,988 acres of coastal sage scrub and 77,669 acres of mixed European annual grassland/coastal sage scrub existed in Riverside County as of 1990. Although gnatcatchers occupy some annual grassland/coastal sage scrub areas, it is incorrect to assume that the entire grassland component should be considered coastal sage scrub. For example, at two sites encompassing about 1,200 and 2,000 acres, respectively, that were mapped by Minnich (1990) as mixed European annual grassland/coastal sage scrub, only 12 and 34 percent, respectively, of the plant cover at these sites consisted of coastal sage scrub as determined by planimetry of 1:21,000 scale color aerial photographs. A more refined vegetation map is needed to quantify the full extent of coastal sage scrub in this cover type.

Assuming that as much as 50 percent of the area associated with mixed European annual grassland/coastal sage scrub is considered to be coastal sage scrub, then about 114,000 acres existed in Riverside County as of 1990. Assuming that 304,000 to 410,000 acres of coastal sage scrub existed in 1930, then a 63 to 71 percent loss had occurred by 1990. Wieslander and Jensen (1946) reported that 279,000 acres of "coastal sagebrush" existed in Riverside County in 1945. Assuming that 114,000 acres existed in 1990, this represents a loss of 59 percent since 1945. The Service considers this magnitude of loss over the last 45 to 60 years to be significant and consistent with its finding that habitat loss is a significant threat to the continued existence of the coastal California gnatcatcher. It should also be noted that Wieslander and Jensen (1946) defined coastal sagebrush as "* * * such shrubs as California sagebrush, coyote brush, and wild buckwheats covering over 50 percent of the ground." The degree to which their estimate of coastal sagebrush acreage for Riverside County would increase, based on inclusion of mixed European annual grassland/coastal sage scrub, is unknown, but may have increased it substantially.

The Service estimate of coastal sage scrub loss for San Diego County is based on an analysis by Oberbauer (1979). A more recent loss estimate of 72 percent was reported by Oberbauer and Vanderwier (1991) after the proposed rule was published. Considering that an estimated 64 percent of the coastal sage scrub present in San Diego County in 1930 had been lost by 1991 (MBA 1991), and that "* * * by 1930 many areas of the coastal lowlands had already been converted to farmland and pastureland * * *" (MBA 1991), the Service believes the 70 percent loss estimate for coastal sage scrub in San Diego County, relative to the pristine condition, to be reasonably accurate based on available information.

There were 381,000 acres of "coastal sagebrush" in San Diego County in 1945 (Wieslander and Jensen 1946). Approximately 135,000 to 152,000 acres of coastal sage scrub currently exist in San Diego County (Oberbauer and Vandewier 1991, San Diego Association of Governments 1992). This represents a 60 to 65 percent loss of coastal sage scrub in San Diego County since 1945 alone. The Service considers this magnitude of loss to be significant and consistent with its finding that habitat loss is a significant threat to the continued existence of the coastal California gnatcatcher.

Issue 10: The Service's finding that the California gnatcatcher once had an extensive range in Los Angeles County is speculative.

Service Response: Relatively little information is available to reconstruct the distribution of the California gnatcatcher in Los Angeles County prior to the urbanization of this area. However, Atwood (1990) reported historic locality records for this species "* * * from the San Fernando Valley east along the base of the San Gabriel Mountains to Clairemont, and at the lower elevations of the San Jose, Los Coyotes, and Palos Verdes Hills." The extremely isolated nature of the Palos Verdes Hills population and the low dispersal capability of gnatcatchers (to date, the maximum known dispersal distance is about 9 miles) strongly suggest that this population was historically contiguous with, or in close proximity to, other gnatcatcher populations in southern Los Angeles County. In addition, Atwood (1990) reported that "over 96 percent of the total low elevation (less than 250 m) acreage in Los Angeles County that might historically have supported *P. c. californica* has been largely or entirely developed." Therefore, the Service concludes that the coastal California gnatcatcher once had an extensive range in Los Angeles County.

Issue 11: The Service should explain how the estimate of 54,000 acres of coastal sage scrub currently occupied by the coastal California gnatcatcher within its range in the United States was derived.

Service Response: This estimate was calculated by multiplying a gnatcatcher population size of 2,262 pairs (Atwood 1990) by a mean home range size of 23.8 acres/pair (Mock and Jones 1990). The actual estimate of 53,835 acres was rounded off to 54,000 acres.

Based on new information on gnatcatcher population size that was not available at the time the proposed rule was published (e.g., Coalition for Habitat Conservation 1992) the Service estimates that about 2,562 pairs of California gnatcatchers remain in the United States. Assuming these pairs occupy, on average, home ranges of 34.6 acres (the largest mean home range reported to date) then as much as 89,000 acres of coastal sage scrub may be occupied by the coastal California gnatcatcher within the United States.

The intent in calculating this estimate is to demonstrate that although the coastal California gnatcatcher is endemic to coastal sage scrub, it does not occur throughout this floristically and structurally variable community.

Additional supporting documentation for this finding is provided by Ogden Environmental and Energy Services (1992), which has prepared a preliminary estimate of the California gnatcatcher population within the city of San Diego's Multiple Species Conservation Plan (MSCP) study area. Based on Ogden's analysis, about 21,500 acres (18 percent) of coastal sage scrub occurring within the MSCP study area is known to be occupied by the California gnatcatcher. Recent surveys have also confirmed the non-uniform distribution of this species. Only three California gnatcatchers (one pair and one individual) were found in a 2,400-acre patch of coastal sage scrub in the Marron Valley area of San Diego County based on multiple visits to this site during 1992 (P. Mock, Ogden Environmental and Energy Services, Pers. Comm.). No gnatcatchers were detected during multiple visits in 1992 to a 1,000-acre patch of coastal sage scrub near Dehesa, north of the Sweetwater River in San Diego County (P. Mock, pers. comm.).

Issue 12: The Service should not list the gnatcatcher because the results of recent censuses show a significant increase in the population of California gnatcatchers within Orange and San Diego Counties relative to estimates by Atwood (1990).

Service Response: The Service has made a concerted effort to obtain the best available scientific information on which to base a listing decision, especially with respect to data on gnatcatcher distribution and abundance. Based on recent census information, the Service has revised the estimate for the United States gnatcatcher population from 2,262 pairs in the proposed rule to 2,562 pairs in the final rule. About 2,800 pairs of coastal California gnatcatchers are estimated to occur in Baja California, Mexico (J. Newman, RECON, pers. comm., 1992).

Although it is reasonable to assume that gnatcatcher populations may have been depressed during the recent drought conditions and are now increasing in response to normal or above normal rainfall that may have improved habitat conditions, there is no scientific basis for concluding that the population, as a whole, is increasing based on a comparison between the results of recent censuses and the estimate by Atwood (1990). The population estimate by Atwood (1990) is an extrapolation based on gnatcatcher densities at two locations and the amount of undeveloped land below 500 m (1,640 ft), which was calculated from base maps prepared in 1983 (Atwood 1990). The recent censuses represent actual counts, although the results were not obtained using the same census methods.

Scientifically credible data on which to base an analysis of population trends must be collected in a standardized manner over the entire range of the population under consideration and, ideally, over a long period of time. To date, a rangewide census of the California gnatcatcher using a standardized methodology has not occurred. Recent censuses of the California gnatcatcher in portions of Orange, Riverside, and San Diego Counties have used different methods especially with respect to sampling effort. An adequate population baseline established using a standardized census methodology is lacking for the coastal California gnatcatcher's range. The Service does not concur that a significant increase has occurred in the population of California gnatcatchers within Orange and San Diego Counties. It should also be recognized that the Service's decision to propose the gnatcatcher for listing was based on significant threats associated with habitat loss and fragmentation rather than low population size. This issue is discussed in the "Summary of Factors Affecting the Species" section of this rule.

Issue 13: A number of commenters questioned the accuracy of the Service estimate that 250,000 to 375,000 acres of coastal sage scrub remain in California. One commenter submitted that about 576,000 acres of coastal sage scrub occur in southern California.

Service Response: The estimate cited above is based on two sources of information. Barbour and Major (1977) estimate that about 2.5 million acres of coastal sage scrub occurred historically in California. Westman (1981a,b) estimates that 85 to 90 percent has been lost as a result of urban and agricultural development. The estimate of 250,000 to 375,000 acres represents 10 to 15 percent of 2.5 million acres.

Based on new information, the Service estimates that about 48,000 acres of coastal sage scrub exist in Orange County (Roberts 1990), 75,000 to 114,000 acres in Riverside County (see discussion under Issue 9 above), and 135,000 to 152,000 acres in San Diego County (Oberbauer and Vanderwier 1991, San Diego Association of Governments 1992). The Santa Monica Mountains Conservancy (1992) estimates that 85,000 to 130,000 acres of coastal sage scrub occur in northwestern Los Angeles County. The California Department of Fish and Game (1992) estimates that 393,655 acres of coastal sage scrub occur within the Natural Community Conservation Planning Program study area, which encompasses the same geographic area discussed above as well as southwestern San Bernardino County. The Service is not aware of any other recent estimates for the extent of coastal sage scrub elsewhere within the historic range of this plant community in California as defined by Barbour and Major (1977).

Assuming the estimate for northwestern Los Angeles County cited above is accurate, then about 343,000 to 444,000 acres of coastal sage scrub remain in California within an area encompassing the majority of the historic range of this plant community. This revised estimate represents 14 to 18 percent of the estimated original extent of coastal sage scrub in California as reported by Barbour and Major (1977).

Issue 14: Coastal sage scrub is plentiful in Baja California, Mexico. One commenter estimated that 1.3 million acres (520,000 ha) of coastal sage scrub and coastal succulent scrub exist in Baja California, based on satellite imagery analysis. The Service should take this factor into consideration in the listing decision-making process.

Service Response: The Service did consider the availability of coastal sage scrub and the status of the coastal California gnatcatcher in Baja California, Mexico, in determining to list the gnatcatcher. Substantially more potential habitat for the coastal California gnatcatcher may remain in Baja California than in the United States. Using 1:20,000 and 1:40,000 scale aerial photographs, Minnich (unpublished manuscript 1993) estimates that about 1.4 million acres of coastal sage scrub and 765,250 acres of maritime desert scrub remain between the international border and 30° north latitude.

Notwithstanding the limitations of mapping vegetation accurately from satellite imagery (Lillesand and Keifer 1987, Franklin and Stow 1991), neither of the acreage estimates cited above consider gnatcatcher habitat. Furthermore, it is incorrect to assume that all coastal sage scrub or maritime desert scrub is coastal California gnatcatcher habitat. The gnatcatcher is not uniformly distributed within this structurally and floristically diverse community. Recent intensive surveys for California gnatcatchers in northwestern Baja California failed to detect any gnatcatchers at various localities containing potential habitat. Repeated visits and entire days were spent at some localities without detecting any gnatcatchers (D. Grout, Fish and Wildlife Service, pers. comm.).

In addition, the acreage estimates cited above do not quantify the degree to which the areas mapped as coastal sage scrub are threatened by urban and agricultural development or the degree to which they have been degraded by grazing and fire. Widespread habitat degradation has occurred in Baja California (RECON 1991a, J. Newman, pers comm.). The habitat connection at the international border consists of very degraded coastal sage scrub that is being encroached upon by urban development. In the United States, the State of California has partially funded an approved off-road vehicle park development at the border that would directly affect about 21 pairs of gnatcatchers and 500 acres of coastal sage scrub. Lease negotiations between the landowner and the California Department of Parks and Recreation have recently been suspended for this park because of potential conflicts with the Natural Community Conservation Planning Act of 1991 and with the conservation of the gnatcatcher.

Sufficient threats to the continued existence of the coastal California gnatcatcher exist in Mexico to warrant the listing of this subspecies throughout its range in Baja California. The government of Mexico has formally endorsed this conclusion and supports this listing action (Garcia 1992).

Issue 15: Periodic fires in gnatcatcher habitat will benefit the species. One commenter questioned the conclusion by the Service in the proposed rule that high fire frequencies and the lag period associated with recovery of the vegetation may significantly reduce the viability of affected gnatcatcher populations and may contribute to the loss, degradation, and fragmentation of coastal sage scrub. The commenter cited several instances where gnatcatcher populations increased following fires, although no data were submitted which would allow independent corroboration of this conclusion.

Service Response: Fire is a natural component of some shrubland ecosystems, although the fire ecology of coastal sage scrub is not well understood. The timing, frequency, intensity, and magnitude of fire events, as well as surrounding land uses and weather patterns, influence the effects of fire on the gnatcatcher. In some cases, the outcome may benefit the gnatcatcher by ultimately causing more suitable habitat to develop and, in others, it may cause local extirpations and/or habitat degradation that reduces the number of gnatcatchers that can be supported on the affected site. Increased fire frequency is probably detrimental to coastal sage scrub and California gnatcatcher populations. For example, increased fire frequencies at Camp Pendleton Marine Corps Base in San Diego County are contributing to the type conversion of shrubland vegetation types, including coastal sage scrub, to grasslands (D. Lawson, U.S. Marine Corps, pers. comm.). Fire frequencies increase in wildland areas bordered by urban and agricultural development (Radtke 1983).

Issue 16: The Service misrepresented the magnitude of threat to the gnatcatcher from urban development. Several commenters questioned the validity of the Service's analysis of the threat to the gnatcatcher posed by urban development and submitted that it was overstated.

Service Response: The Service's assessment of this issue is based on: (1) A review of environmental impact reports for proposed and approved developments within the gnatcatcher's current range in the United States; (2) the results of aerial reconnaissance within Orange, Riverside, and San Diego Counties; (3) the finding that 91 to 94 percent of gnatcatcher locality records for Orange and San Diego Counties occur below 250 m (820 ft) in elevation and 99 percent occur below 300 m (984 ft) in elevation (MBA 1991, Atwood 1992a); and (4) other available information such as an estimated 58 to 61 percent loss of coastal sage scrub in Orange, Riverside, and San Diego Counties since 1945 (see discussion under Issue 5 above) and an estimated 66 to 90 percent reduction in the original extent of coastal sage scrub in California, both reductions due primarily to urbanization (Westman 1981a,b; MBA 1991). A more detailed analysis of the loss of coastal sage scrub habitat due to urbanization is presented under Factor A in the section entitled, "Summary of Factors Affecting the Species," and in the discussion of the NCCP program under Factor D.

Issue 17: The Service violated the Federal Advisory Committee Act when it requested comments from the American Ornithologists' Union (AOU) regarding the subspecies taxonomy of the California gnatcatcher.

Service Response: The Service has made a concerted effort to obtain the best available scientific information regarding the coastal California gnatcatcher. Based on numerous comments regarding gnatcatcher taxonomy, the Service solicited the AOU Committee on Classification and Nomenclature, a recognized authority on the taxonomy of North American birds, for its position on this issue. The Service solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested party on all aspects of the proposed rule. The Service's request for comments from the AOU is consistent with its legal obligations under the Endangered Species Act to obtain the best available scientific information, and does not constitute a violation of the Federal Advisory Committee Act.

Issue 18: Insufficient public notice was given by the Service regarding this proposed action.

Service Response: The Service's efforts to notify the public about the proposal to list the coastal California gnatcatcher were extensive, and are described at the beginning of this section entitled, "Summary of Comments and Recommendations."

In addition, this issue has received considerable media attention. Between September of 1991 and October of 1992, over 60 articles concerning the California gnatcatcher appeared in newspapers such as the *Los Angeles Times, Oceanside Blade-Citizen, Orange County Register, Riverside Press-Enterprise, San Diego Business Journal, San Diego Union-Tribune, Wall Street Journal*, and the *Washington Post*. This issue and a petition to state-list the California gnatcatcher as endangered received considerable media attention during the spring and summer of 1991, as well. Over 50 articles about the gnatcatcher appeared in the *Los Angeles Times, Orange County Register, Riverside Press-Enterprise*, and the *San Diego Union-Tribune*.

On the basis of the information presented above, the Service concludes that the public was adequately notified with respect to the proposed action.

Issue 19: The Service should consider economic effects in determining whether to list the coastal California

gnatcatcher under the Endangered Species Act (Act).

Service Response: In accordance with 16 U.S.C., paragraph 1533(b)(1)(A), 50 CFR 424.11(b), and section 4(b)(1)(A) of the Act, listing decisions are made solely on the basis of the best scientific and commercial data available.

In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in 1982 amendments to the Act. The legislative history of the 1982 amendments states: "The addition of the word "solely" is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species and intends that the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, not apply * * *. Applying economic criteria to the analysis of these alternatives and to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in this legislation." H.R. Rep. No. 567, part I, 97th Cong., 2d Sess. 20 (1982).

Issue 20: The Service should prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for this proposed action.

Service Response: For the reasons cited in the NEPA section of this rule, the Service has determined that rules issued pursuant to section 4(a) of the Endangered Species Act do not require the preparation of an EIS.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the coastal California gnatcatcher should be classified as a threatened species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the coastal California gnatcatcher (*Polioptila californica californica*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat and range of the coastal California gnatcatcher have been significantly reduced. This coastal sage scrub endemic species historically occurred in six counties in southern California. It has been extirpated from two counties (Ventura and San Bernardino) and is on the brink of extirpation from a third (Los Angeles). Atwood (1990, 1992b) reported that California gnatcatchers have been extirpated from at least 42 sites that were occupied prior to 1960. He also reported that of 56 sites that supported coastal sage scrub and California gnatcatchers in 1980, 18 (32 percent) had been destroyed and 15 (27 percent) were partially impacted by development in 1990. About 99 percent of the population in the United States presently occurs within Orange, Riverside, and San Diego Counties.

MBA (1991) and Westman (1981 a,b) have reported an estimated 66 and 85 to 90 percent reduction, respectively, in the original extent of coastal sage scrub in California. In 1945, 95,000 acres of "coastal sagebrush" remained in Orange County, 279,000 acres were in Riverside County, and 381,000 acres existed in San Diego County (Wieslander and Jensen 1946). As of 1990, about 48,000 acres of "coastal sagebrush" remained in Orange County (Roberts 1990), 114,000 acres in Riverside County (based on Minnich 1990 and RECON 1990a), and 135,000 to 152,000 acres in San Diego County (Oberbauer and Vanderwier 1991, San Diego Association of Governments 1992). These data represent coastal sage scrub losses of 50, 59, and 60 to 65 percent for Orange, Riverside, and San Diego Counties, respectively, since 1945. Overall, 58 to 61 percent of the coastal sage scrub within these three counties in 1945 had been lost by 1990. All of the published literature on the status of coastal sage scrub vegetation in California supports the conclusion that this plant community is one of the most depleted habitat types in the United States (Kirkpatrick and Hutchinson 1977; Axelrod 1978; Klopatek *et al.* 1979; Westman 1981 a,b, 1987; Mooney 1988; O'Leary 1990).

The coastal California gnatcatcher is not uniformly distributed within the structurally and floristically variable coastal sage scrub community (Kirkpatrick and Hutchinson 1977, Westman 1981b, Desimone and Burk 1992) which extends up to 600 m (1969 ft) in elevation (O'Leary 1990). It tends to occur most frequently within *Artemisia californica*-dominated stands of coastal sage scrub on mesas and lower slopes of the coast ranges that have been extensively converted to urban and agricultural habitats throughout Los Angeles, Orange, western Riverside, and western San Diego Counties.

Atwood (1992a) reported that 94 percent of all gnatcatcher locality records (n=306) for Orange and San Diego Counties occur below 250 m (820 ft) in elevation. Based on a much larger sample size (n=781) for the same geographic area, MBA (1991) reported that 91 percent of all gnatcatcher records occur at or below 250 m and 99 percent occur at or below 300 m (984 ft) in elevation.

Of about 19,000 acres of coastal sage scrub found below 300 m in elevation in Orange County, 36 percent (6,800 acres) is preserved, 21 percent (4,000 acres) is approved or proposed for development, and 43 percent (8,300 acres) is of uncertain status (Roberts 1992). Since 1989, over 3,600 acres of coastal sage scrub, located mostly below 300 m in elevation in Orange County, have been destroyed by urban and agricultural development.

Between 1980 and 1990, the human population in San Diego County increased by more than 600,000. Most of this increase occurred on or near the coast at sites historically occupied, in part, by coastal sage scrub vegetation. In southwestern San Diego County, 8,461 acres of coastal sage scrub were lost between 1984 and 1991 (Keeler-Wolf 1991); overall, one-third of the coastal sage scrub present in 1984 within the study area was destroyed by urban development over the 7-year period. Almost 9,000 acres of coastal sage scrub (mostly below 300 m in elevation) in San Diego County have been permanently destroyed by development (about 2,400 acres) or temporarily destroyed and degraded by fire (over 6,500 acres) since September of 1990. Approved and proposed projects could destroy an additional 8,000 acres of coastal sage scrub within areas occupied by gnatcatchers primarily below 300 m in elevation. Several of these projects are located within core populations of the California gnatcatcher.

In Riverside County, over 3,900 acres of coastal sage scrub have been destroyed by urban development and fire since 1989. Of 13 multiple species reserves proposed for acquisition within Riverside County, five contain the majority of California gnatcatchers known to occur in Riverside County. Four of these five proposed reserves are considered to be subject to an imminent development threat and are given a top priority for acquisition (Dangermond and Associates and RECON 1991). Moreover, the human population in all

areas supporting the gnatcatcher are rapidly expanding. The western one-third of Riverside County currently contains 800,000 people. By 2010, this area will support 1.4 million. Housing and employment will increase proportionally, with 275,000 additional housing units projected to be constructed in western Riverside County by 2010 (Monroe *et al.* 1992).

RECON (1991a) reported that relatively few coastal California gnatcatchers occur in northern Baja, California, Mexico, and attributed its status there to habitat loss, degradation, and fragmentation. The habitat connection between the United States and Mexican gnatcatcher populations is "tenuous" (RECON 1991a).

Stands of coastal sage scrub vegetation in northern Baja, California are being grazed, burned to increase grass production, converted to agriculture, and graded for urban development (Bowler 1990, Rea and Weaver 1990). Extensive tracts of coastal sage scrub vegetation on the marine terraces between Colonet and San Quintin have been converted to tomato fields (R. Minnich, Univ. of California, Riverside, Dept. of Earth Sciences, pers. comm.). The San Quintin kangaroo rat (*Dipodomys gravipes*), a coastal lowland-associated species endemic to Baja California from San Telmo to El Rosario, is nearly extinct as a result of this change in land use (Best 1983). Apparently (as of 1992), this species is now extinct (E. Mellinck, Centro de Investigacion Cientifica y Educacion Superior de Ensenada, pers. comm.).

The loss of coastal sage scrub vegetation has been associated with an increasing degree of habitat fragmentation, which reduces habitat quality and promotes increased levels of nest predation and brood parasitism, and ultimately, increased rates of local extinction (Wilcove 1985, Rolstad 1991, Saunders *et al.* 1991, Soule *et al.* 1988, 1992). Although the published literature on this subject is based on studies in forested landscapes, the ecological implications of these studies are applicable to other landscape types such as coastal sage scrub.

The Service is currently participating in a study of gnatcatcher ecology in western Riverside County that was initiated in the spring of 1992. This study involves intensive monitoring of three color-banded gnatcatcher subpopulations occupying three different landscape settings: (1) a relatively small, fragmented coastal sage scrub patch adjacent to urban and agricultural development; (2) a relatively large coastal sage scrub patch grazed by cattle; and (3) a relatively large coastal sage scrub patch contiguous with other native plant communities in an area distant from urban and agricultural development. Preliminary results of nest monitoring activities in 1992 indicate that gnatcatchers occupying the small, fragmented patch experienced high levels of nest parasitism by cowbirds (7 of 15 nests or 47 percent) and only 1 of 15 nests (7 percent) fledged a total of 2 young. Gnatcatcher nests on the grazed patch were also heavily parasitized (15 of 25 nests or 60 percent), and only 2 of 25 nests (8 percent) fledged a total of 4 young. The gnatcatchers occupying the coastal sage scrub patch in a "natural" setting had only one case of cowbird parasitism (1 of 26 nests or 4 percent) and good reproductive success (11 of 26 nests or 42 percent fledged a total of 40 young) (Braden 1992). These findings strongly suggest that the adverse edge effects noted in fragmented forest habitats occur in shrubland communities as well.

Although the historic distribution of coastal sage scrub was undoubtedly patchy to some degree, this condition has been greatly exacerbated by urban and agricultural development. Based on maps presented by MBA (1991), the Service has calculated the magnitude of change in the degree of fragmentation of coastal sage scrub between 1931 and 1990 for Orange, Riverside, and San Diego Counties. In 1931, there were 27 distinct coastal sage scrub patches in Orange County. By 1990, there were 145 patches. Similar increases in fragmentation have also occurred in Riverside County, from 87 to 374 patches; and San Diego County, from 72 to 217 patches. Using different scale maps, Keeler-Wolf (1991) analyzed recent changes in the extent of coastal sage scrub in southwestern San Diego County. The number of coastal sage scrub patches within his study area increased from 286 in 1984 to 510 in 1991. The mean size of these patches decreased from 99 acres in 1984 to 53 acres in 1991.

This pattern of increasing habitat fragmentation has isolated many populations of the coastal California gnatcatcher from each other, including those on the Palos Verdes Peninsula (Los Angeles County), in the San Joaquin Hills (Orange County), in four general areas of western San Diego County (Camp Pendleton Marine Corps Base-Fallbrook Naval Weapons Station; Carlsbad-San Marcos-Rancho Penasquitos; Poway-Tierrasanta-Santee; Sweetwater River-Otay Mesa), and three general areas of western Riverside County (Lake Mathews-Gavilan Plateau; Domenigoni Valley-Vail Lake; the Badlands). The severing of interpopulation connections diminishes the viability of the subspecies overall. Brussard and Murphy (1992), representing the Coastal Sage Scrub Scientific Review Panel (Panel) for the State of California's Natural Community Conservation Planning Program, cite the conclusion of Wilcox and Murphy (1985) in recognizing that "habitat fragmentation is the most serious threat to biological diversity and is the primary cause of the present extinction crisis." O'Leary *et al.* (1992), also representing the Panel, characterized the status of the coastal sage scrub community as depleted, degraded, and fragmented. They concluded that, "Clearly, coastal sage scrub vegetation and the animal species it supports are now seriously imperiled in southern California."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable.

C. *Disease or predation.* Disease is not known to be a factor affecting this species at this time. However, several species have been reported as potential predators of coastal California gnatcatcher eggs or nestlings (Atwood 1990). Those include the scrub jay (*Aphelocoma coerulescens*), common crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), opossum (Didelphis marsupialis), raccoon (*Procyon lotor*), gray fox (*Urocyon cinereoargenteus*), coachwhip (*Masticophis flagellum*), striped racer (*Masticophis lateralis*), gopher snake (*Pituophis melanoleucus*), rosy boa (*Lichanura trivirgata*), common kingsnake (*Lampropeltis getulus*), southern alligator lizard (*Gerrhonotus multicarinatus*), domestic or feral cat (*Felis domestica*), wood rat (*Neotoma spp.*), deer mouse (*Peromyscus maniculatus*), house mouse (*Mus musculus*), and black rat (*Rattus rattus*).

Soule *et al.* (1988, 1992) speculated that as coyotes (*Canis latrans*) disappear from small, isolated patches of chaparral (including coastal sage scrub) in urbanized areas, the absence of this large predator allows greater population levels of smaller "bird predators" such as foxes, opossums, or domestic cats. These authors suggested that increased predation pressures resulting from the absence of coyotes may significantly contribute to local extinctions of bird species, like the coastal California gnatcatcher, from small, fragmented patches of vegetation.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms are currently in effect that adequately protect the coastal California gnatcatcher and its habitat. The coastal

California gnatcatcher is not listed under the California Endangered Species Act and most populations occur on private lands. Local and county zoning designations are subject to change and do not incorporate the principles of conservation biology in the establishment and configuration of open space areas. What few resource protection ordinances exist are subject to different interpretations, and in cases where findings of overriding social and economic considerations are made, compliance is not required. In many cases, land-use planning decisions are made on the basis of environmental review documents, prepared in accordance with the California Environmental Quality Act or the National Environmental Policy Act, that do not adequately address potential impacts to the coastal California gnatcatcher and its habitat, if considered at all.

In some cases, even dedicated open space does not confer sufficient protection. For example, the County of Orange recently proposed a zoning change to allow construction of a business park on a 70-acre parcel containing about 40 acres of gnatcatcher-occupied habitat that was dedicated as open space in conjunction with an approved housing development. In another case in Orange County, a landowner has agreed to place about 2,300 acres of coastal sage scrub occupied, in part, by coastal California gnatcatchers into conserved open space. However, the landowner has indicated that this designation could not be guaranteed for longer than 20 years (F. Roberts, pers. comm.). In addition, this open space designation is contingent upon construction of major housing and commercial developments that will adversely affect the gnatcatcher. This designation will also not preclude the construction of transportation or utility facilities that will remove as much as 85 acres of coastal sage scrub within designated open space and fragment what remains (F. Roberts, pers. comm.).

Another indication of the lack of existing regulatory mechanisms to protect the gnatcatcher and its habitat is provided by a recent study in San Diego County. The city of San Diego (1990) evaluated the magnitude of impact associated with development to native plant communities within its jurisdiction for the period 1985 to 1990. This study revealed a 97 percent loss of coastal sage scrub (384 of 395 acres) in conjunction with 15 projects. This study also evaluated eight cases where no distinction was made between chaparral and coastal sage scrub vegetation. A 95 percent loss of chaparral/coastal sage scrub (1,308 of 1,371 acres) was documented for these projects. Keeler-Wolf (1991) reported a net loss of 8,461 acres of coastal sage scrub within the city of San Diego between 1984 and 1991.

Since August 1991, over 4,600 acres of coastal sage scrub have been destroyed within the gnatcatcher's range in Orange, Riverside, and San Diego Counties. No mitigation to offset impacts to the gnatcatcher was associated with 33 of 39 projects known to affect this species. Approved (but not yet constructed) and proposed developments within these three counties could destroy over 10,000 acres of coastal sage scrub. Several of these projects will directly affect and further fragment regionally significant core populations of the coastal California gnatcatcher and may sever the tenuous habitat connection between the United States and Mexico.

Another indication of the ineffectiveness of existing regulatory mechanisms to protect the coastal California gnatcatcher is provided by 11 cases involving the destruction of about 1,050 acres of coastal sage scrub vegetation occupied, in part, by gnatcatchers in Orange, Riverside, and San Diego Counties. These actions occurred prior to regulatory agency review or issuance of grading permits. In two of these cases, gnatcatcher habitat was destroyed shortly after the Service contacted or submitted a letter to a local regulatory agency advising the agency that a draft environmental review document for a proposed housing development failed to disclose the presence of gnatcatchers onsite. Overall, about 1,900 acres of land was cleared in conjunction with agricultural, weed abatement, and fire protection activities or to preclude nesting activities by migratory birds.

Although existing grading ordinances regulate some or all of these activities, they have not proven to be effective deterrents to destruction of gnatcatcher habitat. In a related matter, about 450 acres of high quality coastal sage scrub vegetation occupied by the coastal California gnatcatcher were destroyed in February 1991 near Lake Elsinore in Riverside County (L. Hays, Fish and Wildlife Service, and S. Myers, Tierra Madre Consultants, pers. comm.). This activity was authorized under a grading permit issued by the city of Lake Elsinore in conjunction with an approved reclamation plan for a previously mined site bordering the stand of coastal sage scrub. The entire area lies within an approved but not yet constructed golf course-residential community. Some jurisdictions (e.g., the cities of Chula Vista and Poway in San Diego County) do not regulate grubbing of vegetation. Individuals or entities who grade property for agricultural purposes within the counties of Orange and Riverside are not required to obtain a grading permit or any other approval in order to grade.

In adopting an ordinance imposing interim regulations for grading and clearing, the County of San Diego Board of Supervisors (1988) noted several characteristics associated with these types of activities that appear to apply throughout the range of the coastal California gnatcatcher in the United States:

> * * * Clearing and illegal grading have been used to destroy environmental resources prior to application for a land development permit, during the permit process, after project approval but prior to the application of protecting open space easements, and after dedication of open space * * * Grading violations, when reported, result in relatively minimal fines and, because of the difficulty in obtaining convictions, are not a serious deterrent to illegal grading. A fine often will not prevent a violation of this ordinance because a fine may be considered simply as an additional development cost * * * Clearing for legitimate reasons (geotechnical exploration and access for percolation tests and wells, and clearing for fire protection) is frequently done well in excess of the minimum necessary to accomplish the purpose.

In some recent cases, habitat restoration requirements have been imposed as a penalty for violation of grading ordinances. However, that may not resolve the problem in a biologically-meaningful way. The feasibility of artificially creating a viable coastal sage scrub plant community suitable for the coastal California gnatcatcher has yet to be demonstrated, especially on a large scale. Although the results of a recent effort by the California Department of Parks and Recreation to restore a small area of coastal sage scrub in Crystal Cove State Park (Orange County) are encouraging, they are not conclusive.

The Service is not aware of any existing regulatory mechanisms in Baja, California, Mexico, that protect the gnatcatcher and its habitat. The government of Mexico has formally acknowledged the rapid loss of habitat in northwestern Baja, California and supports this listing action (Garcia 1992).

Several land-use planning efforts have been initiated that are attempting to address the issue of conserving the coastal California gnatcatcher and the coastal sage scrub ecosystem upon which it depends. Foremost among these efforts is the Natural Community

Conservation Planning Program (NCCP) sponsored by the California Resources Agency. This program represents an important opportunity to conserve the coastal California gnatcatcher.

The Service has provided funds and technical assistance for the development of the Coastal Sage Scrub NCCP. The Coastal Sage Scrub NCCP may result in the development and implementation of specific plans and management programs for the long-term protection of the coastal sage scrub community in portions of five southern California counties by addressing the conservation needs of three "target" species including the coastal California gnatcatcher. The planning area for the Coastal Sage Scrub NCCP encompasses the current range of the gnatcatcher in the United States.

Participation in this planning effort involves a formal enrollment process whereby voluntary agreements are established between the Department and two categories of participants: Landowners or land management agencies, and cities or counties. By enrolling, the landowners or land management agencies agree to not disturb the coastal sage scrub community during the planning period (May 1, 1992, to October 31, 1993). The cities or counties agree to monitor impacts to the coastal sage scrub community, impose additional information disclosure requirements during the environmental review process, strongly consider the mitigation recommendations of the Service and the Department for projects affecting the coastal sage scrub community, and be sensitive to the potential impacts of proposed activities on the coastal sage scrub community during the planning process. As of October 22, 1992, a total of 15 cities, 1 county, 35 landowners, and 3 land management agencies within the current range of the gnatcatcher in the United States had enrolled in the NCCP Program based on information provided by the Department.

Several components of the Coastal Sage Scrub NCCP have been established. An advisory committee, consisting of representatives from the Service, the Department, local jurisdictions, environmental organizations, landowners, and developers regularly meets to provide planning for the NCCP. A Scientific Review Panel (Panel), comprised of five members with expertise in conservation biology or coastal sage scrub plant ecology, has defined the planning area, developed a standardized methodology for collection of biological information on the coastal sage scrub community, and has been analyzing available information with the intent of formulating planning guidelines for the conservation and management of the coastal sage scrub community. The Panel is scheduled to release draft conservation planning guidelines in the spring of 1993. The Department has prepared process guidelines that explain the roles of NCCP participants. A committee has been established to monitor and quantify the loss of coastal sage scrub vegetation during the planning period.

The California State Senate defeated a $1.1 million funding bill for the NCCP program on August 17, 1992. Also during August, the Riverside County Board of Supervisors voted against enrolling county lands within the NCCP Program.

The Service fully supports the goals of the NCCP Program. However, no substantive protection of the coastal California gnatcatcher is currently provided by city/county enrollments because habitat loss and fragmentation can occur prior to the development and implementation of adequate conservation plans. Therefore, the degree to which the NCCP Program removes threats to this species is based primarily on an analysis of landowner/land management agency enrollments. However, jurisdictional enrollments contribute to recognition of the need for conserving the gnatcatcher and the coastal sage scrub ecosystem upon which it depends. At such time that city/county enrollments provide at least interim habitat protection or have resulted in the implementation of approved conservation plans for the gnatcatcher, the Service will reconsider the effects of these enrollments on the status of this species.

Landowner and land management agency enrollments encompass about 22,577 of 48,000 acres (47 percent) of coastal sage scrub vegetation in Orange County; about 15,176 of 135,000 to 152,000 acres (10 to 11 percent) of coastal sage scrub vegetation in San Diego County; and about 7,191 of 114,000 acres (6 percent) of coastal sage scrub vegetation in Riverside County. Overall, about 44,944 of 297,000 to 314,000 acres (14 to 15 percent) of coastal sage scrub vegetation within these 3 counties are subject to interim protection under the NCCP Program. The degree to which these lands will be permanently protected is not known at this time.

From the perspective of the gnatcatcher, landowner/land management agency enrollments encompass about 447 of 757 pairs (59 percent) of California gnatcatchers in Orange County; 264 of 1,514 pairs (17 percent) in San Diego County; and 61 of 261 pairs (23 percent) in Riverside County. Overall, 772 of 2,562 pairs (30 percent) of California gnatcatchers known to occur in the United States are subject to interim protection under the NCCP Program. The degree to which these pairs will be permanently protected is not known at this time.

The County of Riverside has funded the preparation of a draft multi-species habitat conservation plan that includes consideration of the gnatcatcher (Dangermond and Associates and RECON 1991). About 60 pairs of gnatcatchers are known to occur within 8 study areas under consideration for permanent preserve status for the Stephens' kangaroo rat (*Dipodomys stephensi*), a species federally listed as endangered.

Orange County, San Diego County, and the San Diego Association of Governments (SANDAG) are using geographic information system computer technology to define, in part, the status of sensitive resources (including coastal sage scrub and the coastal California gnatcatcher) within their respective areas of jurisdiction in the context of regional open space planning. SANDAG has also established a technical advisory committee to guide the development of a regional (San Diego County) open space plan. In a related matter, the city of San Diego is funding the preparation of a multi-species conservation plan (MSCP) in conjunction with the Clean Water Program. The study area for this plan includes about 120,000 acres of coastal sage scrub and the majority of coastal California gnatcatchers known to occur in San Diego County. A draft of the plan is scheduled to be completed in December 1993. The progressive and innovative efforts of the MSCP program have identified the known and potential habitat of the gnatcatcher within the entire study area. This program has made significant progress toward defining regional conservation priorities that may ultimately lead to habitat protection for the gnatcatcher and a variety of other sensitive species within the study area.

The city of Carlsbad (San Diego County) is funding the preparation of a habitat management plan. The study area for this planning effort includes about 3,700 acres of coastal sage scrub and about 85 to 90 pairs of gnatcatchers. The biological resources and habitat analysis components of this plan were prepared in August 1992 (MBA 1992).

In September 1991, a "Focused California Gnatcatcher Resource Study for the City of Poway" in San Diego County was completed by ERCE (1991). The objectives of this study were to (1)

conduct a detailed inventory and assessment of potential California gnatcatcher habitat within Poway and its adopted sphere of influence; (2) estimate the size of the gnatcatcher population within the study area; and (3) identify potential gnatcatcher preserve areas and evaluate the connectivity of these potential biological open space areas within and outside of the study area. ERCE (1991) reported that 8,397 acres of coastal sage scrub and an estimated 125 to 336 pairs of California gnatcatchers occur within Poway and its adopted sphere of influence.

The Metropolitan Water District of Southern California is funding the preparation of a multi-species habitat conservation plan for southwestern Riverside County in cooperation with the Riverside County Habitat Conservation Agency. A revised draft of this plan, which includes the preservation of about 5,600 acres of coastal sage scrub and an estimated 150 pairs of gnatcatchers in the Domenigoni Valley-Lake Skinner area, was completed in October 1992 (Monroe *et al.* 1992). Almost $14 million in funding will be provided under this plan for initial research and management of preserve areas.

A coalition of nine cities, the County of San Diego, the San Diego County Water Authority, SANDAG, the California Department of Fish and Game, the U.S. Marine Corps (Camp Pendleton), and the Service are coordinating habitat conservation planning activities in northern San Diego County. A Memorandum of Agreement formalizing this voluntary, cooperative effort was drafted in November 1991.

Conservation plans that involve the California gnatcatcher have been completed or are under preparation for nine urban development or transportation project areas in Los Angeles County (1 project), Orange County (5), Riverside County (1), and San Diego County (2). Participants in these planning efforts include Centex Homes, The Fieldstone Company, Home Capitol, Palos Verdes Land Holdings Company, Pardee Construction Company, Shell Western E and P Incorporated, San Joaquin Hills Transportation Corridor Agency, and Zuckerman Building Company.

Based on coordination with the Service, the J.M. Peters Company revised the Forrestal project on the Palos Verdes Peninsula (Los Angeles County) to avoid potential impacts to gnatcatcher-occupied habitat and has agreed to dedicate this habitat as natural open space although a nature trail will traverse the area.

A Memorandum of Understanding (MOU) was executed on April 16, 1992, between the Service and The Irvine Company. This MOU establishes the guidelines and procedures that will be followed by both parties in the preparation of an Advance Habitat Conservation Plan for the California gnatcatcher and other coastal sage scrub-associated species that are candidates for Federal listing.

On August 7, 1992, The Irvine Company and The Nature Conservancy announced an agreement for The Nature Conservancy management of 17,000 acres of undeveloped property owned by The Irvine Company that includes large tracts of coastal sage scrub occupied, in part, by the coastal California gnatcatcher. The Irvine Company intends to dedicate these lands to the public over the next 20 to 25 years in conjunction with future development of commercial and residential projects elsewhere on the Irvine Ranch.

Although planning agencies are giving greater consideration to the gnatcatcher and its habitat, none of these efforts are currently providing an adequate level of protection to the gnatcatcher.

E. *Other natural or man-made factors affecting its continued existence.* Grazing and air pollution are also adversely affecting the coastal sage scrub plant community upon which the gnatcatcher depends (Westman 1987, O'Leary and Westman 1988).

One of the effects of urbanization that is contributing to the loss, degradation, and fragmentation of coastal sage scrub vegetation is an increase in wildfires due to anthropogenic ignitions. For example, one of the largest areas of coastal sage scrub vegetation remaining within San Diego County occurs on Camp Pendleton Marine Corps Base. During the last 3 years, over 15,000 acres of native vegetation, much of it coastal sage scrub, have burned in fires started incidental to military training activities. Two of these fires consumed over 6,500 acres of coastal sage scrub vegetation occupied, in part, by the coastal California gnatcatcher (D. Lawson, pers. comm.). High fire frequencies and the lag period associated with recovery of the vegetation may significantly reduce the viability of affected populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service finds that the coastal California gnatcatcher warrants protection under the Act on the basis of past habitat loss and fragmentation alone. Although the preferred action in the proposed rule was to list this species as endangered, the Service concludes (based on information received or developed after the proposed rule was published) that the imminent threat of extinction is not as great as previously considered for the reasons outlined below. Therefore, the preferred action is to list the coastal California gnatcatcher as threatened, which is defined under the Act as a species likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

The Service considers this change in listing status to be warranted based on the following factors. Since the proposed rule was published, enrollment in the State of California's Coastal Sage Scrub Natural Community Conservation Planning Program (NCCP) now includes 15 cities, 1 county, 35 landowners, and 3 land management agencies within the current range of the gnatcatcher in the United States, who have formally committed to develop or to assist in the development of conservation plans that (based on process guidelines finalized by the California Resources Agency on September 1, 1992) meet the standards for allowing incidental take of a federally listed species under section 10 of the Act. The planning period for this program ends on November 1, 1993. Landowner/land management agency enrollments (which preclude any habitat destruction before adequate plans are prepared and implementation agreements are executed) encompass about 45,000 acres of coastal sage scrub occupied, in part, by about 772 pairs of gnatcatchers mostly in Orange County. Overall, according to the California Department of Fish and Game (1992), about 210,000 acres or 53 percent of the coastal sage scrub known to occur within the NCCP planning area (which encompasses the current range of the gnatcatcher in the United States) are subject to enrollment agreements.

In two related matters, The Irvine Company and the Service entered into a Memorandum of Understanding for preparing an "Advance Habitat Conservation Plan" for the California gnatcatcher in April of 1992 (about 193 pairs of gnatcatchers occur on property owned by The Irvine Company), and the Metropolitan Water District of Southern California (MWD) has committed to preserve about 5,600 acres of coastal sage scrub occupied, in part, by the coastal California gnatcatcher in southwestern Riverside County. The

MWD has also committed to provide almost $14 million in funding for research and management of this preserve.

In August 1992, The Nature Conservancy and The Irvine Company announced an agreement for The Nature Conservancy management of 17,000 acres of undeveloped property owned by The Irvine Company in Orange County that includes large tracts of coastal sage scrub occupied, in part, by the coastal California gnatcatcher. This management program will focus, in part, on the gnatcatcher and its habitat.

Taking these actions into consideration, as well as the other recently initiated conservation planning efforts discussed under factor "D" in the "Summary of Factors Affecting the Species" section of this rule and the present and future threats faced by this species, the Service finds that the coastal California gnatcatcher is not in imminent danger of extinction but is likely to become so in the foreseeable future throughout all or a significant portion of its range in the absence of protection afforded under the Act.

Pursuant to the latitude afforded threatened species by section 4(d) of the Act and 50 CFR 17.31(c), the Service is proposing a special rule for the gnatcatcher in this same **Federal Register** part. Special rules are authorized under the Act to adjust the general protective measures available for threatened species and experimental populations. The proposed special rule defines the conditions under which "take" of gnatcatchers may be authorized for certain land-use activities associated with the State of California's NCCP Program.

As provided by 5 U.S.C. 553(d), the Service has determined that good cause exists to make the effective date of this rule immediate. Delay in implementation of the effective date would place the habitat of the species at risk.

Critical habitat is not being designated at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires critical habitat to be designated to the maximum extent prudent and determinable at the time a species is listed as endangered or threatened. The Service has concluded that designation of critical habitat is not prudent for the coastal California gnatcatcher at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(2) Such designation of critical habitat would not be beneficial to the species.

In the case of the California gnatcatcher, both criteria are met. As discussed under factor "D" in the "Summary of Factors Affecting the Species," some landowners or project developers have brushed or graded sites occupied by gnatcatchers prior to regulatory agency review or the issuance of a grading permit. In some instances, gnatcatcher habitat was destroyed shortly after the Service notified a local regulatory agency that a draft environmental review document for a proposed housing development failed to disclose the presence of gnatcatchers on-site. On the basis of these kinds of activities, the Service finds that publication of critical habitat descriptions and maps would likely make the species more vulnerable to activities prohibited under section 9 of the Act.

Most populations of the coastal California gnatcatcher in the United States are found on private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal agencies that may be involved through activities they authorize, fund, or carry out that may affect the coastal California gnatcatcher or its habitat include the Federal Highway Administration, Federal Housing Administration, and Department of the Navy (including Camp Pendleton Marine Corps Base, Fallbrook Naval Annex, and Miramar Naval Air Station).

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, such regulations deemed necessary and advisable to provide for the conservation of the species may be issued. The Secretary may, by regulation, prohibit any act prohibited for endangered species under section 9(a). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. The term "harm" as it applies to the take prohibition is defined in 50 CFR 17.3 to include "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injuries wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." The implementing regulations for threatened wildlife (50 CFR 17.31) incorporate, for the most part, by reference the prohibitions for endangered wildlife (50 CFR 17.21) except when a special rule applies (50

CFR 17.31(c)). The Service finds that the prohibitions for endangered species generally are necessary and advisable for conservation of the coastal California gnatcatcher. However, pursuant to the latitude for threatened species afforded by section 4(d) of the Act and 50 CFR 17.31(c), the Service is proposing to issue a special rule (published in this same **Federal Register**) defining the conditions under which incidental take of the coastal California gnatcatcher resulting from certain state and local government-regulated activities would not violate the general prohibition against take of the species.

The land-use activities covered by the proposed special rule would be associated with an approved Natural Community Conservation Plan prepared in consultation with the Service under the State of California Natural Community Conservation Planning Act of 1991. The approval process for a NCCP plan would involve review and formal concurrence by the Service that the standards set under section 10 of the Endangered Species Act have been met. For these reasons, the Service finds that the proposed special rule would provide for habitat conservation and management essential to recovery of the gnatcatcher in a manner consistent with the purposes of the Act.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits may also be available for zoological exhibition, educational or other special purposes consistent with the provisions and intent of the Act. Individuals wishing further information on permits for research should contact the U.S. Fish and Wildlife Service, Office of Management Authority, Permits Branch, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703–358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Carlsbad Field Office (see **ADDRESSES** above).

Author

The primary author of this final rule is Larry Salata (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following in alphabetical order under "Birds," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
BIRDS							
•	•	•	•	•	•		•
Gnatcatcher, coastal California.	*Polioptila, californica californica.*	U.S.A. (CA), Mexico	Entire	T	496	NA	NA
•	•	•	•	•	•		•

Dated: March 19, 1993.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–7146 Filed 3–25–93; 11:25 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Proposed Special Rule To Allow Take of the Threatened Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed special rule.

SUMMARY: The implementing regulations for threatened wildlife generally incorporate the section 9 prohibitions for endangered wildlife, except when a special rule applies. In the case of the coastal California gnatcatcher (*Polioptila californica californica*), the Fish and Wildlife Service (Service) found that the prohibitions for endangered species were generally necessary and advisable for conservation of the species. This finding is published in this same **Federal Register** separate part. However, pursuant to section 4(d) of the Endangered Species Act of 1973, as amended (Act), and the implementing regulations, the Service proposes to define the conditions associated with certain land-use activities under which take of the coastal California gnatcatcher would not be a violation of section 9. The Service seeks comments from the public on this proposed special rule.

DATES: Comments from all interested parties must be received by June 1, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey D. Opdycke, Field Supervisor, at the address listed above (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The final rule to list the coastal California gnatcatcher (*Polioptila californica californica*) as threatened, published in this same **Federal Register** part, presents discussions describing the current range and status of the gnatcatcher, previous Federal actions on this species, a summary of the comments and recommendations received in response to the Service's proposal to list the gnatcatcher, detailed descriptions of the factors affecting its continued existence, the reasons why critical habitat is not being proposed, and the conservation measures available to federally listed species.

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, such regulations deemed necessary and advisable to provide for the conservation of the species may be issued. These regulations may prohibit any act prohibited for endangered species under section 9(a). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. The implementing regulations for threatened wildlife (50 CFR 17.31) incorporate, for the most part, the prohibitions for endangered wildlife (50 CFR 17.21), except when a special rule applies (50 CFR 17.31(c)). In the case of the coastal California gnatcatcher, the Service found that the prohibitions for endangered species were generally necessary and advisable for conservation of the species. However, pursuant to section 4(d) of the Act, as amended, and 50 CFR 17.31(c), the Service proposes to define the conditions under which take of the coastal California gnatcatcher resulting from specified land-use activities regulated by state and local government would not violate section 9 of the Act.

The Service recognizes the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 (NCCP), as well as such programs as the Multiple Species Conservation Program of San Diego County and the Multispecies Habitat Conservation Planning effort by Riverside County, to approach systematic evaluation and restoration of habitat for the benefit of healthy ecosystems, rather than a species-by-species approach. Such efforts encourage holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species. As a result, the Service is proposing a special rule that would define the conditions under which take associated with certain land-use activities would be authorized. Under this special rule the Service would permit take of the coastal California gnatcatcher associated with land-use activities covered by an approved plan prepared under the NCCP, provided the Service determines that the approved plan meets the issuance criteria of an incidental take permit pursuant to 50 CFR 17.32(b)(2). Moreover, while the NCCP plans are being developed, the special rule would permit take of the gnatcatcher resulting from activities conducted in accordance with conservation guidelines developed by the Scientific Review Panel established under the NCCP process, provided the Service determines the guidelines meet the 50 CFR 17.32(b)(2) standards. The Service believes that this special rule will provide for habitat conservation and management essential to the recovery of the gnatcatcher in a manner consistent with the purposes of the Act.

Finalization of this special rule is contingent upon adoption of the Scientific Review Panel's planning guidelines for the Coastal Sage Scrub NCCP program by the California Department of Fish and Game and the Service.

National Environmental Policy Act

The Fish and Wildlife Service will comply with the National Environmental Policy Act of 1969 (NEPA) in implementing the provisions of the proposed special rule. Pursuant to the NCCP Process Guidelines adopted by the California Resources Agency and the California Department of Fish and Game, a joint State/Federal environmental document will be prepared for each NCCP plan. At the start of a NCCP planning effort, a planning agreement will establish the extent of Federal involvement and Service obligations under NEPA. As appropriate, the NCCP lead agency will provide documentation to assist the Service in NEPA compliance. Both State and Federal law provide for preparation of a joint State/Federal environmental document.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
BIRDS							
•	•	•	•	•	•		•
Gnatcatcher, coastal California.	*Polioptila californica californica.*	U.S.A. (CA), Mexico	Entire	T	496	NA	17.41(b)
•	•	•	•	•	•		•

3. It is proposed to amend § 17.41 by adding paragraph (b) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(b) Coastal California gnatcatcher (*Polioptila californica californica*).

(1) Except as noted in paragraphs (b)(2) and (3) of this section, all prohibitions of § 17.31 (a) and (b) shall apply to the coastal California gnatcatcher.

(2) Incidental take of the coastal California gnatcatcher is permitted if the take results from activities conducted in accordance with a Natural Community Conservation Plan for the protection of coastal sage scrub habitat, *provided that:*

(i) The Natural Community Conservation Plan has been prepared, approved, and implemented pursuant to California Fish and Game Code sections 2800–2840; and

(ii) The Fish and Wildlife Service has issued written concurrence that the Natural Community Conservation Plan meets the standards set forth in 50 CFR 17.32(b)(2). The Service shall issue its concurrence pursuant to the provisions of the Memorandum of Understanding dated December 4, 1991, between the California Department of Fish and Game and the Service regarding coastal sage scrub natural community conservation planning in southern California. (Copies of the Memorandum are available from U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.)

(3) During the period that a Natural Community Conservation Plan referred to in paragraph (b)(2) of this section is being prepared, incidental take of the coastal California gnatcatcher is permitted if the take results from activities conducted pursuant to guidelines prepared by the Scientific Review Panel for this program and adopted by the California Department of Fish and Game pursuant to California Fish and Game Code section 2825, *provided that:*

(i) The take occurs in an area within a local governmental jurisdiction that is enrolled in the natural community conservation planning process;

(ii) The Fish and Wildlife Service has issued written concurrence that the guidelines meet the standards set forth in 50 CFR 17.32(b)(2). The Service shall issue its concurrence pursuant to the provisions of the Memorandum of Understanding dated December 4, 1991, between the California Department of Fish and Game and the Service regarding coastal sage scrub natural community conservation planning in southern California; and

(iii) The total loss of coastal sage scrub habitat resulting from activities covered by this paragraph does not exceed the restrictions defined by the Scientific Review Panel/California Department of Fish and Game guidelines.

(4) If the Fish and Wildlife Service has concurred in the guidelines referred to in paragraph (b)(3) of this section, the Service shall review the guidelines every six months to determine whether they continue to meet the standards set forth in 50 CFR 17.32(b)(2). If the Service determines the guidelines no longer meet these standards, the Service shall consult with the California Department of Fish and Game pursuant to the Memorandum of Understanding dated December 4, 1991, to seek appropriate modification of the guidelines, and shall revoke its concurrence under paragraph (b)(3) of this section if appropriate modification of the guidelines does not occur.

Dated: March 19, 1993.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–7147 Filed 3–25–93; 11:25 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday
March 30, 1993

Part III

Environmental Protection Agency

40 CFR Part 172

Microbial Pesticides; Experimental Use Permits and Notifications; Extension of Comment Period; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 172

[OPP–50668B; FRL–4578–9]

Microbial Pesticides; Experimental Use Permits and Notifications; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: In the **Federal Register** of January 22, 1993, EPA issued proposed amendments to its experimental use permit regulations for pesticides to clarify the circumstances under which an experimental use permit is presumed not to be required. At the request of interested parties, EPA is extending the comment period for the proposed amendments. The original comment period ended March 23, 1993; the comment period is extended to May 7, 1993.

DATES: The comment period is extended to May 7, 1993.

ADDRESSES: Submit written comments by mail to: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Frederick Betz, Acting Chief, Science Analysis and Coordination Staff, Environmental Fate and Effects Division (H7507C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1016A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–6307).

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. EPA's proposed Microbial Pesticides document published as a Separte Part VII in the **Federal Register** of January 22, 1993 (58 FR 5878), is currently available on the *The Federal Bulletin Board*. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. Both files are available in Postscript, Wordperfect 5.1 and ASCII.

As part of the amendments of January 22, 1993 (58 FR 5878), EPA proposed to implement a screening procedure that requires notification to the Agency before initiation of small-scale testing of certain microbial pesticides. The Agency will review notifications to assess the potential for adverse impacts on human health or the environment and will then determine whether to require an experimental use permit. The notification scheme would implement provisions of the Agency's policy statement of June 26, 1986, with modifications.

Dated: March 19, 1993.

Paul F. Schuda,

Acting Director, Environmental Fate and Effects Division.

[FR Doc. 93–7305 Filed 3–29–93 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 59

Tuesday, March 30, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22
15415–15750.....23
15751–16102.....24
16103–16344.....25
16345–16480.....26
16481–16610.....29
16611–16762.....30

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305.....16375

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12193 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12800 (See DOL final rule of March 15).....15402
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12836 (See DOL final rule of March 15).....15402
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13489
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413
6537.....15751
6538.....15753
6539.....16609

Administrative Orders:

Presidential Determinations:
No. 92–22 of April 22, 1992 (See Presidential Determination 93–16 of March 20, 1993).....16345
No. 93–15 of February 27, 1993.....13183
No. 93–16 of March 20, 1993.....16345

Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
297.....16446
307.....12145
432.....13191
532.....12146, 13193, 13194, 15415
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332, 15416, 15775
1421.....14495
1427.....12332, 15261, 15755
1434.....14495
1464.....11960
1493.....11786, 13684, 15901
1540.....16103
1703.....13184
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071, 15417
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130
58.....13130

59.....13130
61.....13130
68.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1435.....16126
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174, 15901
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
26.....15810
50.....12339, 15303, 16377
52.....16377
60.....12342
100.....16377
110.....14344
810.....13427, 15441
834.....16268
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

3.....16481
217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
607.....16104
614.....11792
618.....16104
203.....13403

Proposed Rules:

346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
108.....15756
121.....12334

14 CFR

25.....12537, 16486
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515, 15757, 15758, 15760, 16105, 16107, 16109, 16110, 16113, 16115, 16118, 16347
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264, 15762, 15763, 16488, 16611
93.....12128
95.....16489
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450, 15813, 16137, 16377, 16505, 16507
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118, 16508
121.....15730, 16584
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

4.....15763
5.....15763
305.....15086
1030.....12335
1116.....16119

Proposed Rules:

18.....16139
305.....12818
306.....16464
308.....13370
1204.....15815

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848
240.....14628, 14848
249.....14628, 14848
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804
230.....16141
239.....16141
240.....11804, 11806, 16151
250.....13719
259.....13719
274.....16141

18 CFR

2.....15418
11.....15765
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

Ch. I.....15816
284.....14530, 15311

19 CFR

4.....12538, 13195
19.....15770
111.....15770
112.....15770
122.....15770
141.....16349
146.....15770
178.....16349

Proposed Rules:

113.....16632

20 CFR

Proposed Rules:

209.....11811
211.....11811
229.....16155
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

Ch. I.....15816
450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
213.....13534
215.....15773
234.....13534, 13950
236.....13007, 15773
240.....13534
570.....13686
582.....13884
583.....13870
700.....14509
813.....15773
882.....13828
905.....13916, 15773
913.....15773
968.....13916
3500.....13705

25 CFR

Ch. III.....16493
503.....16495

Proposed Rules:

216.....15404

26 CFR

1.....13409, 13412, 13413,

13706, 14150, 15089, 15274, 16349, 16496
52 14517
602 ..... 13409, 13413
Proposed Rules:
1 ..... 14531, 15312, 15313, 15818, 15819
20 15313
25 15313
26 15314
301 15314
602 14531

27 CFR
9 11964
Proposed Rules:
650 11814

28 CFR
2 16612

29 CFR
470 15402
1910 ..... 15089, 16496, 16612
2619 13706
2676 13707
Proposed Rules:
103 15314
825 13394
1910 15526
1926 ..... 16509, 16515
2619 15315
2676 15315
2700 12158

30 CFR
917 16350
920 15275
944 16623
948 16353
Proposed Rules:
56 14492
57 14492
75 16517
710 15404
715 15404
716 15404
717 15404
750 15404
870 12913
914 ..... 16379, 16381
915 16632
920 ..... 16383, 16384, 16386
935 ..... 15315, 16388
938 ..... 15456, 16389
943 16634
950 ..... 15318, 15319, 16636 16637

31 CFR
103 13538
505 13197
550 13198
585 13199

32 CFR
92 13550
165 16497
988 13007

33 CFR
1 ..... 15228, 15901
100 ..... 13214, 16121, 16357
110 12539
117 ..... 12540, 15419, 15420, 15421, 16122, 16499
154 13550
155 13708
165 ..... 14151, 15089, 15775
Proposed Rules:
117 12568
165 ..... 15821, 15822
168 16391

34 CFR
200 11920
230 13178
231 13178
236 13178
238 13178
300 13528
600 ..... 13335, 15523
668 14152
682 13335
Proposed Rules:
50 11924
232 15748
649 ..... 11928, 15824
674 13356
682 13356

36 CFR
Proposed Rules:
242 14350

37 CFR
301 13413
311 13413

38 CFR
3 ..... 12174, 16358, 16359

39 CFR
111 13551
Proposed Rules:
3001 ..... 12198, 16392

40 CFR
50 ..... 13008, 15278, 15281, 15282
52 ..... 11967, 14153, 15277, 15422, 15431
55 ..... 14157, 16625
72 15634
73 15634
75 15634
80 ..... 13413, 14476, 16002
81 ..... 12541, 15422, 15776
86 ..... 13413, 15781
88 11888
180 ..... 14314, 14316, 15802, 15803, 15804, 16094
261 15284
268 14317
271 ..... 12174, 14319, 14321, 15806
300 ..... 12142, 15287
435 12454
712 13556
716 13556
761 ..... 15435, 15808
763 15808
Proposed Rules:
Ch. 1 ..... 12199, 12352, 13571, 13730, 16517
51 13836
52 ..... 12006, 12913, 12914, 13230, 13572, 13575, 14194, 15824, 16639
61 15457
68 13174
69 13579
82 15014
85 13730
86 13730
93 13836
144 ..... 13836, 15320
172 16762
180 ..... 12199, 12200, 13234, 13236, 13238, 13239, 13241
185 13241
186 13241
191 ..... 13731, 15320
194 15320
228 12569
302 12876
355 12876
761 ..... 12352, 13128

41 CFR
Ch. 301 12890
301–7 12890
302–11 15436

43 CFR
Public Land Orders:
86 11816
6958 11968
6959 14323
6960 16628
Proposed Rules:
3730 12878
3820 12878
3830 12878
3850 12878

44 CFR
64 ..... 11968, 14159, 16500
65 ..... 14323, 15091
67 14325
Proposed Rules:
67 14350

45 CFR
400 11793
1303 13019
1611 12335

46 CFR
10 ..... 15228, 15901
12 ..... 15228, 15901
15 13360
25 13364
552 13414
Proposed Rules:
31 15740
32 15740
67 12352
502 16641

47 CFR
Ch. I 14161
0 13019
1 ..... 13019, 13708, 14328
2 ..... 11795, 16360
5 14328
13 12632
21 ..... 11795, 13708
22 11799
25 13417
64 ..... 12175, 14329
69 16628
73 ..... 12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440, 16502, 16503
74 11795
76 ..... 11970, 11972
80 16503
90 ..... 12178, 12177
Proposed Rules:
Ch. I 12915, 13041, 14367, 15120, 15461
1 14369
2 14532
21 ..... 12202, 13708
25 ..... 13432, 13433, 14532
32 ..... 14535, 16163
61 13435
64 ..... 12204, 13435, 14371
65 16183
68 14375
69 ..... 12204, 13435
73 ..... 12916, 13435, 13436, 13437, 15321, 15461, 15462, 16518, 16643, 16644
76 ..... 12917, 12921
90 ..... 12205, 15131
74 12011

48 CFR
Ch. 20 12988
22 12140
36 12140
52 12140

49 CFR
1 12543
107 12543
171 12182
173 12904
178 12904
180 12904
192 14519
193 14519
195 14519
501 12545
571 ..... 11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463
582 12545
591 12905
1004 16124
1007 15290
Proposed Rules:
23 12207
171 12207
172 12207
173 ..... 12207, 12316
178 12316
180 12316
195 12213
571 ..... 12921, 13042, 13243, 13424, 15132
Ch. VI 15816
613 ..... 12064, 12084
614 12096
1056 12573
1312 14198

50 CFR
17 ..... 12853, 12864, 14169, 14248, 14330, 16742
20 15093
227 16369
611 ..... 14170, 16446
625 13560
641 ..... 13560, 16371
646 11979
652 14340
663 ..... 11984, 16124, 16629
672 ..... 11985, 11986, 13214, 13561, 16372, 16373
674 12336

675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291, 16374, 16446
685.....14170

Proposed Rules:
Ch. I.....16644
17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541, 15828, 16164, 16758
100.....14350
216.....16519
218.....16519
222.....16519
625.....12017, 15463, 16519
641.....12018, 15132
646.....13732
663.....14543, 14549

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List March 25, 1993

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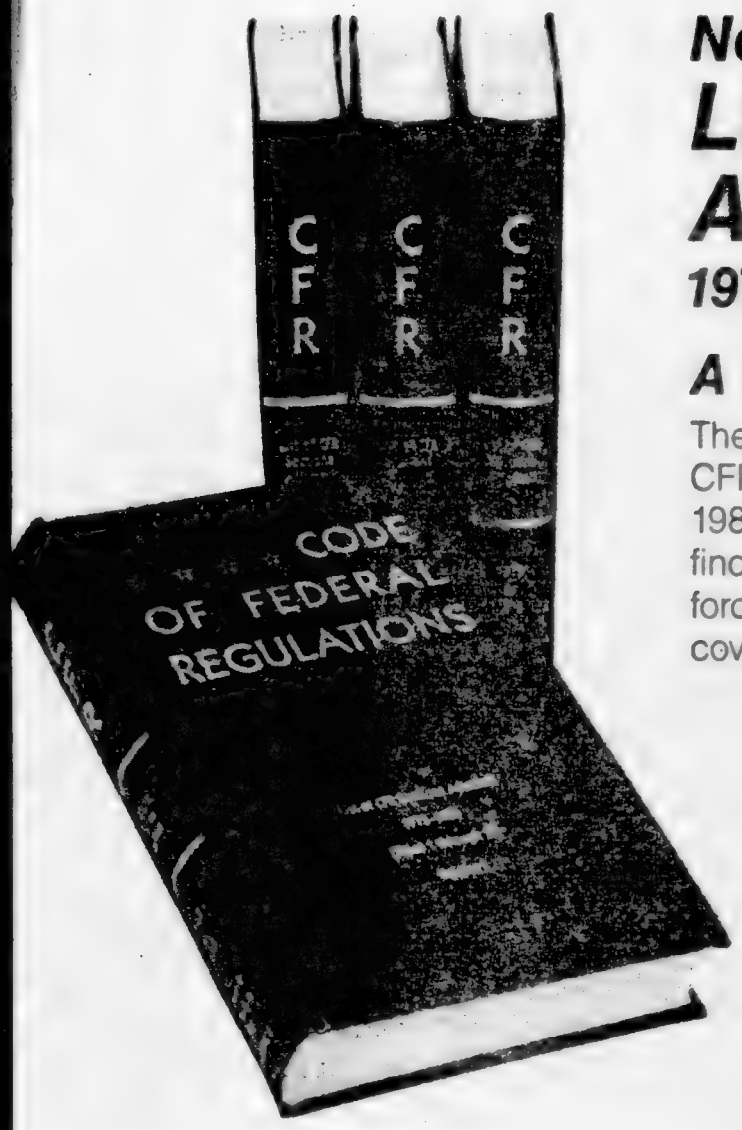

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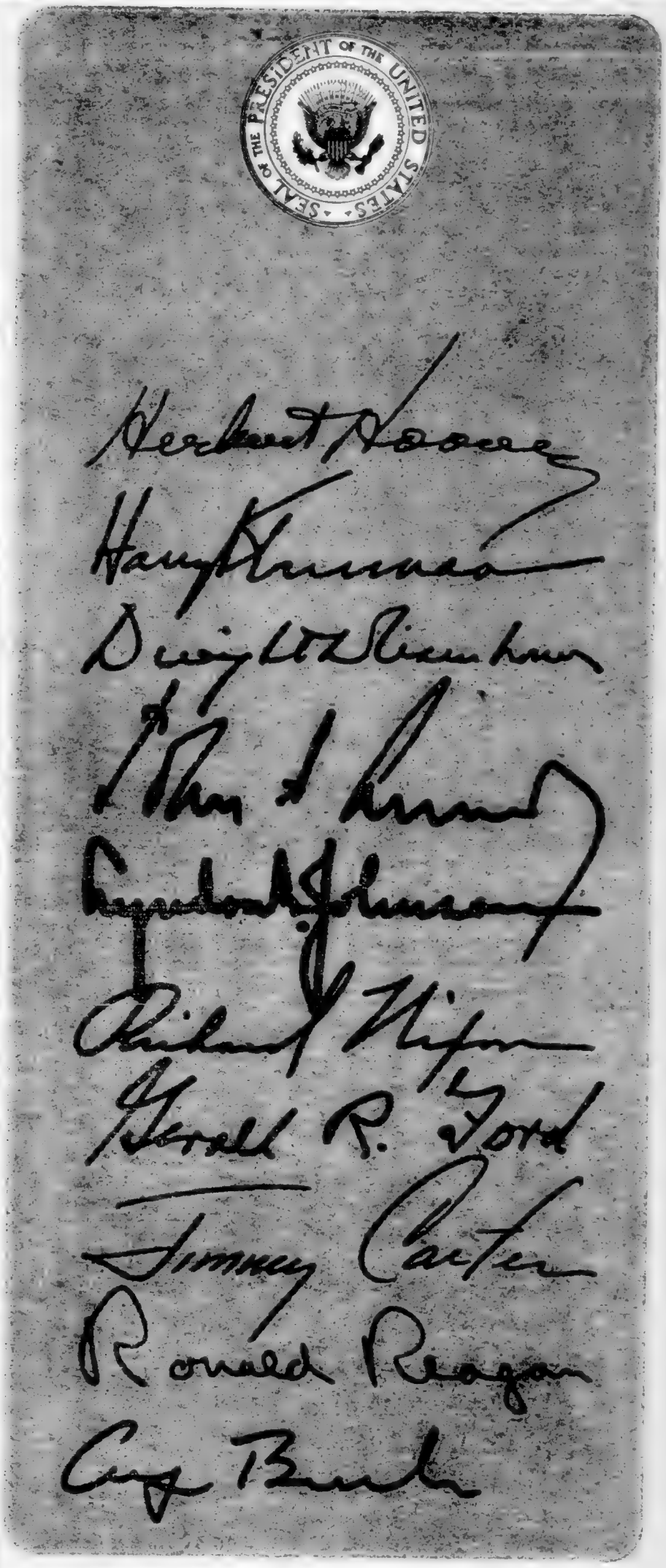

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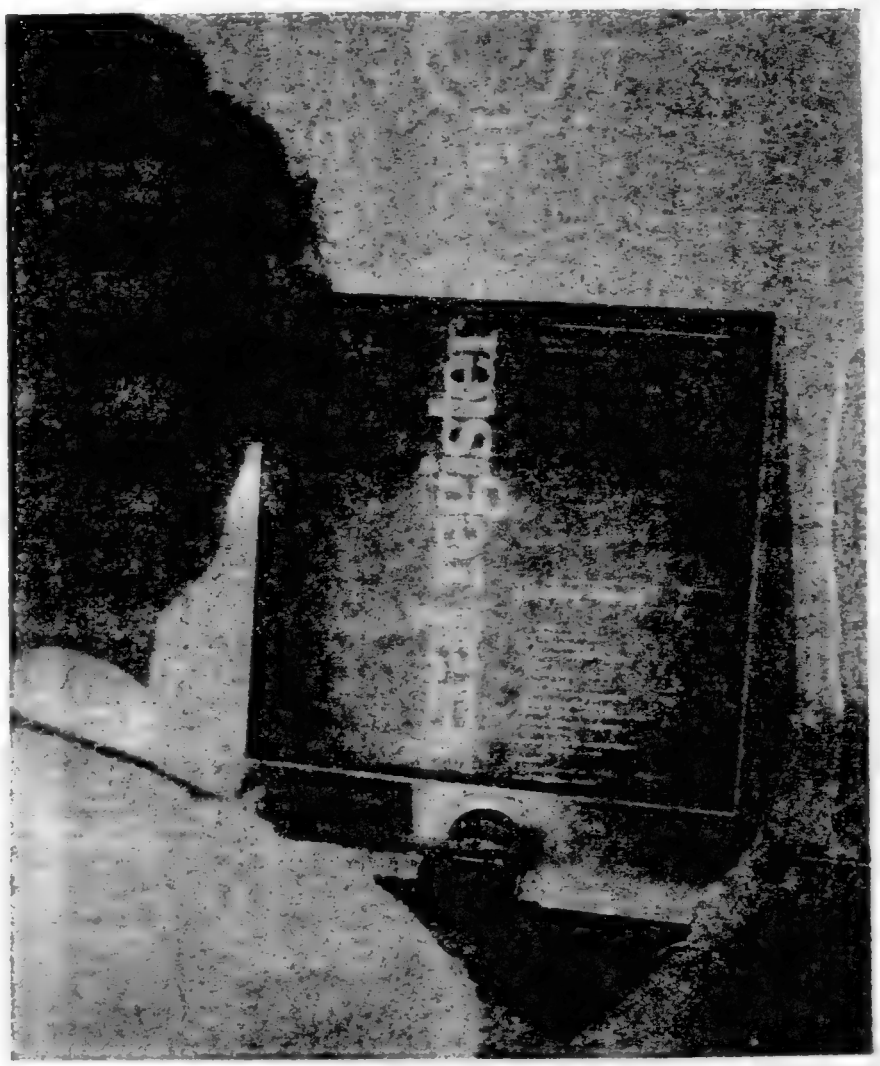

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Contents

Federal Register

Vol. 58, No. 60

Wednesday, March 31, 1993

Agriculture Department
*See*Animal and Plant Health Inspection Service
See Federal Grain Inspection Service

Animal and Plant Health Inspection Service
RULES
Genetically engineered organisms:
Introduction of certain regulated articles and petitions for nonregulated status, 17044

Army Department
NOTICES
Meetings:
Science Board, 16817

Census Bureau
NOTICES
Meetings:
American Economic Association Advisory Committee et al., 16812

Commerce Department
See Census Bureau
See Export Administration Bureau
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 16811

Defense Department
See Army Department
RULES
Acquisition regulations:
Recoupment of nonrecurring costs on sales or licensing of U.S. items, 16782
NOTICES
Agency information collection activities under OMB review, 16815, 16816

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Exempt anabolic steroid products, 16772

Employment and Training Administration
NOTICES
Adjustment assistance:
Cyprus Thompson Creek Mining Co., 16848
Phillips Petroleum Co. et al.; correction, 16849
Job Training Partnership Act:
Training and employment guidance letters—
Governor's coordination and special services plans and statewide job training plans; modifications, 16849

Energy Department
See Energy Information Administration
See Energy Research Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
Environmental Restoration and Waste Management Advisory Committee, 16817

Energy Information Administration
NOTICES
Forms; availability, etc.:
Petroleum marketing survey, 16818

Energy Research Office
NOTICES
Meetings:
Fusion Energy Advisory Committee, 16821

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Methalaxyl, 16776
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Halogenated solvent emissions from organic solvent cleaners, 16808
Air quality planning purposes; designation of areas:
Tennessee, 16806
Toxic substances:
Premanufacture notification regulations; hearing, 17040
NOTICES
Environmental leadership program; establishment Meeting, 16826
Meetings:
Science Advisory Board, 16826
Pesticide registration, cancellation, etc.:
Flair, etc., 16828
Iron salts, 16831
Terrazole 4 Flowable Fungicide, etc., 16832
Pesticides; experimental use permits, etc.:
Ciba-Geigy Corp. et al., 16827

Executive Office of the President
See Management and Budget Office

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Baxter International, Inc., 16813

Family Support Administration
See Refugee Resettlement Office

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus Industrie, 16763
Boeing, 16764
Fokker, 16769
McDonnell Douglas, 16770
PROPOSED RULES
Air carrier certification and operation:
Flight attendant duty period limitations and rest requirements, 17024

Rulemaking petitions; summary and disposition, 16798
Transition areas
Correction, 16914
NOTICES
Meetings:
Research, Engineering, and Development Advisory Committee, 16907

Federal Bureau of Investigation
NOTICES
Committees; establishment, renewal, termination, etc.:
Uniform Crime Reporting (UCR) Data Providers Advisory Policy Board, 16848

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama, 16779
Alabama et al., 16780
Arizona, 16781
California, 16781
Florida et al., 16780
Iowa, 16779
Oklahoma, 16780
PROPOSED RULES
Radio stations; table of assignments:
California, 16809
NOTICES
Agency information collection activities under OMB review, 16833

Federal Deposit Insurance Corporation
PROPOSED RULES
Cost, feasibility, and privacy implications of tracking individual deposits, 16798
NOTICES
Security interests in assets of insured depository institutions; treatment by FDIC as conservator or receiver; policy statement, 16833

Federal Emergency Management Agency
NOTICES
Hotel and Motel Fire Safety Act; national master list, 17008
State contacts, 17020

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
South Glens Falls Limited Partnership, 16820
Meetings; Sunshine Act, 16913
Applications, hearings, determinations, etc.:
Diamond Energy Inc., 16819
Great Lakes Gas Transmission Limited Partnership, 16820
Midwest Power Systems, Inc., 16820
Northern Border Pipeline Co., 16820
Tennessee Gas Pipeline Co., 16821
U-T Offshore System, 16821

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Indiana et al., 16810
Iowa et al., 16810

Federal Highway Administration
NOTICES
Motor vehicle safety standards:
Motor carrier safety enforcement cases; orders, 16916

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Chemical Banking Corp., 16834
Comerica Inc., 16835
Compagnie de Suez et al., 16836
Murphy, Dennis F., Jr., et al., 16837
Trustmark Corp., 16837

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Coupons under book-entry safekeeping (CUBES) program, 16910

Fish and Wildlife Service
NOTICES
Agency information collection activities under OMB review, 16844, 16845

Food and Drug Administration
RULES
Food for human consumption:
Tomato concentrates, catsup, and tomato juice; identity standards and quality and fill of container, 16771

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Refugee Resettlement Office
RULES
Block grants:
Substance abuse prevention and treatment, 17062

Health Care Financing Administration
NOTICES
Medicare and medicaid:
Program issuances and coverage decisions; quarterly listing, 16837

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 16822

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Multifamily mortgage limits; increase, 16773

Indian Affairs Bureau
NOTICES
Rejected statute of limitations claims; list; correction, 17042
Tribal-State Compacts approval; Class III (casino) gambling:
Ak-Chin Indian Community, AZ, 17006

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Commission
NOTICES
Import investigations:
Commercial food portioners, components, including software, and process, 16846

Diltiazem hydrocholoride and diltiazem preparations, 16846
Ferrosilicon from—
Kazakhstan and Ukraine, 16847
Meetings; Sunshine Act, 16913

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Corp. et al., 16848

Justice Department
See Drug Enforcement Administration
See Federal Bureau of Investigation

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
California, 16843
Survey plat filings:
Idaho, 16844

Management and Budget Office
NOTICES
Economic classification system; issues papers, 16990

Minority Business Development Agency
NOTICES
Business development center program applications:
Virgin Islands, 16814

National Credit Union Administration
RULES
Credit unions:
Investments and deposits; prohibitions; correction, 16763

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Power-operated window, partition, and roof panel systems, 16782
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Ford Motor Co., 16907

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing—
Gulf of Alaska groundfish, 16786
Gulf of Alaska groundfish, 16787, 16797
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 16785
NOTICES
Permits:
Marine mammals, 16815

National Park Service
NOTICES
Mining plans of operations; availability, etc.:
Lake Meredith National Recreation Area, TX, 16845
National Register of Historic Places:
Pending nominations, 16845

National Science Foundation
NOTICES
Meetings:
Design and Manufacturing System Special Emphasis Panel, 16851

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 16880
Generic letters:
Line-item technical specification improvements to reduce testing during power operation, 16881
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 16851
Applications, hearings, determinations, etc.:
Portland General Electric Co., 16891
Vermont Yankee Nuclear Power Corp., 16892

Office of Management and Budget
See Management and Budget Office

Postal Service
PROPOSED RULES
Privacy Act; implementation, 16806

Public Health Service
See Food and Drug Administration

Refugee Resettlement Office
RULES
Refugee settlement program:
Cash and medical assistance, 16777
Cash and medical assistance; withdrawn, 16777

Securities and Exchange Commission
RULES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Operational phase implementation
Correction, 16771
PROPOSED RULES
Investment companies:
Exemptive orders and expanded delegated authority; expedited procedure, 16799
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 16892
American Stock Exchange, Inc., et al., 16893
New York Stock Exchange, Inc., 16895, 16896
Applications, hearings, determinations, etc.:
American Capital Government Target Series et al., 16898
Janus Income Series, 16899
Janus Twenty Fund, Inc., 16901
Janus Venture Fund, Inc., 16900
Participants Trust Co., 16902
Preferred Health Care, Ltd., 16902
Seligman Capital Fund, Inc., et al., 16903

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Idaho, 16906
Michigan, 16906
Mississippi, 16907
Applications, hearings, determinations, etc.:
CFB Venture Fund II, L. P., 16907

Thrift Supervision Office
NOTICES
Conservator appointments:
Guardian Bank, a Federal Savings Bank, 16911
Applications, hearings, determinations, etc.:
Blue River Federal Savings Bank, 16911
Fidelity New York, F.S.B., 16912

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Research and Special Programs Administration, Administrator
Correction, 16914

Treasury Department
See Fiscal Service
See Thrift Supervision Office

Separate Parts In This Issue

Part II
Department of Transportation, Federal Highway Administration, 16915

Part III
Office of Management and Budget, 16989

Part IV
Department of the Interior, Bureau of Indian Affairs, 17005

Part V
Federal Emergency Management Agency, 17007

Part VI
Federal Emergency Management Agency, 17019

Part VII
Department of Transportation, Federal Aviation Administration, 17023

Part VIII
Environmental Protection Agency, 17039

Part IX
Department of the Interior, Bureau of Indian Affairs, 17041

Part X
United States Department of Agriculture, Animal and Plant Health Inspection Service, 17043

Part XI
Department of Health and Human Services, 17061

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
340.....17044

12 CFR
703.....16763

Proposed Rules:
Ch. III.....16798

14 CFR
39 (4 documents).....16763, 16764, 16769, 16770

Proposed Rules:
Ch. I.....16798
71.....16914
121.....17024
125.....17024
135.....17024

17 CFR
239.....16771
249.....16771

Proposed Rules:
200.....16799
270.....16799

21 CFR
155.....16771
156.....16771
1308.....16772

24 CFR
207.....16773
213.....16773
220.....16773
221.....16773
231.....16773
234.....16773

39 CFR

Proposed Rules:
266.....16806

40 CFR
180.....16776

Proposed Rules:
52.....16806
63.....16808
81.....16806
700.....17040
720.....17040
721.....17040
723.....17040

45 CFR
96.....17062
400 (2 documents).....16777

47 CFR
73 (8 documents).....16779, 16780, 16781

Proposed Rules:
73.....16809

48 CFR
215.....16782
252.....16782

49 CFR
1.....16914
571.....16782

50 CFR
611.....16787
642.....16785
672 (3 documents).....16786, 16787, 16797

Rules and Regulations

Federal Register
Vol. 58, No. 60
Wednesday, March 31, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule; corrections.

SUMMARY: In the **Federal Register** of October 31, 1991, beginning on page 56000, a final rule concerning part 703 (investment and deposit activities) of the NCUA Regulations was published. An inadvertent error was made in the supplementary information section of the document. This document makes the correction.

EFFECTIVE DATE: March 31, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel (202–682–9630), at the above address.

SUPPLEMENTARY INFORMATION: In final rule document 91–25926, in the issue of Thursday, October 31, 1991, the following correction to the **SUPPLEMENTARY INFORMATION** section is made:

On page 56000, third column, under the heading "Section 703.2 Definitions," delete the second sentence and substitute the following:

Although no comments were received relative to this section, the Board has determined to modify the definition of "Corporate credit union." The Board has concluded that rather than providing a specific definition of the term in this part, the definition should be tied to that provided in part 704, which governs corporate credit unions. This will enable changes to be made to the definition in part 704 without having to amend this part.

By the National Credit Union Administration Board on March 23, 1993.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–7420 Filed 3–30–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–214–AD; Amendment 39–8516; AD 93–05–12]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that requires repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2, and repair, if necessary. This amendment also requires modification of the outer wing rear spar forward face which, when accomplished, constitutes terminating action for the repetitive inspections. This amendment is prompted by results of fatigue testing of the center fuselage, which revealed cracks on the wing rear spar that spread around four fasteners in a fatigue-sensitive area. The actions specified by this AD are intended to prevent reduced structural integrity of the wing.

DATES: Effective May 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31700 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on December 11, 1992 (57 FR 58752). That action proposed to require repetitive detailed visual inspections to detect cracks in the fatigue-sensitive area around the fasteners on the wing rear spar between ribs 1 and 2, and repair, if necessary. That action also proposed to require modification of the outer wing rear spar forward face which, when accomplished, constitutes terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $112 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $40,775, or $800 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–12 Airbus Industrie: Amendment 39–8516. Docket 92–NM–214–AD.

Applicability: Model A320 series airplanes; serial numbers 002 through 071, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 13,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracks in the left- and right-hand sides of the wing rear spar between ribs 1 and 2, in accordance with Airbus Industrie Service Bulletin A320–57–1020, dated September 5, 1991.

(1) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) If no cracks are found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 landings.

(b) Within 3 years after the effective date of this AD, modify the outer wing rear spar forward face between ribs 1 and 2, in accordance with Airbus Industrie Service Bulletin A320–57–1021, dated September 5, 1991.

(c) Accomplishment of the modification required by paragraph (b) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection shall be done in accordance with Airbus Industrie Service Bulletin A320–57–1020, dated September 5, 1991. The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–57–1021, dated September 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 5, 1993.

Issued in Renton, Washington, on March 12, 1993.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–7377 Filed 3–30–93; 8:45 am]

BILLING CODE 4910–13–P–M

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14 CFR Part 39

[Docket No. 92–NM–10–AD; Amendment 39–8521; AD 93–05–17]

Airworthiness Directives; Boeing Model 707/720, 727, and 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Model 707/720, 727, and 737 series airplanes, that currently requires inspections of the E–F window post for cracks, and repair, if necessary. This amendment requires inspections of the E–N and F–N areas of the window post for cracks; visual inspections to determine sufficient edge margin of the reinforcement straps at al of the strap fastener holes; and repair, if necessary. This amendment is prompted by reports of cracks found in certain areas of the window post. The actions specified by this AD are intended to prevent rapid depressurization of the cabin due to cracking in the window post area.

DATES: Effective May 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Forde, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 82–08–09, Amendment 39–4364 (47 FR 17276, April 22, 1982), which is applicable to Boeing Model 707/720, 727, and 737 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on October 26, 1992 (57 FR 48474). The action proposed to require additional inspections to include the E–N and F–N areas of the window posts to detect cracks; visual inspections to determine sufficient edge margin in the reinforcement straps at all of the strap fastener holes; and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One operator requests that the proposed rule be revised to require repetitive inspection intervals in terms of regular maintenance schedules instead of flight cycles. This commenter notes that the proposed intervals of 3,300 and 6,600 flight cycles would fall at times sooner than those of this operator's regular "C" check intervals. To follow the proposed compliance schedule, this operator would be required to schedule special times for the accomplishment of the inspections, and this would entail considerable additional expense. The FAA does not concur with the commenter's request to change the compliance time intervals. Fatigue damage, as addressed by this AD action, accumulates in terms of flight cycles; the repetitive inspection intervals, as proposed, represent what the FAA considers to be the maximum number of flight cycles allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections without compromising safety. Since maintenance schedules vary from operator to operator, there would be no assurance that the inspections will be accomplished within that time; therefore, it would be inappropriate to state the inspection intervals in terms of maintenance checks. Under the provisions of paragraph (e) of the final rule, however, operators may apply for an adjustment of the compliance time if sufficient data is presented to the FAA to justify that such an adjustment will provide an acceptable level of safety.

Several commenters question the repetitive inspection interval specified in Item 5 of Table 3 of the proposal, which pertains to Model 737 series airplanes. Item 5 indicates that inspections should be repeated every 3,300 flight cycles for airplanes with modified window posts that have been verified to be crack-free by the use of eddy current inspections. The commenters question why this repetitive inspection interval should be shorter than that for modified window posts that have not been verified crack-free by eddy current inspections. Since the eddy current inspection is a superior method for detecting cracks, the shorter repetitive inspection interval for window posts so inspected seems unwarranted. The FAA concurs. The repetitive inspection interval of 3,300 flight cycles, which was specified in Item 5 of Table 3, was a typographical error. The correct interval is 5,500 flight cycles; the final rule has been revised to indicate this corrected interval.

One commenter requests clarification of the term "modified structure," as used throughout the notice. The commenter questions whether this term includes "production modified" structure. In response to this commenter, the FAA notes that this AD is not intended to affect "production modified" airplanes. Certain airplanes have been modified during production with an improved fastener pattern at the window post area, and are not subject to the unsafe condition addressed by this AD action. Only the airplanes listed in the service bulletins that are specified in the applicability statement of the rule are affected by the requirements of this AD.

One commenter suggests that the applicability of the proposed rule be revised so that previously repaired window posts are excluded from additional inspection. The FAA does not concur. As was explained in detail in the preamble to both the original notice and the supplemental notice, reports have verified that cracking continues to be found in areas of window posts that have been modified and/or repaired. Therefore, continued inspections of airplanes that have been so modified or repaired are warranted in order to ensure the structural integrity of the window post area.

One commenter requests clarification as to the compliance time threshold specified in Item 1 of Table 6, which pertains to Model 737 series airplanes. The proposal states that the initial inspection is required "* * * prior to the accumulation of 12,750 flight cycles." The commenter questions whether this threshold refers to flight cycles accumulated since the airplane was new, or flight cycles accumulated after the installation of the strap. The FAA responds by explaining that the threshold of 12,750 flight cycles refers to the total number of flight cycles accumulated since the airplane was new. Item 1 of Table 6 addresses airplanes that were modified in accordance with any revision through Revision 8 of Boeing Service 737–53–1023. Those revisions of the service bulletin contain procedures for installation of a strap that covers only the E–F window post area; they did not contain procedures for installing a strap that extends to the E–N window post area. Accordingly, the strap installed in accordance with these service bulletins does not cover the entire area that is prone to cracking and that is addressed by this AD. Therefore, since the entire problem area of E–N window post has not been modified on these airplanes, it is appropriate that the initial inspection be based on the total number of flight cycles of the airplane, not on the number of flight cycles since installation of the "short" strap. (Revisions 9, 10, and 11 of the service bulletin do contain procedures for installation of a strap that does extend to cover the E–N region.)

One commenter requests that Item 5 of Table 2 of the notice, which pertains to Model 727 series airplanes, should include reference to Revision 9 and 10 of Boeing Service Bulletin 727–53–0086. The commenter considers that this reference is necessary, since some airplanes previously may have been modified in accordance with those revisions. The FAA concurs. The omission of references to Revisions 9 and 10 was clearly inadvertent (reference to these revisions was included in Item 3 of Table 2 and in Item 5 of parallel Table 3). Item 5 of Table 2 of the final rule has been revised to include this reference.

The FAA has been advised that a similar omission was made in Table 6 of the notice, which pertains to Model 737 series airplanes. Items 2 and 3 of that table should have included reference to Revision 11 of Boeing Service Bulletin 737–53–1023 as a source of modification or repair. That this was clearly an inadvertent omission is demonstrated by the fact that Revision 11 was referenced in the parallel items of Table 5, which also pertains to Model 737 series airplanes. Table 6 of the final rule has been revised to include this reference.

Additionally, since issuance of the supplemental notice, the FAA has reviewed and approved Boeing Service Bulletin 2983, Revision 6, dated November 12, 1992, which pertains to Model 707/720 series airplanes. This revision is essentially identical to the previous revision, but contains certain editorial and clarifying changes. Items 3 and 5 of Table 1, and Items 2 and 3 of Table 4, as well as paragraph (d)(1), have been revised in the final rule to include reference to this revision as an additional source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,800 Model 707/720, 727, and 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,183 airplanes of U.S. registry will be affected by this AD, that it will take

approximately 8 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $520,520, or $440 per airplane per inspection cycle. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4364 (47 FR 17276, April 22, 1982), and by adding a new airworthiness directive (AD), to read as follows:

93–05–17 Boeing: Amendment 39–8521. Docket No. 92–NM–10–AD. Supersedes AD 82–08–09, Amendment 39–4364.

Applicability: Applies to Model 707/720, series airplanes, listed in Boeing Service Bulletin 2983, Revision 5, dated January 31, 1991; Model 727 series airplanes listed in Boeing Service Bulletin 727–53–0086, Revision 11, dated August 8, 1991; and Model 737 series airplanes listed in Boeing Service Bulletin 737–53–1023, Revision 11, dated May 16, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent depressurization as a result of failure of the control cabin window post structure, accomplish the following:

(a) Inspect the E–F window posts for cracks in accordance with the schedule set forth in Table 1, 2, or 3 of this AD, as applicable:

TABLE 1.—MODEL 707/720 E–F WINDOW POST INSPECTION

[Applicable Boeing Service Bulletin 2983]

Airplane condition	Inspection required in accordance with revision 4, 5, or 6 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to not to exceed exceed (flight cycles)
1. Service Bulletin not accomplished	X-ray of E–F window post	1,650 after May 21, 1982 (effective date of AD 82–08–09), or prior to accumulation of 11,650, whichever occurs later..	3,300
2. Repaired or modified per Original Issue of Service Bulletin.	X-ray of E–F window post	1,650 after May 21, 1982, or prior to accumulating 10,000 after repair or modification, whichever occurs later.	3,300
3. Repaired or modified per Revision 1, 2, 3, 4, 5, or 6 of Service Bulletin. (Modification was accomplished without using eddy current inspection to verify structure was free of cracks.).	Close visual for cracks of external doubler and the exposed portion of the E–F window post with the #2 sliding window open.	1,650 after May 21, 1982, or prior to accumulating 16,650 after repair or modification, whichever occurs later.	3,300
4. Repaired or modified per Revision 1 of Service Bulletin.	Visual inspection for sufficient edge margin of all of the strap fastener holes.	1,650 after effective date of this AD	None
5. Modified per Revision 2, 3, 4, 5, or 6 of Service Bulletin (verified no cracks in structure using eddy current inspection described in Revision 4 or 5 of Service Bulletin).	Close visual for cracks of external doubler and the exposed portion of the E–F window post with the #2 sliding window open.	3,300 after effective date of this AD, or 24,000 after strap installation, whichever is later.	3,300

TABLE 2.—MODEL 727 E–F WINDOW POST INSPECTION

[Applicable Boeing Service Bulletin 727–53–0086]

Airplane condition	Inspection required in accordance with revision 6, 7, 8, 9, 10, or 11 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
1. Service Bulletin not accomplished	X-ray of E–F window post	1,650 after May 21, 1982 (effective date of AD 82–08–09), or prior to accumulating 11,650, whichever occurs later.	3,300

TABLE 2.—MODEL 727 E–F WINDOW POST INSPECTION—Continued

[Applicable Boeing Service Bulletin 727–53–0088]

Airplane condition	Inspection required in accordance with revision 6, 7, 8, 9, 10, or 11 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
2. Repaired or modified per Original Issue or Revision 1 of Service Bulletin.	X-ray of E–F window post	1,650 after May 21, 1982, or prior to accumulating 10,000 after repair or modification, whichever occurs later.	3,300
3. Repaired or modified per Revision 2, 3, 4, 5, 6, 7, 8, 9, 10, or 11 of Service Bulletin. (Modification was accomplished without using eddy current inspection to verify structure was free of cracks.).	Close visual for cracks of external doubler and the exposed portion of the E–F window post with the #2 sliding window open.	1,650 after May 21, 1982, or prior to accumulating 16,650 after repair or modification, whichever occurs later.	3,300
4. Repaired or modified per Revision 9 or 10 of Service Bulletin.	Visual inspection for sufficient edge margin of all of the strap fastener holes.	1,650 after effective date of this AD	None
5. Modified per Revision 2, 3, 4, 5, 6, 7, 8, 9, 10, or 11 of Service Bulletin (verified no cracks in structure using eddy current inspection described in Revision 6, 7, 8, 9, 10, or 11).	Close visual for cracks of external doubler and the exposed portion of the E–F window post with the #2 sliding window open.	3,300 after effective date of this AD, or 24,000 after strap installation, whichever occurs later.	3,300

TABLE 3.—MODEL 737 E–F WINDOW POST INSPECTION

[Applicable Boeing Service Bulletin 737–53–1023]

Airplane condition	Inspection required in accordance with revision 6, 7, 8, 9, 10, or 11 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
1. Service Bulletin not accomplished	X-ray of E–F window post	2,750 after May 21, 1982 (effective date of AD 82–08–09), or prior to the accumulation of 12,750, whichever occurs later.	5,500
2. Repaired or modified per Original Issue or Revision 1 or 2 of Service Bulletin.	X-ray of E–F window post	2,750 after May 21, 1982, or prior to accumulating 10,000 after repair or modification, whichever occurs later.	5,500
3. Repaired or modified per Revision 3, 4, 5, 6, 7, 8, 9, 10, or 11 of Service Bulletin. (Modification was accomplished without using eddy current inspection to verify structure was free of cracks.).	Close visual for cracks of the external doubler and the exposed portion of E–F widow post with the #2 sliding window open.	2,750 after May 21, 1982, or prior to accumulating 17,750 after repair or modification, whichever occurs later.	5,500
4. Repaired or modified per Revision 9 or 10 of Service Bulletin.	Visual inspection for sufficient edge margin of all the strap fastener holes.	2,750 after effective date of this AD	None
5. Modified per Revision 3, 4, 5, 6, 7, 8, 9, 10, or 11 of Service Bulletin (verified no cracks in structure using eddy current inspection described in Revision 6, 7, 8, 9, 10, or 11).	Close visual for cracks of the external doubler and the exposed portion of the E–F window post with the #2 sliding window open.	3,300 after effective date of this AD, or 24,000 after strap installation, whichever occurs later.	5,500

(b) Inspect the E–N window post for cracks in accordance with the schedule set forth in Table 4, 5, or 6 of this AD, as applicable:

TABLE 4.—MODEL 707/720 E–N WINDOW POST INSPECTION

[Applicable Boeing Service Bulletin 2983]

Airplane condition	Inspection required in accordance with revision 5 or 6 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
1. Service Bulletin not accomplished; or repaired or modified per Original Issue or Revision 1, 2, 3, or 4 of Service Bulletin.	X-ray of E–N window post	1,650 after effective date of this AD, or prior to the accumulation of 11,650, whichever occurs later.	3,300

TABLE 4.—MODEL 707/720 E–N WINDOW POST INSPECTION—Continued

[Applicable Boeing Service Bulletin 2983]

Airplane condition	Inspection required in accordance with revision 5 or 6 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
2. Repaired per Revision 5 or 6 of Service Bulletin (cracks in structure).	X-ray of E–N window post; and close visual of external strap.	1,650 after effective date of this AD, or prior to accumulating 16,650 after repair, whichever occurs later.	3,300
3. Modified per Revision 5 or 6 of Service Bulletin (no cracks in structure).	X-ray of E–N window post; and close visual of external strap.	3,300 after effective date of this AD, or 24,000 after strap installation, whichever occurs later.	6,600

TABLE 5.—Model 727 E–N Window Post Inspection

[Applicable Boeing Service Bulletin 727–53–0086]

Airplane condition	Inspection required in accordance with revision 9, 10, or 11 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
1. Service Bulletin not accomplished; or repaired or modified per Original Issue, or Revision 1, 2, 3, 4, 5, 6, 7, or 8 of Service Bulletin.	X-ray of E–N window post	1,650 after effective date of this AD, or prior to the accumulation of 11,650, whichever occurs later.	3,300
2. Repaired per Revision 9, 10, or 11 of Service Bulletin (cracks in structure).	X-ray of E–N window post; and close visual of external strap.	1,650 after effective date of this AD, or prior to accumulating 16,650 after repair, whichever occurs later.	3,300
3. Modified per Revision 9, 10, or 11 of Service Bulletin (no cracks in structure).	X-ray of E–N without post; and close visual of external strap.	3,300 after effective date of this AD, or 24,000 after strap installation, whichever occurs later.	6,600

TABLE 6.—MODEL 737 E–N WINDOW POST INSPECTION

[Applicable Boeing Service Bulletin 737–53–1023]

Airplane condition	Inspection required in accordance with revision 9, 10, or 11 of service bulletin	Initial inspection not to exceed (flight cycles)	Repeat inspection interval not to exceed (flight cycles)
1. Service Bulletin not accomplished; or repaired or modified per Original Issue, Revision 1, 2, 3, 4, 5, 6, 7, or 8 of Service Bulletin.	X-ray of E–N window post	2,750 after effective date of this AD, or prior to the accumulation of 12,750, whichever occurs later.	5,500
2. Repaired per Revision 9, 10, or 11 of Service Bulletin (cracks in structure).	X-ray of E–N window post; and close visual of external strap.	2,750 after effective date of this AD, or prior to accumulating 17,750 after repair, whichever occurs later.	5,500
3. Modified per Revision 9, 10, or 11 of Service Bulletin (no cracks in structure).	X-ray of E–N window post; visual of external strap.	5,500 after effective date of this AD, or 24,000 after strap installation, whichever occurs later.	11,000

(c) Reinspect the affected areas for cracks at intervals not to exceed those specified in the "Repeat Inspection Interval" column of the Tables of paragraphs (a) and (b) of this AD.

(d) Cracks and short edge margins must be repaired, prior to further flight, in accordance with the "Accomplishment Instructions" of the applicable service bulletin specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD. After such repair, inspections must continue in accordance with the Tables of paragraphs (a) and (b) of this AD.

(1) For Boeing Model 707/720 series airplanes: Boeing Service Bulletin 2983, Revision 5, dated January 31, 1991; or Revision 6, dated November 12, 1992.

(2) For Boeing Model 727 series airplanes: Boeing Service Bulletin 727–53–0086, Revision 11, dated August 8, 1991.

(3) For Boeing Model 737 series airplanes: Boeing Service Bulletin 737–53–1023, Revision 11, dated May 16, 1991.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The repairs shall be done in accordance with Boeing Service Bulletin 2983, Revision 5, dated January 31, 1991; Boeing Service Bulletin 2983, Revision 6, dated November 12, 1992; Boeing Service Bulletin 727–53–0086, Revision 11, dated August 8, 1991; and Boeing Service Bulletin 737–53–1023, Revision 11, dated May 16, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 5, 1993.

Issued in Renton, Washington, on March 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-7378 Filed 3-30-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-193-AD; Amendment 39-8523; AD 93-05-19]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, that requires a one-time visual inspection to determine whether bolts and screws of proper length have been installed in the outboard wing attachment fittings of the fuselage main frame and replacement of discrepant parts. This amendment is prompted by reports that loose or sheared bolts and screws were found in the outboard wing attachment fittings. The actions specified by this AD are intended to prevent reduced structural integrity of the wings.

DATES: Effective May 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F-27 series airplanes was published in the Federal Register on December 29, 1992 (57 FR 61846). That action proposed to require a one-time visual inspection to determine whether bolts and screws of proper length have been installed in the outboard wing attachment fittings of the fuselage main frame and replacement of discrepant parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,935, or $385 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-05-19 FOKKER: Amendment 39-8523. Docket 92-NM-193-AD.

Applicability: Model F-27 series airplanes, serial numbers 10102 through 10259, inclusive; on which the inspection described in Service Bulletin F27/53-60 (B-156) Part II has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 2,700 hours time-in-service after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs earlier, perform a one-time visual inspection to determine whether bolts and screws of proper length have been installed in the outboard wing attachment fittings of the fuselage main frame at stations 7961 and 9439.5, in accordance with Fokker Service Bulletin F27/53-115, dated May 21, 1991.

(1) If any measured bolt or screw is found that protrudes more than 4.5 mm (0.177 inch) through the nut, prior to further flight, replace it with a shorter one, in accordance with the service bulletin.

(2) If no measured bolt or screw is found that protrudes more than 4.5 mm (0.177 inch) through the nut, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement shall be done in accordance with Fokker Service Bulletin F27/53-115, dated May 21, 1991. This incorporation by reference was

approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 30, 1993.

Issued in Renton, Washington, on March 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–7376 Filed 3–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–169–AD; Amendment 39–8524; AD 93–05–20]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires modifying the wiring to the engine-driven hydraulic pump overtemperature switches. This amendment is prompted by a report of crossed wiring of the engine-driven hydraulic pump overtemperature switches. The actions specified by this AD are intended to prevent loss of a hydraulic system.

DATES: Effective April 30, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 30, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Kuniyoshi, Aerospace Engineer, Los Angeles ACO, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5337; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on October 28, 1992 (57 FR 48755). That action proposed to require modifying the wiring to the engine-driven hydraulic pump overtemperature switches.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the rule as proposed.

One commenter requests that paragraph (a) of the proposal be revised to include a series of continuity checks. The commenter states that such checks would best ensure a correct wiring connection for the hydraulic pump overtemperature switches. The FAA does not concur with the commenter's request to include a series of continuity checks. Paragraph (a) of the notice specifies accomplishment of the proposed modification in accordance with McDonnell Douglas MD–11 Service Bulletin 29–16, dated August 6, 1992. The McDonnell Douglas service bulletin refers operators to Pratt & Whitney Service Bulletin PW4MD11 29–6, dated August 3, 1992, for additional service information, which includes accomplishment of a pin-to-pin continuity check. The FAA has determined that this continuity check is adequate to ensure a correct wiring connection, and that additional checks are not necessary.

One commenter requests clarification of the Discussion section of the proposal. The commenter suggests that discussion regarding the consequences of the wiring error needs to be expanded. The FAA concurs that clarification is necessary. The FAA notes that the wiring error will direct the Hydraulic System Controller (HSC) and the flight crew to recognize the wrong pump as the high temperature-producing unit. The HSC (when operating in the automatic mode) or the flight crew (when the HSC is in the manual mode) will erroneously reconfigure the hydraulic system by shutting down the good engine-driven pump, and allowing the pump producing the high temperature to continue to operate. In this situation, the loss of the hydraulic system relative to this latter pump could occur.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 25 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,320, or $330 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–05–20 McDonnell Douglas: Amendment 39–8524. Docket 92–NM–169–AD.

Applicability: Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4460 engines; having airplane serial numbers 48407 through 48410 inclusive, 48443 through 48448 inclusive, 48452 through 48457 inclusive, 48461, 48472 through 48475 inclusive, 48484, 48485, 48495, and 48496; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a hydraulic system, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the wiring to the engine-driven hydraulic pump overtemperature switches, in accordance with McDonnell Douglas MD–11 Service Bulletin 29–16, dated August 6, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 29–16, dated August 6, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 30, 1993.

Issued in Renton, Washington, on March 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–7379 Filed 3–30–93; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 249

[Release Nos. 33–6983; 34–32042; 35–25765; 39–2303; IC–19351]

RIN 3235–AC48

Rulemaking for EDGAR System; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to interim rules.

SUMMARY: This document contains corrections to the interim rules that were published Thursday, March 18, 1993 (58 FR 14628). Those rules relate to the implementation of the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.

EFFECTIVE DATE: These rules are effective April 26, 1993, except § 239.13(a)(8)(ii) and General Instruction I.A.8.(2) of Form S–3, relating to Financial Data Schedules, which are effective November 1, 1993.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, Division of Corporation Finance at (202) 272–2589.

SUPPLEMENTARY INFORMATION:

Background

The interim rules that are the subject of these corrections become effective on April 26, 1993 and implement mandated electronic filing on the EDGAR system for registrants whose filings are processed by the Divisions of Corporation Finance and Investment Management and for those making filings with respect to such registrants. Development and implementation of the EDGAR system was effected pursuant to section 35A of the Securities Exchange Act of 1934 (15 U.S.C. 78*ll*).

Need for Correction

As published, numbering errors in the amendatory language and the text of the regulations could cause two existing provisions to be superseded by new provisions that were intended to be additions to, not replacements for, the existing provisions. In another instance, renumbering of paragraph designations is required because of the elimination of two paragraphs.

Correction of Publication

Accordingly, the publication on March 18, 1993 of the interim rules, which were the subject of FR Doc. 93–4805, is corrected as follows:

1. On page 14628, first column, in the 9th and 10th line of the "DATES" caption, the words "Form S–3 (§ 239.13(a)(7)(i))" is corrected to read "Form S–3 (§ 239.13(a)(8)(ii))".

§ 239.13 [Corrected]

2. On page 14679, third column, the amendatory language in No. 37, "paragraph (a)(7)" is corrected to read "paragraph (a)(8)" and in the regulatory text of § 239.13, the designation of paragraph "(a)(7)" is corrected to read "(a)(8)".

§ 239.13 [Corrected]

3. On page 14679, third column, the amendatory language in No. 38, "General Instructions I.A.7." is corrected to read "General Instruction I.A.8." and on page 14680, first column, in the text of Form S–3 (§ 239.13), the designation of General Instruction "I.A.7." is corrected to read "I.A.8."

§ 249.208(a) [Corrected]

4. On page 14685, first column, the amendatory language in No. 79 is corrected to read as follows:

"79. By amending Form 8–A (§ 249.208a) by revising Instruction I and redesignating Instructions II.3 through II.8 as Instructions II.1 through II.6, to read as follows:"

Dated: March 24, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7366 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 155 and 156

[Docket No. 77P–0090]

Tomato Concentrates, Catsup, and Tomato Juice; Definitions and Standards of Identity, Quality, and Fill of Container; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) amended the definitions and standards of identity for tomato products and established standards of quality and fill of container for tomato concentrates, catsup, and tomato juice. The effective date of the labeling provisions of these regulations was stayed pending their approval as information collection requirements by the Office of Management and Budget (OMB). However, because it has been established that food labeling requirements are not information collection requirements, they do not require OMB approval. Thus, FDA is confirming the effective date of these final rules.

DATES: The labeling requirements of §§ 155.191, 155.194, and 156.145 published in the Federal Register of January 28, 1983 (48 FR 3946) and April 17, 1984 (49 FR 15071), became effective on July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 28, 1983 (48 FR 3946), FDA issued a final rule establishing a separate standard of identity for tomato concentrates in § 155.191(a) (21 CFR 155.191(a)); updating U.S. standards of identity for tomato catsup and tomato juice in §§ 155.194(a) and 156.145(a) (21 CFR 155.194(a) and 156.145(a)), respectively; and establishing U.S. standards of quality and fill of container for tomato concentrates in § 155.191(b) and (c), catsup in § 155.194(b) and (c), and tomato juice in § 156.145(b) and (c), respectively. Based on comments received in response to the final rule, additional amendments to these standards were made in the Federal Register of April 17, 1984 (49 FR 15071).

FDA delayed the effective date of the labeling requirements of the standards in the final rules until those requirements, which then were thought to be information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35), had been approved by OMB. However, food labeling requirements are not information collection requirements (see *Dole* v. *United Steel Workers of America*, 494 U.S. 26 (1990)). Therefore, OMB approval is not required for these regulations to be effective. Thus, FDA announces that the labeling provisions of §§ 155.191, 155.194, and 156.145 became effective on July 1, 1985. The other provisions of these standards were effective on that date as well (see the Federal Register of July 12, 1984 (49 FR 28398)).

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7393 Filed 3–30–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) is designating certain preparations as exempt anabolic steroid products. This action, as part of the ongoing implementation of the Anabolic Steroid Control Act of 1990, removes certain regulatory controls pertaining to Schedule III substances from the designated entities.

DATES: *Effective Date:* March 31, 1993. Comments must be submitted on or before June 1, 1993.

ADDRESSES: Comments and objections should be submitted to the Director, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., (Chief, Drug and Chemical Evaluation Section), 202–307–7183.

SUPPLEMENTARY INFORMATION: Section 1903 of the Anabolic Steroids Control Act of 1990 (ASCA) (title XIX of Public Law 101–647) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) if the products have no significant potential for abuse. The procedure for implementing this section of the ASCA was published by the DEA on Friday, August 30, 1991, (56 FR 42935). An order was published on Tuesday, November 24, 1992, (57 FR 55090) which identified certain products as being exempt anabolic steroid products. The purpose of this rule is to identify an additional five products which meet the exempt anabolic steroid product criteria.

The Director, Office of Diversion Control, having reviewed the applications, the recommendations of the Secretary of the Department of Health and Human Services, and other relevant information, finds that each of the products described below has no significant potential for abuse because of its concentration, preparation, mixture or delivery system.

Interested persons are invited to submit their comments in writing in regard to this interim rule.

The listing of these products in 21 CFR 1308.34 relieves persons who handle them in the course of legitimate business from the registration, records, reports, prescription, physical security, import, and export requirements associated with Schedule III substances. Accordingly, the Director certifies that this action will have no impact on the ability of small businesses to compete and he therefore determines that no regulatory flexibility analysis is required.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Director has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101–647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, the Director of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

§ 1308.34 [Amended]

2. Section 1308.34 is amended by adding five new entries to the Table of Exempt Anabolic Steroid Products, to be placed in alphabetical order first by Trade Name and then by Company, to read as follows:

§ 1308.34 Exempt anabolic steroid products.

* * * * *

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC No.	Form	Ingredients	Quality
• •	•	•	•	•	•
Synovex H Pellets in process	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	25 mg. 2.5 mg.
Synovex H Pellets in process granulation.	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	10 parts. 1 part.
Testagen	Clint Pharmaceuticals, Nashville, TN.	55553–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml. 2 mg/ml.
• •	•	•	•	•	•
Testosterone Cypionate—Estradiol Cypionate Injection.					
Testosterone Cypionate—Estradiol Cypionate Injection.	Goldline Labs, Ft. Lauderdale, FL.	0182–3069	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml. 2 mg/ml.
• •	•	•	•	•	•
Testosterone Enanthate—Estradiol Valerate Injection.					
Testosterone Enanthate—Estradiol Valerate Injection.	Goldline Labs, Ft. Lauderdale, FL.	0182–3073	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml. 4 mg/ml.
• •	•	•	•	•	•

Dated: March 26, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–7463 Filed 3–30–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 231 and 234

[Docket No. R–93–1645; FR–3405–F–01]

Increase in FHA Multifamily Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 509 of the Housing and Community Development Act of 1992, by increasing the per-unit dollar limits applicable to FHA multifamily housing.

EFFECTIVE DATE: April 30, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Director, Office of Insured Multifamily Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone, voice: (202) 708–3000; (TDD) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 509 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) increases the per-family-unit dollar limits applicable to the FHA multifamily housing programs. Under these limits, the insured mortgage on a multifamily property or project must involve a principal amount which does not exceed (for that part of the property or project attributable to dwelling use), a set dollar amount for the various types of family units (one bedroom, two bedroom etc.) it contains.

This rule revises existing HUD regulations to implement the statutory increases for the following FHA programs:

24 CFR part 207—Multifamily housing mortgage insurance;

Part 213—Cooperative housing mortgage insurance;

Part 220—Mortgage insurance and insured improvement loans for urban renewal and concentrated development areas;

Part 221—Low cost and moderate income mortgage insurance;

Part 231—Housing mortgage insurance for the elderly; and

Part 234—Condominium ownership mortgage insurance.

The rule is ministerial in nature, in that it merely updates current regulations to reflect the new statutory maximum limits. It should be noted that the new dollar amounts are maximum limits, and that a per-family-unit dollar requirement is only one of several underwriting criteria which must be met by applicants for FHA mortgage insurance.

It should also be noted that section 509 of the Housing and Community Development Act of 1992 provides, in subsection (h), that the "Secretary of Housing and Urban Development shall issue regulations necessary to carry on the amendments made [by this section] which shall take effect not later than the expiration of the one-year period beginning on the date of the enactment of this Act."

Other Matters

Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100

million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary, in approving this rule, has certified that the rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to updating HUD regulations to reflect certain mortgage loan limits recently enacted by the Congress.

NEPA

Under HUD regulations (24 CFR 50.20(k)) this rule is exempt from the requirements of the National Environmental Policy Act as set forth in 24 CFR part 50. The rule relates to internal administrative procedures whose content does not involve a development decision nor affect the physical condition of project areas or building sites but only relates to the establishment of statutorily required loan limits.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 3, 1992, (57 FR 51392) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule only involves establishment of statutorily required mortgage loan limits.

The catalog of Federal Domestic Assistance program numbers are 14.112, 14.122, 14.126, 14.134, 14.135, 14.138, 14.139.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Aged, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 207, 213, 220, 221, 231 and 234 are amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b; 42 U.S.C. 3535(d). Sections 207.258 and 207.258b are also issued under 12 U.S.C. 1701z–11(e).

2. Paragraphs (a)(2) and (b)(1) of § 207.4 are revised to read as follows:

§ 207.4 Maximum mortgage amounts.

(a) * * *

(2) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $30,420 without a bedroom.

(ii) $33,696 with one bedroom.

(iii) $40,248 with two bedrooms.

(iv) $49,608 with three bedrooms.

(v) $59,160 with four or more bedrooms.

* * * * *

(b) * * *

(1) Increase the dollar amount limitations per family unit, as provided in paragraph (a)(2) of this section, to not exceed:

(i) $35,100 without a bedroom.

(ii) $39,312 with one bedroom.

(iii) $48,204 with two bedrooms.

(iv) $60,372 with three bedrooms.

(v) $68,262 with four or more bedrooms.

* * * * *

3. Paragraphs (b)(2)(i) and (b)(2)(ii) of § 207.32a are revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(b) * * *

(2)(i) The total of the amounts per family dwelling unit (excluding exterior land improvements, as defined by the Commissioner) depending on the number of bedrooms, which may be:

(A) 5$30,420 without a bedroom.

(B) $33,696 with one bedroom.

(C) $40,248 with two bedrooms.

(D) $49,608 with three bedrooms.

(E) $59,160 with four or more bedrooms.

(ii) *Increased mortgage amount—elevator type structure.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit as provided in paragraph (b)(2)(i) of this section, to not to exceed:

(A) $35,100 without a bedroom.

(B) $39,312 with one bedroom.

(C) $48,204 with two bedrooms.

(D) $60,372 with three bedrooms.

(E) $68,262 with four or more bedrooms.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

4. The authority citation for 24 CFR part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

5. Paragraphs (a)(2) and (g) of § 213.7 are revised to read as follows:

§ 213.7 Maximum insurable amounts.

(a) * * *

(2) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $30,420 without a bedroom.

(ii) $33,696 with one bedroom.

(iii) $40,248 with two bedrooms.

(iv) $49,608 with three bedrooms.
(v) $59,160 with four or more bedrooms.
* * * * *

(g) *Increased mortgage amount—elevator type structure.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit as provided in paragraph (a)(2) of this section, to not to exceed:
(1) $35,100 without a bedroom.
(2) $39,312 with one bedroom.
(3) $48,204 with two bedrooms.
(4) $60,372 with three bedrooms.
(5) $68,262 with four or more bedrooms.
* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

6. The authority citation for 24 CFR part 220 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

7. Paragraphs (a) and (b) § 220.507 are revised to read as follows:

§ 220.507 Maximum mortgage amounts.

(a) *Dollar limitation—in general.* A mortgage may involve a principal obligation not in excess of the following:
(1) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner), an amount per family unit depending on the number of bedrooms, which may be:
(i) $30,420 without a bedroom.
(ii) $33,696 with one bedroom.
(iii) $40,248 with two bedrooms.
(iv) $49,608 with three bedrooms.
(v) $59,160 with four or more bedrooms.
(2) Where the project involves the rehabilitation of not more than five family units, the mortgage amount per family unit designated in paragraph (a)(1) of this section may be increased by 25 percent, as follows:
(i) $50,310 for a unit with two bedrooms.
(ii) $62,010 for a unit with three bedrooms.
(iii) $73,950 for a unit with four or more bedrooms.

(b) *Increased mortgage amount—elevator type structure.*
(1) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit as provided in paragraph (a)(2) of this section, to not to exceed:
(i) $35,100 without a bedroom.
(ii) $39,312 with one bedroom.
(iii) $48,204 with two bedrooms.
(iv) $60,372 with three bedrooms.
(v) $68,262 with four or more bedrooms.
(2) With respect to any elevator type project involving the rehabilitation of not more than five family units, the dollar amount per family unit, as provided in paragraph (b)(1) of this section may be increased by 25 percent, as follows:
(i) $60,255 for a unit with two bedrooms.
(ii) $75,465 for a unit with three bedrooms.
(iii) $85,328 for a unit with four or more bedrooms.
* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

8. The authority citation for 24 CFR part 221 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715*l*), 42 U.S.C. 3535(d); sec. 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

9. Paragraphs (a)(1) and (b) of § 221.514 are revised to read as follows:

§ 221.514 Maximum mortgage amounts.

(a) * * *
(1) *Dollar limitation on units.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:
(i) For projects involving eligible nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:
(A) $33,638 without a bedroom.
(B) $38,785 with one bedroom.
(C) $46,775 with two bedrooms.
(D) $59,872 with three bedrooms.
(E) $66,700 with four or more bedrooms.
(ii) For projects involving eligible mortgagors other than nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:
(A) $30,275 without a bedroom.
(B) $34,907 with one bedroom.
(C) $42,097 with two bedrooms.
(D) $53,885 with three bedrooms.
(E) $66,030 with four or more bedrooms.
(iii) For projects to be insured under section 221(d)(4) of the Act:
(A) $30,274 without a bedroom.
(B) $34,363 with one bedroom.
(C) $41,536 with two bedrooms.
(D) $52,135 with three bedrooms.
(E) $59,077 with four or more bedrooms.
* * * * *

(b) *Increased mortgage amount—elevator type structure.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit as provided in paragraph (a)(1) of this section, to not to exceed:
(1) For projects involving eligible nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:
(i) $35,400 without a bedroom.
(ii) $40,579 with one bedroom.
(iii) $49,344 with two bedrooms.
(iv) $63,834 with three bedrooms.
(v) $70,070 with four or more bedrooms.
(2) For projects involving eligible mortgagors other than nonprofit mortgagors, to be insured under section 221(d)(3) of the Act:
(i) $31,860 without a bedroom.
(ii) $36,521 with one bedroom.
(iii) $44,410 with two bedrooms.
(iv) $57,451 with three bedrooms.
(v) $63,064 with four or more bedrooms.
(3) For projects to be insured under section 221(d)(4) of the Act:
(i) $32,701 without a bedroom.
(ii) $37,487 with one bedroom.
(iii) $45,583 with two bedrooms.
(iv) $58,968 with three bedrooms.
(v) $64,730 with four or more bedrooms.
* * * * *

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

10. The authority citation for 24 CFR part 231 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

11. Paragraph (a) of § 231.3 is revised to read as follows:

§ 231.3 Maximum mortgage amounts—new construction.

* * * * *

(a) *Family unit limitations.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:
(1) $28,782 without a bedroom.
(2) $32,176 with one bedroom.
(3) $38,423 with two bedrooms.
(4) $46,238 with three bedrooms.

(5) $54,360 with four or more bedrooms.

* * * * *

12. Section 231.5 is revised to read as follows:

§ 231.5 Maximum mortgage amounts—elevator type structures.

In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit, as provided in § 231.3(a), to not exceed:

(a) $32,701 without a bedroom.
(b) $37,487 with one bedroom.
(c) $45,583 with two bedrooms.
(d) $58,968 with three bedrooms.
(e) $64,730 with four or more bedrooms.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

13. The authority citation for 24 CFR part 234 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

14. Paragraph (b) of § 234.525 is revised to read as follows:

§ 234.525 Maximum mortgage amounts—new construction.

* * * * *

(b) *Family unit limitation.* For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $30,420 without a bedroom.
(ii) $33,696 with one bedroom.
(iii) $40,248 with two bedrooms.
(iv) $49,608 with three bedrooms.
(v) $59,160 with four or more bedrooms.

* * * * *

15. Paragraph (a) of § 234.530 is revised to read as follows:

§ 234.530 Increased mortgage amounts.

(a) *Elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit, as provided in § 234.525(b), to not to exceed:

(1) $35,100 without a bedroom.
(2) $39,312 with one bedroom.
(3) $48,204 with two bedrooms.
(4) $60,372 with three bedrooms.
(5) $68,262 with four or more bedrooms.

* * * * *

Dated: March 19, 1993.

James E. Schoenberger,

Associate General Deputy, Assistant Secretary for Housing.

[FR Doc. 93-7381 Filed 3-30-93; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E4024/R1181; FRL-4189-2]
RIN 2070-AB78

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the fungicide metalaxyl and its metabolites in or on the raw agricultural commodity cranberry. The regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on March 31, 1993.

ADDRESSES: Written objections, identified by the document control number [PP 1E4024/R1181], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hoyt L. Jamerson, Product Manager (PM) 43, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, No. 13, 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 31, 1992 (57 FR 62542), EPA issued a proposed rule announcing that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 1E4024 to EPA on behalf of the Agricultural Experiment Stations of Massachusetts, New Jersey, and Washington. The petition requested that the Administrator, under section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose the establishment of a tolerance for residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester], and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl) alanine methyl ester, each expressed as metalaxyl, in or on the raw agricultural commodity cranberry at 4.0 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The data submitted with the petition and other relevant material have been evaluated and were discussed in the proposed rule (57 FR 62542, Dec. 31, 1992). Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was

published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Dated: March 19, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.408(a) table, by adding and alphabetically inserting the raw agricultural commodity cranberry, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cranberry	4.0
* * * * *	
* * * * *	

[FR Doc. 93–7299 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Withdrawal of a final rule.

SUMMARY: This rule withdraws the regulation that was published in the **Federal Register** on March 1, 1993, (58 FR 11793) to reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 8 months in the United States to a refugee's first 5 months, effective April 1, 1993. The Department intends to seek supplemental funding during FY 1993 to maintain the RCA/RMA eligibility period at the current 8-month eligibility level for the remainder of FY 1993. In the event that the Department is unsuccessful in obtaining such additional funds, a separate emergency final rule is being published to decrease the eligibility period from 8 months to 3 months, effective June 1, 1993.

Under the Secretary's authority, the final rule which was published in the **Federal Register** on March 1, 1993, on page 11793 is withdrawn. The RCA and RMA eligibility period remains at the current level of a refugee's first 8 months in the U.S.

DATE: March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

Dated: March 26, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: March 26, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 93–7590 Filed 3–30–93; 8:45 am]

BILLING CODE 4150–04–M

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Final rule.

SUMMARY: This final rule would reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 8 months in the United States to a refugee's first 3 months in the United States for the remainder of FY 1993, effective June 1, 1993.

The reduction is necessitated by the limited funds appropriated for transitional and medical services (TAMS) for Federal FY 1993. Refugee assistance under section 412 of the Immigration and Nationality Act is expressly limited by the extent of available appropriations.

The Department intends to seek supplemental funding during FY 1993 to maintain the RCA/RMA eligibility period at the current 8-month eligibility level for the remainder of FY 1993. In the event that the Department is unsuccessful in obtaining such additional funds, we are publishing this separate emergency final rule to decrease the eligibility period from 8 months to 3 months, effective June 1, 1993.

EFFECTIVE DATE: June 1, 1993.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401–9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), to be provided to States for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) "during the 12-month period beginning with the first month the refugee entered the United States (except during Federal FY 1993, 8-month period)." The 8-month eligibility period was first established by regulation on January 10, 1992.

Description of the Final Regulation

This final rule would reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 8 months in the United States to a refugee's first 3 months in the United States for the remainder of FY 1993, effective June 1, 1993.

The reduction is necessitated by the limited funds appropriated for transitional and medical services (TAMS) for Federal FY 1993. Refugee assistance under section 412 of the Immigration and Nationality Act is expressly limited by the extent of available appropriations. 8 U.S.C. 1522(a)(1)(A); 45 CFR 400.202.

The decision to reduce the period of time-eligibility is based on the Department's analysis of FY 1992 costs and cost trends in the RCA and RMA programs and on the number of refugees who entered the United States during the latter part of FY 1992 and those who will be admitted during FY 1993 under the refugee admissions ceiling of 122,000 publicly funded refugees established by the President after consultation with Congress. (Memorandum from the President to the United States Coordinator for Refugee Affairs, Determination of FY 1993 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), respectively, of the Immigration and Nationality Act, Presidential Determination No. 93–1, October 2, 1992.)

While the refugee admissions ceiling of 122,000 for FY 1993 is approximately 7% lower than the 131,624 publicly funded admissions in FY 1992, the fixed

appropriation of $245,810,656 available for TAMS to cover the costs of refugee cash and medical assistance, unaccompanied minors, State administration, and the voluntary agency matching grant program represents a reduction of 10% from the amount available for these programs in FY 1992.

In part as a result of a reduction in appropriated funds for FY 1993, ORR had issued a Notice of Proposed Rulemaking (NPRM) on November 2, 1992, to terminate the RCA and RMA programs effective January 31, 1993. ORR planned to replace them, through the grant and contract process, with a new private resettlement program and a private medical program. However, this action was challenged in a suit filed on December 7, 1992, in the United States District Court, Western District of Washington at Seattle in the case of *Nguyen* v. *Sullivan* (No. C92–1867WD), and the Department has been permanently enjoined from terminating the State-administered refugee cash and medical assistance program. In order to enable the State-administered RCA/RMA program to operate for the remainder of FY 1993 within the fixed appropriation available, it is necessary to reduce the period of time-eligibility for RCA and RMA to a refugee's first 3 months in the U.S.

Analysis shows that the fixed appropriation of $245,810,656 for TAMS for FY 1993 will be insufficient to provide funding for a period longer than a refugee's first 3 months in the U.S. during the remainder of FY 1993, effective June 1, 1993. If the current State-administered RCA and RMA programs were to be continued with an 8-month eligibility period, it is estimated that all available funds would be exhausted by July 31, 1993, and no RCA or RMA would be available to needy refugees during the last 2 months of the fiscal year.

In determining the number of months of benefits to provide under the RCA and RMA programs, it was assumed that the funds appropriated for TAMS, less the amounts necessary for the matching grant program and the unaccompanied minors program, were available for the RCA and RMA programs, including State administrative costs. This totals approximately $176 million of the $245,810,656 appropriated for TAMS for FY 1993.

The estimate is derived from refugee arrival, eligibility, and participation data. Arrival data are derived by forecasting refugee arrival patterns based on previous years and the annual refugee admissions ceiling set by the President. Eligibility data are computed by determining the number of refugees who have been in the country only for the number of months that will be paid through RCA/RMA funds. The participation data are derived by estimating what fraction of the time-eligibility refugees will actually be RCA/RMA eligible (because they are not eligible for AFDC or SSI), as well as relying on dependency rates based on historical rates.

Using quarterly estimates of RCA and RMA participation, costs are determined by multiplying the number of participants by the per capita amount of cash and medical assistance expected to be paid to the refugees in FY 1993. These per capita costs are based on full-year State-reported expenditures for FY 1992, plus inflation estimates. In determining administrative costs, FY 1992 administrative costs are adjusted for inflation for FY 1993. Varying the number of months of RCA/RMA benefits changes the size of the time-eligible population. It was determined that funds were sufficient to cover 8 months of benefits from October 1, 1992, through May 31, 1993, and 3 months of RCA/RMA benefits from June 1, 1993, through September 30, 1993. The reasons for such a substantial reduction in the RCA/RMA eligibility period are threefold: Higher medical costs, an increase in participation rates, and the fact that the RCA/RMA eligibility period was continued at an 8-month level during the first eight months of the fiscal year, resulting in the expenditures of a sizeable portion of TAMS funds during that period and thus leaving a smaller balance of available TAMS funds for the remainder of the fiscal year.

The Department considers it of the utmost importance to provide refugee support in a manner that ensures the availability of refugee support throughout the year. Failure to decrease the months of eligibility would mean that funds available would be insufficient to carry the program through the end of the year, with the result that, during the latter months of FY 1993, an estimated 25,000 needy refugees would be without Federally-funded refugee assistance.

This rule is applicable to both current and newly-arriving refugees effective June 1, 1993.

Consistent with the preceding actions, 45 C.F.R. 400.2, 400.60(b), 400.100(b), 400.203(b), 400.204(b), and 400.209(b) are being amended to reduce the duration of RCA and RMA in FY 1993 from a refugee's first 8 months in the U.S. to a refugee's first 3 months in the U.S.

Justification for Dispensing with Notice of Proposed Rulemaking

A period for public comment is not being provided because it would be impracticable, unnecessary, and not in the public interest for the following reasons:

Under the current statute and regulations, the duration of benefits is a function of the level of appropriations. The resulting computation is a matter which public comment would not significantly aid because Congressional funding limitations effectively establish the eligibility period, rendering notice of proposed rulemaking and comment procedures unnecessary. In addition, although consideration of alternatives may be assisted by public input, there is insufficient time to consider other options without adversely impacting the public interest. The public interest is clearly served by avoiding the premature exhaustion of funds and in having a finite account equitably distributed throughout the fiscal year.

Because there is a continuing flow of refugees into the United States and because continuing costs for RCA and RMA are being incurred by the States, any delays in applying a reduced period of time-eligibility would result in the need for ever-greater reductions in the RCA and RMA programs in order to avoid their abrupt and complete termination and the absence of such assistance to both current and newly arriving refugees.

Accordingly, the agency finds good cause for issuance of a final rule effective June 1, 1993.

Regulatory Procedures

Regulatory Impact Analysis

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor will they result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This final rule reduces the eligibility period for refugee cash assistance (RCA)

and refugee medical assistance (RMA) from a refugee's first 8 months in the U.S. to a refugee's first 3 months, in order to contain refugee cash and medical assistance costs within the FY 1993 appropriation level.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and Recordkeeping requirements.

Dated: March 26, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: March 26, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for Part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended by amending the definitions of "Refugee cash assistance" and "Refugee medical assistance" by removing the words "(except during Federal FY 1993, less than an 8-month period)" and by adding in their place "(except during Federal FY 1993, less than a 3-month period)".

§§ 400.60(b) and 400.100(b) [Amended]

3. Sections 400.60(b) and 400.100(b) are amended by removing the words "(except during Federal FY 1993, 8-month period)" and adding in their place "(except during Federal FY 1993, 3-month period)".

§§ 400.203(b) and 400.204(b) [Amended]

4. Sections 400.203(b) and 400.204(b) are amended by removing the words "(except during Federal FY 1993, 8-month period)" and adding: "(except during Federal FY 1993, 3-month period)".

§ 400.209(b) [Amended]

5. Section 400.209(b) is amended by removing the words "(except during Federal FY 1993, 8 months)" and adding in their place "(except during Federal FY 1993, 3 months)".

[FR Doc. 93–7589 Filed 3–30–93; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–205; RM–8059]

Radio Broadcasting Services; Belle Plaine, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cynthia A. Siragusa, substitutes Channel 238C3 for Channel 238A at Belle Plaine, Iowa, and modifies her construction permit (File No. BPH–910905MB) to specify operation on the higher class channel. See 57 FR 41719, September 11, 1992. Channel 238C3 can be allotted to Belle Plaine in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.8 kilometers (10.4 miles) south to avoid a short-spacing to Station KQMG–FM, Channel 237A, Independence, Iowa, and to accommodate petitioner's desired transmitter site, at coordinates North Latitude 41–45–00 and West Longitude 92–19–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–205, adopted March 8, 1993, and released March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 238A and adding Channel 238C3 at Belle Plaine.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7345 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–284; RM–8119]

Radio Broadcasting Services; Repton, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 266A to Repton, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed by Curry Communications, Inc. *See* 57 FR 59331, December 15, 1992. Coordinates used for Channel 266A at Repton are 31–24–30 and 87–14–24. With this action, the proceeding is terminated.

EFFECTIVE DATES: May 10, 1993. The window period for filing applications on Channel 266A at Repton, Alabama, will open on May 11, 1993, and close on June 10, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–284, adopted March 8, 1993, and released

March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Repton, Channel 266A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7343 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–225; RM–8073]

Radio Broadcasting Services; Northport, AL, and Macon, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C3 for Channel 264A at Northport, Alabama, and modifies the license of Station WLXY(FM) to specify operation on the higher powered channel, as requested by Warrior Broadcasting, Inc. See 57 FR 59040, December 14, 1992. Additionally, since no expression of interest in retaining vacant Channel 263A at Macon, Mississippi, was received in response to the Notice of Proposed Rule Making, the allotment is deleted to accommodate the modification at Northport. Coordinates for Channel 264C3 at Northport, Alabama, are 33–16–00 and 87–44–01. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–225, adopted March 8, 1993, and released March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 264A and adding Channel 264C3 at Northport.

3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Macon, Channel 263A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7344 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–522; RM–7493, RM–7499]

Radio Broadcasting Services; LaCrosse, FL and Douglas, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document stays the opening of the filing window for Channel 258A at LaCrosse, Florida, and suspends the substitution of Channel 258C for Channel 258C1 at Douglas, Georgia. This action was necessary because the coordinates specified in the Report and Order create a short-spacing between Channel 258A at LaCrosse and Channel 258C at Douglas. See 58 FR 7193, February 5, 1993.

EFFECTIVE DATE: This action is effective March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: The final rule for this allotment was published at 58 FR 7194, February 5, 1993. This is a summary of the Commission's Order Staying Filing Window and Effective Date, MM Docket No. 90–522, adopted March 15, 1993, and released March 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

The window period for filing applications was scheduled to open on March 19, 1993, and close on April 19, 1993. The effective date for the substitution of Channel 258C for Channel 258C1 at Douglas, Georgia, was March 18, 1993.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Accordingly, 47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by suspending the allotment of Channel 258C at Douglas, and adding Channel 258C1 at Douglas, effective March 15, 1993, until further notice.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7418 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–178; RM–8045]

Radio Broadcasting Services; Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Communicorp, Inc., substitutes Channel 231C2 for Channel 232A at Lawton, Oklahoma, and modifies the license of Station KQLI to specify operation on the higher class

channel. See 57 FR 42537, September 15, 1992. Channel 231C2 can be allotted to Lawton in compliance with the Commission's minimum distance separation requirements at the station's licensed transmitter site, at coordinates North Latitude 34–34–24 and West Longitude 98–28–40. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–178, adopted March 8, 1993, and released March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73—[Amended]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 232A and adding Channel 231C at Lawton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7338 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–48; RM–7922]

Radio Broadcasting Services; Bagdad, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 280A to Bagdad, Arizona, as that community's first local aural transmission service, in response to a petition for rule making filed by Chris Sarros. *See* 57 FR 9996, March 23, 1992. Coordinates for Channel 280A at Bagdad are 34–34–52 and 113–12–14. Bagdad is located within 320 kilometers (199 miles) of the United States-Mexico border and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: Effective May 10, 1993. The window period for filing applications for Channel 280A at Bagdad, Arizona, will open on May 11, 1993, and close on June 10, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–48, adopted March 5, 1993, and released March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Bagdad, Channel 280A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7340 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–272; RM–8107]

Radio Broadcasting Services; Alturas, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 267C for Channel 233C1 at Alturas, California, and modifies the license for Station KYAX (FM) to specify operation on the nonadjacent higher powered channel, as requested by KCNO, Inc. *See* 57 FR 56894, December 1, 1992. Additionally, Channel 293C is allotted to Alturas, as an additional equivalent channel, since an interest in applying for a second Class C allotment at that community was expressed by Crystal Broadcasting Company. Coordinates for Channel 267C at Alturas are 41–25–00 and 121–06–32; coordinates for Channel 293C at Alturas are 41–29–18 and 120–32–18. With this action, the proceeding is terminated.

EFFECTIVE DATES: May 10, 1993. The window period for filing applications on Channel 293C at Alturas, California, will open on May 11, 1993, and close on June 10, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process regarding Channel 293C at Alturas, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–272, adopted March 8, 1993, and released March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 233C1 and adding Channel 267C at Alturas, and by adding Channel 293C at Alturas.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7342 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Defense Federal Acquisition Regulation Supplement; Recoupment of Nonrecurring Costs on Sales of U.S. Items

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove language on recoupment of nonrecurring costs as a result of the implementation of major policy changes that have been incorporated in DoD Directive 2140.2, Recoupment of Nonrecurring Costs (NC) on Sales of U.S. Items. The revised DoD Directive 2140.2, eliminates the requirement for recoupment on sales entered into on or after January 13, 1993, except for recoupment required by Act of Congress.

EFFECTIVE DATE: March 24, 1993.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

This DFARS rule finalizes the interim rule that was published in the **Federal Register** on September 10, 1992 (57 FR 41422), under DFARS Case 92–D021.

The interim DFARS rule published in the **Federal Register** on September 10, 1992 (57 FR 41422) eliminated recoupment on derivative items and items other than Major Defense Equipment for new contracts. Subsequently, on October 7, 1992, the Deputy Secretary of Defense (DEPSECDEF) determined that the national defense would be facilitated by the elimination of the recoupment requirement from existing DoD contracts, except as expressly required by statute. Accordingly, pursuant to the authority of Public Law 85–804, the DEPSECDEF directed that existing DoD contracts be amended or modified as necessary to delete any requirement for the recoupment of nonrecurring costs on sales or binding agreement to sell, that were executed on or after October 7, 1992, except for those sales for which an Act of Congress (section 21(e) of the Arms Export Control Act) requires the recoupment of nonrecurring costs.

On January 13, 1993, the DEPSECDEF approved a revision of DoDD 2140.2, that eliminates the requirement for recoupment on all sales entered into on or after January 13, 1993, except for recoupment required by Act of Congress. Consequently, effective January 13,1993, DFARS subpart 215.70 and the clause at 252.215–7004 are eliminated. The clause shall not be used in contracts awarded on or after March 24, 1993. Recoupment required by the Arms Export Control Act on future sales will be handled directly between the DoD and its foreign military sale customer.

By determination made January 13, 1993, the DEPSECDEF extended the application of his October 7, 1992, memorandum to cover all contracts entered into from October 7, 1992 through January 13, 1993.

B. Regulatory Flexibility Act

The Department of Defense certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the recoupment policies apply only to items which have at least a $50 million dollar investment.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, since OMB currently is not carrying in its inventory any burden hours for the information collection requirements associated with recoupment of nonrecurring costs, we are not processing a request for reduction of the information collection requirements to OMB for approval.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 215 and 252 are amended as follows:

1. The authority citation for 48 CFR part 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

215.70 [Removed]

2. Subpart 215.70 is removed in its entirety.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215–7004 [Removed]

3. Section 252.215–7004 is removed in its entirety.

[FR Doc. 93–7356 Filed 3–30–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–10; Notice 6]

RIN 2127–AE73

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration of a June 1992 final rule, this rule amends Federal Motor Vehicle Safety Standard (FMVSS) 118, *Power-Operated Window, Partition, and Roof Panel Systems.* This rule clarifies the standard's requirements and provides manufacturers additional flexibility in meeting them.

DATES: The changes made in this rule are effective April 30, 1993.

Any petition for reconsideration of this rule must be received by NHTSA no later than April 30, 1993.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of this rule and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyd, NHTSA Office of Vehicle Safety Standards, NRM–11, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–6346.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 1991 (56 FR 15290), NHTSA published a final rule that amended Standard 118. Among other things, the amendment permitted power-operated windows, partitions and roof panel systems (WPR's) operable by remote means or by means located on the vehicle exterior.

Unsupervised closings increase the risk that someone, particularly a child, could be caught between a closing WPR and its frame. To minimize the risk that a child could be entrapped and injured, the April 1991 rule allowed closings by external or remote means for certain WPR's under a narrow set of specified circumstances. The WPR's were those that reverse direction before exerting specified levels of force on cylinders of

specified sizes, and reopen to at least a specified minimum distance. The cylinders were selected to be representative of the diameters of appendages that could be injured by the closing of a WPR, such as a finger, arm or head.

Following publication of that rule, NHTSA was petitioned by several parties to reconsider aspects of the rule. On June 5, 1992 (57 FR 23958), NHTSA published a final rule responding to those petitions for reconsideration. The June 1992 rule amended the standard in several respects. It removed the restriction on the circumstances under which closing is permitted for systems that have an automatic reversal feature. This change permitted automatically reversing WPR's that could close under circumstances other than the narrowly specified ones in the 1991 rule. NHTSA stated that even if a child's finger, arm or head were in the path of a closing WPR, the automatic reversing feature would prevent serious injuries. (57 FR at 23959.)

The June 1992 rule also changed the test procedure for automatically reversing WPR's. Briefly, the procedure specifies that a rigid sensor rod from 4 mm to 200 mm in diameter is placed between an open power WPR and the WPR's frame. The WPR is then moved toward the closed position, but must reverse direction before exerting a 100 newton force on the rod.

The June 1992 rule also changed the requirement about the size of the opening to which the WPR must reopen. NHTSA required that the WPR reopen either to a position that permits a 200 mm diameter rod to be placed through the opening, or to a position that is at least as open as the position at the time closing was initiated.

NHTSA received five petitions for reconsideration of the June 1992 rule. Petitioners were Mercedes-Benz, Volkswagen, American Sunroof Company (ASC), Webasto Sunroofs, and Brose North America. Today's rule responds to those petitions.

Petitions for Reconsideration

The petitioners raised three issues concerning the June 1992 rule.

1. Test Procedure

All of the petitioners suggested that the standard should specify the stiffness (force-deflection ratio), or compressibility, of the sensor rod. The stiffness of a force sensor determines the maximum force it will register at a given deflection. If a force sensor rod has a lower stiffness than a human finger, for example, it will register a force lower than that which would actually be exerted against a finger at a given penetration. All the petitioners suggested a value of 10 newtons per millimeter (10 N/mm) for the sensor rod. The petitioners said that the suggested value is specified in the German Road Traffic Act. That Act was identified by NHTSA as the source for the 100 newton limit in the standard (i.e., that the WPR must reverse direction before exerting a 100 newton force on the rod).

Some petitioners stated that the stiffness of the sensor rod must be specified because sensor rods of different values will provide different results. For example, a sensor rod with a stiffness of 10 N/mm, which is more compressible than a rigid rod, would "crush" 10 mm before the 100 newton limit can be measured. In contrast, if a sensor rod with a stiffness of 100 N/mm were used, the 100 newton force limit could be measured after only 1 mm of crush.

The commenters recommended against specifying a sensor rod with an extremely high stiffness. Volkswagen said such a rod would not be as representative of a finger, arm, head or neck as a rod with a lower stiffness. ASC and Volkswagen argued that an extremely stiff rod could make it virtually impossible to meet the standard, because the 100 newton limit could be reached "instantaneously" (Volkswagen's term) using a rod made from a non-yielding material. ASC stated:

> Even if an electronic force detection system could be built which needed no time at all to detect the resistive force generated by the obstruction and could start to reverse the mechanical drive system immediately, the drive system itself (motor, drive links, etc.) still requires some time to overcome the forward inertia of a typical physical system.

NHTSA agrees with the petitioners' arguments regarding the need to specify the stiffness of the test rod. However, NHTSA concludes that the 10 N/mm value suggested by the petitioners would not meet the need for safety. A sensor rod having a stiffness of 10 N/mm cannot measure a force of 100 N unless it has been compressed 10 mm. Such a rod would permit the WPR to travel 10 mm after meeting an obstruction before reversing. A child's finger placed in a 10 mm opening could be severely injured in such a situation.

NHTSA is specifying that sensor rods 25 mm or smaller in diameter will have a stiffness of at least 65 N/mm, and that rods larger than 25 mm in diameter will have a stiffness of at least 20 N/mm. Two values are specified for rod stiffness to provide manufacturers some flexibility in designing WPR's. Smaller rods, representing small appendages like fingers, are used to test smaller openings. The smaller rod with the 65 N/mm stiffness ensures that the rod can compress only 1.5 mm before the WPR must reverse. The available crush space for small openings must be limited; fingers placed in a small opening can be injured even if the WPR opening is reduced by only a few millimeters.

The sensors larger than 25 mm in diameter represent larger appendages, and could compress 5 mm before the WPR must reverse. These sensors may have a larger amount of compressibility before registering the maximum force, since larger body parts can tolerate larger levels of crush or squeezing before an injury is sustained. These larger sensors are permitted to be "softer" to provide design flexibility without compromising safety. The head, neck and larger limb that might be trapped in the larger opening can generally withstand more compression without injury than a finger trapped in a small opening. At the same time, the softer sensor also allows manufacturers to design WPR's such that they would be able to close at a higher rate from a fully open position to within 25 mm of the WPR frame than what would have been possible with a stiffer sensor. (The faster a WPR is traveling, the more difficult it is for the WPR to stop and reverse direction. The softer sensor allows more reaction time and stopping distance for the WPR to stop and reverse than does a stiffer sensor.) The WPR would be able to close rapidly for most of the way, then slow for the last 25 mm of travel. Since it appears desirable to offer consumers WPR's that close rapidly, NHTSA believes rapidly closing WPR's can be available if the potential safety hazards are controlled. The sensor stiffness values chosen respond to the manufacturers' concerns for compliance measurement and WPR closure speed, while maintaining safe WPR operation.

Mercedes raised another issue regarding the test procedure. In arguing for the use of sensor rods with a stiffness of 10 N/mm, Mercedes said that a rigid sensor rod can produce "instantaneous force spikes" that may exceed 100 newtons when the window, consisting of a rigid material, meets a rigid sensor. A massive sensor rod can produce a larger spike than a sensor of less mass.

NHTSA agrees that, under the circumstances described by Mercedes, a force spike can occur due to an abrupt change of speed when the WPR hits the sensor rod. NHTSA did not intend for these force spikes to be included in the determination of the maximum force on

the sensor. These force spikes are related to the impact force on the sensor (caused by the resistance to motion of the mass of the sensor rod struck by the closing WPR), and not to the squeezing force on the rod. Such impact forces lack the significant opposing forces that characterize squeezing. It is only the squeezing forces exerted by a closing WPR system that are a concern to the agency since it is those forces that cause the injuries under consideration. (See, 57 FR 23958. "The purpose of the standard is to minimize the risk of personal injury that may result if a person is *caught between* a closing power-operated window and the window frame." (Emphasis added.))

NHTSA has amended the standard to clarify that impact force spikes would be excluded in the determination of the maximum force on the sensor. The standard specifies that the WPR must reverse direction before exerting a squeezing force of 100 newtons on the rod.

2. Size of Openings

The June 1992 rule requires a WPR to reverse and open to either: (a) A position that permits a 200 mm diameter rod to be placed through the opening, or (b) a position that is at least as open as the position at the time closing was initiated. Mercedes suggests that the rule should replace option (a) with an option that the WRP open "to a position that is at least as open as the position at the time the window reversed direction plus 20 millimeters." Mercedes believes "it would be more appropriate to provide a standard 'reopening' clearance of 20 mm for all sizes of obstructions."

NHTSA has decided not to adopt Mercedes' suggestion, because if the WPR were to close upon a child's neck, a 20 millimeter space would be insufficient to allow the child to withdraw easily his or her head through the opening. However, the agency is amending the standard to specify a third option for the reopening of WPR's on reversal, in response to Mercedes' suggestion that the clearance for removing trapped obstructions of any size should be "standardized." The option would permit the WPR to open to "a position that is at least as open as the position at the time the window reversed direction plus 125 millimeters" (about five inches). The agency is providing this option because manufacturers may want to design systems that reopen a fixed amount after reversal. The 125 millimeter distance would ensure easy passage of a head through the WPR opening.

3. Sunroofs

Volkswagen requested that hinged sunroofs be excluded from the definition of "power operated roof panel systems" adopted by the April 1991 rule. Volkswagen stated that "hinged sunroofs present no safety hazard because of their location and minimal total opening and relatively low closing force at the open side." Also, Volkswagen said, "compliance with the force limitation requirements would be very difficult for the hinged mechanisms."

NHTSA does not agree that hinged roof panels should be excluded. The agency decided earlier in this rulemaking to reject these arguments that Standard 118 need not apply to sunroofs because of their location, and that there is no safety need for the standard to apply to pop-up type roof panels. Volkswagen provided no new information that would change this decision. Thus, that part of its petition is denied.

Effective Date

These amendments are effective in 30 days. An effective date earlier than 180 days after the date of issuance of this rule is in the public interest because this rule clarifies the requirements and provides manufacturers flexibility in meeting them.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. This rule allows new ways to close window, partition and roof panel systems. The rule does not impose additional costs on manufacturers unless they choose to install systems that use the new methods of closure. This rule provides additional design flexibility to manufacturers choosing to install these optional systems, and clarifies the requirements. For these reasons, the agency has determined that the economic and other effects of this action are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Vehicle manufacturers typically do not qualify as small entities. Even if these manufacturers were considered small businesses, this rule does not impose new requirements, but affects manufacturers only if they choose to install window, partition and roof panel systems that are newly permitted by this rulemaking. Small organizations and governmental jurisdictions that purchase vehicles are affected by this amendment only to the extent that these entities purchase motor vehicles. NHTSA believes this amendment will have no significant cost impact to the industry, and therefore it will not result in a significant increase in consumer prices. Since the effects, if any, of this rule would be minimal on small entities, a final regulatory flexibility analysis has not been prepared.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.118 [Amended]

Section 571.118 is amended as follows:

2. S4(e) is amended by removing the period appearing at the end of the paragraph and adding a semi-colon in its place.

3. S4(f) is revised to read as follows:

* * * * *

(f) If the window, partition, or roof panel is in a static position before starting to close and in that position creates an opening so small that a 4 mm diameter semi-rigid cylindrical rod cannot be placed through the opening at any location around its edge in the manner described in S5(b); or

* * * * *

4. S5 is revised to read as follows:

S5. (a) Notwithstanding S4, a power operated window, partition or roof panel system may close if it meets the following requirements—

(1) While closing, the window, partition or roof panel system must reverse direction before contacting, or before exerting a squeezing force of 100 newtons or more on, a semi-rigid cylindrical rod from 4 mm to 200 mm in diameter that has the force-deflection ratio described in S5(c), and that is placed through the window, partition or roof panel system opening at any location, in the manner described in S5(b); and

(2) Upon such reversal, the window, partition or roof panel system must open to one of the following positions, at the manufacturer's option:

(i) A position that is at least as open as the position at the time closing was initiated;

(ii) A position that is not less than 125 millimeters more open than the position at the time the window reversed direction; or

(iii) A position that permits a semi-rigid cylindrical rod that is 200 mm in diameter to be placed through the opening at the same contact point(s) as the rod described in S5(a)(1).

(b) The test rod is placed through the window, partition or roof panel opening from the inside of the vehicle such that the cylindrical surface of the rod contacts any part of the structure with which the window, partition or roof panel mates. Typical placements of test rods are illustrated in Figure 1.

(c) The force-deflection ratio of the test rod is at least 65 N/mm for a rod 25 mm or smaller in diameter, and at least 20 N/mm for a rod larger than 25 mm in diameter.

Issued on March 24, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–7181 Filed 3–30–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920246–2229]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial fishery in the exclusive economic zone (EEZ) off the east coast of Florida between the Volusia/Flagler and Monroe/Dade County boundaries. NMFS has determined that 259,000 pounds (117,482 kg) of king mackerel have been landed from that area since emergency regulations reopened the commercial fishery in the area under daily vessel trip limits on February 18, 1993. With this closure, all commercial fisheries are closed for Gulf migratory group king mackerel in the EEZ through June 30, 1993. The closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATES: Closure is effective 12:01 a.m., local time, March 27, 1993, through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, (Magnuson Act).

The commercial fishery for Gulf group king mackerel in the eastern zone was closed on January 13, 1993, when the applicable commercial quota was reached (58 FR 4599, January 15, 1993) By an emergency interim rule (58 FR 10990, February 23, 1993), the commercial fishery for Gulf group king mackerel was reopened on February 18, 1993, off the east coast of Florida between the Volusia/Flagler and Monroe/Dade County boundaries with a 25-fish daily vessel trip limit. Under the terms of that emergency interim rule, the commercial fishery is to remain open under the trip limit through March 31, 1993, or until 259,000 pounds (117,482 kg) of king mackerel are landed from the area, whichever occurs earlier.

NMFS has determined that the open area quota was reached on March 26, 1993. Accordingly, the commercial fishery for Gulf group king mackerel from the entire eastern zone is closed effective 12:01 a.m., local time, March 27, 1993. This closure of the eastern zone remains in effect through June 30, 1993, the end of the fishing year. However, effective April 1, and through October 31, each year, the boundary separating the Gulf and Atlantic migratory groups of king mackerel shifts from the Volusia/Flagler County, Florida boundary (29°25'N. latitude) to the Monroe/Collier County, Florida boundary (25°48'N. latitude).

NMFS previously determined that the commercial quota of 0.77 million pounds (0.35 million kg) of king mackerel from the western zone of the Gulf migratory group was reached on October 17, 1992, and closed that segment of the fishery on October 18, 1992 (57 FR 47998, October 21, 1992). Thus, with this closure of the commercial fishery in the entire eastern zone, all commercial fisheries are closed for Gulf migratory group king mackerel in the EEZ through June 30, 1993.

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ, Gulf migratory group king mackerel. A person aboard a charter vessel may continue to fish for Gulf migratory group king mackerel under the bag and possession limits set forth in § 642.24 (a)(1)(i) and (a)(2), provided the vessel is operating as a charter vessel and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, Gulf migratory group king mackerel taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold or attempted to be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel of the Gulf migratory group that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Classification

This action is required by 50 CFR 642.31(c) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7375 Filed 3–26–93; 1:28 pm]

BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 921226–3053]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing a regulatory amendment to delay the opening of the second season pollock fishery in the combined Western and Central Regulatory Areas of the Gulf of Alaska (W/C GOA) from the beginning of the second quarterly reporting period (around April 1) until June 1. This action is necessary to increase revenues from the GOA pollock harvest by avoiding a second quarter directed fishery at a time when pollock have recently spawned and flesh yield is low. Additionally, NMFS anticipates this action will reduce discards of undersized pollock, and of incidental catch amounts of chinook salmon in the pollock fishery. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

EFFECTIVE DATE: March 26, 1993.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fisheries Management Division, (907) 586–7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan for Groundfish of the GOA (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR 611.92 and for the U.S. fishery at 50 CFR part 672. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Regulations at § 672.20(a)(2)(iv) provide that the pollock total allowable catch (TAC) in the combined W/C GOA be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distribution of the pollock biomass. Each apportionment is divided equally into the four quarterly reporting periods of the fishing year.

At its September 1992 meeting, the Council recommended that NMFS prepare a proposed rule for Secretarial review and approval that would delay the start of the second pollock fishing season in the W/C GOA from the first day of the second quarterly reporting period until the first day of the weekly reporting period that begins nearest June 1. The FMP at section 4.3.3 requires that the Council consider the following criteria when recommending regulatory amendments to fishing seasons: biological, bycatch, exvessel and wholesale prices, product quality safety, cost, other fisheries, coordinated season timing, enforcement and management costs, and allocation. A detailed discussion of these criteria, which were considered by the Council in making its recommendation of a delayed second pollock fishing season, is found in the ER/RIR/FRFA prepared for this action.

A proposed rule for this action was published in the **Federal Register** on January 6, 1993 (58 FR 532). A complete description of the GOA pollock second season delay was published in the preamble to the proposed rule, and additional information also is available in the EA/RIR/FRFA.

Comments on the Proposed Rule

Public comment on the proposed rule was invited through February 5, 1993. No written comments were received during the comment period.

Changes in the Final Rule From the Proposed Rule

Two changes are made in the final rule from the proposed rule. First, paragraph 672.23(f) is changed to specify that directed fishing for the four quarterly pollock allowances will start on January 1, June 1, July 1, and October 1. This change will simplify regulations, which as proposed, were cumbersome and difficult to understand. This change causes the starting dates to vary no more than 3 days from what otherwise would have been implemented and does not change the substantive intent of the proposed regulations. Therefore, no changes in impacts from those already analyzed in the EA/RIR/IRFA are anticipated. Second, in § 672.20, paragraphs (c)(1)(i)(A) and (c)(1)(ii) are revised by deleting the sentence "The notice also will include the dates that directed fishing may commence for each quarterly allowance of pollock." in each paragraph. This change is necessary because the starting dates will now be specified in regulations. The starting dates for the pollock seasons as announced in the 1993 GOA proposed specification (57 FR 57982, December 8, 1992) are superceded by this final rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the pollock fishery off Alaska and is consistent with the Magnuson Act and other applicable law.

NMFS prepared an EA for this final rule and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of implementation of this rule. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the RIR prepared by NMFS. A copy of the RIR may be obtained (see **ADDRESSES**).

NMFS prepared an FRFA that concludes that this rule will have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This rule does not contain a collection-of-information for purposes of the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. Consistency is inferred because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Informal consultations under the Endangered Species Act were concluded for this action: for Steller sea lions, February 16, 1993; and for the short-tailed albatross, December 22, 1992. An informal consultation on impacts of groundfish fisheries under the FMP was concluded February 20, 1992, for Snake River sockeye salmon, fall chinook salmon, and spring/summer chinook salmon. As a result of the informal consultations, the Regional Director determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species.

NMFS has determined that delaying the effectiveness of this final rule for 30 days under section 553 (d) of the Administrative Procedure Act is contrary to the public interest. This determination was reached because a delay in effectiveness beyond March 29, 1993, would result in the fishery commencing on that date, causing economic losses from low pollock flesh recovery, increased catches and discards of undersized pollock, and increased incidental catch amounts of chinook salmon. Therefore, the 30-day delayed effectiveness period for the final rule is waived to allow the effective date to be the date of filing for public inspection with the Office of the Federal Register.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting, and Recordkeeping requirements.

Dated: March 26, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

§ 672.20 [Amended].

2. In § 672.20, the second sentence in paragraph (c)(1)(i)(A), which reads, "This notice also will include the dates that directed fishing may commence for each quarterly allowance of pollock." is removed.

3. In § 672.20, the second sentence in paragraph (c)(1)(ii)(A), which reads, "This notice will also include the dates that directed fishing may commence for each quarterly allowance of pollock." is removed.

4. In § 672.23, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 672.23 Seasons.

(a) Fishing for groundfish in the regulatory areas and districts of the Gulf of Alaska is authorized from 00:01 a.m., Alaska local time (A.l.t.), January 1, through 12 midnight, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (f) of this section.

* * * * *

(f) Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas of the Gulf of Alaska is authorized: from 00:01 a.m., A.l.t., January 1 through 12 noon, A.l.t., April 1; from 12 noon, A.l.t., June 1 through 12 noon, A.l.t., July 1; from 12 noon, A.l.t., July 1 through 12 noon, A.l.t., October 1; and from 12 noon, A.l.t., October 1 through 12 midnight, A.l.t., December 31.

[FR Doc. 93–7434 Filed 3–26–93; 4:15 pm]
BILLING CODE 3510-22-M

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50 CFR Parts 611 and 672

[Docket No. 921107–3068]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final 1993 initial specifications of groundfish and associated management measures; closures; request for comments.

SUMMARY: NMFS announces initial 1993 harvest specifications of Gulf of Alaska (GOA) groundfish, other than Pacific ocean perch (POP), and associated determinations pertaining to management of GOA groundfish fisheries during 1993. This action is necessary to establish harvest limits for groundfish during the 1993 fishing year and associated management measures. NMFS also is closing specified fisheries consistent with the final 1993 groundfish specifications and fishery bycatch allowances of prohibited species. These measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective March 26, 1993, 4:15 p.m., including closures to directed fishing described herein. All closures to directed fishing are effective through 24:00 a.l.t., December 31, 1993, except that closures to directed fishing for pollock in Statistical Areas 62 and 63 are effective through 12 noon, a.l.t., on March 29, 1993. Comments are invited on the apportionments of reserves on or before April 15, 1993.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668 (Attn. Lori Gravel). Copies of a Final Environmental Assessment for 1993 Total Allowable Catch Specifications for the GOA, dated January 1993 (EA), may be obtained from this address. The Final Stock Assessment and Fishery Evaluation Report, dated November 1992, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fishery Management Biologist, Alaska Region, NMFS, (907) 586–7230.

SUPPLEMENTARY INFORMATION:

Background

NMFS announces for the 1993 fishing year: (1) Total allowable catches (TAC) for each groundfish target species category, other than POP, in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) apportionments of pollock TAC among regulatory areas, seasons, and between inshore and offshore components; (5) apportionment of Pacific cod TAC between inshore and offshore components; (6) apportionment of the "other species" TAC among regulatory areas; (7) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (8) closures to directed fishing; (9) Pacific halibut PSC mortality limits; and (10) seasonal apportionments of the halibut PSC limits. The interim specification for POP established by 57 FR 57982 (December 8, 1992) of 1,062 metric tons (mt) remains in effect. A discussion of each of these measures follows.

The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP, which was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Pursuant to § 672.20(a)(2)(ii), the sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 mt in § 672.20(a)(1). Under §§ 611.92(c)(1) and 672.20(a)(2)(i), TACs are apportioned initially among DAP, JVP, TALFF, and reserves. The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fisherman typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. Regulations at § 672.20(a)(2)(ii) establish initial reserves equal to 20 percent of the TAC for pollock, Pacific cod, flounder target species categories, and "other species." Reserve amounts are set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned to TALFF according to § 672.20(d)(2).

The Council met during September 22–27, 1992, and developed recommendations for proposed 1993 TAC specifications for each target species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1993 fishing year. Under § 672.20(c)(1)(ii), 1993 specifications were proposed in the **Federal Register** (57 FR 57982, December 8, 1992). No JVP or TALFF amounts were specified because GOA groundfish are fully utilized by DAP fisheries. Under § 672.20(c)(1)(ii), one-fourth of the preliminary specifications and gear apportionments and one-fourth of the Pacific halibut PSC amounts were effective January 1 on an interim basis and are now superseded by this **Federal Register** notice of final 1993 specifications, except for POP.

The Council met December 8–13, 1992, to review the best available scientific information concerning groundfish stocks, and to consider public testimony regarding 1993 groundfish fisheries. Scientific information is contained in the Stock Assessment and Fishery Evaluation Report for the 1993 Gulf of Alaska Groundfish Fishery (SAFE report) dated November 1992, which was prepared and presented by the GOA Plan Team to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). New information contained in the November 1992 SAFE report includes the following:

a. For Pollock

Hydroacoustic data from a spring 1992 survey in the Shelikof Strait conducted by the Alaska Fisheries Science Center; estimates of catch-at-age from the 1991 fishery; updated estimates of catch; and length frequency data from the 1992 hydroacoustic survey and the first quarter 1992 fishery.

b. For POP

Revised biomass estimates from the 1984 and 1987 GOA trawl surveys; and length frequency data from 1990 and 1991 fisheries.

c. For Groundfish, Generally

Data from the NMFS Observer Program Office for 1992; revised estimates of biomass from the 1990 bottom trawl survey in the GOA; data from the 1992 cooperative and domestic longline surveys; and updated estimates of catch.

The SSC adopted Acceptable Biological Catch (ABC) recommendations from the Plan Team as provided in the SAFE report for all target species categories, except those for pollock and black rockfish. The recommended ABCs, listed in Table 1, reflect harvest amounts that would not cause overfishing as defined in the FMP. The Council adopted SSC recommendations for the ABC for each target species category, except for pollock. The following is a discussion of the Plan Team, SSC, and Council actions on ABCs for pollock, Northern rockfish, and black rockfish.

The exploitable biomass for pollock in the combined Western and Central Regulatory Areas (W/C GOA) during 1993 is estimated at 1,062,000 mt, which is based on the Stock Synthesis (SS) model. The SAFE report, dated November 1992, presents a detailed discussion of new information and stock assessment methodology for pollock. The Plan Team estimated ABC for pollock in the W/C GOA to be 203,000 mt, an increase from 1992 of 84,000 mt but well below the overfishing level of 286,000 mt. The Plan Team commented, tha although the recommended ABC was biologically defensible, it might not represent an adequate conservative TAC in view of unquantifiable concerns about: (1) Low probability of recruitment of a strong year class; (2) continued declines in spawning biomass; (3) disproportionate targeting on older year classes; (4) indications of large-scale ecosystem changes that may affect carrying capacity for pollock in the GOA; and (5) change in age-at-maturity.

The SSC concurred with the model used to generate pollock biomass, but felt the ABC should be more conservative than the ABC recommended by the Plan Team (203,00 mt) for the W/C GOA. The SSC calculated an ABC of 111,000 mt using the 1992 fishing exploitation rate (10 percent). The SSC then averaged its figure with the ABC recommended by the Plan Team to arrive at a "stock-specific" pollock ABC of 157,000 mt for the W/C GOA. The SSC further noted that an ABC of 157,000 mt may not adequately consider the status of Steller sea lions and certain seabirds that prey on pollock, although it remains unclear whether fishing practices contribute to declines in those species. The SSC finally recommended a pollock ABC of 111,000 mt, to incorporate ecosystem concerns.

The Council, on reviewing the Plan Team, SSC, and AP recommendations, recommended that the ABC for pollock in the W/C GOA be 157,000 mt and that ecosystem concerns, particularly Steller sea lions, be addressed in the recommended TAC of 111,000 mt. The Council also adopted the SSC and AP recommendations that the ABC for pollock in the Eastern Regulatory Area be 3,400 mt.

For Northern rockfish, the Plan Team recommended that the species be managed separately from the remaining "other (slope) rockfish" to prevent over harvesting. Northern rockfish are currently harvested disproportionately to their relative abundance in the "other rockfish" complex. The Plan Team, SSC, and AP recommended ABCs for Northern rockfish and for the remaining "other rockfish" complex of 5,760 mt and 8,300 mt, respectively. The Council adopted the SSC and AP recommendations.

The Plan Team also recommended separate management for black rockfish to prevent harvests out of proportion to the species' abundance in the pelagic shelf rockfish complex. The recommended ABC was based on historical catches. The SSC felt that insufficient information existed on which to base an ABC or manage the fishery, and declined to establish an

ABC for that species. The AP recommended that the species remain in the pelagic shelf rockfish complex pending availability of additional biological and fishery information. The Council adopted the AP recommendation.

1. Specifications of TAC and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

The Council recommended TACs equal to ABCs for Pacific cod, sablefish, Northern rockfish, pelagic shelf rockfish, and demersal shelf rockfish (DSR). The Council recommended TACs less than ABCs for all other species and species groups: pollock; deep-and shallow water flatfish; flathead sole; arrowtooth flounder; POP; shortraker/ rougheye rockfish (SR/RE); "other rockfish;" and thornyhead rockfish (Table 1).

The reduced TAC recommended for pollock in the W/C GOA includes ecosystem concerns, in particular the importance of pollock as prey for Steller sea lions and seabirds as discussed above. Regulations that implement Amendment 25 to the FMP authorize the apportionment of pollock TAC specified for the combined W/C GOA Regulatory Area among the Shumagin, Chirikof, and Kodiak Districts. These are co-extensive with Statistical Areas 61, 62, and 63, respectively. Apportionments are proportional to distribution of exploitable biomass as determined by the most recent NMFS biomass surveys. These respective proportions are 21.7, 23.4, and 54.9 percent. Accordingly, respective apportionments are 24,087 mt, 25,974 mt, and 60,939 mt (Table 1). For rockfishes, the Council recommended reduced TACs because of the depleted status of many of the target species. For POP, the Council recommended a TAC (2,560 mt) that is 46 percent of the recommended ABC (5,560 mt), and 49 percent of the 1992 TAC (5,200 mt). The Council expressed concern over (1) a history of high commercial exploitation for POP, (2) the current low biomass of POP relative to estimated pre-exploitation levels, (3) uncertainties about the accuracy of surveys, biomass estimates, and exploitation rates, (4) apparent low recruitment and relatively old age of the POP population, and (5) the increase in exploitation rate being proposed for 1993 over that used in 1992.

The Council heard public testimony (1) supporting the 5,560 mt ABC adopted by the Council and its committees, (2) indicating that the recommended TAC would likely preclude directed fisheries for POP, (3) estimating the gross wholesale value of the 1992 GOA POP TAC was $6.2 million annually, of which $3.4 million might be foregone under the recommended 1993 TAC, and (4) that the POP fishery is conducted by a relatively small number of factory trawlers, each of which might bear a significant loss from the reduced TAC. The Council responded that biological concerns about POP stocks warranted immediate reduction of catches. The Council directed staff to begin analyses that would examine rebuilding potential for POP, establish options, and enumerate associated biological and socioeconomic costs and benefits, as required by the FMP for any such program. The Council is scheduled to review this analysis at its April 1993 meeting.

The sum of the TACs approved by the Council for GOA groundfish, including POP and "other species", is 306,651 mt, which is within the OY range specified by the FMP.

The Council, after adopting the TACs, then recommended 1993 apportionments of the TACs for each species category among DAP, JVP, TALFF, and reserve. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1993 TAC specification for GOA groundfish. Therefore, the Council recommended that DAP equal TAC for each species category, resulting in no TALFF or JVP apportionments for the 1993 fishing year.

NMFS has reviewed the Council's recommendations for TAC specifications and apportionments and hereby approves these specifications under § 672.20(c)(1)(ii)(B), except for POP and "other species" which is calculated as a percent of TACs in each regulatory area.

For POP, the Council made its recommendation without the benefit of biological and economic data that have recently become available and that NMFS believes should be considered in establishing the 1993 POP TAC, particularly in consideration of the potential economic value of that fishery. Therefore, NMFS is requesting that the Council reexamine available information and reconsider at its April 1993 meeting the recommendation for the 1993 POP TAC. NMFS anticipates specifying a 1993 TAC for POP prior to the beginning of the trawl season for rockfish on June 28. Until that time, interim amounts of POP previously specified in the **Federal Register** (57 FR 57982, December 8, 1992) are anticipated to be sufficient to support ongoing fisheries without unintentional waste and discard.

For "other species," the FMP establishes a TAC equal to 5 percent of the sum of TACs of target species. The Council recommended that "other species" be allocated separately for each regulatory area. Table 1 shows the resultant TAC for "other species" in each regulatory area based on target TACs, excluding POP.

The sum of: (1) Final TACs for groundfish target species; (2) the interim TAC specified for POP, which remains in effect; and (3) "other species," is 305,078 mt.

TABLE 1.—FINAL 1993 SPECIFICATIONS, OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW) [1].

[Specifications of domestic annual processing (DAP) equal TAC. Values are in metric tons.]

Species	Area [2]	Overfishing level	ABC	TAC=DAP
Pollock [3]	SH	286,000	34,068	24,087
	CH	.....	36,737	25,974
	KD	.....	86,195	60,939
	W/C	.....	157,000	111,000
	E	9,020	3,400	3,400

TABLE 1.—FINAL 1993 SPECIFICATIONS, OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW) [1].—Continued

[Specifications of domestic annual processing (DAP) equal TAC. Values are in metric tons.]

Species	Area [2]	Overfishing level	ABC	TAC=DAP
Total		.....	160,400	114,400
Pacific cod [4]	W	.....	18,700	18,700
	C	.....	35,200	35,200
	E	.....	2,800	2,800
Total		78,100	56,700	56,700
Deep water flatfish [5]	W	.....	2,020	1,740
	C	.....	35,580	15,000
	E	.....	7,930	3,000
Total		59,650	45,530	19,740
Shallow water flatfish [6]	W	.....	27,480	4,500
	C	.....	21,260	10,000
	E	.....	1,740	1,740
Total		70,860	50,480	16,240
Flathead sole	W	.....	12,580	2,000
	C	.....	31,830	5,000
	E	.....	5,040	3,000
Total		64,780	49,450	10,000
Arrowtooth flounder	W	.....	38,880	5,000
	C	.....	253,330	20,000
	E	.....	29,080	5,000
Total		451,690	321,290	30,000
Sablefish [7]	W	.....	2,030	2,030
	C	.....	9,610	9,610
	WYK	.....	3,830	3,830
	SEO	.....	5,430	5,430
Total		27,750	20,900	20,900
Northern rockfish [8]	W	.....	1,000	1,000
	C	.....	4,720	4,720
	E	.....	40	40
Total		10,360	5,760	5,760
Other rockfish [9]	W	.....	330	214
	C	.....	1,640	1,064
	E	.....	6,330	4,105
Total		9,850	8,300	5,383
Shortraker/rougheye rockfish [10]	W	.....	100	90
	C	.....	1,290	1,161
	E	.....	570	513
Total		2,900	1,960	1,764
Pelagic shelf rockfish [11]	W	.....	1,010	1,010
	C	.....	4,450	4,450
	E	.....	1,280	1,280
Total		11,300	6,740	6,740
Demersal shelf rockfish [12]	SEO	1,600	800	800
Thornyhead rockfish	GW	1,441	1,180	1,062
Other species [13]	W	.....	na	3,045
	C	.....	na	9,687

TABLE 1.—FINAL 1993 SPECIFICATIONS, OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW)[1].—Continued

[Specifications of domestic annual processing (DAP) equal TAC. Values are in metric tons.]

Species	Area[2]	Overfishing level	ABC	TAC=DAP
	E	.....	na	1,795
Total		na	na	14,527
Grand total[14]		.....	735,220	305,078

[1] Table 1 shows final TACs for all groundfish, except for POP, for which the interim TAC specified at 57 FR 57982 (December 8, 1992) remains in effect. See footnote 14 for an explanation of the "Total".

[2] See figure 1 of § 672.20 for description of regulatory areas/districts.

[3] TAC for W/C Regulatory Area is 111,000 mt, representing the sum of the Shumagin (SH), Chirikof (CH), and Kodiak (KD) districts. The category pollock is allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to fishing for other groundfish species.

[4] The category Pacific cod is allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component (Table 4).

[5] The category "deep water flatfish" means rex sole, Dover sole, and Greenland turbot.

[6] The category "shallow water flatfish" means flounders not including "deep water flatfish," flathead sole, or arrowtooth flounder.

[7] The category sablefish is allocated to trawl and hook-and-line gears (Table 2).

[8] The category Northern rockfish (*Sebastes polyspinis*) was previously part of the "Other rockfish" complex.

[9] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District includes slope rockfish, and demersal shelf rockfish as defined in #12 below. The category "other rockfish" in the Southeast Outside District includes only the slope rockfish.

Slope rockfish means all members of the genus *Sebastes* not defined as pelagic shelf rockfish, demersal shelf rockfish, or Pacific Ocean perch, including the following:

Sebastes aurora (aurora rockfish), *S. melanostomus* (blackgill rockfish), *S. paucispinis* (bocaccio), (*S. goodei* (chilipepper rockfish), *S. crameri* (darkblotch rockfish), *S. elongatus* (greenstriped rockfish), *S. variegatus* (harlequin rockfish), *S. wilsoni*, (pygmy rockfish), *S. proriger* (redstripe rockfish), *S. zacentrus* (sharpchin rockfish), *S. jordani* (shortbelly rockfish), *S. brevispinis* (silvergrey rockfish), *S. diploproa* (splitnose rockfish), *S. saxicola* (stripetail rockfish), *S. miniatus* (vermilion rockfish), and *S. reedi* (Yellowmouth rockfish).

"Pacific Ocean perch" means *Sebastes alutus*.

[10] The category "shortraker/rougheye rockfish" includes *Sebastes borealis* and *S. aleutianus*, respectively.

[11] The category "pelagic shelf rockfish" includes: *Sebastes melanops* (black rockfish), *S. mystinus* (blue rockfish), *S. ciliatus* (dusky rockfish), *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).

[12] The category "demersal shelf rockfish" includes: *Sebastes pinniger* (canary rockfish), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. babcocki* (redbanded rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. nigrocinctus* (tiger rockfish), and *S. ruberrimus* (yelloweye rockfish).

[13] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The "other species" TAC is equal to the sum of: (1) 5 percent of the final TACs of the target species except POP, and (2) 5 percent of the interim TAC of POP, in each Regulatory Area.

[14] "Total" includes the ABC and the interim TAC for POP (1062 mt) established at 57 FR 57982 (December 8, 1992).

2. Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flounder species and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). NMFS apportioned all the reserves to DAP effective on January 1 for the preceding 5 years, including 1992. For 1993, NMFS apportions reserves for each species category to DAP, anticipating that domestic harvesters and processors will need all the DAP amounts. Specifications of DAP shown in Table 1 reflect apportioned reserves. Under § 672.20(d)(5)(iv), the public may submit comments on the apportionments of reserves. Comments should focus on whether, and the extent to which, operators of vessels of the United States will harvest reserve or DAP amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

3. Assignments of the Sablefish TACs to Authorized Fishing Gear Users

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the W/C GOA Regulatory Areas, 80 percent of each TAC is assigned to hook-and-line gear and 20 percent is assigned to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. This latter amount may only be used as bycatch to support directed fisheries for other target species. Sablefish caught with pot gear may not be retained. Table 2 shows the 1993 apportionments of sablefish TACs between the gear types.

TABLE 2.—1993 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE TRAWL GEAR.

[Values are in metric tons.]

Area/district	TAC	Hook-and-line share	Trawl
Western	2,030	1,624	406
Central .....*	9,610	7,688	1,922
Eastern:			
West Yakutat	3,830	3,638	192
Southeast Outside .	5,430	5,158	272
Total	20,900	18,108	2,792

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and to inshore and offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined W/C GOA

Regulatory Areas be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distribution of the pollock biomass. This measure was implemented under Amendment 25 and is intended to distribute spatially the pollock harvest to protect sea lions. Each statistical area apportionment is further divided equally among the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowances of following quarters, resulting in a sum for each quarter that does not exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions from the remaining quarterly allowances of that fishing year. The Eastern Regulatory Area pollock TAC of 3,400 mt is not allocated among smaller areas of quarters.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be allocated to vessels catching pollock for processing by the inshore and offshore components. After subtracting an amount of pollock that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to fishing for other groundfish species, the pollock TAC is allocated entirely to vessels catching pollock for processing by the inshore component. At this time, incidental amounts of pollock to be caught by the offshore component are unknown, and will be determined during the fishing year. The distribution of pollock within the combined W/C GOA Regulatory Areas is shown in Table 3.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL GULF OF ALASKA FOR 1993; BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. BIOMASS DISTRIBUTION IS BASED ON 1990 SURVEY DATA

[Values are in metric tons]

Statistical area	Biomass percent	1993 TAC	Quarterly allowance
Shumagin (SH, 61)	21.7	24,087	6,022
Chirikof (CH, 62)	23.4	25,974	6,494
Kodiak (KD, 63)	54.9	60,939	15,234
Total ..	100	111,000	27,750

NMFS issued a final rule to delay the opening of the second season pollock fishery in the combined Western and Central Regulatory Areas of the GOA to June 1. The final rule is contained elsewhere in this **Federal Register** publication. The final rule also specified that directed fishing for the four quarterly pollock allowances would start on January 1, June 1, July 1, and October 1. Therefore, under § 672.23(f), pollock fishing seasons are as follows:

Pollock quarter	Pollock quarter dates and times*
1	01/01 (00:01 a.m.)–04/01 (12 noon)
2	06/01 (12 noon)–07/01 (12 noon)
3	07/01 (12 noon)–10/01 (12 noon)
4	10/01 (12 noon)–12/31 (12 midnight)

*The time of openings and closures is Alaska local time.

5. Apportionment of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Pacific cod is allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. Inshore and offshore allocations of the 56,700 mt Pacific cod TAC for 1993 are shown in Table 4.

TABLE 4.—ALLOCATION OF PACIFIC COD TAC FOR 1993 IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

[Values are in metric tons]

Regulatory area	TAC	Component	
		Inshore (90%)	(Offshore (10%)
Western	18,700	16,830	1,870
Central	35,200	31,680	3,520
Eastern	2,800	2,520	280
Total	56,700	51,030	5,670

6. Apportionment of "Other Species" TAC Among Regulatory Areas

The FMP specifies that the TAC for the "other species" category is equal to 5 percent of the combined TACs for target species. The Council recommended that for 1993, separate amounts of "other species" be made available in each of the three regulatory areas. This more accurately reflects the intended use of "other species" as incidental catch to support groundfish target fisheries, and will reduce competition among users of other species. Therefore, the TAC for "other species" in each regulatory area is equal to 5 percent of the sum of the final TACs of target species and the interim POP TAC for each regulatory area, as follows (in mt):

Regulatory area	Sum of target TACs*	"Other species"
Western	60,905	3,045
Central	193,749	9,687
Eastern	35,897	1,795
Total	290,551	14,527

*The total for each regulatory area includes one-third of the TAC for thornyhead rockfish.

7. PSC Limits Relevant to Fully Utilized Species

Under § 672.20(b)(1), if NMFS determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, a groundfish PSC limit applicable to the JVP fisheries may be specified for that species or species group.

The Council recommended that DAP equal TAC for each species category. Zero amounts of JVP are available. NMFS concurs with the Council's recommendation, and has not established any JVP amounts. Therefore, no groundfish PSC limits under § 672.20(b)(1) are necessary.

8. Closures to Directed Fishing

The "Proposed 1993 Initial Specifications of Groundfish and Associated Management Measures" for the GOA (57 FR 57982, December 8, 1992) contained several closures to directed fishing for groundfish during 1993. These final specifications affirm previous closures, and include some additional closures.

Under § 672.20(c)(2)(ii), the Regional Director determined that the entire TACs or allocations of TAC of some groundfish species and species groups will be needed as incidental catch to support other anticipated groundfish fisheries during 1993. The Regional Director is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the fishing year for the following: (1) Pacific cod for processing by the offshore component in the Western, Central, and Eastern Regulatory Areas; (2) pollock for processing by the offshore component in the Western, Central, and Eastern Regulatory Areas; (3) sablefish caught by trawl gear in the Western and Central

Regulatory Areas; (4) SR/RE in the Western and Eastern Regulatory Areas; (5) "other rockfish" in the Western Regulatory Area; and, (6) Northern rockfish in the Eastern Regulatory Area. Additionally, regulations at § 672.24(c)(1) prohibit directed fishing for sablefish with gear other than hook-and-line gear in the Eastern Regulatory Area.

Under authority of the interim specifications (57 FR 57982, December 8, 1992) and at §§ 672.20(c)(1)(ii)(A) and 672.20(c)(2)(ii), the Regional Director established a directed fishing allowance and closed directed fishing for Pacific cod by vessels harvesting Pacific cod in the Western Regulatory Area for processing by the inshore component (58 FR 13214, March 10, 1993). Under this current action, and § 672.20(c)(2)(ii) the Regional Director has determined that amounts of Pacific cod remaining in the final specification for the Western Regulatory Area in 1993 for the inshore component are needed as incidental bycatch to support anticipated groundfish fishing activity later in 1993. Therefore, the Regional Director is establishing a directed fishing allowance of 16,000 mt (which has already been harvested), and NMFS is closing directed fishing for Pacific cod by vessels harvesting Pacific cod in the Western Regulatory Area for processing by the inshore component, for the remainder of the fishing year.

The Regional Director determined that the interim first quarterly allowances of pollock apportioned to Statistical Areas 62 and 63 had been reached. NMFS closed directed fishing for pollock in those areas (58 FR 11985, March 2, 1993, and 58 FR 11986, March 2, 1993, respectively). The Regional Director has now determined that the final first quarterly allowances of pollock for areas 62 and 63 (6,494 mt and 15,234 mt, respectively) have been taken. Therefore, NMFS is closing directed fishing for pollock by all vessels catching pollock in those areas under § 672.20(c)(2)(ii), until the second quarterly pollock allowances become available. On March 29, fishing for pollock in Statistical Areas 62 and 63 will resume for vessels catching pollock for delivery for processing by the inshore component. A proposed regulatory change would delay the second quarter pollock season until June 1, 1993.

Directed fishing standards for the aforementioned closures may be found at § 672.20(g).

9. Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 672.20(f)(2), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be apportioned to pot gear. At its December 1992 meeting, the Council recommended that NMFS establish halibut PSC limits of 2,000 mt and 750 mt for trawl and hook-and-line gear, respectively, for 1993. Further, 10 mt of the hook-and-line PSC limit is apportioned to DSR, and the remaining 740 mt is apportioned to all other hook-and-line fisheries.

The Council recommended that pot gear be exempt from Pacific halibut PSC limits for the 1993 fishing year. Operators of vessels using pot gear caught approximately 10,000 mt of groundfish, mostly Pacific cod, during 1992. Observer information suggests that the mortality of Pacific halibut caught in pots is low, approximately 5 percent. Using this rate, NMFS estimates that approximately 4 mt of Pacific halibut mortality occurred in the GOA pot fisheries during 1992.

The Regional Director will project when the 1993 Pacific halibut PSC limits will be reached during the fishing year on the basis of observed halibut bycatch rates, assumed mortality rates, and reported groundfish catch. Assumed mortality rates for halibut bycatch vary, depending on the gear being used and the groundfish target. After reviewing information contained in the November 1992 SAFE report, NMFS observer data, and information provided by the International Pacific Halibut Commission (IPHC), the Council recommended the following assumed mortality rates for Pacific halibut that are caught as bycatch in the following fisheries: 75 percent for pelagic trawl pollock; 60 percent for trawl rockfish, shallow water flatfish, and "other species"; 55 percent for non-pelagic trawl pollock and deep water flatfish; 20.5 percent for hook-and-line sablefish; 16 percent for all other hook-and-line fisheries; and 5 percent for all pot fisheries. These rates may be adjusted during the fishing year if warranted by new information.

If halibut bycatch is caught at the same rate in 1993 as in 1992, the assumed halibut mortality rates for trawl gear will result in faster accrual of Pacific halibut mortality in the pelagic trawl pollock fishery, and slower accrual in all other trawl fisheries than in 1992 when a 65 percent assumed rate was used for all targets. For hook-and-line gear, the sablefish fishery will accrue more halibut mortality than in 1992 when a 16 percent rate was assumed.

NMFS cannot predict whether the 1993 assumed mortality rates will constrain the trawl and hook-and-line groundfish fisheries. Harvesters are expected to change fishing methods in response to: (1) A vessel incentive program in which trawl fishermen are subject to enforcement actions if observed Pacific halibut bycatch rates exceed a bycatch rate standard specified in regulations; (2) a proposed change in the definition of pelagic trawl gear and new performance-based standards for this gear type; and, (3) a proposed requirement for careful release or gangion-cutting for halibut bycatch taken with hook-and-line gear. Groundfish may be fully harvested, subject to market constraints, even under lower Pacific halibut mortality caps.

NMFS concurs with the Council's recommendations listed above. The following types of information as presented in, and summarized from, the 1992 SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game (ADF&G), the IPHC, or public testimony were considered.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is from 1992 observer data. Assumed halibut mortality rates are based on 1990 and 1991 observer data. The calculated halibut bycatch mortality amounts by trawl, hook-and-line, and pot gear for 1992 are 1,718 mt, 1,131 mt, and 4 mt, respectively, for a total of 2,853 mt. These mortality amounts seasonally constrained trawl fisheries during the first and third quarters of the fishing year. Trawling, with the exception of trawling for pollock with pelagic trawl gear, was closed from March 22 to March 31, 1992 (57 FR 10297, March 25, 1992), from August 5 to September 30 (57 FR 35765, August 11, 1992), and from October 30 through December 31 (57 FR 52737, November 5, 1992), as a result of halibut PSC seasonal allowances. Hook-and-line fishing was closed from October 30 through December 31 (57 FR 52594, November 4, 1992), due to attainment of halibut PSC seasonal allowances.

The amount of groundfish that could have been harvested in 1992 without halibut PSC constraints is unknown. The EA estimates 25,500 mt of groundfish, worth an estimated $11.3 million, were foregone by the trawl fishery. Lacking market incentives, some groundfish would not have been

harvested, regardless of halibut PSC bycatch availability.

(B) Expected Changes in Groundfish Stocks

At its December 1992 meeting, the Council adopted lower ABCs for Pacific cod, POP, and thornyhead rockfish and a higher ABC for pollock, deep water flatfish, and arrowtooth flounder than ABCs adopted for these species for 1992. Other ABCs are essentially unchanged from 1992 levels, including those for DSR after adjustment for the increase in the size of the Southeast Outside District, and for the combined Northern rockfish and "other rockfish" species groups. More information on these changes is included in the Final SAFE Report dated November 1992 and in the Council and SSC minutes.

(C) Expected Changes in Groundfish Catch

The total of the 1993 TACs for the GOA, including the interim TAC for POP, is 305,078 mt, an increase of 6 percent over the 1992 TAC total of 289,066 mt (including POP). This notice significantly changes TACs from 1992 for certain target species categories, including reductions in Pacific cod, SR/RE, Northern rockfish and "other rockfish," pelagic shelf rockfish, and thornyhead rockfish, and increases in pollock, shallow water flatfish, and arrowtooth flounder.

TACs for Pacific cod and for the combined rockfishes (SR/RE, Northern rockfish and "other rockfish," pelagic shelf rockfish, and thornyhead rockfish) are decreased from 63,500 mt in 1992 to 56,700 mt in 1993, and from 24,704 mt in 1992 to 20,709 mt in 1993, respectively. The lower Pacific cod and rockfish TACs could reduce halibut mortality associated with those fisheries, and make more halibut bycatch available to support other trawl fisheries, especially those for flounders. TACs for shallow water flatfishes and arrowtooth flounder and for pollock increased from 36,740 mt to 46,240 mt, and from 87,400 mt to 114,400 mt, respectively. Greater participation in flounder fisheries is anticipated due to stronger markets and displacement of the offshore fleet from the pollock and Pacific cod fisheries. Additionally, recent technical developments suggest that arrowtooth flounder might be suitable for surimi production. Any increase in directed fishing for flounders will result in additional halibut PSC bycatch mortality, which might constrain trawlers in 1993. The increase in pollock TAC is not expected to affect halibut bycatch, because most of the pollock in the GOA is harvested with pelagic trawls that have low bycatches of halibut.

(D) Current Estimates of Halibut Biomass and Stock Condition

The IPHC 1992 stock assessment for the 1993 fishing year indicates that the total exploitable biomass of Pacific halibut available for 1992 was 265.8 million pounds (120,566 mt). Halibut biomass declined 11 percent from the previous stock assessment, a rate similar to declines observed in previous years. Recruitment (abundance of 8-year-old fish) appears to have dropped off coastwide, attributable to declines in Areas 3A, 3B, and 4, and stable recruitment in Area 2C, in spite of increases in Areas 2A and 2B. The 15-year-old age class, which recruited strongly as 8-year-old fish in 1985, is contributing less and less to the fishery yield. The low recruitment in recent years, in conjunction with recent exploitation rates in the commercial fishery, is expected to contribute to a continued decline in the overall stock at a rate of 5–10 percent per year over the next several years. A return to historically low recruitment levels as indicated by the numbers of 8-year-old fish in Area 3A supports the hypothesis of cyclically driven recruitment. The IPHC is recommending a decrease in the exploitation rate from 0.35 to 0.30 by 1994.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

Impacts of the groundfish fishery on Pacific halibut stocks and the halibut fisheries will be minimized by the overall PSC mortality limit. The 1993 groundfish fisheries are expected to catch the entire halibut PSC limit of 2,750 mt. According to the IPHC, allowable directed commercial catch of halibut is determined by subtracting recreational catch, waste, and bycatch amounts from a portion of the exploitable biomass. Therefore, although the amount of halibut available for directed halibut fisheries will be reduced, halibut bycatch in groundfish fisheries is not expected to have any effect on halibut stocks.

(F) Methods Available for, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Halibut bycatch may be reduced by: (1) Reducing amounts of groundfish TACs; (2) reducing halibut bycatch rates through Vessel Incentive Programs; (3) gear modifications; (4) changes in groundfish fishing seasons; and (5) reducing the PSC mortality limits.

Reductions in groundfish TACs do not encourage fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depend on species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with § 672.27 are subject to the Vessel Incentive Program outlined in § 672.26. The program encourages trawl fishermen fishing for groundfish to avoid high halibut bycatch rates by specifying bycatch rate standards for various target fisheries.

Current regulations at § 672.24(b)(2) require groundfish pots to have halibut exclusion devices to reduce halibut bycatches. Resulting low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits. Because none of the halibut PSC limit was needed during 1992 pot gear fisheries, it was apportioned entirely to support bycatch needs in trawl and hook-and-line gear. Pending approval by NMFS, a proposed change in the definition of pelagic trawl gear, together with a new performance-based standard, is expected to reduce halibut bycatch by displacing fishing activity away from the bottom when specified halibut bycatch levels are reached during the fishing year. This would allow operators of vessels using midwater trawls to continue to fish for groundfish without halibut PSC constraints.

Groundfish fishing seasons have reduced halibut bycatch. The sablefish hook-and-line season starts May 15, and the rockfish trawl fishery is delayed until the beginning of the third fishing quarter, June 28, 1993. These delays postpone sablefish and rockfish fisheries until halibut have migrated into shallow water.

For 1993, it will be difficult to predict when halibut mortality limits will be reached. Although the PSC limits are the same as in 1992, new assumptions about mortality rates and changes in TACs make predictions speculative for trawl gear. The increased mortality associated with the sablefish fishery will likely result in earlier attainment of the hook-and-line halibut mortality limit.

NMFS and the Council will review methods listed under (F), above, to determine their effectiveness. Changes will be initiated as necessary in response to this review or to public testimony and comment, either through regulatory or FMP amendments.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS assigns 2,000 mt and 750 mt

of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they will not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but expansion of the Vessel Incentive Program, required gear modifications, a delay in the hook-and-line sablefish and trawl rockfish seasons, and the proposed requirement of "careful release" techniques for halibut in the hook-and-line gear fisheries are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery. The success of those measures depends, in part, on action taken by vessel operators to reduce Pacific halibut bycatches and bycatch mortalities as they respond to regulatory requirements.

10. Seasonal Apportionments of the Halibut PSC Limits

Under § 672.20(f)(2), the Pacific halibut PSC limits are apportioned based on recommendations from the Council. For 1993, the Council recommended that Pacific halibut PSC limits for trawl gear for the second and third quarters be reversed from amounts in 1992 (Table 5). Slight adjustments were made to allow PSC limits to coincide with 1993 fishing weeks and quarterly reporting periods. Regulations specify that overages or shortfalls in PSC catches will be accounted for within the 1993 fishing year.

TABLE 5.—PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS FOR 1993. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY, AND TO FISHERIES OTHER THAN DSR.

[Values are in metric tons]

Trawl gear		Hook-and-line gear			
		Other than DSR			
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 28	600 (30%)	Jan 1–May 14	200 (27%)	Jan 1–Dec 31	10 (100%)
Mar 29–Jun 27	400 (20%)	May 15–Aug 31	500 (68%)		
Jun 28–Oct 3	600 (30%)	Sep 1–Dec 31	40 (5%)		
Oct 4–Dec 31	400 (20%)				
Total	2,000 (100%)		740 (100%)		10 (100%)

As required by § 672.20(f)(2)(iii), season apportionments of the halibut PSC limits are based on information summarized in the SAFE report, or as otherwise available, which is summarized below:

(A) Seasonal Distribution of Pacific Halibut

Adult Pacific halibut generally spawn in water 230–450 meters (m) deep from November through March; the peak of spawning is in December and January. During April and May, Pacific halibut migrate onto the offshore banks in water 135–270 m deep. During June through August, Pacific halibut are found in much shallower water, 45 m or less. During September and October, Pacific halibut migrate back to deeper water for spawning.

(B) Seasonal Distribution of Target Groundfish Species Relative to Pacific Halibut Distribution

Most of the groundfish species are found in deep water during winter when water temperatures are relatively warmer (4 °C) than temperatures in shallower water (1 °C). As detailed in the SAFE report, pollock, Pacific cod, shallow water flatfish species, and certain rockfish species are in deep water during winter but generally at depths shallower than where Pacific halibut are found. In summer, these species are in the same shallow water as Pacific halibut.

The recommended seasonal trawl apportionments will accommodate intensive fishing for flounder species during the first half of the fishing year when halibut are in deep water, and for deep water rockfish in the third quarter when halibut are in shallow water. These amounts will also accommodate early-year fishing for Pacific cod, generally a shallow water species. The recommended seasonal hook-and-line apportionments will accommodate intensive fishing for sablefish starting on May 15. Even though Pacific halibut bycatches should be markedly reduced after that date as Pacific halibut migrate into shallow water, the industry prefers to have substantial bycatch to support the valuable sablefish fishery.

(C) Expected Pacific Halibut Bycatch Needs on a Seasonal Basis Relevant to Changes in Pacific Halibut Biomass and Expected Catches of Target Groundfish Species.

TACs for Pacific cod and for all rockfishes except DSR are lower in 1993 than in 1992. TACs for pollock, shallow water flatfish, and arrowtooth flounder are substantially increased. Because of the TAC changes and changes in the assumed halibut bycatch mortality rates, all 2,000 mt of Pacific halibut bycatch mortality allocated to trawl gear and 750 mt allocated to hook-and-line gear are expected to be taken.

The Council recommended four seasonal apportionments of Pacific halibut PSC limit for trawl gear, equal to 30, 20, 30, and 20 percent. Most of the trawl share of the Pacific halibut PSC limit is expected to be taken during the first three quarters. Other than flounders and a limited amount of rockfishes, little groundfish is expected to be available or of high market demand for trawlers late in the year. Therefore, bycatch needs of Pacific halibut during the fourth quarter are expected to be smaller.

For the first quarter, most halibut bycatch will be needed in trawl fisheries for Pacific cod and flounders. Because halibut are in deep water in the winter, bycatch mortality in deep water flounder fisheries will likely be higher than at times later in the year. Pollock will be harvested primarily with pelagic trawl gear which has a low bycatch of halibut.

The second and third quarter proportions are reversed from those in 1992. This recommendation was made because a regulatory delay of trawling for rockfish and a proposed delay of the second quarter pollock season will reverse halibut bycatch needs during the

second and third quarters. Additionally, an anticipated increase in catch of shallow water flatfish during 1993 will increase halibut needs in the third quarter.

(D) Expected Variations in Bycatch Rates Throughout the Fishing Year

Pacific halibut bycatch rates will vary with the seasonal distribution of Pacific halibut. During winter months when Pacific halibut are in deep water, groundfish fisheries for deep-water species will experience higher Pacific halibut bycatch rates. Fisheries for shallow-water species will encounter lower Pacific halibut bycatch rates. This situation will be reversed during summer months when Pacific halibut are in shallower water. The Council's recommended large first and third quarterly apportionments to trawl gear reflect expected harvest patterns for Pacific cod and flounders in the first quarter, and pollock, rockfish and flounders in the third quarter. The allocation of 67 percent of the halibut PSC for hook-and-line gear to the second trimester reflects the needs of the lucrative sablefish fishery commencing on May 15.

(E) Expected Changes in Directed Groundfish Fishing Seasons

Two changes in the groundfish fishing seasons are anticipated from 1992 to 1993. The trawl rockfish fisheries will begin at the beginning of the third quarter, and the second pollock season, if approved, will be delayed from April 1 to a date near June 1. The rockfish season was changed, in part, to decrease halibut bycatch. Because Pacific halibut bycatch is relatively minor in the pollock fishery, the Council's recommended season change for pollock is not a major consideration in Pacific halibut PSC management.

(F) Expected Start of Fishing Effort

Except for GOA rockfish, fishing with trawl gear started on January 20. Trawling for rockfish species will start on June 28. Fishing with hook-and-line and pot gear for Pacific cod started in early January because Pacific cod were aggregated into spawning schools promoting good catch rates. Fishing with hook-and-line gear for sablefish will start on May 15.

(G) Economic Effects of Establishing Seasonal Pacific Halibut Allocations on Segments of the Target Groundfish Industry

The manner in which PSC limits are seasonally apportioned will affect the amount of groundfish OY that will be harvested during a season. Ideally, the seasonal apportionment of Pacific halibut PSC limits will permit each fishery to harvest fully the available resource without exceeding the PSC limits for each gear group. In reality, seasonal apportionments may not allow full harvests.

After the trawl fisheries were closed October 30, 1992, upon reaching the PSC limit for Pacific halibut, substantial amounts of flounder target categories (excluding arrowtooth flounder, which is largely a bycatch species) and some pelagic shelf rockfish and "other rockfish" remained unharvested. The amount of groundfish foregone in 1992 by harvesters using trawl gear is estimated at 25,500 mt, worth approximately $11.3 million exvessel. Lacking market incentives, some amounts of groundfish would not have been harvested, regardless of halibut PSC bycatch availability. A more thorough discussion of economic effects is contained in the SAFE report and EA.

NMFS has determined that the Council's recommendation for the seasonal apportionments of the Pacific halibut PSC to gear types is appropriate and is implementing the Council's recommendation.

Response to Comments

Written comments on the proposed 1993 specifications and other management measures were requested until January 4, 1993. No written comments were received during the comment period on the specifications as proposed. However, four letters were received by the Director, Alaska Region, NMFS (Regional Director), during the comment period on Council recommendations for final specifications. Two of these letters expressed support for the Council's recommendation of TAC for POP and "other rockfish"; one additionally supported the recommendation for SR/RE. Two other letters opposed to the Council recommendation for POP, and supported a higher TAC for POP. NMFS will respond to comments regarding POP when NMFS specifies a TAC for that species; the comments regarding other rockfishes and SR/RE are summarized and addressed below.

Comment 1: The TACs recommended for "other rockfish" and SR/RE by the Council were appropriate. The fisheries for "other rockfish" and SR/RE have a high bycatch of POP; allowing a TAC equal to the ABC of "other rockfish" would compromise the conservation and rebuilding measures adopted by the Council in recommending a reduced POP TAC. Additionally, the ABC for "other rockfish" was based on the average natural mortality rate for the complex. A TAC set at ABC would not provide sufficient protection to any species that has a low natural mortality rate and may be harvested disproportionately to its relative abundance in the complex.

Response: NMFS has adopted the Council's TAC recommendation for "other rockfish." NMFS agrees that a conservative harvest approach is warranted for rockfishes, and unnecessary bycatches, particularly of POP, should be minimized until a detailed population and rebuilding analysis can be evaluated. NMFS also concurs that for species managed as a complex, harvest levels should be set in such a manner as to afford protection for vulnerable species within the complex.

Classification

This action is authorized under 50 CFR 611.92 and 672.20 and complies with E.O. 12291.

This action apportions reserves to DAP fisheries on a date other than those specified in § 672.20(d)(i). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds that it is necessary to waive the opportunity for prior public comment to prevent premature closure of the fishery. In accordance with § 672.20(d)(5)(iv), comments are invited on the reserve apportionments as noted in "DATES" above.

NMFS prepared an environmental assessment on the 1993 TAC specifications. The Assistant Administrator concluded that no significant impact on the environment will result from their implementation.

An informal consultation under the Endangered Species Act for the final 1993 initial groundfish specifications was concluded for Steller sea lions, on January 27, 1993, and for listed, proposed, and candidate seabirds on February 3, 1993. An informal consultation for listed species of Pacific salmon was concluded for groundfish fisheries under the FMPs on February 20, 1992. As a result of the informal consultations, the Regional Director determined that fishing activities under the final 1993 TACs are not likely to adversely affect endangered or threatened species in a manner or to an extent not previously considered.

List of Subjects

50 CFR Part 611

Fisheris, Foreign relations.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 26, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 93-7435 Filed 3-26-93; 4:15 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 921107-3068]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by the inshore component in the Central Regulatory area (CG) (statistical areas 62 and 63) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the Pacific cod total allowable catch (TAC) for the inshore component in this area.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), March 26, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allowance of Pacific cod TAC for the inshore component in the CG was established by the final specifications (contained elsewhere in this **Federal Register** document) as 31,680 mt.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allowance of the 1993 Pacific cod TAC for the inshore component in the CG soon will be reached. Therefore, in accordance with § 672.20(a)(2)(v)(B), the Regional Director has established a directed fishing allowance for vessels catching Pacific cod for processing by the inshore component of 27,680 mt, with consideration that 4,000 mt will be taken as incidental catch in directed fishing for other species in the CG. The Regional Director had determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the CG, effective from 12 noon, A.l.t., March 26, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 26, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-7436 Filed 3-26-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 60
Wednesday, March 31, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Cost, Feasibility, and Privacy Implications of Tracking Individual Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comments; extension of comment period.

SUMMARY: On February 3, 1993, the Federal Deposit Insurance Corporation (FDIC) published a document requesting public comment on a study of the desirability, cost, feasibility, and privacy implications of tracking any individual's insured and uninsured deposits and the exposure of the Federal Government with respect to all insured depository institutions (58 FR 6903). The FDIC is extending the period for public comment on this notice for 30 days from April 5, 1993 to May 5, 1993.

DATES: Written comments must be received on or before May 5, 1993.

ADDRESSES: Written comments shall be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in FDIC's Reading Room, room 7118, 550 17th Street, NW., between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898–3838]

FOR FURTHER INFORMATION CONTACT: Jay W. Golter, Financial Analyst, Division of Research and Statistics, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–3924.

SUPPLEMENTARY INFORMATION: Section 311(d) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, requires the FDIC to conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual and the exposure of the Federal Government with respect to all insured depository institutions. The study must include detailed, technical analysis of the costs and benefits associated with the least expensive manner of implementing the tracking system. As part of the study, the FDIC must investigate, review, and evaluate—

(A) The data systems that would be required to track deposits in all insured depository institutions;

(B) The reporting burdens of such tracking on individual depository institutions;

(C) The systems which exist or which would be required to be developed to aggregate such data on an accurate basis;

(D) The implications such tracking would have for individual privacy; and

(E) The manner in which systems would be administered and enforced.

In order to obtain public comment on all issues related to this study, on February 3, 1993, the FDIC published a request for comment in the **Federal Register** (58 FR 6903) for a 60 day comment period to end on April 5, 1993. In response to a request for an extension of the comment period and in view of the variety of issues to be studied, the FDIC is extending the period for public comment for 30 days from April 5, 1993 to May 5, 1993.

By order of the Board of Directors. Dated at Washington, D.C. this 23rd day of March, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–7367 Filed 3–30–93; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–6]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by May 31, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on March 22, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27163
Petitioner: Mr. Charles Webber
Regulations Affected: 14 CFR 11.25
Description of Rulechange Sought:

To require that a petitioner be given 45-day advance notification of related publication in the **Federal Register**; to

require that a petitioner need submit to the FAA only one copy of a petition; to require the FAA to assign a docket number and notify the petitioner within 1 week of receipt of a petition; to require that the FAA publish a summary of a petition in the **Federal Register** within 90 days of receipt of the petition; to require that errors in the **Federal Register** summary publication be cause for republication if requested by the petitioner; to require that a petitioner be provided promptly with copies of all comments received; to require that if a petition is not resolved in 60 days, the FAA prepare and provide the petitioner a schedule of events that would lead to such action; to require that within 60 days of the closing of the comment period, if the Administrator determines that the petition does not justify instituting rulemaking, the FAA issue a denial order to the petitioner which will subsequently be published in the **Federal Register**; to require that within 60 days of the close of the comment period and every 90 days thereafter, the Office or Service concerned would advise the petitioner in writing of the status and progress of the petition; and to require that each general notice of proposed rulemaking be published in the **Federal Register** and that persons subject to it be named and personally served with a copy.

Petitioner's Reason for the Request:

The petitioner feels that current regulations do not adequately address petitioners' rights regarding their petitions for changes to Federal Aviation Regulations.

[FR Doc. 93–7392 Filed 3–30–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 270

[Release No. IC–19362, File No. S7–13–93]

RIN 3235–AF56

Expedited Procedure for Exemptive Orders and Expanded Delegated Authority

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and requests for comment.

SUMMARY: The Commission is proposing for public comment an amendment to rule 0–5 under the Investment Company Act of 1940 that would establish an expedited review procedure for certain routine applications. The proposed rule amendment would permit applicants to obtain an exemptive order within 90 days if certain requirements are satisfied. The proposed rule amendment also would allow the Commission to declare certain inactive applications to be abandoned. The Commission also is proposing for public comment an amendment to rule 30–5 that would expand the delegated authority of the Director of the Division of Investment Management. The proposed rule amendments are intended to streamline the review procedure for exemptive applications and reduce delays in obtaining exemptive orders.

DATES: Comments must be received on or before June 29, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–13–93. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Matthew M. O'Toole, Attorney, or Diane C. Blizzard, Assistant Director, both at (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 0–5 (17 CFR 270.0–5) under the Investment Company Act of 1940 (15 U.S.C. § 80a–1, *et seq.*) (the "Act"). In addition, the Commission is requesting public comment on proposed amendments to rule 30–5, Delegation of Authority to Director of Division of Investment Management ("Delegation of Authority Rule") (17 CFR 200.30–5). These amendments would implement the recommendations made in the recently issued report by the Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, in Chapter 13, Procedures for Exemptive Orders.[1]

I. Background

The Act delegates to the Commission considerable flexibility in its regulation of investment companies. In over thirty separate provisions, the Act authorizes the Commission to issue orders[2] providing relief from specific statutory requirements.[3] Most significantly, section 6(c) gives the Commission the broad power to exempt conditionally or unconditionally any person, security, or transaction from any provisions of the Act or any rule thereunder, provided that the exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."[4] Congress enacted section 6(c) to give the Commission the flexibility to address unforeseen or changed circumstances in the investment company industry.[5]

Past applications for exemptive orders under the Act have addressed a wide variety of issues in a number of contexts.[6] For example, some

[1] Division of Investment Management, SEC, *Procedures for Exemptive Orders*, Protecting Investors: A Half Century of Investment Company Regulation 503–525 (1992) [hereinafter the Protecting Investors report]. This report concluded a two-year examination of the regulation of investment companies and certain other pooled investment vehicles. The Exemptive Procedures chapter discusses the Division's findings and recommendations in greater detail. The Division's recommendations were based, in part, on suggestions made by commenters responding to a Commission release requesting comment on the regulation of investment companies. Request for Comment on Reform of the Regulation of Investment Companies, Investment Company Act Release No. 17534 (June 15, 1990), 55 FR 25322 (hereinafter Study Release).

[2] Although this release generally refers to exemptive orders, the proposed rule amendments would cover all types of applications for orders under rule 0–5. 17 CFR 230.0–5. In contrast, an application for an order under section 8(f) would not receive expedited review under this proposed rule amendment because the application is not covered by rule 0–5. Applications for orders under sections 2(a)(9), 3(b)(2), and 9(c) also would not receive expedited review because these applications are inherently fact-specific. *See* paragraph (b) of the proposed rule.

[3] *See, e.g.*, section 3(b)(2) (Commission may find that issuer is "primarily engaged" in a non-investment company business even though issuer may technically meet definition of investment company); section 9(c) (Commission may permit otherwise disqualified person to serve in various capacities with respect to investment companies); section 17(b) (Commission may exempt proposed transactions from the Act's affiliated transaction prohibitions); codified at 15 U.S.C. 80a–3(b)(2), –(9c), –17(b).

[4] 15 U.S.C. section 80a–6(a).

[5] See, e.g., Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 872 (1940) [hereinafter 1940 Senate Hearings] (Commissioner Healy, a principal author of the Act, stated that "it seemed possible and even quite probable that there might be companies—which none of us have been able to think of—that ought to be exempted."); id. at 197 (David Schenker, Chief Counsel of the Investment Trust Study, and also a principal author of the Act, stated that "the difficulty of making provision for regulating an industry which has so many variants and so many different types of activities * * * is precisely [the reason that section 6(c)] is inserted.").

[6] The extent to which the financial services industry depends on the exemptive process is demonstrated by the number of applications filed with the Commission. For example, in fiscal year

Continued

applications have requested relief from provisions of the Act to permit registered investment companies to operate in a more efficient and less costly manner.[7] Other applications have been filed either to implement innovations or create new investment vehicles that do not fit within the regulatory confines of the Act.[8]

Filing requirements and specifications for applications are set forth in rules 0–2,[9] 0–4,[10] and 0–5(d).[11] Applicants also are expected to follow published Division guidelines for filing applications.[12] Specifically, applicants must state an adequate basis for the relief requested, including detailed justification for removal of any statutory protections, and identify any benefits expected for investors and any conditions imposed to protect investors.[13] Applicants also must cite and discuss prior applications for similar relief and, to the extent possible, bring their proposal within applicable precedent.[14]

Applications filed with the Commission are forwarded to the Division and generally are reviewed in the order received. During the review process, the Division may ask for clarification of, or modification to, an application so that the relief meets the Act's standards. An applicant that does not respond to such a request in a timely manner may have its application placed on inactive status at the Division's discretion.[15]

The Commission may issue an order on an application "only after appropriate notice and opportunity for hearing."[16] Accordingly, once review of an application is completed, and a determination is made that relief should be granted, a notice of the filing of the application generally must be published in the **Federal Register**.[17] The notice provides interested persons an opportunity to request a hearing on the matter within a specified period of time (typically twenty-five days from the date of the issuance of the notice), and indicates the earliest date upon which an order disposing of the matter may be entered.[18]

The vast majority of notices of applications and exemptive orders are issued by the Division under delegated authority. The Delegation of Authority Rule authorizes the Division Director to issue notices of applications under numerous sections of the Act[19] and underlying rules, where the matter either presents issues previously settled by the Commission or fails to raise questions of fact or policy requiring a hearing.[20] The rule similarly authorizes the Division Director to issue orders where a notice has been issued and no request for a hearing has been filed.[21] In essence, rule 30–5 relieves the Commission from performing functions "which experience has demonstrated to be of a routine or non-controversial nature."[22] Rule 30–5 nonetheless requires a number of applications to be presented to the Commission for consideration, including *all* applications under provisions of the Act for which rule 30–5 does not grant the Division Director delegated authority,[23] and other applications involving matters not previously settled by the Commission.[24]

1991, 331 applications (almost one a day) were filed under the Act.

[7] For instance, the Commission has issued numerous orders permitting several open-end investment companies ("mutual funds") to deposit overnight cash balances into a joint trading account, the daily balance of which would be used to enter into repurchase agreements. By depositing such balances into a joint trading account, the funds are able to reduce costs and thereby increase the return they otherwise would have achieved had each fund separately made these investments. See, e.g., Short-Term Investments Co., Investment Company Act Release Nos. 18550 (Feb. 13, 1992), 57 FR 6156 (Feb. 20, 1992) (Notice of Application) and 18614 (Mar. 12, 1992), 50 SEC Docket 2196 (Mar. 24, 1992) (Order).

[8] The Commission issued numerous orders beginning in the 1980s permitting mutual funds to impose contingent deferred sales loads ("CDSLs") and offer multiple classes of shares with different sales charges and expenses. See, e.g., Freedom Investment Trust, Investment Company Act Release Nos. 16487 (July 20, 1988), 56 FR 56260 (Notice of Application) and 16526 (Aug. 16, 1988), 41 SEC Docket 904 (Order) (CDSLs); Comstock Partners Strategy Fund, Investment Company Act Release Nos. 26672 (June 5, 1992), 57 FR 26672 (Notice of Application) and 18828 (July 1, 1992), 51 SEC Docket 1853 (Order) (multi-class fund). Money market funds could not have been offered without exemptive relief from section 2(a)(41), which requires registered investment companies to value their securities based on market values, if available, or if not, as determined in good faith by the board of directors. In a series of orders beginning in the 1970s, the Commission permitted money market funds to use alternative valuation methods, such as amortized cost or penny rounding. These orders were later codified in rule 2a–7. 17 CFR 270.2a–7. In addition, the Commission has issued over 125 orders under section 6(c) exempting structured financings backed by mortgage-related assets. See, e.g., Shearson Lehman CMO, Inc., Investment Company Act Release Nos. 15796 (June 11, 1987), 52 FR 23246 (Notice of Application) and 15852 (July 2, 1987), 38 SEC Docket 1403 (Order) (collateralized mortgage obligations). The Commission later adopted a rule excluding certain structured financings from the definition of "investment company." 17 CFR 270.3a–7.

[9] 17 CFR 270.0–2. Rule 0–2 contains various requirements for filing papers and applications with the Commission, including how filings are received and dated, what signatures and authorizations must appear, and what applications should contain.

[10] 17 CFR 270.0–4 (regarding incorporation by reference of documents filed with the Commission).

[11] 17 CFR 270.0–5(d) (filing fee requirement). Rule 0–5–(a)-(c) sets forth Commission procedures for considering and disposing of applications. 17 CFR 270.0–5–(a)-(c).

[12] Commission Policy and Guidelines for Filing of Applications for Exemption, Investment Company Act Release No. 14492 (Apr. 30, 1985), 50 FR 19339 (hereinafter Release No. 14492). The release was issued in response to increases in the early 1980s in both the number and complexity of exemptive applications.

[13] *Id.* Section 3. *See also* 17 CFR 270.0–2(e) (requiring that each application contain a brief statement of the reasons why the applicant should be entitled to the action requested). Section 34(b) makes it unlawful for any person to make any untrue or misleading statement in connection with an application or other document filed with the Commission. 15 U.S.C. 80a–33(b).

[14] Release No. 14492, *supra* note 12, section 1. An order issued for the same relief sometimes is referred to as a "precedent." Applicants are further expected to review all relevant provisions of the Act and rules thereunder, and all pertinent Commission releases, before filing an application. *Id.*

[15] Initial comments on an exemptive application generally are given at one time and within 45 days of receipt, although novel or complex applications may take longer. Id. at n.1. Generally, applicants are required to file an amendment within 60 days of receipt of comments. Id. section 8. An applicant may reactivate an inactive application at any time, however, by filing a request with the Division or by filing the required amendment. Action on a reactivated application commences from the date of receipt of the request or the amendment by the Division and does not date back to the filing of the original application. This allows a reviewer to become reacquainted with the facts and issues involved in the application. Id.

[16] Section 40(a), codified at 15 U.S.C. 80a–39(a). In certain circumstances, however, emergency or temporary orders may be appropriate without prior notice.

[17] 17 CFR 270.0–5(a). The notice briefly describes the proposal, states why the applicant believes the proposal qualifies for an exemption, summarizes the critical representations and states the conditions contained in the application. Rule 0–2(g) requires that a proposed notice be submitted as an exhibit to the application and be modified to reflect any subsequent amendments. 17 CFR 270.0–2(g). Division guidelines anticipate that notices of routine applications that require no amendment be published within 60 days of receipt of the application. Release No. 14492, supra note 12, at n.1. Due to the increasing number and complexity of applications, however, these guidelines may not be followed at times.

[18] See 17 CFR 270.0–5(a). Under the Federal Register Act, the notice period generally must last for at least 15 days after publication. 44 U.S.C. 1508. Due to this 15 day requirement, and because notices generally are not published in the **Federal Register** for at least six days after the notice is issued, the notice period typically runs approximately 25 days from the date of issuance. Orders granting the requested relief generally are issued within two days of the expiration of the notice period, unless a hearing is requested by an interested party or is ordered by the Commission on its own motion. See Release No. 14492, supra note 12, at n.1; see also rule 0–5(b)–(c).

[19] The Delegation of Authority Rule also authorizes the Division Director to issue notices of applications (and orders) under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1, et seq.] [hereinafter Investment Advisers Act]. 17 CFR 200.30–5(e).

[20] 17 CFR 200.30–5(a)(1), (e)(3).

[21] 17 CFR 200.30–5(a)(2), (e)(4).

[22] Investment Company Act Release No. 3645 (Mar. 8, 1963) (adopting rules delegating functions to division directors).

[23] See, e.g., section 2(a)(9) (Commission may determine whether a person controls a company); codified at 15 U.S.C. § 80a–2(a)(9).

[24] Rule 30–5 does not delegate to the Division Director the authority to order hearings or deny

Obtaining an exemptive order from the Commission typically takes from six to eight months from the date an application is received, depending on various factors including the novelty and complexity of the requested relief, the Division's workload, the time it takes for applicants to respond to comments, and whether the Division Director has delegated authority. The time period also depends upon whether the application contains the facts and legal analysis needed to justify granting the relief, and whether the application complies with the procedural rules and guidelines.

Applicants and counsel have long complained that obtaining an exemptive order on both routine and complex applications takes too long.[25] They argue that lengthy review procedures delay the commencement of transactions, prevent applicants from responding quickly to changing market conditions, and slow the entry of new products to the market, all to the detriment of investors.

The Commission recognizes that these are legitimate concerns. On the other hand, applications can involve transactions on the forefront of investment company law. In those instances, substantial time and resources are expended to analyze thoroughly the legal and policy issues raised, and the recommendations the Division must make to the Commission often include significant policy choices. Even applications that generally are based on precedent often contain significant variations from previous applications that the Division must scrutinize carefully.

The Commission must balance the industry's legitimate concerns over delays in obtaining orders with the Commission's responsibility to analyze significant questions of fact or law underlying the requested relief. Accordingly, in order to streamline review procedures while continuing to scrutinize applications properly, the Commission is proposing to amend rule 0–5 to establish an expedited review procedure for applications that follow precedent, and to amend rule 30–5 to expand the Division Director's delegated authority to approve certain applications.

II. Proposed Revisions to Rule 0–5 for Expedited Review

The proposed amendment to rule 0–5 would allow certain applicants to receive an exemptive order within 90 days of filing an application if the application is based on clear precedent. This approach balances the applicants' desire for a prompt response with the Commission's responsibility under the Act to protect investors. The Division each year receives numerous applications that are essentially identical, except for identifying information, to previously granted applications. The rule amendments would enable those applicants to obtain exemptive orders on a predictable and expedited basis. At the same time, the Commission must preserve its role in the review process. Thus, the rule amendments also provide a procedure for identifying applications submitted for expedited review on the basis of precedent that is inapposite,[26] and for discontinuing expedited review in cases where complete review is deemed appropriate.[27]

Under the amendments, present rule 0–5 would become paragraph (a), and a new paragraph (b) would be added that would provide for expedited review. Applications reviewed under paragraph (b) thus would be subject to the general procedures in paragraph (a), as well as any other applicable filing requirements of the Act and rules.[28] Subparagraph (b)(3) would establish certain time periods for the issuance of notices and orders on applications that conform to precedent, permitting eligible applications to receive an exemptive order within 90 days of filing. Subparagraphs (b)(1) and (b)(2) would impose eligibility and other requirements for expedited review. Subparagraph (b)(4) would establish procedures for discontinuing the expedited procedures, and subparagraph (a)(5) would be added to the rule to permit the Commission[29] to deem certain inactive applications to be abandoned.

A. Expedited Review of Applications Based on Precedent

1. Expedited Review Procedure

Under proposed subparagraph (b)(3), a notice of application would be issued by the Commission within 60 days from the filing of an application, as long as certain requirements were satisfied. In addition, unless either a request for a hearing were filed by an interested person in response to the notice of application published in the **Federal Register**, or the Commission ordered a hearing on its own motion, an order would be issued within 30 days from publication of the notice in the **Federal Register**.[30] Taking into consideration the Commission's limited resources, comment is requested on whether the 60-day and 30-day time periods proposed by the rule amendments are reasonable.

Under the proposed introductory language in paragraph (b), applications filed under sections 2(a)(9), 3(b)(2) or 9(c) would be ineligible for expedited review. The Commission believes these particular types of applications are too fact-specific to be appropriately reviewed under a procedure that relies on clear precedent. The Commission requests comment, however, whether applications filed under these sections or any other section of the Act should be excluded from the expedited review procedure.

The running of the 60-day review period would be subject to certain exceptions. In particular, the filing of an unsolicited amended and restated application automatically would toll the 60-day period. The issuance of a comment letter requesting clarification to, or modification of, the application also would automatically toll the 60-day period.[31] Although applications would be required to conform to precedent, and the Commission anticipates that few comment letters would be issued, there occasionally may be times when a comment letter is necessary either to resolve technical matters or because modifications to precedent are

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applications. If the Division, for whatever reason, decides that it is not willing to recommend that the Commission issue an order, the Division may ask that the application be withdrawn. If the applicant does not do so, the Division may recommend that the application be set down for a hearing. Release No. 14492, supra note 12, at n.3; see Counsellors Tandem Securities Fund, Inc. and Sequoia Partners L.P., Investment Company Act Release No. 18940 (Sept. 10, 1992).

[25] See, e.g., Letter from the Subcomm. on Investment Companies and Investment Advisers of the Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC, 7–9 (Oct. 18, 1990), File No. S7–11–90.

[26] Precedent would be inapposite if, for example, an applicant were to use as precedent an application that has been superseded or does not correspond to the requested relief.

[27] The Commission believes that while some Commission resources will be devoted to meeting the time periods imposed by the proposed amendments, such resources would be minimal because, among other reasons, its staff will be reviewing applications and draft notices that have been marked to show changes from previous applications and notices.

[28] See, e.g., 17 CFR 270.0–2 (general filing requirements).

[29] The Commission would delegate this authority to the Division. See subparagraph (a)(9) of the proposed amendment to rule 30–5.

[30] Once a notice is issued by the Commission, the notice will be published in the **Federal Register** in approximately six days. The proposal merely establishes a *maximum* number of days in which the Commission shall act if an applicant correctly follows the established procedures. Thus, if the notice were issued in *less* than 60 days, the order could be issued in less than 90 days.

[31] See paragraph (b)(3)(i)(A) of the proposed rule

advisable.[32] The proposed rule further provides that the 60-day period would resume fifteen days after the applicant files an amended and restated application that responds to the comment letter, marked to show all changes from the original application or most recent amendment,[33] unless the Division determines that the amended and restated application does not respond adequately to the comment letter. In such case, the Division would notify the applicant that the 60-day period remains tolled.[34]

The Commission believes that the Division needs adequate time to review the amended and restated application both to ensure that it is responsive to the comment letter and to determine whether it still satisfies the requirements established in subparagraphs (b)(1) and (b)(2). The Commission requests comment, however, whether the proposed tolling mechanism is the most appropriate procedure for handling the review of amended and restated applications.[35]

Finally, if a comment letter goes unanswered for more than 30 days, a new 60-day review period would commence on the date an amended and restated application is filed.[36] The Commission requests comment, however, whether a new 60-day review period is appropriate, or whether, in the alternative, such applications should be removed from expedited review and considered thereafter under the general procedures provided in paragraph (a).

Several commenters on the Study Release suggested that the Commission adopt a rule that would allow exemptive applications to become effective automatically within a fixed period of time unless the Commission takes preventive action.[37] These commenters note that such a change would make the Division's procedures resemble provisions of the Securities Act governing the effectiveness of registration statements,[38] and provisions of the Exchange Act regarding the use of proxy materials.[39]

There are critical distinctions, however, between allowing a particular filing to become effective by the passage of time on the one hand, and granting exemptive applications on the other. Specifically, for a registration statement, a statutory obligation is imposed on the issuer to provide full and accurate disclosure of material information, even after the registration statement has become effective and review is completed.[40] In other words, the issuer remains fully liable under the registration statement. For exemptive applications, however, an applicant that has received a Commission order gains a measure of protection from liability, even if the applicant made misrepresentations in its application.[41] Moreover, while section 6(c) is broad, it is not without limitations and it specifically requires the Commission to grant exemptions *only* if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and other purposes intended by the Act.[42] The passive granting of exemptive relief could call into question whether the Commission was meeting its obligations under the Act.

2. Requirements for Expedited Review

In order for an applicant to use the expedited review procedure in subparagraph (b)(3), the application must meet certain requirements under subparagraphs (b)(1) and (b)(2). Subparagraph (b)(1) would require that the applicant seek relief that is consistent in all material respects with the most recent order issued on applications for the same relief. Thus, an applicant seeking relief from particular sections of the Act must use as precedent only those applications for which relief was granted under the same sections. In other words, there could be no "mixing and matching" of relief. The time period for determining the most recent order would be as of thirty days preceding the filing of the application seeking expedited review.[43] Furthermore, subparagraph (b)(1) would require the order to have been issued within two years preceding the filing of the application seeking expedited review.

The expedited procedure is intended to be used only in routine cases where the Commission already has had sufficient time to analyze and consider the requested relief. The Commission believes that applications seeking expedited review must be adequately supported. By requiring that applications seeking expedited review rely on precedent which must be less than two years old, the proposed rule amendments would ensure that the Division is familiar with applicable precedent.

The Commission requests comment, however, whether only applications that obtained relief identical to the application seeking expedited review should be recognized as precedential applications, or whether previous applications could serve as precedent even though the application for expedited review sought only a portion of the relief granted in the previous application.

Subparagraph (b)(1) also requires that an application submitted for expedited review contain certain information, including a statement on its facing sheet that the applicant requests expedited review under rule 0–5(b),[44] and, under a separate heading, a brief summary of the relief requested together with citations to the release numbers of the notices and orders issued on the applications submitted as precedent.

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[32] As the Division reviews the application and makes the necessary findings as required by law, the Division must consider how new facts and circumstances might dictate a modification to precedent.

[33] In addition, counsel, or if applicant is not represented by counsel, the person executing the amended and restated application, must provide a written representation that such markings are accurate and complete. See subparagraph (b)(3)(i)(A)(*1*) of the proposed amendment to rule 0–5.

[34] Such notification would be made in a comment letter addressing the amended and restated application.

[35] In certain instances, the Division may determine that a responsive filing is unnecessary after the comment letter is sent. To address this circumstance, under paragraph (b)(3)(i)(A)(2), the Division simply could send a letter to the applicant announcing that the 60-day period has resumed.

[36] See paragraph (b)(3)(i)(B) of the proposed rule amendments. Of course, if more than 120 days has elapsed since the mailing of the comment letter, the application already may have been declared abandoned under proposed paragraph (a)(5) of the rule. See infra section II.B.

[37] See Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC, 1–2 (Oct. 10, 1990), File No. S7–11–90; Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC, 45–46 (Oct. 5, 1990), File No. S7–11–90; Letter from Prudential Mutual Fund Management, Inc. to Jonathan G. Katz, Secretary, SEC, 9 (Oct. 9, 1990), File No. S7–11–90.

[38] Section 8(a) of the Securities Act provides that registration statements become effective in 20 days unless the Commission issues a stop order under either section 8(b) or 8(d). Securities Act of 1933, 15 U.S.C. § 77h(a), (b), (d). In practice, however, most registration statements contain "delaying amendment" language prescribed in rule 473, 17 CFR 230.473, and become effective only when the staff completes its review.

[39] 17 CFR 240.14a–6 (Commission must make comments within 10 days of filing proxy materials).

[40] Securities Act of 1933 sections 11(a), 12, 17(a); 15 U.S.C. 77k(a), 77l, 77q(a).

[41] Under section 38(c) of the Act, no liability attaches "to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason." 15 U.S.C. 80a–37(c).

[42] 15 U.S.C. 80a–6(c).

[43] This 30-day period prior to filing is intended to recognize that applicants may not be able to include as precedent applications that recently have received orders. Of course, at the end of this 30-day period, relevant notices already would be approximately 60 days old.

[44] A statement could be in the form of a checkmarked box next to a request for expedited review under rule 0–5(b) on the facing sheet of the application, similar to rule 487, 17 CFR 230.487.

These requirements are intended to clearly identify requests for expedited review and the precedents on which they rely. They also are intended to help the Commission verify the accuracy of applicants' representations.

Proposed subparagraph (b)(1)(iii) would require that an application seeking expedited review contain each condition, and each material representation, included in the final version of the most recent precedential application.[45] The Commission recognizes that certain representations made in precedential applications are not material to the relief granted, and thus should not be required in applications seeking expedited review. Since conditions embody the essential parts of a precedential application, each of them would be required.

Subparagraph (b)(2) of the proposed rule requires that certain items accompany an application for expedited review. These include a copy of the application marked to show all changes from the application that was granted by the most recent order submitted as precedent, and a draft notice marked to show all changes from the notice issued on such precedential application.[46] These exhibits would allow the Commission readily to discern any variations between the application seeking expedited review and the most recent precedential application.

Subparagraph (b)(2) also requires a statement signed by counsel[47] representing that the application meets each of the requirements of subparagraph (b)(1). Such statement also must represent that both the application marked to show changes and the draft notice marked to show changes were complete and accurate. This written representation would be similar to the representation required from counsel under rule 485 for post-effective amendments filed by certain registered investment companies,[48] and under rule 487 for certain unit investment trusts,[49] and should take the form of a letter signed by counsel.[50]

In essence, the Commission would be requesting counsel to represent that there are no provisions of the application that render it ineligible for filing under paragraph (b). Such a representation, in addition to any other document filed with the application for expedited review, would be subject to section 34(b) of the Act.[51] The Commission requests comment, however, whether there are other appropriate and effective means of ensuring the accuracy of applications and exhibits submitted for expedited review.

3. Discontinuance of Expedited Review

Proposed subparagraph (b)(4) would establish a procedure and bases by which the Commission could discontinue the expedited review of any application. Specifically, the Commission may discontinue expedited review to reconsider whether to grant the relief requested or to consider the need for modifications to an application. In addition, the Commission may determine not to expedite review of any or all applications due to constraints on Commission resources. The Commission would notify affected applicants in writing in cases where the Commission is reconsidering its policy or deciding whether an application needs modification, or by publication in the Federal Register in cases where Commission resources will not sustain expedited review.

Subparagraph (b)(4) does not address the situation where an application submitted for expedited review is incomplete or inaccurate. In that case, the Commission could discontinue expedited review because the application did not meet the requirements of paragraph (b). Depending on the degree of incompleteness or inaccuracy, the Commission alternatively could choose, in its discretion, to seek revisions to the application through comments.[52] Of course, the Commission would consider an application for which expedited review has been discontinued under the general procedures in paragraph (a).

B. Applications Deemed To Be Abandoned

Under subparagraph (a)(5) of the proposed rule amendments, the Commission may declare an application abandoned if an applicant fails to file an amended application or otherwise respond in writing to a request for clarification of, or modification to, an application within 120 days of the mailing of such request. Furthermore, if the Division issues a letter stating that it will recommend that the Commission order a hearing on an application, the Commission may declare the application abandoned if the applicant, within 120 days, does not request that the Division recommend a hearing.[53] If the applicant subsequently decides to pursue an abandoned application, the applicant must file a request with the Division to have the application reactivated. The Commission requests comment whether the 120-day period, or a shorter or longer period, is appropriate.

III. Proposed Revisions to Rule 30–5 To Provide for Expanded Delegated Authority

The Commission believes that some of the delays on applications may be caused by an unnecessarily narrow delegation of authority from the Commission to the Division Director. Accordingly, the Commission also is proposing to amend paragraphs (a)(1), (a)(2), (e)(3) and (e)(4) of the Delegation of Authority Rule. These amendments would broaden the Division Director's delegated authority by granting delegated authority with respect to all sections of the Act, and Investment Advisers Act, except as specifically limited.[54] Most importantly, the amendments also would incorporate a new concept of discretion into the

[45] The Commission recognizes that certain applications have many versions due to the filing of amendments. The Commission would require that applications seeking expedited review contain each condition and material representation of the final version of the application submitted as the most recent precedent.

[46] This would serve as the draft notice required under rule 9–2(g). 17 CFR 270.0–2(g).

[47] If the applicant is not represented by counsel, such statement must be signed by the person executing the application. The term "counsel" includes either outside or in-house counsel.

[48] 17 CFR 230.485(e). See Revised Procedures for Processing Post-Effective Amendments Filed by Separate Accounts of Insurance Companies, Investment Company Act Release No. 12434 (May 14, 1982), 47 FR 22356. Such post-effective amendments filed by open-end management investment companies or unit investment trusts become effective immediately under rule 485(b).

[49] 17 CFR 230.487(b)(6). See Automatic Effectiveness of Registration Statements Filed by Certain Unit Investment Trusts, Investment Company Act Release No. 12423 (May 7, 1982), 47 FR 20290. Under rule 487, which provides for expedited effectiveness of registration statements for certain series of unit investment trusts, the Commission indefinitely may suspend a registrant's eligibility for expedited treatment. The Commission has delegated that authority to the Division Director. 17 CFR 200.30–5(b–3).

[50] Except for the requirements of rule 2(e), 17 CFR 201.2(e), counsel would not be held responsible for the accuracy or completeness of the facts in the application, nor would a legal opinion from counsel be required. This is the standard established under rule 487. See Investment Company Act Release No. 12423 (May 7, 1982), 47 FR 20290, 20293. As noted, any amendments to the application also must be accompanied by a written representation from counsel under subparagraph (b)(3)(i)(A)(1) of the proposed rule amendments.

[51] § 34(b) of the Act states that it shall be unlawful to make any untrue statement of a material fact in "any registration statement, application, report, account, record, or other document filed * * * pursuant to this title * * *" 15 U.S.C. § 80a–33(b).

[52] See supra notes 30–33 and accompanying text; paragraph (b)(3)(i)(A) of the proposed rule.

[53] Subparagraph (a)(5) is based upon a procedure for abandoned offering statements established under rule 264 of Regulation A. 17 CFR 230.264.

[54] See, e.g., 17 CFR 200.30–5(a)(5) (delegating authority to the Division to issue notices with respect to applications for orders under § 9(c)).

Division Director's decision to present applications to the Commission. Thus, the Division Director generally could issue notices and orders under all provisions of the Act and Investment Advisers Act if the matter did not appear to her to present significant issues not previously settled by the Commission, or to raise questions of fact or policy indicating that the public interest or the interest of investors warranted consideration of the matter by the Commission.

The proposed amendment to rule 30–5 also would add a new provision to the rule to delegate authority to the Division Director to declare certain applications to be abandoned under proposed subparagraph (a)(5) of rule 0–5. Finally, the proposed amendment would delegate authority to the Division Director to suspend use of the expedited review procedure under subparagraph (b)(4) of rule 0–5.

IV. Cost/Benefit of Proposed Actions

Proposed amendments to rules 0–5 and 30–5 would not impose any significant burdens on investment companies. These proposed amendments would benefit investment companies by streamlining the review procedure for exemptive applications and reducing delays in obtaining exemptive orders. Comment is requested, however, on these matters and on the costs or benefits of any other aspect of the proposed actions. Commenters should submit estimates of any costs and benefits perceived, together with any supporting empirical evidence available.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding amendments to rules 0–5 and 30–5. The Analysis explains that the proposed amendments would establish an expedited review procedure for certain exemptive applications and expand the delegated authority of the Director of the Division of Investment Management. The Analysis states that the proposed amendments are intended to reduce delays in obtaining exemptive orders. It also states that while amendments to rule 30–5 would have no new reporting or recordkeeping requirements, the proposed amendment to rule 0–5 would require applicants to file with the Commission an application marked to show changes from the application relied on as precedent; a draft notice marked to show changes from the notice relied on as precedent; and a representation of counsel that the application at issue conforms to the requirements of rule 0–5(b). The Analysis states, however, that any added burden from these requirements would be minimal because many applications already include exhibits that are marked to show changes. The Commission considered a number of significant alternatives to the proposed amendments, but prefers the proposed approach because it provides investment companies with a procedure to receive exemptive orders in an expedited manner, while still permitting the Commission to discharge its responsibility to protect investors. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Matthew M. O'Toole, Esq. or Diane C. Blizzard, Esq., both at Mail Stop 10–4, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing amendments to rule 0–5 pursuant to sections 6(c) and 38(a) [15 U.S.C. 80a–6(c), 37(a)] of the Act. The Commission is proposing amendments to rule 30–5, the Delegation of Authority Rule, pursuant to section 4A [15 U.S.C. 78d–1] of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 200 and 270

Authority delegations (government agencies), Investment companies, Reporting and recordkeeping requirements.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–5 is amended by revising paragraphs (a)(1) and (a)(2), adding paragraphs (a)(9) and (a)(10), and revising paragraphs (e)(3) and (e)(4) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(a) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a–1, et seq.):

(1) Except as otherwise provided in this section, to issue notices, pursuant to § 270.05 of this chapter, with respect to applications for orders under the Act and the rules and regulations promulgated thereunder, and, with respect to section 8(f) of the Act, in cases where no application has been filed, where, upon examination, the matter does not appear to him to present significant issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants consideration of the matter by the Commission.

(2) Except as otherwise provided in this section, to authorize the issuance of orders where a notice, pursuant to § 270.0–5 of this chapter, has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and it appears to him that the matter involved presents no significant issue that he believes has not previously been settled by the Commission and it does not appear to him to be necessary in the public interest or the interest of investors that the Commission consider the matter.

* * * * *

(9) To declare applications to be abandoned under the Act.

(10) To suspend the operation of § 270.0–5(b) of this chapter, and to issue written notices to applicants of such suspensions.

* * * * *

(e) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*):

* * * * *

(3) To issue notices, pursuant to § 275.0–5(a) of this chapter, with respect to applications for orders under the Act and the rules and regulations promulgated thereunder, where, upon examination, the matter does not appear to him to present significant issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants consideration of the matter by the Commission.

(4) To authorize the issuance of orders where a notice, pursuant to § 275.0–5(a) of this chapter, has been issued and no request for a hearing has been received from any interested person within the period specified by the notice and it appears to him that the matter involved presents no significant issue that he believes has not previously been settled

by the Commission and it does not appear to him to be necessary in the public interest or the interest of investors that the Commission consider the matter.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.0–5 is revised to read as follows:

§ 270.0–5 Procedure with respect to applications and other matters.

(a) *General Procedures.* The procedure set forth in this paragraph (a) will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(1) Notice of the initiation of the proceeding will be published in the **Federal Register** and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested party may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his or her reasons therefor and the nature of his or her interest in the matter.

(2) An order disposing of the matter will be issued as of course, following the expiration of the period of time referred to in paragraph (a)(1) of this section, unless the Commission thereafter orders a hearing on the matter.

(3) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors:

(i) Upon the request of any interested person; or

(ii) Upon its own motion.

(4) At the time of filing an application under the Act, the applicant or applicants shall pay to the Commission a total fee of $500, no part of which shall be refunded; however, this fee shall not be applicable to:

(i) Any application for deregistration of an investment company pursuant to Section 8(f) of the Investment Company Act if such company has assets of less than $100,000; or

(ii) Any application pursuant to Section 9(c) of such Act.

(5) The Commission may declare an application to be abandoned if the applicant does not file an amended application or otherwise respond in writing to any letter requesting clarification to or modification of the application, or request that the Division of Investment Management recommend a hearing in response to any letter stating that the Division will oppose the relief requested by the applicant, within 120 days of the mailing of such letter.

(b) *Procedures for Expedited Review of Applications.* Subject to the general procedures described in paragraph (a) of this section, an applicant may request expedited review of an application, other than an application filed under section 2(a)(9), section 3(b)(2) or section 9(c) of the Act, provided that the application meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(1) Any application for which expedited review is requested shall seek relief that is consistent in all material respects with relief granted by the most recent order (as of thirty days preceding the filing of the application) issued on applications for such relief, and must have been issued within two years preceding the filing of the application, and must contain:

(i) A statement on the facing sheet of such application that applicant requests expedited review under the procedures set forth in this paragraph (b);

(ii) Under a separate heading, a brief summary of the relief requested, together with citations to the captions and Act release number of the notice and order issued on the application submitted as precedent under this paragraph (b)(1); and

(iii) Each of the conditions and material representations contained in the most recent order issued on the final version of the application submitted as precedent under this paragraph (b)(1).

(2) Any application for which expedited review is requested shall be accompanied by the following, attached as exhibits:

(i) A copy of such application marked to show all changes from the final version of the application that was granted by the most recent order submitted as precedent under paragraph (b)(1) of this section;

(ii) A draft notice marked to show all changes from the notice issued on the application that was granted by the most recent order submitted as precedent under paragraph (b)(1) of this section; and

(iii) A statement signed by counsel or, if applicant is not represented by counsel, the person executing the application, representing that such application meets each of the requirements of paragraph (b)(1) of this section and that the markings required by this paragraph (b)(2) are accurate and complete.

(3)(i) A notice as described in paragraph (a)(1) of this section will be issued by the Commission within 60 days from the filing of the application, except that:

(A) The mailing of a letter requesting clarification to or modification of the application to the applicant, or any person authorized to receive communications on behalf of the applicant, or the filing of an amended and restated application by the applicant, shall toll such 60-day period, and such 60-day period shall resume either:

(*1*) 15 days after the filing of an amended and restated application, marked to show all changes from the original application or most recent amendment thereto and accompanied by a statement signed by counsel or, if applicant is not represented by counsel, the person executing the amended application, representing that such markings are accurate and complete; or

(*2*) Upon the mailing of a letter to the applicant announcing that such period has resumed; and

(B) If an amended and restated application is not filed within 30 days of the mailing of any letter requesting clarification to or modification of the application, and no letter has been mailed to the applicant announcing that the 60-day period has resumed, a new 60-day period shall commence on the date such amended and restated application is filed, subject to paragraph (a)(5) of this section.

(ii) Unless the Commission receives a written request for a hearing, or otherwise determines to order a hearing on the matter, an order will be issued as provided by paragraph (a)(2) of this section within 30 days of the publication of the notice in the **Federal Register**.

(4) Notwithstanding any other provision of this section, the Commission may discontinue expedited review:

(i) Of any application in order to reconsider whether to grant the relief requested or to consider the need for modifications to such application; or

(ii) Of any or all applications due to constraints on the Commission's resources. The Commission shall notify affected applicants in writing or by publication in the **Federal Register**.

By the Commission.

Dated: March 26, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7440 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–P

POSTAL SERVICE

39 CFR Part 266

Privacy of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule modifies current regulations for the disclosure of information to prospective employers about current or former employees. The amended regulation will specify the exact data elements that may be given to prospective employers without the employee's authorization to release.

DATE: Comments on the proposed rule must be received on or before April 30, 1993.

ADDRESS: Comments may be mailed to: United States Postal Service, Records Office, 475 L'Enfant Plaza Rm 8831, Washington DC 20260–5240.

Comments also may be delivered to Room 8831 at the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received also may be inspected during the above hours in Room 8831.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Office (202–268–2924).

SUPPLEMENTARY INFORMATION: Current postal regulations and supporting policy in handbooks allow the disclosure of limited information to prospective employers of current or former postal employees. Public information that may be released is specifically defined as: Grade, duty status, length of service, job title, and salary. The regulation amended by this notice also permits disclosure of the date of separation of a former employee and the reason for separation. Supporting policy in postal handbooks further reference "reason of separation of a former employee as shown on Form 50, Notification of Personnel Action." Because some of the reasons for separation, as denoted by codes on the Form 50, are personal in nature, this notice amends the current regulation to limit disclosure of the reason for separation to specific terms not having substantial privacy implications. Postal handbooks and the routine use authorizing disclosure of employee data to prospective employers will be amended to parallel this proposed rule. (See routine use No. 1 of USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto), last published on June 19, 1991 at 56 FR 28181, amended on December 4, 1992 at 57 FR 57516.)

List of Subjects in 39 CFR Part 266

Privacy, Release of Information.

For the reasons set out in this notice, the Postal Service proposes to amend part 266 of Title 39, CFR as follows:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Paragraph (b)(5) of § 266.4 is revised to read as follows:

* * * * *

(b) * * *

(5) *Employee Job References.* Prospective employers of a postal employee or a former postal employee may be furnished with the information in paragraph (b)(4) of this section, in addition to the date and the reason for separation, if applicable. The reason for separation must be limited to one of the following terms: Retired, resigned, death, or separated. Other terms or variations of these terms (e.g., retired—disability) may not be used. If additional information is desired, the requester must submit the written consent of the employee, and an accounting of the disclosure must be kept.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–7409 Filed 3–30–93; 8:45 am]

BILLING CODE 7710–12

ENVIRONMENTAL PROTECTION AGENCY

[TN–95–5651; FRL–4608–8]

40 CFR Parts 52 and 81

Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 26, 1992, the State of Tennessee, through the Tennessee Department of Conservation and Environment, submitted a request to redesignate Knox County (classified as a marginal nonattainment area) from nonattainment to attainment for ozone (O_3) and a maintenance plan. The State has met the requirements for redesignation contained in section 107(d)(3)(E) of the Clean Air Act as amended in 1990 (CAA). EPA proposes to approve the maintenance plan and the redesignation of Knox County, Tennessee, to attainment for O_3. The redesignation is based on three years of ambient monitoring data that shows no violations of the O_3 standard during the three-year period, 1989–1991, as well as the implementation of EPA-approved O_3 control strategies.

DATES: To be considered, comments must be received on or before April 30, 1993.

ADDRESSES: Comments may be mailed to Leslie Cox at the EPA Region IV address listed below. Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Conservation and Environment, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Knox County Department of Air Pollution Control, City/County Building, suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Leslie Cox of the Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published November 6, 1991, Knox County was designated as nonattainment for ozone due to monitored exceedances of the ozone standard during the summer of 1988. This designation became effective 60 days later on January 6, 1992. On August 26, 1992, the State of Tennessee, through the Tennessee Department of Conservation and Environment, submitted a request for Knox County to be redesignated to attainment for ozone. This request was based on three years (1989, 1990, and 1991) of quality assured monitoring data with an expected exceedance rate for the ozone standard of less than 1.0 per year. EPA has determined that the State of Tennessee has met all of the CAA requirements for designation pursuant to section 107(d)(3)(E). The requirements of section 107(d)(3)(E) are as follows.

Section 107(d)(3)(E)(i) The Administrator has Determined That the Area has Attained the National Ambient Air Quality Standard

Tennessee submitted quality-assured air quality data showing that Knox County has attained the ozone NAAQS for ozone for the three year period, 1989–1991. Following the procedures described in 40 CFR 50.9, Knox County had an average annual number of expected exceedances of less than or equal to one. During that period, there was only one exceedance in 1990, and hence, no violations of the ozone standard. Knox County has continued to attain the standard in 1992, as well.

Section 107(d)(3)(E)(ii) The Administrator has Fully Approved the Applicable Implementation Plan for the Area Under Section 110(k)

The proposed approval of the maintenance plan in this notice, along with the current approved Tennessee SIP and the pending approval of the recently submitted revisions (January 29, 1992, and June 15, 1992) to the Knox County portion of the Tennessee SIP, regarding PSD, meets all requirements under part D section 110 which are applicable to the Knox County, Tennessee, area. Corrections to the PSD rules were made by Knox County so that EPA could fully approve the PSD regulation for Knox County. The approval of this change will be published in a direct final **Federal Register** notice.

EPA will not take final action redesignating Knox County from nonattainment to attainment until EPA has taken final action on Knox County's PSD rules. Therefore, we believe that Knox County will have a fully approved SIP under section 110(k) at the time final approval action is taken on the PSD submittal.

Section 107(d)(3)(iii) The Administrator Determines that the Improvement in Air Quality is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the Applicable Implementation Plan and Applicable Federal Air Pollutant Control Regulations and Other Permanent and Enforceable Reductions

The Federal Motor Vehicle Control Program (FMVCP) requirements for lower tail pipe standards have reduced emissions in Knox County. The FMVCP, which began in 1968, produces significant reductions in average emissions per vehicle each year as new, highly controlled vehicles replace old, dirty vehicles in the vehicle fleet. In Knoxville, these reductions in VOC were 6%–8% per vehicle per year for the 1989–1991 time period. In addition, the Federal requirements to reduce the Reid Vapor Pressure (RVP) of gasoline to 9.5 psi went into effect in Knox County during the Summer of 1989. (Previously, the RVP was set at 10.5 psi for May, June, and September and 9.5 psi for July and August.) The air quality data showing attainment of the standard is for the time period, 1989–1991, when this requirement was in effect. As required for nonattainment areas in the Southeast, a RVP of 7.8 psi went into effect on June 1, 1992, in Knox County. This is discussed further under the section on maintenance plans. Tennessee has also voluntarily adopted VOC RACT regulations for sources that are applicable in Knox County. These VOC regulations were recently corrected to be consistent with EPA's pre-Amendment RACT guidance.[1] Therefore, since the area violated the standard, permanent and enforceable VOC emissions reductions have been obtained through State and Federal control programs.

Section 107(d)(3)(E)(iv) The Administrator has Fully Approved a Maintenance Plan for the Area as Meeting the Requirements of Section 175A.

Tennessee has submitted a maintenance plan based on the 1990 Base Year Inventory submitted as required in section 175A of the CAA. The maintenance plan includes a requirement to assess growth factors on a triennial basis with the contingency to assess on a yearly basis if the projection inventory is exceeded by 10% or more. The monitoring network in Knox County will be maintained in accordance with the regulatory requirements of 40 CFR part 58. The projection inventory is required by the CAA to demonstrate maintenance of the standard for 10 years from the date of final approval of the redesignation request. Therefore, Knox County has submitted an inventory which projects out to the year 2004. This covers the 10 years required in the projection inventory and builds in extra years to account for the time it will take to process this redesignation. The projection inventory reflects the allowable emission rate and the expected actual production or activity level.

The plan contains a contingency to implement additional control measures such as Control Technique Guideline (CTG) categories within six (6) months should actual monitored violations of the ozone standard occur in the area. Also, if actual monitored violations of the ozone standard occur within twelve (12) months after regulations for all VOC CTG categories are effective, NO_x control measures will be considered as an alternate/additional strategy.

Accompanying the redesignation request is a request to revise the Federal RVP for the Knox County area from 7.8 psi, which went into effect on June 1, 1992, to 9.0 psi. EPA will consider this request in a separate action. For purposes of redesignation, however, Tennessee's reliance on a 9.0 psi RVP to demonstrate maintenance of the ozone standard does not affect EPA's ability to act on the request. Although Knox County will be required to retain the 7.8 psi RVP until EPA takes final action revising the RVP, the less stringent RVP for purposes of demonstrating maintenance does not affect EPA's proposed approval of the maintenance plan and the redesignation request.

The projected inventory shows that even with the 9.0 psi RVP (as opposed to the present RVP of 7.8 psi), the total emissions for VOC, NO_x, and CO for the year 2004 will be less than the 1990 base year total emissions for those pollutants. Additionally, at no time do the total VOC projected emissions exceed the 1990 baseline year.

Section 107(d)(3)(E)(v) The State Containing Such Area has Met all Requirements Applicable to the Area Under Section 110 and Part D.

The State has complied with all requirements of section 110 and part D of the CAA. In addition, Tennessee has taken additional measures beyond section 110 and part D by implementing RACT fix-ups statewide, even though RACT is not required statewide for Tennessee. For reasons discussed above, EPA believes that all of the requirements of section 107(d)(3)(E) have been satisfied.

The 1990 Amendments require that states make several changes to their PSD program, as well. However, these changes do not affect this redesignation. EPA anticipates receipt of these changes from Tennessee upon final promulgation of revised federal regulations.

Upon redesignation of this area to attainment, the PSD provisions contained in part C of title I are applicable. Until that time, the

[1] Among other things, the pre-Amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

nonattainment new source review (NSR) provisions of part D still apply. Although Tennessee has not submitted part D permitting provisions, permitting under the interim transitional guidance [2] satisfies the CAA requirements.

EPA has not promulgated final conformity regulations, however, the State has committed to develop conformity procedures consistent with the final Federal regulations and, if necessary, will submit an appropriate SIP revision. Therefore, EPA believes that the section 176 conformity requirement is sufficiently met because the promulgation date for conformity procedures has not passed and the State has committed to adopt appropriate procedures.

PROPOSED ACTION: Today, EPA is proposing to approving the redesignation of Knox County to attainment for ozone. This action is contingent on minor corrections which must be made to the 1990 Base Year Emission Inventory and the PSD revisions which must be approved before final approval can be granted.

For further information, the reader may review the Technical Support Document which contains a detailed review of the material submitted. This is available at the EPA address given previously. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 11, 1993.

Don Guinyard,

Acting Regional Administrator.

[FR Doc. 93–7355 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–P

[2] The part D permitting transitional guidance is contained in the following EPA memoranda from John Seitz: "New Source Review Program Transitional Guidance" (March 11, 1991) and "New Source Review Program Supplemental Transitional Guidance on Applicability of New part D NSR Permit Requirements" (September 3, 1992).

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40 CFR Part 63

[FRL–4608–7]

National Emission Standards for Hazardous Air Pollutants; Halogenated Solvent Emissions From Organic Solvent Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is interested in obtaining comments from industry potentially affected by this standard, to help it in its efforts to determine the economic impact of this NESHAP. As this rulemaking is being developed, it is the EPA's desire to ensure that these standards are based on the most complete and accurate information available.

DATES: Comments must be postmarked on or before April 30, 1993.

ADDRESSES: Comments on this notice should be submitted in duplicate if possible, to Central Docket Section (LE–131), Attention: Docket Number A–92–39, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodovar, Chemicals and Petroleum Branch, or Mr. John L. Sorrels, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone numbers (919) 541–0283 and (919) 541–5041, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 112 of the Clean Air Act Amendments of 1990, the Environmental Protection Agency (EPA) is required to promulgate a national emission standard for hazardous air pollutants (NESHAP) for the halogenated solvent cleaning-vapor degreasing source category. The initial source category list can be found in the **Federal Register** (57 FR 31576; July 16,1992) notice entitled "Initial List of Source Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990." This NESHAP is being developed for the control of the following halogenated solvent emissions from organic solvent batch vapor cleaners, and from organic solvent continuous (also called in-line cleaners) cold and vapor cleaners: 1,1,1 trichloroethane, perchloroethylene, methylene chloride, and trichloroethylene. This rulemaking is subject to a consent decree in which the EPA must propose the regulation not later than November 15, 1993, and promulgate it not later than 12 months after proposal. The solvent cleaning-vapor degreasing industry includes both major and area sources.

The information collection effort to develop this regulation has focused on manufacturers of halogenated solvent cleaners, users of this type of equipment, and manufacturers of halogenated solvents. Through this effort, the EPA has collected data to estimate: Number of halogenated solvent cleaners which would be subject to this rule, solvent consumption for the above mentioned solvents, and effectiveness of control techniques used to control emissions from this type of equipment. The collected information is being used to develop background information to support the rulemaking and to develop an economic impact analysis for industries subject to it.

It is well recognized that there is no unique "degreasing" industry. A 1976 study identified 38 3-digit standard industrial classification (SIC) industries that use degreasers (Docket No. OAQPS–78–12, Item III-B–001). These industries range from production of guided missiles, space vehicles, and associated parts (SIC 376) with 141 establishments (places of business) to industrial machinery, not elsewhere classified (SIC 359) with 22,346 establishments. More than 254,000 establishments could be affected directly or indirectly by a degreasing NESHAP. Most of these establishments are small businesses; in only one SIC code did 50 percent or more of the

establishments have 100 or more employees. According to the Small Business Association (SBA), 500 is the maximum number of employees for an establishment in these SIC codes to be designated a small business.

According to 1991 data, the most commonly used halogenated solvent was 1,1,1 trichloroethane (TCA), of which 123.8 million kilograms were consumed. The next most commonly used was trichloroethane (TCE), and then methylene chloride (MC) and perchloroethylene (PCE).

The EPA also attempted to account for the number of degreasers using halogenated solvents. As of 1987, there were approximately 25,000 to 35,000 batch vapor cleaners, and 2,000 to 3,000 continuous cleaners according to the EPA estimates.

The EPA has also developed capital and annual costs for several control techniques used to evaluate control combinations found in degreasers. Capital costs are assumed to include taxes, freight, and installation charges. In addition, floor space required by add-on equipment is included as a capital cost. The utility and labor requirements for each add-on control device were translated into annual operating costs. As with the capital costs and floor space requirements, the annual operating costs were developed by averaging data for each cleaner model size. Costs were developed based upon a 15-year lifetime for the equipment, a 10 percent interest, median control costs for each level of control, and a solvent recovery credit which equals the emission reduction achieved by the control combination. The solvent recovery credit assumes that all solvent no longer emitted represents a direct solvent savings. In addition to the previously mentioned cost considerations, solvent prices and the equipment operating schedules used to develop these costs influence the outcome of this analysis. Solvent prices used in the cost analysis were obtained by averaging the prices quoted by several solvent distributors for each solvent. Average solvent prices used are: methylene chloride ($1.03/kg), perchloroethylene ($1.11/kg), trichloroethylene ($1.43/kg), and 1,1,1 trichloroethane ($2.202/kg). This cost analysis reflects cost savings, particularly in the larger batch cleaners and in-line cleaners. Cost savings imply that solvent recovery credits are greater than annualized control costs.

II. Request for Comments

It would be very helpful for the EPA to receive comments from the affected industry to help in its efforts to determine the economic impact of this NESHAP. Specific comments are requested in the following areas (the term "degreaser" refers only to degreasers using halogenated solvents, unless otherwise noted):

- Provide the 3-digit SIC code or a description of the type of businesses which use degreasers.
- Provide information on what percentage of production cost is accounted for by degreasing for products that are put in degreasers.
- Discuss reasons, if any, for not being able to obtain capital to finance an emission control retrofit of an existing degreaser or to purchase a new one.
- For a particular size and type (i.e., batch or continuous cleaner), provide information on what is the average service life for a degreaser.
- Discuss the reasons for switching to alternative solvents (aqueous, semi-aqueous, or other nonhalogenated) and alternative techniques (dip cleaning, wipe-on rags).
- Provide information as to why some products might require halogenated solvent degreasing (i.e., why substitution of halogenated solvents might not be possible for degreasing certain products).
- Discuss instances in which cold cleaners that use halogenated solvents are presently in operation.
- Provide comments, if any, on the assumptions and cost methodology described in this notice (i.e., solvent prices).
- Provide comments on the existence of cost savings in this source category.

Dated: March 24, 1993.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–7353 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–64, RM–8195]

Radio Broadcasting Services; Corning, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Phoenix Broadcasting, Inc., licensee of Station KCEZ(FM), Corning, California, seeking the substitution of Channel 264C1 for Channel 264B and modification of its license accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 40–15–31 and 122–05–20.

Petitioner's modification proposal is consistent with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 264C1 at Corning, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 17, 1993, and reply comments on or before June 1, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis J. Kelly, Esq., Cordon and Kelly, P.O. Box 6648, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–64, adopted March 8, 1993, and released March 25, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7339 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 60
Wednesday, March 31, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Schneider (IN) Agency and the State of Georgia (GA)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Schneider Inspection Service, Inc. (Schneider), and the Georgia Department of Agriculture (Georgia).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by April 30, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 28, 1993, **Federal Register** (58 FR 6382), FGIS asked persons interested in providing official services in the geographic areas assigned to Schneider and Georgia to submit an application for designation. Applications were due by March 1, 1993. Schneider and Georgia, the only applicants, each applied for designation in the entire area currently assigned to them.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation in the Schneider and Georgia areas. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 23, 1993

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 93–7008 Filed 3–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Mid-Iowa (IA) and Southern Illinois (IL) Agencies, and the State of Oregon (OR)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), and the Oregon Department of Agriculture (Oregon) will end September 30, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before April 30, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send their application to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Mid-Iowa, main office located in Cedar Rapids, Iowa; Southern Illinois, main office located in O'Fallon, Illinois; and Oregon, main office located in Salem, Oregon, to provide official grain inspection services under the Act on October 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Mid-Iowa, Southern Illinois, and Oregon end on September 30, 1993.

The geographic area presently assigned to Mid-Iowa, in the State of Iowa, pursuant to Section 7(f)(2) of the

Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Winneshiek and Allamakee County lines;

Bounded on the East by the eastern Allamakee County line; the eastern and southern Clayton County lines; the eastern Buchanan County line; the northern and eastern Jones County lines; the eastern Cedar County line south to State Route 130;

Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and

Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Bremer County; the southern Bremer County line; the western Fayette and Winneshiek County lines.

The geographic area presently assigned to Southern Illinois, in the States of Illinois and Indiana, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the East in Indiana by the eastern Putnam, Owen, and Greene County lines; the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west to the eastern Lawrence County line; in Illinois, the eastern Lawrence, Wabash, Edwards, White, and Gallatin County lines;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River;

Bounded on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern Macoupin County line; the eastern Macoupin County line north to a point on this line which intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); and

Bounded on the North from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines; the western Clark County line; the western Edgar County line north to U.S. Route 36; U.S. Route 36 east across the Illinois-Indiana State line to the western Parke County line; the northern Parke and Putnam County lines.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana (located inside Champaign-Danville Grain Inspection Departments, Inc.'s, area).

The geographic area presently assigned to Oregon, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Oregon, except those export port locations within the State which are serviced by FGIS.

Interested persons, including Mid-Iowa, Southern Illinois, and Oregon are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning October 1, 1993, and ending September 30, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 23, 1993

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 93–7007 Filed 3–30–93; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Advance Monthly Retail Sales Survey.

Form Number(s): B–104(93).

Agency Approval Number: 0607–0104.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,363 hours.

Number of Respondents: 3,363.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Bureau of the Census conducts the Advance Monthly Retail Sales Survey to collect monthly sales data from a national sample of retail establishments. The survey provides an early indication of changes in current retail trade activity at the United States level. Census releases the advance sales estimates 9 days after the end of the data month in a press release called "Advance Monthly Retail Sales Report." The Council of Economic Advisors, Bureau of Economic Analysis, Federal Reserve Board, other government agencies, and businesses use the advance monthly sales estimates in formulating economic decisions.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 26, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–7458 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: School Enrollment Report.

Form Number(s): P–4.

Agency Approval Number: 0607–0459.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 20 hours.

Number of Respondents: 40.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau prepares estimates of state population and migration patterns which are used by Federal agencies to allocate Federal program funds, as bases for rates of occurrences, and as input for Federal surveys. The Census Bureau uses state population estimates to control their county estimates and as a basis for state projections. Census uses school enrollment data in preparing their state population estimates. Some state education agencies publish this enrollment information in time for Census to use it in their estimates. Census uses the School Enrollment Report to gather school enrollment data from the 40 state agencies that do not publish in time for them to use their reports.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 26, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–7459 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–07–M

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on April 15–16, 1993 at the Bureau of the Census, room 1630, Federal Building 3, Suitland, Maryland.

The CAC of the AEA is composed of nine members appointed by the president of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the chairman of the board of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the president of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts; considers priority issues in the planning of censuses and surveys; examines guiding principles; advises on questions of policy and procedures; and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the president of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the April 15 combined meeting that will begin at 9 a.m. and end at 10:15 a.m. is: (1) Introductory remarks by the Acting Director, Bureau of the Census; (2) economic and agriculture censuses update; and (3) research data centers.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:30 a.m. and adjourn at 4:45 p.m. on April 15 are as follows:

The CAC of the AEA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AEA, (2) current issues in poverty measurement, (3) transportation statistics, (4) improvement of the M3 survey with computer-assisted survey information collection (joint with the CAC of the AMA), and (5) economic classification policy committee issue papers (joint with the CACs of the AMA and the ASA).

The CAC of the AMA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AMA, (2) issues and initiatives for census quality management, (3) public information office action plan for 1993, (4) improvement of the M3 survey with computer-assisted survey information collection (joint with the CAC of the AEA), and (5) economic classification policy committee issue papers (joint with the CACs of the AEA and the ASA).

The CAC of the ASA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the ASA, (2) research to improve mail-back response rates for decennial census forms (joint with the CAC on Population Statistics), (3) research on adjustment of the 1990 census base for postcensal estimates (joint with the CAC on Population Statistics), (4) overview of R&D sampling and estimation (joint with the CAC on Population Statistics), and (5) economic classification policy committee issue papers (joint with the CACs of the AEA and the AMA).

The CAC on Population Statistics: (1) Census Bureau responses to recommendations and activities of special interest to the CAC on Population Statistics, (2) research to improve mail-back response rates for decennial census forms (joint with the CAC of the ASA), (3) research on adjustment of the 1990 census base for postcensal estimates (joint with the CAC of the ASA), (4) overview of R&D sampling and estimation (joint with the CAC of the ASA), and (5) metropolitan area redefinitions and research.

The agendas for the April 16 meeting that will begin at 9 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Preliminary evaluation of the annual capital expenditures survey, (2) manufacturing energy consumption survey, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the AMA: (1) Census Bureau education program: introducing the leaders of tomorrow, (2) market research on the usage of Census Bureau products (joint with the CAC on Population Statistics, (3) development and discussion of recommendations, and (4) closing session including (a)

continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the ASA: (1) Census 2000: Report on content and wording (joint with the CAC on Population Statistics), (2) overview of the Economic Statistical Methods Division, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC on Population Statistics: (1) Census 2000: Report on content and wording (joint with the CAC of the ASA), (2) market research on the usage of Census Bureau products (joint with the CAC of the AMA), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on April 16 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, room 2419, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763–5410—TDD (301) 763–4056.

Dated: March 24, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–7426 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Action Affecting Export Privileges, Baxter International Inc.

Order

The Office of Antiboycott Compliance, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Baxter International Inc. (Baxter) pursuant to section 11(c) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 and Supp. 1992)) (the Act),[1] and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1992)) (the Regulations), based on allegations set forth in the Proposed Charging Letter that is attached hereto and incorporated herein by reference, that Baxter, a United States person as defined in § 769.1(b) of the Regulations, in connection with activities in the interstate or foreign commerce of the United State as defined in § 769.1(d) of the Regulations, violated part 769 of the Regulations in that, from February 1988 through November 1988, Baxter furnished 337 items of prohibited information with intent to comply with, further, or support an unsanctioned foreign boycott, and failed to report to the Department its receipt of four separate boycott-related requests;

The Department and Baxter having entered into a Consent Agreement (Agreement) whereby the Department and Baxter have agreed to settle this matter in accordance with the terms and conditions set forth therein; and

The terms and conditions of the Agreement having been approved by me;

It is Therefore Ordered:

First, that Baxter will pay to the Department, in complete settlement of all alleged violations of the Regulations arising out of the activities set forth in the Proposed Charging Letter, the sum of $3,382,000. Baxter shall pay such sum in its entirety to the Department in the manner specified in the attached instructions, within 30 days of service upon it of this Order.

Second, that through March 24, 1995 with respect to its activities in the Syrian Arab Republic (Syria) and the Kingdom of Saudi Arabia (Saudi Arabia), Baxter and its successors, whether acting directly or through any subsidiaries, affiliates, assigns, officers, partners, representatives, agents, or employees (hereinafter collectively referred to as Baxter and its affiliates), wherever located, shall be prohibited:

(i) From entering into new contracts or other arrangements,

(ii) From renewing or extending existing contracts or other arrangements, and

(iii) From negotiating future contracts or other arrangements

for the sale or delivery of any commodities, software, or technology exported or to be exported from the United States, and subject to the Regulations (hereinafter referred to as U.S.-origin commodities, software, or technology).

Third, that Baxter and its affiliates may not apply for or use any export license or reexport authorization in connection with the export of U.S.-origin commodities, software, or technology from the United States to Syria or Saudi Arabia, or the reexport thereof, from the date of entry of this Order through March 24, 1995, unless in performance of contractual obligations in effect prior to March 25, 1993.

Fourth, that Baxter shall provide to the Department, within 30 days from the date of entry of this Order, a complete listing and copies of all existing contracts or other arrangements that Baxter and its affiliates have in effect on or before March 25, 1993, for the sale or delivery, directly or indirectly, of any U.S.-origin commodities, software, or technology to Syria or Saudi Arabia. Further, with respect to the export or reexport of any U.S.-origin commodities, software, or technology to Syria or Saudi Arabia through March 24, 1996, Baxter and its affiliates shall, in connection with any application to the Office of Export Licensing for an individual or other validated license or for any reexport authorization that may be required by the Regulations, and on each Shipper's Export Declaration filed in connection with any export made from the United States, identify the specific contract pursuant to which each such export or reexport is to be made.

Fifth, that Baxter shall voluntarily comply with any reasonable request made by the Department to inspect records with respect to the export or reexport of any U.S.-origin commodities, software, or technology by Baxter or its affiliates and will produce copies of such records upon such request.

Sixth, that Baxter and its affiliates shall be prohibited from taking any action that departs from past practices in such a way as to enable entities not affiliated with Baxter to supply to Syria or Saudia Arabia items that Baxter and its affiliates would be barred from furnishing by this Order, in an effort to avoid, evade, circumvent or otherwise limit the effect of the terms and conditions of the denial of export privileges set forth herein.

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[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)), to continue in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

Seventh, the provisions of § 787.12 of the Regulations shall not apply.

Eighth, that the proposed Charging Letter, the Agreement, and this Order shall be made available to the public and this Order shall be published in the **Federal Register** and served on Baxter.

This Order is effective immediately.

Entered this 25th day of March, 1993.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 93–7354 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications: U.S. Virgin Islands

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Minority Business Development Center program to operate a U.S. Virgin Islands MBDC for a three (3) year period, starting July 1, 1993 to June 30, 1994 in the U.S. Virgin Islands SMSA (Closing date March 17, 1993). Refer to the **Federal Register** dated February 16, 1993, 58 FR 8584.

Dated: March 25, 1993.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 93–7386 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: U.S. Virgin Islands

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from September 1, 1993 to August 31, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the U.S. Virgin Islands SMA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State, local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods.

MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Applicants are notified that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Applicants are notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs.

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;
2. A negotiated re-payment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DoC are made.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the

conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

Notification must be provided that recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for application is May 12, 1993. Applications must be postmarked on or before May 12, 1993. The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office at (212) 264–3263.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address. A Pre-application Conference to assist all interested applicants will be held on April 15, 1993, from 10 a.m. to 3 p.m. in St. Thomas, U.S. Virgin Islands at the Federal Building Conference Room No. 110. For information, please contact the MBDA Regional Office at (212) 264–3262.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 25, 1993.

John F. Iglehart,

Regional Director, New York Regional Office.

[FR Doc. 93–7387 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Issuance of Modification to Scientific Research Permit No. 782 (P771 #61)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

On February 8, 1993, notice was published in the **Federal Register** (58 FR 7548) that a request had been submitted by the National Marine Fisheries Service's National Marine Mammal Laboratory, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115–0070, to modify Permit No. 782 to authorize the recapture of up to 50 previously immunized California sea lions (*Zalophus californianus*) for further evaluation of their immune system competence.

Notice is hereby given that on March 24, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued the requested modification for the above taking subject to certain conditions set forth in the modified permit.

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213, (310/980–4016); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Building 1, Seattle, WA 98115–0070, (206/526–6150).

Dated: March 24, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–7385 Filed 3–30–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for U.S. Army ROTC 2 and 3-Year Scholarship.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Responses Per Respondent: 1.

Number of Respondents: 5,300.

Annual Burden Hours: 2,650.

Annual Responses: 5,300.

Needs and Uses: The application is one of the tools used in the selection process for the 2 and 3-year scholarship program. The ROTC scholarship provides highly qualified men and women who desire to pursue a commission in the U.S. Army. The application and information provide the basis for the scholarship award.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: March 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7399 Filed 3–30–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Uniform Tender of Rates and/or Charges for Transportation Services; MTHQ Form 43, OMB No. 0702–0018.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 36 minutes.

Responses Per Respondent: 4.261.

Number of Respondents: 2,076.

Annual Burden Hours: 5,252.

Annual Responses: 8,846.

Needs and Uses: The Military Traffic Management Command evaluates bids for transportation service and determines which carriers to utilize so that the government pays the lowest rate for moving personal property.

Affected Public: Businesses or other for-profit; small businesses or organizations.

Frequency: Semiannually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: March 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7400 Filed 3–30–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Department of Defense Facility Security Clearance Survey Data Sheet; DD Form 374; OMB No. 0704–0009.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 4 hours.

Responses Per Respondent: 1.

Number of Respondents: 1,750.

Annual Burden Hours: 7,000.

Annual Responses: 1,750.

Needs and Uses: This collection provides a uniform method for recording information obtained during a survey of a contractor facility. The purpose of the survey is to (1) determine the eligibility of a contractor for entry and participation, or continued participation, in the Defense Industrial Security Program, and (2) determine ability of a facility to safeguard classified information.

Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Office for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: March 25, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7401 Filed 3–30–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: Survey of Current Unit Prices for Equipment and Material on Naval Vessels.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 30 minutes.

Responses Per Respondent: 1.

Number of Respondents: 1,600.

Annual Burden Hours: 800.

Annual Responses: 1,600.

Needs and Uses: This survey is required to obtain data from the shipbuilding industry and DoD supporting businesses in order to analyze changes in prices for designated equipment and other material. The resulting information will be furnished to the Naval Sea Systems Command for inclusion in its annual publication of POM-Year cost guidance as well as to DoD's Production Base Information System.

Affected Public: Businesses or other for-profit; Federal agencies or employees; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should

be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: March 25, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7402 Filed 3–30–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 20–21 April 1993.

Time of Meeting: 0800–1700 on 20 April 1993, 0800–1300 on 21 April 1993.

Place: Pentagon.

Agenda: The Army Science Board's 1993 Summer Study Panel on "Innovative Acquisition Strategies for the 90s" will meet to receive briefings on Army force structure, current budget issues, future budget estimates, and contingency warfighting. This meeting will be closed to the public in accordance with Section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and non-classified information to be discussed will be so inextricable intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information, (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–7411 Filed 3–30–93; 8:45 am]

BILLING CODE 3710–08–M

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22 April 1993.

Time of Meeting: 0800–1500 hours.

Place: Pentagon.

Agenda: The Army Science Board's 1993 Summer Study Panel (Aviation Subpanel) on "Innovative Acquisition Strategies for the 90s" will meet to discuss future Army aviation acquisition strategies and technology opportunities given probable funding constraints. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–7412 Filed 3–30–93; 8:45 am]

BILLING CODE 3710–08–M

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–23 April 1993.

Time of Meeting: 0800–1700 hours daily.

Place: McLean, VA.

Agenda: The Army Science Board's 1993 Summer Study on "Missile Defense Programs" will meet to continue work on the study. The ASB will receive briefings on Sensor Systems, Signal Processing, Guidance Systems, Weapon Systems Lethality, BM/C3I Architectures, and Simulations. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner

Administrative Officer, Army Science Board.

[FR Doc. 93–7414 Filed 3–30–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Advisory Committee on Environmental Restoration and Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting. This meeting is rescheduled from March 17–18, 1993, which was postponed due to inclement weather at the meeting site.

Name: Environmental Restoration & Waste Management Advisory Committee (EMAC).

Date and Time: Thursday, April 22, 1993, 8:30 a.m. to 5:15 p.m.; Thursday, April 22, 1993, 7:30 p.m. to 10:30 p.m.; Friday, April 23, 1993, 8:30 a.m. to 6 p.m.

Place: Tennessee Army National Guard Armory, 1780 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

Contact: James T. Melillo, Executive Secretary, EMAC, EM–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 479–1191.

Purpose of the Committee: The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to make their views known on the Environmental Restoration & Waste Management Program.

Tentative Agenda

Thursday, April 22, 1993

8:30 a.m.
Chairman Glenn Paulson Opens Meeting. EMAC Mission Discussions. Committee Business
12:15 p.m.
Lunch
1:45 p.m.
Panel Discussion: Unique Drivers of Technology Development at Oak Ridge
5:30 p.m.
Meeting Adjourns
7:30 p.m.
Public Comment Session
10:30 p.m.
Meeting Adjourned

Friday, April 23, 1993

8:30 a.m.
Chairman Paulson Reconvenes Public Meeting. Media Panel. Office of Technology Assessment Presentation, "Managing Cleanup, and Worker Health and Safety at the Nuclear Weapons Complex."
12:15 p.m.
Lunch
1:45 p.m.
Panel Discussion—EPA Advisory Committee on Federal Facility Environmental Restoration (Keystone); Committee Business
6 p.m.
Meeting Ends

Public Participation

The meeting is open to the public. Written statements may be filed with

the Committee either before, during or after the meeting. Members of the public having questions pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee should contact Ms. Sandy Perkins by phone in Oak Ridge at (615) 576–1590 or call (800) 862–8860 and leave a message. Individuals may also register on April 22, 1993, at the meeting. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 25, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–7449 Filed 3–30–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Petroleum Marketing Division (PMD) Survey Forms

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision and/or extension of the petroleum marketing survey forms and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision and/or extension to the forms:

EIA–14, "Refiners' Monthly Cost Report"
EIA–182, "Domestic Crude Oil First Purchase Report"
EIA–782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report"
EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report"
EIA–782C, "Monthly Report of Petroleum Products Sold Into States for Consumption"
EIA–821, "Annual Fuel Oil and Kerosene Sales Report"
EIA–856, "Monthly Foreign Crude Oil Acquisition Report"
EIA–863, "Petroleum Product Sales Identification Survey"
EIA–877, "Winter Heating Fuels Telephone Survey"
EIA–878, "Motor Gasoline Telephone Price Survey"

Also, a question has been added to the standard list of questions for potential data users to solicit comments on preferences as to whether EIA should publish data measured in metric units.

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Dr. John S. Cook, Director, Petroleum Marketing Division, Mail Stop 2H–058 EI–43, Forrestal Building, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Ms. Claudia Hernandez at the address listed above or telephone (202) 586–6559.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Petroleum Marketing Program Surveys collect information on costs, sales, prices, and distribution of crude oil and petroleum products. The data are published in the Petroleum Marketing Monthly, the Winter Fuels Report, and the Petroleum Marketing Annual as well as other EIA reports and publications.

II. Current Actions

In keeping with its mandated responsibilities, EIA proposes to extend for three years the petroleum marketing data collection forms. EIA also proposes modifications to the following forms to measure change in petroleum markets due to the Clean Air Act Amendments of 1990, to provide more relevant crude oil and propane price data, to increase reporting accuracy, and to reduce ambiguity in the instructions. The proposed changes are summarized below:

1. Form EIA–782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report."

- Add oxygenated and reformulated gasoline to the product slate.
- Expand the wholesale gasoline sales column to include "DTW," "Rack," and "Bulk" sales.
- Expand the No. 2 diesel category to "No. 2 diesel less than or equal to .05 percent sulfur" and "No. 2 diesel greater than .05 percent sulfur."
- Expand propane sales type categories to include residential, commercial/institutional, industrial, company operated outlets, petrochemical, farm, other retail, and wholesale propane sales.
- Discontinue the sales category "leaded regular motor gasoline."

2. Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

- Add oxygenated and reformulated gasoline to the product slate.
- Expand the wholesale gasoline sales column to include "DTW," "Rack," and "Bulk" sales.
- Expand the No. 2 diesel category to "No. 2 diesel less than or equal to .05 percent sulfur" and "No. 2 diesel greater than .05 percent sulfur."
- Add residential, commercial/institutional, industrial, company operated outlets, petrochemical, farm,

other retail, and wholesale propane sales to the sales type category.

- Discontinue the sales category "leaded regular motor gasoline."

3. Form EIA–782C, "Monthly Report of Petroleum Products Sold into States for Consumption."

- Add oxygenated and reformulated gasoline to the product slate.
- Expand the No. 2 diesel category to "No. 2 diesel less than or equal to .05 percent sulfur" and "No. 2 diesel greater than .05 percent sulfur."
- Discontinue the sales category "leaded regular motor gasoline."

4. Form EIA–14, "Refiners' Monthly Cost Report."

- No changes.

5. Form EIA–182, "Domestic Crude Oil First Purchase Report."

- Collect crude stream price data.

6. Form EIA–856, "Monthly Foreign Crude Oil Acquisition Report."

- No changes.

7. Form EIA–821, "Annual Fuel Oil and Kerosene Sales Report."

- Expand the No. 2 diesel category to "No. 2 diesel less than or equal to .05 percent sulfur" and "No. 2 diesel greater than .05 percent sulfur."
- For 1994, add oxygenated gasoline to the product slate.
- For 1994, add residential, other retail, and wholesale propane sales.

8. Form EIA–863, "Petroleum Product Sales Identification Survey."

- Add oxygenated gasoline to the product slate.
- Add residential, other retail, and wholesale propane sales to the sales type category.

9. Form EIA–877, "Winter Heating Fuels Telephone Survey."

- No changes.

10. Form EIA 878, "Daily Motor Gasoline Price Survey."

- No changes.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and/or revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average:

Form	Burden hours per response
EIA–14	2.4
EIA–182	4.3
EIA–782A	15.0
EIA–782B	2.5
EIA–782C	4.1
EIA–821	3.2
EIA–856	6.3
EIA–863	1.1
EIA–877	.2
EIA–878	.1

How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the petroleum marketing survey forms.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Sections 3506(a) and (c)(1), Paperwork Reduction Act of 1980, as amended, Pub. L. No. 96–511, 44 U.S.C. § 3506 (a) and (c)(1).

Issued in Washington, DC March 25, 1993.

Yvonne M. Bishop,

Director, Statistical Standards.

[FR Doc. 93–7450 Filed 3–30–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG93–34–000]

Diamond Energy, Inc.; Application for Commission Determination of Exempt Wholesale Generator Status

March 25, 1993.

On March 18, 1993, Diamond Energy, Inc. (Diamond), on behalf of its to-be-formed subsidiary, Clearfield Partners, L.P. (Applicant), 633 West Fifth Street, Los Angeles, California, 90071, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Diamond is developing a coal-fired electric generating facility with a capacity of up to 166 MW (Facility) to be located in the Cooper Township, Clearfield, Pennsylvania that will be owned and operated by Applicant. All of the Facility's electricity will be sold at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 12, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7428 Filed 3–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93-65-000]

South Glens Falls Limited Partnership; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 25, 1993.

On March 19, 1993, South Glens Falls Limited Partnership of Civic Center Plaza, suite 100, 5 Warren Street, Glens Falls, New York 12801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 13.78 MW hydroelectric small power production facility will be located on the Hudson River in Saratoga and Warren Counties, New York, and will consist of two vertical shaft Kaplan turbine generators and a 100-ft long transmission line. Commercial operation of the facility is expected to commence in December of 1994.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the FEDERAL REGISTER and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7372 Filed 3-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-020]

Great Lakes Gas Transmission Limited Partnership; Compliance Filing

March 25, 1993.

Take notice that Great Lakes Gas Transmission Limited Partnership (Great Lakes) on March 23, 1993, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following revised tariff sheets, with a proposed effective date of November 1, 1991:

Sixth Substitute Eighteenth Revised Sheet No. 77
Sixth Substitute Fourteenth Revised Sheet No. 151

Great Lakes states that the purpose of Great Lakes' filing is to supplement its March 8, 1993 compliance tariff filing implementing the partial settlement in Docket Nos. RP91-143-000, *et al.*

Great Lakes states that the proposed tariff sheets correct: (1) Tariff language, at article 7 appearing on Sheet No. 77 which, through an administrative error, contained language different than that contained in the *proforma* tariff sheet included with the partial settlement; and (2) a typographical error contained in article VIII, paragraph 1(a) appearing on Sheet No. 151.

Great Lakes states that copies of the letter, together with the tariff sheets, are being served upon each party designated on the official service list complied in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7373 Filed 3-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES93-28-000]

Midwest Power Systems Inc.; Application

March 25, 1993.

Take notice that on March 23, 1993, Midwest Power Systems Inc. (Midwest) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than 750,000 shares of Preferred Stock, no par value, over a two-year period. Also, Midwest requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7370 Filed 3-30-93; 8:45 am]

BILLING CODE 6717-01-M

[RP 93-32-001]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 25, 1993.

Take notice that on March 5, 1993, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Fifteenth Revised Sheet Number 157

The purpose of this filing is to revise the Maximum Rate under Rate Schedule IT-1 as required by Northern Border's Tariff to reflect the reduced return on common equity approved by the Commission's Letter Order issued March 4, 1993 in Docket No. RP92-177-001 and RP92-177-002. Northern Border proposes to decrease the Maximum Rate from 4.052 cents per 100 Dekatherm-Miles to 3.863 cents per 100 Dekatherm-Miles.

Northern Border requests that the revised tariff sheet be made effective January 1, 1993. Northern Border will refund to the Shippers which shipped natural gas volumes through the Northern Border system pursuant to Rate Schedules IT-1 or OT-1 at the currently effective Maximum Rate the difference between the currently effective Maximum Rate and the herein proposed Maximum Rate plus interest computed in accordance with paragraph 154.67(c)(2).

Northern Border states that copies of its filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,

Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before April 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7371 Filed 3-30-93; 8:45 am]

BILLING CODE 6717-01-M

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

March 25, 1993.

Take notice that on March 22, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93-263-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.213) for authorization to add an additional delivery point under an existing firm sales service presently provided by Tennessee to Granite State Gas Transmission, Inc. (Granite), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it currently provides natural gas service to Granite pursuant to authorization granted in Docket Nos. CP69-222 and CP70-185, and under the terms and conditions of Tennessee's CD-6 and CD-5 Rate Schedules and the terms and conditions of a gas sales contract between Tennessee and Granite dated July 1, 1992, as filed with the Commission in Docket No. RP86-119-020, *et al.*, on August 24, 1992. Pursuant to a request of Granite, Tennessee proposes to add the Monson delivery point located in Hampden County, Massachusetts, as a delivery point under the contract. No facilities are proposed.

Tennessee does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Granite. Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by Tennessee's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7369 Filed 3-30-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-47-003]

U-T Offshore System; Compliance Filing

March 25, 1993.

Take notice that U-T Offshore System (U-TOS) tendered for filing on March 19, 1993, Sixth Revised Sheet No. 5 and First Revised Sheet No. 72 of its FERC Gas Tariff, Second Revised Volume No. 1.

U-TOS states that the tariff sheets are proposed to be effective January 1, 1993, and are being filed in compliance with the Federal Energy Regulatory Commission's (Commission) letter order issued March 4, 1993 (March 4 Order) in U-T Offshore System, Docket Nos. RP92-47-002, RP92-95-001 and CP90-1874-000.

U-TOS states that the Commission's March 4 Order approved an uncontested Stipulation and Agreement (Agreement) submitted by U-TOS in the referenced dockets. Pursuant to Ordering Paragraph (1) of the March 4 Order, U-TOS filed Sixth Revised Sheet No. 5. The tariff sheet reflects the settlement rates set forth in appendix A to the Agreement. U-TOS states that refunds as a result of approval of this compliance filing will be made at the times and in the manner prescribed by Article I of the Agreement.

U-TOS further states it is filing Sixth Revised Sheet No. 5 prior to the date on which the March 4 Order technically becomes a "Final Commission Order" under the Agreement. However, because the Agreement was uncontested, U-TOS believes that it is appropriate to treat the March 4 Order as a "Final Commission Order."

U-TOS also states that pursuant to the March 4 Order, U-TOS is required to file a tariff sheet reflecting the termination of its capacity brokering program effective January 1, 1993. First Revised Sheet No. 72 is being filed in compliance therewith.

UTOS states that copies of this filing were mailed to its shippers and all parties listed on the service list heretofore established by the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before April 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7374 Filed 3-30-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Fusion Energy Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Fusion Energy Advisory Committee (FEAC).

Date and Time: Thursday, April 15, 1993—8:30 a.m.-5:30 p.m.; Friday, April 16, 1993—8:30 a.m.-4:00 p.m.

Place: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 22091.

Contact: Deborah Lonsdale, U.S. Department of Energy, GTN, Office of Fusion Energy (ER-50), Office of Energy Research, Washington, D.C. 20585, Telephone: 301-903-4941.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy on the complex scientific and technical issues that arise in the planning, management, and implementation of its Fusion Energy Program.

Tentative Agenda:

Thursday, April 15, 1993

Status of International Thermonuclear Experimental Reactor

Tokamak Physics Experiment

Conceptual Design Review

Report on Panel VII on Inertial Confinement Fusion
Public Comment (10-minute Rule)
Friday, April 16, 1993
Continuation of Panel VII on Inertial Confinement Fusion
FEAC Deliberations
Public Comment (10-minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Deborah Lonsdale at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays

Issued at Washington, DC on March 25, 1993.

Marcia L. Morris,
Deputy Advisory Committee Management Officer.

[FR Doc. 93–7451 Filed 3–30–93; 8:45 am]
BILLING CODE 6450–01–M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $7,000,000, plus accrued interest, obtained by the DOE pursuant to a Consent Order between the Department of Energy and Eason Drilling Company (formerly Eason Oil Company) and ITT Corporation. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments, must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585. All comments should display a reference to Case Number LEF–0040.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $7,000,000 that has been remitted by Eason Drilling Company (formerly Eason Oil Company) ("Eason") and the ITT Corporation to the DOE to settle possible pricing violations. These possible pricing violations concern Eason's sales of natural gas liquids, motor gasoline refined from crude oil condensate, kerosene, and gas oil during the period November 1, 1973 through December 31, 1979. The DOE is currently holding the funds in an interest bearing account pending distribution.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585. If commentors express sufficient interest in presenting their views orally, the DOE will convene a public hearing. In the event we determine to hold a hearing, notice will be given in the **Federal Register**.

Dated: March 24, 1993.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

March 24, 1993.
Names of Firms: Eason Oil Company, ITT Corporation
Date of Filing: February 5, 1992
Case Number: LEF–0040

On February 5, 1992, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Eason Drilling Company (Eason Drilling), formerly Eason Oil Company (Eason), and Eason's former parent corporation, ITT Corporation (ITT), pursuant to 10 C.F.R. Part 205, Subpart V.[1] This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of Eason refund applications is authorized.

I. Background

During the period covered by the Consent Order (November 1, 1973 through December 31, 1979), Eason owned all or part of several natural gas processing plants. In addition, Eason owned a substantial minority interest in a plant which, in addition to producing natural gas liquids, refined crude oil condensate into motor gasoline, kerosene and gas oil. Accordingly, Eason was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Eason records revealed possible violations of these regulations, in sales of Eason's covered products during the period November 1973 through December 1979. On the basis of this audit, the ERA issued a Proposed Remedial Order (PRO) to Eason on September 14, 1984. This Office affirmed in part these alleged violations and issued a Remedial Order to Eason

[1] Eason was acquired by International Telephone and Telegraph Company (now ITT) on August 20, 1977. In December 1984, ITT sold Eason to Sohio Petroleum Company and Sonat, Inc. On July 22, 1985, ITT stipulated that it assumed liability for all violations arising from Eason's activities. Consequently, references to Eason in this Decision also refer to ITT.

on December 6, 1990. *Eason Oil Company*, 20 DOE ¶ 83,011 (1990). On January 4, 1991, Eason appealed the Remedial Order to the Federal Energy Regulatory Commission (Docket No. RO91–1–000).

In order to settle all claims between Eason and the DOE, the two parties entered into a Consent Order (the Consent Order) that resolves all matters relating to Eason's compliance with the federal petroleum price and allocation regulations during the period November 1, 1973 through December 31, 1979 (the Consent Order period). The Consent Order became final upon publication in the **Federal Register** on June 28, 1991. 56 Fed. Reg. 29640 (June 28, 1991). Execution of the Consent Order is neither an admission by Eason nor a finding by the DOE of any violation by Eason of any statute or regulation. Consent Order at ¶ 504.

The Consent Order covers Eason's sales of covered products from all of the natural gas processing plants in which it had an ownership interest. Information furnished to the DOE by ITT indicates that Eason sold 205,417,603 gallons of propane, butane, natural gasoline and ethane from following gas plants in which Eason had an ownership interest (the operator of the plant is indicated in parentheses): (1) Crescent, Oklahoma (Eason); (2) Laverne, Oklahoma (Sun); (3) Beaver, Oklahoma (Cabot, Carbon); (4) Okeene, Oklahoma (Amoco); (5) Thomas, Oklahoma (Mobil); (6) Star Lacey, Oklahoma (Amoco); (7) Elmwood, Oklahoma (Amoco); (8) Gillette, Wyoming (Arco); (9) Lacasane, Louisiana (T&P Oil Company); (10) Ames, Oklahoma (Tenneco); and (11) Dubach, Louisiana (Kerr-McGee). Eason's precise ownership interest in each of these plants and the corresponding volumes of covered products that it sold from each of these plants are listed in the Appendix to this Decision and Order. In addition, the Proposed Remedial Order issued to Eason found that the Dubach, Louisiana plant also refined crude oil condensate into motor gasoline, kerosene and gas oil. Based on information contained in the ERA audit workpapers, we estimate that Eason sold approximately 92,087,016 gallons of covered products produced from crude oil condensate during the audit period.[2] *See* Appendix.

[2] The ERA audit workpapers indicate that crude oil purchases by the Dubach, Louisiana plant during the Consent Order period totalled 2,738,848.18 barrels, resulting in the production of approximately 115,031,624 gallons of motor gasoline, kerosene and gas/oil from this crude oil. Since the prices of kerosene and gas/oil were decontrolled in 1976, we have excluded the volumes of those products that were produced after the dates of decontrol. Accordingly, we find that Eason sold approximately 92,087,016 gallons of covered products from the Dubach, Louisiana plant during the Consent Order period.

Under the terms of the Consent Order, Eason deposited $7,000,000 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. These monies were paid in full on July 29, 1991. This Proposed Decision and Order sets forth the OHA's tentative plan for distributing these funds to qualified purchasers of Eason's covered products.

II. Proposed Refund Procedures

As indicated above, the Consent Order settles:

all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE, * * *, and Eason, * * *, relating to Eason's compliance with the federal petroleum price and allocation regulations, * * *, during the period November 1, 1973 through December 31, 1979 * * *

Consent Order at ¶ 101. The phrase federal petroleum price and allocation regulations is defined by the Consent Order as:

all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act (ESA) of 1970, the Emergency Petroleum Allocation Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150, and 10 CFR Parts 205, 210, 211, 212 and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations.

Consent Order at ¶ 202.

A. Eligibility for Refunds

To the extent that is possible, the settlement amount of $7,000,000, plus accrued interest, will be distributed to purchasers of covered Eason NGLs, NGLPs and other covered refined products who can show that they were injured by Eason's pricing practices during the period November 1, 1973 through December 31, 1979.

B. Calculation of Refund Amount

We propose adopting a volumetric method to apportion the Eason escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the Consent Order period times a per gallon refund amount. We will derive the volumetric figure (per gallon refund amount) by dividing the $7,000,000 received from Eason by the total volume of covered products sold by the firm during the regulatory period. This yields a volumetric refund amount of $.02353 per gallon, exclusive of interest.[3] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by Eason during the regulatory period. *E.g., American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,293 (1986) (*API*).[4]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from Eason during the period November 1973 through December 1979 (or the appropriate date of decontrol of each product), multiplied by the per gallon volumetric amount for this proceeding. Accordingly, each claimant will be required to establish, by documentation or reasonable estimation, the volume of products that it purchased during this period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Eason funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

C. Showing of Injury

We propose that each claimant will be required to document its purchases of covered products from Eason during the Consent Order period. In addition, we propose that in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

However, as we have done in many prior refund cases, we propose to adopt specific injury presumptions that will simplify and streamline the refund process for some categories of

[3] To compute this figure, we estimated that Eason sold a total of 297,504,619 gallons of covered products during the period from November 1973 through December 1979.

[4] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

customers: small claims, end-users, and regulated firms and cooperatives. These presumptions will excuse members of certain applicant categories from proving that they were injured by Eason's alleged overcharges, and are discussed below.

D. Reseller Applicants Seeking Refunds of $10,000 or Less

We propose to adopt a presumption, as we have in many previous cases, that resellers seeking small refunds were injured by Eason's pricing practices. *See, e.g., E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund.

In many prior proceedings, we have established a small claims threshold of $5,000. *E.g., Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987). In this proceeding, the volumetric factor is significantly higher than in most proceedings. As a result, the allocable share of many small retailers, resellers and refiners who would typically qualify for a refund at or below the usual small claims amount of $5,000 will be well above that amount in this proceeding. If we keep the small claims threshold at $5,000 in this proceeding, it would increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their allocable share. It would also increase the burden on this Office because of the need to analyze more detailed injury showings and would thus slow down the evaluation of claims. Therefore, to minimize these burdens, we are proposing a small claims threshold of $10,000. *See Enron Corp.*, 21 DOE ¶ 85,323 at 88,957 (1991).

Accordingly, under the proposed small-claims presumption in this proceeding, a claimant who claims a refund of $10,000 or less will not be required to submit any evidence of injury beyond establishing that it is one of the eligible customers that purchased the covered products from Eason. We propose that a reseller applicant must follow the procedures that are outlined below if the applicant is seeking a refund in excess of $10,000, plus interest accrued on that amount while in escrow.

E. Medium-Range Presumption

We propose, that in lieu of making a detailed showing of injury, a reseller, retailer or refiner claimant whose allocable share of the Consent Order funds for purchases of Eason's refined products exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 60 percent of its allocable share up to $50,000. The use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. In other proceedings involving NGLs and NGLPs, we have determined that a 60 percent presumption for the medium-range purchasers of NGLs and NGLPs accurately reflected the amount of their injury as a result of their purchases of those products. *Sauvage Gas Co.*, 17 DOE ¶ 85,304 (1988); *see also Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). Accordingly, a claimant in this group will only be required to provide documentation of its purchase volumes of Eason's covered products in order to be eligible to receive a refund of 60 percent of its total allocable share.

F. Reseller Applicants Seeking Larger Refunds

We propose that if a retailer, reseller or refiner claims an amount in excess of $10,000, and declines to accept the medium-range presumption, it will be required to provide a detailed demonstration of its injury. We propose that it will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, we propose that a claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,117 (1991). If a reseller that is eligible for a refund in excess of $10,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $10,000 plus accrued interest from the escrow fund.

G. End-users

We propose to adopt a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry, were injured by Eason's alleged overcharges and are entitled to their full share of the settlement monies obtained from Eason. Unlike regulated firms in the petroleum industry, end-users were not subject to price controls during the Consent Judgement period. Moreover, these unregulated firms were not required to keep records that justified selling price increases by reference to cost increases. Therefore, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). We propose, therefore, that any applicant claiming to be an end-user, must establish that it was an Eason customer or a successor thereto and that the nature of its business made it an ultimate consumer of the Eason covered products that it purchased. If an applicant establishes those two facts, it will receive its full pro-rata share as its refund without making a detailed demonstration of injury.

H. Regulated Firms and Cooperatives

We propose that regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their customers the benefit of any refund received, will be exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); *see also Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We will require a regulated firm or cooperative to establish that it was an Eason customer or a successor thereto. In addition, we will require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rate share. However, any public utility claiming a refund of $10,000 or less, or accepting the medium-range presumption of injury, will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered product to non-members will be treated in the same manner as sales by other resellers or retailers.

I. Indirect Purchasers

We propose that firms which made indirect purchases of covered Eason products during the Consent Order period may also apply for refunds. If an applicant did not purchase directly from Eason, but believes that covered products it purchased from another firm were originally purchased from Eason, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the

reseller of Eason products passed through Eason's alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

J. Spot Purchasers

We propose to adopt the rebuttable presumption that a claimant who made only spot purchases from Eason was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered Eason products. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Eason. *E.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

K. Applicants Seeking Refunds Based on Allocation Claims

We also recognize that, while the Consent Order makes no mention of known allocation violations, we may receive claims alleging Eason's failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 C.F.R. Part 211. Such claims could be based on the Consent Order's broad language regarding the matters settled. *See* Section II above. Any such application will be evaluated with reference to the standards set forth in Subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Fuels, Inc.*, 17 DOE ¶ 85,575 (1989), action for reviewing pending, CA–3–89–2983–G (N.D. Tex. filed Nov. 22, 1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the Consent Order firm and the likelihood that the Consent Order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 C.F.R. Part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the Agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Eason may have had to the alleged allocation violation. *E.g., id.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Eason. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of Eason allocation violations in general and regarding the specific allocation violation alleged by the claimants. Finally, since the Eason Consent Order reflects a negotiated compromise of the issues involved in an enforcement proceeding against Eason, as well as potential unknown violations, and the Consent Order amount is therefore less than Eason's potential liability, we will pro rate any allocation refunds that would otherwise be disproportionately large in relation to the Consent Order fund. *Cf. Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

III. Distribution of the Remainder of the Eason Consent Order Funds

In the event that money remains after all refund claims from the Eason fund have been analyzed, the remaining funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–4507 (1988). Pursuant to the PODRA, the funds will be distributed to state governments for use in energy conservation programs.

IV. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the Consent Order fund, we will publicize the distribution process, and provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Order in the **Federal Register**.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Eason Drilling Company and ITT Corporation, pursuant to the Consent Order finalized on June 28, 1991, will be distributed in accordance with the foregoing decision.

Appendix

EASON OIL COMPANY—PRODUCT INFORMATION

Name of facility	Operator	Eason's ownership interest	Eason's sales volume
Natural Gas Liquid Products:			
Crescent, OK	Eason	1.00000000	115,470,821
Laverne, OK	Sun	0.00585000	4,637,070
Beaver, OK	Cabot Carbon	0.01640400	695,227
Okeene, OK	Amoco	0.00994700	1,407,937
Thomas, OK (Putnam Oswego)	Mobil	0.01988400	2,322,486
Star Lacey, OK	Amoco	0.01159000	313,742
Elmwood, OK	Amoco	0.06321020	5,792,864
Gillette, WY	Arco	0.04180700	6,666,936
Lacasane, LA	T&P Oil Co.	0.29475000	9,102,870
Ames, OK	Tenneco	0.10886194	16,182,786
Dubach, LA	Kerr-McGee	0.25000000	42,824,864
Refined Products:			
Dubach, LA	Kerr-McGee	0.25000000	92,087,016
Total			297,504,619

[FR Doc. 93–7452 Filed 3–30–93; 8:45 am]
BILLING CODE 6560–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00131A; FRL–4575–9]

Environmental Leadership Program; Open Meeting; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a public meeting and an extension of comment period relating to EPA's proposed Environmental Leadership Program. EPA will hold a public meeting at the time and place listed below in this notice to receive comments on the Environmental Leadership Program which was proposed in the **Federal Register** of January 15, 1993. EPA is also extending the comment period on that notice. The original comment period was to close April 15, 1993; the comment period is extended to May 17, 1993.

DATES: The meeting will take place on Thusday, May 6, 1993, from 8 a.m. to 5 p.m. Additional time on May 7 may be scheduled if needed. The comment period is extended to May 17, 1993.

ADDRESSES: The meeting will be held at the: Disabled American Veterans Office, 807 Maine Avenue SW., Washington, DC.

Comments on the Environmental Leadership Program should be mailed to: TSCA Nonconfidential Information Center (NCIC) (TS–793), also known as, TSCA Public Docket Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–G99, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Linda Glass-Rimer, Environmental Protection Agency (1102), Pollution Prevention Policy Staff, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–8616.

SUPPLEMENTARY INFORMATION: EPA has proposed the creation of a voluntary Environmental Leadership Program intended to encourage a long-term commitment by corporations and facilities to high quality environmental management practices, pollution prevention, and sustainable development. The Agency is aggressively seeking comment from all interested parties. In the **Federal Register** of January 15, 1993 (58 FR 4802), EPA announced a 90–day comment period on the proposed Environmental Leadership Program. In response to many requests, the comment period is extended to May 17, 1993.

The purpose of this public meeting is to encourage additional comments. A schedule is being developed for presentations, each lasting 10 minutes. Please call (202) 260–4889 to reserve a time for presenting your comments.

Dated: March 24, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7422 Filed 3–30–93; 8:45 am]
BILLING CODE 6560–50–F

[FRL–4609–4]

Science Advisory Board, Drinking Water Committee; Open Meeting

Under the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet on April 19–20, 1993. The Committee will meet on Monday, April 19, from 8:30 a.m. to 5:30 p.m. and on Tuesday, April 20, from 9 a.m. to no later than 4:30 p.m. at U.S. EPA Headquarters, Waterside Mall Conference Center, room 3 North, 401 M Street, SW., Washington, DC 20460. The meeting is open to the public and seating is on a first-come basis.

At this meeting, the Committee will: (1) Review the scientific basis of the draft Drinking Water Criteria Document on Inorganic Arsenic, (2) provide a consultation regarding the "Draft Requirements for Nationwide Approval of New and Optionally Revised Methods for Inorganic and Organic Parameters in National Primary Drinking Water Regulations Monitoring" ("Chemistry Testing Protocol," for short), (3) receive a briefing concerning the proposed National Human Exposure Assessment Survey (NHEXAS), (4) receive a progress report on the NAS/NRC review of the Risk Assessment for Fluoride in Drinking Water, and (5) receive a briefing regarding the chemical selection criteria for drinking water regulations (Phase VIB). Documents provided to the Committee as background and for review of item (1) above are available from Dr. Charles Abernathy, U.S. Environmental Protection Agency, 401 M Street SW. (Mail Code WH–586), Washington, DC 20460. Telephone: (202) 260–5374. No background documents are available for items (3), (4) and (5) above.

For additional information concerning this meeting, including copies of a draft agenda and copies of the "Chemistry Testing Protocol," item (2) above, please contact Mrs. Frances Dolby, Staff Secretary, or Mr. Manuel R. Gomez, Designated Federal Official, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552; FAX: (202) 260–7118.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Gomez no later than Monday, April 12, 1993 in order to be included on the Agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes or less, at the Chair's discretion.

Dated: March 22, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–7425 Filed 3–30–93; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4609–3]

Science Advisory Board, Environmental Economics Advisory Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board will meet on April 30, 1993 at the Old Colony Inn, 625 First Street, Alexandria VA 22314. The hotel telephone number is (703) 548–6300.

The meeting, which is open to the public, will start at 8 a.m., and adjourn no later than 5 p.m. Its main purpose is to continue discussions and the review (initiated at a December 22, 1992 meeting of the Committee) of a draft contingent valuation study *(Methods for Measuring Non-Use Values: A Contingent Valuation Study of Groundwater Cleanup)* prepared for EPA's Office of Policy, Planning, and Evaluation, and the Office of Solid Waste. The Committee will address, among other issues, the design, conduct, and findings of the study, its applicability to EPA regulatory issues, and other analyses and literature relevant to groundwater valuation.

Requests for copies of the contingent valuation study, and questions concerning its content should be

addressed to Mr. Gary Ballard (OS 311), Regulatory Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–2429. The study is not available from the Science Advisory Board. Members of the public desiring additional information about the conduct of the meeting or the agenda should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–6552). Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by April 20, 1993. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: March 19, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–7424 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50759; FRL–4576–8]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On January 19, 1993, EPA received an application from Ciba-Geigy Corporation, Seed Division for an EPA Experimental Use Permit (EUP) for a transgenic plant pesticide. This is the third EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a pesticidal substance that is produced in a plant. The Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by April 30, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50759 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in room 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, (703)305–7690.

SUPPLEMENTARY INFORMATION: On January 19, 1993, EPA received an application for an EUP from Ciba-Geigy Corporation, Seed Division (Ciba Seeds), P.O. Box 12257, Research Triangle Park, North Carolina 27709–2257. The application was assigned EPA File Symbol 66736–EUP–R. Ciba Seeds proposes to test a truncated version of the cryIA(b) δ-endotoxin (derived from the soil microbe *Bacillus thuringiensis*) as expressed in maize plants originating from crosses of descendants of two separate transformation events (Event 171 & Event 176) of the proprietary inbred line CG00526. The February 1993 issue of the international journal *Bio/Technology* (11:194–200) describes how the maize was transformed.

Both transformation events of CG00526 involved insertion of a synthetic gene, encoding the truncated cryIA(b) δ-endotoxin, via microprojectile bombardment into immature maize embryos. Plants originating from Event 171 have the δ-endotoxin gene controlled by the Cauliflower Mosiac Virus 35S promoter, as well as chimeric 35S/ β-glucuronidase (GUS) and 35S/ phophinothricin resistance genes used as selectable markers. Plants originating from Event 176 have 2 copies of the δ-endotoxin gene controlled by the maize PEPC promoter, causing the δ-endotoxin to be expressed in green tissues, or a maize pollen-specific promoter causing the δ-endotoxin to be expressed in pollen/anther tissue. Like Event 171 plants, Event 176 plants have a phosphinothricin resistance gene, controlled by the Cauliflower Mosiac Virus 35S promoter, as a selectable marker.

Larger-scale testing is being sought to evaluate the crosses of descendants of Event 171 & Event 176 transformants in different geographic areas under a variety of conditions and to cross the insecticidal gene into more corn lines. Some limited studies are currently in progress in Florida, Hawaii, and Illinois under USDA permits. Plantings under this EUP proposed through March 1994 will take place in six states (Florida, Hawaii, Illinois, Iowa, Nebraska, and North Carolina), with cumulative acreage of transgenic plants at a maximum of 33 acres. With the exception of locations intended for breeding and seed increase activities, most test plots will not exceed 0.3 acre in size.

Activities proposed for the proposed plantings through March 1994 are as follows: Gene efficacy evaluations, resistance management experiments, insect susceptibility studies, breeding and seed increases. The maximum amount of cryIA(b) protein in seeds to be planted for this period is 35.7 grams.

Plantings proposed for the period between April 1994 through March 1995 will cumulatively total up to 104 acres of transgenic corn in nine states with most test plots not exceeding 0.3 acres (Florida, Hawaii, Illinois, Indiana, Iowa, Nebraska, North Carolina, and Wisconsin). In addition to continuing the five types of activities proposed for earlier plantings, yield evaluations and insect population dynamics studies are also planned. Details of the proposed planting between April 1994 through March 1995 have not yet been submitted to the Agency.

No temporary tolerances are being requested relative to the proposed EUP since any reserved transgenic plant material will be used only for research or future plantings. All other material will be destroyed. Following each field test, all plant material not required for future research or plantings will beincorporated into the soil to decompose. The proposed EUP program will be supervised by professionally qualified employees of Ciba Seeds. Most activities will be conducted at Ciba research facilities; the remainder will be conducted by qualified university or private cooperators.

Upon review of the Ciba Seeds application, any comments received in

response to this notice and any other relevant information, the U.S. EPA will decide whether to issue or deny the EUP. If issued, the U.S. EPA will set conditions under which the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register**.

Dated: March 19, 1993.

Lawrence Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-7306 Filed 3-30-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66173; FRL 4573-9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 29, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 63 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000059-00193	Flair	Butoxypolypropylene glycol 1-Napthyl-*N*-methylcarbamate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000070-00183	Kill Ko Mal-Thox HDC Dust	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000134-00039	Hess & Clark Six Roost Paint	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000241-00076	Malathion Technical	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000241-00110	Malathion ULV Concentrate Insecticide	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000279 IL-92-0001	Command 4EC	2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone
000299-00105	Martin's 5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000299-00180	Martins Cow and Calf Dust	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000407-00282	Imperial Home Orchard Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000602-00067	Purina Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000602-00183	Purina Fruit Tree Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000602-00227	Purina Hog and Cattle Dusting Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000606-00099	Corn King Sulphurized Oil	Mineral oil - includes paraffin oil from 063503 Sulfur
000655-00080	Prentox Malathion 25% WP	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655-00123	Prentox Malathion 8 Lb. Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655-00149	Prentox 80% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655-00323	Prentox Malathion 5 Lb. Emulsifiable Concentrate Premium	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655-00550	10% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000802-00170	Miller's Pet, Poultry and Livestock Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001258-00690	CCH (Commercial Calcium Hypochlorite)	Calcium hypochlorite

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
001258–00892	Olin HTH Dry Chlorine Giant Tablets	Calcium hypochlorite
001258–00896	Dry Chlorinator Granular for Swimming Pools	Calcium hypochlorite
001258–00932	Olin Kiddie Pool Sanitizer	Calcium hypochlorite
001258–00935	Olin HTH Granular Dry Chlorine-65 for Swimming Pools	Calcium hypochlorite
001258–00936	Olin HTH Granular Dry Chlorine-35 for Swimming Pools	Calcium hypochlorite
001258–00938	CCH - 65 (Commercial Calcium Hypochlorite)	Calcium hypochlorite
001258–01052	Olin HTH Shock Treatment & Superchlorinator for Swimming	Calcium hypochlorite
001258–01127	Bio - Free One Tablets	Calcium hypochlorite
001258–01128	Bio - Blitz One Tablets	Calcium hypochlorite
001258–01130	Bio Blitz La Tablets	Calcium hypochlorite
001258–01134	HTH 2 Gram Spa & Hot Tub Tablets	Calcium hypochlorite
001258–01135	HTH 5 Gram Spa & Hot Tub Tablets	Calcium hypochlorite
001258–01146	Calcium Hypochlorite Tablets - 2 Gram	Calcium hypochlorite
001258–01147	Calcium Hypochlorite Tablets - 5 Gram	Calcium hypochlorite
001258–01148	Calcium Hypochlorite Tablets - 10 Gram	Calcium hypochlorite
001258–20006	Olin Calcium Hypochlorite Sanitizer	Calcium hypochlorite
002217–00464	Grain Gard Flour Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002548–00077	Max Kill Malathion 80 WE	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
002935–00139	Red-Top Premium Grade Malathion Grain Protectant	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
003468–00014	4% Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
003772–00007	Earl May 57% Malathion Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Xylene range aromatic solvent
005549–00043	4% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008006–00008	Easy Cattle Oil	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008590–00012	Agway Malathion 25W	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
008590–00185	Agway Malathion-Pyrethrins-Piperonyl Butoxide 4-0.1-1D	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
010349–00004	Nalco Visco 1152	3-Alkoxy°-2-hydroxypropyl trimethyl ammonium chloride °(100% C12-C15 as in linear, primary alcohol)
010349–00010	Visco 1153	Nonylphenoxypolyethoxyethanol - Iodine complex 1-(Alkyl° amino)-3-aminopropane monoacetate °(as in fatty acids of coconut oil) *N*-Polyoxyethylated stearylamine
010349–00022	Nalco Visco 4997	3-Alkoxy°-2-hydroxypropyl trimethyl ammonium chloride °(100% C12-C15 as in linear, primary alcohol)
034704–00019	Clean Crop Malathion 25% Dust Base	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
034704–00291	Hapkins Malathion 25% W.P.	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
034704–00292	Hopkins 5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
034704–00456	Clean Crop Malaspray 8EC	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
034704–00528	Professional Grade Malathion Insect Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
036301–00011	J-Mal-92 Premium Grade Malathion Agricultural Insecticide	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
045385–00074	J-H Tanner's Insecticide	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
045385–00075	Cenol Premium Grade 50% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00009	Malathion 5-E Grain Protectant Contains Cythion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
047000–00010	2% Malathion Backrubber Solution	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00024	Economy's 57% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00037	Economy Malathion 5% Dust Insecticide	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047099–00002	Racor 11-1266	2,2'-(1-Methyltrimethylenedioxy)bis(4-methyl-1,3,2-dioxaborinane) 2,2'-Oxybis(4,4,6-trimethyl-1,3,2-dioxaborinane)
056644–00005	5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
056644–00007	Security Brand 25% Malathion Wettable	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000059	Coopers Animal Health Inc., 1201 Douglas Ave, Kansas City, KS 66103.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000134	Hess & Clark, Inc., 7th & Orange, Ashland, OH 44805.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000299	C. J. Martin Co, 606 W. Main St., Box 9, Nacogdoches, TX 75961.
000407	Imperial Inc., Box 98, Shenandoah, IA 51601.
000602	Purina Mills, Inc., Box 66812, St Louis, MO 63166.
000606	Prince Agri Products, Inc., One Prince Plaza, Quincy, IL 62301.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
000802	Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
001258	Olin Corp., Box 586, Cheshire, CT 06410.
002217	PBI/Gordon Corp., 1217 W. 12th Street, Box 4090, Kansas City, MO 64101.
002548	Research Products Co., Division of McShares, Inc., Box 1460, Salina, KS 67402.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704.
003468	Schall Chemical Inc., 120 N. Broadway, Montevista, CO 81144.
003772	Earl May Seed & Nursery L.P., c/o Bonide Products Inc., 2 Wurz Ave, Yorkville, NY 13495.
005549	Coastal Chemical Corp., PO Box 856, Greenville, NC 27834.
008006	Easy Chemical & Mfg Co. Inc., R R 1, Seward, NE 68434.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
010349	Nalco Chemical Co, One Nalco Center, Box 87, Naperville, IL 60563.
034704	Platte Chemical Co., Inc., c/o Willaim M. Mahlburg, Box 667, Greeley, CO 80632.
036301	Degesch America, Inc., Houston Division, 14802 Park Almeda Drive Box 451036, Houston, TX 77245.
045385	CTX Inc., 481 Scotland Rd, Mchenry, IL 60050.
047000	Chem-Tech, Ltd, 4515 Fleur Dr. #303, Des Moines, IA 50321.
047099	Parker-Hannifin Corp., Racor Division, Box 3208, Modesto, CA 95353.
056644	Security Products Co. of Delaware, Inc., 7801 Metro Parkway, Box 59084, Minneapolis, MN 55420.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, two pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3 with the EPA Company Number of their registrants:

TABLE 3.—ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
26635–92–7	Polyoxyethylated stearylamine	010349
68187–63–3	Alkoxy*-2-hydroxypropyl trimethyl ammonium chloride *(100% C12-C15 as in linear, primary alcohol)	010349

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 29, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: March 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–7301 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00350; FRL–4189–7]

Iron Salts; Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility document; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the chemical case iron salts, and the start of a 60–day public comment period. The RED for iron salts is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical case, and presents the Agency's determination regarding which pesticidal uses of iron salts are eligible for reregistration.

DATES: Written comments on the RED must be submitted by June 1, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00350" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Room 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set for in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a RED Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the Chemical Review Manager, Yvonne Brown, at (703) 308–8073.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the chemical case iron salts, including the pesticidal active ingredients iron sulfate, iron sulfate monohydrate, and iron sulfate heptahydrate. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of these active ingredients is substantially complete. EPA has determined that all currently registered products containing iron salts as an active ingredient are eligible for reregistration.

All registrants of products containing iron salts have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve

the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a Federal Register Notice announcing its availability.

Dated: March 11, 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–7423 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34041; FRL 4574–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 29, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the nine pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 29, 1993 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS.

Registration No.	Product Name	Delete From Label
000400–00423	Terrazole 4 Flowable Fungicide	Turf, rye grass seed
000869–00125	Green Light Systemic Fungicide	Roses, flowers, shade trees, ornamentals
003125–00099	Metasystox-R 50% Concentrate	Avocados
008660–00075	Vertagreen Systemic Disease Control	Ornamentals
010182–00152	Eptam 6-E Selective Herbicide	Flax, sweet potatoes, green peas, table beets
010182–00155	Eptam 5-G Selective Herbicide	Flax, sweet potatoes, green peas, table beets
010182–00160	Eptam 10-G Selective Herbicide	Flax, sweet potatoes, green peas, table beets
010182–00199	Eptam 20-G Selective Herbicide	Flax, sweet potatoes, green peas, table beets
010182–00220	Eptam 7-E Selective Herbicide	Flax, sweet potatoes, green peas, table beets

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000869	Green Light Co., P.O. Box 17985, San Antonio, TX 78217.
003125	Miles, Inc., Agriculture Division, 8400 Hawthorne Road, P.O. Box 4913, Kansas City, MO 64120.
008660	The Andersons, Parker Fertilizer Co., 201 W. Fourth St., P.O. Box 540, Sylacauga, AL 35150.
010182	ICI Americas, Inc., Agricultural Products, New Murphy Road & Concord Pike, Wilmington, DE 19879.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: March 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–7300 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 24, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Frequency Coordinator Evaluation.

Action: New collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 11,000 responses; .166 hours average burden per response; 1,826 hours total annual burden.

Needs and Uses: Report and Order, PR Docket No. 83–737 requires the Commission to monitor the overall performance and quality of service of the frequency coordination committees designated for the Private Land Mobile Radio Service. The evaluation form has been developed to provide the Commission with ratings and comments from the user public to evaluate the performance of the frequency coordination committees. The data will be used by Commission staff to evaluate the present frequency coordination process, service to the public, and to make recommendations on any necessary corrective action. Licensees will be randomly selected in various radio services and being sent an evaluation. The response to the survey is entirely voluntary. Although the Commission does not intend to use a formal statistical method of data collection, tracking of the response rate for each radio service and frequency coordinator is planned. The replies will provide the capability to gauge each frequency coordination committee's quality of service to the public.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7341 Filed 3–30–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Treatment of Security Interests After Appointment of the FDIC as Conservator or Receiver

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: The FDIC has adopted a Statement of Policy which sets forth procedures and guidelines as to how the FDIC, as conservator or receiver of an insured depository institution, will treat security interests in the assets of an insured depository institution.

EFFECTIVE DATE: March 23, 1993. This Statement of Policy applies to all security agreements to which an insured depository institution is a party regardless of date of such agreement.

FOR FURTHER INFORMATION CONTACT: Michael H. Krimminger, Senior Counsel (202–736–0336) or Linda L. Stamp, Counsel (202–736–0161), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has adopted a Statement of Policy Regarding Treatment of Security Interests After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver. The text of the Policy Statement follows:

Statement of Policy Regarding Treatment of Security Interests After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

Introduction

The power of the Federal Deposit Insurance Corporation (FDIC) to repudiate contracts of a federally-insured depository institution (an Institution) for which the FDIC is appointed conservator or receiver,[1] is among the most important and powerful statutory rights the FDIC exercises.

Congress recognized this when it amended the Federal Deposit Insurance Act (the Act) in 1989 to codify the FDIC's rights as conservator or receiver to repudiate contracts and to make special provision for security interests.[2] In effect, Congress intended to strike a reasonable balance between the rights of the FDIC, on the one hand, and the reasonable expectations of the marketplace, on the other.

The FDIC Board of Directors also recognizes the importance of these provisions. Recent inquiries to the FDIC demonstrate concern regarding the enforceability of security interests for public deposits in insured depository institutions.[3] In an effort to avoid misunderstanding or uncertainty by market participants involved in secured transactions with Institutions generally, the FDIC is adopting this "Statement of Policy Concerning Treatment of Secured Obligations After Appointment of the FDIC as Conservator or Receiver."[4]

Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was signed into law on August 9, 1989.[5] FIRREA codified in section 11(e) of the Act the FDIC's repudiation right as conservator or receiver.[6]

Section 11(e) also provides that the right is not to be construed as permitting

[1] 12 U.S.C. 1821(e).

[2] 12 U.S.C. 1821(e)(11).

[3] The granting of security interests to protect deposits in excess of the $100,000 insured by the FDIC may be authorized or required for public deposits by state and/or federal law. See 12 CFR 7.7410.

[4] Nothing contained herein should be interpreted as contradicting or impairing the policies expressed in the "FDIC Statement of Policy on Qualified Financial Contracts" (FDIC Statements of Policy 5113 (Dec. 12, 1989)) or in the "Statement of Policy Regarding Treatment of Collateralized Put Obligations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver" (FDIC Statement of Policy 5335 (July 9, 1991)).

[5] Public Law No. 101–73, 103 Stat. 183 (1989).

[6] FIRREA § 212(e), 103 Stat. 241; see H.R. Rep. No. 101–54(I), 101st Cong., 1st Sess. 332 (1989).

the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.[7] Therefore, if the FDIC repudiates a legally enforceable and perfected security agreement, it cannot avoid any legally enforceable and perfected security interest in the collateral to the extent of the statutory damages allowed by section 11(e) of the Act.

In April 1992, the U.S. Court of Appeals for the Eighth Circuit addressed the meaning of "legally enforceable" as used in the statute.[8] It held that the term required strict compliance with each of the affirmative requirements of section 13(e) of the Act, including the "contemporaneous" requirement,[9] and the *D'Oench* doctrine.[10] The court also held that all state law requirements applicable to the legal enforceability and perfection of security interests must be met.[11]

That decision prompted some concern by those who have entered into or propose to enter into secured deposit or credit transactions with an Institution.

Construing sections 11(e) and 13(e) of the Act together, it remains clear that security interests that are not perfected and legally enforceable may be avoided by the FDIC as conservator or receiver. For this purpose, the term "legally enforceable" requires compliance with sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Act.

Regardless of the date of the contract, the foregoing summary of existing law applies to all contracts to which an Institution is a party, if the FDIC is or was appointed conservator or receiver of such Institution on or after August 9, 1989.

Historical Position of the FDIC

The FDIC has maintained that it will not seek to avoid otherwise legally enforceable and perfected security interests solely because the security agreement does not meet the "contemporaneous" requirement of sections 11 and 13 of the Act.[12]

Similarly, the FDIC has not sought to avoid an otherwise legally enforceable and perfected security interest solely because the secured obligation or the collateral subject to such security interest (a) was not acquired by the Institution contemporaneously with the approval and execution of the security agreement granting the security interest and/or (b) may change, increase, or be subject to substitution from time to time during the period that the security interest is enforceable and perfected.[13]

Assumptions

The foregoing analysis assumes that (a) the agreement was undertaken in the ordinary course of business, not in contemplation of insolvency, and with no intent to hinder, delay or defraud the Institution or its creditors; (b) the secured obligation represents a *bona fide* and arm's length transaction; (c) the secured party or parties are not insiders or affiliates of the Institution; (d) the grant or creation of the security interest was for adequate consideration; and (e) the security agreement evidencing the security interest is in writing, was approved by the Institution's board of directors or loan committee (which approval is reflected in the minutes of a meeting of the board of directors or committee), and has been, continuously from the time of its execution, an official record of the Institution.[14]

Factors Considered

The FDIC considered several factors in the development of this statement of policy. Those factors include the legal rights and powers of the FDIC, assurances that may have been provided in the past by staff of the FDIC and the reliance placed upon those assurances by market participants, and the desirability for market certainty and stability. The FDIC also considered the potential long-term cost to the FDIC of adopting alternative positions or policies, and the potential for redemption or prepayment in the event of acceleration of the maturities of existing secured obligations of Institutions in the event of repudiation.

Statement of Policy

Contemporaneous Requirement. Provided all of the foregoing "Assumptions" are met, the FDIC, acting as conservator or receiver for an Institution, will not seek to avoid an otherwise legally enforceable and perfected security interest solely because the security agreement granting or creating such security interest does not meet the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Act.

Specifically, the FDIC will not seek to avoid such a security interest solely because the secured obligation or collateral subject to the security interest (a) was not acquired by the Institution contemporaneously with the approval and execution of the security agreement granting the security interest and/or (b) may change, increase, or be subject to substitution from time to time during the period that the security interest is enforceable and perfected.

Right to Redeem or Prepay. Notwithstanding the foregoing, the FDIC retains the right, as conservator or receiver, to redeem or prepay any secured obligation of an Institution by repudiation or otherwise.

Upon repudiation, the secured party is entitled to any damages allowable pursuant to section 11(e) of the Act. The liability of the FDIC as conservator or receiver for exercising its repudiation rights is limited to "actual direct compensatory damages" as provided in section 11(e) of the Act. Such damages are to be determined as of the date of appointment of the conservator or receiver, as contrasted with certain "qualified financial contracts" where resulting damages are determined as of the date of repudiation.[15]

The FDIC shall have a reasonable period of time, generally, no more than 180 days from the date of appointment of the FDIC as conservator or receiver for an Institution, to elect whether to redeem or prepay, by repudiation or otherwise, secured obligations of the Institution.

By order of the Board of Directors. Dated at Washington, DC this 23rd day of March, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–7368 Filed 3–30–93; 8:45 am]

BILLING CODE 6714–01–M

[7] 12 U.S.C. 1821(e)(11).

[8] *North Arkansas Medical Center* versus *Barrett*, 962 F.2d 780 (8th Cir. 1992).

[9] *Id.* at 787.

[10] *Id.* (citing *D'Oench, Duhme & Co.* versus *FDIC*, 315 U.S. 447 (1942)); see *Id.* at 788–89 (purposes of section 1823(e) and *D'Oench* doctrine "are to facilitate regulation and protect the FDIC from financial loss by assuring that the bank's financial condition can be assessed instantaneously; to assure senior bank officials are aware of unusual transactions before the bank agrees to them; and to prevent collusion between bank employees and customers on the eve of the bank's failure").

[11] *Id.* at 785.

[12] FDIC Advisory Opinions 4423 (Dec. 15, 1989).

[13] FDIC Advisory Opinions 4537 (Apr. 2, 1991).

[14] FDIC Advisory Opinions 4537 (Apr. 2, 1991); FDIC Advisory Opinions 4423 (Dec. 15, 1989).

[15] 12 U.S.C. 1821(e).

FEDERAL RESERVE SYSTEM

Chemical Banking Corporation; Application to Engage in Nonbanking Activities

Chemical Banking Corporation, New York, New York (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12

U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, Chemical Securities Inc., New York, New York (Company), a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), in underwriting and dealing in, to a limited extent, all types of debt securities, including without limitation sovereign debt securities, corporate debt securities, debt securities convertible into equity securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations. Applicant also proposes to provide services that are incidental to the foregoing activities. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board previously has approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. J.P. Morgan & Co. Incorporated, et al., 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), as modified by Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicant has stated that it will conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities. For this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 29, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 24, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-7403 Filed 3-30-93; 8:45 am]

BILLING CODE 6210-01-F

Comerica Incorporated; Application to Engage De Novo in the Provision of Expanded Employee Benefits Consulting Services and Career Counseling Services Through its Subsidiary, ComeriCOMP, Inc.

Comerica Incorporated, Detroit, Michigan ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act"), and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to offer career counseling services to un-affiliated business organizations and individuals through its wholly owned subsidiary ComeriCOMP, Inc., Detroit, Michigan ("ComeriCOMP"). ComeriCOMP currently provides employee benefits consulting services to affiliates and non-affiliates, and career counseling services to Applicant and its affiliates. With this proposal, Applicant seeks to expand its career counseling activities by offering these services to non-affiliated companies and individuals. These services include: (1) Assessing an individual's education, prior business experience, salary history, interests, and skills; (2) providing assistance in preparing resumes and cover letters; (3) contacting potential employers regarding employment opportunities, and making this information available to its clients; (4) conducting general workshops addressing the financial aspects of unemployment, economic trends, the job search process, and alternative career options; and (5) providing individual counseling to set goals in obtaining employment. Applicant proposes to conduct these activities on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has

determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Thus, the Board must determine initially that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1337 (DC Cir. 1975)("*National Courier*"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant believes that the proposed activities meet the *National Courier* standard because: (1) ComeriCOMP and other bank holding companies and banks currently provide career counseling services to bank and bank holding company employees, former employees, and individuals whose jobs are terminated following acquisitions; (2) the proposed services are operationally and functionally similar to the employee benefits consulting activities that the Board has already approved for bank holding companies and that ComeriCOMP already provides; and (3) both the proposed activities and ComeriCOMP's present employee benefits consulting services involve conveying financial information similar to information provided by bank holding companies in conducting financial advisory services, such as investment advice, consumer financial counseling, and tax preparation and planning pursuant to sections (b)(4), (20), and (21) of the Board's Regulation Y (12 CFR 225.25(b)(4),(20), and (21)). Accordingly, Applicant contends that the proposed activities are operationally and functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant argues that the provision of the proposed activities would be beneficial to the public because: (1) A limited number of companies in the United States provide such services to its present and/or displaced employees; (2) such services are usually provided only to top executive personnel; and (3) the outplacement and career counseling services currently provided are inadequate. Additionally, Applicant asserts that ComeriCOMP could provide the proposed services more cost efficiently than other market providers, and because these services would be provided on a fee for service basis with no guarantees of employment, Applicant claims that the proposed activities are relatively risk free. For these reasons, Applicant believes that providing the proposed career counseling services would result in public benefits, such as greater convenience, increased, competition, and gains in efficiency that would outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

Any comments or requests for hearing must be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 30, 1993. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, March 25, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7407 Filed 3–30–93; 8:45 am]

BILLING CODE 6210–01–F

Compagnie de Suez and Banque Indosuez; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20,1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Compagnie de Suez and Banque Indosuez, both in Paris, France; to engage *de novo* through their subsidiary, Indosuez Carr Futures, Inc., Paris, France, in acting as a futures commission merchant in the provision of execution, clearing and advisory services to nonaffiliated persons with

respect to futures contracts for the Cotation Assistee en Continue 40 Index on the Marche a terme international de France.

Board of Governors of the Federal Reserve System, March 25, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7405 Filed 3–30–93; 8:45 am]

BILLING CODE 6210–01–F

Dennis F. Murphy, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 20, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Dennis F. Murphy, Jr., Bolton, Massachusetts; to acquire an additional 2.5 percent of the voting shares of Community Bancorp, Inc., Hudson, Massachusetts, for a total of 15.67 percent, and thereby indirectly acquire The Hudson National Bank, Hudson, Massachusetts.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Paul M. Hefti Non-Qualifying Trust, Paul M. Hefti and Kay Hefti Coletti, co-trustees, Scottsbluff, Nebraska, to acquire an additional 3.0 percent for a total of 32.77 percent; Paul M. Hefti II, Scottsbluff, Nebraska, to acquire an additional 3.07 percent for a total of 18.17 percent; Kay Hefti Coletti, Laramie, Wyoming, to acquire an additional 1.53 percent for a total of 16.63 percent; and E. Lorraine Hefti, Alliance, Nebraska, to retain 0.03 percent of the voting shares of First State BancShares, Inc., Scottsbluff, Nebraska, and thereby indirectly acquire First State Bank, Scottsbluff, Nebraska.

Board of Governors of the Federal Reserve System, March 25, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7406 Filed 3–30–93; 8:45 am]

BILLING CODE 6210–01–F

Trustmark Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 23, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Trustmark Corporation, Jackson, Mississippi; to acquire an additional 20.25 of the voting shares of UniSouth Banking Corporation, Columbus, Mississippi, for a total of 25.26 percent.

Board of Governors of the Federal Reserve System, March 25, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7404 Filed 3–30–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OIS–020–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during October, November, and December of 1992 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

We also are providing the content of revisions to the Medicare Coverage Issues Manual published between October 1 and December 31, 1992. On August 21, 1989 (54 FR 34555), we published the content of the Manual and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Margaret Cotton, (410) 966–5260 (For Medicare Instruction Information)

Sam DellaVecchia, (410) 966–5395 (For Medicare Coverage Information)

Dusty Kowalewski, (410) 965–3377 (For Medicaid Instruction Information)

Margaret Teeters, (410) 966–4678 (For All Other Information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 35 million Medicare beneficiaries and 31 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid

recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries, and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during this timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice, Medicaid issuances and Medicaid substantive and interpretive regulations published from October 1 through December 31, 1992.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Table IV of this notice contains the text of the revisions to the Coverage Issues Manual published between October 1 and December 31, 1992. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

We issued updates that included the text of changes to the Coverage Issues Manual in the following issues of the **Federal Register**:

- March 20, 1990 (55 FR 10290).
- February 6, 1991 (56 FR 4830).
- July 5, 1991 (56 FR 30752).
- November 22, 1991 (56 FR 58913).
- January 22, 1992 (57 FR 2558).
- March 16, 1992 (57 FR 9127).
- June 12, 1992 (57 FR 24797).
- October 16, 1992 (57 FR 47468).
- January 7, 1993 (58 FR 3028).

The issuance updates found in Table IV of this notice, when added to material from the manual published on August 21, 1989, and the updates listed above constitute a complete manual as of December 31, 1992. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

III. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication. We have divided this current listing into four tables.

Table I identifies previous **Federal Register** documents where interested individuals can get a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

Table IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should

identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the same address indicated above for manual issuances. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 2—Program Administration (HCFA-Pub. 14–2) transmittal entitled "Contractor Performance Evaluation Program—FY 1993," use the Superintendent of Documents No. HE 22.8/7–3, and the HCFA transmittal number 122.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Tables I or II may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, room 688, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Tables I or II may be addressed to Dusty Kowalewski, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, room 233, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 965–3377.

Questions concerning items in Table IV may be addressed to Sam DellaVecchia, Office of Coverage and Eligibility Policy, Health Care Financing Administration, room 445, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5395.

Questions concerning all other information may be addressed to Margaret Teeters, Regulations Staff, Health Care Financing Administration, room 132, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4678.

Table I, Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was previously published on June 9, 1988 at 53 FR 21730 and supplemented on September 22, 1988 at 53 FR 36891 and December 16, 1988 at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989 at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 at 57 FR 47468.

During the quarter covered by this notice, the former Rural Health Clinic Manual has been revised to include instructions applicable to Federally Qualified Health Centers (FQHCs). The new manual is intended to provide guidance to Rural Health Clinics (RHCs) and FQHCs. This manual contains coverage requirements, billing procedures, and related instructions governing performance of RHCs and FQHCs under the Medicare program.

Table II—Medicare and Medicaid Manual Instructions October through December 1992

Trans. No.	Manual/subject/publication number
	Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
390	• Contractor Performance Evaluation Program—FY 1993
	Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1580 ...	• Review of Form HCFA–1450 for Inpatient and Outpatient Bills
	Home Health Agency Denials, Limitation of Liability and Appeals Paragraphs
1581 ...	• Review of Form HCFA–1450 for Inpatient and Outpatient Bills
	Determining Covered/Noncovered Days and Charges
	Processing No-Payment Bills
	Processing Provider Liable Inpatient Bills—Lack of Medical Necessity or Care is Custodial
	OCE Editor
	PRO Preadmission/Preprocedure Review
	Transfers Between Hospitals
	Outliers
	Adjustment Bills
	Additional Payment Amounts for Hospitals With Disproportionate Share of Low Income Patients
	Rural Referral Centers
	Criteria and Payment for Sole Community Hospitals and for Medicare Dependent Hospitals
	Hospital Capital Payments Under PPS
	Provider-Specific File
	Provider Specific Data Record Layout and Description
	Provider-Specific Payment Data
1582 ...	• Reimbursement for Services of Nonparticipating Domestic Hospitals
	Designated Intermediaries
	Exhibits (Model Denial Letters)
1583 ...	• Billing For Durable Medical Equipment and Prosthetic Orthotic/Prosthetic Devices
	Mammography Screening
	National Standard Electronic Remittance Advice
1584 ...	• Provider Access to Limited Eligibility Data
	Eligibility Data Available
	Part A Inquiry Reply Screen Display—HIQAR
	Part A Inquiry Reply Data—HUQAR
1585 ...	• Processing the HCFA–382, ESRD Beneficiary Selection
1586 ...	• Review of Form HCFA–1450 for Inpatient and Outpatient Bills
	Provider-Specific Data Record Layout and Description
1587 ...	• Election Procedures
	Election, Revocation and Change of Hospice

Table II—Medicare and Medicaid Manual Instructions October through December 1992—Continued

Trans. No.	Manual/subject/publication number
	Billing for Covered Services After Hospice Benefits are Exhausted
	Requirements—General
	Covered Services
	Special Coverage Requirements
	Intermediary Manual Part 4—Audit Procedures (HCFA-Pub. 13–4) (Superintendent of Documents No. HE 22.8/6–4)
30	• Summary of Professional Review
	Carriers Manual Part 2—Program Administration (HCFA-Pub. 14–2) (Superintendent of Documents No. HE 22.8/7–3)
122	• Contractor Performance Evaluation Program—FY 1993
	Carriers Manual Part 3—Claims Process (HCFA-Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1440 ...	• Rebundling of CPT Codes
1441 ...	• Payment to Ambulatory Surgical Centers
	Carrier Adjustment of Payment Rates
	Rebundling of CPT–4 Codes
	Wage Index for Determining Ambulatory Surgical Center Facility Payments
1442 ...	• Specimen Collection Fee
	Travel Allowance
	Program Memorandum Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–92–7	• Correction to Program Memorandum A–92–3
A–92–8	• Prospective Payment System and Other Bill Processing Changes
A–92–9	• Change in Hospice Payment Rates
A–92–10.	• Extension of Due Date for Filing Provider Cost Reports on Form HCFA–2552–92
	State Operations Manual Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)
255	• Certification Functions of the State Agency
	Relationship of Survey Date to Date of Initial Medicare Approval
	Meaning of "Providers" and "Suppliers"
	Identification of Potential Providers and Suppliers
	Identifying Eligible Providers and Suppliers
	Suppliers Using Improperly Labeled or Post 1974 Equipment
	Conducting Initial Surveys and Scheduled Resurveys
	Conducting Unscheduled Surveys
	Facility Refuses to Allow Survey
	Reviewing Forms At Beginning of Survey
	Completing the Survey Report
	Certification of Additional Services
	Specific Requirements for Expansion of Services
	Exhibits (CLIA Forms)
	Program Background and Responsibilities
	Identification of Laboratories and Actions Related to Initial Applications and Certification
	Actions Related to Certification
	The Survey Process and Related Activities
	Adverse Actions
	Appeals and Adverse Actions
	Special Procedures for Accredited and CLIA-Exempt Laboratories
	Budget and Administration
	CLIA Related Expenses
	The Budgetary Process
	Financial Accounts and Reporting
	Regional Office Manual Standard and Certification (HCFA-Pub. 23–2) (Superintendent of Documents No. HE 22.8/8)
325	• Services Rendered in Nonparticipating Providers
	Peer Review Organization Manual (HCFA-Pub. 19) (Superintendent of Documents No. HE 8/8–15)
2	• Background
	Policy
	Exceptions
	Private Review
	Training Activities
	Contracting Requirements
3	• Background
	Statutory Requirements for Agreements
	Specifications
4	• Introduction
	Electronic Media Formatting
	File Specifications
	Edit Timeframes
	Output Procedures
	Record Format
	Delivery Date
5	• On-site Review Requirements
6	• Hospital Issuance of Message to Beneficiaries
	Monitoring Procedures
	An Important Message From Medicare
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
644	• Payment Under Prospective Payment System Diagnosis-Related Groups
	Outliers
	Rural Referral Centers
	Criteria and Payment for Sole Community Hospitals and for Medicare Dependent Hospitals
645	• Billing For Durable Medical Equipment and Orthotic/Prosthetic Devices
	Billing For Mammography Screening
646	• Payment for Services Received in Nonparticipating Hospitals
	Designated Carriers
	Christian Science Sanatorium (HCFA-Pub. 32) (Hospital Manual Supplement (HCFA-Pub. 10)) (Superintendent of Documents No. HE 22.8/2–2)
29	• General Admission Procedures
	Identifying Other Primary Payers During the Admission Process
30.	• Claims Processing Timeliness
	Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
257	• Billing For Durable Medical Equipment and Orthotic/Prosthetic Devices
258	• Establishing Entitlement to Medicare for Home Health Services
	Identifying Other Primary Payers When Establishing the Home Health Plan of Treatment
259	• Claims Processing Timeliness
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
316	• Billing For Durable Medical Equipment and Orthotic/Prosthetic Devices
	Billing For Mammography Screening
317	• General Admission Procedures
	Identifying Other Primary Payers During the Admission Process
318	• Claims Processing Timeliness
	Rural Health Clinic and Federally Qualified Health Center Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
1	• New Manual
2	• Health Insurance Card and Other Evidence of Medicare Entitlement
3	• Claims Processing Timeliness
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)
57	• Health Insurance Card and Other Evidence of Medicare Entitlement
58	• Claims Processing Timeliness
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
108	• Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices
109	• Determining How Much to Charge Patient Before Billing Is Submitted
	Identifying Other Primary Payers Prior to Billing
110	• Claims Processing Timeliness
	Coverage Issues Manual (HCFA-Pub. 6) (Superintendent of Documents No. HE 22.8/14)
62	• Vitrectomy
63	• Platelet-Derived Wound-Healing Formula

Table II—Medicare and Medicaid Manual Instructions October through December 1992—Continued

Trans. No.	Manual/subject/publication number
64	• Cochlear Implantation
Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)	
32	• Admission Procedures
33	• Claims Processing Timeliness
34	• Eligibility and Coverage
	Use of Election Periods
	Election, Revocation and Change of Hospice
	Covered Services
	Special Coverage Requirements
Provider Reimbursement Manual Part 1 (HCFA-Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)	
369	• Swing-Bed Reimbursement for Qualifying Small, Rural Hospitals
	Availability of Swing-Bed Reimbursement Method
	Patient Days for Purposes of Swing-Bed Reimbursement
	Definitions
	Payment To Swing-Bed Hospitals Prior to October 1, 1990
	Payment To Spring-Bed Hospitals On or After October 1, 1990
	Application of Lower of Cost or Charges Principle to Services Furnished in Swing-Bed Hospital
	Application of Ceiling on Rate of Hospital Cost Increases
	Swing-Bed Reimbursement Under Prospective Payment System
	Swing-Bed Reimbursement for Small Rural Hospitals With Distinct Part SNF
	Additional Conditions Relating to Swing-Bed Reimbursement for Rural Hospitals With More Than 49 Beds
	Medicare Regional Swing-Bed Rates
370	• Methodology for Determining Per Diem Prospective Payment Rates Effective for Cost Reporting Periods Beginning on or After October 1, 1992, and Before October 1, 1993
Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 15) (HCFA–Pub. 15–IIO) (Superintendent of Documents No. HE 22.8/4)	
4	• Supplemental Worksheet F–2—Computation of Difference Between Total Interim Payments and Net Cost of Covered Services

Table II—Medicare and Medicaid Manual Instructions October through December 1992—Continued

Trans. No.	Manual/subject/publication number
Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 16) (HCFA-Pub. 15–IIP) (Superintendent of Documents No. HE 22.8/4)	
1	• Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report, Form HCFA–2540–92
Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 19) (HCFA-Pub. 15–IIS) (Superintendent of Documents No. HE 22.8/4)	
14	• Supplemental Worksheet F–2–Computation of Difference Between Total Interim Payments and Net Cost of Covered Services
	Supplemental Worksheet F–3–Computation of Return on Equity Capital of Proprietary Providers
15	• Supplemental Worksheet F–2–Computation of Difference Between Total Interim Payments and Net Cost of Covered Services
	Supplemental Worksheet F–3–Computation of Return on Equity Capital of Proprietary Providers
Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 28) (HCFA-Pub. 15–IIAB) (Superintendent of Documents No. HE 22.8/4)	
1	• Hospital and Hospital Health Care Complex Cost Report, Form HCFA–2552–92
Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 31) (HCFA-Pub. 15–IIAE) (Superintendent of Documents No. HE 22.8/4)	
1	• Chain Home Office Cost Statement Form HCFA–287–92
State Medicaid Manual Part 2—State Organization and General Administration (HCFA-Pub. 45–2) (Superintendent of Documents No. HE 22.8/10)	
81	• Federal Financial Participation for Nurse Aide Training and Competency Evaluation Programs
82	• Data the State May Release to Its Agents or Providers
State Medicaid Manual Part 3—Eligibility (HCFA-Pub. 45–3) (Superintendent of Documents No. HE 22.8/10)	
60	• Maintenance of Effort Requirements
	Pay-In Spenddown Option

Table II—Medicare and Medicaid Manual Instructions October through December 1992—Continued

Trans. No.	Manual/subject/publication number
State Medicaid Manual Part 4—Services (HCFA-Pub. 45–4) (Superintendent of Documents No. HE 22.8/10)	
61	• Less than Effective and Identical, Related or Similar Drugs
State Medicaid Manual Part 5—Payment for Services (HCFA-Pub. 45–5) (Superintendent of Documents No. HE 22.8/10)	
21	• Specific Upper Limits for Multiple Source and "Other" Drugs and Upper Limits Requirements
	Addendum (Listing of Multiple Source Drugs)
State Medicaid Manual Part 7—Quality Control (HCFA-Pub. 45–7) (Superintendent of Documents No. HE 22.8/10)	
47	• State Plan Requirements
	Contents of Required State Submissions
	Data Analysis Content
	Introduction
	Analysis of Reported Data
	Table Instructions
State Medicaid Manual Part 11—Medicaid Management Information System (HCFA-Pub. 45–11) (Superintendent of Documents No. HE 22.8/10)	
16	• Safeguards
Regional Office Manual Medicaid (HCFA-Pub. 23–6) (Superintendent of Documents No. HE 22.8/8–4)	
35	• Regional Office Procedures and Guidelines Governing the Approval of State Acquisitions of Medicaid ADP Equipment and Services
Program Memorandum Medicaid State Agencies (HCFA-Pub. 17) (Superintendent of Documents No. HE 22.28)	
92–7 ...	• Title XIX, Social Security Act, Medicaid Eligibility, Coverage and Payment
Medicare/Medicaid Sanction—Reinstatement Report (HCFA-Pub. 69)	
92–10 .	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
92–11 .	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
92–12 .	• Cumulative Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Sanctioned/Reinstated

TABLE III.—REGULATIONS AND NOTICES PUBLISHED OCTOBER THROUGH DECEMBER 1992

Publication date/citation	42 CFR Part	Title
	FINAL RULES	
10/07/92 (57 FR 46093)	435	Medicaid Program; Targeting Information for Income and Eligibility Verification Systems.
10/08/92 (57 FR 46431)	447	Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities.
10/20/92 (57 FR 47779)	412, 466	Medicare Program; Payment to Hospitals for Furnishing Photocopies to Peer Review Organizations.
11/02/92 (57 FR 49397)	456	Medicaid Program; Drug Use Review Program and Electronic Claims Management System for Outpatient Drug Claims.
11/12/92 (57 FR 53572)	483	Medicare and Medicaid Programs; Charges to Residents' Funds in Nursing Homes.
11/17/02 (57 FR 54179)	414	Medicare Program; Payment Change for Home Dialysis.
11/20/92 (57 FR 54705)	441	Medicaid Program; Prohibitions on FFP for Educational and Vocational Training for Institutionalized Individuals.
11/20/92 (57 FR 54710)	442	Medicaid Program; Elimination of Certain Written Documentation Pertaining to Medicaid Long-Term Care Facilities.
11/24/92 (57 FR 55118)	433	Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals.
11/25/92 (57 FR 55896)	400, 405	Medicare Program; Revision of the Medicare Economic Index.
12/02/92 (57 FR 56996)	400, 401, 405	Medicare and Medicaid Programs; Approved Information Collection Requirements and HCFA's Claims Collection Authority.
12/03/92 (57 FR 57109)	414	Medicare Program; Continuous Use of Durable Medical Equipment.
12/07/92 (57 FR 57875)	405, 410, 414	Medicare Program; Payment for Durable Medical Equipment and Orthotic, and Prosthetic Devices.
12/11/92 (57 FR 58716)	406	Medicare Program; Technical Corrections to Hospital Insurance Eligibility and Entitlement Regulations.
	PROPOSED RULES	
10/07/92 (57 FR 46119)	417	Medicare Program; Appeal Rights and Procedures for Beneficiaries Enrolled in Prepaid Health Care Plans.
10/08/92 (57 FR 46362)	431, 440, 442, 488, 489, 498	Medicare and Medicaid Programs; Revised Effective Date of Medicare/Medicaid Provider Agreement and Supplier Participation.
11/27/92 (57 FR 56294)	435	Medicaid Program; Extension of Medicaid When Support Collection Results in Termination of Eligibility.
12/03/92 (57 FR 57125)	421	Medicare Program; Revisions to Criteria and Standards for Evaluating Intermediaries and Carriers.
12/04/92 (57 FR 57403)	435	Medicaid Program; Computer Matching and Privacy Protection for Medicaid Eligibility.
12/14/92 (57 FR 59024)	417, 434	Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations.
12/28/92 (57 FR 61614)	456, 483	Medicare and Medicaid Programs; Resident Assessment in Long-Term Care Facilities.

NOTICES

Publication date/citation	Title
10/01/92 (57 FR 45544)	Medicare Program; Update of Ambulatory Surgical Center Payment Rates.
10/07/92 (57 FR 46177)	Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs.
10/09/92 (57 FR 46509)	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates (Correction to the Final Rule Published 09/01/92 (57 FR 39746)).
10/16/92 (57 FR 47468)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions.
10/19/92 (57 FR 47587)	Medicare and Medicaid Programs; Use of Standardized Federal Claims Processing Forms and Procedures.
10/21/92 (57 FR 48033)	Medicare Program; Revised Procedures for Paying Claims from Providers of Services.
11/20/92 (57 FR 54798)	Medicare Program; Withdrawal of Coverage of Thermography.
11/20/92 (57 FR 54894)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions.
11/24/92 (57 FR 55261)	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Fiscal Year 1993.
11/25/92 (57 FR 55914)	Medicare Program; Fee Schedule for Physicians' Services for Calendar Year 1993.
11/25/92 (57 FR 56168)	Medicare Program; Physician Performance Standard Rates of Increase for Federal Fiscal Year 1993 and Physician Fee Schedule Update for Calendar Year 1993.
11/27/92 (57 FR 56345)	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1993.
12/01/92 (57 FR 56918)	Medicare Program; Part A Premium for 1993 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.
12/01/92 (57 FR 56919)	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1993 (Correction Published 12/21/92 (57 FR 60568)).
12/15/92 (57 FR 59379)	Medicare Program; Fee Schedule for Physicians' Services for Calendar Year 1992 (Correction to the Final Rule Published 11/25/91 (56 FR 59502)).

TABLE IV.—MEDICARE COVERAGE ISSUES MANUAL

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 62; section 35–16, Vitrectomy.

CLARIFICATION—EFFECTIVE DATE: Not Applicable.

Section 35–16, Vitrectomy, is revised to remove payment discussion from the Coverage Issues Manual. Payment instructions are located in chapter 15 of the Medicare Carriers Manual (MCM) for physician vitrectomy services, in § 5243 of the MCM for ambulatory surgical center facility vitrectomy services, and § 4630 of the MCM for payment bundling provisions regarding vitrectomy Physicians' Current Procedural Terminology codes.

35–16 VITRECTOMY

Vitrectomy may be considered reasonable and necessary for the following conditions: vitreous loss incident to cataract surgery, vitreous opacities due to vitreous hemorrhage or other causes, retinal detachments secondary to vitreous strands, proliferative retinopathy and vitreous retraction. See chapter 15 of the Medicare Carriers Manual for how to determine payment for physician vitrectomy services and § 5243 of the Medicare Carriers Manual for how to determine payment for ASC facility vitrectomy services. Also, see § 4630 of the Medicare Carriers Manual to identify when, for Medicare payment purposes, certain vitrectomy codes are included in other codes or when codes for other services include vitrectomy codes. The CPT codes for vitrectomy services are 67005, 67010, 67036, 67038, 67039, and 67040.

Transmittal No. 63; section 45–26, Platelet-Derived Wound-Healing Formula.

NEW IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: Services performed on or after 12/28/92.

Section 45–26, Platelet-Derived Wound-Healing Formula.—This section has been added to reflect noncoverage of a platelet-derived formula containing growth factors intended to treat nonhealing wounds (e.g., Procuren). The Table of Contents of the Medicare Coverage Issues Manual, Supplies—Drugs, has been revised to reflect this noncoverage.

Section 45–26, Platelet-Derived Wound-Healing Formula.—Not Covered

A platelet-derived formula containing growth factors intended to treat nonhealing wounds (e.g., Procuren) is provided through hospital-based outpatient facilities as part of comprehensive wound-care programs designed to treat patients with chronic nonhealing wounds. It is usually applied at first in the presence of a physician, with the patient continuing applications at home. There is a lack of sufficient published data to determine the safety and efficacy of the platelet-derived wound healing formula (based on a technology review by the Public Health Service). Therefore, it is not covered under Medicare because it is not considered reasonable and necessary within the meaning of § 1862(a)(1) of the law.

Transmittal No. 64; section 65–14, Cochlear Implantation.

CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: Services performed on or after 12/31/92.

Section 65–14, Cochlear Implantation.—This section has been revised to allow coverage of cochlear implants for children ages 2 through 17 who have a bilateral profound sensorineural hearing impairment and demonstrate little or no benefit from a hearing aid. The restriction to services performed on and after 10/2/86 has been removed. Use HCPCS code L8614.

65–14 COCHLEAR IMPLANTATION

A cochlear implant device is an electronic instrument, part of which is implanted surgically to stimulate auditory nerve fibers, and part of which is worn or carried by the individual to capture and amplify sound. Cochlear implant devices are available in single channel and multi-channel models. The purpose of implanting the device is to provide an awareness and identification of sounds and to facilitate communication for persons who are profoundly hearing impaired.

Medicare coverage is provided only for those patients who meet all of the following selection guidelines.

A. Adults.—

- Diagnosis of total sensorineural deafness that cannot be mitigated by use of a hearing aid in patients whose auditory cranial nerves are stimulable;
- Cognitive ability to use auditory clues and a willingness to undergo an extended program of rehabilitation;
- Post-lingual deafness;
- Adulthood (at least 18 years of age);
- Freedom from middle ear infection, an accessible cochlear lumen that is structurally suited to implantation, and freedom from lesions in the auditory nerve and acoustic areas of the central nervous system; and
- No contraindications to surgery.

B. Children (Effective for services performed on and after 12/31/92).—

The FDA has approved marketing of a multi-channel cochlear implant device for use in prelingually and postlingually deafened children 2 through 17 years of age. (FDA approved labeling limits use of the device in adults to those who are postlingually deafened.) Medicare coverage is provided for such a device for children who meet the following patient selection guidelines:

- No contraindications to the implant, including those described in the product's FDA-approved package insert;
- Diagnosis of bilateral profound sensorineural deafness with little or no benefit from a hearing (or vibrotactile) aid, as demonstrated by the inability to improve on age appropriate close-set word identification tasks;
- Freedom from middle ear infection, an accessible cochlear lumen that is structurally suited to implantation, and freedom from lesions in the auditory nerve and acoustic areas of the central nervous system; and
- The device must be used in accordance with the FDA approved labeling.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: March 19, 1993

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–7410 Filed 3–30–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–43–7122 08 1016; CACA 30372]

Realty Action; Kern and San Bernardino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public and Private Lands in Kern and San Bernardino Counties, California.

SUMMARY: The following described public lands in Kern County were determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, by the June 6, 1991 **Federal Register** publication of the exchange base segregation notice for

the Western Mojave Land Tenure Adjustment (LTA) Project (56 FR 109; pp. 26137–26139). This determination applies to all public lands within the section listed below.

San Bernardino Meridian, California

T. 9 N., R.12 W.
Sec. 8: N½NW¼NE¼, SW¼NE¼, E½NE¼ and S½.
containing 460.00 acres, more or less, in Kern County.

In exchange for these lands, Pacific Gateway Homes L.P., a California limited partnership, has offered the following non-Federal lands:

Mount Diablo Meridian, California

T. 31 S., R 45 E.
Sec. 2: lot 1;
Sec. 17: S½;
T. 32 S., R 45 E.
Sec. 3: All;
Sec. 5: All.
containing 1776.39 acres, more or less, in San Bernardino County.

The purpose of this exchange is to acquire and consolidate public land ownership and achieve the multi-agency objectives of the Western Mojave LTA Project. Disposal of the isolated selected public land tract is consistent with the Western Mojave Land Tenure Adjustment Project and the California Desert Conservation Area Plan (December 1980), as amended.

The public lands to be conveyed from the United States will be subject to the following terms and conditions:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for public highway purposes granted to the State of California Division of Highways, its successors or assigns, by right-of-way, Serial No. CARI 05925, pursuant to the Act of August 27, 1958 (23 U.S.C. 317) as to the SE¼SE¼SE¼ of section 8, (U.S. Interstate Highway 14).

All minerals will be reserved by the United States pending final review.

B. Third Party Rights. The public lands will be conveyed subject to valid existing rights, including the following:

1. Those rights for a public frontage road (Kern County System road No. 2708) granted to Kern County, its successors or assigns, by RS 2477 legislation, Act of July 26, 1866 (formerly 43 U.S.C. 932), as to E½E½E½ of section 8.

2. Those rights for construction, operation and maintenance of a road and sewer pipeline, granted to Griffin/Benezra Rosa, its successors or assigns, by right-of-way No. CACA 27149 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761), in the N½N½N½N½N½NE¼ of section 8.

3. Such rights as Ray Eyherabide has to graze the land until March 15, 1995 in accordance with Section 15, Taylor Grazing Act, Grazing Authorization No. 046552.

4. Those rights for construction, operation and maintenance of a material site, granted to the State of California, Department of Public Works, its successors or assigns, by right-of-way No. CALA 053096 pursuant to the Act of November 9, 1921, in the E½NE¼ of section 8.

As provided in 43 CFR 2201.1(b), the publication of this exchange in the **Federal Register** shall continue to segregate all of the public lands described herein from all other forms of appropriation under the public land laws, including the mineral laws but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The value of the lands to be exchanged are in approximate balance. Equalization of value will be achieved by acreage adjustment, a payment to the United States by the proponent in an amount not to exceed 25 percent of the value of the public lands to be conveyed, a waiver by the proponent of any excess value owed by the United States, or by a wavier under the amendment to subsection 206(b) Federal Land Policy and Management Act of 1976 provided by Section 9 Federal Land Exchange Facilitation Act of 1988.

Additional information, is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619–256–3591), and the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address.

Dated: March 23, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–7350 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–40–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., March 22, 1993.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and mineral survey nos. 2197 and 2677, and the subdivision of section 33, and the survey of Lots 12 and 14 in section 33, Township 29 North, Range 8 East, Boise Meridian, Idaho, Group No. 842, Idaho, was accepted March 3, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: March 22, 1993.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–7348 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–96–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on March 22, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections in Township 8 South, Range 21 East, Boise Meridian, Idaho, Group No. 844, Idaho, was accepted March 3, 1993.

This survey was executed to meet certain administrative needs to the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: March 22, 1993.

Gary T. Oviatt,

Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 93–7349 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–96–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been

submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0008) Washington, DC 20503, telephone 202–395–7340.

Title: Bird Banding File Reference Card

OMB Approval Number: 1018–0008

Abstract: The Bird Banding File Reference Card is used to trace banded birds for the study of migration factors and other population characteristics. A report is filed upon discovery of a banded bird, and provides the only method of obtaining complete and accurate records of such birds. Banding data is used by Federal and State conservation agencies, university researchers, bird observatories, environmental consulting firms, and others for a variety of purposes. Banding data is used to promulgate annual hunting regulations, aid the recovery of endangered species, assess the effect of environmental contaminants on birds, and to answer basic biological questions. In short, banding provides information otherwise unobtainable on bird biology, behavior, migration and survival.

Service Form Number: 3–1831

Frequency: On occasion

Description of Respondents: Individuals and households

Estimated Completion Time: Less than 3 minutes per response

Annual Responses: 19,000

Annual Burden Hours: 950

Service Clearance Officer: James E. Pinkerton, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: March 22, 1993.

William F. Hartwig,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 93–7337 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0023), Washington, DC 20503, Telephone 202–395–7340.

Title: Sandhill Crane Harvest Questionnaires

OMB Approval Number: 1018–0023

Abstract: The hunting of lesser sandhill cranes is authorized in eight mid-western states. The survey is an annual effort by the U.S. Fish and Wildlife Service to obtain an annual estimate of the magnitude, geographical and temporal distribution of the sandhill crane harvest. The resulting assessment of the population status serves to guide both the Service and State wildlife agencies in the annual promulgation of regulations for hunting sandhill cranes. Such data is also needed to preclude over-harvest and for effective management of the species.

Service Form Number(s): 3–530 and 3–530A (Follow-up questionnaire)

Frequency: Annually

Description of Respondents: Individuals and households

Estimated Completion Time: The reporting burden is estimated to average .083 hours (5 minutes) per response, including time for reviewing instructions.

Annual Responses: 8,000

Annual Burden Hours: 664

Service Clearance Officer: James E. Pinkerton, 703–358–1943

Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: January 15, 1993.

Thomas Dwyer,

Acting Assistant Director; Refuges and Wildlife.

[FR Doc. 93–7346 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Availability of Plan of Operations and Environmental Assessment for Drilling and Operation of the State CR 5–3 "B" Gas Well; Anadarko Petroleum Corp.; Lake Meredith National Recreation Area, Moore County, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Anadarko Petroleum Corporation a Plan of Operations for the Drilling and Operation of the State CR 5–3 "B" Gas Well within Lake Meredith National Recreation Area, Moore County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico.

Dated: March 24, 1993.

John Cook,

Regional Director, Southwest Region.

[FR Doc. 93–7383 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 20, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 15, 1993.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARIZONA

Coconino County

Museum of Northern Arizona Exhibition Building, 3001 N. Fort Valley Rd., Flagstaff, 93000305

Pima County

San Pedro Chapel, 5230 E. Ft. Lowell Rd., Tucson, 93000306

CALIFORNIA

Orange County

Christ College Site, Address Restricted, Irvine vicinity, 93000300

CONNECTICUT

New London County

Wheeler Block, 40 Norwich Ave., Colchester, 93000312

GEORGIA

Bibb County

Fort Hill Historic District, Roughly bounded by Emery Hwy., Second St. Ext., Mitchell and Morrow Sts. and Schaeffer Pl., Macon, 93000313

North Highlands Historic District, Roughly bounded by Nottingham Dr., Boulevard and Clinton Rd., Macon, 93000297

LOUISIANA

Jefferson Davis Parish

Angelus, 1114 N. Cutting, Jennings, 93000296

Jaenke, F. R., House, 114 Davies Ave., Jennings, 93000301

Livingston Parish

Denham Springs City Hall, 115 Mattie St., Denham Springs, 93000304

MASSACHUSETTS

Plymouth County

Thumb, Tom, House, 351 Plymouth St., Middleborough, 93000298

MISSISSIPPI

Forrest County

North Main Street Historic District, Roughly bounded by Jackson St., Gordon's Cr., South, North, Providence and Red Sts. and the Illinois Central RR tracks, Hattiesburg, 93000307

Yazoo County

Deasonville Archeological Site, Address Restricted, Deasonville vicinity, 93000299

MONTANA

Gallatin County

Buttelman Ranch (Willow Creek Area MPS), Address Restricted, Willow Creek vicinity, 93000309

Green Ranch (Willow Creek Area MPS), Address Restricted, Willow Creek vicinity, 93000310

Lower Willow Creek Rural Historic Landscape District (Willow Creek Area MPS), Address Restricted, Willow Creek vicinity, 93000311

Peterson Place (Willow Creek Area MPS), Address Restricted, Willow Creek vicinity, 93000308

NORTH CAROLINA

Guilford County

Sternberger, Sigmund, House (Greensboro MPS), 712 Summit Ave., Greensboro, 93000302

OHIO

Delaware County

Detwiller, John, Tavern and Farmstead, 2877 N. OH 257, Radnor, 93000294

Lewis, Samuel, Farmhouse, 5979 Radnor Rd., Radnor vicinity, 93000295

TENNESSEE

Blount County

Hitch, John, House (Blount County MPS), Lee Lambert Rd., 0.5 mi. S of Old Walland Hwy., Maryville vicinity, 89000924

WEST VIRGINIA

Mingo County

Matewan Historic District, Roughly bounded by McCoy Alley, Railroad Alley, Mate St. underpass and Warm Hollow to the head of the hollow, Matewan. 93000303.

[FR Doc. 93–7382 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–339]

Certain Commercial Food Portioners, Components Thereof, Including Software, and Process Thereof; Commission Determination to Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the initial determination (ID) (Order No. 38) issued in the above-captioned investigation by the presiding administrative law judge (ALJ) on February 19, 1993. Commission review was prompted by concerns about paragraph two of the confidential settlement agreement. The Commission will send a letter to the parties requesting further information.

ADDRESSES: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 22, 1992, based on a complaint filed by Design Systems, Inc. (DSI) of Redmond, Washington. 57 FR 32561 (July 22, 1992). DSI alleged violations of section 337 in connection with the importation and sale of certain commercial food portioners covered by U.S. Letters Patent 4,557,019.

On February 1, 1993, complainant Design Systems, Inc., and the remaining respondents to the investigation—Lumetech, Ltd., Koch Supplies Inc., and Carl Jorgensen Co.—filed a joint motion to terminate the investigation on the basis of a settlement agreement. On February 11, 1993, the Commission investigative attorney filed a response in support of the joint motion.

On February 19, 1993, the ALJ issued an ID granting the joint motion to terminate the investigation based on the settlement agreement. No petitions for review of the ID or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.55–.56 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.55–.56).

Issued: March 24, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–7417 Filed 3–30–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 25, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tanabe Seiyaku Co., Ltd., 2–10 Dosho-machi 3–Chome, Chuo-ku, Osaka, Japan, and Marion Merrell Dow, Inc., 9300 Ward Parkway, Kansas City, Missouri 64114. An amended complaint was filed on March 23, 1993. The complaint, as amended, alleges violations of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain diltiazem hydrochloride and diltiazem preparations alleged to be manufactured abroad by a method covered by claim 1 of U.S. Letters Patent 4,438,035, and that there exists an industry in the

United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on March 25, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain diltiazem hydrochloride and diltiazem preparations made abroad by a process allegedly covered by claim 1 of U.S. Letters Patent 4,438,035; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Tanabe Seiyaku Co., Ltd., 2–10 Dosho-machi 3-Chome, Chuo-ku, Osaka, 541 Japan

Marion Merrell Dow, Inc., 9300 Ward Parkway, Kansas City, Missouri 64114

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Profarmaco Nobel SRL, Via Cucchiari 17, 20155 Milan, Italy

Abic Ltd., Industrial Zone 5, Hayozma Street, P.O. Box 2077, Kiryat Nordau, Netanya, Israel 52120

Orion Corporation Fermion, Orionintie 1, SF–02200 Espoo, Finland

Mylan Pharmaceuticals, Inc., 781 West Chestnut Ridge Road, Morgantown, West Virginia 26505

Mylan Laboratories, Inc., 1030 Century Building, Pittsburgh, Pennsylvania 15222

Copley Pharmaceuticals, Inc., 25 John Road, Canton, Massachusetts 02021

Interchem Corporation, Route 120 North, Paramus, New Jersey 07652

Gyma Laboratories of America, Inc., 65 Commercial Avenue, Garden City, New York 11530

Rhone-Poulenc Rorer, Inc., 500 Arcola Road, Collegeville, Pennsylvania 19426

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with sections 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 26, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–7419 Filed 3–30–93; 8:45 am]

BILLING CODE 7020–02–M

Investigations Nos. 731–TA–566 and 569 (Final); Ferrosilicon From Kazakhstan and Ukraine

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Kazakhstan and Ukraine of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the Act, that critical circumstances do not exist with respect to ferrosilicon imports from Kazakhstan and Ukraine; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted these investigations effective December 22, 1992, following preliminary determinations by the Department of Commerce that imports of ferrosilicon from Kazakhstan and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 29, 1992 (57 FR 61919). The hearing was held in Washington, DC, on January 22, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 23, 1993. The views of the Commission are contained in USITC Publication 2616 (March 1993) entitled "Ferrosilicon

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

from Kazakhstan and Ukraine: Determinations of the Commission in Investigations Nos. 731–TA–566 and 569 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: March 24, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–7416 Filed 3–30–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket Nos. 28905 (Sub-No. 22); 29430 (Sub-No. 20)]

CSX Corp., Control, Chessie System, Inc. & Seaboard Coast Line Industries, Inc.; Norfolk Southern Corp. Control, Norfolk & Western Railway Co., and Southern Railway Co. (Arbitration Review)

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments; extension of comment due date.

SUMMARY: By decision served December 16, 1992 (57 FR 60004, December 17, 1992), the Commission granted the Brotherhood of Railway Carmen (Carmen) a 60-day extension of the comment due date. Replies are currently due on April 2, 1993. By motion filed March 23, 1993, Carmen requests an extension to May 3, 1993 to file reply comments. Carmen states additional time is needed to address the important issues raised in the Commission's request for comments. Carmen also states that such an extension will not unreasonably delay the resolution of this matter. The request is reasonable and will be granted.

DATES: Replies are due on May 3, 1993.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 28905 (Sub-No. 22) and 29430 (Sub-No. 20) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Finance Docket Nos. 28905 (Sub-No. 22); 29430 (Sub-No. 20).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: March 25, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7413 Filed 3–30–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Charter Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), and 41 CFR 101–6.1015, the Attorney General has determined that the reestablishment of the Uniform Crime Reporting (UCR) Data Providers Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the Federal Bureau of Investigation (FBI) by law, and hereby gives notice of reestablishment.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational procedures of the UCR Program as they relate to local and state UCR systems that provide UCR crime statistics and data.

The Board consists of twenty representatives from agencies within the United States that provide crime data. Candidates for Board membership are nominated by the International Association of Chiefs of Police (IACP), by the National Sheriffs' Association (NSA), and by the National Academy Associates (NAA). Specifically, two candidates are elected by the NAA to represent that organization. One candidate is an elected sheriff and the other is a chief of police. Five candidates will be chosen by the NSA. At least one of the five NSA candidates must be a member of the NSA UCR Committee; the remaining four candidates must represent the four geographical regions of the country. There are nine candidates from the IACP. One candidate is to represent the IACP UCR Records Committee. The remaining eight candidates are to represent the four geographical regions, with two being selected from each region. The IACP and the NSA are directed, within these limitations, to nominate candidates for Board membership representing jurisdictions of varying population sizes (over 200,000; 100–200,000; 50–100,000; less than 50,000). Additionally, the Director of the FBI will nominate four members to the Board. All candidates will be active law enforcement executives and their agencies must be contributors to the nation's UCR Program. All candidates for membership are subject to the approval of the Attorney General.

Dated: March 24, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–7358 Filed 3–30–93; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,092]

Cyprus Thompson Creek Mining Co.; Clayton, ID; Affirmative Determination Regarding Application for Reconsideration

On March 8, 1993, counsel for the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Workers Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on January 27, 1993 and published in the **Federal Register** on March 11, 1993, (58 FR 8063).

Counsel claims, among other things, that the Cyprus workers were certified during 1987 under similar conditions and to deny them now would be arbitrary and capricious decision making.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23d day of March 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 93–7429 Filed 3–30–93; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA-W-28,261; TA-W-28,263]

Phillips Chemical Company, Houston, TX; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This corrects the notice on petitions TA-W-28,261 and TA-W-28,263 which was published in the **Federal Register** on February 11, 1993 (58 FR 8064) in FR Document 93-3273. Location errors appear on page 8064 in the 2nd column, 2nd line and 4th line of the Appendix Table under TA-W-28,261 and TA-W-28,263.

Both locations lines should read "Houston, Texas" instead of "Bartlesville, OK" (TA-W-28,261) and "Pasadena, CA" (TA-W-28,263).

Signed at Washington, DC, this 24th day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-7430 Filed 3-30-93; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act (JTPA) Modifications to the Governor's Coordination and Special Services Plans and Statewide Job Training Plans

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration has issued Training and Employment Guidance Letter (TEGL) No. 4-92, dated February 5, 1993. TEGL No. 4-92 provides guidance to States regarding modifications to the Program Year 1993 Governor's Coordination and Special Services Plans and the Statewide Job Training Plans resulting from the enactment of the Job Training Reform Amendments of 1992. TEGL No. 4-92 is reprinted below for public information.

Dated: March 24, 1993.

Dolores Battle,

Administrator, Office of Job Training Programs.

Training and Employment Guidance Letter No. 4-92

From: Carolyn M. Golding, Acting Assistant Secretary of Labor.

Subject: Job Training Partnership Act (JTPA) Amendments Modifications to the Governor's Coordination and Special Services Plans.

1. Purpose. To transmit planning guidance to States regarding modifications to the Governor's Coordination and Special Services Plans (GCSSP) and the Statewide Service Delivery Area Job Training Plans resulting from the enactment of the Job Training Amendments of 1992.

2. Reference. Job Training Amendments of 1992.

3. Background. Section 121(a)(2) of the JTPA provides that "Any State seeking financial assistance under this Act shall submit a GCSSP for two program years to the Secretary describing the use of all resources provided to the State and its service delivery areas under this Act * * *."

Section 121(b)(7) requires that a modification to the GCSSP be submitted by the Governor to the Secretary if major changes occur in labor market conditions, funding, or other factors during the period covered by the plan. Since the States' submission in May 1992 of the GCSSP's for Program Years 1992 and 1993, the JTPA Amendments of 1992 have been enacted, requiring major changes to Title II programs for Program Year 1993.

Section 104(c) states that "If changes in labor market conditions, funding, or other factors require substantial deviation from an approved job training plan, the private industry council and the appropriate chief elected official * * * shall submit a modification of such plan * * *."

RESCISSIONS

EXPIRATION DATE: Continuing

Accordingly, all Governors are expected to review the following sections of the Amendments and interim final regulations and, where appropriate, modify the State's GCSSP for PY 1993. Development of modifications shall proceed on the basis of the statutory language and interim final regulations. In addition, all Governors of single State service delivery areas (SDA's) must modify the State's job training plan.

4. JTPA Amendments of 1992. Modifications to the State's current GCSSP, and, as appropriate, the Statewide Service Delivery Area Job Training Plan, are necessary as a result of the following sections of the 1992 Amendments:

a. Private Industry Council

Section 627.475 of the JTPA regulations provide that the Governor shall establish general standards for Private Industry Council (PIC) oversight responsibilities. The required PIC standards shall be included in the GCSSP. (20 CFR 627.475)

b. Governor's Coordination and Special Services Plans

Section 121(b)(2). The GCSSP shall describe the measures taken by the State to ensure coordination and avoid duplication between agencies administering the Job Opportunities and Basic Skills (JOBS) program and programs under Title II in the planning and delivery of services. The plan shall describe the procedures developed by the State to ensure that the State JOBS plan is consistent with the coordination criteria specified in this plan; and shall identify the procedures developed to provide for the review of the JOBS plan by the State Job Training Coordinating Council (SJTCC).

Section 121(b)(3). The Plan shall describe the projected use of resources, including oversight of program performance, program administration, and program financial management, capacity building, priorities and criteria for State incentive grants, and performance goals for State-supported programs. The description of capacity building shall include the Governor's plans for technical assistance to SDA's and service providers, interstate technical assistance and training arrangements, other coordinated technical assistance arrangements undertaken pursuant to the direction of the Secretary, and as applicable, research and demonstration projects.

c. State Education Coordination and Grants

Section 123 requires the Governor to allocate 8 percent of the State's funds to any State education agency in accordance with a jointly agreed upon plan. Pursuant to section 123(c), the Governor shall include in the GCSSP a description of the use of State's 8 percent funds in conformance with section 123 of the Act and 20 CFR 628.205 and 628.315 of the regulations.

d. State Human Resource Investment Council

Section 701 of the JTPA, as amended, authorizes the establishment of a State Human Resource Investment Council (HRIC) to advise the Governor on coordination of Federal human resource programs within the State. The HRIC may replace existing State councils dealing with Federal human resource programs.

The option for the Governor to designate the HRIC to carry out the responsibilities of the SJTCC, in lieu of establishing a SJTCC, is authorized at section 122(d)(1) of JTPA, as amended. (20 CFR 628.215)

e. Services for Older Workers

Section 202(c)(1)(D) of JTPA, as amended, specifies a 5 percent set-aside to support Services to Older Individuals. Plans for the use of such funds for PY 93 shall be developed in accordance with section 204(d) of JTPA, as amended, and 20 CFR 628.320.

f. Linkages

Section 205 of JTPA, as amended, requires SDA's to establish appropriate linkages with federally authorized programs including: The Adult Education Act; the Carl D. Perkins Vocational and Applied Technology Education Act; the Rehabilitation Act of 1973; the Wagner-Peyser Act; JOBS; the Food Stamp Act; the National Apprenticeship Act; the U.S. Housing Act; the National Literacy Act of 1991; Head Start; title V of the Older Americans Act, and other provisions of JTPA.

Additionally, SDA's are required to establish other appropriate linkages with other organizations and agencies, such as State and local educational agencies, local service agencies, public housing agencies, community organizations, business and labor groups, volunteer groups working with disadvantaged adults, and other training, education, employment, economic development and social service programs. (Section 205 and 20 CFR 627.200).

5. Nontraditional Employment for Women.

The Nontraditional Employment for Women (NEW) Act requires SDAs to include goals in their PY 92 and 93 plans. Such goals have been included in most of the GCSSPs submitted by Governors for PY 92–93. While the Amendments do not specifically require changes to the NEW goals, the general changes in program design and targeting of services may result in changes to the NEW goals included in the GCSSP for PY 93. Furthermore, Governor's staffs may find that the goals initially set warrant refinement, given the relatively short period provided for the initial goal setting. Accordingly, Governors should consider refinement of their NEW goals in the development and submission of this modification.

6. Format

Given the wide variety of approaches taken by the States in constructing the GCSSP and the Job Training Plan, the Department believes that it would be more expeditious if a common outline was followed. Therefore, we are requesting that these modifications adhere to the attached outlines.

7. Submittal

Modifications to the PY 1992/1993 GCSSP's and the Statewide Service Delivery Area Job Training Plans must be submitted for receipt by the Administrator, Office of Job Training Programs, by May 15, 1993. Also, a copy should be sent to the appropriate ETA Regional Office.

8. Burden Hours Estimates

The National Office estimates that the burden estimate of 40 hours includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

9. Inquiries

Inquiries should be directed to James Wiggins or Barbara DeVeaux at 202–219–7533.

10. Attachments

Attachment I

Modification to GCSSP

I. Identifying Information

A. The name and address of the grantee.

B. Date of submission of the modification and the number of the modification (I, II, III, etc).

C. Time period covered.

D. The specific changes to be made in the GCSSP and the reason(s) for the modification. (Describe the section of the plan where this information is included.)

II. Program Information

A. Goals and Objectives

B. Coordination

1. Describe the measures taken by the State to ensure coordination and lack of duplication with the Job Opportunities and Basic Skills (JOBS) training program. (Section 121 (b)(2) and 20 CFR 628.205)

III. Program Activities

B. Projected Use of Resources

1. Describe the State system for the State and sub-State allocation of JTPA funds including the following: Title II–A, II–B, and II–C; education coordination and grants (8 percent); administrative, management, and auditing (5 percent); incentive grants, capacity building and technical assistance (5 percent) and services for older individuals (5 percent). (Section 121(b)(3)).

2. Describe the State's administrative system to assure oversight of the programs operated in the SDA's as well as those State-supported programs operated throughout the State. The discussion should include a description of the role of the SJTCC or HRIC in program operations and oversight. Specify the role of the SJTCC in oversight of Title II–A, II–B, II–C, 8 percent State Education Coordination and Grants, programs for older individuals, and incentive, capacity building and technical assistance programs. (Section 121(b)(3)).

3. Describe the State's administrative activities, and procurement and financial management policies, including auditing and oversight to be conducted using the funds allocated to the State for administrative, financial management and auditing activities. (Section 121(b)(3)).

4. Describe the training activities to be funded with Title II–A, II–B, and II–C funds. (Section 121(b)(3)).

5. Describe the types of training and participant support activities to be funded with services for older individuals funds. (Section 204(d) and 20 CFR 20 628.320)

(a) Describe the State's procedures for accomplishing consultation with the PIC when providing services to older individuals. (Section 204(d) and 20 CFR 628.320)

(b) Describe the State's policy for providing services to individuals with additional barriers to employment. List the SDA's and additional barriers approved by the Governor. (Section 204(d)(5)(B) and 20 CFR 628.320)

6. Describe the projected use of State Education Coordination and Grants (8 percent) funds. (Section 123(c)).

(a) Identify the State education agency (ies) responsible for education and training that will be the recipient(s) of these funds. (Section 123 and 20 CFR 628.315).

(b) Describe the projects to be funded. (Section 123(a)(2) and 20 CFR 628.315(c)(2)).

(c) Describe the anticipated agreements and the agency (ies), administrative entities and SDA's with whom the agreements will be made. (Section 123 (b) and 20 CFR 628.315(b)).

(d) Describe all of the information specified at section 123 (c). (Section 123 and 20 CFR 628.315).

(e) Describe all the State match for the use of these funds. (Section 123(a) and 20 CFR 628.315(e)).

7. (a) Describe how the State has involved SDAs in planning the use of capacity building and technical assistance funds. (20 CFR 628.305).

(b) Describe any requirements the State may have developed for the inclusion of a capacity building and technical assistance strategy as part of the planning guidance for the preparation of SDA local job training plans. (20 CFR 628.420).

(c) Describe how capacity building investments will enhance staff capabilities at the State and local levels, including service providers.

(d) Describe the use of resources that will provide technical assistance to SDAs failing to meet performance standards. (Section 121(b)(3)).

(i) Specify the percentage of the "five percent" funds available under Section 202(c)(1)(B) that will be used for capacity building and technical assistance.

(ii) Describe the formula, weighing schemes, and standards for measuring degree of performance to be used in distributing the balance of the funds for incentive grants to SDAs. (20 CFR 629.325).

8. If the State plans to participate in the incentive bonus program under title V (Jobs for Employable Dependent Individuals (JEDI)), describe how the State will encourage successful implementation of: (a) Training

activities of eligible individuals whose placement is the basis for the payment to the State of the incentive bonus; and (b) the training services, outreach activities, and pre-employment supportive services provided furnished to these individuals. (Title V of JTPA).

IV. Signature

The modification shall contain the Governor's signature or the signature and title of his/her designee. The name of the signer shall be typed below the signature.

V. Plan Submission

States shall submit three copies of any necessary modifications, each with an original signature of the Governor or of a designee to: Dolores Battle, Administrator, Office of Job Training Programs, Department of Labor/Employment & Training Administration, 200 Constitution Avenue, NW., room N4459, Washington, DC 20210.

Also, a copy of the modification must be sent to the appropriate ETA Regional Office.

Attachment II

Modification to Statewide Service Delivery Area Job Training Plan

The Job Training Plan Modification shall contain:

I. Identifying Information

(A) Identification and address of grant recipient.

(B) Identification and address of entity or entities which will administer the program (see section 104(b)(1) of JTPA, if different from the grant recipient).

(C) Date of submission.

(D) Area covered by SDA (i.e., Entire State of _____).

(E) Time period covered by the Plan.

II. Program Information

(A) Specific descriptions of each of the required elements found in sections 104(b)(3) through 104(b)(13) of the Act. (20 CFR 628.420(B)(9))

(B) A statement assuring that the State will publish its plan and make it available for review and comment, as specified in section 105(a) of the Act.

(C) A statement assuring that the State will comply with the cost limitations contained in section 108 of the Act. (20 CFR 627.445).

III. Signature

An original signature of the Governor or authorized designee shall be affixed to each of the three copies of the Statewide Plan submitted. The name of the signer (and the signer's title, if a designee) shall be typed below the signature.

[FR Doc. 93-7431 Filed 3-30-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: April 12, 1993—8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 1800 "G" Street, rm 1128, Washington, DC 20550

Type of Meeting: Closed

Contact Person: Dr. F. Stan Settles, Program Director, Design & Manufacturing Systems, rm 1128, National Science Foundation, 1800 "G" St. NW., Washington, DC 20550. Telephone: (202) 357-5167

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Faculty Internships Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty arranging a convenient meeting time.

Dated: March 26, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-7384 Filed 3-30-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 8, 1993, through March 19, 1993. The last biweekly notice was published on March 25, 1993.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal

workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 30, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 28, 1992

Description of amendments request: The proposed amendments would correct a discrepancy between Technical Specification (TS) 3.1.5, Standby Liquid Control System (SLCS), and TS Tables 3.3.2-1 and 4.3.2-1. Operational Condition 5 would be deleted from the applicability requirements of TS 3.1.5, and the associated Action statement for Operability Condition 5 would also be deleted. The proposed changes also delete both operability and surveillance requirements in Tables 3.3.2-1, Isolation Actuation Instrumentation, and 4.3.2-1, Isolation Actuation Instrumentation Surveillance Requirements, associated

with the SLCS initiation while the unit is in Operational Condition 3. The proposed change would also add the word "Operational" before the word Conditions in the Applicability and Action Statements of TS 3.1.5 to bring the TS terminology to current usage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Liquid Control System (SLCS) is a special safety system not required for unit operation, and never expected to be needed for unit safety due to the large number of independent control rods available to shutdown the reactor. The SLCS has very limited capability of initiating any events. Rupture of the SLCS piping, inadvertent injection, and plant chemistry problems are all bounded by previously analyzed events (small line break, reactor water cleanup). Should the boron solution ever be injected into the reactor, either intentionally or inadvertently, after making certain that the normal reactivity controls will keep the reactor subcritical, the boron is removed from the reactor coolant system by flushing for gross dilution followed by operation of the reactor cleanup system. There is practically no effect on reactor operations when the boron concentration has been reduced below approximately 50 ppm [parts per million].

The proposed amendments delete two current operational condition requirements for the SLCS because of the highly improbable chances of reactivity excursions in Operational Conditions 3 and 5. The design basis ensures that in the highly unlikely event regular reactivity controls fail, the SLCS will bring the reactor subcritical. The assumptions in the design basis are preserved by the proposed amendments. As such, the accidents evaluated in Chapter 15 of the UFSAR [Updated Final Safety Analysis Report] are not affected by the proposed changes; therefore, this amendment request odes not involve a significant increase in the probability of an accident previously evaluated.

The proposed amendments make no modifications to the SLCS instrumentation. In addition, the function of the SLCS instrumentation is not altered. Special provisions for single control rod removal/ multiple rod removal with surrounding fuel removal are in effect for Operational Condition 5. Operational Condition 3 is currently applicable for the SLCS in Tables 3.3.2-1 and 4.3.2-1; however, this condition has never been applicable in SLCS Specification 3.1.5. There are also special provisions for single rod removal in Operational Condition 3 to prohibit reactivity excursions. As a result, the SLCS is never expected to provide any mitigating functions in Operational Condition 3 or 5.

The Brunswick UPSAR Chapter 15 accidents associated with reactivity excursions are not affected by the proposed amendments. In addition, the proposed changes will not compromise the mitigating features of the SLCS required during a reactivity excursion if this system were initiated. As such, the Technical Specification amendments do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Technical Specification amendments delete Operational Conditions 3 and 5 from SLCS applicability. In Operational Conditions 1 and 2, the special shutdown capability (SLCS) could be required since several rods could be withdrawn from the core at once and potentially not be reinserted. The SLCS will remain applicable in these operational conditions.

In Operational Condition 3, control rods are only allowed to be withdrawn under special operations for single control rod withdrawal utilizing the one-rod-out interlock. This provides adequate controls to assure that the reactor remains subcritical. In Operational Condition 5, only a single control rod can be withdrawn from a core cell containing fuel assemblies. Multiple control rod removal is allowed only if the fuel is removed from all four surrounding fuel cells. This provides adequate shutdown margin and assures that the reactor does not become critical. As such, the SLCS is not needed for this operational condition.

Correcting the noted discrepancy in the Brunswick Technical Specifications does not involve modifications to any safety-related equipment and will not alter or introduce new plant operations. As such, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendments do not involve a significant reduction in the margin of safety.

The proposed amendments do not change safety limits, setpoints, or plant design at the Brunswick Plant. There are no functions of the system which have been compromised by these changes. The design basis for this system has been preserved. The SLCS surveillance requirements for Operational Conditions 1 and 2 will continue to assure a high degree of reliability for this system. Therefore, the proposed amendments do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Jocelyn A. Mitchell

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 31, 1992

Description of amendments request: The proposed change would revise Technical Specification (TS) Section 3/ 4.7.1.2, Service Water System, and its associated Bases Section. The first change requested would revise the Limiting Condition for Operation (LCO) and the Action Statements by changing the number of nuclear service water pumps required to be operable whenever either unit is in Operational Condition 1, 2, or 3 from two nuclear service water pumps per unit to three nuclear service water pumps per site. The second proposed change would incorporate the surveillance requirements of TS 4.7.1.2.c into the proposed Action statement b.4 of the TS 3.7.1.2, and would delete the existing TS 4.7.1.2.c. TS Section 3.4.10.5, Plant Service Water, would also be changed to reflect the new sequence of the proposed action statements. The word "Operational" would be incorporated before the word "Conditions" in the Applicability Statement.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change 1:

The proposed change requires both the nuclear and the conventional headers to be operable with three site nuclear and two unit conventional service water pumps capable of supplying the headers when the unit is OPERATIONAL CONDITIONS 1, 2, or 3. The proposed change does not affect the number of service water pumps required operable when the unit is in OPERATIONAL CONDITIONS 4 or 5. These requirements will ensure single failure criteria are met, ensure the availability of service water for emergency diesel generator cooling during the initial ten minute period of a design basis accident, and ensure sufficient service water capability for the post-ten minute period of a design basis accident.

The service water system only aids in mitigation of an accident and does not act as an initiator of an accident sequence. Therefore, the proposed amendments do not involve an increase in the probability of an accident previously evaluated.

The proposed site nuclear service water pump requirements will assure emergency

diesel generator cooling will be available following any design basis accident, regardless of which unit is involved in the accident or plant transient. As such, the proposed amendments do not involve a significant increase in the consequences of an accident previously evaluated.

Proposed Change 2:

The proposed change is administrative in nature since the change simply relocates existing remedial actions from an event-based surveillance requirement (Technical Specification 4.7.1.2.c) to the Limiting Condition for Operation ACTION statement. This change will more clearly link the need for the additional verifications associated with the service water system nuclear header being inoperable when the unit is in OPERATIONAL CONDITION 4 or 5. Therefore, the proposed change does not increase the probability an accident previously evaluated.

In addition, this proposed change does not alter the actions involved in the surveillance requirements by relocating these under the ACTIONS Statements. No plant operations are altered by this relocation. As such, this change does not increase the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 1:

The service water system is designed to provide flow for lubrication and cooling of equipment during normal operations and under accident conditions. The system can also provide flow to the chlorination system and be cross-connected to the RHR system during emergencies to provide core flooding capabilities. As noted above, the service water system supports mitigation of an accident, but does not act as an initiator of an accident sequence. The proposed change does not affect the ability of the service water system to perform its intended function. No new service water operations are introduced. The requested amendments will assure that the service water system will be available to provide an adequate supply of cooling water for both normal operating and emergency operating conditions, and will not alter plant operations. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 2:

As noted in item 1 above, the proposed change is administrative in nature since the change simply relocates existing remedial actions from an event-based surveillance requirement (Technical Specification 4.7.1.2.c) to the Limiting Condition for Operation ACTION statement. This relocation does not involve any changes to safety-related equipment or safety-related functions which could initiate any kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Proposed Change 1:

The proposed change revises the service water pump operability requirements to account for the improved low flow capability of the nuclear service water pumps and the elimination of the minimum flow path. The proposed change to the Technical Specifications will ensure the availability of service water for diesel generator cooling during the initial ten minute period of a design basis accident, even assuming the worst case single failure, as well as assure sufficient service water capability for the post-ten minute period of a design basis accident. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Proposed Change 2:

As noted in items 1 and 2 above, the proposed change is administrative in nature since the change simply relocates existing remedial actions from an event-based surveillance requirement (Technical Specifications 4.7.1.2.c) to the Limiting Condition for Operation ACTION statement. No safety limits, setpoints, or design margins are impacted by this change. Therefore, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Jocelyn A. Mitchell

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 26, 1993

Description of amendment request: This Technical Specification (TS or Specification) change revises TS 3.4.9 by replacing the current five-year heatup and cooldown limitation with revised limitations based on the predicted reactor vessel neutron exposure at 11 effective full power years (EFPY) of operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications 3.4.9.1 and 3.4.9.2 "REACTOR COOLANT SYSTEM PRESSURE/TEMPERATURE LIMITS" provide RCS pressure-temperature limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown rates of Specifications 3.4.9.1 and 3.4.9.2, and LTOP [low-temperature overpressure protection] setpoints in Specification 3.4.9.4 are designed to ensure that the 10 CFR 50 Appendix G pressure-temperature limits for the RCS [reactor cooant system] are not exceeded during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests.

General Design Criterion 31 of Appendix A to 10 CFR 50 requires that the reactor coolant boundary shall be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident conditions (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

Title 10 of the Code of Federal Regulations Part 50 Appendix G, "Fracture Toughness Requirements," requires the effects of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of nuclear reactors to be considered in the pressure-temperature limits. The change is used in conjunction with the material initial reference temperature (RT [nil-ductility]) to establish the limiting pressure-temperature curves. Regulatory Guide [RG] 1.99 contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Using the RG 1.99 Revision 2 and Appendix G to 10 CFR 50, new Adjusted Nil Ductility Reference Temperatures (ART [nil-ductility]) and limiting pressure-temperature curves were prepared for the projected reactor vessel exposure at 11 Effective Full Power Years (EFPY) of operation. These new curves in conjunction with the associated changes in the heatup and cooldown ranges and the existing Low Temperature Overpressure Protection System setpoints provide the required assurance that the reactor pressure vessel is protected from brittle fracture up to 11 EFPY of operation.

No changes to the design of the facility has [sic] been made. No new equipment has been added or removed and no operational setpoints have been altered. The revised analysis and resultant adjustment of the operating limitations provide assurance that the Reactor Coolant System is protected from brittle fracture.

Therefore, the proposed amendments to the pressure-temperature limitations, the heatup and cooldown ranges, and the recalculated limiting material ART [nil-ductility] do not involve a significant increase in the probability or consequences of an accident previously evaluated;

collectively they maintain the required buffer necessary to protect the reactor vessel from brittle fracture given a limiting mass or temperature input to the RCS for up to 11 EFPY of operation.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new equipment has been added or removed and no operational setpoints have been altered. The revised analysis and resultant adjustment of the operating limitations provides assurance that the Reactor Coolant System is protected from brittle fracture. No new accident or malfunction mechanism is introduced by this amendment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The heatup and cooldown rates of Specifications 3.4.9.1 and 3.4.9.2, and LTOP setpoints in Specification 3.4.9.4 are designed to ensure that the 10 CFR 50 Appendix G pressure-temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests.

New Nil Ductility Reference Temperatures and limiting pressure-temperature curves were prepared for the projected reactor vessel exposure at 11 Effective Full Power Years of operation in accordance with 10 CFR 50 Appendix G and the methodology provided in Regulatory Guide 1.99, Revision 2.

The revised heatup and cooldown ranges, in conjunction with the current rates and LTOP setpoints ensure that the Appendix G pressure-temperature curves are not challenged given a limiting mass or heat input to the RCS during normal operations, anticipated occurrences and system hydrostatic testing.

Since restrictions remain in place to ensure the Appendix G operating limits of the reactor vessel are not challenged, the margin of safety defined in the Technical Specification BASES is not significantly reduced by this change.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Jocelyn A. Mitchell

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: March 4, 1993

Description of amendment request: The proposed Technical Specification change would allow the initial and requalification training programs for licensed personnel to be based on a systematic approach to training in accordance with 10 CFR 55.31, 10 CFR 55.59, and under the guidance in NRC Generic Letter 87-07.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This administrative change to Technical Specification 6.4 has no affect on equipment, procedures, or accident initiators. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since this is an administrative change, there are no modifications or additions to plant equipment. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change does not affect any parameters which relate to the margin of safety as defined in the Technical Specifications. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Jocelyn A. Mitchell

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 26, 1993

Description of amendment request: The proposed amendment would revise the surveillance interval for the channel functional test of the Reactor Protection System Electrical Protective Assemblies (RPS-EPA units) per the guidance provided by Generic Letter 91-09, "Modification of Surveillance Interval for the Electrical Protective Assemblies in Power Supplies for the Reactor Protection System." The proposed change would eliminate the potential for inadvertent reactor trip caused by testing the RPS-EPA units during power operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change modifies the surveillance requirement for an electrical protective device on the Reactor Protection System. The proposed change does not affect any accident precursor or initiator. Therefore, the probability of an accident is not affected by the proposed change.

The RPS-EPA units are designed to protect RPS equipment from abnormal operating voltage or frequency produced by RPS motor generator sets. The proposed change will preclude the need to test the RPS-EPA units during power operation. This will eliminate the potential for reactor scrams and Group isolations during performance of the surveillance, thus preventing unwarranted challenges to safety systems. The proposed Technical Specification amendment does not affect the operability of the RPS-EPA units. The demonstrated high reliability of the RPS-EPA units (reference J. A. Silady to T. E. Murley letter dated July 6, 1990) ensures that they will be capable of performing as designed in the event of an abnormal condition on an RPS bus. Based upon this historical reliability, the proposed change does not affect the ability of the Reactor Protection System to maintain the integrity of the fuel cladding, protect the reactor coolant pressure boundary, or limit the amount of energy released to primary containment. Therefore, the consequences of an accident is not affected by the proposed change.

2. Create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change does not decrease the ability of the RPS-EPA units to perform their intended function, nor do the proposed changes create any opportunities for a new or different accident outside of those previously evaluated. No new or different modes of

plant operation are introduced by the proposed changes. Therefore, there is no possibility of creating any new failure mechanisms which could initiate a new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in the margin of safety.

This proposed Technical Specification amendment ensures that a spurious RPS trip does not result in a reactor scram and group isolations during RPS-EPA functional testing. The proposed change does not affect the operability of the RPS-EPA units. The demonstrated high reliability of the RPS-EPA units ensures that they will be capable of performing as designed in the event of an abnormal condition on an RPS bus. Therefore, the margin of safety is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: September 1, 1992, as supplemented on February 22, 1993

Description of amendment request: The proposed amendment would change the Technical Specifications (TS). It would remove the heatup and cooldown limitation curves from the TS and relocate them to a newly created Pressure and Temperature Limits Report, revise the LTOP enabling temperature in Mode 4, delete the allowance to maintain a safety injection pump aligned for injection when in the LTOP range, and remove the reactor vessel toughness data tables, fast neutron fluence figures, and materials irradiation surveillance specimen inspection schedule from the TS and relocate them to the UFSAR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Amendment revises requirements associated with Reactor Coolant System (RCS) Heatup and Cooldown Limitations and Low Temperature Overpressure Protection. The specific changes addressed by this significant hazards consideration are as follows:

• Updating RCS Heatup and Cooldown Limit Curves.

• Relocating RCS Pressure and Temperature Limitations to the PRESSURE AND TEMPERATURE LIMITS REPORT.

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal and updating of the pressure and temperature limits has no influence or impact on the probability or consequences of any accident previously evaluated. The reactor vessel pressure and temperature are not assumed to be initiators of analyzed events. However, pressure and temperature limits do preclude operation in an unanalyzed condition. The revised limitations provide an equivalent level of protection to the previous limitations. In addition, the acceptance criteria for the calculations performed have not been significantly altered. Thus, there will be no change in the probability of vessel failure through crack propagation. Reactor vessel integrity is assumed in mitigating the consequences of design basis accidents. The revised limitations will not affect the performance of any safety systems or structures beyond ensuring the continued integrity of Zion reactor vessels. Therefore, the change to the pressure and temperature limits does not involve significant increases in the probability or consequences of an accident previously evaluated. The pressure and temperature limits, although not in Technical Specifications, will continue to be followed in the operation of Zion Station. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by current Technical Specifications. The limits within the Pressure and Temperature Limits Report (PTLR) will be implemented and controlled per Zion procedures. Any changes to the PTLR will be in accordance with NRC approved methodology discussed in WCAP-13406, "Heatup and Cooldown Limit Curves for Normal Operation for Zion Units 1 & 2." Changes to the PTLR will be performed per the requirements of 10CFR50.59. This ensures that future changes to the pressure and temperature limits in the PTLR will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not necessitate a physical alteration of the plant (no new or different types of equipment will be installed). The removal and updating of the pressure and temperature limitations has no affect on any of the systems or structures at Zion Station. No safety related equipment or safety function will be altered as a result of this proposed change. The imposition of more conservative heatup and cooldown limitations will not interact with any other phase of operation at Zion Station. The updated limitations provide an equivalent level of protection to the previous limitations. In addition, acceptance criteria for the calculations have not been significantly altered. The pressure and temperature limits are calculated using NRC approved methods and submitted to the NRC to allow the staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required pressure and temperature limits and appropriate actions will be taken, when or if limits are exceeded. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal and updating of the pressure and temperature limits. WCAP-13406 "Heatup and Cooldown Limit Curves for Normal Operation for Zion Units 1 & 2" addresses the criteria for the acceptability of these calculations. The methodology of WCAP-13406 was used for revising the heatup and cooldown limitations. The revised heatup and cooldown limitations for Zion Station provide an equivalent level of safety to that which previously existed and ensures that the requirements of 10CFR50 Appendix G are satisfied. In addition, the allowable stresses that the reactor vessel could be subjected to have not been altered from the currently existing levels. Appropriate measures exist to control the values of the pressure and temperature limits. The proposed amendment continues to require operation within the pressure and temperature limits as obtained from the NRC approved methodologies and appropriate actions to be taken, when or if limits are exceeded. The development of the changes to the pressure and temperature limits will continue to conform to those methods described in the NRC approved documentation. In addition, each change to the pressure and temperature limits will involve a 10CFR50.59 safety review to assure that operation of the unit within the limits will not involve a significant reduction in a margin of safety. Therefore, the proposed changes are administrative in nature and do not impact the operation of the Zion Station in a manner that involves a reduction in the margin of safety.

The proposed Amendment revises requirements associated with Reactor Coolant System (RCS) Heatup and Cooldown Limitations and Low Temperature Overpressure Protection. The specific changes addressed by this significant hazards consideration are as follows:

• Relocating the capsule withdrawal schedule from the Technical Specifications to the UFSAR.

• Relocating from the Technical Specifications the Reactor Vessel Toughness Data Tables and Fast Neutron Fluence Figures to a UFSAR reference.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of the capsule withdrawal schedule, the Reactor Vessel Toughness Data

Tables, and the Fast Neutron Fluence Figures, from the Zion Station Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The capsule withdrawal schedule, although not in Technical Specifications, will be followed in the operation of the Zion Station. The proposed amendment still requires exactly the same actions to be taken as is required by current Technical Specifications. The capsule withdrawal schedule will be implemented and controlled per Zion procedures. The capsule withdrawal schedule will be in accordance with UFSAR Section 5.3.1.1. In addition, the Reactor Vessel Toughness Data Tables and the Fast Neutron Fluence Figures only provide information that is used in deriving the heatup and cooldown limitation curves. This same information, the Reactor Vessel Toughness Data Tables and Fast Neutron Fluency Figures, is located in the Westinghouse Topical Reports that describe the methodology used to derive the heatup and cooldown limitation curves. The Westinghouse Topical Reports will also be referenced in the UFSAR. Changes to the capsule withdrawal schedule or the reference to the Westinghouse Topical Report will be performed per the requirements of 10CFR50.59. This ensures that future changes to the capsule withdrawal schedule or the reference to the Westinghouse Topical Report will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the capsule withdrawal schedule and the Reactor Vessel Toughness Data Tables, and the Fast Neutron Fluence Figures has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety related equipment, safety function, or plant operations will be altered as a result of this proposed change. The capsule withdrawal schedule is in accordance with NRC approved documentation. The Technical Specifications will continue to require capsules be withdrawn on the required schedules. The Tables and Figures provide information only and will be referenced in the UFSAR. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the capsule withdrawal schedule, the Reactor Vessel Toughness Data Tables and the Fast Neutron Fluence Figures from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the capsule withdrawal schedule, the Reactor Vessel Toughness Data Tables and the Fast Neutron Fluence Figures. The proposed amendment also continues to require capsules to be withdrawn on a required schedule obtained from the NRC approved methodology. The development of the changes to the capsule withdrawal schedule will continue to conform to those methods described in the NRC approved documentation. In addition, each change to the capsule withdrawal schedule and any change to the reference to the Westinghouse Topical Report (containing the reactor vessel toughness data tables and fast neutron fluence figures) will involve a 10CFR50.59 safety review to assure that operation of the unit within the limits will not involve a significant reduction in a margin of safety. Therefore, the proposed change is administrative in nature and does not impact the operation of the Zion Station in a manner that involves a reduction in the margin of safety.

The proposed Amendment revises requirements associates with the Reactor Coolant System (RCS) Heatup and Cooldown Limitations and Low Temperature Overpressure Protection (LTOP). The specific changes addressed by this significant hazards consideration are as follows:

- Revising the LTOP enable temperature.
- Deleting the allowance to have a maximum of one safety injection pump aligned for injection into the RCS and OPERABLE.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LTOP enable temperature has been shifted in the conservative direction by enabling LTOP at a high temperature (320°F) than the current 250°F. This revision will provide the LTOP protection in a wider span of temperatures than presently exists. The pressurizer power operated relief valves (PORVs) automatic setpoint of 435 psig will provide ample margin for reactor vessel protection within the revised heatup and cooldown curves. As is the case currently, a potential exists for a spurious PORV opening with the resultant loss of inventory from the RCS. With the revised LTOP enable temperature, the exposure to spurious PORV opening is increased. However, the additional exposure (between 250°F and 320°F) is minimal and existing mitigating features for this event are maintained. The PORVs are instrumented to annunciate if one were open. Also, the PORVs are provided with block valves that will allow operator action to isolate a PORV if it fails to close. If a PORV were to spuriously open, station operating procedures direct operators to isolate it. Operators would have ample time to isolate because of the significantly lower pressures that are typical of LTOP operation. These compensatory measures assure that this revision to the LTOP enable temperature does not significantly increase the probability or consequences of any accident previously evaluated.

An inadvertent safety injection pump actuation with injection into the RCS was not assumed to be an initiator of an analyzed event since operation of the safety injection pumps is prohibited. Deletion of the allowance to have a safety injection pump aligned for injection into the RCS and OPERABLE during LTOP conditions helps ensure an inadvertent safety injection to the RCS does not occur. This change ensures the assumptions of the LTOP analysis for mass addition to the RCS are maintained. This change also ensures that an RCS mass addition transient can be relieved by the operation of a single power operated relief valve or the limiting conditions placed on the pressurizer. Therefore, the deletion of the allowance for a safety injection pump to be aligned to the RCS and OPERABLE does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change does not physically alter the plant nor does it affect any of Zion's systems or structures. The revised LTOP enable temperature actually expands the region covered by the conservative lower PORV setpoint and therefore provides an equivalent or higher level of protection. The deletion of the allowance to have a safety injection pump aligned for injection into the RCS and OPERABLE achieves consistency with the assumptions of the current LTOP analysis for mass addition to RCS. In addition, the design criteria for LTOP remains unaffected by this revision. Therefore, the change does not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not reduced by the changes. The Technical Specification requirements for LTOP remain unchanged except for the conservative raising of the enable temperature and the deletion of the allowance to have a safety injection pump aligned for injection into the RCS and OPERABLE. The expanded region of LTOP coverage provides assurance that protection is available during the conditions when an LTOP event could occur. Deletion of the allowance to have a maximum of one safety injection pump aligned for injection into the RCS and OPERABLE achieves consistency with the LTOP analysis. This ensures the assumptions of the LTOP analysis are maintained since inadvertent actuation of a safety injection pump was not analyzed. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket No. 50-295, Zion Nuclear Power Station, Unit 1, Lake County, Illinois

Date of amendment request: March 3, 1993

Description of amendment request: The proposed amendment would defer the next calibration of the Unit 1 containment recirculation sump level instrumentation until the end of the next refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any hardware or operating procedure changes. The frequencies for surveillances are not assumed in the initiation of any analyzed events. This change allows a one time delay in the performance of the CHANNEL CALIBRATION required by Surveillance Requirement 4.8.9 for the CRSL instruments. It would be overly conservative to assume the two Unit 1 CRSL instruments are inoperable when the CHANNEL CALIBRATION has not been performed within the 18 month frequency. Since the CHANNEL CALIBRATIONS for these instrument channels have been successfully performed within the previous interval, it is primarily a question of OPERABILITY that has not been verified by performance of the surveillance within the new required frequency. In addition, alternate indication of containment water level is available from the RWST level instrument channels and the containment water level (wide range) instrument channels. Therefore, the consequences of an accident previously evaluated are not significantly increased since the most likely outcome of performing the CHANNEL CALIBRATION would demonstrate the CRSL instruments are OPERABLE.

2. Does the change create the possibility of a new or different kind of accident from any previously analyzed?

The proposed change does not result in plant operations or configurations that could create a new or different type of accident. No new equipment is being introduced, and installed equipment is not being used in a new or different manner. No plant configuration changes are being made as a result of this amendment request. Additionally, this request deals with instrumentation that performs a monitoring function. There is no active interface between the subject instrumentation and the installed equipment whose failure would initiate a transient event. Therefore, the change will not create a new or different type of accident.

3. Does the change involve a significant reduction in a margin of safety?

The increased time allowed for the performance of the CHANNEL CALIBRATION of the CRSL instruments is acceptable based on the small probability of an event requiring these instruments to function. Granting a one time extension to the 18 month CHANNEL CALIBRATION for the Unit 1 CRSL instruments is acceptable considering the historical reliability of these instrument channels. Without this extension, a unit shutdown would be required to perform the surveillance or to comply with the actions for inoperable instrument channels which cannot be restored. As such, any reduction in a margin of safety will be insignificant and offset by the benefit gained in plant safety due to the avoidance of a plant shutdown transient.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, (ANO-2) Pope County, Arkansas

Date of amendment request: February 24, 1993

Description of amendment request: The proposed change would revise the containment internal pressure lower limit of Technical Specification Figure 3.6-1 from 12.8 to 13.2 psia.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve A Significant Increase in the Probability or Consequences of An Accident Previously Evaluated.

Containment internal pressure is not an event initiator of any accident analyzed in the ANO-2 Safety Analysis Report (SAR) and does not affect the probability of occurrence of any event previously analyzed. Therefore, this change does not increase the probability of any accident previously evaluated.

Increasing the initial containment pressure from 12.8 psia to 13.2 psia is in the conservative direction and will not result in an increase in the consequences of the LBLOCA [large-break loss-of-coolant accident] analysis. This change is requested based on a LBLOCA analysis that has included cumulative cycle fuel design and core physics changes, anticipated plant changes (10% tube plugging), and utilization of the latest approved evaluation model. The sum of these changes have resulted in an increase in the LBLOCA PCT [peak clad temperature]. A new PCT of 2142°F has been calculated, which remains bounded by the 2200°F limit as defined by 10 CFR 50.46. Due to dose calculations for the LBLOCA being totally independent from the ECCS [emergency core cooling system] analysis (based on Technical Information Document 14844), the increase in PCT does not affect the dose calculations. Therefore, this change does not constitute a significant increase in the consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve any design changes, or plant modifications. The new lower limit for containment pressure represents more restrictive limitations than that imposed by the present Technical Specifications and constitutes a conservative change in plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

The new LBLOCA analysis performed and referenced in this submittal will not modify the plant. The analysis was performed using the latest ABB-CE approved evaluation model and conservative input parameters to bound the ANO-2 design. Use of the new ANO-2 LBLOCA input parameters and evaluation model does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

The Region of Acceptable Operation of ANO-2 TS Figure 3.6-1 has been evaluated and shown to result in peak containment pressures within the design pressure as was the case with the original analyses. As indicated above, the LBLOCA analysis is not negatively impacted by this change, but due to the combined evaluation with other conservative input parameter changes, a higher PCT is calculated.

The new LBLOCA analysis performed for ANO-2 was done with an approved evaluation model that complies with the requirements of Appendix K, and has resulted in a higher PCT (2142°F versus 2086°F for cycle 10) and greater core wide clad oxidation (0.843% versus 0.617%). These results are attributed to the input parameter changes. Although the PCT and core wide clad oxidation has increased, the results still are in compliance with the acceptance criteria set forth in 10 CFR 50.46 which establish limits and required design margins, and therefore, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: George T. Hubbard, Acting Director

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, (ANO-2) Pope County, Arkansas

Date of amendment request: February 24, 1993

Description of amendment request: The proposed amendment would change the flow test acceptance criteria for a single pump in the high pressure safety injection (HPSI) system from a minimum of 196 gallons-per-minute (gpm) for each injection leg to a total flow of 570 gpm, excluding the highest injection leg's flow rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to the surveillance requirements for a post modification HPSI system flow test maintains the requirement to verify the current accident analyses values (as approved in Amendment 86) for HPSI flow and does not change the current level of protection provided to the reactor core by the HPSI system. Hardware changes have not been made to the system which could increase the probability or consequence of any accident within the current design basis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The HPSI system will continue to provide adequate flow into the RCS for the design basis events. No system hardware changes have been made which could have an adverse impact on this capability. Therefore the acceptance criteria changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not involve any hardware change and thus does not change the capability of the HPSI system to deliver sufficient flow to accomplish its design basis function. The basis for the Surveillance Requirement is to ensure that the system provides an acceptable level of total ECCS [emergency core cooling system] flow equal to or greater than that assumed in the accident analyses. The revised specification will still require demonstration of adequate total HPSI flow following system modification consistent with the current accident analyses. Since the system will continue to provide the same flow, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: George T. Hubbard, Acting Director

Florida Power and Light Company, et al., Docket No. 50-335 St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: March 4, 1993

Description of amendment request: The proposed amendment excludes penetrations inside containment from the 31-day surveillance requirement of Technical Specification (TS) 4.6.1.1.a.1. and is consistent with similar provisions contained in NUREG-1432, Standard Technical Specifications for Combustion Engineering plants.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Strict control of containment entries, measures being taken to ensure that penetration components are locked, sealed or otherwise secured in their closed positions, and the administrative controls that assure a low probability of valve misalignments described in the supporting safety analysis for the proposed amendment provide assurance that containment integrity is preserved without performing the 31 day verification surveillance inside containment. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not result in any change to the physical plant or in the mode of operation of the plant. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Penetration components inside containment are operated under dministrative controls and entries into containment are restricted. Certain penetration components, as appropriate, are locked, sealed, or otherwise secured in their proper positions to assure containment integrity during Operating Modes 1, 2, 3, and 4. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting safety analysis, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 31, 1992, as revised January 22, 1993

Description of amendment request: The proposed amendments would add a new Technical Specification (TS) 3/4.7.1.6, entitled "Main Feedwater Isolation Systems," and associated bases. The proposed TS addition would

incorporate a Limiting Condition for Operation to require that the main feedwater isolation and regulating valves (MFIVs and MFRVs) and their respective bypass valves (BFIVs) be operable when the reactor is in Modes 1 or 2 (unless the MFIV, MFRV, or associated BFIV is closed and deactivated). Appropriate action statements, surveillance requirements, and bases would also be added.

Basis for proposed no significant hazards consideration determination: The MFIVs, MFRVs, and BFIVs perform a safety-related function of isolating main feedwater flow to the secondary side of the steam generators to avoid excessive cooling and additional mass and energy release after a main steam line break accident. Closure of these valves is also credited in the FSAR safety analyses for feedwater malfunction, feedwater line break, steam generator tube rupture, and small-break loss of coolant accidents. The Vogtle TSs do not contain limiting conditions for operation, surveillance requirements, or bases addressing this safety-related function. The proposed changes would correct this oversight.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed addition to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because it adds requirements to maintain the feedwater isolation systems in a state that is consistent with the accidents previously analyzed.

2. The proposed addition to the Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated because it requires the feedwater isolation system to be maintained operable in a manner that is consistent with the current accident analyses and does not introduce any new or different operating requirements for the feedwater isolation systems.

3. The proposed addition to the Technical Specifications does not involve a significant reduction in a margin of safety because it will require the feedwater isolation system to perform in accordance with the assumptions used in the safety analyses. Therefore, operation in accordance with the proposed specification will not affect any of the acceptance limits or analyses used to demonstrate operation within the acceptance limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Esquire, Troutman, Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2210

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 22, 1993

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.8.1.1, "A.C. Sources - Operating," and TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," to clarify and add requirements regarding the automatic load sequencers. Specifically:

(1) TS 3.8.1.1, which lists the A.C. electrical power sources required to be operable in Modes 1, 2, 3, and 4, would be supplemented with:

c. Automatic load sequencers for train A and B and its corresponding action statement would be supplemented with:

g. with one automatic load sequencer inoperable, restore the inoperable load sequencer to OPERABLE status within 12 hours or be in at least HOT STANDBY within the next 6 hours and in COLD SHUTDOWN within the following 30 hours.

(2) Action Statements 14, 20, and 23 of Table 3.3-2, "Engineered Safety Features Actuation System Instrumentation," would be supplemented with:

(With channels inoperable due to an inoperable load sequencer, apply the ACTION statement of specification 3.8.1.1 for an inoperable load sequencer.)

(3) TS Bases 3.8.1.1 would be supplemented with:

The ACTION times specified for an inoperable automatic load sequencer are based on the times allowed when a combination of one diesel generator and one offsite circuit is inoperable. This conservatively addresses any consequential effects of an inoperable load sequencer on other engineered safety features and avoids having to evaluate the ACTION based on table 3.3-2.

Basis for proposed no significant hazards consideration determination: The load sequencer automatically starts the diesel and connects Class 1E loads to the 4.16-kV bus following an accident or a loss of offsite power. The Vogtle TSs already include surveillance requirements for the load sequencers (TSs 4.8.1.1.2.h.4, 4.8.1.1.2.h.6, and 4.8.1.1.2.h.12) but contain no corresponding Limiting Condition for Operation concerning the effects of an inoperable load sequencer on instrumentation listed in TS Table 3.3-2. The proposed TS changes would clarify the appropriate actions and ensure that appropriate actions are taken when a load sequencer is inoperable or removed from service. The proposed action time of 12 hours for an inoperable sequencer is proposed by the licensee to correspond to the action time currently allowed when an offsite power source and diesel generator are inoperable.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed revision to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because the action to be taken when a load sequencer is inoperable is consistent with an already specified condition that is more significant than an inoperable sequencer, namely, the loss of an entire train of emergency power.

2. The proposed revision to the Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated because it does not involve any change to the design, operation, or performance of the load sequencer. It only serves to clearly identify the appropriate conservative response to an inoperable load sequencer.

3. The proposed addition to the Technical Specifications does not involve a significant reduction in a margin of safety because the proposed action to take when a sequencer is not operable is the same as the action already required by the Technical Specifications when no power is available to the entire train.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Esquire, Troutman, Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2210

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 22, 1993

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," and TS Table 3.3-3, "Engineered Safety Features Actuation System Instrumentation Trip Setpoints," to delete information that became obsolete once all steam generator instrumentation taps were relocated to elevation 333 inches, and to revise the value of "Z" for the steam generator level instrumentation. The Z-value represents the statistical summation of errors assumed for the instrument setpoints in various analyses, and is used in the TSs to determine reporting requirements.

Specifically, the change would delete the footnotes in TS Table 2.2-1 and TS Table 3.3-3 that read: "... the value stated inside the parenthesis is for instrumentation that has the lower tap at elevation 333 [inches]; the value stated outside the parenthesis is for instrumentation that has the lower tap at elevation 438 [inches]." The associated values within these tables that are outside the parenthesis, and their reference to these footnotes, would be deleted. The changes to TS Table 2.2-1 apply to reactor trip due to Steam Generator Water Level Low-Low; this Z-value would be changed to 17.6. The changes to TS Table 3.3-3 apply to turbine trip and feedwater isolation due to Steam Generator Water Level High-High; this Z-value would be changed to 10.47. The changes to TS Table 3.3-3 also apply to auxiliary feedwater actuation (start motor-driven pumps and start turbine driven pump) due to Steam Generator Water Level Low-Low; these Z-values would be changed to 17.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The revised Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated. Operation with these revised values will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of any plant system is unaffected. The steam generator water level reactor trip system and engineered safety feature actuation system functions are part of the accident mitigation response and are not themselves initiators for any transient. Therefore, the probability of occurrence is not affected.

The changes to the Technical Specifications do not affect the integrity of the fission product barriers utilized for mitigation of radiological dose consequences as a result of an accident. Since the Technical Specifications revision does not affect the results or conclusions of FSAR [Final Safety Analysis Report] accident analyses, the offsite mass releases used as input to the dose calculations are unchanged from those previously assumed. Therefore, the offsite dose predictions remain within the acceptance criteria. Since it has been determined that the FSAR accident analyses are not affected by these parameter modifications, it is concluded that the consequences of an accident previously evaluated are not increased.

2. The revised Z values do not create the possibility of a new or different kind of accident from any accident previously evaluated. The safety analysis limit values are not changed. Thus, the changes do not affect the assumed accident initiation sequences. No new operating configuration is being imposed by the Z value adjustments that would create a new failure scenario. In addition, no new failure modes are being created for any plant equipment. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events which bound safe plant operation.

3. The proposed changes do not involve a significant reduction in a margin of safety because there is no reduction in the margin of safety associated with the revised Z values for the steam generator water level - low-low and high-high trip functions. The results and conclusions of the accident analyses as presented in the FSAR remain applicable. Thus, all safety analysis acceptance criteria continue to be met. The margin of safety for each safety analysis is unchanged, and therefore the margin of safety associated with the steam generator level setpoints is unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Esquire, Troutman, Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2210

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 3, 1993

Description of amendment request: The amendment proposes the reduction of the setpoint of the ninth (highest) safety valve from 1230 to 1221 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specification Change Request does not involve a significant hazards consideration for the reasons as stated below:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The change in setpoint of the ninth safety valve will not increase the probability of occurrence or the consequences of an accident previously evaluated in the [Safety Analysis Report] SAR because there is no change to the number or function of the nine safety valves. The only event initiator that involves a safety valve is a spurious valve opening which is not affected by the change in setpoint.

The activity will not increase the probability of occurrence or consequence of a malfunction of equipment important to safety previously evaluated in the SAR based on a reliability analysis of [recirculation pump trip] RPT, [electromatic relief valves] EMRVs and safety valves which shows that the likelihood of reactor vessel overpressure due to an [anticipated transient without scram] ATWS remains very small.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed activity does not create a possibility for an accident of malfunction of a different type than any previously identified in the SAR since existing safety valves remain unchanged, and no systems are affected by this modification. Analyses demonstrate that all of the appropriate event acceptance limits have been satisfied for the proposed new setpoint.

3. Involve a significant reduction in the margin of safety.

The margin of safety as presently defined in the basis for the Technical Specifications will not decrease as a result of this proposed change.

For the purposes of this evaluation, the margin of safety is defined as the margin between the safety limit and fission product barrier failure. Because the event does not exceed the event limit (1375 psig), the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 16, 1992

Description of amendment request: The proposed amendment would make editorial changes to the Clinton Power Station Operating License and Technical Specifications to correct typographical errors, provide clarification and remove provisions which are no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes only consist of clarifications, corrections of typographical errors and the deletion of provisions which are no longer applicable. Therefore, these changes do not affect any previous analysis. These changes do not affect the intent or implementation of the applicable Technical Specifications, and in fact, reduce or eliminate confusion, provide consistency between Technical Specifications, and ensure that the Operating License and Technical Specifications reflect current plant status. Since these are editorial changes which do not impact the plant design or operations, this proposed change cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes are editorial only and do not affect the plant design or operation. No new failure modes are introduced since these proposed changes only correct typographical errors and provide additional clarification. Therefore, the request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes only provide correction of typographical errors and clarification of inconsistent direction to the operators. These changes do not alter or delete technical requirements and as such, maintain an equivalent level of safety. Therefore, these changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 11, 1993

Description of amendment request: The proposed amendment would change Clinton Power Station Technical Specification 3/4.3.4.2, "End-Of-Cycle Recirculation Pump Trip System Instrumentation," to revise the frequency for measuring the breaker arc suppression time from once every 18 months to once avery 60 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change merely brings the current [Clinton Power Station] CPS Technical Specification into conformance with the Standard Technical Specifications and does not result in any changes to the existing plant design. The change to increase the test interval for measuring the breaker arc suppression time is supported by the reliability of the [End-Of-Cycle Recirculation Pump Trip] EOC-RPT system circuit breakers. Since the change does not impact the ability of the EOC-RPT system to perform its function, and since the proposed change can reduce the potential for inadvertent scrams or system actuations and unnecessary wear and tear on associated components, this change does not result in a significant increase in the consequences of any accident previously evaluated. As the EOC-RPT system is designed to initiate a recirculation pump trip to reduce the peak reactor pressure and power resulting from a turbine trip or generator load rejection, the proposed change has no impact on the probability of occurrence of a turbine trip or generator load rejection transient.

(2) This request does not result in any change to the plant design nor does it involve a significant change in current plant operation. The EOC-RPT System Response Time will continue to be determined and the system, including breaker action, will continue to be tested every 18 months. As a result, no new failure modes are introduced, and the request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed request does not adversely impact the reliability of the EOC-RPT system and in fact takes credit for the reliability of system components to reduce the potential for plant transients. In addition, the system will continue to perform its design function of providing additional margin to the core thermal minimum critical power ratio (MCPR) safety limits under end-of-cycle conditions. Since this request does not involve an adverse impact to system operation or reliability, and since the EOC-RPT system function is not affected by the proposed change, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 11, 1993

Description of amendment request: The proposed amendment would revise Clinton Power Station (CPS) Design Features Technical Specification 5.3.1, "Fuel Assemblies," to make the fuel design features more generic to allow use of other NRC-approved fuel designs. Also, the proposed amendment would revise Specification 5.3.2, "Control Rod Assemblies," to allow the use of NRC-approved control rod designs which contain hafnium metal in addition to boron carbide powder. In addition, the proposed amendment would revise Specification 3.3.1, "Reactor Protection System Instrumentation," and the Bases to transfer the specific value of the simulated thermal power time constant for the Average Power Range Neutron Monitors (APRMs) from the Technical Specifications to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated. There will be no change in the

operation of the facility as a result of the amendment.

The fuel design requirements are being proposed to be more generic but still require that these designs be developed and analyzed using NRC-approved codes and methods. This approach is consistent with NRC Generic Letter 90-02 Supplement 1. Further, design evaluations, as required by 10 CFR 50.59, will ensure that the licensing basis for the plant continues to be maintained while utilizing advanced fuel designs. In addition to allowing the use of NRC-approved advanced fuel designs, the proposed wording for Fuel Assembly Design Features, as provided in NRC Generic Letter 90-02 Supplement 1, allows limited substitutions of zirconium alloy or stainless steel filler rods for fuel rods in accordance with NRC-approved applications of fuel rod configurations. However, the proposed wording will still require the fuel assemblies to be analyzed with applicable NRC staff-approved codes and methods and shown by tests or analyses to comply with all fuel safety design bases. As a result, appropriate evaluations will, as discussed in the Generic Letter supplement, be performed. These evaluations will ensure that there is no significant increase in the probability or consequences of any accident previously evaluated.

The use of hafnium as a neutron-absorbing material has been specifically approved by the NRC for use in BWR control rod assemblies. Use of NRC-approved control rod designs and materials will not significantly alter the neutron absorption (reactivity worth), mechanical properties (e.g., corrosion resistance) or other functional characteristics (e.g., weight and dimensions) of the control rods in an adverse way. Control rods containing hafnium are designed to be neutronically and physically compatible with the existing boron carbide rod design. The proposed change does not alter the required number of control rods nor does it affect any of the Technical Specifications relating to operability or testing of the control rods (e.g., the shutdown margin and scram timing requirements are unaffected). Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

With respect to the proposed amendment to replace the specific value of the cycle-specific simulated thermal power time constant in the Technical Specifications with a reference to the Core Operating Limits Report (COLR), the simulated thermal power time constant specified in the COLR will continue to be determined utilizing NRC-approved analytical methods and will continue to be used for calibration of the APRM Flow Biased Simulated Thermal Power-High trip function in accordance with the Technical Specifications. The transfer of the specific value of the fuel and cycle-specific simulated thermal power time constant from the CPS Technical Specifications has no impact on the implementation of the associated Technical Specifications. Based on the above, the proposed change has no impact on the probability or consequences of any transient or accident occurrence.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, no safety functions or plant operation will be altered as a result of this amendment.

As described in item (1) above, the proposed changes to the fuel design requirements will still require that the designs be developed and analyzed using NRC-approved codes and methods. In addition, fuel reconstitution will be performed within the guidelines of Generic Letter 90-02 Supplement 1 and as a result, no new failure modes will be introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of NRC-approved control rod designs using hafnium as an absorber material does not produce any new mode of plant operation or alter the control rods in such a way as to adversely affect their function or operability since the new control rods are designed to be compatible with the existing control rods. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to replace the specific value of the simulated thermal power time constant with a reference to the COLR is in accordance with the guidance provided in Generic Letter 88-16 for requesting removal of the values of cycle-specific parameters from Technical Specifications. The establishment of the simulated thermal power time constant will continue to be in accordance with an NRC-approved methodology. As a result, no new failure modes are introduced. Therefore, this change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

As described in item (1) above, the proposed changes to the fuel design requirements will still require that the designs be developed and analyzed using NRC-approved codes and methods. In addition, fuel reconstitution will be performed within the guidelines of Generic Letter 90-02 Supplement 1. As a result, the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 11, 1993

Description of amendment request: The proposed amendment would bring the Clinton Power Station Technical Specifications in compliance with the amended 10 CFR 50.36a requirements which change the submittal frequency of the "Semiannual Radioactive Effluent Release Report" from semiannually to annually.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is designed to conform the [Clinton Power Station] CPS Technical Specifications to changes in the NRC regulations (in this case, 10CFR50.36a). As described within the discussion of the final rule in the Federal Register, the proposed action (i.e., the proposed change to 10CFR50.36a) "will not reduce the protection of the public health and safety or the common defense and security." The proposed changes to the CPS Technical Specifications are consistent with this intent as they are designed to remove inconsistencies between CPS Technical Specifications and 10CFR50.36a and do not affect plant operation in any way. The proposed changes do not result in a change to plant systems and have no effect on accident conditions or assumptions. The proposed changes are to reporting requirements only and do not affect possible initiating events for accidents previously evaluated, or any system functional requirements. Therefore, the proposed changes to the subject Technical Specifications cannot increase the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes are administrative in nature. The proposed changes do not affect the reactor coolant pressure boundary or any other plant systems or structures, nor do they affect any system functional requirements or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes, and therefore the proposed changes cannot initiate any new or different kind of accident.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not affect any Updated

Safety Analysis Report (USAR) design bases, accident assumptions, or Technical Specification Bases. Therefore, the proposed changes do not result in the reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

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NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 17, 1993

Description of amendment request: The proposed amendment would provide three partial exemptions from the requirements of 10 CFR 50, Appendix J, regarding containment integrated leakage rate testing and changes to the Clinton Power Station (CPS) Technical Specification Bases and Operating License NPF-62 to reflect NRC approval of the proposed partial exemptions. The partial exemptions from 10 CFR 50, Appendix J, include: (1) a partial exemption from Section III.A.1.(a) requirement to stop a Type A test (containment integrated leakage rate test (CILRT)) if excessive leakage is detected; (2) a partial exemption from Section III.D.1.(a) requirement to perform the third Type A test of each 10-year service period when the plant is shut down for the 10-year plant inservice inspections; and (3) a partial exemption from Section III.A.5.(b) acceptance criteria for Type A tests with respect to determining the frequency of subsequent Type A tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) These proposed operating license and [Technical Specification] TS changes consist of editorial and technical changes. The editorial changes merely reflect approval of partial exemptions from 10CFR50 Appendix J and make an editorial format change. The technical changes involve deletion of the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections and a change to base the frequency of subsequent Type A tests on an "as-found" leakage limit of [maximum allowable containment leakage rate] La and require the "as-left" overall containment integrated leakage rate to be less than 0.75 La prior to plant restart. These two technical changes only involve containment leak rate testing requirements and are based on partial exemptions from Appendix J to 10CFR50. Because these changes only involve leak rate testing, they cannot increase the probability of any accident previously evaluated.

With respect to elimination of the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections, there is no significant benefit in coupling these two surveillances. Each of these two surveillances (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A tests assure the required leak-tightness for the reactor primary containment to demonstrate compliance with the guidelines of 10CFR Part 100. The 10-year ISI program provides assurance of the integrity of the plant's structures, systems, and components as well as verifying operational readiness of pumps and valves in compliance with 10CFR50.55a. There is no safety-related concern necessitating their coupling to the same refueling outage. As a result, this change cannot increase the consequences (i.e., offsite dose) of any accident previously evaluated.

With respect to the change to the basis for determining the frequency for performing subsequent Type A tests, this change does not increase the consequences of any accident previously evaluated. The acceptance criterion for [measured containment leakage rate] Lam was established in Appendix J as 0.75 La in order to provide a margin of 25 percent (i.e., 0.25 La) to account for possible deterioration of the reactor primary containment leak-tightness between the periodic Type A tests. The value of La is the leakage rate assumed in the accident analyses in Chapter 15 of the [Updated Safety Analysis Report] USAR. (Refer to Table 15.6.5-5 of the CPS USAR.) Per these analyses, offsite doses resulting from a design-basis loss-of-coolant accident were calculated to be 4.4 Rem whole body and 163 Rem inhalation at the Exclusion Area boundary and 1.7 Rem whole body and 156 Rem inhalation at the Low Population Zone boundary. (Refer to Table 15.6.5-6 of the CPS USAR.) These calculated doses are well below the 10CFR100.11 guidelines of 25 Rem whole body and 300 Rem total. In addition, there is no need for the 25-percent margin to account for deterioration at the end of a Type A test interval since the "as-found" leakage corresponds to the actual condition of the containment at the end of the test interval. Moreover, with respect to "as-left" leakage, the 0.75 La acceptance criterion of 10CFR50 Appendix J will continue to be required to be met prior to plant restart.

There is also added assurance that there will not be any significant undetected degradation in the reactor primary containment leakage during each Type A test interval in that the primary contributors to potentially excessive leakage paths will be measured during the required periodic Type B and Type C tests. These latter tests will be conducted at intervals no greater than 2 years. (Refer to Section III.D.2 and III.D.3 of Appendix J and Surveillance Requirement 4.6.1.2.b.) The principal contributors to any deterioration in the containment leakage rate would thereby be detected and corrected at least once between Type A tests. The air locks will also continue to be tested at intervals of 6 months.

Therefore, based on the above, these proposed changes will not increase the probability or the consequences of any accident previously evaluated.

(2) These proposed changes do not involve any change to the plant design or operation. As discussed above, these changes cannot increase the consequences of any accident previously evaluated. As a result, no new failure modes are created. Therefore, these proposed changes cannot create the possibility of any new or different kind of accident from any accident previously evaluated.

(3) As previously noted, the proposed changes consist of editorial and technical changes. The editorial changes do not directly involve or impact any margin of safety as they merely acknowledge approval of proposed partial exemptions from 10CFR50 Appendix J and make an editorial format change. The proposed technical changes (to delete the requirement to perform the third Type A test for each 10-year service period during the shutdown for the 10-year plant inservice inspections, to base the frequency of subsequent Type A tests on an "as-found" leakage limit of La and require the "as-left" overall containment integrated leakage rate to be less than 0.75 La prior to plant restart) do not change the acceptance criteria that must be met for inservice inspections, do not relax the "as-left" condition of the containment that must be met prior to plant restart and do not change the requirements that must be met between plant refueling outages. Therefore, these proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 31, 1992

Description of amendment request: The proposed amendment would revise the technical specifications (TS) by changing Section 3.6, "Primary Systems Boundary" and adding definitions into Section 1.0, "Definitions". The proposed changes provide additional definitions and improve clarity and consistency of LCOs and SRs. Most of the changes are consistent with the Standard TS (NUREG-1202) while other changes are editorial or administrative in nature. Guidance provided by Generic Letters (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," and GL 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications," was used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes discussed in this section are provided to enhance the overall quality and safety significance of the existing DAEC TS. The proposed TS do not change any accident analysis, plant safety analysis, calculations, degrade existing plant programs, modify any functions of safety related systems, or accident mitigation functions DAEC has previously been credited with. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. These changes have no effect on the consequences of a previously evaluated accident.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed changes do not modify the operation or function of any safety related equipment, nor do they introduce any new modes of operation, failure modes, or physical changes to the plant. The proposed changes do not change any plant parameters or transient responses assumed in the Design Bases of the plant and therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. Therefore, the proposed changes and corrections do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not require any modifications to existing plant systems or equipment, Emergency Operating Procedures, safety limit settings, or parameters utilized in the licensing bases for the safety analysis. These proposed changes are being made to enhance TS Section 3.6 by clarifying and making LCOs and SRs consistent throughout the section. In addition, several LCOs and SRs have been added, providing additional information that did not exist in the current TS. As discussed above, the proposed changes do not change any safety analysis or any accident mitigation actions for which DAEC has previously taken credit. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. These changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 31, 1992

Description of amendment request: The proposed amendment would change the Technical Specifications 3.0 and 4.0 and corresponding Bases and modify existing specifications consistent with new requirements denoting the applicability of Limiting Conditions for Operation and Surveillance Requirements, consistent with the requirements denoted in the Standard Technical Specifications and Generic Letters 87-09 and 89-14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change will not increase the probability or consequences of an accident previously evaluated. The change provides specific applicability requirements to both the Limiting Conditions for Operation and the Surveillance Requirements. The proposed change incorporates only those applicability requirements and exceptions denoted in the Standard Technical Specifications as modified by Generic Letters 87-09 and 89-14, the Improved Technical Specifications (NUREG-1433), or DAEC plant specific terminology which is considered administrative in nature. Invoking the proposed applicability requirements, and thus the administrative requirements imposed on the systems, subsystems, trains, components, or devices, better ensures that these systems, subsystems, trains, components, or devices, will be available to mitigate the consequences of an accident or transient event. Further, the proposed change does not affect any accident or safety analysis event initiator as analyzed in the Final Safety Analysis Report, nor involve any modification to equipment.

2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not affect any equipment design or configuration and, therefore, no new or different types of failures are created. The proposed change will not create any new modes of operation, but ensures that appropriate administrative requirements are invoked (i.e. operability status of a system) prior to mode changes.

3) The proposed change will not involve a significant reduction in the margin of safety. The proposed change does not reduce the margin of safety because it has no impact on any safety analysis assumption. The proposed change is in fact more restrictive due to the additional administrative requirements imposed on the Limiting Conditions for Operation and Surveillance Requirements in each individual specification. The proposed change ensures that each system, subsystem, train, component, or device denoted in the Technical Specifications is maintained with applicability requirements that are consistent with the Standard Technical Specifications and other regulatory guidance documents.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: February 12, 1993

Description of amendment request: The proposed Technical Specification (TS) changes would revise TS Table 1.2, "Operational Conditions," and TS 3/4.9.1, "Reactor Mode Switch," to permit movement of a single control rod with the reactor in the hot shutdown or cold shutdown conditions for purposes such as venting of a control rod drive or scram time testing of a control rod. The current TS permit movement of a control rod in these operational conditions to recouple a rod to its drive.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This revision would allow a single control rod to be withdrawn under control of the reactor mode switch refuel position one-rod-out interlock in OPERATIONAL CONDITIONS 3 and 4. This interlock is explicitly assumed in the safety analysis for control rod removal error during refueling. A prompt reactivity excursion could potentially result in fuel failure. The one-rod-out interlock, together with the requirements for adequate SHUTDOWN MARGIN during refueling, provides protection against prompt reactivity excursions by preventing withdrawal of more than one control rod and ensuring the core remains subcritical with any one control rod withdrawn. The addition of surveillance requirements for the one-rod-out interlock will assure the interlock is operable prior to withdrawal of a control rod in OPERATIONAL CONDITIONS 3 and 4. Although this change would allow an increase in the frequency of single control rod withdrawals in OPERATIONAL CONDITIONS 3 and 4, the probability of previously analyzed accidents, including control rod withdrawal error, is not affected.

The consequences of previously analyzed accidents in OPERATIONAL CONDITIONS 3 and 4 are not affected by this proposed change. The SHUTDOWN MARGIN requirements of Specification 3.1.1 require the reactor to be subcritical when all control rods are fully inserted except for the single control rod having the highest reactivity worth being fully withdrawn. The one-rod-out interlock of the reactor mode switch refuel position permits only a single control rod to be withdrawn. The proposed change will not result in the reactor having the potential for attaining criticality in OPERATIONAL CONDITIONS 3 and 4 or affect the initial conditions assumed in any design basis accident analysis.

Based on the above, the probability and consequences of previously analyzed accidents are not increased.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Single control rods can be withdrawn in OPERATIONAL CONDITIONS 3 and 4 under the existing Technical Specifications to permit control rod recoupling. The proposed change would merely expand this provision to other control rod maintenance and testing activities performed in OPERATIONAL CONDITIONS 3 and 4. The withdrawal of individual control rods in OPERATIONAL CONDITIONS 3 and 4 is a mode of operation permitted under limited circumstances by the existing Technical Specifications. The revision to Specification 3/4.9.1 provides additional assurance that the one-rod-out interlock is OPERABLE in OPERATIONAL CONDITIONS 3 and 4.

The additional control rod maintenance and testing activities which could be performed in OPERATIONAL CONDITIONS 3 and 4 are permitted by the existing Technical Specifications in OPERATIONAL CONDITIONS 1, 2 and 5. Examples of activities which could be performed include venting of control rods following a reactor scram or control rod drive system outage, normal control rod insertion/withdrawal timing and adjustment, control rod scram time testing and control rod friction testing.

Since single control rod withdrawal for the purpose of recoupling is currently allowed in OPERATIONAL CONDITIONS 3 and 4, and Specification 3/4.9.1 is revised to ensure the one-rod-out interlock is OPERABLE, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The Technical Specifications currently permit single control rod withdrawal for the purpose of control rod recoupling when in OPERATIONAL CONDITIONS 3 or 4 if the one-rod-out interlock is OPERABLE. This change merely allows additional activities for which a single control rod may be withdrawn when in OPERATIONAL CONDITION 3 or 4, with the same restriction that the one-rod-out interlock be OPERABLE.

While the Technical Specifications currently allow limited control rod withdrawal in OPERATIONAL CONDITIONS 3 and 4 provided the one-rod-out interlock is OPERABLE, they have no surveillance requirements for the one-rod-out interlock while in OPERATIONAL CONDITION 3 or 4. The revision to the APPLICABILITY statement in Specification 3/4.9.1 invokes the Surveillance Requirements for the one-rod-out interlock whenever control rod withdrawal is performed in OPERATIONAL CONDITIONS 3 and 4. Together, the operability requirements for the one-rod-out interlock and the SHUTDOWN MARGIN requirements of Specification 3.1.1 ensure the reactor will be maintained subcritical during single control rod withdrawals. Therefore, this change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: February 27, 1993

Description of amendment request: The proposed Technical Specification (TS) changes would revise TS Section 1.0, "Definitions;" Section 3/4.3.6, "Control Rod Block Instrumentation;" Bases Section B2.1, "Bases for Safety Limits;" and Bases Section B3/4.2, "Power Distribution Limits." The proposed change to TS Section 1.0 would replace the reference to General Electric Company's critical power correlation, "GEXL," with a more generic term to allow the utilization of other NRC-approved critical power correlations. The proposed change to TS Section 3/4.3.6 would increase the setpoint for the Recirculation Flow Upscale Rod Block by three percent to facilitate reactor operations at up to 105 percent of rated core flow. The proposed changes to Bases Sections B2.1 and B3/4.2 would reflect the proposed change to TS Section 1.0, incorporate revisions to General Electric's approved analytical techniques, update references, and reflect changes made to the Reload Section of the Nine Mile Point Nuclear Station, Unit 2 Updated Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Recirculation Flow Rod Block

The proposed change would alleviate spurious rod block actuations and nuisance alarms currently associated with operation above 100% of rated core flow by revising the high recirculation flow block instrument setpoints from 108% to 111% of rated flow and 111% to 114% of rated flow for the trip setpoint and allowable value, respectively. The operational design basis for high flow rod block is to provide an operator warning signal in response to unexpected high core flow operation. This flow unit upscale trip performs no safety function and the design basis transient and accident analyses do not take any credit for it. The probability of any accident is not significantly increased by operating at 105% core flow because the APRM [Average Power Range Monitor] flow biased scram and the Rod Block Monitor are "clamped" at their 100% core flow values and the 100% core flow values are not changing. The effect of ICF [increased core flow] operation on MCPR [Minimum Critical Power Ratio] operating limits has been previously evaluated and found not significant and MCPR operating limits for the current cycle are bounding for operation in the ICF region. PCT [peak clad temperature] has been evaluated and substantial margin still exists below the limit of 2200°F. Loads on reactor internals, containment, and piping systems have been evaluated and stresses remain within design limits. Therefore, there is no increase in the consequences of any accident.

Critical Power Correlation

Revising the definition of critical power ratio is a modification to analytical techniques and has no effect on the probability of any transient or accident. The transient analyses will continue to be performed using NRC approved critical power correlations and the methodologies approved for the Core Operating Limits Report. The resultant operating limit MCPRs will still assure that the Safety Limit MCPR is not violated during abnormal operating transients. The Safety Limit MCPR provides assurance that one of the principal barriers to the release of radioactive materials, the fuel cladding, is not degraded. Therefore, revising the definition of critical power ratio will not increase the consequences of any transient or accident.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Recirculation Flow Rod Block

Operating with ICF has been evaluated in the USAR [Updated Safety Analysis Report] and does not provide any new accident modes. The control rod block instrument setpoints for the reactor coolant system recirculation flow upscale condition change from 108% to 111% of rated flow and 111% to 114% of rated flow for the trip setpoint and allowable value, respectively. The operational design basis for high flow rod block is to provide an operator warning signal in response to unexpected high core flow operation. The flow unit upscale trip performs no safety function and the design basis transient and accident analyses take no credit for it.

Critical Power Correlation

The change to the definition of Critical Power Ratio does not alter the intent or interpretation of the Technical Specifications. The existing operability requirements for MCPR will remain intact. Thus, the proposed change will not alter the plant configuration or any mode of operation.

The response to previously evaluated accidents remains within previously assessed limits of temperature and pressure, assuring the environmental qualification of plant equipment is not adversely affected by this proposed amendment. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident. Therefore, operation of Nine Mile Point Unit 2, in accordance with the proposed change, will not create the possibility of a new or different kind of accident from any previously assessed.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Recirculation Flow Rod Block

The results of the reload analysis, as documented in Appendix A of the USAR, assure that the current Technical Specifications, including the limits specified in the Core Operating Limits Report, are adequate to preclude the violation of any Safety Limits during ICF operation. To maintain adequate operating margin, the control rod block instrument setpoints for the reactor coolant system recirculation flow upscale condition are being changed from 108% to 111% of rated flow and 111% to 114% of rated flow for the trip setpoint and allowable value, respectively. These setpoints are being increased to maintain an adequate trip setpoint margin allowing for uncertainties and noise, so as not to impact plant high flow operations.

Whereas the analyzed core flow range was previously increased by 5% (from 100% to 105%), the high flow trip setpoint is being increased only 3% (from 108% to 111%); therefore, the function of the trip as an indication/alarm of unintended high flow operation is actually enhanced. Further, the RBM [Rod Block Monitor] upscale setpoint is "clamped" at its 100% core flow value of 110%.

Critical Power Correlation

The proposed change revises the definition of Critical Power Ratio to provide a more generic designation for the critical power correlation. The proposed change provides clarification and will not alter the

Limiting Condition for Operation or Surveillance Requirements associated with MCPR. The safety and operating limits for MCPR will still be determined in accordance with an approved NRC methodology in accordance with the Core Operating Limits Report.

The proposed changes will not cause existing Technical Specification operational limits or system performance criteria to be exceeded. The proposed changes assure that the system response to postulated accidents remains within accepted limits. Thus, the margins of safety established by the Technical Specifications are not altered by this amendment. Therefore, operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: March 8, 1993

Description of amendment request: The licensee proposes to modify the Operating License Nos. NPF-39 and NPF-85 for the Limerick Generating Station (LGS), Units 1 and 2. The amendment would revise paragraph 2.B.(5) to the operating licenses to allow the licensee to receive and possess, but not separate, such source, byproduct, and special nuclear materials as contained in the fuel assemblies and fuel channels from the Shoreham Nuclear Power Station (SNPS) at the LGS site. SNPS never commenced commercial operation and is currently being decommissioned.

The fuel was fabricated by General Electric Company (GE) and consists of 560 GE6-(P8x8R) pressurized, C-lattice, non-barrier fuel bundles. These fuel bundles are similar to those utilized in the LGS Unit 1 initial core loading. The 560 fuel bundles include 340 enriched to 2.19 w/o U-235, 144 enriched to 1.76 w/o U-235, and the remaining 76 are natural uranium (i.e., 0.711 w/o U-235).

The fuel was used at SNPS only in a limited testing program at 5% power. The estimate of the entire core fission product inventory is less than 0.02% of the source term, and its decay heat rate is 265 watts (i.e., 900 Btu/hr). The fuel transport is planned by rail utilizing the GE IF-300 Series spent fuel cask. The GE IF-300 Series spent fuel cask design has received an NRC Certificate of

Compliance (No. 9001), but it will be amended to address the specific pay load to be utilized for the transport of the SNPS fuel to the LGS site.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As explained below, the receipt and storage of the SNPS fuel and fuel channels at LGS, Unit 1 and Unit 2, will not increase the probability of occurrence of any accident previously evaluated in the LGS UFSAR.

The SNPS fuel is similar to fuel previously received, stored, and used at LGS, and the SNPS fuel is the same mechanical design as originally evaluated for Unit 1 in the FSAR. Handling of the SNPS fuel will not differ significantly from the fuel handling procedures described in LGS UFSAR Section 9.1.4, "Fuel Handling System." The impact on the LGS spent fuel pool criticality is bounded by the fuel pool criticality analysis in LGS UFSAR Section 9.1.2.3.1. Furthermore, the impact of the SNPS fuel decay heat on the LGS spent fuel pool cooling capacity is negligible. The radiological consequences of a dropped fuel assembly involving the slightly irradiated Shoreham fuel are bounded by the fuel handling accident involving highly irradiated spent fuel described in LGS UFSAR Section 15.7.4 "Fuel Handling Accident." The physical consequences of a dropped fuel assembly (i.e., on fuel assemblies and structures) are within the scope of LGS UFSAR Section 9.1.2.3.2.3, "Dropped Fuel Bundle Analyses." Restricting the RE main hoist critical load to 110 tons and the use of single failure proof equipment precludes a cask drop due to single failure. Therefore, as stated in LGS UFSAR Section 15.7.5, an analysis of the spent fuel cask drop is not required.

At the time the SNPS fuel is considered for use in either of the LGS reactor cores, a cycle-specific core nuclear analysis will be performed, and will include the effect on the thermal-hydraulic stability in accordance with NRC Generic Letter 88-07, Supplement 1. The SNPS fuel will be used only if the results of the cycle specific analysis are acceptable.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No physical alterations of plant configuration, changes to set points, or changes to operating parameters are involved in implementing the proposed change. The receipt, handling, and storage of the irradiated SNPS fuel is essentially the same as the movement of irradiated fuel using a spent fuel cask that is discussed in UFSAR Section 9.1.4.2.1, "Spent Fuel Cask." The impact of the SNPS fuel and its packaging material on the LGS spent fuel pool criticality is bounded by the fuel pool criticality analysis in LGS UFSAR Section 9.1.2.3.1. Furthermore, the impact of the SNPS fuel decay heat on the LGS spent fuel pool cooling capacity is negligible.

The proposed change does not affect the function or operation of any system or equipment; therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety established in the UFSAR and maintained by compliance with the Technical Specifications [TS] will be maintained. The effect of the SNPS fuel on LGS spent fuel pool cooling capability, storage capacity, and criticality is bounded by existing analyses in the UFSAR as discussed above. Because the fuel is only slightly irradiated and of a similar design to that used at LGS, the movement of the SNPS fuel does not involve any changes in fuel handling practices, types of fuel handling accidents that need to be considered, or occupational radiation exposure from spent fuel pool operations or fuel transfer. The proposed change does not increase the risk or degree of radiological dose to the general public from that previously evaluated.

The operating limits established in the Core Operating Limits Report (COLR) will be submitted to the NRC as required by TS Section 6.9.1.9 prior to using the SNPS fuel in the LGS reactor cores.

Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 26, 1993

Description of amendment request: The licensee has requested a change in the surveillance testing interval for the Logic System Functional Tests (LSFTs) for the 1) Primary Containment Isolation System (PCIS), 2) Core Standby Cooling System (CSCS), 3) Control Rod Block Actuation System and 4) Radiation Monitoring System actuations. The licensee proposes to perform the LSFTs every 24 months (30 months with allowable grace) rather than every 6 months as is currently required. LSFTs are performed to verify operability of all switches, relays, contacts and wiring which make up a particular system's logic. The revised surveillance test interval is proposed to conform to the licensee's operating cycle length.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The change proposed in this application does not constitute a significant hazards consideration in that:

i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes involve a change in the surveillance testing intervals. The proposed changes [d]o not physically impact the plant nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the TS surveillance requirements themselves nor the way in which the surveillance requirements are performed. In addition, the proposed TS changes do not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the change in the frequency of surveillance testing. Also, the proposed TS changes do not affect the availability of equipment or systems required to mitigate the consequences of an accident because of other, more frequent testing or the availability of redundant systems or equipment. Furthermore, an historical review of surveillance test results indicated that there was no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed TS changes do not increase the probability or consequences of an accident previously evaluated.

ii) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes involve a change in the surveillance testing intervals. The proposed TS changes do not introduce new accident initiators or any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the surveillance test requirements themselves and the way surveillance tests are performed will remain unchanged. Furthermore, an

historical review of surveillance test results indicated there was no evidence of any failures that would invalidate these conclusions. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

iii) The proposed changes do not involve a significant reduction in a margin of safety.

Although the proposed TS changes will result in an increase in the interval between surveillance tests, the impact on system availability is insignificant based on other, more frequent testing, redundant systems and equipment, and independent studies which support PECo's evaluation. Furthermore, there is no evidence of any failures that would impact the availability of the systems. Therefore, the margin of safety assumptions in the licensing bases are not impacted and the proposed TS changes do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 5, 1993

Description of amendment request: The licensee proposes to modify Appendix A of the Peach Bottom Atomic Power Station (PBAPS), Unit Nos. 2 and 3 licenses. The proposed changes would revise Technical Specification Table 3.15 and its associated basis for seismic monitoring instrumentation. The modifications are requested to support an upgrade of the seismic monitoring instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Licensee proposes that this application does not involve significant hazards consideration for the following reasons:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the Measurement Range of the Triaxial Time-History Accelerographs and the Triaxial Response-Spectrum Recorders. The current Technical Specification values for the Measurement Range represent the total range that the instrument is capable of providing, not the specified design measurement range for PBAPS.

The proposed changes do not affect the initial conditions or precursors assumed in any Updated Final Safety Analysis Report Section 14 accident analysis. Further, these proposed changes do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes enhance[s] the seismic systems ability to accurately monitor and alarm seismic activity. It does not change any operating procedures. Therefore implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed changes do not involve a significant reduction in a margin of safety.

Revising the Technical Specifications to accurately reflect the measurement range of the new seismic monitoring instrumentation does not affect any safety related equipment or activity.

Therefore, the proposed changes do not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 27, 1993

Description of amendment request: The proposed amendment, by Portland General Electric Company, PGE or the licensee, would modify the facility staffing and training requirements to reflect the permanently defueled non-operating status of the Trojan Nuclear Plant. Since the licensee no longer plans to operate the facility and has requested a possession only license for Trojan Nuclear Plant operators would only be required to monitor and maintain the spent fuel storage facility. As such, the operators do not require training and qualification in areas that would be of value only during reactor power operations. The licensee proposes to amend section 6.0, Administrative Controls, of the Trojan Technical Specifications, to redefine the facility staffing and training requirements consistent with the facility in a non-operating permanently defueled condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.92, Issuance of Amendment, this license amendment request is judged to involve no significant hazards consideration based upon the following:

1. The requested license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to eliminate the requirements for licensed operators and a licensed operator training program and to replace those with certified fuel handlers and a certified fuel handler training program. Since the Plant is defueled, the range of accidents for which an operator needs to be trained is significantly diminished such that a training program of the depth and breath of that required by 10 CFR 55 is no longer needed. In lieu of a 10 CFR 55 licensed operator training program, a NRC-approved certified fuel handler training program will be utilized. Since this training program will adequately equip the operations personnel for fuel handling operations, including responses to abnormal events/accidents, there will be no increase in the probability of these events occurring or in the consequences of these events. The proposed changes do not affect Plant equipment or the procedures for equipment operation or response to abnormal events/accidents.

2. The requested license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is to eliminate the requirements for licensed operators and a licensed operator training program and to replace those with certified fuel handlers and a certified fuel handler training program. This change ensures the qualifications of the operations personnel are commensurate with the tasks to be performed and the conditions to be responded to. This change does not affect Plant equipment or the procedures for operating Plant equipment and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested license amendment does not involve a significant reduction in a margin of safety.

The proposed change is to eliminate the requirements for licensed operators and a licensed operator training program and to replace those with certified fuel handlers and a certified fuel handler training program. This change ensures the qualifications of the operations personnel are commensurate with the tasks to be performed and the conditions to be responded to. The assumptions for a fuel handling accident in the Fuel Building are not affected by the proposed changes. Therefore, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Seymour H. Weiss

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 22, 1993

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TS) would revise TS 1.0. T, 4.0.B, and associated Bases to reflect the recommendations provided in Generic Letter (GL) 89-14, "Line-Item Improvements In Technical Specifications - Removal Of The 3.25 Limit On Extending Surveillance Intervals," dated August 21, 1989. TS 4.0.B currently permits surveillance intervals to be extended up to 25 percent of the surveillance interval. This extension facilitates the scheduling of surveillance activities and allows surveillances to be postponed when plant conditions are not suitable for conducting a surveillance, for example, during transient conditions or other ongoing surveillance or maintenance activities. TS 4.0.B also limits extending surveillances so that the combined time interval for any three consecutive surveillance intervals shall not exceed 3.5 times the specified surveillance interval. The proposed changes would remove the 3.5 surveillance interval limit in TS 4.0.B in accordance with GL 89-14. The associated definition of "Surveillance Frequency" in TS 1.0. T is also removed. The associated Bases are revised to reflect the stated changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not require modification to any plant structures, systems or components. Surveillance test effectiveness and operability as determined by testing will remain the same. The proposed changes will not alter testing. The small change in reliability will not be of a nature to initiate an accident and will not effect the consequences of an accident since mitigating systems are still available.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not require modification to any plant structures, systems or components. The changes remove the limitation for extending surveillance intervals, remove the associated definition and revise Bases accordingly. The nature of the changes preclude the possibility of a new or different kind of accident.

3. involve a significant reduction in a margin of safety.

The proposed changes to remove the limit on surveillance interval extensions and associated definition will not cause a significant reduction in the margin of safety. Removal of the limit results in a small increase to allowable surveillance intervals. This would not result in a significant degradation in the reliability of systems and components under surveillance. Adherence to the limit could require forced shutdown to perform surveillance or the performance of surveillance when conditions are not suitable. It could also require routine surveillances when conditions are not suitable. The safety benefits of removing the limit are more significant than the small increase in the surveillance interval for consecutive extensions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 22, 1993

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TS) would revise the surveillance interval for the electrical protective assemblies (EPAs) in the Reactor Protection System (RPS). Electrical protective assemblies are used in the power supplies for the RPS. The EPAs ensure that RPS components are protected from abnormal voltages or frequencies from the RPS motor generator (MG) set or the alternate power supplies. The EPAs protect the RPS components by tripping a breaker between the MGs and the RPS when abnormal voltages or frequencies are encountered.

The testing of each EPA channel involves a dead-bus transfer and the momentary interruption of power results in a half scram and half isolation. NRC Generic Letter (GL) 91-09, "Modification of Surveillance Interval for the Electrical Protective Assemblies in Power Supplies for the Reactor Protection System," dated June 27, 1991, recommended elimination of testing of EPAs during power operation. This change would reduce the possibility of inadvertent reactor trips caused by testing of the EPAs during power operation. In accordance with GL 91-09, the licensee has proposed to change TS 4.9.G.1 from requiring a channel functional test at least once every 6 months to requiring a channel functional test each time the plant is in cold shutdown for a period of more than 24 hours, unless performed in the previous 6 months. The associated

Bases are also being revised to reflect the surveillance schedule change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the testing frequency for the electrical protective assemblies (EPAs) for the Reactor Protection System (RPS). These changes are in accordance with Generic Letter 91-09. There are no changes to plant design or operation. Increasing the test interval up to 18 months produces a small increase in probability that an inoperable EPA would not be detected. Increased testing during cold shutdown produces a small increase in probability that shutdown cooling can be isolated. These risks are offset by eliminating the possibility of trips due to testing during power that would challenge safety systems.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not change design, operation or the testing process. The change to testing intervals will not effect any condition that could result in a new or different type of accident.

3. involve a significant reduction in a margin of safety.

The testing of each EPA channel involves a dead-bus transfer and the momentary interruption of power results in a half scram and half isolation. Generic Letter 91-09 notes that many plants have encountered problems with the reset of the half trip resulting in inadvertent scrams and group isolation that challenge safety systems during power operation. Eliminating EPA testing at power operation increases the margin of safety by eliminating the potential for trips due to testing that challenge safety systems. An insignificant reduction in the margin of safety is introduced by increasing the test interval up to 18 months producing a small increase in risk that an inoperable EPA would not be detected. The elimination of potential challenges to safety systems provides a safety benefit that offsets the increased risks of component failure and shutdown cooling isolation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 25, 1993

Description of amendment request: The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested a Technical Specifications (Appendix A) and an Environmental Technical Specifications (Appendix B) amendment to incorporate the changes listed below:

(1) The licensee proposed changing the frequency of process and area radiation monitor calibration (specified in Appendix A Table 4.1-1 and Appendix B Tables 3.1-1 and 3.2-1) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the frequency of radioactivity recorder calibration (specified in Appendix B Table 3.1-1) to accommodate operation on a 24-month cycle.

In addition, the licensee requested the following administrative changes:

(1) The licensee proposed changing Appendix A Table 4.1-1 to specify and identify each radiation monitor by its appropriate tag number and to reformat the table for consistency.

(2) The licensee proposed changing Appendix B Tables 3.1-1 and 3.2-1 to specify and identify each radiation monitor by its appropriate tag number.

(3) The licensee proposed changing Appendix B Tables 2.1-1 and 3.1-1 to clarify monitoring requirements for the condensate polisher waste release path.

(4) The licensee proposed changing Appendix B Table 3.1-1 to clearly indicate that the surveillance requirement for monitor R-23 will remain as once per 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The administrative changes to Table 4.1-1 of Appendix A [Technical Specifications] and to Tables 2.1-1, 3.1-1 and 3.2-1 of Appendix B [Radiological Environmental Technical Specifications (RETs)] to the Operating License allow for improved readability and clarification of the Technical Specifications and RETS. These changes do not affect any probabilities or consequences of any accident previously evaluated because they do not change any current Technical Specification or RETS requirements.

The other changes propose extending the calibration intervals for certain radiation monitors and radioactive recorders to be consistent with the length of the operating cycle (24 months). These changes can not affect the probabilities of any previously analyzed accidents because this instrumentation is not a cause of any previously analyzed accidents. This instrumentation provides indication of a plant malfunction which might lead to a health hazard or plant damage, and provides indication associated with radioactive releases to the environment.

There is adequate assurance that an appropriate assessment of the operability of the radiation monitors and radioactive recorders will be provided through various functional tests and programs. Since extending the calibration test intervals for this instrumentation does not involve changes in equipment/system functions and does not adversely affect operability, the changes do not involve a significant increase in the consequences of any accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The administrative changes to Table 4.1-1 of Appendix A and to Tables 2.1-1, 3.1-1 and 3.2-1 of Appendix B to the Operating License allow for improved readability and clarification of the Technical Specifications and RETS. These changes do not create the possibility of a new or different kind of accident from any previously evaluated because they do not change any current Technical Specification or RETS requirements.

The other changes propose extending the calibration intervals for certain radiation monitors and radioactive recorders to be consistent with the length of the operating cycle (24 months). Since these proposed changes do not involve changes in equipment/system functions and do not adversely affect operability, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The administrative changes to Table 4.1-1 of Appendix A and to Tables 2.1-1, 3.1-1 and 3.2-1 of Appendix B to the Operating License allow for improved readability and clarification of the Technical Specifications

and RETS. These changes do not involve a significant reduction in a margin of safety because they do not change any current Technical Specification or RETS requirements.

The other changes propose extending the calibration intervals for certain radiation monitors and radioactive recorders to be consistent with the length of the operating cycle (24 months). These changes will not involve a significant reduction in a margin of safety.

There is adequate assurance that an appropriate assessment of the operability of the radiation monitors and radioactive recorders will be provided through various functional tests and programs. Additionally, the proposed changes to extend the calibration intervals for this instrumentation do not involve changes to established setpoints. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. In addition, the proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 2, 1993

Description of amendment request: This license change request would provide a longer period of time to reduce the setpoints of the Average Power Range Monitors and the Rod Block Monitor when the plant enters single loop operations. Additionally, the changes would incorporate updated core values relative to single loop operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10 CFR 50.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that operation of the Hope Creek Generating Station in accordance with the proposed changes:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. Single Loop Operations

Appendix 15C of the Hope Creek UFSAR contains the single loop analysis that was completed for PSE&G by General Electric. Section 15.C.3.2 evaluates a rod withdrawal error event while in single loop operations and states:

"The rod withdrawal error at rated power is given in the FSAR. These analyses are performed to demonstrate, even if the operator ignores all instrument indications and the alarm which could occur during the course of the transient, the rod block system will stop rod withdrawal at a minimum critical power ratio (MCPR) which is higher than the fuel cladding integrity safety limit. Modification of the rod block equation [...] and lower power assures the MCPR safety limit is not violated."

Relative to the APRMs, Section 15.C.3.2 concludes:

"The APRM trip settings are flow biased in the same manner as the rod block monitor trip settings. Therefore, the APRM rod block and scram settings are subject to the same procedural changes as the rod block monitor trip settings discussed above."

The changes proposed in this submittal would require an APRM and/or RBM channel to be placed in the tripped condition if its setpoints have not been reduced within four hours of entering single loop operations. This would ensure that if thermal power reached the setpoint of the channel that has been reduced, the trip function would occur at the setpoint applicable to single loop operation. Based on these conservative actions, it is concluded that the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Power Ascension Program Data

The proposed changes incorporate plant values which have been conservatively determined from power ascension tests as discussed in Section III.B of this submital. In two cases, the proposed values are more limiting than those presently contained in the affected specifications and in the third case, the value has not been specified until now. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

C. Specification 3.0.2

The proposed changes merely clarify the intent of Specification 3.0.2 and are therefore viewed as administrative in nature.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

A. Single Loop Operations

The constraints imposed by the proposed changes will ensure that, while in single loop operations, the subject trip functions will still occur at the setpoints applicable to single loop operations under the same time limits as the present specification (i.e., within four hours of entering single loop operations). Additionally, the proposed changes will not involve any physical changes to the plant.

B. Power Ascension Program Data

The proposed changes will not involve any physical changes to the plant and have been conservatively determined as discussed in Section III.B of this submittal.

C. *Specification 3.0.2*

The proposed changes merely clarify the intent of Specification 3.0.2 and are therefore viewed as administrative in nature.

3. Will not involve a significant reduction in a margin of safety.

A. Single Loop Operations

The proposed changes will provide a more reasonable period of time to reduce the setpoints of the APRMs and RBM by requiring conservative actions to be taken. These actions will ensure that the applicable trip functions will still occur at the setpoints applicable to single loop operations within the same time period as currently specified (i.e., four hours). These changes, therefore, will not involve a reduction in a margin of safety.

B. Power Ascension Program Data

Insofar as each of the proposed core values that would be incorporated by this submittal were conservatively determined as described in Section III.B of this submittal, it can be concluded that there will be no reduction in margin of safety.

C. Specification 3.0.2

The proposed changes merely clarify the intent of Specification 3.0.2 and are therefore viewed as administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 23, 1993

Description of amendment request: This amendment request would change Technical Specification (TS) Table 3.3-11, "Accident Monitoring Instrumentation," ACTION 3, for both units. The current action statement requires at least one (of two per unit) boric acid storage tank (BAST) to have operable level indication. If the level indication on the second tank is lost, the

unit would be placed into TS Action Statement 3.0.3 requiring, within 1 hour, that action be initiated to shut down the unit. The requested change would allow 72 hours to attempt restoration of one of the level detectors before initiation of a shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The request is only administrative in nature and does to involve a system that was assumed to function in any of the design/licensing basis analysis, and therefore the probability or consequences of an accident previously evaluated are not increased.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce any design or physical configuration changes to the facility which could create new accident scenarios.

3. Does not involve a significant reduction in a margin of safety.

As stated in response to question number 1 above, the proposed change does not affect a system that was taken credit for or assumed to function under any of the design/licensing basis analysis. Consequently, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: December 23, 1992 (TS 328)

Description of amendment request: The proposed amendment modifies the operability requirements for the Low Pressure Coolant Injection (LPCI) system. The proposed change permits LPCI to be considered operable by manual action to restore reactor coolant inventory while this system is aligned for shutdown cooling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Part of the proposed change will add a footnote to present TS [Technical Specification] 3.5.B.1. This footnote will allow LPCI to be considered operable during alignment and operation for shutdown cooling [SDC] with reactor steam dome pressure less than 105 psig [pounds per square inch, gauge] in hot shutdown, if capable of being manually realigned and not otherwise inoperable. The proposed change will explicitly state in the TS, LPCI operability provisions which are appropriate for the hot shutdown condition when less than the RHR [Residual Heat Removal] cut-in permissive of 105 psig. The proposed change ensures that credit can be taken for LPCI operability if manual realignment from SDC is possible and only if LPCI is not inoperable due to causes other than the manual valve realignment. The proposed change does not decrease the requirement for operability of two loops of LPCI in the hot shutdown condition, but rather allows operability to be expanded to include manual realignment from SDC. The availability of the LPCI loop may be different than present provisions since automatic initiation is replaced with manual realignment from the SDC mode of RHR; however, since the reactor is in hot shutdown at less than 105 psig, there is sufficient time for operators to realign to the LPCI subsystem if required. In addition to LPCI, present TS requirements for availability of the automatic initiation capability of core spray remain in effect and are not changed by this proposed TS amendment request.

The proposed change to TS 3.5.B.9 will retain the present requirements for one loop of LPCI to be available when the reactor vessel pressure is atmospheric and the reactor contains irradiated fuel. The availability of the LPCI loop may be different than present provisions since automatic initiation is replaced with manual realignment from the SDC mode of RHR; however, since the reactor is in cold shutdown, there is sufficient time for operators to realign to the LPCI subsystem if required. In addition to LPCI, present TS requirements for availability of the automatic initiation capability of core spray remain in effect and are not changed by this proposed TS amendment request. The proposed changes to the TS do not modify equipment which could affect accident precursors or initiators.

LPCI injection is designed to reflood the vessel following a pipe break from 0.2 square feet to a Design Basis Accident (DBA) Loss of Coolant Accident (LOCA) at rated pressure and power. LPCI functions independently, but in conjunction with the Core Spray system to limit fuel cladding temperature and prevent fuel failure. The function of LPCI is maintained by the proposed TS change since operator action to realign from SDC will provide LPCI injection, if required. The delay in providing LPCI injection due to realignment from the SDC mode is not significant since reactor pressure is low, the plant is in a shutdown condition, and the system realignment will be performed expeditiously by operators trained to perform this evolution.

When the reactor is at atmospheric pressure, the need for LPCI is less than when pressurized. The credible means for loss of vessel inventory at atmospheric pressure is inappropriate maintenance action or valve lineup errors and not pipe breaks. There are administrative controls and equipment interlocks to prevent such occurrences. If the Core Spray system starts and injects during a loss of vessel inventory event, with reactor pressure at atmospheric, then LPCI injection will not be required. If there is a total failure of the Core Spray system during this postulated event, realignment of the RHR system will limit the consequences to less than those of the analyzed accidents and transients. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will maintain the availability of LPCI when the reactor vessel pressure is less than 105 psig and in the hot shutdown or cold shutdown condition. Manual realignment of the RHR system from the SDC mode to LPCI is procedurally controlled and is an evolution that reactor operators are thoroughly trained to perform. This manual realignment will not significantly alter the ability of LPCI to perform its design function for these reactor conditions. [The licensee states that sufficient time is available to manually realign the system to restore reactor coolant inventory in the event of an accident. The proposed change does not modify other LPCI operability requirements.] The proposed change does not "... modify existing equipment design. The requirements for operability of redundant reactor water injection sources such as the Core Spray system are not modified by this proposed TS change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes do not affect the automatic initiation capability of LPCI at reactor conditions other than hot shutdown at less than 105 psig in the vessel and in cold shutdown with irradiated fuel in the reactor. The proposed change clarifies present provisions by allowing LPCI to be considered operable when capable of being manually realigned from the SDC mode. The impact of this change will be to increase the time to start providing makeup water to the reactor from LPCI in a loss of inventory event. However, as stated above, the Core Spray system availability has not been changed and

will provide necessary makeup requirements. The response time for providing makeup water will only be increased if the Core Spray system fails and one loop of RHR is in SDC mode and the other loop is not available for service. For the reactor conditions where the proposed TS change can be utilized, there is ample time to manually realign the RHR loop in SDC mode to the LPCI mode. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c), are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 15, 1993

Description of amendment request: The licensee proposes to change the Design Feature section of the technical specifications (TS) to incorporate a planned replacement of current control rods with General Electric Duralife 215 model control rods. The proposed change would incorporate the design materials of the new control rods, boron carbide and hafnium, into the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The replacement control rod design performs similarly to, or better than, the original control rods. The Duralife 215 is designed to have increased corrosion resistance and structural integrity compared to the original control rods. This reduces the probability of a stuck rod and of the control rod drop accident. The power shaping capability is comparable between the two designs so the Duralife 215 will have no impact on the consequences of licensing basis transients and accidents affected by power shape. Scram reactivity and insertion times are unchanged with respect to the sensitivity of the licensing basis analysis and, therefore, will not impact the consequences of any accidents impacted by reactor scram. Rod drop velocities and the enthalpy deposited in the fuel as a result of a rod drop accident are also within the bounds of the licensing basis analysis, so the consequences of this accident are not impacted. For these reasons, the replacement of the original control rods with Duralife 215 control rods does not represent a significant increase in the probability or consequences of a previously evaluated accident or transient.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation, and the replacement control rods are, by design, fully interchangeable with the original control rods. The power shaping and reactivity control functions of the Duralife 215 are comparable to the original control rods, and the mechanical strength and corrosion resistance of the Duralife 215 are superior to the original control blades. Taken together, these factors indicate that control rod replacement does not create the possibility of any accident that has not been previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The Duralife 215 has been shown to be equivalent, and in some respects better, than the original control rods. The Duralife 215 has comparable reactivity worth when compared to the original control rods. The hafnium in the high flux region of the Duralife 215 provides maximum benefit to increasing the nuclear lifetime. GE has conducted scram speed tests and uses an analytical model which can simulate any core and control rod drive arrangement. Comparing scram speeds between the Duralife 215 and the original control rod design show slight changes. The GE analysis has shown that the scram speeds are not sufficiently different to impact the transient and accident analyses for WNP-2 because differences are within the error bounds assumed in the analyses. The structural strength and corrosion resistance of the Duralife 215 are greater than the original control rods, as such the Duralife 215 has increased resistance to distortion and fatigue. Reduced distortion or fatigue experienced by a control rod corresponds to a reduced likelihood that control rod will be involved in a control rod drop accident or become stuck. Hence the replacement of original control rods with the Duralife 215 does not represent a significant reduction in any margin of safety in the licensing basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: February 26, 1993

Brief description of amendment request: The amendment would allow a one-time exception to the requirements of TS 6.3.1. to permit a specific individual to assume the active duties of Manager, Perry Operations Section, without currently holding a Senior Reactor Operator License.

Date of individual notice in **Federal Register:** March 11, 1993 (58 FR 13511)

Expiration date of individual notice: April 12, 1993

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 20, 1992.

Brief description of amendment: The amendment changes the Technical Specifications to add a requirement to calibrate auxiliary feedwater flow instrumentation at refueling outages and deletes the requirement for a separate functional test on a refueling outage interval.

Date of issuance: March 12, 1993

Effective date: March 12, 1993

Amendment No. 145

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 592)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 16, 1992

Brief description of amendments: The amendments delete certain references related to operator licensing, which are no longer applicable, from Section 6 of the Technical Specifications.

Date of issuance: March 3, 1993

Effective date: March 3, 1993

Amendment Nos.: 52, 52, 41 and 41

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53784). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: September 14, 1992

Brief description of amendment: The amendment revises the pressure/temperature (P/T) limits in Section 3.6 of the Technical Specifications (TS) to correct a deficiency in the P/T limits currently in the TS identified by the licensee.

Date of issuance: March 3, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 123

Facility Operating License No. DPR-19. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55578)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 1, 1991, as supplemented October 26, 1992

Brief description of amendments: The amendment revises the Technical Specifications by incorporating alternative methods of controlling high radiation areas.

Date of issuance: March 11, 1993

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 143 and 132

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20030) The October 26, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: September 28, 1992, as supplemented by letter dated December 2, 1992

Brief description of amendments: The amendments consisted of changes to the Arkansas Nuclear One Industrial Security Plan (ISP) to allow added flexibility in determining the security shift staffing requirements and compensatory measures based on plant activities and the status of the overall security program.

Date of issuance: March 8, 1993

Effective date: March 8, 1993

Amendment Nos.: 162 and 144

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6996)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: September 28, 1992, as supplemented by letter dated January 26, 1993

Brief description of amendments: The amendments added limiting conditions for operation and surveillance requirements for each unit's main steam line radiation monitors in accordance with Generic Letter 83-37.

Date of issuance: March 6, 1993

Effective date: 30 days from the date of issuance

Amendment Nos.: 163 and 145

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6996) The additional information contained in the supplemental letter dated January 26, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: October 21, 1992

Brief description of amendment: This amendment revises Technical Specification 4.5.2.d.1 to delete the requirements to verify operability of autoclosure interlock for the shutdown cooling system.

Date of issuance: March 18, 1993

Effective date: March 18, 1993

Amendment No.: 120

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: November 10, 1992

Brief description of amendment: The amendment temporarily revises Hatch Unit 2 Technical Specification 3.6.6.1 regarding the operability of Hatch Unit 1 standby gas treatment system.

Date of issuance: March 10, 1993

Effective date: March 10, 1993

Amendment Nos.: 124

Facility Operating License Nos. DPR-57 and NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6997)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: September 17, 1992, as supplemented February 12 and 25, 1993

Brief description of amendments: The amendments modify the Technical Specifications by revising a time constant used for lag compensation in the equations for overtemperature and overpower delta temperature trip functions, and a constant (K_4) in the setpoint equation for overpower delta temperature.

Date of issuance: March 10, 1993

Effective date: To be implemented within 60 days of issuance

Amendment Nos.: 57 and 36

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47135) The February 12 and 25, 1993, letters provided additional information in support of the original request and did not change the NRC's proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 10, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 22, 1992

Brief description of amendment: The amendment corrects minor non-conservative errors in acceptance criteria for technical application surveillance requirements for emergency core cooling system pumps. The amendment increases the acceptance criteria for pump differential pressure for high pressure core spray, low pressure core spray, and low pressure coolant injection pumps to be consistent with the Bases for Technical Specification 4.5.1.

Date of issuance: March 18, 1993

Effective date: March 18, 1993

Amendment No.: 66

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6998).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1993. No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 28, 1992, as supplemented by letter dated November 12, 1992.

Brief description of amendments: The amendments change the technical specifications by: (1) replacing the variable shutdown requirements (TS Figure 3.1-1) with a constant value; and (2) changing Surveillance Requirement 4.1.1.1.2, clarifying reactivity balance calculations to confirm core design predictions, leading to the validation of shutdown margin.

Date of issuance: March 9, 1993

Effective date: March 9, 1993, to be implemented within 15 days of issuance.

Amendment Nos.: 48 and 37

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 595).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of application for amendment: August 30, 1991, as superseded by letter dated June 2, 1992.

Brief description of amendments: The amendments change the Technical Specifications (TS) by changing the action and surveillance requirements of TS 3/4.3.3.7 to reflect changes in the toxic gas monitors and number of logic channels for Unit 2. TS changes which reflected comparable changes for Unit 1 were approved in Amendments 45 (Unit 1) and 34 (Unit 2), issued on November 5, 1992.

Date of issuance: March 19, 1993

Effective date: March 19, 1993, to be implemented not later than the completion of the third refueling outage for Unit 2.

Amendment Nos.: 49 and 38

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 2, 1992 (57 FR 45643).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: February 27, 1991

Brief description of amendments: The amendments would change Technical Specification (TS) 3.6.3.1, "Containment Isolation Valves," to provide an exception to the requirements of TS 3.0.4 to allow mode change with inoperable containment isolation valves, provided the action requirements of the TS are met.

Date of issuance: March 16, 1993

Effective date: March 16, 1993

Amendment Nos.: 170 and 153

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22470)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: December 11, 1992

Brief description of amendment: The amendment revised the Technical Specifications by modifying the requirements for performing a channel functional test of the Electrical Protective Assemblies. It also modifies the calibration frequency to an operating cycle basis.

Date of issuance: March 8, 1993

Effective date: March 8, 1993

Amendment No.: 191

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7000).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: January 5, 1993

Brief description of amendment: The proposed changes modify the Cooper Nuclear Station Technical Specifications to delete the Limiting Conditions for Operation and Surveillance Requirements for Residual Heat Removal and Core Spray low-voltage auxiliary relays 27X3 1A/1B.

Date of issuance: March 11, 1993

Effective date: March 11, 1993

Amendment No.: 159

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7001)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 8, 1992

Brief description of amendment: The amendment changed the Cooper Nuclear Station Technical Specification to revise the onsite organizational structure by creating new site management positions.

Date of issuance: March 11, 1993

Effective date: March 11, 1993

Amendment No.: 160

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61115)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: September 22, 1992

Brief description of amendment: The proposed amendment revises the Technical Specification for Millstone Unit 3 to change the measurement range from plus or minus 1g to plus or minus 2g for a seismic monitoring instrument, the triaxial peak accelerograph P/A2.

Date of issuance: March 8, 1993

Effective date: March 8, 1993

Amendment No.: 77

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48822).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 15, 1993, as supplemented January 21, 1993.

Brief description of amendment: The amendment revises the Millstone Unit No. 3 Technical Specifications, Section 4.7.10.e by extending the surveillance requirement frequency for the snubber functional tests by allowing a one-time extension to the current 18-month surveillance, plus the additional 25 percent allowed by Technical Specification 4.0.2.

Date of issuance: March 9, 1993

Effective date: March 9, 1993

Amendment No.: 78

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1993 (58 FR 7265)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 9, 1992

Brief description of amendment: The amendment revised the Technical Specification (TS) to reduce the number of unnecessary starts for the emergency diesel generators (EDGs) due to scheduled preventative maintenance or testing. The changes provide an alternative to starting the remaining EDG every time an EDG is declared inoperable.

Date of issuance: March 12, 1993

Effective date: March 12, 1993

Amendment No.: 150

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55585)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 13, 1992, as supplemented January 8 and January 13, 1993.

Brief description of amendment: The amendment revised Technical Specification 2.6, "Containment System" and the definition of Containment Integrity to reflect the Combustion Engineering Standard Technical Specification for containment integrity and the Personnel Air Lock.

Date of issuance: March 16, 1993

Effective date: March 16, 1993

Amendment No.: 151

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9449) The additional information contained in the supplemented letters dated January 8 and January 13, 1993, was clarifying in nature, and thus, within the scope of the initial notice and did not affect the staff's proposed on significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 21, 1990, as supplemented November 22, 1991 and October 26, 1992 (LAR 90-14)

Brief description of amendments: These amendments add a new technical specification (TS) 3/4.7.1.7, "Main Feedwater Regulating, Bypass and Isolation Valves," to the Diablo Canyon Power Plant TS. These amendments also increase the main feedwater regulating valve and bypass valve closure time limit from 5 to 7 seconds.

Date of issuance: March 18, 1993

Effective date: March 18, 1993

Amendment Nos.: 77 and 76

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9382) The November 22, 1991 and October 26, 1992, provided clarifications on the safety analysis, and more restrictive surveillance requirements and allowed outage times for the proposed TS that did not change the action noticed in the Federal Register on March 6, 1991, and did not affect the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 18, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 29, 1992, as supplemented December 23, 1992.

Brief description of amendment: The amendment revised the Technical Specifications (TS) to incorporate the following changes:

(1) The auxiliary feedwater (AFW) pump full-flow testing frequency (specified in TS Section 4.8.1.a) was changed to accommodate operation on a 24-month cycle.

(2) The AFW pump automatic start verification frequency (specified in TS Section 4.8.3.b) was changed to accommodate operation on a 24-month cycle. In addition, the wording of the AFW pump automatic start verification requirement was changed from "each" actuation signal to "an" actuation signal.

(3) The AFW recirculation valve actuation verification frequency (specified in TS Section 4.8.3.a) was changed to accommodate operation on a 24-month cycle.

(4) The AFW backup supply valve testing frequency (specified in TS Section 4.8.1.c) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable

Date of issuance: March 10, 1993

Effective date: March 10, 1993

Amendment No.: 128

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7004).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: September 23, 1992

Brief description of amendment: The amendment removes Technical Specification (TS) Table 3.6-1 which includes lists of components referenced in individual specifications. In addition, the TS requirements have been modified so all references to Table 3.6-1 are removed under guidance provided in Generic Letter 91-08.

Date of issuance: March 5, 1993

Effective date: March 5, 1993

Amendment No.: 110

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55590)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 6, 1992

Brief description of amendment: The amendment changes the Technical Specifications to permit an increase in the maximum permissible average level of steam generator tube plugging (SGTP) from 15 percent to 18 percent. Although no value for STP is specified in the TS, the increase in SGTP would result in a 1.7 percent decrease in the minimum measured flow (MMF) value which is referenced in TS 3/4.2.3. The proposed reduction in MMF will, in turn, require changes to Table 2.2.-1. Specifically, the overtemperature delta T values for total allowance and the statistical summation of errors (Z) would be changed.

Date of issuance: March 18, 1993

Effective date: March 18, 1993

Amendment No.: 111

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58251)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: October 13, 1992

Brief description of amendments: The amendments change Technical Specification 3/4.4.5 and Bases Section 3/4.4.5 to include new requirements with respect to operability and surveillance of power-operated relief valves (PORVs) and block valves. The changes are based on the guidance contained in Generic Letter 90-06 and are intended to enhance the reliability of the PORVs and block valves.

Date of issuance: March 8, 1993

Effective date: March 8, 1993

Amendment Nos.: 97 and 89

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7005)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: September 28, 1992 (TS 330)

Brief description of amendments: These license amendments revise Browns Ferry Nuclear Plant Technical Specifications by removing detailed listings of circumferential pipe welds requiring additional inspections and placing them in controlled plant procedures, in accordance with guidance provide4d by Generic Letter 91-08.

Date of issuance: March 18, 1993

Effective date: March 18, 1993

Amendment Nos. 191-Unit 1; 206-Unit 2; 163-Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55592)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 18, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: August 4, 1992, as supplemented January 14, 1993.

Brief description of amendments: The amendments allow the entry into an action statement due to a missed surveillance to be delayed for 24 hours, and requires the completion of the surveillance requirements of a limiting condition for operation prior to changing operational conditions. In addition, exceptions to certain requirements of Section 4.0 to Generic Letter 87-09 are also approved.

Date of issuance: March 12, 1993

Effective date: March 12, 1993

Amendment Nos. 175, 174

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: November 25, 1992

Brief description of amendment: The amendment changes Section 6 (Administrative Controls) of the

Technical Specifications (TS) to: (1) modify the title of the Nuclear Safety Assurance Group (NSAG) to the Nuclear Safety Assurance Division (NSAD), and Director of Licensing and Assurance to Director of Quality Assurance, (2) modify the titles of the members on the Plant Operations Committee (POC), (3) delete the position of Assistant Plant Manager as Vice Chairman of the POC, and allow the Plant Manager to designate a Vice Chairman from the POC membership in the POC meeting minutes, and (4) add the Engineering Services Division Manager as a POC member. One title change involves splitting the current combined responsibilities for Chemistry/Radiation Protection into two different management positions responsible for their respective activities. This change provides for a reorganization of the plant management to make the various divisions of station operation more responsive to plant issues and events.

Date of issuance: March 8, 1993
Effective date: March 8, 1993
Amendment No.: 113
Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 601)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: September 10, 1992, as supplemented November 30, 1992.

Brief description of amendment: The amendment revised the Technical Specification Table TS 4.1-1, page 4, item 19, Radiation Monitoring System, to remove the surveillance requirements for the Component Cooling Water Radiation Monitor (R-17). Upon elimination of the automatic actuation feature, R-17 provides indication only. In addition, the related bases for TS 3.1.d were revised.

Date of issuance: March 8, 1993
Effective date: March 8, 1993
Amendment No.: 98
Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48832) The licensee's supplemental submission of November 30, 1992, proposed revisions to the bases only. The Commission's previous proposed determination of no significant hazards was not affected.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 11, 1992

Brief description of amendment: The amendment revises Technical Specification 4.8.1.1.2 by removing the numerical value of 1352 kW associated with the verification of the emergency diesel generators capability to reject the largest single load, the essential service water pump motor, while maintaining required voltage and frequency. In lieu of the numerical value, the revised technical specification denotes the actual load, the essential service water pump motor, which is to be rejected during the emergency diesel generator load rejection surveillance.

Date of issuance: March 8, 1993
Effective date: March 8, 1993
Amendment No.: 59
Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 5, 1992 (57 FR 34592).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 22, 1992

Brief description of amendment: The amendment deletes the surveillance requirement of Technical Specification 4.8.1.1.2(i)(2), which involves performing a pressure test of portions of the emergency diesel fuel oil system. Alternative testing for the tanks and piping would include leak testing at hydrostatic head pressure with the tanks filled to design capacity and would be governed by Technical Specification 4.0.5.

Date of issuance: March 19, 1993
Effective date: March 19, 1993, to be implemented within 30 days of issuance.
Amendment No.: 60
Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7009)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 24th day of March, 1993.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 93-7284 Filed 3-30-93; 8:45 am]

BILLING CODE 7590-01-F

Commonwealth Edison Co., Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50-295 and 50-304]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of sections III.G.2, III.G.2.b and III.G.3 of appendix R to 10 CFR part 50 to Commonwealth Edison Company (the licensee), for the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

In a letter dated August 5, 1992, the licensee requested seven exemptions and documented a revision to a previous exemption from 10 CFR part 50, appendix R, as a result of a recent reassessment of the combustible load values in fire zones and areas. The exemption requests are all revisions of previous requests that were either granted or found to be unnecessary by the NRC staff. The following is a summary of the stated exemption requests.

1. Due to increased combustible loading in the main control room and auxiliary electric equipment room, the licensee requests a revised exemption from the requirements of 10 CFR part 50. appendix R, section III.G.3, for an area wide fixed suppression system.

This exemption would increase the allowable combustible loading in these areas.

2. Due to increased combustible loading in the component cooling water pump area, auxiliary feedwater pump area, auxiliary building elevations 592', 617', and 642' and main steam pipe tunnels, the licensee requests a revised exemption from the requirements of 10 CFR part 50, appendix R, section III.G.2.b, for area wide detection and suppression and for 20 feet of separation between redundant safe shutdown components.

This exemption would increase the allowable combustible loading in these areas.

3 Due to increased combustible loading in the outer and inner crib house, the licensee requests a revised exemption from the requirements of 10 CFR part 50, appendix R, section III.G.2, for redundant circuits to be separated by a 3-hour barrier, or an alternate shutdown capability independent of the areas.

This exemption would increase the allowable combustible loading in these areas.

4. The licensee previously requested an exemption from the requirements of 10 CFR part 50, appendix R, section III.G.2.b, for area wide detection and suppression and for 20 feet of separation between redundant safe shutdown components as they apply to the auxiliary building, elevation 542', residual heat removal pump room area. In a safety evaluation report dated June 7, 1988, the NRC staff concluded an exemption was not required for the 542' elevation because the existing fire protection features in conjunction with cold shutdown repair procedures meet the technical requirements of section III.G.1.b of appendix R to 10 CFR part 50 and related staff guidance. Since this conclusion was independent of the combustible loading, the exemption is not affected by the increased combustible loading of which the licensee is notifying the NRC staff.

The Need for the Proposed Action

The licensee's reassessment of the combustible load values in fire zones and areas has identified the need for several exemptions from 10 CFR part 50, appendix R. The proposed exemptions are needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection that is adequate for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Furthermore, the proposed exemptions would not adversely impact the capability to safely shut down the plant in the event of a fire; would not pose a threat to fuel cladding integrity; would not pose a threat to containment integrity; and would provide an acceptable level of safety, equivalent to that attained by compliance with Sections III.G.2, III.G.2.b and III.G.3 of appendix R to 10 CFR part 50. Based on considerations discussed above, the Commission concludes that granting the proposed exemptions will not increase the probability of an accident and will not result in any post-accident radiological releases in excess of those previously determined for the Zion Nuclear Power Station. The proposed exemptions would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure.

With regard to potential non-radiological impacts, the proposed exemptions involve features located within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the exemptions and require rigid compliance with the requirements of 10 CFR part 50, appendix R, Sections III.G.2, III.G.2.b and III.G.3. Such action would not enhance the protection of the environment. Furthermore, requiring installation of modifications to bring the plant into compliance with 10 CFR part 50, appendix R, in lieu of the revised exemptions would result in additional costs to the licensee, including loss of income from generating power, without adding any benefits already available by existing plant systems or proposed compensatory measures.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemptions discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's request for exemption dated August 5, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 24th day of March 1993.

For the Nuclear Regulatory Commission.

James E. Dyer,

Director, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7394 Filed 3–30–93; 8:45 a.m.]

BILLING CODE 7590–01–M

Proposed Generic Communication; "Line-Item Technical Specification Improvements to Reduce Testing During Power Operation"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or, (3) transmits information to licensees regarding approved changes to rules or

regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures. This draft generic letter presents the results of the NRC staff examination of technical specification surveillance requirements that require testing during power operation. This draft generic letter also provides guidance to assist licensees in preparing a license amendment request to implement the recommendations that resulted from the examination. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 234 of the Committee to Review Generic Requirements (CRGR). The proposed generic letter, as approved by the CRGR, and the supporting documentation are available in the Public Document Rooms under accession number 9303190122. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

Comment period expires April 30, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Dunning, (301) 504–1189.

SUPPLEMENTARY INFORMATION: Draft Generic Letter, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Dated at Rockville, Maryland, this 25th day of March 1992.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

To: All Holders of Operating Licenses or Construction Permits for Nuclear Power Reactors

Subject: Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation (Generic Letter 93–)

The staff of the U.S. Nuclear Regulatory Commission (NRC) has completed a comprehensive examination of technical specification (TS) surveillance requirements that require testing during power operation. This effort is a part of the NRC Technical Specification Improvement Program (TSIP). The results of this work are reported in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements," December 1992. NUREG–1366 is available for examination in the NRC Public Document Room, 2120 L street, NW, Lower Level, Washington, DC 20555 and for purchase from the GPO Sales Program by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. In performing this study, the staff found that while the majority of the testing at power is important, safety can be improved, equipment degradation decreased, and an unnecessary burden on personnel resources eliminated by reducing the amount of testing that the TS require at power operating conditions. However, only a small fraction of the TS surveillance intervals was considered to warrant relaxation. The staff has prepared the enclosed guidance to assist licensees in preparing a license amendment request to implement these recommendations as line-item TS improvements. The NRC issued improved standard technical specifications in September 1992 that incorporated the recommendations of NUREG-1366.

Licensees and applicants are encouraged to propose TS changes that are consistent with the enclosed guidance. The NRC project managers will review requests for license amendments to verify that they conform to this guidance. Please contact the project manager or the contact indicated below if you have questions on this matter.

Any response to the suggestion that licensees or applicants propose these TS changes is voluntary. Therefore, any action taken in response to the guidance provided in this generic letter is not a backfit under § 50.109 of title 10 of the Code of Federal Regulations (10 CFR 50.109). The following information, although not requested under the provisions of 10 CFR 50.54(f), would be helpful to the NRC in evaluating the cost of complying with the suggestion to propose TS changes addressed by this generic letter:

1. The licensee staff time and costs to prepare the amendment request.

2. An estimate of the long-term costs that would be incurred or saved in the future as a result of implementing this TS change.

Contact: T. G. Dunning, NRR, (301) 504–1189.

This request is covered by Office of Management and Budget Clearance Number 3150–0011, which expires June 30, 1994. The estimated average number of burden hours is 40 person hours per licensee response, including those needed to assess the new recommendations, search data sources, gather and analyze the data, and prepare the required letters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB 7714), Division of Information Support Services, Office of Information and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ronald Minsk, Office of Information and Regulatory Affairs (3150–0011), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Sincerely,

James G. Partlow,

Associate Director for Projects, Office of Nuclear Reactor Regulation.

Enclosure: As stated.

Guidance for Implementing Line-Item Technical Specification Improvements to Reduce Testing During Power Operation

Introduction

This enclosure provides guidance for preparing a license amendment request to change the technical specifications (TS) to reduce testing during power operation. These line-item TS improvements are based on the recommendations of an NRC study that included a comprehensive examination of surveillance requirements and is reported in NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements."

Each of the applicable NUREG recommendations is addressed herein with examples of TS changes based upon standard technical specification (STS) requirements that were used as model TS when many plants obtained their operating license. The title and number of each of these line-item improvements corresponds to the section title and number in NUREG–1366 in which the staff recommended the change. The staff is providing the NUREG recommendation for each item, but the NUREG finding is provided only where it is necessary to clarify the intent of the NUREG recommendation. The staff is providing the wording for the changes to specific TS sections using the noted model STS requirements, with the reactor vendor identified in brackets and noted as "(Typ)" where it is typical of the change that applies to the TS for reactors of more than one type or vendor. The staff is providing the wording for a few of the recommendations from TS changes that have been approved for a specific plant. In this case, the plant is identified in brackets as the source of the guidance.

The proposed TS changes for plants that have TS in a format that is different than the STS should be consistent with the intent of the NUREG recommendation, the enclosed guidance, and the format of individual plant TS.

Compatibility With Operating Experience

Licensees should not propose changes to extend any surveillance interval if the recommendations of NUREG–1366 are not compatible with plant operating experience. Therefore, each licensee should include a statement in the license amendment request that all proposed TS changes are compatible with plant operating experience and are consistent with this guidance.

Line-Item TS Improvements

4.1 Moderator Temperature Coefficient Measurements (PWR)

Findings: (1) Technical Specifications require a determination of moderator temperature coefficient at 300 ppm boron concentration. (2) If measured moderator temperature coefficient is more negative (less conservative than the TS value), the licensee must measure the moderator temperature coefficient every 14 EFPDs until the end of the cycle. (3) Measuring the moderator temperature coefficient at low boron concentrations is difficult. (4) VEPCO [Virginia Electric Power Company] proposed a method for eliminating this requirement below 60 ppm. (5) Method is plant-specific.

Recommendation: Other licensees may wish to use the VEPCO approach.

The following condition must be met and addressed to justify the use of the VEPCO approach:

Results of plant-specific analysis are required that show that the maximum possible change in moderator temperature coefficient (MTC) from 60 ppm to the end of the operating cycle (EOC) is less than the difference in the values of MTC from 60 ppm to EOC MTC that are specified in this Technical Specification.

3/4.1 Reactivity Control Systems—Moderator Temperature Coefficient, [W STS (Typ)] TS 4.1.1.3:

The MTC shall be determined to be within its limits during each fuel cycle as follows:

a. The MTC shall be measured and compared to the BOL limit specification 3.1.1.3a., above, prior to initial operation above 5% of rated thermal power, after each fuel loading; and

b. The MTC shall be measured at any THERMAL POWER and compared to −[3.0] × 10–4 delta-k/k/degree-F (all rods withdrawn, rated thermal power condition) within 7 EFPD after reaching an equilibrium boron concentration of 300 ppm.* In the event this comparison indicates the MTC is more negative than −[3.0] × 10–4 delta-k/k/degree-F, the MTC shall be measured, and compared to the EOC MTC limit of Specification 3.1.1.3b., at least once per 14 EFPD during the remainder of the fuel cycle.

**Once the equilibrium boron concentration (all rods withdrawn, rated thermal power condition) is 60 ppm or less, further measurement of the MTC may be suspended if the measured MTC at an equilibrium boron concentration of 60 ppm or less is less negative than [the predicted value of MTC at 60 ppm].*

(Footnote added to be consistent with recommendation.)

4.2 Control Rod Movement Test

4.2.1 Pressurized Water Reactors

Recommendation: Change frequency of the PWR control rod movement test to quarterly.

3/4.1.3 Movable Control Assemblies, [W STS (Typ)] TS 4.1.3.1.2:

Each full-length rod not fully inserted in the core shall be determined to be OPERABLE by movement of at least 10 steps in any one direction at least once per *92* days.

(Replaced "31" with "92" days.)

4.2.2 Boiling Water Reactors

Recommendation: The TS should be changed to require that if a control rod is immovable because of friction or mechanical interference, the other control rods should be tested within 24 hours and every 7 days thereafter.

(**Note:** Existing TS requirements include testing control rods every 7 days. Therefore, the recommendation to change the frequency for tests that apply when a control rod is immovable to include "once every 7 days thereafter" is already covered by the existing requirements that apply before the occurrence of an immovable rod as noted in item a below.)

3/4.1.3 Control Rods, [BWR/6 STS (Typ)] TS 4.1.3.1.2:

When above the low power setpoint of the RPCS, all withdrawn control rods not required to have their directional control valves disarmed electrically or hydraulically shall be demonstrated OPERABLE by moving each control rod at least one notch:

a. At least once per 7 days, and

b. *Within* 24 hours when any control rod is immovable as a result of excessive friction or mechanical interference.

(Replaced "At least once per" with "Within.")

4.3 Standby Liquid Control System BWR

Recommendation: (1) Explosive valves should be tested once each refueling interval for fuel cycles up to 24 months duration. (2) The SBLC system pump test should be required by technical specifications quarterly, in agreement with the ASME Code.

3/4.1.5 Standby Liquid Control System, [BWR/5 STS] TS 4.1.5:

The standby liquid control system shall be demonstrated OPERABLE:

a. At least once per 24 hours by verifying that: (No change to items a.1, a.2, and a.3.)

b. At least once per 31 days by:

1. *(Unused)*

(Item b.1 is noted as "Unused" since it is relocated to item c.1, below. No change to items b.2, b.3, and b.4.)

c. *At least once per 92 days by:*

(New item c. The current item c is renumbered as item d, below.)

1. Starting both pumps and recirculating demineralized water to the test tank.

(Item c.1 is relocated from b.1, above.)

d. At least once *each refueling interval* by:

(Replaced "per 18 months during shutdown" with "each refueling interval.")

1. Initiating one of the standby liquid control system loops, including an explosive valve, and verifying that a flow path from the pumps to the reactor pressure vessel is available by pumping demineralized water into the reactor

vessel. The replacement charge for the explosive valve shall be from the same manufactured batch as the one fired or from another batch which has been certified by having one of the batch successfully fired. Both injection loops shall be tested in *any two consecutive refueling intervals.*

(Item c.1 was relocated from item b.1, above, and replaced "36 months" with "any two consecutive refueling intervals." No change to items d.2 through d.5 that were renumbered as items c.2 through c.5.)

3/4.1.5 Standby Liquid Control System, [BWR/4 STS] TS 4.1.5:

The standby liquid control system shall be demonstrated OPERABLE by:

c. Demonstrating that when tested (pursuant to Specification 4.0.5) (at least once per 92 days), the minimum flow requirement of (41.2) gpm at a pressure of greater than or equal to (1220) psig is met.

(Item c is consistent with the recommended change. No change to item c or to items a and b is required.)

d. At least once *each refueling interval* by:

(Replaced "per 18 months during shutdown" with "each refueling interval.")

1. Initiating one of the standby liquid control system loops, including an explosive valve, and verifying that a flow path from the pumps to the reactor pressure vessel is available by pumping demineralized water into the reactor vessel. The replacement charge for the explosive valve shall be from the same manufactured batch as the one fired or from another batch which has been certified by having one of the batch successfully fired. Both injection loops shall be tested in *any two consecutive refueling intervals.*

(Replaced "36 months" with "any two consecutive refueling intervals." No change to items d.2 through d.4.)

4.4 Closure Time Testing of Scram Discharge Volume Vent and Drain Valves (BWR)

Recommendation: Other BWR licensees may wish to use the Georgia Power Co./GE method on a plant-specific basis to extend the SDV vent and drain valve closure time requirement.

The following condition must be met and addressed to justify the use of the Georgia Power Co./GE method:

Results of plant-specific analysis are required using approved methods, for example, MDE 103 1184, to derive a new vent and drain valve closure time. The analysis must take into account assumptions about the value of each of the following factors: (1) Scram time, (2) displacement volume of water per individual control rod drive, (3) average expected post-scram leakage flow per individual control rod drive, (4) SDV drain flow before isolation, and (5) minimum scram discharge volume.

3/4.1.3 Control Rods, [BWR/6 STS] TS 4.1.3.1.4:

Plant-specific valve closure times should be provided in item a.1 of TS 4.1.3.1.4 that is addressed under the recommendations for Section 4.5, below.

4.5 Reactor Scram Testing to Demonstrate Operability of Scram Discharge Volume (SDV) Vent and Drain Valves (BWR)

Recommendations: (1) Remove the requirement for a scram check of SDV vent and drain valve operability at 50% rod density or less. (2) Require an evaluation of SDV system response after each scram to verify that no abnormalities exist prior to plant restart. (3) Require vent and drain valve operability testing during a scram from shutdown conditions.

3/4.1.3 Control Rods, [BWR/6 STS] TS 4.1.3.1.1:

The scram discharge volume drain and vent valves shall be demonstrated operable by:

a. At least once per 31 days verifying each valve to be open, and

b. *Evaluating SDV system response prior to plant startup after each scram to verify that no abnormalities exist.*

(This change to Item b replaces the 92-day cycling test for each valve.)

The scram discharge volume shall be determined operable by demonstrating:

a. The scram discharge volume drain and vent valves operable, when control rods are scram tested from a shutdown condition at least once per 18 months, by verifying that the drain and vent valves:

(Replaced "a 50% rod density or less" with "a shutdown condition.")

3. Close within (30) seconds after receipt of a signal for control rods to scram, and

2. Open when the scram signal is reset.

b. (No change.)

5.1 Nuclear Instrumentation Surveillance (PWR)

Recommendation: Change surveillance intervals of analog channel functional tests of nuclear instrumentation to quarterly.

Plant-specific requirements have been established based upon the staff's review and approval of topical reports for extending the surveillance intervals for reactor protection system channels from monthly to quarterly as follows:

Letter from C.O. Thomas (NRC) to J.J. Sheppard (WOG–CP&L), of February 21, 1985, Subject: Acceptance for Referencing of Licensing Topical Report WCAP–10271, "Evaluation of Surveillance Frequencies and Out Of Service Time for the Reactor Protection Instrumentation Systems." Also see Westinghouse Owners Group Guidelines for Preparing Submittals Requesting Revision of Reactor Protection System Technical Specification, Revision 1, per letter OG–158, L.D. Butterfield (WOG–CECO) to Harold R. Denton (NRC), September 3, 1985.

Letter from A.C. Thadani (NRC) to T.A. Pickens (BWROG–NSPC), of July 15, 1987, Subject: General Electric Company (GE) Topical Reports NEDC–30844, "BWR Owners Group Response to NRC Generic Letter 83–28," and NEDC–30851P, "Technical Specification Improvement Analysis for BWR RPS."

Letter from A.C. Thadani (NRC) to C.W. Smythe (BWOG–GPU), of December 5, 1988, Subject: NRC Evaluation of BWOG Topical Report BAW 10167 and Supplement 1, "Justification for Increasing the Reactor Trip System On-Line Test Interval."

For CE plants, there is no generic evaluation for increasing RPS surveillance intervals. Therefore, guidance on the recommended TS change is as follows:

3/4.3.1 Reactor Protective Instrumentation, [CE STS] TS Table 4.3–1:

TABLE 4.3–1.—REACTOR PROTECTIVE INSTRUMENTATION SURVEILLANCE REQUIREMENTS

Functional unit	Channel check	Channel calibration	Channel functional test	Modes for which surveillance is required
2. Linear Power Level—High	S	D(2,4)M(3,4),	*Q*	1, 2
3. Logarithmic Power Level— High	S	R(4)(10)	*Q* and S/U(1)	1, 2, 3, 4, 5

(Changed Channel Functional Test frequency from "M" to "Q.")

5.2 Slave Relay Testing (PWR, BWR)

Recommendation: Perform relay testing on a staggered test basis over a cycle and leave the tests carrying highest risk to a refueling outage or other cold shutdown.

The following condition must be met and addressed to justify this approach:

Plant-specific analysis is required to identify those slave relays that should be tested only during a refueling outage or other cold shutdown because of a high risk associated with such testing.

3/4.3.2 Engineered Safety Feature Actuation System (ESFAS) Instrumentation, [W STS (Typ)] TS Table 4.3–2:

TABLE 4.3–2.—ENGINEERED SAFETY FEATURE ACTUATION SYSTEM INSTRUMENTATION SURVEILLANCE REQUIREMENTS

Functional Unit	Slave relay test
[High risk items]	*R*
[Non-high risk items]	*(1)*

(1) Every ( ) days on a STAGGERED TEST BASIS.

(Add "SLAVE RELAY TEST" column to TS tables that do not have it and add footnote (1). The test frequency for high risk items is "R," and the test frequency for the remaining items is to be specified in the footnote at the current TS frequency for slave relays tests, but on a staggered test basis.)

5.3 Test Intervals for RPS and ESFAS (PWR, BWR)

Recommendation: Test three-channel systems on the four-channel schedule. Do not test one of the three channels during a four-channel test interval. Thus, the sequence of testing would be:

Three channels	Four channels
A	A
B	B
C	C
	D
A	A

3/4.3.1 Reactor Trip System Instrumentation, [W STS (Typ)] TS Table 4.3–1:

Table 4.3–1.—Table Notation

(11) Each channel shall be tested at least every 92 days on a staggered test basis. *Individual channels in three-channel systems may be tested on the same schedule for the corresponding channel of four-channel systems.*

(The addition to Note (11), which specifies staggered testing of RPS channels, allows testing of three-channel systems on the same schedule for the corresponding channel of four-channel systems. The same addition should be made to the corresponding note in TS Table 4.3–1 that requires staggered testing of ESFAS channels.)

5.4 Hydrogen Monitor Surveillance (PWR, BWR)

Recommendation: Change frequency of calibration to once each refueling interval and analog channel operational test to quarterly.

3/4.6.5 Combustible Gas Control—Hydrogen Monitors, [W STS (Typ)] TS 4.6.5.1:

Each hydrogen monitor shall be demonstrated OPERABLE by the performance of a channel check at least once per 12 hours, an analog channel operational TEST at least once per *92* days, and at least once *each refueling interval* by performing a CHANNEL CALIBRATION using sample gas containing:

(Replaced "31" with "92" days and "92 days on a Staggered test basis" with "each refueling interval.")

a. One volume percent hydrogen, balance nitrogen, and

b. Four volume percent hydrogen, balance nitrogen.

5.5 Reactor Trip Breaker Testing (PWR)

A TS change was not recommended for this item.

5.6 Power Range Instrument Calibration (PWR)

A TS change was not recommended for this item.

5.7 Control Element Assembly Calculator Surveillance (CE CPC PWR)

Recommendation: Extend the surveillance interval from monthly to quarterly.

3/4.3.1 Reactor Protective Instrumentation, [CE STS] TS Table 4.3–1:

TABLE 4.3–1.—REACTOR PROTECTIVE INSTRUMENTATION SURVEILLANCE REQUIREMENTS

Functional unit	Channel check	Channel calibration	Channel functional test	Surveillance is required
15. CEAC Calculators	S	R	*Q*, R(6)	1, 2

(Channel Functional Test frequency changed from "M" to "Q.")

5.8 Incore Detector Surveillance (CE and B&W PWRs)

Recommendation: The B&W surveillance requirement for incore detectors should be used for CE plants.

3/4.3 Instrumentation—Incore Detectors, [B&W STS] TS 4.3.3.2:

The incore detector system shall be demonstrated operable:

a. By performance of a channel check within 7 days prior to its use for measurement of the axial power imbalance or the quadrant power tilt.

b. At least once per 18 months by performance of a channel calibration which does not include the neutron detectors.

5.9 Response Time Testing of Isolation Instrumentation (PWR, BWR)

Recommendation: Delete requirement from both BWR and PWR technical

specifications to perform response time testing where the required response time corresponds to the diesel start time.

3/4.3.2 ESFAS Instrumentation, [W STS (Typ)] TS Table 3.3–5:

TABLE 3.3–5.—ENGINEERED SAFETY FEATURES RESPONSE TIMES

Initiating signal and function	Response time in seconds
(Identify item)	*NA*

(Replaced specified response time with "NA" for those Initiating Signal and Function entries where the response time [excluding the response time of valves that is confirmed under the inservice testing program] corresponds to the diesel start time.)

5.10 Source Range Monitor and Intermediate Range Monitor Surveillances (BWR)

Recommendation: The calibration interval for the BWR SRMs and IRMs should be changed to once each refueling interval.

3/4.3.6 Control Rod Block Instrumentation, [BWR/6 STS (Typ)] Table 4.3.6–1:

TABLE 4.3.6–1.—CONTROL ROD BLOCK INSTRUMENTATION SURVEILLANCE REQUIREMENTS

Trip function	Channel check	Channel functional test	Channel calibration	Operational conditions in which surveillance required
3. Source range monitors:				
a. Detector not full in	NA	S/U(b),W	NA	2, 5
b. Upscale	NA	S/U(b),W	*R*	2, 5
c. Inoperative	NA	S/U(b),W	NA	2, 5
d. Downscale	NA	S/U(b),W	*R*	2, 5
4. Intermediate range monitors:				
a. Detector not full in	NA	S/U(b),W	NA	2, 5
b. Upscale	NA	S/U(b),W	*R*	2, 5
c. Inoperative	NA	S/U(b),W	NA	2, 5
d. Downscale	NA	S/U(b),W	*R*	2, 5

(Changed Channel Calibration frequency from "Q" to "R.")

5.11 Calibration of Recirculation Flow Transmitters (BWR)

A TS change was not recommended for this item.

5.12 Autoclosure Interlocks (PWR, BWR)

A TS change was not recommended for this item.

5.13 Turbine Overspeed Protection System Testing (PWR, BWR)

Recommendation: Where the turbine manufacturer agrees, the turbine valve testing frequency should be changed to quarterly.

The following condition must be met and addressed to justify the use of this approach:

A statement is required confirming the turbine manufacturer's concurrence with the proposed change.

3/4.3.4 Turbine Overspeed Protection, [W STS (Typ)] TS 4.3.4.2:

The above required Turbine Overspeed Protection System shall be demonstrated OPERABLE:

a. At least once per *92* days by *direct observation of the movement* of each of the following valves through at least one complete cycle from the running position:

(No change to the listing of turbine valves. Replaced "7" with "92" days and "cycling" with "direct observation of the movement" of each valve.)

b. *(Unused)*

(Item b is noted as "Unused" since surveillance for direct observation of valve movement is included in item a above.)

5.14 Radiation Monitors (PWR, BWR)

Recommendation: In order to decrease licensee burden and increase the availability of radiation monitors, change the monthly channel functional test to quarterly.

3/4.3.2 Engineered Safety Feature Actuation System Instrumentation, [CE STS (Typ)] TS Table 4.3–2:

TABLE 4.3–2.—ENGINEERED SAFETY FEATURE ACTUATION SYSTEMS INSTRUMENTATION SURVEILLANCE REQUIREMENTS

Functional unit	Channel check	Channel calibration	Channel functional test	Modes for which surveillance is required
5. Shield Building Filtration (SBFAS):				
e. Containment Radiation—High Gaseous Monitor	S	R	*Q*	1, 2, 3, 4
Particulate Monitor	S	R	*Q*	1, 2, 3, 4
Area Monitor	S	R	*Q*	1, 2, 3, 4

TABLE 4.3–2.—ENGINEERED SAFETY FEATURE ACTUATION SYSTEMS INSTRUMENTATION SURVEILLANCE REQUIREMENTS—Continued

Functional unit	Channel check	Channel calibration	Channel functional test	Modes for which surveillance is required
7. Containment Purge Valves Isolation:				
e. Containment Radiation—High Gaseous Monitor	S	R	Q	1, 2, 3, 4
Particulate Monitor	S	R	Q	1, 2, 3, 4
Area Monitor	S	R	Q	1, 2, 3, 4

(Channel Functional Test frequency changed from "M" to "Q.")

3/4.3.3 Monitoring Instrumentation—Radiation Monitoring Instrumentation, [CE STS] TS Table 4.3–3:

TABLE 4.3–3.—RADIATION MONITORING INSTRUMENTATION SURVEILLANCE REQUIREMENTS

Functional unit	Channel check	Channel calibration	Channel functional test	Modes for which surveillance is required
(All items)	(No change)	(No change)	Q	(No change)

(Channel Functional Test frequency changed from "M" to "Q.")

3/4.3.3 Monitoring Instrumentation—Radioactive Liquid Effluent Monitoring Instrumentation—Radioactive Gaseous Effluent Monitoring Instrumentation, [W STS(Typ)] TS Table 4.3–8 and Table 4.3–9:

No change in existing STS guidance is required. The surveillance interval for an Analog Channel Operational Test (equivalent of a Channel Functional Test for other reactor vendors) is specified as "Q" (quarterly). Plants having a monthly test interval for this surveillance may request a change in the test interval to quarterly.

5.15 Radioactive Gas Effluent Monitor Calibration Standard (PWR, BWR)

A TS change was not recommended for this item.

6.1 Reactor Coolant System Isolation Valves (PWR)

Recommendation: Increase the 72-hour time for remaining in cold shutdown without leak testing the RCS isolation valves to 7 days.

3/4.4.6 Reactor Coolant System Leakage—Leakage Detection Systems, [W STS (Typ)] TS 4.4.6.2.2:

Each Reactor Coolant System Pressure Isolation Valve specified in Table 3.4–1 shall be demonstrated operable by verifying leakage to be within its limit:

a. At least once per 18 months,

b. Prior to entering MODE 2 whenever the plant has been in COLD SHUTDOWN for *7 days* or more and if leakage testing has not been performed in the previous 9 months.

(Replaced "72 hours" with "7 days." No change to items c, d and e.)

6.2 Power-(or Pilot-) Operated Relief Valves (PORVs) and Block Valves (PWR)

Recommendation: Direction concerning PORV and block valves surveillances will be provided in the resolution of GI–70 and GI–94.

This guidance was provided by Generic Letter 90–06 of June 25, 1990.

6.3 High Point Vent Surveillance Testing (PWR)

Recommendation: Licensees to evaluate applicability of Catawba Technical Specification Bases with respect to high point vent surveillance testing and revise the frequency of testing of RCS vent valves to cold shutdown or refueling if appropriate.

Catawba TS Bases 3/4.4.11, Reactor Coolant System Vents, states the following:

Reactor Coolant System vents are provided to exhaust noncondensible gases and/or steam from the primary system that could inhibit natural circulation core cooling. The operability of at least one Reactor Coolant System vent path from the reactor vessel head, and the pressurizer steam space ensures that the capability exists to perform this function.

The valve redundancy of the Reactor Coolant System vent paths serves to minimize the probability of inadvertent or irreversible actuation while ensuring that a single failure of a vent valve, power supply or control system does not prevent isolation of the vent path.

The function, capabilities, and testing requirements of the Reactor Coolant System vent systems are consistent with the requirements of Item II.B.1 of NUREG–0737, "Clarification of TMI Action Plan Requirements," November 1980.

Licensees should confirm and incorporate the applicable portions of the above Catawba TS Bases into the Bases Section for Reactor Coolant System Vent TS to implement the following TS change.

3/4.4.11 Reactor Coolant System Vents, [W STS (Typ)] TS 4.4.11.1:

Each Reactor Coolant System vent path block valve not required to be closed by action a. or b., above, shall be demonstrated operable at least once per *cold shutdown, if not performed within the previous* 92 days, by operating the valve through one complete cycle of full travel from the control room.

(Added "cold shutdown, if not performed within the previous" 92 days)

6.4 Low-Temperature Overpressure Protection (PWR)

A TS change was not recommended for this item.

6.5 Specific Activity of the Reactor Coolant 100/E (PWR, BWR)

A TS change was not recommended for this item.

6.6 Pressurizer Heaters (PWR)

Recommendation: The capacity of pressurizer heaters should be tested once each refueling interval for those plants without dedicated safety-related heaters. The capacity of pressurizer heaters should be tested every 92 days for plants with dedicated safety-related heaters. For those PWRs which have pressurizer heaters tied to a vital bus, no testing of switching between power supplies should be required.

3/4.4.3 Pressurizer, [W STS (Typ)] TS 4.4.3.2:

The capacity of each of the above required groups of pressurizer heaters shall be verified by energizing the heaters and measuring circuit current at least once per 92 days.

(No change. This TS guidance is applicable for plants with dedicated safety-related heaters)

The capacity of each of the above required groups of pressurizer heaters shall be verified by energizing the heaters and measuring circuit current at least once *each refueling interval.*

(Replaced "per 92 days" with "each refueling interval." Applicable for plants without dedicated safety-related heaters)

3/4.4.3 Pressurizer, [W STS (Typ)] TS 4.4.4.3:

The emergency power supply for the pressurizer heaters shall be demonstrated operable at least once per 18 months by manually transferring power from the normal to the emergency power supply and energizing the heaters.

(No change, but this TS is not applicable for plants with some pressurized heaters permanently tied to a vital bus and it may be removed)

7.1 Surveillance of Boron Concentration in the Accumulator/ Safety Injection/Core Flood Tank (PWR)

Recommendation: It should not be necessary to verify boron concentration of accumulator inventory after a volume increase of 1% or more if the makeup water is from the RWST and the minimum concentration of boron in the RWST is greater than or equal to the minimum boron concentration in the accumulator, the recent RWST sample was within specifications, and the RWST has not been diluted.

3/4.5.1 Accumulators—Cold Leg Injection, [W STS (Typ)] TS 4.5.1.1.1:

Each cold leg injection accumulator shall be demonstrated operable:

a. (No change.)

b. At least once per 31 days and within 6 hours of each solution volume increase of greater than or equal to [1% of tank volume] by verifying the boron concentration in the water-filled accumulator. *This surveillance is not required when the volume increase makeup source is the RWST and the RWST has not been diluted since verifying that the RWST boron concentration is equal to or greater than the accumulator boron concentration limit.*

(Added clarification to note when surveillance is not required. For B&W and CE plants, the term "cold leg injection accumulator" is replaced with "core flooding tank" or "safety injection tank," respectively, and "RWST" is replaced with "borated water storage tank" or "refueling water tank," respectively)

7.2 Verification That ECCS Lines Are Full of Water (Contain No Air) (PWR)

A TS change was not recommended for this item.

7.3 Verification of Proper Valve Lineups of ECCS and Containment Isolation Valves (PWR, BWR)

A TS change was not recommended for this item.

7.4 Accumulator Water Level and Pressure Channel Surveillance Requirements (PWR)

Recommendation: (1) Licensees to examine channel checks surveillance and operational history to determine if there is a basis for justifying the extension of frequency for analog channel operational tests for pressure and level channels. (2) Add a condition to the ECCS accumulator LCO for the case where "One accumulator is inoperable due to the inoperability of water level and pressure channels," in which the completion time to restore the accumulator to operable status will be 72 hours.

The NRC staff and industry effort to develop new STS recognized that accumulator instrumentation operability is not directly related to the capability of the accumulators to perform their safety function. Therefore, surveillance requirements for this instrumentation are being relocated from the new STS and the only surveillance that is being retained is that required to confirm that the parameters defining accumulator operability are within their specified limits.

3/4.5.1 Accumulators—Cold Leg Injection, [W STS (Typ)] TS 4.5.1.1.1:

Each cold leg injection accumulator shall be demonstrated operable:

a. At least once per 12 hours by:

1. Verifying *that* the contained borated water volume and nitrogen cover-pressure in the tanks *are within their limits,* and

(Removed the reference to verifying operability "by the absence of alarms" consistent with the removal of the surveillance requirements for this instrumentation. Added clarification to verifying that the noted parameters are within their limits)

2. Verifying that each cold leg injection accumulator isolation valve is open.

(No change for item a.2)

3/4.5.1 Accumulators—Cold Leg Injection, [W STS (Typ)] TS 4.5.1.1.2:

Each accumulator water level and pressure channel shall be demonstrated operable:

a. At least once per 31 days by the performance of an analog channel operational test, and

b. At least once per 18 months by the performance of a channel calibration.

Specification 4.5.1.1.2 above may be removed from TS but should be retained as an existing plant procedure requirement that may be subsequently modified under plant change control procedures and the related requirements of the Administrative Controls Section of the TS.

7.5 Visual Inspection of the Containment Sump (PWR)

Recommendation: Inspection of the containment at least once daily if the containment has been entered that day, and during the final entry to ensure that there is no loose debris that would clog the sump.

3/4.5.1.2 ECCS Subsystems—Tavg Greater Than or Equal to (350) degrees-F, [CE STS (Typ)] TS 4.5.2:

Each ECCS subsystem shall be demonstrated operable by:

(No change to items a and b)

c. By visual inspection which verifies that no loose debris (rags, trash, clothing, etc.) is present in the containment which could be transported to the containment sump and cause restriction of the pump suctions during LOCA conditions. This visual inspection shall be performed:

1. For all accessible areas of the containment prior to establishing containment integrity, and

2. *At least once daily* of the areas affected within containment *by containment entry and during the final entry* when containment integrity is established.

(The underlined additions were made, and "at the completion of containment entry" was removed as it implied an

inspection separate from that activity for which the containment entry was made)

7.6 Verification of Boron Concentration in the Boron Injection Tank (Westinghouse PWR)

Recommendation: Measure concentration of boron in the boric acid storage tank rather than in the BIT if it can be justified that the concentrations are the same.

The following condition must be met and addressed to justify the use of this approach:

A justification is required that the measurement of the boron concentration in the boric acid storage tank verifies the boron concentration in the BIT.

3/4.5.4 Boron Injection System—Boron Injection Tank, [W STS] TS 4.5.4.1:

The boron injection tank shall be demonstrated operable by:

a. Verifying the contained borated water volume at least once per 7 days,

b. Verifying the boron concentration of the water in the tank *by measuring the boron concentration in the boric acid storage tank* once per 7 days, and

(Added clarification of where measurement is made)

c. Verifying the water temperature at least once per 24 hours.

(No change for item c)

8.1 Containment Spray System (PWR)

Recommendation: The surveillance interval [air or smoke flow test] should be extended to 10 years.

Recent Experience: On June 11, 1991, the Southern California Edison Company (SCE) reported that a containment spray system (CSS) air flow test for San Onofre Unit 1 indicated that several nozzles were blocked. SCE investigated and found that seven nozzles were clogged with sodium silicate, a coating material that was applied to the carbon steel CSS piping in 1977. The licensee conducted air flow tests in 1980, 1983, and 1988 and obtained acceptable results.

This event does not alter the recommendation for an extension of the air flow test surveillance interval for plants with the more commonly used stainless steel piping system. However, licensees for plants using carbon steel piping must justify any change in the surveillance interval because of the San Onofre experience.

3/4.6.2 Depressurizing and Cooling Systems—Containment Spray System, [CE STS (Typ)] TS 4.6.2.1:

Each Containment Spray System shall be demonstrated operable:

d. At least once per *10* years by performing an air or smoke flow test through each spray header and verifying each spray nozzle is unobstructed.

(Changed the surveillance interval from "5" to "10" years)

8.2 Containment Purge Supply and Exhaust Isolation Valves (PWR)

A TS change was not recommended for this item.

8.3 Ice Condenser Inlet Doors (PWR)

Finding: Duke Power Co. justified a surveillance interval for containment inlet door testing that eliminated the need for a shutdown. [Duke Power Co. had 6 years of testing experience for McGuire Units 1 and 2 without a failure and the design does not allow water condensation to freeze, a common cause of stuck doors.]

Recommendation: The Duke proposal may be used by other utilities if it can be justified on a plant-specific basis.

3/4.6.7 Ice Condenser—Ice Condenser Doors, [McGuire TS (Typ)] TS 4.6.5.3.1:

Inlet Doors—Ice condenser inlet doors shall be:

a. (No change)

b. Demonstrated operable during shutdown at least once *each refueling interval* by:

(Replaced "per 9 months" with "each refueling interval")

(1) (No change.)

(2) (No change.)

(3) Testing *all* doors and verifying that the torque required to open each door is less than [195] inch-pounds when the door is 40 degrees open. This torque is defined as the "door opening torque" and is equal to the nominal door torque plus a frictional torque component.

(Replaced "a sample of at least 25% of the" with "all" and removed the last sentence of this section relating to selecting door samples such that all doors are tested at least once during four test intervals.)

8.4 Testing Suppression Chamber to Drywell Vacuum Breakers (BWR)

Recommendation: (1) The monthly surveillance test should be retained. (2) The time each vacuum breaker shall be tested following any discharge of steam to the suppression chamber should be changed to 12 hours.

3/4.6.4 Vacuum Relief, Suppression Chamber-Drywell Vacuum Breakers, [BWR/5 STS] TS 4.6.4.1:

Each suppression chamber-drywell vacuum breaker shall be:

a. Verified closed at least once per 7 days.

b. Demonstrated operable:

1. At least once per 31 days and within *12* hours after any discharge of steam to the suppression chamber from the safety-relief valves, by cycling each vacuum breaker through at least one complete cycle of full travel.

(Replaced "2" with "12" hours. No change to items 2 and 3.)

8.5 Hydrogen Recombiner (PWR)

Recommendation: Change the surveillance test interval for the hydrogen recombiner functional test to once each refueling interval. [The test interval is 6 months for some plants.]

3/4.6.5 Combustible Gas Control-Electric Hydrogen Recombiners, [B&W STS (Typ)] TS 4.6.5.2:

Each hydrogen recombiner system shall be demonstrated operable:

a. (No change)

b. At least once *each refueling interval* by:

(Replaced "18 months," which is the current STS requirement for PWRs, with "each refueling interval." No change to items b.1, b.2, and b.3.)

3/4.6.7 Atmospheric Control-Containment and Drywell Hydrogen Recombiner Systems, [BWR/6] TS 4.6.7.1:

Each containment and drywell hydrogen recombiner system shall be demonstrated operable:

a. (No change.)

b. At least once *each refueling interval* by:

(Replaced " per 18 months," which is the current BWR/6 STS requirement, with "each refueling interval." No change to items b.1 through b.4.)

8.6 Sodium Tetraborate Concentration in Ice Condenser Containment Ice

Recommendation: Change the analysis interval to once each refueling interval.

3/4.6.7 Ice Condenser-Ice Bed, [W STS] TS 4.6.7.1:

The ice condenser shall be determined operable:

a. (No change.)

b. *Once each refueling interval* by chemical analyses which verify that at least nine representative samples of stored ice have a boron concentration of at least 1800 ppm as sodium tetraborate and a pH of 9.0 to 9.5 at 20 degrees-C.

(Combined item b and b.1, with the surveillance interval being "Once each refueling interval" rather than "At least once per 9 months.")

c. At least once per 9 months by:

(Renumbered item b as item c.)

(No change to items c.1 and c.2. Renumbered items b.2 and b.3 as items c.1 and c.2.)

d. (No change to this item. Renumbered item c as item d)

9.1 Auxiliary Feedwater Pump and System Testing (PWR)

Recommendation: Change frequency of testing AFW pumps to quarterly on a staggered test basis.

3/4.7 Plant Systems—Auxiliary Feedwater, [CE STS (Typ)] TS 4.7.1.2:

Each auxiliary feedwater pump shall be demonstrated operable:

a. At least once per 31 days by:

1. Verifying that each valve (manual, power-operated or automatic) in the flow path that is not locked, sealed, or otherwise secured in position, is in its correct position.

(Renumbered items a.1 and a.2 as items b.1 and b.2 below, and renumbered item a.3 as a.1.)

b. *At least once per 92 days on a staggered test basis by:*

1. Verifying that each motor-driven pump develops a discharge pressure of greater than or equal to _____psig at a flow of greater than or equal to _____gpm.

2. Verifying that the turbine-driven pump develops a discharge pressure of greater than or equal to _____psig at a flow of greater than or equal to _____gpm when the secondary steam supply pressure is greater than _____psig. The provisions of Specification 4.0.4 are not applicable for entry into MODE 3.

(Added item b. Renumbered items a.1 and a.2 as items b.1 and b.2.)

9.2 Main Steam Line Isolation Valve (MSIV) Surveillance Testing

A TS change was not recommended for this item.

9.3 Control Room Emergency Ventilation System (PWR, BWR)

Findings: (1) The Surveillance requirements for the control room emergency ventilation system contain a requirement that the control room temperature be verified every 12 hours to assure that it is less than a temperature typically in excess of 100 degrees-F. (2) This temperature limit is to ensure equipment operability and human habitability. It does not appear to be effective for either purpose.

Recommendation: Replace this requirement with a more useful surveillance or delete it if a more effective limit cannot be established.

Because the burden for verifying that the control room temperature is within its limit is not believed to be significant, no change to existing TS are proposed in response to this recommendation. However, changes to temperature limits may be proposed on a plant-specific basis to reflect the initial temperature used to calculate the control room peak temperature during a station black out event.

10.1 Emergency Diesel Generator Surveillance Requirements (PWR, BWR)

Recommendation: (1) When a EDG itself is inoperable (not including a support system or independently testable component), the other EDG(s) should be tested only once (not every 8 hours) and within 8 hours unless the absence of any potential common mode failure can be demonstrated. (2) EDGs should be loaded in accordance with the vendor recommendations for all test purposes other than the refueling outage LOOP tests. (3) The hot-start test following the 24-hour EDG test should be a simple EDG start test. If the hot-start test is not performed within the required 5 minutes following the 24-hour EDG test, it should not be necessary to repeat the 24-hour EDG test. The only requirement should be that the hot-start test is performed within 5 minutes of operating the diesel generator at its continuous rating for 2 hours or until operating temperatures have stabilized. (4) Delete the requirement for alternate testing that requires testing of EDG and other unrelated systems not associated with an inoperable train or subsystem (other than an inoperable EDG).

3/4.8.1 A.C. Sources—Operating, [Typical STS Requirements, non-vendor specific] TS 3.8.1.1, ACTIONS:

a. With an offsite circuit of the above required A.C. electrical power sources inoperable, * * *

(Delete the following requirement to test EDGs: "If either diesel generator has not been successfully tested within the past 24 hours, demonstrate its OPERABILITY by performing Surveillance Requirements 4.8.1.1.2.a.5 and 4.8.1.1.2.a.6 for each such diesel generator, separately, within 24 hours.")

b. * * * If the diesel generator became inoperable due to any cause other than *an inoperable support system or* preplanned preventive maintenance or testing, demonstrate the operability of the remaining operable diesel generator by performing Surveillance Requirements 4.8.1.1.2.a.5 and 4.8.1.1.2.a.6 within *8 hours, unless testing of an independently testable component has demonstrated the absence of any potential common mode failure for the remaining diesel generator.*

(Added the noted conditions under which testing of an EDG is not required and replaced "24 hours" with "8 hours." Remove any other requirement to perform the specified surveillances every 8 hours thereafter or to perform testing of alternate trains of other systems.)

d. With two of the above required offsite A.C. circuits inoperable, restore * * *

(Deleted the following requirement to test EDGs: "demonstrate the OPERABILITY of two diesel generators separately by performing the requirements of Specifications 4.8.1.1.2.a.5 and 4.B.1.1.2.a.6 within 1 hour and at least once per 8 hours thereafter, unless the diesel generators are already operating;")

TS 4.8.1.1.2:

a. In accordance with the frequency specified in Table 4.8–1 on a staggered test basis by:

(6) Verifying the generator is synchronized, loaded to greater than or equal to [continuous rating] kW in *accordance with the manufacturer's recommendations*, and operates with a load greater than or equal to [continuous rating] for at least 60 minutes, and

(Replaced "less than or equal to [60] seconds" with "accordance with the manufacturer's recommendations.")

e. At least once per 18 months, during shutdown, by:

(7) Verifying the diesel generator operates for at least 24 hours. * * * Within 5 minutes after completing this 24-hour test, perform Specification *4.8.1.1.2.a.5);* * * *.

(Replaced TS "4.8.1.1.2.e.6).b)" [simulated loss-of-offsite power start and load test] with "4.8.1.1.2.a.5)" [EDG start test].)

*If Specification *4.8.1.1.2.a.5)* is not satisfactorily completed, it is not necessary to repeat the preceding 24-hour test. Instead, the diesel generator may be operated at [continuous rating] kW for *2 hours* or until operating temperature has stabilized.

(Replaced the reference to TS "4.8.1.1.1.e.6).b)" with "4.8.1.1.2.a.5)" and replaced "1 hour" with "2 hours." This footnote may be added if it does not exist in plant TS.)

TS (Plant-specific):

Where plant TS require the testing of the one train (EDG, system, or subsystem) when an alternate train, system, or subsystem (other than an EDG) is inoperable, such requirements may be removed from plant TS.

10.2 Battery Surveillance Requirements (PWR, BWR)

A TS change was not recommended for this item.

11 Refueling

A TS change was not recommended in this area.

12 Special Test Exceptions

Suspending Shutdown Margin Requirements (PWR)

Recommendation: All PWR licensees may select the Florida Power and Light Co. (FP&L) proposal to eliminate one rod drop test if they satisfy the condition of performing a rod drop test no more than 7 days before reducing shutdown margin. If a rod drop test has been performed within this time, another test is not necessary.

3/4.10 Special Test Exceptions—Shutdown Margin, [FP&L TS (Typ)] TS 4.10.1.2:

Each CEA not fully inserted shall be demonstrated capable of full insertion when tripped from at least the 50% withdrawn position within *7 days* prior to reducing the shutdown margin to less than the limits of Specification 3.1.1.1.

(Replaced "24 hours" with "7 days.")

13 Radioactive Effluents

Waste Gas Storage Tanks (PWR)

Recommendation: The surveillance requirement for the limit on the number of curies in the waste gas tank should be changed to: "The quantity of radioactive material contained in each waste gas decay tank shall be determined to be within the limit at least once every 7 days whenever radioactive materials are added to the tank, and at least once every 24 hours during primary coolant system degassing operations."

3.11 Radioactive Effluents—Gas Storage Tanks, [W STS (Typ)] TS 4.11.2.6:

The quantity of radioactive material contained in each gas storage tank shall be determined to be within the above limit at least once per *7 days* when radioactive materials are added to the tank *and at least once per 24 hours during primary coolant system degassing operations.*

(Replaced "24 hours" with "7 days" and added the new requirement for performing surveillance "at least once per 24 hours during primary coolant system degassing operations.")

14 Conclusions

General Recommendations

Items (1) through (3) of the General Recommendations did not include any recommendations for changes to technical specifications.

(4) Section 4.0.2 of the Technical Specifications, which allows the extension of a surveillance test interval, should be made applicable to Section 4.0.5 concerning the ASME Code testing in those Technical Specifications which presently do not allow Section 4.0.2 to be applied.

3/4.0 Applicability [All STS (Typ)] TS 4.0.5 (c):

(c) The provisions of Specification 4.0.2 are applicable to the above required frequencies for performing inservice inspection and testing activities.

For plants with custom TS, the reference to TS 4.0.2 should be replaced with the applicable TS section that allows surveillance intervals to be extended by 25 percent of the specified interval. In addition, the term "above" may be deleted from the reference to the "required frequencies for performing inservice inspection and testing activities." Finally, if plant TS do not include a general specification (TS 4.0.5) on inservice inspection and testing, a new numbered general specification requirement should be proposed based on the STS model specification (TS 4.0.5), or the following statement should be proposed for addition to the specification that allows surveillance intervals to be extended by 25 percent of the specified interval:

This provision is applicable to the required frequencies for performing inservice inspection and testing of ASME Code Class 1, 2, and 3 components, pumps, and valves in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable addenda as required by 10 CFR part 50, § 50.55a(g).

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[Docket No. 50–344]

Portland General Electric Company, Trojan Nuclear Plant; Confirmatory Order Modifying License (Effective Immediately), License No. NPF–1

I

Portland General Electric Company (PGE, the licensee) is the holder of Facility Operating License No. NPF–1 issued by the U.S. Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR part 50 on November 21, 1975. The license authorizes the operation of the Trojan Nuclear Plant (the facility) at steady-state power levels not to exceed 3411 megawatts thermal. The facility consists of a pressurized water reactor (PWR) and supporting systems located at the licensee site in Columbia County, Oregon.

II

On January 4, 1993, the Directors of PGE voted to accept the recommendation by PGE management to permanently cease power operations at the Trojan Nuclear Plant. The facility had been shut down since November 9, 1992, when a leak in the "B" steam generator was detected. PGE began defueling the reactor on January 23, 1993, and completed the movement of all fuel elements to the spent fuel pool on January 27, 1993. Since the vote on January 4, 1993, PGE has decided to decommission the facility. On January 27, 1993, the licensee submitted, to the NRC, an amendment request for a Possession-Only License.

At the end of January 1993, PGE gave 60-day notice of termination of employment to approximately 45 percent of its operating and support staff. The licensee assured the NRC that it would ensure adequate staffing to conform to the requirements of its current license for the shutdown condition. PGE is also proceeding with plans to discontinue customary maintenance on equipment necessary to support operations other than that needed to safely store fuel in the spent fuel pool.

III

The NRC has determined that the public health and safety require that the licensee not return fuel to the reactor vessel because the licensee is currently revising its procedures to no longer require the maintenance of structures, systems, or components in a condition that would allow power operation. As revised, the procedures would only encompass structures, systems, or components required to be maintained during the current defueled mode 6 condition of the facility, and would not cover, for example, the reactor coolant system, the reactor protection system and the safety injection system.

Additionally, the licensee notified the NRC on January 14, 1993 and February 11, 1993, that they are withdrawing certain commitments made to the staff. These commitments included system upgrades, analyses, and revisions to procedures necessary for power operations. As a result of the permanent cessation of operations at the facility, the licensee no longer plans to complete the system upgrades, perform the analyses, or revise the procedures.

If PGE were to place nuclear fuel into the reactor vessel, this could result in a core criticality and the production of power. Should this occur after the end of March 1993, there may not be a sufficient number of adequately trained personnel to control operation. In addition, if the licensee begins to curtail maintenance of systems needed for operation of the facility, as currently planned, it is questionable whether

necessary safety equipment would be available to ensure the protection of the public health and safety.

On January 27, 1993, the licensee submitted a letter notifying the NRC that PGE decided to permanently cease power operations at the Trojan Nuclear Plant. On February 2, 1993, the licensee also submitted a letter to the NRC informing the staff that as of January 27, 1993, all reactor fuel had been moved to the spent fuel storage facility. In a letter of February 17, 1993, the licensee requested that a condition be placed in the Trojan Nuclear Plant Operating License that prohibits the movement of new or spent fuel into the reactor building without prior NRC approval. In that letter, the licensee committed to not move new or spent fuel into the reactor building without prior NRC approval. I find the licensee commitment as stated in its letter of February 17, 1993, acceptable and necessary and conclude that with this commitment plant safety is reasonably assured.

In view of the foregoing, I have determined that the public health and safety require the licensee commitment not to move new or spent fuel into the reactor building without prior NRC approval be confirmed by this Order. The licensee has agreed to this action pursuant to 10 CFR 2.202. I have also determined based on the licensee consent and on the significance of this prohibition, that the public health and safety require that this Order be effective immediately.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR 2.202 and 10 CFR part 50, it is hereby *Ordered*, effective immediately, that Facility Operating License No. NPF–1 is modified as follows:

The licensee is prohibited from placing any nuclear fuel into the Trojan Nuclear Plant reactor building without prior approval in writing from the NRC. This Confirmatory Order in no way relieves the licensee of the terms and conditions of its operating license.

V

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Section. Copies of the hearing request also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and the Regional Administrator, NRC Region V, at 1450 Maria Lane, suite 210, Walnut Creek, California 94596, and to the licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria in 10 CFR 2.714(a).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), (57 FR 20194) May 12, 1992, any person other than the licensee adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 24th day of March 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7397 Filed 3–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corp.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Vermont Yankee Nuclear Power Corporation to withdraw its December 15, 1992, application for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont.

The proposed amendment would have revised the plant technical specifications to allow a one time extension of the 7-day allowed outage time to 14 days for the 'B' diesel generator during the current operating cycle.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 21, 1993 (58 FR 5435).

For further details with respect to this action, see the application for amendment dated December 15, 1992, and the licensee's letter dated March 9, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555 and the local public document room, located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland this 25th day of March, 1993.

For the Nuclear Regulatory Commission

Daniel H. Dorman,

Project Manager, Project Directorate I–3, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7396 Filed 3–30–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32047; File No. SR–AMEX–93–03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change; American Stock Exchange, Inc.

March 25, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1993, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to continue to waive the imposition of transaction charges until March 31, 1993, for any

transactions executed on the Exchange in either the Index Trust SuperUnit or Money Market SuperUnit, and, to similarly waive the imposition of transaction charges for 90 days to commence on the first day of trading of Standard & Poor's Corporation ("S&P") Depository Receipts ("SPDRs") on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On November 6, 1992, trading commenced in Index Trust SuperUnits and Money Market Trust SuperUnits (collectively "SuperUnits").[1] With trading volume by floor professionals and off-floor accounts extremely light, in late November, 1992, the Exchange waived its imposition and collection of transaction charges ("TCs") for orders executed on the Exchange for all accounts (*i.e.*, accounts of floor traders, specialists, and customer and firm propriety off-floor orders) through the close of business on December 31, 1992.[2] Since trading volume remains light, the Exchange now proposes to continue to waive its imposition and collection of TCs as noted above until March 31, 1993.

The AMEX is presently trading SPDRs in minimum increments of 1/32's resulting in the tightest possible trading differential.[3] Accordingly, transaction costs could be a meaningful factor in encouraging or deterring trading in this product. Therefore, the Exchange has determined to waive its imposition and collection of transaction charges for SPDRs orders executed on the Exchange for all accounts, *i.e.*, accounts of floor traders, specialists, and customer and firm proprietary off-floor orders. This waiver will extend for 90 days after the commencement of trading SPDRs.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that the waiver of transaction charges will benefit all market participants who choose to trade SuperUnits and/or SPDRs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Since the proposed rule change concerns changing a fee or other charge imposed by the AMEX, it has become effective immediately upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7441 Filed 3-30-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32039; File Nos. SR-Amex-93-07; SR-BSE-93-08; SR-MSE-93-03; SR-NASD-93-11; SR-NYSE-93-13; SR-PSE-93-04; and SR-Phlx-93-09]

Self-Regulatory Organizations; The American Stock Exchange, et al.

March 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that the above mentioned self-regulatory organizations filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organizations.[2] The

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[1] *See* Securities Exchange Act Release No. 30394 (February 21, 1992), 57 FR 7409 (approving File No. SR-AMEX-90-06).

[2] *See* Securities Exchange Act Release No. 31869 (February 17, 1993), 58 FR 11078.

[3] *See* Securities Exchange Act Release Nos. 31794 (February 5, 1993), 58 FR 7272 (approving File No. SR-AMEX-92-45) and 31591 (December 18, 1992), 57 FR 60253 (approving File No. SR-AMEX-92-18).

[4] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule changes were filed with the Commission as follows: The American Stock Exchange ("Amex") on February 22, 1993; the Boston Stock Exchange ("BSE") on February 9, 1993; the Midwest Stock Exchange ("MSE") on February 17, 1993; the National Association of Securities Dealers ("NASD") on March 1, 1993; the New York Stock Exchange ("NYSE") on March 4, 1993; the Pacific Stock Exchange ("PSE") on March 5, 1993; and the Philadelphia Stock Exchange ("Phlx") on March 5, 1993. The PSE's and BSE's proposed rule changes as originally filed were designated as filings of the Boston Stock Exchange Clearing Corporation and the Pacific Clearing Corporation, respectively. On March 17, 1993, and March 18, 1993, the PSE and the BSE, respectively, amended their proposed rule changes to designate the rule changes as filings of the exchanges. Letter to Jack Drogin, Special Counsel, Division of Market Regulation, Commission, from Michael D. Pierson, Market Regulation, PSE, dated March 17, 1993; and

Continued

Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Amex, BSE, MSE, NASD, NYSE, PSE, and Phlx ("self-regulatory organizations" or "SROs") herewith are filing proposed rule changes regarding book-entry settlement that would require, subject to certain exceptions set forth in the texts of the rules, book-entry settlement of transactions between member firms and between member firms and their clients where settlement is effected on a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") basis. The text of the proposed rule is attached as Exhibit A.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Changes

In their filings with the Commission, the SROs included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The texts of these statements may be examined at the places specified in Item IV below. The SROs have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose and Statutory Basis for, the Proposed Rule Changes

The proposed rule changes are intended to serve as a key element in the implementation in the United States ("U.S.") of the recommendation of the Group of Thirty, U.S. Working Committee ("Committee"), Clearance and Settlement Project ("Project"), regarding book-entry settlement of securities transactions.[3] The proposed rule changes were submitted to the Commission by each SRO in conjunction with substantially similar rule filings by the other SROs.[4]

In connection with the Project, the Committee has recommended that settlements and other movements of corporate and municipal securities, for transactions among financial intermediaries (brokers, dealers, and banks) and between financial intermediaries and their institutional clients, be effected only by book-entry movements within a depository.[5] The proposed rules would implement such a book-entry settlement requirement, subject to certain exceptions discussed below, resulting in book-entry settlement for transactions in depository-eligible securities between SRO members and their clients where settlement is effected on a DVP or RVP basis. Approval of the book-entry settlement rule proposals therefore would ensure that the vast majority of securities transactions effected in the U.S. markets will be settled by book-entry.

The proposed rules will not apply to or affect the manner in which member firms settle transactions with traditional retail customers, settlement of transactions in securities that are not depository-eligible, or transactions in which settlement occurs outside the U.S. The proposed rules also make exceptions for transactions for same-day settlement where the deliverer cannot by reasonable efforts deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities and other special transactions where the deliverer cannot by reasonable efforts deposit the securities prior to a cut-off date that is established by a depository.[6] The latter exception is intended to address corporate reorganizations and other extraordinary activities where a deliverer is unable by reasonable efforts to meet a depository's established delivery cut-off time.

The Committee's recommendation regarding book-entry settlement is one of several Committee recommendations which are directed toward reducing risk in the U.S. national market system. The book-entry settlement recommendation also was supported strongly by the Bachmann Task Force in its recent report submitted to the Chairman of the Commission.[7] In order to provide broker-dealers with sufficient time to implement internal systems and procedures for compliance with these requirements, the proposed rule would become effective sixty days after Commission approval.

The SROs believe that the proposed rule changes are consistent with section 6(b)(5) of the Act,[8] which provides that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The proposed rule is designed to reduce the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical securities. By requiring that transactions between member firms and transactions between member firms and clients that settle on a DVP or RVP basis occur (with rare exceptions) in a book-entry environment, the efficiency of the U.S. clearance and settlement system will be enhanced and the potential for systemic risk will be reduced.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The SROs believe that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members.

The SROs have neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SROs consent, the Commission will:

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letter to Jack Drogin from Karen A. Aluise, Attorney, BSE, dated March 18, 1993.

[3] The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978. In 1988, the Group of Thirty initiated a project to improve the state of risk, efficiency and cost in the world's clearance and settlement systems. See Implementing the Group of Thirty Recommendations in the United States, I–1 (November 1990).

[4] The proposed rule changes were developed through the efforts of the Committee's Legal and Regulatory Subgroup, which included representatives of the Amex, MSE, NASD, NYSE, Phlx, the National Securities Clearing Corporation, The Depository Trust Company, the Municipal Securities Rulemaking Board, and the Commission's Division of Market Regulation.

[5] Implementing the Group of Thirty Recommendations in the United States, Supra note 3, at 1, 2.

[6] With respect to the exception for transactions for same-day settlement, the NASD's proposed rule change omits the phrase "reasonable efforts" and only allows the exception where the deliverer cannot deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities and for other special transactions where the deliverer cannot deposit the securities prior to a cut-off date that is established by a depository. The NASD's proposed rule still will require transactions between member firms and transactions between member firms and clients that settle on a DVP or RVP basis to occur (with rare exceptions) in a book-entry environment.

[7] Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets, Report Submitted to the Chairman of the Securities and Exchange Commission (May 1992).

[8] 15 U.S.C 78f(b)(5) (1988).

(A) By order approve such proposed changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal offices of the above-mentioned SROs. All submissions should refer to the file numbers in the caption above and should be submitted by April 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Book-Entry Settlement

(a) A member, member organization, or affiliated member shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary or a member of a national securities exchange or a registered securities association.

(b) A member, member organization, or affiliated member shall not effect a delivery-versus-payment or receipt-versus-payment transaction in a depository-eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(c) For purposes of this rule, the term "securities depository" shall mean a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.

(d) The term "depository-eligibile securities" shall mean securities that (i) are part of an issue (as identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

(e) This rule shall not apply to transactions that are settled outside of the United States.

(f) The requirements of this rule shall supersede any inconsistent requirements of the [name of SRO].

(g) This rule shall not apply to any transaction where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and

(i) If the transaction is for same-day settlement, the deliverer cannot be reasonable efforts deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities, or

(ii) The deliverer cannot be reasonable efforts deposit the securities in a depository prior to a cut-off date established by the depository for that issue of securities.

[FR Doc. 93-7443 Filed 3-30-93; 8:45 am]

BILLING CODE 8010-01-M

[9] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-32048; File No. SR-NYSE-93-04]

Self-Regulatory Organizations; Filing of Proposed Rule Changes, New York Stock Exchange, Inc.

March 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to amend NYSE Rules 700 (Applicability, Definitions and References) and 703 (Series of Options Open for Trading) to introduce for trading index options that will expire on the second business day following the end of each calendar quarter ("End-of-quarter Options" or "QIXs"). The Exchange seeks approval to list QIX options on the NYSE Composite Stock Index ("NYA").

The text of the proposed rule changes is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B),and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

(1) Purpose

In response to the proliferation of over-the-counter ("OTC"), non-exchange traded options, and in order to accommodate institutional investors whose performance is judged on a quarterly basis, the Exchange is proposing to list index stock group options that expire on the second business day following the end of each calendar quarter, rather than the customary expiration date of "the Saturday immediately following the third Friday of the expiration month." For example, if the proposed QIX options were listed on the Exchange at present, the next three expiration dates would be April 2, 1993, July 2, 1993, and October 4, 1993. The exercise settlement value for QIXs will be based on the opening value of the corresponding index on the business day prior to expiration, or, in other words, at the opening of business on the first business day following the end of a calendar quarter. If a component stock does not open, the prior closing price will be used to calculate the exercise settlement value.

The Exchange proposes to settle QIX options based on the opening prices of an index stock groups component stocks rather than the closing prices. The Exchange feels that the use of opening prices is the best strategy for addressing widely-held concerns about the actual and potential impact of derivative products on the pricing mechanism and integrity of the stock market. The Exchange believes that the use of opening prices diverts order flow away from the close of trading and therefore avoids the order imbalance and concomitant price volatility that historically accompanies the close of trading on index option expiration dates.

In addition, by moving the order imbalance to the morning, the Exchange imposes its time-tested opening procedures, which provide a mechanism for handling the stock volume that accompanies the expiration of an index option. Experience has shown that those procedures, and in particular, the early collection and dissemination of order imbalances, provide market participants with sufficient opportunity to evaluate the unique impact of index-related orders and to react accordingly. The NYSE believes that the use of opening prices generally reduces the potential impact of order imbalances on specialists and other market participants.

Having determined the propriety of opening values rather than closing values, the NYSE next determined to propose the use of opening values on the first business day subsequent to the end of a calendar quarter, rather than opening values for the last business day of a calendar quarter. The additional day provides the investor with an opportunity to roll out of, or to close out, a position at the end of a calendar quarter. This ability to roll out of, or to close out, a position at the end of a calender quarter, rather than a day earlier, has meaning because QIX options are designed to allow institutions to hedge over the full calendar quarter. At this time, the Exchange proposes to list QIX options on the NYA with the symbol of "NYE," and intends to list up to eight series for trading. In addition, the Exchange proposes to retain the flexibility to assign an index multiplier for QIX options of as much as 500 rather than the customary 100 so as to allow the Exchange to accommodate the needs of portfolios of the size that the Exchange expects to make use of QIX options. Aside from the expiration dates and multiplier, contract terms for traditional options on an index stock group will apply for QIX options on that index stock group. For example, traditional and QIX options on the same index stock group will have the same exercise style (*i.e.*, American or European).

Similarly, position and exercise limits that apply to traditional options on an index stock group will also apply to QIX options on that index stock group. However, in order to equalize positions to account for differences in index multipliers, the Exchange proposes to require adjustment to the number of QIX option contracts used for the purposes of calculating exercise and position limits for options on an index stock group. That is, one must multiply the number of QIX option contracts by the index multiplier and divide that product by 100 in order to arrive at the number of QIX options to be used in the position limit calculation. For example, if the Exchange sets the index multiplier for a QIX option on the NYA at 500, it would multiply the number of contracts on that index by five (*i.e.*, the 500 index multiplier divided by 100 = 5) for the purposes of position and exercise limit calculations. In addition, QIX options will be aggregated with positions in other NYSE-traded option contracts on the same index stock group for position and exercise limit purposes.

(2) Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7442 Filed 3-30-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32045; File No. SR-NYSE-92-36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to an Amendment to Enhance Specialist Performance Standards

March 24, 1993.

On December 23, 1992, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 103A to enhance performance standards relating to the turnaround time for specialists' handling of Designated Order Turnaround ("DOT") system orders.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 31760 (January 25, 1993), 58 FR 6650 (February 1, 1993). No comments were received on the proposal.

NYSE Rule 103A specifies performance standards for specialists, and provides for the initiation of a

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[1] 17 CFR 200.30-3(a)(12)(1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The NYSE's DOT system (also known as Super Dot) was developed by the NYSE to facilitate the routing of orders from NYSE members' offices to specialists on the NYSE floor.

formal "Performance Improvement Action" in any case where a specialist unit does not meet a performance standard specified in the rule.[4] Rule 103A has historically contained performance standards applicable to the handling of orders received by specialists by means of the DOT system.[5]

Effective with the second quarter of 1993, the Exchange proposes to implement a new DOT turnaround standard for specialists. The current standard requires a specialist unit to turn around 90% of its DOT orders in two minutes during any two quarters in a "rolling" four quarter period. The Exchange proposes to raise this standard by requiring specialist units to turn around 90% of their DOT orders in one minute during any two quarters in a "rolling" four quarter period.

Rule 103A requires that any modification of existing standards be communicated to the membership at least one quarter before it is actually implemented.[6] The Exchange states that it notified the membership prior to the first quarter of 1993 of its intention to implement the revised turnaround standard as of the beginning of the second quarter of 1993.[7]

The Exchange also is seeking the Commission's approval at this time to adopt a 30-second turnaround performance standard for implementation at some appropriate future date. The Exchange states that it will provide both the Commission and its membership with at least one quarter's notice before implementation of the 30 second standard.

The Exchange states that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Rule 103A are consistent with these objectives in that they are intended to promote timely, efficient and high quality specialist performance in the handling and servicing of market orders received by means of the Exchange's automated order routing system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11(b) of the Act.[8] The Commission believes that the NYSE's proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11(b) of the Act, and Rule 11b–1 thereunder,[9] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. The proposal upholds the Exchange's objective to promote the maintenance of fair and orderly markets because it enhances the Exchange's ability to evaluate specialist performance and when warranted take appropriate action to improve such performance.[10]

The Commission fully supports and encourages the NYSE's continuing efforts to develop meaningful and effective evaluation criteria that encourage improved specialist performance and market quality. The Commission believes it is important to market quality that the Exchange have accurate and comprehensive measures of specialist performance. These specialist performance measures are especially important in light of the significant role played by the NYSE specialist in providing stability and liquidity to exchange markets.

The Commission believes that the NYSE proposal should enhance specialist performance and market quality by increasing specialist performance standards for the turnaround of DOT orders from a requirement of 90% turnaround in two minutes to a 90% turnaround in one minute and, in the future, to a 90% turnaround in 30 seconds during any two quarters in a rolling four quarter period. The Commission believes that the revised standards more accurately reflect current industry practice and would encourage the Exchange to consider adopting the 30 second turnaround time as soon as practicable. In this regard, the NYSE has stated that, on average, DOT orders are turned around in 28 seconds.[11] Moreover, the enhanced specialist performance standards should increase the level of customer service provided by NYSE member organizations by promoting quicker turnaround of customer orders. This, in turn, should promote certainty in the status of customer orders and promote efficiency in the marketplace.

The Commission recognizes that although the NYSE intends to implement the one minute turnaround standard upon approval of this proposed rule change, the NYSE's proposal to adopt a 30 second turnaround performance standard will be implemented at a future date.[12] The NYSE has stated, however, that it would provide both the Commission and the Exchange membership with at least one quarter's notice prior to implementation of the 30 second standard.[13] In addition to the one quarter notice, the Commission requests that the NYSE submit notice of its intent to implement the 30 second standard in the form of a proposed rule change for immediate effectiveness upon filing, pursuant to section 19(b)(3)(A) of the Act[14] and subparagraph (e) of Securities Exchange Act Rule 19b–4,[15] as a proposal constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or

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[4] NYSE Rule 103A grants authority to the Exchange's Market Performance Committee ("MCP") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality. Specialist performance is reviewed on a periodic basis to determine whether or not particular specialist units need to take action to improve their performance. Based on such determinations, the MPC is authorized to conduct a formal Performance Improvement Action in an appropriate case and where warranted take appropriate action, such as: notifying the unit in writing that its performance needs to be improved, informing the unit in writing of measurable goals that the unit will be expected to achieve to improve its performance, imposing an allocation freeze, and initiating a reallocation proceeding.

[5] The Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), the timeliness of a unit's response to status requests, as well as DOT order turnaround. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire.

[6] *See* NYSE Rule 103A.30.

[7] *See* Memorandum from Catherine R. Kinney, Executive Vice President, Equities/Audit, NYSE and Edward Kwalwasser, Executive Vice President, Regulation, NYSE, to Members and Member Organizations, dated December 29, 1992.

[8] 15 U.S.C. 78f(b)(5) and 78k(b) (1988).

[9] 17 CFR 240.11b–1 (1992).

[10] *See supra* note 4.

[11] Telephone conversation between Don Siemer, NYSE, and Diana Luka-Hopson, Commission, on March 9, 1993.

[12] As noted above, we would encourage the NYSE to consider adopting the more stringent standard, after it has had some experience with the 60 second turnaround time structure.

[13] NYSE Rule 103A.30 requires that any modifications, deletions, or additions to Rule 103A be communicated to the membership at least one quarter before they are implemented.

[14] 15 U.S.C. 78s(b)(3)(A) (1988).

[15] 17 CFR 240.19b–4(e) (1991).

enforcement of an existing rule of the self-regulatory organization. In this way, the NYSE will provide notice of the implementation of the new standard to public customers and investors.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–92–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7359 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19355; 812–8156]

American Capital Government Target Series, et al.; Notice of Application

March 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American Capital Government Target Series ("Trust") and American Capital Asset Management, Inc. ("Adviser").

RELEVANT ACT SECTIONS: Order requested under section 17(b) for an exemption from section 17(a), and under rule 17d–1(b) to permit a joint transaction otherwise prohibited by section 17(d) and rule 17d–1(a).

SUMMARY OF APPLICATION: Applicants seek an order that would permit one of the Trust's two portfolios to acquire all of the assets and assume all of the liabilities of the Trust's other portfolio.

FILING DATE: The application was filed on November 10, 1992, and amended and restated on January 25, 1993 and March 15, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, c/o American Capital Asset Management, Inc., 2800 Post Oak Blvd., Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.[1]

Applicants' Representations

1. The Trust was organized on June 14, 1990 as a Massachusetts business trust. The Trust is registered under the Act as an open-end, diversified, management investment company. The Trust is comprised of two investment portfolios: Portfolio '97 and Portfolio '98 (the "Portfolios"). The Adviser provides investment advisory, administrative, and management services to the Portfolios.

2. Portfolio '97 and Portfolio '98 have the same investment objectives and policies, the same fee structure, and similar investment portfolios. Both Portfolios invest at least 80% of their assets in obligations issued or guaranteed by the United States government or its agencies or instrumentalities. The only substantive difference between the two Portfolios is the liquidation date. Portfolio '97 is scheduled to liquidate on December 16, 1997; Portfolio '98 is scheduled to liquidate on May 1, 1998.

3. Amalgamated Bank of New York ("Amalgamated"), in its capacity as custodian for certain pension funds and trusts that own shares of the Portfolios, owned of record as of December 31, 1992 approximately 25% of the outstanding shares of Portfolio '97 and 47% of the outstanding shares of Portfolio '98. American Capital Trust Company ("ACTC"), an affiliate of the Adviser, in its capacity as custodian for certain retirement accounts that own shares of the Portfolios, owned of record as of December 31, 1992 approximately 13% of the outstanding shares of Portfolio '97 and 19% of the outstanding shares of Portfolio '98. Amivest Corporation ("Amivest"), in its capacity as investment adviser to certain pension and trust funds that own shares of the Portfolios (and with authority to vote those shares, subject to the ultimate supervision of its clients), arguably controlled as of December 31, 1992 approximately 51% of the outstanding shares of Portfolio '97 and 47% of the outstanding shares of Portfolio '98.

4. The trustees of the Trust, including a majority of those trustees who are not "interested persons" of the Trust ("Disinterested Trustees"), have approved a Plan of Reorganization ("Plan") pursuant to which Portfolio '97 will acquire all of the assets and assume all of the liabilities of Portfolio '98. The net asset value of the shares Portfolio '97 issues in the exchange will equal the net asset value of the shares of Portfolio '98 then outstanding. Each shareholder of Portfolio '98 will receive that number of full and fractional shares of Portfolio '97 equal in value as of the date of the exchange to the value of such shareholder's shares of Portfolio '98.

5. The Trust will submit the proposed Plan to the shareholders of Portfolio '98 for their approval at a meeting called for that purpose. A majority of the outstanding shares of Portfolio '98 will be required to approve the acquisition.

6. The proposed reorganization will result in an increase in the asset size of Portfolio '97. The Trust expects that, to the extent expenses remain relatively fixed and do not vary with asset size, this increase will result in economies of scale to the benefit of all shareholders of the combined Portfolio. The proposed reorganization will facilitate management of the Trust, and should result in a decrease in certain expenses, including brokerage and research costs, audit fees, and general administrative costs.

7. The proposed transaction will not have adverse tax consequences for the shareholders. No gain or loss will be recognized by Portfolio '98 or its shareholders as a result of the reorganization, and applicants will receive an opinion of tax counsel to this effect before consummating the reorganization.

8. The Adviser will pay all of the direct and indirect expenses of the proposed transaction.

Applicants' Legal Analysis

1. Under section 2(a)(3) of the Act, one person is an "affiliated person" of another person if, among other things: the person directly or indirectly owns, controls, or holds with power to vote 5% or more of the other person's

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[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

[1] This notice supersedes a previous notice, Investment Company Act release No. 19191 (Dec. 29, 1992), that summarized the initial application filed on November 10, 1992. After publication of that notice, applicants advised the SEC staff that certain relevant facts were inadvertently omitted from the initial application. Applicants subsequently amended the application.

outstanding voting securities; 5% or more of the person's outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; or the person directly or indirectly controls, is controlled by, or is under common control with the other person.

2. The Portfolios would be affiliated persons of one another if they are deemed to be under "common control." The Portfolios could be deemed to be under common control because they have common trustees and officers, and a common investment adviser. The Portfolios also could be deemed to be under the common control of Amivest. In addition, Amalgamated and ACTC, by virtue of their record ownership of more than 5% of the Portfolios' stock, arguably are affiliated persons of each Portfolio, and each Portfolio arguably is an affiliated person of Amalgamated and ACTC. If so, Portfolio '97 would be an affiliated person of an affiliated person of Portfolio '98, and vice-versa.

3. Section 17(a) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from knowingly selling to or purchasing from such investment company any security or other property.

4. Rule 17a–8 under the act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers. Because the Portfolios may be affiliated with one another other than through their adviser, directors, and officers, applicants may not rely on rule 17a–8. Nevertheless, applicants have agreed to comply with the substantive requirements of the rule. Specifically, the trustees of the Trust, including a majority of the Disinterested Trustees, have determined that the proposed reorganization will be in the best interest of the shareholders of each Portfolio and will not result in the dilution of the current interests of any such shareholder.

5. Section 17(b) of the Act authorizes the SEC to exempt any transaction from the provisions of section 17(a) if: the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the transaction is consistent with the policy of each registered investment company concerned; and the transaction is consistent with the general purposes of the Act.

6. Applicants contend that the proposed reorganization meets the standards of section 17(b). Among other things, applicants assert that (a) the shareholders of both Portfolios will benefit from the reorganization (as discussed above), (b) the Adviser will bear all costs of the reorganization, (c) the reorganization is subject to approval of the shareholders of Portfolio '98, who will receive a proxy statement containing information about the transaction, (d) the reorganization will have no adverse tax consequences for shareholders of either Portfolio, and (e) the exchange will be made at net asset value and will not result in dilution of the current interests of any shareholder. Applicants further note that there is little danger of overreaching by Amivest, Amalgamated, or ACTC (or by the pension funds, trusts, and retirement accounts for which Amalgamated and ACTC serve as custodians) because those entities will not receive any benefits from the reorganization different from those benefits received by other shareholders. Moreover, Amalgamated and ACTC are record owners only and will not actually vote on the proposed reorganization.

7. Section 17(d) and rule 17d–1(a), taken together, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or joint arrangement in which such registered company is a participant, unless an application relating thereto has been filed with the SEC and an order approving the joint transaction has been entered.

8. Rule 17d–1(b) provides that in determining whether to grant an order, the SEC must consider whether participation of each Portfolio in the reorganization is consistent with the provisions, policies and purposes of the Act, and the extent to which each Portfolio's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants contend that the proposed reorganization meets the standards of rule 17d–1(b). In particular, they note that each Portfolio will participate in the reorganization on a basis not different from or less advantageous than that of the other Portfolio. Applicants submit that the participation of Amalgamated, ACTC, and Amivest in the proposed reorganization is consistent with rule 17d–1 because Amalgamated, ACTC and Amivest will receive no benefit different from any other Portfolio '98 shareholder.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7445 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19360; 811–4976]

Janus Income Series; Notice of Deregistration

March 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Janus Income Series.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 1992, and an amendment thereto was filed on March 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 Fillmore Street, suite 300, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was an open-end, diversified investment company organized as a business trust under Massachusetts law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on January 9, 1987. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act, which was declared effective on July 1, 1987. The public offering of shares of the Janus Flexible Income Fund series commenced promptly thereafter. A post-effective amendment registering shares of the Janus Intermediate Government Securities Fund series was filed on May 15, 1991. Applicant's two series are hereinafter referred to as the "Funds."

2. At a meeting held on May 8, 1992, applicant's trustees determined that it would be desirable and in the best interests of the Funds that they be reorganized as new series of Janus Investment Fund, a Massachusetts business trust (the "Trust"), and for applicant to be terminated thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan "). The trustees determined that the reorganization would provide an economical and cost efficient form of organization, and would result in significant administrative efficiencies. The trustees also determined that the reorganization would not dilute the interests of the Funds' shareholders

3. A notice of a special meeting of shareholders and a proxy statement regarding the approval of the reorganization and termination of applicant was distributed to applicant's shareholders on or about May 8, 1992. At a special meeting of applicant's shareholders held on July 10, 1992, the shareholders approved applicant's reorganization and termination pursuant to the Plan.

4. On August 7, 1992, the Janus Intermediate Government Securities Fund and the Janus Flexible Income Fund were each reorganized from separate series of applicant into the Janus Intermediate Government Securities Fund series and the Janus Flexible Income Fund series, respectively, of the Trust. On that date, applicant transferred all of the Funds' respective assets, and assigned all of the Funds' respective liabilities, to the Janus Intermediate Government Securities Fund series and the Janus Flexible Income Fund series, as the case may be, of the Trust. In exchange, the Trust transferred to applicant a number of shares of the Janus Intermediate Government Securities Fund series and the Janus Flexible Income Fund series for distribution to the shareholders of the respective Funds. Each shareholder of a Fund received shares of the Janus Intermediate Government Securities Fund series or Janus Flexible Income Fund series of the Trust, as the case may be, identical both in number and net asset value per share to the shares of the Fund held by the shareholder at the time immediately before the reorganization.

5. All expenses incurred by applicant in connection with the reorganization and termination of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, accounting expenses, and miscellaneous expenses, will be paid by the Funds (or their successor funds, the Janus Intermediate Government Securities Fund series and the Janus Flexible Income Fund series of the Trust).

6. As of the date of the publication, applicant had no security holders; assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs .

8. Applicant's existence as a Massachusetts business trust was terminated on August 7, 1992. Applicant filed appropriate documents with the Massachusetts Secretary of State and the Boston, Massachusetts City Clerk.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7447 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19361; 811–4106]

Janus Venture Fund, Inc.; Notice of Deregistration

March 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Janus Venture Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 1992, and an amendment thereto was filed on March 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 Fillmore Street, suite 300, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was an open-end, non-diversified investment company organized as a corporation under Maryland law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on September 26, 1984. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act, which was declared effective on April 26, 1985. The public offering of shares commenced promptly thereafter.

2. At a meeting held on May 8, 1992, applicant's board of directors determined that it would be desirable and in applicant's best interests for applicant to be reorganized as a new series of Janus Investment Fund, a Massachusetts business trust (the "Trust"), and for applicant to be liquidated and dissolved thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The board determined that the reorganization would provide an economical and cost efficient form of organization, and would result in significant administrative efficiencies. The board also determined that the

reorganization would not dilute the interests of applicant's shareholders.

3. A notice of a special meeting of shareholders and a proxy statement regarding the approval of the reorganization and dissolution of applicant was distributed to applicant's shareholders on or about May 28, 1992. At a special meeting of applicant's shareholders held on July 31, 1992, the shareholders approved applicant's reorganization and dissolution pursuant to the Plan.

4. On August 7, 1992, applicant was reorganized from a Maryland corporation into the Janus Venture Fund series of the Trust. On that date, applicant transferred all of its assets, and assigned all of its liabilities, to the Janus Venture Fund series of the Trust. In exchange, the Trust transferred to applicant a number of shares of the Janus Venture Fund series for distribution to applicant's shareholders. Each shareholder received shares of the Janus Venture Fund series of the Trust identical both in number and net asset value per share to the shares of applicant held by the shareholder at the time immediately before the reorganization.

5. All expenses incurred by applicant in connection with the reorganization, liquidation, and dissolution of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, accounting expenses, and miscellaneous expenses, will be paid by applicant (or its successor, the Janus Venture Fund series of the Trust).

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant filed Articles of Transfer with the Department of Assessments and Taxation of the State of Maryland on August 7, 1992, and will shortly be filing Articles of Dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7448 Filed 3-30-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19359; 811-4105]

Janus Twenty Fund, Inc.; Notice of Deregistration

March 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Janus Twenty Fund, Inc. (previously known as Janus Value Fund, Inc.).

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 1992, and an amendment thereto was filed on March 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 Fillmore Street, suite 300, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified investment company organized as a corporation under Maryland law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on September 26, 1984. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act, which was declared effective on April 26, 1985. The public offering of shares commenced promptly thereafter.

2. At a meeting held on May 8, 1992, applicant's board of directors determined that it would be desirable and in applicant's best interests for applicant to be reorganized as new series of Janus Investment Fund, a Massachusetts business trust (the "Trust"), and for applicant to be liquidated and dissolved thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The board determined that the reorganization would provide an economical and cost efficient form of organization, and would result in significant administrative efficiencies. The board also determined that the reorganization would not dilute the interests of applicant's shareholders.

3. A notice of a special meeting of shareholders and a proxy statement regarding the approval of the reorganization and dissolution of applicant was distributed to applicant's shareholders on or about May 28, 1992. At a special meeting of applicant's shareholders held on July 31, 1992, the shareholders approved applicant's reorganization and dissolution pursuant to the Plan.

4. On August 7, 1992, applicant was reorganized from a Maryland corporation into the Janus Twenty Fund series of the Trust. On that date, applicant transferred all of its assets, and assigned all of its liabilities, to the Janus Twenty Fund series of the Trust. In exchange, the Trust transferred to applicant a number of shares of the Janus Twenty Fund series for distribution to applicant's shareholders. Each shareholder received shares of the Janus Twenty Fund series of the Trust identical both in number and net asset value per share to the shares of applicant held by the shareholder at the time immediately before the reorganization.

5. All expenses incurred by applicant in connection with the reorganization, liquidation, and dissolution of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, accounting expenses, and miscellaneous expenses, will be paid by applicant (or its successor, the Janus Twenty Fund series of the Trust).

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business

activities other than those necessary for the winding-up of its affairs.

8. Applicant filed Articles of Transfer with the Department of Assessments and Taxation of the State of Maryland on August 7, 1992, and will shortly be filing Articles of Dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7446 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 32040; File No. 600–25]

Securities Exchange Act of 1934

March 23, 1993.

Order Granting Approval of Registration Until March 31, 1994

In the Matter of: The Registration as a Clearing Agency of the Participants Trust Company

On February 1, 1993, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] an amendment to its Form CA–1 [2] requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1994. Notice of PTC's amended application and request for extension of temporary registration appeared in the **Federal Register** on February 16, 1993.[3] No comments were received. This order approves PTC's amendment by extending PTC's registration as a clearing agency until March 31, 1994.

On March 28, 1989, the Commission granted PTC temporary registration as a clearing agency pursuant to sections 17A and 19(a) of the Act, and Rule 17Ab2–1 thereunder for a period of twelve months.[4] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency, the last of which extended PTC's registration until March 31, 1993.[5]

As discussed in detail in the initial order granting PTC's temporary registration,[6] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. Deposits of GNMA securities grew from $616 billion in December of 1991 to $706 billion in December of 1992.[7] During 1992, PTC designated Real Estate Mortgage Investment Conduit ("REMIC") securities guaranteed by the United States Department of Veterans Affairs ("VA") as eligible for deposit.

PTC continued its efforts over the past year to implement operational and procedural changes in connection with PTC's temporary registration.[8] For example, PTC moved its primary processing site to a more modern facility in Jersey City, New Jersey, which is expected to be less vulnerable to environmental failure. PTC's New York facility remains as its principal office and as a fully redundant operating site.[9] In addition, PTC established a policy relating to the use of excess earnings from invested principal and interest receipts.[10]

Although PTC has made considerable progress toward complying with the undertakings set out above, PTC needs more time to implement fully the changes necessary for compliance. Accordingly, PTC has requested that the Commission extend PTC's registration as a clearing agency until March 31, 1994, to permit PTC to gain experience and stability as a fully operative depository and to comply fully with the undertakings made in connection with PTC's registration.[11]

The Commission believes that PTC continues to meet the determinations enumerated in section 17A(b)(3). PTC has facilitated the prompt and accurate clearance and settlement of mortgage-backed securities. PTC has functioned as a clearing agency for the past four years in compliance with the Act.

It is Therefore Ordered, that PTC's temporary registration as a clearing agency be, and hereby is, extended until March 31, 1994, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26671.[12]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7357 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw from Listing and Registration; (Preferred Health Care Ltd., Common Stock, $.01 Par Value) File No. 1–9954

March 25, 1993.

Preferred Health Care Ltd. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on March 5, 1993, to withdraw the Company's Common Stock from listing on the American Stock Exchange ("Amex") and, instead,

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[1] 15 U.S.C. 78s(a).

[2] Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated January 29, 1993.

[3] Securities Exchange Act Release No. 31834 (February 8, 1993), 58 FR 8642.

[4] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[5] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; and 30537 (April 9, 1992), 57 FR 12351.

[6] *Supra* note 4.

[7] *Supra* note 2.

[8] In connection with PTC's temporary registration, PTC committed to the Commission and the Federal Reserve Bank of New York to make a number of operational and procedural changes, which include:

(1) Eliminating trade reversals from PTC's procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse a transfer because its customer may not be able to fulfill its financial obligations to the participant;

(5) Eliminating the deliverer's security interest and replacing it with a substitute;

(6) Reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) Expanding and diversifying PTC's lines of credit;

(8) Assuring operational integrity by developing and constructing a back-up facility; and

(9) Reviewing PTC rules and procedures for consistency with current operations.

Supra note 4.

[9] Securities Exchange Act Release No. 31176 (September 11, 1992), 57 FR 43268 (SR–PTC–92–10).

[10] Securities Exchange Act Release No. 31593 (December 11, 1992), 57 FR 60262.

[11] *Supra* note 2.

[12] *Supra* note 4.

[13] 17 CFR 200.30–3(a)(50) (1972).

list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before April 15, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–7365 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18357; 812–7978]

Seligman Capital Fund, Inc., et al.; Notice of Application

March 25, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Seligman Capital Fund, Inc., Seligman Cash Management Fund, Inc., Seligman Common Stock Fund, Inc., Seligman Communications and Information Fund, Inc., Seligman Frontier Fund, Inc., Seligman Growth Fund, Inc., Seligman High Income Fund Series, Seligman Income Fund, Inc., Seligman International Fund Series, Inc., Seligman Mutual Benefit Portfolios, Inc., Seligman New Jersey Tax-Exempt Fund, Inc., Seligman Pennsylvania Tax-Exempt Fund Series, Seligman Tax-Exempt Fund Series, Inc., Seligman Tax-Exempt Series Trust (the "Funds"), J. & W. Seligman & Co. Incorporated (the "Manager"), and Seligman Financial Services, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to issue and sell an unlimited number of classes of shares with different voting rights and expense allocations.

FILING DATES: The application was filed on July 8, 1992 and amended on November 16, 1992, March 1, 1993, and March 4, 1993. Applicants have agreed to file an additional amendment during the notice period. This notice reflects the changes to be made by such additional amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 19, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 130 Liberty Street, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287 or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. The Manager acts as the Funds' investment adviser, the Distributor is the Funds' principal underwriter, and Union Data Service Center, Inc., is the shareholder servicing agency for the Funds.

2. Applicants request that relief also apply to any future registered investment companies, or existing or future series thereof, that may become a member of the Seligman "group of investment companies" as defined in rule 11a–3 and whose shares may be distributed on substantially the same basis as those of the Funds ("Future Funds"). Applicants will comply with all representations and conditions contained in the application with respect to any Future Funds.

3. Except as described below, all shares of the Funds currently are offered daily to the public at their net asset value plus a front-end sales load calculated as a percentage of the offering price at the time of purchase. The sales load is reduced as the aggregate dollar amount invested increases. Under certain circumstances, investors are entitled to combine current, past and proposed purchases of Fund shares and thereby qualify for percentage reductions in any applicable sales load. In addition, the front-end sales load is waived for certain classes of purchasers named in each Fund's prospectus. Shares of Seligman International Fund, a series of Seligman International Fund Series, Inc., and the two portfolios of Seligman Cash Management Fund, Inc., are offered daily at net asset value without the imposition of a sales charge.[1] Currently, none of the Funds imposes an contingent deferred sales charge ("CDSC") or redemption fee on the redemption of its shares.

[1] Shares of Seligman International Fund currently are offered only to advisory clients of the Manager.

4. Each of the Funds (other than Seligman Mutual Benefit Portfolios, Inc., which does not currently intend to participate in the Alternative Distribution System) has adopted distribution plans pursuant to rule 12b–1 under the Act. These rule 12b–1 plans provide that the Funds may pay to the Distributor up to an aggregate of .25% on an annual basis, payable quarterly, of the average daily net assets of the Fund. The plans further provide that such fee will be used in its entirety by the Distributor to make payments for administration, shareholder services and distribution assistance, including, but not limited to: (i) Compensation to securities dealers and other organizations ("Service Organizations") for providing distribution assistance with respect to assets invested in the Fund, (ii) compensation to Service Organizations for providing administration, accounting and other shareholder services with respect to Fund shareholders,[2] and (iii) otherwise promoting the sale of shares of the Fund, including paying for the preparation of advertising and sales literature and the printing and distribution of such promotional materials and prospectuses to prospective investors and defraying the Distributor's costs incurred in connection with its marketing efforts with respect to shares of the Fund. The Distributor may use a portion of the rule 12b–1 fees from each class of shares and, with respect to Class B and Class C, any CDSC proceeds to offset its Fund marketing costs, such as preparation of sales literature, advertising and printing and distributing prospectuses and other shareholder materials to prospective investors.

5. Applicants propose to establish a multi-class distribution system under which the Funds would be permitted to select among an unlimited number of distribution options mixing different loads, service fees, distribution fees, and CDSCs for each Fund (the "Alternative Distribution System"). Under this distribution system, the Funds may offer investors some or all of three distribution options: Shares sold subject to a front-end load and a service fee under a rule 12b–1 plan (the "Front-End Load Option"), shares sold with a lower front-end load, a service fee and a distribution fee under a rule 12b–1 plan (the "Moderate Front-End Load Option"), or shares sold without a front-end load, but with a service fee and a distribution fee under a rule 12b–1 plan, and subject to a CDSC (the "CDSC Option").[3]

6. The Alternative Distribution System would be implemented by having the Funds create more than one class of shares, with Class A shares subject to the Front-End Load Option, Class B shares subject to the Moderate Front-End Load Option, and Class C shares subject to the CDSC Option. Each of the classes offered by any Fund will represent interests in the same portfolio of investments of that Fund. The only differences among the classes of the same Fund will relate solely to: (a) The impact of the disproportionate payments made under the rule 12b–1 plan and any other incremental expenses subsequently identified that should be properly allocated to one or more classes; (b) the fact that the classes will vote separately with respect to the separate class provisions of the rule 12b–1 plan adopted by each Fund on behalf of each portfolio; (c) the difference in exchange privileges of the classes of shares; and (d) the designation of each class of shares of each Fund.

7. Under the Front-End Load Option, an investor will purchase Class A shares at the current, net asset value plus a front-end sales load. The sales loads will be subject to reductions for larger purchases, under a right of accumulation and letters of intent. The loads will be subject to other reductions permitted by section 22(d) of the Act and rule 22d–1 thereunder and set forth in the registration statement of each Fund. Class A shares will be assessed an ongoing service fee under a rule 12b–1 plan based upon a percentage of the average daily net asset value of the Class A shares.

8. Investors choosing the Moderate Front-End Load Option would purchase Class B shares at the current net asset value per share plus a front-end sales load at the time of purchase that is lower than the load applicable to the Class A shares. The loads generally will be subject to certain other reductions permitted by section 22(d) of the Act and rule 22d–1 thereunder and set forth in the registration statement of each Fund. Class B shares will also be subject to a service fee under a rule 12b–1 plan at an annual rate of up to .25%, and a distribution fee expected to be at an annual rate of up to .25%, of average daily net assets pursuant to a rule 12b–1 plan. Any investor who purchases $1,000,000 or more of Class B shares will not be subject to a sales load at the time of purchase, but proceeds from a redemption of Class B shares made within a specified period (currently expected to be 12 months) of the purchase may be subject to a CDSC payable to the Distributor. The amount of any applicable CDSC will be calculated as a specified percentage of the lesser of (i) the net asset value of the shares at the time of purchase, or (ii) the net asset value of the shares at the time of redemption. Currently, the CDSC is expected to be 1% (but may be higher or lower).

9. Investors choosing the DCSC Option will purchase Class C shares at the then current net asset value per share without the imposition of a sales load at the time of purchase. Class C shares will be subject to a service fee at an annual rate of up to .25%, and a distribution fee expected to be at an annual rate of up to .75% of average daily net assets pursuant to a rule 12b–1 plan. In addition, proceeds from a redemption of Class C shares made within a specified period (currently expected to be 12 months) of purchase may be subject to a CDSC payable to the Distributor. The amount of any applicable CDSC will be calculated as a specified percentage of the lesser of (i) the net asset value of the shares at the time of purchase, or (ii) the net asset value of the shares at the time of redemption. Currently, the CDSC is expected to be 1% (but may be higher or lower).

10. Fund investment income and expenses, other than expenses specifically attributable to one class, will be allocated to the classes based on the relative net asset value of shares of each class. Because of the ongoing distribution fee and potentially higher class expenses paid by the holders of Class B and Class C shares, the net income attributable to and the dividends payable on both Class B and Class C shares would be lower than the net income attributable to and the dividends payable on Class A shares.

11. The exchange privileges applicable to each class will be different. It is contemplated that Class A, Class B, and Class C shares of a Fund will be exchangeable only for Class A, Class B, or Class C shares, respectively, of the other Funds, including Class A, Class B, or Class C shares of the money market Funds. Money Market Fund shares will be exchangeable for Class A, Class B, or Class C shares only if the Money Market Fund shares were

[2] Applicants acknowledge that at present the rule 12b–1 plans provide the flexibility for Service Organizations to be compensated for administration, recordkeeping or accounting services. Applicants will submit an application for an amended order at some future date in the event that the Funds want to compensate Service Organizations for the provision of such services with rule 12b–1 payments.

[3] Applicants previously received an exemptive order from the SEC permitting the Funds to impose, and under certain circumstances waive, a CDSC. Investment Company Act Release Nos. 18841 (July 10, 1992) (notice), and 18882 (Aug. 6, 1992) (order).

originally acquired through an exchange, in which case they will be exchangeable only for the class of shares involved in the original exchange into the Money Market Fund shares. Each money market share received in exchange for a non-moneymarket share would continue to be subject to the same rule 12b–1 fees and CDSC that would have been applicable to the exchanged share in the absence of an exchange. The exchange privileges will comply with rule 11a–3 under the Act.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(f), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of an unlimited number of classes of shares representing interests in the Funds might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. The abuses that section 18 of the Act is intended to redress are set forth in section 1(b) of the Act, which provides that the national public interest and investors' interests are adversely affected when investment companies unduly increase the speculative character of their junior securities by excessive borrowing and the issuance of excessive amounts of senior securities or when they operate without adequate assets or reserves. The Alternative Distribution System does not involve borrowings and does not affect the Funds' existing assets or reserves. The proposed arrangement will not increase the speculative character of the shares of the Funds. The Funds' capital structures under the proposed arrangement will not facilitate control without equity or other investment and will not make it difficult for investors to value the securities of the Funds.

3. Applicants believe that the issuance and sale by the Funds of shares of multiple classes will better enable the Funds to meet the competitive demands of the financial services industry. Under the Alternative Distribution System, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of the purchase, the length of time the investor expects to hold the shares and other relevant circumstances. Moreover, owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than they would be otherwise.

4. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and will not discriminate against any group of shareholders. Investors purchasing Class A shares would pay only a service fee under the portfolio's rule 12b–1 plan, while investors purchasing Class B and Class C shares would pay both a distribution and service fee under the portfolio's rule 12b–1 plan.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to: (a) The impact of the rule 12b–1 plan payments made by the shares of each class of a portfolio, any expenses that may be imposed upon a particular class of shares, which are limited to (i) transfer agency fees attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) directors' fees incurred as a result of issues relating to one class of shares (collectively, "Class Expenses"), and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) voting rights on matters which pertain to rule 12b–1 plans; (c) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds; and (d) the designation of each class of shares of a Fund.

2. The directors of each of the Funds, including a majority of the independent directors, shall have approved the Alternative Distribution System prior to the implementation of the Alternative Distribution System by a particular Fund. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to implement the Alternative Distribution System will reflect in detail the reasons for determining that the proposed Alternative Distribution System is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the Fund including a majority of the independent directors of the Fund. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Class Expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. The directors of the Funds will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a class of shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the directors to support rule 12b–1 fees charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be

in the same amount, except that fee payments made under the rule 12b–1 plan relating to the classes will be borne exclusively by each class and except that any Class Expenses may be borne by the applicable class of shares.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among such classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be reports on policies and procedures placed in operation and tests of operating effectiveness in accordance with SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocations of income and expenses among such classes of shares and this representation has been concurred with the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will include a statement to the effect that salespersons and any other persons entitled to receive compensation for selling Fund shares or servicing Fund shareholders may receive different levels of compensation.

10. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the Alternative Distribution System will be set forth in guidelines which will be furnished to the directors.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. The shares of all the classes will be offered and sold through a single prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and the statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to the shares of the respective classes, it will disclose the expenses and/or performance data applicable to all classes of shares of such Fund. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present the shares of each class.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7444 Filed 3–30–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Detroit District Advisory Council; Public Meeting

The U.S. Small Business Administration Detroit District Advisory Council will hold a public meeting at 10 a.m. on Thursday, April 29, 1993, at the Muskegon Harbor Holiday Inn in Muskegon, Michigan, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Raymond L. Harshman, District Director, U.S. Small Business Administration, 477 Michigan Avenue, room 515, Detroit, Michigan 48226, (313) 226-7240.

Dated: March 25, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–7437 Filed 3–30–93; 8:45 am]

BILLING CODE 8025–01–M

Boise District Advisory Council; Public Meeting

The U.S. Small Business Administration Boise District Advisory Council will hold a public meeting at 9:30 a.m. on Monday, April 19, 1993, at the Kaley Center (the auditorium at West Valley Medical Center—entrance on 10th Avenue), 1717 Arlington Avenue, Caldwell, Idaho, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas E. Bergdoll, Jr., District Director, U.S. Small Business Administration, 1020 Main Street, suite 290, Boise, Idaho 83702, (208) 334–9641.

Dated: March 25, 1993.
Dorothy A. Overal,
Acting Assistant Administrator, Office of Advisory Councils.
[FR Doc. 93-7438 Filed 3-30-93; 8:45 am]
BILLING CODE 8025-01-M

Jackson District Advisory Council; Public Meeting

The U.S. Small Business Administration Jackson District Advisory Council will hold a public meeting from 9 a.m. to 12:30 p.m., on Thursday, April 8, 1993, in the board room of the Deposit Guaranty National Bank, Jackson, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, suite 400, Jackson, Mississippi 39201, (601) 965-5371.

Dated: March 25, 1993.
Dorothy A. Overal,
Acting Assistant Administrator, Office of Advisory Councils.
[FR Doc. 93-7439 Filed 3-30-93; 8:45 am]
BILLING CODE 8025-01-M

[License No. 07/07-0095]

CFB Venture Fund II, L.P.; Issuance of a Small Business Investment Company License

On July 16, 1992 a notice was published in the **Federal Register** (Vol. 57, No. 137 FR p. 31556) stating that an application has been filed by CFB Venture Fund II, L.P. with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing Small Business Investment Companies (13 CFR 107.102 (1992)) for a license as a Small Business Investment Company.

Interested parties were given until close of business August 17, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07-0095 on March 2, 1993, to CFB Venture Fund II, L.P. to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 22, 1993.
Wayne S. Foren,
Associate Administrator for Investment.
[FR Doc. 93-7352 Filed 3-30-93; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Subcommittee on Aircraft Safety; Research, Engineering, and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-362; 5 U.S.C. App. I), notice is given of a meeting of the Federal Aviation Administration (FAA) Subcommittee on Aircraft Safety of the Research, Engineering, and Development (R,E&D) Advisory Committee to be held Thursday, April 15, 1993, at 9 a.m. The meeting will take place at the Federal Aviation Administration Technical Center, Atlantic City International Airport, New Jersey 08495, in the first floor conference room, Building 210.

The agenda for this meeting will include the following:

- Opening Remarks—Chair and Executive Director
- Review of Final Agenda
- Introduction and Program Overview
- Aircraft Safety Research and Development Program Overview
- Cabin Fire Safety Subprogram
- Flight Safety Subprogram
- Airworthiness Subprogram
- Crashworthiness Subprogram
- Aging Aircraft Subprogram
- Propulsion-Fuel Safety Subprogram
- Catastrophic Failure Prevention Subprogram
- Discussion of Program Briefings
- Subcommittee Organization and Formation of Working Groups
- Discussion of Action Items
- Discussion of Future Activities
- Chair's Summary

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should do so by Monday, April 5. Contact Mr. William J. Sullivan, Executive Director of the Subcommittee and Assistant Director, Aircraft Certification Service, AIR-3, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9554. Any member of the public may present a written statement to the Committee at any time by furnishing the Executive Director with 25 copies.

Issued in Washington, DC, on March 24, 1993.
William J. Sullivan,
Executive Director, Subcommittee on Aircraft Safety, Research, Engineering, and Development Advisory Committee.
[FR Doc. 93-7391 Filed 3-30-93; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 93-01; Notice 2]

Ford Motor Company; Disposition of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

This notice grants the petition by Ford Motor Company of Dearborn, Michigan, for a temporary exemption from certain Federal motor vehicle safety standards for an electric panel delivery van. The notice also denies the petition with respect to Standard No. 106, and S7.3 of Standard No. 208. The basis of the petition was that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on January 7, 1993, and an opportunity afforded for comment (58 FR 3063).

Ford intends to manufacture up to 105 low emission experimental electric panel delivery vans, including prototypes, to be called the Ford Ecostar. The Ecostar will be leased to test fleets operated by Ford's electric vehicle development partners in the U.S. and Europe for up to three years of cooperative field testing. For this reason Ford argued that an exemption would facilitate the development and field evaluation of a low emission motor vehicle in the United States.

There are three versions of the Ecostar, which will be classified as a truck for purposes of the safety standards. The first is a hybrid internal combustion-electric vehicle. The second is an electric vehicle with a fuel-fired heating and defrosting system. Both versions are being designed to meet the California Air Resource Board (CARB) requirements for ultra-low emissions. The third type, an electric vehicle with an electric heating/defrosting system would meet CARB's zero emission requirements. Components of these vehicles have been developed in cooperation with the United States Department of Energy, General Electric, and other suppliers.

The Ecostar is based upon an Escort delivery van manufactured by Ford of England which was designed to meet all

applicable European (EEC and ECE) regulations. The van bodies will be shipped to the U.S. where the electric motor, inverter, transaxle drivetrain, batteries, controls, and other components unique to the Ecostar will be installed. Electrical/electronic controls handling high current/voltage will be packaged outside the passenger compartment, with the exception of a fully enclosed electric heater/defroster core on those vehicles so equipped. An 'advanced design battery' will be located in the fuel tank space under the load floor. Hybrid vehicles will have a small, gasoline-fueled engine/alternator assembly mounted under the load floor. A hydraulic/regenerative braking system will be employed. "Limited testing" of converted Escorts indicates that the Ecostar continues to meet the EEC/ECE regulations.

Differences between U.S. and European standards, as well as the increased vehicle weight, will result in noncompliances with the U.S. standards. However, in Ford's view, these noncompliances are minor in nature and would not unreasonably degrade the safety of the vehicle.

The standards, or portions thereof, from which Ford requested a 2-year exemption, were:

1. Standard No. 101—Controls and Displays

2. Standard No. 105—Hydraulic Brake Systems

S5.2.3 of Standard No. 101 and S5.3.5(b) of Standard No. 105 require a brake warning light labeled "BRAKE". The Ecostar uses the ISO brake symbol instead. Neither the heating/defrosting/air conditioning fan switch, nor the horn control, is identified as required by Standard No. 101, although the horn control is conventionally located in the center of the steering hub, and its size, shape, and location should make its function obvious to most operators. The fan switch is located with the other heating/defrosting/air conditioning controls in the center of the instrument panel. The fan speed markings (0, I, II, III), combined with location of the fan control between the temperature control and the air distribution control, have proven adequate to identify the function of the fan control switch to a European multilingual customer base without the addition of the fan ISO symbol.

In addition, some hybrid Ecostars use the ISO oil can symbol to indicate low oil level, rather than low oil pressure. Ford argued that it is appropriate to use the symbol to indicate low oil level on vehicles that do not have a pressurized internal combustion lubrication system.

Finally certain right hand drive models to be tested by the U.S. Postal Service do not meet the requirement of S5.3.3 of Standard No. 101 for variable illumination of the displays. The right hand drive vehicle model was designed to meet only European regulations which do not have an adjustability requirement. The interest of the Postal Service came too late in the development process to add adjustment of display illumination, as Ford found there was no available space to package a dimming control without a major change to the instrument panel and wiring system. Ford argued that the fixed level of illumination provided raises no daylight or night vision issues. Only a minimal number of vehicles, six in all, would be covered by the exemption requested.

3. Standard No. 106—Brake Hoses

The brake hoses will not be labeled and certified according to S7.2 of the standard. However, they "appear to meet the design and performance requirements" of the standard.

4. Standard No. 108—Lamps, Reflective Devices, and Associated Equipment

The headlamps on the Ecostar meet European and not U.S. requirements for beam pattern photometrics. Further, the vehicles would not be equipped with side marker lamps.

Ford argued that exemptions from the photometric requirements will not unduly degrade the safety of the vehicles because the only difference is that the European beam pattern does not provide the lighting above the horizontal that U.S. headlamps provide to illuminate passive and reflectorized overhead signs. This should not have adverse safety implications because the limited fleet of Ecostars will be operated in urban areas with generally high nighttime ambient lighting. Although the Ecostars do not have front and rear side marker lamps, the taillamps "are very visible from the side of the vehicle, although they probably do not meet all of the Standard 108 detailed photometric requirements for side marker lamps."

5. Standard No. 120—Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

As permitted by S5.1.1 of Standard No. 120, Ford plans to use a passenger car tire on its "light truck" Ecostar, specifically, a tire that has been developed especially for use on electric vehicles. The tire will meet Standard No. 109's requirements, except for maximum allowable inflation pressure. The pressure will be 350 Kpa (51 psi). Recommended tire pressure will 50 psi for both front and rear tires. The load rating will be based on an inflation pressure of 240 Kpa (35 psi), then derated by 10% as specified by S5.1.2. Ford noted that both the Rubber Manufacturers Association and the European Tyre and Rim Technical Organization have petitioned NHTSA for rulemaking to amend Standard No. 109 to include a maximum tire pressure of 350 Kpa.

6. Standard No. 115—Vehicle Information Number (VIN)

Without being specific, Ford stated that the VIN "may not meet certain U.S. requirements." It noted that any recall would be facilitated through Ford's retention of title to the vehicles.

7. Standard No. 204—Steering Column Rearward Displacement

Frontal barrier tests indicate that "some versions of the experimental Ecostar, particularly the hybrid-electric vehicles equipped with internal combustion engines," may not meet the requirements of this standard because of the added weight of the internal combustion engine. However, an Ecostar tested at a weight similar to the Standard No. 204 test weight met the displacement criterion. Although that test is an insufficient basis upon which to certify compliance of the hybrid vehicles, any deviation from compliance by the hybrids is likely to be small. Considering that Ford intends to produce only 26 hybrid vehicles, "the vehicle operating characteristics, and the expected operating pattern of these vehicles, Ford believes that the steering columns of these vehicles would not represent any meaningful degradation in operating safety."

8. Standard No. 207—Seating Systems

9. Standard No. 210—Seat Belt Assembly Anchorages

Seats, seat anchorages, and seat belt anchorages "meet U.S. anchorage strength specifications when tested by the European strength test procedure, but may not meet when tested with the longer loading and holding periods of the U.S. test procedure." However, "seats and safety belts that meet the EEC/ECE strength test have proven to be very effective over many years of highway experience."

10. Standard No. 208—Occupant Crash Protection

Paragraph S4.6.1 requires that instrumented dummies meet various criteria in 30 mph frontal barrier crashes. Ford has not tested the Ecostar with instrumented dummies. The

Ecostar, however, is derived from the European Escort car and its panel delivery van, both of which have been designed to meet Standard No. 208's dummy criteria. Further, the electric vehicle modifications to the van structure have been designed to maintain crash integrity, although tests indicate that the heaviest versions may not meet U.S. standards for steering column displacement and windshield zone intrusion.

Ford believes that the Ecostar may be able to meet requirements of Standard No. 208 that differ from EEC/ECE requirements (e.g., belt contact force, latchplate access, and retraction) but it has no plans to conduct testing because of "our inability to certify compliance" with other sections of Standard No. 208, especially S4.6.1.

In addition, the European restraint system does not have the audible seat belt reminder, as required by S7.3.

Standard No. 208 also requires that vehicles be equipped with seat belt assemblies that conform to Standard No. 209. Ford stated that the belts may not have the marking required by S4.1(j) but meet all other requirements.

11. Standard No. 212—Windshield Mounting

A frontal barrier impact of a maximum weight Ecostar showed a windshield retention of 73.4 percent, a minor deviation from the required minimum of 75 percent. However, retention was not measured until about 2 months after the test, following removal and storage of the vehicle. Thus, Ford is unsure whether the hybrid Ecostar conforms, but that it appears that most Ecostars will.

12. Standard No. 216—Roof Crush Resistance

This standard becomes effective for light trucks beginning September 1, 1993. Ford has not tested the Ecostar for compliance with the standard, and believes that assembly of most Ecostars will be completed by then. In its comments to the notice of proposed rulemaking on extension of the standard, Ford raised the issue of inapposite test platen placement, which remains unresolved. Because Ford does not know how the agency would conduct a test on the Ecostar, it cannot judge the compliance status of its vehicle.

13. Standard No. 219—Windshield Zone Intrusion

The hybrids may also not comply with Standard No. 219, though "[l]imited testing indicates that the electric Ecostar probably meets EEC/ECE requirements." The frontal barrier tests were not performed primarily to determine compliance with Standard No. 219, and hence did not use the styrofoam form on the windshield to determine intrusion into the windshield zone. The test of the hybrid Ecostar showed light contact between the hood and lower portion of the windshield, and thus Ford could not certify compliance without further testing. The contact noted was "so near the lower edge of the windshield that the contacted area is quite unlikely to be approached by an occupant's head in a frontal collision".

14. Standard No. 301—Fuel System Integrity

Rear structural modifications will be made to protect fuel system components of the hybrid-electric vans and the electric vans equipped with fuel-fired heater/defrosters. Tests conducted to date indicate that the Ecostar would probably meet the front (S6.1) and rear (S6.2) impact criteria, although the tests were conducted without dummies. However, its limited test program is inadequate "to certify that all versions of the Ecostar meet the rear impact requirements of S6.2, the lateral impact requirements of S6.3, or the static rollover requirements of S6.4 after rear or lateral impact."

Not all the Ecostars are equipped with fuel systems, so an exemption would cover only about half the Ecostars. About 25 percent of the vehicles will be hybrid-electric vehicles that are to be equipped with small gasoline powered engines to extend their driving range. Another 25 percent will be electric vehicles equipped with diesel-fuel-fired heater/defroster systems. Ford stated that it had no reason to believe that the vehicles would fail to meet the lateral impact requirements. Exemptions from S6.2, S6.3, and S6.4 would not degrade safety "because of the excellent performance of the fuel system in front and rear development crash tests and the use of widely accepted design and production practices for protecting the fuel system from lateral impacts."

Ford argued that an exemption would be in the public interest because of the potential reduction in emissions, as well as the requirements of some States that manufacturers sell a percentage of zero-emission motor vehicles by the 1998 model year. Half the Ecostars tested will be zero-emission vehicles. To provide the best possible vehicles, Ford must "invent and refine" technology for such vehicles, and an exemption would allow field testing and demonstration of electric and hybrid-electric vehicles equipped with advanced battery and electronic technologies. A principal issue to be resolved with the half of the Ecostar fleet that is not composed of zero-emission vehicles is to determine whether the emission standards for an ultra-low emission vehicle can practicably be met, although the emission levels of these Ecostars are well below the current limits established under the Clean Air Act.

A temporary exemption would also be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act in Ford's view because the Ecostar provides a level of safety substantially equivalent to that required by the safety standards.

No comments were received on the petition.

The Administrator may exempt Ford from compliance upon such terms and conditions as (s)he deems appropriate upon findings that the exemption would facilitate the development or field evaluation of a low emission motor vehicle, would not unduly degrade the safety of such motor vehicle, and would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Ford has made a prima facie case with respect to several of these factors. Manifestly, a program under which 105 vehicles are produced and leased to Ford's electric vehicle development partners is a program of field evaluations of low-emission vehicles that will be facilitated by a granting of Ford's petition. Given the public policy of the United States to develop alternate energy sources, and to lower emissions from motor vehicle propulsion sources that pollute the atmosphere, an exemption will also serve the public interest. The margin of noncompliance appears slight in most instances, so that exemptions will be consistent with the objectives of the Vehicle Safety Act.

The Administrator must also find that an exemption from each of the requested standards would not "unduly" degrade the safety of the vehicle. In examining Ford's requests, NHTSA has decided to grant Ford's petition, in the main, but to deny its petition from one standard and a portion of another, and to impose a condition of providing operator information with respect to a third. The exemptions are also crafted to reflect Ford's comments on vehicle types and conformance problems. For example, Ford intends to produce 26 hybrid vehicles, and has indicated that, because of their increased weight, they will not conform to Standard No. 219 *Windshield Zone Intrusion*. Thus, the exemption from this standard will cover

only hybrid vehicles, in a number that does not exceed 30.

With respect to Ford's request for exemption from Standards Nos. 101 and 105, NHTSA is granting them provided that Ford will supply each vehicle with information that informs the operator that the brake warning light is represented by the ISO symbol rather than the word "BRAKE", and that provides a drawing of the instrument panel which identifies the location of the heating/defrosting/air conditioning switch, and horn control. NHTSA is also granting Ford's request for exemption of a small number of vehicles from the requirement of continually variable control illumination. The vehicles exempted are intended for use by the U.S. Postal Service, and their nighttime usage will probably be minimal.

As for Standard No. 106, Ford has stated that they "appear" to meet the "performance requirements" of the standard. NHTSA does not understand how the performance of a brake hose can be judged by its appearance, and has concluded that Ford has not met its burden of persuasion that an exemption would not unduly degrade the safety of the vehicle. Therefore, NHTSA is denying Ford's request for exemption from Standard No. 106.

NHTSA accepts Ford's arguments with respect to the lighting deviations from Standard No. 108, that the Ecostars will be operated primarily in urban environments with generally high ambient lighting. Ford's technical failure to comply with Standard No. 120 will be cured when the standard is amended pursuant to a petition currently under review. Because of Ford's retention of title to the Ecostars, a VIN conforming to Standard No. 115 is not required to facilitate the identification and location of vehicles in the event of notification and remedy campaigns.

Ford's request with respect to Standard No. 204 lacks clarity. The statement is made that "some" Ecostars, "particularly the hybrid-electric vehicles equipped with internal combustion engines" may not conform, implying that vehicles other than hybrids should be exempted. However, the petitioner's safety arguments are directed only to the 26 hybrid vehicles that will be produced. The small number of these vehicles and their intended urban operation support granting them an exemption, and NHTSA is doing so, restricting it to hybrid vehicles. Similarly, the low urban speeds at which the Ecostar will be primarily operated supports exemptions from Standards Nos. 207 and 210.

The Ecostars will be fitted with restraint systems that meet all requirements of Standard No. 209 except for the markings required by S4.1(j). These markings are important to identify the belt manufacturer in the event of a notification campaign. With the limited number of vehicles to be covered by an exemption, and with Ford's retention of title, the lack of identification markings does not unduly degrade the safety of the equipment. Given that the restraints conform to ECE/EEC requirements, sufficient reassurance has been provided to justify an exemption from S4.6 of Standard No. 208. Ford has presented no reasons to justify its request for an exemption from the audible seat belt reminder required by S7.3. Because NHTSA routinely requires compliance with this requirement by imported grey market vehicles, the agency does not view it as burdensome to achieve, and is denying Ford's request for an exemption from this aspect of Standard No. 208.

Ford's arguments with respect to Standards Nos. 212 and 219 indicate that only those Ecostars of maximum weight (the 26 hybrids) may fail to comply, and that the margin of failure is small. It is likely that manufacture of the Ecostars will be completed before the effective date of Standard No. 216. Thus, the agency may provide exemptions from these standards as well.

Finally, with respect to Standard No. 301, it appears that not more than 50 to 53 vehicles are subject to the standard. Ford's tests to date and its design practices provide assurance that an exemption would not unduly degrade the safety of the Ecostars.

Accordingly, in consideration of the foregoing, Ford Motor Company is hereby granted Temporary Exemption 93–2, expiring March 1, 1995, for the Ford Ecostar truck, from the following Federal motor vehicle safety standards, or portions thereof, under the terms and conditions indicated: S5.2.3 of 49 CFR 571.101 Motor Vehicle Safety Standard No. 101 *Controls and Displays* and S5.3.5(b) of 49 CFR 571.105 Motor Vehicle Safety Standard No. 105 *Hydraulic Brake Systems* provided that each exempted vehicle is furnished with information that identifies the ISO brake symbol, the heating/defrosting/air conditioning fan switch, and the horn control; S5.3.3 of 49 CFR 571.101 Motor Vehicle Safety Standard No. 101 *Controls and Displays* for no more than ten Ecostar vehicles; the requirements of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* that apply to headlamps, and front and rear side marker lamps; S5.1.1 of 49 CFR 571.102 Motor Vehicle Safety Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*; 49 CFR 571.115 Motor Vehicle Safety Standard No. 115 *Vehicle Identification Number*; 49 CFR 571.207 Motor Vehicle Safety Standard No. 207 *Seating Systems*; S4.6.1 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection;* S4.1(j) of 49 CFR 571.209 Motor Vehicle Safety Standard No. 209 *Seat Belt Assemblies* for seat belt assemblies that are original equipment in Ecostar vehicles; 49 CFR 571.210 Motor Vehicle Safety Standard No. 210 *Seat Belt Assembly Anchorages;* and, effective September 1, 1993, 49 CFR 571.216 Motor Vehicle Safety Standard No. 216 *Roof Crush Resistance*. In addition, Temporary Exemption 93–2 is also granted to not more than 30 Ecostar vehicles, equipped with both internal combustion and electric propulsion systems, from the following: 49 CFR 571.204 Motor Vehicle Safety Standard No. 204 *Steering Column Rearward Displacement*, 49 CFR 571.212 Motor Vehicle Safety Standard No. 212 *Windshield Mounting*, 49 CFR 571.219 Motor Vehicle Safety Standard No. 219 *Windshield Zone Intrusion*, and S6.2, S6.3 and S6.4 of 49 CFR 571.301 Motor Vehicle Safety Standard No. 301 *Fuel System Integrity*.

For the reasons stated above, the petitions for exemption from 49 CFR 571.106 Motor Vehicle Safety Standard No. 106 *Brake Hoses*, and from S7.3 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* are denied.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: March 26, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–7427 Filed 3–30–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt; Coupons Under Book-Entry Safekeeping (CUBES)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice is being published to announce the reopening by the Department of the Treasury of its Coupons Under Book-Entry Safekeeping

("CUBES") program, to permit the conversion of certain physical coupons detached from U.S. Treasury bonds to book-entry form in the commercial book-entry system. With the reopening of the conversion window under CUBES, depository institutions holding eligible coupons will have the opportunity, during the period from June 1, 1993, to and including November 30, 1993, to convert such coupons to book-entry form. Other entities wishing to convert stripped coupons must arrange to do so through a depository institution.

DATES: June 1, 1993 through November 30, 1993, as described below.

SUPPLEMENTARY INFORMATION: On September 4, 1992, the Department of the Treasury modified the CUBES regulations at 31 CFR part 358 to permit additional reopenings of the CUBES window for conversion to book-entry form of detached, physical coupons (57 FR 40607, Sept. 4, 1992). 31 CFR 358.0(c) provides, in part, that notice of time periods for conversion, as well as coupons eligible for conversion and applicable fees, will be published in the **Federal Register** two months prior to the date coupons may be presented. Accordingly, pursuant to that authority, Treasury will reopen the window for conversion under its CUBES program beginning June 1, 1993, and ending close of business November 30, 1993. Under the program, depository institutions holding coupons stripped from Treasury securities will be permitted to convert them to book-entry form. Entities other than depository institutions which hold stripped Treasury coupons and which wish to convert them to book-entry accounts under the CUBES program must arrange for such conversion through a depository institution.

Only Treasury coupons stripped before the date of this notice, and with payment dates on or after January 1, 1994, will be eligible for conversion, excluding those having payment dates during a callable period.

Presentation of coupons under the reopened CUBES window may be made only at the Federal Reserve Bank of New York (FRBNY) and in compliance with the presentation procedures established by FRBNY. Submissions of coupons are subject to the terms and conditions described in appendix A to part 358, except insofar as the terms and conditions are modified by the regulations, the provisions of this notice, or the procedures issued by the FRBNY related to the conversion.

Physical coupons submitted for the CUBES program will be subject to rejection and book-entry CUBES balances established as a result of the submission of coupons will be subject to adjustment until the submission has been verified and approved by Treasury. This verification and approval will be completed by Treasury within twelve (12) business days following deposit by FRBNY of the coupons into the designated accounts. Such verification and approval by Treasury are final determinations.

The CUBES program will offer on-line trading of CUBES balances between depository institutions. However, the submitting institution is prohibited from trading any CUBES balance resulting from the submission of coupons under this notice prior to the Treasury verification of the submission and approval of the resulting CUBES balances.

If, as a result of verification, Treasury determines that an adjustment is necessary to one or more CUBES balances for the submitting institution, the institution will be notified. If a CUBES balance is insufficient for a reduction adjustment to be processed, the submitting institution is responsible for immediately acquiring such CUBES balance as is necessary to allow the adjustments to be made.

The value of all coupons submitted to FRBNY on the same date with the same delivery instructions and for the same payment date will be rounded down to the next lowest full dollar amount since on-line trading is done only in full dollar amounts. For example, on June 18, institution A submits coupons for a variety of customers or accounts and directs that the CUBES balances be established in its trust account (or similar subaccount). The total of the coupon value with this delivery instruction for payment date 5/15/94 is $44,356.87. The total of the value for payment date 11/15/94 is $56,002.13. The submitting institution will receive in its trus account a 5/15/94 CUBES balance of $44,356.00 and an 11/15/94 CUBES balance of $56,002.00.

Book-entry transfers of CUBES will be subject to the same fee schedule applicable for the transfer of other on-line Treasury book-entry securities.

Once stripped coupons have been converted to CUBES, their reconversion to physical form will not be permitted. The principal (corpus) securities from which the interest coupons have been stripped will not be accepted in CUBES.

A depository institution wishing to participate in CUBES should contact Ms. Jessie Miley of the FRBNY at (212) 720-6972/73 as soon as possible to obtain an information package and the necessary supplies required to present the stripped coupons in acceptable form. The institution should inform the FRBNY of its intention to participate as soon as possible, but no later than two weeks before deposit, and should submit a completed holdings statement on the form provided in the information package.

Participants will be charged a participation fee of $4 per coupon for conversion to book-entry. Participants will also bear the full cost and risk associated with both the delivery of the coupons to the FRBNY and any returns that may be necessary if the stated presentation procedures are not followed.

Submitters of coupons are deemed to agree to the terms and conditions set forth in this notice, 31 CFR part 358, including appendix A except as otherwise modified, and any other requirements that may be prescribed by the Department of the Treasury and the FRBNY.

Richard L. Gregg,

Commissioner, Bureau of the Public Debt.

[FR Doc. 93-7538 Filed 3-30-93; 8:45 am]

BILLING CODE 4810-35-P

Office of Thrift Supervision

The Guardian Bank, a Federal Savings Bank, Boca Raton, FL; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) and (C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for The Guardian Bank, a Federal Savings Bank, Boca Raton, Florida, on March 16, 1993.

Dated: March 25, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93-7362 Filed 3-30-93; 8:45 am]

BILLING CODE 6720-01-M

[AC-12: OTS No. 4692]

Blue River Federal Savings Bank, Edinburgh, IN; Approval of Conversion Application

Notice is hereby given that on March 22, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Blue River Federal Savings Bank, Edinburgh, Indiana, to convert to the stock form of organization. Copies of the application

are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: March 25, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–7360 Filed 3–30–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–13: OTS No. 0650]

Fidelity New York F.S.B., Floral Park, NY; Approval of Conversion Application

Notice is hereby given that on March 24, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fidelity New York F.S.B., Floral Park, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: March 25, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–7361 Filed 3–30–93; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 60
Wednesday, March 31, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: March 24, 1993, 58 FR 15898.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 26, 1993, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added as Items CAG–71 and CAG–72 on the Consent Agenda scheduled for March 26, 1993:

Item No., Docket No. and Company

CAG–71, RP92–235–000 and CP91–1671–000, United Gas Pipe Line Company
CAG–72, RP93–5–004, 006 and RP93–96–000, Northwest Pipeline Corporation

Lois D. Cashell,
Secretary.

[FR Doc. 93–7541 Filed 3–29–93; 3:15 pm]
BILLING CODE 6717–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: March 31, 1993 at 3 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. No. 731–TA–550 (Final) (Sulfur Dyes from India)—briefing and vote.
2. Outstanding action jacket requests—none.
3. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: March 26, 1993.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 93–7503 Filed 3–26–93; 4:28 pm]
BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 58, No. 60
Wednesday, March 31, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1–255]

Organization and Delegation of Powers and Duties; Delegation to the Administrator, Research and Special Programs Administration

Correction

In rule document 93–1508 beginning on page 5631 in the issue of Friday, January 22, 1993 make the following correction:

On page 5632, in the first column, in § 1.53(l), in the fourth line "6207" should read "1607".

BILLING CODE 1505–01–D

DEPARMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–4]

Proposed Transition Area Establishment; Moose Lake, MN

Correction

In proposed rule document 93–5827 beginning on page 13715 in the issue of Monday, Marh 15, 1993, make the following correction:

§ 71.1 [Corrected]

On page 13716, in the first column, in § 71.1, under the heading "*Section 71.181 Designation of Transition Areas*", in the fourth line, "long. 94°" should read "long. 92°".

BILLING CODE 1505–01–D

Federal Register

Wednesday
March 31, 1993

Part II

Department of Transportation

Federal Highway Administration

Orders in Motor Carriers Safety Enforcement Cases; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Orders in Motor Carrier Safety Enforcement Cases

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of agency decisions.

SUMMARY: This document gives notice of the Decisions and Orders served from December 5, 1991, through January 8, 1993, concerning motor carrier and hazardous materials proceedings conducted pursuant to 49 CFR part 386. It also includes an order dated September 30, 1991, that was inadvertently omitted when the previous collection of decisions was published on June 26, 1992. (57 FR 28710). The Orders include both those issued by the Associate Administrator for Motor Carriers and those decided by Administrative Law Judges and adopted by the Associate Administrator.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Motor Carrier Law Division (202) 366–1354, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The following Orders are being published:

Name	Docket No.
National Retail Transportation, Inc.	R1–92–03 (R1–92–185)
National Retail Transportation, Inc.	R1–92–03 (R1–92–185)
Sined Leasing, Inc	R1–91–02
Murray Rude Services, Inc	R1–92–01
R.W. Bozel Transfer, Inc	R1–92–051
American Truck & Trailer Repair.	R1–92–001
Specialties, Inc	91–SC–021–SA
Durey-Libby Edible Nuts, Inc.	R1–91–221
Professional Equipment Co., Inc.	R1–92–047
Pappy's Enterprises, Inc	R3–91–112
Robert Hansen Trucking, Inc.	R5–89–174
American Pacific Power Apparatus, Inc.	OR–90–005–075
The Sommers Co., Inc	92–GA–007–SH
Gunther's Leasing Transport, Inc.	R3–92–255
John Steven Johnson/ Steve Johnson & Sons.	R9–89–058
John Steven Johnson/ Steve Johnson & Sons.	R9–89–058
WDP Transportation, Inc	91–KY–027–SA
Pioneer Pallets, Inc	R3–91–171
Bill Carter Trucking, Inc	R3–91–279
LDM Trucking Co., Inc	R9–91–003
Carroll Fulmer & Co., Inc	91–FL–054–SA
National Retail Transportation, Inc.	R1–92–03 (R1–92–185)
Gunther's Leasing Transport, Inc.	Complaint Investigation
Costello Industries, Inc	R1–91–225
PVH, Inc. d/b/a Aries Distributors.	91–142
Kessel Lumber Supply, Inc	R3–92–01
John Steven Johnson/ Steve Johnson & Sons.	R9–89–058
James Kelton, Sr. d/b/a Kelton Tours.	90–AL–028–SA
Charles Meadows d/b/a Meadows Auto Sales.	R3–91–72
Fikse & Company	R9–90–042
Humlhanz Trucking, Inc	R3–91–129
Beier Enterprises d/b/a Oroweat Beier Enterprises.	R6–90–117
Iron Horse Equipment Corporation.	R9–91–032
Aaron McGruder Trucking, Inc.	R6–91–57
American Diversified Construction, Inc.	90–TN–043–SA
Used Equipment Sales, Inc	R1–91–03
S–W Mills, Inc	R5–91–004
Estelle Robertson	R6–90–69
Wayne P. Bryant & Mark Bryant d/b/a Bryant Trucking.	R7–90–020
James Guest	91–GA–025–SA
Laughlin Transport, Inc	R3–91–104
James M. Montague	R3–89–186
Sunrise Fiberglass Engineering, Inc.	91–21
Shetakis Wholesalers, Inc	R1–91–019
A.M. & Wade Cox	89–TN–021–SA
RKM Equipment & Trucking, Inc.	R9–90–039
Jagpal Transport, Inc	R9–92–020
Transurface Carriers, Inc	R1–90–294
Sined Leasing	91–122
American Pacific Power Apparatus, Inc.	OR–90–006–075
Laughlin Transport, Inc	R3–91–104
R.M. Black, Jr. Produce, Inc.	90–AL–021–SA
John Steven Johnson/ Steve Johnson & Sons.	R9–89–058
Kessel Lumber Supply, Inc	R3–92–01 (R3–91–078)
Gunther's Leasing Transport, Inc.	Complaint Investigation
John Steven Johnson/ Steve Johnson & Sons.	R9–89–058
Dan Trease Distributing	85–144H
Forsyth Milk Hauling Co., Inc.	R3–90–037
Gunther's Leasing Transport, Inc.	R3–90–104

Authority: 23 U.S.C. 315, 49 CFR 1.48.

Issued on: March 23, 1993.

E. Dean Carlson,

Executive Director.

National Retail Transportation Inc.; Order Granting Respondent's Motion to Quash

Served January 8, 1993.

This civil forfeiture proceeding was instituted by a Claim Letter issued pursuant to 49 CFR 386.11(b) on January 21, 1992, alleging that National Retail Transportation, Inc. (NRT or Respondent) failed in forty-six instances to preserve for six months supporting documents for drivers' records of duty status. Each failure constitutes a separate violation of 49 CFR 395.8(k). The Regional Director, or Claimant, seeks civil penalties under 49 U.S.C. 521(b)(2) of $23,000, or $500 per violation.

Respondent's October 1, 1992 motion to dismiss this proceeding was denied by my order served October 28, 1992, which, *inter alia*, encouraged the parties to revisit their discovery disputes. Differences evidently remain, however, since Claimant, under date of December 8, 1992, has now applied for several subpoenas *duces tecum* and *ad testificandum* directed to persons and documents affiliated with NRT, which NRT has moved to quash. I grant Respondent's motion.

Administrative subpoenas are enforceable if the information sought is reasonably relevant to the underlying proceeding, so long as the demands are not unreasonably burdensome or broad.[1] I conclude that the information sought is not reasonably relevant to this proceeding.

The Claim Letter, or complaint, seeks to provide that NRT failed to preserve certain documents for applicable periods. The subpoenas seek information concerning Respondent's recordkeeping practices—including an examination of records maintained strictly for tax purposes—and a consultant's view of its safety procedures. The Regional Director is attempting to establish thereby that Respondent has deliberately withheld or destroyed salient documents in order to conceal hours-of-service violations, and that Respondent has lied to FHwA investigators in so doing.

Those may be proper investigatory aims, but in this enforcement proceeding they are not the allegations stated in the Claim Letter. While Claimant argues that information sought to be uncovered by the subpoenas relates to Respondent's compliance posture, a pertinent factor in penalty assessment, and while its contention is true as far as it goes, it goes quite a bit too far. Exploring the issues underpinning Claimant's subpoenas would unduly alter the nature and direction of this case. Questions concerning NRT's intent, and its methods and policies concerning

[1] *U.S.* v. *Newport News Shipbuilding and Dry Dock Co.*, 837 F.2d 162 (4 Cir. 1988); *Federal Trade Commission* v. *Rockefeller*, 441 F. Supp. 234 (S.D.N.Y 1977), *aff'd*, 591 F.2d 182 (2 Cir. 1979).

preservation of its business records, go well beyond the specific matters framed by the Claim Letter. Questions that may bear on the appropriate amount of the penalty are properly examined in the context of whether Respondent violated § 395.8(k) in the forty-six instances cited. Claimant's scenario, by contrast, exalts matters of penalty over the substantive issued limned by the complaint; it would have the tail wag the dog. As such, I conclude that the information sought by these subpoenas is not reasonably relevant to the instant proceeding. Additionally, the Associate Administrator has stated that matters relating to the amount of the penalty alone are not material factual issues in dispute subject to hearing.[2] Against this background, I conclude that these subpoenas should not be enforced and I grant the motion to quash.[3]

The Regional Director has also requested that the hearing be continued in Kentucky in order to hear witnesses who are based in that state. That request may be refiled if still pertinent in light of this order; that aside the hearing will be held in New York City on March 4, 1993, courtroom to be announced.[4]

Burton S. Kolko,
Administrative Law Judge.

National Retail Transportation, Inc.; Order Denying Motion to Dismiss

Served October 28, 1992.

This civil forfeiture proceeding was instituted by a Claim Letter issued pursuant to 49 CFR 386.11(b) on January 21, 1992, alleging that National Retail Transportation, Inc. (NRT or Respondent) failed in forty-six instances to preserve for six months supporting documents for drivers' records of duty status. Each failure constitutes a violation of 49 CFR 395.8(k). The Regional Director, or Claimant, seeks a civil penalty of $23,000, or $500 per violation.[1]

On October 1, 1992, NRT moved for an order dismissing this proceeding. Claimant filed an answer opposing the motion, and Respondent filed a "rebuttal" to the response.

NRT argues that documents it has obtained in discovery establish that no material factual issues are in dispute, and thus no hearing is needed. In support it asserts, citing internal agency documents, that this case violates FHwA policy and that agency officials differ as to the scope and effect of the regulation upon which it is based. NRT also contends that this proceeding discriminatorily singles it out for punishment.

Claimant's response asserts initially that the motion must be dismissed as out of time. On the merits, it asserts that the motion lacks factual basis. Claimant must be given an opportunity to make its case, it argues, stating that it intends to show that NRT violated § 395.8(k) by deliberately refusing to produce documents in an attempt to impede the agency's investigation.

Respondent's rebuttal states that its motion is timely because it is based in critical measure on documents obtained through discovery only days earlier. It also argues that Claimant's proposed manner of proving its case is so different from its allegations as to constitute inadequate notice of the charges against Respondent, tantamount to a denial of due process.

I deny the motion to dismiss. In the first place, it is untimely, having missed the 20-day deadline [2] by 234 days. I am not sympathetic to Respondent's plea for exemption, which leads to my second point.

The discovery-derived documents forming the basis for Respondent's motion, and whatever they show, have no relevance to this case. Whether and how to prosecute this matter is entirely up to the Regional Director. Internal agency debates about the regulation in question are beside the point, and no due process or other concerns are implicated.[3] Respondents' motion fails on the merits as well.

I encourage the parties to revisit, between themselves, their discovery disputes in light of this order. To that end I am dismissing Claimant's motion to compel and all other related motions and requests.[4]

Burton S. Kolko,
Administrative Law Judge.

Order; Sined Leasing, Inc.

Served September 22, 1992.

The parties have agreed to settle this matter prior to hearing and having entered into a settlement agreement, *It is hereby ordered,* That the above matter is dismissed in accordance with the terms of the Stipulation of Compromise and Settlement attached hereto.

Burton S. Kolko,
Administrative Law Judge.

Stipulation of Compromise and Settlement; Sined Leasing, Inc.

It is hereby stipulated by the regional director, Office of Motor Carriers and respondent, Sined Leasing, Inc., through their respective attorneys as follows:

1. The parties agree to settle and compromise this action as to respondent, Sined Leasing, Inc.

2. Respondent, Sined Leasing, Inc. (hereinafter "Respondent"), shall pay to the Federal Highway Administration (hereinafter "Administration") the sum of Seven Thousand Five Hundred Dollars and 00/100's ($7,500) in full satisfaction of any and all claims arising out of the May 23, 1991 Notice of Claim which is the subject of this action.

3. Respondent also agrees to enter into the attached Consent Agreement and Order.

4. This settlement is not an admission by either Respondent or the Administration.

5. Respondent acknowledges that a safety compliance review may be conducted in the near future and, should sufficient violations be discovered, the Administration reserves the right to initiate any and all actions permitted under the Motor Carrier Act, the Interstate Commerce Act and as authorized by 49 App. U.S.C. 521(5)(A).

6. The Respondent acknowledges that it has received adequate notice of the Administration's claim and waives any and all rights it may have to further details of the violations that gave rise to the claim and a decision containing findings of fact and conclusions of law.

7. This settlement is made pursuant to the Federal Claims and Collection Act of 1966, 31 U.S.C. 3701 et. seq. and the regulations of the Administration in 49 CFR part 386.

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[2] *Tonawanda Tank Transport Service, Inc.*, Docket R1–88–130, July 5, 1990; *A.T. Pinto, Inc.*, Docket R3–90–006, February 20, 1990.

[3] Respondent's answer of December 15, 1992, also (1) requested dismissal of this proceeding, which I deny, and (2) applied for a subpoena of a FHwA official, as to which I will reserve judgment pending Claimant's answer.

[4] Respondent's other defenses to Claimant's application for subpoenas are rejected.

[1] The Claim Letter actually asks for a fine of $23,800, but that figure appears to be a typographical error. The Letter clearly states that the basis for the amount sought is $500 per violation alleged, and 46×500=23,000. Further, the Associate Administrator's later-issued Order Appointing Administrative Law Judge states that the Letter "assessed a total penalty of *$23,000*, or $500 per violation" (emphasis supplied). To remove all doubts, Claimant should file an appropriate document indicating the civil penalty sought and the mathematical basis therefor.

[2] 15 days (§§ 386.38(a) and 386.14(a)) plus five days for mailing (§ 386.32(c)).

[3] Alleged selectivity in enforcement is not actionable unless it is deliberately based on an unjustifiable standard such as race, religion, or other arbitrary classification. *Bordenkircher* v. *Hayes*, 434 U.S. 357 (1978), *reh. den.* 435 U.S. 918 (1978). Respondent makes no such charge here.

[4] I also request the parties to tone down their rhetoric, which not only hinders accommodation but detracts from the dignity of this proceeding.

Dated: September 4, 1992.
Denis McDaniel,
President, Sined Leasing, Inc.
Dated: September 10, 1992.
Michael C. Damm,
Attorney for Sined Leasing, Inc.
Dated: September 17, 1992.
Milt L. Schmidt,
Acting Regional Director, Office of Motor Carriers.
Dated: September 17, 1992.
Shelia D. O'Sullivan,
Attorney for the Regional Director.

Consent Agreement and Order; Sined Leasing, Inc., Wrightstown, NJ

It is hereby stipulated and agreed by, Sined Leasing, Inc. (Carrier), and the Federal Highway Administration (Administration) as follows:

1. All drivers in Carrier's use and employ shall not operate a vehicle in interstate commerce unless they are medically qualified to do so. A copy of the medical examiner's certificate shall be maintained in the driver qualification file as per 49 CFR 391.51.

2. All drivers subject to controlled substance testing under 49 CFR part 391 subpart H, shall be tested in accordance with that section and 49 CFR part 40, and records of testing shall be maintained as required.

3. Require all drivers to prepare complete, and accurate daily records of duty status for each 24 hour period and submit them to the Carrier within 13 days. All records of duty status shall be maintained at the Carrier's principal place of business along with supporting documents for a period of 6 months. The supporting documents shall include toll receipts, fuel receipts, repair bills, and any other road expense receipts, as well as invoices, bills of lading, dispatch records, and trip reports. Such supporting documents shall be identified with the driver's name and power unit number and maintained on file.

4. The Carrier shall review the accuracy of all drivers records of duty status by checking supporting documents against the duty status record. The Carrier shall establish a policy and program of prohibiting by disciplining or other means, instances of falsification of records. Such policy and program shall include disciplinary action against drivers for instances of falsification of records. The policy shall be in writing and prominently displayed at the Carrier's place of business. Additionally all drivers shall be personally furnished with a copy of the policy. Any disciplinary action taken against a driver pursuant to the policy and program shall be documented in the driver's qualification file.

5. The Carrier shall establish a system to control and insure compliance with the hours of service requirements as set forth in 49 CFR 395.3. Such system shall include a dispatch program that monitors drivers hours on a daily basis, including requiring drivers to call in to the main dispatcher on a 24 hour basis to advise on the number of on-duty and driving hours available for that period and ensuing days. Additionally, where necessary, the Carrier shall utilize team drivers to insure compliance with the hours of service requirements. Drivers shall not be dispatched unless they retain adequate and available on-duty and driving time as per § 395.3, to complete their assigned run.

6. Require all drivers to prepare vehicle inspection reports at the end of each day's operation. Ensure each report is signed by the driver and certification of repairs have been made if defects are reported. The Carrier shall require that vehicles may not be dispatched or used in interstate commerce unless the prior day's inspection report signed by the driver is present in the vehicle and a certification of repairs is completed if necessary. All driver vehicle inspection reports not required to be present on the vehicle, shall be retained on file at the Carriers principal place of business for at least 90 days in accordance with 49 CFR part 396.

7. This agreement has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner as other orders issued under 49 U.S.C. 501 et seq., 2501 et seq., 3101 et seq., and 10927, note. Additionally after one year from the date of execution of this agreement, any party may petition the Regional Director to modify the terms of this agreement, such modification shall be dependent on the Carriers progress in improving its safety compliance. Any changes in the law or regulations which apply to the provisions of this agreement shall be considered as modifying the agreement to be in conformance with the provisions of the law.

8. The Carrier acknowledges it has received adequate notice of the Administration's actions in this matter and waives any and all rights it may have to further details relating to the violations which gave rise to this Order, including a decision and order containing findings of facts and conclusions of law, and any right to seek judicial review or otherwise contest or challenge the validity of this agreement.

9. The Carrier acknowledges that unannounced on site verification of the Carrier's operation will be conducted and that failure to comply with the Federal Motor Carrier Safety Regulations or with the provisions of this agreement may result in civil penalties as provided by law including those penalties chargeable under 49 CFR part 386, subpart G, appendix A but not a reopening of the specific violations cited in the May 23, 1991 Notice of Claim. In the event that an unannounced on site verification takes place and the appropriate officers of the Carrier are not present, the Carrier will be given an opportunity to notify such officers so they can be present. The Carrier shall have 30 days from the date this Agreement and Order is executed to implement the portions of this Agreement not covered by the Regulations.

Denis McDaniel,
President.
Dated: September 4, 1992.
Milt L. Schmidt,
Acting Regional Director, Office of Motor Carriers.
Dated: September 17, 1992.

Order Terminating Proceeding; Murray Rude Services, Inc.

Served September 9, 1992.

The parties having agreed to settle this matter prior to hearing, *It is therefore ordered* That this matter is dismissed in accordance with the terms and conditions of the settlement agreement and consent order.

Burton S. Kolko,
Administrative Law Judge.

Final Order; R. W. Bozel Transfer, Inc.

This matter comes before me upon a motion by the Regional Director, Region 3, for a final order finding the facts to be as alleged in an amended notice of claim dated December 12, 1991, and imposing a civil penalty of $17,600. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

A December 2, 1991, notice of claim charged R. W. Bozel Transfer, Inc. (Bozel), with 20 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Apparently before it received this notice of claim, Bozel responded to a November 1991 compliance review report on December 4, documenting its efforts to ensure compliance with the regulations. After Bozel was cited by a District of Columbia police officer on December 5 for using a driver (Bob Roth) under the age of 21 in interstate commerce, the

Regional Director amended the notice of claim, adding an additional charge for Bozel's November 19 use of an underage driver.

The amended claim letter, dated December 12, charged Bozel with one substantial health and safety violation and five serious, nonrecordkeeping violations of 49 CFR 391.11 (a) & (b)(1), using an underage driver in interstate commerce; four violations of § 391.27, failing to maintain in driver qualification files the list of each drivers' violations of traffic laws; two violations of § 391.35, failing to maintain in driver qualification files the written examination certificate, questions and driver's answers for each driver; two violations of § 391.51, failing to maintain in driver qualification files a medical examiner's certificate for each driver; one violation of § 391.103, failing to require a driver-applicant to submit to a pre-employment controlled substances test; one violation of § 391.105, failing to require a driver to be tested in accordance with the biennial (periodic) testing requirements; one violation of § 395.3(b), requiring or permitting a driver to drive after having been on duty for 60 hours in 7 consecutive days; and four violations of § 395.8, failing to require drivers to make and submit records of duty status. In all, the December 12 claim letter cited 21 violations and assessed a total penalty of $17,600.

Bozel responded orally to the claim letters. Regional Director's Motion for Final Order at 2. After unsuccessful settlement negotiations, the Regional Director filed a motion for final order and supporting evidence on January 15, 1992, stating that there was no genuine issue of material fact and that he was entitled to judgment as a matter of law.

Bozel responded to the motion for final order on January 27, 1992, admitting to a number of the charges and denying responsibility for others. The carrier did not request a hearing, but defended by stating that the recordkeeping and periodic drug testing charges involved conduct of owner-operators who were independent contractors, not employees of Bozel, and therefore Bozel could not be held liable for their violations. In addition, the carrier claimed it was not given the full 15-day abatement period in which to cease all violations, as provided in the notice of claim. Finally, Bozel stated it believed it could use 20-year-old driver Bob Roth on interstate trips if those trips were wholly within the "commercial zone" of metropolitan Washington, D.C. The Regional Director did not respond to Bozel's January 27 pleading.

Discussion

The Provisions of 49 CFR 386.14

The Rules of Practice provide, "If the respondent does not reply to a Claim Letter within (15 days after it is served), the Claim Letter becomes the final agency order in the proceeding 25 days after it is served." 49 CFR 386.14(e). Bozel did not reply to the December 2 & 12, 1991, notices of claim in accordance with 49 CFR 386.14(b) within the prescribed time period. Therefore, the Regional Director could have sent this case directly to the United States Attorney for enforcement in a Federal district court under 49 CFR 386.65. See Transurface Carriers, Inc., No. R1–90–294, (FHWA March 12, 1992) (Final Order).

Apparently, the Regional Director views Bozel's oral response to the notices of claim as sufficient to avoid a default judgment against the carrier. Although I disagree with this interpretation of § 386.14(e), the notices of claim advised Bozel that "You may elect to discuss, or compromise a settlement of this claim. If you choose this option, you and/or your representative should contact Mr. Walter Johnson at the above address * * *. He may be contacted by telephone * * *." These statements inform the carrier that an oral response within 15 days of receipt of the notice of claim is sufficient under the Rules of Practice. This is incorrect. An oral response neither meets the requirements of § 386.14 regarding the form for a reply, nor does it toll the 15-day time period in which to respond to a notice of claim.

Both claim letters also err in stating that Bozel's "[f]ailure to respond within 30 days of the date of this Notice of Claim will result in this Notice of Claim becoming the final agency order for the full amount claimed pursuant to 386.14(e)." This subsection actually reads, "the Claim Letter becomes the final agency order in the proceeding 25 days after it is served." Contrary to the language in the claim letters, § 386.14 requires a written reply to the notice of claim within 15 days of service. Absent such a written reply, and after 25 days, not 30, the notice of claim becomes a final agency order.

Because the language in the claim letters misinforms the carrier regarding several essential provisions of the Rules of Practice, I have decided to review this matter on the merits, rather than to conclude that Bozel's default is dispositive of the matter.

The Regional Director's Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. See, e.g. *In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). Accordingly, the moving party has the burden of clearly establishing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. All evidence must be viewed in a light most favorable to the nonmoving party, Bozel in this case. In its reply to the motion for final order and in a written statement by Bozel Vice President Chris Bozel, the carrier has admitted to 12 of the 21 charges and unsuccessfully contested the remaining 9 counts.

A. Use of an Underage Driver in Interstate Commerce

Bozel acknowledges that it permitted 20-year-old Bob Roth to drive on the occasions cited in the notices of claim. But the carrier claims "our understanding was that travelling in the commercial zone (of Baltimore, Maryland; Washington, D.C.; and northern Virginia) was exempt from (the definition of) interstate [commerce]." Bozel's January 27, 1992, Reply at 1. Although the FMCSRs once provided a limited "commercial zone" exemption in 49 CFR 390.33, this section was repealed by Act of Congress on November 18, 1988, and since that time, there has been no commercial zone exemption in the FMCSRs. Truck and Bus Safety Reform Act of 1988, Public Law No. 100–690, section 9102, 102 Stat. 4527, 4528 (codified at 49 U.S.C. App. § 2505(h)).[1]

Every motor carrier is charged with knowledge of the regulations. *Cf. In re Robert Hansen Trucking, Inc.*, 57 FR 28731, at 28732, (FHWA 1992) (Order) (holding that "mere ignorance of the law cannot be a defense or an excuse for violating the law"). To accept Bozel's mistake of law as a defense to the charges would appear to reward Bozel's apparent four year failure to educate itself regarding changes made in the safety regulations. Therefore, I find that Bozel's admitted use of an underage driver in interstate commerce is in no way excused or justified by its ignorance of the current safety regulations.

[1] The 1988 Act included a grandfather clause for any person authorized to operate a commercial motor vehicle in a commercial zone throughout the 1-year period ending on November 18, 1988. Based on the evidence before me, it appears that Bob Roth did not begin driving in interstate commerce until 1990, and therefore cannot meet the requirements of the grandfather clause.

B. Excess Hours, Failure to Maintain Records of Duty Status, and No Pre-Employment Drug Test

With regard to the four charges of failing to maintain records of duty status and one count of permitting a driver to drive after having been on duty for 60 hours in seven days, the carrier concedes that "Bozel Transfer's error was not having proper procedures in place to follow-up and inspect record[s] of duty status * * *." Bozel's January 27, 1992, Reply at 3. Section 390.11 provides that, "Whenever in [the FMCSRs] a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition." In failing to review driver logs and to ensure that drivers maintain records of duty status for their trips, the carrier has permitted the violations to occur. Based on Bozel's admissions that its inadequate inspection and verification of driver records caused these violations, I find Bozel breached its duty to require observance of the regulations. Therefore, Bozel is responsible for its drivers' noncompliance. *Used Equipment Sales, Inc.*, FHWA No. R1–91–03, Motor Carrier Safety, May 6, 1992 (Decision of Administrative Law Judge).

In its reply, Bozel also admitted that it did not require a re-hired former driver to take a pre-employment drug test until "several days after his second hire date." Bozel's January 27, 1992, Reply at 3. Therefore, I find Bozel liable for one violation of § 391.103 for failing to require a driver-applicant to submit to pre-employment drug testing.

C. Bozel's Liability for the Actions of its Owner-Operators

As to the remaining nine charges, *i.e.* eight citations for missing driver qualification file documents and a single charge of using a driver without requiring him to submit to a periodic drug test, Bozel has attempted to disclaim liability. The carrier asserts that its contracts with the independent contractors who committed these violations provide that they, not Bozel, are responsible for complying with all applicable safety regulations. This argument is without merit in this context. The regulations have imposed upon carriers the duty to supervise those drivers used by the carrier, regardless of their employment status. As noted above, 49 CFR 390.11 requires carriers to ensure that their drivers observe all regulatory duties and prohibitions. Significant public interest supports the view that motor carriers cannot simply transfer this responsibility for monitoring driver compliance with federal safety regulations to the drivers requiring the supervision. Therefore, when determining a carrier's responsibility for the actions of its drivers, the FMCSRs do not recognize any distinction between independent contractors under the control of a motor carrier and employees that may be recognized in other contexts.

Penalty Determination

The Regional Director assessed a penalty of $10,000 for the substantial health and safety violation, $500 for each serious, nonrecordkeeping violation, and $300 for each recordkeeping violation, for a total penalty of $17,600.

The Regional Director's sole support for the $10,000 penalty for Bozel's November 19, 1991, use of an underage driver is his assertion that Bozel "continued to use an underaged (sic) driver on December 5, 1991, notwithstanding two prior notices and its written assurance of December 4, 1991, that it would not continue to use underaged (sic) drivers in interstate commerce." Motion for Final Order at 1.

I believe that Bozel's conduct on December 5 is wholly irrelevant to the November 19 charge. Even assuming that the December charge is remotely relevant, the Regional Director's apparent assertion that the mere recurrence of an action is sufficient to prove a substantial health and safety violation is without foundation. Whether an action is a threat to health and safety is inherent in the action itself, and cannot be contrived or created through repetition of actions not likely to cause serious personal injury or death.

Further undermining the Regional Director's contention that Bozel's November 19 use of 20 year old Bob Roth as a driver constitutes a substantial health or safety violation is the Regional Director's treatment of Bozel's earlier use of this driver as a serious pattern of violations. Moreover, if the Regional Director objects so strongly to Bozel's early December conduct, I question why he did not cite Bozel for the December 5 trip in the amended notice of claim. By this decision, I hold only that the Regional Director has not proven that Bozel's actions constitute a substantial health and safety threat, I do not rule out the possibility that use of an underage driver could constitute such a violation.

Bozel's argument that the notice of abatement effectively permits it to violate the FMCSRs with immunity for 15 days after receipt of the notice of claim is illogical. Claiming that Bob Roth's December 5 trip occurred within 15 days after the December 2 claim letter, Bozel argued that this trip could not be the basis of the additional $10,000 penalty. Bozel has simply misinterpreted the notice of abatement provision. Upon receipt of the notice of claim, a carrier must cease all violations immediately. The 15 day period is provided for limited cases where the immediate cessation of a violation may require curative efforts lasting no longer than 15 days. In all cases, violations that could be ceased earlier must be ceased earlier. Nothing in the record before me suggests why Bozel could not have ceased using Bob Roth as a driver immediately upon notification that such use constituted a violation of the regulations. I believe the Regional Director is correct in viewing Bozel's continued use of this driver, after notification that such use violates the safety regulations, as an aggravating factor in assessing a penalty had the Regional Director chosen to cite this post-notification trip by Roth.

Upon review of the penalty determination factors listed in 49 U.S.C. 521(b)(2)(C), I find that the Regional Director has failed to provide evidence sufficient to support a finding that the November 19, 1991, charge constitutes a substantial health and safety violation. I do find, however, that the six underage driver violations constitute a serious pattern of safety violations. Accordingly, I assess a penalty of $500 for the November 19 charge and $500 each for the five remaining underage driver charges.

In addition, I conclude that the drug testing and excess hours charges constitute a serious pattern of safety violations. A pattern may be established by single violations of related regulations. All of the regulatory provisions involved in this pattern seek to ensure that commercial motor vehicle drivers are alert and able to perform at optimum skill levels, free from the detrimental influences of fatigue or controlled substances. Therefore, I assess a penalty of $500 for each of the three violations.

Finally, I find that the $300 penalty assessed by the Regional Director for each of the 12 remaining recordkeeping charges is reasonable to induce compliance with these regulations.

It is hereby ordered That the Regional Director's motion for final order is granted, and R.W. Bozel Transfer, Inc., is directed to pay the sum of $8,100 to the Regional Director, Region 3, within 30 days of the date of entry of this order.

Dated: August 6, 1992.
Richard P. Landis,
Associate Administrator for Motor Carriers.

Order; American Truck and Trailer Repair

This matter comes before me upon a motion for a final order by the Regional Director, Region 1. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR Part 386.

Background

After a July 1991 compliance review report of American Truck and Trailer Repair (ATTR) cited the carrier for alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399, and the Hazardous Materials Regulations (HMRs), 49 CFR parts 171–180, the Regional Director issued a notice of claim charging ATTR with nine violations. Specifically, ATTR was charged with two violations of 49 CFR 391.51 for failing to maintain a complete driver qualification file for each driver, one violation of 49 CFR 391.103 for failing to require a driver-applicant to submit to a pre-employment controlled substance test, two violations of 49 CFR 396.11 for failing to require drivers to prepare vehicle inspection reports, and four violations of 49 CFR 177.817 for transporting hazardous material not accompanied by a properly prepared shipping paper.

The carrier answered the notice of claim, contending that the charges cited against it were "unjust" and should be "abated." ATTR's October 18, 1991, Reply to the Notice of Claim at 1. The carrier did not request a hearing. The Regional Director's motion for final order followed on February 20, 1992.

Discussion

In its reply to the notice of claim, ATTR claims it was given conflicting and incomplete answers to its questions regarding the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs) to its activities by a State trooper and two FHWA safety investigators who visited the carrier on three different occasions. As late as October 1990, ATTR was told by an FHWA safety investigator that neither the FMCSRs nor the HMRs applied to its operations. Safety Investigator Stryshak's Transcript of October 10, 1990, Interview. Once it received what it deemed to be clear instructions on the FMCSRs and HMRs during its July 1991 compliance review, ATTR states it immediately complied with the regulations. Therefore, the carrier concludes that it would have been in compliance from the first instance, had it been clearly instructed when it first asked for guidance on whether the regulations covered its activities.

The Regional Director contests ATTR's claims that it did not receive adequate instruction on the regulations, stating that the regulatory violations noted in a February 1990 safety review report should have been a clear indication that the regulations did apply to the carrier, and that ATTR needed to improve its motor carrier safety program. In addition, the Regional Director asserts that any apparently inconsistent advice given by FHWA safety investigators was due to ATTR providing false or conflicting information to the investigators during the reviews.

Included with the motion for final order were statements made by safety investigators Stryshak and McKeown, detailing the advice they gave the carrier. Mr. Stryshak states, "I also advised (ATTR Vice President of Operations Mr. Iseldyke) that if the carrier's vehicles operated wholly within New Jersey, the carrier would not be subject to the FMCSRs." Stryshak's Transcript of October 10, 1990, Oral Interview. Stryshak "also told him that in the event his drivers/vehicles operated in interstate commerce, *i.e.* across state lines, then the carrier would be subject to the requirements of the FMCSR and HM Regulations." *Id.*

In her July 1991 compliance review, Ms. McKeown "questioned Mr. Iseldyke on his operations, [and] determined that [ATTR] was in fact subject" to the FMCSRs. McKeown's October 28, 1991, Memorandum of July 1991 Compliance Review. Without explanation, McKeown also concluded that ATTR was subject to the HMRs. Finally, McKeown stated, "(n)either my file nor Mr. Iseldyke's files contained any written documentation from Ron Stryshak explaining why they were alledgedly (sic) not subject" to the FMCSRs or HMRs. *Id.*

The Regional Director's Motion for Final Order

Upon review of the case as a whole, I find that there are several deficiencies in the record. Specifically, I do not believe that the Regional Director has met his burden of clearly establishing all of the essential elements of his claim. In this case, where the motor carrier contests the applicability of the regulations, proof that ATTR's operations are subject to the FMCSRs and HMRs is a required element of the Regional Director's *prima facie* case. This evidentiary standard is no less stringent when the non-moving party, in this case ATTR, has denied that it is subject to the regulations but fails to submit evidence in support of its contentions. The Regional Director must succeed on the strength of his own evidence. Therefore, mere allegations that ATTR is in fact subject to the regulations are insufficient to meet the Regional Director's evidentiary burden. *E.g. In re American Pacific Power Apparatus, Inc.*, No. OR–90–006–75, (FHWA March 11, 1992) (Order).

In addition, the statements of investigators Stryshak and McKeown regarding the applicability of the regulations will not support a finding that ATTR's actions fall within the scope of both the FMCSRs and HMRs. First of all, the statements are conclusions and unsupported by evidence, as McKeown's own memorandum reveals. Second, the passages documents how the two investigators provided ATTR with inaccurate and conflicting information regarding the scope of the regulations, due at least in part to Stryshak's incorrect interpretation of the term "interstate commerce."

I recognize that ATTR appears satisfied, after McKeown's July 1991 compliance review, that it has been given clear instruction that it must comply with the regulations. But this fact cannot cure any deficiency in the record. If ATTR's operations lie outside the scope of both the FMCSRs and HMRs, I am without power to adjudicate this controversy, because subject matter jurisdiction cannot be conferred by consent of the litigants.

A. Applicability of the Federal Motor Carrier Safety Regulations

Contrary to the representations made by Mr. Stryshak, the term "interstate commerce," within the meaning of the FMCSRs and underlying statutes, is not synonymous with transport across state lines, and can include operations conducted wholly within a single state. Whether transportation between two points in one state is considered to be part of an interstate movement is determined by the essential character of the commerce, manifested by the shipper's fixed and persisting intent at the time of the shipment, and is ascertained from all the facts and circumstances surrounding the transportation. *Baltimore & O.S.W.R. Co.* v. *Settle*, 260 U.S. 166 (1922); *Texas* v. *U.S.*, 866 F.2d 1546 (5th Cir.), reh'g denied, 874 F.2d 812 (1989).

This definition of "interstate commerce" reveals another issue in this case. The determination of whether a shipment that does not cross state lines is either interstate or intrastate requires a careful review of the circumstances surrounding the transport, but such a review cannot be conducted on the record before me. While recognizing that Stryshak provided no documentary evidence in support of his finding that the FMCSRs and HMRs did not apply to the carrier, McKeown herself failed to support her own conclusions that ATTR was subject to the regulations. Without evidence of the specific actions of ATTR giving rise to the alleged FMCSR violations, I am unable to apply the correct definition of "interstate commerce" to the facts of this case and determine whether the carrier is subject to the FMCSRs.

B. Applicability of the Hazardous Materials Regulations

The scope to the HMRs differs from that of the FMCSRs. Where the FMCSRs were issued under 49 U.S.C. 3102 and section 206 of the Motor Carrier Safety Act of 1984 (codified as amended at 49 U.S.C. App. 2505), the authority for the application of the HMRs to motor carriers is found in the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. App. 1801–1819. The relevant statutory language provides that the HMRs apply to commerce which "affects" interstate or foreign commerce. 49 U.S.C. App. 1802(1). This section has been implemented to extend the application of the HMRs to certain intrastate transport of hazardous materials by interstate carriers. 49 CFR 171.1.

The record before me contains allegations that ATTR violated 49 CFR 177.817 of the HMRs by transporting hazardous material within the state of New Jersey without a properly prepared shipping paper. But even after ATTR objected to the applicability of the HMRs to its operations and investigator Stryshak found that the HMRs did not apply to the carrier, the Regional Director has failed to prove or even allege that these single-state trips constitute interstate commerce or "affect" interstate commerce and therefore fall within my regulatory authority.

Conclusion

ATTR has persuasively contested the applicability of both the FMCSRs and HMRs to its activities, therefore the Regional Director must provide *prima facie* evidence that ATTR falls within the scope of these regulations. Because the record before me lacks such evidence, I cannot grant the Regional Director's motion for final order at this time.

By this decision I do not hold that carriers can simply ignore applicable safety regulations, waiting to be ordered by this agency to comply. Each carrier has a duty to educate itself in the regulations that govern its conduct. *Cf. Luck Trucking, Inc.*, 55 FR 2962, at 2963, (FHWA 1990) (Final Order). Although I am concerned that the safety investigators provided the carrier with inaccurate information, the motion is denied for another reason. The Regional Director failed to prove how the FMCSRs and HMRs allegedly apply to ATTR's activities after the carrier asserted that they did not apply. When ATTR claimed that it did not operate in interstate commerce, and was therefore not subject to the FMCSRs, the Regional Director failed to provide any evidence to support his allegation that ATTR drivers operated across state lines on the dates cited in the notice of claim.

Finally, I note that the Regional Director has cited ATTR for one violation of 49 CFR 391.103 for allegedly failing to require a driver to submit to a pre-employment drug test. In order to assess a penalty for this non-recordkeeping charge, 49 U.S.C. 521(b)(2)(A) requires that I find that such charge constitutes "a serious pattern of safety violations" or a substantial health and safety violation which has led, or could lead, to serious personal injury or death. Therefore, I direct the parties to address this issue in their submissions.

It is hereby ordered, That the Regional Director's motion for a final order is denied with leave to renew. The Regional Director and American Truck and Trailer Repair shall submit pleadings and supporting evidence within 30 days of the date of entry of this order, addressing the issues identified herein. Submissions shall be served in accordance with 49 CFR 386.31.

Dated: August 6, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order; Specialties, Inc.

This matter comes before me upon a motion by the Regional Director, Region 4, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

The Regional Director submitted his motion on January 8, 1992. This motion asked me to "find[] the facts to be as alleged in a Notice of Claim dated October 8, 1991," and to impose a civil penalty in the amount of $4,800. The Regional Director did not attach a copy of the notice of claim to his motion.

According to the Regional Director's motion, the Respondent, Specialties, Inc. (Specialties), was charged with 16 violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399. All 16 charges allegedly involved violations of 49 CFR 391.51(a), failure to properly maintain driver qualification files.

Specialties made two timely replies, one on October 14, 1991, and the other on October 23, 1991. Neither reply contained a denial of the alleged violations, but they may fairly be construed as contesting the charges. The first reply acknowledged receipt of the notice of claim and asked for a "compromise and discussion" of the charges. It did not give any details of the contents of the notice. The second reply requested an administrative hearing.

Based on the record before me, I cannot "find the facts to be as alleged" because I do not know what facts have been alleged. For example, without the notice of claim I cannot determine which of the 16 charges leveled against Specialties pertain to which of four different driver's qualification files allegedly found in violation of the regulatory standard. In the absence of such crucial information I must deny the Regional Director's motion for final order.

I have held that a motion for final order is in the nature of one for summary judgment, and therefore the moving party bears the burden of proving that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA Dec. 6, 1991) (Order). If the Regional Director submits a copy of the October 8, 1991, notice of claim, along with supporting evidence, I will reconsider his motion. *In re American Diversified Construction, Inc.*, No. 90–TN–043–SA (FHWA May 12, 1992) (Final Order) at 5–6.

I am not ruling on Specialties' request for a hearing at this time, because I believe the record before me is too incomplete to determine whether there are material factual issues in dispute. See 49 CFR 386.16(b). Specialties should note, however, that its failure to respond to the Regional Director's renewed motion may result in a final order for the Regional Director. See, *e.g., In re American Pacific Power Apparatus, Inc.* (FHWA July 14, 1992) (Final Order).

It is hereby ordered, That the Regional Director's request for a final order is denied, with leave to renew this motion.

Dated: August 6, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Durey-Libby Edible Nuts, Inc.

This matter comes before me upon a motion by the Regional Director, Region 1, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

The Respondent, Durey-Libby Edible Nuts, Inc. (Durey), operates as a private motor carrier in interstate commerce. After a June 17, 1991, compliance review of Durey's operations revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399, the Regional Director served Durey with a notice of claim on September 3, 1991. The notice of claim charged the carrier with 10 violations of the FMCSRs, including: Two violations of 49 CFR 391.45, using a driver without a medical examination; two violations of § 391.51, failing to maintain driver qualification files; one violation of § 391.103, using a driver without first obtaining a pre-employment controlled substances test; one violation of § 391.105, failing to require a driver to be tested for controlled substances in accordance with the biennial testing requirements; and four violations of § 396.11, failing to require drivers to prepare vehicle inspection reports.

Durey replied to the notice of claim on October 7, 1991, and requested an administrative hearing. The reply admitted to the four driver vehicle inspection report violations and also contained a statement that could fairly be interpreted as a denial of one of the charges of using a driver without a medical examination ("(Driver) Antonio Martinez has * * * taken the Medical Exam * * *.").[1] The reply did not directly address any of the other charges in the notice of claim.

This reply was sent well after the 15-day deadline imposed by the Rules of Practice, 49 CFR 386.14, and also after the five-day grace period allotted for service by mail under § 386.32(c)(3). In the reply, Durey sought to excuse its tardiness by claiming that it had attempted several times to contact the Federal Program Manager for Region 1 before making a written reply, but had succeeded in reaching him only on September 25, 1992. Durey asked that its hearing request be considered timely because it sent the reply to the Region less than 15 days after contacting the Federal Program Manager.

The Regional Director submitted a Motion for Final Order on October 24, 1991. Durey has made no reply to this motion.

Discussion

1. Durey's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 C.F.R. § 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute." 49 C.F.R. § 386.14(b)(2). Ordinarily, unless a respondent's reply complies with these basic requirements no hearing will be granted.

Based on the record before me in this matter, I find Durey's untimely reply does not present a material factual issue in dispute requiring a hearing. Even though the reply contains a denial of one of the charges in the notice of claim, for purposes of its hearing request Durey has failed to rebut the Regional Director's *prima facie* case. "If the Regional Director opposes the hearing request, as in this case, the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations." *In re American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, at 2, (FHWA March 11, 1992) (Order). In short, Durey's general, unsupported denial fails to carry the carrier's burden to show the existence of a material factual dispute and does not overcome the Regional Director's opposition to a hearing supported by evidence sufficient to establish a *prima facie* case against the carrier. *American Pacific* at 3.

2. The Regional Director's Motion for Final Order

In an analogy to a motion for summary judgment, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 6, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Durey in this case.

The Regional Director submitted with his motion a signed statement by Durey President Edward Dicker, dated just after the date of the compliance review. *See* Regional Director's Motion for Final Order at Exhibit C. The Regional Director asserts that this statement amounts to an admission of all the charged violations. *Id.* at 3.

I agree that the statement and Durey's reply to the notice of claim, when read together, include admissions to the two driver's qualification file and the four vehicle inspection report charges, and therefore I grant the Regional Director's motion as to counts 3, 4, 7, 8, 9, and 10. I do not, however, agree that Durey has admitted to the remainder of the charges. Instead, I find Dicker's statement's references to the other charges more ambiguous than confessional (*e.g.*, "I am also aware that my drivers are subject to drug testing." "I was also told that I needed to create driver qualification files on my drivers, *have them medically certified*, and require them to complete daily vehicle inspection reports." (emphasis added)).

Nevertheless, based on the record before me, I find that Durey has failed to contest either the two drug-testing charges or the first medical examination charge (relating to driver Waldamer Valez). Neither the carrier's reply to the notice of claim nor Dicker's statement provides any rebuttal to the Regional Director's charges. Nothing in the record before me indicates that Durey has responded to the Regional Director's motion. I find Durey's lack of response to these charges to be in the nature of a default and I grant the Regional Director's motion as to counts 1, 5, and 6.

There remains for my consideration only the second medical examination charge. Here the carrier's late reply is of central importance. I read Durey's reply to contain a denial of this charge. The Regional Director, on the other hand, relies on Dicker's statement to prove the charge. As I have already noted, I find Dicker's statement on this count ambiguous, and not an admission.

This dispute presents a problem that I have encountered before, most recently in *In re America Diversified Construction, Inc.*, No. 90–TN–043–SA (FHWA May 12, 1992) (Final Order) and *American Pacific* (March 11, 1992). Durey has denied this one allegation, but has not provided any evidence to support its position. Furthermore, and more important to my consideration of the instant motion, the Regional Director has also failed to provide evidence on this count. Like his

[1] This statement did not specify whether Mr. Martinez was examined before or after the date of the compliance review.

counterparts in the earlier cases, the Regional Director "did not carry his burden of proving that there is no genuine issue of material fact." *American Diversified* at 5 (quoting *American Pacific* at 4).

In these earlier orders I held that "the Regional Director must succeed on the strength of his own evidence." *Id.* at 5 (quoting *American Pacific* at 5). Durey's unsupported denials would not rebut a *prima facie* case as to the medical examination violation, but the Regional Director has failed to present a *prima facie* case for this count. *Id.* Without more, I cannot hold that the Regional Director has met his burden of clearly establishing the essential elements of his claim, and therefore I must deny the motion for final order as to this count. *Id.*; see Fed. R. Civ. P. 56 (advisory committee notes).

If the Regional Director submits affidavits or other evidence tending to show that Durey committed the second medical examination violation, I will reconsider his motion. Durey should note that if it fails either to respond to the Regional Director's renewed motion or to produce any evidence rebutting the Regional Director's evidence, that failure may result in a final order for the Regional Director on this count.

3. Penalty Determination

Of the nine violations for which I am granting a final order, I find that three of them—the medical examination violation and both drug-testing violations—constitute a serious pattern of safety violations which subject Durey to fines of up to $1,000 per violation, not to exceed $10,000 per pattern. 49 U.S.C. § 521(b)(2)(A). The remaining six counts are for violations of recordkeeping requirements and carry a maximum fine of $500 per violation, not to exceed $2,500 for each type of violation. *Id.*

The Regional Director fined Durey $500 for each violation in a serious pattern and $300 for each recordkeeping violation. Based on the record before me, and after consideration of the nine penalty determination factors of 49 U.S.C. § 521(b)(2)(C), I find the penalties assessed by the Regional Director appropriate and reasonably calculated to induce Durey's compliance with the FMCSRs. Therefore, I grant the Regional Director's motion for final order in the amount of $3,300.

It is hereby ordered, That Respondent Durey-Libby Edible Nuts, Inc.'s, request for a hearing is denied, and the Regional Director's motion for a final order is granted as to counts 2 through 10 and denied as to count one. Durey-Libby Edible Nuts, Inc., is directed to pay $3,300 to the Regional Director within 30 days of the date of this order.

Dated: July 31, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Professional Equipment Co., Inc.

This matter comes before me upon a motion by the Regional Director, Region 1, opposing Professional Equipment Co., Inc.'s (Professional), request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

After a September 25, 1991, compliance review of Professional revealed numerous violations of the Federal Motor Carrier Safety Regulations, a notice of claim was issued by the Regional Director on November 6, 1991, charging Professional with two violations of 49 CFR 391.51, failure to maintain a complete qualification file for each driver used or employed; one violation of 49 CFR 391.105, failure to require a driver to be tested in accordance with the biennial (periodic) testing requirements; and six violations of 49 CFR 396.11, failure to retain a driver vehicle inspection report for at least 3 months. The Regional Director assessed a total penalty of $2,900, $300 for each of the missing driver qualification and vehicle inspection documents, and $500 for the failure to require biennial driver testing.

Professional contacted the Regional Director by phone on 11/13/91 and again on 11/19/91 stating that the assessment was too high and requesting that the penalty be lowered. The Regional Director on both occasions offered a settlement of $2,175, which Professional refused. When no settlement could be reached, the Regional Director reminded the carrier that it could request a hearing within 15 days.

On November 27, 1991, Professional wrote a letter to the Regional Director in which it admitted to the violations listed in the notice of claim, but requested a hearing to compromise the amount of the penalty. There was no further correspondence between the parties and on January 13, 1992, the Regional Director filed a motion for final order asking for a penalty assessment of $2,175 (the amount of the settlement offer). Professional did not respond to the Regional Director's motion for a final order.

Discussion

1. The Rules of Practice require that a hearing request must demonstrate at least one material factual issue in dispute. 49 CFR 386.14(b)(2). In its letter of November 27, 1991, Professional twice acknowledged that the violations charged against it were valid and did not raise any issue of fact, but requested a hearing solely to discuss the amount of the penalty, which it characterized as "excessive." It is well established that the amount of the penalty is not a material factual issue which creates the right to a hearing. *In the Matter of A.T. Pinto, Inc.*, 55 FR 43293 (FHWA 1990) (Reconsideration of Final Order). See also *Drotzman, Inc.*, 55 FR 2929, 2930 (FHWA 1990) (Order Appointing Administrative Law Judge). Because Professional failed to raise a material factual issue in dispute, and also because it admitted to the charges against it, I deny its request for a hearing.

2. The Regional Director's Motion for Final Order. I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). I must draw all inferences in favor of the non-moving party, Professional in this case.

The Regional Director, in his motion for final order, argues that Professional admitted to the violations in its letter of November 27, 1991. Professional's letter, when viewed in a light most favorable to the carrier, must be viewed as an admission to these violations. In its letter Professional initially states "We do acknowledge that the infractions are valid," and subsequently reiterates "We are in violation in that our paperwork was not precisely in order."

I note that the Regional Director's motion for final order is not supported by evidence sufficient to show a *prima facie* case, but in this instance such evidence is not required. Professional has admitted to all of the violations and failed to respond to the motion for final order. Therefore I find that Professional violated the regulations as cited in the notice of claim letter, and the Regional Director is entitled to a judgment as a matter of law.

3. Penalty Assessment. The Regional Director, in the notice of claim, assessed a total penalty of $2,900. However, in the motion for final order, the Regional Director has requested a penalty

assessment of $2,175 the settlement figure offered to Professional. Taking into account the factors listed in 49 U.S.C. § 521(b)(2)(C) for determination of the penalty amount, I find that this amount is reasonably calculated to induce Professional's compliance with the regulations and I therefore grant the Regional Director's motion for final order in the amount of $2,175.

It is hereby ordered, That Professional Equipment Co., Inc.'s hearing request is denied, the Regional Director's motion for final order is granted, and Professional Equipment Co. Inc., is directed to pay the sum of $2,175 to the Regional Director, Region 1, within 30 days of this order.

Dated: July 31, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Pappy's Enterprises, Inc.

This matter comes before me upon a motion by the Regional Director, Region 3, for a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Enforcement Proceedings (Rules of Practice), 49 CFR part 386.

Background

The Respondent, Pappy's Enterprises, Inc. (Pappy's), operates as a private motor carrier in interstate commerce. After a January 30, 1991, compliance review identified numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), the Regional Director served Pappy's with a notice of claim dated February 25, 1991. This document charged Pappy's with multiple violations of the FMCSRs, but failed to make clear exactly how many infractions Pappy's allegedly had committed. In fact, the notice of claim contained three different figures, each of which it said represented the number of violations found by the compliance review.

First, the notice of claim informed Pappy's that "a safety investigation of your company's operation" had documented "19 violations of the (FMCSRs)." Since I find no support for this number in any other part of the notice of claim, or anywhere else in the record before me, I conclude that this figure represents a typographical error and disregard it. The other two figures are not so easily dismissed, and I will discuss them at length below.

The notice of claim lists *ten* violations. These listed charges include: one count of failing to maintain in a driver's qualification file the responses to inquiries into that driver's driving and/or employment record, in violation of 49 CFR 391.23; one count of failing to maintain in a driver's qualification file the required notation of annual review of driver's driving record, 49 CFR 391.25; one count of failing to maintain in a driver's qualification file the list or certificate of violations of motor vehicle laws or ordinances, 49 CFR 391.27; one count of failing to maintain in a driver's qualification file the original or copy of the driver's road test certificate and/or road test, 49 CFR 391.31; one count of failing to maintain in a driver's qualification file the written examination certificate and/or the examination questions and answers given, 49 CFR 391.35; and five counts of failing to require drivers to prepare and submit records of duty status, 49 CFR 395.8(a).

The exhibits attached to the notice of claim cited Pappy's for *15* infractions; the difference being accounted for by an additional five counts under the driver's records of duty status regulations, complete with background information for each charge. (See Exhibit F to Notice of Claim.) The notice of claim assessed the carrier a penalty of $300 per violation, for "total amount" of $4,500.

Pappy's submitted, through counsel, a timely reply on March 7, 1991. The carrier did not raise any objection to the notice of claim, did not deny the charges, and did not request an administrative hearing. The reply did, however, assert that Pappy's was "moving expeditiously to comply with the requirements set forth in" the notice of claim. The reply also asked the Regional Director to begin settlement negotiations, and to "[p]lease consider this letter as a formal request that the civil forfeiture penalty be suspended * * *."

Settlement negotiations proved unsuccessful and the Regional Director submitted a motion for final order on January 14, 1992. The motion cited "clerical error" as the reason for the inconsistent information in the notice of claim and stated that "[i]n view of this * * *, and in view of the alleged financial condition of the carrier, the Regional Director has determined that a civil forfeiture in the amount of $3,000 (for ten (10) violations) is justified." (Motion for Final Order at 2.) Pappy's did not respond to the Regional Director's motion.

Discussion

A. The Regional Director's Motion for Final Order

The moving party on a motion for final order bears a similar burden to that carried by a party seeking a summary judgment in a court of law: it must prove that no genuine issue of material fact exists, and also that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.,* No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). I must draw all inferences in favor of the non-moving party, Pappy's in this case.

As I have already mentioned, Pappy's reply did not request an administrative hearing and did not deny any of the charges contained in the notice of claim. In fact, included in the exhibits attached to the Regional Director's motion is a signed statement by Pappy's president, Robert B. Geller, in which Mr. Geller admits to all of the violations found during the compliance review and later charged in the notice of claim—including the five "extra" driver's records of duty status charges listed in the exhibits attached to the notice of claim.[1] Accordingly, based on the record before me in this matter I conclude that the Regional Director has met his burden and is entitled to a final order for ten violations of the FMCSRs, as requested in his motion.

The Regional Director did not indicate in his motion which five charges should be dismissed. Because I believe that the five extra records of duty status violations listed in the exhibits attached to the notice of claim account for the discrepancy between the 10 violations cited in the notice of claim and the 15 violations noted in the exhibit list, I hereby dismiss the last five records of duty status charges found in the exhibits to the notice of claim.

B. Penalty Determination

The Regional Director assessed a penalty of $300 for each recordkeeping violation charged in the notice of claim. Pappy's has asked for a suspension of this fine amount due to its allegedly weak financial condition. In support of its request, the carrier provided the Regional Counsel with financial data tending to show its deteriorating fiscal position. (Letter from Robert B. Geller to Regional Counsel of 9/17/91.) Furthermore, the Regional Director based his limited motion for final order, in part, on "the alleged financial condition of the carrier * * *" (Motion for Final Order at 2.)

The statutory penalty provisions for motor carrier enforcement cases list nine factors to be considered in assessing a penalty. See 49 U.S.C. 521(b)(2)(C). Applying these nine factors

[1] I also note for the record that the Regional Director provided other documentary evidence tending to show that Pappy's drivers made all 15 trips listed in the appendix to the notice of claim.

to the record before me, I note first that all of the charges leveled against Pappy's are for violations of recordkeeping requirements. The record before me demonstrates that the Regional Director brought this action only after both a safety and a compliance review revealed violations of the FMCSRs. Pappy's cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews.

Pappy's, as already noted, complained that it could not pay the assessed fine, and sent the Regional Counsel a letter containing financial statements allegedly showing the carrier's deteriorating financial condition. These documents, however, list Pappy's total assets for the fiscal year ending November 30, 1990, at over $285,000. Also, a 1991 safety review of Pappy's operations listed the carrier's gross annual revenues as $500,000.

The $300 per violation penalty assessed by the Regional Director is well below the maximum allowed by law. *Id.* For the reasons set forth above, I find the $300 per violation amount reasonably calculated to induce Pappy's compliance with the recordkeeping regulations, and I grant the Regional Director's motion for final order in the amount of $3,000.

It is hereby ordered, That the Regional Director's request for a final order is granted. Pappy's Enterprises, Inc., is directed to pay $3,000 to the Regional Director within 30 days of the date of this Order.

Dated: July 15, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order in Response to Motion for Reconsideration; Robert Hansen Trucking, Inc.

This matter comes before me upon a June 10, 1991, motion by the Regional Director, Region 5, for reconsideration of that portion of my May 21, 1991, order which dismissed 36 counts cited against Robert Hansen Trucking, Inc. (Hansen), for requiring or permitting drivers to falsify records of duty status, in violation of 49 CFR 395.8(e). This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

In its March 20, 1990, reply to the notice of claim, Hansen denied that it required or permitted its drivers to falsify their records of duty status, stating that it has a comprehensive safety program to guard against such violations. Rather than requesting a formal hearing, Hansen asked the Associate Administrator to decide the matter based on the evidence submitted with its reply See 49 CFR 386.14(c). On May 25, 1990, Hansen filed a motion to dismiss the 36 false log charges.

Five months later, October 25, 1990, the Regional Director filed a reply in opposition to Hansen's motions, moving for summary judgment. Apparently deeming the charges admitted by Hansen, the Regional Director submitted no evidence in support of the 36 log falsification charges.

On May 21, 1991, I issued an order which, *inter alia,* dismissed the 36 charges against Hansen for allegedly requiring or permitting false entries on records of duty status. The Regional Director moved for reconsideration of that order on June 10, 1991. Hansen answered the Regional Director's motion on July 3, 1991, and the Regional Director's reply to Hansen's answer followed on July 11, 1991.

Discussion

Timeliness of the Regional Director's Motion for Reconsideration

In its answer to the Regional Director's motion, Hansen urges the Associate Administrator to deny the motion as untimely under 49 CFR 386.32(b) and 386.64. The carrier argues that, under the time computation language of 49 CFR 386.32(b), "the order was deemed served on the Regional Director on May 20, 1991," and therefore the Regional Director's June 11, 1991, motion was not served until one day after the 20-day time limit of 49 CFR 386.64. Hansen's Answer at 2. Without explanation, Hansen also asserts that "it does not appear that the Regional Director is entitled to an additional five (5) days under 49 CFR 386.32(c)(3)." *Id.* The Regional Director answered that he had served his order on the final day of the 20-day time period, according to his reading of 49 CFR 386.32(b).

Section 386.32(b) provides, "[i]n computing any period of time involving an order, the date of entry of the order shall be the date the order is served." The certificate of service on my earlier order in this case states the document was sent to the parties of record on May 21, 1991. This is the "date of entry" of the order under 49 CFR 386.32(b). To hold, as Hansen argues, that the order was deemed served on a date other than the date it was actually served is both illogical and contrary to the express language of 49 CFR 386.32(b). Accordingly, I find that the Regional Director's motion, filed 20 days after my May 21, 1991, order, is timely. Therefore, I find no need to rule on whether the provision for computation of time for delivery by mail applies in this case, because the Regional Director's reply was served within the general 20-day reply period.

Dismissal of 36 Log Falsification Charges

In his motion for reconsideration, the Regional Director provides no new evidence in support of the false log allegations, but cites an alleged error of law in the order. He argues that Hansen did not effectively deny the allegations, claiming that Hansen only denied that it required or permitted its drivers to falsify their logs, rather than deny that the logs were falsified. By accepting this "inadequate" denial as sufficient, the Regional Director asserts that the Associate Administrator improperly required the Regional Director to provide evidence showing that Hansen encouraged its drivers to falsify their logs, or that the carrier actively participated in the falsifications.

The Regional Director argues, in effect, that the record before the Associate Administrator at the time of the order was sufficient to prove the false log violations, had the law been correctly applied. He asserts that 49 CFR 395.8(e) requires proof that a driver's records of duty status are falsified, and prior decisions by the Associate Administrator hold that such driver falsifications are imputed to the motor carrier if the means were present to detect the violations.

The Regional Director has correctly stated the concept of liability which governs log falsification charges under 40 CFR 395.8(e). "When one or more of its drivers falsifies log records, a motor carrier is directly liable for the falsification under 49 CFR 395.8(e). In such cases, the motor carrier breached its own duty to verify drivers' logs. In failing to verify records of duty status, for example by comparing the logs to toll or other receipts, the carrier has permitted the log falsifications." *In re American Pacific Power Apparatus, Inc.,* No. OR–90–006–75, (FHWA March 11, 1992) (Order).

The Regional Director has not, however, persuasively argued that this liability standard was not correctly applied in my earlier order. In fact, in that opinion, I specifically addressed this question, stating,

I recognize that there is an issue lurking here as to whether Hansen has denied that the records of duty status cited by the Regional Director were falsified by it (or by its drivers for whom it is responsible or,

viewed another way, who act as agents for it), or whether Hansen is merely denying that it "required or permitted" such violations to occur. However, I believe that Hansen is denying the charges as alleged in the Regional Director's notice of claim, and I do not believe that the Regional Director should be heard to complain that the Respondent [Hansen] has chosen to reply in the words used by the Regional Director.

In re Robert Hansen Trucking, Inc., No. R5–89–174, at 11–12, (FHWA May 20, 1991) (Order).

The charges in this case were dismissed because the Regional Director failed to provide evidence clearly establishing that the logs were false, not because he failed to show that Hansen was liable for its drivers' actions. In his motion for reconsideration, the Regional Director has again failed to submit evidence of log falsifications. Instead, he argues that the same record I found to be "devoid of evidence to support a *prima facie* case that Hansen violated the regulations" now clearly reveals that Hansen's records of duty status were false.

The Regional Director cites several passages from affidavits submitted with Hansen's May 25, 1990, denial of the charges and motion to dismiss, characterizing these statements as admissions. I specifically addressed these passages in my May 21, 1991, order. I deemed these statements to be ambiguous at best, and falling short of admissions, especially when contradicted by a clear and express denial in Hansen's reply. The Regional Director has provided no new evidence which would lead me to view these statements differently now.

Therefore, I again find that Hansen expressly denied that its drivers' records of duty status contained false entries, and that the Regional Director failed to provide any evidence to support the false log allegations. I have repeatedly held that when a carrier denies the charges against it, mere allegations of violations are insufficient to prove the charges. The Regional Director must clearly establish all of the essential elements of his claim. See, *e.g.*, *In re American Pacific Power Apparatus*, No. OR–90–006–075, (FHWA March 11, 1992) (Order); *In re James Kelton, Sr.*, No. 90–AL–028–SA, (FHWA May 13, 1992) (Final Order).

In the cases cited above, each Regional Director, via pretrial motion for final order, attempted to show that there was no genuine issue of material fact, and that he was entitled to judgment as a matter of law, thereby obviating the need for a hearing. In both cases, I found that there were unresolved factual issues, and I therefore denied the motions, but did not dismiss the charges. Instead, I requested that the parties submit affidavits or other evidence in support of their allegations. I believed that this additional procedure was necessary for the development of a full record from which the merits of the charges could be weighed. In contrast, Hansen and the Regional Director had apparently presented a full record at the time of my May 21, 1991, ruling. That order was therefore a ruling on the merits and dismissal, for the reasons discussed above, was appropriate.

Time Limit for Submission of Evidence Under 49 CFR 386.14(c)

Finally, in defense of its late response to Hansen's request to submit written evidence in lieu of an oral hearing, the Regional Director argues that the 40-day time period provided in 49 CFR 386.14(c) for submission of evidence applies only to motor carriers, and that "[t]here is nothing in § 386.14 that relates in any way to the obligations of the agency * * *." Regional Director's Motion for Reconsideration at 8–9.

Again, the Regional Director has provided no evidence nor cited any legal error in my earlier opinion which would warrant a reversal of my holding that *all* evidence, including any evidence the Regional Director may wish to include to support his case, must be served in written form no later than the fortieth day following the service of the claim letter. This regulatory language is not ambiguous, and clearly provides that "all evidence," not merely the respondent's, must be submitted within the 40-day deadline. In addition, upon review of the final agency rule which revised 49 CFR 386.14, I find no support for the Regional Director's argument that this section was intended to apply to the motor carrier alone. See 50 FR 40304 (1985).

If I were to accept the Regional Director's interpretation of this provision, this would, in effect, leave him exempt from any response deadline in this situation where a respondent files a notice to submit evidence without an oral hearing. No public interest would be advanced by leaving the Regional Director without a deadline to submit his case when the respondent has asked for a review without a formal hearing. Indeed, such an open-ended procedure would hamper the speedy and efficient resolution of these proceedings. Finally, to require the respondent to submit all of its evidence within 40 days, while permitting the prosecuting Regional Director, who bears the burden of proof, to submit his or her evidence later appears to give the Regional Director an unfair procedural advantage. The Regional Director, if anyone, should first submit evidence sufficient to establish a *prima facie* case before the respondent is required to rebut.

Section 386.14(c), in my view, contemplates simultaneous filing and development of a full record for review within 40 days. Section 386.16(a) provides that the Associate Administrator may issue a final order on the evidence and arguments submitted. While I have said that I believe I can order a hearing when none is requested, §§ 386.14(c) and 386.16(a) envision a speedy resolution of a dispute on a full record as an alternative to a costly, time-consuming, and unnecessary oral hearing. To achieve this purpose, both parties must be required to submit all their evidence and arguments within 40 days. I believe that 40 days is adequate time for both parties. If either party needs additional time, or if active settlement negotiations are underway, an extension of time can be agreed to or requested. It is not the purpose of this ruling to obstruct settlement negotiations, since settlement whenever possible is favored.

Therefore, I decline to adopt the Regional Director's interpretation of 49 CFR 386.14, and I affirm my earlier holding that this section requires both parties to submit all evidence no later than the fortieth day following service of the notice of claim when the motor carrier has filed a notice of intent to present evidence without an oral hearing.

Conclusion

I have again reviewed the record in this proceeding, and I find that the Regional Director's motion for reconsideration is timely, but that he has failed to present any new evidence or persuasively argue any error of law which would warrant a modification of my earlier order dismissing the 36 log falsification charges.

It is hereby ordered, That my May 21, 1991, final order is affirmed, and the terms of that final order remain in effect.

Dated: July 14, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; American Pacific Power Apparatus, Inc.

This matter comes before me upon a renewed motion for final order by the Regional Director, Region 10, opposing American Pacific Power Apparatus, Inc.'s (American Pacific), request for a hearing and seeking a final order. This

proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

On March 10, 1992, I issued an order denying the Regional Director's motion for a final order on nine charges that American Pacific required or permitted its drivers to make false entries on records of duty status, in violation of 49 CFR 395.8(e). I found that the Regional Director had failed to prove a *prima facie* case of the violations where American Pacific denied the charges, but neither party provided evidence supporting its allegations. The March order permitted the Regional Director to renew the motion by submitting affidavits or other evidence tending to show log falsifications. American Pacific was advised that "failure to respond to the Regional Director's renewed motion or failure to produce any evidence rebutting the Regional Director's evidence may result in a final order for the Regional Director. 'Silence or mere denial will not meet respondent's burden to overcome the Regional Director's *prima facie* case.'" *In re American Pacific Power Apparatus, Inc.*, No. CR–90–006–075, at 5–6, (FHWA March 10, 1992) (Order) (quoting *In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 7 (FHWA December 5, 1991) (Order)).

The Regional Director filed a renewed motion for final order, requesting that the facts be found as alleged in the notice of claim, and seeking a penalty of $3,600. In addition, the Regional Director included an affidavit of a safety investigator and several exhibits documenting the charges against American Pacific. The carrier has not responded to this motion.

Discussion

The Regional Director's Renewed Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.G., Forsyth Milk Hauling Co., Inc.*, No. R3–90–037 (FHWA December 5, 1991), (Order). Accordingly, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Because American Pacific denies the allegations against it, but the Regional Director nevertheless seeks to obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish a *prima facie* case of the violations charged. American Pacific bears the burden to rebut a *prima facie* case, and mere assertions, unsupported by evidence, cannot defeat an otherwise justified motion for final order.

The evidence presented by the Regional Director in her renewed motion supports the allegations made in the notice of claim and remains unrebutted by American Pacific. Although the Regional Director's evidentiary burden on a motion for final order is no less stringent when the motor carrier denies the allegations but provides no evidence, American Pacific's failure to fully participate in this proceeding is significant because it means the carrier has failed to rebut the Regional Director's *prima facie* case.

The evidence presented by the Regional Director is sufficient to prove the nine log falsification violations. Count one concerns a trip made by American Pacific driver David Gupton on November 16, 1989. David Sprecker, the FHWA safety investigator who documented the false logs in a May 1990 compliance review of American Pacific, stated in a sworn affidavit that Mr. Gupton's logs for this date showed Gupton as driving at Stanwood, Washington, at 12 p.m., while a Washington State scale receipt indicated that he was at the Ridgefield scale just minutes earlier, at 11:58 a.m., on this same date. Stanwood, Washington, is approximately 190 miles north of the scale at Ridgefield, Washington. (I view Mr. Sprecker's attestation that the Ridgefield scale is 190 miles north of Stanwood, Washington, as harmless error.)

The second and third counts involve a November 1989 trip by Gupton between Aurora, Oregon, and Morton, Mississippi. Included in exhibit two are Gupton's records of duty status for November 23, 1989, which indicate that he traveled from Grand Island, Nebraska, through St. Joseph, Missouri, to West Memphis, Arkansas, on this date. But a fuel receipt placed Gupton in Lamarie, Wyoming, on November, 23, 1989. Similarly, in exhibit three, Gupton's November 24, 1989, logs show a trip between West Memphis, Arkansas, and Morton, Mississippi, while a fuel receipt for this date reveals that Gupton was actually in Cabool, Missouri, on this date.

Exhibit four documents a trip made by Gupton on November 29, 1989. Gupton's logs for this day indicate that he left Wichita, Kansas, at 2:30 a.m., arriving in North Platte, Nebraska, at 3:30 p.m., at which time he went off duty for the remainder of the day. But a Kansas Turnpike receipt reveals that Gupton did not reach the southern terminal at Wichita until 3:47 a.m. on November 29. In addition, a fuel receipt for this date placed Gupton at Ogallala, Nebraska, 52 miles to the west of North Platte, revealing that Gupton actually drove further westward on this date than his logs indicate.

Count five concerns a March 26, 1990, trip by American Pacific driver Hugh Gammon, Jr., between Aurora, Oregon, and Chicago, Illinois. While his record of duty status for March 26 indicates that he was off duty from 10 a.m. until midnight, two Illinois toll receipts from 1 and 1:07 p.m. on this date reveal that Gammon was actually driving at these times.

Exhibit six reveals that American Pacific driver Millard Harrison made false entries on his January 16, 1990, record of duty status. His log indicates that he drove from Briggs Junction, Oregon, to Tonasket, Washington, and then to Aurora, Oregon, on this date, for a total of 200 miles. But his January 16 trip report and the company dispatch log reveal a trip to Tonasket, Washington, by Harrison which was not recorded on Harrison's log. Additionally, in the trip report, Harrison reported that he drove 923 miles on January 16.

Exhibit seven concerns a January 18, 1990 trip by Harrison. While his logs indicate that he drove from Aurora, Oregon, to Hermiston, Oregon, on this date, Harrison's trip report shows that he also took a three-hour local trip between Aurora, Oregon, and Sherwood, Oregon. This local trip was not recorded on Harrison's January 18, 1990, record of duty status.

In Exhibit eight, Harrison's January 24, 1990, logs indicate that he was on duty or driving for only two and one quarter hours, between Briggs Junction, Oregon, and Aurora, Oregon. But Harrison's trip reports and the company dispatch log for this day reveal that he took two additional trips, one between Aurora, Oregon, and Mollala, Oregon, and the second between Aurora, Oregon, and Longview, Oregon.

Finally, exhibit 9 reveals that American Pacific driver Gary Walthall made false entries on his March 5, 1990, record of duty status. Walthall's logs for this date indicate that he was off duty for the entire day, but his trip record for March 5 states that he delivered a fork lift to a company in Vancouver, Washington.

In spite of its denial of the charges and its assertion that the findings of the compliance review were erroneous, American Pacific has failed to produce any evidence supporting its assertion, failed to reply to the motion for final

order, and failed to rebut the evidence of these violations. Therefore, I find that American Pacific required or permitted its drivers to make false entries on their records of duty status in the nine instances cited in the notice of claim.

Penalty Assessment

The Regional Director assessed a total penalty of $3,600, or $400 per violation. Safety investigator Sprecker attested that the federal program manager reviewed all of the relevant statutory criteria under 49 U.S.C. 521(b) in establishing this amount. The Regional Director also submitted a copy of the penalty assessment worksheet used by the regional officer in assessing the $3,600 sum. Taking into account the factors listed in 49 U.S.C. 521(b)(2)(C) for determination of the penalty amount, I find that this amount is fully supported by the record, and is calculated to induce further compliance with the recordkeeping regulations.

It is hereby ordered, That the Regional Director's renewed motion for final order is granted, and American Pacific Power Apparatus, Inc., is directed to pay the sum of $3,600 to the Regional Director, Region 10, within 30 days of the date of this order, for requiring or permitting its drivers to make false entries on their records of duty status.

Dated: July 14, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; The Sommers Co., Inc.

This matter comes before me upon a motion for final order by the Regional Director, Region 4. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

The Respondent, The Sommers Co., Inc. (Sommers), operates as a private carrier in interstate commerce. After a September 20, 1991, compliance review of Sommers' operations revealed violations of the Federal Motor Carrier Safety Regulations (FMCSRs), the Regional Director served the carrier with a notice of claim on November 6, 1991. The notice of claim charged Sommers with seven counts of violating 49 CFR 391.51(c) and 177.804, failing to properly maintain driver qualification file in accordance with § 391.51(c) while transporting a placardable quantity of hazardous material, and two counts of violating §§ 395.8(a) and 177.804, failing to require driver to make a record of duty status while transporting a placardable quantity of hazardous material. The Regional Director assessed a penalty of $500 for each violation, for a total civil forfeiture amount of $4,500.

In a timely reply dated November 25, 1991, Sommers requested a "formal hearing or compromise [negotiations]," and asked for mitigation of the penalty amount, claiming that it could not pay such an "excessive" fine. Sommers also made the following assertion:

> We do agree that the documendation [sic] was not on your forms; however, our records did indicate on each and every driver we had obtained an employment application; their previous work records checked, road test and training by our senior driver for a period of not less than three (3) days, drug testing in place, vehicles maintained, etc.

Sommers complained that it had not received "the appropriate forms" from the FHWA with which to maintain driver qualification files. The reply did not address the two record of duty status charges.

The Regional Director submitted a Motion for Final Order on December 24, 1991. Sommers has made no reply to this motion.

Discussion

1. Sommers' Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute." 49 CFR 386.14(b)(2). Ordinarily, unless a respondent's reply complies with these basic requirements no hearing will be granted.

Although the notice of claim explained the requirements of § 386.14 quite clearly, Sommers' reply failed to establish the existence of a material factual dispute. It did not mention the alleged violations of the driver records of duty status regulations, and its statements concerning the driver qualification file violations were vague, at best.

The Regional Director asserts that Sommers' reply—particularly the portion quoted above—amounted to, "in effect," an admission to the driver qualification file charges. Motion for Final Order at 1. I believe that the reply is more fairly characterized as failing to deny the allegations of the notice of claim. Sommers merely claimed that its files contained some, but not all, of the information required under the FMCSRs and that the FHWA had failed to provide it with the "appropriate forms" on which to maintain its records. The violations charged in this case involve Sommers' inability to produce certain specific documents for the FHWA safety investigator at the time of the compliance review. The issue here is not the documents Sommers agrees it had, but the records the Regional Director specifically charged it did not have. Moreover, nothing in the FMCSRs requires the FHWA to provide motor carriers with forms for recording required information.

Because Sommers failed to point to a material factual issue in dispute, and also because it failed to deny any of the charges against it, I determine that Sommers' reply did not meet the requirements of the Rules of Practice (see § 386.14(b)(2)) and I deny Sommers' request for a formal hearing.

2. The Regional Director's Motion for Final Order

The moving party on a motion for final order bears a similar burden to that carried by a party seeking a summary judgment in a court of law: it must prove that no genuine issue of material fact exists, and also that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). I must draw all inferences in favor of the non-moving party, Sommers in this case.

a. The Driver Qualification File Charges

As I have already noted, while Sommers attempted in its reply to contest the driver qualification file charges it has not effectively denied any of the charges in the notice of claim. On the other hand, the Regional Director supports all of his allegations with exhibits that tend to bolster his case.

For the seven driver qualification file charges, the Regional Director submitted a copy of the Driver Qualification File Checklist prepared by the FHWA investigator at the time of the September 20, 1991, compliance review. The checklist catalogs the exact contents of each of Sommers' driver qualification files, and reveals that none of the carrier's files contained all of the records required by § 391.51. Both the FHWA safety investigator and one of Sommers' officials signed the checklist and certified that it "represent[ed] the *complete contents* of the driver qualification files" presented by Sommers for review. Exhibit A to Motion for Final Order (emphasis in original). Based on this record, I find that the Regional Director has met his burden with regard to the driver qualification file charges, and I now

grant his motion for a final order on those counts.

b. The Records of Duty Status Charges

As for the two alleged driver records of duty status violations, Sommers has not contested these charges, either in its reply or in any response to the motion for final order. For his part, the Regional Director submitted evidence that tends to show that two of Sommers' drivers made interstate trips on the dates in question. The evidence does not contain, however, any indication that records of duty status were not made and submitted by the drivers who made these trips. *Id.* at Exhibit C.

More importantly, the evidence presented by the Regional Director indicates that neither of the two trips allegedly made in violation of the records of duty status regulations required Sommers' drivers to go beyond a 100 air-mile radius from the company's Savannah, Georgia, headquarters. The FMCSRs exempt drivers from the records of duty status regulations if they operate within a 100 air-mile radius of the normal work reporting location, provided the drivers and the carriers they work for also meet certain other conditions. 49 CFR 395.8(1). Moreover, a copy of a 1987 safety review of Sommers' operations—included along with the Regional Director's motion—contains the following statement of the FHWA safety investigator: "These are 100 air-mile [sic] radius drivers—*no* logs *required*." *Id.* at Exhibit B (emphasis in original).

Faced with this conflict in the record, and absent any explanation from the Regional Director, I cannot grant a final order as to these two counts. The notice of claim charged Sommers with violating a regulatory requirement that the Regional Director's own evidence indicated might not apply to the carrier. Sommers may be subject to the record of duty status regulations—a carrier must meet several conditions to claim the exemption—but nothing in the record before me allows me to come to that conclusion. Therefore, I deny the Regional Director's motion as to the two driver records of duty status charges.

3. Penalty Determination

The Regional Director assessed a penalty of $500 for each of the nine violations charged in the notice of claim, for a total civil forfeiture amount of $4,500. Sommers complains that this amount is "excessive" and asks for a reduction because of an alleged inability to pay. Reply of Sommers Co. The Regional Director, on the other hand, alleges that Sommers is a $40 million company. Regional Director's Motion for Final Order at 4. The 1987 safety review lists the carrier's annual revenue as $25 million. Based on this record, I find no evidence of Sommers' alleged inability to pay.

After the further review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), I find the $500 per violation penalty reasonably calculated to induce Sommers' compliance with recordkeeping regulations. The record before me demonstrates that Sommers was involved in the transportation of hazardous materials at the time these violations occurred, a circumstance that I view as an aggravating factor warranting the imposition of a stringent penalty. Also, the Regional Director brought this action after both a safety and a compliance review revealed violations of the driver qualification file regulations. Sommers cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews. Therefore, I grant the Regional Director's motion for final order in the amount of $3,500.[1]

It is hereby ordered, That the Regional Director's request for a final order for counts one through seven is granted and denied for counts eight and nine. The Sommers Co., Inc., is directed to pay $3,500 to the Regional Director within 30 days of the date of this Order.

Dated July 14, 1992.

Richard P. Landis,

Associated Administrator for Motor Carriers.

Order; Gunther's Leasing Transport, Inc.

This matter comes before me upon a motion for declaratory relief by Gunther's Leasing Transport, Inc. (Gunther's). In its motion, Gunther's asks whether the issuance of a compliance review report, notice of claim, and new safety rating constitutes the end of the FHWA's investigation of Gunther's activities during the period of October 1, 1991, through March 31, 1992. Gunther's seeks immediate action on this matter, because the carrier has 15 days in which to reply to the notice of claim, but it asserts that "it is patently unfair and a violation of any notion of due process to require the carrier to respond to such notice of claim—and in so doing, waive all of its other rights—when [the] FHWA will have the benefit of Gunther's response and then have the opportunity to make additional claims based on the same compliance review."[1] Gunther's Motion for Declaratory Relief at 4. The Regional Director, Region 3, responded by moving to dismiss Gunther's motion for declaratory relief.

Discussion

Gunther's appears concerned that it might still be subject to further investigation, and suggests that the issuance of a compliance review report, notice of claim, and safety rating should signal the end of this particular investigation. Typically, investigations of carriers do not continue after a notice of claim is issued, but not because such conduct is prohibited under any provision of 49 CFR part 386.

First, insofar as Gunther's is asking whether the Regional Director is continuing his investigation of Gunther's, the short answer is I do not know. That question is better directed to the Regional Director.

In my "quasi-judicial" role under 49 CFR part 386, I consider responses to notices of claim, rule on motions, request that administrative law judges hold hearings, and the like. In this role I know only that which is before me and, consequently, I do not know whether a Regional Office is continuing any particular investigation.

Moreover, I am unaware of any agency policy that provides that investigations are necessarily concluded by the issuance of compliance review reports, notices of claim, or safety ratings, either individually or collectively.

Second, the Regional Director's response to Gunther's motion suggests that Gunther's has not fully complied with the April 16, 1992, order of the Federal district court requiring Gunther's to make its records available to FHWA investigators. The response also suggests that Gunther's motion is an attempt to get the Associate Administrator to find that Gunther's has complied with that order.

Whether Gunther's has complied with the court order is not a matter which is properly before me. I believe it is for the Federal district court to decide, if asked, whether its order has been fully complied with, and I refuse to rule on this issue. Nothing in this order should be construed as expressing an opinion on this issue.

Third, Gunther's also argues in its motion that requiring it to reply to the

[1] I find the Regional Director's penalty assessment even more reasonable in light of the hazardous materials penalty provisions of 49 U.S.C. App. 1809 (a)(1), which allow fines of up to $25,000 per violation.

[1] Gunther's also objected when asked to reply to the compliance review report and sought an extension to the reply period. Contrary to the statement in its latest motion, the Associate Administrator responded to the May 18, 1992, motion by order dated June 4, 1992. A copy of that order is attached.

notice of claim abridges the carrier's due process rights. This claim may be based, in part, on an erroneous assumption, *i.e.*, that in its reply to the notice of claim Gunther's must "waive all of its other rights." Gunther's Motion at 4. The required contents of a reply to a notice of claim are set forth in 49 CFR 386.14. This section does not require a respondent to waive any rights, and I am confident that Gunther's can respond fully to the pending notice of claim without inadvertently waiving any of its rights.

I do not believe there is a due process issue in this case. Whether an investigation is concluded by issuing a compliance review report, notice of claim, or safety rating is, in my view, immaterial to any issue of due process. Assuming any investigation is deemed "closed," nothing prevents a Regional Director from reopening the investigation if he or she believes further investigation is warranted. In this regard, Gunther's is in the same position as any other recipient of a compliance review report, notice of claim, or safety rating. It is theoretically possible that a motor carrier's reply would provide information that would lead the agency to continue or reopen an investigation.[2] For that matter, Gunther's is in the same position as anyone charged with a violation of a law or regulation. The charging of a violation does not preclude the charging agency from subsequently citing a party for further violations if evidence of further violations is discovered.

Fourth, Gunther's seems to be arguing that it should not be required to respond to the June 22, 1992, notice of claim until it has been assured that its response will not be used against it by the Regional Director. There is no rule or policy that would preclude such action, nor do I believe there should be. In this regard, it appears that Gunther's is seeking some form of immunity from liability for any violations that are as yet undiscovered. No public interest would be furthered by routinely binding the agency to a position where previously undiscovered evidence could not be pursued.

Fifth, Gunther's also appears to be concerned about harassment or an abuse of investigatory or prosecutorial authority. However, Gunther's failed to cite to any specific conduct that would constitute harassment or abuse.

The record before me does indicate that Gunther's has been the subject of separate or continuing investigations by the FHWA Regional Office over the past three years. I also note, however, that the Regional Office appears to believe, as evidenced in part by the most recent notice of claim, that Gunther's compliance with the agency's safety regulations has been inadequate.

Conclusion

For the reasons discussed above, I deny Gunther's motion for a declaratory order finding the Regional Office's investigation of Gunther's motor carrier operations to be ended or ongoing.

Under 49 CFR 386.35(f), the pendency of a motion does not affect any time limits set under 49 CFR part 386. But in his motion to dismiss Gunther's motion, the Regional Director consented to an extension of the 15-day reply period. In the interest of equity, I will provide Gunther's with additional time to respond to the notice of claim.

It is hereby ordered, That Gunther's Leasing Transport's motion for declaratory relief is denied. Gunther's Leasing Transport has until Thursday, July 23, 1992, to respond to the Regional Director's June 22, 1992, notice of claim.

Dated: July 9, 1992.

Richard P. Landis,

Associated Administrator for Motor Carriers.

Order Regarding Objections to Requests for Admissions

In the matter of: John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.; and Steve Johnson and Sons Trucking, Inc., a corporation.

Served July 8, 1992.

On June 18, 1992, Respondent served FHWA Counsel with objections to a set of requests for admission which had been served upon Respondent on June 11, 1992. FHWA Counsel has now filed a reply thereto and requests that Respondent be ordered to respond to such requests.

Rule 386.38 of the FHWA Rules of Practice (49 CFR 386.38) defines the parameters of permissible discovery in this case. That rule provides for "discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding * * *." (Rule 386.38(a)). It further provided that "[I]t is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (Rule 386.38(b)). The FHWA rule thus tracks Rule 26(b)(1) of the Federal Rules of Civil Procedure and must be construed in the same manner.

The question of relevancy at the discovery stage of the proceeding is much broader than at trial. At the discovery stage, "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case" is discoverable. *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340, 353 (1978).

The Notice of Claim in this case charges Respondent, in his individual capacity, with certain violations of the regulations promulgated under the Motor Carrier Safety Act of 1984 and the Motor Carrier Act of 1980. As noted in my Order of May 26, 1992, the charge that Mr. Johnson was individually responsible for the violations in issue, necessarily entails the issues as to whether he comes within the definitions of a responsible person under the terms of the underlying statutes. Thus, any matter which has a bearing upon his status and responsibilities with respect to the violations in issue is discoverable matter. This is so, even if the specific matter sought in discovery may not, itself, be admissible in evidence at the hearing, so long as it might reasonably be expected to lead to the discovery of admissible evidence. (49 CFR 386.38(b)).

I have reviewed the objections of Respondent as they relate to the individual requests for admission served by FHWA Counsel. It is my determination that each objection must fail under the reasoning set forth hereinabove. Each of the matters to which admissions are sought bear some relevancy to the basic issues to be decided in this proceeding and can be expected to either provide information which would be admissible at the hearing, or lead to the discovery of such evidence.

To the extent the dates covered by the requests for admission go slightly beyond (by four months) the dates covered by the violations referred to in the Notice of Claim, FHWA Counsel have given good reason in the Reply why the period covered by the requests is either relevant in and of itself, or may lead to the discovery of relevant information. This is especially so, where the subject of discovery is the relationship between the Respondent and the Corporate Respondent, as well as the responsibilities and status of Respondent *vis-a-vis* the violations charged.

Accordingly, I find that the objections raised by Respondent to the Requests for

[2] For example, a notice of claim cites a carrier for requiring or permitting its drivers to drive for periods exceeding the hours of service limitations. The carrier responds by asserting that although its drivers' records of duty status indicated excess hours, the drivers actually complied with the hours-of-service regulations, but their logs were false. An ongoing investigation could be continued, or a terminated investigation reopened, to determine whether the carrier should be cited for requiring or permitting its drivers to make false entries on their records of duty status.

Admission filed on June 11, 1992, are without merit and must be overruled. Respondent is therefore ordered to file answer to such requests within ten (10) days of the service of this order.

So ordered.

John J. Mathias,

Chief Administrative Law Judge.

Order of Administrative Law Judge

In the matter of: John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.; and Steve Johnson and Sons Trucking, Inc., a corporation.

Served July 2, 1992.

By pleading dated June 30, 1992, FHWA Counsel opposes Respondent's Motion for Protective Order of June 18, 1992. Respondent's said motion was already ruled upon in my order of June 24, 1992, in that I extended the time for Respondent to file responses to certain discovery requests in view of the fact that up to that date there had been pending a motion of Respondent for reconsideration of my order of May 26, 1992, setting the procedural schedule herein. In view of some of the arguments raised in Agency Counsel's latest pleadings, it appears that some clarification and expansion of my order of June 24 may be in order.

Respondent's motion for protective order requested an order that the listed discovery not be had, or in the alternative, that such discovery be abated until such time as there was a ruling upon Respondent's Motion for Reconsideration. My order of June 24, 1992, granted the alternative relief—extending the time to respond to the discovery requests of the agency. By the same token, the request for an order precluding the discovery was denied. In view of the fact that the Motion for Reconsideration was denied in that same order, a specific date was set for responses to the outstanding discovery, and other procedural dates were extended accordingly.

Insofar as the request for an order precluding the discovery was concerned. Respondent's motion contained no support for the broad allegations that such discovery would cause Respondent "annoyance; embarrassment; oppression; and/or undue burden and expense. * * *" Therefore, having granted the alternative relief requested, no further note was made of such request in my order.

Attached to Respondent's motion for protective order was a separate pleading entitled "Objections to Request for Admissions." Such objections were not addressed in my order of June 24, 1992, in that I did not have before me any motion to compel from Agency Counsel. However, upon further review, the groundless nature of one of those objections requires a ruling at this time in order to avoid further delay in this proceeding. "General Objection Two" urges that the statutory and regulatory schemes for civil forfeitures requires all evidentiary matters to be in the possession of the Associate Administrator in advance of the issuance of a Notice of Claim involving a Civil Forfeiture. Such position is patently false. Nothing in the underlying statute, or the Agency's Rules of Practice, requires the Associate Administrator to have in his possession, at the time of issuance of a Notice of Claim, every piece of evidence necessary to prove the charges therein. In fact, the Agency's Rules of Practice specifically sets out the scope and means of discovery contemplated by each of the parties in such an action. (49 CFR 386.37 and 386.38). Under the circumstances, I hereby overrule such general obligation to the Agency's discovery requests.

I will not rule at this time on Respondent's "General Objection One," concerning the relevancy of discovery of matters during time periods outside the dates of the violations charged in the Notice of Claim, because I do not have enough information before me to determine the sufficiency of such objection.

So ordered.

John J. Mathias,

Chief Administrative Law Judge.

Order; WDP Transportation, Inc.

This matter comes before me on a motion by the Regional Director, Region 4, opposing the hearing request made by WDP Transportation, Inc. (WDP), and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

In an April 25, 1991, compliance review report, the FHWA cited WDP for several violations of the Federal Motor Carrier Safety Regulations (FMCSRs), and requested a written response from the carrier indicating the actions it was taking in response to the review. As requested, WDP wrote to the Region 3 office on April 25, 1991, explaining its efforts to comply with the regulations. On May 1, 1991, the carrier again wrote to the regional office, detailing its actions to ensure conformance with the FMCSRs.

By notice of claim dated May 14, 1991, the Regional Director charged WDP with 13 violations of 49 CFR 391.11(b)(6), 391.51(a), 394.9, and 395.3(a)(1), for using a physically unqualified driver, failing to maintain driver qualification files, failing to report an accident within 30 days, and requiring drivers to drive more than 10 hours following 8 hours off duty. WDP replied to the notice of claim, contesting one of the charges, requesting a hearing, and seeking a reduction in the penalty amount.

The Regional Director filed a motion for final order on January 8, 1992. He claimed that WDP had admitted to all of the violations in its letters written before the notice of claim was issued, and therefore could not later successfully deny any of the charges. WDP has not responded to the motion for final order.

Discussion

The Regional Director's Motion for Final Order

I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). Where the motor carrier denies the allegations made in the notice of claim but the Regional Director nevertheless seeks to obtain a final order, the Regional Director's pleadings must be accompanied by affidavits or other evidence sufficient to establish a *prima facie* case of the violations. *In re American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, (FHWA March 11, 1991) (Order).

In this case, the Regional Director did not include affidavits or other documentary evidence to support his motion for final order. Instead, he argued that WDP had admitted to all of the violations in its responses to the compliance review. When WDP later denied one of the unqualified driver violations in its response to the notice of claim, the Regional Director asserted that this denial was contradicted by WDP's earlier statements documenting its efforts to comply with the driver qualification regulations. Therefore, he concluded that the violation was "unsuccessfully and contradictorily disputed." Finally, the Regional Director concluded that WDP's statements regarding its post-review compliance efforts constituted admissions to the remaining 12 charges.

Upon review of the case as a whole, I find that there are several deficiencies

in the record. First of all, I question whether the claim letter provides WDP with real notice of the true nature of the charges against it. The notice of claim charged WDP "with 13 violations of 49 CFR 391.11(b)(6); 391.51(a); 394.9 and 395.3(a)(1), Using a Physically Unqualified Driver; Failing to Maintain Driver Qualification Files; Failing the [sic] Report an Accident Within 30 Days and Requiring Driver[s] to Drive More Than 10 Hour[s], contained in Exhibits A, B, C and D." The Regional Director assessed a penalty of "$400 for each recordkeeping violation and $750 for each violation of a serious pattern," and concluded that "the total amount owed to the government as a result of the documented violations is $5,900." Neither the text of the claim letter nor the four exhibits attached thereto inform the carrier of the number of each of the four types of violations that the carrier is cited for in the claim letter. Presuming that the unmarked exhibits correspond with the code sections in the order the sections are listed in the text of the claim letter, the penalty sum would not total the amount listed in the claim letter.

This leads to the second issue in this case, regarding how the $5,900 penalty sum was determined. The notice of claim does not inform the carrier of which violations cited are recordkeeping violations and which constitute a serious pattern of safety violations. Moreover, as noted above, even if the charges can be properly identified by the carrier as either recordkeeping or a serious pattern of safety violations, the notice of claim is still deficient. In assessing a $400 penalty for each of the six recordkeeping violations, $750 for each of the five excess hours violations constituting a serious pattern of safety violations, and $750 for both counts in a serious pattern of safety violations for using a physically unqualified driver, the penalty would total $7,650, not $5,900. The Regional Director provides no evidence to explain how this $5,900 penalty was determined, and no explanation is apparent.

Finally, I am reluctant to read WDP's pre-notice of claim statements as admissions to the charges later cited in the notice of claim, and I reject the Regional Director's assertion that WDP's earlier responses preclude the carrier from successfully contesting the charges at a later time. Instead, I view WDP's May 28 denial of one count of the driver qualification charges as an effective denial.

Although he bears the burden of proving that there is no genuine issue of material fact, the Regional Director provided no evidence in support of his motion for final order which would rebut WDP's denial and prove that the driver was not medically qualified. If the motor carrier has denied the violations and requested a hearing, "mere allegations by the Regional Director are not sufficient." *Id.* at 4. And where the evidence in support of the motion does not establish the absence of a genuine issue, the motion must be denied even if no opposing evidence is presented. See Fed. R. Civ. P. 56 (advisory committee notes). Therefore I find that the Regional Director has failed to meet his evidentiary burden with regard to one of the driver qualification charges and I cannot grant his motion for a final order as to this count at this time.

In addition, I do not deem WDP's replies to the compliance review, alone, as sufficient to find that the carrier has admitted to the charges. In past cases, where a motor carrier has replied to compliance review reports, explaining its efforts to ensure compliance with the regulations, and later has been charged for violations of the FMCSRs, I have held that its failure to contest the charges after the notice of claim was issued may result in an adverse final order.

In those cases, the carrier's reply to the compliance review report was followed by a notice of claim that clearly informed the carrier of the charges against it and the penalty assessed. See *In re Carroll Fulmer & Co., Inc.*, No. 91–FL–054–SA, at 3–4, (FHWA served June 4, 1992) (Final Order). In spite of this knowledge, the carrier failed to deny the charges or simply did not respond at all. But in this case, I find that the notice of claim was deficient and consequently WDP was not adequately informed of the charges against it. Therefore, its failure to fully respond to the deficient notice of claim is not dispositive.

Conclusion

Accordingly, I find that WDP's replies to the notice of claim do not constitute admissions to the remaining 12 violations. In the absence of an admission to the charges, the Regional Director's failure to include any affidavits or other evidence in support of his motion for final order is fatal. He has not met his burden of clearly establishing the essential elements of the violations.

If the Regional Director submits affidavits or other evidence to support the allegations made in the claim letter, I will reconsider his motion. WDP should note that failure to respond to the Regional Director's motion or failure to produce any evidence rebutting the Regional Director's evidence may result in a final order for the Regional Director. "Silence or mere denial will not meet respondent's burden to overcome [the] Regional Director's *prima facie* case." *In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 7, (FHWA December 5, 1991) (Order).

I note that WDP's denial of one of the driver qualification charges is an unresolved issue which could be sent to a hearing. But I decline to grant WDP's hearing request at this time. Instead, I direct the parties to address this issue, and to include evidence to support their assertions. After review of the supplemental pleadings, I will determine whether there is a material factual issue in dispute warranting a hearing on this count.

It is Hereby Ordered, That the Regional Director and WDP Transportation shall submit pleadings and supporting evidence within 30 days of the date of this Order, addressing the issues identified in this Order. Submissions shall be served in accordance with 49 CFR 386.61.

Dated: June 24, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Pioneer Pallets, Inc.

This matter comes before me upon a motion by the Regional Director, Region 3, opposing Pioneer Pallets, Inc.'s (Pioneer), request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

After a March 25, 1991, compliance review of Pioneer revealed numerous violations of the Federal Motor Carrier Safety Regulations, a notice of claim was issued by the Regional Director on April 24, 1991, charging Pioneer with one violation of 49 CFR 391.23, failure to maintain in driver's qualification file the responses to inquiries into driver's driving record; three violations of 49 CFR 391.31, failure to maintain drivers' road test rating form and road test certificate; three violations of 49 CFR 391.51(b)(1), failure to maintain in driver's qualification file a medical examiners certificate; one violation of 49 CFR 391.51(c)(2), failure to maintain in driver's qualification file the driver's employment application; and six violations of 49 CFR 395.8(a), failure to require drivers to prepare and submit records of duty status.

On May 16, 1991, Pioneer responded to the notice of claim, contending that it was unable to produce the documents requested because it had recently undergone a disruptive audit by the Internal Revenue Service (I.R.S) and the documents were subsequently misfiled. The carrier did not contest the violations charged or ask for a hearing, but did request that no fine be imposed.

Attempts at reaching a settlement were unsuccessful, and on August 30, 1991, the Regional Director moved for a final order requesting a penalty assessment of $4,200 for the fourteen violations charged against the carrier. On September 17, 1991, the Regional Director agreed to an extension of time to respond to his motion for a final order until October 2, 1991, in accordance with the provisions of 49 CFR 386.33. This extension was agreed to because the Regional Director's case file did not reflect that the carrier was represented by counsel and Pioneer's counsel had not been served with the motion for final order.

Pioneer, through its counsel, filed an answer to the Regional Director's final order motion on October 1, 1991, in which it again disclaimed responsibility for the missing documents and attributed their absence to the disruption caused by "extensive third party access to and use of such files." The carrier blamed the I.R.S. audit, an audit by the its insurance carrier, and the movement of the files caused by a change in its business location for its inability to produce the requested documents. Pioneer requested that the charges against it be dismissed or that a hearing be held. On October 3, 1991, the Regional Director filed a response to the carrier's answer, opposing the hearing request as untimely and arguing that the answer failed to demonstrate any material factual issues in dispute. Pioneer did not respond to the Regional Director's opposition to the request for a hearing.

Discussion

1. Pioneer's Request for an Administrative Hearing

If a motor carrier contests the charges against it and seeks a hearing, it must make the request within 15 days after service of the claim letter. 49 CFR 386.14(b)(2). Failure to request a hearing within 15 days constitutes a waiver of any right to a hearing. Pioneer did not request a hearing until its October 1, 1991, answer to the Regional Director's motion for a final order. In that answer the carrier contends that its May 16, 1991, letter, which did not request a hearing, was not intended to forfeit that right because "the ambiguous wording of the three options set forth on page 2 of the Notice" led it to believe it could informally discuss a settlement of the claim without forfeiting its right to a formal hearing. As the Regional Director points out in his opposition to Pioneer's answer, both the Associate Administrator and the federal courts have found the identical language to be clear and unambiguous. See *U.S.* v. *Garfield Container Corp.*, No. 89–5323, slip op. (D.N.J. July 23, 1990).

The carrier also claimed there were procedural deficiencies in the conduct of the compliance review and that it was not given treatment consistent with similarly situated violators. The carrier failed to specify what the procedural deficiencies consisted of and provided no factual details to substantiate its allegation of unfair treatment.

Upon review of all of the pleadings submitted, I find that Pioneer did not request a hearing until its October 1, 1991, answer to the final order motion, more than five months after the notice of claim was served. Therefore, Pioneer failed to make a timely hearing request, and has waived any right to a hearing.

Moreover, the Rules of Practice require that a hearing request must demonstrate at least one material factual issue in dispute. 49 CFR 386.14(b)(2). Even if Pioneer's request for a hearing were timely, none of its responses raise a material factual issue in dispute warranting a hearing and it would not be entitled to a hearing.

In its October 1, 1991, answer to the Regional Director's final order motion, Pioneer disclaimed responsibility for the missing documents and attributed their absence to disruptions caused by the I.R.S., its insurance carrier, and a change in its business location. None of the reasons given by Pioneer excuses its failure to produce these records. Moreover, despite its repeated assertions that the records exist, with the exception of one copy of a medical certificate (produced after the notice of claim was issued), Pioneer has failed to produce any of the missing documents.

2. The Regional Director's Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Pioneer in this case. Pioneer's responses, when viewed in a light most favorable to the carrier, must be viewed as admissions to these recordkeeping violations. In a signed statement, dated March 25, 1991, included in the supporting documentation for the compliance review (Exhibit E, Appendix C), the President of Pioneer admits that he did not maintain and could not produce the driver qualification files for which he was cited in the notice of claim. In the same statement, the President also admitted that he did not require drivers to submit daily duty status records and that he could not produce the missing records.

In its May 16, 1991, letter, the carrier stated, "It is true that I only had a minimal file of each driver on hand, and had only briefly checked their licenses and medical cards." Although Pioneer included with this letter a copy of one of the missing medical certificates, this does not alter the fact that it was unable to meet the requirement of producing the certificate at the time of the compliance review. Pioneer did not deny any of the charges and presented no other mitigating evidence.

In its October 1, 1991, answer to the Regional Director's final order motion, Pioneer again failed to deny the charges against it. Pioneer's failure to deny or otherwise adequately defend these charges constitutes a default by the motor carrier. Therefore these allegations will be taken as true. 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* Section 2688 (1983).

I note that the Regional Director's motion for final order is not supported by evidence sufficient to show a *prima facie* case, but in this instance such evidence is not required. Pioneer, in its March 25, 1991, statement, has admitted to all of the recordkeeping violations with which it has been charged and has never denied or contested the charges despite opportunities to do so. Therefore, I find there are no material factual issues in dispute, and the Regional Director is entitled to a judgment as a matter of law.

3. Penalty Assessment

The Regional Director assessed a penalty of $300 per violation, for a total penalty of $4,200 for the fourteen violations. After review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), I find the $4,200 penalty reasonably calculated to induce Pioneer's compliance with the recordkeeping regulations. The penalty amount is well within the statutory maximum of $500 per violation under 49 U.S.C. 521(b)(2)(A). Therefore, I grant

the Regional Director's motion for final order in the full amount, $4,200.

It is Hereby Ordered, That Pioneer Pallets, Inc.'s, hearing request is denied, the Regional Director's motion for final order is granted, and Pioneer Pallets, Inc., is directed to pay the sum of $4,200 to the Regional Director, Region 3, within 30 days of this order.

Dated: June 22, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Bill Carter Trucking, Inc.

This matter comes before me upon a motion by the Regional Director, Region 3, opposing Bill Carter Trucking, Inc.'s (Carter) request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

A compliance review of Carter was initiated after U.S. Customs officials fined driver Ricky Hall for possession of 10.3 grams of marijuana while Hall was driving a commercial motor vehicle for Carter from the United States to Canada. The Regional Director issued a notice of claim on August 7, 1991, charging the carrier with two violations of 49 CFR 391.103(a) for using drivers without requring the drivers to submit to a pre-employment controlled substance test, two violations of 49 CFR 391.105(a) for using drivers without requiring the drivers to submit to a biennial controlled substance test, 16 violations of 49 CFR 395.8(e) for failing to ensure that its drivers do not make false entries on records of duty status, and five violations of 49 CFR 395.8(k) for failing to preserve a driver's records of duty status for six months. On August 27, 1991, Carter replied to the notice of claim, listing the corrective measures it had taken, and requesting a reduction in the penalty amount.

After settlement negotiations were unsuccessful, the Regional Director moved for a final order on December 4, 1991. He argued that because Carter neither contested the charges nor requested a hearing, there were no material factual issues in dispute and he was entitled to judgment as a matter of law. Carter replied to this motion on December 16, 1991, requesting both a reduction in the penalty amount and an administrative hearing "to determine whether or not the assessment is excessive." Carter's Response to Motion for Final Order, at 1. The Regional Director replied to Carter's motion, stating that the carrier had waived any right to a hearing by failing to make a timely hearing request under 49 CFR 386.14, and that Carter had failed to show good cause why its request should be granted in spite of the requirements of the section. Moreover, the Regional Director asserted that even if Carter's hearing request was considered timely, the carrier failed to allege any material issue in dispute warranting a hearing under 49 CFR 386.16(b).

Discussion

Carter's Hearing Request

If the motor carrier contests the charges against it and seeks a hearing, its reply "must contain * * * an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *" 49 CFR 386.14(b)(1). In addition, "[a] request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served * * * shall constitute a waiver of any right to a hearing * * *." 49 CFR 386.14(b)(2).

Although the Regional Director clearly listed the requirements of § 386.14 in the notice of claim, none of Carter's responses comply with these provisions. Carter's August 27 reply simply details the corrective action it had taken since the compliance review to cure the violations. In its December 16 response, Carter does request a hearing, but this later pleading is deficient for two reasons.

First, the hearing request, coming more than four months after the notice of claim, is untimely under 49 CFR 386.14(b)(2). Carter argued that it was led to believe, "based upon prior practices of the Office of Motor Carriers" of Region 3, that the time period in which to request a hearing would be tolled during settlement negotiations. Carter's Response to Motion for Final Order, at 1. In his response to the hearing request, the Regional Director contended that the Regional Office had no practice of acting contrary to the language of the motor carrier regulations by suspending the 15-day time period. Carter provided no evidence to support its allegation, and I know of no such practice in the region. Therefore, I find that Carter's argument to justify its late request is without merit.

Second, if Carter's request were viewed as timely, the carrier failed to deny the charges or allege any material issue of fact requring a hearing under 49 CFR 386.16(b). In fact, Carter admits that it requests a hearing only "to determine whether or not the [penalty] assessment is excessive." I have repeatedly held that an objection to the penalty amount does not constitute a material issue which would merit a hearing. *E.g., In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge).

Therefore, I find that Carter's untimely hearing request does not raise any material factual issue in dispute warranting a hearing under 49 CFR 386.16(b), and that Carter has waived any right to a hearing by failing to submit a timely request.

The Regional Director's Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. Therefore the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All evidence presented must be viewed in a light most favorable to the non-moving party, Carter in this case.

For the purpose of the Regional Director's motion for final order, and the question of whether the Regional Director must provide evidence of the violations charged, Carter's responses to the allegations that it neither required drivers to submit to drug tests nor maintained records of duty status for driver Oval Ramsey must be viewed as admissions. Company president Bill Carter admits to the four drug testing charges in a statement taken at the time of the compliance review, where he concedes that "The reasons [sic] that [drivers] Hall, Truesdell, Ramsey, and Rowland were not drug tested is that I misunderstood the testing requirements." July 17, 1991, Statement of Bill Carter, at 1. In addition, Mr. Carter admits to the five charges that he failed to preserve records of duty status for Ramsey, stating, "I do not know what happened to Ramsey's logs, or even if he turned them in." *Id.* at 2. Despite repeated opportunities to do so, the carrier has not recanted these admissions or otherwise contested the violations. In the absence of a denial by the motor carrier, I do not believe that the Regional Director must submit documentary or other evidence to support his motion for final order. If Carter had denied that it failed to require drivers to submit to drug tests or failed to keep records of duty status, then the Regional Director would have been required to submit affidavits or other evidence supporting his charges.

As to the remaining 16 charges that Carter permitted drivers to make false entries on records of duty status, I find that the carrier has neither denied these charges nor rebutted the Regional Director's evidence proving the falsifications.

The evidence provided by the Regional Director fully supports all 16 allegations of log falsifications. Included in the Regional Director's exhibits 6–9, 11, 13–15, 17, 19, and 20 are records of duty status showing Carter drivers as "off duty" on certain days, while toll receipts and vehicle repair bills reveal that the drivers were in fact on duty and driving on those same days. Similarly, exhibits 5, 10, 12, 16, and 18 contain records of duty status which do not coincide with trip documents for the same dates. For example, driver Vince Rowland's May 31, 1991, records of duty status indicate that he was in the sleeper berth of his truck at Waynesburg, Pennsylvania, from 2:00 p.m. until 10:00 p.m., but his N. G. Island toll receipt revealed that Rowland was at Grand Island, New York, at 3.52 p.m. on this same date.

Based on Carter's admissions to the charges that it failed to require its drivers to submit to controlled substance tests, and that it failed to keep Ramsey's records of duty status for six months, I find that the carrier has committed these violations. In addition, I find that the evidence of log falsifications fully supports the 16 allegations made in the notice of claim, and is unrebutted by Carter. Therefore I find that there are no material factual issues in dispute, and the Regional Director is entitled to a judgment as a matter of law.

Penalty Assessment

The Regional Director assessed a penalty of $500 per drug testing violation, and $400 for each of the remaining violations, for a total penalty of $10,400, stating in the motion for final order that he considered the size of Carter's trucking operations and its financial condition when he determined the amount. Carter has objected to this amount, but has cited no reason why it believes the sum is excessive, nor asserted that it would be unable to pay this amount. Upon review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), especially the circumstances surrounding the drug testing violations, I find that $10,400 is reasonably calculated to induce Carter's compliance with the regulations.

It is hereby ordered, That Bill Carter Trucking, Inc.'s, hearing request is denied, the Regional Director's motion for a final order is granted, and Bill Carter Trucking, Inc., is directed to pay the sum of $10,400 to the Regional Director, Region 3, within 30 days of the date of this order.

Dated: June 22, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; LDM Trucking Co., Inc.

This matter comes before me upon a motion for final order by the Regional Director, Region 9. The Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386, govern this proceeding.

Background

The Respondent, LDM Trucking Co., Inc. (LDM), operates as an authorized, for-hire carrier in interstate commerce. The Regional Director served LDM with a notice of claim dated January 17, 1991. The notice of claim charged the carrier with 10 violations of the Federal Motor Carrier Safety Regulations (FMCSRs), including three violations of 49 CFR 391.51(c), failing to maintain complete driver qualification files for each driver; three violations of 49 CFR 395.3(b), requiring or permitting drivers to drive after having been on duty 60 hours in seven consecutive days; and four violations of 49 CFR 396.3(b), failing to keep minimum records of inspection and maintenance. The Regional Director assessed a penalty of $800 for each violation of § 391.51(c), $800 for each violation of § 395.3(b), and $400 for each violation of § 396.3(b), for a total civil forfeiture amount of $6,400.

In a timely reply to the notice of claim, LDM admitted to each of the charged violations and did not request an administrative hearing. LDM did, however, ask the Regional Director to reduce the penalty because, it claimed, "the 6,400 dollar violations [we] feel will put this co. out of business." Exhibit C to Regional Director's Motion for Final Order.

The Regional Director offered to settle the case for $2,400, but LDM did not execute the proposed settlement agreement or comply with its terms. The Regional Director then submitted his motion for final order on December 18, 1991.

Discussion

1. The Regional Director's Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, LDM in this case.

LDM has admitted to all of the allegations in the notice of claim. Even so, the Regional Director's motion contained numerous exhibits, including: copies of drivers' records of duty status; carrier invoices documenting the trips allegedly made in violation of the regulations; two signed statements of LDM's president Larry D. Morris; and a declaration of FHWA Safety Specialist Warren Mallen (who conducted the compliance review of LDM's operations). All of these exhibits tend to affirm the charges leveled in the notice of claim.

The Regional Director has met his burden in this case. I find the facts to be as alleged in the January 17, 1991, notice of claim and grant the motion for a final order.

2. Penalty Determination

The notice of claim assessed a total fine of $6,400, charging $800 for each driver qualification file violation, $800 for each hours-of-service violation, and $400 for each inspection record violation. Although no material factual issues remain in dispute, one of the penalties assessed by the Regional Director presents a problem.

Based on the record before me and consideration of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), I find the hours-of-service and inspection-report penalties reasonably calculated to induce LDM's compliance with the regulations. LDM asserts in its reply to the notice of claim that it cannot afford to pay the penalties assessed by the Regional Director. While a respondent's ability to pay and to continue to do business must be considered when determining a proper penalty level, LDM has failed to submit any evidence to buttress its assertions. In fact, the only evidence of LDM's financial condition in the record before me is a copy of the compliance review that led to the issuance of the notice of claim. That document, attached to the Regional Director's motion for final order, lists LDM's annual gross revenue for fiscal year 1990 as $500,000.

Furthermore, the Regional Director brought this action after both a safety and a compliance review revealed violations of the FMCSRs. LDM cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews. In addition, the hours-of-service violations constitute a "serious pattern of safety violations"

warranting the imposition of a stringent fine. 49 U.S.C. 521(b)(2)(A).

On the other hand, the record before me does not reveal any basis for the imposition of an $800 penalty for each violation of the driver qualification file regulations. The statutory civil penalty provision, 49 U.S.C. 521(b)(A), states that persons who violate recordkeeping requirements of the FMCSRs "shall be liable * * * for a civil penalty not to exceed $500 for each offense." While the statute does provide that "each day of a violation shall constitute a separate offense," allowing the imposition of a total penalty assessment of $2,500 for all offenses relating to a single violation, the record before me does not contain any indication that the Regional Director intended to impose such a multiple-day penalty.

In the absence of any justification from the Regional Director, I cannot agree to impose an $800 per count penalty for these recordkeeping violations. I have already noted my approval of the penalty assessed for the other recordkeeping violations in this case (for failure to maintain inspection and maintenance records). While these two types of recordkeeping violations are not identical, I find them similar enough to warrant imposition of the same $400 penalty for both types of charges, as each violation involves records which bear a direct relation to motor carrier safety.[1]

Furthermore, as with all of the other violations, a safety review revealed problems with LDM's qualification files nearly a year before the notice of claim was issued. Again, as I noted earlier, LDM cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews.

Finally, I do not find that LDM's unproven assertions of financial hardship warrant any further reduction in the penalty amount. LDM has not demonstrated its inability to pay despite several opportunities to do so, nor has it raised any other matters that justice and public safety may require me to consider. Accordingly, I order LDM to pay $400 for each driver qualification file violation. The total civil forfeiture amount owed by LDM is $5,200.

It Is Hereby Ordered, That the Regional Director's request for a final order is granted. LDM Trucking Co., Inc., is directed to pay $5,200 to the Regional Director within 30 days of the date of this order.

[1] Inspection reports can be used by a carrier to identify unsafe vehicles, while driver qualification files can be used to ensure a driver's fitness has been fully checked by a carrier.

Dated: June 10, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Carroll Fulmer & Co., Inc.

This matter comes before me upon a motion by the Regional Director, Region 4, opposing Carroll Fulmer & Co, Inc.'s (Fulmer), request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

Fulmer is a for-hire motor carrier with 190 drivers, six terminals throughout the United States, and gross annual revenues of $33 million. After a compliance review of Fulmer, the Regional Director issued a notice of claim on August 3, 1991, citing the carrier for 13 violations of 49 CFR 395.3(a)(1) for requiring or permitting its drivers to drive more than 10 hours following eight hours off duty, and 11 violations of 49 CFR 395.3(b) for requiring or permitting its drivers to drive after having been on duty 70 hours in eight consecutive days.

Fulmer responded to the compliance review report on August 15, 1991, detailing the corrective action it would take to comply with the hours-of-service regulations. The carrier requested a hearing in its August 20, 1991, response to the notice of claim.

On January 6, 1992, the Regional Director moved for a final order, asserting that Fulmer was not entitled to a hearing because the carrier failed to deny the violations or otherwise allege any material factual issues in dispute warranting a hearing under 49 CFR 386.16(b). He also argued that Fulmer's efforts to comply with the regulations after the violations were discovered did not excuse its earlier noncompliance. Fulmer has not replied to the motion for final order.

Discussion

Fulmer's Hearing Request

If a motor carrier contests the charges against it and seeks a hearing, its reply "must contain * * * an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 CFR 386.14(b)(1). In addition, "[a] request for a hearing must list all material facts believed to be in dispute." 49 CFR 386.14(b)(2).

Although the Regional Director clearly listed the requirements of § 386.14 in the notice of claim, Fulmer failed to comply with these provisions. Instead, Fulmer's replies simply list its attempts since the compliance review to cure the hours-of-service violations and request a hearing without contesting the charges in any manner. Therefore, I find that Fulmer's replies do not comply with the requirements of 49 CFR 386.14(b) because Fulmer has not admitted to nor denied the allegations in the notice of claim. I also find that Fulmer's hearing request does not raise any material factual issue in dispute warranting a hearing under 49 CFR 386.16(b). Accordingly, Fulmer's request for a hearing is denied.

The Regional Director's Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.* No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Fulmer in this case.

Where the motor carrier denies the allegations of the claim letter but the Regional Director nevertheless seeks to obtain a final order, the Regional Director's pleadings must be accompanied by affidavits or other evidence sufficient to establish a *prima facie* case. *In re American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, (FHWA March 11, 1992) (Order). For the purposes of the Regional Director's motion for final order, and the question of whether the Regional Director must provide evidence of the violations charged, Fulmer's responses must be viewed as admissions. Rather than denying the allegations, Fulmer's August 15 letter listed its efforts to cure its past noncompliance. Fulmer's August 20 reply requested a hearing but did not contest any of the charges made in the notice of claim. Finally, the carrier simply failed to respond to the Regional Director's motion for final order.

Fulmer had repeated opportunities to deny or otherwise object to the charges against it, but failed to fully participate in this proceeding. The issue, then becomes what quantum of evidence must the Regional Director submit to support his motion for final order and avoid a hearing. Both *Forsyth Milk* and *American Pacific Power Apparatus* addressed those situations where the respondent denies the charges against it. In this case, I find that Fulmer has not denied the violations, and therefore I do not believe that the Regional Director must submit documentary or other

evidence to support its claims. If Fulmer had denied that its drivers drove in excess of the hours-of-service limits cited here, the Regional Director would have been required to submit affidavits or other evidence supporting his charges.

Finally, I do not believe that Fulmer can complain that the Regional Director has failed to produce substantive evidence of the violations charged. Fulmer has not only failed to deny that it violated the motor carrier safety regulations, it has also ignored opportunities to put the Regional Director to the test, including most recently by failing to respond to the Regional Director's motion for final order. Accordingly, I find there are no material factual issues in dispute, and the Regional Director is entitled to a judgment as a matter of law.

Penalty Assessment

The Regional Director assessed a penalty of $750 per violation, for a total penalty of $18,000. Fulmer has not objected to this amount, and after review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), I find that $18,000 is reasonably calculated to induce Fulmer's compliance with the hours-of-service regulations. This action was brought after three compliance reviews of Fulmer revealed violations of the hours-of-service limits. Fulmer cannot simply ignore applicable safety regulations or refuse to cure violations repeatedly identified in three compliance reviews.

It Is Hereby Ordered, That Carroll Fulmer & Co., Inc.'s, request for a hearing is denied, the Regional Director's motion for a final order is granted, and Carroll Fulmer & Co., Inc., is directed to pay the sum of $18,000 to the Regional Director, Region 4, within 30 days of this order, for requiring or permitting its drivers to drive more than 10 hours following eight hours off duty, and for requiring or permitting its drivers to drive after having been on duty 70 hours in eight consecutive days.

Dated: June 7, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order Appointing Administrative Law Judge; National Retail Transportation, Inc.

This matter comes before me upon National Retail Transportation's (NRT) request for an administrative hearing under 49 CFR 386.14(b)(2) of the Federal Motor Carrier Safety Regulations. Both NRT and the Regional Director assert that NRT's hearing request raises a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b).

Background

By notice of claim dated January 21, 1992, the Regional Director cited NRT for 45 violations of 49 CFR 395.8(k) for failing to keep driver record of duty status supporting documents, and assessed a total penalty of $23,000, or $500 per violation. He asserted that NRT could not produce such documents at an October 1991 compliance review of the carrier.

NRT replied on January 30, 1992, denying that it failed to preserve these supporting documents and requesting an administrative hearing. NRT asserted that it intended to provide evidence contradicting the findings made in the notice of claim. The carrier stated that support documents were made available to the FHWA in its investigation of NRT, including "computerized Trip File Summaries, original Outbound Dispatch logs, [and] original Bills of Lading," and that NRT would provide these documents at the requested hearing. NRT's Reply and Request for Hearing, at 2.

Settlement negotiations between the two parties were unsuccessful, and on April 7, 1992, the Regional Director concurred in NRT's hearing request.

Conclusion

Upon review of the pleadings, I find that NRT's hearing request raises a material factual issue in dispute which should be addressed in an administrative hearing.

It Is Hereby Ordered, That National Retail Transportation's request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The appointed Judge is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: June 4, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order Denying Motion for Extension of Time; Gunther's Leasing Transport, Inc.; Complaint Investigation

This matter comes before me upon Gunther's Leasing Transport's (Gunther's) May 18, 1992, motion under 49 CFR 386.35(a) for an extension of time to respond to a compliance review report, and the Regional Director's motion to dismiss Gunther's motion.

As I held in my February 13, 1992, Order in this complaint investigation, there is no 49 CFR part 386 proceeding pending between the FHWA and Gunther's. Section 386.11 provides several methods to commence a part 386 proceeding, none of which were employed here. Instead, this case was initiated by the FHWA in a Federal district court to enforce an administrative subpoena issued by the Regional Director under 49 U.S.C. 502(d).

Because no 49 CFR part 386 proceeding has been commenced against Gunther's, it would be inappropriate for the Associate Administrator to grant Gunther's § 386.35(a) motion. Therefore I decline to do so. Gunther's request for additional time to respond to the findings in the compliance review should be made directly to the Regional Director, Region 3.

It is Hereby Ordered, That Gunther's Leasing Transport's motion under 49 CFR 386.35(a) is denied.

Dated: June 4, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Costello Industries, Inc.

This matter comes before me upon a motion for a final order by the Regional Director, Region 1. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

Costello Industries, Inc. (Costello), is a Connecticut road construction company that operates motor vehicles in interstate commerce when its workers drive its large equipment to work sites in other states. The Regional Director, by notice of claim dated September 4, 1991, charged Costello with four violations of 49 CFR 391.51 for its failure to maintain a complete driver qualification file for each driver, four violations of 49 CFR 395.8 for failing to require drivers to make and submit records of duty status, and four violations of 49 CFR 396.17 for use of a commercial motor vehicle that was not periodically inspected. Costello submitted a timely reply to the notice of claim, seeking to settle the case and explaining its efforts to comply with the regulations. The carrier did not deny the allegations, request a hearing, or list any material issues it believed to be in dispute.

On October 4, 1991, after settlement negotiations were unsuccessful, Costello requested a hearing, citing three issues: its overall safety record, the "inherent inequality" of its classification as a

motor carrier, and the insufficient assistance and training it received from the FHWA. Costello supplemented its hearing request on October 22, 1991, stating that the penalty amount was excessive. In addition, the carrier argued that its hearing request was not late because it had implicitly reserved its right to request a hearing when it decided to pursue an informal settlement.

The Regional Director moved for a final order, stating that Costello was not entitled to a hearing. He argued that Costello's assertion that it had implicitly reserved its right to request a hearing was not a credible argument, and therefore the carrier had waived its right to a hearing under 49 CFR 386.14(b)(2). Moreover, if the request was viewed as timely, the Regional Director argued that Costello failed to deny the allegations or otherwise raise a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b). Costello did not respond to the motion for final order.

Discussion

Costello's Hearing Request

If a motor carrier contests the charges against it and seeks a hearing, its hearing request must be made within 15 days after the claim letter is served. 49 CFR 386.14(b)(2). As the Regional Director Stated in his notice of claim, failure to request a hearing within 15 days constitutes a waiver of any right to a hearing. *Id.* There is no regulatory provision permitting a motor carrier to implicitly reserve its right to request a hearing after the 15 day period has elapsed, and I find no reason in this case to conclude that the carrier reserved its right, implicitly or otherwise.

Costello did not request a hearing until its October 8, 1991, letter to the FHWA federal program manager, more than one month after the notice of claim was served. Moreover, none of Costello's responses, including its objection to the amount of the penalty, raises a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b). *E.g., In re Arthur Shelley, Inc.*, 55 FR 43288 (FHWA 1990) (Final Order). First, Costello claims to have an excellent motor carrier safety record, yet provides no evidence to support this allegation and admits to poor recordkeeping.

Next, Costello argues that it is unfair to classify it as a motor carrier, and to force a road contractor to obey the same motor carrier regulations as trucking or delivery businesses do. Costello does not assert, however, that it is not a motor carrier and therefore not subject to the FMCSRs. Instead, Costello claims it should not be subject to rules which it deems to be "irrelevant" to its construction business. Costello's October 8, 1991, Reply at 2.

Finally, Costello claims that a lack of agency assistance is the reason for its noncompliance. Even if true, this reason would not excuse Costello's violations; but there is evidence that the agency made several efforts to assist Costello in meeting the requirements of the FMCSRs. At both a 1987 compliance review and the August 1991 review, Costello received instructions on how to cure its violations and was advised to review the FMCSRs.

Costello's hostile attitude toward these regulations, insisting that it is "inequitable and unrealistic" to expect it to comply with them, appears to be the reason for its noncompliance. *Id.* Because Costello failed to make a timely hearing request, and because I do not believe that Costello has raised any material factual issues requiring a hearing to resolve, I decline to grant Costello an oral hearing in this case.

The Regional Director's Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Costello in this case.

Costello's responses, when viewed in a light most favorable to the carrier, must be viewed as admissions to the recordkeeping violations. In its August 15, 1991, letter, the carrier stated, "If the entire scope of the review is to determine administrative compliance, and administrative compliance is defined as keeping copies of travel logs, medical certificates, vehicle inspection reports, etc. in the home office, then yes, we have a deficiency." Costello did not deny or in any way contest the four charges that it used a motor vehicle that was not periodically inspected. Costello's failure to respond to or otherwise defend these four charges constitutes a default by the motor carrier. Therefore these allegations will be taken as true. 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* section 2688 (1983).

I note that the Regional Director's motion for final order is not supported by evidence sufficient to show a *prima facie* case, but in this instance such evidence is not required. Costello has admitted to the eight recordkeeping violations and failed to respond to the four vehicle inspection charges. In addition, Costello has not responded to the motion for final order. Therefore I find there are no material factual issues in dispute, and the Regional Director is entitled to a judgment as a matter of law.

Penalty Assessment

The Regional Director assessed a penalty of $300 per violation, for a total penalty of $3,600. Costello claimed this amount was excessive, but gave no reason for this objection. The penalty amount is well within the statutory maximum of $500 per violation under 49 U.S.C. § 521(b)(2)(A). In addition, Costello's defiant attitude toward compliance with the FMCSRs warrants no mitigation of the penalty amount, and I find that $3,600 is necessary to induce compliance.

It is Hereby Ordered, That Costello Industries' hearing request is denied, the Regional Director's motion for final order is granted, and Costello Industries is directed to pay the sum of $3,600 to the Regional Director, Region 1, within 30 days of this order.

Dated: June 4, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; PVH, Inc., d/b/a Aries Distributors

This matter comes before me upon a motion by the Regional Director, Region 1, for a final order. This proceeding is governed by the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

After a May 31, 1991, compliance review of PVH, Inc. (PVH), d/b/a Aries Distributors, revealed continuing violations of the Federal Motor Carrier Safety Regulations (FMCSRs), the Regional Director served PVH with a notice of claim letter on June 13, 1991. The notice charged PVH with two violations of 49 CFR 391.51, failure to maintain complete driver qualification files; six violations of 49 CFR 395.8, failure to require a driver to make or submit records of duty status; and four violations of 49 CFR 396.11, failure to require driver vehicle inspection reports. The Regional Director assessed a penalty of $300 per violation, for a total penalty of $3,600.

PVH replied to the notice of claim on June 27, 1991, and requested an administrative hearing. The carrier asserted that it had only one truck

subject to the FMCSRs and that it had not operated the truck during the period when the violations allegedly occurred. The reply also stated that PVH "[had] not had the opportunity to adequately set up proper D.O.T. files."

The parties tried without success to reach a settlement. The Regional Director then submitted a Motion for Final Order on October 21, 1991. PVH has not responded to this motion.

Discussion

1. PVH's Request for an Administrative Hearing

The Rules of Practice require a respondent to demonstrate the existence of a material factual dispute before being granted a hearing. 49 CFR 386.14(b)(2), 386.16(b). PVH claims that its one regulated truck did not operate during the period when the recordkeeping violations allegedly occurred. The Regional Director, however, has presented evidence—including copies of a Massachusetts inspection report and a bill for mechanical services—tending to show that the PVH truck travelled 12,977 miles in the 72 days preceding the compliance review, including the time of the violations cited in the notice of claim. PVH did not rebut this evidence.

The record before me in this case does not demonstrate the existence of a material factual issue in dispute. Because the Regional Director's evidence effectively refutes the carrier's mere assertions concerning its truck, I deny PVH's request for an administrative hearing.

2. The Regional Director's Motion for Final Order

A motion for final order is in the nature of a motion for summary judgment, and the moving party bears the burden of clearly establishing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, (FHWA Dec. 5, 1991) (Order). When a respondent denies the allegations against it but the Regional Director seeks to avoid a hearing and obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish at least a *prima facie* case.

The Regional Director's evidence demonstrates that the carrier used a vehicle subject to the FMCSRs, but his motion is not accompanied by substantial evidence (such as affidavits of persons who inspected the carrier's records) establishing that the recordkeeping violations actually occurred. The record does contain, though, copies of the compliance review, the notice of claim, and other paperwork suggesting that the alleged violations occurred—paperwork that represents evidence that the Regional Director would produce if a hearing were held. This paperwork, served on PVH along with the motion for final order, also provided notice to PVH of the substance behind the allegations against it.

In this case, in contrast to *In re American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, (FHWA March 11, 1992) (Final Order), and similar cases, PVH does not deny the conduct charged in the notice of claim, and indeed its reply may fairly be read as an admission that the carrier did not "adequately set up proper * * * files." The issue, then, becomes what quantum of evidence must the Regional Director submit to support his motion for final order and to avoid a hearing. The *Forsyth Milk* and *American Pacific Power* cases addressed those situations in which the respondent denies the charges against it. In the instant case, the record before me indicates that while PVH admits that it did not keep proper records, the carrier asserts that it did not use its one regulated vehicle during the time the violations allegedly occurred. As I have already noted, the evidence submitted by the Regional Director (unrebutted by PVH) conclusively establishes that this particular vehicle was in use during this time.

As for the recordkeeping violations themselves, I find that PVH has not denied that it failed to keep these records, and therefore I do not believe that the Regional Director must submit documentary or other evidence to support this element of his claim. If PVH had denied that it had failed to keep any of the records here cited, the Regional Director would have been required to submit affidavits or other evidence supporting his charges.

I do not believe that PVH can complain that the Regional Director has failed to produce substantive evidence of the violations alleged. PVH has not only failed to deny that it violated the FMCSRs, it has also ignored opportunities to put the Regional Director to the test, including most recently by failing to respond to the Regional Director's motion for final order.

In short, PVH has failed to rebut the Regional Director's case, whereas the Regional Director has provided evidence to counter the carrier's bald assertion that it did not use a motor vehicle subject to the FMCSRs. Accordingly, I find that the facts to be as alleged in the notice of claim.

As for the amount of the penalty assessed by the Regional Director, after review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C) I find that $3,600 penalty reasonably calculated to induce PVH's compliance with the recordkeeping regulations. I also note that the penalty assessed by the Regional Director, $300 per violation, falls well below the maximum allowed by law. 49 U.S.C. 521(b). The Regional Director brought this action after both a safety and a compliance review revealed violations of the FMCSRs. PVH cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews. Therefore, I grant the Regional Director's motion for final order in the full amount, $3,600.

It is Hereby Ordered, That the Regional Director's request for a final order is granted. PVH, Inc., d/b/a Aries Distributors, is directed to pay $3,600 to the Regional Director within 30 days of the date of this order.

Dated: June 3, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order to Dismiss

Served June 2, 1992.

This proceeding was initiated by a Notice of Claim letter dated January 24, 1991, from the Regional Director of Region 3 to Kessel Lumber Supply, Inc. (Respondent), seeking a penalty in the amount of $10,000. The Associate Administrator for Motor Carrier Safety appointed an Administrative Law Judge by order dated February 18, 1992 (to be designated by the Chief Administrative Law Judge) to consider this matter.

The undersigned Judge was appointed by notice served February, 21, 1992. After various prehearing procedures, by petition for consent judgement received May 22, 1992, the Regional Director with the concurrence of Respondent, requests that a consent judgement be entered in accordance with the terms of a settlement agreement reached by the parties, which provides for payment by Respondent of $5,000 to the FHWA. We conclude that that petition should be granted and the proceeding dismissed on the basis of the settlement.[1]

[1] 49 C.F.R. 386.54(b)(6) was amended effective January 26, 1988 (53 FR 2036), to specify that the Judge can "consider and rule upon all procedural and other motions, including motions to dismiss, except motions which, under this part, are made directly to the Associate Administrator." Although 49 C.F.R. 386.22 provides that the parties "may" execute an appropriate agreement for disposing of the case by consent "for the consideration of the Associate Administrator," it is now settled that the

Accordingly, settlement have been reached between the parties, and that settlement appearing to be in the interest of the parties and the U.S. Department of Transportation,

It is Ordered, That the above-styled matter is hereby dismissed.

Dated: June 1, 1992.

Ronnie A. Yoder,

Administrative Law Judge.

Order of Administrative Law Judge Receiving in Evidence Administrative and Judicial Records, and Setting Procedural Schedule for a Hearing

In the matter of: John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.; and Steve Johnson and Sons Trucking, Inc., a corporation.

Served May 26, 1992.

By order served April 1, 1992, the parties in the above-referenced proceeding were directed to file for admission into the record: (a) the administrative record upon which the Federal Highway Administration ("FHWA") Associate Administrator for Motor Carriers issued the Final Order dated September 20, 1989; and (b) the judicial record upon which the United States Court of Appeals for the Ninth Circuit issued the Memorandum filed July 12, 1991. The two records were filed on April 13, 1992, with a statement signed by FHWA Counsel and by counsel for John Steven Johnson, as an individual, ("Respondent") attesting to the completeness and accuracy of the proffered records.

Accordingly, the aforementioned administrative and judicial records are hereby admitted into the evidentiary record of the instant proceeding.

In this proceeding, FHWA Counsel and Respondent ("the parties") have argued that an oral evidentiary hearing is not required because the administrative and judicial records contain facts which are dispositive of the question to be decided.[1]

I have reviewed the documents in the two records and the parties' arguments, and I conclude, for reasons given below, that an oral evidentiary hearing must be held.

Accordingly, the parties are hereby directed to adhere to the procedural schedule set forth at the conclusion of this Order.

I. The Issues

This proceeding was instituted "for the limited purpose of conducting a hearing to review the appropriateness of imposing the fine against Johnson." (Memorandum, supra, at 5. See also Final Order, *supra*, at 2.)

The alleged fine against Johnson, totaling $19,700, is based on:

(a) $700 for two recordkeeping violations of 49 CFR 394.9(a) and $2,000 for four recordkeeping violations of 49 CFR § 395.8(e);

(b) $3,500 for five safety violations of 49 CFR 395.3(a)(1) and $3,500 for five safety violations of 49 CFR 395.3(b); and

(c) $10,000 is for five financial responsibility violations of 49 CFR 387.7(a).

The recordkeeping and safety regulations in 49 CFR parts 394 and 395 were promulgated pursuant to the Motor Carrier Safety Act of 1984 ("1984 Act").[2] The financial responsibility regulation in 49 CFR part 387 was promulgated pursuant to the Motor Carrier Act of 1980 ("1980 Act").[3]

By Order served March 3, 1992, two possible issues in the proceeding were presented for comment by the parties. Taking into consideration their comments (FHWA Counsel, filed March 18, 1992; Respondent, filed March 26, 1992), and the evidentiary record presently before me, I find that those issues should be modified as follows.

With regard to the 1984 Act and the recordkeeping violations thereunder:

Whether Johnson, in his individual capacity at Steve Johnson and Sons Trucking, Inc., is a "person" within the meaning of sections 213(b) and 204(6) of the Motor Carrier Safety Act of 1984.[4]

With regard to the 1984 Act and the safety violations thereunder:

Whether Johnson, in his individual capacity at Steve Johnson and Sons Trucking, Inc., is a "person" or an "employee" or an "employer" within the meaning of sections 213(b) and 204(6), 204(2), and 204(3) of the Motor Carrier Safety Act of 1984.[5]

Section 204(6), codified at 49 app. U.S.C. 2503(6), provides that " '*person*' means any individual, partnership, association, corporation, business trust, and any other organized group of individuals * * *." [Emphasis added.]

See also note 4, *supra*, for section 204(6)'s definition of person.

Section 204(2), codified at 49 App. U.S.C. 2503(2), provides that " '*employee*' means * * * any individual other than an *employer* * * *." [Emphasis added.]

Section 204(3), codified at 49 App. U.S.C. 2503(3), provides that " '*employer*' means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it * * *" [Emphasis added.]

With regard to the Motor Carrier Act of 1980 and the financial responsibility violations thereunder:

Whether Johnson, in his individual capacity at Steve Johnson and Sons Trucking, Inc., is a "person" who "knowingly violated" the financial responsibility regulations or an "employee" who "acted without knowledge" within the meaning of section 30(d)(1) of the Motor Carrier Act of 1980.[6]

II. The Facts Required To Resolve the Issues

In light of the issues in the case, three statutory categories—person, employee, employer—are involved in determining Respondent's liability for the recordkeeping, safety, and financial responsibility violations. Specifically, only the category, person, is relevant to liability for the recordkeeping

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Judge can also enter an order dismissing a proceeding pursuant to a settlement subject to review by the Associate Administrator, where the application is made to the judge. See *In the Matter of Fulton Packing Co., Inc.*, FHWA Docket No. RI–86–60, Order dated June 10, 1987; *Rodgers Johnson/J and J Bus Service*, FHWA Docket No. R3–89–02, Order served May 4, 1989; *In Matter of Real Ice Cream Distributors, Inc.*, FHWA Docket No. RI–86–13, Order served October 26, 1987; *In the Matter of Alfa Express Co.*, FHWA Docket No. 86–65G, Order served December 28, 1987; *Bower Tiling Service, Inc.*, FHWA Docket No. R5–90–03, Order served June 18, 1990.

[1] *See* FHWA Counsel Pleadings filed February 4, and March 18 and 27, 1992; Respondent Pleadings filed February 6, March 19 and 26, and April 1, 1992

[2] The Motor Carrier Safety Act of 1984 was enacted by Public Law No. 98–554, title II, 98 Stat. 2832 (Oct. 30, 1984).

[3] The Motor Carrier Act of 1980 was enacted by Public Law No. 96–296, 94 Stat. 793 (July 1, 1980).

[4] Section 213(b), codified at 49 U.S.C. 521(b)(2)(A), provides that:

[A]ny *person* who is determined * * * to have committed an act which is a violation of a *recordkeeping* requirement issued by the Secretary pursuant to section 3102 [of title 49] * * * or the Motor Carrier Safety Act of 1984 shall be liable to the United States for a civil penalty not to exceed $500 for each offense * * * [Emphasis added.]

[5] Section 213(b), quoted in note 4, *supra*, goes on to provide that:

If the Secretary determines that a serious pattern of *safety violations, other than recordkeeping requirements*, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000. * * * Notwithstanding any other provision of this section * * *, *except for recordkeeping violations*, no civil penalty shall be assessed under this section against an *employee* for a violation unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. [Emphasis added.]

[6] Section 30(d)(1) of the 1980 Act, codified at 49 U.S.C. 10927 note, provides that:

Any *person* (except an *employee* who acts *without knowledge*) who is determined by the Secretary * * * to have *knowingly violated* this section or a regulation issued under this section shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. [Emphasis added.]

violations, while all three categories are relevant to liability for the safety and financial responsibility violations.

Respondent has spun a convoluted argument against holding an evidentiary hearing in this case based on the wording of the Notice of Claim dated June 2, 1989, concerning Respondent's "capacity".

Respondent points out that the only reference to Respondent John Steven Johnson, as distinguished from the corporate respondent, Steven Johnson and Sons Trucking, Inc., is in the address portion of the Notice of Claim (which is in letter form) and in the first paragraph. (Pleading filed March 19, 1992, at 4.) Because that language refers, respectively, to Johnson, "in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.," and to Johnson, "in his individual capacity," Respondent contends that the agency failed to plead the charges against Respondent as an "employer". From this, Respondent ends up with the assertion that the only way Respondent can be held liable under the Notice of Claim is "upon a vicarious liability approach." In sum, Respondent rejects any application of the above cited statutory provisions because, according to Respondent, the provisions do not specifically provide "vicarious liability" for such entities as employer or employee. (Pleading filed March 26, 1992, at 2–7).

Respondent's reasoning is wholly misguided, for liability under the applicable motor carrier statutes adheres to "any person", a category which could apply to Respondent either as an individual or as President of the trucking company. To the extent, therefore, that employer or employee entities are involved in this case, it is the result of certain other language in the applicable statutory provisions which would exempt Respondent from liability as "any person", entirely or in part, if Respondent is shown to be an"employee", with that category being statutorily defined as "other than an employer".

It should be noted that the issues in the case are framed only in terms of Respondent, "in his individual capacity", because both the Ninth Circuit and the agency so directed. See Memorandum at 5; Final Order at 2. That "capacity", therefore, is a matter of proof in the proceeding and the applicability of the three statutory categories—person, employee, employer—to Respondent remains the question to be decided.

FAA Counsel argues that certain documents in the administrative and judicial records (both records now in the record in this proceeding, indexed, and hereinafter referred to as "the record"), resolve the question of how the categories apply to Respondent. FAA Counsel cites the record at: Index No. 23 (The FHWA Administrative Record on Review) at Tab I (Petitioners' Reply to Notice of Claim); Index No. 23 at Tab K (FHWA Compliance Review); and Index No. 6a at 12, 14 (Reply Brief of Petitioners on Review).

With the possible exception that the three documents, as well as other documents, in the record do provide a factual basis for determining Respondent's legal status, when the recordkeeping violations occurred, as "any person" within the meaning of sections 213(b) and 204(6) of the 1984 Act (*supra* note 4 ("person" equated with "individual")), I find that neither those documents nor any others presently in the record provide sufficient factual information for a legal finding on whether Respondent was an "employee" or an "employer" within the meaning of Sections 213(b), 204 (2) and (3) of the 1984 Act (*supra* note 5) and Section 30(d)(1) of the 1980 Act (*supra*) note 6) when the safety and financial responsibility violations occurred.[7]

Language in Petitioners' Reply to the Notice of Claim,[8] at best, comes close to an admission that Respondent made managerial decisions in connection with Steve Johnson and Sons Trucking, Inc., but even that would shed no light on Respondent as a person "engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it," the statutory definition of an employer.

In relying on "The FHWA Compliance Review", FHWA Counsel merely points to the fact that it contains Respondent's signature, with "President" printed underneath. The position, standing alone, does not fit within the statutory category of employer; nor, for that matter, do the positions listed in the Reply Brief of Petitions on Review,[9] even if the language surrounding the listing of the positions ("Shareholder", "President", "Officer", "Manager") is interpreted as an admission that Respondent held such positions at Steve Johnson and Sons Trucking, Inc., rather than as an argumentative statement. See Respondent Pleadings (March 26, 1992; April 1, 1992).[10]

I will do so because all of the definitions in 49 CFR 390.5 apply to the regulatory sections violated in this case. See 49 CFR 390.5 ("Definitions. In this subchapter [which includes Parts 387, 394, and 395 at issue herein]: * * * [specified term] means * * *."). I add, however, that while the regulation would include the term "employer" in the term "motor carrier", the reverse is apparently not the case. What is plainly significant is that § 390.5 also defines "employee" and "employer", and in terms identical to those in sections 204 ((2) and (3) of the 1984 Act, *supra*. Thus, any ambiguity, if it exists, about the definition of "employee" as used in section 30(d)(1) of the 1980 Act (see note 6, *supra*) may possibly be resolved by the regulation.

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[7] Respondent has indicated that Steven Johnson and Sons Trucking, Inc., is "long defunct" and that Respondent has had "no continuing relationship to it * * * for more than two years." (Pleading filed March 19, 1992, at 2). These circumstances, even if proven at the hearing, would have no bearing on Respondent's individual liability at the time of the violations.

[8] "* * * I [Johnson] deny that I knowingly violated 49 CFR 387.7(a). I admit the violation of 49 CFR 394.9, however, I personally did not know the violation took place and furthermore was not aware of the requirement to report such accidents. With respect to all other alleged violations, I deny all as Steven Johnson & Sons Trucking, Inc. or myself personally has not required such violation and the enforcement to not permit violation [sic] due to signed statements made by drivers would include asking them to *change* such statements after the fact. Steve Johnson and Sons Trucking, Inc. or myself have not in the past nor will we ever ask a driver to change *his* or *her* statement." (Index No. 23 at Tab I (emphasis in original).)

"Furthermore, my personal involvement with Steven Johnson and Sons Trucking, Inc. was very limited to the daily operation of same." (*Id.*)

[9] "Giving the Agency all of the benefits of the numerous doubts in this portion of its Brief, and giving recognition that the Corporate Petitioner was in fact a corporation under which the trucking company operated, the most that can be said from the record is that the Individual Petitioner was a Shareholder of the Corporate" Petitioner; the President, an Officer, of the Corporate Petitioner; and the Manager of the Corporate Petitioner." (Index No. 6a at 12.)

"Nothing in the applicable statutes or in the Agency's argument justifies extending the term *Employer* to an individual such as Individual Petitioner, who is no more than a *Corporate Shareholder*, a *Corporate Officer* or only a *Manager*. . . . Since an individual such as Individual Petitioner, who is a *Corporate Shareholder, Corporate Officer* or a *Manager* is not covered by the statutory definition in Section 2503(3), the proper characterization for these categories is *Employee* under Section 20503(2)." (*Id.*) at 14 (emphasis in original).)

[10] FHWA Counsel requests that I take judicial notice, in this proceeding, of the definition of "motor carrier" in the agency's regulations at 49 C.F.R. § 390.5. (Pleading (March 18, 1992) at 2). The definition provides that "motor carrier" means:

[A] for-hire motor carrier or a private motor carrier of property. The term 'motor carrier' includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of Subchapter B (Federal Motor Carrier Safety Regulations, including Parts 387, 394, and 395 at issue herein], the definition of '*motor carrier*' includes the terms '*employer*' and '*exempt motor carrier*.' [Emphasis in original.]

On the basis of the record before me at this time, I conclude that if Respondent is to be held liable for the safety and financial responsibility violations, as well as for the recordkeeping violations, facts will have to be presented in evidence, along with legal arguments pertaining thereto, which comport with the applicable statutory and regulatory provisions. This will require an oral evidentiary hearing.[11]

III. The Procedural Schedule

The hearing will be held in San Francisco, California, see Order served March 3, 1992, at a date to be set by further order. The procedural schedule prior to the hearing is as follows:

Discovery requests served by	June 12, 1992.
Responses thereto served	Within 30 days, but no later than July 13, 1992.
Depositions, if any, by	July 31, 1992.
Pretrial motions, if any, filed by	August 14, 1992.
Final witness lists, trial exhibits, and summaries of proposed testimony served by	September 11, 1992
Stipulations filed by	September 11, 1992.

All exchanges and filings shall be served upon the administrative law judge, as well as upon each other.

So Ordered.

John J. Mathias,

Chief Administrative Law Judge.

Final Order; James Kelton, Sr. d/b/a Kelton Tours

Background

This matter comes before me upon a motion by the Regional Director, Region 4, opposing Kelton Tour's (Kelton) request for an administrative hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

FHWA conducted a review of Kelton on July 18, 1990, after a parent of one of Kelton's former passengers complained that Kelton was operating in excess of the agency's hours-of-service regulations. By notice of claim dated September 17, 1990, the Regional Director charged Kelton with 11 violations of 49 CFR 395.8(e) for requiring or permitting drivers to make false entries on records of duty status, and assessed a total penalty of $4,400.

Kelton replied to the notice of claim on October 6, 1990, admitting that its drivers' logs contained "inadvertent and unintentional errors, which were clerical in nature," but asserting that it did not knowingly maintain false records of duty status. Kelton also requested an administrative hearing, claiming that it could provide affidavits and lodging receipts which would establish that some of the drivers' logs were accurate and not falsified to conceal excess hours of service.

The Regional Director filed a motion for a final order on July 17, 1991, stating that Kelton's claim that it did not "knowingly" keep false records of duty status was an inadequate defense when Kelton knew its drivers operated in excess of the hours-of-service limitations, yet the drivers' logs maintained by the carrier did not reveal these excess hours. In addition, the Regional Director included several exhibits documenting the charges against Kelton. He asserted that these exhibits, uncontradicted by any evidence or affidavits by the motor carrier, established that there are no material factual issues in dispute and that Kelton's hearing request should therefore be denied and the motion for final order granted.

Kelton has neither replied to the motion for final order nor produced the promised affidavits and lodging receipts to show that its drivers' logs were not falsified.

Discussion

Hearing Request

Hearing requests must list all material factual issues believed to be in dispute. 49 CFR 386.14(b)(2). If the Regional Director opposes the hearing request with sufficient evidence, "then the motor carrier must do more than just deny the allegations of its pleadings. It must give sufficient evidence to support its allegations." *American Pacific Power Apparatus, Inc.* No. OR–90–006–075, at 2 (FHWA March 11, 1992) (Order).

In this case, Kelton has made a partial admission, but the carrier also asserted that it could provide sworn affidavits and lodging receipts which would "establish that, with certain admitted exceptions, the 'on duty' and 'driving' hours were proper." Kelton's Reply to Notice of Claim at 2. The promised evidence has not been produced, and Kelton's bare, partial denials are insufficient to meet its burden to show there is a dispute of fact as to counts 1, 2, and 5–11, where its hearing request is sufficiently opposed by the evidence presented by the Regional Director. Because Kelton has failed to competently identify any material factual issue in dispute as to counts 1, 2, and 5–11, its hearing request is denied as to these counts.

Counts 3 and 4 concern a trip made by Kelton drivers James Carroll and Robert Nelson from Guntersville, Alabama, to Daytona Beach, Florida, on April 26, 1990. Both drivers' logs for this day show an 8 hour "off duty" period in Jennings, Florida. The Regional Director's own evidence includes contradictory statements regarding whether one or both of the drivers did in fact take this 8 hour break. In a written transcript of an August 2, 1990, telephone interview with investigator David LeMaster, Mr. Danny Lancaster, a passenger on the April 26 trip, stated that the bus he was on did not stop in Jennings, Florida, or anywhere else, for 8 hours. Yet Mr. Carroll, a driver of one of the two Kelton buses that made the April 26 trip, stated that he slept in the back of the bus for 8 hours in Jennings, Florida, while the passengers waited on the bus with him. These transcripts do not reveal whether Mr. Lancaster was on the bus driven by Mr. Carroll or the one driven by Mr. Nelson.

I could grant Kelton's hearing request with regard to counts 3 and 4, because several unresolved issues remain as to these counts, but I decline to do so at this time. Instead, I direct the parties to address these issues, and include affidavits or other evidence in support of their pleadings. See, *e.g., Gunther's*

[11] Respondent advances the novel theory that an oral evidentiary hearing cannot be held because the language in the Ninth Circuit's Memorandum remanding the case to the agency restricted the proceeding to nothing more, in effect, than a review of the records before the agency and the Court when the agency imposed the fine against Respondent and Respondent appealed that decision. In other words, Respondent argues that I cannot "reopen" these evidentiary records, *see* Pleading (March 19, 1992) at 3–7, and any hearing in the case would be limited to oral argument, see pleading (February 6, 1992) at 4.

The word "review" does appear in the Court's Memorandum— "for limited purpose of conducting a hearing to review the appropriateness of imposing the fine against Johnson" (at 5)—but Respondent has attached a meaning to it which would lead to an absurd result. Obviously, the Court found the record before it inadequate to support the agency's action finding Respondent liable for the fine and, in terms, remanded that action "for further consideration by the FHWA." (Memorandum at 2). Respondent, therefore, is not presently liable and will only become liable for the fine, if at all, on the basis of the evidentiary record to be established in this proceeding. The Court, clearly, did not restrict the FHWA's "consideration" of the question to facts which had already been presented to the Court. Such a result would be wholly illogical, to say the least, the Court being well aware of what those facts were. Furthermore, Respondent's appeal in the Ninth Circuit was for the purpose of obtaining a hearing before the agency and in remanding the case, the Court has granted Respondent that relief, albeit solely on the question of Respondent's individual liability for the violations and not on the substance of the violations, as well. See also Order served March 3, 1992, at 4 n. 7.

Leasing Transport, Inc., No. R9–90–104 (FHWA September 30, 1991) (Order). After review of the supplemental pleadings, I will determine whether there is a material factual issue in dispute warranting a hearing on these two counts.

Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. *Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Final Order). Therefore, the moving party bears the burden of proving that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. All evidance must be viewed in a light most favorable to the non-moving party, Kelton.

In this case, where Kelton has partially denied the allegations against it, but the Regional Director nevertheless opposes Kelton's hearing request and seeks a final order, the Regional Director's pleadings must be accompanied by evidence sufficient to establish a *prima facie* case of the violations. Because the purpose of a motion for final order is to "pierce the pleadings" and examine the evidence in order to determine whether there is a genuine need for trial, mere assertions in Kelton's pleadings, unsupported by evidence, cannot defeat an otherwise justified motion for final order. Fed. R. Civ. P. 56 (advisory committee notes).

The evidence presented by the Regional Director fully supports allegations 1, 2, and 5–11, and is unrebutted by Kelton. Exhibits 1 and 2 include records of duty status for Kelton drivers James Carroll and Robert Nelson for April 5, 1990, when the two were transporting passengers from Woodland, Alabama, to Washington, DC. These logs show an 8 hour "off duty" period in Wytheville, Virginia. Also included in these exhibits is a transcript from a July 18, 1990, interview conducted by FHWA investigator David Lemaster with James Carroll, where Carroll stated, "I'm not going to lie to you, we drove straight through" to Washington, DC, on April 5, 1990. In addition, exhibits 1 and 2 include a copy of the contract for the 850 mile trip, which reads, "Drivers will rest when you get to Washington, DC." This contract reveals the drivers' motivation for the falsification of their logs. A non-stop 850 mile journey would require approximately 15 continuous hours of driving, impossible to complete under the 10 hour limit imposed by the Federal Motor Carrier Safety Regulations (FMCSRs).

The Regional Director has not met his evidentiary burden on counts 3 and 4, which involve the April 26, 1990, trip by Kelton drivers between Guntersville, Alabama, and Daytona Beach, Florida. Because the Regional Director has failed to clearly establish all of the elements of these two counts, including whether one or both Kelton drivers took an 8 hour break while driving that day, I cannot grant a final order on these counts at this time.

Exhibit 5 documents a trip made by Mr. Nelson from Muscle Shoals, Alabama, to San Antonio, Texas, on May 3, 1990. Nelson's logs for this day show an 8 hour "off duty" period in Texarkana, Arkansas. A parent of one of the passengers of this bus monitored the progress of the bus via phone calls from her child from rest stops along the trip route. Her child called her on May 3 at 10:30 a.m. The bus had just arrived in Dallas, Texas, after leaving Muscle Shoals, Alabama, at 7:15 p.m. on May 2, 1990. Mr. Nelson had driven for over 15 hours and had stopped only for refueling.

Exhibit 6 reveals that Mr. Nelson also falsified his logs on the return trip from San Antonio, Texas, to Muscle Shoals, Alabama, on May 7, 1990. While Nelson's logs show an 8 hour "off duty" period in Little Rock, Arkansas, from 12:30 to 8:30 a.m., an Alabama driver/vehicle examination report reveals that the bus was actually over 300 miles past Little Rock, near Muscle Shoals, Alabama, only forty-five minutes later at 9:15 a.m. Significantly, Mr. Nelson was cited by the state inspector for failure to keep his records of duty status up to date, because his last log entry was made 5 days earlier.

Exhibits 7 and 8 concern a May 10, 1990, trip by Robert Nelson from Huntsville, Alabama, to Orlando, Florida, and the return trip on May 14, 1990. Nelson's May 10 records of duty status show an 8 hour "off duty" period in Valdosta, Georgia, and his May 14 logs show an 8 hour break in Oxford, Alabama. But these logs conflict with the transcript of an FHWA interview with a passenger on this trip, Mr. James Jackson. Jackson stated that the bus did not stop for eight hours in Valdosta on May 10, but drove overnight to Orlando. Again, Jackson reported that on the return trip on May 14, Mr. Nelson drove straight back to Huntsville, Alabama, and did not stop for an 8 hour period.

In exhibits 9 and 10, driver James Carroll admitted in an oral interview with FHWA investigator LeMaster that he falsified his records of duty status documenting his trip from Cedartown, Georgia, to Washington, DC, on June 8, 1990, and the return trip to Cedartown on June 11 and 12. Carroll's June 8 logs show that he was "off duty" between 5 p.m. and 3 a.m. in South Hill, Virginia, but Carroll admitted to LeMaster that he drove straight through from Cedartown to Washington, DC. Similarly, Carroll's logs for June 11 and 12 show an 8 hour "off duty" period at the South Carolina State line, but Carroll confessed that he did not take this break on the return trip, but that he drove directly to Cedartown, Georgia.

Finally, Exhibit 11 reveals that Mr. Nelson made false entries on his June 15, 1990, record of duty status. On that date, he was transporting a Girl Scout troop from Washington, DC to Carrollton, Georgia. Nelson's logs show that he departed Washington, DC, at 6 p.m. on June 14, was "off duty" for 8 hours at a roadside rest area from 5 a.m. to 1 p.m., and then arrived in Carrollton at 5 p.m. on June 15. But Ms. Susan Baskin, troop leader and a passenger on the bus trip, stated that the bus drove directly to Carrollton with only short break periods, arriving at 9 a.m. on June 15.

In spite of claims that it could and would produce affidavits and lodging receipts to establish that its drivers' logs were correct, Kelton has failed to produce any evidence supporting its assertions, failed to reply to the motion for final order, and failed to rebut the evidence of these violations. Although the Regional Director's evidentiary burden on a motion for final order is no less stringent when the motor carrier denies the allegations but provides no evidence, Kelton's failure to fully participate in this proceeding is significant because it means Kelton has failed to rebut the Regional Director's *prima facie* case as to counts 1, 2, and 5–11.

The Regional Director assessed a total penalty of $4,400, $400 per violation. Because I have deferred my decision on two of the eleven counts, the assessed penalty amount for the remaining nine counts is $3,600. Taking into account the factors listed in 49 U.S.C. 521(b)(2)(C) for determination of the penalty amount, I find that this amount is fully supported by the record, and is calculated to induce further compliance with the FMCSRs. These falsified records of duty status concealed the much more serious conduct of Kelton, its dangerous practice of sending single drivers on long, non-stop trips. Such actions are a serious threat to passenger safety and the traveling public. The fact that the passengers endangered by these trips were children reinforces the need for strict adherence to the hours-of-service regulations. The potential for disaster presented by fatigued drivers in this situation is great, and Kelton's actions cannot be tolerated.

It Is Hereby Ordered, That Kelton Tours' request for a hearing is denied as to counts 1, 2, and 5–11, the Regional Director's request for a final order is granted as to counts 1, 2, and 5–11, and Kelton Tours is directed to pay the sum of $3,600 to the Regional Director, Region 4, within 30 days of this order for having required or permitted its drivers to make false entries on their records of duty status, in violation of 49 CFR. § 395.8(e). The Regional Director and Kelton Tours shall submit pleadings and supporting evidence within 30 days of the date of this order, addressing the issues identified in this Order with regard to counts 3 and 4 of the notice of claim. Submissions shall be served in accordance with 49 CFR 386.31.

Dated: May 13, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Charles Meadows d/b/a Meadows Auto Sales

Background

This matter comes before me upon a motion by the Regional Director, Region 3, for a final order finding the facts to be as alleged in the April 15, 1991, notice of claim, and imposing a penalty of $2,000. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier and Hazardous Materials Proceedings, 49 CFR part 386.

After a March 21, 1991, compliance review of Meadows Auto Sales (Meadows) revealed numerous violations of the Federal Motor Carrier Safety Regulations, a notice of claim was issued, charging Meadows with 1 violation of 49 CFR 391.23(c), failing to maintain in its driver qualification file the responses to inquiries into its driver's driving record; 1 violation of 49 CFR 391.25, failing to maintain a written notation of annual review of its driver's driving record; 1 violation of 49 CFR 391.27(d), failing to maintain the list or certificate of its driver's convictions for violations of motor vehicle traffic laws; 1 violation of 49 CFR 391.31(g), failing to maintain the road test rating form and road test certificate of its driver; and 1 violation of 49 CFR 391.35(h), failing to maintain its driver's written exam certificate, the questions asked on the exam, and the driver's answers to those questions. In addition, the notice of claim cited Meadows for 5 violations of 49 CFR 395.3(a)(1), requiring or permitting a driver to drive more than 10 hours following 8 consecutive hours off duty.

Meadows replied to the notice of claim, contested each violation charged, but did not request a hearing. Instead, the carrier requested that all charges against it be dismissed. Meadows claimed that because it had only one driver, the carrier was able to keep an accurate mental record of his qualifications and driving record, and therefore met the goals of the driver qualification file regulations. In addition, Meadows claimed that it was exempt from the hours of service regulations under 49 CFR 395.8(l).

The two parties attempted to resolve the dispute, and in June 1991, Mr. Meadows informed the FHWA federal program manager that he had sold the carrier's truck and released its only driver. But settlement negotiations were unsuccessful, and the Regional Director moved for a final order, asserting that Meadows did not request a hearing or otherwise raise any material factual issues in dispute. Meadows' only response to this motion was by letter to the Associate Administrator, insisting the carrier had repeatedly requested a hearing in all of its correspondence with the Regional Director.

Discussion

Hearing Request

If a motor carrier contests the charges against it and seeks a hearing, its hearing request must be made within 15 days after the claim letter is served. 49 CFR 386.14(b)(2). As the Regional Director stated in his notice of claim, failure to request a hearing within 15 days constitutes a waiver of any right to a hearing. *Id.*

In its reply to the notice of claim, Meadows did not request a hearing, but objected to all of the charges and penalties, asking that they be dismissed.

Upon review of all of the pleadings submitted, including Meadows' June 28, 1991, letter informing the FHWA federal program manager that it had sold its truck and dismissed its driver, and its August 14, 1991, request that all charges against it be dismissed, I find that Meadows did not request a hearing until its September 30, 1991, letter to the Associate Administrator, more than five months after the notice of claim was served. Therefore, because Meadows failed to make a timely hearing request, the carrier has waived any right to a hearing. *Id.* Moreover, none of Meadows' responses raise a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b).

Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. *Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Final Order). Therefore, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. All evidence must be viewed in a light most favorable to the non-moving party, Meadows in this case.

Meadows' reply to the notice of claims was ambiguous, but since all inferences must be drawn in its favor, Meadows' response must be viewed as a denial of the violations. *American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, at 4, (FHWA March 10, 1992) (Order). Because Meadows has in effect denied the allegations in the notice of claim, yet the Regional Director seeks a final order, the Regional Director's pleadings must be accompanied by evidence sufficient to establish a *prima facie* case of the violations. Meadows bears the burden to rebut a *prima facie* case, and mere assertions, unsupported by evidence, cannot defeat an otherwise justified motion for final order.

The Regional Director has met his burden of clearly establishing the essential elements of his claim, and Meadows' reply is insufficient to rebut this *prima facie* case.

First, the record before me supports the allegations that Meadows failed to maintain complete driver qualification files for its driver. A signed statement by Meadows owner Charles S. Meadows as representing "a true and accurate accounting of the driver qualification files" of the carrier reveals that its driver's file did not contain a written inquiry into the driver's driving record, a notation of annual review of the driver's driving record, the driver's road test rating form and road test certificate, the driver's written exam certificate, and the questions and answers to the exam. Yet exhibits 1–5 reveal that on the five occasions cited in the notice of claim, Meadows permitted its driver to operate in interstate commerce.

Meadows' argument that it was able to monitor its driver's driving record and qualifications without written documents is an attempt to justify its failure to maintain the required driver qualification documents, and it does not rebut Mr. Meadows' own admission that the carrier's driver qualification file was incomplete.

Second, the Regional Director has met his burden of proving that Meadows required or permitted its driver to drive more than 10 hours following at least 8 consecutive hours off duty. Exhibit 6, the record of duty status for driver Kenneth Wykle for October 31, 1990, reveals that Mr. Wykle drove 12 hours following at least 8 hours off duty. Similarly, exhibit 7, Mr. Wykle's

November 8, 1990, record of duty status, shows that he drove 13 hours following 8 consecutive hours off duty. Exhibit 8 includes Mr. Wykle's November 30, 1990, logs, and reveals that he drove 12 hours after at least 8 hours off duty on that date. Again, exhibit 9, Mr. Wykle's record of duty status for January 28, 1991, reveals that Mr. Wykle drove in excess of the hours of service regulations on that date, driving 12 hours after at least 8 consecutive hours off duty. Finally, exhibit 10 includes Mr. Wykle's March 6, 1991, record of duty status, and shows that he drove 12 hours following at least 8 hours off duty.

In response to the excess hours charges, Meadows did not deny that its driver drove in excess of 10 hours following 8 hours off duty, but claimed it was exempt from the hours of service regulations under 49 CFR 395.8(1), the 100 air-mile radius driver exemption. The carrier asserted that it complied with the provisions of the exemption because its driver returned to his work reporting location within 12 hours after reporting to work.

I find that 49 CFR 395.8(1) does not apply in this case to exempt Meadows from the hours of service limitations. This section relieves motor carriers from the duty to require drivers to submit records of duty status, and it does not apply to hours of service limitations themselves. In fact, the exemption expressly requires compliance with the 10-hour rule, stating, "A driver is exempt from the requirements of this section if * * * (iv) the driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty." In addition, I find that Meadows' driver did not return to his work location within 12 hours on the 5 occasions cited in the notice of claim, as claimed by the motor carrier. Mr. Wykle's records of duty status for these 5 dates indicate that he did not return to Meadows' office in Rupert, West Virginia, until at least 13 hours after he had departed.

Penalty Determination

In the notice of claim, the Regional Director assessed a total penalty of $4,000, $300 for each citation for missing driver qualification documents, and $500 for each hours-of-service violation. The Regional Director reduced the total penalty amount requested in his motion for final order to $2,000, "due to the fact that Meadows Auto Sales is no longer operating in interstate commerce, and due to the small size of the company and its financial condition." Motion for Final Order at 2.

Although Meadows argues that its actions of selling its truck and dismissing its driver warrant dismissal of the charges, I find that this conduct, which can be considered "corrective action," mitigates the need for a high penalty to induce compliance with the regulations, but it does not excuse Meadows' earlier noncompliance. Additionally, I find that Meadows' violations of 49 CFR 395.3(a)(1) constitute a serious pattern of safety violations. A serious pattern "connotes violations that are both repeated and detectable by reasonable diligence." *Used Equipment Sales, Inc.*, No. R1–91–03, at 57, (FHWA May 6, 1992) (Decision of Administrative Law Judge). The five hours-of-service violations occurred over a period of four months, and could have been detected by Meadows upon review of its sole driver's records of duty status.

Penalty assessments are to be calculated to "induce further compliance" with the regulations. 49 U.S.C. 521(b)(2)(c). In this case, Meadows asserts, and the Regional Director accepts, that it ceased its commercial motor vehicle operations. Thus, the potential for future violations is non-existent. However, I find that I cannot ignore Meadows' previous violations, and I am aware that it could resume commercial motor vehicle operations at any time. Accordingly, I find that a penalty of $50 per violation is reasonable.

It is Hereby Ordered, That Meadows Auto Sales' request for a hearing is denied, the Regional Director's request for a final order is granted, and Meadows Auto Sales is directed to pay the sum of $500 to the Regional Director, Region 3, within 30 days of this order.

Dated May 13, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Fikse & Company

This matter comes before me upon a motion by the Regional Director, Region 9, for a final order. The Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR Part 386, govern this proceeding.

Background

The Respondent, Fikse & Company (Fikse), operates as a for-hire carrier in interstate commerce. An August 17, 1990, safety review revealed that Fikse had transported a listed hazardous material (paint) without having in effect the level of financial responsibility required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Federal Highway Administration's (FHWA) regional office advised Fikse to increase its insurance coverage from $750,000 to $1,000,000 to meet the regulatory minimum, but a compliance review conducted on November 28, 1990, showed that the violations had not been cured. The Regional Director served the carrier with a notice of claim on March 1, 1991, charging the carrier with 10 counts of violating 49 CFR 387.7(a), operating a motor vehicle without having in effect the required minimum level of financial responsibility. The Regional Director assessed a penalty of $1,500 for each violation, for a total fine of $15,000.

Discussion

1. Fikse's Reply to the Notice of Claim

Fikse replied to the notice of claim on March 20, 1991. The carrier admitted to all of the charged violations, but offered three arguments in "mitigation of [the] violations." First, the carrier claimed that all hazardous materials were transported for a single shipper, and "Fikse had not otherwise engaged in the transportation of hazardous substances for which . . . insurance in excess of $750,000 [was] required". Second, Fikse contended that "the shipper maintained an umbrella liability policy with limits of $5,000,000" which Fikse believed satisfied the FMCSRs. Finally, the carrier submitted that it was in Chapter 11 bankruptcy and consequently could not afford to pay a large penalty. Fikse & Co.'s Reply to Notice of Claim at over 1–2.

Fikse did not request an administrative hearing, but reserved its right to do so in the future. In its reply, though, Fikse gave notice that it intended to "submit evidence without an oral hearing" in accordance with § 386.14(b)(2) and (c). *Id.* at 1. The Rules of Practice require that a party giving such notice serve "all evidence * * * in written form no later than the 40th day following service of the [notice of claim]." 49 CFR 386.14(c). The record does not indicate that Fikse submitted any documentary or other evidence before April 15, 1991, the last day of the regulatory deadline, or at any time after that date.

2. The Regional Director's Motion for Final Order

The Regional Director submitted a motion for final order on October 4, 1991. A motion for final order is in the nature of a motion for summary judgment. Consequently, the moving party bears the burden of clearly establishing that no genuine issue of material fact exists and that it is entitled

to a judgment as a matter of law. See *In the Matter of Laughlin Transport, Inc.*, No. R3–91–104 (FHWA March 10, 1992) (Final Order); *In the Matter of Forsyth Milk Hauling Co., Inc.*, No R3–90–037 (FHWA Dec. 5, 1991) (Order); see also 6 Moore's Federal Practice, 2d ed., at ¶56.15 [7]–[8] (1988). In this case, Fikse does not deny the allegations in the notice of claim. The Regional Director, on the other hand, supports his motion with a great deal of documentary evidence, including copies of the safety and compliance reviews, shipping papers documenting the trips allegedly made in violation of the financial responsibility regulations, copies of Fikse's liability insurance endorsement forms (showing the carrier's inadequate coverage), and the affidavits of several FHWA employees personally involved in the investigation which led to the charges brought against Fikse.

Fikse responded to the motion on October 25, 1991, and requested leave to rebut the Regional Director's arguments. The Regional Director asks that I reject this response as untimely, but although it was submitted after the deadline imposed by §§ 386.35(c) and 386.32(c)(3), I do not believe any prejudice will result if I consider it at this time.

In its response, Fikse claimed that "evidence was in fact submitted in the letter of counsel dated March 20, 1991." Fikse's Request for Leave to Respond at 2. This "evidence," said Fikse, was the set of mitigating arguments which the carrier made in its original reply to the notice of claim. The carrier then restated those arguments, and offered to pay a civil forfeiture amount of $5,000 over a period of five months. *Id.* at 4. The response also contained an insurance endorsement form purporting to show that Fikse had obtained the $1,000,000 in liability insurance required by the regulations. *Id.* at Exhibit 3.

Fikse's arguments in mitigation do not rebut the Regional Director's allegations, for as I have noted before, "[m]itigation alone is not a material factual issue in dispute * * *." *In the Matter of Tonawanda Tank Transport Service, Inc.*, 55 FR 43,279 (FHWA 1990) (Final Order). Neither Fikse's reply to the notice of claim nor its response to the motion for final order refute any of the evidence in the Regional Director's motion. I find that this evidence establishes a *prima facie* case against Fikse, and that the Regional Director has met his burden of clearly establishing the essential elements of his claim. Therefore, I grant the Regional Director's motion for final order.

3. Fikse's Arguments for Mitigation of the Penalty Amount

Fikse's arguments "in mitigation" of the violations charged against it fail to persuade me to reduce the amount of the penalty assessed by the Regional Director. Compliance with the FMCSRs is not contingent upon the number of customers a motor carrier has, and the financial responsibility regulations clearly state that the *motor carrier* must obtain and have in effect the minimum level of liability insurance, not the shipper. 49 CFR 387.7(a).

Fikse's post-review compliance with the financial responsibility regulations is similarly unavailing, for Fikse should have been in compliance with the regulations *before* the initiation of this action. See *In the Matter of Stanford & Inge*, 55 FR 43,296 (F.H.W.A. 1990) (Order Upon Reconsideration). The carrier had several contacts with the agency before the notice of claim was issued, and was put on notice of the deficiencies in its insurance coverage. No mitigation of the penalty is appropriate under these circumstances.

As for Fikse's argument that Chapter 11 bankruptcy reorganization prevents it from paying the full $15,000 penalty assessed by the Regional Director, the record before me indicates that the reorganization plan was put into effect in 1987, and that the carrier has failed to produce any documentation to show that it cannot meet its obligations so long after filing for protection from its creditors. In any case, civil forfeiture amounts are not dischargeable in bankruptcy. 11 U.S.C. 523(a)(7). Finally, I note that the $1,500 assessed by the Regional Director for each violation is considerably less than the $10,000 maximum penalty for violations of the financial responsibility regulations. 49 CFR 387.41.

Conclusion

The Regional Director has provided evidence clearly establishing the essential elements of his claim. Fikse, on the other hand, has failed to demonstrate any material factual issues in dispute, and also has failed to provide any reason for me to reduce the penalty charged by the Regional Director. Therefore, I hereby grant the Regional Director's motion for final order in the full amount of the claim, $15,000.

It Is Hereby Ordered That the Regional Director's request for a final order is granted. Fikse & Company is directed to pay the full amount of the claim, $15,000, to the Regional Director within 30 days of the date of this Order.

Dated: May 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Humlhanz Trucking, Inc.

This matter comes before me upon a motion by the Regional Director, Region 4, for a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

The Respondent, Humlhanz Trucking, Inc. (Humlhanz), is an authorized for-hire carrier operating in interstate commerce. See 49 CFR 390.5. According to a compliance review conducted on January 31, 1991, Humlhanz employs 14 drivers to operate 14 truck tractors, 14 trailers, and one truck. The same compliance review indicates that the carrier has annual gross revenues of $3,500,000. Regional Director's Motion for Final Order (Appendix "C").

The compliance review revealed numerous violations of the Federal Motor Carrier Safety Regulations, and the Regional Director served Humlhanz with a notice of claim letter on March 14, 1991. The notice of claim charged Humlhanz with 20 violations of 49 CFR 395.8(e), requiring or permitting drivers to make false entries upon a driver's record of duty status. The Regional Director assessed a penalty of $300 for each violation, for a total penalty of $6,000.

Humlhanz replied to the notice of claim on March 28, 1991. The carrier denied the charges and requested a hearing, but argued that the "allegations [in the notice of claim] are insufficient to permit a concise statement of facts constituting each defense * * *." The reply concluded with a demand that the Regional Director provide Humlhanz with "strict proof" of all the allegations in the notice of claim. Humlhanz's Reply (March 28, 1991). The Regional Counsel sent Humlhanz copies of all of the exhibits on June 17, 1991. Letter from Regional Counsel to Attorney for Humlhanz (June 17, 1991) (discussing exhibits and settlement negotiations). The record before me contains no indication that Humlhanz made any response to these exhibits.

The parties engaged in settlement negotiations for a number of weeks, but these negotiations were ultimately unsuccessful. The Regional Director then submitted a Motion for Final Order on September 13, 1991. Humlhanz did not respond to the Regional Director's motion.

Discussion

1. Humlhanz's Request for an Administrative Hearing

Under the Rules of Practice, before a respondent may be granted a hearing it must demonstrate the existence of a material factual issue in dispute. 49 CFR 386.14(b)(2) and 386.16(b). As I have stated before, "[i]f the Regional Director opposes the hearing request, as in this case, the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations." *In the Matter of American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, at 2, (FHWA March 11, 1992) (Final Order); compare *In the Matter of Sined Leasing, Inc.*, No. 91–122 (FHWA March 12, 1992) (Order Appointing Administrative Law Judge).

Based on the record before me, I find that Humlhanz's denials do not establish the existence of a material factual dispute, and I deny the carrier's request for an administrative hearing. In its reply, Humlhanz claimed it could not frame a detailed reply to the notice of claim until it received "strict proof" of the allegations against it. But the carrier failed to submit such a reply even after the Regional Counsel supplied it with the requested information. The record before me reflects only the general denial found in Humlhanz's reply, and this cannot overcome the Regional Director's opposition to a hearing because it fails to carry the carrier's burden to show the existence of a material factual dispute. *American Pacific* at 3.

2. The Regional Director's Motion for Final Order

A motion for final order is in the nature of a motion for summary judgment. Therefore, the moving party bears the burden of clearly establishing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. *In the Matter of Laughlin Transport, Inc.*, No. R3–91–104 (FHWA March 10, 1992) (Final Order); *In the Matter of Forsyth Milk Hauling Co., Inc.*, No. R3–90–037 (FHWA Dec. 5, 1991) (Order); *see also* 6 Moore's Federal Practice, 2d ed., at ¶ 56.15 [7]–[8] (1988). When a respondent denies the allegations in the notice of claim but the Regional Director still seeks to avoid a hearing and obtain a final order on motion, that motion should be accompanied by affidavits or evidence sufficient to establish at least a *prima facie* case. Only in this way can I fulfill my responsibility to afford a respondent a fair review of the case against it before issuing a final agency order, which, if necessary, can be enforced in a United States District Court. 49 U.S.C. 521(b)(4); 49 CFR 386.65; *Laughlin Transport* at 2–3.

The Regional Director attached 29 exhibits supporting the violations alleged in the notice of claim. The 20 log-falsification charges are bolstered by copies of records of duty status, in combination with copies of other documents—typically signed filling station or toll receipts—which substantiate the charges. For example, the exhibit for count 10 contains a copy of driver Daniel Margot's record of duty status for October 10–11, 1990, which shows him off-duty or in the sleeper berth of his truck from 9 p.m. on October 10 until 6 a.m. on October 11. Although the truck supposedly was in Derby, Connecticut, the evidence presented by the Regional Director also includes a copy of a receipt for diesel fuel signed by Mr. Margot in Bordentown, New Jersey, at 10:47 p.m. on the same night, along with copies of toll receipts placing Mr. Margot on the New Jersey Turnpike at 11:26 p.m. on October 10, and New Rochelle, New York, at 2:02 a.m. on October 11. Regional Director's Motion for Final Order (Exhibit 10). Humlhanz has failed to rebut any of the evidence produced by the Regional Director.

Based on the record before me, I find that the Regional Director has established a *prima facie* case against Humlhanz, and that he has met his burden of clearly establishing the essential elements of his claim. In the absence of any rebuttal from Humlhanz, I grant the Regional Director's motion for final order.

3. Penalty-Determination

The Regional Director assessed a penalty of $300 for each of the 20 violations charged in this notice of claim, for a total penalty of $6,000. Although Humlhanz's reply to the notice of claim did not include a request for mitigation of this fine, on August 5, 1991, Humlhanz's attorney sent the Regional Counsel a letter asserting that Humlhanz could not pay the full amount of the fine and suggesting a reduction of the penalty amount to $2,000. The Regional Counsel wrote back to Humlhanz's attorney on August 12, 1991, asking for both a "detailed description of corrective actions taken by [] Humlhanz * * *," and the carrier's financial statements for the past three years, "in order to take [Humlhanz's] current financial hardship into consideration." Copies of both letters were attached to the Regional Director's motion for final order.

There is nothing in the record to indicate that Humlhanz ever responded to the Regional Counsel's request. In fact, the only evidence giving any indication of Humlhanz's financial status is the January 1991 compliance review report. Signed by company president Randy Humlhanz, this report states that the carrier had gross revenues of $3,500,000 in fiscal year 1989–90. *Id.* (Appendix "C").

Humlhanz's bald assertions of financial hardship, without more, cannot stand. I find no reason to reduce the penalty amount. The carrier has not provided any concrete information justifying a reduction in the penalty amount, even though it was requested to do so by the Regional Counsel. Furthermore, I note that the penalty assessed in this case, $300 per violation, is considerably less than the $500 allowed by the applicable statute. 49 U.S.C. 521(b). Therefore, I grant the Regional Director's motion in the full amount of the claim, $6,000.

It is hereby ordered, That the Regional Director's request for a final order is granted. Humlhanz Trucking, Inc., is directed to pay the amount of the claim, $6,000, to the Regional Director within 30 days of the date of this Order.

Dated: May 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Beier Enterprises d/b/a Oroweat Beier Enterprises

[OMCS No.: LA–90–042–204]

Background

This matter comes before me upon a motion by the Regional Director, Region 4, opposing Oroweat Beier Enterprises' (Oroweat) request for a hearing and seeking a final order. This civil forfeiture proceeding is governed by the Federal Highway Administrations' Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

An April 18, 1990, safety review of Oroweat identified several deficiencies in the carrier's efforts to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). In the review report, the FHWA safety investigator recommended, in part, that Oroweat "monitor records of duty status to ensure against 10, 15, [and] 70 hours of service violations * * *." Safety Review Report at 4. In its April 24, 1990, reply to the safety review, Oroweat stated, "We will monitor records of duty status to insure against 10, 15, [and] 70 hours of service violations."

On November 8, 1990, a safety investigator revisited Oroweat and discovered several hours of service violations, and a notice of claim was issued against the carrier on December 17, 1990. The Regional Director charged Oroweat with 5 violations of 49 CFR 395.3(a)(1), requiring or permitting a driver to drive more than 10 hours following 8 hours off duty, and 5 violations of 49 CFR 395.3(a)(2), requiring or permitting a driver to drive after having been on duty for 15 hours following 8 hours off duty.

Oroweat replied to the notice of claim on January 7, 1991. The carrier requested a hearing, stating that it did not require or permit its driver to violate the hours of service regulations. Oroweat supplemented its reply by letter dated February 13, 1991, asserting that its driver drove in excess of the hours of service regulations without encouragement or permission from the carrier. Oroweat claimed that once these violations were discovered, the driver was told that he must cease this conduct or risk termination.

On August 19, 1991, the Regional Director filed a motion opposing Oroweat's hearing request and seeking a final order. In opposing the hearing request, the Regional Director asserted that Oroweat did require or permit the hours-of-service violations because the carrier had in its possession the information and means to detect the violations, but that it failed to do so.

Oroweat replied to the motion for final order on November 8, 1991, again denying that the carrier itself committed any violation, requesting a hearing, and asserting as a material factual issue in dispute whether by its conduct it required or permitted the hours of service violations to occur. Oroweat stated that during the two month period in which the violations occurred, May 16 to July 19, 1990, both its president and his secretary were unable to monitor driver logs because they were out of the office on vacation and sick leave. During that time, one of Oroweat's drivers interpreted the 10 hour rule to mean that he could drive 10 hours per day, with the day starting and ending at midnight. In late July 1990, the logs for the past two months were reviewed. The president then explained the hours of service rules to the driver and later fired the driver for his inability to follow these and other regulations.

The Regional Director amended his motion for a final order on November 29, 1991, stating that Oroweat's reply did not state any material factual issue in dispute warranting a hearing. He asserted that Oroweat did not deny the occurrence of the violations, but only claimed that it should not be liable for the violations because it dismissed the driver at fault.

Discussion

Hearing Request

Under 49 CFR 386.14(b)(2), a hearing request must list all material facts believed to be in dispute. If the Associate Administrator finds that there is a material factual dispute, the hearing request is granted. 49 CFR 386.16(b). In this case, Oroweat has denied responsibility for its driver's hours-of-service violations, asserting that it did not require or permit this conduct.

Oroweat has admitted that its driver operated in excess of the 10 and 15 hours-of-service rules during the two month period in which it did not monitor or verify driver records of duty status. Oroweat's attempt to disclaim liability for its driver's actions does not raise a material issue of fact warranting a hearing, because Oroweat is directly liable for its own failure to regularly review driver logs for such excess hours. In sum, I find that Oroweat has failed to competently identify any material factual in dispute in this case and its hearing request is therefore denied.

Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. *E.g., Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Oroweat.

The record before me fully supports the allegations made by the Regional Director in the notice of claim. In addition to Oroweat's admission that its driver was able to exceed the hours-of-service regulations while the carrier neglected to monitor driver records of duty status, the logs themselves clearly reveal the excess hours violations. If Oroweat had reviewed these logs, as it claimed to be doing in its letter to the FHWA only weeks before the violations began, then Oroweat would have discovered the violations. For example, Oroweat driver Richard Knight's records of duty status reveal that he drove from 9:00 a.m. on June 20, 1990, until 8 p.m. on June 21, 1990, without taking the requisite 8 hour break, driving a total of 18.5 hours following his last 8 hours off duty. In failing to review the records of duty status, Oroweat permitted the excess hours violations to occur and continue for two months.

Therefore, I find that the Regional Director has met his evidentiary burden in this case, while Oroweat has presented no evidence in rebuttal. Based on Orweat's admission that its May through July 1990 logs were not reviewed until late July, and the records of duty status showing excess hours of service, I find that Oroweat committed the violations with which it is charged.

Penalty Determination

In the notice of claim, the Regional Director assessed a penalty of $450 per violation, for a total of $4,500. The civil penalty provisions provide for a $1,000 maximum penalty per non-recordkeeping offense upon a determination that the carrier's actions constitute a serious pattern of safety violations. 49 U.S.C. 521(b)(2)(A).

I find that the 10 counts in this case constitute a serious pattern of safety violations, and that a penalty of $450 per count is reasonably calculated to induce compliance with the hours-of-service regulations. In spite of Oroweat's April 1990 assertions that it would make efforts to comply with the 10 and 15 hour rules, Oroweat later admitted that it failed to review its drivers logs for over a two month period beginning just weeks after its promised compliance. A later FHWA inspection documented several hours of service violations that were committed during this period, revealing that Oroweat had done little to cure its noncompliance. "If violations are continuing, then a clear pattern case will have been established." *Tonawanda Tank Transp. Serv., Inc.*, 55 FR 43279 (FHWA 1990) (Final Order).

It is Hereby Ordered, That Oroweat Beier Enterprises' request for a hearing is denied, the Regional Director's motion for final order is granted, and Oroweat Beier Enterprises is directed to pay the sum of $4,500 to the Regional Director, Region 6, within 30 days of this order.

Dated: May 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Iron Horse Equipment Corporation

Background

This matter comes before me upon a motion of the Regional Director, Region 9, opposing Iron Horse Equipment Corporation's (Iron Horse) request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and

Hazardous Materials Proceedings, 49 CFR part 386.

In his May 6, 1991, notice of claim, the Regional Director charged Iron Horse with 14 violations of 49 CFR 395.8(e) for requiring or permitting its drivers to make false entries on records of duty status, and assessed a total penalty of $7,000.

Iron Horse replied to the notice of claim on May 20, 1991, stating that the penalty was too high, and asserting that the Regional Director's assessment of the maximum penalty for the motor carrier's first fine was unreasonable. Iron Horse did not deny the charges or request a hearing. On May 22, 1991, Iron Horse filed a written request for a hearing, but also admitted to all 14 violations.

The Regional Director responded to Iron Horse's reply on July 22, 1991. He asserted that Iron Horse's admission to the violations left no material facts in dispute. Therefore, the Regional Director argued, Iron Horse's hearing request should be denied and a final order granted. In addition, the Regional Director included several exhibits documenting the charges against the carrier. Iron Horse did not respond to this motion.

Discussion

Because Iron Horse admitted to all 14 violations, there is no material factual issue in dispute warranting a hearing under 49 CFR 386.14(b). Iron Horse's May 22, 1991, supplemental reply requests that the penalty be reduced, but an objection to the amount of a proposed fine does not constitute a material factual issue in dispute. *Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge). Therefore, Iron Horse's hearing request is denied.

In addition, evidence of the violations is substantial. Included in the Regional Director's exhibits 1, 3, 4, 7, 10, and 13 are records of duty status showing several Iron Horse drivers as "off duty" on certain days, while freight bills and pickup/delivery tickets reveal that the drivers were in fact on duty and driving on those same days. Similarly, exhibits 2, 5, 6, 8, 9, 11, 12, and 14 contain records of duty status which do not coincide with trip documents for the same dates.[1] Based on Iron Horse's written admission, and reinforced by the evidence presented by the Regional Director, I find that Iron Horse committed the 14 violations with which it is charged.

The Regional Director assessed a total penalty of $7,000, $500 for each violation. This is the maximum amount permitted for each recordkeeping violation under 49 U.S.C. § 521(b)(2)(A). Although this is the first enforcement action brought against Iron Horse, the carrier has been cited for log falsification offenses in the past. Iron Horse was the subject of two compliance reviews in 1989 which documented that several of the carrier's driver records of duty status contained false entries. This action was brought only after the third compliance review within a two year period revealed that 85 out of 400 driver's logs were falsified. Iron Horse cannot simply ignore applicable safety regulations or refuse to cure violations repeatedly identified in three compliance reviews. Therefore, I find that the $7,000 penalty is necessary to induce compliance with the regulations.

It is Hereby Ordered That Iron Horse Equipment Corporation's request for a hearing is denied, the Regional Director's motion for final order is granted, and Iron Horse Equipment Corporation is directed to pay the sum of $7,000 to the Regional Director, Region 9, within 30 days of this order for requiring or permitting its drivers to make false entries on records of duty status, in violation of 49 CFR 395.8(e).

Dated: May 12, 1992.

Richard P. Landis,

Association Administrator for Motor Carriers.

Aaron McGruder Trucking, Inc.; Final Order

This matter comes before me upon a motion by the Regional Director, Region 6, for a final order. The Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 C.F.R. Part 386, govern this proceeding.

Background

The Respondent, Aaron McGruder Trucking, Inc. (McGruder), operates in interstate commerce as both an authorized for-hire carrier and an exempt for-hire carrier. See 49 CFR 390.5. After a January 10, 1991, compliance review revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), the Regional Director served McGruder with a notice of claim letter on May 21, 1991. The notice of claim charged McGruder with 13 violations of 49 CFR 395.3(b), requiring or permitting a driver to drive after having been on duty 70 hours in eight consecutive days, and 34 violations of 49 CFR 395.8(e), requiring or permitting drivers to make false entries upon a driver's record of duty status. The Regional Director assessed a penalty of $765 for each hours-of-service violation and $500 for each record-falsification violation, for a total penalty of $26,945.

McGruder replied to the notice of claim on June 6, 1991. The carrier denied the charges and requested a hearing, claiming that it neither "require[d] or knowingly permit[ted] its drivers to exceed" the 70 hours rule, nor "require[d] or knowingly permit[ted] its drivers" to falsify their records of duty status.

The Regional Director submitted a Motion for Final Order on August 23, 1991. In his motion, the Regional Director dropped one of the record-falsification charges for lack of evidence and requested a final order for $26,445 on the 46 remaining counts. The record before me contains no indication that McGruder has responded to the Regional Director's motion.

Discussion

1. McGruder's Request for an Administrative Hearing

In order to be granted a hearing, the Rules of Practice require a respondent to demonstrate the existence of a material factual issue in dispute. 49 CFR 386.14(b)(2) and 386.16(b). Based on the record before me, I find that McGruder's denials do not demonstrate such a dispute, and therefore I deny the carrier's request for an administrative hearing. As I have stated before, "[i]f the Regional Director opposes the hearing request, as in this case, the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations." *In the Matter of American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, at 2, (FHWA March 11, 1992) (Final Order); *compare In the matter of Sined Leasing, Inc.*, No. 91–122 (FHWA March 12, 1992) (Order Appointing Administrative Law Judge). In short, McGruder's general denial is not sufficient to overcome the Regional Director's opposition to a hearing because it fails to carry the carrier's burden to show the existence of a factual dispute. *American Pacific* at 3.

2. The Regional Director's Motion for Final Order

A motion for final order is in the nature of a motion for summary judgment. Therefore, the moving party

[1] For example, driver William McDougal recorded on his record of duty status for January 2, 1991, that he was operating between Bakersfield and Antioch, CA. But a pick-up/delivery ticket and a bill of lading, signed by McDougal as the loading and unloading driver, revealed that he picked up a load in Nelson, AZ, and delivered it to Brawley, CA, on this same date. Exhibit 5.

bears the burden of clearly establishing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. *In the Matter of Laughlin Transport, Inc.*, No. R3–91–104 (FHWA March 10, 1992) (Final Order); *In the Matter of Forsyth Milk Hauling Co., Inc.*, No. R3–90–037 (FHWA Dec. 5, 1991) (Order); *see also* 6 Moore's Federal Practice, 2d ed., at ¶ 56.15 [7]–[8] (1988). In a case such as this one, where a respondent denies the allegations in the notice of claim but the Regional Director still seeks to avoid a hearing and obtain a final order on motion, that motion should be accompanied by affidavits or evidence sufficient to establish at least a *prima facie* case. Only in this way can I fulfill my responsibility to afford a respondent a fair review of the case against it before issuing a final agency order, which, if necessary, can be enforced in a United States District Court. 49 U.S.C. 521(b)(4); 49 CFR 386.65; *Laughlin Transport* at 2–3.

a. *The regional director's evidence.* Attached to the Regional Director's motion are more than 50 exhibits supporting each of the 46 violations for which a final order is sought. All 13 counts of hours-of-service violations are supported by copies of drivers' signed records of duty status documenting the charges. For example, the copy of driver Manuel A. Valdez's records of duty status substantiating hours-of-service count 11 reveals that he drove a total of 97.5 hours between November 19, 1990, and November 26, 1990, or 27.5 hours beyond the regulatory limit. Regional Director's Motion (Exhibit 14). The 33 log-falsification charges also are bolstered by copies of records of duty status, in combination with copies of other documents—typically signed filling station receipts—which substantiate the charges in the notice of claim. For instance, the exhibit for log-falsification count 12 contains driver William P. Thompson's record of duty status for August 29, 1990, which shows him driving from Willsboro, New York, to Buffalo, New York. The evidence presented by the Regional Director also includes, however, a copy of a receipt for diesel fuel signed by Mr. Thompson in Oklahoma City, Oklahoma, on the same date. *Id.* (Exhibit 27). McGruder has not rebutted any of the evidence produced by the Regional Director.

b. *McGruder's knowledge of the violations.* McGruder denied in its reply that it "knowingly permitted" the occurrence of either the hours-of-service or log-falsification violations. Liability under the FMCSRs does not depend upon a carrier "knowingly" violating the regulations. See 49 CFR 395.3(b) and 395.8(e). By failing to verify records of duty status, for example by comparing the records with fuel receipts, the carrier has permitted the falsifications. *American Pacific Power* at 3. By the same token, a carrier also is liable if its drivers exceed the maximum number of driving hours allowed by § 395.3, for then the motor carrier has breached its duty to supervise the actions of its employees.

c. *Conclusion.* Based on the record before me, I find that the Regional Director has established a *prima facie* case against McGruder, and that he has met his burden of clearly establishing the essential elements of his claim. In the absence of any rebuttal from McGruder, I grant the Regional Director's motion for final order in the amount requested, $26,445.

It is Hereby Ordered That the Regional Director's request for a final order is granted. Aaron McGruder Trucking, Inc., is directed to pay the amount of the claim, $26,455, to the Regional Director within 30 days of the date of this Order.

Dated: May 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

American Diversified Construction, Inc.; Final Order

This matter comes before me upon a motion by the Regional Director, Region 4, for a final order. The Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386, govern this proceeding.

Background

The Respondent, American Diversified Construction, Inc. (American Diversified), is a private motor carrier engaged in interstate commerce. After a September 6, 1990, compliance review of American Diversified's operations revealed violations of the Federal Motor Carrier Safety Regulations, the Regional Director served American Diversified with a notice of claim letter dated October 17, 1990. The notice of claim charged American Diversified with five violations of 49 CFR 391.8(k), failure to preserve a driver's record of duty status for six months, and five violations of 49 CFR 391.51(a), failure to properly maintain driver qualification files. The Regional Director assessed a civil penalty of $300 for each violation, for a total penalty of $3000.

American Diversified made a timely reply to the notice of claim on October 23, 1990. The reply acknowledged receipt of the notice of claim and argued that the Federal Highway Administration's "local representative ha[d] over reacted [sic] * * * and * * * ma[de] a minor infraction into a major violation." American Diversified expressed its desire to begin negotiations with the regional office and reserved its right to request an administrative hearing.

American Diversified sent the regional office a second letter dated November 2, 1990, which denied "allegations #1 thru [sic] 6" and requested an administrative hearing. The Regional Director, responding to American Diversified's replies in his Motion for Final Order, points out that American Diversified's second reply confused the compliance review report with the notice of claim letter—an explanation which may reveal why American Diversified's denials of violations "#1 thru 6" do not correspond to the ten charges in the notice of claim.

Discussion

1. American Diversified's Request for an Administrative Hearing

The Rules of Practice require that respondents demonstrate at least one material factual issue in dispute before being granted a hearing. 49 CFR 386.14(b)(2) and 386.16(b). American Diversified's November 2, 1990, letter does contain a statement denying violations listed in the compliance review report, but it does not refer directly to the notice of claim. The Regional Director, in his motion for final order, argues that this incongruity renders American Diversified's replies unresponsive, and no hearing should be granted because the carrier "has failed to raise any factual issues as to these ten violations." Regional Director's Motion at 2.

Reviewing the record before me as a whole, I find that American Diversified's statements in its second letter amount to a denial of the claims against it. An examination of the compliance review report (a copy of the pertinent pages of which was attached to the Regional Director's motion) reveals that the document contained the substance of all of the changes made in the notice of claim, and that each report entry included at least one example which corresponded to one of the violations charged in the notice of claim. American Diversified's mistaken reference to the compliance review report is immaterial, since the second letter denied the same violations later charged in the notice of claim. Therefore, I conclude that the carrier's November 2, 1990, letter constitutes a

valid denial of the Regional Director's allegations.

I do not find, however, that these denials demonstrate material factual disputes requiring a hearing, and therefore I deny American Diversified's request for an administrative hearing. As I stated in a case similar to the one now before me, "[i]f the Regional Director opposes the hearing request, as in this case, the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations." *In the Matter of American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, at 2, (FHWA March 11, 1992) (Final Order); *compare In the Matter of Sined Leasing, Inc.*, No. 91–122 (FHWA March 12, 1992) Order Appointing Administrative Law Judge). In short, American Diversified's general denial is not sufficient to overcome the Regional Director's opposition to an administrative hearing because it fails to carry the carrier's burden to show the existence of a factual dispute. *American Pacific* at 3.

2. The Regional Director's Motion for Final Order

A motion for final order is in the nature of a motion for summary judgment. Consequently, the moving party bears the burden of clearly establishing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. See *In the Matter of Laughlin Transport, Inc.*, No. R3–91–104 (FHWA March 10, 1992) (Final Order); *In the Matter of Forsyth Milk Hauling Co., Inc.*, No. R3–90–037 (FHWA Dec. 5, 1991) (Order); *see also* 6 Moore's Federal Practice, 2d ed., at ¶ 56.15 [7]–[8] (1988). In a case like the one before me today, where a respondent denies the allegations in the notice of claim but the Regional Director still seeks to avoid a hearing and obtain a final order on motion, that motion should be accompanied by affidavits or evidence sufficient to establish at least a *prima facie* case. Only in this way can I fulfill my responsibility to afford a respondent a fair review of the case against it before issuing a final agency order, which, if necessary, can be enforced in a United States District Court. 49 U.S.C. § 521(b)(4); 49 CFR 386.65; *Laughlin Transport* at 2–3.

This dispute presents a problem that I have encountered before, most recently in the *American Pacific* case. In that case the respondent denied the allegations against it, but did not provide any evidence to support its position. Here, neither American Diversified's two replies to the notice of claim nor its response to the Regional Director's motion contain any support for the carrier's contentions that it did not commit the charged violations. Furthermore, and more important to my consideration of the instant motion, the Regional Director, like his counterpart in *American Pacific*, "did not carry his burden of proving that there is no genuine issue of material fact." *American Pacific* at 4.

In *American Pacific*, I held that "the Regional Director must succeed on the strength of his own evidence." *Id.* at 5. American Diversified's unsupported denials would not rebut a *prima facie* case of violations, but the Regional Director has failed to present a *prima facie* case. *Id.* The Regional Director attached seven "Exhibit Abstracts" to his motion, five of which correspond to the five charged violations of § 391.51(c) and purport to describe those items which were missing from American Diversified's driver qualification files. These "Abstracts" are printed on plain bond paper, are not attested, and do not have any other documents attached to them. The two remaining abstracts contain documents which tend to show American Diversified's knowledge of the motor carrier regulations, but do not correspond to specific charges in the notice of claim. Without more, I cannot hold that the Regional Director has met his burden of clearly establishing the essential elements of his claim, and therefore I must deny the motion for final order. *Id.*; see Fed. R.Civ.P. 56 (advisory committee notes).

If the Regional Director submits affidavits or other evidence tending to show that American Diversified committed the charged violations, I will reconsider his motion. American Diversified should note that if it fails either to respond to the Regional Director's renewed motion, or to produce any evidence rebutting the Regional Director's evidence, that failure may result in a final order for the Regional Director.

This ruling requiring the Regional Director to submit affidavits or evidence to the Associate Administrator should not be viewed as requiring a change in the practice of retaining evidence at the appropriate FHWA office. This ruling applies only to the type of factual situation presented by this case: a Regional Director seeks a final order from the Associate Administrator without a hearing and the respondent denies the alleged violations. In such a case, "the Regional Director's motion must be accompanied by sufficient evidence to support a *prima facie* case, which will shift the burden of production to rebut to the respondent." *Forsyth Milk* at 7. If the respondent fails to rebut the *prima facie* case, the Regional Director's motion will be granted. *Id.*

It is hereby ordered That American Diversified's request for a hearing is denied; the Regional Director's request for a final order is denied, with leave to renew this motion.

Dated: May 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Used Equipment Sales, Inc.;

Decision of Administrative Law Judge Robert I. Barton, Jr.

[FHWA DOCKET NO. R1–91–03] (Motor Carrier Safety)

Appearances

Sheila O'Sullivan, Esq., Federal Highway Administration, Leo O'Brien Federal Building, Room 719, Clinton Ave./N. Pearl Street, Albany, New York 12207; Eric Kuwana, Esq., Federal Highway Administration, U.S. Department of Transportation, HCC–20, room 4217, 400 Seventh Street, SW., Washington, DC 20590, for Complainant.

William E. Kenworthy, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N. Street, NW., Washington, DC 20036; Frank T. Weiner, Esq., 15 Court Square, Boston, Massachusetts 02108, for Respondent.

Pursuant to the Notice of Assignment of Proceeding herein, dated January 29, 1991, and the Notice of Claim in this matter dated November 21, 1990, this is the Administrative Law Judge's decision under Rule 386.61 of the Federal Highway Administration's rules of practice and procedure, 49 CFR 386.61.

The Notice of Claim in this matter charges Respondent, Used Equipment Sales, Inc., with the following violations: (1) Thirteen instances in which it used a disqualified driver, in violation of 49 CFR 391.15; (2) one instance in which it failed to report an accident, in violation of 49 CFR 394.9; (3) two instances in which it required or permitted a driver to drive after having been on duty more than 70 hours in 8 consecutive days, in violation of 49 CFR 395.3; (4) eight instances in which it failed to require a driver to forward within 13 days of completion the original of the record of duty status, in violation of 49 CFR 395.8; and (5) eight instances in which it failed to retain a driver vehicle inspection report for at least 3 months, in violation of 49 CFR 396.11.[1] The Notice of Claim further

[1] The Notice of Claim did not specify the exact subsections of each of the sections of the Federal Motor Carrier Safety Regulations which Respondent was charged with having violated. The appropriate

provided that the Federal Highway Administration ("FHWA") had found that the violations of 49 CFR 391.15 constituted substantial health and safety violations and that the violations of 49 CFR 395.3 constituted a serious pattern of safety violations.[2] The FHWA seeks a total penalty of $75,500.

Neither 49 U.S.C. 521, the statute pertaining to civil penalties in FHWA Motor Carrier Safety cases, nor its legislative history addresses the question of whether the statutory language "substantial health and safety violation" or "serious pattern of safety violations" is part of a prima facie case of proving a violation or is to be considered when assessing a penalty. At the hearing, Complainant's counsel contended that the question of "substantial health and safety violation" and "serious pattern of safety violations" goes only to the issue of penalty and not the underlying violation. (Tr. 311). Respondent does not assert otherwise, and I agree with Complainant's contention.

This decision is based upon the entire record of this proceeding, including: The evidentiary record compiled at the hearing; the parties' proposed findings of fact and conclusions of law; the parties' Post Hearing Briefs; and the parties' Reply Briefs.[3] I have also taken into account my observation of the witnesses who appeared before me and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters.

My findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding.[4]

I. Findings of Fact

A. Respondent and Prior Compliance Reviews

1. Used Equipment Sales, Inc. ("Respondent") is a for hire common carrier, with its principal office in North Dartmouth, Massachusetts and transports heavy machinery and other general commodities in interstate commerce, and as such, is subject to the Federal Motor Carrier Safety Regulations (the "Regulations"), 49 CFR part 390. (Cicero, Tr. 27; CPF 1; RPF 1).

2. Mr. Peter Vaz is the president and 100% stockholder of Respondent. (P. Vaz, Tr. 275).

3. Mr. Vaz resides in Memphis, Tennessee, has a full office and staff in Memphis, and is at Respondent's principal office in Massachusetts approximately once a month. (P. Vaz, Tr. 293).

4. Mr. Vaz oversees the operations of Respondent by communicating on a regular basis with employees in Respondent's corporate office in Florida. (P. Vaz, Tr. 293).

5. During the time that Mr. Vaz is not present at Respondent's principal office in Massachusetts, Eric Johansen, the operations manager of Respondent, is responsible for the daily operations of Respondent. (P. Vaz, Tr. 294).

6. Ms. Judith Vaz served as corporate clerk of Respondent during the years of 1988, 1989, and 1990. (J. Vaz, Tr. 225).

7. In the state of Massachusetts, the corporate clerk is an officer of the corporation and is similar to the Secretary of the corporation. (J. Vaz, Tr. 226).

8. As corporate clerk, Judith Vaz handled all of the drivers' files and accident reports. (J. Vaz, Tr. 225).

9. Up until January of 1989, Ms. Vaz was living in Massachusetts and was at Respondent's principal office approximately twelve hours a day. (P. Vaz, Tr. 226).

10. Ms. Vaz moved to Florida in January of 1989 and after that visited Respondent's principal office in Massachusetts approximately twice a month. (J. Vaz, Tr. 226).

11. While Ms. Vaz was living in Florida, Ms. Vaz kept in regular contact with Respondent's principal office in Massachusetts by speaking to her assistant there, Ms. Botelho, every day. (J. Vaz, Tr. 227).

12. Mr. Gerard O'Brien is president of a consulting company for motor carrier safety and hazardous material regulations and as such assists and guides motor carriers in passing D.O.T. audits with a favorable rating. (O'Brien, Tr. 190).

13. As a consultant to motor carriers, Mr. O'Brien educates motor carriers about the Regulations and periodically monitors carriers to ensure that they are complying with the Regulations. (O'Brien, Tr. 191).

14. Mr. O'Brien was hired by Respondent as a safety consultant in early 1989 to ensure that Respondent was complying with the Regulations. (O'Brien, Tr. 191).

15. As safety consultant to Respondent, Mr. O'Brien visits Respondent's principal office in Massachusetts twice a month, meets with Respondent's safety director, Mr. Pereira, and then personally reviews all kinds of records, including driver qualification files, driver logs, driver maintenance records and vehicle inspection reports. (O'Brien, Tr. 194).

16. Mr. Anthony Cicero ("Cicero") is a motor carrier safety specialist for the Federal Highway Administration, Office of Motor Carriers, and is assigned to the division office in Cambridge, Massachusetts. (Cicero, Tr. 24).

17. The duties of a motor carrier safety specialist include: conducting safety reviews, the results of which determine a carrier's safety rating; conducting compliance reviews, which are more detailed audits of the carrier's records and list specific violations; and conducting skills performance evaluations in conjunction with driver waiver. (Cicero, Tr. 26).

18. Cicero has conducted approximately 75 compliance reviews and, more specifically, has conducted two compliance reviews of Respondent, the most recent of which was conducted in July, 1990. (Cicero, Tr. 26, 27).

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citations to the Regulations of which Respondent is charged with having violated, including subsections, are set forth in the appendix of this Decision.

[2] Section 521(b)(2) of the Motor Carrier Safety Act of 1984, 49 U.S.C.A. 521(b)(2) (West Supp. 1991), relates to civil penalties and provides that anyone who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is in violation of a recordkeeping requirement shall be liable to the United States for a civil penalty not to exceed $500 for each offense and that each day of a violation shall constitute a separate offense, except that the total of civil penalties assessed against any violator for all offenses relating to any single violation shall not exceed $2,500. Section 521(b)(2) further provides that if the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that a maximum fine for each such pattern of safety violations shall not exceed $10,000. Section 521(b)(2) finally provides that if the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense.

[3] On January 24, 1992 I issued an Order requiring Complainant and Respondent to submit Reply Briefs to me by February 7, 1992 addressing certain issues and indicating which party had the burden of proof with regard to each of those issues. *See* Order of Administrative Law Judge, FHWA Docket No. R1–91–03 (Motor Carrier Safety), Served January 24, 1992.

[4] The following abbreviations are used in this decision:

Tr.—page of hearing transcript, usually preceded by name of witness.
CX—Complainant's exhibit.
RX—Respondent's exhibit.
CPF—Complainant's proposed finding of fact.
RPF—Respondent's proposed finding of fact.
CCL—Complainant's proposed conclusion of law.
RCL—Respondent's proposed conclusion of law.
CPB—Complainant's post hearing brief.
RPB—Respondent's post hearing brief.
CRB—Complainant's reply brief.
RRB—Respondent's reply brief.

19. Before conducting the July, 1990 compliance review of Respondent, Cicero reviewed Respondent's carrier file and looked over its prior compliance reviews. (Cicero, Tr. 27).

20. Compliance reviews conducted on Respondent on 5/13/81, 7/18/84, 2/14/85, 10/5–6/88, and 6/28/89 asserted that there had been several violations of the Regulations, including driver qualification violations, hours of service violations, recordkeeping violations, and failing to report accidents. (Cicero, Tr. 27–32; CPF 2, 3, 5, 6, 8; CX 1; CX–2; CX–4; CX–5; CX–6).

21. The compliance reviews dated 10/5–6/88 and 6/28/89 each recommended that Respondent receive a rating of "unsatisfactory". (Cicero, Tr. 31, 32; CPF 7, 9; CX–5, CX–6).

22. In July, 1990, Cicero conducted the audit of Respondent which led to the charges in this case; this audit entailed reviewing driver qualification files, records of accidents for the prior year, vehicle inspection reports and maintenance records. (Cicero, Tr. 34).

B. The Notice of Claim

23. On November 21, 1990, the Federal Highway Administration, Office of Motor Carriers, Region One, Albany, New York issued to Respondent a claim letter (the "Notice of Claim") stating that the investigation of Respondent had revealed the following violations: 13 instances in which Respondent used a disqualified driver in violation of 49 CFR 391.15; 1 instance in which Respondent failed to report an accident in violation of 49 CFR 394.9; 2 instances in which Respondent required or permitted a driver to drive after having been on duty more than 70 hours in 8 consecutive days in violation of 49 CFR 395.3; 8 instances in which Respondent failed to require a driver to forward within 13 days of completion the original record of duty status in violation of 49 CFR 395.8; and 8 instances in which Respondent failed to retain a driver vehicle inspection report for at least 3 months in violation of 49 CFR 396.11 (CPF 11; CX–8).

24. The Notice of Claim stated that pursuant to 49 U.S.C. 521(b), the Office of Motor Carriers had found that Respondent's violations of 49 CFR 391.15 (using a disqualified driver) constituted substantial health and safety violations which subjected Respondent to a maximum fine of $10,000 per violation and that Respondent's violations of 49 CFR 395.3 (requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days) constituted a serious pattern of safety violations which subjected Respondent to a maximum fine of $1,000 per violation, not to exceed $10,000 per pattern. (CX–8).

25. The Notice of Claim further stated that the maximum civil penalty to which Respondent is subject for the violations of 49 CFR 394.9 (failure to report an accident), 395.8 (failure to require a driver to forward within 13 days of completion the original record of duty status), and 396.11 (failure to retain a driver vehicle inspection report for a least 3 months) is $500 per violation and $500 for each additional day the violations continue, up to a maximum of $2,500 per violation. (CX–8).

26. The Notice of Claim finally stated that upon consideration of the seriousness of Respondent's violations, past history, financial status, and other factors, the Office of Motor Carriers had decided to assess Respondent's civil penalty at $5,000 for each of the 13 violations of 49 CFR 391.15; $1,000 for each of the 2 violations of 49 CFR 395.3; and $500 for each of the 17 violations of 49 CFR 394.9, 395.8, and 396.11 and that consequently, the total amount owed by Respondent to the United States Government as a result of these 32 violations was $75,500. (CX–8).

C. First Claim: Using a Disqualified Driver in Violation of 49 CFR 391.15(a) and (b)

27. A letter of disqualification dated November 20, 1987 for Douglas Bradley, driver for Respondent, was sent to Bradley by the Office of Motor Carrier Safety and stated that he was not qualified to drive in interstate or foreign commerce under Part 391.15(b) of the Regulations because his Alabama and Rhode Island driver's licenses had been suspended, that his privileges to drive in Connecticut, Maine, and Virginia had been suspended, and that his privilege to drive in Wisconsin had been suspended. (Cicero, Tr. 44; CX–20).

28. The letter of disqualification dated November 20, 1987 (CX–20) sent to Bradley does not indicate that it was either addressed to Respondent or that a carbon copy of such letter was sent to Respondent. (Cicero, Tr. 45).

29. Company policy, which was communicated to employees of Respondent, was that disqualified drivers absolutely were not to be used. (P. Vaz, Tr. 285).

30. The first notice to Respondent of Bradley's disqualification occurred on October 17, 1989 when Judith Vaz, corporate clerk for Respondent, received a copy of Bradley's 1987 disqualification letter from Barry Rubenstein, Federal Hazardous Materials Manager in the regional office of the Federal Highway Administrator in Albany, New York. On October 17, 1989 Judith Vaz phoned and advised Respondent's dispatcher, Richard DeMoranville, that Bradley had been disqualified from driving in interstate commerce and that Bradley should not be used anymore. (Cicero, Tr. 47; RPF 5; CX–10).

31. On or about October 18, 1989, Judith Vaz told Kathleen Botelho, a secretary for Respondent, that Bradley had been disqualified from driving in interstate commerce. On or about October 18, 1989, Ms. Botelho notified DeMoranville that Bradley had been disqualified from driving in interstate commerce. (CX–14).

32. Although DeMoranville had been told that Bradley had been disqualified from driving in interstate commerce, DeMoranville continued to use Bradley and signed Bradley's payroll check on January 5, 1990. (Cicero, Tr. 48; CX–12).

33. Ms. Vaz did not know that DeMoranville had continued to use Bradley. (Cicero, Tr. 47; CX–10).

34. The records of duty status for Bradley for the time periods of 12/1/89–12/3/89; 12/11/89–12/13/89; 12/14/89–12/16/89; 12/21/89–12/23/89; and 1/1/90–1/3/90 and fuel receipts dated 12/2/89; 12/12/89; 12/15/89; 12/22/89 and 1/2/90 indicate that Bradley was driving for Respondent in interstate commerce while he was disqualified. (CPF 12; CX–30; CX–31; CX–32; CX–33; CX–34; CX–35; CX–36; CX–37; CX–38; CX–39).

35. After DeMoranville dispatched disqualified drivers, he was demoted from his position as dispatcher and was temporarily separated from the company for a period of about three months, before being reinstated, as an owner-operator. (P. Vaz, Tr. 284–285).

36. Driver Michael DeVasto and Respondent were sent a certified letter dated May 14, 1990 from the Office of Motor Carriers, Federal Highway Administration, Region One stating that DeVasto was not qualified to drive in interstate commerce because his driver's licenses for California and Virginia had been suspended. (CPF 18; CX–22).

37. On May 18, 1990, Ms. Botelho told dispatcher Johansen and corporate clerk Judith Vaz of DeVasto's disqualification. (CX–14).

38. While Johansen was aware on or about May 19, 1990 that DeVasto had been disqualified from driving in interstate commerce, Johansen decided to pay DeVasto's fines and decided to continue dispatching him. Johansen acknowledged that this was an error in his judgment. (CX–13).

39. The records of duty status for DeVasto indicate that he made interstate trips for Respondent on 6/7/90; 7/18/90; 7/20/90; 7/23/90 and 7/31/90 while

disqualified to drive in interstate commerce. (CX–65 I and J; CX–66).

40. On April 8, 1990 John MacDonald, a driver for Respondent, was stopped for a vehicle inspection at the scale house on I90 near the Minnesota State Line by the South Dakota Highway Patrol who discovered that MacDonald's Vermont driver's license was suspended. At that point, MacDonald surrendered his license to the South Dakota Highway Patrol. (CX–11).

41. After MacDonald surrendered his license to the South Dakota Highway Patrol, MacDonald called and informed dispatcher Johansen that MacDonald needed $100 to pay for the citation he had received for the suspended license. (CX–11).

42. Johansen was the only person at Respondent who was aware that MacDonald's driving privileges had been suspended. (CPF 16; CX–11).

43. Johansen continued dispatching MacDonald until MacDonald returned to No. Dartmouth, MA on April 20, 1990, at which time MacDonald told Johansen that he needed time off to clear up his license in Vermont. (CX–13).

44. The records of duty status for MacDonald for the periods of 4/8/90–4/10/90; 4/15/90; 4/17/90–4/19/90 and bills of lading dated 4/9/90 and 4/16/90 indicate that MacDonald was driving for Respondent in interstate commerce at a time when he was disqualified. (CX–23; CX–24; CX–25; CX–26; CX–27; CX–28; CX–29).

45. Johansen received a letter from Peter D. Vaz, President of Respondent, reprimanding him for dispatching disqualified drivers and stating that he can only use qualified drivers who meet all the requirements of the Department of Transportation and who are on the company's list of approved drivers. (RX–4).

46. As a result of Johansen's conduct in dispatching disqualified drivers, a letter was sent to all of Respondent's employees stating that it was Respondent's goal to achieve 100% compliance with the Department of Transportation regulations and that Mr. Pereira, the company's safety director, would be producing daily a list of available qualified drivers and that only those individuals on the list could be dispatched. (P. Vaz 286; RX–5).

D. Second Claim: Failing to Report an Accident in Violation of 49 CFR 394.9(a)

47. DeVasto was involved in a motor vehicle accident on July 23, 1990 in Memphis, Tennessee at a time that he was disqualified from driving in interstate commerce. (CPF 20; CX–22; CX–63).

48. DeVasto's July 23, 1990 accident was reported to the Department of Transportation by Ms. Botelho on July 26, 1990. (CPF 21; CX–63).

49. DeVasto was involved in a motor vehicle accident on July 25, 1990 in Chicago, Illinois at a time that he was disqualified from driving in interstate commerce. (CX–50; CX–60).

50. Ms. Botelho, Respondent's secretary, had no knowledge of the cost of repairs and was told by Cicero that DeVasto's July 25, 1990 accident in Chicago, Illinois was supposed to be a reportable accident and there was supposedly $6,500 in property damage. (Tr. 260; CX–14).

51. DeVasto's July 25, 1990 accident was reported to the Department of Transportation on October 10, 1990, more than 30 days after the occurrence of the accident. (CPF 24; CX–50).

E. Third Claim: Requiring or Permitting Drivers to Drive after Having Been on Duty More Than 70 Hours in 8 Consecutive Days in Violation of 49 CFR 395.3(b)(2)

52. Records of duty status for Michael Raposa for the period of June 9, 1990 through June 23, 1990 indicate that he was on duty for 77 hours in 8 consecutive days. (CPF 25; RPF–15; CX–51, CX–52, CX–53).

53. Records of duty status for Richard DeMoranville for the period of July 11, 1990 through July 20, 1990 indicate that he was on duty for 76¾ hours in 8 consecutive days. (CPF 26; CX–54, CX–55).

54. Respondent's company policy was that some violations of the 70-hour regulations would occur and that when such violations did occur Respondent would take responsibility. (CRB, p. 8; O'Brien, Tr. 215–216).

F. Fourth Claim: Failing to Require a Driver to Forward Within 13 Days of Completion the Original of the Record of Duty Status In Violation of 49 CFR 395.8(a), (i), and (k)

55. On two occasions during the course of his 1990 compliance review Cicero checked Respondent's files for the records of duty status of DeVasto dated 6/7/90; 6/24/90; 6/28/90; 7/18/90; 7/20/90; 7/23/90; 7/26/90 and 7/31/90 and found no such records on file at Respondent's place of business. (CPF 27; Cicero, Tr. 102–105).

G. Fifth Claim: Failing To Retain a Driver Inspection Report For At Least 3 Months In Violation of 49 CFR 396.11(1)(2)

56. Cicero checked Respondent's files for vehicle inspection reports corresponding to the interstate trips of DeVasto of 6/7/90; 6/24/90; 6/28/90; 7/18/90; 7/20/90; 7/23/90; 7/26/90 and 7/31/90 and found no such corresponding vehicle inspection reports on file at Respondent's place of business. (CPF 28; Cicero, Tr. 106).

II. Opinion

A. Liability

1. First Claim: 13 Instances of Using a Disqualified Driver in Violation of 49 CFR 391.15 (a) and (b)

The first claim cited in the Notice of Claim charges Respondent with thirteen instances in which it used disqualified drivers to drive in interstate commerce in violation of 49 CFR 391.15 (a) and (b). The Notice of Claim further provides that Respondent's alleged violations of 49 CFR 391.15 (a) and (b) constitute substantial health and safety violations which subject Respondent to a civil penalty of $5,000 for each of the thirteen violations.

At the beginning of the hearing in this case, Complainant and Respondent agreed that the applicable legal standard of liability with respect to violations of 49 CFR 391.15 (a) and (b) is whether Respondent "knew" or "should have known". (Tr. 6). Thus, in order to conclude that Respondent violated 49 CFR 391.15 (a) and (b), I must find that Respondent either "knew" or "should have known" that it was using disqualified drivers to drive in interstate commerce. The evidence indicates, and Respondent has admitted, that the three drivers in question, Douglas Bradley, Michael DeVasto, and John MacDonald, made interstate trips for Respondent at a time that they were disqualified to drive commercial motor vehicles in interstate commerce. (Tr. 6; Findings 34, 39, 44).

It is important to note that "know" and "should have known" are different legal concepts. *Contract Courier* v. *Research & Special Programs Administration*, 924 F.2d 112 (7th Cir. 1991). "To know" refers to actual knowledge, while "should have known" refers to imputed knowledge, which means lack of knowledge accompanied by circumstances that lead the legal system to treat ignorance the same way it treats knowledge. *Id.* at 114. The "should have known" concept requires inquiry and the law treats a person as possessing whatever knowledge inquiry would have produced. *Id.*

Respondent is a corporate entity and can obtain knowledge only through its officers, employees or agents. Thus, in determining whether Respondent knew or should have known that disqualified drivers were being dispatched, the

following two questions must be considered:

(1) Whether the knowledge and actions of the dispatchers, who are employees of Respondent, can be imputed to the company?

(2) Whether the responsible company officials of Respondent, namely, Mr. Vaz, its president; Ms. Vaz, its corporate clerk (both of whom are officers of the corporation); or Mr. O'Brien, its safety consultant, knew or should have known that disqualified drivers were being dispatched to drive in interstate commerce?

(a) *Imputed knowledge and actions.* In determining the liability of Respondent under 49 CFR 391.15(a) and (b), the first question which I will consider is whether the knowledge of dispatchers DeMoranville and Johansen that disqualified drivers were being dispatched to drive in interstate commerce and the actions of the dispatchers in dispatching disqualified drivers to drive in interstate commerce may be imputed to Respondent.

In examining the actions of Respondent's dispatchers, the evidence indicates that with regard to driver Bradley, although dispatcher DeMoranville had been notified by both Ms. Vaz and Ms. Botelho that Bradley had been disqualified to drive in interstate commerce and could not be used anymore, DeMoranville continued to dispatch Bradley contrary to instructions and without informing company management of his actions. (Findings 30, 31, 32). Furthermore, Respondent continued to pay Bradley as evidenced by a payroll check he received on January 5, 1990 signed by DeMoranville. (Finding 32). Ms. Vaz did not know that DeMoranville had continued to use Bradley. (Finding 33).

With regard to driver DeVasto, the evidence indicates that although dispatcher Johansen had been informed of DeVasto's disqualification by Ms. Botelho, Johansen decided to pay DeVasto's fines and continued dispatching him. (Findings 37, 38). Johansen acknowledged that he alone decided to continue dispatching DeVasto and that this was an error in his judgment. (Finding 38).

With regard to driver MacDonald, the evidence indicates that on April 8, 1990, MacDonald surrendered his license to the South Dakota Highway Patrol after a South Dakota Highway Patrol discovered that MacDonald's Vermont license had been suspended. (Finding 40). After MacDonald surrendered his license to the South Dakota Highway Patrol, MacDonald called and informed Johansen that he needed $100 to pay for the citation he had received for the suspended license. (Finding 41). Johansen, who was the only person at Respondent who was aware that MacDonald's driving privileges had been suspended, dispatched MacDonald to drive in interstate commerce. (Finding 42).

In its Post Hearing Brief, Complainant contends that having delegated important responsibilities to its employees, Respondent cannot disclaim responsibility for the actions of those employees. (CPB, p. 10). Complainant contends that within the context of the Regulations, employers are liable for the actions of their employees, citing *Trinity Transportation Inc.*, FHWA Docket No. R9–90–001.

In *Trinity Transportation Inc.*, FHWA Docket No. R9–90–001, the FHWA brought suit against Trinity Transportation Inc. for requiring or permitting a driver to drive more than 10 hours following 8 consecutive hours off duty, requiring or permitting a driver to drive after 15 on-duty hours following 8 hours off duty, and requiring or permitting a driver to make false entries upon a driver's record of duty status all in violation of the Regulations. In his Decision, Judge Kolko addressed the issue of whether the actions of drivers operating on behalf of Trinity, so as to be in violation of the Regulations, could be imputed to Trinity. In his Decision, Judge Kolko stated that it was well settled that a corporation is charged with the acts of its employees and that a corporation cannot insulate itself from liability when its employees act within the scope of their employment.

In its Post Hearing Brief, Respondent argues that it should not be liable for the acts of its dispatchers since they were acting contrary to the express orders of company management and contrary to communicated company policy. (RPB, p. 5).

Respondent analogizes this case to the case of *Horne Plumbing & Heating Co.* v. *OSHRC*, 528 F.2d 564 (5th Cir. 1976), where two experienced foremen were working in an unshored portion of a trench contrary to specific instructions. In *Horne Plumbing*, the 5th Circuit Court of Appeals rejected the Secretary of Labor's argument that knowledge on the part of the foreman could be imputed to the company and held that the employer is not required to personally remain on the scene and that it could not be held responsible for the derelictions of experienced and knowledgeable foreman. Furthermore, the court opined that if employers are told that they are liable for violations regardless of the degree of their efforts to comply, it can only tend to discourage such actions and that an employer who would otherwise be found in violation due to the actions and knowledge of a supervisor should be permitted to defend on the basis that it took all necessary precautions to prevent the occurrence of the violation.

In determining the liability of Respondent, I conclude that based on the rationale in *Horen Plumbing*, knowledge on the part of the dispatchers that disqualified drivers were being dispatched to drive in interstate commerce should not be imputed to Respondent since in dispatching disqualified drivers to drive in interstate commerce the dispatchers defied specific instructions and communicated company policy. Furthermore, I note that Respondent, after it became aware that Bradley and DeVasto had been disqualified, sought to comply with 49 CFR 391.15 by promptly notifying its dispatchers that such drivers had been disqualified and should not be used anymore.

Further, unlike the *Trinity Transportation, Inc.* case where Judge Kolko concluded that the actions of drivers at Trinity should be imputed to the company since its drivers were acting within the scope of their employment, here the evidence indicates that Respondent's dispatchers, employees of the company, ignored explicit verbal warnings and ignored communicated company policy. I, therefore, conclude that the dispatchers were acting outside the scope of their employment when they dispatched disqualified drivers to drive in interstate commerce. Furthermore, I concluded that the actions of the dispatchers constituted unforeseen misconduct.

I have also taken into account the fact that the evidence indicates that Respondent did not condone or adopt its dispatchers' actions after it learned of their disobedience. For example, Respondent's officers disapproved of DeMoranville's action and as a result of his disobedience in dispatching disqualified drivers, he was removed from his position as a dispatcher and temporarily separated from the company for a period of about three months before being reinstated as an owner-operator. (Finding 35). Furthermore, after dispatching DeVasto and MacDonald, Johansen received a letter from Mr. Vaz, president of Respondent, reprimanding him and stating that he could only use qualified drivers who met all the requirements of the Department of Transportation and who were on the company's list of

approved drivers.[51] (Finding 45). Finally, as a result of Johansen's conduct in dispatching disqualified drivers, a letter was sent to all of Respondent's employees stating that it was Respondent's goal to achieve 100% compliance with all of the Department of Transportation regulations and that only those drivers who were certified by Mr. Pereira, the company's safety director, on a daily basis as being qualified drivers, could be dispatched. (Finding 46).

A finding of liability on the part of Respondent would ignore the fact that Respondent neither authorized nor adopted its dispatchers actions in dispatching disqualified drivers and would also tend to discourage actions on the part of employers in attempting to take all necessary precautions in an effort to prevent violations of the Regulations.

Finally, in determining the liability of Respondent, I have also considered cases in the area of agency law. Those cases indicate that an employer will be liable for the acts of its employees only so long as such acts are within the course of the employee's employment. *Eberhardy* v. *General Motors Corp.*, 404 F. Supp. 826 (M.D. Fla. 1975). Such case law also indicates that a violation of instructions of the employer may constitute a departure from the scope of the employment. *Wright* v. *Southern Bell Tel. Co.*, 605 F.2d 156 (5th Cir. 1979); *Porter* v. *Jack's Cookie Company*, 127 S.E. 2d 313 (Ga. App. 1962).

Although not every violation of instructions of the employer will take the employee out of the scope of his employment, *Wright*, 605 F.2d at 159; *Porter*, 127 S.E. 2d at 316, an employee's acts will be considered outside his scope of his employment if the employee also acts in contravention of the employer's regulations or policy. *Wright*, 605 F.2d at 158. Here, while it might be arguable that DeMoranville's and Johansen's dispatching of disqualified drivers to drive in interstate commerce was in prosecution of Respondent's business, and was not entirely disconnected from Respondent's business, their actions were outside their course of employment since DeMoranville and Johansen acted in direct contravention of communicated company policy as well as in direct contravention of 49 CFR 391.15 (a) and (b).

I, therefore, conclude that the knowledge of the dispatchers that disqualified drivers were being dispatched and the actions of Respondent's dispatchers in dispatching disqualified drivers to drive in interstate commerce should not be imputed to Respondent so as to hold Respondent liable for violating 49 CFR 391.15 (a) and (b).

(b) *Know or should have known.* In determining the liability of Respondent under 49 CFR 391.15 (a) and (b), the next question which I will consider is whether responsible company officials of Respondent; namely, Mr. Vaz, its president; Ms. Vaz, its corporate clerk (both of whom are officers of the corporation); or Mr. O'Brien, its safety consultant, knew or should have known that disqualified drivers were being dispatched to drive in interstate commerce. As discussed previously in this Decision, the evidence indicates that with regard to Bradley, although DeMoranville had been notified by both Ms. Vaz and Ms. Botelho that Bradley had been disqualified to drive in interstate commerce and could not be used anymore, DeMoranville continued to dispatch Bradley contrary to instructions and without informing responsible company officials of his actions. (Findings 32, 33). With regard to DeVasto, the evidence indicates that although Johansen had been notified by Ms. Botelho of DeVasto's disqualification, Johansen continued to dispatch DeVasto contrary to instructions and without informing responsible company officials of his actions. (Findings 37, 38). With regard to MacDonald, the evidence indicates that Johansen was the only person at Respondent who was aware that MacDonald's driving privileges had been suspended. (Finding 42).

Thus, the evidence indicates that none of the responsible company officials of Respondent, namely Mr. Vaz, its president; Ms. Vaz, its corporate clerk; or Mr. O'Brien, its safety consultant; knew that disqualified drivers were being dispatched to drive in interstate commerce. Therefore, I will now consider whether Respondent's officials "should have known" that disqualified drivers were being dispatched to drive in interstate. More specifically, it is necessary to determine whether they inquired or made any effort to determine if disqualified drivers were being dispatched to drive in interstate commerce.

Case law establishes that a corporate entity is deemed to have knowledge of regulatory violations if the means are present to detect the violations. *Riss & Co.* v. *U.S.*, 262 F.2d 245, 250 (8th Cir. 1958); *U.S.* v. *T.I.M.E.-D.C., Inc.*, 381 F. Supp. 730, 739 (W.D. Va. 1974); *Trinity Transportation, Inc.*, FHWA Docket No. R9–90–001.

In *Riss & Co.* v. *U.S.*, the United States brought suit against Riss & Co., Inc., a motor carrier, with an office in St. Louis, Missouri and headquarters in Kansas City, Missouri, for permitting its drivers to drive excessive hours in violation of the regulations of the Interstate Commerce Commission ("ICC"). The 8th Circuit Court of Appeals found that the carrier's log clerk in the St. Louis office either failed to discover excessive driving hours or completely ignored them and refrained from reporting the findings to her supervisors. The court, however, found that drivers' logs had been forwarded to the carrier's headquarters in Kansas City, Missouri where they were available for inspection by superiors of the carrier.

The court held that although the excessive and prohibited driving hours were readily discoverable upon a mere glance at the logs, no one at the company's headquarters discovered the recorded excessive driving hours until months after the violations had been committed. In holding Riss & Co., Inc. liable for knowingly and willfully violating the I.C.C. regulations, the court held that the means were present by which the carrier could have detected the infractions and its failure to do so under the existing circumstances could not absolve it of liability as a matter of law.

In *U.S.* v. *T.I.M.E.-D.C.*, the United States brought suit against T.I.M.E.-D.C., Inc., an interstate carrier, for violating a regulation of the I.C.C. by permitting a driver to operate carrier vehicles, while the driver's ability or alertness was so impaired, or so likely to become impaired, through illness, as to make it unsafe for the driver to operate a motor vehicle. In holding T.I.M.E.-D.C., Inc. liable for violating the I.C.C. regulation, the court held that the carrier had sufficient information available to it to know that driver Carlton Brown was impaired, or likely to become impaired, so as to make it unsafe for him to begin his trip.

The court held that the carrier had the means to detect the violation of the I.C.C. regulation by having instituted a program regarding drivers mark-offs for illness pursuant to which a driver calling to inform the carrier's dispatcher that he would be absent due to illness was required to submit a doctor's slip or similar verification of his illness. The court noted that the wife of driver Brown had telephoned the carrier's dispatcher to ask him to mark her husband off for work that evening because he had an ear infection and was

[51] The evidence does not indicate how Mr. Vaz learned that disqualified drivers were being dispatched to drive in interstate commerce.

going to see a doctor. After having gone to a hospital emergency room, Brown provided the carrier with a doctor's certificate confirming his ailment. The court, therefore, held the carrier liable for violating the I.C.C. regulation and reached the conclusion that the carrier had sufficient information to know that driver Brown's ability to drive was impaired or likely to become impaired so as to make it unsafe for him to make a trip, in violation of the I.C.C. regulation.

Just as means were present in the *Riss & Co.* and *T.I.M.E.-D.C.* cases to detect violations of pertinent regulations, here the means were present whereby Respondent could have detected violations of 49 CFR 391.15 (a) and (b). The evidence shows that Respondent's company was one where important responsibilities were delegated to employees of the company. (Finding 5). Peter Vaz, president of Respondent, and Judith Vaz, corporate clerk for Respondent, spent a substantial amount of time away from the Massachusetts company office and relied on the employees to carry out day to day responsibilities. (Findings 3, 10). Mr. O'Brien was hired by Respondent as a safety consultant in early 1989 to ensure that Respondent was complying with the Regulations. (Finding 14). Mr. O'Brien visited Respondent's principal office in Massachusetts twice a month and personally reviewed all kinds of records of Respondent, including driver qualification files. (Finding 15). Thus, the means were present whereby Respondent could have detected violations of 49 CFR 391.15 (a) and (b). The company president, corporate clerk, and the safety consultant should have monitored more closely the actions of Respondent's employees. With more extensive oversight of company records and operations, Respondent would have known that disqualified drivers were being dispatched to drive in interstate commerce in violation of explicit verbal orders and in violation of communicated company policy. Since the primary responsibility for conducting the operations of Respondent's company was with its responsible company officials, it was the duty of such officials to take effective measures to supervise the performance of the employees.

I hold Respondent liable for the thirteen instances in which it used disqualified drivers to drive in interstate commerce in violation of 49 CFR 391.15 (a) and (b) since responsible company officials "should have known" that disqualified drivers were being dispatched to drive in interstate commerce in violation of express verbal orders and in violation of communicated company policy.[6]

2. Second Claim: 1 Instance of Failing to Report an Accident in Violation of 49 CFR 394.9(a)

The second claim cited in the Notice of Claim charges Respondent with one instance in which it failed to report the accident of July 25, 1990 involving DeVasto within 30 days after it learned or should have learned that a reportable accident occurred, in violation of 49 CFR 394.9(a). The evidence indicates that DeVasto's July 25, 1990 accident was reported to the Department of Transportation on October 10, 1990, more than 30 days after the occurrence of the accident. (Finding 51). 49 CFR 394.3 defines "reportable accident" and provides, *inter alia*, that the term "reportable accident" means an occurrence involving a commercial motor vehicle engaged in the interstate, foreign, or intrastate operations of a motor carrier who is subject to the Department of Transportation Act resulting in total damage to all property aggregating $4,400 or more based upon actual costs or reliable estimates.

Complainant has the burden of proving at the outset that a "reportable accident" did occur, more specifically that the July 25, 1990 accident involving DeVasto occurred at a time when DeVasto was driving a vehicle of Respondent "engaged in interstate, foreign, or intrastate operations" and that such accident in fact resulted in total damage to all property aggregating $4,400 or more based upon actual costs or reliable estimates and, second, that Respondent learned or should have learned that a "reportable accident" occurred.

Complainant has shown that the July 25, 1990 accident involving DeVasto occurred at a time when DeVasto was driving Respondent's vehicle and was "engaged in interstate, foreign, or intrastate operations." (Findings 30, 49). DeVasto's record of duty status or "log" for July 25, 1990 indicates that the accident occurred while he was driving for Respondent. (CX–60; CRB, p. 1). DeVasto's July 25, 1990 record of duty status specifically states that DeVasto was driving a UES vehicle (number 5–4879) between midnight and 1 o'clock a.m. when he hit a low bridge. (CX–60; CRB, p. 1). DeVasto indicates on his log that he went on "Off Duty" status until he tried to move the truck at 5:00 a.m. (CX–60; CRB, p. 2). His log then indicates that he was eventually able to "change over load" at an Illinois terminal later that morning, an indication that his truck was loaded with cargo he was transporting for Respondent. (CX–60; CRB, p. 2).

Furthermore, the MCS–50T accident report submitted by Respondent on October 10, 1990 contains a space for qualifying an accident (BOX 27), and no indication was made that DeVasto was not conducting company business at that time (CX–50; CRB, p. 2). The accident report even indicates that the truck driven by DeVasto was carrying non hazardous materials in cargo with a weight of 45,000 lbs. at the time of the accident. (CX–50; CRB, p. 2).

In addition to the fact that DeVasto's log and the accident report indicate that he was driving Respondent's vehicle and was engaged in interstate commerce at the time of the accident, there is no evidence in the record to indicate that DeVasto was not driving for Respondent when the accident occurred. (CRB, p. 3). Furthermore, at no time during Cicero's review of Respondent or during the hearing was there any suggestion made that DeVasto was on a personal mission at the time of the accident. (CRB, p. 2.)

While Complainant has shown that the July 25, 1990 accident involving DeVasto occurred at a time when he was driving Respondent's vehicle in "interstate operations," Complainant has failed to show that such accident resulted in total damage to all property aggregating $4,400 or more based upon actual costs or reliable estimates. There is no credible evidence in the record concerning the nature or extent of damage to the trailer, or when the repair was performed so that the cost could be determined or estimated.

Cicero testified that he was told by Ms. Botelho, a secretary for Respondent, that the repairs cost about $6,500, (Cicero, Tr. 93). However, Ms. Botelho testified that she had no knowledge concerning the cost of the repairs and that she had inserted the phrase "supposedly $6,500" in her voluntary statement given to Cicero at the time of his audit of Respondent because Cicero had given her that figure as the cost of the repairs (Finding 50). I agree with Respondent that neither of these witnesses had any actual knowledge as to the cost of repairs, and that the record is totally devoid of any credible evidence regarding actual costs or reliable estimates of the repairs. (RRB, p. 2).

While Complainant has shown that the July 25, 1990 accident involving DeVasto occurred at a time when DeVasto was driving Respondent's vehicle in "interstate operations,"

[6] The issue of "substantial health and safety violation" as it relates to the assessed penalty for violations of 49 CFR 391.15 (a) and (b) is discussed in Section II (C) of this Decision.

Complainant has failed to show that such accident resulted in total damage to all property aggregating $4,400 or more based upon actual costs or reliable estimates. Thus, Complainant has failed to meet its burden of proving that a "reportable accident" did occur, and accordingly, I find no liability on the part of Respondent with regard to its alleged violation of 49 C.F.R. 394.9(a).[7]

3. Third Claim: 2 instances of requiring or permitting drivers to drive after having been on duty more than 70 hours in 8 consecutive days in violation of 49 CFR 395.3(b)(2)

The third claim cited in the Notice of Claim charges Respondent with two instances in which it required or permitted a driver to drive after having been on duty more than 70 hours in 8 consecutive days in violation of 49 CFR 395.3(b)(2).[8] At the beginning of the hearing the parties agreed that the language of 49 CFR 395.3(b)(2) requires the Complainant to prove that the alleged violations were either "required" or "knowingly permitted." The Notice of Claim further provides that Respondent's alleged violations of 49 CFR 395.3(b)(2) constitute a serious pattern of safety violations.

The records of duty status for driver Raposa for the period of June 9, 1990 through June 23, 1990 indicate that he was on duty for 77 hours in 8 consecutive days. (Finding 52). The records of duty status for driver DeMoranville for the period of July 11, 1990 through July 20, 1990 indicate that he was on duty for 76¾ hours in 8 consecutive days. (Finding 53).

In its Post Hearing Brief, Respondent claims that some of the on-duty time logged by DeMoranville may have been off-duty time during which the driver made meal stops. Respondent notes that on cross-examination, Cicero admitted that DeMoranville logged meal time as on duty, although Respondent had authorized its drivers to log off duty during meal breaks. (Cicero, Tr. 99, 101). Respondent further notes that at the hearing, Mr. O'Brien, Respondent's safety consultant, testified that if DeMoranville had logged his time properly in accordance with the carrier's written policy, there would not be any hours of service violation. (O'Brien, Tr. 210). By failing to call driver DeMoranville as a witness at trial, Respondent has failed to show that DeMoranville incorrectly logged meal time as on duty time and that as a result of his incorrectly logging meal time as on duty time, driver DeMoranville did not drive after having been on duty more than 70 hours in 8 consecutive days.

In any event, Respondent's contentions regarding the alleged improper logging of DeMoranville's logs are not central to the issue of whether Respondent violated 49 CFR 395.3(b)(2) with respect to DeMoranville. Even if the 2½ hours of eating stops marked on DeMoranville's logs as "on duty" are subtracted from the total on-duty and driving time set forth on DeMoranville's logs, that leaves 74 and ¼ hours. (CX–54; CX–55; CRB, p. 7). Thus Respondent exceeded the permissible 70 hour limitation by 4¼ hours within that 8 day period. (CX–54; CX–55; CRB, p. 7).

Here, I find that Respondent violated 49 CFR 395.3(b)(2) by knowingly permitting Raposa and DeMoranville to drive after having been on duty more than 70 hours in 8 consecutive days.[9]

4. Fourth Claim: 8 instances of failing to require a driver to forward within 13 days of completion the original of the record of duty status in violation of 49 CFR 395.8 (a), (i), and (k)

The fourth claim cited in the Notice of Claim charges Respondent with eight instances where it failed to require a driver to forward within 13 days of completion the original of the record of duty status and failed to maintain such records for a period of six months in violation of 49 CFR 395.8 (a), (i) and (k). On two occasions during the course of his 1990 compliance review of Respondent, Cicero checked Respondent's files for the records of duty status of DeVasto dated 6/7/90, 6/24/90, 6/28/90, 7/18/90, 7/20/90, 7/23/90, 7/26/90, and 7/31/90 and found no such records on file at Respondent's place of business. (Finding 55).

At the hearing, Complainant asserted that a violation of 49 CFR 395.8 imposes strict liability on Respondent, while Respondent asserted that it meets its legal obligation under 49 CFR 395.8 by having a system in place to obtain the records and by acting reasonably under the circumstances. (Tr. 318).

49 CFR 395.8(a) provides that every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24-hour period. 49 CFR 395.8(i) provides that the driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form. 49 CFR 395.8(k) provides that a driver's records of duty status for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business with all supporting documents for a period of six months from date of receipt.

In its Post Hearing Brief, Complainant notes that Cicero testified that in the course of his investigation of Respondent, he obtained the pertinent records of duty status from DeVasto himself. (Cicero, Tr. 103). Cicero further testified that he copied these documents and returned them to DeVasto. (Cicero, Tr. 105–106). Respondent contends that it never had DeVasto's records of duty status in its possession because DeVasto failed to submit such records of duty status to Respondent. Respondent concludes that Respondent cannot be charged with failure to retain DeVasto's records of duty status if it never had them in its possession.

I note that 49 CFR 395.8(a) and 49 CFR 395.8(k) impose duties upon the carrier, while 49 CFR 395.8(i) imposes a duty upon the driver. In my Order served on the parties on January 24, 1992, I required both Complainant and Respondent to submit Reply Briefs to me addressing the question of whether to prove violations of 49 CFR part 395, Complainant must show that either the regulations impose a duty upon Respondent to require its drivers to forward within 13 days of completion the original record of duty status or that under the regulations, a driver's failure to turn in his records of duty status may be imputed to the motor carrier.

I agree with Complainant that while § 395.8(i) does not specify that the motor carrier itself has a duty to make sure that a driver's records are turned in, the Regulations do specify that duty clearly in a general requirement at 49 CFR 390.11. (CRB, p. 9). 49 CFR 390.11 is entitled "Motor Carrier to Require Observance of Driver Regulations" and provides:

[7] Given this conclusion, I do not reach the question of whether Respondent learned or should have learned that a "reportable accident" occurred.

[8] 49 CFR 395.2 defines "on duty time" as all time from the time a driver begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. The Regulations provide that "on duty time" shall include, *inter alia*, all driving time as defined in paragraph(b) of 49 CFR 395.2 of the Regulations. 49 CFR 395.2(b) of the Regulations provides that the terms "drive" and "driving time" shall include all time spent at the driving controls of a motor vehicle in operation.

[9] With respect to hours of service violations, Respondent's company policy was that some violations of the 70 hour regulations would occur and that when such violations did occur, Respondent would take responsibility. (Finding 54; CRB p. 8; O'Brien, Tr. 215–216). Furthermore, the issue of "serious pattern of safety violations," as it relates to the assessed penalty for violations of 49 CFR 395.3(b)(2) is discussed in Section II(D) of this Decision.

> Whenever in Part 325 of Subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition.

49 CFR 390.11 is a general requirement set forth under subchapter B of the Regulations and applies to the whole of subchapter B, including 49 CFR 395.8. The Regulations, therefore, impose a duty on Respondent to require observance of the Regulations at 49 CFR 395.8 and elsewhere by its drivers.[10] Thus, Respondent is responsible for DeVasto's failure to turn in his records of duty status.

In its Post Hearing Brief, Complainant asserts that even assuming that Respondent did not have an absolute duty to collect and maintain driver's records of duty status, but needed only to have acted reasonably in attempting to comply with the Regulations, Respondent failed to have a safety program in place such that it could "reasonably" ensure that records of duty status would be regularly collected. (CPB, p. 21).

A safety program must not only exist on paper, but it must have teeth. See *Drotzman* (Docket No. R10–89–11) and *E. L. Lawson* (Docket No. R1–89–015). I agree with Complainant that the evidence fails to show that Respondent had a system in place whereby drivers were penalized or reprimanded for failure to turn in their records of duty status. Furthermore, I agree with Complainant that it is unclear from Respondent's safety organization or system, who, if anyone in particular, had the responsibility of making sure these records of duty status were collected on a regular basis.

Mr. O'Brien testified that in regard to safety matters, everyone had various duties. (O'Brien, Tr. 218). For some matters, Mr. Johansen was in charge, for other matters safety director Rui Pereira was in charge. (O'Brien, Tr. 218). Ms. Botelho, Respondent's secretary, testified that the handling of driver paperwork was a "strange process." (Botelho, Tr. 271). According to her testimony, drivers' paperwork sits in assorted files in various departments, and if a driver doesn't turn in his paperwork, the process is halted at that point. (Botelho, Tr. 272). She also explained that the Respondent's safety policy was not as well coordinated prior to Cicero's latest review of Respondent. (Botelho, p. 271).

Mr. Vaz also explained that for a six month period there was a lapse in anyone having direct control over driver paperwork, and that while Respondent had knowledge of the Regulations, it lacked personnel to put that knowledge to work. (P. Vaz, Tr. 279). Furthermore, Respondent's safety program lacked continuity with its director changing every six months. (P. Vaz, Tr. 276–280).

I agree with Complainant that Respondent failed to have a system in place such that it could "reasonably" ensure that records of duty status would be regularly collected and maintained.

I, therefore, find Respondent liable for the eight instances where it failed to require driver DeVasto to forward within 13 days of completion the original of the records of duty status and failed to maintain such records for a period of six months in violation of 49 CFR 395.8 (a), (i) and (k).

5. Fifth Claim: 8 Instances of Failing To Retain a Driver Inspection Report for At Least 3 Months in Violation of 49 CFR 396.11(c)(2)

The fifth claim cited in the Notice of Claim charges Respondent with 8 instances in which it failed to retain a driver vehicle inspection report for at least 3 months in violation of 49 CFR 396.11(c)(2). During Cicero's inspection of Respondent, Cicero checked Respondent's files for vehicle inspection reports corresponding to the interstate trips of driver DeVasto of 6/7/90, 6/24/90, 6/28/90, 7/18/90, 7/20/90, 7/23/90, 7/26/90, and 7/31/90 and found no such corresponding vehicle inspection reports on file at Respondent's place of business. (Finding 56). Furthermore, at the hearing, Cicero testified that he had received no vehicle inspection reports from DeVasto. (Cicero Tr. 106). I, therefore, find Respondent in violation of 49 CFR 396.11(c)(2) based on 8 instances in which it failed to retain a driver inspection report for at least 3 months.

B. Assessment of Penalties

The statutory scheme pertaining to civil penalties in FHWA motor carrier safety cases is set forth in 49 U.S.C. 521. 49 U.S.C. 521 provides for a hierarchal approach. The statute provides that "recordkeeping violations" may result in civil penalties not to exceed $500 per offense and that each day of a violation shall constitute a separate offense, except that the total of civil penalties assessed against any violator for all offenses relating to any single violation shall not exceed $2,500. The next level of assessment is a "serious pattern of safety violations" which may result in civil penalties not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000. The most serious type of violations are "substantial health or safety violations" which could reasonably lead to, or have resulted in, serious personal injury or death. Such violations may result in civil penalties not to exceed $10,000 for each offense.

49 U.S.C. 521(c) provides that the amount of a civil penalty shall be determined by taking into account the following nine factors: (1) Nature of the violation; (2) Circumstances of the violation; (3) Extent of the violation; (4) Gravity of the violation; (5) Degree of culpability; (6) History of prior offenses; (7) Ability to pay; (8) Effect on ability to continue to do business; and (9) Such other matters as justice and public safety may require. Furthermore, the June 23, 1989 Revised Civil Penalty Guidelines of the FHWA (the "Guidelines") enumerate and discuss these nine factors. The Guidelines also recommend that written documentation of how penalty assessments are determined should be kept in order to promote greater confidence in the motor carrier enforcement program. The Guidelines specifically state:

> The FHWA motor carrier safety and hazardous materials enforcement program has been criticized for failure to adequately document the basis for initial and final assessments in civil forfeiture cases. Greater confidence in the integrity and fairness of the enforcement program will be fostered if the case files contain documentation explaining in detail the basis for the assessments. (CX–62).

In administrative law cases, the burden of proof in establishing a violation and the appropriate penalty is on the government agency. *Bosma* v. *United States Dep't. of Agric.*, 754 F.2d 804 (9th Cir. 1983). The burden of proof, in its primary sense, rests on the party who asserts the affirmative of an issue; and it remains there until termination of the action. *Kalkowski* v. *Ronko, Inc.*, 424 F. Supp. 343 (N.D. Ill. 1976). Thus, the burden of proof is on the FHWA to establish the justification for and amount of the penalties assessed in this action.

In recommending penalties to be assessed against Respondent for the violations set forth in the Notice of Claim, Fred Gruin, the FHWA's Federal Programs Manager, relied on the Guidelines devised by the agency for that purpose. (CX–62; Gruin, Tr., p.

[10] I note that in its Reply Brief, Respondent contends that 49 CFR 395.8 imposes the duty upon the carrier to require its drivers to complete logs and that the duty to transmit the logs is clearly imposed upon the drivers. Respondent further contends that this is entirely appropriate since it is the driver who has possession and control of the logs at that point. (RRB, p. 4). I disagree with Respondent's contention that under the Regulations a carrier has no responsibility until the logs are in its possession.

145). At the hearing, Mr. Gruin testified that although he considered all nine factors listed in 49 U.S.C. 521(c) and the Guidelines in calculating Respondent's penalty assessment, he kept no written documentation or checklist of his penalty calculations. (Gruin, Tr. 155).

Thus, Complainant has acknowledged that it failed to comply with its own Guidelines with respect to documenting its penalty assessments. A government agency's failure to comply with its own internal guidelines or regulations can be grounds for invalidating its action. *Vitarelli* v. *Seaton*, 359 U.S. 535 (1959).[11]

Based on the holding in *Vitarelli*, I conclude that Complainant's recommendations as to the amount of penalties with regard to each of the claims set forth in the Notice of Claim should be invalid and of no effect since Complainant did not comply with its own guidelines with respect to documenting its penalty assessments. Consequently, in rendering my Decision with regard to penalties, I have independently taken into account each of the nine factors set forth in 49 U.S.C. 521(c) and the Guidelines, and have independently determined the appropriate penalty. I will now discuss each of such nine factors.

1. Nature of the Violation

This factor is taken into account in determining the appropriate category of penalty. Here, Complainant has charged Respondent with substantial health and safety violations (49 CFR 391.15(a) and (b)); a serious pattern of safety violations (49 CFR 395.3(b)(2)); and recordkeeping violations (49 CFR 394.9(a); 49 CFR 395.8 (a), (i), and (k); 49 CFR 396.11(c)(2)).

2. Circumstances of the Violation

The Guidelines state that mitigating and aggravating variables are factors concerning the conditions, factors, or events accompanying the violations that reflect on the culpability of Respondent. The Guidelines state that persistent and serious noncompliance reflects a disregard for safety, which in turn will increase the frequency of imminently hazardous conditions and eventually result in accidents. The Guidelines further state that timely correction of violation patterns may bring about compliance and prevent the imminent hazards from developing. Here, mitigating factors exist which indicate that Respondent attempted to timely correct violations so as to bring about compliance and prevent the imminent hazards from developing. I have taken these mitigating factors into account in assessing penalties against Respondent.

Following the July, 1990 compliance review of Respondent, Peter Vaz, President of Respondent, sent a letter dated October 11, 1990 to Mr. Fred Gruin, Federal Programs Manager for Region One, Motor Carrier Safety, Albany, New York, setting forth changes to be implemented at Respondent so as to ensure future compliance with the Regulations. (RX–3). This letter stated that some of the changes which would take place were as follows: an allotment of more office space and two additional employees for a department that will handle only D.O.T. and insurance paperwork; a reduction in Respondent's fleet by a third so as to decrease Respondent's need for drivers and so as to allow Respondent to retain the best drivers to drive the new fleet of tractors that it has ordered and for which it expects delivery on January 1, 1991; the development of a separate division for "brokerage" so as to take up the slack during peak demands for equipment and drivers and so as to allow Respondent to comply with driver requirements for logs more effectively; and the installation of a new computer and software paperwork to expedite the flow of information and to help meet D.O.T. paperwork requirements more effectively.

At the end of his October 11, 1990 letter to Mr. Gruin, Mr. Vaz stated his commitment to achieve total compliance with Department of Transportation regulations.

I view the specific changes set forth in Peter Vaz's October 11, 1990 letter as evidence that after the July, 1990 compliance review, Respondent sought to achieve full compliance with the Regulations. Furthermore, Mr. O'Brien, Respondent's safety consultant, testified that subsequent to the July, 1990 compliance review, Respondent was in approximately 100% compliance with the Regulations. (O'Brien, Tr. 220). While Mr. O'Brien, as Respondent's safety consultant, obviously is not a disinterested witness, his statement was not challenged by Complainant.

With regard to the charges against Respondent of using disqualified drivers in violation of 49 CFR 391.15(a) and (b), I believe there are specific mitigating factors. First, after receiving notice of Bradley's disqualification on October 17, 1989, Judith Vaz, corporate clerk for Respondent, promptly called and advised Respondent's dispatcher, Richard DeMoranville, that Bradley had been disqualified from driving in interstate commerce and could not be used anymore. (Finding 30). Furthermore, on or about October 18, 1989, Judith Vaz told Kathleen Botelho, a secretary for Respondent, that Bradley had been disqualified from driving in interstate commerce and on that same day, Ms. Botelho notified DeMoranville that Bradley had been disqualified from driving in interstate commerce. (Finding 31). Second, subsequent to DeMoranville's dispatching of disqualified drivers, he was demoted from his position as dispatcher and was temporarily separated from the company of a period of about three months, before being reinstated as an owner-operator. (Finding 35). Third, after DeVasto and Respondent were sent a letter dated May 14, 1990 from the FHWA regarding DeVasto's disqualifcation, Ms. Botelho, on May 18, 1990, informed dispatcher Johansen and corporate clerk Judith Vaz of DeVasto's disqualification. (Finding 37). Fourth, as a result of Johansen's dispatching disqualied drivers, Peter Vaz, president of Respondent, sent Johansen a letter reprimanding him for his actions and stating that only qualified drivers who met all of the requirements of the Department of Transportation and who were on the company's list of approved drivers could be used. (Finding 45). Fifth, as a result of Johanson's conduct in dispatching disqualified drivers, a letter was sent to all of Respondent's employees stating that it was the goal of Respondent to achieve 100% compliance with the Department of Transportation regulations and that Mr. Pereira, the company's safety director, would be producing daily a list of available qualified drivers and that only those individuals on the list could be dispatched. (Finding 46).

I view the changes set forth in Peter Vaz's October 11, 1990 letter and the aforementioned five factors as mitigating factors.

3. Extent of the Violation

The Guidelines explain that the extent of the violation depends on its magnitude, scope, frequency, and range. The Guidelines provide that to quantify these factors, two main points should be considered:

(1) The sampling methods required in chapter 7 of the OMCS Training Text. The closer the sampling method is followed, the more accurate the picture given, and the greater the extent of the violation; the less the sampling method is followed, the more distorted the

[11] In *Vitarelli*, a former employee of the Department of Interior brought suit against the Secretary of Interior for reinstatement and a declaration that his dismissal had been illegal and ineffective. The Court held that the employee's dismissal was in fact illegal and of no effect since the Department of Interior did not follow applicable agency guidelines in dismissing the employee.

pictura given, and the lesser the extent of the violation.

(2) Ratio of violations found to the number of records, vehicles or employees checked. The larger this ratio, the larger the extent; the lesser this ratio, the smaller the extent.

I agree with Respondent that Complainant did not introduce any evidence concerning Cicero's compliance with the sampling methods of the OMCS Training Text or any evidence as to what those sampling methods recommend. (RPB, p. 21). Furthermore, the OMCS Training Text was not made part of the evidentiary record. In addition, I agree with Respondent that Cicero did not keep accurate track of the number of logs that were checked. Cicero's estimate was 265 logs (Cicero, Tr. 96) while O'Brien estimated that the number was closer to 1,000 during the 17+ days of the investigation. (O'Brien, Tr. 199). Consequently, I agree with Respondent that it is difficult, if not impossible, to assign any weight to this factor. Therefore, I find that Complainant has failed to show the magnitude, scope, frequency, and range in accordance with this own guidelines.

4. Gravity of the Violation

The Guidelines indicate that gravity is an evaluation of the seriousness of the violation as measured by the likelihood of the occurrence of the event against which a standard is directed, and the severity or seriousness of the event if it occurred or were to occur. The Guidelines further indicate that the probability of occurrence should be judged on a scale of "unlikely" to "reasonably likely" to "highly likely" to "occurred." The severity of occurrence should be judged on a scale of "little" to "moderate" to "severe" potential or actual impact on public safety and health.

With regard to Respondent's use of disqualified drivers in violation of 49 CFR 391.15 (a) and (b), although no serious injury or death did in fact occur, serious injury or death was "reasonably likely" or "highly likely" to occur as a result of Respondent's frequent and recurring use of disqualified drivers. With regard to the severity of such occurrences, there was "severe" potential impact on public safety and health because Bradley, DeVasto, and MacDonald were disqualified for safety reasons. (CX–20; CX–22; CX–69). I agree with Complainant that the purpose of the regulation is to remove unsafe drivers from the road and to protect the traveling public from injury or death. (CPB, p. 34). Repeatedly breaking the speed limit, repeated vehicular accidents, and driving with suspended licenses are serious safety matters and the fact that disqualified drivers were continually dispatched by Respondent constitutes a severe potential impact on public safety. (CPB, p. 34). Thus, I believe that Bradley, DeVasto and MacDonald posed serious threats to the traveling public.

With regard to respondent's culpability relating to its violations of 49 CFR 391.15 (a) and (b), Respondent has been "moderately culpable." The Guidelines state that "moderate culpability" exists when a violator knew or should have known of the violative condition, but there are some mitigating factors. As discussed in Section II(A)(1)(b) of this Decision, Respondent "should have known" that disqualified drivers were being dispatched to drive in interstate commerce. However, as discussed previously, there are some mitigating factors.

With regard to recordkeeping violations, the Guidelines provide that instead of determining gravity based on the probability and severity of occurrence, the gravity shall be determined based upon the extent to which enforcement is obstructed by the violation. For instance, failure to maintain records of duty status hinders the discovery of hours of service violations. Here, Cicero's investigation of Respondent was not hindered due to the fact that DeVasto possessed his records of duty status.

5. Degree of Culpability

The Guidelines provide that culpability is an evaluation of the blameworthiness of the violator's conduct or actions. While Complainant alleges that Respondent exhibited "high culpability," Respondent alleges that no culpability should be assigned to Respondent. I do not agree with either party's contention. Because of the mitigating factors set forth in Section II(B)(2) of this Decision ("Circumstances of the Violation"), the level of culpability exhibited by Respondent was "low to moderate."

6. History of Prior Offenses

The Guidelines consider a carrier's history of prior offenses to be a major factor in the determination of an appropriate penalty because such history provides an indication of both an awareness of the safety obligations and the willingness to comply with the Regulations.

In its Post Hearing Brief, Complainant takes the position that the prior audits of Respondent constitute a history of prior offenses, even when Respondent did not pay a fine. Complainant notes that Respondent had previously been cited and assessed penalties for its failure to report accidents and violations of the 70 hours in 8 days regulations, and it had been cited without penalty for using disqualified drivers and failure to have on file records of duty status and vehicle inspection reports. (*Used Equipment Sales*, FHWA Docket Nos. 89–1 and 89–181). Complainant further notes that Respondent had been cited and penalties assessed for dissimilar violations of the Regulations including making false entries on records of duty status. (Used Equipment Sales, FHWA Docket Nos. 89–1 and 89–181).[12]

Complainant has not shown that such audits of Respondent constitute a history of prior offenses. I note that neither the Regulations nor 49 U.S.C. 3102, the authorizing statute pursuant to which the Regulations were promulgated, provide that as a matter of law the payment of an assessment constitutes a finding of a violation of the Regulations. Furthermore, in the absence of an admission of liability on the part of Respondent or an explicit finding of a violation by Respondent, the payment by Respondent of an assessment is in the nature of a compromise or settlement agreement. Case law indicates that a compromise agreement is substituted for the antecedent claim and the antecedent claim is extinguished. *U.S.* v. *Baus*, 834 F.2d 1114 (1st Cir. 1987). Case law further indicates that a valid compromise and settlement is final, conclusive, and binding upon the parties, and regardless of what the actual merits of the antecedent claim may have been, they will not afterward be inquired into and examined. *American Sec. Vanlines, Inc.* v. *Gallagher*, 782 F.2d 1056 (D.C. Cir. 1986). In the absence of an explicit finding of a violation by Respondent, or an admission of liability on the part of Respondent, I can not conclude that the previous audits of Respondent constitute prior offenses.

7. and 8. Ability To Pay and Ability To Do Business

The Guidelines provide that the violator's size, gross revenues, resources, and the standards in 49 CFR part 103 (Standards for Compromise of Claims: Inability To Pay) should be taken into consideration in making a determination whether to charge the total potential assessment. While Respondent has acknowledged that it is

[12] FHWA Docket Nos. 89–1 and 89–181 were not made part of the record, were not published, and were not otherwise publicly available. Therefore, I can not consider these dockets in making a determination of prior offenses.

a small carrier, Respondent has not asserted inability to pay or that payment of assessed penalties would threaten its ability to stay in business.

9. Such Other Matters As Justice and Public Safety May Require

The Guidelines provide that other matters, not specifically covered by one of the other factors, can either be aggravating or mitigating and should be taken into account, if, in the interests of justice and public safety, they require either a reduction or an increase in the amount of the assessment in order to achieve the purposes of the Motor Carrier Safety Act. I consider Respondent's cooperation with the FHWA in its compliance review and Respondent's positive attitude towards compliance with the Regulations to be mitigating factors which should reduce the amount of the assessment against Respondent. Furthermore, I agree with Respondent that another factor which should be taken into consideration in assessing penalties against Respondent is the degree to which penalties are consistent with those assessed against other carriers for similar alleged violations. (RPB, p. 25). The Guidelines indicate that their intent is to promote greater consistency among the Regions, to prevent "unwarranted disparity," and "to promote a fair and equitable enforcement process." Additionally, at the hearing, Mr. Gruin acknowledged that consistency in enforcement action is a desirable goal. (Gruin, Tr. 169–170).[13]

With regard to the charge against Respondent of thirteen instances of using disqualified drivers to drive in interstate commerce, Complainant seeks a penalty against Respondent in the amount of $65,000 ($5,000 per violation). At the hearing, Mr. Gruin was examined concerning recent penalty collections announced by Region One. Respondent further discussed such collections in its Post Hearing Brief.

In Docket No. 91–014 Complainant collected $1,000 from a carrier of medical and hazardous waste for one instance of using a disqualified driver. (Gruin, Tr. 172, 173). In Docket No. 91–154 Complainant collected a total of $1,700 from Carl Harz Furniture Co. for, among other things, using a physically unqualified driver, failing to report an accident, and failing to require preparation of vehicle inspection reports. The disqualified driver had vision in only one eye. (Gruin, Tr. 173, 174). In Docket No. 91–032 Complainant collected $40,500 from a carrier, Lisanti Foods, for a large number of violations which were deemed so aggravated that the FHWA for the first time in its history also exercised its power to issue a cease and desist order. (Gruin, Tr. 173). In Docket No. 91–139 the FHWA collected $1,300 from a carrier for using a driver who was an insulin dependent diabetic and, therefore, physically unqualified. (Gruin, Tr. 175–176). In docket No. 89–316, the FHWA had the U.S. Attorney file a civil action to collect $6,000 from Northeast Bulk Cartage Inc. for a variety of infractions, including use of a driver with a false medical examiner's certificate, failure to report an accident, and hours of service violations of the 10-hour rule, the 15-hour rule and the 70-hour rule. (Gruin, Tr. 177). In Docket 90–248, Complainant collected a total of $24,500 for violations which included use of a disqualified driver, failing to require drivers to submit logs and failing to require vehicle inspection reports. (Gruin, Tr. 177).

I have considered the alleged violations and the aggravating factors in the aforementioned cases, and I conclude that the penalty sought by Complainant is excessive, whether viewed in its totality or for each separate violation. For example, assessing a $5,000 penalty against Respondent for each instance of using a disqualified driver is excessive in comparison to the penalties assessed against the carriers in the aforementioned cases. For example, the use of a driver who is initially physically unqualified to drive is more serious than the use of a subsequently disqualified driver, yet in Docket No. 91–139 the FHWA collected only $1,300 from the carrier for using an insulin dependent diabetic, and therefore, physically unqualified driver. Furthermore, I note that in Docket No. 91–032, while the violations were so aggravated that the FHWA exercised its power to issue a cease and desist order, the FHWA collected a total of $40,500 from the carrier, an amount which is less than the total of $65,000 ($5,000 per penalty) which the FHWA is seeking here for Respondent's 13 instances of using disqualified drivers to drive in interstate commerce. A total penalty of $65,000 against Respondent for using disqualified drivers is excessive, especially in the absence of certain aggravating factors which might have caused the FHWA to issue a cease and desist order.

C. Substantial Health and Safety Violations—Penalty for Violations of 49 CFR 391.15 (a) and (b)

The Notice of Claim states that the FHWA had found that Respondent's violations of 48 CFR 391.15 (a) and (b) relating to Respondent's use of disqualified drivers constituted substantial health and safety violations. The guidelines provide that substantial health or safety violations should be charged when the likelihood of resultant serious injury or death is demonstrable. Furthermore, 49 U.S.C. 521(2) provides that if the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense. Additionally, the Guidelines set forth a Violation Schedule which provides that substantial health and safety violations should be charged when the likelihood of resultant injury or death is demonstrable through the occurrence of accidents, the seriousness of the condition, or the disposition of the carrier toward compliance as determined in a compliance review.

I consider the dispatching of disqualified drivers to drive in interstate commerce to be a serious matter. While Respondent contends that the disqualifications of drivers Bradley, DeVasto and MacDonald resulted from failure to pay fines or appear in court, the evidence shows that Bradley and DeVasto were disqualified for serious driving infractions. Bradley was cited for various driving infractions for which he failed to pay fines and continued to drive without a license. (CPB, p. 13; CX–20D–L). On many occasions, Bradley was cited for speeding violations, often for driving 20 or more miles over the speed limit. (CX–20D; G, I, J and K). With regard to DeVasto, Complainant correctly points out that while DeVasto's driving record does show an entry for his failure to pay excise taxes, it also indicates that he was involved in numerous vehicle accidents, including his leaving the scene of a personal injury accident, that he refused to take a chemical test, that he had speeding violations, and that he was in the DWI alcohol program. (CX–64).

With regard to MacDonald, Complainant notes that his disqualification problems concern his suspended Vermont license. (CX–64, CX–11, CX–13). Complainant has failed, however, to set forth evidence

[13] Complainant argues that each case must be considered on its own merits. While that is true, consistency and fairness is required. Courts have held in other contexts that federal agencies must be consistent in the application of sanctions. *Essery* v. *Dept. of Transportation*, 857 F.2d 1286 (9th Cir. 1988).

establishing why MacDonald's Vermont license was suspended. Thus, although MacDonald was in fact disqualified to drive in interstate commerce, I am unable to conclude that MacDonald's disqualification constituted a serious driving infraction.

Complainant seeks a penalty of $65,000 ($5,000 each) for the 13 violations of 49 CFR 391.15 (a) and (b). In its Post Hearing Brief, Respondent contends that, although Respondent is charged with using three disqualified drivers, Complainant improperly seeks to impose penalties for sequential days of the alleged violations, for a total of 13 separate violations. (RPB, p. 7). Respondent contends that this attempt to impose cumulative per diem penalties goes beyond the Administrator's authority under 49 U.S.C. 521(b)(2). (RPB, p. 7). Respondent notes that while the statute provides that recordkeeping violations may be assessed a civil penalty not to exceed $500 for each offense and specifically provides that "each day of a violation shall constitute a separate offense," no similar language appears for violations other than recordkeeping matters. (RPB, p. 8). Respondent concludes that Complainant has exceeded statutory authority in attempting to impose per diem penalties upon the alleged violations of 49 CFR 391.15 (a) and (b).

I do not agree with Respondent's contentions. Each separate dispatch of an unqualified driver, cited in the Notice of Claim, constitutes a separate and distinct offense in violation of 49 CFR 391.15 (a) and (b). 49 U.S.C. 521(2) provides that if the Secretary determines that a substantial health or safety violation exists, the Secretary may assess a civil penalty not to exceed $10,000 for "each" offense. Where a statutory penalty is imposed for "each" offense, multiple penalties are recoverable for a multiplicity of occurrences subject to such penalty. *People* v. *Abramson*, 101 N.E. 849, (N.Y. App. Div. 1913). Thus, Respondent may be assessed a penalty for each of the 13 violations of 49 CFR 391.15 (a) and (b).

After taking into account the nine factors set forth in 49 U.S.C. 521(c) and the Guidelines, and after taking into account mitigating factors with regard to Respondent's violations of 49 CFR 391.15 (a) and (b), I assess penalties of $2,500 for each of the five dispatches of Bradley and $2,500 for each of the 5 dispatches of DeVasto. With regard to MacDonald, I again note that because of Complainant's failure to set forth evidence establishing why MacDonald's Vermont license had been suspended, I am unable to conclude that MacDonald's disqualification constituted a serious driving infraction and, therefore, I assess penalties of $1,500 for each of the three dispatches of MacDonald. Thus, I assess a total penalty in the amount of $29,500 against Respondent with regard to its 13 violations of 49 CFR 391.15 (a) and (b).

D. Serious Pattern of Safety Violations—Penalty for Violations of 49 CFR 395.3(b)(2)

The Notice of Claim states that the FHWA had found that Respondent's violations of 49 CFR 395.3(b)(2) constitute a serious pattern of safety violations which subjects Respondent to a penalty of $2,000 ($1,000 each) for the two violations. The legislative history of the Motor Carrier Safety Act (the "Act") has largely determined the meaning of "pattern" in the statutory context. The Committee on Commerce, Science and Transportation (S.R. 98–424) stated that a "serious pattern of safety violations" are violations that are not isolated human errors, but are tolerated patterns of equipment violations of operative conduct that any responsible business entity could detect and correct if it wanted to meet its full safety responsibility to the public. Furthermore, the Guidelines provide that while a pattern is more than an isolated violation, a pattern does not require a prescribed number of violations. "[I]f violations are continuing, then a clear pattern case will have been established * * *" (*Tonawanda Tank Transport Service, Inc.*, Docket No. R1–88–130, Final Order dated July 5, 1990; *see also Drotzmann, Inc.*, Docket No. R10–89–11, Final Order dated June 20, 1990, p. 2). Thus, a "serious pattern" under the Act connotes violations that are both repeated and detectable by reasonable diligence.

Here, I find Respondent's two violations of 49 CFR 395.3(b)(2), in requiring or permitting driver Raposa and driver DeMoranville to drive after having been on duty more than 70 hours in 8 consecutive days, to constitute a serious pattern of safety violations. I find that more than one isolated violation exists and that the violations could have been detected with a minimum of reasonable effort. Additionally, I consider Respondent's company policy that some violations of the 70-hour regulation would occur, and that when such violations did occur Respondent would take responsibility (Finding 54), to evidence a conscious disregard on the part of Respondent to comply with the hours of service regulation.[14]

Based upon my finding that Respondent's two violations of 49 CFR 391.15 (a) and (b) constitute a serious pattern of safety violations and that there are no specific mitigating circumstances with respect these offenses, I hereby assess a penalty of $2,000 ($1,000 for each violation) against Respondent.

E. Recordkeeping Violations—Penalties for Violations of 49 CFR 395.8 (a), (i) and (k) and 49 CFR 396.11(c)(2)

Respondent's recordkeeping violations, as cited in the Notice of Claim, include its failure to report an accident, in violation of 49 CFR 394.9(a); its failure to require a driver to forward within 13 days of completion the original of the record of duty status and its failure to maintain such records for a period of six months, in violation of 49 CFR 395.8 (a), (i), and (k); and its failure to retain a driver vehicle inspection report for at least 3 months, in violation of 49 CFR 396.11(c)(2). The Guidelines provide that recordkeeping violations are violations of the administrative requirements of the Regulations, including failure to make, require or keep records or the falsification of entries thereon, required by the Regulations. The Violation Schedule of the Guidelines provides that failure to produce accurate records to be prepared, verified or maintained by the carrier, result in violations which should be charged against the carrier and that failure of the driver to prepare and maintain records as required result in violations which should be charged against the driver only on the roadside. The Violation Schedule further provides that it is primarily the carrier's responsibility to assure compliance by the driver.

With regard to the charge against Respondent of failing to report an accident in violation of 49 CFR 394.9(a), I find no liability on the part of Respondent for the reasons discussed in Section II(A)(2) of this Decision.

With regard to the eight instances of failing to require a driver to forward within 13 days of completion the original of the record of duty status and

[14] In its Post Hearing Brief, Complainant takes the position that prior audits of Respondent, whereby Respondent was either assessed penalties for violating the 70-hour regulation or was merely cited for violating such regulation, warrant a finding that Respondent's violations of 49 CFR 395.3(b)(2) constitute a serious pattern of safety violations. For the reasons set forth in section II(B)(6) of this Decision ("History of Prior Offenses"), these prior audits are not evidence of prior violations and thus cannot be considered in determining whether there is a serious pattern of safety violations.

failing to maintain such records for a period of six months in violation of 49 CFR 395.8 (a), (i) and (k), Complainant seeks a penalty of $4,000 ($500 for each of the eight violations). Complainant also seeks a penalty of $4,000 ($500 for each of the eight violations) with regard to the charge against Respondent of eight instances of failing to retain a driver inspection report for at least 3 months in violation of 49 CFR 396.11(c)(2).

In assessing a penalty against Respondent for the eight violations of 49 CFR 395.8 (a), (i), and (k) and the eight violations of 49 CFR 396.11(c)(2), I agree with Complainant that it is very important that records of duty status and vehicle inspection reports are on file as required at a carrier's principal place of business so that a carrier can monitor, and be monitored, for hours of service violations and for vehicle defects. (CPB, p. 41.) However, the changes implemented by Respondent subsequent to the July, 1990 compliance review (set forth in Peter Vaz's October 11, 1990 letter to Mr. Gruin) constitute mitigating factors which justify imposition of somewhat less than the maximum penalty of $500 per offense. Therefore, I hereby assess a penalty of $3,200 ($400 each) for the eight violations of 49 CFR 395.8 (a), (i), and (k) and $3,200 ($400 each) for the eight violations of 49 CFR 396.11(c)(2).

III. Conclusion

With regard to the first claim, I find Respondent liable for the thirteen instances in which it used disqualified drivers in violation of 49 CFR 391.15(a) and (b) and assess a penalty in the amount of $29,500 for such violations. With regard to the second claim, I find no liability on the part of Respondent with regard to its alleged failure to report an accident in violation of 49 CFR 394.9(a) and, therefore, assess no penalty with regard to this claim. With regard to the third claim, I find Respondent liable for the two instances in which it required or permitted drivers to drive after having been on duty more than 70 hours in 8 consecutive days in violation of 49 CFR 395.3(b)(2) and assess a penalty in the amount of $2,000 for such violations. With regard to the fourth claim, I find Respondent liable for the eight instances in which it failed to require a driver to forward within 13 days of completion the original records of duty status and its failure to maintain such records for a period of six months in violation of 49 CFR 395.8 (a), (i) and (k) and assess a penalty in the amount of $3,200 for such violations. With regard to the fifth claim, I find Respondent liable for the eight instances in which it failed to retain a driver inspection report for at least 3 months in violation of 49 CFR 396.11(c)(2) and assess a penalty in the amount of $3,200 for such violations. Thus, I assess a total penalty in the amount of $37,900 against Respondent.

Robert L. Barton, Jr.,
Administrative Law Judge

Appendix

A. 49 CFR 391.15 Disqualification of Drivers

49 CFR 391.15(a) provides that: A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

49 CFR 391.15(b) provides that: A driver is disqualified for the duration of his loss of his privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew or denied it.

B. 49 CFR 394.9 Reporting of Accidents

49 CFR 394.9(a) provides that: Within 30 days after a motor carrier learns or should have learned that a reportable accident occurred, the motor carrier must file the original and two copies of Form MCS 50–T (property) or Form MCS 50–B (passengers), completed as specified in paragraph (b) of this section, with the Director of the Regional Motor Carrier Safety Office of the Federal Highway Administration region in which the carrier's principal place of business is located.

C. 49 CFR 395.3 Maximum Driving and On-Duty Time

49 CFR 395.3(b)(2) provides that: No motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates motor vehicles every day of the week.

D. 395.8 Driver's Record of Duty Status

49 CFR 335.8(a) provides that: Every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24-hour period using the methods prescribed in either paragraphs (a) (1) or (2) of this section.

49 CFR 395.8(i) deals with filing driver's record of duty status and provides that: The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.

49 CFR 395.8(k) deals with retention of driver's record of duty status and provides that: Driver's records of duty status for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from date of receipt.

E. 49 CFR 396.11 Driver Vehicle Inspection Report(s)

49 CFR 396.11(c)(2) deals with corrective action and provides that: Prior to operating a motor vehicle, motor carriers or their agent(s) shall effect repair of any items listed on the vehicle inspection report(s) that would be likely to affect the safety of operation of the vehicle. Motor Carriers shall retain the original copy of each vehicle inspection report and the certification of repairs for at least 3 months from the date the report was prepared.

Final Order; S–W Mills, Inc.,

This matter comes before me upon a motion by Respondent S–W Mills, Inc. ("S–W Mills"), for an involuntary dismissal, and a cross-motion of the Regional Director, Region 5, opposing S–W Mills' motion and requesting a final order. The parties have submitted arguments and have asked that I determine whether S–W Mills qualifies for exemptions to the Federal Motor Carrier Safety Regulations ("FMCSRs") which would relieve it of liability for alleged violations of these regulations. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier and Hazardous Materials Proceedings, 49 CFR part 386.

Background

S–W Mills is an interstate carrier located in Archbold, Ohio. It "owns farms from which it harvests hay, rents fields for the season from which it harvests hay and harvests hay from fields where hay is purchased 'by the ton.'" S–W Mills' Motion to Dismiss at 1. The alleged violations of the FMCSRs involve motor carrier operations relating to S–W Mills' rented fields and fields from which hay is purchased.

An August 1989 safety review resulted in the carrier receiving an "unsatisfactory" rating. After a November 1, 1990, compliance review disclosed numerous violations of the FMCSRs, a notice of claim was sent to S–W Mills on February 19, 1991. The carrier was charged with 22 violations: 21 counts of violating 49 CFR 395.8 (failing to require drivers to make and submit records of duty status), and one count of violating 49 CFR 394.9 (failing to report an accident). The Regional Director assessed a penalty of $350 for each violation, for a total penalty of $7,700.

S–W Mills does not deny that it committed the acts which led to the

charges. Instead, the carrier argues that it is not subject to the regulations in question, raising in its defense two exemptions contained in the regulations: the "farm-to-market agricultural transportation" exemption of 49 CFR 394.1(c) (to both sets of charges), and the "100 air-mile radius" exemption of 49 CFR 395.8(1) (to the hours-of-service recordkeeping violations only).

The first of these exemptions, for farm-to-market agricultural transportation, provides: "The rules [governing notification and reporting of accidents] do not apply to farm-to-market agricultural transportation as defined in § 390.5." 49 CFR 394.1(c). The definition of farm-to-market agricultural transportation found in § 390.5 states (in pertinent part) that the term includes:

> the operation of a motor vehicle controlled and operated by a farmer who:
> (a) Is a private motor carrier of property; [and]
> (b) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer.

Section 390.5 also defines the term "farmer" as:

> * * * any person [including a corporation] who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—
> (a) Are owned by that person; or
> (b) Are under the direct control of that person.

The second exemption claimed by S–W Mills is found in § 395.8(1). It releases a carrier from the duty to require drivers to submit records of duty status if:

> (i) The driver operates within a 100 air-mile radius of the normal work reporting location; [and]
> (ii) The driver * * * returns to the work reporting location, and is released from work within 12 consecutive hours * * *.

Discussion

1. The Hours-of-Service Recordkeeping Violations (§ 395.8)

S–W Mills claims that either of the exemptions should excuse it from liability for all 21 violations of § 395.8. Although the farm-to-market exemption is found only in part 394, the carrier contends that the exemption "should apply in the same manner to part 395 as it applies to other parts of the Motor Carrier Regulations." Position of S–W Mills at 4. The Regional Director, on the other hand, notes that S–W Mills does not contend that it is able to find language comparable to 49 CFR 390.5 and 394.1 in the hours-of-service requirements. In his motion for final order, the Regional Director argues that since the exemption is explicitly stated in the accident reporting regulations (part 394), if the exemption were meant also to apply to the recordkeeping requirements, then it would be listed there, as well. Regional Director's Motion at 7.

I find that the regulations do not support the position advocated by S–W Mills. The exemption (as opposed to the definition) for farm-to-market agricultural transportation appears only in part 394. Until 1988, when the regulations were amended, the farm-to-market *definition* also appeared only in part 394. See, *e.g.*, 49 CFR part 394 (1987). No other part, including part 395, contains any reference to the farm-to-market exemption. Based on the record before me, I find that the farm-to-market agricultural transportation exemption of part 394 does not extend to part 395 of the FMCSRs.

As noted earlier, S–W Mills also claims that it is covered by the 100 air-mile exemption to § 395.8. While the parties agree that none of the farms involved in this matter is more than 30 miles from the carrier's factory, and thus fall within subsection (i) of the exemption, S–W Mills admits that its drivers frequently are not released from work within the 12 hours prescribed by the exemption. In fact, I find documented in the record before me driver workdays of 14, 15, and even 17 hours. The carrier argues, though, that the exemption should be interpreted to take into account workers who, like those at S–W Mills, spend only part of their workday driving. S–W Mills' Motion at 4. The Regional Director, on the other hand, argues that the rule does not differentiate between driving and non-driving hours.

Based on the record before me, and a careful study of the regulatory language, I find that the exemption granted by § 395.8(l) is narrow in scope and that S–W Mills does not meet the requirements of the regulation. In order to claim the exemption from the requirement that drivers prepare records of duty status, a carrier must operate within a 100 air-mile radius of its principal place of business and also release its drivers from duty within 12 hours after they report to work. This S–W Mills admits it did not do. Therefore, I conclude that the plain language of both exemptions claimed by S–W Mills to the hours-of-service recordkeeping violations exclude the carrier from their coverage, and consequently I now grant that part of the Regional Director's Motion for Final Order which concerns the 21 counts against S–W Mills for violations of 49 CFR 395.8, and direct S–W Mills to pay the full amount of those claims, $7,350.

2. The Accident-Reporting Violation (§ 394.9)

S–W Mills claims that it was involved in farm-to-market transportation when the unreported accident occurred, and therefore was not required to report the accident to the Regional Office under § 394.1(c). Despite the farm-to-market definition's reference to "a farm *owned by* the farmer" (emphasis added), S–W Mills claims that the exemption should apply to its rental operations because "what is intended by the exemption language in § 390.5 is not ownership of land, but ownership of the crop, and, accordingly, hauling from rented land should also qualify for the exemption." S–W Mills claims that any other result would constitute discrimination against renters and "would certainly be struck down by the courts as * * * arbitrary and capricious. * * *" S–W Mills' Motion at 3.

The Regional Director, while conceding that S–W Mills comes within the definition of "farmer" in § 390.5, argues that "the critical test [of the applicability of the farm-to-market exemption] is whether the land which is the focal point of the transportation is owned by the 'farmer' whose vehicle is involved in the relevant transportation." Regional Director's Motion at 8. In this case, the vehicle which was involved in the unreported accident was on its way to land which was owned by another person, and only rented by S–W Mills. According to the Regional Director, the important point is not who qualifies as a "farmer," but rather, it is the relationship between the farmer and the land involved in the transportation. "The farmer involved in the transportation must also be the owner of the land which is the object of the particular transportation." *Id.*

The Regional Director suggests that the "ownership" criteria for this exemption serves to exclude custom-harvesting operations. *Id.* at 9. The Regional Director further asserts that "S–W Mills may well meet the definition of a custom-harvester * * *." *Id.* However, the record before me does not prove that to be the case, and it is just as likely that S–W Mills is a "tenant farmer." Moreover, I note that the "farm custom operations" exemption referred to by the Regional Director is contained in part 391, not part 394.

I find that as a matter of law that S–W Mills violated the accident-reporting provisions of part 394. S–W Mills

cannot claim the protection of the farm-to-market exemption because that definition excludes from its coverage farmers who are not owners, but instead are renters or purchasers of produce. As noted earlier, none of the farms at issue in this matter were owned by S–W Mills.

Nothing, however, in the record indicates why the farm-to-market definition should be limited to farmers who own the land they farm. I question the need for this limitation, and by copy of this order I direct the Office of Motor Carrier Standards to review this regulation and recommend whether this exemption should be enlarged to encompass those who lease farmland.

While S–W Mills must comply with the accident-reporting regulations, under these circumstances I find that it is not necessary to assess a penalty to induce compliance with these regulations. Accordingly, I decline to order S–W Mills to pay any civil penalty for its failure to report the accidents cited by the Regional Director. S–W Mills is, however, on notice that it is required under the FMCSRs to report accidents like the one giving rise to this dispute until such time as there is a change in the regulations and continued failure to report such accidents may result in the imposition of civil penalty intended to induce compliance with these regulations.

Therefore, *It is Hereby ordered* That the request of Respondent S–W Mills', Inc., for an involuntary dismissal is denied, and the Regional Director's Motion for Final Order is granted. Respondent S–W Mills, Inc., is hereby directed to pay the amount of $7,350 to the Regional Director within 30 days of the date of this order.

Dated: April 21, 1992.

Richard P. Landis,

Associated Administrator for Motor Carriers.

Final Order; Estelle Robertson

This matter comes before me upon a motion by the Regional Director, Region 6, opposing Respondent Estelle Robertson's ("Robertson") request for an administrative hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings ("Rules of Practice"), 49 CFR part 386.

Background

The Respondent, Estelle Robertson ("Robertson"), is an individual operating an exempt for-hire motor carrier engaged in interstate commerce. A May 11, 1989, safety review of Robertson's operations resulted in the company receiving an "unsatisfactory" rating. Robertson was advised of the need to comply with the Federal Motor Carrier Safety Regulations ("FMCSRs") and the company was placed in the Selective Compliance and Enforcement Program ("SCE Program"). A compliance review of Robertson's operations was conducted on May 1, 1990, and, after continuing violations of the FMCSRs allegedly were discovered, the company was served with a notice of claim on June 29, 1990.

The notice of claim cited Robertson for ten violations of 49 CFR 395.8, failing to require drivers to prepare and submit records of duty status. The notice of claim assessed a penalty of $300 for each violation, for a total fine of $3,000.

Robertson, through counsel, filed a timely reply on July 13, 1990. The reply denied each allegation and in addition alleged, without elaboration, that Robertson "was discriminated against and unjustly singled out for investigation and enforcement." Robertson requested an administrative hearing in order "to demonstrate [its] compliance with the Act on each count and to further demonstrate the discriminatory manner in which [it] was investigated and penalized." Robertson further stated that it "* * * had complied with all record keeping regulations of the Motor Carrier Safety Act, having submitted in accordance with said Act, records of duty status of [Robertson's] drivers." Reply of Estelle Robertson at 1. Alternatively, Robertson proposed negotiations to discuss the terms of payment or settlement of the amount claimed. *Id.* at 2. The parties engaged in prolonged settlement negotiations, but no agreement was reached.

The Regional Counsel submitted an Opposition to Request for Hearing and Motion for Final Order on June 24, 1991. Despite Robertson's denials of the violations, the Regional Director argued that no material factual issues were in dispute, and that the Region was entitled to a final order in the full amount of the claim.

Discussion

Robertson has requested an administrative hearing. In order to be granted a hearing, the Rules of Practice require that a respondent demonstrate a material factual issue in dispute. 49 CFR 386.14(b).

Robertson has been charged with failing to require its drivers to prepare records of duty status as required by 49 CFR part 395. Part 395 contains an exemption from its requirement for driver records of duty status, for transportation within 100 air miles of the carrier's place of business. 49 CFR 395.8(1). All of Robertson's operations take place within 80 miles of the company's principal place of business. In order to take advantage of the exemption, however, a carrier must keep records on its drivers' activities and maintain these records for a period of six months. 49 CFR 395.8(l)(v). The Regional Director alleges that since these alternate reports were not kept, Robertson cannot claim the exemption and, thus, Robertson's failure to require its drivers to prepare records of duty status was a violation of the FMCSRs.

Attached to the Regional Director's motion was a signed statement by Estelle Robertson, the company's owner, made at the time of the compliance review in May 1990. In the statement, Ms. Robertson declared that she "did not understand that [she] had to have time records showing" the information required under § 395.8(l)(v), and that she thought that the company's drivers "did not have to prepare the [records of duty status] because they operate within a 100 miles radius." Statement of Estelle Robertson at 3–4; Motion for Final Order at 2. The Regional Director argued that Robertson had been advised to prepare the documents needed to comply with § 395.8(l)(v) as early as the 1989 safety review. The motion went on to declare that despite this warning, the documents were not made available at the time of the 1990 compliance review, nor were they—despite Robertson's assertion to the contrary—submitted to either the regional or the division office. *Id.*

The 100 air-mile radius exemption requires compliance with a condition (the alternate reports), and the record before me indicates that the company did not keep these records. Robertson has failed to produce any evidence to rebut the Regional Director's *prima facie* case. Based on the evidence before me, I find that Robertson has not demonstrated a material factual issue in dispute, and therefore I decline to grant an administrative hearing on this issue.

As for Robertson's allegations of discrimination, the record before me is bare of any plausible grounds on which to base such an assertion. The Regional Director argues in his motion that, "It is completely clear that all agency procedures were followed in this matter. [Robertson] has offered no proof at anytime [sic] nor has [Robertson] made any other statements regarding 'discrimination.'" *Id.* at 3.

A safety review is a standard procedure for carriers subject to the FMCSRs. The 1989 safety review in this

case resulted in an "unsatisfactory" rating for the company. Accordingly, the carrier was entered into the SCE Program. The instant enforcement case resulted when the compliance review disclosed continuing violations.

I find nothing in the record before me to support Robertson's assertion that it is the object of any discrimination. Thus, I find that there are no grounds for a hearing on this issue, either.

Turning to the motion for final order, I find that the record before me fully supports the Regional Director in this matter. Estelle Roberston's statement is properly regarded as an admission that the company did not meet the conditions of the 100 air-mile exemption. Further evidence in support of the Regional Director's position is provided by the affidavit of George T. Walker, a Safety Investigator in the Federal Highway Administration's Louisiana division office. Mr. Walker conducted both the May 1989 and the May 1990 reviews of Robertson's operations, and declares that "there were no [records of duty status] on file with the carrier," and that the alternate records "did not meet the requirements of" § 395.8(l)(v). Finally, I note that there is no evidence in the record of any response by Robertson to the Regional Director's Motion for Final Order.

The record before me fully supports the charges brought against Robertson in the June 29, 1990, notice of claim. I also note that the penalty assessed by the Regional Director in this case is well within the maximum allowed by law. 49 U.S.C. § 521(b). For the reasons set out above, I now grant the Regional Director's motion in the full amount of the claim, $3,000.

Accordingly, *It is hereby ordered* That the request for a hearing by Respondent Estelle Robertson is denied, and the Petitioner Regional Director's request for a final order is granted. Respondent Estelle Robertson is hereby directed to pay the full amount of the claim, $3,000, to the Regional Director within 30 days of the date of this Order.

Dated: April 9, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Wayne P. Bryant and Mark Bryant d/b/a Bryant Trucking; Respondent

Final Order

Docket No. R7–90–020

Background

This matter comes before me upon a motion for final order by the Regional Director, Region 7, opposing Bryant Trucking's (Bryant) request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceeding, 49 CFR part 386.

A notice of claim was issued on February 1, 1990, charging Bryant with three violations of 49 CFR 391.51(a), failing to maintain driver qualification files; two violations of 49 CFR 395.3(a)(1), requiring or permitting a driver to drive more than 10 hours following 8 consecutive hours off duty; three violations of 49 CFR 395.8(a), failing to require every driver to make records of duty status; and two violations of 49 CFR 396.11(a), failing to require every driver to prepare driver vehicle inspection reports.

Bryant replied to the notice of claim on February 13, 1990. The motor carrier requested a hearing, denied all of the charges, and asserted that its operations were "not within the jurisdiction of the Department of Transportation in that they were private farm operations by the owner/operator carrying goods only owned by him, and were not conducted as public operations." Bryant also asserted that the material factual issue in dispute was whether it committed the conduct that is alleged to have violated the regulations.

On June 27, 1991, the Regional Director filed a motion to deny Bryant's hearing request and a motion for final order, stating that Bryant failed to state any material factual issue in dispute. Bryant did not respond to the motion for final order.

Discussion

Under 49 CFR 386.14(b)(2), hearing requests must list all material facts believed to be in dispute. If the Regional Director opposes the hearing request with evidence of the violations, then the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its assertions. *American Pacific Power Apparatus, Inc.*, No. OR–90–006–075, at 2, (FHWA March 11, 1992) (Final Order). In this case, Bryant produced no affidavits or other evidence to support its assertions.

Bryant's bare assertion that the regulation of its operations is not within the jurisdiction of the Department of Transportation raises a question of law, not fact, and therefore fails to raise a material factual issue in dispute. In any event, this defense is without merit. The evidence before me indicates that Bryant is a private motor carrier of property (49 CFR 390.5) which operates commercial motor vehicles across State lines, and, thus, in interstate commerce. 49 U.S.C. § 3102; 49 U.S.C. App. 2505; 49 CFR 390.3(a). Exhibits 1 and 2 to the 1989 Compliance Review report, Kansas Clearance Certificates, show that Bryant drivers operated in interstate commerce, hauling cattle between Texas and Missouri to Kansas. Exhibit B to the Compliance Review report consists of State driver/vehicle examination reports from Arkansas, Kansas, Missouri, and Tennessee, citing Bryant for numerous violations of the safety regulations and showing that the motor carrier operates in interstate commerce. Finally, none of the statutory or regulatory exemptions to the safety rules appear to apply to Bryant's commercial motor vehicle operations. See, *e.g.*, 49 CFR 390.3(f).

There is also evidence that Bryant had actual knowledge that it must comply with the FMCSRs. By letter dated November 10, 1964, the Interstate Commerce Commission (the Department of Transportation's predecessor agency then regulating interstate truck and bus safety) advised Bryant and Kirkman (now Bryant Trucking) that private carriers of property engaged in interstate commerce are subject to the Federal motor carrier safety regulations.

Because Bryant has failed to carry its burden of showing a material factual issue to be in dispute, its hearing request is denied.

When the motor carrier denies the allegations of the claim letter, but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order, the Regional Director's pleadings must be accompanied by evidence sufficient to establish a *prima facie* case. The Regional Director has met his burden of clearly establishing the essential elements of his claim and Bryant's reply is insufficient to rebut this *prima facie* case.

First, the record before me supports the allegations that Bryant failed to maintain complete driver qualification files for its drivers. Exhibit abstracts 1 through 3 attached to the 1989 Compliance Review report include a signed statement by driver/owner Mark Bryant, stating that the motor carrier "has no driver qualification files for any driver." Also included is a worksheet listing the documents required for each driver qualification filed, showing that the sole driver qualification document produced by Bryant at the compliance review was an expired medical exam certificate for Mark Bryant. This worksheet was signed by Mark Bryant as representing a true and accurate accounting of Bryant's driver qualification files.

Second, the Regional Director has met his burden of proving the two allegations that Bryant required or permitted its drivers to drive more than

10 hours following 8 consecutive hours off duty. Compliance Review report exhibit 4, the records of duty status for driver Mark Bryant for August 7–8, 1989, clearly reveals that Mr. Bryant drove 18 hours following 8 hours off duty. Similarly, exhibit 5, Mr. Bryant's August 20–21, 1989, records of duty status, shows that Mr. Bryant drove 19.5 hours following 8 consecutive hours off duty.

Third, the record supports the allegations that Bryant failed to require driver Kent Craig to make records of duty status. Exhibits 6 through 8 include trip documents showing that Mr. Craig operated a motor vehicle for Bryant in interstate commerce on May 16, June 21, and July 9, 1989. Also included is a list of the motor carrier's interstate trips, their dates, and the drivers. This list, which cited the three trips by Mr. Craig, was signed by Mark Bryant, certifying that it was true and accurate. Finally, in his signed statement taken at the compliance review, Mark Bryant stated, "We do not have any records of duty status for Kent Craig."

Finally, the evidence provided by the Regional Director supports the charges that Bryant failed to require driver Mark Bryant to prepare vehicle inspection reports. Exhibits 9 and 10 include a signed statement of Mark Bryant declaring that the motor carrier did not have any daily vehicle condition reports because it does not require their completion.

The Regional Director assessed a total penalty of $3,600 for the 10 violations: $400 for each of the three violations of § 391.51(a); $500 for both of the violations of § 395.3(a)(1), finding that these violations constituted a serious pattern; $300 each for the three violations of § 395.8(a); and $250 each for the two violations of § 396.11(a). These amounts are well within the statutory maximums. 49 U.S.C. § 521(b).

I find that the violations fully warrant the assessed penalty. Bryant has presented no evidence which would warrant mitigation of the amount, and the driver/vehicle enforcement records of several States reveal that Bryant has been repeatedly cited for numerous safety violations, yet it has done little to cure this noncompliance.

I also find that the 3 violations of § 395.3(a)(1) constitute a serious pattern of safety violations. The state enforcement reports include citations for violations of the 10-hour rule by Bryant drivers in 1986 in Kansas, and in 1989 in Tennessee. "If violations are continuing, then a clear pattern case will have been established."

Tonawanda Tank Transp. Serv., Inc., 55 FR 43279 (FHWA 1990) (Final Order).

It is Hereby Ordered that Bryant Trucking's request for a hearing is denied, the Regional Director's request for a final order is granted, and Bryant Trucking is directed to pay the sum of $3,600 to the Regional Director, Region 7, within 30 days of this order.

Dated: April 9, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

James Guest Respondent; Final Order

Docket No. 91–GA–025–SA

Introduction

This matter comes before me upon a motion by the Regional Director, Region 4, opposing James Guest's (Guest), request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

By notice of claim dated March 25, 1991, the Regional Director charged motor carrier Guest with one violation of 49 CFR 387.7(b), operating a motor vehicle without having the required minimum levels of financial responsibility; six violations of 49 CFR 391.51(a), failing to maintain driver qualification files in accordance with 391.51(c); two violations of 49 CFR 394.9(a), failing to report an accident, and eleven violations of 49 CFR 395.8(a), failing to require drivers to maintain records of duty status. The Regional Director assessed a total penalty of $8,200.

On April 9, 1991, Guest replied to the notice of claim and requested a hearing. The motor carrier denied that it operated a motor vehicle without the minimum level of financial responsibility, and asserted that "some of the driver files [were] complete and some of the log books were complete." Guest did not provide any affidavits or other evidence in support of its hearing request and denials.

The Regional Director responded on August 6, 1991, opposing the hearing request and requesting a final order. On December 20, 1991, the Regional Director filed a supplemental motion, a declaration by safety investigator Anthony Dixon, and several exhibits documenting the charges against Guest. Guest did not reply to the motion for final order or the supplemental motion.

Background

These charges resulted from a February 13, 1991, compliance review of Guest which revealed several violations of the Federal Motor Carrier Safety Regulations, 49 CFR 350–399. At the time of the review, Mr. James Guest, Sr., president of Guest, gave a written statement to safety investigator Dixon, in which Mr. Guest stated that he was unable to provide any more driver qualification files than were documented on a checklist prepared by Dixon. Mr. Guest also stated that he was unable to provide more than approximately 22 driver records of duty status out of the 150 sought by Mr. Dixon.

The driver checklist prepared by Mr. Dixon, which apparently documented the specific items missing from Guest's driver qualification files, was misplaced and therefore was not forwarded by the Regional Director to the Associate Administrator. To reconstruct the missing checklist, the Regional Director submitted a declaration by Mr. Dixon. This affidavit stated that "the lists of missing items appearing in abstracts #2–7 accurately reflect the list of missing items which appeared in the checklist." Declaration of Anthony L. Dixon, at 2. Exhibit abstracts 2 through 7 describe the specific documents required to be in each driver qualification file but which were missing from the files of 6 Guest drivers.

The Regional Director also provided 11 other exhibit abstracts in support of the 11 charges of failing to keep driver records of duty status. These abstracts describe documents which reveal that Guest drivers transported goods in interstate commerce, yet Guest could not provide records of duty status for these trips. Mr. Dixon attested that these exhibits accurately documented the driver log violations he discovered in his February 1991 compliance review of Guest.

In support of the financial responsibility charge, the Regional Director submitted copies of Guest's insurance policy and a Guest freight bill showing a January 9, 1991, shipment from Mableton, Georgia, to Plainfield, New Jersey. The insurance document reveals that Guest's insurance has a specific mileage limitation. The insurance does not apply if any trips of the insured vehicles exceed a 150 mile radius of where the vehicles are principally garaged in Comer, Georgia.

Discussion

Section 386.14(b) states that a hearing request must list all material facts believed to be in dispute. In this case, Guest asserted that it provided a copy of its insurance policy to Mr. Dixon to prove that it had the required level of financial responsibility. The motor carrier also stated that some of its driver

qualification files and records of duty status were complete. No affidavits or other evidence in support of these statements have been provided.

Upon review of the case as a whole, I find that Guest has failed to carry its burden of showing a materiel factual issue in dispute. Guest's statement that it was able to produce a copy of its insurance policy does not negate the violation that this same document reveals. Guest held no insurance for trips beyond a 150 mile radius from Comer, Georgia, yet the motor carrier permitted a driver to drive to Plainfield, New Jersey, on January 9, 1991. Similarly, Guest's ambiguous denial of some of the driver qualification file and driver record of duty status violations, when opposed by Mr. Dixon's affidavit and other documentary evidence, fails to clearly establish a material factual issue in dispute warranting a hearing under 49 U.S.C. 386.14(b).

A motion for final order is analogous to a motion for summary judgment. *Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). Therefore, the moving party bears the burden of proving that there is no genuine issue of material fact, and all evidence presented must be viewed in a light most favorable to the non-moving party, Guest.

Guest's failure to respond to or otherwise defend the two charges of failing to report an accident constitutes a default by the motor carrier. Therefore these allegations will be taken as true. 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* 2688 (1983).

Because Guest has in effect denied the remaining allegations but the Regional Director nevertheless opposes its hearing request and seeks a final order, the Regional Director's pleadings must be accompanied by affidavits or other evidence sufficient to establish a *prima facie* case. This evidentiary standard is no less stringent when the motor carrier has denied the allegations against it but fails to submit evidence in opposition to the motion. *American Pacific Power Apparatus* No. OR–90–006–075, at 5, (FHWA March 10, 1992) (Order). The Regional Director has met this evidentiary burden of clearly establishing the essential elements of his claim and Guest's reply is insufficient to rebut this *prima facie* case.

The record before me fully supports the remaining allegations that Guest did not have the required level of financial responsibility, failed to maintain complete driver qualification files, and failed to require its drivers to keep records of duty status for every trip. First of all, Guest's insurance policy clearly shows that the carrier held no insurance for trips beyond a 150 mile radius from its Comer, Georgia, office, yet a January 17, 1991, freight bill documents a trip by a Guest driver from Mableton, Georgia, to Plainfield, New Jersey, clearly outside of the 150 mile radius. Secondly, exhibits 2 through 7, certified by safety investigator Dixon as accurately reflecting Guest's driver qualification files at the time of the compliance review, reveal that there were several items missing from the files of six Guest drivers. Finally, exhibits 10 through 20 cite freight bills and invoices evidencing 11 trips by Guest drivers, yet Mr. Guest conceded in his statement taken at the compliance review that he was unable to produce any records of duty status for these trips. Therefore, the Regional Director's motion is supported by evidence sufficient to prove a *prima facie* case, and Guest's bare denials of these violations do not meet its burden to rebut this case.

The final issue in this case is the determination of the penalty amount. The Regional Director assessed a penalty of $2,500 for the charge of operating a motor vehicle without the required minimum level of financial responsibility. This amount is well within the $10,000 maximum amount provided for in 49 CFR 387.17, and I find no reason to reduce this penalty.

Guest was assessed $300 for each of the 19 remaining violations. The general civil penalty provisions of 49 U.S.C. 521(b)(2)(A) permit penalties of up to $500 for each offense. Although this is the first time that Guest has been cited for violations of the FMCSRs, James Guest Trucking, Inc., also with Mr. James Guest, Sr. as president, was the subject of a 1987 safety review. The 1987 review report identified several of the same violations for which the carrier is now charged, including its failure to report an accident and failure to maintain complete driver qualification files. Recommendations were made at that time to facilitate compliance with the regulations. The 1991 compliance review revealed that, despite actual notice of the requirements of the safety regulations, Mr. Guest has done little to bring his trucking company into compliance.

Guest has made no claim that it is financially unable to pay the $8,200 penalty, or otherwise addressed the factors used in determining the penalty amount, nor has it offered any evidence in mitigation of this penalty. Therefore I find that the $8,200 total penalty amount is reasonable to induce compliance with the regulations.

It is Hereby Ordered That James Guest's request for a hearing is denied, the Regional Director's motion for final order is granted, and a civil penalty of $8,200 is awarded. James Guest is directed to pay the sum of $8,200 to the Regional Director, Region 4, within 30 days of this order, for violations of 49 CFR 387.7(b), 391.51(a), 394.9(a) and 395.8(a).

Dated: April 7, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order Withdrawing Final Order of March 10, 1992; Laughlin Transport, Inc.

On March 10, 1992, I issued a Final Order in this matter. On March 16, 1992, however, the Regional Director, Region 3, submitted a motion "Requesting Withdrawal and/or Reconsideration" of that order. Apparently, this matter already had been settled, in accordance with a settlement agreement dated November 4, 1991, and payment of the settlement amount had been made in full. In the instant motion, the Regional Director states that there was an inadvertent failure at that time to file a request for withdrawal of the Regional Director's Renewed Motion for a Final Order.

In light of these developments, the Regional Director's Motion for Withdrawal is granted, and I hereby withdraw my final order of March 10, 1992, and accept the settlement agreement of November 4, 1991.

Dated: March 25, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; James M. Montague

Introduction

This matter comes before me upon a motion for final order by the Regional Director, Region 3, to find the facts as alleged in the notice of claim and to impose a $500 penalty. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR Part 386.

By notice of claim dated November 7, 1990, the Regional Director charged Mr. James M. Montague (Montague) with one count of failing to notify his employer of the suspension of his driving privileges by the end of the next business day after learning of the suspension, in violation of 49 CFR 383.33, and two counts of operating a motor vehicle while the privilege to drive was suspended, in violation of 49 CFR 391.15(a). The Regional Director assessed a total penalty of $1,000. This

claim letter was issued more than one year after the violations it documented.

Montague responded to the notice of claim on January 16, 1991. He did not request a hearing or deny the alleged violations, but he did present information about his financial situation, seeking a reduction in the penalty amount.

On September 24, 1991, the Regional Director moved for a final order. He asserted that Montague's response did not request a hearing or otherwise raise any material factual issue in dispute. Montague did not reply to this motion.

Background

These charges resulted after Montague's driver's license was suspended for a three day period in August 1989. On August 7, 1989, Montague received a letter from the Maryland Department of Motor Vehicles, stating that his license was suspended. It seems from Montague's DMV report that Montague's license was suspended because he failed to appear in court to answer to a charge of "failure to drive on roadway in designated lane." Maryland Driver Record of James M. Montague. Montague did not inform his employer of the suspension.

Montague's records of duty status for August 7–10, 1989, reveal that Montague continued to drive after receiving the suspension notice. On August 8, 1989, Montague drove from Front Royal, Va., to Baltimore, Md., and on August 10, 1989, he drove between Baltimore, Md., and Spring Grove, Pa. These two trips are the basis of the two 49 CFR 391.15(a) charges.

On the afternoon of August 10, 1989, Montague returned to Baltimore and paid his fine to the Maryland DMV. His license was reinstated on this same day.

Montague was the subject of an August 17, 1989, safety investigation. In a signed statement made to a safety investigator on this day, Montague stated that he knew he was not permitted to drive with a suspended license and that he was required to notify his employer of the suspension. Montague explained that he did not tell his employer about his suspended license because he believed if he paid his fine as quickly as possible "everything would be O.K." August 17, 1989, Statement of James MacArthur Montague.

Discussion

Because Montague neither denied the charges nor requested a hearing, there is no material factual issue in dispute. In fact, Montague admitted in his August 17, 1989, statement that he failed to inform his employer of suspension of his driving privileges and that he drove after receiving notice of the suspension. In his January 16, 1991, response to the notice of claim, Montague stated that he was willing to settle the case, but was financially unable to pay the $1,000 fine. The amount of a proposed fine does not constitute a material factual issue in dispute. *Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Judge). Therefore, no hearing is warranted under 49 CFR 386.14(b).

The Regional Director's notice of claim assessed a total penalty of $1,000 (later reduced to $500), citing the $2,500 maximum CDL penalty provision of 49 U.S.C. 521(b)(6)(B), and the $1,000 maximum penalty amount of 49 U.S.C. 521(b)(2)(A) for employee actions constituting gross negligence or reckless disregard for safety. Section 391.15 was issued pursuant to 49 U.S.C. 3102 and the Motor Carrier Safety Act of 1984, so the general civil penalty provisions, not the CDL penalties, apply to violations of this driver qualification regulation. Therefore, in order to be subject to a civil penalty of up to $1,000, Montague's conduct of driving with a suspended license must constitute gross negligence or reckless disregard for safety.

I find on the record before me that Montague's conduct does not rise to the level of gross negligence or reckless disregard for safety. Montague drove after receiving notice that his license was suspended for failure to appear for a relatively routine traffic violation.[1] The period of suspension lasted for only three days and was lifted upon Montague's full payment of his fine. The Regional Director has not brought to my attention any factors which would lead me to conclude that Montague was unfit to drive or otherwise posed an unreasonable risk to safety during this limited time. Therefore, the two 49 CFR 391.15(a) charges are dismissed.

Based on Montague's August 17, 1989, written admission, I find that he has committed the remaining violation with which he is now charged, failing to notify his employer of the suspension of his driving privileges. The final issue in this case is the determination of the penalty amount for this violation. Although the amount of an assessed penalty does not constitute a material factual issue in dispute, the motor carrier's ability to pay is relevant to the determination of the penalty amount. In his January 16, 1991, response to the notice of claim, Montague stated that his annual income was approximately $2,500. Montague submitted evidence of his salary and living expenses with this letter, but this evidence was not forwarded to the Associate Administrator.

Upon review of the case as a whole, and specifically considering Montague's financial situation, I find that the $500 total penalty requested by the Regional Director in his motion for final order is inappropriate. First of all, two of the three counts against Montague have been dismissed.[2] Secondly, this penalty, constituting 20% of Montague's gross income, would be greatly disproportionate to the penalties assessed in the majority of enforcement cases brought under the Federal Motor Carrier Safety Regulations. Montague's conduct is not so egregious that it would mandate a drastic departure from past penalty determinations. Therefore, I find that a $100 penalty is sufficient to induce compliance with the regulations.

It is hereby ordered That the Regional Director's motion for final order is denied as to the two 49 CFR 391.15(a) counts, and these two counts are dismissed; the Regional Director's motion for final order is granted as to the 49 CFR 383.33 violation, and Montague is directed to pay the sum of $100 to the Regional Director, Region 3, within 30 days of this order for having failed to notify his employer of the suspension of his driving privileges by the end of the next business day after learning of the suspension.

Dated: March 25, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Sunrise Fiberglass Engineering, Inc., Respondent; Final Order

Docket No. 91–21

Background

This matter comes before me upon a motion by the Regional Director, Region 10, opposing Sunrise Fiberglass Engineering, Inc.'s (Sunrise), request for a hearing and seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

By notice of claim dated November 27, 1990, the Regional Director asserted that Sunrise committed 7 violations of

[1] I note that Montague's conduct would be viewed quite differently if his driving privileges were suspended for driving while under the influence of alcohol or a controlled substance.

[2] The Regional Director's notice of claim assessed a $500 penalty for the § 383.33 violation and $250 each for the § 391.15(a) violations, but when the Regional Director reduced his penalty request to $500 in his motion for final order, he did not specify the penalty amount allocated to each of the 3 violations.

49 CFR 395.3(a)(1) by requiring or permitting a driver to drive more than 10 hours following 8 hours off duty, and 11 violations of 49 CFR 395.3(a)(2) by requiring or permitting a driver to drive after having been on duty for 15 hours following 8 hours off duty.

Sunrise's February 5, 1991, reply was untimely. Sunrise denied the allegations and asserted that driver carelessness in preparing the log sheets created the appearance that the drivers violated the 10 and 15 hour rules when in fact they did not. Sunrise did not request a hearing at that time.

On February 22, 1991, the Regional Director sent a letter to Sunrise, stating that the notice of claim had become a final order under 49 CFR 386.14(e) because Sunrise failed to reply to the notice of claim within 15 days as required by 49 CFR 386.14(a). The Regional Director requested payment of the $10,800 penalty. Sunrise refused to sign for this certified letter, so the Regional Director sent an identical letter on March 22, 1991.

On June 20, 1991, Sunrise requested an administrative hearing. The Regional Director responded to this request on July 1, 1991, opposing the request and seeking a final order. Sunrise did not reply to this motion.

Discussion

Sunrise's actions in this case constitute a default. The motor carrier failed to reply within 15 days after the notice of claim was served, thereby waiving any right to a hearing according to 49 CFR 386.14(b)(2), and allowing the notice of claim to become a final order under 49 CFR 386.14(e). The question is whether justice would require a different result. In viewing the case as a whole, I find no reason to depart from the result reached under the regulations.

Sunrise's hearing request is both procedurally and substantively flawed. Aside from being five months late, the request consists of a bare denial. Although Sunrise blames driver carelessness for the appearance of violations in its drivers' records of duty status, it produced no evidence to support this allegation. A bald assertion is insufficient to negate the hours-of-service violations that its own documents reveal. Therefore Sunrise has failed to carry its burden of clearly establishing that there is a material factual issue in dispute warranting a hearing.

Because Sunrise did not reply to the claim letter before the expiration of the 15 day time limit set forth in 49 CFR 386.14(a)(2), the claim letter became a final agency order 25 days after it was served, under 49 CFR 386.14(e). The Regional Director informed Sunrise of this by letter dated March 22, 1991. Based on the agency's March 22, 1991, letter, the Regional Director could have sent this case directly to the United States Attorney for enforcement in a federal district court. 49 CFR 386.65. Because Sunrise replied to the notice of claim, albeit late, the Regional Director chose to send this matter to the Associate Administrator.

Upon review of the case as a whole, I find that it is appropriate to grant the Regional Director's motion for final order. *Transurface Carriers, Inc.*, No. R1–90–294 (FHWA March 12, 1992) (Final Order). I note that the motion is not supported by evidence sufficient to show a *prima facie* case, but in this instance such evidence is not required. Here the Regional Director requests a final order based on the default of Sunrise and the passage of time, rather than upon the strength of his own evidence. In light of Sunrise's own actions in this case, this result is not unjust. I further note that since the Regional Director filed this motion for final order, the motor carrier has not replied or provided any evidence to support its earlier denials.

The maximum penalty amount permitted for each violation in a serious pattern of non-recordkeeping safety violations is $1,000. 49 U.S.C. 521(b)(2)(A). The Regional Director assessed a $600 penalty for each of the 18 violations in this case. I find that this $10,800 penalty is appropriate if Sunrise does not act quickly to comply with the hours of service regulations. This is the second enforcement case involving multiple hours violations against Sunrise in one year. Sunrise settled an earlier claim for $5,300. Sunrise's repeated violations reveal that the earlier penalty was insufficient to induce compliance with the regulations. Therefore, absent a change in future conduct by Sunrise, I find no reason to reduce this $10,800 penalty.

It is hereby ordered That Sunrise's request for a hearing is denied, the Regional Director's motion for final order is granted, and a civil penalty of $10,800 is awarded. Sunrise is directed to pay the sum of $7,200 to the Regional Director, Region 10, within 30 days of this order for requiring or permitting its drivers to drive more than 10 hours following 8 consecutive hours off duty, in violation of 49 CFR 395.3(a)(1), and for requiring or permitting its drivers to drive after having been on duty for 15 hours following 8 consecutive hours off duty, in violation of 49 CFR 395.3(a)(2). The Regional Director is directed to revisit Sunrise in 30 days. If the Regional Director finds that Sunrise is then in compliance with the hours-of-service regulations, the remaining $3,600 penalty is dismissed. If Sunrise is not found to be in compliance, then, upon motion by the Regional Director, I will order the payment of the remaining $3,600. Moreover, if the Regional Director finds continuing violations by Sunrise, then the Regional Director shall take appropriate action to compel the cessation of violations.

Dated: March 25, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Shetakis Wholesalers, Inc.

This matter comes before me upon request of the Regional Director, Region 9, for a final order finding the facts to be as alleged in a claim letter dated April 8, 1991, and for the imposition of a civil penalty in the amount of $4,000. Having reviewed the record before me, I grant the Regional Director's request for the reasons set forth below.

Background

The Respondent, Shetakis Wholesalers, Inc. ("Shetakis"), is a private carrier of food products and chemicals. A compliance review of Shetakis' operations was conducted on November 6, 1990, and as a result of that review a notice of claim was sent to the carrier on February 6, 1991, charging Shetakis with eight violations of the Federal Motor Carrier Safety Regulations ("FMCSRs"). Specifically, the Regional Director alleged that Shetakis had committed one violation of 49 CFR 394.9(a) (failing to report an accident); and seven violations of 49 CFR 392.2 (requiring or permitting a motor vehicle to be operated not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated). The latter seven charges involved allegations that Shetakis had transported hazardous materials through the State of Nevada without having the required State permit.

The procedural history of this case is complex, but for the purposes of this order it is sufficient to note that on June 21, 1991, the Regional Director submitted a "Response in Opposition to Respondent's Request for a Hearing and Motion for Summary Judgment and Final Order." After this motion was filed, Shetakis admitted to all the charged violations, withdrew its contest of the claim and requested that negotiations begin to settle the claims, preferably for a lower amount. In mitigation of the charges against it, Shetakis claimed that as late as September 1989, it "did not understand

itself to be involved in the transportation of hazardous materials * * *."

In a final pleading dated July 10, 1991, the Regional Director declined to discuss a settlement. The pleading pointed out that although Shetakis disclaimed knowledge that it transported hazardous materials, shipping papers included among the exhibits attached to the first motion clearly indicated the hazardous nature of the materials being transported by the carrier on the dates of the charged violations.

Conclusion

Since Shetakis has admitted to all of the charges against it, the sole remaining dispute concerns the amount of the fine proposed by the Regional Director. I conclude that the record fully supports the position of the Regional Director, and I grant the motion for a final order in the full amount of the claim.

The failure of a motor carrier to report an accident is a serious matter, one for which it is appropriate to levy a stringent penalty. The Regional Director has assessed a fine of $500 for this offense, and I do not believe that a reduction in that amount is warranted in this case.

The seven violations of § 392.2 constitute a serious pattern of violations which subjects the carrier to fines not to exceed $1000 per violation, with the total fine not to exceed $10,000. 49 U.S.C. 521(b)(2)(A). In this case, the Regional Director has set a fine of $500 per violation, or $3,500. This amount is well less than the maximum amount allowed under the law, and I agree that it is reasonable.

Therefore, based on the record before me, I find that the penalties levied in this case are appropriate. Specifically, I note that Shetakis' own records indicate that hazardous materials were being transported. Most notably, copies of shipping papers attached as part of Exhibit D to the Regional Director's Motion for Final Order plainly state that items being transported by Shetakis were "HAZARDOUS MATERIAL". With such documentation in the record, I am not prepared to reduce the fines as assessed by the Regional Director.

Therefore, *It Is Hereby Ordered* That the Petitioner Regional Director's request for a final order is granted. Respondent Shetakis Wholesalers, Inc., is directed to pay the full amount of the claim, $4,000, to the Regional Director within 30 days of the date of this Order.

Dated: March 20, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; A.M. & Wade Cox

This matter comes before me upon a motion of the Regional Director, Region 4, in opposition to a request for a hearing and asking for a final order finding the facts to be as alleged in a notice of claim dated April 10, 1989. The motion also requests the imposition of a civil penalty in the amount of $3,000. To date, there has been no reply to this motion from the Respondent, A.M. & Wade Cox ("Cox"). Having reviewed the record before me, I now grant the Regional Director's request for the reasons set forth below.

Background

The Cox partnership is a motor carrier whose principal cargo is logs. The Regional Director sent a notice of claim to Cox on April 10, 1989, charging the carrier with six violations of the Federal Motor Carrier Safety Regulations ("FMCSRs"). Specifically, the notice of claim charged that Cox had committed six violations of 49 CFR 391.51(a) (failing to maintain driver qualification files).

Cox, through its attorney, replied on April 24, 1989. The reply does not deny the charges, but does request an oral hearing. In support of its request, Cox makes three allegations which it believes rise to the level of "material factual disputes" under 49 CFR part 386, Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, and therefore entitle it to a hearing. First, Cox claims that Regional officials failed to "fully explain to [Cox] all of [Cox's] obligations pursuant to the regulations." Second, Cox disputes the charge of the Regional Director that Cox operated in interstate commerce and therefore was subject to the recordkeeping regulations. Finally, the reply states that "the fact that [Cox is] now in full and complete compliance with the regulations should be considered in mitigation of any penalty which may be assessed against [it]."

After prolonged settlement negotiations yielded no results, the Regional Director submitted the instant motion for final order on June 21, 1991. The motion contained exhibits, and answered each of the assertions contained in the carrier's reply of April 24. Cox has not replied to this motion.

Discussion

After reviewing the record before me, I conclude that there are no material factual issues in dispute in this case, and therefore I deny Cox's request for a hearing. Moreover, since the exhibits attached to the Regional Director's motion strongly support the allegations made against Cox, I find that the Regional Director has met his burden for obtaining a final order.

Knowledge of the FMCSRs is attributed to all motor carriers. This general principle is reinforced in this case by two of the exhibits attached to the Regional Director's motion. The first is a 1987 letter from the Regional Office to Cox explaining the applicability of the FMCSRs to the carrier's operations. The second is a copy of a safety review of Cox's business undertaken in 1987. Taken together, this evidence is sufficient to show Cox's knowledge of the obligations imposed on it by the FMCSRs.

As for the interstate nature of the carrier's operations, the record before me fully supports the Regional Director's contention that the violations occurred while Cox was engaged in interstate commerce. Several exhibits support the Regional Director's assertions, and nothing in the record disputes their authenticity. The Regional Director attached copies of the daily records of duty status for the driver whose qualification file was alleged to be deficient. On their face, these records show that the driver made trips between Tennessee, Missouri, and Mississippi on the days the violations were alleged to have occurred. Also attached to the motion was a signed statement of A.M. Cox, dated February 28, 1989, admitting both to the incompleteness of the file in question and to the interstate nature of the trips giving rise to the charges.

Cox has asked for mitigation of the penalty based upon its post-review compliance with the FMCSRs. Cox should have been in compliance with the regulations *before* the initiation of this action. *See In the Matter of Stanford & Inge*, 55 FR 43,296 (F.H.W.A. 1990) (Order Upon Reconsideration). The carrier had several contacts with the agency before the notice of claim was issued, and was put on notice of the deficiencies in its recordkeeping operations. No mitigation of the penalty is appropriate under these circumstances.

Therefore, *It Is hereby ordered* That the request for a hearing by Respondent A.M. & Wade Cox is denied, and the Petitioner Regional Director's request for a final order is granted. Respondent A.M. Cox is hereby directed to pay the full amount of the claim, $3,000, to the Regional Director within 30 days of the date of this Order.

Dated: March 20, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

RKM Equipment and Trucking, Inc. Respondent; Final Order

Docket No. R9–90–039

Introduction

This matter comes before me upon a motion by the Regional Director, Region 9, opposing RKM Equipment and Trucking, Inc.'s (RKM), request for a hearing and seeking a final order pursuant to 49 CFR 386.16(b) and 386.35 of the Federal Motor Carrier Safety Regulations (FMCSRs).

A September 20, 1990, notice of claim charged RKM with five counts of requiring or permitting an employee to operate a commercial motor vehicle during a period in which the employee has more than one commercial motor vehicle driver's license, in violation of 49 CFR 383.37(b). The dates of the alleged violations are March 8 and 31, April 18, and May 5 and 19, 1990.

On October 3, 1990, RKM replied to the notice of claim, denied the violations, and requested a hearing. The Regional Director responded on May 22, 1991, opposing the hearing request and requesting a final order. On June 26, 1991, RKM answered the Regional Director's motion, but failed to serve the Associate Administrator with this answer. The Regional Director replied to this answer on July 8, 1991, asserting that a final order should be granted because there are no material factual issues in dispute and the Regional Director is entitled to judgment as a matter of law. RKM responded on August 14, 1991. The motor carrier asserted that it had taken all of the steps necessary to verify the existence or non-existence of the licenses.

Background

These multiple license charges resulted from two safety and compliance reviews of RKM. In a May 31, 1989, safety review, FHWA Safety Investigator Randy Moseley noted in his report "[y]ou are hereby given notice of suspension of driving privileges for driver Glen Hess. Inquiry May 26, 1989, revealed D. L. Calif. A1215184 suspended." RKM Sales/Marketing Manager Dane Meyer signed and received a copy of this report on behalf of RKM. After this safety review, RKM permitted Hess to continue driving. On March 20, 1990, Moseley conducted a compliance review of RKM. The report on this review states that "[i]t was discovered that the carrier did have one driver who may possess multiple driver's licenses. Investigation is continuing to substantiate * * *." RHM President Rick Howard signed and received a copy of this report on the same day the review was conducted.

Both RKM and Moseley made efforts to determine whether Hess in fact held two licenses. On March 23, 1990, RKM obtained a certification from driver Glen Hess that he "would" possess only Arizona commercial driver's license number Y00011202. On March 24, 1990, Moseley confirmed through Hess' Arizona and California DMV records that Hess did have two commercial driver's licenses. RKM obtained an MVR report from DAC Services on this same day. This report indicated Hess did not have any commercial license, suspended or effective, other than his Arizona one. Later this same day, Moseley called RKM's Dane Meyer and informed Meyer that he had confirmed that Hess held licenses from both California and Arizona. The parties disagree on whether Moseley was told of or ever received a copy of the DAC Services report. RKM continued to use Hess as a driver after March 24, 1990.

Discussion

This case presents five issues. The first three are raised by RKM in its hearing request. The fourth issue concerns an April 10, 1990, phone call between RKM and Safety Investigator Moseley. Finally, there is the legal issue of the determination of the penalty amount.

"In deciding whether to grant a motion for a final order, I must review the whole record before me." *Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, (FHWA December 5, 1991) (Order). Because RKM has failed to serve the Associate Administrator with his answer to the motion for final order, that answer is not part of the record and cannot be considered in addressing the five issues raised in this case. RKM was repeatedly reminded of the need to serve all of its pleadings on the Associate Administrator.[1] RKM did not correct this omission, and its answer was never received by the Associate Administrator.

Under 49 CFR 386.14(b)(2), hearing requests must list all material facts believed to be in dispute. In this case, RKM has made a general denial of the alleged violations and asserted that three factual issues are in dispute: (1) Whether RKM took all actions required by the relevant regulations and statute in determining whether Hess had more than one commercial driver's license, through the use of the commercial reporting service and by reliance on the certification by Hess that he would only hold one license, (2) whether RKM had knowledge of Hess' multiple driver's licenses, and (3) whether Hess fraudulently concealed from RKM the existence of his second license. No affidavits or other evidence in support of these statements have been provided.

A review of the case file reveals that RKM received actual notice from the FHWA that Hess had two licenses and that RKM continued to use Hess as a driver in spite of this notice. RKM admits as much in its August 14, 1990, pleading: RKM "[does] not deny that they were put on notice that Mr. Hess may have possessed multiple licenses." Response to Supplemental Declaration of Randy Moseley, at 2–3. With this knowledge, RKM permitted Hess to drive, as evidenced by Hess' records of duty status for March 8–13, March 31–April 4, April 18–25, May 1–10, and May 19–25, 1990. Therefore, the issue of whether RKM knew that Hess possessed two licenses is no longer in dispute.

The remaining two disputed issues, whether RKM took all required actions to determine if Hess had more than one license, and whether Hess fraudulently concealed his second license, are immaterial in this case in determining whether RKM violated 49 CFR 383.37(b). Even if these allegations were supported by sufficient evidence, they would not exonerate RKM. Hess was permitted to drive while RKM knew he had two licenses, and this conduct violates of 49 CFR 383.37(b).

RKM's reliance on the commercial driver's report and the certification by Hess that Hess had only one license was not justified, in light of the direct and actual notice to the contrary that RKM received from Moseley in his March 24, 1990, phone call. RKM asserts that it used the commercial driving report because "[i]t would be impractical for a motor carrier [to] obtain official DMV records from every state for each one of its drivers." *Id* at 3. There was no need to check the driving record of every driver in every state. The safety and compliance reviews revealed a problem with only one driver and two states. Therefore this assertion of impracticality by RKM is no justification for its conduct.

The fourth issue in this case involves an April 10, 1990, phone call between RKM and Moseley. RKM claims that during this conversation Moseley

[1] The Assistant Regional Counsel called RKM counsel on July 3, 1991, to advise that service must be made on the Associate Administrator and that RKM should follow the May 22, 1991, service list attached to the Regional Director's motion for final order. In its July 8, 1991, pleading, the Regional Director again alerted RKM to the fact that it had failed to serve its answer upon the Associate Administrator.

authorized them to continue to use Hess as a driver. Moseley denies this claim.

This issue apparently was originally identified in RKM's missing pleading. Based on the limited record before me, I do not believe that the phone call is a material factual issue in dispute warranting a hearing. The question of whether or not Moseley gave RKM approval to use Hess as a driver is immaterial. Even if RKM's version of the telephone conversation is correct, as a matter of law, this does not exonerate the motor carrier. RKM received actual notice of Hess' multiple licenses on March 24, 1990. When RKM persisted in using Hess as a driver after knowledge of Hess' multiple licenses, the motor carrier acted at its own risk. RKM cannot successfully assert at this time that Moseley's authorization somehow exonerated or negated its prohibited conduct.

A motion for a final order is analogous to a motion for summary judgment. *Forsyth Milk*, at 2. Therefore, the moving party bears the burden of proving that there is no genuine issue of material fact, and all evidence presented must be viewed in a light most favorable to the non-moving party, RKM. In cases such as this, where the respondent denies the allegations in the claim letter, but the Regional Director nevertheless opposes a hearing request and seeks a final order, the Regional Director's pleadings must be accompanied by affidavits or other evidence sufficient to establish a *prima facie* case. The Regional Director has met this evidentiary burden of clearly establishing the essential elements of his claim. RKM's pleadings, standing alone, are insufficient to rebut this *prima facie* case.

The record before me fully supports the allegations made against RKM in the notice of claim. Exhibit D, Hess' DMV records for Arizona and California, clearly shows that Hess was issued a California commercial driver's license on October 16, 1987, to expire on June 5, 1990, and that the license was suspended on February 19, 1989. That exhibit also shows that Hess was issued an Arizona commercial driver's license on April 4, 1989, to expire on June 11, 1992. Exhibit A, the record of the May 31, 1989 safety/compliance review, reveals that Safety Investigator Moseley alerted RKM to the fact that Hess' *California* license was suspended, at a time when RKM's own records showed that Hess possessed an *Arizona* license. Exhibit B, the March 20, 1990, compliance review report, clearly states that RKM had one driver who may have had multiple drivers licenses. Moseley's affidavit in support of the Regional Director's motion for final order reveals that Moseley called RKM on March 24, 1990, and confirmed that Hess did in fact have two commercial driver's licenses. Finally, RKM in effect admits to "the fact that Mr. Hess did drive the vehicle on the alleged occasions while possessing two drivers licenses." Response to Supplemental Declaration of Randy Moseley, at 4. Therefore, the record before me supports a finding that RKM required or permitted Hess to operate a motor vehicle during a period in which Hess possessed more than one commercial driver's license, in violation of 49 CFR 383.37(b) of the FMCSRs.

The final issue in this case is the determination of the penalty amount. The Regional Director assessed civil penalties of $2,500 for each of the five violations, the maximum amount permitted by statute. As to the March 31, April 18, and May 5 and 19 violations, I find that this amount is reasonable. RKM was advised almost one year before these four violations occurred that Hess had a suspended California license. The second compliance review in March 1990 indicated that Hess may have been in possession of two licenses. Finally, Safety Specialist Moseley's March 24, 1990, telephone call to RKM, confirming via DMV reports that Hess possessed two commercial driver's licenses again notified RKM that Hess had both Arizona and California licenses. Despite repeated notice, RKM permitted Hess to drive on at least four more occasions. "A motor carrier cannot ignore applicable safety regulations, nor can it assign such a low priority to compliance with those regulations that, after a year, no significant progress has been made to comply with them." *Kerr Drug Stores, Inc.*, No. 91–NC–008–SH, at 6 (FHWA July 3, 1991) (Final Order). Such actions are willful violations of the FMCSRs, warranting the maximum penalty.

The $2,500 penalty for the March 8, 1990, violation is unduly harsh. Although after the 1989 safety review, this violation was before the more definitive notice of March 20 and 24, 1991. The May 1989 review put RKM on notice that Hess may have possessed two commercial driver's licenses, but permitting Hess to drive on March 8, 1990, notwithstanding this notice, is not as egregious as the later 4 violations, where RKM had actual knowledge that Hess had two licenses. A penalty of $500 for this violation is reasonable to induce compliance with the regulations.

Conclusion

Once RKM had notice that Hess held two licenses, yet permitted Hess to drive, RKM was in violation of 49 CFR 383.37(b). The Regional Director has met his burden of clearly establishing the multiple license violations. The issues asserted by RKM in its pleadings do not exonerate or mitigate this conduct. Therefore RKM has failed to assert any material issue in dispute warranting a hearing.

It is hereby ordered That RKM's request for a hearing is denied; the Regional Director's request for a final order is granted, and RKM is directed to pay the sum of $10,500 to the Regional Director, Region 9, within 30 days of this order for having required by permitted an employee to operate a commercial motor vehicle during a period in which the employee has more than one commercial motor vehicle driver's license, in violation of 49 CFR 383.37(b) of the FMCSRs.

Dated: March 16, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Jagpal Transport, Inc.

Background

This matter comes before me upon a motion by the Regional Director, Region 9, in opposition to Jagpal Transport, Inc.'s (Jagpal), request for a hearing and motion for final order pursuant to 49 CFR 386.35 and 386.16(b) of the Federal Motor Carrier Safety Regulations (FMCSRs).

In his February 6, 1991, notice of claim, the Regional Director charged Jagpal with 19 violations of the FMCSRs and assessed a total penalty of $11,100. The alleged violations included 1 count of requiring or permitting a driver whose driving privileges are suspended, revoked or canceled to drive a commercial motor vehicle, in violation of 49 CFR 391.15(a), $900 penalty; 6 counts of failing to maintain complete driver qualification files for each employed driver, in violation of 49 CFR 391.51(c), $900 penalty for each count; 1 count of failing to report a reportable accident within 30 days after the motor carrier learned of the accident, in violation of 49 CFR 394.9(a), $400 penalty for each count; 7 counts of failing to preserve drivers' records of duty status for six months, in violation of 49 CFR 395.8(k)(1), $400 penalty for each count; and 4 counts of failing to keep minimum records of inspection and maintenance of its motor vehicles, in violation of 49 CFR 396.3(b), with a $400 penalty for each of these four counts.

These charges resulted from the last of three safety and compliance reviews of Jagpal over a one and one-half year period. In a July 21, 1989, safety review of Jagpal, a California Highway Patrol

safety investigator found several violations of the FMCSRs. In his review report, the investigator recommended that Jagpal require its drivers to complete records of duty status and keep them on file for six months, establish and maintain a complete driver qualification file for each driver, and establish vehicle maintenance records. After this review, Mr. Nijjar, Jagpal's operations manager, and Mr. Warren Stevens, a consultant to Jagpal hired to bring Jagpal into compliance with the FMCSRs, wrote to the Office of Motor Carriers, detailing their efforts to correct the violations discovered in the 1989 safety review.

A June 22, 1990, safety review by an FHWA safety specialist revealed many of the same types of violations that had been discovered in the 1989 safety review. The safety specialist recommended, in part, that Jagpal require all drivers to prepare complete, accurate records of duty status, maintain all duty status records on file for at least six months, and require all drivers to prepare a written inspection report for each day a vehicle is operated. When the safety specialist conducted a November 7, 1990, compliance review of Jagpal he found 12 different types of violations. Some of these were the same types of violations that had been discovered in the two previous safety reviews.

The Regional Director's 19 count notice of claim was issued on February 6, 1991. On February 7, 1991, FHWA federal program manager Danny L. Swift received a phone call from Mr. Gurmail Jagpal in response to the notice of claim. Mr. Jagpal requested that the civil penalty be substantially reduced and claimed that Jagpal was financially unable to pay the $11,100 penalty. Although Mr. Swift told Mr. Jagpal that he could submit financial records supporting his allegations, Mr. Jagpal did not offer any evidence of Jagpal's inability to pay.

Jagpal filed a timely written reply to the notice of claim, denying that it required or permitted a driver who is disqualified to drive a commercial motor vehicle, in violation of 49 CFR 391.15(a). Jagpal claimed that it was not aware that driver Roberto Reyes' license was suspended. Jagpal requested a hearing on this alleged violation. Jagpal admitted to the remaining 18 violations.

On July 8, 1991, the Regional Director moved for a final order, dismissing the 391.15(a) claim for insufficient evidence, thereby reducing the civil penalty by $900 to $10,200. The Regional Director asserted that the six violations of 391.51(c), failing to maintain driver qualification records, constitutes a "serious pattern of safety violations" under 49 U.S.C. 521(b)(2)(A). Section 521(b)(2)(A) provides that if a motor carrier's actions are found to constitute a serious pattern of safety violations, then a civil penalty of up to $1,000 per violation, up to a maximum penalty of $10,000 per pattern, may be assessed against the motor carrier.

Discussion

Because the Regional Director has dismissed the only count to which Jagpal has not admitted, there is no material factual issue in dispute warranting a hearing under 49 CFR 386.14(b). Jagpal's February 7, 1991, phone call to the federal program manager, requesting that the penalty be reduced, does not raise a material factual issue in dispute. *Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge). Based on Jagpal's written admission, I find that Jagpal has committed the 18 FMCSR violations with which it is now charged.

I also find that the violations fully warrant the assessed penalty of $10,200, and that this amount is calculated to induce further compliance with the FMCSRs. First of all, Jagpal has offered no defense and presented no evidence which would warrant mitigation of the penalty. Secondly, Jagpal has been the subject of three safety and compliance reviews, and at each, the same violations have been documented. Therefore, Jagpal has a history of prior offenses, yet the maximum penalty allowed under 49 U.S.C. 521(b) was not assessed for any of the violations.

More specifically, I find that the 6 violations of 49 CFR 591.51(c), failing to maintain complete driver qualification files for each driver, constitute a "serious pattern of safety violations" under 49 U.S.C. 521(b)(2)(A). "If violations are continuing, then a clear pattern case will have been established." *Tonawanda Tank Transp. Serv., Inc.*, 55 FR 43279 (FHWA 1990) (Final Order). Section 391.51(c) violations were documented in each of the 3 safety and compliance reviews over a 16 month period. Despite repeated notice, Jagpal failed to cure these violations. Jagpal cannot ignore applicable safety regulations, nor can it assign such a low priority to compliance with these regulations that, after three reviews and one and one-half years, no significant progress has been made to comply with them. See *Kerr Drug Stores, Inc.*, No. 91–NC–008–SH (FHWA Order July 3, 1991) (Final Order).

It is Hereby Ordered That Jagpal's request for a hearing is denied, the Regional Director's request for a final order is granted, and Jagpal is directed to pay the sum of $10,200 to the Regional Director, Region 9, within 30 days of this order, in full satisfaction of the Notice of Claim dated February 6, 1991.

Dated: March 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Transurface Carriers, Inc.

This matter comes before me upon request of the Regional Director, Region 1, for a final order finding the facts to be as alleged in a claim letter dated October 18, 1990, and for the imposition of a civil penalty in the amount of $5,000. Having reviewed the record before me, I now grant the Regional Director's request for the reasons set forth below.

Background

Region 1 initiated an enforcement action after an August 9, 1990, compliance report cited Transurface for numerous alleged violations of the Federal Motor Carrier Safety Regulations ("FMCSRs"). On October 18, 1990, the Regional Director issued a claim letter and a notice of investigation, and personal service was made upon Transurface's President on November 5, 1990. The claim letter alleged one violation of 49 CFR 387.7 (operating a motor vehicle without having the required proof of financial responsibility on file at Transurface's principal place of business); two violations of 49 CFR 391.11 (using a disqualified driver); one violation of 49 CFR 391.51(a) (failing to maintain a qualification file for each driver used or employed); four violations of 49 CFR 391.51(b) and (c) (failing to maintain a complete qualification file for each driver used or employed); two violations of 49 CFR 392.2 (requiring or permitting a motor vehicle to be operated not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated); three violations of 49 CFR 395.8 (failing to preserve a driver's record of duty status for at least six months); and one violation of 49 CFR 396.7 (operating a motor vehicle in such a condition as likely to cause an accident or breakdown). The claim letter assessed a total penalty of $5,000 for the 14 alleged violations of the FMCSRs.

Transurface made no reply to the claim letter before the expiration of the 15-day time limit set forth in 49 CFR 386.14(a), Rules of Practice For Motor Carrier Safety and Hazardous Materials Proceedings. Subsection (e) of § 386.14

states that "[i]f the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served." Therefore, the claim letter served on Transurface became a final order no later than November 30, 1990 (25 days after personal service on Transurface's President).

The Regional Director advised Transurface by letter dated January 23, 1991, that the claim letter had become a final order, and demanded payment of the $5,000 penalty. At no time prior to this date did Transurface make any reply to the regional office.

The record shows that between the next day, January 24, 1991, and February 18, 1991, Mr. Nicholas J. Naples, the president of Transurface, sent five letters to the regional office. These letters did not contain a request for a hearing, and on the whole were unresponsive to the charges made by the Regional Director. Nothing in the record indicates that Transurface has paid the $5,000 fine assessed by the Region, nor is there any evidence tending to show Transurface's subsequent compliance with the FMCSRs.

Having received no adequate response from Transurface, the Regional office filed a motion for final order on April 9, 1991. It is this motion which is before me today. As with the October 1990 claim letter, there is no indication in the record that Transurface has made any reply to the Region's motion.

Conclusions

Ordinarily, when a respondent fails to respond within 30 days to a final order (including a notice of claim which becomes a final order through a respondent's default), the Regional Director, through Regional Counsel, may refer the case to the United States Attorney with a request that an enforcement action be brought in a United States District Court. 49 CFR 386.65. Here, the Regional Director has decided not to take that route and has instead come to this office asking for a new final order based upon the original claim letter. It is important to stress at this point that the Regional Director is not asking that this office enforce the January 23, 1991, letter but rather is asking for an order which presumably would supersede the January 23 letter.

Having reviewed the entire record before me, I believe that the Regional Director's motion should be granted, and that Transurface should be ordered to pay the full amount of the October 18, 1990, claim letter, $5,000. I find that there has been a total default on the part of Transurface: It did not reply to the claim letter on time; its late response did not go to the merits of the allegations against it, but it has not denied the alleged violations; it has not paid the assessed fine; and it has shown little compliance with the FMCSRs.

In the face of Transurface's complete noncompliance with the demand of the Regional Director in his letter of January 23, 1991, and given the serious nature of the charges against it, I believe that it is appropriate that an order be issued in this matter.

Accordingly, *it is Hereby ordered* that the Regional Director's request for a final order is granted. Respondent Transurface Carriers, Inc., is directed to pay the full amount of the claim, $5,000, to the Regional Director within 30 days of the date of this Order.

Dated: March 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Docket No. 91–122

Sined Leasing, Inc., Respondents; Order Appointing Administrative Law Judge

Introduction

This matter comes before me upon a request for an oral hearing. The parties agree that there are material factual issues in dispute, and that pursuant to the provisions of 49 CFR part 386, Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings ("Rules of Practice"), an oral hearing is required for their resolution.

Background

In a notice of claim dated May 23, 1991, the Regional Director alleged that Respondent Sined Leasing, Inc. ("Sined"), committed a total of 24 violations of the Federal Motor Carrier Safety Regulations ("FMCSRs"). Specifically, the Regional Director charged Sined with one violation of 49 CFR 391.11 (using a physically unqualified driver); one violation of § 391.105 (failing to require a driver to be tested in accordance with biennial testing requirements); two violations of § 394.9 (failing to report an accident), 14 violations of § 395.8 (requiring or permitting driver to make false entries upon a record of duty status report); and 6 violations of § 396.11 (failing to require a driver to prepare a vehicle inspection report). The Regional Director assessed a civil penalty of $12,000 against Sined.

In a reply dated June 7, 1991, Sined denied each of the charged violations, requested an oral hearing and listed all factual issues believed to be in dispute. Sined claimed that: (1) It did not use a disqualified driver, citing "medical reports of a satisfactory nature" pertaining to the driver in question; (2) it did in fact require all of its drivers to be tested; (3) it did require all accidents "meeting the criteria established in [§ 394.9]" be reported, but in the case of the first charged accident it lacked information necessary for determining if the accident was reportable, and in the case of the second charged accident a report *was* sent to the Department of Transportation, but the report contained an error; (4) it did direct all drivers to prepare vehicle inspection reports, and instructed its drivers in how to complete the reports; and (5) Sined disputed the amounts of the penalties assessed against it, calling the fines "duplicative" and "confiscatory."

The parties attempted to negotiate a settlement, but without success. It appears that the Regional Director does not oppose Sined's request for a hearing, and this matter has been referred to me.

Conclusion

The record before me shows that instead of simply denying the allegations against it, Sined set down in considerable detail its version of the facts underlying the charges. The carrier's reply met all the requirements of § 386.14 of the Rules of Practice by setting forth specific denials of the charges made against it. I also note that the Regional Director has not opposed the request for a hearing. For these reasons, I conclude that the request should be granted. Sined's allegations raise several material factual disputes which can only be addressed in a formal, trial-type administrative hearing.

Therefore, I hereby appoint an Administrative Law Judge in accordance with 49 CFR 386.54(a), to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: March 12, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order; In the Matter of American Pacific Power Apparatus, Inc.

Background

This matter comes before me upon a motion of the Regional Director, Region 9, to deny American Pacific Power Apparatus, Inc.'s (American Pacific), request for a hearing and to grant the Regional Director's motion for a final agency order. An April 1990 compliance review of American Pacific revealed

several violations of the Federal Motor Carrier Safety Regulations, 49 CFR parts 350–399. Thirty-five of the forty-eight records of duty status examined were allegedly falsified. In his October 15, 1990, notice of claim, the Regional Director charged American Pacific with 9 violations of 49 CFR 395.8(e), alleging that American Pacific required or permitted its drivers to make false entries upon records of duty status, and a $3,600 penalty was assessed.

On October 31, 1991, American Pacific responded to the notice of claim and requested a hearing. The carrier specifically denied that it required or permitted drivers to falsify log records, asserting that the investigation of its log books was incomplete and therefore the findings of falsifications were erroneous. American Pacific asserted that the material factual issue in dispute was whether it "required or permitted" its drivers to falsify their records of duty activities. In a November 23, 1990, letter, the Regional Director informed American Pacific that under the doctrine of respondeat superior, an employer is responsible for the actions of its employees. In December 1990, American Pacific initiated settlement discussions, but these proved to be fruitless.

On May 15, 1991, the Regional Director filed a motion requesting a final order and a response in opposition to American Pacific's request for a hearing. In opposing the hearing request, the Regional Director asserts that both the regulations and the case law on respondeat superior clearly hold that "an owner is responsible for civil fines which result from an employee's log falsification—49 CFR 395.8(e). [American Pacific's] defense is a question of law and therefore does not raise a material issue in dispute" sufficient to warrant a hearing under 49 CFR 386.14(b)(2). Motion for Final Order at 4. American Pacific did not respond to this motion.

Discussion

Under 49 CFR 386.14(b)(2), hearing requests must list all material facts believed to be in dispute. If the Associate Administrator determines there is a material factual dispute, a hearing is granted. 49 CFR 386.16(b). If the Regional Director opposes the hearing request, as in this case, then the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations.

In this case, American Pacific has made a general denial of the alleged violations and asserted that "the investigation of the log books of Respondent's drivers was incomplete and the findings thereof were erroneous." Respondent's Request for Formal Hearing, at 1. American Pacific disputes "that respondent made false reports in connection with duty activities," claiming that it was not liable for its drivers actions. *Id.* No evidence of this assertion was provided, nor is such evidence necessary, because this defense is a question of law, not of fact, and does not raise a material factual issue in dispute.

When one or more of its drivers falsifies log records, a motor carrier is directly liable for the falsifications under 49 CFR 395.8(e). In such cases, the motor carrier breached its own duty to verify drivers' logs. In failing to verify records of duty status, for example by comparing the logs to toll or other receipts, the carrier has permitted the log falsifications.

In sum, American Pacific has simply failed to competently identify any material factual issue in dispute. Because it has failed to carry its burden to show there is a dispute of fact, American Pacific's hearing request is denied.

"A motion for a final order is in the nature of a motion for summary judgment. Accordingly, the moving party has the burden of clearly establishing that there is no genuine issue of material facts." *In the Matter of Forsyth Milk Hauling Co., Inc.*, Docket No. R3–90–037, Order of Associate Administrator for Motor Carriers, p. 2, December 5, 1991. In cases such as this, where the respondent denies the allegations of the claim letter but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order, the Regional Director's pleadings must be accompanied by affidavits or other evidence sufficient to establish a *prima facie* case. Because the respondent has denied the violations and requested a hearing, mere allegations by the Regional Director are not sufficient. *Id.* at 7; *see Laughlin Transport, Inc.*, Docket No. R3–91–104, Order of Associate Administrator for Motor Carriers, March ____, 1992. The burden is on the moving party, the Regional Director, to establish that there is no material factual issue in dispute, and all evidence presented must be viewed in a light most favorable to the non-moving party, American Pacific.

American Pacific did not respond to the Regional Director's motion for final order. Its reply to the notice of claim was ambiguous, but because all inferences must be drawn to favor the non-moving party, American Pacific's response must be viewed as a denial of the violations.

In seeking a final order, the Regional Director did not carry its burden of proving that there is no genuine issue of material fact. A material fact is a part of the claim in issue, "the establishment of which requires proof of each unadmitted essential element, as defined by the substantive law. A material fact is thus an essential element of a claim * * *." Louis, *Federal Summary Judgment doctrine: A Critical Analysis*, 83 Yale L. J. 745, 746–7 (1974). Therefore, if the moving party bears the burden of proof at trial, he must clearly establish all essential elements of his claim. In his motion for final order, the Regional Director addressed at length the doctrine of respondeat superior but did not address any other potential factual disputes.

The real factual issue in this case is whether the log entries of American Pacific's drivers were false. Because American Pacific does not admit that the records of duty status contained falsifications, the Regional Director must clearly establish this element of his claim, rather than simply allege that American Pacific would be liable if his employees did in fact falsify their logs. This evidentiary standard is no less stringent when the non-moving party has denied the allegations against him but fails to submit evidence in opposition to the motion. The Regional Director must succeed on the strength of his own evidence.

American Pacific's denial of the violations, unsupported by evidence, would not rebut a *prima facie* case of violations, but the Regional Director has failed to present a *prima facie* case. *Forsyth Milk* at 6. "Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing matter is presented." Fed. R. Civ. P. 56 (advisory committee notes). Because the Regional Director's motion did not address the real factual issue in this matter and he has not provided evidence clearly establishing the essential elements of his claim, he has not met his burden and I cannot grant his motion for a final order at this time.

If the Regional Director submits affidavits or other evidence tending to show log falsification violations, I will reconsider his motion. American Pacific should note that failure to respond to the Regional Director's renewed motion or failure to produce any evidence rebutting the Regional Director's evidence may result in a final order for the Regional Director. "Silence or mere denial will not meet respondent's burden to overcome Regional Director's *prima facie* case." *Id.* at 7.

This ruling requiring the Regional Director to submit affidavits or evidence to the Associate Administrator should not be viewed as requiring a change in the practice of retaining evidence at the appropriate FHWA office. Instead, this ruling applies only to the specific factual situation of this case. Here a Regional Director seeks a final order from the Associate Administrator without a hearing when the respondent denies the alleged violations. In such case, "the Regional Director's motion must be accompanied by sufficient evidence to support a *prima facie* case, which will shift the burden of production to rebut to the respondent." *Id.* If the respondent fails to rebut the *prima facie* case, the Regional Director's motion will be granted. *Id.*

It is Hereby Ordered That American Pacific's request for a hearing is denied; the Regional Director's request for a final order is denied, with leave to renew this motion.

Dated: March 10, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Laughlin Transport, Inc.

This matter comes before me upon a "Renewal of Motion For a Final Order and In Opposition To Request For a Hearing" filed by the Regional Director for Region 3. The Regional Director asks that the facts be found as alleged in the notice of claim letter dated February 25, 1991, and that a civil penalty of $7,500 be imposed.

The notice of claim alleges that Respondent Laughlin Transport, Inc. (Laughlin), is responsible for 10 violations of the Federal Motor Carrier Safety Regulations. Specifically, the Regional Director alleges that on 10 separate occasions Laughlin "permit[ted] or require[d]" its drivers to drive "more than 10 hours following 8 consecutive hours off duty * * *" in violation of 49 CFR 395.3(a)(1) (1991).

Laughlin responded to the notice of claim by a letter dated March 14, 1991. The reply requested a hearing but neither denied any of the charges made by the Regional Director nor alleged any material factual issue in dispute. Laughlin's reply does not meet the requirements of section 386.14(b) of the Federal Highway Administration's ("FHWA") Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings ("Rules of Practice"). See 49 CFR 386.14(b). Laughlin has not responded to the Regional Director's opposition to the request for a hearing. Because Laughlin has failed to identify any material factual issues in dispute as required by section 386.14(b) of the FHWA's Rules of Practice, and because the record before me fails to disclose any material factual issues in dispute, I hereby deny Laughlin's request for a hearing.

The Regional Director has also moved for a final order. Such a motion is in the nature of a motion for summary judgment. Accordingly, the moving party has the burden of clearly establishing that there is no genuine issue of material facts. *See In the Matter of Forsyth Milk Hauling Co., Inc.*, Docket No. R3–90–037, Order of the Assoc. Admin. for Motor Carriers, Dec. 5, 1991; see also 6 Moore's Federal Practice, 2d ed., at ¶ 56.15 [7]–[8] (1988).

These proceedings are governed by the Rules of Practice, and not the Federal Rules of Civil Procedure. However, mindful that final orders issued by the Associate Administrator are appealable directly to the United States Courts of Appeals (49 U.S.C. § 521(b)(8); 49 CFR 386.67), I believe that in cases where the respondent denies the allegations of the claim letter but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order on motion, that motion should be accompanied by affidavits for evidence sufficient to establish at least a *prima facie* case. Only in this way can I fulfill my responsibility to afford a respondent a fair review of the case against it before a final agency order is issued, which, if necessary, can be enforced in a United States District Court. 49 U.S.C. 521(b)(4); 49 CFR 386.65; *see also Forsyth Milk.* A respondent's reply to such a motion would be required to contain more than mere denials or allegations tending to contradict the Regional Director's evidence. The burden would be on the respondent to oppose the motion with that quantum of evidence needed to support an assertion that there is a material issue in dispute warranting a hearing. *Forsyth Milk.*

In this case, the record before me fully supports the allegations made against Laughlin in the Regional Director's notice of claim. First, Laughlin has failed to deny the allegations of the claim letter as required by 49 CFR 386.14. Second, the Regional Director's motion is supported by copies of the compliance reviews which led to the charges and, more importantly, copies of driver's records of duty status documenting each of the 10 alleged violations of 49 CFR 395.3(a)(1). The Regional Director has met his burden in this matter—that is, to establish at least a *prima facie* case against Laughlin Transport, Inc. Laughlin, as noted earlier, has offered no rebuttal to the Regional Director's very serious allegations against it.

Accordingly, *It Is Hereby Ordered* That Laughlin's request for a hearing is denied and the Regional Director's request for a final order is hereby granted. Respondent Laughlin Transport, Inc., is hereby directed to pay the full amount of the claim, $7,500, to the Regional Director within 30 days of the date of this Order.

Dated: March 10, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; R.M. Black, Jr. Produce, Inc.

Background

This matter comes before me upon request of the Regional Director, Region 4, for a final order finding the facts to be as alleged in a notice of claim letter dated March 15, 1990, and for the imposition of a civil penalty in the amount of $16,500.

The notice of claim alleges that Respondent R.M. Black, Jr. Produce, Inc. ("Black"), committed a total of 32 violations of the Federal Motor Carrier Safety Regulations ("FMCSRs"). Specifically, the Regional Director charges Black with 7 violations of 49 CFR 383.37(a) (driving while license revoked or suspended), 1 violation of § 394.7 (failure to report a fatal accident), 4 violations of § 394.9(a) (failure to report an accident), 10 violations of § 395.3(b) (requiring or permitting driver to drive more than 70 hours in eight consecutive days), and 10 violations of § 395.8 (failure to make driver's record of duty status).

Black made a timely reply to the notice of claim on April 2, 1990. The reply contained a request for a hearing, as well as a denial of any violations of §§ 383.37(a), 394.7, or 394.9(a). Black also denied 8 of the 10 counts of violating § 395.3(b), admitted to the other 2 charges under that section, and admitted to all the charges made under § 395.8. Attached in support of its position were three police reports on motor vehicle accidents which corresponded to three of the violations charged under §§ 394.7 and 394.4(a). The reply did not include evidence regarding the remainder of the violations included in the denial, although there was a reference to the existence of additional documents presently unavailable but which "* * * [would] be utilized by the respondent in support of its position and such documents will be made available when obtained * * *." Lastly, the reply argued that the fines imposed for the "70 hours" violations

(§ 395.3(b)), as well as those for the recordkeeping violations (§ 395.8), were "inconsistent with these violations."

The parties engaged in intermittent negotiation of the claim through April 1991 without reaching a settlement, and the Regional Director filed Motion For Final Order on May 29, 1991. In that motion, the Regional Director argued that the police reports which Black attached to its reply were irrelevant, because the FMCSRs require motor carriers to report accidents to the Regional Director, not to the police. The motion also points out that the rest of the denials contained in Black's reply were unsupported by any evidence, and that the so-called "supporting documents" which the reply mentioned had not been forthcoming. Because of this lack of support for Black's denials, the Regional Director contends that Black is not entitled to a hearing because it has not raised any material factual issues in dispute as required by 49 CFR part 386, Federal Highway Administration Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings ("Rules of Practice"). No reply to this motion has been received from Black.

The Regional Director filed a Supplemental Motion on December 24, 1991, in which he submitted further evidence of the alleged violations. First, attachments to the supplement include documents supporting each of the 32 violations charged against Black, including police accident reports, repair estimates, insurance drafts, driver's records, driver's records of duty status, carrier freight bills, and more. Second, the supplement contains the declaration of Christopher M. Hartley, the Safety Specialist of FHWA who conducted the compliance review which discovered the violations. Mr. Hartley states that no accident reports were filed with FHWA corresponding to the motor vehicle accidents which are the subject of several of the alleged violations. Black never responded to this supplemental motion.

Discussion

In light of all of the evidence presented by the Regional Director, Black's blanket denials of the allegations against it are inadequate to entitle it to a hearing under the FHWA's Rules of Practice. Those Rules require that a respondent demonstrate a material factual dispute before a hearing may be granted. 49 CFR 386.14 (b)(2), (d). Black's reply to the notice of claim complained that some of the fines were "inconsistent with the violations" charged. The rule is well settled, however, that the amount of the fine alone is insufficient to constitute such a material factual issue in dispute. *See Drotzmann, Inc.*, Docket No. R10–89–11, 55 FR 2929, 2930 (Jan. 29, 1990); *see also North East Express, Inc.*, Docket No. 85–113FR, 55 FR 2965 (Jan. 29, 1990).

Turning to the violations charged in this case, the record before me fully supports the allegations made against Black in the notice of claim. As noted above, the Regional Director's two motions were accompanied by a great deal of documentary evidence, evidence which was very prejudicial to Black's position. The Regional Director has met his burden in this matter—that is, to establish at least a *prima facie* case against Black. As noted earlier, Black has offered no rebuttal to the Regional Director's allegations against it. These are very serious charges, and it is not an adequate response to reply to them with mere denials and little else in the way of evidence.

The record before me makes it clear that R.M. Black, Jr. Produce, Inc., has been in substantial non-compliance with the FMCSRs. The serious safety violations present in this case cannot be tolerated and warrant the imposition of the stringent fines assessed by the Regional Director.

Accordingly, *It is Hereby Ordered*, That the request for a hearing by Respondent R.M. Black, Jr. Produce, Inc., is denied, and the Petitioner Regional Director's request for a final order is granted. Respondent R.M. Black, Jr. Produce, Inc., is hereby directed to pay the full amount of the claim, $16,500, to the Regional Director within 30 days of the date of this Order.

Dated: March 10, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order of Administrative Law Judge Requesting Further Filings on Issues and Procedures

In the matter of: John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.; and Steve Johnson and Sons Trucking, Inc., a corporation

Served March 3, 1992.

By Order served December 23, 1991, the parties in the above-referenced proceeding were directed to file either an agreed-upon joint procedural schedule or separate proposed procedural schedules for the proceeding, along with a statement of the issues to be heard in the proceeding. Separate procedural schedules were filed on February 4 and 6, 1992, respectively, by Federal Highway Administration (FHWA) Counsel and Respondent John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.[1] The filings also show disagreement as to the issues in the proceeding and provide different approaches as to how the proceeding should be conducted. This Order, requesting further filings from the parties, is intended to clarify these matters.

As indicated in the Order served December 23, 1991, the proceeding arises by way of a Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit, dated July 12, 1991, remanding in part the Final Order of the Associate Administrator for Motor Carriers, dated September 20, 1989, ordering Respondent and Corporation to pay a civil penalty in the amount of $19,700. The Court of Appeals stated:

> Because we believe that the FHWA may have exceeded its statutory and regulatory authority in imposing this fine against Johnson individually, we remand to the FHWA for the limited purpose of conducting a hearing to review the appropriateness of imposing the fine against Johnson. *See* 49 U.S.C. 521(b)(2)(A). [Memorandum Opinion at 5.]

In the order of remand, the "fine" the Court referred to was the "$19,700 fine" to which the FHWA had held "Johnson, in his individual capacity, and the company liable * * *." (Memorandum Opinion at 5.) The $19,700 civil penalty amount imposed against both Corporation and Respondent by the September 20, 1989 Final Order is based upon violations of recordkeeping and safety regulations (49 CFR parts 394 and 395, respectively) promulgated pursuant to the Motor Carrier Safety Act of 1984[2] and upon violations of the financial responsibility regulation (49 CFR part 387) promulgated pursuant to the Motor Carrier Act of 1980.[3]

Specifically, the $19,700 represents $700 for two recordkeeping violations of 49 CFR 394.9(a); $3,500 for five safety violations of 49 CFR 395.3(a)(1), $3,500 for five safety violations of 49 CFR 395.3(b), and $2,000 for four safety violations of 49 CFR 395.8(e); in all,

[1] Hereinafter in the proceeding, "Respondent" will refer only to John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc. The corporate respondent, Steve Johnson and Sons Trucking, Inc., will be referred to as "Corporation".

[2] The Motor Carrier Safety Act of 1984 was enacted by Pub. L. No. 98–554, Title II, 98 Stat. 2832 (Oct. 30, 1984).

[3] The Motor Carrier Act of 1980 was enacted by Pub. L. No. 96–296, 94 Stat. 793 (July 1, 1980). Authority for regulating motor carrier financial responsibility was added to the 1980 Act by Pub. L. No. 97–261, 96 Stat. 1120 (Sept. 20, 1982). The authority is codified at 49 U.S.C. § 10927 note.

$9,700 for 16 recordkeeping and safety violations. The remaining $10,000 is for five financial responsibility violations of 49 CFR 387.7(a).

Accordingly, it is necessary to determine the question of Respondent's liability under two separate statutes, the Motor Carrier Safety Act of 1984 and the Motor Carrier Safety Act of 1980. The definitions of responsible parties differ somewhat in the wording as between these two Acts.

I. The Issues in the Proceeding

The Motor Carrier Act of 1984 provides that:

> *[A]ny person* who is determined * * * to have committed an act which is a violation of a recordkeeping requirement issued by the Secretary [of Transportation] pursuant to section 3102 [of title 49] * * * or the Motor Carrier Safety Act of 1984 shall be liable to the United States for a civil penalty not to exceed $500 for each offense * * *. If the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000 * * *. Notwithstanding any other provision of this section * * *, *except for recordkeeping violations, no civil penalty shall be assessed under this section against an employee for a violation unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000.* [49 U.S.C. 521(b)(2)(A) (emphasis added).][4]

The 1984 Act also contains the following definitions:

> ['E]mployee' means—
> (A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);
> (B) a mechanic;
> (C) a freight handler; and
> (D) any individual other than an employer; who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety * * *. [49 App. U.S.C. 2503(2).]
> * * * * * *
> ['E]mployer' means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it * * *. [49 App. U.S.C. 2503(3).][5]

The Motor Carrier Act of 1980 provides that:

> *Any person (except an employee who acts without knowledge)* who is determined by the Secretary * * * to have knowingly violated this section or a regulation issued under this section shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. [49 U.S.C. 10927 note (emphasis added).][6]

In addressing the question presented by the Court of Appeals for this remand proceeding; namely, whether the FHWA exceeded its statutory and regulatory authority in imposing a $19,700 fine against Mr. Johnson, individually;[7] it is thus necessary to determine whether Mr. Johnson may be held individually responsible, separately, under each of these statutes. Therefore, it appears that the issues to be decided herein are as follows:

1. Whether Mr. Johnson, as president of Steve Johnson and Sons Trucking, Inc., is an employee of Steve Johnson and Sons Trucking, Inc., within the meaning of 49 App. U.S.C. 2503(2) or an employer within the meaning of 49 App. U.S.C. 2503(3).

2. Whether Mr. Johnson, as president of Steve Johnson and Sons Trucking, Inc., is an employee of Steve Johnson and Sons Trucking, Inc., or a "person" who "knowingly violated" the Motor Carrier Act of 1980.

With regard to the foregoing two issues, the parties are directed to respond, on or before March 20, 1992, indicating their agreement or disagreement that these are the issues in the proceeding. The parties shall also present any other issues purportedly in the proceeding. Any disagreement with the two issues or any additionally presented issues must be supported by detailed argument and appropriate citations.

II. Procedures for the Proceeding

Both of the issues just discussed involve the factual question of the relationship between Respondent and Corporation and of the duties and activities Respondent performs in relation to Corporation. Therefore, the proceeding is not immediately susceptible of disposition by motion for summary judgment as presently proposed by FHWA Counsel. It may be possible, however, for the parties to stipulate to such relationship and duties and activities. It is also noted that FHWA Counsel refers to the "Administrative Record" in this case and to evidence in that record on such matters.[8] It may be possible, therefore, for the parties to stipulate that the factual evidence contained in the Administrative Record regarding such relationships and duties and activities shall serve as the evidentiary record in this proceeding.

If such matters are agreed to and stipulated, an oral evidentiary hearing should not be necessary and the legal issues in the case should be susceptible of submission and argument by the parties on brief.

Accordingly, the parties are directed to respond, on or before March 20, 1992, as to whether it is possible to stipulate as to the relationship between Respondent and Corporation and as to the duties and activities Respondent performs in relation to Corporation.

If stipulation of the above facts is not possible, an oral evidentiary hearing will be held in San Francisco, California, and procedural dates for discovery and for filing stipulations, witness lists, summaries of proposed testimony of witnesses, and for exchange of exhibits, as well as a hearing date, will be set by further order.

So ordered.

John J. Mathias,
Chief, Administrative Law Judge.

Order Appointing Administrative Law Judge; Kessel Lumber Supply, Inc.

This matter comes before me upon a request, dated October 10, 1991, of the Regional Director, Office of Motor Carrier Safety, Region 3, for the appointment of an Administrative Law Judge. The Regional Director, by Notice of Claim dated January 24, 1991, alleged that Respondent Kessel Lumber Supply, Inc. (Kessel), had failed to equip one of its "cargo-carrying vehicle[s] * * * with a headerboard or similar device of sufficient strength to prevent load shifting and penetration or crushing of the driver's compartment" in violation of 49 CFR 393.106(a)(1) of the Federal Motor Carrier Safety Regulations (FMCSR).

Kessel replied on February 6, 1991, by denying the allegation and requesting an administrative hearing. In its reply, Kessel contended that it was exempt from the requirements of 49 CFR 393.106(a)(1) because its vehicle fell

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[4] 49 U.S.C. 521(b)(2)(A) is the codification of section 213(b) of the Motor Carrier Safety Act of 1984, Pub. L. No. 98–554, 98 Stat. 2842.

[5] 49 App. U.S.C. 2503(2) and (3) are the codification of sections 204(2) and (3) of the Motor Carrier Safety Act of 1984, Pub. L. No. 98–554, 98 Stat. 2833.

[6] The above quoted provision from 49 U.S.C. 10927 note is the codification of section 18(e)(1) of the Motor Carrier Act of 1980, Pub. L. 97–261, Stat 1121.

[7] In Respondent's February 6, 1992 response, the question is raised as to what "remaining" violations are being charged against Respondent. FHWA Counsel's February 4, 1992 response makes clear that, in its view, no violations are at issue in this proceeding, the Court of Appeals having affirmed the Associate Administrator's Final Order finding the facts concerning the violations to be as alleged in the June 2, 1989 Notice of Claim. I so find.

[8] See FHWA Counsel Response (February 4, 1992) at 3 (citing AR Tabs I, K) and 6.

within the scope of 49 CFR 393.106(g)(1), which exempts from the headerboard requirement those vehicles "designed and used exclusively to transport other vehicles* * * ." Specifically, Respondent contended that the vehicle in question was designed and used exclusively to transport construction equipment used in Respondent's business operations.

Efforts to reach a compromise lasted several months, but in the end no settlement was reached. The Regional Director had originally opposed Kessel's request for an administrative hearing on the grounds Kessel's contentions were primarily legal in nature and therefore did not present a material factual issue in dispute as required by 49 CFR 386.14. However, in October 1991, the parties agreed that the issues in this case presented mixed questions of fact and law and the instant request for the appointment of an Administrative Law Judge soon followed.

Having reviewed the pleadings, I have decided that the case does present a material factual issue in dispute. The factual question to be resolved is whether the vehicle in question "is designed and used exclusively to transport other vehicles * * *" in accordance with the exemption granted in 49 CFR 393.106(g)(1). Expert testimony, and a view of the commercial motor vehicle and the construction equipment that was being transported at the time of the alleged violation, may be necessary to resolve this matter.

Accordingly, I hereby appoint an Administrative Law Judge in accordance with 49 CFR 386.54(a), to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: February 18, 1992.

Richard P. Landis,

Associate Administrator for Motor Carrier Safety.

Order Denying Motion to Quash Subpoena Background; Gunther's Leasing Transport, Inc.

This matter comes before me upon a motion by Gunther's Leasing Transport, Inc. (Gunther's), to quash a subpoena issued by the Regional Director, Region 3, in furtherance of a complaint investigation.

On February 3, 1992, the Regional Director issued an administrative subpoena against Gunther's seeking to investigate two written complaints that Gunther's violated the Federal Motor Carrier Safety Regulations. The Regional Director asserted authority to issue the subpoena under 49 U.S.C. 502(d), but noted that pursuant to 49 CFR part 386 Gunther's had the right to file a motion to quash or modify the subpoena.

Gunther's responded on February 6, 1992, with a motion to quash the subpoena. One of Gunther's arguments is that, in the absence of a formal 49 CFR part 386 investigation or proceeding, the Regional Director cannot use the provisions of § 386.53 to issue a subpoena.

On February 11, 1992, the Regional Director filed a motion to dismiss or transfer Gunther's motion to quash.

Discussion

In effect, the Regional Director has opposed the motion to quash. Notwithstanding the 49 CFR part 386 notice in the subpoena, the subpoena was not issued under part 386. Section 386.11 of the FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings provides for three types of proceedings: (a) Driver qualification proceedings, (b) civil forfeitures, and (c) notices of investigation. This complaint investigation is none of the three.

Moreover, the subpoena issued by the Regional Director is not a 49 CFR 386.53 subpoena. This section requires that "applications for the issuance of subpoenas must be submitted to the Associate Administrator * * * or the Administrative Law Judge." In this case, the subpoena was not submitted to either the Associate Administrator or an Administrative Law Judge, nor should it be in the absence of any proceeding before them. Because the subpoena was not issued by the Associate Administrator under § 386.53, it would be inappropriate for the Associate Administrator to quash the subpoena.

The subpoena was issued by the Regional Director in furtherance of a complaint investigation, pursuant to delegated authority. The statutory basis for this subpoena power is 49 U.S.C. 502(d). This authority has been delegated to Regional Directors pursuant to FHWA Order M 1100.1, Part I, Ch. 7, Par. 6. Section 502(d) governs the enforcement of this subpoena if Gunther's chooses to resist the subpoena. If Gunther's resists, the Regional Director may petition a Federal district court to enforce the subpoena. Gunther's could then seek to have the subpoena modified or quashed by the district court.

The Associate Administrator is aware that if the Regional Director insists upon the production of the documents here in question, and Gunther's continues to resist producing the same, a judicial proceeding may be necessary to enforce the subpoena. The Associate Administrator views this as costly and encourages the Regional Director to explore less burdensome ways of conducting the complaint investigation. Similarly, the Associate Administrator encourages Gunther's to cooperate fully with the Regional Director in concluding this complaint investigation in the least costly manner possible.

Conclusion

Because this complaint investigation is not a 49 CFR part 386 proceeding and the subpoena was not issued pursuant to 49 CFR 386.53, it would be inappropriate for the Associate Administrator to quash the subpoena. Therefore I decline to do so. This denial of Gunther's motion to quash also disposes of the Regional Director's motion to dismiss or transfer the motion to quash.

It is hereby ordered, That Gunther's Leasing Transport's motion to quash the Regional Director's subpoena is denied.

Dated: February 13, 1992.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order

In the Matter of John Steven Johnson, in his individual capacity as President of Steve Johnson and Sons Trucking, Inc.; Steve Johnson and Sons, Inc., Respondents.

This matter comes before me upon a motion for appropriate relief from the Regional Director, Region 9, of the Federal Highway Administration. This motion was served by mail on November 6, 1991. No reply from Respondents has been received.

The Associate Administrator issued a Final Order in this case on September 20, 1989, ordering Respondents to pay a penalty of $19,700 to the Regional Director. On October 20, 1989, Respondents petitioned for reconsideration of the Final Order. Reconsideration was denied on December 20, 1989, and Respondents appealed to the United States Court of Appeals for the Ninth Circuit. By Memorandum Opinion filed on July 12, 1991, the Ninth Circuit Court of Appeals affirmed in part and remanded in part "for further consideration of the appropriateness of the fine against Johnson, the individual petitioner." Memorandum at 5. The Regional Director's motion of November 6, brings the decision of the Ninth Circuit to the Associate Administrator's attention for action.

Accordingly, I hereby appoint an Administrative Law Judge in accordance with 49 CFR part 386 (1990), the Federal

Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, to be designated by the Chief Administrative Law Judge of the Department of Transportation. The Administrative Law Judge so appointed in this matter is requested to conduct a proceeding for the limited purpose of reviewing the appropriateness of imposing the fine against Johnson in his individual capacity. To accomplish this purpose, the Administrative Law Judge shall have the powers and duties specified in 49 CFR 386.54(b).

Dated: December 11, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Decision; Dan Trease Distributing

A Motion for Final Order was filed in this matter on October 1, 1987, to which respondent replied on October 15, 1987. Through inadvertence, this Motion was never brought before me. Because of the passage of such a long period of time, and remaining issues in dispute which arguably could only be resolved through evidentiary hearing, I am hereby ordering that the case be dismissed in the interest of justice.

Dated: December 5, 1991.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Order; Forsyth Milk Hauling Company, Inc.

This matter comes before me upon request of the Regional Director, Region 4, for a final order finding the facts to be as alleged in the notice of claim dated May 14, 1991, and imposing a civil penalty of $4,500.

This notice of claim alleges that Forsyth Milk Hauling Company, Inc., is responsible for fourteen (14) violations of § 391.51(a) of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 391.51(a)), failing to properly maintain driver qualification files for its drivers, and one violation of § 394.9(a) (49 CFR 394.9(a)), failing to report a reportable accident to the Federal Highway Administration (FHWA). 49 CFR 394.9(a).

Forsyth responded, through counsel, on or about May 24, 1991, denying the violations and requesting a hearing. Forsyth also expressed an interest in discussing settlement of this case, but apparently no settlement was reached. Motion for Final Order at 2.

The Regional Director has now moved for a final order asking that I find the facts to be as alleged in the notice of claim and impose a civil penalty in the amount of $4,500, the full amount assessed in the notice of claim. Forsyth has not responded to the Regional Director's motion.

A motion for a final order is in the nature of a motion for summary judgment. Accordingly, the moving party has the burden of clearly establishing that there is no genuine issue of material facts. See, e.g., 6 Moore's Federal Practice, 2d ed., at ¶ 56.15[7]–[8] (1988). While this proceeding is governed by the FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (49 CFR part 386), rather than the Federal Rules of Civil Procedure, I am mindful of the fact that appeals of final orders issued by the Associate Administrator, subject to motions for reconsideration (49 CFR 386.64), are appealable directly to the United States Courts of Appeals. 49 U.S.C. 521(b)(8); 49 CFR 386.67. For this reason I believe, as discussed *infra*, that in cases where the Regional Director seeks to avoid a hearing and obtain a final order on motion, that motion should be accompanied by affidavits or evidence sufficient to at least established a *prima facie* case. Only in this way can I fulfill my responsibility to afford a respondent a fair review of the case against it before a final agency order is issued, which, if necessary, can be enforced in a Federal District Court. 49 U.S.C. 521(b)(4); 49 CFR 386.65. That is especially true in a case such as this one where the respondent has denied the violations and requested a hearing.

In deciding whether to grant a motion for a final order, I must review the whole record before me. Respondent Forsyth has failed to reply to the Motion for a Final Order, and thus I turn my attention to Forsyth's May 24 response to the notice of claim which makes ten points.

1. Forsyth alleges that the notice of claim "did not comply with the due process requirements of the United States Constitution." Section 386.11(b) of the FHWA's Rules of Practice (49 CFR 386.11) provides that civil forfeiture procedures, such as this one, are commenced by the issuance of a notice of claim letter. That section sets forth the requirements of a notice of claim. 49 CFR 386.11(b)(1). Upon review, I find that the May 14 notice of claim comports with the requirements of this section. Insofar as Forsyth seeks to challenge the constitutionality of the FHWA's motor carrier safety regulations, including the FHWA's Rules of Practice, I agree with the Regional Director that this is not the proper forum for such a challenge; such review must be obtained in the United States Court of Appeals. See, e.g., *Cousins* v. *Secretary of the Department of Transportation*, 880 F.2d 603 (1st Cir. 1989) (en banc).

2. Forsyth asserts that the notice of claim was defective because it did not include a service list. I agree with the Regional Director that § 386.11(b) sets forth the requirements of a notice of claim, and that this provision does not require the inclusion of a service list with the notice of claim.

Section 386.31(b), cited by Respondent Forsyth, refers to the first pleading sent to the Associate Administrator in a contested matter. The first pleading sent by the Regional Director in this matter to the Associate Administrator, when the matter was contested, was the Regional Director's Motion for a Final Order, to which was attached a proper service list. This met the requirement of § 386.31(b).

Respondent Forsyth has not shown in what way it has been adversely affected by the absence of a "service list" with the notice of claim letter. Forsyth has not denied receipt of the notice of claim letter. Until the notice of claim is contested, no other party need see it; the Associate Administrator has no need to see notices of claim issued by Regional Directors which are not contested.

3 and 4. Forsyth asserts that the amendment of part 386 of the FMCSRs, the Rules of Practice, which was published in the **Federal Register** on October 2, 1985 (50 FR 40304 (1985)), contained a major rule within the meaning of Executive Order 12291 and violated it for failing to provide prior notice and opportunity for comment. Forsyth also appears to allege that 49 CFR part 386, is defective because the 1985 amendment, presumably, was unaccompanied by a "full regulatory evaluation" and "has a significant economic impact on a substantial number of small entities."

The short answer to this challenge is that, again, challenges of this type alleging some defect in regulations adopted pursuant to 49 U.S.C. 3102 must be brought in the United States Courts of Appeals. See *Counsins, supra.*

I note, however, that the Federal Highway Administrator, in adopting the 1985 amendment to part 386, determined that the amendment was not a major rule under Executive Order 12291; that the economic impacts of the rulemaking, if any, were minimal and that, accordingly, a full regulatory evaluation was not required; that good cause under the Administrative Procedure Act (APA) existed to waive prior notice and opportunity for comment under the APA, as well as to waive the usual 30-day delay in effectiveness of an amendment; and that, under the Regulatory Flexibility

Act, the amendment would not have a significant economic impact on a substantial number of small entities. 50 FR at 40305.

5. Forsyth states that it is interested in discussing settlement of this case. This is a point for Forsyth to pursue directly with the Regional Director rather than in this forum.

6 and 7. Forsyth appears to assert that Mr. and Mrs. Sanders, officers of Forsyth Milk Hauling Company, Inc., were not personally familiar with certain files of the corporation, and that other individuals had been employed by the corporation to maintain the required records. Forsyth further denies that it failed to maintain the required driver qualification files.

For purposes of considering the Regional Director's Motion for a Final Order, I am reviewing this matter as a case against Forsyth Milk Hauling Company, Inc. I believe that it is a fair reading of the Regional Director's motion that he seeks an order against Forsyth Milk Hauling Company, Inc., and not personally against Mr. or Mrs. Sanders. While the assertion that Mr. and Mrs. Sanders were not personally familiar with certain files of the corporation may be relevant insofar as the notice of claim sought to find them personally liable for violations of the FMCSRs, I do not perceive this denial of personal knowledge as more than marginally relevant to the issue of whether Forsyth Milk Hauling Company, Inc., maintained or failed to maintain certain records. In the absence of further argument on this point by Forsyth, I decline to rule that this assertion alone raises a material factual issue in dispute requiring a hearing to resolve.

Paragraph 6 of Forsyth's May 24 reply suggests that the required files could not be found at the time the FHWA investigator's review of Respondent's records, as alleged by the Regional Director. Additionally, Forsyth's counsel's letter of March 7, 1991, could be read as admitting to this violation: "We have now located the driver qualification files for each driver and the new lady is checking to make sure they contain all the required information." While negative inferences can be drawn from these documents submitted by Forsyth, I do not believe that, on a motion for a final order to which Respondent has not replied, that these inferences overcome Respondent's express denial contained in paragraph 7 of its reply of May 24.

The burden is on the moving party to establish that there is no material factual issue in dispute. The Regional Director has alleged that certain files were required to be kept and that those files were not kept. Respondent Forsyth has denied the violation. Forsyth's mere denial in paragraph 7 that it failed to maintain driver qualification files would ordinarily fail to rebut a *prima facie* case of violations. Because the Regional Director's motion is unaccompanied by any affidavit or documentary or other evidence supporting his claim, I do not believe that he has carried his burden and, thus, I cannot at this time grant his Motion for a Final Order with respect to the allegedly missing driver qualification files.

If the Regional Director submits an affidavit or other evidence tending to show driver qualification file violations, I will reconsider his motion with respect to these counts. Respondent Forsyth is hereby notified that failure to respond to the Regional Director's renewed motion, or failure to produce any evidence rebutting the Regional Director's evidence, will result in issuance of an order adversely affecting Forsyth. Silence or mere denial will not meet Respondent's burden to overcome Regional Director's *prima facie* case.

Finally, this ruling requiring the Regional Director to submit affidavits or evidence to the Associate Administrator should be read in the context of the facts of this case. This ruling does not mean that the practice of retaining evidence at the appropriate FHWA office needs to be changed. It simply means that if a Regional Director seeks a final order from the Associate Administrator without a hearing when the respondent denies the alleged violations, then the Regional Director's motion must be accompanied by sufficient evidence to support a *prima facie* case which will shift the burden of production to rebut to the respondent. A respondent's failure to rebut such a *prima facie* will result in the granting of the Regional Director's motion.

In the case before me, I have insufficient evidence supporting the Regional Director's claim that the required driver qualification files were not maintained.

8. Forsyth denies that it failed to report an accident as required. Unlike with the driver qualification files discussed *supra*, I believe that the record before me supports a finding that Respondent Forsyth did not report this accident as required. Forsyth's denial of this charge is ambiguous. In paragraph 8 of its May 24 reply, Forsyth states that, "Respondents deny that they failed to report a reportable accident as stated in the notice of Claim but shows that when claimant contended that the same was a reportable accident they promptly reported the same." I agree with the Regional Director that this statement actually constitutes an admission that the accident was not reported in a timely manner. Insofar as Forsyth's statement in paragraph 8 can be construed as alleging ignorance of the FHWA's accident reporting requirements (49 CFR part 394), I find such a defense to be unavailing. For this reason, and in view of Forsyth's failure to further explain its position in response to the Regional Director's motion, I am granting the Regional Director's motion with respect to this count and will direct Forsyth to pay a civil penalty of $300 to the Regional Director for this violation within thirty (30) days.

9. Forsyth requested a hearing in this case asserting that the material factual issues in dispute are whether Respondent Forsyth failed to maintain driver qualification files and whether Respondent failed to report a reportable accident. The Regional Director opposes the request for a hearing. Because I believe that Respondent has effectively admitted that it failed to report a reportable accident, I do not believe that this issue is in dispute and, thus, no hearing is required.

Because I have declined to grant the Regional Director a final order on the driver qualification file counts, I could sent this issue to a hearing. However, in view of Respondent Forsyth's failure to respond to the Regional Director's motion, I do not see what is to be gained by ordering a hearing on this issue at this time. I have left it with the Regional Director to decide whether to renew his motion for a final order supported as I have outlined here. If the Regional Director renews his motion, I will consider it. If the Regional Director renews his motion, the burden will be on Respondent to oppose the motion with that quantum of evidence needed to support Respondent's assertion that there is a material issue in dispute warranting a hearing. If Respondent meets this burden, I will send this matter for a hearing at that time. If Respondent does not meet this burden, an order may issue against Respondent.

10. Forsyth asserts that a hearing is needed to decide whether the Regional Director complied with 49 CFR 386.31(b). Insofar as this is a reiteration of Respondent's assertion that the notice of claim is defective for failure to include a service list, I have addressed that issue *supra*. I believe that the notice of claim in this case comports with the applicable regulations, 49 CFR 386.11(b), and no hearing is necessary.

Accordingly, it is hereby ordered, That Respondent Forsyth's request for a

hearing is denied; the Regional Director's request for a final order is granted, in part, and Respondent Forsyth is directed to pay the sum of $300 to the Regional Director within 30 days of the date of this Order for having failed to report a reportable accident to the FHWA as alleged in the notice of claim; and the Regional Director's motion is denied in all other respects, with leave to renew this motion.

Dated: December 5, 1991.

Richard P. Landis,

Associate Administrator for Motor Carrier Safety.

Order; Gunther's Leasing Transport, Inc.

Background

This matter comes before me on a motion for a final order by the Regional Director, Region 3, of the Federal Highway Administration (FHWA).

On September 17, 1990, the Regional Director issued a notice of claim to Gunther's Leasing Transport, Inc., alleging that Gunther's committed twelve (12) violations of the Federal Motor Carrier Safety Regulations (FMCSRs). These violations consisted of eleven (11) counts of requiring or permitting drivers to exceed the maximum hours of service allowed under the regulations (49 CFR 391.95(a)(1)) and one (1) count or requiring or permitting a driver to falsify a record of duty status (49 CFR 395.8(e)). The Regional Director alleged that the 11 counts of requiring or permitting drivers to exceed the maximum hours of service represented a pattern of violations, and accordingly assessed a penalty of $900 for each violation cited. Section 521(b) of title 49, United States Code, provides that, if the agency establishes that a motor carrier has engaged in a pattern of safety violations, then a civil penalty of up to $1,000 per violation, up to a maximum penalty of $10,000 per pattern, may be assessed against the offending motor carrier. (In his motion for a final order, the Regional Director dropped the recordkeeping count from this case, and that count will not be discussed further.)

Gunther's, through counsel, responded to this notice of claim on October 3, 1990. In this initial reply, Gunther's did not deny that the violations occurred, nor did it request an oral hearing; however, it did request additional time to prepare a more complete response. On October 16, 1990, Gunther's submitted its further response in this matter. It again neither denied that the violations occurred nor did it request an oral hearing. Nevertheless, Gunther's argued that no penalty should be assessed against it because (1) the violations discovered did not reflect a pattern of violations and (2) Gunther's neither required nor permitted these violations to occur.

On December 14, 1990, the Regional Director filed a motion for a final order asking that I find that Gunther's violated 49 CFR 391.95(a)(1) on 11 occasions as alleged in the notice of claim and that I assess a civil penalty of $9,900 for those 11 violations.

On December 20, 1990, Gunther's responded to the Regional Director's motion opposing it and asking for an oral hearing. Gunther's complained about what it viewed as procedural irregularities in the initiation and prosecution of the enforcement case against it. Gunther's does not deny the violations alleged in the notice of claim occurred, but argues that it neither required nor permitted the drivers to exceed the maximum hours of service set forth in the applicable regulations; that it has effective management controls in place to detect and correct such violations; and that in this case it in fact did discover and correct these violations. Gunther's argues, further, that the violations discovered were essentially isolated instances which only appear to present a pattern of violations because of an allegedly improper review of company records.

Similarly, Gunther's complains that the compliance review itself which led to the discovery of these violations was outside the scope of articulated agency review procedures. Gunther's appears to believe that, because its commercial motor vehicle operations had been assigned to a satisfactory safety rating, it should not have been reviewed when it was. Gunther's requested that I grant it an oral hearing and an opportunity to show that it should not be penalized for the violations discovered.

On December 21, 1990, the Regional Director responded to Gunther's opposition to the Regional Director's Motion for a Final Order. In this response, the Regional Director in turn opposed Gunther's request for a hearing arguing that the request is untimely under the FHWA's procedural regulations and, in any event, that there are no material factual issues in dispute. On December 26, 1990, Gunther's filed a motion to strike the Regional Director's December 21 response as not authorized by the FHWA's Rules of Practice. On December 27, The Regional Director requested additional time to respond to Gunther's motion to strike, and on January 2, 1991, the Regional Director filed his response opposing Gunther's motion to strike. Gunther's responded to this on January 7, 1991, by writing to me directly, with a copy to the Regional Director, complaining about the Regional Director's handling of this case.

On January 11, 1991, the Regional Director served a request for admissions on Gunther's, to which Gunther's responded on January 17, with a motion for a protective order, which motion the Regional Director opposed on January 22, 1991.

Finally, on March 8, 1991, both parties wrote to me. The Regional Director wrote to advise me of the enactment of a law by Congress on November 3, 1990, which the Regional Director believes evidences congressional intent that enforcement cases of this type be prosecuted by the agency. Gunther's responded again complaining about what it considers to be unauthorized filings by the Regional Director in this case.

Discussion

A review of the multitude of paper which has been filed in this case reflects that more heat is being generated over this matter than light shed on it. Moreover, I find that the rhetorical flourishes contained in some of these filings obscure the actual issues, substantive and procedural, which I must resolve. As I see it, the basic issues which I must resolve are whether the violations alleged to have been committed by Gunther's were in fact committed by it, and whether the Regional Director was correct in finding that these violations constituted a pattern of violations within the meaning of 49 U.S.C. 521(b) so that the assessment of a civil penalty is authorized by statute. Obviously, in order to resolve these basic issues, I must first turn my attention to certain subsidiary matters. I do not intend, however, to address every incipient issue which might be gleaned from the numerous filings submitted to me, because I do not believe that to be necessary for me to resolve the fundamental issues of this case.

The objective of this proceeding is to review the Regional Director's initiation and prosecution of an enforcement case which, in turn, is intended to secure Gunther's compliance with the FMCSRs. See 49 CFR 386.1. To that end, the FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386, are intended to provide a guide for an orderly, efficient, and effective presentation of the issues for resolution. I do not believe these Rules of Practice establish cumbersome or convoluted procedures which trap the unwary or

trip up those lacking prescience, and I will not read the Rules of Practice in a way that produces such results.

Request for an Oral Hearing

The Rules of Practice provide that civil forfeiture proceedings, such as this one, are commenced by the issuance of a claim letter. 49 CFR 386.11(b). Responses to notices of claim are due within 15 days and must contain, "if the respondent contests the claim, a request for a formal, trial-type administrative hearing or notice of intent to submit evidence without a formal hearing." 49 CFR 386.14(b)(2). By requesting a hearing in a timely fashion, the respondent preserves his or her "right" to a hearing, if there is a material factual issue in dispute. See 49 CFR 386.16(b).

On the other hand, the FHWA's Rules of Practice also provide that, "if the reply submitted does not request an oral hearing, the Associate Administrator may issue a final decision and order based on the evidence and arguments submitted." 49 CFR 386.16 (emphasis supplied). I believe that this provision is written in a permissive way (i.e., "may issue a final decision") so as to enable the Associate Administrator to order further procedures as may be warranted before issuing a final order. These may include additional briefing or oral argument (see, e.g., 49 CFR 386.35(d)).

Thus, I do not read the Rules of Practice as barring me from ordering a hearing if, for example, I am convinced that a material factual issue in dispute exists, despite the parties' failure to identify it. I also believe that I have the inherent authority to send a matter for a hearing if I believe a hearing will enhance my ability to make a decision in a particular case or otherwise serve the interests of justice.

In this case, I do not now believe that there is a material factual issue in dispute requiring a hearing to resolve it. The ultimate facts which must be ascertained involve whether the alleged violations occurred. Respondent Gunther's has not denied that these violations occurred. What it appears to me that Gunther's is arguing relates to the legal significance of these facts. In this respect, certain subsidiary facts may be important; for example, the size or the selectivity of the record sample reviewed by the investigator from which these violations were identified may be relevant to the issue of whether a pattern of violations exists.

But I am not convinced that an oral hearing is necessary for Gunther's to make its argument or to establish the "subsidiary" facts which would tend to support such an argument.

Appendix B to the Regional Director's Motion for a Final Order is a copy of the investigator's enforcement report. This report indicates that the investigator checked 375 records of duty status for compliance with 49 CFR 395.3(a)(1); discovered 39 violations of this provision; and documented 11. The 39 violations discovered reportedly involved 11 different drivers of a total driver population of 18. (This latter number is presumably the number of drivers for whom records were checked. The investigator's enforcement report indicates that Gunther's uses a total of 86 drivers subject to the FMCSRs.) Of the 11 violations cited in the notice of claim letter, 7 different drivers were involved.

Gunther's argues that it believes that FHWA's sampling method in this case "was so severely flawed as to violate any notion of proper procedure, due process, or FHWA's own standards." Gunther's December 20 Opposition to Motion for Final Order, at 3. Apparently, Gunther's believes that the decision to revisit Gunther's, which had received a "satisfactory" safety rating, was "flawed," as was the method by which the investigator selected certain records to review. *Id.* at 8.

Gunther's has also argued that it neither required nor permitted the violations to occur because it, in fact, discovered these violations soon after they occurred, and took disciplinary action against the drivers involved.

These are the issues which I believe must be resolved, and I am not now convinced that a hearing is necessary to resolve them. Thus, I decline to order a hearing at this time. However, despite all the words which have so far been written on this matter, I do not believe the fundamental issues have been fully joined by the parties. Before I decide this matter, therefore, I wish to afford the parties a final opportunity to succinctly express their views on the issues which I must decide.

If Gunther's wishes to argue that the violations cited do not represent a pattern within the meaning of 49 U.S.C. 521(b), then I want to hear that argument now, along with any authority which might support that position. Similarly, if Gunther's believes that it should not be penalized for violations it discovered and took action to correct, or at least to avoid their recurrence, then I want to see some evidence or authority to support that.

For the convenience of the parties, they are reminded that previous decisions of the Associate Administrator have been published in the **Federal Register** at 55 FR 2924 (January 29, 1990) and 55 FR 43264 (October 26, 1990). Finally, I note that Gunther's has complained of the Regional Director's reference to past enforcement actions taken against Gunther's. Gunther's should be aware that its past compliance history may be relevant to several factors the agency is statutorily required to consider in determining the amount of the penalty. See 49 U.S.C. 521(b)(2)(C).

I am hereby directing the parties to submit, within thirty (30) days of the date of this order, all evidence which they wish me to consider in this matter, as well as all arguments that they wish to make. These submissions must be no more than 50 pages, including all attachments, appendices, and exhibits, typed double space on 8½" x 11" paper. The parties may then submit final rebuttals no later than 15 days thereafter. Rebuttal submissions shall be limited to no more than 20 pages in length, including all attachments, appendices, and exhibits, typed double space on 8½" x 11" paper. Deviations from these criteria will be permitted only for good cause shown. Pleadings not in conformity with these criteria will be rejected.

It is my intent to issue a final decision and order after considering these final submissions, although I reserve the right to send this matter to a hearing if I determine that it is necessary to resolve a material factual issue in dispute. I do not intend to send disputed factual issues to a hearing if those issues are not material, i.e., essential, to the resolution of the fundamental issues in this case. Nor do I intend to call a hearing to consider the significance of undisputed facts. I expect the parties to address themselves to these issues at this time.

Request for Admissions

The Regional Director has also filed a Request for Admissions from which Gunther's, in turn, has sought a protective order from me. I am holding Gunther's motion for a protective order in abeyance while I await the parties' response to this order. The discovery sought by the Regional Director would be appropriate if this matter goes to a hearing, subject to any appropriate objections Respondent Gunther's might be able to make to individual questions asked. I do not believe that Gunther's request for a broad protective order is warranted. While Gunther's has invested much time and effort in arguing what it perceives to be procedural irregularities on the part of the Regional Director, I note that requests for admissions are expressly authorized by the Rules of Practice. If this matter should be sent to a hearing, I will refer Gunther's request for a

protective order to the administrative law judge, although I will note that in my view the Regional Director would be entitled to insist upon answers to properly posed requests for admissions. Inasmuch as I am not sending this matter to a hearing at this time, however, I do not believe that it is necessary at this time to either direct Gunther's to answer the Regional Director's request for admissions or to issue a protective order, in whole or in part.

Accordingly, it is hereby ordered, That the Regional Director and Gunther's Leasing Transport, Inc., shall submit within 30 days of the date of this order arguments and supporting material, as specified in this Order, addressing the fundamental issues identified in this Order. Submissions will be served in accordance with 49 CFR 386.31. Rebuttal submissions must then be submitted within 15 days (5 additional days may be added if the initial submission is made by mail).

Dated: September 30, 1991.

Richard P. Landis,

Associate Administrator for Motor Carrier Safety.

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March 31, 1993

Part III

Office of Management and Budget

Economic Classification Policy Committee Issues Papers

Solicitation of Comments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee Issues Papers

AGENCY: Office of Management and Budget.

ACTION: Notice of solicitation of comments.

SUMMARY: Under title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is announcing its process for revising the economic classification system, currently known as the Standard Industrial Classification (SIC) system, and is soliciting public comment on the first two of a series of issues papers prepared by the Economic Classification Policy Committee (ECPC), a body chartered by OMB to develop a new classification system and plan for its implementation in the late 1990's. The due date for receipt of comments on the issues papers is May 28, 1993. Additional public comment periods, after major milestone events in the revision process, are planned. The revision is tentatively scheduled for implementation in January 1997.

DATES: To assure consideration in development of the conceptual framework for the revision of the classification structure, all comments on the first two ECPC issues papers must be received on or before May 28, 1993.

ADDRESSES: Please send written comments to Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE–42), U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Peggy L. Burcham, Bureau of Economic Analysis, telephone number (202) 523–0873.

SUPPLEMENTARY INFORMATION:

History

In 1937, the Central Statistical Board established an Interdepartmental Committee on Industrial Classification "to develop a plan of classification of various types of statistical data by industries and to promote the general adoption of such classification as the standard classification of the Federal Government."[1] The List of Industries for manufacturing was first available in 1938, with the List of Industries for nonmanufacturing following in 1939.

Before the development of the SIC, each U.S. Government agency collected and classified data according to its own needs. Standardization was desired because:

> various agencies collecting industrial data used their own classifications, and thus a given establishment might be classified in one industry by one agency and in another by a second agency. Such a situation made the comparison of industrial data prepared by different agencies difficult and often misleading.[2]

Since the inception of the SIC, the system has been revised periodically. The latest version is the 1987 SIC.[3] For the most part, changes to the SIC have resulted in adding new and growing industries, deleting or combining declining industries, and rearranging industries within the existing industry groups.

Background

The SIC is a major statistical classification system used to promote the comparability of establishment data describing various facets of the U.S. economy. The SIC's basic classification unit is the establishment, i.e., an economic unit, generally at a single geographical location, where business is conducted or where services or industrial operations are performed. The SIC covers the entire field of economic activities by defining industries in accordance with the composition and structure of the economy. It is revised periodically to reflect the economy's changing industrial composition and organization. The 1987 SIC Manual contains the current classification of industries.

Rapid changes in both the U.S. and world economies have brought the U.S. SIC under increasing criticism. The 1991 International Conference on the Classification of Economic Activities in Williamsburg, Virginia, provided a forum for exploring the issues, and for considering new approaches to classifying economic activity. Papers presented at the conference and the discussion and insights that they generated strongly indicate that the time has arrived to take a fresh look at the concepts, methodologies, procedures, and uses of economic classifications for statistical purposes.[4]

In July 1992, the Office of Management and Budget established an Economic Classification Policy Committee (ECPC) chaired by the Bureau of Economic Analysis, U.S. Department of Commerce, with representatives from the Bureau of the Census, U.S. Department of Commerce, and the Bureau of Labor Statistics, U.S. Department of Labor. The Office of Management and Budget is represented on the ECPC in an *ex officio* status.

The ECPC is charged with a "fresh slate" examination of economic classifications for statistical purposes, including industrial classifications, product classifications, and product code groupings. This is a large undertaking with basic implications for the accuracy and utility of all establishment-based, enterprise-based, or product-oriented economic data. The Committee's charge includes: (1) identifying the essential statistical uses of economic classifications; (2) identifying and developing, if needed, economic concepts, new structures, and statistical methodologies that address such statistical uses; (3) developing classification system(s) based on those concepts; (4) planning the implementation of the new classification system(s); and (5) ensuring that there is ample opportunity for widespread public participation in the entire process.

Work Plan

The ECPC intends to identify the essential statistical uses of data produced from economic classifications through research, experiences of statistical producers, information obtained through an outreach process, and information obtained from data users concerning the actual and potential uses of data that are produced with economic classification systems. The outreach process will be structured around a set of issues papers, the first two of which are published with this announcement. Others will be made available for distribution to current and potential users of economic data and the interested public. Background material and requests for comment will be distributed through this and subsequent announcements in the **Federal Register**, as well as directly through professional organizations, industry groups, and other vehicles.

In addition to the public outreach process, the ECPC will establish two committees of Federal Government agencies to provide input to the classification examination process. One committee will be composed of Federal statistical agencies that collect or compile data that are classified by

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[1] Pearce, Esther, "History of the Standard Industrial Classification," Executive Office of the President, Office of Statistical Standards, U.S. Bureau of the Budget, Washington, DC, July 1957 (mimeograph).

[2] Ibid.

[3] Copies of the *Standard Industrial Classification Manual, 1987*, are available for sale from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. (703) 487–4650. Order Number PB 87–100012.

[4] Copies of the *Proceedings* of the 1991 International Conference on the Classification of Economic Activities can be obtained on request from Ms. Carole Ambler, Bureau of the Census, U.S. Department of Commerce, room 2089–3, Washington, DC 20233. (301) 763–5450.

economic classifications. Membership in this committee will be designated by OMB. The second committee will be composed of government agencies that use data that are classified by economic classifications. Membership in the user committee is open to any interested Federal Government agency and also to any interested State or other governmental agency. The ECPC outreach process will also include international statistical agencies, statistical agencies of the North American Free Trade Agreement Signatories, and those of other countries.

Once major statistical uses have been identified through agency research and the outreach process, the ECPC intends to identify and develop, if needed, economic concepts, new structures, and statistical methodologies that address those uses through in-house and contract research. The research will concentrate on core issues developed from the papers and discussions of the Williamsburg conference as well as the issues surfaced through the ECPC's domestic and international outreach efforts.

Drawing upon the input of the public and other government agencies obtained through the outreach process, the ECPC will evaluate alternative classification structures giving appropriate weight to the following criteria (not necessarily in priority order): (1) Analytical usefulness and conceptual appropriateness; (2) policy relevance; (3) use of appropriate classification unit(s), including enterprise, division, establishment, and/or individual product or service; (4) ease of historical comparability; (5) compatibility with international classification, to facilitate analysis of domestic data and data of other countries as well as international trade data; (6) geographic coverage and detail; and (7) feasibility in implementation, including data availability, respondent reporting burden, classification ease, and cost.

The ECPC will manage the development of a classification system(s) based on the concepts and criteria discussed above. The ECPC will seek the advice and comments of users and the public in the development process. Technical expertise and other support for the development of the classification system(s) will be provided by the agencies that are represented on the ECPC and by other agencies with an interest in economic classification to the extent possible given agency resource availability.

The ECPC will develop an implementation plan for the new classification system(s) after widespread consultation with affected domestic and international agencies.

The ECPC will ensure that there is ample opportunity for widespread public participation in the entire process through a comprehensive and open outreach process that welcomes domestic and international participation in every phase of the project. Participants are expected to include public- and private-sector domestic and international users of economic statistics, data providers and survey respondents, as well as Federal and State statistical agencies, United Nations statistical bodies, the Statistical Office of the European Community, and statistical units of the North American Free Trade Agreement Signatories.

ECPC Work Plan Schedule

A schedule outlining the process and mileposts that the ECPC will use to assess its progress toward achieving its goals follows.

(1) Public comments due on **Federal Register** notice of ECPC work plan and first two issues papers. (May 28, 1993)

(2) Research and development to determine framework for industry classification system. This includes conceptual framework, principles, procedures, and hierarchical structure, if any, concluding with **Federal Register** notice for public comment. (December 1993)

(3) Development of new economic classifications, concluding with **Federal Register** notice for public comment. (September 1995)

(4) Review comments and revise classification proposals (Concurrently, beginning with public comment phase, draft detailed industry descriptions, index items, etc.). (November 1995)

(5) Public comment on final proposals and OMB review. (December 1995)

(6) Final OMB decisions. (March 1996)

(7) Implementation of revised SIC. (January 1997)

(8) Restructuring of the SIC will be a continuing process. Research will proceed throughout the revision process. Additional changes to the industry classification structure may be made as a result of this ongoing research or as the result of data collected in the 1997 Economic Censuses, but any such proposals will be circulated for public comment before being adopted.

Issues Papers

To facilitate public comment, the ECPC has prepared issues papers on key areas of decision leading to a new classification structure. Issues Paper No. 1, Conceptual Issues, plays a pivotal role in basic decisions regarding the extent and form of the classification structure revision and is appended to this announcement. Issues Paper No. 2, Aggregation Structures and Hierarchies, is closely related to Issues Paper No. 1 and is also appended. The other papers listed below will be completed in the near future and will be available on request:

Issues Paper No. 3—Collectibility of Data
Issues Paper No. 4—Criteria for Determining Industries
Issues Paper No. 5—Time Series Continuity
Issues Paper No. 6—Service Classifications
Issues Paper No. 7—International Comparability
Issues Paper No. 8—Detailed Product Code Classifications

Requests for these issues papers should be addressed to: Economic Classification Policy Committee, Bureau of Economic Analysis (BE–42), U.S. Department of Commerce, Washington, D.C. 20230. Information on availability of issues papers and other matters can be obtained by calling (202) 523–0873.

Comment Procedure

Interested parties are invited to comment in writing to the Economic Classification Policy Committee. Comments may be in reference to questions posed in the issues papers, the ECPC work plan and public outreach proposals, or any other topic associated with economic classifications. The Committee particularly solicits comments on present and future uses of data that are produced using economic classification systems, with emphasis on the strengths and weaknesses of the present SIC system in meeting those needs.

Availability of Comment Materials

All written comments and materials received in response to this notice will be available throughout 1993 during normal business hours, 8:30 a.m. to 5 p.m. in room 709, 1401 K Street NW., Washington, DC. Individuals wishing to inspect these materials must call (202) 523–0873 to obtain an appointment to enter the building.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator for Information and Regulatory Affairs.

Economic Classification Policy Committee; Issues Paper No. 1—Conceptual Issues

At the 1991 International Conference on the Classification of Economic Activities at Williamsburg, Virginia ([1], hereafter, "Williamsburg Conference"),

many participants stated that economic classification systems, including the U.S. Standard Industrial Classification (SIC) system, need to be based on economic concepts, or need an improved conceptual foundation. This call for an economic concept was a major departure from recent past discussions of economic classifications.

Classification Systems

Many economic classification systems exist. All of them group economic data.

Some classification systems group individual transactions. The Harmonized Commodity Description and Coding System (HS), for example, groups individual international trade transactions into product-code groupings for tariff and trade negotiations. The Census Bureau "7-digit" product codes group the value of shipments of individual manufacturing products. In principle, such groupings could provide an exhaustive list of the commodities and services produced in the economy (though in practice, even the most detailed codes must combine commodities that differ to an extent).

Other classification systems group or aggregate producing units into industries. The U.S. 4-digit SIC codes are an example of such an industry system. The SIC system also aggregates the 4-digit industries into higher level aggregations, the SIC 3-digit and 2-digit industry groups. The International Standard Industrial Classification of all Economic Activities (ISIC), of the United Nations, is another industry classification system.

Many of the most difficult issues of classification systems concern the principles for forming industry aggregations. For this reason, Issues Paper No. 1 focuses its attention on these conceptual questions.

Questions concerning the grouping of "industries" or other first-level aggregates into higher-level aggregates are discussed in Issues Paper No. 2. Issues in forming the product- or commodity-level detail itself are discussed in Issues Paper No. 8. However, the topics discussed in Issues Papers Nos. 2 and 8 are closely related to these addressed in Issues Paper No. 1, and for this reason Paper No. 1 is crucial for the other two.

1.1 The Purpose of an Economic Classification System

To those most familiar with economic classifications, their purpose may seem obvious. Yet, an explicit statement of purpose—the underlying objective of a classification system—is essential for many of the topics discussed in the Economic Classification Policy Committee (ECPC) issues papers.

The literature on economic classifications presents several general answers to the question of purpose. In all of the following, some listing of detailed commodities and services is presumed to exist, and the discussion concerns the formation of some first-level aggregation system, that is, an SIC industry, or some analogous or similar aggregation.

(a) *To facilitate use of the data.* For many analyses, economic data are grouped in order to reduce the amount of unmanageable detail. When detailed commodity data are available, some users will prefer to group the data for themselves. Other users, however, prefer that statistical agencies group the data into product or industry categories, either because of the expense of doing it for themselves or because they may lack the expertise to group data for their purposes. A standardized grouping, or classification, system is therefore a service to the data user and provides a valuable reference point even for those users who decide they wish to depart from the standard system in some way. In addition, microdata are not always available, because of confidentiality, sampling considerations, or other reasons; in these cases, statistical agencies must provide data in grouped formats.

In past approaches to classification, the objective has been to find a general purpose classification system that will meet all major user needs, or provide the maximum accommodation to the variety of needs for data. In the earliest U.S. economic classifications, different statistical agencies adopted their own systems, presumably in part because each agency's system was tailored to a specific statistical agency purpose or objective. Because many analyses require economic statistics produced by different agencies, demand arose for a standard classification system that would render all statistical agency outputs comparable, yet meet in some manner the specific purposes for which individual classification systems had been developed previously.

What seems new in the Williamsburg Conference is the view that, though standardization across statistical agencies should be maintained, different standardized classification systems corresponding to different uses of economic data may be needed. These uses, in a kind of short-hand expression, may be divided into "supply-side" or "production-oriented" classification systems versus "demandside" or "commodity-oriented" classification systems (see the development of these terms in section 1.2, below).

(b) *Structure of the economy.* Frequently encountered in the economic classification literature is the statement that the classification system should "reflect the structure of the economy." Joseph Duncan commented that "A good classification system * * * need[s] to reflect the current structure of the economy in order to assist in analysis of important changes" (Williamsburg Conference [6], pp. 19–20), and other participants expressed similar views. It is often remarked that the structure of the economy provides a kind of snapshot view of the economy at one time, which implies that time series will show how the structure changes.

Unfortunately, the term "structure of the economy" has not been well defined or explained. In one view, the structure of the economy encompasses what industries exist, where they are located, what inputs they use, what outputs they produce, and what markets they serve. Yet, the current (1987) U.S. SIC may not adequately indicate the industries that exist: Three-fifths (574) of the SIC 4-digit industries are goods producing (of which 459 are manufacturing), while the remaining two-fifths (430) 4-digit SIC's relate to the entire nongoods producing sector. The U.S. nongoods producing sector is larger than the goods producing sector by most measures. It has often been stated that the distribution of current SIC 4-digit industries does not seem to reflect the structure of the economy.

Another definition of the structure of the economy refers to the organization of production units for marketing goods or services, including the degree of vertical integration. For example, two separate meat processing industries are recognized in the current SIC (2011, Meat Packing Plants; and 2013, Sausages and Other Prepared Meat Products). The two produce virtually the same output, meat products, but meat packing plants slaughter the animals that they use in the production of meat products, while the sausage and other prepared meats plants produce meat products from purchased carcasses and other meats. As the meat packing example illustrates, the degree of vertical integration is sometimes recognized as an aspect of structure in the current SIC. In other instances, differences in vertical integration are ignored, e.g., Poultry Slaughtering and Processing (SIC 2015), where slaughtering and processing are combined regardless of whether or not the producer actually slaughters the poultry.

Moreover, the SIC system has been criticized for reflecting changes in vertical integration, when in some sense or for some purposes it should not. Conflicting statements and differences in treatment in the present system suggest the need for a more coherent statement of how vertical integration is to be treated in economic classifications.

A third example of structure concerns the combination of activities. The Hotels and Motels (SIC 7011) industry encompasses many distinct economic activities. For example, a hotel generally includes a restaurant, bar, the rental of rooms, a gift shop, etc., some of which exist separately in other 4-digit SIC's. In the U.S. SIC, the structure that is embedded in the SIC hotel industry pertains to the combination of related economic activities. In some other countries, classification systems distinguish between hotels that serve food and beverages and those that do not. Structure in the sense of this example thus admits to alternative interpretations.

Another criticism of the current SIC system structure is that new or emerging industries are not recognized very rapidly. Thus, the present system lags in recording these kinds of changes in the structure of the economy.

(c) *For use in sampling.* Most statistical programs are based on sample surveys. The requirements of sample surveys provide another reason for developing economic classification systems.

Samples may not be large enough to support estimates at the detailed commodity level or even at the 4-digit industry level of detail. Classification systems have traditionally determined how commodity detail will be collapsed for sampling purposes into more aggregated estimates, such as 4-digit, 3-digit, or 2-digit industries. For some statistical surveys, sampling at the commodity-detail level may not make sense: Because they are produced jointly, one cannot collect wage and employment information for granulated sugar or for molasses, for example, though labor information for sugar products is both collectible and useful. The sampling process often requires stratification by relevant economic variables, among which are the variables employed in economic classification systems. Both sample frame development and estimates from sample surveys thus depend on economic classification systems.

(d) *Comparability.* The expressed purpose of the U.S. SIC system is to ensure that industry statistics provided by various agencies are comparable and consistent across agencies. Comparability is crucial because the U.S. system is decentralized. However, even if the system were centralized, comparability across surveys would be required: One might want, for example, to use data from labor market surveys in the same analysis with information on product sales or receipts.

Similarly, if one wants to draw comparisons among different countries, it is important that data be collected and reported on some standardized basis. The National Academy of Sciences ([14]), emphasizes the importance of comparability between international trade data and data on domestic production.

One can thus conceive of a classification system as a device for organizing in a comparable way data sets produced from different surveys, or by different statistical agencies, or by statistical agencies in different countries. Reg Ward (Williamsburg Conference [27], pp. 88–9) speaks of a classification system promoting "communication" among data sets.

The Committee's Position

This section lists four possible purposes for a classification system. For the reasons set out in the following, the Committee believes that the first of the four—facilitating the use of economic data—should be the primary purpose of an economic classification system.

Comparability is clearly necessary for a classification system to be useful. It is also clear, however, that comparability is not sufficient, and one must look beyond comparability to specify the purposes of a classification system. The SIC system serves to make data produced by different U.S. statistical agencies comparable, but comparability has not precluded extensive criticism of it. Criticism of the U.S. SIC implies that users are concerned with the utility or usefulness of an economic classification system, beyond its provision of comparability. Shaila Nijhowne (Williamsburg Conference [15], p. 560) drew attention to the fact that "We have come a long way since the Standard Industrial Classification was used simply to achieve data comparability between federal government departments, for a limited number of data series. The SIC's now serve a multiplicity of needs." In the Committee's judgment, comparability must be coupled to the requirement that classification systems be designed so that they meet user needs. Adopting some existing system merely because it provides comparability is not consistent with the Committee's charge to conduct a "fresh slate" examination of economic classification systems.

Survey use—providing a statistical framework for collapsing product and industry detail when conducting sample surveys—is an important reason that statistical agencies develop and maintain economic classification systems. The sampling use of classifications focuses attention on the ultimate purposes for which the data are used, because the data programs for which samples are selected have themselves differing ultimate uses. A classification system that is used to facilitate drawing samples needs to be consistent with the purposes for which samples are drawn.

The Committee recognizes the long tradition that states that classifications systems are intended to portray the structure of the economy. There is validity in many complaints that the current system does not portray the structure of the economy (its failure to record emerging industries soon enough, for example). However, the phrase "structure of the economy" seems to mean different things to different users, perhaps because they have differing analyses in mind when they discuss structure. If so, the elements of structure that matter for one use of SIC-grouped data are not those that matter for another use, and may even conflict. In any event, ambiguity in the use of the term suggests the need for a more rigorous definition of "structure," one that could be applied consistently across all the industries in the classification system.

Request for Comment

The Committee invites comments on the foregoing discussion, particularly its view that data use provides the primary rationale for an economic classification system.

1.2 The Idea That an Economic Classification System Should be Based on a Consistent Conceptual Framework

At the Williamsburg Conference, there was widespread recognition that the present U.S. SIC system does not correspond to any single concept for grouping or aggregation. Critics of the present system suggest that the absence of a consistent conceptual framework creates anomalies within the system. Particular concern was also voiced at the Williamsburg Conference that there is no discernible concept in the services categories: "In general, there seems to be no consistent definition or classification concept underlying decisions on what to include in services or on how to arrange the categories within services. The resulting conglomerate is too diverse to be analytically useful"

(Courtenay Slater, Williamsburg Conference [20], p. 150).

On the other side of this issue are those who, while recognizing the validity of many of the criticisms of the current system, question use of a single concept for constructing a classification system. They believe that classification systems must incorporate multiple concepts, both because industries are actually organized on varying principles, and because classification systems must be the source of data for different types of analysis.

The following section explains the economic concepts that have been proposed for economic classifications. The positions taken on the concepts question and the issues that arise under it are reviewed in the subsequent subsection.

Background: Economic Concepts for Classification Systems

Proponents of adopting a consistent conceptual framework for economic classifications have focused on two alternative general approaches, which may be referred to as the supply-side approach and the demand-side approach.

A supply-side, or production-oriented, concept aggregates according to similarity in the production processes that are used to make them. In the technical language of economists, one would group establishments together if each establishment has the same or closely similar production function.

A demand-side, or commodity-oriented, classification concept, in contrast, yields a classification system based on use of the commodity or service. Commodities or services that serve similar purposes, that are used together, or that are functionally related in use, are grouped together.

Both general approaches—supply-side or demand-side—are derived from economic theory, specifically the economic theory of aggregation. The conceptual approach to economic classifications is developed in a paper by Jack Triplett [23] that was published prior to the Williamsburg Conference. That paper contains more information on the conceptual approaches described in the following paragraphs.

The supply-side or production-oriented concept. For the purposes of this paper, the technical term production function needs more explanation and needs to be related to other terms that have been employed in the classification literature.

Production involves an activity in which inputs are used to fabricate some material good or to render a service. A production function describes how the amount of the product (or service) depends upon all the inputs used in its production, given the state of the art, or "technology." All of the inputs matter, not just the major input (e.g., leather or plastics). The list of inputs includes in principle the types of labor and their skills, the types of capital equipment, as well as intermediate materials, and, in many cases, intangible inputs may be important, especially in the production of services. The substitution of one input for another is inherently part of many production processes, and that information, too, is incorporated into the production function. The production function should be understood as an abstract description of the engineering principles for a production process, or as a description of the production technology, and not just a list of inputs. In principle, it is engineering information about the production process that determines if establishments are sufficiently similar to justify grouping them by a supply-side concept.

In the international literature on classifications, the term "activity" is used to convey ideas that are very similar to the terms production function or production process, as these terms are used in ECPC issues papers. Peter Struijs (Williamsburg Conference [21], p. 367) remarked: "* * * [C]onstructing an SIC is to define similarity of businesses. As the SIC is used for the statistical description of the production process as carried out by businesses, it is the kind of economic activity of businesses that determines their similarity." Struijs then goes on to note several possible "criteria" of classification, one of which is: "The production process criterion refers to the way in which inputs are transformed into outputs. This depends mainly on the technology used" (ibid., pp. 368–9).

Similarly, the usage of the term "activity" in the International Standard Industrial Classification (ISIC), Rev. 3, of the U.N. Statistical Office [24] is also consistent with the meaning of the production function term, as used in the ECPC issues papers: "* * * [T]he term 'activity' is to be understood as a process, i.e., the combination of actions that result in a certain set of products. In other words, an activity can be said to take place when resources such as equipment, labour, manufacturing techniques or products are combined, leading to specific goods or services. Thus, an activity is characterized by an input of resources, a production process and an output of products" (ibid., p. 9, para. 29). The following example from the same source is illuminating: "If, for example, pens and pencils are produced in the same enterprise, using, however, different inputs and different production techniques, the enterprise may be considered to carry out two activities * * *" (ibid., para. 32). Although the ISIC use of the term "activity" is consistent with the production function concept, this does not necessarily imply that the ISIC in practice actually implements a supply-side concept.

The Demand-Side or Commodity-Oriented Concept. The demand-side concept is more intuitively understandable than is the supply-side concept, but, at the same time, is technically more difficult to define. Under a demand-side concept, one would group together commodities or services that have similarities in use, that belong together or are used together for some purpose, or that define market groupings.

A quite old idea is that demand groupings can be formed by considering the nature of substitutions. Very close substitutes belong together; commodities or services that are not good substitutes belong in different categories. Granulated cane sugar and granulated beet sugar, for example, are probably indistinguishable in use (they are perfect substitutes) and accordingly belong together on the close-substitutes rule. The close substitutes method is sometimes known as the "gaps in nature" approach: To define demand-side categories one looks for pronounced gaps in the chain of substitutes. Empirically, finding gaps in the substitute chain has proven difficult.

A somewhat related idea is examining the movement of prices. If the prices of two goods move together, then they may be combined in a demand-side category. This is often known as "Hicksian aggregation," because it appeared in the work of Nobel laureate Sir John Hicks. The products granulated cane sugar and granulated beet sugar probably conform to Hicksian aggregation, because it is difficult to comprehend how the prices of such close substitutes could differ. Hicksian aggregation has the advantage that it can be examined empirically using available government price indexes: One study by Theodore Jaditz [10], for example, employs detailed Producer Price Indexes to determine if conditions for Hicksian aggregation are met.

Demand relationships extend beyond close substitutes or goods whose prices move together. Cases where commodities are used together need to be included in a demand-side concept. Such relationships are sometimes called "Leontief" aggregation (from the work of

another Nobel prize-winning economist, Wassily Leontief): Demand-side groupings can be formed from goods that are used in fixed relation to one another.

Still more general is the demand-side aggregation known as "functional aggregation." In this case, one aggregates commodities if demand patterns among them—whether substitution or joint use—are independent of the use of other commodities. The technical condition is that demands for commodities included in a group should depend only on the prices of commodities within the group, and on consumer income (in the case of consumer goods). This form of demand-side aggregation imposes conditions that are highly technical, and that are not easy to explain in intuitive language.

Another approach to demand-side groupings is to consider marketing relationships. If commodities are commonly sold together through similar channels, some users will request that information on them be combined. One example appears to be "Hand and Edge Tools" (SIC 3423), which groups together most of the tools found in a typical hardware store.

From this discussion, it may be understood that one technical problem inherent in applying a demand-side concept for classifications is that the alternative demand-side rules noted above will not necessarily yield the same groupings.

Additional Discussion

The classification of sugar products is an old example that illustrates some of the differences between supply-side and demand-side conceptual bases for aggregation or grouping. The present U.S. SIC distinguishes granulated sugar (as well as molasses and other sugar products) made from sugar cane and puts these sugar products in a different industry from the same sugar products that are produced from sugar beets; sugar products that are made from raw cane sugar are yet another separate industry (these three industries are, respectively, SIC's 2061, 2063, and 2062).

One could argue that the present SIC grouping makes sense as a supply-side or production-oriented concept, on the grounds that sugar cane and sugar beets require different production processes in the sugar refinery, and that refining of sugar from purchased raw sugar also implies a difference in the production process (because the first stage of processing will be absent in these latter establishments). If sugar production processes are adequately distinguished by the groupings in SIC's 2061, 2062, and 2063, then this supply-side grouping of sugar products is appropriate for the analysis of production processes for sugar, the analysis of productivity in sugar production, and so forth. For production and productivity analyses, an economist wants the data grouped so that they represent similar production processes, and does not want the data grouped by similarity in use of the product.

The present SIC grouping of sugar products does not, however, conform to a demand-side grouping concept. Granulated sugar produced in SIC 2061 is probably indistinguishable in use from the granulated sugar that is produced in SIC's 2062 and 2063, and the same statement undoubtedly holds for powdered (icing) sugar, or molasses. No matter the raw material from which they are made or the process used for refining, there is little evidence in the marketing or use of sugar that any attention needs to be paid to the production processes distinguished in the present 4-digit SIC's.

The distinction between supply-side and demand-side classification concepts is sometimes identified with the distinction between an industry classification system and a product or commodity classification system.

A commodity classification system aggregates only commodities—that is, only the outputs of the collection unit are aggregated, and not the inputs. If only the outputs are aggregated, one could group molasses, say, wherever produced into a single commodity group, and place it, if appropriate, in a completely different category from granulated sugar. A demand-side, commodity, classification system is not limited or constrained by the necessity for grouping inputs (capital equipment, employment, or materials used) along the same lines.

An industry classification system, on the other hand, must be capable of grouping both establishment outputs and inputs by the same system. In a supply-side classification system, putting molasses and powdered sugar into different categories would not be feasible. Neither the labor inputs, nor the machinery, nor the sugar cane or sugar beet inputs can be allocated uniquely to molasses or powdered sugar.

Another similar distinction is the one between industry and market. James McKie [13], writing nearly 30 years ago, noted that economists frequently assume that the limits of the industry and the market coincide: "Marshallian economics envisioned a structure of single-stage industries producing single products. For analytical purposes, the boundary of the industry is still usually assumed to be the same as the boundary of the market. * * * But such a concept is too simple to serve as a framework for statistical reporting." If industry and market boundaries coincide, then the conceptual questions in classifications will have little practical importance—one will obtain similar groupings whether supply-side or demand-side aggregation concepts are employed. Generally, the industry and the market do not always coincide, which means that supply-side and demand-side groupings may well differ.

In some of the discussions at the Williamsburg Conference, the distinction between product and industry classification systems was not clearly maintained, or the distinction was not drawn as it has been in the present paper. Some of the participants envisioned a demand-side aggregation, a market-oriented commodity classification system that would also collect data on inputs, and so could be used simultaneously both for market analysis and for production analysis. This vision is, of course, precisely the historical goal of the current SIC system—to construct a classification system that can simultaneously meet the demands of all uses of economic data.

1.3 What Grouped or Classified Data Do Users Need?

Though statistical programs must always be adapted to user needs for data, statistical agencies sometimes find it difficult to stay abreast of evolving uses of statistics because data needs change, and sometimes they change quite rapidly. Determining actual and potential statistical uses of classified data, and the major users of classified data, is particularly difficult. Data classification systems affect the programs of nearly all statistical agencies.

Within the decentralized U.S. statistical system, there is no single place to which information on the uses of classified data flows.

One view expressed at the Williamsburg Conference holds that uses of classified data can be separated into supplyside analyses or uses of data and demand-side analyses or uses of data. Use of grouped data for marketing studies, for example, is generally a demand-side use, because marketing studies require that data be grouped by use patterns or by patterns of close substitutes. Production analysis or productivity studies are supply-side uses, because they require grouping by similarity of production processes.

It is not clear, however, that these distinctions between supply-side and demand-side uses were developed out

of a sophisticated and comprehensive overview of user requirements for classified data. The distinctions seem to have been drawn, instead, from the distinctions made in economic theory, combined with generalized discussion of how the data might be used. But even if the theoretical distinctions are entirely the relevant ones, the Committee would still need to compile information about major uses to determine which of the groupings that are derived from economic theory are the most relevant ones for the major uses of the data.

A survey of uses of economic data is particularly difficult in this case. Tabulations of inquiries to statistical agencies (see the table in Tom Petska, Fritz Scheuren, and Bob Wilson [16], p. 57) are generally useful, but are not practical for gathering information on classifications. Files of complaints from users about aspects of past classification systems have been built up, more or less on an anecdotal basis, but these files never have been assembled in a way that relates them systematically to major uses of classified data. Samples drawn from statistical agency mailing lists may also fail to reach the appropriate audience because many users of statistical agency data are not on agency direct mailing lists.

The Committee's Position

The Committee believes that more information about user needs for classified data must be assembled, regardless of the difficulties.

Request for Comment

The Committee invites comments from users, especially on the uses they make of classified data. Particularly relevant to the Committee's deliberations is information on problems with existing (SIC) classified data in serving user needs, especially analyses that are inhibited by inadequacies in existing classifications. The Committee also invites comment on the view that major uses of classified data can themselves be grouped into supply-side or demand-side categories for the purpose of the Committee's investigation.

1.4 Should Classification Systems Conform to a Consistent Conceptual Framework?

Whether economic classification systems should conform to a consistent conceptual framework brought forth a number of views, of which the following are the major contending positions.

(a) *A single economic concept should be applied consistently throughout an economic classification system.* The view that economic classifications require a conceptual framework drawn from economic theory was endorsed by a number of participants at the Williamsburg Conference, including Joel Popkin [17], Frank Gollop [8], Marilyn Manser [11], Ernst Berndt [3], Jack Triplett [22], and Cardiff, Kokaski, Smith, and Zieschang [4].

The case for a single economic concept for economic classifications has several interrelated parts.

- Without a consistent economic concept for grouping and classifying data, users will find that the data are not always grouped appropriately for any purpose. Inconsistencies arise in the system, and users may not know where they are. The present system contains examples. Sugar products are grouped by the supply-side concept into three separate SIC's because of differences in production processes. However, some other products (such as Hand and Edge Tools, SIC 3423, or Musical Instruments, SIC 3931) that are produced by different production processes are grouped into a single industry by what appears to be a demand-side concept. Similarly, presumably a demand-side concept justifies separating timeclocks and time recording devices (which are placed in SIC 3579, Office Machines, Not Elsewhere Classified) from the clocks and watches industry (SIC 3873).
- Equally important, without a consistent economic concept, whoever constructs a classification system must inevitably choose from among competing requirements. Lack of a consistent underlying concept may lead to arbitrary decisions or decisions that seem arbitrary, and may cause unnecessary reclassifications among 4-digit categories (see Edward Denison [5] for the position that SIC reclassifications have made economic data less useful).
- In presenting the system to the public, an economic concept facilitates explaining why data are grouped in one way rather than in another. Without a consistent concept, the system as a whole cannot be understood by users, which leads not only to inadvertent misuse of the data, but also to controversies and criticisms that arise from misunderstandings. The system needs a consistent concept to provide a coherent framework for criticizing the system in order to improve it.
- If the multiple uses of economic data cannot be accommodated within one conceptually consistent system, then the solution may be to create multiple classification systems, each one conceptually oriented toward a particular use of the data. At minimum, this would entail an industry classification system based on a supply-side concept and a commodity classification system based on a demand-side concept. Constructing a single classification system that is intended to accommodate all uses creates, on this view, too many compromises, so that data produced under the system do not meet user needs.

(b) *The system needs concepts, but a single concept may not be either desirable or feasible.* Others believe that the classification system must provide multi-purpose statistical groupings and that there can be no single underlying concept. Accordingly, the system must be a balance, and a compromise if necessary, among competing requirements for data.

This view notes that the multiple concepts embedded in the current U.S. SIC are dictated by the fact that in the economy some units are organized on the basis of inputs or production (e.g., Aluminum Die-Castings, SIC 3363; and Cotton Textile Finishers, SIC 2261) and others on the basis of marketing patterns or uses (e.g., Hand and Edge Tools, Except Machine Tools and Handsaws, SIC 3423; and Dolls and Stuffed Toys, SIC 3942). The defenders of the current U.S. classification system suggest that requiring the system to conform to a single concept may result in data that are less useful, accurate, and comparable across time and among agency programs.

The current SIC system attempts to implement concepts to the extent permitted by establishment input and output patterns. Widespread emphasis is given in the current SIC to products, market categories, and stage of processing. Economic concepts may have provided guidelines but they did not define a standard.

This system has been criticized because in application it results in inconsistencies of concept. But those who question the acceptability of a single concept state that these apparent inconsistencies exist because of variations in output patterns in the economy which result in groupings that are not conceptually consistent. In this context, inconsistency is a valid criticism only if consistency is the major objective of the classification system.

Many advocates of the current system point out that the units of some current SIC industries cannot be grouped according to a demand-side concept. For example, as noted above, the aluminum die-castings industry (SIC 3363) is currently categorized on the basis of the material used and the production process. Aluminum die-castings establishments produce an unlimited

range of products, the mix of which can change from year to year or week to week. From a practical standpoint, the establishments may not even maintain records by product. If these establishments were to be classified on the basis of outputs, it would be difficult to obtain accurate data, diminish the stability of classification over time, and lessen agreement among agencies in their classifications.

This view recognizes that both production process and outputs are important in a classification system. A grouping, however, should not be based exclusively on the production process if that results in grouping outputs that are highly dissimilar in use. There is probably little similarity in the production processes for pianos, piccolos, and ocarinas, but that does not mean that the musical instruments industry (SIC 3931) ought to be separated along production process lines.

Under this view, the mixing of concepts in different parts of the classification system is inevitable and in some instances desirable, because then such a system represents differences in industrial production processes and marketing arrangements among industries. It is suggested that these differences should be carefully considered when contemplating a commitment to a single concept.

The Committee's Position

The Committee believes that the current U.S. approach to classifications is problematic, and that an approach or approaches that implement an underlying economic concept or concepts must be considered. However, the overriding objective for a classification is to develop a system that meets user needs. A major part of the disagreement between those who advocate the current approach and those who advocate a conceptual basis arises out of differing assessments of the usefulness of the present SIC system. Many see the present system as useful, though not perfect, in meeting the needs of users, and these individuals see criticisms of it as misunderstandings of the system's objectives. Those who advocate conceptual development emphasize that the present SIC's objectives are not clearly stated and that users have expressed problems with the present system. The Committee's task is to sort out these arguments and to form an assessment on the merits and demerits of the present system and of proposed alternatives.

Request for Comment

The Committee invites comments on the issue of adopting a consistent conceptual framework for the economic classification system. Relevant to the Committee's work are assessments from data users about the usefulness of the present SIC system as well as indications of problems with it. The Committee recognizes that parallel evaluations of conceptually-based systems cannot be rendered at this point, but anticipates public review later in the process of developing any proposed revised classification system. Preliminary responses about the suitability of the supplyside concept, the demand-side concept, or the current approach to classifications are appropriate and are solicited.

1.5 If a Conceptually-Based Approach is Chosen, Which Specific Classification Approach or Approaches Should be Adopted?

As discussed previously, a substantial body of economic theory relates to how economic data should be grouped for various purposes. There is thus considerable basis for implementing any of the approaches discussed. Further research, however, would be needed to support actual implementation of either of the two conceptual approaches presented above. The basic question is whether either, or both, of the conceptual approaches should be adopted, or whether the traditional framework—suitably modified—should be retained.

(a) *Should there be a supply-side classification system?* A supply-side, or production-oriented, structure would group together commodities that have similar production processes, or as it is frequently stated in economics, similar production functions. A production-based structure would be essential for international comparisons similar to the examples listed by Jacob Ryten (Williamsburg Conference [18], p. 473): "* * * to compare across national boundaries the volumes and values of inputs required to produce the same outputs; the degree to which the relative intensity of labour and capital varies from one country to another; the inter-country differences in the scale of operations typical of any particular grouping; and perhaps most importantly, the different returns to capital employed in the same industry but in different countries."

A production-oriented structure is also essential for carrying out productivity studies. Productivity studies compare efficiency relationships between inputs and outputs, and the framework for such studies implies that the units that are grouped together share identical, or similar, production processes. Improving data for productivity analysis was a major priority of the Federal Government's recent Economic Statistics Initiative (see *Survey of Current Business*, February 1990, page 2).

In aggregating establishment data, the concept of joint production is important. Joint production occurs when an establishment's labor force and/or other inputs cannot uniquely be divided among the various products the establishment produces. The case of joint production is different from the situation where establishments do not maintain records on inputs into producing separate products, although it is likely that joint production is often the reason behind the lack of availability of such records.

Frank Gollop (Williamsburg Conference [8], p. 496) states that, in contrast to the demand-side case, statistical agencies must form supply-side aggregates because joint production is prevalent: "If all producers of goods and services were single-product producers, there would be no need for the Census Bureau to provide supply-based aggregates. * * * [However], multiple-output producers report the dollar distribution of shipments by detailed product code but do not (and most often, cannot) allocate inputs to the various products or services produced under conditions of joint production. * * * If data for multipleoutput establishments are to be reported at all, the Bureau * * * must aggregate over products within multiple-output establishments* * *."

However, Popkin (Williamsburg Conference [17], pp. 187–8) suggests that "* * * the production-based approach presents considerably more hurdles [than the commodity-oriented approach] on the road to implementation. For example, to group establishments by similarity of production structure, their production structure must first be identified. In other words, to clean the data, the data must first be clean. * * * A restaurant, for example, might look more like a food manufacturing plant than a retail store, when viewed from the production function approach."

Others disagreed with Popkin's assessment, or with parts of it. The first part of Popkin's statement implies that only formal, data-based technical procedures would be used to discriminate among industries, rather than the full range of information about industry production that is in fact used in all countries for classification

decisions. Triplett (Williamsburg Conference [22], p. 28) notes that adopting a consistent conceptual approach for economic classification does not mean that SIC classification committees must necessarily carry out complex statistical or econometric analyses. Instead, it "* * * means only that the classification committee is instructed to follow a consistent principle—and only one principle—in constructing classifications."

Nevertheless, implementing a production-oriented classification concept does imply gathering information about production processes, perhaps beyond the information that is now available (see ECPC Issues Paper No. 3).

(b) *Should there be a demand-side classification system?* Studies of the demand for various goods and services, of market share, and so forth require a demand-side classification concept. A demand-based structure would group together commodities that are close substitutes in use, or are functionally related in use. A demand-side system pertains both to households buying commodities for consumption and to firms buying commodities as inputs into their production process.

The need for such a demand-based system was addressed by Popkin (Williamsburg Conference [17], p. 159), who recommended that "* * * the classification concept be one that classifies items by the markets in which they compete and are sold." He (ibid., pp. 186–7) reasons that "[t]he main advantages of a consumption based approach lie in the analysis of the market structure of an economy. Any demand-based analysis would clearly be facilitated by the aggregation of outputs."

Others do not see the necessity for statistical agencies to produce a demand-side system, because, they maintain, the detailed commodity data are already provided so that demand-side users can aggregate those data for themselves. Data on establishment shipments, sales, revenue, and so forth are available by Census detailed product classifications. For example, the shipments data required to form a sweetener category or a fastener category exist, at least in Economic Census years, and can be combined by any users who need them. Consequently, Michael Gort (Williamsburg Conference [9]) and Frank Gollop (Williamsburg Conference [8]) contend that there is little need for a statistical agency to expend resources on demand-side aggregations.

Gollop (ibid., p. 497) is also concerned that consensus on the methods for demand-side aggregation will not be reached. He notes: "First, there is no single 'correct' aggregation scheme. * * * There are a number of demand-side aggregation techniques—no two of which would necessarily lead to the same set of SIC aggregates. * * * The supremacy of each is driven by the particular research question being asked. Second, even if economists were to agree on a particular method, there would likely be significant disagreement over the process of applying the method."

Another view emphasizes the distinction between a commodity classification system, or a commodity-based aggregation system, and an industry classification system. That is, it emphasizes the difference between aggregating detailed product or commodity codes and aggregating establishments.

If users require data on a sweetener aggregation for market-share studies, for example, this need could be met by aggregating over the relevant commodities from SIC's 2046, 2061, 2062, 2063, 2099, and 2869. Such a commodity aggregation system need not imply that inputs from these same industries be combined, for presumably users do not need aggregated information on inputs for demand-side purposes. A commodity system, if needed, could then supplement, not replace, an industry classification system, which would continue to be used to group all data, inputs and outputs, from the establishments included in the grouping.

(c) *Is more than one classification system desirable?* Several participants at the Williamsburg Conference pointed out the need for more than one classification system. William Seltzer (Williamsburg Conference [19], p. 487) emphasized that multiple classification systems already exist for some purposes and endorsed extending this idea: "In the language that we seemed to have adopted at this Conference, while 1,000 flowers may be beyond the resources of the Suitland Plantation, certainly the Census Bureau and the SIC can produce more than a single flower." Marilyn Manser (Williamsburg Conference [10], p. 522) recommended that "* * * users would be well served if one production-based and one demand-based aggregation system were developed." Some other participants expressed similar views.

One reason for endorsing two aggregation systems is to permit maintaining a clear focus on the purposes of a classification system. Paula Young (Williamsburg Conference [28], p. 427) points out that "* * * data users whose focus is on commodity analysis have targeted the SIC as the vehicle for meeting their needs." She views this as having weakened the SIC's analytical foundation (which is, in her view, for supply-side analyses): "For industry analysis, this foundation must reflect the production process and the commonality of input structure among establishments, not the end use of the commodity" (ibid.). In support of her production-oriented interpretation of the present SIC, Young quotes from the 1987 SIC Manual ([25], p. 11), which states that the purpose of the SIC is "* * * for use in the classification of establishments by type of activity in which they are engaged * * *." Young calls for the establishment of a second, commodity-oriented, classification system integrated with the SIC.

The Committee has research underway that examines the present 4-digit SIC industries which will identify the number of these industries that already fit into either the supply-side or the demand-side approaches. When this research is completed a report will be made available.

The Committee's Position

The precise concept or concepts to be implemented are not yet clear. The resolution of this issue is perhaps the major undertaking of the ECPC project's research phase.

Request for Comment

The Committee invites comments on any aspect of this issue, including the importance of providing alternative classification systems and on problems that might arise if alternative systems were to be adopted. Proposals for research that would clarify or resolve the economic issues, or provide new or extended methodology that could be applied in developing a system based on either supply-side or demand-side approaches, are also encouraged. Also relevant to this topic are assessments on the advisability of replacing the current approach to classifications with an approach based on economic concepts.

1.6 The Classification Unit

What is the unit of classification? Does it depend on the concept implemented in the classification system?

An establishment is defined as a production entity in a single location. Two establishments may occupy the same or adjacent space if the data available are separable by activity, physical identification, and recordkeeping. The establishment concept has been integral to the U.S. SIC system since its beginning. A key issue

in revising the economic classification system is whether the establishment should continue to be the basic unit that is classified.

Concern has been expressed that U.S. business operations have become less establishment-based (Charles Waite, Williamsburg Conference [26], p. 11). Popkin (Williamsburg Conference [17], p. 192) recommends the basic business unit for the new system be changed to "the DDS, the division, department, or subsidiary," a unit determined by the management structure within each firm that reflects its way of doing business. He believes that increasingly firms do not keep records, or report some types of data, at the establishment level. And Popkin also believes that many of the inputs that have become more important in an advanced economy (business services, for example) are increasingly provided at the enterprise, rather than the establishment level. If so, even a supply-side classification concept must use the DDS as the unit, rather than the traditional establishment.

Ernst Berndt (Williamsburg Conference [3], p. 494) notes that in many industries, especially in recent decades, the extensive activity involving mergers and restructuring of companies and divisions implies that the DDS could involve a great deal of instability over time. Robert McGuckin (Williamsburg Conference [12], pp. 394–5) recommends against moving from the establishment as the basic unit for an industry unless absolutely necessary. Much of the detail on production relationships that one gets from establishments would be lost in consolidation to the DDS level. Also, the establishment represents a fixed location, independent of ownership status: When establishments are the units, the ability to link microdata over time does not depend on the ability to track changes in ownership and management structures, as it will if the DDS is the unit. Marilyn Manser (Williamsburg Conference [11], pp. 524–5) notes that the need for geographic detail is important, and that differing after-tax prices across areas is a reason to refrain from aggregating units across geographic lines.

Some of the examples cited to show the declining relevance of the establishment may simply represent misapplication of the concept (Triplett [22], p. 29). For instance, in banking, ATM's do not correspond to a production unit and should not be considered an establishment. In other examples as well, including pipelines, courier services, and communications, providing a network is the essence of the production process; defining the production unit in one location (the pipeline's pumping station) ignores the most essential aspect of the network.

The question of the classification unit arises in work on classifications outside the United States. Struijs (Williamsburg Conference [21], p. 366) proposes that "The answer to [questions about the classification unit] depends on which parts of the organization act independently, i.e., where autonomy of action resides. . . . For example, a franchising chain, say a chain of restaurants, could be seen as an autonomous unit with regard to advertising, while the franchises could all be considered separate [units] where the selling of food is concerned." He goes on to point out that the unit chosen must be one for which records are available, though mere availability does not imply that the recordkeeping center is the appropriate unit. The unit must be a decision-making entity, not just one that holds information.

Some participants at the Williamsburg Conference, while generally agreeing that the establishment should remain the statistical unit, note some qualifications. Stanley Feldman (Williamsburg Conference [7], pp. 269; 294–6) would retain the establishment as the statistical unit, for the most part. He discussed particular issues relating to the application of the establishment concept in banking and insurance. It was also noted that although there are reasons that we should not drop the establishment classification, we may want to supplement it (Waite, Williamsburg Conference [26], p. 11).

A key point for Issues Paper No. 1 is whether the choice of unit is determined by the conceptual basis that is adopted for the classification system. Triplett (Williamsburg Conference [22], p. 28) suggests that for a supply-side, or production-oriented concept, collection of inputs linked with outputs is essential. In this case, the choice of unit is determined by the availability of information on the inputs that are important to production. Whether the DDS or the establishment is the correct unit depends on whether the growth of nontraditional inputs provided by the enterprise has become dominant in modern production. This is an empirical issue, on which there seems no current consensus.

For a commodity-oriented, or demand-side, classification system, on the other hand, the unit is probably not the establishment. A demand-side aggregation system would aggregate commodities or services, no matter where produced, and would by definition not be concerned with inputs. Data could therefore be collected for any level that is convenient, either below the establishment level or at some higher level, such as the DDS.

The Committee's Position

In the Committee's judgment, the choice of unit cannot be considered in isolation from the concept employed. Under a supply-side concept, the establishment might remain the unit. If, however, the establishment is no longer a decision unit, or if business services and other essential inputs cannot be allocated uniquely to establishments, then the establishment is no longer the relevant unit for production analysis, and some other unit is appropriate for classification purposes. For a demand-side system, or other approaches, the choice of the classification unit may be less clear. The ultimate decision on this issue also depends on where business records are kept and on what information is collectible (see Issues Paper No. 3).

Request for Comment

The Committee invites comments on the choice of classification unit, including information on the extent to which inputs are shared across physical locations, whether the establishment remains a meaningful concept, and on instances where the existing establishment concept is inappropriately applied. The Committee also invites comment on the unit that is appropriate for a classification system that arranges data for market-share analyses or other demand-side purposes.

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Economic Classification Policy Committee; Issues Paper No. 2—Aggregation Structures and Hierarchies

The present U.S. Standard Industrial Classification (SIC) system is hierarchical in that each level of the system provides an aggregation of detail at the next lower level. The SIC system arrays the economy into 11 divisions, that are divided into 83 2-digit major groups, that are further subdivided into 416 3-digit industry groups, and finally disaggregated into 1,005 4-digit industries.

2.1 Classification Hierarchies

Overview

What role should hierarchies have in a revised economic classification system? One way of organizing the discussion of this question is to distinguish between "top-down" and "bottom-up" approaches to constructing a classification system.

A top-down approach is one that begins from the division or 2-digit level—that is to say, from a hierarchical concept of classification—and assigns 3-digit or 4-digit industries to major sectors and industry groups. The top-down approach probably originated in the habit of partitioning the economy into "primary" (agriculture, mining), "secondary" (manufacturing), and "tertiary" (nongoods producing) sectors, sectors which can be distinguished clearly in the SIC. With a top-down approach, the hierarchy is inherently a vital part of the classification system.

In contrast, a bottom-up approach concentrates on forming 4-digit industries from the individual producing units. Thus, a bottom-up approach implies that the second or third-level aggregations—grouping industries into hierarchies—involve questions that are primarily extensions of questions that are confronted when the first-level aggregations are determined. If hierarchies of the basic 4-digit industries are to be formed at all, they are formed to facilitate in some way the use of the full classification system.

Conceptual and Data Use Positions on the Question of Hierarchies

At the International Conference on the Classification of Economic Activities at Williamsburg, Virginia ([1], hereafter, "Williamsburg Conference"), some participants explicitly stated that a hierarchical structure was needed, or implicitly assumed its importance in the context of explaining an existing classification system and/or of constructing a revised system.

From an analytical perspective, Paula Young (Williamsburg Conference [26], seconded by Allan Young (Williamsburg Conference [25], p. 573), urges that emphasis be accorded to the hierarchical structure. She:

- Stresses that "The present SIC, although designed as a hierarchy, in fact does not provide a hierarchical structure useful for analysis. Past revisions to the SIC seem to have focused on adding (or eliminating) 4-digit SIC's rather than reviewing the overall structure of the classification system * * *" (Paula Young, Williamsburg Conference [26], p. 433).
- Recommends that "The major emphasis of the next SIC revision should be placed on * * * the 2-digit and 3-digit structures [which] require a complete review * * *. The guideline that these 2-digit and 3-digit groupings must be relevant and useful in economic analysis must be enforced" (ibid.).

After reviewing how units should be aggregated in the SIC to industries (these users specify industries based primarily on their inputs), after tracing the aggregation of 4-digit SIC industries into 3-digit industry groups and thence to 2-digit major groups, and after noting anomalies at higher levels of the current hierarchy (such as the absence of 2-digit major groups to reflect the importance of plastics and electronics), these

Conference participants see an improved hierarchy as the priority for future improvement of the classification system. Moreover, because they viewed the formation of the hierarchy as a requirement for analytical use of economically classified data, they therefore viewed it as a conceptual issue.

Joel Popkin and Stanley Feldman assume the need for a hierarchy, and for each the hierarchy was a cornerstone in improving classification systems. Popkin (Williamsburg Conference [19], p. 160) proposes a relatively major revision for the system's hierarchy, while Feldman (Williamsburg Conference [6], p. 267) stresses that his hierarchy would "represent * * * an extension of the current SIC structure and not its abandonment." Both devoted major portions of their papers to reviewing the existing hierarchical structure and to explaining their respective proposed new or improved hierarchies.

Other Williamsburg Conference participants took the position that the formation of hierarchies should be of secondary importance in future classification systems. Michael Gort (Williamsburg Conference [8], p. 491) stresses the importance of microdata and relegates the issue of hierarchical structure to a level of "minor interest," except to ensure aggregations that will permit comparisons across countries, or for production of derived data such as income originating, capital stocks, and productivity measures. Again reducing the issue to one of priority, William Johnston (Williamsburg Conference [9], p. 78) discourages the search for a "perfect hierarchy," because he wishes statistical agencies "* * * to create a data structure that can be aggregated and disaggregated at will."

Jack Triplett (Williamsburg Conference [23], p. 30) also contends that hierarchies should receive diminished attention, presenting several complementary points:

- For some classification concepts, hierarchies may not be appropriate and/or may be of limited use. For example, a classification system that groups by similarity in production processes (a supply-side or production-oriented aggregation concept—see ECPC Issues Paper No. 1) will group establishments that share similar or identical production processes or technologies within a 4-digit industry; these industries are distinguished from one another by their having different production processes. Whether one finds sufficient production similarities across 4-digit industries to justify grouping them into higher-level aggregations by a production aggregation concept is a research issue that should not be decided at the beginning of the classification design process.
- He urges that the perceived need for a hierarchy not be used to eliminate a conceptual classification contender: "Sometimes one hears that a hierarchical structure is a requirement: If a particular classification concept does not yield a hierarchical structure . . . that concept is rejected. That puts the cart before the horse * * *."
- The guiding concept is foremost and the hierarchy—if appropriate—is secondary: "Within the appropriate theoretically consistent framework * * * does a hierarchical structure make sense? * * * I suspect that eventually we will place far less emphasis on classification hierarchies than we have in the past."

In summary, one group urges that major attention be paid to constructing a hierarchy, because they feel the hierarchy is necessary for conceptual reasons and because of the requirements they see for the analytical use of the data. The other group feels that hierarchies have little intrinsic analytical use in themselves, and emphasizes the bottom-up approach to classifications. This latter group's position on the question of classification hierarchies is not so much opposition to classification hierarchies, as such. Rather, they question whether hierarchies should receive a high priority in designing a classification system. The hierarchy may be necessary for pragmatic or statistical reasons, on this view, but it is not the part of the system to be emphasized in developing its conceptual foundation.

Pragmatic and Statistical Considerations

Some participants stressed the practical context for forming hierarchies—the decentralized nature of the U.S. statistical system, the differences among agency missions, and the historically overriding objective to ensure comparability among the data provided/used by the several agencies. Some statistical agencies cannot collect information on 4-digit industries and accordingly use the 2-digit or 3-digit groupings for sampling, coding, and publication. Sidney Marcus (Williamsburg Conference [12], p. 153) comments that the differing reasons for collecting data among Federal statistical agencies are bound to continue to result in differing "data wish lists." Walter Neece (Williamsburg Conference [15], p. 510) points to the different levels of detail needed by various agencies as helping to explain "why we have a hierarchy." If a common hierarchical structure did not exist, each agency might group data uniquely. This could be both an advantage and a disadvantage.

From an international vantage point, William Seltzer (Williamsburg Conference [20], p. 486) explicitly recognizes the past, present, and likely continued future importance of a hierarchical system. Stressing the need to keep in mind more than one function of a given statistical classification scheme, he noted in the context of data grouping/hierarchy: "* * * its being first, a system for grouping units in an ordered way for the purpose of data collection and storage, and second, a hierarchical system of grouping units for the purpose of aggregation, tabulation and analysis." Recognizing the spread of microcomputers, Seltzer further noted that the groupings no longer need to be the same for both functions.

Rather more implicitly, but just as pragmatically, Shaila Nijhowne and Gérard Côté (Williamsburg Conference [16], p. 410) support the importance of a hierarchy through extensive description of the two classification systems developed in Canada; through a focus similar to U.S. speakers on the contributions of a hierarchical scheme to both data compilation and to data analyses at several levels of detail; and through frequent reference to the "customary," "traditional," and widespread acceptance of, and reliance upon, hierarchies in classification work.

In summary, this group of participants stressed the practical, statistical, and programmatic needs for a hierarchy. They do not necessarily take a position on the question of the conceptual importance of a hierarchy, or on the top-down compared with bottom-up methods for forming economic classification systems.

The Committee's Position

The Economic Classification Policy Committee anticipates that a hierarchical scheme will probably be reflected in a restructured economic classification system. The issues to be resolved seem to be ones of priority. Is constructing the hierarchy of major importance for the analytical use of classified data? Or should emphasis be placed on the first-order groupings (e.g., 4-digit industries)? Should the development of the hierarchy be a major focus of the Committee's conceptual/economic phase, or is the hierarchy a pragmatic issue relating to sample selection, when agency resources or program objectives limit sample sizes? To put it another way, should the new

classification system be constructed from top-down or bottom-up principles?

Request for Comment

The Committee invites comment on the role that should be accorded to a hierarchy in classification scheme(s) of the future, whether the hierarchy is important for the analytical uses of classified data, and whether a top-down or bottom-up approach is most appropriate. Examples where hierarchies are essential to analysis even when detail is available [for example, analytical use of 2- or 3-digit information even when 4-digit information is available] would help to establish whether hierarchies have conceptual importance, or if they should be considered primarily as pragmatic methods for the presentation of data when detailed estimates do not exist.

2.2 Are Multiple Classification Hierarchies Needed?

The discussion in 2.1, combined with the topics addressed in Issues Paper No. 1, suggests an extension: If a hierarchy is needed, and deemed important in the overhaul of the classification system, then "which one" should it be?

The uses of economically classified data are numerous and varied and range from production and productivity analysis to market-share analysis. Each of the uses may demand a different aggregation structure, or hierarchy, if the resulting data are to be meaningful and useful. For example, a hierarchy of industries, similar to the present SIC system, could be constructed. Alternatively, one can envision a parallel hierarchy that groups products, wherever made, along use categories (for example, a sweetener aggregate that combines refined sugar and molasses from the sugar industries with corn sweeteners, artificial sweeteners and honey). In some cases, the two principles for forming hierarchies would result in quite different arrays of data.

Does the classification system provide a hierarchy to satisfy those users who need to do production-related analysis, or is it to be designed for demand or market studies? Is it possible to satisfy both groups of users, either within a single system, or by providing alternative hierarchies?

Frank Gollop (Williamsburg Conference [7], pp. 497) draws a distinction between supply-side and demand-side hierarchies: "The [Census] Bureau's demand-side responsibility is to preserve and present as much product detail as possible and, in ways that do not compromise legitimate disclosure concerns, provide access to interested users. Users can create whatever demand-side aggregates are required by their research." In contrast, he (ibid.) argued that "* * * multiple-output production and disclosure concerns prevent the Bureau from abdicating its obligation to form supply-side aggregates * * *." On this reasoning, one might conclude that where data users can construct their own aggregations, this reduces the value of traditional classification hierarchies; but traditional systems must be maintained for other situations for which user aggregation is not practical.

The Committee's Position

The ultimate answer to this question may come in part from research among data users. It must come, in large part, as a logical consequence of the answers to similar questions that have been raised in Issues Paper No. 1, that is: Should there be a conceptual framework for economic classifications, and, if so, "which one?" In parallel with the discussion in Issues Paper No. 1, it is quite conceivable that multiple hierarchies—an industry hierarchy and a product hierarchy—are needed, to correspond to different uses of the data. It is also conceivable that a hierarchy might be appropriate for one use of the data, and therefore for one conceptual basis for economic classification, and not for another. For example, a hierarchy might be more appropriate for a demand-side classification concept than for a supply-side classification concept (see Issues Paper No. 1 for a discussion of classification concepts).

Request for Comment

In addressing the question of hierarchies, the Committee is also interested in public input on the type of hierarchy, if any, that is relevant for the uses of economically-classified data. The Committee recognizes that views on this point are largely determined by positions taken on issues 1.3, 1.4, 1.5, and 2.1.

2.3 Should the System Have a Flexible Aggregation Structure?

Overview

Some Williamsburg Conference participants proposed going much further along the multiple classifications path, and proposed that the system should encompass completely flexible aggregation schemes. "Essentially, the task is to create a data structure that can be aggregated and disaggregated at will. Instead of trying to find the perfect hierarchy for our data, we should be creating a vast relational database to which we can add fields as needed" (William Johnston, Williamsburg Conference [9], p. 78). Completely flexible aggregation was referred to at the Williamsburg Conference as the "let a thousand flowers bloom" approach: Statistical agencies should provide detailed data and let the user aggregate any way at any time.

Flexible aggregation raises a number of issues, which were sometimes intermingled at the Williamsburg Conference. The following are the major topics and questions.

(a) *Enhanced capability for flexible aggregation makes traditional classification systems obsolete.* With the advent of the computer age, data users need not be bound to data that are pre-aggregated by a statistical agency. Some data users feel that if microdata sets were made available, users could manipulate them for their own purposes, and would not require traditional classification systems. Michael Gort (Williamsburg Conference [8], p. 483], for example, noted that the publication of data in computer-readable form greatly increases the potential for flexibility in aggregation; accordingly, he stated that "* * * data producers must focus [on] what data to collect and not how to aggregate them. Aggregation should increasingly be left to the user." While noting the limitations of confidentiality, Henry Kelly (Williamsburg Conference [10], p. 106) strongly echoes the conclusion that "* * * the problem of aggregation should be left largely to consumers."

A flexible aggregation system for microdata may be the most desirable way to make statistical agency data available to users (see the following section). However, for a number of reasons, traditional economic classification systems will remain relevant, even in the computer age.

First, the availability of microdata is often limited by disclosure problems, which force grouping of micro-observations into product or industry groupings. Even product groupings—the Census Bureau "7-digit" product codes and Current Industrial Reports (CIR) product codes, and Bureau of Labor Statistics Producer Price Index codes, for example—can in some circumstances create disclosure problems in cases where only a small number of producers account for the bulk of production, and, in many cases, detail that is collected must be suppressed for publication. Classification systems are therefore required to provide meaningful publishable groupings.

Second, even when micro-observations are available, some users

will prefer that statistical agencies group the data into product or industry categories because of the expense of doing it for themselves, and because they may lack the expertise to know how data are best grouped for their purposes (Courtenay Slater, [22]). Having available a standardized grouping, or classification, system produced by the statistical agency is, therefore, a service to the user and will be a valuable reference point even for users who decide they wish to depart from the standard system in some way.

Third, most statistical programs are sample surveys. Samples may not be large enough to support estimates at the detailed product level; classification systems have traditionally determined how product detail will be collapsed for sampling purposes into more aggregated estimates. The sampling process often requires stratification by relevant economic variables, among which are the variables employed in economic classification systems (4-digit industry or a higher-level aggregation, for example). Both sample frame development and estimates from sample surveys thus depend on economic classification systems.

To summarize this exchange of views, it is useful to distinguish conceptual considerations from pragmatic considerations, or what is the same thing in this case, requirements arising out of the use of economic data from requirements for collection and processing of data. There was no disputing at the Williamsburg Conference the value of flexible aggregation for the use of data, that when users need conceptual aggregates they should be tailored to specific data uses. But pragmatic considerations—disclosure and sample sizes—mean that the availability of microdata may sometimes be limited, so that methods for collapsing cells and aggregating data will be required. And complete flexibility in aggregation, which is desired by some users, should not preclude "standardized" aggregation systems or hierarchies provided by statistical agencies for other classes of users who will still need them, even in a computer-literate, "thousand flowers" environment.

The Committee's Position

The Committee believes that, regardless of the capabilities of statistical agencies for flexible aggregation, standardized aggregation or classification systems will be maintained by statistical agencies, for the reasons noted above, and does not plan to recommend that they be discontinued. The Committee is accordingly not requesting comment on this matter, though if there are users who disagree with the Committee's analysis, the Committee would like to be so informed and might, depending on the nature of the comment, conduct further investigation.

(b) *Statistical agencies should develop flexible aggregation capabilities to supplement the "official" classification system or systems.* The idea that computer capability has made it technologically feasible to provide multiple groupings of economic data was widely endorsed at the Williamsburg Conference. For statistical agencies to create the capability for groupings "on demand" from users poses issues for statistical agency procedures, for the maintenance of data bases, and for maintaining confidentiality, all of which extend beyond the topic of economic classifications.

First, as Robert McGuckin (Williamsburg Conference [13]), points out, for flexible aggregation to work, statistical agencies must collect and maintain data at the most detailed commodity level possible. There was general agreement at the Williamsburg Conference that statistical agencies need to collect as much detail as possible. As already noted, however, in some cases sampling and other concerns mean that detail must be restricted or collapsed.

Second, product detail needs to be comparable across statistical agencies. If product detail is not comparable, if product codes do not match across agencies, or do not match over time, the ability to use computing power in the aid of flexible aggregation is lost. The Committee has established a task force to work on improving statistical agency product codes. Issues concerning product classification codes are discussed in Issues Paper No. 8.

Finally, flexible aggregation may be limited by what is collectible (refer to Issues Paper No. 3 for discussion of this point). Assembling data for the "tourism" industry provides an example of collectibility limitations. In principle, it is not difficult to determine which economic activities should be included in a "tourism" category. However, many of these categories require information that is not readily collected from establishments. Hotels cannot readily distinguish business travel from tourism; restaurants may be unable to distinguish local residents from those diners who come from out of town, let alone divide the latter into tourists and business travelers. Because the required information cannot be collected from establishments, tourism has not been accepted as an SIC industry.

However, data can be collected from a variety of sources, and a classification system that can encompass alternative aggregations, such as "tourism," may be desirable. The Committee is mindful of the frequent requests for such data, and would like to consider the classification aspects of these requests in its work, though also it emphasizes that establishing such categories involves issues that extend well beyond the limits of the Committee's work on classifications.

Flexible aggregation might also be useful to manage the difficulties caused by vertical integration. In some industries in the present SIC, different stages of processing are distinguished and kept separate. For example, two meat products industries exist (SIC's 2011 and 2013) which are distinguished by the degree of vertical integration. In other cases, different stages of process are placed together. For example, production of automobile bodies is placed with final assembly of complete cars in SIC 3711. There are some purposes for which complete vertical integration (for example, providing data on "fishing" from the fish farm or the fishing boat all the way to the retail store) would be useful. For other purposes, such an aggregation obscures too much detail. Though a consistent treatment of vertical integration in a conceptually-based classification system is desirable, any decision on the treatment of vertical integration will satisfy one need for data at the expense of the other. A flexible aggregation system might facilitate construction of alternative groupings across stage-of-processing lines. It might be useful to form alternative hierarchies that cut across the economic system to integrate different stages of process for the same commodity or that integrate production with different levels of distribution.

The Committee's Position

The Committee is conscious of requests for alternative aggregations that have been presented in various SIC revisions of the past. It believes that more flexible systems should be developed in an attempt to meet more of the needs that have been expressed but have not been satisfied. At the moment, this seems an issue that will require substantial work, innovation, and research. The precise methods for implementing flexible aggregation have not been worked out, nor have all of the implications that flexible aggregation raises for data-collection, confidentiality, and statistical agency operations been developed. This is a task that lies ahead.

Request for Comment

The Committee requests comments from potential users on the subject of alternative aggregations that might be valuable and the uses for which they are necessary. It would be helpful in the Committee's work if proposals for aggregations similar to those mentioned above (i.e., tourism, or fishing) be accompanied by proposals for how the requisite data should be collected and stored. The Committee is interested in innovative proposals on these lines, but feels that all aspects of the data-collection system, and not just a proposal for the classification part, must be considered before implementing a flexible system.

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[3] Berndt, Ernst R., "Alternative Approaches to Classifying Economic Activity: Panelist Remarks," Williamsburg Conference, pp. 494–5.

[4] Cremeans, John, "Floor Discussion," Williamsburg Conference, pp. 425–6.

[5] Dulberger, Ellen, "Floor Discussion," Williamsburg Conference, p. 503.

[6] Feldman, Stanley, "Moving Towards an Improved Micro-Based Classification of Economic Activity: A Report on the Structure and Implementation of a Revised SIC and Related Economic Clusters," Williamsburg Conference, pp. 217–359.

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[12] Marcus, Sidney, "Floor Discussion," Williamsburg Conference, p. 153.

[13] McGuckin, Robert H., "Multiple Classification Systems for Economic Data: Can a Thousand Flowers Bloom? and Should They?" Williamsburg Conference, pp. 384–407.

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[25] Young, Allan H., "Where Do We Go from Here?," Williamsburg Conference, pp. 573–4.

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[FR Doc. 93–7432 Filed 3–30–93; 8:45 am]

BILLING CODE 3110–01–P

federal register

Wednesday
March 31, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Ak-Chin Indian Community and the State of Arizona Gaming Compact of 1993, enacted on February 5, 1993.

DATES: This action is effective March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: March 19, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–7388 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
March 31, 1993

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: April 30 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes three times previously.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained in writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: March 18, 1993.

William C. Tidball,

Acting Director.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE

ADDITIONS				
Alaska				
Anchorage Chelsea Inn Corp DBA Chelsea Inn.	.....	3836 Spenard Road	Anchorage, AK 99517.	
Ingersoll Hotel	.....	303 Mission Street	Ketchikan, AK 99901.	
Alabama				
Athens Travelodge	.....	1325 Hwy 72 E	Athens, AL 35611	205–233–1446
Holiday Inn Gadsden	.....	801 Cleveland Avenue	Attalla, AL 35954	205–538–7861
Days Inn	.....	12960 Hwy 431 S	Boaz, AL 35957	205–593–0000
Holiday Inn—Decatur	.....	1101 6th Avenue N	Decatur, AL 35601	205–355–3150
Hampton Inn Dothan	.....	3071 Ross Clark Circle SW	Dothan, AL 36301	205–671–3700
Courtyard By Marriott Homewood	.....	500 Shades Creek Pkwy	Homewood, AL 35209	205–879–0400
Fairfield Inn By Marriott—Homewood.	.....	155 Vulcan Drive	Homewood, AL 35209	205–945–5600
Tom Bevill Center	.....	1100 N Loop Road	Huntsville, AL 35816.	
Days Inn South	.....	1705 Dauphin Island Pkwy	Mobile, AL 36605	205–471–6114
Mobile Days Inn	.....	5550 I—10 Service Road	Mobile, AL 36619	205–661–8181
Red Roof Inn #98	.....	33 S Beltline Hwy	Mobile, AL 36606	205–476–2004
Courtyard By Marriott Montgomery.	.....	5555 Carmichael Road	Montgomery, AL 36117	205–272–5533
Econo Lodge	.....	1105 Columbus Pkwy	Opelika, AL 36801	205–749–8377
Days Inn	.....	26032 Perdido Beach Blvd	Orange Beach, AL 36561	205–981–9888
J & W Motel	.....	206 West Willow Street	Scottsboro, AL 35768	205–574–2330
Scottsboro Days Inn	.....	1106 John T. Reid Pkwy	Scottsboro, AL 35768	205–574–1212
Arkansas				
Holiday Inn Express	.....	3508 S Moberle Lyne	Bentonville, AR 72712	501–273–2222
Fayetteville Hilton	.....	70 N East Avenue	Fayetteville, AR 72701	501–442–5555
Holiday Express—Fayetteville	.....	1251 N Shiloh Drive	Fayetteville, AR 72701	501–444–6006
Holiday Inn Civic Center	.....	700 Rogers Avenue	Fort Smith, AR 72901	501–783–1000
Sheraton Inn	.....	5711 Rogers Avenue	Fort Smith, AR 72903	501–452–4110
Avanelle Motor Lodge	.....	1204 Central Avenue	Hot Springs, AR 71901	501–321–1332
Holiday Inn	.....	3006	Jonesboro, AR 72401	501–935–1625
Holiday Inn West	.....	201 S Shackleford	Little Rock, AR 72211	501–223–3000
Red Roof Inn—Little Rock	.....	7900 Scott Hamilton Drive	Little Rock, AR 72209	501–562–2694

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Best Western Regency		I—55 US 64	Marion, AR 72364	501–739–3278
Melbourne Motel Inc		Hwy 9 N	Melbourne, AR 72556	501–368–4355
Mountain Home Holiday Inn		1350 Hwy 62 S W	Mountain Home, AR 72653	501–425–5101
Best Western Inn		210 N Blake Street	Pine Bluff, AR 71601	501–534–7222
Holiday Inn—Texarkana		5100 Stateline	Texarkana, AR 75502	501–774–3521
Days Inn		100 Ingram Blvd	West Memphis, AR 72301	501–735–8600
Hampton Inn West Memphis		2003 Service Road	West Memphis, AR 72301	501–732–1102
Arizona				
Wyndaham Chandler		7475 W Chandler Blvd	Chandler, AZ 85226	602–961–4444
Holiday Inn Chinle (Garcias Trading Post).		Bia Rt 7	Chinle, AZ 86503.	
Cottonwood Quality Inn		302 W Hwy 89A	Cottonwood, AZ 86326	602–634–4207
Quality Suites Hotel		706 S Milton Road	Flagstaff, AZ 86001	602–774–4333
Residence Inn By Marriott		3440 N Country Club	Flagstaff, AZ 86004	602–526–5555
Comfort Inn		2602 E Navajo Blvd	Holbrook, AZ 86025	602–524–6131
Econo Lodge		2596 Navajo Blvd	Holbrook, AZ 86025	602–542–1448
Holbrook Super 8 Motel		1989 Navajo Blvd	Holbrook, AZ 86025	602–524–2871
Holiday Inn Kayenta		Jct 160 & 163	Kayenta, AZ 86033	602–697–3221
Holiday Inn Mesa		1600 S Country Club	Mesa, AZ 85210	602–964–7000
Holiday Inn		287 N Lake Powell Blvd	Page, AZ 86040	602–645–8851
Comfort Inn North		1711 W Bell Road	Phoenix, AZ 85023	602–866–2089
Holiday Inn North Central		4321 N Central Avenue	Phoenix, AZ 85012	602–277–6671
Holiday Inn West		1500 N 51st Avenue	Phoenix, AZ 85043	602–484–9009
Wyndaham North Phoenix		2641 W Union Hills Drive	Phoenix, AZ 85027	602–978–2222
Wyndaham Phoenix Airport		427 N 44th Street	Phoenix, AZ 85008	602–220–4400
Holiday Inn Old Town Scottsdale		7353 E Indian School Road	Scottsdale, AZ 85251	602–994–9203
Residence Inn By Marriott—Scottsdale.		6040 N Scottsdale Road	Scottsdale, AZ 85253	602–948–8666
Wyndaham Paradise Valley		5401 N Scottsdale Road	Scottsdale, AZ 85250	602–947–5400
Quality Inn And Suites		1635 N Scottsdale Road	Tempe, AZ 85281	602–947–3711
Rodeway Inn Phoenix Airport East.		1550 S 52 Street	Tempe, AZ 85281	602–967–3000
Holiday Inn Palo Verde		4550 S Palo Verde Blvd	Tucson, AZ 85714	602–746–1161
Quality Inn University And Conference Center.		1601 N Oracle Road	Tucson, AZ 85705	602–623–6666
Residence Inn By Marriott—Tucson.		6477 E Speedway	Tucson, AZ 85710	602–721–0991
Roadway Inn North		1365 W Grant Road	Tucson, AZ 85745	602–622–7791
Holiday Inn Express		3181 S 4th Avenue	Yuma, AZ 85364	602–344–1420
California				
Quality Inn Alhambra		2221 W Commonwealth Avenue	Alhambra, CA 91803	818–300–0003
Quality Hotel Maingate		616 Convention Way	Anaheim, CA 92802	714–750–3131
Quality Inn—Anaheim West		727 S Beach Blvd	Anaheim, CA 92804	714–220–0100
Quality Inn—Brookhurst		711 S Brookhurst Avenue	Anaheim, CA 92804	714–999–1200
Arcata Super 8 Motel		4887 Valley West Blvd	Arcata, CA 95521	707–822–8888
Comfort Inn Arcata		4701 Valley West Blvd	Arcata, CA 95521	707–826–2827
Banning Super 8 Motel		1690 W Ramsey Street	Banning, CA 92220	909–849–6887
Comfort Inn		1865 Lincoln Avenue N	Calistoga, CA 94515	707–942–9400
Campbell Inn	PO Box 925	1995 S Bascom Avenue	Campbell, CA 95009	408–559–4300
Pruneyard Inn	PO Box 925	1995 S Bascom Avenue	Campbell, CA 95009	408–559–4300
Residence Inn By Marriott—San Jose.		2761 S Bascom Avenue	Campbell, CA 95008	408–559–1551
Wyndham Commerce		5757 Telegraph Road	Commerce, CA 90040	213–887–8100
Holiday Inn Orange County Airport.		3131 S Bristol Street	Costa Mesa, CA 92626	714–557–3000
Friendship Inn		410 N Hwy 101	Encinitas, CA 92024	619–436–4999
Comfort Inn—Eureka		2014 4th Street	Eureka, CA 95501	707–444–0401
Holiday Inn Express		1859 Alamar Way	Fortuna, CA 95540	707–725–5500
Holiday Inn—Fresno Airport		5090 E Clinton	Fresno, CA 93727	209–252–3611
Holiday Inn Centre Plaza		2233 Ventura Avenue	Fresno, CA 93720	209–268–1000
Friendship Inn—Regal Lodge Motel.		200 W Colorado Street	Glendale, CA 91204	818–246–7331
Ramada LAX Airport South		5250 W El Segundo Blvd	Hawthorne, CA 90250	310–536–9800
Comfort Suites		16301 Beach Blvd	Huntington Beach, CA 92647	714–841–1812
Huntington Beach Holiday Inn		7667 Center Avenue	Huntington Beach, CA 92647	714–891–0123
Quality Inn		800 Pacific Coast Hwy	Huntington Beach, CA 92648	714–536–7500
Indio Super 8 Motel		81753 Hwy 111	Indio, CA 92201	619–342–0264
Holiday Inn Irvine Orange County Airport.		17941 Von Karman Avenue	Irvine, CA 92714	714–863–1999
Comfort Inn—La Mesa		8000 Pkwy Drive	La Mesa, CA 91942	619–698–7747
Holiday Inn Gateway Plaza		14299 Firestone Blvd	La Mirada, CA 90638	714–739–8500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Residence Inn By Mariott La Mirada.		14419 Firestone Blvd	La Mirada, CA 90638	714-523-2800
Comfort Inn		118 N Cherokee Lane	Lodi, CA 95240	209-367-4848
Quality Inn & Executive Suites		1621 N H Street	Lompoc, CA 93436	805-735-8555
Best Western The Mayfair		1256 W Seventh Street	Los Angeles, CA 90017-2315	213-484-9789
Hotel Inter-Continental Los Angeles.		251 S Olive Street	Los Angeles, CA 90012	213-617-3300
Quality Hotel Los Angeles Airport		5249 W Century Blvd	Los Angeles, CA 90045	310-645-2200
Residence Inn By Mariott Manhattan Beach/LAX.		1700 N Sepulveda	Manhattan Beach, CA 90266	310-546-7627
Holiday Inn San Jose North (Silicon Valley).		777 Bellew Drive	Milpitas, CA 95035	408-321-9500
Monterey Carmel Travelodge		2030 N Fremont Street	Monterey, CA 93940	408-373-3381
Econo Lodge		1100 Main Street	Morro Bay, CA 93442	805-772-5609
Clarion Inn Napa Valley		3425 Solano Avenue	Napa, CA 94558	707-253-7433
Quality Inn—Marin		215 Alameda De Prado	Novato, CA 94949	415-883-4400
Holiday Inn Oakland Airport		500 Hegenberger Road	Oakland, CA 94621	510-562-5311
Holiday Inn Ontario International Airport.		1801 E G Street	Ontario, CA 91764	909-983-3604
Holiday Inn Express—Palm Desert.		74-675 Hwy 111	Palm Desert, CA 92260	619-340-4303
Quality Inn—Palm Springs		1269 E Palm Canyon	Palm Springs, CA 92264	619-323-2775
Wyndham Palm Springs Hotel		888 E Tahquitz Canyon Way	Palm Springs, CA 92262	619-322-6000
Quality Inn		5100 Montero Way	Petaluma, CA 94954	707-664-1155
Pleasanton Hilton		7050 Johnson Drive	Pleasanton, CA 94588	510-463-8000
Red Bluff Super 8 Motel		203 Antelope Road	Red Bluff, CA 96080	916-527-8882
Grand Manor Inn		850 Mistletoe Lane	Redding, CA 96002	916-221-4472
Holiday Inn Crowne Plaza Redondo Beach.		300 N Harbor Drive	Redondo Beach, CA 90277	310-318-8888
Days Inn—Downtown		200 Jibbon Street	Sacramento, CA 95814	916-448-8100
Guest Suites		2264 Cottage Way Suite 1	Sacramento, CA 95825	916-925-4247
Holiday Inn Capitol Plaza—Sacramento.		300 J Street	Sacramento, CA 95814	916-446-0100
San Bernardino Hilton		285 Hospitality Lane	San Bernardino, CA 92408	714-889-0133
Comfort Suites		3701 S El Camino Real	San Clemente, CA 92672	714-361-8600
Holiday Inn San Clemente		111 S Avenue De Estrella	San Clemente, CA 92672	714-361-3000
Comfort Inn Old Town San Diego Airport.		1955 San Diego Avenue	San Diego, CA 92110	619-543-1130
Holiday Inn—Montgomery Field		8110 Aero Drive	San Diego, CA 92123	619-277-8888
Holiday Inn—San Diego North		9335 Kearny Mesa Road	San Diego, CA 92126	619-695-2300
Holiday Inn Express		3950 Jupiter Street	San Diego, CA 92110	619-226-8000
Holiday Inn Harbor View		1617 First Avenue	San Diego, CA 92101	619-239-6171
Holiday Inn, Mission Valley Hotel Circle.		595 Hotel Circle South	San Diego, CA 92108	619-291-5720
Hyatt Islandia Hotel		1441 Quivira Road	San Diego, CA 92109-7898	619-224-1234
Residence Inn By Mariott—San Diego.		5400 Kearny Mesa Road	San Diego, CA 92111	619-278-2100
Residence Inn By Marriott—San Diego North.		11002 Rancho Carmel Drive	San Diego, CA 92128	619-673-1900
Sheraton Harbor Island Hotel		1380 Harbor Island Drive	San Diego, CA 92101	619-692-2215
Wyndham North San Diego		5975 Lusk Blvd	San Diego, CA 92121	619-558-1818
Grand Hyatt San Francisco On Union Square.		345 Stockton Street	San Francisco, CA 94108	415-398-1234
Holiday Inn Union Square		480 Sutter Street	San Francisco, CA 94108	415-398-6900
Quality Hotel and Conference Center.		1101 Van Ness Avenue	San Francisco, CA 94109	415-776-8900
Holiday Inn		330 N Bayshore Blvd	San Mateo, CA 94401	415-344-3219
Holiday Inn Express		350 N Bayshore Blvd	San Mateo, CA 94401	415-344-6376
Comfort Suites—John Wayne Airport.		2620 Hotel Terrace Drive	Santa Ana, CA 92705	714-966-5200
Holiday Inn—Mission De Oro		13070 S Hwy 33	Santa Nella, CA 95322	209-826-4444
Selma Super 8 Motel		3142 Highland Avenue	Selma, CA 93662	209-896-2800
Clarion Hotel—Simi Valley		1775 Madera Road	Simi Valley, CA 93065	805-584-6300
Comfort Suites		121 East Grand Avenue	South San Francisco, CA 94080	415-589-7766
Holiday Inn Stockton		111 E March Lane	Stockton, CA 95207	209-474-3301
Quality Inn		1280 Persian Drive	Sunnyvale, CA 94089	408-744-0660
Wyndham Sunnyvale		1300 Chesapeake Terrace	Sunnyvale, CA 94089	408-747-0999
Torrance Holiday Inn		21333 Hawthrone Blvd	Torrance, CA 90503	310-540-0500
Truckee Super 8 Lodge		11506 Deerfield Drive	Truckee, CA 96161	916-587-8888
Holiday Inn—Union City East Bay.		32083 Alvarado Niles Road	Union City, CA 94587	510-489-2200
Holiday Inn		1000 Fairgrounds Drive	Vallejo, CA 94533	707-644-1200
Econo Lodge		1400 S Mooney Blvd	Visalia, CA 93277	209-732-6641
Comfort Inn		2804 E Garvey Avenue S	S West Covina, CA 91791	818-916-6077

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Willows Super 8 Motel		457 N Humboldt Avenue	Willows, CA 95988	916-934-2871
Comfort Inn		1562 E Main Street	Woodland, CA 95695	916-666-3050
Yucca Valley Super 8 Motel		57096 Twentynine Palms Hwy	Yucca Valley, CA 92284	619-228-1773
Colorado				
The Little Nell Hotel		675 East Durant Avenue	Aspen, CO 81611	303-920-4600
Breckenridge Hilton		550 Village Road	Breckenridge, CO 80424	303-453-4500
Days Inn Fort Collins		3625 East Mulberry Street	Fort Collins, CO 80524	303-221-5490
Foothills Executive Lodging		6565 West Jewell Street #4b	Lakewood, CO 80232	303-936-3070
District of Columbia				
Comfort Inn (Downtown)		500 H Street NW	Washington, DC 20001	202-289-5959
Sheraton City Centre		1143 New Hampshire Avenue NW.	Washington, DC 20037	202-775-0800
The Georgetown Dutch Inn		1075 Thomas Jefferson St NW	Washington, DC 20007	202-337-0900
Delaware				
Holiday Inn—Dover		348 North Dupont Hwy	Dover, DE 19901	302-734-5701
Florida				
Comfort Inn Mayport		2401 Mayport Road	Atlantic Beach, FL 32233	904-249-0313
Econo Lodge		28090 Quail's Nest Lane	Bonita Springs, FL 33923	813-947-3366
Quality Inn Nautilus		1538 Cape Coral Parkway	Cape Coral, FL 33904	813-542-2121
Clearwater Central		21030 US 19N	Clearwater, FL 34625	813-797-8173
Comfort Inn Clearwater/St. Petersburg.		3680 Ulmerton Road	Clearwater, FL 34622	813-573-1171
Holiday Inn Express Gateway		13625 Icot Blvd	Clearwater, FL 34620	813-536-7275
Holiday Inn Gulfview		521 South Gulfview Blvd	Clearwater Beach, FL 34632	813-447-6461
Econo Lodge		3220 North Cocoa Blvd	Cocoa, FL 32926	407-632-4561
Holiday Inn University of Miami		1350 South Dixie Drive	Coral Gables, FL 33146	305-662-5611
Comfort Inn		4486 N Suncoast Blvd	Crystal River, FL 34428	904-563-1500
Holiday Inn Boardwalk Oceanfront.		400 North Atlantic Avenue	Daytona Beach, FL 32118	904-255-0251
Holiday Inn & Convention Center Deland.		350 E International Speedway	Deland, FL 32724	904-738-5200
Holiday Inn Destin		1020 Hwy 98 East	Destin, FL 32541	904-837-6181
Comfort Inn		8425 South Hwy 17-92	Fern Park, FL 32730	407-339-3333
Holiday Inn Surfside		2600 North A-1-A	Fort Pierce, FL 34949	407-465-6000
Holiday Inn Fort Walton Beach		1110 Santa Rosa Blvd	Fort Walton Beach, FL 32548	904-243-9181
Best Western Cypress Creek Road.		999 W Cypress Creek Road	Ft. Lauderdale, FL 33309	305-491-7666
Comfort Suites Fort Lauderdale		1800 South Federal Highway	Ft. Lauderdale, FL 33316	305-767-8700
Holiday Inn Ocean Club & Marina.		440 Seabreeze Blvd	Ft. Lauderdale, FL 33316	305-462-5555
Holiday Inn Central		2431 Cleveland Avenue	Ft. Myers, FL 33901	813-332-3232
Comfort Inn		2435 SW 13th Street	Gainesville, FL 32608	904-373-6500
Holiday Inn University Center		1250 West University Avenue	Gainesville, FL 32601	
Holiday Inn Bay Beach		51 Gulf Breeze Parkway	Gulf Breeze, FL 32561	904-932-2214
Econo Lodge Motor Inn And Restaurant.		1504 US Hwy 27 South	Haines City, FL 33844	813-422-8621
Holiday Inn Hialeah Miami Lakes		6650 West 20 Avenue	Hialeah, FL 33016	305-362-7777
Comfort Inn Oceanfront		1515 North First Street	Jacksonville, FL 32250	904-241-2311
Comfort Suites Hotel		8333 Dix Ellis Trail	Jacksonville, FL 32256	904-739-1155
Holiday Inn East And Conference Center.		5865 Arlington Expressway	Jacksonville, FL 32211	904-724-3410
Holiday Inn Oceanfront		1617 North First Street	Jacksonville, FL 32250	904-247-9071
Howard Johnson Airport Lodge		1153 Airport Road	Jacksonville, FL 32229	904-741-4600
Holiday Inn of Jennings/Inn of Lake City.	Post Office 9	I-75 & State Road #143	Jennings, FL 32053	904-938-3501
Holiday Inn Key Largo Resort & Marina.		99701 Overseas Highway	Key Largo, FL 33037	305-451-2121
Holiday Inn La Concha		430 Duval Street	Key West, FL 33040	305-296-2991
Sheraton Suites Key West		2001 South Roosevelt Blvd	Key West, FL 33040	305-292-9800
Comfort Inn Main Gate		7671 W Irlo Bronson Mem. Hwy	Kissimmee, FL 34747	407-396-7500
Comfort Inn, Maingate South		14 & US 27 North	Kissimmee, FL 34745-0850	813-424-2811
Holiday Inn Main Gate East		5678 Irlo Bronson Highway	Kissimmee, FL 34746	407-396-4488
Holiday Inn Maingate West		7601 Black Lake Road	Kissimmee, FL 34747	407-396-1100
Quality Inn Lake Cecile		4944 W Irlo Bronson Mem. Hwy	Kissimmee, FL 34746	407-396-4455
Sleep Inn Maingate		8536 W Irlo Bronson Hwy	Kissimmee, FL 34747	407-396-1600
Travelodge Hotel—Walt Disney World.		2000 Hotel Plaza Blvd	Lake Buena Vista, FL 32830	407-828-2424
Quality Inn North		2025 State Road 434	Longwood, FL 32759	407-862-4000
Friendship Inn		Route 1 Box 3095	Madison, FL 32340	904-973-2504

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Holiday Inn Calder/Joe Robbie Stadium.		21485 NW 27th Avenue	Miami, FL 33056	305–621–5801
Howard Johnson Convention Center.		200 SE 2nd Avenue	Miami, FL 33131	305–374–3000
Quality Shawnee Beach Resort		4343 Collins Avenue	Miami Beach, FL 33140	305–532–3311
Holiday Inn Golden Glades		148 NW 167th Street	N Miami, FL 33169	305–949–1411
Quality Inn Golf & Country Club		4100 Golden Gate Parkway	Naples, FL 33999	813–455–1010
Friendship Inn		626 John Sims Parkway	Niceville, FL 32578	904–678–4164
Comfort Inn Orlando		8421 S Orange Blossom Trail	Orlando, FL 32809	407–855–6060
Econo Lodge Central		3300 W Colonial Drive	Orlando, FL 32808	407–293–7221
Holiday Inn Centroplex		929 West Colonial Drive	Orlando, FL 32804	407–843–1360
Holiday Inn Express/Midtown		3330 W Colonial Drive	Orlando, FL 32811	407–299–6710
Holiday Inn L.B.V		13351 State Road 535	Orlando, FL 32830	407–239–4500
Holiday Inn Orlando Airport		5750 T.G. Lee Blvd	Orlando, FL 32822	407–851–6700
Holiday Inn Universal Studios		5905 Kirkman Road	Orlando, FL 32819	407–351–3333
Holiday Inn University Of Central Florida.		12125 High Tech Avenue	Orlando, FL 32817	407–275–9000
Ramada Hotel Resort		7400 International Drive	Orlando, FL 32819	407–351–4600
Rodeway Inn/Convention Center		9956 Hawaiian Court	Orlando, FL 32819	407–351–5100
Quality Inn Plaza		9000 International Drive	Orlando, FL 32819	407–345–8585
Quality Hotel Orlando Airport		3835 McCoy Road	Orlando, FL 32812	407–859–2711
Holiday Inn Winter Park		626 Lee Road	Orlando, FL 32810	407–645–5600
Holiday Inn Sarasota—South		1660 South Tamiami Trail	Osprey, FL 34229	813–966–2121
Holiday Inn Riverfront		201 North First Street	Palatka, FL 32177	904–328–3481
Holiday Inn Palm Beach Gardens		4431 P.G.A. Blvd	Palm Beach Gardens, FL 33410	407–622–2260
Econo Lodge		32000 US Hwy 19 North	Palm Harbor, FL 34684	813–786–2529
Holiday Inn Beach Resort (Hilton, Inc.).		11127 Front Beach Road	Panama City, FL 32407	904–234–1111
Holiday Inn Mall		2001 North Cove Blvd	Panama City, FL 32405	904–769–0000
Residence Inn By Marriott		7230 Plantation Road	Pensacola, FL 32504	904–479–1000
The Pensacola Grand Hotel		200 East Rgory Street	Pensacola, FL 32501	904–433–3336
Holiday Inn Ft. Lauderdale, Plantation.		1711 North University Drive	Plantation, FL 33322	305–472–5600
Holiday Inn Pompano Beach		1350 S Ocean Blvd	Pompano Beach, FL 33062	305–941–7300
Quality Inn Oceanside Resort		1208 N Ocean Boulevard	Pompano Beach, FL 33062	305–782–5300
Comfort Inn Of Port Richey		11810 US Hwy 19	Port Richey, FL 34668	813–863–3336
Holiday Inn Sanford		530 North Palmetto Avenue	Sanford, FL 32771	407–232–1910
Super 8 Motel, Orlando North		4750 State Road 46 W	Sanford, FL 32771	407–323–3443
Holiday Inn Sarasota/Bradenton Airport/Marina.		7150 North Tamiami Trail	Sarasota, FL 34243	813–355–2781
Days Inn Satellite Beach		180 Highway A–1–A	Satellite Beach, FL 32937	407–777–3552
Holiday Inn		6525 US 27 North	Sebring, FL 33870	813–385–4500
Ponce De Leon Golf & Conference Resort.		4000 US Hwy 1 North	St. Augustine, FL 32095	904–824–2821
Econo Lodge & Tennis Resort		3000 34th Street South	St. Petersburg, FL 33711	813–867–1111
Holiday Inn St. Petersburg Beach		5300 Gulf Blvd	St. Petersburg Beach, FL 33706	813–360–6911
Budgetel Inn		602 South Faulkenburg Road	Tampa, FL 33619	813–684–4002
Comfort Inn		2106 E Busch Blvd	Tampa FL 33612	813–931–3313
Crowne Plaza Sabal Palm		10221 Princess Palm Avenue	Tampa, FL 32610	813–623–6362
Holiday Inn Busch Gardens		2701 East Fowler Avenue	Tampa, FL 33612	813–971–4710
Quality Suites Hotel		3001 University Center Drive	Tampa, FL 33612	813–971–8930
Shoney's Inn		8602 Merris Bridge Road	Tampa, FL 33617	813–985–8525
Wyndham Harbour Island		725 South Harbour Island Blvd	Tampa, FL 33602	813–229–5000
Holiday Inn Kennedy Space Center.		4951 S Washington Avenue	Titusville, FL 32780	407–269–2121
Holiday Inn Palm Beach Intl. Airport.		1301 Belvedere Road	West Palm Beach, FL 33405	407–659–3880
Iowa				
Holiday Inn		2501 Williams Blvd SW	Cedar Rapids, IA 52404	319–365–9441
Holiday Inn—Davenport		5202 Brody	Davenport, IA 52806	315–391–1230
Holiday Inn—Merle Hwy		5000 Merle Hwy Road	Des Moines, IA 50322	515–278–0271
Ft. Dodge Holiday Inn	PO Box 1336	2001 US Hwy 169 S	Ft. Dodge, IA 50501	515–955–3621
Comfort Inn		410 5th Street SW	Mason City, IA 50401	515–423–4444
Econo Lodge		86 9th Street Circle NE	Sioux Center, IA 51250	712–722–4000
Waterloo Holiday Inn—Civic Center.		4th & Commercial Street	Waterloo, IA 50704	319–233–7560
Illinois				
Cambridge Inn		1605 N State Street	Belvidere, IL 61008	815–544–7111
Ho—Jo Inn		401 Brock Drive	Bloomington, IL 61701	309a829–3100
Ramada Inn West		403 Brock Drive	Bloomington, IL 61701	309–829–7602
Byron Motel		511 W Blackhawk Drive	Byron, IL 61010	815–234–4500
Lakeside Motel		5440 N Sheridan Road	Chicago, IL 60640	312–275–2700

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Cove Motel		2019 S Cicero Avenue	Cicero, IL 60650	708–656–2260
Karavan Motel		1620 S Cicero Avenue	Cicero, IL 60650	708–656–4220
Best Western Inn Of Countryside		5631 S Lagrange Road	Countryside, IL 60525	708–352–8480
Green Valley Motel		145 W Pershing Road	Decatur, IL 62526	217–877–3123
Super 8 Motel—Dixon		1800 S Galena	Dixon, IL 61021	815–284–1600
Royal Inn		1010 S Jefferson Street	Duquoin, IL 62832	618–542–4335
Holiday Inn Express Chicago		933 S Route 83	Elmhurst, IL 60126	708–279–0700
Indian Mound Motel		4700 Collinsville Road	Fairmont City, IL 62201	618–279–5700
Abe Lincoln Motel		10841 W Lincoln Hwy	Frankfort, IL 60423	815–469–5114
Westerfield House Inn		8059 Jefferson Road	Freeburg, IL 62243	618–539–5643
Carl Johnson Gallery Gallery Guest Suite.		202 S Main Street	Galena, IL 610362227	815–777–1222
2 Acres Motel & Restaurant		I–70 & Rt. 127	Greenville, IL 62246	618–664–3131
Sweet Basil Hill Farm		15937 W Washington	Gurnee, IL 60031	708–244–3333
Inn Keeper Motel Hwy		140 & I–55	Hamel, IL 62046	618–633–2111
Red Roof Inn—Joliet		1750 McDonough	Joliet, IL 60436	815–741–2304
Holiday Inn—Lagrange Countryside.		6201 Joliet Road	Lagrange, IL 60525	708–354–4200
Red Roof Inn #078		2450 E 173rd Street	Lansing, IL 60438	708–895–9570
Moline Comfort Inn		2600 52nd Avenue	Moline, IL 61265	309–762–7000
Riverside Inn Motel	Box 429	Rt. 5	Murphysboro, IL 62966	618–687–2244
Best Western Mark Twain Hotel		225 NE Adams	Peoria, IL 61602	309–676–3600
Best Western Heritage Inn		420 S Murray Road	Rantoul, IL 61866	217–892–9292
Quality Inn At O'Hare		6810 N Mannheim Road	Rosemont, IL 60018	708–297–1234
Continental Motel	Rt. 50 E	1600 E Main Street	Salem, IL 62881	618–548–3090
Spillway Motel	Box 1	R.R. 1	Shelbyville, IL 62565	217–774–9591
Watseka Motel		814 E Walnut Street	Watseka, IL 60970	815–432–2426
Red Roof Inn—Willowbrook	Rt. 83	7535 Kingery Hwy	Willowbrook, IL 60521	708–323–8811
Wyndham Wood Dale		1200 N Nittel Blvd	Wood Dale, IL 60191	708–860–2900
Louisiana				
Quality Inn Marina		5353 Paris Road	Chalmette, LA 70043	504–277–5353
Holiday Inn Westbank		100 Westbank Expressway	Gretna, LA 70053	504–366–2361
Comfort Inn NO Airport		1700 I—10 Service Road	Kenner, LA 70065	504–464–1300
Holiday Inn—Laplace		3900 Main Street	Laplace, LA 70068	504–652–5544
Holiday Inn Express		2503 SE Evangeline Thwy	Lafayette, LA 70508	318–234–2000
Holiday Inn North		2716 NE Evangeline Thwy	Lafayette, LA 70507	318–233–0003
Holiday Inn Lake Charles		505 N Lakeshore Drive	Lake Charles, LA 70601	318–433–7121
Comfort Inn		5650 Frontage Road	Monroe, LA 71202	318–345–2220
Massachusetts				
Howard Johnson Lodge		1271 Boylston Street	Boston, MA 02215	617–267–8300
Holiday Inn Brockton		Westgate Mall	Brockton, MA 02401	508–588–6300
Comfort Inn		235 Elm Street	Dedham, MA 02026	617–326–6700
Mariner Motel		555 Main Street	Falmouth, MA 02540	508–548–1331
Red Roof Inn Inc.		650 Cochichuate Road	Framingham, MA 01701	508–872–4499
Holiday Inn		Rt. 132	Hyannis, MA 02601	508–775–6600
Holiday Inn Leominster/Fitchburg		One Lindell Avenue	Leominster, MA 01453	508–537–1661
Susse Chalet Hotel—Seekonk		341 Highland Avenue	Seekonk, MA 02771	508–336–7900
Quality Inn Colonial		Rt 20	Sturbridge, MA 01566	508–347–3306
Maryland				
Econo Lodge Of Aberdeen		820 W Bel Air Avenue	Aberdeen, MD 21001	410–272–5500
Susse Chalet		4 Philadelphia Court	Baltimore, MD 21237	410–574–8100
Residence Inn By Marriott		7335 Wisconsin Avenue	Bethesda, MD 20814	301–718–0200
Holiday Inn Columbia		7900 Washington Blvd	Columbia, MD 20794	410–799–7500
Econo Lodge		5895 Bonnieview Lane	Elkridge, MD 21227	410–796–1020
Fairlingers Hotel Gunter		11 West Main Street	Frostburg, MD 21532	301–689–6511
Holiday Inn Gaithersburg		2 Montgomery Village Avenue	Gaithersburg, MD 20879	301–948–8900
Comfort Inn—Germantown		20260 Golden Rod Lane	Germantown, MD 20874	301–428–1300
Comfort Inn		118 Limestone Road	Hancock, MD 21750	301–678–6101
Susse Chalet Jessup		7300 Crestmount Road	Jessup, MD 20794	410–799–1500
Holiday Inn Capital Centre		9100 Basil Ct	Landover, MD 20785	301–773–0700
301 Property Management Ventures/Econo Lodge.	PO Box 1661	Rtes 301 & 6	Laplata, MD 20646	301–934–1400
Holiday Inn Laurel		3400 Ft Meade Road	Laurel, MD 20724	301–498–0900
Susse Chalet B W I		1734 West Nursery Road	Linthicum, MD 21090	410–859–2333
Red Roof Inn #140		827 Elkridge Landing Road	Linthicum Hts, MD 21090.	
Days Inn		4201 Coastal Hwy	Ocean City, MD 21842	410–289–6468
Ocean Park Motel		1701 Atlantic Avenue	Ocean City, MD 21842	410–289–7262
Oceanic Motel		710 S Philadelphia Avenue	Ocean City, MD 21842	410–289–6494
Plim Plaza Hotel		109 N Boardwalk	Ocean City, MD 21842	410–289–6161
Quality Inn Beachfront		3301 33rd Street	Ocean City, MD 21842	410–289–1234
Sandyhill Motel		1710 Baltimore Avenue	Ocean City, MD 21842	410–289–6151

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Seabonay Motel		2711 Atlantic Avenue	Ocean City, MD 21842	410–289–9194
Stardust Motel		3200 Baltimore Avenue	Ocean City, MD 21842	410–289–6444
Susse Chalet		6363 Oxon Hill Road	Oxon Hill, MD 20745	301–839 0001
Econo Lodge Princess Anne		10936 Market Lane	Princess Anne, MD 21853	410–651–9400
Holiday Inn—Salisbury	Rt 11 Bx 226	US Rt 13 N	Salisbury, MD 21801	410–742–7194
Holiday Inn Timonium Plaza		2004 Greenspring Drive	Timonium MD 21093	410–252–7373
Sheraton Baltimore North Hotel		903 Dulaney Valley Road	Towson, MD 21204	410–321–7400
Minnesota				
Wyndham Bloomington		4460 W 78th Street Circle	Bloomington, MN 55435	612–831–3131
Holiday Inn		2115 S 6th Street	Brainard, MN 56401	218–829–1441
Holiday Inn Burnsville		14201 Nicollet Avenue S	Burnsville MN 55337	612–435–2100
Duluth Super 8 Motel		4100 W Superior Street	Duluth, MN 55807	218–628–2241
Mankato Days Inn		1285 Range Street	Mankato MN 56001	507–387–3332
Holiday Inn—Plymouth		3000 Harbor Lane	Plymouth, MN 55447	612–559–1222
Radisson Hotel Centerplace		150 South Broadway	Rochester, MN 55904	507–281–8000
Holiday Inn St. Paul—Roseville		2540 N Cleveland Avenue	Roseville, MN 55113	612–636–4567
Holiday Inn—St. Paul E		2201 Burns Avenue	St. Paul, MN 55117	612–731–2220
Holiday Inn—New Section		75 S 37th Avenue	St. Cloud, MN 56301	612–253–9000
Montana				
Holiday Inn Billings Plaza		5500 Midland Road	Billings, MT 59101	406–248–7701
Bozeman Comfort Inn		1370 N 7th Avenue	Bozeman, MT 59715	406–587–2322
Holiday Inn		5 Baxter Lane	Bozeman, MT 59715	406–587–4561
Sheraton Hotel		400 10th Avenue	Great Falls, MT 59405	406–727–7200
Best Western Hamilton Inn		409 S First Street	Hamilton, MT 59840	406–363–2142
Days Inn 2001		2001 Prospect Avenue	Helena, MT 59601	406–442–3280
Helena Comfort Inn		750 Fee Street	Helena, MT 59623	406–443–1000
Holiday Inn Parkside		700 S Pattee	Missoula, MT 59802	406–721–8550
Pine Lodge Quality Inn		920 Spokane Avenue	Whitefish, MT 59937	406–862–7600
North Carolina				
Econo Lodge East		I–40 Exit 55	Asheville, NC 28815	704–298–5519
Holiday Inn Tunnel Road		201 Tunnel Road	Asheville, NC 28805	704–252–4000
Lloyd's On The River	PO Box 429	Hwy 19 North	Bryson City, NC 28713	704–488–3767
Comfort Inn—Hatteras Island	PO Box 1089	Old Lighthouse And State 12	Buxton, NC 27920	919–995–6100
Comfort Inn Of Canton	PO Box 866	I–40 At Exit 31 Champion Drive	Canton, NC 28716	704–648–4881
Holiday Inn	US 15–501	Eastgate 1301 N Fordham Blvd	Chapel Hill, NC 27514	919–929–2171
Charlotte University Red Roof Inn.		5116 N I–85	Charlotte, NC 28206	704–596–8222
Holiday Inn Center City		230 N College Street	Charlotte, NC 28202	704–335–5400
Holiday Inn Express		575 Clanton Road	Charlotte, NC 28217	704–523–0633
Holiday Inn Woodlawn		212 Woodlawn Road	Charlotte, NC 28217	704–525–8350
Hyatt Charlotte		5501 Carnelge Blvd	Charlotte, NC 28209	704–554–1234
Red Roof Inn—Charlotte Coliseum (#124).		131 Red Roof Drive	Charlotte, NC 28217	704–529–1020
Residence Inn By Marriott Tyvola Executive P.		5800 Westpark Drive	Charlotte, NC 28217	704–527–8110
Wyndham Charlotte		4200 Wilmount Road	Charlotte, NC 28208	704–357–9100
Holiday Inn—Cherokee	PO Box 1929	Hwy 19 West	Cherokee NC 28719	704–497–9181
Friendship Inn		2451 Kannapolis Hwy	Concord, NC 28025	704–788–8550
Holiday Inn Durham West		3460 Hillsborough Road	Durham, NC 27705	919–383–1551
Red Roof Inn #155		4405 Hwy 55 East	Durham, NC 27713	919–361–1950
Red Roof Inn—Durham II		2000 I -85 Service Road	Durham, NC 27705	919–471–9882
Holiday Inn		522 S Hughes Blvd	Elizabeth City, NC 27909	919–338–3951
Comfort Inn		1957 Cedar Creek Road	Fayetteville, NC 28301	919–323–8333
Econo Lodge I–95		1952 Cedar Creek Road	Fayetteville, NC 28302	919–433–2100
Holiday Inn Fayettevelle I–95	PO Box 2245	1944 Cedar Creek Road	Fayetteville, NC 28302	919–323–1600
Holiday Inn Airport		550 Airport Road	Fletcher, NC 28732	704–684–1213
Econo Lodge		I–85 & Bessemer City Road	Gastonia, NC 28052	704–867–1821
Red Roof Inn #99		2101 West Meadowview Road	Greensboro, NC 27403	919–852–6560
Red Roof Inns		615 Regional Road	Greensboro, NC 27409	919–271–2636
Residence Inn By Marriott		2000 Veasley Street	Greensboro, NC 27407	919–294–8600
Holiday Inn		I–85 & Parham Road	Henderson, NC 27536	919–492–1126
Comfort Suites		1125 13th Avenue Drive SE	Hickory, NC 28602	704–323–1211
Best Western Eldreth Inn At Mt. Jefferson.		Hwy US 221 & NC 88	Jefferson, NC 28640	919–246–8845
Holiday Inn Laurinburg		15401 By Pass	Laurinburg, NC 28352	919–276–6555
Comfort Suites Of Lexington		1620 Cotton Grove Road	Lexington, NC 27292	704–352–2333
Comfort Inn At Lincolnton	PO Box 814	1550 E Main Street	Lincolnton, NC 28092	704–732–0011
Comfort Suites		215 Wintergreen Drive	Lumberton, NC 28358	919–739–8800
Holiday Inn North		5201 Fayetteville Road	Lumberton, NC 28358	919–671–1166
Comfort Inn		848 Soco Road	Maggie Valley, NC 28751	704–926–9106
Sleep Inn		2400 A South Sterling Street	Morganton, NC 28655	704–433–9000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Comfort Inn NC 160		Hwy 114 64 West	Murphy, NC 28906	704–837–8030
Econo Lodge		3804 Newbern Avenue	Raleigh, NC 27610	919–231–8818
Hampton Inn Crabtree		6209 Glenwood Avenue	Raleigh, NC 27612	919–782–1112
Red Roof Inns		3520 Maitland Drive	Raleigh, NC 27610	919–231–0200
Residence Inn By Marriott—Raleigh.		1000 Navaho Drive	Raleigh, NC 27609	919–878–6100
Holiday Inn Reidsville		2100 Barnes Street	Reidsville, NC 27320	919–342–0341
Holiday Inn—Raleigh Durham Airport.		I–40 & Exit 282 Page Road	Research Triangle P, NC 27709	919–941–6000
Comfort Inn		1911 Weldon Road	Roanoke Rapids, NC 27870	919–537–5252
Comfort Inn—Gateway		200 Gateway Blvd	Rocky Mount, NC 27804	919–937–7765
Holiday Inn—Dortches	PO Box 7215	I–95 5350 Dortches Blvd	Rocky Mount, NC 27804	919–937–6300
Holiday Inn Salisbury	PO Box 1925	530 Jake Alexander Blvd S	Salisbury, NC 28144	704–638–0311
Sleep Inn		321 Bondix Drive	Salisbury, NC 28146	404–633–5961
Holiday Inn—Southern Pines		US Hwy 1 At Morganton Road	Southern Pines, NC 28387	919–692–8585
Comfort Inn		1214 Greenland Drive	Statesville, NC 28677	704–873–2044
Red Roof Inn #113		1508 E Broad Street	Statesville, NC 28677	704–878–2051
Clarion Resort At Sea Trail Plantation.		211 Clubhouse Road	Sunset Beach, NC 28468	919–579–4350
Friendship Inn		1201 E Casmell Street	Wadesboro, NC 28170	704–694–4616
Econo Lodge		1202 Russ Avenue	Waynesville, NC 28786	704–452–0353
Holiday Inn—Express		1700 Winkler Street	Wilkesboro, NC 28697	919–838–1800
Comfort Inn—Williamston		Hwy 64 By Pass	Williamston, NC 27892	919–792–8400
Holiday Inn—West Intwe		2008 S Hawthorne Road	Winston Salem, NC 27103	919–765–6670
Holiday Inn		1706 N Lumina Avenue	Wrightsville Beach, NC 28480	919–256–2231
North Dakota				
Comfort Inn		1030 Interstate Avenue	Bismarck, ND 58501	701–223–1911
Fleck House		122 East Thayer	Bismarck, ND 58501	701–255–1450
El Vu Motel		Hwy 12 & 85 S	Bowman, ND 58623	701–523–5224
Budget Inn of Dickinson Inc.	I–94 Exit 6	1529 12th Street W	Dickinson, ND 58601	701–225–9123
Comfort Inn		493 Elks Drive	Dickinson, ND 58601	701–264–7300
Evergreen Inn		2143 6th Avenue W	Dickinson, ND 58601	701–225–6606
Red Coach Inn		71 W 12th Street	Dickinson, ND 58601	701–227–4310
Motel 66	PO Box 116		Drayton, ND 58225	701–454–6464
Comfort Inn East		1407 35th Street S	Fargo, ND 58103	701–280–9666
Doublewood Inn		3333 13th Avenue S	Fargo, ND 58103	701–235–3333
Expressway Inn		1340 21st Avenue S	Fargo, ND 58103	701–235–3141
Radisson Hotel Fargo		201 5th Street N	Fargo, ND 58102	701–232–7363
Super 8 Motel		3518 Interstate Blvd	Fargo, ND 58103	701–232–9202
Ramada Inn		1205 North 43rd Street	Grand Forks, ND 58203	701–775–3951
Select Inn		1000 N 42nd Street	Grand Forks, ND 58201	701–775–0555
Central Flyway Outfitters		RR Box K6	Kramer, ND 58748	701–359–4422
Best Western Safari Inn		1510 26th Avenue SW	Minot, ND 58701	701–852–4300
Days Inn—Minot		2100 4th Street SW	Minot, ND 58701	701–852–3646
Econo Lodge		1937 N Broadway US Hwy 83	Minot, ND 58701	701–852–5600
Holiday Inn—Minot		2315 N Broadway	Minot, ND 58701	701–852–4161
Lincoln Park Motel		94 Lincoln Avenue	Underwood, ND 58576	701–442–3486
Super Eight Motel		822 11th Street SW	Valley City, ND 58072	701–845–1140
Super 8 Motel		825 E Main	West Fargo, ND 58078	701–282–7121
Super 8 Lodge		2324 2nd Avenue W	Williston, ND 58801	701–572–8371
The Kensington		1001—W 24th Street	Williston, ND 58801	701–774–0424
Nebraska				
Econo Lodge		4402 Dakota Avenue	South Sioux City, NE 68776	402–494–4114
New Jersey				
Atlantic City—Diplomat		115 Chelsea Avenue Boardwalk	Atlantic City, NJ 08401	609–348–2200
Holiday Inn Bridgewater		1260 Rt 22	Bridgewater, NJ 08807	908–526–9500
Sheraton Meadowlands		2 Meadowlands Plaza	East Rutherford, NJ 07073	201–896–0500
Holiday Inn At Raritan Center		125 Raritan Center Pkwy	Edison, NJ 08837	908–225–8300
Econo Lodge		2016 Rt 37 W	Lakehurst, NJ 08733	908–657–7100
Howard Johnson Lodge		2991 Brunswick Pike	Lawrenceville, NJ 08648	609–896–1100
Red Roof Inn—Princeton North		208 New Road	Monmouth Junction, NJ 08852	908–821–8800
Econo Lodge University Center		26 US Hwy 1 N	New Brunswick, NJ 08901	908–828–8000
Parsippany Hilton		One Hilton Ct	Parsippany, NJ 07054	201–267–7373
Sheraton Tara Hotel		199 Smith Road	Parsippany, NJ 07054	201–515–2000
Hyatt Regency Princeton	Rt. 1	102 Carnegie Ctr	Princeton, NJ 08850	609–987–1234
Residence Inn—Princeton	PO Box 8388	4225 Rt 1	Princeton, NJ 08543	908–329–9600
Holiday Inn Harmon Meadow		300 Plaza Drive	Secaucus, NJ 07094	201–348–2000
Comfort Inn South Plainfield		101 New World Way	South Plainfield, NJ 07080	908–561–4488
Quality Inn		101 Grove Road	Thorofare, NJ 08086	609–848–4111
Holiday Inn At Tinton Falls		700 Hope Road	Tinton Falls, NJ 07724	908–544–9300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Sheraton Inn—Atlantic City West		6821 Black Horse Pike	West Atlantic City, NJ 08232	609–272–0200
Nevada				
Ceasar's Palace		3570 Las Vegas Blvd South	Las Vegas, NV 89109	702–731–7368
Holiday Inn		325 E Flamingo Road	Las Vegas, NV 89109	702–732–9100
Pahrump Station Days Inn	PO Box 38	2021 E Loop Road	Pahrump, NV 89041	702–727–5100
Holiday Inn Convention Center		5851 S Virginia Street	Reno, NV 89502	702–825–2940
Rodeway Inn		2050 Market Street	Reno, NV 89502	702–786–2500
New York				
Comfort Suites—Buffalo Airport		901 Dick Road	Buffalo, NY 14225	716–633–6000
Sheraton Inn—Buffalo Airport		2040 Walden Avenue	Buffalo, NY 14225	716–681–2400
Holiday Inn Crowne Plaza Laguardia Airport.		104–04 Ditmars Blvd	East Elmhurst, NY 11369	718–457–6300
Westview Lodge		3998 Harbor Road	Henderson Harbor, NY 13651	315–938–5722
Holiday Inn—JFK Airport		144–02 135th Street	Jamaica, NY 11436	718–659–0200
Grandview Holiday Inn		1 Olympic Drive	Lake Placid, NY 12946	518–523–2550
Comfort Inn		866 Albany—Shaker Road	Latham, NY 12110	518–783–1900
Magnolia Hotel		RD #2 Box 257	Mayville, NY 14757	716–789–2935
Holiday Inn—Utica		1777 Burrstone Road	New Hartford, NY 13413	315–797–2131
Holiday Inn Crowne Plaza		1605 Broadway	New York, NY 10019	219–977–4000
Holiday Inn Downtown		138 Lafayette Street	New York, NY 10013	212–966–8898
New York Helmsley Hotel		212 E 42nd Street	New York, NY 10017	212–490–8900
New York Renaissance Hotel		2 Times Square	New York, NY 10036	212–765–7676
Holiday Inn—Convention Center		231 Third Street	Niagara Falls, NY 14303	716–282–2211
Holiday Inn Express		341 S Road	Poughkeepsie, NY 12601	914–473–1151
Holiday Inn		173 Sunrise Hwy	Rockville Centre, NY 11570	516–678–1300
Adirondack Comfort Inn		148 Lake Flower Avenue	Saranac Lake, NY 12983	518–891–1970
Inn At Saratoga		231 Broadway	Saratoga Springs, NY 12866	518–583–1890
Sheraton Saratoga Springs Hotel & Conf Center.		534 Broadway	Saratoga Springs, NY 12866	518–584–4000
Sheraton Smithtown Hotel		110 Vanderbilt Motor Pkwy	Smithtown, NY 11788	516–231–1100
Holiday Inn Syracuse—Fairgrounds.		State Fair Blvd & Farrell Rd	Syracuse, NY 13209	315–457–8700
Holiday Inn—Watertown		300 Washington Street	Watertown, NY 13601	315–782–8000
Stouffer Westchester Hotel		80 W Red Oak Lane	White Plains, NY 10604	914–694–5400
Oklahoma				
Holiday Inn Ardmore		2705 West Broadway	Ardmore, OK 73401	405–223–7130
Ramada Inn		2700 West Broadway	Ardmore, OK 73401	405–226–1250
Holiday Inn		1410 SE Washington Blvd	Bartlesville, OK 74006	918–333–8320
Econo Lodge		1401 N Elm Place	Broken Arrow, OK 74012	918–258–6617
Holiday Inn		2015 N Hwy 81	Duncan, OK 73533	405–252–1500
Holiday Inn—East		5701 Tinker Diagonal	Midwest City, OK 73110	405–737–4481
Holiday Inn		801 S Meridian	Oklahoma City, OK 73108	405–942–8511
Lexington Hotel Suites		1200 S Meridian Avenue	Oklahoma City, OK 73108–1706	405–943–7800
Holiday Inn		2215 N 14th	Ponica City, OK 74601	405–762–8311
Best Western Trade Winds Central Inn.		3141 E Skelly Drive	Tulsa, OK 74107	918–749–5561
Econo Lodge		11620 E Skelly Drive	Tulsa, OK 74128	918–437–9200
Holiday Inn Express		3131 East 51st	Tulsa, OK 74105	918–743–9811
Holiday Inn Tulsa Center I–44		8181 East Skelly	Tulsa, OK 74129	918–663–4541
Holiday Inn Tulsa East Airport		1010 N Garnett Rd	Tulsa, OK 74116	918–437–7660
Comfort Inn West		321 N Mustang Rd	Yukon, OK 73099	405–324–1000
Oregon				
The Riverhouse		3075 N Hwy 97	Bend, OR 97701	503–389–3111
Harbor Inn Motel		15891 Hwy 101 S	Brookings, OR 97415	503–469–3184
Shanleo Inn		1113 NW 9th	Corvallis, OR 97330	503–754–7474
Holiday Inn		225 Coburg Road	Eugene, OR 97401	503–342–5181
Quality Inn		1545 NE Burnside Street	Gresham, OR 92030	503–666–8545
Best Western Beachfront Inn		16008 Boat Basin Road	Harbor, OR 97418	504–469–7779
Best Western Klamath Inn		4061 S 6th Street	Klamath Falls, OR 97603	503–882–1200
Comfort Inn		2500 S 6th Street	Klamath Falls, OR 97601	503–884–9999
Econo Lodge		75 Main Street	Klamath Falls, OR 97601	503–884–7735
Quality Inn At Rogue Valley		2345 Crater Lake Hwy	Medford, OR 97504	503–770–1234
Hotel Newport		3019 N Coast Hwy 101	Newport, OR 97365	503–265–9411
Sylvia Beach Hotel		267 NW Cliff Street	Newport, OR 97365	503–265–5428
The Waves Motel		820 NW Coast Street	Newport, OR 97365	503–265–4661
Best Western Salbasgeon Inn Of Reedsport.		1400 Hwy Avenue	Reedsport, OR 97467	503–271–4831
Salbasgeon Inn Of Umpqua		45209 Hwy 38	Reedsport, OR 97467	503–271–2025
Comfort Inn		8855 SW Citizens Drive	Wilsonville, OR 97070	503–682–9000
Flying M Ranch		23029 NW Flying M Road	Yamhill, OR 97148	503–662–3222

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Pennsylvania				
Red Roof Inn		1846 Catasaqua Road	Allentown, PA 18103	215–264–5404
Hojo Inn		1500 Sterling Street	Altoona, PA 16602	814–946–7601
Red Roof Inn		1454 Beers School Road	Coraopolis, PA 15108	412–264–5678
Holiday Inn		US 219 & I 80	Du Bois, PA 15801	814–371–5100
Red Roof Inn		7865 Perry Hwy	Erie, PA 16509	814–868–5246
Sheraton Great Valley Hotel		707 Lancaster Pike	Frazer, PA 19355	215–524–5500
Red Roof Inn		400 Corporate Circle	Harrisburg, PA 17110	717–657–1445
Holiday Inn		Rt 309	Hazleton, PA 18201	717–455–2061
Days Inn Huntingdon	PO Box 353	4th Street & US Rt 22	Huntingdon PA 16652	814–643–3934
Red Roof Inn		2729 Mosside Blvd	Monroeville, PA 15146	412–856–4738
Courtyard Philadelphia		8900 Bartram Avenue	Philadelphia, PA 19153	215–365–2200
Holiday Inn		440 Arch Street	Philadelphia, PA 19106	215–923–8660
Red Roof Inn		6404 Steubenville Pike	Pittsburgh, PA 15205	412–787–7870
Holiday Inn Bucks County		4700 Street Road	Trevose, PA 19053	215–364–2000
Red Roof Inn		1399 W Chestnut Street	Washington, PA 15301	412–228–5750
Courtyard By Marriott		1100 Drummers Lane	Wayne, PA 19087	215–687–6700
Red Roof Inn		1035 Hwy 315	Wilkes—Barre, PA 18702	717–829–6422
Holiday Inn		334 Arsenal Road	York, PA 17402	717–845–5671
York Travelodge Motel		132–140 N George Street	York, PA 17401	717–843–8974
South Carolina				
Comfort Inn		5055 N Arco Lane	Charleston, SC 29418	803–554–6485
Comfort Inn		499 Piney Grove Road	Columbia, SC 29210	803–798–0500
Red Roof Inn Columbia West		10 Berryhill Road	Columbia, SC 29210	803–798–9220
Residence Inn		150 Stone Ridge Drive	Columbia, SC 29210	803–779–7000
Holiday Inn Express		I–95 Exit 193 & Sc Hwy 9	Dillon, SC 29536	803–774–5111
Holiday Inn Express		103 Redbank Road	Goose Creek, SC 29445	803–572–9500
Red Roof Inn #095		2801 Laurens Road	Greenville, SC 29607	803–297–4458
Holiday Inn—Camden		Hwy 1 & 601 S	Lugoff, SC 29078	803–438–9441
Holiday Inn Oceanfront		415 S Ocean Blvd	Myrtle Beach, SC 29577	803–448–4481
Charleston Super 8 Motel		2311 Ashley Phosahate Road	North Charleston, SC 29418	803–572–2228
Holiday Inn Rock Hill		2640 N Cherry Road	Rock Hill, SC 29730	803–329–1122
Howard Johnson Resort Hotel	PO Box 130	I–95 Exit 102 Road 400	Santee, SC 29142	803–478–7676
Washington				
Bellevue Inn		11211 Main Street	Bellevue, WA 98004	206–455–5240
Quality Inn Baron Suites		100 E. Kellogg Road	Bellingham, WA 98226	206–647–8000
Wyndham Bothell		19333 N Creek Parkway	Bothell, WA 98011	206–485–5557
Econo Lodge		3518 Pacific Hwy E	Fife, WA 98424	206–982–0550
Holiday Inn Renton		800 Rainier Avenue S	Renton, WA 98055	206–226–7700
University Inn		4140 Roosevelt Way NE	Seattle, WA 98105	202–632–5055
Wyndham Sea—Tac		18118 Pacific Hwy S	Seattle, WA 98188	206–244–6666
Holiday Inn		4212 Sunset Blvd	Spokane, WA 99204	509–747–2021
Quality Inn Oakwood		N 7919 Division Street	Spokane, WA 99208	509–467–4900
Holiday Inn of Yakima		9 N 9th Street	Yakima, WA 9901	509–452–6511
Wisconsin				
Best Western Midway Hotel		780 Packer Drive	Green Bay, WI 54304	414–499–3161
Midway Hotel		3710 E Washington Avenue	Madison, WI 53704	608–244–2424
Red Roof Inn		6360 S 13th Street	Oak Creek, WI 53154	414–764–3500
Wyoming				
Holiday Inn Casper		300 West F Street	Casper, WY 82601	307–235–2531
Comfort Inn at Buffalo Bill Cody Village.		1601 Sheridan Avenue	Cody, WY 82414	307–587–5556
Ramada Limited Gillette		608 E 2nd Street	Gillette, WY 82716	307–682–9341
Holiday Inn Sheridan		1809 Sugarland Drive	Sheridan, WY 82801	307–672–8931
CORRECTIONS				
Alabama				
Voyager Inn Motel		100 Mobile Road	Aliceville, AL 35442	205–373–6344
#426 Bessemer, AL Motel 6		1000 Shiloh Lane	Bessemer, AL 35020	205–426–9646
Hojo Inn of Florence		1241 Florence Blvd	Florence, AL 35632	205–764–5421
Courtyard Marriott		4804 University Drive	Huntsville, AL 35816	205–837–1400
Monroe Motor Court	PO Box 519		Monroeville, AL 36480	205–575–3177
Ramsay Conference Center	Sta 6280	University of Montevallo	Montevallo, AL 35115	205–665–6280
Courtyard By Marriott		1824 Montgomery Hwy South	Hoover, AL 35244	205–988–5000
Connecticut				
Holiday Inn		1070 Main Street	Bridgeport, CT 06604	
District of Columbia				
Holiday Capitol Inn		550 C Street SW	Washington, DC 20024	202–479–4000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 24, 1993 UPDATE—Continued

Illinois				
Wyndham Northwest Chicago		400 Park Blvd	Itasca, IL 60143	708–773–4000
Iowa				
Sheraton Inn Des Moines		11040 Hickman Road	Des Moines, IA 50325	515–278–5575
Kentucky				
Econo Lodge—Renfro Valley		1375 Richmond Road	Mt. Vernon, KY 40456	
Maryland				
Waldorf Holiday Inn		1 St Patrick Drive	Waldorf, MD 20603	301–645–6200
Comfort Inn Westminster		451 Wmc Drive	Westminster, MD 21158	410–857–1900
Pennsylvania				
Comfort Inn		3660 Street Road	Bensalem, PA 19020	215–245–0100
Bechtel Mansion Inn		400 West King Street	East Berlin, PA 17316	717–259–7760
Penn Motel		2921 Lincoln Hwy	Trevose, PA 19047	215–639–5200
DELETIONS				
(None)				

[FR Doc. 93–6718 Filed 3–30–93; 8:45 am]
BILLING CODE 6718–26–P

federal register

Wednesday
March 31, 1993

Part VI

Federal Emergency Management Agency

State Contacts for the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

State Contacts for the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the State contacts for the Hotel and Motel Fire Safety Act national master list. The offices or officials listed are responsible for compiling the respective State listings of properties which comply with the Hotel and Motel Fire Safety Act, and should be contacted directly for any changes to the national master list.

EFFECTIVE DATE: March 31, 1993.

ADDRESSES: Comments on the State contact list or the national master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and makes periodic changes to the list.

Each State and Territory or other participating jurisdiction is responsible for compiling its respective listings of properties which comply with the Hotel and Motel Fire Safety Act. If you own or represent a property in compliance with the Act, and want to include the property in the national master list or to make an addition, deletion, or other change to a listing on the national master list, please contact the appropriate office in the State or jurisdiction where the property is located.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The State contacts for the national master list follow below.

Dated: March 18, 1993.

William C. Tidball,

Acting Director.

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST, MARCH 16, 1993

State	Office	Address	Phone	FAX
Alabama	Fire Marshal's Office	135 S Union Street, Room 140, Montgomery, AL 36130–3401.	205/269–3575	205/240–3194
Alaska	State Fire Marshal's Office	5700 E Tudor Road, Anchorage, AK 99507–1225.	907/269–5604	907/338–4375
American Samoa	Department of Public Safety	Fire Services Division, American Samoa Government, Pago Pago, American Samoa 96799.	684/633–1111	684/633–7035
Arizona	Office of the State Fire Marshal	1540 W Van Buren Street, Room 235, Phoenix, AZ 85007.	602/255–4964	602/255–4961
Arkansas	Arkansas State Police	Fire Marshal's Section, 3 Natural Resources Drive, Little Rock, AR 72215.	501/221–8258	501/224–5006
California	State Fire Marshal	7171 Bowling Drive, Suite 500, Sacramento, CA 95823.	916/427–4196	916/262–1942
Colorado	Colorado Division of Fire Safety	PO Box 158, Palisade, CO 81526–0158	303/464–0728	303/464–0729
Commonwealth of the Northern Mariana Islands.	Office of the Governor	Capitol Hill, Saipan, MP/USA 96950	670/322–5091	670/322–5096
Connecticut	Bureau of State Fire Marshal	Division of Fire and Building Safety, 294 Colony Street, Meriden, CT 06450.	203/238–6625	203/238–6148
District of Columbia	DC Fire Prevention Division	613 G Street NW, Room 810, Washington, DC 20001.	202/673–3344	202/628–5306
Delaware	State Fire Marshal	RD2, Box 166A, Dover, DE 19901	302/739–5665	302/739–3696
Florida	Division of State Fire Marshal	Department of Insurance, 101 E Gaines Street, Rm 660, Tallahassee, FL 23299–0300.	904/922–3172 x3629	904/922–2553
Georgia	State Fire Marshal	2 Martin Luther King Jr. Drive, Suite 620 West, Atlanta, GA 30334.	404/656–0418	404/656–7628
Guam	Fire Department	Pedro's Plaza, 287 W O'Brien Drive, Agana, Guam 96910.	671/477–3473	671/477–4385
Hawaii	State Fire Council	1455 S Beretania, Room 305, Honolulu, HI 96814.	808/942–9167	808/943–3322
Idaho	State Fire Marshal	500 S 10th Street, Boise, ID 83720	208/334–4288	208/334–2298
Illinois	Illinois State Fire Marshal	1035 Stevenson Drive, Springfield, IL 62703–4259.	217/785–5620	217/782–1062
Indiana	Office of the State Fire Marshal	402 W Washington Street, Room E241, Indianapolis, IN 46204.	317/232–2222	317/232–0146
Iowa	Iowa State Fire Marshal	Des Moines, IA 50319	515/281–5821	515/242–6299
Kansas	State Fire Marshal Department	700 SW Jackson Street, Suite 600, Topeka, KS 66603–3714.	913/296–3401	913/296–0151
Kentucky	Division of Fire Prevention	1047 US 127 South, Frankfort, KY 40601	502/564–3626	502/564–6799

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST, MARCH 16, 1993—Continued

State	Office	Address	Phone	FAX
Louisiana	Dept. of Public Safety and Corrections.	5150 Florida Blvd, Baton Rouge, LA 70806.	504/925–4911	504/925–4241
Maine	State Fire Marshal's Office	317 State Street, Station #52, Augusta, ME 04333–0052.	207/287–3473	207/287–5163
Marshall Islands	Office of the Commissioner	PO Box 1222, Majaro, Republic of the Marshall Islands, MH 96960.	692/9–3233	692/625–5134
Maryland	State Fire Marshal's Office	106 Old Court Road, Suite 300, Pikesville, MD 21208.	410/764–4324	410/764–4576
Massachusetts	State Fire Marshal's Office	1010 Commonwealth Avenue, Boston, MA 02215.	617/566–4500	617/566–2600
Michigan	Michigan Fire Marshal Division	7150 Harris Drive, Lansing, MI 48913	517/322–5454	517/322–2908
Minnesota	State Fire Marshal Division	450 N Syndicate, Suite 285, St. Paul, MN 55104.	612/643–3098	612/643–3095
Mississippi	Mississippi Emergency Mgmt Agency.	PO Box 4501, Jackson, MS 39296–4501	601/960–9013	601/352–8314
Missouri	Division of Fire Safety	301 W High Street, #860, Jefferson City, MO 65101.	314/751–2930	314/751–1744
Montana	Fire Prevention and Investigation.	303 N Roberts, Helena, MT 59620	406/444–2050	406/444–4722
National Government of the Federated States of Micronesia.		PO Box PS53, Palikir, Pohnpei, Eastern Carolina Islands, 96941.	691/320–2649	691/320–2785
Nebraska	State Fire Marshal's Office	246 S 14th Street, Lincoln, NE 68508–1804.	402/471–2027	402/471–3118
Nevada	State Fire Marshal's Office	Capitol Complex, Carson City, NV 89710	702/687–4290	702/687–5122
New Hampshire	State of New Hampshire Dept. of Safety.	Division of Fire Service, 91 Airport Road, Concord, NH 03301.	603/271–3294	603/271–3903
New Jersey	Bureau of Fire Safety	CN 809, Trenton, NJ 08625	609/633–6115	609/633–6134
New Mexico	New Mexico State Fire Marshal's Office.	PO Box Drawer 1269, Santa Fe, NM 87504–1269.	505/827–3550	505/827–3778
New York	Office of Fire Prevention and Control.	162 Washington Avenue, Albany, NY 12231.	518/473–9590	518/474–3240
North Carolina	Fire and Rescue Service Division.	111 Seaboard Avenue, PO Box 26387, Raleigh, NC 27603.	919/733–5435	919/733–9076
North Dakota	Consumer Protection Division	PO Box 937, Bismarck, ND 58502–0937	701/221–6147	701/221–5363
Ohio	Division of State Fire Marshal	8895 E Main Street, Reynoldsburg, OH 43068.	614/752–8200	614/752–7213
Oklahoma	State Fire Marshal's Office	4030 N Lincoln Blvd, Suite 100, Oklahoma City, OK 73105.	405/424–4371	405/424–0926
Oregon	Office of State Fire Marshal	4760 Portland Road NE, Salem, OR 97305–1760.	503/378–3473	503/373–1825
Pennsylvania	Pennsylvania Emergency Mgmt Agency.	PO Box 3321, Harrisburg, PA 17105	717/783–5061	717/772–6917
Puerto Rico	Puerto Rico Fire Department	PO Box 13325, Santurce, PR 00908–3325	809/725–3444	
Republic of Palau	National Emergency Management.	Office of the Vice President, PO Box 100, Koror, Republic of Palau 96940.	680/488–2249	680/488–1725
Rhode Island	State Fire Marshal's Office	1270 Mineral Spring Avenue, North Providence, RI 02904.	401/277–2335	401/726–9633
South Carolina	Division of State Fire Marshal	1201 Main Street, Suite 810, Columbia, SC 29201.	803/737–0660	803/737–0675
South Dakota	South Dakota Department of Health.	Division of Public Health, 523 E Capitol, Pierre, SD 57501.	605/773–3364	605/773–5904
Tennessee	Division of Fire Protection	500 James Robertson Parkway, Volunteer Plaza, 3rd Floor, Nashville, TN 37243.	615/741–2981	615/741–1583
Texas	Texas Commission on Fire Protection.	3006–B Longhorn Blvd, Austin, TX 78768	512/873–1875	512/873–1740
Utah	Office of the Fire Marshal	4501 South 2700 West, Salt Lake City, UT 84119.	801/965–4353	801/965–4756
Vermont	Fire Prevention Director's Office	Department of Labor and Industry, Montpelier, VT 05620–3401.	802/828–2288	802/828–2288
Virginia	Dept of Housing & Community Develop.	501 N 2nd Street, Richmond, VA 23219–1321.	804/371–7153	804/371–7092
Virgin Islands	Virgin Islands Fire Service	Universal Plaza, 8A Estate Thomas, Charlotte Amalie, St. Thomas, VI 00802.	809/774–7610	809/774–4718
Washington	Department of Community Development.	Fire Protection Services, 4317 6th Avenue SE, PO Box 48350, Olympia, WA 98504–8350.	206/493–9440	206/493–2648
West Virginia	Office of the State Fire Marshal	Inspection Division, 2100 Washington St. E, PO Box 51040, Charleston, WV 25305–0140.	304/558–2191	304/558–2537

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST, MARCH 16, 1993—Continued

State	Office	Address	Phone	FAX
Wisconsin	Bureau of Buildings and Structures.	Safety and Building Division, 20 E Washington Avenue, Room 103, Madison, WI 53707.	608/267-9706	608/267-9566
Wyoming	Dept of Fire Prev. and Electrical Safety.	Herschler Building, 1st Floor West, Cheyenne, WY 82002.	307/777-7288	307/777-7119

[FR Doc. 93-6719 Filed 3-30-93; 8:45 am]

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federal register

Wednesday
March 31, 1993

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Flight Attendant Duty Period Limitations and Rest Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135

[Docket No. 27229; Notice No. 93-3]

RIN AD-50

Flight Attendant Duty Period Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. This proposal would establish flight attendant duty period scheduling limitations and rest requirements. The proposal results from public and congressional interest in regulating flight attendant work hours and from data contained in a recent FAA study of current industry practice relating to flight attendant flight, duty, and rest times. The objective of the proposal is to contribute to an improved aviation safety system by ensuring that flight attendants are sufficiently rested to perform their routine and emergency safety duties.

DATES: Comments must be received on or before June 1, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 27229, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27229. Comments may be examined in room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, 304B, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments, and by commenting on the possible environmental, economic, and federalism- or energy-related impact of the adoption of this proposal. Comments concerning the proposed implementation and effective date of the rule are also specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before [60 days after publication in the **Federal Register**], and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 27229". When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

In the mid-1980's, the FAA received two petitions for rulemaking on flight and duty period limitations for flight attendants. The first petition, from the Association of Flight Attendants (AFA), was received on December 19, 1984, and was summarized in the **Federal Register** (50 FR 6185) on February 14, 1985. The second petition, from the Joint Council of Flight Attendant Unions (JCFA), was received on April 23, 1985, and was summarized in the **Federal Register** (50 FR 25252) on June 18, 1985.

In its petition, the AFA requested the introduction of flight and duty time regulations, equivalent to those currently applying to flight crewmembers, into 14 CFR parts 121 and 135. In addition, the AFA sought the limitation of flight time to no more than 8 hours, with a minimum rest period of 9 hours in a single daily duty period.

The AFA also addressed the potential costs and benefits of its proposal. The AFA did not foresee its proposal as having a major cost impact on the industry because many unions have contracts regarding flight attendant work hours that are more restrictive than the flight crewmember flight time limitations and rest requirements of 14 CFR parts 121 and 135. Additionally, the AFA asserted that its proposal would "ensure that flight attendants are rested enough to perform safely in an emergency. * * *"

The JCFA submitted a more complex proposal that recommended the establishment of specific maximum duty time limits, minimum release-to-report rest periods, minimum numbers of monthly 24-consecutive-hour rests at domicile, and at least one 24-consecutive-hour rest period every 7 consecutive days.

Both petitioners contended that such rules are necessary to protect flight attendants since some air carriers require extremely long and exhausting duty periods. The petitioners pointed out that not all flight attendants are represented by unions. Moreover, the petitioners stated that the unrepresented flight attendants have no protection from excessive duty hours. In its proposal, the JCFA stated that excessive duty hours often lead to flight attendant fatigue and can diminish the ability of flight attendants to adequately perform their safety function in air transportation.

Because of the petitions' common subject matter, the FAA considered the two petitions jointly in a single docket, No. 24397. Commenters in support of the petitions and in factor of regulating flight attendant hours of service included the petitioners, union members of JCFA, individual flight attendants, the National Transportation Safety Board (NTSB), the Air Line Pilots Association (ALPA), the International Airline Passengers Association, the Director of Aerospace Medicine at Wright State University, and several members of Congress. While not citing any studies specifically related to flight attendant duties, supporters of the rulemaking agreed with the petitioners that fatigue does have an effect on performance and that flight attendants perform an important safety function in air transportation.

The NTSB, in its comment to Docket No. 24397, stated that the Board "believes that flight attendant fatigue can be detrimental to passenger safety." In its investigation of a January 21,

1985, Galaxy Airlines L–188 accident in Reno, Nevada, the Board disclosed scheduling practices that could be detrimental to passenger safety. At the time of the accident, two of the three flight attendants had been on duty for 18 hours 39 minutes. Their estimated total hours on duty, had they completed the flight to their scheduled destination, would have exceeded 25 hours. While the NTSB investigators did not attribute the cause of the accident and subsequent fatalities to the flight attendants' possible fatigue, the Board was concerned that such long duty periods "could impair the flight attendant's ability to perform the physical and mental tasks required" in an emergency.

The Air Transport Association, People Express Airlines, and the National Air Carrier Association expressed opposition to the initiation of rulemaking for flight attendant flight, duty, and/or rest limitations. These organizations saw no safety basis for rulemaking action by the FAA and believed that, if a problem exists, it is a labor/management problem and should be resolved as such.

After considering the comments submitted, the FAA issued a Denial of Petition on January 23, 1989, basing its determination on lack of evidence of any correlation among flight attendant duty time, flight attendant safety duties, and risk to passengers. No safety justification was found for adopting more stringent daily flight time limitations and daily minimum rest requirements for flight attendants, as proposed, than the current FAR applicable to flight crewmembers. Further, the FAA found no reasonable method of determining requirements for cost-beneficial flight attendant duty times directly related to safety. The FAA concluded that the costs to the carriers to administer the proposed rules and to the FAA to enforce them, could not be justified based on any empirical or reasonably estimated safety benefit.

Later in 1989 both the House of Representatives and the Senate introduced bills to provide for the establishment of limitations on duty time for flight attendants.

On May 17, 1989, the Subcommittee on Aviation of the House Committee on Public Works and Transportation held a public hearing on the House version of the bill. At that hearing the FAA's Associate Administrator for Regulation and Certification advised the subcommittee of its intent to initiate further studies of current flight attendant scheduling practices.

The FAA completed a "Report on the Study of Current Industry Practice-Flight Attendant Flight, Duty, and Rest Times" (hereinafter referred to as the "Industry Study") on September 12, 1989. A copy of the Industry Study has been placed in the docket and is available for review. The information contained in the study, which was submitted to the House Subcommittee on Aviation, reflects a comprehensive view of current U.S. air carrier industry practices. The data collected for the study indicated that certain types of problems related to flight attendant duty hours may occur more frequently in certain industry segments than in others because of the nature of their operations. The study also noted that a variety of mechanisms are in place throughout the industry to respond to such problems. However, the results of the study suggest the need for regulatory action, which is provided by this NPRM.

On March 13, 1991, a hearing was held by the Aviation Subcommittee (Transportation Committee, House of Representatives) on the subject of flight attendant duty and rest. The FAA did not recommend rulemaking at that hearing. Subsequently, legislation pending, now H.R. 14, was voted out of committee and passed the House. In 1992, a provision was added to both the House and Senate versions of FAA's appropriations bill which incorporated the language of H.R. 14, but the provision was deleted in conference. On January 5, 1993, H.R. 14 was reintroduced by Congressman Mineta.

General Discussion

Historical Review

The Civil Aeronautics Act of 1938 (52 Stat. 1007; as amended by 62 Stat. 1216, 49 U.S.C. 551) and subsequently, the Federal Aviation Act of 1958 (72 Stat. 775, 49 U.S.C. 1421) addressed the issue of regulating flight crewmember hours of service. The 1958 Act, as amended, empowers and directs the Secretary of Transportation to promote the safety of civil air flight in air commerce by prescribing and revising from time to time "reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees." This section of the Act has been cited in arguments for establishing flight and/or duty and rest limitations for flight attendants, who are required crewmembers [1] aboard certain commercial aircraft, but who are not defined as flight crewmembers.

Flight time limitations and rest requirements for domestic air carrier flight crewmembers were revised in 1985 (50 FR 29319; July 18, 1985). At the time of that rulemaking, a number of commenters pointed out that the proposed rule for flight crewmembers did not apply to flight attendants and that regulations should be enacted to cover those employees. Recognizing the unique duties and responsibilities held by flight attendants, the FAA chose to consider flight attendant work limits as a separate issue.

14 CFR 121.391, 125.269, and 135.107 require flight attendants on certain passenger-carrying airplanes. Other regulations require flight attendants to meet specific and recurrent training requirements dealing with normal safety duties, emergency evacuation procedures, and hijacking incidents. Flight attendants perform essential safety duties, including the following: (1) Identifying the location and using emergency exits, fire extinguishers, first aid kits, flotation devices, oxygen masks, and slides, (2) employing land and water evacuation procedures, including issuing evacuation commands, redirecting all passengers, and removing nonambulatory passengers; (3) responding to in-flight emergencies such as smoke or fire in the cabin, turbulence, medical emergencies, airplane decompressions, and airplane hijackings; and (4) using nonemergency safety procedures, including checking emergency equipment before flight, ensuring that baggage is correctly stowed so it will not block any exit in case of an emergency evacuation, securing galleys, briefing the passengers on safety equipment, emergency evacuation, and crash landing procedures, and ensuring compliance with all other applicable safety regulations. In recognition of their safety-sensitive role as crewmembers, flight attendants are subject to the alcohol and drug use regulations (§ 91.11, new § 91.17 effective August 18, 1990), and to regulations on drug testing (§§ 121.429, 121.455, 121.457, 135.249, 135.251, 135.353).

Because such safety regulations are applied to flight attendants as well as flight crewmembers, there is a growing complaint about the absence of duty and rest requirements for flight attendants. Flight attendants are the only safety-sensitive aviation group that does not have such rules.

Industry Study

The Industry Study focused on air carrier's scheduling practices and on

[1] Section 1.1 of the FAR, General definitions, distinguishes between a flight crewmember (pilot, flight engineer, or flight navigator) and a crewmember (person assigned to perform duty in an aircraft during flight time). The FAR contain rest and duty requirements only for flight crewmembers.

flight attendant's actual work hours. The study divided the air carrier industry into four categories: Majors, nationals, regionals, and supplementals. Each category generally differs in route structure and provides varying levels of service to the traveling public. Rather than serve as a general survey of industry practice, the Industry Study was designed to review current industry practice to identify extreme cases when contract/work rule limits were exceeded and where there were no work rules.

According to figures provided by airlines, unions, and the FAA field offices, approximately 83,000 flight attendants are employed in these four segments of the U.S. air carrier industry. Carriers selected for this review represented a cross section of the industry and the various types of operations. The study examined the work rules and policies of 36 U.S. air carriers, including the findings from 21 on-site visits, and provided detailed information concerning flight attendant work schedules. The work hours of flight attendants employed by these carriers are governed by union contracts, company work rules, or guidelines determined by the carrier. The Industry Study verified that scheduling guidelines vary considerably within the industry because of fundamental operational differences among the carriers.

Preliminary input was obtained from the FAA principal operations inspectors (POI's) assigned to monitor the operations of 74 air carriers throughout the country. The Industry Study noted that, even though the POI's work with flight attendants is limited to issues of cabin safety rather than duty hours, the POI's receive flight attendant complaints and comments about conditions that may affect cabin safety.

The information from the POI's indicated that most air carriers, including all majors and nationals, had union contracts or written work rules governing flight attendant scheduling. The carriers' recordkeeping practices varied widely, as was confirmed by the study. The POI's reported that, in about one-fifth of the 74 carriers, they had observed or been told about potential problem areas of long duty periods or minimum rest periods. Some of the POI's emphasized the need for flight attendants to be well-rested in order to respond effectively in emergency situations.

Parameters chosen for analysis in the Industry Study were based on a variety of established guidelines, including flight crewmember flight and duty time, and rest requirements in FAR parts 121 and 135. Normal and minimum scheduling limits were based on industry practice and on the current flight crewmember regulations. Data collected targeted longer-than-average duty days, below minimum rest periods, and instances of a high number of flight hours in a day, week, month, or year. The study revealed examples outside the boundary of normal industry practice. These "extreme" cases included lengthy work days, inadequate rest periods, and a high number of consecutive days worked. The study noted that, while certain extremes did not occur frequently, they could be expected to occur under circumstances such as weather, mechanical, air traffic control (ATC), and other types of operational delays typical of air transportation. Other extremes noted were a result of flight attendants voluntarily exceeding company-prescribed limits to receive extra pay or days off, or to avoid adjustments to their work schedule.

Listed below are the parameters chosen for analysis and a summary of findings regarding each parameter:

• Union Representation and the Existence of Contract/Work Rules

The FAA estimates that approximately 78 percent of all U.S. flight attendants have scheduling guidelines implemented through union contracts that establish wages, work hours, and working conditions. The remaining flight attendants have their hours of service set by their employers, usually based on written work rules, policies, or guidelines. As noted in congressional testimony and in the Industry Study, flight attendants may be subject to lengthy duty periods and inadequate rest when flights are delayed due to weather, mechanical problems, or carrier scheduling problems. Although a unionized flight attendant can follow established grievance procedures if a carrier exceeds his or her union contract's flight, duty, and rest limits, these procedures can be lengthy and may result in the flight attendant's suspension from service until the matter is resolved. Nonunion flight attendants have limited recourse for excessive work hour assignments.

• Guidelines or Policies for Scheduling a Flight Attendant's Work Day, Domestically and Internationally

Flight attendant records reviewed in the Industry Study showed that the number of actual work hours per day ranged from as few as 4 to more than 20. Typical actual duty periods for domestic operations were 14 hours or less; for international operations they ranged between 14 and 16 hours. A small percentage of the actual duty periods documented were more than 20 hours. Lengthy work days are typically a result of delays due to air traffic control, weather, mechanical, or operational difficulties. While each industry segment experienced such problems, supplemental carriers appeared to have the highest occurrence of lengthy work periods, primarily because of their geographically widespread operations and limited operational flexibility due to fewer crew bases or maintenance facilities, or fewer aircraft.

• Number of Scheduled Flights per Duty Day

The number of scheduled flights per duty day did not appear to be an industry problem because the number of flights are effectively limited by the number of scheduled work hours. Regional carriers were found to be more susceptible to scheduling a high number of flights per day because of their route structures and the short duration of their flight segments.

• Scheduled Rest Periods

Limited air carrier documentation of actual flight attendant rest periods was available. Generally, the records reflected actual flight and duty hours rather than the actual length of rest periods. Eight hours to nine hours appeared to be the standard minimum rest received in domestic operations. Twelve hours minimum was common in international operations. However, some cases in which rest periods fell below 8 hours because of operational irregularities were documented.

• Flight Attendants Voluntarily Exceeding Set Work and Rest Limitations

A majority of the carriers allowed flight attendants to voluntarily waive carrier or contract flight and duty limits and certain rest limits to make scheduling adjustments or work extra hours for additional pay. This provision allows carriers and flight attendants increased scheduling flexibility.

• Maximum Number of Flight Hours Scheduled per Week/Month

The maximum number of flight hours scheduled per week and month were not restricted by the majority of carriers reviewed. Few cases of flight hours exceeding 14 CFR parts 121 and 135 flight crewmember flight time limits were documented. Instances in which flight hours exceeded FAR or company guidelines appeared to be a result of flight attendants voluntarily working additional flight hours.

• Number of Consecutive Days Worked

The number of consecutive days worked was limited by a majority of the carriers, which required that flight attendants be relieved for at least 24 consecutive hours every 7 days. Excesses found in this area were attributed to flight attendants voluntarily waiving their time off.

The variations noted in duty time and rest hours resulted from air carriers exceeding their established operational guidelines and flight attendants voluntarily exceeding limits. The Industry Study confirmed that, whether voluntarily or at the direction of the carrier, contract/work rule limits are exceeded limits are exceeded on a limited but consistent basis.

The FAA also reviewed foreign civil aviation regulations on the limitation of flight attendant flight, duty, and rest requirements. The FAA obtained information from foreign embassies, foreign civil aviation authorities, foreign air carriers, and the International Civil Aviation Organization (ICAO) Circular, "Flight Crew Fatigue and Flight Time Limitations" (25–AN/47/6, 1984). Generally, countries that do regulate flight attendant work hours apply similar limitations to flight crewmembers and flight attendants. Yet, while similar, flight attendant limitations are typically less restrictive than flight crewmember limitations.

Several foreign government civil aviation authorities cite aeromedical information as the basis for their regulations on flight attendant work hours, although none cited specific studies on flight attendant work hours, rest, or safety issues. Six of the countries reviewed established limits specifically to control fatigue.

Flight Attendant Duty, Rest

The proposals contained in this notice would limit flight attendants' work by scheduled duty hours rather than by flight hours. In addition, the proposals would establish rest period requirements for flight attendants.

The duty-hour approach is based on the flight attendant's typical work day. For the purposes of assignments involving flight time, the duty period includes the total elapsed time between when the flight attendant reports for a flight assignment, as required by the air carrier, and when the flight attendant is relieved from duty by the air carrier. Flight attendant duties include pre- and post-flight safety-related duties.

Pre-flight safety duties include aircraft emergency equipment checks and passenger boarding. The Industry Study noted that air carriers vary in how early they require flight attendants to check in to begin their duty periods and pre-flight duties. This check-in or report time varies depending on the type of equipment flown and the flight destination. Carriers typically require flight attendants to arrive 30 minutes to 1 hour before scheduled departure. The Industry Study noted that some carriers require flight attendants to report for duty up to 2 hours before departure on international flights.

Post-flight safety duties include the safe deplaning of passengers, duties related to securing the aircraft, and administrative responsibilities such as reporting inoperative cabin safety equipment to maintenance personnel. Typically, flight attendants are required to remain on duty after the aircraft arrives at the gate to accomplish these post-flight duties before they are relieved from duty. Thus, a flight attendant's work is not solely a function of whether the aircraft is airborne, because they perform very important safety duties during boarding and deplaning.

Under the proposal, if a flight attendant reported for duty as required and found that the flight assignment was incorrectly scheduled or that the flight was delayed or canceled, a duty period nevertheless would have begun. For example, a flight attendant may report for duty as scheduled, only to find that the assigned report time is incorrect and that duty actually begins 2 hours later. The carrier could either keep the flight attendant on duty or release the flight attendant for a complete rest period under the applicable section of this proposed rule.

Training, gate duties (such as assigning seats, collecting tickets and boarding passes), or other ground duties not directly associated with a particular flight assignment, such as ticketing or reservations, are not considered as assignments involving flight time for purposes of this proposal. The proposed rules are intended to regulate activities that are normally performed by flight attendants. The rules are not intended to regulate activities unrelated to normal flight attendant duties; nevertheless, these types of duties could not be performed for a carrier during a required rest period.

A major issue in establishing limitations for flight attendants is the compatibility of the proposed flight attendant limitations with the flight, duty, and rest limitations for flight crewmembers. The proposed regulation for flight attendants is based on duty periods, while the current regulations for flight crewmembers are based on flight hours. Under certain conditions, current flight crewmember regulations, particularly for flag and supplemental operations, may permit extremely long duty periods, as much as 30 hours or more. These are based on flight hours and formulas that may require extended rest periods in case of extended flights. Some flight crewmember regulations also are based on substantially augmented crews and adequate sleeping quarters on the airplanes. It is therefore difficult to compare the flight crewmember rules with the proposed international limits for flight attendants. Most rest and scheduling provisions in the proposed rule appear compatible with most flight crewmember scheduling provisions, and the concept of augmented crews is carried over from the flight crewmember regulations as well. But while sections of this proposed regulation are compatible with the flight crewmember rules, the FAA is not aware of a reliable formula or ratio for absolutely matching flight hours to duty hours.

The intent of this proposed rule is to ensure that flight attendants are rested, through properly scheduled duty periods and rest periods, without causing major recordkeeping or staffing burdens to the air carriers, the flight attendants, or the FAA. The proposal would do this, in part, by having carriers set schedules based on past operating experience. Regular delays on certain routes or deviations from certain schedules would indicate that the schedules need to be adjusted to comply with the proposed limitations. As with current pilot regulations, the proposal acknowledges that certain delays, such as adverse weather, cannot be anticipated. For example, § 121.471(g) states that "A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather conditions), are not at the time of departure expected to reach their destinations within the scheduled time." Nevertheless, carriers would be expected to recognize when certain schedules need adjustment due to regularly experienced delays. The addition of recordkeeping requirements for flight attendants, as proposed, would assist both the carriers and the FAA in monitoring the effectiveness of the scheduling process.

The FAA recognizes that the current regulations for flight crewmembers are inconsistent among themselves regarding disincentives for exceeding scheduled duty time (for example, there

are differences in the rest requirements in the domestic, flag, and supplemental rules). The FAA solicits comments on establishing compensatory rest periods for flight attendants in the event that scheduled duty periods are exceeded.

This proposal is a preventive measure designed to address the potential safety problems that may occur if fatigued flight attendants work extended duty hours or receive inadequate rest because of air carrier scheduling or flight attendants voluntarily scheduling their own work hours in excess of reasonable limits. This proposal is not a response to specific accidents. Data are not available to demonstrate a link between flight attendant fatigue and the outcome of accidents in which flight attendants have exercised their safety duties. Since flight attendants are required crewmembers and need to be alert and exercise judgment in performance of routine and emergency safety duties, the air safety system would be enhanced by limiting the potential for fatigue. This proposed measure would place limitations on flight attendant hours of service by requiring certain scheduling limitations and minimum rest periods.

Possible Alternative Procedure

Although the FAA does not expect the lack of a formula to present scheduling problems, carriers may prefer the option of scheduling flight attendants under the same flight, duty, and rest requirements that exist for flight crewmembers. Therefore, the FAA invites comments on the possibility of modifying the proposal, as presented in this NPRM, to add an option for air carriers, commuters, and other operators to either follow the proposed duty and rest requirements set forth in this NPRM or apply flight crewmember requirements to flight attendants. Because there are differences in the rest requirements among the flight crewmember regulations (i.e., domestic, flag, and supplemental regulations), persons interested in applying the flight crewmember regulations to flight attendants as an alternative should submit detailed concepts and plans, to include estimated cost data, on how such an option would work. These comments should include consideration of the flight crewmember flight time and rest regulations applicable to domestic, flag, and supplemental air carriers under 14 CFR part 121 and the flight time and rest regulations applicable to air taxi operators under 14 CFR part 135. The FAA will evaluate all concepts and may include such an option in any final rule.

Discussion of the Proposals

The proposed rule would establish duty, rest, and recordkeeping requirements for flight attendants under parts 121, 125, and 135.

The proposed regulatory limitations for Parts 121 and 135 were based in part on current industry practice as reflected in the Industry Study. These proposed amendments should be compatible with air carrier operations and should meet the objective of providing reasonable, basic limitations that are conducive to safety. The proposed regulatory requirements for Part 125 flight attendants are the same as the Part 125 requirements for flight crewmembers.

Proposed §§ 121.466(a) and 135.273(a) of this NPRM contain a list of terms and definitions applicable to the proposed amendments. Under the proposals, "duty period" is defined as the period of elapsed time between when the flight attendant reports for an assignment involving flight time, and ends when the air carrier or certificate holder releases the flight attendant from duty. The proposed rule is intended to ensure that flight attendants are rested between duty periods that entail flight assignments. Hence, the scheduling limitations apply only to duty periods entailing flight assignments, rather than assignment to training or ground duties. The FAA believes that restricting the applicability of this notice to duty periods entailing flight assignments will not pose problems of carriers scheduling flight attendants to ground duty followed by flight duty. The agency solicits comments, however, on this issue.

The proposed rule defines a "rest period" as a period free of all restraint or duty for the certificate holder, and free of all responsibility for work or duty should the occasion arise. A rest period is considered personal time. For example, a flight attendant could not be released from duty for a required rest period while on board an airplane on a long international flight, since, clearly, the flight attendant would be under restraint by the carrier and the flight attendant would be on the airplane at the direction of the carrier. Thus, deadhead transportation as described in § 121.466(m) and § 135.273(m) could not occur during a required rest period.

Under the proposal, a "flight attendant" is considered to be an individual, other than a flight crewmember, assigned to duty in an aircraft during flight time and whose duties include, but are not necessarily limited to, cabin safety responsibilities. Thus, all flight attendants, including required and nonrequired (those assigned in accordance with the required minimum complement of flight attendants required for a particular flight under § 121.391, § 135.107, or the carrier's operations specifications, and flight attendants in excess of that minimum complement), would be covered by the proposed rule. All assigned flight attendants are crewmembers, whether required or nonrequired, and would be expected to respond to emergencies or routine passenger safety duties, regardless of whether they were part of the minimum required flight attendant crew.

For clarification purposes, the proposal defines "calendar day" as the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Part 121 and Part 135

The Addition of Flight Attendant Duty Limitations and Rest Requirements—Part 121, Subpart P, (All Certificate Holders); Part 135, Subpart F, (All Certificate Holders)

Duty Limitations

The basic duty period scheduling limitation in all operations would be 14 hours, under proposed §§ 121.466(b) and 135.273(b). Longer duty periods could be scheduled if a longer rest period is scheduled and additional flight attendants were assigned to each flight on which the flight attendant worked. These additional flight attendants would be over the minimum complement required under the carrier's or the certificate holder's operations specifications. This minimum complement is established under § 121.391. Section 121.391 requires one flight attendant for every 50 passenger seats. However, as specified in § 121.391(c), if the certificate holder uses more than the minimum number of flight attendants to conduct the emergency evacuation demonstration required under § 121.291, then the number of flight attendants used in the demonstration is set forth in the certificate holder's operation's specifications as the minimum complement required for the aircraft.

Under the proposed duty period regulation, additional flight attendants would be required as follows:

- For a duty period scheduled for more than 14 hours, but no more than 16 hours, 1 additional flight attendant. (Proposed §§ 121.466(e) and 135.273(e)).
- For a duty period scheduled for more than 16 hours, but no more than 18 hours, 2 additional flight attendants. (Proposed §§ 121.466(f) and 135.273(f)).

• For a duty period scheduled for more than 18 but no more than 20 hours, 3 additional flight attendants. (Proposed §§ 121.466(g) and 135.273(g).)

The longer scheduled duty periods are contingent upon the assignment of additional flight attendants in order to provide an extra measure of safety by distributing the workload and permitting more rest. This will ensure that flight attendants are more alert and can contribute to safer operations. It is important to note that if a flight attendant were scheduled for a duty period longer than 14 hours, the appropriate number of additional flight attendants would have to be present on every flight segment to which that flight attendant was assigned. In practical terms, the FAA expects that this would occur on larger aircraft and, generally, long-haul operations with relatively few flight segments. This result would be consistent with the intent of the proposal and consistent with current industry practice. Normally, it was found that flight attendants on domestic operations were scheduled for 14 hours or less of duty, and that longer duty periods occurred on international flights.

The provision for additional flight attendants on longer international flights is intended to provide an extra measure of rest, particularly on prolonged flights, which may extend to 14 or more hours of flight time. The FAA recognizes that it is common industry practice for air carriers to provide flight attendants in addition to the FAA minimum complement when operating long-range nonstop international flights. In addition, the FAA believes that most airplanes on which long-haul operations would be conducted already provide adequate designated flight attendant seats, so that air carriers and operators would seldom need to block revenue passenger seats to accommodate the additional flight attendants.

No duty period could be scheduled for more than 20 hours, regardless of the nature of the air carrier operation. Duty periods could be extended under conditions in which unforeseen operational delays, including unforecast adverse weather, ATC, or mechanical delays, occur in flight or at the time of departure. Unforeseen delays include any unanticipated delays that exceed the reach or control of an operator and that disrupt an otherwise properly scheduled flight.

These proposed flight attendant scheduling limitations parallel flight and duty limitations and rest time requirements for flight crewmembers, which are also predicated on the assumption that the scheduled flights normally terminate within the limitations. Scheduling would be expected to be based on what the carrier's experience showed to be a normal timeframe for a given flight or duty period. This is described in proposed §§ 121.466(o) and 135.273(o). These sections state that a flight attendant is not considered to be scheduled for duty in excess of the duty limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier or operator, such as adverse weather conditions, are not at the time of departure expected to reach their destination within the scheduled time.

Rest

Under proposed §§ 121.466(c) and 135.273(c), an air carrier or certificate holder would be required to schedule a rest period of at least 9 hours for any flight attendant who worked a duty period scheduled for 14 hours or less. This rest period would have to occur between the completed duty period and the next duty period.

Proposed §§ 121.466(d) and 135.273(d) would permit this rest period to be scheduled or reduced to a minimum of 8 consecutive hours, provided that the flight attendant was scheduled to receive a subsequent rest period of at least 10 consecutive hours. In no case the actual rest period be less than 8 consecutive hours. The subsequent rest period must be scheduled to begin within 24 hours of commencement of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period. This rest provision is comparable to the domestic flight crewmember limitations in current §§ 121.471 (b)(1) and (c)(1), and 135.265 (b)(1) and (c)(1).

For any duty period scheduled for more than 14 hours, flight attendants would be required to receive a scheduled rest period of at least 12 consecutive hours, in accordance with proposed §§ 121.466(h) and 135.273(h). The rest period would be required to be given following the duty period, and prior to the next duty period. Under proposed §§ 121.466(i) and 135.273(i), the rest period could be scheduled or reduced to 10 consecutive hours, provided the flight attendant received a subsequent rest period of at least 14 consecutive hours. In no case could the actual rest period be less than 10 consecutive hours. The subsequent rest period must be scheduled to begin no later than 24 hours after the commencement of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

Both the 8-hour and 10-hour reduced rest periods could be planned, under the proposal. However, under no circumstances would flight attendants be permitted to receive any less than 8 consecutive hours of rest following a scheduled duty period of 14 hours or less, or any less than 10 consecutive hours of rest following a duty period of more than 14 scheduled hours. The provision for a longer rest period subsequent to any reduced rest period would prevent a flight attendant from receiving two consecutive minimum rest periods.

To facilitate the provision of the compensatory rest period following the 10-hour reduced rest period, §§ 121.466(j), and 135.273(j) are proposed. These paragraphs state that, notwithstanding the permitted duty periods of up to 20 scheduled hours, flight attendants cannot be scheduled for duty periods of 14 or more hours during the 24-hour period commencing after the beginning of the reduced period.

Allowances for reduction in rest would permit carriers to make scheduling adjustments in case of operational delays. The subsequent longer rest of 10 or 14 consecutive hours, like the flight crewmember limits, is intended to provide safeguards if the basic scheduled rest period is reduced, and to minimize the effects of fatigue.

A rest period must be prospective in nature, with the flight attendant knowing the rest period is scheduled and will be of a specified duration. The rest periods required by this proposal would be required to be taken over a period of consecutive hours at the flight attendant's domicile or away from their base, but may not be taken on the air carrier's aircraft. The FAA's intention is that the rest period be continuous, that is, uninterrupted by duty with the carrier.

Proposed §§ 121.466(l) and 135.273(l) would preclude any carrier from assigning any type of duty, including nonflight assignments (such as training or ground duties), to any flight attendant during a required rest period. However, the FAA requests comment on the most appropriate way to address reserve status, stand-by status or any similar assignments. Current industry practice varies in regard to the use of these terms and their relationship to duty or rest. The definition of rest period, as

proposed, would preclude not only the assignment of duty during a required rest period but also the scheduling of reserve status or similar assignments during a required rest period. Public input will be considered in the clarification of terms and in determining the appropriate treatment of this issue in the final rule.

Weekly rest requirements are set forth in proposed §§ 121.466(n) and 135.372(n), which state that each flight attendant engaged in air transportation shall be relieved from all duty for at least 24 consecutive hours during any 7 consecutive calendar days. Similar provisions currently apply to mechanics, dispatchers, and flight crewmembers. The proposed 24-hour rest could be taken during a layover. As the Industry Study indicated, it is already common practice among a majority of the carriers to provide 24 hours free from duty in a 7-day period. Requiring 24 hours rest within a 7-day period, in combination with the other minimum rest requirements, should help ensure that flight attendants are adequately rested prior to undertaking a flight assignment; the requirement is not intended to ensure that the flight attendants are adequately rested for training or other non-flight related activities. The 24-hour rest requirement could be postponed if a delay occurs during a duty period at the end of a period of 6 consecutive days worked, and the circumstance surrounding the delay is unforeseen and beyond the control of the carrier. The 24-hour rest period would immediately follow the completion of that duty period.

Proposed §§ 121.466(m) and 135.273(m) define deadhead transportation in a manner consistent with the use of the term in current pilot flight, duty, and rest regulations. Deadhead transportation is considered transportation, not local in character, that an air carrier requires of a flight attendant and provides to transport the flight attendant to an airport at which the flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station. Time spent in deadhead transportation is not considered part of a rest period.

The proposal would place shared responsibility on air carriers and flight attendants for ensuring that the flight attendant has received minimum rest prior to assigning or accepting assignment for a duty period. This is reflected in proposed §§ 121.466(k) and 135.273(k). These include both daily and weekly rest requirements.

General

The FAA considered a number of options prior to proposing those outlined here. This proposal takes a combined approach based on duty scheduling limitations, daily and weekly rest requirements, and augmented flight attendant crews. The single set of scheduling limitations was selected for all types of affected operations for several reasons as explained below.

Another alternative was setting lower scheduling limitations, or setting different limitations for different types of operations. This proposal, however, was designed to be as simple as possible to follow and monitor, and at the same time provide effective parameters for duty schedules and rest. The proposal sets one basic scheduled duty and rest limitation, based on typical industry practice, of 14 hours of scheduled duty and 9 hours of scheduled rest. Carriers would have additional flexibility under the proposal to increase the scheduled duty periods, but only under certain conditions. Comments are invited regarding this approach.

In particular, consideration was given to setting shorter duty period limitations and rest requirements for domestic operations, and longer duty period limitations and rest requirements for international operations. It was recognized that much domestic flying, especially regional and commuter flights, may entail flight segments of only 2 hours or less, while flag and supplemental operations may entail flights for more than 4 hours. Thus, separate regulations may be feasible. Many carrier contracts and work rules are based on these assumptions, which are also a basis for differing pilot flight, duty, and rest regulations. However, the distinction between domestic and international operations is not always useful. International flights to Canada, Mexico, or the Caribbean may be short haul. These can be completed in shorter duty periods, requiring shorter minimum rest periods, and using smaller airplanes. Transcontinental domestic flights may bear more resemblance to long haul transoceanic flights, requiring longer duty periods and correspondingly longer rest periods.

Permitting longer duty periods is expected to allow the carriers flexibility based on the nature of the operation rather than whether it crosses international borders. Although the same regulations are contained in part 135 as in part 121, this has been done mainly for the sake of standardization. It is not expected that most regionals operating small aircraft will find it feasible to add 1 to 3 flight attendants to their short-haul flights simply to schedule longer duty periods. However, this option would be feasible for flights on large and, especially wide-body, aircraft on long-haul flights in which actual flight time may be as much as 14 hours.

These proposals are intended to provide basic scheduling limitations, and ensure at least minimum rest. If carriers intended to use longer scheduling limitations, they would have to meet certain safety-oriented conditions.

Part 125, Subpart B—Certification Rules and Miscellaneous Requirements

The Addition of Flight Attendant Duty Limitations and Rest Requirements

14 CFR part 125 was not addressed in the Industry Study, the petitions for rulemaking. As of February 1990, FAA statistics show that there are 48 active part 125 operators.

The proposed duty and rest limits for flight attendants were designed to address the needs of air carriers transporting revenue passengers. To apply the parts 121 and 135 proposed amendments to part 125 operators would be inappropriate because these operators have different scheduling concerns. The FAA acknowledges these operational differences and has instead included flight attendants in § 125.37 which is entitled "Duty time limitations."

Section 125.37(a) currently requires that each flight crewmember be relieved from all duty for at least 8 consecutive hours during any 24-hour period. This proposal would extend these provisions to part 125 flight attendants. Current § 125.37(b) allows the Administrator to specify rest, flight time, and duty time limitations, other than the limits listed in paragraph (a), in the carrier's operations specifications. This notice proposes no change to § 125.37(b); however, since paragraph (a) extends its provisions to flight attendants, paragraph (b) would apply to flight attendants as well.

Recordkeeping Requirements, Parts 121, 125, and 135

Present §§ 121.683 and 135.63 require that a certificate holder maintain current records of each crewmember's flight time records. Section 121.683(a)(1) currently requires certificate holders, supplemental air carriers, and commercial operators to maintain crewmember records, including those showing compliance with flight time requirements. The proposed revision to § 121.683(a)(1) would add duty and rest

requirements to the list of items carriers need to track. Carriers would need to maintain records of flight attendant daily duty and rest periods as well as weekly rest periods. The proposed revision to § 135.63 would add a subparagraph (a)(5) to require that certificate holders maintain records on flight attendant duty periods and rest periods in sufficient detail to determine compliance with the duty period limitations and rest requirements. The proposed records requirements will aid the carriers and the FAA in monitoring compliance with the proposed duty time and rest requirements.

The proposal to include flight attendants in § 125.37 would automatically incorporate recordkeeping requirements for flight attendants into the current recordkeeping requirements for crewmembers as described in § 125.401.

Additional Changes and Changes to Subpart Titles

For simplicity in the regulation, the FAA proposes to address all duty period limitations and rest requirements for all flight attendants in part 121 operations under a revised subpart P. This would require retitling the subpart, which currently addresses dispatchers only. The new title of the subpart would be "Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers; Flight Attendant Duty Period Limitations and Rest Requirements: Domestic, Flag and Supplemental Air Carriers and Commercial Operators." Section 121.461, "Applicability," would be revised to include the flight attendant duty period limitations and rest requirements.

Also under this proposal, the heading of part 135, subpart F, would be revised to eliminate the reference solely to "flight crewmembers," to reflect that the subpart would pertain to flight crewmembers and flight attendants. A new paragraph (e) on applicability would be added to § 135.261 to introduce a new section relating to flight attendant duty period limitations and rest requirements. Proposed § 135.273 would incorporate the duty limitations and rest requirements for flight attendants.

Paperwork Reduction Act

Information collection requirements for parts 121, 125, and 135 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers as follows: For part 121, OMB Control Number 2120–0008; for part 125, OMB Control Number 2120–0085; and for part 135; OMB Control Number 2120–0039. The FAA is preparing changes to these control numbers to reflect the additional paperwork requirements proposed herein and will submit those changes to OMB.

Regulatory Evaluation Summary

The FAA's initial regulatory evaluation of the proposed amendments is summarized here. A copy of the complete evaluation has been included in the regulatory docket opened for the NPRM, along with the initial Regulatory Flexibility Determination and International Trade Impact Assessment.

The proposed amendments would establish flight attendant scheduled duty period limitations and rest requirements as provided for by the Federal Aviation Act of 1958, as amended, which empowers and directs the Secretary of Transportation to regulate rules concerning hours of service of "airmen and other employees" in the interest of safety. The proposed rule seeks to address insufficient rest that could affect safety in commercial aircraft, without imposing major economic burdens or alterations to the carriers' operations. The proposed rule follows extensive debate on the issue, and responds to concern expressed in Congress, the National Transportation Safety Board, and the industry.

The intent of this evaluation is to examine and, to the extent feasible, quantify the costs of the proposed rule. Cost estimates are considered for a 15-year period, and monetary values are based on 1992 dollars discounted at an annual effective rate of 7 percent.

This initial regulatory evaluation of the proposed rule to establish scheduled duty period limitations and rest requirements for flight attendants indicates that costs to operators would be incurred in the areas of recordkeeping and higher personnel costs in order to augment flight attendant crews. It is expected that the proposed rule would have its greatest effect on supplemental carriers.

Potential benefits are examined from a qualitative perspective, considering a variety of factors. The FAA expects the proposal, if enacted, to help ensure that flight attendants are rested and alert when performing both emergency and routine safety-related duties, thereby reducing passenger and crew injuries and fatalities in air carrier accidents. The proposal seeks to take the initiative rather than be reactive. That is, the FAA is proposing to act when the earliest symptoms appear in order to prevent a safety problem from occurring. In this case, the symptom is duty time and inadequate rest periods for flight attendants and it creates a potential safety problem because it could impede their performance during emergency evacuations or during routine safety duties requiring a high degree of alertness.

The proposed rule would establish scheduled duty period limitations and rest requirements for flight attendants under parts 121 and 135 of the FAR and would add flight attendants to the part 125 rest and recordkeeping requirements for flight crewmembers. Under parts 121 and 135, the FAA proposes to do the following: (1) Establish maximum scheduled duty periods; (2) establish minimum scheduled rest requirements; (3) allow reduced rest with provisions for compensatory rest; (4) establish at least a 24-consecutive-hour rest period during any 7 consecutive calendar days; and (5) require records to be maintained for each flight attendant on the proposed duty period limitations and rest requirements. The proposal would require one flight attendant in addition to the minimum crew for flights in scheduled duty periods of more than 14 hours but no more than 16 hours; two more than the minimum crew for flights in scheduled duty periods of more than 16 hours but no more than 18 hours; and three more than the minimum crew for flights in scheduled duty periods of more than 18 hours but no more than 20 hours.

The FAA recognizes that there is a great deal of uncertainty associated with determining the benefits and costs of this action. The FAA invites comments on the evaluation. Persons submitting comments are requested to provide specific economic and trade data along with their comments about the costs or benefits of the proposal. In addition, the FAA invites recommendations for better methods of achieving the objectives of the rule changes proposed in this notice.

Costs

The FAA estimates that over 15 years, the proposed amendments could cost the air carrier industry from $11.0 million to $32.2 million, discounted, in 1992 dollars. This cost range is because of uncertainty regarding the impact of certain of the proposed requirements, particularly for augmented flight attendant crews on flights in duty periods scheduled for more than 14 hours. The FAA believes that costs to most carriers in the current air carrier environment would be limited to recordkeeping and, in some cases, increasing flight attendant staffing on

certain flights to provide the augmented crew that would be required for scheduled duty periods of more than 14 hours. Augmented flight attendant crews are already common in the industry, but the proposed rule would require carriers to augment crews more frequently than they do now.

The lower end of the range reflects recordkeeping costs, which would be incurred by all affected operators. This lower end cost estimate assumes that a large number of carriers are already in compliance in varying degrees. The higher end of the range includes recordkeeping costs plus increased personnel costs that would be incurred in order to augment flight attendant crews. The upper end cost assumes that carriers are largely in compliance with the proposed requirements, but that a minority of carriers schedule flight attendants for duty periods longer than 14 hours on flights with only the minimum crew required under § 121.391 and the carrier's operations specification. The FAA requests additional information with documentation, if available, on any costs that would be incurred if the proposal is adopted as a rule.

The costs are based on the following FAA estimates: (1) The number of active flight attendants; (2) salary levels for flight attendants; (3) the initial cost of modifying an existing recordkeeping system to include flight attendants; and (4) the recurrent cost of maintaining records of flight attendant duty and rest times. Because supplemental carriers are expected to be disproportionately affected by the proposed rule, their costs are examined separately.

The actual cost of modifying the recordkeeping system tracking flight, duty, and/or rest time for flight crewmembers and other operations personnel to include flight attendants is expected to vary from carrier to carrier. These actual costs are based on the number of flight attendants employed by the air carrier, the sophistication of the carrier's present recordkeeping system, the adaptability of that recordkeeping system to include flight attendant records, and whether a system to monitor flight, duty, and/or rest times for flight attendants already exists.

In conducting research for the Industry Study, the FAA found that carriers use automated, semi-automated, and manual recordkeeping systems to monitor flight, duty, and rest times for operations personnel. Carriers often include flight attendants in their tracking systems to ensure and monitor compliance with company or union restrictions, to maximize utilization, or for payroll purposes.

The total cost of modifying recordkeeping systems industry-wide is estimated to be approximately $462,000, nondiscounted in 1992 dollars, for the industry's approximately 83,000 flight attendants. This would include approximately $6,700 for flight attendants employed by supplemental air carriers, and approximately $455,600 for the rest of the industry. The recurring cost to update an existing flight attendant record has been estimated to be approximately $1.16 million per year. This includes approximately $16,700 for supplemental air carriers and $1.14 million for the rest of the industry.

The Industry Study found that most carriers have contracts or rules addressing duty and rest requirements for both domestic and international operations. The FAA's comparison of the proposed amendments to the findings in the study indicates that most of the carriers reviewed during the study employed scheduled duty limitations equal to or more restrictive than those in the proposed rule. Thus, the scheduled duty period limitations contained in the proposal are not expected to have a significant effect on operators guided by union contracts or work rules.

A comparison of the proposed rest requirements to the findings in the Industry Study shows that most of the domestic operators contacted have rules that meet or exceed the proposed minimum rest requirements. (Although international layovers often were found to be 24 hours or longer, little information was available on air carrier scheduled rest period policies for international operations.) Therefore, the FAA is of the opinion that the proposed rest periods would not cause an economic burden to the air carrier industry.

The Industry Study found that most operators provide flight attendants with at least 24 consecutive hours of rest in any 7 consecutive days. The few operators that currently have no provision ensuring that flight attendants receive 24 consecutive hours of rest in any 7 consecutive calendar days could probably comply with the proposal by redistributing shifts rather than by hiring additional flight attendants.

Contracts and work rules reviewed show that most carriers, including supplementals, already staff longer flights with more than minimum flight attendant crews. However, exceptions appear to exist. For example, if flight attendants are assigned but do not show up for work, a flight may depart with a minimum crew. A minimum crew could be used for flights on which minimum passenger service is planned. Therefore, the proposed requirements for augmented flight attendant crews is expected to affect certain carriers, but on relatively few flights.

The FAA does not have sufficient data on how often flights are scheduled for more than 14 hours but are not actually staffed with more than the minimum flight crew. Therefore, the FAA has limited data with which to estimate the impact of the proposal to require additional flight attendants above the minimum complement required by the air carriers' operations specifications. However, besides recordkeeping, this appears to be the only provision that would entail costs to the industry.

The FAA estimates that the air carrier industry could need as many as 10,000 additional scheduled duty periods per year in order to meet the proposal. Because supplemental air carriers were found to have longer scheduled duty periods, the FAA estimates that even though only 1,200 flight attendants are employed by supplemental air carriers (approximately one percent of the estimated 83,000 active flight attendants in the air carrier industry), as many as 60 percent of the additional scheduled duty periods would affect supplemental air carriers.

Based on an annual salary, including fringe benefits, of $35,075, the cost of a flight attendant per scheduled work day, excluding per diem, is estimated to be $234 ($35,075 annually divided by 150 average duty periods per year). By using this amount, the FAA estimates the recurring cost of an additional 6,000 scheduled duty periods for all supplemental carriers to be approximately $1,404,000, nondiscounted. The rest of the industry would account for the remainder of the additional duty periods, or 4,000 per year. This would entail a recurring cost of approximately $936,000, nondiscounted.

Based on the preceding discussion, the FAA estimates that the recordkeeping cost for supplemental operators over 15 years would be approximately $158,400, discounted. The cost for supplemental operators to assign up to 6,000 additional scheduled duty periods per year over 15 years would be approximately $12.8 million, discounted. Thus, the total cost to all supplemental operators over 15 years would range from approximately $158,400, discounted (recordkeeping only), to approximately $12.9 million, discounted (recordkeeping), to approximately $15.5 million, discounted (recordkeeping and additional scheduled duty periods).

The FAA estimates that the recordkeeping costs for scheduled major, national, and regional operators over 15 years would be approximately $10.8 million, discounted. The costs for these operators to assign up to 4,000 additional scheduled duty periods per year over 15 years would be approximately $8.5 million, discounted. Thus, the total cost to all scheduled major, national, and regional operators over 15 years would range from approximately $19.3 million, discounted (recordkeeping), to approximately $15.5 million, discounted (recordkeeping and additional scheduled duty periods). When the costs for supplemental and scheduled air carriers are combined, total discounted costs over the next 15 years are $11.0 million to $32.2 million.

Benefits

Potential benefits are examined in the context of previous accident and incident experience. This provides a frame of reference for instances in which flight attendants may have exercised their safety responsibilities in potential life-and-death situations. Even though no studies have been performed to find a direct correlation between flight attendant duty and rest times and their performance in accidents and incidents, a decrease in the number or severity of injuries to passengers and crewmembers could occur over time, because of increased alertness and judgment as well as improved performance of gross motor skills.

Flight attendants have been recognized as essential crewmembers, and are required on certain passenger carrying flights. The FAA requires flight attendants to complete specific and recurrent training in safety duties, emergency evacuation procedures, and security-related procedures. Some airlines include flight attendants in cockpit resource management (CRM) training programs for flight crewmembers to promote efficiency and communication between flight and cabin crews.

The NTSB cites several occasions during which flight attendants were instrumental in assisting passengers after an accident or incident. Although it is difficult to assess an exact number of lives the flight attendants may have saved on these occasions, it is reasonable to conclude that passengers survived as a result of the flight attendants' actions. Such occurrences illustrate the vital role flight attendants play in passenger safety.

As required crewmembers in passenger-carrying operations, flight attendants also perform essential safety duties other than those associated with major emergencies. Such situations include emergency landings, evacuations, bomb threats, and injuries to people aboard the aircraft, including flight crewmembers and other flight attendants. In reviewing FAA and NTSB accident and incident data from 1975 through 1989, the FAA found at least 405 evacuations or evacuation-related occurrences. (Evacuation-related occurrences are those for which the data does not clearly state whether an evacuation occurred, but the circumstances appeared to have warranted an evacuation or emergency procedures.) The occurrences counted by the FAA in this review include accidents, emergency landings, and fires. However, this evaluation does not include accidents in which most of the people aboard were fatally injured, because in such an accident a flight attendant could provide little assistance to passengers and other crewmembers. These occurrences also do not include "false alarm" emergency landings that did not result in an evacuation.

Due to the uncertainties of ascribing specific results of evacuations to flight attendant actions, the potential benefits of the proposed rule are difficult to quantify. The 15-year record of evacuations and evacuation-related occurrences in which flight attendant response was a factor in passenger survival indicates losses approximately, on average of $160 million per year due to injuries and fatalities. However, this 15-year record of evacuations and evacuation-related occurrences is an indicator of the number of passengers annually exposed to emergency evacuations. This record shows that throughout the industry, over 15 years, approximately 38,000 passengers were aboard airliners that experienced evacuations or on which evacuation-related occurrences took place. Approximately 2,500 of these passengers were aboard supplemental carriers.

Evacuations may occur because of bomb threats, aircraft fires or suspected fires, takeoffs or landings in which the aircraft skids off the runway, off-airport crashes, or other reasons. Industry experience shows that regardless of whether the emergency itself turns out to be significant, evacuations themselves are potentially hazardous actions. Injuries often occur regardless of the reason for the evacuation. Such injuries may be limited to friction burns, lacerations, and abrasions during slide use, or may include fractures and more serious injuries. When the evacuation takes place amid the stress and confusion of an actual emergency, the potential for serious injury greatly increases. Flight attendants are called upon not only to react automatically in response to training. They must also exercise rapid judgment under conflicting pressures: avoid unnecessary evacuations, but execute evacuations without delay if warranted.

Every evacuation is unique. Smoke and/or fire may be present inside or outside the cabin. Rain, high winds, or other environmental factors may complicate escape from the aircraft by making doors difficult to open or overwing exits potentially treacherous. The airplane may come to rest on a hill or at a steep angle, making certain exits especially dangerous or blocked, and certain slides unusable. Passengers may panic or insist on taking carry-on luggage with them. Although other factors such as aircraft configuration and the environment and circumstances of the evacuation influence passenger egress from the airplane, flight attendants play a key role. Their response depends on training, their own injuries, degree of alertness, and the efficacy of crew communication.

In addition to the passengers exposed to evacuations and evacuation-related occurrences during the 15-year period reviewed, approximately 14,000 people were aboard the 120 aircraft on which injuries occurred in flight. Most of these injuries were the result of severe turbulence.

In-flight injury to crewmembers or passengers could require the attention of at least one flight attendant. Such occurrences could be followed by an emergency landing during which the full attention and good judgment of flight attendants is necessary to ensure the safety of all crewmembers and passengers.

The incapacitation of a flight crewmember or flight attendant could create a potentially dangerous situation. In a case in which a flight crewmember is incapacitated during an emergency, the remaining flight crewmembers would need to perform an emergency landing with less than the minimum flight crew. The attention of at least one flight attendant would probably be directed toward the incapacitated crewmember rather than toward the passengers during the emergency landing. In reviewing NTSB data from 1975 through 1989, the FAA found that 17 flight crewmembers and two flight attendants had become incapacitated during a flight.

Flight attendants perform other security-related functions that demand alertness and judgment but cannot be quantified in monetary terms. These include handling passengers who are

unruly or under the influence of alcohol or drugs, passengers who are ill in flight, and incidents of depressurization.

The FAA has examined pertinent evacuations and other incidents over 15 years to develop a framework from which to gauge flight attendants' potential contributions to aviation safety. If flight attendants are protected through duty period limitations and rest requirements from excessive fatigue, they may be able to contribute to decreased injuries or fatalities in some future accident or incident, or to contribute to safety in less dramatic circumstances through alertness and vigilance in routine safety duties.

Based on the qualitative evaluation of the proposal, the FAA believes that the proposal is cost-beneficial. The proposed rule changes to Parts 121, 125, and 135 contained in this Notice are warranted because they would contribute to an overall enhancement of transport category airplane safety and utility that would both promote and enhance the U.S. air transportation system.

Initial Regulatory Flexibility Determination

Congress enacted the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules that may have a significant impact on a substantial number of small entities.

Regulatory Flexibility Criteria and Guidance, FAA Order 2100.14A, sets guidelines for determining whether small entities are significantly affected by regulations. The fleet size for an operator of aircraft for hire to be considered a small entity is nine or fewer aircraft. The threshold annualized cost levels for operators of aircraft for hire in 1992 dollars are $114,700 for scheduled operators whose fleets have aircraft with seating capacities of more than 60, $63,500 for scheduled operators whose fleets have aircraft with seating capacities of 60 or less (other scheduled operators), and $4,450 for unscheduled operators. The proposals in the NPRM would affect air carriers that provide passenger-carrying operations in aircraft for which flight attendants are required. Other types of aviation companies would not be affected.

According to FAA records of small entity air carriers that provide passenger-carrying operations in aircraft that require flight attendants, there are 21 operators that could be affected by the proposal. Of these 21 operators, 10 are scheduled operators whose aircraft have seating capacities of more than 60, 5 are other scheduled operators, and 6 are unscheduled operators.

As discussed in the cost section of this evaluation, the FAA estimates that increased personnel costs for augmented flight attendant crews for the purpose of complying with the proposed amendments would disproportionately affect supplemental, or charter, operations.

The FAA estimates that because scheduled operators whose aircraft have seating capacities of over 60 do operate some international charter flights, such operators may incur additional cabin crew costs. As noted earlier, some unscheduled operators provide international charter operations.

As noted above the threshold annualized cost levels in 1992 dollars is $114,700 for scheduled operators whose fleets have aircraft with seating capacities of more than 60, $63,500 for scheduled operators who fleets have aircraft with seating capacities of 60 or less (other scheduled operators), and $4,450 for unscheduled operators. The FAA estimates that the cost for the 10 scheduled operators whose aircraft have seating capacities of more than 60 and 5 other scheduled operators (all of which are small entities) to comply with the proposal, if adopted, would be less than $114,700 or $63,500 annually. However, the FAA estimates that the six unscheduled operators that are small entities could incur costs more than $4,450 annually. Therefore, these operators could be affected by the proposals. However, under the guidelines presented in FAA Order 2100.14A, the FAA has determined that the proposed rule would not affect a substantial number of small entities—that is, at least 11 and more than one-third of the 21 small entities subject to the proposed rule. Therefore, the FAA has determined that a regulatory flexibility analysis is not necessary.

International Trade Impact Assessment

The FAA has determined that the proposed amendments to Parts 121, 125, and 135 would not have a significant affect on international trade. The FAA does not expect the proposals to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. The proposed rule would primarily affect U.S. operators of aircraft for hire that provide both domestic and international service. Furthermore, the proposed amendments are consistent with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its power and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination, the Regulatory Flexibility Analysis, and the International Trade Impact Analysis, the FAA has determined that the proposed amendments are not considered major under Executive Order 12291, dated February 17, 1981. I certify that the proposed amendments would not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act and guidelines of FAA Order 2100.14A. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The regulatory evaluation of these proposed amendments, including a Regulatory Flexibility Determination and an International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Safety.

14 CFR Part 125

Aircraft, Airmen, Hours of work, Pilots.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Aviation safety, Pilots, Safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121, 125, and 135 of title 14 of the Code of Federal

Regulations (14 CFR parts 121, 125, and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. The heading for subpart P is revised to read as follows:

Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers; Flight Attendant Duty Period Limitations and Rest Requirements: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators

3. Section 121.461 is revised to read as follows:

§ 121.461 Applicability.

This subpart prescribes—

(a) Qualifications and duty time limitations for aircraft dispatchers for domestic and flag air carriers.

(b) Duty period limitations and rest requirements for domestic, flag, and supplemental air carriers and commercial operators conducting, and any flight attendant participating in, domestic, flag, and supplemental air carrier and commercial operations.

4. Section 121.466 is added to subpart P to read as follows:

§ 121.466 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental air carriers and commercial operators.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the domestic, flag, or supplemental air carrier or commercial operator. The time is calculated using either Coordinated Universal Time or the local time of the flight attendant's home base, to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by a domestic, flag, or supplemental air carrier or commercial operator, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin safety-related responsibilities.

Rest period means the time period free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraphs (e), (f), and (g) of this section, no domestic, flag, or supplemental air carrier or commercial operator may assign, nor may any flight attendant accept, a scheduled duty period of more than 14 hours.

(c) Except as provided in paragraph (d) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(d) The rest period required under paragraph (c) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(e) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(f) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the air carrier or commercial operator has assigned to each flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(g) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(h) Except as provided in paragraph (i) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (e), (f), and (g) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(i) The rest period required under paragraph (h) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(j) Notwithstanding paragraphs (e), (f), and (g) of this section, if a domestic, flag, or supplemental air carrier or commercial operator elects to reduce the rest period to 10 hours as authorized by paragraph (i) of this section, the air carrier or commercial operator may not schedule, nor may any flight attendant accept a schedule, for a duty period of 14 or more hours during the 24-hour period commencing after the beginning of the reduced rest period.

(k) No domestic, flag, or supplemental air carrier or commercial operator may assign, nor may any flight attendant accept, any duty period with the air carrier or commercial operator unless the flight attendant has had at least the minimum rest required under this section.

(l) No domestic, flag, or supplemental air carrier or commercial operator may assign, nor may any flight attendant accept, an assignment to perform any duty with the air carrier or commercial operator during any required rest period.

(m) Time spent in transportation, not local in character, that a domestic, flag, or supplemental air carrier or commercial operator requires of a flight

attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(n) Each domestic, flag, or supplemental air carrier shall relieve each flight attendant engaged in scheduled air transportation and each commercial operator shall relieve each flight attendant engaged in air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(o) A flight attendant is not considered to be scheduled for duty in excess of duty time limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the domestic, flag, or supplemental air carrier or commercial operator (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

5. Section 121.683 is amended by revising paragraph (a)(1) to read as follows:

§ 121.683 Crewmember and dispatcher record.

(a) * * *

(1) Maintain current records of each crewmember and each aircraft dispatcher (domestic and flag air carriers only) that show whether or not the crewmember or aircraft dispatcher complies with the applicable sections of this chapter, including, but not limited to, proficiency and route checks, airplane and route qualifications, training, any required physical examinations, flight, duty, and rest time records;

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

6. The authority citation for Part 125 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g).

7. Section 125.37 is amended by revising the heading and paragraph (a) to read as follows:

§ 125.37 Duty period limitations.

(a) Each flight crewmember and flight attendant must be relieved from all duty for at least 8 consecutive hours during any 24-hour period.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

8. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

9. Section 135.63 is amended by revising paragraphs (a)(3) and (a)(4)(x), adding a new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 135.63 Recordkeeping requirements.

(a) * * *

(3) A current list of the aircraft used or available for use in operations under this part and the operations for which each is equipped;

(4) * * *

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this part; and

(5) An individual record for each flight attendant used in operations under this part, including the flight attendant's duty periods and rest periods, maintained in sufficient detail to determine compliance with the duty period limitations and rest requirements of this part.

(b) Each certificate holder shall keep each record required by paragraph (a)(3) of this section for at least 6 months, and each record required by paragraphs (a)(4) and (a)(5) of this section for at least 12 months.

* * * * *

10. Subpart F is amended by revising the heading to read as follows:

Subpart F—Crewmember Flight Time and Duty Period Limitations and Rest Requirements

11. Section 135.261 is amended by revising the introductory text of the section and by adding a new paragraph (e) to read as follows:

§ 135.261 Applicability.

Sections 135.263 through 135.273 prescribe flight time limitations, duty period limitations, and rest requirements for operations conducted under this part as follows:

* * * * *

(e) Section 135.273 prescribes duty period limitations and rest requirements for flight attendants in all operations conducted under this part.

12. Section 135.273 is added to Subpart F to read as follows:

§ 135.273 Duty period limitations and rest time requirements.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight attendant's home base, to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by the certificate holder, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin safety-related responsibilities.

Rest period means the time period free of all restraint or duty for the certificate holder and free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraphs, (e), (f), and (g) of this section, no certificate holder may assign, nor may any flight attendant accept, a scheduled duty period of more than 14 hours.

(c) Except as provided in paragraph (d) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(d) The rest period required under paragraph (c) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(e) A certificate holder may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the certificate holder has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that

duty period under the certificate holder's operations specifications.

(f) A certificate holder may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the certificate holder has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(g) A certificate holder may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the certificate holder has assigned to the flight or flights in that duty period at least three flight attendants in the addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(h) Except as provided in paragraph (i) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (e), (f), and (g) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(i) The rest period required under paragraph (h) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(j) Notwithstanding paragraphs (e), (f), and (g) of this section, if a certificate holder elects to reduce the rest period to 10 hours as authorized by paragraph (i) of this section, the certificate holder may not schedule, nor may any flight attendant accept a schedule, for a duty period of 14 or more hours during the 24-hour period commencing after the beginning of the reduced rest period.

(k) No certificate holder may assign, nor may any flight attendant accept, any duty period with the certificate holder unless the flight attendant has had at least the minimum rest required under this section.

(l) No certificate holder may assign, nor may any flight attendant accept, an assignment to perform any duty with any certificate holder during any required rest period.

(m) Time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight attendant to an airport at which the flight attendant is to serve on a flight as a crewmember, or from an airport at which that flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(n) Each certificate holder shall relieve each flight attendant engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(o) A flight attendant is not considered to be scheduled for duty in excess of duty time limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

Issued in Washington, DC, on March 26, 1993.

David R. Harrington,

Acting Director, Flight Standards Service.

[FR Doc. 93-7433 Filed 3-29-93; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
March 31, 1993

Part VIII

Environmental Protection Agency

40 CFR Parts 700 et al.

Premanufacture Notification; Revisions of Notification Regulations, Exemptions for Chemicals in Quantities of 1,000 Kilograms or Less, and for Polymers, and Amendment to Expedited Process for Issuing Significant New Use Rules; Proposed Rule; Extension of Comment Period

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 700, 720, 721 and 723

[OPPTS–50593A, 50594A, 50595A, 50596A; FRL–4579–7]

Premanufacture Notification; Revisions of Notification Regulations, Exemptions for Chemicals in Quantities of 1,000 Kilograms or Less, and for Polymers, and Amendment to Expedited Process for Issuing Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; notice of public hearing and extension of comment period.

SUMMARY: This document extends to May 24, 1993, the comment period for persons who want to submit comments on EPA's proposed revisions of the Toxic Substances Control Act (TSCA) section 5 premanufacture notification (PMN) regulations, exemptions for chemicals in quantities of 1,000 kilograms or less and for polymers, and an amendment to the expedited process for issuing significant new use rules (SNURs), which were published in the **Federal Register** on February 8, 1993 (58 FR 7646–7701). EPA will also hold a public hearing in Washington, DC on April 26 and 27, 1993.

DATES: Written comments must be received by May 24, 1993. A public hearing will be held from 9:30 a.m. to 5 p.m. on April 26 and 27, 1993, in Washington, DC. Requests to make an oral presentation at the public hearing must be received by April 21, 1993.

ADDRESSES: Further information on procedures for submitting comments, including "Confidential Business Information" (CBI), is provided in the proposed rules (see **Federal Register** of February 8, 1993 (58 FR 7646–7701)). Public hearing. The April 26 and 27, 1993 public hearing will be held at the Regional Office Building Auditorium, room 1041, first floor, National Capital Region, General Services Administration, 7th and D Streets, SW., Washington, DC 20407.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. EPA's proposed Premanufacture Notification; Revisions of Notification Regulations, Exemptions for Chemicals in Quantities of 1,000 Kilograms or Less, and for Polymers, and Amendment to Expedited Process for Issuing Significant New Use Rules published as a separate part III in the **Federal Register** of February 8, 1993 (58 FR 7646) is available on *The Federal Bulletin Board*. By modem dial (202) 512–1387 or call (202) 512–1530 for disks or paper copies. These files are available in Postscript, Wordperfect and ASCII.

EPA published its proposed amendments to the PMN regulations, exemptions for chemicals in quantities of 1,000 kilograms or less, exemption for polymers, and an amendment to expedited process for issuing SNURs on February 8, 1993 (58 FR 7646–7701). Subsequent to the publication of the proposed amendments, the Chemical Manufacturers Association (CMA) and the Synthetic Organic Chemical Manufacturers Association Inc. (SOCMA) requested an extension of the comment period and a public hearing on the proposed regulations. CMA and SOCMA's letters cited a long-standing interest in these proposed amendments and the considerable analysis of complicated technical and legal issues required before comments could be drafted. EPA is extending the comment period until May 24, 1993 and will hold a public hearing in Washington, DC on April 26 and 27, 1993.

Any person wishing to present an oral statement at the public hearing should contact the TSCA Assistance Information Service by phone (202) 554–1404 (Fax: 202–554–5603). Each request to present an oral statement at the public hearing must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes per session, as discussed below. Written text of the oral statement should be presented to the hearing officer prior to the oral presentation.

The April 26, 1993 public hearing will address the following proposed amendments:

Session 1. The proposed revisions of exemptions for polymers (OPPTS–50594, 58 FR 7679–7701).

Session 2. The proposed revisions of premanufacture notification regulations (OPPTS–50593, 58 FR 7661–7676).

The April 27, 1993 public hearing will address the following proposed amendments:

Session 1. The proposed revision of exemption for chemical substances manufactured in quantities of 1,000 kilograms or less per year (OPPTS–50596, 58 FR 7646–7661).

Session 2. The proposed amendment to expedited process for issuing significant new use rules (OPPTS–50595, 58 FR 7676–7679).

The hearings may conclude before 5 p.m. on each day if all persons wishing to testify have been heard.

Dated: March 25, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7421 Filed 3–30–93; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
March 31, 1993

Part IX

Department of the Interior

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims

AGENCY: Bureau of Indian Affairs.

ACTION: Correction.

SUMMARY: This document corrects notice document 92–31410 beginning on page 62112 in the issue of Tuesday, December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Muskogee Area Director, Bureau of Indian Affairs, 5th & West Okmulgee, Muskogee, OK 74401–4898, Telephone (918) 687–2296.

SUPPLEMENTARY INFORMATION:

Background

On December 29, a notice was published in the **Federal Register** listing certain potential pre-1966 damage claims which had been rejected for litigation by the Secretary of the Interior pursuant to the Indian Claims Limitation Act of 1982, Public Law 97–394 (96 Stat. 1966, 1976).

Need for Correction

Nine claims, which have not been rejected by the Secretary of the Interior, were erroneously included in the published list.

Correction of Notice

On page 62113, delete "MUSKOGEE AREA REJECTED CLAIMS:" and the nine claims prefixed "G09–" listed thereunder.

Dated: March 25, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–7480 Filed 3–30–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
March 31, 1993

Part X

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 340

Genetically Engineered Organisms and Products; Notification Procedures for the Introduction of Certain Regulated Articles; and Petition for Nonregulated Status; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 92-156-02]

Genetically Engineered Organisms and Products; Notification Procedures for the Introduction of Certain Regulated Articles; and Petition for Nonregulated Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations pertaining to the introduction of certain genetically engineered organisms and products to provide for a notification process for the introduction of certain plants with which APHIS has had experience. The introduction of certain regulated articles under notification may be allowed provided that the introduction is in accordance with the provisions of this rule.

This document also amends the regulations to provide for a petition process allowing for a determination that certain plants are no longer regulated articles. The amendments provide a procedure for the release from regulation of such plants which do not present a plant pest risk and therefore should no longer be regulated

These actions supplement the existing permitting requirements for the introduction of certain genetically engineered plants by adding two alternatives. The effect of these actions is to provide standardized procedures for notification of the introduction of regulated articles in accordance with eligibility criteria and performance standards and a petition for the determination of nonregulated status.

EFFECTIVE DATE: April 30, 1993.

FOR FURTHER INFORMATION CONTACT: Terry L. Medley, Director, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7602.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a proposed rule on Genetically-Engineered Organisms and Products; Notification Procedures for the Introduction of Certain Regulated Articles; and Petition for Nonregulated Status (See 57 FR 53036-53053 Docket No. 92-156-1). This rule proposed amendments to 7 CFR part 340. APHIS solicited comments for 60 days with the comment period ending January 5, 1993.

Summary and Analysis of Comments

APHIS received 84 comments on the proposed amendments from State, Territorial, and Commonwealth officials, universities, industry, environmental and consumer organizations, business and professional associations, members of Congress, Federal agencies, individuals, and unions. In general, the comments were well-researched and constructive. After a careful analysis of the information and views presented by the commenters, APHIS has made a number of modifications in the amendments as proposed on November 6, 1992. The most significant changes were made in proposed § 340.3(b), in which the second alternative in proposed § 340.3(b)(2) allowing a researcher to determine eligibility after consultation was eliminated, and in proposed § 340.3(d), in which a 10-day interval prior to interstate movement and a 30-day interval prior to importation and release have been added to provide for notification and review by State officials. Minor changes have been made in the eligibility requirements and performance standards in response to commenters' requests for clarification and definition of terms. In the proposed petition requirements in § 340.6, certain wording changes have been made, and the total response time has been extended to 180 days to accommodate a now specified, initial 60-day period for public comments. A general discussion of the comments appears below, followed by a section-by-section response to comments and explanation of modifications.

Comments on Reduced Regulation

A majority of the commenters expressed either general support for the proposed amendments, or qualified support based on suggested changes. The commenters favoring a measure of reduced regulation represented industry, the university research community, and State governments. A small number of commenters opposed the amendments for a variety of reasons, ranging from concerns that their scope was too broad, to conclusions that they were premature. The two proposed provisions that elicited the largest number of comments were the proposal to allow a researcher to determine eligibility through consultation with an "appropriate Institutional Biosafety Committee," and the proposal that notification could be made on the day of introduction. In each case, a majority of the commenters expressed opposition to these proposals. There was general agreement among these commenters, who represented State governments, industry, universities, Federal agencies, and environmental and consumer groups, that these two provisions represented an abrupt or premature move toward deregulation and/or self-regulation by researchers. APHIS has accordingly maintained the overall intent of the proposed notification and petition amendments, while adding additional procedural constraints to ensure uniformity and accountability.

Comments on Eligibility Criteria for Notification (§ 340.3(b))

Eligibility Criterion 1 (§ 340.3(b)(1))

Several comments explicitly expressed approval of the list of six crops in § 340.3(b)(1)(i) that were proposed as eligible for notification. Approximately sixteen commenters proposed a variety of additions to the list. Some of the suggested list additions were to pertain to interstate movement or importation only, while others were to pertain specifically to release into the environment. Several commenters suggested that all common crop species be eligible for notification for interstate movement or importation.

APHIS wishes to clarify that the provisions of § 340.3(b)(1)(ii) in the proposed rule also allowed for notifications for "any additional plant species that BBEP determines may be safely introduced in accordance with the eligibility criteria set forth in paragraphs (b)(2) through (b)(6) and the performance standards set forth in paragraph (c) of this section." For an organism to be approved according to this clause, all of the other eligibility criteria in § 340.3(b) must be met, and evidence would need to be presented that the organism would be introduced in accordance with the performance criteria set out in § 340.3(c). This clause provides for additional flexibility in broadening the set of organisms eligible for notification. Such a determination would be based on consultation with the responsible individual and designated State regulatory officials. APHIS will make determinations upon request as to whether any additional plant in a particular proposed introduction is eligible for notification.

With regard to other suggested modifications to the list of plants eligible for notification for release, it should be noted that in many instances,

commenters suggested including on the list those organisms with which they had particular familiarity. A sample of crops suggested by commenters for addition to the list included walnuts, carrots, endive, artichokes, sunflowers, lettuce, sugarbeets, wheat, beans, canola, apples, and oats. No single crop was identified by more than a few commenters as appropriate for inclusion on the list, and there was no scientific consensus on any additional species that are appropriate for the notification provision. Accordingly, no additional species have been added to the list in the final rule. This is not to imply that these six species will remain the only species eligible for introduction by the notification alternative or that these are the only six species that can meet the eligibility criteria and the performance standards for notification; these six crops have been the most actively field tested and have been individually considered by APHIS and found to be appropriate for notification. APHIS is receptive to receiving information which will support the addition of other species to the list in § 340.3(b)(1)(i). These additions would be made through notice and comment rulemaking.

Justification for the Six Crops

Several commenters expressed the opinion that APHIS has not adequately justified the choice of the six plant species eligible for introduction by the notification alternative on either a biological or experience basis. We will therefore take this opportunity to address these concerns. Under the current regulations in 7 CFR part 340, a permit is required to introduce a regulated article. Between 1987 and March 2, 1993, we have granted 365 environmental release permits and 1,301 movement permits of transgenic organisms developed with genetic material from known plant pests. We have had the most experience with evaluating field tests for these six plant species, with percentages of total permits issued as follows: Corn (19%), cotton (10%), potato (20%), soybean (18%), tobacco (5%), or tomato (13%). This evaluation includes review of the application for field testing and other relevant information from the scientific literature and the field data reports. The data reports should verify that genetically engineered crops present the same types of ecological concerns (i.e., weediness, competitiveness, toxicity) associated with other plants. The permitted field tests have been safe and have not presented plant pest or environmental risks because these tests have been performed under appropriate confinement conditions imposed in the introduction permit. These confinement conditions form the basis for the performance standards stipulated in the notification process. In addition, the information provided by permittees in data reports from their respective field tests have confirmed our assessment that the confined field tests do not pose a risk of introduction or dissemination of a plant pest and do not present a significant impact on the quality of the human environment. The majority of the organisms that are the subject of these reports are transgenic plants that would meet the eligibility requirements in the notification amendment. Additionally, these field tests have been performed using agricultural practices that are encompassed by the proposed performance standards. That is to say, the tests have not resulted in viable progeny persisting in the environment or the introduction and dissemination of a plant pest. To date, APHIS has received 71 percent of the data reports that are due. These reports are available from APHIS upon request. The data reports will be available for public review in the Reading Room, suite 7, 6505 Belcrest Rd., Hyattsville, Maryland. APHIS will periodically publish a notice of their availability in the **Federal Register**.

The six plant species listed in § 340.3(b) have been carefully considered by APHIS. APHIS has already specifically considered any potential plant pest risks posed by the cultivation of certain tomatoes. APHIS made an assessment of the potential for gene transfer from a transgenic tomato when a petition for determination of regulatory status of a particular type of genetically engineered tomato was requested (57 FR 47608–47616, October 19, 1992). APHIS has also brought panels of world experts together in workshops to address issues of gene transfer and safeguards for planned introductions of corn (Conference Report: Workshop on Safeguards for Planned Introduction of Transgenic Corn and Wheat, December 6–8, 1990, Keystone, Colorado), potatoes (Meeting Report: Workshop on Safeguards for Planned Introduction of Transgenic Potatoes, August 16–17, 1991, St. Andrews, Scotland), and tomatoes ((report in preparation) Workshop on the Safeguards for Planned Introductions of Transgenic Tomatoes, August 19–20, 1992, Davis, California). The outcrossing frequency is known to be negligible for soybeans (Wilcox, J. (ed.), Soybeans: Improvement, Production, and Uses, 1987, American Society of Agronomy, Madison, Wisconsin) and tobacco (Durbin, R. (ed.), *Nicotiana*. Procedures for Experimental Use, 1979, USDA, Technical Bulletin Number 1586). Given the performance standards required under notification, there should be no gene transfer from these six plant species to other cultivated crops of the same species that results in the generation of progeny that can persist in the environment. Performance standard § 340.3(c)(5) specifically addresses gene transfer. When one considers both the biology and plant breeding practices of these six crops, any introgression by unique genes from genetically engineered plants to other nontransgenic breeding stock of the crop would be negligible. Breeders are very concerned about the maintenance of genetically pure lines. Hybrid off-types involving transgenic plants and breeders plants may be evident in some crops whenever the next generation of seed was grown and would be removed. With the exception of cotton, these crops lack volunteers that persist in the environment.

What follows is scientific evidence to demonstrate that the risk of gene transfer from these six plant species to a sexually compatible plant that results in the generation of progeny that can persist in the environment is negligible. APHIS has analyzed which of these six species has wild relatives (defined as species that are both sexually compatible with the six crop species without human intervention and whose hybrid progeny can persist in the environment), or has wild populations (defined as members of the same species that are both sexually compatible with a crop species and present in populations that can persist in the environment) in the United States. While potato and cotton have such wild relatives, wild populations only exist in the United States for cotton relatives. APHIS has also identified which of these six plant species has weedy relatives (defined as different species that are capable of receiving, incorporating, and maintaining genetic material via sexual reproduction from a crop species, that form populations that can persist in the environment, and that are so identified as weeds by expert organizations such as the Weed Society of America) in the United States. According to these definitions, we have devised the following table:

Crop	Wild relatives	Wild populations	Weedy relatives
Corn	None	None[1]	None.
Cotton	Hawaii[2]	Florida[3, 4]	None.[2]
Potato	AZ, NM, TX[5]	None[1]	None.
Soybean	None	None[6]	None.[6]
Tobacco	None[7]	None	None.[7]
Tomato	None	None[1 8]	None.[8]

Notes:

[1] Corn (Conference Report: Workshop on Safeguards for Planned Introduction of Transgenic Corn and Wheat, December 6–8, 1990, Keystone, Colorado), potato (D.S. Correll, The Potato and its Wild Relatives, 1962, Texas Research Foundation, Renner, Texas), and tomato (Atherton, J., Rudick, G. (eds.), The Tomato Crop: A Scientific Basis for Improvement, 1986, Chapman and Hall, New York) occasionally volunteer with a frequency depending on weather, location, and agronomic practices.

[2] *G. tomentosum* occurs in Hawaii. There is evidence for the possible historic introgression into *G. tomentosum* by other cultivated non-genetically engineered cottons as observed by Dr. Jonathan Wendel (personal communication, Iowa State University) and indicated by Dr. Paul Fryxell (The Natural History of the Cotton Tribe, 1979, Texas A&M University Press, College Station, Texas). Thus, cultivated cotton (*G. hirsutum* and *G. barbadense* are cultivated in the United States) in general, regardless of whether it is genetically engineered, presents a gene transfer risk. *G. tomentosum* is not an agricultural weed. Indeed, it is just the opposite; from loss of habitat due to human activities, it is in a precarious position for survival. We have no scientific evidence to demonstrate that field tests of genetically engineered cotton in Hawaii will present any further gene transfer risk. However, field tests of cotton in Hawaii will not qualify for notification unless all the eligibility criteria and performance standards are met. Our performance standards would preclude gene movement via pollen which could result in viable progeny persisting in the environment.

[3] Because *Gossypium tomentosum* is a different species, it is not included here. *G. tomentosum* occurs in Hawaii; *G. thurberi* occurs in Arizona. *G. thurberi* and cultivated cotton (*G. hirsutum* and *G. barbadense*) do not naturally form viable hybrids as the chromosomal types are incompatible. Although *G. tomentosum* is sexually compatible with cultivated cotton, cross pollination seems unlikely as published reports suggest they do not have common pollinators or common time periods during which their flowers are receptive (P. Fryxell, The Natural History of the Cotton Tribe, 1979, Texas A&M University Press, College Station, Texas).

[4] R. Long, O. Lakela, A Flora of Tropical Florida, 1976, Banyan Books, Miami, Florida.

[5] *Solanum tuberosum* can produce fertile hybrids with some wild *Solanum* species that grow in Arizona, New Mexico, and Texas (D.S. Correll, The Potato and its Wild Relatives, 1962, Texas Research Foundation, Renner, Texas; Meeting Report: Workshop on Safeguards for Planned Introduction of Transgenic Potatoes, August 16–17, 1991, St. Andrews, Scotland). However, field tests of potato in these States will not qualify for notification unless all the eligibility criteria and performance standards are met. Our performance standards would preclude gene movement via pollen which could result in viable progeny persisting in the environment.

[6] Polhill, R., Raven, P. (eds.) Advances in Legume Systematics, Part 1, 1981, Royal Botanic Gardens, England.

[7] Native *Nicotiana* spp. occur in the United States, but successful introgression that results in populations that can persist in the environment is extremely unlikely. Most common wild species in the United States, such as *N. glauca*, have somatic chromosome counts of 24, as contrasted to the cultivated tobacco with counts of 48 (Kartesz, J., Kartesz, R., A Synonymized Checklist of the Vascular Flora of the United States, Canada, and Greenland, 1980, University of North Carolina Press, Chapel Hill; Durbin, R. (ed.), *Nicotiana*. Procedures for Experimental Use, 1979, USDA, Technical Bulletin Number 1586). Hybrids between wild and cultivated *Nicotiana* would exhibit abnormal chromosome behavior at meiosis, be sterile under normal conditions (Durbin, R. (ed.), *Nicotiana*. Procedures for Experimental Use, 1979, USDA, Technical Bulletin Number 1586), and would perish with the first generation of offspring. Such hybrids would also be unlikely to survive because of the genetic contribution of the cultivated parent, which is known to perish in almost all areas of the United States. There are no reports of such natural hybrids in the literature.

Holm et al. (Holm, L., Pancho, J., Herberger, J., Plucknett, D., A Geographical Atlas of World Weeds, 1979, John Wiley and Sons, New York) give an undocumented report of *N. tabacum* as a common weed in Hawaii. Although the plant grows wild to a limited extent in Hawaii, its weedy nature is not supported by the experience of botanists in Hawaii, and is not supported by other published works such as Neal (Neal, M., In Gardens of Hawaii, 1965, Bishop Museum Press, Honolulu) and Wagner et al. (Wagner, W., Herbst, D., Sohmer, S., Manual of the Flowering Plants of Hawaii, 1990, University of Hawaii Press et Bishop Museum Press, Honolulu).

[8] Cherry tomato, *Lycopersicon esculentum* var. *cerasiforme* occurs in Texas and Florida, but is not considered a weed pest. It can cross with the cultivated tomato, *L. esculentum* var. *esculentum*. However, introgression within the United States is not likely since the rate of outcrossing in var. *esculentum* is low (Rick, 1949, Proceedings of the American Society of Horticultural Science 54:237–284; C.M. Rick, personal communication) and var. *cerasiforme* is not present in areas of the United States that are devoted to large scale production of tomatoes (J. Scott, personal communication). There are no published reports that visible traits of cultivated tomato have introgressed into var. *cerasiforme* from cultivated tomatoes in areas where the wild cherry tomato commonly grows.

Environmental releases under notification will take place in a variety of environments. APHIS believes that the performance standards will provide for safe field testing regardless of the environment. The field trial environment needs to be carefully considered by the applicant in order to assure that the performance standards are being met and address any specific local concerns.

Comments on General Criteria for Eligibility

More than half of all commenters specifically addressed the provisions proposed in § 340.3(b)(2) for decentralizing determinations that particular organisms are eligible for introduction under notification. Approximately 12 commenters strongly endorsed the proposal to allow a researcher to determine eligibility for notification in consultation with an Institutional Biosafety Committee (IBC). The majority of the commenters favoring the use of IBCs represented the research communities of major universities, and included a university biosafety officer and the faculty chair of an IBC. However, the vast majority of the commenters opposed the general criteria of § 340.3(b)(2), and specifically, the proposal that IBCs be given the authority to make determinations about eligibility for notification. Most commenters were of the opinion that this authority should remain with APHIS. The commenters expressing these views represented State departments of agriculture, members of Congress, Federal agencies, unions, industry, environmental organizations, and IBCs. Several commenters expressed the opinion that IBCs and State authorities lack the expertise to make such determinations. Two commenters expressed concern that the proposed provisions would amount to self-regulation by researchers, while another expressed concern that IBCs would have no public accountability for their actions. A further comment identified three other potential shortfalls: "a. Lack of consistency in the reviews of different IBC's. b. Inadequate protection of confidential business information. c. Liability problems arising from IBC decisions." APHIS agrees with the general substance of these comments, and accordingly § 340.3(b)(2) of the proposed rule has been deleted. Since paragraph (b)(2) was removed from the proposed amendment, the remaining eligibility criteria are renumbered with Arabic

numerals 2–6, replacing the corresponding Roman numerals i–vi.

Eligibility Criterion 2 (§ 340.3(b)(2))

Several commenters expressed reservations regarding the use of the term "stably integrated." One commenter objected to the fact that researchers would, under certain circumstances, be able to make a determination regarding this eligibility criterion without oversight from APHIS. This objection has been addressed by the deletion of the proposed § 340.3(b)(2) which provided for decentralized determinations regarding eligibility for introduction. The other commenters on this section felt that "stably integrated" is imprecisely defined. These commenters felt that explanatory information contained in the preamble to the proposed rule, which provided examples of modifications that either fit or do not fit the definition of "stably integrated", should be provided in the final rule. APHIS agrees with the commenters. Although no change to the wording of the definition has been made, we are providing the following clarification. The intent of this criterion is to exclude from notification regulated articles that have been modified to contain genetic material: maintained in an extrachromosomal manner, whether on plasmids or on viral vectors; or maintained on transposable elements. Field tests utilizing regulated articles of these types would continue to require a permit. Genetic instability resulting from insertion of genetic material at a particular site in the recipient plant genome, or resulting from genetic mechanisms intrinsic to chromosomal maintenance in recipient plant cells, such as spontaneous deletion, rearrangement, and gene conversion, would not be grounds for exclusion from eligibility under this criterion. These types of genetic mechanisms occur in all plant cells regardless of whether they are genetically transformed.

Eligibility Criterion 3 (§ 340.3(b)(3))

Two commenters expressed the opinion that the phrase "well characterized" in the eligibility criterion in § 340.3(b)(3) is ill-defined; one of these commenters also felt that the phrase "results in plant disease" is also imprecise. In response, APHIS notes that the intent of the proposed eligibility criterion was to identify for notification those organisms that had new genetic material of which the function was understood, and that function was one not involved in pathogenesis. (APHIS believes that the concept of "plant disease" in the Federal Plant Pest Act (FPPA) and the Federal Plant Quarantine Act (PQA), and in the 7 CFR part 340 regulations, is both scientifically and legally clear.) The sense of "well characterized" is, therefore, characterized with respect to its cellular or organismal role. To clarify this intent, we have rephrased this criterion as follows:

"The function of the introduced genetic material is known and its expression in the regulated article does not result in plant disease." For example, if the nucleotide sequence encodes a protein, then the enzymatic reaction it carries out, or its structural or other intracellular role, should be known. On the other hand, a nucleotide sequence whose sole identification and/or characterization is the fact that it is expressed in response to a particular chemical or physical stimulus would not be considered to fit this eligibility criterion.

One commenter suggested that this criterion be modified to exclude genes that cause the regulated article to exhibit increased "weediness", but acknowledged that it would be difficult to define "weediness". APHIS agrees that the term "weediness" is a difficult term to define in a precise way. APHIS believes that the performance standards will preclude any risk associated with plants which may exhibit increased "weediness". However, if increased "weediness" is observed, it should be reported in accordance with the provisions for unusual occurrences in paragraph (d)(5) of this section.

Eligibility Criterion 4 (§ 340.3(b)(4))

One commenter suggested that we define "infectious entity" found in paragraph (b)(4)(i) of this criterion. APHIS believes that the meaning of this term is clear. Paragraph (b)(4)(i) will ensure that the plants introduced under notification have not been modified to produce a plant virus, an animal virus, a human virus, a viral satellite RNA, a defective interfering RNA molecule, or other entities which have not previously been introduced under permit.

A total of eight comments were received that specifically addressed paragraph (b)(4)(ii) of this eligibility criterion as it was stated in the proposal. In general, the commenters requested that the proposed terms "new to the plant" and "toxic to nontarget organisms" be better defined. Several of these commenters suggested that it would be very difficult to determine when a constituent is "new to the plant" and "toxic to nontarget organisms" and that such a determination may not be feasible. One commenter pointed out that the proposed wording would exclude plants from notification that express toxins that affect nontarget organisms that do not feed or live on that plant species. APHIS agrees with the commenters and has modified the criterion in paragraph (b)(4)(ii) to read the introduced genetic material does not encode substances that are known or likely to be toxic to nontarget organisms known or likely to feed or live on the plant species. This allows the notification alternative for plants expressing a toxin which may be toxic to nontarget organisms that are not likely to feed or live on that plant species. This would generally not allow the introduction of plants via notification that have been purposely modified to encode substances toxic to such nontarget organisms. APHIS considers the term "known" to mean "generally recognized", and the term "likely" to mean "supported by evidence strong enough to establish presumption if not proof."

There were a total of six commenters who questioned why pharmaceutical-producing plants would be eligible for introduction by the notification alternative. APHIS interpreted criterion (4) to be a trigger for pharmaceutical-producing plants, and did not intend that such plants would be introduced under notification. We have therefore modified this criterion to state specifically that in paragraph (b)(4)(iii) the introduced genetic material does not encode products intended for pharmaceutical use. If the applicant observes or finds that the introduced genetic material causes the production of an infectious entity or substances toxic to nontargets or having pharmaceutical activity, or the encoded substances are toxic to nontargets or have pharmaceutical activity, then such effects should be reported to APHIS in accordance with paragraphs (d) (4) and (5) of this section. If uncertain, an applicant can refer to the Federal Food Drug and Cosmetic Act (21 U.S.C. 321(g)) for clarification about substances with pharmaceutical use.

Eligibility Criterion 5 (§ 340.3(b)(5))

Two commenters on this eligibility criterion suggested that APHIS has had insufficient experience with the field testing of plants expressing plant virus genes to allow field testing of such genes under notification. In response APHIS has modified criterion (5) of the rule in paragraph (b)(5) to establish that to ensure the introduced genetic sequences do not pose a significant risk of the creation of any new plant virus, they must be: (1) Noncoding regulatory sequences of known function, or (2)

sense or antisense genetic constructs derived from viral coat protein genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and infect plants of the same species, or (3) antisense genetic constructs derived from noncapsid viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and infect plants of the same species. These changes clarify which sequences derived from plant viruses can be engineered into plants introduced by the notification alternative. The function of any noncoding regulatory sequences must be known; the DNA sequence must be known, for example, to be a promoter, enhancer, intron with enhancer activity, upstream activating sequence, polyadenylation site, or transcription terminator. The second and third elements of the criterion are intended to preclude the construction or reconstruction of viruses other than those that are prelavent and endemic in the area where the introduction will occur and infect plants of the same host species. These elements will also prevent the transmission of viruses by insect vectors that would not normally come in contact with a virus encapsidated by an exotic, nonendemic, or nonrevalent coat protein derived from a virus that does not normally infect the recipient plant. The third element of modified criterion (5) eliminates the release of transgenic plants expressing sense constructs to viral genes, other than the coat protein gene, under the notification alternative. Certain of these constructs, when introduced into plants, have been reported in the scientific literature to result in disease symptom expression. In addition, the precise function of many of the noncapsid genes and their encoded proteins is unknown. Plants expressing sense noncapsid plant viral proteins can still be introduced under permit. In the future, APHIS will seek input from the public on the inclusion under notification of plants expressing sense constructs from all other noncapsid viral genes from plant viruses. Of introductions under permit to date, nearly 100% of the plants have contained noncoding regulatory sequences derived from plant viruses. Of those plants introduced under permit that express plant virus genes, at least 95% have expressed sense viral coat protein genes, or antisense genes to coat protein and other viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and infect plants of the same species.

Eligibility Criterion 6 (§ 340.3(b)(6))

Six comments were received on eligibility criterion (6). Five of these commenters objected to the exclusion from notification of plants expressing nonpathogenic proteins from animal and human pathogens. One of the commenters suggested alternate language for this criterion, and the sixth commenter found the descriptor "functionally intact" to be confusing. APHIS agrees with these commenters, and has modified this criterion to establish that the plant has not been modified to contain the following genetic material from animal and human pathogens: (1) Any nucleic acid sequence derived from an animal or human virus, or (2) coding sequences whose products are known or likely causal agents of disease in animals or humans. The terms "known" and "likely" mean the same as they do in eligibility criterion (4). APHIS believes the exclusion from notification of plants containing any nucleic acid sequence derived from animal or human virus or sequences encoding products pathogenic to animals or humans is prudent because of our lack of experience with the introduction of plants expressing such sequences, and thereby, the possible need for additional containment measures to address potential new risk issues posed by such plants. Furthermore, we believe it is necessary to eliminate from notification all plants expressing any nucleic acid sequence from an animal or human virus because of the potential misperceptions by the public that animal and human "viruses" are being produced in plants and that these plants are subject to insufficient government oversight. Two commenters stated that APHIS may be "duplicating existing federal authority" by "regulating human pathogens" whose introduction into the environment is covered by the Public Health Service Act. APHIS disagrees with the commenters. APHIS is not "duplicating existing federal authority" or "regulating human pathogens", but rather overseeing the introduction of plants containing such genetic material that has never been expressed in a plant before.

Other Comments on Eligibility

APHIS specifically solicited comment on whether a regulated article that does not necessarily meet each of the eligibility criteria may nonetheless be safely introduced under the notification procedure based on the performance standards or additional confinement measures. While several commenters expressed the view that a regulated article could be safely introduced under the notification alternative even though it did not "technically" meet each of the eligibility criteria, APHIS believes it is prudent to be consistent in applying the criteria for introduction under notification. Therefore, to qualify for notification, a regulated article must meet all six of the eligibility requirements stipulated in paragraph (b) and the performance standards set forth in paragraph (c) of this section.

Several commenters suggested that the eligibility requirements for notification should be modified to include as one criterion for eligibility that an organism had been previously field tested under permit. APHIS disagrees. A major purpose of this rule is to establish safe conditions based on familiarity for field testing of a set or organisms that only have a restricted range of new introduced traits. If the eligibility criteria for notification and the performance standards for introductions are adequate to provide for safe field testing, then there should be no need for the imposition of an additional permitting requirement. APHIS believes that the specific revisions it has made to the eligibility criteria and performance standards, in response to comments, ensure this safe field testing.

Comments on Performance Standards (§ 340.3(c))

Procedure

Ten general comments were received on § 340.3(c) of the proposed notification amendment entitled "Performance standards for introductions under the notification procedure". Two commenters thought the performance standards were adequate; one thought they were too stringent, and the remaining seven thought they were too general and too vague. APHIS has sought to clarify some of the performance standards by considering issues raised for the individual performance standards by specific commenters. There were no comments directed toward performance standard 3 (§ 340.3(c)(3)).

Unique Ecology

Several commenters expressed the opinion that the proposed performance standards fail to take into account the potential effects of the introduction of regulated articles into unique environments. APHIS disagrees. The performance standards for introduction of regulated articles under notification are designed to prevent the persistence

of any organism which could have an effect on the surrounding environment, whether "unique" or otherwise. Moreover, the modifications to the proposed performance standards embodied in the final rule clarify what is required of the responsible persons to ensure safety. It should be emphasized, however, that the specific environment at the test site must be considered when the applicant determines how to comply with the performance standards.

Performance Standard 1 (§ 340.3(c)(1))

New § 340.3(c)(1) of the final rule establishes that the regulated article "* * * must be maintained at the destination facility such that there is no release into the environment." The proposed rule provided that "destination facilities shall provide for adequate containment of the regulated article(s)." Three commenters requested clarification and more detail as to what was meant by "adequate containment." APHIS does not believe that it is practical to define "adequate containment", since what is considered adequate will vary according to the subject organism. Adequate containment depends not only on the specific facilities on site and the physical containment measures employed, but also the biology of the plant and, if it is artificially infested or inoculated, the organism used in the challenge. Interested persons should consult the National Institutes of Health Guidelines at 51 FR 16958, "Appendix G—Physical Containment", for guidance on appropriate methods of physical containment. It remains the responsibility of the responsible person to ensure that appropriate measures are employed to prevent inadvertent release. APHIS believes that it is part of its responsibility to inspect these facilities, and it has been its practice to perform these inspections as provided in section § 340.4(d). The requirements for shipping in § 340.8(b)(1–3) must be adhered to when shipping regulated articles.

Performance Standard 2 (§ 340.3(c)(2))

New § 340.3(c)(2) establishes that "the regulated article must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release." One commenter questioned whether mixing refers to mixture with a non-regulated article or with other plant species. APHIS has therefore added the words "of any species" to clarify that the regulated article not be mixed with plant materials of any species which are not part of the environmental release. This does not preclude the mixture of the regulated article with non-regulated plant species that are part of the environmental release.

Performance Standard 4 (§ 340.3(c)(4))

Two commenters suggested modifications to performance standard (4). One of the commenters suggested that the statement be clarified to read that the introduction not contain a viable vector agent. APHIS believes that it is clear from the context of the performance standards that we intend that no viable vector agent be introduced along with the regulated article. The other commenter suggested that the statement be clarified to read that no transgenic vector agent be associated with the regulated article. Again, we believe that our intent is clear that no transgenic vector agent be introduced along with the regulated article.

Performance Standard 5 (§ 340.3(c)(5))

New § 340.3(c)(5) establishes that the field trial must be conducted such that neither the regulated article nor any offspring derived from the regulated article can "persist in the environment." What APHIS means by "persisting in the environment" is producing feral or sustained populations of the regulated article or its offspring that can persist in agricultural or nonagricultural habitats without human intervention. This standard does not necessarily preclude the conduct of controlled genetic crosses or open pollination as part of a field test. In cases where open pollination is employed, any hybrid progeny produced outside the test site cannot be used for agricultural seed, and these progeny must not be capable of forming feral or sustained populations. When the regulated article is male fertile and allowed to flower, it must be separated from any foundation or breeder seed production of non-regulated plant material of the same species, by at least the isolation distances for foundation seed production given in 7 CFR 201.76. The change to this standard was in response to three commenters who either objected to the proposed standard terms "significant probability" and "minimized", the vagueness of the standard, or expressed the opinion that it was not based on experience and it was unclear how it would be implemented. APHIS does not believe that pollen movement can or need necessarily be prevented, but rather that progeny produced as a result of such pollen movement should not persist in the environment, as stated above. We also believe that we have had extensive experience with the imposition of these standards with the six crops eligible for introduction by the notification alternative, as 85% of environmental release permits have been with these six crops and there have been no reports of their persistence. We agree with another commenter that based on the biology of these six crops there is little opportunity for persistence in the environment without sustained human intervention.

Performance Standard 6 (§ 340.3(c)(6))

The content of performance standard six has not been changed; however, it has been punctuated for clarification. One commenter expressed the opinion that it is not based on experience and it is unclear how it would be implemented. Again, 85% of APHIS' environmental release permits have been with the six crops eligible for introduction under notification and agricultural practices have been developed to eliminate the potential for volunteers or remove them if they appear. As with performance standard (5), the regulated article or viable propagative material derived from it must not persist in the environment.

Comments on Procedural Requirements (§ 340.3(d))

Procedural Requirement 2 (§ 340.3(d)(2))

All or most of the information requested in the notification letter described in § 340.3(d)(2) may be used by APHIS for recordkeeping purposes. APHIS intends to provide the public with examples of such notification letters so that it is clear what information we require in order to verify that the regulated article is eligible for introduction by the notification alternative.

In response to a single comment on § 340.3(d)(2)(ii), the section was amended to specify the information APHIS believes is necessary to identify the regulated article. APHIS believes this clarifies section (2)(ii). Subsection (A) provides the name and phenotype of the organism; e.g., *Solanum tuberosum*, potato cultivar Russet Burbank, virus resistant. Subsection (B) provides the identify of the introduced genetic material, the encoded protein and/or function, and the donor organisms; e.g., promoter: enhanced *35S* 5′ from Cauliflower Mosaic Virus; coding sequence: antisense coat protein from Potato Virus Y, strain N; terminator: *nos* 3′ from the *Agrobacterium tumefaciens* T–DNA nopaline synthase gene; and promoter: *35S* 5′, coding sequence: *uidA;* encoding β-glucuronidase from *Escherichia coli*; terminator: *nos* 3′.

Other sequences that should be identified include all noncoding regulatory sequences associated with the coding DNA. Subsection (C) identifies the mode of transformation, e.g., via disarmed *A. tumefaciens* or microprojectile bombardment. The information provided for by these subsections will allow APHIS to determine that the regulated article meets the eligibility criteria set forth in § 340.3(b). Subsection (C) will also allow APHIS to ascertain when a modified plant is not a regulated article. APHIS has also modified § 340.3(d)(2)(iii) to include the size of the introduction. APHIS believes this information is necessary for inspection officials who may visit the introduction sites or facilities.

Procedural Requirement 3 (§ 340.3(d)(3))

Approximately 48 commenters commented specifically on the provision in proposed § 340.3(d)(3) that notification occur on the day of introduction. Virtually the only support for this provision was expressed for movement only, by a small number of commenters representing industry. Several of these same commenters suggested that same-day notification for movement be extended to other crop varieties, and/or all regulated articles. In contrast, approximately 37 commenters representing State governments, industry, environmental and consumer organizations, and members of Congress expressed strong opposition to same-day notification for introduction, based on concern about public perception and the need for State review. The intervals suggested ranged from 10–15 days for release to 60 days for all introductions, with suggested variations falling between these extremes. Approximately 17 commenters expressly requested advance notification for State review prior to introduction.

APHIS agrees that notification should precede introduction to accommodate both Federal and State review. Therefore proposed § 340.3(d)(3) has been changed to require that notification must be submitted to BBEP 10 days prior to the day of an interstate movement, and 30 days prior to an importation or environmental release. The rationale for these time intervals is discussed in detail in response to "Comments on Administrative Action § 340.3(e)."

Procedural Requirement 4 (§ 340.3(d)(4))

A sentence was added to § 340.3(d)(4) regarding the submission of data reports pursuant to field trials approved under notification. The added sentence, "Final reports for those field tests lasting more than 12 months are due 6 months after the termination of the field test," was added to clarify APHIS' intent that a final field test report is due after the completion of a field test with a duration of longer than 12 months. APHIS specifies that this report be submitted 6 months after the termination of such a test. APHIS believes the 6 month time period to be a reasonable length of time for the applicant to review relevant data and compose a field test report. APHIS views these data reports as critical to the substantiation of safety, and expects that these documents will also be essential components in petition submissions under § 340.6. APHIS agrees with the commenter who suggested that the reports be submitted 11 months after the start of the test, but have not changed the initial reporting time from 12 months. APHIS believes that it is prudent that it receive the data reports from an applicant prior to, whenever possible, their next notification for the environmental release of the same or similar material so that we can review the report and request additional information if necessary. The submission of data reports within the time specified is essential for compliance with the final rule. The data reports will be available for public review in the Reading Room, suite 7, 6506 Belcrest Rd., Hyattsville, Maryland. APHIS will periodically publish a notice of their availability in the **Federal Register**.

In response to one commenter's inquiry concerning the content of the field test reports, we have modified the paragraph to require that the APHIS reference number given in the acknowledgement of receipt of the notification, as well as "methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment", be included. By these modifications APHIS intends that applicants provide APHIS with information about how its observations were made, and provide their analysis of the significance of them. We encourage the inclusion of other types of data, such as new information acquired regarding the phenotype of the regulated article as given in § 340.6(c)(4), if the applicant anticipates submission of a petition for determination of regulatory status for their regulated article. One commenter was interested in what the information in the data reports will be used for. In addition to ensuring that APHIS is informed of the progress of the field trial, this information will be utilized to fulfill our commitment to adjust regulations based on experience gained.

Procedural Requirement 5 (§ 340.3(d)(5))

Several State officials favored changed language to require a specified reporting time to the Federal Government of any unusual occurrence. APHIS agrees with these comments. The reporting periods for such occurrences for introductions under permit are also appropriate for notification. New § 340.3(d)(5) provides that the Director, BBEP, shall be notified "of any unusual occurrence within the time periods and in the manner specified in § 340.4(f)(10)."

Comments on Administrative Action (§ 340.3(e))

To provide for State notification and review, § 340.3(e)(1) has been changed to include a provision that the Director, BBEP, will notify State regulatory officials within 5 business days of receipt of notification. Section 340.3(e)(2), (3), and (4) were modified to establish that the Director, BBEP, will provide acknowledgement within 10 days of receipt for interstate movement, or 30 days of receipt for importation and environmental release that the introduction is appropriate under notification. These intervals were selected based on the estimated average time required to process a typical permit application for the introduction of a regulated article that meets the eligibility requirements for notification. In the case of importation, the 30 day interval will allow adequate time for the administrative requirements associated with importation of regulated articles, including consulting with State and other APHIS officials, printing special importation labels, contacting port inspectors, and inspecting the imported material for plant pests. When APHIS determines the introduction can not be made under notification, the applicant will be notified of denial of notification and the need to obtain a permit. The applicant can then request a permit for introduction of that regulated article without prejudice, as provides by § 340.3(e)(5).

APHIS will maintain an updated list of all notifications submitted. In the interest of providing the public access to information regarding the field trials that have been judged by APHIS to be eligible for notification, APHIS will periodically publish a notice in the **Federal Register** announcing the availability of such a list. Several commenters requested that a list of the

notifications be published in the Federal Register. APHIS will instead, on request, directly provide the list of interested parties in a timely manner, either by mail or through the use of electronic equipment. APHIS has made arrangements with the National Biological Impact Assessment Program (a free biotechnology data base) which is administered by USDA's Cooperative State Research Service, to make available current lists of notifications for release, that are pending and those which have been acknowledged by APHIS. The public may also review such lists in the Reading Room, suite 7, 6505 Belcrest Rd., Hyattsville, Maryland.

Petition for Determination of Nonregulated Status

Apart from the eleven comments that expressed general approval for the entire proposed rule as written, another twenty-one comments addressed the proposed petition process in § 340.6 directly. Of the twenty-one comments, eleven were in favor of the petition rule as proposed. Ten comments requested amendments to, or deletion of, the proposed petition rule.

Two comments requested that the proposed petition process be withdrawn. One of these comments gave no clear rationale for the request. The second comment expressed the opinion that the proposed petition process would provide inadequate oversight of the commercialization of transgenic plants and that the indicated data requirements were inadequate to address the known risks of commercialization. The commenters also stated that petitions were currently being reviewed by APHIS on an "ad hoc" basis and the new process would be one without scope or standards. The commenter specifically requested that proposed § 340.6(b)(A) be amended to specify that a petitioner shall include all data and not just one type of data that is relevant to a petition.

APHIS wishes to clarify that the FPPA and PQA are intended to protect American agriculture and the environment against the introduction and dissemination of plant pests. They are not statutes for the commercialization or marketing of plants. Therefore, the petition process allows APHIS to determine, based upon the review of data, whether certain transgenic plants which are regulated articles should continue to be regulated. Currently prior to commercialization new plant varieties, including those varieties produced through biotechnology, must comply with State and Federal marketing statutes such as State seed certification laws, the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In this regard, the Food and Drug Administration and the Environmental Protection Agency which administers these statutes have published policy or proposed policy statements in the Federal Register (57 FR 22984–23005; May 29, 1992) and 57 FR 55531–2; November 25, 1992). The petition process, which addresses the initial field testing of transgenic plants, supplements these commercialization requirements. To the extent the petition process is viewed as addressing commercialization, it should be viewed as an interim measure pending adoption of the Administration's policy for reviewing and approving applications to commercialize genetically engineered plants and other products.

With regard to the petition process acting in a supplementary capacity to the above marketing statutes as a means of addressing plant pest issues, APHIS believes that the data elements in the proposed petition process specifically relating to the new phenotype of the transgenic plant, outlined in § 340.6(c)(4) including, but not limited to:

> plant pest risk characteristics, disease and pest susceptibilities, expression of the gene product, new enzymes, or changes to plant metabolism, weediness of the regulated article, impact on the weediness of any other plant with which it can interbreed, agricultural or cultivation practices, effects of the regulated article on nontarget organism, indirect plant pest effects on other agricultural products, transfer of genetic information to organisms with which it cannot interbreed, and any other information which the Director believes to be relevant to a determination.

specifically address any substantive pest issues that might conceivably be raised in consideration of a new plant variety.

APHIS has recently reviewed a petition that a determination be made that an organism which had been a regulated article, the FLAVR SAVR™ tomato from Calgene, Inc., be given nonregulated status under 7 CFR part 340 based on evidence that it posed no plant pest risk, and published an interpretive ruling on that petition in the Federal Register on October 19, 1992. This ruling was based on analysis of the same types of issues presented in § 340.6(c)(4) based on scientific literature, laboratory data, field test data derived during three years of field testing, and public comments. APHIS is currently in the process of reviewing another such petition, received from Upjohn, Inc., regarding certain varieties of virus-resistant squash. The proposed rule formalizes a process analogous to that which has been operating for the first two petitions received by the agency. In response to the comment that review of petitions was being conducted on an "ad hoc" basis, APHIS notes that prior to the finalization of this rule, APHIS published notices of intent to issue interpretive rulings in the Federal Register in response to two petitions, and solicited public comment on these proposed actions. Once this proposed rule is finalized, its procedures for review of petitions will become codified in the regulations.

APHIS also disagrees with the comment that the proposed petition process for transgenic plants has no scope and no standards. APHIS believes that the issues that petitioners need to consider to fulfill the data requirements of § 340.6(c)(4) illuminate the full range of substantive risks that might conceivably be presented by a transgenic plant. With respect to standards, APHIS has followed the procedural requirements under the National Environmental Policy Act (NEPA) and existing USDA authorities to identify any plant pest risk posed by a transgenic plant under the FPPA. Based on these facts, and on its experience in having completed one determination of nonregulated status, APHIS does not believe that its review under the petition process provides inadequate oversight; nor that the data requirements are inadequate. No changes to the regulations are made in specific response to any of these comments. However, several small changes to wording describing information requirements for submission have been made, and these will be discussed below.

Four commenters expressed the desire that the public be allowed to comment on any proposed petitions under this section. Several of these commenters stated that 60 days, or a minimum of 60 days, should be afforded the public for their input. APHIS utilized a 45 day comment period in its interpretive rulemaking process for Calgene's petition concerning the FLAVR SAVR™ tomato, and in its ongoing review of another petition concerning virus-resistant squash from Upjohn, Inc. APHIS published notices of proposed interpretive rulemaking in the Federal Register (57 FR 31170, July 14, 1992; 57 FR 40632, September 4, 1992) with a request for public comment regarding determination of the regulatory status of the organisms that were the subject of these petitions. Many of the comments received on these two petitions have proven extremely useful in APHIS'

analyses. APHIS recognizes the valuable role that can be played by public input in this process. Accordingly, we have added a provision for a 60-day public comment period. The amended section, § 340.6(d)(2), reads as follows:

> After the filing of a petition, APHIS shall publish a notice in the **Federal Register**. This notice shall specify that comments will be accepted from the public on the filed petition during a 60 day period commencing with the date of the notice. During the comment period, any interested person may submit to the Director, BBEP, written comments, regarding the filed petition, which shall become part of the petition file.

APHIS has also modified the proposed regulations to lengthen the review period for petitions from 120 days to 180 days. This change has been made to allow for adequate review of public comments after the new 60 day public comment period.

APHIS disagrees with one commenter's contention that an exemption from regulated status deprives the public of access to information regarding releases of transgenic plants. This statement does not accurately represent the history of organisms determined to have nonregulated status. This determination of safety for a transgenic plant is based upon scientific evidence, which may include successful field tests that have been approved after Agency environmental assessments and findings of no significant impact, and other scientific data and public comment indicating that the constructs pose no significant plant pest risk. There is a history of public access and involvement throughout the regulatory processes utilized by APHIS. Notices are published in the **Federal Register** when a permit application for a field trial is received, and when an environmental assessment has been prepared for than field trial. In addition, in an effort to be responsive to public interest in field tests performed under the notification process, APHIS will make a list of notification for release available on request. APHIS has now also modified the proposed regulation to include a specified public comment period in the petition process; if significant issues are identified that cannot be satisfactorily addressed in that process, a petition for determination of nonregulated status will not be successful and the transgenic plant will remain under regulated status.

One commenter offered the opinion that a public participation in APHIS' decision making process is also inadequate because the public has inadequate access to information protected as Confidential Business Information (CBI) by a petitioner, particularly during the appeals process for CBI determinations. APHIS disagrees. Its requirements for substantiation of CBI claims by petitioners and public access to non-confidential materials comply fully with the Freedom of Information Act (FOIA) (5 U.S.C. 552). APHIS balances the need for confidentiality against the publics right to know. All non-confidential data submitted in support of a petition is available for public inspection in a reading room provided by APHIS. Thus, APHIS, believes that adequate opportunity is provided for public participation in the determination. No change to the rule has been made in response to these comments.

Three comments expressed the opinion that establishment of the petition process for determination of nonregulated status is premature and is not founded on adequate information or data. APHIS disagrees. APHIS believes that valid procedures have been proposed to ensure that adequate data and justification be provided before APHIS makes a determination that an organism should be exempted from the regulations. The new procedures include an opportunity for public comment and public review of the data that has been submitted to APHIS in support of a petition for determination of nonregulated status. State regulatory agencies, academic institutions, and individual research scientists will have the opportunity to present all relevant information to the agency pertaining to a specific organism prior to a determination of nonregulated status by APHIS. Thus, no changes are made to the regulations in response to these comments.

One commenter expressed the opinion that data reviewed in the petition process must necessarily include "peer reviewed scientific studies". APHIS disagrees with this contention. Data related to the safety of the regulated article must be submitted with the petition and be reviewed by APHIS' scientific staff and the data made available to the public. Public comment and the review process utilized by APHIS provide for adequate peer review of submitted data. Although the precise meaning of the phrase "peer reviewed scientific studies" is not entirely clear, one interpretation is that the commenter is suggesting that these data need to be published in the scientific literature. APHIS believes it would place unreasonable temporal and monetary burdens on applicants to require that their studies be published in this way, particularly all of those studies that indicate no new or scientifically interesting characteristics for the regulated article. Moreover, such a provision would deny applicants the ability to protect CBI as provided under FOIA.

Another comment relating to data requirements suggested that APHIS should generally require that petitions be substantiated by data, rather than descriptive information. APHIS disagrees with this comment at least in part. APHIS believes that descriptive information is, in fact, data. Much of the useful agronomic information that has been collected over the years on crop plants has been collected through "description." Nonetheless, while not all useful observations are easily presented in the form of tables and statistics, it is important to point out to petitioners that accurate recording of when, how, and how often particular observations are made can be critical to the validity of their observations. It should also be pointed out, however, that for particular transgenic plants, experiments may sometimes need to be designed expressly to address particular issues that may be raised by use of those plants. These experiments might conceivably be of a type that will require field testing under permit rather than notification, even for crops listed as eligible for notification.

In response to a specific request that proposed § 340.6(b)(A) be amended to include all data relevant to a petition, APHIS notes that the proposed regulations in § 340.6(b)(A) stated:

> The petitioner shall include copies of scientific literature, copies of unpublished studies, or data from tests performed upon which to base a determination.

It was the intent of APHIS, by using the disjunctive "or", to require all available data. In order to clarify this requirement, APHIS is amending the regulations to indicate explicitly that all three types of data shall be required with a petition if they are available. The regulations are amended accordingly in the final rule in response to this comment.

Another commenter argued that the scope of the petition section of the proposed rule is ambiguous. The comment argued that the scope of the rule might not be limited to plants because some "regulated articles" which might be the subject of petitions are microorganisms. If the rule is to apply to organisms other than plants, the commenter continued, the appropriate data requirements must be specified. The commenter is correct in noting that the data elements listed in § 340.6(c) apply specifically to characteristics of plants, rather than

microorganisms. APHIS notes that it is stated in the summary to the proposed rule that the petition process is designed to apply to "a petition process allowing for a determination that certain transgenic plants are no longer considered regulated articles." To further clarify the intent of the proposed rule, we have also amended the petition data element proposed in § 340.6(c)(1) by substituting the word "plant" for "organism". The section redesignated as § 340.5 in the proposed rule, "Petition to amend the list of organisms," would still apply if an applicant wishes that the regulatory status of a particular microorganism be considered by APHIS.

Several minor changes have been made to § 340.6(c) for clarification or in response to comments. We have further amended § 340.6(c)(1) by adding the words, "and information necessary to identify the recipient plant in the narrowest taxonomic grouping applicable," in order to indicate to petitioners the requirement that they specify exactly those species, varieties, cultivars, or transformat lines to which the petition applies.

Another commenter noted that the language setting out data requirements for specifying the genotype of a regulated article in § 340.6(c)(3) seemed open-ended. It would often be difficult and irrelevant, the commenter contended, to provide a detailed genotype of the parental organism, and it would make more sense to focus on that subset of genotype information that could be relevant to the determination. APHIS concurs, and accordingly, the first sentence of this section has been modified to read, "A detailed description of the differences in genotype between the regulated article and the nonmodified recipient organism."

One commenter noted that it would be helpful for investigators if there were some comment in the rule regarding the significance of the traits imparted to plants as a criterion for risk. Accordingly, the following sentence has been added to § 340.6(c)(4):

> Any information known to the petitioner that indicates that a regulated article may pose a greater plant pest risk than the unmodified recipient organism shall also be included.

Executive Order 12778

Twenty-five comments were received related to the statement made under Executive Order 12778, Civil Justice Reform, that appeared on page 57 FR 53040 of the proposed rule. Twenty-two of these comments objected to the statement that the proposed Federal regulations preempted State regulations that were inconsistent with this rule. Three comments raised concerns or requested clarification of the statement pertaining to preemption.

In general, the comments stated that States and Federal Territories need to retain the authority to impose restrictions and advance notification requirements that are more strict than Federal standards to address local plant pest or disease conditions, to keep their constituencies informed, and to ensure their adequate protection. Federal preemption would discourage State involvement and undermine cooperation between State and Federal governments. The comments further stated that the language under Executive Order 12778 was in conflict with a recent court decision which held that Federal preemption authority was divested from the PQA by the 1926 amendment to the Act.

APHIS wishes to clarify its role in cooperating with the States during the permitting and notification processes for introduction of regulated articles. Since 7 CFR part 340 went into effect in July, 1987, APHIS has generally enjoyed a fruitful collaborative relationship in the evaluation of introductions of genetically engineered organisms, and input from officials of the States and Federal Territories has been invaluable in determining prudent courses of action with regard to proposed field trials throughout the United States. APHIS expects that this relationship will continue, and looks forward to additional assistance from the States and Territories whenever a significant issue arises.

With regard to APHIS' interpretation of its actual authority regarding plant protection issues, Congress has given to the Secretary of Agriculture, through the PQA and the FPPA, the sole responsibility for protecting the horticulture and agriculture of the United States from the importation into the United States of plant pests and diseases. Under these Acts, the States are precluded from imposing restrictions on plants and plant products while they are in foreign commerce, or which would be an unreasonable burden on such commerce. Additionally, the Secretary has been given authority under the PQA and FPPA to promulgate regulations to prevent the movement in interstate commerce of plant pests or diseases. Pursuant to those Acts, State regulations would be preempted only if they are inconsistent with any Federal orders or regulations promulgated pursuant to those Acts. It is APHIS' position that where the Secretary of Agriculture has established an interstate quarantine or regulation under either Act, neither the States nor Territories can establish additional requirements concerning the particular subject matter regulated thereby. It should be noted, however, that even where the Secretary has issued a quarantine or regulations on articles in interstate commerce, States may still establish parallel quarantines and regulations which do not impose requirements in addition to those imposed by the Secretary.

Thus, the issuance of final rules does not *per se* prohibit State regulation of the intrastate movement of genetically engineered plants. Whether State or Territorial regulation is preempted would depend on whether the State or Territorial regulation is viewed as being different than, or otherwise inconsistent with, the provisions of the final rule. The procedures adopted herein retain provisions for providing information to the States or Territories, for their review, about notifications pending within their borders. APHIS will welcome responses from the States and Territories. States and Territories are requested to inform APHIS if they have any information that gives them any reason to believe that a particular organism is not eligible for notification. APHIS looks forward to continuing its close relationship with the States or Territories as it addresses any new risk-based issues in its regulation of genetically engineered plants.

Four commenters raised the issue of preemption specifically with regard to the 1988 Court of Appeals decision in Guam Fresh, Inc. (here and after *Guam Fresh* v. *Ada*), which considered whether the 1926 amendments to the Federal Plant Quarantine Act (hereinafter, the Act) divested Federal preemptive authority from the Act. One commenter expressed the opinion that this holding allows States to regulate plant pests more strictly than they are regulated under Federal law. A reading of Guam Fresh, however, indicates that the regulatory authority of the States in a particular instance hinges on whether "the Secretary has acted" or "has found it necessary to impose a Federal quarantine in the same area". The Ninth Circuit held in Guam Fresh that States may "impose a quarantine on any articles not specifically interdicted by a Federal quarantine". The legislative history of the 1926 amendments to the Act stated:

> [t]he purpose of this measure is simply to permit the States to continue such regulations where they are not in conflict with the regulations of the United States government or where the regulations of the United States government do not cover the

particular plant or thing which the State laws undertake to cover.

The House report further noted that:

[t]he USDA advised and encouraged the placing of State quarantines [and] issued and administered its quarantines as to particular pests and diseases in the belief that the States might legally take similar action with reference to subjects not covered by a Federal quarantine.

Moreover:

* * * the Secretary of Agriculture is authorized, whenever he deems such action advisable and necessary to carry out the purposes of this chapter, to cooperate with any State, Territory, or District, in connection with any quarantine. * * *

Thus, the Secretary may cooperate with the States when the Secretary deems it necessary:

* * * in order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy of administration of Federal and State laws and regulations.

In holding in Guam Fresh that the 1926 amendments to the Act divested the Act of its preemptive authority, there was in effect the conclusion that "the Secretary had not acted" to impose a Federal quarantine which covered the same articles as those covered by the Guam regulation. In that instance, State regulation "supplements" Federal law by restricting pests of "peculiarly local concern" and is not preempted by Federal law. With regard to the notification provisions in question, if the State identifies a specific plant or article of local concern upon which the Secretary has not acted, a State's actions would "supplement" those of the Federal government and would not be subject to preemption. However, it is APHIS' expectation that the process established under this rule will enable, with continued cooperation by the States, identification and communication of any issues of state or local concern, so that those issues will be directly considered as part of the Federal actions under notification.

Compliance With the National Environmental Policy Act

Several commenters expressed the opinion that APHIS has failed to comply with the requirements of NEPA by failing to provide an environmental analysis of its proposed rule at the time of its publication. APHIS disagrees. With regard to the notification provision of this final rule, APHIS has prepared an environmental assessment which is available upon request. The rationale for this analysis was also set forth in an abbreviated form in the preamble of the proposed rule. For organisms approved under notification, however, APHIS continues to believe that the constraints imposed by the eligibility criteria and the performance standards effectively eliminate the potential for significant impact to the environment that would occasion any case-by-case analysis.

The testing of novel organisms not fitting the eligibility criteria for notification and the use of field testing protocols not strictly in conformance with the performance standards will continue to be regulated under the permitting procedures. APHIS stated in its regulations at 52 FR 22892 on June 16, 1987, that the issuance of all permits for the introduction of a genetically engineered organism would be in accordance with NEPA, USDA regulations, and APHIS Guidelines implementing NEPA. APHIS indicated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing permits for the release of regulated articles into the environment.

APHIS has prepared environmental assessments (EA's) and findings of no significant impact (FONSI's) for some 365 permit applications as of March 2, 1993. Each of these assessments has entailed the evaluation of scientific data and other information submitted by interested persons, review of State comments on each proposed release, and sometimes consideration of other comments provided to APHIS by members of the public, regarding not only the potential for plant pest risk, but also a broad range of other potential effects on the human environment. Our analyses, documented in these evaluations and supported by the field trial reports submitted by applicants after the conclusion of their field trials, indicate that certain actions will not have a significant environmental effect. APHIS' action, establishing performance standards and eligibility criteria applicable to notification of introduction of a limited number of regulated articles in lieu of permitting requirements, is a reflection of our experience with these field trials. APHIS has derived the eligibility criteria and performance standards to be used for notification in this rule from the criteria that APHIS has used previously in its environmental assessments to determine that genetically engineered plants pose no significant impact on the environment. APHIS believes that full compliance with the eligibility requirements and performance standards for notification would lead to a finding of no significant impact for the introduction of such genetically engineered plants.

The D.C. Circuit's decision in *FET* v. *Heckler*, stated that "NEPA requires an agency to evaluate the environmental effects of its action at the point of commitment" (756 F.2d 143, D.C. Cir. 1985). With regard to the petition provision of this final rule, APHIS has concluded that the "point of commitment" occurs when the agency takes action on each individual petition for determination of nonregulated status of a genetically engineered plant. This petition process is similar to APHIS' actions regarding a petition for nonregulated status received from Calgene, Inc., regarding its FLAVR SAVR™ tomato. Through an analysis of data submitted from Calgene and public comments, APHIS made the determination that the FLAVR SAVR™ tomato should no longer be a regulated article. To illustrate the considerations involved in making this determination, the following conclusions are derived from that determination. FLAVR SAVR™ tomatoes were found to: (1) Exhibit no plant pathogenic properties; (2) be no more likely to become weeds than their non-engineered parental varieties; (3) be unlikely to increase the weediness potential for any other cultivated plant or native wild species with which the organisms can interbreed; (4) not cause damage to processed agricultural commodities; and (5) be unlikely to harm other organisms, such as bees, that are beneficial to agriculture. APHIS also concluded that there is no reason to believe that new progeny FLAVR SAVR™ tomato varieties bred from these lines will present a plant pest risk, i.e., have properties substantially different from those observed for the FLAVR SAVR™ tomato lines already field tested, or those observed for tomatoes in traditional breeding programs.

APHIS will make similar analyses in full compliance with NEPA to determine plant pest risk for other organisms for which petitions are received under § 340.6. APHIS expects to receive petitions concerning a wide range of organisms that exhibit a wide range of properties. By virtue of the potential variation in considerations between different petitions, each will need to be considered individually. The final rule does not irrevocably commit APHIS to any decision regarding any petition for nonregulated status.

The petition process is merely a procedural provision which may result in an organism no longer being regulated after a thorough and comprehensive plant pest and environmental analysis. As a procedural provision it advises persons what data to submit in a petition so that the

Agency can decide *if* a determination of nonregulated status can be made. This is the same rationale which appeared in the Agency's Special Environmental Assessment that was prepared analyzing the impact of 7 CFR part 340, when it was published as a final rule on June 16, 1987 (see FR 22906). Thus, APHIS is incorporating the Special Environmental Assessment into the present assessment it is preparing for this final rule.

Changes to the Final Rule Which Reflect Internal Agency Management

We have amended the rule in response to comments only in those portions addressed in the November 6, 1992, proposed rule (*See* 57 FR 53036–53043), and have made miscellaneous changes related to administrative organization within APHIS. The latter changes pertain to internal agency management and are thus exempted from notice and comment rulemaking under the Federal Administrative Procedure Act (5 U.S.C. 553).

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the final rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this final rule is to (1) provide for a notification procedure for the introduction of regulated articles in accordance with performance standards, and (2) formalize a petition procedure for a determination that an article is not regulated under part 340. Currently, the regulations do not provide for such a petition procedure. The notification procedure for the introduction of a regulated article would be used in place of a permit application when the field test, interstate movement, or importation would be performed in accordance with the eligibility requirements and performance standards in this document. The petition procedure was devised in response to comments received by APHIS. The notification procedure should result in a savings of time and expense that would ordinarily be associated with the preparation of a permit application and would eliminate the delay associated with permit application review. Eighty-five percent of current field tests could be conducted under the notification procedure, with the result that the current 120-day waiting period for a release permit would be eliminated. The majority of movement that is currently conducted under permit could also be conducted under the notification procedure, with the result that the current 60-day waiting period of movement would be eliminated.

It is expected that the notification and petition procedures would affect several hundred research scientists, some of whom may be operating small businesses that would be deemed small "entities" under the Regulatory Flexibility Act. When the final rule was issued in 1987 it was estimated that the initial cost associated with submission of a permit application was $5,000. However, APHIS has subsequently learned that the cost of preparing a permit application has dropped significantly (by as much as 90%) once an applicant has made more than one permit submission to APHIS. We have estimated that the notification procedure should reduce by 95% the cost associated with permit preparation. Thus, each person utilizing the notification procedure in lieu of a permit should immediately realize an initial savings of at least $4750 for a person who is preparing a permit application for the first time. However, this savings would be less than $4750 when the cost of preparing a permit application is less than $5000.

APHIS believes that the initial cost of preparing a notification should not be significant since the type of information called for in a notification is basic data that a researcher or company has already collected. The cost of preparing a notification will further decrease as persons become more familiar with the preparation of notification letters. APHIS further believes that there should be no additional cost associated with the collection of data required for a petition for non-regulated status. The Agency believes that the data required in a petition is the data a company or researcher would routinely collect to assess the development potential of a new variety. APHIS acknowledges that there may be some slight additional cost associated with the actual preparation of the petition. APHIS believes that this cost would be minimal.

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

In order to ensure that State regulatory programs are in harmony with this regulation, the Department will continue to consult with State regulatory officials regarding specific local ecological concerns that may be affected by plants to be introduced under the notification procedures. The Department also intends to provide the public with notice of its proposed actions and the deliberations with the States. This process should assure, with continued cooperation of the States, that State concerns will be considered as part of the Federal notification process. If newly identified issues suggest any modifications of these regulations, the Department will be able to address these concerns through the notice and comment rulemaking process, or through emergency regulation as appropriate. These cooperative measures should go far to harmonize Federal and State regulatory activities in this area.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Pursuant to the United States Constitution and applicable Federal statutes, any State or local laws, regulations, or policies that are inconsistent with this rule are preempted. This rule does not preempt any existing State or local law which is consistent with it. This rule has no retroactive effect. This rule does not require the exhaustion of administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0085.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and

containers, Plant diseases and plant pests, Transportation.

Accordingly, we are amending 7 CFR 340 as follows:

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

1. The authority citation for 7 CFR part 340 continues to read as follows:

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 340.0, paragraph (a) and its footnote are revised to read as follows:

§ 340.0 Restrictions on the introduction of regulated articles.

(a) No person shall introduce any regulated article unless the Director, BBEP, is:

(1) Notified of the introduction in accordance with § 340.3, or such introduction is authorized by permit in accordance with § 340.4, or such introduction is conditionally exempt from permit requirements under § 340.2(b); and

(2) Such introduction is in conformity with all other applicable restrictions in this part.[1]

* * * * *

3. In § 340.1, the definitions for *Deputy Administrator* and *Plant Protection and Quarantine* are removed; the following definitions *Animal and Plant Health Inspection Service (APHIS), Director, BBEP,* and *State regulatory official* are added in alphabetical order; and *Courtesy permit, Inspector, Permit,* and *Regulated article* are revised to read as follows:

§ 340.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service (APHIS). An agency of the United States Department of Agriculture.

Courtesy permit. A written permit issued by the Director, BBEP, in accordance with § 340.4(h).

Director, BBEP. The Director, or designee of the Director, of the Biotechnology, Biologics, and Environmental Protection (BBEP) division of the Animal and Plant Health Inspection Service.

* * * * *

Inspector. Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Director, BBEP, in accordance with law to enforce the provisions of this part.

* * * * *

Permit. A written permit issued by the Director, BBEP, for the introduction of a regulated article under conditions determined by the Director, BBEP, not to present a risk of plant pest introduction.

* * * * *

Regulated article. Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in § 340.2 and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Director, BBEP, determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions.

* * * * *

State regulatory official. State official with responsibilities for plant health, or any other duly designated State official, in the State where the introduction is to take place.

* * * * *

§ 340.1 [Amended]

4. In § 340.1 the definition heading for *Well-characterized and contains only non-coding regulatory regions (e.g. operators, promoters, origins of replication, terminators, and ribosome binding regions)* is italicized.

§ 340.2 [Amended]

5. In § 340.2, paragraph (b)(1)(i) the phrase "§ 340.6(b)(3) of this part" is revised to read "§ 340.8(b)(3)".

6. In § 340.2, paragraph (b)(2)(i) the phrase "§ 340.6(b)(1), (2), and (3) of this part" is revised to read "§ 340.8(b) (1), (2), and (3)."

§§ 340.3 through 340.7 [Redesignated as §§ 340.4, 340.5, 340.7, 340.8 and 340.9]

7. Sections 340.3, 340.4, 340.5, 340.6, 340.7 are redesignated §§ 340.4, 340.5, 340.7, 340.8, and 340.9 respectively.

8. A new § 340.3 is added to read as follows:

§ 340.3 Notification for the introduction of certain regulated articles.

(a) *General.* Certain regulated articles may be introduced without a permit, provided that the introduction is in compliance with the requirements of this section. Any other introduction of regulated articles require a permit under § 340.4, with the exception of introductions that are conditionally exempt from permit requirements under § 340.2(b) of this part.

(b) *Regulated articles eligible for introduction under the notification procedure.* Regulated articles which meet all of the following six requirements and the performance standards set forth in paragraph (c) of this section are eligible for introduction under the notification procedure.

(1) The regulated article is:

(i) One of the following plant species:

corn (*Zea mays* L.);
cotton (*Gossypium hirsutum* L.);
potato (*Solanum tuberosum* L.);
soybean (*Glycine max* [L.] Merr.);
tobacco (*Nicotiana tabacum* L.);
tomato (*Lycopersicon esculentum* L.);

or

(ii) Any additional plant species that BBEP has determined may be safely introduced in accordance with the eligibility criteria set forth in paragraph (b)(2) through (b)(6) of this section and the performance standards set forth in paragraph (c) of this section.

(2) The introduced genetic material is "stably integrated" in the plant genome, as defined in § 340.1.

(3) The function of the introduced genetic material is known and its expression in the regulated article does not result in plant disease.

(4) The introduced genetic material does not:

(i) Cause the production of an infectious entity, or

(ii) Encode substances that are known or likely to be toxic to nontarget organisms known or likely to feed or live on the plant species, or

(iii) Encode products intended for pharmaceutical use.

(5) To ensure the introduced genetic sequences do not pose a significant risk of the creation of any new plant virus, they must be:

(i) Noncoding regulatory sequences of known function, or

[1] Part 340 regulates, among other things, the introduction of organisms and products altered or produced through genetic engineering which are plant pests or which there is reason to believe are plant pests. The introduction into the United States of such articles may be subject to other regulations promulgated under the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Noxious Weed Act (7 U.S.C. 2801 *et seq.*) and found in 7 CFR parts 319, 321, 330, and 360. For example under regulations promulgated in 7 CFR "Subpart-Nursery Stock" (7 CFR 319.37) a permit is required for the importation of certain classes of nursery stock whether genetically engineered or not. Thus, a person should consult those regulations prior to the importation of any nursery stock.

(ii) Sense or antisense genetic constructs derived from viral coat protein genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species, or

(iii) Antisense genetic constructs derived from noncapsid viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species.

(6) The plant has not been modified to contain the following genetic material from animal or human pathogens:

(i) Any nucleic acid sequence derived from an animal or human virus, or

(ii) Coding sequences whose products are known or likely causal agents of disease in animals or humans.

(c) *Performance standards for introductions under the notification procedure.* The following performance standards must be met for any introductions under the notification procedure.

(1) If the plants or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in transit and must be maintained at the destination facility in such a way that there is no release into the environment.

(2) When the introduction is an environmental release, the regulated article must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release.

(3) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(4) There must be no viable vector agent associated with the regulated article.

(5) The field trial must be conducted such that:

(i) The regulated article will not persist in the environment, and

(ii) No offspring can be produced that could persist in the environment.

(6) Upon termination of the field test:

(i) No viable material shall remain which is likely to volunteer in subsequent seasons, or

(ii) Volunteers shall be managed to prevent persistence in the environment.

(d) *Procedural requirements for notifying APHIS.* The following procedures shall be followed for any introductions under the notification procedure:

(1) Notification should be directed to Director, BBEP, c/o Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

(2) The notification shall include the following:

(i) Name, title, address, telephone number, and signature of the responsible person;

(ii) Information necessary to identify the regulated article(s), including:

(A) The scientific, common, or trade names, and phenotype of regulated article,

(B) The designations for the genetic loci, the encoded proteins or functions, and donor organisms for all genes from which introduced genetic material was derived, and

(C) The method by which the recipient was transformed;

(iii) The names and locations of the origination and destination facilities for movement or the field site location for the environmental release; and the size of the introduction,

(iv) The date and, in the case of environmental release, the expected duration of the introduction (release); and

(v) A statement that certifies that introduction of the regulated article will be in accordance with the provisions of this section.

(3) Notification must be submitted to BBEP:

(i) At least 10 days prior to the day of introduction, if the introduction is interstate movement.

(ii) At least 30 days prior to the day of introduction, if the introduction is an importation.

(iii) At least 30 days prior to the day of introduction, if the introduction is an environmental release.

(4) Field test reports must be submitted to the Director, BBEP, within 12 months after the start of the field test, and every 12 months through the duration of the field test. Final reports for those field tests lasting more than 12 months are due 6 months after the termination of the field test. Field test reports shall include:

(i) The APHIS reference number; and

(ii) Methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment.

(5) The Director, BBEP, shall be notified of any unusual occurrence within the time periods and in the manner specified in § 340.4(f)(10).

(6) Access shall be allowed for APHIS and State regulatory officials to inspect facilities and/or the field test site and any records necessary to evaluate compliance with the provisions of paragraphs (b) and (c) of this section.

(e) *Administrative action in response to notification.* (1) The Director, BBEP, will notify the appropriate State regulatory official(s) for notification and review within 5 business days of receipt of notification.

(2) The Director, BBEP, will provide acknowledgement within 10 days of receipt that the interstate movement is appropriate under notification.

(3) The Director, BBEP, will provide acknowledgement within 30 days of receipt that the importation is appropriate under notification.

(4) The Director, BBEP, will provide acknowledgement within 30 days of receipt that the environmental release is appropriate under notification.

(5) A person denied permission for introduction of a regulated article under notification may apply for a permit for introduction of that regulated article without prejudice.

9. A new § 340.6 is added to read as follows:

§ 340.6 Petition for determination of nonregulated status.

(a) *General.* Any person may submit to the Director, Biotechnology, Biologics, and Environmental Protection (BBEP), a petition to seek a determination that an article should not be regulated under this part. A petitioner may supplement, amend, or withdraw a petition in writing without prior approval of the Director, BBEP, and without affecting resubmission at any time until the Director, BBEP, rules on the petition. A petition for determination of nonregulated status shall be submitted in accordance with the procedure and format specified in this section.

(b) *Submission procedures and format.* A person shall submit two copies of a petition to the Director, BBEP, c/o the Deputy Director, Biotechnology Coordination and Technical Assistance, BBEP, APHIS, USDA, 6505 Belcrest Road, Federal Building, Hyattsville, MD 20782. The petition shall be dated and structured as follows:

Petition for Determination of Nonregulated Status

The undersigned submits this petition under 7 CFR 340.6 to request that the Director, BBEP, make a determination that the article should not be regulated under 7 CFR part 340.

(Signature) _____

A. Statement of Grounds

A person must present a full statement explaining the factual grounds why the

organism should not be regulated under 7 CFR part 340. The petitioner shall include copies of scientific literature, copies of unpublished studies, when available, and data from tests performed upon which to base a determination. The petition shall include all information set forth in paragraph (c) of 7 CFR 340.6. If there are portions of the petition deemed to contain trade secret or confidential business information (CBI), each page of the petition containing such information should be marked "CBI Copy". In addition, those portions of the petition which are deemed "CBI" shall be so designated. The second copy shall have all such CBI deleted and shall have marked on each page where the CBI was deleted: "CBI Deleted." If a petition does not contain CBI, the first page of both copies shall be marked: "No CBI."

A person shall also include information known to the petitioner which would be unfavorable to a petition. If a person is not aware of any unfavorable information, the petition should state, "Unfavorable information: NONE."

B. Certification

The undersigned certifies, that to the best knowledge and belief of the undersigned, this petition includes all information and views on which to base a determination, and that it includes relevant data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____

(Name of Petitioner) _____

(Mailing Address) _____

(Telephone Number) _____

(c) *Required data and information.* The petition shall include the following information:

(1) Description of the biology of the nonmodified recipient plant and information necessary to identify the recipient plant in the narrowest taxonomic grouping applicable.

(2) Relevant experimental data and publications.

(3) A detailed description of the differences in genotype between the regulated article and the nonmodified recipient organism. Include all scientific, common, or trade names, and all designations necessary to identify: the donor organism(s), the nature of the transformation system (vector or vector agent(s)), the inserted genetic material and its product(s), and the regulated article. Include country and locality where the donor, the recipient, and the vector organisms and the regulated articles are collected, developed, and produced.

(4) A detailed description of the phenotype of the regulated article. Describe known and potential differences from the unmodified recipient organism that would substantiate that the regulated article is unlikely to pose a greater plant pest risk than the unmodified organism from which it was derived, including but not limited to: Plant pest risk characteristics, disease and pest susceptibilities, expression of the gene product, new enzymes, or changes to plant metabolism, weediness of the regulated article, impact on the weediness of any other plant with which it can interbreed, agricultural or cultivation practices, effects of the regulated article on nontarget organisms, indirect plant pest effects on other agricultural products, transfer of genetic information to organisms with which it cannot interbreed, and any other information which the Director believes to be relevant to a determination. Any information known to the petitioner that indicates that a regulated article may pose a greater plant pest risk than the unmodified recipient organism shall also be included.

(d) *Administrative action on a petition.*

(1) A petition for determination of nonregulated status under this part which meets the requirements of paragraphs (b) and (c) of this section will be filed by the Director, BBEP, stamped with the date of filing, and assigned a petition number. The petition number shall identify the file established for all submissions relating to the petition. The BBEP will promptly notify the petitioner in writing of the filing and the assigned petition number. If a petition does not meet the requirements specified in this section, the petitioner shall be sent a notice indicating how the petition is deficient.

(2) After the filing of a completed petition, APHIS shall publish a notice in the **Federal Register**. This notice shall specify that comments will be accepted from the public on the filed petition during a 60 day period commencing with the date of the notice. During the comment period, any interested person may submit to the Director, BBEP, written comments, regarding the filed petition, which shall become part of the petition file.

(3) The Director, BBEP, shall, based upon available information, furnish a response to each petitioner within 180 days of receipt of a completed petition. The response will either:

(i) Approve the petition in whole or in part; or

(ii) deny the petition.

The petitioner shall be notified in writing of the Director's decision. The decision shall be placed in the public petition file in the offices of BBEP and notice of availability published in the **Federal Register**.

(e) *Denial of a petition; appeal.* (1) The Director's written notification of denial of a petition shall briefly set forth the reason for such denial. The written notification shall be sent by certified mail. Any person whose petition has been denied may appeal the determination in writing to the Administrator within 10 days from receipt of the written notification of denial.

(2) The appeal shall state all of the facts and reasons upon which the person relies, including any new information, to show that the petition was wrongfully denied. The Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. An informal hearing may be held by the Administrator if there is a dispute of a material fact. Rules of Practice concerning such a hearing will be adopted by the Administrator.

§ 340.4 [Amended]

10. In newly redesignated § 340.4 the words "Plant Protection and Quarantine" are removed and the phrase "Biotechnology, Biologics, and Environmental Protection" is added in its place:

a. Paragraph (a), both times it appears.

b. Paragraph (b), three times it appears.

c. Footnote 6.

d. Paragraph (c), introductory paragraph, three times it appears.

e. Paragraph (c)(1), in the 5th and 8th sentences.

f. Paragraph (c)(2).

g. Paragraph (e), both times it appears.

h. Paragraph (f)(9).

i. Paragraph (f)(10).

j. Paragraph (f)(11)(ii).

k. Paragraph (h)(2).

l. Paragraph (h)(3), both times it appears.

11. In newly redesignated § 340.4 the words "Deputy Administrator" are removed and the words "Director, BBEP" are added in their place:

a. Paragraph (f), introductory paragraph.

b. Paragraph (f)(7).

c. Paragraph (f)(8).

d. Paragraph (g), the three times it appears.

e. Paragraph (h)(1).

12. In newly redesignated § 340.4, paragraph (a) first sentence, the words "the Biological Assessment Support Staff, (Biotech Unit)" are removed and the words "Biotechnology Permit Unit" are added in their place.

13. In newly redesignated § 340.4, footnote 6, the words "the Biological Assessment Support Staff" are removed and the words "Biotechnology Permit Unit" are added in their place.

§ 340.5 [Amended]

14. In newly redesignated § 340.5, paragraph (b), in the introductory paragraph and under the subheading PETITION TO AMEND 7 CFR 340.2, the words "Plant Protection and Quarantine" are removed and the phrase "Biotechnology, Biological, and Environmental Protection" are added in their place.

15. In newly redesignated § 340.5 the words "Deputy Administrator" are removed and the words "Director, BBEP" are added in their place:

a. Paragraph (a), the three times it appears.

b. Paragraph (b), in the introductory paragraph and under the subheading PETITION TO AMEND 7 CFR 340.2.

c. Paragraph (c)(3) the introductory text and (c)(3)(i).

16. In newly redesignated § 340.5, paragraph (c)(3)(ii) the words "Deputy Administrator's" are removed and the words "Director, BBEP's" are added in their place.

17. In newly redesignated § 340.5, paragraph (b), the words "in care of the Director of the Biotechnology and Environmental Coordination Staff" are removed.

18. In newly redesignated § 340.5 the words "the Biotechnology and Environmental Coordination Staff' are removed and the words "Biotechnology, Biologics, and Environmental Protection" are added in their place.

a. Paragraph (c)(1), both times it appears.

b. Paragraph (c)(2).

c. Paragraph (c)(3)(ii).

§ 340.7 [Amended]

19. In newly redesignated § 340.7, paragraph (b) the words "Plant Protection and Quarantine" are removed and the phrase "Biotechnology, Biologics, and Environmental Protection" are added in its place.

Done in Washington, DC, this 29th day of March 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–7517 Filed 3–30–93; 8:45 am]

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March 31, 1993

Part XI

Department of Health and Human Services

45 CFR Part 96

Substance Abuse Prevention and Treatment Block Grants; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 96

Substance Abuse Prevention and Treatment Block Grants

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Interim Final Rule.

SUMMARY: Sections 1921 to 1954 of the Public Health Service (PHS) Act, authorize the Secretary to provide Block Grants to States for the purposes of prevention and treatment of substance abuse which includes alcohol and other drugs. Among other things, the Act requires that the funding agreements with the States provide for a number of provisions relating to intravenous substance abuse, tuberculosis and human immunodeficiency virus (HIV) testing and services, group homes for recovering substance abusers, and peer review requirements. This interim final rule establishes standards specifying the circumstances in which the Secretary will consider an application for a grant under section 1921 of the PHS Act to be in accordance with the law .

DATES: *Effective Date:* March 31, 1993.

Comment Date: The Secretary is requesting written comments which must be received on or before (insert date 60 days after publication).

ADDRESSES: Written comments on this interim final rule may be sent to Susan L. Becker, Director, Division of State Programs, Center for Substance Abuse Treatment (CSAT), Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan L. Becker, telephone No. (301) 443–3820.

SUPPLEMENTARY INFORMATION: Sections 1921 to 1954 of the PHS Act, 42 U.S.C. 300x–21—300x–35, provide for allotments each year to States for the purposes of planning, carrying out, and evaluating activities to prevent and treat substance abuse which is defined at section 96.121 to include the abuse and/or illicit use of alcohol and other drugs. The Block Grant funds may be expended to provide for a wide range of activities to prevent and treat substance abuse and may be expended to deal with the abuse of alcohol, the use or abuse of illicit drugs, the abuse of licit drugs and the use or abuse of tobacco products.

In order for the Secretary to award Block Grants, the States and eligible Indian tribes must apply for the Block Grant and the application must be in accordance with the law. These interim final regulations establish standards specifying the circumstances in which the Secretary will consider an application for a grant to be in accordance with the law. Based on the criteria established in law and implemented by this regulation, there is only one Indian tribe that is currently eligible for funds under this program.

All of the statutory requirements for the Substance Abuse Prevention and Treatment Block Grant are applicable to fiscal year 1993 Block Grants, except section 1926 of the PHS Act. It is the Department's view that good cause exists to show that notice and comment are "impracticable, * * * or contrary to the public interest," 5 U.S.C. 553(b)(B), since pursuant to section 1932(d) of the PHS Act Block Grant funds for substance abuse may not be provided to States for fiscal year 1993 on or after January 1, 1993 if the rule is not issued. These Block Grants are the major source of Federal funds to States to be used to establish and supplement various substance abuse prevention and treatment programs and an interruption or a delay in such funding could have a profound impact on the States ability to provide substance abuse prevention and treatment, a result which is contrary to the War on Drugs and the public interest.

For similar reasons, this regulation is effective immediately. Delaying the effective date for a period of thirty days is contrary to the public interest. Requiring States that have submitted an acceptable application to wait an additional thirty days for payment would only compound the problem of delay and burden the States further in their provision of substance abuse prevention and treatment programs. Although the regulations are published as an interim final rule and are effective immediately, the Secretary requests comments on the regulations and is particularly interested in comments on alternative ways the law may be implemented. The Secretary will consider all comments and, after such consideration, make any amendments to the regulations by January 1, 1994, in a final rule.

The Application and Assurances

45 CFR 96.122 and 96.123 are added to describe what is to be provided in the application and the necessary assurances that the States (which includes the District of Columbia and the territories) will provide to ensure the Secretary that it will carry out the purposes of and expend the Block Grant in accordance with the law. In applying for Block Grants for fiscal year 1993, applicants must submit an application containing information which conforms to all of the elements of the regulations.

Beginning in fiscal year 1994, applicants are required to use the standard application form prescribed by HHS with the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Upon submission to OMB for review, a copy of this application may be obtained from the Center for Substance Abuse Treatment, Division of State Programs, Rockwall II Bldg., 5600 Fishers Lane, Rockville, MD 20857. The contract person is Susan L. Becker. The Secretary has had preliminary discussions and will have further discussions with General Accounting Office (GAO) and the States about the reporting requirements under section 1942(a) of the PHS Act which is part of the application. However, the public is encouraged to formally comment on all of the information collection requirements contained in the standard form under the Paperwork Reduction Act. These comments will be carefully considered by OMB and the Secretary and, as a result of these comments, any changes to the rule will be made by January 1, 1994, or shortly thereafter.

The State in its application, as required by section 1932(a) of the PHS Act, is to submit the necessary assurances, as well as the State plan and the report required by sections 1932(b)(1) and 1942(a) of the PHS Act, respectively. Section 1932(b)(1) of the PHS Act provides that the States are to submit a State plan describing how the State plans to implement the requirements of the Act, such as those relating to the provision of tuberculosis and HIV services and services to pregnant women which are described in more detail below. It also provides that the States are to describe how the Block Grant is to be expended. 45 CFR 96.122(g) sets forth the information States are to provide the Secretary under the State plan.

Section 1942(a) of the PHS Act requires the States to submit a report which describes the purposes for which the grant received by the State for the preceding fiscal years was expended, a description of the activities of the State under the program, and the recipients of amounts provided in the grant. 45 CFR 96.122(f) sets forth the information that is to be submitted to the Secretary in the report.

In addition, the regulations, applicable to the report, require States to submit information on the use of Block Grant funds over a several year period. For example, for fiscal year

1993, specific information is to be submitted for Federal fiscal years 1990, 1991 and 1992, as well as for the most recent twelve month State expenditure period for which expenditure information is available. Information from earlier years is necessary because it often takes States two to three years to acquire actual expenditure, and other data. The Secretary believes it is essential that actual data (rather than simply estimates) be acquired for monitoring the Block Grant funds to ensure that the funds are expended for authorized purposes and in accordance with the law.

Also, when information is requested for fiscal years 1990, 1991 and 1992, applicants are to provide information relating to substance abuse prevention and treatment activities under the Alcohol, Drug Abuse and Mental Health Services (ADMS) Block Grant formerly authorized by sections 1911 and 1926 of the PHS Act. Although those sections have been amended, the Department will review those expenditures to ensure that the Block Grant funds were expended in accordance with the law in effect for those fiscal years.

As has been the case under the ADMS Block Grant, the funding agreements and assurances in the application are to be made through certification by the chief executive officer personally, or by an individual authorized to make such certification on behalf of the chief executive officer. If a delegation has occurred, a copy of the current delegation of authority must be submitted with the application.

The application (in substantial compliance with the statutory and regulatory provisions) is to be submitted for fiscal year 1993 no later than ninety days after publication of these regulations, and, for subsequent years, no later than March 31 of the fiscal year for which the State is applying for funds. The Secretary believes this will allow States sufficient time to complete the applications and, as to the March 31 deadline, allow for a more orderly process. The term "fiscal year" refers to the Federal fiscal year. This will make the HHS review process more efficient and may expedite the process of reviewing applications and awarding the grants.

The Secretary will approve an application with a State plan, assurances and report which satisfy the requirements of the Act and the regulations. The State is required to provide descriptions of how the State is implementing the provisions of the Act and the regulations. Unless provided otherwise by the regulations, the Secretary will approve procedures which are provided as examples in the regulations, or the State may submit other procedures which the Secretary determines to reasonably implement the requirements of the Act and the regulations.

Certain Allocations and Primary Prevention

45 CFR 96.124 and 96.125 are added to implement the provisions of Section 1922 of the PHS Act which requires States to expend the Block Grant on various programs. Specifically, the State is required to expend not less than 35 percent of the Block Grant for prevention and treatment activities regarding alcohol and not less than 35 percent for treatment and prevention activities relating to other drugs.

In addition, not less than 20 percent of the grant is to be expended for primary prevention activities. Section 96.125 is added which requires States to develop a comprehensive prevention program which provides a broad array of prevention activities and services including such activities and services to discourage the use of alcoholic beverages and tobacco products by minors. These activities and services must be provided in a variety of settings for both the general population, as well as targeted subgroups who are at high risk for substance abuse. Section 96.125 provides examples of strategies the States may use in developing a comprehensive primary prevention program. Under each strategy, examples of acceptable programs are listed.

The Secretary believes the examples of acceptable strategies and activities are important to alleviate any confusion in the prevention field as to acceptable primary prevention activities under the Block Grant. This is particularly important because of the major change in how prevention for purposes of the 20 percent set aside is defined in the Block Grant—that is, primary prevention *only* as compared to prevention and early intervention.

It should be noted, however, that the "primary prevention" definition is for purposes of the "Substance Abuse Prevention and Treatment Block Grant" regulations *only*. This definition does *not* apply to other programs administered by SAMHSA or the Center for Substance Abuse Prevention, such as the High Risk Youth programs, which include intervention activities which go beyond activities authorized by these regulations.

The Secretary assures States that early intervention activities which counted as part of the 20 percent prevention set aside prior to passage of the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act, Public Law 102–321, July 10, 1992, are allowable activities under the Block Grant but do not now count as primary prevention.

Section 96.124 implements section 1922 of the PHS Act which provides for specific allocations to increase the availability of treatment services designed for pregnant women and women with dependent children. Under § 96.124, the State is required to expend not less than 5 percent of the fiscal year 1993 grant to increase (relative to fiscal year 1992) such services, consistent with the base described at § 96.124(c). This requirement may be waived upon the request of the State if the Secretary determines that the State is providing an adequate level of services for this population. In determining whether an adequate level does exist, the Secretary will review the extent to which a State is providing services to this population and will consider whether the minimum level of services stipulated in § 96.124(e) are being provided for pregnant women and women with dependent children who are being served.

At a minimum, the Secretary requires States to ensure that treatment programs receiving funding from the Block Grant set aside for pregnant women and women with dependent children for such services also provide or arrange for the following: (1) Primary medical care for women who are receiving substance abuse services, including prenatal care, and while women are receiving such treatment, child care; (2) primary pediatric care for their children including immunizations; (3) gender specific substance abuse treatment and other therapeutic interventions for women that may address issues of relationships, sexual and physical abuse and parenting, and child care while the women are receiving these services; (4) therapeutic interventions for children in custody of women in treatment which may, among other things, address their developmental needs, and their issues of sexual and physical abuse and neglect; and (5) sufficient case management and transportation services to ensure that women and their children have access to the services provided by (1) through (4).

Because of the important health issues relating to the provision of treatment services to pregnant women and women with dependent children, the Secretary strongly encourages the States to require all programs that provide services to women to also provide a comprehensive range of services to such women and their children, either directly or through linkages with community based organizations. These services include

case management to assist in establishing eligibility for public assistance programs provided by Federal, State or local governments; employment and training programs; education and special education programs; drug-free housing for women and their children; prenatal care and other health care services; therapeutic day care for children; Head Start; and other early childhood programs.

In addition to providing the minimum services, the State is to require that all programs which provide substance abuse treatment services to pregnant women and women with dependent children using funds from the Block Grant amount set aside for such purposes must treat the family as a unit and therefore admit both women and their children into treatment, when appropriate. Such an admission may not be appropriate, however, if, for example, the father of the child is able to adequately care for the child. In addition, the amount set aside for such services must be expended on individuals who have no other financial means in obtaining such services as provided by § 96.137. This is important so as to increase the level of service to pregnant women and women with dependent children.

Finally, women with dependent children for the purposes of section 96.124 include women in treatment who are attempting to regain custody of their children. The Secretary believes that this is important, because often a court has custody of the children and regaining custody is dependent on successful substance abuse treatment. Regaining custody of their children may serve as an incentive to these women to successfully complete treatment and to remain alcohol and drug free.

Capacity of Treatment for Intravenous Substance Abusers

45 CFR 96.126 is added to implement section 1923 of the PHS Act which provides that, as a condition of receiving Block Grant funding, the State must require programs that receive funding under the grant and that treat individuals for intravenous substance abuse to inform the State when they reach 90 percent of capacity. The Secretary requires States, as a condition of receipt of a grant, to establish a capacity management program which reasonably enables a program to readily report to the State when it reaches 90 percent capacity. The requirement for a capacity management system is an important change in the substance abuse and prevention block grant program and the Secretary requests comments on efficient but cost effective means to implement this section.

In addition, section 1923 of the PHS Act requires the State to ensure that each individual who requests and is in need of treatment for intravenous drug abuse be admitted to the program not later than 14 days after making the request for admission to such a program, or 120 days after the date of such request, if no such program has the capacity to admit the individual on the date of such request and if interim services are made available to the individual not later than 48 hours after such request.

In carrying out these provisions, the Secretary requires the State to establish a waiting list management program which provides systematic reporting of treatment demand. The State is to require any program receiving funding from the grant for the purposes of treating injecting drug abusers to establish a waiting list which includes a unique patient identifier for each injecting drug abuser seeking treatment, including those receiving interim services, while awaiting admission to such treatment. For individuals who cannot be placed in comprehensive treatment within 14 days, the State is to ensure that individuals receive interim services and to develop a mechanism for maintaining contact with the individuals awaiting admission. Whatever mechanism is developed, it must ensure that patients on waiting lists are transferred at the earliest possible time to a program providing treatment within a reasonable geographic area.

However, if a person cannot be located for admission into treatment or if a person refuses treatment, such individuals may be taken off the waiting lists, and the States are not obligated to provide treatment to those individuals within 14 or 120 days, whichever is applicable under § 96.126. The Secretary believes that to have a continuing obligation to provide treatment to such individuals would result in programs having unoccupied slots so as to be able to fulfill its obligations. This result, the Secretary believes, would not promote treatment.

The Secretary is considering whether regulations should be issued requiring States not only to establish a capacity management program which will monitor available slots in treatment programs, but to establish a central registry to track individuals so as to make available treatment in a timely fashion. A central registry may also be useful to make available treatment to pregnant women as provided in § 96.131. The Secretary seeks comments on the central registry concept and any alternatives to a central registry.

Interim services for the purposes of section 96.126 may entail any number of services, including interim methadone maintenance as authorized by section 1976 of the PHS Act and the applicable regulations. The Secretary, however, requires that at a minimum interim services include counseling and education about HIV and tuberculosis, about the risks of needle-sharing, about the risks of transmission to sexual partners and infants, and about steps that can be taken to ensure that HIV transmission does not occur, as well as referral for HIV and TB treatment services, if necessary. For pregnant women, the Secretary believes it is essential that interim services also include counseling on the effects of alcohol and drug use on the fetus, as well as referrals for prenatal care. These provisions are consistent with the thrust of the Block Grant—to prevent the spread of HIV infection and to treat substance abuse.

Section 1923 of the PHS Act also requires States to ensure that any entity that receives funding for treatment services for intravenous drug abuse carry out activities to encourage individuals in need of such treatment to undergo such treatment. In carrying out this provision, the Secretary requires the States to use outreach models that are scientifically sound, so as to optimally maximize these outreach programs, or if no such models are available which are applicable to the local situation, to use an approach which reasonably can be expected to be an effective outreach method. Examples of scientifically sound models include the following: (1) The standard intervention model as described in *The NIDA Standard Intervention Model for Injection Drug Users: Intervention Manual*, National AIDS Demonstration Research (NADR) Program, National Institute on Drug Abuse, Feb. 1992; (2) the health education model as described in Rhodes, F. Humfleet, G.L., *et al., AIDS Intervention Program for Injection Drug Users: Intervention Manual*, (Feb. 1992); and (3) the indigenous leader model as described in Wiebel, W., Levin, L.B., *The Indigenous Leader Model: Intervention Manual* (Feb. 1992).

As part of the outreach programs, the Secretary, among other things, also requires the States to ensure that such entities promote awareness among injecting drug abusers about the relationship between injecting drug abuse and communicable diseases and select, train and supervise outreach workers. These measures ensure quality outreach programs and will prevent the

use of less effective strategies, such as simply having persons without an understanding of substance abuse handing out flyers.

Requirements Regarding Tuberculosis and HIV

45 CFR 96.127 and 96.128 are added to provide for the provisions of section 1924 of the PHS Act regarding tuberculosis and HIV treatment services. Under the PHS Act, States are to require any entity receiving amounts from the Block Grant for operating a program of treatment for substance abuse (1) to, directly or through arrangements with other public or nonprofit private entities, routinely make available tuberculosis services as defined in section 96.121 to each individual receiving treatment for such abuse; and (2) in the case of an individual in need of such treatment who is denied admission to the program on the basis of the lack of the capacity of the program, to refer the individual to another provider of tuberculosis services.

In carrying out this tuberculosis provision, the Secretary requires that the principal agency of a State, in consultation with the State Medical Director for Substance Abuse Services, and in cooperation with the Tuberculosis Control Officer of the State Department of Health, develop written procedures to implement these provisions, as well as protocols to be implemented by the programs to prevent the transmission of tuberculosis, such as screening patients. In addition, the principal agency is to develop a plan establishing linkages with other health providers to ensure that tuberculosis services are routinely made available.

The Secretary is requiring the State to also develop an effective system for monitoring program compliance with this section. This system should be developed in conjunction with those systems required for services to injecting drug abusers under section 96.126(b) and for ensuring that services are being provided to pregnant women under section 96.131(f). The Secretary believes it is critical that pregnant women who are addicts be provided substance abuse and other treatment as early as possible both because of the health of the mother and the effects of the addiction on the fetus. Close monitoring is thus important to insure compliance by treatment providers. The Secretary also believes that turberculosis and HIV are health problems of enormous consequence and therefore programs must be monitored closely to ensure provision of such services in accordance with the regulation. Although the regulation does not prescribe a system for monitoring the provision of these services, the States are to develop effective systems that will ensure to the maximum extent possible that these services are being provided. The State may wish to consider routine inspections of providers as a way of carrying out this requirement. The Secretary seeks comments on procedures to implement these provisions that will be both efficient and cost effective.

As to HIV, some States are to carry out one or more projects to make available to individuals early intervention services for HIV disease as defined by section 96.121 at the sites at which the individuals are undergoing treatment. This requirement is applicable only to a State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which the data are available) and the amount to be expended is the amount prescribed at section 1924 of the PHS Act.

Further, if the State plans to carry out 2 or more such projects, the State is to carry out one of the projects in a rural area of the State, unless the requirement is waived. The Secretary will waive the requirement if the State certifies to the Secretary that there is insufficient demand in the State to carry out a project in any rural area, or there are no rural areas in the State.

The Secretary requires the State to ensure that the programs participating in the project establish linkages with a comprehensive community resource network of related health and social services organizations to ensure a wide-based knowledge of the availability of these services and to facilitate referral. All individuals with active TB shall be reported to the appropriate State official as required by State law.

Section 1924(b)(6) of the PHS Act also requires States to ensure that, with respect to the provision of early intervention services for HIV disease to an individual, such services will be undertaken voluntarily by, and with the informed consent of, the individual and undergoing such services will not be required as a condition of receiving treatment services for substance abuse or any other services. Designated States are to establish a plan to carry out these provisions and are required to develop effective strategies for monitoring program compliance with this section.

As to both TB and HIV services, section 1924 of the PHS Act requires that the Block Grant be used for such services as "payor of last resort." Furthermore, for both HIB services (if a designated State) and TB services, the State is to maintain Statewide expenditures (rather than expenditures only through the principal agency) of non-Federal amounts for such services at a level that is not less than the average level of such expenditures maintained by the State for a 2-year period preceding the first fiscal year for which the State receives such a grant. The Secretary requires States to establish a reasonable funding base for fiscal year 1993 and use the defined base consistently in establishing future compliance with this section.

Revolving Funds for Establishment of Homes in Which Recovering Substance Abusers May Reside

45 CFR § 96.129 is added to implement requirements relating to the revolving funds for the establishment of homes in which recovering substance abusers may reside. These requirements, however, do not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

Section 1925 of the PHS Act requires that the State establish and provide for the ongoing operation of a revolving fund for the purpose of making loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol and drug abuse may reside in groups of not less than six individuals. Not less than $100,000 is to be available for the revolving fund and loans made from the revolving fund are not to exceed $4,000. The loans are to be repaid to the revolving fund not later than 2 years after the date on which the loan is made and each such loan is to be repaid by such residents through monthly installments by the date specified in the loan agreement involved. Such loans are made only to nonprofit private entities agreeing to a number of provisions including that, in the operation of the program established pursuant to the loan, the use of alcohol or any illegal drug in the housing provided by the program will be prohibited and the costs of the housing, including fees for rent and outlets, will be paid by the residents of the housing.

In addition, the Secretary has provided further requirements that States are to follow to ensure the integrity of the program and to place borrowers on notice of what is expected of them. The Secretary expects the State to (1) identify and clearly define legitimate purposes for which funds

will be spent; (2) establish reasonable criteria for selecting a fund management group, if the State plans to indirectly manage the fund; (3) set reasonable criteria in determining the eligibility of prospective borrowers; (4) establish a procedure and process for applying for a loan under the program; (5) provide clear written instructions to applicants concerning what is expected of them, such as timelines, required documentation, and notification of reasonable penalties and recourse for default; and (6) keep a written record of the number of loans and amount of loans provided, the identities of borrowers and the repayment history of each borrower. For instructional information on group homes, refer to *Self-Run, Self-Supported Houses for More effective Recovery from Alcohol and Drug Addiction*, DHHS Publication No. (ADM) 90–1678 (1990), which is available through the National Clearinghouse for Alcohol and Drug Information (NCADI).

Treatment Services for Pregnant Women

45 CFR 96.131 is added to implement regulations for treatment services for pregnant women as required by section 1927 of the PHS Act. Section 1927 requires the State to ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant. In carrying out this provision, the Secretary requires the State to ensure that the availability of treatment to pregnant women is publicized by public service announcements (radio/television), or street outreach programs.

In addition, the Secretary requires the State to ensure that entities that serve women and who are receiving such funds provide preference to pregnant women. The State shall require that programs which serve an injecting drug abuse population and who receive Block Grant funds shall give preference to treatment as follows: (i) pregnant injecting drug users; (ii) pregnant substance abusers; (iii) injecting drug users; and (iv) all others. The Secretary believes it is essential that pregnant women receive preferential treatment because of the added risk to the fetus of contracting HIV from the mother's use of injecting drugs.

The State is to also require that a facility which serves women refer pregnant women to the State if the treatment facility has insufficient capacity to provide treatment services to any such pregnant women who seeks the services from the facility. The Secretary proposes that this may be accomplished by establishing a toll-free number or other reasonable means to implement this provision.

The State is to then refer the pregnant woman to a treatment facility that has the capacity to provide treatment services to the pregnant woman or, if on treatment facility has the capacity to admit the pregnant woman, to make available interim services, as defined in § 96.121, to the pregnant woman not later than 48 hours after she seeks the treatment services. This means that the State is required to have a capacity tracking system which tracks all open treatment slots available to pregnant women in the State. Such a system must be continually updated to identify treatment capacity for any such pregnant woman. The State may wish to coordinate the capacity tracking system required under § 96.131 with the capacity tracking system required under § 96.126 for injecting drug abusers.

Procedures for the implementation of this section are to be developed in consultation with the State Medical Director for Substance Abuse Services. The State is also to develop effective strategies for monitoring program compliance with § 96.131.

Additional Agreements

45 CFR 96.132 is added to implement sections 1928 and 1943(b) of the PHS Act regarding additional requirements relating to substance abuse. With respect to individuals seeking treatment services, the State is required to improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals. The regulations provide examples of ways to implement this provision, including the utilization of a toll-free number for programs to report available capacity and waiting list data and/or the implementation of a capacity management/waiting list management system.

With respect to any facility for treatment services or prevention activities that is receiving amounts from a Block Grant, continuing education in such services or activities (or both, as the case may be) is to be made available to employees of the facility who provide the services or activities. The States are to require programs to include a provision in its funding agreement with the State concerning continuing education for employees of the facility.

The State is to coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, education, vocational rehabilitation, and employment services). The regulations specify that the Secretary, in monitoring compliance with this section, will consider such factors as the existence of memoranda of understanding between various service providers or agencies and evidence that the State has included prevention and treatment service coordination in its grants and contracts. The Secretary believes that improving service coordination and integration of services is an important objective. It is particularly important in the area of substance abuse, because many of the individuals involved are either served by or need to receive services from a variety of systems. The Secretary is interested in receiving comments about additional ways that might be used to strengthen the service coordination provision. For example, should States be required to have an internal mechanism for monitoring service coordination, such as receiving reports from treatment programs that do not get cooperation from other service systems? Should preference be given to funding treatment programs that do make arrangements for service coordination?

Section 1928 of the PHS Act also provides for a waiver, at the request of the State, of any or all of the requirements established above but only if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State. In determining whether to grant a waiver, the Secretary will rely on information drawn from the independent peer review/quality assurance activities conducted by the State and such other information as the Secretary deems necessary.

Finally, the State is required to have in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant. The Secretary requires that the system is to include provisions for employee education on the confidentiality requirements and employees are to be informed of the fact that disciplinary action may occur upon inappropriate disclosures.

Submission to Secretary of Statewide Assessment of Needs

45 CFR § 96.133 is added to require a State to submit to the Secretary an assessment of the need in the State for authorized activities, both by locality

and by the State in general as required by section 1929 of the PHS Act. The assessment must include the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism. Setting-up information systems to obtain such data may take time and will likely require technical assistance from HHS. Therefore, in carrying out this provision, the Secretary requires the States to submit for fiscal years 1993 through 1996, its best available data on the incidence and prevalence of drug and alcohol abuse and alcoholism. The State is also to provide a summary describing the weaknesses and bias in the data and a description on how the State plans to strengthen the data in the future.

With regard to fiscal year 1997 and subsequent years, the Secretary is considering requiring the States to provide incidence and prevalence data which is supported by quantitative studies, using generally accepted methods of research. The State could determine the appropriate methodology to be used in gathering the information. The data, however, would have to be collected and reported by age, sex and race/ethnicity and at the State level and at sub-State level (as defined by the State). The data at a minimum would have to be collected and reported on five code substance abuse problems: marijuana (including hashish), cocaine (including Crack), hallucinogens (including PCP), heroin and alcohol. The Secretary is also considering requiring the use of common diagnostic criteria for dependence that characterize the cluster of cognitive, behavioral, and physiological symptoms that indicate the person has impaired control of substance abuse and continues use of the substance despite adverse consequences. The Secretary specifically requests comment on the barriers the State would face for fiscal year 1997 and subsequent years including the cost of such collection if these requirements were imposed. The Secretary seeks reasonable alternatives that are consistent with legislation and are cost effective.

Section 1929 of the PHS Act also requires the State to provide a detailed description of current prevention and treatment activities in the State. For fiscal year 1993, the State is required to provide its best available data on current prevention and treatment activities in the State in such detail as it finds reasonably practicable given its own data collection activities and records. For fiscal years 1994 and subsequent years, the Secretary requires that the report include a detailed description of the intended use of the funds relating to prevention and treatment, as well as a description of treatment capacity. As to primary prevention activities, the activities must be broken down by strategies used, such as those provided in section 96.125. The State must provide the following data, if available: the specific activities conducted; the specific risk factors being addressed by activity; the age, race/ethnicity and gender of the population being targeted by the prevention activity; and the community size and type where the activity is carried out. As to all treatment and prevention activities, including primary prevention, the State must provide the identities of the entities that provide the services and describe the services provided. The State is to submit information on treatment utilization to describe the type of care and the utilization according to primary diagnosis of alcohol or drug abuse, or a dual diagnosis of drug and alcohol abuse.

Section 1929 of the PHS Act requires the State to also describe in detail its efforts to improve substance abuse treatment and prevention activities. The Secretary requires that this report include the State's strategy to improve existing programs, as well as a description of the new programs created, activities taken to remove barriers, and actions taken to improve such activities.

Section 1929 of the PHS Act requires the State to submit a detailed description on the extent to which the availability of prevention and treatment activities is insufficient to meet the need for the activities, the interim services to be made available under sections 96.126 and 96.131, and the manner in which such services are to be so available. In carrying out this provision, the Secretary requires the State to submit documentation describing the results of the State's management information system pertaining to capacity and waiting lists, as well as a summary of such information for admissions and, when available, discharges. As to prevention activities, the report must include a description of the populations at risk, by risk factor, gender, age and ethnicity. Populations at risk include, among others, children of substance abusers, pregnant women, school dropouts, and homeless and run-away youth.

Maintenance of Effort regarding State Expenditures

45 CFR 96.134 is added to implement section 1930 of the PHS Act which requires the principal agency of the State to maintain aggregate State expenditures by the principal agency for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the two year period preceding the fiscal year for which the State is applying for the grant.

In addition to the maintenance of effort by the principal agency, the Secretary requires the States not to use the Block Grant to supplant State funding of substance abuse prevention and treatment programs. The Secretary believes it is essential in combating the war on drugs and other substances that the Block Grant be expended to increase services rather than using the funds to maintain the current level of such programs.

The Secretary may upon a request by the State, waive all or part of these requirements only if the Secretary determines that extraordinary economic conditions in the State justify the waiver. If a waiver is issued, it will be applicable only to the fiscal year involved. The Secretary defines "extraordinary economic conditions" as a financial crisis in which the total tax revenue declines at least one and one-half percent, and either unemployment increases by at least one percentage point, or employment declines by at least one and one-half percent. The Secretary seeks comments on this and other criteria.

In making a Block Grant to a State for a fiscal year, the Secretary must also make a determination of whether, for the previous fiscal year or years, the State maintained material compliance with all agreements made under this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary will reduce the amount of the allotment for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

To support the maintenance of effort requirement, States must provide the dollar amount reflecting the aggregate State expenditures by the principal agency for authorized activities for each of the two State fiscal years preceding the fiscal year for which the State is applying for the grant. The base must be calculated using Generally Accepted Accounting Principles and the composition of the base must be applied consistently from year to year.

Restrictions on Expenditure of Grant

45 CFR 96.135 is added to implement section 1931 of the PHS Act which requires that States not expend the Block Grant on a number of activities.

For example, a State is not to expend grant money for inpatient hospital substance abuse programs, except in the case that such treatment is a medical necessity for the individual involved, and the individual cannot be effectively treated in a community based, nonhospital, residential treatment program. If such circumstances occurs, section 1931 requires that the daily rate of payment provided to the hospital for providing the services cannot exceed the comparable daily rate provided by a residential treatment program.

In carrying out this section, the Secretary allows grant funds to be used for this purpose only if a physician makes a determination that: (1) The primary diagnosis of the individual is substance abuse and the physician certifies this fact; (2) the individual cannot be safely treated in a community-based, nonhospital, residential treatment program; (3) the service can reasonably be expected to improve an individual's condition or level of functioning; and (4) the hospital-based substance abuse program follows national standards of substance abuse professional practice. In addition, grant money may be expended for such services only to the extent that it is medically necessary, i.e., only for those days that the patient cannot be safely treated in a residential, community-based program.

Section 1931 of the PHS Act also provides that grant money may not be used to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment. The PHS Act provides, however, that the Secretary may grant a waiver to a requesting State of the restriction on expending a grant for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition.

The Secretary may approve a waiver only if (1) the State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available; (2) the State has carefully designed a program that will minimize the costs of additional beds; and (3) the State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided under section 1931. In granting a waiver, the Secretary will allow the use of a specified amount of funds to construct or rehabilitate a specified number of beds for residential treatment and a specified number of slots for outpatient treatment, based on reasonable estimates by the State of the costs of construction or rehabilitation. Section 96.135 sets out the information that is needed to request a waiver.

Numerous other restrictions on expenditures of the grant are provided by law including expenditures on activities (1) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; (2) to provide financial assistance to any entity other than a public or nonprofit private entity; (3) to make payments to intended recipients of health services; and (4) to carry out any program prohibited by section 256(b) of the Health Omnibus Programs Extension of 1988 (42 U.S.C. 300ee–5), relating to the provision of hypodermic needles to injecting drug users.

The State is also to limit expenditures on certain activities. The State is not to expend more than 5 percent of the grant to pay the costs of administering the grant. The State is not to, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, expend more than an amount prescribed by section 1931(a)(3) of the PHS Act.

Independent Peer Review

45 CFR 96.136 is added which requires the State, for the fiscal year which the grant is provided, to provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved, and ensure that at least 5 percent of the entities providing services in the State under such program are reviewed.

The purpose of independent peer review is to review the quality and appropriateness of treatment services. The review is to focus on treatment programs and the substance abuse service system rather than on the individual practitioners. The intent of the independent peer review process is to continuously improve the treatment services to alcohol and drug abusers within the State system.

The regulations require the independent peer reviewers to be individuals with expertise in the field of alcohol and drug abuse treatment. Because treatment services may be provided by multiple disciplines, the individual peer reviewers must be representative of the various disciplines utilized, must be knowledgeable about the treatment settings and differences in treatment approaches, and must be sensitive to cultural and environmental issues that may influence the quality of the services provided.

As part of the independent peer review, the reviewers are required to review a representative sample of patient/client records to determine quality and appropriateness of treatment services, as well as admission criteria/intake process, assessments, treatment planning, documentation of implementation of treatment services, and discharge and continuing care planning.

The regulations also require the State to ensure that the peer review will not involve practitioners or providers reviewing their own programs, or programs in which they have administrative oversight, and ensure that there is a separation of peer review personnel from funding decisionmakers.

Direct Application for Grant by Indian Tribes

45 CFR 96.46(c) is amended to establish criteria prescribed by the Secretary as is required by section 1933(d)(3) of the PHS Act. It establishes criteria that Indian tribes or tribal organizations which are eligible for a direct grant must follow. Essentially, these entities must abide by all the statutory provisions and accompanying regulations except for the following provisions of the PHS Act: section 1923 which relates to provisions on intravenous substance abuse; section 1925 which provides for group homes for recovering substance abusers; section 1926 regarding State laws on the sale of tobacco products to minors; section 1928 regarding funding agreements for improving referrals, continuing education, and coordination of activities in the State; section 1929 regarding submission of Statewide assessment of needs; and section 1943(a)(1) relating to peer review of treatment programs.

The Department believes these provisions are too burdensome for Indian tribes and not really feasible. The Department believes, however, that it is essential that these entities expend the funds for purposes for which they are intended and any Indian tribe or tribal organization that is eligible for a direct grant will be subject to the technical review requirements of section 1945(g) and the audit requirements of section 1942 of the PHS Act.

45 CFR 96.46 (a) and (b) are also amended to reflect technical changes such as statutory citation changes.

Economic Impact

In crafting these regulations, the Secretary sought to minimize cost and

burden both to States and to service providers. The Secretary recognizes that there are a number of areas in which requirements are tougher compared to the predecessor Block Grant, either because of the statute or the Department's judgment as to what is needed for effective programs. In none of these areas, however, has the Secretary imposed any requirement which would increase cost drastically or unreasonably. Nor does the Secretary believe that a well run service program should have a major difficulty in meeting the new requirements. For example, an astutely designed outreach program can be operated effectively without incurring many additional hours of effort in most circumstances. However, the Secretary welcomes comment on cost or burden and will seek to eliminate any unnecessarily costly provisions in the final rule.

For these reasons, this rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, these regulations will not have a significant impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description applicable to the information collection requirements are shown below with an estimate of the annual reporting and record-keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Substance Abuse Prevention and Treatment Block Grant.

Description: This action requires States to annually submit an application for allotments under a formula grant to the States.

Description of Respondents: State or local governments.

Section	Number of respondents	Number of responses per year	Number hours per response	Total hours
Reporting:				
Standard Form and Content:				
96.122(c)				
Annual Report:				
96.122(f)	60	1	152	9120
96.134(d)	60	1	16	960
State Plan:				
96.122(g)	60	1	162	9720
96.124(c)(1)	60	1	40	2400
96.127(b)	60	1	8	480
96.131(f)	60	1	8	480
96.133(a)	60	1	80	4800
Waivers:				
96.132(d)*	60	1	16	960
96.134(b)*	60	1	40	2400
96.135(d)*	60	1	8	480
Total	60	1	530	**31,800

Section	Number of recordkeepers	Number hours per respondent	Total hours
Recordkeeping Burden:			
96.129(a)(13)	60	16	960
Total	60	16	960
Combined Burden—45 CFR 96:		546	32,760

* For the purpose of calculating burden it has been assumed that all States could apply for each waiver.

The Department of Health and Human Services will submit a copy of this rule to OMB for its review of these information collection requirements. Organizations and individuals desiring to submit comments on the information collection requirements and the estimated burden should direct such comments to the agency official designated for this purpose whose name appears in this preamble, and to: SAMHSA Desk Officer, Allison Eydt, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3001, 725 17th St. NW., Washington, DC 20503. It should be noted that the standard application form which is required to be used beginning fiscal year 1994, the annual report, and all other paperwork required under the rule will not be effective until approved by OMB pursuant to the Paperwork Reduction Act.

List of Subjects in 45 CFR Part 96

Alcohol abuse, Alcoholism, Drug abuse, Confidentiality, Health records.

For the reasons set out in the preamble, 45 CFR part 96 is amended as set forth below.

Dated: March 10, 1993.

Approved March 24, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Donna E. Shalala,

Secretary.

PART 96—BLOCK GRANTS

1. The authority citation for part 96 is revised to read as follows:

Authority: 42 U.S.C. 300w et seq.; 42 U.S.C. 300x et seq.; 42 U.S.C. 300y et seq.; 42 U.S.C. 701 et seq.; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 et seq.; 42 U.S.C. 1397 et seq.; 31 U.S.C. 1243 note; unless otherwise noted.

2. Section 96.46 is revised to read as follows:

§ 96.46 Substance abuse prevention and treatment services.

(a) This section applies to direct funding of Indian tribes and tribal organizations under the substance abuse prevention and treatment Block Grant.

(b) For the purpose of determining eligible applicants under section 1933(d) of the Public Health Service Act (42 U.S.C. 300x–33(d)) an Indian tribe or tribal organization (as defined in subsections (b) and (c) of section 4 of the Indian Self-Determination and Education Assistance Act) that received a direct grant under subpart I of part B of title XIX of the PHS Act (as such existed prior to October 1, 1992) in fiscal year 1991 will be considered eligible for a grant under subpart 2 of part B of title XIX of the PHS Act.

(c) For purposes of the substance abuse prevention and treatment Block Grant, an Indian tribe or tribal organization is not required to comply with the following statutory provisions of the Public Health Service Act: 1923 (42 U.S.C. 300x–23), 1925 (42 U.S.C. 300x–25), 1926 (42 U.S.C. 300x–26), 1928 (42 U.S.C. 300x–28), 1929 (42 U.S.C. 300x–29), and 1943(a)(1) (42 U.S.C. 300x–53(a)(1)). An Indian tribe or tribal organization is to comply with all other statutes and regulations applicable to the Substance Abuse Prevention and Treatment Block Grant. In each case in which an Indian Tribe receives a direct grant, the State is also responsible for providing services to Native Americans under the State's Block Grant program.

3. Subpart L is revised to read as follows:

Subpart L—Substance Abuse Prevention and Treatment Block Grant

96.120 Scope.
96.121 Definitions.
96.122 Application content and procedures.
96.123 Assurances.
96.124 Certain allocations.
96.125 Primary prevention.
96.126 Capacity of treatment for intravenous substance abusers.
96.127 Requirements regarding tuberculosis.
96.128 Requirements regarding human immunodeficiency virus.
96.129 Revolving funds for establishment of homes in which recovering substance abusers may reside.
96.131 Treatment services for pregnant women.
96.132 Additional agreements.
96.133 Submission to Secretary of Statewide assessment of needs.
96.134 Maintenance of effort regarding State expenditures.
96.135 Restrictions on expenditure of grant.
96.136 Independent peer review.
96.137 Payment schedule.

Subpart L—Substance Abuse Prevention and Treatment Block Grant

Authority: 42 U.S.C. 300x–21 to 300x–35 and 300x–51 to 300x–64.

§ 96.120 Scope.

This subpart applies to the Substance Abuse Prevention and Treatment Block Grant administered by the Substance Abuse and Mental Health Services Administration. 45 C.F.R. Part 96, subparts A through F, are applicable to this subpart to the extent that those subparts are consistent with subpart L. To the extent subparts A through F are inconsistent with subpart L, the provisions of subpart L are applicable.

§ 96.121 Definitions.

Block Grant means the Substance Abuse Prevention and Treatment Block Grant, 42 U.S.C. 300x–21, *et seq.*

Early Intervention Services Relating to HIV means:

(1) appropriate pretest counseling for HIV and AIDS;

(2) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(3) appropriate post-test counseling; and

(4) providing the therapeutic measures described in Paragraph (2) of this definition.

Fiscal Year, unless provided otherwise, means the Federal fiscal year.

Interim Services or Interim Substance Abuse Services means services that are provided until an individual is admitted to a substance abuse treatment program. The purposes of the services are to reduce the adverse health effects of such abuse, promote the health of the individual, and reduce the risk of transmission of disease. At a minimum, interim services include counseling and education about HIV and tuberculosis (TB), about the risks of needle-sharing, the risks of transmission to sexual partners and infants, and about steps that can be taken to ensure that HIV and TB transmission does not occur, as well as referral for HIV or TB treatment services if necessary. For pregnant women, interim services also include counseling on the effects of alcohol and drug use on the fetus, as well as referral for prenatal care.

Primary Prevention Programs are those directed at individuals who have not been determined to require treatment for substance abuse. Such programs are aimed at educating and counseling individuals on such abuse and providing for activities to reduce the risk of such abuse.

Principal Agency is the single State agency responsible for planning, carrying out and evaluating activities to prevent and treat substance abuse and related activities.

Rural Area The definition of a rural area within a State shall be the latest definition of the Bureau of the Census, Department of Commerce.

Secretary is the Secretary of the United States Department of Health and Human Services or the Secretary's designee.

State, unless provided otherwise, includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, America Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

State Medical Director for Substance Abuse Services is a licensed physician with the knowledge, skill and ability to address the multiple physical and psychological problems associated with substance abuse, and who provides the principle agency with clinical consultation and direction regarding effective substance abuse treatment, effective primary medical care, effective infection control and public health and quality assurance.

Substance Abuse is defined to include the abuse or illicit use of alcohol or other drugs.

Tuberculosis Services means:

(1) Counseling the individual with respect to tuberculosis;

(2) Testing to determine whether the individual has been infected with mycobacteria tuberculosis to determine the appropriate form of treatment for the individual; and

(3) Providing for or referring the individuals infected by mycobacteria tuberculosis for appropriate medical evaluation and treatment.

§ 96.122 Application content and procedures.

(a) For each fiscal year, beginning with fiscal year 1993, the State shall submit an application to such address as the Secretary determines is appropriate.

(b) For fiscal year 1993, applicants must submit an application containing information which conforms to the assurances listed under § 96.123, the report as provided in § 96.122(f), and the State plan as provided in § 96.122(g).

(c) Beginning fiscal year 1994, applicants shall only use standard application forms prescribed by the granting agency with the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Applicants must follow all applicable instructions that bear OMB clearance numbers. The application will require the State to submit the assurances listed under § 96.123, the report as provided in § 96.122(f), and the State Plan as provided in § 96.122(g).

(d) The application (in substantial compliance with the statutory and regulatory provisions for the Block Grant) shall be submitted for fiscal year 1993 no later than ninety days after publication of these regulations, and, for subsequent years, no later than March 31 of the fiscal year for which the State is applying.

(e) The funding agreements and assurances in the application shall be made through certification by the State's chief executive officer personally, or by an individual authorized to make such certification on behalf of the chief executive officer. When a delegation has occurred, a copy of the current delegation of authority must be submitted with the application.

(f) A report shall be submitted annually with the application and State Plan. Among other things, the report must contain information as determined by the Secretary to be necessary to determine the purposes and the activities of the State, for which the Block Grant was expended. The report shall include (but is not limited to) the following:

(1) For the fiscal year three years prior to the fiscal year for which the State is applying for funds:

(i) A statement of whether the State exercised its discretion under applicable law to transfer Block Grant funds from substance abuse services to mental health services or vice versa, and a description of the transfers which were made;

(ii) A description of the progress made by the State in meeting the prevention and treatment goals, objectives and activities submitted in the application for the relevant year;

(iii) A description of the amounts expended under the Block Grant by the State agency, by activity;

(iv) A description of the amounts expended on primary prevention and early intervention activities (if reporting on fiscal years 1990, 1991, and 1992 only) and for primary prevention activities (if reporting on fiscal years 1993 and subsequent years);

(v) A description of the amounts expended for activities relating to substance abuse such as planning, coordination, needs assessment, quality assurance, training of counselors, program development, research and development and the development of information systems;

(vi) A description of the entities, their location, and the total amount the entity received from Block Grant funds with a description of the activities undertaken by the entity;

(vii) A description of the use of the State's revolving funds for establishment of group homes for recovering substance abusers, as provided by § 96.129, including the amount available in the fund throughout the fiscal year and the number and amount of loans made that fiscal year;

(viii) A detailed description of the State's programs for women and, in particular for pregnant women and women with dependent children, if reporting on fiscal years 1990, 1991, or 1992; and pregnant women or women with dependent children for fiscal year 1993 and subsequent fiscal years;

(ix) A detailed description of the State's programs for intravenous drug users; and

(x) For applications for fiscal year 1996 and subsequent fiscal years, a description of the State's expenditures for tuberculosis services and, if a designated State, early intervention services for HIV.

(2) For the most recent 12 month State expenditure period for which expenditure information is complete:

(i) A description of the amounts expended by the principal agency for substance abuse prevention and treatment activities, by activity and source of funds;

(ii) A description of substance abuse funding by other State agencies and offices, by activity and source of funds when available; and

(iii) A description of the types and amounts of substance abuse services purchased by the principal agency.

(3) For the fiscal year two years prior to the fiscal year for which the State is applying for funds:

(i) A description of the amounts obligated under the Block Grant by the principal agency, by activity;

(ii) A description of the amounts obligated for primary prevention and early intervention (if reporting on fiscal years 1990, 1991, and 1992 activities only) and primary prevention activities (if reporting on fiscal years 1993 and subsequent year activities);

(iii) A description of the entities to which Block Grant funds were obligated;

(iv) A description of the State's policies, procedures and laws regarding substance abuse prevention, especially the use of alcohol and tobacco products by minors;

(v) For applications for fiscal year 1995 and all subsequent fiscal years, a description of the State's procedures and activities undertaken to comply with the requirement to conduct independent peer review as provided by § 96.136;

(vi) For applications for fiscal year 1995 and all subsequent fiscal years, a description of the State's procedures and activities undertaken to comply with the requirement to develop capacity management and waiting list systems, as provided by §§ 96.126 and 96.131, as well as an evaluation summary of these activities; and

(vii) For applications for fiscal year 1955 and subsequent fiscal years, a description of the strategies used for monitoring program compliance with § 96.126(f), § 96.127(b), and § 96.131(f), as well as a description of the problems identified and the corrective actions taken.

(4) The aggregate State expenditures by the principle agency for authorized activities for the two State fiscal years preceding the fiscal year for which the State is applying for a grant, pursuant to § 96.134(d).

(5) For the previous fiscal year:

(i) A description of the State's progress in meeting the goals, objectives and activities included in the previous year's application, and a brief description of the recipients of the Block Grant funds;

(ii) A description of the methods used to calculate the following:

(A) The base for services to pregnant women and women with dependent children as required by § 96.124;

(B) The base for tuberculosis services as required for § 96.127; and

(C) For designated States, the base for HIV early intervention services as required by § 96.128;

(iii) For applications for fiscal years 1994 and 1995 only, a description of the State's progress in the development of protocols for and the implementation of

tuberculosis services, and, if a designated State, early intervention services for HIV; and

(iv) For applications for fiscal year 1994 only, a description of the States progress in the development, implementation, and utilization of capacity management and waiting list systems.

(6) [Reserved]

(7) In addition to the information above, any information that the Secretary may, from time to time, require, consistent with the Paperwork Reduction Act.

(g) For each fiscal year, beginning fiscal year 1993, the State Plan shall be submitted to the Secretary and shall include the following:

(1) For fiscal years 1993 and 1994, a statement on whether the Governor intends to exercise discretion under applicable law to transfer Block Grant funds from the Substance Abuse Prevention and Treatment Block Grant allotment under section 1921 of the PHS Act to the Community Mental Health Services Block Grant allotment under section 1911 of the PHS Act or vice versa and a description of the planned transfer;

(2) A budget of expenditures which provides an estimate of the use and distribution of Block Grant and other funds to be spent by the agency administering the Block Grant during the period covered by the application, by activity and source of funds;

(3) A description of how the State carries out planning, including how the State identifies substate areas with the greatest need, what process the State uses to facilitate public comment on the plan, and what criteria the State uses in deciding how to allocate Block Grant funds;

(4) A detailed description of the State procedures to monitor programs that reach 90% capacity pursuant to § 96.126(a);

(5) A detailed description of the State procedures to implement the 14/120 day requirement provided by § 96.126(b) as well as the interim services to be provided and a description of the strategies to be used in monitoring program compliance in accordance with § 96.126(f);

(6) A full description of the outreach efforts States will require entities which receive funds to provide pursuant to § 96.126(e);

(7) A detailed description of the State procedures implementing TB services pursuant to § 96.127, and a description of the strategies to be used in monitoring program compliance in accordance with § 96.127(b);

(8) A detailed description of the State's procedures implementing HIV services pursuant to § 96.128, if considered a designated State;

(9) A description of estimates of non-Federal dollars to be spent for early intervention services relating to HIV, if a designated State, and tuberculosis services for the fiscal year covered by the application, as well as the amounts actually spent for such services for the two previous fiscal years;

(10) For fiscal year 1993, a detailed description of the State's revolving fund for establishment of group homes for recovering substance abusers pursuant to § 96.129 and, for subsequent years, any revisions to the program;

(11) A detailed description of State procedures implementing § 96.131 relating to treatment services for pregnant women;

(12) Unless waived, a description on how the State will improve the process for referrals for treatment, will ensure that continuing education is provided, and will coordinate various activities and services as provided by § 96.132;

(13) Statewide assessment of needs as provided in § 96.133;

(14) The aggregate State dollar projected expenditures by the principal agency of a State for authorized activities for the fiscal year for which the Block Grant is to be expended, as well as the aggregate obligations or expenditures, when available, for authorized activities for the two years prior to such fiscal year as required by § 96.134;

(15) Unless waived, a description of the services and activities to be provided by the State with Block Grant funds consistent with § 96.124 for allocations to be spent on services to pregnant women and women with dependent children, alcohol and other drug treatment and prevention, including primary prevention, and any other requirement;

(16) A description of the State procedures to implement § 96.132(e) regarding inappropriate disclosure of patient records;

(17) A description of the amounts to be spent for primary prevention in accordance with § 96.125;

(18) A description of the amounts to be spent on activities relating to substance abuse such as planning coordination, needs assessment, quality assurance, training of counselors, program development, research and development and the development of information systems;

(19) A description of the State plans regarding purchasing substance abuse services;

(20) A description of how the State intends to monitor and evaluate the performance of substance abuse service providers in accordance with § 96.136;

(21) A description of the State's overall goals for Block Grant expenditures, specific objectives under each goal, and the activities the State will carry out to achieve these objectives; and

(22) Such other information as the Secretary may, from time to time, require, consistent with the Paperwork Reduction Act.

(h) The Secretary will approve an application which includes the assurances, the State plan and the report that satisfies the requirements of this part and the relevant sections of the PHS Act. As indicated above, the State is required to provide descriptions of the State's procedures to implement the provisions of the Act and the regulations. Unless provided otherwise by these regulations, the Secretary will approve procedures which are provided as examples in the regulations, or the State may submit other procedures which the Secretary determines to reasonably implement the requirements of the Act.

§ 96.123 Assurances.

(a) The application must include assurances that:

(1) the State will expend the Block Grant in accordance with the percentage to be allocated to treatment, prevention, and other activities as prescribed by law and, also, for the purposes prescribed by law;

(2) The activities relating to intravenous drug use pursuant to § 96.126 will be carried out;

(3) The TB services and referral will be carried out pursuant to § 96.127, as well as the early intervention services for HIV provided for in § 96.128, if a designated State;

(4) The revolving funds to establish group homes for recovering substance abusers is in place consistent with the provisions of § 96.129 and the loans will be made and used as provided for by law;

(5) [Reserved]

(6) Pregnant women are provided preference in admission to treatment centers as provided by § 96.131, and are provided interim services as necessary and as required by law;

(7) The State will improve the process in the State for referrals of individuals to the treatment modality that is most appropriate for the individuals, will ensure that continuing education is provided to employees of any funded entity providing prevention activities or treatment services, and will coordinate

prevention activities and treatment services with the provision of other appropriate services as provided by § 96.132;

(8) The State will submit an assessment of need as required by section 96.133;

(9) The State will for such year maintain aggregate State expenditures by the principal agency of a State for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant as provided by § 96.134;

(10) The Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs;

(11) For purposes of maintenance of effort pursuant to §§ 96.127(f), 96.128(f), and 96.134, the State will calculate the base using Generally Accepted Accounting Principles and the composition of the base will be applied consistently from year to year;

(12) The State will for the fiscal year for which the grant is provided comply with the restrictions on the expenditure of Block Grant funds as provided by § 96.135;

(13) The State will make the State Plan public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the State Plan and after the submission of the State Plan (including any revisions) to the Secretary as provided by § 1941 of the PHS Act;

(14) The State will for the fiscal year for which the grant is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved as required by § 96.136;

(15) The State has in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an entity which is receiving amounts from the grant;

(16) The State will comply with chapter 75 of title 31, United States Code, pertaining to audits; and

(17) The State will abide by all applicable Federal laws and regulations, including those relating to lobbying (45 CFR Part 93), drug-free workplace (45 CFR 76.600), discrimination (PHS Act Sec. 1947), false statements or failure to disclose certain events (PHS Act Sec. 1946), and, as to the State of Hawaii, services for Native Hawaiians (PHS Act Sec. 1953).

§ 96.124 Certain allocations.

(a) States are required to expend the Block Grant on various activities in certain proportions. Specifically, as to treatment and prevention, the State shall expend the grant as follows:

(1) not less than 35 percent for prevention and treatment activities regarding alcohol; and

(2) not less than 35 percent for prevention and treatment activities regarding other drugs.

(b) The States are also to expend the Block Grant on primary prevention programs as follows:

(1) Consistent with § 96.125, the State shall expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse, which programs—

(i) educate and counsel the individuals on such abuse; and

(ii) provide for activities to reduce the risk of such abuse by the individuals;

(2) The State shall, in carrying out paragraph (b)(1) of this section—

(i) give priority to programs for populations that are at risk of developing a pattern of such abuse; and

(ii) ensure that programs receiving priority under paragraph (b)(2)(i) of this section develop community-based strategies for prevention of such abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(c) Subject to paragraph (d) of this section, a State is required to expend the Block Grant on women services as follows:

(1) The State for fiscal year 1993 shall expend not less than five percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs). The base for fiscal year 1993 shall be an amount equal to the fiscal year 1992 alcohol and drug services Block Grant expenditures and State expenditures for pregnant women and women with dependent children as described in paragraph (e) of this section, and to this base shall be added at least 5 percent of the 1993 Block Grant allotment. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year. States shall report the methods used to calculate their base for fiscal year 1992 expenditures on treatment for pregnant women and women with dependent children.

(2) For fiscal year 1994, the State shall, consistent with paragraph (c)(1) of this section, expend not less than five percent of the grant to increase (relative to fiscal year 1993) the availability of such services to pregnant women and women with dependent children.

(3) For grants beyond fiscal year 1994, the States shall expend no less than an amount equal to the amount expended by the State for fiscal year 1994.

(d) Upon the request of a State, the Secretary may waive all or part of the requirement in paragraph (c) of this section if the Secretary determines that the State is providing an adequate level of services for this population. In determining whether an adequate level of services is being provided the Secretary will review the extent to which such individuals are receiving services. This determination may be supported by a combination of criminal justice data, the National Drug and Treatment Units Survey, statewide needs assessment data, waiting list data, welfare department data, including medicaid expenditures, or other State statistical data that are systematically collected. The Secretary will also consider the extent to which the State offers the minimum services required under § 96.124(e). The Secretary shall approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary shall be applicable only to the fiscal year involved.

(e) With respect to paragraph (c) of this section, the amount set aside for such services shall be expended on individuals who have no other financial means of obtaining such services as provided in § 96.137. All programs providing such services will treat the family as a unit and therefore will admit both women and their children into treatment services, if appropriate. The State shall ensure that, at a minimum, treatment programs receiving funding for such services also provide or arrange for the provision of the following services to pregnant women and women with dependent children, including women who are attempting to regain custody of their children:

(1) primary medical care for women, including referral for prenatal care and, while the women are receiving such services, child care;

(2) primary pediatric care, including immunization, for their children;

(3) gender specific substance abuse treatment and other therapeutic interventions for women which may address issues of relationships, sexual and physical abuse and parenting, and

child care while the women are receiving these services;

(4) therapeutic interventions for children in custody of women in treatment which may, among other things, address their developmental needs, their issues of sexual and physical abuse, and neglect; and

(5) sufficient case management and transportation to ensure that women and their children have access to services provided by paragraphs (e) (1) through (4) of this section.

(f) Procedures for the implementation of paragraphs (c) and (e) of this section will be developed in consultation with the State Medical Director for Substance Abuse Services.

§ 96.125 Primary prevention.

(a) For purposes of § 96.124, each State/Territory shall develop and implement a comprehensive prevention program which includes a broad array of prevention strategies directed *at individuals not identified to be in need of treatment.* The comprehensive program shall be provided either directly or through one or more public or nonprofit private entities. The comprehensive primary prevention program shall include activities and services provided in a variety of settings for both the general population, as well as targeting sub-groups who are at high risk for substance abuse.

(b) In implementing the prevention program the State shall use a variety of strategies, as appropriate for each target group, including but not limited to the following:

(1) *Information Dissemination:* This strategy provides awareness and knowledge of the nature and extent of alcohol, tobacco and drug use, abuse and addiction and their effects on individuals, families and communities. It also provides knowledge and awareness of available prevention programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Clearinghouse/information resource center(s);
(ii) Resource directories;
(iii) Media campaigns;
(iv) Brochures;
(v) Radio/TV public service announcements;
(vi) Speaking engagements;
(vii) Health fairs/health promotion; and
(viii) Information lines.

(2) *Education:* This strategy involves two-way communication and is distinguished from the Information Dissemination strategy by the fact that interaction between the educator/facilitator and the participants is the basis of its activities. Activities under this strategy aim to affect critical life and social skills, including decision-making, refusal skills, critical analysis (e.g. of media messages) and systematic judgment abilities. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Classroom and/or small group sessions (all ages);
(ii) Parenting and family management classes;
(iii) Peer leader/helper programs;
(iv) Education programs for youth groups; and
(v) Children of substance abusers groups.

(3) *Alternatives:* This strategy provides for the participation of target populations in activities that exclude alcohol, tobacco and other drug use. The assumption is that constructive and healthy activities offset the attraction to, or otherwise meet the needs usually filled by alcohol, tobacco and other drugs and would, therefore, minimize or obviate resort to the latter. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Drug free dances and parties;
(ii) Youth/adult leadership activities;
(iii) Community drop-in centers; and
(iv) Community service activities.

(4) *Problem Identification and Referral:* This strategy aims at identification of those who have indulged in illegal/age-inappropriate use of tobacco or alcohol and those individuals who have indulged in the first use of illicit drugs in order to assess if their behavior can be reversed through education. It should be noted, however, that this strategy does not include any activity designed to determine if a person is in need of treatment. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Employee assistance programs;
(ii) Student assistance programs; and
(iii) Driving while under the influence/driving while intoxicated education programs.

(5) *Community-Based Process:* This strategy aims to enhance the ability of the community to more effectively provide prevention and treatment services for alcohol, tobacco and drug abuse disorders. Activities in this strategy include organizing, planning, enhancing efficiency and effectiveness of services implementation, inter-agency collaboration, coalition building and networking. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

(i) Community and volunteer training, e.g., neighborhood action training, training of key people in the system, staff/officials training;
(ii) Systematic planning;
(iii) Multi-agency coordination and collaboration;
(iv) Accessing services and funding; and
(v) Community team-building.

(6) *Environmental:* This strategy establishes or changes written and unwritten community standards, codes and attitudes, thereby influencing incidence and prevalence of the abuse of alcohol, tobacco and other drugs used in the general population. This strategy is divided into two subcategories to permit distinction between activities which center on legal and regulatory initiatives and those which relate to the service and action-oriented initiatives. Examples of activities conducted and methods used for this strategy shall include (but not be limited to) the following:

(i) promoting the establishment and review of alcohol, tobacco and drug use policies in schools;
(ii) technical assistance to communities to maximize local enforcement procedures governing availability and distribution of alcohol, tobacco and other drug use;
(iii) modifying alcohol and tobacco advertising practices; and
(iv) product pricing strategies.

§ 96.126 Capacity of treatment for intravenous substance abusers.

(a) In order to obtain Block Grant funds, the State must require programs that receive funding under the grant and that treat individuals for intravenous substance abuse to provide to the State, upon reaching 90 percent of its capacity to admit individuals to the program, a notification of that fact within seven days. In carrying out this section, the State shall establish a capacity management program which reasonably implements this section—that is, which enables any such program to readily report to the State when it reaches 90 percent of its capacity—and which ensures the maintenance of a continually updated record of all such reports and which makes excess capacity information available to such programs.

(b) In order to obtain Block Grant funds, the State shall ensure that each individual who requests and is in need

of treatment for intravenous drug abuse is admitted to a program of such treatment not later than—

(1) 14 days after making the request for admission to such a program; or

(2) 120 days after the date of such request, if no such program has the capacity to admit the individual on the date of such request and if interim services, including referral for prenatal care, are made available to the individual not later than 48 hours after such request.

(c) In carrying out subsection (b), the State shall establish a waiting list management program which provides systematic reporting of treatment demand. The State shall require that any program receiving funding from the grant, for the purposes of treating injecting drug abusers, establish a waiting list that includes a unique patient identifier for each injecting drug abuser seeking treatment including those receiving interim services, while awaiting admission to such treatment. For individuals who cannot be placed in comprehensive treatment within 14 days, the State shall ensure that the program provide such individuals interim services as defined in § 96.121 and ensure that the programs develop a mechanism for maintaining contact with the individuals awaiting admission. The States shall also ensure that the programs consult the capacity management system as provided in paragraph (a) of this section so that patients on waiting lists are admitted at the earliest possible time to a program providing such treatment within reasonable geographic area.

(d) In carrying out paragraph (b)(2) of this section the State shall ensure that all individuals who request treatment and who can not be placed in comprehensive treatment within 14 days, are enrolled in interim services and those who remain active on a waiting list in accordance with paragraph (c) of this section, are admitted to a treatment program within 120 days. If a person cannot be located for admission into treatment or, if a person refuses treatment, such persons may be taken off the waiting list and need not be provided treatment within 120 days. For example, if such persons request treatment later, and space is not available, they are to be provided interim services, placed on a waiting list and admitted to a treatment program within 120 days from the latter request.

(e) The State shall require that any entity that receives funding for treatment services for intravenous drug abuse carry out activities to encourage individuals in need of such treatment to undergo such treatment. The States shall require such entities to use outreach models that are scientifically sound, or if no such models are available which are applicable to the local situation, to use an approach which reasonably can be expected to be an effective outreach method. The model shall require that outreach efforts include the following:

(1) Selecting, training and supervising outreach workers;

(2) Contacting, communicating and following-up with high risk substance abusers, their associates, and neighborhood residents, within the constraints of Federal and State confidentiality requirements, including 42 C.F.R. Part 2;

(3) Promoting awareness among injecting drug abusers about the relationship between injecting drug abuse and communicable diseases such as HIV;

(4) Recommend steps that can be taken to ensure that HIV transmission does not occur; and

(5) Encouraging entry into treatment.

(f) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of § 96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems.

§ 96.127 Requirements regarding tuberculosis.

(a) States shall require any entity receiving amounts from the grant for operating a program of treatment for substance abuse to follow procedures developed by the principal agency of a State for substance abuse, in consultation with the State Medical Director for Substance Abuse Services, and in cooperation with the State Department of Health/Tuberculosis Control Officer, which address how the program—

(1) Will, directly or through arrangements with other public or nonprofit private entities, routinely make available tuberculosis services as defined in § 96.121 to each individual receiving treatment for such abuse;

(2) In the case of an individual in need of such treatment who is denied admission to the program on the basis of the lack of the capacity of the program to admit the individual, will refer the individual to another provider of tuberculosis services; and

(3) Will implement infection control procedures established by the principal agency of a State for substance abuse, in cooperation with the State Department of Health/Tuberculosis Control Officer, which are designed to prevent the transmission of tuberculosis, including the following:

(i) Screening of patients;

(ii) Identification of those individuals who are at high risk of becoming infected; and

(iii) Meeting all State reporting requirements while adhering to Federal and State confidentiality requirements, including 42 CFR part 2; and

(4) will conduct case management activities to ensure that individuals receive such services.

(b) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of § 96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems. The principal agency, in cooperation with the State Department of Health/ Tuberculosis Control Officer, shall also establish linkages with other health care providers to ensure that tuberculosis services are routinely made available. All individuals identified with active tuberculosis shall be reported to the appropriate State official as required by law and consistent with paragraph (a)(3)(iii) of this section.

(c) With respect to services provided for by a State for purposes of compliance with this section, the State shall maintain Statewide expenditures of non-Federal amounts for such services at a level that is not less than an average level of such expenditures maintained by the State for the 2-year period preceding the first fiscal year for which the State receives such a grant. In making this determination, States shall establish a reasonable funding base for fiscal year 1993. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

§ 96.128 Requirements regarding human immunodeficiency virus.

(a) In the case of a designated State as described in paragraph (b) of this section, the State shall do the following—

(1) with respect to individuals undergoing treatment for substance abuse, the State shall, subject to paragraph (c) of this section, carry out one or more projects to make available to the individuals early intervention services for HIV disease as defined in § 96.121 at the sites at which the individuals are undergoing such treatment;

(2) for the purpose of providing such early intervention services through such

projects, the State shall make available from the grant the amounts prescribed by section 1924 of the PHS Act;

(3) the State shall, subject to paragraph (d) of this section, carry out such projects only in geographic areas of the State that have the greatest need for the projects;

(4) the State shall require programs participating in the project to establish linkages with a comprehensive community resource network of related health and social services organizations to ensure a wide-based knowledge of the availability of these services; and

(5) the State shall require any entity receiving amounts from the Block Grant for operating a substance abuse treatment program to follow procedures developed by the principal agency of a State for substance abuse, in consultation with the State Medical Director for Substance Abuse Services, and in cooperation with the State Department of Health/Communicable Disease Officer.

(b) For purposes of this section, a "designated State" is any State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which the data are available).

(c) With respect to programs that provide treatment services for substance abuse, the State shall ensure that each such program participating in a project under paragraph (a) of this section will be a program that began operation prior to the fiscal year for which the State is applying to receive the grant. A program that so began operation may participate in a project under paragraph (a) of this section without regard to whether the program has been providing early intervention services for HIV disease.

(d) If the State plans to carry out 2 or more projects under paragraph (a) of this section, the State shall carry out one such project in a rural area of the State, unless the requirement is waived. The Secretary shall waive the requirement if the State certifies to the Secretary that:

(1) The rate of cases of acquired immune deficiency syndrome is less than or equal to two such cases per 100,000 individuals in any rural area of the State, or there are so few infected persons that establishing a project in the area is not reasonable; or

(2) There are no rural areas in the State as defined in § 96.121.

(e) With respect to the provision of early intervention services for HIV disease to an individual, the State shall ensure that the entities comply with § 96.137 regarding payment and § 96.135 regarding restrictions on expenditure of grant. The State shall also ensure that such services will be undertaken voluntarily by, and with the informed consent of, the individual, and undergoing such services will not be required as a condition of receiving treatment services for substance abuse or any other services.

(f) With respect to services provided for a State for purposes of compliance with this section, the State shall maintain Statewide expenditures of non-Federal amounts for such services at a level that is not less than the average level of such expenditures maintained by the State for 2-year period preceding the first fiscal year for which the State receives such a grant. In making this determination, States shall establish a reasonable base for fiscal year 1993. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

§ 96.129 Revolving funds for establishment of homes in which recovering substance abusers may reside.

(a) The State shall establish and provide for the ongoing operation of a revolving fund as follows:

(1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol and drug abuse may reside in groups of not less than six individuals;

(2) Not less than $100,000 will be available for the revolving fund;

(3) Loans made from the revolving fund do not exceed $4,000 and that each such loan is repaid to the revolving fund not later than 2 years after the date on which the loan is made;

(4) Each such loan is repaid by such residents through monthly installments by the date specified in the loan agreement involved;

(5) Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—

(i) The use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

(ii) Any resident of the housing who violates such prohibition will be expelled from the housing;

(iii) The costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

(iv) The residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved;

(6) States shall identify and clearly define legitimate purposes for which the funds will be spent, such as first month's rent, necessary furniture (e.g., beds), facility modifications (e.g., conversion of basement into a game room or extra bedrooms), and purchase of amenities which foster healthy group living (e.g., dishwasher);

(7) In managing the revolving fund, the State and the financial entity managing the fund for the State shall abide by all Federal, State and local laws and regulations;

(8) If the State decides to indirectly manage the fund using a private nonprofit entity as the fund management group, the State shall establish reasonable criteria for selecting the group, such as qualifications, expertise, experience, and capabilities of the group, and the State shall require that these entities abide by all Federal, State and local laws and regulations;

(9) The State may seek assistance to approve or deny applications from entities that meet State-established criteria;

(10) The State shall set reasonable criteria in determining the eligibility of prospective borrowers such as qualifications, expertise, capabilities, the acceptability of a proposed plan to use the funds and operate the house, and an assessment of the potential borrower's ability to pay back the funds;

(11) The State shall establish a procedure and process for applying for a loan under the program which may include completion of the application, personal interviews and submission of evidence to support eligibility requirements, as well as establish a written procedure for repayment which will set forth reasonable penalties for late or missed payments and liability and recourse for default;

(12) The State shall provide clearly defined written instructions to applicants which lays out timeliness, milestones, required documentation, notification of reasonable penalties for late or missed payments and recourse for default, notification on legitimate purposes for which the loan may be spent, and other procedures required by the State; and

(13) The State shall keep a written record of the number of loans and amount of loans provided, the identities of borrowers and the repayment history of each borrower and retain it for three years.

(b) The requirements established in paragraph (a) of this section shall not apply to any territory of the United

States other than the Commonwealth of Puerto Rico.

§ 96.131 Treatment services for pregnant women.

(a) The State is required to, in accordance with this section, ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant. In carrying out this section, the State shall require all entities that serve women and who receive such funds to provide preference to pregnant women. Programs which serve an injecting drug abuse population and who receive Block Grant funds shall give preference to treatment as follows:

(1) Pregnant injecting drug users;
(2) Pregnant substance abusers;
(3) Injecting drug users; and
(4) All others.

(b) The State will, in carrying out this provision publicize the availability to such women of services from the facilities and the fact that pregnant women receive such preference. This may be done by means of street outreach programs, ongoing public service announcements (radio/television), regular advertisements in local/regional print media, posters placed in targeted areas, and frequent notification of availability of such treatment distributed to the network of community based organizations, health care providers, and social service agencies.

(c) The State shall in carrying out paragraph (a) of this section require that, in the event that a treatment facility has insufficient capacity to provide treatment services to any such pregnant woman who seeks the services from the facility, the facility refer the woman to the State. This may be accomplished by establishing a capacity management program, utilizing a toll-free number, an automated reporting system and/or other mechanisms to ensure that pregnant women in need of such services are referred as appropriate. The State shall maintain a continually updated system to identify treatment capacity for any such pregnant women and will establish a mechanism for matching the women in need of such services with a treatment facility that has the capacity to treat the woman.

(d) The State, in the case of each pregnant woman for whom a referral under paragraph (a) of this section is made to the State—

(1) will refer the woman to a treatment facility that has the capacity to provide treatment services to the woman; or

(2) will, if no treatment facility has the capacity to admit the woman, make available interim services, including a referral for prenatal care, available to the woman not later than 48 hours after the woman seeks the treatment services.

(e) Procedures for the implementation of this section shall be developed in consultation with the State Medical Director for Substance Abuse Services.

(f) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of § 96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems.

§ 96.132 Additional agreements.

(a) With respect to individuals seeking treatment services, the State is required to improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals. Examples of how this may be accomplished include the development and implementation of a capacity management/waiting list management system; the utilization of a toll-free number for programs to report available capacity and waiting list data; and the utilization of standardized assessment procedures that facilitate the referral process.

(b) With respect to any facility for treatment services or prevention activities that is receiving amounts from a Block Grant, continuing education in such services or activities (or both, as the case may be) shall be made available to employees of the facility who provide the services or activities. The States will ensure that such programs include a provision for continuing education for employees of the facility in its funding agreement.

(c) The State shall coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, educational, vocational rehabilitation, and employment services). In evaluating compliance with this section, the Secretary will consider such factors as the existence of memoranda of understanding between various service providers/agencies and evidence that the State has included prevention and treatment services coordination in its grants and contracts.

(d) Upon the request of a State, the Secretary may provide to a State a waiver of any or all of the requirements established in paragraphs (a), (b) and (c) of this section, if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State. In evaluating whether to grant or deny a waiver, the Secretary will rely on information drawn from the independent peer review/quality assurance activities conducted by the State. For example, a State may be eligible for a waiver of the requirement of paragraph (a) of this section if a State already has a well developed process for referring individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals. The Secretary will approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary for paragraphs (a), (b) and (c) of this section, will be applicable only to the fiscal year involved.

(e) The State is also required to have in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant and such system shall be in compliance with all applicable State and Federal laws and regulations, including 42 CFR part 2. This system shall include provisions for employee education on the confidentiality requirements and the fact that disciplinary action may occur upon inappropriate disclosures. This requirement cannot be waived.

§ 96.133 Submission to Secretary of Statewide assessment of needs.

(a) The State is required to submit to the Secretary an assessment of the need in the State for authorized activities, both by locality and by the State in general. The State is to provide a broad range of information which includes the following:

(1) The State is to submit data which shows the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism. For fiscal years 1993 through 1996, the State shall submit its best available data on the incidence and prevalence of drug and alcohol abuse and alcoholism. The State shall also provide a summary describing the weakness and bias in the data and a description on how the State plans to strengthen the data in the future.

(2) The State shall provide a description on current substance abuse prevention and treatment activities:

(i) For fiscal year 1993, the State shall provide its best available data on current prevention and treatment activities in the State in such detail as it finds reasonably practicable given its own data collection activities and records.

(ii) For fiscal year 1994 and subsequent years, the State shall provide a detailed description on current prevention and treatment activities in the State. This report shall include a detailed description of the intended use of the funds relating to prevention and treatment, as well as a description of treatment capacity. As to primary prevention activities, the activities must be broken down by strategies used, such as those provided in section 96.125, including the specific activities conducted. The State shall provide the following data if available: the specific risk factors being addressed by activity; the age, race/ethnicity and gender of the population being targeted by the prevention activity; and the community size and type where the activity is carried out. As to all treatment and prevention activities, including primary prevention, the State shall provide the identities of the entities that provide the services and describe the services provided. The State shall submit information on treatment utilization to describe the type of care and the utilization according to primary diagnosis of alcohol or drug abuse, or a dual diagnosis of drug and alcohol abuse.

(3) The State may describe the need for technical assistance to carry out Block Grant activities, including activities relating to the collection of incidence and prevalence data identified in paragraph (a)(1) of this section.

(4) The State shall establish goals and objectives for improving substance abuse treatment and prevention activities and shall report activities taken in support of these goals and objectives in its application.

(5) The State shall submit a detailed description on the extent to which the availability of prevention and treatment activities is insufficient to meet the need for the activities, the interim services to be made available under sections 96.126 and 96.131, and the manner in which such services are to be so available. Special attention should be provided to the following groups:

(i) Pregnant addicts;

(ii) Women who are addicted and who have dependent children;

(iii) Injecting drug addicts; and

(iv) Substance abusers infected with HIV or who have tuberculosis.

(6) Documentation describing the results of the State's management information system pertaining to capacity and waiting lists shall also be submitted, as well as a summary of such information for admissions and, when available, discharges. As to prevention activities, the report shall include a description of the populations at risk of becoming substance abusers.

§ 96.134 Maintenance of effort regarding State expenditures.

(a) With respect to the principal agency of a State for carrying out authorized activities, the agency shall for each fiscal year maintain aggregate State expenditures by the principal agency for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the two year period preceding the fiscal year for which the State is applying for the grant. The Block Grant shall not be used to supplant State funding of alcohol and other drug prevention and treatment programs.

(b) Upon the request of a State, the Secretary may waive all or part of the requirement established in paragraph (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver. The State involved must submit information sufficient for the Secretary to make the determination, including the nature of the extraordinary economic circumstances, documented evidence and appropriate data to support the claim, and documentation on the year for which the State seeks the waiver. The Secretary will approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary shall be applicable only to the fiscal year involved. "Extraordinary economic conditions" mean a financial crisis in which the total tax revenue declines at least one and one-half percent, and either unemployment increases by at least one percentage point, or employment declines by at least one and one-half percent.

(c) In making a Block Grant to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year or years, the State maintained material compliance with any agreement made under paragraph (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(d) The Secretary may make a Block Grant for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in paragraph (a) of this section, which includes the dollar amount reflecting the aggregate State expenditures by the principal agency for authorized activities for the two State fiscal years preceding the fiscal year for which the State is applying for the grant. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

§ 96.135 Restrictions on expenditure of grant.

(a) The State shall not expend the Block Grant on the following activities:

(1) To provide inpatient hospital services, except as provided in paragraph (c) of this section;

(2) To make cash payments to intended recipients of health services;

(3) To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) To satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(5) To provide financial assistance to any entity other than a public or nonprofit private entity; or

(6) To provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for AIDS.

(b) The State shall limit expenditures on the following:

(1) The State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant; and

(2) The State will not, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, expend more than an amount prescribed by section 1931(a)(3) of the PHS Act.

(c) Exception regarding inpatient hospital services.

(1) With respect to compliance with the agreement made under paragraph (a) of this section, a State (acting through the Director of the principal agency) may expend a grant for inpatient

hospital-based substance abuse programs subject to the limitations of paragraph (c)(2) of this section only when it has been determined by a physician that:

(i) The primary diagnosis of the individual is substance abuse, and the physician certifies this fact;

(ii) The individual cannot be safely treated in a community-based, nonhospital, residential treatment program;

(iii) The Service can reasonably be expected to improve an individual's condition or level of functioning;

(iv) The hospital-based substance abuse program follows national standards of substance abuse professional practice; and

(2) In the case of an individual for whom a grant is expended to provide inpatient hospital services described above, the allowable expenditure shall conform to the following:

(i) The daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse; and

(ii) The grant may be expended for such services only to the extent that it is medically necessary, i.e., only for those days that the patient cannot be safely treated in a residential, community-based program.

(d) The Secretary may approve a waiver for construction under paragraph (a)(3) of this section within 120 days after the date of a request only if:

(1) The State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available;

(2) The State has carefully designed a plan that minimizes the costs of renovation or construction;

(3) The State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided under the Block Grant; and

(4) The State submits the following to support paragraphs (b)(1), (2) and (3), of this section:

(i) Documentation to support paragraph (d)(1) of this section, such as local needs assessments, waiting lists, survey data and other related information;

(ii) A brief description of the project to be funded, including the type(s) of services to be provided and the projected number of residential and/or outpatient clients to be served;

(iii) The specific amount of Block Grant funds to be used for this project;

(iv) The number of outpatient treatment slots planned or the number of residential beds planned, if applicable;

(v) The estimate of the total cost of the construction or rehabilitation (and a description of how these estimates were determined), based on an independent estimate of said cost, using standardized measures as determined by an appropriate State construction certifying authority;

(vi) An assurance by the State that all applicable National (e.g., National Fire Protection Association, Building Officials and Codes Administrators International), Federal (National Environmental Policy Act), State, and local standards for construction or rehabilitation of health care facilities will be complied with;

(vii) Documentation of the State's commitment to obligate these funds by the end of the first year in which the funds are available, and that such funds must be expended by the end of the second year (section 1914(a)(2) of the PHS Act);

(viii) A certification that there is public support for a waiver, as well as a description of the procedure used (and the results therein) to ensure adequate comment from the general public and the appropriate State and local health planning organizations, local governmental entities and public and private-sector service providers that may be impacted by the waiver request;

(ix) Evidence that a State is committed to using the proposed new or rehabilitated substance abuse facility for the purposes stated in the request for at least 20 years for new construction and at least 10 years for rehabilitated facilities;

(x) An assurance that, if the facility ceases to be used for such services, or if the facility is sold or transferred for a purpose inconsistent with the State's waiver request, monies will be returned to the Federal Government in an amount proportionate to the Federal assistance provided, as it relates to the value of the facility at the time services cease or the facility sold or transferred;

(xi) A description of the methods used to minimize the costs of the construction or rehabilitation, including documentation of the costs of the residential facilities in the local area or other appropriate equivalent sites in the State;

(xii) An assurance that the State shall comply with the matching requirements of paragraph (d)(3) of this section; and

(xiii) Any other information the Secretary may determine to be appropriate.

§ 96.136 Independent peer review.

(a) The State shall for the fiscal year for which the grant is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved, and ensure that at least 5 percent of the entities providing services in the State under such program are reviewed. The programs reviewed shall be representative of the total population of such entities.

(b) The purpose of independent peer review is to review the quality and appropriateness of treatment services. The review will focus on treatment programs and the substance abuse service system rather than on the individual practitioners. The intent of the independent peer review process is to continuously improve the treatment services to alcohol and drug abusers within the State system. "Quality," for purposes of this section, is the provision of treatment services which, within the constraints of technology, resources, and patient/client circumstances, will meet accepted standards and practices which will improve patient/client health and safety status in the context of recovery. "Appropriateness," for purposes of this section, means the provision of treatment services consistent with the individual's identified clinical needs and level of functioning.

(c) The independent peer reviewers shall be individuals with expertise in the field of alcohol and drug abuse treatment. Because treatment services may be provided by multiple disciplines, States will make every effort to ensure that individual peer reviewers are representative of the various disciplines utilized by the program under review. Individual peer reviewers must also be knowledgeable about the modality being reviewed and its underlying theoretical approach to addictions treatment, and must be sensitive to the cultural and environmental issues that may influence the quality of the services provided.

(d) As part of the independent peer review, the reviewers shall review a representative sample of patient/client records to determine quality and appropriateness of treatment services, while adhering to all Federal and State confidentiality requirements, including 42 CFR Part 2. The reviewers shall examine the following:

(1) Admission criteria/intake process;

(2) Assessments;

(3) Treatment planning, including appropriate referral, e.g., prenatal care and tuberculosis and HIV services;

(4) Documentation of implementation of treatment services;

(5) Discharge and continuing care planning; and

(6) Indications of treatment outcomes.

(e) The State shall ensure that the independent peer review will not involve practitioners/providers reviewing their own programs, or programs in which they have administrative oversight, and that there be a separation of peer review personnel from funding decisionmakers. In addition, the State shall ensure that independent peer review is not conducted as part of the licensing/certification process.

(f) The States shall develop procedures for the implementation of this section and such procedures shall be developed in consultation with the State Medical Director for Substance Abuse Services.

§ 96.137 Payment schedule.

(a) The Block Grant money that may be spent for §§ 96.124(c) and (e), 96.127 and 96.128 is governed by this section which ensures that the grant will be the "payment of last resort." The entities that receive funding under the Block Grant and provides services required by the above-referenced sections shall make every reasonable effort, including the establishment of systems for eligibility determination, billing, and collection, to:

(1) Collect reimbursement for the costs of providing such services to persons who are entitled to insurance benefits under the Social Security Act, including programs under title XVIII and title XIX, any State compensation program, any other public assistance program for medical expenses, any grant program, any private health insurance, or any other benefit program; and

(2) Secure from patients or clients payments for services in accordance with their ability to pay.

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Reader Aids

Federal Register

Vol. 58, No. 60

Wednesday, March 31, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

11783–11950.....1
11951–12144.....2
12145–12328.....3
12329–12536.....4
12537–12900.....5
12901–12996.....8
12997–13188.....9
13189–13400.....10
13401–13528.....11
13529–13694.....12
13695–14144.....15
14145–14302.....16
14303–14494.....17
14495–15070.....18
15071–15260.....19
15261–15414.....22
15415–15750.....23
15751–16102.....24
16103–16344.....25
16345–16480.....26
16481–16610.....29
16611–16762.....30
16763–17080.....31

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305.....16375

3 CFR

Executive Orders:
12154 (Amended by EO 12841).....13529
12193 (See EO 12840).....13401
12295 (See EO 12840).....13401
12351 (See EO 12840).....13401
12409 (See EO 12840).....13401
12463 (See EO 12840).....13401
12506 (See EO 12840).....13401
12554 (See EO 12840).....13401
12587 (See EO 12840).....13401
12629 (See EO 12840).....13401
12670 (See EO 12840).....13401
12706 (See EO 12840).....13401
12753 (See EO 12840).....13401
12791 (Superseded by EO 12840).....13401
12800 (See DOL final rule of March 15).....15402
12808 (See final rule of Jan. 14).....13199
12810 (See final rule of Jan. 14).....13199
12831 (See final rule of Jan. 14).....13199
12833 (See EO 12841).....13529
12836 (See final rule of Mar. 2).....12140
12836 (See DOL final rule of March 15).....15402
12840.....13401
12841.....13529

Proclamations:
6491 (Revoked by Proc. 6534).....13189
6531.....11951
6532.....13185
6533.....13187
6534.....13189
6535.....15441
6536.....15413
6537.....15751
6538.....15753
6539.....16609

Administrative Orders:

Presidential Determinations:
No. 92–22 of April 22, 1992 (See Presidential Determination 93–16 of March 20, 1993).....16345
No. 93–15 of February 27, 1993.....13183
No. 93–16 of March 20, 1993.....16345

Memorandums:
March 4, 1993.....14303

5 CFR

Ch. 14.....13695
297.....16446
307.....12145
432.....13191
532.....12146, 13193, 13194, 15415
752.....13191
870.....11953
871.....11953
872.....11953
873.....11953

Proposed Rules:
317.....11988
412.....11988

7 CFR

2.....11954, 11955
321.....11957
354.....14395
340.....17044
400.....13531
702.....11783
723.....11959, 11960
729.....11962
987.....13695
993.....13697
1106.....14307
1260.....12997
1413.....12329, 12332, 15416, 15775
1421.....14495
1427.....12332, 15261, 15755
1434.....14495
1464.....11960
1493.....11786, 13684, 15901
1540.....16103
1703.....13194
1901.....12632
1943.....15071
1944.....12632, 14509
1951.....15071, 15417
1980.....15071
4284.....12632

Proposed Rules:
29.....13130
52.....13130
55.....13130

58.....13130
59.....13130
61.....13130
68.....14174
70.....13130
90–159.....13130
180.....13130
1001.....12634
1002.....12634
1004.....12634
1005.....12634
1006.....12634
1007.....12634
1011.....12634
1012.....12634
1013.....12634
1030.....12634
1032.....12634
1033.....12634
1036.....12634
1040.....12634
1044.....12634
1046.....12634
1049.....12634
1050.....12634
1064.....12634
1065.....12634
1068.....12634
1075.....12634
1076.....12634
1079.....12634
1093.....12634
1094.....12634
1096.....12634
1097.....12634
1098.....12634, 14344
1099.....12634
1106.....12634
1108.....12634
1124.....12634
1126.....12634
1131.....12634
1134.....12634
1135.....12634
1137.....12634
1138.....12634
1139.....12634
1421.....12338
1435.....16126
1717.....12552
3515.....11910

8 CFR

208.....12146, 14145
209.....12146, 14145
274a.....12146, 14145

9 CFR

94.....13698

Proposed Rules:

94.....14174, 15901
113.....12187
391.....14177
92.....15292
113.....15301
130.....15292

10 CFR

2.....14308
73.....13699
110.....11886, 12999
440.....12514

Proposed Rules:

20.....14178
26.....15810
50.....12339, 15303, 16377
52.....16377
60.....12342
100.....16377
110.....14344
810.....13427, 15441
834.....16268
1706.....13684

11 CFR

110.....14310
201.....14510

Proposed Rules:

102.....12189
104.....14530
110.....12189

12 CFR

3.....16481
203.....13403
217.....15076
225.....15076
230.....15076
325.....12149
563.....14510, 15082
567.....15085
601.....12333
607.....16104
614.....11792
618.....16104
703.....16763

Proposed Rules:

Ch. III.....16798
346.....11992
611.....15099
701.....11801
707.....11801
711.....12910
740.....11801
900.....13565

13 CFR

102.....14145, 14147
108.....15756
121.....12334

14 CFR

25.....12537, 16486
35.....15262
39.....12152, 12153, 12155, 13430, 13700, 13701, 14181, 14182, 14184, 14185, 14187, 14189, 14311, 14513, 14515, 15757, 15758, 15760, 16105, 16107, 16109, 16110, 16113, 16115, 16118, 16347, 16763, 16764, 16769, 16770
71.....11886, 12128, 12157, 13006, 13703, 13704, 14190, 14517, 15117, 15118, 15264, 15762, 15763, 16488, 16611
93.....12128
95.....16489
97.....15265, 15266, 15268, 15270
121.....12158

Proposed Rules:

Ch. I.....16798
21.....13216
25.....12563, 13216
39.....11996, 11997, 11999, 12002, 12004, 12190, 12192, 12194, 12195, 12347, 12349, 13430, 13711, 13713, 15114, 15116, 15305, 15309, 15441, 15444, 15445, 15448, 15450, 15813, 16137, 16377, 16505, 16507
71.....11801, 11802, 11803, 12128, 11886, 12197, 12566, 12567, 13715, 15117, 15118, 16508, 16914
121.....15730, 16584, 17024
125.....17024
135.....17024
221.....12350
389.....12350

15 CFR

Proposed Rules:

806.....12912
944.....15271

16 CFR

4.....15763
5.....15763
305.....15086
1030.....12335
1116.....16119

Proposed Rules:

18.....16139
305.....12818
306.....16464
308.....13370
1204.....15815

17 CFR

1.....12988
200.....11792, 14628, 14848, 14999
201.....14628
202.....14628, 14999, 15009
210.....14628
228.....14628
229.....14628, 14848
230.....14628, 14848
232.....14628
239.....14628, 14848, 16771
240.....14628, 14848
249.....14628, 14848, 16771
250.....14999
259.....14999
260.....14628, 15009
269.....14628
270.....14848
274.....14848

Proposed Rules:

1.....13565, 14348
17.....13716
18.....13716
155.....13025, 13684
200.....11804, 16799
230.....16141
239.....16141
240.....11804, 11806, 16151
250.....13719
259.....13719
270.....16799
274.....16141

18 CFR

2.....15418
11.....15765
154.....15418
157.....15418
284.....15087, 15418
365.....11886
375.....15418
380.....15418
381.....11886

Proposed Rules:

Ch. I.....15816
284.....14530, 15311

19 CFR

4.....12538, 13195
19.....15770
111.....15770
112.....15770
122.....15770
141.....16349
146.....15770
178.....16349

Proposed Rules:

113.....16632

20 CFR

Proposed Rules:

209.....11811
211.....11811
229.....16155
266.....13225
325.....12005
345.....11811
416.....14191
656.....15242

21 CFR

155.....16771
156.....16771
520.....14313
522.....11964
529.....14314
1301.....15272
1308.....13533, 15088, 16772
1311.....15272

Proposed Rules:

103.....13041
129.....13041
165.....13041
184.....13041
350.....15452
876.....15119
878.....13230

22 CFR

221.....14148
514.....15180

23 CFR

Proposed Rules:

Ch. I.....15816
450.....12064, 12084
500.....12096
511.....12096
626.....12096

24 CFR

91.....13686
200.....13534
201.....13950
202.....13534
203.....12901, 13534, 13950
204.....12901
207.....16773
213.....13534, 16773
215.....15773
220.....16773
221.....16773
231.....16773
234.....13534, 13950, 16773
236.....13007, 15773
240.....13534
570.....13686
582.....13884
583.....13670
700.....14509
813.....15773
882.....13828

905.....13916, 15773
913.....15773
968.....13916
3500.....13705

25 CFR

Ch. III.....16493
503.....16495
Proposed Rules:
216.....15404

26 CFR

1.....13409, 13412, 13413, 13706, 14150, 15089, 15274, 16349, 16496
52.....14517
602.....13409, 13413
Proposed Rules:
1.....14531, 15312, 15313, 15818, 15819
20.....15313
25.....15313
26.....15314
301.....15314
602.....14531

27 CFR

9.....11964
Proposed Rules:
650.....11814

28 CFR

2.....16612

29 CFR

470.....15402
1910.....15089, 16496, 16612
2619.....13706
2676.....13707
Proposed Rules:
103.....15314
825.....13394
1910.....15526
1926.....16509, 16515
2619.....15315
2676.....15315
2700.....12158

30 CFR

917.....16350
920.....15275
944.....16623
948.....16353
Proposed Rules:
56.....14492
57.....14492
75.....16517
710.....15404
715.....15404
716.....15404
717.....15404
750.....15404
870.....12913
914.....16379, 16381
915.....16632
920.....16383, 16384, 16386
935.....15315, 16388
938.....15456, 16389
943.....16634
950.....15318, 15319, 16636 16637

31 CFR

103.....13538
505.....13197
550.....13198
585.....13199

32 CFR

92.....13550
165.....16497
988.....13007

33 CFR

1.....15228, 15901
100.....13214, 16121, 16357
110.....12539
117.....12540, 15419, 15420, 15421, 16122, 16499
154.....13550
155.....13708
165.....14151, 15089, 15775
Proposed Rules:
117.....12568
165.....15821, 15822
168.....16391

34 CFR

200.....11920
230.....13176
231.....13176
236.....13176
238.....13176
300.....13528
600.....13335, 15523
668.....14152
682.....13335
Proposed Rules:
50.....11924
232.....15748
649.....11928, 15824
674.....13356
682.....13356

36 CFR

Proposed Rules:
242.....14350

37 CFR

301.....13413
311.....13413

38 CFR

3.....12174, 16358, 16359

39 CFR

111.....13551
Proposed Rules:
266.....16806
3001.....12198, 16392

40 CFR

50.....13008, 15278, 15281, 15282
52.....11967, 14153, 15277, 15422, 15431
55.....14157, 16625
72.....15634
73.....15634
75.....15634
80.....13413, 14476, 16002
81.....12541, 15422, 15776
86.....13413, 15781
88.....11888
180.....14314, 14316, 15802, 15803, 15804, 16094, 16776
261.....15284
268.....14317
271.....12174, 14319, 14321, 15806
300.....12142, 15287
435.....12454
712.....13556
716.....13556
761.....15435, 15808
763.....15808
Proposed Rules:
Ch. 1.....12199, 12352, 13571, 13730, 16517
51.....13836
52.....12006, 12913, 12914, 13230, 13572, 13575, 14194, 15824, 16639, 16806
61.....15457
63.....16808
68.....13174
69.....13579
81.....16806
82.....15014
85.....13730
86.....13730
93.....13836
144.....13836, 15320
172.....16762
180.....12199, 12200, 13234, 13236, 13238, 13239, 13241
185.....13241
186.....13241
191.....13731, 15320
194.....15320
228.....12569
302.....12876
355.....12876
700.....17040
720.....17040
721.....17040
723.....17040
761.....12352, 13128

41 CFR

Ch. 301.....12890
301–7.....12890
302–11.....15436

43 CFR

Public Land Orders:
86.....11816
6958.....11968
6959.....14323
6960.....16628
Proposed Rules:
3730.....12878
3820.....12878
3830.....12878
3850.....12878

44 CFR

64.....11968, 14159, 16500
65.....14323, 15091
67.....14325
Proposed Rules:
67.....14350

45 CFR

96.....17062
400.....11793, 16777
1303.....13019
1611.....12335

46 CFR

10.....15228, 15901
12.....15228, 15901
15.....13360
25.....13364
552.....13414
Proposed Rules:
31.....15740
32.....15740
67.....12362
502.....16641

47 CFR

Ch. I.....14161
0.....13019
1.....13019, 13708, 14328
2.....11795, 16360
5.....14328
13.....12632
21.....11795, 13708
22.....11799
25.....13417
64.....12175, 14329
69.....16626
73.....12902, 12903, 13423, 13424, 15288, 15289, 15290, 15439, 15440, 16502, 16503, 16779, 16780, 16781
74.....11795
76.....11970, 11972
80.....16503
90.....12176, 12177
Proposed Rules:
Ch. I.....12915, 13041, 14367, 15120, 15461
1.....14369
2.....14532
21.....12202, 13708
25.....13432, 13433, 14532
32.....14535, 16163
61.....13435
64.....12204, 13435, 14371
65.....16163
68.....14375
69.....12204, 13435
73.....12916, 13435, 13436, 13437, 15321, 15461, 15462, 16518, 16643, 16644, 16809
76.....12917, 12921
90.....12205, 15131
74.....12011

48 CFR

Ch. 20.....12988
22.....12140
36.....12140
52.....12140
215.....16782
252.....16782

49 CFR

1.....12543, 16914
107.....12543
171.....12182
173.....12904
178.....12904
180.....12904
192.....14519
193.....14519
195.....14519
501.....12545
571.....11974, 11975, 12183, 13021, 13023, 13424, 14162, 15463, 16782
582.....12545
591.....12905
1004.....16124
1007.....15290
Proposed Rules:
23.....12207
171.....12207
172.....12207
173.....12207, 12316
178.....12316

180.....12316
195.....12213
571.....12921, 13042, 13243, 13424, 15132
Ch. VI.....15816
613.....12064, 12084
614.....12096
1056.....12573
1312.....14198

50 CFR

17.....12853, 12864, 14169, 14248, 14330, 16742
20.....15093
227.....16369
611.....14170, 16446, 16787
625.....13560
641.....13560, 16371
642.....16785
646.....11979
652.....14340
663.....11984, 16124, 16629
672.....11985, 11986, 13214, 13561, 16372, 16373, 16786, 16787, 16797
674.....12336
675.....11986, 12336, 13561, 13826, 14172, 14173, 14524, 15291, 16374, 16446
685.....14170

Proposed Rules:

Ch. I.....16644
17.....11821, 12013, 12353, 12573, 13042, 13244, 13732, 14199, 14537, 14541, 15828, 16164, 16758
100.....14350
216.....16519
218.....16519
222.....16519
625.....12017, 15463, 16519
641.....12018, 15132
646.....13732
663.....14543, 14549

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H.R. 750/P.L. 103–10

To extend the Export Administration Act of 1979 and to authorize appropriations under that Act for fiscal years 1993 and 1994. (Mar. 27, 1993; 107 Stat. 40; 1 page)

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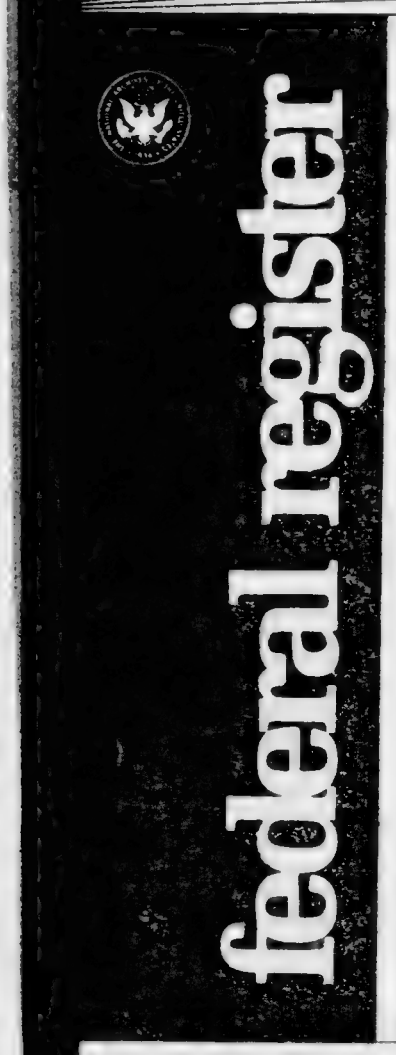

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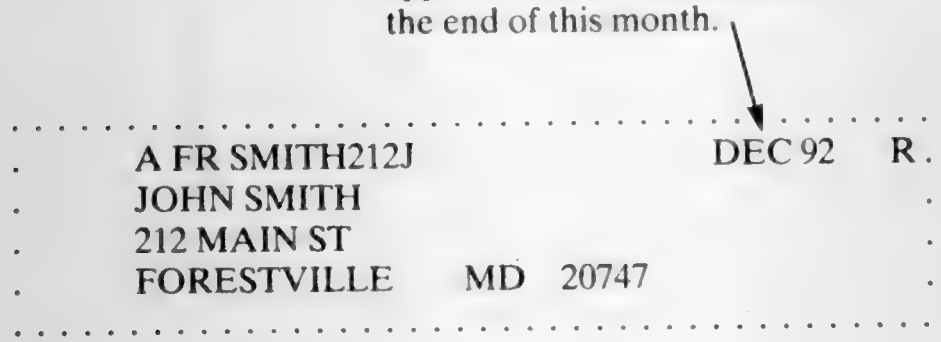

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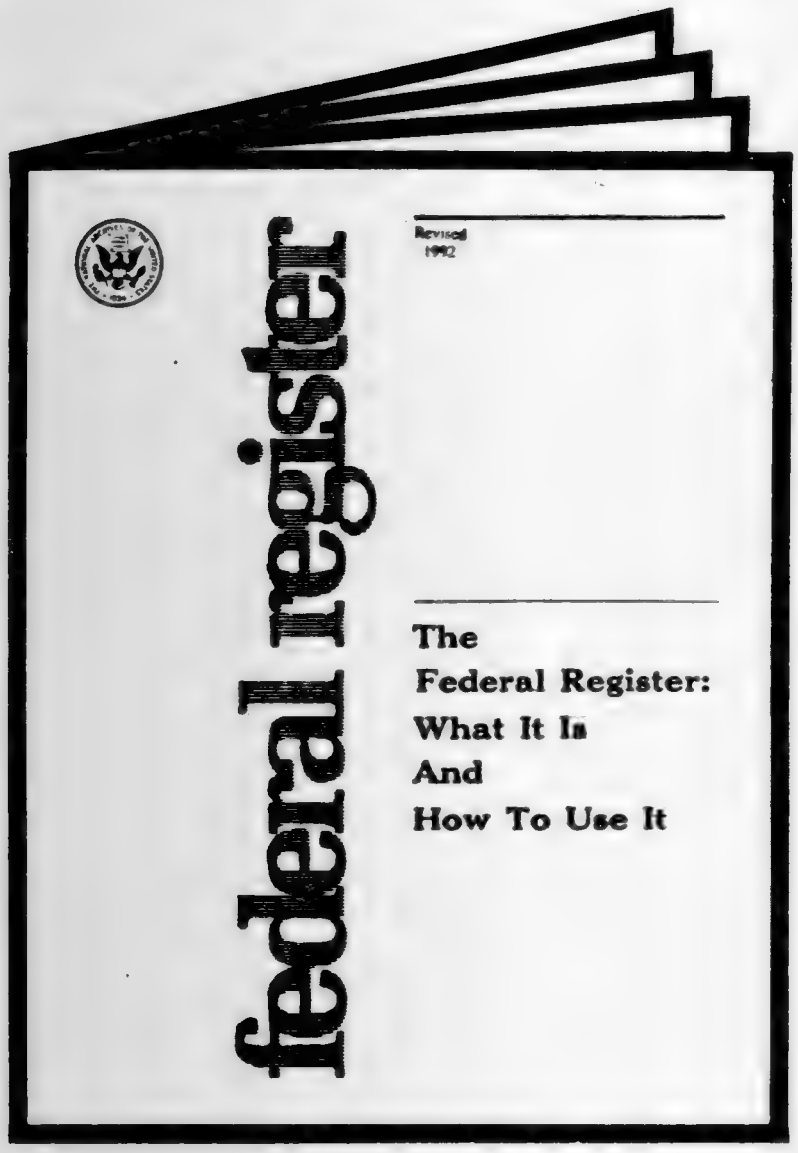

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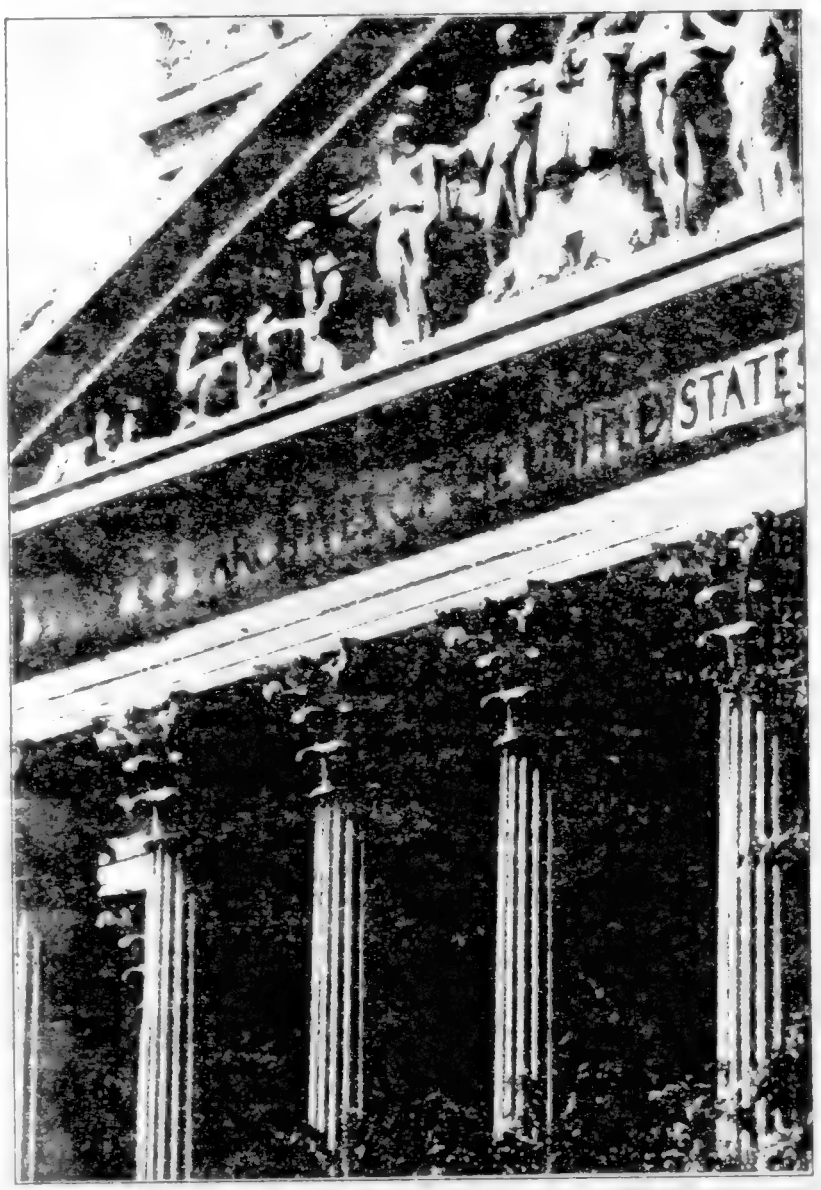

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List of CFR Sections Affected

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Title 1-16
Changes January 4, 1993
through January 29, 1993

Title 17-27
Changes April 1, 1991
through January 29, 1993

Title 28-41
Changes July 1, 1991
through January 29, 1993

Title 42-50
Changes October 1, 1991
through January 29, 1993

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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1992.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	19.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	22.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	27.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	19.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-0)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1,1992
§§ 1.1401-End	(867-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992
200-End	(869-017-00103-1)	11.00	Apr. 1, 1992
28	(869-017-00104-0)	37.00	July 1, 1992
29 Parts:			
0-99	(869-017-00105-8)	19.00	July 1, 1992
100-499	(869-017-00106-6)	9.00	July 1, 1992
500-899	(869-017-00107-4)	32.00	July 1, 1992
900-1899	(869-017-00108-2)	16.00	July 1, 1992
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-013-00111-7)	9.00	[6] July 1, 1989
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-017-00114-7)	25.00	July 1, 1992
200-699	(869-017-00115-5)	19.00	July 1, 1992
700-End	(869-017-00116-3)	25.00	July 1, 1992
31 Parts:			
0-199	(869-017-00117-1)	17.00	July 1, 1992
200-End	(869-017-00118-0)	25.00	July 1, 1992
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-017-00119-8)	30.00	July 1, 1992
190-399	(869-017-00120-1)	33.00	July 1, 1992
400-629	(869-017-00121-0)	29.00	July 1, 1992
630-699	(869-017-00122-8)	14.00	July 1, 1992
700-799	(869-017-00123-6)	20.00	July 1, 1992
800-End	(869-017-00124-4)	20.00	July 1, 1992
33 Parts:			
1-124	(869-017-00125-2)	18.00	July 1, 1992
125-199	(869-017-00126-1)	18.00	July 1, 1992
200-End	(869-017-00127-9)	23.00	July 1, 1992
34 Parts:			
1-299	(869-017-00128-7)	27.00	July 1, 1992
300-399	(869-017-00129-5)	19.00	July 1, 1992
400-End	(869-017-00130-9)	32.00	July 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
35	(867-017-00131-7)	12.00	July 1, 1992
36 Parts:			
1-199	(869-017-00132-5)	15.00	July 1, 1992
200-End	(869-017-00133-3)	32.00	July 1, 1992
37	(869-017-00134-1)	17.00	July 1, 1992
38 Parts:			
0-17	(869-017-00135-0)	28.00	July 1, 1992
18-End	(869-017-00136-8)	28.00	July 1, 1992
39	(869-017-00137-6)	16.00	July 1, 1992
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
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700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-017-00153-8)	9.50	July 1, 1992
101	(869-017-00154-6)	28.00	July 1, 1992
102-200	(869-017-00155-4)	11.00	July 1, 1992
201-End	(869-017-00156-2)	11.00	July 1, 1992
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-013-00159-1)	21.00	Oct. 1, 1991
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
200-499	(869-013-00166-4)	12.00	Oct. 1, 1991
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-013-00170-8)	8.00	Oct. 1, 1992
90-139	(869-013-00172-9)	12.00	Oct. 1, 1991
140-155	(869-017-00173-4)	12.00	Oct. 1, 1992
156-165	(869-017-00173-2)	14.00	Oct. 1, 1992
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-013-00177-0)	11.00	Oct. 1, 1991
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-013-00179-6)	19.00	Oct. 1, 1991
40-69	(869-017-00189-1)	10.00	Oct. 1, 1992
70-79	(869-013-00181-8)	18.00	Oct. 1, 1991
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1-51)	(869-013-00183-4)	31.00	Oct. 1, 1991
1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-End	(869-013-00189-3)	30.00	Oct. 1, 1991
29-End	(869-017-00190-2)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-013-00194-0)	27.00	Oct. 1, 1991
1000-1199	(869-013-00195-8)	17.00	Oct. 1, 1991
1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
50 Parts:			
1-199	(869-013-00197-4)	21.00	Oct. 1, 1991
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
600-End	(869-013-00199-1)	15.00	Oct. 1, 1991
CFR Index and Finding Aids	(869-017-00053-7)	31.00	Jan. 1, 1992
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CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

TITLE 1—GENERAL PROVISIONS

Chapter III—Administrative Conference of the Federal Register (Parts 300—399)

Page

305.79-7 Correctly designated..... 4295

TITLE 3—THE PRESIDENT

Proclamations

6519 207
6520 467
6521 469
6523 3197
6522 3195
6524 4293
6525 5917
6526 6187

Executive Orders

2859 Amended by EO 12832.....5905
10865 Amended by EO 12829.....3479
10909 *See* EO 12829..... 3479
11382 *See* EO 12829..... 3479
12154 Amended by EO 12833.....5907
12333 *See* EO 12829..... 3479
12356 *See* EO 12829..... 3479
12792 Amended by EO 12827.....211
12808 *See* EO 12831..... 5253
12810 Revoked in part by 12831.....5253
12827 211
12828.....2965
12829 3479
12830 4061
12831 5253
12832 5905
12833 5907
12834 5911
12835 6189

Administrative Orders

Memorandums:

Dec. 30, 1992..... 3485
Dec. 30, 1992..... 3195
Jan. 15, 1993..... 6339
Jan. 22, 1993..... 6439

Presidential Determinations:

No. 93-7 of Jan. 5, 1993.....4059
No. 93-8 of Jan. 6, 1993.....5241
No. 93-9 of Jan. 6, 1993.....5243

Page

No. 93-10 of Jan. 6, 1993.....5245
No. 93-11 of Jan. 6, 1993.....5247
No. 93-12 of Jan. 6, 1993.....5249
No. 93-13 of Jan. 6, 1993.....5251
No. 93-14 of Jan. 19, 1993.....6341

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

351.608 Revised..... 5563
351.803 Heading and (a) revised.....5564
430.405 (g) corrected..... 6056
531 Authority citation revised.....3200
531.301 Amended; interim.....3200
531.304 (a)(3) and (f)(5) revised; interim.....3201
532.509 Amended; interim.....3201
550.103 (t) added; interim.....3201
550.104 (b)(3) revised; interim..... 3201
550.105 (b)(3) revised; interim..... 3201
550.106 (e)(2) revised; interim..... 3201
550.107 Introductory text revised; interim.....3201
575 Authority citation revised.....3201
572.102 (a)(4) revised; interim..... 3201
572.202 (a)(4) revised; interim..... 3201
575.205 (b) revised; interim..... 3201
575.302 (a)(4) revised; interim..... 3201
838.103 Amended..... 3202
838.101—838.103 (Subpart A) Appendix A amended..... 3202
838.135 (a) amended.....3202
838.806 (c)(1) amended..... 3202
890 Regulation at 57 FR 10609 comment period extended..... 4569

Title 5—*Proposed Rules:*

410 3508

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

Page

2.27 (a)(11) revised....4569
2.84 (a)(6) revised....4570
2.85 (a)(7) revised....4570
52.441—52.453 (Subpart) Revised....4296
52.454 Removed....4302
52.455 Removed....4302
52.456 Removed....4302

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

271 Authority citation revised....215
272 Authority citation revised....215
272.1 Regulation at 56 FR 12845 confirmed....215
273 Authority citation revised....215
273.1 Regulation at 56 FR 12845 confirmed....215
273.2 Regulation at 56 FR 12845 confirmed....215
273.9 Regulation at 56 FR 12845 confirmed....215
273.11 Regulation at 56 FR 12845 confirmed....215
274 Authority citation revised....215
275 Authority citation revised....215
276 Authority citation revised....215
277 Authority citation revised....215
278 Authority citation revised....215
279 Authority citation revised....215
280 Authority citation revised....215
281 Authority citation revised....215
282 Authority citation revised....215
284 Authority citation revised....215

Page

285 Authority citation revised....215

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.50 (a) and (b) designation removed; interim....6347
301.50-1 Amended; interim....6347
301.50-3 (c) amended; interim....6348
301.50-5 (a)(1)(ii) and (iii) amended; (a)(1)(iv) added; interim....6348
301.50-10 Introductory text designated as (a); new (b) added; interim....6348
301.64 (a) amended; interim....219
301.64-3 (c) amended; interim....219
301.78-3 (c) amended; interim....6345
301.80 (b)(17) through (21) redesignated as (b)(18) through (22); new (b)(17) added; interim....216
301.80-2a Amended; interim....216, 217
354.2 Table amended....220

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401.111 Amended; eff. 11-30-93....3205
401.113 Amended; eff. 11-30-93....3207
401.117 Amended; eff. 11-30-93....3209
422 Exclusion of certified seed potato option....1

Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.71 (a) Schedule A revised....3214
Regulation at 58 FR 3214 postponed; interim....5255
800.88 (d) revised....3212
800.96 (c)(2) revised....3212

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

Page

920.302 (b)(1) corrected.....3069
921 Suspended.....220
928 Referendum order.....4302
966 Budget of expenses.....4572
979 Budget of expenses.....4574
984 Budget of expenses.....4572
989 Budget of expenses.....4572

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001 Marketing percentages.....5255
1004 Marketing percentages.....5255
1124 Marketing percentages.....5255

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1207.510 (b)(1), (2), (3) and (c) revised.....3359
1209.1—1209.77 (Subpart A) Added.....3449
1210.401 (f) concluding text revised.....3355
1210.403 (h) revised.....3355
1210.404 Removed.....3356
1210.517 (a)(3) through (11) redesignated as (a)(4) through (12); new (a)(3) added; new (a)(9) and new (10) revised.....3356
1210.540 Revised (OMB number).....3356
1211.251 (h) introducotry text revised.....3362
1212.251 (l) introductory text revised.....3366

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1410.13 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c).....4064

Page

1410.103 (d)(2), (3), (4) and (f)(2) revised.....4064
1410.108 Introductory text and (b) amended.....4064
1410.110 (d) revised.....4064
1413.54 (a)(2) and (d) revised.....4305
1421.7 (c)(2) through (6), (9) and (10) revised.....4306

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1822.261 Amended.....224
1823.401 Amended.....224
1900.51-1900.100 (Subpart B) Exhibit D revised.....4065
1900.151-1900.156 (Subpart D) Added.....224
1901.2 Amended.....226
1901.204 (a)(2) revised; (a)(24) and (25) added.....5565
1910.3 (a)(7) added.....226
1910.4 Introductory text amended.....226
1940.590 (i) added.....5565
1941.1 Amended.....226
1942.1 (a) amended.....226
1942.101 Amended.....226
1942.301 Amended.....226
1942.351 (a) amended.....226
1942.402 (a) amended.....226
1942.451 Amended.....227
1942.501 (a) amended.....227
1943.1 Amended.....227
1943.51 Amended.....227
1944 Authority citation revised.....227
1944.1 Amended.....227
1944.37 (f) and (g) amended.....227
1944.39 Revised.....227
1944.151 Amended.....227
1944.201 Amended.....227
1944.401 Amended.....227
1944.451 Amended.....228
1944.475 Added.....5565
1944.451—1944.500 (Subpart J) Exhibit D added.....5565
1944.501 Amended.....228
1944.651 (a) amended.....228
1945.101 (a) amended.....228
1945.151 (a) amended.....228
1948.51 Amended.....228
1948.101 (a) amended.....228
1951.201 Revised.....5566

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

TITLE 7 Chapter XVIII—Con. Page

1951.901 Amended 228
1951.916 Revised 4066
1956.101 Revised 5566
1965.126 (c)(2) revised 4067
1980.101 (a) amended 228
1980.201 (a) amended 229
1980.207 Introductory text revised 229
1980.301 (a) amended 229
1980.401 (a) amended 229
1980.501 (a) amended 229
1980.601 Amended 229
1980.801 (a) amended 229
1980.901 (a) amended 229
2003.1—2003.50 (Subpart A) Exhibit A amended 5566

Chapter XLII—Rural Development Administration, Department of Agriculture (Part 4284)

Chapter XLII established 5566
4284 (Subpart E) Added 5566

Title 7—*Proposed Rules:*

29 3233
52 3816
56 3234
59 3234
68 3511
275 5188
283 5188
354 260
723 3869
781 3871
958 3234
1040 6447
1446 3514
1944 507
1956 4095

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

100.4 (d) amended 471, 3487
212.1 (f)(3) amended 4891

Title 8—*Proposed Rules:*

235 6056

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

Page

94.18 (a) revised; interim ..... 43[illegible]

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

317.300—317.400 (Subpart B) Added; eff. 7-6-94 664
317.1—317.24 designated as Subpart A; eff. 7-6-94 664
318.7 (c)(4) table amended 4070
320.1 (b)(8) added; eff. 7-6-94 675
381.147 (f)(4) table amended 4070
381.175 (b)(5) added; eff. 7-6-94 675
381.400—381.500 (Subpart Y) Added; eff. 7-6-94 675

Title 9—*Proposed Rules:*

78 4360
91 262
92 ..... 4361, 4362
94 264
98 266
317 688
318 269
381 688

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

0.735-1 Removed 3825
0.735-2 Removed 3825
0.735-3 Revised 3825
0.735-4 Removed 3825
0.735-5 Removed 3825
0.735-6 Removed 3825
0.735-8 Revised 3825
0.735-20 Removed 3825
0.735-21 (d) revised 3826
0.735-23 Revised 3826
0.735-24 Removed 3826
0.735-25 Removed 3826
0.735-26 Revised 3826

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

Page

0.735-27 Removed.....3826
0.735-28 Removed.....3826
0.735-28a Removed.....3826
0.735-30 (Subpart C) Removed.....3826
0.735-40 (e), (g) and (h) removed; (f) redesignated as new (e).....3826
0.735-41 Removed.....3826
0.735-42 Removed.....3826
0.735-43 Removed.....3826
0.735-44 Removed.....3826
0.735-45 Removed.....3826
0.735-46 Removed.....3826
0.735-47 Removed.....3826
0.735-48 Removed.....3826
0.735-49 Removed.....3826
0.735-49a Removed.....3826
0.735-50—0.735-55 (Subpart E) Removed.....3826

Title 10—*Proposed Rules:*

0—199 (Ch. I) 6196
20 4363
30 .....3515, 4099
40 .....3515, 4099, 6098
50 .....271, 3515
52 271
70 .....3515, 4099
72 .....3515, 4099, 5301, 6098
74 6098
75 6098
100 .....271, 4946
150 6098

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

110.3 (c) heading revised; (c)(6) removed; (d) added.....3476

Title 11—*Proposed Rules:*

104 4110

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

5.33 Regulation at 57 FR 49642 comment period extended.....6441
7.7490 Revised.....4073

Page

34 Technical correction.....4460

Chapter II—Federal Reserve System (Parts 200—299)

203 Exemption termination.....1
208 Technical correction.....4460
211.2 (t) revised.....6358
211.20 Redesignated from 211.21; (b)(3) through (8) revised; (b)(9) and (c) added.....6358
211.21 Redesignated as 211.20; new 211.21 redesignated from 211.22 and revised.....6358
211.22 Redesignated as 211.21.....6358
Redesignated from 211.23.....6359
211.23 Redesignated as 211.22; new 211.23 redesignated from 211.24; (a) through (h) redesignated as (b) through (i); new (a) added.....6359
211.24 Redesignated as 211.23; new 211.24 redesignated from 211.25 and revised.....6359
211.25 Redesignated as 211.24; new 211.25 redesignated from 211.26 and revised.....6359
211.26 Redesignated as 211.25; new 211.26 redesignated from 211.27 and revised.....6359
211.27 Redesignated as 211.26; new 211.27 redesignated from 211.28 and revised.....6359
211.28 Redesignated as 211.27; new 211.28 redesignated from 211.29 and revised.....6359
211.29 Redesignated as 211.28.....6359
Added.....6362
225 Authority citation revised.....4074
225.2 (k) revised.....473
(k) and (l) revised.....4074
225.11 (f) revised.....6362
225.12 (f) revised.....6362
225.13 (a) and (b)(2) revised.....474
225.31 (d)(2)(ii) revised.....474
225 Appendix B revised.....474
229.2 (cc) amended.....2
229 Appendixes A, B-2 and E amended.....2
Appendix E amended.....3
263 Authority citation revised.....6363

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

TITLE 12 Chapter II—Con. Page

263.51 (c) revised....6363
265.6 (b)(2) revised; (f) added....6363
265.7 (d)(8) revised....6363
265.11 (d)(11) added....6363

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

325.2 (t) and (v) amended....6368
325.5 (f) revised....6369
325 Appendixes A and B amended....6369
327.3 (d)(1)(B)(*1*) corrected....3069
327.7 (a)(1)(ii)(A) corrected....3069
365 Technical correction....4460

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

506.1 (b) table amended....4311
509.104 (b) and (f) revised; (g) redesignated as (i); new (g) and (h) added....4311
516 Authority citation revised....4312
516.1 (c) introductory text amended....4312
528 Authority citation revised....4312
528.1 (d) through (g) removed....4312
528.6 Revised....4312
541 Authority citation revised....4312
541.9 Removed....4312
541.12 Removed....4312
541.24 Removed....4312
543 Authority citation revised....4312
543.1 (a) amended....4312
545 Technical correction....4460
545.12 (b) revised....4312
545.21 Removed....4312
545.34 (b) and (c) amended....4312
545.36 (d) amended....4312
545.41 (a) revised....4312
545.75 (b)(5) removed....4312
545.79 Removed....4312
545.93 Removed....4312
545.123 Removed....4312
552 Authority citation revised....4312
552.6-1 (b) amended....4312
552.7 Removed....4312
552.8 (b) removed....4312

Page

556 Authority citation revised....4312
556.7 Removed....4312
558 Revised....4312
559 Removed....4313
561 Authority citation revised....4313
561.5 Removed....4313
561.16 (b) through (e) and (g) removed; (f) redesignated as (b)....4313
561.17 Removed....4313
561.22 Removed....4313
561.46 Removed....4313
563 Technical correction....4460
563.7 (d) removed; (e) redesignated as (d)....4313
563.24 Removed....4313
563.27 (a), (b) designation, heading, (1) designation and (2) removed....4313
563.29 Removed....4313
563.32 Removed....4313
563.33 (b) removed....4313
563.34 Removed....4313
563.45 Removed....4313
563.48 (e) amended....4313
563.90 Removed....4313
563.93 (b)(6)(i) and (d)(3)(ii) amended....4313
563.99 (d) removed....4314
563.131 Removed....4314
563.132 (a)(1)(ii) revised....4314
563.192 Removed....4314
563b.3 (i)(4)(vi) added....4314
563e Authority citation revised....4314
563e.6 Amended....4314
567 Authority citation revised....4314
567.6 Heading revised; (a)(1)(iv)(Q) amended; (a)(1)(iv)(R) and (S) added; (a)(1)(v) removed....476
567.20 Removed....4314
571 Authority citation revised....4314
571.1 Removed....4314
571.3 Removed....4314
571.10 Removed....4314
571.16 Removed....4314
571.17 Removed....4314
571.25 Removed....4314
571.26 Removed....4314

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

Page

579—580 (Subchapter E) Removed 4314

Chapter VI—Farm Credit Administration (Parts 600—699)

601 Revised (effective date pending) 5919

Chapter VII—National Credit Union Administration (Parts 700—799)

701 Authority citation revised 6077
701.21 (c)(7)(ii)(C) amended 6077
741.13 (a) revised 5571

Chapter IX—Federal Housing Finance Board (Parts 900—999)

932 Authority citation revised 3490
932.13 (c) concluding text amended; interim 3490
932.14 (d) amended; interim 3490
932.18 (f)(1) and (3) introductory text revised; interim 3490
932.21 (d)(2), (g)(1) and (3) revised; interim 3490

Chapter XVI—Resolution Trust Corporation (Parts 1600—1699)

1616 Revised 476

Title 12—*Proposed Rules:*

5 4600
16 4600
203 31
208 3235
211 ..... 513, 3235
225 3235
230 271
332 6448
333 6450
353 3237
362 6452
620 3872
703 5664
748 5663

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

Page

101.3-2 Amended 2967
121.601 Table amended; footnote 21 added; interim 4077

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

21 Special FAA conditions 5571
25 Special FAA conditions 5571
35 Special FAA conditions 3215
39.13 ... 5, 7, 481, 484, 3492, 4892, 5257, 5258, 5261, 5262, 5575, 5578—5580, 5922, 5923, 5925, 6078, 6080—6082, 6084—6086, 6192, 6370
71.1 ..... 3216, 3217, 3218, 4315, 6371
Corrected 4314
93 Policy statement 230
97.21—97.35 ..... 3219, 3221, 4894, 4896

Chapter III—Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)

413 Authority citation revised 3827
413.5 (d) removed 3827
415 Authority citation revised 3827
415.4 Removed 3827
415.9 (e) removed 3827

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1203b.107 (a)(3) and (c)(1) revised 5263
1203(b).108 (d)(2) revised 5263

Title 14—*Proposed Rules:*

1—199 (ch. 14) 5947
21 ..... 3239, 5666, 5669
27 5666

CHANGES JANUARY 4, 1993 THROUGH JANUARY 29, 1993

TITLE 14—Con.

Page

29 ..... 3239, 4566, 5669
39 ...275, 278, 515, 3873, 4366, 4367, 4600, 5671, 5947, 5949, 6198
71 ...34, 3241, 3242, 3875, 4946, 5301, 5303, 6375
93 280
221 287
234 4370
241 35
300 516
389 287

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

50.5 Revised..... 4078

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

770.2 Amended..... 3222
770.4 Revised..... 3222
771 Authority citation revised..... 488
771.7 Added..... 488
771.23 (b) amended..... 486
773.3 (a)(1)(ii), (d)(3)(iii)(D) and (e)(1)(ix)(I) amended..... 486
773.7 (c)(2) heading, text, (d)(1) introductory text, (2)(i), (ii) heading, introductory text, (A), (C), (3) introductory text, ((h)(1)(i) footnote 2, (ii), (i) heading, introductory text, (1), (2), (4), (6), (k) introductory text and concluding text amended..... 486
773.8 (a)(2) introductory text and (c)(1) amended..... 487
774.5 (a) amended..... 486
776.8 (b)(1)(ii) and (iii) amended..... 486
776.10 (a)(1) amended..... 486

Page

777 Authority citation revised..... 488
777.7 Revised..... 489
779.4 (f)(1)(i), (iii), (2)(i) and (iii) amended..... 486
779.5 (e)(1)(vii) amended..... 486
(e)(2) amended..... 487
785.4 (f) removed; (g) redesignated as (f)..... 487
786.1 (a), (c)(1), (2) introductory text, (2)(i) and (iii) amended; (b)(1) footnote 1, (2)(i) and (c)(3) revised..... 3222
786.3 (f)(1), (i)(1), (2), (p)(1)(i) and (ii) revised; (i)(3), (j)(1), (p)(1) introductory text, (r)(1), (3), (4), (6) and (7) amended..... 3223
786 Supplement No. 1 amended..... 3223
799.1 Regulations at 57 FR 61259 corrected..... 6574

Title 15—*Proposed Rules:*

303 4947
900—999 (Ch. IX) 4601
1200 5672

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

305 Appendixes A1, A2 and B amended..... 3224
Authority citation revised..... 5926
305.9 (a) revised..... 5926

Chapter II—Consumer Product Safety Commission (Parts 1000—1750)

1615 Stay of enforcement..... 4078
1616 Stay of enforcement..... 4078

Title 16—*Proposed Rules:*

307 4875
1615 4111
1616 4111

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

Page

Authority citation revised....23143
1.10 (j)(3) and (4) revised....23143
1.17 (h)(3)(vi) revised....20637
1.41 (e) revised....20637
(o) through (t) added....27924
1.41a (a)(5) revised....27925
1.41b Revised....58705
1.43 Revised....20637
1.46 (d)(8) and (9) added; (e)(1) revised; (e)(2) removed....55085
1.57 (a)(1) revised....23143
1.62 Revised....23143
3.1 (a)(3), (b) and (c) revised; (d), (e) and (f) added....23144
3.10 Heading, (a), (b) and (d) revised....23144
3.11 (b) revised; (d) added....23145
3.12 Heading, (a), (b), (c) introductory text, (d)(1) introductory text, (iv), (v), (2), (f) and (h) revised; (d)(4) and (5) removed; (i) and (j) added....23145
3.13 Removed....23148
3.14 Removed....23148
3.15 Removed....23148
3.16 Removed....23148
3.17 Removed....23148
3.18 Removed....23148
3.20 Removed....23148
3.21 (c) and (d) added....23148
3.22 Introductory text, (a) and (c) revised....23148
3.30 Revised....23148
3.32 (a), (c), (e), (g) and (h) revised....23149
3.33 (a) introductory text, (e) and (f) introductory text revised....23150
3.40 (c) revised....23151
3.42 (a) revised....23151
3.44 (a)(3) and (5) revised....23151
3.50 (a) and (b)(1) revised....23151
3.51 (a) introductory text and (b) revised....23151
3.52 Removed....23151
3.53 Removed....23151
3.54 Removed....23151

Page

3.55 (a) introductory text, (3), (b), (e) and (f) revised; (g) through (k) removed....23151
3.56 Removed....23152
3.60 Revised....23152
3.61 Revised....23154
3.62 Removed....23154
3.63 Revised....23154
3.64 Added....23154
3.70 (a) and (c) revised....23155
3.75 (c) revised....23155
4.5 (a)(4) introductory text, (b)(4) and (c)(2)(i) revised; (c)(2)(ii) removed; (c)(2)(iii), (iv) and (v) redesignated as (c)(2)(ii), (iii) and (iv)....6347
4.7 Added....34861
(b)(1)(ii)(B)(*2*)(*xi*) and (2)(i) corrected....41173
4.8 Added....34865
(b) correctly designated....41173
5.2 (d) introductory text revised....20637
5.3 Removed....20637
7.100—7.101 (Subpart B) removed....20637
7.200 Removed....20637
12.2 (w) removed....20637
(d)(4) removed; (d)(1), (h), (i)(1), (p) and (r) revised....20637
12.5 (a) amended....20638
12.6 (a) amended....20638
12.8 (a) and (b) amended....20638
12.10 (a)(3) and (c) amended....20638
12.22 (b) revised....20638
12.301 Removed....20637
12.302 Removed....20637
12.303 Introductory text and concluding text revised....20638
12.304 (d) removed....20637
12.408 (a)(2) and (3) amended....20638
15.03 Revised....20403, 49394
15.04 Removed....20638
16.02 (a)(1), (2) and (b) revised....40603
19.00 (b) introductory text revised....41390
19.01 Introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); heading, new (a) introductory text and (3) revised; (a)(4), (5) and (b) added....41390
19.02 Revised....41391

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 17 Chapter I—Con. Page

19.10 Removed 41391
20 Removed 20638
30 Order 36369, 49644
30 Appendix B amended 10988, 38439, 40604
32 Order 36369
32.2 Revised 27926
33.4 (b)(4)(iii) and (8) removed 58978
34 Revised 5586
35 Added 5594
140 Authority citation revised 61291
140.2 (a) revised 29203
140.61 Removed 20638
140.72 (a) amended 20638
140.73 (a) introductory text and (b) amended 20638
140.77 (a), (b) and (c) amended 20638
140.81 Removed 20638
140.96 (b) revised 20638
140.97 Added 12874
Effective date corrected 20572
140.98 Added 61291
143 Authority citation revised 61292
143.5 Introductory text revised 61292
145.6 (d) revised 29203
145 Appendix A amended 29203
Appendix A corrected 31563
149.110 Removed 20638
150 Authority citation revised 44492
150.1 (e)(3) revised; (e)(4) redesignated as (e)(5); new (e)(4) added 44492
150.3 (a)(4) introductory text, (i) and (b) revised 44492
180.2 (d)(1) revised 46093
180.5 Revised 46093

Chapter II—Securities and Exchange Commission (Parts 200—399)

200.30-1 (c) revised 36449
200.30-6 (b) revised 36449
200.80e Amended 48970
202 Authority citation revised 18216
202.3 (a) amended 18216
202.3a Effective date extended through 9-1-93 39359
210 Nomenclature change 36501, 47409

Page

210.3-01—210.3-16 Introductory note amended 45292
210.3-02 (a) and (b) amended 45292
210.3-03 (b)(2) amended 45292
210.3-09 (c) amended 45292
210.3-12 (a) amended 45292
210.3-18 (a)(3) redesignated as (a)(4); (b) revised; new (a)(3) added; (c) amended 45292
210.3-19 (a)(2) and (d) amended 45293
210.3-21 Removed 45293
210.4-08 (h)(3) added; (j) removed; (k)(1) amended 45293
210.4-10 (i)(4)(i) revised; (j) amended; (k) removed 45293
210.7-04 Amended 45293
210.10-01 (a)(4) revised; (c)(3) and (4) amended 45293
210.12-04 (a) amended 45293
210.12-16 Amended 45293
228 Added 36449
Authority citation revised 48145
Technical correction 54280
228.402 Revised 48145
228.403 (b) introductory text revised 48150
228.601 (b)(10)(ii)(A) revised 48150
229 Nomenclature change 36501, 47409
Technical correction 54280
229.402 Revised 48150
(l) corrected 53985
229.403 (b) introductory text revised 48158
229.601 (b)(10)(iii)(A) revised 48158
229.801 (g) added 36466
229.802 (g) added 36468
230 Authority citation revised 18043, 18216, 56834
Technical correction 29119
Nomenclature change 36501, 47409
Order 49644
230.134b Added 56834
230.144A (a)(1)(i)(F) through (H) redesignated as (a)(1)(i)(G) through (I); (a)(1)(i)(A) note and new (a)(1)(i)(F) added; (a)(1)(i)(B) and (2) amended 48722
230.174 (g) added 18043
230.175 (b)(1)(i) and (2)(i) amended 36468

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

230.251—230.263 Undesignated center heading and text revised ... 36468
230.405 Amended ... 36472
230.419 Added ... 18043
230.424 (b)(6) amended ... 48975
230.430 Existing text designated as (a); (b) added ... 56834
230.430A (a)(3) amended ... 48975
(e) added ... 56834
230.457 (o) added ... 48976
230.460 (b) redesignated as (b)(1); (2) added ... 56834
230.462 Revised ... 48976
230.463 (d)(6) revised ... 56834
230.481 (b)(2) amended ... 36473
(g) added ... 56834
230.495 (a), (c) and (d) revised ... 56834
230.496 Revised ... 56835
230.497 (c) and (e) revised ... 56835
230.499 Revised ... 18216
230.502 (b)(1), (b) note, (c) introductory text, (d) introductory text and concluding text amended ... 36473
(b)(1), (b) Note, (c) and (d) concluding text amended ... 47409
230.504 Redesignated as 230.504a; new 230.504 added ... 36473
230.504a Redesignated from 230.504; heading revised ... 36473
Removed ... 47409
230.505 (b)(2)(iii) introductory text, (A) and (B) revised ... 36473
230.508 (a)(2) revised ... 36473
239 Nomenclature change ... 36501
239.10 Added ... 36473
239.12 Form S-2 amended ... 36475
239.13 Form S-3 amended ... 36475
(a) introductory text, (3)(i), (b) introductory text, (1), (2) and (c)(2) revised; (a)(4), (5) and (6) redesignated as (a)(5), (6) and (7); new (a)(4) and (b)(5) added; new (a)(7) introductory text and (c)(3) amended ... 48976
239.14 Form N-2 revised ... 56836
239.16b Form S-8 amended ... 36475
239.23 Form N-14 amended ... 56835
239.25 Form S-4 amended ... 36475, 48977
239.28 Removed ... 36473
239.36 Amended ... 37084

Page

239.42 Heading and (a) revised; (d), (e) and Form F-X amended; (f) added ... 36475
239.62 Revised ... 18216
239.63 Revised ... 18218
239.64 Revised ... 18218
239.90 Revised; Form 1-A revised ... 36476
239.91 Revised; Form 2-A revised ... 36476
239.92 Removed ... 36473
239.93 Removed ... 36473
239.94 Removed ... 36473
239.95 Removed ... 36473
239.96 Removed ... 36473
240 Authority citation revised ... 18218
Phase-in period extended ... 28781
Technical corrections ... 29119, 54280
Authority citation amended ... 32168
Nomenclature change ... 36501, 47409
240.3a51-1 Added ... 18032
240.3b-6 (b)(1)(i) and (2)(i) amended ... 36494
240.12b-2 Amended ... 36494
240.12b-23 (a)(3) revised ... 48977
240.12b-37 Revised ... 18218
240.13e-100 Amended ... 45294, 48290
240.13e-101 Amended ... 45294
240.13f-2(T) Revised ... 18227
240.14a-1 (l)(2) revised ... 48290
240.14a-2 (b) introductory text revised; (b)(1) and (2) redesignated as (b)(2) and (3); new (b)(1) added ... 48290
240.14a-3 (b)(5)(ii) amended; (b) note added ... 36495
(b)(1) amended ... 45294
(a) revised; (f) added ... 48291
240.14a-4 (a)(3), (b)(1) and (d)(4) amended; (f) added ... 48291
240.14a-6 (b) and (h) removed; (c) through (g) and (i) through (m) redesignated as (b) through (f) and (h) through (l); (a) introductory text and new (b) amended; new (g) and (i)(5) added; new (c) through (e) revised ... 48291
240.14a-7 Revised ... 48292
240.14a-11 (b) and (c) removed; (d) through (h) redesignated as (b) through (f); new (b)(1) removed; new (b)(2) through (4) redesignated as

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 17 Chapter II—Con. Page

(b)(1) through (3); new (b)(1) and (d) amended; new (b)(2), (3), (c) and (e) revised **48293**
240.14a-12 (a)(3), (4) and (b) revised **48293**
240.14a-101 Amended ... **36495**, **48158**, **48293**
240.14a-102 Removed **48294**
240.14a-103 Added **48294**
240.14c-2 (a) introductory text revised **48295**
240.14c-5 (d) revised **48295**
240.14c-101 Note amended **36495**
240.15b1-1 Heading revised, existing text designated as (a), (b) and (c) added 13
240.15b1-2 Removed 14
240.15b3-1 Revised 14
240.15b6-1 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (e) revised 14
240.15c3-1 (a)(3), (5), (c)(2)(vi)(I) and (f) removed; (c)(1)(xii) amended; (c)(1)(xiv) and (xv) added; (a) introductory text, (1), (2), (4), (6)(i), (7)(i), (9), (c)(1)(xiii), (2)(i)(C)(*1*), (iv)(B), (F)(*3*)(i)(*B*), (*C*), (vi) introductory text, (A)(*5*), (J), (M), (viii), (ix), (x)(A)(*2*) through (*5*), (9) and (10) revised 56984
240.15c3-1a (c)(1) through (5), (7), (9) and (10) revised **56988**
240.15c3-1c (b)(1) revised **56988**
240.15c3-1d (a)(2)(iii), (b)(6)(iii), (7), (8), (10)(ii)(B), (c)(2), (5)(i) and (ii)(A) revised **56988**
240.15c3-1e Added **56990**
240.15g-1 Added **18032**
240.15g-2 Added **18033**
240.15g-3 Added **18033**
240.15g-4 Added **18034**
240.15g-5 Added **18034**
240.15g-6 Added **18034**
240.15g-8 Added **18045**
240.15g-100 Added **18035**
Amended **31446**
240.15Ba2-2 Revised 14
240.15Ba2-4 Revised 10
240.15Ba2-6 Removed 11

Page

240.15Bc3-1 (b) and (c) redesignated as (c) and (d); new (b) added; new (d) revised 14
240.15Ca1-1 (c) added 14
240.15Ca2-1 Revised 15
240.15Ca2-2 Removed 15
240.15Ca2-3 Revised 11
(b) amended 15
240.15Cc1-1 (b) and (c) redesignated as (c) and (d); heading and new (d) revised; (b) added 15
240.17a-5 (g)(1) amended; nomenclature change **45294**
240.17h-1T Added **32168**
240.17h-2T Added **32170**
240.25b1-3 Revised 10
241 Interpretive releases 11
249 Nomenclature change ... **36501**, **47409**
Technical correction **54280**
249.208a Form 8-A amended **48978**
249.210b Added **36495**
249.220f Form 20-F amended **45294**
249.308 Form 8-K amended **36501**
249.308a Form 10-Q amended **48295**
249.308b Added **36498**
Form 10-QSB amended **48295**
249.310 Form 10-K amended ... **45294**, **48159**, **48295**
249.310b Added **36496**
Form 10-KSB amended **48295**
249.328T Added **32171**
249.444 Revised **18219**
249.445 Revised **18219**
249.446 Revised **18219**
249.501 Form BD revised ... **34032**, **53262**
Amended 15
249.501a Form BDW amended 15
249.617 Form X-17A-5 amended **53278**
250 Authority citation revised **31122**
250.52 Revised **31122**
250.111 Revised **18232**
259 Authority citation revised **45294**
259.5s Form U5S amended **45294**
259.602 Revised **18219**
259.603 Revised **18219**
260 Authority citation revised **18220**
Nomenclature change **36501**, **47409**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

260.0-12 Revised....18220
260.4a-1 Revised....36501
260.4a-2 Redesignated as 260.4a-3; new 240.4a-2 added....36501
260.4a-3 Redesignated from 260.4a-2 and amended....36501
260.4d-9 (a) introductory text amended....36501
260.10a-5 (a) amended....36501
269 Authority citation revised....18221
269.6 Revised....18220
269.7 Revised....18220
269.8 Revised....18220
270.0-11 Revised....18228
270.3a-7 Added....56256
270.8b-11 (b) revised....56835
270.8b-12 (b) revised....56836
270.8b-16 Existing text designated as (a); (b), (c) and (d) added....56836
270.30d-1 (a) revised....56836
274 Authority citation revised....56836
274.11a-1 Form N-2....56836
274.11c Form N-4 amended....45294
274.401 Revised....18221
274.402 Revised....18221
274.403 Revised....18221
276 Interpretive releases....11

Title 17—*Proposed Rules:*

1 ...26801, 34533, 45999, 46101, 47896, 48480, 62244
4 ....47821, 53454, 53457, 58760
17 ....25007, 39664
19 27713
30 46101
33 ....40626, 46101, 53863
....4948
34 ....53618, 58422
35 ....53627, 58423
150 ....27202, 31674, 58760
156 57116
170 54465
180 46101
190 46101
200—399 (Ch. II) 18421, 43631
200 ....35070, 35202, 35430, 38352
201 ....35070, 38352
202 ....35070, 35430, 35442, 38352
210 ....35070, 38352
228 36502
229 ....29582, 31156, 35070, 35202, 38352

Page

230 ...32458, 32461, 35070, 35202, 36502, 38352, 57397
232 ....35070, 38352
239 ...32461, 34701, 35070, 35202, 36502, 38352
240 ...18046, 24415, 26891, 29564, 29582, 32461, 34048, 34701, 35070, 35202, 36502, 38352, 48581, 49039, 49156, 57027, 57397, 57710
249 ...29564, 32461, 34048, 35070, 35202, 36502, 38352
250 ....12766, 31156, 35431, 54025
259 ....35431, 54025
260 ....35070, 35442, 36502, 38352, 57713
269 ....35070, 38352
270 ....23980, 34701, 34726, 35202
....2999, 3243
274 ....34701, 35202

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Authority citation revised....21733
Rehearing denied....59289
2.1 (a)(1)(ii)(B), (C), (E) and (ix) removed....21733
2.1b Redesignated from 2.72 and revised....494
2.5 Removed....21733
2.10 Removed....21733
2.11 Removed....21733
2.53 Removed....21893
2.55 (b) revised....46495
2.56 Removed....21893
2.56a Removed....21893
2.56b Removed....21893
2.61 Removed....21893
2.63 Removed....21893
2.66 Removed....21893
2.70 Removed....21893
2.72 Redesignated as 2.1b....494
2.75 Removed....21893
2.77 Removed....21893
2.79 Removed....21893
2.90 Removed....21893
2.90a Removed....21893
2.90b Removed....21893
2.91 Removed....21893
4 Authority citation revised....21737
4.32 (b)(1) and (2) revised....21737

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 18 Chapter I—Con. Page

4.34 (h) added 21737
4.41 (g)(4) revised 21737
4.51 (g)(3) revised 21737
8 Authority citation revised 21737
8.11 (a)(2) and (c) revised 21737
11 Authority citation revised 48455
Appendix A revised 48455
16 Authority citation revised 21738
16.18 (d) amended 21738
24 Authority citation revised 21738
24.1 Amended 21738
33 Authority citation revised 53990
33.2 (b), (d), (g), (h), (i) and (n) removed; (c), (e), (f), (j) through (m) and (o) through (r) redesignated as (b) through (l); new (c) revised 53990
33.3 Introductory text revised; Exhibits A through E and note removed; Exhibit C and Exhibits F through M redesignated as Exhibit A through I 53990
35 Authority citation revised 21734
Rehearing denied 59289
35.1 (d)(2) and (3) amended 21734
35.7 Amended 21734
35.8 Amended 21734
35.9 Amended 21734
35.13 (d)(6) and (h)(7)(iv) removed; (d)(7), (h)(7)(v) and (vi) redesignated as (d)(6), (h)(7)(iv) and (v) 53990
35.18 Amended 21734
35.19a (b) revised 53990
35.20 Removed 21734
35.22 Removed; new 35.22 redesignated from 35.23 53990
35.23 Redesignated as 35.22; new 35.23 redesignated from 35.24 53990
35.24 Redesignated as 35.23; new 35.24 redesignated from 35.25 53990
35.25 Redesignated as 35.24; new 35.25 redesignated from 35.26 53990
35.26 Redesignated as 35.25 53990
35.27 Removed 21734
50 Removed 21734
Rehearing denied 59289
101 Termination of inquiry 13064
103 Removed 21738
131 Authority citation revised 21734
Rehearing denied 59289
131.20 Amended 21734
131.51 Amended 21734
131.52 Amended 21734
131.53 Amended 21734
131.60 Removed 21734
141 Authority citation revised 21738
Rehearing denied 59289
141.15 Added 21738
141.100 Removed; new 141.100 redesignated from 141.200 21734
141.200 Redesignated as 141.100 21734
152 Heading and authority citation revised 32894
152.1 Heading revised; existing text designated as (a); (b) added 32894
154 Authority citation revised 21893
154.81—154.86 Undesignated center heading removed 21893
154.81 Removed 21893
154.82 Removed 21893
154.83 Removed 21893
154.84 Removed 21893
154.85 Removed 21893
154.86 Removed 21893
155 Removed 21893
157 Authority citation removed 21893
Rehearing denied 29631
157.7 (b) through (h) removed 21893
157.42 Removed 21894
159 Removed 21894
160 Removed 21894
161 Authority citation revised 58982
161.3 (f) revised 58982
250 Authority citation revised 58982
250.16 (a)(3), (c)(1), (2) introductory text and (d)(1) revised 58982
260 Authority citation revised 21894
260.100 Removed 21894
271 Authority citation revised 13018, 34682
Rehearing 31123

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

271.101 (a) Table I and Table II amended ... **19252, 34682, 49648**
271.102 (c) Table III amended ... **19253, 34683, 49649**
271.703 (c)(2)(i)(B) revised ... **13018**
281 Authority citation revised ... **21894**
281.101—281.111 (Subpart A) Removed ... **21894**
284 Authority citation revised ... **36217, 46495, 46501, 57959**
Order on rehearing ... **38590**
Order denying rehearing ... **57911**
Clarification ... 5595
284.1 (a) revised; (c) added ... **13315**
284.8 (a)(1) and (d) revised; (a)(4) and (b)(2) through (5) added; (b) amended ... **13315**
284.9 (a)(1) revised; (b) amended; (b)(2) through (5) added ... **13315**
284.11 Revised ... **46495**
284.12 Amended ... **13315**
284.14 Added ... **13315**
(b)(3)(iii) redesignated as (b)(3)(v); new (b)(3)(iii) and (iv) added; (e) revised ... **36217**
284.106 (a) introductory text, (c) introductory text and (d) introductory text amended; (g) added ... **13317**
284.122 (d)(2) amended ... **46501**
284.126 (g) added ... **13317**
284.221 (d) revised ... **13317**
(d)(2) introductory text and (ii) amended ... **36217**
284.223 (d)(1) introductory text, (3) introductory text and (4) introductory text amended; (d)(5) added ... **13318**
284.227 (a) revised ... **46501**
284.241—284.243 (Subpart H) Added ... **13318**
284.242 Amended ... **36217**
284.243 (c) and (d) revised; (h) added ... **36217**
284.281—284.288 (Subpart J) Added ... **13318**
284.282 (d) added ... **36218**
284.284 (e) added ... **36218**
284.401—284.402 (Subpart L) Added ... **57959**
290 Authority citation revised ... **53991**
290.102 Revised ... **53991**

Page

290.103 Introductory text, (a), (b) and (c)(1) revised; (c)(2) removed; (c)(3) redesignated as (c)(2) and revised ... **53991**
290.104 Removed ... **53991**
290.105 Removed ... **53991**
290.201—290.205 (Subpart B) Removed ... **53991**
290.301—290.308 (Subpart C) Removed ... **53991**
290.401—290.406 (Subpart D) Removed ... **53991**
290.501—290.502 (Subpart E) Removed ... **53991**
290.601—290.603 (Subpart F) Removed ... **53991**
290.701 (Subpart G) Removed ... **53991**
290 Appendix A Revised ... **53991**
292 Authority citation revised ... **21734**
Rehearing denied ... **59289**
292.203 (c)(1) amended; (c)(2) removed ... **21734**
292.401 Removed; new 292.401 redesignated from 292.402 ... **21734**
292.402 Redesignated as 292.401; new 292.402 redesignated from 292.403 ... **21734**
292.403 Redesignated as 292.402 ... **21734**
300 Authority citation revised ... **21734**
Rehearing denied ... **59289**
300.10 (d)(2), (4), (f)(2)(i) and (vi) removed; (d)(3), (5), (6) and (f)(2)(ii) through (v) redesignated as (d)(2) through (4) and (f)(2)(i) through (iv) ... **21734**
346 Removed ... 2975
375 Authority citation revised ... **21894**
375.307 (a)(13) removed ... **21894**
(f)(5) added ... **55087**
381 Authority citation revised ... **15225**
Authority citation revised ... 2975
381.104 (c) revised ... 2975
381.107 (a) revised ... 2975
381.201 Amended ... **15225**
Removed ... 2975
381.202 Amended ... **15225**
Removed ... 2975
381.203 Amended ... **15225**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 18 Chapter I—Con. Page

Removed....2975
381.204 (a) and (b) amended....**15225**
Removed....2975
381.205 (a)(1) through (4) and (b)(1) through (4) amended....**15225**
Removed....2975
381.206 Removed....2975
381.207 (b) amended....**15225**
(a) and (b) revised....2975
381.208 (a) amended....**15225**
Removed....2975
381.209 (b) amended....**15225**
Removed....2975
381.301 Amended....**15225**
Removed....2975
381.302 (a) amended....**15225**
381.303 (a) amended....**15225**
381.305 (a) amended....**15226**
381.401 Amended....**15226**
Removed....2975
381.403 Amended....**15226**
381.404 Amended....**15226**
Revised....2975
381.405 Removed....2975
381.502 (c)(2)(i), (ii), (d)(2)(i), (ii), (e)(2)(i), (ii), (f)(2)(i) and (ii) amended....**15226**
Removed....2975
381.503 Removed....2975
381.504 Removed....2975
381.505 (a) amended....**15226**
381.506 Removed....2975
381.507 Amended....**15226**
Removed....2975
381.508 Amended....**15226**
Removed....2975
381.509 Amended....**15226**
Removed....2975
381.510 Amended....**15226**
Removed....2975
381.511 Removed....2975
381.512 Removed....2975
381.601 Amended....**15226**
385 Authority citation revised....**21734**
Rehearing denied....**59289**
385.602 (c)(1)(iv) removed....**21734**

Chapter III—Delaware River Basin Commission (Parts 400—499)

401.35 (a)(4) and (5) revised....**60470**
(b)(17) added....**59908**

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

Page

1301.1 (b) introductory text revised; (c)(1)(i), (ii), (2)(i), (ii), (3)(i) and (ii) amended....**59908**
1301.3 Added....**23532**
1301.12 (f) revised....**33634**
(d) revised....**59803**
1301.19 (a) introductory text revised....**33634**

Title 18—*Proposed Rules:*

1—399 (Ch. I) **17867**
2 ....**35525, 55176, 58168**
11 ....**61850**
33 ....**23171, 27511**
34 ....**55176, 58168**
35 ....**23171, 27511, 55176, 58168**
....519
41 ....**55176, 58168**
101 ....**13064**
131 ....**55176, 58168**
154 ....**13673, 56876**
157 ....**13673**
201 ....**13673**
284 ....**13673, 26803, 35525, 35766, 57031**
285 ....**26803**
290 ....**23171, 27511**
....519
292 ....**55176, 58168**
294 ....**55176, 58168**
346 ....**48005**
365 ....**55195**
381 ....**48005**
382 ....**55176, 58168**
385 ....**55176, 58168**
401 ....**46354**

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4 Authority citation amended....**23945, 35751**
4.1 (b) revised....**53751**
4.7 (b) amended; (d)(3) revised....**35751**
4.8 Revised....**35751**
4.10 Amended....**35751**
4.13 Footnote 25 removed; (a) amended....**35751**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

4.23 Amended....24943
4.30 (a) and (d) revised....35751
4.69 Revised....23945
4.81 (d) and (e) amended....35752
4.85 (b) amended; (d) revised....35752
4.87 (c) amended....35752
4.93 (b)(1) and (2) amended....13019, 29634, 33274
4.94 (b) amended....29633
10.33 Revised....40605
Regulation at 57 FR 40605 effective date corrected....43059
10.34 Removed....40605
Removal at 57 FR 40605 effective date corrected....43059
10.49 (a) amended....40605
Regulation 57 FR 40605 effective date corrected....43059
10.59 (f) amended....30639
10.175 Regulation at 57 FR 2018 confirmed....40314
10.305 (a)(3)(iv) revised; interim....46504
18.11 (h) revised....38275
18.20 (a) amended....38275
19 Authority citation revised....37696
19.1 (a)(9) added....37696
Regulation at 57 FR 37696 effective date stayed....47410
19.2 (b)(1) designation, (2) designation, (3) designation and (d) removed; (b) introductory text amended; new (b)(1), (2) and (3) added; (c) revised....37696
Regulation at 57 FR 37696 effective date stayed....47410
19.3 (e)(9) added....37697
Regulation at 57 FR 37697 effective date stayed....47410
19.5 Removed....37697
Removal at 57 FR 37697 effective date stayed....47410
19.6 Heading and (d) revised....37697
Regulation at 57 FR 37697 effective date stayed....47410
19.9 (c) amended....24944
19.11 (c) amended; (d) revised; (h) added....37698
Regulation at 57 FR 37698 effective date stayed....47410
19.12 (a)(2) and (4) revised; (a)(3) amended; (a)(8) added....37698
Regulation at 57 FR 37698 effective date stayed....47410

Page

19.35—19.39 Undesignated center heading added....37698
19.35 Added....37698
Regulation at 57 FR 37698 effective date stayed....47410
19.36 Added....37699
Regulation at 57 FR 37699 effective date stayed....47410
19.37 Added....37700
Regulation at 57 FR 37700 effective date stayed....47410
19.38 Added....37700
Regulation at 57 FR 37700 effective date stayed....47410
19.39 Added....37700
Regulation at 57 FR 37700 effective date stayed....47410
24 Fee rate adjustment....42697
24.1 (b) introductory text revised....26775
(e) added....35459
101.3 (b) amended....15013
103.14 (e) added....44089
111 User fee due date....48978
113.63 (c)(5) added....37701
Regulation at 57 FR 37701 effective date stayed....47410
118 Added....5604
118.0 Corrected....6574
118.11 (e) corrected....6574
118.21—118.24 (Subpart C) Heading corrected....6574
118.21 (a)(2) corrected....6574
122 Authority citation revised....43397
Technical correction....47163
122.1 (f) and (m) revised....43397
122.11—122.14 (Subpart B) Heading revised....43397
122.14 Redesignated from 122.34; (c) revised; (d) and (e) added....43397
122.15 Redesignated from 122.39 and revised....43397
122.33 Revised....43397
122.34 Redesignated as 122.14....43397
122.39 Redesignated as 122.15....43397
122.92 Heading and (b)(1) revised; (a)(1) amended; (a)(3) added....38275
123.4 (b) amended....24944
133 Court order....28605

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 19 Chapter I—Con.

Page

141 Authority citation amended....27160
141.1 (c) revised....27160
141.68 (f) and (h) amended....24944
(h) corrected....28012
141.102 Heading revised....10989
141.113 (g) revised....40607
142.41—142.52 (Subpart D) Added....44093
143.23 Introductory text amended....24944
143.24 Heading revised; text amended....24944
143.25 Amended....24944
144.37 (h) added....37701
Regulation at 57 FR 37701 effective date stayed....47410
145.4 (c) amended....24944
145.12 (b)(1), (c) and (e)(1) amended....24944
(b)(1) corrected....28012
145.51 (a)(5) revised....37702
Regulation at 57 FR 37702 effective date corrected to 1-1-93....40255
148.12 (c) amended....24944
148.27 Amended....24944
151 Technical correction....6574
151.6 Amended....5606
151.7 Introductory text amended....5606
151.12 Removed....10989
151.15 Added....5606
162 Authority citation amended....30640
Technical correction....31754
162.46 (d)(1) redesignated as (d); (d)(2) removed....30640
162.48 Heading revised; existing text redesignated as (a) and amended; (b) added....30640
171.12 (b) and (c) revised....40607
171.15 (a) introductory text and (4) revised....40607
172.12 (b)(1) and (2) amended; (c) revised....40607
177 Administrative rule....58706
178 Technical correction....6574
178.2 Table amended (OMB numbers)....44095
178.2 Table amended (OMB numbers)....5607

NOTE: Boldface page numbers indicate 1992 changes.

Chapter II—United States International Trade Commission (Parts 200—299)

Page

207.90 Revised....34825
207.91 Revised....34825
Amended....56259
207.93 Revised....34825
(b)(3)(i), (c)(2)(ii)(A)(*4*), (3), (5)(i), (ii) introductory text, (d)(2)(ii), (iii) and (iv) revised; (c)(5)(iii) added....56259
207.94 Revised....34827, 56260
207.101 Revised....34828
207.102 (a)(1) introductory text, (2) introductory text, (c), (d), (e) and (g) revised....34828
(e) and (g) revised....56260
207.103 (a)(1), (2), (4), (5) and (d) revised....34828
(a)(2) revised....56260
207.105 Revised....34829
(b) revised....56260
207.106 (a) amended; (b), (c), (d) and (e) revised....34829
(d) revised....56260
207.107 (a)(1) and (d) revised....34829
207.108 Revised....34829
Amended....56260
207.109 Revised....34829
207.110 (a) amended....34829
207.111 Introductory text revised....34829
207.112 (a) and (b) revised....34830
207.113 (a)(1) revised....34830
207.114 (a) through (c) revised....34830
207.115 (a)(2), (3)(ii), and (4) revised....34830
207.116 Revised....34830
207.117 Amended....34830
207.118 Revised....34830
207.119 Revised....34830
207.120 Revised....34830

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

353.31 (a)(1) introductory text, (b)(4) and (g) introductory text revised; interim....30902
353.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim....30903

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

355.31 (a)(1), (b)(4) and (g) introductory text revised; interim 30903
355.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim 30903

Title 19—*Proposed Rules:*

4 ..... 40627, 56531
..... 4114
10 ...33909, 37591, 44714, 45758, 46112, 47582
..... 4615
39 ..... 58998, 58999, 58999, 59001
101 ...26805, 26806, 31677, 33461, 33462, 34809, 35530, 42712, 47583
102 33462
112 49049
113 5680
122 56531
123 4615
125 49049
133 30703
141 ..... 40361, 44792
142 ..... 33463, 40361, 44142
..... 4115
143 40361
145 4615
146 ..... 35530, 41896, 49049, 55198
151 ..... 37917, 40361, 44143
152 ..... 44143, 48347
175 ..... 21914, 39158
191 ..... 41446, 44145, 46113
210 52830
211 52830

TITLE 20—EMPLOYEES' BENEFITS

Chapter I—Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

10.304 (b) revised 15227
10.311 Revised 35755

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404 Technical correction 24308
Authority citation revised 59910
404.110 (d)(1) revised 23156
404.111 (c) amended; (d) added 23157
404.101—404.146 (Subpart B) Appendix amended 44096

Page

Appendixes V and VII amended; Appendix VI revised 44097
404.213 (d)(1) introductory text and (e)(5) revised 22429
404.241 (a) revised; (c)(1)(v) and (vi) added 23157
404.201—404.290 (Subpart C) Appendix I amended; Appendixes II and IV revised 44096
Appendixes II, V and VII corrected 45878
404.301—404.395 (Subpart D) Authority citation revised 21598, 30119
404.315 (d) revised 30119
404.335 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added 30119
404.336 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added 30119
404.381 (a) revised 21598
404.429 (c)(1) table amended 44097
(c)(1) and (3) revised 59913
404.801—404.831 (Subpart I) Authority citation revised 54919
404.810 Revised 54919
404.811 Added 54919
404.822 (e)(5) revised 21600
404.900—404.999d (Subpart J) Authority citation revised 23056
404.903 (q) added 23057
404.1001—404.1096 (Subpart K) Authority citation revised 44098, 59910
404.1015 (a)(1) removed; (a)(2) redesignated as (a)(1) and revised; new (a)(2) added; (a)(3) and (a)(4) introductory text revised 59913
404.1018b Revised 59913
404.1019 (a) revised 59913
404.1020 (a)(3) and (4) added 59910
(b) redesignated as (c); (a)(2), new (c)(4)(ii)(B) and (iv)(B) revised; new (b) added 59914
404.1021 (c) added 59914
404.1022 (d) added 59914
404.1047 Table amended 44098
404.1055 Revised 59914
404.1058 (c)(1) revised; (c)(2) introductory text and (c)(4) added 59914

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 20 Chapter III—Con. Page

404.1073 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added..... **59910**
404.1096 Table amended..... **44098**
404.1200—404.1299 (Subpart M) Authority citation revised..... **59911**
404.1200 Heading revised; existing text designated as (a); new (a) heading and (b) added..... **59911**
404.1201 (a) revised..... **59911**
404.1209 (f) added..... **59911**
404.1501—404.1599 (Subpart P) Authority citation revised... **30120, 61796**
404.1501 (i) revised..... **30120**
404.1505 (a) and (b) amended..... **30120**
404.1511 Revised..... **30120**
404.1520a (c)(3) revised..... **30120**
404.1560 (a) revised..... **30120**
404.1577 Revised..... **30120**
404.1578 Revised..... **30121**
404.1579 (a) redesignated in part as (a)(2) and amended; (a)(1) added..... **30121**
404.1594 (a) revised..... **30121**
404.1501—404.1599 (Subpart P) Appendix 1 amended... **23946, 23947, 24187, 30121, 57666, 61796**
404.2040a Added..... **23057**
404 Appendix IV amended..... **22429**
416 Technical correction..... **46431**
416.202 (b) revised..... 4897
416.215 Added..... 4897
416.640a Added..... **23057**
(g)(4) corrected..... **27091**
416.901—416.1094 (Subpart I) Authority citation revised..... **53853**
416.931 Amended..... **53853**
416.932 Introductory text and (b) revised..... **53853**
416.1100—416.1182 (Subpart K) Authority citation revised... **48562, 53850, 55088**
416.1103 (b)(1) amended..... **53850**
416.1124 (c)(5) amended..... **53850**
416.1142 (a)(4) and (7) revised..... **53850**
416.1150 Revised..... **53850**
416.1165 Heading, (d) and (h) revised..... **48562**
Regulation at 57 FR 48562 effective date corrected..... **52827**

Page

416.1170—416.1171 Undesignated center heading added..... **53851**
416.1100—416.1182 (Subpart K) Appendix amended..... **53851, 55088**
416.1201—416.1266 (Subpart L) Authority citation revised... **53851, 55089**
416.1201 (b) revised..... **55089**
416.1201 (a)(3) revised..... **35461**
416.1236 (a)(14) through (18) added..... **53851**
(a)(19) and (20) added..... **55089**
416.1237 Revised..... **53852**
416.1403 (a)(11) added..... **23058**
422.101—422.140 (Subpart B) Authority citation revised..... **54919**
422.125 (a) and (b) revised; (c) and (d) removed; (e) through (h) redesignated as (c) through (f); new (c) revised..... **54919**

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

614.1 (a) amended; interim..... **59799**
614.2 (g) revised; (p)(1) amended; interim..... **59799**
614.3 (e) removed; interim..... **59799**
(c) and (d) revised; interim..... **59800**
614.4 (c) and (d) revised; interim..... **59800**
614.27 Removed; interim..... **59800**
626 Revised; interim; effective to 6-1-93..... **62025**
627 Revised; interim; effective to 6-1-93..... **62030**
628 Revised; interim; effective to 6-1-93..... **62052**
629 Removed; interim; effective to 6-1-93..... **62061**
630 Removed; interim; effective to 6-1-93..... **62061**
631 Revised; interim; effective to 6-1-93..... **62062**
637 Revised; interim; effective to 6-1-93..... **62072**
655 Authority citation revised..... **40989**
655.0 Regulation at 56 FR 24667 effective date extended through 6-30-92..... **10989**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

Regulation at 56 FR 24667 effective date extended through 7-10-92.....29204
Regulation at 56 FR 24667 effective date extended through 9-8-92.....30640
Regulation at 56 FR 24667 effective date extended through 10-8-92 and confirmed.....40990
655.000 Regulation at 56 FR 24667 extended through 6-30-92.....10989
Regulations at 56 FR 24667 effective date extended through 7-10-92.....29204
Regulation at 56 FR 24667 effective date extended through 9-8-92.....30640
Regulation at 56 FR 24667 effective date extended through 10-8-92 and confirmed.....40990
655.100 (b) amended.....43123
655.500—655.550 (Subpart F) Regulation at 56 FR 24654, 24667 effective date extended through 6-30-92.....10989
Regulation at 56 FR 24654, 24667 effective date extended through 7-10-92.....29204
Regulation at 56 FR 24654, 24667 effective date extended through 9-8-92.....30640
Revised.....40990
655.510 (g)(2)(viii) corrected.....43495
655.600—655.675 (Subpart G) Regulation at 56 FR 24654, 24667 effective date extended through 6-30-92.....10989
Regulation at 56 FR 24654, 24667 effective date extended through 7-10-92.....29204
Regulation at 56 FR 24654, 24667 effective date extended through 9-8-92.....30640
Revised.....40990
655.615 (b)(4)(v) corrected.....43495

Title 20—*Proposed Rules:*

404 .....32926, 47415, 47584, 48851
.....4950, 5687
416 ...22187, 29244, 32926, 33137, 44146, 44348, 44519, 47415, 48851, 54732
.....4950, 5687

Page

626 41447
627 41447
628 41447
629 41447
630 41447
631 41447
637 41447
660 14803

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

Chapter I
IOM Implementation report..... 2470
1.24 (a)(14) revised; eff. 2-14-94.....2174
2.125 (h)(2) introductory text revised.....17980
(e)(13) added.....6088
3 Meeting.....24544
5 Authority citation revised.....18823
Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Regulatory impact analysis statement.....2927
5.10 (a)(34) added.....28462
5.20 (f) redesignated as (g); new (f) added.....12875
5.22 (a)(9)(iv) revised.....40318
5.23 (c)(4) added.....40318
5.25 (a)(7) added.....45295
5.35 (b) introductory text and (c)(3) revised; (b)(1) through (5) redesignated as (b)(1)(i) through (v); new (b)(1) introductory text and (2) added.....494
5.37 (a)(2)(iii) revised; (a)(2)(iv) added.....40318
5.38 Added.....18823
5.45 (e)(1)(iii) revised.....40318
5.54 (a) and (b) revised; (c) added.....40316
5.55 (a) and (b) revised; (c) added.....40317
5.56 Introductory text revised; (c) and (d) added.....40317
5.57 (d) and (e) added.....40317
5.60 Added.....40315
5.61 Heading revised; (g) added; eff. 2-14-94.....2410

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 21 Chapter I—Con. Page

5.64 Added.....**43398**
5.80 (c)(1) and (2)(i) amended.....**17980**
10.30 (e)(2) introductory text amended; (e)(4) added.....**17980**
10.45 (d) introductory text revised.....**17980**
14.100 (c)(15) heading and (ii) revised.....**14350**
(a) revised.....**35461**
16 Authority citation revised.....**58403**
16.1 (b)(1) revised.....**58403**
16.5 (a)(3) revised.....**58403**
20 Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Regulatory impact analysis statement.....2927
20.100 Heading revised; (c)(34) added; eff. 5-8-93.....2533
60 Authority citation revised.....**56261**
60.1 (a) introductory text amended.....**56261**
60.3 (b)(2) and (5) amended; (b)(11)(ii), (iii), (12)(ii), (iii) and (14) revised; (b)(11)(iv), (12)(iv) and (16) added.....**56261**
60.10 Revised.....**56261**
60.22 (b)(1) revised; (d) redesignated as (f); new (d) and (e) added; new (f) amended.....**56262**
73 Regulation at 57 FR 32173 effective date confirmed.....**61292**
73.1 (a)(3) table amended.....**32175**
73.3127 Added.....3227
81.1 Regulation at 57 FR 10616 effective date corrected.....**11797**
100 Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Authority citation revised.....2467
Regulatory impact analysis statement.....2927
100.1 Added.....2468
100.2 Added.....2460
101 Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Regulatory impact analysis statement.....2927
101.3 (e)(4)(ii) revised; eff. 5-8-94.....2227
101.4 (a)(1) and (b)(2)(i) revised, eff. 5-8-93.....2875
(b)(20) through (22), (d), (e) and (f) added, eff. 5-8-94.....2875

Page

101.6 Removed; eff. 5-8-94.....2875
101.8 (a) revised; eff. 5-8-94.....2291
101.9 Revised; eff. 2-14-94.....2175
(b) revised; eff. 5-8-94.....2291
(c)(7)(iii), (8)(iv) and (9) added; eff. 5-8-94.....2227
(k)(1) added; eff. 2-14-94.....2533
101.10 Revised; eff. 2-14-94.....2410
101.12 (Subpart A) Added; eff. 5-8-94.....2293
101.13 Revised; eff. 2-14-94.....2410
101.14 Added; eff. 5-8-93.....2533
101.22 (h)(7) added; eff. 5-8-94.....2875
(k) added; eff. 5-8-93.....2875
101.25 Removed; eff. 2-14-94.....2413
101.30 Added; eff. 5-8-93.....2925
101.35 Removed; eff. 5-8-94.....2876
101.54—101.69 (Subpart D) Added; eff. 2-14-94.....2413
101.67 Added; eff. 5-8-94.....2455
101.70—101.71 (Subpart E) Added; eff. 5-8-93.....2534
101.71(Subpart E) Added; eff. 5-8-93.....2578
(a) added; eff. 5-8-93.....2547
(c) added; eff. 5-8-93.....2620
(d) added; eff. 5-8-93.....2639
(e) added; eff. 5-8-93.....2664
(f) added; eff. 5-8-93.....2714
101.72 Added; eff. 5-8-93.....2676
101.73 Added; eff. 5-8-93.....2801
101.74 Added; eff. 5-8-93.....2836
101.75 Added; eff. 5-8-93.....2757
101.76 Added; eff. 5-8-93.....2548
101.77 Added; eff. 5-8-93.....2578
101.78 Added; eff. 5-8-93.....2639
101.95 (Subpart F) Added; eff. 2-14-94.....2426
101.100—101.108 (Subpart F) Redesignated as subpart G; eff. 2-14-94.....2426
101.100 (d) introductory text revised; eff. 2-14-94.....2188
(a)(2) revised; eff. 5-8-94.....2876
101 Appendix B added; eff. 2-14-94.....2188
102.22 Added; eff. 5-8-94.....2876
102.30 Removed; eff. 5-8-94.....2926
102.32 Removed; eff. 5-8-94.....2926
102.33 Revised; eff. 5-8-94.....2926
103.35 (d)(3) added; eff. 7-6-93.....381
104.20 (a) amended; (c)(1) and (d)(3) revised; eff. 5-8-94.....2228

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

105 Implementation at 57 FR 56347 revoked....2066
Implementation; eff. 5-8-94....2070
Regulatory impact analysis statement....2927
105.66 Revised; eff. 5-8-94....2430
130 Implementation at 57 FR 56347 revoked....2066
Implementation; eff. 5-8-94....2070
Regulatory impact analysis statement....2927
130.3 (e) added; eff. 5-8-93....2876
130.9 Added; eff. 5-8-93....2876
130.10 Added; eff. 5-8-93....2446
130.11 Added; eff. 5-8-93....2876
130.110 (f) revised; eff. 5-8-93....2890
131.111 (h) revised; eff. 5-8-93....2890
131.112 (g) revised; eff. 5-8-93....2890
131.115 (f) revised; eff. 5-8-93....2890
131.120 (e) revised; eff. 5-8-93....2890
131.122 (e) revised; eff. 5-8-93....2890
131.123 (f) revised; eff. 5-8-93....2890
131.125 (e) revised; eff. 5-8-93....2890
131.127 (f) revised; eff. 5-8-93....2890
131.130 (f) revised; eff. 5-8-93....2890
131.132 (f) revised; eff. 5-8-93....2890
131.135 (f) revised; eff. 5-8-93....2890
131.136 (h) revised; eff. 5-8-93....2890
131.138 (g) revised; eff. 5-8-93....2891
131.143 (f) revised; eff. 5-8-93....2891
131.144 (h) revised; eff. 5-8-93....2891
131.146 (g) revised; eff. 5-8-93....2891
131.147 (f) revised; eff. 5-8-93....2891
131.149 (e) revised; eff. 5-8-93....2891
131.150 (e) revised; eff. 5-8-93....2891
131.155 (e) revised; eff. 5-8-93....2891
131.157 (e) revised; eff. 5-8-93....2891
131.160 (e) revised; eff. 5-8-93....2891
131.162 (e) revised; eff. 5-8-93....2891

Page

131.170 (h) revised; eff. 5-8-93....2891
131.180 (e) revised; eff. 5-8-93....2891
131.185 (e) revised; eff. 5-8-93....2891
131.187 (e) revised; eff. 5-8-93....2891
131.200 (g) revised; eff. 5-8-93....2891
131.203 (g) revised; eff. 5-8-93....2891
131.206 (g) revised; eff. 5-8-93....2891
133.102 (e) revised; eff. 5-8-93....2891
133.103 Revised; eff. 5-8-93....2892
133.104 Revised; eff. 5-8-93....2892
133.106 (d) introductory text revised; eff. 5-8-93....2892
133.108 (d) introductory text revised; eff. 5-8-93....2892
133.111 (f) revised; eff. 5-8-93....2892
133.113 (d) introductory text revised; eff. 5-8-93....2892
133.118 (f) added; eff. 5-8-93....2892
133.121 Introductory text revised; eff. 5-8-93....2892
133.123 (f) introductory text revised; eff. 5-8-93....2892
133.124 (h) revised; eff. 5-8-93....2892
133.125 (a) introductory text revised; eff. 5-8-93....2892
133.127 (d) revised; eff. 5-8-93....2892
133.128 (e) revised; eff. 5-8-93....2892
133.129 (e) revised; eff. 5-8-93....2892
133.131 Introductory text revised; eff. 5-8-93....2892
133.133 (d) introductory text revised; eff. 5-8-93....2892
133.134 (d) introductory text revised; eff. 5-8-93....2893
133.136 (d) introductory text revised; eff. 5-8-93....2893
133.138 (d) introductory text revised; eff. 5-8-93....2893
133.140 (c) revised; eff. 5-8-93....2893
133.141 (d) introductory text revised; eff. 5-8-93....2893
133.144 (d) introductory text revised; eff. 5-8-93....2893

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 21 Chapter I—Con. Page

133.146 (e) introductory text revised; eff. 5-8-93....2893
133.147 (e) revised; eff. 5-8-93....2893
133.148 (f) introductory text revised; eff. 5-8-93....2893
133.149 (d) introductory text revised; eff. 5-8-93....2893
133.150 (f) introductory text revised; eff. 5-8-93....2893
133.152 (d) introductory text revised; eff. 5-8-93....2893
133.153 (d) introductory text revised; eff. 5-8-93....2893
133.154 Revised; eff. 5-8-93....2893
133.155 (d) introductory text revised; eff. 5-8-93....2893
133.156 (d) introductory text revised; eff. 5-8-93....2893
133.158 Revised; eff. 5-8-93....2894
133.160 (d) introductory text revised; eff. 5-8-93....2894
133.162 (d) introductory text revised; eff. 5-8-93....2894
133.164 (d) introductory text revised; eff. 5-8-93....2894
133.165 (e) revised; eff. 5-8-93....2894
133.167 Introductory text revised; eff. 5-8-93....2894
133.168 (a) introductory text revised; eff. 5-8-93....2894
133.169 (g) revised; eff. 5-8-93....2894
133.170 (a) introductory text revised; eff. 5-8-93....2894
133.171 Introductory text revised; (f) removed; eff. 5-8-93....2894
133.173 (h) revised; eff. 5-8-93....2894
133.174 (a) introductory text revised; eff. 5-8-93....2894
133.175 Revised; eff. 5-8-93....2894
133.176 (a) introductory text revised; eff. 5-8-93....2894
133.178 (d) revised; eff. 5-8-93....2894
133.179 (i) revised; eff. 5-8-93....2895
133.180 (a) introductory text revised; eff. 5-8-93....2895
133.181 (d) introductory text revised; eff. 5-8-93....2895
133.182 (f) added; eff. 5-8-93....2895
133.183 (f) introductory text revised; eff. 5-8-93....2895
133.184 (d) introductory text revised; eff. 5-8-93....2895
133.185 (d) introductory text revised; eff. 5-8-93....2895
133.186 (d) revised; eff. 5-8-93....2895
133.187 (g) added; eff. 5-8-93....2895
133.188 (g) added; eff. 5-8-93....2895
133.189 (e) added; eff. 5-8-93....2895
133.190 (d) introductory text revised; eff. 5-8-93....2895
133.191 Revised; eff. 5-8-93....2895
133.193 (a) revised; eff. 5-8-93....2895
133.195 (d) introductory text; eff. 5-8-93....2895
135.110 (f) revised; eff. 5-8-93....2896
135.115 (d) revised; eff. 5-8-93....2896
135.120 (a) introductory text; eff. 5-8-93....2896
135.130 (e) revised; eff. 5-8-93....2896
135.140 (i) revised; eff. 5-8-93....2896
135.160 (a) revised; eff. 5-8-93....2876
136.110 (f) revised; eff. 5-8-93....2877
137.105 (b)(1) revised; eff. 5-8-93....2877
137.155 Revised; eff. 5-8-93....2877
137.160 Revised; eff. 5-8-93....2877
137.165 Introductory text revised; eff. 5-8-93....2877
137.170 (a) revised; eff. 5-8-93....2877
137.175 Introductory text revised; eff. 5-8-93....2877
137.180 (b) revised; eff. 5-8-93....2877
137.185 Introductory text revised; eff. 5-8-93....2877
137.200 (b)(1) revised; eff. 5-8-93....2877
137.205 Revised; eff. 5-8-93....2877
137.225 Revised; eff. 5-8-93....2877
137.235 (c) added; eff. 5-8-93....2877
137.260 (c) added; eff. 5-8-93....2878
137.270 (c) added; eff. 5-8-93....2878
137.305 (b)(1) revised; eff. 5-8-93....2878
137.350 (g) added; eff. 5-8-93....2878
139.110 (g) added; eff. 5-8-93....2878

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

139.115 (a) introductory text; eff. 5-8-93 ... 2878
139.117 (e) revised; eff. 5-8-93 ... 2878
139.120 (a) introductory text revised; eff. 5-8-93 ... 2878
139.121 (a) introductory text revised; eff. 5-8-93 ... 2878
139.122 (a) introductory text revised; eff. 5-8-93 ... 2878
139.125 (a) introductory text revised; eff. 5-8-93 ... 2878
139.135 (a) revised; eff. 5-8-93 ... 2878
139.138 (a) introductory text revised; eff. 5-8-93 ... 2878
139.140 (a) introductory text revised; eff. 5-8-93 ... 2878
139.150 (i) added; eff. 5-8-93 ... 2878
139.155 (a) introductory text revised; eff. 5-8-93 ... 2879
139.160 (a) revised; eff. 5-8-93 ... 2879
139.165 (a) revised; eff. 5-8-93 ... 2879
139.180 (a) revised; eff. 5-8-93 ... 2879
145.110 (a)(4) revised; eff. 5-8-93 ... 2879
145.115 (a)(4)(iv) revised; eff. 5-8-93 ... 2879
145.116 (b)(2) revised; eff. 5-8-93 ... 2879
145.120 (a)(5)(iv) revised; eff. 5-8-93 ... 2879
145.125 (a)(4)(iv) revised; eff. 5-8-93 ... 2879
145.126 (b)(2) revised; eff. 5-8-93 ... 2879
145.130 (d)(4) revised; eff. 5-8-93 ... 2879
145.131 (b)(2) revised; eff. 5-8-93 ... 2880
145.134 (f) added; eff. 5-8-93 ... 2880
145.135 (a)(4)(iv) revised; eff. 5-8-93 ... 2880
145.136 (b)(2) revised; eff. 5-8-93 ... 2880
145.140 (d)(4) revised; eff. 5-8-93 ... 2880
145.145 (a)(4)(iii) revised; eff. 5-8-93 ... 2880
145.170 (a)(4)(iv) revised; eff. 5-8-93 ... 2880
145.171 (b)(2) revised; eff. 5-8-93 ... 2880

Page

145.175 (a)(4)(iv) revised; eff. 5-8-93 ... 2880
145.176 (b)(2) revised; eff. 5-8-93 ... 2880
145.180 (a)(5)(iii) revised; eff. 5-8-93 ... 2880
145.181 (b)(2) revised; eff. 5-8-93 ... 2880
145.185 (a)(4)(iv) revised; eff. 5-8-93 ... 2880
145.190 (c)(4) revised; eff. 5-8-93 ... 2880
146.113 (h) added; eff. 5-8-93 ... 2881
146.114 (a)(3)(ii) revised; eff. 5-8-93 ... 2881
146.120 (c) revised; eff. 5-8-93 ... 2881
146.121 (f) added; eff. 5-8-93 ... 2881
146.126 (c) revised; eff. 5-8-93 ... 2881
146.132 (a)(3)(iii) revised; 5-8-93 ... 2881
146.135 (a) revised ... **57667**
146.140 (a) amended ... **57667**
(g) added; eff. 5-8-93 ... 2881
146.141 (a) amended ... **57667**
(f) added; eff. 5-8-93 ... 2881
146.145 (f) added; eff. 5-8-93 ... 2881
146.146 (a) amended ... **57667**
(g) added; eff. 5-8-93 ... 2881
146.148 (a) revised; eff. 5-8-93 ... 2881
146.150 (a) revised; eff. 5-8-93 ... 2881
146.151 (a) amended ... **57667**
146.152 (d) revised; 5-8-93 ... 2881
146.153 (a) revised; eff. 5-8-93 ... 2881
146.154 (d) revised; eff. 5-8-93 ... 2882
146.185 (a)(3) revised; eff. 5-8-93 ... 2882
146.187 (d) added; eff. 5-8-93 ... 2882
150.110 (e)(1) introductory text revised; (c)(2)(ii) removed; eff. 5-8-93 ... 2882
150.140 (e)(2) introductory text revised; eff. 5-8-93 ... 2882
150.141 (h) added; eff. 5-8-93 ... 2882
150.160 (e)(2) introductory text revised; eff. 5-8-93 ... 2882
150.161 (h) added; eff. 5-8-93 ... 2882
152.126 (a)(4)(i) revised; eff. 5-8-93 ... 2882
155 Technical correction ... **37591**
155.120 (a)(3)(xiii) and (a)(3)(xiv) redesignated as

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 21 Chapter I—Con.

Page

(a)(3)(xiv) and (a)(3)(xv); new (a)(3)(xiii) added; (b)(2)(i) revised ... **34245**
(a)(5) revised; eff. 5-8-93 ... 2882
155.130 (a)(5) revised; eff. 5-8-93 ... 2882
155.131 (a)(1) revised; eff. 5-8-93 ... 2882
155.170 (a)(4) revised; eff. 5-8-93 ... 2882
155.172 (a) introductory text revised; eff. 5-8-93 ... 2883
155.191 (a)(3)(iv) revised; eff. 5-8-93 ... 2883
155.194 (a)(3)(iii) revised; eff. 5-8-93 ... 2883
155.200 (h) revised; eff. 5-8-93 ... 2883
155.201 (a)(4)(ii) revised; eff. 5-8-93 ... 2883
156.145 (a)(2)(ii) revised; eff. 5-8-93 ... 2883
158.170 (a)(4) revised; eff. 5-8-93 ... 2883
160.105 (e) added; eff. 5-8-93 ... 2883
160.110 (d) added; eff. 5-8-93 ... 2883
160.115 Existing text designated as (a); (b) added; eff. 5-8-93 ... 2883
160.140 (c) added; eff. 5-8-93 ... 2883
160.145 (f) added; eff. 5-8-93 ... 2883
160.150 (c) added; eff. 5-8-93 ... 2883
160.180 Existing text designated as (a); (b) added; eff. 5-8-93 ... 2883
160.185 (e) added; eff. 5-8-93 ... 2883
160.190 Existing text designated as (a); (b) added; eff. 5-8-93 ... 2884
161.145 (a)(4) added; eff. 5-8-93 ... 2884
161.170 (a)(5)(iii) revised; eff. 5-8-93 ... 2884
161.173 (a)(5)(ix) revised; eff. 5-8-93 ... 2884
161.175 (i) added; eff. 5-8-93 ... 2884
161.190 (a)(6)(ii) through (viii) and (8)(vi) revised; (a)(6)(ix) removed; eff. 5-8-93 ... 2884
163.110 (c) added; eff. 5-8-93 ... 2884
163.111 (c) added; eff. 5-8-93 ... 2884
163.112 (c) added; eff. 5-8-93 ... 2885
163.113 Revised; eff. 5-8-93 ... 2885
163.114 Revised; eff. 5-8-93 ... 2885
163.117 Revised; eff. 5-8-93 ... 2885

Page

163.123 (i) added; eff. 5-8-93 ... 2885
163.130 (f) added; eff. 5-8-93 ... 2885
163.135 (c) added; eff. 5-8-93 ... 2885
163.140 (c) added; eff. 5-8-93 ... 2885
163.145 (c) added; eff. 5-8-93 ... 2885
163.150 (d) added; eff. 5-8-93 ... 2885
163.153 (c) added; eff. 5-8-93 ... 2885
163.155 (c) added; eff. 5-8-93 ... 2885
164.110 (e) introductory text and (f) revised; (e)(3) and (4) removed; eff. 5-8-93 ... 2885
164.150 (e) revised; eff. 5-8-93 ... 2886
168.110 (b) and (d) revised; eff. 5-8-93 ... 2886
168.111 (c) revised; eff. 5-8-93 ... 2886
168.130 (d) revised; eff. 5-8-93 ... 2886
168.140 (d) revised; eff. 5-8-93 ... 2896
168.160 (d) revised; eff. 5-8-93 ... 2886
168.180 (d)(1) revised; eff. 5-8-93 ... 2886
169 Technical correction ... **37591**
169.115 (e) revised; eff. 5-8-93 ... 2886
169.140 (a) and (e) revised ... **34246**
(f) revised; eff. 5-8-93 ... 2886
169.150 (g) revised; eff. 5-8-93 ... 2886
169.175 (c) added; eff. 5-8-93 ... 2886
169.176 (a) revised; eff. 5-8-93 ... 2886
169.177 (a) revised; eff. 5-8-93 ... 2886
169.178 (a) revised; eff. 5-8-93 ... 2886
169.179 (d) added; eff. 5-8-93 ... 2887
169.180 (a) revised; eff. 5-8-93 ... 2887
169.181 (a) revised; eff. 5-8-93 ... 2887
169.182 (a) revised; eff. 5-8-93 ... 2887
172.133 Introductory text, (b) and (c)(2) revised ... 6091
172.225 Revised ... **12711**
172.270 Added ... **12711**
172.665 (a) amended; (e) revised ... **55445**
172.800 (c)(7) added ... **57961**
172.892 (h) amended; (i) added ... **54700**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

176.170 Regulation at 57 FR 10616 effective date corrected ... **11797**
(b)(2) table amended ... **20200**
(a)(5) table amended ... **23949, 34867**
176.210 (d)(3) amended ... **31313**
177.1312 Added ... **32422**
177.1345 Added ... **43399**
177.1395 (b)(4) table amended ... **43399**
177.1500 (b) table amended ... 2977
177.1520 Regulation at 57 FR 10616 effective date corrected ... **11797**
178 Technical correction ... **37867**
178.1005 (e)(1) table amended ... **32423**
178.1010 (b)(39) and (c)(34) added ... **11682**
(b)(40) and (c)(35) added ... **35463**
(b)(41) and (c)(36) added ... **43614**
(b)(42) and (c)(37) added ... **54701**
178.2010 (b) table amended ... **10992, 18081, 48724, 48980**
178.3690 (a) revised; (b)(1) amended ... **18082**
178.3910 (a)(2) table amended ... **23952**
180.115 Revised ... **58386**
180.319 Table amended ... **58387**
184.1505 Regulation at 57 FR 10616 effective date corrected ... **11797**
184.1924 Added ... **60473**
201 Authority citation revised ... **54300**
201.105 Introductory text and (a) revised ... **54300**
201.110 Removed ... **54301**
201.122 Introductory text revised ... **54301**
201.307 Removed ... **58374**
291 Authority citation revised ... 498
291.105 (d)(1)(i), (iii), (iv), (2)(i), (3)(v), (D), (4)(i)(B)(*2*), (5)(ii), (6)(iv)(B)(*6*), (v)(A)(*1*), (*3*), (C), (8)(i) introductory text, (E), (9)(i) introductory text and (F) amended; (a)(2) and (d)(8)(i)(F) revised; (a)(10), (b)(1)(v), (2)(vi), (d)(4)(i)(C) and (7) added ... 498
310 Technical correction ... **46068**

Page

310.201 (a)(25) removed; (b) added ... **58374**
310.305 (a) revised; (b)(2), (c)(4) and (d)(1) amended ... **17980**
310.537 Added ... **29173**
310.545 (a)(6)(iii), (d)(4) and (5) added; (d) introductory text and (1) revised; eff. 9-14-93 ... **41860**
(a)(3) amended ... **45295**
(a)(6)(i), (d) introductory text and (1) revised; (d)(6) added ... **58374**
(a)(21), (d)(7) and (8) added; (d) introductory text revised; eff. 6-18-93 ... **60423**
(a)(10)(iv) and (d)(9) added; (d) introductory text revised; eff. 6-18-93 ... **60427**
(a)(22) and (d)(10) added; (d) introductory text revised; eff. 6-18-93 ... **60431**
312 Technical correction ... **19458**
312.34 (a) amended ... **13248**
312.35 (a) amended ... **13249**
312.42 (b)(3)(iii) and (4) added ... **13249**
312.44 (b)(1)(xi) added; (b)(2)(i) revised ... **13249**
314 Regulation at 57 FR 58942 corrected ... **61489**
Technical correction ... **61489**
Technical correction ... 4078
314.1 (a)(1) and (2) amended ... **17981**
314.3 (b) revised ... **17981**
314.50 (a)(2) and (c)(1) amended; (g)(3) added ... **17982**
314.54 Added ... **17982**
(a)(2) corrected ... **61612**
314.55 Removed ... **17983**
314.56 Removed ... **17983**
314.60 Existing text designated as (a) and amended; (b) added ... **17983**
314.70 (e) added ... **17983**
314.71 (b) amended ... **17983**
314.80 (a), (c)(1)(ii) and (d)(1) amended; (b) revised ... **17983**
314.81 (b)(3)(iii) added ... **17983**
314.92—314.99 (Subpart C) Added ... **17983**
314.94 (a)(9)(iii) corrected ... **29353**
314.100—314.170 (Subpart C) Redesignated as subpart D ... **17983**
Heading revised ... **17987**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 21 Chapter I—Con. Page

314.100 Revised....17987
314.101 Revised....17987
(d)(3) and (4) corrected....29353
314.102 Revised....17988
(b) corrected....29353
314.103 (a) revised; (b) and (c)(2) amended....17989
314.104 Revised....17989
314.105 Revised....17989
314.110 Revised....17989
314.120 Revised....17990
314.122 Added....17990
(b) corrected....29353
314.125 Heading, (a) introductory text, (b) introductory text, (7), (9), (10), (12), (14), (15), (16) and (17) revised; (b)(18) added....17991
314.127 Added....17991
(a)(3)(iii)(A)(*1*) corrected....29353
314.150 Revised....17993
314.151 Added....17994
314.152 Revised....17994
314.153 Added....17995
314.160 Revised....17995
314.161 Added....17995
314.162 Added....17996
314.200—314.235 (Subpart D) Redesignated as subpart E....17983
314.200 (a) introductory text, (b)(1) and (c)(3) revised; (c)(1) and (g)(1) amended....17996
314.300 (Subpart E) Redesignated as subpart F....17983
314.410—314.445 (Subpart F) Redesignated as subpart G....17983
314.430 Heading, (a) through (d), (e) introductory text, (f)(5), (6) and (g) introductory text revised....17996
314.440 Heading, (a) introductory text, (1) and (2) revised....17997
314.500—314.560 (Subpart H) Added....58958
316 Added....62085
316.10 (b)(10) corrected....6167
316.27 (a)(2)(ii) corrected....6167
320.1 (a) and (e) revised....17997
320.21—320.32 (Subpart B) Heading revised....17998
320.21 Revised....17998
320.22 Revised....17998
320.23 Revised....17999
320.24 Revised....17999

NOTE: **Boldface page numbers indicate 1992 changes.**

Page
(b)(4) corrected....29354
320.30 Revised....18000
320.31 Revised....18000
320.32 Redesignated as 320.38; new 320.32 redesignated from 320.51 and revised....18000
320.33 Redesignated from 320.52; heading and introductory text revised....18001
320.34 Redesignated from 320.55....18001
320.35 Redesignated from 320.56....18001
320.36 Redesignated from 320.62....18001
320.38 Redesignated from 320.32....18000
320.50 Removed....18000
320.51 Redesignated as 320.32....18000
320.52 Redesignated as 320.33....18001
320.53 Removed....18001
320.54 Removed....18001
320.55 Redesignated as 320.34....18001
320.56 Redesignated as 320.35....18001
320.57 Removed....18001
320.58 Removed....18001
320.59 Removed....18001
320.60 Removed....18001
320.61 Removed....18001
320.62 Redesignated as 320.36....18001
341.3 (e) added....58374
341.12 Added....58374
341.72 Added....58374
341.78 (b) amended; (c)(1) and (2) redesignated as (c)(2) and (1); new (c)(2) revised; (c)(3) added....29177
341.90 (e) through (q) added....58376
348 Added; eff. 6-19-93....27656
358 Authority citation revised....44494
358.150 (d)(2) revised....44494
358.550 (d)(2) revised....44494
369.20 Amended....58376
369.21 Amended....58376
433.1 (d)(2) amended....18001
510 Technical correction....21854
510.600 (c)(1) table and (2) table amended...11683, 12711, 26995,

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

30641, 31313, 32175, 35988, 38442, 45984, 48163, 54176, 61796

(c)(1) table and (2) table amended....4316, 5607
520 Heading revised....**37319**
520.88 Added....**37319**
(b)(1)(ii)(B) corrected....**42623**
520.88a Added....**37319**
520.88b Added....**37319**
520.88c Added....**37319**
520.88d Added....**37319**
(c) corrected....**42623**
520.88e Added....**37320**
520.88f Added....**37320**
520.88g Added....**37320**
520.88h Added....**37320**
520.90 Added....**37321**
520.90a Added....**37321**
520.90b Added....**37321**
520.90c Added....**37321**
520.90d Added....**37321**
520.90e Added....**37322**
520.90f Added....**37322**
520.154 Added....**37322**
520.154a Added....**37322**
(d)(3)(iii) corrected....**42623**
520.154b Added....**37322**
520.154c Added....**37322**
520.182 (b) amended....5608
520.390 Added....**37323**
520.390a Added....**37323**
520.390b Added....**37323**
520.390c Added....**37323**
(c)(1) corrected....**42623**
520.445 Added....**37323**
520.445a Added....**37323**
520.445b Added....**37324**
(b), (d)(1)(iv)(A) introductory text and (2)(i)(D)(*1*) corrected; (d)(2)(i)(C) correctly designated....**42623**
520.445c Added....**37325**
520.580 (b)(1) amended....**35989, 45984**
520.608 Added....**37325**
520.1130 Added....**37325**
520.1130a Added....**37325**
520.1130b Added....**37326**
520.1130c Added....**37326**
520.1445 (c)(2) revised....5608
520.1484 Added....**19085**
(b) revised....**26604**
520.1660d (b) revised....**42490**
520.1696 Added....**37326**
520.1696a Added....**37326**
520.1696b Added....**37326**
520.1696c Added....**37326**

Page

(c) corrected....**42623**
520.1696d Added....**37327**
520.1806 (b) amended....**48163**
520.2041 (b) amended....**48163**
520.2042 (b) amended....**48163**
520.2158 Added....**37327**
520.2158a Added....**37327**
520.2158b Added....**37327**
(b) corrected....**42623**
520.2158c Added....**37327**
520.2220a (b) amended....**32176**
Heading, (a), (b) and (e) introductory text revised....6092
520.2345 Added....**37327**
520.2345a Added....**37327**
520.2345b Added....**37327**
520.2345c Added....**37328**
520.2345d Added....**37328**
(e)(1)(i)(A), (ii)(A) and (4)(iii)(A)(*1*) corrected....**42623**
520.2345e Added....**37329**
520.2345f Added....**37329**
520.2345g Added....**37329**
520.2345h Added....**37329**
522 Heading revised....**37330**
522.88 Added....**37330**
522.90 Added....**37330**
522.90a Added....**37330**
522.90b Added....**37331**
(d)(3)(ii) corrected....**42623**
522.90c Added....**37331**
522.313 (d)(2) and (3) added....**41862**
522.390 Added....**37331**
522.575 Added....500
522.650 Added....**37331**
(b) corrected....**42623**
522.840 (a), (c)(1) and (3) amended....**41861**
522.1696 Added....**37332**
522.1696a Added....**37332**
(d)(2) introductory text corrected....**42623**
522.1696b Added....**37332**
Heading, (d)(3)(ii) and (e)(1)(ii) corrected....**42623**
522.1696c Added....**37333**
522.2100 (a)(1) amended....**21209**
522.2471 Added....**12712**
524 Heading revised....**37333**
524.154 Added....**37333**
524.155 Added....**37333**
524.390 Added....**37333**
524.390a Added....**37333**
524.390b Added....**37333**
524.390c Added....**37334**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 21 Chapter I—Con. Page

524.390d Added 37334
524.1005 (b)(1) amended 31314
526 Heading revised 37334
526.88 Added 37334
526.464 Added 37334
526.464a Added 37334
(c)(2) corrected 42623
526.464b Added 37334
(c)(2) and (3) corrected 42623
526.464c Added 37335
526.464d Added 37335
526.1130 Added 37335
526.1696 Added 37335
526.1696a Added 37335
(f) removed 500
526.1696b Added 37336
526.1696c Added 37336
(a) corrected 42623
526.1696d Added 37336
(c)(1)(iii) corrected 42623
529 Heading revised 37336
529.1030 (b) amended 42490
529.2464 Added 37336
536 Removed 37336
539 Removed 37336
540 Removed 37336
540.274b (c)(3)(iv)(c) amended 32896
544 Removed 37336
546 Removed 37336
546.180d (c)(6)(iv)(*d*)(*3*) amended 12711
(c)(6)(i)(*a*)(*3*), (*b*)(*3*), (ii)(*d*), (iii)(*a*)(*3*), (*b*)(*3*), (*c*)(*3*), (iv)(*a*)(*3*) and (*b*)(*3*) amended 26996
548 Removed 37336
555 Removed 37336
556.113 Revised 41862
556.308 Amended 21209
556.735 Added 12712
558 Technical correction 21854, 44791
558.4 (d) amended 38442
558.15 (g)(1) table and (2) table corrected 14639
558.55 (d)(2) table corrected; CFR correction 12712
558.76 (d)(3)(xiii) revised 32176
558.95 (a)(2) amended 23059
558.235 Added 38442
558.258 (a) and (c)(1)(i) revised; (c)(1)(ii) and (iii) redesignated as (c)(1)(i)(A) and (B); new (c)(1)(ii) through (v) added 34516

Page

558.274 (a)(2), (4) and (c)(1) table amended 37410
558.325 (c)(4)(ii) added 34517
558.335 (f)(3)(ii)(*a*) revised; (f)(3)(ix) added 11683
558.355 (b)(7) and (14) revised 23953
(b)(11) revised; (f)(1)(xxv) added 46504
(f)(3)(ix) amended 4316
558.363 (c)(1)(vi) added 32176
558.625 (b)(51) removed 23059
(b)(3) added 37410
(b)(28) removed 54176
558.630 (b)(10) amended 37410
573 Hearing 28606
Hearing denied 33244
Technical correction 40318
573.870 (a) table amended 24187
601 Regulation at 57 FR 58942 corrected 61489
Technical correction 61489
Technical correction 4316
601.40—601.46 (Subpart E) Added 58959
606.60 (c) amended 11263
(c) corrected 12862
601 Technical correction 4078
807.3 (n) through (q) added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.87 (h) redesignated as (k); new (h), (i) and (j) added; interim 18066
Regulation at 57 FR 18066 stayed 23059
(i)(2) corrected 29354
807.92 Added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.93 Added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.94 Added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.95 (c)(3) removed; (d) redesignated as (e); new (d) added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.100 Added 58403
812 Extension of applicability 12875, 29001

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

814.44 (a) revised 58403
821 Added 22967
860.3 (c)(1) amended; (c)(2) and (3) revised 58403
860.84 (a) amended 58404
860.120 (c) amended 58404
860.130 (e) and (f) amended; (c) through (f) redesignated as (d) through (g); new (c) added 58404
860.134 Heading, (a) introductory text, and (b)(3) revised 58404
861 Authority citation revised 58404
861.1 (a) and (b) revised 58404
861.20 Revised 58404
861.22 Removed 58405
861.24 (a) introductory text and (b) revised 58405
861.26 Removed 58405
861.28 Removed 58405
861.30 Revised 58405
861.32 Revised 58405
861.36 (c) amended 58405
861.38 (b)(2) revised 58405
888.3358 (Subpart D) Added 3228
895.20 Amended 58405
895.21 (b), (d)(4) and (8) revised 58405
895.30 (c) and (d) amended 58405
1220.40 (a) revised 38771
1240.3 (i) through (p) redesignated as (k) through (r); new (i) and new (j) added 57344
1240.61 (a) revised 57344

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308.11 (g)(3) added 18825
(g)(4) added 43401
(d)(3) through (28) redesignated as (d)(4) through (29); new (d)(3) added 4317
(f)(1) through (4) redesignated as (f)(2) through (5); new (f)(1) added 4318
1308.12 (b)(1) introductory text revised 31126
1308.24 Regulation at 57 FR 5818 confirmed 36371
1308.26 Table revised; interim 19534
Regulation at 57 FR 19534 confirmed 36371
1308.32 Introductory text revised 23301
1308.34 Table revised 32423, 55091
1310.02 (b)(8) and (9) added 43615
1310.04 (f)(2)(iv) added 43615
1310.08 Added 43615

Chapter III—Office of National Drug Control Policy (Parts 1400—1499)

Chapter III Established 55089
1401 Added 59803
1402 Added 55089
1403 Added 55092
1404 Added 56262

Title 21—*Proposed Rules:*

1—1299 (Ch. I) 22447, 32185, 33283, 33915, 48008, 4953
5 ..... 11277, 19410, 29119, 32750
10 ..... 21044, 47314
12 21044
16 21044
20 ..... 11277, 19410, 21044, 28647, 29119, 32750, 36617
100 ..... 11277, 19410, 29119, 2957
101 ..... 11277, 12773, 19410, 29119, 32058, 32750, 32751, 37190, 47319, 2944, 2950
102 2950
103 ..... 382, 389, 393
105 ..... 11277, 19410, 29119
129 393
130 ..... 11277, 19410, 29119
131 ..... 32470, 38095, 40255, 43059
135 520
146 23555
161 2950
163 ..... 23989, 28011, 54195
165 393
166 ..... 33916, 43634
182 37738
184 ..... 37738, 393
189 55485
201 47423
226 21044
310 ..... 38568, 40944, 53300
314 ..... 13234, 27202, 30802
334 23174

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 21—Con.

Page

341 ...27658—27666, 33663, 34733—34735, 58378
355 ..... 19823, 21332, 55199 6102
356 ..... 20434, 28555, 30534
500 21044
510 21044
511 21044
514 21044
601 ..... 13234, 19410, 27202, 30802
808 47314
812 60491
821 ..... 12376, 20656, 22971, 31754
880 27397
864 ..... 43161, 46068
872 ..... 43165, 46068, 56876
876 4116
878 3436
884 42908
890 27397
1301 ..... 15037, 33465, 36439, 60148
1304 ..... 15037, 33465, 36439
1308 ..... 11447, 32937, 55201 4370
1311 60148
1400-1499 (Ch. III) 31160
1401 45353

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

41 Authority citation revised..... 31447
41.11 (b)(1) revised..... 31448
41.12 Revised..... 31448
41.53 Revised..... 31449
41.54 Revised..... 31449
41.55 Revised..... 31450
41.56 Revised..... 31450
41.57 Revised..... 31450
43 Authority citation revised..... 28980
43.12 (d) added..... 28980
43.13 Revised..... 28981
43.14 Revised..... 28981
43.15 Revised..... 28982
43.17 Revised..... 28982
51.21 (c) introductory text, (1) and (d)(1) revised; (d)(4) added..... 59807
121 Revised..... 15230
121.1 Amended; interim..... 32148 Amended..... 41078, 48316
172 Added..... 32896

Chapter II—Agency For International Development, International Development Cooperation Agency (Parts 200—299)

Page

211 Revised..... 19766
215 Revised..... 38277

Chapter III—Peace Corps (Parts 300—399)

309 Revised..... 2978

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statements..... 46676

Chapter XI—International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

1101 Revised..... 24945

Title 22—*Proposed Rules:*

43 15266
51 39159
89 52600
120 ..... 19666, 27715
121 ..... 12774, 14671, 61589
122 ..... 19666, 27715
123 ..... 19666, 27715
124 ..... 19666, 27715
125 ..... 19666, 27715
126 ..... 19666, 27715
127 ..... 19666, 27715
130 ..... 19666, 27715
172 20656
309 55202
514 ..... 46679, 47585
1101 14674

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

1.4 Removed..... 60728
1.11 (d) removed..... 60728
1.31 Removed..... 60728
1.34 Removed..... 60728
1.37 Removed..... 60728
1.38 Removed..... 60728

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

12 Removed....60728
17 Removed....60728
140.101—140.111 (Subpart A) Removed....60728
470.301—470.307 (Subpart C) Removed....60728
490 Removed....60728
642 Removed....60728
650.305 (c) revised; interim....53281
650.501—650.515 (Subpart E) Removed....60728
650.601—650.609 (Subpart F) Removed....60728
655.101—655.109 (Subpart A) Removed....60728
655.601 (a) revised....53030
655.701—655.707 (Subpart G) Removed....60728
661 Removed....60728
666 Removed....60728
770 Removed....60728
771.135 (n)(i), (ii) and (iii) redesignated as (n)(1), (2) and (3)....12411
920 Removed....60728
922 Removed....60728

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1212 Added....35999
1204.4 (IV)(B)(1)(g) revised....56991

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1313 Revised; interim....29011

Title 23—*Proposed Rules:*

1-999 (Ch. I) ... 17868, 21915, 23460, 54191
1 21362
12 21362
17 21362
140 ....21362, 31467
172 53631
470 21362
490 21362
642 21362
650 ....21362, 29689
655 21362

Page

....288
659 186
661 21362
666 21362
750 ....19823, 21152, 31470, 34168
770 21362
920 21362
922 21362
1200-1299 (Ch. II) 54191
1215 4622
1260 186
1300-1399 (Ch. III) 54191

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

0 Authority citation revised....28783
0.735-101 Revised....28783
0.735-102 Revised....28783
0.735-104 Revised....28783
4 Authority citation revised....34248
4.5 Amended....34248
4.10 (a) revised....34249
4.100 (b) revised....34249
20 Authority citation revised....20201
20.3 (a) revised....20201
20.10 Amended....20201
24.700 Amended....58339
24.710 (a)(3) revised....58339
25 Revised....31051
Regulation on 57 FR 31051 effective date corrected....31754
25.2 Corrected....37085
25.3 Corrected....37085
25.4 (b) corrected....37085
25.5 (b), (c)(3) and (d)(3)(i) corrected....37085
(c)(3) corrected....40111
25.9 (cc) corrected....37085
(b), (h) and (u) revised....58339
25.13 Corrected....37085
30.320 (c) introductory text and (k) revised....58339
44 Heading and authority citation revised....33254
44.3 (c) amended....33254
44.6 (a) revised; (b) amended....33254
45 Added....33254
50 Authority citation revised...12036, 32110

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 24 Subtitle A—Con. Page

50.3 (i) added; interim ... **32110**
50.17 (i) redesignated as (j); new (i) added; interim ... **32110**
50.19 Added; interim ... **32110**
50.20 (n) revised; interim ... **12036**
(o) revised; interim ... **32110**
70 Added; interim ... **14756**
85 Authority citation revised ... **33255**
85.26 (b)(1) and (2) amended ... **33255**
91 Revised ... **40053**
91.40 (c) corrected ... **46068**
92.2 Amended; interim ... **58863, 60964**
92.50—92.52 (Subpart B) Heading revised; undesignated center heading added; interim ... **58864**
92.50 (b) revised; interim ... **58864**
92.60—92.66 Undesignated center heading and sections added; interim ... **58864**
Added; interim ... **58864**
92.101 (a) revised; interim ... **60964**
92.150 (b)(3) and (c)(7) revised; interim ... **60965**
92.151 (d) redesignated as (e); (a) and new (e) revised; new (d) added; interim ... **60965**
92.204 (a)(2)(i)(A) and (B) revised; interim ... **60965**
92.205 (c) revised; interim ... **60965**
92.206 (a)(4) redesignated as (c)(5) and revised; (f) added; interim ... **60965**
92.211 (a)(2) revised; interim ... **60966**
92.214 Revised; interim ... **60966**
92.220 (a)(1)(i) and (2) revised; (b)(3) and (4) amended; (b)(5) added; interim ... **60966**
92.250 Revised; interim ... **60966**
92.251 Revised; interim ... **60966**
92.252 (a)(1)(ii), (2) introductory text, (5) introductory text and (c) revised; (e) added; interim ... **60967**
92.254 (a)(1)(ii) and (4) revised; (c) added; interim ... **60967**
92.300 (c) revised; interim ... **60968**
92.500 (a) and (d)(1) through (4) revised; (d)(5) removed; interim ... **60968**
92.502 (d) revised; (g) added; interim ... **60968**
92.504 (c)(13) amended; interim ... **60968**

Page

0—99 (Subtitle A) Appendix A amended; interim ... **14758**

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.135 (c) and (d) corrected ... 2988
103 Authority citation revised ... **18398**
103.200 (a) introductory text and (3) revised ... **39116**
103.400 (a)(1) and (2)(ii) revised ... **18398**
135 Authority citation revised ... **40113**
135.1 (a) revised ... **40113**
135.5 (g) revised ... **40113**
135.10 Revised ... **40113**
135.15 Revised ... **40113**
135.20 Amended ... **40113**
135.65 Revised ... **40113**
135.125 Removed ... **40113**
135.140 Removed ... **40113**

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised ... **27927**
200.141 (b) revised ... **58339**
200.145 (b) amended ... **58339**
200.146 (a) revised ... **58339**
200.147 Amended ... **58340**
200.148 (a)(2) amended ... **58340**
200.150 (b) revised ... **58340**
200.152 Revised ... **58340**
200.163 Removed ... **58340**
200.164 Removed ... **58340**
200.164a Removed ... **58340**
200.926 (a)(2) revised ... **58340**
200.926d OMB number ... **27927**
200.1105 Amended ... **58340**
201 High-cost limits ... **12715, 62187**
201.2 (j) introductory text and (hh) revised ... **45246**
201.10 (a)(1)(i), (ii), (iii) and (2) revised ... **45246**
201.11 (a) and (c)(1) revised ... **45246**
201.55 (a)(1) revised ... **30395**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

202 Authority citation revised....31056
Heading revised....58340
202.1—202.8 Designated as Subpart A; heading added; authority citation revised....58340
202.2 (c) and (d) revised....58340
202.3 (a) revised....58340
202.8 (a) introductory text, (b)(1), (c) and (d) revised....31056
Regulation at 57 FR 31056 effective date corrected....31754
(d) corrected....37085
202.10—202.19 (Subpart B) Added....58340
203 High-cost limits...12715, 44098, 62187
Authority citation revised...15211, 27927, 47970
Heading revised....58345
203.1—203.249 (Subpart A) Heading and undesignated center headings revised....58345
203.1 Revised....58345
203.2 Removed....58345
203.3 Revised....58345
203.4 Removed....58345
203.5 Revised....58345
203.6 Removed....58345
203.7 Revised....58345
203.10 Removed....58345
203.11 Removed....58345
203.13 Removed....58345
203.14 Revised....58345
203.16a (a) and (b) revised; (c) added....58346
203.17 (c)(3) and (d) revised....58347
203.18 (c) revised....15211
203.27 (a)(3)(v) and (d) revised....58347
203.30 (a) revised....58347
203.43h (b)(1), (d) introductory text, (3) and (f) revised; (b)(2) amended....58347
203.43i (d) introductory text, (g) introductory text and (2) revised....58347
203.50 (h) revised....58347
203.51 (2) revised....58347
203.52 OMB number....27927
203.248 Revised....58347
203.249 Revised....58348
203.255 Revised....58348
203.258 (c) introductory text, (2), (d) introductory text, (2) and (e) revised....58349
203.259 (a) revised....15211
203.259a (b) and (c) revised; interim....46983
203.270 (c) revised....15211
(c) revised; interim....46983
203.284 Undesignated center heading and section revised....15211
Amended; interim....46983
203.285 Added; interim....46983
203.355 Revised....47970
203.356 Revised....47971
203.359 Revised....47971
203.363 Revised....47971
203.364 Revised....47971
203.365 Revised....47972
203.366 Existing text designated as (a) and amended; (b) added....47972
203.369 (a) and (b) revised....47972
203.377 Revised....47972
203.378 (a) heading, (c) and (d) added; (b) revised....47973
203.379 Revised....47973
203.380 Revised....47973
203.387 Revised....47974
203.391 Revised....47974
203.402 (f) amended; (g), (j) and (k)(1) revised; (p), (q) and (r) added....47974
203.415 (b) revised....58349
203.441 Revised....58349
203.479 Revised....58349
203.499 Revised....58349
203.502 (b) amended....47974
(a) revised....58349
203.550 OMB number....27927
204 Authority citation revised....15212
204.1 Revised....58349
204.2 (a) introductory text, (1), (5) and (b)(1) revised....58349
204.260 Revised....15212
Revised; interim....46984
204.270—204.275 Undesignated center heading revised....15212
204.271 (a) revised....15212
204.276 Undesignated center heading and section revised....15213
Revised; interim....46984
206.9 (b) revised....58350
207 Authority citation revised....33255, 33849
207.19 (f)(6) added....33255

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 24 Chapter II—Con. Page

207.22 Revised....58350
207.24a Added....33849
207.259 (a) introductory text revised....55112
207.263 Added....58350
213 Authority citation revised....33255
213.30 (h) redesignated as (i); new (h) added....33255
213.39 Revised....58350
213.41 Added....33850
213.501—213.749 (Subpart C) Undesignated center heading revised....58350
213.502 Revised....58350
213.503 Revised....58350
213.504 Removed....58350
213.505 Removed....58350
213.510 (a) revised....58350
213.752 (e) redesignated as (f); new (e) added....58350
215 Authority citation revised....33850
215.16 Added....33850
219 Authority citation revised....12036
Revised....32405
219.325 (b) introductory text and (3) introductory text revised; (b)(5) added; interim....12036
220 Authority citation revised....33850
220.104 Introductory text and (a) revised....58350
220.105 (c) revised....58350
220.253 (e) redesignated as (f); new (e) added....58351
220.506a Added....33850
220.563 Revised....58351
221 Authority citation revised....12036, 33255, 33850
221.30 Revised....58351
221.32 Revised....58351
221.70 (a)(2) revised....58351
221.252 (e) revised....58351
221.524 (e) revised; interim....12036
221.528 Revised....58351
221.530 (f) added....33255
221.538 (b)(2) revised; interim....14758
221.545a Added....33850
221.770 Amended....58351
222.254 (e) revised....58351
226.252 (e) redesignated as (f); new (e) added....58351

Page

227.1 (a) revised....58351
227.501 (a) revised....58351
227.545 Revised....58351
231 Authority citation revised....33850
231.8 (b)(2) revised; interim....14758
231.15 Added....33850
232 Authority citation revised....33255, 33850
232.45 (c) added....33255
232.70 Revised; interim....14758
232.73 Revised; interim....14758
232.591 Added....33850
233.5 (a)(5) and (6) removed....58352
234 High-cost limits...12715, 44098, 62187
Authority citation revised...27927, 33850
234.1—234.249 (Subpart A) Undesignated center heading revised....58352
234.5 Revised....58352
234.10 Revised....58352
234.11 Removed....58352
234.12 Removed....58352
234.16 (a) revised....58352
234.17 (a) and (b) revised; (c) and (d) added....58352
234.25 (c)(2) and (4) revised....58352
234.64 OMB number....27927
234.85 (a)(2) removed....58352
234.249 Revised....58352
234.256 (e) revised....58352
234.521 Added....33851
235 Authority citation revised....62453
235.4 Amended....62453
235.1200—235.1222 (Subpart H) Added....62453
236 Authority citation revised....12036
236.55 (b) revised; interim....12036
236.60 Revised; interim....12036
236.85 Added....33851
236.901 (Subpart E) Revised....33256
237.5 Revised....58353
240.16 (b)(4) revised....58353
241 Authority citation revised....12036
241.40 Revised....58353
241.166 Added; interim....12036
241.251 (a) heading and (c) added; interim....12037
241.1000—241.1120 (Subpart E) Revised; interim....12037

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

241.1040 Revised....58353
241.1200—241.1250 (Subpart F) Revised; interim....12040
242 Authority citation revised....33256
242.25 Revised....58353
242.67 (b) revised; interim....14758
242.79 Existing text designated as (a); (b) added....33256
242.87a Added....33851
244.25 Revised....58353
248 Authority citation revised....12041, 57314
248.1—248.7 (Subpart A) Revised; interim....12041
248.101—248.183 (Subpart B) Added; interim....12042
248.101 Amended; interim....57314
248.111 (d) revised....4871
248.145 (a)(1) revised; interim....57314
248.183 (c) revised; interim....57314
248.201—248.261 (Subpart B) Redesignated as subpart C; interim....12041
Heading revised; interim....12060
248.201 Amended; interim....57314
248.213 (b)(9) redesignated as (b)(10); new (b)(9) added; interim....12060
248.221 (c) and (d) added; interim....12060
248.233 (f) added; interim....12060
248.234 (c) redesignated as (d); new (c) added; interim....12060
248.235 Removed; interim....12060
248.300—248.319 (Subpart D) Added; interim....12060
277.12 Added....33256
280 Authority citation revised....33256
280.207 (h) amended....33256

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570 Authority citation revised....27119, 40067
Authority citation revised; subpart and sectional authority citations removed....53397
570.200 (f)(1)(ii) revised; interim....27119
570.201 (e) revised; (n) added; interim....27119
570.306 (b) and (c) revised....40067
570.480—570.487 Added....53397
570.488 Removed; new 570.488 redesignated from 570.496a....53397
570.489 Revised....53402
570.490 Revised....53405
570.491 Revised....53406
570.492 Revised....53406
570.493 Revised....53406
570.494 Revised....53406
570.495 Revised....53406
570.496 (c) revised; interim....14759
Revised....53407
570.496a Redesignated as new 570.488....53397
570.497 Removed....53397
570.498 Removed....53397
570.499 Removed....53397
570.499a Removed....53397
570.500 (a)(1)(v) revised; (c) amended; (a)(3) added; interim....27120
570.501 (b) amended; interim....27120
570.502 (b) introductory text and (4) revised....33256
570.503 (b)(8) introductory text amended; (b)(8)(ii) revised; interim....27120
570.603 Revised; interim....14759
570.610 Amended....33256
570.611 (b) revised; interim....27120
571 Revised; interim....11837
Comment period extended....58139
571.301 (a)(1) correctly revised; interim....20970
574 Added; interim....32111
Revised....61740
575 Authority citation revised....33256
575.59 (h) amended....33256
576 Authority citation revised....33256, 54507
576.51 (b)(2)(i) corrected....11430
576.67 (c)(4) removed; (d) and (e) introductory text revised; interim....54507
576.79 (i) amended....33256
577 Authority citation revised....33256
577.335 (g) amended....33256
578 Authority citation revised....33256

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 24 Chapter V—Con. Page

578.335 (g) amended ... **33256**
579 Authority citation revised ... **33256**
579.325 (g) amended ... **33256**

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

700 Added ... **58055**
750.3 Regulation at 56 FR 27111 corrected ... **11263**
750.5 Regulation at 56 FR 27111 corrected ... **11263**
770 Added; interim ... 4268

Chapter VIII—Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

880 Authority citation revised ... **33256, 33851**
880.207 (g) added ... **33851**
880.210 (d) revised; interim ... **14759**
880.211 Existing text designated as (a); (b) added ... **33256**
881 Authority citation revised ... **33257, 33851**
881.207 (g) added ... **33851**
881.210 (d) revised; interim ... **14759**
881.211 Existing text designated as (a); (b) added ... **33257**
882 Authority citation revised ... **33851**
882.109 (r) added ... **33851**
882.404 (b)(3) revised; interim ... 4270
882.407 (c)(6) revised; interim ... **14759**
882.708 (d) revised; interim ... 4270
882.713 (c)(7) revised; interim ... **14759**
882.804 (c)(1) revised; interim ... **14760**
883 Authority citation revised ... **33257, 33851**
883.310 (c) added ... **33851**
883.312 (d) revised; interim ... **14760**

Page

883.313 Existing text designated as (a); (b) added ... **33257**
884 Authority citation revised ... **33257, 33852**
884.110 (d) added ... **33852**
884.113 (d) revised; interim ... **14760**
884.124 Existing text designated as (a); (b) added ... **33257**
884.207 (b)(5) revised; interim ... **14760**
885 Authority citation revised ... **33257, 33852**
885.10 Added ... **33257**
885.429 Added ... **33852**
885.717 (d) added ... **33852**
885.740 (d)(1)(i) and (ii) revised; interim ... **14760**
886 Authority citation revised ... **33257, 33852**
886.113 (m) redesignated as (n); new (m) added ... **33852**
886.131 Existing text designated as (a); (b) added ... **33257**
886.307 (p) added ... **33852**
886.313 (c)(2) revised; interim ... **14760**
886.336 Existing text designated as (a); (b) added ... **33257**
887 Authority citation revised ... **33852**
887.251 (m) added ... **33852**
888 Schedules B and D revised ... **45468**
Schedule C revised ... 4272
889 Authority citation revised ... **33853, 36339**
889.230 (f) added; interim ... 4270
889.265 (d) revised; interim ... **14760**
(g) added ... **33853**
889.400—889.430 (Subpart D) Revised; interim ... **36339**
889.500—889.530 (Subpart E) Added; interim ... **36342**
890 Authority citation revised ... **33853, 36331**
890.230 (h) added; interim ... 4270
890.260 (d)(1) and (2) revised; interim ... **14761**
(h) added ... **33853**
890.400—890.430 (Subpart D) Revised; interim ... **36331**
890.500—890.530 (Subpart E) Added; interim ... **36334**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

Page

901 Regulation at 57 FR 2188 comment time extended 23953
905 Revised 28250
Authority citation revised 33853
905.120 (c)(1) and (2) revised; interim 14761
(e)(2) revised 40114
905.135 (g)(2) revised 40114
905.160 (a)(2), (3)(ii) and (iii) introductory text revised; (a)(3)(iv) added; (a)(4), (5) and (7) amended 40115
905.165 (c)(2) amended 40115
905.170 (a) introductory text amended 40115
905.175 (b)(2) introductory text removed; (b)(2)(i)(A), (c) introductory text, (1), (d)(1) introductory text and (ii) amended 40115
905.180 (a)(1) introductory text amended 40115
905.210 (a) designation and (b) removed 40115
905.212 (a) and (b) amended 40115
905.215 (a)(1), (2) and (3)(ii) revised 40115
905.225 (a)(1) amended 40116
905.245 (a) and (b) revised 40116
905.250 (c) amended 40116
905.255 (g) amended 40116
905.260 (a) through (d) and (f) revised 40116
905.265 (b) amended 40116
905.335 Amended 40117
905.346 Added 33853, 40117
905.350 Removed 40117
905.407 (b)(3) revised 40117
905.413 (b) revised 40117
905.416 (d) amended 40117
905.427 (b) heading revised; (b)(1) and (e) amended 40117
905.431 (a) amended 40117
905.434 (b) introductory text amended 40117
905.440 (e)(1) correctly designated 37085
(e)(5) amended 40117
905.443 (a)(2), (b)(1) and (c)(3) amended; (g) added 40117
905.602 (d) added 28785
905.627 (b) revised 28785
905.639 (c) correctly revised 15014
905.923 (b)(3) revised 40118
905.925 Removed 40118
905.963 Heading corrected 37085
905.1001—905.1021 (Subpart O) Regulation at 56 FR 47860 effective date extended through 1-20-93 31962
Regulation at 56 FR 47860 effective date extended 6092
906 Regulation at 56 FR 47866 effective date extended through 1-20-93 31962
Regulation at 56 FR 47860 effective date extended 6092
941.202 (d) revised; interim 4270
941.208 (d) revised; interim 14761
961 Revised 3163
961.40 (a)(2) introductory text revised; (a)(2)(iii) added; interim 14761
963 Added 20189
965 Authority citation revised 33853
965.101 (d) amended 28358
965.302 Revised 28358
965.401 Amended 28358
965.471 Revised 28358
965.472 Amended 28358
965.701 Revised 28358
965.800—965.805 (Subpart I) Added 33853
968.102 (d) added 28785
968.110 (e)(1), (2) and (f) revised; interim 14761
968.225 (b) revised 28785
990 Authority citation revised 61231
990.301—990.325 (Subpart C) Added 61231
Regulation at 57 FR 61231 comment period extended (OMB number pending) 4318

Chapter XII—Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

2003 Added 62142

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CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 24

Chapter XX—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

Page

3500 Revised 49607
Interpretive rule 5520
3500.2 (a)(3)(ii)(D) corrected 56857
3500.13 (a) corrected 56857
3500.14 (g)(4) corrected 56857
3500.15 (b)(2) corrected 56857
3500.20 (d)(2)(ii) corrected 56857
3500 Appendixes A through D corrected 56857

Title 24—*Proposed Rules:*

10 47166
50 13592
55 13592
92 34640
200 13592
203 ..... 13592, 24424
204 ..... 13592, 24424
207 37119
213 37119
220 37119
221 37119
231 37119
232 37119
234 37119
242 37119
244 37119
251 59314
252 59314
255 59314
290 34834
812 12686
880 49120
881 49120
882 ..... 12686, 49120
883 49120
884 49120
886 ..... 34834, 49120
887 12686
888 ..... 18684, 49120
905 ..... 27716, 54196, 59316
912 12686
965 54196
990 ..... 11448, 27716
2003 38804

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

Page

101 Authority citation revised 46471
101.1 Revised 46471
101.3 (a) amended 46471
101.4 Amended 46471
101.6 (a) amended 46473
101.11 (b) and (c) revised 46472
101.15 (j) through (s) added 46472
101.20 Removed; new 101.20 redesignated from 101.21; (e) removed; (f) redesignated as (e) 46472
101.21 Redesignated as 101.20; new 101.21 redesignated from 101.22 46472
101.22 Redesignated as 101.21; new 101.22 redesignated from 101.23 46472
101.23 Redesignated as 101.22; new 101.23 redesignated from 101.24 46472
101.24 Redesignated as 101.23; new 101.24 redesignated from 101.25 46472
101.25 Redesignated as 101.24; new 101.25 redesignated from 101.26 46472
101.26 Redesignated as 101.25 46472
103 Authority citation revised 46472
103.1 Revised 46472
103.7 Amended 46473
103.10 (e) and (f) added 46473
103.13 (a) revised 46473
103.15 Heading, (a) and (c) revised 46473
103.16 Revised 46473
103.17 (a) amended 46473
103.23 (b) amended 46473
103.27 Amended 46473
103.30 (a) revised 46473
103.34 Amended 46473
103.36 Revised 46473
103.38 Amended 46474
103.42 (a) introductory text revised; (a)(5) added; (c) amended 46474
103.43 Revised 46474

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

103.44 Amended....46474
103.46 Existing text designated as (a); (b) added....46474
103.51 Amended....46475

Chapter III—National Indian Gaming Commission (Parts 500—599)

501 Added....5810
502 Added....12392
Effective date corrected....20145
515 Added....5815
519 Added....5810
522 Added....5810
523 Added....5812
524 Added....5812
531 Added....5828
533 Added....5829
535 Added....5830
537 Added....5831
539 Added....5832
556 Added....5813
558 Added....5814
571 Added....5842
573 Added....5844
575 Added....5844
577 Added....5845

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.709 (d) revised....24363

Title 25—*Proposed Rules:*

23 4046
67 45252
211 40298
212 40298
248 45258
515 ....30346, 30353, 34809
517 55212
519 ....30346, 34349
522 ....30346, 34349
523 ....30346, 34349
524 ....30346, 34349
531 37656
533 37656
535 37656
537....37656
539 37656
556 ....30346, 34349
558 ....30346, 34349
571 ....30584, 34809
575 30584
577 ....30584, 34809

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TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

Page

1 Authority citation amended...10994, 12210, 12419, 13022, 14795, 15241, 19255, 20748, 20977, 22649, 24749, 36002, 38282, 38596, 40121, 40321, 40843, 41649, 44978, 45711, 48981, 53032, 54923, 55448, 58984, 60988, 61298, 61316, 61800, 61808, 61812, 61818
Authority citation amended...232, 236, 4080, 5271, 5929
Technical correction...21152, 21855, 21894, 31754, 47994, 57280
1.32-1 Redesignated from 1.43-1....54923
1.32-2 Redesignated from 1.43-2....54923
1.42-4 Added....24749
1.42-5 Added; eff. 6-30-93....40121
(c)(1)(vii), (c)(3), (e)(2) and (f)(1)(ii) corrected....57280
1.43-0 Added....54923
1.43-1 Redesignated as 1.32-1; new 1.43-1 added....54923
1.43-2 Redesignated as 1.32-2....54923–Added....54925
1.43-3 Redesignated from 1.43-3T; (a)(3)(ii)(B) and (e) removed; (a)(3)(i)(C)(*2*) and (ii)(C) redesignated as (a)(3)(i)(C)(*3*) and (ii)(B); heading, (a)(3)(i)(C)(*1*), new (a)(3)(i)(C)(*3*) and (ii)(B) amended; new (a)(3)(i)(C)(*2*), (ii)(C) and (D) added; (a)(3)(ii)(A) revised....54927
1.43-3T Redesignated as 1.43-3....54927
1.43-4 Added....54927
1.43-5 Added....54930
1.43-6 Added....54930
1.43-7 Added....54930
1.56(g)-0 Amended....60476
1.56(g)-1 (a)(6)(i) and (d)(2)(ii)(B) revised; (a)(7), (f)(3), (m), (r) and (s) added....60477
1.58-9 Added....19255

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 26 Chapter I—Con. Page

(c)(3)(iii)(A)(*3*)(*iii*), (d) *Example* 1, *Example* 2 and (e)(2)(i) corrected **24848**
1.58-9T Removed **19262**
1.61-2T (c)(3)(i) heading and (ii) removed; (c)(3)(i) redesignated as (c)(3) **62195**
1.61-3 (a) amended **12419**
1.61-21 (a)(7), (c)(2)(i), (3)(i), (4) and (7) amended; (c)(1), (3) heading, (3)(i) heading and (ii) revised; (c)(2)(ii) and (iii) redesignated as (c)(2)(iii) and (iv); new (c)(2)(ii) added **62195**
1.62-1 Added **57668**
(c) corrected **60568**
1.62T (c)(2) and (f) removed; (e)(1) amended **57668**
1.62-2 (c)(1), (5), (d)(3)(ii), (e)(2), (h)(2)(i)(B)(*1*) amended **57668**
1.62-25 (b) corrected **60568**
1.67-3 Added **40321**
1.79-3 (d)(2) revised **33635**
1.79-3T Removed **33635**
1.103-13 (f) removed **20977**
1.103-14 (e) removed **20977**
1.103-15 (c) revised **20977**
1.103-18 (a), (c)(2)(B), (d), (f)(2)(i), (ii), (g)(3)(ii) and (3)(iv) corrected; (k)(2)(i) correctly designated **13027**
(l)(2)(i) corrected; (l)(3) correctly added **13028**
(c)(1)(iii) corrected **26891**
(c)(2)(ii)(B) corrected **28611, 36001**
1.108-2 Added **61808**
1.132-0 Amended **62196**
1.132-1 (g) amended **62196**
1.132-5 (b)(1)(iv) amended **57669**
(m)(1) amended; (m)(2)(i) revised; (m)(6) redesignated as (m)(8); (m)(2)(v), (3)(iv), new (6), (7), (new (8) *Examples* 6 and 7 and (r) added **62196**
1.148-0 Added **20977**
(b)(3) and (d) corrected **44989**
(b)(4) corrected **45878**
1.148-0T Removed **20977**
1.148-1 Added **20982**
(a) corrected **44989**
(b)(1)(ii) corrected **45878, 48851**
1.148-1T Removed **20977**
1.148-2 Added **20984**

Page

(c)(1), (2) *Example* 2, (d)(2) and (4) corrected **44990**
(b)(2)(iii) and (c)(2) *Example* 3 corrected **45878**
(c)(2) *Example* 3 corrected **48851**
1.148-2T Removed **20977**
1.148-3 Added **20987**
(b)(7)(iv)(B), (c)(7) *Example* 2, (d)(4) *Example* 9 and *Example* 11 corrected **44990**
(c)(7) *Example* 9 and (d)(4) *Example* 11 corrected **45879**
1.148-3T Removed **20977**
1.148-4 Added **21005**
(c)(5), (d)(3)(ii) and (e)(6)(i)(A) corrected **44990**
1.148-4T Removed **20977**
1.148-5 Added **21011**
(c)(1)(iii) corrected **44990**
1.148-5T Removed **20977**
1.148-6 Added **21012**
(i)(2) corrected **44990**
(b)(5)(ii) and (m)(4) corrected **45879**
1.148-6T Removed **20977**
1.148-7 Added **21020**
1.148-7T Removed **20977**
1.148-8 Added **21020**
(c)(3), (d)(3), (e)(13), (14) and (h)(4) corrected **44990**
1.148-8T Removed **20977**
1.148-9 Added **21024**
(h) correctly removed **44990**
1.148-9T Removed **20977**
1.148-10 (c) through (i) added **21024**
1.148-10T Removed **20977**
1.148-11 Added **21025**
(b)(2)(i) introductory text, (C), (c)(1)(i)(A), (e)(2)(i), (ii), (f)(2)(vii), (3), (g) and (j)(5) corrected **44990**
Heading and (j)(3) corrected **45879**
Heading corrected **48851**
1.148-12T Added **21030**
1.148-13T Added **21031**
(b)(1) corrected **44991**
1.149(d)-1 Added **21031**
(d)(2) corrected **44991**
1.149(d)-1T Correctly removed **44991**
1.149(e)-1 Added **36002**
1.149(e)-1T Removed **36002**
1.150-0 Added **21031**
1.150-0T Correctly removed **44991**

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CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

1.150-1 (g) corrected; (h)(1) correctly designated 13028
(a) through (e) revised 21031
1.150-1T Correctly removed 44991
1.162-10T Amended 43896
1.162-25 Added 57669
(b) corrected 60568
1.162-25T (b) removed 57669
1.163-12 Added 236
1.166-2 (d)(3)(iii)(D), (E), and (iv)(C)(2) revised 45569
1.166-2T Added 45569
1.168(d)-0 Added 48981
1.168(d)(1) Added 48981
1.168(j)-1T Amended 43896
1.179-0 Added 61316
1.179-1 (j) redesignated as (k); (a) through (d), (e)(4), (f)(1), (h) and (i)(2) revised; (e)(1), (f)(2), (3) and new (k) amended; new (j) added 61316
1.179-2 Revised 61318
1.179-3 Redesignated as 1.179-4; new 1.179-3 added 61321
1.179-4 Redesignated as 1.179-5; new 1.179-4 redesignated from 1.179-3 61321
Introductory text and (a) revised; (b) removed; (c) through (g) redesignated as (b) through (f) 61323
1.179-5 Redesignated as 179-6; new 1.179-5 redesignated from 1.179-4 61321
(a) concluding text amended 61323
1.179-6 Revised 61323
1.263(a)-1 (b) amended 12419
1.263A-1T (a)(5)(i) revised 12419
1.267(a)-3 Added 237
1.274 (d)-1 Added 57669
1.274-5T (e)(1)(ii), (l) and (m) amended; (g) revised 57669
1.337(d)-1 (a)(5) Example 8 amended 53550
1.337(d)-2 (c)(1)(i) introductory text amended 53550
1.355-2 (d)(3)(iv) amended 28463
1.367(e)-0T Removed 5929
1.367(e)-0 Added 5930
1.367(e)-1T Removed 5929
1.367(e)-1 Added 5930
1.382-1 Removed; new 1.382-1 redesignated from 1.382-1T; heading and introductory text revised 45711

Page

1.382-1T Redesignated as 1.382-1 45711
1.382-2 (a)(3)(ii) *Example* 2 and *Example* 3 corrected 24188
Heading revised; (a)(3) redesignated as 1.382-3 (a)(1) 45712
1.382-2T (h)(4)(x)(J) added 12210
(j)(2)(iii)(A) amended 38282
(f)(7), (g)(4) *Example* 5, (h)(4)(x)(J) and (j)(2)(iii)(A) amended; (h)(4)(x)(Z) revised 45712
(f)(7) corrected 52827
1.382-3 (e) and (o) added 12210
Redesignated as 1.382-9; new 1.382-3 redesignated from 1.382-4; (a) heading and (2) added; (a)(1) redesignated from 1.382-2 (a)(3); (a)(1) introductory text, *Example* 1, *Example* 2, *Example* 3, (iii)(A), (B), (C) and (k)(2)(ii) amended 45712
(a)(1)(ii) *Example* 1 corrected 52827
1.382-4 Added 38282
Redesignated as 1.382-3 45712
Added 45713
1.382-5 Added 45713
1.382-6 Added 45713
1.382-7 Added 45713
1.382-8 Added 45713
1.382-9 Redesignated from 1.382-3 45712
(o)(2) amended 45713
1.383-0—1.383-2 CFR correction 39359
1.383-2 (c) correctly designated from 1.383-2T; CFR correction 39359
1.383-2T Correctly designated as 1.383-2; CFR correction 39359
1.401(a)(31)-1T Added 48166
1.401(k)-1 (f)(3)(ii) correctly revised 59915
1.402(c)-2T Added 48168
1.402(f)-2T Added 48171
1.403(b)-2T Added 48171
1.404(a)-1T Amended 43896
1.404(b)-1T Amended 43896
1.404(d)-1T Amended 43896
1.414(r)-8 (b)(2)(iii) revised 52591
1.446-1 (c)(1)(ii) revised 12419
1.451-3 (a)(8) added 12420
1.451-6 (a)(1) revised 38595

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CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 26 Chapter I—Con. Page

1.451-6T Removed..... 38595
1.453C-3T (c)(4) amended..... 43896
1.453C-8T (a)(1) amended..... 43896
1.458-1 Added..... 38596
(b)(5)(i) correctly designated; (e)(4) *Example* corrected..... 45879
1.458-2 Redesignated from 1.458-10..... 38599
1.458-10 Redesignated as 1.458-2..... 38599
1.461-0 Added..... 12420
1.461-1 (a)(2) and (3) revised..... 12420
1.461-2 Heading and (g) revised; (f) and (h) removed..... 12421
1.461-3T Redesignated as 1.461-7T..... 12421
1.461-4 Added..... 12421
1.461-5 Added..... 12427
1.461-6 Added..... 12428
1.461-7T Redesignated from 1.461-3T..... 12421
1.461(h)-4T Removed..... 12421
1.468A-0 Amended..... 62199
1.468A-1 (b)(3) revised..... 62199
1.468A-2 (d)(2)(i) amended..... 62199
1.468A-3 (a)(1) amended; (h)(1)(iii) revised; (h)(2)(xii) and (i)(1)(ii) redesignated as (h)(2)(xv) and (i)(1)(ii)(A); (h)(2)(xiv) added..... 62199
1.468A-4 (d)(4) removed; (d)(5) and (6) redesignated as (d)(4) and (5); (a), (b)(3), (c)(4) and new (d)(5)(ii) revised..... 62199
1.468A-5 (a)(1)(i)(B), (a)(1)(iv), (a)(3)(i)(C) and (a)(3)(ii) revised; (a)(1)(iii) removed; (a)(1)(v) redesignated as (a)(1)(iii)..... 62200
1.468A-8 (b)(11) added..... 62200
1.468B Added..... 60988
1.468B-0 Added..... 60988
1.468B-1 Added..... 60989
1.468B-2 Added..... 60991
1.468B-3 Added..... 60992
1.468B-4 Added..... 60994
1.468B-5 Added..... 60994
1.469-0 Added..... 20748
1.469-0T Removed..... 20748
1.469-1 Added..... 20750
(f)(4)(iii) *Example* 6 corrected..... 28612
1.469-1T (d)(2), (e)(2), (3)(iii), (vi)(D), (E), (4)(iv), (5), (f)(4), (g)(4)(ii)(C), and (h)(4) revised..... 20753
1.469-2 Added..... 20754
1.469-2T (c)(2)(iii), (iv), (6)(i), (ii), (iii), (iv) *Example* 1, *Example* 2, (d)(2)(ix), (5)(iii)(A), (6)(v)(E), (8), (e)(2)(ii), (iii), (3)(iii)(B), (f)(5)(i), (6), (9)(iii), (iv) and (10) revised..... 20758
1.469-3 Added..... 20758
1.469-3T (e) and (f) revised..... 20758
1.469-5 Added..... 20758
1.469-5T (f)(1), (h)(3), (j) and (k) *Example* 5 revised..... 20759
1.469-6T Removed..... 20759
1.469-7T Removed..... 20759
1.469-8T Removed..... 20759
1.469-9T Removed..... 20759
1.469-10T Removed..... 20759
1.469-11 Added..... 20759
1.469-11T Removed..... 20759
1.482-1 Redesignated as 1.482-1A; eff. 4-21-93..... 5271
1.482-1A Redesignated from 1.482-1; undesignated centerheading added; eff. 4-21-93..... 5271
1.482-2 Redesignated as 1.482-2A; eff. 4-21-93..... 5271
1.482-2A Redesignated from 1.482-2; eff. 4-21-93..... 5271
1.482-0T Added; eff. 4-21-93..... 5271
1.482-1T Added; eff. 4-21-93..... 5272
1.482-2T Added; eff. 4-21-93..... 5282
1.482-3T Added; eff. 4-21-93..... 5282
1.482-4T Added; eff. 4-21-93..... 5287
1.482-5T Added; eff. 4-21-93..... 5290
1.482-6T Added; eff. 4-21-93..... 5293
1.482-7T Added; eff. 4-21-93..... 5293
1.509(a)-3 (a)(3)(i) amended..... 33443
1.512(b)-1 (a) revised..... 33443
(a)(3) corrected..... 42490
1.593-11 (b)(1) amended; (e) added..... 61298
1.597-8T Added..... 14795
1.613-1 (a) amended..... 43899
1.613A-0 Amended..... 43899
1.613A-2 (a)(3) revised; (b) and (c) redesignated as (c) and (d); new (b) added..... 43899
1.613A-3 (e), (f), (i)(2) and (j)(1) added; (h)(1) amended 43900
(e) and (h) corrected..... 60474

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CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

1.613A-7 (e) added; (f)(1), (n), (o) and (r)(1) concluding text amended; (h) revised..... **43903**
1.636-4 (c)(2) amended..... **43896**
1.702-3T (c) amended..... **43896**
1.704-1 (b)(2)(ii)(*d*)(*6*) corrected; (b)(2)(iv)(*r*) amended..... **11430**
1.704-2 (f)(3), (h)(1), (4), (l)(1)(ii) and (m) *Example* 4 corrected..... **11430**
(b)(4), (c), (e)(3), (f)(7) *Example* 1, *Example* 2 and (i)(4) corrected..... **28611**
(a), (d)(4)(ii), (f)(7), (g)(1)(ii), (l)(1)(iii)(A) and (m) *Example* 1 and *Example* 3 corrected..... **37189**
1.705-1 (a)(2)(iii) revised; (a)(4) redesignated as (a)(6); new (a)(4) and (5) added..... **43904**
1.707-0 Added..... **44978**
1.707-2 Added..... **44978**
1.707-3 Added..... **44978**
1.707-4 Added..... **44981**
(a)(3)(ii), (4) *Example* 1 and *Example* 2 corrected..... **56444**
1.707-5 Added..... **44983**
1.707-6 Added..... **44987**
1.707-7 Added..... **44988**
1.707-8 Added..... **44988**
1.707-9 Added..... **44989**
1.846-0 Added..... **40843**
Corrected..... **48563**
1.846-1 Added..... **40844**
1.846-2 Added..... **40845**
1.846-3 Added..... **40845**
(f) *Example* 5 corrected..... **48563**
Regulation at 57 FR 40846 corrected..... **57531**
1.846-4 Added..... **40847**
1.848-0 Added..... **61818**
1.848.1 Added..... **61819**
1.848.2 Added..... **61821**
1.848.3 Added..... **61829**
1.856-3 (b) redesignated as (b)(1); new (b)(1) heading and (b)(2) added; (c) revised..... **61298**
1.856-9 (d)(2) amended..... **43896**
(d)(2) corrected..... **47373**
1.860A-0 Added..... **61299**
1.860A-1 Added..... **61299**
1.860C-1 Added..... **61299**
1.860C-2 Added..... **61299**
1.860D-1 (a) and (b) added; (c)(2) revised..... **61**

Page

1.80E-1 Added..... **61302**
1.860E-2 Added..... **61302**
1.860F-1 Added..... **61302**
1.860F-2 Added..... **61302**
1.860F-4 (f) added..... **61306**
1.860G-1 through 860G-3 Added..... **61306**
1.861-10 Added..... **13022**
(e)(3)(ii), (iii)(A), (6) and (11) *Example* corrected..... **28012**
1.871-2 (c) added..... **15241**
1.871-9 Amended..... **15241**
1.884-0 Added..... **41649**
(b) corrected..... **49117, 60126**
1.884-0T Removed..... **41649**
1.884-1 Added..... **41651**
(d)(6)(iv), (e)(5) *Example* 2 and (f)(2)(iv) corrected..... **49117**
(b)(4) *Example* 5, (d)(2)(vii) and (3)(iii) *Example* corrected..... **60126**
1.884-1T Removed..... **41649**
(b)(3) and (c)(2) introductory text corrected..... **49117**
1.884-2T (a)(2)(i), (ii), (c)(2) introductory text, (iii), (3), (4)(iii), (5), (6) concluding text, (d)(3) introductory text, (ii) and (6) *Example* amended; (b) revised..... **41659**
(c)(3) corrected..... **60126**
(b) corrected..... **60126**
1.884-4 Added..... **41660**
(b)(5)(i), (c)(1)(iv) *Example* 1 and (3)(i) corrected..... **49117**
(b)(6)(ii) corrected..... **60126**
1.884-4T Removed..... **41649**
1.884-5 Added..... **41666**
(b)(1)(i)(D), (3)(i), (6)(iv), (e)(3)(iii) and (4)(ii) corrected..... **49117**
(b)(1)(iv)(B), (3)(iii) concluding text, (v) and (e)(4)(iii) corrected..... **60126**
1.884-5T Removed..... **41649**
1.904-0 Revised..... **20642**
1.904-4 (c)(8) removed; (c)(9) redesignated as (c)(8); (b)(1)(i), (2)(i), (iv), *Example*, (c)(1), (2)(ii), (7)(ii), (iii), new (c)(8), (e)(3)(i) and (iii) amended; (c)(4) introductory text, (5)(ii), (iii), (6)(ii), (e)(1) and (2)(i)(V) revised; (c)(5)(iv) added; (e)(3)(iii)(A)

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 26 Chapter I—Con.

Page

designation removed; (e)(3)(iii)(B) redesignated as (e)(3)(iv)..... **20644**
(h)(3)(iv) and (v) redesignated as (h)(4) and (5), new (h)(5)(A), (B) and (C) redesignated as (h)(5)(i), (ii) and (iii); (e)(3)(iv), (f), (g)(1), (2)(ii)(A), (iv), new (h)(5)(i) and (ii) amended; (e)(5)(i), (ii), (g)(3)(i), (h)(3)(iv), (5)(iii) *Example* 2, *Example* 4 and (l) added; (h)(2), (3) introductory text, (i), (ii), (iii), new (h)(4) introductory text, *Example* 1, *Example* 2, *Example* 3, (5)(iii) introductory text, *Example* 1 and (k) revised..... **20645**
(c)(1) corrected..... **45660**
1.904-5 (a) introductory text, (3), (b), (c)(1)(i), (ii), (2)(iii)(A) and (2)(iv) amended; (c)(2)(i), (ii) introductory text, (ii)(B), (D) and (E) revised..... **20648**
(c)(3), (4)(ii), (d)(2), (3), *Example* 1, *Example* 2, (e)(1), (f)(1), (2), (i)(1), (l), (m)(2) and (3) *Example* 4 amended; (c)(4)(iii) *Example* 1, (d)(1), (f)(3), (g), (h)(3), (i)(3), (j), (k)(1) and (m)(7) revised; (f)(2) redesignated in part as (f)(2)(i) and amended; (f)(2)(ii) and (i)(4) added..... **20649**
1.904-6 Heading, (a) heading, (2) and (b)(2)(i) revised; (a)(1)(ii), (b)(1) and (c) amended; (a)(1)(iv) added..... **20652**
1.904-7 (a) revised; (c) and (d) amended..... **20653**
1.904(b)-3 (f) amended..... **15241**
1.953-2 (d) amended..... **15241**
1.985-0 Amended..... 232
1.985-5 Added..... 232
1.985-5T Removed..... 232
1.985-6 Added..... 232
1.985-6T Removed..... 232
1.1275-3 Added..... **40322**
(c)(1) corrected..... **46243**
1.1286-1 Added..... **61812**
1.1286-1T Removed..... **61812**
1.1291-0T Revised (temporary)..... **10994**

Page

1.1291-9T Added (temporary)..... **10994**
(e) corrected..... **28463**
1.1291-10T (b)(2), (d)(2)(vii) and (e) revised; (b)(4) and (f) added (temporary)..... **10996**
(b)(2)(ii) corrected..... **28463**
1.1295-1T Removed (temporary)..... **10996**
1.1303-1 (b) amended..... **15241**
1.1361-0—1.1375-1A Undesignated center heading added..... **22649**
1.1361-0 Redesignated from 1.1360-0A; nomenclature change..... **22649**
1.1361-0A Redesignated as 1.1360-0..... **22649**
1.1361-1 Added..... **22649**
(b)(1), (6), (l)(4)(v) *Example* 2 and (l)(7) corrected..... **28613**
1.1362-0 Added..... **55448**
Corrected..... 3330
1.1362-1 Added..... **55449**
1.1362-2 Added..... **55449**
1.1362-3 Added..... **55452**
1.1362-4 Added..... **55453**
1.1362-5 Added..... **55454**
1.1362-6 Added..... **55454**
1.1362-7 Added..... **55456**
1.1363-1 Added..... **55456**
1.1374-1 Redesignated from 1.1374-1A; (b)(2) and (d)(2) amended..... **22653**
1.1374-1A Redesignated as 1.1374-1..... **22653**
1.1375-1 Redesignated from 1.1375-1A; (b)(1)(ii) and (c)(2) concluding text amended..... **22653**
1.1375-1A Redesignated as 1.1375-1..... **22653**
1.1441-5 (d) amended..... **15241**
1.1502-13T (o)(1)(i) corrected..... **21152, 48426**
1.1502-20 (a)(5) *Example* 6, (e)(1), (2)(i)(B)(*2*) introductory text, and (h)(1) amended; (c)(2)(i)(D) and (v) revised..... **53550**
1.1502-21 (g) revised..... **53034**
1.1502-75 (d)(5) redesignated from 1.1502-75T (d)(5)..... **44333**
1.1502-75T Heading revised; (d)(5) redesignated as

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

1.1502-75 (d)(5); (c) and (d) removed ... **44333**
1.1502-77 (e) revised ... **53034**
1.1502-78 (b)(3) revised ... **53034**
1.1503-2 Added ... **41084**
(g)(2)(iii)(A) introductory text, (A)(*7*), (vii)(C)(*1*), (h)(2)(ii) and (3) corrected ... **48722**
(c)(16) *Example* 4, (d)(3)(i)(A), (4) *Example* 1, (e)(3) and (g)(2)(iii)(1) corrected ... **57280**
1.1503-2A Undesignated center heading added; 1.1503-2A redesignated from 1.1503-2T; heading amended ... **41093**
1.1503-2T Redesignated as 1.1503-2A; heading amended ... **41093**
1.1504-0 Added ... **61800**
1.1504-4 Added ... **61801**
1.6012-7T Added ... 4080
1.6013-6 (a)(2)(ii) amended ... **15241**
1.6041-1 (b) text redesignated as (b)(1); new (b)(1) heading and (b)(2) added ... **61313**
1.6045-1 (c)(3) revised; (c)(7) added ... **53032**
(c)(3) revised ... **58984**
1.6049-7 (f)(2)(i)(G) revised ... **40322**
(g) corrected ... **46243**
1.6061-2T Added ... 4080
1.6065-2T Added ... 4080
1.6411-4 Revised ... **53034**
1.6695-1 (f) reinstated ... **60733**
1.7701-13A (e)(12) added ... **61313**
1.7704-2 Added ... **58708**
5c.0 Redesignated as 301.9100-4T ... **43895**
5f.0 Redesignated as 301.9100-5T ... **43895**
5f.103-3 (a) amended ... **36003**
5h Removed ... **43895**
5h.4 Redesignated as 301.9100-6T ... **43895**
5h.5 Redesignated as 301.9100-7T ... **43895**
5h.6 Redesignated as 301.9100-8 ... **43895**
6 Removed ... **43896**
6.1 Redesignated as 301.9100-9T ... **43896**
6.2 Redesignated as 301.9100-10T ... **43896**
6.3 Redesignated as 301.9100-11T ... **43896**

Page

7.0 Redesignated as 301.9100-12T ... **43896**
7a Removed ... **43896**
7a.1 Redesignated as 301.9100-13T ... **43896**
7a.2 Redesignated as 301.9100-14T ... **43896**
7a.3 Redesignated as 301.9100-15T ... **43896**
10 Removed ... **43896**
10.2 Redesignated as 301.9100-16T ... **43896**
13 Authority citation revised ... **43896**
13.0 Redesignated as 301.9100-17T ... **43896**
13.1 Redesignated as 301.9100-18T ... **43896**
14 Removed ... **43896**
14.1-1 Redesignated as 301.9100-19T ... **43896**
14a Authority citation revised ... **43896**
14a.422A-1 Amended ... **43896**
18 Authority citation revised ... **43897**, **55457**
18.1362-1 Removed ... **55457**
18.1362-2 Removed ... **55457**
18.1362-3 Removed ... **55457**
18.1362-4 Removed ... **55457**
18.1362-5 Removed ... **55457**
18.1366-5 (c) amended ... **43897**
19 Authority citation revised ... **43896**
19.2-1 Redesignated as 301.9100-20T ... **43896**
25.2701-1 (b)(2)(i)(C) introductory text, (*2*), (ii) introductory text, (E), (c)(3) and (4) corrected ... **11264**
25.2701-3 (b)(1) and (2) correctly added; (b)(3), (4)(ii)(A), (iv), (5)(i), (d) *Example* 1, *Example* 2, *Example* 4 and *Example* 5 corrected ... **11265**
25.2702-5 (c)(8)(ii)(C)(*2*)(*i*) and (*ii*) correctly added; (c)(8)(ii)(*3*) corrected; (c)(8)(ii)(*2*)(*iii*) removed ... **11265**
25.2704-2 (b) corrected ... **11265**
25.2704-3 Corrected ... **11265**
31 Authority citation amended ... **13031**, **15241**, **44102**
Technical correction ... **61612**
31.3121(b)(19)-1 (a)(1) amended ... **15241**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 26 Chapter I—Con. Page

31.3306(c)(18)-1 (a)(1) amended **15241**
31.3402(f)(1)-1 OMB number **15241**
31.3405(c)-1T Added **48172**
31.3406-0 Added **13031**
31.3406(d)-5 Added **13031**
31.6302-0 Added **44102**
31.6302-1 Added **44102**
31.6302-2 Added **44105**
31.6302-3 Added **44106**
31.6302(c)-1 Heading, (a) introductory text and (1)(ii) introductory text revised **44106**
31.6302(c)-2 Heading and (a)(2) heading revised **44106**
31.6301-1 (h)(1) corrected **48724**
35a Authority citation amended **13055**
35a.3406-1 Removed **13035**
40 Revised **48177**
40.0-1 (b) and (e) corrected 6575
40.6071(a)-2 (a) corrected 6575
40.6302(c)-0 Corrected 6575
40.9999-1 (3) *Example* 3 corrected 6575
43 Authority citation revised **48185**
43.0-1 Redesignated from 43.0-1T; heading amended **33636**
Revised **48185**
43.0-1T Redesignated as 43.0-1 ..... **33636**
43.4471-1 Redesignated from 43.4471-1T; heading amended **33636**
43.4471-1T Redesignated as 43.4471-1 ..... **33636**
43.4472-1 Added **33636**
(f)(2) corrected **45713**
43.6011(a)-1T Removed **48185**
43.6011(a)-2T Removed **48185**
43.6071(a)-1T Removed **48185**
43.6091-1T Removed **48185**
43.6101-1T Removed **48185**
43.6109(a)-1T Removed **48185**
43.6151(a)-1T Removed **48185**
43.6302(c)-1T Removed **48185**
44 Authority citation revised **48185**
44.4402-1 Redesignated from 44.4402-1T; heading amended **48185**
44.4402-1T Redesignated as 44.4402-1 ..... **48185**
44.6091-1 Authority citation removed **48185**
46 Authority citation revised **48185**
46.0-1 Added **48185**
46.0-1T Removed **48185**
46.4371-1—46.4374-1 (Subpart B) Authority citation removed **48186**
46.4371-4 Authority citation removed **48186**
46.6001-1—46.7805-1 (Subpart E) Removed **48186**
48 Authority citation amended **32428**
Authority citation revised **48186**
48.0-1 Added **48186**
48.0-1T Removed **48186**
48.4041-2T Authority citation removed **48186**
48.4042-2(d) Removed **48186**
48.4051-1T Removed **48186**
48.4061(a)—48.4121-1 (Subpart H) Heading revised **48186**
48.4081-0 Added **32429**
48.4081-1 Added **32429**
48.4081-2 Added **32430**
48.4081-3 Added **32431**
48.4081-4 Added **32432**
(b) introductory text and (e)(3) corrected **39421**
48.4081-5 Added **32433**
(a) corrected **39422**
48.4081-6 Added **32433**
(b)(2)(i), (f)(4) *Example* 2, (g)(1)(ii) and (2)(iii) corrected **39422**
48.4081-7 Added **32436**
48.4081-8 Added **32437**
48.4081-9 Added **32437**
48.4082-1 Removed **32428**
48.4083-1 Removed **32428**
48.4083-2 Removed **32428**
48.4084 Removed **32428**
48.4084-1 Removed **32429**
48.4091—48.4093 Undesignated heading removed **48186**
48.4091 Removed **48186**
48.4091-0 Removed **48186**
48.4091-1 Removed **48186**
48.4091-2 Removed **48186**
48.4091-3 Removed **48186**
48.4091-4 Removed **48186**
48.4091-5 Removed **48186**
48.4092-1 Removed **48186**
48.4093-1 Removed **48186**
48.4093-2 Removed **48186**
48.4121-1 (e) removed; redesignated as Subpart I **48186**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

48.4161(a)—48.4182-2 (Subpart K) Heading revised; undesignated center heading removed....48186
48.4181-1 Removed....48186
48.4181-2 Removed....48186
48.4182-1 Removed....48186
48.4182-2 Removed....48186
48.6011(a)-1 Removed....48186
48.6011(a)-2 Removed....48186
48.6071(a)-1 Removed....48186
48.6081(a)-1 Removed....48186
48.6091-1 Removed....48186
48.6101-1 Removed....48186
48.6109-1 Removed....48186
48.6151-1 Removed....48186
48.6151-1T Removed....48186
48.6161(a)-1 Removed....48186
48.6302(c)-1 Removed....48186
48.6302(c)-2 Removed....48186
48.6402(a)-1 Removed....48186
48.6404(a)-1 Removed....48186
48.9000-0 Removed....32429
49 Authority citation revised....48186
49.0-1 Added....48186
49.0-1T Removed....48186
49.4251-2 (c) revised....48186
49.4271-1 Redesignated from 49.4271-1T; designated as subpart E; heading amended; authority citation removed....48186
49.4271-1T Redesignated as 49.4271-1....48186
49.6011(a)-1—49.6302(c)-1 (Subpart G) Removed....48186
51 Removed....48186
52 Authority citation revised....48186
52.0-1 Added....48186
52.0-1T Removed....48186
52.4681-1 (b)(4) revised....48186
52.6011(a)-1T Removed....48186
52.6011(a)-2T Removed....48186
52.6071(a)-1 Removed....48186
52.6071(a)-2T Removed....48186
52.6071(a)-3T Removed....48186
52.6091(a)-1T Removed....48186
52.6101-1T Removed....48186
52.6109(a)-1T Removed....48186
52.6151(a)-1T Removed....48186
52.6302(c)-1 Removed....48186
52.6302(c)-2T Removed....48186
53 Authority citation revised....33444
53.4940-1 (d)(1) amended....33444
145 Authority citation revised....48187

Page

145.9000-1 Removed....48187
148 Authority citation revised....48187
148.1-3 Removed....48187
148.1-4 Removed....48187
150 Removed....48187
40—156 (Subchapter D) Appendix removed....48187
301 Authority citation amended....15017, 15241, 43894, 53034
Technical correction....21855, 22167
301.6332-1(a)(1), (2) heading and (b)(2) amended....17
(c) revised....3829
301.6332-3 Added....18
301.6402-6 Added....13038
(a)(2)(ii), (b)(1)(i), (2), (j) and (m) corrected....36691
301.6402-7 Redesignated from 301.6402-7T; heading and (d)(2)(i) revised; (e)(1) and (3) amended....53034
301.6402-7T Redesignated as 301.6402-7....53034
301.6501(c)-1 (e)(3) corrected....11265
301.6621-3 Added....53554
(d) *Example* 3 (i) and *Example* 5 (ii) corrected....60846
301.6621-3T Removed....53557
301.6724-1 (f)(1)(ii), (3), (g) and (h)(2)(i) amended; (f)(2) revised....13035
301.7216-2 (o) amended....37086
301.7429-1 Revised....58985
301.7429-2 Revised....58985
301.7429-3 Revised....58985
301.7514-1 (a)(2)(ii) and (5)(ii) amended; (a)(2)(iii) through (vi) and (7) added; (a)(3) and (6) revised....15015
301.7624-1 Redesignated from 301.7624-1T; heading amended....15017
301.7624-1T Redesignated as 301.7624-1....15017
301.7701-10 Amended....15241
301.7701-13A (e)(12) added....61313
301.7701(b)-0 Added....15241
301.7701(b)-1 Added....15242
(e) *Example* 3 corrected....28612
(e) *Example* 1 corrected....37190
301.7701(b)-2 Added....15244
(f)(3) corrected....28612
(f)(1) through (4) and (6) corrected....37190

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 26 Chapter I—Con. Page

301.7701(b)-3 Added..... **15245**
(b)(6) corrected..... **28612**
(c)(2) corrected..... **37190**
301.7701(b)-4 Added..... **15247**
(d) *Example* 5 corrected..... **28612**
301.7701(b)-5 Added..... **15250**
301.7701(b)-6 Added..... **15250**
(b) *Example* 1 corrected..... **28612**
301.7701(b)-7 Added..... **15251**
(e) *Example* 3 corrected..... **28612**
301.7701(b)-8 Added..... **15252**
(b)(2) introductory text corrected..... **28612**
(b)(2)(ii) corrected..... **37190**
301.7701(b)-9 Added..... **15253**
301.7704-2 Added..... **58710**
301.9100-4T Redesignated from 5c.0..... **43895**
301.9100-5T Redesignated from 5f.0..... **43895**
301.9100-6T Redesignated from 5h.4..... **43895**
301.9100-7T Redesignated from 5h.5..... **43895**
(f) amended..... **43896**
301.9100-8 Redesignated from 5h.6; (a)(1) table and (4)(ii) amended..... **43895**
(a)(1) table corrected..... **47379**
301.9100-9T Redesignated from 6.1..... **43896**
301.9100-10T Redesignated from 6.2..... **43896**
301.9100-11T Redesignated from 6.3..... **43896**
301.9100-12T Redesignated from 7.0..... **43896**
301.9100-13T Redesignated from 7a.1..... **43896**
301.9100-14T Redesignated from 7a.2..... **43896**
301.9100-15T Redesignated from 7a.3..... **43896**
301.9100-16T Redesignated from 10.2..... **43896**
301.9100-17T Redesignated from 13.0..... **43896**
301.9100-18T Redesignated from 13.1..... **43896**
301.9100-19T Redesignated from 14.1-1..... **43896**
301.9100-20T Redesignated from 19.2-1..... **43896**
301.9100-21 Added..... **43894**
601.501 (a) and (b)(4) amended..... **27356**

Page

601.502 Introductory text, (i), (ii), (a) and (b) redesignated as (a) introductory text, (1), (2), (b) and (c); (a)(2) and (c)(4) amended..... **27356**
601.503 (b)(1) amended..... **27356**
601.504 (b)(2)(i) amended..... **27356**
601.505 (b)(2)(ii) and (iii) amended..... **27356**
602 Technical correction...**21152, 21894, 60474**
602.101 (c) table amended (OMB numbers)...**10996, 11266, 12211, 13035, 15253, 19262, 21032, 32438, 36004, 38283, 38599, 41093, 40323, 41676, 43897, 43904, 44989, 45713, 48174, 48187, 48984, 54931, 55457, 60481, 60995, 61313, 61323, 61830, 62200**
(c) table corrected (OMB numbers)..... **27511, 44991**
(c) table amended (OMB numbers); eff. 6-30-93..... **40124**
(c) table amended (OMB numbers)..... 4080 5293, 5936
(c) table amended (OMB numbers); eff. 4-21-93..... 5293
(c) table corrected (OMB numbers)..... 6575

Title 26—*Proposed Rules:*

1-799 (Ch. I)..... **11277**
1 ...**11024, 12244, 13066, 13676, 13680, 14369, 14371, 14803, 14804, 15038, 19556, 20660, 20802, 20805, 21044, 21152, 23176, 23356, 24426, 27401, 27716, 28470, 28907, 29246, 29851, 30451, 31344, 33467, 33663, 34092, 34736, 34740, 34886, 35536, 37495, 39374, 39379, 39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945, 45587, 46355, 46525, 47373, 47427, 47428, 48193, 48194, 48487, 48584, 48757, 49432, 49435, 49514, 49581, 52601, 52605, 52738, 52743, 53046, 53300, 53304, 53634, 54535, 54734, 54957, 56534, 57033, 57034, 52399, 57531, 57971, 57979, 59003, 59319, 59324, 59327, 60029, 60495, 60749, 60750, 6084661017, 61019, 61345, 61353, 61582, 62250, 62251, 62266, 62274, 62526**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

Page

...43, 44, 47, 290, 300, 305, 322, 3522, 3876, 4125, 5304, 5310, 5687, 5691, 6103
5f 5316
5h 34736, 34740, 48584
15a 49432, 49435, 49581, 62274
20 .....49514, 49581, 56535, 57399 .....305, 322, 4125
25 .....49514, 49581, 56535, 57399 .....305, 322, 4125
26 .....56877, 61353, 61356 .....4372, 6470
31 .....21045—21051, 58423
35a 5316
40 13067
49 .....13067, 33918, 41549
52 4625
301 ...14804, 15272, 19828, 19831, 20805, 22189, 22194, 23356, 28470, 29248, 32472, 32473, 36031, 38457, 38959, 39379, 43777, 45759, 46355, 56535, 58760, 61020, 61029, 61035, 61356, 61373, ...3331, 4372, 6470
602 ...11024, 39379, 48487, 49514, 49581, 53304, 56535, 57399, 59003 5310

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.21 (b)(3) revised; eff. 7-22-93.....5615
4.35 (e) added.....33114
4.35a Added.....33114
(e) corrected.....37591
5.22 (i) revised; eff. 7-30-92.....29020
5.23 (a)(3)(ii) compliance date deferred to 9-3-93.....40323
5.47a (a) revised.....31128
9.139 Added.....20764
9.141 Added.....20761
19.988 Revised.....32178
20 Authority citation revised.....40849
20.11 Amended; OMB number.....40849
20.25 Revised.....40849
20.36 Authority citation revised.....40849
Authority citation corrected.....42623
20.63 (a) revised.....40849

NOTE: **Boldface page numbers indicate 1992 changes.**

Page

20.134 (b)(1)(ii) revised; (f) added.....40849
20.235 (b) revised.....40849
47 Authority citation revised.....29787
47.43 (a) revised.....29787
47.52 (a) and (c) revised.....24189
53.11 Amended.....40325
53.151 (a) revised.....40325
53.152 (a) revised.....40325
53.153 (a), (b) heading revised; (b)(3) added.....40325
53.154 Revised.....40325
53.157 Heading, (a), (b)(1), (c), (e)(1) and (4) revised.....40325
53.158 Added.....40326
70 Authority citation revised.....40327
70.1 (d) revised.....40327
70.11 Amended.....40327
70.21 Revised.....40327
70.22 (a) revised.....40328
70.32 Revised.....40328
70.61 (a)(3) revised.....40328
70.131 Revised.....40328
70.223 (b) revised.....40328
70.441—70.449 Undesignated center heading revised.....40328
70.441 (f) added.....40328
70.443 Revised.....40328
70.448 Revised.....40328
70.449 Revised.....40329
70.471 (a)(3) revised.....40329
70.482 (d)(1) revised.....40329
179 Authority citation revised.....29787
179.111 (a) amended.....29787
194.55 (c) added; authority citation revised.....39598
194.151 (b) revised.....39598
270.11 Regulation at 54 FR 48839 confirmed.....53854
270.25a Regulation at 55 FR 52743 confirmed.....53854
270.61b Regulation at 54 FR 48839 confirmed.....53854
270.72 Regulation at 54 FR 48839 confirmed.....53854
270.133 Regulation at 54 FR 48839 confirmed.....53854
270.182 Regulation at 54 FR 48840 confirmed.....53854
270.183 Regulation at 54 FR 48840 confirmed.....53854
270.216b Regulation at 54 FR 48840 confirmed.....53854

CHANGES APRIL 1, 1992 THROUGH JANUARY 29, 1993

TITLE 27 Chapter I—Con. Page

270.216c Regulation at 54 FR 48840 confirmed....53854
270.231 Regulation at 54 FR 48840 confirmed....53854
270.252 Regulation at 54 FR 48840 confirmed....53854
270.255 Regulation at 54 FR 48840 confirmed....53854
275.11 Regulation at 54 FR 48840 confirmed....53854
275.30 Regulation at 55 FR 52743 confirmed....53854
275.72b Regulation at 54 FR 48841 confirmed....53854
275.72c Regulation at 54 FR 48841 confirmed....53854
275.81 Regulation at 54 FR 48841 confirmed....53854
275.107 Regulation at 54 FR 48841 confirmed....53854
275.110 Regulation at 54 FR 48841 confirmed....53854
275.117 Regulation at 54 FR 48841 confirmed....53854
275.121 Regulation at 54 FR 48841 confirmed....53854
275.139 Regulation at 54 FR 48841 confirmed....53854
290.11 Regulation at 54 FR 48841 confirmed....53854
290.143 Regulation at 54 FR 48841 confirmed....53854
295.11 Regulation at 54 FR 48842 confirmed....53854

Page

295.45a Regulation at 54 FR 48842 confirmed....53854
295.45b Regulation at 54 FR 48842 confirmed....53854
296.72 Regulation at 54 FR 48842 confirmed....53854
296.74 Regulation at 55 FR 52745 confirmed....53854
296.163 Regulation at 54 FR 48843 confirmed....53854
296.171—296.181 (Subpart H) Regulation at 54 FR 48843 confirmed....53854

Title 27—*Proposed Rules:*

4 ...19267, 23357, 27401, 29456, 33139, 40380, 40884, 48487
5 40884
9 ...14681, 23559, 27401, 33139, 45009, 45588, 58763
17 ....39536, 45357
19 ....39536, 45357
20 ....27956, 29763
24 ....23357, 33467
25 44525
70 ....39536, 45357
170 ....39536, 45357
194 ....39536, 45357
197 ....39536, 45357
250 ....39536, 40885, 47319
251 ....40886, 47319
252 ....40887, 47320
290 40889
....3247

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

Page

0.1 Amended 32439
0.26 (Subpart O) Revised 32438
0.96 Revised 38772
0.157 Added 31314
0.160—0.172 (Subpart Y) Appendix amended 30396
2.12 (a) revised 41391
2.20 Paroling policy guidelines amended 41392, 41393
2.41 (b) revised 59916
2.62 (a)(1) revised 41394
2.66 (f) removed; (g) and (h) redesignated as (f) and (g); (e) and new (f) revised; new (g) amended 41395
(i) and (j) redesignated as (h) and (i) 41396
11 Authority citation revised 44107
11.4—11.9 (Subpart B) Added 44107
20 Authority citation revised 31318
20.32 (a) and (b) amended 31318
26 Added 4901
40 Authority citation revised 38773
40.7 (b) revised 38733, 38773
44.301 Regulation at 56 FR 40249 corrected 30397
50.18 Removed 39600
64.1 Revised; interim 56445
64.2 Revised; interim 56445
68 Authority citation revised 57671
68.2 (i), (j), (k), and (l) through (q) redesignated as (j), (l), (m), and (o) through (t); new (i), new (k), and (n) added 57671
68.3 (a), (b), and (c) redesignated as (1), (2), and (3); introductory text redesignated as (a); (d) redesignated as (b); new (c) added 57672
68.5 (b) amended 57672
68.6 (a) amended 57672
68.8 (c)(2) amended 57672
68.23 (c)(6) amended 57672
68.25 (b) revised; (d) redesignated as (e); new (d) added 57672
68.26 Amended 57672
68.28 (a) introductory text amended 57672

Page

68.37 (b)(2)(ii) revised; (c) amended 57672
68.43 (c) heading revised 57672
68.48 (a) amended 57672
68.52 (a), (c)(1)(v), (2)(i)(K) and (ii) amended; (c)(4) revised 57672
68.53 (a) introductory text and (1) amended 57672
80 Added 39600

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

503.2 (b)(3) through (7), (c) and (d) redesignated as (b)(4) through (8), (d) and (e); new (b)(3) and (c) added 53822
503.3 (b)(3) revised; (d) added 53822
503.4 (b)(1) through (4) redesignated as (b)(2) through (5); new (b)(1) and (e) added 53822
503.5 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added 53822
503.7 Introductory text amended 53822
503.8 (b) and (c) revised 53822
524.11 (a) amended 34662
543 Authority citation added 62460
543.30—543.32 (Subpart C) Revised 62460
549 Authority citation revised; subpart and sectional authority citations removed 53820
549.40—549.43 (Subpart C) Added; interim 53820
571 Authority citation revised 34663
571.40—571.41 (Subpart E) Heading revised 34663
571.41 (c)(1) and (2) revised 34663

Title 28—*Proposed Rules:*

2 41450
..... 4126
5 62274
26 56536
77 54737

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

Page

5.5 (a)(4)(iv) removed **28776**
20 Authority citation revised; nomenclature change **31450**
34 Added 4750

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

402.4 (b)(3) amended; eff. 12-31-93 ..... **49290**
403.4 (a) amended; eff. 12-31-93 ..... **49290**
(a) redesignated as (a)(1); (a)(2) added; eff. 12-31-93 ..... **49357**
470 (Subchapter C) Added **49595**
470.2 (d) corrected **54702**
470.3 (a)(1) and (b) corrected **58285**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

506 Regulation at 56 FR 24654, 24667 effective date extended through 7-10-92 ..... **29204**
Regulation at 56 FR 24654, 24667 effective date extended through 09-08-92 ..... **30640**
Technical correction **32895**
Regulation at 56 FR 24654, 24667 effective date extended through 10-8-92 and confirmed **40990**
506.500—506.550 (Subpart F) Revised **40975**, **40990**
506.510 (g)(2)(viii) corrected **43495**
506.600—506.675 (Subpart G) Revised **40983**, **40990**
506.615 (b)(4)(v) corrected **43495**
541 Authority citation revised **37677**
541.3 (a)(3) amended; (a)(4) added; (e) revised **46744**
541.5c Removed **46744**
541.5d Revised **37677**
541.300 Redesignated from 541.301 ..... **46744**
541.301 Redesignated as 541.300; new 541.301 redesignated from 541.302 ..... **46744**

Page

541.302 (h) removed **46744**
Redesignated as 541.301; new 541.302 redesignated from 541.303 ..... **46744**
541.303 Redesignated as 541.302; new 541.303 ..... **46744**
(b)(2), (c) and (e) corrected **47163**
541.312 Revised **46745**
578 Added **49129**
578.3 (c)(2) and (3) corrected **57280**

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1425 Authority citation revised **30399**
1425.2 Revised **30399**

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 (a) CFR correction **60995**
1602 Filing deadline extension **45570**
Filing deadline extension 239

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910.11—1910.19 (Subpart B) Authority citation revised **42388**
1910.19 (k) added **42388**
(i) revised **35666**
1910.119 (f), (h), (j) and (l) eff. 8-27-92 ..... **38600**
1910.141—1910.150 (Subpart J) Authority citation revised 4549
1910.146 Added 4549
1910.1000 (a)(3) and table Z-1-A amended **29205**
Table Z-3 amended **29206**
Tables Z-1-A and Z-2 amended **42388**
1910.1027 Added **42389**
OMB number **49272**
1910.1030 (d)(2)(vii)(A), (B), (g)(1)(i)(D), (2)(vii)(A), (h)(1)(iii)(B), (3)(ii) and (i)(2) correctly added; (g)(1)(i)(B), (C), (ii)(A) and (B) corrected **29206**
1910.1050 Added **35666**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

OMB number 49649
1910.1450 Appendix B amended 29204
1910.1500 Amended 29204
1915 Authority citation revised 42388
1915.1027 (Subpart Z) Added 42389
OMB number 49272
1926.50—1926.63 (Subpart D) Authority citation revised 45452
1926.60 Added 35681
OMB number 49649
1926.63 Added 42452
OMB number 49272

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.4 Revised 41683
2200.5 Revised 41684
2200.7 (a) and (c) revised 41684
2200.8 Revised 41684
2200.10 Revised 41684
2200.20 (a) amended 41684
2200.24 Added 41684
2200.30 (d) through (g) redesignated as (e) through (h); new (d) added 41685
2200.32 Amended 41685
2200.34 Revised 41685
2200.35 Revised 41685
2200.36 Removed 41685
2200.40 (a) revised 41685
2200.51 Revised 41685
2200.52 (d) revised; (h) through (l) added 41686
2200.53 (b) revised 41686
2200.56 (f), (g), and (h) added 41686
2200.57 (a) revised 41687
2200.63 (c) revised 41687
2200.64 (c) revised 41687
2200.93 (c) revised; (i) added 41687
2200.95 (a)(1) revised; (g) amended; (j) and (k) added 41688
2200.100 (c) revised 41688
2200.107 Revised 41688
2200.200 (a) revised 41688
2200.201 Revised 41688
2200.202 Revised 41688
2200.203 (a)(2), (3), (b)(2), (3), (4), (c) and (d) revised; (a)(4) removed; (e) added 41688
2200.204 Revised 41689
2200.205 (a) revised 41689
2200.207 (b) and (c) revised 41689

Page

2200.209 (b) revised 41689
2200.210 Revised 41689
2200.212 Revised 41689

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2550 Authority citation revised; sectional authority citations removed 46932
2550.404c-1 Added 46932

Chapter XXVI—Pension Benefit Guaranty Corporation (Parts 2600—2699)

2601 Authority citation revised 61324
2601.3 (b)(1) amended; (c) revised 61324
2602 Heading and authority citation revised 45714
Authority citation revised 4319
2602.1—2602.32 Designated as subpart A; heading added; nomenclature change 45714
Undesignated center heading removed 4319
2602.1 Undesignated center heading removed 4319
2602.2 Undesignated center heading removed 4319
2602.3 Undesignated center heading removed 4319
2602.4 Undesignated center heading removed 4319
2602.5 Undesignated center heading removed 4319
2602.6 Removed 4319
2602.7 Removed 4319
2602.8 (a) through (c) removed 4319
2602.9 Removed 4319
2602.10 Removed 4319
2602.11 Removed 4319
2602.12 Removed 4319
2602.13 Removed 4319
2602.14 Removed 4319
2602.15 Removed 4319
2602.16 Removed 4319
2602.17 Removed 4319
2602.18 Removed 4319
2602.19 Removed 4319
2602.20 Removed 4320

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 29 Chapter XXVI—Con. Page

2602.21 Removed....4320
2602.22 Removed....4320
2602.23 Removed....4320
2602.24 Removed....4320
2602.25 Removed....4320
2602.26 Removed....4320
2602.27 Removed....4320
2602.28 Removed....4320
2602.29 Removed....4320
2602.30 Removed....4320
2602.31 Removed....4320
2602.32 Removed....4320
Appendix A redesignated from part 2602 appendix A....**45714**
2602.41—2602.46 (Subpart B) Added....**45714**
2602 Appendix A redesignated as subpart A appendix A....**45714**
Removed....4320
2610 Appendixes A and B amended....**31319, 47259**
Appendixes A and B amended....4575
2615 Authority citation corrected....**48319**
2615.16 (b) amended....**48319**
2615.30 Redesignated as 2615.31....**48319**
2615.31 Redesignated from 2615.30; (a) and (c) amended; OMB number....**48319**
2616 Revised....**59218**
2616.1 (b) corrected....4203
2617 Revised....**59225**
2617.24 (b)(1) and (2), (d)(4) and (e) corrected....4203
2619 Authority citation revised....**36602**
2619 Appendix B amended...**31320, 36602, 53855, 59292**
Appendix D amended....**59294**
Appendix B amended....4576
2621 Appendix A amended....**59295**
2622 Appendix A amended...**31319, 47259**
Appendix B amended....**31320**
Appendix A amended....4575
2640 Authority citation revised....**59809, 59821**
2640.4 Revised....**59809**
2640.6 Revised....**59815**
2640.8 Added....**59821**
2642 Authority citation revised....**59809**
2642.1 (a) revised....**59809**

NOTE: **Boldface page numbers indicate 1992 changes.**

Page

2642.21—2642.27 (Subpart D) Added....**59809**
2644 Appendix A amended...**31321, 47260**
Appendix A amended....4578
2646 Added....**59815**
2649 Added....**59821**
2676.15 (c) table amended...**31322, 36603, 42491, 47261, 53856, 59295**
(c) table amended....4577

Title 29—*Proposed Rules:*

18 3822
34 ....**47690, 48009, 48082**
42 ....**32939**
....5168
103 ....**43635, 47023, 55491**
403 ....**41634**
470....**33403**
541 ....**37678**
1910 ...**34192, 36964, 37126, 37591, 47746, 49657**
1915 ....**36964, 37126**
1917 ....**37126**
1918 ....**37126**
1926 ...**34656, 36964, 37126, 47746, 49657, 61860**
1928 ....**37126**
2606 ....**59003**
2610 ....**42910**
2612 ....**59003**
2615 ....**59003**
2616 ....**59003**
2619 5128
2622 ....**59003**
2623 ....**59003**
2647 ....**48348**
2676 5128

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

7.44 (k) amended....**61220**
7.301—7.311 (Subpart J) Added....**61193**
7.401—7.411 (Subpart K) Added....**61220**
18.1 Amended; eff. 12-23-93....**61223**
18.2 Amended; eff. 12-23-93....**61223**
18.4 Revised....**61209**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

18.6 (a) and (i) amended; (b) removed; eff. 12-23-93 61223
18.9 (a) amended; eff. 12-23-93 61223
18.24 Revised 61209
18.31 (a)(3), (5) and (6) revised; (a)(7) and (8) added 61209
18.32 (i) added 61210
18.33 Revised 61210
18.34 Introductory text added; (a)(6) revised 61210
18.35 (a)(3) revised 61223
18.37 (b) revised 61210
18.62 (a) amended 61210
18.64 Removed; eff. 12-23-93 61223
18.94 (a)(2) revised 61223
56.6000 Stayed to 7-1-93 44256
56.6130 (b) stayed in part to 7-1-93 44256
56.6140 Effective to 7-1-93 44256
56.6131 (a)(1) stayed to 7-1-93 44256
56.6202 (a)(1) stayed to 7-1-93 44256
56.6220 Effective to 7-1-93 44256
56.6304 (b) stayed to 7-1-93 44256
56.6306 Stayed to 7-1-93 44256
56.6320 Effective to 7-1-93 44256
56.6330 Effective to 7-1-93 44256
56.6331 Effective to 7-1-93 44256
56.6501 (a) stayed to 7-1-93 44256
56.6902 (b) stayed to 7-1-93 44256
56.6903 Stayed to 7-1-93 44256
56.6000—56.6904 (Subpart E) Appendix I stayed to 7-1-93 44256
57.4057 Revised 61223
57.6000 Stayed to 7-1-93 44256
57.6130 (b) stayed in part to 7-1-93 44256
57.6131 (a)(1) stayed to 7-1-93 44256
57.6140 Effective to 7-1-93 44256
57.6202 (a)(1) stayed to 7-1-93 44256
57.6220 Effective to 7-1-93 44256
57.6304 (b) stayed to 7-1-93 44256
57.6306 Stayed to 7-1-93 44256
57.6320 Effective to 7-1-93 44256
57.6330 Effective to 7-1-93 44256
57.6331 Effective to 7-1-93 44256
57.6375 Effective to 7-1 93 44256
57.6382 Effective to 7-1-93 44256
57.6501 (a) stayed to 7-1-93 44256
57.6902 (b) stayed to 7-1-93 44256
57.6903 Stayed to 7-1-93 44256

Page

57.22310 Revised 61223
57.22311 Revised 61223
70.2 Regulation at 57 FR 20913 effective date delayed to 11-16-92 34683
70.208 Regulation at 57 FR 20913 effective date delayed to 11-16-92 34683
75.2 Regulation at 57 FR 20913 effective date delayed to 11-16-92 34683
75.300—75.389 (Subpart D) Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683
75.313 Regulation at 57 FR 20916 stayed to 7-1-93 53857
75.314 Added; eff. 11-16-92 to 7-1-93 53857
75.315 Added; eff. 11-16-92 to 7-1-93 53857
75.320 (d) amended 53858
75.321 (a) suspended; (c) added 55457
75.322 Revised 53858
75.325 (c)(2) amended 53858
75.326 Amended 53858
75.330 (b)(2) amended 53858
75.333 (b), (c), (d) and (e) amended 53858
75.335 (a(1) amended 53858
75.344 (a)(1) stayed to 7-1-93 53857
75.345 Redesignated from 75.1105 and revised 53857
75.370 Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683
75.380 Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683
(f)(1) and (g) amended 53858
75.381 Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683
75.382 Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683
75.383 Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683
75.385 Regulation at 57 FR 20914 effective date delayed to 11-16-92 34683

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 30 Chapter I—Con. Page

75.386 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.388 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.600-1 Revised **61223**
75.604 (d) added **61223**
75.1103-4 Regulation at 57 FR 20928 effective date delayed to 11-16-92 ..... **34683**
75.1103-7 Regulation at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**
75.1105 Redesignated as 75.345 ..... **53857**
75.1701 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1704 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1704-1 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1704-2 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1705 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1706 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1707 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ..... **34683**
75.1721 Regulation at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**
75.1801 Removal at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**
75.1802 Removal at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**
75.1803 Removal at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**
75.1804 Removal at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**
75.1805 Removal at 57 FR 20929 effective date delayed to 11-16-92 ..... **34683**

Page

100.3 (c) amended **60697**
100.4 (b) corrected **61612**
Revised **60697**
100.5 Concluding text amended **60697**

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

206.10 Revised **41863**
206.254 (b) amended **52720**
206.257 (d)(3) amended **52720**
206.259 (c)(1)(i), (2)(i), (c)(4), (d)(1), (e)(1) and (2) amended **52720**
206.262 (a)(1) amended **41864**
(c)(1), (2)(i), (4), (d)(1), (e)(1) and (2) amended **52720**
207 Authority citation revised **41864**
207.1 Revised **41864**
208 Authority citation revised **41864**
208.3 Revised **41864**
210 Authority citation revised **41864**
210.10 Revised (OMB numbers) **41864**
210.53 (a) revised **41867**
210.202 Amended **52720**
210.204 (a) revised **41867**
216 Authority citation revised **41867**
216.10 Revised **41867**
216.15 (a) revised **41867**
216.16 (a) revised **41867**
218.10 Added **41867**
218.40 (c) amended **52720**
218.42 Added **62206**
218.51 (f)(1) revised **41867**
218.54 (e) added **62206**
218.102 (b) revised **41868**
(d) added **62206**
218.150 (c) revised **41868**
218.150 (e) added **62206**
218.155 (d)(3) and (4) revised **41868**
218.202 (b) revised **41868**
(f) added **62207**
218.302 (b) revised **41868**
(f) added **62207**
219 Authority citation revised **41868**
219.102 Revised **41868**
220.003 Added **41868**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

228 Authority citation revised 41868
228.10 Revised 41868
230 Heading revised; section added 62207
243 Authority citation revised 44997
243.2 Revised 44997
243.3 Added 44998

Chapter IV—Geological Survey, Department of the Interior (Parts 400—499)

400 Removed 59916

Chapter VI—Bureau of Mines, Department of the Interior (Parts 600—699)

609 Removed 61831
651 Removed 61832

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

701 Authority citation revised 3470
701.5 Amended 3470
785 Authority citation revised 3470
785.10 Revised 3470
861.101 Suspended 33875
901.25 (c) added 3832
902.15 (c) added 37422
902.16 Added 37423
902.20 Revised 53992
902.25 Added 53993
904.10 Revised 37429
904.15 (k) added 37430
913.25 (d) added 4322
914.15 (oo) added 41873
(qq) added 59918
(pp) added 62220
(rr) added 4324
914.16 (l) and (m) added 41873
(a) removed 48726
914.25 Revised 45985
916.15 (m) added 37435
917.15 (kk) added 37093
(ll) added 45306
(mm) added 58144
(nn) added 59921
(oo) added 3837

Page

917.16 (g) added 45307
(d)(3) removed; (h) added 3838
917.21 (c) added 59921
918.15 (c) added 48730
918.16 (a) through (i) removed 48730
920.15 (q) added 44113
(r) added 53994
(s) added 59924
(t) added 62222
920.16 (o) added 62222
925.10 Revised 44600
925.15 (o) added 44118
(p) added 44680
925.16 (i) added 44118
(b)(1), (2), (3), (c), (e), (f)(2) through (5), (g)(17) and (n) removed; (f)(1), (g)(16) and (18) revised; (p) added 44681
926.15 (j) added 37446
926.16 (a) removed; (e) added 37446
934.10 (b) revised; (c) removed 37706
934.15 (p) added 37710
934.20 Revised 33116
934.25 Revised 33116
935.12 Removed 33123
935.15 (ddd) added 33123
(fff) added 37096
(eee) added 37100
(ggg) added 41691
(hhh) added 48733
(iii) added 3840
(kkk) added 4326
(jjj) added 4331
935.16 (c) removed 33123
(f) revised 4331
935.25 (e) added 44121
938.15 (u) added 48736
(v) added 53996
(w) added 62228
(x) added 4333
238.16 (rr) through (bbb) added 62229
938.20 Revised 49137
938.25 Added 49138
943.10 Revised 37458
943.15 (h) added 37458
943.16 (a) removed; (k) through (q) added 37458
943.20 Revised 37461
943.25 Added 37461
944.15 (t) added 37465
(u) added 41696

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 30 Chapter VII—Con. Page

944.16 (a) through (m) removed; (p) added 41696
944.20 Revised 37465
944.25 Added 37465
946.15 (ff) added 29792
950.12 (a)(2) and (5) removed 48991
950.15 (m) added 30131
(n) added 48991
950.16 (o), (p) and (q) added 30131
(r) through (z) added 48991

Title 30—*Proposed Rules:*

14 61524
18 ..... 39036, 48350, 61524
48 ..... 29853, 38289
56 ..... 47524, 47824, 49218, 55491
57 ..... 47524, 49218, 55491
75 ..... 29853, 38289, 39041, 40395, 42808, 48350, 61524, 61538
77 ..... 29853, 38289
202 31471
250 ..... 36032, 39421
256 47824
400 43411
401 59941
609 43411
651 43411
701 53670
718 35960
720 35960
724 47431
772 47431
773 53670
779 3458
780 3458
783 3458
784 3458
816 47431
817 ..... 47431, 53670
840 60140
..... 3248
842 60410
..... 3248
846 47431
870 62116
901 37497
902 33664
913 ..... 37127, 48757
914 ..... 31161, 31162, 33665, 37498, 48759, 48761, 57039
..... 3928, 4372, 4374
915 4376
916 ..... 37132, 49051
..... 4381
917 ..... 41897, 43946, 43948, 43949, 43952, 58169
..... 4384, 4386
920 ..... 37133, 37134, 41712, 48762, 62277
924 4387
925 62278
926 59020
931 48764
935 ..... 31163, 33139, 37136, 37138, 48765
..... 4388
938 ..... 33666, 33668
944 ..... 54032, 58171
..... 4390
948 49052
950 ..... 41714, 41715

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

10.0 Amended 41095
10.20 (a) and (b) amended 41095
10.21 Amended 41095
10.22 Introductory text amended 41095
10.23 Amended 41095
10.24 Introductory text amended 41095
10.26 (a)(4) amended 41095
10.27 Amended 41095
10.28 Amended 41095
10.29 Amended 41095
10.30 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); (a) and new (c) revised; (b)(1)(iv), (c)(1) introductory text, (2), (3) and (e) amended 41095
10.31 Amended 41095
10.50 Amended 41095
10.51 Introductory text amended 41095
10.52 (a) amended 41095
10.53 Amended 41095
10.54 Amended 41095
10.55 (a) and (b) amended 41095

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

204 Removed 40330
205 Revised 44280, 60676

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

205.18 (b)(2) corrected 4460
211.1 (a) revised **44999**
250.2 Amended 4578
250.3 (a)(1) and (b) amended 4578
250.4 (b)(1) and (f) amended 4578
250.6 Amended 4578
257 Removed **57345**
312 Note amended **34684**
315 Authority citation revised **39602**
315.40 (d) revised **39602**
315.64 Revised **39602**
315.65 Removed; new 315.65 redesignated from 315.66 ..... **39602**
315.66 Redesignated as 315.65 ..... **39602**
317.2 (a) amended **34684**
349 Removed 414
353 Authority citation revised **39602**
353.40 (d) revised **39602**
353.64 Revised **39602**
353.65 Removed; new 353.65 redesignated from 353.66 ..... **39603**
353.66 Redesignated as 353.65 ..... **39603**
356 Added 414
357.21 (c) amended; (f) added **38774**
357.26 (b)(1)(vii), (viii), (4), (5), (6), (d) and (e) removed; (f) redesignated as (d); (b)(2) and (3) revised **38774**
358.0 (c) added **40608**

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500.571 Revised **58986**
500.574 Added **62230**
515.333 Added **53997**
515.416 Added **53997**
515.540 Revised **53998**
515.560 Revised **53998**
515.563 Revised **53998**
515.564 (c) revised; (d) added **53999**
515.566 Added **53999**
520.101 (a)(2) removed; (a)(3) redesignated as (a)(2) **44682**
550 Authority citation revised **41697, 54177**
550.212 Added **41697**
550.511 Heading and (g) revised; (a) amended **41697**
550.515 Removed **41697**
550.520 Added **41697**

Page

550.805 Amended **41697**
550 Appendix A revised **29425**
Appendix B revised **29427**
Appendixes A and B amended **54177**
575.603 Removed **39603**
580 Policy statement 3228
580.510 Revised 4081
580.516 Added **39604**
580.517 Added 4081

Title 31—*Proposed Rules:*

1 ..... **54539**
10 ..... **46356, 57400, 60149, 60278**
203 ..... **48584**
209 ..... **57400**
210 ..... **34650**
235 ..... **52605**
251 ..... **56292**
253 ..... **56293**
254 ..... **56293**
257 ..... **37139**
270 ..... **41117**
290 ..... **56294**
349 ..... **45116**
356 ..... **45116**
357 ..... **33470**

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (1—399)

40a Revised 239
60 Removed **40849**
67 Removed **48188**
954 Removed **4902**
165a Added; interim **29620**
169a Authority citation and footnote 1 revised; footnote 8 removed; footnotes 5 through 7 redesignated as footnotes 6 through 8 ..... **29207**
169a.2 Revised **29207**
169a.3 Amended **29207**
169a.4 Revised **29207**
169a.8 (c) revised; heading and (a) amended **29208**
169a.9 (a) introductory text, (1) introductory text and (i) revised; (a)(1)(ii), (iv), (2)(i)(A), (B) and (D) amended **29208**
169a.10 Revised **29208**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 32 Chapter I—Con. Page

169a.11 Amended....29208
169a.13 Revised....29208
169a.15 (a), (b), (c)(3), (d)(1), (2)(ii)(A), (iii) and (4)(i)(E) revised; (d)(2)(i), (v), (3)(viii), (4)(i)(C), (F), (H), (ii)(A), (D)(*2*), (*3*) and (E) introductory text amended....29209
169a.16 (a) and (b) amended....29210
169a.17 (a), (d) and (g)(1) revised; (l) added....29210
169a.18 (b) revised....29210
169a.21 (a), (b) heading, (c) introductory text, (1), (2), (5), (6) and (7) amended; (c)(3) revised....29210
169a.22 Revised....29210
169a Appendixes A and B amended....29210
Appendix B amended....29211
Appendix C revised; Appendix D amended....29212
Appendix E removed....29218
179 Removed....48188
191.1 (a) and (c) amended....35755
191.3 Amended....35755
191.4 (b), (c), (e) and (f) amended....35756
191.5 (a)(6), (11), (14), (b)(2), (5), (9), (10) and (13) amended....35756
191.6 (b)(2), (3), (5), (9), (10), (12), (13), (14) and (15) amended....35756
191.8 (a) amended....35756
191.9 (b)(2) and (3) amended....35756
220 Heading and authority citation revised....41100
220.1 Revised....41100
220.2 (a) revised....41101
220.3 (b)(1) revised....41101
220.6 (b) revised; (d) added....41101
220.8 Revised....41101
220.9 (b) revised....41102
220.10 Revised....41102
220.11 Added....41103
220.12 Added....41103
287 Revised....61324
290 Appendix B amended....30904
292 Revised....38775
317 Revised....48992
321.2 (c) revised....33124
321.4 (b) revised....33124
321.14 (b), (d), (e) and (f) revised; (c) and (g) added....33124

NOTE: **Boldface page numbers indicate 1992 changes.**

Page

323 Appendix H amended....40609
345 Added....53557
346 Added....53559
347 Added....53561
348 Added....53564
367 Revised....58986
385 Revised....32178
397 Added....5293

Chapter V—Department of the Army (Parts 400—699)

505 Authority citation revised....33126
505.5 (d) revised; (e) amended....33126
619 Technical correction....47572
619.1 Amended....44239
619.2 (c) added....44239
619.4 Revised....44239
619.5 (a)(4) added....44239
619.6 Introductory text revised; (k) added....44239
619.7 Revised....44239
619.8 Revised....44240
619 Appendix designated as appendix A and revised....44240
Appendixes B through F added....44242

Chapter VI—Department of the Navy (Parts 700—799)

701.119 (i) introductory text revised; (i)(1) amended....37100
(b)(4) and (5) removed; (b)(6) and (7) redesignated as (b)(4) and (5); (e)(2) added....40609
(h)(1) amended....57961
Table Four amended....31451, 31452
Table Five amended....28463, 31452, 35464, 35465, 41698, 46299, 59925
Tables One and Three amended....59924, 59926, 59927
706.2 Tables One and Three amended....59924, 59926, 59927
Table Five amended....59925
Tables Four and Five amended....4334
Table Two amended....4335

Chapter VII—Department of the Air Force (Parts 800—1099)

806 Revised....41396
861 Revised....44683
954 Removed....4902

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Chapter XIX—Central Intelligence Agency (Parts 1900—1999)

Page

1906 Added..... 39610

Chapter XXIX—Presidential Commission on the Assignment of Women in the Armed Forces (Parts 2900—2999)

Chapter XXIX Established..... 49394

Title 32—*Proposed Rules:*

165 29619
199 58427
202 43645
287 48768
317 40397
321 49661
505 ..... 44716, 47825, 62531
516 31852
623 46246
701 33285
1636 62533

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Interpretation..... 48319
3.40-15 (c) added; eff. 8-28-92 to 9-9-92..... 39614
Regulation at 57 FR 39614 effective date corrected..... 42699
3.40-17 (b) revised; eff. 8-28-92 to 9-9-92..... 39614
Regulation at 57 FR 39614 effective date corrected..... 42699
3.40-20 (c) added; eff. 8-28-92 to 9-9-92..... 39614
Regulation at 57 FR 39614 effective date corrected..... 42699
24 Removed..... 60728
64 Authority citation revised..... 43402
64.01 Redesignated from 64.01-1..... 43402
64.01-1—64.01-6 Redesignated as subpart A..... 43402
64.01-1 Redesignated as 64.01..... 43402
64.01-3 Redesignated as 64.03..... 43402
64.01-6 Redesignated as 64.06..... 43402
64.03 Redesignated from 64.01-3..... 43402

Page

64.06 Redesignated from 64.01-6; amended..... 43402
64.10-1—64.10-6 (Subpart 64.10) Redesignated as subpart B..... 43402
64.10-1 Redesignated as 64.11..... 43402
64.10-3 Redesignated as 64.13..... 43402
64.10-6 Redesignated as 64.16..... 43402
64.11 Redesignated from 64.10-1; (a) revised; (d) added..... 43402
64.13 Redesignated from 64.10-3..... 43402
64.16 Redesignated from 64.10-6..... 43402
64.20-1—64.20-3 (Subpart 64.20) Redesignated as subpart C..... 43402
64.20-1 Redesignated as 64.21..... 43402
64.20-3 Redesignated as 64.23..... 43402
64.21 Redesignated from 64.20-1..... 43402
64.23 Redesignated from 64.20-3..... 43402
64.30-1—64.30-3 (Subpart 64.30) Redesignated as subpart D..... 43402
64.30-1 Redesignated as 64.31..... 43402
64.30-3 Redesignated as 64.33..... 43402
64.31 Redesignated from 64.30-1..... 43402
Revised..... 43403
64.33 Redesignated from 64.30-3..... 43402
Revised..... 43403
81 Appendix A amended..... 29219
95.055 Revised..... 33261
100 Temporary regulations list..... 30644, 47766
100.T01-001 Added (temporary)..... 40125
100.T01-103 Added (temporary)..... 38607
100.35-07-119 Added (temporary)..... 60127
100.35T01-057 Added (temporary)..... 38284
100.35T01-079 Added (temporary)..... 30642
100.35-T0205 Added (temporary)..... 39359
(a) corrected..... 45570
100.35-T0207 Added (temporary)..... 39117
100.35-T0213 Added (temporary)..... 39116
100.35-T0216 Added (temporary)..... 41420

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 33 Chapter I—Con. Page

100.35-T0223 Added (temporary)..... 46300
100.35-T0557 Added (temporary)..... 40610
100.35-T0560 Added (temporary)..... 40611
100.35-T0564 Added (temporary)..... 44688
100.35-T0822 Added (temporary)..... 37711
100.35-T0913 Added (temporary)..... 30644
100.35-T0916 Added (temporary)..... 34075
100.35-T0918 Added (temporary)..... 41419
100.35-T0919 Added (temporary)..... 39118
100.103 (b) revised (temporary)..... 30403
100.105 Implementation (temporary)..... 46301
100.501 Implementation (temporary)..... 30643, 58144
100.502 Implementation (temporary)..... 33444, 44687
100.504 Implementation (temporary)..... 30643
100.509 Implementation (temporary)..... 45985, 60996
100.511 Implementation (temporary)..... 33444
100.512 Implementation (temporary)..... 44687
100.513 Implementation (temporary)..... 33445
105 Removed..... 60728
117 Temporary drawbridge operation regulations..... 38778
Authority citation revised..... 54178
117.31 Revised..... 20
117.221 (c) revised (temporary)..... 58146
117.255 Revised..... 54178
117.261 (hh) revised..... 30647
(r) added..... 37882
117.275 Removed..... 39615
117.287 (d)(3) redesignated as (d)(4); new (d)(3) added..... 39360
(a-1) redesignated as (a-2); new (a-1) added..... 41874
(c), (d)(1) and (2) revised; eff. 12-1-92 to 1-31-93..... 57099
117.303 Revised..... 58711

Page

117.311 Revised; eff. 12-1-92 to 1-31-93..... 57099
117.359 Revised..... 37880
117.373 Revised..... 37880
117.385 Revised..... 38608
117.403 Revised..... 37880
117.407 Revised..... 37880
117.439 Revised..... 46302
117.451 (c) revised; (d) and (e) redesignated as (e) and (f); new (d) added (temporary)..... 46302
117.478 Revised..... 57962
117.488 Revised..... 34868
117.491 Revised..... 37880
117.591 Revised..... 30405
117.680 Added..... 38609
117.684 Revised..... 37880
117.700 Revised..... 37880
117.897 (a)(1)(ii) suspended; (a)(5) added; eff. 9-13-92 through 11-11-92..... 39119
(a)(5) corrected..... 46301
117.904 Revised..... 37880
117.911 (d) revised..... 57963
117.937 Revised..... 37880
117.981 Revised..... 37880
117.997 (d) and (e) redesignated as (e) and (f); new (d) added..... 46506
117.1035 Revised..... 37712
117.1049 (d) removed; (a) and (c) revised; eff. 9-21-92 through 9-1-93..... 37881
117.1099 Revised..... 37880
117.1103 Revised..... 37880
117 Appendix A amended..... 30405
133 Added; interim..... 53969
135 Authority citation revised..... 36316
135.301—135.319 (Subpart D) Heading revised; interim..... 36316
135.301 Removed; interim..... 36316
135.303 (a)(1) and (2) removed; (a) designation and (a)(3) designation removed; interim..... 36316
135.305—135.307 Undesignated center heading removed; interim..... 36316
135.309—135.311 Undesignated center heading removed; interim..... 36316
135.309 Removed; interim..... 36316
135.311 Removed; interim..... 36316

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

135.313—135.319 Undesignated center heading removed; interim ... 36316
135.313 Removed; interim ... 36316
135.315 Removed; interim ... 36316
135.317 Removed; interim ... 36316
135.319 Removed; interim ... 36316
136 Revised; interim ... 36316
136.101 (b) corrected ... 41104
136.103 (a) corrected ... 41104
137.501—137.513 (Subpart F) Removed; interim ... 36322
147.1114 Revised; eff. 10-15-92 through 11-30-92 ... 48457
147.1115 Revised; eff. 10-15-92 through 11-30-92 ... 48457
151.04 (c) revised ... 33261
155.390 Removed; interim ... 36238
Regulation at 57 FR 36238 comment period reopened; interim ... 60402
157 Authority citation revised ... 36238, 60402
157.01 Revised; interim ... 36238
Regulation at 57 FR 36238 comment period reopened; interim ... 60402
157.03 (k), (n) and (aa) revised; (ii) through (oo) added; interim ... 36238
Regulation at 57 FR 36238 comment period reopened; interim ... 60402
157.08 Introductory text removed; (b) through (i) redesignated as (f) through (m); Note, new (b) through (e) and (n) added; (a), new (f), (g) and (h) revised; interim ... 36239
(n) corrected ... 40494
Regulation at 57 FR 36239 comment period reopened; interim ... 60402
157.10 Heading and (d) revised; interim ... 36239
Regulation at 57 FR 36239 comment period reopened; interim ... 60402
157.10d Added; interim ... 36239
Regulation at 57 FR 36239 comment period reopened; interim ... 60402
157.11 (g) added; interim ... 36244
Regulation at 57 FR 36244 comment period reopened; interim ... 60402

Page

157.24 Introductory text and (c) revised; interim ... 36244
Regulation at 57 FR 36244 comment period reopened; interim ... 60402
157.25 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added; interim ... 36244
Regulation at 57 FR 36244 comment period reopened; interim ... 60402
157.28 Introductory text revised; interim ... 36244
Regulation at 57 FR 36244 comment period reopened; interim ... 60402
157 Appendix A amended; interim ... 36245
Appendix G added; interim ... 36245
Regulation at 57 FR 36245 comment period reopened; interim ... 60402
161 Authority citation revised ... 31662
161.109 Added ... 31662
161.376 (a)(5) added ... 31663
165 Temporary regulations list ... 30644, 47766
165.111 Added ... 30407
165.T01-056 Added (temporary) ... 35467
165.T01-070 Added (temporary) ... 30651
165.T01-083 Added (temporary) ... 31323
165.T01-085 Added (temporary) ... 30650
165.T01-096 Added (temporary) ... 35466, 39362
165.T01-097 Added (temporary) ... 40126
165.T01-101 Added (temporary) ... 41421
165.T01-109 Added (temporary) ... 39121
165.T01-114 Added (temporary) ... 44123
165.T01-117 Added (temporary) ... 44122
165.T01-125 Added (temporary) ... 48190
165.T01-130 Added (temporary) ... 60997
165.T01-131 Added (temporary) ... 60128

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 33 Chapter I—Con. Page

165.T01-134 Added (temporary)..... **55461**
165.T01-135 Added (temporary)..... **55463**
165.T0252 Added (temporary)..... **56992**
165.T0255 Added (temporary)..... 2989
165.T02013 Added (temporary)..... **31664**
165.T02045 Added (temporary)..... **43616**
165.T0506 Added (temporary)..... **40612**
165.T05-12 Added (temporary)..... **31453**
165.T0549 Added (temporary)..... **35757**
165.T0551 Added (temporary)..... **57100**
165.T0585 Added (temporary)..... **58147**
165.T0591 Added (temporary)..... **59928**
165.T0793 Added (temporary)..... **40330**
165.T0857 Added (temporary)..... **46507**
165.T1106 Added (temporary)..... **46506**
165.T1108 Added (temporary)..... **49649**
165.T1170 Added (temporary)..... **57100**
165.T551 Added (temporary)..... **33637**
165.T576 Added (temporary)..... **47262**
165.T592 Added (temporary)..... **58988**
165.T841 Added (temporary)..... **47769**
165.T844 Added (temporary)..... **46508**
165.T850 Added (temporary)..... **46508**
165.1406 Added..... **54508**

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

222 Authority citation added; sectional authority citations removed..... **35757**
222.7 (g)(2) revised..... **35757**
334.370 (a)(1) revised..... **40613**
334.782 Added..... **46303**
334.786 Added..... **46303**
334.802 Added..... **46303**
334.938 Added..... **58098**

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Page

402.3 (b)(10) added..... **30905**
402.9 (f) through (i) added..... **30905**

Title 33—*Proposed Rules:*

1—199 (Ch. I) **54191**
89 ..... **43169**
100 ..... **30704, 55492, 55493**
110 ..... **31471, 47431, 47432, 53672**
117 ...**30451, 30704, 33286, 37918, 37920, 38638, 39381, 43647, 46361, 47321, 48488, 53673, 53674, 54202, 57039, 58172, 59943, 59944**
..... 47
126 4127
151 ..... **45591**
..... 452
154 ..... **37920**
155 ..... **29354, 33287, 44912, 48489**
..... 452, 4040
156 ..... 452, 4040
162 ..... **41899**
..... 4130
164 ..... **45662, 45664, 45667**
165 ..... **31472, 34741, 36034, 45596**
168 ..... **30058**
175 ..... **53410**
179 ..... **36034**
334 ..... **32474**
400—499 (Ch. IV) **54191**

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

8 Added..... **34646**
8.3 OMB number pending..... **34647**
12 Revised (effective date pending)..... **60394**
73 Authority citation revised..... **56420**
73.40—73.42 (Subpart E) Removed..... **56420**
74 Authority citation revised; sectional authority citations amended..... **30335**
74.3 Amended (effective date pending)..... **30335**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

74.47 Revised (effective date pending)..... **30335**
74.73 Heading, (a) and (b) revised (effective date pending)..... **30335**
74.74 (a), (c) and (d) revised (effective date pending)..... **30335**
74.75 (a) revised; (b) redesignated as (c); new (b) added (OMB number pending)..... **30336**
74.76 (c) amended (effective date pending)..... **30336**
74.91 Amended (effective date pending)..... **30336**
74.93 Revised (effective date pending)..... **30336**
74.94 Removed (effective date pending)..... **30336**
74.96 Revised (effective date pending)..... **30336**
74.144 Amended (effective date pending)..... **30336**
74.171 Added (effective date pending)..... **30336**
74.172 Removed (effective date pending)..... **30336**
74.173 Removed (effective date pending)..... **30336**
74.174 Removed (effective date pending)..... **30336**
74.175 Revised (effective date pending)..... **30336**
74 Appendixes D and E removed (effective date pending)..... **30336**
75 Authority citation revised; sectional authority citations amended..... **30336**
75.1 (b) amended, (effective date pending)..... **30336**
75.3 Removed (effective date pending)..... **30336**
75.4 (a) introductory text and (1) revised (effective date pending)..... **30336**
75.60—75.62 Undesignated center heading added (effective date pending)..... **30337**
75.60 Added (effective date pending)..... **30337**
75.61 Added (effective date pending)..... **30337**
75.62 Added (effective date pending)..... **30337**
75.105 (c)(2)(i) and (3) revised (effective date pending)..... **30337**

Page

75.107 Removed (effective date pending)..... **30337**
75.108 Removed (effective date pending)..... **30337**
75.110 Removed (effective date pending)..... **30337**
75.111 Removed (effective date pending)..... **30337**
75.113 Removed (effective date pending)..... **30337**
75.114 Removed (effective date pending)..... **30337**
75.115 Removed (effective date pending)..... **30337**
75.116 Removed (effective date pending)..... **30337**
75.118 Note removed (effective date pending)..... **30337**
75.130—75.134 Undesignated center heading removed (effective date pending)..... **30338**
75.130 Removed (effective date pending)..... **30338**
75.131 Removed (effective date pending)..... **30338**
75.132 Removed (effective date pending)..... **30338**
75.133 Removed (effective date pending)..... **30338**
75.134 Removed (effective date pending)..... **30338**
75.150—75.154 Undesignated center heading removed (effective date pending)..... **30338**
75.150 Removed (effective date pending)..... **30338**
75.151 Removed (effective date pending)..... **30338**
75.152 Removed (effective date pending)..... **30338**
75.153 Removed (effective date pending)..... **30338**
75.154 Removed (effective date pending)..... **30338**
75.155 Revised (effective date pending)..... **30338**
75.160 Removed (effective date pending)..... **30338**
75.200 Heading revised, (b)(4) and (5) added (effective date pending)..... **30338**
75.216 Revised (effective date pending)..... **30338**
75.218 Revised (effective date pending)..... **30338**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 34 Subtitle A—Con.

Page

75.233 Revised (effective date pending)..... 30338
75.234 Revised (effective date pending)..... 30338
75.235 (b) revised (effective date pending)..... 30338
75.253 (a)(2) revised; (d) redesignated as (e); new (d) added (effective date pending)..... 30338
75.261 Revised; (OMB number pending)..... 30338
75.262 Added (effective date pending)..... 30339
75.510 Removed (effective date pending)..... 30339
75.518 Removed (effective date pending)..... 30339
75.534 Introductory test and (a) revised (effective date pending)..... 30339
75.560 (a) revised (effective date pending)..... 30339
75.563 Revised (effective date pending)..... 30339
75.580—75.581 Undesignated center heading removed (effective date pending)..... 30339
75.580 (a) designation and (b) through (d) removed (effective date pending)..... 30339
75.581 Removed (effective date pending)..... 30339
75.590 (c) revised (effective date pending)..... 30339
75.608 Revised (effective date pending)..... 30339
75.616 Revised (effective date pending)..... 30339
75.617 Added (effective date pending)..... 30339
75.621 Amended; authority citation and cross-reference revised..... 30339
75.622 Revised (effective date pending)..... 30339
75.625—75.626 Cross-reference revised (effective date pending)..... 30339
75.625 Removed (effective date pending)..... 30339
75.626 (a) paragraph designation and (b) removed (effective date pending)..... 30339
75.681 Cross-reference amended (effective date pending)..... 30339

Page

75.684 Removed (effective date pending)..... 30340
75.690 Removed (effective date pending)..... 30340
75.707 (h) table amended (effective date pending)..... 30340
75.720 Revised (OMB number pending)..... 30340
75.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)..... 30340
75.750—75.755 Undesignated center heading removed (effective date pending)..... 30340
75.750 Removed (effective date pending)..... 30340
75.751 Removed (effective date pending)..... 30340
75.752 Removed (effective date pending)..... 30340
75.753 Removed (effective date pending)..... 30340
75.754 Removed (effective date pending)..... 30340
75.755 Removed (effective date pending)..... 30340
76 Authority citation revised..... 30340
76.3 Removed (effective date pending)..... 30340
76.102 Revised (effective date pending)..... 30340
76.125 (a) amended; (c) and authority citation revised (effective date pending)..... 30341
76.136 Amended (effective date pending)..... 30341
76.305 Removed (effective date pending)..... 30341
76.401 (a) revised (effective date pending)..... 30341
76.560 Removed (effective date pending)..... 30341
76.580—76.581 Undesignated center heading removed..... 30341
76.580 (a) designation and (b) through (d) removed (effective date pending)..... 30341
76.581 Removed (effective date pending)..... 30341
76.591 Amended (effective date pending)..... 30341
76.600 Amended (effective date pending)..... 30341

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

76.670 Heading revised; existing text designated as (a); (b) added (effective date pending)..... **56795**
76.681 Heading revised; cross reference added (effective date pending)..... **30341**
76.684 Removed (effective date pending)..... **30341**
76.690 Removed (effective date pending)..... **30341**
76.707 (h) table amended (effective date pending)..... **30341**
76.720 Revised (OMB number pending)..... **30341**
76.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)..... **30342**
76.770 Revised (effective date pending)..... **30342**
76.771 Removed (effective date pending)..... **30342**
76.772 Removed (effective date pending)..... **30342**
76.780—76.783 Center heading removed (effective date pending)..... **30342**
76.780 Removed (effective date pending)..... **30342**
76.781 Removed (effective date pending)..... **30342**
76.782 Removed (effective date pending)..... **30342**
76.783 (b) amended (effective date pending)..... **30342**
76.901 Revised (effective date pending)..... **30342**
77.1 (c) amended (effective date pending)..... **30342**
81.11 (c) added (effective date pending)..... **56795**
81.12 (a) and (d) revised; (b) amended; (e) and (f) added (effective date pending)..... **56795**
81.32 (b), (c) and (e) revised (effective date pending)..... **56795**
86.405 Revised (effective date pending)..... **56795**
99 Authority citation revised.....3188
99.5 Heading revised (effective date pending)..... 3188
99.6 (a)(5) amended (effective date pending)..... 3188

Page

99.30 Heading and (a) revised (effective date pending)..... 3189
99.31 (a)(13) added; (b) and authority citation revised (effective date pending)..... 3189
99.60 Heading, (a) and (c) revised (effective date pending)..... 3189
99.63 Revised (effective date pending)..... 3189
99.64 (c) and (d) added (effective date pending)..... 3189
99.65 Revised (effective date pending)..... 3189
99.67 (a) and authority citation revised (effective date pending)..... 3189

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

200.6 (c) amended (effective date pending..... **39067**
200.20 (a)(10)(i)(B) revised; (a)(10)(i)(D) amended; (a)(10)(i)(F) added (effective date pending)..... **39067**
200.31 (b)(1) and (2) revised; (c)(6) and (d) added; OMB number (effective date pending)..... **39067**
200.34 (a)(4) added (effective date pending)..... **39067**
200.35 (a)(3) redesignated as (a)(4); new (a)(3) added (effective date pending)..... **39067**
206 Authority citation revised..... **60406**
206.1 (a) and (b) amended (effective date pending)..... **60407**
206.3 (a), (b) introductory text and (c) revised (effective date pending)..... **60407**
206.4 (a) revised (effective date pending)..... **60407**
206.5 (d) added (effective date pending)..... **60407**
206.10 (b)(1)(i) and (2)(i) revised (effective date pending)..... **60407**
206.11 (Subpart B) Added (effective date pending)..... **60407**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 34 Chapter II—Con. Page

206.20 (b)(1) amended (effective date pending)..... **60407**
218.3 Redesignated as 218.4; new 218.3 added (effective date pending)..... **56794**
218.4 Redesignated as 218.5; new 218.4 redesignated from 218.3 (effective date pending)..... **56795**
Amended (effective date pending)..... **56796**
218.5 Redesignated as 218.6; new 218.5 redesignated from 218.4 (effective date pending)..... **56795**
218.6 Redesignated as 218.7; new 218.6 redesignated from 218.5 (effective date pending)..... **56795**
218.7 Redesignated as 218.8; new 218.7 redesignated from 218.6 (effective date pending)..... **56795**
218.8 Redesignated as 218.9; new 218.8 redesignated from 218.7 (effective date pending)..... **56795**
Amended (effective date pending)..... **56796**
218.9 Redesignated as 218.10; new 218.9 redesignated from 218.8 (effective date pending)..... **56795**
218.10 Redesignated as 218.11; new 218.10 redesignated from 218.9 (effective date pending)..... **56795**
Amended (effective date pending)..... **56796**
218.11 Redesiganted from 318.10 (effective date pending)..... **56795**
221 Authority citation revised..... **56796**
221.81 (b) removed (effective date pending)..... **56796**
221.82 (b)(3) removed (effective date pending)..... **56796**
221.83 Added (effective date pending)..... **56796**
222.69 (f), (g) and (h) redesignated as (g), (h) and (i); new (f) added; new (g)(2) and (i)(4) amended (effective date pending)..... **56796**
237 (a)(4) and (b) amended; (c) added (effective date pending)..... **30342**
237.7 (a) revised (effective date pending)..... **30342**
263 Authority citation revised..... **30342**
263.2 (c) added (effective date pending)..... **30342**
263.9 Added (effective date pending)..... **30342**
280.2 Undesignated introductory text designated as (a); existing (a) and (b) redesignated as (1) and (2); new (b) added..... **61508**
280.4 (b) amended..... **61508**
280.20 (g) redesignated as (i); (f)(4), (5), new (g) and (h) added..... **61509**
280.31 Revised..... **61509**
280.32 Revised..... **61510**

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

300 Revised (effective date pending)..... **44798**
300.17 (b)(3) and Note 2 corrected..... **48694**
300.18 (b)(2) corrected..... **48694**
300.110 OMB number pending..... **44798**
300.111 Corrected..... **48694**
300.121 OMB number pending..... **44798**
300.122 OMB number pending..... **44798**
300.123 OMB number pending..... **44798**
300.125 OMB number pending..... **44798**
300.126 OMB number pending..... **44798**
300.127 OMB number pending..... **44798**
300.128 OMB number pending..... **44798**
300.129 OMB number pending..... **44798**
300.130 OMB number pending..... **44798**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

300.131 OMB number pending....44798
300.132 OMB number pending....44798
300.133 OMB number pending....44798
300.134 OMB number pending....44798
300.136 OMB number pending....44798
300.138 OMB number pending....44798
300.139 OMB number pending....44798
300.140 OMB number pending....44798
300.141 OMB number pending....44798
300.144 OMB number pending....44798
300.146 OMB number pending....44798
300.148 OMB number pending....44798
300.149 OMB number pending....44798
300.152 OMB number pending....44798
300.153 OMB number pending....44798
300.180 OMB number pending....44798
300.192 OMB number pending....44798
300.220 OMB number pending....44798
300.222 OMB number pending....44798
300.223 OMB number pending....44798
300.224 OMB number pending....44798
300.225 OMB number pending....44798
300.226 OMB number pending....44798
300.227 OMB number pending....44798
300.230 (b) introductory text amended; (b)(1) designation; (b)(2) and comment removed; (b)(1)(i) and (ii) redesignated as new (b)(1) and (2); new (b)(2) amended....37654
300.231 OMB number pending....44798

Page

300.235 OMB number pending....44798
300.238 OMB number pending....44798
300.240 OMB number pending....44798
300.280 OMB number pending....44798
300.281 OMB number pending....44798
300.284 OMB number pending....44798
300.341 OMB number pending....44798
300.343 OMB number pending....44798
300.345 OMB number pending....44798
300.346 OMB number pending....44798
300.349 OMB number pending....44798
300.380 OMB number pending....44798
300.381 OMB number pending....44798
300.382 OMB number pending....44798
300.383 OMB number pending....44798
300.402 OMB number pending....44798
300.482 OMB number pending....44798
300.483 OMB number pending....44798
300.486 Redesignated as 300.487; new 300.486 added (effective date pending)....56796
300.487 Redesignated from 300.486 (effective date pending)....56796
300.505 OMB number pending....44798
300.510 OMB number pending....44798
300.512 OMB number pending....44798
300.532 OMB number pending....44798
300.533 OMB number pending....44798
300.543 OMB number pending....44798

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 34 Chapter III—Con. Page

300.561 OMB number pending 44798
300.562 OMB number pending 44798
300.563 OMB number pending 44798
300.565 OMB number pending 44798
300.569 OMB number pending 44798
300.570 Corrected 48694
300.571 OMB number pending 44798
300.572 OMB number pending 44798
300.574 OMB number pending 44798
300.575 OMB number pending 44798
300.586 Redesignated as 300.587; new 300.586 added (effective date pending) 56796
300.587 Redesignated from 300.586 (effective date pending) 56796
300.589 OMB number pending 44798
300.600 OMB number pending 44798
300.653 OMB number pending 44798
300.660 OMB number pending 44798
300.661 OMB number pending 44798
300.662 OMB number pending 44798
300.670—300.672 Undesignated center heading added (effective date pending) 30342
300.670 Added (effective date pending) 30343
300.671 Added (effective date pending) 30343
300.672 Added (effective date pending) 30343
300.750 OMB number pending 44798
300.751 OMB number pending 44798
300.754 OMB number pending 44798
300 Appendix C corrected 48694
301.1 (a) revised (effective date pending) 44840

NOTE: **Boldface page numbers indicate 1992 changes.**

Page

301.3 (a) and (c) revised (effective date pending) 44840
301.6 Added (effective date pending) 44840
301.10 (b)(2) revised (effective date pending) 44840
301.30 (a), (b)(2) and (d) revised (effective date pending) 44840
303.124 (b) introductory text amended; (b)(1) designation; (b)(2) and note removed; (b)(1)(i) and (ii) redesignated as new (b)(1) and (2); new (b)(2) amended 37654
316 Revised 62096
318 Revised 62099
319 Revised 62106
356 Authority citation revised 30343
356.2 (d) added (effective date pending) 30343
356.3 (b) and (c)(2) amended; (d) added (effective date pending) 30343
361.170 (d) revised (effective date pending) 56797
361.171 (b) and (c) redesignated as (c) and (d); new (b) added (effective date pending) 56797

Chapter IV—Office of Vocational and Adult Education, Department of Education (Parts 400—499)

400 Revised (effective date pending) 36724
401 Revised (effective date pending) 36730
402 Added (effective date pending) 36733
403 Added (effective date pending) 36735
405 Added (effective date pending) 36761
406 Added (effective date pending) 36763
407 Revised (effective date pending) 36765
408 Revised (effective date pending) 36767
409 Redesignated as 429 (effective date pending) 36724, 36771
Added 36771

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

410 Revised (effective date pending)..... **36773**
411 Revised (effective date pending)..... **36776**
412 Revised (effective date pending)..... **36778**
413 Added (effective date pending)..... **36780**
414 Revised (effective date pending)..... **36782**
415 Revised (effective date pending)..... **36784**
416 Revised (effective date pending)..... **36786**
417 Revised (effective date pending)..... **36788**
418 Added (effective date pending)..... **36791**
419 Added (effective date pending)..... **36794**
421 Added (effective date pending)..... **36796**
422 Added (effective date pending)..... **36797**
423 Added (effective date pending)..... **36799**
424 Added (effective date pending)..... **36801**
425 Added (effective date pending)..... **36803**
426 Added (effective date pending)..... **36805**
427 Added (effective date pending)..... **36810**
428 Added (effective date pending)..... **36812**
429 Redesignated from 409 (effective date pending)..... **36724, 36771**

Chapter V—Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

555 Added (effective date pending)..... **53195**
562 Authority citation revised..... **30343**
562.2 (b)(1)(iii) and (2) amended; (b)(3) added (effective date pending)..... **30343**
562.3 (c) added (effective date pending)..... **30343**
581.59 Added (effective date pending)..... **56797**

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

Page

600.5 (a)(7) and (c)(2) amended; (b) redesignated as (c); new (b) added (effective date pending)..... **57309**
600.6 (a)(6) and (c)(2) amended; (b) redesignated as (c); new (b) added (effective date pending)..... **57309**
600.9 OMB numbers..... **57310**
600.30 (a) introductory text revised (effective date pending)..... **57310**
600.31 (a)(4), (5) amended; (a)(6) added (effective date pending)..... **57310**
600.41 (g)(1) amended (effective date pending)..... **47753**
630 Authority citation revised..... **30343**
630.11 Introductory text amended (effective date pending)..... **30343**
630.22 Added (effective date pending)..... **30343**
630.23 Added (effective date pending)..... **30343**
637 Authority citation revised..... **54301**
637.1 Amended..... **54302**
637.3 (a) revised..... **54302**
637.4 Authority citation revised..... **54302**
637.12 (a) amended..... **54302**
637.14 (c)(7) and (9) amended..... **54302**
637.32 (g)(1) and (i)(1) amended..... **54302**
639 Authority citation revised..... **49650**
639.1 (a) amended and authority citation revised (effective date pending)..... **49650**
639.2 Authority citation revised (effective date pending)..... **49650**
639.3 (a) and authority citation revised (effective date pending)..... **49650**
639.4 Authority citation revised (effective date pending)..... **49650**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 34 Chapter VI—Con. Page

639.10 Authority citation revised (effective date pending) **49650**

639.11 Authority citation revised (effective date pending) **49650**

639.30 Authority citation revised (effective date pending) **49650**

639.31 Authority citation revised (effective date pending) **49650**

639.40 Authority citation revised; (a)(1) and (b) amended (effective date pending) **49650**

653.2 (c) added (effective date pending) **30343**

563.3 (b) amended (effective date pending) **30343**

654.2 (c) added (effective date pending) **30344**

654.4 (a) amended (effective date pending) **30344**

668.12 (f) added; authority citation revised (effective date pending) **57310**

668.56 (a) introductory text and (c) revised (effective date pending) **39089**

668.57 (c)(1) introductory text and (d)(1) introductory text revised (effective date pending) **39089**

668.58 (a)(1)(i) revised (effective date pending) **39089**

668.59 (a)(3)(ii) and (c)(2)(ii) revised (effective date pending) **39089**

668.61 (b) revised (effective date pending) **39089**

668.84 (b)(4) and (c) amended (effective date pending) **47753**

(b)(4) amended (effective date pending) **47754**

668.85 (b)(4) amended (effective date pending) **47753**

(b)(4) amended (effective date pending) **47754**

(c) added **60034**

668.86 (b)(4) and (c) amended (effective date pending) **47753**

(b)(4) amended **47754**

668.87 (a)(1) and (b) amended (effective date pending) **47753**

668.88 Heading, (a), (b) and (c)(4) amended (effective date pending) **47753**

(a) amended (effective date pending) **47754**

(b)(3) and (4) revised **60034**

668.89 Heading, (a), (b)(1), (2) and (c) amended (effective date pending) **47753**

668.90 (a)(1) introductory text, (ii), (iii), (2), (3)(i), (ii), (iii), (iv), (v), (4), (b)(1), (c)(1), (2), (d)(1), (e) and (f)(3) amended (effective date pending) **47753**

(a)(1), (c)(2), (f)(1) and (3) revised; (c)(3) added; (d)(1), (3) and (5) removed; (d)(2) and (4) redesignated as (d)(1) and (2) **60034**

668.92 (a) amended (effective date pending) **47753**

668.95 (a) amended (effective date pending) **47753**

668.98 Added **60034**

668.114 (a), (b) and (c) amended (effective date pending) **47753**

(a) amended (effective date pending) **47754**

668.115 (a) and (b)(2) amended (effective date pending) **47753**

668.116 Heading, (a), (b), (c), (e)(1) introductory text, (v), (f) and (g)(1) amended (effective date pending) **47753**

668.117 Heading, (a), (b), (c) and (d) amended (effective date pending) **47753**

668.118 Heading, (a), (b) and (c) amended (effective date pending) **47753**

668.119 (a) amended (effective date pending) **47753**

(a) and (d) amended **60035**

668.120 (a), (b) introductory text and (b)(3) amended (effective date pending) **47753**

(a) revised **60035**

668.121 (a) and (b) amended (effective date pending) **47753**

668.124 Added **60035**

668.130—668.139 (Subpart I) Added (effective date pending) **3184**

674 Heading revised **60706**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

674.1 (b)(1) revised (effective date pending) **32344**
674.2 (b) amended (effective date pending) **32344**
674.8 (a) introductory text and (3) revised (effective date pending) **32344**
674.18 (b)(4) amended (effective date pending) **32345**
674.19 (e)(2)(i) revised (effective date pending) **32345**
674.31 (b)(2)(i)(B), (3) and (5)(iii)(A) revised (effective date pending) **32345**
674.32 (a)(2)(ii) and authority citation revised (effective date pending) **32345**
674.33 (a)(1) and (3)(iii) revised (effective date pending) **32345**
(c)(2) revised (OMB number) **60706**
674.34 (b)(1), (c)(3), (4), (5), (d)(3) introductory text, (4) introductory text, (iii) and (e)(2) revised (effective date pending) **32345**
674.35 (b)(1), (c) introductory text, (3), (4) and (g) revised (effective date pending) **32345**
674.36 (b)(1), (c)(3) and (d) revised (effective date pending) **32345**
674.38 (a)(1) revised (effective date pending) **32346**
674.42 (a)(2)(x) added; (b)(1)(i) revised (effective date pending) **32346**
674.43 (a) introductory text and (b)(3) introductory text revised (effective date pending) **32346**
674.45 (c)(1) introductory text, (i) and (ii)(B) revised; (c)(1)(iii) added (effective date pending) **32346**
674.47 (a)(2) revised (effective date pending) **32346**
(d), (e) and (g) revised **60706**
674.49 (c)(1), (2), (3), (e)(4)(i), (f) introductory text, (2) introductory text, (ii)(A), (f)(3), (h)(1)(i) and (ii) revised (effective date pending) **32346**
674.50 (a)(6) amended (effective date pending) **32347**

Page

(a)(2) revised **60707**
674.52 (d) revised (effective date pending) **32347**
674.57 (a)(2) amended (effective date pending) **32347**
674 Appendix A revised (effective date pending) **32347**
Appendix B revised (effective date pending) **32349**
Appendix C revised (effective date pending) **32351**
Appendix D revised (effective date pending) **32354**
675 Authority citation revised **32356**
Heading revised **60707**
675.2 (b) amended **32356, 60707**
675.16 (b)(1) and (3) amended (effective date pending) **32356**
675.18 (a)(4) amended (effective date pending) **32356**
675.21 (b) revised **60707**
675.22 (b)(6) amended (effective date pending) **32356**
675.23 (b)(2)(ii) amended (effective date pending) **32356**
675.26 (a)(1) introductory text, (ii) and (2) revised (effective date pending) **32356**
675.28 (a), (b)(2) and (c)(2)(ii) revised (effective date pending) **32356**
675.34 (a)(2) revised (effective date pending) **32357**
676 Heading revised **60707**
676.2 (b) amended (effective date pending) **32357**
676.3 (b) amended (effective date pending) **32357**
676.14 (d)(3) revised (OMB number) **60707**
676.16 (f) amended (effective date pending) **32357**
676.18 (a)(3) amended (effective date pending) **32357**
682 Revised (effective date pending) **60323**
682.600 (d) redesignated as (e); new (d) added (effective date pending) 3177

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 34

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Page

755.20 Redesignated as 755.22; new 755.20 added (effective date pending)..... **53200**
755.21 Added (effective date pending)..... **53201**
755.22 Redesignated from 755.20 (effective date pending)..... **53200**
757.10 Redesignated as 757.12; new 757.10 added (effective date pending)..... **53201**
757.11 Added (effective date pending)..... **53201**
757.12 Redesignated from 757.10 (effective date pending)..... **53201**
758.10—758.11 (Subpart B) Added (effective date pending)..... **53201**
762.2 (d) added (effective date pending)..... **30344**
762.4 Existing text designated as (a); (b) added (effective date pending)..... **30344**
769 Revised (effective date pending)..... **49265**

Title 34—*Proposed Rules:*

5b **59860**
34 ..... **58100**
76 ..... **38740**
80 ..... **38740**
99 ..... **35964**
231 ..... **44046**
238 ..... **44046**
280 ..... **36324, 38740**
305 ..... **43572**
316 ..... **34620**
318 ..... **34620**
319 ..... **34620**
345 ..... **59866**
366 ..... **30866, 36617**
545 ..... **59866**
555 ..... **34488**
600—699 (Ch. VI) **38639, 62533**
612 ..... **44350**
668 ..... **30826**
785 ..... **44408**
786 ..... **44408**
787 ..... **44408**

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

Page

133.1 Revised..... **37066**
251.4 (a) amended; (i) added..... **5616**

Title 35—*Proposed Rules:*

52 ..... **45358, 45360**
63 ..... **45363**
133 ..... **32187**

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.96 (l) redesignated as (m); new (l) added..... **29797**
7.97 (c) added..... **58716**
51 Revised..... **40503**
Corrected..... **42808**
51.4 (a) corrected..... **46509**

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

242.25 (m)(1) table and (13) table corrected; (m)(17)(ii)(C), (18)(ii)(B), (19)(ii)(D) and (25)(ii)(B) correctly revised..... **54509**
(m)(4) table amended; eff. 7-29-92..... **54703**

Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Appendix C amended..... **29220**

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1254.26 (e) introductory text amended; (h) added..... **46306**
1258.12 (g) and (h) redesignated as (h) and (i); new (g) added; interim..... **46306**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

(g) and (h) redesignated as (h) and (i); new (g) added..... **60997**

Title 36—*Proposed Rules:*

7 ..... **60496**
242 ..... **43074**
251 ..... **36618**
704 ..... **57979**
1191 ..... **41006, 60612**
1191 3069
1222 ..... **57042**
1230 ..... **57042**
.... 376

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.12 (a) and (d) revised..... **29641**
1.16 (a) through (d), (f) through (j) and note revised..... **38194**
1.17 (i)(1) revised..... **29642, 32439**
(b) through (g), (j) and (m) through (o) revised..... **38194**
1.18 (a), (b) and (c) revised..... **38195**
1.19 (b)(4), (f) and (h) revised..... **38195**
1.20 (a), (c), (e), (f), (g) and (i) revised..... **38195**
(i) revised; interim..... **56450**
1.21 (a)(1), (5), (6), (b)(2), (3), (e) and (i) revised; (p) added..... **38195**
(a)(6) corrected..... **40493**
1.26 (a) and (c) revised..... **38195**
1.32 Removed..... **29642**
1.46 Revised..... **29642**
1.48 (a) revised..... **56447**
1.60 (b) and (c) revised; (d) added..... **56447**
1.104 (e) revised..... **29642**
1.331—1.335 Undesignated center heading revised..... **29642**
1.331 Removed..... **29642**
1.332 Removed..... **29642**
1.333 Removed..... **29642**
1.334 Removed..... **29642**
1.378 (a), (b) and (c) revised; interim..... **56450**
1.431 (b)(1) through (3)(ii), (c) and (d) revised; (e) removed..... 4344

Page

1.432 Revised..... 4344
1.434 (a) revised..... 4345
1.445 Corrected..... **40493**
1.445 (a) revised..... **38195**
(a)(4) added..... 4345
1.446 (d) revised; (e) added..... 4345
1.451 (a) revised..... 4345
1.455 (a) revised..... 4345
1.475 Revised..... 4345
1.476 (a) revised..... 4346
1.480 (b) revised..... 4346
1.482 (a) introductory text, (1) and (2)(ii) revised..... **38196**
1.484 (b) revised..... 4346
1.485 Revised..... 4346
1.487 Removed..... 4346
1.488 (a) revised..... 4346
1.492 (a)(1), (2), (3), (5) and (b) through (d) revised..... **38196**
Introductory text and (e) revised..... 4346
1.494 (a) through (d) and (g) revised; (h) removed..... 4346
1.495 (a) through (e) and (h) revised; (i) removed..... 4347
1.499 Revised..... 4347
1.821 (h) revised..... 4348
2.6 (a)(1) and (b)(7) revised; (a)(19) added..... **38196**
2.87 Revised..... **38196**
(c) corrected..... **40493**
2.185—2.187 Undesignated center heading removed..... **29642**
2.185 Removed..... **29642**
2.186 Removed..... **29642**
2.187 Removed..... **29642**
3 Added..... **29642**
10.9 (c) added..... 4348

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised..... **55465**
201.5 (b)(2)(iv) revised..... **60482**
201.11 (h)(2) and (3) revised..... **61834**
201.17 (i)(2)(i) and (ii) revised; (i)(2)(iii) added..... **61834**
201.27 Added; interim..... **55465**
202.3 (b)(6) and (7) redesignated as (b)(7) and (8); new (b)(6) added..... **39616**
202.11 Added..... **45310**
202.17 (a) through (f) revised; (g) and (h) added..... **60483**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 37 Chapter II—Con. Page

202.19 (b)(3) revised; (b)(4) removed; (d)(2)(viii) added..... **45310**
202.20 (b)(3) revised; (c)(2)(xviii) added..... **45310**

Chapter III—Copyright Royalty Tribunal (Parts 300—399)

301.1 (g) and (h) added; interim..... 6445
301.3 Revised..... 5616
301.70 Revised; interim..... 6445
301.71 (d) added; interim..... 6445
301.72 (d) added; interim..... 6445
304 Revised..... **60954**
311 Added; interim..... 6445

Title 37—*Proposed Rules:*

1 ...**29248, 31344, 36034, 38640, 41899, 42721, 43412, 56537** 528
2 ..... **38640, 56537**
3 ..... **38640**
5 ..... **43412**
10 ..... **29248, 36034, 43412, 56537**
300-399 (Ch. III) **54542**
304 ..... **55494, 58552**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

[EDITORIAL NOTE: The revision date for the 1992 edition of title 38 was delayed until September 1, 1992. The 1992 revision includes amendments promulgated during the period of July 1, 1991 through September 1, 1992. For amendments promulgated during that period see the August 1992 LSA.]

Chapter I—Department of Veterans Affairs (Parts 0—99)

1.630 (c) revised; authority citation added..... **44123**
1.631 Authority citation added..... **44124**
1.633 Added..... **44124**
1.912a (a) revised; (d)(1) redesignated as (d); (d)(2) removed; (e) added..... **47263**
1.930 Revised..... **47263**
1.936 Revised..... **47264**
1.940 Revised..... **47264**
1.955—1.970 Authority citation revised..... 3840

Page

1.955 (a)(1), (d) and authority citation revised..... **47264**
1.957 (a)(2), (b) introductory text, (1), (2) and authority citation revised..... **47264**
1.963 (a) and authority citation revised..... 3840
1.964 (a) and authority citation revised..... 3840
1.965 (b) and (2) introductory texts revised; authority citation added..... 3841
3.1—3.1009 (Subpart A) Authority citation revised..... **59296**
3.7 (x)(21) authority citation removed; (x)(22), (23) and authority citation added..... **43905**
(x)(24) through (26) added..... **60734**
3.103 (b)(1) and (f) amended..... **56993**
3.105 (h)(2) introductory text amended..... **56993**
3.261 Table amended..... **59298**
3.262 (l)(1) through (4) and authority citation revised; (r) through (u) added..... **59298**
(g)(2), (h) introductory text, (j)(2), (3) heading, (k)(1), (5), (6), (m) introductory text, (1), (2), (n) introductory text, (1), (2) and (p) amended; (k) authority citation, (m) authority citation, (n) authority citation and (o) authority citation revised..... **59299**
3.263 (a) amended; (e) and (f) added..... **59299**
3.271 (f) introductory text redesignated as (f)(1); (a)(1) through (3) and (f)(2) added..... **59299**
3.272 (d) revised; (n) through (p) added..... **59300**
3.273 Introductory text and (d) added; (a), (b)(1), (2) and (c) amended..... **59300**
3.275 (f) and (g) added..... **59300**
3.277 Authority citation revised..... **59300**
3.306 (b) heading and (c) heading revised..... **59296**
3.660 (a)(2) heading, (b) introductory text, (1) and (2) amended; (b) authority cita-

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

tion removed; (b)(1) authority citation added....59300
3.661 Heading,(a)(1) heading, (b) heading, (1) and (2) amended....59300
3.1610 Introductory text and (b) corrected....40944
17 Authority citation revised....41701
17.123 (j) redesignated as (j)(1); (j)(2) and authority citation added....41701
21 Authority citation revised....60735
21.21 (a) and authority citation revised....57108
21.22 (a) amended....57108
21.78 (b)(4) introductory text, (i) and (ii) amended....57108
21.134 Revised....57108
21.148 (d) amended....57108
21.254 (b)(1) amended....57108
21.256 (e)(2) and authority citation revised....57108
21.264 Amended....57108
21.268 (b) amended....57108
21.272 (b)(1) amended....57108
21.276 (g) amended....57108
21.320 (b)(3) and (d)(3) amended....57108
21.330 (a) amended....57108
21.334 Nomenclature change; (a) and authority citation, (b)(1), (e)(2) and authority citation revised....57108
21.340 (c) and authority citation revised....57109
21.3046 (b)(5) revised; authority citation added....60735
21.4131 (b) and (c)(1) revised; (c) authority citation added....40614
21.4234 (a) revised....40614
21.4251 (g)(1) revised....40614
21.4500—21.4507 (Subpart F) Regulations at 57 FR 31026 corrected....43616
21.4632 (c)(4) added....49397
21.4700—21.4705 (Subpart F-2) Republished....57101
21.5001—21.5300 (Subpart G) Regulations at 57 FR 31027 corrected....43616
21.7000—21.7310 (Subpart K) Regulations at 57 FR 31028 and 31029 corrected....43616
Regulations at 57 FR 31029 and 31030 corrected....43617

Page

21.7131 (b) and (c)(1) revised....40615
21.7136 (a) and authority citation, (b)(1) and authority citation, (2) and authority citation and (3) introductory text revised....57103
21.7137 (a) and authority citation, (c)(2) and authority citation revised....57104
21.7500—21.7810 (Subpart L) Regulations at 57 FR 31030 and 31031 corrected....43617
21.7520 (b)(14) and authority citations revised; (b)(29) added....57105
21.7540 (a)(2) and authority citation revised....57106
21.7550 (a) introductory text and authority citation revised; (c) and authority citation added....57106
21.7551 (a)(2) and authority citation revised....57106
21.7635 (c) and authority citation, (d) and authority citation revised....57106
21.7636 (a)(2), (3) and authority citation revised; (a)(4) added; (b)(1) removed; (b)(2) through (b)(6) redesignated as (b)(1) through (b)(5)....57107
21.7639 (b) and authority citation revised; (c) introductory text amended....57107
21.7670 (a)(2), (3) and authority citation, (b)(2)(i), (2)(ii), (b) authority citation, (c)(2)(i), (ii) and (c) authority citation revised; (a)(4), (b)(2)(iii) and (c)(2)(iii) added....57107
21.7672 (c)(2) revised; authority citation added....46985
36 Regulations at 57 FR 31031 and 31032 corrected....43617, 43618
Negotiated interest rates....61325
36.4201—36.4287 Sectional authority citations revised....40616
36.4225 (f) added....40616
36.4300—36.4375 Sectional authority citations revised....40616
36.4348 (f) added....40616

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 38

Title 38—*Proposed Rules:*

Page

3 .....40424, 48350
4 .....4954, 4961, 4962, 4969, 5691
21 .....41451, 47023, 47024, 58435
36 47433

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference.....30654, 45572
111 DMM amended; incorporation by reference...30780, 32899, 43403, 45889, 49139, 55113, 56276
Meetings.....47264
111.3 (e) amended.....37884
232 Authority citation revised.....36903
232.1 (k)(1), (2) and (3) redesignated as (k)(3), (4) and (5); new (k)(1) and (2) added.....36903
(b)(2) redesignated as (b)(3); new (b)(2) added.....38443
233.7 (j)(2) and (4) revised.....32726
601.100 Procurement Manual amended; incorporation by reference.....60998
601.105 Table amended.....31129

Title 39—*Proposed Rules:*

111 ...32188, 32475, 39646, 40890, 41716, 43956, 58765
3001 .....31346, 39160, 57124

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

2 Authority citation revised.....461
2.211 (d) amended.....461
2.301 (b)(6) removed, (e) amended; (h)(2)(i), (ii)(A) and (C) revised.....461
2.306 (j)(1) existing text amended; (j)(1)(i) and (ii) added.....462
2.310 Heading, (a)(1), (6), (b), (g)(1), (3), (4), (h)(1) and (4) revised; (g)(5) and (6) added.....462

Page

22.04 Heading revised.....60129
22.16 (b) amended.....60129
35.4000—35.4130 (Subpart M) Revised.....45316
40 Revised.....48177
51 Authority citation revised...32334, 52987
51.165 (a)(1)(xii)(D) revised; (a)(1)(v)(C)(*8*), (*9*), (xii)(E) and (xx) through (xxv added.....32334
51.166 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (30) through (37) added.....32335
51.350—51.373 (Subpart S) Added.....52987
51 Appendix N removed.....52987
52 Authority citation revised.....32336
Authority delegation notice.....54931
State implementation plan determination.....44689, 45715
Technical correction.....6056
52.21 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (31) through (38) added.....32336
52.24 (f)(13)(iv) revised; (f)(5)(iii)(*h*), (*i*), (13)(v) and (19) through (24) added.....32337
52.220 (c)(183)(i)(B)(*2*), (184)(i)(B)(*2*), (C)(*1*), (185)(i)(A)(*3*) and (C)(*2*) amended.....35759
(c)(182), (183)(i)(A)(*2*), (184)(i)(B)(*2*) added.....48459
52.320 Regulation at 57 FR 28617 withdrawn.....36004
(c)(57) added.....40333
(c)(56) added.....54511
52.370 (c)(59).....5465
52.420 (c)(44) added.....53566
52.470 (c)(27) added.....34251
52.472 (d) added.....34251
52.570 (c)(37) added.....46781
(c)(38) added.....58991
(c)(42) added.....6095
52.720 (c)(90) added.....37104
(c)(8) added.....40128
(c)(87) added.....40335
(c)(84) and (85) added.....59935
(c)(94) added.....61837
(c)(93) added.....3844
(c)(92) added.....3846
52.726 (f) added.....3844

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

52.736 (a) removed; (b) added..... **59935**
52.737 Added..... **59936**
52.741 (z)(5) added..... **38616**
52.770 (c)(81) added..... **42892**
52.820 (c)(55) revised..... 6093
52.870 (c)(27) added..... 3848
52.884 (a)(2) and (3) removed..... 3848
52.1070 (c)(90) added..... **49653**
52.1120 (c)(96) added..... **46312**
(c)(92) added..... **46315**
(c)(95) added..... **58992**
(c)(97) added..... **58995**
(c)(93) added..... 3494
52.1167 Table amended...**46312, 46316, 58993, 58996**
Table amended..... 3495
52.1220 (c)(25) added..... **46308**
52.1230 (a) removed; (b) and (c) redesignated as (a) and (b)..... **46308**
52.1270 (c)(22) added..... **34252**
52.1320 (c)(80) added..... **46779**
(c)(81) added..... **52723**
52.1370 (c)(25) added..... 5297
52.1384 Revised..... **57347**
Existing text designated as (a); (b) added..... **60486**
52.1520 (c)(45) added..... **36605**
(c)(46) added..... 4904
52.1525 Table revised..... **36605**
Table amended..... 4904
52.1526 Removed..... **36607**
52.1527 (b) revised..... **36607**
52.1530 Removed..... **36607**
52.1570 (c)(47) added..... **42893**
(c)(49) added..... **53441**
52.1605 Amended..... **42893, 43441**
52.1820 (c)(23) added..... 5297
52.1970 (c)(89) added..... **37467**
(c)(94) added..... **37468**
(c)(93) added..... **37469**
(c)(95) added..... **37471**
(c)(65) revised..... **37474**
52.1977 Revised..... **37471**
52.2020 (c)(73) added..... **42895**
(c)(74) added..... **43906**
(c)(76) added..... **52722**
52.2120(c)(36) added..... **59302**
52.2170 (c)(13) added..... 5297
52.2220 (c)(106) added..... **40337**
52.2270 (c)(77) added..... **44126**
52.2420 (c)(97) removed..... **35760**
Added..... **48460**
52.2470 (c)(38) added..... 4580
52.2479 Revised..... 4580
52.2520 (c)(25) added..... **42896**

Page

52.2570 (c)(62) added..... **46310**
(c)(64) added..... **53444**
55 Added..... **40806**
58 Appendix D amended..... **44496**
60 Authority delegation notices..... **29649, 48563, 55113**
Authority citation revised..... **32338**
Authority delegation notices..... 21
60.2 Amended..... **32338**
60.4 (c) table revised..... 5298
60.14 (h) thrqugh (l) added..... **32339**
60.17 (a)(31) amended; (a)(62) added..... **30656**
60.730—60.737 (Subpart UUU) Added..... **44503**
60 Appendix A amended..... **30656**
61 Authority delegation notices..... **29649, 48563, 55113**
Authority delegation notices..... 21
61.04 (c) table revised..... 5299
61.60 (c) amended..... **60999**
61.340 (c)(3) removed..... 3095
61.341 Amended..... 3095
61.342 (a), (b), (c)(1) introductory text, (iii), (2), (3), and (d) introductory text revised; (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added..... 3095
61.343 (a) introductory text amended; (b) and (c) redesignated as (c) and (d); (a)(1)(i)(C) and new (b) added; new (c) revised..... 3096
61.344 (a)(1)(i)(C) redesignated as (a)(1)(i)(D); new (a)(1)(i)(C) added..... 3097
61.345 (a)(1)(ii), (2) and (3) introductory text revised; (a)(4) added..... 3097
61.346 (a)(1)(i)(C) added..... 3097
61.347 (a)(1)(i)(C) Added..... 3098
61.348 (a)(5) amended; (b) introductory text and (e) introductory text revised; (f), (g), (h), and (i) redesignated as (e)(1), (2), (f), and (g); (e)(3) added..... 3098
61.349 (a)(1)(ii), (2)(i)(B), (ii), and (e) revised; (a)(1)(iv) and (2)(iv) added..... 3098
61.353 (a) revised..... 3099
61.354 (a)(1), (b), (c)(6)(i), (7)(i), (8), and (d) revised; (c)(9), (f) and (g) added..... 3099

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 40 Chapter I—Con. Page

61.355 (a)(1) introductory text, (1)(i), (ii), (2), (3), (b), (c) introductory text, (e)(3), (4), (f)(3), (i) introductory text, (3) introductory text, (ii)(C), (iii), (iv), and (4) revised; (c)(1) and (2) redesignated as (c)(2) and (3); (a)(6), new (c)(1), (j), and (k) added; new (c)(2), (d) and (g) amended....3099

61.356 (f)(2)(i) removed; (b)(4), (f)(2)(ii) and (i)(4) redesignated as (b)(6), (f)(2)(i), and (i)(5); (b)(2), new (b)(6), (c), (d), (e)(2), (f)(2) introductory text, new (f)(2)(i) introductory text, (E), (F), (G), (j)(3), (6), (8), (9), and (11) revised; new (b)(4), (5), (f)(2)(i)(H), new (i)(4), (j)(12), and (m) added....3103

61.357 (d)(4) removed; (d)(3), (5), (6), and (7) redesignated as (d)(4), (6), (7), and (8); new (d)(7)(iii) redesignated as (d)(7)(iv); (a) introductory text, (4), (d)(1), and new (d)(4)(iii), (7)(iv)(D), and (8) revised; (c) and (d)(2) amended; new (d)(3), new (5), new (7)(iii), (iv)(J), and (v) added....3105

61.359 Removed....3105

62.6123 Undesignated heading and section added....**43405**

62.7325 Undesignated center heading and section added....**56858**

62.7425 Undesignated center heading and section added....**56858**

62.9975 Undesignated center heading and section added....**44692**

62.11450 Undesignated center heading and section added....**44692**

63 Added....**61992**

70 Added....**32295**

70.1 (f) added....**57347**

72 Added....3650

73.1—73.3 (Subpart A) Revised....3687

73.10—73.27 (Subpart B) Added....3687

73.30—73.38 (Subpart C) Added....3691

73.50—73.53 (Subpart D) Added....3694

73.72 (c) revised....3695

73.80—73.86 (Subpart F) Added....3695

75 Added....3701

77 Added....3757

78 Added....3760

80 Program extension....**46316**

80.2 (pp), (qq) and (rr) added....**47771**

80.35—80.39 (Subpart C) Added....**47771**

81 Authority citation revised....4350

81.300 (d) added....**56766**

81.301 Table amended....3850

81.302 Amended....**56767**

81.303 Amended....**56767**

81.305 Amended....**56767**

Amended....3341

81.306 Amended....**56768**

81.307 Amended....**56768**

81.310 Amended....**56769**

81.311 Amended....**56769**

81.313 Amended....**56769**

81.314 Amended....**56769**

81.315 Amended....**56770**

81.320 Amended....**56770**

81.323 Amended....**56770**

81.324 Revised....**48462**

Amended....**56771**

81.327 Amended....**56772**

81.329 Amended....**56772**

Amended....3342

81.332 Amended....**56772**

81.333 Amended....**56772**

81.334 Amended....**56773**

81.336 Amended....**56773**

81.338 Amended....**56773**

81.339 Amended....**56774**

81.341 Table amended....**59302**

81.344 Amended....**56775**

81.345 Amended....**56775**

81.347 Amended....**56776**

81.348 Amended....**56777**

81.349 Amended....**56778**

81.350 Amended....**56778**

81.351 Amended....**56778**

Table amended....4350

81.355 Amended....**56779**

82 Authority citation revised....**31260**

82.1—82.20 Designated as subpart A....**31261**

82.1—82.13 Designated as subpart A and revised....**33787**

82.14 Removed....**33787**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

82.20 Removed....33787
82.1—82.20 (Subpart A) Appendixes A through E redesignated from appendixes A through E to part 82....31261
82.30—82.42 (Subpart B) Added....31261
82.60—82.68 (Subpart C) Added....4798
82 Appendixes A, B, C and E redesignated as appendixes A, B, C and E to subpart A and revised; appendix D redesignated as appendix D to subpart A....33787
86 Authority citation revised....30055
Authority citation revised....4002
86.091-28 (e) added....31897
86.094-1 Added....4002
86.094-2 Amended....31897
Amended....4002
86.094-7 (h) revised; OMB number....31897
86.094-8 (b) through (h) revised; (k) added....31898
86.094-9 (k) added....31899
86.094-13 Added....4002
86.094-14 Added....4006
86.094-16 Added....31900
86.094-21 (a) through (b)(1) and (b)(5)(i)(C) through (b)(7) revised; (g) added....31900
Revised....4009
86.094-22 Added....31902
Revised....4010
86.094-23 Revised....4012
86.094-24 Added....31903
Revised....4014
86.094-25 Added....4018
86.094-26 Added....4021
86.094-28 Added....4025
86.094-30 Revised....4028
86.094-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) revised; (a)(1)(iii)(k) added....31907
(a)(2)(iii)(F) and (c)(1)(ii)(B)(2) removed....4035
86.095-14 Revised....4035
86.095-24 (a) through (b)(1)(iv), (b)(2) through (h) revised; (b)(1)(xi) added....31909
Revised....4035

Page

86.095-26 Revised....4036
86.095-30 Revised....4036
86.095-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b) and (d)(2) through (h) revised; (a)(1)(iii)(L) and (a)(2)(iii)(K) added....31913
(a)(2)(iii)(F) and (c)(1)(ii)(B)(2) removed....4037
86.096-8 (b) through (h) revised; (k) added....31915
86.097-7 (k) added....31916
86.201-94—86.246-94 (Subpart C) Added....31916
86.608-90 (a) introductory text and (1) revised; (a)(3) added....31921
86.701-94 Revised....31922
86.708-94 (b) revised....31922
86.709-94 (b) revised....31922
86.709-99 (b) revised....31922
86.901-93—86.911-93 (Subpart J) Added....30055
86.1005-90 (a)(1)(ii) amended; (a)(1)(iii) and (a)(2)(vi)(c) revised....31922
86.1008-90 (a)(2) revised; (a)(5) added....31922
86.1009-84 (a) and (c)(1) revised....31923
86.1015 Correctly designated....30657
88 Added....66046
91.215 (a) revised....34618
112 Authority citation revised....52705
112.6 Revised; interim....52705
114 Authority citation revised....52705
114.1 Revised; interim....52705
117 Authority citation revised....52706
117.22 Revised....52706
122.26 (e)(7) added....60447
122.42 (d) added....60448
122.44 (d)(1)(vi)(B) revised....33049
123.46 (a) revised....33049
124.2 Amended....60129
124.5 (b) amended....60129
124.78 Correctly designated....30657
130.7 (d)(1) redesignated in part as (d)(2); (b) revised; (c)(1) introductory text, (ii),

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 40 Chapter I—Con. Page

(2), (d) introductory text, (1), (2) and (e) amended 33049
130.8 (b)(5) added 33050
130.10 (b)(2) and (d)(3) revised 33050
131 Authority citation revised 60910
131.36 Added 60910
136.3 (a) Table 1B, (b) table amended 41833
141.2 Amended 31838
141.6 (h) added 31838
141.12 Table amended 31838
141.23 (k)(4) and (5) redesignated as (k)(5) and (6); (a)(4) introductory text, (a)(4)(i) introductory text, Table, (c) introductory text, (1), (i)(1), new (k)(5) and (6) revised; (a)(4)(iii) and new (k)(4) added 31838
141.24 (f) introductory text, (4), (5), (7), (10), (11), introductory text, (12), (14) introductory text, (15) introductory text, (16) introductory text, (17), (18), (h)(10), (12)(ii), (iii), (iv), (vi), (vii), (viii), (18) and (19)(i)(B) revised; (h)(12)(ix) through (xiv) added 31841
141.32 (e)(53) through (75) added 31843
141.40 (e) through (h), (n)(11) and (12) revised; eff. 1-17-94 31845
141.50 (a)(19) through (23) added; (b) table amended; effective in part 8-17-92 and 1-17-94 31846
141.51 (b) table amended; eff. 1-17-94 31846
141.60 (a)(3) and (b)(3) added 31846
141.61 (a)(19), (20), (21) and (c)(19) through (33) added; (b) and (c) introductory text revised; effective in part 8-17-92 and 1-17-94 31846
141.62 (b) introductory text and (c) revised; (b)(11) through (b)(15) added; eff. 1-17-94 31847
141.89 (a) table amended 31847

Page

142.16 (e) introductory text and (2) revised; eff. 1-17-94 31847
142.62 (a) and (b) revised; eff. 1-17-94 31848
146.68 (d)(4) revised 46294
147.2650 Revised 33446
147.2651 Revised 33447
148.1 (d) revised 31963
148.17 Added 37263
Regulation at 57 FR 37263 effective date corrected 39275, 41173
156 Notification of USDA comments 42472
Comment period reopened 54464
156.10 Designated as subpart A; (i)(2)(viii) revised 38146
156.200—156.212 (Subpart K) Added 38146
164.2 (k) through (r) correctly redesignated as (l) through (s) 30657
170 Revised 38151
Notification of USDA comments 42472
Comment period reopened 54464
180 Technical correction 54304, 59824
180.1 (h) table amended 53569
180.33 Revised 34518
180.103 (a) table and (b) table amended 36005
180.142 (k) added 37475
180.221 Revised 53568
180.287 Table amended 53568
180.298 (c) table amended 31325
180.304 Revised 59823
180.333 Removed 30132
180.364 (a) table amended 42701
180.381 (a) table and (b) table amended 34518
180.408 (a) table amended 53572
180.415 (a) table revised 31454
(a) amended 53445
180.425 Table amended 59824
180.432 (b) revised 58149
180.438 (a) table amended 32440
180.461 Added 48328
180.462 Added 54303
180.463 Added 47996
180.1001 (d) table amended 40129, 48737, 58149
(c) table amended 48738, 61000
(e) table amended 58148
(c) table and (e) table amended 61001

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

180.1112 Added 61002
180.1113 Added 53570
180.1114 Added 42700
180.1115 Added 61003
185 Authority citation revised 36006
Technical correction 59824
185.1310 (b) added 32441
185.3500 (a) table amended 42701
185.3500 (a)(2) table amended 42701
185.3625 Added 36006
186 Technical correction 59824
186.1860 Added 47996
186.3500 (a) table amended 42701
260.10 Amended 37263, 38564, 54460
Regulation at 57 FR 37263 effective date corrected 39275, 41173
Amended 41611
260.20 (a) amended 38565
261.2 (c)(2)(iv) revised 38564
261.3 (a)(2)(iii) and (c)(2)(ii)(C) revised; (f) added 37263
Regulation at 57 FR 37263 effective date corrected 39275, 41173
(a)(2)(v) added 41611
(e) removed 49279
261.4 (b)(15) correctly revised 29220
(b)(6)(ii) introductory text and (9) revised 30658
(a)(10) revised 37305
261.5 (j) amended 41612
261.6 (a)(2)(iii) and (3)(iii) removed; (a)(2)(iv), (v) and (3)(iv) through (viii) redesignated as (a)(2)(iii), (iv) and (3)(iii) through (vii); (a)(4) added 41612
261.31 Table amended 61502
261.32 Amended 37305
Table amended 47385
261 Appendix VII amended 37305
Appendix IX amended 37885, 37888
Appendix II amended 55117
Appendix IX 57674
262.34 (a)(1)(iii) introductory text amended; (a)(1)(iii)(B) and (a)(1) concluding text revised; (a)(1)(iv) added; (a)(2) removed 37264
264.1 (g)(2) revised 38564
264.13 (c)(3) added 54460
264.110 (b)(1), (2) and (3) amended; (b)(4) added 37264
264.111 (c) revised 37265
264.112 (a)(2) revised 37265

Page

264.140 (b)(1), (2) and (3) amended; (b)(4) added 37265
264.142 (a) introductory text revised 37265
264.143 (f)(10) introductory text revised 42835
264.145 (f)(11) introductory text revised 42836
264.147 (a)(7), (b)(7) and (f)(6) revised; (h)(4) and (5) added 42836
264.151 (f), (g), (h) and (k) revised; (n) added 42837
264.314 (e) redesignated as (f); (a)(2), (b), and (d)(1)(ii) revised; new (e) added 54460
264.316 (b) and (c) revised 54460
264.570 (a) revised; (c) added 61502
264.571 (a) amended; (b) revised 61503
264.572 Revised 61503
264.573 (a)(4), (b) introductory text and (i) revised; (b)(3) added 61503
264.1100—264.1102 (Subpart DD) Added 37265
265.1 (c)(6) revised 38564
265.13 (c)(3) added 54461
265.110 (b)(1), (2) and (3) amended; (b)(4) added 37267
265.111 (c) revised 37267
265.112 (d)(4) amended 37267
265.140 (b) revised 37267
265.142 (a) introductory text revised 37267
265.143 (e)(10) introductory text revised 42843
265.145 (e)(11) introductory text revised 42843
265.147 (a)(7), (b)(7) and (f)(6) revised; (h)(4) and (5) added 42843
265.221 (h) added 37267
265.301 (d)(1) revised 30658
265.314 (f) redesignated as (g); (a)(2), (b) and (c)(1)(ii) revised; new (f) added 54461
265.316 (b) and (c) revised 54461
265.440 (a) revised; (c) added 61503
265.441 (a) amended; (b) revised 61504
265.442 Revised 61504
265.1100—265.1102 (Subpart DD) Added 37268

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 40 Chapter I—Con. Page

266.40—266.44 (Subpart E) Removed....**41612**
266.100 (a) and (f) introductory text amended....**38564**
(b)(1) revised....**41612**
266.101 (c)(1) amended; (c)(2) revised....**38564**
266.103 (b)(2)(ii) introductory text, (iii), (3)(ii)(B), (v), (c)(1) introductory text, (ii)(A), (C), (iii), (vi), (5) and (7)(ii)(B) revised....**38564**
(c)(1) and (3) revised....**45000**
266.104 (f)(1) revised....**38565**
266.106 (b)(7) introductory text, (d)(1) and (5) revised; (d)(3) amended....**38565**
266.107 (a) revised....**38566**
266.108 (c) amended....**38566**
266.112 (b)(2)(i) revised....**38566**
266 Appendix IX amended....**38566**
Appendix IX corrected....**44999**
268.2 (g) revised; (h) added....**37270**
Regulation at 57 FR 37270 effective date corrected....**39275, 41173**
268.5 (h)(2)(ii) amended; (h)(2)(iv) revised; (h)(2)(v) redesignated as (h)(2)(vi); new (h)(2)(v) added....**37270**
Regulation at 57 FR 37270 effective date corrected....**39275, 41173**
268.7 (a)(1)(iii), (iv), (2) introductory text, (3) (iv), (v), (4) introductory text, (b)(4) introductory and (5) introductory text revised; (a)(1)(v), (3)(vi) and (d) added....**37270**
Regulation at 57 FR 37270 effective date corrected....**39275, 41173**
268.9 (d) revised....**37271**
Regulation at 57 FR 37271 effective date corrected....**39275, 41173**
268.14 Added....**37271**
268.35 (c), (d) and (e) revised; eff. 10-13-92 to 5-8-93....**47776**
268.36 Added....**37271**
Regulation at 57 FR 37271 effective date corrected....**39275, 41173**
268.40 (b) revised; (d) added....**37272**
Regulation at 57 FR 37272 effective date corrected....**39275, 41173**
268.41 (a) introductory text revised; (a) Table CCWE amended; (c) added....**37272**
Regulation at 57 FR 37272 effective date corrected....**39275, 41173**
268.42 (a) Table 2 amended; (b) and (d) revised....**37273**
Regulation at 57 FR 37273 effective date corrected....**39275, 41173**
268.43 (a) Table CCW amended....**37274**
Regulation at 57 FR 37274 effective date corrected....**39275, 41173**
268.45 Added....**37277**
Regulation at 57 FR 37277 effective date corrected....**39275, 41173**
268.46 Added....**37280**
Regulation at 57 FR 37280 effective date corrected....**39275, 41173**
268.50 (a)(1) and (2) introductory text revised....**37281**
Regulation at 57 FR 37281 effective date corrected....**39275, 41173**
268 Appendix II revised....**37281**
270.13 (n) added....**37281**
270.14 (b)(2) revised....**37281**
Regulation at 57 FR 37281 effective date corrected....**39275, 41173**
270.42 (e)(3)(ii)(B) revised; Appendix I amended....**37281**
Regulation at 57 FR 37281 effective date corrected....**39275, 41173**
270.72 (b)(6) revised....**37282**
Regulation at 57 FR 37282 effective date corrected....**39275, 41173**
271 State hazardous waste management program authorizations...**29446, 30905, 32726, 33638, 41699, 45574, 45717, 45719, 45721, 45722, 47996, 49140, 54932, 55466, 59825, 61003, 62231**
State hazardous waste management program authorizations....500
271.1 (j) Tables 1 and 2 amended....**37282**
(j) Table 1 amended...**37306, 47385, 54461, 55117, 61504**
Regulation at 57 FR 37282 effective date corrected....**39275, 41173**
(a) revised....**41612**
Authority citation revised....**61504**
271.24 Revised; interim....**60132**
271.26 Added....**41612**
272.1 Revised....3500
272.2 Added....3500
272.700 (a) and (b) revised....**45576**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

272.701 Introductory text, (a) introductory text, (1), (2)(ii) introductory text, (b), (c) and (d) revised....45576
272.1200 (a) and (b) revised....47266
272.1201 Introductory text, (a)(1)(i), (ii), (2), (3)(i), (ii), (b), (c) and (d) revised....47266
272.1301 Introductory text, (a), (b) and (c)(2) revised....3500
272 Appendix A added....3500
279 Added....41612
281 State underground storage tank program authorizations....34519, 41874
300 Authority citation revised....47187
Appendix B revised....47187
Appendix B amended....61005, 62232
302.4 Table amended...37306, 47386, 61504
307 Added....5475
310 Revised....4827
372 Technical correction....37888
374 Added....55040
374.3 (c) corrected....61612
414.11 (g), (h), and (i) added....41843
414.21 Amended....41844
414.30 Amended....41844
414.31 Amended....41844
414.40 Amended....41844
414.41 Amended....41844
414.50 Amended....41844
414.51 Amended....41844
414.61 Amended....41844
414.70 (a), (c) and (e) amended....41844
414.71 Amended....41844
414.81 Amended....41844
414 Appendixes A and B amended....41844
712.30 Regulation at 57 FR 29034 effective date corrected....30771
716.120 Regulation at 57 FR 29034 effective date corrected....30771
721.805 Added....31330
721.840 Added....46464
721.853 (a)(2)(iii) revised....54305
721.1050 Added....44061
721.1075 Added....44062
721.1120 Added....31330
721.1210 Added....44062
721.1325 Added....44062
721.1650 Added....44062

Page

721.1745 Added....44063
721.1950 Added....44063
721.2025 Added....46465
721.2086 Added....46464
721.2120 Added....46465
721.2140 Added....44063
721.2175 Added....46465
721.2225 Added....44063
721.2250 Added....44064
721.2420 Added....46465
721.2475 Added....44064
721.2540 Added....46465
721.2568 Removed....34253
721.2840 Added....44064
721.2980 Added....46465
721.3100 Added....46465
721.3120 Added....31968
721.3180 Added....32446
721.3240 Added....44064
721.3260 Added....44065
721.3340 Added....31968
721.3360 Added....46466
721.3480 Added....44065
721.3620 Added....46466
721.3680 Added....46466
721.3700 Added....44065
721.3720 Added....46466
721.3764 Added....44065
721.3800 Added....44066
721.3880 Added....44066
721.4000 Added....31968
721.4260 Added....44066
721.4380 Added....44067
721.4460 Added....46466
721.4480 Added....46466
721.4520 Added....44067
721.4600 Added....44067
721.4720 Added....46467
721.5050 Added....46467
721.5200 Added....46467
721.5250 Added....31968
721.5300 Added....44068
721.5450 Added....44068
721.5475 Added....44068
721.5525 Added....31969
721.5660 Added....44068
721.5700 Added....44069
721.6060 Added....31969
721.6140 Added....44069
721.6160 Added....44069
721.6200 Added....46467
721.6220 Added....46467
721.6540 Added....46468
721.6560 Added....46468
721.6620 Added....44070

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 40 Chapter I—Con. Page

721.6625 Added..... 44070
721.6640 Added..... 44070
721.6820 Added..... 31969
721.6920 Added..... 44070
721.7000 Added..... 44071
721.7200 Added..... 44071
721.7210 Added..... 44071
721.7240 Added..... 31969
721.8125 Added..... 44071
721.8250 Added..... 44072
721.8375 Added..... 44072
721.8425 Added..... 44072
721.9280 Added..... 44072
721.9300 Added..... 44073
721.9400 Added..... 44073
721.9420 Added..... 44074
721.9460 Added..... 44074
721.9525 Added..... 44074
721.9550 Added..... 44074
721.9570 Added..... 31970
721.9740 Added..... 44075
721.9820 Added..... 44075
721.9850 Added..... 44075
721.9975 Added..... 44075

Title 40—*Proposed Rules:*

1—799 (Ch. I) ...30708, 31473, 42533, 43956, 44147, 45597, 48490, 49054, 53866, 54203, 55501, 57402, 61866
.....3002, 4391, 4392, 6200
2 44718
25 31164
40 31058
50 35542
51 .....33287, 33314, 46114, 48490
.....3768
52 ...31477, 31678, 32191, 33314, 35769, 35771, 36040, 37743, 38641, 38650, 40157, 40159, 41716, 42536, 42911, 42913, 43420, 43423, 43425, 43648, 43651, 43653, 43657, 43957, 43959, 44351, 44528, 44530, 44534, 44538, 44540, 44542, 44718, 45012, 45358, 45360, 47896, 48352, 48492, 49436, 49437, 49662, 52606, 53304, 53866, 53868, 55218, 55620, 57045, 57047, 57715, 59022, 59327, 6014961036, 62535
..... 322, 324, 326, 5319, 5695
55 62537
58 46003
60 .....43171, 62798
61 .....43173, 56877, 57403, 60778
62 40628
63 .....44147, 45363, 57534, 62608

Page
.....328
68 5102
72 29940
73 29940
76 .....55632, 61489
.....5950
80 .....31165, 37744, 38651, 57980
82 58644
85 .....33141, 52912, 61867
.....3380
86 .....33141, 52912, 61867
.....3380
122 .....32475, 35774, 41344
123 33051
141 54957
143 54957
145 53869
148 4972
153 .....44290, 56422
159 .....44290, 56422
170 .....38167, 38175, 54465
172 5878
180 ...30180, 30454, 31164, 31346, 31479, 32753, 33475, 33477, 34537, 36042, 36044, 36046, 40161—40163, 42727, 42730, 45017, 45018, 48009, 48769, 53675, 53676, 59829, 62540, 62542
.....4131
185 .....32753, 53676
186 32753
228 43427
230 52716
250 44543
260 .....31164, 61376
261 ...31164, 36866, 37921, 37927, 45112, 49280, 61376, 61542
.....4972
262 .....31164, 61376
264 .....31164, 43171, 48195, 61376
265 .....43171, 48195
268 .....31164, 35940, 44545, 61376
.....4972
270 .....43171, 48195
271 .....35940, 43171, 44545, 48195, 49159
281 .....53870, 61376
300 ...30452, 34742, 38289, 39659, 41452, 44545, 45597, 45599, 46527, 47204, 47585, 56882, 61867
302 56726
.....6056
308 .....34742, 46527
355 56726
372 .....41020, 48706
.....4133
414 56883

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

Page

455 56883
600 ..... 52912, 61867
721 ..... 34281—34283, 37499, 41020, 53461
761 6184

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Public Contracts, Department of Labor (Parts 50-1—50-999)

50-201.101 (a)(2)(xii) added 31571

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)

60-2 Policy statement 52592

Chapter 101—Federal Property Management Regulations (101-1—101-99)

101-2.102 (a) revised 56993
101-14 Removed 37714
101-16—101-21 (Subchapter D Appendix) Temporary Reg. D-75, Supp. 1 added 46317
Temporary Reg. D-76, Supp. 1 added 56994
101-21.000 Revised 44693
101-21.001 Revised 44693
101-21.002 Revised 44693
101-21.003 Revised 44693
101-21.003-1 Revised 44693
101-21.003-2 Revised 44694
101-21.003-3 Revised 44694
101-21.003-4 Revised 44694
101-21.003-5 Revised 44694
101-21.101—101-21.102 (Subpart 101-21.1) Revised 44694
101-21.200—101-21.207 (Subpart 101-21.2) Revised 44694
101-21.300—101-21.303 (Subpart 101-21.3) Revised 44694
101-21.400—101-21.402 (Subpart 101-21.4) Revised 44695
101-21.501—101-21.502 (Subpart 101-21.5) Revised 44695
101-21.600—101-21.606 (Subpart 101-21.6) Revised 44696
101-26.501 Revised 47777

Page

101-26.501-1 (a) revised 47777
101-26.501-2 Revised 47777
101-26.501-3 Revised 47777
101-26.501-4 Revised 47778
101-26.501-5 Revised 47778
101-26.501-6 (b) and (c) revised 47778
101-26.501-7 Revised 47779
101-26.501-8 Removed 47779
101-34 Heading revised 59936
101-34.000 Revised 59936
101-34.001 Revised 59936
101-34.002 Removed 59936
101-34.003 Removed 59936
101-34.100—101-34.105(Subpart 101-34.1) Heading revised 59936
101-34.100 Revised 59936
101-34.101 Revised 59936
101-34.102 Revised 59936
101-34.103 Removed 59936
101-34.104 Removed 59936
101-34.105 Removed 59936
101-34.200 (Subpart 101-34.2) Removed 59936
101-37 Authority citation revised 48329
101-37.000 Revised 48329
101-37.1100 Revised 48329
101-37.1101 Revised 48329
101-37.1102 Added 48329
101-37.1104 Added 48329
101-37.1105 Heading, introductory text, (a)(6) and (7) introductory text revised 48330
101-37.1106 Added 48330
101-37.1107 Added 48331
101-37.1108 Added 48331
101-37—101-41 (Subchapter G Appendix) Temporary Reg. G-56 added 46985
101-38.202-4 Revised 60132
101-38.204-1 (e) through (t) redesignated as (f) through (u); new (i), (j) and (l) revised; new (e) and (v) added 53282
101-38.500 Revised 53283
101-38.501 Revised 53283
101-38.502 Revised 53283
101-38.503 Redesignated as 101-38.504; new 101-38.503 added 53283
101-38.504 Redesignated from 101-38.503 and revised 53283
101-42 Added 39121

NOTE: **Boldface page numbers indicate 1992 changes.**

341-245 (4) 0 - 93 - 5

CHANGES JULY 1, 1992 THROUGH JANUARY 29, 1993

TITLE 41—Chapter 101—Con.

Page

101-43.000 Revised....39135
101-43.001-3 Removed....39135
101-43.001-22 Removed....39135
101-43.305 Revised....39135
101-43.307-2 Revised....39136
101-43.307-8 Removed....39136
101-43.307-11 Removed....39136
101-43.311-4 Added....39136
101-44.000 Revised....39136
101-44.108-1 Revised....39136
101-44.108-4 Removed....39136
101-44.108-8 Removed....39136
101-44.108-10 Removed....39136
101-44.700 (b) revised....39136
101-44.702-3 Revised....39136
101-45.000 Revised....39137
101-45.001-3 Removed....39137
101-45.303-3 (c) revised; (d) added....32446
101-45.304-6 Revised....29805
101-45.309-2 Revised....39137
101-45.309-4 Removed....39137
101-45.309-6 Removed....39137
101-45.309-7 Removed....39137
101-45.309-11 Removed....39137
101-45.309-13 Added....34253
101-45.900 Revised....39137
101-45.903 Removed....39137
101-45.4809 Removed....39137
101-45.4901-97 Revised....32447
101-45.4901-97A Removed....32447
101-46.000 Revised....39137

Page

101-46.202 (b)(6) revised; (b)(7) added....39137
101-48.000 Revised....39137
101-49.108 Revised....39137

Chapter 201—Federal Information Resources Management Regulation (Parts 201-1—201.99)

201-38 CFR correction....56280
CFR correction withdrawn....60132

Chapter 301—Travel Allowances (Parts 301-1—301-99)

301-1.2 (c) revised; interim....53289
301-2.6 (d) added; interim....54305

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302-6.2 (g)(1) and (2) amended....45001

Chapter 304—Payment From a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

304-1 Revised; interim....53289

Title 41—*Proposed Rules:*

60-741 ....48084, 49160
105-7 53871

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

Page

52a Revised 61006
57.203 (a) amended; OMB number 45734
57.208 OMB number 45734
57.210 OMB number 45734
57.213a OMB number 45734
57.215 (a)(3) amended; OMB number 45734
57.216 Amended 45734
57.303 (a) amended; OMB number 45735
57.308 OMB number 45735
57.310 (a)(1)(iii) footnote and (b)(2)(i) amended; OMB number 45735
57.313 OMB number 45735
57.314 Amended 45735
57.315 OMB number 45735
57.316 Amended 45735
57.501—57.514 (Subpart F) Authority citation revised 45735
57.502 Amended 45735
57.503 Amended 45735
57.505 (b) amended 45735
57.507 (c) amended 45735
57.508 (b) amended; (c) revised 45735
57.509 (a) revised; OMB number 45735
57.510 OMB number 45735
57.512 OMB number 45735
57.513 Amended 45736
57.601—57.613 (Subpart G) Removed 45736
57.701—57.712 (Subpart H) Authority citation revised 45736
57.701 Revised 45736
Corrected 53815
57.702 Amended 45736
57.703 Revised 45736
57.704 (c)(4) removed; (c)(1) amended; (a) revised 45736
57.705 (b) revised; OMB number 45736
57.706 (a)(2) amended; (a)(4) and (5) revised 45736
57.707 (a)(1) amended; (a)(2), (3) and (c) revised 45736

Page

57.709 (a) and (c) amended; (b) revised 45736
57.710 Amended 45736
57.711 Amended 45737
57.801—57.803 (Subpart I) Authority citation revised 45737
57.802 Amended 45737
57.803 (b), (d), (e), (g) and (h) amended; (a)(2) revised 45737
57.901—57.913 (Subpart J) Removed 45737
57.1001—57.1014 (Subpart K) Removed 45737
57.1101—57.1112 (Subpart L) Authority citation revised 45737
57.1101 Introductory text revised 45737
57.1102 Amended 45737
57.1103 Revised 45737
57.1104 (a) revised 45737
57.1106 (a) amended 45737
57.1107 (a)(1) amended; (a)(2), (3), (4) and (b) revised 45737
57.1109 (b) and (c) amended 45738
57.1110 Amended 45738
57.1111 Revised 45738
57.1112 OMB number 45738
57.1201—57.1212 (Subpart M) Removed 45738
57.1301—57.1314 (Subpart N) Removed 45738
57.1401—57.1415 (Subpart O) Removed 45738
57.1601—57.1610 (Subpart Q) Authority citation revised 45738
57.1601 Revised 45738
57.1602 Amended 45738
57.1603 (a) and (b) amended; (c) added 45738
57.1604 (b)(3)(iii)(C), (4)(iii)(C) and (d)(5)(ii) amended; (b)(3)(i) revised; OMB number 45738
57.1606 (d) removed; (b) and (c) revised 45739
57.1607 (c) added 45739
57.1608 Amended 45739
57.1609 OMB number 45739
57.1701—57.1710 (Subpart R) Authority citation revised 45739
57.1701 Introductory text amended 45739
57.1702 Amended 45739
57.1703 Revised 45739

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 42 Chapter I—Con. Page

57.1704 (d) through (g) amended; OMB number ... **45739**
57.1706 (a) amended; (b) and (c) revised; (d) removed ... **45739**
57.1707 (c) added ... **45740**
57.1708 Amended ... **45740**
57.1709 OMB number ... **45740**
57.1802 Amended ... **45740**
57.1803 (a) footnote 1 removed ... **45740**
57.1805 (a)(2) revised ... **45740**
57.1807 (a) and (b) amended ... **45740**
57.1809 Footnote amended ... **45740**
57.2101—57.2114 (Subpart V) Heading revised ... **45740**
57.2102 Amended ... **45740**
57.2103 Footnote 1 removed ... **45740**
57.2107 (b) amended ... **45740**
57.2108 Amended ... **45740**
57.2109 OMB number ... **45741**
57.2401 Revised ... **45740**
57.2402 (b), (j) and (o) amended ... **45741**
(f) corrected ... **53815**
57.2403 (a)(1) revised ... **45741**
57.2404 (a) footnote 1 removed; (c)(8) removed ... **45741**
57.2406 (a)(2)(i) amended ... **45741**
57.2408 (b) amended ... **45741**
57.2409 Amended ... **45741**
57.2401—57.2410 (Subpart Y) Appendix amended ... **45741**
57.2502 Amended ... **45741**
57.2503 (b)(1) amended ... **45741**
57.2504 Amended; (a) revised ... **45741**
57.2508 (b) amended ... **45741**
57.2509 Amended ... **45742**
57.2601 Revised ... **45742**
57.2602 Amended ... **45742**
57.2603 Revised ... **45742**
57.2604 (a)(3) and (b) amended ... **45742**
57.2607 (c) amended ... **45742**
57.2610 (b), (d) and (h) amended; OMB number ... **45742**
57.2613 (a)(1), (2) and (c) amended; OMB number ... **45742**
57.2615 OMB number ... **45742**
57.2616 Amended ... **45742**
57.2801—57.2810 (Subpart CC) Heading and authority citation revised ... **45742**
57.2801 Amended ... **45742**
57.2802 Amended ... **45742**
57.2803 (a) revised; OMB number ... **45743**

Page

57.2804 (a)(2) and (b)(2) amended; (a)(1) revised; OMB number ... **45743**
57.2805 (a) amended ... **45743**
57.2806 (b) and (c)(1) amended ... **45743**
57.2808 Amended ... **45743**
57.2809 OMB number ... **45743**
57.2902 Amended ... **45743**
57.2904 (b)(1)(i) amended; (a)(1) revised ... **45743**
57.2908 Amended ... **45743**
57.3001—57.3011 (Subpart EE) Authority citation revised ... **45743**
57.3001 Amended ... **45743**
57.3002 Amended ... **45743**
57.3003 Revised ... **45743**
57.3004 OMB number ... **45744**
57.3005 (a)(1) and (4) amended ... **45744**
57.3006 (a) and (b) amended; (c) revised; (d) removed ... **45744**
57.3007 (b) amended; OMB number ... **45744**
57.3008 (c) added ... **45744**
57.3009 Amended ... **45744**
57.3010 OMB number ... **45744**
57.3101 Introductory text amended ... **45744**
57.3102 Amended ... **45744**
57.3103 Revised ... **45744**
57.3105 (a)(8) amended ... **45744**
57.3107 (a) amended; (b) revised ... **45744**
57.3109 (c) amended ... **45745**
57.3110 Heading revised; text amended ... **45745**
57.3201—57.3202 (Subpart GG) Authority citation revised ... **45745**
57.3201 Revised ... **45745**
57.3401—57.3413 (Subpart II) Removed ... **45745**
57.3501—57.3510 (Subpart JJ) Removed ... **45745**
57.3902 Amended ... **45745**
57.3906 (a) amended; (b) and (c) revised; (d) removed ... **45745**
57.3907 (c) added ... **45745**
57.3908 Heading revised; introductory text added; text amended ... **45745**
57.4001—57.4010 (Subpart OO) Authority citation revised ... **45745**
57.4001 Amended ... **45746**
57.4002 Amended ... **45746**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

57.4003 Amended; footnote 1 removed **45746**
57.4005 (a) introductory text amended **45746**
57.4007 (c) amended **45746**
57.4008 Amended **45746**
57.4009 OMB number **45746**
57.4102 Amended **45746**
57.4103 Footnote 1 removed; OMB number **45746**
57.4104 Amended **45746**
57.4105 (i) amended **45746**
57.4107 (a) amended **45746**
57.4111 Amended **45746**
57.4113 (c) amended **45746**
57.4114 Amended **45746**
62.25 (a) amended **56996**

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Amended **55912**
400.310 Revised (OMB numbers) **56997**
401.601 (b) and (c) revised **56998**
405.374 (c) revised **56998**
405.501—405.580 (Subpart E) Authority citation revised **57688**
405.501 (f) added **57688**
405.502 (a) introductory text republished; (a)(3) revised **55912**
405.504 (a)(3)(i) introductory text and (iii) revised; (d) added **55912**
405.514 Removed **57688**
405.701—405.750 (Subpart G) Authority citation revised **56504**
405.705 Introductory text republished, (c) and (d) revised; (e) and (f) added **56504**
406.24 Redesignated as 406.34 ..... **58717**
406.30 Redesignated as 406.50 ..... **58717**
406.31 Redesignated as 406.52 ..... **58717**
406.32 Transferred to subpart C; (c) amended **58717**
406.34 Redesignated from 406.24; (a)(1) and (b)(1) amended **58717**
406.38 Transferred to subpart C **58717**

Page

406.50 Redesignated from 406.30 ..... **58717**
406.52 Redesignated from 406.31 ..... **58717**
410 Authority citation revised **57688**
410.36 (a), (b), and (c) redesignated as (a)(1), (2) and (3) and republished; undesignated introductory text redesignated as new (a); (b) added **57688**
410.38 (b) amended; (c) revised; (d), (e), (f), and (g) added **57688**
412.1 (a) corrected **46510**
412.2 (e) corrected **46510**
412.115 (c) added **47787**
412.302 (c)(1)(v) correctly revised **46510**
414 Authority citation revised **57688**
414.200 Added **57689**
414.202 Added **57689**
414.210 Added **57689**
414.220 Added **57689**
414.222 Added **57690**
414.226—414.229 (Subpart D) Added **57688**
414.226 Added **57690**
414.228 Added **57691**
414.229 Added **57691**
414.230 (f) revised **57111**
414.232 Added **57688**
Added **57692**
414.330 Added **54187**
431.200 Revised **56505**
431.201 Amended **56505**
431.202 (a) revised **56505**
431.206 (c) revised **46505**
431.210 Introductory text and (a) revised **56505**
431.213 Introductory text republished; (e) and (f) revised; (g) and (h) added **56505**
431.241 Revised **56505**
431.242 (a)(2) revised **56506**
431.246 Revised **56506**
431.250 (f)(2) and (3) revised; (f)(4) added **56506**
431.621 Added **56506**
433 Authority citation revised **55138, 56506**
433.8—433.15 (Subpart A) Heading revised; interim **55138**
433.15 (b)(9) added **56506**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 42 Chapter IV—Con. Page

433.32 Transferred to subpart A; interim **55138**
433.33 Redesignated as 433.53 ..... **55139**
Corrected 6095
433.34 Transferred to subpart A; interim **55138**
433.35 Transferred to subpart A; interim **55138**
433.36 Transferred to subpart A; interim **55138**
433.37 Transferred to subpart A; interim **55138**
433.38 Transferred to subpart A; interim **55138**
433.40 Transferred to subpart A; interim **55138**
433.45 Redesignated as 433.51 6095
433.50—433.74 (Subpart B) Revised; interim **55138**
433.50 Redesignated as 433.45; (b)(2) amended 6095
433.53 Redesignated from 433.33; heading revised 55139
Corrected 6095
433.58 Corrected 6095
433.60 (b)(2) corrected 6095
433.68 (f)(3)(i) corrected 6095
433.145 (a) revised 4907
433.147 (a) revised 4907
435.1—435.10 (Subpart A) Heading revised 4925
435.1 Removed 4925
435.4 Amended 4925
435.113 Revised 4926
435.121 Revised 4926
435.201 Revised 4927
435.210 Revised 4927
435.211 Revised 4927
435.220 Heading and (a) revised 4927
435.222 Heading, (a) and (b)(3) revised; (b) introductory text republished 4927
435.223 (a) revised 4927
435.230 Redesignated as 435.232; new 435.230 added 4928
435.231 Redesignated as 435.236 4928
435.232 Redesignated from 435.230; (a) introductory text and (b)(3) revised; (a)(9) added; (b) introductory text republished 4928
435.230 Added 4928
435.234 Added 4928
435.236 Redesignated from 435.231 4928
435.301 (a) and (b)(2)(ii) revised; (b) introductory text and (2) introductory text republished 4929
435.308 (a) and (b)(3) revised; (b) introductory text republished 4929
435.310 Revised 4929
435.330 Revised 4929
435.408 (b)(13) corrected 4907
435.510 (a) amended 4929
435.520 Revised 4929
435.522 Added 4929
435.600 Revised 4929
435.601 Added 4929
435.602 Revised 4930
435.603 Redesignated as 435.608 4931
435.604 (a) revised 4907
Redesignated as 435.610; new 435.604 added 4931
435.606 Added 4931
435.608 Redesignated from 435.603 4931
435.610 Redesignated from 435.604 4931
435.622 Redesignated from 435.722; (a) revised 4932
435.631 Redesignated from 435.731 and revised 4932
435.640 Redesignated from 435.740 4932
435.700—435.740 (Subpart H) Heading revised 4931
435.700 Revised 4931
435.711—435.712 Undesignated center heading and sections removed 4932
435.721—435.724 Undesignated center heading removed 4932
435.721 Removed 4932
435.722 Redesignated as 435.622 4932
435.723 Removed 4932
435.724 Removed 4932
435.725 Heading revised; (c)(2)(iii) and (3)(iii) amended 4932
435.726 Amended 4932

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

435.731 Undesignated center heading removed; redesignated as 435.631....4932
435.732 Removed....4932
435.733 Heading revised; (c)(2)(ii) and (3)(iii) amended....4932
435.734 Removed....4932
435.735 (c)(3)(iii) amended....4932
435.740 Undesignated center heading removed; redesignated as 435.640....4932
435.800—435.852 (Subpart I) Heading revised....4932
435.800 Revised....4932
435.811—435.814 Undesignated center heading revised....4932
435.811 Revised....4932
435.812 Removed....4933
435.814 Revised....4933
435.821—435.823 Undesignated center heading and sections removed....4933
435.831 (a) revised....4933
435.840—435.843 Undesignated center heading revised....4933
435.840 Revised....4933
435.841 Removed....4933
435.843 Revised....4933
435.845 Revised....4933
435.850 Removed....4933
435.851 Removed....4933
435.852 Removed....4933
435.945 (h) removed....**46097**
435.1005 Revised....4933
435.1007 Revised....4933
436.3 Amended....4934
436.111 Revised....4934
436.201 Revised....4934
436.210—436.211 Undesignated center heading and sections revised....4935
436.212 (a) revised....4935
436.220—436.224 Undesignated center heading removed....4935
436.220 Heading and (a) revised....4935
436.222 Heading, (a) and (b)(3) revised; (b) introductory text republished....4935
436.301 (a) and (b)(2)(ii) revised; (b) introductory text and (2) introductory text republished....4935

Page

436.308 (a) and (b)(3) revised; (b) introductory text republished....4935
436.310 Revised....4936
436.408 (b)(13) corrected....4908
436.510 Amended....4936
436.520 Revised....4936
436.522 Added....4936
436.600 Revised....4936
436.601 Added....4936
436.602 Revised....4936
436.603 Redesignated as 436.608....4937
436.604 Redesignated as 436.610; new 436.604 added....4937
(a) revised....4908
436.606 Added....4937
436.608 Redesignated from 436.603....4937
436.610 Redesignated from 436.604....4937
436.700—436.711 (Subpart H) Heading and sections removed....4938
436.811—436.814 Undesignated center heading revised....4938
436.811 Revised....4938
436.812 Removed....4938
436.814 Revised....4938
436.821 Undesignated center heading and section removed....4938
436.832 Heading revised; (c)(2)(ii) and (iii)(A) amended....4838
436.840—436.843 Undesignated center heading revised....4938
436.840 Revised....4938
436.841 Removed....4938
436.843 Revised....4938
436.845 Introductory text republished; (a), (c) and (d) revised....4938
436.850—436.852 Undesignated center heading and sections removed....4938
440.220 (a) introductory text republished; (a)(2) revised....4938
440.250 (h) revised....4938
441.13 Heading and (b) revised....**54709**
442.105 (a) amended....**54712**
447.255 (a) corrected....**46431**
447.272 (c) revised; interim....**55143**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 42 Chapter IV—Con. Page

447.296—447.299 (Subpart E) Added; interim 55143
447.297 (d)(1) corrected 6095
447.300—447.371 (Subpart D) Redesignated as subpart F 6095
456.1 (a) introductory text, (b) introductory text and Table 1 introductory text republished; (a)(3) and (b)(8) added; Table 1 amended; interim 49408
456.700—456.725 (Subpart K) Added; interim 49408
466 Authority citation revised 47787
466.78 (b) introductory text republished; (b)(2) revised; (c) and (d) added 47787
483 Authority citation revised 56506
483.10 (c)(8) revised 53587
483.100—483.138 (Subpart C) Added 56507
483.200—483.206 (Subpart E) Added 56514

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1001 Authority citation revised 52729
1001.1 Existing text designated as (a); (b) added 5618
1001.952 Introductory text, (k) introductory text and (1) introductory text republished; (k)(1)(iii) revised; (l) and (m) added; interim 52729
Regulation at 57 FR 52729 comment period extended; interim 2989
1005.4 (c) introductory text republished; (c)(1) revised 5618
1005.7 (e)(1) revised 5618

Title 42—*Proposed Rules:*

100 49055
400—499 (Ch. IV) 47587
417 ..... 46119, 59024
421 57125
431 46362
434 59024
435 ..... 56294, 57403
436 56294
440 46362
442 46362
456 61614
483 61614
488 46362
489 46362
498 46362
1003 59024

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

Subtitle A Policy statement and advisory guidelines 52730
4.21 (a) in part, (b) and (c) redesignated as (b), (c) and (d); new (c) revised 4942

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

5400.0-5 Amended 62235
5461.2 Introductory text removed; (a) revised 62235
5473.4 (d) removed; (e) redesignated as (d) 62235
8360.0-5 (e) added 61243
8365.1-3 Existing text designated as (a); (b) added 61243

Public Land Orders

203 Revoked by PLO 6954 61326
1567 Revoked in part by PLO 6948 45324
4522 Regulation at 57 FR 28637 corrected 53191
5400.0-5 Amended 62235
5461.2 Introductory text removed; (a) revised 62235
5473.4 (d) removed; (e) redesignated as (d) 62235
5721 Revoked by PLO 6946 45322
6934 Regulation at 57 FR 28637 corrected 53191
6944 45321
6946 45322
6948 45324
6949 45576
6950 45725

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

6951 47410
6952 53587
6953 4081
6954 61326
6955 3229

Title 43—*Proposed Rules:*

2 4635
426 ..... 47437, 53678
3400 5697

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

11 Authority citation revised..... 54714
11.30 Revised..... 54714
11.32 Nomenclature change..... 54714
11.34 Heading, (a) introductory text, (a)(1) introductory text and (c) revised..... 54714
11.41 (c) added..... 54715
11.42 (a) amended..... 54715
11.43 (a) amended; (f) added..... 54715
11.44 (a) amended..... 54715
11.45 (a) and (d) amended; (g) added..... 54715
11.48 (a) and (d) amended; (g) revised..... 54715
11.50 (c) amended..... 54715
11.51 Heading revised; (c) amended..... 54715
11.52 (c) amended..... 54715
11.60 Nomenclature change..... 54715
11.61 Added..... 54715
11.62 Added..... 54716
11.63 Added..... 54716
11.64 Added..... 54716
11.65 Added..... 54717
64.6 Table amended...47267, 47269, 49143, 49144, 54512, 54514, 54934, 60487
Table amended...502, 4083, 4085, 6097
65.4 Table amended...47788, 47789, 54306, 54307, 59304, 59305
67 Flood elevation determinations..... 47791, 54309
67.11 Table amended..... 59306
81.1 (b)(1) revised..... 52593

Title 44—*Proposed Rules:*

67 ..... 47825, 54347, 59329, 59946

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 45—PUBLIC WELFARE

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

Page

205 Authority citation revised..... 46804
205.40 Revised..... 46804
(b)(6) corrected..... 52826
205.41 Added..... 46805
(d)(3)(iv) and (v) corrected..... 52826
205.42 Revised..... 46807
(b)(1)(ii), (e)(1)(ii), (f)(1), (i)(4) and (5) corrected..... 52826
205.43 Revised..... 46810
(b)(2), (4), (e)(4)(ii)(B) and (5) *Example* corrected..... 52827
205.44 Removed..... 46811
205.56 (b) republished..... 53859
205.58 (a) and (b)(4) republished..... 53860
232.20 (d) revised..... 54519
250 Authority citation revised..... 47002
250.81 (a) revised..... 47002

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program) Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

302.32 (f)(2)(i), (ii) and (iii) revised..... 54519
302.70 (a)(10) revised; eff. 10-13-93..... 61581
302.85 Revised..... 47002
303.7 (b)(6) and (c)(7)(v) added; (c)(8) amended; eff. 10-13-93..... 61581
303.8 (c) through (f) added; eff. 10-13-93..... 61581
304.20 (c) amended..... 47002
304.23 (k) added..... 54525
307 Authority citation revised..... 47002
307.0 Revised..... 47002
307.1 Revised..... 47002
307.5 Added..... 47003
307.10 Revised..... 47003

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 45 Chapter III—Con. Page

307.15 Heading, (a) and (b) revised..... **47004**
307.20 Heading amended..... **47005**
307.25 Revised..... **47005**
307.30 Heading, (a) and (b) revised..... **47005**
307.35 (a) revised..... **47005**
307.40 Heading and (a)(1) revised..... **47005**

Chapter VII—Commission on Civil Rights (Parts 700—799)

708 Added..... 4351

Chapter XII—ACTION (Parts 1200—1299)

1224.1-19 Added..... **45326**

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1303 Revised..... **59264**
1303.10 Revised (OMB number pending)..... **59264**
1303.23 (OMB number pending)..... **59264**
1304 Authority citation revised..... 5518
Nomenclature change..... 5518
1304.1-2 (a), (c) and (i) revised..... 5518
1304.3-3 (b) introductory text revised..... 5518
1304 Appendix A removed..... **58092**
1305 Revised..... **46725**
Authority citation revised..... 5518
1305.2 (a) revised..... 5518
1306 Added..... **58902**
1308 Added..... 5501

Title 45—*Proposed Rules:*

233 ..... **56294**
400 ..... **49439**
2500 ..... **60779**
2501 ..... **60779**
2502 ..... **60779**
2503 ..... **60779**
2504 ..... **60779**
2505 ..... **60779**
2506 ..... **60779**

TITLE 46—SHIPPING

Page

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

15.720 Regulation at 55 FR 1212 confirmed..... 25
30.01-5 Regulation at 57 FR 36246 comment period reopened..... **60402**
32.60-1—32.60-45 (Subpart 32.60) Regulation at 57 FR 36246 comment period reopened..... **60402**
32.95-1 (subpart 32.95) Regulation at 57 FR 36246 comment period reopened..... **60402**
35.30-20 (c)(1), (2) and (d) revised..... **48324**
(d) corrected..... **56406**
35.40-20 Revised..... **48324**
69.5 (a)(4) amended..... **59938**
69.11 (a)(2)(vi) added; (d) revised..... **59938**
69.15 (a) revised..... **59938**
69.119 (c) amended..... **59938**
69.169 Heading revised..... **59938**
69.205 Revised..... **59938**
70.05-30 Regulation at 57 FR 36246 comment period reopened..... **60402**
70.05-35 Regulation at 57 FR 36246 comment period reopened..... **60402**
77.30-1 Revised..... **48324**
77.30-5 (a) and (b) revised..... **48324**
77.30-10 (a) table and (b) revised..... **48325**
77.30-90 Revised..... **48324**
77.35-1 Revised..... **48325**
77.35-5 (b) revised..... **48325**
77.35-10 (a) revised..... **48325**
77.35-90 Revised..... **48325**
96.30-1—96.30-90 (Subpart 96.30) Revised..... **48325**
96.30-5 (a) corrected..... **56406**
96.35-1 Revised..... **48325**
96.35-5 (b) revised..... **48325**
96.35-10 (a) revised..... **48325**
96.35-90 Revised..... **48326**
108.497 (a) and (d)(1) revised..... **48326**
108.703 (a) revised..... **48326**
154a Removed..... **60728**
160.011-1—160.011-6 (Subpart 160-011) Removed..... **48326**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

167.45-60 Revised **48326**
169.717 (a) revised **48326**
170.210 Regulation at 57 FR 41812; effective date deferred **58406**
172.060 Regulation at 57 FR 36246 comment period reopened **60402**
195.30-1—195.30-90 (Subpart 195.30) Revised **48327**
195.35-1 Revised **48327**
195.35-5 (b) revised **48327**
195.35-10 (a) revised **48327**
195.35-90 Revised **48327**

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

237 Removed **60728**
250 Removed **60728**
262 Removed **60728**
278 Removed **60728**
279 Removed **60728**
292 Removed **60728**
294 Removed **60728**
310 Authority citation revised **60728**
310.13—310.32 (Subpart B) Removed **60728**
316 Removed **60728**
318 Removed **60728**
319 Removed **60728**
320 Removed **60728**
321 Removed **60728**
322 Removed **60728**
323 Removed **60728**
333 Removed **60728**
334 Removed **60728**

Chapter IV—Federal Maritime Commission (Parts 500—599)

514 Authority citation revised **46322**
514.2 Amended **46323**
Amended 27
514.7 (a), (b), (f) introductory text, (1), (2)(i), (g)(2)(i), (h)(1)(i), (j)(1)(i), (ii), (2) introductory text, (i), (3)(i), (ii) introductory text, (4) and (k) revised **46322**
(f)(4), (l)(1) and (2) amended 27
(f)(3) and (h)(1)(iii) revised 28
(d) revised 5622

Page

514.8 (n)(1)(iii)(G)(*3*) removed **46324**
514.8 (d)(3) introductory text and (n)(1)(iii)(G) revised 28
514.9 (a)(5) revised 28
514.10 (d)(1)(i)(B) removed; (d)(1)(i)(C), (D) and (E) redesignated as (d)(1)(i)(B), (C) and (D); (d)(1)(iii) revised 28
514.12 (a)(1)(v) and (vi) removed; (c) added 28
514.15 (b)(1)(iii)(A) and (2)(i) revised 28
(b)(24) introductory text, (i) and (ii) revised 5622
514.17 (a)(1) amended; (d)(2) and (3) revised **46324**
(a)(1) and (d) revised 28
514.18 (b) and (c)(3) introductory text amended **46324**
(c)(1) amended 30
514.21 Introductory text revised 30
540.5 (d) introductory text, (4) through (6) and (e) introductory text revised **62480**
560.309 Added 5630
560.601 Introductory text amended 5630
572.311 Added 5631
572.502 (a)(4) and (5) revised **54531**
572.602 (a) revised 5631
572.801—572.802 (Subpart H) Added **54531**
580 Authority citation revised 5622
580.5 (d)(24) introductory text, (i) and (ii) revised 5622
581 Authority citation revised 5623
581.3 (a) introductory text, (1)(i), (2)(iv)(A), (B) and (3)(i) revised **46324**
(e) revised 5623
581.4 (a)(1)(i) and (b)(1)(iii) revised; (b)(2)(iii)(A) amended **46324**
581.6 (a), (b)(1) and (2) revised **46324**
(b)(1) corrected **49020**
581.8 (a)(1), (b) introductory text, (c)(1), (2) introductory text and (d) revised **46325**
581.9 Revised **46325**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 46 Chapter IV—Con. Page

583 Authority citation and heading revised....5623
583.2 Revised....5623
583.3 Revised....5623
583.4 Revised....5623
583.5 (a) and (b) revised; (e) added....5624
583.6 (a) revised....5625
583 Appendix B added....5625
Appendix C added....5626
Appendix D added....5627
586 Authority citation revised....**54316, 54322**
586.4 Added....**54316**
586.5 Added; (b) through (e) eff. 6-1-94....**54322**

Title 46—*Proposed Rules:*

1-199 (Ch. I) **54191**
15 ....**48554**
16 ....**59752, 59778**
28 ....**48670, 57129, 60158**
....630
35 ....**45667**
78 ....**52748**
97 ....**52748**
197 ....**46126**
200-299 (Ch. II) **54191**
252 ....**53083**
300-399 (Ch. III) **54191**
514 ....**47589, 49665, 56539**
....4137
525 ....**47025**
530 ....**47025**
540 ....**47830**
552 ....**48770**
560 ....**49667**
572 ....**47600, 49667**
580 ....**47589, 56539**
581 ....**47589, 47600, 49665, 56539**
583 ....**47589, 56539**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0.408 (b) table amended (OMB numbers)....**45747**
(c) table amended (OMB numbers)....**45748**
1.65 (c) revised....**47412**
Regulation at 57 FR 47412 effective date corrected to 1-14-93....**49218**

Page

1.80 (d) introductory text revised....**47006**
(f)(2) amended....**48333**
1.2003 Amended....**48333**
2.106 Table amended....**49021, 60133**
21.50 Added....**49021**
22.28 (a) revised....**53446**
22.29 (a) introductory text revised....**53447**
22.50 Added....**49021**
22.902 (b)(4) introductory text, (i), (ii) introductory text and (B)(3) revised....**53447**
22.903 (a), (d)(1) and (3)(i) through (iv) revised; (e) added....**53447**
22.920 (c) introductory text revised....**53448**
22.922 Heading revised; (b) added....**53448**
(a) revised....**56859**
22.924 (a)(3) added....**53448**
22.925 Introductory text revised....**53448**
22.927 Added....**53448**
22.928 Added....**53448**
22.929 Added....**53449**
24.103 (d)(2) corrected....**53295**
61 Memorandum opinion and order....**62481**
Technical correction....5936
61.38 (b)(3) and (4) added....**54330**
61.42 (e)(1)(iii) revised; (e)(1)(iv) and (v) added....**54718**
61.47 (h) redesignated as (h)(1); (h)(2) added....**54331**
(e) redesignated as (e)(1), (e)(2) and (3) added....**54719**
61.48 (b) and (h) added....**54719**
61.49 (h) introductory text revised; (i), (j) and (k) added....**54331**
61.50 Added (effective date pending)....**60737**
63.01 (k)(6) and (r) added....**57965**
63.10 Redesignated as 63.15; new 63.10 added....**57966**
63.11 Added....**57966**
63.12 Added....**57966**
63.13 Added....**57966**
63.14 Added....**57966**
63.15 Redesignated from 63.10....**57966**
64 Authority citation revised....**48335, 54331**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

Memorandum opinion and order....62481
Technical correction....5936
64.1001 (g) revised....4354
64.1200 (Subpart L) Added....48335
(e)(2)(iii) corrected....53293
64.1401—64.1402 (Subpart N) Added....54331
65 Memorandum opinion and order....62481
Technical correction....5936
65.702 (b) amended....54332
(b) amended....54719
68 Authority citation revised....48336
68.318 (c)(2) revised; (c)(3) added....48336
69 Order....56998
Memorandum opinion and order....62481
Technical correction....5936
69.1 (c) revised....54719
69.2 (nn) through (ss) added....54719
69.4 (b) introductory text revised; (e) and (f) added....54332
(b) revised....54719
69.108 Added....54720
69.110 Added....54720
69.111 Revised....54720
69.112 Revised....54720
69.113 (a) revised....54721
69.118 Revised....54721
69.121 Added....54332
69.122 Added....54332
69.123 Added....54333
69.124 Added....54721
69.125 Added....54721
69.126 Added....54721
69.127 Added....54722
69.210 Removed....54722
69.301 (a) revised....54722
69.305 (b) revised....54722
69.306 (a), (b), (c) and (e) revised....54722
69.307 Revised....54722
73 Regulation at 57 FR 44338 eff. 9-25-92....47007
Waiver....53449
Policy decision....53588
73.202 (b) table amended
45577—45579, 46812—46814, 47006, 47007, 49147, 49148, 53860, 53861, 54533, 54935, 54936, 55468, 55469, 56285, 56286, 56514. 56515, 56860, 56999, 57000, 57348, 58717, 60737, 62483

Page

(b) table amended...4355, 4943, 4944, 5300, 6193
73.215 (e) amended....46325
73.232 Amended....48333
73.295 (a) amended....48333
73.310 (a)(2) amended....48333
73.313 (d) amended....48333
73.319 (a)(1) amended....48333
73.606 (b) table amended....56516
73.644 (b)(1) amended....48333
73.1010 (a)(4) revised; (a)(7) added....48333
73.1125 (a) amended....48333
73.1225 (b) amended; (d)(3)(iii) revised....48333
73.1620 (g) amended....48333
73.3500 Amended....48333
73.3999 Revised....5937
74 Policy decision....53588
76.5 (kk) added....61010
76.601 (c)(1), (2) and (4) revised; note added....61010
76.605 (a)(3), (4) introductory text, (5), (6), (10), (11), (12), and Note (2) revised; Notes (4) through (6) added....61010
76.607 Revised....61011
76.609 (h)(2) revised....61011
80 Technical correction....57000
80.309 Amended....61012
80.1001 (a) revised....61012
80.1011 Revised....61012
80.1013 Revised....61012
87.5 Amended....45749
87.51 Added....45749
87.131 Table amended....45749
87.133 (a)(7) table amended....45749
87.137 (a) table amended....45749
87.139 (i) introductory text added....45749
87.141 (j) added....45749
87.145 (b) revised; (e) added....45750
87.147 (d)(3) revised....45750
87.171 Amended....45750
87.173 (b) table amended....45750
87.185 (b) and (c) revised; (d) added....45750
87.187 (p) through (aa) redesignated as (q) through (bb); new (p) added....45750
87.189 (b) through (d) redesignated as (c) through (e); new (b) added; (a) and new (c) and (d) revised....45750
90 Clarification....48191

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 47 Chapter I—Con. Page

Technical correction 47793
Petition for stay denied 53293
90.38 (a)(4) redesignated as (a)(5); new (a)(4) added 45751
90.63 (c) table amended 60133
(d)(27) added 60134
(c) table corrected 376
90.65 (b) table amended; (c)(43) added 60134
90.75 (b) table amended; (c)(45) added 60134
90.79 (c) table amended; (d)(28) added 60134
90.91 (b) table amended 60134
(c)(21) added 60135
90.127 (c) revised; (e) added 48739
90.135 (a)(5) revised; (a)(8) removed 48739
90.175 (g) added 48739
(f)(3) revised 60135
90.179 (e) removed; (f) and (g) redesignated as (e) and (f) 48739
90.257 (b) introductory text revised; (b)(1) amended 60135
90.555 (b) amended 55146
90.619 (a) introductory text, (2) introductory text, (3) introductory text, (4) introductory text and (5) introductory text revised; (a)(3) Table 2, (a)(4) Table 3 and (a)(5) Table 4 redesignated as (a)(3) Table 2A, (a)(4) Table 3A and (a)(5) Table 4A and amended; (a)(3) Table 2B, (a)(4) Table 3B and (a)(5) Table 4B added 55146
90.715 (a) introductory text amended; (c) added 55148
94.59 Added 49022

Title 47—*Proposed Rules:*

0-199 (Ch. I) ...53307, 53462, 54744, 58436, 60501, 62543
.....3522, 4139, 5319, 6471
1 .....54034, 60781
.....3929, 6376
2 ...48353, 48775, 48776, 54034, 54204, 57049, 57408, 57717
.....4974, 6381
13 47027
15 54204
18 59040
21 .....48353, 48776
.....6376
22 .....48353, 48776
36 .....56888, 58767
43 530
61 .....54205, 56888, 58767, 61591
63 .....46366, 57717
.....6381
64 .....56888, 58767, 62544
65 4637
69 .....54205, 54542, 56888, 58767, 61591
.....4637
73 ...45601, 46132, 46367—46369, 46839, 47027, 47028, 48494, 49055—49058, 49160—49162, 53678, 53679, 53874, 54543, 54544, 55218, 55501, 55502, 58540, 56894, 57051, 57409, 57411, 58769, 59330, 60782, 60783, 61037, 61591, 62545
...3002, 3004, 3929, 4139, 4392, 4393, 4974, 5320, 5322, 5323, 6201
74 53679
76 ...54207, 54209, 54544, 56298, 59331, 60501, 61038, 62282
..... 48, 328, 3005, 3523, 3929
80 57717
.....6381
88 54034
90 .....47601, 49058, 53462, 54034, 57717
.....6381
94 ..... 48353, 48776, 54034
97 59950
100 3929

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular (FAC) 90-16 60570
4.602 (d) revised 60572
4.603 Removed 60572
4.805 Introductory text revised; table amended 60573
5.206 Revised 60574
7.103 (l) added 60574
7.300 Revised 60575
7.302 (d) revised 60575
7.303 (b)(1) amended; (b)(3) added 60575
7.304 (b)(1) and (c)(1) amended 60575
7.306 (a)(1)(i) through (iii), (v), (2), (4), (b) introductory

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

text, (1)(ii), (2)(ii) and (3) amended 60575
7.307 (a) revised 60575
8.002 (f) revised 60576
9.404 (d) revised 60577
13.000 Amended 60577
13.101 Amended 60577
13.103 (c) added 60577
15.106-2 (a) revised; (b) amended 60578
15.804-2 (a)(1)(ii) amended; (a)(1)(iii) and (iv) revised; (a)(2) through (4) redesignated as (a)(3) through (5); new (a)(2) added 60579
19.001 Amended 60580
19.102 (f)(1) amended; (f)(5) revised 60580
19.202-1 (e)(2)(ii) amended 60581
22.501—22.507 (Subpart 22.5) Added; interim 55470
22.1101 Amended 60582
22.1103 Revised 60582
25.108 (d)(1) amended 60583
25.202 (a)(3) amended; (b) removed; (c) redesignated as (b) 60583
25.401 Amended 48471
30.602-2 Corrected 47373
31 Technical correction 3850
31.205-6 (g)(2)(i)(D) amended 60584
33.104 Revised 60585
36.101 (a) revised; interim 55471
37.110 (f) removed 60584
42.1404-1 (b) revised 60587
45.105 (b) revised 60588
45.106 (d) amended; (e) revised 60588
45.301 Amended 60589
45.302-3 (a) revised; (b) amended 60588
(c) amended 60589
45.307-2 (a) amended 60588
45.506 Revised 60588
45.606-1 (b) revised 60590
51.106 (b) amended 60590
52.204-4 Removed 60572
52.207-1 Amended 60575
52.207-2 Amended 60575
52.215-1 Amended 60578
52.215-2 Amended 60578
52.222-5 Added; interim 55471
52.222-45 Removed 60582
52.222-46 Amended 60582
52.230-2 Corrected 45878
52.237-8 Removed 60584

Page

52.242-11 Amended 60587
52.245-18 Amended 60589
53.236-2 (b) and (c) revised 60591

Chapter 2—Department of Defense (Parts 200—299)

202 Technical correction 45422
204 Technical correction 45422
204.670-2 (c) redesignated as (d); new (c) added 53598
204.7202-1 (c)(1), (4) and (5) amended 53598
204.7203 (d) amended 53598
204.7204-1 (a)(4) and (b) amended 53598
206.302-5 (b) added 53598
208 Technical correction 45422
210 Technical correction 45422
213.000 Added 53599
213.101 (Subpart 213.1) Added 53599
214 Technical correction 45422
214.503-1 (a)(4) removed 53599
215 Technical correction 45422
215.70 Reinstated 55472
215.804-3 (i)(iii) introductory text amended 53599
215.804-8 (a) removed 53599
215.870-6 (a) amended 53599
215.975 (b) amended 53599
215.7000—215.7006 (Subpart 215.70) Removed 53599
216 Technical correction 45422
217.102-3 Added 53599
217.103-1 (a)(iii) revised 53599
219 Technical correction 45422
219.7100 Amended; interim 47275
219.7102 (b) and (d) revised; interim 47275
219.7103-1 (a) revised; interim 47275
219.7104 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (d) revised; interim 47276
219.7107 Added; interim 47276
222.7100—222.7102 (Subpart 222.71) added; interim 52593
223 Technical correction 45402
223.7002 (a) introductory text amended; (b) introductory text revised 53599
225 Technical correction 45402
225.770-2 Revised 53599

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 48 Chapter 2—Con. Page

225.770-3 Revised....53599
225.770-4 Revised....53599
225.770-5 Added....53599
225.872-1 (b) amended....53599
225.873 Added....53599
225.873-1 Added....53599
225.873-2 Added....53599
225.873-3 Added....53600
225.7017-4 (a) and (b) revised....53600
225.7303-2 (c) introductory text revised....53600
226 Technical correction....45402
227 Technical correction....45402
227.304-1 Amended....53600
227.403-70 (b)(1) revised....53600
228 Technical correction....45402
231 Technical correction....45402
231.205-6 Added....53600
231.205-18 (c)(1)(iii)(*1*) redesignated as (c)(1)(i)(C)(*1*); (c)(2) added....53600
232 Technical correction....45402
235.015-71 (i)(2) amended....53601
235.017 (a)(2) amended....53601
236 Technical correction....45402
237 Technical correction....45402
239 Technical correction....45402
242 Technical correction....45402
242.205 (1)(iii) revised....53601
242.302 (a)(9) added; (a)(11) removed....53601
242.771 Added....53601
242.771-1 Added....53601
242.771-2 Added....53601
242.771-3 Added....53601
242.1005—242.1008 (Subpart 242.10) Removed....53601
245 Technical correction....45402
245.7308 (a) amended....53601
252 Technical correction....45402
252.215-7004 Removed....53601
Reinstated....55472
252.219-7008 Added; interim....47276
252.222-7001 Added; interim....52594
252.223-7005 Revised....53601
252.225-7030 Revised....53601
252.225-7032 Added....53602
252.232-7005 (b) revised....53602
253 Technical correction....45402
253.204-71 (a)(3) added....53602
Chapter 2 Appendixes F and G amended....53602

Page

Chapter 5—General Services Administration (Parts 500—599)

501.603-70 (h)(1)(iv)(K) revised....61583
501.670-4 (a)(3) revised....61583
502.101 Amended....61583
504.201 Revised....61583
504.803 (a)(23) revised....61584
508.304-5 Revised....61584
508.371 Removed....61584
510.011 (j) added....61584
515.406-1 (a) revised....61584
515.414-70 (b) revised....61584
517.200 Added....59939
517.201 Removed....59939
517.202 Added....59939
517.203 Added....59939
517.204 Revised....59939
517.207 Revised....59939
517.208 Revised....59939
530.201-5 Revised....61584
530.470 (Subpart 530.4) Added....61584
533.104 (c) revised....61584
552.217-71 Added....59939
552.270-10 Corrected....52826
552.270-28 Corrected....52826
552.270-37 Corrected....52826
570.203 (a)(8)(vii) table and (9) corrected....52826
570.303 Corrected....52826
570.702-30 Heading corrected....52826

Chapter 8—Department of Veterans Affairs (Parts 800—899)

803 Authority citation revised....58718
803.104 Removed....58718
803.7000—803.7002 (Subpart 803.70) Added....58718
852 Authority citation revised....58718
852.203-71 Added....58718

Chapter 9—Department of Energy (Parts 900—999)

909.104-1 Regulation at 57 FR 32675 confirmed....48471
913.507 Added; interim....57639
922.7100—922.7101 (Subpart 922.71) Added; interim....57639

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

923.570—923.570-3 (Subpart 923.5) Regulation at 57 FR 32676 confirmed 48471
952.222-70 Added; interim 57639
970.2274-1 —970.2274-2 (Subpart 970.2274) Added; interim 57639
970.2305 Regulation at 57 FR 32676 confirmed 48471
970.2305-1 Regulation at 57 FR 32676 confirmed 48471
970.2305-2 Regulation at 57 FR 32676 confirmed 48471
970.2305-3 Regulation at 57 FR 32676 confirmed 48471
970.2305-4 Regulation at 57 FR 32676 confirmed 48471
970.2305-5 Regulation at 57 FR 32677 confirmed 48471
970.5204-57 Regulation at 57 FR 32677 confirmed 48471
970.5204-58 Regulation at 57 FR 32677 confirmed 48471
970.5204-59 Added; interim 57640

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1602.170-9 Regulation at 57 FR 14359 confirmed 54001
1605—1609 Designated as subchapter B 54001
1609 Regulation at 57 FR 14359 confirmed 54001
1632.170 Regulation at 57 FR 14360 confirmed 54001
1632.171 Regulation at 57 FR 14360 confirmed 54001
1632.172 Regulation at 57 FR 14360 confirmed 54001
1652.216-71 Regulation at 57 FR 14360 confirmed 54001
1652.232-70 Regulation at 57 FR 14360 confirmed 54001
1652.232-71 Regulation at 57 FR 14360 confirmed 54001

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (e) and (f) amended 58719
1801.370 (a)(1)(ii) and (b) amended 58719
1804.170 (b) amended 58719
1804.202 (a) amended 58719
1804.671-4 (ss) revised 58719
1804.671-6 (d) revised 58719
1804.671-7 Introductory text amended 58719
1804.677-1 (c) revised; interim 60737
1804.677-4 (b) revised; interim 60737
1804.677-6 (n)(2), (4) and (q) revised; interim 60738
1805.202 Revised 58719
1806.203 Added 58719
1807.103 (a)(1)(ii) (C) through (G) redesignated as (a)(1)(ii)(D) through (H); (a)(1)(i)(B) redesignated as new (a)(1)(ii)(C); (b)(1)(ii)(B) (*3*) through (*7*) redesignated as (b)(1)(ii)(B) (*4*) through (*8*); (b)(1)(ii)(A)(*2*) redesignated as new (b)(1)(ii)(B)(*3*); new (a)(1)(i)(B) and new (b)(1)(ii)(A)(*2*) added 58719
1807.7102 (b)(2) (iii) through (vii) redesignated as (b)(2) (iv) through (viii); (b)(1)(ii) redesignated as new (b)(2)(iii); new (b)(1)(ii) added 58719
1809.105 Added 58720
1809.105-1 Added 58720
1809.506 Redesignated from 1809.507; (a) and (b) amended 58720
1809.507 Redesignated as 1809.506 58720
1809.508-2 Amended 58720
1815.507 Removed 58720
1817.7002-2 Amended 58720
1817.7002-3 Amended 58720
1827.406 (b)(1)(v) revised 58720
1827.409 (i) added 58720
1828.2 Added 58720
1828.106-1 Revised 58720
1831.205-70 Amended 58720
1832.402-2 Added 4086
1832.7001—1832.7008 (Subpart 1832.70) Added 4086
1833.214 Redesignated as 1833.215 58720

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 48 Chapter 18—Con. Page

1835.003-70 Amended 58720
1835.070 (a) amended 58720
1837.7000—1837.7001-4 (Subpart 1837.70) Added 58720
1839.7000—1839.7007 (Subpart 1839.70) Revised 58721
1842.202-70 (a)(6)(iii) amended 58725
1845.302-1 (a) revised 58725
1845.302-73 Added 58725
1849.110 Heading revised 58725
1852.204-70 Heading and (c) amended 58725
1852.232-83 Added 4088
1852.232-84 Added 4088
1852.235-70 Revised 58725
1853.204-70 Heading revised 58726
1870.303 Appendix I amended 58726

Chapter 20—Nuclear Regulatory Commission (Parts 2000—2099)

Chapter 20 Revised 61157

Chapter 24—Department of Housing and Urban Affairs (Parts 2400—2499)

2401 Authority citation revised 59787
2401.601-70 Revised 59787
2401.601-71 Revised 59787
2401.602-72 Removed; new 2401.602-72 redesignated from 2401.601-73 and revised 59787
2401.601-73 Redesignated as 2401.601-72; new 2401.601-73 redesignated from 2401.601-74 and revised 59787
2401.601-74 Redesignated as 2401.601-73 59787
2401.603-2 (c) revised 59787
2401.603-3 (b) amended 59787
2402 Authority citation revised 59787
2402.101 Amended 59787
2403 Authority citation revised 59788
2403.303-70 (Subpart 2403.3) Heading amended 59788
2403.670 Added 59788
2405 Authority citation revised 59788
2405.301 (Subpart 2405.3) Added 59788
2406 Authority citation revised 59788
2406.304-70 Removed; new 2406.304-70 redesignated from 2406.304-71 59788
2406.304-71 Redesignated as 2406.304-70; new 2406.304-71 redesignated from 2406.304-72; (c) revised 59788
2406.304-72 Redesignated as 2406.304-71 59788
2409 Authority citation revised 59788
2409.501 Removed 59788
2409.502 Amended 59788
2409.503 Added 59788
2409.504 Introductory text revised 59788
2413 Authority citation revised 59788
2413.505-2 (b) revised 59788
2414 Authority citation revised 59788
2414.406-3 Revised 59788
2415 Authority citation revised 59788
2415.407 (a) revised 59788
2415.604 Revised 59789
2415.608 (a) revised 59789
2415.611 Removed 59789
2415.611-70 Removed 59789
2415.612 Redesignated from 2415.613 and revised 59787
2415.612-70 Redesignated from 2415.613-70 and revised 59789
2415.613 Redesignated as 2415.612; new 2415.613 added 59789
2415.613-70 Redesignated as 2415.612-70; new 2415.613-70 added 59789
2415.613-71 Removed; new 2415.613-71 added 59789
2415.613-72 Added 59789
2416 Authority citation revised 59790
2416.504 Revised 59790
2419 Authority citation revised 59790
2419.708 (Subpart 2419.7) Added 59790
2425 Added 59790
2425.402 Added 59790

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

2426 Authority citation added 59790
2426.201 Nomenclature change 59790
2428 Authority citation revised 59790
2428.203 Redesignated as 2428.204 59790
2428.203-70 Redesignated as 2428.204-70 59790
2428.204 Redesignated from 2428.203 59790
2428.204-70 Redesignated from 2428.203-70 59790
2432 Authority citation revised 59790
2432.402 Revised 59790
2432.906 (Subpart 2432.9) Added 59790
2433 Authority citation revised 59790
2433.103 Revised 59790
2433.103-70 Removed; new 2433.103-70 redesignated from 2433.103-71 59790
2433.103-71 Redesignated as 2433.103-70 59790
2433.104 (f) redesignated as (g) 59790
2433.104-70 Removed 59790
2436 Authority citation revised 59790
2436.602-2 (a) amended 59790
(3) added 59791
2436.602-4 Revised 59791
2436.602-5 Amended 59791
2437 Authority citation revised 59791
2437.110 (g) and (h) added 59791
2437.205 (Subpart 2437.2) Heading revised 59791
2437.205 (b)(6) amended 59791
2446 Authority citation amended 59791
2446.710 (Subpart 2446.7) Added 59791
2452 Authority citation revised 59791
2452.203-70 Added 59791
2452.203-71 Added (OMB number) 59791
2452.215-70 (b) amended (OMB number) 59791
2452.215-71 Amended 59792
2452.216-75 Introductory text revised 59792

Page

2452.219-70 Added 59792
2452.237-76 Added (OMB number) 59793
2452.237-77 Added 59793

Title 48—*Proposed Rules:*

48 59274
200-299 (Ch. 2) 54035
209 54035
219 ..... 56895, 60503
252 ..... 56895, 60503
538 54036
552 54036
970 4141
1200—1299 (Ch. 12) 54191
1512 46007
1516 46007
1552 46007
1816 ..... 53681, 54210
1837 47602
1852 47602
3410 56416
5415 45759
5452 45759
6101 60783
9903 ..... 47438, 60503
9904 6103
9905 60503

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.46 (m) revised 6194
1.48 (jj) added 62484
(jj) added 502
(jj) revised 6194
1.49 (ii) added 62484
(ii) revised 6194
1.53 (k) redesignated as (k)(1); new (k)(2) added 62484
(l) added 5631
(k) revised 6194
1.56 (k) removed 5632
71.7 (a) revised 48339
81 Removed 60728

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

101 Removed 60728

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 49 Chapter I—Con. Page

101.1—101.7 (Subchapter A) Removed....60728
107 Interpretation....48739
107.315 (c) revised; (d) added....45453
171 Interpretation....48739
171.1 (a)(3)(iv) added....52934
171.4 Added....52934
171.7 (a)(3) table amended; interim....60739
171.8 Amended....45453, 52935, 59309
Corrected....47513
171.11 (d)(13) added....52935
171.12 (b)(7) revised....45453
171.12a (b) introductory text revised....45453
(b)(15) added....52935
171.14 (b)(2) revised; (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added....45443
Heading, (a), (b) introductory text and (c)(2) introductory text revised....45455
(b)(2) corrected....47412
171.15 (a)(4) redesignated as (a)(5); new (a)(4) added....52935
172 Interpretation....48739
172.101 Table amended...45454—45457, 59309, 59310
(c)(1), (3), (7)(ii) and appendix amended....45458
Table corrected....47513
Table amended; appendix redesignated as appendix A and amended; appendix B added....52935
Table corrected; appendix A correctly designated....54141
Table amended....3348
172.102 (c)(1), (3) and (7)(ii) amended....45458
(c)(7)(ii) corrected....47513
(c)(5) amended....52938
(c)(3) amended....59310
172.200 (b) introductory text amended....52938
172.202 (d) amended....52938
172.203 (m)(1) amended....45458
(c)(1)(i) amended; (l) added....52938
(g)(3) amended....3348
172.312 (a)(2) amended....45458
172.313 (a) correctly revised....46624
172.322 Added....52938
172.324 (a)(1) amended....52939
172.325 Revised....3348

Page

172.330 (a) amended....45458
172.405 (a) introductory text amended....45458
172.422 (a) revised....45458
172.504 (c) introductory text, (f)(1) and (4) revised; (f)(9) and (10) added....45460
(f)(9) amended....59310
172.505 (a) revised....45460
172.510 (c) amended; (e) revised....45460
172.519 (b)(3) amended....45460
172.526 (a)(4) amended....45460
172.560 (b) revised....45460
172.704 (a)(1), (2), (c)(1)(i) and (ii) revised....5851
173 Interpretation....48739
173.2 Amended....45460
173.12 (d)(1) and (2) amended; (d)(3) added....52939
173.22 (a)(4) amended....45460
173.23 (c) amended....45460
173.24a (c)(1)(iii) amended....45460
173.28 (e) added....45460
173.29 (b)(3) amended....52939
173.31 (c) Table I amended....45460
173.32 (a)(1), (3), (5) and (c) amended....45460
173.32c (r) added....45460
(f) amended....45461
173.33 (c)(1)(iii), (5) and (e) amended....45461
173.115 (b)(1) amended....45461
173.120 (b)(1) and (2) amended....45461
173.124 (a)(3)(ii) revised....45461
173.133 (a)(2)(ii) introductory text republished; (a)(2)(ii) Figure 1 revised....45461
(a)(1) table and (2)(i) table amended....45463
173.140 Revised....45463
(b) revised....52939
173.150 (a), (f) introductory text and (3)(vii) amended....45463
(c), (f)(2), (3) and (4) amended....52940
173.151 (c) amended....52940
173.152 (c) amended....52940
173.153 (c)(3) amended....52940
173.154 (d) revised....45463
(c) and (d) amended....52940
173.155 (c) amended....52940
173.156 (b) amended....45463

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

173.159 (b)(3) through (6) added; (c) introductory text revised 45463
173.193 (d) amended 45463
173.211 (c) amended 45463
173.225 (e)(2) amended; (e)(3) introductory text, (i), (ii), (iii), (v) and (iv) redesignated as (e)(3)(i) introductory text, (A), (B), (C), (ii) and (4) 45463
173.227 (b) introductory text amended 45463
173.244 Heading revised 45463
173.247 Revised 3349
173.302 (a)(5)(iii) amended; (h) revised 45463
173.304 (g) revised 45463
173.314 (c) introductory text revised 45463
(c) table amended 45464
(c) table corrected 47513
173.315 (a) table, (d) and (i)(12) amended 45464
173.336 Heading and introductory text revised 45464
173.421 (b)(1)(i) and (2)(i) amended 52940
173.425 (b)(8) amended 52940
174 Interpretation 48739
174.25 (a)(2) table amended 45464
(b)(5) added 52940
174.55 (c) amended 45464
174.61 (c) amended 45464
174.81 (f) table revised; (d) table and (e)(5) amended 45464
(d) table amended 59310
174.82 (a) amended 45464
174.85 (b) amended 45464
175 Interpretation 48739
176 Interpretation 48739
176.70 Added 42940
176.83 (c)(2)(i)(A) and (B) amended 45465
176.600 (d) amended 45465
177 Authority citation revised 45465
Interpretation 48739
177.805 (a) designation removed 45465
177.816 (a) and (4) amended; (c) revised; (d) added 5852
177.848 (f) table revised; (d) table and (e)(5) amended 45465
(f) table corrected 47513
(d) table amended 59310

Page

177 Appendix B corrected 47513
178.270-5 (a), (c) and (d) amended 45465
178.337-1 (b) amended 45465
178.337-11 (a)(4)(i)(B) amended 45465
178.345-2 (a)(2) amended 45465
178.345-11 (a) and (b)(1)(iii) amended; (b)(2) and (c) revised 45465
178.507 (a) amended 45465
178.601 (h) amended 45465
178.603 (a) introductory text and table amended 45465
178.606 (c)(1) and (d) amended 45465
178 Appendix B amended 45466
179.101-1 (a) amended 45466
179.200 (b)(4) removed 45466
180.405 (g)(2) amended 45466
180.407 (d)(2)(vii) removed; (d)(2)(viii) amended 45466
180.409 (b) introductory text revised 45466
180.413 (b)(2)(v) revised 45466
180.415 (b) and (c) amended 45466
194 Added; interim 253

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

214.103 Regulation at 57 FR 45326 effective date delayed to 11-24-92 45326
214.105 Regulation at 57 FR 45326 effective date delayed to 11-24-92 45326
255 Removed 52734
268 Removed 52735

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

383.51 (c)(3) removed 53295

Chapter IV—Coast Guard, Department of Transportation (Parts 400—499)

400—499 (Ch. IV) Policy statement 6446

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 49

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

Page

527 Removed **60728**
541 Appendixes A, A-I and A-II revised 3852
564 Added 3860
571 Petition denied **47007**
571.100 Removed **60728**
571.105 Amended; eff. 10-20-93 ..... **47800**
571.108 Regulation at 56 FR 16021 effective 10-1-92 ..... **45328**
Amended; eff. 12-1-93 ..... **58413**
Amended 3506, 3861
Figures 23-4 and 23-5 revised 3854
571.111 Amended; eff. 12-2-93 ..... **57015**
571.121 Amended; eff. 10-20-94 ..... **47800**
571.205 Corrected **58150**
571.211 Amended 4583
571.213 Corrected **45422**
571.216 Amended 5633
571.217 Amended; eff. 5-2-94 ..... **49423, 57020**
571.222 Amended; eff. 1-17-94 4593
571.301 Amended 5638
572.31 (a)(1) revised **47910**
572.90—572.91 (Subpart K) Added 3232
590 Removed **60728**

Chapter VI—Federal Transit Administration (Parts 600—699)

603 Removed **60728**
623 Removed **60728**
630 Revised 4888
635 Removed **60728**
665 Regulation at 57 FR 33397 comment period extended; interim 2989
665.3 (d) revised; interim **46815**
670 Removed **60728**

Chapter X—Interstate Commerce Commission (Parts 1000—1399)

1002.1 (b) revised; (f)(6) table amended **53296**
1002.2 (f) revised **53296**
(f) table corrected **54894**
1023.32 Regulation at 57 FR 43152 stayed **45751**
(e) and (f) amended **49149**
1023.33 Regulation at 57 FR 43152 stayed **45751**
1023.34 Regulation at 57 FR 43152 stayed **45751**
1023.35 Regulation at 57 FR 43152 stayed **45751**
Revised **49149**
1023.36 Regulations at 57 FR 43152 and 43153 stayed **45751**
1023.37 Regulations at 57 FR 43152 and 43153 stayed **45751**
1023.38 Regulation at 57 FR 43152 stayed **45751**
1023.39 Regulation at 57 FR 43152 stayed **45751**
1023.40 Removal at 57 FR 43153 stayed **45751**
1023.41 Removal at 57 FR 43153 stayed **45751**
1023.42 Removal at 57 FR 43153 stayed **45751**
1023.101 Removal at 57 FR 43153 stayed **45751**
1033 Revised **53451**
1033.1 (a)(3) and (b)(1) revised **61585**
1037 Authority citation revised **54334**
1037.2 Revised **54334**
1039.11 (a) amended 4356
1039.14 (c)(3) amended **53451**
(c)(3) correctly designated **56641**
1180 Authority citation revised **57112**
1180.20 (Subpart B) Revised **57112**
(c) amended **61585**
1321.1 Amended **54189**
1321.5 Introductory text amended **54189**

Title 49—*Proposed Rules:*

1-99 (Subtitle A) **54191**
10 ..... **49446**
23 ..... **58288**
37 ..... **54210, 54210**
..... 6471
40 ..... **59409**
41 4393
100-199 (Ch. I) **54191**
190 ..... **53085, 54745**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

191 53085
192 ..... 53085, 54745
193 ..... 53089, 54745
195 ..... 54745, 56304
199 ..... 59712, 59720, 59778
200-299 (Ch.II) 54191
213 54038
..... 338, 4975
217 ..... 47603, 58436, 59608
218 48494
219 ..... 59588, 59605, 59608, 59778
220 ..... 47603, 58436
232 62546
234 53684
..... 4400
300-399 (Ch. III) 53089, 54191, 60784
350 59516
382 ..... 59516, 59536, 59567, 59778
383 59516
..... 4638, 4640
390 4640
391 ..... 48011, 59778, 59539
..... 4640
392 59516
395 59516
400-499 (Ch.IV) 54191
500-599 (Ch. V) 54191, 54351, 61869
523 61377
525 61377
531 48777
533 61377
537 61377
552 45759
571 ...45760, 49162, 49444, 54354, 54958, 58437, 58444, 59041, 59043
..... 4644, 4649, 5323, 5699
572 ..... 48779, 58444
575 ..... 54962, 54963
585 59043
600-699 (Ch. VI) 54191
604 48924
653 ..... 59660, 59778,
654 59646
826 ..... 60785, 61967
1007 531
1023 5951
1039 ..... 45602, 48354
..... 6104
1057 ..... 53463, 61870
1145 48354
1152 ..... 53307, 59951
1162 5951
1201 ..... 53307, 59951
1312 35

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 50—WILDLIFE AND FISHERIES

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

Page

17.11 (h) table amended...45337, 54726, 59243, 59256
(h) table amended...4358, 5642, 5657, 5946
17.12 (h) table amended...46339, 46344, 48747
17.84 (h) added..... 5657
17.108 (a)(3) and map revised; (a)(4), (5) and (6) added; eff. 11-15-92 through 3-15-93..... 5645
20.105 Corrected..... 53416
100.25 (m)(1) table and (13) table corrected; (m)(17)(ii)(C), (18)(ii)(B), 19)(ii)(D) and (25)(ii)(B) correctly revised..... 54509
(m)(4) table amended..... 54703

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.24 (e)(5)(i) introductory text and (vi) through (xv) revised; (e)(5)(xvi) added..... 54335
217 Temporary regulations...46815, 53603, 54533, 60135
Temporary regulations..... 4088
217.12 Regulation at 57 FR 40867 confirmed and amended..... 57353
222 Temporary regulations...46815, 53603, 54533, 60135
Temporary regulations..... 4088
227 Temporary regulations...45986, 46815, 47276, 52735, 53603, 54533, 57968, 60135
Temporary regulations.....4088, 5643
227.71 (a) and (b) revised; (c) republished..... 57354
227.72 (e) revised..... 57354
(e)(2)(ii)(A)(5) and (6) removed; (e)(2)(ii)(A)(7) redesignated as (e)(2)(ii)(A)(5)..... 2990
228.11 Revised..... 4093

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

TITLE 50 Chapter II—Con. Page

228.12 Revised....4093
228.13 (b) and (c) revised....4093
228.14 (b) and (c) introductory text revised....4093
285 Temporary regulations...45579, 47412, 59310

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

603.1 Revised....47801
603.2 Amended....47801
603.3 Amended....47801
603.5 Revised....47801
603.6 (a) introductory text amended....47801
603.7 Nomenclature change....47801
611 Specifications....2991
611.2 Amended....48566
611.1—611.16 (Subpart A) Appendixes A and D amended....48566
611.20 (c) amended....48566
611.81 Heading, (a), (b), (c), (j)(2), (3) and (4) introductory text revised; (h)(4) removed; (j)(9) added....48566
(j)(5)(i), (ii), (iv), (6)(ii) and (iv) amended....48567
(a) corrected....53966
625 Revised....57369
Specifications....5658
625.8 (a)(8) suspended; (a)(12) added; interim; effective to 3-9-93....58151
625.24 (b)(1) suspended; (b)(3) added; interim; effective to 3-9-93....58151
640.1 Revised....56518
640.2 Amended....56518
640.4 Revised....56518
640.6 Revised....56519
640.7 Revised....56520
640.20—640.24 (Subpart B) Revised....56520
640.23 (a)(3) revised (temporary)....58154
641.4 (m) and (n) added; interim; effective to 3-30-93....62239
641.7 (u) added; interim; effective to 3-30-93....62237
(v) and (w) added; interim; effective to 3-30-93....62239
641.21 (d) added; interim; effective to 3-30-93....62239
641.30 Added; interim; effective to 3-30-93....62237
(b) suspended; (c) added; interim; effective to 3-30-93....62239
642 Temporary regulations....47998
Temporary regulations....4093
Fishery management measures....4599
642.1 (a) amended....58153
642.2 Amended....58153
642.4 (a)(1)(i), (ii), (b)(2)(vi) revised; (b)(3) amended....58153
642.5 (a) introductory text, (3) and (b) introductory text amended; (e) and (f) revised....58154
642.6 (a) introductory text revised....58154
642.7 Revised....58154
(a) corrected....3330
642.20—642.30 (Subpart B) Revised....58154
642.21 (b) corrected....3330
642 Appendix A redesignated in part as part 642 Figures 1 and 2; removed....58157
646 Temporary regulations....56522
650 Temporary regulations....4944
651.20 (e)(2) revised....48473
652 Temporary regulations....55148
655 Specifications....54189
661 Temporary regulations....45751
662 Harvest quotas....48191
663 Reassessment....45987
Restrictions....46097, 49425
Temporary regulations....47413, 57377
Specifications....2991
663.7 (q), (r), (t) and (u) added; eff. 1-1-94; (s) and (v) added....54006
663.30—663.43 (Subpart C) Added....54006
663.35 (a)(3) corrected....3330
663.36 (a)(2) corrected....3330
663 Appendix amended....54012
671 Added; interim....57115
671.2 Corrected....60029
671.20 Corrected....60029
672 Temporary regulations...45580, 45988, 46510, 47277, 47572, 47910, 52594, 52737

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH JANUARY 29, 1993

Page

Prohibition of retention...46344, 46816, 48568, 56860
Technical correction...49653
Fishery management measures...61586
Temporary regulations...504
672.2 Amended...61340
672.7 (g) revised...55149
(h)(1) and (2) revised...61340
672.20 (a)(2)(v)(C) removed; (a)(2)(v)(A) and (B) revised...61340
672.24 (d)(3) and (4) removed...504
(f) added...5661
675 Temporary regulations...46511, 53452, 58726
Technical correction...49653
Apportionment...53035, 58158
Prohibition of retention...57377
Recordkeeping and reporting requirements...57692
Temporary regulations...504, 5662
675.2 Amended...54942, 61341
675.7 (j) and (k) redesignated as (k) and (l); new (j) added...54942
(h) revised...55149
(i) revised...61341
675.20 (a)(3)(i), (ii) and (iii) revised; (a)(7)(i) and (ii) amended; (e)(2)(iv) added...54942
(a)(2)(iii) introductory text revised...61341
675.21 (c)(2)(ii) corrected...49750
675.22 (g) revised...54942, 61341
675.24 (g) added...5662
675.26 (b)(4) and (d)(3)(i)(A)(*1*) corrected...49750
675.27 Added...54943
685.1 (a) and (b) revised...48567
685.2 Amended...45991, 48568
Table corrected...53966
685.4 (a), (b)(7), (8) and (c)(9) amended...48568
685.5 (t) revised...45991
(a), (b), (d) through (g), (n), (o) and (r) amended...48568
685.8 (a) amended...48568
685.9 (a) amended...48568
685.13 Amended...48568
685.15 (a), (c)(1) and (2) amended...48568

Page

685.22 Revised...48568
685.23 Amended...48568
685.24 Redesignated as 685.26; new 685.24 added...45992
685.25 (a)(2), (3) and (4) amended...48568
685.26 Redesignated from 685.24...45992

Title 50—*Proposed Rules:*

17 ...45761, 45762, 46007, 46528, 46840, 47028, 47833, 48495, 49671, 53309, 54545, 54546, 54547, 54747, 55219, 56541, 56549, 58770, 58774, 58779, 59053, 59061, 59951, 59970, 60159, 60160, 60161
...339, 4144, 4145, 4400, 4401, 4975, 5341, 5701, 6578
18 ...62283
23 ...53090
32 ...55686, 58108, 58930, 62289
216 ...47606
218 ...47606
222 ...47606, 60162
226 ...52750, 57051, 57981
227 ...53312
...3108
259 ...54356
611 ...47040, 57718, 57982
...6574
625 ...55220, 61389
641 ...57129
649 ...58781
650 ...49675
651 ...46840, 49676, 58173
652 ...48589, 54215
655 ...60786
658 ...54965, 58175
663 ...49060, 53313, 54552, 56897
...126, 4146
669 ...58782
672 ...46133, 47321, 49676, 57130, 57726, 57982, 59072, 61870
...532, 6574
675 ...45602, 46133, 46139, 48426, 49676, 54045, 57130, 57718, 57726, 59072, 60788, 61870
676 ...49676, 57130, 61870
683 ...54560
685 ...47040

NOTE: **Boldface page numbers indicate 1992 changes.**

Additions to Table I, January 1993

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January 1992. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1993. Additions during 1992 are in the December 1992 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
5 U.S.C.	
5514	22 Part 309
	45 Part 708
552a	21 Part 291
	25 Part 515
7 U.S.C.	
2	17 Part 35
6	17 Part 35
6c	17 Part 35
12a	17 Part 35
1989	7 Part 4284
2011-2032	7 Part 271-282, 284, 285
10 U.S.C.	
131	32 Part 397
12 U.S.C.	
1462	12 Part 558
1463	12 Part 563
1464	12 Part 563
1467a	12 Part 558
	12 Part 563
1798	12 Part 701
1828	12 Part 225
2810 et seq	12 Part 528
15 U.S.C.	
1392	49 Part 564
1401	49 Part 564
1403	49 Part 564
1407	49 Part 564
3717	12 Part 701
16 U.S.C.	
1005	7 Part 4284
17 U.S.C.	
1007	37 Part 311
803	37 Part 311
18 U.S.C.	
4001	28 Part 26
4002	28 Part 26
19 U.S.C.	
66	19 Part 118
1499	19 Part 118
1623	19 Part 118
1624	19 Part 118
20 U.S.C.	
1681	29 Part 34

	CFR
21 U.S.C.	
337	21 Part 100
22 U.S.C.	
2503	22 Part 309
25 U.S.C.	
81	25 Parts 531, 533, 535, 537, 539
2705	25 Parts 573, 575
2706	25 Parts 501, 519, 522, 523, 524, 531, 533, 535, 537, 539, 556, 558, 571, 573, 575, 577
2710	25 Parts 501, 522, 523, 524, 531, 533, 535, 537, 539, 556, 558, 571
2711	25 Parts 531, 533, 535, 537, 539
2712	25 Parts 522, 523, 524, 556, 558
2713	25 Parts 573, 575, 577
2715	25 Parts 571, 573, 575, 577
2716	25 Part 571
26 U.S.C.	
267	26 Part 1
482	26 Part 1
936	26 Part 1
6012	26 Part 1
6065	26 Part 1
28 U.S.C.	
509	28 Part 26
510	28 Part 26
29 U.S.C.	
794	29 Part 34
1501	29 Part 34
1551	29 Part 34
1573	29 Part 34
1574	29 Part 34
1575	29 Part 34
1576	29 Part 34
1577	29 Part 34
1578	29 Part 34
1579	29 Part 34
31 U.S.C.	
3102 et seq	31 Part 356
3720A	22 Part 309
33 U.S.C.	
1231	49 Part 194
1321	49 Part 194

42 U.S.C.	CFR
300y-11	21 Part 291
1437	24 Part 770
1441	24 Part 770
1981	12 Part 701
2000d et seq	29 Part 34
3535	24 Part 770
3608	24 Part 770
5301	24 Part 770
6106	29 Part 34
7401—7671q	40 Part 81
7601	40 Part 78
7651 et seq	40 Parts 72, 78
7651k	40 Part 75
7651k note	40 Part 75
7651j	40 Part 77
8101 et seq	12 Part 932
9601 et seq	40 Part 307
9615	40 Part 2
9801 et seq	45 Parts 1304, 1305, 1308
46 U.S.C. App.	
1721	46 Parts 580, 581, 583
49 U.S.C.	
1—27	18 Part 381
Public Laws:	
101-73	12 Part 701
102-378	5 Part 531
Presidential Documents:	
Executive Orders:	
11609	45 Part 708
12107	45 Part 708
12777	49 Part 194
12580	40 Part 307

Removals from Table I, January 1993

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January 1993.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1993. Removals during 1992 are in the December 1992 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
7 U.S.C.	
6	17 Part 34
1989	7 Part 1944
2011-2031	7 Parts 271-282, 284, 285
10 U.S.C.	
8012	32 Part 954
15 U.S.C.	
1601 et seq.	12 Part 701
12 U.S.C.	
1462	12 Parts 579, 580
1462a	12 Parts 579, 580
1463	12 Parts 579, 580
1464	12 Parts 579, 580
1467	12 Parts 579, 580
1831o	12 Part 263
2801	12 Parts 579, 580
31 U.S.C.	
738a	31 Part 349
754	31 Part 349
754a	31 Part 349
1601 et seq.	12 Part 701
3717	12 Part 701
31 U.S.C.—Con.	CFR
9701	40 Part 86
42 U.S.C.	
1861	12 Part 701
2928h	45 Part 1304
7101—7352	18 Part 346
9615	40 Part 2
9831 et seq.	45 Part 1305
46 U.S.C. App.	
1722	46 Parts 580, 581, 583
49 U.S.C.	
1—27	18 Part 346
U.S. Statutes at Large:	
40 Stat.	
290	31 Part 349
50 Stat.	
481	31 Part 349
80 Stat.	
379	31 Part 349
Presidential Documents:	
Executive Orders:	
12009	18 Part 346

1992

57 FR Page	
10973-11260	Apr. 1
11261-11424	2
11425-11552	3
11553-11670	6
11671-11904	7
11905-12176	8
12177-12402	9
12403-12694	10
12695-12862	13
12863-12988	14
12989-13266	15
13267-13622	16
13623-14320	17
14320-14474	20
14475-14636	21
14637-14790	22
14791-15000	23
15001-15216	24
15217-17844	27
17845-18078	28
18079-18386	29
18387-18796	30
18797-19062	May 1
19063-19248	4
19249-19362	5
19363-19514	6
19515-19790	7
19791-20024	8
20025-20190	11
20191-20394	12
20395-20626	13
20627-20734	14
20735-20954	15
20955-21186	18
21187-21346	19
21347-21586	20
21587-21720	21
21721-21888	22
21889-22156	26
22157-22408	27
22409-22642	28
22643-23042	29
23043-23134	June 1
23135-23300	2
23301-23522	3
23523-23924	4
23925-24178	5
24179-24344	8
24345-24538	9
24539-24748	10
24749-24934	11
24935-26602	12
26603-26766	15
26767-26920	16
26921-27140	17
27141-27344	18
27345-27676	19
27677-27888	22
27889-28032	23
28033-28456	24
28457-28582	25
28583-28776	26
28777-28996	29
28997-29180	30
29181-29428	July 1
29429-29628	2
29629-29782	6
29783-30098	7
30099-30378	8
30379-30634	9
30635-30896	10
30897-31088	13
31089-31302	14
31303-31428	15
31429-31628	16
31629-31946	17
31947-32148	20
32149-32412	21
32413-32684	22
32685-32878	23
32879-33096	24
33097-33266	27
33267-33424	28
33425-33622	29
33623-33856	30
33857-34060	31
34061-34200	Aug. 3
34201-34494	4
34495-34664	5
34665-34850	6
34851-35454	7
35455-35744	10
35745-35980	11
35981-36350	12
36351-36586	13
36587-36886	14
36887-37078	17
37079-37392	18
37393-37682	19
37683-37868	20
37869-38236	21
38237-38402	24
38403-38576	25
38577-38742	26
38743-39096	27
39097-39350	28
39351-39596	31
39597-40070	Sept. 1
40071-40300	2
40301-40590	3
40591-40826	4
40827-41042	8
41053-41374	9
41375-41640	10
41641-41852	11
41853-42484	14

42485-42680	15
42681-42880	16
42881-43124	17
43125-43334	18
43335-43604	21
43605-43884	22
43885-44076	23
44077-44304	24
44305-44480	25
44481-44650	28
44651-44966	29
44967-45260	30
45261-45558	Oct. 1
45559-45707	2
45709-45972	5
45973-46078	6
46079-46294	7
46295-46476	8
46477-46746	9
46747-46948	13
46949-47252	14
47253-47398	15
47399-47554	16
47555-47754	19
47755-47974	20
47975-48160	21
48161-48304	22
48305-48434	23
48435-48556	26
48557-48710	27
48711-48928	28
48929-49130	29
49131-49372	30
49373-49630	Nov. 2
49631-52576	3
52577-52718	4
52719-53014	5
43014-53210	6
53211-43430	9
53431-53536	10
53537-53846	12
53537-53846	13
53981-54164	16
54165-54284	17
54285-54484	18
54485-54678	19
54677-54894	20
54895-55042	23
55043-55436	24
55437-56230	25
56231-56432	27
56433-56802	30
56803-56962	Dec. 1
56963-57093	2
57095-57320	3
57321-57644	4
57645-57873	7
57875-58119	8
58121-58397	9
58399-58696	10
58697-58960	11
58691-59274	14
59275-59800	15
59801-59894	16
59895-60071	17
60073-60448	18
60449-60713	21
60715-60973	22
60975-61248	23
61249-61556	24
61557-61758	28
61759-62144	29
62145-62465	30
62467-62919	31

1993

58 FR Page	
1-211	Dec. 4
213-465	5
467-2964	6
2965-3192	7
3193-3483	8
3485-3823	11
3825-4057	12
4059-4294	13
4295-4568	14
4569-4890	15
4891-5252	19
5253-5560	21
5561-5917	22
5919-6074	25
6075-6186	26
6187-6341	27
6343-6439	28
6441-6600	29

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List of CFR Sections Affected

February 1993

Title 1-16
Changes January 4, 1993
through February 26, 1993

Title 17-27
Changes April 1, 1992
through February 26, 1993

Title 28-41
Changes July 1, 1992
through February 26, 1993

Title 42-50
Changes October 1, 1992
through February 26, 1993

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The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1992.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1990 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-019-00017-8)	20.00	Jan. 1, 1993
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-019-00025-9)	12.00	Jan. 1, 1993
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	19.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	22.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	27.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	19.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-0)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1,1992
§§ 1.1401-End	(867-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992
27 Parts:			
1-199	(869-017-00102-3)	34.00	Apr. 1, 1992
200-End	(869-017-00103-1)	11.00	Apr. 1, 1992
28	(869-017-00104-0)	37.00	July 1, 1992
29 Parts:			
0-99	(869-017-00105-8)	19.00	July 1, 1992
100-499	(869-017-00106-6)	9.00	July 1, 1992
500-899	(869-017-00107-4)	32.00	July 1, 1992
900-1899	(869-017-00108-2)	16.00	July 1, 1992
1900-1910 (§§ 1901.1 to 1910.999)	(869-017-00109-1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-017-00111-2)	9.00	[6] July 1, 1989
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-017-00114-7)	25.00	July 1, 1992
200-699	(869-017-00115-5)	19.00	July 1, 1992
700-End	(869-017-00116-3)	25.00	July 1, 1992
31 Parts:			
0-199	(869-017-00117-1)	17.00	July 1, 1992
200-End	(869-017-00118-0)	25.00	July 1, 1992
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-189	(869-017-00119-8)	30.00	July 1, 1992
190-399	(869-017-00120-1)	33.00	July 1, 1992
400-629	(869-017-00121-0)	29.00	July 1, 1992
630-699	(869-017-00122-8)	14.00	July 1, 1992
700-799	(869-017-00123-6)	20.00	July 1, 1992
800-End	(869-017-00124-4)	20.00	July 1, 1992
33 Parts:			
1-124	(869-017-00125-2)	18.00	July 1, 1992
125-199	(869-017-00126-1)	18.00	July 1, 1992
200-End	(869-017-00127-9)	23.00	July 1, 1992
34 Parts:			
1-299	(869-017-00128-7)	27.00	July 1, 1992
300-399	(869-017-00129-5)	19.00	July 1, 1992
400-End	(869-017-00130-9)	32.00	July 1, 1992

Footnotes at end of table.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH—Continued

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
35	(867-017-00131-7)	12.00	July 1, 1992
36 Parts:			
1-199	(869-017-00132-5)	15.00	July 1, 1992
200-End	(869-017-00133-3)	32.00	July 1, 1992
37	(869-017-00134-1)	17.00	July 1, 1992
38 Parts:			
0-17	(869-017-00135-0)	28.00	July 1, 1992
18-End	(869-017-00136-8)	28.00	July 1, 1992
39	(869-017-00137-6)	16.00	July 1, 1992
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-017-00153-8)	9.50	July 1, 1992
101	(869-017-00154-6)	28.00	July 1, 1992
102-200	(869-017-00155-4)	11.00	July 1, 1992
201-End	(869-017-00156-2)	11.00	July 1, 1992
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992

Footnotes at end of table.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-017-00170-8)	8.00	Oct. 1, 1992
90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
140-155	(869-017-00172-4)	12.00	Oct. 1, 1992
156-165	(869-017-00173-2)	14.00	Oct. 1, 1992
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-017-00179-1)	10.00	Oct. 1, 1992
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1-51)	(869-017-00182-1)	34.00	Oct. 1, 1992
1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
1200-End	(869-017-00196-1)	21.00	Oct. 1, 1992
50 Parts:			
1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
600-End	(869-017-00199-6)	20.00	Oct. 1, 1992
CFR Index and Finding Aids	(869-017-00053-7)	31.00	Jan. 1, 1992
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Footnotes at end of table.

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CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 1—GENERAL PROVISIONS

Chapter III—Administrative Conference of the Federal Register (Parts 300—399)

Page

305.79-7 Correctly designated..... 4295

TITLE 3—THE PRESIDENT

Proclamations

6519 207
6520 467
6521 469
6522 3195
6523 3197
6524 4293
6525 5917
6526 6187
6527 7477
6528 8691
6529 10937
6530 11361

Executive Orders

2859 Amended by EO 12832.....5905
10865 Amended by EO 12829.....3479
10909 *See* EO 12829..... 3479
11382 *See* EO 12829..... 3479
12154 Amended by EO 12833.....5907
12333 *See* EO 12829..... 3479
12356 *See* EO 12829..... 3479
12792 Amended by EO 12827.....211
12800 Revoked by EO 12836..... 7045
12808 *See* EO 12831..... 5253
12810 Revoked in part by EO 12831.....5253
12818 Revoked by EO12836..... 7045
12827 211
12828.....2965
12829 3479
12830 4061
12831 5253
12832 5905
12833 5907
12834 5911
12835 6189
12836 7045
12837 8205
12838 8207
12839 8515

Administrative Orders

Memorandums:

Page

Dec. 30, 1992.....3485
Dec. 30, 1992.....3195
Jan. 15, 1993..... 6339
Jan. 22, 1993..... 6439
Jan. 29, 1993..... 8201
Feb. 3, 1993..... 8303

Presidential Determinations:

No. 93-7 of Jan. 5, 1993.....4059
No. 93-8 of Jan. 6, 1993.....5241
No. 93-9 of Jan. 6, 1993.....5243
No. 93-10 of Jan. 6, 1993.....5245
No. 93-11 of Jan. 6, 1993.....5247
No. 93-12 of Jan. 6, 1993.....5249
No. 93-13 of Jan. 6, 1993.....5251
No. 93-14 of Jan. 19, 1993.....6341

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

351.608 Revised..... 5563
351.803 Heading and (a) revised.....5564
430.405 (g) corrected..... 6056
531 Authority citation revised.....3200
531.301 Amended; interim.....3200
531.304 (a)(3) and (f)(5) revised; interim.....3201
532.509 Amended; interim.....3201
550.103 (t) added; interim.....3201
550.104 (b)(3) revised; interim..... 3201
550.105 (b)(3) revised; interim..... 3201
550.106 (e)(2) revised; interim..... 3201
550.107 Introductory text revised; interim.....3201
572.102 (a)(4) revised; interim..... 3201
572.202 (a)(4) revised; interim..... 3201
575 Authority citation revised.....3201
575.205 (b) revised; interim.....3201
575.302 (a)(4) revised; interim..... 3201
838.103 Amended..... 3202
838.101—838.103 (Subpart A) Appendix A amended..... 3202
838.135 (a) amended.....3202

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 5 Chapter I—Con. Page

838.806 (c)(1) amended 3202
890 Regulation at 57 FR 10609 comment period extended 4569

Title 5—*Proposed Rules:*

410 ..... 3508, 8912
970 7052

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0–26)

2.27 (a)(11) revised 4569
2.84 (a)(6) revised 4570
2.85 (a)(7) revised 4570

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

52.42 Amended 11186
52.50 Amended 11186
52.51 (c)(1), (2), (d)(1) and (2) amended 11186
52.441—52.453 (Subpart) Revised 4296
52.449 (c)(1)(iii) corrected 7607
52.454 Removed 4302
52.455 Removed 4302
52.456 Removed 4302

Chapter II—Food and Nutrition Service, Department of Agriculture (Parts 210—299)

246.1 Amended 11506
246.2 Amended 11506
246.4 (a)(8), (9) and (11)(ii) revised; (a)(11)(iii) and (iv) amended; (a)(11)(v) added 11506
246.7 (a) amended; (n) added 11506
246.11 (a)(3) added; (b)(1) revised 11507
246.14 (c)(1) introductory text amended; (c)(9) added 11507
246.28 OMB numbers 11507
271 Authority citation revised 215
272 Authority citation revised 215
272.1 Regulation at 56 FR 12845 confirmed 215
273 Authority citation revised 215
273.1 Regulation at 56 FR 12845 confirmed 215

Page

273.2 Regulation at 56 FR 12845 confirmed 215
273.9 Regulation at 56 FR 12845 confirmed 215
273.11 Regulation at 56 FR 12845 confirmed 215
274 Authority citation revised 215
275 Authority citation revised 215
276 Authority citation revised 215
277 Authority citation revised 215
278 Authority citation revised 215
279 Authority citation revised 215
280 Authority citation revised 215
281 Authority citation revised 215
282 Authority citation revised 215
284 Authority citation revised 215
285 Authority citation revised 215

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.13-1 Amended 7958
301.38-2 (b) corrected 8820
301.50 (a) and (b) designation removed; interim 6347
301.50-1 Amended; interim 6347
301.50-3 (c) amended; interim 6348
301.50-5 (a)(1)(ii) and (iii) amended; (a)(1)(iv) added; interim 6348
301.50-10 Introductory text designated as (a); new (b) added; interim 6348
301.64 (a) amended; interim 219
301.64-3 (c) amended; interim 219
301.78-3 (c) amended; interim 6345
301.80 (b)(17) through (21) redesignated as (b)(18) through (22); new (b)(17) added; interim 216

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

Page

301.80-2a Amended; interim... 216, 217
Corrected... 11099
301.93—301.93-10 (Subpart) Added; interim... 8521
318.13-3 (c) and (d) redesignated as (d) and (e); new (c) added... 7959
318.13-4 (c) revised... 7959
318.13-6 Revised... 7959
318.13-8 Amended... 7959
318.13-10 (f)(1) amended; (f)(2) introductory text revised; (f)(3) added... 7959
318.13-16 Heading and text amended... 7959
318.13-17 Added... 7959
318.58-1 Amended... 7961
318.58-3 (b) and (c) redesignated as (c) and (d); new (b) added... 7961
318.58-4 Heading and introductory text revised; (c) added... 7962
318.58-7 Amended... 7962
318.58-8 Amended... 7962
318.58-10 (f)(1) amended; (f)(2) introductory text revised; (f)(3) added... 7962
318.58-12 Revised... 7962
318.58-16 Heading revised; text amended... 7964
319.40-1—319.40-8 (Subpart) Added; interim... 8530
319.56-2aa Added... 11364
354.2 Table amended... 220

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

401.111 Amended; eff. 11-30-93... 3205
401.113 Amended; eff. 11-30-93... 3207
401.117 Amended; eff. 11-30-93... 3209
422 Exclusion of certified seed potato option... 1

Chapter VIII—Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

800.71 (a) Schedule A revised... 3214
Regulation at 58 FR 3214 postponed; interim... 5255
800.88 (d) revised... 3212

Page

800.96 (c)(2) revised... 3212

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

907.10 Amended... 7965
907.17 Revised... 7965
907.18 Revised... 7965
907.20 (a) revised... 7965
907.21 Revised... 7965
907.22 (a) introductory text, (c), (d), (e) and (i) revised... 7965
907.23 Revised... 7966
907.24 Revised... 7966
907.26 Revised... 7966
907.27 Revised... 7966
907.31 Revised... 7966
907.34 Removed... 7966
907.41 (d) removed... 7966
907.50 (a) amended... 7966
907.51 (a) and (c) revised... 7966
907.52 Amended... 7966
907.53 (b), (c), (f), (g) and (h) revised; (i) removed... 7966
907.54 Revised... 7967
907.55 Revised... 7967
907.56 Revised... 7967
907.59 Amended... 7967
907.60 Amended... 7967
907.61 Amended... 7967
907.61a Amended... 7967
907.64 Revised... 7968
907.67 Amended... 7968
907.70 Introductory text amended... 7968
907.71 Revised... 7968
907.73 Undesignated center heading and section removed... 7968
907.83 (c)(1) revised; (c)(3) added; (d) and (e) removed; (f) redesignated as (d)... 7968
907.103 Removed... 7968
907.106 Undesignated center heading and section removed... 7968
907.109 Removed... 7968
907.118 Removed... 7968
907.173 Undesignated center heading and section removed... 7968
908.11 Amended... 7968

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 7 Chapter IX—Con. Page

908.18 Revised....7968
908.19 Revised....7968
908.20 (a) revised....7968
908.21 Revised....7968
908.22 (a) introductory text, (c), (d), (e) and (i) revised....7969
908.23 Revised....7969
908.24 Revised....7969
908.26 Revised....7969
908.27 Revised....7970
908.31 Revised....7970
908.34 Removed....7970
908.41 (d) removed....7970
908.50 (a) amended....7970
908.51 (a) and (c) revised....7970
908.52 Amended....7970
908.53 (b), (c), (f), (g) and (h) revised; (i) removed....7970
908.54 Revised....7970
908.55 Revised....7971
908.56 Revised....7971
908.59 Amended....7971
908.60 Amended....7971
908.61 Amended....7971
908.61a Amended....7971
908.64 Revised....7971
908.67 Amended....7971
908.70 Introductory text amended....7971
908.71 Revised....7971
908.73 Undesignated center heading and section removed....7971
908.83 (c)(1) revised; (c)(3) added; (d) and (e) removed; (f) redesignated as (d)....7971
908.103 Removed....7972
908.106 Undesignated center heading and section removed....7972
908.109 Removed....7972
908.118 Removed....7972
908.173 Undesignated center heading and section removed....7972
911 Budget of expenses....8534
915 Budget of expenses....8534
915.306 (a)(7) added; interim....7973
916.356 (a)(2), (3), (5), (6), (7) and (8) introductory texts revised, (9) removed; interim....8536
918 Suspended; eff. 3-1-93 through 2-28-95....8210
920.302 (b)(1) corrected....3069

Page

921 Suspended....220
925 Budget of expenses....8893
927 Regulation at 57 FR 54903 confirmed....8538
928 Referendum order....4302
932 Budget of expenses....8539
948.150 (a) revised; interim....8541
966 Budget of expenses....4572
979 Budget of expenses....4574
984 Budget of expenses....4572
989 Budget of expenses....4572

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1001 Marketing percentages....5255
1004 Marketing percentages....5255
1097.2—1097.95 Reinstated....6679
1099.2—1099.86 Reinstated....6691
1106.6 Suspended in part....8896
1106.7 (b)(1) and (2) suspended in part....8896
1124 Marketing percentages....5255

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1207.510 (b)(1), (2), (3) and (c) revised....3359
1209.1—1209.77 (Subpart A) Added....3449
1209.200—1209.280 (Subpart B) Added; interim....8197
1210.401 (f) concluding text revised....3355
1210.403 (h) revised....3355
1210.404 Removed....3356
1210.517 (a)(3) through (11) redesignated as (a)(4) through (12); new (a)(3) added; new (a)(9) and new (10) revised....3356
1210.540 Revised (OMB number)....3356
1211.251 (h) introductory text revised....3362
1212.251 (l) introductory text revised....3366

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

Page

1410.13 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c)....4064
1410.103 (d)(2), (3), (4) and (f)(2) revised....4064
1410.108 Introductory text and (b) amended....4064
1410.110 (d) revised....4064
1413.54 (a)(2) and (d) revised....4305
1421.7 (c)(2) through (6), (9) and (10) revised....4306
1477 Authorized citation revised....9108
1477.3 Amended....9108
1477.4 Revised....9109
1477.5 (a)(3) and (4)(ii) amended; (a)(5) added....9109
1477.7 (b) and (d) revised; (e) and (f) added....9109
1477.8 Revised....9109
1477.9 (a)(1) revised....9109
1477.10 (d)(2) and (e) revised....9110
1477.12 (c) revised....9110
1478 Authority citation revised....9110
1478.1 (a) revised....9110
1478.3 (b) amended....9110
1478.4 Revised....9111
1478.5 Revised....9111
1478.6 Revised....9111
1478.8 (d) and (e) revised....9111
1478.9 Revised....9112

Chapter XVII—Rural Electrification Administration, Department of Agriculture (1700—1799)

1703 Authority citation revised....11512
1703.100—1703.140 (Subpart D) Added....11512

Chapter XVIII—Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

1822.261 Amended....224
1823.401 Amended....224
1900.51-1900.100 (Subpart B) Exhibit D revised....4065
1900.151-1900.156 (Subpart D) Added....224

Page

1901.2 Amended....226
1901.204 (a)(2) revised; (a)(24) and (25) added....5565
1910.3 (a)(7) added....226
1910.4 Introductory text amended....226
1940.590 (i) added....5565
1941.1 Amended....226
1942.1 (a) amended....226
1942.101 Amended....226
1942.301 Amended....226
1942.351 (a) amended....226
1942.402 (a) amended....226
1942.451 Amended....227
1942.501 (a) amended....227
1943.1 Amended....227
1943.51 Amended....227
1944 Authority citation revised....227
1944.1 Amended....227
1944.37 (f) and (g) amended....227
1944.39 Revised....227
1944.151 Amended....227
1944.201 Amended....227
1944.401 Amended....227
1944.451 Amended....228
1944.475 Added....5565
1944.451—1944.500 (Subpart J) Exhibit D added....5565
1944.501 Amended....228
1944.651 (a) amended....228
1945.101 (a) amended....228
1945.151 (a) amended....228
1948.51 Amended....228
1948.101 (a) amended....228
1951.201 Revised....5566
1951.901 Amended....228
1951.916 Revised....4066
1956.101 Revised....5566
1965.126 (c)(2) revised....4067
1980.101 (a) amended....228
1980.201 (a) amended....229
1980.207 Introductory text revised....229
1980.301 (a) amended....229
1980.401 (a) amended....229
1980.501 (a) amended....229
1980.601 Amended....229
1980.801 (a) amended....229
1980.901 (a) amended....229
2003.1—2003.50 (Subpart A) Exhibit A amended....5566

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 7

Chapter XLII—Rural Development Administration, Department of Agriculture (Part 4284)

Page

Chapter XLII established 5566
4284 (Subpart E) Added 5566

Title 7—*Proposed Rules:*

29 3233
52 ..... 3816, 7296
56 3234
59 3234
68 3511
275 ..... 5188, 7296
283 ..... 5188, 7296
300 11383
319 11383
354 260
723 3869
781 3871
907 8912
908 8912
932 8558
958 3234
1001 10993
1002 10993
1040 6447
1106 8559
1139 7996
1446 3514
1944 507
1956 4095

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

100.4 (d) amended 471, 3487
212.1 (f)(3) amended 4891

Title 8—*Proposed Rules:*

235 6056

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

78.43 Amended 11365

Page

94.1 (a)(2) amended 11367
94.9 (a) amended 11367
94.10 (a) amended 11367
94.11 (a) amended 11367
94.12 (a) amended 11367
94.13 Introductory text amended 11367
94.18 (a) revised; interim 4308
124 Added 11369
161.3 (f) corrected 8820

Chapter III—Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

317.1—317.24 designated as Subpart A; eff. 7-6-94 664
317.300—317.400 (Subpart B) Added; eff. 7-6-94 664
318.7 (c)(4) table amended 4070
320.1 (b)(8) added; eff. 7-6-94 675
381.147 (f)(4) table amended 4070
381.175 (b)(5) added; eff. 7-6-94 675
381.400—381.500 (Subpart Y) Added; eff. 7-6-94 675

Title 9—*Proposed Rules:*

78 4360
91 262
92 ..... 4361, 4362
94 264
98 266
317 ..... 688, 8560
318 269
381 ..... 688, 8560

TITLE 10—ENERGY

Chapter I—Nuclear Regulatory Commission (Parts 0—199)

0.735-1 Removed 3825
0.735-2 Removed 3825
0.735-3 Revised 3825
0.735-4 Removed 3825
0.735-5 Removed 3825
0.735-6 Removed 3825
0.735-8 Revised 3825
0.735-20 Removed 3825
0.735-21 (d) revised 3826
0.735-23 Revised 3826
0.735-24 Removed 3826

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

Page

0.735-25 Removed....3826
0.735-26 Revised....3826
0.735-27 Removed....3826
0.735-28 Removed....3826
0.735-28a Removed....3826
0.735-30 (Subpart C) Removed....3826
0.735-40 (e), (g) and (h) removed; (f) redesignated as new (e)....3826
0.735-41 Removed....3826
0.735-42 Removed....3826
0.735-43 Removed....3826
0.735-44 Removed....3826
0.735-45 Removed....3826
0.735-46 Removed....3826
0.735-47 Removed....3826
0.735-48 Removed....3826
0.735-49 Removed....3826
0.735-49a Removed....3826
0.735-50—0.735-55 (Subpart E) Removed....3826
19.2 Amended....7736
19.3 Amended....7736
20 Technical correction....11290
20.2 Amended....7736
20.3 (a)(9) amended....7736
20.203 (c)(6) and (7) removed....7736
20.1002 Amended....7736
20.1003 Amended....7736
20.1603 Removed....7736
20.2109 Removed....7736
30.4 Amended....7736
30.5 Amended....7736
30.6 (a) introductory text and (b)(1) introductory text amended....7736
30.11 (a) amended....7736
30.13 Amended....7736
30.14 (a) and (c) amended....7736
30.15 (a) introductory text amended....7736
30.16 Amended....7736
30.18 (a) amended....7736
30.19 (a) amended....7736
30.20 (a) amended....7736
30.31 Amended....7736
30.33 (a)(4) amended....7736
30.34 (a) through (d) and (e) introductory text amended....7736
30.39 Amended....7736
30.51 (a) introductory text, (b), (c)(1) and (2) amended....7736
30.53 Introductory text amended....7736
36 Added....7728

Page

40.5 (b)(1) amended....7736
51.22 (c)(3), (10) and (14) amended....7737
51.60 (a) amended....7737
51.66 (a) amended....7737
51.68 Amended....7737
70.5 (b)(1) introductory text amended....7737
70.20a (b) amended....7737
170.2 (a) amended....7737

Chapter II—Department of Energy (Parts 200—699)

455 Revised....9438

Title 10—*Proposed Rules:*

0—199 (Ch. I) 6196, 11389
20 ....4363, 8560, 11389
30 ....3515, 4099, 6730
40 ....3515, 4099, 6098, 6730
50 ....271, 3515, 6730, 7757
52 271
70 ....3515, 4099, 6730
72 ....3515, 4099, 5301, 6098, 6730
74 6098
75 6098
100 ....271, 4946
150 ....6098, 9552

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission (Parts 1—9099)

110.3 (c) heading revised; (c)(6) removed; (d) added....3476
201 Hearing....6875

Title 11—*Proposed Rules:*

104 4110

TITLE 12—BANKS AND BANKING

Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

5.33 Regulation at 57 FR 49642 comment period extended....6441
7.7490 Revised....4073
34 Technical correction....4460

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 12

Chapter II—Federal Reserve System (Parts 200—299)

Page

203 Exemption termination.....1
MSA designations.....6601
207 OTC margin stock list.....6602
208 Technical correction.....4460
Authority citation revised.....7979
Appendix A amended.....7979, 7980
Appendix B amended.....7980
211.2 (t) revised.....6358
211.20 Redesignated from 211.21; (b)(3) through (8) revised; (b)(9) and (c) added.....6358
211.21 Redesignated as 211.20; new 211.21 redesignated from 211.22 and revised.....6358
211.22 Redesignated as 211.21.....6358
Redesignated from 211.23.....6359
211.23 Redesignated as 211.22; new 211.23 redesignated from 211.24; (a) through (h) redesignated as (b) through (i); new (a) added.....6359
211.24 Redesignated as 211.23; new 211.24 redesignated from 211.25 and revised.....6359
211.25 Redesignated as 211.24; new 211.25 redesignated from 211.26 and revised.....6359
211.26 Redesignated as 211.25; new 211.26 redesignated from 211.27 and revised.....6359
211.27 Redesignated as 211.26; new 211.27 redesignated from 211.28 and revised.....6359
211.28 Redesignated as 211.27; new 211.28 redesignated from 211.29 and revised.....6359
211.29 Redesignated as 211.28.....6359
Added.....6362
225 Authority citation revised.....4074, 7980
225.2 (k) revised.....473
(k) and (l) revised.....4074
225.11 (f) revised.....6362
225.12 (f) revised.....6362
225.13 (a) and (b)(2) revised.....474
225.31 (d)(2)(ii) revised.....474
225 Appendix B revised.....474
Appendix A amended.....7980, 7981
Appendix D amended.....7981

Page

229.2 (cc) amended.....2
229 Appendixes A, B-2 and E amended.....2
Appendix E amended.....3
263 Authority citation revised.....6363
263.51 (c) revised.....6363
265.6 (b)(2) revised; (f) added.....6363
265.7 (d)(8) revised.....6363
265.11 (d)(11) added.....6363
268 Revised; interim.....9518

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303 Heading and authority citation revised.....8216
303.2 (a) concluding text amended.....8216
303.3 (a) amended.....8216
303.5 Heading revised; (e) added.....8217
303.7 (f) heading revised; (f)(1)(iii) amended; (f)(1)(ix) added.....8217
303.8 (i) added.....8217
303.9 (h) and (m)(5) revised.....8218
303.10 (c)(5) and (6) revised; (c)(7) added.....8219
325.1 Revised.....8219
325.2 (t) and (v) amended.....6368
(h)(1) and (t) amended.....8219
325.3 (c)(3) revised.....8219
325.5 (f) revised.....6369
(b) amended.....8219
325.1—325.6 (Subpart A) Appendixes A and B amended.....8219
325 Appendixes A and B amended.....6369
327.3 (d)(1)(B)(*1*) corrected.....3069
327.7 (a)(1)(ii)(A) corrected.....3069
365 Technical correction.....4460

Chapter V—Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

506 Technical correction.....11186
506.1 (b) table amended.....4311
509 Technical correction.....11186
509.104 (b) and (f) revised; (g) redesignated as (i); new (g) and (h) added.....4311
516 Authority citation revised.....4312
Technical correction.....11186

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

Page

516.1 (c) introductory text amended....4312
528 Authority citation revised....4312
Technical correction....11186
528.1 (d) through (g) removed....4312
528.6 Revised....4312
541 Authority citation revised....4312
Technical correction....11186
541.9 Removed....4312
541.12 Removed....4312
541.24 Removed....4312
543 Authority citation revised....4312
Technical correction....11186
543.1 (a) amended....4312
545 Technical correction....4460, 11186
545.12 (b) revised....4312
545.21 Removed....4312
545.34 (b) and (c) amended....4312
545.36 (d) amended....4312
545.41 (a) revised....4312
545.75 (b)(5) removed....4312
545.79 Removed....4312
545.93 Removed....4312
545.123 Removed....4312
552 Authority citation revised....4312
Technical correction....11186
552.6-1 (b) amended....4312
552.7 Removed....4312
552.8 (b) removed....4312
556 Authority citation revised....4312
Technical correction....11186
556.7 Removed....4312
558 Revised....4312
Technical correction....11186
559 Removed....4313
Technical correction....11186
561 Authority citation revised....4313
Technical correction....11186
561.5 Removed....4313
561.16 (b) through (e) and (g) removed; (f) redesignated as (b)....4313
561.17 Removed....4313
561.22 Removed....4313
561.46 Removed....4313
563 Technical correction....4460, 11186
563.7 (d) removed; (e) redesignated as (d)....4313

Page

563.24 Removed....4313
563.27 (a), (b) designation, heading, (1) designation and (2) removed....4313
563.29 Removed....4313
563.32 Removed....4313
563.33 (b) removed....4313
563.34 Removed....4313
563.45 Removed....4313
563.48 (e) amended....4313
563.90 Removed....4313
563.93 (b)(6)(i) and (d)(3)(ii) amended....4313
563.99 (d) removed....4314
563.131 Removed....4314
563.132 (a)(1)(ii) revised....4314
563.192 Removed....4314
563b Technical correction....11186
563b.3 (i)(4)(vi) added....4314
563e Authority citation revised....4314
Technical correction....11186
563e.6 Amended....4314
567 Authority citation revised....4314
Technical correction....11186
567.6 Heading revised; (a)(1)(iv)(Q) amended; (a)(1)(iv)(R) and (S) added; (a)(1)(v) removed....476
567.20 Removed....4314
571 Authority citation revised....4314
Technical correction....11186
571.1 Removed....4314
571.3 Removed....4314
571.10 Removed....4314
571.16 Removed....4314
571.17 Removed....4314
571.25 Removed....4314
571.26 Removed....4314
579—580 (Subchapter E) Removed....4314
579 Technical correction....11186
580 Technical correction....11186

Chapter VI—Farm Credit Administration (Parts 600—699)

601 Revised (effective date pending)....5919
607 Added (effective date pending)....10942

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 12 Chapter VI—Con. Page

611.400 Regulation at 57 FR 43393 eff.1-29-93.....6604
611.1155 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1156 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1157 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1160 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1168 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1170 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1175 Regulation at 57 FR 46487 eff. 2-23-93.....10945
611.1180 Regulation at 57 FR 46487 eff. 2-23-93.....10945
612.2000—612.2110 (Subpart A) Removal at 57 FR 43394 eff. 1-29-93.....6605
612.2130—612.2270 (Subpart B) Regulation at 57 FR 43394 eff. 1-29-93.....6605
612.2150 Regulation at 57 FR 43395 eff. 1-29-93.....6605
614.4250 (a)(1) amended (effective date pending).....11372
614.4255 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (c) amended (effective date pending).....11372
615.5216 Regulation at 57 FR 46487 eff. 2-23-93.....10945
618 Authority citation revised.....10944
618.8230 Removed (effective date pending).....10944
625 Regulation at 57 FR 60109 eff. 2-23-93.....10945
627 Regulation at 57 FR 46482 eff. 2-23-93.....10945
627.2710 Regulation at 57 FR 46487 eff. 2-23-93.....10945

Chapter VII—National Credit Union Administration (Parts 700—799)

701 Authority citation revised.....6077
701.21 (c)(7)(ii)(C) amended.....6077
741.13 (a) revised.....5571
796 Removed.....6605

Chapter IX—Federal Housing Finance Board (Parts 900—999)

Page

932 Authority citation revised.....3490
932.13 (c) concluding text amended; interim.....3490
932.14 (d) amended; interim.....3490
932.18 (f)(1) and (3) introductory text revised; interim.....3490
932.21 (d)(2), (g)(1) and (3) revised; interim.....3490

Chapter XVI—Resolution Trust Corporation (Parts 1600—1699)

1605 Authority citation revised.....8222
1605.1 Removed.....8222
1605.2 (f), (g), (l), (n), (s) through (v), (x), (y), (cc) and (dd) removed.....8222
1605.3 Removed.....8222
1605.4 Removed.....8222
1605.5 Removed.....8222
1605.6 Removed.....8222
1605.7—1605.14 (Subpart B) Heading revised.....8222
1605.7 Removed.....8222
1605.8 Removed.....8222
1605.9 Removed.....8222
1605.10 Removed.....8222
1605.11 Removed.....8222
1605.12 Removed.....8222
1605.13 Removed.....8222
1605.14 Removed.....8222
1605.15 Removed.....8222
1605.16 Removed.....8222
1605.16a (d) footnote 4 redesignated as footnote 2.....8222
1605.23 (c) and (g) removed.....8222
1605.27 Removed.....8222
1605.28 Removed.....8222
1605.29 Removed.....8222
1605.30—1605.33 (Subpart E) Heading revised.....8222
1605.30 Removed.....8222
1605.31 Removed.....8222
1605.32 Removed.....8222
1605.33 Removed.....8222
1605.34—1605.43 (Subpart F) Heading revised.....8222
1605.34 Removed.....8222
1605.35 Removed.....8222
1605.36 Removed.....8222

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

Page

1605.37 Removed....8222
1605.38 Removed....8222
1605.39 Removed....8222
1605.40 Removed....8222
1605.41 Removed....8222
1605.42 Removed....8222
1605.43 Removed....8222
1616 Revised....476

Title 12—*Proposed Rules:*

5 4600
16 4600
203 31
205 8714
208 ....3235, 8007
211 ....513, 3235
225 ....3235, 8007
230 271
300—399 (Ch. III) 6903
332 6448
333 6450
353 3237
362 6452
620 3872
703 5664
748 5663
900 8563

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration (Parts 1—199)

101.3-2 Amended....2967
121 Waiver....7479, 9112, 9113, 11372
121.601 Table amended; footnote 21 added; interim....4077

Title 13—*Proposed Rules:*

121 9131

TITLE 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation (Parts 1—199)

21 Special FAA conditions....5571, 8222
23 Special FAA conditions....8222
25 Special FAA conditions....5571
Authority citation revised....11781

Page

25.7333 (e) added....11781
33 Special FAA conditions....6876
35 Special FAA conditions....3215
39.13 ...5, 7, 481, 484, 3492, 4892, 5257, 5258, 5261, 5262, 5575, 5578—5580, 5922, 5923, 5925, 6078, 6080—6082, 6084—6086, 6192, 6370, 6704, 6706, 6708, 6877, 6878, 6879, 6881, 6882, 7185, 7480, 7482, 7484, 7738, 7862, 7864, 7982, 7983, 8225, 9114—9117, 11187, 11189, 11191, 11524, 11525
71.1 ...3216, 3217, 3218, 4315, 6371, 6884—6887, 7485, 7744, 8897, 11373, 11374
Corrected....4314, 7179, 8693
Regulation at 57 FR 57662 corrected....6709
Regulation at 57 FR 39015 corrected....8897
73.29 6885
93 Policy statement....230
95 6887
97.21—97.35 ...3219, 3221, 4894, 4896, 6710, 6713, 7486, 7747, 10946, 10948

Chapter III—Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)

413 Authority citation revised....3827
413.5 (d) removed....3827
415 Authority citation revised....3827
415.4 Removed....3827
415.9 (e) removed....3827

Chapter V—National Aeronautics and Space Administration (Parts 1200—1299)

1203b.107 (a)(3) and (c)(1) revised....5263
1203b.108 (d)(2) revised....5263

Title 14—*Proposed Rules:*

1—199 (Ch. I) ...5947, 8244, 8719, 11391
21 ....3239, 5666, 5669, 7197
23 10994
27 5666
29 ....3239, 4566, 5669

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

TITLE 14—Con. Page

39 ...275, 278, 515, 3873, 4366, 4367, 4600, 5671, 5947, 5949, 6198, 6740, 6742, 6743, 6745, 6746, 6906, 7196, 7494, 7495, 7759, 8719, 8721, 8723, 8914, 8916, 9131, 9133, 9552
61 ..... 7197, 9514
63 7197
65 7197
71 ...34, 3241, 3242, 3875, 4946, 5301, 5303, 6375, 6911, 8244, 8724, 8725, 9134, 11553
93 ..... 7950, 11554
121 ..... 7197, 8917
129 8917
135 7197
142 9514
221 287
234 4370
241 35
300 ..... 516, 7040
389 287
399 7053

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce (Parts 30—199)

50.5 Revised..... 4078

Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

770.2 Amended..... 3222
770.4 Revised..... 3222
771 Authority citation revised..... 488
771.7 Added..... 488
771.23 (b) amended..... 486
773.3 (a)(1)(ii), (d)(3)(iii)(D) and (e)(1)(ix)(I) amended..... 486
773.7 (c)(2) heading, text, (d)(1) introductory text, (2)(i), (ii) heading, introductory text, (A), (C), (3) introductory text, ((h)(1)(i) footnote 2, (ii), (i) heading, introductory text, (1), (2), (4), (6), (k) introductory text and concluding text amended..... 486

Page

773.8 (a)(2) introductory text and (c)(1) amended..... 487
774.5 (a) amended..... 486
776.8 (b)(1)(ii) and (iii) amended..... 486
776.10 (a)(1) amended..... 486
777 Authority citation revised..... 488
777.7 Revised..... 489
779.4 (f)(1)(i), (iii), (2)(i) and (iii) amended..... 486
779.5 (e)(1)(vii) amended..... 486
(e)(2) amended..... 487
785.4 (f) removed; (g) redesignated as (f)..... 487
786.1 (a), (c)(1), (2) introductory text, (i) and (iii) amended; (b)(1) footnote 1, (2)(i) and (c)(3) revised..... 3222
786.3 (f)(1), (i)(1), (2), (p)(1)(i) and (ii) revised; (i)(3), (j)(1), (p)(1) introductory text, (r)(1), (3), (4), (6) and (7) amended..... 3223
786 Supplement No. 1 amended..... 3223
799.1 Regulations at 57 FR 61259 corrected..... 6574

Title 15—*Proposed Rules:*

303 4947
900—999 (Ch. IX) 4601
1200 ..... 5672, 8564

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission (Parts 0—999)

4.13 (m) revised..... 7047
305 Authority citation revised..... 5926
305.9 (a) revised..... 5926
305 Appendixes A1, A2 and B amended..... 3224

Chapter II—Consumer Product Safety Commission (Parts 1000—1750)

1615 Stay of enforcement..... 4078
1616 Stay of enforcement..... 4078

Title 16—*Proposed Rules*

0—999 (Ch. I) 11554

CHANGES JANUARY 4, 1993 THROUGH FEBRUARY 26, 1993

	Page
305	7852
307	4875, 10997
1000—1799 (Ch. II)	8013, 8016, 8020, 8023
1210	8565
1615	4111
1616	4111

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

Page

1 Authority citation revised.....**23143**
Authority citation revised.....10952
1.10 (j)(3) and (4) revised.....**23143**
(a)(2)(ii) introductory text, (3)(ii)(B), (b)(1), (2), (h) and (j)(8) revised.....10952
1.12 (g) revised.....10953
1.17 (h)(3)(vi) revised.....**20637**
1.28 Revised.....10953
1.41 (e) revised.....**20637**
(o) through (t) added.....**27924**
1.41a (a)(5) revised.....**27925**
1.41b Revised.....**58705**
1.43 Revised.....**20637**
1.46 (d)(8) and (9) added; (e)(1) revised; (e)(2) removed.....**55085**
1.57 (a)(1) revised.....**23143**
1.62 Revised.....**23143**
3.1 (a)(3), (b) and (c) revised; (d), (e) and (f) added.....**23144**
3.10 Heading, (a), (b) and (d) revised.....**23144**
3.11 (b) revised; (d) added.....**23145**
3.12 Heading, (a), (b), (c) introductory text, (d)(1) introductory text, (iv), (v), (2), (f) and (h) revised; (d)(4) and (5) removed; (i) and (j) added.....**23145**
3.13 Removed.....**23148**
3.14 Removed.....**23148**
3.15 Removed.....**23148**
3.16 Removed.....**23148**
3.17 Removed.....**23148**
3.18 Removed.....**23148**
3.20 Removed.....**23148**
3.21 (c) and (d) added.....**23148**
3.22 Introductory text, (a) and (c) revised.....**23148**
3.30 Revised.....**23148**
3.32 (a), (c), (e), (g) and (h) revised.....**23149**
3.33 (a) introductory text, (e) and (f) introductory text revised.....**23150**
3.40 (c) revised.....**23151**
3.42 (a) revised.....**23151**
3.44 (a)(3) and (5) revised.....**23151**
3.50 (a) and (b)(1) revised.....**23151**

Page

3.51 (a) introductory text and (b) revised.....**23151**
3.52 Removed.....**23151**
3.53 Removed.....**23151**
3.54 Removed.....**23151**
3.55 (a) introductory text, (3), (b), (e) and (f) revised; (g) through (k) removed.....**23151**
3.56 Removed.....**23152**
3.60 Revised.....**23152**
3.61 Revised.....**23154**
3.62 Removed.....**23154**
3.63 Revised.....**23154**
3.64 Added.....**23154**
3.70 (a) and (c) revised.....**23155**
3.75 (c) revised.....**23155**
4 Advisory.....8227
4.5 (a)(4) introductory text, (b)(4) and (c)(2)(i) revised; (c)(2)(ii) removed; (c)(2)(iii), (iv) and (v) redesignated as (c)(2)(ii), (iii) and (iv).....6347
4.7 Added.....**34861**
(b)(1)(ii)(B)(*2*)(*xi*) and (2)(i) corrected.....**41173**
4.8 Added.....**34865**
(b) correctly designated.....**41173**
5.2 (d) introductory text revised.....**20637**
5.3 Removed.....**20637**
7.100—7.101 (Subpart B) removed.....**20637**
7.200 Removed.....**20637**
12.2 (w) removed.....**20637**
(d)(4) removed; (d)(1), (h), (i)(1), (p) and (r) revised.....**20637**
12.5 (a) amended.....**20638**
12.6 (a) amended.....**20638**
12.8 (a) and (b) amended.....**20638**
12.10 (a)(3) and (c) amended.....**20638**
12.22 (b) revised.....**20638**
12.301 Removed.....**20637**
12.302 Removed.....**20637**
12.303 Introductory text and concluding text revised.....**20638**
12.304 (d) removed.....**20637**
12.408 (a)(2) and (3) amended.....**20638**
15.03 Revised.....**20403**, **49394**
15.04 Removed.....**20638**
16.02 (a)(1), (2) and (b) revised.....**40603**
19.00 (b) introductory text revised.....**41390**
19.01 Introductory text, (a), (b) and (c) redesignated as

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 17 Chapter I—Con. Page

(a) introductory text, (1), (2) and (3); heading, new (a) introductory text and (3) revised; (a)(4), (5) and (b) added 41390
19.02 Revised 41391
19.10 Removed 41391
20 Removed 20638
30 Order 36369, 49644
30 Appendix B amended 10988, 38439, 40604
Appendixes B and C amended 10957
32 Order 36369
32.2 Revised 27926
33.4 (b)(4)(iii) and (8) removed 58978
34 Revised 5586
35 Added 5594
140 Authority citation revised 61291
Technical correction 6677
140.2 (a) revised 29203
140.61 Removed 20638
140.72 (a) amended 20638
140.73 (a) introductory text and (b) amended 20638
140.77 (a), (b) and (c) amended 20638
140.81 Removed 20638
140.96 (b) revised 20638
140.97 Added 12874
Effective date corrected 20572
140.98 Added 61291
143 Authority citation revised 61292
143.5 Introductory text revised 61292
145.6 (a) revised 29203
(a) correctly designated 7040
145 Appendix A amended 29203
Appendix A corrected 31563
149.110 Removed 20638
150 Authority citation revised 44492
150.1 (e)(3) revised; (e)(4) redesignated as (e)(5); new (e)(4) added 44492
150.3 (a)(4) introductory text, (i) and (b) revised 44492
(a)(4) and (b) corrected 6854
180.2 (d)(1) revised 46093
180.5 Revised 46093

Chapter II—Securities and Exchange Commission (Parts 200—399)

Page

200.30-1 (c) revised 36449
200.30-6 (b) revised 36449
200.30-14 (f) revised 8541
200.80e Amended 48970
202 Authority citation revised 18216
202.3 (a) amended 18216
202.3a Effective date extended through 9-1-93 39359
210 Nomenclature change 36501, 47409
210.3-01—210.3-21 Introductory note amended 45292
210.3-02 (a) and (b) amended 45292
210.3-03 (b)(2) amended 45292
210.3-09 (c) amended 45292
210.3-12 (a) amended 45292
210.3-18 (a)(3) redesignated as (a)(4); (b) revised; new (a)(3) added; (c) amended 45292
210.3-19 (a)(2) and (d) amended 45293
210.3-21 Removed 45293
210.4-08 (h)(3) added; (j) removed; (k)(1) amended 45293
210.4-10 (i)(4)(i) revised; (j) amended; (k) removed 45293
210.7-04 Amended 45293
210.10-01 (a)(4) revised; (c)(3) and (4) amended 45293
210.12-04 (a) amended 45293
210.12-16 Amended 45293
228 Added 36449
Authority citation revised 48145
Technical correction 54280
228.402 Revised 48145
228.403 (b) introductory text revised 48150
228.601 (b)(10)(ii)(A) revised 48150
229 Nomenclature change 36501, 47409
Technical correction 54280
229.402 Revised 48150
(l) corrected 53985
229.403 (b) introductory text revised 48158
229.601 (b)(10)(iii)(A) revised 48158
229.801 (g) added 36466
229.802 (g) added 36468
230 Authority citation revised 18043, 18216, 56834

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

Technical correction..... 29119
Nomenclature change.....36501, 47409
Order..... 49644
230.134b Added..... 56834
230.144A (a)(1)(i)(F) through (H) redesignated as (a)(1)(i)(G) through (I); (a)(1)(i)(A) note and new (a)(1)(i)(F) added; (a)(1)(i)(B) and (2) amended..... 48722
230.174 (g) added..... 18043
230.175 (b)(1)(i) and (2)(i) amended..... 36468
230.251—230.263 Undesignated center heading and text revised..... 36468
230.405 Amended..... 36472
230.419 Added..... 18043
230.424 (b)(6) amended..... 48975
230.430 Existing text designated as (a); (b) added..... 56834
230.430A (a)(3) amended..... 48975
(e) added..... 56834
230.457 (o) added..... 48976
230.460 (b) redesignated as (b)(1); (2) added..... 56834
230.462 Revised..... 48976
230.463 (d)(6) revised..... 56834
230.481 (b)(2) amended..... 36473
(g) added..... 56834
230.495 (a), (c) and (d) revised..... 56834
230.496 Revised..... 56835
230.497 (c) and (e) revised..... 56835
230.499 Revised..... 18216
230.502 (b)(1), (b) note, (c) introductory text, (d) introductory text and concluding text amended..... 36473
(b)(1), (b) Note, (c) and (d) concluding text amended..... 47409
230.504 Redesignated as 230.504a; new 230.504 added..... 36473
230.504a Redesignated from 230.504; heading revised..... 36473
Removed..... 47409
230.505 (b)(2)(iii) introductory text, (A) and (B) revised..... 36473
230.508 (a)(2) revised..... 36473
239 Nomenclature change..... 36501
239.10 Added..... 36473
239.12 Form S-2 amended..... 36475
239.13 Form S-3 amended...36475, 56836

Page

239.16b Form S-8 amended..... 36475
239.23 Form N-14 amended..... 56835
239.25 Form S-4 amended...36475, 48977
239.28 Removed..... 36473
239.36 Amended..... 37084
239.42 Heading and (a) revised; (d), (e) and Form F-X amended; (f) added..... 36475
239.62 Revised..... 18216
239.63 Revised..... 18218
239.64 Revised..... 18218
239.90 Revised; Form 1-A revised..... 36476
239.91 Revised; Form 2-A revised..... 36476
239.92 Removed..... 36473
239.93 Removed..... 36473
239.94 Removed..... 36473
239.95 Removed..... 36473
239.96 Removed..... 36473
240 Authority citation revised..... 18218
Phase-in period extended..... 28781
Technical corrections..... 29119, 54280
Authority citation amended..... 32168
Nomenclature change.....36501, 47409
240.3a51-1 Added..... 18032
240.3b-6 (b)(1)(i) and (2)(i) amended..... 36494
240.12b-2 Amended..... 36494
240.12b-23 (a)(3) revised..... 48977
240.12b-37 Revised..... 18218
240.13e-100 Amended..... 45294, 48290
240.13e-101 Amended..... 45294
240.13f-2(T) Revised..... 18227
240.14a-1 (l)(2) revised..... 48290
240.14a-2 (b) introductory text revised; (b)(1) and (2) redesignated as (b)(2) and (3); new (b)(1) added..... 48290
240.14a-3 (b)(5)(ii) amended; (b) note added..... 36495
(b)(1) amended..... 45294
(a) revised; (f) added..... 48291
240.14a-4 (a)(3), (b)(1) and (d)(4) amended; (f) added..... 48291
240.14a-6 (b) and (h) removed; (c) through (g) and (i) through (m) redesignated as (b) through (f) and (h) through (l); (a) introductory text and new (b) amended; new (g) and (i)(5) added; new (c) through (e) revised..... 48291

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 17 Chapter II—Con. Page

240.14a-7 Revised **48292**
240.14a-11 (b) and (c) removed; (d) through (h) redesignated as (b) through (f); new (b)(1) removed; new (b)(2) through (4) redesignated as (b)(1) through (3); new (b)(1) and (d) amended; new (b)(2), (3), (c) and (e) revised **48293**
240.14a-12 (a)(3), (4) and (b) revised **48293**
240.14a-101 Amended ... **36495**, **48158**, **48293**
240.14a-102 Removed **48294**
240.14a-103 Added **48294**
240.14c-2 (a) introductory text revised **48295**
240.14c-5 (d) revised **48295**
240.14c-101 Note amended **36495**
240.15b1-1 Heading revised, existing text designated as (a), (b) and (c) added 13
240.15b1-2 Removed 14
240.15b3-1 Revised 14
240.15b6-1 (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (e) revised 14
240.15c3-1 (a)(3), (5), (c)(2)(vi)(I) and (f) removed; (c)(1)(xii) amended; (c)(1)(xiv) and (xv) added; (a) introductory text, (1), (2), (4), (6)(i), (7)(i), (9), (c)(1)(xiii), (2)(i)(C)(*1*), (iv)(B), (F)(*3*)(i)(*B*), (*C*), (vi) introductory text, (A)(*5*), (J), (M), (viii), (ix), (x)(A)(*2*) through (*5*), (9) and (10) revised 56984
240.15c3-1a (c)(1) through (5), (7), (9) and (10) revised **56988**
240.15c3-1c (b)(1) revised **56988**
240.15c3-1d (a)(2)(iii), (b)(6)(iii), (7), (8), (10)(ii)(B), (c)(2), (5)(i) and (ii)(A) revised **56988**
240.15c3-1e Added **56990**
240.15g-1 Added **18032**
240.15g-2 Added **18033**
240.15g-3 Added **18033**
240.15g-4 Added **18034**
240.15g-5 Added **18034**
240.15g-6 Added **18034**

Page

240.15g-8 Added **18045**
240.15g-100 Added **18035**
Amended **31446**
240.15Ba2-2 Revised 14
240.15Ba2-4 Revised 10
240.15Ba2-6 Removed 11
240.15Bc3-1 (b) and (c) redesignated as (c) and (d); new (b) added; new (d) revised 14
240.15Ca1-1 (c) added 14
240.15Ca2-1 Revised 15
240.15Ca2-2 Removed 15
240.15Ca2-3 Revised 11
(b) amended 15
240.15Cc1-1 (b) and (c) redesignated as (c) and (d); heading and new (d) revised; (b) added 15
240.17a-5 (g)(1) amended; nomenclature change **45294**
240.17h-1T Added **32168**
240.17h-2T Added **32170**
240.25b1-3 Revised 10
241 Interpretive releases 11
249 Nomenclature change ... **36501**, **47409**
Technical correction **54280**
249.208a Form 8-A amended **48978**
249.210b Added **36495**
249.220f Form 20-F amended **45294**
249.308 Form 8-K amended **36501**
249.308a Form 10-Q amended **48295**
249.308b Added **36498**
Form 10-QSB amended **48295**
249.310 Form 10-K amended ... **45294**, **48159**, **48295**
249.310b Added **36496**
Form 10-KSB amended **48295**
249.328T Added **32171**
249.444 Revised **18219**
249.445 Revised **18219**
249.446 Revised **18219**
249.501 Form BD revised ... **34032**, **53262**
Amended 15
249.501a Form BDW amended 15
249.617 Form X-17A-5 amended **53278**
250 Authority citation revised **31122**
250.52 Revised **31122**
250.111 Revised **18232**
259 Authority citation revised **45294**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

259.5s Form U5S amended 45294
259.602 Revised 18219
259.603 Revised 18219
260 Authority citation revised 18220
Nomenclature change 36501, 47409
260.0-12 Revised 18220
260.4a-1 Revised 36501
260.4a-2 Redesignated as 260.4a-3; new 240.4a-2 added 36501
260.4a-3 Redesignated from 260.4a-2 and amended 36501
260.4d-9 (a) introductory text amended 36501
260.10a-5 (a) amended 36501
269 Authority citation revised 18221
269.6 Revised 18220
269.7 Revised 18220
269.8 Revised 18220
270.0-9 Removed 7984
270.0-11 Revised 18228
270.3a-7 Added 56256
270.8b-11 (b) revised 56835
270.8b-12 (b) revised 56836
270.8b-16 Existing text designated as (a); (b), (c) and (d) added 56836
270.30d-1 (a) revised 56836
274 Authority citation revised 56836
274.11a-1 Form N-2 56836
274.11c Form N-4 amended 45294
274.401 Revised 18221
274.402 Revised 18221
274.403 Revised 18221
276 Interpretive releases 11

Title 17—*Proposed Rules:*

1 ..... 26801, 34533, 45999, 46101, 47896, 48480, 62244
14 ..... 6748, 7056
3 6748
4 ..... 47821, 53454, 53457, 58760
10 6748
17 ..... 25007, 39664
19 27713
30 46101
33 ..... 40626, 46101, 53863
..... 4948
34 ..... 53618, 58422
35 ..... 53627, 58423
145 6748
150 ..... 27202, 31674, 58760

Page

156 57116
170 54465
180 46101
190 46101
200—399 (Ch. II) 18421, 43631
200 ..... 35070, 35202, 35430, 38352
201 ..... 35070, 38352
202 ..... 35070, 35430, 35442, 38352
210 ..... 35070, 38352
228 36502
229 ..... 29582, 31156, 35070, 35202, 38352
230 ..... 32458, 32461, 35070, 35202, 36502, 38352, 57397
232 ..... 35070, 38352
239 ..... 32461, 34701, 35070, 35202, 36502, 38352
240 ..... 18046, 24415, 26891, 29564, 29582, 32461, 34048, 34701, 35070, 35202, 36502, 38352, 48581, 49039, 49156, 57027, 57397, 57710
249 ..... 29564, 32461, 34048, 35070, 35202, 36502, 38352
250 ..... 12766, 31156, 35431, 54025
259 ..... 35431, 54025
260 ..... 35070, 35442, 36502, 38352, 57713
269 ..... 35070, 38352
270 ..... 23980, 34701, 34726, 35202
..... 2999, 3243
274 ..... 34701, 35202

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Authority citation revised 21733
Rehearing denied 59289
2.1 (a)(1)(ii)(B), (C), (E) and (ix) removed 21733
2.1b Redesignated from 2.72 and revised 494
2.5 Removed 21733
2.10 Removed 21733
2.11 Removed 21733
2.53 Removed 21893
2.55 (b) revised 46495
2.56 Removed 21893
2.56a Removed 21893
2.56b Removed 21893
2.61 Removed 21893
2.63 Removed 21893
2.66 Removed 21893

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 18 Chapter I—Con. Page

2.70 Removed....21893
2.72 Redesignated as 2.1b....494
2.75 Removed....21893
2.77 Removed....21893
2.79 Removed....21893
2.90 Removed....21893
2.90a Removed....21893
2.90b Removed....21893
2.91 Removed....21893
3c Authority citation revised....7488
3c.1 Removed; new 3c.1 redesignated from 3c.5(b)(3)(i)....7488
3c.2 Removed....7488
3c.3 Removed....7488
3c.4 Removed....7488
3c.5 (a), (b)(1), (2), and (b)(3)(ii) through (e) removed; (b)(3)(i) redesignated as 3c.1....7488
3c.6 (a) through (c) and (f) through (j) removed; (d) and (e) redesignated as 3c.2(a) and (b)....7488
3c.7 Removed....7488
3c.8 Removed....7488
3c.9 Removed....7488
3c.10 Removed....7488
3c.11 Removed....7488
3c.101—3c.112 (Subpart B) Removed....7488
3c.201—3c.206 (Subpart C) Removed....7488
4 Authority citation revised....21737
4.32 (b)(1) and (2) revised....21737
4.34 (h) added....21737
4.41 (g)(4) revised....21737
4.51 (g)(3) revised....21737
8 Authority citation revised....21737
8.11 (a)(2) and (c) revised....21737
11 Authority citation revised....48455
Appendix A revised....48455
16 Authority citation revised....21738
16.18 (d) amended....21738
24 Authority citation revised....21738
24.1 Amended....21738
33 Authority citation revised....53990
33.2 (b), (d), (g), (h), (i) and (n) removed; (c), (e), (f), (j) through (m) and (o) through (r) redesignated as (b) through (l); new (c) revised....53990
33.3 Introductory text revised; Exhibits A through E and note removed; Exhibits C and F through M redesignated as Exhibits A through I....53990
35 Authority citation revised....21734
Rehearing denied....59289
35.1 (d)(2) and (3) amended....21734
35.7 Amended....21734
35.8 Amended....21734
35.9 Amended....21734
35.13 (d)(6) and (h)(7)(iv) removed; (d)(7), (h)(7)(v) and (vi) redesignated as (d)(6), (h)(7)(iv) and (v)....53990
35.18 Amended....21734
35.19a (b) revised....53990
35.20 Removed....21734
35.22 Removed; new 35.22 redesignated from 35.23....53990
35.23 Redesignated as 35.22; new 35.23 redesignated from 35.24....53990
35.24 Redesignated as 35.23; new 35.24 redesignated from 35.25....53990
35.25 Redesignated as 35.24; new 35.25 redesignated from 35.26....53990
35.26 Redesignated as 35.25....53990
35.27 Removed....21734
50 Removed....21734
Rehearing denied....59289
101 Termination of inquiry....13064
103 Removed....21738
131 Authority citation revised....21734
Rehearing denied....59289
131.20 Amended....21734
131.51 Amended....21734
131.52 Amended....21734
131.53 Amended....21734
131.60 Removed....21734
141 Authority citation revised....21738
Rehearing denied....59289
141.15 Added....21738
141.100 Removed; new 141.100 redesignated from 141.200....21734
141.200 Redesignated as 141.100....21734
152 Heading and authority citation revised....32894
152.1 Heading revised; existing text designated as (a); (b) added....32894

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

154 Authority citation revised 21893
Authority citation revised 7986
154.26 (c) revised 7986
154.81—154.86 Undesignated center heading removed 21893
154.81 Removed 21893
154.82 Removed 21893
154.83 Removed 21893
154.84 Removed 21893
154.85 Removed 21893
154.86 Removed 21893
155 Removed 21893
157 Authority citation removed 21893
Rehearing denied 29631
157.7 (b) through (h) removed 21893
157.42 Removed 21894
157.208 (d) table I revised 6893
157.215 (a) table II revised 6893
159 Removed 21894
160 Removed 21894
161 Authority citation revised 58982
161.3 (f) revised 58982
250 Authority citation revised 58982
250.16 (a)(3), (c)(1), (2) introductory text and (d)(1) revised 58982
260 Authority citation revised 21894
260.100 Removed 21894
271 Authority citation revised 13018, 34682
Rehearing 31123
271.101 (a) Table I and Table II amended 19252, 34682, 49648
271.102 (c) Table III amended 19253, 34683, 49649
271.703 (c)(2)(i)(B) revised 13018
281 Authority citation revised 21894
281.101—281.111 (Subpart A) Removed 21894
284 Authority citation revised 36217, 46495, 46501, 57959
Order on rehearing 38590
Order denying rehearing 57911
Clarification 5595
284.1 (a) revised; (c) added 13315
284.8 (a)(1) and (d) revised; (a)(4) and (b)(2) through (5) added; (b) amended 13315

Page

284.9 (a)(1) revised; (b) amended; (b)(2) through (5) added 13315
284.11 Revised 46495
284.12 Amended 13315
284.14 Added 13315
(b)(3)(iii) redesignated as (b)(3)(v); new (b)(3)(iii) and (iv) added; (e) revised 36217
284.106 (a) introductory text, (c) introductory text and (d) introductory text amended; (g) added 13317
284.122 (d)(2) amended 46501
284.126 (a), (c), (d) and (g) added 13317
284.221 (d) revised 13317
(d)(2) introductory text and (ii) amended 36217
284.223 (d)(1) introductory text, (3) introductory text and (4) introductory text amended; (d)(5) added 13318
284.227 (a) revised 46501
284.241—284.243 (Subpart H) Added 13318
284.242 Amended 36217
284.243 (c) and (d) revised; (h) added 36217
284.281—284.288 (Subpart J) Added 13318
284.282 (d) added 36218
284.284 (e) added 36218
284.401—284.402 (Subpart L) Added 57959
290 Authority citation revised 53991
290.102 Revised 53991
290.103 Introductory text, (a), (b) and (c)(1) revised; (c)(2) removed; (c)(3) redesignated as (c)(2) and revised 53991
290.104 Removed 53991
290.105 Removed 53991
290.201—290.205 (Subpart B) Removed 53991
290.301—290.308 (Subpart C) Removed 53991
290.401—290.406 (Subpart D) Removed 53991
290.501—290.502 (Subpart E) Removed 53991
290.601—290.603 (Subpart F) Removed 53991

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 18 Chapter I—Con. Page

290.701 (Subpart G) Removed **53991**
290 Appendix A Revised **53991**
292 Authority citation revised **21734**
Rehearing denied **59289**
292.203 (c)(1) amended; (c)(2) removed **21734**
292.401 Removed; new 292.401 redesignated from 292.402 ..... **21734**
292.402 Redesignated as 292.401; new 292.402 redesignated from 292.403 ..... **21734**
292.403 Redesignated as 292.402 ..... **21734**
300 Authority citation revised **21734**
Rehearing denied **59289**
300.10 (d)(2), (4), (f)(2)(i) and (vi) removed; (d)(3), (5), (6) and (f)(2)(ii) through (v) redesignated as (d)(2) through (4) and (f)(2)(i) through (iv) **21734**
346 Removed 2975
365 (Subchapter T) Added 8906
375 Authority citation revised **21894**
375.307 (a)(13) removed **21894**
(f)(5) added **55087**
381 Authority citation revised **15225**
Authority citation revised 2975
Rehearing denied 7488
381.104 (c) revised 2975
381.107 (a) revised 2975
381.201 Amended **15225**
Removed 2975
381.202 Amended **15225**
Removed 2975
381.203 Amended **15225**
Removed 2975
381.204 (a) and (b) amended **15225**
Removed 2975
381.205 (a)(1) through (4) and (b)(1) through (4) amended **15225**
Removed 2975
381.206 Removed 2975
381.207 (b) amended **15225**
(a) and (b) revised 2975
381.208 (a) amended **15225**
Removed 2975
381.209 (b) amended **15225**
Removed 2975

Page

381.301 Amended **15225**
Removed 2975
381.302 (a) amended **15225**
381.303 (a) amended **15225**
381.305 (a) amended **15226**
381.401 Amended **15226**
Removed 2975
381.403 Amended **15226**
381.404 Amended **15226**
Revised 2975
381.405 Removed 2975
381.502 (c)(2)(i), (ii), (d)(2)(i), (ii), (e)(2)(i), (ii), (f)(2)(i) and (ii) amended **15226**
Removed 2975
381.503 Removed 2975
381.504 Removed 2975
381.505 (a) amended **15226**
381.506 Removed 2975
381.507 Amended **15226**
Removed 2975
381.508 Amended **15226**
Removed 2975
381.509 Amended **15226**
Removed 2975
381.510 Amended **15226**
Removed 2975
381.511 Removed 2975
381.512 Removed 2975
381.601 Amended **15226**
381.801 (Subpart H) Added 8907
385 Authority citation revised **21734**
Authority citation revised 7987
Rehearing denied **59289**
385.602 (c)(1)(iv) removed **21734**
385.2011 (d)(1) designation and (d)(2) added 7987

Chapter III—Delaware River Basin Commission (Parts 400—499)

401.35 (a)(4) and (5) revised **60470**
(b)(17) added **59908**

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1301.1 (b) introductory text revised; (c)(1)(i), (ii), (2)(i), (ii), (3)(i) and (ii) amended **59908**
1301.3 Added **23532**
1301.12 (f) revised **33634**
(d) revised **59803**
1301.19 (a) introductory text revised **33634**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

Title 18—*Proposed Rules:*

1—399 (Ch. I) **17867**
2 ..... **35525, 55176, 58168**
11 ..... **61850**
33 ..... **23171, 27511**
34 ..... **55176, 58168**
35 ..... **23171, 27511, 55176, 58168**
..... 519
41 ..... **55176, 58168**
101 ..... **13064**
131 ..... **55176, 58168**
154 ..... **13673, 56876**
157 ..... **13673**
201 ..... **13673**
284 ..... **13673, 26803, 35525, 35766, 57031**
285 ..... **26803**
290 ..... **23171, 27511**
..... 519
292 ..... **55176, 58168**
294 ..... **55176, 58168**
346 ..... **48005**
365 ..... **55195**
381 ..... **48005**
382 ..... **55176, 58168**
385 ..... **55176, 58168**
401 ..... **46354**

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

4 Authority citation amended **23945, 35751**
4.1 (b) revised **53751**
4.7 Footnote 16 removed; (b) amended; (d)(3) revised **35751**
4.8 Revised **35751**
4.10 Text amended; footnote 22 removed **35751**
4.13 Footnote 25 removed; (a) amended **35751**
4.23 Amended **24943**
Footnotes 55 through 58 removed 35752
4.30 (a) and (d) revised **35751**
4.69 Revised **23945**
4.81 (d) and (e) amended **35752**
4.85 (b) amended; (d) revised **35752**
4.87 (c) amended **35752**
4.93 (b)(1) and (2) amended **13019, 29634, 33274**
4.94 (b) amended **29633**
10.33 Revised **40605**
Regulation at 57 FR 40605 effective date corrected **43059**

Page

10.34 Removed **40605**
Removal at 57 FR 40605 effective date corrected **43059**
10.49 (a) amended **40605**
Regulation 57 FR 40605 effective date corrected **43059**
10.59 (f) amended **30639**
10.175 Regulation at 57 FR 2018 confirmed **40314**
10.305 (a)(3)(iv) revised; interim **46504**
18.11 (h) revised **38275**
18.20 (a) amended **38275**
19 Authority citation revised **37696**
19.1 (a)(9) added **37696**
Regulation at 57 FR 37696 effective date stayed **47410**
19.2 (b)(1) designation, (2) designation, (3) designation and (d) removed; (b) introductory text amended; new (b)(1) through (4) added; (c) revised **37696**
Regulation at 57 FR 37696 effective date stayed **47410**
19.3 (e)(9) added **37697**
Regulation at 57 FR 37697 effective date stayed **47410**
19.5 Removed **37697**
Removal at 57 FR 37697 effective date stayed **47410**
19.6 Heading and (d) revised **37697**
Regulation at 57 FR 37697 effective date stayed **47410**
19.9 (c) amended **24944**
19.11 (c) amended; (d) revised; (h) added **37698**
Regulation at 57 FR 37698 effective date stayed **47410**
19.12 (a)(2) and (4) revised; (a)(3) amended; (a)(8) added **37698**
Regulation at 57 FR 37698 effective date stayed **47410**
19.35—19.39 Undesignated center heading added **37698**
19.35 Added **37698**
Regulation at 57 FR 37698 effective date stayed **47410**
19.36 Added **37699**
Regulation at 57 FR 37699 effective date stayed **47410**
19.37 Added **37700**
Regulation at 57 FR 37700 effective date stayed **47410**
19.38 Added **37700**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 19 Chapter I—Con. Page

Regulation at 57 FR 37700 effective date stayed....47410
19.39 Added....37700
Regulation at 57 FR 37700 effective date stayed....47410
24 Fee rate adjustment....42697
24.1 (b) introductory text revised....26775
(e) added....35459
101.3 (b) amended....15013
103.14 (e) added....44089
111 User fee due date....48978
113.63 (c)(5) added....37701
Regulation at 57 FR 37701 effective date stayed....47410
118 Added....5604
118.0 Corrected....6574
118.11 (e) corrected....6574
118.21—118.24 (Subpart C) Heading corrected....6574
118.21 (a)(2) corrected....6574
122 Authority citation revised....43397
Technical correction....47163
122.1 (f) and (m) revised....43397
122.11—122.14 (Subpart B) Heading revised....43397
122.14 Redesignated from 122.34; (c) revised; (d) and (e) added....43397
122.15 Redesignated from 122.39 and revised....43397
122.33 Revised....43397
122.34 Redesignated as 122.14....43397
122.39 Redesignated as 122.15....43397
122.92 Heading and (b)(1) revised; (a)(1) amended; (a)(3) added....38276
123.4 (b) amended....24944
133 Court order....28605
141 Authority citation amended....27160
141.1 (c) revised....27160
141.68 (f) and (h) amended....24944
(h) corrected....28012
141.102 Heading revised....10989
141.113 (g) revised....40607
142.41—142.52 (Subpart D) Added....44093
143.23 Introductory text amended....24944
143.24 Heading revised; text amended....24944

Page

143.25 Amended....24944
144.37 (h) added....37701
Regulation at 57 FR 37701 effective date stayed....47410
145.4 (c) amended....24944
145.12 (b)(1), (c) and (e)(1) amended....24944
(b)(1) corrected....28012
145.51 (a)(5) revised....37702
Regulation at 57 FR 37702 effective date corrected to 1-1-93....40255
148.12 (c) amended....24944
148.27 Amended....24944
151 Technical correction....6574
151.6 Amended....5606
151.7 Introductory text amended....5606
151.12 Removed....10989
151.15 Added....5606
162 Authority citation amended....30640
Technical correction....31754
162.46 (d)(1) redesignated as (d); (d)(2) removed....30640
162.48 Heading revised; existing text redesignated as (a) and amended; (b) added....30640
171.12 (b) and (c) revised....40607
171.15 (a) introductory text and (4) revised....40607
172.12 (b)(1) and (2) amended; (c) revised....40607
177 Administrative rule....58706
178 Technical correction....6574
Table amended (OMB numbers)....5607
178.2 Table amended (OMB numbers)....5607

Chapter II—United States International Trade Commission (Parts 200—299)

207.90 Revised....34825
207.91 Revised....34825
Amended....56259
207.93 Revised....34825
(b)(3)(1), (c)(2)(ii)(A)(4), (c)(3), (5)(i), (ii) introductory text, (d)(2)(ii), (iii) and (iv) revised; (c)(5)(iii) added....56259
207.94 Revised....34827, 56260
207.101 Revised....34828

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

207.102 (a)(1) introductory text, (2) introductory text, (c), (d), (e) and (g) revised....34828
(e) and (g) revised....56260
207.103 (a)(1), (2), (4), (5) and (d) revised....34828
(a)(2) revised....56260
207.105 Revised....34829
(b) revised....56260
207.106 (a) amended; (b), (c), (d) and (e) revised....34829
(d) revised....56260
207.107 (a)(1) and (d) revised....34829
207.108 Revised....34829
Amended....56260
207.109 Revised....34829
207.110 (a) amended....34829
207.111 Introductory text revised....34829
207.112 (a) and (b) revised....34830
207.113 (a)(1) revised....34830
207.114 (a) through (c) revised....34830
207.115 (a)(2), (3)(ii), and (4) revised....34830
207.116 Revised....34830
207.117 Amended....34830
207.118 Revised....34830
207.119 Revised....34830
207.120 Revised....34830

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

353.31 (a)(1) introductory text, (b)(4) and (g) introductory text revised; interim....30902
353.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim....30903
355.31 (a)(1), (b)(4) and (g) introductory text revised; interim....30903
355.32 (a)(2) and (b) introductory text revised; (a)(3) and (b)(3) added; interim....30903

Title 19—*Proposed Rules:*

4 ....40627, 56531
....4114
10 ...33909, 37591, 44714, 45758, 46112, 47582
....4615, 6677
39 ....58998, 58999, 58999, 59001

Page

101 ...26805, 26806, 31677, 33461, 33462, 34809, 35530, 42712, 47583
102 33462
112 49049
113 5680
122 56531
123 4615
125 49049
133 30703
141 ....40361, 44792
142 ....33463, 40361, 44142
....4115
143 40361
145 4615
146 ....35530, 41896, 49049, 55198
151 ....37917, 40361, 44143
152 ....44143, 48347
175 ....21914, 39158
191 ....41446, 44145, 46113
210 52830
211 52830

TITLE 20—EMPLOYEES' BENEFITS

Chapter I—Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

10.304 (b) revised....15227
10.311 Revised....35755

Chapter III—Social Security Administration, Department of Health and Human Services (Parts 400—499)

404 Technical correction....24308
Authority citation revised....59910
404.110 (d)(1) revised....23156
404.111 (c) amended; (d) added....23157
404.101—404.146 (Subpart B) Appendix amended....44096
Appendixes V and VII amended; Appendix VI revised....44097
404.213 (d)(1) introductory text and (e)(5) revised....22429
404.241 (a) revised; (c)(1)(v) and (vi) added....23157
404.201—404.290 (Subpart C) Appendix I amended; Appendixes II and IV revised....44096
Appendixes II, V and VII corrected....45878

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 20 Chapter III—Con. Page

404.301—404.395 (Subpart D) Authority citation revised...**21598, 30119**
404.315 (d) revised...**30119**
404.335 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added...**30119**
404.336 (b)(2), (3) and (c)(2) amended; (c) introductory text and (1) revised; (b)(4) and (c)(3) added...**30119**
404.381 (a) revised...**21598**
404.429 (c)(1) table amended...**44097**
(c)(1) and (3) revised...**59913**
404.801—404.831 (Subpart I) Authority citation revised...**54919**
404.810 Revised...**54919**
404.811 Added...**54919**
404.822 (e)(5) revised...**21600**
404.900—404.999d (Subpart J) Authority citation revised...**23056**
404.903 (q) added...**23057**
404.1001—404.1096 (Subpart K) Authority citation revised...**44098, 59910**
404.1015 (a)(1) removed; (a)(2) redesignated as (a)(1) and revised; new (a)(2) added; (a)(3) and (a)(4) introductory text revised...**59913**
404.1018b Revised...**59913**
404.1019 (a) revised...**59913**
404.1020 (a)(3) and (4) added...**59910**
(b) redesignated as (c); (a)(2), new (c)(4)(ii)(B) and (iv)(B) revised; new (b) added...**59914**
404.1021 (c) added...**59914**
404.1022 (d) added...**59914**
404.1047 Table amended...**44098**
404.1055 Revised...**59914**
404.1058 (c)(1) revised; (c)(2) introductory text and (c)(4) added...**59914**
404.1073 (b)(1) revised; (b)(2) redesignated as (b)(3); new (b)(2) added...**59910**
404.1096 Table amended...**44098**
404.1200—404.1299 (Subpart M) Authority citation revised...**59911**
404.1200 Heading revised; existing text designated as (a); new (a) heading and (b) added...**59911**
404.1201 (a) revised...**59911**
404.1209 (f) added...**59911**
404.1501—404.1599 (Subpart P) Authority citation revised...**30120, 61796**
404.1501 (i) revised...**30120**
404.1505 (a) and (b) amended...**30120**
404.1511 Revised...**30120**
404.1520a (c)(3) revised...**30120**
404.1560 (a) revised...**30120**
404.1577 Revised...**30120**
404.1578 Revised...**30121**
404.1579 (a) redesignated in part as (a)(2) and amended; (a)(1) added...**30121**
404.1594 (a) revised...**30121**
404.1501—404.1599 (Subpart P) Appendix 1 amended...**23946, 23947, 24187, 30121, 57666, 61796**
404.2040a Added...**23057**
404 Appendix IV amended...**22429**
416 Technical correction...**46431**
416.202 (b) revised...4897
416.215 Added...4897
(b)(2) corrected...9597
416.640a Added...**23057**
(g)(4) corrected...**27091**
416.901—416.1094 (Subpart I) Authority citation revised...**53853**
416.931 Amended...**53853**
416.932 Introductory text and (b) revised...**53853**
416.1100—416.1182 (Subpart K) Authority citation revised...**48562, 53850, 55088**
416.1103 (b)(1) amended...**53850**
416.1124 (c)(5) amended...**53850**
416.1142 (a)(4) and (7) revised...**53850**
416.1150 Revised...**53850**
416.1165 Heading, (d) and (h) revised...**48562**
Regulation at 57 FR 48562 effective date corrected...**52827**
416.1170—416.1171 Undesignated center heading added...**53851**
416.1100—416.1182 (Subpart K) Appendix amended...**53851, 55088**
416.1201—416.1266 (Subpart L) Authority citation revised...**53851, 55089**
416.1201 (a)(3) revised...**35461**
(b) revised...**55089**
416.1236 (a)(14) through (18) added...**53851**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

(a)(19) and (20) added **55089**
416.1237 Revised **53852**
416.1403 (a)(11) added **23058**
422.101—422.140 (Subpart B) Authority citation revised **54919**
422.125 (a) and (b) revised; (c) and (d) removed; (e) through (h) redesignated as (c) through (f); new (c) revised **54919**

Chapter V—Employment and Training Administration, Department of Labor (Parts 600—699)

614.1 (a) amended; interim **59799**
614.2 (g) revised; (p)(1) amended; interim **59799**
614.3 (e) removed; interim **59799**
(c) and (d) revised; interim **59800**
614.4 (c) and (d) revised; interim **59800**
614.27 Removed; interim **59800**
626 Revised; interim; effective to 6-1-93 ..... **62025**
627 Revised; interim; effective to 6-1-93 ..... **62030**
628 Revised; interim; effective to 6-1-93 ..... **62052**
629 Removed; interim; effective to 6-1-93 ..... **62061**
630 Removed; interim; effective to 6-1-93 ..... **62061**
631 Revised; interim; effective to 6-1-93 ..... **62062**
637 Revised; interim; effective to 6-1-93 ..... **62072**
655 Authority citation revised **40989**
655.0 Regulation at 56 FR 24667 effective date extended through 6-30-92 ..... **10989**
Regulation at 56 FR 24667 effective date extended through 7-10-92 ..... **29204**
Regulation at 56 FR 24667 effective date extended through 9-8-92 ..... **30640**
Regulation at 56 FR 24667 effective date extended through 10-8-92 and confirmed **40990**
655.000 Regulation at 56 FR 24667 extended through 6-30-92 ..... **10989**

Page

Regulations at 56 FR 24667 effective date extended through 7-10-92 ..... **29204**
Regulation at 56 FR 24667 effective date extended through 9-8-92 ..... **30640**
Regulation at 56 FR 24667 effective date extended through 10-8-92 and confirmed **40990**
655.100 (b) amended **43123**
655.500—655.550 (Subpart F) Regulation at 56 FR 24654, 24667 effective date extended through 6-30-92 ..... **10989**
Regulation at 56 FR 24654, 24667 effective date extended through 7-10-92 ..... **29204**
Regulation at 56 FR 24654, 24667 effective date extended through 9-8-92 ..... **30640**
Revised **40990**
655.510 (g)(2)(viii) corrected **43495**
655.600—655.675 (Subpart G) Regulation at 56 FR 24654, 24667 effective date extended through 6-30-92 ..... **10989**
Regulation at 56 FR 24654, 24667 effective date extended through 7-10-92 ..... **29204**
Regulation at 56 FR 24654, 24667 effective date extended through 9-8-92 ..... **30640**
Revised **40990**
655.615 (b)(4)(v) corrected **43495**

Title 20—*Proposed Rules:*

404 ..... **32926, 47415, 47584, 48851**
..... 4950, 5687
416 ..... **22187, 29244, 32926, 33137, 44146, 44348, 44519, 47415, 48851, 54732**
..... 4950, 5687
626 ..... **41447**
627 ..... **41447**
628 ..... **41447**
629 ..... **41447**
630 ..... **41447**
631 ..... **41447**
637 ..... **41447**
660 ..... **14803**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

Page

Chapter I
IOM Implementation report.....2470
1.24 (a)(14) revised; eff. 2-14-94.....2174
2.125 (h)(2) introductory text revised.....17980
(e)(13) added.....6088
3 Meeting.....24544
5 Authority citation revised.....18823
Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Regulatory impact analysis statement.....2927
5.10 (a)(34) added.....28462
5.20 (f) redesignated as (g); new (f) added.....12875
5.22 (a)(9)(iv) revised.....40318
5.23 (c)(4) added.....40318
5.25 (a)(7) added.....45295
5.35 (b) introductory text and (c)(3) revised; (b)(1) through (5) redesignated as (b)(1)(i) through (v); new (b)(1) introductory text and (2) added.....494
5.37 (a)(2)(iii) revised; (a)(2)(iv) added.....40318
5.38 Added.....18823
5.45 (e)(1)(iii) revised.....40318
5.54 (a) and (b) revised; (c) added.....40316
5.55 (a) and (b) revised; (c) added.....40317
5.56 Introductory text revised; (c) and (d) added.....40317
5.57 (d) and (e) added.....40317
5.60 Added.....40315
5.61 Heading revised; (g) added; eff. 2-14-94.....2410
5.64 Added.....43398
5.80 (c)(1) and (2)(i) amended.....17980
10.30 (e)(2) introductory text amended; (e)(4) added.....17980
10.45 (d) introductory text revised.....17980
14.100 (c)(15) heading and (ii) revised.....14350
(a) revised.....35461
16 Authority citation revised.....58403

Page
16.1 (b)(1) revised.....58403
16.5 (a)(3) revised.....58403
20 Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Regulatory impact analysis statement.....2927
20.100 Heading revised; (c)(34) added; eff. 5-8-93.....2533
60 Authority citation revised.....56261
60.1 (a) introductory text amended.....56261
60.3 (b)(2) and (5) amended; (b)(11)(ii), (iii), (12)(ii), (iii) and (14) revised; (b)(11)(iv), (12)(iv) and (16) added.....56261
60.10 Revised.....56261
60.22 (b)(1) revised; (d) redesignated as (f); new (d) and (e) added; new (f) amended.....56262
73 Regulation at 57 FR 32173 effective date confirmed.....61292
73.1 (a)(3) table amended.....32175
73.3121 (a)(8) and (9) amended (a)(10) added.....9541
73.3127 Added.....3227
81.1 Regulation at 57 FR 10616 effective date corrected.....11797
100 Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Authority citation revised.....2467
Regulatory impact analysis statement.....2927
100.1 (Subpart A) added.....2468
100.2 Added.....2460
101 Implementation at 57 FR 56347 revoked.....2066
Implementation; eff. 5-8-94.....2070
Regulatory impact analysis statement.....2927
101.3 (e)(4)(ii) revised; eff. 5-8-94.....2227
101.4 (a)(1) and (b)(2)(i) revised; eff. 5-8-93.....2875
(b)(20) through (22), (d), (e) and (f) added, eff. 5-8-94.....2875
101.6 Removed; eff. 5-8-94.....2875
101.8 (a) revised; eff. 5-8-94.....2291
101.9 Revised; eff. 2-14-94.....2175
(b) revised; eff. 5-8-94.....2291
(c)(7)(iii), (8)(iv) and (9) added; eff. 5-8-94.....2227
(k)(1) added; eff. 2-14-94.....2533
101.10 Revised; eff. 2-14-95.....2410

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

101.12 (Subpart A) Added; eff. 5-8-94....2293
101.13 Revised; eff. 2-14-94....2410
(q)(2) revised; eff. 2-14-95....2410
101.14 Added; eff. 5-8-93....2533
(d)(2)(vii)(B) and (3) added; eff. 5-8-94....2533
101.22 (h)(7) added; eff. 5-8-94....2875
(k) added; eff. 5-8-93....2875
101.25 Removed; eff. 2-14-94....2413
101.30 Added; eff. 5-8-93....2925
101.35 Removed; eff. 5-8-94....2876
101.54—101.69 (Subpart D) Added; eff. 2-14-94....2413
101.67 Added; eff. 5-8-94....2455
101.70—101.71 (Subpart E) Added; eff. 5-8-93....2534
101.71(Subpart E) Added; eff. 5-8-93....2578
(a) added; eff. 5-8-93....2548
(c) added; eff. 5-8-93....2620
(d) added; eff. 5-8-93....2639
(e) added; eff. 5-8-93....2664
(f) added; eff. 5-8-93....2714
101.72 Added; eff. 5-8-93....2676
101.73 Added; eff. 5-8-93....2801
101.74 Added; eff. 5-8-93....2836
101.75 Added; eff. 5-8-93....2757
101.76 Added; eff. 5-8-93....2548
101.77 Added; eff. 5-8-93....2578
101.78 Added; eff. 5-8-93....2639
101.95 (Subpart F) Added; eff. 2-14-94....2426
101.100—101.108 (Subpart F) Redesignated as subpart G; eff. 2-14-94....2426
101.100 (d) introductory text revised; eff. 2-14-94....2189
(a)(2) revised; eff. 5-8-94....2876
101 Appendix B added; eff. 2-14-94....2188
102.22 Added; eff. 5-8-94....2876
102.30 Removed; eff. 5-8-94....2926
102.32 Removed; eff. 5-8-94....2926
102.33 Revised; eff. 5-8-94....2926
103.35 (d)(3) added; eff. 7-6-93....381
104.20 (a) amended; (c)(1) and (d)(3) revised; eff. 5-8-94....2228
105 Implementation at 57 FR 56347 revoked....2066
Implementation; eff. 5-8-94....2070
Regulatory impact analysis statement....2927
105.66 Revised; eff. 5-8-94....2430

Page

130 Implementation at 57 FR 56347 revoked....2066
Implementation; eff. 5-8-94....2070
Regulatory impact analysis statement....2927
130.3 (e) added; eff. 5-8-93....2876
130.9 Added; eff. 5-8-93....2876
130.10 Added; eff. 5-8-94....2446
130.11 Added; eff. 5-8-93....2876
130.110 (f) revised; eff. 5-8-93....2890
131.111 (h) revised; eff. 5-8-93....2890
131.112 (g) revised; eff. 5-8-93....2890
131.115 (f) revised; eff. 5-8-93....2890
131.120 (e) revised; eff. 5-8-93....2890
131.122 (e) revised; eff. 5-8-93....2890
131.123 (f) revised; eff. 5-8-93....2890
131.125 (e) revised; eff. 5-8-93....2890
131.127 (f) revised; eff. 5-8-93....2890
131.130 (f) revised; eff. 5-8-93....2890
131.132 (f) revised; eff. 5-8-93....2890
131.135 (f) revised; eff. 5-8-93....2890
131.136 (h) revised; eff. 5-8-93....2890
131.138 (g) revised; eff. 5-8-93....2891
131.143 (f) revised; eff. 5-8-93....2891
131.144 (h) revised; eff. 5-8-93....2891
131.146 (g) revised; eff. 5-8-93....2891
131.147 (f) revised; eff. 5-8-93....2891
131.149 (e) revised; eff. 5-8-93....2891
131.150 (e) revised; eff. 5-8-93....2891
131.155 (e) revised; eff. 5-8-93....2891
131.157 (e) revised; eff. 5-8-93....2891
131.160 (e) revised; eff. 5-8-93....2891
131.162 (e) revised; eff. 5-8-93....2891
131.170 (h) revised; eff. 5-8-93....2891
131.180 (e) revised; eff. 5-8-93....2891
131.185 (e) revised; eff. 5-8-93....2891
131.187 (e) revised; eff. 5-8-93....2891

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 21 Chapter I—Con.

Page

131.200 (g) revised; eff. 5-8-93....2891
131.203 (g) revised; eff. 5-8-93....2891
131.206 (g) revised; eff. 5-8-93....2891
133.102 (e) revised; eff. 5-8-93....2891
133.103 Revised; eff. 5-8-93....2892
133.104 Revised; eff. 5-8-93....2892
133.106 (d) introductory text revised; eff. 5-8-93....2892
133.108 (d) introductory text revised; eff. 5-8-93....2892
133.111 (f) revised; eff. 5-8-93....2892
133.113 (d) introductory text revised; eff. 5-8-93....2892
133.118 (f) added; eff. 5-8-93....2892
133.121 Introductory text revised; eff. 5-8-93....2892
133.123 (f) introductory text revised; eff. 5-8-93....2892
133.124 (h) revised; eff. 5-8-93....2892
133.125 (a) introductory text revised; eff. 5-8-93....2892
133.127 (d) revised; eff. 5-8-93....2892
133.128 (e) revised; eff. 5-8-93....2892
133.129 (e) revised; eff. 5-8-93....2892
133.131 Introductory text revised; eff. 5-8-93....2892
133.133 (d) introductory text revised; eff. 5-8-93....2892
133.134 (d) introductory text revised; eff. 5-8-93....2893
133.136 (d) introductory text revised; eff. 5-8-93....2893
133.138 (d) introductory text revised; eff. 5-8-93....2893
133.140 (c) revised; eff. 5-8-93....2893
133.141 (d) introductory text revised; eff. 5-8-93....2893
133.144 (d) introductory text revised; eff. 5-8-93....2893
133.146 (e) introductory text revised; eff. 5-8-93....2893
133.147 (e) revised; eff. 5-8-93....2893
133.148 (f) introductory text revised; eff. 5-8-93....2893
133.149 (d) introductory text revised; eff. 5-8-93....2893

Page

133.150 (f) introductory text revised; eff. 5-8-93....2893
133.152 (d) introductory text revised; eff. 5-8-93....2893
133.153 (d) introductory text revised; eff. 5-8-93....2893
133.154 Revised; eff. 5-8-93....2893
133.155 (d) introductory text revised; eff. 5-8-93....2893
133.156 (d) introductory text revised; eff. 5-8-93....2893
133.158 Revised; eff. 5-8-93....2894
133.160 (d) introductory text revised; eff. 5-8-93....2894
133.162 (d) introductory text revised; eff. 5-8-93....2894
133.164 (d) introductory text revised; eff. 5-8-93....2894
133.165 (e) revised; eff. 5-8-93....2894
133.167 Introductory text revised; eff. 5-8-93....2894
133.168 (a) introductory text revised; eff. 5-8-93....2894
133.169 (g) revised; eff. 5-8-93....2894
133.170 (a) introductory text revised; eff. 5-8-93....2894
133.171 Introductory text revised; (f) removed; eff. 5-8-93....2894
133.173 (h) revised; eff. 5-8-93....2894
133.174 (a) introductory text revised; eff. 5-8-93....2894
133.175 Revised; eff. 5-8-93....2894
133.176 (a) introductory text revised; eff. 5-8-93....2894
133.178 (d) revised; eff. 5-8-93....2894
133.179 (i) revised; eff. 5-8-93....2895
133.180 (a) introductory text revised; eff. 5-8-93....2895
133.181 (d) introductory text revised; eff. 5-8-93....2895
133.182 (f) added; eff. 5-8-93....2895
133.183 (f) introductory text revised; eff. 5-8-93....2895
133.184 (d) introductory text revised; eff. 5-8-93....2895
133.185 (d) introductory text revised; eff. 5-8-93....2895
133.186 (d) revised; eff. 5-8-93....2895
133.187 (g) added; eff. 5-8-93....2895

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

133.188 (g) added; eff. 5-8-93.....2895
133.189 (e) added; eff. 5-8-93.....2895
133.190 (d) introductory text revised; eff. 5-8-93.....2895
133.191 Revised; eff. 5-8-93.....2895
133.193 (a) revised; eff. 5-8-93.....2895
133.195 (d) introductory text; eff. 5-8-93.....2895
135.110 (f) revised; eff. 5-8-93.....2896
135.115 (d) revised; eff. 5-8-93.....2896
135.120 (a) introductory text; eff. 5-8-93.....2896
135.130 (e) revised; eff. 5-8-93.....2896
135.140 (i) revised; eff. 5-8-93.....2896
135.160 (a) revised; eff. 5-8-93.....2876
136.110 (f) revised; eff. 5-8-93.....2877
137.105 (b)(1) revised; eff. 5-8-93.....2877
137.155 Revised; eff. 5-8-93.....2877
137.160 Revised; eff. 5-8-93.....2877
137.165 Introductory text revised; eff. 5-8-93.....2877
137.170 (a) revised; eff. 5-8-93.....2877
137.175 Introductory text revised; eff. 5-8-93.....2877
137.180 (b) revised; eff. 5-8-93.....2877
137.185 Introductory text revised; eff. 5-8-93.....2877
137.200 (b)(1) revised; eff. 5-8-93.....2877
137.205 Revised; eff. 5-8-93.....2877
137.225 Revised; eff. 5-8-93.....2877
137.235 (c) added; eff. 5-8-93.....2877
137.260 (c) added; eff. 5-8-93.....2878
137.270 (c) added; eff. 5-8-93.....2878
137.305 (b)(1) revised; eff. 5-8-93.....2878
137.350 (g) added; eff. 5-8-93.....2878
139.110 (g) added; eff. 5-8-93.....2878
139.115 (a) introductory text; eff. 5-8-93.....2878
139.117 (e) revised; eff. 5-8-93.....2878
139.120 (a) introductory text revised; eff. 5-8-93.....2878
139.121 (a) introductory text revised; eff. 5-8-93.....2878
139.122 (a) introductory text revised; eff. 5-8-93.....2878

Page

139.125 (a) introductory text revised; eff. 5-8-93.....2878
139.135 (a) revised; eff. 5-8-93.....2878
139.138 (a) introductory text revised; eff. 5-8-93.....2878
139.140 (a) introductory text revised; eff. 5-8-93.....2878
139.150 (i) added; eff. 5-8-93 2879
139.155 (a) introductory text revised; eff. 5-8-93.....2879
139.160 (a) revised; eff. 5-8-93.....2879
139.165 (a) revised; eff. 5-8-93.....2879
139.180 (a) revised; eff. 5-8-93.....2879
145.110 (a)(4) revised; eff. 5-8-93.....2879
145.115 (a)(4)(iv) revised; eff. 5-8-93.....2879
145.116 (b)(2) revised; eff. 5-8-93.....2879
145.120 (a)(5)(iv) revised; eff. 5-8-93.....2879
145.125 (a)(4)(iv) revised; eff. 5-8-93.....2879
145.126 (b)(2) revised; eff. 5-8-93.....2879
145.130 (d)(4) revised; eff. 5-8-93.....2879
145.131 (b)(2) revised; eff. 5-8-93.....2880
145.134 (f) added; eff. 5-8-93..... 2880
145.135 (a)(4)(iv) revised; eff. 5-8-93.....2880
145.136 (b)(2) revised; eff. 5-8-93.....2880
145.140 (d)(4) revised; eff. 5-8-93.....2880
145.145 (a)(4)(iii) revised; eff. 5-8-93.....2880
145.170 (a)(4)(iv) revised; eff. 5-8-93.....2880
145.171 (b)(2) revised; eff. 5-8-93.....2880
145.175 (a)(4)(iv) revised; eff. 5-8-93.....2880
145.176 (b)(2) revised; eff. 5-8-93.....2880
145.180 (a)(5)(iii) revised; eff. 5-8-93.....2880
145.181 (b)(2) revised; eff. 5-8-93.....2880

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 21 Chapter I—Con. Page

145.185 (a)(4)(iv) revised; eff. 5-8-93....2880
145.190 (c)(4) revised; eff. 5-8-93....2880
146.113 (h) added; eff. 5-8-93....2881
146.114 (a)(3)(ii) revised; eff. 5-8-93....2881
146.120 (c) revised; eff. 5-8-93....2881
146.121 (f) added; eff. 5-8-93....2881
146.126 (c) revised; eff. 5-8-93....2881
146.132 (a)(3)(iii) revised; 5-8-93....2881
146.135 (a) revised....**57667**
146.140 (a) amended....**57667**
(g) added; eff. 5-8-93....2881
146.141 (a) amended....**57667**
(f) added; eff. 5-8-93....2881
146.145 (f) added; eff. 5-8-93....2881
146.146 (a) amended....**57667**
(g) added; eff. 5-8-93....2881
146.148 (a) revised; eff. 5-8-93....2881
146.150 (a) revised; eff. 5-8-93....2881
146.151 (a) amended....**57667**
146.152 (d) revised; 5-8-93....2881
146.153 (a) revised; eff. 5-8-93....2881
146.154 (d) revised; eff. 5-8-93....2882
146.185 (a)(3) revised; eff. 5-8-93....2882
146.187 (d) added; eff. 5-8-93....2882
150.110 (e)(1) introductory text revised; (e)(2)(ii) removed; eff. 5-8-93....2882
150.140 (e)(2) introductory text revised; eff. 5-8-93....2882
150.141 (h) added; eff. 5-8-93....2882
150.160 (e)(2) introductory text revised; eff. 5-8-93....2882
150.161 (h) added; eff. 5-8-93....2882
152.126 (a)(4)(i) revised; eff. 5-8-93....2882
155 Technical correction....**37591**
155.120 (a)(3)(xiii) and (a)(3)(xiv) redesignated as (a)(3)(xiv) and (a)(3)(xv); new (a)(3)(xiii) added; (b)(2)(i) revised....**34245**
(a)(5) revised; eff. 5-8-93....2882
155.130 (a)(5) revised; eff. 5-8-93....2882
155.131 (a)(1) revised; eff. 5-8-93....2882

Page

155.170 (a)(4) revised; eff. 5-8-93....2882
155.172 (a) introductory text revised; eff. 5-8-93....2883
155.191 (a)(3)(iv) revised; eff. 5-8-93....2883
155.194 (a)(3)(iii) revised; eff. 5-8-93....2883
155.200 (h) revised; eff. 5-8-93....2883
155.201 (a)(4)(ii) revised; eff. 5-8-93....2883
156.145 (a)(2)(ii) revised; eff. 5-8-93....2883
158.170 (a)(4) revised; eff. 5-8-93....2883
160.105 (e) added; eff. 5-8-93....2883
160.110 (d) added; eff. 5-8-93....2883
160.115 Existing text designated as (a); (b) added; eff. 5-8-93....2883
160.140 (c) added; eff. 5-8-93....2883
160.145 (f) added; eff. 5-8-93....2883
160.150 (c) added; eff. 5-8-93....2883
160.180 Existing text designated as (a); (b) added; eff. 5-8-93....2883
160.185 (e) added; eff. 5-8-93....2883
160.190 Existing text designated as (a); (b) added; eff. 5-8-93....2884
161.145 (a)(4) added; eff. 5-8-93....2884
161.170 (a)(5)(iii) revised; eff. 5-8-93....2884
161.173 (a)(5)(ix) revised; eff. 5-8-93....2884
161.175 (i) added; eff. 5-8-93....2884
161.190 (a)(6)(ii) through (viii) and (8)(vi) revised; (a)(6)(ix) removed; eff. 5-8-93....2884
163.110 (c) added; eff. 5-8-93....2884
163.111 (c) added; eff. 5-8-93....2884
163.112 (c) added; eff. 5-8-93....2885
163.113 Revised; eff. 5-8-93....2885
163.114 Revised; eff. 5-8-93....2885
163.117 (a) revised; eff. 5-8-93....2885
163.123 (i) added; eff. 5-8-93....2885
163.130 (f) added; eff. 5-8-93....2885
163.135 (c) added; eff. 5-8-93....2885
163.140 (c) added; eff. 5-8-93....2885
163.145 (c) added; eff. 5-8-93....2885
163.150 (d) added; eff. 5-8-93....2885
163.153 (c) added; eff. 5-8-93....2885
163.155 (c) added; eff. 5-8-93....2885

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

164.110 (e) introductory text and (f) revised; (e)(3) and (4) removed; eff. 5-8-93 2885
164.150 (e) revised; eff. 5-8-93 2886
166.110 (d) revised; eff. 5-8-93 2886
168.110 (b) revised; eff. 5-8-93 2886
5-8-93 2886
168.111 (c) revised; eff. 5-8-93 2886
168.130 (d) revised; eff. 5-8-93 2886
168.140 (d) revised; eff. 5-8-93 2896
168.160 (d) revised; eff. 5-8-93 2886
168.180 (d)(1) revised; eff. 5-8-93 2886
169 Technical correction **37591**
169.115 (e) revised; eff. 5-8-93 2886
169.140 (a) and (e) revised **34246**
(f) revised; eff. 5-8-93 2886
169.150 (g) revised; eff. 5-8-93 2886
169.175 (c) added; eff. 5-8-93 2886
169.176 (a) revised; eff. 5-8-93 2886
169.177 (a) revised; eff. 5-8-93 2886
169.178 (a) revised; eff. 5-8-93 2886
169.179 (d) added; eff. 5-8-93 2887
169.180 (a) revised; eff. 5-8-93 2887
169.181 (a) revised; eff. 5-8-93 2887
169.182 (a) revised; eff. 5-8-93 2887
172.133 Introductory text, (b) and (c)(2) revised 6091
172.225 Revised **12711**
172.270 Added **12711**
172.665 (a) amended; (e) revised **55445**
172.800 (c)(7) added **57961**
172.892 (h) amended; (i) added **54700**
176.170 Regulation at 57 FR 10616 effective date corrected **11797**
(b)(2) table amended **20200**
(a)(5) table amended **23949, 34867**
176.210 (d)(3) amended **31313**
177.1312 Added **32422**
177.1345 Added **43399**

Page

177.1395 (b)(4) table amended **43399**
177.1500 (b) table amended 2977
Technical correction 8820
tion 8820
177.1520 Regulation at 57 FR 10616 effective date corrected **11797**
178 Technical correction **37867**
178.1005 (e)(1) table amended **32423**
178.1010 (b)(39) and (c)(34) added **11682**
(b)(40) and (c)(35) added **35463**
(b)(41) and (c)(36) added **43614**
(b)(42) and (c)(37) added **54701**
178.2010 (b) table amended **10992, 18081, 48724, 48980**
178.3690 (a) revised; (b)(1) amended **18082**
178.3910 (a)(2) table amended **23952**
184.1505 Regulation at 57 FR 10616 effective date corrected **11797**
184.1924 Added **60473**
201 Authority citation revised **54300**
201.105 Introductory text and (a) revised **54300**
201.110 Removed **54301**
201.122 Introductory text revised **54301**
201.307 Removed; eff. 12-9-93 ..... **58374**
291 Authority citation revised 498
291.505 (d)(1)(i), (iii), (iv), (2)(i), (3)(v), (D), (4)(i)(B)(*2*), (5)(ii), (6)(iv)(B)(*6*), (v)(A)(*1*), (*3*), (C), (8)(i) introductory text, (E), (9)(i) introductory text and (F) amended; (a)(2) and (d)(8)(i)(F) revised; (a)(10), (b)(1)(v), (2)(vi), (d)(4)(i)(C) and (7) added 498
310 Technical correction **46068**
310.201 (a)(25) removed; (b) added; eff. 12-9-93 ..... **58374**
310.305 (a) revised; (b)(2), (c)(4) and (d)(1) amended **17980**
310.537 Added **29173**
310.545 (a)(6)(iii), (d)(4) and (5) added; (d) introductory

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 21 Chapter I—Con. Page

text and (1) revised; eff. 9-14-93 ..... **41860**
(a)(3) amended **45295**
(a)(6)(i), (d) introductory text and (1) revised; (d)(6) added; eff. 12-9-93 ..... **58374**
(a)(21), (d)(7) and (8) added; (d) introductory text revised; eff. 6-18-93 ..... **60423**
(a)(10)(iv) and (d)(9) added; (d) introductory text revised; eff. 6-18-93 ..... **60427**
(a)(22) and (d)(10) added; (d) introductory text revised; eff. 6-18-93 ..... **60431**
312 Technical correction **19458**
312.34 (a) amended **13248**
312.35 (a) amended **13249**
312.42 (b)(3)(iii) and (4) added **13249**
312.44 (b)(1)(xi) added; (b)(2)(i) revised **13249**
314 Regulation at 57 FR 58942 corrected **61489**
Technical correction **61489**
Technical correction 4078
314.1 (a)(1) and (2) amended **17981**
314.3 (b) revised **17981**
314.50 (a)(2) and (c)(1) amended; (g)(3) added **17982**
314.54 Added **17982**
(a)(2) corrected **61612**
314.55 Removed **17983**
314.56 Removed **17983**
314.60 Existing text designated as (a) and amended; (b) added **17983**
314.70 (e) added **17983**
314.71 (b) amended **17983**
314.80 (a), (c)(1)(ii) and (d)(1) amended; (b) revised **17983**
314.81 (b)(3)(iii) added **17983**
314.92—314.99 (Subpart C) Added **17983**
314.94 (a)(9)(iii) corrected **29353**
314.100—314.170 (Subpart C) Redesignated as subpart D **17983**
Heading revised **17987**
314.100 Revised **17987**
314.101 Revised **17987**
(d)(3) and (4) corrected **29353**
314.102 Revised **17988**
(b) corrected **29353**
314.103 (a) revised; (b) and (c)(2) amended **17989**

Page

314.104 Revised **17989**
314.105 Revised **17989**
314.110 Revised **17989**
314.120 Revised **17990**
314.122 Added **17990**
(b) corrected **29353**
314.125 Heading, (a) introductory text, (b) introductory text, (7), (9), (10), (12), (14), (15), (16) and (17) revised; (b)(18) added **17991**
314.127 Added **17991**
(a)(3)(iii)(A)(*1*) corrected **29353**
314.150 Revised **17993**
314.151 Added **17994**
314.152 Revised **17994**
314.153 Added **17995**
314.160 Revised **17995**
314.161 Added **17995**
314.162 Added **17996**
314.200—314.235 (Subpart D) Redesignated as subpart E **17983**
314.200 (a) introductory text, (b)(1) and (c)(3) revised; (c)(1) and (g)(1) amended **17996**
314.300 (Subpart E) Redesignated as subpart F **17983**
314.410—314.445 (Subpart F) Redesignated as subpart G **17983**
314.430 Heading, (a) through (d), (e) introductory text, (f)(5), (6) and (g) introductory text revised **17996**
314.440 Heading, (a) introductory text, (1) and (2) revised **17997**
314.500—314.560 (Subpart H) Added **58958**
316 Added **62085**
316.10 (b)(10) corrected 6167
316.27 (a)(2)(ii) corrected 6167
320.1 (a) and (e) revised **17997**
320.21—320.32 (Subpart B) Heading revised **17998**
320.21 Revised **17998**
320.22 Revised **17998**
320.23 Revised **17999**
320.24 Revised **17999**
(b)(4) corrected **29354**
320.30 Revised **18000**
320.31 Revised **18000**
320.32 Redesignated as 320.38; new 320.32 redesignated from 320.51 and revised **18000**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

320.33 Redesignated from 320.52; heading and introductory text revised **18001**
320.34 Redesignated from 320.55 ..... **18001**
320.35 Redesignated from 320.56 ..... **18001**
320.36 Redesignated from 320.62 ..... **18001**
320.38 Redesignated from 320.32 ..... **18000**
320.50 Removed **18000**
320.51 Redesignated as 320.32 ..... **18000**
320.52 Redesignated as 320.33 ..... **18001**
320.53 Removed **18001**
320.54 Removed **18001**
320.55 Redesignated as 320.34 ..... **18001**
320.56 Redesignated as 320.35 ..... **18001**
320.57 Removed **18001**
320.58 Removed **18001**
320.59 Removed **18001**
320.60 Removed **18001**
320.61 Removed **18001**
320.62 Redesignated as 320.36 ..... **18001**
341.3 (e) added; eff. 12-9-93 ..... **58374**
341.12 Added; eff. 12-9-93 ..... **58374**
341.72 Added; eff. 12-9-93 ..... **58374**
341.78 (b) amended; (c)(1) and (2) redesignated as (c)(2) and (1); new (c)(2) revised; (c)(3) added **29177**
341.90 (e) through (q) added; eff. 12-9-93 ..... **58376**
348 Added; eff. 6-19-93 ..... **27656**
358 Authority citation revised **44494**
358.150 (d)(2) revised **44494**
358.550 (d)(2) revised **44494**
369.20 Amended; eff. 12-9-93 ..... **58376**
369.21 Amended; eff. 12-9-93 ..... **58376**
433.1 (d)(2) amended **18001**
510 Technical correction **21854**
510.600 (c)(1) table and (2) table amended ... **11683, 12711, 26995, 30641, 31313, 32175, 35988, 38442, 45984, 48163, 54176, 61796**
(c)(1) table and (2) table amended 4316, 5607
520 Heading revised **37319**
520.88 Added **37319**
(b)(1)(ii)(B) corrected **42623**

Page

520.88a Added **37319**
520.88b Added **37319**
520.88c Added **37319**
520.88d Added **37319**
(c) corrected **42623**
520.88e Added **37320**
520.88f Added **37320**
520.88g Added **37320**
520.88h Added **37320**
520.90 Added **37321**
520.90a Added **37321**
520.90b Added **37321**
520.90c Added **37321**
520.90d Added **37321**
520.90e Added **37322**
520.90f Added **37322**
520.154 Added **37322**
520.154a Added **37322**
(d)(3)(iii) corrected **42623**
520.154b Added **37322**
520.154c Added **37322**
520.182 (b) amended 5608
520.390 Added **37323**
520.390a Added **37323**
520.390b Added **37323**
520.390c Added **37323**
(c)(1) corrected **42623**
520.445 Added **37323**
520.445a Added **37323**
520.445b Added **37324**
(b), (d)(1)(iv)(A) introductory text and (2)(i)(D)(*1*) corrected; (d)(2)(i)(C) correctly designated **42623**
520.445c Added **37325**
520.580 (b)(1) amended **35989, 45984**
520.608 Added **37325**
520.1130 Added **37325**
520.1130a Added **37325**
520.1130b Added **37326**
520.1130c Added **37326**
520.1196 Added 8542
520.1445 (c)(2) revised 5608
520.1484 Added **19085**
(b) revised **26604**
520.1660d (b) revised **42490**
520.1696 Added **37326**
520.1696a Added **37326**
520.1696b Added **37326**
520.1696c Added **37326**
(c) corrected **42623**
520.1696d Added **37327**
520.1806 (b) amended **48163**
520.1870 (a) and (c)(2)(ii) revised 7864
520.2041 (b) amended **48163**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 21 Chapter I—Con. Page

520.2042 (b) amended **48163**
520.2158 Added **37327**
520.2158a Added **37327**
520.2158b Added **37327**
(b) corrected **42623**
520.2158c Added **37327**
520.2220a (b) amended **32176**
Heading, (a), (b) and (e) introductory text revised 6092
520.2345 Added **37327**
520.2345a Added **37327**
520.2345b Added **37327**
520.2345c Added **37328**
520.2345d Added **37328**
(e)(1)(i)(A), (ii)(A) and (4)(iii)(A)(*1*) corrected **42623**
520.2345e Added **37329**
520.2345f Added **37329**
520.2345g Added **37329**
520.2345h Added **37329**
522 Heading revised **37330**
522.88 Added **37330**
522.90 Added **37330**
522.90a Added **37330**
522.90b Added **37331**
(d)(3)(ii) corrected **42623**
522.90c Added **37331**
522.313 (d)(2) and (3) added **41862**
522.390 Added **37331**
522.575 Added 500
522.650 Added **37331**
(b) corrected **42623**
522.840 (a), (c)(1) and (3) amended **41861**
522.1696 Added **37332**
522.1696a Added **37332**
(d)(2) introductory text corrected **42623**
522.1696b Added **37332**
Heading, (d)(3)(ii) and (e)(1)(ii) corrected **42623**
522.1696c Added **37333**
522.2100 (a)(1) amended **21209**
522.2471 Added **12712**
522.2670 Revised 8543
524 Heading revised **37333**
524.154 Added **37333**
524.155 Added **37333**
524.390 Added **37333**
524.390a Added **37333**
524.390b Added **37333**
524.390c Added **37334**
524.390d Added **37334**
524.1005 (b)(1) amended **31314**
526 Heading revised **37334**

Page

526.88 Added **37334**
526.464 Added **37334**
526.464a Added **37334**
(c)(2) corrected **42623**
526.464b Added **37334**
(c)(2) and (3) corrected **42623**
526.464c Added **37335**
526.464d Added **37335**
526.1130 Added **37335**
526.1696 Added **37335**
526.1696a Added **37335**
(f) removed 500
526.1696b Added **37336**
526.1696c Added **37336**
(a) corrected **42623**
526.1696d Added **37336**
(c)(1)(iii) corrected **42623**
529 Heading revised **37336**
529.1030 (b) amended **42490**
529.2464 Added **37336**
536 Removed **37336**
539 Removed **37336**
540 Removed **37336**
540.274b (c)(3)(iv)(*c*) amended **32896**
544 Removed **37336**
546 Removed **37336**
546.180d (c)(6)(iv)(*d*)(*3*) amended **12711**
(c)(6)(i)(*a*)(*3*), (*b*)(*3*), (ii)(*d*), (iii)(*a*)(*3*), (*b*)(*3*), (*c*)(*3*), (iv)(*a*)(*3*) and (*b*)(*3*) amended **26996**
548 Removed **37336**
555 Removed **37336**
556.113 Revised **41862**
556.308 Amended **21209**
556.735 Added **12712**
558 Technical correction **21854, 44791**
558.4 (d) amended **38442**
558.15 (g)(1) table and (2) table corrected **14639**
558.55 (d)(2) table corrected; CFR correction **12712**
558.76 (d)(3)(xiii) revised **32176**
558.95 (a)(2) amended **23059**
558.235 Added **38442**
558.258 (a) and (c)(1)(i) revised; (c)(1)(ii) and (iii) redesignated as (c)(1)(i)(A) and (B); new (c)(1)(ii) through (v) added **34516**
558.274 (a)(2), (4) and (c)(1) table amended **37410**
558.325 (c)(4)(ii) added **34517**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

558.335 (f)(3)(ii)(a) revised; (f)(3)(ix) added 11683
558.355 (b)(7) and (14) revised 23953
(b)(11) revised; (f)(1)(xxv) added 46504
(f)(3)(ix) amended 4316
558.363 (c)(1)(vi) added 32176
558.625 (b)(51) removed 23059
(b)(3) added 37410
(b)(28) removed 54176
558.630 (b)(10) amended 37410
573 Hearing 28606
Hearing denied 33244
Technical correction 40318
573.870 (a) table amended 24187
601 Regulation at 57 FR 58942 corrected 61489
Technical correction 61489
Technical correction 4316
601.40—601.46 (Subpart E) Added 58959
606.60 (c) amended 11263
(c) corrected 12862
601 Technical correction 4078
807.3 (n) through (q) added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.87 (h) redesignated as (k); new (h), (i) and (j) added; interim 18066
Regulation at 57 FR 18066 stayed 23059
(i)(2) corrected 29354
807.92 Added; interim 18066
Regulation at 57 FR 18066 stayed 23059
807.93 Added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.94 Added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.95 (c)(3) removed; (d) redesignated as (e); new (d) added; interim 18067
Regulation at 57 FR 18067 stayed 23059
807.100 Added 58403
812 Extension of applicability 12875, 29001
814.44 (a) revised 58403
821 Added 22967
860.3 (c)(1) amended; (c)(2) and (3) revised 58403

Page

860.84 (a) amended 58404
860.120 (c) amended 58404
860.130 (e) and (f) amended; (c) through (f) redesignated as (d) through (g); new (c) added 58404
860.134 Heading, (a) introductory text, and (b)(3) revised 58404
861 Authority citation revised 58404
861.1 (a) and (b) revised 58404
861.20 Revised 58404
861.22 Removed 58405
861.24 (a) introductory text and (b) revised 58405
861.26 Removed 58405
861.28 Removed 58405
861.30 Revised 58405
861.32 Revised 58405
861.36 (c) amended 58405
861.38 (b)(2) revised 58405
888.3358 (Subpart D) Added 3228
895.20 Amended 58405
895.21 (b), (d)(4) and (8) revised 58405
895.30 (c) and (d) amended 58405
1220.40 (a) revised 38771
1240.3 (i) through (p) redesignated as (k) through (r); new (i) and new (j) added 57344
1240.61 (a) revised 57344

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1308.11 (g)(3) added 18825
(g)(4) added 43401
(d)(3) through (28) redesignated as (d)(4) through (29); new (d)(3) added 4317
(f)(1) through (4) redesignated as (f)(2) through (5); new (f)(1) added 4318
1308.12 (b)(1) introductory text revised 31126
1308.14 (c)(48) added 7187
1308.24 Regulation at 57 FR 5818 confirmed 36371
1308.26 Table revised; interim 19534
Regulation at 57 FR 19534 confirmed 36371

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 21 Chapter II—Con. Page

1308.32 Introductory text revised 23301
1308.34 Table revised 32423, 55091
1310.02 (b)(8) and (9) added 43615
1310.04 (f)(2)(iv) added 43615
1310.08 Added 43615

Chapter III—Office of National Drug Control Policy (Parts 1400—1499)

Chapter III Established 55089
1401 Added 59803
1402 Added 55089
1403 Added 55092
1404 Added 56262

Title 21—*Proposed Rules:*

1—1299 (Ch. I) 22447, 32185, 33283, 33915, 48008, 4953
5 ..... 11277, 19410, 29119, 32750
10 ..... 21044, 47314
12 21044
16 21044
20 ..... 11277, 19410, 21044, 28647, 29119, 32750, 36617
100 ..... 11277, 19410, 29119, 2957
101 ..... 11277, 12773, 19410, 29119, 32058, 32750, 32751, 37190, 47319, 2944, 2950
102 2950
103 ..... 382, 389, 393
105 ..... 11277, 19410, 29119
129 393
130 ..... 11277, 19410 29119
131 ..... 32470, 38095, 40255, 43059
135 520
146 23555
161 2950
163 ..... 23989, 28011, 54195
165 393
166 ..... 33916, 43634
182 37738
184 ..... 37738, 393
189 55485
201 47423
226 21044
310 ..... 38568, 40944, 53300
314 ..... 13234, 27202, 30802
334 23174
341 ..... 27658—27666, 33663, 34733—34735, 58378
355 ..... 19823, 21332, 55199, 6102
356 ..... 20434, 28555, 30534
500 21044
510 21044
511 21044
514 21044
601 ..... 13234, 19410, 27202, 30802
808 47314
812 60491
821 ..... 12376, 20656, 22971, 31754
864 ..... 43161, 46068
872 ..... 43165, 46068, 56876
876 4116
878 3436
880 27397
884 42908
890 27397
1301 ..... 15037, 33465, 36439, 60148
1304 ..... 15037, 33465, 36439
1308 ..... 11447, 32937, 55201, 4370
1311 60148
1400-1499 (Ch. III) 31160
1401 45353

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

41 Authority citation revised 31447
41.11 (b)(1) revised 31448
41.12 Revised 31448
41.53 Revised 31449
41.54 Revised 31449
41.55 Revised 31450
41.56 Revised 31450
41.57 Revised 31450
43 Authority citation revised 28980
43.12 (d) added 28980
43.13 Revised 28981
43.14 Revised 28981
43.15 Revised 28982
43.17 Revised 28982
51.21 (c) introductory text, (1) and (d)(1) revised; (d)(4) added 59807
121 Revised 15230
121.1 Amended; interim 32148
Amended 41078, 48316
172 Added 32896

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Chapter II—Agency For International Development, International Development Cooperation Agency (Parts 200—299)

Page

211 Revised....19766
215 Revised....38277

Chapter III—Peace Corps (Parts 300—399)

309 Revised....2978

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statements....46676

Chapter XI—International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

1101 Revised....24945

Title 22—*Proposed Rules:*

43 15266
51 39159
89 52600
120 ....19666, 27715
121 ....12774, 14671, 61589
122 ....19666, 27715
123 ....19666, 27715
124 ....19666, 27715
125 ....19666, 27715
126 ....19666, 27715
127 ....19666, 27715
130 ....19666, 27715
172 20656
309 55202
514 ....46679, 47585
1101 14674

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

1.4 Removed....60728
1.11 (d) removed....60728
1.31 Removed....60728
1.34 Removed....60728
1.37 Removed....60728
1.38 Removed....60728
12 Removed....60728
17 Removed....60728
140 Authority citation revised....6714
140.101—140.111 (Subpart A) Removed....60728
140.301-140.311 (Subpart C) Added....6714
470.301—470.307 (Subpart C) Removed....60728
490 Removed....60728
642 Removed....60728
650.305 (c) revised; interim....53281
650.501—650.515 (Subpart E) Removed....60728
650.601—650.609 (Subpart F) Removed....60728
655.101—655.109 (Subpart A) Removed....60728
655.601 (a) revised....53030
655.701—655.707 (Subpart G) Removed....60728
661 Removed....60728
666 Removed....60728
770 Removed....60728
771.135 (n)(i), (ii) and (iii) redesignated as (n)(1), (2) and (3)....12411
920 Removed....60728
922 Removed....60728

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1204.4 Amended....56991
1212 Added....35999

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1313 Revised; interim....29011

Title 23—*Proposed Rules:*

1-999 (Ch. I) 17868, 21915, 23460, 54191
1 21362
12 21362
17 21362
140 ....21362, 31467
172 53631
470 21362
490 21362

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 23—Con.

Page
625 6914
642 21362
650 ..... 21362, 29689
655 21362
..... 288
657 11450
658 11450
659 186
661 21362
666 21362
750 ..... 19823, 21152, 31470, 34168
770 21362
920 21362
922 21362
1200-1299 (Ch. II) 54191
1215 4622
1260 186
1300-1399 (Ch. III) 54191

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

0 Authority citation revised..... 28783
0.735-101 Revised..... 28783
0.735-102 Revised..... 28783
0.735-104 Revised..... 28783
4 Authority citation revised..... 34248
4.5 Amended..... 34248
4.10 (a) revised..... 34249
4.100 (b) revised..... 34249
20 Authority citation revised..... 20201
20.3 (a) revised..... 20201
20.10 Amended..... 20201
24.700 Amended..... 58339
24.710 (a)(3) revised..... 58339
25 Revised..... 31051
Regulation on 57 FR 31051 effective date corrected..... 31754
25.2 Corrected..... 37085
25.3 Corrected..... 37085
25.4 (b) corrected..... 37085
25.5 (b), (c)(3) and (d)(3)(i) corrected..... 37085
(c)(3) corrected..... 40111
25.9 (cc) corrected..... 37085
(b), (h) and (u) revised..... 58339
25.13 Corrected..... 37085
30.320 (c) introductory text and (k) revised..... 58339
44 Heading and authority citation revised..... 33254

Page
44.3 (c) amended..... 33254
44.6 (a) revised; (b) amended..... 33254
45 Added..... 33254
50 Authority citation revised... 12036, 32110
50.3 (i) added; interim..... 32110
50.17 (i) redesignated as (j); new (i) added; interim..... 32110
50.19 Added; interim..... 32110
50.20 (n) revised; interim..... 12036
(o) revised; interim..... 32110
70 Added; interim..... 14756
85 Authority citation revised..... 33255
85.26 (b)(1) and (2) amended..... 33255
91 Revised..... 40053
91.40 (c) corrected..... 46068
92.2 Amended; interim..... 58863, 60964
92.50—92.52 (Subpart B) Heading revised; undesignated center heading added; interim..... 58864
92.50 (b) revised; interim..... 58864
92.60—92.66 Undesignated center heading and sections added; interim..... 58864
Added; interim..... 58864
92.101 (a) revised; interim..... 60964
92.150 (b)(3) and (c)(7) revised; interim..... 60965
92.151 (d) redesignated as (e); (a) and new (e) revised; new (d) added; interim..... 60965
92.204 (a)(2)(i)(A) and (B) revised; interim..... 60965
92.205 (c) revised; interim..... 60965
92.206 (a)(4) redesignated as (c)(5) and revised; (f) added; interim..... 60965
92.211 (a)(2) revised; interim..... 60966
92.214 Revised; interim..... 60966
92.220 (a)(1)(i) and (2) revised; (b)(3) and (4) amended; (b)(5) added; interim..... 60966
92.250 Revised; interim..... 60966
92.251 Revised; interim..... 60966
92.252 (a)(1)(ii), (2) introductory text, (5) introductory text and (c) revised; (e) added; interim..... 60967
92.254 (a)(1)(ii) and (4) revised; (c) added; interim..... 60967
92.300 (c) revised; interim..... 60968
92.500 (a) and (d)(1) through (4) revised; (d)(5) removed; interim..... 60968

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

92.502 (d) revised; (g) added; interim....60968
92.504 (c)(13) amended; interim....60968
0—99 (Subtitle A) Appendix A amended; interim....14758

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

100.135 (c) and (d) corrected....2988
103 Authority citation revised....18398
103.200 (a) introductory text and (3) revised....39116
103.400 (a)(1) and (2)(ii) revised....18398
135 Authority citation revised....40113
135.1 (a) revised....40113
135.5 (g) revised....40113
135.10 Revised....40113
135.15 Revised....40113
135.20 Amended....40113
135.65 Revised....40113
135.125 Removed....40113
135.140 Removed....40113

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200 Authority citation revised....27927
200.141 (b) revised....58339
200.145 (b) amended....58339
200.146 (a) revised....58339
200.147 Amended....58340
200.148 (a)(2) amended....58340
200.150 (b) revised....58340
200.152 Revised....58340
200.163 Removed....58340
200.164 Removed....58340
200.164a Removed....58340
200.926 (a)(2) revised....58340
200.926d OMB number....27927
200.1105 Amended....58340
201 High-cost limits....12715, 62187
201.2 (j) introductory text and (hh) revised....45246
201.10 (a)(1)(i), (ii), (iii) and (2) revised....45246

Page

201.11 (a) and (c)(1) revised....45246
201.55 (a)(1) revised....30395
202 Authority citation revised....31056
Heading revised....58340
202.1—202.8 Designated as Subpart A; heading added; authority citation revised....58340
202.2 (c) and (d) revised....58340
202.3 (a) revised....58340
202.8 (a) introductory text, (b)(1), (c) and (d) revised....31056
Regulation at 57 FR 31056 effective date corrected....31754
(d) corrected....37085
202.10—202.19 (Subpart B) Added....58340
203 High-cost limits....12715, 44098, 62187
Authority citation revised....15211, 27927, 47970
Heading revised....58345
203.1—203.249 (Subpart A) Heading and undesignated center headings revised....58345
203.1 Revised....58345
203.2 Removed....58345
203.3 Revised....58345
203.4 Removed....58345
203.5 Revised....58345
203.6 Removed....58345
203.7 Revised....58345
203.10 Removed....58345
203.11 Removed....58345
203.13 Removed....58345
203.14 Revised....58345
203.16a (a) and (b) revised; (c) added....58346
203.17 (c)(3) and (d) revised....58347
203.18 (c) revised....15211
203.27 (a)(3)(v) and (d) revised....58347
203.30 (a) revised....58347
203.43h (b)(1), (d) introductory text, (3) and (f) revised; (b)(2) amended....58347
203.43i (d) introductory text, (g) introductory text and (2) revised....58347
203.50 (h) revised....58347
203.51 (2) revised....58347
203.52 OMB number....27927
203.248 Revised....58347
203.249 Revised....58348
203.255 Revised....58348

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 24 Chapter II—Con. Page

203.258 (c) introductory text, (2), (d) introductory text, (2) and (e) revised....58349
203.259 (a) revised....15211
203.259a (b) and (c) revised; interim....46983
203.270 (c) revised....15211
(c) revised; interim....46983
203.284 Undesignated center heading and section revised....15211
Amended; interim....46983
203.285 Added; interim....46983
203.355 Revised....47970
203.356 Revised....47971
203.359 Revised....47971
203.363 Revised....47971
203.364 Revised....47971
203.365 Revised....47972
203.366 Existing text designated as (a) and amended; (b) added....47972
203.369 (a) and (b) revised....47972
203.377 Revised....47972
203.378 (a) heading, (c) and (d) added; (b) revised....47973
203.379 Revised....47973
203.380 Revised....47973
203.387 Revised....47974
203.391 Revised....47974
203.402 (f) amended; (g), (j) and (k)(1) revised; (p), (q) and (r) added....47974
203.415 (b) revised....58349
203.441 Revised....58349
203.479 Revised....58349
203.499 Revised....58349
203.502 (b) amended....47974
(a) revised....58349
203.550 OMB number....27927
204 Authority citation revised....15212
204.1 Revised....58349
204.2 (a) introductory text, (1), (5) and (b)(1) revised....58349
204.260 Revised....15212
Revised; interim....46984
204.270—204.275 Undesignated center heading revised....15212
204.271 (a) revised....15212
204.276 Undesignated center heading and section revised....15213
Revised; interim....46984
206.9 (b) revised....58350

Page

207 Authority citation revised....33255, 33849
Authority citation revised....9542
207.19 (f)(6) added....33255
207.22 Revised....58350
207.24a Added....33849
207.32a (n) added; interim....9542
207.259 (a) introductory text revised....55112
207.263 Added....58350
213 Authority citation revised....33255
213.30 (h) redesignated as (i); new (h) added....33255
213.39 Revised....58350
213.41 Added....33850
213.501—213.749 (Subpart C) Undesignated center heading revised....58350
213.502 Revised....58350
213.503 Revised....58350
213.504 Removed....58350
213.505 Removed....58350
213.510 (a) revised....58350
213.752 (e) redesignated as (f); new (e) added....58350
215 Authority citation revised....33850
215.16 Added....33850
219 Authority citation revised....12036
Revised....32405
219.325 (b) introductory text and (3) introductory text revised; (b)(5) added; interim....12036
220 Authority citation revised....33850
220.104 Introductory text and (a) revised....58350
220.105 (c) revised....58350
220.253 (e) redesignated as (f); new (e) added....58351
220.506a Added....33850
220.563 Revised....58351
221 Authority citation revised....12036, 33255, 33850
221.30 Revised....58351
221.32 Revised....58351
221.70 (a)(2) revised....58351
221.252 (e) revised....58351
221.524 (e) revised; interim....12036
221.528 Revised....58351
221.530 (f) added....33255
221.538 (b)(2) revised; interim....14758

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

221.545a Added....33850
221.770 Amended....58351
222.254 (e) revised....58351
226.252 (e) redesignated as (f); new (e) added....58351
227.1 (a) revised....58351
227.501 (a) revised....58351
227.545 Revised....58351
231 Authority citation revised....33850
231.8 (b)(2) revised; interim....14758
231.15 Added....33850
232 Authority citation revised....33255, 33850
232.45 (c) added....33255
232.70 Revised; interim....14758
232.73 Revised; interim....14758
232.591 Added....33850
233.5 (a)(5) and (6) removed....58352
234 High-cost limits...12715, 44098, 62187
Authority citation revised...27927, 33850
234.1—234.249 (Subpart A) Undesignated center heading revised....58352
234.5 Revised....58352
234.10 Revised....58352
234.11 Removed....58352
234.12 Removed....58352
234.16 (a) revised....58352
234.17 (a) and (b) revised; (c) and (d) added....58352
234.25 (c)(2) and (4) revised....58352
234.64 OMB number....27927
234.85 (a)(2) removed....58352
234.249 Revised....58352
234.256 (e) revised....58352
234.521 Added....33851
235 Authority citation revised....62453
235.4 Amended....62453
235.1200—235.1222 (Subpart H) Added....62453
236 Authority citation revised....12036
236.55 (b) revised; interim....12036
236.60 Revised; interim....12036
236.85 Added....33851
236.901 (Subpart E) Revised....33256
237.5 Revised....58353
240.16 (b)(4) revised....58353
241 Authority citation revised....12036
241.40 Revised....58353
241.166 Added; interim....12036

Page

241.251 (a) heading and (c) added; interim....12037
241.1000—241.1120 (Subpart E) Revised; interim....12037
241.1040 Revised....58353
241.1200—241.1250 (Subpart F) Revised; interim....12040
242 Authority citation revised....33256
242.25 Revised....58353
242.67 (b) revised; interim....14758
242.79 Existing text designated as (a); (b) added....33256
242.87a Added....33851
244.25 Revised....58353
248 Authority citation revised....12041, 57314
248.1—248.7 (Subpart A) Revised; interim....12041
248.101—248.183 (Subpart B) Added; interim....12042
248.101 Amended; interim....57314
248.111 (d) revised....4871
248.145 (a)(1) revised; interim....57314
248.183 (c) revised; interim....57314
248.201—248.261 (Subpart B) Redesignated as subpart C; interim....12041
Heading revised; interim....12060
248.201 Amended; interim....57314
248.213 (b)(9) redesignated as (b)(10); new (b)(9) added; interim....12060
248.221 (c) and (d) added; interim....12060
248.233 (f) added; interim....12060
248.234 (c) redesignated as (d); new (c) added; interim....12060
248.235 Removed; interim....12060
248.300—248.319 (Subpart D) Added; interim....12060
277.12 Added....33256
280 Authority citation revised....33256
280.207 (h) amended....33256

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570 Authority citation revised....27119, 40067

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 24 Chapter V—Con. Page

Authority citation revised; subpart and sectional authority citations removed..... **53397**
570.200 (f)(1)(ii) revised; interim..... **27119**
570.201 (e) revised; (n) added; interim..... **27119**
570.306 (b) and (c) revised..... **40067**
570.480—570.487 Added..... **53397**
570.488 Removed; new 570.488 redesignated from 570.496a..... **53397**
570.489 Revised..... **53402**
570.490 Revised..... **53405**
570.491 Revised..... **53406**
570.492 Revised..... **53406**
570.493 Revised..... **53406**
570.494 Revised..... **53406**
570.495 Revised..... **53406**
570.496 (c) revised; interim..... **14759**
Revised..... **53407**
570.496a Redesignated as new 570.488..... **53397**
570.497 Removed..... **53397**
570.498 Removed..... **53397**
570.499 Removed..... **53397**
570.499a Removed..... **53397**
570.500 (a)(1)(v) revised; (c) amended; (a)(3) added; interim..... **27120**
570.501 (b) amended; interim..... **27120**
570.502 (b) introductory text and (4) revised..... **33256**
570.503 (b)(8) introductory text amended; (b)(8)(ii) revised; interim..... **27120**
570.603 Revised; interim..... **14759**
570.610 Amended..... **33256**
570.611 (b) revised; interim..... **27120**
571 Revised; interim..... **11837**
Comment period extended..... **58139**
571.301 (a)(1) correctly revised; interim..... **20970**
574 Added; interim..... **32111**
Revised..... **61740**
575 Authority citation revised..... **33256**
575.59 (h) amended..... **33256**
576 Authority citation revised..... **33256, 54507**
576.51 (b)(2)(i) corrected..... **11430**
576.67 (c)(4) removed; (d) and (e) introductory text revised; interim..... **54507**
576.79 (i) amended..... **33256**

Page

577 Authority citation revised..... **33256**
577.335 (g) amended..... **33256**
578 Authority citation revised..... **33256**
578.335 (g) amended..... **33256**
579 Authority citation revised..... **33256**
579.325 (g) amended..... **33256**

Chapter VII—Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

700 Added..... **58055**
750.3 Regulation at 56 FR 27111 corrected..... **11263**
750.5 Regulation at 56 FR 27111 corrected..... **11263**
770 Added; interim..... 4268

Chapter VIII—Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

880 Authority citation revised..... **33256, 33851**
880.207 (g) added..... **33851**
880.210 (d) revised; interim..... **14759**
880.211 Existing text designated as (a); (b) added..... **33256**
881 Authority citation revised..... **33257, 33851**
881.207 (g) added..... **33851**
881.210 (d) revised; interim..... **14759**
881.211 Existing text designated as (a); (b) added..... **33257**
882 Authority citation revised..... **33851**
882.109 (r) added..... **33851**
882.404 (b)(3) revised; interim..... 4270
882.407 (c)(6) revised; interim..... **14759**
882.708 (d) revised; interim..... 4270
882.713 (c)(7) revised; interim..... **14759**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

882.804 (c)(1) revised; interim....14760
883 Authority citation revised....33257, 33851
883.310 (c) added....33851
883.312 (d) revised; interim....14760
883.313 Existing text designated as (a); (b) added....33257
884 Authority citation revised....33257, 33852
884.110 (d) added....33852
884.113 (d) revised; interim....14760
884.124 Existing text designated as (a); (b) added....33257
884.207 (b)(5) revised; interim....14760
885 Authority citation revised....33257, 33852
885.10 Added....33257
885.429 Added....33852
885.717 (d) added....33852
885.740 (d)(1)(i) and (ii) revised; interim....14760
886 Authority citation revised....33257, 33852
886.113 (m) redesignated as (n); new (m) added....33852
886.131 Existing text designated as (a); (b) added....33257
886.307 (p) added....33852
886.313 (c)(2) revised; interim....14760
886.336 Existing text designated as (a); (b) added....33257
887 Authority citation revised....33852
887.251 (m) added....33852
888 Schedules B and D revised....45468
Schedule C revised....4272, 11526
889 Authority citation revised....33853, 36339
889.230 (f) added; interim....4270
889.265 (d) revised; interim....14760
(g) added....33853
889.400—889.430 (Subpart D) Revised; interim....36339
889.500—889.530 (Subpart E) Added; interim....36342
890 Authority citation revised....33853, 36331
890.230 (h) added; interim....4270
890.260 (d)(1) and (2) revised; interim....14761
(h) added....33853
890.400—890.430 (Subpart D) Revised; interim....36331

Page

890.500—890.530 (Subpart E) Added; interim....36334

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

901 Regulation at 57 FR 2188 comment time extended....23953
905 Revised....28250
Authority citation revised....33853
905.120 (c)(1) and (2) revised; interim....14761
(e)(2) revised....40114
905.135 (g)(2) revised....40114
905.160 (a)(2), (3)(ii) and (iii) introductory text revised; (a)(3)(iv) added; (a)(4), (5) and (7) amended....40115
905.165 (c)(2) amended....40115
905.170 (a) introductory text amended....40115
905.175 (b)(2) introductory text removed; (b)(2)(i)(A), (c) introductory text, (1), (d)(1) introductory text and (ii) amended....40115
905.180 (a)(1) introductory text amended....40115
905.210 (a) designation and (b) removed....40115
905.212 (a) and (b) amended....40115
905.215 (a)(1), (2) and (3)(ii) revised....40115
905.225 (a)(1) amended....40116
905.245 (a) and (b) revised....40116
905.250 (c) amended....40116
905.255 (g) amended....40116
905.260 (a) through (d) and (f) revised....40116
905.265 (b) amended....40116
905.335 Amended....40117
905.346 Added....33853, 40117
905.350 Removed....40117
905.407 (b)(3) revised....40117
905.413 (b) revised....40117
905.416 (d) amended....40117
905.427 (b) heading revised; (b)(1) and (e) amended....40117
905.431 (a) amended....40117
905.434 (b) introductory text amended....40117

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 24 Chapter IX—Con.

Page

905.440 (e)(1) correctly designated....37085
(e)(5) amended....40117
905.443 (a)(2), (b)(1) and (c)(3) amended; (g) added....40117
905.602 (d) added....28785
905.627 (b) revised....28785
905.639 (c) correctly revised....15014
905.923 (b)(3) revised....40118
905.925 Removed....40118
905.963 Heading corrected....37085
905.1001—905.1021 (Subpart O) Regulation at 56 FR 47860 effective date extended through 1-20-93....31962
Regulation at 56 FR 47860 effective date extended....6092
906 Regulation at 56 FR 47866 effective date extended through 1-20-93....31962
Regulation at 56 FR 47860 effective date extended....6092
941.202 (d) revised; interim....4270
941.208 (d) revised; interim....14761
961 Revised....3163
961.40 (a)(2) introductory text revised; (a)(2)(iii) added; interim....14761
963 Added....20189
965 Authority citation revised....33853
965.101 (d) amended....28358
965.302 Revised....28358
965.401 Amended....28358
965.471 Revised....28358
965.472 Amended....28358
965.701 Revised....28358
965.800—965.805 (Subpart I) Added....33853
968.102 (d) added....28785
968.110 (e)(1), (2) and (f) revised; interim....14761
968.225 (b) revised....28785
990 Authority citation revised....61231
990.301—990.325 (Subpart C) Added....61231
Regulation at 57 FR 61231 comment period extended (OMB number pending)....4318

Chapter XII—Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

Page

2003 Added....62142

Chapter XX—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

3500 Revised....49607
Interpretive rule....5520
3500.2 (a)(3)(ii)(D) corrected....56857
3500.13 (a) corrected....56857
3500.14 (g)(4) corrected....56857
3500.15 (b)(2) corrected....56857
3500.20 (d)(2)(ii) corrected....56857
3500 Appendixes A through D corrected....56857

Title 24—*Proposed Rules:*

10....47166
50....13592
55....13592
92....34640
200....13592
203....13592, 24424
204....13592, 24424
207....37119
213....37119
220....37119
221....37119
231....37119
232....37119
234....37119
242....37119
244....37119
251....59314
252....59314
255....59314
290....34834
770....8187
812....12686
813....11292
880....49120
881....49120
882....12686, 49120
....8187, 11292
883....49120
884....49120
886....34834, 49120

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

887 12686
..... 11292
888 ..... 18684, 49120
889 8187
890 8187
905 ..... 27716, 54196, 59316
912 12686
941 8187
965 54196
982 11292
990 ..... 11448, 27716
2003 38804

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

101 Authority citation revised 46471
101.1 Revised 46471
101.3 (a) amended 46471
101.4 Amended 46471
101.6 (a) amended 46473
101.11 (b) and (c) revised 46472
101.15 (j) through (s) added 46472
101.20 Removed; new 101.20 redesignated from 101.21; (e) removed; (f) redesignated as (e) 46472
101.21 Redesignated as 101.20; new 101.21 redesignated from 101.22 46472
101.22 Redesignated as 101.21; new 101.22 redesignated from 101.23 46472
101.23 Redesignated as 101.22; new 101.23 redesignated from 101.24 46472
101.24 Redesignated as 101.23; new 101.24 redesignated from 101.25 46472
101.25 Redesignated as 101.24; new 101.25 redesignated from 101.26 46472
101.26 Redesignated as 101.25 46472
103 Authority citation revised 46472
103.1 Revised 46472
103.7 Amended 46473
103.10 (e) and (f) added 46473
103.13 (a) revised 46473
103.15 Heading, (a) and (c) revised 46473

Page

103.16 Revised 46473
103.17 (a) amended 46473
103.23 (b) amended 46473
103.27 Amended 46473
103.30 (a) revised 46473
103.34 Amended 46473
103.36 Revised 46473
103.38 Amended 46474
103.42 (a) introductory text revised; (a)(5) added; (c) amended 46474
103.43 Revised 46474
103.44 Amended 46474
103.46 Existing text designated as (a); (b) added 46474
103.51 Amended 46475

Chapter III—National Indian Gaming Commission (Parts 500—599)

501 Added 5810
Technical correction 8449
502 Added 12392
Effective date corrected 20145
515 Added 5815
Technical correction 8449
519 Added 5810
Technical correction 8449
522 Added 5810
Technical correction 8449
523 Added 5812
Technical correction 8449
524 Added 5812
Technical correction 8449
531 Added 5828
Technical correction 8449
533 Added 5829
Technical correction 8449
535 Added 5830
Technical correction 8449
537 Added 5831
Technical correction 8449
539 Added 5832
Technical correction 8449
556 Added 5813
Technical correction 8449
558 Added 5814
Technical correction 8449
571 Added 5842
571.2 Corrected 8449
573 Added 5844
Technical correction 8449
575 Added 5844
Technical correction 8449
577 Added 5845

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 25 Chapter III—Con. Page
Technical correction..... 8449

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.709 (d) revised..... **24363**

Title 25—*Proposed Rules:*

23 4046
67 ..... **45252**
211 ..... **40298**
212 ..... **40298**
248 ..... **45258**
515 ..... **30346, 30353, 34809**
517 ..... **55212**
519 ..... **30346, 34349**
522 ..... **30346, 34349**
523 ..... **30346, 34349**
524 ..... **30346, 34349**
531 ..... **37656**
533 ..... **37656**
535 ..... **37656**
537 ..... **37656**
539 ..... **37656**
556 ..... **30346, 34349**
558 ..... **30346, 34349**
571 ..... **30584, 34809**
575 ..... **30584**
577 ..... **30584, 34809**

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended...**10994, 12210, 12419, 13022, 14795, 15241, 19255, 20748, 20977, 22649, 24749, 36002, 38282, 38596, 40121, 40321, 40843, 41649, 44978, 45711, 48981, 53032, 54923, 55448, 58984, 60988, 61298, 61316, 61800, 61808, 61812, 61818**
Authority citation amended...232, 236, 4080, 5271, 5929
Technical correction...**21152, 21855, 21894, 31754, 47994, 57280**
Technical correction..... 7988
1.32-1 Redesignated from 1.43-1..... **54923**
1.32-2 Redesignated from 1.43-2..... **54923**
1.42-4 Added..... **24749**
1.42-5 Added; eff. 6-30-93..... **40121**
(c)(1)(vii), (c)(3), (e)(2) and (f)(1)(ii) corrected..... **57280**
(c)(2)(i) and (ii) corrected..... 7748
1.43-0 Added..... **54923**
1.43-1 Redesignated as 1.32-1; new 1.43-1 added..... **54923**
(a)(2) *Example* 2 corrected..... 7987
(g) *Example* 1 corrected..... 7987
1.43-2 Redesignated as 1.32-2..... **54923**
Added..... **54925**
Regulation at 57 FR 54926 corrected..... 6678
1.43-3 Redesignated from 1.43-3T; (a)(3)(ii)(B) and (e) removed; (a)(3)(i)(C)(*2*) and (ii)(C) redesignated as (a)(3)(i)(C)(*3*) and (ii)(B); heading, (a)(3)(i)(C)(*1*), new (a)(3)(i)(C)(*3*) and (ii)(B) amended; new (a)(3)(i)(C)(*2*), (ii)(C) and (D) added; (a)(3)(ii)(A) revised..... **54927**
1.43-3T Redesignated as 1.43-3..... **54927**
1.43-4 Added..... **54927**
(e)(3) *Example* 2 corrected..... 79887
1.43-5 Added..... **54930**
1.43-6 Added..... **54930**
1.43-7 Added..... **54930**
1.56(g)-0 Amended..... **60476**
1.56(g)-1 (a)(6)(i) and (d)(2)(ii)(B) revised; (a)(7), (f)(3), (m), (r) and (s) added..... **60477**
1.58-9 Added..... **19255**
(c)(3)(iii)(A)(*3*)(*iii*), (d) *Example* 1, *Example* 2 and (e)(2)(i) corrected..... **24848**
1.58-9T Removed..... **19262**
1.61-2T (c)(3)(i) heading and (ii) removed; (c)(3)(i) redesignated as (c)(3)..... **62195**
1.61-3 (a) amended..... **12419**
1.61-21 (a)(7), (c)(2)(i), (3)(i), (4) and (7) amended; (c)(1), (3) heading, (3)(i) heading and (ii) revised; (c)(2)(ii) and (iii) redesignated as (c)(2)(iii) and (iv); new (c)(2)(ii) added..... **62195**
1.62-1 Added..... **57668**
(c) corrected..... **60568**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

1.62T (c)(2) and (f) removed; (e)(1) amended 57668
1.62-2 (c)(1), (5), (d)(3)(ii), (e)(2), (h)(2)(i)(B)(*1*) amended 57668
1.62-25 (b) corrected 60568
1.67-3 Added 40321
1.79-3 (d)(2) revised 33635
1.79-3T Removed 33635
1.103-13 (f) removed 20977
1.103-14 (e) removed 20977
1.103-15 (c) revised 20977
1.103-18 (a), (c)(2)(B), (d), (f)(2)(i), (ii), (g)(3)(ii) and (3)(iv) corrected; (k)(2)(i) correctly designated 13027
(l)(2)(i) corrected; (l)(3) correctly added 13028
(c)(1)(iii) corrected 26891
(c)(2)(ii)(B) corrected 28611, 36001
1.108-2 Added 61808
1.132-0 Amended 62196
1.132-1 (g) amended 62196
(g) corrected 7296
1.132-5 (b)(1)(iv) amended 57669
(m)(1) amended; (m)(2)(i) revised; (m)(6) redesignated as (m)(8); (m)(2)(v), (3)(iv), new (6), (7), (new (8) *Examples* 6 and 7 and (r) added 62196
1.148-0 Added 20977
(b)(3) and (d) corrected 44989
(b)(4) corrected 45878
1.148-0T Removed 20977
1.148-1 Added 20982
(a) corrected 44989
(b)(1)(ii) corrected 45878, 48851
1.148-1T Removed 20977
1.148-2 Added 20984
(c)(1), (2) *Example* 2, (d)(2) and (4) corrected 44990
(b)(2)(iii) and (c)(2) *Example* 3 corrected 45878
(c)(2) *Example* 3 corrected 48851
1.148-2T Removed 20977
1.148-3 Added 20987
(b)(7)(iv)(B), (c)(7) *Example* 2, (d)(4) *Example* 9 and *Example* 11 corrected 44990
(c)(7) *Example* 9 and (d)(4) *Example* 11 corrected 45879
1.148-3T Removed 20977
1.148-4 Added 21005
(c)(5), (d)(3)(ii) and (e)(6)(i)(A) corrected 44990
1.148-4T Removed 20977

Page

1.148-5 Added 21011
(c)(1)(iii) corrected 44990
1.148-5T Removed 20977
1.148-6 Added 21012
(i)(2) corrected 44990
(b)(5)(ii) and (m)(4) corrected 45879
1.148-6T Removed 20977
1.148-7 Added 21020
1.148-7T Removed 20977
1.148-8 Added 21020
(c)(3), (d)(3), (e)(13), (14) and (h)(4) corrected 44990
1.148-8T Removed 20977
1.148-9 Added 21024
(h) correctly removed 44990
1.148-9T Removed 20977
1.148-10 (c) through (i) added 21024
1.148-10T Removed 20977
1.148-11 Added 21025
(b)(2)(i) introductory text, (C), (c)(1)(i)(A), (e)(2)(i), (ii), (f)(2)(vii), (3), (g) and (j)(5) corrected 44990
Heading and (j)(3) corrected 45879
Heading corrected 48851
1.148-12T Added 21030
1.148-13T Added 21031
(b)(1) corrected 44991
1.149(d)-1 Added 21031
(d)(2) corrected 44991
1.149(d)-1T Correctly removed 44991
1.149(e)-1 Added 36002
1.149(e)-1T Removed 36002
1.150-0 Added 21031
1.150-0T Correctly removed 44991
1.150-1 (g) corrected; (h)(1) correctly designated 13028
(a) through (e) revised 21031
1.150-1T Correctly removed 44991
1.162-10T Amended 43896
1.162-25 Added 57669
(b) corrected 60568
1.162-25T (b) removed 57669
1.163-12 Added 236
(b)(1) corrected 8098
1.166-2 (d)(3)(iii)(D), (E), and (iv)(C)(*2*) revised 45569
1.166-2T Added 45569
1.168(d)-0 Added 48981
1.168(d)(1) Added 48981
1.168(j)-1T Amended 43896
1.179-0 Added 61316

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 26 Chapter I—Con. Page

1.179-1 (j) redesignated as (k); (a) through (d), (e)(4), (f)(1), (h) and (i)(2) revised; (e)(1), (f)(2), (3) and new (k) amended; new (j) added.....**61316**
1.179-2 Revised.....**61318**
1.179-3 Redesignated as 1.179-4; new 1.179-3 added.....**61321**
1.179-4 Redesignated as 1.179-5; new 1.179-4 redesignated from 1.179-3.....**61321**
Introductory text and (a) revised; (b) removed; (c) through (g) redesignated as (b) through (f).....**61323**
1.179-5 Redesignated as 179-6; new 1.179-5 redesignated from 1.179-4.....**61321**
(a) concluding text amended.....**61323**
1.179-6 Revised.....**61323**
1.263(a)-1 (b) amended.....**12419**
1.263A-1T (a)(5)(i) revised.....**12419**
1.267(a)-3 Added.....237
1.274 (d)-1 Added.....**57669**
1.274-5T (e)(1)(ii), (l) and (m) amended; (g) revised.....**57669**
1.337(d)-1 (a)(5) Example 8 amended.....**53550**
1.337(d)-2 (c)(1)(i) introductory text amended.....**53550**
1.355-2 (d)(3)(iv) amended.....**28463**
1.367(e)-0T Removed.....5929
1.367(e)-0 Added.....5930
1.367(e)-1T Removed.....5929
1.367(e)-1 Added.....5930
(c)(3)(ii)(B) corrected.....11099
1.382-1 Removed; new 1.382-1 redesignated from 1.382-1T; heading and introductory text revised.....**45711**
1.382-1T Redesignated as 1.382-1.....**45711**
1.382-2 (a)(3)(ii) *Example* 2 and *Example* 3 corrected.....**24188**
Heading revised; (a)(3) redesignated as 1.382-3 (a)(1).....**45712**
1.382-2T (h)(4)(x)(J) added.....**12210**
(j)(2)(iii)(A) amended.....**38282**
(f)(7), (g)(4) *Example* 5, (h)(4)(x)(J) and (j)(2)(iii)(A) amended; (h)(4)(x)(Z) revised.....**45712**
(f)(7) corrected.....**52827**
1.382-3 (e) and (o) added.....**12210**

Page

Redesignated as 1.382-9; new 1.382-3 redesignated from 1.382-4; (a) heading and (2) added; (a)(1) redesignated from 1.382-2 (a)(3); (a)(1) introductory text, *Example* 1, *Example* 2, *Example* 3, (iii)(A), (B), (C) and (k)(2)(ii) amended.....**45712**
(a)(1)(ii) *Example* 1 corrected.....**52827**
1.382-4 Added.....**38282**
Redesignated as 1.382-3.....**45712**
Added.....**45713**
1.382-5 Added.....**45713**
1.382-6 Added.....**45713**
1.382-7 Added.....**45713**
1.382-8 Added.....**45713**
1.382-9 Redesignated from 1.382-3.....**45712**
(o)(2) amended.....**45713**
1.383-0—1.383-2 CFR correction.....**39359**
1.383-2 (c) correctly designated from 1.383-2T; CFR correction.....**39359**
1.383-2T Correctly designated as 1.383-2; CFR correction.....**39359**
1.401(a)(31)-1T Added.....**48166**
1.401(k)-1 (f)(3)(ii) correctly revised.....**59915**
1.402(c)-2T Added.....**48168**
1.402(f)-2T Added.....**48171**
1.403(b)-2T Added.....**48171**
1.404(a)-1T Amended.....**43896**
1.404(b)-1T Amended.....**43896**
1.404(d)-1T Amended.....**43896**
1.414(r)-8 (b)(2)(iii) revised.....**52591**
1.446-1 (c)(1)(ii) revised.....**12419**
1.451-3 (a)(8) added.....**12420**
1.451-6 (a)(1) revised.....**38595**
1.451-6T Removed.....**38595**
1.453C-3T (c)(4) amended.....**43896**
1.453C-8T (a)(1) amended.....**43896**
1.458-1 Added.....**38596**
(b)(5)(i) correctly designated; (e)(4) *Example* corrected.....**45879**
1.458-2 Redesignated from 1.458-10.....**38599**
1.458-10 Redesignated as 1.458-2.....**38599**
1.461-0 Added.....**12420**
1.461-1 (a)(2) and (3) revised.....**12420**
1.461-2 Heading and (g) revised; (f) and (h) removed.....**12421**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

1.461-3T Redesignated as 1.461-7T....12421
1.461-4 Added....12421
1.461-5 Added....12427
1.461-6 Added....12428
1.461-7T Redesignated from 1.461-3T....12421
1.461(h)-4T Removed....12421
1.468A-0 Amended....62199
1.468A-1 (b)(3) revised....62199
1.468A-2 (d)(2)(i) amended....62199
1.468A-3 (a)(1) amended; (h)(1)(iii) revised; (h)(2)(xii) and (i)(1)(ii) redesignated as (h)(2)(xv) and (i)(1)(ii)(A); (h)(2)(xiv) added....62199
1.468A-4 (d)(4) removed; (d)(5) and (6) redesignated as (d)(4) and (5); (a), (b)(3), (c)(4) and new (d)(5)(ii) revised....62199
1.468A-5 (a)(1)(i)(B), (a)(1)(iv), (a)(3)(i)(C) and (a)(3)(ii) revised; (a)(1)(iii) removed; (a)(1)(v) redesignated as (a)(1)(iii)....62200
1.468A-8 (b)(11) added....62200
1.468B Added....60988
1.468B-0 Added....60988
1.468B-1 Added....60989
(j)(2)(ii) introductory text and (k) corrected....7865
1.468B-2 Added....60991
(k) corrected....7865
1.468B-3 Added....60992
1.468B-4 Added....60994
1.468B-5 Added....60994
1.469-0 Added....20748
Amended....11538
1.469-0T Removed....20748
1.469-1 Added....20750
(f)(4)(iii) *Example* 6 corrected....28612
1.469-1T (d)(2), (e)(2), (3)(iii), (vi)(D), (E), (4)(iv), (5), (f)(4), (g)(4)(ii)(C), and (h)(4) revised....20753
1.469-2 Added....20754
(c)(7)(iv) through (vi), (d)(2)(x) and (xi) added; (d)(2)(ix) revised....11538
1.469-2T (c)(2)(iii), (iv), (6)(i), (ii), (iii), (iv) *Example* 1, *Example* 2, (d)(2)(ix), (5)(iii)(A), (6)(v)(E), (8), (e)(2)(ii), (iii), (3)(iii)(B), (f)(5)(i), (6), (9)(iii), (iv) and (10) revised....20758
(c)(7)(iv) through (vi), (d)(2)(x) and (ix) revised; (d)(2)(xii) added....11538
1.469-3 Added....20758
1.469-3T (e) and (f) revised....20758
1.469-5 Added....20758
1.469-5T (f)(1), (h)(3), (j) and (k) *Example* 5 revised....20759
1.469-6T Removed....20759
1.469-7T Removed....20759
1.469-8T Removed....20759
1.469-9T Removed....20759
1.469-10T Removed....20759
1.469-11 Added....20759
1.469-11T Removed....20759
1.482-1 Redesignated as 1.482-1A; eff. 4-21-93....5271
1.482-1A Redesignated from 1.482-1; undesignated center heading added; eff. 4-21-93....5271
1.482-2 Redesignated as 1.482-2A; eff. 4-21-93....5271
1.482-2A Redesignated from 1.482-2; eff. 4-21-93....5271
1.482-0T Added; eff. 4-21-93....5271
1.482-1T Added; eff. 4-21-93....5272
1.482-2T Added; eff. 4-21-93....5282
1.482-3T Added; eff. 4-21-93....5282
1.482-4T Added; eff. 4-21-93....5287
1.482-5T Added; eff. 4-21-93....5290
1.482-6T Added; eff. 4-21-93....5293
1.482-7T Added; eff. 4-21-93....5293
1.509(a)-3 (a)(3)(i) amended....33443
1.512(b)-1 (a) revised....33443
(a)(3) corrected....42490
1.593-11 (b)(1) amended; (e) added....61298
1.597-8T Added....14795
1.613A (e)(3)(ii)(B) corrected....6678
1.613A-0 Amended....43899
1.613A-2 (a)(3) revised; (b) and (c) redesignated as (c) and (d); new (b) added....43899
(a)(3) corrected....6678
1.613A-3 (e), (f), (i)(2) and (j)(1) added; (h)(1) amended 43900
(e) and (h) corrected....60474
1.613A-7 (e) added; (f)(1), (n), (o) and (r)(1) concluding text amended; (h) revised....43903
(r)(1) corrected....6678

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 26 Chapter I—Con. Page

1.613-1 (a) amended **43899**
1.636-4 (c)(2) amended **43896**
1.702-3T (c) amended **43896**
1.704-1 (b)(2)(ii)(*d*)(*6*) corrected; (b)(2)(iv)(*r*) amended **11430**
1.704-2 (f)(3), (h)(1), (4), (l)(1)(ii) and (m) *Example* 4 corrected **11430**
(b)(4), (c), (e)(3), (f)(7) *Example* 1, *Example* 2 and (i)(4) corrected **28611**
(a), (d)(4)(ii), (f)(7), (g)(1)(ii), (l)(1)(iii)(A) and (m) *Example* 1 and *Example* 3 corrected **37189**
1.705-1 (a)(2)(iii) revised; (a)(4) redesignated as (a)(6); new (a)(4) and (5) added **43904**
1.707-0 Added **44978**
1.707-2 Added **44978**
1.707-3 Added **44978**
1.707-4 Added **44981**
(a)(3)(ii), (4) *Example* 1 and *Example* 2 corrected **56444**
1.707-5 Added **44983**
1.707-6 Added **44987**
1.707-7 Added **44988**
1.707-8 Added **44988**
1.707-9 Added **44989**
1.846-0 Added **40843**
Corrected **48563**
1.846-1 Added **40844**
1.846-2 Added **40845**
1.846-3 Added **40845**
(f) *Example* 5 corrected **48563**
Regulation at 57 FR 40846 corrected **57531**
1.846-4 Added **40847**
1.848-2 (k)(2)(ii) corrected 7987
1.848-0 Added **61818**
1.848-1 Added **61819**
(h)(2)(vi) corrected 9245
1.848-2 Added **61821**
1.848-3 Added **61829**
1.856-3 (b) redesignated as (b)(1); new (b)(1) heading and (b)(2) added; (c) revised **61298**
1.856-9 (d)(2) amended **43896**
(d)(2) corrected **47373**
1.860A-0 Added **61299**
1.860A-1 Added **61299**
(b)(2)(ii) and (iii) corrected 8098
1.860C-1 Added **61299**
1.860C-2 Added **61299**

Page

1.860D-1 (a) and (b) added; (c)(2) revised **61**
1.80E-1 Added **61302**
(a)(1) corrected 8098
1.860E-2 Added **61302**
1.860F-1 Added **61302**
1.860F-2 Added **61302**
(c) corrected 8098
1.860F-4 (f) added **61306**
(f) corrected 8098
1.860G-1 Added **61306**
(b)(2) and (5) corrected 8098
1.860G-2 (a)(5), (6), (9), (d)(1) and (g)(1)(ii)(A) corrected 8098
1.860G-3 Added **61306**
1.861-10 Added **13022**
(e)(3)(ii), (iii)(A), (6) and (11) *Example* corrected **28012**
1.871-2 (c) added **15241**
1.871-9 Amended **15241**
1.884-0 Added **41649**
(b) corrected **49117, 60126**
1.884-0T Removed **41649**
1.884-1 Added **41651**
(d)(6)(iv), (e)(5) *Example* 2 and (f)(2)(iv) corrected **49117**
(b)(4) *Example* 5, (d)(2)(vii) and (3)(iii) *Example* corrected **60126**
1.884-1T Removed **41649**
(b)(3) and (c)(2) introductory text corrected **49117**
1.884-2T (a)(2)(i), (ii), (c)(2) introductory text, (iii), (3), (4)(iii), (5), (6) concluding text, (d)(3) introductory text, (ii) and (6) *Example* amended; (b) revised **41659**
(c)(3) corrected **60126**
(b) corrected **60126**
1.884-4 Added **41660**
(b)(5)(i), (c)(1)(iv) *Example* 1 and (3)(i) corrected **49117**
(b)(6)(ii) corrected **60126**
1.884-4T Removed **41649**
1.884-5 Added **41666**
(b)(1)(i)(D), (3)(i), (6)(iv), (e)(3)(iii) and (4)(ii) corrected **49117**
(b)(1)(iv)(B), (3)(iii) concluding text, (v) and (e)(4)(iii) corrected **60126**
1.884-5T Removed **41649**
1.904-0 Revised **20642**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

1.904-4 (c)(8) removed; (c)(9) redesignated as (c)(8); (b)(1)(i), (2)(i), (iv), *Example*, (c)(1), (2)(ii), (7)(ii), (iii), new (c)(8), (e)(3)(i) and (iii) amended; (c)(4) introductory text, (5)(ii), (iii), (6)(ii), (e)(1) and (2)(i)(V) revised; (c)(5)(iv) added; (e)(3)(iii)(A) designation removed; (e)(3)(iii)(B) redesignated as (e)(3)(iv)..... **20644**

(h)(3)(iv) and (v) redesignated as (h)(4) and (5), new (h)(5)(A), (B) and (C) redesignated as (h)(5)(i), (ii) and (iii); (e)(3)(iv), (f), (g)(1), (2)(ii)(A), (iv), new (h)(5)(i) and (ii) amended; (e)(5)(i), (ii), (g)(3)(i), (h)(3)(iv), (5)(iii) *Example* 2, *Example* 4 and (l) added; (h)(2), (3) introductory text, (i), (ii), (iii), new (h)(4) introductory text, *Example* 1, *Example* 2, *Example* 3, (5)(iii) introductory text, *Example* 1 and (k) revised..... **20645**

(c)(1) corrected..... **45660**

1.904-5 (a) introductory text, (3), (b), (c)(1)(i), (ii), (2)(iii)(A) and (2)(iv) amended; (c)(2)(i), (ii) introductory text, (ii)(B), (D) and (E) revised..... **20648**

(c)(3), (4)(ii), (d)(2), (3), *Example* 1, *Example* 2, (e)(1), (f)(1), (2), (i)(1), (l), (m)(2) and (3) *Example* 4 amended; (c)(4)(iii) *Example* 1, (d)(1), (f)(3), (g), (h)(3), (i)(3), (j), (k)(1) and (m)(7) revised; (f)(2) redesignated in part as (f)(2)(i) and amended; (f)(2)(ii) and (i)(4) added..... **20649**

1.904-6 Heading, (a) heading, (2) and (b)(2)(i) revised; (a)(1)(ii), (b)(1) and (c) amended; (a)(1)(iv) added..... **20652**

1.904-7 (a) revised; (c) and (d) amended..... **20653**

1.904(b)-3 (f) amended..... **15241**

1.953-2 (d) amended..... **15241**

1.985-0 Amended..... 232

Page

1.985-0T Correctly designated and removed..... 11099

1.985-5 Added..... 232

(f) table corrected..... 11099

1.985-5T Removed..... 232

1.985-6 Added..... 232

1.985-6T Removed..... 232

1.1275-3 Added..... **40322**

(c)(1) corrected..... **46243**

1.1286-1 Added..... **61812**

1.1286-1T Removed..... **61812**

1.1291-0T Revised (temporary)..... **10994**

1.1291-9T Added (temporary)..... **10994**

(e) corrected..... **28463**

1.1291-10T (b)(2), (d)(2)(vii) and (e) revised; (b)(4) and (f) added (temporary)..... **10996**

(b)(2)(ii) corrected..... **28463**

1.1295-1T Removed (temporary)..... **10996**

1.1303-1 (b) amended..... **15241**

1.1361-0—1.1375-1A Undesignated center heading added..... **22649**

1.1361-0 Redesignated from 1.1361-0A; nomenclature change..... **22649**

1.1361-0A Redesignated as 1.1361-0..... **22649**

1.1361-1 Added..... **22649**

(b)(1), (6), (l)(4)(v) *Example* 2 and (l)(7) corrected..... **28613**

1.1362-0 Added..... **55448**

Corrected..... 3330

1.1362-1 Added..... **55449**

1.1362-2 Added..... **55449**

1.1362-3 Added..... **55452**

1.1362-4 Added..... **55453**

1.1362-5 Added..... **55454**

1.1362-6 Added..... **55454**

1.1362-7 Added..... **55456**

1.1363-1 Added..... **55456**

1.1374-1 Redesignated from 1.1374-1A; (b)(2) and (d)(2) amended..... **22653**

1.1374-1A Redesignated as 1.1374-1..... **22653**

1.1375-1 Redesignated from 1.1375-1A; (b)(1)(ii) and (c)(2) concluding text amended..... **22653**

1.1375-1A Redesignated as 1.1375-1..... **22653**

1.1441-5 (d) amended..... **15241**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 26 Chapter I—Con. Page

1.1502-13T (o)(1)(i) corrected...21152, 48426
1.1502-20 (a)(5) *Example* 6, (e)(1), (2)(i)(B)(*2*) introductory text, and (h)(1) amended; (c)(2)(i)(D) and (v) revised...53550
1.1502-21 (g) revised...53034
1.1502-75 (d)(5) redesignated from 1.1502-75T (d)(5)...44333
1.1502-75T Heading revised; (d)(5) redesignated as 1.1502-75 (d)(5); (c) and (d) removed...44333
1.1502-77 (e) revised...53034
1.1502-78 (b)(3) revised...53034
1.1503-2 Added...41084
(g)(2)(iii)(A) introductory text, (A)(*7*), (vii)(C)(*1*), (h)(2)(ii) and (3) corrected...48722
(c)(16) *Example* 4, (d)(3)(i)(A), (4) *Example* 1, (e)(3) and (g)(2)(iii)(A)(*1*) corrected...57280
1.1503-2A Undesignated center heading added; 1.1503-2A redesignated from 1.1503-2T; heading amended...41093
1.1503-2T Redesignated as 1.1503-2A; heading amended...41093
1.1504-0 Added...61800
1.1504-4 Added...61801
Heading and (b)(3) *Example* corrected...7041
1.6012-7T Added...4080
1.6013-6 (a)(2)(ii) amended...15241
1.6041-1 (b) text redesignated as (b)(1); new (b)(1) heading and (b)(2) added...61313
1.6045-1 (c)(3) revised; (c)(7) added...53032
(c)(3) revised...58984
1.6049-7 (f)(2)(i)(G) revised...40322
(g) corrected...46243
1.6061-2T Added...4080
1.6065-2T Added...4080
1.6411-4 Revised...53034
1.6695-1 (f) reinstated...60733
1.7704-2 Added...58708
5c.0 Redesignated as 301.9100-4T...43895
5f.0 Redesignated as 301.9100-5T...43895
5f.103-3 (a) amended...36003
5h Removed...43895
5h.4 Redesignated as 301.9100-6T...43895
5h.5 Redesignated as 301.9100-7T...43895
5h.6 Redesignated as 301.9100-8...43895
6 Removed...43896
6.1 Redesignated as 301.9100-9T...43896
6.2 Redesignated as 301.9100-10T...43896
6.3 Redesignated as 301.9100-11T...43896
7.0 Redesignated as 301.9100-12T...43896
7a Removed...43896
7a.1 Redesignated as 301.9100-13T...43896
7a.2 Redesignated as 301.9100-14T...43896
7a.3 Redesignated as 301.9100-15T...43896
10 Removed...43896
10.2 Redesignated as 301.9100-16T...43896
13 Authority citation revised...43896
13.0 Redesignated as 301.9100-17T...43896
13.1 Redesignated as 301.9100-18T...43896
14 Removed...43896
14.1-1 Redesignated as 301.9100-19T...43896
14a Authority citation revised...43896
14a.422A-1 Amended...43896
18 Authority citation revised...43897, 55457
18.1362-1 Removed...55457
18.1362-2 Removed...55457
18.1362-3 Removed...55457
18.1362-4 Removed...55457
18.1362-5 Removed...55457
18.1366-5 (c) amended...43897
19 Authority citation revised...43896
19.2-1 Redesignated as 301.9100-20T...43896
25.2701-1 (b)(2)(i)(C) introductory text, (*2*), (ii) introductory text, (E), (c)(3) and (4) corrected...11264
25.2701-3 (b)(1) and (2) correctly added; (b)(3), (4)(ii)(A), (iv), (5)(i), (d) *Example* 1, *Example* 2, *Exam-*

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

ple 4 and *Example* 5 corrected 11265
25.2702-5 (c)(8)(ii)(C)(*2*)(*i*) and (*ii*) correctly added; (c)(8)(ii)(*3*) corrected; (c)(8)(ii)(*2*)(*iii*) removed 11265
25.2704-2 (b) corrected 11265
25.2704-3 Corrected 11265
31 Authority citation amended 13031, 15241, 44102
Technical correction 61612
31.3121(b)(19)-1 (a)(1) amended 15241
31.3306(c)(18)-1 (a)(1) amended 15241
31.3402(f)(1)-1 OMB number 15241
31.3405(c)-1T Added 48172
31.3406-0 Added 13031
31.3406(d)-5 Added 13031
31.6302-0 Added 44102
31.6302-1 Added 44102
31.6302-2 Added 44105
31.6302-3 Added 44106
31.6302(c)-1 Heading, (a) introductory text and (1)(ii) introductory text revised 44106
31.6302(c)-2 Heading and (a)(2) heading revised 44106
31.6301-1 (h)(1) corrected 48724
35a Authority citation amended 13055
35a.3406-1 Removed 13035
40 Revised 48177
40.0-1 (b) and (e) corrected 6575
40.6071(a)-2 (a) corrected 6575
40.6302(c)-0 Corrected 6575
40.9999-1 (3) *Example* 3 corrected 6575
43 Authority citation revised 48185
43.0-1 Redesignated from 43.0-1T; heading amended 33636
Revised 48185
43.0-1T Redesignated as 43.0-1 33636
43.4471-1 Redesignated from 43.4471-1T; heading amended 33636
43.4471-1T Redesignated as 43.4471-1 33636
43.4472-1 Added 33636
(f)(2) corrected 45713
43.6011(a)-1T Removed 48185
43.6011(a)-2T Removed 48185
43.6071(a)-1T Removed 48185
43.6091-1T Removed 48185
43.6101-1T Removed 48185

Page

43.6109(a)-1T Removed 48185
43.6151(a)-1T Removed 48185
43.6302(c)-1T Removed 48185
44 Authority citation revised 48185
44.4402-1 Redesignated from 44.4402-1T; heading amended 48185
44.4402-1T Redesignated as 44.4402-1 48185
44.6091-1 Authority citation removed 48185
46 Authority citation revised 48185
46.0-1 Added 48185
46.0-1T Removed 48185
46.4371-1—46.4374-1 (Subpart B) Authority citation removed 48186
46.4371-4 Authority citation removed 48186
46.6001-1—46.7805-1 (Subpart E) Removed 48186
48 Authority citation amended 32428
Authority citation revised 48186
48.0-1 Added 48186
48.0-1T Removed 48186
48.4041-2T Authority citation removed 48186
48.4042-2(d) Removed 48186
48.4051-1T Removed 48186
48.4061(a)—48.4121-1 (Subpart H) Heading revised 48186
48.4081-0 Added 32429
48.4081-1 Added 32429
48.4081-2 Added 32430
48.4081-3 Added 32431
48.4081-4 Added 32432
(b) introductory text and (e)(3) corrected 39421
48.4081-5 Added 32433
(a) corrected 39422
48.4081-6 Added 32433
(b)(2)(i), (f)(4) *Example* 2, (g)(1)(ii) and (2)(iii) corrected 39422
48.4081-7 Added 32436
48.4081-8 Added 32437
48.4081-9 Added 32437
48.4082-1 Removed 32428
48.4083-1 Removed 32428
48.4083-2 Removed 32428
48.4084 Removed 32428
48.4084-1 Removed 32429
48.4091—48.4093 Undesignated center heading removed 48186

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 26 Chapter I—Con. Page

48.4091 Removed 48186
48.4091-0 Removed 48186
48.4091-1 Removed 48186
48.4091-2 Removed 48186
48.4091-3 Removed 48186
48.4091-4 Removed 48186
48.4091-5 Removed 48186
48.4092-1 Removed 48186
48.4093-1 Removed 48186
48.4093-2 Removed 48186
48.4121-1 (e) removed; redesignated as Subpart I 48186
48.4161(a)—48.4182-2 (Subpart K) Heading revised; undesignated center heading removed 48186
48.4181-1 Removed 48186
48.4181-2 Removed 48186
48.4182-1 Removed 48186
48.4182-2 Removed 48186
48.6011(a)-1 Removed 48186
48.6011(a)-2 Removed 48186
48.6071(a)-1 Removed 48186
48.6081(a)-1 Removed 48186
48.6091-1 Removed 48186
48.6101-1 Removed 48186
48.6109-1 Removed 48186
48.6151-1 Removed 48186
48.6151-1T Removed 48186
48.6161(a)-1 Removed 48186
48.6302(c)-1 Removed 48186
48.6302(c)-2 Removed 48186
48.6402(a)-1 Removed 48186
48.6404(a)-1 Removed 48186
48.9000-0 Removed 32429
49 Authority citation revised 48186
49.0-1 Added 48186
49.0-1T Removed 48186
49.4251-2 (c) revised 48186
49.4271-1 Redesignated from 49.4271-1T; designated as subpart E; heading amended; authority citation removed 48186
49.4271-1T Redesignated as 49.4271-1 48186
49.6011(a)-1—49.6302(c)-1 (Subpart G) Removed 48186
51 Removed 48186
52 Authority citation revised 48186
52.0-1 Added 48186
52.0-1T Removed 48186
52.4681-1 (b)(4) revised 48186
52.6011(a)-1T Removed 48186
52.6011(a)-2T Removed 48186

Page

52.6071(a)-1 Removed 48186
52.6071(a)-2T Removed 48186
52.6071(a)-3T Removed 48186
52.6091(a)-1T Removed 48186
52.6101-1T Removed 48186
52.6109(a)-1T Removed 48186
52.6151(a)-1T Removed 48186
52.6302(c)-1 Removed 48186
52.6302(c)-2T Removed 48186
53 Authority citation revised 33444
53.4940-1 (d)(1) amended 33444
145 Authority citation revised 48187
145.9000-1 Removed 48187
148 Authority citation revised 48187
148.1-3 Removed 48187
148.1-4 Removed 48187
150 Removed 48187
40—156 (Subchapter D) Appendix removed 48187
301 Authority citation amended 15017, 15241, 43894, 53034
Technical correction 21855, 22167
301.6332-1(a)(1), (2) heading and (b)(2) amended 17
(c) revised 3829
301.6332-3 Added 18
301.6402-6 Added 13038
(a)(2)(ii), (b)(1)(i), (2), (j) and (m) corrected 36691
301.6402-7 Redesignated from 301.6402-7T; heading and (d)(2)(i) revised; (e)(1) and (3) amended 53034
301.6402-7T Redesignated as 301.6402-7 53034
301.6501(c)-1 (e)(3) corrected 11265
301.6621-3 Added 53554
(d) *Example* 3 (i) and *Example* 5 (ii) corrected 60846
301.6621-3T Removed 53557
301.6724-1 (f)(1)(ii), (3), (g) and (h)(2)(i) amended; (f)(2) revised 13035
301.7216-2 (o) amended 37086
301.7429-1 Revised 58985
301.7429-2 Revised 58985
301.7429-3 Revised 58985
301.7514-1 (a)(2)(ii) and (5)(ii) amended; (a)(2)(iii) through (vi) and (7) added; (a)(3) and (6) revised 15015

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

301.7624-1 Redesignated from 301.7624-1T; heading amended....15017
301.7624-1T Redesignated as 301.7624-1....15017
301.7701-10 Amended....15241
301.7701-13A (e)(12) added....61313
301.7701(b)-0 Added....15241
301.7701(b)-1 Added....15242
(e) *Example* 3 corrected....28612
(e) *Example* 1 corrected....37190
301.7701(b)-2 Added....15244
(f)(3) corrected....28612
(f)(1) through (4) and (6) corrected....37190
301.7701(b)-3 Added....15245
(b)(6) corrected....28612
(c)(2) corrected....37190
301.7701(b)-4 Added....15247
(d) *Example* 5 corrected....28612
301.7701(b)-5 Added....15250
301.7701(b)-6 Added....15250
(b) *Example* 1 corrected....28612
301.7701(b)-7 Added....15251
(e) *Example* 3 corrected....28612
301.7701(b)-8 Added....15252
(b)(2) introductory text corrected....28612
(b)(2)(ii) corrected....37190
301.7701(b)-9 Added....15253
301.7704-2 Added....58710
301.9100-4T Redesignated from 5c.0....43895
301.9100-5T Redesignated from 5f.0....43895
301.9100-6T Redesignated from 5h.4....43895
301.9100-7T Redesignated from 5h.5....43895
(f) amended....43896
301.9100-8 Redesignated from 5h.6; (a)(1) table and (4)(ii) amended....43895
(a)(1) table corrected....47379
301.9100-9T Redesignated from 6.1....43896
301.9100-10T Redesignated from 6.2....43896
301.9100-11T Redesignated from 6.3....43896
301.9100-12T Redesignated from 7.0....43896
301.9100-13T Redesignated from 7a.1....43896
301.9100-14T Redesignated from 7a.2....43896

Page

301.9100-15T Redesignated from 7a.3....43896
301.9100-16T Redesignated from 10.2....43896
301.9100-17T Redesignated from 13.0....43896
301.9100-18T Redesignated from 13.1....43896
301.9100-19T Redesignated from 14.1-1....43896
301.9100-20T Redesignated from 19.2-1....43896
301.9100-21 Added....43894
601.501 (a) and (b)(4) amended....27356
601.502 Introductory text, (i), (ii), (a) and (b) redesignated as (a) introductory text, (1), (2), (b) and (c); (a)(2) and (c)(4) amended....27356
601.503 (b)(1) amended....27356
601.504 (b)(2)(i) amended....27356
601.505 (b)(2)(ii) and (iii) amended....27356
602 Technical correction....21152, 21894, 60474
Technical correction....6678, 7987, 7988, 9245
602.101 (c) table amended (OMB numbers)....10996, 11266, 12211, 13035, 15253, 19262, 21032, 32438, 36004, 38283, 38599, 41093, 40323, 41676, 43897, 43904, 44989, 45713, 48174, 48187, 48984, 54931, 55457, 60481, 60995, 61313, 61323, 61830, 62200
(c) table corrected (OMB numbers)....27511, 44991
(c) table amended (OMB numbers); eff. 6-30-93....40124
(c) table amended (OMB numbers)....4080 5293, 5936
(c) table amended (OMB numbers); eff. 4-21-93....5293
(c) table corrected (OMB numbers)....6575

Title 26—*Proposed Rules:*

1—799 (Ch. I)....11277
1 ...11024, 12244, 13066, 13676, 13680, 14369, 14371, 14803, 14804, 15038, 19556, 20660, 20802, 20805, 21044, 21152, 23176, 23356, 24426, 27401, 27716, 28470, 28907, 29246, 29851,

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 26—Con.

Page

30451, 31344, 33467, 33663, 34092, 34736, 34740, 34886, 35536, 37495, 39374, 39379, 39743, 40378, 41707, 41897, 42712, 42720, 43776, 43945, 45587, 46355, 46525, 47373, 47427, 47428, 48193, 48194, 48487, 48584, 48757, 49432, 49435, 49514, 49581, 52601, 52605, 52738, 52743, 53046, 53300, 53304, 53634, 54535, 54734, 54957, 56534, 57033, 57034, 52399, 57531, 57971, 57979, 59003, 59319, 59324, 59327, 60029, 60495, 60749, 60750, 6084661017, 61019, 61345, 61353, 61582, 62250, 62251, 62266, 62274, 62526

...43, 44, 47, 290, 300, 305, 322, 3522, 3876, 4125, 5304, 5310, 5687, 5691, 6103, 6854, 6922, 6923, 7179, 7497, 7845, 8027, 8098, 9553, 9597, 10997, 11290

5f 5316

5h **34736, 34740, 48584**

15a **49432, 49435, 49581, 62274**

20 .....**49514, 49581, 56535, 57399**
.....305, 322, 4125

25 .....**49514, 49581, 56535, 57399**
.....305, 322, 4125

26 ..... **56877, 61353, 61356**
.....4372, 6470, 6854, 7497

31 .....**21045—21051, 58423**
.....8726

35a 5316

40 .....**13067**

49 ..... **13067, 33918, 41549**

52 .....4625, 8099

301 ...**14804, 15272, 19828, 19831, 20805, 22189, 22194, 23356, 28470, 29248, 32472, 32473, 36031, 38457, 38959, 39379, 43777, 45759, 46355, 56535, 58760, 61020, 61029, 61035, 61356, 61373**

...3331, 4372, 6470, 6854, 7497, 7761, 9597

602 ...**11024, 39379, 48487, 49514, 49581, 53304, 56535, 57399, 59003**
.....5310

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Page

4.21 (b)(3) revised; eff. 7-22-93.....5615

4.35 (e) added; eff. 7-27-94..... **33114**

4.35a Added; eff. 7-27-94..... **33114**
(e) corrected.....**37591**

5.22 (i) revised; eff. 7-30-92..... **29020**

5.23 (a)(3)(ii) compliance date deferred to 9-3-93.....**40323**

5.47a (a) revised.....**31128**

9.139 Added.....**20764**

9.141 Added.....**20761**

19.988 Revised.....**32178**

20 Authority citation revised..... **40849**

20.11 Amended; OMB number..... **40849**

20.25 Revised.....**40849**

20.36 Authority citation revised..... **40849**
Authority citation corrected.....**42623**

20.63 (a) revised.....**40849**

20.134 (b)(1)(ii) revised; (f) added.....**40849**

20.235 (b) revised.....**40849**

47 Authority citation revised..... **29787**

47.43 (a) revised.....**29787**

47.52 (a) and (c) revised..... **24189**

53.11 Amended.....**40325**

53.151 (a) revised.....**40325**

53.152 (a) revised.....**40325**

53.153 (a), (b) heading revised; (b)(3) added..... **40325**

53.154 Revised.....**40325**

53.157 Heading, (a), (b)(1), (c), (e)(1) and (4) revised.....**40325**

53.158 Added..... **40326**

70 Authority citation revised..... **40327**

70.1 (d) revised.....**40327**

70.11 Amended.....**40327**

70.21 Revised.....**40327**

70.22 (a) revised.....**40328**

70.32 Revised.....**40328**

70.61 (a)(3) revised.....**40328**

70.131 Revised.....**40328**

70.223 (b) revised.....**40328**

70.441—70.449 Undesignated center heading revised.....**40328**

70.441 (f) added..... **40328**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES APRIL 1, 1992 THROUGH FEBRUARY 26, 1993

Page

70.443 Revised....40328
70.448 Revised....40328
70.449 Revised....40329
70.471 (a)(3) revised....40329
70.482 (d)(1) revised....40329
179 Authority citation revised....29787
179.111 (a) amended....29787
194.55 (c) added; authority citation revised....39598
194.151 (b) revised....39598
270.11 Regulation at 54 FR 48839 confirmed....53854
270.25a Regulation at 55 FR 52743 confirmed....53854
270.61b Regulation at 54 FR 48839 confirmed....53854
270.72 Regulation at 54 FR 48839 confirmed....53854
270.133 Regulation at 54 FR 48839 confirmed....53854
270.182 Regulation at 54 FR 48840 confirmed....53854
270.183 Regulation at 54 FR 48840 confirmed....53854
270.216b Regulation at 54 FR 48840 confirmed....53854
270.216c Regulation at 54 FR 48840 confirmed....53854
270.231 Regulation at 54 FR 48840 confirmed....53854
270.252 Regulation at 54 FR 48840 confirmed....53854
270.255 Regulation at 54 FR 48840 confirmed....53854
275 11 Regulation at 54 FR 48840 confirmed....53854
275.30 Regulation at 55 FR 52743 confirmed....53854
275.72b Regulation at 54 FR 48841 confirmed....53854
275.72c Regulation at 54 FR 48841 confirmed....53854
275.81 Regulation at 54 FR 48841 confirmed....53854
275.107 Regulation at 54 FR 48841 confirmed....53854
275.110 Regulation at 54 FR 48841 confirmed....53854

Page

275.117 Regulation at 54 FR 48841 confirmed....53854
275.121 Regulation at 54 FR 48841 confirmed....53854
275.139 Regulation at 54 FR 48841 confirmed....53854
290.11 Regulation at 54 FR 48841 confirmed....53854
290.143 Regulation at 54 FR 48841 confirmed....53854
295.11 Regulation at 54 FR 48842 confirmed....53854
295.45a Regulation at 54 FR 48842 confirmed....53854
295.45b Regulation at 54 FR 48842 confirmed....53854
296.72 Regulation at 54 FR 48842 confirmed....53854
296.74 Regulation at 55 FR 52745 confirmed....53854
296.163 Regulation at 54 FR 48843 confirmed....53854
296.171—296.181 (Subpart H) Regulation at 54 FR 48843 confirmed....53854

Title 27—*Proposed Rules:*

4 ...19267, 23357, 27401, 29456, 33139, 40380, 40884, 48487
5 40884
9 ...14681, 23559, 27401, 33139, 45009, 45588, 58763
....8726, 11290
17 ....39536, 45357
19 ....39536, 45357
20 ....27956, 29763
24 ....23357, 33467
25 44525
70 ....39536, 45357
170 ....39536, 45357
194 ....39536, 45357
197 ....39536, 45357
250 ....39536, 40885, 47319
251 ....40886, 47319
252 ....40887, 47320
290 40889
....3247

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

Page

0.1 Amended 32439
0.26 (Subpart O) Revised 32438
0.96 Revised 38772
0.157 Added 31314
0.160—0.172 (Subpart Y) Appendix amended 30396
2.12 (a) revised 41391
2.20 Paroling policy guidelines amended 41392, 41393
2.41 (b) revised 59916
2.62 (a)(1) revised 41394
2.66 (f) removed; (g) and (h) redesignated as (f) and (g); (e) and new (f) revised; new (g) amended 41395
(i) and (j) redesignated as (h) and (i) 41396
11 Authority citation revised 44107
11.4—11.9 (Subpart B) Added 44107
20 Authority citation revised 31318
20.32 (a) and (b) amended 31318
26 Added 4901
40 Authority citation revised 38773
40.7 (b) revised 38733, 38773
44.301 Regulation at 56 FR 40249 corrected 30397
50.18 Removed 39600
64.1 Revised; interim 56445
64.2 Revised; interim 56445
68 Authority citation revised 57671
68.2 (i), (j), (k), and (l) through (q) redesignated as (j), (l), (m), and (o) through (t); new (i), new (k), and (n) added 57671
68.3 (a), (b), and (c) redesignated as (1), (2), and (3); introductory text redesignated as (a); (d) redesignated as (b); new (c) added 57672
68.5 (b) amended 57672
68.6 (a) amended 57672
68.8 (c)(2) amended 57672
68.23 (c)(6) amended 57672
68.25 (b) revised; (d) redesignated as (e); new (d) added 57672
68.26 Amended 57672
68.28 (a) introductory text amended 57672
68.37 (b)(2)(ii) revised; (c) amended 57672
68.43 (c) heading revised 57672
68.48 (a) amended 57672
68.52 (a), (c)(1)(v), (2)(i)(K) and (ii) amended; (c)(4) revised 57672
68.53 (a) introductory text and (1) amended 57672
80 Added 39600

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

503.2 (b)(3) through (7), (c) and (d) redesignated as (b)(4) through (8), (d) and (e); new (b)(3) and (c) added 53822
503.3 (b)(3) revised; (d) added 53822
503.4 (b)(1) through (4) redesignated as (b)(2) through (5); new (b)(1) and (e) added 53822
503.5 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added 53822
503.7 Introductory text amended 53822
503.8 (b) and (c) revised 53822
524.11 (a) amended 34662
543 Authority citation added 62460
543.30—543.32 (Subpart C) Revised 62460
549 Authority citation revised; subpart and sectional authority citations removed 53820
549.40—549.43 (Subpart C) Added; interim 53820
571 Authority citation revised 34663
571.40—571.41 (Subpart E) Heading revised 34663
571.41 (c)(1) and (2) revised 34663

Title 28—*Proposed Rules:*

2 41450
..... 4126
5 62274
26 56536
77 54737

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

Page

5.5 (a)(4)(iv) removed **28776**
20 Authority citation revised; nomenclature change **31450**
34 Added 4750

Chapter IV—Office of Labor-Management Standards, Department of Labor (Parts 400—499)

402.4 (b)(3) amended; eff. 12-31-93 ..... **49290**
403.4 (a) amended; eff. 12-31-93 ..... **49290**
(a) redesignated as (a)(1); (a)(2) added; eff. 12-31-93 ..... **49357**
470 (Subchapter C) Added **49595**
470.2 (d) corrected **54702**
470.3 (a)(1) and (b) corrected **58285**

Chapter V—Wage and Hour Division, Department of Labor (Parts 500—899)

506 Regulation at 56 FR 24654, 24667 effective date extended through 7-10-92 ..... **29204**
Regulation at 56 FR 24654, 24667 effective date extended through 09-08-92 ..... **30640**
Technical correction **32895**
Regulation at 56 FR 24654, 24667 effective date extended through 10-8-92 and confirmed **40990**
506.500—506.550 (Subpart F) Revised **40975, 40990**
506.510 (g)(2)(viii) corrected **43495**
506.600—506.675 (Subpart G) Revised **40983, 40990**
506.615 (b)(4)(v) corrected **43495**
541 Authority citation revised **37677**
541.3 (a)(3) amended; (a)(4) added; (e) revised **46744**
541.5c Removed **46744**
541.5d Revised **37677**
541.300 Redesignated from 541.301 ..... **46744**
541.301 Redesignated as 541.300; new 541.301 redesignated from 541.302 ..... **46744**

Page

541.302 (h) removed **46744**
Redesignated as 541.301; new 541.302 redesignated from 541.303 ..... **46744**
541.303 Redesignated as 541.302; new 541.303 ..... **46744**
(b)(2), (c) and (e) corrected **47163**
541.312 Revised **46745**
578 Added **49129**
578.3 (c)(2) and (3) corrected **57280**

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1425 Authority citation revised **30399**
1425.2 Revised **30399**

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1601.74 (a) CFR correction **60995**
1602 Filing deadline extension **45570**
Filing deadline extension 239

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1910.11—1910.19 (Subpart B) Authority citation revised **42388**
1910.19 (k) added **42388**
(i) revised **35666**
1910.119 (f), (h), (j) and (l) eff. 8-27-92 ..... **38600**
1910.141—1910.150 (Subpart J) Authority citation revised 4549
1910.146 Added 4549
1910.1000 (a)(3) and table Z-1-A amended **29205**
Table Z-3 amended **29206**
Tables Z-1-A and Z-2 amended **42388**
1910.1027 Added **42389**
OMB number **49272**
1910.1030 (d)(2)(vii)(A), (B), (g)(1)(i)(D), (2)(vii)(A), (h)(1)(iii)(B), (3)(ii) and (i)(2) correctly added; (g)(1)(i)(B), (C), (ii)(A) and (B) corrected **29206**
1910.1050 Added **35666**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

OMB number 49649
1910.1450 Appendix B amended 29204
1910.1500 Amended 29204
1915 Authority citation revised 42388
1915.1027 (Subpart Z) Added 42389
OMB number 49272
1926.50—1926.63 (Subpart D) Authority citation revised 45452
1926.60 Added 35681
OMB number 49649
1926.63 Added 42452
OMB number 49272

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.4 Revised 41683
2200.5 Revised 41684
2200.7 (a) and (c) revised 41684
2200.8 Revised 41684
2200.10 Revised 41684
2200.20 (a) amended 41684
2200.24 Added 41684
2200.30 (d) through (g) redesignated as (e) through (h); new (d) added 41685
2200.32 Amended 41685
2200.34 Revised 41685
2200.35 Revised 41685
2200.36 Removed 41685
2200.40 (a) revised 41685
2200.51 Revised 41685
2200.52 (d) revised; (h) through (l) added 41686
2200.53 (b) revised 41686
2200.56 (f), (g), and (h) added 41686
2200.57 (a) revised 41687
2200.63 (c) revised 41687
2200.64 (c) revised 41687
2200.93 (c) revised; (i) added 41687
2200.95 (a)(1) revised; (g) amended; (j) and (k) added 41688
2200.100 (c) revised 41688
2200.107 Revised 41688
2200.200 (a) revised 41688
2200.201 Revised 41688
2200.202 Revised 41688
2200.203 (a)(2), (3), (b)(2), (3), (4), (c) and (d) revised; (a)(4) removed; (e) added 41688
2200.204 Revised 41689
2200.205 (a) revised 41689
2200.207 (b) and (c) revised 41689

Page

2200.209 (b) revised 41689
2200.210 Revised 41689
2200.212 Revised 41689

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2550 Authority citation revised; sectional authority citations removed 46932
2550.404c-1 Added 46932

Chapter XXVI—Pension Benefit Guaranty Corporation (Parts 2600—2699)

2601 Authority citation revised 61324
2601.3 (b)(1) amended; (c) revised 61324
2602 Heading and authority citation revised 45714
Authority citation revised 4319
2602.1—2602.32 Designated as subpart A; heading added; nomenclature change 45714
Undesignated center heading removed 4319
2602.1 Undesignated center heading removed 4319
2602.2 Undesignated center heading removed 4319
2602.3 Undesignated center heading removed 4319
2602.4 Undesignated center heading removed 4319
2602.5 Undesignated center heading removed 4319
2602.6 Removed 4319
2602.7 Removed 4319
2602.8 (a) through (c) removed 4319
2602.9 Removed 4319
2602.10 Removed 4319
2602.11 Removed 4319
2602.12 Removed 4319
2602.13 Removed 4319
2602.14 Removed 4319
2602.15 Removed 4319
2602.16 Removed 4319
2602.17 Removed 4319
2602.18 Removed 4319
2602.19 Removed 4319
2602.20 Removed 4320

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 29 Chapter XXVI—Con. Page

2602.21 Removed....4320
2602.22 Removed....4320
2602.23 Removed....4320
2602.24 Removed....4320
2602.25 Removed....4320
2602.26 Removed....4320
2602.27 Removed....4320
2602.28 Removed....4320
2602.29 Removed....4320
2602.30 Removed....4320
2602.31 Removed....4320
2602.32 Removed....4320
Appendix A redesignated from part 2602 appendix A....**45714**
2602.41—2602.46 (Subpart B) Added....**45714**
2602 Appendix A redesignated as subpart A appendix A....**45714**
Removed....4320
2610 Appendixes A and B amended....**31319, 47259**
Appendixes A and B amended....4575
2615 Authority citation corrected....**48319**
2615.16 (b) amended....**48319**
2615.30 Redesignated as 2615.31....**48319**
2615.31 Redesignated from 2615.30; (a) and (c) amended; OMB number....**48319**
2616 Revised....**59218**
2616.1 (b) corrected....4203
2616.110 Added....6606
2617 Revised....**59225**
2617.11 Added....6606
2617.24 (b)(1) and (2), (d)(4) and (e) corrected....4203
2619 Authority citation revised....**36602**
2619 Appendix B amended....**31320, 36602, 53855, 59292**
Appendix D amended....**59294**
Appendix B amended....4576, 8230
2621 Appendix A amended....**59295**
2622 Appendix A amended....**31319, 47259**
Appendix B amended....**31320**
Appendix A amended....4575
2640 Authority citation revised....**59809, 59821**
2640.4 Revised....**59809**
2640.6 Revised....**59815**
2640.8 Added....**59821**
2642 Authority citation revised....**59809**

Page

2642.1 (a) revised....**59809**
2642.21—2642.27 (Subpart D) Added....**59809**
2644 Appendix A amended....**31321, 47260**
Appendix A amended....4578
2646 Added....**59815**
2649 Added....**59821**
2676.15 (c) table amended....**31322, 36603, 42491, 47261, 53856, 59295**
(c) table amended....4577, 8231

Title 29—*Proposed Rules:*

18 3822
34 ....**47690, 48009, 48082**
42 ....**32939**
....5168
103 ....**43635, 47023, 55491**
....7199, 10997
402 9418
403 ....**41634**
....9418
470....**33403**
541 ....**37678**
1910 ....**34192, 36964, 37126, 37591, 47746, 49657**
1915 ....**36964, 37126**
1917 ....**37126**
1918 ....**37126**
1926 ....**34656, 36964, 37126, 47746, 49657, 61860**
1928 ....**37126**
2606 ....**59003**
2610 ....**42910**
2612 ....**59003**
2615 ....**59003**
2616 ....**59003**
2619 ....5128, 7921
2622 ....**59003**
2623 ....**59003**
2647 ....**48348**
2676 ....5128, 7921

TITLE 30—MINERAL RESOURCES

Chapter I—Mine Safety and Health Administration, Department of Labor (Parts 1—199)

7.44 (k) amended....**61220**
7.301—7.311 (Subpart J) Added....**61193**
7.401—7.411 (Subpart K) Added....**61220**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

18.1 Amended; eff. 12-23-93.....61223
18.2 Amended; eff. 12-23-93.....61223
18.4 Revised.....61209
18.6 (a) and (i) amended; (b) removed; eff. 12-23-93.....61223
18.9 (a) amended; eff. 12-23-93.....61223
18.24 Revised.....61209
18.31 (a)(3), (5) and (6) revised; (a)(7) and (8) added.....61209
18.32 (i) added.....61210
18.33 Revised.....61210
18.34 Introductory text added; (a)(6) revised.....61210
18.35 (a)(3) revised.....61223
18.37 (b) revised.....61210
18.62 (a) amended.....61210
18.64 Removed; eff. 12-23-93.....61223
18.94 (a)(2) revised.....61223
56.6000 Stayed to 7-1-93.....44256
56.6130 (b) stayed in part to 7-1-93.....44256
56.6140 Effective to 7-1-93.....44256
56.6131 (a)(1) stayed to 7-1-93.....44256
56.6202 (a)(1) stayed to 7-1-93.....44256
56.6220 Effective to 7-1-93.....44256
56.6304 (b) stayed to 7-1-93.....44256
56.6306 Stayed to 7-1-93.....44256
56.6320 Effective to 7-1-93.....44256
56.6330 Effective to 7-1-93.....44256
56.6331 Effective to 7-1-93.....44256
56.6501 (a) stayed to 7-1-93.....44256
56.6902 (b) stayed to 7-1-93.....44256
56.6903 Stayed to 7-1-93.....44256
56.6000—56.6904 (Subpart E) Appendix I stayed to 7-1-93.....44256
57.4057 Revised.....61223
57.6000 Stayed to 7-1-93.....44256
57.6130 (b) stayed in part to 7-1-93.....44256
57.6131 (a)(1) stayed to 7-1-93.....44256
57.6140 Effective to 7-1-93.....44256
57.6202 (a)(1) stayed to 7-1-93.....44256
57.6220 Effective to 7-1-93.....44256
57.6304 (b) stayed to 7-1-93.....44256
57.6306 Stayed to 7-1-93.....44256
57.6320 Effective to 7-1-93.....44256
57.6330 Effective to 7-1-93.....44256
57.6331 Effective to 7-1-93.....44256
57.6375 Effective to 7-1 93.....44256
57.6382 Effective to 7-1-93.....44256

Page

57.6501 (a) stayed to 7-1-93.....44256
57.6902 (b) stayed to 7-1-93.....44256
57.6903 Stayed to 7-1-93.....44256
57.22310 Revised.....61223
57.22311 Revised.....61223
70.2 Regulation at 57 FR 20913 effective date delayed to 11-16-92.....34683
70.208 Regulation at 57 FR 20913 effective date delayed to 11-16-92.....34683
75.2 Regulation at 57 FR 20913 effective date delayed to 11-16-92.....34683
75.300—75.389 (Subpart D) Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.313 Regulation at 57 FR 20916 stayed to 7-1-93.....53857
75.314 Added; eff. 11-16-92 to 7-1-93.....53857
75.315 Added; eff. 11-16-92 to 7-1-93.....53857
75.320 (d) amended.....53858
75.321 (a) suspended; (c) added.....55457
75.322 Revised.....53858
75.325 (c)(2) amended.....53858
75.326 Amended.....53858
75.330 (b)(2) amended.....53858
75.333 (b), (c), (d) and (e) amended.....53858
75.335 (a(1) amended.....53858
75.344 (a)(1) stayed to 7-1-93.....53857
75.345 Redesignated from 75.1105 and revised.....53857
75.370 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.380 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
(f)(1) and (g) amended.....53858
75.381 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.382 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683
75.383 Regulation at 57 FR 20914 effective date delayed to 11-16-92.....34683

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 30 Chapter I—Con. Page

75.385 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.386 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.388 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.600-1 Revised ... **61223**
75.604 (d) added ... **61223**
75.1103-4 Regulation at 57 FR 20928 effective date delayed to 11-16-92 ... **34683**
75.1103-7 Regulation at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
75.1105 Redesignated as 75.345 ... **53857**
75.1701 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1704 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1704-1 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1704-2 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1705 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1706 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1707 Regulation at 57 FR 20914 effective date delayed to 11-16-92 ... **34683**
75.1721 Regulation at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
75.1801 Removal at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
75.1802 Removal at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
75.1803 Removal at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
75.1804 Removal at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
75.1805 Removal at 57 FR 20929 effective date delayed to 11-16-92 ... **34683**
77.216-5 CFR correction ... 8543
100.3 (c) amended ... **60697**
100.4 (b) corrected ... **61612**
Revised ... **60697**
100.5 Concluding text amended ... **60697**
165 Temporary regulations list ... 8593

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

206.10 Revised ... **41863**
206.254 (b) amended ... **52720**
206.257 (d)(3) amended ... **52720**
206.259 (c)(1)(i), (2)(i), (c)(4), (d)(1), (e)(1) and (2) amended ... **52720**
206.262 (a)(1) amended ... **41864**
(c)(1), (2)(i), (4), (d)(1), (e)(1) and (2) amended ... **52720**
207 Authority citation revised ... **41864**
207.1 Revised ... **41864**
208 Authority citation revised ... **41864**
208.3 Revised ... **41864**
210 Authority citation revised ... **41864**
210.10 Revised (OMB numbers) ... **41864**
210.53 (a) revised ... **41867**
210.202 Amended ... **52720**
210.204 (a) revised ... **41867**
216 Authority citation revised ... **41867**
216.10 Revised ... **41867**
216.15 (a) revised ... **41867**
216.16 (a) revised ... **41867**
218.10 Added ... **41867**
218.40 (c) amended ... **52720**
218.42 Added ... **62206**
218.51 (f)(1) revised ... **41867**
(a)(1) CFR correction ... 8907
218.54 (e) added ... **62206**
218.102 (b) revised ... **41868**
(d) added ... **62206**
218.150 (c) revised ... **41868**
218.150 (e) added ... **62206**
218.155 (d)(3) and (4) revised ... **41868**
218.202 (b) revised ... **41868**
(f) added ... **62207**
218.302 (b) revised ... **41868**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

(f) added 62207
219 Authority citation revised 41868
219.102 Revised 41868
220.003 Added 41868
228 Authority citation revised 41868
228.10 Revised 41868
230 Heading revised; section added 62207
243 Authority citation revised 44997
243.2 Revised 44997
243.3 Added 44998
254 Added; interim 7490

Chapter IV—Geological Survey, Department of the Interior (Parts 400—499)

400 Removed 59916

Chapter VI—Bureau of Mines, Department of the Interior (Parts 600—699)

609 Removed 61831
651 Removed 61832

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

701 Authority citation revised 3470
Technical correction 8655
701.5 Amended 3470
785 Authority citation revised 3470
785.10 Revised 3470
Corrected 8655
861.101 Suspended 33875
901.25 (c) added 3832
902.15 (c) added 37422
902.16 Added 37423
902.20 Revised 53992
902.25 Added 53993
904.10 Revised 37429
904.15 (k) added 37430
913.25 (d) added 4322
914.15 (oo) added 41873
(qq) added 59918
(pp) added 62220
(rr) added 4324
914.16 (l) and (m) added 41873
(a) removed 48726

Page

914.25 Revised 45985
916.15 (m) added 37435
917.15 (kk) added 37093
(ll) added 45306
(mm) added 58144
(nn) added 59921
(oo) added 3837
917.16 (g) added 45307
(d)(3) removed; (h) added 3838
917.21 (c) added 59921
918.15 (c) added 48730
918.16 (a) through (i) removed 48730
920.15 (q) added 44113
(r) added 53994
(s) added 59924
(t) added 62222
920.16 (o) added 62222
925.10 Revised 44680
925.15 (o) added 44118
(p) added 44680
925.16 (i) added 44118
(b)(1), (2), (3), (c), (e), (f)(2) through (5), (g)(17) and (n) removed; (f)(1), (g)(16) and (18) revised; (p) added 44681
926.15 (j) added 37446
926.16 (a) removed; (e) added 37446
934.10 (b) revised; (c) removed 37706
934.15 (p) added 37710
934.20 Revised 33116
934.25 Revised 33116
935.12 Removed 33123
935.15 (ddd) added 33123
(fff) added 37096
(eee) added 37100
(ggg) added 41691
(hhh) added 48733
(iii) added 3840
(kkk) added 4326
(jjj) added 4331
935.16 (c) removed 33123
(f) revised 4331
935.25 (e) added 44121
938.15 (u) added 48736
(v) added 53996
(w) added 62228
(x) added 4333
238.16 (rr) through (bbb) added 62229
938.20 Revised 49137
938.25 Added 49138
943.10 Revised 37458
943.15 (h) added 37458

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 30 Chapter VII—Con. Page

943.16 (a) removed; (k) through (q) added **37458**
943.20 Revised **37461**
943.25 Added **37461**
944.15 (t) added **37465**
(u) added **41696**
944.16 (a) through (m) removed; (p) added **41696**
944.20 Revised **37465**
944.25 Added **37465**
946.15 (ff) added **29792**
950.12 (a)(2) and (5) removed **48991**
950.15 (m) added **30131**
(n) added **48991**
950.16 (o), (p) and (q) added **30131**
(r) through (z) added **48991**

Title 30—*Proposed Rules:*

14 ..... **61524**
..... 8028
18 ..... **39036, 48350, 61524**
..... 8028
48 ..... **29853, 38289**
56 ..... **47524, 47824, 49218, 55491**
57 ..... **47524, 49218, 55491**
75 ..... **29853, 38289, 39041, 40395, 42808, 48350, 61524, 61538**
..... 8028, 9554
77 ..... **29853, 38289**
202 ..... **31471**
250 ..... **36032, 39421**
256 ..... **47824**
400 ..... **43411**
401 ..... **59941**
609 ..... **43411**
651 ..... **43411**
700 11555
701 ..... **53670**
718 ..... **35960**
720 ..... **35960**
724 ..... **47431**
772 ..... **47431**
773 ..... **53670**
779 3458
780 3458
783 3458
784 3458
785 11555
816 ..... **47431**
817 ..... **47431, 53670**
827 11555
840 ..... **60140**
..... 3248
842 ..... **60410**
..... 3248

Page

846 ..... **47431**
870 ..... 7761, 8655
870 8655
901 ..... **37497**
902 ..... **33664**
913 ..... **37127, 48757**
914 ..... **31161, 31162, 33665, 37498, 48759, 48761, 57039**
..... 3928, 4372, 4374
915 4376
916 ..... **37132, 49051**
..... 4381
917 ..... **41897, 43946, 43948, 43949, 43952, 58169**
..... 4384, 4386
920 ..... **37133, 37134, 41712, 48762, 62277**
924 4387
925 ..... **62278**
926 ..... **59020**
931 ..... **48764**
935 ..... **31163, 33139, 37136, 37138, 48765**
..... 4388
938 ..... **33666, 33668**
944 ..... **54032, 58171**
..... 4390
948 ..... **49052**
950 ..... **41714, 41715**

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)

10.0 Amended **41095**
10.20 (a) and (b) amended **41095**
10.21 Amended **41095**
10.22 Introductory text amended **41095**
10.23 Amended **41095**
10.24 Introductory text amended **41095**
10.26 (a)(4) amended **41095**
10.27 Amended **41095**
10.28 Amended **41095**
10.29 Amended **41095**
10.30 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); (a) and new (c) revised; (b)(1)(iv), (c)(1) introductory text, (2), (3) and (e) amended **41095**
10.31 Amended **41095**
10.50 Amended **41095**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

10.51 Introductory text amended 41095
10.52 (a) amended 41095
10.53 Amended 41095
10.54 Amended 41095
10.55 (a) and (b) amended 41095
103 Appendix amended 7048

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

204 Removed 40330
205 Revised 44280, 60676
205.18 (b)(2) corrected 4460
211.1 (a) revised 44999
250.2 Amended 4578
250.3 (a)(1) and (b) amended 4578
250.4 (b)(1) and (f) amended 4578
250.6 Amended 4578
257 Removed 57345
312 Note amended 34684
315 Authority citation revised 39602
315.40 (d) revised 39602
315.64 Revised 39602
315.65 Removed; new 315.65 redesignated from 315.66 39602
315.66 Redesignated as 315.65 39602
317.2 (a) amended 34684
349 Removed 414
353 Authority citation revised 39602
353.40 (d) revised 39602
353.64 Revised 39602
353.65 Removed; new 353.65 redesignated from 353.66 39603
353.66 Redesignated as 353.65 39603
356 Added 414
357.21 (c) amended; (f) added 38774
357.26 (b)(1)(vii), (viii), (4), (5), (6), (d) and (e) removed; (f) redesignated as (d); (b)(2) and (3) revised 38774
358.0 (c) added 40608

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500.571 Revised 58986
500.574 Added 62230
515.333 Added 53997
515.416 Added 53997

Page

515.540 Revised 53998
515.560 Revised 53998
515.563 Revised 53998
515.564 (c) revised; (d) added 53999
515.566 Added 53999
520.101 (a)(2) removed; (a)(3) redesignated as (a)(2) 44682
550 Authority citation revised 41697, 54177
550.212 Added 41697
550.511 Heading and (g) revised; (a) amended 41697
550.515 Removed 41697
550.520 Added 41697
550.805 Amended 41697
550 Appendix A revised 29425
Appendix B revised 29427
Appendixes A and B amended 54177
575.603 Removed 39603
580 Policy statement 3228
580.510 Revised 4081
580.516 Added 39604
580.517 Added 4081

Title 31—*Proposed Rules:*

1 54539
10 ..... 46356, 57400, 60149, 60278
203 48584
209 57400
210 34650
235 52605
251 56292
253 56293
254 56293
257 37139
270 41117
290 56294
349 45116
356 45116
357 33470
..... 9134

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (1—399)

40a Revised 239
60 Removed 40849
67 Removed 48188
165a Added; interim 29620

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 32 Chapter I—Con. Page

169a Authority citation and footnote 1 revised; footnote 8 removed; footnotes 5 through 7 redesignated as footnotes 6 through 8 ... **29207**
169a.2 Revised ... **29207**
169a.3 Amended ... **29207**
169a.4 Revised ... **29207**
169a.8 (c) revised; heading and (a) amended ... **29208**
169a.9 (a) introductory text, (1) introductory text and (i) revised; (a)(1)(ii), (iv), (2)(i)(A), (B) and (D) amended ... **29208**
169a.10 Revised ... **29208**
169a.11 Amended ... **29208**
169a.13 Revised ... **29208**
169a.15 (a), (b), (c)(3), (d)(1), (2)(ii)(A), (iii) and (4)(i)(E) revised; (d)(2)(i), (v), (3)(viii), (4)(i)(C), (F), (H), (ii)(A), (D)(*2*), (*3*) and (E) introductory text amended ... **29209**
169a.16 (a) and (b) amended ... **29210**
169a.17 (a), (d) and (g)(1) revised; (l) added ... **29210**
169a.18 (b) revised ... **29210**
169a.21 (a), (b) heading, (c) introductory text, (1), (2), (5), (6) and (7) amended; (c)(3) revised ... **29210**
169a.22 Revised ... **29210**
169a Appendixes A and B amended ... **29210**
Appendix B amended ... **29211**
Appendix C revised; Appendix D amended ... **29212**
Appendix E removed ... **29218**
179 Removed ... **48188**
191.1 (a) and (c) amended ... **35755**
191.3 Amended ... **35755**
191.4 (b), (c), (e) and (f) amended ... **35756**
191.5 (a)(6), (11), (14), (b)(2), (5), (9), (10) and (13) amended ... **35756**
191.6 (b)(2), (3), (5), (9), (10), (12), (13), (14) and (15) amended ... **35756**
191.8 (a) amended ... **35756**
191.9 (b)(2) and (3) amended ... **35756**
201 Removed ... 7865
220 Heading and authority citation revised ... **41100**

Page

220.1 Revised ... **41100**
220.2 (a) revised ... **41101**
220.3 (b)(1) revised ... **41101**
220.6 (b) revised; (d) added ... **41101**
220.8 Revised ... **41101**
220.9 (b) revised ... **41102**
220.10 Revised ... **41102**
220.11 Added ... **41103**
220.12 Added ... **41103**
236 Removed ... 7865
246 Removed ... 7865
287 Revised ... **61324**
290 Appendix B amended ... **30904**
292 Revised ... **38775**
317 Revised ... **48992**
321.2 (c) revised ... **33124**
321.4 (b) revised ... **33124**
321.14 (b), (d), (e) and (f) revised; (c) and (g) added ... **33124**
323 Appendix H amended ... **40609**
345 Added ... **53557**
346 Added ... **53559**
347 Added ... **53561**
348 Added ... **53564**
367 Revised ... **58986**
385 Revised ... **32178**
397 Added ... 5293

Chapter V—Department of the Army (Parts 400—699)

505 Authority citation revised ... **33126**
505.5 (d) revised; (e) amended ... **33126**
592 Removed ... 6716
593 Removed ... 6716
594 Removed ... 6716
595 Removed ... 6716
596 Removed ... 6716
597 Removed ... 6716
598 Removed ... 6716
599 Removed ... 6716
600 Removed ... 6716
601 Removed ... 6716
602 Removed ... 6716
603 Removed ... 6716
604 Removed ... 6716
605 Removed ... 6716
606 Removed ... 6716
608 Removed ... 6716
612 Removed ... 6716
616 Removed ... 6716
619 Technical correction ... **47572**
619.1 Amended ... **44239**
619.2 (c) added ... **44239**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

619.4 Revised....44239
619.5 (a)(4) added....44239
619.6 Introductory text revised; (k) added....44239
619.7 Revised....44239
619.8 Revised....44240
619 Appendix designated as appendix A and revised....44240
Appendixes B through F added....44242

Chapter VI—Department of the Navy (Parts 700—799)

701.119 (i) introductory text revised; (i)(1) amended....37100
(b)(4) and (5) removed; (b)(6) and (7) redesignated as (b)(4) and (5); (e)(2) added....40609
(h)(1) amended....57961
Table Four amended....31451, 31452
Table Five amended....28463, 31452, 35464, 35465, 41698, 46299, 59925
Tables One and Three amended....59924, 59926, 59927
706.2 Tables One and Three amended....59924, 59926, 59927
Table Five amended....59925
Tables Four and Five amended....4334
Table Two amended....4335
Table Three amended....8694
Table Four amended....8695
Table Five amended....11192

Chapter VII—Department of the Air Force (Parts 800—1099)

806 Revised....41396
861 Revised....44683
954 Removed....4902

Chapter XIX—Central Intelligence Agency (Parts 1900—1999)

1906 Added....39610

Chapter XXIX—Presidential Commission on the Assignment of Women in the Armed Forces (Parts 2900—2999)

Chapter XXIX Established....49394

Title 32—*Proposed Rules:*

165 29619
199 58427

NOTE: Boldface page numbers indicate 1992 changes.

Page

202 43645
287 48768
317 40397
321 49661
505 ....44716, 47825, 62531
516 31852
623 46246
701 33285
1636 62533

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1 Interpretation....48319
1.30-1 (a) through (d) introductory text revised; interim....8885
1.30-10 Revised; interim....8885
3.40-15 (c) added; eff. 8-28-92 to 9-9-92....39614
Regulation at 57 FR 39614 effective date corrected....42699
3.40-17 (b) revised; eff. 8-28-92 to 9-9-92....39614
Regulation at 57 FR 39614 effective date corrected....42699
3.40-20 (c) added; eff. 8-28-92 to 9-9-92....39614
Regulation at 57 FR 39614 effective date corrected....42699
3.40-25 (b) revised....6716
3.40-30 (b) revised....6717
24 Removed....60728
64 Authority citation revised....43402
64.01 Redesignated from 64.01-1....43402
64.01-1—64.01-6 Redesignated as subpart A....43402
64.01-1 Redesignated as 64.01....43402
64.01-3 Redesignated as 64.03....43402
64.01-6 Redesignated as 64.06....43402
64.03 Redesignated from 64.01-3....43402
64.06 Redesignated from 64.01-6; amended....43402
64.10-1—64.10-6 (Subpart 64.10) Redesignated as subpart B....43402
64.10-1 Redesignated as 64.11....43402
64.10-3 Redesignated as 64.13....43402
64.10-6 Redesignated as 64.16....43402

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 33 Chapter I—Con. Page

64.11 Redesignated from 64.10-1; (a) revised; (d) added 43402
64.13 Redesignated from 64.10-3 43402
64.16 Redesignated from 64.10-6 43402
64.20-1—64.20-3 (Subpart 64.20) Redesignated as subpart C 43402
64.20-1 Redesignated as 64.21 43402
64.20-3 Redesignated as 64.23 43402
64.21 Redesignated from 64.20-1 43402
64.23 Redesignated from 64.20-3 43402
64.30-1—64.30-3 (Subpart 64.30) Redesignated as subpart D 43402
64.30-1 Redesignated as 64.31 43402
64.30-3 Redesignated as 64.33 43402
64.31 Redesignated from 64.30-1 43402
Revised 43403
64.33 Redesignated from 64.30-3 43402
Revised 43403
81 Appendix A amended 29219
95.055 Revised 33261
100 Temporary regulations list 30644, 47766
Temporary regulations list 8543
100.T01-001 Added (temporary) 40125
100.T01-103 Added (temporary) 38607
100.35-07-119 Added (temporary) 60127
100.35T01-057 Added (temporary) 38284
100.35T01-079 Added (temporary) 30642
100.35-T0205 Added (temporary) 39359
(a) corrected 45570
100.35-T0207 Added (temporary) 39117
100.35-T0213 Added (temporary) 39116
100.35-T0216 Added (temporary) 41420
100.35-T0223 Added (temporary) 46300
100.35-T0557 Added (temporary) 40610
100.35-T0560 Added (temporary) 40611
100.35-T0564 Added (temporary) 44688
100.35-T0822 Added (temporary) 37711
100.35-T0913 Added (temporary) 30644
100.35-T0916 Added (temporary) 34075
100.35-T0918 Added (temporary) 41419
100.35-T0919 Added (temporary) 39118
100.103 (b) revised (temporary) 30403
100.105 Implementation (temporary) 46301
100.501 Implementation (temporary) 30643, 58144
100.502 Implementation (temporary) 33444, 44687
100.504 Implementation (temporary) 30643
100.507 Implementation (temporary) 7492
100.509 Implementation (temporary) 45985, 60996
100.511 Implementation (temporary) 33444
Implementation (temporary) 9118
100.512 Implementation (temporary) 44687
100.513 Implementation (temporary) 33445
100.523 Added (temporary) 9119
105 Removed 60728
110.78 Note added 9543
117 Temporary drawbridge operation regulations 38778
Authority citation revised 54178
117.31 Revised 20
117.221 (c) revised (temporary) 58146
117.255 Revised 54178
117.261 (hh) revised 30647
(r) added 37882
(ee) revised 6718
117.275 Removed 39615
117.287 (d)(3) redesignated as (d)(4); new (d)(3) added 39360
(a-1) redesignated as (a-2); new (a-1) added 41874
(c), (d)(1) and (2) revised; eff. 12-1-92 to 1-31-93 57099
117.303 Revised 58711

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

117.311 Revised; eff. 12-1-92 to 1-31-93....57099
117.359 Revised....37880
117.373 Revised....37880
117.385 Revised....38608
117.403 Revised....37880
117.407 Revised....37880
117.439 Revised....46302
117.451 (c) revised; (d) and (e) redesignated as (e) and (f); new (d) added (temporary)....46302
117.465 (c) revised; (d) redesignated as (e); new (d) added....11193
117.478 Revised....57962
117.488 Revised....34868
117.491 Revised....37880
117.591 Revised....30405
117.680 Added....38609
117.684 Revised....37880
117.700 Revised....37880
117.897 (a)(1)(ii) suspended; (a)(5) added; eff. 9-13-92 through 11-11-92....39119
(a)(5) corrected....46301
117.904 Revised....37880
117.911 (d) revised....57963
117.937 Revised....37880
117.981 Revised....37880
117.997 (d) and (e) redesignated as (e) and (f); new (d) added....46506
117.1035 Revised....37712
117.1049 (d) removed; (a) and (c) revised; eff. 9-21-92 through 9-1-93....37881
117.1099 Revised....37880
117.1103 Revised....37880
117 Appendix A amended....30405
133 Added; interim....53969
135 Authority citation revised....36316
135.301—135.319 (Subpart D) Heading revised; interim....36316
135.301 Removed; interim....36316
135.303 (a)(1) and (2) removed; (a) designation and (a)(3) designation removed; interim....36316
135.305—135.307 Undesignated center heading removed; interim....36316
135.309—135.311 Undesignated center heading removed; interim....36316
135.309 Removed; interim....36316
135.311 Removed; interim....36316

Page

135.313—135.319 Undesignated center heading removed; interim....36316
135.313 Removed; interim....36316
135.315 Removed; interim....36316
135.317 Removed; interim....36316
135.319 Removed; interim....36316
136 Revised; interim....36316
136.101 (b) corrected....41104
136.103 (a) corrected....41104
137.501—137.513 (Subpart F) Removed; interim....36322
147.1114 Revised; eff. 10-15-92 through 11-30-92....48457
147.1115 Revised; eff. 10-15-92 through 11-30-92....48457
148.103 Revised....11193
148.205 (a) revised....11193
148.207 (d) revised....11193
150 Authority citation revised....7352
150.129 Added; interim....7352
151.04 (c) revised....33261
154.100 (a) revised; (c) added; interim....7352
154.106 (a) revised; (b) amended; interim....7352
154.1010—154.1075 (Subpart F) Added; interim....7352
154.1110—154.1140 (Subpart G) Added; interim; eff. 8-18-93....7352
155 Authority citation revised....7424
155.140 Added; interim....7424
155.390 Removed; interim....36238
Regulation at 57 FR 36238 comment period reopened....60402
155.1010—155.1065 (Subpart D) Added; interim....7424
155.1110—155.1150 (Subpart E) Added; interim; 8-18-93....7424
157 Authority citation revised....36238, 60402
157.01 Revised; interim....36238
Regulation at 57 FR 36238 comment period reopened....60402
157.03 (k), (n) and (aa) revised; (ii) through (oo) added; interim....36238
Regulation at 57 FR 36238 comment period reopened; interim....60402
157.08 Introductory text removed; (b) through (i) redes-

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 33 Chapter I—Con. Page

ignated as (f) through (m); Note, new (b) through (e) and (n) added; (a), new (f), (g) and (h) revised; interim.....**36239**
(n) corrected.....**40494**
Regulation at 57 FR 36239 comment period reopened; interim.....**60402**
157.10 Heading and (d) revised; interim.....**36239**
Regulation at 57 FR 36239 comment period reopened; interim.....**60402**
157.10d Added; interim.....**36239**
Regulation at 57 FR 36239 comment period reopened; interim.....**60402**
157.11 (g) added; interim.....**36244**
Regulation at 57 FR 36244 comment period reopened; interim.....**60402**
157.24 Introductory text and (c) revised; interim.....**36244**
Regulation at 57 FR 36244 comment period reopened; interim.....**60402**
157.25 Heading revised; (a) and (b) redesignated as (b) and (c); new (a) added; interim.....**36244**
Regulation at 57 FR 36244 comment period reopened; interim.....**60402**
157.28 Introductory text revised; interim.....**36244**
Regulation at 57 FR 36244 comment period reopened; interim.....**60402**
157 Appendix A amended; interim.....**36245**
Appendix G added; interim.....**36245**
Regulation at 57 FR 36245 comment period reopened; interim.....**60402**
161 Authority citation revised.....**31662**
161.109 Added.....**31662**
161.376 (a)(5) added.....**31663**
165 Temporary regulations list.....**30644, 47766**
Temporary regulations list.....8543
165.111 Added.....**30407**
165.T01-056 Added (temporary).....**35467**
165.T01-070 Added (temporary).....**30651**
165.T01-083 Added (temporary).....**31323**
165.T01-085 Added (temporary).....**30650**
165.T01-096 Added (temporary).....**35466, 39362**
165.T01-097 Added (temporary).....**40126**
165.T01-101 Added (temporary).....**41421**
165.T01-109 Added (temporary).....**39121**
165.T01-114 Added (temporary).....**44123**
165.T01-117 Added (temporary).....**44122**
165.T01-125 Added (temporary).....**48190**
165.T01-130 Added (temporary).....**60997**
165.T01-131 Added (temporary).....**60128**
165.T01-134 Added (temporary).....**55461**
165.T01-135 Added (temporary).....**55463**
165.T0201 Added (temporary).....9544
165.T0252 Added (temporary).....**56992**
165.T0255 Added (temporary).....2989
165.T02013 Added (temporary).....**31664**
165.T02045 Added (temporary).....**43616**
165.T0506 Added (temporary).....**40612**
165.T05-12 Added (temporary).....**31453**
165.T0549 Added (temporary).....**35757**
165.T0551 Added (temporary).....**57100**
165.T0585 Added (temporary).....**58147**
165.T0591 Added (temporary).....**59928**
165.T0793 Added (temporary).....**40330**
165.T0857 Added (temporary).....**46507**
165.T1106 Added (temporary).....**46506**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

165.T1108 Added (temporary)..... **49649**
165.T1170 Added (temporary)..... **57100**
165.T551 Added (temporary)..... **33637**
165.T576 Added (temporary)..... **47262**
165.T592 Added (temporary)..... **58988**
165.T841 Added (temporary)..... **47769**
165.T844 Added (temporary)..... **46508**
165.T850 Added (temporary)..... **46508**
165.1406 Added..... **54508**

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

222 Authority citation added; sectional authority citations removed..... **35757**
222.7 (g)(2) revised..... **35757**
334.370 (a)(1) revised..... **40613**
334.782 Added..... **46303**
334.786 Added..... **46303**
334.802 Added..... **46303**
(a) corrected..... 6718
334.938 Added..... **58098**
334.1275 (a) amended..... 6718

Chapter IV—Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

402.3 (b)(10) added..... **30905**
402.9 (f) through (i) added..... **30905**

Title 33—*Proposed Rules:*

1—199 (Ch. I) **54191**
89 ..... **43169**
100 ..... **30704, 55492, 55493**
110 ..... **31471, 47431, 47432, 53672**
117 ... **30451, 30704, 33286, 37918, 37920, 38638, 39381, 43647, 46361, 47321, 48488, 53673, 53674, 54202, 57039, 58172, 59943, 59944** 47, 6766, 6767, 7497, 7498
126 4127
151 ..... **45591** 452
154 ..... **37920** 8918
155 ..... **29354, 33287, 44912, 48489** 452, 4040, 8918
156 ..... 452, 4040
162 ..... **41899** 4130
164 ..... **45662, 45664, 45667**
165 ..... **31472, 34741, 36034, 45596** 7500
168 ..... **30058**
175 ..... **53410**
179 ..... **36034**
334 ..... **32474** 6768
400—499 (Ch. IV) **54191**

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

8 Added..... **34646**
8.3 OMB number pending..... **34647**
OMB number..... 7860
12 Revised (effective date pending)..... **60394**
73 Authority citation revised..... **56420**
73.40—73.42 (Subpart E) Removed..... **56420**
74 Authority citation revised; sectional authority citations amended..... **30335**
74.3 Amended (effective date pending)..... **30335**
74.47 Revised (effective date pending)..... **30335**
74.73 Heading, (a) and (b) revised (effective date pending)..... **30335**
74.74 (a), (c) and (d) revised (effective date pending)..... **30335**
74.75 (a) revised; (b) redesignated as (c); new (b) added (OMB number pending)..... **30336**
74.76 (c) amended (effective date pending)..... **30336**
74.91 Amended (effective date pending)..... **30336**
74.93 Revised (effective date pending)..... **30336**
74.94 Removed (effective date pending)..... **30336**
74.96 Revised (effective date pending)..... **30336**
74.144 Amended (effective date pending)..... **30336**
74.171 Added (effective date pending)..... **30336**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 34 Subtitle A—Con. Page

74.172 Removed (effective date pending) **30336**
74.173 Removed (effective date pending) **30336**
74.174 Removed (effective date pending) **30336**
74.175 Revised (effective date pending) **30336**
74 Appendixes D and E removed (effective date pending) **30336**
75 Authority citation revised; sectional authority citations amended **30336**
75.1 (b) amended; (effective date pending) **30336**
75.3 Removed (effective date pending) **30336**
75.4 (a) introductory text and (1) revised (effective date pending) **30336**
75.60—75.62 Undesignated center heading added (effective date pending) **30337**
75.60 Added (effective date pending) **30337**
75.61 Added (effective date pending) **30337**
75.62 Added (effective date pending) **30337**
75.105 (c)(2)(i) and (3) revised (effective date pending) **30337**
75.107 Removed (effective date pending) **30337**
75.108 Removed (effective date pending) **30337**
75.110 Removed (effective date pending) **30337**
75.111 Removed (effective date pending) **30337**
75.113 Removed (effective date pending) **30337**
75.114 Removed (effective date pending) **30337**
75.115 Removed (effective date pending) **30337**
75.116 Removed (effective date pending) **30337**
75.118 Note removed (effective date pending) **30337**
75.130—75.134 Undesignated center heading removed (effective date pending) **30338**
75.130 Removed (effective date pending) **30338**
75.131 Removed (effective date pending) **30338**
75.132 Removed (effective date pending) **30338**
75.133 Removed (effective date pending) **30338**
75.134 Removed (effective date pending) **30338**
75.150—75.154 Undesignated center heading removed (effective date pending) **30338**
75.150 Removed (effective date pending) **30338**
75.151 Removed (effective date pending) **30338**
75.152 Removed (effective date pending) **30338**
75.153 Removed (effective date pending) **30338**
75.154 Removed (effective date pending) **30338**
75.155 Revised (effective date pending) **30338**
75.160 Removed (effective date pending) **30338**
75.200 Heading revised, (b)(4) and (5) added (effective date pending) **30338**
75.216 Revised (effective date pending) **30338**
75.218 Revised (effective date pending) **30338**
75.233 Revised (effective date pending) **30338**
75.234 Revised (effective date pending) **30338**
75.235 (b) revised (effective date pending) **30338**
75.253 (a)(2) revised; (d) redesignated as (e); new (d) added (effective date pending) **30338**
75.261 Revised; (OMB number pending) **30338**
75.262 Added (effective date pending) **30339**
75.510 Removed (effective date pending) **30339**
75.518 Removed (effective date pending) **30339**
75.534 Introductory test and (a) revised (effective date pending) **30339**
75.560 (a) revised (effective date pending) **30339**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

75.563 Revised (effective date pending)..... 30339
75.580—75.581 Undesignated center heading removed (effective date pending)..... 30339
75.580 (a) designation and (b) through (d) removed (effective date pending)..... 30339
75.581 Removed (effective date pending)..... 30339
75.590 (c) revised (effective date pending)..... 30339
75.608 Revised (effective date pending)..... 30339
75.616 Revised (effective date pending)..... 30339
75.617 Added (effective date pending)..... 30339
75.621 Amended; authority citation and cross-reference revised..... 30339
75.622 Revised (effective date pending)..... 30339
75.625—75.626 Cross-reference revised (effective date pending)..... 30339
75.625 Removed (effective date pending)..... 30339
75.626 (a) paragraph designation and (b) removed (effective date pending)..... 30339
75.681 Cross-reference amended (effective date pending)..... 30339
75.684 Removed (effective date pending)..... 30340
75.690 Removed (effective date pending)..... 30340
75.707 (h) table amended (effective date pending)..... 30340
75.720 Revised (OMB number pending)..... 30340
75.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)..... 30340
75.750—75.755 Undesignated center heading removed (effective date pending)..... 30340
75.750 Removed (effective date pending)..... 30340
75.751 Removed (effective date pending)..... 30340
75.752 Removed (effective date pending)..... 30340

Page

75.753 Removed (effective date pending)..... 30340
75.754 Removed (effective date pending)..... 30340
75.755 Removed (effective date pending)..... 30340
76 Authority citation revised..... 30340
76.3 Removed (effective date pending)..... 30340
76.102 Revised (effective date pending)..... 30340
76.125 (a) amended; (c) and authority citation revised (effective date pending)..... 30341
76.136 Amended (effective date pending)..... 30341
76.305 Removed (effective date pending)..... 30341
76.401 (a) revised (effective date pending)..... 30341
76.560 Removed (effective date pending)..... 30341
76.580—76.581 Undesignated center heading removed..... 30341
76.580 (a) designation and (b) through (d) removed (effective date pending)..... 30341
76.581 Removed (effective date pending)..... 30341
76.591 Amended (effective date pending)..... 30341
76.600 Amended (effective date pending)..... 30341
76.670 Heading revised; existing text designated as (a); (b) added (effective date pending)..... 56795
76.681 Heading revised; cross reference added (effective date pending)..... 30341
76.684 Removed (effective date pending)..... 30341
76.690 Removed (effective date pending)..... 30341
76.707 (h) table amended (effective date pending)..... 30341
76.720 Revised (OMB number pending)..... 30341
76.740 Heading and authority citation revised; existing text designated as (a); (b) added (effective date pending)..... 30342
76.770 Revised (effective date pending)..... 30342

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 34 Subtitle A—Con.

Page

76.771 Removed (effective date pending)..... **30342**
76.772 Removed (effective date pending)..... **30342**
76.780—76.783 Center heading removed (effective date pending)..... **30342**
76.780 Removed (effective date pending)..... **30342**
76.781 Removed (effective date pending)..... **30342**
76.782 Removed (effective date pending)..... **30342**
76.783 (b) amended (effective date pending)..... **30342**
76.901 Revised (effective date pending)..... **30342**
77.1 (c) amended (effective date pending)..... **30342**
81.11 (c) added (effective date pending)..... **56795**
81.12 (a) and (d) revised; (b) amended; (e) and (f) added (effective date pending)..... **56795**
81.32 (b), (c) and (e) revised (effective date pending)..... **56795**
86.405 Revised (effective date pending)..... **56795**
99 Authority citation revised.....3188
99.5 Heading revised (effective date pending).....3188
99.6 (a)(5) amended (effective date pending).....3188
99.30 Heading and (a) revised (effective date pending).....3189
99.31 (a)(13) added; (b) and authority citation revised (effective date pending).....3189
99.60 Heading, (a) and (c) revised (effective date pending).....3189
99.63 Revised (effective date pending).....3189
99.64 (c) and (d) added (effective date pending).....3189
99.65 Revised (effective date pending).....3189
99.67 (a) and authority citation revised (effective date pending).....3189

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

Page

200.6 (c) amended (effective date pending)..... **39067**
200.20 (a)(10)(i)(B) revised; (a)(10)(i)(D) amended; (a)(10)(i)(F) added (effective date pending)..... **39067**
200.31 (b)(1) and (2) revised; (c)(6) and (d) added; OMB number (effective date pending)..... **39067**
200.34 (a)(4) added (effective date pending)..... **39067**
200.35 (a)(3) redesignated as (a)(4); new (a)(3) added (effective date pending)..... **39067**
206 Authority citation revised..... **60406**
206.1 (a) and (b) amended (effective date pending)..... **60407**
206.3 (a), (b) introductory text and (c) revised (effective date pending)..... **60407**
206.4 (a) revised (effective date pending)..... **60407**
Regulation at 57 FR 60407 corrected.....11539
206.5 (d) added (effective date pending)..... **60407**
206.10 (b)(1)(i) and (2)(i) revised (effective date pending)..... **60407**
206.11 (Subpart B) Added (effective date pending)..... **60407**
206.20 (b)(1) amended (effective date pending)..... **60407**
218.3 Redesignated as 218.4; new 218.3 added (effective date pending)..... **56794**
218.4 Redesignated as 218.5; new 218.4 redesignated from 218.3 (effective date pending)..... **56795**
Amended (effective date pending)..... **56796**
218.5 Redesignated as 218.6; new 218.5 redesignated from 218.4 (effective date pending)..... **56795**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

218.6 Redesignated as 218.7; new 218.6 redesignated from 218.5 (effective date pending)....56795
218.7 Redesignated as 218.8; new 218.7 redesignated from 218.6 (effective date pending)....56795
218.8 Redesignated as 218.9; new 218.8 redesignated from 218.7 (effective date pending)....56795
Amended (effective date pending)....56796
218.9 Redesignated as 218.10; new 218.9 redesignated from 218.8 (effective date pending)....56795
218.10 Redesignated as 218.11; new 218.10 redesignated from 218.9 (effective date pending)....56795
Amended (effective date pending)....56796
218.11 Redesignated from 318.10 (effective date pending)....56795
221 Authority citation revised....56796
221.81 (b) removed (effective date pending)....56796
221.82 (b)(3) removed (effective date pending)....56796
221.83 Added (effective date pending)....56796
222.69 (f), (g) and (h) redesignated as (g), (h) and (i); new (f) added; new (g)(2) and (i)(4) amended (effective date pending)....56796
237 (a)(4) and (b) amended; (c) added (effective date pending)....30342
237.7 (a) revised (effective date pending)....30342
263 Authority citation revised....30342
263.2 (c) added (effective date pending)....30342
263.9 Added (effective date pending)....30342
280.2 Undesignated introductory text designated as (a); existing (a) and (b) redesignated as (1) and (2); new (b) added....61508

Page

280.4 (b) amended....61508
280.20 (g) redesignated as (i); (f)(4), (5), new (g) and (h) added....61509
280.31 Revised....61509
280.32 Revised....61510

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

300 Revised (effective date pending)....44798
300.17 (b)(3) and Note 2 corrected....48694
300.18 (b)(2) corrected....48694
300.110 OMB number pending....44798
300.111 Corrected....48694
300.121 OMB number pending....44798
300.122 OMB number pending....44798
300.123 OMB number pending....44798
300.125 OMB number pending....44798
300.126 OMB number pending....44798
300.127 OMB number pending....44798
300.128 OMB number pending....44798
300.129 OMB number pending....44798
300.130 OMB number pending....44798
300.131 OMB number pending....44798
300.132 OMB number pending....44798
300.133 OMB number pending....44798
300.134 OMB number pending....44798
300.136 OMB number pending....44798
300.138 OMB number pending....44798
300.139 OMB number pending....44798
300.140 OMB number pending....44798

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 34 Chapter III—Con. Page

300.141 OMB number pending....44798
300.144 OMB number pending....44798
300.146 OMB number pending....44798
300.148 OMB number pending....44798
300.149 OMB number pending....44798
300.152 OMB number pending....44798
300.153 OMB number pending....44798
300.180 OMB number pending....44798
300.192 OMB number pending....44798
300.220 OMB number pending....44798
300.222 OMB number pending....44798
300.223 OMB number pending....44798
300.224 OMB number pending....44798
300.225 OMB number pending....44798
300.226 OMB number pending....44798
300.227 OMB number pending....44798
300.230 (b) introductory text amended; (b)(1) designation; (b)(2) and comment removed; (b)(1)(i) and (ii) redesignated as new (b)(1) and (2); new (b)(2) amended....37654
300.231 OMB number pending....44798
300.235 OMB number pending....44798
300.238 OMB number pending....44798
300.240 OMB number pending....44798
300.280 OMB number pending....44798
300.281 OMB number pending....44798
300.284 OMB number pending....44798
300.341 OMB number pending....44798
300.343 OMB number pending....44798
300.345 OMB number pending....44798
300.346 OMB number pending....44798
300.349 OMB number pending....44798
300.380 OMB number pending....44798
300.381 OMB number pending....44798
300.382 OMB number pending....44798
300.383 OMB number pending....44798
300.402 OMB number pending....44798
300.482 OMB number pending....44798
300.483 OMB number pending....44798
300.486 Redesignated as 300.487; new 300.486 added (effective date pending)....56796
300.487 Redesignated from 300.486 (effective date pending)....56796
300.505 OMB number pending....44798
300.510 OMB number pending....44798
300.512 OMB number pending....44798
300.532 OMB number pending....44798
300.533 OMB number pending....44798
300.543 OMB number pending....44798
300.561 OMB number pending....44798
300.562 OMB number pending....44798
300.563 OMB number pending....44798
300.565 OMB number pending....44798
300.569 OMB number pending....44798
300.570 Corrected....48694
300.571 OMB number pending....44798
300.572 OMB number pending....44798

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

300.574 OMB number pending....44798
300.575 OMB number pending....44798
300.586 Redesignated as 300.587; new 300.586 added (effective date pending)....56796
300.587 Redesignated from 300.586 (effective date pending)....56796
300.589 OMB number pending....44798
300.600 OMB number pending....44798
300.653 OMB number pending....44798
300.660 OMB number pending....44798
300.661 OMB number pending....44798
300.662 OMB number pending....44798
300.670—300.672 Undesignated center heading added (effective date pending)....30342
300.670 Added (effective date pending)....30343
300.671 Added (effective date pending)....30343
300.672 Added (effective date pending)....30343
300.750 OMB number pending....44798
300.751 OMB number pending....44798
300.754 OMB number pending....44798
300 Appendix C corrected....48694
301.1 (a) revised (effective date pending)....44840
301.3 (a) and (c) revised (effective date pending)....44840
301.6 Added (effective date pending)....44840
301.10 (b)(2) revised (effective date pending)....44840
301.30 (a), (b)(2) and (d) revised (effective date pending)....44840
303.124 (b) introductory text amended; (b)(1) designation; (b)(2) and note removed; (b)(1)(i) and (ii) redesignated as new (b)(1) and (2); new (b)(2) amended....37654

Page

305.10 Heading revised; (b) amended (effective date pending)....9462
305.11 Redesignated as 305.12; new 305.11 added (effective date pending)....9462
305.12 Redesignated from 305.11 (effective date pending)....9462
305.30 Amended (effective date pending)....9463
305.31 Heading, (a)(1), (2) and (f)(2) revised; OMB number (effective date pending)....9462
305.40 Heading and introductory text revised; OMB number (effective date pending)....9463
316 Revised....62096
318 Revised....62099
319 Revised....62106
356 Authority citation revised....30343
356.2 (d) added (effective date pending)....30343
356.3 (b) and (c)(2) amended; (d) added (effective date pending)....30343
361.170 (d) revised (effective date pending)....56797
361.171 (b) and (c) redesignated as (c) and (d); new (b) added (effective date pending)....56797

Chapter IV—Office of Vocational and Adult Education, Department of Education (Parts 400—499)

400 Revised (effective date pending)....36724
401 Revised (effective date pending)....36730
402 Added (effective date pending)....36733
403 Added (effective date pending)....36735
405 Added (effective date pending)....36761
406 Added (effective date pending)....36763
407 Revised (effective date pending)....36765
408 Revised (effective date pending)....36767

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 34 Chapter IV—Con. Page

409 Redesignated as 429 (effective date pending)..... **36724, 36771**
Added..... **36771**
410 Revised (effective date pending)..... **36773**
411 Revised (effective date pending)..... **36776**
412 Revised (effective date pending)..... **36778**
413 Added (effective date pending)..... **36780**
414 Revised (effective date pending)..... **36782**
415 Revised (effective date pending)..... **36784**
416 Revised (effective date pending)..... **36786**
417 Revised (effective date pending)..... **36788**
418 Added (effective date pending)..... **36791**
419 Added (effective date pending)..... **36794**
421 Added (effective date pending)..... **36796**
422 Added (effective date pending)..... **36797**
423 Added (effective date pending)..... **36799**
424 Added (effective date pending)..... **36801**
425 Added (effective date pending)..... **36803**
426 Added (effective date pending)..... **36805**
427 Added (effective date pending)..... **36810**
428 Added (effective date pending)..... **36812**
429 Redesignated from 409 (effective date pending)..... **36724, 36771**

Chapter V—Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

555 Added (effective date pending)..... **53195**
562 Authority citation revised..... **30343**
562.2 (b)(1)(iii) and (2) amended; (b)(3) added (effective date pending)..... **30343**
562.3 (c) added (effective date pending)..... **30343**
581.59 Added (effective date pending)..... **56797**

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

600.5 (a)(7) and (c)(2) amended; (b) redesignated as (c); new (b) added (effective date pending)..... **57309**
600.6 (a)(6) and (c)(2) amended; (b) redesignated as (c); new (b) added (effective date pending)..... **57309**
600.9 OMB numbers..... **57310**
600.30 (a) introductory text revised (effective date pending)..... **57310**
600.31 (a)(4), (5) amended; (a)(6) added (effective date pending)..... **57310**
600.41 (g)(1) amended (effective date pending)..... **47753**
628 Authority citation revised..... 11163
628.1 Introductory text amended; authority citation revised (effective date pending)..... 11163
628.2 Heading and introductory text amended; authority citation revised (effective date pending)..... 11163
628.3 Authority citation revised (effective date pending)..... 11163
628.4 Revised (effective date pending)..... 11163
628.5 (b) and authority citation revised (effective date pending)..... 11163
628.6 Text amended; authority citation revised; (effective date pending)..... 11163
628.10 Revised (effective date pending)..... 11163
628.20 Introductory text and authority citation revised (OMB number pending)..... 11163
628.30 Authority citation revised (effective date pending)..... 11163

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

628.31 Authority citation revised (effective date pending)....11163
628.32 (a) and authority citation revised (OMB number pending)....11163
628.40 Revised (effective date pending)....11163
628.41 Authority citation revised (effective date pending)....11163
628.42 Authority citation revised (effective date pending)....11163
628.43 Authority citation revised (effective date pending)....11163
628.44 Authority citation revised (effective date pending)....11163
628.45 (a)(3)(ii) and (iii) amended; authority citation revised (effective date pending)....11163
628.46 Authority citation revised (effective date pending)....11163
628.47 (d) and (e) amended; authority citation revised (effective date pending)....11164
628.48 Authority citation revised (effective date pending)....11163
630 Authority citation revised....**30343**
630.11 Introductory text amended (effective date pending)....**30343**
630.22 Added (effective date pending)....**30343**
630.23 Added (effective date pending)....**30343**
637 Authority citation revised....**54301**
637.1 Amended....**54302**
637.3 (a) revised....**54302**
637.4 Authority citation revised....**54302**
637.12 (a) amended....**54302**
637.14 (c)(7) and (9) amended....**54302**
637.32 (g)(1) and (i)(1) amended....**54302**
639 Authority citation revised....**49650**

Page

639.1 (a) amended and authority citation revised (effective date pending)....**49650**
639.2 Authority citation revised (effective date pending)....**49650**
639.3 (a) and authority citation revised (effective date pending)....**49650**
639.4 Authority citation revised (effective date pending)....**49650**
639.10 Authority citation revised (effective date pending)....**49650**
639.11 Authority citation revised (effective date pending)....**49650**
639.30 Authority citation revised (effective date pending)....**49650**
639.31 Authority citation revised (effective date pending)....**49650**
639.40 (a)(1) and (b) amended; authority citation revised (effective date pending)....**49650**
653.2 (c) added (effective date pending)....**30343**
563.3 (b) amended (effective date pending)....**30343**
654.2 (c) added (effective date pending)....**30344**
654.4 (a) amended (effective date pending)....**30344**
668.12 (f) added; authority citation revised (effective date pending)....**57310**
668.56 (a) introductory text and (c) revised (effective date pending)....**39089**
668.57 (c)(1) introductory text and (d)(1) introductory text revised (effective date pending)....**39089**
668.58 (a)(1)(i) revised (effective date pending)....**39089**
668.59 (a)(3)(ii) and (c)(2)(ii) revised (effective date pending)....**39089**
668.61 (b) revised (effective date pending)....**39089**
668.84 (b)(4) and (c) amended (effective date pending)....**47753**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 34 Chapter VI—Con. Page

(b)(4) amended (effective date pending) **47754**
668.85 (b)(4) amended (effective date pending) **47753**
(b)(4) amended (effective date pending) **47754**
(c) added **60034**
668.86 (b)(4) and (c) amended (effective date pending) **47753**
(b)(4) amended **47754**
668.87 (a)(1) and (b) amended (effective date pending) **47753**
668.88 Heading, (a), (b) and (c)(4) amended (effective date pending) **47753**
(a) amended (effective date pending) **47754**
(b)(3) and (4) revised **60034**
668.89 Heading, (a), (b)(1), (2) and (c) amended (effective date pending) **47753**
668.90 (a)(1) introductory text, (ii), (iii), (2), (3)(i), (ii), (iii), (iv), (v), (4), (b)(1), (c)(1), (2), (d)(1), (e) and (f)(3) amended (effective date pending) **47753**
(a)(1), (c)(2), (f)(1) and (3) revised; (c)(3) added; (d)(1), (3) and (5) removed; (d)(2) and (4) redesignated as (d)(1) and (2) **60034**
668.92 (a) amended (effective date pending) **47753**
668.95 (a) amended (effective date pending) **47753**
668.98 Added **60034**
668.114 (a), (b) and (c) amended (effective date pending) **47753**
(a) amended (effective date pending) **47754**
668.115 (a) and (b)(2) amended (effective date pending) **47753**
668.116 Heading, (a), (b), (c), (e)(1) introductory text, (v), (f) and (g)(1) amended (effective date pending) **47753**
668.117 Heading, (a), (b), (c) and (d) amended (effective date pending) **47753**
668.118 Heading, (a), (b) and (c) amended (effective date pending) **47753**
668.119 (a) amended (effective date pending) **47753**
(a) and (d) amended **60035**
668.120 (a), (b) introductory text and (b)(3) amended (effective date pending) **47753**
(a) revised **60035**
668.121 (a) and (b) amended (effective date pending) **47753**
668.124 Added **60035**
668.130—668.139 (Subpart I) Added (effective date pending) 3184
674 Heading revised **60706**
674.1 (b)(1) revised (effective date pending) **32344**
674.2 (b) amended (effective date pending) **32344**
674.8 (a) introductory text and (3) revised (effective date pending) **32344**
674.18 (b)(4) amended (effective date pending) **32345**
674.19 (e)(2)(i) revised (effective date pending) **32345**
674.31 (b)(2)(i)(B), (3) and (5)(iii)(A) revised (effective date pending) **32345**
674.32 (a)(2)(ii) and authority citation revised (effective date pending) **32345**
674.33 (a)(1) and (3)(iii) revised (effective date pending) **32345**
(c)(2) revised (OMB number) **60706**
674.34 (b)(1), (c)(3), (4), (5), (d)(3) introductory text, (4) introductory text, (iii) and (e)(2) revised (effective date pending) **32345**
674.35 (b)(1), (c) introductory text, (3), (4) and (g) revised (effective date pending) **32345**
674.36 (b)(1), (c)(3) and (d) revised (effective date pending) **32345**
674.38 (a)(1) revised (effective date pending) **32346**
674.42 (a)(2)(x) added; (b)(1)(i) revised (effective date pending) **32346**
674.43 (a) introductory text and (b)(3) introductory text revised (effective date pending) **32346**
674.45 (c)(1) introductory text, (i) and (ii)(B) revised;

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

(c)(1)(iii) added (effective date pending)..... **32346**
674.47 (a)(2) revised (effective date pending)..... **32346**
(d), (e) and (g) revised..... **60706**
674.49 (c)(1), (2), (3), (e)(4)(i), (f) introductory text, (2) introductory text, (ii)(A), (f)(3), (h)(1)(i) and (ii) revised (effective date pending)..... **32346**
674.50 (a)(6) amended (effective date pending)..... **32347**
(a)(2) revised..... **60707**
674.52 (d) revised (effective date pending)..... **32347**
674.57 (a)(2) amended (effective date pending)..... **32347**
674 Appendix A revised (effective date pending)..... **32347**
Appendix B revised (effective date pending)..... **32349**
Appendix C revised (effective date pending)..... **32351**
Appendix D revised (effective date pending)..... **32354**
675 Authority citation revised..... **32356**
Heading revised..... **60707**
675.2 (b) amended..... **32356, 60707**
675.16 (b)(1) and (3) amended (effective date pending)..... **32356**
675.18 (a)(4) amended (effective date pending)..... **32356**
675.21 (b) revised..... **60707**
675.22 (b)(6) amended (effective date pending)..... **32356**
675.23 (b)(2)(ii) amended (effective date pending)..... **32356**
675.26 (a)(1) introductory text, (ii) and (2) revised (effective date pending)..... **32356**
675.28 (a), (b)(2) and (c)(2)(ii) revised (effective date pending)..... **32356**
675.34 (a)(2) revised (effective date pending)..... **32357**
676 Heading revised..... **60707**
676.2 (b) amended (effective date pending)..... **32357**
676.3 (b) amended (effective date pending)..... **32357**
676.14 (d)(3) revised (OMB number)..... **60707**
676.16 (f) amended (effective date pending)..... **32357**

Page

676.18 (a)(3) amended (effective date pending)..... **32357**
682 Revised (effective date pending)..... **60323**
682.206 OMB number..... 9119
682.209 OMB number..... 9119
682.210 OMB number..... 9120
682.211 OMB number..... 9120
682.214 OMB number..... 9119
682.301 OMB number..... 9120
682.305 OMB number..... 9119
682.401 OMB number..... 9120
682.402 OMB number..... 9120
682.404 OMB number..... 9119
682.406 OMB number..... 9119
682.407 OMB number..... 9120
682.409 OMB number..... 9120
682.410 OMB number..... 9119
682.412 OMB number..... 9120
682.414 OMB number..... 9120
682.508 OMB number..... 9120
682.515 OMB number..... 9120
682.600 (d) redesignated as (e); new (d) added (effective date ending)..... 3177
682.601 OMB number..... 9120
682.602 OMB number..... 9120
682.603 OMB number..... 9120
682.605 OMB number..... 9119
682.711 OMB number..... 9119
682.712 OMB number..... 9119
682.713 OMB number..... 9119
682.802 OMB number..... 9119
682.803 OMB number..... 9120
682 Appendix B (OMB number)..... 9119

Chapter VII—Office of Educational Research and Improvement, Department of Education (Parts 700—799)

755.20 Redesignated as 755.22; new 755.20 added (effective date pending)..... **53200**
755.21 Added (effective date pending)..... **53201**
755.22 Redesignated from 755.20 (effective date pending)..... **53200**
757.10 Redesignated as 757.12; new 757.10 added (effective date pending)..... **53201**
757.11 Added (effective date pending)..... **53201**

NOTE: **Boldface page numbers indicate 1992 changes.**

341-245 O - 93 - 4 (5)

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 34 Chapter VII—Con. Page

757.12 Redesignated from 757.10 (effective date pending)..... **53201**
758.10—758.11 (Subpart B) Added (effective date pending)..... **53201**
762.2 (d) added (effective date pending)..... **30344**
762.4 Existing text designated as (a); (b) added (effective date pending)..... **30344**
769 Revised (effective date pending)..... **49265**
770.4 (c) amended (effective date pending)..... 11167

Title 34—*Proposed Rules:*

5b **59860**
34 ..... **58100**
76 ..... **38740**
80 ..... **38740**
99 ..... **35964**
231 ..... **44046**
238 ..... **44046**
280 ..... **36324, 38740**
300 ..... 7938, 11776
305 ..... **43572**
316 ..... **34620**
318 ..... **34620**
319 ..... **34620**
345 ..... **59866**
361 ..... 8688, 9458
366 ..... **30866, 36617**
545 ..... **59866**
555 ..... **34488**
600—699 (Ch. VI) **38639, 62533**
608 11158
609 11158
612 ..... **44350**
668 ..... **30826**
785 ..... **44408**
786 ..... **44408**
787 ..... **44408**

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

133.1 Revised..... **37066**
251.4 (a) amended; (i) added..... 5616

Title 35—*Proposed Rules:*

Page

52 ..... **45358, 45360**
63 ..... **45363**
133 ..... **32187**

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter I—National Park Service, Department of the Interior (Parts 1—199)

7.96 (l) redesignated as (m); new (l) added..... **29797**
7.97 (c) added..... **58716**
51 Revised..... **40503**
Corrected..... **42808**
51.4 (a) corrected..... **46509**

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

242.25 (m)(1) table and (13) table corrected; (m)(17)(ii)(C), (18)(ii)(B), (19)(ii)(D) and (25)(ii)(B) correctly revised..... **54509**
(m)(4) table amended; eff. 7-29-92..... **54703**

Chapter III—Corps of Engineers, Department of the Army (Parts 300—399)

327.30 Appendix C amended..... **29220**

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1254.26 (e) introductory text amended; (h) added..... **46306**
1258.12 (g) and (h) redesignated as (h) and (i); new (g) added; interim..... **46306**
(g) and (h) redesignated as (h) and (i); new (g) added..... **60997**

Title 36—*Proposed Rules:*

7 ..... **60496**
242 ..... **43074**
251 ..... **36618**
704 ..... **57979**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

1191 ..... 41006, 60612
..... 3069, 6924
1222 57042
1230 57042
..... 376

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1.12 (a) and (d) revised 29641
1.16 (a) through (d), (f) through (j) and note revised 38194
1.17 (i)(1) revised 29642, 32439
(b) through (g), (j) and (m) through (o) revised 38194
1.18 (a), (b) and (c) revised 38195
1.19 (b)(4), (f) and (h) revised 38195
1.20 (a), (c), (e), (f), (g) and (i) revised 38195
(i) revised; interim 56450
1.21 (a)(1), (5), (6), (b)(2), (3), (e) and (i) revised; (p) added 38195
(a)(6) corrected 40493
1.26 (a) and (c) revised 38195
1.32 Removed 29642
1.46 Revised 29642
1.48 (a) revised 56447
1.60 (b) and (c) revised; (d) added 56447
1.104 (e) revised 29642
1.331—1.335 Undesignated center heading revised 29642
1.331 Removed 29642
1.332 Removed 29642
1.333 Removed 29642
1.334 Removed 29642
1.378 (a), (b) and (c) revised; interim 56450
1.431 (b)(1) through (3)(ii), (c) and (d) revised; (e) removed 4344
1.432 Revised 4344
1.434 (a) revised 4345
1.445 Corrected 40493
1.445 (a) revised 38195
(a)(4) added 4345
1.446 (d) revised; (e) added 4345
1.451 (a) revised 4345
1.455 (a) revised 4345

Page

1.475 Revised 4345
1.476 (a) revised 4346
1.480 (b) revised 4346
1.482 (a) introductory text, (1) and (2)(ii) revised 38196
1.484 (b) revised 4346
1.485 Revised 4346
1.487 Removed 4346
1.488 (a) revised 4346
1.492 (a)(1), (2), (3), (5) and (b) through (d) revised 38196
Introductory text and (e) revised 4346
1.494 (a) through (d) and (g) revised; (h) removed 4346
1.495 (a) through (e) and (h) revised; (i) removed 4347
1.499 Revised 4347
1.821 (h) revised 4348
2.6 (a)(1) and (b)(7) revised; (a)(19) added 38196
2.87 Revised 38196
(c) corrected 40493
2.185—2.187 Undesignated center heading removed 29642
2.185 Removed 29642
2.186 Removed 29642
2.187 Removed 29642
3 Added 29642
10.9 (c) added 4348

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201 Authority citation revised 55465
Authority citation revised 9546
201.5 (b)(2)(iv) revised 60482
201.11 (h)(2) and (3) revised 61834
201.17 (i)(2)(i) and (ii) revised; (i)(2)(iii) added 61834
201.27 Added; interim 55465
201.28 Added; interim 9546
202.3 (b)(6) and (7) redesignated as (b)(7) and (8); new (b)(6) added 39616
202.11 Added 45310
202.17 (a) through (f) revised; (g) and (h) added 60483
202.19 (b)(3) revised; (b)(4) removed; (d)(2)(viii) added 45310
202.20 (b)(3) revised; (c)(2)(xviii) added 45310

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 37

Chapter III—Copyright Royalty Tribunal (Parts 300—399)

Page

301 Technical correction 8655
301.1 (g) and (h) added; interim 6445
301.3 Revised 5616
301.70 Revised; interim 6445
301.71 (d) added; interim 6445
301.72 (d) added; interim 6445
304 Revised **60954**
304.7 (b)(2) table corrected 7051
(b) corrected 8820
304.8 (b)(1)(ii)(D) corrected 7051
311 Added; interim 6445
Technical correction 8655
701 Technical correction 8655

Title 37—*Proposed Rules:*

1 ...**29248, 31344, 36034, 38640, 41899, 42721, 43412, 56537** 528
2 ..... **38640, 56537**
3 ..... **38640**
5 ..... **43412**
10 ..... **29248, 36034, 43412, 56537**
300-399 (Ch. III) **54542**
304 ..... **55494, 58552**

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

[EDITORIAL NOTE: The revision date for the 1992 edition of title 38 was delayed until September 1, 1992. The 1992 revision includes amendments promulgated during the period of July 1, 1991 through September 1, 1992. For amendments promulgated during that period see the August 1992 LSA.]

Chapter I—Department of Veterans Affairs (Parts 0—99)

1.630 (c) revised; authority citation added **44123**
1.631 Authority citation added **44124**
1.633 Added **44124**
1.912a (a) revised; (d)(1) redesignated as (d); (d)(2) removed; (e) added **47263**
1.930 Revised **47263**
1.936 Revised **47264**
1.940 Revised **47264**

Page

1.955—1.970 Authority citation revised 3840
1.955 (a)(1), (d) and authority citation revised **47264**
1.957 (a)(2), (b) introductory text, (1), (2) and authority citation revised **47264**
1.963 (a) and authority citation revised 3840
1.964 (a) and authority citation revised 3840
1.965 (b) and (2) introductory texts revised; authority citation added 3841
(b)(2) corrected 7296
3.1—3.1009 (Subpart A) Authority citation revised **59296**
3.7 (x)(21) authority citation removed; (x)(22), (23) and authority citation added **43905**
(x)(24) through (26) added **60734**
3.103 (b)(1) and (f) amended **56993**
3.105 (h)(2) introductory text amended **56993**
3.261 Table amended **59298**
3.262 (l)(1) through (4) and authority citation revised; (r) through (u) added **59298**
(g)(2), (h) introductory text, (j)(2), (3) heading, (k)(1), (5), (6), (m) introductory text, (1), (2), (n) introductory text, (1), (2) and (p) amended; (k) authority citation, (m) authority citation, (n) authority citation and (o) authority citation revised **59299**
3.263 (a) amended; (e) and (f) added **59299**
3.271 (f) introductory text redesignated as (f)(1); (a)(1) through (3) and (f)(2) added **59299**
3.272 (d) revised; (n) through (p) added **59300**
3.273 Introductory text and (d) added; (a), (b)(1), (2) and (c) amended **59300**
3.275 (f) and (g) added **59300**
3.277 Authority citation revised **59300**
3.306 (b) heading and (c) heading revised **59296**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

3.660 (a)(2) heading, (b) introductory text, (1) and (2) amended; (b) authority citation removed; (b)(1) authority citation added....59300
3.661 Heading,(a)(1) heading, (b) heading, (1) and (2) amended....59300
3.1610 Introductory text and (b) corrected....40944
17 Authority citation revised....41701
17.123 (j) redesignated as (j)(1); (j)(2) and authority citation added....41701
21 Authority citation revised....60735
21.21 (a) and authority citation revised....57108
21.22 (a) amended....57108
21.78 (b)(4) introductory text, (i) and (ii) amended....57108
21.134 Revised....57108
21.148 (d) amended....57108
21.254 (b)(1) amended....57108
21.256 (e)(2) and authority citation revised....57108
21.264 Amended....57108
21.268 (b) amended....57108
21.272 (b)(1) amended....57108
21.276 (g) amended....57108
21.320 (b)(3) and (d)(3) amended....57108
21.330 (a) amended....57108
21.334 Nomenclature change; (a) and authority citation, (b)(1), (e)(2) and authority citation revised....57108
21.340 (c) and authority citation revised....57109
21.3046 (b)(5) revised; authority citation added....60735
21.4131 (b) and (c)(1) revised; (c) authority citation added....40614
21.4234 (a) revised....40614
21.4251 (g)(1) revised....40614
21.4500—21.4507 (Subpart F) Regulations at 57 FR 31026 corrected....43616
21.4632 (c)(4) added....49397
21.4700—21.4705 (Subpart F-2) Republished....57101
21.5001—21.5300 (Subpart G) Regulations at 57 FR 31027 corrected....43616

Page

21.7000—21.7310 (Subpart K) Regulations at 57 FR 31028 and 31029 corrected....43616
Regulations at 57 FR 31029 and 31030 corrected....43617
21.7131 (b) and (c)(1) revised....40615
21.7136 (a) and authority citation, (b)(1) and authority citation, (2) and authority citation and (3) introductory text revised....57103
21.7137 (a) and authority citation, (c)(2) and authority citation revised....57104
21.7500—21.7810 (Subpart L) Regulations at 57 FR 31030 and 31031 corrected....43617
21.7520 (b)(14) and authority citations revised; (b)(29) added....57105
21.7540 .(a)(2) and authority citation revised....57106
21.7550 (a) introductory text and authority citation revised; (c) and authority citation added....57106
21.7551 (a)(2) and authority citation revised....57106
21.7635 (c) and authority citation, (d) and authority citation revised....57106
21.7636 (a)(2), (3) and authority citation revised; (a)(4) added; (b)(1) removed; (b)(2) through (b)(6) redesignated as (b)(1) through (b)(5)....57107
21.7639 (b) and authority citation revised; (c) introductory text amended....57107
21.7670 (a)(2), (3) and authority citation, (b)(2)(i), (2)(ii), (b) authority citation, (c)(2)(i), (ii) and (c) authority citation revised; (a)(4), (b)(2)(iii) and (c)(2)(iii) added....57107
21.7672 (c)(2) revised; authority citation added....46985
36 Regulations at 57 FR 31031 and 31032 corrected....43617, 43618
Negotiated interest rates....61325
36.4201—36.4287 Sectional authority citations revised....40616
36.4225 (f) added....40616

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 38 Chapter I—Con. Page

36.4300—36.4375 Sectional authority citations revised..... **40616**
36.4348 (f) added..... **40616**

Title 38—*Proposed Rules:*

3 ..... **40424, 48350**
4 ....4954, 4961, 4962, 4969, 5691, 11099
21 ..... **41451, 47023, 47024, 58435**
36 ..... **47433**

TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

20 IMM amended; incorporation by reference..... **30654, 45572**
111 DMM amended; incorporation by reference...**30780, 32899, 43403, 45889, 49139, 55113, 56276**
Meetings..... **47264**
111.3 (e) amended..... **37884**
232 Authority citation revised..... **36903**
232.1 (k)(1), (2) and (3) redesignated as (k)(3), (4) and (5); new (k)(1) and (2) added..... **36903**
(b)(2) redesignated as (b)(3); new (b)(2) added..... **38443**
233.7 (j)(2) and (4) revised..... **32726**
601.100 Procurement Manual amended; incorporation by reference..... **60998**
601.105 Table amended..... **31129**

Title 39—*Proposed Rules:*

111 ...**32188, 32475, 39646, 40890, 41716, 43956, 58765**
..... 8921
3001 ..... **31346, 39160, 57124**
..... 6769

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

2 Technical correction 29353
Authority citation revised 461
2.211 (d) amended..... 461
2.301 (b)(6) removed, (e) amended; (h)(2)(i), (ii)(A) and (C) revised..... 461
(h)(2)(i) amended..... 7189
2.306 (j)(1) existing text amended; (j)(1)(i) and (ii) added..... 462
2.310 Heading, (a)(1), (6), (b), (g)(1), (3), (4), (h)(1) and (4) revised; (g)(5) and (6) added..... 462
5 Technical correction 29353
10 Technical correction 29353
22.04 Heading revised..... **60129**
22.16 (b) amended..... **60129**
35.4000—35.4130 (Subpart M) Revised..... **45316**
40 Revised..... **48177**
51 Authority citation revised...**32334, 52987**
51.165 (a)(1)(xii)(D) revised; (a)(1)(v)(C)(*8*), (*9*), (xii)(E) and (xx) through (xxv) added..... **32334**
51.166 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (30) through (37) added..... **32335**
51.350—51.373 (Subpart S) Added..... **52987**
51 Appendix N removed..... **52987**
52 Authority citation revised..... **32336**
Authority delegation notice..... **54931**
State implementation plan determination..... **44689, 45715**
Technical correction..... 6056
State implementation plan determination..... 6606
52.21 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (31) through (38) added..... **32336**
52.24 (f)(13)(iv) revised; (f)(5)(iii)(*h*), (*i*), (13)(v) and (19) through (24) added..... **32337**
52.220 (c)(183)(i)(B)(*2*), (184)(i)(B)(*2*), (C)(*1*), (185)(i)(A)(*3*) and (C)(*2*) amended..... **35759**
(c)(182), (183)(i)(A)(*2*), (184)(i)(B)(*2*) added..... **48459**
(c)(183)(i)(D)(*1*), (184)(i)(A)(2), (186)(i)(A)(*1*) added 8546
52.320 Regulation at 57 FR 28617 withdrawn..... **36004**
(c)(57) added..... **40333**
(c)(56) added..... **54511**
52.370 (c)(59)..... **5465**
(c)(56) added..... 10963

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

52.382 Revised 10964
52.420 (c)(44) added **53566**
52.470 (c)(27) added **34251**
52.472 (d) added **34251**
52.570 (c)(37) added **46781**
(c)(38) added **58991**
(c)(42) added 6095
52.720 (c)(90) added **37104**
(c)(8) added **40128**
(c)(87) added **40335**
(c)(84) and (85) added **59935**
(c)(94) added **61837**
(c)(93) added 3844
(c)(92) added 3846
52.726 (f) added 3844
52.736 (a) removed; (b) added **59935**
52.737 Added **59936**
52.741 (z)(5) added **38616**
52.770 (c)(81) added **42892**
52.820 (c)(55) revised 6093
52.870 (c)(27) added 3848
52.884 (a)(2) and (3) removed 3848
52.1070 (c)(90) added **49653**
52.1120 (c)(96) added **46312**
(c)(92) added **46315**
(c)(95) added **58992**
(c)(97) added **58995**
(c)(93) added 3494
(c)(84) added 10969
52.1167 Table amended **46312, 46316, 58993, 58996**
Table amended 3495, 10970
52.1220 (c)(25) added **46308**
52.1230 (a) removed; (b) and (c) redesignated as (a) and (b) **46308**
52.1270 (c)(22) added **34252**
52.1320 (c)(80) added **46779**
(c)(81) added **52723**
52.1370 (c)(25) added 5297
52.1384 Revised **57347**
Existing text designated as (a); (b) added **60486**
52.1520 (c)(45) added **36605**
(c)(46) added 4904
52.1525 Table revised **36605**
Table amended 4904
52.1526 Removed **36607**
52.1527 (b) revised **36607**
52.1530 Removed **36607**
52.1570 (c)(47) added **42893**
(c)(49) added **53441**
52.1605 Amended **42893, 43441**
52.1620 (c)(49) added 10972
(c)(47) added 10980
52.1820 (c)(23) added 5297

Page

52.1970 (c)(89) added **37467**
(c)(94) added **37468**
(c)(93) added **37469**
(c)(95) added **37471**
(c)(65) revised **37474**
(c)(97) added 10974
52.1977 Revised **37471**
Revised 10974
52.2020 (c)(73) added **42895**
(c)(74) added **43906**
(c)(76) added **52722**
52.2120(c)(36) added **59302**
52.2170 (c)(13) added 5297
52.2220 (c)(106) added **40337**
(c)(108) added 10981
52.2270 (c)(77) added **44126**
52.2420 (c)(97) removed **35760**
(c)(97) added **48460**
(c)(94) added 10983
(c)(89) added 11376
52.2423 (f) revised 11377
52.2470 (c)(38) added 4580
52.2479 Revised 4580
52.2520 (c)(25) added **42896**
52.2570 (c)(62) added **46310**
(c)(64) added **53444**
55 Added **40806**
Authority citation revised 8467
58.1 (f) amended; (w), (x) and (y) added 4867
58.2 (d) redesignated as (e); new (d) added 8467
58.13 (b) revised; (c) redesignated as (d); new (c) added 8467
58.20 (a) and (c) revised; (f) added 8467
58.40—58.46 (Subpart E) Added 8468
58.40 (Subpart E) Redesignated as 58.50 (Subpart F) 8467
58.50—58.51 (Subpart F) Redesignated as 58.60 through 58.61 (Subpart G); new 58.50 (Subpart F) redesignated from 58.40 (Subpart E) 8467
58.60—58.61 (Subpart G) Redesignated from 58.50 through 58.51 (Subpart F) 5867
58 Appendix D amended **44496**
Appendix A amended 8468
Appendixes C and D amended 8469
Appendix E amended 8474, 8475
60 Authority delegation notices **29649, 48563, 55113**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 40 Chapter I—Con. Page

Authority citation revised....32338
Authority delegation notices...21, 7189
60.2 Amended....32338
60.4 (c) table revised....5298
260.10 Amended....8682
60.14 (h) through (l) added....32339
60.17 (a)(31) amended; (a)(62) added....30656
60.730—60.737 (Subpart UUU) Added....44503
60 Appendix A amended....30656
61 Authority delegation notices....29649, 48563, 55113
Authority delegation notices....21
61.04 (c) table revised....5299
61.60 (c) amended....60999
61.340 (c)(3) removed....3095
61.341 Amended....3095
61.342 (a), (b), (c)(1) introductory text, (iii), (2), (3), and (d) introductory text revised; (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added....3095
61.343 (a) introductory text amended; (b) and (c) redesignated as (c) and (d); (a)(1)(i)(C) and new (b) added; new (c) revised....3096
61.344 (a)(1)(i)(C) redesignated as (a)(1)(i)(D); new (a)(1)(i)(C) added....3097
61.345 (a)(1)(ii), (2) and (3) introductory text revised; (a)(4) added....3097
61.346 (a)(1)(i)(C) added....3097
61.347 (a)(1)(i)(C) Added....3098
61.348 (a)(5) amended; (b) introductory text and (e) introductory text revised; (f), (g), (h), and (i) redesignated as (e)(1), (2), (f), and (g); (e)(3) added....3098
61.349 (a)(1)(ii), (2)(i)(B), (ii), and (e) revised; (a)(1)(iv) and (2)(iv) added....3098
61.353 (a) revised....3099
61.354 (a)(1), (b), (c)(6)(i), (7)(i), (8), and (d) revised; (c)(9), (f) and (g) added....3099
61.355 (a)(1) introductory text, (1)(i), (ii), (2), (3), (b), (c) introductory text, (e)(3), (4), (f)(3), (i) introductory text, (3) introductory text, (ii)(C), (iii), (iv), and (4) revised; (c)(1) and (2) redesignated as (c)(2) and (3); (a)(6), new (c)(1), (j), and (k) added; new (c)(2), (d) and (g) amended....3099
61.356 (f)(2)(i) removed; (b)(4), (f)(2)(ii) and (i)(4) redesignated as (b)(6), (f)(2)(i), and (i)(5); (b)(2), new (b)(6), (c), (d), (e)(2), (f)(2) introductory text, new (f)(2)(i) introductory text, (E), (F), (G), (j)(3), (6), (8), (9), and (11) revised; new (b)(4), (5), (f)(2)(i)(H), new (i)(4), (j)(12), and (m) added....3103
61.357 (d)(4) removed; (d)(3), (5), (6), and (7) redesignated as (d)(4), (6), (7), and (8); new (d)(7)(iii) redesignated as (d)(7)(iv); (a) introductory text, (4), (d)(1), and new (d)(4)(iii), (7)(iv)(D), and (8) revised; (c) and (d)(2) amended; new (d)(3), new (5), new (7)(iii), (iv)(J), and (v) added....3105
61.359 Removed....3105
62.6123 Undesignated heading and section added....43405
62.7325 Undesignated center heading and section added....56858
62.7425 Undesignated center heading and section added....56858
62.9975 Undesignated center heading and section added....44692
62.11450 Undesignated center heading and section added....44692
63 Added....61992
70 Added....32295
70.1 (f) added....57347
72 Added....3650

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

73.1—73.3 (Subpart A) Revised....3687
73.10—73.27 (Subpart B) Added....3687
73.30—73.38 (Subpart C) Added....3691
73.50—73.53 (Subpart D) Added....3694
73.72 (c) revised....3695
73.80—73.86 (Subpart F) Added....3695
75 Added....3701
77 Added....3757
78 Added....3760
80 Program extension....46316
80.2 (pp), (qq) and (rr) added....47771
80.35—80.39 (Subpart C) Added....47771
81 Authority citation revised....4350
81.300 (d) added....56766
81.301 Table amended....3850
81.302 Amended....56767
81.303 Amended....56767
81.305 Amended....56767
Amended....3341
81.306 Amended....56768
81.307 Amended....56768
81.310 Amended....56769
81.311 Amended....56769
81.313 Amended....56769
81.314 Amended....56769
81.315 Amended....56770
81.320 Amended....56770
81.323 Amended....56770
81.324 Revised....48462
Amended....56771
81.327 Amended....56772
81.329 Amended....56772
Amended....3342
81.332 Amended....56772
81.333 Amended....56772
81.334 Amended....56773
81.336 Amended....56773
81.338 Amended....56773
81.339 Amended....56774
81.341 Table amended....59302
81.344 Amended....56775
81.345 Amended....56775
81.347 Amended....56776
81.348 Amended....56777
81.349 Amended....56778
81.350 Amended....56778
81.351 Amended....56778
Table amended....4350
81.355 Amended....56779
82 Authority citation revised....31260

Page

82.1—82.20 Designated as subpart A....31261
82.1—82.13 Designated as subpart A and revised....33787
82.14 Removed....33787
82.20 Removed....33787
82.1—82.20 (Subpart A) Appendixes A through E redesignated from appendixes A through E to part 82....31261
82.30—82.42 (Subpart B) Added....31261
82.60—82.68 (Subpart C) Added....4798
82.62 (a) corrected....8820
82.64 (b) correctly designated....8820
82.100—82.124 (Subpart E) Added....8164
82 Appendixes A, B, C and E redesignated as appendixes A, B, C and E to subpart A and revised; appendix D redesignated as appendix D to subpart A....33787
86 Authority citation revised....30055
Authority citation revised....4002
86.091-28 (e) added....31897
86.094-1 Added....4002
86.094-2 Amended....31897
Amended....4002, 9485
86.094-7 (h) revised; OMB number....31897
86.094-8 (b) through (h) revised; (k) added....31898
86.094-9 (k) added....31899
86.094-13 Added....4002
86.094-14 Added....4006
86.094-16 Added....31900
86.094-17 Added....9485
86.094-18 Added....9486
86.094-21 (a) through (b)(1) and (b)(5)(i)(C) through (b)(7) revised; (g) added....31900
Revised....4009
(h) and (i) added....9487
86.094-22 Added....31902
Revised....4010
86.094-23 Revised....4012
86.094-24 Added....31903
Revised....4014
86.094-25 Added....4018
(d)(2)(i) amended; (d)(2)(iii) added....9487
86.094-26 Added....4021
86.094-28 Added....4025

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 40 Chapter I—Con. Page

86.094-30 Revised....4028
(f) added....9487
86.094-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) revised; (a)(1)(iii)(k) added....**31907**
(a)(2)(iii)(F) and (c)(1)(ii)(B)(*2*) removed....4035
(i) added....9487
86.095-14 Revised....4035
86.095-24 (a) through (b)(1)(iv), (b)(2) through (h) revised; (b)(1)(xi) added....**31909**
Revised....4035
86.095-26 Revised....4036
86.095-30 Revised....4036
(f) added....9487
86.095-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b) and (d)(2) through (h) revised; (a)(1)(iii)(L) and (a)(2)(iii)(K) added....**31913**
(a)(2)(iii)(F) and (c)(1)(ii)(B)(*2*) removed....4037
(i) added....9487
86.096-8 (b) through (h) revised; (k) added....**31915**
86.097-9 (k) added....**31916**
86.201-94—86.246-94 (Subpart C) Added....**31916**
86.608-90 (a) introductory text and (1) revised; (a)(3) added....**31921**
86.701-94 Revised....**31922**
86.708-94 (b) revised....**31922**
86.709-94 (b) revised....**31922**
86.709-99 (b) revised....**31922**
86.901-93—86.911-93 (Subpart J) Added....**30055**
86.1005-90 (a)(1)(ii) amended; (a)(1)(iii) and (a)(2)(vi)(c) revised....**31922**
86.1008-90 (a)(2) revised; (a)(5) added....**31922**
86.1009-84 (a) and (c)(1) revised....**31923**
86.1015 Correctly designated....**30657**
88 Added....**60046**
91.215 (a) revised....**34618**

Page

112 Authority citation revised....**52705**
112.6 Revised; interim....**52705**
114 Authority citation revised....**52705**
114.1 Revised; interim....**52705**
117 Authority citation revised....**52706**
117.22 Revised....**52706**
122.1 (b)(4) amended; OMB number....9413
122.21 (c)(2)(i), (ii) and (iii) redesignated as (c)(2)(ii), (iii) and (v); new (c)(2)(ii) and (iii) revised; new (c)(2)(i) and (iv) added....9413
122.26 (e)(7) added....**60447**
122.42 (d) added....**60448**
122.44 (d)(1)(vi)(B) revised....**33049**
123.25 (a)(4) revised....9414
123.46 (a) revised....**33049**
124.2 Amended....**60129**
124.5 (b) amended....**60129**
124.78 Correctly designated....**30657**
130.7 (d)(1) redesignated in part as (d)(2); (b) revised; (c)(1) introductory text, (ii), (2), (d) introductory text, (1), (2) and (e) amended....**33049**
130.8 (b)(5) added....**33050**
130.10 (b)(2) and (d)(3) revised....**33050**
131 Authority citation revised....**60910**
131.36 Added....**60910**
136.3 (a) Table 1B, (b) table amended....**41833**
141.2 Amended....**31838**
141.6 (h) added....**31838**
141.12 Table amended....**31838**
141.23 (k)(4) and (5) redesignated as (k)(5) and (6); (a)(4) introductory text, (a)(4)(i) introductory text, Table, (c) introductory text, (1), (i)(1), new (k)(5) and (6) revised; (a)(4)(iii) and new (k)(4) added....**31838**
141.24 (f) introductory text, (4), (5), (7), (10), (11), introductory text, (12), (14) introductory text, (15) introductory text, (16) introductory text, (17), (18), (h)(10), (12)(ii), (iii), (iv), (vi), (vii),

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

(viii), (18) and (19)(i)(B) revised; (h)(12)(ix) through (xiv) added....31841
141.32 (e)(53) through (75) added....31843
141.40 (e) through (h), (n)(11) and (12) revised; eff. 1-17-94....31845
141.50 (a)(19) through (23) added; (b) table amended; effective in part 8-17-92 and 1-17-94....31846
141.51 (b) table amended; eff. 1-17-94....31846
141.60 (a)(3) and (b)(3) added....31846
141.61 (a)(19), (20), (21) and (c)(19) through (33) added; (b) and (c) introductory text revised; effective in part 8-17-92 and 1-17-94....31846
141.62 (b) introductory text and (c) revised; (b)(11) through (b)(15) added; eff. 1-17-94....31847
141.89 (a) table amended....31847
142.16 (e) introductory text and (2) revised; eff. 1-17-94....31847
142.62 (a) and (b) revised; eff. 1-17-94....31848
146.68 (d)(4) revised....46294
147.2650 Revised....33446
147.2651 Revised....33447
148.1 (d) revised....31963
148.17 Added....37263
Regulation at 57 FR 37263 effective date corrected....39275, 41173
156 Notification of USDA comments....42472
Comment period reopened....54464
156.10 Designated as subpart A; (i)(2)(viii) revised....38146
156.200—156.212 (Subpart K) Added....38146
164.2 (k) through (r) correctly redesignated as (l) through (s)....30657
168.65—168.85 (Subpart D) Added....9085
169.2 (h)(3) and concluding text revised....9090
170 Revised....38151
Notification of USDA comments....42472
Comment period reopened....54464
180 Technical correction....54304, 59824
180.1 (h) table amended....53569
180.33 Revised....34518
180.103 (a) table and (b) table amended....36005
180.115 Revised....58386
180.142 (k) added....37475
180.221 Revised....53568
180.287 Table amended....53568
180.298 (c) table amended....31325
180.304 Revised....59823
180.319 Table amended....58387
180.333 Removed....30132
180.361 (a) table amended....11379
180.364 (a) table amended....42701
180.381 (a) table and (b) table amended....34518
180.408 (a) table amended....53572
180.415 (a) table revised....31454
(a) amended....53445
180.425 Table amended....59824
Table amended....8697
180.432 (b) revised....58149
180.434 Table amended....8699
180.438 (a) table amended....32440
180.461 Added....48328
180.462 Added....54303
180.463 Added....47996
180.1001 (d) table amended....40129, 48737, 58149
(c) table amended....48738, 61000
(e) table amended....58148
(c) table and (e) table amended....61001
(d) table amended....8700
180.1023 Revised....6893
180.1112 Added....61002
180.1113 Added....53570
180.1114 Added....42700
180.1115 Added....61003
180.1119 Added....8696
185 Authority citation revised....36006
Technical correction....59824
185.1310 (b) added....32441
185.3500 (a) table amended....42701
185.3500 (a)(2) table amended....42701
185.3625 Added....36006
186 Technical correction....59824
186.1860 Added....47996
186.3500 (a) table amended....42701
232.2 Amended....8182
233.1 (b) revised....8183
233.2 Amended....8183
233.41 (f) added....8183
233.60 (Subpart G) Redesignated as 233.70 (Subpart H);

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 40 Chapter I—Con. Page

new 233.60 through 233.62 (Subpart G) added (OMB number)..... 8183
233.70 (Subpart H) Redesignated from 233.60 (Subpart G)..... 8183
257.1 (b) and (c)(3) revised; (c)(11) added..... 9385
257.2 Amended..... 9385
257.3-4 (b)(1) introductory text revised..... 9386
260.10 Amended..... **37263, 38564, 54460**
Regulation at 57 FR 37263 effective date corrected..... **39275, 41173**
Amended..... **41611**
Amended..... 8682
260.20 (a) amended..... **38565**
261.2 (c)(2)(iv) revised..... **38564**
261.3 (a)(2)(iii) and (c)(2)(ii)(C) revised; (f) added..... **37263**
Regulation at 57 FR 37263 effective date corrected..... **39275, 41173**
(a)(2)(v) added..... **41611**
(e) removed..... **49279**
261.4 (b)(15) correctly revised..... **29220**
(b)(6)(ii) introductory text and (9) revised..... **30658**
(a)(10) revised..... **37305**
261.5 (j) amended..... **41612**
261.6 (a)(2)(iii) and (3)(iii) removed; (a)(2)(iv), (v) and (3)(iv) through (viii) redesignated as (a)(2)(iii), (iv) and (3)(iii) through (vii); (a)(4) added..... **41612**
261.31 Table amended..... **61502**
261.32 Amended..... **37305**
Table amended..... **47385**
261 Appendix VII amended..... **37305**
Appendix IX amended..... **37885, 37888**
Appendix II amended..... **55117**
Appendix IX..... **57674**
Appendix II corrected..... 6854
262.34 (a)(1)(iii) introductory text amended; (a)(1)(iii)(B) and (a)(1) concluding text revised; (a)(1)(iv) added; (a)(2) removed..... **37264**
264.1 (g)(2) revised..... **38564**
264.3 Amended..... 8683
264.13 (c)(3) added..... **54460**
264.101 (b) revised..... 8683
264.110 (b)(1), (2) and (3) amended; (b)(4) added..... **37264**
264.111 (c) revised..... **37265**
264.112 (a)(2) revised..... **37265**
264.140 (b)(1), (2) and (3) amended; (b)(4) added..... **37265**

Page

264.142 (a) introductory text revised..... **37265**
264.143 (f)(10) introductory text revised..... **42835**
264.145 (f)(11) introductory text revised..... **42836**
264.147 (a)(7), (b)(7) and (f)(6) revised; (h)(4) and (5) added..... **42836**
264.151 (f), (g), (h) and (k) revised; (n) added..... **42837**
264.314 (e) redesignated as (f); (a)(2), (b), and (d)(1)(ii) revised; new (e) added..... **54460**
264.316 (b) and (c) revised..... **54460**
264.552—269.553 (Subpart S) added..... 8683
264.570 (a) revised; (c) added..... **61502**
264.571 (a) amended; (b) revised..... **61503**
264.572 Revised..... **61503**
264.573 (a)(4), (b) introductory text and (i) revised; (b)(3) added..... **61503**
264.1100—264.1102 (Subpart DD) Added..... **37265**
265.1 (c)(6) revised..... **38564**
(b) amended..... 8685
265.13 (c)(3) added..... **54461**
265.110 (b)(1), (2) and (3) amended; (b)(4) added..... **37267**
265.111 (c) revised..... **37267**
265.112 (d)(4) amended..... **37267**
265.140 (b) revised..... **37267**
265.142 (a) introductory text revised..... **37267**
265.143 (e)(10) introductory text revised..... **42843**
265.145 (e)(11) introductory text revised..... **42843**
265.147 (a)(7), (b)(7) and (f)(6) revised; (h)(4) and (5) added..... **42843**
265.221 (h) added..... **37267**
265.301 (d)(1) revised..... **30658**
265.314 (f) redesignated as (g); (a)(2), (b) and (c)(1)(ii) revised; new (f) added..... **54461**
265.316 (b) and (c) revised..... **54461**
265.440 (a) revised; (c) added..... **61503**
265.441 (a) amended; (b) revised..... **61504**
265.442 Revised..... **61504**
265.1100—265.1102 (Subpart DD) Added..... **37268**
266 Meeting..... 6607
266.40—266.44 (Subpart E) Removed..... **41612**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

266.100 (a) and (f) introductory text amended....38564
(b)(1) revised....41612
266.101 (c)(1) amended; (c)(2) revised....38564
266.103 (b)(2)(ii) introductory text, (iii), (3)(ii)(B), (v), (c)(1) introductory text, (ii)(A), (C), (iii), (vi), (5) and (7)(ii)(B) revised....38564
(c)(1) and (3) revised....45000
266.104 (f)(1) revised....38565
266.106 (b)(7) introductory text, (d)(1) and (5) revised; (d)(3) amended....38565
266.107 (a) revised....38566
266.108 (c) amended....38566
266.112 (b)(2)(i) revised....38566
266 Appendix IX amended....38566
Appendix IX corrected....44999
268.2 (g) revised; (h) added....37270
Regulation at 57 FR 37270 effective date corrected....39275, 41173
(c) revised....8685
268.5 (h)(2)(ii) amended; (h)(2)(iv) revised; (h)(2)(v) redesignated as (h)(2)(vi); new (h)(2)(v) added....37270
Regulation at 57 FR 37270 effective date corrected....39275, 41173
268.7 (a)(1)(iii), (iv), (2) introductory text, (3) (iv), (v), (4) introductory text, (b)(4) introductory and (5) introductory text revised; (a)(1)(v), (3)(vi) and (d) added....37270
Regulation at 57 FR 37270 effective date corrected....39275, 41173
268.9 (d) revised....37271
Regulation at 57 FR 37271 effective date corrected....39275, 41173
268.14 Added....37271
268.35 (c), (d) and (e) revised; eff. 10-13-92 to 5-8-93....47776
268.36 Added....37271
Regulation at 57 FR 37271 effective date corrected....39275, 41173
268.40 (b) revised; (d) added....37272
Regulation at 57 FR 37272 effective date corrected....39275, 41173
268.41 (a) introductory text revised; (a) Table CCWE amended; (c) added....37272
Regulation at 57 FR 37272 effective date corrected....39275, 41173
268.42 (a) Table 2 amended; (b) and (d) revised....37273
Regulation at 57 FR 37273 effective date corrected....39275, 41173
268.43 (a) Table CCW amended....37274
Regulation at 57 FR 37274 effective date corrected....39275, 41173
268.45 Added....37277
Regulation at 57 FR 37277 effective date corrected....39275, 41173
268.46 Added....37280
Regulation at 57 FR 37280 effective date corrected....39275, 41173
268.50 (a)(1) and (2) introductory text revised....37281
Regulation at 57 FR 37281 effective date corrected....39275, 41173
268 Appendix II revised....37281
270.2 Amended....8685
270.13 (n) added....37281
270.14 (b)(2) revised....37281
Regulation at 57 FR 37281 effective date corrected....39275, 41173
270.42 (e)(3)(ii)(B) revised; Appendix I amended....37281
Regulation at 57 FR 37281 effective date corrected....39275, 41173
Appendix I amended....8685
270.72 (b)(6) revised....37282
Regulation at 57 FR 37282 effective date corrected....39275, 41173
271 State hazardous waste management program authorizations...29446, 30905, 32726, 33638, 41699, 45574, 45717, 45719, 45721, 45722, 47996, 49140, 54932, 55466, 59825, 61003, 62231
State hazardous waste management program authorizations....500, 7865, 8232, 9120, 11539
271.1 (j) Tables 1 and 2 amended....37282
(j) Table 1 amended...37306, 47385, 54461, 55117, 61504
(j) Table 1 corrected....6854
Regulation at 57 FR 37282 effective date corrected....39275, 41173
(a) revised....41612
Authority citation revised....61504
(j) Table I amended....8685
271.24 Revised; interim....60132
271.26 Added....41612
272.1 Revised....3500
272.2 Added....3500
272.700 (a) and (b) revised....45576
272.701 Introductory text, (a) introductory text, (1), (2)(ii)

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 40 Chapter I—Con. Page

introductory text, (b), (c) and (d) revised....**45576**
272.1200 (a) and (b) revised....**47266**
272.1201 Introductory text, (a)(1)(i), (ii), (2), (3)(i), (ii), (b), (c) and (d) revised....**47266**
272.1301 Introductory text, (a), (b) and (c)(2) revised....3500
272 Appendix A added....3500
279 Added....**41612**
280.92 (a) through (o) designations removed; amended....9050
280.94 (a) and (b) revised....9051
280.104 Redesignated as 280.108....9051
Added....9053
280.105 Redesignated as 280.109....9051
Added....9054
280.106 Redesignated as 280.110....9051
Added....9056
280.107 Redesignated as 280.111....9051
Added....9059
280.108 Redesignated as 280.112; new 280.108 redesignated from 280.104....9051
280.109 Redesignated as 280.113; new 280.109 redesignated from 280.105 and revised....9051
280.110 Redesignated as 280.114; new 280.110 redesignated from 280.106 and revised (OMB number)....9051
280.111 Redesignated as 280.115; new 280.111 redesignated from 280.107 and revised (OMB number)....9051
280.112 Redesignated as 280.116; new 280.112 redesignated from 280.108....9051
Revised....9052
280.113 Redesignated from 280.109....9051
280.114 Redesignated from 280.110....9051
Revised....9053
280.115 Redesignated from 280.111....9051
Revised....9053
280.116 Redesignated from 280.112....9051
281 State underground storage tank program authorizations....**34519, 41874**
State underground storage tank program authorizations....6894
300 Authority citation revised....**47187**
Appendix B revised....**47187**
Appendix B amended....**61005, 62232**
Appendix B amended....7190, 7493
302.4 Table amended...**37306, 47386, 61504**
305 Added; interim....7706
307 Added....5475
310 Technical correction....29353
Revised....4827
372 Technical correction....**37888**
374 Added....**55040**
374.3 (c) corrected....**61612**
403.7 (a)(3)(iv) amended; (a)(3)(iv)(A) through (C) added....9386
403 Appendix G added....9386
414.11 (g), (h), and (i) added....**41843**
414.21 Amended....**41844**
414.30 Amended....**41844**
414.31 Amended....**41844**
414.40 Amended....**41844**
414.41 Amended....**41844**
414.50 Amended....**41844**
414.51 Amended....**41844**
414.61 Amended....**41844**
414.70 (a), (c) and (e) amended....**41844**
414.71 Amended....**41844**
414.81 Amended....**41844**
414 Appendixes A and B amended....**41844**
Technical correction....29353
501.15 (d)(1)(ii)(A), (B) and (C) redesignated as (d)(1)(ii)(B), (C) and (E); new (d)(1)(ii)(B) and (C) revised; new (d)(1)(ii)(A) and (D) added....9414
503 Added....9387
530 Suspended....10984
712.30 Regulation at 57 FR 29034 effective date corrected....**30771**
716.120 Regulation at 57 FR 29034 effective date corrected....**30771**
721 Technical correction....7190
721.805 Added....**31330**
721.840 Added....**46464**
721.853 (a)(2)(iii) revised....**54305**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

		Page
721.1050	Added	**44061**
721.1075	Added	**44062**
721.1120	Added	**31330**
721.1210	Added	**44062**
721.1325	Added	**44062**
721.1650	Added	**44062**
721.1745	Added	**44063**
721.1950	Added	**44063**
721.2025	Added	**46465**
721.2086	Added	**46464**
721.2120	Added	**46465**
721.2140	Added	**44063**
721.2175	Added	**46465**
721.2225	Added	**44063**
721.2250	Added	**44064**
721.2420	Added	**46465**
721.2475	Added	**44064**
721.2540	Added	**46465**
721.2568	Removed	**34253**
721.2840	Added	**44064**
721.2980	Added	**46465**
721.3100	Added	**46465**
721.3120	Added	**31968**
721.3180	Added	**32446**
721.3240	Added	**44064**
721.3260	Added	**44065**
721.3340	Added	**31968**
721.3360	Added	**46466**
721.3480	Added	**44065**
721.3620	Added	**46466**
721.3680	Added	**46466**
721.3700	Added	**44065**
721.3720	Added	**46466**
721.3764	Added	**44065**
721.3800	Added	**44066**
721.3880	Added	**44066**
721.4000	Added	**31968**
721.4260	Added	**44066**
721.4380	Added	**44067**
721.4460	Added	**46466**
721.4480	Added	**46466**
721.4520	Added	**44067**
721.4600	Added	**44067**
721.4720	Added	**46467**
721.5050	Added	**46467**
721.5200	Added	**46467**
721.5250	Added	**31968**
721.5300	Added	**44068**
721.5450	Added	**44068**
721.5475	Added	**44068**
721.5525	Added	**31969**
721.5660	Added	**44068**
721.5700	Added	**44069**
721.6060	Added	**31969**
721.6140	Added	**44069**
721.6160	Added	**44069**
721.6200	Added	**46467**
721.6220	Added	**46467**
721.6540	Added	**46468**
721.6560	Added	**46468**
721.6620	Added	**44070**
721.6625	Added	**44070**
721.6640	Added	**44070**
721.6820	Added	**31969**
721.6920	Added	**44070**
721.7000	Added	**44071**
721.7200	Added	**44071**
721.7210	Added	**44071**
721.7240	Added	**31969**
721.8125	Added	**44071**
721.8250	Added	**44072**
721.8375	Added	**44072**
721.8425	Added	**44072**
721.9280	Added	**44072**
721.9300	Added	**44073**
721.9400	Added	**44073**
721.9420	Added	**44074**
721.9460	Added	**44074**
721.9525	Added	**44074**
721.9550	Added	**44074**
721.9570	Added	**31970**
721.9740	Added	**44075**
721.9820	Added	**44075**
721.9850	Added	**44075**
721.9975	Added	**44075**

NOTE: **Boldface page numbers indicate 1992 changes.**

Title 40—*Proposed Rules:*

1—799 (Ch. I) ...**30708, 31473, 42533, 43956, 44147, 45597, 48490, 49054, 53866, 54203, 55501, 57402, 61866** ...3002, 4391, 4392, 6200, 6609, 7501, 8565, 9554

2 ...**44718**

25 ...**31164**

40 ...**31058**

50 ...**35542**

51 ...**33287, 33314, 46114, 48490** ...3768, 11110

52 ...**31477, 31678, 32191, 33314, 35769, 35771, 36040, 37743, 38641, 38650, 40157, 40159, 41716, 42536, 42911, 42913, 43420, 43423, 43425, 43648, 43651, 43653, 43657, 43957, 43959, 44351, 44528, 44530, 44534, 44538, 44540, 44542, 44718, 45012, 45358, 45360, 47896, 48352, 48492, 49436, 49437, 49662, 52606, 53304, 53866, 53868, 55218, 55620, 57045, 57047, 57715, 59022, 59327, 6014961036, 62535** ...322, 324, 326, 5319, 5695, 7762, 8245, 8247, 8565, 10998, 11200, 11555

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 40—Con.

Page

54 7870
55 ..... **62537**
58 ..... **46003**
60 ..... **43171, 62798**
..... 11709
61 ..... **43173, 56877, 57403, 60778**
62 ..... **40628**
63 ..... **44147, 45363, 57534, 62608**
..... 328, 11201, 11667
68 5102
72 ..... **29940**
73 ..... **29940**
76 ..... **55632, 61489**
..... 5950
80 ..... **31165, 37744, 38651, 57980**
..... 11722
81 7762
82 ..... **58644**
85 ..... **33141, 52912, 61867**
..... 3380
86 ..... **33141, 52912, 61867**
..... 3380, 11202
112 8824
122 ..... **32475, 35774, 41344**
123 ..... **33051**
141 ..... **54957**
143 ..... **54957**
144 ..... 7924, 8028
145 ..... **53869**
148 4972
153 ..... **44290, 56422**
159 ..... **44290, 56422**
170 ..... **38167, 38175, 54465**
172 5878
180 ...**30180, 30454, 31164, 31346, 31479, 32753, 33475, 33477, 34537, 36042, 36044, 36046, 40161—40163, 42727, 42730, 45017, 45018, 48009, 48769, 53675, 53676, 59829, 62540, 62542**
..... 4131, 8728, 8729
185 ..... **32753, 53676**
186 ..... **32753**
191 ..... 7924, 8028
194 8029
228 ..... **43427**
..... 10999
230 ..... **52716**
250 ..... **44543**
260 ..... **31164, 61376**
..... 8102
261 ...**31164, 36866, 37921, 37927, 45112, 49280, 61376, 61542**
..... 4972, 6925, 8102, 8504
262 ..... **31164, 61376**
..... 8102
264 ..... **31164, 43171, 48195, 61376**
..... 8102
265 ..... **43171, 48195**
..... 8102
268 ..... **31164, 35940, 44545, 61376**
..... 4972, 8102
270 ..... **43171, 48195**
..... 8102
271 ..... **35940, 43171, 44545, 48195, 49159**
273 8102
281 ..... **53870, 61376**
300 ...**30452, 34742, 38289, 39659, 41452, 44545, 45597, 45599, 46527, 47204, 47585, 56882, 61867**
302 ..... **56726**
..... 6056
308 ..... **34742, 46527**
355 ..... **56726**
372 ..... **41020, 48706**
..... 4133, 6609, 11002
414 ..... **56883**
455 ..... **56883**
600 ..... **52912, 61867**
700 7646
720 7661
721 ..... **34281—34283, 37499, 41020, 53461**
..... 7676
723 ..... 7646, 7679
762 8184
763 8926

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Public Contracts, Department of Labor (Parts 50-1—50-999)

50-201.101 (a)(2)(xii) added..... **31571**

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)

60-2 Policy statement..... **52592**

Chapter 101—Federal Property Management Regulations (101-1—101-99)

101-2.102 (a) revised..... **56993**
101-14 Removed..... **37714**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

Page

101-16—101-21 (Subchapter D Appendix) Temporary Reg. D-75, Supp. 1 added 46317
Temporary Reg. D-76, Supp. 1 added 56994
101-21.000 Revised 44693
101-21.001 Revised 44693
101-21.002 Revised 44693
101-21.003 Revised 44693
101-21.003-1 Revised 44693
101-21.003-2 Revised 44694
101-21.003-3 Revised 44694
101-21.003-4 Revised 44694
101-21.003-5 Revised 44694
101-21.101—101-21.102 (Subpart 101-21.1) Revised 44694
101-21.200—101-21.207 (Subpart 101-21.2) Revised 44694
101-21.300—101-21.303 (Subpart 101-21.3) Revised 44694
101-21.400—101-21.402 (Subpart 101-21.4) Revised 44695
101-21.501—101-21.502 (Subpart 101-21.5) Revised 44695
101-21.600—101-21.606 (Subpart 101-21.6) Revised 44696
101-26.501 Revised 47777
101-26.501-1 (a) revised 47777
101-26.501-2 Revised 47777
101-26.501-3 Revised 47777
101-26.501-4 Revised 47778
101-26.501-5 Revised 47778
101-26.501-6 (b) and (c) revised 47778
101-26.501-7 Revised 47779
101-26.501-8 Removed 47779
101-34 Heading revised 59936
101-34.000 Revised 59936
101-34.001 Revised 59936
101-34.002 Removed 59936
101-34.003 Removed 59936
101-34.100—101-34.105(Subpart 101-34.1) Heading revised 59936
101-34.100 Revised 59936
101-34.101 Revised 59936
101-34.102 Revised 59936
101-34.103 Removed 59936
101-34.104 Removed 59936
101-34.105 Removed 59936
101-34.200 (Subpart 101-34.2) Removed 59936
101-37 Authority citation revised 48329
101-37.000 Revised 48329
101-37.1100 Revised 48329
101-37.1101 Revised 48329

Page

101-37.1102 Added 48329
101-37.1104 Added 48329
101-37.1105 Heading, introductory text, (a)(6) and (7) introductory text revised 48330
101-37.1106 Added 48330
101-37.1107 Added 48331
101-37.1108 Added 48331
101-37—101-41 (Subchapter G Appendix) Temporary Reg. G-56 added 46985
101-38.202-4 Revised 60132
101-38.204-1 (e) through (t) redesignated as (f) through (u); new (i), (j) and (l) revised; new (e) and (v) added 53282
101-38.500 Revised 53283
101-38.501 Revised 53283
101-38.502 Revised 53283
101-38.503 Redesignated as 101-38.504; new 101-38.503 added 53283
101-38.504 Redesignated from 101-38.503 and revised 53283
101-42 Added 39121
101-43.000 Revised 39135
101-43.001-3 Removed 39135
101-43.001-22 Removed 39135
101-43.305 Revised 39135
101-43.307-2 Revised 39136
101-43.307-8 Removed 39136
101-43.307-11 Removed 39136
101-43.311-4 Added 39136
101-44.000 Revised 39136
101-44.108-1 Revised 39136
101-44.108-4 Removed 39136
101-44.108-8 Removed 39136
101-44.108-10 Removed 39136
101-44.700 (b) revised 39136
101-44.702-3 Revised 39136
101-45.000 Revised 39137
101-45.001-3 Removed 39137
101-45.303-3 (c) revised; (d) added 32446
101-45.304-6 Revised 29805
101-45.309-2 Revised 39137
101-45.309-4 Removed 39137
101-45.309-6 Removed 39137
101-45.309-7 Removed 39137
101-45.309-11 Removed 39137
101-45.309-13 Added 34253
101-45.900 Revised 39137
101-45.903 Removed 39137
101-45.4809 Removed 39137

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES JULY 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 41 Chapter 101—Con. Page

101-45.4901-97 Revised..... **32447**
101-45.4901-97A Removed..... **32447**
101-46.000 Revised..... **39137**
101-46.202 (b)(6) revised; (b)(7) added..... **39137**
101-48.000 Revised..... **39137**
101-49.108 Revised..... **39137**

Chapter 201—Federal Information Resources Management Regulation (Parts 201-1—201.99)

201-38 CFR correction..... **56280**
CFR correction withdrawn..... **60132**

Chapter 301—Travel Allowances (Parts 301-1—301-99)

301-1.2 (c) revised; interim..... **53289**
301-2.6 (d) added; interim..... **54305**

Chapter 302—Relocation Allowances (Parts 302-1—302-99)

302-6.2 (g)(1) and (2) amended..... **45001**
302-11 Appendixes A, B and C amended..... 8547

Chapter 304—Payment From a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

304-1 Revised; interim..... **53289**

Title 41—*Proposed Rules:*

60-741 ..... **48084, 49160**
105-7 ..... **53871**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health and Human Services (Parts 1—199)

Page

52a Revised **61006**
57.203 (a) amended; OMB number **45734**
57.208 OMB number **45734**
57.210 OMB number **45734**
57.213a OMB number **45734**
57.215 (a)(3) amended; OMB number **45734**
57.216 Amended **45734**
57.303 (a) amended; OMB number **45735**
57.308 OMB number **45735**
57.310 (a)(1)(iii) footnote and (b)(2)(i) amended; OMB number **45735**
57.313 OMB number **45735**
57.314 Amended **45735**
57.315 OMB number **45735**
57.316 Amended **45735**
57.501—57.514 (Subpart F) Authority citation revised **45735**
57.502 Amended **45735**
57.503 Amended **45735**
57.505 (b) amended **45735**
57.507 (c) amended **45735**
57.508 (b) amended; (c) revised **45735**
57.509 (a) revised; OMB number **45735**
57.510 OMB number **45735**
57.512 OMB number **45735**
57.513 Amended **45736**
57.601—57.613 (Subpart G) Removed **45736**
57.701—57.712 (Subpart H) Authority citation revised **45736**
57.701 Revised **45736**
Corrected **53815**
57.702 Amended **45736**
57.703 Revised **45736**
57.704 (c)(4) removed; (c)(1) amended; (a) revised **45736**
57.705 (b) revised; OMB number **45736**
57.706 (a)(2) amended; (a)(4) and (5) revised **45736**
57.707 (a)(1) amended; (a)(2), (3) and (c) revised **45736**

Page

57.709 (a) and (c) amended; (b) revised **45736**
57.710 Amended **45736**
57.711 Amended **45737**
57.801—57.803 (Subpart I) Authority citation revised **45737**
57.802 Amended **45737**
57.803 (b), (d), (e), (g) and (h) amended; (a)(2) revised **45737**
57.901—57.913 (Subpart J) Removed **45737**
57.1001—57.1014 (Subpart K) Removed **45737**
57.1101—57.1112 (Subpart L) Authority citation revised **45737**
57.1101 Introductory text revised **45737**
57.1102 Amended **45737**
57.1103 Revised **45737**
57.1104 (a) revised **45737**
57.1106 (a) amended **45737**
57.1107 (a)(1) amended; (a)(2), (3), (4) and (b) revised **45737**
57.1109 (b) and (c) amended **45738**
57.1110 Amended **45738**
57.1111 Revised **45738**
57.1112 OMB number **45738**
57.1201—57.1212 (Subpart M) Removed **45738**
57.1301—57.1314 (Subpart N) Removed **45738**
57.1401—57.1415 (Subpart O) Removed **45738**
57.1601—57.1610 (Subpart Q) Authority citation revised **45738**
57.1601 Revised **45738**
57.1602 Amended **45738**
57.1603 (a) and (b) amended; (c) added **45738**
57.1604 (b)(3)(iii)(C), (4)(iii)(C) and (d)(5)(ii) amended; (b)(3)(i) revised; OMB number **45738**
57.1606 (d) removed; (b) and (c) revised **45739**
57.1607 (c) added **45739**
57.1608 Amended **45739**
57.1609 OMB number **45739**
57.1701—57.1710 (Subpart R) Authority citation revised **45739**
57.1701 Introductory text amended **45739**
57.1702 Amended **45739**
57.1703 Revised **45739**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 42 Chapter I—Con. Page

57.1704 (d) through (g) amended; OMB number ... **45739**
57.1706 (a) amended; (b) and (c) revised; (d) removed ... **45739**
57.1707 (c) added ... **45740**
57.1708 Amended ... **45740**
57.1709 OMB number ... **45740**
57.1802 Amended ... **45740**
57.1803 (a) footnote 1 removed ... **45740**
57.1805 (a)(2) revised ... **45740**
57.1807 (a) and (b) amended ... **45740**
57.1809 Footnote amended ... **45740**
57.2101—57.2114 (Subpart V) Heading revised ... **45740**
57.2102 Amended ... **45740**
57.2103 Footnote 1 removed ... **45740**
57.2107 (b) amended ... **45740**
57.2108 Amended ... **45740**
57.2109 OMB number ... **45741**
57.2401 Revised ... **45740**
57.2402 (b), (j) and (o) amended ... **45741**
(f) corrected ... **53815**
57.2403 (a)(1) revised ... **45741**
57.2404 (a) footnote 1 removed; (c)(8) removed ... **45741**
57.2406 (a)(2)(i) amended ... **45741**
57.2408 (b) amended ... **45741**
57.2409 Amended ... **45741**
57.2401—57.2410 (Subpart Y) Appendix amended ... **45741**
57.2502 Amended ... **45741**
57.2503 (b)(1) amended ... **45741**
57.2504 Amended; (a) revised ... **45741**
57.2508 (b) amended ... **45741**
57.2509 Amended ... **45742**
57.2601 Revised ... **45742**
57.2602 Amended ... **45742**
57.2603 Revised ... **45742**
57.2604 (a)(3) and (b) amended ... **45742**
57.2607 (c) amended ... **45742**
57.2610 (b), (d) and (h) amended; OMB number ... **45742**
57.2613 (a)(1), (2) and (c) amended; OMB number ... **45742**
57.2615 OMB number ... **45742**
57.2616 Amended ... **45742**
57.2801—57.2810 (Subpart CC) Heading and authority citation revised ... **45742**
57.2801 Amended ... **45742**
57.2802 Amended ... **45742**
57.2803 (a) revised; OMB number ... **45743**
57.2804 (a)(2) and (b)(2) amended; (a)(1) revised; OMB number ... **45743**
57.2805 (a) amended ... **45743**
57.2806 (b) and (c)(1) amended ... **45743**
57.2808 Amended ... **45743**
57.2809 OMB number ... **45743**
57.2902 Amended ... **45743**
57.2904 (b)(1)(i) amended; (a)(1) revised ... **45743**
57.2908 Amended ... **45743**
57.3001—57.3011 (Subpart EE) Authority citation revised ... **45743**
57.3001 Amended ... **45743**
57.3002 Amended ... **45743**
57.3003 Revised ... **45743**
57.3004 OMB number ... **45744**
57.3005 (a)(1) and (4) amended ... **45744**
57.3006 (a) and (b) amended; (c) revised; (d) removed ... **45744**
57.3007 (b) amended; OMB number ... **45744**
57.3008 (c) added ... **45744**
57.3009 Amended ... **45744**
57.3010 OMB number ... **45744**
57.3101 Introductory text amended ... **45744**
57.3102 Amended ... **45744**
57.3103 Revised ... **45744**
57.3105 (a)(8) amended ... **45744**
57.3107 (a) amended; (b) revised ... **45744**
57.3109 (c) amended ... **45745**
57.3110 Heading revised; text amended ... **45745**
57.3201—57.3202 (Subpart GG) Authority citation revised ... **45745**
57.3201 Revised ... **45745**
57.3401—57.3413 (Subpart II) Removed ... **45745**
57.3501—57.3510 (Subpart JJ) Removed ... **45745**
57.3902 Amended ... **45745**
57.3906 (a) amended; (b) and (c) revised; (d) removed ... **45745**
57.3907 (c) added ... **45745**
57.3908 Heading revised; introductory text added; text amended ... **45745**
57.4001—57.4010 (Subpart OO) Authority citation revised ... **45745**
57.4001 Amended ... **45746**
57.4002 Amended ... **45746**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

57.4003 Amended; footnote 1 removed 45746
57.4005 (a) introductory text amended 45746
57.4007 (c) amended 45746
57.4008 Amended 45746
57.4009 OMB number 45746
57.4102 Amended 45746
57.4103 Footnote 1 removed; OMB number 45746
57.4104 Amended 45746
57.4105 (i) amended 45746
57.4107 (a) amended 45746
57.4111 Amended 45746
57.4113 (c) amended 45746
57.4114 Amended 45746
59.2 Suspended in part 7463
59.5 Regulations at 53 FR 2944 and 53 FR 2946 suspended 7463
59.7 Suspended 7463
59.8 Suspended 7463
59.9 Suspended 7463
59.10 Suspended 7463
62.25 (a) amended 56996

Chapter IV—Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

400.200 Amended 55912
400.310 Revised (OMB numbers) 56997
401.601 (b) and (c) revised 56998
405.374 (c) revised 56998
405.501—405.580 (Subpart E) Authority citation revised 57688
405.501 (f) added 57688
405.502 (a) introductory text republished; (a)(3) revised 55912
405.504 (a)(3)(i) introductory text and (iii) revised; (d) added 55912
405.514 Removed 57688
405.701—405.750 (Subpart G) Authority citation revised 56504
405.705 Introductory text republished, (c) and (d) revised; (e) and (f) added 56504
406.24 Redesignated as 406.34 58717
406.30 Redesignated as 406.50 58717
406.31 Redesignated as 406.52 58717

Page

406.32 Transferred to subpart C; (c) amended 58717
406.34 Redesignated from 406.24; (a)(1) and (b)(1) amended 58717
406.38 Transferred to subpart C 58717
406.50 Redesignated from 406.30 58717
406.52 Redesignated from 406.31 58717
410 Authority citation revised 57688
410.36 (a), (b), and (c) redesignated as (a)(1), (2) and (3) and republished; undesignated introductory text redesignated as new (a); (b) added 57688
410.38 (b) amended; (c) revised; (d), (e), (f), and (g) added 57688
412.1 (a) corrected 46510
412.2 (e) corrected 46510
412.115 (c) added 47787
412.302 (c)(1)(v) correctly revised 46510
414 Authority citation revised 57688
414.200 Added 57689
414.202 Added 57689
414.210 Added 57689
414.220 Added 57689
414.222 Added 57690
414.226—414.229 (Subpart D) Added 57688
414.226 Added 57690
414.228 Added 57691
414.229 Added 57691
414.230 (f) revised 57111
414.232 Added 57688
Added 57692
414.330 Added 54187
431.200 Revised 56505
431.201 Amended 56505
431.202 (a) revised 56505
431.206 (c) revised 46505
431.210 Introductory text and (a) revised 56505
431.213 Introductory text republished; (e) and (f) revised; (g) and (h) added 56505
431.241 Revised 56505
431.242 (a)(2) revised 56506
431.246 Revised 56506

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 42 Chapter IV—Con. Page

431.250 (f)(2) and (3) revised; (f)(4) added....56506
431.621 Added....56506
433 Authority citation revised....55138, 56506
433.8—433.15 (Subpart A) Heading revised; interim....55138
433.15 (b)(9) added....56506
433.32 Transferred to subpart A; interim....55138
433.33 Redesignated as 433.53....55139
Corrected....6095
433.34 Transferred to subpart A; interim....55138
433.35 Transferred to subpart A; interim....55138
433.36 Transferred to subpart A; interim....55138
433.37 Transferred to subpart A; interim....55138
433.38 Transferred to subpart A; interim....55138
433.40 Transferred to subpart A; interim....55138
433.45 Redesignated as 433.51....6095
433.50—433.74 (Subpart B) Revised; interim....55138
433.50 Redesignated as 433.45; (b)(2) amended....6095
433.53 Redesignated from 433.33; heading revised....55139
Corrected....6095
433.58 Corrected....6095
433.60 (b)(2) corrected....6095
433.68 (f)(3)(ii) corrected....6095
433.145 (a) revised....4907
433.147 (a) revised....4907
435.1—435.10 (Subpart A) Heading revised....4925
Regulation at 58 FR 4925 effective date delayed to 8-18-93....9120
435.1 Removed....4925
Removal at 58 FR 4925 effective date delayed to 8-18-93....9120
435.4 Amended....4925
Regulation at 58 FR 4925 effective date delayed to 8-18-93....9120
435.113 Revised....4926
Regulation at 58 FR 4926 effective date delayed to 8-18-93....9120
435.121 Revised....4926
Regulation at 58 FR 4926 effective date delayed to 8-18-93....9120
435.201 Revised....4927
Regulation at 58 FR 4927 effective date delayed to 8-18-93....9120
435.210 Revised....4927
Regulation at 58 FR 4927 effective date delayed to 8-18-93....9120
435.211 Revised....4927
Regulation at 58 FR 4927 effective date delayed to 8-18-93....9120
435.220 Heading and (a) revised....4927
Regulation at 58 FR 4927 effective date delayed to 8-18-93....9120
435.222 Heading, (a) and (b)(3) revised; (b) introductory text republished....4927
Regulation at 58 FR 4927 effective date delayed to 8-18-93....9120
435.223 (a) revised....4927
Regulation at 58 FR 4927 effective date delayed to 8-18-93....9120
435.230 Redesignated as 435.232; new 435.230 added....4928
Regulation at 58 FR 4928 effective date delayed to 8-18-93....9120
435.231 Redesignated as 435.236....4928
Regulation at 58 FR 4928 effective date delayed to 8-18-93....9120
435.232 Redesignated from 435.230; (a) introductory text and (b)(3) revised; (a)(9) added; (b) introductory text republished....4928
Regulation at 58 FR 4928 effective date delayed to 8-18-93....9120
435.234 Added....4928

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

Regulation at 58 FR 4928 effective date delayed to 8-18-93....9120
435.236 Redesignated from 435.231....4928
Regulation at 58 FR 4928 effective date delayed to 8-18-93....9120
435.301 (a) and (b)(2)(ii) revised; (b) introductory text and (2) introductory text republished....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.308 (a) and (b)(3) revised; (b) introductory text republished....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.310 Revised....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.330 Revised....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.408 (b)(13) corrected....4907
435.510 (a) amended....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.520 Revised....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.522 Added....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.600 Revised....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.601 Added....4929
Regulation at 58 FR 4929 effective date delayed to 8-18-93....9120
435.602 Revised....4930
Regulation at 58 FR 4930 effective date delayed to 8-18-93....9120
435.603 Redesignated as 435.608....4931

Page

Regulation at 58 FR 4931 effective date delayed to 8-18-93....9120
435.604 (a) revised....4907
Redesignated as 435.610; new 435.604 added....4931
Redesignation at FR 4931 effective date delayed to 8-18-93....9120
Regulation at 58 FR 4931 effective date delayed to 10-19-93....9120
435.606 Added....4931
Regulation at 58 FR 4931 effective date delayed to 10-19-93....9120
435.608 Redesignated from 435.603....4931
Regulation at 58 FR 4931 effective date delayed to 8-18-93....9120
435.610 Redesignated from 435.604....4931
Regulation at 58 FR 4931 effective date delayed to 8-18-93....9120
435.622 Redesignated from 435.722; (a) revised....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.631 Redesignated from 435.731 and revised....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.640 Redesignated from 435.740....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.700—435.740 (Subpart H) Heading revised....4931
Regulation at 58 FR 4931 effective date delayed to 8-18-93....9120
435.700 Revised....4931
Regulation at 58 FR 4931 effective date delayed to 8-18-93....9120
435.711—435.712 Undesignated center heading and sections removed....4932

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 42 Chapter IV—Con. Page

Removal at 58 FR 4932 effective date delayed to 8-18-93....9120
435.721—435.724 Undesignated center heading removed....4932
Removal at 58 FR 4932 effective date delayed to 8-18-93....9120
435.721 Removed....4932
Removal at 58 FR 4932 effective date delayed to 8-18-93....9120
435.722 Redesignated as 435.622....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.723 Removed....4932
Removal at 58 FR 4932 effective date delayed to 8-18-93....9120
435.724 Removed....4932
Removal at 58 FR 4932 effective date delayed to 8-18-93....9120
435.725 Heading revised; (c)(2)(iii) and (3)(iii) amended....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.726 Amended....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.731 Undesignated center heading removed; redesignated as 435.631....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.732 Removed....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.733 Heading revised; (c)(2)(ii) and (3)(iii) amended....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.734 Removed....4932
Removal at 58 FR 4932 effective date delayed to 8-18-93....9120
435.735 (c)(3)(iii) amended....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.740 Undesignated center heading removed; redesignated as 435.640....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.800—435.852 (Subpart I) Heading revised....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.800 Revised....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.811—435.814 Undesignated center heading revised....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.811 Revised....4932
Regulation at 58 FR 4932 effective date delayed to 8-18-93....9120
435.812 Removed....4933
Removal at 58 FR 4933 effective date delayed to 8-18-93....9120
435.814 Revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.821—435.823 Undesignated center heading and sections removed....4933
Removal at 58 FR 4933 effective date delayed to 8-18-93....9120
435.831 (a) revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.832 Heading, (c)(2)(iii) and (c)(3)(iii)(B) revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.840—435.843 Undesignated center heading revised....4933

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.840 Revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.841 Removed....4933
Removal at 58 FR 4933 effective date delayed to 8-18-93....9120
435.843 Revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.845 Revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.850 Removed....4933
Removal at 58 FR 4933 effective date delayed to 8-18-93....9120
435.851 Removed....4933
Removal at 58 FR 4933 effective date delayed to 8-18-93....9120
435.852 Removed....4933
Removal at 58 FR 4933 effective date delayed to 8-18-93....9120
435.945 (h) removed....**46097**
435.1005 Revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
435.1007 Revised....4933
Regulation at 58 FR 4933 effective date delayed to 8-18-93....9120
436.3 Amended....4934
Regulation at 58 FR 4934 effective date delayed to 8-18-93....9120
436.111 Revised....4934
Regulation at 58 FR 4934 effective date delayed to 8-18-93....9120
436.201 Revised....4934
Regulation at 58 FR 4934 effective date delayed to 8-18-93....9120
436.210—436.211 Undesignated center heading and sections revised....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.212 (a) revised....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.220—436.224 Undesignated center heading removed....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.220 Heading and (a) revised....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.222 Heading, (a) and (b)(3) revised; (b) introductory text republished....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.301 (a) and (b)(2)(ii) revised; (b) introductory text and (2) introductory text republished....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.308 (a) and (b)(3) revised; (b) introductory text republished....4935
Regulation at 58 FR 4935 effective date delayed to 8-18-93....9120
436.310 Revised....4936
Regulation at 58 FR 4936 effective date delayed to 8-18-93....9120
436.408 (b)(13) corrected....4908
436.510 Amended....4936
Regulation at 58 FR 4936 effective date delayed to 8-18-93....9120
436.520 Revised....4936
Regulation at 58 FR 4936 effective date delayed to 8-18-93....9120
436.522 Added....4936
Regulation at 58 FR 4936 effective date delayed to 8-18-93....9120
436.600 Revised....4936
Regulation at 58 FR 4936 effective date delayed to 8-18-93....9120
436.601 Added....4936

NOTE: **Boldface page numbers indicate 1992 changes.**

341-245 O - 93 - 5 (5)

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 42 Chapter IV—Con. Page

Regulation at 58 FR 4936 effective date delayed to 8-18-93.....9120
436.602 Revised.....4936
Regulation at 58 FR 4936 effective date delayed to 8-18-93.....9120
436.603 Redesignated as 436.608.....4937
Regulation at 58 FR 4937 effective date delayed to 8-18-93.....9120
436.604 (a) revised.....4908
Redesignated as 436.610; new 436.604 added.....4937
Redesignation at 58 FR 4937 effective date delayed to 8-18-93.....9120
Regulation at 58 FR 4937 effective date delayed to 10-19-93.....9120
Redesignation at 58 FR 4937 effective date delayed to 8-18-93.....9120
436.606 Added.....4937
Regulation at 58 FR 4937 effective date delayed to 10-19-93.....9120
436.608 Redesignated from 436.603.....4937
Redesignation at 58 FR 4937 effective date delayed to 8-18-93.....9120
436.610 Redesignated from 436.604.....4937
Regulation at 58 FR 4937 effective date delayed to 8-18-93.....9120
436.700—436.711 (Subpart H) Heading and sections removed.....4938
Removal at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.811—436.814 Undesignated center heading revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.811 Revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.812 Removed.....4938
Removal at 58 FR 4938 effective date delayed to 8-18-93.....9120

Page

436.814 Revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.821 Undesignated center heading and section removed.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.832 Heading revised; (c)(2)(ii) and (iii)(A) amended.....4838
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.840—436.843 Undesignated center heading revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.840 Revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.841 Removed.....4938
Removal at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.843 Revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.845 Introductory text republished; (a), (c) and (d) revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
436.850—436.852 Undesignated center heading and sections removed.....4938
Removal at 58 FR 4938 effective date delayed to 8-18-93.....9120
440.220 (a) introductory text republished; (a)(2) revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
440.250 (h) revised.....4938
Regulation at 58 FR 4938 effective date delayed to 8-18-93.....9120
441.13 Heading and (b) revised.....**54709**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

442.105 (a) amended 54712
447.255 (a) corrected 46431
447.272 (c) revised; interim 55143
447.296—447.299 (Subpart E) Added; interim 55143
447.297 (d)(1) corrected 6095
447.300—447.371 (Subpart D) Redesignated as subpart F 6095
456.1 (a) introductory text, (b) introductory text and Table 1 introductory text republished; (a)(3) and (b)(8) added; Table 1 amended; interim 49408
456.700—456.725 (Subpart K) Added; interim 49408
466 Authority citation revised 47787
466.78 (b) introductory text republished; (b)(2) revised; (c) and (d) added 47787
483 Authority citation revised 56506
483.10 (c)(8) revised 53587
483.100—483.138 (Subpart C) Added 56507
483.200—483.206 (Subpart E) Added 56514

Chapter V—Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

1001 Authority citation revised 52729
1001.1 Existing text designated as (a); (b) added 5618
1001.952 Introductory text, (k) introductory text and (1) introductory text republished; (k)(1)(iii) revised; (l) and (m) added; interim 52729
Regulation at 57 FR 52729 comment period extended; interim 2989
1005.4 (c) introductory text republished; (c)(1) revised 5618
1005.7 (e)(1) revised 5618

Title 42—*Proposed Rules:*

59 7464
100 49055

Page

400—499 (Ch. IV) 47587
417 ..... 46119, 59024
..... 8568
421 57125
431 46362
434 59024
..... 8568
435 ..... 56294, 57403
436 56294
440 46362
442 46362
456 61614
483 61614
488 46362
489 46362
498 46362
1003 59024
..... 8568

TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

Subtitle A Policy statement and advisory guidelines 52730
4.21 (a) in part, (b) and (c) redesignated as (b), (c) and (d); new (c) revised 4942

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

5400.0-5 Amended 62235
5461.2 Introductory text removed; (a) revised 62235
5473.4 (d) removed; (e) redesignated as (d) 62235
8360.0-5 (e) added 61243
8365.1-3 Existing text designated as (a); (b) added 61243

Public Land Orders

203 Revoked by PLO 6954 61326
1567 Revoked in part by PLO 6948 45324
4522 Regulation at 57 FR 28637 corrected 53191
5721 Revoked by PLO 6946 45322

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 43 Public Land Orders—Con. Page

6934 Regulation at 57 FR 28637 corrected **53191**
6944 ..... **45321**
6946 ..... **45322**
6948 ..... **45324**
6949 ..... **45576**
6950 ..... **45725**
6951 ..... **47410**
6952 ..... **53587**
6953 4081
6954 ..... **61326**
6955 3229
6956 6719
6957 7867

Title 43—*Proposed Rules:*

2 4635
426 ..... **47437, 53678**
3400 5697

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

11 Authority citation revised **54714**
11.30 Revised **54714**
11.32 Nomenclature change **54714**
11.34 Heading, (a) introductory text, (a)(1) introductory text and (c) revised **54714**
11.41 (c) added **54715**
11.42 (a) amended **54715**
11.43 (a) amended; (f) added **54715**
11.44 (a) amended **54715**
11.45 (a) and (d) amended; (g) added **54715**
11.48 (a) and (d) amended; (g) revised **54715**
11.50 (c) amended **54715**
11.51 Heading revised; (c) amended **54715**
11.52 (c) amended **54715**
11.60 Nomenclature change **54715**
11.61 Added **54715**
11.62 Added **54716**
11.63 Added **54716**
11.64 Added **54716**
11.65 Added **54717**
64.6 Table amended **47267, 47269, 49143, 49144, 54512, 54514, 54934, 60487**
Table amended 502, 4083, 4085, 6097, 9121, 11195
65.4 Table amended **47788, 47789, 54306, 54307, 59304, 59305**
Table amended 8550, 8553, 11541, 11543
Table amended; interim 8552
67 Flood elevation determinations **47791, 54309, 59306**
Flood elevation determinations 8550, 11544
81.1 (b)(1) revised **52593**

Title 44—*Proposed Rules:*

67 ..... **47825, 54347, 59329, 59946**
..... 8568, 11556

TITLE 45—PUBLIC WELFARE

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205 Authority citation revised **46804**
205.40 Revised **46804**
(b)(6) corrected **52826**
205.41 Added **46805**
(d)(3)(iv) and (v) corrected **52826**
205.42 Revised **46807**
(b)(1)(ii), (e)(1)(ii), (f)(1), (i)(4) and (5) corrected **52826**
205.43 Revised **46810**
(b)(2), (4), (e)(4)(ii)(B) and (5) *Example* corrected **52827**
205.44 Removed **46811**
205.56 (b) republished **53859**
205.58 (a) and (b)(4) republished **53860**
232.20 (d) revised **54519**
250 Authority citation revised **47002**
250.81 (a) revised **47002**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program) Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

Page

302.32 (f)(2)(i), (ii) and (iii) revised....54519
302.70 (a)(10) revised; eff. 10-13-93....61581
302.85 Revised....47002
303.7 (b)(6) and (c)(7)(v) added; (c)(8) amended; eff. 10-13-93....61581
303.8 (c) through (f) added; eff. 10-13-93....61581
(c)(5) corrected....7040
304.20 (c) amended....47002
304.23 (k) added....54525
307 Authority citation revised....47002
307.0 Revised....47002
307.1 Revised....47002
307.5 Added....47003
307.10 Revised....47003
307.15 Heading, (a) and (b) revised....47004
307.20 Heading amended....47005
307.25 Revised....47005
307.30 Heading, (a) and (b) revised....47005
307.35 (a) revised....47005
307.40 Heading and (a)(1) revised....47005

Chapter VII—Commission on Civil Rights (Parts 700—799)

708 Added....4351

Chapter XII—ACTION (Parts 1200—1299)

1224.1-19 Added....45326

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1303 Revised....59264
1303.10 Revised (OMB number pending)....59264
1303.23 (OMB number pending)....59264

Page

1304 Authority citation revised....5518
Nomenclature change....5518
1304.1-2 (a), (c) and (i) revised....5518
1304.3-3 (b) introductory text revised....5518
1304 Appendix A removed....58092
1305 Revised....46725
Authority citation revised....5518
1305.2 (a) revised....5518
1306 Added....58902
1308 Added....5501

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1626.4 (a) introductory text and (1) revised....6608

Title 45—*Proposed Rules:*

233 56294
400 49439
1607 6611
1609 6612
2500 60779
2501 60779
2502 60779
2503 60779
2504 60779
2505 60779
2506 60779

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

15.720 Regulation at 55 FR 1212 confirmed....25
30.01-5 Regulation at 57 FR 36246 comment period reopened....60402
32.60-1—32.60-45 (Subpart 32.60) Regulation at 57 FR 36246 comment period reopened....60402
32.95-1 (subpart 32.95) Regulation at 57 FR 36246 comment period reopened....60402
35.30-20 (c)(1), (2) and (d) revised....48324
(d) corrected....56406
35.40-20 Revised....48324
69.5 (a)(4) amended....59938

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 46 Chapter I—Con. Page

69.11 (a)(2)(vi) added; (d) revised **59938**
69.15 (a) revised **59938**
69.119 (c) amended **59938**
69.169 Heading revised **59938**
69.205 Revised **59938**
70.05-30 Regulation at 57 FR 36246 comment period reopened **60402**
70.05-35 Regulation at 57 FR 36246 comment period reopened **60402**
77.30-1 Revised **48324**
77.30-5 (a) and (b) revised **48324**
77.30-10 (a) table and (b) revised **48325**
77.30-90 Revised **48324**
77.35-1 Revised **48325**
77.35-5 (b) revised **48325**
77.35-10 (a) revised **48325**
77.35-90 Revised **48325**
96.30-1—96.30-90 (Subpart 96.30) Revised **48325**
96.30-5 (a) corrected **56406**
96.35-1 Revised **48325**
96.35-5 (b) revised **48325**
96.35-10 (a) revised **48325**
96.35-90 Revised **48326**
108.497 (a) and (d)(1) revised **48326**
108.703 (a) revised **48326**
154a Removed **60728**
160.011-1—160.011-6 (Subpart 160-011) Removed **48326**
167.45-60 Revised **48326**
169.717 (a) revised **48326**
170.210 Regulation at 57 FR 41812; effective date deferred **58406**
172.060 Regulation at 57 FR 36246 comment period reopened **60402**
195.30-1—195.30-90 (Subpart 195.30) Revised **48327**
195.35-1 Revised **48327**
195.35-5 (b) revised **48327**
195.35-10 (a) revised **48327**
195.35-90 Revised **48327**

Chapter II—Maritime Administration, Department of Transportation (Parts 200—399)

237 Removed **60728**
250 Removed **60728**
262 Removed **60728**
278 Removed **60728**
279 Removed **60728**
292 Removed **60728**
294 Removed **60728**
310 Authority citation revised **60728**
310.13—310.32 (Subpart B) Removed **60728**
316 Removed **60728**
318 Removed **60728**
319 Removed **60728**
320 Removed **60728**
321 Removed **60728**
322 Removed **60728**
323 Removed **60728**
333 Removed **60728**
334 Removed **60728**

Chapter IV—Federal Maritime Commission (Parts 500—599)

514 Authority citation revised **46322**
514.2 Amended **46323**
Amended 27
514.7 (a), (b), (f) introductory text, (1), (2)(i), (g)(2)(i), (h)(1)(i), (j)(1)(i), (ii), (2) introductory text, (i), (3)(i), (ii) introductory text, (4) and (k) revised **46322**
(f)(4), (l)(1) and (2) amended 27
(f)(3) and (h)(1)(iii) revised 28
(d) revised 5622
514.8 (n)(1)(iii)(G)(*3*) removed **46324**
514.8 (d)(3) introductory text and (n)(1)(iii)(G) revised 28
514.9 (a)(5) revised 28
514.10 (d)(1)(i)(B) removed; (d)(1)(i)(C), (D) and (E) redesignated as (d)(1)(i)(B), (C) and (D); (d)(1)(iii) revised 28
514.12 (a)(1)(v) and (vi) removed; (c) added 28
514.15 (b)(1)(iii)(A) and (2)(i) revised 28
(b)(24) introductory text, (i) and (ii) revised 5622
514.17 (a)(1) amended; (d)(2) and (3) revised **46324**
(a)(1) and (d) revised 28
514.18 (b) and (c)(3) introductory text amended **46324**
(c)(1) amended 30

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

514.21 Introductory text revised....30
525 Removed....10984
530 Suspended....10984
540.5 (d) introductory text, (4) through (6) and (e) introductory text revised....**62480**
560.309 Added....5630
560.601 Introductory text amended....5630
571.2 Added....7194
572.311 Added....5631
572.502 (a)(4) and (5) revised....**54531**
572.602 (a) revised....5631
572.801—572.802 (Subpart H) Added....**54531**
580 Authority citation revised....5622
580.5 (d)(24) introductory text, (i) and (ii) revised....5622
581 Authority citation revised....5623
581.3 (a) introductory text, (1)(i), (2)(iv)(A), (B) and (3)(i) revised....**46324**
(e) revised....5623
581.4 (a)(1)(i) and (b)(1)(iii) revised; (b)(2)(iii)(A) amended....**46324**
581.6 (a), (b)(1) and (2) revised....**46324**
(b)(1) corrected....**49020**
581.8 (a)(1), (b) introductory text, (c)(1), (2) introductory text and (d) revised....**46325**
581.9 Revised....**46325**
583 Authority citation and heading revised....5623
583.2 Revised....5623
583.3 Revised....5623
583.4 Revised....5623
583.5 (a) and (b) revised; (e) added....5624
583.6 (a) revised....5625
583 Appendix B added....5625
Appendix C added....5626
Appendix D added....5627
586 Authority citation revised....**54316, 54322**
586.4 Added....**54316**
586.5 Added; (b) through (e) eff. 6-1-94....**54322**
(b)(2) revised; (b)(4)(iii) added; eff. 6-1-94....7989

NOTE: **Boldface page numbers indicate 1992 changes.**

Page

Title 46—*Proposed Rules:*

1-199 (Ch. I) **54191**
15 ....**48554**
16 ....**59752, 59778**
28 ....**48670, 57129, 60158**
....630
35 ....**45667**
78 ....**52748**
97 ....**52748**
197 ....**46126**
200-299 (Ch. II) **54191**
252 ....**53083**
300-399 (Ch. III) **54191**
315 9135
502 7199
505 7199
510 7199
514 ....**47589, 49665, 56539**
....4137, 7501
525 ....**47025**
530 ....**47025**
540 ....**47830**
....7199
552 ....**48770**
560 ....**49667**
572 ....**47600, 49667**
580 ....**47589, 56539**
581 ....**47589, 47600, 49665, 56539**
583 ....**47589, 56539**

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission (Parts 0—199)

0.131 (h) and (i) added....9124
0.408 (b) table amended (OMB numbers)....**45747**
(c) table amended (OMB numbers)....**45748**
0.485 Revised....9124
0.561 (f) and (g) added....11549
1.65 (c) revised....**47412**
Regulation at 57 FR 47412 effective date corrected to 1-14-93....**49218**
1.80 (d) introductory text revised....**47006**
(f)(2) amended....**48333**
(a) introductory text, (3), (4), concluding text, (c)(1) and (h) revised....6896
1.1103 Table amended....9129
1.1105 Table amended....9129

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 47 Chapter I—Con. Page

1.2002 (c) revised....8701
1.2003 Amended....48333
2.106 Table amended....49021, 60133
13 Revised....9124
21.50 Added....49021
22.28 (a) revised....53446
22.29 (a) introductory text revised....53447
22.50 Added....49021
22.902 (b)(4) introductory text, (i), (ii) introductory text and (B)(3) revised....53447
22.903 (a), (d)(1) and (3)(i) through (iv) revised; (e) added....53447
22.920 (c) introductory text revised....53448
22.922 Heading revised; (b) added....53448
(a) revised....56859
22.924 (a)(3) added....53448
22.925 Introductory text revised....53448
22.927 Added....53448
22.928 Added....53448
22.929 Added....53449
24.103 (d)(2) corrected....53295
61 Memorandum opinion and order....62481
Memorandum opinion and order....8908
Technical correction....5936
61.38 (b)(3) and (4) added....54330
61.42 (e)(1)(iii) revised; (e)(1)(iv) and (v) added....54718
(e)(1)(vi) added....7868
61.47 (h) redesignated as (h)(1); (h)(2) added....54331
(e) redesignated as (e)(1), (e)(2) and (3) added....54719
(i) added....7868
61.48 (b) and (h) added....54719
61.49 (h) introductory text revised; (i), (j) and (k) added....54331
61.50 Added (effective date pending)....60737
63.01 (k)(6) and (r) added....57965
63.10 Redesignated as 63.15; new 63.10 added....57966
63.11 Added....57966
63.12 Added....57966
63.13 Added....57966
63.14 Added....57966
63.15 Redesignated from 63.10....57966
64 Authority citation revised....48335, 54331
Memorandum opinion and order....62481
Technical correction....5936
Memorandum Opinion and Order....11195
64.1001 (g) revised....4354
64.1200 (Subpart L) Added....48335
(e)(2)(iii) corrected....53293
64.1401—64.1402 (Subpart N) Added....54331
65 Memorandum opinion and order....62481
Technical correction....5936
65.702 (b) amended....54332
(b) amended....54719
68 Authority citation revised....48336
68.318 (c)(2) revised; (c)(3) added....48336
69 Order....56998
Order....9550
Memorandum opinion and order....62481
Memorandum opinion and order....8908, 11195
Technical correction....5936
69.1 (c) revised....54719
69.2 (nn) through (ss) added....54719
69.4 (b) introductory text revised; (e) and (f) added....54332
(b) revised....54719
69.108 Added....54720
69.110 Added....54720
69.111 Revised....54720
69.112 Revised....54720
69.113 (a) revised....54721
69.118 Revised....54721
Revised....7868
69.121 Added....54332
69.122 Added....54332
69.123 Added....54333
69.124 Added....54721
69.125 Added....54721
69.126 Added....54721
69.127 Added....54722
69.210 Removed....54722
69.301 (a) revised....54722
69.305 (b) revised....54722
69.306 (a), (b), (c) and (e) revised....54722
69.307 Revised....54722
73 Regulation at 57 FR 44338 eff. 9-25-92....47007
Waiver....53449
Policy decision....53588

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

73.202 (b) table amended **45577—45579, 46812—46814, 47006, 47007, 49147, 49148, 53860, 53861, 54533, 54935, 54936, 55468, 55469, 56285, 56286, 56514, 56515, 56860, 56999, 57000, 57348, 58717, 60737, 62483**
(b) table amended...4355, 4943, 4944, 5300, 6193, 7194, 7195, 7869, 8233—8235, 11196, 11197
73.215 (e) amended... **46325**
73.232 Amended... **48333**
73.295 (a) amended... **48333**
73.310 (a)(2) amended... **48333**
73.313 (d) amended... **48333**
73.319 (a)(1) amended... **48333**
73.606 (b) table amended... **56516**
73.644 (b)(1) amended... **48333**
73.1010 (a)(4) revised; (a)(7) added... **48333**
73.1125 (a) amended... **48333**
73.1225 (b) amended; (d)(3)(iii) revised... **48333**
73.1620 (g) amended... **48333**
73.3500 Amended... **48333**
73.3999 Revised... 5937
74 Policy decision... **53588**
76 Authority citation revised... 7993
76.5 (kk) added... **61010**
76.305 (a) amended... 7993
76.601 (c)(1), (2) and (4) revised; note added... **61010**
76.605 (a)(3), (4) introductory text, (5), (6), (10), (11), (12), and Note (2) revised; Notes (4) through (6) added... **61010**
76.607 Revised... **61011**
76.609 (h)(2) revised... **61011**
76.701 (Subpart L) Added... 7993
80 Technical correction... **57000**
80.309 Amended... **61012**
80.1001 (a) revised... **61012**
80.1011 Revised... **61012**
80.1013 Revised... **61012**
87.5 Amended... **45749**
87.51 Added... **45749**
87.131 Table amended... **45749**
87.133 (a)(7) table amended... **45749**
87.137 (a) table amended... **45749**
87.139 (i) introductory text added... **45749**
87.141 (j) added... **45749**
87.145 (b) revised; (e) added... **45750**
87.147 (d)(3) revised... **45750**
87.171 Amended... **45750**
87.173 (b) table amended... **45750**

Page

87.185 (b) and (c) revised; (d) added... **45750**
87.187 (p) through (aa) redesignated as (q) through (bb); new (p) added... **45750**
87.189 (b) through (d) redesignated as (c) through (e); new (b) added; (a) and new (c) and (d) revised... **45750**
90 Clarification... **48191**
Technical correction... **47793**
Petition for stay denied... **53293**
90.38 (a)(4) redesignated as (a)(5); new (a)(4) added... **45751**
90.63 (c) table amended... **60133**
(d)(27) added... **60134**
(c) table corrected... 376
90.65 (b) table amended; (c)(43) added... **60134**
90.75 (b) table amended; (c)(45) added... **60134**
90.79 (c) table amended; (d)(28) added... **60134**
90.91 (b) table amended... **60134**
(c)(21) added... **60135**
90.127 (c) revised; (e) added... **48739**
90.135 (a)(5) revised; (a)(8) removed... **48739**
90.175 (g) added... **48739**
(f)(3) revised... **60135**
90.179 (e) removed; (f) and (g) redesignated as (e) and (f)... **48739**
90.257 (b) introductory text revised; (b)(1) amended... **60135**
90.555 (b) amended... **55146**
90.619 (a) introductory text, (2) introductory text, (3) introductory text, (4) introductory text and (5) introductory text revised; (a)(3) Table 2, (a)(4) Table 3 and (a)(5) Table 4 redesignated as (a)(3) Table 2A, (a)(4) Table 3A and (a)(5) Table 4A and amended; (a)(3) Table 2B, (a)(4) Table 3B and (a)(5) Table 4B added... **55146**
90.715 (a) introductory text amended; (c) added... **55148**
94.59 Added... **49022**

Title 47—*Proposed Rules:*

0-199 (Ch. I) ...**53307, 53462, 54744, 58436, 60501, 62543**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 47 Title 47—Con. Page

...3522, 4139, 5319, 6471, 6937, 7062, 8248, 8927, 8928
1 ..... **54034, 60781**
.....3929, 6376, 6937, 8731
2 ...**48353, 48775, 48776, 54034, 54204, 57049, 57408, 57717**
.....4974, 6381, 6769, 8731
13 ..... **47027**
15 ..... **54204**
.....6769, 7205
18 ..... **59040**
21 ..... **48353, 48776**
.....6376
22 ..... **48353, 48776**
36 ..... **56888, 58767**
43 .....530, 7764
61 .....**54205, 56888, 58767, 61591**
63 ..... **46366, 57717**
.....6381
64 ..... **56888, 58767, 62544**
.....9137
65 4637
69 .....**54205, 54542, 56888, 58767, 61591**
.....4637, 11203
73 ...**45601, 46132, 46367—46369, 46839, 47027, 47028, 48494, 49055—49058, 49160—49162, 53678, 53679, 53874, 54543, 54544, 55218, 55501, 55502, 58540, 56894, 57051, 57409, 57411, 58769, 59330, 60782, 60783, 61037, 61591, 62545**
...3002, 3004, 3929, 4139, 4392, 4393, 4974, 5320, 5322, 5323, 6201, 6677, 7874, 7875, 8248, 11204—11206
74 ..... **53679**
76 ...**54207, 54209, 54544, 56298, 59331, 60501, 61038, 62282**
...48, 328, 3005, 3523, 3929, 7205, 7875
80 ..... **57717**
.....6381
88 ..... **54034**
.....8731
90 .....**47601, 49058, 53462, 54034, 57717**
.....6381, 8731
94 ..... **48353, 48776, 54034**
.....8731
97 ..... **59950**
100 3929

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Page

Chapter 1 Federal Acquisition Circular (FAC) 90-16..... **60570**
4.602 (d) revised..... **60572**
4.603 Removed..... **60572**
4.805 Introductory text revised; table amended..... **60573**
5.206 Revised..... **60574**
7.103 (l) added..... **60574**
7.300 Revised..... **60575**
7.302 (d) revised..... **60575**
7.303 (b)(1) amended; (b)(3) added..... **60575**
7.304 (b)(1) and (c)(1) amended..... **60575**
7.306 (a)(1)(i) through (iii), (v), (2), (4), (b) introductory text, (1)(ii), (2)(ii) and (3) amended..... **60575**
7.307 (a) revised..... **60575**
8.002 (f) revised..... **60576**
9.404 (d) revised..... **60577**
13.000 Amended..... **60577**
13.101 Amended..... **60577**
13.103 (c) added..... **60577**
15.106-2 (a) revised; (b) amended..... **60578**
15.804-2 (a)(1)(ii) amended; (a)(1)(iii) and (iv) revised; (a)(2) through (4) redesignated as (a)(3) through (5); new (a)(2) added..... **60579**
19.001 Amended..... **60580**
19.102 (f)(1) amended; (f)(5) revised..... **60580**
19.202-1 (e)(2)(ii) amended..... **60581**
22.501—22.507 (Subpart 22.5) Added; interim..... **55470**
22.1101 Amended..... **60582**
22.1103 Revised..... **60582**
25.108 (d)(1) amended..... **60583**
25.202 (a)(3) amended; (b) removed; (c) redesignated as (b)..... **60583**
25.401 Amended..... **48471**
30.602-2 Corrected..... **47373**
31 Technical correction..... 3850
31.205-6 (g)(2)(i)(D) amended..... **60584**
33.104 Revised..... **60585**
36.101 (a) revised; interim..... **55471**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

37.110 (f) removed....60584
42.1404-1 (b) revised....60587
45.105 (b) revised....60588
45.106 (d) amended; (e) revised....60588
45.301 Amended....60589
45.302-3 (a) revised; (b) amended....60588
(c) amended....60589
45.307-2 (a) amended....60588
45.506 Revised....60588
45.606-1 (b) revised....60590
51.106 (b) amended....60590
52.204-4 Removed....60572
52.207-1 Amended....60575
52.207-2 Amended....60575
52.215-1 Amended....60578
52.215-2 Amended....60578
52.222-5 Added; interim....55471
52.222-45 Removed....60582
52.222-46 Amended....60582
52.230-2 Corrected....45878
52.237-8 Removed....60584
52.242-11 Amended....60587
52.245-18 Amended....60589
53.236-2 (b) and (c) revised....60591

Chapter 2—Department of Defense (Parts 200—299)

202 Technical correction....45422
204 Technical correction....45422
204.670-2 (c) redesignated as (d); new (c) added....53598
204.7202-1 (c)(1), (4) and (5) amended....53598
204.7203 (d) amended....53598
204.7204-1 (a)(4) and (b) amended....53598
206.302-5 (b) added....53598
208 Technical correction....45422
210 Technical correction....45422
213.000 Added....53599
213.101 (Subpart 213.1) Added....53599
214 Technical correction....45422
214.503-1 (a)(4) removed....53599
215 Technical correction....45422
215.70 Reinstated....55472
215.804-3 (i)(iii) introductory text amended....53599
215.804-8 (a) removed....53599
215.870-6 (a) amended....53599
215.975 (b) amended....53599
215.7000—215.7006 (Subpart 215.70) Removed....53599

Page

216 Technical correction....45422
217.102-3 Added....53599
217.103-1 (a)(iii) revised....53599
219 Technical correction....45422
219.7100 Amended; interim....47275
219.7102 (b) and (d) revised; interim....47275
219.7103-1 (a) revised; interim....47275
219.7104 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (d) revised; interim....47276
219.7107 Added; interim....47276
222.7100—222.7102 (Subpart 222.71) added; interim....52593
223 Technical correction....45402
223.7002 (a) introductory text amended; (b) introductory text revised....53599
225 Technical correction....45402
225.770-2 Revised....53599
225.770-3 Revised....53599
225.770-4 Revised....53599
225.770-5 Added....53599
225.872-1 (b) amended....53599
225.873 Added....53599
225.873-1 Added....53599
225.873-2 Added....53599
225.873-3 Added....53600
225.7017-4 (a) and (b) revised....53600
225.7303-2 (c) introductory text revised....53600
226 Technical correction....45402
227 Technical correction....45402
227.304-1 Amended....53600
227.403-70 (b)(1) revised....53600
228 Technical correction....45402
231 Technical correction....45402
231.205-6 Added....53600
231.205-18 (c)(1)(iii)(*1*) redesignated as (c)(1)(i)(C)(*1*); (c)(2) added....53600
232 Technical correction....45402
235.015-71 (i)(2) amended....53601
235.017 (a)(2) amended....53601
236 Technical correction....45402
237 Technical correction....45402
239 Technical correction....45402
242 Technical correction....45402
242.205 (1)(iii) revised....53601
242.302 (a)(9) added; (a)(11) removed....53601
242.771 Added....53601
242.771-1 Added....53601

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 48 Chapter 2—Con. Page

242.771-2 Added..... **53601**
242.771-3 Added..... **53601**
242.1005—242.1008 (Subpart 242.10) Removed..... **53601**
245 Technical correction..... **45402**
245.7308 (a) amended..... **53601**
252 Technical correction..... **45402**
252.215-7004 Removed..... **53601**
Reinstated..... **55472**
252.219-7008 Added; interim..... **47276**
252.222-7001 Added; interim..... **52594**
252.223-7005 Revised..... **53601**
252.225-7030 Revised..... **53601**
252.225-7032 Added..... **53602**
252.232-7005 (b) revised..... **53602**
253 Technical correction..... **45402**
253.204-71 (a)(3) added..... **53602**
Chapter 2 Appendixes F and G amended..... **53602**

Chapter 5—General Services Administration (Parts 500—599)

501.603-70 (h)(1)(iv)(K) revised..... **61583**
501.670-4 (a)(3) revised..... **61583**
502.101 Amended..... **61583**
504.201 Revised..... **61583**
504.803 (a)(23) revised..... **61584**
508.304-5 Revised..... **61584**
508.371 Removed..... **61584**
510.011 (j) added..... **61584**
515.406-1 (a) revised..... **61584**
515.414-70 (b) revised..... **61584**
517.200 Added..... **59939**
517.201 Removed..... **59939**
517.202 Added..... **59939**
517.203 Added..... **59939**
517.204 Revised..... **59939**
517.207 Revised..... **59939**
517.208 Revised..... **59939**
530.201-5 Revised..... **61584**
530.470 (Subpart 530.4) Added..... **61584**
533.104 (c) revised..... **61584**
552.217-71 Added..... **59939**
552.222-43 CFR correction..... 8235
552.270-10 Corrected..... **52826**
552.270-28 Corrected..... **52826**
552.270-37 Corrected..... **52826**
570.203 (a)(8)(vii) table and (9) corrected..... **52826**
570.303 Corrected..... **52826**
570.702-30 Heading corrected..... **52826**

Chapter 7—Department of Veterans Affairs (Parts 700—799)

Page

701.7 Added..... 8702
701.105 (a) amended (OMB numbers)..... 8702
701.601 (b)(4) amended..... 8702
706.302-5 Revised..... 8702
706.302-71 (a)(1) revised..... 8702
716.306 Added..... 8702
719.272 Revised..... 8702
726.000 Revised..... 8702
726.104 Revised..... 8702
733.7006 (d) removed; (e) through (h) redesignated as (d) through (g)..... 8703
752.7009 Amended..... 8703

Chapter 8—Department of Veterans Affairs (Parts 800—899)

803 Authority citation revised..... **58718**
803.104 Removed..... **58718**
803.7000—803.7002 (Subpart 803.70) Added..... **58718**
852 Authority citation revised..... **58718**
852.203-71 Added..... **58718**

Chapter 9—Department of Energy (Parts 900—999)

909.104-1 Regulation at 57 FR 32675 confirmed..... **48471**
913.507 Added; interim..... **57639**
922.7100—922.7101 (Subpart 922.71) Added; interim..... **57639**
923.570—923.570-3 (Subpart 923.5) Regulation at 57 FR 32676 confirmed..... **48471**
925 Authority citation revised..... 8910
925.225-70 Added..... 8911
925.7000—925.7004 (Subpart 925.70) Added..... 8910
952 Authority citation revised..... 8910
952.222-70 Added; interim..... **57639**
Added..... 8911
970.2274-1 —970.2274-2 (Subpart 970.2274) Added; interim..... **57639**
970.2305 Regulation at 57 FR 32676 confirmed..... **48471**
970.2305-1 Regulation at 57 FR 32676 confirmed..... **48471**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

970.2305-2 Regulation at 57 FR 32676 confirmed 48471
970.2305-3 Regulation at 57 FR 32676 confirmed 48471
970.2305-4 Regulation at 57 FR 32676 confirmed 48471
970.2305-5 Regulation at 57 FR 32677 confirmed 48471
970.5204-57 Regulation at 57 FR 32677 confirmed 48471
970.5204-58 Regulation at 57 FR 32677 confirmed 48471
970.5204-59 Added; interim 57640

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1602.170-9 Regulation at 57 FR 14359 confirmed 54001
1605—1609 Designated as subchapter B 54001
1609 Regulation at 57 FR 14359 confirmed 54001
1632.170 Regulation at 57 FR 14360 confirmed 54001
1632.171 Regulation at 57 FR 14360 confirmed 54001
1632.172 Regulation at 57 FR 14360 confirmed 54001
1652.216-71 Regulation at 57 FR 14360 confirmed 54001
1652.232-70 Regulation at 57 FR 14360 confirmed 54001
1652.232-71 Regulation at 57 FR 14360 confirmed 54001

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (e) and (f) amended 58719
1801.370 (a)(1)(ii) and (b) amended 58719
1804.170 (b) amended 58719
1804.202 (a) amended 58719
1804.671-4 (ss) revised 58719
1804.671-6 (d) revised 58719
1804.671-7 Introductory text amended 58719
1804.677-1 (c) revised; interim 60737
1804.677-4 (b) revised; interim 60737

Page

1804.677-6 (n)(2), (4) and (q) revised; interim 60738
1805.202 Revised 58719
1806.203 Added 58719
1807.103 (a)(1)(ii) (C) through (G) redesignated as (a)(1)(ii)(D) through (H); (a)(1)(i)(B) redesignated as new (a)(1)(ii)(C); (b)(1)(ii)(B) (*3*) through (*7*) redesignated as (b)(1)(ii)(B)(*4*) through (*8*); (b)(1)(ii)(A)(*2*) redesignated as new (b)(1)(ii)(B)(*3*); new (a)(1)(i)(B) and new (b)(1)(ii)(A)(*2*) added 58719
1807.7102 (b)(2) (iii) through (vii) redesignated as (b)(2) (iv) through (viii); (b)(1)(ii) redesignated as new (b)(2)(iii); new (b)(1)(ii) added 58719
1809.105 Added 58720
1809.105-1 Added 58720
1809.506 Redesignated from 1809.507; (a) and (b) amended 58720
1809.507 Redesignated as 1809.506 58720
1809.508-2 Amended 58720
1815.507 Removed 58720
1817.7002-2 Amended 58720
1817.7002-3 Amended 58720
1827.406 (b)(1)(v) revised 58720
1827.409 (i) added 58720
1828.2 Added 58720
1828.106-1 Revised 58720
1831.205-70 Amended 58720
1832.402-2 Added 4086
1832.7001—1832.7008 (Subpart 1832.70) Added 4086
1833.214 Redesignated as 1833.215 58720
1835.003-70 Amended 58720
1835.070 (a) amended 58720
1837.7000—1837.7001-4 (Subpart 1837.70) Added 58720
1839.7000—1839.7007 (Subpart 1839.70) Revised 58721
1842.202-70 (a)(6)(iii) amended 58725
1845.302-1 (a) revised 58725
1845.302-73 Added 58725
1849.110 Heading revised 58725

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 48 Chapter 18—Con. Page

1852.204-70 Heading and (c) amended....58725
1852.232-83 Added....4088
1852.232-84 Added....4088
1852.235-70 Revised....58725
1853.204-70 Heading revised....58726
1870.303 Appendix I amended....58726

Chapter 20—Nuclear Regulatory Commission (Parts 2000—2099)

Chapter 20 Revised....61157

Chapter 24—Department of Housing and Urban Affairs (Parts 2400—2499)

2001.602-3 (c) corrected....8449
2009.570-2 Corrected....8449
2015.604 (b) corrected....8449
2015.605 Corrected....8450
2015.611 Corrected....8450
2052 Corrected....8450
2052.216-74 (b)(2) corrected....8450
2052.231-70 Corrected....8450
2401 Authority citation revised....59787
2401.601-70 Revised....59787
2401.601-71 Revised....59787
2401.602-72 Removed; new 2401.602-72 redesignated from 2401.601-73 and revised....59787
2401.601-73 Redesignated as 2401.601-72; new 2401.601-73 redesignated from 2401.601-74 and revised....59787
2401.601-74 Redesignated as 2401.601-73....59787
2401.603-2 (c) revised....59787
2401.603-3 (b) amended....59787
2402 Authority citation revised....59787
2402.101 Amended....59787
2403 Authority citation revised....59788
2403.303-70 (Subpart 2403.3) Heading amended....59788
2403.670 Added....59788
2405 Authority citation revised....59788
2405.301 (Subpart 2405.3) Added....59788
2406 Authority citation revised....59788

Page

2406.304-70 Removed; new 2406.304-70 redesignated from 2406.304-71....59788
2406.304-71 Redesignated as 2406.304-70; new 2406.304-71 redesignated from 2406.304-72; (c) revised....59788
2406.304-72 Redesignated as 2406.304-71....59788
2409 Authority citation revised....59788
2409.501 Removed....59788
2409.502 Amended....59788
2409.503 Added....59788
2409.504 Introductory text revised....59788
2413 Authority citation revised....59788
2413.505-2 (b) revised....59788
2414 Authority citation revised....59788
2414.406-3 Revised....59788
2415 Authority citation revised....59788
2415.407 (a) revised....59788
2415.604 Revised....59789
2415.608 (a) revised....59789
2415.611 Removed....59789
2415.611-70 Removed....59789
2415.612 Redesignated from 2415.613 and revised....59787
2415.612-70 Redesignated from 2415.613-70 and revised....59789
2415.613 Redesignated as 2415.612; new 2415.613 added....59789
2415.613-70 Redesignated as 2415.612-70; new 2415.613-70 added....59789
2415.613-71 Removed; new 2415.613-71 added....59789
2415.613-72 Added....59789
2416 Authority citation revised....59790
2416.504 Revised....59790
2419 Authority citation revised....59790
2419.708 (Subpart 2419.7) Added....59790
2425 Added....59790
2425.402 Added....59790
2426 Authority citation added....59790
2426.201 Nomenclature change....59790

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

2428 Authority citation revised **59790**
2428.203 Redesignated as 2428.204 ..... **59790**
2428.203-70 Redesignated as 2428.204-70 ..... **59790**
2428.204 Redesignated from 2428.203 ..... **59790**
2428.204-70 Redesignated from 2428.203-70 ..... **59790**
2432 Authority citation revised **59790**
2432.402 Revised **59790**
2432.906 (Subpart 2432.9) Added **59790**
2433 Authority citation revised **59790**
2433.103 Revised **59790**
2433.103-70 Removed; new 2433.103-70 redesignated from 2433.103-71 ..... **59790**
2433.103-71 Redesignated as 2433.103-70 ..... **59790**
2433.104 (f) redesignated as (g) **59790**
2433.104-70 Removed **59790**
2436 Authority citation revised **59790**
2436.602-2 (a) amended **59790**
(3) added **59791**
2436.602-4 Revised **59791**
2436.602-5 Amended **59791**
2437 Authority citation revised **59791**
2437.110 (g) and (h) added **59791**
2437.205 (Subpart 2437.2) Heading revised **59791**
2437.205 (b)(6) amended **59791**
2446 Authority citation amended **59791**
2446.710 (Subpart 2446.7) Added **59791**
2452 Authority citation revised **59791**
2452.203-70 Added **59791**
2452.203-71 Added (OMB number) **59791**
2452.215-70 (b) amended (OMB number) **59791**
2452.215-71 Amended **59792**
2452.216-75 Introductory text revised **59792**
2452.219-70 Added **59792**
2452.237-76 Added (OMB number) **59793**
2452.237-77 Added **59793**

NOTE: **Boldface page numbers indicate 1992 changes.**

Page

Title 48—*Proposed Rules:*

48 ..... **59274**
200—299 (Ch.2) **54035**
209 ..... **54035**
219 ..... **56895, 60503**
252 ..... **56895, 60503**
538 ..... **54036**
552 ..... **54036**
970 4141
1200—1299 (Ch. 12) **54191**
1512 ..... **46007**
1516 ..... **46007**
1552 ..... **46007**
1816 ..... **53681, 54210**
1837 ..... **47602**
1852 ..... **47602**
3410 ..... **56416**
5300—5399 (Ch. 53) 6771
5415 ..... **45759**
5452 ..... **45759**
6101 ..... **60783**
9903 ..... **47438, 60503**
9904 6103
9905 ..... **60503**

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1 Authority citation revised 6898
1.22 (a) revised 6897
1.23 (i) revised; (p) and (q) added 6897
1.26 (a)(7), (8) and (9) revised 6897
(a)(8) redesignated as (a)(9); new (a)(8) added 6897
1.45 (a)(3) amended, (15) and (15) and (16) added 6898
(a)(17) added 6899
1.46 (m) revised 6194
1.48 (jj) added **62484**
(jj) added 502
(jj) revised 6194
1.49 (ii) added **62484**
(ii) revised 6194
1.53 (k) redesignated as (k)(1); new (k)(2) added **62484**
(l) added 5631
(k) revised 6194
1.56 (k) removed 5632
1.59 (c)(6) amended 6898
9 Revised 6724
71.7 (a) revised **48339**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 49 Subtitle A—Con. Page

81 Removed....60728
89 Authority citation revised....6898
89.5 Introductory text amended....6898
99 Authority citation revised....7995
99.735-80 Added....7995
99.735-1—99.735-5 (Subpart A) Removed....7995
99.735-7—99.735-25 (Subpart B) Removed....7995
99.735-31—99.735-45 (Subpart C) Removed....7995
99.735-51—99.735-61 (Subpart D) Removed....7995
99.735-71—99.735.77 (Subpart E) Removed....7995
99.735-80 Added....7995
99 Appendix B, C, and D removed; Appendix E amended....7995

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

101 Removed....60728
101.1—101.7 (Subchapter A) Removed....60728
107 Interpretation....48739
Filing requirements....10985
107.315 (c) revised; (d) added....45453
171 Interpretation....48739
Authority citation revised....6870
Filing requirements....10985
171.1 (a)(3)(iv) added....52934
(a)(3)(v) added....6870
171.4 Added....52934
171.5 Added....6870
171.7 (a)(3) table amended; interim....60739
171.8 Amended....45453, 52935, 59309
Corrected....47513
Amended....6870
171.11 (d)(13) added....52935
(d)(14) added....6870
171.12 (b)(7) revised....45453
(b)(17) added....6870
171.12a (b) introductory text revised....45453
(b)(15) added....52935
(b)(16) added....6871
171.14 (b)(2) revised; (b)(3), (4) and (5) redesignated as (b)(4), (5) and (6); new (b)(3) added....45443

Page

Heading, (a), (b) introductory text and (c)(2) introductory text revised....45455
(b)(2) corrected....47412
171.15 (a)(4) redesignated as (a)(5); new (a)(4) added....52935
Note revised....6871
172 Interpretation....48739
Authority citation revised....6871
172.101 Table amended....45454—45457, 59309, 59310
(c)(1), (3), (7)(ii) and appendix amended....45458 OUT OF ORDER?
Table corrected....47513
Table corrected....8821
Table amended; appendix redesignated as appendix A and amended; appendix B added....52935
Table corrected; appendix A correctly designated....54141
Table amended....3348
172.102 (c)(1), (3) and (7)(ii) amended....45458
(c)(7)(ii) corrected....47513
(c)(5) amended....52938
(c)(3) amended....59310
172.200 (b) introductory text amended....52938
172.202 (d) amended....52938
172.203 (m)(1) amended....45458
(c)(1)(i) amended; (l) added....52938
(g)(3) amended....3348
(o) added....6871
172.312 (a)(2) amended....45458
172.313 (a) correctly revised....46624
172.322 Added....52938
172.324 (a)(1) amended....52939
172.325 Revised....3348
172.330 (a) amended....45458
172.405 (a) introductory text amended....45458
172.422 (a) revised....45458
172.504 (c) introductory text, (f)(1) and (4) revised; (f)(9) and (10) added....45460
(f)(9) amended....59310
172.505 (a) revised....45460
172.510 (c) amended; (e) revised....45460
172.519 (b)(3) amended....45460
172.526 (a)(4) amended....45460
172.560 (b) revised....45460
172.704 (a)(1), (2), (c)(1)(i) and (ii) revised....5851

NOTE: Boldface page numbers indicate 1992 changes.

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

173 Interpretation....48739
Authority citation revised....6871
173.2 Amended....45460
173.12 (d)(1) and (2) amended; (d)(3) added....52939
173.22 (a)(4) amended....45460
173.23 (c) amended....45460
173.24a (c)(1)(iii) amended....45460
173.28 (e) added....45460
173.29 (b)(3) amended....52939
173.31 (c) Table I amended....45460
173.32 (a)(1), (3), (5) and (c) amended....45460
173.32c (r) added....45460
(f) amended....45461
173.33 (c)(1)(iii), (5) and (e) amended....45461
173.115 (b)(1) amended....45461
173.120 (b)(1) and (2) amended....45461
173.124 (a)(3)(ii) revised....45461
173.133 (a)(2)(ii) introductory text republished; (a)(2)(ii) Figure 1 revised....45461
(a)(1) table and (2)(i) table amended....45463
173.140 Revised....45463
(b) revised....52939
(b) revised....6871
173.150 (a), (f) introductory text and (3)(vii) amended....45463
(c), (f)(2), (3) and (4) amended....52940
(f)(3)(viii) and (4) introductory text revised....6871
173.151 (c) amended....52940
173.152 (c) amended....52940
173.153 (c)(3) amended....52940
173.154 (d) revised....45463
(c) and (d) amended....52940
173.155 (c) amended....52940
(d) added....6871
173.156 (b) amended....45463
173.159 (b)(3) through (6) added; (c) introductory text revised....45463
173.193 (d) amended....45463
173.211 (c) amended....45463
173.225 (e)(2) amended; (e)(3) introductory text, (i), (ii), (iii), (v) and (iv) redesignated as (e)(3)(i) introductory text, (A), (B), (C), (ii) and (4)....45463
173.227 (b) introductory text amended....45463

Page

173.244 Heading revised....45463
173.247 Revised....3349
173.302 (a)(5)(iii) amended; (h) revised....45463
173.304 (g) revised....45463
173.314 (c) introductory text revised....45463
(c) table amended....45464
(c) table corrected....47513
173.315 (a) table, (d) and (i)(12) amended....45464
173.336 Heading and introductory text revised....45464
173.421 (b)(1)(i) and (2)(i) amended....52940
173.425 (b)(8) amended....52940
174 Interpretation....48739
Authority citation revised....6871
174.25 (a)(2) table amended....45464
(b)(5) added....52940
(b)(1)(i) amended; (b)(6) added....6871
174.55 (c) amended....45464
174.61 (c) amended....45464
174.81 (f) table revised; (d) table and (e)(5) amended....45464
(d) table amended....59310
174.82 (a) amended....45464
174.85 (b) amended....45464
175 Interpretation....48739
176 Interpretation....48739
176.70 Added....42940
(a) amended....6872
176.83 (c)(2)(i)(A) and (B) amended....45465
176.600 (d) amended....45465
177 Authority citation revised....45465
Interpretation....48739
177.805 (a) designation removed....45465
177.816 (a) and (4) amended; (c) revised; (d) added....5852
177.848 (f) table revised; (d) table and (e)(5) amended....45465
(f) table corrected....47513
(d) table amended....59310
177 Appendix B corrected....47513
178.270-5 (a), (c) and (d) amended....45465
178.337-1 (b) amended....45465
178.337-11 (a)(4)(i)(B) amended....45465
178.345-2 (a)(2) amended....45465

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 49 Chapter I—Con. Page

178.345-11 (a) and (b)(1)(iii) amended; (b)(2) and (c) revised **45465**
178.507 (a) amended **45465**
178.601 (h) amended **45465**
178.603 (a) introductory text and table amended **45465**
178.606 (c)(1) and (d) amended **45465**
178 Appendix B amended **45466**
179.101-1 (a) amended **45466**
179.200 (b)(4) removed **45466**
180.405 (g)(2) amended **45466**
180.407 (d)(2)(vii) removed; (d)(2)(viii) amended **45466**
180.409 (b) introductory text revised **45466**
180.413 (b)(2)(v) revised **45466**
180.415 (b) and (c) amended **45466**
194 Added; interim 253
198.11—198.13 (Subpart B) Added 10988

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

214.103 Regulation at 57 FR 45326 effective date delayed to 11-24-92 ..... **45326**
214.105 Regulation at 57 FR 45326 effective date delayed to 11-24-92 ..... **45326**
229 Authority citation revised 6902
229.133 Added; interim 6902
255 Removed **52734**
268 Removed **52735**

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

383.51 (c)(3) removed **53295**
390.5 Introductory text revised; section amended 6729
390.15 Added 6729
394 Removed 6729

Chapter IV—Coast Guard, Department of Transportation (Parts 400—499)

400—499 (Ch. IV) Policy statement 6446

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

Page

527 Removed **60728**
541 Appendixes A, A-I and A-II revised 3852
564 Added 3860
571 Petition denied **47007**
571.100 Removed **60728**
571.105 Amended; eff. 10-20-93 ..... **47800**
571.108 Regulation at 56 FR 16021 effective 10-1-92 ..... **45328**
Amended; eff. 12-1-93 ..... **58413**
Amended 3506, 3861
Figures 23-4 and 23-5 revised 3854
571.111 Amended; eff. 12-2-93 ..... **57015**
571.121 Amended; eff. 10-20-94 ..... **47800**
571.205 Corrected **58150**
571.211 Amended 4583
571.213 Corrected **45422**
571.216 Amended 5633
571.217 Amended; eff. 5-2-94 ..... **49423**, **57020**
571.222 Amended; eff. 1-17-94 4593
571.301 Amended 5638
572.31 (a)(1) revised **47910**
572.90—572.91 (Subpart K) Added 3232
590 Removed **60728**

Chapter VI—Federal Transit Administration (Parts 600—699)

603 Removed **60728**
623 Removed **60728**
630 Revised 4888
635 Removed **60728**
665 Regulation at 57 FR 33397 comment period extended; interim 2989
Meeting 11549
665.3 (d) revised; interim **46815**
(d) revised; interim 10990
670 Removed **60728**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Chapter VIII—National Transportation Safety Board (Parts 800—999)

Page

821 Authority citation revised 11380
821.1 Amended; interim 11380
821.2 Revised; interim 11380
821.30 Revised; interim 11381
821.64 Revised; interim 11381
826 Authority citation revised 11381
826.2 Revised; interim 11381
826.3 (a) revised; interim 11381

Chapter X—Interstate Commerce Commission (Parts 1000—1399)

1002.1 (b) revised; (f)(6) table amended **53296**
(f)(11) revised 7748
1002.2 (f) revised **53296**
(f) table corrected **54894**
(a) and (b) revised; (g) added 7749
1004.3 Removed 11550
1017.1 (e) added 7749
1018 Added 7749
1018.20 (a)(5) corrected 11099
1018.50 Corrected 11099
1023.32 Regulation at 57 FR 43152 stayed **45751**
(e) and (f) amended **49149**
1023.33 Regulation at 57 FR 43152 stayed **45751**
1023.34 Regulation at 57 FR 43152 stayed **45751**
1023.35 Regulation at 57 FR 43152 stayed **45751**
Revised **49149**
1023.36 Regulations at 57 FR 43152 and 43153 stayed **45751**
1023.37 Regulations at 57 FR 43152 and 43153 stayed **45751**
1023.38 Regulation at 57 FR 43152 stayed **45751**
1023.39 Regulation at 57 FR 43152 stayed **45751**
1023.40 Removal at 57 FR 43153 stayed **45751**
1023.41 Removal at 57 FR 43153 stayed **45751**
1023.42 Removal at 57 FR 43153 stayed **45751**
1023.101 Removal at 57 FR 43153 stayed **45751**
1033 Revised **53451**

Page

1033.1 (a)(3) and (b)(1) revised **61585**
1037 Authority citation revised **54334**
1037.2 Revised **54334**
1039.11 (a) amended 4356
1039.14 (c)(3) amended **53451**
(c)(3) correctly designated **56641**
1180 Authority citation revised **57112**
1180.20 (Subpart B) Revised **57112**
(c) amended **6 585**
1312.4 (b)(2) redesignated as (b)(2)(i); (b)(2)(ii) added 7756
(b)(2)(ii)(D) corrected 11099
1313.7 (a)(6) existing text amended; (a)(6)(i) through (iv) added 7756
1314.4 (a) existing text amended; (a)(1) through (4) added 7756
1321.1 Amended **54189**
1321.5 Introductory text amended **54189**

Title 49—*Proposed Rules:*

1-99 (Subtitle A) **54191**
10 ..... **49446**
23 ..... **58288**
37 ..... **54210, 54210**
..... 6471
40 ..... **59409**
..... 7197, 7506
41 4393
100-199 (Ch. I) **54191**
190 ..... **53085, 54745**
191 ..... **53085**
192 ..... **53085, 54745**
193 ..... **53089, 54745**
195 ..... **54745, 56304**
199 ..... **59712, 59720, 59778**
..... 7197
200-299 (Ch.II) **54191**
213 ..... **54038**
..... 338, 4975, 8928
217 ..... **47603, 58436, 59608**
..... 7197
218 ..... **48494**
219 ..... **59588, 59605, 59608, 59778**
..... 7197
220 ..... **47603, 58436**
232 ..... **62546**
234 ..... **53684**
..... 4400

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 49—Con.

Page

300-399 (Ch. III) **53089, 54191, 60784**
350 .....**59516**
.....7197
382 .....**59516, 59536, 59567, 59778**
.....7197
383 .....**59516**
.....4638, 4640, 7197
390 4640
391 ..... **48011, 59778, 59539**
.....4640, 7197
392 .....**59516**
.....6937, 7197
395 .....**59516**
.....6937, 7197
400-499 (Ch.IV) **54191**
500-599 (Ch. V) **54191, 54351, 61869**
523 .....**61377**
525 .....**61377**
531 .....**48777**
.....6939
533 .....**61377**
537 .....**61377**
552 .....**45759**
571 ...**45760, 49162, 49444, 54354, 54958, 58437, 58444, 59041, 59043**
...4644, 4649, 5323, 5699, 7206, 7506, 11003, 11009, 11562
572 .....**48779, 58444**
.....7506
575 .....**54962, 54963**
585 .....**59043**
600-699 (Ch. VI) **54191**
604 .....**48924**
611 6948
653 .....**59660, 59778**
.....7197
654 .....**59646**
.....7197
826 .....**60785, 61967**
1007 531
1023 5951
1039 .....**45602, 48354**
.....6104, 8030
1056 6912
1057 .....**53463, 61870**
1145 .....**48354**
1152 .....**53307, 59951**
1162 5951
1180 6612
1201 .....**53307, 59951**
1312 35

NOTE: **Boldface page numbers indicate 1992 changes.**

TITLE 50—WILDLIFE AND FISHERIES

Page

Chapter I—United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

17.11 (h) table amended...**45337, 54726, 59243, 59256**
(h) table amended...4358, 5642, 5657, 5946
17.12 (h) table amended...**46339, 46344, 48747**
(h) table amended..... 8242, 11552
17.84 (h) added.....5657
17.108 (a)(3) and map revised; (a)(4), (5) and (6) added; eff. 11-15-92 through 3-15-93..... 5645
20.105 Corrected.....**53416**
100.25 (m)(1) table and (13) table corrected; (m)(17)(ii)(C), (18)(ii)(B), 19)(ii)(D) and (25)(ii)(B) correctly revised..... **54509**
(m)(4) table amended.....**54703**

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

216.24 (e)(5)(i) introductory text and (vi) through (xv) revised; (e)(5)(xvi) added.....**54335**
217 Temporary regulations...**46815, 53603, 54533, 60135**
Temporary regulations 4088
217.12 Regulation at 57 FR 40867 confirmed and amended.....**57353**
Amended; interim; eff. 2-10-93 through 4-10-93.....8556
222 Temporary regulations...**46815, 53603, 54533, 60135**
Temporary regulations..... 4088
227 Temporary regulations...**45986, 46815, 47276, 52735, 53603, 54533, 57968, 60135**
Temporary regulations.....4088, 5643
227.71 (a) and (b) revised; (c) republished.....**57354**
227.72 (e) revised.....**57354**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page

(e)(2)(ii)(A)(5) and (6) removed; (e)(2)(ii)(A)(7) redesignated as (e)(2)(ii)(A)(5)....2990
(e)(2)(iii), (4)(iii)(D) added; interim eff. 2-10-93 through 4-10-93....8556
228.11 Revised....4093
228.12 Revised....4093
228.13 (b) and (c) revised....4093
228.14 (b) and (c) introductory text revised....4093
285 Temporary regulations...45579, 47412, 59310

Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

603.1 Revised....47801
603.2 Amended....47801
603.3 Amended....47801
603.5 Revised....47801
603.6 (a) introductory text amended....47801
603.7 Nomenclature change....47801
611 Specifications....2991
Apportionment....8712
611.2 Amended....48566
611.1—611.16 (Subpart A) Appendixes A and D amended....48566
611.20 (c) amended....48566
611.81 Heading, (a), (b), (c), (j)(2), (3) and (4) introductory text revised; (h)(4) removed; (j)(9) added....48566
(j)(5)(i), (ii), (iv), (6)(ii) and (iv) amended....48567
(a) corrected....53966
625 Revised....57369
Specifications....5658
Harvest quota....8557
625.4 (b)(1)(ii) corrected....11381
625.5 (b)(1) corrected....11381
625.27 (e)(2) corrected....11381
625.8 (a)(8) suspended; (a)(12) added; interim; effective to 3-9-93....58151
625.24 (b)(1) suspended; (b)(3) added; interim; effective to 3-9-93....58151
640.1 Revised....56518
640.2 Amended....56518

Page

640.4 Revised....56518
640.6 Revised....56519
640.7 Revised....56520
640.20—640.24 (Subpart B) Revised....56520
640.23 (a)(3) revised (temporary)....58154
641.4 (m) and (n) added; interim; effective to 3-30-93....62239
641.7 (u) added; interim; effective to 3-30-93....62237
(v) and (w) added; interim; effective to 3-30-93....62239
641.21 (d) added; interim; effective to 3-30-93....62239
641.30 Added; interim; effective to 3-30-93....62237
(b) suspended; (c) added; interim; effective to 3-30-93....62239
642 Temporary regulations....47998
Temporary regulations....4093, 11198
Fishery management measures....4599
642.1 (a) amended....58153
642.2 Amended....58153
642.4 (a)(1)(i), (ii), (b)(2)(vi) revised; (b)(3) amended....58153
642.5 (a) introductory text, (3) and (b) introductory text amended; (e) and (f) revised....58154
642.6 (a) introductory text revised....58154
642.7 Revised....58154
(a) corrected....3330
(u) added; interim....10991
642.20—642.30 (Subpart B) Revised....58154
642.21 (b) corrected....3330
642.31 Added; interim....10991
642 Appendix A redesignated in part as part 642 Figures 1 and 2; removed....58157
646 Temporary regulations....56522
650 Temporary regulations....4944
Technical correction....7040
651.20 (e)(2) revised....48473
652 Temporary regulations....55148
Harvest quotas....11198
655 Specifications....54189
661 Temporary regulations....45751
662 Harvest quotas....48191
663 Reassessment....45987
Restrictions....46097, 49425
Temporary regulations....47413, 57377

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

TITLE 50 Chapter VI—Con. Page

Specifications 2991
663.7 (q), (r), (t) and (u) added; eff. 1-1-94; (s) and (v) added **54006**
663.30—663.43 (Subpart C) Added **54006**
663.35 (a)(3) corrected 3330
663.36 (a)(2) corrected 3330
663 Appendix amended **54012**
671 Added; interim **57115**
671.2 Corrected **60029**
671.20 Corrected **60029**
672 Temporary regulations ... **45580, 45988, 46510, 47277, 47572, 47910, 52594, 52737**
Prohibition of retention ... **46344, 46816, 48568, 56860**
Technical correction **49653**
Fishery management measures **61586**
Temporary regulations 504
672.2 Amended **61340**
672.7 (g) revised **55149**
(h)(1) and (2) revised **61340**
672.20 (a)(2)(v)(C) removed; (a)(2)(v)(A) and (B) revised **61340**
672.24 (d)(3) and (4) removed 504
(f) added 5661
675 Temporary regulations ... **46511, 53452, 58726**
Technical correction **49653**
Apportionment **53035, 58158**
Prohibition of retention **57377**
Recordkeeping and reporting requirements **57692**
Temporary regulations ... 504, 5662, 9129, 11199, 11381
Apportionment 8712
Prohibition of retention 8713
675.2 Amended **54942, 61341**
675.7 (j) and (k) redesignated as (k) and (l); new (j) added **54942**
(h) revised **55149**
(i) revised **61341**
675.20 (a)(3)(i), (ii) and (iii) revised; (a)(7)(i) and (ii) amended; (e)(2)(iv) added **54942**
(a)(2)(iii) introductory text revised **61341**
675.21 (c)(2)(ii) corrected **49750**
675.22 (g) revised **54942, 61341**
675.24 (g) added 5662
675.26 (b)(4) and (d)(3)(i)(A)(*1*) corrected **49750**

Page

675.27 Added **54943**
(b)(1)(iii) corrected 7040
685.1 (a) and (b) revised **48567**
685.2 Amended **45991, 48568**
Table corrected **53966**
685.4 (a), (b)(7), (8) and (c)(9) amended **48568**
685.5 (t) revised **45991**
(a), (b), (d) through (g), (n), (o) and (r) amended **48568**
685.8 (a) amended **48568**
685.9 (a) amended **48568**
685.13 Amended **48568**
685.15 (a), (c)(1) and (2) amended **48568**
685.22 Revised **48568**
685.23 Amended **48568**
685.24 Redesignated as 685.26; new 685.24 added **45992**
685.25 (a)(2), (3) and (4) amended **48568**
685.26 Redesignated from 685.24 ..... **45992**

Title 50—*Proposed Rules:*

17 ... **45761, 45762, 46007, 46528, 46840, 47028, 47833, 48495, 49671, 53309, 54545, 54546, 54547, 54747, 55219, 56541, 56549, 58770, 58774, 58779, 59053, 59061, 59951, 59970, 60159, 60160, 60161**
... 339, 4144, 4145, 4400, 4401, 4975, 5341, 5701, 6578, 8032, 8249, 8250, 11579
18 ..... **62283**
23 ..... **53090**
32 ..... **55686, 58108, 58930, 62289**
216 ..... **47606**
218 ..... **47606**
222 ..... **47606, 60162**
226 ..... **52750, 57051, 57981**
..... 7206
227 ..... **53312**
..... 3108
259 ..... **54356**
301 9138
611 ..... **47040, 57718, 57982**
..... 6574
625 ..... **55220, 61389**
641 ..... **57129**
649 ..... **58781**
650 ..... **49675**
651 ..... **46840, 49676, 58173**
652 ..... **48589, 54215**

NOTE: **Boldface page numbers indicate 1992 changes.**

CHANGES OCTOBER 1, 1992 THROUGH FEBRUARY 26, 1993

Page	
655	**60786**
658	**54965, 58175**
663	**49060, 53313, 54552, 56897** 126, 4146, 7525
669	**58782**
672	**46133, 47321, 49676, 57130, 57726, 57982, 59072, 61870**
	532, 6574, 6677
675	**45602, 46133, 46139, 48426, 49676, 54045, 57130, 57718, 57726, 59072, 60788, 61870**
676	**49676, 57130, 61870**
683	**54560**
685	**47040**

NOTE: **Boldface page numbers indicate 1992 changes.**

Additions to Table I, January 1993

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January 1992. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1993. Additions during 1992 are in the December 1992 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
5 U.S.C.	
552a	21 Part 291
	25 Part 515
553	49 Part 1018
5514	22 Part 309
	45 Part 708
7351	18 Part 3c
7353	18 Part 3c
5 U.S.C. Appendix	
App	18 Part 3c
7 U.S.C.	
2	17 Part 35
6	17 Part 35
6c	17 Part 35
6p	17 Part 1
12a	17 Part 35
150dd	7 Part 319
150ee	7 Part 319
150ff	7 Part 319
151—167	7 Part 319
950 et seq	7 Part 1703
1989	7 Part 4284
2011—2032	7 Parts 271—282, 284, 285
10 U.S.C.	
131	32 Part 397
12 U.S.C.	
1462	12 Part 558
1463	12 Part 563
1464	12 Part 563
1467a	12 Parts 558, 563
1715	24 Part 207
1735f-12	24 Part 207
1798	12 Part 701
1828	12 Part 225
1831e	12 Part 303
1831o	12 Part 303
2250	12 Part 607
2252	12 Part 607
2810 et seq	12 Part 528
3025	12 Part 607
15 U.S.C.	
78l	12 Part 208
79	18 Part 365
717—717w	18 Part 385

15 U.S.C.—Con.	CFR
717g	18 Part 3c
1392	49 Part 564
1401	49 Part 564
1403	49 Part 564
1407	49 Part 564
3717	12 Part 701
16 U.S.C.	
792—825r	18 Part 385
825	18 Part 3c
1005	7 Part 4284
2601—2605	18 Part 385
17 U.S.C.	
803	37 Part 311
1007	37 Part 311
18 U.S.C.	
4001	28 Part 26
4002	28 Part 26
19 U.S.C.	
66	19 Part 118
1499	19 Part 118
1623	19 Part 118
1624	19 Part 118
20 U.S.C.	
1065	34 Part 628
1681	29 Part 34
21 U.S.C.	
136a	27 Part 319
337	21 Part 100
22 U.S.C.	
2503	22 Part 309
23 U.S.C.	
120 note	23 Part 140
409	49 Part 9
25 U.S.C.	
81	25 Parts 531, 533, 535, 537, 539
2705	25 Parts 573, 575
2706	25 Parts 501, 519, 522, 523, 524, 531, 533, 535, 537, 539, 556, 558, 571, 573, 575, 577
2710	25 Parts 501, 522, 523, 524, 531, 533, 535, 537, 539, 556, 558, 571
2711	25 Parts 531, 533, 535, 537, 539
2712	25 Parts 522, 523, 524, 556, 558

25 U.S.C.—Con.	CFR
2713	25 Parts 573, 575, 577
2715	25 Parts 571, 573, 575, 577
2716	25 Part 571
26 U.S.C.	
267	26 Part 1
482	26 Part 1
936	26 Part 1
6012	26 Part 1
6065	26 Part 1
28 U.S.C.	
509	28 Part 26
510	28 Part 26
29 U.S.C.	
794	29 Part 34
1501	29 Part 34
1551	29 Part 34
1573	29 Part 34
1574	29 Part 34
1575	29 Part 34
1576	29 Part 34
1577	29 Part 34
1578	29 Part 34
1579	29 Part 34
2672	49 Part 1
31 U.S.C.	
3102 et seq	31 Part 356
3701	49 Part 1018
3711	49 Part 1
3711 et seq	49 Part 1018
3720A	22 Part 309
33 U.S.C.	
1231	49 Part 194
1251 et seq	40 Part 503
1321	30 Part 254 33 Part 150 49 Parts 171, 172, 174, 194
1345	40 Part 503
2735	33 Parts 154, 155
35 U.S.C.	
156	9 Part 124
40 U.S.C.	
322	49 Part 1
42 U.S.C.	
300y-11	21 Part 291
1437	24 Part 770
1441	24 Part 770
1981	12 Part 701
2000d et seq	29 Part 34
2111	10 Part 36
2112	10 Part 36
2201	10 Part 36
2232	10 Part 36
2233	10 Part 36
2236	10 Part 36
2282	10 Part 36
3535	24 Part 770
3608	24 Part 770
5301	24 Part 770
5841	10 Part 36

42 U.S.C.—Con.	CFR
5842	10 Part 36
5846	10 Part 36
6106	29 Part 34
7211—7218	18 Part 3c
7401—7671q	40 Part 81
7601	40 Part 78
7651 et seq	40 Parts 72, 78
7651k	40 Part 75
7651k note	40 Part 75
7651j	40 Part 77
8101 et seq	12 Part 932
9601 et seq	40 Parts 305, 307
9615	40 Part 2
9801 et seq	45 Parts 1304, 1305, 1308
13524	48 Parts 925, 952
45 U.S.C.	
41—42	49 Part 9
46 U.S.C.	
3715	33 Part 155
46 U.S.C. App.	
1721	46 Parts 580, 581, 583
47 U.S.C.	
531	47 Part 76
532	47 Part 76
49 U.S.C.	
1—27	18 Part 381
322	49 Parts 1, 9
504	49 Part 9
10321	49 Part 1018
49 U.S.C. App.	
1344	14 Part 25
1354	14 Part 25
1355	14 Part 25
1421	14 Part 25
1423	14 Part 25
1424	14 Part 25
1425	14 Part 25
1428	14 Part 25
1429	14 Part 25
1803	49 Part 172
1804	49 Part 172
1805	49 Part 172
1808	49 Part 172
1901 et seq	49 Part 821
1921 et seq	49 Part 821
1971	49 Part 821
U.S. Statutes at Large:	
105 Stat.	
1701	7 Parts 1477, 1478
106 Stat.	
117	7 Parts 1477, 1478
4237	37 Part 201
Public Laws:	
89-508	49 Part 89
98-167	49 Part 89
98-369	49 Part 89
99-578	49 Part 89
101-73	12 Part 701

Public Laws—Con.	CFR
102-378	5 Part 531
102-533	49 Part 229
Presidential Documents:	
Executive Orders:	
11609	45 Part 708
12107	45 Part 708
12580	40 Parts 305, 307

Executive Orders—Con.	CFR
12674	18 Part 3c
	49 Part 99
12731	12 Part 1605
	18 Part 3c
	49 Part 99
12777	33 Parts 150, 154, 155
	49 Part 194

Removals from Table I, February 1993

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January 1993.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1993. Removals during 1992 are in the December 1992 LSA (List of CFR Sections Affected).

In order to determine the **Federal Register** page number of a parallel CFR citation, consult this LSA and the appropriate Annual Issue of the LSA for that CFR title.

U.S. Code:	CFR
5 U.S.C.	
553	46 Part 525
7 U.S.C.	
6	17 Part 34
1989	7 Part 1944
2011-2031	7 Parts 271-282, 284, 285
10 U.S.C.	
2202	32 Parts 201, 236, 246
2301—2314	32 Parts 592—606, 608, 612, 616
2576	32 Part 201
3012	32 Parts 592—606, 608, 612, 616
8012	32 Part 954
12 U.S.C.	
1462	12 Parts 579, 580
1462a	12 Parts 579, 580
1463	12 Parts 579, 580
1464	12 Parts 579, 580
1467	12 Parts 579, 580
1715b	24 Part 207
1828	12 Part 225
1831	12 Part 303
1831o	12 Part 263
2801	12 Parts 579, 580
15 U.S.C.	
781	12 Part 208
1601 et seq	12 Part 701
16 U.S.C.	
717-717w	18 Part 385
20 U.S.C.	
1065a	34 Part 628
23 U.S.C.	
109	23 Part 140
115	23 Part 140
122 note	23 Part 140
130	23 Part 140
31 U.S.C.	
738a	31 Part 349
754	31 Part 349
754a	31 Part 349
1601 et seq	12 Part 701
3717	12 Part 701
3718	49 Part 89
9701	40 Part 86
42 U.S.C.	
1861	12 Part 701

42 U.S.C.—Con.	U.S.C.
2928h	45 Part 1304
7101—7352	18 Part 346
9615	40 Part 2
9831 et seq	45 Part 1305
46 U.S.C.	
816	46 Part 525
841a	46 Part 525
1709	46 Part 525
1716	46 Part 525
1722	46 Parts 580, 581, 583
49 U.S.C.	
1—27	18 Part 346
504	49 Part 394
1344	14 Part 25
1354	14 Part 25
1355	14 Part 25
1421	14 Part 25
1421 et seq	49 Part 821
1423	14 Part 25
1424	14 Part 25
1425	14 Part 25
1428	14 Part 25
1429	14 Part 25
1430	14 Part 25
1657	49 Part 9
1803	49 Part 172
1804	49 Part 172
1808	49 Part 172
1901 et seq	49 Part 821
3102	49 Part 394
49 U.S.C. App.	
1815	49 Part 171
2505	49 Part 394
U.S. Statutes at Large:	
40 Stat.	
290	31 Part 349
50 Stat.	
481	31 Part 349
80 Stat.	
379	31 Part 349
Public laws:	
101-624	7 Parts 1477, 1478
102-229	7 Parts 1477, 1478

	U.S.C.
Presidential Documents:	
Executive Orders:	
11222	12 Part 796
	18 Part 3c
	49 Part 99
11735	33 Parts 154, 155
12009	18 Part 346

1992

57 FR Page	
10973-11260	Apr. 1
11261-11424	2
11425-11552	3
11553-11670	6
11671-11904	7
11905-12176	8
12177-12402	9
12403-12694	10
12695-12862	13
12863-12988	14
12989-13266	15
13267-13622	16
13623-14320	17
14320-14474	20
14475-14636	21
14637-14790	22
14791-15000	23
15001-15216	24
15217-17844	27
17845-18078	28
18079-18386	29
18387-18796	30
18797-19062	May 1
19063-19248	4
19249-19362	5
19363-19514	6
19515-19790	7
19791-20024	8
20025-20190	11
20191-20394	12
20395-20626	13
20627-20734	14
20735-20954	15
20955-21186	18
21187-21346	19
21347-21586	20
21587-21720	21
21721-21888	22
21889-22156	26
22157-22408	27
22409-22642	28
22643-23042	29
23043-23134	June 1
23135-23300	2
23301-23522	3
23523-23924	4
23925-24178	5
24179-24344	8
24345-24538	9
24539-24748	10
24749-24934	11
24935-26602	12
26603-26766	15
26767-26920	16
26921-27140	17
27141-27344	18
27345-27676	19
27677-27888	22
27889-28032	23
28033-28456	24
28457-28582	25
28583-28776	26
28777-28996	29
28997-29180	30
29181-29428	July 1
29429-29628	2
29629-29782	6
29783-30098	7
30099-30378	8
30379-30634	9
30635-30896	10
30897-31088	13
31089-31302	14
31303-31428	15
31429-31628	16
31629-31946	17
31947-32148	20
32149-32412	21
32413-32684	22
32685-32878	23
32879-33096	24
33097-33266	27
33267-33424	28
33425-33622	29
33623-33856	30
33857-34060	31
34061-34200	Aug. 3
34201-34494	4
34495-34664	5
34665-34850	6
34851-35454	7
35455-35744	10
35745-35980	11
35981-36350	12
36351-36586	13
36587-36886	14
36887-37078	17
37079-37392	18
37393-37682	19
37683-37868	20
37869-38236	21
38237-38402	24
38403-38576	25
38577-38742	26
38743-39096	27
39097-39350	28
39351-39596	31
39597-40070	Sept. 1
40071-40300	2
40301-40590	3
40591-40826	4
40827-41042	8
41053-41374	9
41375-41640	10
41641-41852	11
41853-42484	14

42485-42680	15
42681-42880	16
42881-43124	17
43125-43334	18
43335-43604	21
43605-43884	22
43885-44076	23
44077-44304	24
44305-44480	25
44481-44650	28
44651-44966	29
44967-45260	30
45261-45558	Oct. 1
45559-45707	2
45709-45972	5
45973-46078	6
46079-46294	7
46295-46476	8
46477-46746	9
46747-46948	13
46949-47252	14
47253-47398	15
47399-47554	16
47555-47754	19
47755-47974	20
47975-48160	21
48161-48304	22
48305-48434	23
48435-48556	26
48557-48710	27
48711-48928	28
48929-49130	29
49131-49372	30
49373-49630	Nov. 2
49631-52576	3
52577-52718	4
52719-53014	5
43014-53210	6
53211-43430	9
53431-53536	10
53537-53846	12
53537-53846	13
53981-54164	16
54165-54284	17
54285-54484	18
54485-54678	19
54677-54894	20
54895-55042	23
55043-55436	24
55437-56230	25
56231-56432	27
56433-56802	30
56803-56962	Dec. 1
56963-57093	2
57095-57320	3
57321-57644	4
57645-57873	7
57875-58119	8
58121-58397	9
58399-58696	10
58697-58960	11
58691-59274	14
59275-59800	15
59801-59894	16
59895-60071	17
60073-60448	18
60449-60713	21
60715-60973	22
60975-61248	23
61249-61556	24
61557-61758	28
61759-62144	29
62145-62465	30
62467-62919	31

1993

58 FR Page	
1-211	Jan. 4
213-465	5
467-2964	6
2965-3192	7
3193-3483	8
3485-3823	11
3825-4057	12
4059-4294	13
4295-4568	14
4569-4890	15
4891-5252	19
5253-5560	21
5561-5917	22
5919-6074	25
6075-6186	26
6187-6341	27
6343-6439	28
6441-6600	29
6601-6678	Feb. 1
6679-6874	2
6875-7041	3
7043-7184	4
7185-7475	5
7477-7713	8
7715-7860	9
7861-7951	10
7953-8199	11
8201-8515	12
8517-8689	16
8691-8892	17
8893-9106	18
9107-9516	19
9517-10935	22
10937-11184	23
11185-11359	24
11361-11495	25
11497-11781	26

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Contents

Federal Register

Vol. 58, No. 61

Thursday, April 1, 1993

Administrative Conference of the United States
NOTICES
Meetings:
Rulemaking Committee, 17204

Agriculture Department
See Federal Grain Inspection Service
See Forest Service
See Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 17210

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Children's environments, 17175

Army Department
See Engineers Corps
NOTICES
Meetings:
U.S. Military Academy, Board of Visitors, 17209

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Subdivision and stability:
Dry cargo vessels, 17316

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Indonesia, 17208

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 17304

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 17304

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
NOTICES
Meetings:
Ada Board, 17209

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Exempt chemical preparations, 17106
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey Inc., 17284
Sigma Chemical Co., 17285
Stanford Seed Co., 17285

Education Department
PROPOSED RULES
Special education and rehabilitative services:
Demonstration projects to increase client choice program, 17308
NOTICES
Agency information collection activities under OMB review, 17221

Employment and Training Administration
NOTICES
Adjustment assistance:
General Electric Co. et al., 17286
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act:
National workforce assistance collaborative, 17286
Job Training Partnership Act:
National Center for the Workplace, 17287

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grant and cooperative agreement awards:
Massachusetts Institute of Technology, 17222
Osmotek Inc., 17222
University and Community College System of Nevada, 17223
Natural gas exportation and importation:
Chevron Natural Gas Services, Inc., 17229
CoEnergy Ventures, Inc., 17229

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research program—
Atmospheric radiation measurement program, 17223

Engineers Corps
NOTICES
Regulatory guidance letters, 17209

Environmental Protection Agency
PROPOSED RULES
Clean Air Act:
Fuel and fuel additives; reformulated gasoline
Hearing, 17175
NOTICES
Agency information collection activities under OMB review, 17230
Clean Air Act:
Citizens suits; proposed settlements, 17230

Meetings:
Environmental Policy and Technology National Advisory Council, 17231
Science Advisory Board et al., 17231
Superfund; response and remedial actions, proposed settlements, etc.:
Shore Realty Site, NY, 17231

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Meetings:
Advisory Committee, 17232

Federal Aviation Administration
NOTICES
Exemption petitions; summary and disposition, 17300

Federal Communications Commission
RULES
Common carrier services:
Interstate 900 telecommunications services, 17167
Open network architecture access charge subelements and dominant carriers rates policy and rules, 17166
PROPOSED RULES
Radio services, special:
Amateur services—
219-220 MHz; use allocation, 17180

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
Mojave Pipeline Co. et al., 17224
Applications, hearings, determinations, etc.:
American REF-FUEL Co., 17227
Elm Energy & Recycling Limited, 17227
Granite State Gas Transmission, Inc., 17227
New England Power Co., 17227
Pemberton Power Limited Partnership, 17228
Trunkline Gas Co., 17228

Federal Grain Inspection Service
NOTICES
Committees, establishment, renewal, termination, etc.:
Advisory Committee, 17204

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Kane County, IL, 17300
Meetings:
Intelligent Vehicle-Highway Society of America, 17301

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Official staff commentary update, 17083
NOTICES
Meetings; Sunshine Act, 17304

Food and Drug Administration
RULES
Federal Food, Drug, and Cosmetic Act; misbranding sections; adequate implementation; lists
Correction, 17085
Food additives:
Adjuvants, production aids, and sanitizers—
N-alkyl[C12-C16]benzyldimethykammonium chloride, etc., 17085
Food for human consumption:
Food labeling—
Butter nutrient content claims use; correction, 17100
Calcium and osteoporosis; health claims; correction, 17100
Dairy products and maple sirup; ingredients declaration; correction, 17105
Dietary fiber and cardiovascular disease; health claims and label statements; correction, 17100
Dietary saturated fat and cholesterol and coronary heart disease; health claims and label statements; correction, 17102
Diluted juice beverages; ingredients declaration; correction, 17102
Folic acid and neural tube defects; health claims and label statements; correction, 17099
Foods named by nutrient content claim and standardized term; requirements; correction, 17096
Health claims; general requirements; correction, 17097
Ingredients declaration; correction, 17103
Mandatory nutrition labeling and nutrient content claims requirements; application date establishment; correction, 17105
Omega-3 fatty acids and coronary heart disease; health claims and label statements; correction, 17101
Reference daily intakes and daily reference values; correction, 17085
Regulatory impact analysis statement; correction, 17096
Serving sizes; correction, 17085
Sodium and hypertension; health claims and label statements; correction, 17099
Special dietary use foods; correction, 17104
State enforcement provisions; correction, 17097
Organization, functions, and authority delegations:
Agency organizational structure; headquarters and field offices addresses, 17091, 17105
Change in organizational structure, evidentiary hearings, and division name, 17095
Commissioner of Food and Drugs, 17094
Deputy Commissioner for Operations, 17098
Deputy Director (Medical and Scientific Affairs), Center for Drug Evaluation and Research, 17093
PROPOSED RULES
Food for human consumption:
Food labeling—
Misleading containers; nonfunctional slack-fill; correction, 17171
Nutrient content claims; "healthy" definition; correction, 17171
Protein hydrolysates and vegetable broth in canned tuna; and "and/or" labeling for soft drinks; ingredients declaration; correction, 17171
Frozen desserts; ice milk, goat's milk ice milk, ice cream, frozen custard, and goat's milk ice cream; identity standards
Correction, 17172
NOTICES
Food for human consumption:
Lead in food packed in lead-soldered cans; emergency action levels, 17233

Forest Service
NOTICES
Meetings:
Newberry National Monument Advisory Council, 17205

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 17232

General Services Administration
NOTICES
Small business competitiveness demonstration program; solicitation procedures change, 17233

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV):
Outpatient early intervention services, 17236

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 17229

Housing and Urban Development Department
RULES
Indian housing programs:
Annual income definition; Holocaust reparations Correction, 17164
Low income housing:
Housing opportunities for persons with AIDS programs (HOPWA) entitlement and competitively awarded grants; correction, 17164
Real Estate Settlement Procedures Act; implementation; correction, 17165
PROPOSED RULES
Fair housing:
Housing and Community Development Act—
Fair housing initiatives program implementation, 17172
NOTICES
Agency information collection activities under OMB review, 17236, 17241, 17242, 17243
Regulatory waiver requests; quarterly listing, 17263

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 17275

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 17304

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Branch profits tax; correction, 17166
NOTICES
Inflation adjustment factor and reference price:
Fuel credit, nonconventional sources, 17302

International Trade Administration
NOTICES
Cheese quota; foreign government subsidies:
Quarterly update, 17205
Countervailing duties:
Fresh cut flowers from—
Peru, 17206
Stainless steel cooking ware from—
Taiwan, 17206

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Norfolk & Western Railway Co. et al., 17282
Railroad operation, acquisition, construction, etc.:
Indiana Hi-Rail Corp., 17282

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Coleman Trucking Co. et al., 17283
Eastern Environmental Services of the Southeast, Inc., 17284
NL Industries, Inc., et al., 17284

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 17275, 17276, 17277, 17278
Oil and gas leases:
Colorado, 17278
Realty actions; sales, leases, etc.:
Nevada, 17278, 17279
Wyoming, 17279
Resource management plans, etc.:
Thermo Hot Springs II Known Geothermal Resource Area, UT, 17280
Withdrawal and reservation of lands:
Oregon, 17280

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 17298

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 17280, 17281, 17282

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Expansion Arts Advisory Panel, 17288
Museum Advisory Panel, 17288
Music Advisory Panel, 17289

National Highway Traffic Safety Administration
NOTICES
Meetings:
International Harmonization of Safety Standards, 17301

National Institute of Standards and Technology
NOTICES
Grants and cooperative agreements; availability, etc.:
Liposome immunoanalysis, 17206

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Mexico shrimp, 17169
PROPOSED RULES
Endangered and threatened species:
Steller sea lion; critical habitat designation, 17181
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 17200
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 17196
Gulf of Alaska groundfish, 17193
NOTICES
Meetings:
North Pacific Fishery Management Council, 17207
Pacific Fishery Management Council, 17207
Permits:
Marine mammals, 17208

National Science Foundation
NOTICES
Grants and cooperative agreements; availability, etc.:
Graduate research traineeships program, 172889
Meetings:
Archaeology Advisory Panel, 17290
Astronomical Sciences Advisory Committee, 17290
Biochemistry and Molecular Structure and Function Advisory Panel, 17291
Biological and Critical Systems Special Emphasis Panel, 17291
Chemical and Thermal Systems Special Emphasis Panel, 17291
Cross-Disciplinary Activities Special Emphasis Panel, 17292
Geography and Regional Science Advisory Panel, 17292
Human Resource Development Special Emphasis Panel, 17292
Information, Robotics and Intelligent Systems Special Emphasis Panel, 17292
Materials Research Special Emphasis Panel, 17292
Mathematical Sciences Special Emphasis Panel, 17293
Networking and Communications Research and Infrastructure Special Emphasis Panel, 17293

Nuclear Regulatory Commission
NOTICES
Generic letters:
Technical specification administrative control requirements for emergency and security plans, 17293
Meetings:
Reactor Safeguards Advisory Committee, 17295
Meetings; Sunshine Act, 17305
Applications, hearings, determinations, etc.:
Philadelphia Electric Co. et al., 17296
Tennessee Valley Authority, 17296

Occupational Safety and Health Administration
NOTICES
Meetings:
Shipyard Employment Standards Advisory Committee, 17288

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
EXECUTIVE ORDERS
International Development Law Institute; designation as public international organization (EO 12842), 17081

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Indian Health Service, 17236

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 17305

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Toby Tubby Creek Watershed, MS, 17204

State Department
NOTICES
Meetings:
International Communications and Information Policy Advisory Committee, 17299

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 17173

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
European Community:
Products and services from Member States; contract award prohibition, 17299

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service
NOTICES
Senior Executive Service:
Combined Performance Review Board; membership, 17302

U.S. Commission on Improving Effectiveness of United Nations
See U.S. Commission on Improving Effectiveness of United Nations
NOTICES
Hearings, 17303

Veterans Affairs Department
NOTICES
Meetings:
Vietnam and Other War Veterans Readjustment Advisory Committee, 17303

Separate Parts In This Issue

Part II
Department of Education, 17308

Part III
Department of Transportation, Coast Guard, 17316

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12842.....17081

12 CFR
226.....17083

21 CFR
Ch. I.....17085
1.....17085
5 (7 documents).....17091, 17093, 17094, 17095, 17096, 17105, 17105
12.....17095
14.....17095
20 (2 documents).....17096, 17097
74.....17098
100 (2 documents).....17096, 17097
101 (14 documents).....17085, 17096, 17097, 17099, 17100, 17101, 17102, 17103, 17104
102 (2 documents).....17102, 17103
104.....17104
105 (3 documents).....17096 17104
130 (4 documents).....17103, 17105
131.....17105
133.....17105
135 (2 documents).....17103, 17105
136.....17103
137.....17103
139.....17103
145.....17103
146.....17103
150.....17103
152.....17103
155.....17103
156.....17103
158.....17103
160.....17103
161.....17103
163.....17103
164.....17103
166.....17103
168 (2 documents).....17103, 17105
169.....17103
172.....17098
177.....17098
178.....17098
186.....17098
189.....17098
1308.....17106
Proposed Rules:
100.....17171
101 (2 documents).....17171
102.....17171
135.....17172
161.....17171

24 CFR
50.....17164
574.....17164
905.....17164
3500.....17165
Proposed Rules:
125.....17172

26 CFR
1.....17166

30 CFR
Proposed Rules:
935.....17173

34 CFR
377.....17308

36 CFR
Proposed Rules:
1191.....17175

40 CFR
Proposed Rules:
80.....17175

46 CFR
174.....17316

47 CFR
61.....17166
64.....17167
Proposed Rules:
2.....17180
80.....17180
97.....17180

50 CFR
658.....17169
Proposed Rules:
226.....17181
672 (2 documents).....17193, 17196
675 (2 documents).....17196, 17200

Federal Register
Vol. 58, No. 61
Thursday, April 1, 1993

Presidential Documents

Title 3—

The President

Executive Order 12842 of March 29, 1993

International Development Law Institute

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in light of the Act of Congress authorizing the participation of the United States in the International Development Law Institute, section 805 of the Freedom Support Act of 1992, Public Law 102–511, I hereby designate the International Development Law Institute as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization may have acquired or may acquire by international agreements or by congressional action.

William J Clinton

THE WHITE HOUSE,
March 29, 1993.

[FR Doc. 93–7734
Filed 3–30–93; 2:03 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 58, No. 61
Thursday, April 1, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. TIL–1]

Truth in Lending; Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is revising the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions are limited, and address regulatory provisions needing clarification or issues for which there may be a general need for more guidance. The revisions address the interplay between the Truth in Lending rules on demand features and other federal rules dealing with credit extended to executive officers of depository institutions. They provide greater flexibility in complying with the disclosure requirements under Regulation Z in these transactions. The disclosure rules for security interests (particularly those in rescindable transactions) are also clarified. The commentary offers creditors alternative methods of disclosing security interests in rescindable transactions.

DATES: Effective April 1, 1993; but compliance is optional until October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kyung Cho, Jane Gell or Kurt Schumacher, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 29551, at (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) General

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise.

The Board published proposed revisions to the official staff commentary to Regulation Z (Truth in Lending) on December 9, 1992 (57 FR 58159). The Board received 44 comments on the proposal relating to demand features in credit transactions to executive officers and disclosure of a security interest in rescindable transactions. Commenters generally supported the proposal. Based on a review of the comments and further analysis, the Board is adopting the commentary update which, except for minor editorial changes, is virtually identical to the proposed commentary language. Compliance with the commentary revision is optional until October 1, 1993.

(2) Revisions

The following is a description of the revisions to the commentary:

Subpart A—General

Section 226.2 Definitions and Rules of Construction

Section 2(a) Definitions

Section 2(a)(25) Security Interest

The Board received numerous questions about the disclosure of security interests—particularly in rescission notices—and about the appropriate use of the model rescission form for a refinancing with an original creditor. Comment 2(a)(25)–6 is revised to clarify that disclosures about collateral securing an open-end or closed-end credit transaction need not specify how the security interest is taken, for example, by "acquiring" a new security interest or by "retaining" an existing security interest. The revision expands on an interpretation added in the 1989 commentary update (54 FR 9417, March 7, 1989). Commentary to the definition of "security interest" is revised because of its applicability to the security interest disclosures under multiple sections of the regulation (§§ 226.8, 226.15, 226.18 and 226.23). Sample language is provided to illustrate how a rescission notice could disclose the fact that a transaction is secured by the consumer's home without any additional detail about the security interest.

The comment refers to the model form for rescission of refinancings with an original creditor (model form H–9) to illustrate that it adequately discloses the fact of a security interest where a new security interest is acquired (and the preexisting security interest is replaced by the new one). As stated in the Supplementary Information to the 1989 commentary update, comment 2(a)(25)–6 was intended to clarify "that the disclosure that an interest is retained, as in form H–9, is adequate in a refinancing where a new mortgage is filed and a new advance is made." The revision specifically incorporates that position into the commentary.

The commentary revisions make clear that the requirements about disclosure of a security interest in a rescission notice may be satisfied with either a generic statement of the fact that the consumer's home is security for the transaction or with a more detailed disclosure about that security interest. It further makes clear, as an alternative to modifying rescission notices to include more generic disclosures, that the form H–9 may be used, without modification, in any case in which an original creditor refinances a transaction (whether or not the refinancing involves keeping in place an existing security interest for any period of time or involves taking a new security interest).

Subpart B—Open-End Credit

Section 226.5b Requirements for Home-Equity Plans

Section 5b(d) Content of Disclosures

Section 5b(d)(4) Possible Actions by Creditor—Paragraph 5b(d)(4)(iii)

Comment 5b(d)(4)(iii)–1 is revised to reflect the amendment to § 226.5b(f)(2) adopted by the Board in August 1992. (57 FR 34676, August 6, 1992.) The Board amended the regulation to provide that a depository institution may terminate and demand payment of the balance on any home equity line of

credit extended to its executive officers to the extent federal law requires that the credit shall be due and payable on demand. (See § 226.5b(f)(2)(iv).) For example, Regulation O contains this requirement for state member banks of the Federal Reserve System. (See 12 CFR 215.5.)

In the Supplementary Information accompanying the amendment, the Board stated that the regulation requires that this provision be part of the home-equity agreement, although this feature is not required to be disclosed with the preapplication disclosures. The commentary restates this position.

Section 5b(f) Limitations on Home Equity Plans—Paragraph 5b(f)(2)

Comment 5b(f)(2)–1 is revised to clarify that a creditor may terminate a plan as provided in § 226.5b(f)(2)(iv).

Section 226.6 Initial Disclosure Statement

Section 6(e) Home Equity Plan Information

Comment 6(e)–1 is revised to add a cross reference to comment 5b(d)(4)(iii)–1. This reflects the position taken in the Supplementary Information of the August 6, 1992 **Federal Register** notice that the termination feature in § 226.5b(f)(2)(iv) also need not be specifically disclosed under § 226.6(e).

Appendix G Open-End Model Forms and Clauses

Comment 4 to Appendix G is revised to add a cross reference to comment 226.2(a)(25) regarding the specificity of the security interest disclosure for model form G–7.

Subpart C—Closed-End Credit

Section 226.18 Content of Disclosures

Section 18(i) Demand Feature

Comment 18(i)–2 is revised to address how the rule in the Board's Regulation O (and other comparable federal financial regulatory agency rules) relates to the disclosure rules for demand features in closed-end credit transactions. It parallels the treatment of such features in open-end credit. The revised comment provides that if an institution retains the ability to demand payment of a loan in its closed-end credit agreement with its executive officers to the extent required by federal law, the institution need not provide demand disclosures. Of course, if an institution has a demand feature in its closed-end agreement with its executive officers that is broader than that required by federal law, such a feature would have to be disclosed under § 226.18(i).

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

Section 19(b) Certain Variable-Rate Transactions

Paragraph (19)(b)(2)(xi).

Demand features must be disclosed in variable rate mortgages covered by § 226.19(b). Since disclosure of a demand feature for variable-rate mortgages is determined by reference to § 226.18(i), a cross-reference is added to comment 19(b)(2)(xi)–1 dealing with demand features.

Appendix H Closed-End Model Forms and Clauses

Comment 11 to Appendix H is revised to add a cross reference to comment 226.2(a)(25) regarding the specificity of the security interest disclosure for model form H–9.

List of Subjects in 12 CFR Part 226

Advertising, Reporting and recordkeeping requirements, Truth in Lending.

Text of Revisions

For the reasons set forth in the preamble, the Board is amending the official staff commentary to 12 CFR part 226, Supplement I as follows:

PART 226—[AMENDED]

1. The authority citation for part 226 is revised to read as follows:

Authority: 12 U.S.C. 3806, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204(c).

Supplement I to Part 226—[Amended]

2. In Supplement I to part 226, under the heading *"2(a) Definitions,"* comment 2(a)(25)–6 is amended by adding five new sentences at the end to read as follows:

2(a)(25) Security interest.

* * * * *

6. *Specificity of disclosure.* * * * In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is "acquired" or an existing security interest is "retained" in the transaction.

The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction." A statement such as this may be used, for example, instead of the second sentence in model form H–9 and could apply both to a refinancing in which a new security interest is taken by the original creditor to replace a preexisting security interest and one in which an existing security interest is maintained. Of course, because model form H–9 adequately discloses the fact that the home is security for the transaction, it may be used without modification in both a refinancing in which a new security interest is taken by the original creditor to replace a preexisting security interest and one in which an existing security interest is retained by that creditor.

* * * * *

3. In Supplement I to part 226, under the heading *"5b(d) Content of Disclosures"*, comment 5b(d)(4)(iii)–1 is amended by revising the fourth sentence and adding a sentence after the fourth sentence to read as follows:

Paragraph 5b(d)(4)(iii).

1. *Disclosure of conditions.* * * * As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§ 226.5b(f)(2)(i)–(iii), 226.5b(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 226.5b(f)(3)(vi) or language that is substantially similar. The condition contained in § 226.5b(f)(2)(iv) need not be stated. * * *

* * * * *

4. In Supplement I to part 226, under the heading *"5b(f) Limitations on Home Equity Plans"*, comment 5b(f)(2)–1 is amended by revising the second sentence to read as follows:

Paragraph 5b(f)(2).

1. *Limitations on termination and acceleration.* * * * However, creditors may take these actions in the four circumstances specified in § 226.5b(f)(2). * * *

* * * * *

5. In Supplement I to part 226, under the heading *"6(e) Home Equity Plan Information"*, comment 6(e)–1 is amended by adding a parenthetical at the end to read as follows (and the last sentence is reprinted for the convenience of the reader):

1. *Additional disclosures required.* * * * Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (See comment 5b(d)(4)(iii)–1.)

* * * * *

6. In Supplement I to part 226, under the heading *"18(i) Demand feature,"* comment 18(i)–2 is amended by adding a new sentence at the end to read as follows:

2. *Covered demand features.* * * * A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature to the extent that the contractual right is required by Regulation O (12 CFR 215.5) or other federal law.

* * * * *

7. In Supplement I to part 226, under the heading *"19(b) Certain variable-rate transactions,"* comment 19(b)(2)(xi)–1 is amended by revising the first sentence to read as follows:

Paragraph 19(b)(2)(xi).

1. *Demand feature.* If a variable-rate loan subject to § 226.19(b) requirements contains

a demand feature as discussed in the commentary to § 226.18(i), this fact must be disclosed. * * *

* * * * *

8. In Supplement I to part 226, under the heading *"Appendix G—Open-end model forms and clauses,"* comment 4 to Appendix G is amended by adding a new sentence at the end to read as follows:

4. *Models G–5 through G–9.* * * * See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form G–7.

* * * * *

9. In Supplement I to part 226, under the heading *"Appendix H—Closed-end model forms and clauses,"* comment 11 to Appendix H is amended by adding a new sentence at the end to read as follows:

11. *Models H–8 through H–9.* * * * See the commentary to section 226.2(a)(25) regarding the specificity of the security interest disclosure for model form H–9.

* * * * *

Board of Governors of the Federal Reserve System, March 26, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–7646 Filed 3–31–93; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 91N–0134]

Certain Misbranding Sections of the Federal Food, Drug, and Cosmetic Act That Are, and That Are Not, Adequately Being Implemented by Regulation; Notice of Final Lists; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2470). The document provided final lists delineating which of six sections of the Federal Food, Drug, and Cosmetic Act (the act) that define circumstances in which a food is misbranded are adequately being implemented by FDA regulations and which are not. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: February 5, 1993.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

In FR Doc. 92–31510, appearing on page 2470 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2470, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in line 5, the telephone number "202–205–5162" is corrected to read "202–205–4561".

2. On page 2472, in the second column, in the second full paragraph, beginning in the fifth line from the bottom, the phrase "in this area suggested" is corrected to read "in this area and suggested".

3. On page 2474, in the second column, in the second full paragraph, beginning in line 6, the phrase "defined producing locality The" is corrected to read "defined producing locality. The"; and in line 11, the phrase "is not necessary Again" is corrected to read "is not necessary. Again".

4. On page 2475, in the third column, in line 12, the word "act" is corrected to read "set"; and in the second full paragraph, in the ninth line from the bottom, the word "proposed" is corrected to read "final".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7239 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 1 and 101

[Docket No. 90N–0165]

RIN 0905–AD08

Food Labeling; Serving Sizes; Technical Amendment and Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment and corrections.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations concerning general provision of regulations promulgated under the Federal Food, Drug, and Cosmetic Act (the act) and related to serving sizes to correct a reference. The agency is also correcting its final rule on serving size that appeared in the **Federal Register** of Wednesday, January 6, 1993 (58 FR 2229). The document amended the nutrition labeling regulations concerning serving sizes. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors. This action is being taken to improve the clarity and accuracy of the regulations.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Youngmee K. Park, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5489.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1993 (58 FR 2229), FDA published a final rule that amended the nutrition labeling regulations concerning serving sizes. FDA has discovered that it inadvertently failed to amend § 1.1, relevant to serving sizes. The agency is amending the reference to § 101.8 in § 1.1(c) because § 101.8 is now adopted pursuant to both the act and the Fair Packaging and Labeling Act. Thus, such a reference would be in error. Further, the agency discovered numerous typographical and editorial errors. Accordingly, this document amends § 1.1(c) and corrects the typographical and editorial errors. Publication of the amendment to § 1.1(c) constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely making a nonsubstantive change to the regulations.

The Technical Amendment

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371); sec. 215 of the Public Health Service Act (42 U.S.C. 216).

§ 1.1 [Amended]

2. Section 1.1 *General* is amended in paragraph (c) by removing "§§ 101.8 and 501.8"and adding in its place "§ 501.8".

The Corrections

In FR Doc. 92–31503, appearing on page 2229 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

3. On page 2229, in the first column, under the caption "**SUMMARY:**",

beginning in the fifth line from the bottom, "or" is removed and a comma is added in its place and ",1 oz, or 1 fl oz" is added after "(mL)".

4. On page 2233, in the first column, in the second full paragraph, in the eighth line from the bottom, "1.7" is corrected to read "2.2"; in the second column, in line 2, "(or mL)" is added after "100 g"; and in the third column, in the first full paragraph, in line 11, "nutritioal" is corrected to read "nutritional".

5. On page 2239, in the third column, in line 19, "(56 g 1-inch slice)" is corrected to read "(56 g/——inch slice)".

6. On page 2241, in the first column, in the second full paragraph, in the fifth line from the bottom, "(Ref. 47)" is added after the word "herbs"; and in the second column, in the second full paragraph, beginning in line 14, "Division of Nutrition (HFF–260)" is corrected to read "Office of Food Labeling (HFS–150)".

7. On page 2242, in the second column, the fifth full paragraph "(3)" is removed and the sixth full paragraph "(4)", is redesignated as paragraph "(3)"; and in the third column, in line 1, "Division of Nutrition (HFF–260)" is corrected to read "Office of Food Labeling (HFS–150)".

8. On page 2244, in the third column, in the fourth full paragraph, beginning in line 1, the phrase "in section III.D.1. of this document, concerning the presentation" is corrected to read "in section III.D.2. of this document, concerning the expression".

9. On page 2247, in the first column, in the second full paragraph, in the last line, and in the third full paragraph, in the third line from the bottom, the phrase "or any of these combined" is added after the word "vegetables".

10. On page 2248, in the second column, above comment "59." a subheading is added to read as follows: "*(8a) Bakery products: coffee cakes, doughnuts, Danish, sweet rolls, sweet quick type breads, muffins, hushpuppies, cornbread*"; and in the third column, in the third full paragraph, in the third line from the bottom, "snacker" is corrected to read "snack".

11. On page 2249, in the first column, in the first full paragraph, in line 12, "(Ref. 41)" is added after "0.5 oz"; and in the second column, in the first full paragraph, in line 12, the word "not" is corrected to read "no".

12. On page 2250, in the third column, in the first full paragraph, in the 10th line from the bottom, the words "coffee and" are added before the word "tea".

13. On page 2254, in the first column, in line 9, the word "noodles" is added after the word "lasagna".

14. On page 2256, in the first column, in line 7, "88" is corrected to read "90"; and in the third column, in the sixth full paragraph, in the third line from the bottom, "(Ref. 44)." is corrected to read "(Ref. 45)."

15. On page 2258, in the first column, in the third paragraph, in line 18, "cutomarily" is corrected to read "customarily"; and in the same paragraph, beginning in the second line from the bottom, "and for fish salad" is removed.

16. On page 2259, in the third column, in the third full paragraph, in line 3, the phrase "and refried beans;" is added after the word "liquid" and in line 4, the following sentence is added after the word "others.": "Refried beans are grouped with beans in sauce or canned in liquid because gram weight equivalents of the 1/2-cup measure are similar for these beans (Ref. 55)."

17. On page 2262, in the first column, beginning in line 1, the phrase "groups. For example, dry spanish rice mix contains rice and tomato" is corrected to read "groups, e.g., rice and vegetables or cheese".

18. On page 2264, in the first column, in the second full paragraph, in line 8, the word "hearing" is corrected to read "heating"; in the second column, in the second full paragraph, in line 8, the phrase "68 percent reported by USDA (Ref. 18)" is corrected to read "68 and 88 percent reported by USDA for canned potatoes and vacuum pack sweet potatoes, respectively (Ref. 18)"; and in the same paragraph, beginning in the second line from the bottom, the phrase "125 g for vacuum packed;" is added after the word "frozen;".

19. On page 2265, in the second column, in the second full paragraph, in line 1, "1/" is removed, and in line 2, the phrase "4-cup reference amount seems large" is corrected to read "1/4-cup reference amount seems large for cocktail sauce".

20. On page 2267, in the second column, in the fourth full paragraph, in the fourth line from the bottom, "was repeated" is corrected to read "was repeated is needed."

21. On page 2268, in the second column, in the first full paragraph, in the last line, "(Ref. 57)" is corrected to read "(Ref. 59)".

22. On page 2271, in the third column, in the second full paragraph, in the last line, the phrase ", except for cheese cakes as discussed in section III.D.5. of this document" is added after the word "cakes".

23. On page 2274, in the first column, in the first full paragraph, in the second line from the bottom, "1 cup (240 mL)" is corrected to read "8 fl oz (240 mL)"; and in the second column, in the third full paragraph, in line 3, the word "items" is added after the word "other".

24. On page 2277, in the first column, in the first full paragraph, in line 13, "1/16, 1/18, 1/20, 1/24, 1/32, 1/36, etc" is corrected to read "1/15, 1/16, 1/18, 1/20, 1/24, 1/27, 1/30, 1/32, 1/36, etc".

25. On page 2278, in the second column, in the first paragraph, beginning in line 14, "Division of Nutrition (HFF–260)" is corrected to read "the Office of Food Labeling (HFS–150)".

26. On page 2284, in the second column, in the first full paragraph, in line 4, the word "package" is corrected to read "packaged".

27. On page 2285, in the first column, in the last paragraph, in line 11, "footnote 6" is corrected to read "footnote 11".

28. On page 2286, in the first column, in the first paragraph, beginning in the second line from the bottom, the phrase "which are used interchangeably" is corrected to read "that are consumed in similar quantities and used interchangeably".

29. On page 2287, in the second column, in the first full paragraph, beginning in the third line from the bottom, "Recommended Daily Intake" is corrected to read "Daily Reference Value".

30. On page 2288, in the second column, in line 5, the word "amount" is corrected to read "amounts".

§ 101.9 [Corrected]

31. On page 2292, in § 101.9 *Nutrition labeling of food*, in the second column, in paragraph (b)(5)(iv), in the second line from the bottom, "1 fluid ounce (fl oz)" is corrected to read "1 fl oz"; and in the third column, in paragraph (b)(7), in the fourth line from the bottom, "Division of Nutrition (HFF–260)" is corrected to read "the Office of Food Labeling (HFS–150)".

§ 101.12 [Corrected]

32. On page 2293, in § 101.12 *Reference amounts customarily consumed per eating occasion*, in the third column, in paragraph (a)(4), in line 2, the word "mode" is corrected to read "modes".

33. On page 2294, in paragraph (b), in Table 1, in footnote 4, "Division of Nutrition (HFF–260)" is corrected to read "Office of Food Labeling (HFS–150)"; and Table 2 is corrected to read as follows:

TABLE 2

REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4]

Product category	Reference amount	Label statement[5]
BAKERY PRODUCTS:		
Biscuits, croissants, bagels, tortillas, soft bread sticks, soft pretzels, corn bread, hush puppies.	55 g	——— piece(s) (——— g)
Breads (excluding sweet quick type), rolls	50 g	——— piece(s) (——— g) for sliced bread and distinct pieces (e.g., rolls); 2 oz (56 g/——— inch slice) for unsliced bread
Bread sticks—see crackers		
Toaster pastries—see coffee cakes		
Brownies	40 g	——— piece(s) (——— g) for distinct pieces; fractional slice (——— g) for bulk
Cakes, heavy weight (cheese cake; pineapple upside-down cake; fruit, nut, and vegetable cakes with more than or equal to 35 percent of the finished weight as fruit, nuts, or vegetables or any of these combined)[6].	125 g	——— piece(s) (——— g) for distinct pieces (e.g., sliced or individually packaged products); ——— fractional slice (——— g) for large discrete units
Cakes, medium weight (chemically leavened cake with or without icing or filling except those classified as light weight cake; fruit, nut, and vegetable cake with less than 35 percent of the finished weight as fruit, nuts, or vegetables or any of these combined; light weight cake with icing; Boston cream pie; cupcake; eclair; cream puff)[7].	80 g	——— piece(s) (——— g) for distinct pieces (e.g., cupcake); ——— fractional slice (——— g) for large discrete units
Cakes, light weight (angel food, chiffon, or sponge cake without icing or filling)[8].	55 g	——— piece(s) (——— g) for distinct pieces (e.g., sliced or individually packaged products); ——— fractional slice (——— g) for large discrete units
Coffee cakes, crumb cakes, doughnuts, Danish, sweet rolls, sweet quick type breads, muffins, toaster pastries.	55 g	——— piece(s) (——— g) for sliced bread and distinct pieces (e.g., doughnut); 2 oz (56 g/visual unit of measure) for bulk products (e.g., unsliced bread)
Cookies	30 g	——— piece(s) (——— g)
Crackers that are usually not used as snack, melba toast, hard bread sticks, ice cream cones[9].	15 g	——— piece(s) (——— g)
Crackers that are usually used as snacks	30 g	——— piece(s) (——— g)
Croutons	7 g	——— tbsp(s) (——— g) or ——— cup(s) (——— g); ——— piece(s) (——— g) for large pieces
French toast, pancakes, variety mixes	110 g prepared for french toast and pancakes; 40 g dry mix for variety mixes.	——— piece(s) (——— g); ——— cup(s) (——— g) for dry mix
Grain-based bars with or without filling or coating, e.g., breakfast bars, granola bars, rice cereal bars.	40 g	——— piece(s) (——— g)
Ice cream cones—see crackers		
Pies, cobblers, fruit crisps, turnovers, other pastries	125 g	——— piece(s) (———g) for distinct pieces; ——— fractional slice (——— g) for large discrete units
Pie crust	1/6 of 8 inch crust; 1/8 of 9 inch crust	1/6 of 8 inch crust (——— g); 1/8 of 9 inch crust (——— g)
Pizza crust	55 g	——— fractional slice (——— g)
Taco shells, hard	30 g	——— shell(s) (——— g)
Waffles	85 g	——— piece(s) (——— g)
BEVERAGES:		
Carbonated and noncarbonated beverages, wine coolers, water.	240 mL	8 fl oz (240 mL)
Coffee or tea, flavored and sweetened	240 mL prepared	8 fl oz (240 mL)
CEREALS AND OTHER GRAIN PRODUCTS:		
Breakfast cereals (hot cereal type), hominy grits	1 cup prepared; 40 g plain dry cereal; 55 g flavored, sweetened dry cereal.	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat, weighing less than 20 g per cup, e.g., plain puffed cereal grains.	15 g	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat weighing 20 g or more but less than 43 g per cup; high fiber cereals containing 28 g or more of fiber per 100 g.	30 g	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat, weighing 43 g or more per cup; biscuit types.	55 g	——— piece(s) (——— g) for large distinct pieces (e.g., biscuit type);——— cup(s) (——— g) for all others
Bran or wheat germ	15 g	——— tbsp(s) (——— g) or ——— cup(s) (——— g)
Flours or commeal	30 g	——— tbsp(s) (——— g) or ——— cup(s) (——— g)
Grains, e.g., rice, barley, plain	140 g prepared; 45 g dry	——— cup(s) (——— g)
Pastas, plain	140 g prepared; 55 g dry	——— cup(s) (——— g); ——— piece(s) (——— g) for large pieces (e.g., large shell) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., lasagna or spaghetti noodles)
Pastas, dry, ready-to-eat, e.g., fried canned chow mein noodles.	25 g	——— cup(s) (——— g)
Starches, e.g., cornstarch, potato starch, tapioca, etc.	10 g	1 tbsp (8 g) for cornstarch; 1 tbsp (10 g) for tapioca; 1 tbsp (——— g) for others
Stuffing	100 g	——— cup(s) (——— g)
DAIRY PRODUCTS AND SUBSTITUTES:		
Cheese, cottage	110 g	1/2 cup (105 g) for small curd; 1/2 cup (113 g) for large curd, low fat, or with fruit added; 1/2 cup (——— g) for others
Cheese used primarily as ingredients, e.g., dry cottage cheese, ricotta cheese.	55 g	1/3 cup (48 g) for dry curd cottage cheese; 1/4 cup (62 g) for ricotta cheese
Cheese, grated hard, e.g., Parmesan, Romano	5 g	1 tbsp (5 g)

TABLE 2—Continued

REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3, 4]

Product category	Reference amount	Label statement[5]
Cheese, all others except those listed as separate categories—includes cream cheese and cheese spread.	30 g	——— piece(s) (——— g) for distinct pieces; ——— tbsp(s) (——— g) for cream cheese and cheese spread; 1 oz (28 g/visual unit of measure) for bulk
Cheese sauce—see sauce category		
Cream or cream substitutes, fluid	15 mL	1 tbsp (15 mL)
Cream or cream substitutes, powder	2 g	1 tsp (2 g)
Cream, half & half	30 mL	2 tbsp (30 mL)
Eggnog	120 mL	1/2 cup (120 mL) or 4 fl oz (120 mL)
Milk, condensed, undiluted	30 mL	2 tbsp (30 mL)
Milk, evaporated, undiluted	30 mL	2 tbsp (30 mL)
Milk, milk-based drinks, e.g., instant breakfast, meal replacement, cocoa.	240 mL	1 cup (240 mL) or 8 fl oz (240 mL)
Shakes or shake substitutes, e.g., dairy shake mixes, fruit frost mixes.	240 mL	1 cup (240 mL) or 8 fl oz (240 mL)
Sour cream	30 g	2 tbsp (30 g)
Yogurt	225 g	1 cup (——— g)
DESSERTS:		
Ice cream, ice milk, frozen yogurt, sherbet: all types, bulk and novelties (e.g., bars, sandwiches, cones).	1/2 cup-includes the volume for coatings and wafers for the novelty type varieties.	——— piece(s) (——— g) for individually wrapped or packaged products; 1/2 cup (——— g) for others
Frozen flavored and sweetened ice and pops, frozen fruit juices: all types, bulk and novelties (e.g., bars, cups).	85 g	——— piece(s) (——— g) for individually wrapped or packaged products; ——— cup(s) (——— g) for others
Sundae	1 cup	1 cup (——— g)
Custards, gelatin or pudding	1/2 cup	——— piece(s) (——— g) for distinct unit (e.g., individually packaged products); 1/2 cup (——— g) for bulk
DESSERT TOPPINGS AND FILLINGS:		
Cake frostings or icings	35 g	——— tbsp(s) (——— g)
Other dessert toppings, e.g., fruits, syrups, spreads, marshmallow cream, nuts, dairy and nondairy whipped toppings.	2 tbsp	2 tbsp (——— g)
Pie fillings	85 g	——— cup(s) (——— g)
EGG AND EGG SUBSTITUTES:		
Egg mixtures, e.g., egg foo young, scrambled eggs, omelets.	110 g	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g)
Eggs (all sizes)[9]	50 g	1 large, medium, etc. (——— g)
Egg substitutes	An amount to make 1 large (50 g) egg	——— cup(s) (——— g)
FATS AND OILS:		
Butter, margarine, oil, shortening	1 tbsp	1 tbsp (14 g) for butter, margarine, or oil; 1 tbsp (9 g) for whipped butter or margarine; 1 tbsp (13 g) for shortening
Butter replacement, powder	2 g	——— tsp(s) (——— g)
Dressings for salads	30 g	2 tbsp (——— g)
Mayonnaise, sandwich spreads, mayonnaise-type dressings.	15 g	1 tbsp (14 g) for mayonnaise; 1 tbsp (15 g) for imitation mayonnaise, mayonnaise-type dressings or sandwich spread
Spray types	0.25 g	About ——— seconds spray (——— g)
FISH, SHELLFISH, GAME MEATS[10], AND MEAT OR POULTRY SUBSTITUTES:		
Bacon substitutes, canned anchovies,[11] anchovy pastes, caviar.	15 g	——— piece(s) (——— g) for discrete pieces; ——— tbsp(s) (——— g) for others
Dried, e.g., jerky	30 g	——— piece(s) (——— g)
Entrees with sauce, e.g., fish with cream sauce, shrimp with lobster sauce.	140 g cooked	——— cup(s) (——— g); 5 oz (140 g/visual unit of measure) if not measurable by cup
Entrees without sauce, e.g., plain or fried fish and shellfish, fish and shellfish cake.	85 g cooked; 110 g uncooked[12]	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g); ——— oz (——— g/visual unit of measure) if not measurable by cup[13]
Fish, shellfish or game meat[10], canned[11]	55 g	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g); 2 oz (56 g/——— cup) for products that are difficult to measure the g weight of cup measure (e.g., tuna); 2 oz (56 g/——— pieces) for products that naturally vary in size (e.g., sardines)
Substitute for luncheon meat, meat spreads, Canadian bacon, sausages and frankfurters.	55 g	——— piece(s) (——— g) for distinct pieces (e.g., slices, links); ——— cup(s) (——— g); 2 oz (56 g/visual unit of measure) for nondiscrete bulk product
Smoked or pickled[11] fish, shellfish, or game meat[10]; fish or shellfish spread.	55 g	——— piece(s) (——— g) for distinct pieces (e.g., slices, links) or ——— cup(s) (——— g); 2 oz (56 g/visual unit of measure) for nondiscrete bulk product
Substitutes for bacon bits—see miscellaneous category.		
FRUITS AND FRUIT JUICES:		
Candied or pickled[11]	30 g	——— piece(s) (——— g)
Dehydrated fruits—see snacks category		
Dried	40 g	——— piece(s) (——— g) for large pieces (e.g., dates, figs, prunes); ——— cup(s) (——— g) for small pieces (e.g., raisins)
Fruits for garnish or flavor, e.g., maraschino cherries[11].	4 g	1 cherry (——— g)

TABLE 2—Continued

REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3, 4]

Product category	Reference amount	Label statement[5]
Fruit relishes, e.g., cranberry sauce, cranberry relish	70 g	——— cup(s) (——— g)
Fruits used primarily as ingredients, avocado	30 g	See footnote 13
Fruits used primarily as ingredients, others (cranberries, lemon, lime).	55 g	——— piece(s) (——— g) for large fruits; ——— cup(s) (——— g) for small fruits measurable by cup[13]
Watermelon	280 g	See footnote 13
All other fruits (except those listed as separate categories), fresh, canned, or frozen.	140 g	——— piece(s) (——— g) for large pieces (e.g., strawberries, prunes, apricots, etc.); ——— cup(s) (——— g) for small pieces (e.g., blueberries, raspberries, etc.)[13]
Juices, nectars, fruit drinks	240 mL	8 fl oz (240 mL)
Juices used as ingredients, e.g., lemon juice, lime juice.	5 mL	1 tsp (5 mL)
LEGUMES:		
Bean cake (tofu)[11], tempeh	85 g	——— piece(s) (——— g) for discrete pieces; 3 oz (84 g/visual unit of measure) for bulk products
Beans, plain or in sauce	130 g for beans in sauce or canned in liquid and refried beans; 90 g for others.	1/2 cup (——— g)
MISCELLANEOUS CATEGORY:		
Baking powder, baking soda, pectin	1 g	1/4 tsp (——— g)
Baking decorations, e.g., colored sugars and sprinkles for cookies, cake decorations.	1/4 tsp or 4 g if not measurable by teaspoon	——— piece(s) (——— g) for discrete pieces;1/4 tsp (——— g)
Batter mixes, bread crumbs	30 g	——— tbsp(s) (——— g) or——— cup(s) (——— g)
Cooking wine	30 mL	2 tbsp (30 mL)
Drink mixers (without alcohol)	Amount to make 240 mL drink (without ice)	——— fl oz (——— mL)
Chewing gum[9]	3 g	——— piece(s) (——— g)
Meat, poultry and fish coating mixes, dry; seasoning mixes, dry, e.g., chili seasoning mixes, pasta salad seasoning mixes.	Amount to make one reference amount of final dish	——— tsp(s) (——— g) or ——— tbsp(s) (——— g)
Salad and potato toppers, e.g., salad crunchies, salad crispins, substitutes for bacon bits.	7 g	——— tbsp(s) (——— g)
Salt, salt substitutes, seasoning salts (e.g., garlic salt)	1 g	——— tsp(s) (——— g);——— piece(s) (——— g) for discrete pieces (e.g., individually packaged products)
Spices, herbs (other than dietary supplements)	1/4 tsp or 0.5 g if not measurable by teaspoon	1/4 tsp (——— g); ——— piece(s) (——— g) if not measurable by teaspoons (e.g., bay leaf)
MIXED DISHES:		
Measurable with cup, e.g., casseroles, hash, macaroni and cheese, pot pies, spaghetti with sauce, stews, etc..	1 cup	1 cup (——— g)
Not measurable with cup, e.g., burritos, egg rolls, enchiladas, pizza, pizza rolls, quiche, all types of sandwiches.	140 g, add 55 g for products with gravy or sauce topping, e.g., enchilada with cheese sauce, crepe with white sauce[14].	——— piece(s) (——— g) for discrete pieces; ——— fractional slice (——— g) for large discrete units
NUTS AND SEEDS:		
Nuts, seeds, and mixtures, all types: sliced, chopped, slivered, and whole.	30 g	——— piece(s) (——— g) for large pieces (e.g., unshelled nuts);——— tbsp(s) (——— g) or——— cup(s) (——— g) for small pieces (e.g., peanuts, sunflower seeds)
Nut and seed butters, pastes, or creams	2 tbsp	2 tbsp (——— g)
Coconut, nut and seed flours	15 g	——— tbsp(s) (——— g); ——— cup (——— g)
POTATOES AND SWEET POTATOES/YAMS:		
French fries, hash browns, skins, or pancakes	70 g prepared; 85 g for frozen unprepared french fries.	——— piece(s) (——— g) for large distinct pieces (e.g., patties, skins); 2.5 oz (70 g/——— pieces) for prepared fries; 3 oz (84 g/——— pieces) for unprepared fries
Mashed, candied, stuffed, or with sauce	140 g	——— piece(s) (——— g) for discrete pieces (e.g., stuffed potato); ——— cup(s) (——— g)
Plain, fresh, canned, or frozen	110 g for fresh or frozen; 125 g for vacuum packed; 160 g for canned in liquid.	——— piece(s) (——— g) for discrete pieces;——— cup(s) (——— g) for sliced or chopped products
SALADS:		
Gelatin salad	120 g	1/2 cup (120 g)
Pasta or potato salad	140 g	——— cup(s) (——— g)
All other salads, e.g., egg, fish, shellfish, bean, fruit, or vegetable salads.	100 g	——— cup(s) (——— g)
SAUCES, DIPS, GRAVIES AND CONDIMENTS:		
Barbecue sauce, hollandaise sauce, tartar sauce, other sauces for dipping (e.g., mustard sauce, sweet and sour sauce), all dips (e.g., bean dips, dairy-based dips, salsa).	2 tbsp	2 tbsp (——— g)
Major main entree sauces, e.g., spaghetti sauce	125 g	1/2 cup (——— g)
Minor main entree sauces (e.g., pizza sauce, pesto sauce), other sauces used as toppings (e.g., gravy, white sauce, cheese sauce), cocktail sauce.	1/4 cup	1/4 cup (——— g)
Major condiments, e.g., catsup, steak sauce, soy sauce, vinegar, teriyaki sauce, marinades.	1 tbsp	1 tbsp (——— g)
Minor condiments, e.g., horseradish, hot sauces, mustards, worcestershire sauce.	1 tsp	1 tsp (——— g)
SNACKS:		

TABLE 2—Continued

REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3, 4]

Product category	Reference amount	Label statement[5]
All varieties, chips, pretzels, popcorns, extruded snacks, fruit- based snacks (e.g., fruit chips,) grain-based snack mixes.	30 g	——— cup(s) (——— g) for small pieces (e.g., popcorn) ——— piece(s) (——— g) for large pieces (e.g., large pretzels; pressed dried fruit sheet); 1 oz (28 g/visual unit of measure) for bulk products (e.g., potato chips)
SOUPS:		
All varieties	245 g	1 cup (——— g)
SUGARS AND SWEETS:		
Baking candies (e.g., chips)	15 g	——— piece(s) (——— g) for large pieces; ——— tbsp(s) (——— g) for small pieces; 1/2 oz (14 g/visual unit of measure) for bulk products
Hard candies, breath mints	2 g	——— piece(s) (——— g)
Hard candies, roll-type, mini-size in dispenser packages.	5 g	——— piece(s) (——— g)
Hard candies, others	15 g	——— piece(s) (——— g) for large pieces;——— tbsp(s) (——— g) for "mini-size" candies measurable by tablespoon; 1/2 oz (14 g/visual unit of measure) for bulk products
All other candies	40 g	——— piece(s) (——— g); 1 1/2 oz (42 g/visual unit of measure) for bulk products
Confectioner's sugar	30 g	1/4 cup (30 g)
Honey, jams, jellies, fruit butter, molasses	1 tbsp	1 tbsp (——— g)
Marshmallows	30 g	——— cup(s) (——— g) for small pieces or ——— piece(s) (——— g) for large pieces
Sugar	4 g	1 tsp (——— g); ——— piece(s) (——— g) for discrete pieces (e.g., sugar cubes, individually packaged products)
Sugar substitutes	An amount equivalent to one reference amount for sugar in sweetness.	——— tsp(s) (——— g) for solids; ——— drop(s) (——— g) for liquid; ——— piece(s) (——— g) (e.g., individually packaged products)
Syrups	30 mL for syrups used primarily as an ingredient (e.g., light or dark corn syrup); 60 mL for all others.	2 tbsp (30 mL) for syrups used primarily as an ingredient; 1/4 cup (60 mL) for all others
VEGETABLES:		
Vegetables primarily used for garnish or flavor, e.g., pimento, parsley.	4 g	——— piece(s) (——— g); ——— tbsp(s) (——— g) for chopped products
Chili pepper, green onion	30 g	——— piece(s) (——— g)[13]; ——— tbsp(s) (——— g) or ——— cup(s) (——— g) for sliced or chopped products
All other vegetables without sauce: fresh, canned, or frozen.	85 g for fresh or frozen; 95 g for vacuum packed; 130 g for canned in liquid, cream-style corn, canned or stewed tomatoes, pumpkin, or winter squash.	——— piece(s) (——— g) for large pieces (e.g., brussel sprouts); ——— cup(s) (——— g) for small pieces (e.g., cut corn, green peas); 3 oz (84 g/visual unit of measure) if not measurable by cup[13]
All other vegetables with sauce: fresh, canned, or frozen.	110 g	——— piece(s) (——— g) for large pieces (e.g., brussel sprouts); ——— cup(s) (——— g) for small pieces (e.g., cut corn, green peas); 4 oz (112 g/visual unit of measure) if not measurable by cup
Vegetable juice	240 mL	8 fl oz (240 mL)
Olives[11]	15 g	——— piece(s) (——— g); ——— tbsp(s) (——— g) for sliced products
Pickles, all types[11]	30 g	1 oz (28 g/visual unit of measure)
Pickle relishes	15 g	1 tbsp (15 g)
Vegetable pastes, e.g., tomato paste	30 g	2 tbsp (33 g) for tomato paste; 2 tbsp (——— g) for all others
Vegetable sauces or purees, e.g, tomato sauce, tomato puree.	60 g	1/4 cup (61 g) for tomato sauce; 1/4 cup (63 g) for tomato puree; 1/4 cup (——— g) for all others

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the USDA.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make one reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

[6] Includes cakes that weigh 10 g or more per cubic inch.

[7] Includes cakes that weigh 4 g or more per cubic inch but less than 10 g per cubic inch.

[8] Includes cakes that weigh less than 4 g per cubic inch.

[9] Label serving size for ice cream cones and eggs of all sizes will be one unit. Label serving size of all chewing gums that weigh more than the reference amount that can reasonably be consumed at a single-eating occasion will be one unit.

[10] Animal products not covered under the Federal Meat Inspection Act or the Poultry Products Inspection Act, such as flesh products from deer, bison, rabbit, quail, wild turkey, geese, ostrich, etc.

[11] If packed or canned in liquid, the reference amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed (e.g., canned chopped clam in juice).

[12] The reference amount for the uncooked form does not apply to raw fish in § 101.45 or to single-ingredient products that consist of fish or game meat as provided for in § 101.9(b)(j)(11).

TABLE 2

REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3, 4]

Product category	Reference amount	Label statement[5]

[13] For raw fruit, vegetables, and fish, manufacturers should follow the label statement for the serving size specified in Appendices A and B to the regulation entitled "Food Labeling; Guidelines for Voluntary Nutrition Labeling; and Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish; Definition of Substantial Compliance; Correction" (56 FR 60880 as amended 57 FR 8174, March 6, 1992).
[14] Pizza sauce is part of the pizza and is not considered to be sauce topping.

34. On page 2299, in in the third column, in line 8, of paragraph (h)(11)(i), the word "amount" is corrected to read "amounts."

Dated: March 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7638 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the current organizational structure of the agency as well as the current addresses for headquarters and field offices.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Kennard, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The regulations are being amended in 21 CFR 5.100 and 5.115 to reflect the current organizational structure of the agency and to provide current addresses for headquarters and field offices.

There were major changes in FDA's organizational structure in 1992. The Office of Regulatory Affairs was reorganized and one new office and four new divisions were established as follows: The Office of Criminal Investigations, the Division of Human Resource Development and the Division of Management Operations in the Office of Resource Management, the Division of Import Operations and Policy in the Office of Regional Operations, and the Division of Medical Products Quality Assurance in the Office of Enforcement.

The Center for Biologics Evaluation and Research was reorganized by establishing four new offices as follows: The Office of Blood Research and Review, consisting of four divisions; the Office of Therapeutics Research and Review, consisting of six divisions; the Office of Vaccines Research and Review, consisting of four divisions; and the Office of Establishment Licensing and Product Surveillance, consisting of four divisions. Three divisions were established within the Office of Compliance.

The Center for Drug Evaluation and Research established the Office of Over-the-Counter Drug Evaluation.

The Center for Food Safety and Applied Nutrition was reorganized and two deputy director level offices were established as follows: The Office of Programs, consisting of seven new offices; and the Office of Systems and Support, consisting of four new offices.

The Center for Veterinary Medicine reorganized its Office of Science by establishing the Division of Residue Chemistry and the Division of Animal Research.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Immediate Office

Office of the Administrative Law Judge.
Office of Equal Employment Opportunity and Civil Rights.
Office of Executive Operations.

Office of External Affairs

Office of Consumer Affairs.
Office of Health Affairs.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Small Business, Scientific, and Trade Affairs.

Office of Management and Systems

Office of Management.
Office of Planning and Evaluation.

Office of Policy

Policy Development and Coordination Staff.
Policy Research Staff.
Regulations Policy and Management Staff.

Office of Science

Office of AIDS Coordination.
Office of Biotechnology.
Office of Orphan Products Development.

National Center for Toxicological Research [2]

Office of the Center Director

Office of Research

Division of Biochemical Toxicology.
Division of Comparative Toxicology.
Division of Genetic Toxicology.
Division of Reproductive and Developmental Toxicology.

Office of Research Services

Division of Chemistry.
Division of Microbiology.
Division of Veterinary Services.

Office of Management

Division of Facilities Engineering and Maintenance.
Division of Research Information and Management Services.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.
[2] Mailing address: Jefferson, AR 72029–9502.

Office of Operations

Office of Regulatory Affairs[1]

Office of Resource Management

Division of Planning, Evaluation, and Management.
Division of Information Systems.
Division of Human Resource Development.
Division of Management Operations.

Office of Enforcement

Division of Compliance Management and Operations.
Division of Compliance Policy.
Division of Medical Products Quality Assurance.

Office of Regional Operations

Division of Federal-State Relations.
Division of Field Science.
Division of Field Investigations.
Division of Emergency and Epidemiological Operations.
Division of Import Operations and Policy.

Office of Criminal Investigations[3]

Northeast Area Office.[4]
Mid-Atlantic Area Office.[4]
Southeast Area Office[5]
Midwest Area Office.[4]
Southwest Area Office.[6]
Pacific Area Office.[7]

Center for Biologics Evaluation and Research[8]

Office of the Center Director

Office of Compliance

Division of Case Management.
Division of Inspection and Surveillance.
Division of Bioresearch Monitoring and Regulations.

Office of Management

Division of Scientific and Management Information Systems.
Division of Management and Budget.

Office of Blood Research and Review

Division of Transfusion Transmitted Diseases.
Division of Hematology.
Division of Blood Collection and Processing.
Division of Blood Establishment and Product Applications.

Office of Therapeutics Research and Review

Division of Cytokine Biology.
Division of Cellular and Gene Therapies.
Division of Hematologic Products.
Division of Monoclonal Antibodies.
Division of Clinical Trial Design and Analysis.
Division of Application Review and Policy.

Office of Vaccines Research and Review

Division of Allergenic Products and Parasitology.
Division of Bacterial Products.
Division of Viral Products.
Division of Vaccines and Related Products Applications.

Office of Establishment Licensing and Product Surveillance

Division of Product Quality Control.
Division of Veterinary Services.
Division of Biostatistics and Epidemiology.
Division of Establishment Licensing.

Center for Drug Evaluation and Research[1]

Office of the Center Director

Pilot Drug Evaluation Staff.

Office of Compliance

Division of Drug Labeling Compliance.
Division of Drug Quality Evaluation.
Division of Manufacturing and Product Quality.
Division of Regulatory Affairs.
Division of Scientific Investigations.

Office of Management

Division of Drug Information Resources.
Division of Information Systems Design.
Division of Management and Budget.
Medical Library.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.
Division of Medical Imaging, Surgical, and Dental Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Pulmonary Drug Products.

Office of Drug Evaluation II

Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.
Division of Metabolism and Endocrine Drug Products.

Office of Drug Standards

Division of Drug Marketing, Advertising, and Communications.

Office of Epidemiology and Biostatistics

Division of Biometrics.
Division of Epidemiology and Surveillance.

Office of Generic Drugs[9]

Division of Bioequivalence.
Division of Chemistry I.
Division of Chemistry II.

Office of Over-the-Counter Drug Evaluation

Medical Review Staff.
Monograph Review Staff.
OTC Drug Policy Staff.

Office of Research Resources

Division of Biopharmaceutics.
Division of Clinical Pharmacology.
Division of Drug Analysis.
Division of Research and Testing.

Center for Devices and Radiological Health[1]

Office of the Center Director

Office of Health Affairs[10]
Office of Health Physics
Office of Standards and Regulations
Office of Information Systems
Division of Computer Services.
Division of Information Resources.

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Compliance and Surveillance[10]

Division of Compliance Operations.
Division of Compliance Programs.
Division of Management Information.
Division of Product Surveillance.
Division of Standards Enforcement.

Office of Device Evaluation.[10]

Division of Cardiovascular, Respiratory, and Neurological Devices.
Division of Clinical Laboratory Devices.
Division of General and Restorative Devices.
Division of Ophthalmic Devices.
Division of Reproductive; Abdominal; Ear, Nose, and Throat; and Radiological Devices.

Office of Science and Technology[11]

Division of Biometric Sciences.
Division of Electronics and Computer Sciences.
Division of Life Sciences.
Division of Management, Information, and Support Services.
Division of Mechanics and Materials Science.
Division of Physical Sciences.

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[3] Mailing address: 7500 Standish Pl., rm. 250N, Rockville, MD 20855.

[4] Will be operational in 1993.

[5] Mailing address: 8525 NW. 53d Terrace, suite 204, Miami, FL 33166.

[6] Mailing address: 10901 West 84th Terrace, suite 201, Lenexa, KS 66214–3338.

[7] Mailing address: 4365 Executive Dr., suite 230, San Diego, CA 92122.

[8] Mailing address: 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

[9] Mailing address: 7500 Standish Pl., rm. 150, Rockville, MD 20855.

[10] Mailing address: 1390 Piccard Dr., Rockville, MD 20850.

[11] Mailing address: 1801 Rockville Pike, Rockville, MD 20852.

Office of Training and Assistance

Division of Consumer Affairs.
Division of Professional Practices.
Division of Small Manufacturers Assistance.
Division of Technical Development.
Division of Training Support.

Center for Food Safety and Applied Nutrition [12]

Office of the Center Director

Office of Programs

Office of Cosmetics and Colors

Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Food Labeling

Division of Programs and Enforcement Policy.
Division of Technical Evaluation.
Division of Science and Applied Technology.

Office of Pre-Market Approval

Division of Product Policy.
Division of Petition Control.
Division of Health Effects Evaluation.
Division of Molecular Biological Research and Evaluation.
Division of Product Manufacture and Use.

Office of Plant and Dairy Foods and Beverages

Division of Microanalytical Evaluations.
Division of Programs and Enforcement Policy.
Division of Virulence Assessment.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.

Office of Seafood

Division of Special Programs.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Special Nutritionals

Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.

Office of Special Research Skills

Division of Toxicological Research.
Division of Microbiological Studies.

Office of Systems and Support

Office of Constituent Operations

Consumer Education Staff.
Legislative Activities Staff.
Industry Activities Staff.
International Activities Staff.

Office of Field Programs

Division of Enforcement.
Division of HACCP Programs.
Division of Cooperative Programs.
Division of Field Program Planning and Evaluation.

Office of Management Systems

Division of Management Services and Policy.
Division of Planning and Financial Management.
Division of Information Resources Management.
Division of Administrative Services.

Office of Scientific Analysis and Support

Division of Mathematics.
Division of General Scientific Support.
Division of Market Studies.

Center for Veterinary Medicine [13]

Office of the Center Director

Office of Management

Division of Program and Information Systems.
Division of Program Communications and Administrative Management.

Office of Surveillance and Compliance

Division of Compliance.
Division of Animal Feeds.
Division of Surveillance.
Division of Voluntary Compliance and Hearings Development.

Office of New Animal Drug Evaluation

Division of Biometrics and Production Drugs.
Division of Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Toxicology and Environmental Sciences.

Office of Science

Division of Residue Chemistry.
Division of Animal Research.

§ 5.115 [Amended]

3. Section 5.115 *Field structure* is amended under the heading "MIDWEST REGION" for the *Regional Field Office* by removing "550" and adding in its place "510"; the *Chicago District Office* address is amended to read "300 South Riverside Plaza, suite 550, South Chicago, IL 60606."; under the heading "SOUTHWEST REGION," the *Kansas City District Office* address is amended to read "11630 West 80th St., Lenexa, KS 66214–3340."

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7643 Filed 3–31–93; 8:45 am]
BILLING CODE 4160–01–F

[12] Mailing address: 200 C St. SW., Washington, DC 20024.

[13] Mailing address: 7500 Standish Pl., Rockville, MD 20855.

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21 CFR Part 5

Delegations of Authority and Organization; Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to the approval of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and their supplements to add the Deputy Director (Medical and Scientific Affairs), Center for Drug Evaluation and Research (CDER), to the list of officials authorized to approve certain NDA's, ANDA's, and their supplements for drugs for human use. In addition, FDA is adding authority to approve applications submitted under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (505(b)(2) applications) to these officials. These authorities were given to FDA under section 505 of the act.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.80 *Approval of new drug applications and their supplements* (21 CFR 5.80) to add the Deputy Director (Medical and Scientific Affairs), CDER, to those authorized in § 5.80(a)(1)(i) to approve NDA's, ANDA's, and their supplements. The agency is also authorizing officials to approve 505(b)(2) applications. FDA continues to delegate to previous officials, under appropriate circumstances, the authority to act upon the applications to which this authorization applies. These changes in the regulations will conform them to CDER's current division of work responsibilities. Accordingly, FDA is amending § 5.80 as set forth below.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be

exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

§ 5.80 [Amended]

2. Section 5.80 is amended by adding in paragraph (a)(1)(i) the words "and Deputy Director (Medical and Scientific Affairs)," before the word "Center"; by revising the introductory text of paragraph (c), paragraphs (c)(1)(i) through (c)(1)(iii); by adding new paragraph (c)(1)(iv); by redesignating paragraph (d) as paragraph (f); by adding new paragraphs (d) and (e); and by revising the introductory text of newly redesignated paragraph (f) to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

* * * * *

(c) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of abbreviated new drug applications and supplements thereto for drugs for human use and new drug applications for drugs with a 5S classification whose clinical safety and efficacy may be supported by appropriate literature citations in lieu of submission of data from original proprietary studies, or 505(b)(2) applications under their jurisdiction. The applications to which this authorization applies may, in appropriate circumstances, continue to be acted upon by the officials so authorized in § 5.10(a) and paragraph (a) of this section.

(1) * * *

(i) The Director and Deputy Director, Office of Generic Drugs (OGD), CDER, except that the Director and Deputy Director, OGD are not authorized to approve new drug applications with a 5S classification if clinical studies are needed.

(ii) The Directors and Deputy Directors of the divisions in the Office of Drug Evaluation I, CDER.

(iii) The Directors and Deputy Directors of the divisions in the Office of Drug Evaluation II, CDER.

(iv) The Director, Pilot Drug Evaluation Staff, CDER.

* * * * *

(d) The following officials are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to abbreviated new drug applications, 5S applications, or 505(b)(2) applications for drugs for human use that are described in § 314.70(b)(1), (b)(2)(ii) through (b)(2)(x), (c)(1), and (c)(3) of this chapter. Authority to approve supplements that require in vivo bioavailability studies or that include in vivo bioavailability study waiver requests are not included in this paragraph.

(1) The Director and Deputy Director of the Division of Chemistry I, OGD.

(2) The Director and Deputy Director of the Division of Chemistry II, OGD.

(3) The Associate Director for Chemistry, OGD.

(e) The Associate Director for Labeling and Professional Support, OGD, is authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to abbreviated new drug applications, 5S applications, or 505(b)(2) applications for drugs for human use that are described in § 314.70(b)(3) and (c)(2)(i) through (c)(2)(iv) of this chapter. Authority to approve supplements that require in vivo bioavailability studies or in vivo study waiver requests are not included in this paragraph.

(f) The following officials are authorized to perform all functions of the Commissioner of Food and Drugs with respect to approval of supplemental applications to new drug applications for drugs for human use that are described in § 314.70(b)(1), (b)(2)(ii) through (b)(2)(x), (c)(1), and (c)(3) of this chapter. Authority to approve supplements that require in vivo bioavailability information or that require a change in the labeling of the drug, except changes that reflect only the use of a different facility or establishment, are not included in this paragraph. The supplemental applications to which this authorization applies may continue to be acted upon by the officials so authorized in § 5.10(a) and paragraphs (a) and (b) of this section.

Dated: February 23, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7645 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F1

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21 CFR Part 5

Delegations of Authority to the Commissioner of Food and Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to redelegate the authority of the Assistant Secretary for Health to make determinations to close advisory committee meetings to the public to the Commissioner of Food and Drugs (the Commissioner) and other agency heads. FDA is further redelegating this authority from the Commissioner to the Deputy Commissioner for Operations.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In a memorandum dated October 23, 1992, the Secretary of Health and Human Services authorized the Assistant Secretary for Health to make determinations that advisory committee meetings or portions thereof may be closed to the public pursuant to the provisions of 5 U.S.C. 552(b) of the Government in the Sunshine Act and the Federal Advisory Committee Act (Pub. L. 92–463), as amended. In that same memorandum, the Secretary authorized the Assistant Secretary for Health to redelegate this authority to Public Health Service agency heads, with authority to redelegate to a single official who reports directly to the agency head.

In a subsequent memorandum, dated December 22, 1992, the Assistant Secretary for Health redelegated this authority, including the authority to redelegate to a single official who

reports directly to the agency head, to the Commissioner. Accordingly, FDA is revising § 5.10(a)(18) *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) by adding that the authority to make determinations to close advisory committee meetings may be redelegated to a single official who reports directly to the agency head. The Commissioner is redelegating this authority to the Deputy Commissioner for Operations in § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20).

Further redelegation of the authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.10 is amended by revising the introductory text of paragraph (a)(18) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(18) Functions vested in the Secretary under the Federal Advisory Committee Act, Public Law 92–463, to make determinations that advisory committee meetings are concerned with matters listed in 5 U.S.C. 552(b) and therefore may be closed to the public for those committees under the administrative jurisdiction of the Commissioner of Food and Drugs. This authority may be redelegated to a single official who reports directly to the Commissioner of Food and Drugs. This authority is to be exercised in accordance with the requirements of the Federal Advisory Committee Act and only with respect to the following:

* * * * *

3. Section 5.20 is amended by redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h), respectively, and by adding new paragraph (e) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(e) The Deputy Commissioner for Operations is authorized to make determinations that advisory committee meetings are concerned with matters listed in 5 U.S.C. 552(b) and may be closed to the public in accordance with § 5.10(a)(18).

* * * * *

Dated: March 16, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–7642 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 5, 12, and 14

Organization, Functions, and Authority Delegations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority and organization and formal evidentiary public hearing to reflect a change in the organizational structure and the name of one of its Divisions. FDA is also correcting a typographical error. This action is being taken to improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa M. Stehlin, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations in § 5.22 *Certification of true copies and use of Department seal* (21 CFR 5.22) and § 12.50 *Advice on public participation in hearings* (21 CFR 12.50), to reflect a change in the organizational structure and name of one of its divisions. The Division of Regulations Policy, Office of Enforcement, Office of Regulatory Affairs was moved to the Office of the Commissioner, Office of Policy. In addition, the name of the Division of Regulations Policy was changed to the Regulations Policy and Management Staff. Accordingly, FDA is amending §§ 5.22(c), 12.50(a) and (c) to reflect these changes. FDA is also amending § 14.100 *List of standing advisory committees* (21 CFR 14.100) to correct a typographical error.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 12

Administrative practice and procedure.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5, 12, and 14 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

§ 5.22 [Amended]

2. Section 5.22 *Certification of true copies and use of Department seal* is amended in paragraph (c) by removing the words "Staff and his/her alternates, Division of Regulations Policy, Office of Enforcement, ORA," and adding in their place the words "Section and his/her alternates, Regulations Policy and Management Staff, Office of Policy, Office of the Commissioner".

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

3. The authority citation for 21 CFR part 12 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

§ 12.50 [Amended]

4. Section 12.50 *Advice on public participation in hearings* is amended in paragraphs (a) and (c) by removing the words "Associate Commissioner for Regulatory Affairs (HFC–220)" and adding in their place the words "Deputy Commissioner for Policy (HF–22)".

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

5. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

§ 14.100 [Amended]

6. Section 14.100 *List of standing advisory committees* is amended in paragraph (c)(1)(ii) by correcting the spelling of "anesthesiology".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7644 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 5, 20, 100, 101, 105, and 130

[Docket No. 91N–0219]

RIN 0905–AD08

Regulatory Impact Analysis of the Final Rules to Amend the Food Labeling Regulations; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the regulatory impact analysis (RIA) statement that appeared in the **Federal Register** of January 6, 1993 (58 FR 2927). The document published the final RIA that FDA had prepared under Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This study presented the costs and benefits of the food labeling regulations that the agency issued in response to the Nutrition Labeling and Education Act of 1990 and as part of the Secretary of Health and Human Services' food labeling reform initiative. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Richard A. Williams, Jr., Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5271.

In FR Doc. 92–31525, appearing on page 2927 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2927, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", the mail code "(HFF–303)" is corrected to read "(HFS–726)".

2. On page 2931, in the second column, in line 9, the word "package" is corrected to read "packaging".

3. On page 2932, in the first column, in the first full paragraph, in line 17, the phrase "providing values in the final rule" is corrected to read, "providing protein values for some foods in the final rule".

4. On page 2934, in the third column, in the second full paragraph, beginning in line 21, the phrase "how much, if at all, advertising expenditures" is corrected to read "how much advertising expenditures".

5. On page 2935, in the second column, in the first full paragraph, in line 8, the phrase "compliance to 15 months" is corrected to read "compliance period to 15 months".

6. On page 2936, in the first column, in the fourth full paragraph, in line 5, the phrase "decreases that will affect" is corrected to read "decreases for health care that will affect"; and in the third column, in the second full paragraph, in the fourth line from the bottom, the phrase "from restaurant menus" is corrected to read "on restaurant menu boards".

7. On page 2938, in the first column, in the second full paragraph, beginning in line 8, the phrase "because the total number" is corrected to read "because, of the total number".

8. On page 2940, in the second column, in the second full paragraph, in the second line from the bottom, the word "of" is corrected to read "for".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7240 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 5, 101, 105, and 130

[Docket Nos. 90N–0134 et al.]

RIN 0905–AD08 and 0905–AB68

Food Labeling: Establishment of Date of Application; Correction

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2070). The document established May 8, 1994, as the date on which it will apply mandatory nutrition labeling and nutrient content claims provisions of the Nutrition Labeling and Education Act. The document was published with some inadvertent editorial errors. This document corrects those errors.

DATES: The statutory effective date of sections 403(q) and 403(r)(2) of the Federal Food, Drug, and Cosmetic Act (the act) is May 8, 1993, except that section 403(q)(4) (raw agricultural commodities and raw fish) became effective November 8, 1991. However, FDA is delaying the date that it will apply sections 403(q) of the act (21 CFR 101.9) and 403(r)(2) of the act (21 CFR 101.13, all of the regulations in subpart D of 21 CFR part 101, and 21 CFR 130.10), except section 403(q)(4) of the act (21 CFR 101.42 through 101.45), until May 8, 1994. The effective date of the regulations published elsewhere in the January 6, 1993, issue of the **Federal Register** implementing sections 403(q) and 403(r)(2) of the act, except section 403(q)(4) of the act, is May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

In FR Doc. 92–31500, appearing on page 2070 in the **Federal Register** of Wednesday, January 6, 1993, the following correction is made:

1. On page 2070, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", the mail code "(HFF–302)" is corrected to read "(HFS–151)" and the telephone number "202–205–5267" is corrected to read "202–205–4561".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7317 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 100

[Docket No. 91N–0343]

RIN 0905–AD08

State Enforcement Provisions of the Nutrition Labeling and Education Act of 1990; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2457). The document amended the regulations to implement section 4 of the Nutrition Labeling and Education Act of 1990. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: February 5, 1993.

FOR FURTHER INFORMATION CONTACT: Janice F. Oliver, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4771.

In FR Doc. 92–31508, appearing on page 2457, in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2457, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in the 4th line, the telephone number "202–205–4187" is corrected to read "202–205–4771".

2. On page 2459, in the second column, in the second full paragraph, beginning in line 9, the phrase "The Division of Regulatory Guidance" is corrected to read "The Division of Enforcement, Office of Field Programs (formerly part of the Division of Regulatory Guidance (see 57 FR 54239, November 17, 1992))".

§ 100.2 [Corrected]

3. On page 2461, in § 100.2 *State enforcement of Federal regulations*, in paragraphs (d), (f), and (g) the phrase "Division of Regulatory Guidance (HFF–310)" is corrected to read "Division of Enforcement (HFS–605)"; and in the introductory text of paragraph (h), the phrase "Division of Regulatory Guidance, Office of Compliance" is corrected to read "Division of Enforcement, Office of Field Programs".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7233 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 20 and 101

[Docket No. 85N–0061]

RIN 0905–AB67

Food Labeling; General Requirements for Health Claims for Food; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2478). The document established regulations on general requirements for health claims for food. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993, except § 101.9(k)(1) which will become effective May 8, 1994, and § 101.14(d)(2)(vii)(B) and (d)(3) concerning restaurant firms consisting of 10 or less individual restaurant establishments for whom these sections will become effective on May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Victor P. Frattali, Center for Food Safety and Applied Nutrition (HFS–455), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4064.

In FR Doc. 92–31511, appearing on page 2478 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2478, in the first column, under the caption "**EFFECTIVE DATE:**", in lines 2 and 3, "§ 101 9(k)(1) which will become effective February 14, 1994" is corrected to read "§ 101.9(k)(1) which will become effective May 8, 1994"; and on the same page, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in line 2, the mail code "(HFF–261)" is corrected to read "(HFS–455)".

2. On page 2480, in the third column, in the first full paragraph, in line 3, "§ 101 14(a)(2)" is corrected to read "§ 101.14(a)(2)".

3. On page 2494, in the second column, in line 1, "section 403(r)(A)(ii)" is corrected to read "section 403(r)(3)(A)(ii)".

4. On page 2511, in the third column, in the fourth full paragraph, in the third line from the bottom, "2,400 mg" is corrected to read "2,000 mg".

5. On page 2512, in the second column, in the first full paragraph, in the third line from the bottom, "2,400 mg" is corrected to read "2,000 mg".

6. On page 2513, in the second column, in the third full paragraph, in line 11, "§ 101.72(d)(3)" is corrected to read "§ 101.72(c)(2)(i)(C)"; and in line 21, "§ 101.72(d)(2)" is corrected to read "§ 101.72(c)(2)(i)(A)."

7. On page 2515, in the first column, in the quoted material that appears as part of the first full paragraph, beginning in the fifth line from the bottom, "Diets low in salt and sodium may help lower blood pressure in many people" is corrected to read "Diets low in sodium may reduce the risk of high blood pressure, a disease associated with many factors."

8. On page 2517, in the second column, in the third full paragraph, in line 8, the word "place" is corrected to read "placed".

9. On page 2521, in the first column, in the second line from the bottom, "Secretary" is corrected to read "Secretary's".

10. On page 2523, in the second column, in the second full paragraph, in line 2, "that the Secretary (and FDA" is corrected to read "that the Secretary's (and FDA's".

11. On page 2527, in the first column, in the third line from the bottom, "the" is removed.

§ 101.14 [Corrected]

12. On page 2534, in the second column, in § 101.14 *Health claims: general requirements*, in paragraph (d)(2)(vii)(A), beginning in line 10, "Diets low in salt and sodium may help lower blood pressure in many people" is corrected to read "Diets low in sodium may reduce the risk of high blood pressure, a disease associated with many factors"; and in paragraph (d)(2)(vii)(B), in the last line, the word "providing" is corrected to read "provides".

§ 101.70 [Corrected]

13. On page 2535, in the second column, in § 101.70 *Petitions for health claims*, in paragraph (f), beginning in line 10, "Regulatory Affairs Staff (HFF–204), Office of Nutrition and Food Sciences" is corrected to read "Office of Food Labeling (HFS–150)"; in lines 16 and 17, "or (r)(5)(D)" is removed; and in line 20, "in quadruplicate," is removed.

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7241 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 74, 172, 177, 178, 186, and 189

[Docket No. 93N–0082]

Food and Color Additives; Substances Generally Recognized as Safe; Prohibited Substances; Technical Amendments and Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments and corrections.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive, food additive, generally recognized as safe (GRAS), and prohibited use regulations to correct certain typographical and other inadvertent errors. Further, the agency is correcting a final rule that appeared in the **Federal Register** of September 22, 1992 (57 FR 43613). The document amended the food additive regulations to provide for the safe use of calcium stearate and sodium bicarbonate, among other substances, as components of a sanitizing solution to be used on food-processing equipment and utensils, including food-contact surfaces in public eating places. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: FDA has discovered that certain errors have become incorporated into the agency's codified regulations on color additives, food additives, indirect food substances affirmed as GRAS, and substances prohibited from use in human food. These corrections are nonsubstantive, and therefore no new rulemaking is necessary. This final rule addresses the following errors in the regulations:

1. In 21 CFR 74.1109 *D&C Blue No. 9*, in paragraph (b), "nercent" is corrected to read "percent".

2. In 21 CFR 172.490 *Yellow prussiate of soda*, the formula for sodium ferrocyanide decahydrate is corrected to read "$Na_4Fe(CN)_6 \cdot 10H_2O$".

3. In 21 CFR 177.1060 *n-Alkylglutarimide/acrylic copolymers*, paragraph (e) incorrectly refers to Table 1 of § 176.170(c) (21 CFR 176.170(c)). The correct reference is Table 2.

4. In 21 CFR 177.1520 *Olefin polymers*, in the table in paragraph (c), in item 3.2a the clause "for use in articles used for packing or holding food during cooking;" was inadvertently placed after the words "of this table" when the agency amended item 3.2a in the **Federal Register** of November 29, 1989 (54 FR 49079 at 49080). It should have been placed after the words "(a)(3)(i) of this section". FDA is correcting this error.

5. In 21 CFR 178.1010 *Sanitizing solutions*, in paragraph (b)(41), FDA incorrectly specified the Chemical Abstracts Service Registry Numbers (CAS Reg. No:) for calcium stearate and for sodium bicarbonate when the agency amended the food additive regulations in the **Federal Register** of September 22, 1992 (57 FR 43613 at 43614). The correct CAS Reg. No. for calcium stearate is 1592–23–0. The correct CAS Reg. No. for sodium bicarbonate is 144–55–8.

6. In 21 CFR 186.1551 *Hydrogenated fish oil*, Chemical Abstracts Service has changed the CAS Reg. No. for hydrogenated fish oil from 8016–14–6 to 91078–95–4. FDA is incorporating this updated CAS Reg. No. into the regulation. This has no substantive effect on the identity of the regulated substance.

7. In 21 CFR 189.220 *Flectol H*, the formula for 1,2-dihydro-2,2,4-trimethylquinoline, polymerized is corrected to read $C_{12}H_{15}N$.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because these corrections are editorial and nonsubstantive in nature.

The Technical Amendments

List of Subjects

21 CFR Part 74
Color additives, Cosmetics, Drugs.
21 CFR Part 172
Food additives, Reporting and recordkeeping requirements.
21 CFR Part 177
Food additives, Food packaging.
21 CFR Parts 186 and 189
Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 74, 172, 177, 186, and 189 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

§ 74.1109 [Amended]

2. Section 74.1109 *D&C Blue No. 9* is amended in paragraph (b) by removing "nercent" and adding in its place the word "percent".

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

3. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

§ 172.490 [Amended]

4. Section 172.490 *Yellow prussiate of soda* is amended in paragraph (a) by removing the formula "$Na_4FE(CN_6.10H_2O)$" and adding in its place "$Na_4Fe(CN)_6 \cdot 10H_2O$".

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

5. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

§ 177.1060 [Amended]

6. Section 177.1060 *n-Alkylglutarimide/acrylic copolymers* is amended in paragraph (e) by removing the words "Table 1" and adding in their place "Table 2".

§ 177.1520 [Amended]

7. Section 177.1520 *Olefin polymers* is amended in the table in paragraph (c), in the "Olefin polymers" column, item 3.2a, by removing the phrase "Olefin copolymers described in paragraph (a)(3)(i) of this section; except olefin copolymers described in paragraph (a)(3)(i)(*c*)(*2*) of this section and listed in item 3.2b of this table for use in articles used for packing or holding food during cooking;" and adding in its place "Olefin copolymers described in paragraph (a)(3)(i) of this section for use in articles used for packing or holding food during cooking; except olefin copolymers described in paragraph (a)(3)(i)(*c*)(*2*) of this section and listed in item 3.2b of this table;".

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

8. The authority citation for 21 CFR part 186 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 186.1551 [Amended]

9. Section 186.1551 *Hydrogenated fish oil* is amended in the first sentence in paragraph (a) by removing the parenthetical phrase "(CAS Reg. No. 8016–14–6)" and adding in its place "(CAS Reg. No. 91078–95–4)".

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

10. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 189.220 [Amended]

11. Section 189.220 *Flectol H* is amended in the first sentence in paragraph (a) by removing the formula "$C_{12}H_{17}N$" and adding in its place "$C_{12}H_{15}N$".

The Corrections

In FR Doc. 92–22950, appearing on page 43613 in the **Federal Register** of Tuesday, September 22, 1992, the following corrections are made:

§ 178.1010 [Corrected]

12. On page 43614, in the second column, in § 178.1010 *Sanitizing solutions*, in paragraph (b)(41), beginning in line 9, "(CAS Reg. No. 1529–23–0)" is corrected to read "(CAS Reg. No. 1592–23–0)" and in line 11, "(CAS Reg. No. 144–55–9)" is corrected to read "(CAS Reg. No. 144–55–8)".

Dated: March 25, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–7640 Filed 3–30–93; 9:26 am]

BILLING CODE 4160–01–F

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21 CFR Part 101

[Docket No. 91N–0100]

RIN 0905–AB67

Food Labeling: Health Claims and Label Statements; Folic Acid and Neural Tube Defects; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2606). The document announced FDA's decision not to authorize a health claim for folic acid and neural tube defects at this time. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS–175), 200 C St. SW., Washington, DC 20204, 202–205–4064.

In FR Doc. 92–31514, appearing on page 2606, in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2606, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", the mailing code "(HFF–268)" is corrected to read "(HFS–175)", and the address "8301 Muirkirk Rd., Laurel, MD 20708" is corrected to read "200 C St. SW., Washington, DC 20204".

2. On page 2609, in the first column, in the first full paragraph, in the second line from the bottom, "0 4" is corrected to read "0.4"; and on the same page in the second column, in the third full paragraph, in the third and fourth lines from the bottom, and in the fifth full paragraph, in the eighth line, "0 4" is corrected to read "0.4";

3. On page 2618, in the first column, in Reference 3, in the second line, "into a Cluster" is corrected to read "of a Cluster "; on the same page, in the third column, in Reference 20, in the second line, "Congential" is corrected to read "Congenital"; in Reference 21, in the third line, the words "Congential" and "form " are corrected to read "Congenital" and "from", respectively; in Reference 24, in the second line "Alcohol-incude" is corrected to read,"Alcohol-induced"; in Reference 28, in the fourth line, "Chapter 18, pp. 351–379, and Chapter 21, pp. 412–419," is added before "1990"; and in Reference 37, in the first line, the author's name "K. Tuomilehto" is corrected to read "J. Tuomilehto".

4. On page 2619, in the first column, in Reference 45, in the last line, "pp. 56–58" is corrected to read "pp. 56–68"; on the same page, in the second column, in Reference 57, in the first line, the author's name "Ellison, A. B. and Curry" is corrected to read "Ellison, A. B. Curry"; in Reference 68, beginning in the second line, the formula "*DL*–5-formyltetrahydrogfolate" is corrected to read "*DL*–5-formyltetrahydrofolate"; in the third column, in Reference 76, in the first line, the author's name"S. C. Johnson" is corrected to read "C. S. Johnson; and in Reference 83, beginning in the first line, "'Folate Metabolism in Brain,' *Biochemistry of Brain*" is corrected to read "'Folate Metabolism in Brain,' *in*: Kuman, S., editor, *Biochemistry of Brain*".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7312 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 101

[Docket No. 91N–0095]

RIN 0905–AB67

Food Labeling: Health Claims and Label Statements; Sodium and Hypertension; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2820). The document announced the agency's decision to authorize the use on the label or labeling of certain foods of health claims relating to an association between dietary sodium and high blood pressure. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5375.

In FR Doc. 92–31521, appearing on page 2820 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2820, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", beginning in line 2, the mail code "(HFF–266)" is corrected to read "(HFS–165)".

2. On page 2823, in the first column, in line 22, "hypertension evidences" is corrected to read "hypertension is evidence of a".

3. On page 2825, in the first column, in line 21, the word "decreases" is corrected to read "decreased".

4. On page 2826, in the second column, in the first full paragraph, in line 10, "(Refs. 34 and 35)" is added after "(15 percent)".

5. On page 2828, in the second column, in the first full paragraph, in line 16, the word "dose" is corrected to read "does"; and in the third column, in the second full paragraph, in the fourth line from the bottom, "agency has also has" is corrected to read "agency has also".

6. On page 2829, in the third column, in the fourth full paragraph, in the last line, the word "regulations" is corrected to read "regulation".

7. On page 2831, in the third column, in line 38, "In Belgium" is corrected to read "in Belgium"; and in the first full paragraph, in line 9, the word "potassium" is corrected to read "phosphate".

8. On page 2835, in the third column, in reference 111, in line 4, "I35" is corrected to read "I–35".

9. On page 2836, in the first column, in reference 124, in line 2, "Hyptension" is corrected to read "Hypertension".

§ 101.74 [Corrected]

10. On page 2837, in § 101.74 *Health claims: sodium and hypertension*, in paragraph (b)(3), in the last line, the word "cardiovascular" is corrected to read "coronary heart".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7238 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 101

[Docket No. 91N–0099]

RIN 0905–AB67

Food Labeling: Health Claims and Label Statements; Dietary Fiber and Cardiovascular Disease; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2552). The document announced FDA's decision not to authorize the use on the label or labeling of foods of health claims relating to the association between dietary fiber and cardiovascular disease. However, FDA did authorize a health claim relating diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain dietary fiber (particularly soluble fiber) to a reduced risk of coronary heart disease. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

In FR Doc. 92–31513, appearing on page 2552 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2556, in the second column, in the first full paragraph, beginning in the 12th line from the bottom, "192 mg/dL 172 mg/dL" is corrected to read "192 mg/dL to 172 mg/dL"; and in the third column, beginning in the 16th line from the bottom, the paragraph is corrected by starting a new paragraph with the phrase "In a parallel design,".

2. On page 2562, in the second column, in the last paragraph, in the fifth line from the bottom, "bloood" is corrected to read "blood".

3. On page 2564, in the third column, in the second full paragraph, in line 5, "Chrinic" is corrected to read "Chronic".

4. On page 2566, in the third column, in the second full paragraph, in line 9, "remains" is corrected to read "remain".

5. On page 2568, in the first column, in the second full paragraph, in the second line from the bottom, "oat bran supplementation reduced" is corrected to read "the oat-bran supplemented diet reduced".

6. On page 2573, in the second column, in the first full paragraph, in line 1, "§ 101.76(c)(2)(i)(C)" is corrected to read "§ 101.77(c)(2)(i)(C)".

7. On page 2574, in the first column, in the first full paragraph, in line 17, "fiber cancer" is corrected to read "fiber and cancer".

§ 101.71 [Corrected]

8. On page 2578, in the third column, amendatory instruction number 2 is corrected to read "Section 101.71 is amended by adding new paragraph (b) to read as follows:".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7242 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 101

[Docket No. 91N–0344]

RIN 0905–AD08

Food Labeling: Use of Nutrient Content Claims for Butter; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2448). The document permits nutrient content claims that are defined by regulation in 21 CFR part 101 to be made for butter. The document was published with some inadvertent editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5112.

In FR Doc. 92–31507, appearing on page 2448, in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2448, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in line 2, the mail code "(HFS–158)," is corrected to read "(HFS–306),".

2. On page 2450, in the second column, in the first complete paragraph, in line 7, the word "'margarine,'" is corrected to read "'modified margarine,'" the first time it appears.

3. On page 2454, in the second column, in the fifth full paragraph, beginning in line 5, the phrase "that claim must be included" is corrected to read "that claim must be an explicit claim that is included".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7315 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 101

[Docket No. 91N–0094]

RIN 0905–AB67

Food Labeling: Health Claims; Calcium and Osteoporosis; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a

final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2665). The document authorized the use on the label and labeling of foods of health claims relating to an association between adequate calcium intake and osteoporosis. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mona S. Calvo, Center for Food Safety and Applied Nutrition (HFS–226), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5434.

In FR Doc. 92–31517, appearing on page 2665 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2665, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in line 2, the mail code "(HFF–265)" is corrected to read "(HFS–226)".

2. On page 2666, in the third column, in the second full paragraph, in line 10, "for calcium-osteoporosis claim" is corrected to read "for a calcium-osteoporosis claim".

3. On page 2667, in the first column, in line 20, "food" is corrected to read "food's".

4. On page 2669, in the first column, in the fifth line from the bottom, "intakes" is corrected to read "intake"; and in the third column, in line 2, "authorize" is corrected to read "authorizes".

5. On page 2670, in the first column, in the first full paragraph, in line 8, "caucasian" is corrected to read "Caucasian"; and in the second column, in the first full paragraph, in line 4, the phrase "comment included also submitted" is corrected to read "comment submitted also included".

§ 101.72 [Corrected]

6. On page 2677, in § 101.72 *Health claims: calcium and osteoporosis*, in the third column, in paragraph (c)(2)(ii)(C), in the first line, the phrase "supplements meet" is corrected to read "supplements shall meet".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7318 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 91N–0103]

RIN 0905–AB67

Food Labeling: Health Claims and Label Statements: Omega-3 Fatty Acids and Coronary Heart Disease; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2682). The document announced FDA's decision not to authorize the use on the label or labeling of foods of health claims relating to an association between omega-3 fatty acids and coronary heart disease. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Wallingford, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5461.

In FR Doc. 92–31518, appearing on page 2682 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2685, in the second column, in the second full paragraph, in line 6, the word "nine" is corrected to read "ten".

2. On page 2687, in the third column, in the second full paragraph, in line 6, "0 6" is corrected to read "0.6".

3. On page 2690, in the second column, in the fifth line from the bottom, the phrase "Wolmarans studied" is corrected to read "Wolmarans, et al. (Ref. 301) studied".

4. On page 2694, in the first column, in line 7, the word "marker" is corrected to read "markers".

5. On page 2695, in the first column, in the second full paragraph, in the last line, "comment 52" is corrected to read "comments 52 and 56".

6. On page 2699, in the second column, in the third full paragraph, in the last line, the phrase "was provided" is corrected to read "were provided".

7. On page 2700, in the second column, in the third full paragraph, in line 8, "253, 253" is corrected to read "253, 253a".

8. On page 2701, in the second column, in the third full paragraph, in line 3, "Iib" is corrected to read "IIb"; and in the third column, the third paragraph is corrected by moving the entire paragraph to immediately follow the third full paragraph, in the second column, on page 2702.

9. On page 2702, in the first column, in the first full paragraph, in line 4, the phrase "comments 35 through 37" is corrected to read "comments 36 through 38".

10. On page 2703, in the second column, in the second full paragraph, in line 14, "47" is corrected to read "49".

11. On page 2704, in the second column, in line 12, "Dart" is corrected to read "DART".

12. On page 2708, in the first column, in reference 27, in line 4, "*Arterio Sclerosis*" is corrected to read "*Arteriosclerosis*"; in the second column, in reference 50, in line 2, "Platelet-devised" is corrected to read "Platelet-derived"; in reference 56, in line 2, "Ecstenosis" is corrected to read "Restenosis"; and in the third column; in reference 67, in line 5, "Feedingtrials" is corrected to read "Feeding Trials"; reference 68 is corrected to read "Hirai, A., et al., "Clinical and Epidemiological Studies of Eicosapentaenoic Acid in Japan," *in* Proceedings of the AOCS Short Course on Polyunsaturated Fatty Acids and Eicosanoids, W. E. M. Lands, ed; AOCS, Champaign, IL"; reference 69 is corrected to read "Hollander, W., et al., "Differential Effects of Fish Oil Supplements on Atherosclerosis," *Circulation* 76:IV–313, 1987"; in reference 72, in line 3, "Menhaden Oil Mitre" is corrected to read "Menhaden Oil,' Mitre"; and in reference 73, in line 3, "Atheroselerosis" is corrected to read "Atherosclerosis".

13. On page 2709, in the first column, in reference 79, "Kusion" is corrected to read "Kasim"; in the second column, in reference 89, in line 2, "*Intern*" is corrected to read "*Internal*"; and in reference 105, in line 2, "FishLipid" is corrected to read "Fish Lipid" and the journal title "*Clinical Chemical Action*" is corrected to read "*Clinica Chemica Acta*".

14. On page 2710, in the first column, reference 122 is corrected to read "Weiner, B. H., I. S. Ockene, P. H. Levine, et al., "Inhibition of Atherosclerosis by Cod-Liver Oil in a Hyperlipidemic Swine Model," *New England Journal of Medicine*, 315:841–846, 1986"; and in the third column, reference 155 is corrected to read "Valdini, A. F., et al., "Efficacy of Fish Oil Supplementation for Treatment of Moderate Elevation of Serum Cholesterol," *Journal of Family Practice*, 30:55–59, 1990.

15. On page 2711, in the first column, in reference 171, in line 3, the words "Phenotype A" are corrected to read

"Phenotype. A"; in reference 180, in line 4, the word "Uppressing" is corrected to read "Suppressing"; in the second column, in reference 185, in line 3, the word "Opulations" is corrected to read "Populations"; in reference 185a, in line 1, the phrase "Decreased HDL2 and HDL3" is corrected to read "Decreased HDL_2 and HDL_3"; in reference 186, in line 4, the word "Hromboxane" is corrected to read "Thromboxane"; in the third column, in reference 202, in line 3, the word "acids" is corrected to read "Acids".

16. On page 2712, in the third column, in reference 239, in line 8, "cids" should read "Acids"; in reference 244, in line 3, "Coagualtion" is corrected to read "Coagulation"; and in reference 245, in line 4, the word "Lipoporteins" is corrected to read "Lipoproteins".

17. On page 2713, in the first column, in reference 253a, in line 5, the "Healty" is corrected to read "Healthy"; and in the third column, in reference 282, in line 2, the word "Physician's" is corrected to read "Physicians'".

18. On page 2723, in Table 2, under the "Subjects" column, in the first entry, in line 1, the term "Type II-B" is corrected to read "Type IIb".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7389 Filed 3-31-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 101

[Docket No. 91N-0096]

RIN 0905-AB67

Food Labeling: Health Claims and Label Statements; Dietary Saturated Fat and Cholesterol and Coronary Heart Disease; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of January 6, 1993 (58 FR 2739). The document authorized the use on the label or labeling of certain foods of health claims relating to an association between dietary lipids (specifically, saturated fat and cholesterol) and cardiovascular disease (specifically coronary heart disease). The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Paddy Wiesenfeld, Center for Food Safety and Applied Nutrition (HFS-465), Food and Drug Administration, 8301 Muirkirk Rd., Beltsville, MD 20708, 301-344-5825.

In FR Doc. 92-31519, appearing on page 2739, in the Federal Register of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2741, in the second column, in the second full paragraph, in line 9, add a closing parenthesis after the word "discussion".

2. On page 2742, in the first column, beginning in line 1, "(Ref. 20)" is corrected to read "(Refs. 20 and 35, 56 FR 60727 at 60739)".

3. On page 2743, in the third column, in the sixth line from the bottom, the phrase "potential for increased" is corrected to read "possible increase in".

4. On page 2744, in the first column, in the first full paragraph, in line 16, the parenthetical phrase "(a monounsaturated fat)" is corrected to read "(a *cis*-monounsaturated fat)"; in the third column, in the first full paragraph, in line 3, "60737" is corrected to read "60727"; and in the same column, in the tenth line from the bottom, "60737" is corrected to read "60727".

5. On page 2747, in the first column, in the parenthetical phrase following the third full paragraph, "60712" is corrected to read "60772".

6. On page 2749, in the first column, in the fourth full paragraph, beginning in line 9, the phrase "diets low in saturated fat and cholesterol and reduced risk" is corrected to read "dietary saturated fat and cholesterol and the risk".

7. On page 2750, in the first column, in the second full paragraph, in line 5, "(Ref. 221)" is corrected to read "(Ref. 223)".

8. On page 2752, in the first column, in reference 1, in line 5, the journal name "*Arterios*" is corrected to read "*Arteriosclerosis*"; in the second column, in reference 7, in line 5, the page citation "263:164-1652" is corrected to read "263:1646-1652"; in reference 13, in line 4, the word "*Journal*" is added after the word "Mortality"; in the third column, in reference 21, in line 4, the page citation "9:191-105" is corrected to read "9:I-91—I-105"; and in reference 25, in line 1, the author's name "H. Kautz" is corrected to read "J. Kautz".

9. On page 2753, in the first column, in reference 42, in line 4, the page citation "9:129-136" is corrected to read "9:129-135"; in the second column, in reference 51, in line 5, the word "*British*" is added before the word "*Medical*"; in reference 54, in line 4, the page citation "47:833-834" is corrected to read "47:822-824"; and in reference 62, in line 1, the author's name "J. S. Charnoci" is corrected to read "J. S. Charnock"; and in the third column, in reference 66, in line 1, the phrase "and P. Greenland" is added after "Johnson, C."

10. On page 2754, in the second column, in reference 91, in line 1, the authors "McPhillips, J. B., E. Barrett-Connor, and D. L. Wingard" are corrected to read "Brown, J., J. B. Phillips, E. Barrett-Connor, D. L. Wingard"; in reference 95, in line 1, the author's name "K. B. Martijn" is corrected to read "M. B. Katan"; in reference 99, in line 7, the word "Screens" is corrected to read "Screenes"; and in the third column, in reference 114, in line 1, the author "F. R. Path," is added after "B. Lewis,".

11. On page 2755, in the first column, in reference 127, in line 6, the name of the journal "*Journal of Lipid Research*" is added after "Lipoproteins,"; in reference 129, in line 4, the page citation "701:1000-1128" is corrected to read "701:100-125"; and in the second column, in reference 145, in line 6, the page citation "325:462-466" is corrected to read "325:461-466".

12. On page 2756, in the second column, in reference 172, beginning, in line 2, the page citation "54:L 351-8" is corrected to read "54:351-8".

13. On page 2757, in the second column, reference 225 is added to read as follows:

225. Lewis, C. J. et al, "Nutrient Intakes and Body Weights of Persons Consuming High and Moderate Levels of Added Sugars," *Journal of the American Dietetic Association*, 92:708-713, 1992.

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7390 Filed 3-31-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Parts 101 and 102

[Docket No. 80N-0140]

RIN 0095-AC48

Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a

final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2897). The document amended the food labeling regulations to establish requirements for the declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: May 8, 1993, except that amendments to part 102 become effective May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

In FR Doc. 92–31524, appearing on page 2897, in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2904, in the first column, in the second full paragraph, in the fourth line, "vegotable" is corrected to read "vegetable".

2. On page 2906, in the third column, in the fourth paragraph, under item i. "Apple juice," in the second line from the bottom, "(7 CFR 52.301 through 52.301)" is corrected to read "(7 CFR 52.301 through 52.310)".

3. On page 2910, in the first column, under item vii. "Grape juice," the first two sentences are corrected to read "NJPA submitted a Brix value of 13° for grape juice in December 1989, based on the USDA File code 147–A–2 (March 1988). Subsequently, in May of 1990, NJPA suggested a higher Brix value of 16° based on information from the Concord Grape Association."; and on the same page, in the third column, in the second full paragraph, in the eighth line from the bottom, "22.7°" is corrected to read "11.7°".

4. On page 2911, in the second column, in first full paragraph, under item ix. "Guava juice," in the sixth line, "(21 CFR 146.140)" is corrected to read "(21 CFR 150.140)".

5. On page 2912, in the second column, in the third line, "(Ref. 2)" is corrected to read "(Ref. 13)".

6. On page 2913, in the first column, in the third full paragraph, in the seventh line from the bottom, "(USDA file code 147§ A§ 2)" is corrected to read "(USDA File code 147–A–2)".

7. On page 2916, in the second column, in the first full paragraph, in the sixth line from the bottom, the word "a" is removed.

8. On page 2918, in the second column, in the third full paragraph, in the fourth line, "1080" is corrected to read "100".

9. On page 2924, in the second column, in Reference 2, in the first line, the name of the author "S. C. Moyer" is corrected to read "J. C. Moyer"; in the third column, in Reference 3, in the first line, after the name of the author "Wrolstad, Ronald E.," add "V. Hong, and G. Spanos,".

§ 102.33 [Corrected]

10. On page 2926, in § 102.33 *Beverages that contain fruit or vegetable juice*, in paragraph (c), in the third column, in the fourth line, "two other fruit" is corrected to read "two other fruit juices".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7311 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 101, 102, 130, 135, 136, 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163, 164, 166, 168, and 169

[Docket No. 90N–0361]

RIN 0905–AD08

Food Labeling; Declaration of Ingredients; Technical Amendment and Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment and corrections.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2850). The document amended the regulations to make ingredient labeling more useful for consumers. The agency inadvertently omitted an amendment. Further, the document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: The effective date of the provisions in this final rule for ingredient listing of standardized foods and declaration of certified color additives is May 8, 1993 (§ 101.4(a) and (b)(2)(i), § 101.6, § 101.22(k), part 130 except § 130.10 and parts 131 through 169). The effective date of all other provisions in this regulation is May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Campbell, Center for Food Safety and Applied Nutrition (HFS–155), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1993 (58 FR 2850), FDA published a final rule that amended the regulations to make ingredient labeling more useful to consumers. FDA discovered that it had inadvertently omitted an amendment to § 155.190 from the final rule. Further, the agency discovered numerous typographical and editorial errors. Accordingly, this document amends § 155.190 by revising paragraph (a)(6) and corrects the typographical and editorial errors.

The Technical Amendment

List of Subjects in 21 CFR Part 155

Food grades and standards, Vegetables.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA is amending 21 CFR part 155 as follows:

Part 155—Canned Vegetables

1. The authority citation for part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 155.190 is amended by revising paragraph (a)(6) to read as follows:

§ 155.190 Canned Tomatoes.

(a) * * *

(6) *Label declaration.* The name of each ingredient used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

* * * * *

The Corrections

In FR Doc. 92–31522, appearing on page 2850 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

3. On page 2850, in the second column, in line 14, "§ 101.190" is corrected to read "§ 161.190"; and under the caption "**DATES:**", in line 6, the phrase "§ 101.22(k), and parts 130 through 169" is corrected to read "§ 101.6, § 101.22(k), part 130 except § 130.10, and parts 131 through 169".

4. On page 2851, in the third column, beginning in line 2, the phrase "a 1 'double declaration' " is corrected to read "a 'double declaration'."

5. On page 2852, in the third column, in the last paragraph, beginning in the second line from the bottom, the phrase "manufacturing (§ 146.151), and frozen concentrated" is corrected to read "manufacturing (§ 146.153), and concentrated".

6. On page 2853, in the first column, in line 1, "§ 146.153" is corrected to

read "§ 146.154"; and in the second column, in the third full paragraph, in line 13, the word "color" is corrected to read "colorings".

7. On page 2854, in the second column, in line 6, "(Refs. 47, 48, and 49)" is corrected to read "(Refs. 47, 48, 48a, and 49)."

8. On page 2864, in the first column, in the third line from the bottom, "(Ref. 50)" is corrected to read "(Refs. 50, 50a, and 50b)"; and in the second column, in the first full paragraph, in line 4, the word "as" is removed.

9. On page 2874, in the third column, after reference "48.," reference 48a. is added to read as follows:

48a. Memorandum of Telephone Conversation between Mr. Vahan Serpekian, Bumble Bee Seafoods, and Nannie H. Rainey, FDA, August 11, 1992.

10. On the same page, in the third column, after reference "50.," references 50a. and "50b." are added to read as follows:

50a. Peterson, N. B., "Isolation and Use of Raw Starches," *in* Edible Starches and Starch-Derived Syrups, Noyes Data Corp., New Jersey, pp. 4–17 and 26–29, 1975.

50b. Johnson, J. C., "Modified Starch and Cellulose," *In* Food Additives Recent Developments, edited by J. C. Johnson, Noyes Data Corp., New Jersey, pp. 186–209 and 222–225, 1983.

§ 155.191 [Corrected]

11. On page 2883, in the first column, in § 155.191 *Tomato concentrates*, in paragraph (a)(3)(iv), in line 5, the phrase "of this chapter." is corrected to read "of this chapter; except that water need not be declared in the ingredient statement when added to adjust the tomato soluble solids content of tomato concentrates within the range of soluble solids levels permitted for these foods."

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7237 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 101 and 104

[Docket No. 90N–0134]

RIN 0905–AD08

Food Labeling; Reference Daily Intakes and Daily Reference Values; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2206). The document amended the food labeling regulations to establish two sets of label reference values, Reference Daily Intakes (RDI's) and Daily Reference Values (DRV's), for use in declaring the nutrient content of a food on its label or labeling. The document was published with some inadvertent editorial errors. This document corrects those errors.

DATES: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5588.

In FR Doc. 92–31502, appearing on page 2206 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2218, in the second column, in line 16, "60" is corrected to read "65".

2. On page 2226, in the third column, in Ref. 32, in line 2, the author's name "S. Grodong" is corrected to read "S. Gordon"; and in Ref. 33, in line 2, the author's name "W. O'Fallong" is corrected to read "W. O'Fallon".

3. On page 2227, in the first column, in Ref. 35, beginning in line 3, the page citation "p. 284" is corrected to read "pp. 283–285"; and in Ref. 37, beginning in line 4, the journal name "*Journal of the Association of Analytical Chemistry*" is corrected to read "*Journal of the Association of Official Analytical Chemists*".

§ 101.9 [Corrected]

4. On page 2227, in § 101.9 *Nutrition labeling of food*, in paragraph (c)(8)(iv), the list of RDI's and nomenclature is correctly revised to read as follows:

Vitamin A, 5,000 International Units.
Vitamin C, 60 milligrams.
Calcium, 1.0 gram.
Iron, 18 milligrams.
Vitamin D, 400 International Units.
Vitamin E, 30 International Units.
Thiamin, 1.5 milligrams.
Riboflavin, 1.7 milligrams.
Niacin, 20 milligrams.
Vitamin B_6, 2.0 milligrams.
Folate, 0.4 milligrams.
Vitamin B_{12}, 6.0 micrograms.
Biotin, 0.3 milligram.
Pantothenic acid, 10 milligrams.
Phosphorus, 1.0 gram.
Iodine, 150 micrograms.
Magnesium, 400 milligrams.
Zinc, 15 milligrams.
Copper, 2.0 milligrams.

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7316 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 105

[Docket No. 91N–384L]

RIN 0905–AD08

Food Labeling: Label Statements on Foods for Special Dietary Use; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2427). The document amended the food labeling regulations to conform them to the requirements of the Nutrition Labeling and Education Act of 1990. The document was published with some inadvertent editorial errors. This document corrects those errors.

DATES: Effective May 8, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by February 5, 1993.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFS–155), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

In FR Doc. 92–31505, appearing on page 2427 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2427, in the third column, in the second full paragraph, in the fourth line from the bottom, the phrase "apply to that" is corrected to read "that apply to".

2. On page 2430, in the first column, in the second full paragraph, in the third line, "December 10, 1992" is corrected to read "February 5, 1993"

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7319 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 130

[Docket No. 91N–0317 et al.]

RIN 0905–AD08

Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2431). The document amended the General Provisions for food standards to prescribe a general definition and standard of identity for foods named by use of a nutrient content claim defined in part 101 (21 CFR part 101) (such as "fat free," "low calorie," and "light") in conjunction with a traditional standardized name (for example "reduced fat sour cream"). The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5112.

In FR Doc. 92–31506, appearing on page 2431, in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2431, in the first column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in line 2, the mail code "(HFS–158)" is corrected to read "(HFS–306)".

2. On page 2432, in the third column, in line 3, "§§ 101.3(e)(4) and 101.13(d)" is corrected to read "§§ 101.3(e) and 101.13(d)".

3. On page 2435, in the third column, in the first full paragraph, in line 13, the phrase "the DRV of protein or the RDI" is corrected to read "the DRV of protein listed under § 101.9(c)(7)(iii) and of potassium listed under § 101.9(c)(9) and the RDI"; and in line 15, "§ 101.9(c)(7)(iv)" is corrected to read "§ 101.9(c)(8)(iv)".

4. On page 2438, in the third column, in the second full paragraph, in the ninth line from the bottom, the word "new" is removed.

5. On page 2441, in the second column, in line 3, the word "new" is removed.

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7314 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 131, 133, 135, and 168

[Docket No. 90N–351D]

RIN 0905–AD08

Food Labeling; Declaration of Ingredients for Dairy Products and Maple Sirup; Confirmation of Effective Date; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date and correction.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2888), and amended the U.S. standards of identity for dairy products and maple sirup to require the listing of the common or usual names of all ingredients in these standardized foods. The final rule was published with an inadvertent typographical error. This document also corrects that error.

DATES: The final rule published in the **Federal Register** of January 6, 1993 (58 FR 2888), and the correction published in this document are effective May 8, 1993. The final rule applies to the products initially labeled on or after this date.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5106.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of January 6, 1993, FDA published a final rule that amended the standards of identity for dairy products and maple syrup to require the listing of all ingredients in these standardized foods. Proceedings to amend these standards are subject to the provisions of section 701(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(1)). Therefore, FDA gave interested persons until February 5, 1993, to file written objections or to request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received in response to the final regulation. The agency is therefore confirming the effective date of May 8, 1993, for these amendments.

Further, the agency discovered an inadvertent typographical error in § 133.108. Accordingly, the agency is correcting this error.

The Correction

In FR Doc. 92–31523, appearing on page 2888 in the **Federal Register** of Wednesday, January 6, 1993, the following correction is made:

§ 133.108 [Corrected]

On page 2892, in § 133.108 *Brick cheese*, in the introductory text of paragraph (d), in the last line, the phrase "of this chapter, except that," is corrected to read "of this chapter, except that:".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7235 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 5

Delegations of Authority and Organization; National Childhood Vaccine Injury Act of 1986

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding new authorities delegated by the Assistant Secretary for Health to the Commissioner of Food and Drugs (the Commissioner). The new authorities are under certain provisions of the Public Health Service Act (the PHS Act) and of the National Childhood Vaccine Injury Act of 1986. The authorities added are being further redelegated, from the Commissioner to the Director, Center for Biologics Evaluation and Research (CBER), and the Associate Director for Policy Coordination and Public Affairs, CBER.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 30857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 13, 1988 (53 FR 22054), the Secretary of Health and Human Services (the Secretary) delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary under: (1) Part C, Subtitle 2 of Title XXI of the PHS Act (42 U.S.C. 300aa–25 *et*

seq.), as amended; and (2) sections 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1 note), as amended hereafter, excluding the authority to promulgate regulations and to submit reports to Congress.

In a notice that appeared in the **Federal Register** of September 16, 1988 (53 FR 36127), the Assistant Secretary for Health redelegated to the Commissioner the authority under: (1) Part C, Subtitle 2 of Title XXI of the PHS Act (42 U.S.C. 300aa–25 *et seq.*), as amended; and (2) sections 312, 313, and 314 of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1 note), as amended hereafter. as follows:

(1) Section 2125 of the PHS Act—Provider and manufacturer recording and reporting (42 U.S.C. 300aa–25).

(2) Section 2127 of the PHS Act—Mandate for safer vaccines (42 U.S.C. 300aa–27).

(3) Section 2128 of the PHS Act—Manufacturer recordkeeping and reporting (42 U.S.C. 300aa–28).

(4) Section 312 of the National Childhood Vaccine Injury Act—Related studies.

(5) Section 313 of the National Childhood Vaccine Injury Act—Study of other vaccine risks.

(6) Section 314 of the National Childhood Vaccine Injury Act—Review of warnings, use instructions, and precautionary information.

FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials*, by adding new § 5.10(a)(35) concerning these authorities redelegated to the Commissioner.

As provided for in the delegation from the Assistant Secretary for Health, the Commissioner is further redelegating these authorities to the Director, CBER, and the Associate Director for Policy Coordination and Public Affairs, CBER, by adding a new § 5.29 *Functions pertaining to safer vaccines*. Pursuant to 21 CFR 5.20(f), the authorities in § 5.29 may not be redelegated. Authority delegated to a position by title may be exercised by a person officially designated to serve in that position in an acting capacity or on a temporary basis (21 CFR 5.20(d)).

List of Subject in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.10 is amended by adding paragraph (a)(35) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a)* * *

(35) Functions vested in the Secretary under Part C, Subtitle 2 of Title XXI of the Public Health Service Act (42 U.S.C. 300aa–25 *et seq.*), as amended, and the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1 note), as amended hereafter, as follows:

(i) Section 2125 of the Public Health Service Act (42 U.S.C. 300aa–25)—Recording and reporting of information.

(ii) Section 2127 of the Public Health Service Act (42 U.S.C. 300aa–27)—Mandate for safer childhood vaccines.

(iii) Section 2128 of the Public Health Service Act (42 U.S.C. 300aa–28)—Manufacturer recordkeeping and reporting.

(iv) Section 312 of the National Childhood Vaccine Injury Act of 1986—Related studies.

(v) Section 313 of the National Childhood Vaccine Injury Act of 1986—Study of other vaccine risks.

(vi) Section 314 of the National Childhood Vaccine Injury Act of 1986—Review of warnings, use instructions, and precautionary information.

(vii) The delegation excludes the authority to issue regulations and submit reports to Congress.

* * * * *

3. New § 5.29 is added to subpart B to read as follows:

§ 5.29 Functions pertaining to safer vaccines.

The Director, Center for Biologics Evaluation and Research (CBER), and the Associate Director for Policy Coordination and Public Affairs, CBER, are authorized to perform the functions of the Commissioner of Food and Drugs under Part C, Subtitle 2 of Title XXI of the Public Health Service Act (42 U.S.C. 300aa–25 *et seq.*), as amended, and the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1 note), as amended hereafter, as follows:

(a) Section 2125 of the Public Health Service Act (42 U.S.C. 300aa–25)—Recording and reporting of information.

(b) Section 2127 of the Public Health Service Act (42 U.S.C. 300aa–27)—Mandate for safer childhood vaccines.

(c) Section 2128 of the Public Health Service Act (42 U.S.C. 300aa–28)—Manufacturer recordkeeping and reporting.

(d) Section 312 of the National Childhood Vaccine Injury Act of 1986—Related studies, except that the authority to provide for notice and opportunity for public hearing on the review of vaccines and related illnesses and conditions under sections 312(a) and 312(d) of the National Childhood Vaccine Injury Act of 1986 is not redelegated by the Commissioner.

(e) Section 313 of the National Childhood Vaccine Injury Act of 1986—Study of other vaccine risks, except that the authority to provide for notice and opportunity for public hearing on the establishment of guidelines regarding the risks to children of certain vaccines under section 313(a)(1)(B) and (b) of the National Childhood Vaccine Injury Act of 1986 is not redelegated by the Commissioner.

(f) Section 314 of the National Childhood Vaccine Injury Act of 1986—Review of warnings, use instructions, and precautionary information.

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7641 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the list of exempt chemical preparations set forth in § 1308.24(i) of title 21 of the Code of Federal Regulations. This action

is in response to DEA's periodic review of the exempt chemical preparation list and of new applications for exemptions filed with DEA. Preparations included in the list are exempted from the application of specific provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration Regulations.

DATES: *Effective Date:* April 1, 1993. Comments must be submitted on or before May 3, 1993.

ADDRESSES: Comments and objections should be submitted to the Director, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., (Chief, Drug & Chemical Evaluation Section), 202–307–7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal and which is packaged in such form or concentration, or with adulterants or denaturants, so that, as packaged, it does not present any significant potential for abuse. This authority ultimately has been delegated to the Director, Office of Diversion Control, Drug Enforcement Administration.

The Director, Office of Diversion Control, Drug Enforcement Administration, has received applications pursuant to § 1308.23 of title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. The Director hereby finds that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either: (a) Contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Director further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

The listing of products in 21 CFR 1308.24(i) exempts persons who handle them for certain sections of the Controlled Substances Act of 1970 and its regulations. The Director, Office of Diversion Control, hereby certifies that these matters will have no significant impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Accordingly, the Director certifies this action will have no impact on the ability of small businesses to compete and he, therefore, determines that no regulatory flexibility analysis is required.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has also been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Director has determined that this is not a "major rule", as that term is used in standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811(g)(3)(B) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR part 0.100) and redelegated to the Director, Office of Diversion Control, Drug Enforcement Administration, the Director of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below:

PART 1308—SCHEDULES OF CONTROLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. In section 1308.24(i), the table is revised to read as follows:

1308.24 Exempt chemical preparations.

* * * * *

(i) * * *

Dated: March 24, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

EXEMPT CHEMICAL PREPARATIONS

Supplier	Product name	Form	Date
Aalto Scientific, LTD	Therapeutic Drug Monitoring Control Level I, II, III Freeze Dried.	Vial: 5 ml	04/09/91
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7816.	Plastic Bottle: 20 ml	04/07/78
Abbott Laboratories	ADx Benzoylecgonine Fluorescein Tracer Solution.	Bottle: 3.2 ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Fluorescein Tracer Solution.	Bottle: 3.2 ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Reagent Pack (No. 9671–55).	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	ADx Cocaine Metabolite Fluorescein Tracer Solution, No. 9670–T, No. 9670T0013.	Vial: 3.2 ml, Kit: 100 vials	04/18/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	ADx Cocaine Metabolite Reagent Pack, No. 9670–55.	50 Test Unit	04/18/89
Abbott Laboratories	ADx Opiates Fluorescein Tracer Solution, No. 9673–T, No. 9673T0013.	Vial: 3.2 ml, Kit: 100 vials	04/18/89
Abbott Laboratories	ADx Opiates Reagent Pack, No. 9673–55	50 Test Unit	04/18/89
Abbott Laboratories	ADx Propoxyphene Fluorescein Tracer Solutions Item No. 9675T0011.	Box: 100 bottles or less	11/30/90
Abbott Laboratories	ADx Propoxyphene Reagent Pack Item No. 9675–55.	Kit: 50 test	11/30/90
Abbott Laboratories	Advisor Cannabinoids Bulk Tracer No. 76224.	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 5 ml, Amp: 20 ml, 10 ml, 5 ml, 2 ml.	04/10/92
Abbott Laboratories	Advisor Card & Cover No. 07A15	Box: 2000 Cards	04/10/92
Abbott Laboratories	Advisor Card & Tracer No. 07A14	Box: 2000 Cards	04/10/92
Abbott Laboratories	Advisor Cocaine Bulk Tracer (in-process) No. 77458A.	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 5 ml, Amp: 20 ml, 10 ml, 5 ml, 2 ml.	06/08/92
Abbott Laboratories	Advisor Cocaine Bulk Tracer No. 77458 ..	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 5 ml, Amp: 20 ml, 10 ml, 5 ml, 2 ml.	04/10/92
Abbott Laboratories	Advisor Drug of Abuse Screening System No. 6A60–10.	Kit: 10 Discs	04/10/92
Abbott Laboratories	Advisor Drug of Abuse Screening System No. 6A60–40.	Kit: 40 Discs	04/10/92
Abbott Laboratories	Advisor Opiates Bulk Tracer (in-process) No. 78692A.	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 5 ml, Amp: 20 ml, 10 ml, 5 ml, 2 ml.	06/08/92
Abbott Laboratories	Advisor Opiates Bulk Tracer No. 78692 ..	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 5 ml, Amp: 20 ml, 10 ml, 5 ml, 2 ml.	04/10/92
Abbott Laboratories	Advisor Reaction Disc No. 6A60B	Disc: 1 Card	04/10/92
Abbott Laboratories	Advisor Reaction Discs No. 6A60	Carton: 10 Discs	04/10/92
Abbott Laboratories	Amphetamine Bulk Calibrators, B–F	Carboy: 10L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	10/09/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask: 2 liter	12/09/85
Abbott Laboratories	Amphetamine Class Bulk Calibrator B–F .	50 L, 45 L, 20 L, 10 L, 8 L, 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 125 ml, 100 ml, 50 ml, 30 ml, 20 ml, 15 ml, 10 ml, 5 ml, 2 ml.	03/01/88
Abbott Laboratories	Amphetamine Class Bulk Control L and H.	50 L, 45 L, 20 L, 10 L, 8 L, 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 125 ml, 100 ml, 50 ml, 30 ml, 20 ml, 15 ml, 5 ml, 2 ml.	03/01/88
Abbott Laboratories	Amphetamine Class Bulk Tracer: No. 94699.	50 L, 45 L, 20 L, 10 L, 8 L, 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 125 ml, 100 ml, 50 ml, 30 ml, 20 ml, 15 ml, 10 ml, 5 ml, 2 ml.	03/01/88
Abbott Laboratories	Amphetamine Class QC Primary B–F, L, M, H No. 9667 (B–F, L, M, H) QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/22/88
Abbott Laboratories	Amphetamine Class Stock Tracer: No. 94700.	Bottle: 30 ml	03/01/88
Abbott Laboratories	Amphetamine Stock Standard No. 97072, 97072 A–B.	Carboy: 20 L, 10 L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Amphetamine Stock Standard, No. 97072	Bottle: 125 ml	09/30/85
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary Bulk Control M, No. 9668–M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Amphetamine/Methamphetamine (II) QC Primary B–F, L, M, H, No. 1A99 (B–F, L, M, H) QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/22/88
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Calibrators B–F Code No. 1A99 (B–F).	20 L, 10 L, Carboy: 6 L, 2 L, 1 L, 250 ml, 200 ml, Flask.	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Controls (L, M, H) Code No. 1A99 (L, M, H).	20 L, 10 L, Carboy: 6 L, 2 L, 1 L, 250 ml, 200 ml, Flask.	08/26/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Amphetamine/Methamphetamine II Calibrators B–F No. 1A99 B–F.	5 ml Vial	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Calibrators, No. 1A99–01.	Kit: 6 Vials	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Controls (L, M, H), No. 1A99–L, M, H.	5 ml Vial	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine II Controls, No. 1A99–10.	Kit: 3 Vials	08/26/88
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary B–F, L, M, H, No. 9668 (B–F, L, M, H) QC.	Carboy: 10L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Amphetamine/Methamphetamine QC Primary Standard Control M, No. 9668–M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Controls, No. 1A99X, Y, Z.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Control X, Y, Z; No. 1A99–02, 03, 04.	Kit: 100 vials	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Control X, Y, Z; No. 1A99X, Y, Z.	Vial: 5 ml	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II QC Primary 2–6 QT, NG, CO, PS, No. 1A99 2–6 QT–QC & NG/CO/PS–QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Amphetamine/Methamphetamine II QC Primary 8QT No. 1A998QT–QC.	Carboy: 20 L, 10L; Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/25/91
Abbott Laboratories	Amphetamine/Methamphetamine II bulk Calibrator B, C, D, E, F, No. 01A99–B, C, D, E, F.	Carboy: 20 L, 10 L, 6 L, 2 L, 1 L, 250 ml, 200 ml.	07/14/89
Abbott Laboratories	Amphetamine/Methamphetamine II bulk Control L, M, H, No. 01A99–L, M, H.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	07/14/89
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution, No. 7824.	Plastic Bottle: 2.5 ml	04/07/78
Abbott Laboratories	Barbiturate II U Control L, M, H, No. 9669 L, M, H–11.	Bottle: 5 ml	10/17/89
Abbott Laboratories	Barbiturates Bulk Calibrator B–F, No. 9669 B–F.	Carboy: 9.5, 19 L	07/01/88
Abbott Laboratories	Barbiturates Bulk Control L, H, No. 9669 L, H.	Carboy: 9.5, 19 L	07/01/88
Abbott Laboratories	Barbiturates Bulk Controls, No. 9669X, Y, Z.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	01/19/89
Abbott Laboratories	Barbiturates Control X, Y, Z,; No. 9669X, Y, Z.	Vial: 5 ml	01/19/89
Abbott Laboratories	Barbiturates II QC Primary NG, CO, PS No. 9669, NG/CO/PS–11–QC.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Barbiturates II U Bulk Calibrators B–F; No. 9669 B–F–05.	Carboy: 20 L, 19 L, 10 L, 9.5 L, 6 L, 4 L, 2 L, 1 L, Flask: 250 ml, 200 ml.	10/17/89
Abbott Laboratories	Barbiturates II U Bulk Controls L, M, H; No. 9669 L, M, H–11.	Carboy: 20 L, 19 L, 10 L, 9.5 L, 6 L, 4 L, 2 L, 1 L, Flask: 250 ml, 200 ml.	10/17/89
Abbott Laboratories	Barbiturates II U Calibrators B–F; No. 9669 B–F–05.	Bottle: 5 ml	10/17/89
Abbott Laboratories	Barbiturates II U Calibrators B–F; No. 9669–05.	Kit: 6 vials	10/17/89
Abbott Laboratories	Barbiturates II U Controls L, M, H; No. 9661–11.	Kit: 3 vials	10/17/89
Abbott Laboratories	Barbiturates II U QC Primary B–F; No. 9669 B–F–05 QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	10/17/89
Abbott Laboratories	Barbiturates II U QC Primary L, M, H; No. 9669 L, M, H–11 QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	10/17/89
Abbott Laboratories	Barbiturates QC Primary B–F, L, M, H, No. 9669 (B–F, L, M, H) QC.	Carboy: 10 L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/22/88
Abbott Laboratories	Barbiturates QC Primary Bulk Control M, No. 9669–M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary Standard Control M, No. 9669–M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary X, No. 9669X–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	06/05/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Barbiturates Serum Bulk Calibrator B–F, No. 9679 B–F.	Carboy, Flask, Bottle or Ampule: 50, 45, 20, 10, 8, 6, 4, 2, 1–(L). 500, 250, 200, 125, 100, 50, 30, 20, 15, 10, 5, 2–(ml).	01/03/89
Abbott Laboratories	Barbiturates Serum Bulk Control L, M, H, No. 9676 L, M, H.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	01/03/89
Abbott Laboratories	Barbiturates Serum Calibrators B–F, No. 9679–01.	Kit: 6 vials	01/03/89
Abbott Laboratories	Barbiturates Serum Calibrators B/F, No. 9679 B/F.	Bottle: 5 ml	01/03/89
Abbott Laboratories	Barbiturates Serum Controls L, M, H; No. 9679 L, M, H.	Bottle: 5 ml	01/03/89
Abbott Laboratories	Barbiturates Serum Controls L, M, H; No. 9579–10.	Kit: 3 vials	01/03/89
Abbott Laboratories	Barbiturates Serum QC Primary B–F, L, M, H, No. 9679 (B–F, L, M, H)–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	01/03/89
Abbott Laboratories	Benzodiazepine Serum QC Primary B–F, L, M, H, No. 9682 (B–F, L, M, H)–QC.	Carboy: 10 L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/22/88
Abbott Laboratories	Benzodiazepines Bulk Calibrator No. 9674 B–F.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Calibrators, B–F No. 9674.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	04/21/86
Abbott Laboratories	Benzodiazepines Bulk Control L, H, No. 9674 L, H.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Controls, L and H No. 9674.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	04/21/86
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674–M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674–M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary NG, CO, PS No. 9674 NG/CO/PS–QC.	Carboy: 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Benzodiazepines QC Primary, B–F, L, M, H No. 9674 (B–F, L, M, H) QC.	Carboy: 10 L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Benzodiazepines Serum Bulk Calibrators B–F: Code No. 9682 B–F.	Carboy: 10 liter, Flask: 6 liter, 2 liter	12/07/87
Abbott Laboratories	Benzodiazepines Serum Bulk Calibrators: No. 9682 B–F.	Carboy: 20 liters, 10 liters; Flask: 6 liters, 2 liters, 1 liter.	05/02/88
Abbott Laboratories	Benzodiazepines Serum Bulk Controls L, M, & H: Code No. 9682 L, M, & H.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/88
Abbott Laboratories	Benzodiazepines Serum Bulk Controls: No. 9682 L, M, H.	Carboy: 20 liters, 10 liters; Flask: 6 liters, 2 liters, 1 liter, 250 ml, 200 ml.	05/02/88
Abbott Laboratories	Benzoylecgonine Stock Standard No. 97182, 97182 A–B.	Carboy: 20 L, 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/23/88
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182.	Bottle: 125 ml	11/21/85
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cannabinoids—GS Bulk Controls, No. 3897X, Y, Z.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L. 250 ml, 200 ml.	01/19/89
Abbott Laboratories	Cannabinoids—GS Control X, Y, Z, No. 3897–02, 03, 04.	Kit: 100 vials	01/19/89
Abbott Laboratories	Cannabinoids—GS Control X, Y, Z, No. 3697X, Y, Z.	Vial: 5 ml	01/19/89
Abbott Laboratories	Cannabinoids Bulk Calibrators B–F	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	10/24/86
Abbott Laboratories	Cannabinoids Bulk Controls L, M, H	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	10/24/86
Abbott Laboratories	Cannabinoids Bulk Tracer (No. 94192)	Carboy: 50 L, 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1L.	10/27/86
Abbott Laboratories	Cannabinoids QC Primary 2–6 QT, NG, CO, PS No. 9671–11 2–6 QT–QC & NG/CO/PS–QC.	Carboy: 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Cannabinoids QC Primary 8QT No. 9671–11 8QT–QC.	Carboy: 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/25/91
Abbott Laboratories	Cannabinoids QC Primary NBS, B–F, L, M, H; No. 9671–02 [NBS, B–F]–QC; No. 9671–11[L, M, H]–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 500 ml, 250 ml, 100 ml, 200 ml, Bottle: 5 ml.	12/27/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Cannabinoids QC Primary NBS, B–F, L, M, H; No. 9671 (NBS, B–F, L, M, H)–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Standard (94568)	Bottle: 125 ml	06/19/87
Abbott Laboratories	Cannabinoids Stock Standard (No. 94193).	Bottle: 125 ml	10/24/86
Abbott Laboratories	Cannabinoids Stock Standard 10 mcg/ml—No. 94568, 5 mcg/ml—No. 94568A, 1 mcg/ml—No. 94568B.	Carboy: 20 L, 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, bottle: 950 ml, 500 ml, 100 ml, 5 ml.	12/27/89
Abbott Laboratories	Cannabinoids Stock Standard 10 mcg/ml—No. 94193, 5 mcg/ml—No. 94193A, 1 mcg/ml—No. 94193B.	Carboy: 20 L, 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, bottle: 950 ml, 500 ml, 100 ml, 5 ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Tracer (No. 94194)	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 30 ml, 5 ml, Amp: 20, 10, 5, 2 ml.	10/27/86
Abbott Laboratories	Cannabinoids—GS Bulk Calibrators B–F No. 3897 B–F.	20 L, 10 L Carboy, 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	07/28/88
Abbott Laboratories	Cannabinoids—GS Bulk Controls (L, M, H) Code No. 3897 (L, M, H).	20 L, 10 L Carboy, 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	07/28/88
Abbott Laboratories	Cannabinoids—GS Bulk Tracer Code No. 95826.	10 L Carboy, 6 L, 2 L Flask	07/28/88
Abbott Laboratories	Cannabinoids—GS Calibrators B–F No. 3897 B–F.	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids—GS Calibrators No. 3897–01.	Kit: 6 Vials	07/28/88
Abbott Laboratories	Cannabinoids—GS Controls (L, M, H) No. 3897–L, M, H.	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids—GS Controls No. 3897–10	Kit: 3 Vials	07/28/88
Abbott Laboratories	Cannabinoids—GS QC Primary NBS, B–F, L, M, H; No. 3897 (NBS, B–F, L, M, H)–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	12/27/88
Abbott Laboratories	Cannabinoids—GS Reagent Pack 100 Test No. 3897–20.	Kit: 100 Tests	07/28/88
Abbott Laboratories	Cannabinoids—GS Reagent Pack 100 Test, No. 3897–19.	Kit: 100 Tests	09/22/89
Abbott Laboratories	Cannabinoids—GS Tracer Code No. 3897–T.	5 ml Vial	07/28/88
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20 ml	04/07/78
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator B–F No. 9670 B–F.	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B–F No. 9670.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls L, H No. 9670–L, H.	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls, No. 9670X, Y, Z.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	01/19/89
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No. 97075.	Carboy: 50 L, 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1L.	10/30/85
Abbott Laboratories	Cocaine Metabolite Control X, Y, Z; No. 9670X, Y, Z.	Vial: 5 ml	01/19/89
Abbott Laboratories	Cocaine Metabolite QC Primary 2–6 QT, NG, CO, PS No. 9670 2–6 QT–QC & NG/CO/PS–QC.	Carboy: 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Cocaine Metabolite QC Primary 2–6 QT–C, 8QT–C No. 9670 2–6 QTC–QC, 9670 8QTC–QC.	Carboy: 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/28/91
Abbott Laboratories	Cocaine Metabolite QC Primary 8QT No. 9670 8QT–QC.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/25/91
Abbott Laboratories	Cocaine Metabolite QC Primary B–F, L, M, H, No. 9670 (B–F, L, M, H)–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/23/88
Abbott Laboratories	Cocaine Metabolite QC Primary Bulk Control M, No. 9670–M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary Standard Control M, No. 9670–M.	Bottle: 5 ml	11/10/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Cocaine Metabolite QC Primary X, No. 9670X–QC; Primary Z, No. 9670Z–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	06/05/89
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 97156.	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 30 ml, 5 ml, Amp: 20, 10, 5, 2 ml.	10/30/85
Abbott Laboratories	High Multiconstituent (9) Stock Standard Cat. No. 92622.	Carboy: 50, 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	07/02/91
Abbott Laboratories	Low Multiconstituent (9) Stock Standard Cat. No. 92620.	Carboy: 50, 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	07/02/91
Abbott Laboratories	Low, Medium, High Multiconstituent Stock Standards, No. 90967, 90968, 90969.	Carboy: 10, 20 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/06/89
Abbott Laboratories	Medium Multiconstituent (9) Stock Standard Cat. No. 92621.	Carboy: 50, 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	07/02/91
Abbott Laboratories	Methadone Bulk Calibrators (B–F) Code No. 9676 (B–F).	20 L, 10 L Carboy, 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	09/02/88
Abbott Laboratories	Methadone Bulk Calibrators (L, M, H) Code No. 9676 (L, M, H).	20 L, 10 L Carboy, 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	09/02/88
Abbott Laboratories	Methadone Bulk Stock Standard Code No. 95952.	10 L Carboy, 6 L, 2 L, 1 L Flask	09/02/88
Abbott Laboratories	Methadone Calibrators No. 9676–01	Kit: 6 Vials	09/02/88
Abbott Laboratories	Methadone Calibrators B–F No. 9676 B–F.	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls L, M, H No. 9676–L, M, H.	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls No. 9676–10	Kit: 3 Vials	09/02/88
Abbott Laboratories	Methadone QC Primary NG, CO, PS No. 9676 NG/CO/PS–QC.	Carboy: 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Methadone Stock Standard Code No. 95720.	1 L, 500 ml, 100 ml Bottle	09/02/88
Abbott Laboratories	Morphine Stock Standard No. 97291	Vial: 125 ml	10/16/85
Abbott Laboratories	Morphine Stock Standard No. 97291 A–B	Carboy: 20 L, 10 L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Multiconstituent (9) QC Control H Cat. No. 92625.	Carboy: 50, 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	07/02/91
Abbott Laboratories	Multiconstituent (9) QC Control L Cat. No. 92623.	Carboy: 50, 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	07/02/91
Abbott Laboratories	Multiconstituent (9) QC Control M Cat. No. 92624.	Carboy: 50, 20, 10 L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	07/02/91
Abbott Laboratories	Multiconstituent Bulk Controls L, M, H (No. 9687–L, M, H).	Carboy: 20 L, 10 L, Flask: 10 L, 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	09/03/87
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays Bulk L, M, H, No. 9687–L, M, H.	Carboy: 20 L, 10 L, 19 L, 9.5 L, 6 L, 4 L, 1 L, Flask: 250 ml, 200 ml.	10/06/89
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays L, M, H, No. 9687–L, M, H.	Vial: 5 ml	10/06/89
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays QC Primaries L, M, H, No. 9687–L, H, H–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	10/06/89
Abbott Laboratories	Multiconstituent Controls for Abused Drug Assays, No. 9687–10.	Kit: 6 vials	10/06/89
Abbott Laboratories	Nordiazepam Serum Bulk Stock Standard No. 94941.	Carboy: 10 liters, Flask: 6 liters, 2 liters, 1 liter.	05/02/88
Abbott Laboratories	Nordiazepam Serum Bulk Stock Standard: Code No. 94941.	Carboy: 10 liter Flask: 6 liter, 2 liter	12/07/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Nordiazepam Serum Stock Standard No. 94941, 94941 A, B.	Carboy: 20 L, 10L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Nordiazepam Serum Stock Standard: Code No. 94941.	Bottle: 125 ml	12/07/87
Abbott Laboratories	Nordiazepam Serum Stock Standard: No. 94941.	Bottle: 125 ml	05/02/88
Abbott Laboratories	Nordiazepam Stock Standard No. 97757, 97757 A; B.	Carboy: 20 L, 10L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125 ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B–F No. 9673	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H, No: 9673	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	05/07/86
Abbott Laboratories	Opiates Bulk Controls, No. 9673X, Y, Z	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	01/19/89
Abbott Laboratories	Opiates Bulk Tracer, No. 97458	Carboy: 50 L, 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1L.	05/07/86
Abbott Laboratories	Opiates Control X, Y, Z, No. 9673X, Y, Z	Vial: 5 ml	01/19/89
Abbott Laboratories	Opiates QC Primary (B–F, L, M, H) QC No. 9673 (B–F, L, M, H) QC.	Carboy: 10L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Opiates QC Primary 2–6 QT, NG, CO, PS No. 9673 2–6 QT–QC & NG/CO/PS–QC.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Opiates QC Primary 8QT No. 9673 8QT–QC.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/25/91
Abbott Laboratories	Opiates QC Primary Bulk Control M, No. 9673–M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Opiates QC Primary Standard Control M, No. 9673–M.	Bottle: 5 ml	11/10/87
Abbott Laboratories	Opiates QC Primary X, No. 9673X–QC, Primary Y, No. 9673Y–QC, Primary Z, No. 9673Z–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	06/05/89
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Flasks: 6 L, 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottles: 950 ml, 500 ml, 100 ml, 50 ml, 30 ml, 5 ml; Amp: 20, 10, 5, 2 ml.	05/07/86
Abbott Laboratories	Phencyclidine Bulk Calibrator, B–F, No. 9672.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	03/21/86
Abbott Laboratories	Phencyclidine Bulk Control M, No. 9672	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	09/26/88
Abbott Laboratories	Phencyclidine Bulk Controls, L and H, No. 9672.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	03/21/86
Abbott Laboratories	Phencyclidine Bulk Controls, No. 9672X, Y, Z.	Carboy: 20 L, 10 L, Flask: 6 L, 2 L, 1 L, 250 ml, 200 ml.	01/19/89
Abbott Laboratories	Phencyclidine Control X, Y, Z; No. 9672X, Y, Z.	Vial: 5 ml	01/19/89
Abbott Laboratories	Phencyclidine QC Primary (B–F, L, M, H) QC No. 9672 (B–F, L, M, H) QC.	Carboy: 10L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5, ml.	11/22/88
Abbott Laboratories	Phencyclidine QC Primary 2–6 QT NG, CO, PS, No. 9672 2–6 QT–QC & NG/CO/PS–QC.	Carboy: 20, 10L; Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml. Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Phencyclidine QC Primary 8QT, No. 9672 8QT–QC.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/25/91
Abbott Laboratories	Phencyclidine QC Primary X, No. 9672X–QC, Primary Z, No. 9672Z–QC.	Carboy: 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	06/05/89
Abbott Laboratories	Phencyclidine Stock Standard No. 97158, 97158 A–B.	Carboy: 20 L, 10L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Phencyclidine Stock Standard, No. 95356	Flask: 100 ml, 200 ml, 250 ml, 500 ml, 1 L, 2 L, 4 L, Bottle: 5 ml, 100 ml, 500 ml, 950 ml, Carboys: 10 L, 20L.	04/16/89
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125 ml	11/21/85
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2 ml	01/20/84
Abbott Laboratories	Phenobarbital QC Primary B–F, L, M, H Item No. 9500B–F, L, M, H.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 500, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	01/04/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Phenobarbital Stock Solution 1 mg/ml Code No. 94312.	Plastic Bottle: 125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Solution 10 mg/ml Code No. 94313.	Plastic Bottle: 125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Standard 500 ug/ml Item No. 99259.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 500, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	01/04/91
Abbott Laboratories	Phenobarbital Stock Standard Solution ...	Bottle: 1 liter	08/12/82
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300 ml, 150 ml	09/21/77
Abbott Laboratories	Polyethylene Glycol 8000, 18% Solution in 0.09M Barbital Buffer: No. 07602.	Stainless Steel Tank: 1000 liters	03/09/88
Abbott Laboratories	Progesterone Buffer No. 2242J	Bottle: 30 ml	03/11/92
Abbott Laboratories	Progesterone Buffer No. 2242J0001	Box: 100 Bottles/30 ml	03/11/92
Abbott Laboratories	Progesterone Bulk Buffer No.12918	Carboy: 50 L, 25 L, 20 L, 19 L, 15 L, 13 L, 10 L, 9L, Bottle: 950 ml, 500 ml, 100 ml, 50 ml, 30 ml, 20 ml, Amp: 20 ml, 10 ml, 5 ml, 2 ml.	05/11/92
Abbott Laboratories	Progesterone Reagent Pack No. 2242–20.	Kit: 4 Bottles	03/11/92
Abbott Laboratories	Propoxyphene Bulk Calibrator B–F Item No. 9675(B–F).	Carboys or Flasks: 20 L, 19 L, 10 L, 9.5 L, 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	11/30/90
Abbott Laboratories	Propoxyphene Bulk Control L, M, H List No. 9675(L, M, H).	Carboys or Flasks: 20 L, 19 L, 10 L, 9.5 L, 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	11/30/90
Abbott Laboratories	Propoxyphene Bulk Tracer Item No. 92003.	Carboys or Flasks: 20 L, 19 L, 10 L, 9.5 L, 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	11/30/90
Abbott Laboratories	Propoxyphene Calibrators Item No. 9675–01.	Kit: 5 vials	11/30/90
Abbott Laboratories	Propoxyphene Calibrators Item No. 9675B–F.	Vial: 5 ml	11/30/90
Abbott Laboratories	Propoxyphene Controls Item No. 9675–10.	Kit: 3 vials	11/30/90
Abbott Laboratories	Propoxyphene Controls Item No. 9675 L, M, H.	Vial: 5 ml	11/30/90
Abbott Laboratories	Propoxyphene QC Primary B–F, L, M, H, Z Item No. 9675 (B–F, L, M, H, Z)–QC.	Carboy: 20, 10L, Flasks: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 500, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	11/30/90
Abbott Laboratories	Propoxyphene QC Primary NG, CO, PS No. 9675 NG/CO/PS–QC.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950 ml, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	02/20/91
Abbott Laboratories	Propoxyphene Stock Standard, 100 mcg/ml Item No. 92005.	Carboy: 20, 10L, Flasks: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 500, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	11/30/90
Abbott Laboratories	Propoxyphene Stock Tracer Item No. 92001.	Bottle: 12 ml	11/30/90
Abbott Laboratories	Propoxyphene Tracer Item No. 9675–T ...	Bottles: 3.2 ml, 5 ml	11/30/90
Abbott Laboratories	Secobarbital Bulk Calibrator, B–F No. 9669.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	03/21/86
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669.	Carboy: 20 L, 10 L, Flask: 6 L, 4 L, 2 L, 1 L, 250 ml, 200 ml.	03/21/86
Abbott Laboratories	Secobarbital Stock Standard 1000 mcg/ml—No. 90107, 500 mcg/ml—No. 90107A, 200 mcg/ml—No. 90107B.	Carboy: 20 L, 10 L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	01/03/89
Abbott Laboratories	Secobarbital Stock Standard No. 97171, 97171 A, B.	Carboy: 20 L, 10L, Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Secobarbital Stock Standard, No. 97171 .	Bottle: 125 ml	11/21/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II–VI, Nos. 9755, 9757, 9759, 9761, 9763.	Bottle: 4 ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9876, 9878, 9880. (L, M, H).	Bottle: 4 ml	10/03/85
Abbott Laboratories	TDx Amphetamine Class Calibrators 9667–01.	Kit containing 6 vials	03/01/88
Abbott Laboratories	TDx Amphetamine Class Calibrators B–F	Bottle: 5 ml	03/01/88
Abbott Laboratories	TDx Amphetamine Class Control L and H	Bottle: 5 ml	03/01/88
Abbott Laboratories	TDx Amphetamine Class Controls 9667–10.	Kit containing 2 vials	03/01/88
Abbott Laboratories	TDx Amphetamine Class Reagent Pack, No. 9667–60.	Kit containing 1 vial	03/01/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	TDx Amphetamine Class Tracer Solution, No. 9667T.	Bottle: 5 ml	03/01/88
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9668–01.	Bottles: 4 ml	08/23/85
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9668–10.	Bottles: 4 ml	08/23/85
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669 B–F.	5 ml vial	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669–01.	Kit: 5 vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators, B–F No. 9669.	Bottle: 4 ml	10/08/85
Abbott Laboratories	TDx Barbiturates Control L, H No. 9669 L, H.	5 ml vial	07/01/88
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669.	Bottle: 4 ml	10/08/85
Abbott Laboratories	TDx Barbiturates Controls No. 9669–10	Kit: 2 vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Benzodiazepines Calibrator No. 9674 B–F.	5 ml vial	07/18/88
Abbott Laboratories	TDx Benzodiazepines Calibrators No. 9674–01.	Kit: 5 vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674–01.	Bottles: 4 ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls L, H No. 9674 L, H.	5 ml vial	07/18/88
Abbott Laboratories	TDx Benzodiazepines Controls L, H No. 9674–10.	Kit: 2 vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674–10.	Bottles: 4 ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Serum Calibrator No. 9682 B–F.	Bottle: 4 ml	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators B–F: Code No. 9682 B–F.	Bottle: 4 ml, 5 ml	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators: Code No. 9682–01.	Kit	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators: No. 9682–01.	Kit containing 6 vials	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls L, M, & H: No. 9682 L, M, H.	Bottle: 4 ml	12/07/87
Abbott Laboratories	TDx Benzodiazepines Serum Controls L, M, H: No. 9682 L, M, H.	Bottle: 4 ml	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls: Code No. 9682–10.	Kit	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls: No. 9682–10.	Kit containing 3 vials	05/02/88
Abbott Laboratories	TDx Cannabinoids Calibrators B–F (9671–02).	Bottle: 5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Calibrators B–F (No. 9671–01).	Bottles: 5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Controls L, M, and H (9671–11).	Bottle: 5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Controls L, M, H (No. 9671–10).	Bottles: 5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Fluorescein Tracer Solution (No. 9671–T).	Bottle: 5 ml	10/27/86
Abbott Laboratories	TDx Cannabinoids Reagent Pack (No. 9671–20).	100 tests	10/27/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrator B–F No. 9670 B–F.	5 ml vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B–F No. 9670.	Bottle: 4 ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Calibrators No. 9670–01.	Kit: 5 vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control L, H No. 9670 L, H.	5 ml vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669.	Bottle: 4 ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Controls No. 9670–10.	Kit: 2 vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670 T0001.	Kit: 100 vials, 5 ml each	07/07/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670–T.	Box: 5 ml vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent well: 5 ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack No. 9670–20.	Kit: 100 tests	07/07/88
Abbott Laboratories	TDx Multiconstituent Controls L, M, H (No. 9687–L, M, H).	Bottle: 5 ml	09/03/87
Abbott Laboratories	TDx Opiates Calibrators B–F: No. 9673–01.	Vial: 4 ml	02/29/88
Abbott Laboratories	TDx Opiates Calibrators, B–F No. 9673	5 ml vial	05/07/86
Abbott Laboratories	TDx Opiates Controls L and H: No. 9673 L, H.	Vial: 4 ml	02/29/88
Abbott Laboratories	TDx Opiates Controls, L and H, No. 9673	Vials: 5 ml	05/07/86
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution No. 9673 T0001.	Box: 10 vials, 5 ml each	07/08/88
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution: No. 9673–T.	Reagent Well: 5 ml	02/29/88
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673–20, 100 tests.	Reagent Well: 5 ml, 100 tests	05/07/86
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B–F No. 9672 B–F.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B–F No. 9672 B–F.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Control L, M, H No. 9672 L, M, H.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators B–F No. 9672–01.	Kit: 5 vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators, B–F No. 9672.	Bottle: 4 ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4 ml	09/26/86
Abbott Laboratories	TDx Phencyclidine Controls L, M, H No. 9672 L, M, H.	5 ml vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls No. 9672–10	Kit: 3 vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls, L and H, No. 9672.	Bottle: 4 ml	10/09/85
Abbott Laboratories	TDx Phenobarbital Bulk Calibrators No. 9500 B–F.	Carboy: 10 L, 20 L	06/16/88
Abbott Laboratories	TDx Phenobarbital Bulk Calibrators No. 9500 L, M, H.	Carboy: 10 L, 20 L	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrator—0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	08/31/81
Abbott Laboratories	TDx Phenobarbital Calibrators B–F No. 9500 B–F.	5 ml vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrators No. 9500–01.	5 vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500 L, M, H.	5 ml vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500–10	Kit: 3 vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls—15.0, 30.0, 50.0 mcg/ml.	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	TDx Propoxyphene Reagent Pack Item No. 9675–20.	Kit: 100 tests	11/30/90
Abbott Laboratories	TDx Systems Multiconstituent Controls for Abused Drug (No. 9687–10).	Kit: 6 bottles	09/03/87
Abbott Laboratories	TDx or TDx/TDxFLx Propoxyphene Fluorescein Tracer Solution Item No. 9675T0001.	Box: 100 bottles or less	11/30/90
Abbott Laboratories	TDx, ADx Amphetamine Class Reagent Pack, No. 9667–20, No. 9667–55.	Kit: 100 tests	03/01/88
Abbott Laboratories	TDx/TDxFLx Propoxyphene Reagent Pack Item No. 9675–60.	Kit: 100 tests	11/30/90
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125.	Glass Bottle: 13 ml. Plastic Bottle: 250 ml	04/22/76
Abbott Laboratories	TrakPak Five Drug Control 2–6 QT Nos. 92212–92216.	Carboy: 20, 10L Flask: 6, 4, 2, 1 L, 500, 250, 200, 100, ml Bottle: 950, 500, 100, 50, 5 ml Ampule: 20, 10, 5, 2 ml.	10/19/90
Abbott Laboratories	TrakPak Five Drug Control 8QT No. 93349.	Carboy: 20, 10l, FlaskL: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/25/91
Abbott Laboratories	TrakPak Five Drug Control Stock No. 92210.	Carboy: 20, 10L, Flask: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottle: 950, 500, 100, 50, 5 ml, Ampule: 20, 10, 5, 2 ml.	10/19/90

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Abbott Laboratories	Trakpak Card w/Cover Code #01249	Box: 2000 cards w/cover	03/08/91
Abbott Laboratories	Trakpak Card w/Tracers Code #01248	Box: 2000 cards	03/08/91
Abbott Laboratories	Trakpak Cocaine Tracer Code #92199	Flasks: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 500, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	03/08/91
Abbott Laboratories	Trakpak Drug of Abuse Screening System (40 test kit) Code #04A74.	Kit: 40 cartridges	03/08/91
Abbott Laboratories	Trakpak Negative Control Code #04A74C	Vial: 5 ml	03/08/91
Abbott Laboratories	Trakpak Opiates Tracer Code #92198	Flasks: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 5, 00, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	03/08/91
Abbott Laboratories	Trakpak Reaction Cartridge Code #04A74B.	Cartridge: 1 card	03/08/91
Abbott Laboratories	Trakpak THC Tracer Code #92200	Flasks: 6, 4, 2, 1 L, 500, 250, 200, 100 ml, Bottles: 950, 500, 100, 50, 5 ml, Ampules: 20, 10, 5, 2 ml.	03/08/91
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Calibrator B, C, D, E, F, No. 01A99–B, C, D, E, F.	Vial: 5 ml	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Calibrators, No. 01A99–01.	Kit: 6 vials	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Control L, M, H, No. 01A99–L, M, H.	Vial: 5 ml	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Controls, No. 01A99–10.	Kit: 3 vials	07/14/89
Abbott Laboratories	X Systems Methadone Calibrators B–F	Kit: 6 Bottles	05/12/92
Abbott Laboratories	X Systems Methadone Calibrators B–F	Bottle: 5 ml	05/15/92
Abbott Laboratories	X Systems Methadone Controls L, M, H, No. 9676–10.	Kit: 3 Bottles	05/15/92
Abbott Laboratories	X Systems Methadone Controls L, M, H, No. 9676 L, M, H.	Bottle: 5 ml	05/15/92
Abbott Laboratories	d-Amphetamine (II) Bulk Stock Standard Code No. 95947.	10 L Carboy, 6 L, 2 L, 1 L Flask	08/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard Code No. 95934.	1 L, 500 ml, 100 ml Bottle	08/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard No. 95934, 95934 A–B.	Carboy: 20 L, 10 L Flask: 4 L, 2 L, 1 L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Adri/Technam	3–Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5–Ethyl-5-(1–Carboxy-n-propyl) Barbituric Acid.	Screw Cap Vial	05/03/73
Adri/Technam	5–Ethyl-5-(1–Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10 ml	05/03/73
Adri/Technam	5–Ethyl-5-(1–Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10 ml	05/03/73
Adri/Technam	Barbiturate Standard	Screw-cap vial: 10 ml	07/17/76
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells.	Vaccine Vial: 50 ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial: 10 ml	04/18/74
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells.	Vaccine Vial: 50 ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial: 10 ml	07/17/76
Adri/Technam	Benzoyl Ecgonine-BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine-RSA	Vaccine Vial	07/21/75
Adri/Technam	CMM–BSA and CMM–RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10 ml	05/03/73
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/03/85
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Adri/Technam	Drug Standards, Acid/Neutral Mixture A and B.	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Methadone Standard	Screw-cap vial: 10 ml	07/17/76
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50 ml	05/03/73
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial: 10 ml	07/17/77
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle: 10 ml	05/03/73
Alltech-Applied Science	4-Methylaminorex	Vial: 1 ml	06/16/89
Alltech-Applied Science	6-Acetylcodeine	Vial: 1 ml	06/16/89
Alltech-Applied Science	Benzoylecgonine Tetrahydrate 7.5µg, 50µg, 250µg.	Amber Ampoule: 1 ml	02/16/90
Alltech-Applied Science	Bromazepam	Vial: 1 ml	06/16/89
Alltech-Applied Science	Cyclopentobarbital	Vial: 1 ml	06/16/89
Alltech-Applied Science	GC/MS Benzoylecgonine Calibration Standards Kit.	Kit: 3 vials	02/16/90
Alltech-Applied Science	L-Amphetamine HCl	Vial: 1 ml	06/16/89
Alltech-Applied Science	MDE HCl	Vial: 1 ml	06/16/89
Alltech-Applied Science	Medazepam	Vial: 1 ml	06/16/89
Alltech-Applied Science	Methatbital	Vial: 1 ml	06/16/89
Alltech-Applied Science	N-Ethylamphetamine	Amber Ampoule: 1 ml	02/16/90
Alltech-Applied Science	N-Hydroxy-MDA	Amber Ampoule: 1 ml	02/16/90
Alltech-Applied Science	Normeperidine HCl	Vial: 1 ml	06/16/89
Alltech-Applied Science	Phenmetrazine HCl	Amber Ampoule: 1 ml	02/16/90
Alltech-Applied Science	Talbutal	Vial: 1 ml	06/16/89
Alltech-Applied Science	Thiopental	Vial: 1 ml	06/16/89
Alltech-Applied Science	d3-Benzoylecgonine Tetrahydrate	Amber Ampoule: 5 ml	02/16/90
Alltech-Applied Science	l-Methamphetamine HCl	Vial: 1 ml	06/16/89
American Biological Technologies, Inc	Dade Urine Chemistry Control, Level I & II.	Glass Vial: 15 ml	04/08/91
American Monitor Corporation	Qualify I	Glass Vial: 10 ml	10/09/75
American Monitor Corporation	Qualify II	Glass Vial: 10 ml	10/09/75
Amersham Corporation	5 Alpha-Dihydro[1,2,4,5,6,7-3H]Testosterone Cat. No. TRK.443.	Vial: 6 ml	04/02/91
Amersham Corporation	5 alpha-Dihydro[1 alpha, 2 alpha(n)-3H] Testosterone Cat. No. TRK.395.	Vial: 6 ml	04/02/91
Amersham Corporation	5 alpha-dihydro[1,2,4,5,6,7-3H] Testosterone Reagent 4 T/DHT RIA Kit.	Vial: 1 ml	04/11/91
Amersham Corporation	Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004.	Kit: 50 tests, 100 tests, 400 tests	02/18/80
Amersham Corporation	Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014.	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex-M B-hCG Radioimmunoassay Kit IM 3091, IM 3094.	Kit: 100 tests, 400 tests	06/19/85
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004.	Kit: 100 Tests, 400 Tests	08/27/86
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014.	Kit: 100 Tests, 400 Tests	08/27/86
Amersham Corporation	Amerlite FSH Assay, Cat. Code LAN.0077, Cat. Code LAN.2077.	Glass vial: 5.8 ml, 38.1 ml, 240 tests, 144 tests.	05/30/89
Amersham Corporation	Amerlite Rubella Antibody Assay, Cat. Code LAN.0200, Cat. Code LAN.2200.	Glass vial: 5.8 ml, 38.1 ml, 240 tests, 144 tests.	05/30/89
Amersham Corporation	Amerlite TSH Assay, Cat. Code LAN.0001, Cat. Code LAN.2001.	Glass vial: 5.8 ml, 240 tests, 144 tests	05/30/89
Amersham Corporation	Amerlite TT3 Assay: Catalog Code Lan. 0003, Lan. 1003, and Lan.2003.	Kit: 144 tests, 240 tests, 480 tests	11/24/87
Amersham Corporation	Amerlite TT4 Assay: Catalog Code Lan. 0002, Lan. 1002, Lan. 2002.	Kit: 144 tests, 240 tests, 480 tests	11/24/87
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Custom Preparation	03/27/72
Amersham Corporation	Dihydrotestosterone Standard Reagent 3 T/DHT RIA Kit.	Vial: 5.5 ml	04/11/91
Amersham Corporation	Morphine (N-methyl-C14) Hydrocloride No. CFA-363.	Vial: 0.32 to 1.89 mg	03/27/72
Amersham Corporation	Pheno [2-14C] barbital Catalog No. CFA 537.	Vial: 0.39 to 5.85 mg	11/05/74
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80
Amersham Corporation	T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024.	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	Testosterone Standard Reagent 2 T/DHT RIA Kit.	Vial: 5.5 ml	04/11/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Amersham Corporation	Testosterone-3-(0-carboxymethyl)oximino-(2-[125I] iodohistamine)10μCi, 25μCi Cat. No. IM.128.	Vial: 1.2 ml	04/02/91
Amersham Corporation	Testosterone/dihydrotestosterone [3H] assay system Cat. No. TRK-600.	Kit: 200 assays	04/11/91
Amersham Corporation	[1(N)-3H] Hydromorphone TRQ 4729	Vial: 47.5–95 micrograms	07/31/87
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampule: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1(n)-3H] Morphine, No. TRK-447	Vial: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1,2,6,7-3H] Testosterone Cat. No. TRK.402.	Vial: 6 ml	04/02/91
Amersham Corporation	[1,7,8(n)-3H]Dihydromorphine, No. TRK-450.	Vial: 0.0008 mg to 0.008 mg	02/26/74
Amersham Corporation	[15,16(n)-3H] Etorphine, Catalog No. TRK 476.	Vial: 3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15,16(n)-3H] Etorphine Catalog No. TRK 476.	Vial: 13.8 to 27.6 micrograms	02/17/75
Amersham Corporation	[17 alpha-methyl-3H] Mibolerone Cat. No. TRK.764.	Vial: 6 ml	04/02/91
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461.	Vial: 0.003 mg to 0.04 mg	05/22/74
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA.591	Multidose Glass Vial: 56 mm x 25 mm	09/28/77
Amersham Corporation	[3H]11-Ketotestosterone Cat. No. TRQ.5919.	Vial: 5.7 ml	06/13/91
Amersham Corporation	[4-14C] Testosterone 50μCi, 250μCi Cat. No. CFA.129.	Vial: 6 ml	04/02/91
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK.572.	Multidose Glass Vial: 56 mm x 25 mm	09/28/77
Analytical Control Systems, Inc	Benchmark I TDM Control 1 L, 2M, 3H	Plastic Vial: 5 ml per Vial; 1–120 Vials per Bag.	10/02/91
Applied Science Laboratories	6-Monoacetylmorphine HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	Allylisobutylbarbituric Acid	Vial: 1 ml	01/24/73
Applied Science Laboratories	Alphaprodine HCl	Vial: 1 ml	04/16/85
Applied Science Laboratories	Alphenal	Vial: 1 ml	01/24/73
Applied Science Laboratories	Alprazolam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Amobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Amphetamine HCl	Vial: 1 ml	01/24/73
Applied Science Laboratories	Aprobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Barbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Barbiturates, Mixture 4	Vial: 10 ml	10/04/72
Applied Science Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1 ml	04/16/85
Applied Science Laboratories	Benzphetamine HCl	Vial: 1 ml	04/16/85
Applied Science Laboratories	Butabarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Butethal	Vial: 1 ml	01/24/73
Applied Science Laboratories	Cannabidiol	Vial: 1 ml	03/30/88
Applied Science Laboratories	Cannabinol	Vial: 1 ml	03/30/88
Applied Science Laboratories	Chloral Hydrate	Vial: 1 ml	04/16/85
Applied Science Laboratories	Chlordiazepoxide HCl	Vial: 1 ml	04/16/85
Applied Science Laboratories	Clonazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Clorazepate Dipotassium	Vial: 1 ml	04/16/85
Applied Science Laboratories	Cocaine	Vial: 1 ml	01/24/73
Applied Science Laboratories	Codeine	Vial: 1 ml	01/24/73
Applied Science Laboratories	Delta-8-Tetrahydro-cannabinol	Vial: 1 ml	03/30/88
Applied Science Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1 ml	04/16/85
Applied Science Laboratories	Depressants, Mixture 3	Vial: 10 ml	10/04/72
Applied Science Laboratories	Dextropropoxyphene HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Diacetylmorphine HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Diallybarbituric acid	Vial: 1 ml	01/24/73
Applied Science Laboratories	Diazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Diethylpropion HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Dihydrocodeine	Vial: 1 ml	04/16/85
Applied Science Laboratories	Dimethyltryptamine	Vial: 1 ml	04/16/85
Applied Science Laboratories	Drug Mix Four	Ampoule: 1 ml	11/03/86
Applied Science Laboratories	Drug Mix One	Ampoule: 1 ml	10/21/86
Applied Science Laboratories	Drug Mix Three	Ampoule: 1 ml	11/03/86
Applied Science Laboratories	Drug Mix Two	Ampoule: 1 ml	10/21/86
Applied Science Laboratories	Ecgonine HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Ecgonine Methyl Ester HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	Ethchlorvynol	Vial: 1 ml	01/24/73
Applied Science Laboratories	Ethinamate	Vial: 1 ml	01/24/73
Applied Science Laboratories	Ethylmorphine HCL	Vial: 1 ml	01/24/73
Applied Science Laboratories	Fenfluramine HCL	Vial: 1 ml	04/16/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Applied Science Laboratories	Fentanyl	Vial: 1 ml	04/16/85
Applied Science Laboratories	Flurazepam HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Glutethimide	Vial: 1 ml	01/24/73
Applied Science Laboratories	Halazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Hexobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Hydrocodone Bitartrate	Vial: 1 ml	01/24/73
Applied Science Laboratories	Hydromorphone HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Levorphanol Tartrate	Vial: 1 ml	04/16/85
Applied Science Laboratories	Lorazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Lysergic Acid	Vial: 1 ml	04/16/85
Applied Science Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1 ml	04/16/85
Applied Science Laboratories	Lysergic Acid diethylamide	Vial: 1 ml	04/16/85
Applied Science Laboratories	MDA HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	MDMA HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	Meperidine HCL	Vial: 1 ml	01/24/73
Applied Science Laboratories	Mephobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Meprobamate	Vial: 1 ml	01/24/73
Applied Science Laboratories	Mescaline	Vial: 1 ml	01/24/73
Applied Science Laboratories	Methadone HCL	Vial: 1 ml	01/24/73
Applied Science Laboratories	Methamphetamine HCL	Vial: 1 ml	01/24/73
Applied Science Laboratories	Methaqualone HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Methohexital	Vial: 1 ml	04/16/85
Applied Science Laboratories	Methylphenidate	Vial: 1 ml	01/24/73
Applied Science Laboratories	Methyprylon	Vial: 1 ml	04/16/85
Applied Science Laboratories	Mixture 1-Opiates	Vial: 1 ml	10/04/72
Applied Science Laboratories	Mixture 2–Stimulants	Vial: 1 ml	10/04/72
Applied Science Laboratories	Mixture 3–Depressants	Vial: 1 ml	10/04/72
Applied Science Laboratories	Mixture 4–Barbiturates	Vial: 1 ml	10/04/72
Applied Science Laboratories	Mixture 5–Kit of Representatives	Vial: 1 ml	10/04/72
Applied Science Laboratories	Morphine	Vial: 1 ml	01/24/73
Applied Science Laboratories	Nalorphine	Vial: 1 ml	01/24/73
Applied Science Laboratories	Nitrazepam	Vial: 1 ml	03/30/88
Applied Science Laboratories	Norcodeine HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Nordiazepam	Vial: 1 ml	03/30/88
Applied Science Laboratories	Normorphine	Vial: 1 ml	04/16/85
Applied Science Laboratories	Opiates, Mixture 1	Vial: 10 ml	10/04/72
Applied Science Laboratories	Oxazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Oxycodone HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Oxymorphone HCL	Vial: 1 ml	04/16/85
Applied Science Laboratories	Paraldehyde	Vial: 1 ml	04/16/85
Applied Science Laboratories	Pemoline	Vial: 1 ml	04/16/85
Applied Science Laboratories	Pentazocine	Vial: 1 ml	04/16/85
Applied Science Laboratories	Pentazocine HBr	Vial: 1 ml	01/24/73
Applied Science Laboratories	Pentobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Phencyclidine HCL	Vial: 1 ml	01/24/73
Applied Science Laboratories	Phendimetrazine Bitartrate	Vial: 1 ml	04/16/85
Applied Science Laboratories	Phenobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Phentermine	Vial: 1 ml	04/16/85
Applied Science Laboratories	Prazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Propylbenzoyl-ecgonine	Vial: 1 ml	03/30/88
Applied Science Laboratories	Psilocybin	Vial: 1 ml	04/16/85
Applied Science Laboratories	Psilocyn	Vial: 1 ml	11/06/87
Applied Science Laboratories	Secobarbital	Vial: 1 ml	01/24/73
Applied Science Laboratories	Stimulants, Mixture 2	Vial: 10 ml	10/04/72
Applied Science Laboratories	Temazepam	Vial: 1 ml	04/16/85
Applied Science Laboratories	Thebaine	Vial: 1 ml	01/24/73
Applied Science Laboratories	Thiamylal	Vial: 1 ml	01/24/73
Applied Science Laboratories	Toxi Clean Test Mix	Vial: 1 ml	03/30/88
Applied Science Laboratories	Triazolam	Vial: 1 ml	04/16/85
Armed Forces Institute of Pathology	11-nor-9-carboxy-delta 8–THC in Ethanol Ampules.	Glass Ampule: 1mg/ml, 1 ml, 5 ml, 10 ml	01/25/82
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
Atochem North America, Inc	M&T NiproTeq SB Additive	Polypropylene Containers: 5 gallons, 55 gallons.	03/10/88
BHP Diagnostix, Inc	Kallestad TDM Multi-Calibrator-Pilot Lot B–G.	Kit: 7–3 ml Vials; 3 ml Vial	08/18/88
BHP Diagnostix, Inc	Kallestad TDM Multi-Calibrator-Pilot-Lot Phenobarbital.	3 ml, 6 ml, 10 ml, 30 ml, 50 ml Vial	08/18/88
BHP Diagnostix, Inc	Kodak Ektachem-DT Calibrator	Bottle: 6 ml	01/05/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Baxter Diagnostics Inc., Dade Division	(125I) Human TSH Tracer, Cat. No. CA–2623.	Vial: 15 ml	12/07/89
Baxter Diagnostics Inc., Dade Division	Absorbed Plasma and Serum Reagents Kit B4233–2.	Glass Vial: 5 ml (Lyophilized Material)	08/16/71
Baxter Diagnostics Inc., Dade Division	Bovine Chemistry Control I.X Special Order Request B5107–55XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Baxter Diagnostics Inc., Dade Division	Bovine Chemistry Control II.X Special Order Request B5107–65XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Baxter Diagnostics Inc., Dade Division	Buffered Thrombin (Bovine) Catalog No. B4233–40.	Bottle: 5 ml (Lyophilized Material)	01/24/86
Baxter Diagnostics Inc., Dade Division	Dade IAC.X Comprehensive Immuno-Assay Control, Tri-Level Unassayed.	Kit: 6 bottles	08/27/91
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Control, Level I–Low	Bottle: 9 ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Control, Level II–Intermediate.	Bottle: 9 ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Control, Level III–High.	Bottle: 9 ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Controls, Tri-Level ...	Kit: 3 bottles	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade TDM Control Level I–Low B5700–2	Glass Vial: 9 ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc., Dade Division	Dade TDM Control Level II–Intermediate B5700–3.	Glass Vial: 9 ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc., Dade Division	Dade TDM Control Level III–High B5700–4.	Glass Vial: 9 ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc., Dade Division	Dade Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700–1).	Kit: 9 Vials	03/10/87
Baxter Diagnostics Inc., Dade Division	Dade Urine Chemistry Control Level I, II .	Kit: 10 Bottles; Bottle: 18 ml	08/02/91
Baxter Diagnostics Inc., Dade Division	Data-Fi Euglobulin Lysis Set Cat. No. B4233–40.	Kit: 70 Tests	09/09/86
Baxter Diagnostics Inc., Dade Division	Data-Fi Fibrin Monomer Control Catalog Nos. B4233–30 & B4233–38.	Glass Vial: 5 ml (Lyophilized Material)	01/24/86
Baxter Diagnostics Inc., Dade Division	Data-Fi Fibrinogen Determination Reagents Cat. No. B4233–15.	Kit: 50 tests	09/09/86
Baxter Diagnostics Inc., Dade Division	Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233–30).	Kit: 10 Vials	03/10/87
Baxter Diagnostics Inc., Dade Division	Data-Fi Thrombin Reagent	Bottle: 5 ml (Lyophilized Material) Vial: 9 ml Carton: 10 vials, Cat. No. 28 10 09.	05/18/61
Baxter Diagnostics Inc., Dade Division	Data-Fi Thrombin Reagent	Bottle: 9 ml (Lyophilized Material)	07/20/83
Baxter Diagnostics Inc., Dade Division	Immunoassay Control Level I–III Unassayed.	Bottle: 9 ml	08/27/91
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level I Chemistry Control, Assayed, Special Order Request. B5103–XXX.	Bottle: 9 ml (Lyophilized Material)	01/20/84
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level I.X Special Order Request B5106–5X.	Bottle: 18 ml (Lyophilized Material)	06/30/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103–XXX, B5113–XXX.	Bottle: 9 ml (Lyophilized Material)	01/20/84
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level II.X Special Order Request B5106–6X.	Bottle: 18 ml (Lyophilized Material)	06/30/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level I Chemistry Control, Assayed..	Bottles: 9 ml, 6.7 ml (Lyophilized Material).	07/15/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106–75AAA Catalog No. B5106–1XAAA.	Bottle: 18 ml, 9 ml (Lyophilized Material) .	06/27/86
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level II Chemistry Control, Assayed.	Bottle: 9 ml, 6.7 ml (Lyophilized Material)	07/15/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106–85AAA Catalog No. B5106–2XAAA.	Bottle: 18 ml, 9 ml (Lyophilized Material) .	06/27/86
Baxter Diagnostics Inc., Dade Division	Owren's Veronal Buffer	Bottle: 18 ml	08/16/71
Baxter Diagnostics Inc., Dade Division	Stratus Phenobarbital Calibrators B, C, D, E, & F.	Glass Vial: 3 ml	06/27/83
Baxter Diagnostics Inc., Dade Division	Stratus Phenobarbital Conjugate	Glass Vial: 6 ml	01/25/82
Baxter Diagnostics Inc., Dade Division	Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5700–22).	Kit: 120 tests	03/10/87
Baxter Diagnostics Inc., Dade Division	Thrombin Reagent (Bovine)	Bottle: 5 ml (Lyophilized Material) Vial: 5 ml Carton: 10 vials, Cat. No. 28 10 12.	08/16/71
Beckman Instruments, Inc	Beckman B–1 Buffer	Plastic Vial: 15 g	05/22/79
Beckman Instruments, Inc	Beckman Buffer B–2	Packet: 18.16 g	04/24/71
Beckman Instruments, Inc	Beckman ICS Drug Calibrators A, B, C, D, and E.	Vials: 5 ml	10/29/80

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Beckman Instruments, Inc	Beckman ICS Drug Control Sera	Kit containing: 6–1 ml bottles	11/11/80
Beckman Instruments, Inc	Beckman ICS Phenobarbital Conjugate	Vial: 5 ml	10/29/80
Beckman Instruments, Inc	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc	Paragon Electrophoresis System: Alkaline Phosphatase Isoenzyme Electrophoresis (Isopal) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc	Paragon Electrophoresis System: High Resolution Electrophoresis (HRE) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc	Paragon Electrophoresis System: Immunoelectrophoresis (IEP) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5 ml	07/31/86
Beckman Instruments, Inc	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5 ml	07/31/86
Beckman Instruments, Inc	Paragon Electrophoresis System: Lipoprotein Electrophoresis (LIPO) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc	Paragon Electrophoresis System: Protein Electrophoresis (SPE–II) Kit.	Plastic Tray: 3.5 ml	07/31/86
Beckman Instruments, Inc	Paragon Electrophoresis System: Serum Protein Electrophoresis (SPE) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays.	05/19/89
Beckman Instruments, Inc	Synchron Control: Multilevel Comprehensive Chemistry Control Serum Levels I, II, III.	Plastic Bottle: 20 ml; Kit: 6 bottles	05/13/91
Beckman Instruments, Inc	Triad LINK Comprehensive Custom Unassayed Chemistry Control Serum Levels I, II, III.	Plastic Bottle: 20 ml; Box: 20 Bottles	05/13/91
Beckman Instruments, Inc	Triad NYSPATH Comprehensive Custom Unassayed Chemistry Control Serum Levels I, II, III.	Plastic Bottle: 20 ml; Box 20 Bottles	05/13/91
Beckman Instruments, Inc	Vigil PRx Multilevel Protein/Drug Control Serum Levels I, II, III.	Plastic Bottle: 10 ml; Kit: 6 Bottles	05/13/91
Becton Dickinson & Company	IQ Immunochemistry System, Thyroid Stimulating Hormone Catalog No. 3010.	Kit: 25 tests	06/30/87
Becton Dickinson & Company	Neonatal T4 Tracer, Catalog #264015	Bottle: 125 ml	01/15/92
Becton Dickinson & Company	T3 Tracer Solution Catalog No. 237728	Bottle: 125 ml	09/27/78
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259624	Clear vial: 10 ml	09/04/86
Behring Diagnostics	IEP Buffer, 793001 pH 8.2	Foil Pouch: 6.5 g.	09/17/79
Behring Diagnostics	Immuno-tec II Agarose Plate, 839013, 850013.	Foil Pouch: "5.35" x "5.25"	09/17/79
Bio-Metric Systems, Incorporated	Cocaine-Enzyme Conjugate	Vial: 250 ml, 100 ml, 50 ml	07/07/92
Bio-Metric Systems, Incorporated	Cocaine-ImmunoPrime Modified Carrier	Vial: 50 ml, 10 ml	07/07/92
Bio-Metric Systems, Incorporated	Morphine-Enzyme Conjugate	Vial: 250 ml, 100 ml, 50 ml	07/07/92
Bio-Metric Systems, Incorporated	Morphine-ImmunoPrime Modified Carrier	Vial: 50 ml, 10 ml	07/07/92
Bio-Metric Systems, Incorporated	Phencyclidine-Enzyme Conjugate	Vial: 250 ml, 100 ml, 50 ml	07/07/92
Bio-Metric Systems, Incorporated	Phencyclidine-ImmunoPrime Modified Carrier.	Vial: 50 ml, 10 ml	07/07/92
Bio-Metric Systems, Incorporated	Tetrahydrocannabino-Enzyme Conjugate	Vial: 250 ml, 100 ml, 50 ml	07/07/92
Bio-Metric Systems, Incorporated	Tetrahydrocannabinol-ImmunoPrime Carrier.	Vial: 50 ml, 10 ml	07/07/92
Bio-Rad Laboratories	Benzodiazepines/Tricyclic Antidepressants by HPLC.	Kit: 100 tests	02/08/90
Bio-Rad Laboratories	Dade Urine Chemistry Control Levels I AND II.	Vial: 20 ml, 50 ml	01/05/88
Bio-Rad Laboratories	Dade Urine Toxiology Control	Vial: 50 ml	01/05/88
Bio-Rad Laboratories	Internal Standard	Amber vial: 30 ml Flask: 200 ml–2000 ml	02/08/90
Bio-Rad Laboratories	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10 ml	08/20/84
Bio-Rad Laboratories	Lypochek Immunoassay Control Levels I, II, III.	Vial: 10 ml	09/24/87
Bio-Rad Laboratories	Lypochek Quantitative Urine Control Levels I and II.	Vial: 20 ml, 50 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Bovine) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Human) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Methadone/Methadone Metabolite Reagent Kit.	400 tests	09/17/90
Bio-Rad Laboratories	Quantaphase Thyroxine RIA–125I Tracer/ Dissociating Reagent.	Plastic bottle: 60 ml, 260 ml	05/06/81

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Bio-Rad Laboratories	Quantaphase Thyroxine RIA–Thyroxine Immunobeads.	Plastic bottle: 60 ml, 260 ml	05/06/81
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000 ml, 250 ml, 200 ml	05/31/78
Bio-Rad Laboratories	Quantimune Radioimmunoassay T–4 Tracer, Iodine-125.	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	Quantimune T–3 RIA Barbital Buffer	Bottle: 220 ml	09/24/82
Bio-Rad Laboratories	Quantimune T–3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T–4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune T–4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune Thyroxine Radio-Immunoassay Barbital Buffer.	Plastic Bottle with Screw cap: 1 liter	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T–4 125I Tracer/ Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	REMEDI DPS Check Mix	Vial: 20 ml, Flask: 1L–10L	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard Combination.	Vial: 20 ml, Flask: 250 ml–6000 ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard One	Vial: 20 ml, Flask: 250 ml–2500 ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard Two	Vial: 20 ml, Flask: 250 ml–5000 ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Urine Calibrator	Vial: 20 ml, Flask: 1L–10L	09/17/90
Bio-Rad Laboratories	Serum Calibrator 1	Amber vial: 20 ml, Polypropylene container: 20L.	02/09/90
Bio-Rad Laboratories	Serum Calibrator 2	Amber vial: 20 ml, Polypropylene container: 20L.	02/09/90
Bio-Rad Laboratories	Serum Calibrator for Benzodiazepines/ Tricyclics, Contains 2.	Box: 2 vials	02/08/90
Bio-Rad Laboratories	T–4 Competitive Binding Reagent, Iodine-125.	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories	Urine Toxicology Control No. C–470–25	Amber Vial: 50 ml	09/19/79
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer	Vial: 10 ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250 ml	09/09/77
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250 ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g	05/09/74
Bio-Rad Laboratories, (Chemical Division)	Bio-Rad Electrophoresis Buffer	Bottle: 500 ml	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Electrophoresis Buffer, Dry-Pack	Package: 6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer I, pH 8.6.	Dry-pack: 25.6 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer II, pH 8.6.	Dry-pack: 15.61 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III, pH 8.6.	Dry-pack: 6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III-a, pH 8.6.	Dry-pack: 15.07 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Reagent No. 3	Bottle: 165 ml	12/14/72
Bio-Rad Laboratories, (Clinical Division)	Benzodiazepines/Tricyclics/Plasma Catecholamines (BZ/TCA/pCats) Serum Calibrators Bulk Preparations.	Polypropylene Container: 15L–100L	03/28/91
Bio-Rad Laboratories, (Clinical Division)	Plasma Catecholamines by HPLC, 100 Test.	Kit: 100 Test	03/28/91
Bio-Rad Laboratories, (Clinical Division)	Plasma Catecholamines by HPLC, Serum Calibrator Set, 1x6 vials.	Vial: 20 ml, Set: 6 vials	03/28/91
Bio-Rad Laboratories, (ECS Division)	Benzo/TCA Control Levels I & II	Vial: 10 ml, Box: 6 vials	03/20/91
Bio-Rad Laboratories, (ECS Division)	Blind Performance Specimen Set Cat. #610.	Kit: 5 bottles	09/14/90
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Assayed Chemistry Control Serum (Human) Levels I and II.	Vials: 10 ml. each	04/13/88
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Immunoassay Plus Control Serum Levels 1–3.	Vial: 10 ml, Kit: 12 vials	09/14/90
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Urine Toxicology Control-Confirm.	Box: 10 vials, Vial: 50 ml	09/14/91
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Urine Toxicology Control-Law.	Vials: 20 ml. each	04/13/88
Bio-Rad Laboratories, (ECS Division)	LYPHOCHEK Urine Toxicology Control-Screen.	Box: 10 vials, Vial: 20 ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Amphetamines	Bottle: 90 ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Cocaine	Bottle: 90 ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Marihuana	Bottle: 90 ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Opiates	Bottle: 90 ml	09/14/90
Bio-Rad Laboratories, (ECS Division)	Positive for Phencyclidine	Bottle: 90 ml	09/14/90
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5 ml	03/11/85
Bioscientific Corp.	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box.	07/14/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Bioscientific Corp/ECA	Agarose Barbital Buffer CSB 470182	Vial: 7 drams	11/15/90
Bioscientific Corp/ECA	Agarose Barbital Buffer ECA 470182	Vial: 12 drams, Box: 3 vials	11/15/90
Bioscientific Corp/ECA	Agarose Barbital-EDTA Buffer ECA 470180.	Vial: 12 drams, Box: 3 vials	11/15/90
Bioscientific Corp/ECA	ECA Buffer ECA 0320024	Vial: 12 drams, Box: 12 vials	11/15/90
Bioscientific Corp/ECA	General Procedure Agarose Film #ECA 470100.	Plastic Tray 4.5"x5" Kit: 10 trays	09/10/90
Bioscientific Corp/ECA	LD Agarose Gel #CSB 102	Plastic Tray: 3"5", Kit: 10 trays	09/10/90
Bioscientific Corp/ECA	Protein Agarose Gel #PSB 103	Plastic Tray 3"x5", Kit: 10 trays	09/10/90
Biosite Diagnostics	Alprazolam Stock Solution, 31366	Vial: 2 ml	05/26/92
Biosite Diagnostics	Alprazolam Threshold Control Calibrators 2–6, 31446–31450.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Amphetamine Enzyme Conjugate 31111, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Amphetamine QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Amphetamine QC Control (Bulk)	Bottle: 0.5L–10L	10/29/91
Biosite Diagnostics	Barbiturate Conjugate	Plastic Bottles: 2 ml–60 ml	11/30/90
Biosite Diagnostics	Barbiturate Derivative	Vial: 8, 16, 32 ml	11/30/90
Biosite Diagnostics	Barbiturate Enzyme Conjugate 31110, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Barbiturate QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Barbiturate QC Control (Bulk)	Bottle: 5L–10L	10/29/91
Biosite Diagnostics	Barbiturate Threshold Control Calibrators 2–6, 31356–31360.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Benzodiazepine Controls, 1–6 31088–31093, 7–11 31098–31102, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/91
Biosite Diagnostics	Benzodiazepine QC Control 3	Vial: 5 ml	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 1	Vial: 5 ml	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 1 (Bulk)	Bottle: 0.5L–10L	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 2	Vial: 5 ml	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 2 (Bulk)	Bottle: 0.5L–10L	10/29/91
Biosite Diagnostics	Benzodiazepines QC Control 3 (Bulk)	Bottle: 0.5L–10L	10/29/91
Biosite Diagnostics	Benzoylecgonine Conjugate	Plastic Bottles: 2 ml–60 ml	11/30/90
Biosite Diagnostics	Benzoylecgonine Conjugate II, III, IV, & V	Vial: 1.5 ml	03/14/91
Biosite Diagnostics	Benzoylecgonine Conjugate II, III, IV, & V Bulk.	Bottle: 5, 15, 30 & 60 ml	03/14/91
Biosite Diagnostics	Benzoylecgonine Controls, 1–5 31041–31045, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Benzoylecgonine Enzyme Conjugate 31105, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Benzoylecgonine Enzyme Conjugate II	Vial: 1.5 ml	03/14/91
Biosite Diagnostics	Benzoylecgonine Standards, 1–6 31035–31040, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Benzoylecgonine Stock Solution, 31322	Vial: 2 ml	05/26/92
Biosite Diagnostics	Benzoylecgonine Threshold Control Calibrators 2–6, 31341–31345.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Cocaine QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Cocaine QC Control (Bulk)	Bottle: 0.5L–10L	10/29/91
Biosite Diagnostics	Conjugate Beads (Bulk)	Bottles: 250 ml–1L	11/30/90
Biosite Diagnostics	D-Amphetamine Stock Solution, 31323	Vial: 2 ml	05/26/92
Biosite Diagnostics	D-Amphetamine Threshold Control Calibrator, 31376.	Flask: 250 ml	05/26/92
Biosite Diagnostics	D-Methamphetamine Stock Solution, 31324.	Vial: 2 ml	05/26/92
Biosite Diagnostics	D-Methamphetamine Threshold Control Calibrator, 31381.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Flurazepam Enzyme Conjugate 31109, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Flurazepam Standards, 1–7 31081–31087, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Labeled Conjugate Mixture 4	Bottles: 10 ml–1 L	10/29/91
Biosite Diagnostics	Labeled Conjugate Mixture 5	Bottles: 10 ml–1 L	10/29/91
Biosite Diagnostics	Labeled Conjugate Mixture 7	Bottle: 20 L, 10 L, 5 L, 1 L	12/22/92
Biosite Diagnostics	Labelled Barbiturate Conjugate	Plastic Bottles: 0.5, 1, 2 & 5 L	11/30/90
Biosite Diagnostics	Labelled Benzoylecgonine Conjugate	Plastic Bottles: 0.5, 1, 2 & 5 L	11/30/90
Biosite Diagnostics	Labelled Conjugate Mixture 1	Plastic Bottles: 10 ml–1 L	11/30/90
Biosite Diagnostics	Labelled Conjugate Mixture 2	Plastic Bottles: 10 ml-1 L	11/30/90
Biosite Diagnostics	Labelled Morphine Conjugate	Plastic Bottles: 0.5, 1, 2 & 5 L	11/30/90
Biosite Diagnostics	Labelled THC Conjugate	Plastic Bottles: 10 ml–1 L	11/30/90
Biosite Diagnostics	Lorazepam Enzyme Conjugate 31108, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Biosite Diagnostics	Lorazepam Standards, 1–4, 31094–31097, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Methadone Control	Vial: 2 ml	12/22/92
Biosite Diagnostics	Methadone Standards 1–6	Vial: 2 ml, 50 ml	12/22/92
Biosite Diagnostics	Methadone Stock Solution	Vial: 2 ml, 50 ml	12/22/92
Biosite Diagnostics	Methamphetamine Enzyme Conjugate 31104, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Methamphetamine QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Methamphetamine QC Control (Bulk)	Bottle: 5 L–10 L	10/29/91
Biosite Diagnostics	Morphine Conjugate	Plastic Bottles: 2 ml–60 ml	11/30/90
Biosite Diagnostics	Morphine Control 3	Vial: 2 ml, 50 ml	12/22/92
Biosite Diagnostics	Morphine Controls, 1–5, 31076–31080, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Morphine Enzyme Conjugate 31107, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Morphine Standard 6, 31220, Bulk Formulation.	Vial: 1.5 ml, 5–20 ml; Flask: 20–50 ml	03/14/91
Biosite Diagnostics	Morphine Standards, 1–5, 31071–31075, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Morphine Stock Solution, 31325	Vial: 2 ml	05/26/92
Biosite Diagnostics	Opiate QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Opiate QC Control (Bulk)	Bottle: 0.5 L–10 L	10/29/91
Biosite Diagnostics	Opiate Threshold Control Calibrators 2–6, 31346–31350.	Flask: 250 ml	05/26/92
Biosite Diagnostics	PCP QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	PCP QC Control (Bulk)	Bottle: 0.5 L–10 L	10/29/91
Biosite Diagnostics	Phencyclidine Controls, 5–6, 31255–31256 Bulk Formulation.	Vial: 1.5 ml, 5–20 ml; Flask: 20–50 ml	03/14/91
Biosite Diagnostics	Phencyclidine Controls, 1–4, 31010–31013, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Phencyclidine Enzyme Conjugate 31103, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Phencyclidine Standards 1–4, 31006–31009, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Phencyclidine Standards 5–6, 31253–31254, Bulk Formulation.	Vial: 1.5 ml, 5–20 ml; Flask: 20–50 ml	03/14/91
Biosite Diagnostics	Phencyclidine Stock Solution, 31321	Vial: 2 ml	05/26/92
Biosite Diagnostics	Phencyclidine Threshold Control Calibrators 2–6, 31366–31370.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Phenobarbital Controls, 1–8, 31063–31070, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Phenobarbital Standards, 1–8, 31055–31062, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	Secobarbital Stock Solution, 31326	Vial: 2 ml	05/26/92
Biosite Diagnostics	THC Conjugate	Plastic Bottles: 2 ml–60 ml	11/30/90
Biosite Diagnostics	THC Controls, 1–3, 31052–31054, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	THC Enzyme Conjugate 31106, Bulk Formulation.	Vial: 100 ml, 1.5 ml	10/24/90
Biosite Diagnostics	THC QC Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	THC QC Control (Bulk)	Bottle: 0.5 L–10 L	10/29/91
Biosite Diagnostics	THC Standards, 1–6 31046–31051, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	THC Threshold Control Calibrators 2–6, 31371–31375.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Temazepam Stock Solution, 31337	Vial: 2 ml	05/26/92
Biosite Diagnostics	Temazepam Threshold Control Calibrators 2–6, 31451–31455.	Flask: 250 ml	05/26/92
Biosite Diagnostics	Threshold Control A & B	Vial: 5 ml	10/29/91
Biosite Diagnostics	Threshold Control A & B (Bulk)	Bottle: 1 L–20 L	10/29/91
Biosite Diagnostics	Triage 6 Panel for Drugs of Abuse	Metallic Pouch: 1 Each	10/05/92
Biosite Diagnostics	Triage DOA Demo Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Triage DOA Demo Control (Bulk)	Bottle: 0.5 L–10 L	10/29/91
Biosite Diagnostics	Triage Drug Screen Control	Vial: 5 ml	10/29/91
Biosite Diagnostics	Triage Drug Screen Control (Bulk)	Bottle: 0.5 L–20 L	10/29/91
Biosite Diagnostics	Triage Panel for Drugs of Abuse	Box: 25 pouches	11/30/90
Biosite Diagnostics	Triage Test Device	Metallic Pouch: 1 each	11/30/90
Biosite Diagnostics	Triage-7 Conjugate Beads	Bottle: 1 L, 250 ml	12/22/92
Biosite Diagnostics	Triage-7 Device	Pouch: 1 cassette	12/22/92
Biosite Diagnostics	Triage-7 Panel for Drugs	Box: 25 cassettes	12/22/92
Biosite Diagnostics	d-Amphetamine Controls, 1–5, 31030–31034, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Biosite Diagnostics	d-Amphetamine Standards, 1–6, 31024–31029, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	d-Methamphetamine Controls 5–6, 31020, 31257 Bulk Formulation.	Vial: 1.5 ml, 20–50 ml; Flask: 20–50 ml	03/14/91
Biosite Diagnostics	d-Methamphetamine Controls, 1–4, 31020–31023, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
Biosite Diagnostics	d-Methamphetamine Standards, 1–6, 31014–31019, Bulk Formulation.	Vial: 50 ml, 1.5 ml	10/24/90
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72182.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-2-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicurie.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicurie.	01/08/75
Cambridge Medical Diagnostics, Incorporated.	125I-Human Parathyroid Hormone 44–68	Vial: 5 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Tetralodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Triiodothyronine	Vial: 11 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Donkey Anti-Goat Gamma Globulin	Vial: 5 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone (Human 1–84) Standard.	6 Vials: 5 ml each	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone Assay Buffer	Vial: 10 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Antiserum (Rabbit)	Vial: 11 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Standard	Vial: 1 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Antiserum (Rabbit)	Vial: 11 ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Standard	Vial: 1 ml	03/29/85
Casco Standards	1-(1-Phenylcyclohexyl)pyrrolidine Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	1-Phenylcyclohexylamine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/23/90
Casco Standards	1-[1-(2-thienyl)-cyclohexyl]-piperdine Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/23/90
Casco Standards	1-[1-2(2-thienyl)-cyclohexyl]-pyrrolidine Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 Plastic Cup: 125 ml.	03/23/90
Casco Standards	11-OH-delta-8-THC Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	11-OH-delta-9THC Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	11-nor-delta-8-THC-9-carboxilic acid Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	11-nor-delta-9-THC-9-carboxilic acid Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials	03/21/90
Casco Standards	8-B-11-diOH-delta-9–THC Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	8–B-OH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Casco Standards	Allobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Alphenal Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Alprazolam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Amobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Aprobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Barbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Benzoylecgonine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Benzphetamine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Bromazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Butabarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Butalbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Butethal Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Cannabidiol Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Cannabinol Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Chlordiazepoxide Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Clonazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Cocaine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Cyclopentobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Diazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Ecgonine HCl Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Ecgonine-methyl ester HCl hydrate Cross-Reactant.	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Fenfluramine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Flunitrazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Flurazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Halazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Hexobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Lorazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	MDA Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	MDE Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	MDMA Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Medazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Midazolam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Nitrazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Nordiazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Oxazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Pentobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Casco Standards	Phencyclidine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/23/90
Casco Standards	Phenmetrazine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Phenobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Phentermine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Pinazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Prazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Propylhexedrine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Secobarbital Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Talbutal Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Temazepam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	Triazolam Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	d-Amphetamine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	d-Methamphetamine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	l-Amphetamine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Casco Standards	p-HO-Amphetamine Cross-Reactant	Cryo-vial: 1.1 ml Box: 25, 50, 75 vials Plastic Cup: 125 ml.	03/21/90
Ciba Corning Diagnostics Corp	AACC Tox	Glass Vial: 30 ml	01/20/86
Ciba Corning Diagnostics Corp	ACS FT4	Kit: 50 Test, 300 Test	03/26/91
Ciba Corning Diagnostics Corp	ACS FT4 Lite Reagent	Vial: 7 ml	03/26/91
Ciba Corning Diagnostics Corp	ACS FT4 Lite Reagent	Vial: 7 ml	03/26/91
Ciba Corning Diagnostics Corp	ACS FT4 Solid Phase	Vial: 26 ml	03/26/91
Ciba Corning Diagnostics Corp	ACS Ferritin Lite Reagent	Vial: 7 ml, kit: 50 Tests, 300 Tests	04/15/91
Ciba Corning Diagnostics Corp	ACS Ferritin Solid Phase	Vial: 26 ml, kit: 50 Tests, 300 Tests	04/15/91
Ciba Corning Diagnostics Corp	ACS HCG Solid Phase	Vial: 26 ml, kit: 50 Tests, 300 Tests	04/18/91
Ciba Corning Diagnostics Corp	ACS Magnetic Check	Plastic Vial: 26 ml	06/18/91
Ciba Corning Diagnostics Corp	ACS Magnetic Check II	Plastic Vial: 26 ml	06/18/91
Ciba Corning Diagnostics Corp	ACS Performance Verification Test Kit	Kit: 6 Vials	06/18/91
Ciba Corning Diagnostics Corp	ACS T3 300 Test Kit	Kit: 300 Tests	07/22/91
Ciba Corning Diagnostics Corp	ACS T3 50 Test Kit	Kit: 50 Tests	07/22/91
Ciba Corning Diagnostics Corp	ACS T3 Lite Reagent	Plastic Vial: 7 ml	07/22/91
Ciba Corning Diagnostics Corp	ACS T3 Solid Phase	Plastic Vial: 26 ml	07/22/91
Ciba Corning Diagnostics Corp	ACS T4	Kit: 50 Test, 300 Test	03/26/91
Ciba Corning Diagnostics Corp	ACS T4 Lite Reagent	Vial: 7 ml	03/26/91
Ciba Corning Diagnostics Corp	ACS T4 Solid Phase	Vial: 26 ml	03/26/91
Ciba Corning Diagnostics Corp	ACS Wash Check Solid Phase	Plastic Vial: 26 ml	06/18/91
Ciba Corning Diagnostics Corp	ALP Buffer Concentrate Cat. No. 470244	Plastic Bottle: 175 ml	10/28/91
Ciba Corning Diagnostics Corp	ALP Gel/12 Cat. No. 470246	2 Plates: 24 Tests	10/28/91
Ciba Corning Diagnostics Corp	ALP Gel/8 Cat. No. 470243	2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp	ALP Gel/8 and Buffer Cat. No. 470240	Kit: 10 Plates, Plastic Bottle: 175 ml	10/28/91
Ciba Corning Diagnostics Corp	Alkaline Hemoglobin Buffer Cat. No. 470580.	Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Alkaline Hemoglobin Kit/8 Cat. No. 470678.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Ciba Corning ANTICONV/ASTH I, II	Kit Contains: 10 ml vial, 5 Vials each level.	10/22/85
Ciba Corning Diagnostics Corp	Ciba Corning TDM I	Vial: 5 ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp	Ciba Corning TDM I, II & III	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp	Ciba Corning TDM II	Vial: 5 ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp	Ciba Corning TDM III	Vial: 5 ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp	Ciba Corning TOX I, II	Kit: Contains: 10 ml vial, 5 Vials each level.	12/16/85
Ciba Corning Diagnostics Corp	Ciba Corning Urine II	Vial: 30 ml	05/22/85
Ciba Corning Diagnostics Corp	DAU I, No. 9076	Glass vial: 25 ml, Box: 10 vials	05/23/89
Ciba Corning Diagnostics Corp	DAU II, No. 9077	Glass Vial: 25 ml, Box: 10 vials	05/23/89
Ciba Corning Diagnostics Corp	DAU III, No. 9078	Glass vial: 25 ml, Box: 10 Vials	05/23/89
Ciba Corning Diagnostics Corp	DAU IV, No. 9079	Glass Vial: 25 ml, Box: 10 Vials	05/23/89
Ciba Corning Diagnostics Corp	DAU V, No. 9085	Glass Vial: 25 ml; Box: 10 vials	05/10/91
Ciba Corning Diagnostics Corp	Double Four-Track Gel Cat. No. 470179	Plate: 8 Tests, Kit: 12 Plates	10/26/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Ciba Corning Diagnostics Corp	HDL Cholesterol Gel/8 and Buffer Cat. No. 470618.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	High Resolution Protein Gel/8 Cat. No. 470201.	Kit: 12 Plates, 2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp	High Resolution Protein Kit/8 Cat. No. 470682.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Immophase Ferritin Controls	Glass Vial: 3 ml	01/19/87
Ciba Corning Diagnostics Corp	Immophase Ferritin Standards	Glass Vial: 5 ml	09/16/86
Ciba Corning Diagnostics Corp	Immunoelectrophoresis Gel/10 Cat. No. 470090.	Kit: 12 Plates, 2 Plates: 20 Tests	10/28/91
Ciba Corning Diagnostics Corp	Immunoelectrophoresis Kit/8 Cat. No. 470684.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	L-TDM I	Glass Vial: 5 ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp	L-TDM I, II, III Kit	Kit: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp	L-TDM II	Glass Vial: 5 ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp	L-TDM III	Glass Vial: 5 ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp	LD Isoenzyme Gel/8 and Buffer Cat. No. 470620.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	LVM HI-CHEM DIL	Vial: 10 ml	06/21/90
Ciba Corning Diagnostics Corp	LVM, Product Code—9774	Carton: 12 vials	06/21/90
Ciba Corning Diagnostics Corp	Lipoprotein Kit/8 Cat. No. 470694	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	MULTIQUAL ABN UNASY	Vial: 3 ml, 10 ml, Carton: 15 vials, 10 vials.	04/09/89
Ciba Corning Diagnostics Corp	MULTIQUAL I Assay, Product Code 9816	Kit: 15 vials, 3 ml/vial	08/05/92
Ciba Corning Diagnostics Corp	MULTIQUAL II Assay, Product Code 9817.	Kit: 15 vials, 3 ml/vial	08/05/92
Ciba Corning Diagnostics Corp	MULTIQUAL III Assay, Product Code 9818.	Kit: 15 vials, 3 ml/vial	08/05/92
Ciba Corning Diagnostics Corp	MULTIQUAL NOR UNASY	Vial: 3 ml, 10 ml, Carton: 15 vials, 10 vials.	04/09/89
Ciba Corning Diagnostics Corp	Magic Ferritin 2000 Standard	Plastic Vial: 1 ml	01/19/87
Ciba Corning Diagnostics Corp	Magic Ferritin Controls	Plastic Vial: 5 ml	01/19/87
Ciba Corning Diagnostics Corp	Magic Ferritin Standards	Polypropylene Vial: 3 ml	09/16/86
Ciba Corning Diagnostics Corp	Magic Ferritin Zero Standard	Plastic Vial: 50 ml	01/19/87
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Bulk Lite Reagent	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite Ferritin Solid Phase	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite T3 Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp	Magic Lite T3 Kit	Kit: 100 Tests	06/27/91
Ciba Corning Diagnostics Corp	Magic Lite T3 Lite Reagent	Plastic Vial: 30 ml	06/27/91
Ciba Corning Diagnostics Corp	Magic Lite T3 Solid Phase	Plastic Vial: 75 ml	06/27/91
Ciba Corning Diagnostics Corp	Magic T4 Antibody	Vial: 50 ml, 200 ml	11/01/90
Ciba Corning Diagnostics Corp	Magic T4 Antibody	Plastic Vial: 50 ml and 200 ml	02/16/88
Ciba Corning Diagnostics Corp	Multi-LD Gel Cat. No. 470221	Kit: 12 Plates, 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp	Multi-SPE Gel Cat. No. 470252	Kit: 12 Plates, 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp	Multitrac ALP Gel/12 and Buffer Cat. No. 470240.	Kit: 10 Plates, Plastic Bottle: 175 ml	10/28/91
Ciba Corning Diagnostics Corp	Multitrac Immunofixation Kit/12 Cat. No. 470685.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Multitrac LD Isoenzyme Gel/12 and Buffer Cat. No. 470622.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Multitrac LD Isoenzyme Gel/16 and Buffer Cat. No. 470625.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Multitrac Lipoprotein Kit/12 Cat. No. 470695.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Multitrac Serum Protein Kit/12 Cat. No. 470697.	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	QCS ABN ASY	Vial: 5 ml, Kit: 5 vials	01/21/89
Ciba Corning Diagnostics Corp	QCS ABN ASY No. 9705/9705A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS ABN ASY No. 9707/9707A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS ABN UNASY No. 9691/9691A	Box: 40 vials, Vial: 25 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS ABN UNASY No. 9717/9717A	Box: 10 vials, Vial: 10 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS NOR ASY	Vial: 5 ml, Kit: 5 vials	01/21/89
Ciba Corning Diagnostics Corp	QCS NOR ASY No. 9702/9702A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS NOR ASY No. 9704/9704A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS Nor UNASY No. 9681/9681A	Box: 40 vials, Vial: 25 ml	12/15/89
Ciba Corning Diagnostics Corp	QCS Nor UNASY No. 9716/9716A	Box: 10 vials, Vial 10 ml	12/15/89
Ciba Corning Diagnostics Corp	Reagent A—Alt 14	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp	Reagent A—Alt 7	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp	Reagent A—Ammonia 10	Vial: 10 ml	03/24/79
Ciba Corning Diagnostics Corp	Serum Protein Kit/8 Cat. No. 470696	Kit: 10 Plates, Plastic Vial: 25 Drams	10/28/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Ciba Corning Diagnostics Corp	Special Barbital Buffer Set, Catalog No. 470182.	Vial: 3 per kit	04/17/79
Ciba Corning Diagnostics Corp	Universal II Gel/8 Cat. No. 470261	Kit: 12 Plates, 2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp	Universal Buffer Cat. No. 470586	Plastic Vial: 25 Drams	10/28/91
Ciba Corning Diagnostics Corp	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Ciba Corning Diagnostics Corp	Universal Gel/12 Cat. No. 470554	Kit: 12 Plates, 2 Plates: 24 Tests	10/28/91
Ciba Corning Diagnostics Corp	Universal Gel/16 or Multi-SPE Gel Cat. No. 470066.	Kit: 12 Plates, 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp	Universal IEP Gel Cat. No. 470222	Kit: 12 Plates, 2 Plates: 16 Tests	10/28/91
Ciba Corning Diagnostics Corp	Universal II Gel/12 Cat. No. 470262	Kit: 12 Plates, 2 Plates: 24 Tests	10/28/91
Ciba Corning Diagnostics Corp	Universal II Gel/12 Cat. No. 470362	Kit: 12 Plates	09/22/92
Ciba Corning Diagnostics Corp	Universal II Gel/16 Cat. No. 470268	Kit: 12 Plates, 2 Plates: 32 Tests	10/28/91
Ciba Corning Diagnostics Corp	Universal II Gel/8 Cat. No. 470361	Kit: 12 Plates	09/22/92
Ciba Corning Diagnostics Corp	Universal PHAB Buffer Set Catalog No. 470180.	Kit: 3 vials per kit	09/26/79
Ciba Corning Diagnostics Corp	Magic Lite HCG Solid Phase	Plastic vial: 50 ml, Kit: 100 tests	12/09/88
Ciba-Corning Diagnostics Corp	Linearity Reference Material LNM–A, LNM–B, LNM–C.	Vial: 10 ml, Kit: 2 vials	02/12/91
Ciba-Corning Diagnostics Corp	Linearity Survey LN3–A, LN3–B, LN3–C	Vial: 10 ml, Kit: 2 vials	02/12/91
Ciba-Corning Diagnostics Corp	Linearity Survey LN4–A, LN4–B, LN4–C	Vial: 25 ml, Kit: 2 vials	02/12/91
Cone Biotech, Inc	American Association of Bioanalysts, Urine Toxicology Survey.	Vial: 20 ml, Kit: 2 vials	05/30/90
Cone Biotech, Inc	CAP/Cocaine Reference Material Levels II, III, and IV.	Vial: 20 ml	03/07/88
Cone Biotech, Inc	College of American Pathologists (CAP) Reference Material for Cocaine in Urine.	Vial: 15 ml, Kit: 4 vials	05/30/90
Cone Biotech, Inc	College of American Pathologists Forensic Urine Drug Testing Survey Material (AACC/CAP).	Vial: 100 ml	05/30/90
Cone Biotech, Inc	College of American Pathologists Toxicology Survey (CAP).	Vial: 50 ml	05/30/90
Cone Biotech, Inc	College of American Pathologists Urine Toxicology Survey (CAP).	Vial: 50 ml	05/30/90
Cone Biotech, Inc	QCM–UTI	Vial: 20 ml	03/07/85
Cone Biotech, Inc	RIATRAC-Three Level Ligand Assay Controls.	Vial: 8 ml	02/27/84
Cone Biotech, Inc	UDM–CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase).	Bottle: 60 ml	08/31/87
Cone Biotech, Inc	UDS and UDC CAP/AACC Forensic Urine Drug Testing.	Vial: 30 ml	01/06/88
Consolidated Technologies, Inc	ADT–1 thru ADT–40	Vial: 125 ml	06/10/92
Consolidated Technologies, Inc	HIST Multi-Drug Reference Material	Vial: 15 ml	10/22/92
Consolidated Technologies, Inc	Morphine Glucuronide Calibration Set	Kit: 4 Vials	09/08/92
Consolidated Technologies, Inc	Morphine Glucuronide Reference Levels 1, 2, 3.	Vial: 20 ml	09/08/92
Diagnostic Products Corporation	125–I Barbiturate Isotope: Cat. No. TBA2, TBAY2.	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125–I Benzolyecgonine Isotope: Cat. No. TCN2, TCNY2.	Vial: 100 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125–I Benzoylecgonine Isotope (DA): Cat. No. CND2, YCND2.	Vial: 10 ml, 100 ml, 675 ml	03/01/88
Diagnostic Products Corporation	125–I Fentanyl Isotope: Cat. No. TFN2	Vial: 500 ml	03/01/88
Diagnostic Products Corporation	125–I Methadone Isotope: Cat. No. TMD2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	125–I Methaqualone Isotope: Cat. No. TMQ2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	125–I Morphine Isotope: Cat. No. TMP2, TMPY2.	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125–I PCP Isotope: Cat. No. TPC2, TPCY2.	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125–I Serum Morphine Isotope: Cat. No. TSM2.	Vial: 110 ml	03/01/88
Diagnostic Products Corporation	125–I THC Isotope: Cat. No. THD2, YTHD2.	Vial: 20 ml, 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Calibrators B–F: Cat. No. APD4–8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Calibrators Cat. No. MAP 4–8.	Vial: 5 ml	07/05/90
Diagnostic Products Corporation	Amphetamine Controls, Cat. No. ACO1, ACO2.	Vial: 5 ml	03/20/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Diagnostic Products Corporation	Amphetamine Controls: Cat. No. 5AC01, 5ACO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Isotope: Cat. No. APD2, 5APD2, YAPD2.	Vial: 20 ml, 100 ml, 550 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Reference Preparation: Cat. No. 5YAP7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Reference Preparations, Cat. No. APD5, APD9.	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	Barbiturate Calibrators B–G: Cat. No. BAC4–9.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Barbiturate Reference Preparations: Cat. No. 5YBA5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (CAC) B–F: Cat. No. COC4–8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (DA) B–F: Cat. No. CND4–8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (DA): Cat. No. CNC4–8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Reference Preparation (DA): Cat. No. 5YCN5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Reference Preparation: Cat. No. 5YCN5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	C-Terminal PTH Antiserum: Cat. No. PCD1.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	CON6 Immunoassay Tri-level Control Cat. No. CON6.	Kit: 6 vials	03/25/91
Diagnostic Products Corporation	Canine T3 Isotope: Cat. No. TC32	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Coat-A-Count Barbiturates In Urine: Cat. No. TKBA1, TKBA5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Barbiturates Qualitative Determination In Urine: Cat. No. TKBAY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Canine T3: Cat. No. TKC31, TKC35.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Cocaine Metabolite: Cat. No. TKCN1, TKCN5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Fentanyl: Cat. No. TKFN1 .	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Free Testosterone Cat. No. TKTF 1, 2.	Kit: 100, 200 Tests	03/25/91
Diagnostic Products Corporation	Coat-A-Count LSD 100, 500, Cat. No. TKLS1, TKLS5.	Kit: 8 vials, 19 vials	03/20/89
Diagnostic Products Corporation	Coat-A-Count LSD Qualitative Determination In Urine, Cat. No. TKLSY.	Kit: 8 vials	03/20/89
Diagnostic Products Corporation	Coat-A-Count Metabolite Qualitative Determinants In Urine: Cat. No. TKCNY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Methadone: Cat. No. TKMD1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Methaqualone: Cat. No. TKMQ1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Morphine Qualitative Determinations In Urine: Cat. No. TKMPY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Morphine: Cat. No. TKMP1, TKMP5, TKMPX.	Kit: 100 tests, 500 tests, 1000 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Opiates Screen Qualitative Determinations In Urine: Cat. No. TKOSY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Opiates Screen: Cat. No. TK0S1, TKOS5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count PCP (Phencyclidine) In Urine: Cat. No. TKCY1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count PCP (Phencyclidine) Qualitative Determinations In Urine: Cat. No. TKPCY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Serum Morphine: Cat. No. TKSM1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Total Testosterone Cat. No. TKTT 1, 2, 5.	Kit: 100, 200, 500 Tests	03/25/91
Diagnostic Products Corporation	Donkey Anti-Goat Gamma Globulin (PTH-Ultra): Cat. No. PTDG.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Double Antibody Amphetamine, Cat. No. KAPD1, KAPD5.	Kit: 6 vials	03/20/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Diagnostic Products Corporation	Double Antibody Amphetamine, Qualitative Determinations In Urine: Cat. No. KAPDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Amphetamine: Cat. No. KAPD1, KAPD5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cannabinoids (THC) In Urine: Cat. No. KTHD1, KTHD5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cannabinoids (THC) Quantitative Determinations In Urine: Cat. No. KTHDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cocaine Metabolite Qualitative Determination In Urine: Cat. No. KCNDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cocaine Metabolite: Cat. No. KCND1, KCND5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody PTH-C: KPCD1, KPCD2	Kit: 70 tests, 140 tests	03/01/88
Diagnostic Products Corporation	Double Antibody PTH-M: Cat. No. KPMD1.	Kit: 70 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Testosterone Cat. No. KTTD1, 2.	Kit: 100, 200 Tests	03/25/91
Diagnostic Products Corporation	Double Antibody Ultra-PTH: Cat. No. KPTD1, KPTD2.	Kit: 70 tests, 140 tests	03/01/88
Diagnostic Products Corporation	Enzyme-Labeled Amphetamine Cat. No. MEAP2, 5MEAP2.	Vial: 20 ml, 60 ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled Cocaine Metabolite Cat. No. MECC2, 5MECC2.	Glass Vial: 11 ml, 60 ml	01/25/91
Diagnostic Products Corporation	Enzyme-Labeled Methamphetamine Cat. No. MEMA2, 5MEMA2.	Vial: 11 ml, 60 ml	09/28/90
Diagnostic Products Corporation	Enzyme-Labeled Opiates Cat. No. MEOP2, 5MEOP2.	Vial: 20 ml, 60 ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled PCP Cat. No. MEPC2, 5MEPC2.	Vial: 20 ml, 60 ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled THC Cat. No. METH 2, 5METH2.	Vial: 20 ml, 60 ml	07/05/90
Diagnostic Products Corporation	EquiCON-DOA Drugs of Abuse Equine Urine Controls Cat. No. EDAC.	Kit: 2 Vials	03/25/91
Diagnostic Products Corporation	EquiCon-DOA Level 2, 3 Cat. No. EDAC 2, 3.	Vial: 30 ml	03/25/91
Diagnostic Products Corporation	Fentanyl Calibrators: Cat. No. FNC4–9	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Free Testosterone Calibrators Cat. No. TFC4–8.	Vial: 3.5 ml	03/25/91
Diagnostic Products Corporation	Goat Anti-Rabbit Gamma Globulin/4% PEG Saline: Cat. No. 5N6.	Vial: 110 ml, 320 ml	03/01/88
Diagnostic Products Corporation	LSD Calibrators B-F, Cat. No. LSCH–8	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	LSD Controls, Cat. No. 5LCO1, 5LCO2, LSCO1, LSCO2.	Vial: 120 ml, 5 ml	03/20/89
Diagnostic Products Corporation	LSD Isotope, Cat. No. TLSY2, TLS2	Vial: 105 ml, 550 ml	03/20/89
Diagnostic Products Corporation	LSD Reference Preparation, Cat. No. 5YLS6.	Vial: 120 ml	03/20/89
Diagnostic Products Corporation	Low and High Barbiturate Urinary Controls: Cat. No. 5BCO1, 5BCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Benzoylecgonine Urinary Controls (DA): Cat. No. 5COO1, 5COO2, CNCO2, CNCO3.	Vial: 3.5 ml, 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Cannabinoid Urinary Controls: Cat. No. 5TCO1, 5TCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Morphine Urinary Controls: Cat. No. 5MCO1, 5MCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Opiate Urinary Controls: Cat. No. 5OCO1, 5OCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High PCP Urinary Controls: Cat. No. 5PCO1, 5PCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Methadone Calibrators: Cat. No. MDC4–8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Methamphetamine Calibrators Cat. No. MMA–8.	Vial: 5 ml	09/28/90
Diagnostic Products Corporation	Methamphetamine Cartridges Cat. No. VMADC.	Cartridge: 5 ml	01/25/91
Diagnostic Products Corporation	Methamphetamine Positive Reference Cat. No. VMAPC.	Vial: 3 ml	01/25/91
Diagnostic Products Corporation	Methaqualone Calibrators: Cat. No. MQC4–8.	Vial: 3.5 ml	03/01/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Diagnostic Products Corporation	Mid-Molecule PTH Antiserum: Cat. No. PMD1.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Milenia Amphetamine Cat. No. MKAP1, MKAP5.	Kit: 7 vials, 96 tests, 480 tests	07/05/90
Diagnostic Products Corporation	Milenia Cannabinoids Cat. No. MK TH1, MKTH5.	Kit: 6 vials, 96 Tests, 480 Tests	07/05/90
Diagnostic Products Corporation	Milenia Cocaine Metabolite Cat. No. MKCC1, MKCC5.	Kit: 96 Tests, 480 Tests	01/25/91
Diagnostic Products Corporation	Milenia Cocaine References and Controls Cat. No. MC3,6; MCCC1,2.	Glass Vial: 5 ml	01/25/91
Diagnostic Products Corporation	Milenia Methamphetamine Cat. No. MKMA1, MKMA5.	Kit: 96 wells, 480 wells	09/28/90
Diagnostic Products Corporation	Milenia Opiates Cat. No. MKOP1, MKOP5.	Kit: 6 vials, 96 Tests, 480 Tests	07/05/90
Diagnostic Products Corporation	Milenia PCP Cat. No. MKPC1, MKPC5	Kit: 6 vials, 96 tests, 480 tests	07/05/90
Diagnostic Products Corporation	Morphine Calibrators: Cat. No. MPC4–8	Vial: 3.5 ml, 10 ml	03/01/88
Diagnostic Products Corporation	Morphine Reference Preparation: Cat. No. 5YMPY7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Opiate Calibrators: Cat. No. OSC4–8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Opiate Cartridges Cat. No. VOSDC	Cartridge: 5 ml	07/05/90
Diagnostic Products Corporation	Opiates Calibrators Cat. No. MOP 4–7	Vial: 5 ml	07/05/90
Diagnostic Products Corporation	Opiates Positive Reference Cat. No. VOSPC.	Vial: 1 ml	07/05/90
Diagnostic Products Corporation	Opiates Reference Preparation: Cat. No. 5YOS7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	PCP Calibrators Cat. No. MPC 3–7	Vial: 5 ml	07/05/90
Diagnostic Products Corporation	PCP Calibrators: Cat. No. PCC4–8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	PCP Reference Preparation: Cat. No. 5YPC6.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	PTH (C-Terminal) Isotope: Cat. No. PCD2.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	PTH (Ultra) Antiserum: Cat. No. PTD1	Vial: 5 ml	03/01/88
Diagnostic Products Corporation	PTH (Ultra) Isotope: Cat. No. PTD2	Vial 5 ml	03/01/88
Diagnostic Products Corporation	PTH–M Isotope: Cat. No. PMD2	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	RIA Controls Level 4, 5, 6 Cat. No. CON4, CON5, CON6.	Vial: 10 ml	03/25/91
Diagnostic Products Corporation	Serum Morphine Calibrators: Cat. No. SMC4–8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Serum Morphine Controls: Cat. No. SMCO2, SMCO3.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	THC Calibrators B–F: Cat. No. THD4–8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	THC Calibrators Cat. No. MTH 4–7	Vial: 5 ml	07/05/90
Diagnostic Products Corporation	THC Reference Preparation: Cat. No. 5YTH7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Ten One Methamphetamine Cat. No. VKMA1, VKMA4.	Kit: 12 Tests, 48 Tests	01/25/91
Diagnostic Products Corporation	Ten One Opiates Cat. No. VKSO1, VKSO4.	Kit: 1 vial, 12 & 48 5 ml cartridges	07/05/90
Diagnostic Products Corporation	Testosterone Calibrators Cat. No. TTD3–8.	Vial: 3.5 ml	03/25/91
Diagnostic Products Corporation	Total Testosterone Calibrators Cat. No. TTC4–8.	Vial: 3.5 ml	03/25/91
Diagnostic Products Corporation	Triiodothyronine (T3) Isotope: Cat. No. TT32.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	[125I] Free Testosterone Cat. No. TTF2	Vial: 105 ml	03/25/91
Diagnostic Products Corporation	[125I] Testosterone Cat. No. TTD2	Vial: 10 ml	03/25/91
Diagnostic Products Corporation	[125I] Total Testosterone Cat. No. TTT 2	Vial: 105 ml	03/25/91
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709–317	Package: 20 envelopes-10.65 g. per envelope.	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730–274.	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709–339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing.	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Diamedix Corporation	EDTA (0.014M)–GVB Buffer, 753–034	Bottle: 5 ml	08/09/73
Diamedix Corporation	EDTA (0.01M)–GVB Buffer, 753–031	Bottle: 5 ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753–037	Bottle: 50 ml	08/09/73
Diamedix Corporation	Glucose-GVB 1 Buffer, 753–036	Bottle: 50 ml	08/09/73
Duo Research, Inc	Drug Testing Assessment Program Quality Control Samples.	Kit: 25 bottles	12/26/86
Duo Research, Inc	Drug Testing Assessment Program-Quality Control Sample.	Bottle: 65 ml	02/27/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Duo Research, Inc	Drug Testing Assessment Program-Quality Control Sample Kit.	Kit: 5–65 ml bottles	02/27/86
E.I. duPont de Nemours & Co., Inc	(1) PREP Sample Preparation and Analysis Kit.	Kit containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc	(2a) PREP Liquid Chromatography Verifier.	Vial: 10 ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(2b) PREP Buffer/Internal Standard	Vial: 100 ml (3 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(3) PREP Calibrators	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc	(3a) PREP Calibrator-Level 1	Vial: 10 ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(3b) PREP Calibrator-Level 2	Vial: 10 ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(3c) PREP Calibrator-Level 3	Vial: 10 ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(3d) PREP Calibrator-Level 4	Vial: 10 ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(4) PREP Controls	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc	(4a) PREP Control-Low Level	Vial: 10 ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	(4b) PREP Control-High Level	Vial: 10 ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc	DM/TU Saturating Reagent	Plastic Bottle: 1L, 10L, 20L	02/22/89
E.I. duPont de Nemours & Co., Inc	DuPont Drug Calibrator-A (levels 1–5)	Vial: 6 ml, Box: 10 vials	09/28/90
E.I. duPont de Nemours & Co., Inc	DuPont Drug Calibrators—Levels 1 through 5.	Vial: 6 ml (1 vial and 2 vials/box)	04/04/86
E.I. duPont de Nemours & Co., Inc	DuPont Phenobarbital Assay	Vial: 6 ml	10/13/86
E.I. duPont de Nemours & Co., Inc	DuPont U Amp Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc	DuPont U Barb Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc	DuPont U Benz Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc	DuPont U COC Enzyme Pack Reagent	Bottle: 1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc	DuPont U OPI Enzyme Pack Reagent	Bottle: 1 liter	08/28/87
E.I. duPont de Nemours & Co., Inc	DuPont U THC Enzyme Pack Reagent	Bottle: 1 Liter	01/04/88
E.I. duPont de Nemours & Co., Inc	DuPont Urine Drugs-of-Abuse Calibrator (Levels 0, 1, 2).	Box: 6 Vials, 6 ml Vial	07/27/87
E.I. duPont de Nemours & Co., Inc	DuPont Urine Drugs-of-Abuse Control	Vial: 6 ml	08/03/87
E.I. duPont de Nemours & Co., Inc	DuPont aca Barbiturate Screen Analytical Test Pack.	Plastic Packs: 25 tests	12/23/84
E.I. duPont de Nemours & Co., Inc	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3 ml	02/23/84
E.I. duPont de Nemours & Co., Inc	DuPont aca Benzodiazepine Screen Analytical Test Pack.	Plastic Packs: 25 tests	02/23/84
E.I. duPont de Nemours & Co., Inc	Phenobarbital Calibrator—Level 1	Vial: 6 ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc	Phenobarbital Calibrator—Level 2	Vial: 6 ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc	Phenobarbital Calibrator—Level 3	Vial: 6 ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc	Phenobarbital Calibrator—Level 4	Vial: 6 ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc	Phenobarbital Calibrator—Level 5	Vial: 6 ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc	Theophylline Calibrator Levels 1, 2 and 3	Vial: 6 ml. Box contains 2 vials each level	09/21/88
E.I. duPont de Nemours & Co., Inc	Thyroid Rotor	Foil Pouch: 1 Rotor Shelf Carton: 10 Rotors Box: 5 Shelf Cartons (50 Rotors).	10/25/88
E.I. duPont de Nemours & Co., Inc	Thyronine (TU) Uptake Flex	32 Test Cartridge, Carton: 7 cartridges	03/29/89
E.I. duPont de Nemours & Co., Inc	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge.	Plastic container: 2.3 ml (20 tests)	04/28/86
E.I. duPont de Nemours & Co., Inc	Urine Amphetamine (U Amp) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc	Urine Barbiturate (U Barb) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc	Urine Benzodiazepine (U Benz) Test Pack.	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc	Urine Cannabinoid (U THC) Test Pack	Carton: 50 tests	11/09/87
E.I. duPont de Nemours & Co., Inc	Urine Cocaine (U COC) Test Pack	Carton: 50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc	Urine Opiate (U OPI) Test Pack	Carton: 50 tests	07/08/87
E.I. duPont de Nemours & Co., Inc	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. duPont de Nemours & Co., Inc	aca Thryonine Uptake Analytical Test Pack.	Plastic Pack: 1 test	08/25/83
E.I. duPont de Nemours & Co., Inc, Medical Products.	5-Cyclohexenyl-3, 5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET–426.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours & Co., Inc, Medical Products.	Acetaldehyde (1, 2-14C) as Paraldehyde, Catalog No. NEC–158.	Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie.	01/04/77
E.I. duPont de Nemours & Co., Inc, Medical Products.	Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET–510.	Combi-Vial: 100 microcuries, 250 microcuries.	01/04/77
E.I. duPont de Nemours & Co., Inc, Medical Products.	Diazepam [Methyl-3H] Catalog No. NET–564.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	09/06/79
E.I. duPont de Nemours & Co., Inc, Medical Products.	Dihydromorphine [7, 8-3H(N)]	Combi-Vial: 250 microcuries, 1 millicurie	01/04/77
E.I. duPont de Nemours & Co., Inc, Medical Products.	Dihydromorphine[N-Methyl-3H] NET–658	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. duPont de Nemours & Co., Inc, Medical Products.	Dihydrotestosterone, [1, 2, 4, 5, 6, 7, 16, 17-3H(N)].	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
E.I. duPont de Nemours & Co., Inc, Medical Products.	Dihydrotestosterone, [1, 2, 4, 5, 6, 7-3H(N)]-.	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Dihydrotestosterone, [1, 2-3H(N)]	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Dihydrotestosterone, [4-14C]-	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Drug Discovery Kit, No. NED–002, NED–002A.	Kit: 100 tests, 500 tests	08/08/89
E.I. duPont de Nemours & Co., Inc, Medical Products.	Flunitrazepam (Methyl-3H)	Combi-Vial: 5 microcuries, 14 microcuries	08/08/89
E.I. duPont de Nemours & Co., Inc, Medical Products.	Flunitrazepam 2.5 Micro M	Combi-Vial: 2.0 ml	08/08/89
E.I. duPont de Nemours & Co., Inc, Medical Products.	Flunitrazepam [Methyl-3H] NET–567	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	04/29/87
E.I. duPont de Nemours & Co., Inc, Medical Products.	LSD [N-Methyl-3H] NET–638	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	11/06/79
E.I. duPont de Nemours & Co., Inc, Medical Products.	Mazindol (4'-3H) Catalog No. NET–816	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	05/17/84
E.I. duPont de Nemours & Co., Inc, Medical Products.	Methylenedioxymethamphetamine, (+)3, 4-[N-methyl-3H] NET–957.	Combi-Vial: 0.0250 millicuries, 0.25 millicuries, 1.0 millicuries.	08/25/75
E.I. duPont de Nemours & Co., Inc, Medical Products.	Methylphenidate, +/– threo[methyl-3H]NET–857.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. duPont de Nemours & Co., Inc, Medical Products.	Mibolerone	Glass Vial: 5 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Mibolerone, [17Alpha-methyl-3H]-	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Morphine [N-methyl-3H] NET–653	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. duPont de Nemours & Co., Inc, Medical Products.	N-[1-(2–Thienyl) Cyclohexyl]-3, 4-Piperidine (Piperidyl-3, 4-3H)NET–886.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. duPont de Nemours & Co., Inc, Medical Products.	Phencyclidine [Piperidyl-3, 4-3H(N)], Catalog No. NET–630.	Combi-Vial: 0.250 millicurie, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co., Inc, Medical Products.	Testosterone, [1, 2, 6, 7, 16, 17-3H(N)]	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Testosterone, [1, 2, 6, 7-3H(N)]-	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Testosterone, [1Alpha, 2Alpha,-3H(N)]-	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Testosterone, [1Beta, 2Beta,-3H(N)]-	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Testosterone, [4-14C]-	NENSURE Vial: 0.8 ml, 6.2 ml; Glass Vial: 10 ml.	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	Testosterone, [7-3H(N)]-	NENSURE Vial: 0.8 ml, 6.2 ml	11/01/91
E.I. duPont de Nemours & Co., Inc, Medical Products.	d-Amphetamine Sulfate (3H(G)), Catalog No. NET–140.	Combi-Vial: 250 microcuries, 1 millicune, and 5 millicuries.	01/04/77
EM Diagnostic Systems, Inc	EMDS Antiepileptic Drug Calibrator Item No. 67630/95.	Box: 3 Vials, 5 ml each	06/11/86
EM Diagnostic Systems, Inc	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95.	Carton: 48 Test Packs	09/09/86
EM Diagnostic Systems, Inc	Easytest Phenobarbital Assay Item No. 67534/93.	Cuvette: 1.8 ml (40 cuvettes /carton)	06/11/86
Eastman Kodak Company	KODATROL Control I Control and Diluent Set.	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets.	07/21/88
Eastman Kodak Company	KODATROL Control II Control and Diluent Set.	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets.	07/21/88
Eastman Kodak Company	Kodak EKTACHEM Specialty Calibrator	Vial: 3 ml	09/13/85
Eastman Kodak Company	Kodak EKTACHEM Specialty Control I	Vial: 3 ml	09/13/85
Eastman Kodak Company	Kodak Ektachem Specialty Control II	Glass Vial: 6 ml	11/10/87
Electro-Nucleonics	VIRGO IPA Immuno-Precipitation	Kit	11/30/82
Laboratories, Incorporated	Assay for Phenobarbital		
Endocrine Metabolic Center	0.1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/28/87
Endocrine Metabolic Center	1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle: 2 liter	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.05M	Plastic Bottle: 3000 ml	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.1M	Plastic Bottle: 3000 ml	05/28/87
Endocrine Metabolic Center	Tracer Diluent	Glass Bottle: 1 or 2 liter	05/28/87
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid Enzyme Conjugate.	Ampule: 1 ml	02/03/87
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid Kit Catalog No. 216–28P.	Kit: 1 test	02/03/87
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid Positive Control	Ampule: 1 ml	02/03/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid/Cocaine-Enzyme Conjugate.	Polyethylene Tube: containing ampule with 1 tablet, Kit: 1 test.	12/20/88
Environmental Diagnostics, Inc	EZ-Screen: Cannabinoid/Cocaine-Positive Control.	Polyethylene Tube: 2.2 ml, Kit: 1 test	12/20/89
Fisher Diagnostics	TheraChem Anticonvulsants/Theophylline, Level I, II.	Kit: 9 vials, vial: 5 ml	03/03/81
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E–1.	Packet: 12.14 g	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E–2.	Packet: 18.16 g	10/27/72
Fisher Scientific	IL-Test Phenobarbital	Kit: contains 2 plastic containers of reagent 2.	03/15/88
Fisher Scientific	IL-Test Phenobarbital Conjugate, Reagent 2.	Plastic Container: 16 ml	03/15/88
Fisher Scientific	Owren's Veronal Buffer, CS1094–34	Vial: 10 ml	08/18/86
Fisher Scientific	Owren's Veronal Buffer, CS1094–38	Vial: 25 ml	08/18/86
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906.	Vial: 5 ml, 10 ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5 ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907.	Vial: 5 ml	04/16/82
Fisher Scientific	Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908.	Vial: 5 ml, 10 ml	04/16/82
Fisher Scientific	TDM Cal	Kit: 7 vials	11/26/86
Fisher Scientific	TDM Cal (B–F)	Vials: 5 ml	11/26/86
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840–58.	Kit: 6 vials	01/12/84
Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845–94.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2848–31.	Vial: 5 ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level, 2842–31.	Vial: 5 ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846–31.	Vial: 5 ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841–31.	Vial: 5 ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2847–31.	Vial: 5 ml	03/19/86
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935–80.	Vial: 25 ml	04/06/78
Fisher Scientific	Urine Toxicology Control No. 2950–61	Vial: 25 ml	04/06/78
Fisher Scientific Group	SeraChem Plus Clinical Chemistry Control Sera Unassayed (Bovine) Level I.	Vial: 10 ml, Box: 50 vials, Carton: 4 boxes.	07/25/89
Fisher Scientific Group	SeraChem Plus Clinical Chemistry Control Sera Unassayed (Bovine) Level II.	Vial: 10 ml, Box: 50 vials, Carton: 4 boxes.	07/25/89
Flow Laboratories	DGV No. 28–010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human "O" DGV (Dextrose Gelatin Veronal Buffer) No. 28–080.	Glass Vial: 100 ml	10/14/76
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3–7.4, NDC 0118115–0247–1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3–7.4, NDC 011815–0247–2.	Bottle: 500 ml	04/05/77
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No. 815–0566–1 and No. 815–0566–2.	Bottle: 100 and 500 ml	07/05/73
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815–0245–1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815–0246–1.	Bottle: 1 liter	01/28/74
Gelman Sciences, Inc	Drug Control Set No. 51911	Set: 3 vials of 50 ml each	04/06/72
Gelman Sciences, Inc	Drug Standard Set, No. 51910	Set: 3 vials of 2 ml each	04/06/72
Gelman Sciences, Inc	Hi-Phore Buffer	Glass Vial: 15 g	02/11/82
Gelman Sciences, Inc	High Resolution Buffer-Tris Barbital Buffer No. 51104.	Vial: 10 dr	12/22/71
Gumm Chem. Co.	Niflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co.	Niflow Maintenace Additive	Drums: 5 Gallons	09/30/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Hach Chemical Co.	pH 8.3 Buffer Powder Pillows. No. 898–98.	Pillow: 1 g. each	11/30/71
Helena Laboratories	CK–LD Buffer Catalog No. 5808	Packet: 18.332 g. 10 packets/box	03/26/86
Helena Laboratories	Electra B1 Buffer, Catalog No. 5016	Packet: 13.1 g. 10 packets/box	12/28/73
Helena Laboratories	Electra B2 Buffer, Catalog No. 5017	Packet: 18.2 g. 10 packets/box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/box	12/28/73
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet: 9.7 g	12/18/85
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Owren's Veronal Buffer Cat. No. 5375	Plastic Bottle: 125 ml	09/15/88
Helena Laboratories	REP CK Isoforms-15	Plate: 5.8″x5.5″	03/09/88
Helena Laboratories	REP CK Isoforms-15 Kit: Cat. No. 3081	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK–12	Plate: 5.8″x2.18″	03/09/88
Helena Laboratories	REP CK–12 Isoenzyme Kit: Cat. No. 3071.	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK–2 STAT Kit, Cat. No. 3074	Kit: 10 plates (5.8″x0.6″)	03/30/89
Helena Laboratories	REP CK–30	Plate: 5.8″x5.5″	03/09/88
Helena Laboratories	REP CK–30 Isoenzyme Kit	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK–6	Plate: 5.8″x1.25″	03/09/88
Helena Laboratories	REP CK–6 Isoenzyme Kit: Cat. No. 3072	Kit: 10 plates	03/09/88
Helena Laboratories	REP LD	Plates: 5.8″x5.5″, 5.8″x2.18″, 5.8″x1.25″	03/09/88
Helena Laboratories	REP SPE Hi Res-15 Kit, Cat. No. 3176	Kit: 10 plates (5.8″x5.5″)	03/30/89
Helena Laboratories	REP–HDL–12 Isoenzyme Kit Cat. No. 3187.	Kit: 10 Plates (5.8″x2.18″)	09/15/88
Helena Laboratories	REP–HDL–30 Isoenzyme Kit Cat. No. 3186.	Kit: 10 Plates (5.8″x5.5″)	09/15/88
Helena Laboratories	REP–HDL–6 Isoenzyme Kit Cat. No. 3188.	Kit: 10 Plates (5.8″x1.25″)	09/15/88
Helena Laboratories	REP–Lipo–12 Kit Cat. No. 3181	Kit: 10 Plates (5.8″x2.18″)	09/15/88
Helena Laboratories	REP–Lipo–30 Kit Cat. No. 3180	Kit: 10 Plates (5.8″x5.5″)	09/15/88
Helena Laboratories	REP–Lipo–6 Kit Cat. No. 3182	Kit: 10 Plates (5.8″x1.25″)	09/15/88
Helena Laboratories	REP–SP–12 Isoenzyme Kit Cat. No. 3171.	Kit: 10 Plates (5.8″x2.18″)	09/15/88
Helena Laboratories	REP–SP–30 Isoenzyme Kit Cat. No. 3170.	Kit: 10 Plates (5.8″x5.5″)	09/15/88
Helena Laboratories	REP–SP–6 Isoenzyme Kit Cat. No. 3172	Kit: 10 Plates (5.8″x1.25″)	09/15/88
Helena Laboratories	Super Z–12XHDL Cholesterol Supply Kit Catalog No. 5470.	Kit: 3 Packages buffer 36 g	01/24/86
Helena Laboratories	TITAN GEL Alkaline Phosphatase (HR) Kit, Cat. No. 3058.	Kit: 1 bag	06/19/89
Helena Laboratories	TITAN GEL Alkaline Phosphatase Buffer	Plastic Bag: 13.1g	06/19/89
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet: 25.9 g	04/12/83
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040.	Kit: 10 Plates (90mmx75mm), 2 Packages Buffer.	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate: (90mmx75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Buffer	Packet: 25.9 g	12/18/85
Helena Laboratories	Titan Gel IFE Plate	Plate: (90mmx75mm)	03/05/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No. 3046.	Kit: 10 Plates (90mmx75mm), 2 Packets IFE Buffer.	01/24/86
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet: 19.6 g	01/07/86
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate: (90mmx75mm)	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No. 3062.	Kit: 10 Plates (90mmx75mm), 1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel LD Buffer	Packet: 21.5 g	11/26/86
Helena Laboratories	Titan Gel LD Isoenzyme Diluent	Bottle: 10 ml	11/26/86
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22 7 g	03/07/83
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate: (90mmx75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial: 2 ml, 10 vials/box	01/07/86
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet: 17.3 g	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No.3045.	Kit: 1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Plate	Plate: (90x75 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Kit Catalog No. 3095.	Kit: 10 plates (81 x 143 mm) 1 packet buffer (21.6 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Plate	Plate: (81x143 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP–17 Kit Catalog No. 3091.	Kit: 10 plates (81x143 mm) 1 packet buffer (29.1 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP–17 Plate	Plate: 81x143 mm	01/09/87
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet: 29.1 g	04/12/83
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041.	Kit: 10 Plates (90mmx75mm), 1 Packet Buffer.	01/24/86
Helena Laboratories	Titan Gel Serum Protein Plate	Plate: (90mmx75mm)	12/18/85

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet: 25.9 g	12/18/85
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No. 3035.	Kit: 10 Plates (90mmx75mm), 2 Packets Buffer.	01/24/86
Helena Laboratories	Titan Gel Silver Stain Plate	Plate: (90mmx75mm)	03/03/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053.	Kit: 10 Plates (90mmx75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate: (90mmx75mm)	12/18/85
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet: 5 g (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates, 1 box B1 Buffer.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer.	12/28/73
Hycor Biomedical, Inc	Hycor AccuPINCH Cocaine Test	Bottle: 3 ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc	Hycor AccuPINCH Morphine Test	Bottle: 3 ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc	Hycor AccuPINCH Phencyclidine Test	Bottle: 3 ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc	Hycor AccuPINCH Methamphetamine Test.	Bottle: 3 ml; Kit: 50 tests	10/29/91
Hycor Biomedical, Inc	Hycor AccuPINCH THC Test	Bottle: 3 ml; Kit: 50 tests	10/29/91
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator BARBITURATES Urine Calibrator—4 levels.	Bottle: 10 ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator DELTA-9-THCC Urine Calibrator—4 levels.	Bottle: 10 ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator NORDIAZEPAM Urine Calibrator—3 levels.	Bottle: 10 ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator OPIATES Urine Calibrator—4 levels.	Bottle: 10 ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator PHENCYCLIDINE Urine Calibrator—4 levels.	Bottle: 10 ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator, Amphetamine Urine Calibrator—4 level.	Vial: 10 ml, Kit: 12 vials, Kit: 4 vials	03/29/89
Hycor Biomedical, Inc	Sentry Drugs of Abuse Urine Calibrator, Benzoylecgonine Urine Calibrator—4 level.	Vial: 10 ml, Kit: 12 vials, Kit: 4 vials	03/29/89
Hycor Biomedical, Inc	Sentry Ligand/Combo Control High Level	Vial: 10 ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc	Sentry Ligand/Combo Control Low Level	Vial: 10 ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc	Sentry Ligand/Combo Control Mid Level	Vial: 10 ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc	Sentry Ligand/Combo Control Multi-Pack	Kit: 15 vials	03/01/90
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, HIGH POSITIVE.	Bottle: 30 ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, LOWER THRESHOLD.	Bottle: 30 ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, UPPER THRESHOLD.	Bottle: 30 ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Urine Control, CONFIRMATION.	Box: 4–100 ml Bottles	10/21/88
Hycor/ICL Scientific	Drugs of Abuse Urine Control, SCREEN	Box: 4–30 ml Bottles	10/21/88
ICL Scientific	Therapeutic Drug Control I, TDC I (High Level).	Glass Vial: 10 ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack.	Glass Vials (12): 10 ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level).	Glass Vial: 10 ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low Level).	Glass Vial: 10 ml	08/14/85
ICN Micromedic Systems, Inc	Immunogen: BZ–A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: BZ–B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: CD–A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: M–A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: M–B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Immunogen: TF–A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc	Micromedic Combostat THC/Cocaine STANDARDS–2, 3, and 4.	Amber Glass Vial: 2 ml Plastic Bottle: 100 ml.	02/24/88
ICN Micromedic Systems, Inc	Micromedic CrackPot 57Co/125I Tracer Solution.	Plastic Bottle: 25 ml, 1000 ml	02/24/88
ICN Micromedic Systems, Inc	Micromedic Morphine 125I Tracer Solution.	Bottle: 50 ml, 1000 ml	02/29/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
ICN Micromedic Systems, Inc	Micromedic Morphine Standards 2, 3 and 4.	Bottle: 5 ml, 100 ml	02/29/88
INCSTAR Corporation	(125I) Human TSH Tracer Cat. No. CA–2623.	Vial: 15 ml	03/08/91
INCSTAR Corporation	Anticonvulsant Drug Controls Levels I and II Cat. Nos. CA–2419, CA–2420.	Vial: 3.5 ml	03/08/91
INCSTAR Corporation	Assay Buffer Cat. No. CA–2742	Bottle: 150 ml	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Coat (125I) Phenobarbital Radioimmunoassay Kits Cat. Nos. CA–2545, CA–2565.	Kit: 50, 500 assays	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Coat (125I) Phenytoin Radioimmunoassay Kits Cat. Nos. CA–2537, CA–2557.	Kit: 50, 500 assays	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Coat (125I) T3 Uptake Radioimmunoassay Kit Catalog Nos. CA–2539, CA–2539J, CA–2559, CA–2559J.	Kit: 100, 500 assays	03/08/91
INCSTAR Corporation	Clinical Assays Gamma Dab (125I) hTSH Radioimmunoassay Kit Cat. No. CA–1591.	Kit: 125 assays; Vial: 15 ml	03/08/91
INCSTAR Corporation	HTSH Non-Specific Binding Reagent Cat. No. CA–2752.	Vial: 3.5 ml	03/08/91
INCSTAR Corporation	Human TSH Controls Levels I & II Cat. Nos. CA–2452, CA–2453.	Vial: 3.5 ml	03/08/91
INCSTAR Corporation	Human hTSH Blank Cat. No. CA–2885	Vial: 15 ml	03/08/91
INCSTAR Corporation	Phenobarbital Standards: 1, 3, 10, 30, 100 µg/ml Cat. Nos. CA–2380–2384.	Bottle: 3.5 ml	03/08/91
INCSTAR Corporation	Rabbit Anti-Human TSH Serum Cat. No. CA–2145.	Vial: 15 ml	03/08/91
INCSTAR Corporation	htsH Standards: 2, 5, 10, 20, 50 µIU/ml Cat. Nos. CA–2886–2890.	Bottle: 3.5 ml	03/08/91
Immunotech Corp.	Amphetamine Enzyme Conjugate	Bottle: 10.5 ml	09/28/89
Immunotech Corp.	Amphetamine Positive Urine Calibrator	Bottle: 1 ml	09/28/89
Immunotech Corp	Amphetamine—ALK Phos Cat. No. 612, 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Amphetamine—HRP Cat. No. 613, 50 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Benzoylecgonine—ALK Phos Cat. No. 602, 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Benzoylecgonine—HRP Cat. No. 604, 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Cocaine Conjugate No. 0364–SIG	Bottle: 75 ml	06/13/91
Immunotech Corp	Cocaine Metabolite Enzyme Conjugate	Vial: 10.5 ml	09/28/89
Immunotech Corp	Cocaine Metabolite Positive Urine Calibrator.	Vial: 2 ml	09/28/90
Immunotech Corp	Delta-8-tetrahydrocannabinol—ALK Phos Cat. No. 616, 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Delta-8-tetrahydrocannabinol—HRP Cat. No. 618, 50 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	ENDAB Phenobarbital Kit, Cat. No. 119	Kit: 100 tests, 4 Bottles: 1 ml ea	09/28/89
Immunotech Corp	Methamphetamine—ALK Phos Cat. No. 614, 50 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Methamphetamine—HRP Cat. No. 615, 50 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Micro Dau Amphetamine Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp	Micro Dau Benzodiazepine Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp	Micro Dau Cocaine Metabolite Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp	Micro Dau Opiates Enzyme Immunoassay Test Kit.	Kit: 96 tests	12/19/89
Immunotech Corp	Micro Dau PCP Enzyme Immunoassay Kit Cat. No. 175.	Kit: 96 tests	07/11/90
Immunotech Corp	Micro Dau THC Enzyme Immunoassay Test Kit Cat. No. 173.	Kit: 96 tests	07/11/90
Immunotech Corp	Morphine Positive Urine Calibrator	Vial: 3.5 ml	12/19/89
Immunotech Corp	Morphine—ALK Phos Cat. No. 610, 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Morphine—HRP Cat. No. 611, 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Opiates Enzyme Conjugate	Vial: 10 ml	12/19/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Immunotech Corp	Oxazepam Enzyme Conjugate	Bottle: 10.5 ml	09/28/89
Immunotech Corp	Oxazepam Positive Urine Calibrator	Bottle: 2 ml	09/28/89
Immunotech Corp	Oxazepam—ALK Phos Cat. No. 606, 50 units.	Bottle: 10 ml	03/12/90
Immunotech Corp	Oxazepam—HRP Cat No. 608, 50 units	Bottle: 10 ml	03/12/90
Immunotech Corp	PCP Enzyme Conjugate Cat. No. 375	Vial: 20 ml	07/11/90
Immunotech Corp	PCP Positive Urine Calibrator Cat. No. 418.	Vial: 3 ml	07/11/90
Immunotech Corp	Phenobarbital Enzyme Conjugate	Bottle: 10.0 ml	09/28/89
Immunotech Corp	Phenobarbital Serum Standard: 3 µg/ml, 10 µg/ml, 30 µg/ml, 80 µg/ml.	4 Bottles: 1 ml each	09/28/89
Immunotech Corp	THC Enzyme Conjugate Cat. No. 373	Vial: 20 ml	07/11/90
Immunotech Corp	THC Positive Urine Calibrator Cat No. 416 50 ng/ml, 417 100 ng/ml.	Vial: 3 ml	07/11/90
Industrial Analytical Laboratory, Inc	11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol.	Ampule: 1 ml	09/04/85
Industrial Analytical Laboratory, Inc	11-hydroxy-delta-9-tetrahydrocannabinol	Ampule: 1 ml	02/18/87
Industrial Optical	Opti-Kleen	Bottle: 5 gallon	06/24/81
International BioClinical, Inc	Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml.	Bottle: 3 ml	07/09/87
International BioClinical, Inc	Phenobarbital Stock Tracer	Vial: 5 ml	09/23/87
International Technidyne Corp	Hemochron Control Plasma Quality Control Test Kit.	Kit: 18 tests; Test tube: 9 ml; Vial: 5 ml	03/11/91
Janssen Pharmaceutica, Inc	3H Alfentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc	3H Fentanyl	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc	3H Sufentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc	Alfentanil Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica, Inc	Fentanyl Radioimmunoassay Kit	Kit: 200 tests	05/13/85
Janssen Pharmaceutica, Inc	Sufentanil Radioimmunoassay Kit	Kit: 500 tests	05/13/85
Kallestad Diagnostics	Barbital Buffer 901	Vial	05/19/81
Kallestad Diagnostics	IEP Buffer No. 900	Vial: 7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Catalog No. 910	1 Film Sealed in Cardboard Container	03/11/80
Kallestad Diagnostics	Immunoelectrofilms, Catalog No. 1013	Styrofoam Container: 25 film	06/22/87
Kallestad Diagnostics	Immunoelectrophoresis Reagent Kit, Catalog No. 1012.	Kit: 3 Vials	06/22/87
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Kit, Catalog No. 823.	Kit: 400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Kit, Catalog No. 833.	Kit: 100 tests	06/24/81
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Reagent, Catalog No. 785.	Bottle: 500 ml	12/16/85
Kallestad Diagnostics	Quanticoat 125I–T3 Uptake Reagent No. 834.	2 Glass Bottles: 110 ml	06/24/81
LKB Instruments, Inc	Tris-barbiturate Buffer pH 8.6	Packet: each 6.788 g. 20 packets/box	05/15/78
Lemmon Company	Etorphine Standard Solution	Plastic Carboy: 1 Liter	10/31/83
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Package: 6.510 grams	08/28/72
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl)Barbituric Acid.	Screw Cap Vial: 8 ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl)Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8 ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1-Carboxy-N-Propyl)Barbituric Acid Sensitized RBC.	Vaccine Vial: 8 ml	05/03/73
Materials & Technology Systems	Barbiturate Standard	Screw Cap Vial: 10 ml	09/17/76
Materials & Technology Systems	Benzoylecgonine	Screw Cap Vial: 25mg and 100 mg	04/18/74
Materials & Technology Systems	Benzoylecgonine Standard	Screw Cap Vial: 10 ml	09/17/76
Materials & Technology Systems	Carboxymethyl-Morphine	Screw Cap Vial: 8 ml	05/03/73
Materials & Technology Systems	Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8 ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Sensitized RBC	Vaccine Vial: 50 ml	05/03/73
Materials & Technology Systems	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial: 8 ml	05/03/73
Materials & Technology Systems	Ecgonine Sensitized RBC	Vaccine Vial: 50 ml	05/03/73
Materials & Technology Systems	Methadone Standard	Screw Cap Vial: 10 ml	09/17/76
Materials & Technology Systems	Morphine Standard	Screw Cap Vial: 10 ml	07/17/73
Materials & Technology Systems	Tropinecarboxylic Acid	Screw Cap Vial: 8 ml, 10 ml	05/03/73
McGean-Rocho, Inc	Chloral Solution Denatured	Plastic container; 1, 5, 55 Gallons	1/11/91
McGean-Rocho, Inc	Reflexion Semi-Bright B	Plastic container; 1, 5, 55 Gallons	1/11/91
McGean-Rocho, Inc	Reflexion Semi-Bright S	Plastic container; 1, 5, 55 Gallons	1/11/91
Medi-Chem, Inc	Barbiturate Test Set (Sodium Secobarbital Standard 10 mg% w/v) Catalog No. 250.	Bottle: 120 ml	02/22/74

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 1.	Glass Vial: 22x38mm, 5 ml	08/07/86
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 2.	Glass Vial: 22x38mm, 5 ml	08/07/86
Medical Analysis Systems, Inc	ACE II Calibrator for the DuPont aca Level 3.	Glass Vial: 22x38mm, 5 ml	08/07/86
Medical Analysis Systems, Inc	CHALLENGE Liquid Therapeutic Drug Linearity Controls.	Kit: 10 bottles	01/24/91
Medical Analysis Systems, Inc	CHALLENGE Liquid Therapeutic Drug Linearity Controls TD1 A–E; TD2 A–E.	Glass Bottles: 5 ml, 1 Set: 5 bottles	01/24/91
Medical Analysis Systems, Inc	ChemTrak Liquid Unassayed	Vial: 15 ml	04/30/85
Medical Analysis Systems, Inc	Chemistry Control Assayed, Level 1, 2, & 3.	Vial: 15 ml	04/30/85
Medical Analysis Systems, Inc	Chemistry Control, Level 1, 2, & 3	Vial: 15 ml	04/30/85
Medical Analysis Systems, Inc	DOA Liquid Drugs of Abuse Controls Level 2, 3, 4.	Vial: 5 ml, 18 ml, Box: 6–8 ml vials, Box: 8–5 ml vials.	10/12/90
Medical Analysis Systems, Inc	Liquid Urine Control Level 1	Vial: 5 ml	04/03/87
Medical Analysis Systems, Inc	TDM Plus.XL Level I, II or III Unassayed Enhanced Liquid Drug Control.	Bottle: 5 ml, Box: 6 bottles	09/05/90
Medical Analysis Systems, Inc	Tri-Point Liquimmune Ligand Control, Levels 1, 2 and 3.	Glass Bottle: 5 ml, Kit: 6 bottles	10/23/91
Medical Analysis Systems, Inc	Tri-Point Liquimmune Ligand Control, Levels 1, 2 and 3.	Glass Bottle: 5 ml, Kit: 6 bottles	10/23/91
Medical Analysis Systems, Inc	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 2.	Kit: 6x5 ml Vials	10/08/86
Medical Analysis Systems, Inc	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 3.	Kit: 6x5 ml Vials	10/08/86
Medical Analysis Systems, Inc	chemTRAK Liquid Unassayed Therapeutic Drug Control Level I.	Kit: 6x5 ml Vials	10/08/86
Meloy Labs, Inc	Counterelectrophoresis Plates, G–301	Plates: 10 determinations	09/05/73
Meloy Labs, Inc	Immunoelectrophoresis Plates, G–201	Plates: 6/unit	09/05/73
Merck and Co., Inc	Amphetamine—d6 HCl, Cat. No. MD–3892.	Ampule: 2 or 5 ml	08/30/89
Merck and Co., Inc	Cocaine—d3 HCl Catalog # MD–3677	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	Codeine—d3 H2O (N-methyl-d3) No. MD–3776.	2 ml, 5 ml ampule, Carton: 5 ampules	09/06/88
Merck and Co., Inc	Codeine—d3 Catalog # MD–3678	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	DL–1 Phenyl-2-aminopropane 1, 1, 2, 3, 3, 3-d6 (Amphetamine-d6) Catalog # MD–3682.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	DL–1 Phenyl-2-methylam-inopropane-1, 1, 2, 3, 3, 3-d6 HCl (Methamphetamine d6) Catalog # MD–3683.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	DL–1 Phenyl-2-aminopropane-1, 1, 2, 3, 3, 3-d6 HCL No. MD–3778.	2 ml, 5 ml amber ampule, Carton: 5 ampules.	09/06/88
Merck and Co., Inc	Ecgonine—d3 Methyl Ester HCl Catalog # MD3679.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	Methamphetamine—d9 HCl, Cat. No. MD–3853.	Ampule: 2 or 5 ml	08/30/89
Merck and Co., Inc	Morphine—d3 HCl 3H20 (N-methyl-d3) No. MD–3777.	2 ml, 5 ml ampule, Carton: 5 ampules	09/06/88
Merck and Co., Inc	Morphine—d3 HCl Catalog # MD–3680	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	O-Benzoylecgonine-d3 Catalog # MD–3676.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc	Phen-d5-cyclidine HCl Catalog # MD–3681.	Ampule: 2 or 5 ml	06/13/88
Microdiagnostics, Inc	Amphetamine Enzyme Conjugate	Bottle: 2 ml	12/24/92
Microdiagnostics, Inc	Cocaine Enzyme Conjugate	Bottle: 2 ml	12/24/92
Microdiagnostics, Inc	EIA for Amphetamine Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc	EIA for Cocaine Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc	EIA for Marijuana Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc	EIA for Opiate Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc	EIA for PCP Metabolites	Kit: 2 bottles	12/24/92
Microdiagnostics, Inc	Opiate Enzyme Conjugate	Bottle: 2 ml	12/24/92
Microdiagnostics, Inc	PCP Enzyme Conjugate	Bottle: 2 ml	12/24/92
Microdiagnostics, Inc	Positive Amphetamine Standard	Bottle: 10 ml	12/24/92
Microdiagnostics, Inc	Positive Cocaine Standard	Bottle: 10 ml	12/24/92
Microdiagnostics, Inc	Positive Opiate Standard	Bottle: 10 ml	12/24/92
Microdiagnostics, Inc	Positive PCP Standard	Bottle: 10 ml	12/24/92
Microdiagnostics, Inc	Positive THC Standard	Bottle: 10 ml	12/24/92
Microdiagnostics, Inc	THC Enzyme Conjugate	Bottle: 2 ml	12/24/92

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Microgenics Corporation	Bulk Calibrator Solution 80 µg/ml, 40 µg/ml.	Carboy: 10 L	11/13/90
Microgenics Corporation	In-house Phenobarbital Bulk Primary Standard 40 µg/ml, 80 µg/ml.	Bottle: 2 L	11/13/90
Microgenics Corporation	In-house Phenobarbital Primary Standard 40 µg/ml, 80 µg/ml.	Micro tube: 1.5 ml, Box: 100 tubes	11/13/90
Microgenics Corporation	In-house manufacturing Bulk Calibrator 10 µg/ml, 20 µg/ml, 40 µg/ml, 60 µg/ml, 80 µg/ml, 90 µg/ml Phenobarbital.	Bottle: 2 L	11/13/90
Microgenics Corporation	In-house manufacturing Calibrator 10 µg/ml, 20 µg/ml, 40 µg/ml, 60 µg/ml 80 µg/ml, 90 µg/ml Phenobaribtal.	Vial: 3.5 ml	11/13/90
Microgenics Corporation	Microgenics CEDIA Phenobarbital Assay 40 µg/ml, 80 µg/ml.	Vial: 3.5 ml, Kit: 2 vials	11/13/90
Microgenics Corporation	Phenobarbital Stock Solution	Flask: 100 ml	11/13/90
Micromedic Systems	Micromedic Neonatal T4 125I Tracer Solution.	Nalgene Bottle: 4 oz	06/25/87
Micromedic Systems	Micromedic Neonatal T4 Elution Solution	Nalgene Bottle: 2 oz	06/25/87
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30 ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8 ounce	05/21/80
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial: 30 ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial: 30 ml	12/14/76
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial: 30 ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle: 8 ounce.	12/14/76
Miles Inc	Technicon Immuno 1 TESTpoint Ligand Controls, Kit No. T03–3393–01; Level I T13–3394–01; Level II T13–3395–01; Level III T13–3396–01.	Glass vial: 5 ml, Kit: 6 vials	3/16/92
Miles Laboratories, Inc	Ames Phenobarbital Assay, Kit Contains: Phenobarbital Standards; 10, 20, 40, & 60 mcg/ml.	6.1 ml vials	03/01/79
Miles Laboratories, Inc	Ames Phenobarbital Controls, 15 mcg/ml, 30 mcg/ml, 50 mcg/ml.	Vial: 6.1 ml	05/21/80
Miles Laboratories, Inc	Cliniria T–3 Uptake Test, Kit Contains: (1)125I T–3 Uptake Reagent & (2) Separating Reagent.	200 ml bottles	11/10/78
Miles Laboratories, Inc	Clinistat Calibrator Nos. 1 and 2	Vial: 1 ml	12/19/80
Miles Laboratories, Inc	Clinistat Control B, C, D, and E	Vial: 1 ml	12/19/80
Miles Laboratories, Inc	Seralute Total T–4 (RIA) 125I Reagent Kit, No. 3304, No. 3305.	Kit: 20 columns, 100 columns	03/28/77
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay Control	Vial: 1 ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay High Calibrator.	Vial: 0.5 ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Drug Assay Low Calibrator.	Vial: 0.5 ml	01/17/84
Miles Laboratories, Inc	Seralyzer ARIS Phenytoin Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Miles Laboratories, Inc	T–4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Miles Laboratories, Inc	TDA Cross-Reactivity Cocktails	Glass Vial: 1 ml	02/01/83
Miles Laboratories, Inc	TEK–CHEK Special Urine Control (supplemental)..	Vial: 25 ml	05/01/70
Miles Laboratories, Inc	Tetralute	Bottle: 4.9 g	07/29/70
Miles Laboratories, Inc	Thyrolute I125, Reagent Kit, No. 5250	Kit: 20 columns	12/02/74
Miles Laboratories, Inc	Thyrolute I125, Reagent Kit, No. 5252	Kit: 100 columns	12/02/74
Monobind, Inc	Monobind T3 Antibody Reagent	Test Tube w/Cap: 70 ml	11/08/77
Monobind, Inc	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55 ml	11/08/77
Monobind, Inc	Monobind T4 Antibody Reagent	Test Tube w/Cap: 70 ml	11/08/77
Monobind, Inc	Monobind T4 Tracer Reagent	Wheaton Glass Container 55 ml	11/08/77
Monobind, Inc	Monobind TSH Antibody Reagent	Test Tube w/Cap: 10.5 ml	11/08/77
Monobind, Inc	Monobind TSH Non-Specific Buffer	Wheaton Glass: 1.05 ml	11/08/77
Monobind, Inc	Monobind TSH Precipitating Reagent	Plastic Container w/Cap: 105 ml	11/08/77
Monobind, Inc	Monobind TSH Tracer Reagent	Wheaton Glass Container: 10.5 ml	11/08/77
Monobind, Inc	T3 Adsorbent Reagent	Glass Bottle: 110 ml, 50 ml, Plastic Bottle: 260 ml.	05/15/78
Monobind, Inc	T3 Uptake Tracer Reagent	Glass Bottle: 55 ml, 30 ml, Plastic Bottle: 125 ml.	05/15/78
Monobind, Inc	TSH Radioimmunoassay Test System	Kit: 100 tests	11/08/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Monobind, Inc	Thyroxine Radioimmunoassay Test System.	Kit: 100 tests	11/08/77
Monobind, Inc	Triiodothyronine Radioimmunoassay Test System.	Kit: 100 tests	11/08/77
Monoclonal Antibodies, Inc	Test Kit for Cocaine Metabolites in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc	Test Kit for Opiates in Urine	Kit: 50 tests	10/17/86
Monoclonal Antibodies, Inc	Test Kit for Tetrahydrocannabinol (THC) in Urine.	Kit: 50 tests	10/17/86
NSI Technology Services Corp	Alpha, alpha-dimethyl-phenethylamine	Amber Ampoule: 2 ml	03/02/89
Nuclear Diagnostics, Inc	MAAT T3 Uptake Reagent	Bottle: 105 ml, 210 ml; Kit: 1 bottle 210 ml.	11/16/90
Nuclear Diagnostics, Inc	SPINSEP-TBG Reagent Catalog No. 17100.	Polypropylene Bottle: 105 ml	12/15/77
Nuclear Diagnostics, Inc	TETRIA P.E.G. Antiserum Catalog No. 16100A.	Polypropylene Bottle: 55 ml	03/10/78
Nuclear Diagnostics, Inc	TETRIA P.E.G. Reagent Catalog No. 16100.	Polypropylene Bottle: 105 ml	07/08/77
Nuclear Diagnostics, Inc	TETRIA P.E.G. Reagent Catalog No. 16100R.	Polypropylene Bottle: 55 ml	03/10/78
Nuclear Diagnostics, Inc	TRIA-P.E.G. Antiserum Catalog No. 12100A.	Polypropylene Bottle: 55 ml	03/10/78
Nuclear Diagnostics, Inc	TRIA-P.E.G. Reagent Catalog No.12100R.	Polypropylene Bottle: 55 ml	03/10/78
OMI International Corporation	Compound N Solution	Steel Drum: 55 gallon	10/01/75
Organon Teknika Corp	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp	Barbital Buffered Saline with Azide	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp	Bovine QAS Clinical Study	6 Vials/Kit (10 ml/vial)	04/28/80
Organon Teknika Corp	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/18/79
Organon Teknika Corp	Liothyronine T3 125I	Boston Round Amber Bottle: 16 ounce	01/20/76
Organon Teknika Corp	Midwest/Illinois/New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials/kit	04/16/81
Organon Teknika Corp	Modified Barbital Buffer	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp	PACP I & II	Kit: 36 vials/kit	03/07/80
Organon Teknika Corp	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp	Platelin	Vial: 7.3 ml	03/13/72
Organon Teknika Corp	Platelin Plus Activator	Vial: 7.3 ml	03/13/72
Organon Teknika Corp	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp	Profile General—Levels I & II	Vial: 5 ml	02/22/82
Organon Teknika Corp	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/kit	08/17/78
Organon Teknika Corp	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/kit	08/17/78
Organon Teknika Corp	Russell's Viper Venom Reagent	Vial: 7.3 ml containing 48 mg of powder	07/08/74
Organon Teknika Corp	Simplastin	Vial: 4.7 ml, 7.3 ml, and 16.5 ml	03/13/72
Organon Teknika Corp	Simplastin-A	Vial: 7.3 ml	03/13/72
Organon Teknika Corp	T–4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr..	01/20/76
Organon Teknika Corp	T–4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr..	01/20/76
Organon Teknika Corp	TETRA-TAB-RIA T4 Diagnostic Kit	Kit: 40 tests, 200 tests	01/20/76
Organon Teknika Corp	TETRA-TUBE RIA T4 Diagnostic Kit	Kit: 100 tests, 500 tests	06/03/83
Organon Teknika Corp	TGTR Set	Package: 4 Tests per set	03/13/72
Organon Teknika Corp	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/18/79
Organon Teknika Corp	TRIS/Barbital Buffer	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp	Unassayed Chemistry Serum Control, Levels I & II.	Vial: 25 ml	06/27/80
Ortho Diagnostic Systems, Inc	Activated ThromboFAX No.721000	Bottle: 3.2 ml	09/21/71
Ortho Diagnostic Systems, Inc	Ortho Activated PTT Reagent	Glass Vial: 30 determination size, 100	05/23/83
Ortho Diagnostic Systems, Inc	Ortho Plasma Coagulation Control Level I	Glass Vial: 5 ml	10/25/83
Ortho Diagnostic Systems, Inc	Ortho Plasma Coagulation Control Level II.	Glass Vial: 5 ml	10/25/83
Othro Diagnostic Systems, Inc	ORTHO Owren's Buffer	Kit: 6–20 ml vials	08/26/88
PB Diagnostic Systems, Inc	OPUS Phenobarbital Calibrators: 5, 10, 20, 40, 80ug/ml.	Vial: 2.5 ml Carton: 5 vials	08/07/90
PB Diagnostic Systems, Inc	OPUS Phenobarbital Test Modules	Plastic Test Module, Tray: 5 modules, Carton: 50 modules.	08/07/90
Pacific Hemostasis	Barbital Buffered Saline	Vial: 100 ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial: 90 ml	05/24/84
Pacific Hemostasis	Diluting Fluid	Vial: 20 ml	05/24/84
Pantex	Immuno T3 Kit: (1) L-Triiodothyronine 125I (2) 1st Antiserum (3) 2nd Antiserum (4) Diluent (5) Standards.	Kit Containing Bottles: (1) 10 ml (2) 10 ml (3) 50 ml (4) 5 ml (5) 3 ml.	01/04/79

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Pantex	Immuno-Digoxin Kit Containing: (1) Digoxin 125I (2) 1st Antiserum (3) 2nd Antiserum (4) Diluent.	Kit Containing Bottles: (1) 10 ml (2) 20 ml (3) 50 ml (4) 5 ml.	01/04/79
Pantex	Immuno-Estriol 125I Kit: 2nd Antiserum	Bottle: 50 ml	01/04/79
Pantex	Immuno-Estriol Kit: (1) Estriol 3H RIA (2) Estriol 3H Recovery (3) 1st Antiserum (4) 2nd Antiserum (5) Diluent (6) Buffer (7) Standards.	Kit Containing Bottles: (1) 10 ml (2) 5 ml (3) 10 ml (4) 20 ml (5) 100 ml (6) 50 ml (7) 5 ml.	01/04/79
Pantex	Immuno-T4 Kit: (1) Thyroxine 125I (2) 1st Antiserum (3) 2nd Antiserum (4) Diluent (5) Standards.	Kit Containing Bottles: (1) 100 ml, 1000 ml (2) 50 ml (3) 100 ml (4) 5 ml (5) 3 ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1) Testosterone 125I (2) 1st Antiserum (3) 2nd Antiserum (4) Diluent (5) Standards.	Kit Containing Bottles: (1) 10 ml (2) 10 ml (3) 50 ml (4) 100 ml (5) 5 ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle: 100 ml, 1000 ml	01/04/79
Perkin-Elmer Corporation	Amphetamine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Barbiturates Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Cocaine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Methadone Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Morphine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Oplates Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Princeton Separations, Inc	Panagel 16	Pouch: 1 slide	06/29/87
Princeton Separations, Inc	Panagel 8	Pouch: 1 slide	06/29/87
Princeton Separations, Inc	Panagel Electrobuffer	Fiber Drum: 25 kg	06/29/87
Princeton Separations, Inc	Panagel Electrode Buffer	Pouch: 18.3 gms	06/29/87
Princeton Separations, Inc	Panagel LD Isoenzyme Electrode Buffer	Pouch: 11.85 gms	06/29/87
Princeton Separations, Inc	Panagel LD Isoenzyme Slide	Pouch: 1 slide	06/29/87
Quality Assurance Service Corp	Q.A. Toxicology Blood Controls	Vial: 6 ml, 12 ml Plastic Bottle: 60 ml, 90 ml, 250 ml, 625 ml Glass Bottle: 6 ml–100 ml.	01/23/90
Quality Assurance Service Corp	Q.A. Toxicology Serum Controls	Vial: 6 ml, 12 ml Plastic Bottle: 60 ml, 90 ml, 250 ml, 625 ml Glass Bottle: 6 ml–100 ml.	01/23/90
Quality Assurance Service Corp	Q.A. Toxicology Urine Controls	Vial: 6 ml, 12 ml Plastic Bottle: 60 ml, 90 ml, 250 ml, 625 ml Glass Bottle: 6 ml–100 ml.	01/23/90
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17–0303–2.	Polyethylene Dropper Bottle: 15 ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17–0303–1.	Polyethylene Dropper Bottle: 15 ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17–0305–1.	Polyethylene Dropper Bottle: 15 ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17–0305–2.	Polyethylene Dropper Bottle: 15 ml	04/16/86
Quantimetrix	Urine Drugs of Abuse Control Catalog No. 12–2411–1.	Dropper Bottle: 15 ml	02/23/87
Quin-Tec, Inc	Additive SB–1	Drum: 55 gals.	05/11/87
Quin-Tec, Inc	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Quin-Tec, Inc	Quin-Tec Brightener 404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Radian Corporation	(+/−) 11-Nor-9-Carboxy-delta 9-THC-D9 0.1 mg/ml, 1.0 mg/ml.	Vial: 2 ml	06/12/91
Radian Corporation	3, 4-Methylenedioxy-amphetamine-D5 0.1 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-amphetamine-D5 1.0 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-methamphetamine-D5 0.1 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3, 4-Methylenedioxy-methamphetamine-D5 1.0 mg/ml.	2 ml amber ampule	10/19/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Radian Corporation	3, 4-Methylenedioxyamphetamine 0.1, 1.0 mg/ml.	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	3, 4-Methylenedioxymethamphetamine 0.1, 1.0 mg/ml.	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	6-Acetylmorphine	Ampule: 2 ml	12/04/87
Radian Corporation	6-Acetylmorphine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	9-Carboxy-11-nor-Delta-9-Tetrahydrocannabinol-D3.	Ampule: 2 ml	12/04/87
Radian Corporation	9-Carboxy-11-nor-delta-9-THC 0.1, 1.0 mg/ml.	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Alpha-Hydroxyalprazolam 0.1 mg/ml, 1.0 mg/ml.	Vial: 2 ml	06/12/91
Radian Corporation	Alpha-Hydroxyalprazolam-D5 0.1 mg/ml, 1.0 mg/ml.	Vial: 2 ml	06/12/91
Radian Corporation	Alpha-Hydroxytriazolam 0.1 mg/ml, 1.0 mg/ml.	Ampule: 2 ml	04/27/92
Radian Corporation	Alpha-Hydroxytriazolam-D4, 0.1 mg/ml, 1.0 mg/ml.	Ampule: 2 ml	04/27/92
Radian Corporation	Alprazolam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	11/05/90
Radian Corporation	Alprazolam-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	11/05/90
Radian Corporation	Amobarbital 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Amphetamine-D3 0.1 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	Benzoylecgonine	Ampule: 2 ml	12/04/87
Radian Corporation	Benzoylecgonine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Buprenorphine 0.1	Ampule: 2 ml	02/01/91
Radian Corporation	Buprenorphine-D4 0.1 mg/ml	Ampule: 2 ml	02/01/91
Radian Corporation	Cocaethylene 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	12/13/90
Radian Corporation	Cocaethylene-D3	Ampule: 2 ml	12/13/90
Radian Corporation	Cocaine 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Cocaine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Codeine	Ampule: 2 ml	03/09/88
Radian Corporation	Codeine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	D-Amphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	D-Methamphetamine 0.1 mg/ml, 1.0 mg/ml.	Vial: 2 ml	06/12/91
Radian Corporation	D-Propoxyphene 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	04/27/92
Radian Corporation	D-Propoxyphene 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	DL-Amphetamine 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Amphetamine-D11, 0.1 mg/ml, 1.0 mg/ml.	Ampule: 2 ml	04/27/92
Radian Corporation	DL-Amphetamine-D3 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Amphetamine-D5 (SC) 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Amphetamine-D5 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Amphetamine-D5 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Amphetamine-D8, 0.1 mg/ml, 1.0 mg/ml.	Ampule: 2 ml	04/27/92
Radian Corporation	DL-Methamphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	DL-Methamphetamine-D5 0.1, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Methamphetamine-D8 0.1 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	DL-Methamphetamine-D8, 0.1 mg/ml, 1.0 mg/ml.	Ampule: 2 ml	04/27/92
Radian Corporation	DL-Propoxyphene—D5 0.1, 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Delta-9-Tetrahydro-cannabinol-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Delta-9-Tetrahydrocannabinol 0.1, 1.0 mg/ml.	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Diazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Diazepam-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Diazepam-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine 0.1 mg/ml, 1.0 mg/ml	Vial: 2 ml	06/12/91
Radian Corporation	Ecgonine Methyl Ester 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Ecgonine Methyl Ester-D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine Methyl Ester-D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine-D3 0.1 mg/ml, 1.0 mg/ml	Vial: 2 ml	06/12/91
Radian Corporation	Fentanyl	Ampule: 2 ml	01/02/91
Radian Corporation	Fentanyl-D5	Ampule: 2 ml	01/02/91
Radian Corporation	Flurazepam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Hydrocodone—D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone—D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Hydromorphone—D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone—D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Radian Corporation	Lorazepam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Lorazepam-D4, 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Meperidine 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Meperidine 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Meprobamate 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Methadone—D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone—D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Methaqualone—D4 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone—D4 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Methohexital 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Methylphenidate 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Morphine	Ampule: 2 ml	03/09/88
Radian Corporation	Morphine-3–Beta-D-glucuronide 0.1, 1.0mg/ml.	Ampule: 2 ml	02/01/91
Radian Corporation	Morphine-3–Beta-D-glucuronide-D3 0.1, 1.0mg/ml.	Ampule: 2 ml	02/01/91
Radian Corporation	Morphine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Nitrazepam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	09/17/90
Radian Corporation	Nitrazepam-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	09/17/90
Radian Corporation	Norcocaine 0.1 mg/ml, 1.0 mg/ml	Vial: 2 ml	06/12/91
Radian Corporation	Nordiazepam—D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam—D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Oxazepam—D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam—D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Pentobarbital 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	09/24/90
Radian Corporation	Pentobarbital-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	09/24/90
Radian Corporation	Phencyclidine 0.1 mg/ml, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Phencyclidine-D5	Ampule: 2 ml	12/04/87
Radian Corporation	Phenobarbital 0.1 mg/ml, 1.0 mg/ml	Amber glass ampule: 2 ml	01/12/89
Radian Corporation	Phenobarbital-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	12/04/87
Radian Corporation	Temazepam 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	09/17/90
Radian Corporation	Temazepam-D5 0.1 mg/ml, 1.0 mg/ml	Ampule: 2 ml	09/17/90
Radian Corporation	Traizolam 0.1mg/ml, 1.0mg/ml	Ampule: 2 ml	04/27/92
Radian Corporation	Traizolam-D4 0.1mg/ml, 1.0mg/ml	Ampule: 2 ml	04/27/92
Research Diagnostics	3H Alfentanil	Vial: 0.5 ml	06/15/89
Research Diagnostics	3H Fentanyl	Vial: 0.5 ml	06/15/89
Research Diagnostics	3H Sufentanil	Vial: 0.5 ml	06/15/89
Research Diagnostics	Alfentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Alfentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Fentanyl Analogs Reference Standards for Drug Analysis.	Amber Ampule: 1 ml, Plastic Shell: 5 ampules, Kit: 2 shells (10 ampules).	10/17/89
Research Diagnostics	Fentanyl Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Sufentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Triangle Institute	11–Nor-9-carboxy-delta-9 THC Blood Standards Kit.	Kit Containing: 18–21 ml Ampuls; 1–5 ml Ampul.	10/26/81
Research Triangle Institute	11–Nor-9-carboxy-delta-9 THC Plasma Standards Kit.	Kit Containing: 18–21 ml Ampuls; 1–5 ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16–2 ml Ampuls; 1–5 ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16–2 ml Ampuls; 1–5 ml Ampul.	11/02/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11–Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 26–1 ml Ampuls; 2–20 ml Vials; 2–250 ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11–Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing: 24–1 ml Ampuls; 2–20 ml Vials; 2–250 ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC.	Kit Containing: 20–1 ml Ampules; 2–20 ml Vials; 2–250 ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood.	Kit Containing: 22–1 ml Ampules; 2–20 ml Vials; 2–250 ml Bottles.	07/10/81
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC.	Kit Containing: 20–1 ml Ampules; 2–20 ml Vials; 2–250 ml Bottles.	06/27/80
Restek Corp	Thebaine	Ampule: 2 ml	01/08/93
Restek Corp	Alprazolam	Ampule: 2 ml	01/08/93
Restek Corp	Amobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Amphetamine	Ampule: 2 ml	01/08/93
Restek Corp	Aprobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Barbital	Ampule: 2 ml	01/08/93
Restek Corp	Benzoylecgonine	Ampule: 2 ml	01/08/93

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Restek Corp	Benzphetamine	Ampule: 2 ml	01/08/93
Restek Corp	Bromazepam	Ampule: 2 ml	01/08/93
Restek Corp	Butabarbital	Ampule: 2 ml	01/08/93
Restek Corp	Butalbital	Ampule: 2 ml	01/08/93
Restek Corp	Cannabidiol delta-8	Ampule: 2 ml	01/08/93
Restek Corp	Cannabinol	Ampule: 2 ml	01/08/93
Restek Corp	Chlordiazepoxide	Ampule: 2 ml	01/08/93
Restek Corp	Clobazam	Ampule: 2 ml	01/08/93
Restek Corp	Clonazepam	Ampule: 2 ml	01/08/93
Restek Corp	Cocaethylene	Ampule: 2 ml	01/08/93
Restek Corp	Cocaine	Ampule: 2 ml	01/08/93
Restek Corp	Codeine	Ampule: 2 ml	01/08/93
Restek Corp	Desmethyl Diazepam	Ampule: 2 ml	01/08/93
Restek Corp	Diacetylmorphine	Ampule: 2 ml	01/08/93
Restek Corp	Diazepam	Ampule: 2 ml	01/08/93
Restek Corp	Ecgonine	Ampule: 2 ml	01/08/93
Restek Corp	Ecgonine methyl ester	Ampule: 2 ml	01/08/93
Restek Corp	Fenfluramine	Ampule: 2 ml	01/08/93
Restek Corp	Fentanyl	Ampule: 2 ml	01/08/93
Restek Corp	Flunitrazepam	Ampule: 2 ml	01/08/93
Restek Corp	Flurazepam	Ampule: 2 ml	01/08/93
Restek Corp	Glutethimide	Ampule: 2 ml	01/08/93
Restek Corp	Hexobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Hydrocodone	Ampule: 2 ml	01/08/93
Restek Corp	Levorphanol	Ampule: 2 ml	01/08/93
Restek Corp	Lorazepam	Ampule: 2 ml	01/08/93
Restek Corp	Medazepam	Ampule: 2 ml	01/08/93
Restek Corp	Meperidine	Ampule: 2 ml	01/08/93
Restek Corp	Mephobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Meprobamate	Ampule: 2 ml	01/08/93
Restek Corp	Methadone	Ampule: 2 ml	01/08/93
Restek Corp	Methamphetamine	Ampule: 2 ml	01/08/93
Restek Corp	Methohexital	Ampule: 2 ml	01/08/93
Restek Corp	Methyprylon	Ampule: 2 ml	01/08/93
Restek Corp	Morphine	Ampule: 2 ml	01/08/93
Restek Corp	Nitrazepam	Ampule: 2 ml	01/08/93
Restek Corp	Oxazepam	Ampule: 2 ml	01/08/93
Restek Corp	Oxycodone	Ampule: 2 ml	01/08/93
Restek Corp	Pentazocine	Ampule: 2 ml	01/08/93
Restek Corp	Pentobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Phencyclidine	Ampule: 2 ml	01/08/93
Restek Corp	Phendimetrazine	Ampule: 2 ml	01/08/93
Restek Corp	Phenmetrazine	Ampule: 2 ml	01/08/93
Restek Corp	Phenobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Phentermine	Ampule: 2 ml	01/08/93
Restek Corp	Prazepam	Ampule: 2 ml	01/08/93
Restek Corp	Propoxyphene	Ampule: 2 ml	01/08/93
Restek Corp	Secobarbital	Ampule: 2 ml	01/08/93
Restek Corp	Talbutal	Ampule: 2 ml	01/08/93
Restek Corp	Temazepam	Ampule: 2 ml	01/08/93
Restek Corp	Tetrahydrocannabinol 11-nor delta-9–THC-carboxylic acid.	Ampule: 2 ml	01/08/93
Restek Corp	Tetrahydrocannabinol delta-9	Ampule: 2 ml	01/08/93
Restek Corp	Thiamylal	Ampule: 2 ml	01/08/93
Restek Corp	Thiopental	Ampule: 2 ml	01/08/93
Restek Corp	Triazolam	Ampule: 2 ml	01/08/93
Roche Diagnostic Systems, Inc	125I T3 (for T3 Uptake Radioassay)	Vial: 15 ml	07/22/81
Roche Diagnostic Systems, Inc	Abuscreen 125 I-Methamphetamine Reagent.	Vial: 500 ml, 30 ml	03/01/89
Roche Diagnostic Systems, Inc	Abuscreen FP Cocaine Metabolite 75, 150, 300 or 600 ng/ml Benzoylecgonine Standard.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP Cocaine Metabolite Positive Control.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Amphetamine	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Amphetamine 250, 500, 1000 or 2000 ng/ml d-Amphetamine Standard.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Amphetamine Positive Control.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Amphetamine Tracer Reagent.	Vial: 12 ml	03/23/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc	Abuscreen FP for Barbiturates	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Barbiturates 50, 100, 200 or 400 ng/ml Secobarbital Standard.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Barbiturates Positive Control.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Barbiturates Tracer Reagent.	Vial: 12 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Benzodiazepines	Kit: 1000 Tests	05/11/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Cannabinoids	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Cannabinoids 25, 50, 100 or 200 ng/ml Cannabinoid Standard.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Cannabinoids Positive Control.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Cannabinoids Tracer Reagent.	Vial: 12 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Cocaine Metabolite	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Cocaine Metabolite Tracer Reagent.	Vial: 12 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Methamphetamine	Kit: 1000 tests	03/09/90
Roche Diagnostic Systems, Inc	Abuscreen FP for Methamphetamine 250, 500, 1000 or 2000 ng/ml d-Methamphetamine Calibrator.	Vial: 4 ml	03/09/90
Roche Diagnostic Systems, Inc	Abuscreen FP for Methamphetamine Cutoff Control.	Vial: 4 ml	03/09/90
Roche Diagnostic Systems, Inc	Abuscreen FP for Methamphetamine Positive Control.	Vial: 4 ml	03/09/90
Roche Diagnostic Systems, Inc	Abuscreen FP for Methamphetamine Tracer Reagent.	Vial: 12 ml	03/09/90
Roche Diagnostic Systems, Inc	Abuscreen FP for Morphine	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Morphine 75, 150, 300 or 600 ng/ml Morphine Standard.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Morphine Positive Control.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Morphine Tracer Reagent.	Vial: 12 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Phencyclidine	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Phencyclidine 5, 10, 25 or 50 ng/ml Phencyclidine Standard.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Phencyclidine Positive Control.	Vial: 4 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Phencyclidine Tracer Reagent.	Vial: 12 ml	03/23/89
Roche Diagnostic Systems, Inc	Abuscreen High Control (Methamphetamine).	Vial: 2 oz.	03/01/89
Roche Diagnostic Systems, Inc	Abuscreen Low Control (Methamphetamine).	Vial: 2 oz.	03/01/89
Roche Diagnostic Systems, Inc	Abuscreen Positive Reference Control (Methamphetamine).	Vial: 100 ml, 6.6 ml	03/01/89
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Methamphetamine High Specificity.	Kit: 100 tests, 2500 tests	03/01/89
Roche Diagnostic Systems, Inc	Abuscreen 125I Amphetamine Reagent	Vial: 30 ml, 500 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen 125I Benzoylecgonine Reagent.	Vial: 30 ml, 500 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen 125I D-Amphetamine Reagent	Vial: 30 ml, 500 ml	05/11/92
Roche Diagnostic Systems, Inc	Abuscreen 125I Methaqualone Reagent	Vial: 30 ml, 500 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen 125I Morphine Reagent	Vial: 30 ml, 500 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen 125I Oxazepam Reagent	Vial: 30 ml, 500 ml	03/06/87
Roche Diagnostic Systems, Inc	Abuscreen 125I Phencyclidine Reagent	Vial: 30 ml, 500 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen 125I Secobarbital Reagent	Vial: 30 ml, 500 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen 125I Tetrahydrocannabinol Reagent.	Vial: 500 ml, 30 ml	08/14/81
Roche Diagnostic Systems, Inc	Abuscreen 125I–LSD Reagent	Vial: 500 ml, 30 ml	01/28/86
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Amphetamine).	Vial: 6.6 ml, 100 ml	05/11/92
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Amphetamine) 100, 500, 750, 1500, or 2000 ng/ml.	Vial: 6.6 ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6 ml, 100 ml	02/15/83

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Benzodiazepines) 25, 50, 75, 100 ng/ml or 150–1000 (in increments of 50) ng/ml.	Vial: 5 ml, 100 ml	03/06/87
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Benzoylecgonine) 100, 150, 200, 400, 500, 600, 750, 1000, or 2000 ng/ml.	Vial: 6.6 ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Cannabinoids) 20, 25, 50, 150, 200, 300, 400, or 500 ng/ml.	Vial: 6.6 ml, 100 ml	02/20/84
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml.	Vial: 5 ml, 100 ml	01/28/86
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Methaqualone) 100, 300, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6 ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Morphine) 40, 50, 100, 150, 200, 300, 500, 600, or 1000 ng/ml.	Vial: 6.6 ml, 100 ml.	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial: 6.6 ml, 100 ml.	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for Amphetamine.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for Cannabinoids.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for Cocaine Metabolite.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for LSD (Lysergic Acid Diethylamide).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for Methamphetamine (High Specificity).	Pack: 6 Vials	05/27/92
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for Morphine.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Calibration Standard for Phencyclidine (PCP).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Calibraton Standard for Barbiturate.	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Amphetamine	Kit: 100 tests	01/18/88
Roche Diagnostic Systems, Inc	Abuscreen EIA Amphetamine Conjugate Reagent.	Vial: 30 ml	01/18/88
Roche Diagnostic Systems, Inc	Abuscreen EIA Amphetamine Negative Control.	Vial: 4 ml	01/18/88
Roche Diagnostic Systems, Inc	Abuscreen EIA Amphetamine Positive Calibrator.	Vial : 4 ml	01/18/88
Roche Diagnostic Systems, Inc	Abuscreen EIA Amphetamine Positive Control.	Vial: 4 ml	01/18/88
Roche Diagnostic Systems, Inc	Abuscreen EIA Barbiturate Conjugate Reagent.	Vial: 30 ml	10/02/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Barbiturate Enzyme Immunoassay Test Kit for Barbiturate Metabolites.	Kit: 100 Tests	10/02/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Barbiturate Negative Control.	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Barbiturate Positive Calibrator 50–1200 (in increments of 50) ng/ml.	Vial: 4 ml	10/02/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Barbiturate Positive Control.	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Cannabinold Positive Calibrator 50–1200 (in increments of 50) ng of THC derivative/ml..	Vial: 4 ml	08/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Cannabinoid THC Conjugate Reagent.	Vial: 30 ml	08/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Cannabinoids Enzyme Immunoassay Test Kit for Cannabinoids.	Kit: 100 Tests	08/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Cannabinoids Negative Control.	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Cannabinoids Positive Control.	Vial: 4 ml	04/15/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Conjugate Reagent.	Vial: 30 ml	05/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Positive Calibrator 50–1200 (in increments of 50) ng/ml.	Vial: 4 ml	05/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Cocaine Metabolite Enzyme Immunoassay Test Kit for Benzoylecgonine.	Kit: 100 tests	05/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Cocaine Metabolite Negative Control.	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Cocaine Metabolite Positive Control.	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Morphine Conjugate Reagent.	Vial: 30 ml	05/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Morphine Enzyme Immunoassay Test Kit for Morphine and Morphine Metabolites.	Kit: 100 tests	05/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Morphine Negative Control.	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen EIA Morphine Positive Calibrator 50–1200 (in increments of 50) ng/ml.	Vial: 4 ml	05/28/86
Roche Diagnostic Systems, Inc	Abuscreen EIA Morphine Positive Control	Vial: 4 ml	04/15/87
Roche Diagnostic Systems, Inc	Abuscreen FP for Benzodiazepines-25, 50, 100 or 200 ng/ml Benzodiazepines Standard.	Vial: 4 ml	05/11/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Benzodiazepines-Positive Control.	Vial: 4 ml	05/11/89
Roche Diagnostic Systems, Inc	Abuscreen FP for Benzodiazepines-Tracer Reagent.	Vial: 12 ml	05/11/89
Roche Diagnostic Systems, Inc	Abuscreen High Control (Amphetamine)	Vial: 2oz	05/11/92
Roche Diagnostic Systems, Inc	Abuscreen Low Control (Amphetamine)	Vial: 2oz	05/11/92
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Calibration Pack	Kit: 8 vials	05/18/92
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Calibrator Level 3	Vial: 5 ml; Kit: 6 vials	02/21/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Calibrator Level 3	Pack: 6 vials	05/18/92
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Calibrator Levels 2, 4.	Vial: 3 ml; Kit: 6 vials	02/21/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Cocaine Metabolite Calibrator Level 2, 3, 4.	Vial: 7 ml	09/11/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Opiate Calibrator Level 2, 3, 4.	Vial: 7 ml	09/11/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Positive Control	Vial: 3 ml; Kit: 6 vials	02/21/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE Positive Control	Pack: 6 vials	05/18/92
Roche Diagnostic Systems, Inc	Abuscreen ONLINE THC Calibrator Level 2, 3, 4, 5.	Vial: 7 ml	09/11/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE for Cocaine Metabolite.	Kit: 100 Test, 1000 Test	03/19/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE for Opiates	Kit: 100 Test, 1000 Test	03/19/91
Roche Diagnostic Systems, Inc	Abuscreen ONLINE for THC	Vial: 100 Test, 1000 Test	03/19/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK "THC"	Kit: 40 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK "THC" Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK "THC" Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK "THC" Reagent C—Latex Reagent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine	Kit: 40 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine (500ng/ml).	Kit: 40 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine (500ng/ml) Negative Control.	Vial: 4 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine (500ng/ml) Reagent C—Latex Reagent.	Vial: 7 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Amphetamine Reagent C—Latex Reagent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Barbiturate	Kit: 40 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Barbiturate Reagent C—Latex Reagent.	Vial: 7 ml	03/14/88

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Barbiturates Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Barbiturates Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Benzodiazepines	Kit: 40 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Benzodiazepines Negative Control.	Vial: 4 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Benzodiazepines Reagent C—Latex Reagent.	Vial: 7 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine (200ng/ml)	Kit: 40 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine (200ng/ml) Negative Control.	Vial: 4 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine (200ng/ml) Reagent C—Latex Reagent.	Vial: 7 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine Metabolite	Kit: 40 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine Metabolite Benzoylecgonine Reagent C—Latex Reagent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine Metabolite Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Cocaine Metabolite Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Methamphetamine	Kit: 40 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Methamphetamine Negative Control.	Vial: 4 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Methamphetamine Reagent C—Latex Reagent.	Vial: 7 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Morphine	Kits: 40 tests, 100 tests	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Morphine Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Morphine Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK Morphine Reagent C—Latex Reagent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK THC (50ng/ml)	Kit: 40 Tests, 100 Tests	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK THC (50ng/ml) Negative Control.	Vial: 4 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK THC (50ng/ml) Reagent C—Latex Reagent.	Vial: 7 ml	05/03/91
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK phencyclidine (PCP)	Kit: 40 tests, 100 tests	11/22/89
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK phencyclidine (PCP) Negative Control.	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK phencyclidine (PCP) Positive Control.	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK phencyclidine (PCP) Reagent A—Antibody Reagent.	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc	Abuscreen ONTRAK phencyclidine (PCP) Reagent C—Latex Reagent.	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Amphetamine.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit: 100 tests, 2500 tests	09/13/85
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Barbiturates.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Benzodiazepines.	Kit: 100 tests, 2500 tests	03/06/87
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Cannabinoids.	Kit: 100 tests 2500 tests	08/14/81
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Cocaine Metabolite.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Combined Amphetamines (Amphetamine/Methamphetamine).	Kit: 100 tests, 2500 tests	05/11/92
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	01/28/86
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Methaqualone.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Morphine.	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc	Abuscreen Radioimmunoassay for Phencyclidine (PCP).	Kit: 100 tests, 2500 tests	02/15/83

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Amphetamine.	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Barbiturate.	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Cannabinoids.	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Cocaine Metabolite.	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for LSD (Lysergic Acid Diethylamide).	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Methamphetamine (High Specificity).	Kit: 3 vials, 100 ml each	05/27/92
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Morphine.	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Abuscreen Reference Controls and Calibrator for Phencyclidine (PCP).	Kit: 3 Vials, 100 ml each	10/12/87
Roche Diagnostic Systems, Inc	Agglutex Amphetamine Latex Reagent	Vial: 2 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Amphetamine Positive Human Urine Control.	Vial: 5 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Amphetamine Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Barbiturate Latex Reagent	Vial: 2 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Barbiturate Positive Human Urine Control.	Vial: 5 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Barbiturate Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Methaqualone Latex Reagent	Vial: 2 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Methaqualone Positive Human Urine Control.	Vial: 5 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Methaqualone Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Morphine Latex Reagent	Vial: 2 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Morphine Positive Human Urine Control.	Vial: 5 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Morphine Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Phencyclidine (PCP) Test Kit	Kit: 20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Phencyclidine Latex Reagent	Vial: 2 ml	06/27/83
Roche Diagnostic Systems, Inc	Agglutex Phencyclidine Positive Human Urine Control.	Vial: 5 ml	06/27/83
Roche Diagnostic Systems, Inc	Amerifluor Florescent Immunoassay—Phenobarbital.	Kit: 100 tests	04/30/82
Roche Diagnostic Systems, Inc	Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay).	Vial: 15 ml	07/22/81
Roche Diagnostic Systems, Inc	Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay).	Vial: 15 ml	07/22/81
Roche Diagnostic Systems, Inc	CAL PACK Abuscreen ONLINE Cocaine Metabolite Calibration Kit.	Kit: 6 vials	09/11/91
Roche Diagnostic Systems, Inc	CAL PACK Abuscreen ONLINE Opiate Calibration Kit.	Kit: 6 vials	09/11/91
Roche Diagnostic Systems, Inc	CAL PACK Abuscreen ONLINE THC Calibration Kit.	Kit: 4 vials	09/11/91
Roche Diagnostic Systems, Inc	COBAS FP Phenobarbital Calibrators	Kit: 6 Vials	11/13/84
Roche Diagnostic Systems, Inc	COBAS FP Phenobarbital Calibrators B through F.	Vials: 5 ml	11/13/84
Roche Diagnostic Systems, Inc	COBAS FP Phenobarbital Tracer Reagent.	Vial: 5 ml	11/13/84
Roche Diagnostic Systems, Inc	COBAS FP Reagents for Phenobarbital	Kit: 100 tests	11/13/84
Roche Diagnostic Systems, Inc	COBAS FP TDM Controls	Kit: 6 Vials	11/13/84
Roche Diagnostic Systems, Inc	CUTOFF CAL PACK Abuscreen ONLINE Cocaine Metabolite Calibration Kit.	Kit: 6 vials	09/11/91
Roche Diagnostic Systems, Inc	CUTOFF CAL PACK Abuscreen ONLINE Opiate Calibration Kit.	Kit: 6 vials	09/11/91
Roche Diagnostic Systems, Inc	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8.	Vial: 10, 20, 50, or 100 ml	01/25/83
Roche Diagnostic Systems, Inc	Immunizing Preparation No. 9	Vial: 10 ml, 20 ml, 50 ml, or 100 ml	07/24/84
Roche Diagnostic Systems, Inc	Immunizing Preparation No. 9A	Vial: 10 ml, 20 ml, 50 ml, or 100 ml	07/24/84
Roche Diagnostic Systems, Inc	Immunizing Preparation No. 10	Vial: 10 ml, 20 ml, 50 ml, or 100 ml	04/02/86
Roche Diagnostic Systems, Inc	Immunizing Preparation No. 10A	Vial: 10 ml, 20 ml, 50 ml, or 100 ml	04/02/86
Roche Diagnostic Systems, Inc	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A & 8A.	Vial: 10 ml, 20 ml, 50 ml, or 100 ml	07/12/83
Roche Diagnostic Systems, Inc	NS8 Reagent	Vial: 2 ml	07/22/81
Roche Diagnostic Systems, Inc	TDM Controls, Levels I through III	Vials: 5 ml	11/13/84
Rowley Biochemical Institute, Inc	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Rowley Biochemical Institute, Inc	Aldehyde Thionin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc	Mayer's Hematoxylin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Schering Corp	Hepaquik	Vial: 9 Dram and Plate	07/16/72
Serex Inc	Benzoylecgonine Positive Control	Bottle: 1 ml	12/16/89
Serex Inc	Benzoylecgonine Standards	Bottle: 1 ml	12/16/89
Serex Inc	CoMA EIA for Cocaine Metabolite	Kit: 96 tests, 2 Bottles: 5 ml ea., Assay Plate: 96 wells.	10/17/89
Serex Inc	Cocaine Metabolite Standards and Controls Kit.	Kit: 3 bottles—100 Assays	12/16/89
Serex, Inc	Automates CoMA Cocaine Metabolite Assay.	Kit: 3 Bottles; 50, 1000 Tests	07/22/92
Serex, Inc	Automates CoMA Cocaine Metabolite Assay Reagent B.	Bottle: 12.5 ml, 50 ml	07/22/92
Serex, Inc	Automates CoMA High Calibrator	Vial: 5 ml	07/22/92
Serex, Inc	Automates CoMA Plus Cocaine Metabolite Assay.	Kit: 3 Bottles; 50, 1000 Tests	07/22/92
Serex. Inc	Automates CoMA Low Calibrator	Vial: 5 ml	07/22/92
Serex. Inc	Automates CoMA Plus Cocaine Metabolite Assay Reagent B.	Bottle: 12, 5 ml, 50 ml	07/22/92
Serono Diagnostics, Inc	rT3 Barbital Buffer	Glass Vial: 120 ml	10/26/84
Serono Diagnostics, Inc	rT3–125I	Glass Vial: 13 ml	10/26/84
Serono Diagnostics, Inc	rT3–Antiserum	Glass Vial: 13 ml	10/26/84
Sherwood Medical Company	Lancer Fibrinogen Determination, Reagent Kit Catalog No. 8889–007608.	Kit	04/17/75
Sigma Chemical Co	(+) Deoxyephedrine-d5 HCl #D–5914	Ampule: 2 ml	08/28/90
Sigma Chemical Co	(+/–)-(2 Methylamino)propiophenone Hydrochloride.	Ampule: 1 ml	07/30/92
Sigma Chemical Co	(+/–) 2, 5-Dimethoxy-4-bromo-amphetamine Hydrobromide, D–7633.	Ampule: 2 ml	09/25/91
Sigma Chemical Co	(+/–) 2, 5-Dimethoxy-4-methyl-amphetamine HCl, D–7883.	Ampule: 2 ml	09/25/91
Sigma Chemical Co	(+/–) Deoxyephedrine HCl, D–7508	Ampule: 2 ml	09/25/91
Sigma Chemical Co	(–) Deoxyephedrine, D–7258	Ampule: 2 ml	09/25/91
Sigma Chemical Co	1-Tetrahydrocannabinol, Product No. T–4764.	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	1-Tetrahydrocannabinol, Product No. T–4764.	Vial: 1 ml	05/11/81
Sigma Chemical Co	11-Hydroxy-delta 9 Tetrahydrocannabinol Cat. No. H3879.	Ampule: 2 ml	11/06/91
Sigma Chemical Co	11-nor-delta9-Tetrahyrocannabinol, 9-carboxylic .05 mg/ml acid, No. N–5642.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	11-nor-delta9THC-9-Carboxylic Acid #N–6893.	Ampule: 2 ml	08/28/90
Sigma Chemical Co	19-Nortesterone 17-Phenylpropionate, N 2771.	Ampule: 1 ml	07/30/92
Sigma Chemical Co	19-Nortesterone 17-Propionate, N 2896	Ampule: 1 ml	07/30/92
Sigma Chemical Co	19-Nortestosterone 17-Decanoate, N 3021.	Ampule: 1 ml	07/30/92
Sigma Chemical Co	3, 4 Methylenedioxymethamphetamine 1 mg/ml, No. M–5029.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	3, 4-Methylenedioxyamphetamine, No. M–3272.	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	3-Methylfentanyl HCl, M–6255	Ampule: 2 ml	09/25/91
Sigma Chemical Co	5, 5-Diallylbarbituric Acid, Product No. D–6013.	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	5-Alpha-Androstan-17beta-ol-3-one Benzoate, A 9687.	Ampule: 1 ml	07/30/92
Sigma Chemical Co	6-Tetrahydrocannabinol, Product No. T–4889.	Vial: 1 ml	05/11/81
Sigma Chemical Co	AST Reagent A, Stock No. 56–2	Vial: 10 ml	06/27/79
Sigma Chemical Co	Acid Hematoxylin Solution, No. 285–2	Bottle: 25 ml, 100 ml	08/06/73
Sigma Chemical Co	Adenosine Phosphate Substrate, Product No. 675–1.	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Allylcyclopentylbarbituric Acid (A–7787)	Sealed Ampule: 1 ml	04/10/85
Sigma Chemical Co	Allylisobutylbarbituric Acid (A–1038)	Sealed Ampule: 1 ml	04/10/85
Sigma Chemical Co	Alphaprodine Hydrochloride (A–1537)	Ampule: 1 ml	08/27/84
Sigma Chemical Co	Alphenal (A–1163)	Ampule: 1 ml	04/10/85
Sigma Chemical Co	Alprazolam .25 mg/ml, No. A–5052	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	Alprazolam-d5 #A–7055	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Ammonia Reagent, Stock No. 170–10	Vial: 10 ml	02/17/77
Sigma Chemical Co	Ammonia Reagent Kit: Stock No. 170–10	Kit: 10 Vials	02/17/77
Sigma Chemical Co	Ammonia Reagent Stock No. 170–10	Vial: 30 ml	12/13/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Sigma Chemical Co	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co	Amobarbital, Product No. A–5142	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Antibody Sensitized Sheep Erythrocytes (EA7S).	Vials: 2 ml and 5X 2 ml	04/02/86
Sigma Chemical Co	Aprobarbital, Product No. A–7023	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Barbital Buffer, Product No. B–6632	Polyethylene Vial: 30 ml	05/11/77
Sigma Chemical Co	Barbital Buffer 5X Concentrate Electrophoresis Reagent Cat. No. B–3506.	Bottle: 200 ml	11/14/91
Sigma Chemical Co	Barbital Buffer with Albumin Stock No. 880–3.	Vial: 20 ml	07/11/80
Sigma Chemical Co	Barbital, Product No. B–8632	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Benzoylecgonine 1 mg/ml, No. B–8900	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	Benzoylecgonine-d3 #B–3277	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Benzphetamine Hydrochloride, Product No. B–8765.	Sealed Ampule: 1 ml	06/08/84
Sigma Chemical Co	Bromazepam #B–5402	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Bufotenine Monooxalate, Product No. B–8757.	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Butabarbital, Product No. B–8882	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Butalbital, Product No. B–5514	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Butethal (B–7516)	Ampule: 1 ml	09/05/85
Sigma Chemical Co	Cannabidiol, Product No. C–6395	Sealed Ampule: 1 ml	08/29/79
Sigma Chemical Co	Cannabidiol, Product No. C–6395	Vial: 1 ml	05/11/81
Sigma Chemical Co	Cannabinol, Product No. C–6520	Vial: 1 ml	05/11/81
Sigma Chemical Co	Cannabinol, Product No. C–6520	Sealed Ampule: 1 ml	08/29/79
Sigma Chemical Co	Chloral Hydrate, Product No. C–6516	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Chlorazepam Dipotassium Salt, (C–9531)	Ampule: 1 ml	05/24/85
Sigma Chemical Co	Chlordiazepoxide (C–4782)	Ampule: 1 ml	09/05/85
Sigma Chemical Co	Chlordiazepoxide Hydrochloride Acetonitrile Drug Standard #C–9547.	Ampule: 2 ml	06/26/90
Sigma Chemical Co	Chlordiazepoxide-d5 #C–5047	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Clobazam, No. C–6667	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Clonazepam, Product No. C–4404	Sealed Ampule: 1 ml	06/08/84
Sigma Chemical Co	Cocaine Hydrochloride Product No. C–1528.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Cocaine-d3 #C–3547	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Codeine-d3 HCl #C–3672	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Codeine.Product No. C–1653	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	D-Amphetamine Sulfate, Product No. A–3278.	Vial: 1 ml	05/11/81
Sigma Chemical Co	DL-Amphetamine HCL, Product No. A–5017.	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Delorazepam #D–5789	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Desmethyldiazepam 1 mg/ml, No. D–3162.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	Desmethyldiazepam-d5 #D–6039	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Dextropropoxyphene Hydrochloride (D–8901).	Ampule: 1 ml	09/27/84
Sigma Chemical Co	Diazepam, Product No. D–9900	Sealed Ampule: 1 ml	06/08/84
Sigma Chemical Co	Diazepam-d5 #D–5664	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Diethylpropion Hydrochloride, Product No. D–7274.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Diphenoxylate (D–0780)	Ampule: 1 ml	09/05/85
Sigma Chemical Co	Drug Standard Mix 1, D–3155	Ampule: 2 ml	04/18/86
Sigma Chemical Co	Drug Standard Mix 2, D–3030	Ampule: 2 ml	04/18/86
Sigma Chemical Co	Ecgonine Hydrochloride 1 mg/ml, No. E–9762.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	Ecgonine-d3 HCl #E–2014	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Ecgonine-d3 Methyl Ester HCl #E–2139	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Estazolam #E–1139	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Ethinamate (E–8508)	Ampule: 1 ml	04/10/85
Sigma Chemical Co	Ethylmorphine, E–3377	Ampule: 2 ml	09/25/91
Sigma Chemical Co	Fenfluramine Hydrochloride, Product No. F–1884.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Fenproporex Hydrochloride, No. F–7261	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Fentanyl Citrate, No. F–5886	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Fentanyl-d5 Citrate #F–2520	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Flunitrazepam No. F–8763	Vial: 1 ml	06/30/87
Sigma Chemical Co	Flurazepam Dihydrochloride Methanol Drug Standard, No. F–9134.	Ampule: 2 ml	10/20/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Sigma Chemical Co	Flurazepam Dihydrochloride, Product No. F–9134.	Sealed Ampule: 1 ml	06/08/84
Sigma Chemical Co	Gelatin Veronal Buffer (GVB2+) No. G–6514.	Vial: 50 ml, 250 ml	09/15/86
Sigma Chemical Co	Glutethimide, Product No. G–3134	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Glycerophosphate Substrate, Product No. 675–2.	Bottle: 4 ounce	07/25/83
Sigma Chemical Co	Heroin Hydrochloride .1 mg/ml, No. H–5144.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	Hexobarbital, Product No. H–2007	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Hydrocodone Bitartrate, No. H–2269	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Hydromorphone Hydrochloride No. H–7141.	Vial: 1 ml	06/30/87
Sigma Chemical Co	Ibogaine HCL, Product No. I–4630	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	LDH Electrophoresis Buffer, Stock No. 705–1.	Bottle: 30 ml	01/04/77
Sigma Chemical Co	LDH-P Reagent No. 125–100	Vial: 100 ml	05/29/73
Sigma Chemical Co	Levorphanol Tartrate 1 mg/ml, No. L–0896.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co	Lorazepam (L–0140)	Ampule: 1 ml	05/24/85
Sigma Chemical Co	Lormetazepam, No. 8145	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Lysergic Acid, Product No. L–5881	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Lysergic Acid Diethylamide #L–8147	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Mayer's Hematoxylin Solution, No. MHS–1.	Bottle: 3 ml, 6 ml, 25 ml, 100 ml, 225 ml	08/06/73
Sigma Chemical Co	Mebutamate (M–3772)	Ampule: 1 ml	09/05/85
Sigma Chemical Co	Medazepam (M–7646)	Ampule: 1 ml	09/24/85
Sigma Chemical Co	Meperidine Hydrochloride (M–1020)	Ampule: 1 ml	08/27/84
Sigma Chemical Co	Mephobarbital, Product No. M–3514	Vial: 1 ml	05/11/81
Sigma Chemical Co	Meprobamate (M–0271)	Ampule: 1 ml	05/24/85
Sigma Chemical Co	Mescaline HC1, Product No. M–5153	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Methadone Hydrochloride, Product No. M–3268.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Methadone-d3 #M–4781	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Methamphetamine HC1, Product No. M–5260.	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Methaqualone Hydrochloride, Product No. M–3393.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Methaqualone-d4 #M–5406	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Methylphenidate Hydrochloride (M–1145)	Ampule: 1 ml	10/31/84
Sigma Chemical Co	Methyprylon, Product No. M–1769	Sealed Ampule: 1 ml	06/08/84
Sigma Chemical Co	Morphine Sulfate, No. M–9524	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Morphine-3–B-D Glucuronide, Product No. M–4266.	Ampule: 1 ml	10/21/82
Sigma Chemical Co	Morphine-d3 HCl, M–6380	Ampule: 2 ml	09/25/91
Sigma Chemical Co	N, N-Diethyltryptamine, Product No. D–0392.	Vial: 1 ml	05/11/81
Sigma Chemical Co	N, N-Dimethyltryptamine, Product No. D–6263.	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Nalorphine Hydrochloride	Ampule: 1 ml	08/27/84
Sigma Chemical Co	Norcodeine Hydrochloride, No. N–3017	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Normorphine HCl #N–7393	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Noroxymorphone #N–7018	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Oxazepam, No. O–1755	Vial: 1 ml	06/30/87
Sigma Chemical Co	Oxazepam-d5 #O–1381	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Oxazolam, No. O–8005	Glass Ampule: 2 ml	06/06/89
Sigma Chemical Co	Oxycodone Hydrochloride, Product No. O–2628.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Paraldehyde, Product No. D–3778	Ampule: 1 ml	10/21/82
Sigma Chemical Co	Pemoline, Product No. P–3518	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Pentazocine Hydrochloride, Product No. P–7530.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Pentobarbital, Product No. P–3393	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Phencyclidine, No. P–7043	Vial: 1 ml	06/30/87
Sigma Chemical Co	Phencyclidine-d5 HCl #P–6054	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Phendimetrazine, Product No. P–3524	Vial: 1 ml	05/11/81
Sigma Chemical Co	Phenobarbital FPIA Calibrator Set Cat. No. P9051.	Kit: 6 vials	11/21/89
Sigma Chemical Co	Phenobarbital FPIA Calibrator: A-No. P8301, B-No. P8426, C-No. P8551, D-No. P8676, E-No. P8801, F-No. P8926.	Vial: 2.5 ml	11/21/89

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Sigma Chemical Co	Phenobarbital Primary Stock Solution No. Z-5419.	Bottle: 10, 5, 1L, 500, 100 ml	02/01/91
Sigma Chemical Co	Phenobarbital Prod. No. P–3643	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Phentermine Hydrochloride, Product No. P–7655.	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Phenylacetone, Product No. P–2024	Vial: 1 ml	05/11/81
Sigma Chemical Co	Prazepam, No. P–7168	Vial: 1 ml	06/30/87
Sigma Chemical Co	Psilocin #P–4054	Ampule: 2 ml	08/28/90
Sigma Chemical Co	SIA Cocaine Metabolites	Kit: 96 Tests	07/11/91
Sigma Chemical Co	SIA Conjugate Cocaine Metabolites	Bottle: 75 ml	07/11/91
Sigma Chemical Co	SIA Positive Reference Cocaine Metabolites.	Vial: 1 ml	07/11/91
Sigma Chemical Co	Secobarbital, Product No. S–4006	Sealed Ampule: 1 ml	06/30/77
Sigma Chemical Co	Secobarbital-d5, S–4628	Ampule: 2 ml	09/25/91
Sigma Chemical Co	Temazepam, No. T–4903	Vial: 1 ml	06/30/87
Sigma Chemical Co	Tenocyclidine HCl, T–3507	Ampule: 2 ml	09/25/91
Sigma Chemical Co	Testosterone 17beta-Cypionate, T 3415	Ampule: 1 ml	07/30/92
Sigma Chemical Co	Testosterone Enanthate, T 3540	Ampule: 1 ml	07/30/92
Sigma Chemical Co	Testosterone Propionate, T 3665	Ampule: 1 ml	07/30/92
Sigma Chemical Co	Thebaine, Product No. T–5270	Sealed Ampule: 1 ml	09/19/83
Sigma Chemical Co	Thiamylal Sodium, Product No. T–6896	Sealed Ampule: 1 ml	06/08/84
Sigma Chemical Co	Thiopental (T–1022)	Ampule: 1 ml	08/27/84
Sigma Chemical Co	Triazolam #T–7658	Ampule: 2 ml	08/28/90
Sigma Chemical Co	Trizma-Barbital Buffer, Stock No. 710–1	Bottle: 30 ml	01/04/77
Sigma Chemical Co	Tropacocaine, Product No. T–4516	Vial: 1 ml	05/11/81
Sigma Chemical Co	Z9999, Field Test Sample PSEUDOnarcotics Marihuana Formulation.	Vial: 400 ml	03/14/91
Sigma Chemical Co	d-Amphetamine-d3 Sulfate #A–7180	Ampule: 2 ml	08/28/90
Sigma Chemical Co	d-Lysergic Acid Cat. No. L–9752	Ampule: 2 ml	11/06/91
Sigma Chemical Co	d-Propoxyphene-d7 HCl #P–4179	Ampule: 2 ml	08/28/90
Sigma Chemical Co	d-Propoxyphene-d7 HCl #P–4179	Ampule: 2 ml	08/28/90
Sigma Chemical Co	d-Propoxyphene-d7 HCl #P–4179	Ampule: 2 ml	08/28/90
Sigma Chemical Co	delta-9-tetrahydrocannabinol-d3 #T–8783	Ampule: 2 ml	08/28/90
Sigma Chemical Co	dl-Amphetamine, A–2262	Ampule: 2 ml	09/25/91
Sigma Chemical Co	l-Amphetamine, A–9136	Ampule: 2 ml	09/25/91
Sigma Chemical Co	p-Methoxyamphetamine HCl #M–4656	Ampule: 2 ml	08/28/90
Smart Chemical Co	Regal 180XL	Plastic Drum: 55 gallon	06/12/86
SolarCare Technology Control	LSD EIA	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Benzoylecgonine Cutoff Calibrator	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Benzoylecgonine Negative Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Benzoylecgonine Positive Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Cocaine Cutoff Calibrator	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Cocaine EIA	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Cocaine Metabolite EIA	Kit: 30 vials	06/05/90
SolarCare Technology Corporation	Cocaine Negative Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Cocaine Positive Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	LSD Cutoff Calibrator	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	LSD Negative Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	LSD Positive Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Low Level Benzodiazepine (Triazolam) EIA.	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Triazolam Cutoff Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Triazolam Negative Control	Vial: 4 ml	06/05/90
SolarCare Technology Corporation	Triazolam Positive Control	Vial: 4 ml	06/05/90
Supelco, Inc	Alk Mix No. 04–9210	Vial: 1 ml	08/28/73
Supelco, Inc	Amobarbital, No.04–9170	Ampule: 1 ml	12/22/72
Supelco, Inc	Amph. Mix Catalog No. 4–9205	Glass Ampule: 2 ml	06/09/86
Supelco, Inc	Amphetamine No.04–9165	Ampule: 1 ml	12/22/72
Supelco, Inc	Anticonvulsant Mixture No.1 No. 04–9202	Glass Serum Bottle: 50 ml	06/16/77
Supelco, Inc	Antiepileptic Calibration Standard Kit, No.4–9259.	Kit: 3 Ampules	05/21/80
Supelco, Inc	Antiepileptic Calibration Standards, Nos.4–9256, 4–9257, 4–9258.	Glass Ampule: 5 ml	05/21/80
Supelco, Inc	Aprobarbital No.04–9171	Ampule: 1 ml	12/22/72
Supelco, Inc	Barb. Mix 1, Catalog No. 4–9200	Glass Ampule: 2 ml	06/09/86
Supelco, Inc	Barb. Mix 2, Catalog No. 4–9201	Glass Ampule: 2 ml	06/09/86
Supelco, Inc	Barbital, Catalog No. 4–9279	Glass Ampule: 10 ml	06/09/86
Supelco, Inc	Barbiturates Test Mix Catalog No. 4–9295.	Ampule: 2 ml	02/25/87
Supelco, Inc	Cannabidiol, No.04–9221	Ampule: 1 ml	11/27/74
Supelco, Inc	Cannabinol, No.04–9235	Ampule: 1 ml	11/27/74
Supelco, Inc	Cocaine, No.04–9188	1000 mcg /Glass Ampule	06/05/75

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Supelco, Inc	Codeine No.04–9161	Ampule: 1 ml	12/22/72
Supelco, Inc	Cyclobarbital No.04–9175	Ampule: 1 ml	12/22/72
Supelco, Inc	Delta-1 THC, No.04–9237	Ampule: 1 ml	11/27/74
Supelco, Inc	Delta-6 THC, No.04–9238	Ampule: 1 ml	11/27/74
Supelco, Inc	Dextroamphetamine, No.4–9185	Glass Ampule: 1 ml	05/21/80
Supelco, Inc	Glutethimide No.04–9173	Ampule: 1 ml	12/22/72
Supelco, Inc	Heroin No.04–9162	Ampule: 1 ml	12/22/72
Supelco, Inc	Hexobarbital No.04–9177	Ampule: 1 ml	12/22/72
Supelco, Inc	Mephobarbital No.04–9178	Ampule: 1 ml	12/22/72
Supelco, Inc	Meprobamate, No.4–9184	Glass Ampule: 1 ml	05/21/80
Supelco, Inc	Methadone No.04–9163	Ampule: 1 ml	12/22/72
Supelco, Inc	Methamphetamine No.04–9168	Ampule: 1 ml	12/22/72
Supelco, Inc	Methaqualone, No.04–9183	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc	Morphine No. 04–9160	Glass Ampule: 1000 mcg	03/08/78
Supelco, Inc	Pentobarbital No. 04–9179	Glass Ampule: 1000 mcg	03/08/78
Supelco, Inc	Phenobarbital No. 04–9181	Glass Ampule: 1000 mcg	03/08/78
Supelco, Inc	Psilocybin, No.04–9191	1000 mcg/Glass Ampule	06/05/75
Supelco, Inc	Secobarbital No. 04–9180	Glass Ampule: 1000 mcg	03/08/78
Sure-Tech Diagnostic Associates, Inc	Codeine in Urine Matrix, Prod 924	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Morphine-3–Glucuronide in Urine Matrix, Prod 931.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Oxazepam in Urine Matrix, Prod 934	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	3,4–Methylenedioxyamphetamine in Urine Matrix, Prod 928.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	3,4–Methylenedioxymethylamphetamine in Urine Matrix. Prod 929.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Alprazolam in Urine Matrix, Prod. 920	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	D-Propoxyphene in Urine Matrix, Prod 936.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse Urine Control (Blind Sample) Positive Amphetamine Kit No. ST 904, Vial No. 904–P.	Vial: 4 ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse Urine Control (Blind Sample) Positive Cocaine & Marijuana Kit No. ST 903.	Kit: 2 vials	05/11/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse Urine Control (Blind Sample) Positive Cocaine, Kit No. ST 901, Vial No. 901–P.	Vial: 4 ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse Urine Control (Blind Sample) Positive Marijuana, Kit No. ST 902, Vial No. 902–P.	Vial: 4 ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse Urine Control (Blind Sample) Positive Opiates Kit No. ST 905, Vial No. 905–P.	Vial: 4 ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse Urine Control (Blind Sample) Positive Phencyclidine Kit No. ST 906, Vial No. 906–P.	Vial: 4 ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Codeine No. 907–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Methadone NNo. 908–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Methamphetamine No. 909–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Methaqualone No. 913–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Oxazepam No. 910–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Propoxyphene No. 911–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Drugs of Abuse: Urine Controls (Blind Samples) positive Secobarbital No. 912–P.	Vial: 20 ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc	Meperidine in Urine Matrix, Prod 930	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Methadone in Urine Matrix, Prod 925	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Methaqualone in Urine Matrix, Prod 927	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Nordiazepam in Urine Matrix, Prod 932	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Normeperidine in Urine Matrix, Prod 933	Vial: 20 ml	04/24/92

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Sure-Tech Diagnostic Associates, Inc	Phencyclidine in Urine Matrix, Prod 935	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Secobarbital in Urine Matrix, Prod 937	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Temazepam in Urine Matrix, Prod 938	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	Triazolam in Urine Matrix, Prod 939	Vial: 20 ml	04/24/92
Sure-Tech Diagnostic Associates, Inc	d-Methamphetamine/D-Amphetamine e in Urine Matrix, Prod 926.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostics Associates, Inc	9-Carboxyl-11 Nor-A-9-THC in Urine Matrix, Prod 923.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostics Associates, Inc	Benzoylecgonine in Urine Matrix, Prod 922.	Vial: 20 ml	04/24/92
Sure-Tech Diagnostics Associates, Inc	D-Amphetamine in Urine Matrix, Prod 921.	Vial: 20 ml	04/24/92
Syva Co	AccuLevel Phenobarbital Test Control Stock Solution.	Flask: 50 ml	10/31/85
Syva Co	AccuLevel Phenobarbital Test Kit (Catalog No. 10C019) Contains: (1) AccuLevel Phenobarbital Control (2) AccuLevel Reagent I.	(1) Glass Vial: 6 ml, (2) Glass Vial: 9 ml, 12 Vials per test kit.	01/24/86
Syva Co	Advance T-3 Uptake Assay	Kit: 100 tests	05/11/82
Syva Co	Advance Thyroxin Assay	Kit: 100 tests	05/11/82
Syva Co	Antiepileptic Drug Control	Vial: 10 ml, Lyophilized	08/27/74
Syva Co	EMIT Thyroxine Assay, Cat. No. 6J909	Glass Bottle: 4oz., Kit: 500 Assays	01/23/89
Syva Co	Emit 2000 Phenobarbital Assay (Convenience Pack).	Kit: 1 cassette; Cassette: 11 ml	08/05/91
Syva Co	Emit 2000 Phenobarbital Assay; Enzyme Reagent 2.	Kit: 1 bottle; Bottle: 15 ml	08/05/91
Syva Co	Emit 2000 Phenobarbital Calibrators (5, 10, 20, 40, 80).	Kit: 5 vials	08/05/91
Syva Co	Emit 700 Amphetamine Assay Catalog No. 3C919.	Bottle: 180 ml	10/12/84
Syva Co	Emit 700 Barbiturate Assay Catalog No. 3D919.	Bottle: 180 ml	10/12/84
Syva Co	Emit 700 Benzodiazepine Assay Reagent 2.	Glass Bottle: 180 ml, Kit: 2 bottles	02/21/89
Syva Co	Emit 700 Calibrator A Catalog No. 3A919	Bottle: 3 ml	10/05/84
Syva Co	Emit 700 Calibrator B Catalog No. 3A969	Bottle: 3 ml	10/05/84
Syva Co	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919.	Bottle: 180 ml	10/12/84
Syva Co	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969.	Bottle: 3 ml	10/09/84
Syva Co	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959.	Plastic Bottle: 180 ml	09/15/86
Syva Co	Emit 700 Cannabinoid 100ng Assay, Positive Control.	Bottle: 3 ml	07/31/89
Syva Co	Emit 700 Cannabinoid 20ng Assay Calibrator.	Glass Bottle: 5 ml, Kit: 2 bottles	02/21/89
Syva Co	Emit 700 Cannabinoid 20ng Assay Control Set-Positive Control.	Glass Bottle: 5 ml, Kit: 2 bottles	02/21/89
Syva Co	Emit 700 Cannabinoid Control Set Catalog No. 3M989.	2 Bottles: 3 ml	10/09/84
Syva Co	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919.	Bottle: 180 ml	10/12/84
Syva Co	Emit 700 Control Set A Catalog No. 3A939.	2 Bottles: 3 ml	10/09/84
Syva Co	Emit 700 Control Set B Catalog No. 3A969.	2 Bottles: 3 ml	10/09/84
Syva Co	Emit 700 Methaqualone Assay Catalog No. 3Q919.	Bottle: 180 ml	10/19/84
Syva Co	Emit 700 Opiate Assay Catalog No. 3B919.	Bottle: 180 ml	10/12/84
Syva Co	Emit 700 Phencyclidine Assay Catalog No. 3J919.	Bottle: 180 ml	10/12/84
Syva Co	Emit AED-No. 1 Calibrator	Vial: 3 ml, Lyophilized	08/27/74
Syva Co	Emit AED-No. 2 Calibrator	Vial: 3 ml, Lyophilized	08/27/74
Syva Co	Emit AED-No. 3 Calibrator	Vial: 3 ml, Lyophilized	08/27/74
Syva Co	Emit AED-No. 4 Calibrator	Vial: 3 ml, Lyophilized	08/27/74
Syva Co	Emit AED-No. 5 Calibrator	Vial: 3 ml, Lyophilized	08/27/74
Syva Co	Emit Amphetamine Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Amphetamine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz	04/20/90
Syva Co	Emit Amphetamine Bulk Reagent B	Glass bottle: 1000 ml	12/05/90

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Syva Co	Emit Barbiturate Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co	Emit Barbiturate Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz	04/20/90
Syva Co	Emit Barbiturate Bulk Reagent B	Glass Bottle: 1000 ml	12/05/90
Syva Co	Emit Benzodiazepine Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Benzodiazepine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz	04/20/90
Syva Co	Emit Calibrator B Level 1 (cutoff)	Vial: 5 ml, 25 ml	06/19/91
Syva Co	Emit Calibrator B Level 2 (high)	Vial: 5 ml, 25 ml	06/19/91
Syva Co	Emit Cannabinoid (100) Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Cannabinoid (100) Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz	04/20/90
Syva Co	Emit Cannabinoid Bulk Reagent B	Glass bottle: 1000 ml	12/05/90
Syva Co	Emit Cocaine Metabolite Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Cocaine Metabolite Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz	04/20/90
Syva Co	Emit Cocaine Metabolite Bulk Reagent B	Glass Bottle: 1000 ml	12/05/90
Syva Co	Emit Convenience Pack Phenobarbital Assay: Catalog No. 5D009.	Plastic Cassette: 100 tests	11/23/87
Syva Co	Emit Convenience Pack: T-Uptake Assay (Thyroid Hormone Binding Ratio).	Kit: 100 Tests Ea. Kit-Plastic Cassette: 16 ml.	05/09/88
Syva Co	Emit Convenience Pack: Thyroxine Assay Enzyme Reagent B.	Plastic Cassette: 8 ml, Kit: 100 Assays	02/22/89
Syva Co	Emit Delta 9 Cannabinoid 100 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co	Emit Delta 9 Cannabinoid 20 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co	Emit Delta 9 Cannabinoid 400 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co	Emit Delta 9 Cannabinoid 50 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co	Emit HVA Amphetamine Assay Catalog No. 3C619.	Kit: 2500 Assays	06/30/88
Syva Co	Emit HVA Barbiturate Assay Catalog No. 3D619.	Kit: 2500 Assays	06/30/88
Syva Co	Emit HVA Calibrator Kit Catalog No. 3A619.	Kit: 500 Tests Each Kit—2 Glass Bottles 100 ml.	05/10/88
Syva Co	Emit HVA Cannabinoid 100 ng Assay Control Kit, Catalog No. 3M739.	Kit: 2 Bottles, 50 ml. ea	07/15/88
Syva Co	Emit HVA Cannabinoid 100 ng. Assay Calibrator Kit, Catalog No. 3M729.	Kit: 3 Bottles 50 ml. ea	07/15/88
Syva Co	Emit HVA Cannabinoid 100 ng. Assay Kit, Catalog No. 3M719.	Kit: 2500 Assays	07/15/88
Syva Co	Emit HVA Cocaine Metabolite Assay Catalog No. 3H619.	Bottle: 125 ml	05/10/88
Syva Co	Emit HVA Control Kit Catalog No. 3A629	Kit: 500 Tests Each Kit-2 Glass Bottles—100 ml.	05/10/88
Syva Co	Emit HVA Opiate Assay Catalog No. 3B619.	Bottle: 125 ml	05/10/88
Syva Co	Emit HVA Phencyclidine Assay Catalog No. 3J619.	Bottle: 125 ml	05/19/88
Syva Co	Emit II Barbiturate Assay	Kit: 100 ml, 500 ml Bottle: 4oz, 500 ml	06/29/90
Syva Co	Emit II Calibrator A Level 1 (Cutoff)	Vial: 10 ml, 50 ml	06/29/90
Syva Co	Emit II Calibrator A Level 2 (high)	Vial: 10 ml, 50 ml	06/29/90
Syva Co	Emit II Cannabinoid 20 ng, 50 ng, 100 ng Assay.	Bottle: 4 oz, 500 ml; Kit: 100 ml, 500 ml	10/12/90
Syva Co	Emit II Cocaine Metabolite Assay	Kit: 100 ml, 500 ml Bottle: 4 oz, 500 ml	06/29/90
Syva Co	Emit II Delta 9 Cannabinoid 20 ng/ml, 50 ng/ml, 100 ng/ml, 200 ng/ml, Calibrator/Control.	Vial: 10 ml, 50 ml	10/12/90
Syva Co	Emit II Methadone Assay	Kit: 2 vials	01/26/93
Syva Co	Emit II Methadone Assay Reagent 2	Bottle: 100 ml, 500 ml	01/26/93
Syva Co	Emit II Methaqualone Assay	Kit: 2 vials	01/26/93
Syva Co	Emit II Methaqualone Assay Reagent 2	Bottle: 100 ml, 500 ml	01/26/93
Syva Co	Emit II Monoclonal Amphetamine/Methamphetamine Assay.	Kit: 2 vials	01/26/93
Syva Co	Emit II Monoclonal Amphetamine/Methamphetamine Assay Enzyme Reagent 2.	Vial: 100 ml, 500 ml	01/26/93

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Syva Co	Emit II Opiate Assay	Kit: 100 ml, 500 ml Bottle: 4 oz, 500 ml	06/29/90
Syva Co	Emit II Phencyclidine Assay	Bottle: 4 oz, 500 ml; Kit: 100 ml, 500 ml	10/26/90
Syva Co	Emit Methadone Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co	Emit Methadone Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Methaqualone Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Methaqualone Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Opiate Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co	Emit Opiate Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Opiate Bulk Reagent B	Glass bottle: 1000 ml	12/05/90
Syva Co	Emit Phencyclidine Bulk Powder Reagent 2.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Phencyclidine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Phencyclidine Bulk Reagent B	Glass Bottle: 1000 ml	12/05/90
Syva Co	Emit Phenobarbital Bulk Powder Reagent B.	Bottle: 1000 ml	10/04/89
Syva Co	Emit Phenobarbital Bulk Powder Reagent B Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Phenobarbital Enzyme Reagent B	Vial: 6 ml, Lyophilized	08/27/74
Syva Co	Emit Qst Phenobarbital Bulk Powder Reagent.	Steel Drum: 7 gallon	06/05/86
Syva Co	Emit Qst Primidone Assay Catalog No. 60819.	Glass Vial: 6 ml, 50 Vials/Kit	11/12/85
Syva Co	Emit Serum Barbiturate-Enzyme Reagent B.	Bottle: 3 ml	05/22/79
Syva Co	Emit T-Uptake Assay	Bottle: 4 oz., 1 L, Kit: 500 tests, 5000 tests.	05/25/89
Syva Co	Emit T-Uptake Assay (Thyroid Hormone Binding Ratio) Catalog No. 6J519.	Polyethylene Bottle: 4 oz.	02/29/88
Syva Co	Emit T-Uptake Bulk Powder Reagent A	Bottle: 1000 ml	10/04/89
Syva Co	Emit T-Uptake Bulk Powder Reagent A Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Thyroxine Assay	Glass Bottle: 8 oz., 1 L, Kit: 1300 tests, 5000 tests.	05/25/89
Syva Co	Emit Thyroxine Bulk Powder Reagent B	Bottle: 1000 ml	10/04/89
Syva Co	Emit Thyroxine Bulk Powder Reagent B Satellite.	Bottle: 4 oz.	04/20/90
Syva Co	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle: 3 ml	02/01/79
Syva Co	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co	Emit d.a.u. Amphetamine Class Low Calibrator, Cat. No. 3C179.	Glass Vial: 5 ml	01/30/89
Syva Co	Emit d.a.u. Amphetamine Class Medium Calibrator, Cat. No. 3C189.	Glass Vial: 5 ml	01/30/89
Syva Co	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co	Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119.	Kit: 1000 tests	09/12/86
Syva Co	Emit d.a.u. Cannabinoid 100 ng Assay Calibrator.	Kit: 3 vials	07/31/89
Syva Co	Emit d.a.u. Cannabinoid 100 ng Assay Low Calibrator.	Vial: 3 ml	07/31/89
Syva Co	Emit d.a.u. Cannabinoid 100 ng Assay Medium Calibrator.	Vial: 3 ml	07/31/89
Syva Co	Emit d.a.u. Cannabinoid 20 ng Assay Catalog No. 3M619.	Kit: 100 tests	02/10/86
Syva Co	Emit d.a.u. Cannabinoid 20 ng Enzyme Reagent B.	Vial: 10 ml Lyophilized Powder	02/10/86
Syva Co	Emit d.a.u. Cannabinoid 50 ng Assay Calibrators, Low And Medium: Cat. No. 3M509.	Vial: 5 ml	06/01/88
Syva Co	Emit d.a.u. Cannabinoid 50 ng Assay: Cat. No. 3M519.	Kit: 100 tests	06/01/88
Syva Co	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019.	Kit: 100 tests	09/24/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Syva Co	Emit d.a.u. Cannabinoid Urine Calibrator Set.	Kit: 3 Vials, 3 ml Each	01/03/80
Syva Co	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co	Emit d.a.u. Low Calibrator A	Bottle: 5 ml	07/20/84
Syva Co	Emit d.a.u. Low Calibrator A	Vial: 5 ml	06/30/89
Syva Co	Emit d.a.u. Low Calibrator A, Catalog No. 3C579.	5 ml vial	10/06/88
Syva Co	Emit d.a.u. Medium Calibrator A	Vial: 5 ml	06/30/89
Syva Co	Emit d.a.u. Medium Calibrator A, Catalog No. 3C569.	5 ml vial	10/06/88
Syva Co	Emit d.a.u. Medium Calibrator B	Bottle: 5 ml	08/03/84
Syva Co	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119.	Kit: 100 tests, 1000 tests	10/05/84
Syva Co	Emit d.a.u. Monoclonal Amphetamine/ Methamphetamine Assay, Catalog No. 3C549 100 tests, 3C559 1000 tests.	Kit: 100 tests, 1000 tests	10/06/88
Syva Co	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co	Emit d.a.u. Phencyclidine Assay Kit Containing: (1) Emit Phencyclidine Enzyme Reagent B.	Bottle: 6 ml	02/01/79
Syva Co	Emit d.a.u. Barbiturate Assay Catalog Nos. 3D019, 3D119.	Kit: 100 tests, 1000 tests	09/27/84
Syva Co	Emit d.a.u. Low Calibrator B	Bottle: 5 ml	08/03/84
Syva Co	Emit d.a.u. Medium Calibrator A	Bottle: 5 ml	07/20/84
Syva Co	Emit-Tox Serum Barbiturate Assay	Kit: 50 tests	05/22/79
Syva Co	Emit-Qst Phenobarbital Assay, Catalog Number 6D819.	Kit: 50 Vials	01/18/84
Syva Co	Emit-Tox Serum Calibrators Low and Medium.	Bottle: 3 ml	02/01/79
Syva Co	Emit-d.a.u. Methaqualone Assay	Kit: 100 tests	04/27/82
Syva Co	Emit-st Amphetamine Assay	Vial: 3 ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Barbiturate Assay	Vial: 3 ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Benzodiazepine Assay	Vial: 3 ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Cannabinoid Assay Catalog No. 3M319.	Vial: 6 ml, 80 vials/kit	09/27/84
Syva Co	Emit-st Cannabinoid Calibrator	Vial: 3 ml, 2 vials/kit	07/10/81
Syva Co	Emit-st Cannabinoid Controls	Vial: 3 ml, 2 vials/kit	07/10/81
Syva Co	Emit-st Opiate Assay	Kit: 3 ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Phencyclidine Assay	Vial: 3 ml, 80 vials/kit	01/07/81
Syva Co	Emit-st Serum Barbiturate Assay	Vial: 3 ml, 80 vials/kit	02/16/81
Syva Co	Emit-st Serum Benzodiazepine Assay	Vial: 3 ml, 80 vials/kit	02/16/81
Syva Co	Emit-st Serum Calibrator	Vial: 3 ml	02/16/81
Syva Co	Emit-st Serum Controls	Vial: 3 ml, 2 vials/kit	02/16/81
Syva Co	Emit-st Serum Phencyclidine Assay	Vial: 3 ml, 80 vials/kit	02/16/81
Syva Co	Emit-st Urine Calibrator A	Vial: 1 ml, 3 vials/kit	10/03/80
Syva Co	Emit-st Urine Cocaine Metabolite Assay	Vial: 3 ml, 80 Vials/Kit	03/16/82
Syva Co	Emit-st Urine Controls A	Vial: 1 ml, 6 vials/kit	10/03/80
Syva Co	Emit-st Urine Methadone Assay	Vial: 3 ml, 80 vials/kit	03/22/82
Syva Co	Emit-st Urine Methaqualone Assay	Kit: 80 Vials	04/27/82
Syva Co	Emit-st Urine Methaqualone Calibrator	Vial: 3 ml	04/27/82
Syva Co	Emit-st Urine Methaqualone Controls	Vial: 3 ml	04/27/82
Syva Co	IL test AED Calibrator 1	Vial: 5 ml	04/06/90
Syva Co	IL test AED Calibrator 2	Vial: 5 ml	04/06/90
Syva Co	IL test AED Calibrator 3	Vial: 5 ml	04/06/90
Syva Co	IL test AED Calibrator 4	Vial: 5 ml	04/06/90
Syva Co	IL test AED Calibrator 5	Vial: 5 ml	04/06/90
Syva Co	IL test Cannabinoid 100ng, 400ng calibrator.	Vial: 5 ml	04/06/90
Syva Co	IL test set A calibrator	Vial: 5 ml	04/06/90
Syva Co	IL test set A control	Vial: 5 ml	04/06/90
Syva Co	IL test set B calibrator	Vial: 5 ml	04/06/90
Syva Co	IL test set B control	Vial: 5 ml	04/06/90
Syva Company	Vista Thyroxine Uptake Reagent Cartridge.	Cartridge: 4 ml	01/22/93
Syva Laboratories	Vista Triiodothyronine (T3) Reagent Cartridge.	Cartridge: 2.02 ml	09/11/92
Technicon Instruments Corporation	Emit Benzodiazepine Bulk Reagent B	Glass Bottle: 1000 ml	12/05/90
	Immuno-1 Setpoint TDM Calibrators Kit No. T03–2864 Component No. T13–2864(02–06).	Glass Bottles: 5 ml, Kit: 5 Bottles	01/03/91

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Technicon Instruments Corporation	Technicon RA Systems Set Point	Vial: 5 ml Kit: 5 vials	07/20/90
Technicon Instruments Corporation	Technicon Testpoint Ligand Controls Kit No. TO3–3229–01, Level I: No. T13–3230, Level II: No. T13–3231, Level III: No. T13–3232.	Glass vial: 5 ml; Kit: 6 vials	01/16/91
Tempil Division. Big Three Industries, Inc	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope.	09/22/76
The Binding Site, Inc	I.F.E. Buffer	Plastic Bottle: 125 ml	12/05/91
The Binding Site, Inc	Immunofixation Kit	Kit: 125 ml Plastic Bottle	12/05/91
The Theta Corp	Allobarbital No. FP305	Vial: 2 ml	04/10/73
The Theta Corp	Amobarbital No. FP313	Vial: 2 ml	04/10/73
The Theta Corp	Amphetamine No. FP604	Vial: 2 ml	04/10/73
The Theta Corp	Anileridine No. FP203	Vial: 2 ml	04/10/73
The Theta Corp	Aprobarbital No. FP306	Vial: 2 ml	04/10/73
The Theta Corp	Barbital No. FP314	Vial: 2 ml	04/10/73
The Theta Corp	Benzoylecgonine FP–1001	Vial: 2 ml	01/24/87
The Theta Corp	Butabarbital No. FP315	Vial: 2 ml	04/10/73
The Theta Corp	Butalbital No. FP307	Vial: 2 ml	04/10/73
The Theta Corp	Chloral Betaine No. FP502	Vial: 2 ml	04/10/73
The Theta Corp	Chloral Hydrate No. FP501	Vial: 2 ml	04/10/73
The Theta Corp	Cocaine No. FP601	Vial: 2 ml	04/10/73
The Theta Corp	Codeine No. FP102	Vial: 2 ml	04/10/73
The Theta Corp	Cyclobarbital No. FP308	Vial: 2 ml	04/10/73
The Theta Corp	Dihydrocodeine No. FP108	Vial: 2 ml	04/10/73
The Theta Corp	Diphenoxylate No. FP205	Vial: 2 ml	04/10/73
The Theta Corp	Ethchlorvynol No. FP508	Vial: 2 ml	04/10/73
The Theta Corp	Ethylmorphine No. FP106	Vial: 2 ml	04/10/73
The Theta Corp	FP207	Vial: 2 ml	09/04/80
The Theta Corp	FP210	Vial: 2 ml	05/15/84
The Theta Corp	FP214	Vial: 2 ml	04/10/84
The Theta Corp	FP327	Vial: 2 ml	04/10/84
The Theta Corp	FP405	Vial: 2 ml	03/08/79
The Theta Corp	FP411	Vial: 2 ml	05/15/84
The Theta Corp	FP412	Vial: 2 ml	05/15/84
The Theta Corp	FP416	Vial: 2 ml	05/15/84
The Theta Corp	FP512	Vial: 2 ml	03/08/79
The Theta Corp	FP513	Vial: 2 ml	03/08/79
The Theta Corp	FP514	Vial: 2 ml	05/15/84
The Theta Corp	FP515	Vial: 2 ml	03/08/79
The Theta Corp	FP556	Vial: 2 ml	04/10/84
The Theta Corp	FP601A	Vial: 2 ml	05/15/84
The Theta Corp	FP607	Vial: 2 ml	05/15/84
The Theta Corp	FP609	Vial: 2 ml	05/15/84
The Theta Corp	Fentanyl No. FP211	Vial: 2 ml	04/10/73
The Theta Corp	Glutethimide No. FP404	Vial: 2 ml	04/10/73
The Theta Corp	Heptabarbital No. FP309	Vial: 2 ml	04/10/73
The Theta Corp	Hexabarbital No. FP303	Vial: 2 ml	04/10/73
The Theta Corp	Hydrocodone No. FP107	Vial: 2 ml	04/10/73
The Theta Corp	Hydromorphone No. FP103	Vial: 2 ml	04/10/73
The Theta Corp	Levorphanol No. FP208	Vial: 2 ml	04/10/73
The Theta Corp	Marker Mixture No. FPM–104	Vial: 2 ml	04/10/73
The Theta Corp	Marker Mixture No. FPM–201	Vial: 2 ml	04/10/73
The Theta Corp	Meperidine No. FP201	Vial: 2 ml	04/10/73
The Theta Corp	Mephobarbital No. FP301	Vial: 2 ml	04/10/73
The Theta Corp	Meprobamate No. FP402	Vial: 2 ml	04/10/73
The Theta Corp	Methadone No. FP206	Vial: 2 ml	04/10/73
The Theta Corp	Methamphetamine No. FP603	Vial: 2 ml	04/10/73
The Theta Corp	Metharbital No. FP302	Vial: 2 ml	04/10/73
The Theta Corp	Methohexital No. FP304	Vial: 2 ml	04/10/73
The Theta Corp	Methylphenidate No. FP605	Vial: 2 ml	04/10/73
The Theta Corp	Monthly Urine Test No. FPM–103	Vial: 2 ml	04/10/73
The Theta Corp	Morphine No. FP101	Vial: 2 ml	04/10/73
The Theta Corp	Oxycodone No. FP109	Vial: 2 ml	04/10/73
The Theta Corp	Oxymorphone No. FP104	Vial: 2 ml	04/10/73
The Theta Corp	Paraldehyde No. FP506	Vial: 2 ml	04/10/73
The Theta Corp	Pentobarbital No. FP318	Vial: 2 ml	04/10/73
The Theta Corp	Phenazocine No. FP213	Vial: 2 ml	04/10/73
The Theta Corp	Phenmetrazine No. FP606	Vial: 2 ml	04/10/73
The Theta Corp	Phenobarbital No. FP320	Vial: 2 ml	04/10/73
The Theta Corp	Piminodine No. FP202	Vial: 2 ml	04/10/73
The Theta Corp	Probarbital No. FP319	Vial: 2 ml	04/10/73
The Theta Corp	Secobarbital No. FP310	Vial: 2 ml	04/10/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
The Theta Corp	Talbutal No. FP311	Vial: 2 ml	04/10/73
The Theta Corp	Test Mixture SM No. 1	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SM No. 2	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SM No. 3	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SM No. 4	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SP No. 1	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SP No. 2	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SP No. 3	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture SP No. 4	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture TM No. 1	Vial: 2 ml	06/19/74
The Theta Corp	Test Mixture TM No. 2	Vial: 2 ml	06/19/74
The Theta Corp	Thiamylal No. FP322	Vial: 2 ml	06/19/74
The Theta Corp	Thiopental No. FP321	Vial: 2 ml	04/10/73
The Theta Corp	Vinbarbital No. FP312	Vial: 2 ml	04/10/73
The Theta Corp	Weekly Urine Test (FDA) No. FPM–101	Vial: 2 ml	04/10/73
The Theta Corp	Weekly Urine Test (States) No. FPM–102	Vial: 2 ml	04/10/73
Toxi-Lab, Inc	Proficiency Sample	Plastic bottle containing 40 ml	06/22/82
Toxi-Lab, Inc	Special Toxi-Discs	Plastic vial or bottle containing 50 standard discs.	03/30/77
Toxi-Lab, Inc	Supplemental Standard Toxi-Discs No. SD–4 Catalog No. 234.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Supplemental Standard Toxi-Discs No. SD–5 Catalog No. 235.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Supplemental Standard Toxi-Discs No. SD–6 Catalog No. 236.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Control	Plastic bottle containing 50 ml	03/30/77
Toxi-Lab, Inc	Toxi-Control THC	Plastic bottle containing 50 ml	10/05/83
Toxi-Lab, Inc	Toxi-Disc A Series	Plastic vial containing 50 standard discs	05/06/75
Toxi-Lab, Inc	Toxi-Disc B Series	Plastic vial containing 50 standard discs	05/06/75
Toxi-Lab, Inc	Toxi-Discs Library II, No. 3 Catalog No. 131C.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 1 Catalog No. 131A.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 10 Catalog No. 131K.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 11, Catalog No. 131L.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 12 Catalog No. 131M.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 2 Catalog No. 131B.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 5 Catalog No. 131E.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs Library II, No. 8 Catalog No. 131H.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc	Toxi-Discs THC	Plastic vial containing 50 standard discs	10/05/83
Toxi-Lab, Inc	Toxi-Grams	Glass jar containing 50 or 100 chromatograms.	09/24/80
Toxi-Lab, Inc	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/05/83
Tudor Laboratories, Inc	FPIA Phenobarbital Kit—Cat. No. 105	Kit: 100 tests	11/27/89
Tudor Laboratories, Inc	Phenobarbital Calibrator Kit—Cat. No. 205.	Kit: 6 vials	11/27/89
Tudor Laboratories, Inc	Phenobarbital Calibrators B, C, D, E, F	Vial: 4.0 ml	11/27/89
Universal Reagents, Inc	Drug Monitoring & Toxicology No. DM 90–5, DM–62.	Bottle: 10 ml	10/09/90
Utak Laboratories	Toxicology Control—High Range Anticonvulsants No. 71910.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—High Range Barbiturates No. 71916.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—High Range Hypnotic Plus Acetaminophem, No. 71918.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—High Range Hypnotic Plus Salicylate, No. 71920.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—Mid Range Anticonvulsants No. 71911.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—Mid Range Barbiturates No. 71917.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—Mid Range Hypnotic Plus Acetaminophem, No. 71919.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Control—Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle: 10 ml	04/14/80
Utak Laboratories	Toxicology Serum Control Dried #88112	Bottle: 10 ml	07/29/82

EXEMPT CHEMICAL PREPARATIONS—Continued

Supplier	Product name	Form	Date
Utak Laboratories	Toxicology Serum Control Dried #88113 .	Bottle: 10 ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried #88120 .	Bottle: 10 ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658.	In bottles	05/24/76
Utak Laboratories	Toxicology Urine Control Dried #88100 ...	Bottle: 20 ml	07/29/82
Utak Laboratories	Toxicology Urine Control Dried #88121 ...	Bottle: 10 ml	07/29/82
Utak Laboratories	Toxicology Urine Control Dried Catalog Nos. 44650, 44651, 44652, 44653.	Bottle: 1 oz	05/24/76
Ventrex Laboratories, Inc	PTH Antiserum	Vial: 5 ml	04/12/90
Ventrex Laboratories, Inc	PTH Assay Buffer	Vial: 10 ml	04/12/90
Ventrex Laboratories, Inc	PTH Omega Radio-immunoassay Kit	Kit: 60 tests	04/12/90
Ventrex Laboratories, Inc	PTH Second Antibody	Vial: 10 ml	04/12/90
Ventrex Laboratories, Inc	PTH Tracer Buffer	Vial: 5 ml	04/12/90
Wien Laboratories, Inc	3H Dihydrotestosterone Cat. No. D–1916	Vial: 5.5 ml	02/21/91
Wien Laboratories, Inc	3H Epi-Testosterone Cat. No. T–1028	Vial: 5.5 ml	02/21/91
Wien Laboratories, Inc	3H Testosterone Cat. No. T–3027	Vial: 5.5 ml	02/21/91
Wien Laboratories, Inc	ANS Buffer pH 8.6 Catalog No. T–5144 ..	Plastic bottle: 100 ml	05/14/75
Wien Laboratories, Inc	Buffer Reagent pH 8.6 Catalog No. T–5065.	Bottle: 4 oz	12/22/72
Wien Laboratories, Inc	Coated Charcoal Suspension No. T–5077	Bottle: 4 oz	12/22/72
Wien Laboratories, Inc	Dihydrotestosterone Standard 1 ng/ml Cat. No. D–1928.	Vial: 5.5 ml	02/21/91
Wien Laboratories, Inc	Epi-Testosterone Standard, 10 ng/ml Cat. No. T–1016.	Vial: 5.5 ml	02/21/91
Wien Laboratories, Inc	Epi-Testosterone Test Set Cat. No. TS–1010.	Kit: 2 Bottles	02/21/91
Wien Laboratories, Inc	Methamphetamine: HRP EIA Conjugate ..	Vial: 5 ml, 10 ml	06/25/90
Wien Laboratories, Inc	T3 Buffer Reagent Catalog No. T–5156 ..	Plastic vial: 20 ml	09/13/78
Wien Laboratories, Inc	Testosterone Standard, 10 ng/ml Cat. No. T–3039.	Vial: 5.5 ml	02/21/91
Wien Laboratories, Inc	Testosterone Test Set Cat. No. TS–333 ..	Kit: 2 bottles	02/21/91
Windsor Laboratories, Inc	Calibrators FPR Phenobarbital	Kit: 6 vials	10/30/86
Windsor Laboratories, Inc	Phenobarbital Fluorescence Polarization Immunoassay Kit.	Kit: 100 tests	11/20/86

[FR Doc. 93–7320 Filed 3–31–93; 8:45 am]
BILLING CODE 4410–09–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50 and 574

[Docket No. R–93–1606; FR–3178–C–02]

Housing Opportunities for Persons With AIDS; Correction

AGENCY: Office of the Secretary, HUD.
ACTION: Interim rule; correction.

SUMMARY: On July 20, 1992 (57 FR 32106), the Department published in the **Federal Register**, an interim rule that governed the operation of the Housing Opportunities for Persons with AIDS (HOPWA) program. The rule, in part, amended title 24 of the CFR by erroneously adding a new § 50.19 to part 50. A new § 50.19 had already been added to part 50 in an interim rule published on January 14, 1992 (57 FR 1385).

The purpose of this document is to correct the amendatory language in the July 20 interim rule to indicate that § 50.19 is being revised instead of being added.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, (202) 708–4300; TDD: (202) 708–2565; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 92–16791, published in the **Federal Register**, on July 20, 1992 (57 FR 32106), is corrected to read as follows:

On page 32110, in the middle column, the amendatory language for item 4, is corrected to read, "4. Section 50.19 is revised to read as follows:".

Dated: March 29, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 93–7586 Filed 3–31–93; 8:45 am]
BILLING CODE 4210–32–M

24 CFR Part 905

[Docket No. R–93–1654; FR–3494–F–02]

Definition of Annual Income: Holocaust Reparations; Correction

AGENCY: Office of the Secretary, HUD.
ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule on the definition of annual income with regard to Holocaust reparations published on March 24, 1993 (58 FR 15773). The regulations section amended for the Indian housing program was § 905.320, whereas the section that should have been amended is § 905.102.

EFFECTIVE DATE: April 23, 1993.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, room 4224, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708–0444 (voice) or (202) 708–0850 (TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The final rule published on March 24, 1993, revising the definition of annual income

in several program regulations to exclude from family income reparation payments made by foreign governments in connection with the Holocaust, contained an error with respect to the amendment of part 905. The definition of annual income is found not in § 905.320, as referenced in the rule published on that date, but in § 905.102. It is found there in an alphabetical list of defined terms.

Accordingly, FR Doc. 93–6625 published at 58 FR 15773, is corrected as follows:

1. On page 15775, in the second column, amendatory instruction number 8 and the regulatory text for § 905.320 are removed, and a new instruction 8 and the regulatory text for § 905.102 are correctly added in their place:

8. In § 905.102, the definition of "Annual income" is amended by redesignating paragraph (2)(x) as paragraph (2)(xi); by removing the word "or" after paragraph 2(ix); and by adding new paragraphs (2)(x) and (4), to read as follows:

§ 905.102 Definitions.

* * * * *

Annual income. * * *

(2) * * *

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; or

* * * * *

(4) Any family receiving the reparation payments referred to in paragraph (2)(x) of this definition of Annual Income that has been requested to repay assistance under this part as a result of receipt of such payments shall not be required to make further repayments on or after April 23, 1993.

* * * * *

Dated: March 26, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 93–7504 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–93–1256; FR–1942–C–08]

RIN 2502–AC09

Real Estate Settlement Procedures Act (Regulation X), Final Rule; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule; correction.

SUMMARY: On November 2, 1992 (57 FR 49600), the Department published in the **Federal Register**, a final rule that revised the regulations for the Real Estate Settlement Procedures Act of 1974 (RESPA), also known as Regulation X, to conform to section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA). A document was published on December 1, 1992 (57 FR 56856) that in part corrected appendices C and D to part 3500.

In order to avoid confusion, the purpose of this document is to publish in their entirety Appendices C and D to incorporate corrections made in the publication of December 1 with the original document published on November 2, 1992.

EFFECTIVE DATE: December 2, 1992.

FOR FURTHER INFORMATION CONTACT: David Williamson, Director, RESPA Enforcement, room 5241, (202) 708–4560 or, for legal questions, Grant E. Mitchell or John B. Shumway, Office of General Counsel, (202) 708–1550, room 10252, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 92–26547, the final rule published in the **Federal Register** on Monday, November 2, 1992 (57 FR 49600), as corrected by FR Doc. 92–29058, a correction document published on December 1, 1992 (57 FR 56856), is further corrected to read as follows:

On pages 49620, 49621, and 49622, as corrected on page 56857, remove appendices C and D, and add in their places, the corrected appendices C and D, to read as set forth below.

Dated: March 29, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

Appendix C to Part 3500

Sample Form of Good Faith Estimate

[Name of Lender] [1]

The information provided below reflects estimates of the charges which you are likely to incur at the settlement of your loan. The fees listed are estimates—the actual charges may be more or less. Your transaction may not involve a fee for every item listed.

The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD–1 settlement statement which you will be receiving at settlement. The HUD–1 settlement statement will show you the actual cost for items paid at settlement.

Item [2]	HUD–1	Amount or range
Loan origination fee.	801	$_____
Loan discount fee.	802	$_____
Appraisal fee	803	$_____
Credit report	804	$_____
Inspection fee ...	805	$_____
Mortgage broker fee.	[Use blank line in 800 Section].	$_____
CLO access fee	[Use blank line in 800 Section].	$_____
Tax related service fee.	[Use blank line in 800 Section].	$_____
Interest for [X] days at $_____per day.	901	$_____
Mortgage insurance premium.	902	$_____
Hazard insurance premiums.	903	$_____
Reserves	1000–1005 ..	$_____
Settlement fee ..	1101	$_____
Abstract or title search.	1102	$_____
Title examination	1103	$_____
Document preparation fee.	1105	$_____
Attorney's fee	1107	$_____
Title insurance ..	1108	$_____
Recording fees .	1201	$_____
City/County tax stamps.	1202	$_____
State tax	1203	$_____
Survey	1301	$_____
Pest inspection .	1302	$_____
[Other fees—list here].	.....	$_____

_____

Applicant

_____

Date

_____

Authorized Official

These estimates are provided pursuant to the Real Estate Settlement Procedures Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender.

Footnotes

[1] The name of the lender shall be placed at the top of the form. Additional information identifying the loan application and property may appear at the bottom of the form or on a separate page. Exception: If the disclosure is being made by a mortgage broker who is not an exclusive agent of the lender, the lender's name will not appear at the top of the form, but the following legend must appear:

This Good Faith Estimate is being provided by _____, a mortgage broker, and no lender has yet been obtained. A lender will provide you with an additional Good Faith Estimate within three Business Days of the receipt of your loan application.

[2] Items for which there is estimated to be no charge to the borrower are not required to be listed. Any additional items for which there is estimated to be a charge to the borrower shall be listed if required on the HUD–1.

Appendix D to Part 3500

Controlled Business Arrangement Disclosure Statement Format

Notice

To: Buyer or Seller

From: [Entity Making Statement]

Property:
Date: _____

This is to give you notice that [referring party] has a business relationship with [provider]. [Describe the nature of the relationship between the referring party and the provider, including ownership and financial interests.]

Set forth below is the estimated charge or range of charges by [provider] for the following settlement services:

_____: $_____
_____: $_____
_____: $_____

You are not required to use [provider] as a condition for [settlement of your loan on] [or] [purchase or sale of] the subject property. You may be able to get these services at a lower rate by shopping with other settlement service providers.[1]

A lender is allowed to require the use of an attorney, credit reporting agency or real estate appraiser chosen to represent the lender's interest.

[FR Doc. 93–7603 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–27–M

[1] Where the lender is requiring an attorney, credit reporting agency or real estate appraiser to represent its interests, this paragraph should be omitted

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8432]

RIN 1545–AP18

Branch Profits Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to the correction to final regulations.

SUMMARY: This document contains a correction to the correction to final regulations (T.D. 8432), which was published in the **Federal Register** for Friday, December 18, 1992 (57 FR 60126). The final regulations relate to the branch profits tax, branch-level interest tax and qualified resident rules issued under section 884 of the Internal Revenue Code of 1986.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction to the final regulations that is the subject of this document corrects the final rules that provide guidance to comply with section 884 and generally affect foreign corporations engaged in trade or business in the United States. These regulations also provide guidance relating to the application of section 884 to foreign governments in light of the changes made by the Technical and Miscellaneous Revenue Act of 1988 under section 892(a)(3) of the Internal Revenue Code.

Need for Correction

As published, one of the corrections to T.D. 8432 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to final regulations (T.D. 8432), which was the subject of FR Doc. 92–30310 is corrected as follows:

§ 1.884–1 [Corrected]

On page 60126, column 2, § 1.884–1 [Corrected], regulatory text of § 1.884–1(d)(2)(vii) following amendatory instruction 3, line 6, the language "the United States during the taxable" is corrected to read "the active conduct of a banking, financing, or similar business in the United States during the taxable".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–7607 Filed 3–31–93; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket Nos. 89–79, FCC 93–133]

Creation of Access Charge Subelements for Open Network Architecture

AGENCY: Federal Communications Commission [FCC].

ACTION: Final rule.

SUMMARY: This order adopts the tentative conclusions of the Supplemental Notice of Proposed Rulemaking. It requires the Bell Operating Companies (BOCs) to justify the prices of restructured unbundled optional Open Network Architecture (ONA) services (also known as basic service elements or BSEs) by providing the same cost support that the Part 69/ ONA Order required them to provide for the prices of the initial set of unbundled BSEs. Thus, BOCs must show that the prices set for restructured unbundled BSEs equal their direct costs plus a reasonable allocation of overhead costs. This action is intended to forestall unreasonably discriminatory pricing of future ONA services.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Common Carrier Bureau, (202) 632–1301.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average 262.09 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project (3060–0298), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0298), Washington, DC 20503.

Background

CC Docket 89–79: Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket 89–79. Adopted: March 30, 1989. Released: May 9, 1989. 54 FR 20873 (May 15, 1988). By the Commission. Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89–79 and 87–313; FCC 91–186. Adopted: June 13, 1991. Released: July 11, 1991. 56 FR 33879 (July 24, 1991). By the Commission.

Summary of Memorandum Opinion and Order on Second Further Reconsideration

This is a summary of the Commission's Report & Order in Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89–79; FCC 93–133, Adopted: March 8, 1993 and Released: March 23, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, (202) 857–3800, 2100 M St., NW., suite 140, Washington, DC 20037.

The Commission has required the BOCs to make the same cost showings for rates for restructured unbundled BSEs as they made for the rates for their initial set of new unbundled BSEs. The BOCs must show that the rates for future unbundled BSEs reflect the direct costs of the BSEs plus reasonable overhead loadings. Carriers must also ensure revenue neutrality for these restructured services by adjusting their rates for the residual basic serving arrangements (BSAs) to account for the revenues projected from any unbundled BSEs. Moreover, the BOCs must also document any cost models they use and abide by the flagging requirements that require the BOCs to identify which BSEs tney expect to use themselves. The Commission finds that these requirements should help protect against discriminatory pricing of BSEs by the BOCs.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendments to the Code of Federal Regulations

Title 47 of the CFR, part 61 is amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.49 is amended by revising paragraph (g)(2) and the introductory portion of paragraph (h) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(g)(1) * * *

(g)(2) Each tariff filing submitted by a local exchange carrier specified in § 61.41(a) (2) or (3) of this part that introduces a new service or a restructured unbundled basic service element (BSE) (as BSE is defined in § 69.2 (mm)) that is or will later be included in a basket must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's overhead costs.

(h) Each tariff filing by a local exchange carrier specified in § 61.41(a) (2) or (3) of this part that introduces a new service or a restructured unbundled basic service element (BSE) (as BSE is defined in § 69.2 (mm)) that will later be included in a basket must be accompanied by:

* * * * *

[FR Doc. 93–7465 Filed 3–31–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 64

[CC Docket No. 91–65; FCC 93–88]

Interstate Pay-Per-Call Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted this Order on Reconsideration to resolve various petitions for reconsideration and clarification of the Report and Order adopting regulations governing the provision of interstate pay-per-call or "900" services. The Order on Reconsideration largely denies the petitions and, with one minor modification, affirms existing pay-per-call regulations which were adopted to protect consumers from fraudulent and deceptive practices associated with the provision of some pay-per-call services.

EFFECTIVE DATE: May 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Romano, Enforcement Division, Common Carrier Bureau, 202–632–4887.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration in CC Docket No. 91–65 [FCC 93–88], adopted February 11, 1993 and released March 10, 1993. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. The full text of this Order on Reconsideration may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Order on Reconsideration

1. On February 11, 1993, the Commission adopted an Order on Reconsideration in CC Docket No. 91–65 (released March 10, 1993; FCC 93–88) affirming, with one minor change, regulations governing pay-per-call services that were adopted by Report and Order in CC Docket 91–65, 56 FR 56160, November 1, 1991, (6 FCC Rcd 6166).

2. In the Report and Order, the Commission adopted rules governing common carriers' provision of pay-per-call services, including 900 services. Those rules, which became effective December 2, 1991, require carriers to ensure that the pay-per-call programs they transmit contain a preamble that gives the information provider's (IP's) name, a brief description of the service, the cost of the program and a warning, on programs that are aimed at or likely to be of interest to children under age 18, that parental permission is required. The preamble may be omitted on programs with a flat-rate charge of $2.00 or less. Callers must also be allowed to hang up during the preamble without incurring charges, and may not be billed for the preamble time if they continue the call. The Commission preempted state-imposed preamble requirements on jurisdictionally-mixed services that differ from the federal requirement. The

Commission also prohibited carriers from disconnecting basic telephone service because of disputes about pay-per-call charges. Local exchange carriers (LECs) must offer, where technically feasible, services to allow subscribers to block all calls to 900 numbers; that service is to be provided free of charge one time to residential subscribers. Finally, the Commission required the interexchange carriers (IXCs) transmitting pay-per-call programs to provide, on request, the name, address and telephone number of information providers using their services.

3. Ten parties filed petitions for reconsideration of the Report and Order. Two parties also filed requests for stay of the effectiveness of the rules, but the Commission dismissed these requests as procedurally defective. Certain petitioners asserted that the cost threshold for exemption from the preamble requirement was too low, that an average cost or cost-indexing procedure should be used, and that certain programs charged on a usage-sensitive basis should be exempted. The Commission declined to change the scope of the preamble exemption, noting that there is no basis for assuming that all low cost usage-sensitive programs will result only in minimal charges to users. The petitioners' other suggestions were deemed to be difficult to enforce and might create new opportunities for the deception of consumers. Also, the Commission maintained the $2.00 flat rate threshold because no party demonstrated that the Commission's balancing of the interests in arriving at this amount was incorrect. The Commission also declined to exempt non-verbal programs from the preamble requirement, but did change the rule to provide that the preamble on such programs need not be audible.

4. Several parties challenged the Commission's determination that a caller who stays on the line after hearing a preamble should not be charged for the preamble time, and questioned what carrier is responsible for ensuring the accuracy of the billing. The Commission affirmed the prohibition on charging callers for preamble time. It acknowledged that some callers may abuse that feature by bypassing the preamble and listening to a program during the free period, but found that carriers could deter this abuse by starting the billing as soon as the caller bypassed the preamble. Finally, the Commission stated that responsibility for ensuring that billing begins at the correct time should rest on the carrier responsible for rating the call.

5. The Commission considered challenges to the scope of the children's preamble warning. In response to concerns that the age limit of children should be reduced to twelve years, as is the case in other rules, the Commission noted that it had not selected a single age standard to separate children from adults for all regulatory purposes. The basis for selecting age 18 as the threshold for the preamble warning in this proceeding was that a child's ability to turn an impulse to buy immediately into an actual purchase is much greater with a pay-per-call service than with broadcast advertising. Thus, the Commission balanced the need to protect children who lack the maturity to make an informed purchase decision against the possible adverse impact of the warning and concluded that the rule should be retained. The Commission also declined to adopt rules governing preambles and advertising in languages that differ from the call message, noting that the Federal Trade Commission had jurisdiction to prevent abuses arising in this regard.

6. In response to challenges by several parties to the preemption of state-imposed preamble requirements that differ from the federal requirement, the Commission noted that the record in the proceeding demonstrated that neither the LECs, IXCs nor IPs had the capability to jurisdictionally sort the traffic to a 900 service to separate the intrastate calls. Preemption was accordingly justified because state regulation of jurisdictionally mixed 900 service would thwart or impede the federal policy of facilitating development of interstate 900 service. The Commission recognized that after close of the record, AT&T made a tariff filing that apparently would allow an IP to isolate intrastate 900 calls on a real time basis. The Commission concluded that it need not seek additional comment on this feature in this proceeding, however, because the Commission's limited preemption will cease when the Federal Trade Commission adopts a preamble rule that applies directly to IPs. The Commission noted that in a separate proceeding, it was proposing to abolish its preamble requirement upon effectiveness of the new FTC rule.

7. One party sought a Commission requirement that the billing carriers print the IP's name, address and telephone number on all bills containing charges for 900 services, in addition to the requirement that IXCs provide that information on request. The Commission stated that the practical difficulties involved in implementing that proposal may outweigh the modest incremental benefit which would be provided to consumers. The Commission noted that such information is now available to consumers on request, and that, in any event, the Commission was in a separate proceeding considering what information should be provided on consumer's bills in addition to that required by statute.

8. The Commission's blocking requirements allow residential consumers to obtain a free one-time block of access to 900 calls; that free feature was not extended to commercial customers. One party sought free blocking for commercial accounts also, stating that such blocking will benefit the IXCs and IPs by reducing their losses. Another party asked the Commission to rule that the costs of providing the free block are exogeneous for price cap LECs. The Commission declined to extend the "one free block" policy to commercial customers. It noted that the free block was a limited exception to the Commission's policy that the subscriber who causes a cost should bear the responsibility for payment thereof, and that extending the program to commercial customers would expand that exception. The Commission observed, however, that the Telephone Disclosure and Dispute Resolution Act (TDDRA) mandates a free block period of limited duration for all subscribers, and therefore, upon effectuation of new pay-per-call rules to be adopted in a separate proceeding implementing the TDDRA, free blocking will be available to commercial subscribers. Finally, the Commission stated that not all costs resulting from governmental action are automatically treated as exogenous, and that no showing had been made to support a finding that the costs of the free block program should be exogenous.

9. The Commission considered the issue of whether carriers should be allowed to bundle blocking of access to 900 service with other blocking features. It ruled that such bundled blocking may not be imposed for 900 and 700 services, because that action would force customers to choose between avoiding liability for pay-per-call charges and accessing the business services which the IXCs provide on the 700 exchange. The Commission also clarified that the federal rules do not apply to 976 services in local calling areas that cross state lines and are not accessed through an IXC.

Ordering Clauses

10. *Accordingly, it is ordered,* pursuant to sections 1, 4(i), 4(j), 201–205, and 405 of the Communications

Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205 and 405, that the petitions for reconsideration filed in this proceeding are denied, except as provided herein.

11. *It is further ordered, that* part 64 of the Commission's rules, 47 CFR part 64, is amended as set forth herein, effective 30 days from publication of the text thereof in the Federal Register.

12. *It is further ordered, that* COAC's request that the commission stay the effectiveness of the pay-per-call rules and NAIS's Motion to Accept Late Filed Petition for Reconsideration and Motion to Hold Rules in Abeyance are dismissed.

13. *It is further ordered, that* NAAG's Motion to Accept Responsive Pleading is granted.

14. *It is further ordered, that* the motions to withdraw petitions for waiver filed by MCI and AT&T are granted.

List of Subjects in 47 CFR Part 64

Communications common carriers, Computer technology, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. Section 64.711 is amended by revising paragraph (a) to read as follows:

§ 64.711 Preamble.

(a) Programs must begin with a clearly understandable and (except for non-verbal programs) audible preamble that states the cost of the call. The preamble must disclose all per call charges. If the call is billed on a usage sensitive basis, the preamble must state all rates, by minute or other unit of time, any minimum charges and the total cost for calls to that program if the duration of the program can be determined. No preamble is required for programs with a flat-rate charge of $2 or less.

* * * * *

[FR Doc. 93–7464 Filed 3–31–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 921119–3035]

RIN 0648–AE49

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This rule seasonally modifies the boundary of the Tortugas shrimp sanctuary to reduce the area closed to trawl fishing. This action will enable fishermen to harvest marketable-sized shrimp during specified periods from three small areas that otherwise would be closed.

EFFECTIVE DATE: April 11, 1993.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 6 to the FMP establishes the seasonal opening of three small areas within the Tortugas shrimp sanctuary, as has been done in each of the last 3 years by regulatory amendments. Amendment 6 also contains a definition of overfishing, a discussion of recruitment overfishing, and action to be taken in the event of recruitment overfishing, all applicable to white shrimp. The Secretary of Commerce (Secretary) disapproved these measures because the definition of overfishing is not scientifically justified. The background and rationale for these actions, and discussion of a minority report submitted by four members of the Council on Amendment 6, were contained in the proposed rule (57 FR 58175, December 9, 1992) and are not repeated here.

One comment was received on the proposed rule. The commenter agreed that the seasonal modification of the boundary of the Tortugas shrimp sanctuary is reasonable, urged the Council to continue its efforts to determine the cause of the pink shrimp decline, and agreed with the minority report. NMFS acknowledges the agreement with the changes to the boundary of the Tortugas shrimp sanctuary and has referred to the Council the concerns regarding the decline of pink shrimp. As noted above, discussion of the minority report was included in the proposed rule.

Classification

The Secretary determined that the changes to the Tortugas shrimp sanctuary contained in Amendment 6 are necessary for the conservation and management of the shrimp fishery and are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Council prepared a regulatory impact review that concludes that this rule is not expected to have any significant economic effects on fishermen because it makes permanent the changes to the Tortugas shrimp sanctuary that have been in effect for the last 3 years.

When this rule was proposed, the General Counsel of the Department of Commerce certified to the Small Business Administration that if it was adopted it would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule.

Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida objected to the proposed definition of overfishing for white shrimp and did not concur with this determination. Since NMFS rejected and severed this definition from Amendment 6, Florida's objection is moot.

A consultation conducted in accordance with section 7 of the

Endangered Species Act on Amendment 6 concluded that neither the fishery nor this amendment is likely to jeopardize endangered or threatened sea turtles as long as the current turtle excluder device regulations remain in effect.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause, namely to ensure that fishermen may take full advantage of the additional areas opened to trawl fishing by this rule commencing on April 11, 1993, as they have been able to do in each of the last 3 years under temporary regulations, that it is impracticable to delay for 30 days the effective date of this rule. Accordingly, the seasonal modifications to the Tortugas shrimp sanctuary are effective April 11, 1993.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 26, 1993.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.22, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding,

(1) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point T at 24° 47.8′ N. latitude, 82° 01.0′ W. longitude to point U at 24° 43.83′ N. latitude, 82° 01.0′ W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24° 42.55′ N. latitude, 82° 15.0′ W. longitude; thence north to point W at 24° 43.6′ N. latitude, 82° 15.0′ W. longitude (see Figure 1).

(2) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point W to point V, both points as specified in paragraph (b)(1) of this section, to point G, as specified in paragraph (a) of this section (see Figure 1).

(3) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: From point F, as specified in paragraph (a) of this section, to point Q at 24° 46.7′ N. latitude, 81° 52.2′ W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (b)(1) of this section (see Figure 1).

[FR Doc. 93–7577 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 61
Thursday, April 1, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 100

[Docket No. 92N-0383]

Misleading Containers; Nonfunctional Slack-Fill; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of January 6, 1993 (58 FR 2957). The document proposed to amend agency regulations to define the circumstances in which a food is misbranded under the Federal Food, Drug, and Cosmetic Act and in which the slack-fill within a package is nonfunctional and therefore misleading. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: Written comments by March 8, 1993. The agency intends to issue a final rule by May 8, 1993.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5106.

In FR Doc. 92-31528, appearing on page 2957 in the Federal Register of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2963, in the third column, in the tenth line from the bottom, "producthas" is corrected to read "product has".

2. On page 2964, in the first column, in section V.C.2., in line 2, "withpossible" is corrected to read "with possible"; in the second column, in section V.C.3., in line 2, "producthas" is corrected to read "product has"; and in the tenth line from the bottom, the date "January 11, 1993" is corrected to read "March 8, 1993".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7234 Filed 3-31-93; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 101

[Docket No. 91N-384H]

RIN 0905-AD08

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of January 6, 1993 (58 FR 2944). The document proposed to amend the food labeling regulations to establish a definition for the term "healthy" under the Federal Food, Drug, and Cosmetic Act. The document was published with inadvertent typographical and editorial errors. This document corrects those errors.

DATES: Written comments by March 8, 1993. The agency intends that any final rule that may issue based on this proposal become effective on the same date as the final regulations for the General Principles for Nutrient Content Claims, promulgated under the provisions of the 1990 amendments.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFS-155), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

In FR Doc. 92-31526, appearing on page 2944 in the Federal Register of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2944, in the third column, in line 18, "privisions" is corrected to read "provisions".

2. On page 2947, in the second column, in the second full paragraph, in the 4th line from the bottom, "approiate" is corrected to read "appropriate".

§ 101.65 [Corrected]

3. On page 2949, in the third column, in line 6, a comma is added after the word "Food"; in the same column, in amendatory instruction number "2." for § 101.65, the phrase "redesignating paragraph (d) as (d)(1) and" is added after the word "by".

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7243 Filed 3-31-93; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Parts 101, 102, and 161

[Docket No. 90N-361M]

RIN 0905-AD08

Food Labeling; Declaration of Ingredients—Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; "and/or" Labeling for Soft Drinks; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of January 6, 1993 (58 FR 2950). The document proposed to amend the food labeling regulations to require the declaration of the term "(includes soybeans)" when soybeans are one of the extractives in vegetable broth in canned tuna; to amend the common or usual name regulations for protein hydrolysates to require the term "(contains glutamate)"; and to permit the use of "and/or" labeling for sweeteners in soft drinks. The document was published with some typographical and editorial errors. This document corrects those errors.

DATES: Written comments by March 8, 1993. The agency proposes that any

final rule that may issue based on this proposal become effective May 8, 1994.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

In FR Doc. 92–31527, appearing on page 2950 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2951, in the first column, in the second full paragraph, beginning in the ninth line, the phrase "be identified parenthetically following the term vegetable broth because of possible allergic reactions in some individuals to soy proteins (Ref. 57)." is corrected to read "be identified in the ingredient statement (Ref. 57). Because of possible allergic reactions in some individuals to soy proteins,".

2. On page 2952, in the second column, in the first full paragraph, in the 16th line from the bottom, the words "'contains glutamate.'" are corrected to read "'(contains glutamate)'."; in the same paragraph, in the ninth line from the bottom, the phrase "greater than 0.62 (AN:TN ≤ 0.62)" is corrected to read "greater than or equal to 0.62 (AN:TN ≥ 0.62)"; and in the third column, in the first full.paragraph, in the second line, the words "'contains glutamate'" is corrected to read "'(contains glutamate)'."

3. On page 2953, in the second column, in the third full paragraph, in the third line, the quotation marks after the word "was" are removed.

§ 102.22 [Corrected]

4. On page 2955, in § 102.22 *Protein hydrolysates*, in paragraph (b), in the tenth line, the phrase "is greater than 0.62)" is corrected to read "is greater than or equal to 0.62)."

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7236 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 135

[Docket No. 88P–0251]

Frozen Desserts: Removal of Standards of Identity for Ice Milk and Goat's Milk Ice Milk; Amendment of Standards of Identity for Ice Cream and Frozen Custard and Goat's Milk Ice Cream; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule on frozen desserts that appeared in the **Federal Register** of January 6, 1993 (58 FR 520). The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: Comments by March 8, 1993. FDA proposes that any final rule that may issue based on this proposal, unless stayed by the filing of proper objections, become effective 1 year following the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margaret E. Cole, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4745.

In FR Doc. 92–31529, appearing on page 520, in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On Page 520, in the second column, under the caption "**FOR FURTHER INFORMATION CONTACT:**", in the second line, the mail code "(HFF–414)" is corrected to read "(HFS–158)".

2. On page 524, in the third column, in the first full paragraph, in the seventh line, the words "standards of identity §§ 135.110" are corrected to read "standards of identity in §§ 135.110".

3. On page 525, in the first column, last line, the words "manufacturing process They also vary in" are corrected to read " manufacturing process. They also vary in".

4. On page 526, in the third column, under the heading "VII. Effective Date," in the last line, the words "date publication" are corrected to read "date of publication".

Dated: March 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7313 Filed 3–31–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 125

[Docket No. R–93–1657; FR–3480–A–01]

Advance Notice of Proposed Rulemaking for Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Advance notice of proposed rulemaking for Fair Housing Initiatives Program.

SUMMARY: This notice requests comment on HUD's implementation of section 905 of the Housing and Community Development Act of 1992, which extensively amends the Fair Housing Initiatives Program. This program provides assistance to eligible public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

DATES: Comments on the development of these statutory amendments may be submitted on or before May 3, 1993. The Department anticipates publishing a proposed rule within six months of this notice.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rulemaking to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3214. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as

amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent or eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), substantially amends section 561 of the Housing and Community Development Act of 1987. Specific additions include provisions dealing with:

(A) Private Enforcement Initiatives, including permitting multiyear contracts for investigations of violations, and the use of funds for the costs and expenses of litigation;

(B) The funding of Fair Housing Organizations to support the development or implementation of initiatives which enforce the rights granted under title VIII, and to build and enhance the capacity of such organizations; and

(3) The establishment of a national education and outreach program, with a specific set-aside for activities related to the annual national fair housing month.

The Department invites comment on all aspects of the implementation of section 905.

Dated: March 19, 1993.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–7485 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 61 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns vegetation maintenance practices which Ohio would not consider augmentative and which would not restart the period of extended responsibility for revegetation success.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 3, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on April 26, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 16, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61. In this amendment, Ohio proposes to revise OAC section 1501:13–9–15(F) to expand and clarify the vegetative management practices which Ohio will not consider augmentative and which will not restart the revegetation responsibility period. The substantive changes proposed by Ohio in Program Amendment Number 61 are discussed briefly below:

(1) OAC 1501:13–9–15 Paragraph (F)(4)

Ohio is revising this paragraph to include practices which Ohio will not consider augmentative when the practice is an acceptable local practice for comparable unmined lands. The revised paragraph would provide that the following practices are not augmentative:

(1) Seeding, applying soil amendments, and irrigating to maintain productivity, as recommended by or as specified in technical guidelines published by the Ohio State University Cooperative Extension Service as normal practices on cropland, pasture land, or grazing land;

(2) Replanting of trees as a reinforcement measure on areas for which the approved planting plan requires woody vegetation; and

(3) Reseeding of legumes within the first three years after the initial planting where the legumes are expected to be

present five years after the initial planting.

Ohio is also deleting the term "agronomic" when referring to these practices.

(2) OAC 1501:13–9–15 Paragraph (F)(5)

Ohio is adding this new paragraph to provide that Ohio will not consider to be an augmentative practice the reseeding of areas that have been disturbed after the initial seeding because of unavoidable repairs due to land movement or third party interference. For this determination, the existence of established permanent vegetation prior to the disturbance must be documented. Also, the total acreage of the area reseeded during any one year may not exceed ten percent of the total area permitted, with no single area exceeding three acres.

(3) OAC 1501:13–9–15 Paragraph (F)(6)

Ohio is adding this new paragraph to provide that the reseeding of areas disturbed in the course of gaining access to and removing sediment control structures will not restart the period of extended responsibility for revegetation success.

(4) OAC 1501:13–9–15 Paragraph (F)(7)

Ohio is adding this new paragraph to establish criteria for phase III bond release of areas reseeded under paragraphs (F)(5) and (F)(6). Such areas must have vegetation in place for a minimum of 90 days prior to the phase III bond release request. However, if the area is planted after the first day of August of a given year, the area will not be eligible for a phase III bond release until the first day of May of the following year.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on April 16, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Executive Order No. 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–7477 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket 93–1]

Americans With Disabilities Act Accessibility Guidelines for Building and Facilities; Children's Environments

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On February 3, 1993, the Architectural and Transportation Barriers Compliance Board (Access Board) published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (58 FR 6924) requesting comments from the public on various issues relating to the development of accessibility guidelines for newly constructed and altered children's environments under the Americans with Disabilities Act of 1990. The ANPRM noted that the Center for Accessible Housing at North Carolina State University's School of Design had prepared a report titled "Accessibility Standards for Children's Environments" and that the report was available from the Access Board. Due to an unexpected delay in printing and distributing the report, the Access Board is extending the comment period to accommodate persons who wish to review the report prior to submitting their comments.

DATES: Comments should be received by June 1, 1993. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: John Murdoch, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 (Voice); (202) 272–5449 (TDD). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 93–7587 Filed 3–31–93; 8:45 am]

BILLING CODE 8150–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–4609–5]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and notice of correction for proposed rule.

SUMMARY: This action announces the date, time and place for a public hearing on the Notice of Proposed Rulemaking (NPRM) entitled "Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline" published on February 26, 1993 (58 FR 11722).

In addition, this action announces a correction to the NPRM. An incorrect version of section VI of the NPRM, originally entitled "Phase II Reformulated Gasoline Performance Standards", was published in error. The correct section VI of the NPRM is now entitled "Phase II (Post-1999) Reformulated Gasoline Standards" and is published here for public comment. The public hearing announced herein will also address the contents of this corrected section VI.

DATES: EPA will conduct a public hearing for both the February 26, 1993 NPRM and today's notice of correction on April 14–15, 1993. The public hearing will begin at 10 a.m. on April 14th and continue until 6 pm and will resume at 8:30 am on April 15th and continue until all testimony has been heard.

The comment period on the February 26, 1993 NPRM, as well as on this notice of correction, will extend through 30 days from the completion of the public hearing. The comment period for the NPRM published on July 9, 1991 (56 FR 31176) and the NPRM published on April 16, 1992 (57 FR 13416) is also extended until such date.

ADDRESSES: The public hearing will be held at the Holiday Inn Dulles International Airport, 1000 Sully Rd., Sterling, VA, 20166, Telephone number: (703) 471–7411. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–12, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–92–12, First Floor, Waterside Mall, rm. M–1500, 401 M Street, SW., Washington, DC 20460. Materials relevant to this notice, including the regulatory language, are contained in that Public Docket. The docket may be inspected from 8:00 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joann Jackson Stephens, Fuel Studies and Standards Branch, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4276.

SUPPLEMENTARY INFORMATION: For further information on this matter, please refer to EPA's February 26, 1993 **Federal Register** Notice of Proposed Rulemaking at 58 FR 11722.

NPRM Section VI: The following discussion replaces section VI of the February 26, 1993 NPRM published at 58 FR 11722.

V Phase II (Post-1999) Reformulated Gasoline Standards

A. Statutory Requirements

Section 211(k)(1) of the Act specifies that the Administrator shall consider, in addition to cost, non-air quality and other air quality-related health and environmental impacts, and energy requirements in establishing requirements for the greatest achievable reductions in VOC and toxic emissions. Summaries of the cost, health, environmental, and energy impacts of achieving the proposed emissions reductions are presented below and are more thoroughly discussed in the Draft RIA associated with this proposal.

Section 211(k)(3)(B) of the Clean Air Act requires, in the year 2000 and beyond, that aggregate emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from baseline vehicles using reformulated gasoline be at least 25 percent below emissions from baseline vehicles using baseline gasoline during the high ozone season. The Act also specifies that the 25 percent reduction level may be adjusted to provide for a greater or lesser reduction based on technological feasibility, including consideration of the cost of achieving the reductions. However, in no case can the required reductions be less than 20 percent. The required emission reductions are called, hereafter, the Phase II standards.

The Act requires that the minimum standard for emission reductions be set by the more stringent of either the formula fuel specified in section 211(k)(3)(A) or the performance requirement specified in section 211(k)(3)(B). For Phase I reformulated gasoline, the performance requirement of 15 percent is more stringent than the formula fuel emission reductions for both VOC and toxics. Since the performance requirement for Phase II reformulated gasoline is 25 percent, it is also more stringent than the formula fuel. As previously discussed, this sets the minimum standards allowed under section 211(k).

The Phase II requirements would apply to gasoline which is sold in those ozone nonattainment areas required to receive reformulated gasoline and in those areas which have already opted into the program or which opt in at a later date. Requirements related to the enforcement of the Phase II standards (and all reformulated gasoline certification) would not change relative to that with the Phase I standards for 1997 and beyond.

In discussions relating to potential opt-in, a question has been raised concerning a state opting into Phase I of the reformulated gasoline program, but not Phase II, such that a state would continue to have Phase I reformulated gasoline sold in its relevant ozone nonattainment areas under a Federal program beyond 1999. EPA has not, at this time, sufficiently analyzed the details of such an option to evaluate how such fuel would comply with the requirements of section 211(k), particularly those pertaining to the Phase II standards in section 211(k)(3)(B). EPA requests comments on ways such an approach could be designed to fully comply with these requirements, how it would affect fuel distribution and production costs and the value of this added flexibility to states trying to develop means to comply with the ozone NAAQS.

In addition to the VOC and toxic emissions reductions, section 211(k)(2)(A) of the Act specifies that there be no net increase in NO_x emissions (over baseline NO_x levels) resulting from the use of reformulated gasoline. As will be shown below, NO_x emission increases due to the use of reformulated gasoline are unlikely, and are definitely avoidable. Recently, both a National Research Council study [1] and a study prepared for EPA [2] have indicated that additional NO_x reductions could significantly reduce ozone formation in some areas. Based on these reports, other EPA work in ambient ozone analysis and the broad authority granted EPA under section 211(c), EPA is considering adoption of a NO_x emission reduction standard between 0 and approximately 15 percent in connection with the Phase II standards to further reduce ozone formation during the high ozone season. Section 211(c) of the Act gives the Agency broad regulatory authority to regulate motor vehicle fuel quality if any emission product of such fuel causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA must evaluate the effects of the emissions on public health, scientific data, and other factors including technological feasibility when considering using its 211(c) authority.

The Agency believes that NO_x emission control via reformulated gasoline may be a technologically feasible and cost-effective option. The Agency also realizes that imposing a NO_x reduction standard on reformulated gasoline may reduce the flexibility of refiners to modify their operations to produce complying gasoline. This reduced flexibility would likely increase production costs. EPA requests comments on the need for NO_x emissions control in reformulated gasoline areas and on the use of its authority under section 211(c) to add NO_x control to the reformulated gasoline program.

B. Evaluation of Factors Affecting Selection of Proposed Standards

In setting the Phase II reformulated gasoline standards, EPA must consider the cost, health, environmental and energy impacts, and the technological feasibility, of modifying fuels to meet certain emission reduction requirements. EPA's analyses of each of these factors is discussed briefly below, and in detail in the DRIA. Comments on any of the analyses are welcome.

1. Cost Impacts

In evaluating the cost impact of meeting a Phase II emission reduction requirement, EPA considered the cost effectiveness of modifying a fuel to achieve a certain emission reduction. The methodology for determining the cost effectiveness of fuel component changes is described in the Draft Regulatory Impact Analysis (RIA). In this analysis, the incremental cost effectiveness of an emission control obtained through fuel modifications is the ratio of the cost of a fuel component change to the additional reduction in emissions that occurs because of that fuel change. Individual fuel component control costs include operating costs and annualized capital costs.

Individual fuel component control costs and the effects of changes in one fuel component on the other fuel components are integral parts in the determination of the cost effectiveness of an emission control strategy. In the analysis presented in the DRIA, these two integral parts were estimated from the results of refinery modeling performed by Turner, Mason and Company (for the Auto-Oil Air Quality Improvement Research Program) and Bonner & Moore Management Science (for EPA) and on survey results presented by the California Air Resources Board (CARB). Comments on the use of these studies for estimating individual fuel component control costs and coincident fuel component effects are requested. Additional fuel component control cost data is also welcome.

EPA believes it is reasonable to focus this analysis for the proposed Phase II standards on cost effectiveness, which EPA defines here as the ratio of the incremental cost of a control measure to the incremental benefit, e.g., tons of VOC or NO_x emissions reduced or number of cancer incidences avoided. EPA's cost effectiveness analysis measured the incremental cost and incremental benefit from the Phase I emissions performance standards. The use of cost effectiveness allows for the relative ranking of various control strategies so that a specified environmental goal can be achieved at minimum cost. EPA also evaluated the overall cost of the proposed standards on a per-gallon basis to ensure they would be reasonable. EPA does not expect non-production related costs, such as distribution costs, to increase relative to Phase I reformulated gasoline.

All emission reductions for Class C areas are calculated relative to the statutory baseline per the requirements of the Act and all emission reductions for Class B areas are calculated relative to a fuel with an RVP of 7.8 psi and statutory baseline levels for all other parameters. As for Phase I reformulated gasoline, all Phase II reformulated gasoline must have at least 2.0 weight percent oxygen and maximum 1.0 volume percent benzene, with

[1] "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Research Council, December 18, 1991.

[2] "Modeling the Effects of Reformulated Gasolines on Ozone and Toxics Concentrations in the Baltimore and Houston Areas," prepared for EPA, OPPE, APB by Systems Applications International, September 30, 1992.

provisions for averaging. The costs of these two requirements are discussed in the Phase I reformulated gasoline DRIA.[3] The DRIA for Phase II reformulated gasoline contains updated costs for each of these two mandated controls. The cost effectiveness of incremental changes in fuel quality is determined relative to the statutory baseline and the mandated oxygen and benzene requirements. EPA requests comments on the methodology used in determining the cost effectiveness of fuel component changes.

2. Health and Environmental Effects

The health and environmental benefits of the reformulated gasoline program are measured in terms of cancer incidences avoided and tons of VOC and NO_x reduced. Based on the standards proposed today, and supported by the analysis in the DRIA, approximately 2–3 cancer incidences will be avoided annually nationwide, 81,000 to 228,000 annual tons of VOC will be reduced in Class B, and 142,000 to 187,000 annual tons of VOC will be reduced in C areas. The actual number of tons reduced depends on the performance standard (from the range of standards proposed today) ultimately promulgated. If NO_x standards are imposed, 27,000 to 48,000 annual tons of NO_x will be reduced in Class B areas and 40,000 to 71,000 annual tons of NO_x will be reduced in C areas. Additional VOC reductions could also occur with imposition of a NO_x standard.

3. Energy Impacts

Approximately a 3–5 percent increase in energy required to produce reformulated gasoline (over conventional gasoline) is expected, primarily as process heat input. The total increase depends on many factors, including how the energy balance is drawn, refinery configuration, the sulfur level of the crude charge, the oxygenate source, and the reformulation approach chosen by a refiner.

Directional changes in energy usage are predictable. For instance, refinery crude charge will decrease due to extensive use of oxygenates. Oxygenate production is energy intensive, not only in producing the oxygenates, but in the case of MTBE, producing the methanol and isobutylene feedstocks. Desulfurization processes are also energy intensive, particularly hydrogen production. Benzene removal via fractionation and benzene and olefin reduction via hydrogenation require additional energy. Aromatics reductions will reduce energy usage, because the reformer can be run at a lower severity, reducing fuel consumption. T90 reductions will require further gasoline processing of heavy ends to maintain gasoline yield.

4. Technological Feasibility

The technological feasibility of producing fuels to meet the proposed standards must be considered in establishing the standards. EPA believes that the refinery modeling results, from which the fuel component control costs were estimated, provide adequate support for believing that the proposed fuel component changes are technologically feasible. The refinery models utilized only well-developed, demonstrated, commercially available technologies, and hence will only produce fuels within the limits of these technologies. In all likelihood, new technologies will be developed between now and the year 2000 which will reduce the costs for certain types of fuel component changes. Thus, EPA believes that the determination of fuel component control costs using the results of such models is reasonable and that the feasibility of producing such emission-reducing fuels is justifiable.

Because the standards proposed today will not take effect until the year 2000, EPA does not believe that lead time issues should present problems to reformulated gasoline producers in achieving the proposed reductions, as all the processes needed to produce complying fuels are already commercially available.

EPA has evaluated both driveability and safety concerns associated with the use of low RVP fuels and found no significant negative impacts. These issues are addressed in the Draft RIA. Comments are requested on potential technological barriers to achieving the proposed VOC, NO_x and toxics emissions reductions.

C. Proposed Standards

1. VOC and NO_x Control

a. *Control Costs.* The total cost (or manufacturing cost) of producing a reformulated gasoline is the sum of the capital recovery cost and the operating cost. In determining the cost of fuel changes for VOC and NO_x control, EPA assumed that, because VOC control is mandated only during the high ozone season, the length of which was described in the NPRM and SNPRM, operating costs of changes made to produce reformulated gasoline would only occur in the summer and not in the winter, in effect, idling any process units built especially for the purpose of meeting the reformulated gasoline program emission requirements. However, capital costs would have to be fully recovered regardless of whether the equipment was used seasonally or not. EPA adjusted the capital costs accordingly, and used the sum of the adjusted capital cost and the original operating cost as the individual fuel component control cost in analyzing the cost-effectiveness of VOC and NO_x controls. As will be discussed under the section on toxics control, in its estimate of the cost effectiveness of toxics control, EPA did not adjust the capital cost portion of the individual fuel component control costs as described above because toxics reductions are required year-round. Complete information on the development of the individual component costs for both Class B and C areas is provided in the Draft RIA.

Table VI–1 gives the individual fuel component control costs and the associated incremental percent reduction in VOC emissions for Class C areas. The incremental costs shown in the table are the costs of making a particular fuel change after making the fuel change immediately above. The previous fuel change may or may not affect the value of the fuel component directly below. For example, the sulfur cost of 0.11–0.18 cents per gallon is the cost of reducing sulfur to 160 ppm from the sulfur level that resulted when olefins were reduced to 5.0 volume percent first. In this particular case, olefin reductions also reduced sulfur levels. The effect of each fuel component modification on other fuel components are discussed in the DRIA. Likewise, the incremental percent reductions shown in the table are the emission reductions due to making a particular fuel change after making the fuel change immediately above. The sum of the incremental reductions is the total reduction when the fuel component changes are made in the order shown. EPA must stress that the order shown is only an example; refiners may achieve the required standards by any combination of fuel component controls resulting in the required emissions performance. Similar information to that shown in Table VI–1 is available in the DRIA for Class B areas and for Class B and C areas for NO_x and toxics emissions. Comments on the incremental costs and emission reductions presented in Table VI–1, or in the DRIA, and on their

[3] "Draft Regulatory Impact Analysis, Reformulated Gasoline and Anti-Dumping Regulations," EPA, OAR, OMS, ECTD, SDSB, July 1991.

derivation are requested, as well as additional fuel component control cost data and supporting description.

TABLE VI.—CLASS C COMPONENT CONTROL COSTS AND VOC EMISSION REDUCTIONS

Component	Control level	Incremental cost (c/gal)	Incremental VOC reduction (percent)
Oxygen	2.0 wt%	[1] 3.39–5.11	10.5
Benzene	1.0 vol%	0.69	0.0
RVP	8.1 psi	0.57	8.5
Olefins	5.0 vol%	0.27	1.9
Sulfur	160 ppm	0.11–0.18	1.0
RVP	7.5 psi	1.49	7.8
Oxygen	2.7 wt%	[1] 1.18–1.78	3.5
Sulfur	50 ppm	2.60–3.32	2.9
Aromatics	20 vol%	0.61–0.97	0.7

[1] Based on MTBE. Includes increased costs due to fuel economy losses.

b. *Cost Effectiveness.* In determining the emission reductions and the associated cost effectiveness of VOC and NO_x standards, EPA employed a convention typically used in estimating the benefit of both mobile and stationary source VOC controls. This convention requires the determination of cost effectiveness on the basis of annual tons of VOC reduced. Thus, even though VOC emission reductions required under section 211(k) are only during the high ozone season, the convention is to calculate the cost of the fuel component control per ton of VOC removed as if the high ozone season emission reductions were obtained over the whole year.

EPA evaluated particular combinations [4] of fuel component controls which reduce VOC (and VOC plus NO_x) emissions at costs of less than $5,000 and less than $10,000 per ton, respectively. EPA believes that these values represent costs in the range of those which will be incurred by many ozone nonattainment areas in achieving attainment. These cost-effectiveness values are higher than any cost-effectiveness values for any existing federal nationwide motor vehicle or motor vehicle fuel controls. As the cost-effectiveness of an emission reduction strategy increases, substantial emission control may be achieved in other ways (e.g., through other regulatory programs) at the same or lower cost-effectiveness. Since many areas are currently formulating their State Implementation Plans (SIP), EPA requests comments on the cost-effectiveness of strategies being considered by states to reduce VOC and/or NO_x emissions, including both mobile and stationary source controls. EPA also requests comments as to the appropriateness of the cost per ton levels of $5,000 and $10,000.

Normally, use of these cost per ton values would determine the depth of RVP controls projected for Class B and C fuels. However, limited RVP control cost data below 7.2 psi prevented the determination of RVP levels which would exceed the cost-effectiveness levels of $5,000 and $10,000 per ton. Instead, EPA based the proposed Phase II standards for Class B areas on an RVP range of 6.5–7.2 psi. For Class C areas, the proposed standards are based on RVPs of 6.5–7.5 psi which result in the same nonexhaust VOC emissions in Class C areas as the range of Class B RVPs do in Class B areas. Comments are requested on the level of RVP control in each class which is reasonable for use in setting the Phase II standards.

Because fuel component control costs increase with increasing participation in the reformulated gasoline program (this effect is discussed in the DRIA), EPA based its analysis on a mid-level of participation which consists of the "nine cities" as well as those areas which have opted into the program as of June 26, 1992. EPA requests comments on whether its standard setting analysis should focus on just the "nine cities", given coverage of these areas is mandatory, not optional, and they represent the nine largest metropolitan areas with the most severe summertime ozone problems, or if it should focus on the cost-effectiveness of a reformulated gasoline program with a certain level of opt-in, to reflect the current extension of the program to several opt-in areas.

c. *VOC and NO_x Standards.* Based on the complex model, the refinery modeling studies and associated analyses described above, EPA has found that the VOC performance standards listed in Row A of Table VI–2 could be met under the various RVP and cost per ton levels evaluated for the Phase II standards.

TABLE VI–2.—PROPOSED STANDARDS FOR PHASE II REFORMULATED GASOLINE

[Percent reduction in emissions]

	Cost effectiveness <$5,000 per ton		Cost effectiveness <$10,000 per ton	
	Class B [1]	Class C	Class B [1]	Class C
A. VOC Standard	20.7–29.6	26.7–32.1	23.2–31.7	29.2–34.7
B. NO_x Standard	8.5–8.5	8.7–8.8	14.6–14.8	14.4–15.4

[4] As stated previously, the combination of fuel components on which the proposed standards are based are just one of many fuel formulations which could be used to achieve the standards. The proposed standards are performance standards which may be met by the refiner's choice of fuel component controls.

TABLE VI–2.—PROPOSED STANDARDS FOR PHASE II REFORMULATED GASOLINE—Continued

[Percent reduction in emissions]

	Cost effectiveness <$5,000 per ton		Cost effectiveness <$10,000 per ton	
	Class B[1]	Class C	Class B[1]	Class C
C. VOC Standard w/NO_x Std	20.7–29.6	26.7–32.1	25.3–33.8	31.3–37.3
D. Toxics Standard From VOC Std	26.0–29.0	29.4–34.3	29.2–31.4	31.8–36.7

[1] Class B standards relative to a base fuel with RVP at 7.8 psi and Clean Air Act base values for all other parameters. Analysis of Class B standards relative to Clean Air Act base fuel (with RVP of 8.7 psi) can be found in the DRIA.

EPA is also proposing a NO_x standard in the range shown in Row B in Table VI–2. The lower end of this range is a year-round zero NO_x increase, as required by section 211(k)(2)(A) of the Act. In addition, under its authority provided by section 211(c)(1)(A) of the Act, the Agency is proposing a NO_x reduction standard to further reduce ozone formation. The range under consideration for the stringency of the NO_x standards (i.e., NO_x emission reduction requirements) is zero up to those shown in Row B of Table VI–2. As for VOC, the NO_x emission controls would apply only during the high ozone season.

EPA estimated that the NO_x reductions shown in Table VI–2 could be achieved at costs ranging from less than $1000 per ton of NO_x to as high as $5,500 per ton of VOC plus NO_x. Comments are requested on the cost-effectiveness levels which should be used in determining an appropriate level of NO_x control, and whether cost-effectiveness should be evaluated on a NO_x basis or on a VOC plus NO_x basis, and, if the latter, on the relative values of VOC and NO_x.

The additional fuel component changes which yielded the proposed NO_x standards also further decreased VOC emissions. While these fuel component changes cost more than the cost-effective targets described above when based solely on VOC control, they cost less than $5,000 and $10,000 per ton, respectively, when based on total tons of VOC plus NO_x. The VOC reductions achievable under these cost effectiveness levels, on a VOC plus NO_x basis when both VOC and NO_x are controlled, are shown in Row C of Table VI–2. Implementing the more stringent, Row C VOC standards would increase the likelihood that the greatest VOC emission reductions achievable were being attained. However, EPA is not certain that it has fully considered all of the costs of refiners attaining both the VOC and NO_x requirement simultaneously and the Row C VOC emission reductions may be achieved in-use even without the more stringent standards. Comments are requested as to whether EPA should promulgate the more stringent VOC standards of Row C if it also implements the NO_x standards of Row B or whether the slightly more relaxed VOC standards shown in Row A should be required.

Regardless of whether the VOC standards are based on those of Rows A or C, the addition of a NO_x performance standard would further restrict refiners' flexibility in producing qualifying fuels. EPA therefore requests comments on an option whereby the VOC performance standards shown in Row A of Table VI–2 should be relaxed even further if a NO_x reduction standard was promulgated, subject to section 211(k) minimum requirements. Such a decision might be appropriate, for example, if NO_x emissions reductions were more important for ozone control than VOC reductions and, therefore, the acceptable cost effectiveness of VOC reductions should be lower than the $5,000 and $10,000 per ton levels considered in Table VI–2. Comments are also requested on granting refiners the option to trade off VOC and NO_x control within fixed limits on either standard and on whether the trade-off should be one-for-one (in percentage reduction terms) or on some other basis.

If EPA set a NO_x standard under section 211(c), states could still petition EPA to revise it for their state's nonattainment areas based on local conditions. This would be similar to the approach taken in the Phase I and II RVP rulemakings.[5] This decision could be made by each state based on detailed air quality analyses of their individual ozone nonattainment problems. A potential problem with this option is that it could require the production of another type of gasoline in one or more grades. Distribution problems and complications already expected with implementation of the reformulated gasoline requirements could increase. Comments are requested regarding benefits or drawbacks to state-specific NO_x performance standards.

2. Toxics Control

a. *Control costs.* As discussed above, in determining the cost of fuel changes for VOC and NO_x control, EPA adjusted the capital cost portion of the individual fuel component control costs to account for the fact that VOC and NO_x control are necessary only during the high ozone season. Toxics emissions, however, must be controlled year-round and thus no adjustment is needed for capital costs already amortized on an annual basis. The individual fuel component costs shown in Table VI–1 for VOC and NO_x control are thus higher than those used in the determination of the cost effectiveness of toxics emissions control.

b. *Toxics standard and cost-effectiveness.* Fuel controls for the sole purpose of reducing toxic emissions do not appear to be cost-effective. Based on the fuel component control costs used in this analysis, EPA estimates that fuel modifications for the control of toxics emissions would cost over $100 million per cancer incidence reduced.

At the same time, the control of fuel components to reduce VOC emissions also results in average reductions of toxics emissions of 17–33 percent, as shown in row D of Table VI–2. However, EPA believes that Congress intended this program to provide fuel producers flexibility to produce a variety of complying fuel reformulations. While these toxics reductions would presumably be free since they would result from VOC and NO_x controls, in this case, they would also in most cases automatically occur with or without a regulatory standard. If it were more economical for a particular refiner to use fuel modifications to meet the VOC and NO_x standards which did not produce this degree of toxics reduction, then that refiner would be faced with controlling toxics explicitly, which appears to not be cost-effective. Thus, while a toxics performance standard greater than the minimum 25 percent level specified in section

[5] 54 FR 11868 (March 22, 1989); 55 FR 23659 (June 11, 1990).

211(k)(3)(B)(ii) of the CAA is feasible, it would not be cost effective and EPA proposes setting the standard at 25 percent. Section 211(k)(3)(B)(ii) of the CAA also permits EPA to reduce the toxics performance standard below 25 percent to as low as 20 percent based on technological feasibility, considering the cost of achieving such reductions in toxic emissions. While EPA does not have information on how refiners will choose to reformulate gasoline, nor on those reformulations which will not automatically achieve the required toxics reductions and thus will require the refiner to do additional reformulation explicitly for toxics control, and therefore does not have specific information on the actual costs involved, the same arguments expressed above for not requiring greater than a 25 percent reduction are equally applicable below 25 percent. Thus, EPA also proposes as a second option that the toxics performance standard be set at the 20 percent minimum level specified by section 211(k)(3)(B)(ii) of the CAA. Comments are requested on this standard and the decision to not require a greater toxics performance standard of the magnitude shown in Row D of Table VI–2.

Dated: March 26, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–7634 Filed 3–31–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 80, and 97

[GEN Docket No. 93–40; FCC 93–119]

Allocation of the 219–220 MHz Band for Use by the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate the 219–220 MHz band to the amateur radio service on a secondary basis for amateur auxiliary station (point-to-point) packet backbone networks and other amateur point-to-point fixed communications. The proposed allocation would alleviate frequency congestion that amateurs are experiencing in certain areas of the country in the 222–225 MHz band and would facilitate establishment of regional and nationwide backbone networks for amateur packet communications. In addition, the Commission solicits comment on various technical and regulatory issues related to this secondary allocation. The intent of this action is to provide spectrum for amateurs to establish a regional and/or nationwide communications backbone to connect local packet nodes and carry a variety of information including messages, computer programs, graphic images and data bases. This network could also be used for emergency preparedness and national defense communications.

DATES: Comments are due on June 15, 1993. Reply comments are due on July 15, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas P. Derenge, (202) 653–7605, or David Siddall, (202) 653–8108, Office of Engineering and Technology, or John Johnston, (202) 632–4964, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) adopted February 26, 1993, and released March 22, 1993. This action will not add to or decrease the public reporting burden. The full text of the Commission document is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Proposed Rule

1. The Notice of Proposed Rule Making responds to a Petition for Rule Making filed by the American Radio Relay League (ARRL) requesting a secondary allocation in the 216–220 MHz band for amateur wideband packet networks and other point-to-point fixed communications. The Commission proposed to allocate the 219–220 MHz portion of that band to the amateur service on a secondary basis for point-to-point fixed operations. The Commission expressed concern that amateur use of the 216–219 MHz portion of that band could result in harmful interference to the primary services on those frequencies, Automated Maritime Telecommunications Systems (AMTS) coast stations (217–218 MHz), and Interactive Video and Data Services (218–219 MHz), and to reception of television channel 13 broadcasts in the adjacent 210–216 MHz band. The Commission believes that amateurs could use the 219–220 MHz segment on a secondary basis without causing interference to other services if their operations are properly engineered and appropriate regulatory safeguards are applied. This spectrum is currently allocated on a primary basis to the maritime mobile service for AMTS ship station channels.

2. The Commission proposed regulations to ensure that the proposed secondary amateur service not interfere with primary operations and other secondary operations in and adjacent to this band. Power limits were proposed as well as notification requirements for amateur stations within 240 km (150 miles) of AMTS coast stations. Comment was sought on these and other proposed requirements. Comment was also sought on whether this service should be limited to digital data communications, any digital communications, or whether any modulation or access method should be permitted as long as it is a point-to-point fixed communication.

3. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

A. Reason for Action

This action is being taken to provide a secondary allocation to the amateur service for amateur auxiliary station (point-to-point) packet backbone networks and other amateur point-to-point fixed communications. The Commission believes this service is in the public interest and that the additional spectrum is needed to accommodate additional amateur packet radio links in certain areas of the country. The proposed rules will protect from interference all primary and existing secondary users in and adjacent to the band that is proposed for allocation.

B. Objective

The objective of this proposal is to provide additional spectrum in which amateurs can establish wideband backbones to connect individual packet systems or use for other point-to-point fixed communications. This allocation will benefit the amateur services generally, including the emergency preparedness component of those services, as evidenced by a Memorandum of Understanding between ARRL and the National Communications System. Provision of this additional spectrum also will foster amateur expirementation with higher data rates and spectrum efficiency.

C. Legal Basis

The proposed action is authorized by sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r). These provisions authorize the Commission to make such rules and regulations as may be necessary to encourage more effective use of radio as is in the public interest.

D. Description, Potential Impact, and Number of Small Entities Affected

This proposal may provide new marketing opportunities for amateur radio equipment manufacturers, some of which may be small businesses. The Commission invites specific comments on this matter by interested parties.

E. Reporting, Record Keeping and Other Compliance Requirements

None.

F. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

G. Significant Alternatives

None.

Procedural Information

4. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

5. The rule making proposals in this NPRM constitute a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).303(r).

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 15, 1993, and reply comments on or before July 15, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments must be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters; general rules and regulations, Radio.

47 CFR Part 80

Radio Stations in the Maritime Services.

47 CFR Part 97

Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7466 Filed 3–31–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930236–3036]

Designated Critical Habitat; Steller Sea Lion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS proposes to designate critical habitat for the Steller (northern) sea lion (*Eumetopias jubatus*) pursuant to the Endangered Species Act (ESA). The proposed critical habitat for designation includes (1) all Steller sea lion rookeries and major haulouts (i.e. >200 Steller sea lions) located within state and Federally managed waters off Alaska, including a zone that extends 3,000 feet (0.9 km) landward and vertical of each rookery and major haulout boundary, and that extends either 3,000 feet (0.9 km) seaward from rookeries and major haulouts in Alaska located east of 144° W. longitude, or 20−nm seaward from rookeries and major haulout sites west of 144° W. longitude; (2) all Steller sea lion rookeries in state and Federally managed waters off Washington, Oregon and California, including the zone that extends 3,000 feet (0.9 km) vertical and seaward from each rookery; and (3) three aquatic foraging habitats within the core of the Steller sea lion's geographic range, one aquatic zone located exclusively in the Gulf of Alaska (GOA), and two aquatic zones in the Bering Sea/Aleutian Islands area (BSAI). The physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection are discussed in the preamble to this proposed rule. The primary benefit of the designation of critical habitat is that it provides notification to Federal agencies that a listed species is dependent on these areas for its continued existence and that any Federal action that may affect these areas is subject to the consultation requirements of section 7 of the ESA. The direct economic and other impacts resulting from this proposed critical habitat designation are expected to be minimal.

DATES: Comments on the proposed rule must be received on or before June 1, 1993. Requests for a public hearing must be received on or before May 17, 1993.

ADDRESSES: Comments and requests for a public hearing should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802, (907) 586–7235, or Mr. Michael Payne, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Ecological Consideration

Steller sea lions are the largest member of the otariid pinniped family, and rely upon both terrestrial and marine habitats for successful completion of their life cycle. Steller sea lions are polygynous and gregarious; they use traditional terrestrial sites for breeding, pupping, and resting. Females reach sexual maturity between 3 and 6 years of age and may produce young into their early twenties (Calkins and Pitcher 1982). Adult females are monestrous, and most breed annually. Males reach sexual maturity between 3 and 7 years of age; however, Thorsteinson and Lensink (1962) found that 90 percent of males holding territories on rookeries in the western GOA were between 9 and 13 years of age.

Steller sea lions range around the North Pacific Ocean rim from the Kuril Islands and Okhotsk Sea, through the Aleutian Islands and Bering Sea, and south along the North American coast to

California (Loughlin, Rugh and Fiscus 1984). Their centers of abundance and distribution are the GOA and Aleutian Islands (Kenyon and Rice 1961, Calkins and Pitcher 1982). A 1989 range-wide survey indicates that during the summer about 70 percent of the Steller sea lion population resides in Alaska, 15 percent in the Russian Federation (formerly the Soviet Union), 9 percent in British Columbia, 3 percent in Oregon, and 3 percent in California (Loughlin, Perlov and Vladimirov 1992). Although sea lions exhibit fidelity to breeding location, there is insufficient evidence to identify any discrete population subunits within the geographic range.

Counts of Steller sea lions on rookeries and major haulouts during the breeding season indicate that extensive declines have occurred within the Alaskan and the Russian Federation portions of their range over the last 30 years. A series of counts in the GOA and BSAI between the mid-1970s and 1991 indicate a 70-percent decline in the Alaskan portion of the population over this time period (Merrick, Calkins and McAllister 1992). Counts in Southeast Alaska, British Columbia, and Oregon have remained stable over the same period; Steller sea lion numbers in California have declined. Loughlin, Perlov and Vladimirov (1992) estimated the 1989 Steller sea lion world population to be about 116,000 animals, approximately 39–48 percent of the 240,000–300,000 animals estimated 30 years ago by Kenyon and Rice (1961).

The causes of the Steller sea lion population decline are unknown. Potential causative factors include disease, incidental takes in fishing gear, direct mortality (shooting), and natural or human induced (through fishing) changes in the abundance and species composition of the sea lion prey (Merrick, Loughlin and Calkins 1987, Loughlin and Merrick 1989).

Previous Federal Actions

Because of the drastic population decline, NMFS issued an emergency interim rule on April 5, 1990, that listed the Steller sea lion as a threatened species throughout its range, established protective regulations, and requested comments (55 FR 12645). Since the emergency interim rule was only effective for 240 days, an expeditious permanent rulemaking process was undertaken to avoid any lapse in ESA status. Thus, NMFS decided to postpone critical habitat designation and consideration of additional conservation measures, and issued proposed and final rules to list permanently the species that were essentially identical to the emergency rule (55 FR 29793, July 20, 1990 and 55 FR 49204, Nov. 26, 1990).

The final rule listing the Steller sea lion as threatened became effective on December 4, 1990, and incorporated the protective regulations established in the emergency interim rule. Specifically, coincident with the listing, NMFS: (1) Prohibited shooting at or near Steller sea lions; (2) prohibited, with limited exceptions, vessels from entering within 3 nautical miles (nm) (5.5 km) of selected Steller sea lion rookeries and individuals on land from approaching within one-half mile (0.8 km) or within sight of listed Steller sea lion rookeries in the GOA and BSAI; and (3) limited the allowable annual take of Steller sea lions incidental to commercial fisheries to 675 animals in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone west of 141° W. longitude (50 CFR 227.12). These protective regulations were intended to reduce sea lion mortality, restrict opportunities for unintentional and intentional harassment of sea lions, and minimize disturbance and interference with sea lion behavior, especially at pupping and breeding sites.

Since listing, NMFS has implemented additional regulations under the Magnuson Fishery Conservation and Management Act (Magnuson Act) to reduce the possible adverse effects of the GOA and BSAI Federally managed groundfish fisheries on Steller sea lions, their habitat and food resources. Effective January 20, 1992, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries during the BSAI winter pollock roe fishery; and (3) placed spatial and temporal restrictions on the GOA pollock harvest to divert some fishing effort away from sea lion foraging areas and to spread effort over the calendar year. Protective regulations have focused on the geographic area where the sea lion population has experienced the greatest decline.

Recovery Plan

The ESA requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species. Accordingly, NMFS appointed a Steller Sea Lion Recovery Team (hereafter referred to as the Recovery Team) during April 1990. The Recovery Team submitted a draft Recovery Plan to NMFS on February 15, 1991, which NMFS released for public review and comment (56 FR 11204, March 15, 1991). Following review and comment, a final draft of the Steller Sea Lion Recovery Plan was submitted by the Recovery Team to NMFS on October 3, 1991, for NMFS review and approval. The final draft Recovery Plan incorporated, to the maximum extent possible, the comments that were submitted to NMFS during the technical review process. The Plan discusses the natural history and current status of the species, as well as the known and potential human impacts on the species, and recommends management and research actions to aid the species' recovery. The final Recovery Plan was approved by NMFS on December 30, 1992.

In a separate letter to NMFS dated April 11, 1991, the Recovery Team recommended terrestrial and aquatic areas that should be considered as critical habitat for the Steller sea lion. Those recommendations have been included in this proposal.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species."

Areas outside the current range of a species can only be designated if a designation limited to the species' present distribution would be inadequate to ensure the conservation of the species. The term "conservation," as defined in section 3(3) of the ESA means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

The criteria to be considered in critical habitat designation are specified under 50 CFR 424.12. NMFS is required to consider those physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or

shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are, generally, protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

In addition, when considering the designation of critical habitat, NMFS is required to focus on and list the biological or physical features (primary constituent elements) within the designated areas that are essential to the conservation of the species and that may require special management considerations or protection.

Consideration of Economic, Environmental and Other Factors

The economic, environmental, and other impacts of a critical habitat designation were considered and evaluated. NMFS identified present and anticipated activities that may adversely modify the areas being considered for critical habitat, or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to the species' habitat, in many cases the direct economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat only duplicates and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the ESA and associated regulations. "Taking" as defined in the ESA means to harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm to a listed species can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, migrating, or sheltering.

Impacts attributable to listing also include those resulting from the duty of Federal agencies under section 7 to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat, regardless of whether that habitat has been designated as critical.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. A critical habitat designation contributes to species conservation primarily by identifying critically important areas and by describing the features within the areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only direct impact of a critical habitat designation is under the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat also are likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation usually only duplicates the protection provided under the section 7 jeopardy provision. Designation of critical habitat may provide additional benefits to a species in cases where areas outside of the species' current range have been designated. In these cases, it is expected that Federal agencies would consult on additional actions occurring in these areas.

A designation of critical habitat provides a clearer indication to Federal agencies as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area). For example, disposal of waste material in waters adjacent to a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation would also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. This is particularly true in cases where there are alternative areas that would provide for the conservation of the species. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state, and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of proposal and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

In summary, developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features identified. If there are alternative areas that would provide for the conservation of the species, these alternative areas are also identified. Second, the need for special management considerations or protection of the areas or features is evaluated. Finally, the probable economic and other impacts of

designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of designation, the proposed critical habitat is published in the Federal Register for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within 1 year of the proposal. Final critical habitat designations may be revised, using the same process, as new data become available.

A description of the essential habitat, need for special management, impacts of designating as critical habitat, and the proposed action are described in the following sections for the Steller sea lion.

Essential Habitat of the Steller Sea Lion

Available biological information for the listed Steller sea lion can be found in the final Recovery Plan (NMFS 1992). The physical and biological habitat features that support reproduction, foraging, rest, and refuge are essential to the conservation of the Steller sea lion. For the Steller sea lion, essential habitat includes both terrestrial and aquatic areas.

Terrestrial Habitat

Because of their traditional use and the relative ease of observation, terrestrial habitats are better known than aquatic habitats. Steller sea lion rookeries and haulouts are widespread throughout their geographic range, and the locations used change little from year to year. Factors that influence the suitability of a particular area include substrate, exposure to wind and waves, the extent and type of human activities and disturbance in the region, and proximity to prey resources (Mate 1973).

The best known Steller sea lion habitats are the rookeries, where adult animals congregate during the reproductive season for breeding and pupping. Rookeries are defined as those sites where males defend a territory and where pupping and mating occurs. Rookeries typically occur on relatively remote islands, rocks, reefs, and beaches, where access by terrestrial predators is limited. A rookery may extend across low-lying reefs and islands, or may be restricted to a relatively narrow strip of beach by steep cliffs. Rookeries are occupied by breeding animals and some subadults throughout the breeding season, which extends from late May to early July throughout the range. Female sea lions frequently return to pup and breed at the same rookery in successive years (Gentry 1970), and this site may be the same rookery, or approximate rookery (same island) as the female's natal site (Calkins and Pitcher 1982).

Steller sea lion rookeries are found from the central Kuril Islands around the Pacific Rim of the Aleutian Islands to Prince William Sound (Seal Rocks, at the entrance to Prince William Sound, Alaska, is the northernmost rookery) and south along the coast of North America to Ano Nuevo Island, California, the southernmost rookery. Loughlin, Rugh and Fiscus (1984) identified 51 Steller sea lion rookeries; since that time two additional rookeries have been identified in southeastern Alaska (Hazy Islands and White Sisters), bringing the total to 53 (43 of which are within U.S. borders). Historically, the largest rookeries occurred in the central and eastern Aleutian Islands, and the western and central GOA (Kenyon and Rice 1961; Loughlin, Rugh and Fiscus 1984; Loughlin, Perex and Merrick 1987). Because of drastic declines in pup production at the GOA and Aleutian Islands rookeries, the Forrester Island rookery in southeastern Alaska has been the largest annual producer of pups in recent years.

Haulouts are areas used for rest and refuge by all ages and both sexes of sea lions during the non-breeding season and by non-breeding adults and subadults during the breeding season. Sites used as rookeries in the breeding season may also be used as haulouts during other times of the year. Many rocks, reefs, and beaches are used as haulout sites; Steller sea lions are also occasionally observed hauled out on sea ice and manmade structures, such as breakwaters, navigational aids, and floating docks.

The Recovery Team identified 121 major haulout sites. Major haulouts were defined by the Recovery Team as sites where more than 200 animals have been counted. There are many more haulout sites throughout the range that are used by fewer animals or may be used irregularly.

Aquatic Habitat

Although they are most commonly seen and studied while on land, Steller sea lions spend most of their time at sea. The principal, essential at-sea activity presumably is feeding.

Nearshore waters around rookeries and haulouts: For regulatory purposes, the waterward boundary of rookeries and haulouts has been defined as the mean low-water mark. However, biologically, the boundaries are not that simply delineated. Nearshore waters surrounding rookeries and haulouts are an integral component of these habitats. Animals must regularly transit this region as they go to, and return from, feeding trips. As pups mature, they spend an increasing amount of time in waters adjacent to rookeries, where they develop their swimming ability and other aquatic behaviors. Waters surrounding rookeries and haulouts also provide a refuge to which animals may retreat when they are displaced from land by disturbance.

Rafting sites: In addition to rookeries and haulouts, sea lions also use traditional rafting sites. These are locations where the animals rest on the ocean surface in a tightly-packed group (Bigg 1985). Although the reasons for rafting are not fully understood, the widespread use and traditional nature of these sites indicate that they are an essential part of Steller sea lion habitat.

Food resources: Adequate food resources are an essential component of the Steller sea lion's aquatic habitat. Steller sea lions are opportunistic carnivores that prey predominantly upon demersal and off-bottom schooling fishes; invertebrates, e.g., squid and octopus, also appear to be regular component of their diet (Pitcher 1981). Prey consumption is expected to vary geographically, seasonally, and over years in response to fluctuations in prey abundance and availability (Pitcher 1981, Hoover 1988).

Data on Steller sea lion prey consumption are fairly limited. Results of limited diet studies conducted in Alaska since 1975 indicate that walleye pollock (*Theragra chalcogramma*) has been the principal prey in all areas over this time period, with Pacific cod (*Gadus macrocephalus*), octopus (*Octopus* sp.), squid (Gonatidae), Pacific herring (*Clupea harengus*), Pacific salmon (*Onchorhynchus* spp.), capelin (*Mallotus villosus*), and flatfishes (Pleuronectidae) also consumed (Pitcher 1981, Calkins and Pitcher 1982, Calkins and Goodwin 1988, Lowry et al. 1989). Few data are available on Steller sea lion prey preferences in Alaska prior to 1975; however, those data available indicate that pollock may have been a less important component of the diet in previous years (Fiscus and Baines 1966, Pitcher 1981). Limited food habit data from California and Oregon show a predominance of rockfish (Scorpaenidae) and hake (*Merluccius productus*) in the diet, with flatfish, squid, octopus, and lamprey (*Lampetra tridentatus*) also eaten.

Foraging habitats: Specific foraging sites, and their constancy over time, have not been well defined. NMFS' ongoing studies in the central GOA and Aleutian Islands using satellite telemetry are providing more detailed

information on feeding areas and diving patterns in Alaskan waters. Findings to date are summarized below: NMFS has deployed 52 satellite-linked time depth recorders on Steller sea lions since 1989. The results of this tagging indicate that waters in the vicinity of rookeries and haulouts are important foraging habitats, particularly for post-parturient females and young animals. These investigations strongly suggest that sea lion foraging strategies and ranges change seasonally, and according to the age and reproductive status of the animal.

Summertime foraging by postpartum females, whose foraging range is probably restricted by the need to return to the rookery to nurse pups, appears to occur mainly in relatively shallow waters within 20 nm of the rookeries. Data from tagged animals without pups and females with pups during the winter indicate that adult sea lions have the ability to forage at locations far removed from their rookeries and haul-out sites, and at great depths. Sea lion pups by their sixth month are also capable of traveling extended distances from land. However, dive depth appears to be more limited, and may restrict foraging success. Few observed dives by juvenile sea lions (younger than 11 months) have exceeded 20 m, whereas adult animal have been observed diving to depths greater than 250 m.

Need for Special Management Considerations or Protection

The following discussion outlines specific essential habitats that may require special management considerations or protection. Under separate rulemakings, NMFS has already determined that certain Steller sea lion habitats require special management considerations or protection, and has limited human activities in these areas. These management actions and the essential habitats they protect are also described below.

Terrestrial Habitats

The Steller sea lion's use of traditional sites, and the link of territorial males, postpartum females, and pups to rookery sites during the breeding season make them particularly vulnerable to intentional harassment. Observed responses to human disturbance vary from no reaction at all to mass stampedes into the water. In some cases, haulout sites have been completely abandoned after repeated disturbances, whereas in other cases sea lions have continued to use sites even after extreme harassment (Hoover 1988). The remote locations of most rookeries and haulouts help to reduce the frequency of harassment, but disturbance of sea lions by air and water craft continues to occur. Steller sea lions are vulnerable to harassment and disruption of essential life functions (e.g., breeding, pup care, and rest) at rookeries and haulouts throughout their range.

Aquatic Habitats

Nearshore waters around rookeries and haulouts: Nearshore waters associated with terrestrial habitats are subject to the same types of disturbance as rookeries and haulouts. NMFS has prohibited vessel entry within 3 nm of all Steller sea lion rookeries west of 150° W. longitude, the area where the greatest population decline has occurred, primarily to protect sea lions using these habitats from intentional and unintentional harassment. The Recovery Team recommended that waters extending 3,000 feet (0.9 km) from rookeries and major haulouts throughout the range of Steller sea lions be considered essential habitat that merits special management consideration.

Rafting sites: Available information is not sufficient to identify any specific rafting sites that are in need of special management consideration. Therefore, rafting sites are not included in this critical habitat designation.

Prey resources and foraging habitats: Reduction in food availability, quantity, and/or quality is considered to be a possible factor in the Steller sea lion population decline (Calkins and Goodwin 1988; Merrick, Loughlin and Calkins 1987; Loughlin and Merrick 1989; Lowry, Frost and Loughlin 1989). Most of the data on proximate causes of the Alaska sea lion decline point to reduced juvenile survival as a significant causative agent. There are also indications that decreased juvenile survival is due to a lack of food post-weaning and during the winter/spring of the first year. Calkins and Goodwin (1988) found that Steller sea lions collected in the GOA in 1985–1986 were significantly smaller (girth, weight, and standard length) than same-aged animals collected in the GOA in the 1970s. Reduced body size at age was interpreted as an indicator of nutritional stress.

Conservation and management of prey resources and foraging areas appears essential to the recovery of the Steller sea lion population. The quality and quantity of these resources may be degraded by human activities, e.g., pollutant discharges, habitat losses associated with human development, and commercial fisheries. Available data indicate that contamination of sea lion food resources by anthropogenic pollutants has not been a significant factor in the Steller sea lion decline. Changes in prey base due to physical habitat alteration also appear insignificant. Local degradation of sea lion food resources may occur near human population centers, along shipping lanes, and near drill sites. Presently, there is insufficient information to identify any specific geographic areas where additional management measures to protect sea lion food resources from contaminant inputs and habitat loss, beyond the existing state and Federal regulations, are necessary.

The relationship between commercial fisheries and the Steller sea lion's ability to obtain adequate food is unclear. The BSAI/GOA geographic region where Steller sea lions have experienced the greatest population decline is also an area where large commercial fisheries have developed. Many of the Steller sea lion's preferred prey species are harvested by commercial fisheries in this region, and food availability to Steller sea lions may be affected by fishing. At present, NMFS believes that the exploitation rates in Federally managed fisheries are unlikely to diminish the overall abundance of fish stocks important to Steller sea lions. However, spatial and temporal regulation of fishery removals in some areas has been determined to be necessary to ensure that local depletion of prey stocks does not occur.

No definitive description of Steller sea lion foraging habitat is possible. However, available data from satellite telemetry studies indicate that nearshore waters proximal to rookeries and haulouts are important foraging zones for females with pups during the breeding season and yearlings in the non-breeding season. Because of concerns that commercial fisheries in these essential sea lion habitats could deplete prey abundance, NMFS amended the BSAI and GOA groundfish Fishery Management Plans. Under the Magnuson Act, NMFS: (1) Prohibited trawling year-round within 10 nm of listed GOA and BSAI Steller sea lion rookeries; (2) prohibited trawling within 20 nm of the Akun, Akutan, Sea Lion Rock, Agligadak, and Seguam rookeries during the BSAI winter pollock roe fishery to mitigate concentrated fishing effort on the southeastern Bering Sea shelf and in Seguam Pass; and (3) placed spatial and temporal restrictions on the GOA pollock harvest to divert some fishing effort way from sea lion foraging areas and to spread effort over the calendar year. NMFS is also

proposing to expand seasonally the 10 nm no-trawl zone around Ugamak Island in the eastern Aleutians to 20 nm (57 FR 57726; Dec. 7, 1992). The expanded seasonal buffer at Ugamak Island is intended to better encompass Steller sea lion winter habitats and juvenile foraging areas in the eastern Aleutian Islands region during the BSAI winter pollock fishery.

In taking these regulatory actions, NMFS determined that aquatic habitats and prey resources in the vicinity of GOA and BSAI sea lion rookeries, in Seguam Pass, and on the southeastern Bering Sea shelf are essential to Steller sea lions, and are in need of special management considerations and/or protection. These aquatic habitats are proposed for critical habitat designation.

NMFS is also proposing to designate other foraging habitats, e.g., within 20 nm of major haulouts and Shelikof Strait, where additional management restrictions on human activities do not appear to be warranted at this time. Monitoring of fishery harvests and Steller sea lion research in these habitats will continue.

Essential Steller sea lion prey resources and foraging habitats also occur outside of the GOA and BSAI. However, we do not have sufficient information to identify any specific foraging areas to the east of 144° W. longitude that require special management consideration.

Activities That May Affect Essential Habitat

A wide range of activities by several private, state, and Federal activities and agencies may affect the essential habitats of Steller sea lions. Specific human activities that occur within or in the vicinity of the essential sea lion habitat defined above, and that may disrupt the essential life functions that occur there, include, but are not limited to (1) wildlife viewing (primarily south-central and southeastern Alaska, Oregon, and California); (2) boat and airplane traffic (throughout the range of the Steller sea lion); (3) research activities (on permitted sites and during specified times throughout the year); (4) commercial, recreational, and subsistence fisheries for groundfish, herring, salmon, and invertebrates, e.g., crab, shrimp, sea urchins/cucumbers (throughout the range of the Steller sea lion); (5) timber harvest (primarily southeastern and south-central Alaska); (6) hard mineral extraction (primarily southeastern Alaska); (7) oil and gas exploration (primarily Bering Sea and GOA); (8) coastal development, including pollutant discharges (specific sites throughout range); and (9) subsistence harvest (Alaska).

Federal agencies whose actions may affect essential sea lion habitats and will most likely be affected by this critical habitat designation include, but are not necessarily limited to (1) the U.S. Department of the Interior, Bureau of Land Management, Minerals Management Service (MMS), the National Park Service, and the U.S. Fish and Wildlife Service, (2) the U.S. Department of Agriculture, the Forest Service; (3) the U.S. Environmental Protection Agency; (4) the U.S. Coast Guard; (5) the U.S. military, including the Navy and Air Force; (6) and primarily, the U.S. Department of Commerce, NMFS.

Expected Impacts of Designating Critical Habitat

There are no inherent restrictions on human activities in an area designated as critical habitat. A critical habitat designation affects only those actions authorized, funded, or carried out by Federal agencies. Under section 7 of the ESA, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat

In many cases, the primary benefit of the designation of critical habitat is that it provides notification to Federal agencies that a listed species is dependent on a particular area for its continued existence and that any Federal action that may affect that area is subject to the consultation requirements of section 7 of the ESA. Therefore, this designation would require Federal agencies to evaluate their activities with respect to Steller sea lion critical habitat and to consult with NMFS prior to engaging in any action that may affect the critical habitat.

This designation will assist Federal agencies in evaluating the potential environmental impacts of their activities on Steller sea lions or their critical habitat, and in determining when consultation with NMFS would be appropriate. Currently (prior to the proposed critical habitat designation), Federal agencies active within the range of the Steller sea lion are required to consult with NMFS regarding projects and activities they permit, fund, or otherwise carry out that may affect the species pursuant to section 7 of the ESA. A Federally regulated activity may be conducted in an area designated as critical habitat if the authorizing Federal agency determines through the ESA section 7 consultation process that the activity is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of its critical habitat. It is difficult to separate these two concepts. Activities that result in the destruction or adverse modification of critical habitat are also very likely to jeopardize the continued existence of the species, given the definitions specified in 50 CFR 402.02, regardless of any official critical habitat designation or the absence of such a designation. Therefore, in most situations, if not all, such consultations would be required even without this critical habitat designation because an action that is likely to affect the critical habitat would also be expected to affect the species. Additional consultations as a result of this designation are unlikely to be necessary.

NMFS has already reinitiated section 7 consultation on Federal actions that occur within the range of the Steller sea lion, including those that occur within these proposed critical habitat areas. Federal activities for which section 7 consultations have been reinitiated/conducted include: (1) Federally managed fisheries; (2) MMS Outer Continental Shelf lease sales (areas being considered by MMS for oil and gas lease sales during the 1992–1997 period include portions of proposed critical habitat in Shelikof Strait and the Bogoslof Island area); (3) U.S. Forest Service timber harvest and mineral extraction proposals; (4) EPA waste discharge permits; (5) U.S. Army Corps of Engineers section 10/404 permits; and (6) U.S. military activities.

Section 7 consultations on the Federally managed groundfish fisheries of the BSAI and GOA management areas have resulted in changes in the manner in which these fisheries are prosecuted, specifically to protect Steller sea lions and their essential habitats. Economic effects attributable to these regulations were analyzed in the environmental assessments and other regulatory documents produced in support of those decisions.

The designation of the proposed critical habitat will not affect state and local government activity, or private actions that are not dependent on, or limited by, Federal authority, permits, or funds. The designation will help to inform private and state agencies of the importance of these habitat areas to Steller sea lions. Other provisions of the ESA, such as the prohibition on takings, are applicable to state agencies and private parties.

It should be noted that the taking prohibition has been interpreted broadly, and that the destruction of

habitat may be considered a taking, regardless of any official critical habitat designation or the absence of such a designation and regardless of Federal involvement or the lack of such involvement.

It should also be noted that activities conducted outside of designated critical habitat areas may adversely modify or destroy critical habitat or may jeopardize the continued existence of the listed species. Such a result should be anticipated if the activity has a significant impact on an essential feature identified in the critical habitat designation.

Developed areas, such as roads, are not proposed for designation as critical habitat even if physically situated within the boundaries of the proposed critical habitat units, nor are man-made structures (i.e. jetties or piers) although Steller sea lions may use these structures for haulout sites. In cases where the proposed critical habitat boundaries unavoidably contain man-made structures, these areas will be unaffected by critical habitat designation.

NMFS prepared an Environmental Assessment (EA), based on the best available information, that describes the environmental and economic impacts of alternative critical habitat designations. The proposed action identifies and delineates critical habitat for the Steller sea lion.

This action is intended to maintain and/or enhance, rather than to use, a resource. No adverse environmental impacts from the designation of critical habitat are expected. Rather, this action may enhance the long-term productivity of these areas by ensuring that a Federal agency's actions will not result in the adverse modification or destruction of critical habitat for the Steller sea lion.

Proposed Critical Habitat: Essential Features

NMFS proposes to designate the following areas as critical habitat for the Steller sea lion. These areas are considered essential for the health, continued survival, and recovery of the Steller sea lion population, and may require special management consideration and protection.

(1) NMFS proposes to designate all Steller sea lion rookeries and major haulouts within state and Federally managed waters off Alaska as critical habitat for the species (tables 1 and 2 to proposed 50 CFR 226.12). This designation includes a zone that extends 3,000 feet (0.9 km) of 144° W. longitude, or 20 nm seaward from BSAI and GOA Steller sea lion rookeries and major haulouts west seaward from rookeries and major haulouts located in Alaska east landward and vertical of each rookery and major haulout boundary, and a zone that extends either 3,000 feet (0.9 km) of 144° W. longitude.

This geographic region has historically been the center of Steller seal lion abundance, and has experienced the greatest decline. Aquatic areas surrounding major rookeries and haulout sites provide foraging habitats, prey resources, and refuge considered essential to the conservation of Steller sea lions. The proposed critical habitat surrounding each BSAI and GOA rookery and major haulout site includes not only the aquatic areas adjacent to rookeries that are essential to lactating females and juveniles, but also encompasses aquatic zones around major haulouts, which provide foraging and refuge habitat for non-breeding animals year-round and for reproductively active animals during the non-breeding season. These areas are considered critical to the continued existence of the species throughout their range since they are essential for reproduction, rest, and refuge from predators and human-related disturbance.

(2) NMFS proposes to designate all Steller sea lion rookeries within state and Federally managed waters off Washington, Oregon and California, including the zone that extends 3,000 feet (0.9 km) vertical and seaward from each rookery. A 3,000 foot "buffer zone" landward of rookeries in Washington, Oregon and California would not be appropriate, generally, for these sites. These rookeries are, for the most part, small offshore rocks and outcroppings where upland boundaries are not applicable due to the small size of the site. Haulout sites in Washington, Oregon and California have not been proposed as Steller sea lion critical habitat.

Proposed critical habitat designations (1) and (2) are consistent with recommendations of the Recovery Team, except that rookeries and haulouts outside of U.S. waters have not been included (50 CFR 424.12(h)). They are also consistent with the intent of protective measures developed by NMFS at the time the species was listed as threatened (55 FR 49204, Nov. 26, 1990).

(3) NMFS proposes to follow the recommendations of the Recovery Team and designate critical aquatic foraging habitat within the core of the Steller sea lion's geographic range, where the greatest population decline has been observed. The Recovery Team recommended one aquatic zone for critical habitat designation that is located exclusively in the GOA (Shelikof Strait) (figure 1 of proposed 50 CFR 226.12), and two aquatic zones in the BSAI area (Bogoslof Island area and Seguam Pass) (figures 2 and 3 of proposed 50 CFR 226.12). These sites were selected because of their geographic location relative to Stellar sea lion abundance centers, their importance as Steller sea lion foraging areas, their present or historical importance as habitat for large concentrations of Steller sea lion prey items that are essential to the species' survival, and because of the need for special consideration of Steller sea lion prey and foraging requirements in the management of the large commercial fisheries that occur in these areas.

The aquatic foraging sites in the BSAI (Seguam and Bogoslof Island area) that were recommended by the Recovery Team for critical habitat designation are included in this proposal with one modification. NMFS is proposing to designate an area on the southeastern Bering Sea shelf that includes Bogoslof Island, but is larger than that recommended by the Recovery Team. This enlarged area better encompasses a diverse oceanographic region with high concentrations of important sea lion food resources, e.g., walleye pollock, eulachon, capelin, and migrating herring, as well as intense commercial fisheries for these prey resources.

Essential Steller sea lion prey resources and foraging habitats occur outside of the GOA and BSAI. However, NMFS does not have sufficient information to identify specific foraging areas to the east of 144° W. longitude that require special management considerations. Therefore, NMFS is not proposing to designate any critical foraging habitats in these areas. Modifications to this critical habitat designation may be necessary in the future as additional information becomes available.

Public Comments Solicited

NMFS is soliciting information, comments, or recommendations on any aspect of this proposed rule from the public, concerned government agencies, the scientific community, industry, private interests, or any other interested party. NMFS will consider all comments received by the date specified (see **DATES**) in reaching a final decision.

References

A list of references is included in the Environmental Assessment (EA) and available upon request (see **ADDRESSES**).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impacts specifically resulting from the designation of critical habitat, above the impacts attributable to listing the species or from other authorities, are expected to be minimal. The General Counsel of the Department of Commerce has certified that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act; therefore, a regulatory flexibility analysis is not required.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally are categorically excluded from the requirements to prepare an EA or Environmental Impact Statement. However, in order more clearly to evaluate the minimal environmental and economic impacts of the proposed critical habitat designation versus the alternative of a no-critical habitat designation, NMFS has prepared an EA. Copies of the EA are available on request (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the proposed designation of critical habitat for Steller sea lions is consistent to the maximum extent practicable with the approved Coastal Zone Management Programs of the states of Alaska, Washington, Oregon, and California. This determination has been submitted for review by the responsible state agencies under section 7 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife.

Dated: March 25, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.12 is added to subpart B to read as follows:

§ 226.12 North Pacific Ocean

Steller Sea Lion *(Eumetopias jubatus)*

All rookeries and major haulouts within the state and Federally managed waters off Alaska, including a zone that extends 3,000 feet (0.9 km) landward and vertical of each rookery and major haulout boundary, where possible, and a zone that extends either 3,000 feet (0.9 km) seaward from the site boundary for rookeries and major haulouts located in state and Federally managed waters of Alaska east of 144° W. longitude, or 20-nm seaward from the site boundary for sites west of 144° W. longitude; all rookeries within the state and Federally managed waters off Washington, Oregon and California, including the zone that extends 3,000 feet (0.9 km) vertical and seaward from each rookery (tables 1 and 2 to part 226).

U.S. waters and food resources in Shelikof Strait, Gulf of Alaska; in the southeastern Bering Sea shelf, and in Seguam Pass, Aleutian Islands (figures 1 through 3 to part 226).

3. Tables 1 and 2 and figures 1 through 3 are added to the part to read as follows:

Major Steller sea lion rookery sites are identified in the following table. Each baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates; or, if only one set of coordinates is listed, the site extends around the entire shoreline of the island at mean lower-low water. Proposed critical habitat includes the area 3,000 feet (915 meters) landward (Alaska sites only) and seaward from the site baseline, and a vertical extension above the land area measured from sea level. For sites identified with an asterisk, the proposed critical habitat includes the area 20 nautical miles (32 kilometers) seaward from the site baseline.

TABLE 1 TO PART 226

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Alaska:				
Western Aleutians:				
Agattu I./Cape Sabak*	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E
/Gillon Point*	52°24.0 N	173°21.5 E		
Attu I.*	52°57.5 N	172°31.5 E	52°54.5 N	172°28.5 E
Buldir I.*	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E
Central Aleutians:				
Adak I.*	51°36.5 N	176°58.5 W	51°38.0 N	176°59.5 W
Agligadak I.*	52°6.25 N	172°54.0 W		
Amchitka I./Column Rock*	51°32.5 N	178°50.0 E		
/East Cape*	51°23.5 N	179°26.0 E	51°22.0 N	179°23.0 E
Ayugadak I.*	51°45.5 N	178°24.5 E		
Gramp Rock*	51°29.0 N	178°20.5 W		
Kasatochi I.*	52°10.5 N	175°29.0 W	52°10.0 N	175°31.5 W
Kiska I./Lief Cove*	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E
/Cape St. Stephen*	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E

TABLE 1 TO PART 226—Continued

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Seguam I./Saddleridge*	52°21.5 N	172°33.5 W	52°21.5 N	172°35.0 W
Semisopochnoi I.*	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E
Tag I.*	51°33.5 N	178°34.5 W		
Ulak I.*	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W
Yunaska I.*	52°41.0 N	170°34.5 W	52°42.0 N	170°38.5 W
Eastern Aleutians:				
Adugak I.*	52°55.0 N	169°10.5 W		
Akun I./Billings Head*	54°18.0 N	165°31.5 W	54°18.0 N	165°34.0 W
Akutan I./Cape Morgan*	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W
Bogoslof I.*	53°56.0 N	168°02.0 W		
Ogchul I.*	53°00.0 N	168°24.0 W		
Sea Lion Rock*	55°28.0 N	163°12.5 W		
Ugamak I.*	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W
Bering Sea:				
Walrus I.*	57°11.0 N	169°56.0 W		
Western Gulf of Alaska:				
Atkins I.*	55°03.5 N	159°18.5 W		
Chernabura I.*	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W
Clubbing Rocks*	54°42.0 N	162°27.5 W	54°43.0 N	162°27.5 W
Pinnacle Rock*	54°46.0 N	161°46.0 W		
Central Gulf of Alaska:				
Chirikof I.*	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W
Chowiet I.*	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W
Marmot I.*	58°14.0 N	151°47.5 W	58°10.0 N	151°51.0 W
Outer I.*	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W
Sugarloaf I.*	58°53.0 N	152°02.0 W		
Eastern Gulf of Alaska:				
Seal Rocks*	60°10.0 N	146°50.0 W		
Southeast Alaska:				
Forrester I	54°51.0 N	133°32.0 W	54°52.5 N	133°35.5 W
Hazy I	55°52.0 N	134°34.0 W	55°51.5 N	134°35.0 W
White Sisters	57°38.0 N	136°15.5 W		
Oregon:				
Rogue Reef/Pyramid Rock	42°26.7 N	124°28.2 W		
Orford Reef:				
Long Brown Rock	42°47.5 N	124°36.3 W		
Seal Rock	42°47.2 N	124°35.6 W		
California:				
Ano Nuevo I	37°06.5 N	122°20.5 W		
Cape Mendocino	40°26.0 N	124°24.0 W		
Farallon Islands:				
Southeast	37°41.5 N	123°00.1 W		
Middle	37°43.7 N	123°02.8 W		
North	37°46.3 N	123°06.4 W		
Sugarloaf I	39°44.5 N	123°50.3 W		

Major Steller sea lion haulout sites are identified in the following table. Each baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates; or, if only one set of coordinates is listed, the site extends around the entire shoreline of the island at mean lower-low water. Proposed critical habitat includes the area 3,000 feet (915 meters) landward and seaward from the site baseline, and a vertical extension above the land area measured from sea level. For sites identified with an asterisk, the proposed critical habitat includes the area 20 nautical miles (32 kilometers) seaward from the site baseline.

TABLE 2 TO PART 226

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Alaska:				
Western Aleutians:				
Alaid I.*	52°45.0 N	173°56.5 E	52°46.5 N	173°51.5 E
Shemya I.*	52°44.0 N	174°09.0 E		
Central Aleutians:				
Amlia I./East*	52°05.0 N	172°58.5 W	52°06.0 N	172°57.0 W
/Sviech. Harbor*	52°02.0 N	173°23.0 W		

TABLE 2 TO PART 226—Continued

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Amukta I. & Rocks*	52°31.5 N	171°16.5 W	52°26.5 N	171°16.5 W
Anagaksik I.*	51°51.0 N	175°53.5 W		
Atka I.*	52°23.5 N	174°17.0 W	52°24.5 N	174°07.5 W
Chaguiak I.*	52°34.0 N	171°10.5 W		
Chuginadak I.*	52°46.5 N	169°44.5 W	52°46.5 N	169°42.0 W
Great Sitkin I.*	52°06.0 N	176°10.5 W	52°07.0 N	176°08.5 W
Kagamil I.*	53°02.5 N	169°41.0 W		
Kanaga I./North Cape*	51°56.5 N	177°09.0 W		
/Ship Rock*	51°47.0 N	177°22.5 W		
Kavalga I.*	51°34.5 N	178°51.5 W	51°34.5 N	178°49.5 W
Kiska I./Sobaka & Vega*	51°50.0 N	177°20.0 E	51°48.5 N	177°20.5 E
Little Sitkin I.*	51°59.5 N	178°30.0 E		
Little Tanaga I.*	51°50.5 N	176°13.0 W	51°49.0 N	176°13.0 W
Sagigik I.*	52°00.5 N	173°08.0 W		
Seguam I./South*	52°10.0 N	172°37.0 W	52°19.5 N	172°18.0 W
/Finch Pt.*	52°23.5 N	172°25.5 W	52°23.5 N	172°24.0 W
Segula I.*	52°00.0 N	178°06.5 E		
Tanadak I./East*	51°57.0 N	177°47.0 E		
/West*	52°04.5 N	172°57.0 W		
Tanaga I.*	51°55.0 N	177°58.5 W	51°55.0 N	177°57.0 W
Ugidak I.*	51°35.0 N	178°30.5 W		
Uliaga I.*	53°04.0 N	169°47.0 W	53°05.0 N	169°46.0 W
Unalga & Dinkum Rocks*	51°34.0 N	179°04.0 W	51°34.5 N	179°03.0 W
Eastern Aleutians:				
Akutan I./Reef-Lava*	54°10.5 N	166°04.5 W	54°07.5 N	166°06.5 W
Amak I.*	55°24.0 N	163°07.0 W	55°26.0 N	163°10.0 W
Cape Sedanka & Island*	51°50.0 N	168°04.0 W		
Emerald I.*	53°17.5 N	167°51.5 W		
Old Man Rocks*	53°52.0 N	166°05.0 W		
Polivnoi Rock*	53°16.0 N	167°58.0 W		
Tanginak I.*	54°12.0 N	164°19.0 W		
Tigaida I.*	54°08.5 N	164°58.5 W		
Umnak I.*	53°15.0 N	168°20.0 W		
Bering Sea:				
Cape Newenham*	58°39.0 N	162°10.5 N		
Round I.*	58°36.0 N	159°58.0 W		
Western Gulf of Alaska				
Bird I.*	54°49.0 N	159°46.0 W		
Castle Rock*	55°17.0 N	159°30.0 W		
Caton I.*	54°23.5 N	162°25.5 W		
Jude I.*	55°16.0 N	161°06.0 W		
Lighthouse Rocks*	55°47.5 N	157°23.0 W		
Nagai I.*	54°52.5 N	160°14.0 W	54°56.0 N	160°15.0 W
Nagai Rocks*	55°50.0 N	155°46.0 W		
Sea Lion Rocks*	55°04.5 N	160°31.0 W		
South Rock*	54°18.0 N	162°43.5 W		
Spitz I.*	55°47.0 N	158°53.0 W		
The Whaleback*	55°16.5 N	160°06.0 W		
Central Gulf of Alaska:				
Cape Barnabas*	57°10.0 N	152°55.0 W	57°07.5 N	152°55.0 W
Cape Chiniak*	57°35.0 N	152°09.0 W	57°37.5 N	152°09.0 W
Cape Gull*	58°13.5 N	154°09.5 W	58°12.5 N	154°10.5 W
Cape Ikolik*	57°17.0 N	154°47.5 W		
Cape Kuliak*	57°48.2 N	153°55.0 W		
Cape Sitkinak*	56°32.0 N	153°52.0 W		
Cape Ugat*	57°57.0 N	153°51.0 W		
Gore Point*	59°12.0 N	150°58.0 W		
Gull Point*	57°21.5 N	152°36.5 W	57°24.5 N	152°39.0 W
Latax Rocks*	58°42.0 N	152°28.5 W	58°40.5 N	152°30.0 W
Nagahut Rocks*	59°06.0 N	151°46.0 W		
Puale Bay*	57°41.0 N	155°23.0 W		
Sea Lion Rocks*	58°21.0 N	151°48.5 W		
Sea Otter I.*	58°31.5 N	152°13.0 W		
Shakun Rock*	58°33.0 N	153°41.5 W		
Sud I.*	58°54.0 N	152°12.5 W		
Sutwik I.*	56°32.0 N	157°14.0 W	56°32.0 N	157°20.0 W
Takli I.*	58°03.0 N	154°27.5 W	58°03.0 N	154°30.0 W
Two-headed I.*	56°54.5 N	153°33.0 W	56°53.5 N	153°35.5 W
Ugak I.*	57°23.0 N	152°15.5 W	57°22.0 N	152°19.0 W
Ushagat I.*	58°53.5 N	152°18.5 W		

TABLE 2 TO PART 226—Continued

State/region/site	Latitude	Longitude	To	
			Latitude	Longitude
Eastern Gulf of Alaska:				
Cape Fairweather	58°47.5 N	137°54.0 W		
Cape St. Elias*	59°48.0 N	144°36.0 W		
Chiswell I.*	59°36.0 N	149°34.0 W		
Graves Rock	57°14.5 N	136°45.5 W		
Hook Point*	60°20.0 N	146°15.5 W		
Middleton I.*	59°26.5 N	146°20.0 W		
Perry I.*	60°39.5 N	147°56.0 W		
Point Eleanor*	60°35.0 N	147°34.0 W		
Point Elrington*	59°56.0 N	148°13.5 W		
Seal Rocks*	60°10.0 N	146°50.0 W		
The Needle*	60°07.0 N	147°37.0 W		
Wooded I.*	59°52.0 N	147°22.0 W		
Southeast Alaska:				
Benjamin I.	58°33.5 N	134°54.5 W		
Biali Rock	56°43.0 N	135°20.5 W		
Biorka I.	56°51.0 N	135°32.0 W		
Cape Addington	55°26.5 N	133°48.5 W		
Cape Cross	57°55.5 N	136°33.0 W		
Cape Ommaney	56°09.5 N	134°39.5 W		
Coronation I.	55°49.5 N	134°16.5 W		
Gran Point	59°08.2 N	135°14.6 W		
Ledge Point	58°48.5 N	130°45.5 W		
Lull Point	57°18.0 N	134°48.5 W		
Sunset I.	57°30.5 N	133°35.0 W		
Timbered I.	55°42.0 N	133°48.0 W		

Figure 1 to Part 226: Proposed Steller sea lion critical habitat in Shelikof Strait. Locations indicated are major Steller sea lion rookeries.

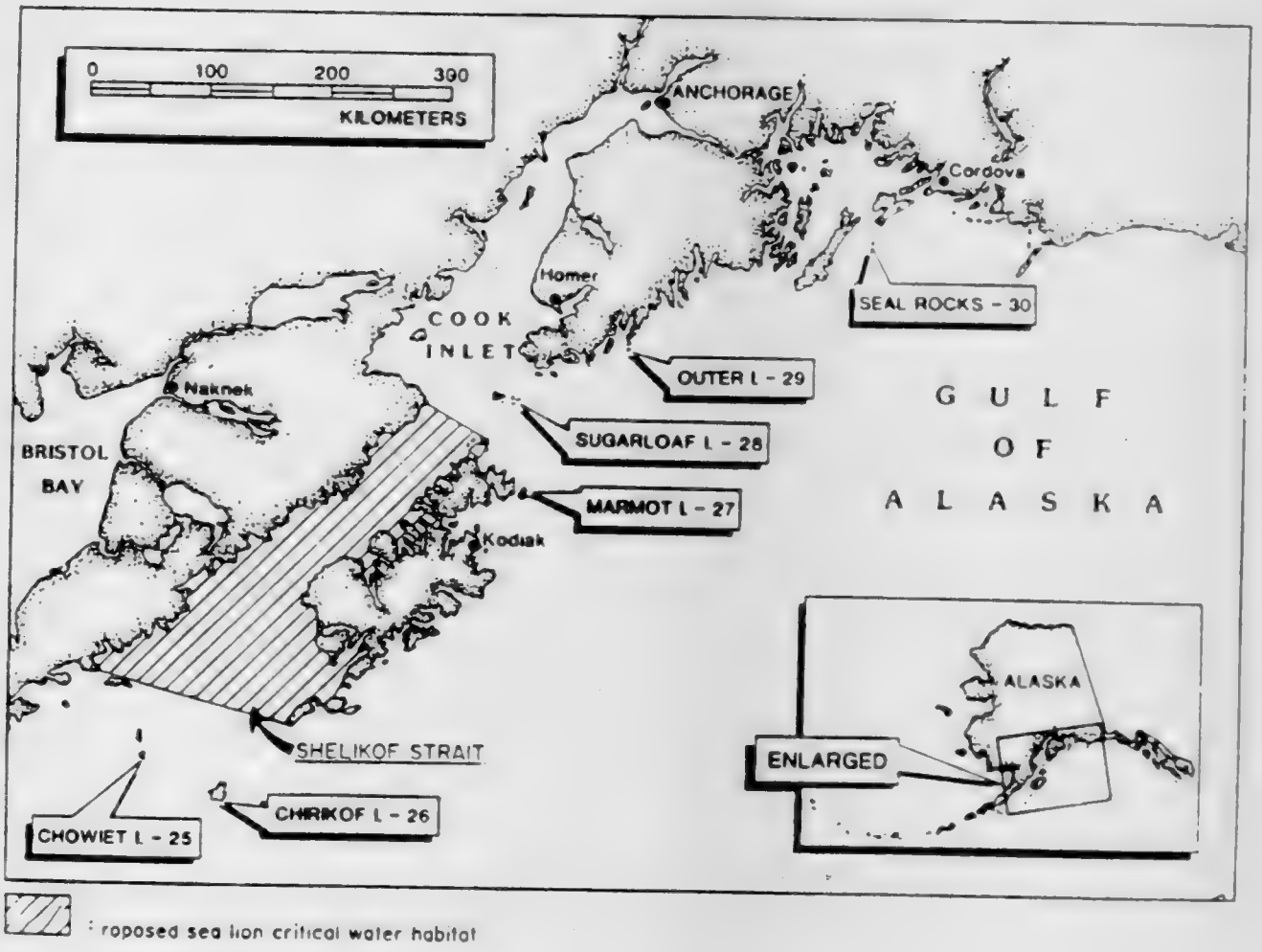


Figure 2 to Part 226: Proposed Steller sea lion critical habitat in the vincinity of Bogoslof Island. Locations indicated are major Steller sea lion rookeries.

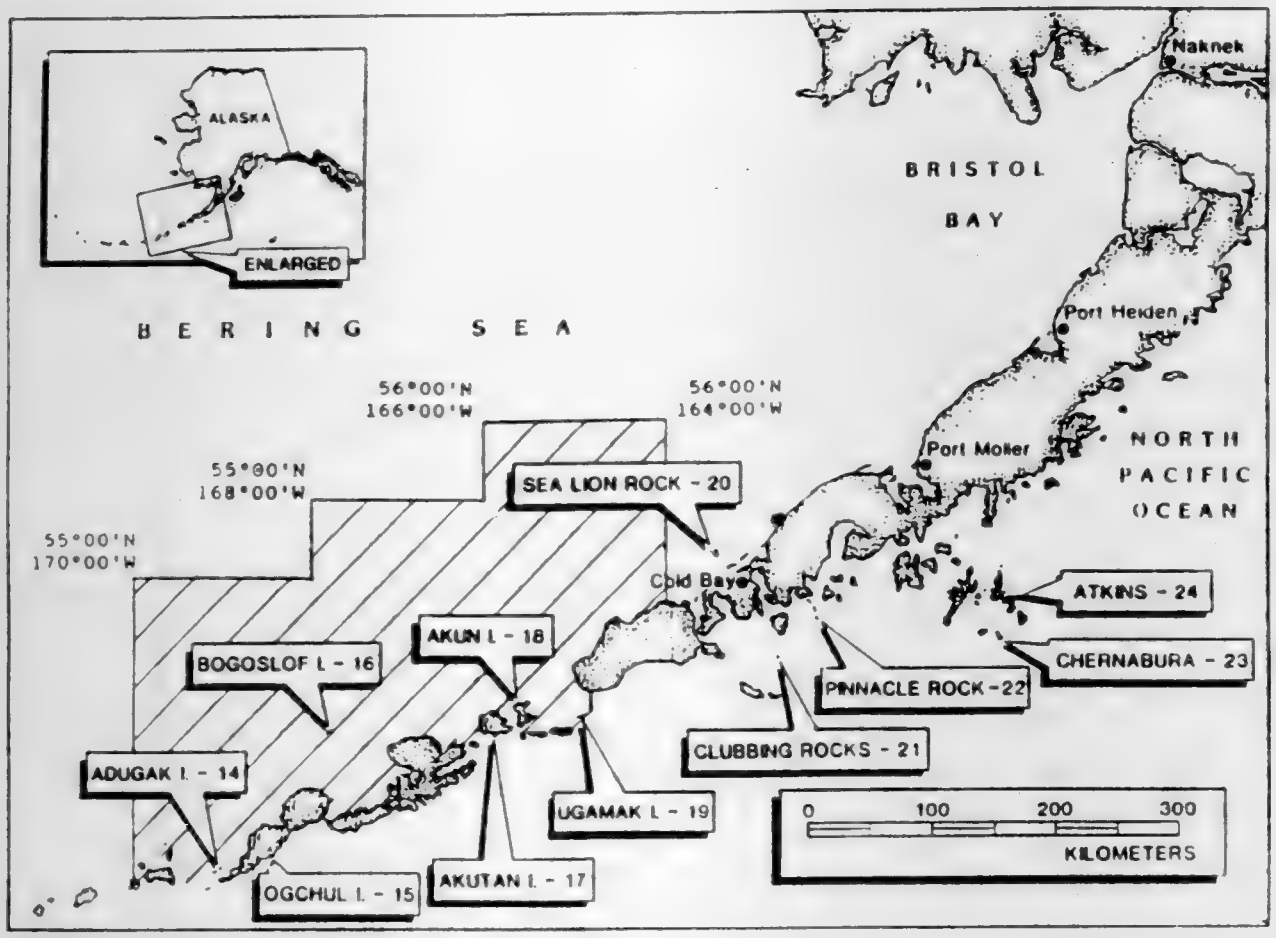
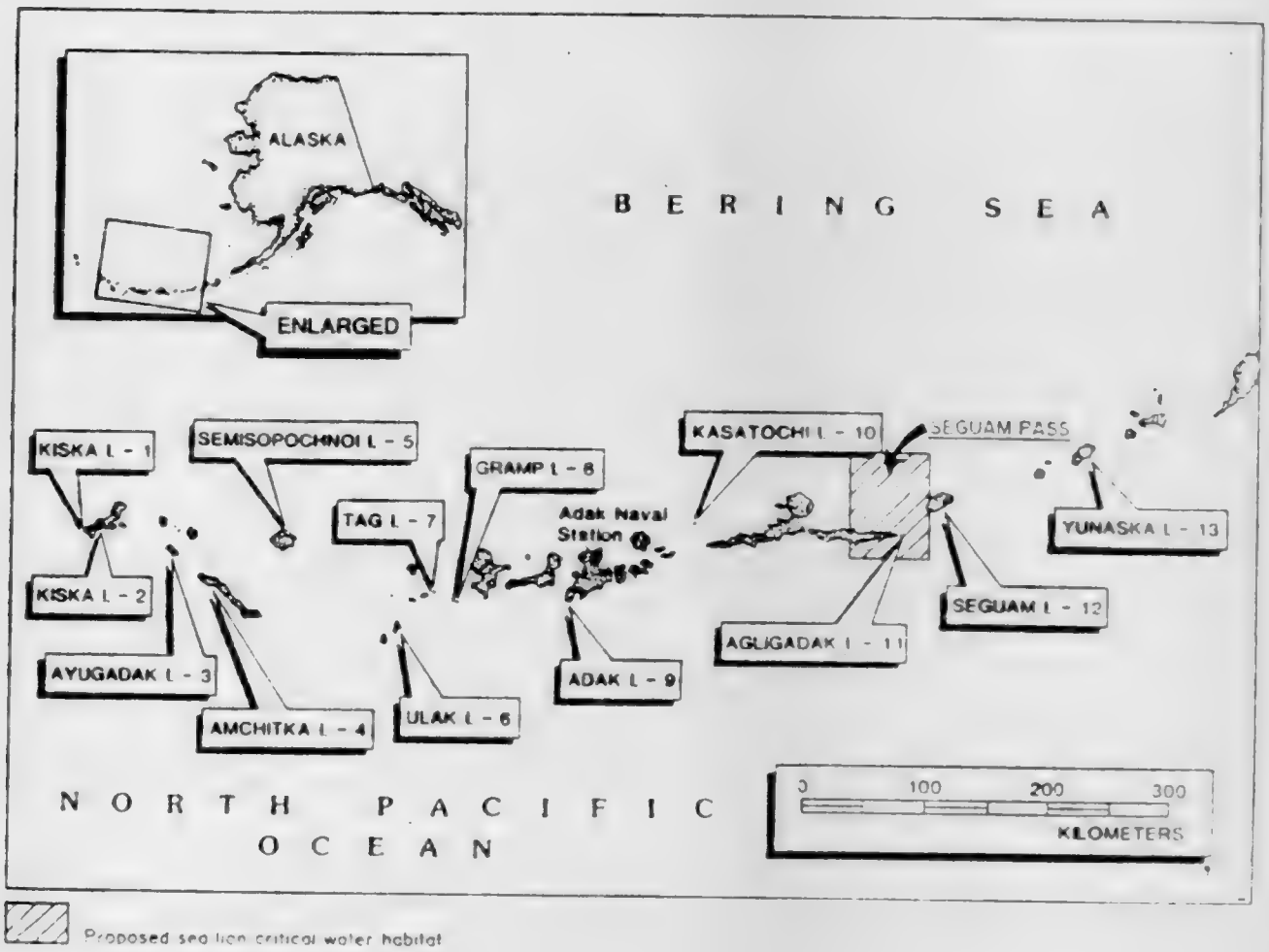


Figure 3 to Part 226: Proposed Steller sea lion critical habitat in vicinity of Sequam Pass. Locations indicated are major Steller sea lion rookeries.



[FR Doc. 93-7512 Filed 3-31-93; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921185-3022]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes two changes to the regulations governing the opening of the sablefish hook-and-line gear fishery in the Gulf of Alaska (GOA). The first would redefine the start of the GOA sablefish hook-and-line gear fishery to prohibit operators of vessels that deploy hook-and-line gear within 72 hours of the opening from participating in the directed sablefish fishery. This action is necessary to clarify NMFS' intent with respect to the opening of directed fishing for sablefish with hook-and-line gear, and reduce both gear conflicts and preemptions of the fishing grounds. The second proposed action would set the annual mid-May opening date as the mid-May date upon which the tide with the smallest tidal range occurs—the least damaging tidal range for hook-and-line gear. This action is necessary to provide safer fishing conditions and reduce economic costs resulting from gear loss. The intent of these actions is to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, April 28, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed by the Secretary of Commerce (Secretary) in accordance with the Fishery Management Plan for Groundfish of the GOA (FMP). The FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations codified at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

In the GOA, separate total allowable catch (TAC) amounts of sablefish are specified for four different regulatory areas and districts. These TAC amounts are further allocated between hook-and-

line and trawl gear. During 1992, 985 vessels participated in the GOA sablefish hook-and-line gear fishery. This large number of fishing vessels competing for relatively small TAC amounts results in directed fisheries that only last 1 or 2 weeks before directed fishing allowances are harvested and the fishery is closed. Intense competition among fishermen to harvest available TAC amounts has created safety, equity, and resource management concerns. The Council has taken long-term action to address these concerns by adopting for Secretarial review an FMP amendment that would authorize an individual fishing quota (IFQ) program for the hook-and-line sablefish fishery. A proposed rule to implement the IFQ program was published in the **Federal Register** on December 3, 1992, (57 FR 57130). The IFQ program has been approved by the Secretary. Implementation is expected in 1994.

During its September 22–27, 1992, meeting, the Council recommended that a regulatory amendment be prepared that would provide immediate relief from some of the management concerns that exist for the GOA sablefish hook-and-line gear fishery. The regulatory amendment proposed by the Council would prohibit participation in the directed sablefish fishery by vessels from which hook-and-line gear is deployed within 72 hours prior to the opening of that directed fishery. NMFS also proposes a regulatory amendment that would set the annual date for the mid-May season opening of the GOA sablefish hook-and-line gear fishery as the date upon which the tide with the smallest tidal range occurs.

Reasons for, and a description of each of the proposed measures follow:

Redefine the Opening of the Gulf of Alaska Sablefish Hook-and-Line Gear Fishery

Under this proposed regulatory measure, no vessel from which hook-and-line gear was used to fish for any species of fish in the GOA during the 72-hour period immediately before an opening to directed fishing for sablefish with hook-and-line gear may be used to participate in that opening of the sablefish fishery. This measure is proposed because existing regulations do not prohibit the deployment of hook-and-line gear prior to an opening for directed fishing for sablefish with this gear type. Some fishermen take advantage of this opportunity by deploying hook-and-line gear prior to the start of the sablefish fishery with the intent to fish for sablefish. These fishermen then retrieve the resulting directed sablefish catch after the directed fishery has opened. Gear deployment before the opening, under these circumstances, constitutes unlawful directed fishing for sablefish. However, enforcement of this prohibition has proved problematic because fishery enforcement officers cannot determine a vessel's catch composition from aerial observations alone.

Problems associated with inconsistencies between regulations governing the opening of the Pacific halibut and the sablefish fisheries were highlighted during 1992 when NMFS opened the sablefish directed hook-and-line gear fishery concurrently with the International Pacific Halibut Commission's (IPHC's) summer openings of the Pacific halibut hook-and-line gear fishery. The intent of the concurrent openings was to avoid wasteful discard of the sablefish resource and fully harvest the specified sablefish TACs by providing vessel operators the opportunity to retain any amount of sablefish that were taken incidental to the Pacific halibut fishery. NMFS also expected that some vessels would be used to fish only for sablefish during the concurrent openings.

Regulations that govern the Pacific halibut fishery (50 CFR part 301) clearly prohibit a person on board a vessel from which hook-and-line gear was deployed during the 72-hour period immediately before the opening of a halibut fishing period from catching or possessing halibut during that halibut fishing period. The Pacific halibut fishery regulations also provide that no vessel from which hook-and-line gear was deployed during the 72-hour period immediately preceding an opening of a halibut fishing period may be used to catch or possess halibut during that halibut fishing period (50 CFR 301.16 (g) and (h)). However, regulations governing the hook-and-line sablefish fishery do not similarly prohibit deployment of hook-and-line fishing gear prior to the opening of the sablefish fishery. As a result, concurrent openings of the Pacific halibut and sablefish fisheries during 1992 created additional confusion in the interpretation of current regulations and resulted, in some instances, in the deployment of hook-and-line gear in advance of the opening of these directed fisheries.

Reports of vessels deploying gear in advance of an opening of the directed sablefish hook-and-line gear fishery were brought to the Council's attention. A clarification of existing regulations was requested at the June 23–28, 1992, Council meeting. NMFS issued a news release on June 26, 1992, stating that hook-and-line gear used in the directed fishery for GOA sablefish may not be deployed until 12 noon of the opening date of that fishery. Under existing regulations, hook-and-line gear that is deployed prior to the opening may not be used to retain any sablefish in excess of the 4 percent bycatch limitation specified under directed fishing standards at § 672.20(g)(4).

During its September meeting, the Council was petitioned by industry representatives to adopt a regulatory amendment that would redefine the opening of the GOA sablefish hook-and-line gear fishery to address the problems described above. The Council recommended that a regulatory amendment be prepared that would prohibit participation in the directed sablefish fishery by vessels that deploy hook-and-line gear within 72 hours prior to the opening of the sablefish hook-and-line directed fishery. No vessel that deploys hook-and-line gear to fish for any species in the GOA during this 72-hour period could be used to participate in the directed fishery for sablefish during that opening.

Vessels that could be impacted under this proposed regulation are those fishing with hook-and-line gear for other species during the 72-hour prohibition period. In 1992, 31 vessels fished for other species of groundfish prior to the opening of directed fishing for GOA sablefish with hook-and-line gear. NMFS specifically requests comments on the potential impact of the proposed action on vessels fishing for other species during the 72-hour period prior to an opening for directed fishing for sablefish with hook-and-line gear. If approved by the Secretary, this regulatory amendment could be effective by May 15, 1993, the current opening date of the GOA sablefish hook-and-line gear fishery.

This action will reduce gear conflicts and the preemption of fishing grounds while providing safer fishing conditions. Without a regulation prohibiting the deployment of gear in advance of the sablefish hook-and-line fishery, vessels could deploy gear prior to the opening. This could cause ground preemptions and gear conflicts because hook-and-line gear can span several miles and gear set in advance of the opening would not be readily visible. Safety is compromised when gear becomes tangled due to tides or the union of two sets of gear. When gear is tangled, tension and torque can cause the line to part which compromises the safety of the fishermen on board while causing economic losses.

Regulatory Framework for Establishing the Season Opening Date

Industry representatives have petitioned NMFS for regulations establishing a regulatory framework for the annual determination of the season opening date of the directed sablefish hook-and-line gear fishery in the GOA. Regulations at 50 CFR 672.23 authorize directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the GOA from May 15 through December 31, or until closed by inseason action, whichever occurs earlier. In contrast, the IPHC annually selects the opening dates of the Pacific halibut fishery after considering the variation in tides. The GOA has semidiurnal tides, which have large ranges. For example, on May 15, 1992, the sablefish hook-and-line gear fishery commenced on a tide of maximum range, which resulted in gear losses and related economic costs. NMFS's fixed opening date does not take into account tidal variability and causes gear losses and economic costs when spring tides occur.

NMFS proposes a regulatory amendment that would set the mid-May opening date for the sablefish hook-and-line gear fishery as the date each year upon which the tide has the smallest tidal range. Tides can be measured by calculating the change in feet between consecutive high and low waters, a measurement commonly called the tidal "range." Tides with a large range have been known to cause loss of fishing gear, resulting in "ghost" fishing and economic loss to fishermen. Under the proposed regulatory framework, NMFS would annually specify the sablefish opening date as the day between May 9th and May 22nd upon which the tide with the smallest tidal range occurs. This opening date would be determined from the tide schedules in the publication Tide Tables, published annually by the Department of Commerce, NOAA, and would be published annually in the **Federal Register** by January 1, or as soon as practicable thereafter, for the new fishing year.

NMFS preliminarily concurs with the proposed actions. Implementation of the proposed measures would provide economic benefits to vessels participating in the sablefish hook-and-line gear fishery as gear conflicts, preemption of fishing grounds, and gear losses due to variable tides would be minimized.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

NMFS prepared an EA for this rule that discusses the impact on the environment as a result of this rule. The public may obtain a copy (see **ADDRESSES**).

NMFS prepared an IRFA that concludes that this proposed rule, if adopted, would have significant effects on small entities. This action is intended to prevent gear conflicts, prevent fishing ground preemptions and diminish economic losses. Based on data from the 1992 sablefish hook-and-line gear fishery in the GOA, 985 vessels could benefit by this action. If 10 percent of the vessels participating in this fishery each deployed one set of gear in advance of the opening this could result in over 130 metric tons of sablefish being taken prior to the opening date. The cost of 10 percent of the vessels deploying gear in advance of the opening could be approximately $334,000 or a potential loss of approximately $370 to each vessel that does not deploy gear in advance of the fishery. This situation creates inequities among those who fish in accordance with regulations and those who do not. In addition, economic losses due to a fixed commencement date of the May season opening date could cause net losses when varying tides occur causing gear conflicts and fish loss to all participants. A copy of this analysis is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by NMFS. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

Pursuant to the requirements of the Endangered Species Act (ESA), NMFS has determined that the fisheries as managed by 50 CFR part 672, as would be revised by this proposed rule, will not affect any endangered or threatened species under the ESA in ways not analyzed by previous biological opinions and informal consultations.

NMFS has determined that this rule would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under Section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements

Dated: March 26, 1993.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, paragraph (k) is added to read as follows.

§ 672.7 Prohibitions.

* * * * *

(k) Engage in directed fishing for sablefish with hook-and-line gear from a vessel that was used to deploy hook-and-line gear within 72 hours prior to the opening of the sablefish hook-and-line directed fishery.

3. In § 672.23, paragraph (c) is revised to read as follows:

§ 672.23 Seasons.

* * * * *

(c) The opening date for the directed fishing season for sablefish with hook-and-line gear in the Gulf of Alaska will be the calendar day from May 9 through May 22 upon which the tide with the smallest tidal range occurs. For purposes of this paragraph, tidal range means the change, measured in feet and inches, between consecutive high and low waters. The directed fishery will remain open through December 31 subject to other provisions of this part. The opening date will be determined from the tide schedules in the annual publication Tide Tables published by

the Department of Commerce, NOAA. By January 1, or as soon as practicable thereafter, of each year, NMFS will publish a notice in the **Federal Register** announcing this date for the new fishing year.

* * * * *

[FR Doc. 93–7576 Filed 3–29–93; 2:40 pm]
BILLING CODE 3510–22–M

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50 CFR Parts 672 and 675

[Docket No. 930–232–3032]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes four regulatory amendments applicable to the groundfish fisheries off Alaska. These amendments would revise the existing definition of a pelagic trawl; implement a performance standard for trawls, which would be in effect whenever directed fishing for groundfish with non-pelagic trawls is prohibited; implement a definition of a non-pelagic trawl; and revise a directed fishing standard associated with trawl gear when directed fishing with non-pelagic trawls is prohibited. These measures are necessary to address management concerns in the groundfish fisheries. They are intended to promote the goals and objectives of the North Pacific Fishery Management Council with respect to groundfish management off Alaska.

DATES: Comments must be received by April 30, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and Bering Sea and Aleutian Islands Area is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are implemented at 50 CFR part 620.

At times, amendments to regulations at 50 CFR parts 672 and 675 are necessary for conservation and management of the groundfish fisheries. Regulatory amendments proposed by this action would implement the following four changes to regulations: (1) The existing definition of a pelagic trawl in §§ 672.2 and 675.2 would be revised; (2) §§ 672.7 and 675.7 would be revised to prohibit the catch of 20 or more crabs when fishing for groundfish with trawl gear whenever directed fishing for groundfish with non-pelagic trawls is prohibited; (3) §§ 672.2 and 675.2 would be amended by adding a definition of a non-pelagic trawl; and (4) §§ 672.20(g)(3) and 675.20(h)(1) would be revised such that the directed fishing standard would apply only when fishing by vessels using non-pelagic trawl gear is prohibited.

A description of, and reasons for, each of these measures follows.

Revision of the Pelagic Trawl Definition

NMFS has implemented several bycatch management measures in the Gulf of Alaska and in the Bering Sea and Aleutian Islands groundfish trawl fisheries to minimize the catch of halibut and crab, which are designated as prohibited species in the groundfish fisheries. One measure prohibits the use of non-pelagic trawls while allowing the use of pelagic trawls when certain prohibited species catch (PSC) allowances of halibut or crab have been caught as bycatch. This measure depends on the differences in the configurations of pelagic trawls and non-pelagic trawls.

The existing definition of a pelagic trawl in §§ 672.2 and 675.2 initially was implemented through an emergency rule (55 FR 33715, August 17, 1990) under Magnuson Act section 305(c) and then as a final regulation (56 FR 2700, January 24, 1991) as a management tool to allow directed fishing for pollock by vessels using pelagic trawl gear. Reasons for the pelagic trawl definition are contained in the EA/RIR reviews and the regulatory preambles for both rulemakings. These reasons are summarized here. The proposed rule published at 55 FR 38347, September 18, 1990, stated that a former definition of a pelagic trawl contained a measure that was intended to prohibit parts of the pelagic trawl from contacting the seabed. This measure was intended to minimize bycatches of halibut and crab. NMFS provided testimony to the Council that such a prohibition could not be enforced. In meetings with industry representatives, NMFS sought to determine how a pelagic trawl was constructed to determine if the pelagic trawl definition could be improved for enforcement purposes. Fishing industry representatives emphasized that pelagic trawls were constructed to reduce drag during fishing operations by using large mesh openings or parallel lines behind the trawl opening. Mesh openings of at least one meter (3.3 feet) or parallel lines that are at least one meter apart accomplish the objective of reducing drag, but also result in reduced bycatch of halibut and crab. These animals, upon passing over the foot rope and into the trawl, are believed to escape through the large meshes or between the parallel lines. The large mesh sizes or parallel lines in back of the fishing line provide escape panels for halibut and crab in case the pelagic trawl contacts or comes near the seabed, resulting in reduced bycatches of halibut and crab. Historical joint venture data provided evidence that halibut and crab bycatches were minimal when using trawls of this type, because these animals were able to escape the pelagic trawl through the large meshes upon passing over the foot rope. Requiring 12-inch spacing around the net circumference instead of just the belly panel prevented a fisherman from circumventing the purpose of the rule by fishing a net upside down. When bycatch PSC allowances of halibut or crab were reached, closure notices stipulated that further trawling with trawls other than pelagic trawls were prohibited. Industry sources indicated to NMFS when the rule was being developed that most pelagic trawls purchased within the last ten years for use in the BSAI conformed to the definition. Trawl fishermen have been using these trawls for mid-water trawling, because the larger meshes reduce drag for the towing vessel.

NMFS fishery information continues to demonstrate that very small bycatches of halibut and crab occur when pelagic trawls are used, compared to much higher bycatch proportions when non-pelagic trawls are used. The existing definition of a pelagic trawl in

§§ 672.2 and 675.2 continues to depict a pelagic trawl configuration. The definition prohibits the use of discs, bobbins, rollers, or other chafe protection gear attached to the foot rope. It also requires very large mesh, or parallel ropes, aft of the fishing line for a length of several meshes.

During the 1991 and 1992 fisheries, some fishermen were able to defeat the purpose of the pelagic trawl definition by reconfiguring a trawl in such a way that it met the definition of a pelagic trawl, but functioned as a non-pelagic trawl. Other fishermen apparently were able to fish a pelagic trawl for certain groundfish species (e.g., large-sized pollock), which are found close to the sea bed, and which normally would be caught with non-pelagic trawls. As a result, bycatches of halibut and crab were higher than anticipated even when directed fishing with non-pelagic trawl gear was prohibited.

Associated with the pelagic trawl definition is the definition of a fishing line, which reads: "Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached".

Fishermen have been able to defeat this definition merely by attaching parallel lines to the front of an existing non-pelagic trawl, resulting in a configuration that meets the definition of a pelagic trawl with parallel lines. Once a line is no longer in front, it is no longer a fishing line by definition.

Also, associated with the fishing line is the foot rope, which is defined as follows: "Footrope means chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line."

Again, once a rope is further back in the belly of a reconfigured non-pelagic trawl, it is no longer a foot rope by definition. When these reconfigured trawls are deployed in close proximity to the sea bed to trawl for groundfish species that normally are caught with non-pelagic trawls, high bycatch rates of Pacific halibut and crab have resulted, defeating the purpose of regulations intended to minimize bycatches of halibut and crab.

The Council considered this issue at the April 1992 meeting. It reviewed recommendations from industry representatives for revising the current pelagic trawl definition. The industry representatives sought to describe a pelagic trawl in such a way that fishermen would not be able to defeat the definition by simply re-configuring a trawl to meet the pelagic trawl definition and then fish it as a non-pelagic trawl. The underlying objective is to reduce halibut and trawl bycatches by discouraging or preventing trawl operations on the sea bed when halibut and crab PSC allowances have been reached. The "trawl performance standard," as described below, is a means to accomplish this objective. NMFS believes such a measure would not be effective unless impartial persons are on board to observe the catches. A physical definition of a pelagic trawl is still necessary to enforce closures to non-pelagic trawls.

Based on industry recommendations, the Council adopted a revision to the pelagic trawl definition. Salient parts of this definition prohibit trawl parts and configurations that typically are not found on a pelagic trawl. NMFS proposes the definition to facilitate enforcement and prosecution of violations. Should a trawl fail any part of the definition, the vessel operator is in violation of the regulations. The following explains the purpose of each part of the definition.

A pelagic trawl must not have discs, bobbins, or rollers, and must not have chafe protection gear attached to the foot rope or fishing line. These parts would be prohibited, because they typically are found only on non-pelagic trawls.

A pelagic trawl, other than a rope trawl, must not have mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and must not have stretched mesh sizes of less than 60 inches (152.4 cm) extending aft from all points on the fishing line, head rope, and breast lines past the fishing circle for a distance equal to or greater than one-half the vessel's length overall.

A pelagic trawl configured as a rope trawl (i.e., having a series of parallel ropes in the front end of the trawl) must not have parallel lines spaced closer than 64 inches (162.6 cm), starting at all points on the fishing line, head rope, and breast lines and extending aft of the fishing circle. Furthermore, meshes aft of the parallel ropes must meet the same minimum mesh size requirement as required by the above paragraph (i.e., no less than 60 inches (152.4 cm) for a distance of one-half the vessel's length overall).

Aft of the minimum 60-inch (152.4-cm) mesh size described above, a pelagic trawl must not have stretched mesh sizes less than 15 inches (38.1 cm) for a distance equal to or greater than one-half the vessel's length overall. A pelagic trawl must not have any configuration intended to reduce the stretched mesh sizes described above.

NMFS understands that all pelagic trawls used in the Alaska groundfish fisheries already meet these large mesh/parallel line spacing requirements. Historical and current NMFS catch data show that pelagic trawls with large meshes and widely spaced parallel lines result in low bycatches of crab and halibut. Maintaining the minimum size requirement for these large meshes and widely spaced parallel lines is a major part of the pelagic trawl definition.

A pelagic trawl must not have flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sonde device. NMFS understands that the doors (otter boards) used when deploying pelagic trawls keep the mouth of the trawl open and that floats are not necessary for this purpose. However, net-sonde devices normally used with all trawls must have some flotation capable of maintaining the upward position of the device to allow it to measure bottom depths correctly. The maximum weights of such devices indicate that as much as 200 pounds (90.7 kg) of flotation may be required for net-sonde devices to perform as intended. At its September 1992 meeting, the Council recommended that the phrase "* * * and/or lifting devices (e.g., kites or floats)" be deleted from the proposed definition. Some industry representatives have requested that NMFS allow kites or floats to allow operation of large trawls in shallow water. When large trawls operate in shallow water, fishermen may not be able to use midwater trawl doors to keep the trawl mouth open, thereby necessitating the use of lifting devices (e.g., kites or floats). NMFS proposes to prohibit kites or floats other than 200 pounds (90.7 kg) of flotation to accommodate a net-sonde, but specifically requests comments on this issue.

A pelagic trawl must not have more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle. The purpose of this description is to prohibit fishermen from adding many weighted lines and thus causing the trawl to be suitable for fishing for groundfish species normally caught with non-pelagic trawls. NMFS is considering defining a "weighted line," and requests information from the public about materials and means used to weight lines for use with trawl gear.

A pelagic trawl must not have metallic components except for connectors (e.g., hammerlocks or swivels) and net-sonde devices aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure. The purpose of this description is to prevent fishermen from attaching parallel lines to a non-pelagic

trawl, which would result in a non-pelagic trawl's fishing line, which is a metal component made of heavy chain or wire rope, being further back in the belly of a trawl, thereby allowing fishermen to defeat the definition by simply reconfiguring a non-pelagic trawl to meet the pelagic trawl definition and then fish it as a non-pelagic trawl. This was the practice early in 1992 that resulted in the Council's decision to revise the pelagic trawl definition.

A pelagic trawl may have small mesh within 32 feet (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sonde device). Although an allowance for small mesh is inconsistent with the large mesh descriptions of the definition, the industry contends that secure attachment of instrumentation requires small meshes.

Finally, a pelagic trawl may have weights on the wing tips. NMFS understands that all trawls, including pelagic trawls, must have weights on the wing tips for proper deployment. This description in the definition is not necessary, but NMFS recognizes that the Council included it to underscore the necessity of weights on the wing tips.

The Council's recommended revised pelagic trawl definition addresses the weaknesses identified with the existing definition. NMFS concurs with the Council's recommendation and proposes to revise the pelagic trawl definition. For purposes of clarity, NMFS has modified the wording of the definition in this rule from the exact language adopted by the Council. These modifications are intended to conform to the Council's intent.

Trawl Performance Standard

Fishermen who use pelagic trawls in midwater fisheries catch very small amounts of bottom dwelling (benthic) life forms other than free swimming fish. Fishermen who use non-pelagic trawls, or who fish with pelagic trawls for pollock on or near the sea bed, catch large amounts of benthic life forms. NMFS observer reports show these life forms are usually Tanner crabs. Therefore, the presence of crabs in trawl catches is assumed to be the result of fishermen deploying pelagic trawls on the sea bed.

When pelagic trawls are used in midwater pollock fisheries, catches of crabs occur in very small numbers. In 1991, for example, 11,344 of 14,624 observed hauls (78 percent) on vessels using pelagic trawl gear caught zero crabs. These operations, which caught no crabs, caught 642,111 metric tons (mt) of groundfish (see Appendix 2 of the EA/RIR/IRFA prepared for this action). These results show that large groundfish catches can occur without catching Tanner crabs.

Fishermen might avoid catching Tanner crabs simply by adjusting fishing practices to avoid fishing on the sea bed. If so, the intent of the Council's revised pelagic trawl definition would be promoted. At its December 8–13, 1992, meeting, the Council reviewed NMFS data about numbers of crabs that are caught by vessels using pelagic trawls to determine a number that might represent a reasonable performance standard to accompany a pelagic trawl definition.

NMFS analyzed numbers of crabs in 1991 trawl catches that were attributed to pelagic trawls. In doing so, NMFS first examined bycatch rates of halibut that were caught during 1991 by vessels using trawl gear. These rates, shown in Appendix 2 of the EA/RIR/IRFA, show a significant increase when the bycatch rate (numbers of crab/mt of groundfish) changes from 0.0012 to 0.0024. This represents a 100-percent increase. The 0.0012 bycatch rate equates to the 0.1 percent value used in the Vessel Incentive Program. Under the program, vessel operators are subject to a violation if the ratio of halibut to groundfish catches by a vessel participating in the midwater trawl fishery exceeds 0.1 percent as contained in procedures in § 675.26(d)(2)(v)(C). A habibut bycatch rate greater than 0.1 percent is a violation of the Vessel Incentive Program.

NMFS analyzed the number of crabs associated with this proportion. The 1991 observer data show that when the halibut bycatch rate doubled from 0.0012 to 0.0024, the number of crabs increased to 20 animals or more per groundfish haul. Therefore, NMFS considers the presence of 20 crabs or more in a haul or on board a vessel to have resulted from a vessel operating a trawl on the sea bed.

After reviewing the NMFS bycatch data, the Council agreed that a catch of fewer than 20 crabs might be expected when a pelagic trawl is deployed correctly, but that a catch of 20 or more crabs likely was the result of operating a trawl on the sea bed. Therefore, the Council recommended defining as a violation the possession of 20 or more crabs when caught by trawl gear when directed fishing with non-pelagic trawl gear is prohibited.

Further, the Council recommended that the actual number of crabs be frameworked in such a way that it could be changed from the present number of 20 crabs to some other number if information warranted the change. The purpose of the Council's recommendation was to avoid the lengthy rulemaking process when regulations are amended.

NMFS concurs with the Council's recommendation to prohibit the possession of 20 or more crabs by the operator of a vessel using trawl gear when directed fishing with non-pelagic trawls is prohibited. With respect to proposing a measure to framework the actual number of crabs, NMFS notes that the purpose of the proposed performance standard of 20 crabs is to encourage fishermen to deploy their pelagic trawl gear with the objective of catching zero crabs. A zero crab bycatch will be associated with a reduced halibut bycatch as well. Therefore, NMFS is not proposing to framework this measure, but encourages the Council to review the performance standard at any time and recommend changes as necessary. NMFS intends to use the best available information with respect to this measure and make changes as necessary for purposes of conservation and management of the fishery.

Definition of a Non-Pelagic Trawl

A non-pelagic trawl is not defined in the existing regulations, even though "non-pelagic trawl" is referenced in regulatory text in 50 CFR parts 672 and 675. NMFS proposes to amend §§ 672.2 and 675.2 to define a non-pelagic trawl to mean a trawl other than a pelagic trawl.

Directed Fishing Closures

Under current regulations, directed fishing for a groundfish target fishery category is prohibited under § 672.20(c)(2) or § 675.20(a)(8), because a directed fishery allowance has been reached. Fishermen who use pelagic trawl gear are prohibited from retaining aggregate amounts of groundfish species for which a directed fishing closure applies in amounts equal to or greater than 7 percent. In contrast, fishermen who use non-pelagic trawl gear are prohibited from retaining groundfish in amounts equal to or greater than 20 percent. NMFS did not intend to constrain pelagic fishermen in this manner.

Therefore, NMFS proposes to amend the regulations establishing the 7-percent standard (at §§ 672.20(g) and 675.20(h)(1)) so that the 7-percent standard will not apply during directed fishing closures under §§ 672.20(c)(2) or 675.20(a)(8). Under the proposed regulations, the 7-percent standard would apply only when trawling for goundfish other than pollock with pelagic gear has been prohibited (under

§§ 672.20(f)(1) and 675.21(c)) because a halibut or crab limit is about to be reached. Furthermore, the current standard can be used only if the fish on board were harvested by "pelagic trawl," which may be difficult to prove. To ease enforcement, the revised standard deletes the word "pelagic", so the standard is applied by counting all retained groundfish harvested by trawl gear during a trip.

Other Changes

NMFS proposes to remove figures 2 and 3 to part 672 and figures 4 and 5 in part 675. These figures do not accurately depict a pelagic trawl and serve no useful purpose.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

The Alaska Region, NMFS, prepared an EA for this rule that describes the impact on the human environment that would occur as a result of its implementation. A copy of the EA may be obtained (see **ADDRESSES**).

The Assistant Administrator initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS concludes that none of the proposed measures in this rule would cause impacts considered significant for purposes of the E.O.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis as part of the EA/RIR/IRFA for this proposed rule that describes its economic impact on small entities, if adopted. A summary of the IRFA follows:

(1) The revision to the pelagic trawl definition is superior to the current definition, because fishermen will not easily be able to reconfigure pelagic trawls for purposes of fishing in close proximity to the sea bed for groundfish species normally caught with non-pelagic trawls;

(2) The performance standard prohibiting the catch of a crab in a trawl when non-pelagic trawl gear is prohibited is superior to the status quo, because it minimizes the importance of the physical pelagic trawl definition, and will discourage fishermen from fishing a pelagic trawl as they would a non-pelagic trawl;

(3) The newly proposed definition of a non-pelagic trawl is superior to the status quo, because it is needed to improve the effectiveness of regulations; and

(4) The application of the directed fishing standard of 7 percent is superior to the status quo, because it will apply only to situations when the use of non-pelagic trawls has been prohibited, promoting the intent of this particular directed fishing standard.

NMFS has determined that fishing conducted under the FMPs and this rule will not affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 26, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, definitions of "fishing circle", "non-pelagic trawl", "stretched mesh size", and "wing tip" are added in alphabetical order and the definition of "pelagic trawl" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

* * * * *

Non-pelagic trawl means a trawl other than a pelagic trawl. * * *

Pelagic trawl means a trawl that:

(1) Has no discs, bobbins, or rollers;

(2) Has no chafe protection gear attached to the foot rope or fishing line;

(3) Except for the small mesh allowed under paragraph (9) of this definition:

(i) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one-half the vessel's length overall; or

(ii) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one-half the vessel's length overall;

(4) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (3) of this definition for a distance equal to or greater than one-half the vessel's length overall;

(5) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (3) and (4) of this definition;

(6) Has no flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sonde device;

(7) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and fishing circle;

(8) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sonde device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(9) May have small mesh within 32 feet (9.8 m) of the center of the head

rope as needed for attaching instrumentation (e.g., net-sonde device); and

(10) May have weights on the wing tips.

* * * * *

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

* * * * *

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

3. In § 672.7, paragraph (k) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(k) Have on board, at any particular time, 20 or more of any crab species caught with trawl gear when directed fishing for groundfish with non-pelagic trawl gear is prohibited under § 672.20(f)(1).

4. In § 672.20, paragraph (g)(3) is revised to read as follows:

§ 372.20 General limitations.

* * * * *

(g) * * *

(3) *Using trawl gear when directed fishing with non-pelagic trawl gear is prohibited.* The operator of a vessel is engaged in directed fishing for groundfish species or species groups in violation of a notice issued under paragraph (f)(1) of this section, if the operator retains at any time during a trip an aggregate amount of these groundfish species or species groups caught with trawl gear equal to or greater than 7 percent of the amount of other fish or fish products, in round-weight equivalents, retained on the vessel at the same time during the same trip.

* * * * *

5. In § 672.24, paragraphs (d)(1) introductory text and (d)(2) introductory text are revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(d) * * *

(1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

(2) From February 15 to June 15, no person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

6. Figures 2 and 3 are removed from part 672 and Figure 4 is redesignated as Figure 2 to the part.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

7. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

8. In § 675.2, definitions of "fishing circle", "non-pelagic trawl", "stretched mesh size", and "wing tip" are added in alphabetical order, and the definition of "pelagic trawl" is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

* * * * *

Non-pelagic trawl means a trawl other than a pelagic trawl.

* * * * *

Pelagic trawl means a pelagic trawl as defined in § 672.2 of this chapter.

* * * * *

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

* * * * *

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

9. In § 675.7, paragraph (m) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(m) Catch 20 or more of any crab species at any particular time with trawl gear when directed fishing for groundfish with non-pelagic trawl gear is prohibited under §§ 675.20(h)(1) or 675.24(c)(2).

10. In § 675.20, paragraph (h)(1) is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(1) *Using trawl gear when directed fishing with non-pelagic trawl gear is prohibited.* The operator of a vessel is engaged in directed fishing for groundfish species or species groups in violation of a notice issued under § 675.21(c)of this part, if the operator retains at any time during a trip an aggregate amount of these groundfish species or species groups caught with trawl gear equal to or greater than 7 percent of the amount of other fish or fish products, in round-weight equivalents, retained on the vessel at the same time during the same trip.

* * * * *

11. Figures 4 and 5 are removed from part 675.

[FR Doc. 93–7509 Filed 3–31–93; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 930350–3050]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to delay the opening of the second (non-roe) directed fishing season for pollock in the Bering Sea and Aleutian Islands Area (BSAI) from June 1 to August 15 of each fishing year. This action is necessary to achieve increased revenues from the harvest of BSAI pollock during the non-roe season. The proposed season delay also would provide participants in the pollock fishery increased opportunities to fish in other groundfish fisheries and to develop salmon processing capabilities during summer months. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time (A.l.t.), April 16, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the BSAI are managed by the Secretary of Commerce (Secretary) in accordance with the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Under regulations at § 675.20(a)(2)(ii), the initial total allowable catch (TAC) amounts specified for pollock in the Bering Sea, Aleutian Islands, and Bogoslof subareas are divided into two seasonal allowances. Subject to other regulatory provisions, the first seasonal allowance is available for directed fishing from January 1 until noon A.l.t., April 15 (the "roe" or "A" season). The second seasonal allowance is available for directed fishing from noon, A.l.t., June 1 through the end of the fishing year (the "non-roe" or "B" season). NMFS annually apportions the initial pollock TACs between the roe and non-roe seasons after consultation with the Council during the annual groundfish TAC specification process set forth at § 675.20(a).

During its April 1992 meeting, the Council requested that a draft EA/RIR/IRFA be prepared to analyze alternatives for delaying the June 1 opening date of the pollock "B" season. Alternative opening dates considered by the Council included July 1, August 1, and September 1. A draft analysis was prepared under the National Environmental Policy Act (NEPA), E.O. 12291, the Regulatory Flexibility Act, and NOAA policy. The Council reviewed this document at its September 1992 meeting and decided to send the analysis to the public for review. At its December 8–13, 1992, meeting, the Council considered the testimony and recommendations of its Advisory Panel (AP), Scientific and Statistical Committee (SSC), Plan Teams, fishing industry representatives, and the public on alternative dates for the start of the pollock "B" season. For the reasons given below, the Council determined that delaying the "B" season opening date to August 15 would provide the most benefit to the fishing industry and recommended that NMFS prepare a proposed rule delaying the opening of the pollock "B" season until this date. Subject to approval by NMFS, this action is scheduled to be effective prior to June 1, 1993, so that benefits that accrue to the fishing industry under the proposed action could be realized during the 1993 fishing year.

The proposed delay of the pollock "B" season is intended to increase the value of the pollock harvested during the non-roe season by delaying the directed fishery for pollock until pollock flesh quality and product recovery rates are improved. The proposed delay also is intended to provide participants in the pollock fishery increased opportunities to fish in other groundfish fisheries and to develop salmon processing capabilities during summer months.

Section 14.3 of the FMP requires that the Council consider the following criteria when recommending a regulatory amendment to change season opening dates: biological, bycatch, exvessel and wholesale prices, product quality, safety, cost, other fisheries, coordinated season timing, enforcement and management costs, and allocation effects. The EA/RIR/IRFA prepared for this action addresses anticipated effects of the proposed delay relative to these criteria. The following discussion summaries these effects relative to how the Council's objectives for a "B" season delay are met under the proposed action.

Increased Product Recovery and Quality

Information presented in the EA/RIR/IRFA prepared for the proposed action indicates most pollock processors would not change the mix of products under a delayed pollock "B" season. However, a delayed season would allow for an increase in pollock product yield and an associated increase in weight of product produced per metric ton (mt) of round pollock. For any given "B" season pollock allowance, a delay in the season date from June 1 to August 15 likely would yield an increase in total production amounts. This effect is anticipated because product yield tends to continue to increase through summer months until that time before the following spawning season (January–March).

In the EA/RIR/IRFA prepared for this proposed action, a fishery simulation model was used by analysts to estimate the increase in total pollock product weight and value that would result during the next 3-year period (1993–1995). Based on assumptions derived from the 1992 fisheries, an August 15 opening date for the pollock "B" season was estimated to increase the product yield by about 52,000 mt over the next 3-year period. The associated increase in gross revenue was estimated at about $42 million. Furthermore, a delayed pollock season likely would result in relative price increases of pollock products, although the magnitude of these increases could not be quantified.

Reasons for this upward trend include increased product quality, decreased inventory holding costs, and timing surimi sales to coincide with Japanese peak demand in November and December.

Alternative Opportunities for the Pollock Harvesters and Processors

Interest exists within the pollock industry to harvest and process other groundfish species (primarily flatfish and Atka mackerel) during summer months if the pollock "B" season is delayed to August 15. Information does not exist to quantify the amount of new effort in the non-pollock groundfish fisheries or to assess the costs to the existing fleet of increased competition for these species during summer months. However, increased competition for the harvest of available groundfish likely would occur regardless of the starting date of the "B" season, because the open access nature of existing management programs governing these fisheries will continue to exacerbate fleetwide overcapitalization.

A delay of the pollock "B" season and associated shift of fishing effort from this fishery into other groundfish fisheries during summer months could increase chinook salmon and Pacific herring bycatch amounts, and slightly reduce Pacific halibut bycatch amounts, but would have relatively little effect on the bycatch of other prohibited species. Based on results of a fishery bycatch simulation model described in the EA/RIR/IRFA, the associated annual increase in bycatch impact costs of delaying the "B" season opening date to August 15 is estimated at about $450,000. Bycatch impact costs are defined in terms of net present value to the directed fisheries for the sum of foregone crab, halibut, salmon, and herring taken as bycatch in the groundfish fisheries.

A delay of the pollock "B" season to August 15 also would allow pollock processors the opportunity to participate in salmon processing operations during mid-summer months. A shift into salmon processing activities would: (1) Provide new opportunities for pollock processors; (2) offset shortages of salmon processing capacity; (3) increase competition in the salmon processing industry and prices paid to fishermen; and (4) encourage development of new salmon products and markets. Alternatively, the entry of

pollock processors into the salmon processing industry could disrupt traditional onshore salmon processing operations and harm local communities that depend upon onshore processors. At this time, information on which to gauge the potential for such negative effects are speculative and would involve other factors that typically affect the success or failure of traditional salmon processing operations (i.e., annual strength of salmon returns and market effects).

The diversity of the Alaska salmon industry suggests that the potential impact of a "B" season delay to August 15 would vary widely among different regions and species, as well as from year to year. The EA/RIR/IRFA concludes that the most likely potential effects upon different user groups are as follows:

(1) At-sea processors who participate in the pollock "B" season would tend to benefit from additional economic opportunity to process salmon;

(2) Salmon fishermen could benefit, at least in the short term, from additional markets, increased competition that might result in higher exvessel prices, and possible new markets;

(3) Onshore salmon processing operations could face increased competition in the processing sector, which might lead to increased exvessel prices; and

(4) Local Alaska communities might benefit or lose, depending on the net effects of the "B" season delay on fishermen and processors, and the relative economic contribution of each to individual communities.

During its December meeting, the Council considered the above information, along with public input that suggested a delay of the starting date later than August 15 could preempt smaller trawl vessels from fully participating in the "B" season pollock fishery because of adverse weather conditions during early fall months. Given this information, the Council recommended that a delay of the opening date of the "B" season to August 15 would best meet the intent of the Council to increase the value of the pollock harvest during the "B" season and provide for alternative harvesting and processing opportunities during summer months.

NMFS has reviewed the potential effects of the "B" season pollock allowance and the proposed delay of the pollock "B" season on winter foraging success of Steller sea lions. In the past, NMFS has opined that, if commercial fishery removals of pollock are detrimental to sea lion foraging success, this effect would be the most pronounced during the winter season. Steller sea lions are likely to be more nutritionally stressed during winter than summer because of ecological (e.g., reduced food availability) and biological factors (e.g., pregnant females have higher nutritional needs and newly weaned juveniles are less adept foragers).

Under the final 1993 BSAI initial groundfish specifications, the "B" season pollock allowance specified for the Bering Sea subarea is 607,750 mt; seasonal allowances are not specified for either the Aleutian Islands or Bogoslof subareas (58 FR 8703, February 17, 1993). Unharvested portions of the Community Development Quota (CDQ) pollock reserve specified for the Bering Sea subarea also may be taken during the "B" season, although the 1993 CDQ fisheries are not governed under seasonal allowances after the end of the roe season on April 15.

Based on 1992 fishing patterns and given existing levels of harvesting and processing capacity, NMFS anticipates that the portions of the "B" season allowance allocated to the inshore and offshore components will be harvested by mid-October, prior to the winter months. NMFS believes that fishing activities conducted under the proposed action would not result in additional adverse effects on Steller sea lion feeding success. Although the CDQ pollock fishery is not affected directly by the proposed delay in the "B" season, the proposed delay could increase the possibility that the CDQ fishery is prosecuted during winter months after closure of the inshore and offshore fisheries. In a biological opinion prepared for the proposed "B" season delay under section 7 of the Endangered Species Act, NMFS concludes that the possibility of pollock harvests beyond October under the CDQ program may warrant the development of sea lion protection measures for the November–December period that are commensurate with those implemented for the pollock roe season (January–April) at § 675.24(f).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this proposed rule that discusses the impacts on the environment as a result of this rule. A copy of the EA is available from the Council (see **ADDRESSES**).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the regulatory impact review, which concludes that this proposed rules, if adopted, would have significant effects on small entities. During 1992, 350 vessels were issued Federal permits to use trawl gear to fish for Alaska groundfish in Federal waters. A substantial number of these vessels are used to fish or process pollock and would be affected by the proposed action to delay the start of the pollock "B" season to August 15. Benefits accrued to the inshore and offshore components of the pollock industry as a result of the proposed delay primarily result from higher flesh quality and product yields, price increases, shifts to higher grade products, and better timing of supply. The offshore fleet additionally benefits due to increased opportunities to fish in other groundfish fisheries and to develop salmon processing capabilities. Increased competition among shorebased and offshore salmon processors may result in an upward pressure on salmon exvessel prices. Non-groundfish on shore processors who process salmon would tend to be negatively affected by increased competition from offshore salmon processors, but any damages incurred may be lessened by the fact that the offshore processors are likely to develop new products and sell them into new markets. Most of these costs and benefits cannot be quantified. Increases in gross revenues due to yield changes alone are estimated to total about $42 million over the next 3 years (1993–1995). Other positive effects cannot be quantified, but in the aggregate, could be substantial in consideration of the amount of pollock harvested in waters off Alaska. Increased prohibited species bycatch impact costs predicted by a bycatch simulation model are minimal with the exception of potential substantial

increases in herring bycatch, with possible adverse impact on the herring quotas and fishermen who participate in a herring fishery. Annual increases in net revenues predicted by the bycatch simulation model (net groundfish revenue ($3.5 million) minus net bycatch impact costs ($450,000)) are estimated at about $3.0 million. A copy of this analysis is available from the Council (see **ADDRESSES**).

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule does not directly affect the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

A formal section 7 consultation under the Endangered Species Act (ESA) was initiated for the proposed rule. The Steller sea lion is listed under the ESA and a biological opinion has been initiated to determine if the fishing activities conducted under the proposed rule are likely to jeopardize their continued existence. In addition, Sacramento River winter-run chinook salmon and Snake River sockeye salmon, fall chinook and spring/summer chinook salmon are listed under the ESA. Coded wire tag recovery data suggest that the ocean distribution of these salmon populations may extend into the Bering Sea. The effect of the proposed action on these listed salmon populations is being evaluated by NMFS. Formal consultation under section 7 of the ESA will be concluded before NMFS takes final action on the proposed rule.

The Regional Director determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 26, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.20, paragraph (a)(2)(ii) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(ii) The TAC of pollock in each subarea will be divided, after subtraction of reserves, into two allowances. The first allowance will be available for directed fishing from January 1 until noon, Alaska local time (A.l.t.), April 15. The second allowance will be available for directed fishing from noon, A.l.t., August 15 through the end of the fishing year. Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance.

* * * * *

3. In § 675.23, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 675.23 Seasons.

(a) Fishing for groundfish in the subareas and statistical areas of the Bering Sea and Aleutian Islands is authorized from 00:01 a.m., Alaska local time (A.l.t.), on January 1, through 12 midnight, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (e) of this section.

* * * * *

(e) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock by the inshore and offshore components, defined at § 675.2 of this part, is authorized from January 1 until noon, A.l.t., April 15, and from noon, A.l.t., August 15 through the end of the fishing year. Directed fishing for pollock under the Western Alaska Community Development Quota Program at § 675.27 of this part is authorized from January 1 through the end of the fishing year, subject to other provisions of this part.

[FR Doc. 93–7510 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 61
Thursday, April 1, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Notice of Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

DATES: Friday, April 23, 1993 at 9 a.m.

LOCATION: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

FOR FURTHER INFORMATION CONTACT: Kevin L. Jessar, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

SUPPLEMENTARY INFORMATION: The Committee will meet to further discuss a report by Jerry Mashaw on improving the environment of agency rulemaking. Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 25, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–7474 Filed 3–31–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Invitation To Serve On Federal Grain Inspection Service Advisory Committee

Under authority of section 20 of the United States Grain Standards Act (Act), the Secretary of Agriculture established the Federal Grain Inspection Service (FGIS) Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the FGIS Administrator on implementation of the Act. Public Law 100–518 extended the authority for the Advisory Committee through September 30, 1993.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members and four alternative members whose terms expire in April 1993.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: David R. Galliart, Acting Administrator, FGIS, Room 1094–S, P.O. Box 96454, Washington, DC 20090–6454, in writing and request Form AD–755, which must be completed and submitted to the Administrator at the above address not later than June 1, 1993.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Dated: March 26, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–7602 Filed 3–31–93; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Newberry National Monument Advisory Council Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Commission meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on April 15 and 16 at Lava Lands Visitor Center, 10 miles south of Bend, Oregon, just off Highway 97. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. In the event of bad weather, the meeting will move to the Bend/Fort Rock Ranger District Office, 1230 NE. 3rd. St. in Bend. Agenda items to be covered include: issues and alternatives for management, public involvement, and desired future condition for the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE. 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: March 22, 1993.

Sally Collins,

Deputy Forest Supervisor, Deschutes National Forest.

[FR Doc. 93–7347 Filed 3–31–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Toby Tubby Creek Watershed, MS; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not

being prepared for Toby Tubby Creek Watershed, Lafayette County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, suite 1321, Dr. A. H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965–5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project plan is for urban flood protection and stabilization of existing channels in the predominantly urban portion of the watershed. The planned works of improvement include approximately 2.5 miles of rock lined urban channel, six bridge/culvert replacements, rehabilitation of two floodwater retarding structures and installation of land treatment measures.

Planned measures will be installed by the Soil Conservation Service as a component of the Yazoo Basin Demonstration Erosion Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The Watershed Plan and Environmental Assessment is on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: March 18, 1993.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

[FR Doc. 93–7565 Filed 3–31–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: March 25, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) restitution payments	45.6¢/lb.	45.6¢/lb.
Canada	Export assistance on certain types of cheese	27.3¢/lb.	27.3¢/lb.
Denmark	EC restitution payments	57.4¢/lb.	57.4¢/lb.
Finland	Export subsidy	123.9¢/lb.	123.9¢/lb.
France	EC restitution payments	59.9¢/lb.	59.9¢/lb.
Germany	EC restitution payments	56.6¢/lb.	56.6¢/lb.
Greece	EC restitution payments	63.5¢/lb.	63.5¢/lb.
Ireland	EC restitution payments	62.1¢/lb.	62.1¢/lb.
Italy	EC restitution payments	59.3¢/lb.	59.3¢/lb.
Luxembourg	EC restitution payments	45.6¢/lb.	45.6¢/lb.
Netherlands	EC restitution payments	47.8¢/lb.	47.8¢/lb.
Norway	Indirect (milk) subsidy	17.5¢/lb.	17.5¢/lb.
	Consumer subsidy	38.9¢/lb.	38.9¢/lb.
Portugal	EC restitution payments	56.4¢/lb.	56.4¢/lb.
Spain	EC restitution payments	43.6¢/lb.	43.6¢/lb.
Switzerland	Deficiency payments	43.8¢/lb.	43.8¢/lb.
		168.1¢/lb.	168.1¢/lb.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
U.K.	EC restitution payments	39.7¢/lb.	39.7¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 93–7461 Filed 3–31–93; 8:45 am]
BILLING CODE 3510–DS–M

[C–333–601]

Certain Fresh Cut Flowers from Peru; Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain fresh cut flowers from Peru. Interested parties who object to this revocation must submit their comments in writing not later than April 30, 1993.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Tamara Markowitz, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain fresh cut flowers from Peru (52 FR 13491). The Department has not received a request to conduct an administrative review of this countervailing duty order for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than April 30, 1993, interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by April 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: March 26, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–7460 Filed 3–31–93; 8:45 am]
BILLING CODE 3510–DS–P

[C–583–604]

Stainless Steel Cooking Ware From Taiwan; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on stainless steel cooking ware from Taiwan.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Lorenza Olivas, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–0983 or 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1993, the Department of Commerce ("the Department") published in the **Federal Register** (58 FR 85) its intent to revoke the countervailing duty order on stainless steel cooking ware from Taiwan. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On January 27, 1993, Farberware Inc., an interested party and a domestic producer of the subject merchandise, objected to the intended revocation and, on January 28, 1993, the Fair Trade Committee of the Cookware Manufacturers Association, a trade association representing the interests of a majority of stainless steel cookware producers, also objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: March 25, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–7462 Filed 3–31–93; 8:45 am]
BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology, U.S. Department of Commerce, is contemplating the grant of a field of use

exclusive license in the United States to practice the invention embodied in U.S. Patent Application 07/917,426, titled, "Liposome Immunoanalysis" to Paracelsian Inc., having a place of business in Ithaca, New York. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, room B–256, Gaithersburg, MD 20852.

SUPPLEMENTARY INFORMATION: The prospective field of use exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective field of use exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application 07/917,426 relates to the use of liposomes in an immunoanalysis method with a flow injection analysis system. This application describes a method of immunoanalysis combining immobilized immunochemistry with flow injection analysis and employing liposomes as carriers of detectable reagents. The liposomes are modified on their surface with analytical reagents and carry in their internal volume a very large number of fluorescent or electroactive molecules.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 57, No. 226 (November 23, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: March 25, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93–7585 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council), and its Scientific and Statistical Committee (SSC), Advisory Panel (AP) and Comprehensive Planning Committee (CPC), will meet during the week of April 19, 1993, at the Hilton Hotel, Anchorage, AK.

The SSC, AP and CPC will all begin meeting at 1 p.m. on April 19. The Council's Ad Hoc Observer Committee will meet at 1 p.m. on April 20. The plenary session of the Council will begin at 8 a.m. on April 21 and continue through the week until the agenda is complete.

The Council will consider and may take action on the following agenda subjects:

(1) Reports by the National Marine Fisheries Service, the Alaska Department of Fish and Game, and the United States Coast Guard;

(2) A preliminary review of scallop management measures and plan;

(3) A legislative update and review of reauthorization issues for the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Marine Mammal Protection Act, and the Endangered Species Act;

(4) Report from the Comprehensive Planning Committee on progress in developing alternatives for analysis;

(5) Report on current crab management measures, discussion of need for changes and appropriate action;

(6) Report on scope of observer information and its confidentiality;

(7) Discussion and clarification of implementation dates for the Sablefish/Halibut Individual Fishing Quota program and its associated Community Development Quota (CDQ) program;

(8) Status report on 1992–1993 pollock CDQ operations and on progress on a CDQ prohibited species catch amendment;

(9) Final review and approval of a Bering Sea/Aleutian Islands (BSAI) groundfish plan amendment with proposed salmon bycatch measures;

(10) Initial review of regulatory amendments, including proposals to: (a) Adjust rockfish directed fishing standards to discourage "topping off"; (b) trawl mesh regulations; (c) framework opening date for the BSAI pollock 'A' Season; and (d) total weight measurement alternatives;

(11) Final review of a groundfish regulatory amendment to add the definition of legal gears in the groundfish plans;

(12) Preliminary review of the following groundfish plan amendment proposals:

(a) Salmon bycatch vessel incentive program in the BSAI; (b) add pelagic gear to other trawl prohibitions around Kodiak Island; (c) rebuilding plans for rockfish. Associated with this topic is reconsideration of Pacific ocean perch acceptable biological catch and total allowable catch specifications in Gulf of Alaska for 1993 that were set last December; (d) preferential and seasonal allocations of Pacific cod; and (e) establish Atka mackerel as a separate target species in the Gulf of Alaska;

(13) Status reports and/or review of initial analyses for a Pribilof Island trawl closure and a ban on night trawling;

(14) Review current staff tasking.

In addition to the listed meetings, the Council's Enforcement Committee will meet sometime during the week. Other committees and workgroups may also meet during the week. All meetings are open to the public with the exception of a Council Executive session scheduled for noon on April 22, to receive reports on litigation, international affairs, and personnel matters.

The Council will also review 1993–1994 salmon fishery management for consistency with the Fishery Management Plan for the High Sea Salmon Fishery off the Coast of Alaska, the Magnuson Act, the Pacific Salmon Treaty Act, and other applicable law, and take action as necessary to ensure consistency. The National Marine Fisheries Service and State of Alaska will present a plan for management of the Alaska salmon fisheries, that includes recommended harvest levels for directed troll fisheries. They will seek Council recommendations for Secretarial approval.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271–2809.

Dated: March 26, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7507 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team will meet on the dates and at the locations listed below to continue preparation of the coastal pelagic species fishery management plan. Meetings in La Jolla will be in the small conference room at the National Marine Fisheries Service, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA. Meetings in Long Beach will be at the California

Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

Location, time, and date

Long Beach, 10 a.m., April 7, 1993
La Jolla, 10 a.m., April 21, 1993
Long Beach, 10 a.m., May 5, 1993
La Jolla, 10 a.m., May 19, 1993

For more information or for persons wishing to attend, please contact Larry Jacobson on (619) 546–7117 or Patricia Wolf on (310) 590–5175 prior to the date listed herein to confirm that meeting dates and locations have not been changed.

Dated: March 26, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7508 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for a scientific research permit to take marine mammals (P771#67).

Notice is hereby given that the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Building 4, Seattle, WA 98115, has applied in due form for a Permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Applicant seeks authorization to conduct several studies on fur seals (*Callorhinus ursinus*) over a five-year period on rookeries in the Bering Sea and eastern North Pacific Ocean. This research would entail: Shear marking of up to 60,000 pups; collection of tooth samples from up to 500 dead pups and 400 dead adults; collection of scats; capture, weighing, and measuring of up to 4400 pups, of which up to 300 may be tagged and up to 440 may be swab sampled. Additionally, up to 20 pups, 50 adult females, and 50 sub-adult males may be captured, flipper tagged, and instrumented with radio/satellite tags. Up to 222,720 fur seals and 3500 California sea lions (*Zalophus californianus*) per year may be harassed incidental to census activities and the other research activities outlined above. Some of these animals may be harassed more than once during the course of these activities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data, views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700–Building 1, Seattle, WA 98115–0070, (206/526–6150);

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016).

Dated: March 25, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–7511 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch no agreement has been reached on a mutually satisfactory solution on Categories 350/650 and 447, the United States Government has decided to control imports in these categories for the prorated period beginning on March 30, 1993 and extending through June 30, 1993.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Indonesia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 24597, published on June 10, 1992; and 58 FR 5362, published on January 21, 1993.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 26, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the

Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 30, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Indonesia and exported during the period beginning on March 30, 1993 and extending through June 30, 1993, in excess of the following limits:

Category	Restraint limit [1]
350/650	23,328 dozen.
447	3,679 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 29, 1993.

Textile products in Categories 350, 650 and 447 which have been exported to the United States on and after July 1, 1992 shall remain subject to the Group II limit (Categories 350 and 650), and its subgroup (Category 447), established for the period July 1, 1992 through June 30, 1993.

Imports charged to these category limits for the ninety-day period which began on December 30, 1992 and extended through March 29, 1993, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–7540 Filed 3–31–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Board for Ada; Meeting

AGENCY: DOD.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Federal Advisory Board for Ada (Ada Board) will be held April 15 and 16, 1993 at the Institute for Defense Analyses, 2001 N. Beauregard Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland 20706, (703) 685–1477.

Dated: March 29, 1993.

L.M. Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 93–7539 Filed 3–31–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on GPS Integrity and Denial will meet from 8 a.m. to 5 p.m. on 26–27 April 1993 at the ANSER Corporation, 1215 Jefferson-Davis Highway, Arlington, VA.

The purpose of this meeting is to receive information briefings, conduct a working session, and initiate report writing. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–7571 Filed 3–31–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

United States Military Academy, Board of Visitors; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 6 to 8 May 1993.

Place of Meeting: West Point, New York.

Start Time of Meeting: 8:00 a.m.

Proposed Agenda: Report on Annual Program Review; Report on Infrastructure Revitalization.

All proceedings are open. For further information, contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996–5000, (914) 938–5870.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–7566 Filed 3–31–93; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers. DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGL's) to all interested parties. RGL's are used by the Corps Headquarters as a means to transmit guidance on the permit program (33 CFR Parts 320–330) to its division and district engineers. Each future RGL will be published in the Notice Section of the **Federal Register** as a means to insure the widest dissemination of this information while reducing costs to the Federal Government. The Corps no longer maintains a mailing list to furnish copies of the RGL's to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1783.

SUPPLEMENTARY INFORMATION: RGL's were developed by the Corps of Engineers as a system to organize and track written guidance issued to its field agencies. RGL's are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another Agency's regulations which affect the permit program. RGL's are used only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices. RGL's are sequentially numbered and expire on a specified date. After a RGL's expiration date has passed, it no longer constitutes mandatory guidance for Corps district and division offices. Nevertheless, many expired RGL's still provide useful, non-mandatory guidance which Corps field offices have the discretion to follow. On the other hand, some RGL's have been superseded by specific provisions of subsequently issued regulations or RGL's. In addition, other expired RGL's, in whole or in part, may not be consistent with current Corps policy. The Corps incorporates most of the guidance provided by RGL's whenever it revises its permit regulations.

There were five RGL's issued by the Corps during 1992, and all were published in the Notice Section of the **Federal Register** upon issuance. We are hereby publishing all current RGL's, beginning with RGL 90–6 (earlier RGL's issued in 1990 have expired), and ending with RGL 92–5. We will

continue to publish each RGL in the Notice Section of the Federal Register upon issuance and in early 1994, we will again publish the complete list of all current RGL's.

Dated: March 23, 1993.

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

Regulatory Guidance Letter (RGL 90–6)

RGL 90–6: Date: August 14, 1990.
Expires: December 31, 1993.
Subject: Expiration Dates for Wetlands Jurisdictional Delineations.

1. Recently, questions have been raised regarding the length of time that wetlands jurisdictional delineations remain valid. In light of the need for national consistency in this area, the guidance in paragraph 4(a)-(d) below is provided. This guidance is subject to the provisions in paragraphs 5, 6, and 7.

2. Since wetlands are affected over time by both natural and manmade activities, we can expect local changes in wetland boundaries. As such, wetlands jurisdictional delineations will not remain valid for an indefinite period of time.

3. The purpose of this guidance is to provide a consistent national approach to reevaluating wetlands delineations. This provides greater certainty to the regulated public and ensures their ability to rely upon wetlands jurisdictional delineations for a definite period of time.

4. (a) Written wetlands jurisdictional delineations made before the effective date of this guidance, without a specific time limit imposed in the Corps written delineation, will remain valid for a period of two years from the effective date of this Regulatory Guidance Letter (RGL).

(b) Written wetlands jurisdictional delineations made before the effective date of this guidance, with a specified time limit imposed in the Corps written delineation, will be valid until the date specified.

(c) Oral delineations (i.e., not verified in writing by the Corps) are no longer valid as of the effective date of this RGL.

(d) As specified in the 20 March 1989 Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions Under Section 404(f) of the Clean Water Act (MOA), all wetlands jurisdictional delineations (including those prepared by the project proponent or consultant and verified by the Corps) shall be put in writing. Generally, this should be in the form of a letter to the project proponent. The Corps letter shall include a statement that the wetlands jurisdictional delineation is valid for a period of three years from the date of the letter unless new information warrants revision of the delineation before the expiration date. Longer periods, not to exceed five years, may be provided where the nature and duration of a proposed project so warrant. The delineation should be supported by proper documentation. Generally, the project proponent should be given the opportunity to complete the delineation and provide the supporting documentation subject to the Corps verification. However, the Corps will complete the delineation and documentation at the project proponent's request, consistent with other work priorities.

5. The guidance in paragraph 4(a)-(b) above does not apply to completed permit applications [33 CFR 325.1(d)(9)] received before the effective date of this RGL, or where the applicant can fully demonstrate that substantial resources have been expended or committed based on a previous Corps jurisdictional delineation (e.g., final engineering design work, contractual commitments for construction, or purchase or long term leasing of property will, in most cases, be considered a substantial commitment of resources). However, district engineers cannot rely upon the expenditure or commitment of substantial resources to validate an otherwise expired delineation for more than five years from the expiration dates noted in paragraph 4(a)-(b). At the end of the five year period a new delineation would be required. In certain rare cases, it may be appropriate to honor a previous oral wetlands delineation when the applicant can fully demonstrate a substantial expenditure or commitment of resources. However, the presumption is that oral delineations are not valid and acceptance of such must be based on clear evidence and equities of the particular case. This determination is left to the discretion of the district engineer.

6. When making wetlands jurisdictional delineations it is very important to have complete and accurate documentation which substantiates the Corps decision (e.g., data sheets, etc.) Documentation must allow a reasonably accurate replication of the delineation at a future date. In this regard, documentation will normally include information such as data sheets, maps, sketches, and in some cases, surveys.

7. This guidance does not alter or supersede any provisions of law, regulations or any interagency agreement between Army and EPA. Further, this guidance does not impair the Corps discretion to revise wetlands jurisdictional delineations where new information so warrants.

8. Each district shall issue a public notice on this guidance no later than 1 September 1990. The public notice shall contain the full text of this RGL.

9. This guidance expires on 31 December 1993 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 90–7)

RGL 90–7: Date: September 26, 1990.
Expires: December 31, 1993.
Subject: Clarification of the Phrase "Normal Circumstances" as it pertains to Cropped Wetlands.

1. The purpose of this Regulatory Guidance Letter (RGL) is to clarify the concept of "normal circumstances" as currently used in the Army Corps of Engineers definition of wetlands (33 CFR 328.3(b)), with respect to cropped wetlands.

2. Since 1977, the Corps and the Environmental Protection Agency (EPA) have defined wetlands as:

> "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions * * *" (33 CFR 328.3(b)) (emphasis added).

While "normal circumstances" has not been defined by regulation, the Corps previously provided guidance on this subject in two expired "normal circumstances" RGL's (RGL's 82–2 and 86–9). These RGL's did not specifically deal with the issue of wetland conversion for purposes of crop production.

3. When the Corps adopted the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Manual) on 10 January 1989, the Corps chose to define "normal circumstances" in a manner consistent with the definition used by the Soil Conservation Service (SCS) in its administration of the Swampbuster provisions of the Food Security Act of 1985 (FSA). Both the SCS and the Manual interpret "normal circumstances" as the soil and hydrologic conditions that are normally

present, without regard to whether the vegetation has been removed [7 CFR 12.31(b)(2)(i)] [Manual page 71].

4. The primary consideration in determining whether a disturbed area qualifies as a section 404 wetland under "normal" circumstances" involves an evaluation of the extent and relative permanence of the physical alteration of wetlands hydrology and hydrophtyic vegetation. In addition, consideration is given to the purpose and cause of the physical alterations to hydrology and vegetation. For example, we have always maintained that areas where individuals have destroyed hydrophytic vegetation in an attempt to eliminate the regulatory requirements of section 404 remain part of the overall aquatic system, and are subject to regulation under section 404. In such a case, where the Corps can determine or reasonably infer that the purpose of the physical disturbance to hydrophytic vegetation was to avoid regulation, the Corps will continue to assert section 404 jurisdiction.

5. The following guidance is provided regarding how the concept of "normal circumstances" applies to areas that are in agricultural crop production:

a. "Prior converted cropland" is defined by the SCS (Section 512.15 of the National Food Security Act Manual, August 1988) as wetlands which were both manipulated (drained or otherwise physically altered to remove excess water from the land) and cropped before 23 December 1985, to the extent that they no longer exhibit important wetland values. Specifically, prior converted cropland is inundated for no more than 14 consecutive days during the growing season. Prior converted cropland generally does not include pothole or playa wetlands. In addition, wetlands that are seasonally flooded or ponded for 15 or more consecutive days during the growing season are not considered prior converted cropland.

b. "Farmed wetlands" are wetlands which were both manipulated and cropped before 23 December 1985, but which continue to exhibit important wetlands values. Specifically, farmed wetlands include cropped potholes, playas, and areas with 15 or more consecutive days (or 10 percent of the growing season, whichever is less) of inundation during the growing season.

c. The definition of "normal circumstances" found at page 71 of the Manual is based upon the premise that for certain altered wetlands, even though the vegetation has been removed by croping, the basic soil and hydrological characteristics remain to the extent that hydrophytic vegetation would return if the cropping ceased. This assumption is valid for "farmed wetlands" and as such these areas are subject to regulation under section 404.

d. In contrast to "farmed wetlands", "prior converted croplands" generally have been subject to such extensive and relatively permanent physical hydrological modifications and alteration of hydrophytic vegetation that the resultant cropland constitutes the "normal circumstances" for purposes of section 404 jurisdiction. Consequently, the "normal circumstances" of prior converted croplands generally do not support a "prevalence of hydrophytic vegetation" and as such are not subject to regulation under section 404. In addition, our experience and professional judgment lead us to conclude that because of the magnitude of hydrological alterations that have most often occurred on prior converted cropland, such cropland meets, minimally if at all, the Manual's hydrology criteria.

e. If prior converted cropland is abandoned (512.17 National Food Security Act Manual as amended, June 1990) and wetland conditions return, then the area will be subject to regulation under section 404. An area will be considered abandoned if for five consecutive years there has been no cropping, management or maintenance activities related to agricultural production. In this case, positive indicators of all mandatory wetlands criteria, including hydrophytic vegetation, must be observed.

f. For the purposes of section 404, the final determination of whether an area is a wetland under normal circumstances will be made pursuant to the 19 January 1989 Army/EPA Memorandum of Agreement on geographic jurisdiction. For those cropped areas that have previously been designated as "prior converted cropland" or "farmed wetland" by the SCS, the Corps will rely upon such a designation to the extent possible. For those cropped areas that have not been designated "prior converted cropland" or "farmed wetland" by the SCS, the Corps will consult with SCS staff and make appropriate use of SCS data in making a determination of "normal circumstances" for section 404 purposes. Although every effort should be made at the field level to resolve Corps/SCS differences, in opinion on the proper designation of cropped wetlands, the Corps will make the final determination of section 404 jurisdiction. However, in order to monitor implementation of this RGL, cases where the Corps and SCS fail to agree on designation of prior converted cropland or farmed wetlands should be documented and a copy of the documentation forwarded to CECW–OR.

6. This policy is applicable to section 404 of the Clean Water Act only.

7. This guidance expires 31 December 1993 unless sooner revised or rescinded.

For the Commander.

Stanley G. Genega,

Major General(P), USA, Director of Civil Works.

Regulatory Guidance Letter (RGL 90–8)

RGL 90–8: Date: December 14, 1990.
Expires: December 31, 1993.
Subject: Applicability of section 404 to Pilings.

1. The purpose of this Regulatory Guidance Letter (RGL) is to provide additional guidance on the applicability of section 404 to certain categories of projects constructed with pilings in waters of the United States. This RGL represents a clarification and revision to RGL 88–14, which addresses this same subject. Therefore, effective on the date of this RGL, RGL 88–14 is rescinded.

2. For some years, the Army Corps of Engineers, as a matter of policy, has taken the position that pilings do not ordinarily constitute fill material and that the placement of pilings do not ordinarily constitute a discharge of fill material under the Clean Water Act (CWA; see RGL 88–14). Under RGL 88–14, however, the Corps recognized that "in the situation where piles are used in a manner essentially equivalent to file material in effect, purpose and function they should be treated as fill material under the section 404 program." Historically, pilings were generally used for traditional pile-supported structures such as docks and bridges where the effect, purpose and function of the pilings were not to replace an aquatic area with dry land or to change the bottom elevation of a waterbody. More recently, however, circumstances have changed, with pilings being used as a substitute for fill material. That is, there is increasing reliance on construction methods involving the use of pilings in place of fill, often at additional cost, in order to avoid regulation under the CWA section 404. The intent of this RGL is to clarify the application of requirements in the existing Corps regulations to these new circumstances involving the use of pilings in waters of the United States.

3. The Corps regulatory definitions of "fill material" and "discharge of fill material" (33 CFR 323.2 (e) and (f)) are clearly broad enough to capture the placement of pilings in waters of the United States as a discharge that could be regulated in certain specific circumstances. Projects involving

pilings meet the definition of "fill" when they have the physical effect or functional use and effect of fill; that is, pilings may be regulated when they constitute the equivalent "of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody." As was explained in RGL 88–14, pilings may have this function or effect when they are placed so as to facilitate sedimentation, or are placed so densely that they in effect displace a substantial percentage of the water in the project area.

In addition, pilings have the physical effect or functional use of fill, and will be regulated as fill, in circumstances where a structure is placed on top of the pilings in such a manner as to constitute the functional equivalent of fill; or where pilings are placed for the same basic purpose as fill; or where pilings have essentially the same effects as fill (i.e., replaces an aquatic area with dry land or changes the bottom elevation of a waterbody). Similarly, the placement of pilings in waters of the United States may, in certain specific circumstances, be regulated as a "discharge of fill material" under the current regulations.

4. Therefore, based on current regulations, the placement of pilings in waters of the United States will require authorization under section 404 when such placement is used in a manner essentially equivalent to a discharge of fill material in physical effect or functional use and effect. Examples include, but are not limited to, the following activities in waters of the United States:

a. Physical Effect of Fill: Projects that in effect replace an aquatic area or change the bottom elevation of a waterbody as a result of the placement of pilings that are so closely spaced that sedimentation rates are increased, or the pilings themselves essentially replace the bottom, will be regulated under CWA Section 404. This circumstance would include pilings place in waters of the United States for dams, dikes, other structures utilizing densely spaced pilings or as a foundation for large structures.

b. Functional Use and Effect of Fill: Construction projects will be regulated under CWA Section 404 where pilings serve essentially the same functional use as a solid fill foundation, and where the project would result in essentially the same effects as fill (e.g., alter flow or circulation of the waters, bring the area into a new, non-aquatic use, or significantly alter or eliminate aquatic functions and values). Regulated activities include the placement of pilings to facilitate the construction of office and industrial developments, parking structures, restaurants, stores, hotels, multi-family housing projects and similar structures in waters of the United States.

5. Placement of pilings in waters of the United States will not, as in the past, be regulated under section 404 in circumstances involving linear projects such as bridges, elevated walkways, or powerline structures, since pile-supported structures have traditionally been used in these circumstances to cross waters of the United States, and have not substantially harmed or eliminated aquatic functions and values. Similarly, placement of pilings will not be regulated under section 404 in circumstances that involve structures that have traditionally been constructed on pilings; examples are piers, boathouses, wharves, marinas, lighthouses and individual houses built on stilts solely to reduce the potential of flooding (e.g., beach houses where road access is on uplands, but the house may be located in a low area necessitating construction on stilts).

6. We believe that it is appropriate to regulate projects placed on pilings, as provided for in paragraph 4. above, because of the effect the projects have on the aquatic environment and because they are essentially equivalent to solid-fill supported projects in purpose, effect and/or function. Moreover, we have noted an increasing incidence of cases where large-scale construction projects originally, and typically, designed to be built on fill material have been re-designed for pile supports solely for the purpose of evading section 404 regulation.

7. For any proposed pile-supported project where the proponent has relied on earlier Corps guidance to conclude reasonably that a project is not covered by section 404, and has committed substantial resources to the degree that it would be unreasonable and inequitable for the Corps to assert section 404 jurisdiction based on this RGL, the District should not assert section 404 jurisdiction. In cases where a project proponent has been provided a specific answer by the Corps, in writing, that a pile-supported structure will not require a section 404 permit, the District will not require a section 404 permit.

8. As with all determinations regarding whether a proposed activity requires a section 404 permit, the Corps is solely responsible for the decision.

9. This guidance expires 31 December 1993 unless sooner revised or rescinded.

For the Commander.

Stanley G. Genega,

Major General (P), USA, Director of Civil Works.

Regulatory Guidance Letter (RGL 90–9)

RGL 90–9: Date: December 17, 1990.
Expires: December 31, 1993.
Subject: Wetlands Enforcement Initiative.

1. Enclosed is a joint Environmental Protection Agency/Army memorandum which establishes a wetlands enforcement initiative, and provides guidance on judicial civil and criminal enforcement priorities.

2. The memorandum describes the level of participation and schedule that will be followed during the initiative. As stated in the memo, Corps Headquarters will not be involved in decisions about filing suits, but will select the Corps cases for the initiative.

3. The guidance on priorities will be followed as standard operating practice for judicial civil and criminal cases. The guidance was developed to promote consistency in the manner in which the provisions of the Clean Water Act are enforced. Those enforcement actions outside the purview of the Clean Water Act (i.e., Section 10 only cases) should continue, and are to be included in the prioritization process using the general concepts provided in the guidance.

4. This guidance expires on 31 December 1993 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum

December 12, 1990.
Subject: Wetlands Enforcement Initiative.
From: James M. Strock, Assistant Administrator for Enforcement.
LaJuana S. Wilcher, Assistant Administrator for Water.
G. Edward Dickey, Acting Assistant Secretary of the Army (Civil Works).
To: Regional Administrators, Director of Civil Works.

We are seeking the participation of EPA Regions and Corps Districts in an enforcement initiative to protect wetlands. The Wetlands Enforcement Initiative is designed to emphasize the Federal government's commitment to Clean Water Act Section 404 enforcement, to generally educate the regulated community and the public at large about the requirements of the Section 404 program and the importance of wetlands, and to

publicize Clean Water Act violations involving the unauthorized discharge of dredged or fill material. The EPA and the Department of the Army have placed high priority on protecting this Nation's wetlands and recognize that an active Section 404 enforcement program is one important wetlands protection tool.

The Wetlands Enforcement Initiative will be similar to EPA's FY89 municipal pretreatment enforcement initiative under the Clean Water Act. That initiative concluded with the filing of several important cases and a major Agency press release and press conference. We are proposing to publicize the Wetlands Enforcement Initiative in two phases. The first "wave" of publicity is planned for April 1991. It will announce the Initiative and highlight appropriate Section 404 enforcement actions initiated or resolved over the previous 12 months. We also hope to file a "cluster" of Section 404 cases at that time if such a filing does not unduly interfere with the normal flow of cases.

By alerting the regulated community, as well as the general public, to the Federal government's commitment to Section 404 enforcement, this Spring announcement is also intended to provide an early deterrent to potential violations which might otherwise occur during the 1991 Spring and Summer construction season. The second "wave" of publicity is scheduled for October 1991 and will highlight appropriate Section 404 enforcement actions initiated or resolved during FY91, including cases resulting from investigations conducted during the Spring field season. We also hope to have a second "cluster" filing at that time. Each announcement will consist of a joint EPA/Army/Department of Justice (DOJ) press release and press conference. In the press release, we will acknowledge Section 404 administrative compliance orders, cease and desist orders, administrative penalty orders and judicial cases initiated or resolved by the Regions and Districts during the covered time period. At the press conferences, we will highlight those administrative and judicial cases that best serve to illustrate the Initiative's goals.

The Wetlands Enforcement Initiative will include cases involving both unpermitted discharges of dredged or fill material into wetlands and discharges in violation of the conditions in a Section 404 permit. Regions and Districts will have flexibility to decide which enforcement actions are most appropriate to support the Initiative. In making enforcement decisions, Regions and Districts should consider: The "EPA/Army Guidance on Judicial Civil and Criminal Enforcement Priorities;" the "Clean Water Act Section 404 Civil Administrative Penalty Settlement Guidance and Appendices;" the Clean Water Act Section 404 Enforcement Memorandum of Agreement; and the additional guidance discussed below, and should focus on the most significant violators/violations in each of the Regions or Districts.

While this Initiative focuses on wetlands protection, Section 404 enforcement actions involving unpermitted discharges and violations of 404 permit conditions to other waters of the United States can be included. We suggest, however, that, where possible, the Regions and Districts focus on enforcement actions which have one or more of the following elements:

—a discharge into a wetland that is identified on the Region's Priority Wetland List or is an important and/or threatened area in the Region or District;

—a case which will have high deterrence value in the Region, District or Nation, e.g., a particular industry, business or land development entity which engaged in unauthorized discharges of dredged or fill material.

—a discharge by a repeat or flagrant violator, e.g., someone who engaged in an unauthorized discharge activity after being denied a Section 404 permit or withdrawing a permit application for such activity.

The above list is not intended to exclude other cases of importance.

As noted above, the Wetlands Enforcement Initiative will consist of cease and desist orders, administrative compliance orders, administrative penalty actions and civil judicial referrals. In addition, appropriate criminal actions, which have been approved in accordance with each agency's procedures for criminal referrals, may also be included in the press announcements. Because Regions and Districts follow different procedures in initiating enforcement responses, we have provided two separate schedules for implementing this Initiative.

EPA Regions

We propose that the Regions issue Section 309(a) administrative compliance orders and Section 309(g) administrative penalty complaints on the schedule described below. Administrative compliance orders and administrative penalty orders are not subject to Headquarters concurrence (with the exception of those Regions that have not fulfilled Headquarters concurrence requirements concerning the requisite number of Section 309(g) complaints and consent agreements). Headquarters will review Section 309(g) complaints and consent agreements, however, for the purpose of determining whether such orders should be highlighted in Initiative press activities.

We ask that the Regions submit case referrals by no later than February 15, 1991, for the April announcement and by August 1, 1991 for the October 1991 announcement. We do not intend, however, to delay the processing of referrals submitted earlier. Each Region should submit one or more civil judicial referrals and should also issue administrative compliance orders and administrative penalty orders as appropriate. After receipt of the referral packages, the Regions, Headquarters and DOJ, in consultation with the Army, will decide if suits should be filed simultaneously or in some other coordinated manner, as indicated in the following schedule:

1. Headquarters/Regional conference calls to discuss Call Letter. December 18, 1990.

2. Regions submit to Headquarters a list and brief description and schedule for candidate enforcement actions. January 8, 1991.

3. Headquarters/Regional conference call to discuss candidate cases and confirm schedules for candidate enforcement actions. January 22, 1991.

4. Deadline for Regions to submit referrals to Headquarters for April filing. February 15, 1991.

5. Deadline for Regions to issue administrative compliance orders, administrative consent orders and administrative penalty complaints (copies of issued compliance orders, consent orders and administrative penalty complaints should be supplied to Headquarters after issuance). March 23, 1991.

6. Headquarters completes coordination of national communications strategy with Regions, Army and DOJ for April announcement. April 1, 1991.

7. Likely judicial case filing dates. April 23, 1991.

8. Joint press release and/or joint press conference held. April 23, 1991.

9. Regions submit to Headquarters a list and brief description and schedule for candidate enforcement actions for October announcement. June 14, 1991.

10. Headquarters coordinates with Regions and confirms schedules for candidate enforcement actions. July 1, 1991.

11. Deadline for Regions to submit civil judicial referrals to Headquarters for October filing. August 1, 1991.

12. Deadline for Regions to issue administrative compliance orders, administrative consent orders and administrative penalty complaints (copies of issued compliance and consent orders and administrative penalty complaints should be supplied to Headquarters after issuance). September 13, 1991.

13. Headquarters completes coordination of national communications strategy with Regions, Corps and DOJ for October announcement. September 20, 1991.

14. Likely judicial case filing date. October 15, 1991.

15. Joint press release and/or joint press conference held. October 15, 1991.

We request that each Region complete the attached form on cases that are candidates for inclusion in the Wetlands Enforcement Initiative, and submit the forms to Hazel Groman of the Office of Wetlands Protection and Elyse DiBiagio-Wood of the Office of Enforcement by January 8, 1991 or June 14, 1991, as appropriate. Headquarters staff assigned to the Initiative and available to answer questions include Hazel Groman, OWP, FTS 475–8798, and Elyse DiBiagio-Wood, OE–Water, FTS 475–8187.

Corps District

Unlike EPA, Corps Headquarters will not participate in the decision as to which suits should be filed. The Initiative is not intended to affect ongoing Corps enforcement activities. Districts should continue to employ all enforcement options, as discussed in the attached joint guidance letter. For purposes of the Initiative, however, we ask that each District submit two planned or pending enforcement actions for each phase of the Initiative which, in the District's opinion, target particularly egregious violations. We will then decide which cases are proper candidates to be publicized at the joint press conference. The Districts should submit their actions in accordance with the following schedule:

1. Districts submit to Headquarters two planned or pending enforcement actions to be included in the April announcement. February 4, 1991.

2. Headquarters coordinates with Districts and confirms schedules for enforcement actions. March 5, 1991.

3. Headquarters completes coordination of national communications strategy with EPA and DOJ. April 1, 1991.

4. Joint press release and/or joint press conference. April 23, 1991.

5. Districts submit to Headquarters two planned or pending enforcement actions to be included in the October announcement. July 2, 1991.

6. Headquarters coordinates with Districts and confirms schedules for enforcement actions. August 20, 1991.

7. Headquarters completes coordination of national communications strategy with EPA and DOJ. September 20, 1991.

8. Joint press release and/or joint press conference. October 15, 1991.

We request that each District complete the attached form on cases that it believes should be publicized in the Enforcement Initiative, and submit the form, in duplicate, to Jack Chowning, HQUSACE, CECW–OR by February 4, 1991 and July 2, 1991. Headquarters staff available to answer questions regarding the Initiative include Jack Chowning, 272–1781, and Martin Cohen, HQUSACE, CECC–K, 272–0027.

We realize that the above schedule will require a large effort by Regional and District offices. However, we believe that the Initiative is critical to the priority goal of the agencies to protect wetlands, and greatly appreciate your continued support of the Initiative. We will make Headquarters personnel available to assist the Regions and Districts. Attachment

cc: Regional Counsels
Directors, Water Mgmt. Div., Regs. I, II, IV, V, VIII, IX and X
Directors, Env'l Services Div., Regs. III and VI
Ass't Regional Administrator, Policy and Management, Reg. VII
Margaret Strand, Chief, Environmental Defense Sec., DOJ
John Studt, Chief, Regulatory Branch, COE
Pat Alberico, OCE
Fred Stiehl, OE-Water
Dave Davis, OWP
Martin Cohen, Assistant Chief Counsel for Litigation, Office of the Chief Counsel, USACE

Environmental Protection Agency
United States Department of the Army

Guidance on Judicial Civil and Criminal Enforcement Priorities

Background

This document provides guidance to the Environmental Protection Agency (EPA) Regions and Army Corps of Engineers Districts on enforcement priorities for unauthorized discharges of dredged or fill material in waters of the United States in violation of section 301 of the Clean Water Act (CWA). Unauthorized discharges include both discharges that are unpermitted and discharges that violate permit terms or conditions.

The guidance enumerates factors enforcement personnel should consider when deciding whether to refer a case for judicial action.

By providing this guidance, EPA and the Army intend to encourage consistency in the manner in which we enforce the CWA's requirements nationally, protect the integrity of the section 404 regulatory program, and direct limited program resources in a manner that produces the most beneficial environmental results.

Options to address CWA violations include: No action, voluntary compliance, cease and desist orders, EPA administrative compliance orders, interim measures designed to protect the aquatic ecosystem from further damage, after-the-fact permits, administrative penalty orders, and civil and criminal judicial actions. This guidance discusses priorities for civil and criminal judicial actions only. By defining priorities for judicial actions, EPA and the Army do not intend to suggest that the agencies limit their use of these or any other enforcement options. In fact, the agencies should continue the use of all enforcement options whether in conjunction with or instead of civil and criminal proceedings.

Civil and Criminal Enforcement Priorities

A. Civil Judicial Cases

Decisions on whether to refer a civil action to the Department of Justice must be on a case-by-case basis, and the absence or presence of one or more of the following factors should not necessarily dictate a decision regarding a particular case. Nevertheless, enforcement personnel should consider the following factors when deciding whether to refer a civil action:

1. *Quality of the waters affected.* Enforcement personnel should determine, to the extent practicable, what functions and values the waters performed prior to the unauthorized discharge. Regions and Districts should give priority to violations that affect wetlands and other special aquatic sites.

2. *Impact of the discharge.* Enforcement personnel should determine, to the extent practicable, the amount and content of the discharge, the number of acres effected by the discharge, and the discharge's direct and indirect effects. Priority should be given to those discharges that have an especially deleterious effect on wetlands functions or values, that affect a large area of wetlands or other waters, or that are widespread and have significant cumulative effects. These would include unauthorized discharges with significant adverse effects on aquatic

ecosystem diversity, productivity, and stability such as loss of fish or wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy. Judicial enforcement action would normally be appropriate, for example, for unauthorized discharges that cause or contribute to violations of state water quality standards; violate any applicable toxic effluent standard or prohibition under section 307 of the CWA; or jeopardize endangered or threatened species and their designated critical habitat. Judicial enforcement action should be considered for any case where unauthorized discharges did or may cause or contribute to significant adverse environmental impacts.

3. *Culpability of violator.* Enforcement personnel should consider the violator's prior compliance history when determining what type of enforcement action is appropriate. Priority should be given to violators with a history of noncompliance and those who commit knowing violations. The violator's experience with the program and whether he or she had been the subject of previous enforcement actions are considerations. In general, repeat violators warrant judicial action, regardless of whether the violations occurred on the same site or on different sites. Repeat violation, however, are not a prerequisite for referring a civil case to the Department of Justice.

4. *Deterrence value.* Enforcement personnel should consider the extent to which the violation is flagrant, visible, and well-publicized. If there are a number of violations within a particular geographic area or industry, civil judicial action against one or more of the violators can provide excellent deterrence. The agencies should refer for civil action a case against any violator whose actions, if left unpunished, would have the effect of jeopardizing the integrity of the section 404 program in the area where the violation occurred.

5. *Benefit from the violation.* Enforcement personnel should consider the economic benefit a violator derived from the unauthorized discharge. Because administrative penalties are limited, when a violator has obtained a significant economic benefit from the discharge, a civil judicial action may be the only enforcement option that can effectively recover that benefit.

6. *Equitable consideration.* In addition to the above five factors, the Regions and Districts will want to anticipate and evaluate the strength of any equitable considerations likely to be raised by potential defendants. Priority should be given to recent and ongoing violations. Regions and Districts should also take into account, as appropriate, when the Region and/or District learned of the violation, and whether timely administrative attempts to achieve compliance were unsuccessful and a civil referral is the only available means to obtain needed injunctive relief.

Another equitable consideration is whether the violator received misinformation from the federal government as to whether the discharge required a section 404 permit. Based on existing case law, the federal government can only rarely and in very limited circumstances be barred from enforcing its laws. At the same time, an important goal of federal enforcement, including section 404 enforcement, is fair and equitable treatment of the regulated community. As a result, the Regions and Districts will need to carefully consider the appropriateness of initiating a civil suit in cases where the violator may have reasonably relied on a federal official's misrepresentations regarding the need for a section 404 permit. This includes situations where the violator was led to believe that the activity did not constitute a discharge, that the discharge did not take place in waters of the United States, or that a general permit covered the discharge. When determining whether the violator's reliance was reasonable, enforcement personnel should assess such factors as whether the misrepresentations were made by EPA or the Corps, the two federal agencies charged with implementing the section 404 program, or another federal agency; whether the misrepresentations were communicated to the violator in writing or were merely oral statements; the extent of the violator's familiarity with the section 404 program; and whether the violator knew, should have known, or with reasonable diligence could have determined, that the representations were erroneous.

The first two factors listed above center upon the environmental effects of the violation. Special attention should be paid both to violations that damage large areas of wetlands and those that impair valuable wetlands, no matter what their size. The next three factors are intended to protect the integrity of the section 404 program by focusing enforcement priorities first on individuals or violations which show disdain for the law and on those who seek to benefit from circumvention of the law.

B. Criminal Cases

With regard to the discharge of dredged or fill material, section 309(c) of the CWA provides criminal penalties for four separate offenses. First, anyone who negligently violates section 301 (e.g., engaging in unauthorized discharges) or who negligently violates the requirements of a section 404 permit may be criminally liable. Second, anyone who knowingly violates section 301 or the requirements of a section 404 permit may also be subject to criminal liability. Third, any person who violates section 301 or the conditions of a section 404 permit and, in doing so, knowingly endangers another person may be subject to criminal penalties. Finally, section 309(c) provides criminal sanctions for persons who knowingly make false material statements regarding a section 404 permit.

In some instances a violation will involve circumstances which indicate that a criminal prosecution may be in order. Such circumstances should be underscored when the case is referred to the Department of Justice. Ultimately, Justice must exercise its discretion as to whether or not to proceed criminally in any case. If there is a possibility of criminal prosecution, field personnel should pay special attention to evidentiary matters such as sample preservation, content of statements to and from any potential defendant, good photographs, and chain of custody.

This document provides internal guidance for field personnel regarding the exercise of their enforcement discretion. Accordingly, this document creates no rights in third parties.

For the Environmental Protection Agency:

David G. Davis, 12/7/90,

Director, Office of Wetlands Protection.

Frederick F. Stiehl, 12/10/90,

Associate Enforcement Counsel for Water.

For the Department of the Army:

John P. Elmore, 2/12/90,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 91–1)

RGL 91–1: Date: December 31, 1991.
Expires: December 31, 1996.
Subject: Extensions of Time For Individual Permit Authorizations.

1. The purpose of this guidance is to provide clarification for District and Division offices relating to extensions of time for Department of the Army permits (See 33 CFR 325.6).

2. *General:* A permittee is informed of the time limit for completing an authorized activity by General Condition #1 of the standard permit form (ENG Form 1721). This condition states that a request for an extension of time should be submitted to the authorizing official at least one month prior to the expiration date. This request

should be in writing and should explain the basis of the request. The DE may consider an oral request from the permittee provided it is followed up with a written request prior to the expiration date. A request for an extension of time will usually be granted unless the DE determines that the time extension would be contrary to the public interest. The one month submittal requirement is a workload management time limit designed to prevent permittees from filing last minute time extension requests. Obviously, the one month period is not sufficient to make a final decision on all time extension requests that are processed in accordance with 33 CFR 325.2. It should be noted that a permittee may choose to request a time extension sooner than this (e.g., six months prior to the expiration date). While there is no formal time limit of this nature, a request for an extension of time should generally not be considered by the DE more than one year prior to the expiration date. A permit will automatically expire if an extension is not requested and granted prior to the applicable expiration date (See 33 CFR 325.6(d)).

3. *Requests for Time Extensions Prior to Expiration:* For requests of time extensions received prior to the expiration date, the DE should consider the following procedures if a decision on the request cannot be completed prior to the permit expiration date:

(a) The DE may grant an interim extension while a final decision is being made; or

(b) The DE may, when appropriate, suspend the permit at the same time that an interim time extension is granted, while a final decision is being made.

4. *Requests for Time Extensions After Expiration:* A time extension cannot be granted if a time extension request is received after the applicable time limit. In such cases, a new permit application must be processed, if the permittee wishes to pursue the work. However, the DE may consider expedited processing procedures when: (1) The request is received shortly (generally 30 days) after the expiration date, (2) the DE determines that there have been no substantial changes in the attendant circumstances since the original authorization was issued, and (3) the DE believes that the time extension would likely have been granted. Expedited processing procedures may include, but are not limited to, not requiring that a new application form be submitted or issuing a 15 day public notice.

5. This guidance expires 31 December 1996 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 92–1)

RGL 92–1: Date: May 13, 1992, *Expires:* December 31, 1997.

Subject: Federal Agencies Roles and Responsibilities.

1. *Purpose:* The purpose of this guidance is to clarify the Army Corps of Engineers leadership and decision-making role as "project manager" for the evaluation of permit applications pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. This guidance is also intended to encourage effective and efficient coordination among prospective permittees, the Corps, and the Federal resource agencies (i.e., Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS)). Implementation of this guidance will help to streamline the permit process by minimizing delays and ensuring more timely decisions, while providing a meaningful opportunity for substantive input from all Federal agencies.

2. *Background:* (a) The Department of the Army Regulatory Program must operate in an efficient manner in order to protect the aquatic environment and provide fair, equitable, and timely decisions to the regulated public. Clear leadership and a predictable decision-making framework will enhance the public acceptance of the program and allow the program to meet the important objective of effectively protecting the Nation's valuable aquatic resources.

(b) On August 9, 1991, the President announced a comprehensive plan for improving the protection of the Nation's wetlands. The plan seeks to balance two important objectives—the protection, restoration, and creation of wetlands and the need for sustained economic growth and development. The plan, which is designed to slow and eventually stop the net loss of wetlands, includes measures that will improve and streamline the current wetlands regulatory system. This Regulatory Guidance Letter is issued in accordance with the President's plan for protecting wetlands.

(c) The intent of this guidance is to express clearly that the Corps is the decision-maker and project manager for the Department of Army's Regulatory Program. The Corps will consider, to the maximum extent possible, all timely, project-related comments from other Federal agencies when making regulatory decisions. Furthermore, the Corps and relevant Federal agencies will maintain and improve as necessary their working relationships.

(d) The Federal resource agencies have reviewed and concurred with this guidance and have agreed to act in accordance with these provisions. While this guidance does not restrict or impair the exercise of legal authorities vested in the Federal resource agencies or States under the CWA or other statutes and regulations (e.g., EPA's authority under section 404(c), section 404(f), and CWA geographic jurisdiction and FWS/NMFS authorities under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA)), agency comments on Department of the Army permit applications must be consistent with the provisions contained in this regulatory guidance letter.

3. *The Corps Project Management/Decision Making Role:* (a) The corps is solely responsible for making final permit decisions pursuant to section 10 and section 404(a), including final determinations of compliance with the Corps permit regulations, the Section 404(b)(1) Guidelines, and Section 7(a)(2) of the ESA. As such, the Corps will act as the project manager for the evaluation of all permit applications. The Corps will advise potential applicants of its role as the project manager and decision-maker. This guidance does not restrict EPA's authority to make determinations of compliance with the Guidelines in carrying out its responsibilities under Sections 309 and 404(c) of the Clean Water Act.

(b) As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps will obtain and utilize this information in a manner that moves, as rapidly as practical, the regulatory process towards a final permit decision. The Corps will not evaluate applications as a project opponent or advocate—but instead will maintain an objective evaluation, fully considering all relevant factors.

(c) The Corps will fully consider other Federal agencies' project-related comments when determining compliance with the National Environmental Policy Act (NEPA), the Section 404(b)(1) Guidelines, the ESA, the National Historic Preservation Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the agencies' views when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit.

4. *The Federal Resource Agencies' Role:* (a) It is recognized that the Federal

resource agencies have an important role in the Department of the Army Regulatory Program under the CWA, NEPA, ESA, Magnuson Fisheries Conservation and Management Act, and other relevant statutes.

(b) When providing comments, Federal resource agencies will submit to the Corps only substantive, project-related information on the impacts of activities being evaluated by the Corps and appropriate and practicable measures to mitigate adverse impacts. The comments will be submitted within the time frames established in interagency agreements and regulations. Federal resource agencies will limit their comments to their respective areas of expertise and authority to avoid duplication with the Corps and other agencies and to provide the Corps with a sound basis for making permit decisions. The Federal resource agencies should not submit comments that attempt to interpret the Corps regulations or for the purposes of section 404(a) make determinations concerning compliance with the section 404(b)(1) Guidelines. Pursuant to its authority under section 404(b)(1) of the CWA, the EPA may provide comments to the Corps identifying its views regarding compliance with the Guidelines. While the Corps will fully consider and utilize agency comments, the final decision regarding the permit application, including a determination of compliance with the Guidelines, rests solely with the Corps.

5. Pre-Application Consultation: (a) To provide potential applicants with the maximum degree of relevant information at an early phase of project planning, the Corps will increase its efforts to encourage pre-application consultations in accordance with regulations at 33 CFR 325.1(b). Furthermore, while encouraging pre-application consultation, the Corps will emphasize the need for early consultation concerning mitigation requirements, if impacts to aquatic resources may occur. The Corps is responsible for initiating, coordinating, and conducting pre-application consultations and other discussions and meetings with applicants regarding Department of the Army permits. This may not apply in instances where the consultation is associated with the review of a separate permit or license required from another Federal agency (e.g., the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission) or in situations where resource agencies perform work for others outside the context of a specific Department of the Army permit application (e.g., the Conservation Reserve Program and technical assistance to applicants of Federal grants).

(b) For those pre-application consultations involving activities that may result in impacts to aquatic resources, the Corps will provide EPA, FWS, NMFS (as appropriate), and other appropriate Federal and State agencies, a reasonable opportunity to participate in the pre-application process. The invited agencies will participate to the maximum extent possible in the pre-application consultation, since this is generally the best time to consider alternatives for avoiding or reducing adverse impacts. To the extent practical, the Corps and the Federal resource agencies will develop local procedures (e.g., teleconferencing) to promote reasonable and effective pre-application consultations within the logistical constraints of all affected parties.

6. Applications for Individual Permits:

(a) The Corps is responsible for determining the need for, and the coordination of, interagency meetings, requests for information, and other interactions between permit applicants and the Federal Government. In this regard, Federal resource agencies will contact the Corps to discuss and coordinate any additional need for information from the applicant. The Corps will cooperate with the Federal resource agencies to ensure, to the extent practical, that information necessary for the agencies to carry out their responsibilities is obtained. If it is determined by the Corps that an applicant meeting is necessary for the exchange of information with a Federal resource agency and the Corps chooses not to participate in such a meeting, the Federal resource agency will apprise the Corps, generally in writing, of that agency's discussions with the applicant. Notwithstanding such meetings, the Corps is solely responsible for permit requirements, including mitigation and other conditions—the Federal resource agencies must not represent their views as regulatory requirements. In circumstances where the Corps meets with the applicant and develops information that will affect the permit decision, the Corps will apprise the Federal resource agencies of such information.

(b) Consistent with 33 CFR part 325, the Corps will ensure that public notices contain sufficient information to facilitate the timely submittal of project-specific comments from the Federal resource agencies. The resource agencies comments will provide specific information and/or data related to the proposed project site. The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of potential cumulative and secondary impacts.

(c) The Corps must consider cumulative impacts in reaching permit decisions. In addition to the Corps' own expertise and experience, the Corps will fully consider comments from the Federal resource agencies, which can provide valuable information on cumulative impacts. Interested Federal agencies are encouraged to provide periodically to the Corps generic comments and assessments of impacts (outside the context of a specific permit application) on issues within the agencies' area of expertise.

7. General Permits:

(a) The Corps is responsible for proposing potential general permits, assessing impacts of and comments on proposed general permits, and deciding whether to issue general permits. The Corps will consider proposals for general permits from other sources, including the Federal resource agencies, although the final decision regarding the need to propose a general permit rests with the Corps. Other interested Federal agencies should provide comments to the Corps on proposed general permits. These Federal agency comments will be submitted consistent with established agreements and regulations and will focus on the Federal agencies' area(s) of expertise. The Corps will fully consider such agencies' comments in deciding whether to issue general permits, including programmatic general permits.

(b) The Corps is responsible for initiating and conducting meetings that may be necessary in developing and evaluating potential general permits. Any discussions with a State or local Government regarding proposed programmatic general permits will be coordinated through and conducted by the Corps. Prior to issuing a programmatic general permit, the Corps will ensure that the State or local program, by itself or with appropriate conditions, will protect the aquatic environment, including wetlands, to the level required by the section 404 program.

8. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For The Commander:

Arthur E. Williams,

Major General, USA, Director of Civil Works

Regulatory Guidance Letter (92–2)

RGL 92–2:
Date: June 26, 1992.
Expires: December 31, 1995.
CECW–OR

Subject: Water Dependency and Cranberry Production.

1. Enclosed for implementation is a joint Army Corps of Engineers/ Environmental Protection Agency Memorandum to the Field on water dependency and cranberry production. This guidance was developed jointly by the Army Corps of Engineers and the U.S. Environmental Protection Agency.

2. This guidance will expire 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field

Subject: Water Dependency and Cranberry Production.

1. The purpose of this memorandum is to clarify the applicability of the Section 404(b)(1) Guidelines water dependency provisions (40 CFR 230.10(a)) to the cultivation of cranberries, in light of Army Corps of Engineers (Corps) regulations at 33 CFR 323.4(a)(1)(iii)(C)(1)(ii) and (iii), and Environmental Protection Agency (EPA) regulations at 40 CFR 232.3(d)(3)(i)(B) and (C). These sections of the Corps and EPA regulations state, among other things, that cranberries are a wetland crop, and that some discharges associated with cranberry production are considered exempt from regulation under the provisions of Section 404(f) of the Clean Water Act. The characterization of cranberries as a wetland crop has led to inconsistency in determining if cranberry production is a water dependent activity as defined in the Section 404(b)(1) Guidelines (Guidelines).

2. The intent of Corps regulations at 33 CFR 320.4(b) and of the Guidelines is to avoid the unnecessary destruction or alteration of waters of the U.S., included wetlands, and to compensate for the unavoidable loss of such waters. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (see 40 CFR 230.10(a)). Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

3. For proposed discharges into wetlands and other "special aquatic sites," the Guidelines alternatives analysis requirement further considers whether the activity associated with the proposed discharge is "water dependent". The Guidelines define water dependency in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. Special aquatic sites (as defined in 40 CFR 230.40–230.45) are: (1) Sanctuaries and refuges; (2) wetlands; (3) mud flats; (4) vegetated shallows; (5) coral reefs; and (6) riffle and pool complexes. If an activity is determined not to be water dependent, the Guidelines establish the following two presumptions (40 CFR 230.10(a)(3)) that the applicant is required to rebut before satisfying the alternatives analysis requirements:

a. That practicable alternatives that do not involve special aquatic sites are presumed to be available; and,

b. That all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem.

It is the responsibility of the applicant to clearly rebut these presumptions in order to demonstrate compliance with the Guidelines alternatives test.

4. If an activity is determined to be water dependent, the rebuttable presumptions stated in paragraph 3 of this memorandum do not apply. However, the proposed discharge, whether or not it is associated with a water dependent activity, must represent the least environmentally damaging practicable alternative in order to comply with the alternatives analysis requirement of the Guidelines as described in paragraph 2 of this memorandum.

5. As previously indicated, Corps and EPA regulations consider cranberries as a wetland crop species. This characterization of cranberries as a wetland crop species is based primarily on the listing of cranberries as an obligate hydrophyte in the National List of Plant Species That Occur in Wetlands (U.S. Fish and Wildlife Service Biological Report 88(26.1–26.13)) and the fact that cranberries must be grown in wetlands of areas altered to create a wetland environment. Therefore, the Corps and EPA consider the construction of cranberry beds, including associated dikes and water control structures associated with dikes (i.e., headgates, weirs, drop inlet structures), to be a water dependent activity. Consequently, discharges directly associated with cranberry bed construction are not subject to the presumptions applicable to non-water dependent activities discussed in paragraph 3 of this memorandum. However, consistent with the requirements of Section 230.10(a), the proposed discharge must represent the least environmentally damaging practicable alternative, after considering aquatic and non-aquatic alternatives as appropriate. To be considered practicable, an alternative must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. For commercial cranberry cultivation, practicable alternatives may include upland sites with proper characteristics for creating the necessary conditions to grow cranberries. Factors that must be considered in making a determination of whether or not upland alternatives are practicable include soil pH, topography, soil permeability, depth to bedrock, depth to seasonal high water table, adjacent land uses, water supply, and, for expansion of existing cranberry operations, proximity to existing cranberry farms. EPA Regions and Corps Districts are encouraged to work together with local cranberry growers to refine these factors to reflect their regional conditions.

6. In contrast, the following activities often associated with the cultivation and harvesting of cranberries are not considered water dependent: construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries, and construction of secondary support facilities for shipping, storage, packaging, parking, etc. Therefore, the rebuttable practicable alternatives presumptions discussed in paragraph 3 of this memorandum apply to the discharges associated with these non-water dependent activities. However, since determinations of practicability under the Guidelines includes consideration of cost, technical, and logistics factors, determining the availability of practicable alternatives to discharges associated with these non-water dependent activities must involve consideration of the need of an alternative to be proximate to the cranberry bed in order to achieve the

basic project purpose of cranberry cultivation. Once it has been determined that the location of the cranberry bed, including associated dikes, and water control structures, represents the least environmentally damaging practicable alternative, practicable alternatives for maintenance roads, ditches, reservoirs and pump houses will generally be limited to the bed itself and the area in the vicinity of the actual bed. For example, the bed dikes may be the only practicable alternative for location of maintenance roads. When practicable alternatives cannot be identified within such geographic constraints, the applicant must minimize the impacts of the roads, reservoirs, etc., to the maximum extent practicable.

7. During review of applications for discharges associated with cranberry cultivation, it is important to reiterate that proposed discharges must also comply with the other requirements of the Guidelines (i.e., 40 CFR 230.10 (b), (c) and (d)). In addition, evaluations of all discharges, whether or not the proposed discharge is associated with a water dependent activity, must comply with the provisions of the National Environmental Policy Act, including an investigation of alternatives to the proposed discharge. Further, applications for discharges associated with cranberry cultivation will continue to be evaluated in accordance with current Corps and EPA policy and practice concerning mitigation, cumulative impact analysis, and public interest review factors.

8. This guidance expires 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, Environmental Protection.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (92–3)

RGL 92–3:

Date: August 19, 1992.

Expires: December 31, 1997.

Subject: Extension of Regulatory Guidance Letter (RGL) 86–10 RGL 86–10, subject: "Special Area Management Plans (SAMPs)" is extended until 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

RGL 86–10

Special Area Management Plans (SAMPs)

Issued: October 2, 1986.

Expired: December 31, 1988.

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as "a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone." This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMPs are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

a. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products: (1) Appropriate local/state approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and (2) a local/state restriction and/or an Environmental Protection Agency (EPA) 404(c) restriction (preferably both) for undesirable activities. An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do not assume that an environmental impact statement is automatically required to develop a SAMP.

6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMPs. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4 above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

For the Chief of Engineers:

Peter J. Offringa,

Brigadier General, USA, Deputy Director of Civil Works.

Regulatory Guidance Letter (RGL–92–4)

Date: September 14, 1992.

Expires: January 21, 1997.

Subject: Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits.

1. The purpose of this Regulatory Guidance Letter (RGL) is to provide additional guidance and clarification for divisions and districts involved in developing acceptable conditions under the Section 401 Water Quality Certifications and Coastal Zone Management Act (CZM) concurrences for the Nationwide Permit (NWP) Program. This RGL represents a clarification of 330.4(c)(2) and (3) and 330.4(d)(2) and (3), concerning when NWP section 401 and CZM conditions should not be accepted and thus treated as a denial without prejudice. The principles contained in this RGL also apply to 401 certification and CZM concurrence conditions associated with individual permits and regional general permits.

2. Corps divisions and districts should work closely and cooperatively with the States to develop reasonable 401 and CZM conditions. All involved parties should participate in achieving the purpose of the NWP program, which is to provide the public with an expeditious permitting process while, at the same time, safeguarding the environment by only authorizing activities which result in no more than minimal individual and cumulative adverse effects. When a State certifying

agency or CZM agency proposes conditions, the division engineer is responsible for determining whether 401 Water Quality Certification or CZM concurrence conditions are acceptable and comply with the provisions of 33 CFR 325.4. In most cases it is expected that the conditions will be acceptable and the division engineer shall recognize these conditions as regional conditions of the NWP's.

3. *Unacceptable Conditions:* There will be cases when certain conditions will clearly be unacceptable and those conditioned 401 certifications or CZM concurrences shall be considered administratively denied. Consequently, authorization for an activity which meets the terms and conditions of such NWP(s) is denied without prejudice.

a. Illegal conditions are clearly unacceptable. Illegal conditions would result in violation of a law or regulation, or would require an illegal action. For example, a condition which would require an applicant to obtain a 401 certification or CZM concurrence, where the State has previously denied certification or concurrence, prior to submitting a predischarge notification (PDN) to the Corps in accordance with PDN procedures, would violate the Corps regulation at 33 CFR 330.4(c)(6). Another example would be a case where an applicant would be required, through a condition, to apply for an individual Department of the Army permit. Another example is a requirement by the State agency to utilize the 1989 Federal Wetland Delineation Manual to establish jurisdiction.

b. As a general rule, a condition that would require the Corps or another Federal agency to take an action which we would not otherwise take and do not choose to take, would be clearly unacceptable. For example, where the certification or concurrence is conditioned to require a PDN, where the proposed activity did not previously require a PDN, the Corps should not accept that condition, since implicitly the Corps would have to accept and utilize the PDN. Another example would be a situation where the U.S. Fish and Wildlife Service is required, through a condition, to provide any type of formal review or approval.

c. Section 401 or CZM conditions which provide for limits (quantities, dimensions, etc.) different from those imposed by the NWP do not change the NWP limits.

1. Higher limits are clearly not acceptable. For example, increasing NWP 18 for minor discharges from 10 to 50 cubic yards would not be acceptable. Such conditions would confuse the regulated public and could contribute to violations.

2. Lower limits are acceptable but have the effect of denial without prejudice of those activities that are higher than the Section 401 or CZM condition limit but within the NWP limit. Thus, if an applicant obtains an individual 401 water quality certification and/or CZM concurrence for work within the limits of an NWP where the State had denied certification and/or CZM concurrence, then the activity could be authorized by the NWP.

d. A condition which would delete, modify, or reduce NWP conditions would be clearly unacceptable.

4. *Discretionary Enforcement;* The initiation of enforcement actions by the Corps, whether directed at unauthorized activities or to ensure compliance with permit conditions, is discretionary. The district engineer will consider the following situations when determining whether to enforce 401 and/or CZM conditions.

a. Unenforceable Conditions—Some conditions that a State may propose will not be reasonably enforceable by the Corps (e.g., a condition requiring compliance with the specific terms of another State permit). Provided such conditions do not violate paragraph 3 above, the conditions will be accepted by the Corps as regional conditions. However, limited Corps resources should not be utilized in an attempt to enforce compliance with 401 or CZM conditions which the district engineer believes to be essentially unenforceable, or of low enforcement priority for limited Corps resources.

b. Enforceable Conditions—Some other conditions proposed by a State may be considered enforceable, (e.g., a condition requiring the applicant to obtain another State permit), but of low priority for Federal enforcement, since the Federal Government would not have required those conditions but for the State's requirement. Furthermore, the Corps will generally not enforce such State-imposed conditions except in very unusual cases, due to our limited personnel and financial resources.

5. *NWP Verification and PDN Responses:* In response to NWP verification requests and PDN's, district engineers should utilize the sample paragraphs presented below. This language should be used where conditional 401 certification or CZM concurrence has been issued. This specifically addresses situations when the conditions included with the certification or concurrence are such that the district engineer determines they are unenforceable or the district engineer cannot clearly determine compliance with the 401/CZM conditions (see 4.a.).

"Based on our review of your proposal to [describe proposal], we have determined that the activity qualifies for the nationwide permit authorization [insert NWP No(s.)], subject to the terms and conditions of the permit.

[Insert paragraph on any Corps required activity-specific conditions].

Enclosed you will find a copy of the Section 401 Water Quality Certification and/or Coastal Zone Management special conditions, which are conditions of your authorization under Nationwide Permit [insert NWP No(s.)]. If you have questions concerning compliance with the conditions of the 401 certification or Coastal Zone Management concurrence, you should contact the [insert appropriate State agency].

If you do not or cannot comply with these State Section 401 certification conditions and/or CZM conditions, then in order to be authorized by this Nationwide Permit, you must furnish this office with an individual 401 certification or Coastal Zone Management concurrence from [insert appropriate State agency], or a copy of the application to the State for such certification or concurrence, [insert "60 days" for Section 401 water quality certification, unless another reasonable period of time has been determined pursuant to 33 CFR 330.4(c)(6), or insert "six months" for CZM concurrence] after you submit it to the State agency."

6. This guidance expires 21 January 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction Readiness Division.

Regulatory Guidance Letter (RGL 92–5)

RGL92–5: Date: October 29, 1992.

Expires: December 31, 1997.

Subject: Altenatives Analysis Under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. Enclosed for implementation is a joint Army Corps of Engineers/ Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

Encl

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

EPA/CORPS Joint Memorandum for the Field

Subject: Alternatives Analysis under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act 1. The 1990 Clean Air Act (CAA) amendments require most electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The Congressional endorsement of the industry's ability to select the most effective compliance method (e.g., sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act Section 404 permits for certain proposed activities.

2. The analysis and regulation under Section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with requirements under the Section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the Section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the Section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and of the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities retain flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the Section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight time-frames under which the industry must meet these new air quality standards.

Robert H. Wayland,

Director, Office of Wetlands, Oceans and Watersheds.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 93-7570 Filed 3-31-93; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 3, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: March 25, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Application for Federal Financial Assistance under Part B of the Drug Free Schools and Communities Act.
Frequency: Annually.

Affected Public: State or local governments.
Reporting Burden:
Responses: 57.
Burden Hours: 1,824.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Drug Free Schools and Communities Act. The Department will use the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Regular.
Title: State Plan for Independent Living.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 80.
Burden Hours: 4,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: A State plan for Independent Living is required for a State to receive funds under title VII, chapter I of the Rehabilitation Act for Independent Living Program to serve individuals with severe disabilities.

Office of Postsecondary Education

Type of Review: Revision.
Title: Summary Data Sheet/Listing Form for the Federal Perkins and National Direct Student Loan Programs.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; federal agencies or employees; non-public institutions.
Reporting Burden:
Responses: 57.
Burden Hours: 570.
Recordkeeping Burden:
Recordkeepers: 57.
Burden Hours: 3.
Abstract: ED request State Education Agencies to complete this form in order to create a national directory. The state agencies complete the Summary Data Sheet and the State Listing of Schools. ED transposes the data in order to create/update a national directory on low-income elementary and secondary schools. ED uses this directory to satisfy inquiries made by universities, colleges, teachers, students and other public interest groups.

[FR Doc. 93–7506 Filed 3–31–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Massachusetts Institute of Technology (MIT); Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a financial assistance award to Massachusetts Institute of Technology (MIT) on a sole-source basis.

SUMMARY: Pursuant to 10 CFR 600.7(b), the U.S. DOE announces it is restricting eligibility for award of Grant No. DE–FG03–93SF19607 to the Massachusetts Institute of Technology (MIT) to conduct a study on the Socio-economic Acceptability for the Next Generation of Nuclear Power Plants.

SUPPLEMENTARY INFORMATION: The project will be performed by the Program for Advanced Nuclear Studies at MIT under their public communications and consensus building activities. The objective is to achieve consensus involving diverse constituencies on difficult socioeconomic issues related to public acceptance of the safety and economics of deployment of the next generation of nuclear power stations. The project will rely on the public communications and the consensus building capabilities and experience of the MIT program, and will be accomplished through discussions involving leaders from nuclear power; governmental and environmental protection organizations. Topics to be explored in these discussions should include, but are not limited to: Nuclear power related to utility management and regulation; severe accident performance of nuclear reactors and public acceptance; relevance of advanced reactor development activities to strategic energy and environmental problems; nuclear plant siting and public acceptance; potential national nuclear policy conflicts and the nuclear safety licensing process; storage of high level nuclear waste and United States and International issues relating to the above topics. This grant will be awarded to MIT on a sole source basis because the Program for Advanced Nuclear Power Studies has exclusive domestic capability to perform the project successfully based on the unique nature of the program, the expertise of the personnel and the successful work of the program in conducting similar public communications and consensus building efforts through writings and speakings by the faculty at international conferences. MIT is expected to cost-share the project on an equal basis with the DOE.

FOR FURTHER INFORMATION CONTACT: James H. Solomon, DOE San Francisco Field Office, 1333 Broadway, Oakland, CA 94612, (510) 273–7117.

Issued in Oakland March 15, 1993.

Aundra Richards,
Chief, NE/SF Branch.

[FR Doc. 93–7595 Filed 3–31–93; 8:45 am]
BILLING CODE 6450–01–M

Federal Assistance Award to Osmotek Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with the Osmotek Inc. for development of a system for recovery of chemicals in paper mills using electrolysis.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M.A. Barron, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The project involves pilot scale evaluations of a system for recovery of chemicals from black liquor and bleach effluents in pulp plants that use the Kraft process for making pulp to be used in the paper industry.

The key technology is a patented membrane support system that greatly reduces fouling thereby allowing electrolytic recovery of chemicals from streams which previously fouled membranes. The approach has been successfully demonstrated in the laboratory on two pulp mill streams: Kraft black liquor and alkaline bleach effluent.

The pilot plant will be installed at Boise Cascade's Wallula Washington mill and be operated continuously 24 hours per day and seven days per week. Economic, technical, and environmental viability for a large scale system will be assessed from the pilot plant data.

The total project is estimated to cost $4,800,000 of which approximately $2,600,000 will be provided by the participant and the paper industry.

Issued in Chicago, Illinois, on March 22, 1993.

Timothy S. Crawford,
Assistant Manager for Administration.

[FR Doc. 93–7596 Filed 3–31–93; 8:45 am]
BILLING CODE 6450–01–M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance

AGENCY: DOE, Nevada Field Office.

ACTION: Notice of intent to award on a noncompetitive basis.

SUMMARY: DOE, Nevada Field Office, announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i)(G), "A specific recipient has been statutorily designated," it intends to award a cooperative agreement on a noncompetitive basis to the Desert Research Institute (DRI), University and Community College System of Nevada, to facilitate participation in the Yucca Mountain Site Characterization Project.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA) implemented a federal policy decision to concentrate DOE disposal and research efforts in the development of a mined geologic repository. The Nuclear Waste Policy Amendments Act of 1987 (NWPAA) restricted DOE efforts in site characterization to the Yucca Mountain site in Nevada. Public Law 102–377 serves as the basis of DOE's intent to award DRI a cooperative agreement (106 Stat. 1334). DRI has been involved since the onset of the repository related work being conducted. The role of DRI has included work in paleoclimatology, climatology, and transportation as well as other areas of concern. DRI's position in the Nevada academic community creates an environment in which dedicated participation in the current nuclear waste repository process is a logical and necessary accompaniment to the DOE effort.

PROJECT SCOPE: DRI will participate in research and documentation activities to include review of documents, laboratory research, climatology and paleoclimatic studies, and involvement in new and ongoing subsurface activities such as geology, hydrology, and seismic/tectonics. Contact between the Yucca Mountain Project participants and DRI is anticipated to be extensive. Activities undertaken over the five year period of the agreement will reflect a changing emphasis on particular aspects of the Yucca Mountain Site Characterization Project as progress continues toward completing characterization.

The project period for the cooperative agreement is a five-year period expected to begin April 30, 1993. The amount requested for FY 1993 is $800,000. A maximum funding level for the total five years is anticipated to be $4,000,000.

FOR FURTHER INFORMATION CONTACT: DOE, Yucca Mountain Site Characterization Project Office, Attn: Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, NV 89193–8608.

Issued in Las Vegas, Nevada on March 22, 1993.

Nick C. Aquilina,

Manager, NV.

[FR Doc. 93–7597 Filed 3–31–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 93–14: Atmospheric Radiation Measurement (ARM) Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests applications for grants to support:

(Category 1): The modeling and analysis of data relating to the parameterization of clouds in General Circulation Models (GCMs) and related models. The parameterizations must include the full life cycle of the cloud type being modeled. This involves the modeling and scientific portion of the ARM Program and includes process level models of clouds which can lead to improved GCMs.

(Category 2): The development of advanced instrumentation for high accuracy/precision radiometric observations and for profiling water vapor in the atmosphere and lower stratosphere.

(Category 3): The use of ARM data to support activities in other programs with goals related to those of ARM through unfunded participation in the ARM Science Team.

(Category 4): Continuation of activities previously funded by DOE under Special Research Grant Program Notice 90–4 dated February 27, 1990 (with grants awarded in the fall of 1990).

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., May 4, 1993, to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 93–14 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, ATTN: Program Notice 93–14. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Peter W. Lunn, Environmental Sciences Division, Office of Health and Environmental Research, ER–74 (GTN), Washington, DC 20585, telephone (301) 903–4819.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Environmental Sciences Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models used to predict future climate, particularly the General Circulation Models (GCMs). This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional predictions of climate and climate change. The major component of the ARM Program is an experimental testbed for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This testbed is referred to as the Cloud and Radiation Testbed (CART). The first ARM CART site began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. Sites are planned for the Tropical Western Pacific Ocean and the North Slope of Alaska which are expected to begin operation during the next four years, followed by up to two more sites at later dates. Each site is intended to be in operation for approximately 10 years.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE Environmental Sciences Division (ESD), successful applicants will

participate as ARM Science Team members along with selected scientists from other ESD programs that relate to the ARM Program. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two (2) trips of 3 days each to Chicago, IL.

Successful applicants for grants in support of Category 1 will participate in the modeling and scientific portion of the ARM Program. These applicants must demonstrate the role of their research in the improvement of General Circulation Models and/or related models and delineate the path that their results will take to make those improvements. It is anticipated that successful applicants will be involved in one or more of four activities: (a) The development of cloud life cycle models and parameterization or the testing of these models in GCMs or process-level models; (b) experimental studies at CART facilities to test elements of models and their performance or to obtain key laboratory data; (c) the analysis of existing data, including field data and satellite data, to support model development or testing; and (d) the development of new analytic methods combining ARM data and other data such as satellite data to support the experimental efforts of ARM Science Team members involved in activities a, b, and c (above). These efforts should have as a focus the conduct of research using the CART facilities either in operation or being developed for ARM. Successful applicants will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

Successful applicants for participation in the ARM advanced instrument development program, Category 2, will either: (a) Develop instruments to meet the long-term need of the ARM Program for deployment of improved radiometric sensors, both broad-band and spectrally-resolved. Of particular interest are instruments capable of high-precision radiometric calibration. Each application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of wavelength and the relevance of the resulting measurements to testing models of atmospheric radiative processes; or (b) Develop instruments to meet the long-term need of the ARM Program for the deployment of improved systems for the measurement of the spatial distribution of all three phases of water, with particular emphasis on water vapor profiles. Each application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of altitude and the relevance of the resulting measurements to testing models of atmospheric radiative processes.

Successful applicants for participation in the unfunded ARM Science Team, Category 3, will apply ARM data to research programs of interest to DOE and related to ARM goals, but which are funded by other sources. While ARM data is available through the ARM Data Archive at Oak Ridge National Laboratory, ARM Science Team participation provides investigators the opportunity to receive tailored data products from the ARM Experiment Center at Pacific Northwest Laboratory and the opportunity to participate in the design of ARM facilities and experiments. While there will not be funds to support the research of applicants under this portion of this notice, some funds may be available to support the travel of successful applicants to participate in ARM Science Team activities as indicated below. The number of participants which will be selected under this portion of this notice may be limited to no more than 20 teams. Preference will be given to participants whose goals are related to the general goals of ARM outlined above; Global Energy and Water Experiment (GEWEX) and its associated programs; the study of aerosols and their effect on the radiative transfer, including visibility studies; and the transfer of UV–B radiation through the atmosphere.

Successful applicants for continuation of grants placed under Program Notice 90–4, Category 4, will demonstrate (a) continued relevance of their work to the goals of the ARM Program; (b) the quality and relevance of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM program, particularly the design and development of CART facilities, as a result of previous funding. Applications should include a special section entitled "Accomplishments Under Previous Support" which addresses items (b) and (c) discussed directly above.

It is anticipated that approximately $8,500,000 will be available for awards for the combined activity under Categories 1, 2, and 4 above in FY 1994, contingent upon availability of appropriated funds. Multiple year funding of awards is expected, also contingent upon availability of funds. The allocation of funds among the three categories above will depend on the number and quality of the applications received. It is anticipated that a substantial fraction of the funds will support continuation of existing research under Category 4 above. Typical ESD awards are $200,000 per year, but range from $50,000 to $750,000. Collaborative applications are encouraged. Awards are anticipated to begin on or about November 1, 1993.

The technical portion of the application should not exceed twenty-five (25) doubled-spaced pages. For applicants under Category 4 above, the "Accomplishments Under Previous Support" section should not exceed ten (10) double-spaced pages. Lengthy appendices are discouraged.

Technical information on the ARM Program is available from the ARM Program Office at Pacific Northwest Laboratory, P.O. Box 999, Richland, WA 99352 (telephone (509) 375–3816) or from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831 (telephone (615) 576–8401).

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures, may be found in the ER Special Research Grants Application Kit and Guide and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Office of Energy Research, ER–74, Washington, DC 20585. Telephone requests may be made by calling (301) 903–4208.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–7601 Filed 3–31–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP93–258–000, et al.]

Mojave Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mojave Pipeline Co.

[Docket No. CP93–258–000]

March 23, 1993.

Take notice that on March 17, 1993, Mojave Pipeline Company (Mojave), filed in Docket No. CP93–258–000 an application pursuant to section 7(c) of the Natural Gas Act and subpart E of the Federal Energy Regulatory Commission's (FERC's) regulations thereunder for a certificate of public convenience and necessity under optional procedures contained in subpart E of part 157 authorizing Mojave to construct, operate, and own certain pipeline expansion facilities (the Northward Expansion Facilities).

Project Description

Mojave submits for Commission review two alternative designs for the Northward Expansion Facilities that would extend Mojave's system in a northerly direction from the terminus of its existing East Lateral to points near Benicia, California, Sacramento, California, and to various points around the San Francisco Bay area.

Under its Case 1, Mojave proposes to construct a 475 MMcf/d expansion on a stand-alone basis. This expansion would require the construction of about 599 miles of new mainline and looping of existing facilities, about 102,000 horsepower of new compression and as well as about 40 additional meter stations. Mojave estimates the cost of its Case 1 facilities at $467.8–million.

Under Mojave's Case 2, Mojave's proposed 475 MMcf/d expansion would be built in conjunction with an expansion by Kern River Pipeline Company of 452 MMcf/d. Essentially Mojave proposes the same facilities in its Case 2 as for its Case 1, except there would be less new compression at Daggett and about 38 miles more of looping. Mojave estimates the cost of its Case 2 facilities at $467.7–million. Kern River's request for authorization to construct and operate its expansion facilities is currently pending in Docket No. CP92–198–000.

Mojave proposes to provide open access, transportation service on a firm and interruptible basis over its proposed Northerward Expansion Facilities. Mojave proposes to charge its expansion shippers an incremental rate. Mojave proposes to design its expansion rates using the straight-fixed variable cost classification and cost allocation methodology. Mojave contemplates an in-service date of April 1, 1995. Mojave requests a certificate on or before April 1, 1994 in order to meet its in-service date. Mojave also requests a preliminary determination resolving the non-environmental issues prior to the completion of its environmental review.

Comment date: April 13, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Frontier Gas Storage Co.

[Docket No. CP85–221–012]

March 23, 1993.

Take notice that on March 17, 1993, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Prairielands Energy Marketing, Inc. (Prairielands). The Service Agreement, dated March 16, 1993, contemplates the possible sale to commence April 1, 1993.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: April 13, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Frontier Gas Storage Co.

[Docket No. CP85–221–011]

March 23, 1993.

Take notice that on March 17, 1993, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Interenergy Resources Corporation (Interenergy). The Service Agreement, dated March 16, 1993, contemplates the possible sale to commence April 1, 1993.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: April 13, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Frontier Gas Storage Co.

[Docket No. CP85–221–013]

March 23, 1993.

Take notice that on March 18, 1993, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 1 Bcf of Frontier's gas storage inventory on an "as metered" basis to Rainbow Gas Company (Rainbow). The Service Agreement, dated March 17, 1993, contemplates the possible sale to commence April 1, 1993.

Under subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: April 13, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP93–255–000]

March 23, 1993.

Take notice that on March 17, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization to partially abandon a sales service provided to East Tennessee Natural Gas Company (East Tennessee) under Rate Schedule CD–1, all as more fully set forth in the

application which is on file with the Commission and open to public inspection.

Tennessee requests specific authority to abandon in part a Maximum Daily Quantity (MDQ) of 13,265 dths of sales to East Tennessee, effective February 1, 1992. Tennessee states that the full amount of sales service authorized [1] is no longer needed. Therefore, the parties, by contract dated February 1, 1992, agreed to a lower MDQ of 391,703 Dth per day. Tennessee requests that the Commission authorize the abandonment, effective retroactively, to eliminate demand charges allocable to East Tennessee after February 1, 1992.

As stated by Tennessee, the abandonment of this service will reflect the actual service performed by Tennessee.

Comment date: April 13, 1993, in accordance with Standard Paragraph F at the end of the notice.

6. Suncor Inc., an Ontario, Canada, Corporation; PanCanadian Petroleum Company, a Delaware Corporation; and Petro-Canada Hydrocarbons Inc., a Delaware Corporation, Complainants, v. Pacific Gas Transmission Company, a California Corporation; and Pacific Gas and Electric Company, a California Corporation, Respondents.

[Docket No. CP93–260–000]

March 23, 1993.

Take notice that on March 18, 1993, Suncor Inc. (Suncor), PanCanadian Petroleum Company (PanCanadian), and Petro-Canada Hydrocarbons Inc. (Petro-Canada) referred to collectively as complainants) jointly filed a complaint against Pacific Gas Transmission Company (PGT) and Pacific Gas and Electric Company (PG&E) (jointly referred to as respondents), with the Federal Energy Regulatory Commission (Commission). Complainants allege prospective violations of the Natural Gas Act (NGA) and part 284 of the Commission's Regulations.

Complainants request that the Commission, pursuant to section 20(a) of the NGA, bring an action in a proper United States District Court to enjoin respondents' prospective violations of the NGA and to enjoin respondents' prospective violations of the Commission's regulations. Complainants also request that the Commission take other such action as is necessary and appropriate to cause respondents to cease and desist from enforcing regulations of the California Public Utilities Commission (CPUC) that improperly intrude upon the Commission's jurisdiction under the NGA.

Complainants state that each one of them has a contract with PGT for firm transportation service on the PGT expansion project. The PGT expansion project, for which a conditional certificate of public convenience and necessity was granted by this Commission on August 1, 1991 (56 FERC ¶ 61,192), is scheduled to be placed into service on or about November 1, 1993.

PGT's existing interstate pipeline and the PGT expansion facilities interconnect with the California intrastate pipeline facilities of PG&E at Malin, Oregon. PG&E has been authorized by the CPUC to expand its intrastate pipeline facilities in order to accommodate the increased deliveries of Canadian gas over the expanded PGT pipeline.

Complainants state that the CPUC has adopted regulations requiring shippers that use the PGT expansion facilities for interstate transportation also to use and pay for the intra-California expansion facilities of PG&E if they wish to sell and deliver gas to consumers in California. PGT expansion shippers will not be permitted, under the CPUC's regulations, to deliver gas directly into PG&E's pre-existing intrastate pipeline facilities at Malin, Oregon.

Complainants allege that enforcement of this CPUC-imposed "crossover ban" by PGT and PG&E will constitute a violation of sections 4(b) and 5(a) of the NGA. Complainants allege that it is unduly discriminatory for PGT and PG&E to determine a shipper's access to the PG&E intrastate transportation system based upon whether the shipper's gas is transported over PGT's existing pipeline system or over the PGT expansion pipeline.

Complainants also allege that the "tying arrangement" between the intrastate transportation on the PG&E expansion and transportation on the PGT expansion facilities will prevent competition between shippers on PGT's existing pipeline and shippers on the PGT expansion pipeline. Complainants allege that enforcement of the crossover ban will prevent the establishment of a "market center" at the Malin, Oregon delivery point on the PGT system.

Complainants further allege that enforcement of the crossover ban will place all of PGT's expansion shippers, including complainants, at a severe and unlawful competitive disadvantage vis-a-vis PG&E (PGT's corporate parent). PG&E is the sole owner of firm interstate capacity rights on the existing PGT pipeline from Kingsgate, British Columbia to Malin, Oregon.

Complainants request that the Commission obtain an injunction prohibiting respondents from enforcing the CPUC-imposed crossover ban. Complainants further request that the Commission find that the Crossover ban constitutes an *ultra vires* act by the CPUC that is inconsistent with this Commission's jurisdiction and authority under the NGA, and is thus void and unenforceable. Complainants also request that the Commission direct respondents to cease and desist from enforcement of the crossover ban, and that the Commission take such other action as is necessary to prevent respondents' enforcement of the crossover ban.

Comment date: April 22, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Answers to this complaint shall be due on or before April 22, 1993.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385 214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

[1] On January 21, 1991, the Commission authorized, among other things, Tennessee to sell an MDQ of 404,968 dths of natural gas per day to East Tennessee (55 FERC 61,499).

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing

Lois D. Cashell,

Secretary.

[FR Doc. 93-7493 Filed 3-31-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER93-26-000 and ER93-110-000]

American REF-FUEL Company of Essex County; Issuance of Letter Order

March 26, 1993.

Take notice that on March 11, 1993, the Director, Division of Applications, Office of Electric Power Regulation, pursuant to delegated authority, issued a letter order to American REF-FUEL Company of Essex County (Am REF) conditionally granting blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Am REF.

Within thirty days of the date of this letter order, any person desiring to be heard or to protest the Commission's blanket approval of issuance of securities or assumptions of liabilities by Am REF should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within the period set forth above, Am REF is authorized to issue securities and assume liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Am REF's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 12, 1993.

Copies of the full text of the letter order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7500 Filed 3-31-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-36-000]

Elm Energy & Recycling (UK) Limited; Application for Commission Determination of Exempt Wholesale Generator Status

March 26, 1993.

Take notice that on March 19, 1993, Elm Energy & Recycling (UK) Limited (Elm) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Elm states that it is the owner of electric generating facilities (the Facility) currently under construction in the West Midlands area of England. Elm further states that when the Facility is completed and operational Elm will be engaged directly and exclusively in the business of owning the Facility and selling electric energy at wholesale. Elm states that the Facility will be a 25 MW (net) electric generating facility fueled by used rubber tire and rubber tire scraps and that the Facility will be used for the generation of electric energy exclusively for sale at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 16, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7499 Filed 3-31-93; 8:45 am]

BILLING CODE 6707-01-M

[RS93-1-000]

Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

March 26, 1993.

Take notice that on March 3, 1993, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the following tariff sheets which Granite State proposes to become effective April 1, 1994.

Original Volume No. 50

Original Sheet No. 1
through
Original Sheet No. 600

Granite State states that these tariff sheets are being submitted to comply with the Commission's order issued November 2, 1992 in Docket No. CP92-552-000. As more fully described in the filing, the proposed tariff sheets represent the terms and conditions under which Granite State proposes to provide natural gas storage service pursuant to Commission Orders No. 636, and 636A and 636B.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by April 16, 1993, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests and comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants or commenters parties to the proceeding. Any person wishing to comment on said filing should file its comments by April 16, 1993. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 93-7497 Filed 3-31-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-113-001]

New England Power Company; Granting in Part Motion To Defer Filing of Firm Transmission Tariff and Establishing Date for Filing of Comments

March 26, 1993.

On March 17, 1993, New England Power Company (NEPCO) filed a motion to defer the filing of a firm transmission tariff from March 30, 1993 until the earlier of August 1994 or its next general wholesale rate case.

NEPCO states that in an offer of settlement in this proceeding, approved by the Commission on September 30, 1992, NEPCO agreed to file a tariff for firm transmission service applicable to its entire system within six months of approval of the settlement. NEPCO requests a deferral of the filing requirement from March 30, 1993 to the earlier of August 1994 or its next general wholesale rate case. NEPCO states that Northeast Utilities Service Company, the party that wanted NEPCO to commit to file the tariff, supports the requested deferral, and that counsel for each of the other parties to the offer of settlement consents to the deferral.

In support of its motion, NEPCO states that if recent progress on the negotiation of a New England Regional Transmission Arrangement (RTA) continues and results in the implementation of an RTA, then the RTA would supersede any tariff that NEPCO might now file as to most transactions. NEPCO adds that for any transactions not covered by the RTA, the provisions of any tariff that NEPCO would file would still need to be coordinated with the provisions of the RTA. Under these circumstances, although NEPCO states that an RTA is not yet assured, NEPCO states a deferral of the filing of the tariff is both logical and reasonable.

NEPCO adds that a deferral would not harm any party. NEPCO states that it currently has on file with the Commission its Transmission Tariff No. 3, which is available for entitlement wheeling across all of NEPCO's system and which thus provides access across NEPCO's system at the filed rate.

While the parties to the settlement do not object to a deferral of the filing, there may be other interested persons that do object. Accordingly, the date for the filing of the firm transmission service tariff will be deferred from March 30, 1993 to June 1, 1993, and interested persons will be given until on or before April 23, 1993 to comment on whether a longer deferral is appropriate or whether NEPCO should be required to make the required filing by June 1, 1993 or some other date.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7502 Filed 3–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–35–000]

Pemberton Power Limited Partnership; Application for Commission Determination of Exempt Wholesale Generator Status

March 26, 1993.

Take notice that on March 18, 1993, Pemberton Power Limited Partnership (Pemberton Power) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Pemberton Power states that it is a Michigan limited partnership which is developing an electric generating facility and certain related interconnection facilities (the Facility) which will be located in New Jersey. Pemberton Power states that it will directly own and operate the Facility. When completed, the Facility will have a net electric output of between 90 MW and 160 MW. Pemberton Power states that it plans to sell the entire net electric output of the Facility to Jersey Central Power & Light Company at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before April 9, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7498 Filed 3–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–266–000]

Trunkline Gas Company; Request Under Blanket Authorization

March 26, 1993.

Take notice that on March 23, 1993, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–266–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Policy Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery meter and approximately 2,300 feet of pipeline in Massac County, Illinois, in order to transport for Electric Energy, Inc. (EEI) pursuant to Trunkline's blanket certificate issued in Docket No. CP86–586–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

According to an interruptible transportation agreement with EEI dated March 22, 1993, Trunkline states that it will receive gas from various existing points of receipt in the States of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt point at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas. It is stated that this transportation will be based on Trunkline's currently effective Rate Schedule PT.

Trunkline proposes to install two 10-inch hot taps on the suction side of its Joppa compressor station in Massac County, Illinois, on Lines 100–1 and 100–2; approximately 2,300 feet of 10-inch pipeline from Trunkline's mainline to EEI's plant gate, a 12-inch meter with electronic gas measurement equipment, a regulator station complete with pressure control/monitor valves, and an indirect fired heater. It is further stated that the taps will be installed on existing Trunkline right-of-way. The meter site will be constructed on EEI's property, and will be approximately 150 feet long by 170 feet wide. Trunkline will construct, operate and maintain the facilities, and own the meter and regulatory, indirect fired heater, and hot taps, it is stated. Trunkline further states that EEI will own the pipeline.

Trunkline states that the projected costs of the facilities is $1,400,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7501 Filed 3–31–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–160–NG]

Chevron Natural Gas Services, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Chevron Natural Gas Services, Inc. (CNGS) authorization to import up to 100 billion cubic feet (Bcf) of natural gas and export up to 100 Bcf of natural gas from and to Mexico over a two-year period beginning on the date of the first delivery after March 31, 1993, the date CNGS' current authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 26, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7598 Filed 3–31–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–28–NG]

CoEnergy Ventures, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CoEnergy Ventures, Inc. (CVI) authorization to export up to 40 billion cubic feet of natural gas to Canada over a two-year term beginning on the date of first export after November 30, 1993, the date CVI's current authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 26, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7600 Filed 3–31–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of February 26 Through March 5, 1993

During the week of February 26 through March 5, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 26, 1993.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 26 through Mar. 5, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 2, 1993	Dr. A. Victorian, Nottingham, England	LFA–0273	Appeal of an information request denial. If granted: The November 2, 1992 Freedom of Information Request Denial issued by the Albuquerque Operation Office would be rescinded, and Dr. A. Victorian would receive access to records and documents concerning the Special Project Section/Division of Los Alamos National Labs.
Mar. 4, 1993	Power City Electric Inc., Spokane, Washington.	LFA–0274	Appeal of an information request denial. If granted: The February 10, 1993 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Power City Electric, Inc. would receive access to information concerning the Alvey Substation construction project.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 26 through Mar. 5, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
3/1/93	Claude P. Gragnon Wholesaler	RF356–39
2/26/93	Lloyds Shell	RF315–10278
3/1/93	Howard Oil Company, Inc	RF339–15
3 1/93	Exxon Company, USA	RF339–16

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 26 through Mar. 5, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
3/1/93	Narragansett Improvement Co	RC272–172
3/2/93	Northern Tank Line	RC272–173
3/3/93	Kash N' Karry Food Stores, Inc	RF348–1
3/4/93	Atkerson Beacon Service	RF238–89
2/26/93 thru 3/5/93	Gulf Oil Refund Applications Received	RF300–21314 thru RF300–21707
2/26/93 thru 3/5/93	Crude Oil Refund Applications Received	RF272–94377 thru RF272–94517
2/26/93 thru 3/5/93	Atlantic Richfield Applications Received	RF304–13647 thru RF304–13696
2/26/93 thru 3/5/93	Texaco Oil Refund Applications Received	RF321–19621 thru RF321–19647.

[FR Doc. 93–7599 Filed 3–31–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4609–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 3, 1993.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT:
Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: 1993 Hazardous Waste Report System (EPA ICR #0976.06; OMB No. 2050–0024). This ICR is a reinstatement of a previously approved information collection.

Abstract: Generators and owners/operators of hazardous waste management facilities must compile a biennial report of information on location, amount and description of hazardous waste handled. EPA uses the information to define the population of the regulated community and to expand its data base of information for rulemaking and compliance with statutory requirements.

Burden Statement: The estimated average public burden for this collection of information is about 21 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, reviewing the collection of information, and submitting the form.

Respondents: Generators and Handlers of Hazardous Waste.

Estimated Number of Respondents: 20,250.

Frequency of Collection: Biennial.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 234,900.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460
and
Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: March 26, 1993

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–7578 Filed 3–31–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4609–7]

Proposed Settlement; Uranium Mill Tailings Disposal Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; opportunity for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of the following cases: *American Mining Congress ("AMC") et al.* v. *EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.); and *EDF* v. *Reilly*, No. 92–1082 (D.C. Cir.). (The proposed settlement also addresses administrative petitions filed with EPA by the Nuclear Regulatory Commission ("NRC"), AMC, and the Homestake Mining Company.) These cases involve (1) challenges to EPA's National Emission Standards for Hazardous Substances ("NESHAPs")—Radionuclides, as concerns subpart T of 40 CFR part 61 (uranium mill tailings disposal sites), promulgated under section 112 of the Act; and (2) EPA's rule staying subpart T until it is either rescinded pursuant to section 112(d)(9) of the Act, or June 30, 1994, whichever first occurs.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the settlement has been, or soon will be, lodged with the Clerk of the United States Court of Appeals for the District of Columbia Circuit. Copies of the settlement are also available from Diane Weeks, Division Secretary, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should also be sent to John Hannon at the above address and must be submitted on or before May 3, 1993.

Dated: March 22, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93-7495 Filed 3-31-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4609-9]

Waste Isolation Pilot Plant Subcommittee of the National Advisory Council for Environmental Policy and Technology Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting.

SUMMARY: Under PL92563 (the Federal Advisory Committee Act), EPA gives notice of a two-day meeting of the Waste Isolation Pilot Plant subcommittee (WIPP), a subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the first meeting of the WIPP subcommittee, whose mission is to provide advice to the EPA regarding the Agency's role in reviewing the Department of Energy's activities pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act (LWA) (Public Law 102-579).

Discussion at the meeting will center around EPA's review of DOE's Test Phase and Retrieval Plans. EPA staff have developed a set of proposed criteria for reviewing the adequacy of the DOE WIPP Test Phase and Retrieval Plans. The criteria include the following issue areas: completeness criteria, which tests should be included in EPA's rulemaking, a discussion of the term "directly relevant" as the terms appear in the LWA, criteria for "satisfactory" retrieval of waste, and identification of locations for storage of retrieved waste. The subcommittee will also receive a short presentation on the status of EPA's efforts to develop criteria which will be used in certifying whether the WIPP complies with the 40 CFR part 191 radioactive waste disposal standards. The second day will be committed to an open discussion by the subcommittee of the criteria options that have been presented by the EPA.

DATES: The public meeting will take place on May 3, 1993 from 9 a.m. to 4:30 p.m., and May 4, 1993 from 9 a.m. to 3 p.m.

ADDRESSES: Members of the public wishing to make comments should submit their comments, in writing, by April 23, 1993. Written comments should be submitted to: USEPA, 501 3rd Street NW., Washington, DC 20460, attn: Judy Maguire, 6602J. Written comments may also be submitted at the public meeting. The meeting will be held at Holiday Inn Midtown, 2020 Menaul NE., Albuquerque, NM., 87110, (505) 884-2511.

FOR FURTHER INFORMATION CONTACT: Judy Maguire, Office of Radiation and Indoor Air, USEPA, Mail Stop 6602 J, 501 3rd Street NW., Washington, DC 20460 (202) 233-9205.

Dated: March 26, 1993.

Abby J. Pirrie,

Director, Office of Cooperative Environmental Management.

[FR Doc. 93-7697 Filed 3-31-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4609-2]

Science Advisory Board, Executive Committee Public Meeting and SAB/EFAB Steering Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Science Advisory Board's (SAB's) Executive Committee (EC) on Thursday and Friday, April 22-23, 1993 and a public meeting of the Steering Committee of the joint SAB/Environmental Financial Advisory Board (EFAB) project on April 23, 1993.

The meetings will be held at the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EC meeting will begin at 8:30 a.m. on Thursday, April 22, in the Administrator's Conference Room, W1103, and should adjourn around noon on Friday, April 23. The SAB/EFAB meeting will take place at the same location, beginning at 1 p.m. on the 23rd and adjourning no later than 5 p.m.

At its meeting, the Executive Committee plans to review the following reports from its Committees:

Review of Guidance on the Use of Data from Cholinesterase Inhibition in Risk Assessment (prepared in conjunction with the FIFRA Scientific Advisory Panel)

Review of the OSWER Assessment Framework for Ground-Water Model Applications

Review of Draft Guidance for Peer Review of Computer Model Development and Application

Review of Multi-Media Risk Assessment for Radon

Review of the OW Approach to Costs of Radon Control or Mitigation Experienced by Households or Communities.

The tentative agenda also includes updates on the Agency's comparative risk projects, S. 110 (the proposed Environmental Risk Reduction Act), and the SAB's joint activity with the Environmental Financial Advisory Board. In addition, members of the new leadership team at the Agency will meet with the Committee.

At its meeting the SAB/EFAB Steering Committee will continue its work of investigating the utility of melding scientific, engineering, and financial advice to the Administrator.

Both meetings are open to the public. Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Ms. Priscilla Tillery, Office of the Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 260-4126 or by Fax at (202) 260-9232. Limited unreserved seating is available at the meeting.

Dated: March 26, 1993.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 93-7494 Filed 3-31-93; 8:45 am]

BILLING CODE 6450-01-M

[FRL-4609-6]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA")— proposes to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of thirteen *de minimis* parties for costs incurred, or to be incurred, by EPA at the Shore Realty Site, also known as the Applied Environmental Services, Inc. Site in Glenwood Landing, Nassau County, New York.

DATES: Comments must be provided on or before May 3, 1993.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278 and should refer to: In Re: Applied Environmental Services, Inc.

Site, Glenwood Landing, Nassau County, New York, U.S. EPA Index No. II CERCLA–122–93–0201.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/ Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278, (212) 264–9794, Attention: Alexander Schmandt.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Applied Environmental Services, Inc. Site (the "Site"), Glenwood Landing, Nassau County, New York. Section 122(g) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

EPA has previously entered into two administrative agreements (see 57 FR 27049), which became effective on August 5, 1992, with 136 *de minimis* respondents (U.S. EPA Index No. II CERCLA–122–20201) and 27 non-*de minimis* respondents (U.S. EPA Index No. II CERCLA–122–20202) at the Site. The two agreements reimbursed EPA $275,000 for its past response costs ($125,000) and estimated future oversight costs ($150,000) at the Site.

Administrative Order on Consent, U.S. EPA Index No. II CERCLA–122–93–0201, provides that the *de minimis* respondents (i.e. generators of hazardous substances that contributed less than one percent by volume of the hazardous substances to the Site) will reimburse EPA $7,708 for its enforcement costs associated with this settlement and potential additional future oversight costs in excess of the anticipated $150,000 of future oversight costs. The proposed agreement also provides, in conjunction with the State of New York's proposed Shore Realty Supplementary Consent Judgment, that the *de minimis* respondents will pay $121,048 towards the conduct of the remedial work at the Site, which is being implemented by the Glenwood Landing Remedial Trust pursuant to the August 5, 1992, consent-judgment entered into by the State of New York and certain defendants in the case of *State of New York* v. *Shore Realty Corp.*, Nos. 84 CV 0864 and 85 CV 2270 (JBW)(E.D.N.Y.). Upon payment of its share of response costs to EPA and the Glenwood Landing Remedial Trust, a *de minimis* respondent will be released from liability for past and future CERCLA response costs at the Site.

Thirteen potentially responsible parties eligible for *de minimis* status at the Site have committed to participate in the *de minimis* settlement: Acme Auto Radiator; Aladdin Dry Cleaning Specialists, Inc.; Baldwin Union Free Schools District; Burmar Technical Corp.; Camillitti, Frank; Chemcoat, Inc.; Dependable Hydraulic, f/k/a Dependable Repair; J&A Cleaners, Inc.; LTS, Inc.,; Port Jefferson Cleaners, Inc.; Prestige Screen Prints, Ltd.; Suffolk Services, Inc.; and Tele-Signal Corp.

A copy of the proposed Administrative Order on Consent may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, room 437, 26 Federal Plaza, New York City, New York, 10278, Attention: Alexander Schmandt.

Dated: March 23, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 93–7496 Filed 3–31–93; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Friday, April 16, 1993, from 9:30 a.m. to 11:45 a.m. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Advisory Committee Responsibilities; Congressional Status Report; Financial and Budget Status Report; OECD Agreement Status Report/ Activity Review; Insurance Program Update; Small Business Report; Report on FY 1992 Advisory Committee Recommendations and Identification of 1993 Prospects; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 966, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893, not later than April 15, 1993. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 12, 1993, Loretta Carrier, Room 966, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Loretta Carrier, Room 966, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Helene H. Wall,

Vice President—Administrative and Management Services.

[FR Doc. 93–7581 Filed 3–31–93; 8:45 am]

BILLING CODE 6690–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Hearing and Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a public hearing on Wednesday, April 21 from 9 a.m. to 4 p.m. and, if necessary, based on public response, continuing on Thursday, April 22, 1993, from 9 a.m. to 12 p.m. in room 7313, General Accounting Office, 441 G St., NW., Washington, DC. In addition, on April 22, immediately following the hearing the Board will hold its monthly meeting.

At the hearing the Board will hear views and testimony of interested parties on two Exposure Drafts recently issued by the Board. They are entitled Objectives of Federal Financial Reporting, and Accounting for Inventory and Related Property, both issued on January 8, 1993. Written comments or position papers, and outlines of oral presentations from individuals wishing to testify should be submitted to the Board by April 5. The Board will schedule those desiring to give oral testimony who have made timely requests, subject to available time. Copies of any written material submitted to the Board will be distributed to members of the Board and made a part of its public file.

The agenda for the monthly meeting on April 22 includes a discussion of credit reform issues from the Board's Exposure Draft Accounting for Direct Loans and Loan Guarantees.

Other items may be added to the agenda; interested parties should

contact the Staff Director for more specific information. Any interested person may attend the hearing and the meeting as an observer. Board hearings and meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., suite 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Public Law No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 29, 1993.

Ronald S. Young,

Staff Director.

[FR Doc. 93–7605 Filed 3–31–93; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Pub. L. 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 30, 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: Construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection services); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from January 1, 1992 to December 31, 1992. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after April 1, 1993.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION: Procurements of construction or trash/garbage collections with an estimated value of $25,000 or less and procurements of A&E services with an estimated value of $50,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collections with an estimated value that exceeds $25,000 and procurements of A&E services with an estimated value that exceeds $50,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Service in Groups 15, 16 and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 5 and 9 for services in SIC 1794) will be conducted on an unrestricted basis.

Procurements for construction services in SIC 1794 issued by GSA contracting activities in Regions 5 and 9 will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin. Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except solicitations issued by contracting activities in Regions 2, 3, and 6) will be conducted on an unrestricted basis. Procurements for architect-engineer services issued by GSA contracting activities in Regions 2, 3, and 6 will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of Connecticut, Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New Jersey, New York, Puerto Rico, and Virgin Islands. Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties) and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William). Region 6 encompasses the states of Iowa, Kansas, Missouri, and Nebraska.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: March 23, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–7470 Filed 3–31–93; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0113]

Emergency Action Levels: Lead in Food Packed in Lead-Soldered Cans

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing emergency action levels of 80 micrograms per kilogram (μg/kg) (80 parts per billion (ppb)) for lead in fruit beverages (such as juices, nectars, and drinks) packed in lead-soldered cans and 250 ppb for all other foods packed in lead-soldered cans. FDA is announcing these emergency action levels as an interim measure to protect infants and young children from injury

or impairment that could result from consistent consumption of fruit beverages and other foods that contain lead at levels greater than 80 ppb and 250 ppb, respectively.

DATES: Written comments by June 1, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

SUPPLEMENTARY INFORMATION: In this document, FDA is announcing that it is issuing, pursuant to § 181.1(c) (21 CFR 181.1(c)), emergency action levels of 80 ppb for lead in fruit beverages, such as juices, nectars, and drinks packed in lead-soldered cans and 250 ppb for all other foods packed in lead-soldered cans. FDA is issuing the 80 ppb emergency action level because fruit beverages have the potential to be consumed in large amounts by infants and young children, and when such foods contain lead at 80 ppb or greater, they may cause injury to the child. The agency is issuing the 250 ppb emergency action level to protect infants and young children from adverse effects that could result from daily consumption of other foods containing lead at levels greater than 250 ppb.

In the near future, FDA intends to publish a document that finds, based upon the agency's evaluation of available evidence, including the comments submitted in response to an advance notice of proposed rulemaking published in the **Federal Register** of August 31, 1979 (44 FR 51233), that a prior sanction, as defined in section 201(s)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)(4)), exists for lead solder used in metal containers for food packaging. The basis for the agency's conclusion includes: (1) The issuance of final standards of identity for 29 different canned fruits, fruit juices, and vegetables between 1939 and 1958 that generally approved the use of cans that were made with lead-soldered side seams as the appropriate container for these standardized products; and (2) agency correspondence, press releases, and scientific reports that stated that lead solder was acceptable for use in canning food and was not unsafe if used in accordance with then current good manufacturing practices.

However, based on data that demonstrate that lead solder in food packaging may cause food that comes in contact with it to be injurious to health, FDA intends to propose to revoke this prior sanction and to propose to prohibit the use of lead solder in food packaging. Sections 181.1(b) and 181.5(c) (21 CFR 181.1(b) and 181.5(c)) provide that the agency may prohibit the use of a prior-sanctioned ingredient where scientific data or information demonstrate that use of the ingredient may be injurious to health and thus in violation of section 402 of the act (21 U.S.C. 342).

Pending completion of the rulemaking to prohibit the use of lead solder in food cans, the agency is issuing, pursuant to § 181.1(c), emergency action levels of 80 ppb for lead in fruit beverages, such as juices, nectars, and drinks packed in lead-soldered cans and 250 ppb for all other foods packed in lead-soldered cans. These emergency action levels are being issued under section 402(a)(1) because available data and information demonstrate that continual consumption of fruit beverages and other foods containing lead at levels greater than 80 ppb and 250 ppb, respectively, by infants or young children may be injurious to their health.

The appropriateness of the emergency action level for lead in fruit beverages packed in lead-soldered cans is evidenced by an incident that occurred during the summer of 1992. This incident involved an 18-month-old child with a blood lead level of 36 µg per deciliter (dL) found in a routine county health department blood lead monitoring program. Investigation of this incident by the county health department revealed that the only significant source of lead exposure for this child was lead in imported fruit juice packed in 12-ounce, lead-soldered cans (Ref. 1).

Analysis by the State health department of multiple flavors of the fruit juices in lead-soldered cans available to the child found lead levels ranging from 160 to 810 ppb per can (Ref. 1). Analysis by FDA of representative samples of these fruit juices available to the general public revealed a range of lead levels from 255 to 1,084 ppb. These lead levels correspond to a lead content of 86 to 376 µg of lead per 12-ounce can of product (Ref. 2). An exposure assessment performed by the county health department estimated that the child consumed about three cans of these fruit juices per day and estimated that the child's daily lead intake from these fruit juices was approximately 600 µg/day (Ref. 2).

An FDA toxicological evaluation of this incident concluded that the excessive lead levels in these fruit juices, namely 255 to 1,084 ppb (as determined by FDA analysis), were likely to cause permanent damage and disability to children if consumed on a daily basis in quantities consistent with those reported in the incident described above. The lead level found in these juices represents a severe health hazard to infants and children because consumption of fruit juices containing these lead levels presents a potential hazard of encephalopathy and death (Ref. 2).

As a result of the incident involving fruit beverages packed in lead-soldered cans, the agency believes that a level of 80 ppb or greater of lead in fruit beverages, which could be consumed by infants and young children as a substantial portion of their daily diet, is an appropriate level at which to consider enforcement action against fruit beverages under section 402(a)(1) of the act. Section 402(a)(1) of the act states:

> A food shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health.

Infants and young children absorb ingested lead into the blood much more efficiently than do older children and adults. FDA estimates that daily consumption of a fruit beverage containing 80 ppb (80 µg/kg) of lead as a substantial portion of the daily diet by infants and young children could produce a blood lead level greater than 10 µg/dL (Ref. 2), which is a minimal blood lead level considered by experts to adversely affect neurological development in infants and young children (Ref. 3).

Further, FDA data show that background lead levels in fruit beverages are normally well below 80 ppb. Since 1985, FDA's total diet study has found the mean lead level in domestic canned fruit beverages (packed in lead-soldered and nonlead-soldered cans) to be 20 ppb or less. In addition, for the last 12 total diet market basket collections between August 1988 and April 1991, the highest lead level detected in any fruit beverage was approximately 20 ppb (Ref. 4). During the same time period, no detectable lead was found in samples of frozen, reconstituted orange juice; canned grapefruit juice; canned orange drink;

frozen, reconstituted lemonade; or, strained (infant/junior) orange or orange/pineapple juice. Thus, a lead level in excess of 80 ppb in a fruit beverage packed in a lead-soldered can clearly results from migration of the lead into the food from the solder used in the can. Therefore the lead in the food is an added substance within the meaning of section 402(a)(1) of the act.

The issuance of the 250 ppb emergency action level for all foods other than fruit beverages packed in lead-soldered cans is the result of recent findings of high levels of lead in other types of foods packed in lead-soldered cans, and of FDA's concern that young children are vulnerable to adverse effects, as described above, from lead from frequent consumption of these foods.

For example, a Class I recall of refried beans packed in lead-soldered cans was initiated November 17, 1992, by a foreign manufacturer because lead levels of 325 ppb and 335 ppb were found in two composite samples, respectively, of these products by FDA's San Francisco district laboratory during routine analysis of surveillance samples. On November 18, 1992, the firm extended the recall to include two jalapeno pepper products also packed in lead-soldered cans. On November 24, 1992, the firm extended the recall to include four fruit nectar products and one vegetable juice, also packed in lead-soldered cans. On December 10, 1992, the firm extended the recall to include an additional four fruit nectar products and corn tamales, also packed in lead-soldered cans. With the extension on December 10, 1992, the recall included all of the firm's products packed in lead-soldered cans that had been exported to the United States (Ref. 5).

A toxicological evaluation of this incident (Ref. 6) by FDA concluded that the lead levels found in the two refried bean samples, 325 ppb and 335 ppb, respectively, are likely to cause permanent damage and disability to children if consumed on a daily basis. This evaluation further concluded that the additional products included by the firm in the recall were likely to contain lead levels that would approximate those of the refried beans because of the nature of the container used to package these products. Based on this evaluation, FDA believes that these products present a severe health hazard to young children. Consumption of these products, depending upon the frequency of use and the lead levels present in the product, could represent a potential hazard of encephalopathy and death.

Another incident that caused the agency to consider issuing an emergency action level for foods other than fruit beverages packed in lead-soldered cans is described by the Department of Health, State of Hawaii, in a press release issued on January 8, 1993, discussing their order of December 29, 1992, to remove from sale all stocks of one brand of canned mandarin orange segments produced by a foreign manufacturer because of high lead levels (Ref. 7). This action followed the State of Hawaii's investigation of a consumer complaint about an off-taste in the product. The investigation disclosed a variety of can abnormalities, including spots of lead solder on the cans' inner walls and deterioration of the enamel coating of the inner surface of the cans, which is designed to protect the product from lead solder used to seal the can side seams. Analysis by the Department of Health, State of Hawaii, Food and Drug Branch reported lead levels between 190 and 700 ppb in the cans tested. FDA analysis of representative samples of the canned mandarin orange segments in domestic commerce found lead levels between 159 and 205 ppb.

An emergency action level of 250 ppb for all foods, other than fruit beverages, packed in lead-soldered cans is thus needed to protect infants and young children from the adverse effects, as noted above, that could result from daily consumption of foods containing lead at levels greater than 250 ppb. The agency believes that an emergency action level of 250 ppb is appropriate for foods other than fruit beverages because these other canned foods are not consumed by infants and young children in the high amounts at which canned fruit beverages are consumed.

On the basis of the foregoing discussion, FDA believes that there is sufficient evidence to support enforcement action against fruit beverages packed in lead-soldered cans found to contain 80 ppb or more of lead, and against all other foods packed in lead-soldered cans found to contain 250 ppb or more of lead, on the grounds that these foods contain an added poisonous or deleterious substance, lead, that may render them injurious to health and are, therefore, adulterated under section 402(a)(1) of the act. The emergency action levels are applicable to all fruit beverages and to all other foods packed in lead-soldered cans that are offered for introduction into interstate commerce.

The agency advises that there is no basis to believe that there is a widespread problem with canned foods and lead contamination. FDA decided to establish the emergency action levels largely in response to the specific incidents described above, which involved imported products. Domestic can industry officials (the Can Manufacturers Institute (CMI) and the National Food Processors Association (NFPA)) have advised FDA that lead-soldered food cans are no longer being produced by U.S. can manufacturers (Ref. 8). CMI and NFPA have stated that, to the best of their knowledge, the last lead-soldered food can was produced by a U.S. can manufacturer on November 28, 1991. Based on usual marketing and consumption patterns, FDA believes that it is unlikely that any domestic lead-soldered food can is in the marketplace at this time. Similarly, several government officials of countries that export food to the United States have advised FDA that they are aware of and concerned with the presence of lead solder in food cans. These officials stated that their countries were either continually attempting to reduce lead levels in food or were monitoring lead levels in food.

The emergency action levels for lead in fruit beverages packed in lead-soldered cans and for lead in other foods packed in lead-soldered cans contained in this notice are not substantive rules. Rather, they constitute guidance that FDA will use in exercising its enforcement discretion when considering whether the agency will regard an article as adulterated within the meaning of section 402(a)(1) of the act. This notice does not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all relevant facts concerning the presence of lead in any food.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA Memorandum dated July 16, 1992, from the Director, Center for Food Safety and Applied Nutrition, to the Associate Commissioner for Regulatory Affairs.

2. Health Hazard Evaluation No. 2881, Center for Food Safety and Applied Nutrition, Food and Drug Administration, July 14, 1992.

3. FDA Memorandum dated November 16, 1990 (revised November 18, 1991), from the Contaminants Team, Division of Toxicological Review and Evaluation, to Elizabeth Campbell, Division of Regulatory Guidance.

4. FDA Total Diet Study, April 1985 to May 1991, unpublished.

5. FDA Memorandum dated January 15, 1993, from the Director, Center for Food Safety and Applied Nutrition, to the

Associate Commissioner for Regulatory Affairs.

6. Health Hazard Evaluation No. 2990, Center for Food Safety and Applied Nutrition, Food and Drug Administration, December 21, 1992.

7. Press release dated January 8, 1993, issued by the State of Hawaii, Department of Health.

8. Letter dated March 24, 1992, from Robert R. Budway, Vice President and General Counsel, CMI, to Jerry Burke, Director, Office of Physical Sciences, Center for Food Safety and Applied Nutrition, FDA.

Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Comments

Interested persons may, on or before June 1, 1993, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 26, 1993.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 93-7516 Filed 3-31-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Availability of Funds for Grants To Provide Outpatient Early Intervention Services With Respect to HIV Disease

AGENCY: Health Resources and Services Administration.

ACTION: Correction Notice.

In this notice document 93-5954 beginning on page 14216 in the issue of Tuesday, March 16, 1993, make the following corrections:

On page 14216, under **DATES:** in the middle column add after June 1, 1993, "and applications for new grants must be received by the appropriate RGMO by June 18, 1993."

Under **SUPPLEMENTARY INFORMATION:** Number of Awards, the first paragraph should read:

It is anticipated that a total of 136 grants will be awarded ($47.5 million), of which 40 ($12.7 million) will be for noncompeting continuation grants with January 1 budget start dates, and 26 ($9.4 million) will be for *competing continuation and new grants* and 70 ($25.4 million) will be for noncompeting continuations with September 30 budget start dates.

On page 14217, third column, under B. the heading should read: "B. Competing Applications." The first paragraph should read: "In its review of applications for competing *continuation and new* projects, BPHC will consider the extent to which:"

The rest of the notice remains as published.

Dated: March 26, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93-7515 Filed 3-31-93; 8:45 am]

BILLING CODE: 4160-15-P

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (55 FR 2152-3, January 22, 1990 and at 54 FR 4085-91, January 27, 1990, and 57 FR 34300-34301, August 4, 1992, as most recently amended 57 FR 43237, September 18, 1992) is amended to replace the function statement for the Division of Management Policy within the Office of Administration and Management to provide administrative infrastructure and support to the functional managers and their staff within the Indian Health Service.

Indian Health Service

Chapter HG, Section HG-20, Functions, is amended as follows:

Under the heading *Office of Administration and Management (HGA2),* after the statement for the *Program Integrity and Ethics Staff (HGA2-2),* insert the following title and statement: *Division of Management Policy (HGA21).* (1) Provides analysis, direction, and control for management policies and procedures; (2) serves as principal adviser on Indian Health Service (IHS) organization and management policy and provides guidance and control for establishment or modification of organizational infrastructures, functions, and delegations of authority; (3) coordinates management control reviews, management initiatives, issuances, reports, and agreements programs; (4) directs and controls the agency's directives management and delegations of authority program; (5) provides consultation and assistance in the development of directives, delegations of authority, and agreements; (6) serves as focus for liaison with Public Health Service (PHS) and Department of Health and Human Services (HHS) for management policy; and (7) coordinates all responses to reports for the Office of the Inspector General (OIG), General Accounting Office (GAO), and other Federal internal audits for the agency.

Under *Section HG.40, Delegations of Authority:* All delegations and redelegations of authority made to IHS officials that were in effect immediately prior to this replacement shall continue in effect pending further redelegation.

Dated: March 25, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 93-7514 Filed 3-31-93; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-93-3602]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Request for expedited processing of information collection requirements associated with amendments to the Housing and Community Development Act of 1992 (Pub. L. 102-550).

SUMMARY: The proposed information collection requirement described is being submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. An expedited review is necessary to comply with section 908(c) of the Act which requires the Secretary to issue regulations to implement the amendments not later than the expiration of the 180-day period beginning on the date of enactment of the Act (October 28, 1992).

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, RESPA Specialist, Department of Housing and Urban Development, 451-7th Street SW., Washington, DC 20410, Telephone No. (202) 708-4560 (this is not a toll-free

number). Copies of the proposed form and other documentation submitted to OMB may be obtained from Ms. Jackson.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review as soon as possible, but not later than 10 days.

The notice lists the following information: (1) The title of the information collection proposal; (2) the office to the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form numbers, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information collection, including respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and, (9) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, section 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: 25 March 1993.

James E. Schoenberger,

Associate General Deputy, Assistant Secretary of Housing.

Proposal: Collection information associated with amendments to the Housing and Community Development Act of 1992.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is a regulatory requirement in order to comply with amendments to the Real Estate Settlement Procedures Act as amended in the Housing and Community Development Act of 1992.

Form Number: Not applicable.

Respondents: Lenders and other settlement businesses for profit.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
115,000		13.1		.35		582,025

Status: New request.

Contact: Ivy Jackson, HUD, (202) 708–4560.

SF–83 Supporting Statement

A. Justification

1. This rule proposes to revise 24 CFR part 3500, the implementing regulations for the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.* (RESPA). The Rule has been issued to reflect amendments to RESPA in the Housing and Community Development Act of 1992 (Pub. L. 102–550) which adds a new class of covered transactions: second and other subordinate mortgages such as home equity lines and loans secured by qualifying residential real estate (12 U.S.C. 2602(1)(A)). In addition, it proposes a revised HUD–1 Settlement Statement (HUD–1A) which is more functional for this class of loans. Although the amendments included first mortgage refinances, this coverage was previously added in the revised regulations, effective December 2, 1992.

2. A result of expanding coverage of RESPA to subordinate mortgages is that certain RESPA required disclosures be given as a part of these transactions.

The Good Faith Estimate (GFE) gives the borrower an estimate of projected loan costs. It gives the borrower information concerning origination fees, broker fees, etc. on which to shop and make the best financial decision. The lender must also disclose any required settlement providers and their costs on the GFE. If the lender denies credit within three days of receipt of the application, a GFE is not required (12 U.S.C. 2604(d). Mortgage brokers, not exclusive agents of lenders, are also required to give an additional GFE at time of application.

The proposed HUD–1(A) itemizes the settlement services provided and fees and charges related to the loan transaction. The HUD–1(A) is filled out by the settlement agent and a copy is provided to the borrower and lender. The HUD–1(A) is proposed in lieu of the HUD–1 (12 U.S.C. 2603(a)).

The Controlled Business Arrangement (CBA) Disclosure is used to disclose the relationship between a settlement service being referred by an affiliated settlement service. The disclosure is necessary in order to meet the CBA exemption from violation of section 8(c)(4) (12 U.S.C. 2607).

3. Any technology may be used to produce the Good Faith Estimate, HUD–1(A) Settlement Statement or Controlled Business Arrangement Disclosure.

4. There is no duplication of information required by the HUD–1(A) or the CBA disclosures. There will be duplication of most of the information required by the broker GFE as in most cases the lender will also provide a GFE.

5. There is no similar information available which is required by the CBA disclosure and the HUD–1(A). Duplicate GFE information may be supplied by the lender, but subsequently.

6. It is customary to provide some estimate of costs and settlement statement format. The requirement for a CBA disclosures will mainly effect large entities.

7. Collection is at a minimum frequency. Disclosures and the HUD–1(A) are a one-time per loan requirement.

8. These collections are consistent with the guidelines of 5 CFR 1320.6.

9. There is little data readily available on subordinate mortgage transactions. Information was sought from these sources:

- American Housing Survey for the U.S. in 1991, Bureau of the Census, U.S. Department of Commerce, Office of Policy and Development, U.S. Department of HUD, Kurt Vsowski (202) 708–0426, Duane McGough (202) 708–1060.
- County Business Patterns 1990 United States. Economic Surveys Division, Bureau of the Census, U.S. Department of Commerce. Howard Savage (301) 763–8165, Alan Blum (301) 763–1804, Gerald Feuer (301) 763–5056.
- National Association of Mortgage Brokers, Michael J. Hoogendyk, Executive Vice President (602) 992–6181, Mary Burt, Director Government Relations (202) 408–6891.
- American Financial Network, Bob McKew, General Counsel (202) 296–5544.
- Title I Lenders Association, Peter Bell (202) 328–9171.

• Regulatory Impact Analysis (RIA) (Docket No. 1256), U.S. Department of HUD. HUD published a revision of RESPA on October 2, 1992 with an effective date of December 2, 1992. The RIA discussed the impact of these required disclosures as well as the costs of retention.

10. No assurances of confidentiality are required or necessary.

11. Not applicable.

12. There is no cost to the Federal government because HUD does not collect, distribute or retain this information. Furthermore, the information is not usually required to be sent to HUD.

13. Costs to respondents are estimated as follows:

In regard to applicable federally-related mortgages the rule conforms with the statute and extends coverage of RESPA to subordinate mortgage loans. The following disclosures are required:

* Lenders as well as any mortgage broker, not the exclusive agent of a lender, are required to provide a GFE.

* Settlement agents are required to issue a proposed HUD–1(A) Settlement Statement.

* Affiliates of a controlled business relationship are required to give borrowers the CBA disclosure at the time of referral.

The annual number of subordinate mortgage transactions was calculated from information obtained by the Office of Policy and Development, U.S. Department of HUD, from the American Housing Survey for the U.S. in 1991, Bureau of the Census, U.S. Department of Commerce. The data included a sample of households with more than one mortgage. The sample results were then used to project an estimated number of total U.S. households with more than one mortgage. The number of mortgages acquired for four years were reported as: 1988—520,000; 1989—749,000; 1990—734,000; and 1991—563,000. These four years were then averaged to estimate the annual number of subordinate mortgage transactions as 642,000.

The estimate of 100,000 lending institutions which might engage in subordinate loan transactions was determined based on data obtained from the U.S. Census Bureau, County Business Patterns 1990 United States. There are approximately 100,000 individual branches and subsidiaries which are reported under the Standard Industrial Codes as personal credit institutions (25,000), commercial banks (52,000), savings institutions (21,000) and credit unions (3,000).

HUD published a comprehensive revision of RESPA on October 2, 1992 with an effective date of December 2, 1992. A regulatory impact analysis (RIA) was completed (Docket No. 1256) which discussed the impact of these required disclosures as well as the costs of retention.

According to the RIA industry estimates that it takes about 15 minutes to complete a GFE. Based on an estimated 642,000 loan transaction the burden hours for lenders is projected at 160,500. If 25 percent of these loans (160,500) involve a mortgage broker an addition of 40,125 burden hours is required. Costs for preparation, mailing, overhead and storage are estimated to be approximately $30 per form for a total annual cost of approximately $24.1 million.

Based on the RIA it is estimated that approximately 10 percent of the loan transactions (64,000) will require a CBA disclosure concerning their business affiliation. The cost involved is basically the time to give the disclosure and make any explanations. It is estimated that each transaction will add .10 burden hours for a total of 6400 burden hours and a cost of $20 per disclosure or total of $1.2 million.

TABULATION OF ANNUAL REPORTING BURDEN—REAL ESTATE SETTLEMENT PROCEDURES ACT

	No. of respondents	No. of responses	Total annual responses	Hours per response	Annual burden hours	Total annual burden
Good faith estimate (brokers)	15,000	11	160,500	0.25	40,125	4.8 mil.[2]
Good faith estimate (lenders)	100,000	5	642,000	0.25	160,500	19.3 mil.[2]
HUD–1(A)	[1] 100,000	6	642,000	0.50	321,000	19.3 mil.[2]
Controlled business disclosure	[1] 10,000	6	64,000	0.10	6,400	1.2 mil.[3]

[1] Part of original 100,000 respondents.
[2] Estimated cost is $30 per disclosure.
[3] Estimated cost is $20 per disclosure.

14. Burden is due to statutory amendments, Housing and Community Development Act of 1992 (Pub. L. 102–550) approved October 28, 1992.

15. Not applicable.

B. Not applicable.

Excerpts From Unpublished Proposed Rule

(These excerpts are provided as an elaboration of the information collection requirements set out in this notice for public comment).

Section 3500.6 Special information booklet at time of loan application

(a) *Lender to provide information booklet.* Subject to the exceptions set forth below, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application on an application form or forms normally used by the lender for a federally related mortgage loan. Where two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the individuals applying, but may provide additional booklets to other applicants, or to guarantors.

The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 3500.2) after the application is received or prepared, unless the lender denies the application for credit before the end of the three business-day period. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive this special information booklet at the earliest possible date.

However, the lender or mortgage broker does not have to provide the booklet to any applicant for a covered loan for refinancing of a borrower's property, or for any other loan where the lender will not take a first lien, until and unless the Secretary has issued a revised or separate HUD Settlement Booklet[s] which deals which refinancing loans or subordinate liens, or until the Secretary has endorsed forms or information booklets of other Federal Agencies. The availability of the Booklet or the acceptability of alternate materials or booklets will be set forth in a notice in the **Federal Register**, which will also set forth the implementation date of this provision. Similarly, the HUD Settlement Booklet need not be distributed to applicants for a reverse mortgage, until the Department identifies an appropriate booklet

or other information to be distributed, by means of a notice in the Federal Register.

* * * * *

Section 3500.7 Good faith estimate

(a) *Lender to provide.* The lender shall provide the good faith estimate required under this section (a suggested format is set forth in Appendix C of this part) to all applicants for a federally related mortgage loan by delivering the good faith estimate or placing it in the mail to at least one of the loan applicants not later than three business days after the application is received or prepared, unless the lender denies the application for credit before the end of the three business day period. If a mortgage broker is the exclusive agent of the lender, either the lender or the mortgage broker shall provide the good faith estimate, within three business days after the application is received or prepared by the mortgage broker.

(b) * * * However, if the application for mortgage credit is denied before the end of the three business day period, no good faith estimate is required.

* * * * *

(e) * * *

(1) If the provider is an associate of the lender (as that term is defined in § 3500.15(c)(1)), or;

* * * * *

(3) * * * In the event that a lender requires a provider as set forth in the first paragraph of this part, but at the time of the receipt of the application has a list or lists of discrete classes of required providers (5 or more) such as appraisers, closing agents, attorneys, private mortgage insurers, or credit reporting agencies, and the lender has not yet chosen the provider from one or more of these lists, an alternative form of compliance may be utilized. The requirements of this part may be satisfied if it is disclosed that a designated provider will be required from a lender controlled list, the range of costs for each provider are disclosed on the Good Faith Estimate, and if the required information, including Controlled Business Arrangement disclosures, if applicable, regarding the specific service provider is given to the applicant within three business days after the service provider is selected.

Section 3500.14 Prohibition against kickbacks and unearned fees

* * * * *

(g) * * *

(1) * * *

(v) Pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements for real estate brokerage fees.)

Appendix A to Part 3500—Instructions for Completing HUD–1 Settlement Statement

* * * * *

Line Item Instructions

Line 902 is used for mortgage insurance premiums due and payable at settlement, except reserves collected by the Lender and recorded in the 1000 series. A lump sum mortgage insurance premium paid at settlement should be inserted on Line 902, with a note that indicates that the premium is for the life of the loan.

Appendix F Form of HUD Settlement Statement for Refinancings and Junior Lien Transactions

BILLING CODE 4210–27–M

Appendix F

REAL ESTATE SETTLEMENT STATEMENT

U.S. Department of Housing and Urban Development

For Use Only for Refinancing and Junior Lien Settlements

Name and Address of Borrower	Loan Number
	Settlement Date
Property Location (if different from above)	Name & Address of Lender

L SETTLEMENT CHARGES		M DISBURSEMENT TO OTHERS
800	Items Payable In Connection With Loan	
801	Loan origination fee %	1501
802	Loan discount %	1502
803	Appraisal fee to	
804	Credit report to	1503
805	Lender's inspection fee	
806	Mortgage insurance application fee to	1504
807	Assumption fee	
808	Mortgage broker fee	1505
809		
810		1506
811		
900	Items Required By Lender To Be Paid In Advance	1507
901	Interest from to @ $ /day	
902	Mortgage insurance premium for months to	1508
903	Hazard insurance premium for years to	1509
904	years to	1510
905		1511
1000	Reserves Deposited With Lender	
1001	Hazard insurance months @ $ per month	1512
1002	Mortgage insurance months @ $ per month	
1003	City property taxes months @ $ per month	1513
1004	County property taxes months @ $ per month	
1005	Annual assessments months @ $ per month	1514
1006	months @ $ per month	
1007	months @ $ per month	1515
1008	months @ $ per month	
1100	Title Charges	1520 TOTAL DISBURSED (enter on line 1603)
1101	Settlement or closing fee to	
1102	Abstract or title search to	
1103	Title examination to	
1104	Title insurance binder to	
1105	Document preparation to	
1106	Notary fees to	
1107	Attorney's fees to (includes above item numbers)	
1108	Title insurance to (includes above item numbers)	
1109	Lender's coverage $	
1110	Owner's coverage $	
1111		
1112		
1113		N. NET SETTLEMENT
1200	Government Recording And Transfer Charges	
1201	Recording fees: deed $ mortgage $ releases $	1600 Note Amount $
1202	City county tax/stamps: deed $ mortgage $	
1203	State tax/stamps deed $ mortgage $	1601 PLUS Cash/Check From Borrower $
1204		
1205		1602. MINUS Total Settlement Charges (line 1400) $
1300	Additional Settlement Charges	
1301	Survey to	1603. MINUS Total Disbursements To Others (line 1520) $
1302	Pest inspection to	
1303	Architectural/engineering services	1604. EQUALS Disbursements to Borrower (after expiration of any applicable rescission period required by law) $
1304	Building permit	
1305		
1400	Total Settlement Charges (enter on line 1602)	

DRAFT

Borrower

Borrower

[FR Doc. 93-7484 Filed 3-31-93; 8:45 am]

BILLING CODE 4210-27-C

Office of Administration

[Docket No. N–93–3597]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 23, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Expedited Procedures for RTC Multifamily Properties (FR–3393).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information collection will be used by the purchasers of properties from the Resolution Trust Corporation (RTC). These purchasers may elect to apply for mortgage insurance under section 207 pursuant to section 223(f). The purchasers will furnish to HUD with their application, copies of the architectural, appraisal, and environmental reports prepared by RTC. This requirement will expedite HUD's processing for mortgage insurance.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	20		1		.25		5

Total Estimated Burden Hours: 5.

Status: New.

Contact: Jill Rudow or Benjamin Jacinto, HUD, (202) 708–3055; Angela Antonelli, OMB, (202) 395–6880.

Dated: March 23, 1993.

[FR Doc. 93–7486 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3598]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 24, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Historical Lead-Based Paint (LBP) Activity Report.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The purpose of this information collection is to ascertain the number of children identified by the health community as having an elevated blood lead (EBL) level. The Housing Authorities will submit this historical information to HUD. The report will also identify the risk assessment and costs associated with EBL activities. The report will cover the period from August 1, 1986 to June 30, 1992.

Form Number: HUD–52850–A.

Respondents: State or local Governments.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Activity Report	3,400		1		1		3,400

Total Estimated Burden Hours: 3,400.

Status: New.

Contact: Marilyn Diaz, HUD, (202) 708–0846; Angela Antonelli, OMB, (202) 395–6880.

Date: March 24, 1993.

[FR Doc. 93–7487 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3599]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 22, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Contractor's Requisition Project Mortgages.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–92488 is used by the contractor to obtain distribution of insured mortgage proceeds when construction costs are involved. The form is needed by HUD to monitor construction progress and ensure compliance with the Davis-Bacon wage rates.

Form Number: HUD–92488.

Respondents: Businesses or other for-profit and non-profit institutions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92488	1,000		10		6		60,000

Total Estimated Burden Hours: 60,000.

Status: Extension.

Contact: Roger Kramer, HUD, (202) 708–0743; Angela Antonelli, OMB, (202) 395–6880.

Date: March 22, 1993.

Proposal: Commitment to Guarantee Mortgage-Backed Securities.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: HUD–11704 will be used by applicants to apply for GNMA commitment authority to guarantee mortgage-backed securities and to request the assignment of a pool number.

Form Number: HUD–11704.

Respondents: Businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11704	1,200		4		.25		1,200

Total Estimated Burden Hours: 1,200.

Status: Reinstatement.

Contact: Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 395–6880.

Date: March 22, 1993.

[FR Doc. 93–7488 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3600]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 19, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Multifamily Coinsurance Claims Package 223(f).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The mortgagee prepares and submits to HUD the 223(f) Coinsurance Package whenever a coinsured mortgage is defaulted. HUD computes the claim settlement that is due the mortgagee based on the information submitted by the mortgagee.

Form Number: HUD–27008, 27009–B, 27009–D, and 27009–F.

Respondents: Businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	5		1		6		30

Total Estimated Burden Hours: 30.

Status: Extension.

Contact: Betty Belin, HUD, (202) 401–2168; Angela Antonelli, OMB, (202) 395–6880.

Date: March 19, 1993.

[FR Doc. 93–7489 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–01–M

Office of Housing

[Docket No. N–93–3601]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Request for extension of approval of information collection requirements associated with OMB Control Number 2502–0377 to be used in connection with the Subsidy Layering Review Requirements of title 1 of the HUD Reform Act of 1989 and the Housing and Community Development Act of 1992.

SUMMARY: The proposed information collection requirement described is being submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. An expedited review is necessary to permit the processing of applications for assistance under the Subsidy Layering Requirements outlined review.

DATES: Comments due: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Report Management Office, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, Telephone No. (202) 708–0050 (this is not a toll-free number). Copies of the proposed forms and other available documentation submitted to OMB may be obtained from Mrs. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 350 it is also requested that OMB complete its review within 20 days.

The notice lists the following information: (1) The title of the

information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form numbers, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information collection, including respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and, (9) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, section 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 35359d).

Dated: March 17, 1993.

James E. Schoenberger,

Associate General Deputy Assistant Secretary of Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Collecting Information from Applicants for a Subsidy Layering Review of Housing Projects as Required by the HUD Reform Act of 1989 in Connection with Low Income Housing Tax Credits.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information will enable HUD to determine what HUD assistance is necessary to make the housing projects feasible which have been awarded Low Income Housing Tax Credits.

Form Number: N/A.

Respondents: Applicants applying for HUD assistance for Housing projects in connection with Low Income Housing Tax Credits.

Frequency of Submission: One time.

Reporting Burden:

Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
1170		1		½		585

Status: New request.

Contact: Thomas P. Conway or Scott Werdal, HUD (202) 708–0624; Angela Antonelli, OMB (202) 395–6880.

Dated: March 17, 1993.

Supporting Statement to SF–83 Owner Certification on LIH Tax Credits

A. Justification

1. Multifamily projects participating in HUD's mortgage insurance or subsidy programs can also receive Low Income Housing Tax Credits from the states. They can receive credits for building, acquiring or rehabbing units that will be occupied by low-income families. The credit is taken annually for 10 years. The maximum annual credit a project may receive is 4 percent of acquisition costs and 9 percent of construction or rehab costs.

a. To receive and take the credit, owners must agree to lease at least either: (1) 20 percent of the units to families with incomes at/below 50 percent of the area median incomes (20/50 option); or (2) 40 percent of the units to families with incomes below 60 percent of the area median income (40/60 option). The owner chooses which option to apply and which units will be rent restricted. For either option, the owner may choose to exceed the minimum (20/40 percent) low-income use and receive credit on the additional units.

b. The tax credit law limits a tenant's rent to no more than 30 percent of the income limit (50/60 percent of the median) selected by the owner. For example, if an owner chooses the 20/50 option, a tenant's gross rent may not exceed 30 percent of 50 percent of area median income, adjusted for family size.

c. Projects receiving tax credit allocations are generally syndicated as limited partnerships. Investors pay cash up front or over a few years in return for ownership interests and the right to take a proportionate share of the project's tax credit on their personal tax returns. Generally, investors contribute cash equal to five times the annual credit amount.

Since tax credits are allocated by States and owners are not now required to tell HUD of tax credit allocations, HUD does not know which projects have credits or the amount of the credits. If a project receives credits without HUD's knowledge, it is very likely that HUD will assume excessive mortgage insurance risk or award more assistance than a project needs.

a. Excessive Mortgage Insurance Risk

If HUD is not aware that a project has a tax credit allocation, HUD could insure/coinsure a mortgage that is higher than needed or higher than the restricted tax credit rents can support.

- The mortgage could be higher than rents can support because HUD's feasibility analysis and appraisals will be based on market rents but the tax credit rules will limit actual rents on all or some units to significantly lower amounts. HUD will not know how many units or which units are rent-restricted or the rent option the owner has selected. Result: Increased potential for defaults and claims against the FHA insurance funds.
- The mortgage could be higher than needed to support construction or rehab because HUD processing will be based upon total costs and won't reflect the private capital raised by the tax credit. Result: Limited insurance authority is wasted and any subsequent claim on the FHA insurance funds is unnecessarily high.

b. Excessive Assistance Awarded

If HUD does not know that a project has a tax credit allocation, assistance could be excessive because HUD would likely:

- Award tenant rent subsidies based on market rents, when the owner would be charging significantly lower rents. Again, unless the owner submits the information requested by our Notice, HUD would not know that rents are restricted or the amount of the reduction.
- Allocate Flexible Subsidy and other repair assistance based on total rehab needs, even though investor contributions could meet all or part of these needs.
- Award tenant rent subsidies to support mortgages that are unnecessarily high for reasons noted in Paragraph a above. *Result*: Scarce subsidy dollars are wasted.

2. HUD staff will use the information to assure that HUD does not award excessive subsidies or assume undue risk when owners combine the Low Income Housing Tax Credit with HUD's mortgage insurance or subsidy programs.

a. Certification on Participation in LIHTC Program

All applicants for HUD assistance or mortgage insurance must disclose

whether they plan to participate in the LIHTC program. The disclosure is submitted to the HUD Field Staff/ Coinsuring Lender/PHA who processes the transaction involved. If the applicant's response is:

- Negative, the applicant merely photocopies and signs the certification in Attachment 3 of the Notice. No additional submission is required.
- Positive, the applicant must submit the information listed in Attachment 2 of the Notice.

b. Materials Submitted by Tax Credit Participants

These submission requirements are listed in Attachment 2 of our proposed Notice. Initially, HUD Field Offices and lenders will pass these materials to HUD Headquarters and HUD Headquarters will use them as described below. Later, after review procedures have been tested and finalized, HUD Field Staff will perform these reviews.

- Tax Credit Terms (Item 1 of Attachment 2). HUD needs this information to accurately estimate a project's income. If income is over/ understated, HUD will assume excessive mortgage insurance risk or award more assistance than needed, as explained in Paragraph 1 above.
- Information on Sources and Uses of Funds (Items 1a, 2, 3, 4, and 5). This information will show HUD the total funding available to meet a project's development, rehab or operating costs. HUD will adjust assistance or insurance commitments to reflect the private capital raised by the tax credits. Without this information, HUD's commitments would be higher than needed as they would be based on an unadjusted needs figure.
- Applicant Agreement to Notify HUD of Subsequent Changes in Information Submitted. If applicants submit updated information, HUD's subsidy and mortgage calculations will more accurately reflect project needs. If an applicant does not report changes that occur and those changes cause subsidy/mortgage amounts to be excessive, the owner certification will give HUD a basis to pursue penalties or other corrective action.

3. The information collection burden associated with this certification is minimal, so there has been no consideration of the use of improved information technology to reduce the burden.

4. Neither this or any similar information is now available to HUD. While HUD currently does not see this information, most tax credit applicants will have already compiled the information Attachment 2 requests. They will have done so to assess the feasibility of their proposal, to prepare a syndication offering or to submit their credit applications to the states. To keep applicant burden to a minimum, we will accept photo copies of such submissions.

5. See #4 above.

6. The burden for all respondents, including small businesses, is minimal.

7. If information were collected less frequently than proposed by our Notice, HUD would not have the information it needs to accurately determine mortgage insurance and assistance needs. (See Items 1a and 1b above.)

a. Our notice requires applicants to submit the information before HUD or its agent executes documents locking HUD into a specific amount of mortgage insurance or assistance or setting forth conditions on which HUD will approve a specific transaction. If information were submitted at a later point, HUD would not be able to adjust its commitments to reflect the information.

b. Generally, an applicant need submit information only once. If an applicant submits the information at one stage (e.g. conditional commitment), the applicant need submit the information again only if it changes.

8. See #7 above.

9. Consultation with persons outside of HUD was not considered necessary, given the limited scope of the information to be collected.

10. HUD does not assure confidentiality.

11. Not applicable.

12. Annual cost to HUD and to respondents are estimated below.

Respondent costs	HUD costs
Time required/ response=½ hour.	Time review=1 hour.
Cost/response=$10 ($42,000 salary).	Cost/review=$16 ($33,000 salary).
Total responses/ year=1170.	Total reviews/ year=1170.
Total cost=$11,700 ...	Total cost=$18,720.

13. The information collection burden hours was estimated to be:

Number of respondents=1170.
Number of responses/respondent/ year=1.
Total number of responses per year=1170.
Time required/response=½ hour.
Total annual burden=585 hours.

The number of respondents was estimated using preliminary 1988, data from state credit agencies. The data shows that during 1988, 842 of the 3262 projects receiving 1988 tax credit allocations participated in a HUD mortgage insurance or subsidy program (236, BMIR, Section 8, Mod Rehab, Rent Sup). Another 34 projects participated in the HODAG program. We estimated total responses by trending 1988 data to recognize: (1) Increased usage of credit authority; (2) that Nov '89 tax credit legislation precludes Mod Rehab projects from receiving 1990 credit allocations; (3) that HODAG generally did not make new awards after 1988 and, hence, subsidy commitments will already be locked in on most HODAG projects; and (4) that projects can stay in the processing pipeline for one to two years.

The 1170 respondents was estimated as shown below.

(1)	(2)	(3)	(4)
Year of tax credit authority	Total HUD-related projects receiving credit allocations	% of Col 2 having Attmt 2 action in '90	Total responses (Col 2x3)
1988 .	842	20	168
1989 .	1000	70	700
1990 .	720	40	288
			1156
			HODAG + 14
			1170

14. Estimated respondent burden hours and cost to government differ from the hours and costs we estimated in 1988 when requesting OMB approval of tax credit submissions by applicants for FHA full insurance (OMB No. 2502–0377). The differences are due to the following facts.

a. Our 1988 submission significantly overestimated the number of respondents. While we estimated 580 submissions would be required, only about 20 submissions were made between 2/89 and 12/1/89.

b. The proposed notice will require tax credit disclosure on more transactions. While our 1988 memo required disclosure only in conjunction with mortgage insurance applications, our new notice will require disclosure on all of the transactions listed in the Notice's Attachment 1.

c. While our 1988 SF–83 estimated that each respondent would make two submissions per year, under the proposed notice each respondent will generally submit Attachment 2's data only once in any year. (See Item 7b Above.)

d. Respondent's cost per submission is reduced because we assumed a $42,000 salary rather than the $62,400 salary used in our 1988 submission. Since the data is already available, it can be compiled by mid-level staff.

e. HUD review time is increased because reviewing the Sources and Uses Statement, which was not required by the 1988 policy, will consume additional HUD time.

15. Not applicable.

B. Collection of Information Employing Statistical Methods

This information collection will not employ statistical methods.

Special Regional and Field Office Instructions Regarding HCA/HUD Implementation of the Subsidy Layering Review Guidelines

A. Housing Development

The[1] instructions in this section (section A) clarify for Regional (RO) and Field Office (FO) Housing Development (HD) staff special procedures to follow when implementing the low income housing tax credit (LIHTC) Subsidy Layering Guidelines into their standard mortgage insurance processing routines. Instructions relating to HUD assistance administered through the Office of Housing Management (HM) follow in section B.

Definition of Subsidy

Projects receive many layers of assistance which one might not ordinarily equate with "subsidy". But for the purposes of the subsidy layering review (SLR), subsidy is broadly defined to include at least the following layers of assistance: Project-Based Certificates; Mod Rehab; Mortgage Insurance; Transfers of Physical Assets; Mortgage Relief (i.e. Partial Payments of Claims); Refinancing a HUD-assisted project; Prepayment Plans of Action; § 8 Rent Increases or Contracts for new or additional units; Flexible Subsidy; Foreclosures, Negotiated, or Competitive Sales; Grants/Special Loans from a Federal, State, or local source; Tax Credits received from a Housing Credit Agency (HCA); Tax Exempt Bond Financing and attendant Tax Credits received from a Housing Finance Agency; etc. (See 24 CFR 12.50 Definitions for a more complete list).

Purpose of Instructions

These instructions should assist ROs and FOs in determining whether HCAs are properly implementing the Subsidy Layering Guidelines, and in cases where they are not, provide direction for how HUD will exclusively perform the SLR, and the RO may revoke the HCA.

[1] These instructions supersede our memorandum of February 2, 1988 entitled, "Processing HUD-Insured Projects Involving Low-Income Tax Credits", and also Notice H 90–17, "Combining Low Income Housing Tax Credits with HUD Programs".

1. *Sponsor certification and application screening.*—a. *Sponsor certification.* The Sponsor of any application for insurance under HUD multifamily programs must identify whether the project will receive tax credits in accordance with the certification contained in Addendum #1. If tax credits are involved, HUD program participants must submit materials listed in Addendum #2. Multifamily Representatives (MRs) must pay particularly close attention to these requirements, because HUD is concerned that there are still projects which have not disclosed the presence of tax credits, e.g. tax-exempt bond financed projects automatically receive a ten year stream of LIHTCs, and although these are for lesser amounts which do not count against the state's total allocation authority (the availability of such financing is subject to separate limitations, however), these can be syndicated or kept by the Sponsor, subjecting the set-aside units of the project to rent restrictions which HUD must consider in its underwriting, and adding a layer of subsidy which must be considered in the SLR. At the earliest stages of a project's mortgage insurance application it is essential that HUD obtain the required certification and details about tax credits from Sponsors in order to expedite processing.

"Other government assistance", such as grants or special loans must appear on the Sponsor's Form HUD–92013; at the commitment stage of processing a commitment letter signed by the authorized agent of the applicable government agency or instrumentality and showing the amount, original source, and intended use of the funds must be submitted (See HUD Handbook 4470.1, ¶16–2B.).

b. *Initial application screening.* MRs should review the basic types of tax credits described briefly below and the Sponsor's certification and detailed information before an application is accepted for processing. Processing will be expedited if the MR screens the participants' tax credit materials to see if certain basic Guidelines' requirements are met (read and study Addendum #8, popularly referred to as the Subsidy Layering Guidelines), e.g. ascertain whether the HCA has made an initial allocation award; verify that the HCA's initial § 911 Certification has been made and determine whether its initially approved "Sources and Uses" (S&U) statement is in balance; verify that the Form HUD–92013 requested mortgage amount is the same as that assumed by the HCA in the Sources portion of the S&U statement; make sure that the Sponsor has identified either 20%/50% or 40%/60% set aside arrangements (Item 1b of Addendum #2), and has said which units the tax credits are claimed against (Item 1c); check whether this matches the HCA's allocation assumptions for the percentage of units LIHTCs relate to (Item 2b). Please note that when greater than 40% of the units are set aside for low income use, and the project does not receive project-based § 8 rental assistance, Headquarters' approval of the completed underwriting is required (See Handbook 4430.1, REV–1, Issued Sept. 23, 1992, ¶1–42; see also Appendix 4, 9c). If the underwriting is performed in accordance with these instructions, Headquarters' review will be expedited; but commitments may not be issued until the review result is known. A Sponsor must also submit with their application, and update as necessary throughout processing, a detailed schedule indicating when installments from the syndication are contractually required or expected from investors, whether these serve as security for a bridge loan, a photocopy of the terms of such a loan, all expected syndication expenses, bridge loan interest and costs which must be subtracted from gross syndication proceeds, and the Sponsor's resulting estimate of Net Syndication Proceeds. Valuation and Mortgage Credit cannot complete mortgage insurance processing without this information, and the HCA cannot make their final § 911 Certification without it.

Details concerning "other government assistance" such as grants/loans, and the requirements for application review are contained in Chapter 16 of Handbook 4470.1, REV–2, issued 9/92.

2. *Basic types of tax credits.* LIHTCs may be allocated or automatically awarded (for tax-exempt financing) in ten year streams for the new construction, substantial rehabilitation, or acquisition and rehabilitation of a multifamily project, and bind the recipient to rent restrictions. Historic Tax Credits, by contrast, may be awarded to developers of projects with historical significance for one year, but do not bind the recipient to rent restrictions. A State or local housing credit agency, or bond financing agency (for tax-exempt proposals), determines the amount of tax credits a project will receive. In general, greater amounts of LIHTCs are allocated for new construction and substantial rehabilitation, and even greater amounts if located in "qualified census tracts" (See Attachment #1 of Addendum #8 for definition). HUD staff should note that an HCA's definition of substantial rehabilitation may be different than

HUD's, but HUD should apply its applicable program definition to substantial rehabilitation proposals to determine eligibility. It must also be noted that an HCA's definitions of the terms "development costs" for new construction and "rehabilitation costs" for substantial rehabilitation may differ from HUD's; nevertheless, HUD Cost Analysts and Appraisers will process proposals in accordance with the applicable outstanding program and technical handbook instructions to estimate the total development costs and the estimated total replacement cost or value, as applicable.

3. *Primary effects of the combination of LIHTCs and HUD multifamily mortgage insurance.* Generally, the annual credit amount relating to low-income rent restricted projects receiving LIHTCs is for a ten year period, and specific details must be disclosed by the Sponsor (In contrast, Historic Tax Credits are a one year award, unless combined with ten year LIHTCs and corresponding low-income restrictions). Whatever the type and amount of LIHTCs, HUD Valuation and Mortgage Credit sections (Architecture and Cost will not be affected) will notice the primary effects in two important areas of underwriting:

a. The proportion of units which must be set aside for low-income purposes in accordance with the LIHTC award (please note that this may exceed the minimum 20 or 40 percent levels) can substantially lower estimated project net operating income, and thus, reduce the Debt Service Mortgage Criterion (Exception: For project-based section 8 cases, the Form HUD–92264 T rents do not apply for rent restricted units, but rather, a Rent Computation Worksheet must be completed for the project based units—see more below—and other program limitations apply); and,

b. Accounting for certain cash requirements such as the "Sponsor's required minimum equity contribution" (See Guideline #9 and its Exceptions), and for cases where an HCA's section 911 authority has been either voluntarily surrendered or revoked, or an HCA does not follow the Guidelines, determining the applicable mortgage limitations in a manner similar to that already in place for grants/loans (See instructions below) will require additional processing time and attention.

4. *Valuation special instructions.*—a. *Land and expense analyses: Similarities outweigh differences.* The fact that the tax credits will be received by the project Sponsor will not have any effect on the Appraiser's estimate of land value (or "as is" value in substantial rehabilitation cases, i.e. Line G 73, Form HUD–92264) or Total Project Expenses (Line E 29). The Appraiser may complete these analyses first, if desired, in the same manner as one would process the proposal without tax credits, with a few caveats. With regard to the land and/or improvements, please note that Guideline #1 specifically states that any "value" attributable to the tax credit award must be ignored in the appraisal, i.e. pretend the tax credit is not there when performing the appraisal. As to the expenses, Appraisers must be careful in the Form HUD–92274 analysis not to underestimate necessary project expenses, i.e. because low income rents may not increase at the same rate as expenses during the rent restricted holding period, the appraisal should contain a reasonable initial expense estimate. A final caveat is that for projects already subject to a HUD-insured loan, e.g. section 236 or section 221(d)(3) loan staying with the project after transfer and repairs insured under, say, a proposed section 241 loan, and subject to a 100 percent project-based section 8 contract, the Appraiser may use the greater of either outstanding indebtedness of that loan, or unsubsidized "as is" market value on Line G 73 (See Guideline #1; Consult the assigned Loan Management Servicer regarding the loan's remaining balance, and whether it is in HUD's best interests to use the greater of the two amounts).

b. *Rental analysis.* In contrast to land and expenses, the Appraiser will have to pay close attention to several restrictions in the rental analysis.

1. *Unsubsidized rents.* The Form HUD–92264 T must be completed (See Addendum #3) for projects receiving LIHTCs which seek only mortgage insurance assistance from HUD. Note that if the Sponsor has indicated that 40 percent of the units will be set aside at 60 percent of the area median income as the general set-aside category, the 40 percent set-aside is just a minimum proportion. The Appraiser must check the HCA's allocation contract to find out what percentage of the units will actually be set aside for low income use, i.e. just because the 40%/60% option is selected does not mean that the Sponsor will only set aside 40 percent of the units, or that the rent restrictions will only apply to 40 percent. If the LIHTC allocation assumes a greater percentage of low income units will be set aside, and this was the basis of the Sponsor's LIHTC award, then the Appraiser must reflect this total set aside percentage in processing (The rents for the set aside units are transferred from the Form HUD–92264 T to section C, Form HUD–92264). This should also be cross-checked against the Sponsor's Addendum #2, Item 1c list. Where greater than 40% of the units are subject to rent restrictions, but do not receive project-based section 8 rental assistance, Headquarters approval of the completed underwriting is required. The effect of using the Form HUD–92264 T for rent restricted units will be to reduce the total net operating income (Line F 34 of Form HUD–92264), and ultimately, the Debt Service Mortgage (Criterion 5 of the Trial Form HUD–92264A).

2. *Subsidized rents.* In cases where some additional form of HUD assistance (like, for example, a section 236 project currently receiving 100 percent project based section 8 rental assistance) is combined with a proposed HUD-insured loan (like, for example, a section 241 Supplemental Loan) and LIHTCs to help finance repairs, then the Appraiser must work together with the assigned Loan Servicer to determine what the processing rents will be, and whether they can support the proposal submitted.

For example, the Servicer should show the Appraiser how the current section 8 contract rents are calculated using a format similar to the "Rent Computation Worksheet" (See Handbook 4350.1, REV–1, 9/92 version, pages 7–77 et seq; See also ¶s 7–32 and 7–33). The Servicer and Appraiser must work together to complete a new worksheet, assuming completion of the proposed improvements.

The Appraiser should do a rough calculation of the additional debt service necessary on the section 241 loan, i.e., multiply the new debt service constant, Line 5d of the Trial Form HUD–92264A, by the maximum insurable mortgage (MIM). The MIM's debt service will be used by the Loan Servicer as a new mortgage assumption when completing the draft worksheet.

Next, the Appraiser must refine the result of the Operating Expense Analysis, which assumes completion of proposed improvements. Line E 21 must include both Replacement Reserve for the new improvements and adequate annual reserve requirements for the existing improvements. The Loan Servicer, and if available, HD or HM Architectural staff, should be consulted about the adequacy of the current reserve requirements, and what the total required annual amount will be. The Servicer should share data concerning the operating and maintenance cost of the existing project, and as a result the Appraiser may be able to refine the "After Repairs" Form HUD–92274 estimates. All assigned staff should agree on what the estimated total expenses, including reserves, will be so

the Servicer can complete "Box C" of the worksheet.

The Servicer must complete the worksheet,[2] and then determine whether there is sufficient Budget Authority in the existing section 8 contract to pay the amounts estimated to be necessary. If the FO has sufficient contract authority to grant the section 8 increase involved, no further approvals from Headquarters are necessary. If there is not sufficient contract authority, then the FO should specially request that Headquarters reserve the amendment money necessary, and provide the same to the RO to hold on behalf of the project. The RO would hold the money until the section 241 loan was approved and insured, and then allow for amendment of the section 8 contract, and the FO execution of a new contract. If for any reason the section 241 loan fell through, the Department could recapture the reserve funds and use them elsewhere.[3]

c. *Processing completion.* After determining the land or "as is" value, the project operating expenses, any necessary operating deficit, and the rents as described above, the Appraiser should complete the Forms HUD–92264 and Trial HUD–92264A following basic outstanding instructions. The Appraiser must "back into" the rents for rental assistance cases, i.e. Criterion 5 of the Form HUD–92264A reflects the net operating income which will be transferred to Line F 34 of Form HUD–92264. Line F 33 should reflect the result agreed upon by staff earlier in processing, and the sum of Lines 33 and 34 should be reflected as Effective Gross Income on Line 32. After dividing by the vacancy and loss ratio assumed by the Servicer in the Rent Computation Worksheet, and adding any equity return included to LD Sponsors, the Appraiser can complete Lines F 31 and 30. The Line F 30 Gross Income should be transferred to Line C 32, and after commercial and ancillary income are subtracted from this total, the Appraiser may use the same allocation formula assumed by the Servicer in the Rent Computation Worksheet to distribute rents among the various unit types.

The results can then be checked against the section 8 contract rents assumed by Loan Management in making their assistance request determination. Differences between the mortgage assumed by the HCA in its S&U statement and HUD's maximum insurable mortgage (MIM), or between estimated total replacement cost (Line G 74) and the HCA's estimate, or operating deficit estimates, should be noted in the Remarks section regardless of whether there is rental assistance.

The Appraiser will advise the MR of preliminary results, and forward Form HUD–92264 to Mortgage Credit. Forms HUD–92274, 92273, and 92264 T or "Rent Computation Worksheet" or its equivalent for section 8 cases, a Trial 92264A, and photocopies of processing forwarded must be retained in the Valuation file. Regardless of which criterion limits the mortgage, the MR should include in all project commitments for mortgage insurance which receive LIHTCs the following condition:

This commitment is based on specific assumptions about the receipt of tax credits, and for low income housing tax credit allocations, the limitation of a specific percentage of its units for low income use as certified to by the Sponsor to HUD, and as reflected in the Housing Credit Agency's allocation documentation. If at any time prior to final closing these assumptions change, HUD may alter the insured mortgage amount, or increase cash requirements, to more accurately reflect: the actual net syndication proceeds received or expected to be received through the sale of the tax credits; the actual allocation of LIHTCs, if modified; the actual percentage of set aside units; or the actual allowable syndication expenses and bridge loan costs.

As noted above, HD will not issue a commitment in cases where Headquarters' review and approval are required. As noted below, HD will not issue a commitment in any case until the HCA's response to HUD's assistance review has been received.

d. *Preservation and LIHTCs.* For any preservation cases proposing to combine LIHTCs, insured section 241 loan(s), and any other form of HUD assistance, Appraisers should bear in mind that extension and transfer preservation value estimates should not include any enhanced value by virtue of, or in anticipation of, the LIHTC allocation; rather, the project's transfer and extension preservation values should be measured separately as if no allocation had been awarded. After the Appraiser completes preservation processing according to outstanding instructions, the details of any indicated section 241 (a) or (f) loans will be forwarded to HM. HM will assess the need for such loans and any other HUD assistance/ incentives in conjunction with the HCA's LIHTC allocation, and make recommendations to the Field Office Manager (FOM) regarding section 102 Certification. The HCA must, as always, execute a section 911 certification, and HUD must execute a section 102 certification (See Addendum #5), certifying that "no more assistance than is necessary to preserve affordable multifamily housing" is being provided in such cases (See also section B.4. below). If the HCA takes no part in the SLR, then see instructions below in section A7f.

5. *Mortgage credit special instructions.* Mortgage Credit Examiners (MCEs) should follow outstanding instructions for the review and cost certification of projects combining LIHTCs and mortgage insurance located in HUD Handbook 4470.1 with the following caveats. Prior to commitment in insurance cases, the Sponsor must satisfy the MCE that all cash requirements and required escrows can be funded by the identified sources in a timely manner before and during the construction period as contemplated. At initial closing the Sponsor must fund the escrows required under program rules or assumed under the approved S&U statement. For insurance of advance cases, advances will only be insured and draws approved based on the mortgage's proportionate position as a source for approved development cost uses after all net proceeds front money has been exhausted, i.e. net tax credit proceeds must be available as front money to pay for that source's proportionate share of the draws before any mortgage proceed draws can be approved. See additional instructions below for projects where HUD must do the SLR.

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[2] Upon reaching the point in the Rent Computation Worksheet where returns to equity are estimated, Servicers should allow the same percentage of annual return to any new equity contributed as was originally permitted under the program involved. Program definitions of equity as interpreted together with Guideline #9 should be applied.

[3] For projects which do not currently have a section 8 contract in place, the Servicer would complete the worksheet and then compare the resulting unit rents for the unit types involved to existing fair market rents (FMRs) for those same types. The rents cannot exceed the 100 percent of existing FMRs, unless the area's unsubsidized market would support an increase above the published amounts. If the unsubsidized market supports it, the Field Office Manager may approve and increase rents up to 110 percent of existing FMRs. If the approved FMRs are greater than the estimated amount necessary to service the original debt, service the new debt, and pay total expenses, plus vacancy and loss, and any return to equity, then such rents can be assumed for processing purposes if the Field Office has sufficient contract authority to grant the section 8 increase involved. If "amendment funds" are needed, but no additional section 8 Units are being added, then this request must be made to the regional Funding Coordinator, and the results of the request must be known and processing completed before forwarding the results to the HCA, or issuing any commitment. If the published FMRs are less than the estimated amount necessary, however, or the unsubsidized market does not support exceeding 100 percent of existing FMRs, or, funds are not available to approve increases over the published FMRs, then the proposal, as submitted, must be rejected.

All requested change orders and cost overruns will be treated in accordance with outstanding HUD Handbook instructions. Mortgage increases, however, can only be approved if the required equity contribution under the applicable program has been met, the net tax credit proceeds treated as a front money requirement are exhausted, there is no evidence of diversion of net proceeds for a Use not allowed under the Guidelines, and the project has reached final completion. If the mortgage increase cannot be approved because these or other program requirements are not met, then the owner must contribute additional equity, and such cash requirements must be met prior to final closing.

6. *HUD correspondence with and monitoring of the HCA.*—a. *Communication of mortgage insurance processing and cost certification results.* If the HD staff has recommended approval of the subject's application for mortgage insurance, and conditioned the draft commitment (See section A4c. above), and the Director of Housing Development (DHD) has determined that there are no significant unresolved underwriting issues, and where applicable, Headquarters' has reviewed and approved the project underwriting (when greater than 40% of the units are set aside for low income use, and such units do not receive project-based section 8 rental assistance, Headquarters approval of the completed underwriting is required. See HUD HB 4430.1, REV–1, Issued Sept. 23, 1992, ¶1–42D3.; see also Appendix 4, 9c. DHDs must also see ¶s 1–41 and 1–42 and confer with General Counsel to determine whether use restrictions and subordination issues are satisfactorily addressed. If the underwriting is performed in accordance with these instructions, Headquarters' review will be expedited and commitments can be issued thereafter), then correspondence communicating HUD's essential findings may be sent to the project Sponsor and HCA (See Addendum #4 for format; for section 223(f) cases, see also Addendum #7 for the appropriate S&U format for these cases). No commitment may be issued until a response is received from the HCA. If the HCA agrees to adjust and adjusts its allocation, as necessary, a commitment may be issued for the amount processed and the FOM may be advised to concur by signing the section 102 Certification form attached as Addendum #5. If the HCA does not reduce its allocation, however, when HUD estimates that too much subsidy is being provided to the project, then in accordance with instructions below in section A7., HUD will perform the SLR, reduce its MIM, and the FOM may thereafter execute the section 102 Certification; i.e. since HUD has the ultimate responsibility for assuring that no excess subsidy layering occurs, in cases where the HCA has not or will not adjust subsidy within its jurisdiction, HUD must adjust assistance within its jurisdiction.

Another letter similar in format to Addendum #4 must be sent to HCAs and Sponsors after cost certification which notes any changes in HUD assistance or replacement cost, as necessary. It is critical that FOs communicate all results expeditiously so that HCAs can refine earlier assumptions made regarding the mortgage or replacement cost. For all tax credit cases, DHDs must keep a separate file record of all correspondence with HCAs for RO monitoring purposes.

b. *Developer's fees and net syndication factor schedules.* Generally, HCAs are charged with the duty of determining what percentage of development costs ("allowable costs" during cost certification) the total developer's fee should be under Guidelines #4 and #5. HUD believes that its BSPRA/SPRA allowances provide the Sponsor and its General Contractor adequate compensation in the typical low and moderate income development (i.e. approximately 10 percent of development costs, which is the limit under Guideline #4). But in accordance with Guideline #5, HUD is willing to recognize Additional Developer's Fees for projects located in "qualified census tracts", or having other recognizable risk characteristics. The Guidelines require HCAs to develop a schedule for how much the additional fee should be for projects of identifiable risk characteristics, i.e. the "Risk and Related Profit" schedule, and submit it to HUD FOs and ROs of Housing Development for comment. If the HCA has adequately supported the schedule submitted, then both the applicable RO and FO must recognize it for review purposes and indicate their approval in writing. If the HCA deviates from the schedule which they have established, however, it is important that the FO advise the HCA and RO of all apparent departures. In the absence of an acceptably supported schedule, or if HUD must perform the SLR, the following reflects the maximum for the sum total of Builder's Profit, BSPRA/SPRA, and Additional Developer's Fee, as applicable in a particular case, multiplied by total development costs:

	Rehabilitation	New construction
1st 100 units	17%	15%
Additional units	13%	13%

(For the purposes of this calculation, the total development cost will be divided by the total number of units, and the average unit cost shall be used for the first 100 units. Note: These are *maximum* amounts, but HUD may establish its own schedule as described below.)

HCA (or HUD, where it exclusively performs the SLR—See more below) schedules should comprehend the special and unique circumstances of different development proposals. Such factors may include the need for the particular type of low income housing involved in an area of non-contiguous site development (e.g. scattered site development of 3 Bedroom units), the size of the project, and any special risks the developer incurs that the market would recognize and compensate for to build the proposed housing (See also Guideline #5). The schedule should not be arbitrarily established without any rational basis. The sum of amounts allowed under Guidelines #4 and #5 cannot exceed 17 percent of total development costs (as defined in the Guidelines) during processing, or allowable costs during construction and cost certification. HCAs may not approve in excess of 13 percent of total development costs for the sum of Guidelines #4 and #5 until HUD ROs and FOs have received the HCA's proposed schedule, reviewed it to determine if it is adequately supported, and approved it by written response to the HCA.

HCAs should also establish Net Syndication Factor Schedules reflecting how the following factors affect net cash amounts obtainable through syndication: public vs. private offerings, type(s) of HUD assistance the LIHTC is combined with, individual vs. corporate investors, the installment/infusion period of syndication proceeds, rent-restricted holding period. In the absence of data, HCAs may assume the applicable factor under Guideline #10 is presently obtainable for the purposes of allocation. Documentation evidencing the funding of Letters of Credit, as applicable, should also be submitted. The HCA's schedules should be adjusted as necessary based on actual syndications. On an annual basis, HCAs must submit data to the applicable HUD RO to the attention of the Regional Administrator (RA) from any and all actual syndications which support the factors assumed when awarding

allocations. DHDs must simultaneously provide to the RA's office photocopies of the FO LIHTC correspondence files and all applicable processing forms for comparison. HCAs must clearly identify the Approved LIHTC Allocation, Gross Syndication Proceeds received or receivable, Bridge Loan Costs, Syndication Expenses, and resulting Net Proceeds for each transaction. The HUD FO Net Proceeds front money requirement should closely approximate this amount. Because LIHTCs are a limited resource, HCAs should be encouraged to reallocate to other needed multifamily projects any recaptured LIHTCs resulting from their SLRs. Failure to establish and adjust rational schedules is, in itself, adequate basis for revocation of the HCA's section 911 authority (see Monitoring below).

c. *Monitoring.* In monitoring the HCA's implementation of the Guidelines, HUD should accept without notice any reasonable differences between HCA's development cost uses and HUD's cost certifiable allowances. Similarly, HUD may disregard any minor differences between the front money net syndication proceeds and the amount reflected by the HCA in its final S&U statement. But if significant differences between HUD's estimate of allowable sources and uses under the Guidelines and the HCA's exist, and the HCA provides no reasonable explanation for such differences, or the HCA makes no reasonable effort to refine individual allocation awards to bring the S&U statement into balance, or recapture LIHTCs from projects receiving excess subsidy, or to require Sponsors to apply such excesses to prepay HUD insured loans, or recover shortfalls through collection on the Letter of Credit required under Guideline #10 to pay all approved project uses, or refine its schedule of factors to reflect actual syndications, or to establish competitive procedures which assure that the maximum level of investment capital is obtained through syndications and no diversions or delayed receipt of proceeds occur, or annually report all actual syndication data and make available to HUD on site inspection of all records of the same, as requested, the RA must put the HCA on notice of HUD's determination and the details supporting HUD's position. If after repeated notice, substantial differences in HCA guideline interpretation or implementation persist, a Notice of Revocation of Authority should be prepared with the assistance of Region's General Counsel, as is consistent with section 911 of the Housing and Community Development Act of 1992.

7. *Surrendered/revoked HCA authority and HUD assistance reduction.* In areas where the HCA voluntarily surrenders its section 911 authority, or HUD revokes it, or if the HCA awards too much subsidy in any individual case and will not reduce it, affected RO & FO HD Valuation and Mortgage Credit staffs will first complete the instructions above, and then follow the procedure outlined below:

Summary: Letters of Credit (LC) for up to 3% over scheduled factors, if applicable (See Guideline #10), must be funded separately from all other sources by the Sponsor, and must be held by the mortgagee until it can be demonstrated that the syndication proceeds will meet or exceed the schedule amount, at which time HUD may authorize the release. Such additional factored amounts should only appear on the S&U statement under Net Proceeds if a LC is funded by the Sponsor at initial endorsement. If the Sponsor's net syndication estimate is greater than HUD's but the Sponsor cannot fund the difference, then note the difference under Remarks and use the lower amount in processing below. If such excesses materialize, they will be applied to prepay the mortgage loan. In cases where project principals have elected to hold the LIHTCs rather than sell them, or to syndicate only a part of the allocation, HUD will "impute" the value of such credits to the project mortgagor using the appropriate market-based factor for all portions of the allocation retained. In effect, the procedures outlined below impose another MIM limitation to reduce mortgages where too much assistance has otherwise been awarded.

a. *Replacement cost formula (RCF) uses.* For new construction or substantial rehabilitation, complete the RCF (See Addendum #6) using the Form HUD–92264 construction estimates and applicable land or "As Is" value. The Valuation Branch will:

1. Use an appropriate net syndication factor to estimate tax credit proceeds, and reflect the assumptions in the Remarks section. Subtract from this amount all allowable uses funded by sources other than the mortgage (See Attachment #2 format of Addendum #8). Assume that the reminder is available for mortgageable replacement cost items and deduct it from the RCF like a grant, or any other deduction. Thus, Valuation does not deduct tax credit proceeds earmarked for non-replacement costs (i.e. not mortgageable) items. Read the Guidelines for such allowable amounts and check with the DHD for any appropriate Additional Developer's Fee.

2. Deduct the amount of any applicable grant/loan funds attributed to replacement cost (mortgageable) items when computing RCF.

3. Prepare a trial copy of the Form HUD–92264A following outstanding mortgage credit instructions as modified by ¶16–3 of Handbook 4470.1, REV–2, issued 9/92.

4. Complete the Total Estimated Replacement Cost of Project in § G of Form HUD–92264 using the MIM developed on the Trial Form HUD–92264A.

b. *Mortgage credit examiners will:* follow instructions contained in chapters 15, 16, and 18 of 4470.1, REV 2, issued 9/92, except as they are expanded or modified as follows:

1. Tax Credit Proceeds:

a. Deduct non-mortgageable tax credit proceed uses from the estimated net syndication proceeds (whether proceeds are calculated by schedule estimate during processing, as indicated by Valuation in the Remarks section, or based on the actual syndication and bridge loan financing). The remainder shall be considered proceeds available for mortgageable replacement cost items (uses) and shall be deducted from Criterion 3 in the same manner as grants/loans in ¶16–3A. Similarly, treat such net proceeds available for mortgageable items the same as grants/loans for mortgageable items in accordance with ¶16–3 B to H.

b. Do not affect any other criteria on Form HUD–92264A except as low income restrictions affect Criterion 5 in non-project-based § 8 cases, and for substantial rehabilitation Criterion 6 (§§ 207 or 231 only) is affected by cost reductions for mortgageable items, or for § 223(f) cases the lowest mortgage criterion, the MIM, is affected (See § A7c. below).

c. Cannot be used to meet the mortgagor's required investment except as permitted to fund working capital under Guideline #6, operating deficit escrows under Guideline #7, or other exceptions to fund the minimum equity requirement discussed under Guideline #9.

2. The lowest mortgage permitted by the applicable criteria becomes the MIM.

c. *Section 223(f).* Instead of using an RCF, and because section 223(f) is a "value" program, Appraisers and MCEs will simply and directly reduce the MIM by the sum total of any grants, special loans, and mortgageable net tax credit syndication proceeds (i.e. deduct from the total net proceeds all approved uses payable by sources other than the

mortgage, before adding this amount to any grants/loans, and reducing the MIM by the sum total of deductions for mortgageable items).

d. *Initial endorsement.* Instructions contained in chapters 15, 16, and 18 of HUD HB 4470.1 are expanded or modified as follows:

Sponsors must submit complete details concerning any bridge loan financing prior to issuance of a firm commitment as part of the overall financing plan and schedule required under ¶ 18–4 (See all review requirements discussed thereunder). If syndication proceeds are to be used for mortgageable items, these funds should be treated as front money and used prior to the disbursement of any mortgage proceeds in all insurance of advance cases. Further, the funding of other uses outside the mortgage permitted under the Guidelines must be accomplished in accordance with outstanding instructions, e.g. the operating deficit must be funded by such tax credit proceeds or funds secured by these in a timely manner. Similarly, the working capital reserve, where appropriate, must be funded at initial closing. If the details of the financing plan as submitted, or the timing or amounts of any syndication proceeds installments, indicate that the mortgagor will be unable to make timely payment of any mortgageable or non-mortgageable item in an acceptable manner, then it is a mortgage credit reject, until bridge loan financing or some other acceptable device for filling any gap in the timing or amount necessary is obtained by the Sponsor and is not secured by the real estate.

e. *Processing completion.* The MR should be advised of the preliminary results, and the Forms HUD–92264 and 92264A may be used to draft the commitment. Regardless of which criterion limits the mortgage, and whether HUD or the HCA has adjusted assistance within its jurisdiction from initially assumed amounts, the MR should include in all project commitments for mortgage insurance which receive tax credits the condition referred to in section A4c. above.

f. *Preservation and LIHTCs.* For any preservation cases proposing to combine the receipt of LIHTCs, section 241 loan(s), and any other form of HUD assistance, Appraisers should bear in mind that extension and transfer preservation value estimates should not include any enhanced value by virtue of, or in anticipation of, the LIHTC allocation; rather, the project's value should be measured separately as if no allocation had been awarded. After the Appraiser completes preservation processing according to outstanding instructions, Net Syndication Proceeds available for mortgageable items must be deducted from the equity loan amount(s) otherwise estimated (For title II, See Notice entitled Housing Development Instructions for Processing Plans of Action Under Title II of the Housing and Community Development Act of 1987 and Associated Section 241(f) Loan Applications, especially ¶ 3–3 B.17, "Owner's Equity, Maximum Equity Loan Based on Value and Combined Equity Loan"; For title VI, See Notice entitled Development Processing Instructions for Section 241(f) Under Preservation Title VI, especially section III.C.6, "Determination of Maximum Insurable Loan, section I of Form HUD–92264A, Supplement to Project Mortgage Analysis"). It is possible that the need for equity loans could be completely obviated by a LIHTC allocation, but this is consistent with HUD's requirement to certify that "no more assistance than is necessary" is being provided to the project, and is not inconsistent with the requirement under the Preservation Guidelines that Sponsors receive adequate consideration for any equity present (they are receiving it from the HCA in such cases). If any section 241 loan remaining can be approved, then the DHD may recommend that the FOM execute the section 102 Certification (See Addendum #5; See also section B.4. below).

8. *Section 102 Certification.* After any and all unresolved issues affecting the underwriting have been satisfactorily addressed, the FOM must sign the section 102 Certification contained in Addendum #5, and retain it in the FO and Washington Docket files. A section 102 Certification must be made for every HUD assistance case involving other assistance from outside HUD. This means that where viable SLR HCAs have made a section 911 Certification and submitted an acceptable balanced S&U Statement containing an approvable amount of HUD assistance, the section 102 Certification must be made. If an HCA does not accept section 911 authority, or it has been revoked, or the HCA does not comply with the Guidelines in an individual case and HUD has exclusively performed the SLR in accordance with instructions in section A7. above, the section 102 Certification must be made. Mortgage insurance commitments should contain the provision included above and any reduced mortgage amount(s) which the SLR necessitate, and should be executed simultaneously with the section 102 Certification. Changes in the LIHTC allocation amount, allowable syndication and bridge loan expenses (see Addendum #8), and any change orders or mortgage increase requests should be handled during the course of cost certification as described above and in the Guidelines, and an updated section 102 Certification—Addendum #5—documenting any changes should be included in the Docket files. For projects which combine HD mortgage insurance assistance and also project-based section 8 rent increases or some other form of HM assistance, HD must recommend approval of insurance, and HM must provide assurance that necessary funds are available and approved before FOM certification.

B. Housing Management

The instructions below provide the FOs and ROs direction on how to review various requests for HUD assistance from the Office of Management when combined with LIHTCs.

1. Transfers of Physical Assets (TPAs)

When TPAs are combined with LIHTCs but no additional assistance is being requested from HUD, neither the HCA nor HUD need perform a SLR or make certifications. HUD has previously determined that the combination of LIHTCs and a TPA alone is not a form of subsidy layering and that the existing program guidance and policy in effect will be used to determine whether the project is positively affected by the TPA, i.e. FOs should process TPAs using instructions in HUD Handbook 4350.1 CHG 55.

2. Flexible Subsidy and LMSA Section 8 Rental Assistance

Annual Adjustment Factor rent increases are not considered additional assistance, so neither the HCA nor HUD need perform a SLR or make certifications.

3. Budget-Based Section 8 Rental Increase Requests.

As discussed above in section A, the assigned loan management servicer to an existing loan which also receives project based section 8 rental assistance must work together with an assigned Appraiser if newly insured loans are proposed. If the Sponsor is requesting a budget-based increase to finance repairs, together with the receipt of LIHTCs, and a new loan, follow the instructions as outlined above. If no new loans are sought, then follow outstanding instructions in determining whether the request should be approved, and limit LD owners to the same annual return on any new equity contributions (as

defined under Guideline #9) as applied under the original program.

4. Preservation.

As noted above in section A, preservation loans and additional section 8 units or assistance requests, when combined with LIHTCs from a viable HCA administering the SLR, must be evaluated by the HM staff as a part of the total incentives equation. If HM determines that the LIHTCs awarded obviate the need for any additional HUD assistance as an incentive, including preservation loans as estimated by HD, then the request should be denied, and this decision must be communicated to the HCA, advising them that a re-allocation or adjustment of the LIHTC award would be necessary before additional HUD assistance will be considered as an appropriate incentive. If the assistance requested, taken together with the LIHTC allocation, is believed to be the necessary level of incentive to retain the low income housing in question, without unduly enriching the Sponsor, but providing the equity otherwise permissible under the Preservation Guidelines, then the request can be approved, and this determination should be communicated to the HCA by sending it a copy of the HUD's section 102 Certification (Addendum #5) and the details of the assistance incentives agreed upon. Where the HCA's delegated authority has been relinquished or revoked, HD must determine whether any section 241 loans are appropriate as discussed above, and Directors of both HD and HM must make recommendations concerning the FOM's execution of the section 102 Certification.

5. Property Disposition and Section 8 Rental Assistance

6. Monitoring.

The monitoring of HCA implementation of section 911 SLR responsibilities when LIHTCs are combined with assistance provided through the Office of Housing Management shall be handled in a manner similar to that described above for HD. The FO will forward to the Regional Administrator's Office all correspondence relating to such cases, detailing the amounts and types of HUD assistance involved. For preservation cases the FOM's certification and a brief summary supporting the conclusions reached should be included. The RAs will make the final determination as to whether an HCA's section 911 authority will be revoked or continued, and whether HUD RQs & FOs have acted properly.

Addendum #1—Owner's Certification that Project Will Not Participate in the Low Income Housing Tax Credit or Historic Tax Credit Program [4]

To: HUD Field Office
Re: Project No.: _____
Project Name: _____

1. I certify that neither I nor any other representative of the project identified above currently intends to participate in a tax credit program with regards to the subject project. "Participation" includes receipt or ongoing claim of any tax credits from an authorized Housing Credit or Finance Agency regardless of the amount.

2. If plans change and I or another representative of the project decide to participate in tax credit programs with regard to the subject project, I will notify you in writing immediately following our decision to participate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

_____
Signature

_____
Date

_____
Name

_____
Title

Addendum #2—Materials LIHTC Participants Must Submit

1. Brief summary of the terms on which the owner will participate in the program, including:

a. The annual credit amount, the type(s) of credit (new construction, acquisition, or rehab); the date the 10-year credit period will begin; the credit percentage awarded for each type of credit; and the maximum qualified basis for each type of credit;

b. Which income eligibility limit will apply (50 or 60 percent of median income) to what minimum percent of the total units (20 or 40 percent) and how many units, if any, will be set aside for families with incomes below 40 percent of the median income (deep-rent skewing);

c. A list of units for which credits will be claimed, and the percentage of total units for which LIHTCs are awarded. Give the number of units in each bedroom size and the initial tax credit rent limit for each unit size. Also indicate which units, if any, will be held for families with incomes below 40 percent of the median income.

[4] This Addendum, and Addendum #2, essentially mirror Attachments 1 and 2 to Notice H 90–17, and replace those reporting forms.

Note: The 1989 Omnibus Reconciliation Act sets the rent limit based on the median income of "hypothetical" households having 1.5 persons per bedroom. Under previous law, rent cap was based upon the actual size of the household occupying the unit.

2. Copy of (a) IRS Form 8609, Low Income Housing Credit Allocation Certification; or (b) a report on the status of any tax credit allocation still in process and a copy of any credit agency reservation form or other document indicating agency's intent to award credits to the project.

3. Whether credit will be claimed by current owners or sold to new owners.

4. List of all federal/state/local government insurance, loan, grant, or subsidy programs in which the participant plans to participate and any grants or below-market loans expected to be received from non-government sources. For each loan, give interest rate, term, and amount.

5. Sources and Uses of Funds Statement, itemizing (a) all funds available; (b) all purposes for which funds will be disbursed; (c) dates any investor contributions are due. Where a Bridge Loan will be obtained which is secured by such funds, the lender (if known), terms and conditions of the loan, and interest and finance charges associated with the loan are required, and such information must be updated throughout assistance review until final approval.

6. A statement in which the applicant agrees to promptly notify the HUD Field Office of any change in the information provided pursuant to this attachment.

Note: The following language must be included in the submission and the applicant's signature must appear directly below this warning.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Public Reporting Burden

This collection of information is estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

—Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600

—Office of Management and Budget, Paperwork Reduction Project (2502–0377), Washington, DC 20503

Addendum #3—Processing HUD Insured Projects Involving Low Income Housing Tax Credits Using Form HUD–92264–T

A. Purpose

This attachment provides modified underwriting instructions for processing projects where owners will receive low income housing tax credits (LIHTCs).

B. Background

The Tax Reform Act of 1986 amended the Internal Revenue Code to create new Federal Tax Credits for owners of low income rental housing. In Public Law 101–239, dated December 19, 1989, the applicable maximum affordable monthly rents for most apartment sizes are to be based on the program income limits by household size assuming an occupancy of 1.5 persons per bedroom and efficiency units without a separate bedroom would have income limits based on occupancy by one person. In order for a household to qualify as tax credit assisted they must have an income at or below the program income limit for their respective household size.

The calculation of the maximum affordable monthly rents for tax credit units is based on tenants paying at least 30 percent of income for rent. Analysis of program participation has shown that few households in tax credit projects spend more than 40 percent of income for rent. This means that, if rents are set at the maximum, the potential market is restricted to income-eligible households with incomes between 75 and 100 percent of the respective income limit. Most households with incomes lower than this would be unable to afford the statutory maximum rents. As a result, when the proposed rents are set at the statutory maximums, the market for a tax credit assisted project is comprised of a relatively narrow band of income eligible renters, which can result in a problem with the market feasibility of the project. Therefore, depending on the particular market area and the rental market conditions in that area, there may be an insufficient number of potential renters that meet the income limit criteria and who are also willing and able to pay the maximum allowable rent.

Program data show that this potential marketability problem has been dealt with either by charging lower rents or obtaining other subsidies to lower the rent. The available information on tax credit assisted units shows that most projects have established rents below the maximum permitted by the statute. In addition, over 80 percent of projects funded had some other form of assistance to further reduce tenant rents.

The extent to which there is an adequate supply of units with rents at or below those proposed would also limit the market. An analysis of the market prospects of a proposed project, therefore, requires information on the current market conditions for this type of project, and information on the marketability of the proposed project relative to other options available to those income-eligible households.

Thus, market demand for tax credit units depends on several factors: The number of income qualified households and the willingness of those same households to pay the proposed rents; the supply of comparable units at rents equal to or less than the proposed rents; and, the marketability of the proposed units in comparison to the existing supply.

Therefore, if the Field Office determines that there is insufficient demand for the units at the proposed rents the Field Office should set the rents at lower amounts, as necessary to broaden the market band sufficiently to attract the potential tenants needed to ensure market feasibility. This determination should take into consideration the current and anticipated supply/demand conditions in the overall rental market, and potential depth of the market of income eligible households in comparison to the number of units at the proposed rents, and the marketability of the proposed units taking into account the project's amenities, rents and location relative to comparable and competitive projects and other options available to those income eligible households.

C. Special Processing Instructions

In order to make the rent estimates based on income limits as close as possible to the income limits described in the legislation, the following instructions for processing HUD-insured projects involving LIHTCs using revised Form HUD–92264–T shall be used. Using this form and the following directions, the Department will determine the appropriate processing rents for the low income units required by the Tax Credits. (In the case of projects with "deep skewed" rental units, it may be necessary to compete two separate revised Forms HUD–92264–T, since two different qualifying income limits may apply to lower income units of the same size.)

1. *Line 1* of Form HUD–92264–T for each affected unit size, enter the market rental estimates from Form HUD–92273.

2. *Line 2*—If utility costs are to be paid by the tenant, enter an estimated Personal Benefit Expense (PBE) for services or utilities not included in the market rental estimate.

3. *Line 3*—Enter the applicable income limit. For purposes of this rent estimation exercise, the applicable income limits by unit size are as follows:

Column A [1] applicable limit if 20%/50% restriction applies	Column B [1] applicable limit if 40%/60% restriction applies	Column C [1] applicable limit if 15%/40% restriction applies
Eff. 1 Person Section 8 Very Low Income Limit	120% of Column A Limit	80% of Column A Limit.
1-BR 1.5–Person Section 8 Very Low Income Limit [2]	120% of Column A Limit	80% of Column A Limit.
2-BR 3–Person Section 8 Very Low Income Limit [2]	120% of Column A Limit	80% of Column A Limit.
3-BR 4.5–Person Section 8 Very Low Income Limit	120% of Column A Limit	80% of Column A Limit.
4-BR 6–Person Section 8 Very Low Income Limit	120% of Column A Limit	80% of Column A Limit.

[1] The use of these limits by HUD for underwriting purposes is not meant to imply that the Internal Revenue Service will necessarily use the same limits in determining whether tenants will qualify as low income for purposes of the Tax Credit.

[2] One and one-half-person Section 8 very low income limit is computed by adding the one person Section 8 very low income limit to the two-person limit, the dividing the sum by 2. Likewise, the four and one-half-person Section 8 very low income limit is the sum of the four-person limit and the five-person limit, divided by 2.

4. *Line 4*—Compute and enter the estimated maximum affordable monthly rent for each affected unit size. Compute that rental estimate as follows:

a. Multiply the income limit on line 3 of the form by 30 percent (.30);

b. Divide the product obtained in step a by 12;

c. Subtract the monthly PBE (if any) on Line 2 from the quotient obtained in step b.

5. *Line 5*—Where the Valuation staff has evidence that the project's tax credit assisted units would not be marketable to income eligible households at the lesser of the maximum affordable monthly rents (Line 4) or the rent by market comparison (Line 1), based on the market analysis review by the EMAS, enter the recommended estimated monthly rent obtainable for the restricted units, as approved by the Director, HD Division. For Section 223(f) cases involving projects with existing Section 8 HAP contracts, use this line to enter the processing rents calculated in accordance with the outstanding instructions involving the refinancing or purchase of Section 8 projects with outstanding project based contracts.

6. *Line 6*—Monthly Rent Estimated for Restricted Units. Enter the least of lines 1, 4, or 5.

7. *Line 7*—Enter the number of each unit type with income limits shown on line 3.

8. *Line 8*—Enter the number of each unit type shown on another Form HUD–92264–T with other income limits.

9. *Line 9*—Enter the number of each unit type with no income limits using unsubsidized market rents from line 1.

D. *For Further Information*—Any questions concerning this attachment and completion of revised Form HUD–92264–T which follows should be directed to the Office of Insured Multifamily Housing Development, Technical Support Division, Valuation Branch, (FTS 8–202–708–0624).

FORM HUD–92264–T.—RENT ESTIMATES FOR LOW OR MODERATE INCOME UNITS IN NON SECTION 8 PROJECTS INVOLVING TAX EXEMPT FINANCING OR LOW INCOME HOUSING TAX CREDITS

Unit size	0–br	1–br	2–br	3–br	4–br
1. Rent by Market Comparison:					
2. Personal Benefit Expense (if any):					
3. The Percentage of Median Income (adjusted for family size) used for income limits: 40%, 50%, 60% (circle only one; then enter the applicable dollar income limit for each unit):					
4. Estimated Maximum Affordable Monthly Rent for Restricted Units:[1] (.30 × Line 3)—Line 2 ÷ (12)					
5. Estimated Obtainable Monthly Rent for Restricted Units[2]					
6. Monthly Rent Estimate for Restricted Units (least of lines 1, 4, or 5)[3]					
7. Number of each unit type with income limits shown on line 3					
8. Number of each unit type shown on another form HUD–92264–T with other income limits					
9. Number of each unit type with no income limits using unsubsidized market rents from line 1					

[1] Where State or local laws, ordinances or regulations limit the rent to an amount lower than this formula estimate, or the Sponsor's proposed rent is less than this formula estimate, enter the lower amount and explain below.

[2] Where the Valuation staff has evidence that the project's tax credit assisted units would not be marketable to income eligible households at the lesser of the maximum affordable monthly rents (Line 4) or the rent by market comparison (Line 1), based on the market analysis review by the EMAS, enter the recommended estimated monthly rent obtainable for the restricted units, as approved by the Director, HD Division. For Section 223(f) cases involving projects with existing Section 8 HAP contracts, use this line to enter the processing rents calculated in accordance with the outstanding instructions involving the refinancing or purchase of Section 8 projects with outstanding project based contracts.

[3] Enter in Section C or Form HUD–92264.

Addendum #4—Sample HD Correspondence to HCA

We have processed (Sponsor's name)'s loan application (or substitute "cost certified the costs under the construction loan", as applicable) in accordance with special processing instructions, and can report the following salient points:

—Our underwriting criteria do not permit us to insure a loan in excess of $_____. (Pre-Commitment this will usually be the Criterion 5 debt service limitation because of the reduced NOI caused by rent restricted units; Post-Cost Certification, mortgage increases or reductions are possible);

—We estimate that the total replacement cost of mortgageable items which should be recognized under the Guidelines is $_____. This should approximate the amount you approve under the top portion of the uses part of the Sources and Uses Statement. (Pre-Commitment, this will typically be Line G 74 of the 92264 for new construction and substantial rehabilitation; Post-Cost Certification, it will be allowable costs plus the appropriate land and/or improvements value. For § 223 (f) report the "Subtotal Uses Related to Mortgage Financing" to the HCA instead of replacement costs);

—Our estimated value of the land and/or improvements, as applicable, is $_____. Please note that Guideline #1 only permits this amount be recognized as an approved use on the Sources and Uses Statement.

—Our processing indicates that the acceptable uses otherwise recognizable under the Guidelines for the operating deficit is $_____, and for the working capital is $_____. (If HCAs do not recognize HUD's deficit estimate, then for commitments use the HCA's estimated operating deficit—if it is greater than HUD's, modifying the form to provide that unused amounts will prepay the mortgage loan. Use HUD's estimated working capital for new construction and substantial rehabilitation commitments, and after cost certification, adjust it as necessary);

—The required equity contribution of the Sponsor under this program is $_____% of replacement cost. (or substitute "value" for section 223 (f)).

—If the LIHTCs are presently valued at $_____ (e.g. 48 cents on the dollar of allocation awarded), this means that the award you initially reserved is worth $_____ to the Sponsor.

In order for HUD to underwrite the loan stated above, and for you to re-certify that no more assistance than is necessary goes to the project Sponsor, we believe that the allocation, according to this scenario, should be reduced to $_____. However, this is based

on the following sources and uses assumptions:

Sources:
- Required Equity Contribution. _____
- HUD loan limitation ... _____
- Present Value of LIHTC allocation of $_____at $_____%. _____
- Sources Total: _____

Uses:
- Replacement Cost/ Value Project Uses. _____
- Other Uses Permitted under Guidelines. _____
- Uses Total: _____

Alternatively, please notify us if you determine not to reduce the LIHTC allocation, with your § 911 Certification and revised, balanced Sources and Uses Statement. If we do not concur in your approved Sources and Uses Statement, however, we may reduce the mortgage, and issue a commitment for a lesser amount. We will await your decision before reducing the loan or issuing any commitment or approving any other assistance. If this is your final § 911 Certification, please indicate whether any net syndication proceeds excess will be applied to prepay the mortgage loan.

If you wish, you may meet with our Cost Analysts, Appraisers, and Mortgage Credit Examiners to discuss the basis of our underwriting, and our conclusions about replacement cost estimates or other permissible project uses under the Guidelines. If as a result of that meeting you are able, for your purposes, to satisfactorily explain any differences between our estimates of project uses and your own, please note them in the file for HUD's future monitoring of your § 911 authority.

Total Unknowns ..... _____%=C

New Construction With BSPRA:
- Project Cost less Deductions (A+(1.1B) – D) / (1 – (1.1C)) ..... $_____=X
- Total Project Replacement Cost ×+D ..... $_____=R

New Construction Without BSPRA:
- Project Cost less Deductions (A+B – D) / 1 – C) ..... $_____=X
- Total Project Replacement Cost ×+D ..... $_____=R

Rehabilitation Construction With BSPRA:
- Project Cost less Deductions (A+(1.10055B) – D) / (1 – (1.10055C)) ..... $_____=X
- Total Project Replacement Cost ×+D ..... $_____=R

Rehabilitation Construction Without BSPRA:
- Project Cost less Deductions (A+B – D) / (1 – C) ..... $_____=X
- Total Project Replacement Cost ×+D ..... $_____=R

Maximum Mortgage; New Construction or Rehabilitation:
R – D=$_____ × Loan Ratio _____%= $_____
(Rounded down to nearest $100 is maximum RCF mortgage)

Complete Section G of Form HUD–92264 using the MIM. The "Total Estimated Replacement Cost of Project" will approximate "R" as calculated by formula when Criterion 3 limits the mortgage.

Note that for the new construction Interest calculation, ½ of the MIM is used to determine the Section G amount. For Rehabilitation construction, add ½ of the MIM and ½ of either "As Is" Value or existing debt when recalculating Interest for Section G.

Addendum #7—Sample Format Sources and Uses Section 223 (f) [5]

Sources:
- LIHTC Source:
  - Estimated Net Syndication Proceeds [6] ..... $_____
- Separate Equity Sources:
  - Minimum Required Equity Contribution [7] ..... $_____
  - Additional Equity Necessary [8] ..... $_____
- Grant Sources:
  - Indicate any grants for project uses ..... $_____

Subtotal LIHTC, Grant, and Equity Sources ..... $_____
(Do not include Min. Equity in sum if funded by LIHTC proceeds)

Debt Sources:	Program:	Mortgage:
HUD loans/programs [9]	_____	$_____
Other loans	_____	$_____
Subtotal Mortgage Sources	_____	xxxxxx
Total Sources	_____	$_____

Project Uses:
- Use Limitations Related to Mortgage Financing:
  - Use Limitation "A":
    - "Fair Market Value" of the Property Including Required Repairs, from § L, Form HUD–92264— ..... $_____
    - Use Limitation "B": (for projects being acquired) Item 7g., Form HUD–92264A [10]— ..... $_____
    - Use Limitation "C": (for projects owned) Item 10g., Form HUD–92264A [11]— ..... $_____

Subtotal Uses Related to Mortgage Financing:
- For Property Acquired (lesser of "A" or "B")— ..... $_____
- For Property Owned (lesser of "A" or "C")— ..... $_____

Uses Permissible Under Guidelines, but Payable by Sources Other than the Mortgage:
- Resident Initiative Fund (Not to Exceed 10% of Net Syndication Proceeds)— ..... $_____
- Operating Deficit Reserve— ..... $_____
- Developer's Fee [12]— ..... $_____
- Appraisal, Cost Analyst, Accntnt Fees— ..... $_____
- Other [13] ..... _____

Subtotal Uses Otherwise Permissible .....
Total Project Uses .....

[5] The format for new construction and substantial rehabilitation appears in the Guidelines as Attachment #2. This format, in contrast, is only appropriate for projects which HCAs have awarded "rehabilitation" LIHTCs, but proposed repairs are less than those required to meet HUD's substantial rehabilitation eligibility rules.

[6] The amount obtainable by the owner through the syndication of the LIHTCs awarded (i.e., gross proceeds less syndication expenses and bridge loan interest and costs).

[7] 15% multiplied by the Subtotal Uses Related to Mortgage Financing from below equals the Minimum Required Contributed Equity. LIHTC syndication proceeds may not generally fund this requirement directly, but see Guideline #9 exceptions.

[8] Additional Equity Necessary is the additional amount needed to be contributed by the mortgagor to balance the sources and uses when no additional monies are available from other sources.

[9] The HCA may assume estimated amounts for the initial allocation review; HUD will communicate processing results at the time it is preparing to issue a commitment, and will advise of any changes prior to final closing.

[10] See HUD Handbook 4480.1, pages 2264A–18a. through 18d.

[11] See HUD Handbook 4480.1, pages 2264A–18g. through 18j.

[12] Whatever the applicable percentage according to "Risk and Related Profit" schedule for the type of "rehabilitation" involved, the percentage must be multiplied by the "required repairs" cost according to HUD's estimate, and the result shall serve as a limitation payable by other sources. There are only minimal soft costs related to such construction since repairs must be completed prior to closing or properly escrowed for, and what closing costs there are will not be included in the base used for determining Developer's Fees, nor will any value already present (i.e. not added by the developer).

[13] Please note that working capital reserves do not apply to section 223 (f) loans, and thus, are not an allowable use.

Addendum #8—Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–; FR–3334]

Administrative Guidelines—Limitations on Combining Low Income Housing Tax Credits With HUD and Other Government Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Administrative Guidelines to be Applied in Implementing the Requirements of section 102 of the HUD Reform Act of 1989 and section 911 of the Housing and Community Development Act of 1992.

SUMMARY: This document sets forth the administrative guidelines which HUD and Housing Credit Agencies (HCAs) as defined under section 42 of the Internal Revenue Act of 1986, must follow in implementing the requirements of section 102 of the HUD Reform Act of 1989 and section 911 of the Housing and Community Development Act of 1992. These guidelines were designed to ensure that participants in multifamily projects do not receive excessive compensation by combining low income housing tax credits (LIHTCs) with sundry HUD program assistance, or with assistance from other Federal, State, local, or private agencies. The guidelines also advise HUD and HCAs of how they may implement section 102 (d) certification requirements that any LIHTC allocation that HCAs may award "shall not be more than is necessary to provide affordable housing after taking account of (other government assistance)", and how HCAs will meet the statutory requirement to "* * * adjust the amount of assistance awarded or allocated to an applicant * * * for any changes reported (while applications are pending or assistance is being provided)".

These guidelines should make the "Subsidy Layering" review process more workable for nonprofit community groups and builders who rely on the LIHTC, combined with HUD or other government assistance, to produce low income housing. The revised procedure provides for the following:

a. Section 911 of the Housing and Community Development Act of 1992 (HCDA '92) provides that HCAs must conform to guidelines established by the Secretary to prevent projects from receiving excessive subsidy under section 102 of the HUD Reform Act of 1989 (HRA '89). The Secretary reserves the right under Section 102 of HRA '89, and the audit authority provided by section 911 of HCDA '92, to make the final determination that there is no excessive subsidy. HCAs must comply with the guidelines, procedures, and attachments discussed and included in this Notice, and HUD shall monitor HCAs for compliance. For projects combining HCA and HUD assistance, the applicable HCA must certify to the applicable HUD Field Office (FO) that it will follow these procedures. Where the HCA has not so certified, or where it has but does not comply with the guidelines and procedures, or where HUD revokes an individual HCA's authority for noncompliance, the applicable HUD FO will exclusively perform the subsidy layering review and make the section 102(d) certification. When awarding or adjusting LIHTC allocations, HCAs must review all Sources and Uses to determine whether reported amounts are reasonable and appropriate (See Attachment #2 for sample format).

b. HCAs must provide to HUD, and update as necessary, their guideline compliance certifications (See Attachment #3 for sample format) and accompanying approved Sources and Uses Statement from the initial LIHTC allocation, through construction and cost certification stages, until final endorsement or final HUD assistance approval when a final guideline compliance certification is made by the HCA.

c. Where sponsors have reported to HUD the receipt of LIHTCs in a request for some form of HUD assistance, HUD must advise HCAs of the results of their review of that assistance request, and update as necessary through final endorsement or until the assistance is otherwise finally approved. This includes the results of mortgage insurance application processing, requests for the transfer of physical assets (TPAs) involving requests for increased Section 8 rent subsidies (if the increase goes beyond annual rent increase requests to, for example, finance additional improvements), requests for "flexible subsidy" funds, requests for preservation loans or other incentives, CDBG grants, and any combination of HUD assistance programs.

d. For projects combining LIHTCs and HUD mortgage insurance, HCAs must require, as a separate and identifiable source of funds, sponsor equity contributions which are consistent with the loan to value ratio of the program involved. For example, new construction or substantial rehabilitation proposals made by profit motivated sponsors under section 221 require a 10 percent (of replacement cost) equity position. The net proceeds obtainable through syndication of the LIHTCs awarded is a separate source of funds, and must be analyzed independent from the equity stake which sponsors must have in the project. For all types of sponsorship, however, Developer Fees that have first been determined reasonable under the guidelines as approved project costs (i.e. uses) may be returned to the project as a source of equity, i.e. once received, they may be used to fund the sponsor's required equity position. (See Guideline #9.)

e. HCAs must include in their allocation agreements with sponsors provisions which: (1) Inform them that it will recommend cuts of any applicable HUD assistance, as necessary, and (2) allow for the adjustment or recapture of the initial

LIHTCs awarded if changes in assumptions regarding any items appearing on the Source and Uses Statement occur during the processing of applicable HUD or other government assistance. For example, for projects receiving LIHTCs combined with a HUD-insured mortgage, the HCA's final certification and approved Sources and Uses Statement is required prior to HUD's Final Closing, and must reflect all changes in sources and uses confirmed during HUD's cost certification.

f. HCAs must develop factors which estimate the net present value dollar amount of reserved but unsyndicated public and private Tax Credit offerings. A schedule of such factors for different types of projects and syndication offerings will assist HCAs in their initial estimates of necessary LIHTC allocations, so that less adjustment would be required from the original awards when the actual net amounts obtainable from the syndication are known. Until revised by future HUD Notice, the guidelines contained in this Notice will assist HCAs and HUD Field Offices in projecting Net Proceeds.

g. The guiding principles in establishing and adjusting LIHTC allocations are: (1) The HCA shall award no more than the net present value of the LIHTCs necessary to fill the gap between the sum of loans, grants, required equity, or other sources, and total project uses as permitted under these guidelines; and (2) the HCA shall seek to maximize the amount of project funding from the LIHTC once an allocation amount has been set. Therefore, should proceeds from LIHTC syndication be larger than initially estimated, HCAs will require prepayment of serviceable mortgage sources.

DATES: *Comment Due Date:* June 1, 1993.

EFFECTIVE DATE: The Office of Housing currently applies previously published guidelines (See Federal Register dated March 14, 1991 at 56 FR 11032) and other instructions to project submissions received as of this date. Section 911 of HCDA '92 provides that HCAs may perform certain subsidy layering review functions under Section 102 of HRA '89 as of January 1, 1993 so long as they certify they will follow guidelines HUD establishes. Accordingly, participating HCAs must certify they will apply, and affected HUD Offices of Housing will also apply, these guidelines to all applications and requests involving the combination of tax credits and any HUD assistance as of the date of this publication. Instructions replacing the Notice 90–17 review procedure will also be issued and distributed to HUD offices shortly. When LIHTCs are combined with mortgage insurance cases which were processed through the issuance of a commitment, the sponsor has the option of deciding whether its proposal is analyzed under the guidelines in effect at the time of the commitment, or under the revised subsidy layering review guidelines herein published for public comment, but proposal specifics may not be significantly altered, and construction must not have been begun. For cases which have not yet reached the commitment stage, the sponsor will have the right to amend their applications or requests in accordance with these guidelines, and HUD agrees not to impose any duplicative mortgage insurance processing fees. HUD will consider public comments on the guidelines, and will make a final revision of the guidelines effective by publication following the 60-day comment period. The Office of Public and Indian Housing (PIH) will be publishing a separate set of guidelines which will apply to Section 8 Moderate Rehabilitation projects developed under 24 CFR part 882, subparts D and E, and the Project Based Certificate projects developed under part 882, subpart G. However, until such time as PIH's guidelines are published, these guidelines will serve as basic administrative guidelines for determining necessary assistance when reviewing tax credit proposals related to the Section 8 Moderate Rehabilitation and Project Based Certificate programs. The Office of Special Needs Assistance Programs (SNAPS), of the Office of Community Planning and Development, will issue its own set of guidelines, tailored to its individual programs. Until that time, subsidy layering reviews for the Section 8 Moderate Rehabilitation SRO program will continue to be conducted at Headquarters. For these reviews, SNAPS will generally adopt the standards contained in the Office of Housing's revised guidelines published below. For more information, please contact James N. Forsberg, Director, SNAPS, (202) 708–2140.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. All comments will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: All correspondence may be generally addressed to Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, but must be further addressed as follows: For questions relating to assistance provided through Housing Development, write to the attention of Howard Mayfield, Director, Technical Support Division, Office of Insured Multifamily Housing, room 6152, or call (202) 708–0035. For questions relating to assistance provided through Housing Management, write to the attention of William Hill, Director, Operations Division, Office of Multifamily Housing Management, room 6170, or call (202) 708–0547. For questions relating to Preservation cases, write to the attention of Kevin East, Director, Preservation Division, room 6172, or call (202) 708–2300. Please note that these phone numbers are *not* toll free.

SUPPLEMENTARY INFORMATION: The Administrative Guidelines set out in this document are intended to permit HCAs and HUD the necessary flexibility to meet the unique facts of a particular case, and the combination of various forms of HUD assistance with HCA LIHTC allocations. The Department was in the process of revising the existing Subsidy Layering Guidelines when HCDA '92 was signed. It contains a provision, Section 911, which provides for the following:

a. The Secretary shall establish guidelines for HCAs to implement the requirements of Section 102(d) of HRA '89.

b. (1) The guidelines shall require that the amount of equity capital contributed by investors to a project partnership is not less than the amount generally contributed by investors in current market conditions as determined by the HCA.

(2) The guidelines shall further require the project costs, including developer fees, are within a reasonable range, taking into account project size, project characteristics, project location and project risk factors, as determined by the HCA.

c. HCAs shall carry out the responsibilities of section 102(d) with respect to Subsidy Layering and Certification so long as the HCA properly implements the guidelines HUD establishes.

Section 102 of HRA '89 made HUD responsible for performing the subsidy layering review and certifying that no more assistance than is necessary to

provide affordable housing was being provided. Section 911 of HCDA '92 made HCAs responsible for performing specific functions under section 102 subject to HUD's: (1) guidance through established guidelines, (2) oversight for HCA compliance, and (3) revocation authority for non-compliance. In President Bush's October 29, 1992 letter signing HCDA '92 into law he states, "To avoid the constitutional difficulties that would arise if Section 911 were understood to vest in housing credit agencies the exercise of significant authority under Federal law, I interpret Section 911 to permit the Secretary to formulate guidelines under which he will retain the ultimate authority to make the determinations required by Section 102(d)."

Consequently, the guidelines established below must be implemented as discussed in this notice or HUD Regional Administrators are charged to revoke an HCA's section 911 authority. Where the Subsidy Layering Review and Certification authority has been voluntarily surrendered by an HCA or revoked by the Regional Administrator, or an HCA does not follow this procedure in any individual case, HUD Field Offices will perform the Subsidy Layering review and certification functions.

Overview of Subsidy Layering Review

Guidelines #1 through #8 and #10 assess the reasonableness of costs and reserve deposits included in the applicant's development proposal. Guideline #9 assures that the sponsor's equity contributions are consistent with applicable program loan/value ratios. If applicants proposed Uses that are not specifically addressed in the guidelines, the HCA and HUD will assess the merits of those uses on a case-by-case basis.

HCAs shall conduct the initial review of a project's proposed "sources and uses," and based on total project cost, and as yet unconfirmed assumptions about HUD assistance, award LIHTC allocations. Such amounts are subject to adjustment, however, should the assumptions regarding HUD's assistance change (See Section 102 (c) and (d) of the HUD Reform Act of 1989). Project sponsors must then apply to HUD for the assistance involved, identifying the LIHTC allocation awarded. Based primarily on outstanding handbook instructions, HUD will evaluate the assistance request assuming the initial LIHTC allocation awarded. The results of HUD's processing of the sponsor's request shall be communicated to both the HCA and the sponsor, and the amounts of HUD's assistance, as well as HUD's estimate of project replacement cost/value, as applicable, will be included.

After the receipt of updated information regarding HUD assistance, HCAs must review the LIHTC allocation and adjust it as necessary. If any other changes occur during construction which significantly affect the approved Sources and Uses Statement, these too should be reviewed by the HCA, and adjustments made, if necessary. If the HCA determines that no adjustment to the allocation is necessary, HUD reserves the right to adjust assistance within its jurisdiction. For mortgage insurance cases, after construction has been completed, and prior to Final Closing, HUD will provide the HCA with the results of its review of the mortgagor's cost certification. The HCA must rely on audited statements of actual costs when completing its final Sources and Uses statement, and must also review all LIHTC syndication proceeds received or to be received in future infusions, deduct allowable syndication and bridge loan costs, and estimate the net amount obtained or obtainable under sources. On the basis of this information, the HCA will make recommendations for cuts of applicable HUD assistance, or any allocation adjustments necessary, and send its final guideline compliance certification and approved, balanced Sources and Uses Statement to HUD before Final Closing. The Secretary reserves the right under section 102 of the HRA '89, and the audit authority provided by section 911 of the HCDA '92, to make the final determination that there is no excessive subsidy.

Administrative Guidelines

HCAs will apply the specific guidelines below which apply to the particular combination of LIHTCs and "other government assistance" involved. Every guideline may not apply to every project, but HCAs must apply all guidelines which apply to a particular project. For example, the Guideline #4 and #5 references to BSPRA/SPRA are not applicable to the Flexible Subsidy program, since they are not allowed under that program. HCAs and program participants must review HUD program rules and administrative procedures to determine guideline applicability. A particular guideline will apply when the applicant's proposal may and does include the source, use, or other amount covered by that guideline. Note: The guidelines do not require applicants to establish reserves or escrows that are not already required by HUD program rules.

1. Property Value

At its initial tax credit allocation stage the HCA may rely on preliminary estimates of land value, for new construction proposals, or land and improvement value, for rehabilitation proposals, in determining what Replacement Cost use to include in an individual proposal's Source and Uses Statement. Ultimately, an HCA will only allow HUD's appraised "as-is" value for substantial rehabilitation (This means unsubsidized market value for apartment use), "after repairs" value for acquisition and rehabilitation (This means that any Section 223(f) proposals involving less than substantial rehabilitation will be limited by program value), or "warranted price of land" for new construction (This means with the infrastructure improvements and utilities completed up to the site's boundaries, with only standard hook-up charges pending or levied, but no unpaid special assessments for offsite improvements. Any necessary "unusual" site improvements must also be subtracted to estimate the allowable land value). These values will be estimated without considering any planned rehabilitation, any additional subsidies to be made available at the project, or any LIHTCs or other tax benefits the owner will receive. Any amount exceeding HUD's estimated value must be disallowed.

Note: HUD will not require appraisals for property purchased from HUD or at a foreclosure sale where HUD is the foreclosing mortgagee; the allowable amount under this guideline will be the purchase price when a project is sold competitively based on the high bid price at either a foreclosure sale or HUD-owned sale. When HUD sells a property at a pre-determined price, as in a negotiated sale, the allowable amount is that price, and is not subject to adjustment based on an appraisal of value. Also, for acquisition and rehabilitation of projects which will remain subject to existing HUD-insured loans, HUD may permit the greater of either the outstanding indebtedness on loans being assumed or the "as is" unsubsidized market value.

2. Development Costs

To determine whether proposed development costs are reasonable, HUD will use cost standards included in either the FHA mortgage insurance handbooks or in the applicable subsidy program's administrative procedures. HCAs may use any cost data which they have available, and either staff or independent contract cost analysts' estimates of project replacement cost in

establishing the proper LIHTC allocation. The cost of contracting with independent cost analysts may be included as a project cost (use) if funded by sources other than a HUD-insured mortgage. At its final certification, however, the HCA must recognize only the actual costs paid for approved project uses, as verified through the review of an audited statement of costs.

3. Builder's Overhead

Generally, the builder's overhead reimbursement should not exceed 2 percent of the sum of "total land improvements" and "structural improvements." In all cases, the HCA can allow only the overhead attributable to the subject construction project for the estimated period of construction.

4. Builder's Profit

Builder's Profit is the primary category of developer's Fee. The allowance may not exceed the typical market profit to the builder for developing a project of the subject's type and size in the area in question, and thus, may not exceed 10 percent of total development costs where there is an identity of interest between the builder and the owner. Where there is no identity of interest, then 10 percent of the "hard" costs of construction (total development costs less the "soft" costs— i.e. carrying and financing charges during construction— less the "as is" value of land and/or improvements) must be used as a ceiling. Builder's Profit may, however, be combined with Additional Developer's Fees under Guideline #5 for projects located in "qualified census tract" (See Attachment #1 definition), or for projects with other special risk characteristics as discussed thereunder; but the sum of these two guideline allowances may never exceed 17 percent of total development costs. Before the HCA allows the sum of Guidelines #4 and #5 to exceed 13 percent for any project awarded LIHTCs, it must develop a "Risk and Related Profit" schedule for evaluating what percentage will be recognized for specific kinds or combinations of proposal risks in accordance with Guideline #5. The amount reflected on the Sources and Uses statement for this guideline must appear under "Mortgageable Replacement Cost Uses," and may not exceed 10 percent of development costs of any project (BSPRA and SPRA only apply to certain HUD programs; for programs not allowing BSPRA, or involving only Builder's Profit, or Builder's Profit and SPRA, the HCA should include only so much as is permitted under the applicable HUD program, and such amounts may never exceed 10 percent of development costs).

5. Additional Developer's Fee

Additional fees which, when combined with the primary developer's fee, exceed 10 percent of total development costs, are only permitted for projects located in qualified census tracts, or which have some of the following other special risk characteristics: Size (generally, projects which are smaller should receive a higher percentage than otherwise comparable larger projects of over 100 units); scattered site development of a particular type of housing (e.g. three bedroom family units may be especially needed in a particular area of non-contiguous parcels, and such development involves greater compensable risk than contiguous site development); location—i.e. other distressed neighborhoods not included by HUD in qualified census tracts (HCA must document the nature of difficulty and risk connected to the applicable site area); challenging rehabilitation proposals with many unknown contingencies (because of the unforeseen, such projects have greater inherent risk to the developer than new construction or moderate rehabilitation). Other factors not mentioned may be developed and considered if the HCA can demonstrate to HUD the relationship between the characteristic and risk for which the developer is being compensated (e.g. if the HCA and applicant developer entered into an agreement to set aside units at amounts which are less than the rent restrictions otherwise required, and such an arrangement could be monitored for compliance throughout the rent restricted period, then perhaps, such additional risks as are associated with such development might be compensable). Risk and Related Profit Schedules must be submitted to the applicable HUD Field and Regional Offices for review and comment. Later the HCA has established its schedule, it can only deviate from it where the local Field Office approves. The combined sum of fees permitted under Guideline #4 and #5 can never exceed 17 percent of "total development costs" (as defined in Attachment #1). Any amounts in excess of what basic HUD program requirements would permit must be funded by sources other than HUD-insured mortgages, and must be reflected as such on the Sources and Uses statement. For HUD-insured projects which do not include BSPRA, the sum of the "Builder's Profit" allowance under Guideline #4 plus SPRA will be considered the primary developer's fee, and the only additional amounts that are allowed must be due to the site's location in a "qualified census tract" or other of the above characteristics.

6. Working Capital Deposit

For Profit Motivated Sponsors developing new construction or substantial rehabilitation proposals, the HCA will allow a working capital reserve of 2 percent of newly insured mortgages, but the reserve must be funded by non-mortgage sources. This amount will be held in escrow by the mortgagee to disburse in accordance with established HUD handbook rules (Non-Profit Sponsors qualify for AMPO—see Attachment #1—rather than working capital under this guideline), except that any amounts remaining after construction completion shall be applied to repay any mortgage loans.

7. Operating Deficit Escrow

In making its initial allocation award, the HCA should estimate whether, according to market absorption rates for the rental project proposed, any loss will occur during the construction/rent-up period estimated (an estimate of the construction time must be assumed in the cost estimate) resulting from the difference between revenues obtainable and expenses incurred during rent-up and early operation (See also Attachment #1 definition and comments). Only reasonable estimates of such losses can be included under project uses as an operating deficit escrow, and must be funded from Non-Mortgage Sources. Furthermore, the HCA may include such an amount in its Uses statement only if the sponsor agrees to enter into HUD's standard Escrow Agreement for the amount involved, and that agreement is amended to provide that any escrow remaining after the escrow period will be applied to prepay the insured mortgage loan (rather than being returned to the sponsor; See Form FHA-2476a, clause 4) if one exists, or retained as a project reserve for the term of the assisted period.

8. Resident Initiative Fund

a. The HCA will recognize a resident initiative fund in its approved Uses only if: (1) The fund will be used for resident management/ownership initiatives, security/drug free housing initiatives, job-training or other support services; and (2) all initiatives or services will be targeted to the residents of the project for which the fund is established.

b. The HCA will include no more than 10 percent of the Estimated or Actual

Present Value of Net Syndication Proceeds, and only if: (1) The fund is established by Non-Mortgage sources; and (2) the Sponsor agrees that any unused funds remaining after 10 years will be used to prepay the mortgage loan, or, in the event of default, will immediately be applied to prepay the mortgage loan.

9. Contributed Equity

The owner's required contributed equity includes all amounts necessary to balance sources against uses, and the minimum requirement is expressed as a percentage of the estimated total replacement cost, or value, depending on the program. For new construction and substantial rehabilitation HUD-Insured loans, the sponsor's contributed equity must be greater than or equal to HUD's applicable program required equity position percentage of estimated replacement cost (e.g., since 90 percent is the loan to value/replacement cost ratio for Profit Motivated Sponsors under Section 221(d)(4), the minimum equity position required is 10 percent of total estimated replacement cost). HCAs may, for new construction and substantial rehabilitation cases, estimate the required contributed equity to be 10 percent of the portion of the uses statement payable from mortgage sources. Where acquisition and repair of projects (under section 241) already subject to a HUD-insured loan (e.g. section 236 or 221 (d) (3)) is contemplated, HCAs should require only 10 percent on the development cost of the repair improvements proposed (subtract outstanding indebtedness or "as is" unsubsidized market value from the upper section of the Use portion of the statement, and multiply the remainder by .10). The HCA shall require that owners contribute to approved project uses the entire amount of Net Syndication Proceeds as defined in Attachment #1 and Guideline #10. Generally, however, LIHTC proceeds do not fall within the definition of "contributed equity". *Exceptions:* (1) Any Developer's Fees funded through LIHTC proceeds may be included as a part of the minimum required equity contribution amount if returned to the project; thus, LIHTC proceeds may be used indirectly to fund the equity position -as redirected through an approved "use" which the sponsor receives, but not directly; (2) In cases where the maximum insurable mortgage source is *less* than the amount produced by the applicable loan to value percentage of replacement cost or value, then the difference between the two may be directly paid by syndication proceeds, and shall be considered a portion of the sponsor's minimum equity requirement (For example, where the debt service limitation is less than, say, 90% of the replacement cost, the difference can be directly paid by proceeds and considered part of the minimum equity requirement. As another example, in property disposition cases where the maximum mortgage obtainable in the conventional market is 80%, then the difference may be directly paid by proceeds to fund the required equity position. The definition of "Equity" for other purposes in property disposition cases is *not* affected by this guideline). Limited distribution sponsors will not receive a return on such additional funds as provided under Exception #2. Also, HUD will determine the amount upon which a return on equity will be reflected in any HUD rental assistance contract. This amount will not recognize substantial net equity proceeds that are, nevertheless, required to be committed to approved project uses.

10. HUD Assistance and LIHTC Allocation Adjustment

HCAs must establish procedures that assure that "the amount of equity capital contributed by investors to a project partnership is not less than the amount generally contributed by investors in current market conditions" (See section 911 (b) (1) of HCDA '92). Therefore, HCAs must develop a schedule of Net Syndication Proceed Estimates which reflects how the following factors affect the amount of net proceeds obtainable through syndication of the LIHTCs awarded: public vs. private offerings, type of HUD assistance the LIHTC is combined with, individual vs. corporate investors, the installment/infusion period of syndication proceeds, and the length of the rent-restricted holding period. The HCA's schedule must be adjusted periodically as necessary based on actual syndications. At the initial LIHTC allocation and certification stage, HCAs should estimate the present value of the net syndication proceeds based on data from past syndications of the type of project and offering involved. It should be recognized that, although many syndications (for rent restricted projects) net approximately 48% of the allocation awarded, not all can be expected to obtain this amount because of investment perceptions and other factors. Where proceeds received or forecast to be received are less than such an estimate, the actual net, if known, or a more precise estimate should be assumed by the HCA. However, the HCA must also establish procedures which assure that only "arms-length", non-identity of interest syndication expenses and bridge loan costs are recognized, so that the sponsor does not receive excess profit from such "closed" syndications. In the absence of data, HCAs may assume a factor of .48 (48 cents on the dollar) is presently obtainable for the typical 10 year LIHTC allocation, and .70 for one year Historic allocations. If sponsors can convince HCAs that their particular syndication will exceed the schedule factor, then HCAs may use a factor of up to 3 percent more (.51 and .73, respectively, in the absence of data; or the HCA's schedule factor plus 3 percent where data exists and a schedule has been developed) if the sponsor agrees to fund the difference by either cash or an irrevocable Letter of Credit to be held by the mortgagee, with the mortgagee assuming full responsibility for the quality of any Letters of Credit, until it can be demonstrated that the actual syndication proceeds will equal or exceed the higher amount assumed. On an annual basis, HCAs must submit data to the applicable HUD Regional Office from any and all actual syndications which support the factors assumed when awarding allocations. Please note, Bridge Loan and Syndication Costs will not be reflected in the Sources and Uses statement because an estimate of net proceeds necessary should appear under sources, and uses are balanced against these sources. However, an estimate of the gross proceeds obtainable, the costs incurred in obtaining these (including the costs of the Letter of Credit mentioned above), the net proceeds remaining, and a schedule for the LITHC investor infusions/installments (for example, if securing a bridge loan) is required of the sponsor for all loan applications made to HUD, must be updated throughout processing as necessary, and must be reviewed by the HCA prior to making its final re-certification. For HUD-insured cases, where proceeds received or forecast to be received by the Sponsor are greater than HCA's schedule factored amount, the lower amount should be assumed by the HCA, except for cases where up to 3 percent over the schedule amount is funded as discussed above, and any excess received by the sponsor over the amount ultimately assumed by the HCA may be used to prepay the mortgage loan (See more below). After HUD has performed its assistance analysis and reported the results to the HCA, HCAs must re-weigh the contemplated sources against approved project uses, and determine whether to adjust the LIHTC allocation, as necessary, or recommend reduction of HUD assistance. The HCA's

determination must be timely communicated to HUD if it recommends to reduce HUD assistance. The HCA's determination, re-certification, and balanced Sources and Uses statement should be returned to HUD as soon as possible to expedite assistance processing. For mortgage insurance cases the HCA must adjust and finalize, as necessary throughout construction, the uses portion of the statement prior to HUD's final endorsement, but after receipt of HUD's cost certified amounts, and after reviewing audited statements of actual costs, to reflect any changes from earlier assumptions. Based on the HCA's earlier assistance determinations and any changes in source or use assumptions, the maximum loan which HUD will underwrite may be adjusted, and can be re-calculated, at any time throughout the review procedure. The sponsor's required equity contribution should also be refined based on actual replacement cost uses. Therefore, the HCA, in accordance with the required provisions in its allocation agreement that it will recommend cuts of applicable HUD assistance and/or make adjustments to the LIHTC allocation, as necessary, must recognize any HUD reductions, and may increase (if possible) or will reduce the allocation, as necessary, to produce a Net amount which balances the statement, i.e. fills the gap between allowable total project costs and the sum of all other sources. For mortgage insurance cases, if the syndication has been completed and produced an excess over the estimated net proceeds, the HCA will require the sponsor to apply the excess to prepay the mortgage loan. For every case, the HCA must advise HUD of its final determinations by recertification and an adjusted sources and uses statement, so that HUD may finally approve the assistance within its jurisdiction that is involved (e.g. hold a final closing on the loan for mortgage insurance cases; re-calculate approved Section 8 rent contract increases; etc.).

Dated: _____

James E. Schoenberger,

Associate General Deputy Assistant, Secretary for Housing-FHA Commissioner

Attachment #1—Definitions and Comments

AMPO. The "amount to make the project operational" permitted for HUD-insured non-profit projects. It typically approximates 2 percent of the mortgage, and may be included under the Replacement Costs Typically Financed by the Mortgage portion of the Sources and Uses statement (See Attachment #2 below).

Bridge loan costs. All financing charges incurred by a developer on loans obtained by the pledge of investors' deferred capital contributions to the project receiving LIHTCs and the loan proceeds. The HCAs will disallow unreasonable interest or other costs when identity of interest relationships exist between the developer and the lender to avoid the excess profits which result when loans are not negotiated through arm's length transactions.

BSPRA and SPRA. BSPRA (Builder's and Sponsor's Profit and Risk Allowance) and SPRA (Sponsor's Profit and Risk Allowance) are defined the same as for their applicable FHA mortgage insurance programs. BSPRA and SPRA, where applicable, are familiar allowances to participants in multifamily housing programs.

Builder's Profit & Additional Developer's Fee. Guidelines #4 and #5 seek to ensure that the sum of these two never exceeds a reasonable percentage of development cost for the type of construction proposed in HUD-designated qualified census tracts. Guideline #5 permits the developer to receive commercially reasonable compensation for arranging more risky transactions, while precluding excessive or windfall profits.

Contributed Equity. All amounts required of the owner to make sources balance uses. The contribution must be greater than or equal to the applicable program percentage of the Total Replacement Cost, or Value, as applicable. HUD expects the revised method of requiring that owners commit all Tax Credit proceeds to reasonably limited uses, while requiring a defined minimum percentage of equity based on existing program loan-to-value ratios, will ensure that sponsors are not unduly enriched through subsidy layering.

Development costs (Total). HUD believes that use of well-known FHA procedures for estimating development costs would limit such costs to commercially-reasonable amounts and facilitate cost certifications, but HCAs may use their own professionals or contract with outside professionals to establish reasonable cost estimates and actual amounts. Amounts allowed under Guidelines #1, #4, and #5 are not included in total development cost, but Guidelines #4 and #5 are percentages of it. "Uses" paid by sources other than the mortgage are not to be included in total development cost (See sample format, Attachment #2). The HCA may rely on staff or contract cost analysts to estimate total development cost during the initial allocation stage, but the HCA must recognize the actual costs of construction before making a final guideline compliance certification.

Estimated total replacement Cost. Usually an amount approximating development cost plus amounts permitted under Guidelines #1 and #4 payable from mortgage proceeds. HCAs may use staff or contract cost analysts, appraisers, and accountants to assist them in estimating total replacement cost prior to construction, but must recognize the actual costs of construction before making a final guideline compliance certification, and must base the required equity contribution reflected in the final balanced Sources and Uses statement accompanying the certification on the required percentage of this amount.

Gross Syndication Proceeds. All amounts paid by purchasers of the LIHTCs before subtraction of syndication and bridge loan costs. The Sponsor must report and certify the HCA and HUD the actual gross and net amounts received from the sale of LIHTCs.

Identity of Interest. A financial, familial, or business relationship that permits less than arm's length transactions. Includes, but is not limited to, existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders.

Net syndication proceeds. All amounts received from the actual syndication of LIHTCs awarded to projects, after the payment of allowable costs. Such an amount should approximate Gross Syndication Proceeds less allowable Syndication Costs incurred to obtain such funds, less allowable Bridge Loan costs and interest associated with syndication. The HCA should use scheduled factors to estimate such proceeds before making allocations so less adjustment will be necessary at final certification.

Operating deficit reserve. An escrow established to fund net operating losses projected to occur between the date of initial occupancy and the date by which the project's operating income is expected to cover replacement reserve deposits, debt service, expenses, and ground rent, if any, related to operation of the rental project. Guidelines #7 changes traditional FHA rules on operating deficit reserves when tax credits are involved. The new standard will ensure that reserve funds are not distributed to developers/owners, but rather, are used to prepay the mortgage loan, or remain with project reserves until the assistance period has expired, and then prepay.

Property value. Guideline #1 permits Sponsors to acquire property for new construction or rehabilitation at its market value, and assures that present fee simple owners receive the value of their property, but no excess subsidy. By using "as-is" market value of improvements and/or land, or outstanding indebtedness, as applicable, instead of investment value, the guideline will eliminate any value attributable to the LIHTC or other tax benefits the purchaser will receive.

Qualified census tracts. Those census tracts and census enumeration districts designated by the Secretary in accordance with section 42(d)(5)(c)(ii)(I) of the Internal Revenue Code as amended.

Syndication Expenses. The legal and organizational expenses incurred by the owner in obtaining cash from the sale of LIHTCs to investors, whether through public or private offerings. The total also may include reasonable HCA fees or other incidental expenses, but generally should not exceed 15% of the gross syndication proceeds.

Total LIHTC Allocation Awarded. The sum of all amounts received from authorized State and local sources. HUD requires that the sponsor provide adequate documentation regarding the status and amount of LIHTCs when any form of HUD assistance is requested, and update this information as necessary throughout processing of the request. HUD also requires that sponsors receiving tax-exempt bond financing and an "automatic" Tax Credit amount for 10 years provide all necessary information and documentation regarding the Tax Credits received. HCAs must also make guideline compliance certifications for tax-exempt bond-financed projects.

Total project cost (Uses). The total cost of the housing project. This includes estimated total replacement cost, resident initiative fund, working capital reserve, operating deficit escrow, and all other allowable Guidelines' costs, except those permitted under Guideline #11 (bridge loan costs and syndication expenses). If allowable total project costs exceed total sources, additional equity is required of the sponsor to "balance" sources and uses. If total sources are greater than allowable total uses then, generally, too much assistance has been provided to the project, and one of the sources must be reduced. In such cases, HCAs may reduce assistance within its jurisdiction, or HUD may reduce assistance within its jurisdiction, as necessary, to "balance" sources and uses.

Attachment #2—SAMPLE FORMAT SOURCES AND USES STATEMENT

SOURCES:

LIHTC Source:

Estimated Net Syndication Proceeds[14]

Separate Equity Sources:

Minimum Required Equity Contribution[15]

Additional Equity Necessary[16]

Grant Sources:

Indicate any grants for project uses _____

SUBTOTAL LIHTC, GRANT, & EQUITY SOURCES $_____

(Do not include Min. Equity in sum if funded by LIHTC proceeds)

Debt sources	Program	Mortgage
HUD loans/programs[17]	_____	$_____
Other loans	_____	$_____

Subtotal Mortgage Sources $ _____
Total Sources $ _____

Project Uses[18]

Mortgageable Replacement Cost Uses:

Total Land Improvements $ _____
Total Structures _____
General Requirements _____
Builder's General Overhead _____
Builder's Profit _____
Architects' Fees _____
Bond Premium _____
Other Fees _____
Construction interest _____
Taxes _____
Insurance _____
Mortgage Insurance Premium _____
Examination Fee _____
Inspection Fee _____
Financing Fee _____
FNMA/GNMA Fee _____
Title & Recording _____
Legal _____
Organization _____
Cost Certification Fee _____
Contingency Reserve (Sub Rehab) _____
Supplemental Management Fee, AMPO, or — _____
Consultants Fee (Nonprofits Only) _____
HUD Value of Land/Improvements[19] _____

Subtotal "Replacement Cost" Uses $

Uses Permissible under Guidelines, but Payable by Sources Other than the Mortgage:

Resident Initiative Fund (Not to Exceed 10% of Net Syndication Proceeds) _____
Working Capital Reserve (Not to Exceed 2% of New Mortgages) _____
Operating Deficit Reserve _____
Additional Developers Fee (Sum of this fee and Builder's Profit not to exceed 17% of Total Development Costs) _____
Appraisal, Cost Analyst, Accntnt Fees — _____
Other _____
Subtotal Uses Otherwise Permissible $ _____
Total Project Uses $ _____

[14] The amount obtainable by the owner through the syndication of the LIHTCs awarded (i.e., gross proceeds less syndication expenses and bridge loan interest and costs).

[15] The applicable percentage equity position multiplied by the replacement cost uses equals the Minimum Required Contributed Equity. LIHTC syndication proceeds may not generally fund this requirement directly, but see Guideline #9 exceptions.

[16] Additional Equity Necessary is the additional amount needed to be contributed by the mortgagor to balance the sources and uses when no additional monies are available from other sources.

[17] The HCA may assume estimated amounts for the initial allocation review; HUD will communicate processing results at the time it is preparing to issue a commitment, and will advise of any changes during the cost certification stage.

[18] This format may be used for project uses for most new construction, moderate, and substantial rehabilitation. A different format must be used for acquisitions and refinancings which involve less substantial repairs.

Attachment #3—Section 911 Certification Regarding the Total Assistance Provided for Projects Utilizing HUD and other Government Assistance

Pursuant to section 911 of the Housing and Community Development Act of 1992 and Implementing Guideline requirements, I certify that the assistance provided by the (Name of HCA) to (Project Name), project number (Office Tracking Number), located in _____, when combined with other government assistance as defined in section 102(b) of the HUD Reform Act of 1989, and assistance within the jurisdiction of HUD, is not more than is necessary to provide affordable

[19] See Guideline #1. If property is valued within a substantial rehabilitation proposal, it shall be valued based on the appraisal assumption of non-subsidized, market rate rental use "As Is". But for projects already HUD-insured where the mortgage is to stay in place, the greater of such a value or outstanding indebtedness may, at HUD's discretion, be used. For new construction proposals, HUD will estimate the "warranted price of land fully improved" which, for the HCA's purposes, is adequately described in Guideline #1.

multifamily rental housing. This certification is based upon our review of all allowable projected and actual project costs in accordance with the Implementing Guidelines and all applicable HUD program rules.

(Designated HCA Official)

Date

[FR Doc. 93-7480 Filed 3-31-93; 8:45 am]

BILLING CODE 4210-27-M

Office of the Secretary

[Docket No. N-93-3038; FR-2736-N-09]

Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers requests: September 1, 1992 through November 30, 1992.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the seventh in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone 202-708-3055. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the seventh Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. Thereafter, notices updating waiver-grant activity for the ensuing three-month periods were published on October 28, 1991, January 13, 1992, April 8, 1992, July 20, 1992 and October 9, 1992.

Today's document updates HUD's waiver-grant activity through the end of November, 1992. In approximately one month, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from December 1, 1992 through February 28, 1993.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the section 8 and section 202 programs (24 CFR chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between December 1, 1992 and February 28, 1993.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: March 12, 1993.

Henry G. Cisneros,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, September 1, 1992 Through November 30, 1992 (and Listing of Pre-September 1, 1992 Regulatory Waivers Not Previously Reported)

Note to Reader: The person to be contacted for additional information about the waiver-grant item numbered 1 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC 20410-7000,, Phone: (202) 708-2565. TDD: (202) 708-2565.

1. *Regulation:* 24 CFR 92.254(a)(1) and (b)(1).

Project/Activity: Los Angeles, CA. Section 203(b) limits for purchase and rehabilitation under the HOME Investment Partnership Act program.

Nature of Requirement: 24 CFR 92.254(a)(1) provides for the setting of area limits on the initial purchase price for single family housing and 24 CFR 92.254(b)(1) provides for the setting of area limits of the value of property after rehabilitation, not involving purchase.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: October 16, 1992.

Reasons Waived: Department recognizes that in some high-cost areas, there may be few properties whose purchase price and/or after rehabilitation value are below the section 203(b) caps. Los Angeles, which is one such area, indicated that to have a viable homeownership program, the City needs to have the limit increased to $175,000. A HUD review confirmed the validity of that request and, therefore, for good cause granted a waiver establishing the recommended limit.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 2 through 6 in this listing is: Mr. Robert E. Falkenstein, Acting Director, Single Family Property Disposition Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room 9270, Washington, DC 20410–8000, Phone: (202) 708–0740. TDD: (202) 708–4594.

2. *Regulation:* 24 CFR 200.163(a)(1).
Project/Activity: Hurricane Iniki, 203(h) via the Direct Endorsement program.
Nature of Requirement: A waiver of the requirements of 24 CFR 200.163(a)(1) is required in order to provide assistance to victims of the hurricane Iniki Federal Disaster Area in the State of Hawaii in order to authorize the processing of cases for mortgage insurance under 203(h) by way of the Direct Endorsement program.
Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 18, 1992.
Reason Waived: It is in the public interest and consistent with the programmatic objectives of helping to end the tragedy of homelessness and expand homeownership and affordable housing opportunities to waive the requirements of 24 CFR 200.163(a)(1) in order to facilitate the use of the section 203(h) mortgage insurance program for disaster victims.

3. *Regulation:* 24 CFR 200.163(a)(1).
Project/Activity: Hurricane Andrew, 203(h) via the Direct Endorsement program.
Nature of Requirement: A waiver of the requirements of 24 CFR 200.163(a)(1) is required in order to provide assistance to victims of the hurricane Andrew Federal Disaster Area in order to authorize the processing of cases for mortgage insurance under 203(h) by way of the Direct Endorsement program.
Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 8, 1992.
Reason Waived: It is in the public interest and consistent with the programmatic objectives of helping to end the tragedy of homelessness and expand homeownership and affordable housing opportunities to waive the requirements of 24 CFR 200.163(a)(1) in order to facilitate the use of the section 203(h) mortgage insurance program for disaster victims.

4. *Regulation:* 24 CFR 200.163(a)(2).
Project/Activity: Hurricane Iniki, section 247 via Direct Endorsement program.
Nature of Requirement: A waiver of the requirements of 24 CFR 200.163(a)(2) is required in order to provide assistance to victims of the hurricane Iniki Federal Disaster Area in the State of Hawaii in order to authorize the processing of cases for mortgage insurance under 247 by way of the Direct Endorsement program.
Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: November 13, 1992.
Reason Waived: It is in the public interest and consistent with the programmatic objectives of helping to end the tragedy of homelessness and expand homeownership and affordable housing opportunities to waive the requirements of 24 CFR 200.163(a)(2) in order to facilitate the use of the section 247 mortgage insurance program for disaster victims.

5. *Regulation:* 24 CFR 201.20(b)(3).
Project/Activity: Title I Property Improvement Loans to Assist Tornado Victims in Waushara County, Wisconsin.
Nature of Requirement: Section 201.20(b)(3) requires that the proceeds of a title I loan be used to finance only those property improvements started after approval of the loan.
Granted By: Arthur J. Hill, Assistant Secretary of Housing—Federal Housing Commissioner.
Date Granted: October 8, 1992.
Reason Waived: On August 29, 1992, a number of homes in Waushara County, Wisconsin were damaged by a tornado. Because of the severity of the damage, it was necessary to begin property repairs as soon as possible. The Wisconsin Housing and Economic Development Authority, which makes title I loans under an interest subsidy program, requested that HUD waive § 201.20(b)(3) to permit them to make approximately 25 loans for improvements that were begun before loan approval. The waiver is applicable only in cases of documented tornado damage.

6. *Regulation:* 24 CFR 201.25(c).
Project/Activity: Title I Property Improvement and Manufactured Home Loans to Assist Victims of Hurricanes Andrew and Iniki.
Nature of Requirement: Section 201.25(c) lists certain fees and charges which may not be included in the title I loan or financed or advanced by any other party. These include an origination fee up to one percent of the loan amount, recording fees, recording taxes, filing fees, documentary stamp taxes, and appraisal fees not normally eligible for financing (see §§ 201.25(c)(1), (3), (4) and (8)).
Granted By: Arthur J. Hill, Assistant Secretary of Housing—Federal Housing Commissioner.
Date Granted: October 2, 1992.
Reason Waived: Strict application of the regulations would inhibit the ability of homeowners to carry out property repairs and the replacement of manufactured homes that were damaged or destroyed by Hurricanes Andrew and Iniki. Under the waiver, borrowers are permitted to finance the fees and charges listed in 24 CFR 201.25(c) (1), (3), (4) and (8), as long as they can demonstrate that they are victims of the hurricane and the property is located in the Presidentially declared disaster areas in Florida, Louisiana and Hawaii. The waiver is in effect until June 30, 1993, unless extended prior to that date.

Note to Reader: The person to be contacted for additional information about the waiver-grant item number 7 in this listing is: James B. Mitchell, Director, Financial Services Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, Phone: (202) 708–4325. TDD: (202) 708–4594.

7. *Regulation:* 24 CFR 207.259(e).
Project/Activity: McKinney Act State Agency Refunding of bonds which financed nine section 8 assisted project in the State of South Carolina.
Nature of Requirement: The Regulations set conditions under which HUD may authorize call of debentures prior to maturity. This refunding of section 103 bonds is accomplished via section 103 of the Internal Revenue Code and no section 11(b) waivers are needed.
Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.
Date Granted: May 21, 1992.
Reasons Waived: To credit enhance refundings bonds not fully secured by the FHA mortgage balance, HUD agrees not to exercise its option under § 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 9, 1992. It will not only reduce FHA project mortgage debt service but due to the 50–50 percent savings split derived from

the refunding, the South Carolina HFA will gain $2.4 million to provide housing for very low-income persons and families as required by the McKinney Act, a priority HUD objective established by Secretary Kemp.

Note to Reader: The person to be contacted for additional information about the waiver-grant items number 8 through 12 in this listing is: Mr. Robert E. Falkenstein, Acting Director, Single Family Property Disposition Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room 9270, Washington, DC 20410–8000, Phone: (202) 708–0740. TDD: (202) 708–4594.

8. *Regulation:* 24 CFR 280.305.
Project/Activity: Shamrock Square, East Pittsburgh Economic Development Corporation, Nehemiah Housing Opportunity Grant Program.
Nature of Requirement: Regulations only permit a maximum of three display homes where the program involves less than 60 homes.
Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 15, 1992.
Reason Waived: The grantee requested approval to build more than three display homes. The waiver was granted in order to facilitate affordable housing opportunities for low- and moderate-income families provided under the Nehemiah program. The grantee could not build three display homes due to the townhome configuration. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate-income families provided under the Nehemiah program by allowing the grantee to build the townhomes which were presented in their plans.

9. *Regulation:* 24 CFR 280.305.
Project/Activity: Century Townhomes, ACTION—Housing, Inc. Nehemiah Housing Opportunity Grant Program.
Nature of Requirement: Regulations prohibits a governmental entity or instrumentality for providing funds for a family's downpayment.
Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 1, 1992.
Reason Waived: The grantee requested approval to allow funding of downpayments by a governmental entity. The waiver was granted in order to permit the homebuyers to finance their downpayments with funds from a governmental entity. Without the waiver, the homebuyer would not be able to afford the downpayment. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate income families provided under the Nehemiah program by reducing the amount of the downpayment any family would have to pay.

10. *Regulation:* 24 CFR 280.305.
Project/Activity: York Nehemiah Project, United Way of York County Housing Initiatives Corporation, Nehemiah Housing Opportunity Grant Program.
Nature of Requirement: Regulations prohibits a governmental entity or instrumentality from providing funds for a family's downpayment.
Granted By: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Commissioner.
Date Granted: October 6, 1992.
Reason Waived: The grantee requested approval to allow funding of downpayments by a governmental entity. The waiver was granted in order to permit the homebuyers to finance their downpayments with funds from a governmental entity. Without the waiver, the homebuyer would not be able to afford the downpayment. Granting the waiver would facilitate the affordable housing opportunities for low and moderate income families provided under the Nehemiah program by reducing the amount of the downpayment any family would have to pay.

11. *Notice of Grant of Waiver of 24 CFR 291.120*

Hurricane Andrew—Disaster Relief Effort Single Family Property Disposition

In view of President Bush's declaration of Southern Florida and Louisiana as major disaster areas, I am waiving, in accordance with 24 CFR 291.500, certain requirements of 24 CFR 291.120. The regulations in part 291 set forth the Department's policy with regard to Single Family Property Disposition Insured with Repair Escrow Sales.

Under this procedure, properties requiring no more than $5,000 in repairs to meet the intent of the Minimum Property Standards are offered for sale with insured financing available provided a cash escrow is established to insure the completion of the repairs. The actual escrow amount is determined by estimating 110 percent of the estimated repair cost. All repairs must be completed within 90 days of sales closing.

This waiver will permit the dollar amount of the repair escrow to be increased from $5,000 to $10,000, and the timeframe for completion of repairs to be lengthened from 90 days to 180 days. This waiver will permit more properties to be eligible for inclusion in the Escrow Repair Program which serves as the Department's primary repair program. The waiver is needed at this time in order to publicly advertise properties available for sale under these conditions. This will expedite assistance to disaster victims and reduce the workload of the Field Office in handling requests for individual waivers.

Since the objective of this waiver is to provide assistance to purchasers of HUD-owned properties located in areas afflicted by Hurricane Andrew, the waiver will apply to those properties located in those parts of Southern Florida and Louisiana which have been declared major disaster areas by the President. The authority to exceed the normal $5,000 repair escrow and to lengthen the allowable time to complete repairs will expire, for new applicants, six months after the date of this action.

The HUD Field Office will maintain, and provide to Headquarters on a monthly basis, a record of the names of persons to whom the benefit of this waiver has been provided, the date that the waiver was applied to each such person, and the property address and case number. This monthly report is to be submitted to the Office of Insured Single Family Housing, Single Family Property Disposition Division, Attention: Rose Donnelly, room 9172, by the thirtieth of each month. If waivers are not provided, a report to Headquarters is not required.

Dated: September 10, 1992.

Approved By:

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

12. *Regulation:* 24 CFR 291.120, Insured Sales with Repair Escrow.
Project/Activity: Hurricane Andrew—Disaster Relief Effort Single Family Property Disposition.
Nature of Requirement: The regulation, cited above, requires properties needing less than $5,000 in repairs to meet the intent of the Minimum Property Standards to be offered for sale with insured financing available provided a cash escrow is established to ensure the completion of repairs. The actual escrow amount will be determined by estimating 110 percent of the estimated repair cost. All repairs must be completed within 90 days of sales closing.
Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: September 10, 1992.
Reason Waived: This regulation is being waived in an effort to provide

relief to disaster victims in Southern Florida and Louisiana.

Waiver Provisions: The waiver provides for the change in the amount of the repair escrow and the change in the timeframe in which the repairs are to be completed. Specifically, the waiver allows the repair escrow maximum to be increased from $5,000 to $10,000 and lengthens the timeframe for completion of repairs from 90 days to 180 days.

The waiver applies only to those properties located in those parts of Southern Florida and Louisiana which have been declared major disaster areas by the President.

The waiver expires six months after the date granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 13 through 15 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC. 20410–7000, Phone: (202) 708–2565. TDD: (202) 708–2565.

13. *Regulation:* 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Nashua, NH—group home for abused and/or neglected girls; Loveland, CO—construction of rental housing units by a special subrecipient. Waiver of reimbursement of preagreement costs under the Community Development Block Grant program.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement. 24 CFR 570.200(a)(5) limits preagreement costs of those described in subparagraph 570.200(h).

Granted By: Randall H. Erben, Acting Secretary for Community Planning and Development.

Date Granted: September 24, 1992 (Nashua, NH); November 18, 1992 (Loveland, CO).

Reasons Waived: Without the waiver, the acquisition and rehabilitation of the property in Nashua, NH for adolescent females who have been removed from their homes where they have been abused and/or neglected would not occur. They would have to be placed in out-of-district or out-of-state facilities, inhibiting successful re-integration into social and family life. The Acting Assistant Secretary determined that not granting a waiver would cause undue hardship principally on low and moderate income persons who would otherwise benefit from the facility and adversely affect the purposes of the Housing and Community Development Act of 1974, as amended.

Loveland, CO has critical need for affordable housing, having a tight rental market and a long waiting list of rental subsidies. To not grant a waiver would delay construction of at least 30 rental housing units and pose a hardship on low and moderate income families who would ultimately benefit from the multi-family housing project.

14. *Regulation:* 24 CFR 570.507(a)(2)(i)(A).

Project/Activity: Montgomery County, MD. Submission of the performance and evaluation report (Grantee Performance Report (GPR)).

Nature of Requirement: 24 CFR 570.507(a)(2)(i)(A) requires that CDBG Entitlement grantees submit a performance and evaluation report no later than 90 days after the completion of the most recent program year. The County requested a 30-day extension of the submission deadline.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: September 28, 1992.

Reasons Waived: The County experienced delays in receiving financial data from its Department of Finance due to downsizing in the County government brought about by budget reductions. It is expected that the delay would be a one-time occurrence. Not to grant a waiver would frustrate implementation of the purposes of the Housing and Community Development Act of 1974, as amended, by inhibiting review of the grantee's performance to ensure compliance with applicable requirements.

15. *Regulation:* 24 CFR 577.135(b).

Project/Activity: Virginia Peninsula Council on Domestic Violence (VPCDV) (Transitional Housing project number VA36T89–403). Use of section 8 certificates in a Transitional Housing project.

Nature of Requirement: Supportive Housing Demonstration (Transitional Housing) regulations at 24 CFR 577.135(b) state that, "HUD will not assist a project * * *, if the project involves a structure that is assisted, or residents of the structure will receive assistance, under the United States Housing Act of 1937 * * *", which includes the section 8 program.

Granted By: Paul Roitman Bardack, Acting Assistant Secretary for Community Planning and Development.

Date Granted: August 20, 1992.

Reasons Waived: Though the VPCDV application for Transitional Housing funds clearly referenced an intention to use project-based section 8 certificates, HUD reviewers did not note those references and the application was not rejected. The VPCDV has stated that it does not have the financial capacity to continue its operation without both the Transitional Housing funds and the section 8 payments. Failure to grant the waiver would result in either recovery of past Transitional Housing assistance, termination of future assistance, or both. Such action would reduce or eliminate supportive services to formerly homeless persons and cause undue hardship to project residents.

Note to Reader: The person to be contacted for additional information about the waiver-grant item number 16 through 35 in this listing is: James B. Mitchell, Director, Financial Services Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, Phone: (202) 708–4325. TDD: (202) 708–4594.

16. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Monroe (Rochester, NY) HDC refunding of bonds which financed three section 8 assisted projects in Rochester: Genesee West, South Village, and CS&O Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: September 2, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 28, 1992. Refunding bonds have been priced to an average yield of 7.0%. The tax-exempt refunding bond issue of $4,425,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.2–12% at the call date in 1992 with tax-exempt bonds yielding 7.0%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.6% to 7.85%, thus reducing FHA mortgage insurance risk. The refunding

serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

17. *Regulation*: 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: Waterbury (Connecticut) HDC refunding of bonds which financed a section 8 assisted project in Connecticut: Fairmont Heights Apartments (FHA No. 017–35218–PM–L8).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing–FHA Commissioner.

Date Granted: September 15, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 17, 1992. Refunding bonds have been priced to an average yield of 6.70%. The tax-exempt refunding bond issue of $9,545,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.80% at the call date in 1992 with tax-exempt bonds yielding 6.70%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.08% to 6.725%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

18. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project Activity: The York (PA) RA refunding of bonds which financed a section 8 assisted project: York NSA Apartments (FHA Number 034–35215).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing–FHA Commissioner.

Date Granted: September 30, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 1, 1992. Refunding bonds have been priced to an average yield of 6.70%. The tax-exempt refunding bond issue of $2,230,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5 to 12% at the call date in 1992 with tax-exempt bonds yielding 6.70%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12.0% to a rate close to the bond rate, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

19. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: South Carolina Regional HDC refunding of bonds which financed a section 8 assisted project: Redwood Village Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: October 23, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 15, 1992. Refunding bonds have been priced to an average yield of 6.82%. The tax-exempt refunding bond issue of $1,790,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1992 with tax-exempt bonds yielding 6.82%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.75% down to 6.7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

20. *Regulation:* 24 CFR 811.105(b), 811.107(a)(2), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The New Haven (Connecticut) HA refunding of bonds which financed a section 8 assisted project: Fair Haven Elderly Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 13, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding

proposal was approved by HUD on November 4, 1992. Refunding bonds have been priced to an average yield of 7.25%. The tax-exempt refunding bond issue of $2,540,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1993 with tax-exempt bonds yielding 7.25%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 10.8% to a rate close to the bond rate, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

21. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Lewiston HA refunding of bonds which financed a Section 8 assisted project in Maine: Centreville Commons Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 2, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 14, 1992. Refunding bonds have been priced to an average yield of 6.72%. The tax-exempt refunding bond issue of $4,390,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.875% at the call date in 1992 with tax-exempt bonds yielding 6.72%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% to 7.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

22. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Second Columbus (Georgia) HDC refunding of bonds which financed a section 8 assisted project in Georgia: Bull Creek Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: November 17, 1992.

Reason Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 14, 1992. Refunding bonds have been priced to an average yield of 7.02%. The tax-exempt refunding bond issue of $3,365,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds yielding 13.33% at the call date in 1992 with tax-exempt bonds yielding 7.02%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.83% to 7.5%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

23. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Framingham (Mass.) HA refunding of bonds which financed a section 8 assisted project: Claflin House Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 17, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 23, 1992. Refunding bonds have been priced to an average yield of 6.91%. The tax-exempt refunding bond issue of $2,035,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 6.91%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

24. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Framingham (Mass.) HA refunding of bonds which financed a section 8 assisted project: Claflin House Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 17, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 23, 1992. Refunding bonds have been priced to an average yield of 6.91%. The tax-exempt refunding bond issue of $2,035,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1992 with tax-exempt bonds yielding 6.91%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.0% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

25. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Second Columbus (Georgia) HDC refunding of bonds which financed a section 8 assisted project in Georgia: Bull Creek Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing–FHA Commissioner.

Date Granted: November 17, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 14, 1992. Refunding bonds have been priced to an average yield of 7.02%. The tax-exempt refunding bond issue of $3,365,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds yielding 13.33% at the call date in 1992 with tax-exempt bonds yielding 7.02%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.83% to 7.5%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

26. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Lake County (Illinois) HA refunding of bonds which financed three section 8 assisted projects in Illinois: Hebron Townhouses, Ravinia Housing, and Cedar Villas Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 20, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 23, 1992. Refunding bonds have been priced to an average yield of 6.71%. The tax-exempt refunding bond issue of $14,125,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds yielding 11.42% at the call date in 1992 with tax-exempt bonds yielding 6.71%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contracts, from 11.78% to 6.54%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

27–28. *Regulation:* 24 CFR 811.107(a), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b), 811.117.

Project/Activity: The New Britain (Connecticut) HA refunding of bonds which financed a section 8 assisted project in Connecticut: Nathan Hale Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 24, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on November 10, 1992. Refunding bonds have been priced to an average yield of 6.83%. The tax-exempt refunding bond issue of $4,500,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.25% at the call date in 1992 with tax-exempt bonds yielding 6.83%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.54% to 7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

29. *Regulation:* 24 CFR 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Phoenix (Arizona) HFC refunding of bonds which financed three section 8 assisted projects: Morningside Villa, Myrtle Manor, and Sunland Terrace.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: November 25, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on October 15, 1992. Refunding bonds have been priced to an average yield of 6.6%. The tax-exempt refunding bond issue of $6,045,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds yielding 11.5%—11.0% at the call date in 1992 with tax-exempt bonds yielding 6.6%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contracts, from 12%, 11.78%, and 11.51% to 6.95%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

30. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project Activity: The Decatur (Georgia) HA refunding of bonds which financed a section 8 assisted project in Georgia: Park Trace Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: September 1, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on December 9, 1991. Refunding bonds have been priced to an average yield of 6.45%. The tax-exempt refunding bond issue of $5,910,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.7% at the call date in 1992 with tax-exempt bonds yielding 6.45%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12% to 6.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

31. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117.

Project/Activity: The Allentown HA refunding of bonds which financed a section 8 assisted project in Pennsylvania of 100 scattered site units, PA–26–A003–001.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October *20*, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transaction in which bonds will be issued pursuant to section 103 of the Internal Revenue Code. This refunding proposal was approved by HUD on September 3, 1992. Refunding bonds have been priced to an average yield of 5.48%. The tax-exempt refunding bond issue of $3,215,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.0 to 11.25% at the call date in 1992 with tax-exempt bonds yielding 5.48%. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

32. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The City of Pekin (Illinois) HA refunding of bonds which financed a section 8 assisted project, the UAW Senior Citizens Home.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 21, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 28, 1992. Refunding bonds have been priced to an average yield of 6.81%. The tax-exempt refunding bond issue of $6,260,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.7% to 12.5% at the call date in 1992 with tax-exempt bonds yielding 6.81%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12.34% to 7.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

33. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The San Francisco RA refunding of bonds which financed two section 8 assisted projects: Mercy Terrace Apartments and Mariposa Apartments.

Nature of Requirement: The Regulations set conditions under which

HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debenture prior to maturity.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-FHA Commissioner.

Date Granted: October 26, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 24, 1992. Refunding bonds have been priced to an average yield of 6.48%. The tax-exempt refunding bond issue of $13,020,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11% at the call date in 1992 with tax-exempt bonds yielding 6.48%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 12% to 6.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

34. *Regulation:* 24 CFR 811.114(d), 811.115(b), and 811.117.

Project/Activity: The Newport News (VA) Agency refunding of bonds which financed a section 8 assisted project: Berkley-West Apartments (FHA Number 051–35366).

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: October 28, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 1, 1992. Refunding bonds have been priced to an average yield of 6.54%. The tax-exempt refunding bond issue of $4,825,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.75% at the call date in 1992 with tax-exempt bonds yielding 6.54%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12.0% to a rate close to the bond rate, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

35. *Regulation:* 24 CFR 811.114(d), 811.115(b), 811.117.

Project/Activity: The Philadelphia RA refunding of bonds which financed a section 8 assisted project: Washington Square Apartments.

Nature of Requirement: The Regulations set conditions under which HUD may grant a section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—FHA Commissioner.

Date Granted: November 5, 1992.

Reasons Waived: The part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on October 18, 1991. Refunding bonds have been priced to an average yield of 6.94%. The tax-exempt refunding bond issue of $5,725,000 at current low-interest rates will save section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10%–12¼% at the call date in 1992 with tax-exempt bonds yielding 6.94%. The refunding will also substantially reduce the FHA mortgage interest rates at expiration of the HAP contract, from 11.15% to 7.6%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective established by Secretary Kemp.

Note to Reader: The person to be contacted for additional information about the waiver-grant item numbered 36 in this listing is: Ms. Kathryn Greenspan, Housing Program Specialist, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410, Phone: (202) 708–3887. TDD: (202) 708–4594.

36. *Regulation:* 24 CFR 882.712(c)(1)(iii).

Project/Activity: Project-Based Certificate Program.

Nature of Requirement: (1) Temporary relocation policies apply only to lawful residential tenants who are temporarily relocated from a property (building or complex) following submission of the Owner's application to the PHA for project-based certificate (PBC) assistance. (2) The temporary location period for such tenants will not exceed 12 months.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: July 21, 1992.

Reason Waived: Families were temporarily relocated prior to submission of the PBC application to the PHA because of extensive code violations which made continued occupancy hazardous. The waiver will make it possible for the former tenants to return to the rehabilitated units.

Note to Reader: The person to be contacted for additional information about the waiver-grant item numbered 37 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC 20410–7000, Phone: (202) 708–2565. TDD: (202) 708–2565.

37. *Regulation:* 24 CFR 882.806(a).

Project/Activity: Spokane (WA) Housing Authority. Rehabilitation agreement under the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program.

Nature of Requirement: 24 CFR 882.806(a) requires that before an owner begins any rehabilitation, the public housing authority enter into an agreement with the owner in the form prescribed by HUD.

Granted By: Randall H. Erben, Acting Assistant Secretary for Community Planning and Development.

Date Granted: October 20, 1992.

Reasons Waived: A waiver was granted for good cause, to permit

rehabilitation of a deteriorating roof because the structure was exposed to moisture damage and a delay would take the project into Spokane's "inclement weather season" in which further damage could be done to the roof. Immediate action would save rehabilitation costs. All other rehabilitation on the project would be preceded by the required agreement.

Note to Reader: The person to be contacted for additional information about waiver-grant item number 38 in this listing is: Ms. Linda Cheatham, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–3000. TDD: (202) 708–4594.

38. *Regulation:* 24 CFR 888.103a.
Project/Activity:

Project name	Project No.	Field office
Elmwood Park Senior Complex.	071–EH451	Chicago.

Nature of Requirement: On April 24, 1991, HUD published "Final Fair Market Rents" pursuant to its duties to establish FMRs under the above cited regulation. In the preamble to the actual schedule of applicable FMRs, it is stated that for certain projects, subject to FY 1987 FMRs and earlier, the 1988 FMRs are the highest and most recent which they may use, and " * * * shall be applicable to all subsequent processing in reviewing contract rents and utilities." Therefore, if HUD wishes not to impose a restriction that appears in the published preamble, it must waive the regulation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing-Housing Commissioner.

Date Granted: August 26, 1992.

Reason Waived: The subject was selected for funding in 1986, and initially closed on May 22, 1989. Excavation of the site began in June 1989, and unforeseen soil contamination was discovered. The Illinois Environmental Protection Agency halted construction. A mortgage increase request to fund the estimated $483,472 cost of clean-up was submitted to Headquarters. If HUD strictly imposed the above referenced preamble requirement, which appears in the section on "applicability" to the FY 1989 schedule of new construction FMRs, and processed the subject FMRs applying the 1.20 prerogative to 1988 FMRs, an additional cash requirement of $78,663 was necessary. The subject's non-profit sponsor could not meet this necessary cash requirement, so it was likely that HUD would ultimately end up owning a contaminated site which it must then clean up anyway pursuant to its CERCLA liability. But if HUD waived the regulation, in recognition of the fact that the preamble requirement was not published until April 24, 1991, and previous established procedure would have permitted the use of 1989 FMRs, with a lesser prerogative of only 1.12 of 1989 FMRs, an additional cash requirement of only $63 would be necessary, since the sponsor's minimum capital investment of $10,000 has already been met. HUD and the sponsor share a common goal to provide this much needed housing and not waste the time, effort, and money already expended on this project.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 39 through 41 in this listing is: Ms. Kathryn Greenspan, Housing Program Specialist, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410, Phone: (202) 708–3887. TDD: (202) 708–4594.

39. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: Cuyahoga Metropolitan Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 21, 1992.

Reason Waived: The Cleveland Field Office was granted a waiver for the completion of the PHMAP assessment for the Cuyahoga Metropolitan Housing Authority (CMHA) due to the necessity to merge performance data from the Lakeview Terrace Resident Management Firm with that of CMHA; and the completion by the Field Office of a confirmatory review after the merge has been completed. The Chicago Field Office was granted a waiver for the completion of the PHMAP assessment for all of the public housing agencies in its jurisdiction due to the flooding by the Chicago River and various computer problems.

40. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: Salt Lake Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Dated Granted: April 22, 1992.

Reason Waived: The Denver Regional Office was granted a waiver for the completion of the PHMAP assessment for the Salt Lake Housing Authority (SLHA) due to the fact that the SLHA used incorrect data for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Denver Regional Office to complete the PHMAP assessment.

41. *Regulation:* 24 CFR 901.120(b)(2).
Project/Activity: Marianna Housing Authority, Time Extension to Complete the Public Housing Management Assessment Program (PHMAP) assessment.

Nature of Requirement: The Regulation cites specific time frames for Field Office completion of the Public Housing Management Assessment Program (PHMAP) assessment.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: July 13, 1992.

Reason Waived: The Little Rock Field Office was granted a waiver for the completion of the PHMAP assessment for the Marianna Housing Authority (MHA) due to the fact that the MHA used incorrect data for its PHMAP Certification and it required additional time to resubmit its first phase PHMAP certification, thereby necessitating additional time for the Little Rock Field Office to complete the PHMAP assessment.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 42 and 43 in this listing is: Mr. Roger Braner, Acting Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4116, Washington, DC 20410, Phone: (202) 708–1380. TDD: (202) 708–4594.

42. *Regulation:* 24 CFR 913.107.
Project/Activity: Public housing projects owned and operated by the Edgar Housing Authority of Edgar, Nebraska.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income, or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Edgar Housing Authority to establish ceiling rents for all one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

43. *Regulation:* 24 CFR 905.325.

Project/Activity: Establishment of ceiling rents for Lac Courte Oreilles Housing Authority Rental Program.

Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 20, 1992.

Reason Waived: This waiver was requested and granted to allow the Lac Courte Orielles Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

Note to Reader: The person to be contacted for additional information about waiver-grant items numbers 44 through 53 in this listing is: Mr. Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1015. TDD: (202) 708–0850.

44. *Regulation:* 24 CFR 905.325.

Project/Activity: Establishment of ceiling rents for Ute Mountain Ute Housing Authority.

Nature of the Requirement: Waiver of the Regulation cited above is required to allow establishment of ceiling rents for their Rental Program.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted:

Reason Waived: This waiver was requested and granted to allow the Ute Mountain Ute Housing Authority to establish ceiling rents for their rental program in accordance with PIH Notice 89–21, which provides for the establishment of ceiling rents in a rental Indian housing program.

45. *Regulation:* 24 CFR 905.404(a), 905.407(b)(1)(3), 905.407(c), 905.410, 905.413 (a), (b) and (d), 905.416 (c) and (d), 905.419 (b) and (c), 905.422, 905.440(b) (1) and (2).

Project/Activity: Conversion of 355 Turnkey III (TKY III) units to the Mutual Help (MH) Homeownership Opportunity Program by the Tlingit-Haida Regional Housing Authority in Juneau, Alaska.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert an existing unit funded and built under one program to operation under a different program.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 22, 1992.

Reason Waived: This action was requested, and granted, in order to fulfill the Department's obligation in the case entitled *Samato* v. *Wilson, et al.*, in which, based on meeting their obligations under the Settlement Agreement, eligible members of the class were to be transferred from the TKY III Program to the MH Program.

Also, many of these homebuyers have been in their TKY III units since they were built and transferring to the MH Program will enable participants to realize homeownership in a shorter period of time.

46. *Regulation:* 24 CFR 905.440(c).

Project/Activity: Establishment of Purchase Price for a Subsequent Homebuyer in the Mutual Help Homeownership Opportunity (MH) Program at the Northern Circle Indian Housing Authority in Ukiah, California.

Nature of Requirement: The Regulation cited above applies to how to establish a purchase price for a subsequent homebuyer. Therefore, a waiver is required to use only the current replacement cost, instead of the lower of the current replacement cost or the appraised value of the home.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: May 21, 1992.

Reason Waived: This action was requested, and granted, because Northern Circle Indian Housing Authority has been unable to obtain a current appraisal due to a lack of cooperation by the Bureau of Indian Affairs to complete timely appraisals, a lack of understanding of trust land by private firms, and the unavailability of comparable properties.

47. *Regulation:* 24 CFR 905.705.

Project/Activity: Providing Performance Funding System subsidy for one unit from the Modoc-Lassen Indian Housing Authority's inventory which is used as a space for community members to make Native American crafts, which will be sold locally and in surrounding communities.

Nature of Requirement: The regulation cited above discusses how to determine the amount of operating subsidy for which an IHA is eligible under the Performance Funding System.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: March 25, 1992.

Reason Waived: This waiver was requested, and granted, to provide Performance Funding System operating subsidy for one unit removed from the Modoc-Lassen Indian Housing Authority's rental inventory. The rental units are being used as a crafts center which promotes economic self sufficiency services to the community.

48. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Housing Authority of Excelsior Springs, of Excelsior Springs, Missouri.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Housing Authority of Excelsior Springs to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

49. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Ely Housing Authority of LaSalle County, in LaSalle County, Illinois.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Ely Housing and Redevelopment Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which

permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

50. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Lucas Metropolitan Housing Authority of Lucas, Ohio.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: August 27, 1992.

Reason Waived: To allow the Lucas Metropolitan Housing Authority to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

51. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Lynch Housing Authority.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, and amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Lynch Housing Authority to establish ceiling rents for one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

52. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Housing Authority of the City of Marion, Indiana.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason Waived: To allow the Housing Authority of the City of Marion to establish ceiling rents on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

53. *Regulation:* 24 CFR 913.107.

Project/Activity: Public housing projects owned and operated by the Stromsburg Housing Authority of Stromsburg, Nebraska.

Nature of Requirement: 24 CFR 913.107 requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: August 27, 1992.

Reason waived: To allow the Stromsburg Housing Authority to establish ceiling rents for one-bedroom units on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 54 through 58 in this listing is: Mr. Edward C. Whipple, Occupancy Division, Office of Management Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–0744. TDD: (202) 708–0850.

54. *Regulation:* 24 CFR 990.109(b)(3)(iv).

Project/Activity: In determining its operating subsidy eligibility for its fiscal year ending 6/30/92, the Detroit Housing Department, Detroit, MI, requested approval to use 62% as its projected occupancy percentage.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 10, 1992.

Reason Waived: The initial request for a waiver came shortly after HUD had published a proposed rule in the **Federal Register** that would have established new conditions under which a PHA could include vacant units in the determination of operating subsidy eligibility. Congressional action on the Department's 1992 Appropriations Bill, however, included language in the Conference report that barred appropriated funds from being used to implement the proposed rule.

The proposed rule would have corrected inefficiencies and removed inequities contained in the current Vacancy Rule. The Congressional abrogation of the rule-making process meant a continuation of these problems. It was thus felt necessary to develop a general policy describing the circumstances under which Vacancy Rule waivers would be considered and approved so that these problems could be minimized without being in conflict with the Congressional action. Waiver requests received during and after this period were reviewed but not generally acted upon.

In response to this situation, HUD approved an obligation of $28.9 million of operating subsidy funds by issuing a letter-of-intent (LOI) in September 1991. In determining this amount, 62% was used as the assumed occupancy percentage. It was hoped, however, that a policy on Vacancy Rule waiver requests would be in place before payments of the LOI began so that appropriate conditions could be placed on the released funds, if warranted.

In November 1991, the Detroit Field Office was authorized to pay $14.4 million to the DHD and payment of an additional $4 million was authorized in March 1992. No conditions were placed on these payments. HUD is now asking Congress to reverse its earlier action on the proposed vacancy rule and allow HUD to proceed with publication of a final rule. Since only three months remained in the DHD's fiscal year and because there was an approvable budget in the Field Office, Good cause was found to exist to permit the DHD to use 62% as its projected occupancy percentage.

55. *Regulation:* 24 CFR 990.109(e)(2).

Project/Activity: In determining its operating subsidy eligibility for its fiscal year ending 12/31/92, the Denver Housing Authority, Denver, CO, requested approval to exclude certain surcharge income from the calculation.

Nature of Requirement: The regulation requires a PHA to include

locally-generated income in its calculation of operating subsidy eligibility.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: April 24, 1992.

Reason Waived: The waiver allows the exclusion from the subsidy calculation of surcharge income from a cable TV service being offered to residents at the Denver Housing Authority. The provision of this cable service is seen as a desirable resident initiative project. The Central Resident Council (CRC) is expected to become responsible for the cable service contract within a year. Residents choosing cable service will pay a mandatory $2 surcharge as part of their monthly bill and this income, less reasonable administrative expenses, would be used by the CRC for resident initiatives such as the scholarship fund. This project will be operated with the full consultation and involvement of the CRC. This waiver is for a period not to exceed 12 months from the time the cable service is implemented. During this period the housing authority shall train and prepare CRC to assume complete responsibility for the cable service contract.

56. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: In determining its operating subsidy eligibility for its fiscal year ending 6/30/92, the Bromley-Health Resident Management Corporation, Boston Housing Authority, Boston, MA, requested approval to use other than the HUD-approved COP goal as its projected occupancy percentage.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 89% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability.

57. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: In determining its operating subsidy eligibility for its fiscal year ending 9/30/92, the Carr Square RMC, St. Louis Housing Authority, St. Louis, MO, requested approval to use other than the HUD-approved COP goal as its projected occupancy percentage.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 72% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability. The RMC was encouraged to use the relief provided to develop a homeownership occupancy plan, marketing program and waiting list.

58. *Regulation:* 24 CFR 990.118(h)(1).

Project/Activity: In determining its operating subsidy eligibility for its fiscal year ending 9/30/92, the Cochran Gardens—Cochran Plaza RMC, St. Louis Housing Authority, St. Louis, MO, requested approval to use other than the HUD-approved COP goal as its projected occupancy percentage.

Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: June 30, 1992.

Reason Waived: The Resident Management Corporation (RMC) was not in place when the COP was developed and it does not have control over such resources as CIAP funding. The RMC was granted a waiver in order to permit the use of 88% as the projected occupancy goal for its 1992 fiscal year in recognition of these factors and as an encouragement to its financial stability.

24 CFR 990.118(h)(1)

More information concerning these waivers may be obtained by contacting: John Comerford, Director, Financial Management Division, Department of Housing and Urban Development, Office of Assisted Housing, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1872.

[FR Doc. 93–7380 Filed 3–31–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–), Washington, DC 20503, telephone (202) 345–7340.

Title: Indian Highway Safety Project Application.

OMB Approval Number: 1076–

Abstract: Respondents supply highway traffic information and data supporting request for funding under the Highway Safety Act necessary to determine eligibility for 402 funding. This information allows the Bureau of access tribal needs for highway safety on reservations.

Bureau Form Number: BIA 2535.

Frequency: Annually.

Description of Respondents: Federally-Recognized Tribes, Tribal groups and organizations.

Estimated Completion Time: 39 Hours.

Annual Responses: 250.

Annual Burden hours: 9,750.

Bureau Clearance Officer: Gail Sheridan (202) 208–2685.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–7467 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AK–960–03–4230–05]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for review of the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of

information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0026), Washington, DC 20503, telephone 202–395–7340.

Title: Alaska Townlot Deed Application, 43 CFR part 2565
OMB approval number: 1004–0026
Abstract: Non-Native individuals, groups and businesses, incorporated State of Alaska municipalities and traditional governments use the Alaska Townlot Deed Application to obtain title to lands within Alaska townsites (43 U.S.C. 732) from the Alaska Townsite Trustee. Applications are filed on each of the 21 townsites in rural communities. The municipal and traditional governments in Alaska villages are the principal applicants for townlot deeds using this application.
Bureau Form Number: AK 2564–19
Frequency: On Occasion
Description of respondents: Non–Native individuals, groups and businesses, incorporated Alaskan municipalities and traditional Alaskan governments.
Estimated completion time: 30 minutes
Annual responses: 50
Annual burden hours: 25
Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105

Dated: November 10, 1992.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 93–7551 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–JA–M

[AA–260–4210–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0029), Washington, DC 20503, telephone 202–395–7340.

Title: Color-of-Title Application, 43 CFR part 2540
OMB approval number: 1004–0029
Abstract: Respondents supply identifying information to be used by the agency to process applications to determine validity of a color-of-title claim to public lands
Bureau form number: 2540–1
Frequency: Once
Description of respondents: Individuals applying for a color-of-title claim to public lands
Estimated completion time: 15 minutes
Annual responses: 37
Annual burden hours: 9
Bureau clearance officer (Alternate): Marsha Harley 202–653–6105

Dated: January 27, 1993.

Michael J. Penfold,

Assistant Director for Land and Renewable Resources.

[FR Doc. 93–7552 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0162), Washington, DC 20503, telephone (202) 395–7340.

Title: Oil and Gas Geophysical Exploration Operations 43 CFR 3151.
OMB Approval Number: 1004–0162.
Abstract: Respondents supply information which will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.
Form Numbers: 3150–4, 3150–5.
Frequency: On occasion.
Description of Respondents: Oil and gas exploration and drilling companies.
Estimated Completion Time: Form 3150–4—1 hour, Form 3150–5—⅓ hour.
Annual Responses: 1200.
Annual Burden Hours: 800.
Bureau Clearance Officer (Alternate): Dorothy Chambers, (202) 653–8853.

Dated: January 19, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–7553 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

[AK–960–03–4230–05]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for review of the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0028), Washington, DC, 20503, telephone 202–395–7340.

Title: Native Indian or Eskimo of Alaska Trustee Deed Application, 43 CFR 2564.
OMB Approval Number: 1004–0028.
Abstract: Native Indians or Eskimos of Alaska use the Native Indian or Eskimo of Alaska Trustee Deed Application to obtain title to lands within Alaska townsites (43 U.S.C. 733–737) from the Alaska Townsite Trustee. Applications are filed in each of the 21 townsites. Alaska native individuals are the only applicants for townlot deeds in restricted and unrestricted status using this application.
Bureau Form Number: AK 2560–6.
Frequency: On occasion.
Description of Respondents: Native Indians or Eskimos of Alaska.
Estimated Completion Time: 30 minutes.
Annual responses: 60.
Annual Burden Hours: 30.
Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Dated: November 10, 1992.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 93–7554 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–JA–M

[AA–260–4210–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggetions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0011), Washington, DC 20503, telephone 202–395–7340.

Title: Color-of-Title Tax Levy and Payment Record, 43 CFR part 2540.

OMB approval number: 1004–0011.

Abstract: Respondents supply identifying information to be used by the agency to process applications to determine validity of color-of-title claim and aid in the documentation of tax payments in support of the color-of-title applications to public lands.

Bureau form number: 2540–3.

Frequency: Once.

Description of respondents: Individuals applying for a color-of-title claim to public lands.

Estimated completion time: 1 hour.

Annual responses: 37.

Annual burden hours: 37.

Bureau clearance officer (Alternate): Marsha Harley 202–653–6105.

Dated: February 18, 1993.

Kemp Conn,

Deputy Assistant Director for Land and Renewable Resources.

[FR Doc. 93–7555 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

[AA–260–4210–05]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau of Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0004), Washington, DC 20503, telephone 202–395–7340.

Title: Desert Land Entry, 43 CFR 2520.

OMB Approval Number: 1004–0004.

Abstract: Respondents supply identifying information to be used by the agency to determine eligibility for farming on Bureau administered desert land.

Bureau Form Number: 2520–1.

Frequency: Once.

Description of Respondents: Individuals applying for entry on to public land under the Desert Land Act.

Estimated completion time: 90 minutes.

Annual Responses: 20.

Annual burden hours: 30.

Bureau Clearance Officer: (Alternate) Marsha A. Harley, 202–653–6105.

Dated: January 27, 1993.

Mike Penfold,

Assistant Director for Land and Renewable Resources.

[FR Doc. 93–7556 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

[AA–680–01–4142–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0103), Washington, DC 20503, telephone 202–395–7340.

Title: Mineral Materials Disposal, 43 CFR part 3600.

OMB approval number: 1004–0103.

Abstract: Respondents supply information and data necessary to process applications for the removal of mineral materials from the public lands. Operators also provide periodic production information which is used by the Government to verify that payment has been made for the Federal mineral materials. The information is needed to prevent unnecessary destruction of natural resources, to ensure that the Government is not liable for costly reclamation of abandoned sites, and to ensure that the Government receives fair market value for the disposal of mineral materials.

Bureau Form Number: 3600–4, 3600–5.

Frequency: Upon application.

Description of Respondents: Individuals and entities applying for a permit or contract to remove mineral materials from the public lands.

Estimated completion time: 14 minutes (approximate).

Annual Responses: 6,200.

Annual Burden Hours: 1,485.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Adam A. Sokoloski,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–7558 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

[WO–610–4110–03–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0145), Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Exploration and Leasing.

OMB Approval Number: 1004–0145.

Abstract: Respondents supply information which will be used to determine the eligibility of an applicant to hold, explore for, and produce oil and gas on Federal lands. The information supplied allows the Bureau of Land Management to determine whether an

applicant is qualified to conduct geophysical operations and to hold a lease to obtain a benefit under the terms of the Mineral Leasing Act of 1920.

Bureau Form Numbers: N/A.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, and oil and gas exploration and drilling companies.

Estimated Completion Time: 1 hour.

Annual Responses: 1400.

Annual Burden Hours: 1400.

Bureau Clearance Officer: (Alternate) Dorothy Chambers (202) 653–8853.

Dated: January 15, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–7559 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

[WO230–09–4310–87]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be—made directly to the Bureau Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1004–0001), Washington, DC 20503, telephone (202) 395–7340.

Title: Free Use Application and Permit.

OMB Approval Number: 1004–0001

Abstract: This form is used to provide for proper management of material disposal when product sale is not feasible or in the best interest of the Government.

Bureau form number: 5510–1.

Frequency: On Occasion.

Description of respondents: Settlers, residents, miners, and nonprofit groups.

Estimated completion time: 30 minutes.

Annual responses: 416.

Annual burden hours: 208.

Bureau Clearance Officer: (Alternate) Marsha A. Harley (202) 653–6105.

Dated: March 23, 1993.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 93–7560 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–84–M

[CO–920–93–4110–03; COC48859]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC48859, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: March 24, 1993.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 93–7564 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–37119]

Realty Action; Lease/Purchase for Recreation and Public Purposes (R&PP) Act, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Clark County.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for expansion of the current park site to construct passive recreational play areas and sports facilities, including a Little League complex.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Section 3, Lots 95 and 96.
Containing 10.57 acres more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest.

The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. As easement for streets, roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

2. Those rights for underground distribution and telephone line purposes which have been granted to Nevada Power Co. and Centel by Permit No. N–54772 under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal law.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: March 22, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93-7469 Filed 3-31-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-4210-05; N-56920]

Lease/Purchase for Recreation and Public Purposes (R&PP) Act Clark County, NV; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Clark County.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Clark County School District proposes to use the land for an elementary school site.

Mount Diablo Meridian, Nevada

T. 22 S., R. 63 E.,
Section 4: E½SW¼SW¼NW¼.
Containing 5 acres more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest.

The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal law.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: March 22, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93-7557 Filed 3-31-93; 8:45 am]

BILLING CODE 4310-HC-M

[WY-010-5700-11; WYW 123107]

Proposed Exchange; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed exchange involving public lands in Park County, Wyoming.

SUMMARY: The surface estate of the following described public lands is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The exchange is in accordance with the Cody Resource Management Plan approved November 8, 1990, and the Grass Creek Resource Area Management Framework Plan dated July 1983. Final determination for disposal will be made through the Environmental Assessment process pursuant to the National Environmental Policy Act of 1969, as amended.

Sixth Principal Meridian

T. 49 N., R. 99 W.,
Sec. 4, lot 5;
Sec. 7, lots 5 & 23;
Sec. 9, W½NW¼, NW¼SW¼;
Sec. 17, lot 8, SW¼SE¼;
Tract 41, lots, 26, 32, 34, & 37.
T. 50 N., R. 99 W.,
Sec. 30, lots 13, 14;
Sec. 31, lot 37;
Sec. 32, lot 8;
Sec. 33, lots 4, 23, SE¼SW¼, S½SE¼.
T. 53 N., R. 99 W.,
Sec. 18, lots 9 & 10;
Sec. 19, lots 1 & 2;
Sec. 27, NW¼, NW¼SW¼;
Sec. 28, E½, E½W½;
Sec. 30, lot 1;
Sec. 32, NW¼NW¼.
T. 53 N., R. 100 W.,
Sec.25, E½NE¼, W½W½, SE¼.
T. 50 N., R. 101 W.,
Sec. 1, SW¼NW¼, W½SW¼;
Sec. 2, lots 1-3, S½NE¼, E½SE¼;
Sec. 4, lot 5, NE¼SW¼;
Sec. 12, NW¼, NW¼SW¼;
Sec. 14, NE¼NE¼, S½NE¼;
Lot 52.
T. 50 N., R. 102 W.,
Sec. 7, lot 14;
Sec. 9, lot 1;
Sec. 10, lots 1 & 2;
Sec. 12, lot 5;
Sec. 13, lot 3;
Sec. 16, lot 1;
Sec. 17, SW¼SW¼;
Sec. 18, lots 5, 7-10, SE¼SE¼;
Sec. 19, lots 3-6, W½NE¼, SE¼NE¼, E½NW¼, E½SW¼;
Sec. 20, NE¼SE¼;
Sec. 22, lot 9.
T. 50 N., R. 103 W.,
Sec. 5, lots 1 & 2.
T. 50 N., R. 104 W.,
Sec. 1, lots 10, 11, & 14;
Sec. 2, lot 6;
Sec. 10, lots 8 & 10;
Sec. 11, lot 16, NE¼NE¼
Sec. 14, lots 7, 11, & 14.
T. 51 N., R. 101 W.,
Sec. 18, lot 12;
Sec. 19, lot 5;
Sec. 20, lot 7;
Sec. 22, lots 2-6, S½SW¼, SW¼SE¼;
Sec. 27, NE¼, NE¼SE¼, E½SW¼;
Sec. 28, lot 2, S½SE¼;
Sec. 35, lot 7, SE¼SW¼;
Tract 38C;
Tract 71J.
T. 51 N., R. 102 W.,
Sec. 16, lot 4;
Sec. 19, SE¼NW¼;
Sec. 23, SW¼SE¼;
Sec. 26, W½NE¼;
Tract 80A.
T. 51 N., R. 103 W.,
Sec. 33, lot 2;
Sec. 35,, lot 12.

The above area described aggregates 4,859.79 acres in Park County.

EFFECTIVE DATE: The publication of this notice in the **Federal Register** will segregate the public lands described above from appropriation under the public land laws, including the mining laws, except for exchange pursuant to section 206(b) of the Federal Land

Policy and Management Act of 1976. The segregative effect will terminate upon issuance of patent or two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

FOR FURTHER INFORMATION CONTACT:

Lylia Livingston, Bureau of Land Management, 1002 Blackburn Avenue, Cody, Wyoming 82520 (307) 587–2216. Information relating to the exchange is available for review at the Cody Resource Area Office. An open house is planned for June 24, 1992, from 9 a.m. to 8 p.m.

SUPPLEMENTARY INFORMATION: The State Director, Bureau of Land Management, Wyoming, has entered into an agreement with the Hoodoo Ranch to begin Phase II of the Carter Mountain/McCullough Peaks land exchange in order to acquire the balance of non-Federal lands offered in Phase I of the exchange, as published in the **Federal Register** on September 24, 1992, 57 FR 44200–44201. The exchange would also acquire additional non-Federal lands offered within the Fifteenmile Wild Horse Area, Grass Creek Resource Area, for a total of 2,598.94 acres. A detailed description of the offered land is available for review at the Cody Resource Area Office. The public interest would be served by the completion of this exchange.

Phase I accomplished the acquisition of 1,772.24 acres of land out of 2,142.24 acres of non-Federal lands on Carter Mountain.

The exchange will be for equal appraised values. Any differences in value between the offered and selected lands will be equalized through adjustments in public land acreage or through a cash payment from the proponent. Some of the lands described above may be deleted from consideration to achieve equal values between the offered and selected lands in the exchange.

A Notice of Realty Action with detailed information will be published in accordance with existing regulations, when the environmental document is completed.

Dated: March 23, 1993.

Duane Whitmer,

Area Manager.

[FR Doc. 93–7471 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–22–M

[UT–920–03–4140–02–GEOT]

Designation of the Thermo Hot Springs II Known Geothermal Resource Area; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of the Thermo Hot Springs II Known Geothermal Resource Area, Utah.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegation of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby designated as the Thermo Hot Springs II Known Geothermal Resource Area.

EFFECTIVE DATE: December 1, 1992.

Thermo Hot Springs II Known Geothermal Resource Area

T. 30 S., R. 12 W., SLM Utah.
Sec. 15, Lot 4, E½E½, W½SE¼, SE¼SW¼;
Sec. 22, Lots 1 to 4 inclusive, N½NE¼, E½NW¼.

The above area aggregates 640.87 acres, more or less.

FOR FURTHER INFORMATION CONTACT: James Fouts at 801–539–4044, or Robert Henricks at 801–539–4041, Bureau of Land Management, Utah State Office, (UT–922), P.O. Box 45155, Salt Lake City, Utah, 84145–0155.

James M. Parker,

Utah State Director.

[FR Doc. 93–7479 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–943–4210–06; GP3–151; ORE–016183]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a portion of the land withdrawal for a recreation site continue for an additional 20 years and requests that the land involved remain closed to surface entry and mining.

DATES: Comments should be received by June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing withdrawal made by Public Land Order No. 3869 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The Darby Creek recreation site contains 20 acres in Sec. 15, T. 31 S., R. 8 W., W.M., Douglas County, approximately 2 miles west of Riddle.

The purpose of the withdrawal is to protect the recreation area. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 22, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–7550 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0051); Washington, DC

20503, telephone (202) 395–7340, with copies to Chief, Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Oil and Gas Production Measurement, Surface Commingling, and Security, Subpart L, 30 CFR part 250

OMB approval number: 1010–0051

Abstract: Respondents submit this information to MMS's District Supervisors so they can evaluate the equipment and/or procedures and approve or disapprove the equipment and/or procedures for use during offshore production measurement and commingling operations.

Bureau form number: None

Frequency: Varied

Description of respondents: Federal Outer Continental Shelf oil and gas lessees

Estimated completion time: .08 hours (4.8 minutes)

Annual responses: 2,395 (rounded)

Recordkeeping hours: 2,255

Annual burden hours: 4,650 (rounded)

Bureau Clearance Officer: Arthur Quintana, (703) 787–1238

Dated: February 23, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–7546 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0086); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart P, Sulphur Operations

OMB approval number: 1010–0086

Abstract: This information is needed to ascertain the conditions of a drilling site. This is necessary to mitigate the hazards inherent in drilling operations and to increase the margin of safety of personnel and the environment.

Bureau form number: None

Frequency: On occasion

Description of respondents: Lessees of Outer Continental Shelf Sulphur Leases

Estimated completion time: 2.3 hours (rounded)

Annual responses: 50

Recordkeeping hours: 331

Annual burden hours: 116

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1238

Dated: January 12, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–7547 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0036); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Inspection and Reporting of Progress and Results of Activities Conducted Under Permits, 30 CFR 251.7

OMB approval number: 1010–0036

Abstract: Respondents provide the Minerals Management Service (MMS) with a status report that enables MMS to verify that permit requirements are met, estimate completion dates, and determine the quality of data acquired by persons operating under a permit for geological and geophysical exploration for mineral resources and scientific research in the Outer Continental Shelf (OCS).

Bureau form number: Forms MMS–328 and MMS–329

Frequency: Monthly and other

Description of respondents: Federal OCS permittees

Estimated completion time: 8 hours

Annual responses: 800

Annual burden hours: 6,400

Bureau Clearance Officer: Arthur Quintana, (703) 787–1238

Dated: February 10, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–7548 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0050); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart J, Pipelines and Pipeline Rights-of-Way

OMB approval number: 1010–0050

Abstract: The information is submitted by respondents to MMS to enable MMS to ensure that pipelines are planned, installed, operated, and maintained in a way to ensure safety, protect the environment, and prevent waste

Bureau form number: None.

Frequency: Varies

Description of respondents: Federal Outer Continental Shelf oil and gas lessees

Estimated completion time: 36.37 hours (rounded)

Annual responses: 1,811.

Recordkeeping hours: 2,940

Annual burden hours: 68,806

Bureau clearance officer: Arthur Quintana, (703) 787–1238

Dated: March 5, 1993.

E.P. Danenberger,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–7549 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0043); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817

Title: 30 CFR part 250, Subpart F, Well-Workover Operations

OMB approval number: 1010–0043

Abstract: This information will be used by the District Supervisors to evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-workover operations.

Bureau form number: None

Frequency: On occasion

Description of respondents: Federal Outer Continental Shelf oil, gas, and sulphur lessees

Estimated completion time: 0.75 hour

Annual responses: 20

Recordkeeping hours: 430

Annual burden hours: 15

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1238

Dated: January 6, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–7561 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0049); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart B, Exploration and Development and Production Plans.

OMB approval number: 1010–0049.

Abstract: This information will be used by the Minerals Management Service to determine if activities covered in exploration, development and production plans, and environmental reports are carried out in a safe and environmentally acceptable manner.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: 236.8 hours.

Annual responses: 725.

Annual burden hours: 171,680.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1238.

Dated: February 12, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–7562 Filed 3–31–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available and listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (Sub-No. 125X), Norfolk and Western Railway Company—Abandonment—Between Cowden and Coffeen, Illinois. EA available 3/23/03.

Comments on the following assessment are due 30 days after the date of availability:

AB–6 (Sub-No. 348X), Burlington Northern Railroad Company—Abandonment—In Beaverton, Washington County, Oregon. EA available 3/24/93.

AB–55 (Sub-No. 457X), CSX Transportation, Co.—Discontinuance of Service in Jefferson and Indiana Counties, Pennsylvania. EA available 3/26/93.

AB–319 (Sub-No. 2X), Florida Central Railroad Company, Inc.—Abandonment and Discontinuance of Service in Lake County, FL. EA available 3/24/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7579 Filed 3–31–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32162]

Indiana Hi-Rail Corporation; Lease and Operation Exemption; Norfolk and Western Railway Company Line Between Rochester and Argos, IN, and Exemption From 49 U.S.C. 10761, 10762, and 11144

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Indiana Hi-Rail Corporation (IHR): (1) from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for its lease and operation of Norfolk and Western Railway Company's 13-mile rail line between Rochester and Argos, IN; and (2) from the requirements of tariff filing (49 U.S.C. 10761 and 10762) and record keeping (49 U.S.C. 11144). The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on May 1, 1993. Petitions to stay must be filed by April 16, 1993. Petitions to reopen must be filed by April 26, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32162 to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: John D. Heffner, Suite 1107, 1700 K St., NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: March 16, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons, joined by Chairman McDonald, dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7580 Filed 3–31–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. Coleman Trucking Co., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 25, 1993, a proposed Consent Decree in *United States* v. *Coleman Trucking Co., et al.*, Civil Action No. 1:91CV0499, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M, by various parties, including the St. Luke's Hospital ("St. Luke's").

The proposed Consent Decree would resolve claims the United States has asserted against St. Luke's. The decree does not address the liability of any other Defendants in this action.

The proposed decree requires St. Luke's to comply with all requirements of the asbestos NESHAP. Under the proposed decree, St. Luke's must diligently investigate the background of any asbestos contractor hired to perform renovation or demolition work involving asbestos. The decree provides that only persons with adequate asbestos abatement training may be used for specified activities that may result in contact with asbestos. In addition, prior to future demolition or renovation operations, St. Luke's facilities will be examined by licensed inspectors, and if suspected asbestos containing material is found, St. Luke's must either have the material analyzed or handle the material as friable asbestos. The consent decree also sets forth training requirements applicable to persons who perform inspections or asbestos abatement activities at St. Luke's facilities. Finally, the proposed consent decree also requires St. Luke's to pay a civil penalty of $17,300.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Coleman Trucking Co., et al.*, D.J. Ref. No. 90–5–2–1–1378A.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114–1748 (contact Assistant United States Attorney James Bickett); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Deborah Schmitt); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–7544 Filed 3–31–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act; United States v. Coleman Trucking Co., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 25, 1993, a proposed Consent Decree in *United States* v. *Coleman Trucking Co., et al.*, Civil Action No. 1:91CV0499, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M, by various parties, including the Cleveland Metropolitan Housing Authority ("CMHA").

The proposed Consent Decree would resolve claims the United States has asserted against CMHA. The decree does not address the liability of any other Defendants in this action.

The proposed decree requires CMHA to comply with all requirements of the asbestos NESHAP. Under the proposed decree, CMHA must diligently investigate the background of any asbestos contractor hired to perform renovation or demolition work involving asbestos. The decree provides that only persons with adequate asbestos abatement training may be used for specified activities that may result in contact with asbestos. In addition, prior to future demolition or renovation operations, CMHA facilities will be examined by licensed inspectors, and if suspected asbestos containing material is found, CMHA must either have the material analyzed or handle the material as friable asbestos. The consent decree also sets forth training requirements applicable to persons who perform inspections or asbestos abatement activities at CMHA facilities. Finally, the proposed consent decree also requires CMHA to pay a civil penalty of $2,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Coleman Trucking Co., et al.*, D.J. Ref. No. 90–5–2–1–1378A.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, suite 500,

1404 East Ninth Street, Cleveland, Ohio 44114–1748 (contact Assistant United States Attorney James Bickett); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Deborah Schmitt); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20044, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–7545 Filed 3–31–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Eastern Environmental Services of the Southeast, Inc.

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Eastern Environmental Services of the Southeast, Inc.* Civ No. 93–374–Civ–T–99B was lodged with the United States District Court for the Middle District of Florida on March 4, 1993. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412, 7413. In its complaint, the United States alleged that Eastern Environmental had failed to follow proper procedures for the removal of asbestos material during two separate renovation actions.

The proposed Consent Decree provides that Eastern Environmental will pay a civil penalty of $28,000 in settlement of claims alleged in the Complaint. In addition, the Decree requires that Eastern Environmental develop a training program for all company employees dealing with the proper identification and removal of asbestos containing materials.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eastern Environmental Services of the Southeast, Inc.*, D.O.J. Ref. No. 90–5–2–1–1518.

This proposed Consent Decree may be examined at the offices of the United States Attorney, 500 Zack Street, Tampa, Florida 33602, at the Office of Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–7542 Filed 3–31–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"); United States v. NL Industries, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *NL Industries, Inc., et al.*, Civil No. 91–00578–JLF, was lodged on March 23, 1993, with the United States District Court for the Southern District of Illinois. The decree pertains to the NL Industries/Taracorp Superfund Site in Granite City, Illinois.

The Consent Decree requires Southern to pay to the Hazardous Substances Superfund the sum of $30,000 plus interest accruing from November 10, 1992. Such payments would be made in two installments over a period of 180 days.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *NL Industries, Inc., et al.* (S.D. Ill.) and DOJ Ref. No. 90–11–3–608A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Illinois, room 330, 750 Missouri Avenue, East St. Louis, Illinois (62201); the Region V office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois (60604–3509); and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please enclose a check in the amount of $5.00 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–7543 Filed 3–31–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated December 28, 1992, and published in the **Federal Register** on January 11, 1993, (58 FR 3560), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer did file an objection with respect to Methylphenidate (1724). Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations § 1301.54(e), the Director hereby orders that the application for registration submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above, with the exception of Methylphenidate (1724) is granted.

Dated: March 24, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–7582 Filed 3–31–93; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 18, 1993, Sigma Chemical Company, 3500 DeKalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-methamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Etorphine (except HCl) (9056)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Beta-hydroxyfentanyl (9830)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Fenethylline (1503)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-Piperidinocyclo-hexanecarbonitrile (8603)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 3, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 24, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–7584 Filed 3–31–93; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 3, 1993, Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 3, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required

to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 24, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-7583 Filed 3-31-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition no.	Petition No.	Articles produced
General Electric Co, Arrestors Oper (Wkrs).	Pittsfield, MA	03/22/93	01/21/93	28,461	Arrestors.
Pennzoil Sulphur Co Exploration (Co)	The Woodlands, TX	03/22/93	03/09/93	28,462	Sulphur.
Roseburg Forest Products, Plant #3 (IWA).	Roseburg, OR	03/22/93	03/08/93	28,463	Plywood.
Austin Computer Systems (Wkrs)	El Paso, TX	03/22/93	03/09/93	28,464	Personal computers.
Tracey Warner School of Fashion (Wkrs).	Philadelphia, PA	03/22/93	03/08/93	28,465	Fashion design school.
Russell-Newman, Inc (Co)	Breckenridge, TX	03/22/93	03/10/93	28,466	Ladies' sleepwear.
Ozalid Corp (Wkrs)	Vestal, NY	03/22/93	03/08/93	28,467	Diazo and zerographic reprographic equipment.
Maynard Oil Co (Wkrs)	Dallas, TX	03/22/93	03/11/93	28,468	Oil and gas production.
Magic Chef Co (Wkrs)	Cleveland, TN	03/22/93	03/05/93	28,469	Gas ranges.
Vought Aircraft Co (Wkrs)	Dallas, TX	03/22/93	03/09/93	28,470	Aircraft components.
Laurel Metals, Inc (Wkrs)	Johnstown, PA	03/22/93	02/02/93	28,471	Steel rods.
International Drilling Fluids (Co)	Houston, TX	03/22/93	03/02/93	28,472	Drilling fluid additives.
Craftex Creations, Inc (Wkrs)	Candor, NC	03/22/93	02/26/93	28,473	Ladies' sleepwear and daywear.
Border Steel Rolling Mills (Wkrs)	El Paso, TX	03/22/93	03/09/93	28,474	Rebar, ball steel.
Airfoil Forging Textron (UAW)	Euclid, OH	03/22/93	03/11/93	28,475	Forgings for jet engine blades.
MI-Drilling Fluids (Wkrs)	Denver, CO	03/22/93	02/26/93	28,476	Drilling fluids.
MI-Drilling Fluids (Wkrs)	Williston, ND	03/22/93	02/26/93	28,477	Drilling fluids.

[FR Doc. 93-7575 Filed 3-31-93; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: National Workforce Assistance Collaborative

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and of solicitation for grant application (SGA).

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces its intent to award a grant on a competitive basis for the purpose of establishing a National Workforce Assistance Collaborative (NWAC). The purpose of the Collaborative is to develop and provide technical assistance on human resource development and implementation of management systems which reflect the characteristics of high performance work organizations. The products of the NWAC will be developed for use by organizations that assist small businesses, e.g., the Department of Commerce's Manufacturing Technology Centers (MTCs), State industrial modernization programs, the Small Business Administration's Small Business Development Centers (SBDCs), community colleges, four-year colleges, and other assistance providers at the Federal, State, local and regional levels.

Eligible applicant(s) under this solicitation shall be nonprofit community organizations and institutions of higher education. (Institutions of higher education include accredited junior and community colleges.)

In conjunction with this effort, ETA is simultaneously announcing another SGA—National Center for the Workplace—in this issue of the **Federal Register** which will be complimentary to the Collaborative. The Center will provide leadership in developing and coordinating relevant new knowledge and the Collaborative will provide leadership in the application of such knowledge.

Eligible applicants may submit proposals under either or both solicitations. However, these shall remain separate grants with discrete activities under each title. For this reason, it will be necessary for those parties wishing to be considered for grants under both solicitations to submit separate applications. Dual applicants are reminded that proposals for the Collaborative and the Center will be evaluated according to separate criteria for each grant. An applicant receiving the award under one solicitation will be precluded from receiving an award under the other solicitation.

DATES: The application package for this solicitation will be available April 16, 1993. The requests for a copy of the solicitation must be made in writing to the address below. Telephone and telefacsimile (FAX) requests will not be honored. Requests must cite SGA/DAA 93–002 and must include two (2) self-addressed labels. Requests will be honored on a first come, first serve basis until the supply of 300 is exhausted. The closing date for receipt of proposals will be May 17, 1993, 2 p.m. Eastern time. Any application not reaching the designated place by the specified date and time of delivery will not be considered.

ADDRESSES: Mail your request to obtain Solicitation for Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., room S-4203, Washington, DC 20210, Attention: Reda Harrision, Reference SGA/DAA 93–002.

FOR FURTHER INFORMATION CONTACT: Reda Harrison, Telephone: (202) 219–8702 (This is not a Toll Free Number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, U.S. Department of Labor, will award one (1) grant at approximately $650,000 for the first twelve (12) months of operation. Pending availability of funds, effective operation of grants, and the needs of the Department, the grant may be extended for an additional four (4) years. The period of performance will be 12 months from the date of execution by the Government.

Signed at Washington, DC, on March 23, 1993.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 93–7573 Filed 3–31–93; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; National Center for the Workplace

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and of solicitation for grant application (SGA).

SUMMARY: The Employment and Training Administration, U.S. Department of Labor, announces its intent to award a grant on a competitive basis for the purpose of establishing a National Center for the Workforce. The purpose of the Center is to create a national workforce development resource capable of identifying and researching emerging issues and trends in the workforce and providing the information resources needed to offer technical assistance, and technical information in these areas to labor organizations, employers, educational institutions, and workers. In conjunction with this effort, ETA is simultaneously announcing in this issue of the **Federal Register** a second, but separate effort—National Workforce Assistance Collaborative—which will be complementary to the Center. The Center will provide leadership in developing and coordinating relevant new knowledge and the Collaborative will provide leadership in the application of such knowledge. Eligible Applicant(s) shall be a consortium of three or more institutions of higher education in the United States. ("Institutions of higher education" include accredited junior and community colleges). For the purposes of this Solicitation, "Consortium" is defined as three or more institutions of higher education, one of which must serve as the "host institution" and shall meet the following criteria:

1. Broad collective knowledge of and demonstrable experience in the wide range of employment and workplace issues.

2. A faculty that, collectively, demonstrates a nonpartisan research and policy perspective joining the several revelant workplace disciplines (labor economics, industrial relations, collective bargaining, human resources management, sociology, psychology, and law) in a multidisciplinary approach to workplace issues.

3. Established credibility and work relations with employers unions, and government agencies on a national scale, and established means of providing education and technical assistance to each of the above groups that include publications, state-of-the-art electronic and video technology, and distinguished extension/outreach programs operating on a national and international level.

Eligible applicants may submit proposals under either one or both solicitations. However, these shall remain separate grants with discrete activities. For this reason it will be necessary for those parties wishing to be considered for both grants to submit separate applications. Dual applicants are reminded that proposals for the Center and the Collaborative will be evaluated according to separate criteria for each grant. The award of a grant under one solicitation will preclude that organization from receiving an award under the other solicitation.

DATES: The application package for this solicitation will be available April 16, 1993. The requests must be made in writing to the address below. Telephone and telefacsimile (FAX) requests will not be honored. Requests must cite SGA/DAA 93–001 and must include two (2) self-addressed labels. Requests will be honored on a first come, first serve basis until the supply of 300 is exhausted. The closing date for receipt of proposals will be May 17, 1993, 2 p.m. Eastern time. Any applications not reaching the designated place by specified date and time of delivery will not be considered.

ADDRESSES: Mail your request to obtain Solicitation for Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., room S–4203, Washington, DC 20210, Attention: Brenda Banks, Reference GSA/DAA 93–001.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Telephone: (202) 219–8702 (This is not a Toll Free Number).

SUPPLEMENTAL INFORMATION: The Employment and Training Administration, U.S. Department of Labor, will award one (1) grant at approximately $744,000 for the first eighteen (18) months of operation.

Pending availability of funds, effective grant operation, and the needs of the Department, the grant may be

extended for an additional four (4) years at one year intervals.

Signed at Washington, DC on March 23, 1993.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 93–7574 Filed 3–31–93; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee (SESAC), established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. I) and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b), will convene on April 29, 1993, at 8:30 a.m., at the Omni Norfolk Hotel, 777 Waterside Drive, Norfolk Virginia, 23510. The meeting will adjourn on April 30, 1993, at approximately 12:30 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.
II. Review of transcripts of the February 19–20, 1993 meetings.
III. Discussion of the following standards:
  (a) 29 CFR part 1915, subpart F, General Working Conditions.
  (b) 29 CFR part 1915, subpart L, Electrical.
  (c) 29 CFR part 1915, subpart U, Surface Preparation and Preservation.
IV. New Business. Discussion of the following standards, as time permits.
  (a) 29 CFR part 1915, subpart J, Ships Machinery and Piping Systems. (AD–HOC Committee report)

PUBLIC PARTICIPATION: Time permitting, the Committee will consider oral presentations relating to the agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, April 23, 1993. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed. Disabled individuals wishing to attend should contact Mr. Thomas Hall at the address listed below to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 5 copies to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8617.

Signed at Washington, DC., this 26th day of March, 1993.

David Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–7473 Filed 3–31–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory panel (Arts Education Initiative Section) to the National Council on the Arts will be held on April 27, 1993 from 9 a.m.–5:30 p.m., April 28 from 9 a.m.–6 p.m., and April 29 from 9 a.m.–4:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 29 from 3 p.m–4:30 p.m. for policy discussion.

The remaining portions of this meeting on April 27 from 9 a.m.–5:30 p.m., April 28 from 9 a.m.–6 p.m., and April 29 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, thee sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 23, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–7475 Filed 3–31–93; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 28, 1993 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topics will be opening remarks and policy discussion.

The remaining portion of this meeting from 10 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 24, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–7476 Filed 3–31–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting: Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Prescreening Section) to the National Council on the Arts will meet on April 20–21, 1993 from 9 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 24, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–7481 Filed 3–31–93; 8:45 am]

BILLING CODE 7537–01–M

Amended Notice of Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships/Services to Composers Section) to the National Council on the Arts will be held on April 5–6, 1993 from 9 a.m.–5:30 p.m., April 7 from 9 a.m.–5 p.m., and April 8 from 9 a.m.–4 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The portion of the meeting open to the public which was to be held on April 8 from 3 p.m.–4 p.m. will now be held on April 7 from 3 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on April 5–6 from 9 a.m.–5:30 p.m., April 7 from 9 a.m.–3 p.m., and April 8 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information in reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 25, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–7482 Filed 3–31–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Education and Human Resources, Division of Research Career Development; Graduate Research Traineeship Program Announcement

Closing Date: June 25, 1993.

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a proposal, obtain a printed copy of the guidelines by writing or calling the publications office of NSF.

The National Science Foundation (NSF) announces the FY 1993 competition for the Graduate Research Traineeship (GRT) Program. The principle objective of the program is to increase the numbers of talented American undergraduates enrolling in doctoral programs in the following areas which NSF has selected as being particularly representative of our nation's science, mathematics, engineering and technology priorities:

Education and Human Resources

Innovation in Teaching and Learning (including assessment of student learning and research in knowledge transfer and knowledge utilization)

Biological Sciences

Environmental Biology
Plant Biology

Geosciences

Hydrology
Atmospheric Chemistry

Social and Behavioral Sciences

Cognitive Science
Organizational Effectiveness

Mathematics and Physical Sciences

Environmental Physical and Mathematical Science and Engineering (an interdisciplinary approach to environmental research)
Integrating High Performance Computing into Research

Engineering

Machine Tool Research
Environmentally Friendly Technology

Computer Science

Human-Computer Interface (HCI)
Robotics/Intelligent Control

It is anticipated that the list of targeted subdisciplines will be reviewed annually and, therefore, is subject to change if there are subsequent competitions.

Graduate Research Traineeship awards are packages of student support. The colleges and universities that receive the awards are responsible for the selection of trainees, retention of trainees, and administration of traineeships. Approximately 40 awards will be made, supporting 200 traineeship positions in FY 1993.

Program Highlights

Eligible Disciplinary (Focus) Area. . . . Each proposal must be developed around one of the previously identified targeted subdisciplines.

Eligible Institutions. . . . Any university or other academic institution in the United States and its territories that awards a Ph.D. in a subject area represented by a targeted field of science or engineering identified in this announcement is eligible to submit proposals.

Stipend Level/Award Type. . . . Within each award, traineeships will provide a $14,000/year stipend and a $7,500/year cost-of-education allowance in lieu of tuition and fees normally charged to students of similar academic standing (unless such charges are optional or refundable). Contingent upon satisfactory progress and the availability of funds, the Foundation expects to provide renewal support annually for a maximum of five years.

Innovative Structural Components. The program is also intended to contribute to strengthening the Nation's human resource base across all geographical sectors and among all underrepresented groups. In an effort to have a more significant impact on human resource development within the scientific and technological community, the FY 1993 GRT program will encourage and give preference to proposals which include unique and progressive characteristics such as, but not limited to:

a. *Consortial arrangements* between Ph.D granting institutions and institutions that do not grant graduate degrees—The undergraduate institutions would serve as feeder schools for the graduate institutions. Consortial arrangements should achieve objectives which would otherwise be difficult to accomplish. A variety of affinity groupings could conceivably benefit from this type of targeting, including, but not limited to, university systems which might proactively utilize feeder institutions to increase participation of minorities and women in graduate science and engineering programs and alliances that develop through the activities of such NSF programs as EPSCoR and AMP.

b. *Interdisciplinary, intersectoral, and international interactions* that provide unique graduate training opportunities for American students—Programs in this category might include:

(i) Cross disciplinary interactions involving multidisciplinary training activities that maintain a clearly identified focal point, rather than arrays of unrelated, but possibly strong discipline areas;

(ii) Interactions between universities and industry involving student participation and with industry cost-sharing; and

(iii) Programs which include opportunities for international activities on the part of American graduate students. Such program components would have to provide clearly defined unique research and training benefits to the American student participants.

Numbers of Submissions—Only one proposal per targeted subject area may be submitted by an eligible institution. Overall, an institution may not submit more than three (3) GRT proposals. Multi-institutional proposals will be counted as single proposals from each of the participating institutions for the purpose of determining adherence to the proposal submission limits. If the proposal submission limit is exceeded, NSF will require that the institution(s) determine which proposals will be withdrawn from the competition before any proposals from that institution will be declared eligible for review.

Number of Traineeship Positions—Funded proposals will support five (5) traineeship positions.

Contact Person—Roosevelt Johnson, (202) 357–9453, Program Director.

Dated: March 26, 1993.

Roosevelt Johnson,

Program Director.

[FR Doc. 93–7604 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Archaeology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 22–23, 1993, 9 a.m.—5 p.m.

Place: Room 523, National Science Foundation, 1800 "G" Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: John E. Yellen, Program Director of Archeology, Division of Social, Behavioral, and Economic Research, room 320, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7804.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7525 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Astronomical Sciences (ACAST).

Date and Time: April 22 and 23, 1993 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC, room 500–D.

Type of Meeting: Open.

Contact Person: Dr. M. Kent Wilson, Director, Division of Astronomical Sciences, National Science Foundation, 1800 G Street, NW., room 615, Washington, DC 20550. Telephone: 202/357–9488.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning research programs; proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda:

Thursday, April 22, 1993

8:30 a.m.—Meeting with Assistant Director/MPS
10 a.m.—Budget and Planning Discussion
1 p.m.—Discussion of Gemini Telescopes Project
2 p.m.—Committee of Visitors Report
3:30 p.m.—Report on MPS Advisory Committee Meeting
4:30 p.m.—Discussion of Organization of Division

Friday, April 23, 1993

8:30 a.m.—Budget Discussion
10:30 a.m.—Long-Range Planning Discussion; New Initiatives; Procedures for Review of University Facilities and National Centers
1 p.m.—Response to Committee of Visitors Report
2 p.m.—Committee on Astronomy and Astrophysics Report
3 p.m.—Dissolution of ACAST.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7526 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Astronomical Sciences; Meeting:

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee of Visitors of the Advisory Committee for Astronomical Sciences (AST).

Date and Time: April 19, 20, and 21, 1993; 8:30 a.m.–5 p.m

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Morris L. Aizenman, Deputy Division Director, AST, room 615, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: 202/357–7643.

Purpose of Meeting: To provide oversight review of the AST Programs.

Agenda: To carry out Committee of Visitors review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7532 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting. Advisory Panel for Biochemistry and Molecular Structure and Function—Panel B

Date and Time: Monday, Tuesday and Wednesday, April 19, 20, and 21, 1993, 8:30 a.m. to 5 p.m.

Place: The National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 1242

Type of Meeting: Closed

Contact Persons: Kamal Shukla or Karl Koehler, Program Directors for Biophysics, room 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7777.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7534 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Advisory Panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences. (Panel A)

Date and Time: Wednesday, Thursday and Friday April 21–23, 1993; 9 a.m. to 5 p.m.

Place: The Historic Inns of Annapolis, Annapolis, MD

Type of Meeting: Closed.

Contact Person: Dr. Marcia Steinberg and Dr. Karl Koehler, Program Directors, Molecular Biochemistry, Room 325, Division of Molecular and Cellular Biosciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7945.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7536 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 19, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation Annex, 1110 Vermont Avenue, NW., room 500D, Washington, DC.

Type of Meeting: Closed.

Contact Person: Karen Mudry, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7955.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation proposals, Equipment proposals, Career Advancement proposals, Research Planning proposals, and Regular Research proposals in the area of Biomechanics and Rehabilitation as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7530 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: Wednesday, April 21, 1993; 8.30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Fred Heineken, Program Director, Division of Biological and Critical Systems, room 1132, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9545.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biotechnology and Biomedical Research Initiation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7537 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Thermal Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following three meetings:

Date and Time: April 9, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 1133, 1800 G Street, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Initiation Awards and the NSF Young Investigator Awards Program.

Contact Person: Dr. Farley Fisher, Program Director, (202) 357–9624.

Date and Time: April 27, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 1133, 1800 G Street, NW., Washington, DC 20550.

Agenda: Review and evaluate nominations for the Research Equipment Grants Program.

Contact Person: Dr. Maria K. Burka, Program Director, (202) 357–9606.

Date and Time: April 29, 1993; 8:30 a.m. to 5 p.m.

Place: NSF, 1800 G Street, NW., Washington, DC 20550.

Agenda: Review and evaluate nominations for the Research Equipment Grants Program.

Contact Person: Dr. Farley Fisher, Program Director, (202) 357–9624.

Purpose of Meeting: To provide advice and recommendation to the Division of Chemical and Thermal Systems concerning proposals submitted to the Division for financial support.

Type of Meeting: Closed.

Reason for Closing: The nominations and proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations and proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in scheduling and selection of panelists.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7523 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 23, 1993, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, rm. 540.

Type of Meeting: Closed.

Contact Person: Dr. Caroline Wardle, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7349.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Educational Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7529 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Geography and Regional Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 19–20, 1993, 8 a.m. to 5:30 p.m.

Place: Room 1243, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Brian P. Holly or Dr. Thomas J. Baerwald, Program Directors, Division of Social, Behavioral, and Economic Research, room 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7326.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Geography and Regional Science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7524 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 22–23, 1993; 8 a.m.–5 p.m.

Place: The Inn at Foggy Bottom, 824 New Hampshire Ave., NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Wanda E. Ward, Program Director, Career Access, HRD Room 1225, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7461.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Partnerships for Minority Student Achievement proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7528 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: April 19–20–21, 1993; 8:30 a.m. to 5 p.m.

Place: Omni Georgetown Hotel, 2121 P. Street NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Laurence Rosenberg, Deputy Division Director, Robotics and Intelligent Systems, Rm. 310, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9572.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Database and Expert Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7531 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR)

Date and Time: April 19, 1993 8:30 a.m.–5 p.m.

Place: NSF Conference & Training Center, 1110 Vermont Avenue, NW., rooms 500 A,B, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Instrumentation Program, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9789.

Purpose of Meetings: To provide advice and recommendations concerning support for DMR Instrumentation Proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7555 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 19–20, 1993 (9:00 a.m.–5 p.m.)

Place: National Science Foundation, Room 523, 1800 'G' Street, NW., Washington, DC

Type of Meeting: Closed.

Contact Person: Drs. Joe Jenkins and Alan Izenman, Program Directors, Division of Mathematical Sciences, room 399, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–3697 or 357–3693.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate National Science Foundation's Young Investigator proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7527 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.

Date and Time: April 20, 1993; 8:30 a.m. to 5 p.m.

Place: Room 417, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mr. Daniel Vanbelleghem, Networking and Communications Research Program, National Science Foundation, room 416, Washington, DC 20550 (202) 357–9717.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSFNET Connections Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 29, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7533 Filed 3–31–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Generic Letter 93]

Proposed Generic Communication; Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or, (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures. This draft generic letter provides guidance to nuclear power plant licensees on allowable changes to the technical specifications. These changes would remove the administrative control requirements for emergency and security plans that are adequately addressed by other existing regulatory requirements. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 232 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the Public Document Rooms under accession number 9303230275. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: The comment period expires on May 3, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to

4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Dunning, AC (301) 504–1189.

SUPPLEMENTARY INFORMATION: Draft Generic Letter.

Dated at Rockville, Maryland, this 25 day of March 1992.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

To: All Holders of Operating licenses for Nuclear Power Reactors.

Subject: Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans (Generic Letter 93)

The U.S. Nuclear Regulatory Commission (NRC) is issuing this guidance for changes to technical specifications (TS) to (1) remove the audit of the emergency and security plans and implementing procedures from the list of responsibilities of the company nuclear audit and review group and (2) remove the review of the emergency and security plans from the list of responsibilities of the unit review group. Parts 50 and 73 of title 10 to the Code of Federal Regulations (10 CFR) include provisions that are sufficient to address these requirements (See Enclosure 1). Also this guidance will allow licensees to (3) relocate the requirements for the unit review group to review procedures, and procedure changes, for the implementation of the emergency and security plans. The NRC developed this line-item TS improvement in response to a proposal by the Duke Power Company to amend the operating licenses of its plants.

Enclosure 2 contains sample technical specification requirements that have been marked to show the requirements that may be removed. Licensees should retain these audit and review activities in a manner that fully satisfies the regulatory requirements that are summarized in Enclosure 1. Although the TS change removes requirements that are specific with regard to providing a plant operations perspective in the review and audit of emergency and security plans and implementing procedures, the NRC staff is not suggesting that licensees remove or reduce this perspective when satisfying the regulatory requirements for these activities.

Licensees that plan to adopt this line-item TS improvement are encouraged to propose TS changes consistent with the enclosed guidance. NRC project managers will review the amendment requests to verify that they conform to the guidance. Please contact your project manager or the contact indicated herein if you have questions on this matter.

Any action by licensees to propose technical specification changes in accordance with the guidance of this generic letter is voluntary and, therefore, not a backfit under 10 CFR 50.109.

A Summary of Regulatory Requirements for Emergency and Security Plans in Title 10 to the Code of Federal Regulations [1]

Emergency Plan

Section 50.54(q) includes the following statement: A licensee authorized to possess and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in appendix E of this part.

Section V, "Implementing Procedures," of appendix E to part 50 includes the following statement: No less than 180 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Commission as specified in § 50.4. Licensees who are authorized to operate a nuclear power facility shall submit any changes to the emergency plan or procedures to the Commission, as specified in § 50.4, within 30 days of such changes.

Section 50.54(t) includes the following statement: A nuclear power reactor licensee shall provide for the development, revision, implementation, and maintenance of its emergency preparedness program. To this end, the licensee shall provide for a review of its emergency preparedness program at least every 12 months by persons who have no direct responsibility for implementation of the emergency preparedness program. The review shall include an evaluation for adequacy of interfaces with State and local governments and of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and retained for a period of five years.

[1] For the official text of the requirements excerpted in this summary, see 10 CFR parts 50 and 73.

Security Plan

Section 50.54(p)(1) includes the following statement: The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan.

Section 50.54(p)(3) includes the following statement: The licensee shall provide for the development, revision, implementation and maintenance (sic) of its safeguards contingency plan. To this end, the licensee shall provide for a review at least every 12 months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices * * * The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of two years.

Section 73.40(a) includes the following statement: Each licensee shall provide physical protection against radiological sabotage and against theft of special nuclear material at fixed sites where licensed activities are conducted.

Section 73.40(b) includes the following statement: Each licensee * * * shall prepare a safeguards contingency plan in accordance with the criteria set forth in appendix C of this part. The licensee shall retain the current plan as a record until the Commission terminates the license for which the plan was developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. The plan becomes effective and must be followed by the licensee 30 days after approval by the Commission.

Section 73.40(c) includes the following statement: Prior to the plan becoming effective, the licensee shall have:

Section 73.40(c)(2) includes the following statement: Detailed procedures developed according to appendix C to this part available at the licensee's site. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the

superseded material for three years after each change.

Section 73.40(d) includes the following statement: The licensee shall provide for the implementation, revision, and maintenance of this safeguards contingency plan. To this end, the licensee shall provide for a review at least every twelve months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices * * * The results of the review and audit, along with recommendations for improvements must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of three years from the date of the review or audit.

Section 73.55(b)(3) includes the following statement: The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

Section 73.55(b)(3)(i) includes the following statement: Written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall maintain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedure is superseded, retain the superseded material for three years after each change.

Section 73.55(b)(3)(ii) includes the following statement: Provisions for written approval of these procedures and any revisions to the procedures by the individual with overall responsibility for the security function. The licensee shall retain each written approval as a record for three years from the date of the approval.

Section 73.55(g)(4) includes the following statement: The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices * * *. The results of the review audit and evaluation along with recommendation for corrections and improvements, if any, shall be documented, reported to the licensee's plant management and to corporate management at least one level higher than that having responsibility for the day to day plant operation.

Section 73.56(g)(1) includes the following statement: Each licensee shall audit its access authorization program within 12 months of the effective date of implementation of this program and at least every 24 months thereafter to ensure that the requirements of this section are satisfied.

Section 73.56(g)(2) includes the following statement: Each licensee who accepts the access authorization program of a contractor or vendor as provided for by paragraph (a)(4) of this section shall have access to records and shall audit contractor or vendor programs every 12 months to ensure that the requirements of this section are satisfied.

Section 73.56(h)(2) includes the following statement: Each licensee shall retain records of results of audits, resolution of the audit findings and corrective actions for three years.

Model Technical Specifications Administrative Control Requirements for Security and Emergency Plans (Modified as shown)

The following model technical specifications are derived from the "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," NUREG–0452, Revision 4a.

6.5.1 [Unit Review Group (URG)] Responsibilities

6.5.1.1. through 6.5.1.5 (No change.)
6.5.1.6 The [URG] shall be responsible for:
a. through h. (No change.)
i. Review of the Security Plan and implementing procedures and submittal of recommended changes to the [Company Nuclear Review and Audit Group]; *Not used.*[1]
j. Review of the Emergency Plan and implementing procedures and submittal of recommended changes to the [Company Nuclear Review and Audit Group]; *Not used.*
k. and l. (No change.)

6.5.2 [Company Nuclear Review and Audit Group (CNRAG)]

6.5.2.1 through 6.5.2.7 (No change.)

Audits

6.5.2.8 Audits of unit activities shall be performed under the cognizance of the [CNRAG]. These audits shall encompass.
a. through d. (No change.)
e. The Security Plan and implementing procedures at least once per 24 months. *Not used.*
f. The Emergency Plan and implementing procedures at least once per 24 months. *Not used.*
g. through j. (No change.)

6.8 Procedures and Programs

6.8.1 Written procedures shall be established, implemented, and maintained covering the activities referenced below:
a. and b. (No change.)
c. Security Plan implementation. *Not used.*
d. Emergency Plan implementation. *Not used.*
e. through g. (No change.)
6.8.2 Each procedure of Specification 6.8.1, and change thereto, shall be reviewed by the [URG] and shall be approved by the [Plant Superintendent] prior to implementation and reviewed periodically as set forth in administrative procedures. (No change.)

The requirements of Specifications 6.5.1.6 for items i and j, 6.8.1 for items c and d, and the provisions of Specification 6.8.2 are to be relocated to the security and emergency plans as applicable.

[FR Doc. 93–7395 Filed 3–31–93; 8:45 am]
BILLING CODE 7590–01–M

[1] Deleted sections are noted as "Not used" to avoid renumbering sections.

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 14, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6). The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The agenda for the subject meeting shall be as follows: Wednesday, April 14, 1993—3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. John T. Larkins (telephone 301/492–8158) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 25, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–7478 Filed 3–31–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Withdrawal of Application for Amendment to Facility Operating License

In the matter of: Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (PECo, the licensee) to withdraw its October 5, 1992, application for proposed amendment to Facility Operating License Nos. DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania.

The proposed amendment would have revised the Tables 3.7.1 and 3.7.4. of the Technical Specifications (TS) to include the new 16" butterfly valve on the hardened torus vent line, valve AO–8(9)0290.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 28, 1992 (57 FR 48824). However, by letter dated December 17, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 5, 1992, and the licensee's letter dated December 17, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland this 11th day of February, 1993.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7519 Filed 3–31–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Withdrawal of Application for Amendment to Facility Operating License

In the matter of: Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (PECo, the licensee) to withdraw its February 26, 1990, application for proposed amendment to Facility Operating License Nos. DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would have revised section 6.4 of the Technical Specifications such that PECo would commit to standards set forth in ANSI/ANS–3.1–1981 entitled, "Selection, Qualification and Training of Personnel for Nuclear Power Plants."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 15, 1991, (56 FR 22474). However, by letter dated March 1, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 26, 1990, and the licensee's letter dated March 1, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Government Publications Section, State Library of Pennsylvania, (Regional Depository), Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland this 9th day of March, 1993.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7520 Filed 3–31–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–259, 50–260, and 50–296]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 issued to the Tennessee Valley Authority (the licensee) for operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3 located in Limestone County, Alabama.

The proposed changes consist of administrative changes to the Technical Specifications for the BFN, Units 1, 2, and 3. The changes include deletion of requirements applicable only to BFN Unit 2 Cycle 6 operation, various administrative error corrections, correction of discrepancies between the Technical Specification Bases and the BFN Final Safety Analysis Report, and clarification of certain requirements to ensure consistency in application.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the

facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are administrative in nature. They are being made to delete Unit 2 Cycle 6 only requirement, to correct administrative errors in previous technical specifications, and to correct discrepancies between technical specification bases and the BFN FSAR. They also include the clarification of some requirements to ensure consistent application throughout the specifications. These changes do not affect any of the design basis accidents. They do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature. They are being made to delete a Unit 2 Cycle 6 only requirement, to correct administrative errors in previous technical specifications, and to correct discrepancies between technical specification bases and the BFN FSAR. They also include the clarification of some requirements to ensure consistent application throughout the specifications. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. The changes will correct the technical specifications so that they are more accurate and more closely reflect actual plant condition. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature. They delete a Unit 2 Cycle 6 only requirement, correct administrative errors in previous technical specifications, and correct discrepancies between technical specification bases and the BFN FSAR. They also include the clarification of some requirements to ensure consistent application through the specifications. No safety margins are affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 3, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama 35611. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to

show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Frederick J. Hebdon, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 18, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 26th day of March 1993.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7521 Filed 3–31–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three new deferrals of budget authority, totaling $354.0 million.

These deferrals affect Funds Appropriated to the President and the Department of Agriculture. The details of these deferrals are contained in the attached report.

William J. Clinton,

The White House, February 26, 1993.

CONTENTS OF SPECIAL MESSAGE

[In thousands of dollars]

Deferral No.	Item	Budget authority
Funds Appropriated to the President:.		
Agency for International Development:.		
D93–10	International disaster assistance, executive	63,823
D93–11	Sub-Saharan Africa disaster assistance, executive	67,188
Department of Agriculture:.		
Forest Service:.		
D93–12	Timber salvage sales	222,994
Total, deferrals		354,005

Deferral No. 93–10

Deferral of Budget Authority

Report Pursuant to Section 1013 of Public Law 93–344

Agency: Funds Appropriated to the President.

Bureau: Agency for International Development.

Appropriation title and symbol: International disaster assistance, Executive—11X1035.[1]

OMB identification code: 11–1035–0–1–151.

Grant program: Yes.

Type of account or fund: No-Year.

New budget authority (Public Law 102–319): $48,965,000.

Other budgetary resources: $26,500,000.

Total budgetary resources: $75,465,000.

Amount to be deferred:

Part of year: $63,823,161.[2]

Legal authority (in addition to Sec. 1013): Antideficiency Act.

Type of budget authority: Appropriation.

[1] This account was the subject of a similar deferral in FY 1992 (D92–2A).

[2] This deferred amount has been reduced to $56,755,055 due to subsequent releases.

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. Funds are deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated program effect: None.

Outlay effect: None.

Deferral No. 93–11

Deferral of Budget Authority

Report Pursuant to Section 1013 of Public Law 93–344

Agency: Funds Appropriated to the President.

Bureau: Agency for International Development.

Appropriation title and symbol: Sub-Saharan Africa disaster assistance, Executive—11X1040.

OMB identification code: 11–1040–0–1–151.

Grant program: Yes.

Type of account or fund: No-Year.

New budget authority (Public Law 102–319): $100,000,000.

Total budgetary resources: $100,000,000.

Amount to be deferred:

Part of year: $67,187,957.[1]

Legal authority (in addition to Sec. 1013): Antideficiency Act.

Type of budget authority: Appropriation.

Justification: The Sub-Saharan Africa disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout Sub-Saharan Africa. Funds are deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated program effect: None.

Outlay effect: None.

Deferral No. 93–12

Deferral of Budget Authority

Report Pursuant to Section 1013 of Public Law 93–344

Agency: Department of Agriculture.

Bureau: Forest Service.

Appropriation title and symbol: Timber salvage sales—12X5204.[1]

OMB identification code: 12–9922–0–2–302.

Grant program: No.

Type of account or fund: No-Year.

New budget authority (Public Law 102–154): $200,000,000.

Other budgetary resources: $222,986,152.

Total budgetary resources: $422,986,152.

Amount to be deferred:

Entire year: $222,994,486.

Legal authority (in addition to Sec. 1013): Antideficiency Act.

Type of budget authority: Appropriation.

Justification: The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976 to enable immediate harvesting of dead and dying trees when required by market conditions or catastrophes. Purchasers of dead, damaged, insect-infested, or downed timber are required to make monetary deposits into this fund to cover the preparation costs for future salvage sales.

This salvage sale program is a part of the timber sales program and has specific timber volume targets assigned. Specific timber volume targets are assigned based on current information on salvage opportunities. The Forest Service is pursuing a program to achieve maximum salvage volumes while protecting the full range of environmental values. The sale of approximately 2.1 billion board feet of new and existing salvage timber is planned for FY 1993. Funds are deferred pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated program effect: None.

Outlay effect: None.

[FR Doc. 93–7625 Filed 3–31–93; 8:45 am]

BILLING CODE 3110–01–F

[1] This deferred amount has been reduced to $53,187,957 due to subsequent releases.

[1] This account was the subject of a similar deferral in FY 1992 (D92–11).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of Sanctions With Respect to the European Community Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Postponement of implementation of prohibition of awards of contracts by federal agencies for products and services from Member States of the European Community until April 22, 1993.

SUMMARY: On March 29, 1993, the United States Trade Representative announced that the effective date of the prohibitions of awards of contracts by federal agencies for products and services of some or all member states of the European Community, scheduled to go into effect on April 1, 1993, was being postponed until April 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Linscott, Office of GATT Affairs (202–395–3063), or Laura B. Sherman, Office of the General Counsel (202–395–7203), Office of the United States Trade Representative, 600 Seventeenth Street NW., Washington, DC 20506.

Ira Shapiro,

General Counsel.

[FR Doc. 93–7731 Filed 3–31–93; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF STATE

[Public Notice No. 1784]

The Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Advisory Committee on International Communications and Information Policy will hold an open meeting on April 30, 1993, from 9:30 a.m. to 12:30 p.m. in room 1105, Department of State, 2201 C Street, NW., Washington DC.

The Advisory Committee deals with issues of international communications and information policy, especially as the issues involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, and the activities of international organizations with regard to the development of communications and information policy.

This meeting will deal with one issue:

1. A discussion of potential private sector support and activities should be the United States Government decide to host the Plenipotentiary Conference of the International Telecommunication Union in 1998.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Arrangements must be made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Ms. Rebecca Boothby, Department of State, Washington DC.; telephone 202–647–5220, by providing their name, title, company name, social security number and date of birth. All

attendees must use the C Street entrance to the building.

Dated: March 19, 1993.

Bohdan Bulawka,

Executive Secretary, Advisory Committee on International Communications and Information Policy.

[FR Doc. 93-7472 Filed 3-31-93; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-16]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 24, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27061.
Petitioner: Alaska Air Carriers Association.
Sections of the FAR Affected: 14 CFR 135.181(c)(2).
Description of Relief Sought: To allow limited passenger carrying operations using single engine airplanes in IFR conditions for members of Alaska Air Carriers Association.

Dispositions of Petitions

Docket No.: 22558.
Petitioner: Boeing Commercial Airplane Company.
Sections of the FAR Affected: 14 CFR 47.69(b).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 3513, which expires May 1, 1993, and which allows flight testing and sales demonstrations outside the United States with Boeing Commercial Airplane Company's Dealer's Aircraft Registration Certificates and Temporary Registration Numbers, subject to certain conditions and limitations.

GRANT, March 4, 1993, Exemption No. 3515I

Docket No.: 26440.
Petitioner: Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 47.65, 47.69(b).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5315, which expires May 30, 1993, and which allows Falcon Jet Corporation to obtain a Dealer's Aircraft Registration Certificate without meeting citizenship requirements, and which allows the use of Dealer's Aircraft Registration Certificates outside the United States in connection with ferry flights of "green" Falcon aircraft from France, and for demonstrating, testing, selling, and marketing its aircraft, subject to certain conditions and limitations.

GRANT, March 4, 1993, Exemption No. 5315A

Docket No.: 26490.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.310(m).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5301, which expires March 31, 1993, and which allows Delta Air Lines, Inc. to operate L-1011-385-3 airplanes without conforming to the 60-foot required distance between emergency exits.

GRANT, March 4, 1993, Exemption No. 5301A

Docket No.: 27037.
Petitioner: Randy H. Avery.
Sections of the FAR Affected: 14 CFR 65.91(c)(2).
Description of Relief Sought/ Disposition: To enable Mr. Avery to become eligible for an Inspection Authorization (IA) without meeting the eligibility requirements outlines in the FAR.

DENIAL, March 18, 1993, Exemption No. 5618

Docket No.: 27094.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.343(e).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5350, which expires April 11, 1993, and which allows member airlines of the Air Transport Association of America and similarly situated nonmember airlines to continue to operate airplanes that are not equipped with approved flight recorders that use a digital method of recording and storing data and that provide a method of readily retrieving data from the storage medium, while those aircraft are retrofitted with this equipment.

GRANT, March 18, 1993, Exemption No. 5350B

[FR Doc. 93-7594 Filed 3-31-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Kane County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposal to impose east-west access across the Fox River in Kane County, Illinois.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Design Operations Engineer, Federal Highway

Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–4622.

Mr. Duane Carlson, District Engineer, Illinois Department of Transportation, District One, 201 West Center Court, Schaumburg, Illinois 60196–1096, Telephone: (708) 705–4000.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, the Kane County Division of Transportation and the City of Elgin will prepare an Environmental Impact Statement (EIS) on a proposal to improve east-west access across the Fox River from Illinois Route 47 in Yorkville, Kendall County to Illinois Route 62 in Algonquin, McHenry County. In April of 1991, the Kane County Policy Advisory Committee, a group composed of mayors and township supervisors with jurisdiction fronting the Fox River, in conjunction with the Chicago Area Transportation Study (CATS) concluded the Fox River Traffic Study. This Study was a strategic planning effort which evaluated a myriad of bridge proposals made for the Fox River over the previous ten years. As a result of this effort, seven new bridge crossings are currently being advanced and will be developed as major east-west corridor improvements. The tentative locations of the seven new corridors are as follows:

- Orchard Road, west of Oswego in Kendall County
- Sullivan Road in Aurora
- Mooseheart Road, south of Mooseheart
- Red Gate Road, south of Fox River Estates
- Chicago Central and Pacific Railroad, south of South Elgin
- Big Timber-Dundee Road (North End Bridge) in Elgin
- Lake Marian-Miller Road in Carpentersville

Three of the seven crossings were previously advanced. The Record of Decision for the North End Bridge EIS (FHWA–IL–EIS–82–02–F) was made on May 18, 1984. The reevaluation of this North End Bridge EIS will be a part of the subject EIS. Environmental studies and documentation for the Orchard Road and Sullivan Roads crossings were previously initiated and will be processed separately.

The overall purpose and need, selection of alternative corridors and secondary and cumulative impacts, will be based primarily on conclusions reached during the Fox River Bridge Traffic Study. The affected environment and environmental consequences will concentrate on the development of up to five new east-west corridors.

Improvements to the east-west access across the Fox River are considered necessary to meet the needs of immediate and long-range planning goals of this rapidly growing area. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; and (3) the development of up to five new east-west corridors across the Fox River (Build Alternative). Incorporated into and studied with the various corridor alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public informational meetings will be held in southern, central and northern Kane County between May and June 1993. In addition, public hearings will be held. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting and field review will be scheduled with appropriate agencies.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 24, 1993.

Lyle P. Renz,

Division Administrator, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 93–7563 Filed 3–31–93; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings; change of location.

SUMMARY: The March 1, 1993, **Federal Register** (58 FR 11885) announced meetings of the Intelligent Vehicle—Highway Society of America's (IVHS AMERICA) Coordinating Council and Board of Directors. The location of the Board of Directors meeting has been changed.

DATES: The Coordinating Council of IVHS AMERICA will meet on April 14, from 8 a.m. to 12 noon, e.t. The Board of Directors will meet on April 16, 1993, from 8:30 a.m. to 12 noon, e.t.

ADDRESSES: The address for the Coordinating Council remains the Sheraton Washington Hotel, 2660 Woodley Ave., NW., Washington, DC 20008. The Board of Directors meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, FHWA, HSR–1, 6300 Georgetown Pike, McLean, VA 22101, (703) 285–2021, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Mr. Daniel Toohey, IVHS AMERICA, 1776 Massachusetts Avenue, NW., Washington, DC 20036, (202) 857–1202.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 26, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93–7593 Filed 3–31–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

International Harmonization of Safety Standards; Calendar of Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will continue its participation during this year in the international meetings to harmonize U.S. and foreign motor vehicle safety standards. These meetings will be conducted by the Working Party on the Construction of Vehicles (WP29) under the Principal Working Party on Road Transport of the United Nations' Economic Commission for Europe (ECE), and by the six Meetings of Experts (formerly called Groups of Rapporteurs) of WP29. The NHTSA currently represents the United States in all of the Meetings of Experts except those on Pollution and on Noise.

DATES: For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings should be made at least two weeks preceding that meeting.

FOR FURTHER INFORMATION CONTACT: Francis J. Turpin, Office of International Harmonization (NOA–05), National

Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2114).

SUPPLEMENTARY INFORMATION: This calendar consists of those ECE meetings currently scheduled. It is published for information and planning purposes and the meeting dates and places are subject to change. NHTSA attendance at these meetings will be affected by agenda content, priorities and availability of travel funds.

March 29–31, 1993

Meeting of Experts on Lighting and Light-Signalling (GRE), Thirtieth Session—Geneva, Switzerland.

April 5–8, 1993

Meeting of Experts on General Safety Provisions (GRSG), Sixty-Fourth Session—Geneva, Switzerland.

May 17–18, 1993

Meeting of Experts on Noise (GRB), Twentieth Session—Geneva, Switzerland.

June 1–4, 1993

Meeting of Experts on Passive Safety (GRSP), Thirteenth Session—Geneva, Switzerland.

June 21, 1993

Administrative Committee for the Coordination of Work of WP29 (AC.2), Fifty-Second Session—Geneva, Switzerland.

June 22–25, 1993

Working Party on the Construction of Vehicles (WP–29), Hundredth Session—Geneva, Switzerland.

July 5–7, 1993

Meeting of Experts on Pollution and Energy (GRPE), Twenty-Sixth Session—Geneva, Switzerland.

August 30–31, 1993

Meeting of Experts on Noise (GRB), Twenty-First Session—Geneva, Switzerland.

September 1–3, 1993

Meeting of Experts on Brakes and Running Gear (GRRF), Thirty-Third Session—Geneva, Switzerland.

October 11, 1993

Administrative Committee for the Coordination of Work of WP29(AC.2), Fifty-Third Session—Geneva, Switzerland.

October 12–15, 1993

Working Party on the Construction of Vehicles (WP–29), Hundred and First Session—Geneva, Switzerland.

October 25–27, 1993

Meeting of Experts on General Safety Provisions (GRSG), Sixty-Fifth Session—Geneva, Switzerland.

November 15–18, 1993

Meeting of Experts on Lighting and Light-Signalling (GRE), Thirty-First Session—Geneva, Switzerland.

November 29—December 1, 1993

Meeting of Experts on Passive Safety (GRSP), Fourteenth Session—Geneva, Switzerland.

The following meetings took place earlier this year.

January 18–20, 1993

Meeting of Experts on Pollution and Energy (GRPE), Twenty-Fifth Session—Geneva, Switzerland.

February 8–11, 1993

Meeting of Experts on Brakes and Running Gear (GRRF), Thirty-Second Session—Geneva, Switzerland.

March 8, 1993

Administrative Committee for the Coordination of Work of WP29 (AC.2), Fifty-First Session—Geneva, Switzerland.

March 9–12, 1993

Working Party on the Construction of Vehicles (WP–29), Ninety-Ninth Session—Geneva, Switzerland.

Issued on March 29, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–7592 Filed 3–31–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of members of Combined PRB.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint, the Bureau of the Public Debt, and the U.S. Savings Bonds Division. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the five bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the Combined PRB members are as follows:

Primary Members

Timothy G. Vigotsky, Assistant Director (Management), E&P
Bland T. Brockenborough, Assistant Commissioner, Management, FMS
Andrew Cosgarea, Jr., Associate Director for Operations, Mint
Michael D. Pecovish, Assistant Commissioner, Public Debt Accounting, PD
Richard J. Schnaebeli, Deputy Executive Director for Marketing and Sales, SBD

Alternate Members

Carl V. D'Alessandro, Associate Director (Chief Operating Officer), E&P
Diane E. Clark, Assistant Commissioner, Financial Information, FMS
Robert Jenkins, Director, Office of Automated Information Systems, Mint
Eleanor J. Holsopple, Assistant Commissioner, Securities and Accounting Services, PD

DATES: Membership is effective on April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Michael D. Pecovish, Assistant Commissioner, Public Debt Accounting, Bureau of the Public Debt, 999 E St., NW., Washington, DC 20239; telephone (202) 874–4060 or (202) 874–7399 TDD. This notice does not meet the Department's criteria for significant regulations.

Dated: March 25, 1993.

Michael D. Pecovish,

Assistant Commissioner, Public Debt Accounting, Bureau of the Public Debt.

[FR Doc. 93–7569 Filed 3–31–93; 8:45 am]

BILLING CODE 4810–40–M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1992

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1992 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATES: The 1992 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1992.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1992 is 1.8430.

CREDIT: The nonconventional source fuel credit for calendar year 1992 is $5.53 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1992 is $15.98.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—Thomas Thompson, PR:R, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For the reference price—David McMunn, CC:P&SI:6, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC 20224, Telephone Number (202) 622–3110 (not a toll-free number).

Marlene Gross

Acting Associate Chief Counsel, (Domestic).

[FR Doc. 93–7608 Filed 3–31–93; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

Hearing

AGENCY: United States Commission on Improving the Effectiveness of the United Nations.

ACTION: Notice: public hearing.

SUMMARY: The purpose of this hearing is to obtain information on the subject of United Nations reform and U.S. policy toward the United Nations, and to conduct other Commission business. The hearing will be open to the public.

DATES: Chicago, Illinois, April 16, 1993, 9:15 a.m. to 5 p.m.

ADDRESSES: The hearing will be held in room 1200 of the John Marshall Law School, 315 South Plymouth Court, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Leary, Administrative Officer, 1825 Connecticut Avenue, suite 1011, Washington, DC 20009; telephone: (202) 673–5012; telefax: (202) 673–5007.

Experts or representatives of interested groups wishing to present testimony should contact the Administrative Officer and submit a summary of their presentation by April 9.

Citizens interested in testifying at the Chicago hearing may sign up at room 1200 of the John Marshall Law School between 9:30 a.m. and 11 a.m. on the date of the hearing and will be selected to testify on a first-come, first-served basis. Testimony will be heard after 3:30 p.m. Citizen witnesses are required to limit their statements to one minute. All witnesses may submit additional material for the record.

The U.S. Commission on Improving the Effectiveness of the United Nations was established by Public Law 100–204, 101 Stat. 1934 (22 U.S.C. 287 note). The Commission is charged with preparing and submitting to the President and Congress a report containing a detailed statement of its findings, conclusions and recommendations regarding reform of the United Nations system and the role of the United States in the United Nations system. The Commission is bipartisan and is privately funded.

The Commission members are: Representative James A. Leach and Charles M. Lichenstein, Co-Chairs; Thomas F. Eagleton, Edward F. Feighan, Edwin J. Feulner, Jr., Walter Hoffmann, Alan L. Keyes, Jeane J. Kirkpatrick, Peter M. Leslie, Gary E. MacDougal, Father Richard John Neuhaus, Senator Claiborne Pell, Senator Larry Pressler, Jerome J. Shestack, Harris O. Schoenberg, and Jose S. Sorzano.

Dated: March 26, 1993.

Gregory Wierzynski,

Executive Director.

[FR Doc. 93–7415 Filed 3–31–93; 8:45 am]

BILLING CODE 6820–BB–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment of Vietnam and Other War Veterans; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Readjustment of Vietnam and Other War Veterans will be held April 15 and 16, 1993. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting will be held at the American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meetings on April 15 and 16 will both begin at 8:30 a.m. and conclude at 4:30 p.m. The agenda for April 15 will consist of presentation and discussion of VA services and activities regarding women veterans experiencing psychological difficulties related to exposure to traumatic sexual abuse and/or assault while in the military. The first day's agenda will also cover a discussion of Native-American war veteran issues and a review of VA's initiative to El Salvador to assist local officials and service providers in development of post-war readjustment services. On April 16 the Committee will review issues and findings regarding VA coordination of care for war veterans with PTSD among all relevant VA services and programs. The second day's agenda will also consist of a review and discussion of pending legislation of importance for the readjustment of war veterans and discussion of the potential need for readjustment counseling among military personnel serving in United Nations peace keeping operations.

Both day's meetings will be open to the public up to the seating capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–535–7554).

Dated: March 19, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–7572 Filed 3–31–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 61
Thursday, April 1, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, April 13, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–7674 Filed 3–30–93; 10:51 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 12984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, April 6, 1993.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has postponed the discussion regarding Exemption for Certain Contracts Involving Energy Products, final order, until Tuesday, April 13, 1993 at 10 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–7675 Filed 3–30–93; 10:52 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 27, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Recordkeeping Requirements, final rule 1.31 on optical storage systems and electronic filing
—Final regulation on Contract Market Emergency Actions
—Proposed amendments to Rule 1.35 regarding allocation procedures for certain orders
—Quarterly Review/Second Quarter, FY 1993

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–7778 Filed 3–30–93; 4:00 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, April 27, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–7779 Filed 3–30–93; 4:00 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, April 27, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–7780 Filed 3–30–93; 4:00 pm]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 31, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Baby Walkers, Petition HP 92–2.

The staff will brief the Commission on petition HP 92–2 from the Consumer Federation of America, the American Academy of Pediatrics, the Washington Chapter of the American Academy of Pediatrics, the National SAFE KIDS Campaign, and Consumers Union requesting a ban of baby walkers as a mechanical hazard under the Federal Hazardous Substances Act.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: March 25, 1993.

Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 93–7639 Filed 3–29–93; 4:42 pm]
BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 7, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 30, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93–7736 Filed 3–30–93; 2:33 pm]
BILLING CODE 6210–01–M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: April 12, 1993, 10:00 a.m.–12:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the October 26, 1992, Board Meeting.
2. The Chairman's Report.
3. The President's Report.
4. The Audit Committee Report.
5. Impact and Results of Grants.
6. Administrative Expenses.
7. Aid Strategy for Latin America.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: March 29, 1993.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 93–7714 Filed 3–30–93; 2:15 pm

BILLING CODE 7025–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, April 6, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Tuesday, April 6

10:00 a.m.

Briefing by IIT on Unauthorized Forced Entry into the Protected Area at TMI–1 (Public Meeting)

(Contact: Sam Collins, 817–860–8183)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Commission Vote on Authorization of Full Power License for Comanche Peak (Unit 2)

(Contact: Suzanne Black, 301–504–1318) (Tentative)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: March 30, 1993.

William M. Hill, Jr.,

SECY Tracking Officer,

Office of the Secretary.

[FR Doc. 93–7688 Filed 3–30–93; 12:08 pm]

BILLING CODE 7590–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on April 8, 1993, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

PORTION OPEN TO THE PUBLIC

(1) Travel Policy.
(2) Migration Task Force Report.
(3) *Nancy Johnson* v. *U.S. Railroad Retirement Bard.*
(4) Pre-Recovery Waiver.
(5) Debt Prevention.
(6) Debt Collection.
(7) Opening Notice of Litigation and Recommendation for Remand in Light of *Viers* v. *U.S. Railroad Retirement Board,* James H. Buchanan, R.R.B. No. A–223–46–6566.
(8) Regulations—Part 203, Employees Under the Act.
(9) Regulations—Part 228, Computation of Survivor Annuities.
(10) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(11) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(12) Regulations—Part 328, Voluntary Leaving of Work.
(13) Regulations—Part 336, Duration of Normal and Extended Benefits.
(14) Regulations—Part 345, Contribution and Contribution Reports.

Portion Closed to the Public

(A) 1993 Performance Appraisal Plans.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751-4920, FTS No. 386–4920.

Dated: March 29, 1993.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–7716 Filed 3–30–93; 2:34 pm]

BILLING CODE 7905–01–M

Federal Register

Thursday
April 1, 1993

Part II

Department of Education

34 CFR Part 377

Demonstration Projects To Increase Client Choice Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 377

RIN 1820–AB23

Demonstration Projects To Increase Client Choice Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Demonstration Projects to Increase Client Choice Program (program) authorized in the recently enacted Rehabilitation Act Amendments of 1992. The program would provide grants to States and public and nonprofit agencies and organizations to pay all or part of the costs of projects to demonstrate ways to increase client choice in the rehabilitation process, including the choice of providers of vocational rehabilitation services. The proposed regulations would incorporate statutory requirements and provide rules for applying for and spending Federal funds provided under this program.

DATES: Comments must be received on or before May 3, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3028, Mary E. Switzer Building, Washington, DC 20202–2899.

A copy of any comments that concern information collection requirements also should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ann Queen, U.S. Department of Education, 400 Maryland Avenue SW., room 3038, Mary E. Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–8292. Individuals who are hearing impaired or others who use a TDD may call (202) 205–5896 for TDD services.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement the Demonstration Projects to Increase Client Choice Program authorized in title VIII, section 802(g) of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569, enacted October 29, 1992) (the Act). The purpose of the program is to provide financial assistance to States and public and nonprofit agencies and organizations to stimulate creative efforts to increase client choice in the rehabilitation process, including choice in selecting vocational goals and objectives, services to achieve those objectives, and providers of services, thereby improving the quality of the rehabilitation process.

The program is an important step forward in achieving the National Education Goals. Specifically, the program addresses Goal Five, which calls for every adult American to be literate and to possess the skills necessary to compete in a global economy, by providing improved vocational rehabilitation opportunities for an increased number of people with disabilities.

Summary of Major Statutory Provisions

The following is a summary of the major statutory provisions authorizing the Demonstration Projects to Increase Client Choice Program.

- Section 802(g)(1) of the Act provides that States and public and nonprofit agencies and organizations are eligible for grants to pay all or part of the costs of projects to demonstrate ways to increase client choice in the rehabilitation process, including choice in the providers of services. The proposed regulations address this provision in §§ 377.1 and 377.2.
- Section 802(g)(2)(A) provides that the grants may be used only for activities directly related to planning, operating, and evaluating the demonstration projects. The proposed regulations address this provision in § 377.3.
- Section 802(g)(2)(B) provides that grants must be used to supplement, not supplant, other Federal and non-Federal funds that are being used to provide increased choice in the rehabilitation process. The proposed regulations address this requirement in § 377.11(b).
- Section 802(g)(3)(A) requires applicants to describe how they will determine the cost of any product or service offered to an eligible client and how they will ensure that services are provided by qualified providers who are accredited or meet other quality assurance or cost-control criteria established by the State. The proposed regulations address these requirements in § 377.11.
- Section 802(g)(3)(B) requires applicants to assure that a written plan, including a client's vocational rehabilitation goals, the services to be provided, and an evaluation procedure and schedule for determining whether the goals are being achieved, is established with the full participation of the client. The proposed regulations address these provisions in § 377.11.
- Section 802(g)(4) requires the Commissioner to take into consideration the diversity of strategies used to increase choice, diversity of clients served, and geographic distribution of projects in selecting recipients of grants. The proposed regulations address this requirement in § 377.22.
- Section 802(g)(5) requires grantees to maintain records and provide information as requested by the Commissioner, and section 802(g)(7) requires the Commissioner to conduct an evaluation of the demonstration projects with respect to services provided, clients served, client outcomes obtained, implementation issues addressed, the cost effectiveness of the project, and the effects of increased choice on clients and service providers. The proposed regulations address these requirements in § 377.30.
- Section 20 of the Act requires programs that provide services to individuals with disabilities to advise the individuals, their families, or other authorized representatives of the availability and purposes of the Client Assistance Program. This provision is addressed in the proposed § 377.31.
- Section 21(b)(5) of the Act authorizes the Secretary to require applicants for financial assistance under the Act, if appropriate, to demonstrate how they will address the needs of individuals with disabilities from minority backgrounds. The proposed regulations address this provision in § 377.11(a)(7).

Summary of Major Regulatory Provisions

The following is a summary of the major provisions of the proposed regulations that interpret statutory text or provide rules and procedures for the operation of the program that were not included in the statutory text.

- Section 377.3 would clarify that grants provided under this program must be used for projects that demonstrate effective ways to increase the choices available to eligible clients in the selection of providers of services. In addition, the Secretary would encourage, but not require, grantees to demonstrate effective ways to increase client choice in other aspects of the rehabilitation process.
- Section 377.5(c) provides definitions of the terms "employment outcome" and "voucher." The 1992 Amendments replace the definition of the term "employability" with a similar definition of the term "employment outcome." Specifically, the term "employment outcome" is defined in section 7(5) of the Act to mean entering or retaining full-time or, if appropriate,

part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) *or satisfying any other vocational outcome the Secretary may determine, consistent with this Act* (emphasis added). The definition in the proposed regulations incorporates the "other vocational outcome" or outcomes as previously determined by the Secretary in the definition of the term "employability" in 34 CFR part 361 of the existing regulations. The Secretary has determined that those vocational outcomes continue to be consistent with the Act. "Voucher" is not defined in the Act. However, because the Secretary anticipates that a number of demonstration projects may propose the use of vouchers as a means of increasing client choice, a definition is proposed in these regulations to ensure that applicants use the term consistently. It is not designed to restrict the flexibility of applicants in proposing methods to increase choice.

- Section 377.11 contains the proposed provisions regarding the content of grant applications. The Secretary proposes to implement the requirement in section 802(g)(3)(A) of the Act that applicants describe how they will determine the "cost" of any service or product offered to an eligible client by requiring applicants to describe how they will determine the "monetary value" of a service or product, including, if applicable, the monetary value of a voucher. The Secretary intends for the grantee's determination of monetary value to be an indication of the amount the grantee will pay for a service or product. The Secretary believes this approach reflects legislative intent since the actual costs of services and products will be determined by the providers, who are not necessarily the grantees. It is anticipated that applicants also would explain how they would handle any differences between the monetary value determined by the grantee and the cost determined by the provider. The Secretary notes that the application package also will ask applicants who are proposing to use vouchers to describe their plan for administering the use of vouchers, including the redemption or reimbursement of vouchers. In addition, in accordance with section 21(b)(5) of the Act, the Secretary has determined that it is appropriate for all applicants under this program to demonstrate how they will address the needs of individuals with disabilities from minority backgrounds and proposes to include that requirement in this section. This section also would require applicants to describe how they would ensure that clients are satisfied with the quality and scope of services provided and how they would monitor and account for the use of funds to purchase services. The Secretary notes that the Department would recover directly from the grantee any Federal funds that are misspent. Accordingly, it would be left to the discretion of individual grantees to establish mechanisms for recovering misspent funds from providers. Finally, this section would incorporate the requirements in section 802(g)(3)(B) of the Act regarding the preparation of a written plan. The Secretary notes that while an individualized written rehabilitation program (IWRP), which is required under the State Vocational Rehabilitation Services Program, would also meet the written plan requirement for this program, the regulatory requirements associated with the IWRP do not apply to the written plan required under this program. However, the Secretary expects that the full range of goals currently available to clients under the IWRP would also be available under this program.
- Section 377.21 contains the selection criteria the Secretary proposes to use to evaluate each application. The proposed selection criteria are designed to ensure that the demonstration projects funded under this program will provide measurable and useful information regarding choice in the rehabilitation process that could be used in the future to expand choice in the State Vocational Rehabilitation Services Program.
- Section 377.22 incorporates the requirement in the Act that the Secretary must consider the diversity of strategies proposed, diversity of clients to be served, and geographic distribution of projects in making grants under this program. The Secretary interprets these as overall requirements that apply to the group of projects that are funded, not to each project. Thus, the proposed regulations would not require each individual application to describe diverse strategies, assure that a diversity of clients will be served, or cover broad geographic areas.
- Section 377.30 contains the record collection requirements that the Secretary believes are necessary for the Department to conduct the evaluation required by section 802(g)(5) of the Act. The Department is in the process of developing an evaluation plan consistent with the requirements in the statute. In order to evaluate the effectiveness of the project with respect to clients served, the Secretary proposes to require grantees to maintain records regarding the number of clients served by disability, race, national origin, gender, and age, and the number of clients served who are individuals with a severe disability.
- Section 377.31 incorporates the provision in section 20 of the Act requiring programs to advise individuals with disabilities, their families, or authorized representatives regarding the purposes and availability of the Client Assistance Program (CAP). Although the scope of this statutory requirement is not clear, since CAP provides assistance to applicants as well as recipients of services, the Secretary proposes to require grantees to advise both applicants and clients of the purposes and availability of CAP.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

States are not defined as "small entities" under the Regulatory Flexibility Act. The small entities that would be affected by these proposed regulations are small public and nonprofit agencies and organizations receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small agencies and organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 377.11, 377.21, and 377.30 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h).)

The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 60 hours per response for 100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3038, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 377

Choice, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

Dated: March 26, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 377 to read as follows:

PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

Subpart A—General

Sec.

377.1 What is the Demonstration Projects to Increase Client Choice Program?
377.2 Who is eligible for an award?
377.3 What types of activities may the Secretary fund?
377.4 What regulations apply?
377.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

377.10 How does an eligible entity apply for an award?
377.11 What is the content of an application for an award?

Subpart C—How Does the Secretary Make an Award?

377.20 How does the Secretary evaluate an application?
377.21 What selection criteria does the Secretary use?
377.22 What additional factors does the Secretary consider in making grants?

Subpart D—What Post-Award Conditions Must Be Met by a Grantee?

377.30 What information must a grantee maintain and provide to the Secretary?
377.31 What information must a grantee provide to eligible clients?
377.32 What are the matching requirements?

Authority: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g), unless otherwise noted.

Subpart A—General

§ 377.1 What is the Demonstration Projects to Increase Client Choice Program?

The Demonstration Projects to Increase Client Choice Program is designed to provide financial assistance for projects that demonstrate ways to increase client choice in the vocational rehabilitation process, including the choice of providers of vocational rehabilitation services.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

§ 377.2 Who is eligible for an award?

States and public and nonprofit agencies and organizations are eligible to receive a grant under this program.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

§ 377.3 What types of activities may the Secretary fund?

The Secretary provides financial assistance under this program for activities that are directly related to planning, operating, and evaluating projects to demonstrate effective ways to increase the choices available to eligible clients in the rehabilitation process as follows:

(a) At a minimum, all projects must demonstrate effective ways to increase the choices available to clients in selecting providers of services.

(b) Projects may also use these funds to demonstrate additional ways to increase the choices available to clients in the rehabilitation process.

(Authority: Sec. 802(g)(2)(A) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1), (2))

§ 377.4 What regulations apply?

The following regulations apply to the Demonstration Projects to Increase Client Choice Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The following regulations in 34 CFR part 369 (Vocational Rehabilitation Service Projects): §§ 369.43, 369.46, and 369.47.

(c) The regulations in this part 377.

(Authority: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g))

§ 377.5 What definitions apply?

(a) *Definitions in the Rehabilitation Act of 1973, as amended (the Act).* The

following terms used in this part are defined in the Act:

Client or eligible client means an individual with a disability who is not currently receiving services under an individualized written rehabilitation program established through a designated State unit. (Section 802(g)(8) of the Act)

Individual with a disability means any individual who—

(1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, II, III, VI, or VIII of the Act. (Section 7(8)(A) of the Act)

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect). (Section 7(16) of the Act)

Vocational rehabilitation services means the services authorized in section 103(a) of the Act. (Section 103(a) of the Act)

(b) *Definitions in EDGAR.* (1) The following terms used in this part are defined in 34 CFR 77.1:

Applicant	Nonprofit
Application	Project
Award	Project period
Budget period	Public
Department	Secretary
EDGAR	

(2) The following terms used in this part are defined in 34 CFR 74.3:

Grant
Grantee

(c) *Other definitions.* The following definitions also apply to this part:

Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than in cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

Voucher means a credit of specified monetary value, issued by a grantee to an eligible client, that the eligible client exchanges for vocational rehabilitation services from a qualified provider.

(Authority: Secs. 7(5), 7(8)(A), and 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 706 and 29 U.S.C. 797a)

Subpart B—How Does One Apply for an Award?

§ 377.10 How does an eligible entity apply for an award?

In order to apply for an award, an eligible entity shall submit an application to the Secretary in response to an application notice published in the **Federal Register**.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.11 What is the content of an application for an award?

(a) The award application must include a description of—

(1) The manner in which the applicant intends to promote increased client choice in the geographical area identified in the application;

(2) The outreach activities the applicant plans to conduct to obtain eligible clients, including clients who are individuals with a severe disability;

(3) The manner in which the applicant will ensure that service providers are accredited or meet any quality assurance and cost-control criteria established by the State;

(4) The manner in which the applicant will ensure that eligible clients are satisfied with the quality and scope of services provided;

(5) The manner in which the applicant will monitor and account for use of funds to purchase services;

(6) The manner in which the applicant will determine the monetary value of the services or products available to clients, including, if appropriate, the monetary value of vouchers;

(7) The manner in which the applicant will address the needs of individuals with disabilities who are from minority backgrounds; and

(8) Those features of the proposed project that the applicant considers to be essential and a discussion of their potential for widespread replication.

(b) The application also must include assurances from the applicant that—

(1) A written plan to provide vocational rehabilitation services will be established for, and with the full participation of, each eligible client, that at a minimum will include—

(i) A statement of the client's vocational rehabilitation goals, which must include goals that are designed to lead to an employment outcome consistent with the client's unique strengths, resources, priorities, concerns, abilities, and capabilities;

(ii) A statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and termination of each service; and

(iii) A description of an evaluation procedure for determining whether the client's vocational rehabilitation goals are being achieved, including—

(A) Objective evaluation criteria; and

(B) An evaluation schedule;

(2) The Federal funds granted under this part will be used to supplement, and in no case to supplant, funds made available from other Federal and non-Federal sources for projects providing increased choice in the rehabilitation process;

(3) At least 80 percent of the funds awarded for any project under this part will be used to provide vocational rehabilitation services, as specifically chosen by eligible clients;

(4) The applicant will cooperate fully with the Secretary in a national evaluation, including assisting the Department's contractor in selecting and obtaining data for a control group established through random assignment or by the selection of a matched comparison group; and

(5) Individuals with disabilities will be involved in the development and implementation of the project.

(c) Each applicant also shall submit to the Secretary any other information and assurances that the Secretary determines to be necessary.

(Authority: Sec. 21(b)(5), 802(g)(2), 802(g)(3), 802(g)(5), 802(g)(6), and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 718b and 29 U.S.C 797a(g)(2), (3), (5), (6), and (7))

Subpart C—How Does the Secretary Make an Award?

§ 377.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 377.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purpose of the program to provide increased client

choice in the rehabilitation process, including at a minimum increased choice in the selection of service providers, leading to an employment outcome;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable for purposes of evaluation, including an estimate of the numbers of clients to be served;

(iv) Include objectives to be met during each budget period that can be used to determine the progress of the project toward meeting its intended outcomes;

(2) The extent to which the plan of operation specifies the methodology for accomplishing each objective of the project;

(3) The extent to which the applicant's plan of management, including resources and timelines, is designed to achieve each objective and intended outcome during the period of Federal funding;

(4) The extent to which the applicant's plan identifies the numbers of eligible clients by type of disability and the number of eligible clients with severe disabilities who are available to participate in the project;

(5) The extent to which the applicant plans to conduct outreach activities to obtain eligible clients;

(6) The extent to which the applicant's plan ensures that clients who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or age; and

(7) The extent to which the applicant's plan describes a workable process for determining the monetary value of any service or product offered to eligible clients, including, if appropriate, the value of vouchers.

(b) *Key personnel and other resources.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The relevant experience and training of the project director;

(ii) The relevant experience and training of each of the other key personnel to be used on the project;

(iii) The amount of time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project;

(iv) The extent to which persons referred to in paragraphs (b)(1)(i) and (ii) of this section are capable of providing technical assistance to other entities interested in replicating the project; and

(v) The extent to which the applicant will ensure that persons employed through the project are selected and work without regard to race, color, national origin, gender, age, or disabling condition.

(2) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including—

(i) The facilities that the applicant plans to use;

(ii) The equipment and supplies that the applicant plans to use; and

(iii) The recordkeeping capabilities of the applicant for financial and evaluation purposes.

(c) *Service provision.* (20 points) The Secretary reviews each application to determine the quality and comprehensiveness of the services to be offered and the applicant's capacity to provide increased choice in the provision of services to eligible clients, including the extent to which the applicant—

(1) Has the capacity to evaluate the eligibility of applicants for services and to develop written plans for services for individual clients;

(2) Has demonstrated knowledge of a wide range of potential service providers that can meet the needs of eligible clients;

(3) Has described a workable process for allowing eligible clients to choose from among a wide range of service providers;

(4) Has described satisfactory systems to account for the appropriate expenditure of funds; and

(5) Has described satisfactory systems to ensure the provision of quality services.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable, including data that are required under § 377.30.

(e) *National significance.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) Project findings might be effectively used within the State vocational rehabilitation service system; and

(2) Project activities might be successfully replicated by other entities.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

§ 377.22 What additional factors does the Secretary consider in making grants?

In addition to the criteria in § 377.21, the Secretary considers the following factors in making grants under this program:

(a) The diversity of strategies to increase client choice, in order to ensure that a variety of approaches are demonstrated by funded projects.

(b) The diversity of clients to be served, in order to ensure that a variety of disability populations are served by funded projects.

(c) The geographical distribution of funded projects.

(Authority: Sec. 802(g)(4) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(4))

Subpart D—What Post-Award Conditions Must Be Met by a Grantee?

§ 377.30 What information must a grantee maintain and provide to the Secretary?

(a) Each grantee shall maintain the records that the Secretary requires to conduct an evaluation of projects funded under this program, which at a minimum must include information regarding the—

(1) Types of services provided;

(2) Costs of services provided;

(3) Number of clients served by disability, race, national origin, gender, and age;

(4) Number of clients with a severe disability served;

(5) Client outcomes obtained;

(6) Implementation issues addressed; and

(7) Any other information the Secretary requires.

(b) Each grantee shall comply with any request from the Secretary for those records.

(Authority: Secs. 802(g)(5) and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(5), (7))

§ 377.31 What information must a grantee provide to eligible clients?

Each grantee shall advise all clients and applicants for services under this program, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program under section 112 of the Act, including information on

means of seeking assistance under that program.

(Authority: Sec. 20 of the Rehabilitation Act of 1973; 29 U.S.C. 718a)

§ 377.32 What are the matching requirements?

Grants may be made for paying all or part of the costs of projects under this program. If part of the costs is to be covered by the grantee, the amount of grantee contribution is specified in the application notice and will not be required to be more than 10 percent of the total cost of the project.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

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federal register

Thursday
April 1, 1993

Part III

Department of Transportation

Coast Guard

46 CFR Part 174

Subdivision and Damage Stability of Dry Cargo Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 174

[CGD 87–094]

RIN 2115–AC87

Subdivision and Damage Stability of Dry Cargo Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations require new dry cargo ships of 500 gross tons or more, calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969, to meet a minimum standard of subdivision and damage stability. These regulations implement an international standard that was developed to ensure that a ship can sustain limited damage without loss of that ship.

EFFECTIVE DATE: May 3, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LT Robert Holzman, Office of Marine Safety, Security, and Environmental Protection at (202) 267–2988.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR Guy R. Nolan, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 6, 1988, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) entitled "Dry Cargo Ship Subdivision and Damage Stability Regulations" in the **Federal Register** (53 FR 11440). The ANPRM provided draft regulations, that were based on an IMO resolution, for public comment. On November 6, 1989, the Coast Guard published a revision to the draft regulations in the **Federal Register** (54 FR 46631). This revision incorporated a revision in the international standard, and reopened the comment period. The Coast Guard received a total of fourteen comments to the ANPRM's.

On July 22, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Subdivision and Damage Stability of Dry Cargo Vessels" in the **Federal Register** (57 FR 32624). The Coast Guard received eight comments to the proposal. A public hearing was not requested and one was not held.

Background and Purpose

A. Introduction

Subdivision is the partitioning of a ship's internal volume into watertight compartments. Its purpose is to limit the quantity of water which may enter the ship following accidental hull damage or internal piping failure. Damage stability is the ability of a ship to avoid capsizing following accidental flooding. If uncontrolled flooding occurs without adequate subdivision and damage stability, the loss of the ship is virtually certain. Many disasters could possibly have been avoided if the ships had been subdivided and many others did not become disasters because the ships were subdivided. Casualties which result in capsizing or sinking typically involve loss of life, loss of the ship and its cargo, and release of quantities of oil and toxic chemicals into the environment. Casualty statistics presented in the April 6, 1988, ANPRM demonstrate that dry cargo ships with little subdivision have a higher rate of total loss following a collision than similar ships having the degree of subdivision in their cargo holds which the regulations will require. Loss of life and property can be reduced if adequate subdivision and damage stability is provided in the design of all dry cargo ships.

A one-compartment standard of subdivision and damage stability requires ships to be divided by transverse watertight bulkheads and to be operated with sufficient stability so as to remain afloat without excessive heel after damage within any one of the spaces between the bulkheads. This does not mean that a ship built to a one-compartment standard will always survive damage. These ships are still vulnerable to even minor damage in way of a bulkhead that allows the flooding of two compartments.

The probabilistic approach of these regulations takes into account the probability of various extents of damage occurring anywhere along the ship's length and the resulting flooding. At the same time it takes into account the probability that the ship will survive the damage given its stability and draft. This provides a rational means of assessing the safety of ships, where flooding is concerned, no matter what their arrangements might be.

B. Historical Perspective

Until recently, there were no domestic regulations or international requirements for dry cargo ships, which may carry sizeable quantities of hazardous materials in packages, to be designed to remain afloat without capsizing after sustaining even minor damage. However, most existing U.S. dry cargo ships, including RO–RO ships, were built under a subsidy or mortgage insurance program administered by the U.S. Maritime Administration (MARAD) which required these ships to meet a one-compartment standard of subdivision.

The United States has been pressing for an international agreement on dry cargo ship subdivision since the International Convention for the Safety of Life at Sea, 1960. In 1977, after a series of casualties around the world, the Coast Guard restated its desire to have subdivision and damage stability standards for dry cargo ships developed as a matter of urgency, and worked on a one-compartment subdivision standard together with the Society of Naval Architects and Marine Engineers. The standard could not be agreed upon internationally, partly because the standard could not be made flexible enough for RO–RO designs which depend upon horizontal and longitudinal subdivision instead of transverse subdivision, and partly because the index of safety was not functionally proportionate to the true degree of safety.

In 1985, the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) instructed the technical Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety (SLF) to develop a subdivision and damage stability standard based on the probabilistic analysis method. Standards developed were based on the research work done and the equations which were developed for the probabilistic rules for passenger ships (IMO Resolution A.265(VIII)).

In May 1990, the current IMO damage stability rules for dry cargo ships were adopted. These rules became effective as of February 1, 1992, as an amendment to the International Convention for the Safety of Life at Sea, 1974 (SOLAS).

The IMO regulations apply to cargo ships constructed on or after February 1, 1992. A definition of a "new" ship was included in the proposed regulations and has been further refined in this final

rule in response to the comments received.

The IMO regulations have recently been evaluated for application to ships less than 100 meters (328 feet) in length. While the principles used in the IMO regulations are appropriate regardless of ship size, the subdivision of smaller dry cargo ships is further complicated by the need to design cargo spaces that are large enough to allow efficient cargo operations. At the 36th session of SLF there was widespread support for the application of these rules to ships less than 100 meters (328 feet) in length, provided a compromise could be found between the need to subdivide and a reasonable minimum bulkhead spacing. Late in the session, consensus was reached using data contained in the multinational collation of results in applying Resolution MSC.19(58) to cargo ships less than 100 meters (328 feet) in length. A draft SOLAS amendment has been prepared and the 37th session of SLF is expected to forward it to MSC for approval.

These rules are part of a continuing effort by the Coast Guard to promote the development and adoption of satisfactory international standards that then can be adopted into U.S. regulations. Improvement of international standards benefits the public by raising the level of safety of foreign flag vessels visiting U.S. ports. U.S. adoption of the improved international standards allows U.S. flag vessels to better compete with foreign flag vessels.

To fully understand the impact of these rules, they must be considered in conjunction with the draft IMO Code on Intact Stability. This Code is the result of years of international effort to consolidate and refine the intact stability standards for all vessel types. The draft code is currently in near final form and is expected to be adopted at the next IMO Assembly in October 1993. The Coast Guard intends to propose adoption of many portions of the draft IMO Code of Intact Stability, the most significant of which affects large containerships. The current U.S. regulations for intact stability were developed for 1940's era ships and have proved inappropriate and overly restrictive for large modern containerships. On April 2, 1992, the Coast Guard published a notice in the **Federal Register** (57 FR 11267) that allows the draft IMO intact stability standard for large containerships to be submitted as an equivalent to the current U.S. requirements for intact stability for containerships greater than 100 meters (328 feet) in length. The combined effect of the changes in both the intact and damage stability standards will be an increase in cargo capacity of U.S. flag vessels of 3 to 8 percent, without added danger to the vessel or crew. The Coast Guard projects that the potential annual benefit for the entire U.S. containership industry could be as high as $250 million.

Discussion of Comments and Changes

On July 22, 1992, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Subdivision and Damage Stability of Dry Cargo Vessels" in the **Federal Register** (57 FR 32624). The Coast Guard received eight comments to the proposal, one of which was a correction to an earlier comment. Four comments indicated strong support for the proposed rules. Two comments requested clarification without indicating support and one comment recommended changes to the international standard this rulemaking adopts.

Four comments expressed satisfaction with the international damage stability standard for dry cargo ships and the positive effect it will have in improving safety of the world fleet. One comment expressed a need for a mandatory damage stability standard for all U.S. oceangoing cargo vessels and indicated that the proposed standard, based on the probabilistic approach, represents the current state of the art on the subject. This comment, from a major U.S. shipping company, indicated extensive experience in the application of MARAD Design Letter No. 3, both for ships where it was required for title XI financing and other vessels as well. This company has designed and operated ships to meet the one-compartment standard, but expressed concern over its shortcomings and support for efforts to develop a criterion based on a more rational approach. Two comments expressed the belief that U.S. flag cargo ships have been operating at a competitive disadvantage relative to foreign flag ships and recommended that the MARAD one-compartment standard for dry cargo ships be abandoned.

Three comments requested clarification of the applicability of the regulations with respect to offshore supply vessels (OSV's), integrated tug and barge units (ITB's) and existing foreign flag vessels that are reflagged as U.S. flag vessels.

SOLAS Regulation 25–1, of chapter II–1, part B–1, implemented by this final rule, specifically excludes application to ships which are shown to comply with subdivision and damage stability requirements of other international standards. Therefore, OSV's that comply with the Guidelines for the Design and Construction of Offshore Supply Vessels (Resolution A.469(XII)) are not required to comply with these rules. A separate rulemaking has already proposed adoption of IMO Resolution A.469(XII) for all new U.S. flag OSV's. If adopted, the proposed regulations published in the **Federal Register** on May 9, 1989 (CGD 82–004 and 86–074; 54 FR 20006) will obviate the need for these vessels to comply with the damage stability rules for dry cargo vessels. The Coast Guard has no intention to apply the dry cargo rules to OSV's while CGD 82–004 and 86–074 are pending, even on an interim basis. It is the Coast Guard's intention to implement the provisions of the SOLAS amendments on subdivision and damage stability of dry cargo ships as adopted by IMO without expanding or narrowing its application.

One comment requests clarification on whether the tug unit of an ITB would be required to meet the subdivision rules when not operating as part of the ITB and further asked if the tug was to be considered as a single compartment or ignored when considering damage to the barge. When operating as individual vessels both tug and barge must meet the standard subdivision and damage stability requirements applicable to those vessels only. When operating as an integrated tug and barge the combined unit must meet the same subdivision and damage stability requirements as a ship of that size. Designers may simplify the damage stability calculations by treating the tug as one-compartment or may consider the subdivision of the tug to calculate the maximum attained index.

One comment pointed out that the proposed definition of "new ship" did not specifically mention ships that were changing from foreign to U.S. flag and asked if the Coast Guard intended to apply the new damage stability requirements to existing ships that were being reflagged. Navigation and Vessel Inspection Circular (NVIC) 10–81, Change 1, provides that vessels being reflagged should meet the stability standards of a U.S. ship being built at the time of application for inspection as a U.S. flag vessel. The Coast Guard encourages consideration of a vessel's ability to survive damage as part of the decision to reflag vessels, but recognizes the potential cost of modifying an existing vessel. Recognizing that the majority of reflags are promoted by needs of the Military Sealift Command, and to avoid placing an undue hardship on vessel owners currently reflagging vessels, the definition of "new ship" has been modified to specifically address

reflags. The final rule requires all vessels making application for reflagging on or after February 1, 1997 to meet the IMO damage stability standard. This approach is consistent with the goals of NVIC 10–81, Change 1, to include stability standards in decisions to reflag vessels, but allows sufficient lead time to prevent hardships to vessel owners currently reflagging vessels.

Two comments addressed the application of these rules to vessels less than 100 meters in length. One comment supported application, but noted the challenge of meeting these rules is most difficult for smaller vessels and expressed the hope that the Coast Guard will be open to working with designers and owners to achieve satisfactory and efficient new ships and not put a premium on older tonnage. The Coast Guard agrees that smaller vessels have the most difficulty in achieving a high attained index "A". However, the proposed modification to the calculation of the required index "R" significantly lowers the required index for smaller vessels, and would provide designers with an achievable standard that would not be overly restrictive. A second comment did not support adoption of the proposed rules for vessels less than 100 meters in length prior to adoption by IMO, stating that industry needs additional time to study the implications of such a proposal. This comment asked the Coast Guard to remove the proposal of application to vessels less than 100 meters in length or extend the comment period. While the NPRM provided an excellent opportunity for public comment on the application of the proposed standard for vessels less than 100 meters in length, the Coast Guard agrees that it is appropriate to delay mandatory application of the proposed SOLAS amendment until approved by IMO. The portions of the proposed regulation defining subdivision length and requiring the calculation of the required index for vessels less than 100 meters in length has been removed. Subpart J remains applicable to dry cargo ships less than 100 meters in length, but, as long as the 100 meter limit remains in SOLAS, these vessels will not be required to meet any damage stability standard. If the proposed amendment regarding vessels less than 100 meters is adopted by IMO, the Coast Guard will address application of the amendment to vessels less than 100 meters in length in the **Federal Register**.

One comment indicated the belief that an act of Congress on metrification requires the use of metric units, with traditional English units in parenthesis. The proposed rule was written in traditional English units, with metric units in parenthesis, to be consistent with the rest of Part 174 of these regulations. The removal of the portion of the rule concerning ships less than 100 meters in length leaves gross tonnage as the only units in these regulations and resolves this issue. However, throughout the preamble metric units have been used, with English in parenthesis.

One comment disagreed with the Coast Guard's statement that virtually all U.S. flag ships have been built to the one-compartment standard, pointing out that "more than a few" U.S. flag ships do not meet the one-compartment standard. However, this comment also agreed that there is no compelling reason to apply these rules to existing ships. The Coast Guard acknowledges that most foreign built dry cargo vessels that have been reflagged and some U.S. built cargo vessels may not meet the one-compartment standard, but retains its position that the IMO standard will not place an undue burden on the design of new vessels and that there is no compelling reason to apply these rules to existing ships, except on a voluntary basis.

One comment pointed out that the NPRM discussion of SOLAS regulation 25–8 noted that damage stability plans are to be posted on the bridge. The comment suggested that reference should be to "damage control plans." This comment further questioned whether the required information should be more detailed than currently found on damage control plans, whether the information was to be available to all officers on ship, including the Engineering Dept., and whether the information should actually be provided instead of merely available. The comment expressed the belief that the answers to all these questions should be yes, and that the development of a damage control booklet would enhance safety by advising ship's officers of a ship's specific vulnerabilities. The Coast Guard agrees that a damage control booklet would be one way to present the information required by SOLAS regulation 25–8. However, there may be other ways to present this information that could be just as effective. It is the Coast Guard's position that SOLAS regulation 25–8 provides satisfactory guidance and therefore no change has been made to the rule on this matter.

One comment noted that the Coast Guard's assertion in the proposed rule that virtually all U.S. ships are built to the requirements of MARAD Design Letter No. 3 could be interpreted to indicate that there was no need to demonstrate compliance with the damage stability standard implemented by this rule. This comment correctly pointed out that this interpretation would be counter to the U.S. position during the development of the probabilistic international standard. The Coast Guard did not intend to imply equivalence, but merely intended to demonstrate that these rules will not place an undue burden on ship designers or owners. The ability of a new vessel to meet the MARAD one-compartment standard does not obviate the requirement to demonstrate compliance with these rules.

Four comments specifically addressed the probabilistic IMO criterion itself. One comment stated that the criterion has not only been applied in the design of a new containership but also in the conversion of two existing ships and the compartmentation and design requirements were found to be reasonable and practicable in all cases.

One comment requested clarification of how the probability of damage to each compartment was established and asked for confirmation that the international standard did not require "survival" in all possible damage conditions. The probability of damage to each compartment was established by evaluating the longitudinal, vertical and transverse extents of damage observed in actual vessel casualties. The observed results were simplified and presented as mathematical relationships, as was the location of the center of damage, in such a way that the probability of damage to any compartment could be estimated based on the location of the boundaries that defined that space. A damage stability analysis is performed assuming each space, or combination of spaces, is damaged to see if the vessel meets the established conditions of survival with that space damaged. If so, the probability of damage to that space becomes part of the overall summation that represents the vessels ability to survive damage. It is not necessary for a vessel to meet the conditions of survival in all possible damage scenarios provided that the vessel meets those conditions in enough cases to exceed the value of the required index "R" established by the international standard.

One comment supported the use of horizontal subdivision in SOLAS regulation 25–6, but believes the NPRM discussion suggests a much higher scientific basis for the vertical extent than there was in fact. The comment correctly pointed out that casualty statistics on the vertical extent of damage were particularly lacking and that the relationship between a striking

ship's bow height and the vertical extent of damage was observed in a small sample of these statistics. Since it is impossible to know the bow height of the striking ship, it was assumed that the bow height of the struck ship could be used instead. A second comment agreed that the tendency of ships to collide with ships of the same relative size tends to ignore the differences in bow heights for different ship types and makes this portion of the international standard more tenuous, particularly for greater ship lengths. An example of a recent collision was provided where damage was sustained by a cruise ship as high as 20' above the main deck. However, the international standard only considers damage to a maximum height of 23' above the waterline, which on this vessel was still 10' below the main deck. MARAD has long recommended the vertical extent of damage be increased and is currently preparing a study of bow heights that may lead to international agreement to improve this portion of the international standard.

One comment to the NPRM reiterated the position expressed in a previous comment to the ANPRM's that several changes should be made in the international standard, as follows:

1. Required index "R" should be increased; comment stated a higher required index is both desirable and attainable.
2. Recommended that attained index be required to achieve required index in full range of operating conditions.
3. Asserted that 25° equilibrium heel angle is too high and recommended survival criteria be modified to maximum 15–20° equilibrium heel angle.
4. Recommended cargo permeability be expanded from a single value to more traditional values appropriate for different types of cargo.
5. Recommended increase in the required vertical extent of damage.

As discussed in the NPRM, it is the Coast Guard's position that there is merit to all of these suggestions and the Coast Guard intends to pursue continued improvements of the international standards. It would be possible to establish higher U.S. standards but this would have a detrimental effect on owners of U.S. flag vessels and reduce their ability to compete with foreign operators.

One comment suggested that the IMO Explanatory Notes to the regulations on subdivision and damage stability of dry cargo ships be published as a NVIC as soon as possible. This has always been the Coast Guard's intention and publication of a NVIC is planned to coincide with the publishing of this final rule. In addition, the Coast Guard is working with the Society of Naval Architects and Marine Engineers to develop more detailed guidance for future publication. This comment also recommended that the U.S. position at IMO reflect the need for continued improvement of the international standard.

Two comments emphasized that these rules are rationally based and represent a reasonable safety standard for cargo ships, but acknowledged that reappraisal and refinement of these regulations must continue at IMO. One comment went on to point out that the rules as proposed are adaptable to changes in the state of the art because as many of the factors which influence damage stability as possible have been quantified separately, allowing future improvements of the international standard as better data or better analytic tools become available.

The Coast Guard is committed to the continued improvement and adoption of international stability standards for all ship types in order to improve the level of safety of foreign flag vessels visiting U.S. ports and to reduce unnecessary regulatory burdens on U.S. flag operators.

Regulatory Evaluation

This rulemaking is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11304; February 26, 1979). The ANPRM was considered significant because it suggested applying the proposed standard in advance of formal adoption by IMO. Further, the ANPRM announced that the Coast Guard would consider applying the proposed standard to new and existing foreign ships entering U.S. ports and generated a high level of interest in the international community. The adoption of a mandatory international subdivision and damage stability standard terminated the necessity for unilateral U.S. regulations. The regulations proposed in the NPRM, and adopted by this Final Rule, apply to new U.S. flag ships only. However, the Coast Guard continues to consider this rulemaking significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of the public interest in, and importance of, establishing minimum standards of subdivision and damage stability for dry cargo ships. The Coast Guard expects the adverse economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. These regulations implement an international standard that requires a mandatory minimum level of subdivision for new ships. This standard is easier to achieve than the traditional one-compartment standard required to qualify for MARAD subsidies. This results in no increased cost for subsidized ships due to these regulations. For new ships built without MARAD subsidies, these regulations require a subdivision standard already adopted on a world wide basis and will have no adverse effects on competition.

This rulemaking complements ongoing international efforts to consolidate and refine the intact stability standards for all vessel types. The draft IMO Code of Intact Stability is expected to be adopted at the next IMO Assembly in October 1993. The Coast Guard intends to propose adoption of many portions of this draft code, the most significant of which affects large containerships. The current U.S. regulations for intact stability were developed for 1940's era ships and have proved inappropriate and overly restrictive for large modern containerships. On April 2, 1992, the Coast Guard published a notice in the **Federal Register** (57 FR 11267) that allows the draft IMO intact stability standard for large containerships to be submitted as an equivalent to the current U.S. requirements for intact stability for containerships greater than 100 meters (328 feet) in length. The combined effect of the changes in both the intact and damage stability standards will be an increase in cargo capacity of U.S. flag vessels of 3 to 8 percent, without added danger to the vessel or crew. The Coast Guard projects that the potential annual benefit for the entire U.S. containership industry could be as high as $250 million.

Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) required the Coast Guard to consider whether this rulemaking would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These regulations impact owners and operators of large, oceangoing ships. None of these entities can be classified as a small entity. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C.

601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These rules do not increase the paperwork burden on the public. The only paperwork requirements involve ship design calculations that are used in the development of stability information that is already subject to Coast Guard review under 46 CFR 170.110. The Coast Guard previously submitted the requirements regarding the collection of stability information resulting from these and other calculations to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The corresponding OMB control number is 2115–0559.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

These regulations affect only large entities which own or operate ships engaged in interstate or international commerce. The authority to regulate the stability design criteria of these vessels has been committed to the Coast Guard by Federal statutes. These regulations, therefore, preempt state and local regulations regarding subdivision and damage stability for dry cargo ships engaged in interstate or international commerce.

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. These regulations require a minimum standard of subdivision and damage stability, for a type of ship for which no standards existed, with the intent of reducing the chance of a ship sinking and subsequently polluting the environment. These rules do not result in any of the following:

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts which are more than minimal on properties protected under 4(f) of the DOT Act as superseded by Public Law 97–449, and section 106 of the National Historic Preservation Act; or
4. Inconsistencies with any Federal, State or local laws, or administrative determinations relating to the environment.

A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 174

Marine safety, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 174 as follows:

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

1. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. In § 174.005, paragraphs (g) and (h) are added and reserved and paragraph (i) is added to read as follows:

§ 174.005 Applicability.

* * * * *

(g) Reserved.

(h) Reserved.

(i) Oceangoing ships of 500 gross tons or over, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships.

3. Subpart J, consisting of §§ 174.350, 174.335 and 174.360, is added to read as follows:

Subpart J—Special Rules Pertaining to Dry Cargo Ships

Sec.

174.350 Specific applicability.
174.355 Definitions.
174.360 Calculations.

Subpart J—Special Rules Pertaining to Dry Cargo Ships

§ 174.350 Specific applicability.

This subpart applies to each new ship of 500 gross tons or over, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships and integrated tug and barges (ITBs) when operating as a combined unit.

§ 174.355 Definitions.

New ship means a ship:

(1) For which the building contract is placed on or after February 1, 1992; or

(2) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after August 1, 1992; or

(3) The delivery of which is on or after February 1, 1997; or

(4) For which application for reflagging is made on or after February 1, 1997; or

(5) Which has undergone a major conversion:

(i) For which the contract is placed on or after February 1, 1992; or

(ii) In the absence of a contract, the construction work of which is begun on or after August 1, 1992; or

(iii) Which is completed on or after February 1, 1997.

§ 174.360 Calculations.

Each ship to which this subpart applies, must meet the minimum standard of subdivision and damage stability required for that ship by the International Convention for the Safety of Life at Sea, 1974, as amended, chapter II–1, part B–1. Compliance with the applicable requirements must be demonstrated by calculations and reflected in information on loading restrictions, such as a maximum height of the center of gravity (KG) or minimum metacentric height (GM) curve that is part of the stability information required by § 170.110 of this chapter and Regulation 25–8 of The International Convention for the Safety of Life at Sea, 1974, as amended, chapter II–1, part B–1.

Dated: March 10, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93–7591 Filed 3–31–93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 61

Thursday, April 1, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

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Printing schedules	523–3419

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Additional information	523–5230

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Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

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Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, APRIL

17081–17320.....1

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

CFR ISSUANCES 1993
January 1993 Editions and Projected April, 1993 Editions

This list sets out the CFR issuances for the January 1993 editions and projects the publication plans for the **April, 1993** quarter. A projected schedule that will include the **July, 1993** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1992–1993 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1993 editions:

Title

CFR Index

1–2

3 (Compilation)*

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999*
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949*
1950–1999*
2000–End

8*

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399
400–499
500–End*

11*

12 Parts:
1–199
200–219*
220–299*
300–499*
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

Projected April 1, 1993 editions:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0–1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End (Cover only)

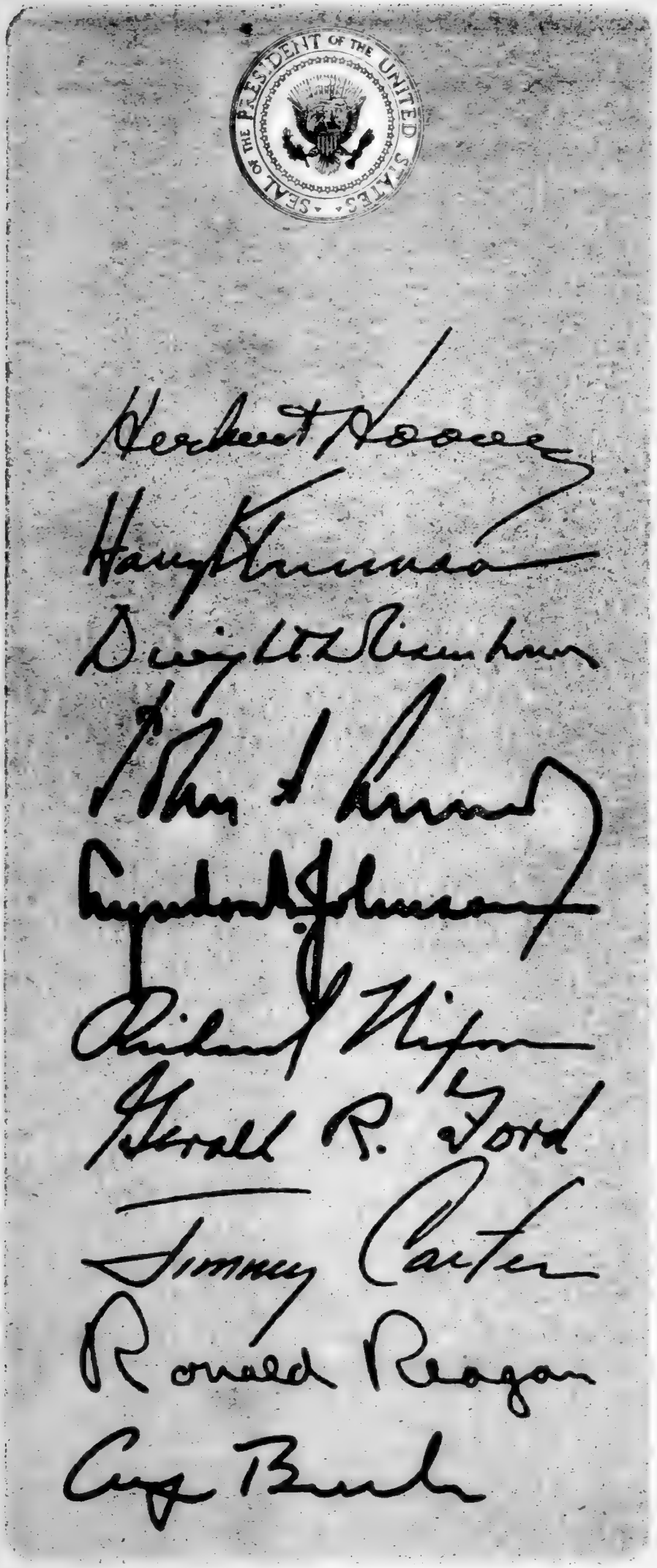
TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1993

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 3	May 17	June 1	June 30
April 2	April 19	May 3	May 17	June 1	July 1
April 5	April 20	May 5	May 20	June 4	July 6
April 6	April 21	May 6	May 21	June 7	July 6
April 7	April 22	May 7	May 24	June 7	July 6
April 8	April 23	May 10	May 24	June 7	July 7
April 9	April 26	May 10	May 24	June 8	July 8
April 12	April 27	May 12	May 27	June 11	July 12
April 13	April 28	May 13	May 28	June 14	July 12
April 14	April 29	May 14	June 1	June 14	July 13
April 15	April 30	May 17	June 1	June 14	July 14
April 16	May 3	May 17	June 1	June 15	July 15
April 19	May 4	May 19	June 3	June 18	July 19
April 20	May 5	May 20	June 4	June 21	July 19
April 21	May 6	May 21	June 7	June 21	July 20
April 22	May 7	May 24	June 7	June 21	July 21
April 23	May 10	May 24	June 7	June 22	July 22
April 26	May 11	May 26	June 10	June 25	July 26
April 27	May 12	May 27	June 11	June 28	July 26
April 28	May 13	May 28	June 14	June 28	July 27
April 29	May 14	June 1	June 14	June 28	July 28
April 30	May 17	June 1	June 14	June 29	July 29



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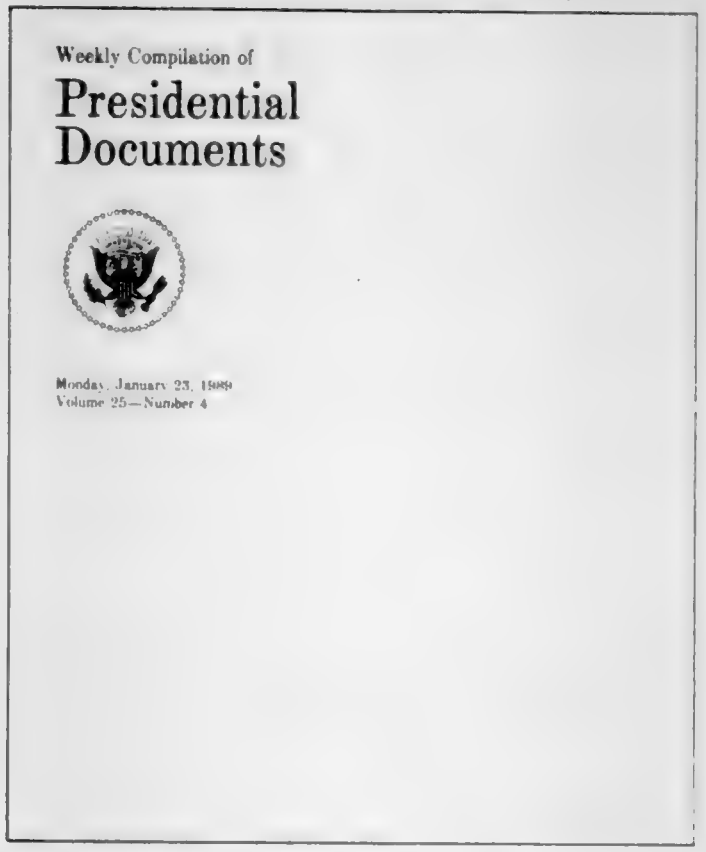

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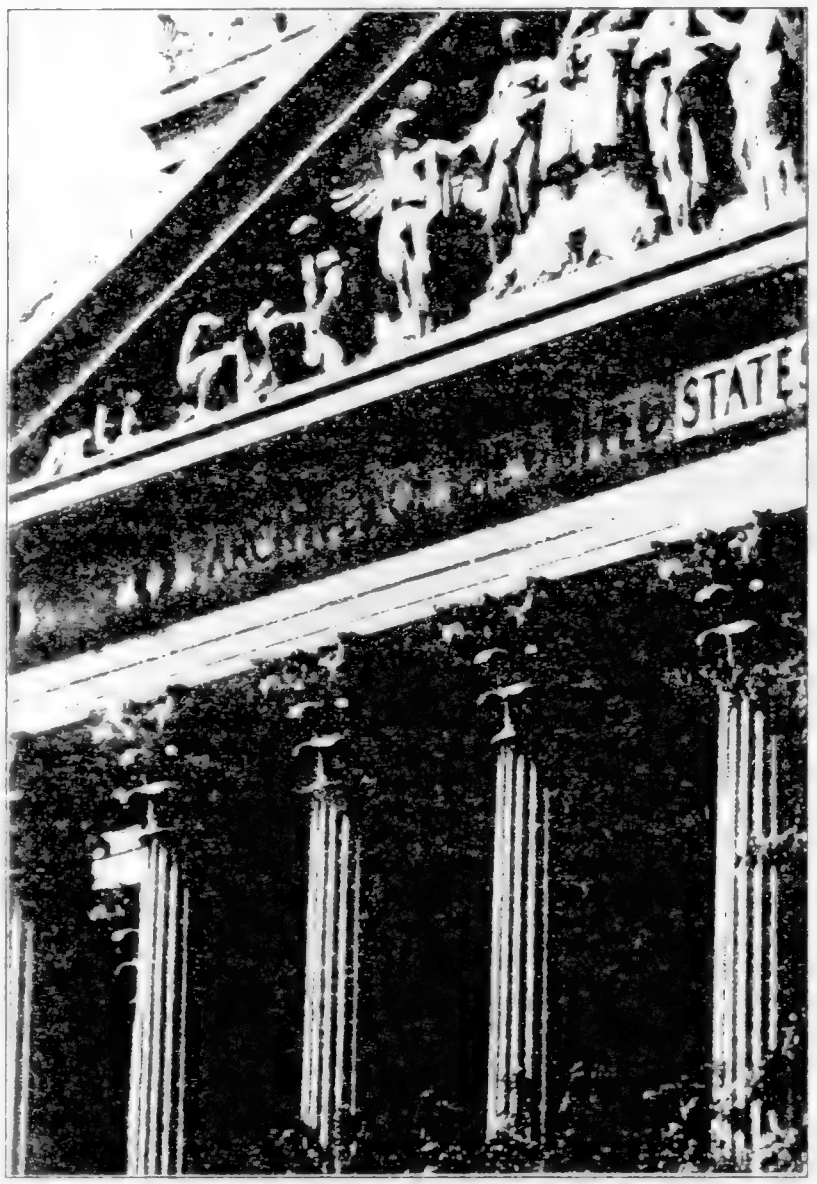

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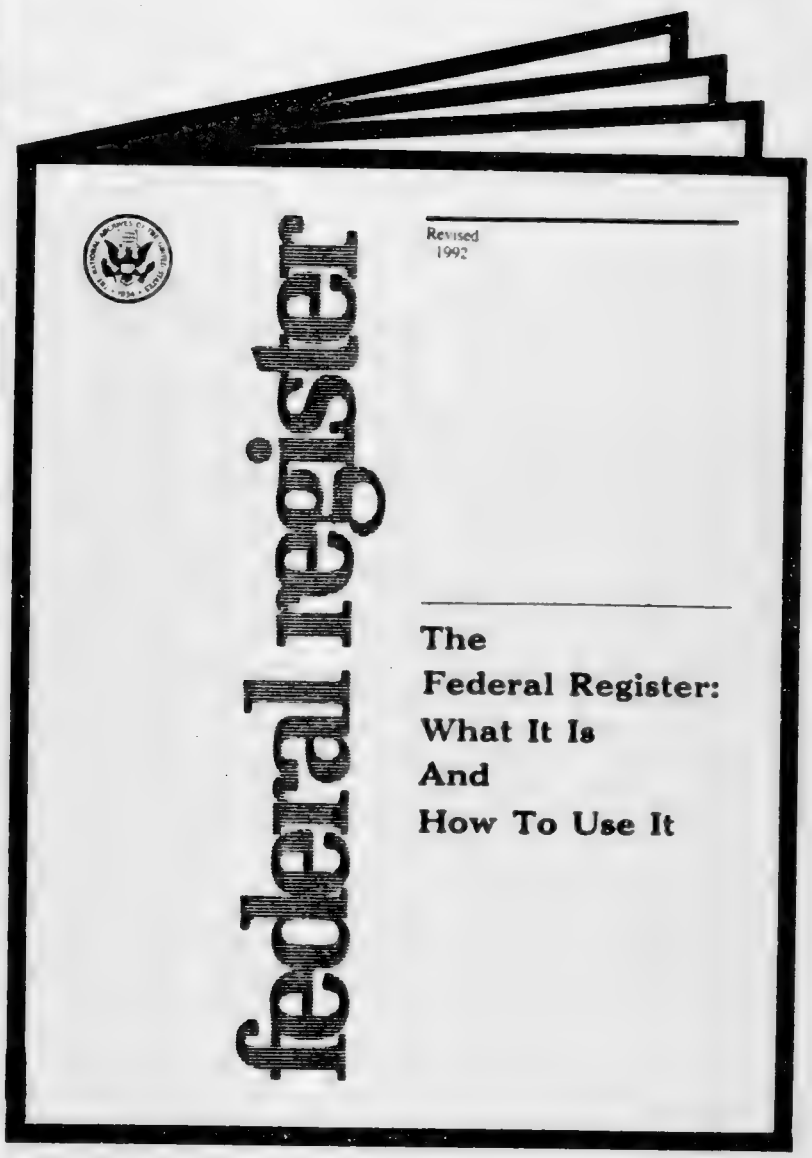

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Contents

Federal Register

Vol. 58, No. 62

Friday, April 2, 1993

Agriculture Department
See Food and Nutrition Service

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 17379

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 17385, 17386

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Laos, 17384

Commodity Futures Trading Commission
PROPOSED RULES
Complaints against registered persons; class action suits, 17369

Copyright Royalty Tribunal
NOTICES
Cable royalty fees:
Distribution proceedings, 17387

Defense Department
See Engineers Corps

Education Department
PROPOSED RULES
Postsecondary education:
Federal direct student loan program, 17472

Employment and Training Administration
NOTICES
Adjustment assistance:
Ardyne, Inc., 17430
Arkla Exploration Co., 17430
Bethlehem Steel Corp., 17430
Monessen, Inc., 17430

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 17431

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Gas Technology Information, Inc., 17387

Engineers Corps
PROPOSED RULES
Danger zones and restricted areas:
Atlantic Ocean south of Chesapeake Bay entrance, VA, 17373
Norfolk Naval Shipyard, VA, 17374

Environmental Protection Agency
NOTICES
Alternative fuels research strategy; document availability, 17395
Drinking water:
Public water supply supervision program—
Maryland, 17395
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 17396,
Weekly receipts, 17397
Toxic and hazardous substances control:
Polychlorinated biphenyls (PCBs); applications for disposal approval, 17397

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities under OMB review, 17398

Export Administration Bureau
NOTICES
Meetings:
Computer Systems Technical Advisory Committee, 17379

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 17469

Federal Aviation Administration
RULES
Control zones, 17322
Restricted areas, 17323
Standard instrument approach procedures, 17324, 17325
NOTICES
Airport noise compatibility program:
Pueblo Memorial Airport, CO, 17466
Exemption petitions; summary and disposition, 17467
Passenger facility charges; applications, etc.:
Lubbock International Airport, TX, 17467

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 17349
Television broadcasting:
Cable television systems—
Must-carry and retransmission consent provisions, 17350

PROPOSED RULES
Radio services, special:
Amateur services—
Message forwarding systems, 17375
NOTICES
Agency information collection activities under OMB review, 17399
Public safety radio communications plans:
Arkansas, 17399
New Mexico, 17399

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 17469

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Florida, 17400
Georgia, 17400
Virginia, 17400

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 17388, 17389
Applications, hearings, determinations, etc.:
Central Louisiana Electric Co., Inc., 17394
Northeast Utilities Service Co., 17394
NW Energy (William Lake), Limited Partnership; correction, 17394
Public Service Co. of Colorado, 17394

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 17469

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Barnett Banks, Inc., 17401
Farmers & Traders Bancshares, Inc., et al., 17401

Federal Trade Commission
NOTICES
Prohibited trade practices:
AE Clevite, Inc., 17405
ASFE, Association of Engineering Firms Practicing in the Geosciences, 17401
Fone Telecommunications, Inc., 17408
National Association of Social Workers, 17411

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Hartweg's golden sunburst, etc., 17376
NOTICES
Environmental statements; availability, etc.:
National Wildlife Refuge System management, 17426

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Fenbendazole, etc.; correction, 17346
Isoflurane, 17346
Food for human consumption:
Food labeling—
Dietary lipids and cancer; health claims and label statements; correction, 17343
Nutrient content claims; general principles, petitions, and definition of terms; correction, 17341
Nutrition labeling, mandatory status; and nutrient content revision; correction, 17328
NOTICES
Animal drugs, feeds, and related products:
New drug applications—
Stevan M. Rogers Farm; proposal to withdraw, 17412
Veterinary Medicine Center list of guidelines; availability, 17413
Human drugs:
Patent extension; regulatory review period determinations—
DAYPRO, 17416

Food and Nutrition Service
NOTICES
Child nutrition programs:
School breakfast—
National school lunch program and school breakfast program, 17378

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service

Health Care Financing Administration
NOTICES
Medicare:
Peer review organizations—
Contracts; in-State organizations statements of interest, 17417

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health services; Federal set-aside programs, 17418

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 17422

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Carbon steel butt-weld pipe fittings from—
Japan, 17380
Fresh and chilled Atlantic salmon from—
Norway, 17380
Melamine from—
Japan, 17382
Pads for woodwind instrument keys from—
Italy, 17382

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 17428
Declaratory order petitions—
Georgia-Pacific Corp., 17428

Justice Department
NOTICES
Pollution control; consent judgments:
Fiano, Lore, et al., 17429

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Meetings:
Business Research Advisory Council, 17429

Land Management Bureau
NOTICES
Alaska Native claims selection:
Sealaska Corp., 17423
Environmental statements; availability, etc.:
Oklahoma, 17423
Opening of public lands:
Oregon, 17424
Recreation use permit system:
Colorado River, etc., CO, 17424
Supplementary rule establishment; persons under 21 possessing alcoholic beverages on public land; prohibition, 17425
Survey plat filings:
Oregon, 17426

Maritime Administration
RULES
Subsidized vessels and operators:
Bulk cargo vessels; operating-differential subsidy; maintenance and repair subsidy rates; calculation, 17346

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 17432
Space Science and Applications Advisory Committee, 17432

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 17432
Nixon Presidential historical materials; opening of materials, 17433

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Presenting and Commissioning Advisory Panel, 17434

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 17419, 17420
National Heart, Lung, and Blood Institute, 17421
National Institute of General Medical Sciences, 17421
National Institute on Deafness and Other Communications Disorders, 17421

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 17366, 17367
Marine mammals:
Sea turtle conservation requirements; restrictions applicable to shrimp trawlers and other fisheries, 17364
NOTICES
Permits:
Endangered and threatened species, 17383
Marine mammals, 17383, 17384

National Park Service
NOTICES
Environmental statements; availability, etc.:
Cape Cod National Seashore, MA, 17427
Timpanogos Cave National Monument, UT, 17427
Meetings:
Chesapeake and Ohio Canal National Historical Park Commission, 17428

National Science Foundation
NOTICES
Meetings:
Chemical and Thermal Systems Special Emphasis Panel, 17434

Nuclear Regulatory Commission
RULES
Practice rules:
Domestic licensing proceedings—
Policy statement, 17321
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 17434
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
Combustion Engineering, Inc.; Hematite, MO, 17435
Applications, hearings, determinations, etc.:
Agriculture Department, 17436

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Indian Health Service facilities; inpatient and outpatient medical care; 1993 CY reimbursement rates, 17422

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Forges Field Development, MA, 17438
Oak Summit, CA, 17439

Securities and Exchange Commission
RULES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Investment and business development companies and institutional investment managers; operational phase implementation

Correction. 17327
NOTICES
Meetings; Sunshine Act, 17469
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 17462
Applications, hearings, determinations, etc.:
Public utility holding company filings, 17463
Thomson Fund Group et al., 17464

Selective Service System
NOTICES
Health care personnel delivery system; development, 17439

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 17372

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Maritime Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 17466
Certificates of public convenience and necessity and foreign air carrier permits; weekly receipts, 17465

Separate Parts In This Issue

Part II
Department of Education, 17471

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
2.....17321

14 CFR
71.....17322
73.....17323
97 (2 documents).....17324, 17325

17 CFR
200.....17327
202.....17327
229.....17327
230.....17327
239.....17327
240.....17327
249.....17327
250.....17327
259.....17327
270.....17327
274.....17327

Proposed Rules:
12.....17369

21 CFR
1.....17328
5.....17341
101 (3 documents).....17328, 17341, 17343
529.....17346
558.....17346

30 CFR

Proposed Rules:
935.....17372

33 CFR

Proposed Rules:
334 (2 documents).....17373, 17374

34 CFR

Proposed Rules:
685.....17472

46 CFR
252.....17346

47 CFR
73.....17349
76.....17350

Proposed Rules:
97.....17375

50 CFR
217.....17364
227.....17364
675 (2 documents).....17366, 17367

Proposed Rules:
17.....17376

Rules and Regulations

Federal Register
Vol. 58, No. 62
Friday, April 2, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AE59

Policy and Procedure for NRC Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Modification and request for comments.

SUMMARY: The NRC is modifying Supplement VI of its Enforcement Policy to revise certain of the examples of severity levels for violations associated with the quality management program required by 10 CFR 35.32. The examples of severity levels are used in the enforcement process to provide guidance in determining the safety and regulatory significance of a particular violation.

DATES: This revised policy statement is effective on April 2, 1993. Submit comments on or before May 3, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Comments may be considered in future revisions of the statement of policy.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741.

SUPPLEMENTARY INFORMATION: On July 25, 1991, the Commission published in the **Federal Register** (56 FR 34121) a final rule, effective January 27, 1992, requiring persons subject to the requirements of 10 CFR Part 35 to establish a quality management program and meet certain reporting requirements for misadministrations. As part of that Notice, the Commission modified its Enforcement Policy to provide examples in Supplement VI of severity levels for potential violations associated with the new requirements. The examples of severity level are used in the enforcement process to provide guidance in determining the safety and regulatory significance of a particular violation. The enforcement action taken is, in part, based upon the severity level decision. As a result of comments on the rulemaking, NRC has reconsidered the severity level examples for misadministrations.

The NRC is revising examples B.3, C.6, and D.4 of Supplement VI, which are the examples of violations of Severity Levels II, III, and IV, respectively. The basic purpose and thrust of the revisions is to provide greater emphasis, and attach greater importance, to violations which are indicative of or flow from deficiencies of a programmatic nature. Such deficiencies are preventable and are more likely to have a widespread or severe impact than are isolated mistakes involving human error made in the treatment of individual patients. The revisions also reflect a reduced Severity Level assignment for individual violations which represent isolated mistakes or errors of limited consequences that qualify as reportable misadministrations but are not indicative of or due to any programmatic failure or weakness.

The current examples for Severity Levels II and III, examples B.3 and C.6, reflect the assignment of Severity Level based on whether or not a misadministration occurred and the magnitude of overdose involved. Under the current examples, any failure to follow quality management program procedures resulting in an overdose of 50 percent or more is automatically a Severity Level II event; any misadministration not involving an overdose of 50 percent or more is automatically a Severity Level III event, regardless of whether there is an overexposure or underexposure.

Neither of these examples considers the causes of the misadministration. These examples do not provide for any assessment of the scope or magnitude of any programmatic deficiencies, nor do they depend, in any way, on whether or not the misadministration represented an isolated and inconsequential event resulting purely from human error. While the consequences of a misadministration are important, as reflected in example A.4 for Severity Level I which addresses misadministrations involving death or serious injury to a patient, it is appropriate in less consequential misadministrations to give consideration to the root cause in determining the severity level. This approach to enforcement is more likely to focus licensee attention on the need to address programmatic deficiencies with corrective action. Therefore, examples B.3 and C.6 are being revised to consider the degree of programmatic weakness in the causes of a misadministration.

Under revised example B.3, Severity Level II is assigned whenever a misadministration occurs as a result of a substantial failure to implement the quality management program required by 10 CFR 35.32, regardless of whether or not an overdose of 50 percent or more is involved. The assignment of Severity Level II is no longer dependent on the occurrence of an overdose of at least 50 percent.

Under revised example C.6, Severity Level III is assigned: (1) Whenever there is a substantial failure to implement the quality management program required by 10 CFR 35.32 even if there is no resulting misadministration; (2) if programmatic weakness in implementation of the quality management program results in a misadministration; or (3) if a misadministration is not reported.

Example D.3, the example for a Severity Level IV violation, is being revised to include instances where failure to follow the quality management program, including procedures, results in a reportable misadministration provided that such failures are isolated, have limited consequences, and do not demonstrate a

programmatic weakness in the implementation of the quality management program. A lower Severity Level may be assigned to those events where simple human error results in an isolated violation despite the development and implementation of a fully adequate quality management program as required by 10 CFR 35.32, including appropriate instruction, training, policies and procedures, written directives, and supervision. However, such violations involving misadministrations with potential for residual consequences will be considered for a Severity Level III categorization.

The Commission, nonetheless expects that all violations of NRC regulations and the licensee's quality management programs will be addressed with appropriate corrective actions so as to provide a high degree of confidence that byproduct material or radiation from byproduct material is administered to patients only as intended and directed by authorized user physicians. In this regard, the Commission emphasizes that all such violations are of concern, and that repetitive Severity Level IV violations may result in escalation of the sanctions applied, and could lead to the imposition of civil penalties or other sanctions, *e.g.*, suspension or revocation of a license, as the Commission may determine to be either necessary or appropriate to enforce compliance.

The determination of severity level based on the degree of programmatic weaknesses will be fact dependent. While generally a single failure that resulted in a misadministration would not be indicative of a programmatic weakness, depending on the circumstances, it may. For example, the failure to train one technician may indicate a programmatic weakness for a small program or where the technician not trained is the sole technician on a weekend shift.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, and Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Appendix C, Supplement VI is amended by revising examples B.3, C.6, and D.3 to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement VI—Fuel Cycle and Materials Operations

* * * * *

B. Severity Level II—Violations involving for example:

* * * * *

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration.

C. Severity Level III—Violations involving for example:

* * * * *

6. Substantial failure to implement the quality management program as required by § 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration.

* * * * *

D. Severity Level IV—Violations involving for example:

* * * * *

3. Failure to follow the quality management program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by § 35.32; or

* * * * *

Dated at Rockville, Maryland, this 26th day of March 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–7522 Filed 4–1–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANM–23]

Amendment to Coppertown Control Zone; Coppertown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Coppertown Control Zone, Coppertown, Montana, from full-time to part-time. A reduction in personnel staffing of the Butte Flight Service Station has resulted in weather observations not being available 24 hours-a-day. This action will bring publications up-to-date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 utc May 27, 1993.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 92–ANM–23, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On December 7, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulation (14 CFR part 71) to change the status of the Coppertown control zone from full-time to part-time (57 FR 57709).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the rule is adopted as proposed. The coordinates for this Airspace Docket are based on North American Datum 83. Control Zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the Order.

The Rule

This amendment of part 71 of the Federal Aviation Regulations changes the status of the Coppertown Control Zone, Coppertown, Montana, from full-time to part-time. A reduction in personnel staffing at the Butte Flight Service Station has resulted in weather observations not being available 24 hours-a-day, and, therefore, full-time control zone service is not available. This amendment allows for changes in the hours of effectiveness by issuance of Notices to Airmen when minor variations in time of designation are anticipated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ANM MT CZ Coppertown, MT [Revised]
Butte, Bert Mooney, Airport , MT (lat. 45°57'12" N, long. 112°29'48" W)
Coppertown VORTAC (lat. 46°01'58" N, long. 112°44'50" W)

Within a 4.3 mile radius of the Bert Mooney Airport, and within 1.8 miles each side of the Coppertown VORTAC 115° radial extending from the 4.3-mile radius to the VORTAC, and within 2.7 miles each side of the Bert Mooney Airport Runway 15 localizer course extending from the 4.3-mile radius to 11.4 miles northwest of the airport. This control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time thereafter, will be continuously published in the airport/facility directory.

* * * * *

Issued in Seattle, Washington, on March 16, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–7743 Filed 4–1–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 93–ANM–15]

Amendment To Using Agency for Restricted Areas R–5701, R–5706, R–6701, R–6707

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the using agency for Restricted Areas R–5701 and R–5706 in Oregon, and R–6701 and R–6707 in the State of Washington. Currently, the Commander, Medium Attack Tactical Electronic Warfare Wing, Naval Air Station, Whidbey Island, WA, is the designated using agency for these restricted areas. As a result of reorganization within the United States Navy, the new using agency is U.S. Navy, Commanding Officer, NAS Whidbey Island, Oak Harbor, WA.

EFFECTIVE DATE: 0901 UTC, May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7686.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the name of the using agency for Restricted Areas R–5701 and R–5706 located in Oregon, and R–6701 and R–6707 located in the State of Washington. Currently, the Commander, Medium Attack Tactical Electronic Warfare Wing, Naval Air Station, Whidbey Island, WA, is the designated using agency for these restricted areas. As a result of reorganization within the United States Navy, the new using agency is U.S. Navy, Commanding Officer, NAS Whidbey Island, Oak Harbor, WA. This action is an editorial change only and does not affect the designated boundaries, altitudes, times of designation, or activities conducted in these restricted areas. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Sections 73.57 and 73.67 of part 73 of the Federal Aviation Regulations were republished in Handbook 7400.8 dated November 1, 1991.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.57 [Amended]

2. Section 73.57 is amended as follows:

R–3701 Boardman, OR [Amended]

By removing "Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, WA," and substituting the following:

"Using agency. U.S. Navy, Commanding Officer, NAS Whidbey Island, Oak Harbor, WA."

R–3706 Boardman, OR [Amended]

By removing "Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, WA," and substituting the following:

"Using agency. U.S. Navy, Commanding Officer, NAS Whidbey Island, Oak Harbor, WA."

§ 73.67 [Amended]

3. Section 73.67 is amended as follows:

R–6701 Admiralty Inlet, WA [Amended]

By removing "Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, WA," and substituting the following:

"Using agency. U.S. Navy, Commanding Officer, NAS Whidbey Island, Oak Harbor, WA."

R–6707 Quoets, WA [Amended]

By removing "Using agency. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, WA," and substituting the following:

"Using agency. U.S. Navy, Commanding Officer, NAS Whidbey Island, Oak Harbor, WA."

Issued in Washington, DC, on March 24, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–7742 Filed 4–1–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27216; Amdt. No. 1539]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the

close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on March 26, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective May 27, 1993*

Decatur, AR, Crystal Lake, VOR/DME RWY 13, Amdt. 8
Huntsville, AR, Huntsville-Madison County Regional, VOR/DME RWY 12, Amdt. 1
Siloam Springs, AR, Smith Field, VOR–A, Amdt. 8
Siloam Springs, AR, Smith Field, VOR/DME RNAV RWY 18, Amdt. 1
Springdale, AR, Springdale Muni, VOR RWY 18, Amdt. 13
Springdale, AR, Springdale Muni, VOR/DME RWY 36, Amdt. 7
Springdale, AR, Springdale Muni, ILS RWY 18, Amdt. 4
Statesboro, GA, Statesboro, Muni, LOC RWY 32, Amdt. 4
Statesboro, GA, Statesboro, Muni, NDB RWY 32, Amdt. 4
Coeur D'Alene, ID, Coeur D'Alene Air Terminal, VOR RWY 1, Amdt. 1, Cancelled
Coeu D'Alene, ID, Coeur D'Alene Air Terminal, VOR RWY 1, Amdt. 1, Orig.
West Union, IA, George L. Scott Muni, NDB RWY 35, Amdt. 4
West Union, IA, George L. Scott Muni, VOR/DME–A, Amdt. 3
New Orleans, LA, Lakefront, VOR–A, Amdt. 16
New Orleans, LA, Lakefront, VOR–B, Amdt. 8
New Orleans, LA, Lakefront, VOR RWY 18R, Amdt. 3
New Orleans, LA, Lakefront, VOR/DME RWY 36L, Amdt. 6
New Orleans, LA, Lakefront, ILS RWY 18R, Amdt. 11
New Orleans, LA, New Orleans Intl (Moisant Field), LOC BC RWY 10, Amdt. 13
New Orleans, LA, New Orleans Intl (Moisant Field), NDB RWY 10, Amdt. 25
New Orleans, LA, New Orleans Intl (Moisant Field), ILS RWY 1, Amdt. 15
New Orleans, LA, New Orleans Intl (Moisant Field), ILS RWY 10, Amdt. 1
New Orleans, LA, New Orleans Intl (Moisant Field), ILS RWY 28, Amdt. 3
Charlotte, MI, Fitch H. Beach, VOR RWY 20, Amdt. 10
Eaton Rapids, MI, Skyway Estates, VOR–A, Amdt. 1
Grand Ledge, MI, Abrams Muni, VOR–A, Amdt. 5
Grand Rapids, MI, Kent County Intl, NDB RWY 26L, Amdt. 19
Grand Rapids, MI, Kent County Intl, ILS RWY 26L, Amdt. 19
Ionia, MI, Ionia County, VOR–A, Orig.
Ionia, MI, Ionia County, VOR RWY 27, Amdt. 6, Cancelled
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 6, Amdt. 19
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 14, Amdt. 19
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 24, Amdt. 21
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 32, Amdt. 17
Jackson, MI, Jackson County-Reynolds Field, NDB RWY 24, Amdt. 14
Jackson, MI, Jackson County-Reynolds Field, ILS 24, Amdt. 14
Lansing, MI, Capital City, VOR RWY 6, Amdt. 24
Lansing, MI, Capital City, VOR RWY 24, Amdt. 8
Lansing, MI, Capital City, NDB RWY 28L, Amdt. 24
Lansing, MI, Capital City, ILS RWY 10R, Amdt. 9
Lansing, MI, Capital City, ILS RWY 28L, Amdt. 25
Lansing, MI, Capital City, RADAR–1, Amdt. 14
Mason, MI, Mason Jewett Field, VOR–A, Amdt. 3
Chappell, NE, Billy G. Ray Field, NDB RWY 30, Amdt. 2
Orangeburg, SC, Orangeburg Muni, NDB RWY 5, Amdt. 3A, Cancelled
Orangeburg, SC, Orangeburg Muni, NDB RWY 5, Orig.
Wise, VA, Lonesome Pine, SDF/DME RWY 24, Amdt. 3

* * * *Effective March 19, 1993*

Seattle, WA, Boeing Field/King County Intl, ILS RWY 13R, Amdt. 27.

[FR Doc. 93–7740 Filed 4–1–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27217; Amdt. No. 1540]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendments state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on March 26, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
02/22/93	NJ	Linden	Linden Airport	3/0922	VOR/DME–D ORIG...
03/12/93	AL	Troy	Troy Muni	3/1284	NDB RWY 7 AMDT 10...
03/12/93	AL	Troy	Troy Muni	3/1285	ILS RWY 7 AMDT 7...
03/12/93	OH	Hillsboro	Highland County	3/1294	VOR/DME–A AMDT 1...
03/12/93	SC	Sumter	Sumter Muni	3/1282	NDB RWY 22 AMDT 2A...
03/16/93	KS	Hutchinson	Hutchinson Muni	3/1388	VOR/DME RWY 21 AMDT 5...
03/16/93	KS	Hutchinson Muni	Hutchinson Muni	3/1389	VOR RWY 3 AMDT 18...
03/18/93	GA	Atlanta	Fulton County Airport-Brown Field.	3/1484	ILS RWY 8, AMDT 15...
03/18/93	SC	Manning	Santee Cooper Regional	3/1465	NDB RWY 1 AMDT 1...
03/18/93	SC	Manning	Santee Cooper Regional	3/1467	VOR/DME–A AMDT 3...
03/19/93	AR	Rogers	Rogers Municipal-Carter Field	3/1492	NDB RWY 19 ORIG–A...
03/19/93	MI	Bay City	James Clements Muni	3/1508	VOR–A AMDT 11...
03/19/93	MI	Gladwin	Charles C. Zettel Memorial	3/1509	NDB RWY 27 AMDT 3...
03/19/93	MN	Ely	Ely Muni	3/1513	VOR/DME RWY 30 AMDT 3A...
03/19/93	MN	Ely	Ely Muni	3/1515	VOR RWY 30 AMDT 5A...
03/19/93	MN	Ely	Ely Muni	3/1516	VOR/VOR RWY 12 AMDT 5A...
03/22/93	KS	Augusta	Augusta Muni	3/1573	VOR/DME RNAV RWY 36 ORIG...
03/22/93	MI	Wixom	Spencer Field	3/1554	VOR–A AMDT 1...
03/22/93	MO	Sedalia	Sedalia Memorial	3/1545	NDB RWY 18 AMDT 7A...
03/22/93	WV	Beckley	Raleigh County Memorial	3/1558	VOR RWY 10 AMDT 12...
03/22/93	WV	Beckley	Raleigh County Memorial	3/1559	VOR RWY 19 AMDT 3...
03/23/93	MI	Midland	Jack Barstow	3/1576	VOR–A AMDT 5...
03/23/93	MI	Owosso	Owosso Community	3/1578	VOR RWY 28 AMDT 5...
03/24/93	FL	Jacksonville	Jacksonville Intl	3/1602	LOC BC RWY 31 AMDT 8...
03/24/93	IN	Peru	Peru Muni	3/1595	VOR RWY 1AMDT 5...
03/24/93	MN	Thief River Falls	Thief River Falls Regional	3/1596	VOR/DME RWY 31 AMDT 3...
03/24/93	MN	Thief River Falls	Thief River Falls Regional	3/1597	ILS RWY 31 AMDT 2...
03/24/93	MN	Thief River Falls	Thief River Falls Regional	3/1598	NDB RWY 31 AMDT 1...
03/24/93	MN	Thief River Falls	Thief River Falls Regional	3/1599	VOR RWY 13 AMDT 8...
03/24/93	MN	Thief River Falls	Thief River Falls Regional	3/1600	VOR/DME RWY 13 AMDT 2...
03/24/93	MN	Thief River Falls	Thief River Falls Regional	3/1601	VOR RWY 31 AMDT 8...
03/24/93	OH	West Union	Alexander Salamon	3/1603	NDB RWY 23 AMDT 3...
03/25/93	MI	Detroit	Willow Run	3/1610	ILS RWY 5R AMDT 14...
03/25/93	MI	Marlette	Marlette	3/1611	VOR/DME–A AMDT 5...
09/19/93	MN	Ely	Ely Muni	3/1514	VOR/DME RWY 12 AMDT 3A...

[FR Doc. 93–7741 Filed 4–1–93; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 202, 229, 230, 239, 240, 249, 250, 259, 270, and 274

[Release Nos. 33–6984; 34–32056; 35–25771; IC–19364]

Rulemaking for EDGAR System—Investment Companies and Institutional Investment Managers and Public Utility Holding Companies; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to interim rules.

SUMMARY: This document contains corrections to the interim rules that were published Thursday, March 18, 1993 (58 FR 14848 and 14999). Those rules relate to the implementation of the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.

EFFECTIVE DATE: These rules are effective April 26, 1993 except provisions relating to Financial Data Schedules which are effective November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ruth Armfield Sanders, Staff Attorney, at (202) 272–7714 and Richard T. Miller, Staff Attorney, at (202) 504–2268, Division of Investment Management.

SUPPLEMENTARY INFORMATION:

Background

The interim rules that are the subject of these corrections implement mandated electronic filing on the EDGAR system for registrants whose filings are processed by the Division of Investment Management and for those making filings with respect to such registrants. Development and implementation of the EDGAR system was effected pursuant to Section 35A of the Securities Exchange Act of 1934 (15 *U.S.C. 78ll*).

Correction of Publication

Accordingly, the publication on March 18, 1993 of the interim rules, which were the subject of FR Doc. 93–4806 and 93–4807, is corrected as follows:

1. On page 14848, second column, beginning on the fifth line of the **DATES** caption, the parenthetical is removed and in its place add the following: "contained in § 229.601(a)(1); § 230.483(e); Form S–6 (§ 239.16); § 270.20a-4; Form N-SAR (§ 274.101); Form N–2 (§§ 239.14 and 274.11a-1); Form N–1 (§§ 239.15 and 274.11); N–1A (§§ 239.15A and 274.11A); Form N–3 (§§ 239.17a and 274.11b); Form N–4 (§§ 239.17b and 274.11c) and Form N–5 (§§ 239.24 and 274.5)".

§ 200.30 [Corrected]

2. On page 14857, first column, beginning in the 10th line of the regulatory text of § 200.30–5(j) the words "rule 12(b) of Regulation S-T (§ 232.12(b) of this chapter)" is corrected to read "Regulation S-T".

3. On page 14999, second column, beginning in the second line (fifth line of the **DATES** caption), the parenthetical is removed and in its place add the following: "contained in Form U5S (§ 259.5s); Form U–1 (§ 259.101); Form

U–13–60 (§ 259.313); and Form U–3A–2 (§ 259.402)".

Dated: March 29, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–7695 Filed 4–1–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 101

[Docket Nos. 90N–0135, 91N–0162, 78P–0091, 87P–0194/CP, and 90P–0052]

RIN 0905–AD08

Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2079). The document amended the regulations to require nutrition labeling on most foods that are regulated by FDA. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

DATES: Effective May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

In FR Doc. 92–31501, beginning on page 2079 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2079, in the first column, under the caption "**DATES:**", in lines 1 and 9, "February 14, 1994" is corrected to read "May 8, 1994"; and under the caption "**FOR FURTHER INFORMATION CONTACT:**", beginning in line 2, the mail code "(HFF–200)" is corrected to read "(HFS–165)".

2. On page 2081, in the first column, in the second full paragraph, in line 9, a closing parenthesis is added after the word "acids"; and in the second column, in the first full paragraph, in line 21, a closing parenthesis is added after "(ii)".

3. On page 2097, in the second column, in the second full paragraph, in the fourth line from the bottom, the word "carcinogenicity" is corrected to read "cariogenicity".

4. On page 2099, in the third column, in the third full paragraph, beginning in the second line from the bottom, the phrase "mannitol) or is GRAS (e.g., xylitol, sorbitol)" is corrected to read "mannitol or xylitol) or is GRAS (e.g., sorbitol)".

5. On page 2105, in the third column, in the fifth full paragraph, beginning in line 8, the phrase "Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260)" is corrected to read "Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition".

6. On page 2113, in the third column, beginning in the sixth line from the bottom, the phrase "Nutrient Surveillance Branch (HFF–266)" is corrected to "Office of Food Labeling (HFS–150)".

7. On page 2129, in the third column, in the first full paragraph, in line 10, the phrase ",as provided for by § 101.9(d)(8)" is removed and a period is added after the word "values".

8. On page 2132, in the first column, in the first full paragraph, in the third line from the bottom, "§ 101.9(d)(9)" is corrected to read "§ 101.9(d)(10)".

9. On page 2138, in the first column, in the second full paragraph, in line 9, "§ 101.9(d)(ii)" is corrected to read "§ 101.9(d)(11)".

10. On page 2142, in the second column, in the second full paragraph, in the fourth line from the bottom, the word "carcinogenicity" is corrected to read "cariogenicity"; and in the third column, after the second full paragraph, in heading number "5.", the phrase "Source of" is corrected to read "Source of _____".

11. On page 2143, in the second column, in the first full paragraph, in line 8, the word "added" is added after the word "any".

12. On page 2157, in the first column, in the first full paragraph, beginning in the sixth line from the bottom, the phrase "Office of Nutrition and Food Sciences (HFF–200)" is corrected to read "Office of Food Labeling (HFS–150)".

13. On page 2164, in the first column, in the first full paragraph, beginning in the fifth line from the bottom, the phrase "Division of Nutrition (HFF–260), Office of Nutrition and Food Sciences" is corrected to read "Office of Food Labeling (HFS–150)".

§ 101.9 [Corrected]

The following corrections are made in § 101.9 *Nutrition labeling of food*:

14. On page 2175, in the second column, beginning in the sixth line from the bottom in paragraph (c)(1)(i)(A), the phrase "Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260)," is corrected to read "Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition".

15. On page 2177, in the first column, beginning in line 14 of paragraph (c)(6)(iii), the phrase "(e.g., mannitol) or is generally recognized as safe (e.g., xylitol, sorbitol)" is corrected to read "(e.g., mannitol or xylitol) or is generally recognized as safe (e.g., sorbitol)"; in the third column, beginning in the 18th line from the bottom of paragraph (c)(7)(ii), the phrase "Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260)" is corrected to read "Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition".

16. On page 2178, in the first column, in paragraph (c)(8)(i), beginning in line 7, the phrase "RDI's in paragraph (c)(8)(iv) of this section that" is corrected to read "RDI's that"; in paragraph (c)(8)(ii), in the last line, the phrase "minerals that are:" is corrected to read "minerals need not be declared if neither the nutrient nor the component is otherwise referred to on the label or in labeling or advertising and the vitamins and minerals are:"; and in paragraph (c)(8)(ii)(B), beginning in line 3, the phrase "statement need not be declared if neither the nutrient nor the component is otherwise referred to on the label or in labeling or advertising" is corrected to read "statement".

17. On page 2179, in the second column, in paragraph (d)(8), in line 6, the phrase "Iron 4%) as shown" is corrected to read "Iron 4%) or may be listed in two columns as shown"; in paragraph (d)(9)(i), in line 4, the word "value" is corrected to read "values"; in paragraph (d)(9)(ii), in line 4, "(d)(5)(ii)" is corrected to read "(d)(7)(ii)"; beginning in line 5, the phrase "and the DRV established in paragraph (c)(7)(iii) of this section shall be inserted on the same line in the numeric columns" is corrected to read "and a value of 50 g shall be inserted on the same line in the column headed '2,000' and a value of 65 g in the column headed '2,500'"; and in paragraph (d)(9)(iii), in line 2, "(d)(5)(i)" is corrected to read "(d)(7)(i)".

18. On page 2180, in paragraph (d)(12), the sample label is corrected to read as follows:

BILLING CODE 4160–01–F

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving

Calories 260 Calories from Fat 120

	% Daily Value*
Total Fat 13g	**20**%
Saturated Fat 5g	**25**%
Cholesterol 30mg	**10**%
Sodium 660mg	**28**%
Total Carbohydrate 31g	**10**%
Dietary Fiber 0g	**0**%
Sugars 5g	
Protein 5g	

Vitamin A 4%	•	Vitamin C 2%
Calcium 15%	•	Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

19. On page 2181, in the first column, in paragraph (e), beginning in line 10, the phrase "are established in paragraph (c)(8)(iv) of this section" is corrected to read "are established".

20. On page 2182, in paragraph (e)(5), the sample label is corrected to read as follows:

Nutrition Facts

Serving Size 1/12 cake (80g)
Servings Per Container 12

Amount Per Serving	Mix	Baked
Calories	190	280
Calories from Fat	45	140
	% Daily Value**	
Total Fat 5g*	**8**%	**24**%
Saturated Fat 2g	**10**%	**13**%
Cholesterol 0mg	**0**%	**23**%
Sodium 300mg	**13**%	**13**%
Total Carbohydrate 34g	**11**%	**11**%
Dietary Fiber 0g	**0**%	**0**%
Sugars 18g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	6%	8%
Iron	2%	4%

* Amount in Mix

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

21. On page 2183, in the first column, in paragraph (f)(2)(ii), in line 2, "(f)(1)" is corrected to read "(f)"; in paragraph (f)(2)(iv), in line 1, the phrase "minerals that are" is corrected to read "minerals listed in paragraph (c)(8)(iv) of this section"; in the third column, in paragraph (g)(8), beginning in the second line from the bottom, the phrase "Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260)," is corrected to read "Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition".

22. On page 2184, in the first column, in paragraph (g)(9), beginning in the fourth line from the bottom, and in the second column, in paragraph (h)(3)(iv), beginning in the fifth line from the bottom, the phrase "Office of Nutrition and Food Sciences (HFF–200)" is corrected to read "Office of Food Labeling (HFS–150)".

23. On page 2185, in the first column, in paragraph (j)(4), in line 12, the word "Foods" is corrected to read "Examples of foods"; and in the third column, in paragraph (j)(13)(ii)(A), in line 7, the phrase "if the package shape or size" is corrected to read "if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size".

24. On page 2187, Nutrition Facts, the sample label is corrected to read as follows:

Nutrition Facts

Serv. Size 1/3 cup (56g)
Servings about 3
Calories 80
Fat Cal. 10

*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/serving	% DV*	Amount/serving	% DV*
Total Fat 1g	**2%**	**Total Carb.** 0g	**0%**
Sat.Fat 0g	**0%**	Fiber 0g	**0%**
Cholest. 10mg	**3%**	Sugars 0g	
Sodium 200mg	**8%**	**Protein** 17g	

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 6%

25. On page 2189, in appendix B to part 101, the illustration is corrected to read as follows:

Appendix B to Part 101

Examples of Graphic Enhancements used by the FDA

A.Overall

1. Nutrition Facts Label is boxed with all black or one color type printed on a white or neutral ground.

B. Typeface and size

1. The "Nutrition Facts" label uses 6 point or larger Helvetica Black and/or Helvetica Regular type. In order to fit some formats the typography may be kerned as much as -4, (tighter kerning reduces legibility).
2. Key nutrients & their % Daily Value are set in 8 point Helvetica Black (but "%" is set in Helvetica Regular).
3. "Nutrition Facts" is set in either Franklin Gothic Heavy or Helvetica Black to fit the width of the label flush left and flush right.
4. "Serving Size" and "Servings per container" are set in 8 point Helvetica Regular with 1 point of leading.
5. The table labels (for example; "Amount per Serving") are set 6 point Helvetica Black.
6. Absolute measures of nutrient content (for example; "1g") and nutrient subgroups are set in 8 point Helvetica Regular with 4 points of leading.
7. Vitamins and minerals are set in 8 point Helvetica Regular, with 4 points of leading, separated by 10 point bullets.
8. All type that appears under vitamins and minerals is set in 6 point Helvetica regular with 1 point of leading.

C. Rules

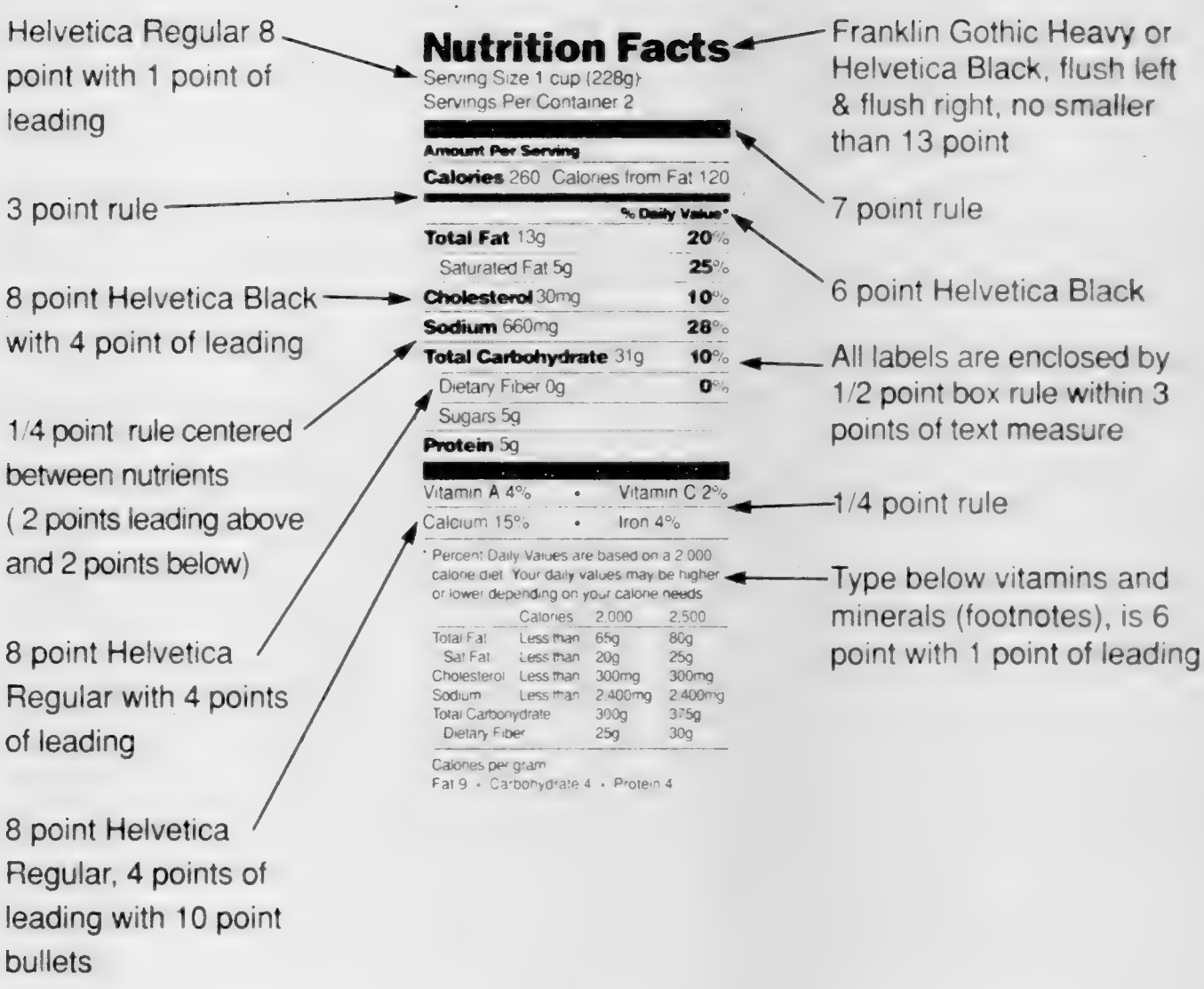
1. A 7 point rule separates large groupings as shown in example. A 3 point rule separates calorie information from the nutrient information.
2. A hairline rule or 1/4 point rule separates individual nutrients, as shown in the example. Descenders do not touch rule. The top half of the label (nutrient information) has 2 points of leading between the type and the rules, the bottom half of the label (footnotes) has 1 point of leading between the type and the rules.

D. Box

1. All labels are enclosed by 1/2 point box rule within 3 points of text measure.

26. On page 2190, appendix B to part 101, the sample label is corrected to read as follows:

Appendix B to Part 101



27. On page 2192, appendix A, the sample label is corrected to read as follows:

Appendix A:
Shortened Format (See comment 8)—Vegetable Soup

Nutrition Facts

Serving Size 1cup (245g)
Servings Per Container 2

Amount Per Serving

Calories 60 Calories from Fat 10

	% Daily Value*
Total Fat 1g	**2%**
Sodium 800mg	**33%**
Total Carbohydrate 10g	**3%**
Dietary Fiber 1g	**4%**
Protein 2g	

Vitamin A 20% • Vitamin C 4% • Iron 2%

Not a significant source of saturated fat, cholesterol, sugars, or calcium.

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

28. On page 2193, in the table "Appendix B.—True Protein Digestibility Value of Common Foods," in the "Product" column, in line 13, the entry for "Cereal" is removed; in the "True digestibility" and "References" columns, in lines 14, 15, and 16, for the products "Oat, Quick Oatmeal," "Oat, Oatmeal," and "Oats, Rolled" are corrected to read "89" and "2", "82" and "2", and "90" and "3", respectively; and the illegible values in the "True digestibility" column in lines 29 and 31, for the products "Bread, White" and "Wheat, Bran" are corrected to read "99" and "75", respectively.

29. On page 2194, in appendix B, in the "References" column, in line 35, for the entry "Sunflower," the reference number "2" is corrected to read "4".

30. On page 2196, appendix C, the sample label is corrected to read as follows:

Appendix C:
Sweet potatoes, Canned, Vacuum packed

Nutrition Facts

Serving Size 2/3 cup (133g)
Servings Per Container 4

Amount Per Serving

Calories 90	Calories from Fat 0
	% Daily Value*
Total Fat 0g	**0%**
Saturated Fat 0g	**0%**
Cholesterol 0mg	**0%**
Sodium 55mg	**2%**
Total Carbohydrate 21g	**7%**
Dietary Fiber 2g	**8%**
Sugars 5g	
Protein 2g	

Vitamin A 160% (100% as Beta Carotene)

Vitamin C 40% • Calcium 2% • Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

31. On page 2197, appendix D, the sample label is corrected to read as follows:

Appendix D

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving

Calories 260 Calories from Fat 120

	% Daily Value*
Total Fat 13g	**20%**
Saturated Fat 5g	**25%**
Cholesterol 30mg	**10%**
Sodium 660mg	**28%**
Total Carbohydrate 31g	**10%**
Dietary Fiber 0g	**0%**
Sugars 5g	
Protein 5g	

Vitamin A 4% • Vitamin C 2%

Calcium 15% • Iron 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

32. On page 2198, appendix D: Footnote to side, the sample label is corrected to read as follows:

Appendix D:
Footnote to side

Nutrition Facts

Serving Size 1 cup (228g)
Servings Per Container 2

Amount Per Serving

Calories 260 Calories from Fat 120

	% Daily Value*
Total Fat 13g	**20**%
Saturated Fat 5g	**25**%
Cholesterol 30mg	**10**%
Sodium 660mg	**28**%
Total Carbohydrate 31g	**10**%
Dietary Fiber 0g	**0**%
Sugars 5g	
Protein 5g	

Vitamin A 4%	•	Vitamin C 2%
Calcium 15%	•	Iron 4%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

33. On page 2199, appendix E, the sample label is corrected to read as follows:

Appendix E:
Sample labels with dual declaration

Nutrition Facts

Serving Size 1/12 cake (80g)
Servings Per Container 12

Amount Per Serving	Mix	Baked
Calories	190	280
Calories from Fat	45	140
	% Daily Value**	
Total Fat 5g*	**8%**	**24%**
Saturated Fat 2g	**10%**	**13%**
Cholesterol 0mg	**0%**	**23%**
Sodium 300mg	**13%**	**13%**
Total Carbohydrate 34g	**11%**	**11%**
Dietary Fiber 0g	**0%**	**0%**
Sugars 18g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	6%	8%
Iron	2%	4%

*Amount in Mix

**Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

34. On page 2202, appendix F: Simplified format (Soft Drink), the sample label is corrected to read as follows:

Appendix F:
Simplified format (Soft Drink)

Nutrition Facts

Serving Size 1 can (360 mL)

Amount Per Serving

Calories 140

	% Daily Value*
Total Fat 0g	**0**%
Sodium 20mg	**1**%
Total Carbohydrate 36g	**12**%
Sugars 36 g	
Protein 0g	**0**%

* Percent Daily Values are based on a 2,000 calorie diet.

35. On page 2205, Appendix H: Tabular Display, the sample label is corrected to read as follows:

Appendix H:
Tabular Display

Nutrition Facts
Serv. Size 1/3 cup (56g)
Servings about 3
Calories 80
Fat Cal. 10
*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/serving	% DV*	Amount/serving	% DV*
Total Fat 1g	**2**%	**Total Carb.** 0g	**0**%
Sat.Fat 0g	**0**%	Fiber 0g	**0**%
Cholest. 10mg	**3**%	Sugars 0g	
Sodium 200mg	**8**%	**Protein** 17g	

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 6%

BILLING CODE 4160-01-C

Dated: March 29, 1993.
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 93-7672 Filed 3-30-93; 4:07 pm]
BILLING CODE 4160-01-F

21 CFR Parts 5 and 101

[Docket Nos. 91N-0384 and 84N-0153]

RIN 0905-AD08 and 0905-AB68

Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2302). The document amended the food labeling regulations to: Provide definitions for specific nutrient content claims using the terms "free," "low," "lean," "extra lean," "good source," "high," "reduced," "light" or "lite," "less," "fewer," and "more" and provide for their use on the food label; provide for the use of implied nutrient content claims; define and provide for the use of the term "fresh;" and address the use of the terms "natural" and "organic." The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994, except §§ 101.10 and 101.13(q)(5) concerning restaurant firms consisting of 10 or less individual restaurant establishments for whom these sections will become effective on May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFS-155), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

In FR Doc. 92-31504, appearing on page 2302 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2302, in the first column, under the caption "**EFFECTIVE DATE:**", in line 1, the date "February 14, 1994" is corrected to read "May 8, 1994"; and beginning in line 6, the date "February 14, 1995" is corrected to read "May 8, 1995"; and under the caption "**FOR FURTHER INFORMATION CONTACT:**", beginning in line 2, the mail code "(HFF-312)" is corrected to read "(HFS-155)".

2. On page 2303, in the third column, in the first full paragraph, in line 10, the word "distribution" is corrected to read "distinction".

3. On page 2305, in the third column, in the third full paragraph, in line 6, "(r)(2)(A)(iv)" is corrected to read "(r)(2)(A)(v)".

4. On page 2310, in the second column, in the second full paragraph, in the second line from the bottom, the phrase "III.B.c.vi." is corrected to read "III.B.1.c.vi.".

5. On page 2312, in the third column, in the second full paragraph, in line 8, "(r)(2)(A)(iv)" is corrected to read "(r)(2)(A)(v)"; and in line 12, "or (f)" is corrected to read "or § 101.13(f)".

6. On page 2314, in the third column, in the second full paragraph, in line 9, "i.e.," is corrected to read "e.g.,".

7. On page 2315, in the second column, in the first full paragraph, in line 8, the words "customarily consumed" are added after the word "amount".

8. On page 2323, in the first column, in the fourth full paragraph, in line 8, "§ 101.13(e)" is corrected to read "§ 101.13(d)".

9. On page 2327, in the third column, in the second full paragraph, in line 8, "III.B.c.ii." is corrected to read "III.B.1.c.ii.".

10. On page 2330, in the second column, in the second full paragraph, in line 2, the phrase "no percent fat free" is corrected to read " ——percent fat free".

11. On page 2335, in the second column, in line 29, "§ 101.62(c)(4)" is corrected to read "§ 101.60(c)(4)".

12. On page 2340, in the second column, in the second full paragraph, in line 4, and in the second line from the bottom of the third full paragraph, the phrase "less than 20 mg" is corrected to read "20 mg or less".

13. On page 2341, in the third column, in the third full paragraph, the first sentence is removed.

14. On page 2345, in the third column, in the fourth full paragraph, in line 9, the phrase "required by" is corrected to read "required in part by"; and the heading "c. *relative claims*" is corrected to read "C. *Relative Claims*".

15. On page 2346, in the third column, in the second full paragraph, in line 10, a period is added after the word "food".

16. On page 2356, in the third column, in the third line from the bottom, "said th" is corrected to read "said that".

17. On page 2361, in the third column, in the fourth full paragraph, in line 9, the word "more" is added before the word "unsaturated".

18. On page 2362, in the second column, beginning in the fifth line from the bottom, the phrase "percent reduction, reductions from a certain class of reference foods," is corrected to read "percentage definitions, differences in the amount of nutrient compared to a certain class of reference foods, i.e.,"; and in the third column, in line 6, the word "reductions" is corrected to read "differences".

19. On page 2365, in the second column, in the fourth full paragraph, in line 11, the phrase "reference the" is corrected to read "the reference".

20. On page 2369, in the second column, in line 1, the words "or no" are removed; and in line 5, the phrase "saturated fat free" is corrected to read "low saturated fat".

21. On page 2370, in the third column, in the second full paragraph, in line 4, the words "made with" are added before the word "corn".

22. On page 2373, in the third column, in the fourth full paragraph, in line 10, the following sentence is added after the second sentence:
"Alternatively such statement may not characterize the level of a nutrient or otherwise be misleading."

23. On page 2376, in the second column, in the second full paragraph, in line 1, the number "52" is corrected to read "256".

24. On page 2377, in the third column, the first full paragraph is corrected by starting a new paragraph in line 16 before the number "250".

25. On page 2378, in the third column, in the first full paragraph, in line 4, the phrase "of sugar and sodium" is corrected to read "of sugar, sodium, and salt".

26. On page 2384, in the first column, in the second full paragraph, in line 7, "185" is corrected to read "183"; in the third column, in line 12, "(§ 101.56(d)(2)(i))" is corrected to read "(§ 101.56(d)(1)(ii)(A))"; and in line 18, "§ 101.56(d)(2)(ii)" is corrected to read "§ 105.56(d)(1)(ii)(B)".

27. On page 2385, in the first column, in line 3, "roducts" is corrected to read

"products"; and in the second full paragraph, in line 3, "o" is corrected to read "to".

28. On page 2388, in the second column, in the first full paragraph, in the last line, the date "February 14, 1995" is corrected to read "May 8, 1995".

29. On page 2392, in the second column, in the first full paragraph, in line 8, the word "*State*" is corrected to read "*States*".

30. On page 2395, in the second column, in line 6, "288–81" is corrected to read "2880–81".

31. On page 2406, in the third column, in the first full paragraph, in line 9, the phrase "in comment 334" is corrected to read "in comment 332".

32. On page 2409, in the second column, in reference 1, in line 2, the word "draft" is added after the word "NCEP"; and in line 5, the date "April 7, 1991" is corrected to read "March 27, 1991".

33. On page 2410, in the first column, in reference 17, in line 5, the words "(Population Panel)" are removed; in reference 21, in line 2, the words "for Proposal," are removed and " No. 3-" is added in their place; in the second column, in reference 24, in line 1, "8–17" is corrected to read "8–16"; in reference 33, in line 3, the phrase "associate ed., 2d ed." is corrected to read "associate ed., Pediatric Nutrition Handbook, 2d ed."; and in Reference 34, in line 3, "p. 254" is corrected to read "pp. 242–245".

§ 101.13 [Corrected]

The following corrections are made in § 101.13 *Nutrient content claims—general principles*:

34. On page 2412, in the first column, in paragraph (i)(1), in line 7, "10 g" is corrected to read "3 g"; in paragraph (i)(2), in the last line, the phrase "of an inch;" is corrected to read "of an inch; or"; and in paragraph (i)(3), in line 6, the phrase "required; or" is corrected to read "required."; and in the second column, in paragraph (j)(2)(i), in line 5, the phrase "the nutrient has been modified" is corrected to read "the nutrient in the labeled food differs"; and in the third column, in paragraph (m)(1)(ii), in line 4, "(l)(1)(ii)(E)" is corrected to read "(m)(1)(ii)(E)".

35. On page 2413, in the first column, in paragraph (p)(1), in line 1, the phrase "specified the" is corrected to read "specified, the"; in the second column, in paragraph (q)(5)(i), beginning in line 4, the citation "(d)(1)(ii)(C)" is corrected to read "(d)(1)(ii)(D)"; and in line 5, the citation "(d)(2)(ii)(C)" is corrected to read "(d)(2)(iii)(C)".

§ 101.54 [Corrected]

The following corrections are made in § 101.54 *Nutrient content claims for "good source," "high," and "more"*:

36. On page 2414, in the first column, in paragraph (a), in line 10, the word "and" is corrected to read "or"; in paragraph (b)(1), in line 3, the word "and" is corrected to read "or"; in the second column, in paragraph (e)(1)(i), beginning in line 2, the phrase "for protein, vitamins, or minerals" is corrected to read "for vitamins or minerals"; beginning in line 3, the phrase "for dietary fiber or potassium" is corrected to read "for protein, dietary fiber, or potassium"; in paragraph (e)(1)(iii)(A), in line 3, the phrase "was increased" is corrected to read "is greater"; in the third column, in paragraph (e)(2)(i), beginning in line 2, the phrase "for protein, vitamins, or minerals" is corrected to read "for vitamins or minerals"; and beginning in line 3, the phrase "for dietary fiber or potassium" is corrected to read "for protein, dietary fiber, or potassium".

§ 101.56 [Corrected]

The following corrections are made in § 101.56 *Nutrient content claims for "light" or "lite"*:

37. On page 2414, in the third column, in paragraph (a), in line 4, the word "and" is corrected to read "or"; and in paragraph (a)(3), beginning in line 2, the phrase "with § 101.9, § 101.10, or § 101.36, where applicable" is corrected to read "with § 101.9 or § 101.10, where applicable".

38. On page 2415, in the second column, in paragraph (d)(2), the paragraph number "(d)(2)(i)" is corrected to read "(2)(i)"; in the third column, in paragraph (g), beginning in line 10, the phrase "information on the label" is corrected to read "information required to accompany a relative claim shall appear on the label".

§ 101.60 [Corrected]

The following corrections are made in § 101.60 *Nutrient content claims for the calorie content of foods*:

39. On page 2416, in the first column, in paragraph (b)(2), in line 5, the word "and" is corrected to read "or"; paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) are redesignated as paragraphs (b)(2)(i)(A), (b)(2)(i)(B) and (b)(2)(ii); in newly redesignated paragraph (b)(2)(i)(B), in the bottom line, the phrase "form); and" is corrected to read "form)."; in the second column, in paragraph (b)(4)(ii)(A), in line 3, the phrase "have been reduced" is corrected to read "differ between the two foods"; and in paragraph (b)(5)(ii)(A), in line 3, the phrase "have been reduced" is corrected to read "differ between the two foods".

40. On page 2417, in the first column, in paragraphs (c)(4)(ii)(A), in line 3, and in paragraph (c)(5)(ii)(A), in line 3, the phrase "has been reduced" is corrected to read "differs between the two foods".

§ 101.61 [Corrected]

The following corrections are made in § 101.61 *Nutrient content claims for the sodium content of foods*:

41. On page 2417, in the second column, in paragraph (a), in line 1, the word "and" is corrected to read "or"; in paragraph (b)(2), in line 3, the word "and" is corrected to read "or"; in the third column, in paragraph (b)(3), in line 3, the word "and" is corrected to read "or"; in paragraph (b)(4), in line 5, the word "and" is corrected to read "or"; and in paragraph (b)(5), in line 3, the word "and" is corrected to read "or".

42. On page 2418, in the first column, in paragraph (b)(6)(ii)(A), in line 3, the phrase "has been reduced" is corrected to read "differs from the labeled food"; and in paragraph (b)(7)(ii)(A), in line 3, the phrase "has been reduced" is corrected to read "differs from the reference food".

§ 101.62 [Corrected]

The following corrections are made in § 101.62 *Nutrient content claims for fat, fatty acid, and cholesterol content of foods*:

43. On page 2418, in the third column in paragraph (b)(2), in line 4, the word "and" is corrected to read "or"; and in paragraph (b)(3), in line 3, the word "and" is corrected to read "or".

44. On page 2419, in the first column, in paragraph (b)(4)(ii)(A), in line 3, the phrase "has been reduced" is corrected to read "differs between the two foods"; in paragraph (b)(5)(ii)(A), in line 3, "has been reduced" is corrected to read "differs between the two foods"; in paragraph (b)(6)(ii), in line 1, the phrase "percent of reduction" is corrected to read "percent declared"; in the second column, in paragraph (c), in line 21 "0.5 g or less" is corrected to read "less than 0.5 g"; in the third column, in paragraph (c)(4), in line 7, "§ 101.13(j)(1)(i)(A)" is corrected to read "§ 101.13(j)(1)(i)"; and in paragraph (c)(4)(ii)(A), in line 3, the phrase "was reduced" is corrected to read "differs between the two foods".

45. On page 2420, in the first column, in paragraph (c)(5)(ii)(A), in line 3, the phrase "has been reduced" is corrected to read "differs between the two foods"; in the second column, in paragraph (d)(1)(ii), in line 4, the phrase "serving,

per" is corrected to read "serving, or per".

46. On page 2421, in the first column, in paragraph (d)(2)(ii)(B), in line 3, the word "and" is added after the semicolon.

47. On page 2422, in the first column, in paragraph, (d)(4), in line 5, "§ 101.13(j)(1)(i)(A)" is corrected to read "§ 101.13(j)(1)(i)"; and in paragraph (d)(4)(i), in line 5, "300 g" is corrected to read "30 g".

§ 101.65 [Corrected]

The following corrections are made in § 101.65 *Implied nutrient content claims and related label statements*:

48. On page 2423, in the second column, in paragraph (b), in line 10, the phrase "are not subject" is corrected to read ",as such, are not subject"; in the third column, in paragraph (c)(3), in line 7, the phrase "a good source of" is corrected by adding quotation marks before and after the phrase "good source".

§ 101.69 [Corrected]

The following corrections are made in § 101.69 *Petitions for nutrient content claims*:

49. On page 2424, in the second column, in paragraph (m)(1), beginning in line 10, the phrase "Regulations and Industry Activities Branch (HFF–312)" is corrected to read "Office of Food Labeling (HFS–150)".

50. On page 2425, in the first column, in paragraph (n)(1), beginning in line 9, "Regulations and Industry Activities Branch (HFF–312)" is corrected to read "Office of Food Labeling (HFS–150)"; in the third column, in paragraph (o)(1), beginning in line 11, "Regulations and Industry Activities Branch (HFF–312)" is corrected to read "Office of Food Labeling (HFS–150)".

Dated: March 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7671 Filed 3–30–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 91N–0097]

RIN 0905–AD08

Food Labeling: Health Claims and Label Statements: Dietary Lipids and Cancer; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 6, 1993 (58 FR 2787). The document authorized the use on labels and labeling of certain foods of health claims relating to an association between dietary fat and cancer. The document was published with some inadvertent typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1993.

FOR FURTHER INFORMATION CONTACT: Helen HeChong Lee, Center for Food Safety and Applied Nutrition (HFS–226), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5558.

In FR Doc. 92–31520, appearing on page 2787 in the **Federal Register** of Wednesday, January 6, 1993, the following corrections are made:

1. On page 2787, in the first column, in the subject heading, the word "Fat" is corrected to read "Lipids".

2. On page 2790, in the second column, in the first full paragraph, beginning in line 6, the third and fourth sentences are removed and the following text is added in its place: "As discussed in the lipids/cancer proposal, although the totality of scientific evidence supports the relationship between low fat intakes and reduced risk of some cancers, there have been no dietary intervention studies examining the quantitative relationship between reduction in fat intake and altered cancer risks. Therefore, it is not yet possible to conclude how much reduction in fat intake is necessary to reduce the risk of cancer in the United States."; and in the third column, in the second full paragraph, in line 8, the word "fat" is corrected to read "energy intake".

3. On page 2793, in the second column, in the second full paragraph, in line 13, the word "energy" is added after the word "differential".

§ 101.73 [Corrected]

4. On page 2801, in the first column, in § 101.73 *Health claims: dietary fat and cancer*, in the section heading the word "*fat*" is corrected to read "*lipids*".

5. On page 2804, in Table 1, in the third entry under the "Results" column, in line 10, "MUFA" is removed.

6. On page 2805, in Table 1, in the third entry under the "Comments" column beginning in line 8, the text is corrected by removing the third sentence.

7. On page 2809, in Table 2, in the first entry under the "Objectives/Tumor Types" column, "*N*-nitromethylurea-induced" is corrected to read "*N*-nitrosomethylurea-induced"; in the "Results" column in the same entry, the word "significance" is corrected both times it occurs to read "significantly"; in the second entry under the "Objectives/Tumor Types" column, the word "affects" is corrected to read "effects"; and under the "Results" column, the subtable "MCF–7 carcinoma MDA–MB231 carcinoma" is corrected to read as follows:

MCF–7 carcinoma MDA–MB231 carcinoma

Mean carcinoma		Volume (Cm3)	
		(A)	(B)
I	3.4	0.5	0.2
II	4.0	1.5	0.4
III	2.4	1.2	0.1
IV	2.4	0.8	
V	0.2	0.6	0.0
Significance:			
I, II, III, IV vs. II		I vs. II, III II vs. V	II vs. V

BILLING CODE 4160–01–F

8. The portion of Table 2, appearing on page 2811 is corrected to read as follows:

TABLE 2
Lipids and Cancer: Animal Studies

Study	Objectives/ Tumor Types	Experimental Animals	Methods	Results	Comments
Lasekan et al., 1990 (Ref. 124)	To compare effects of safflower and olive oils on DMBA-induced mammary tumorigenesis	Female Weanling Sprague-Dawley rats 25/groups	Diet: 20 wt% fat High linoleic acid SO: SL diet High oleic acid SO: SO diet Olive oil: OO diet OO diet w/ linoleic acid supplementation : OL diet Linoleic content (wt%) SL 14.6 SO 3.4 OO 1.1 OL 3.4 Rats were fed the diets for 16 weeks, and 7, 12-DMBA-induced tumorigenesis measured	No difference in lag time or incidence OO diet significantly lowered tumor yield compared to SO or OL diets Linoleic supplementation of the OO diet (makes OL diet) significantly enhanced the yield; no difference in yield between OO and OL diets Diet / Tumor/rat / statistics SL 1.5 a,b SO 5.0 a OO 3.0 b OL 5.1 a (statistical: different letters in the statistics column show a significant difference)	Isocaloric diets; no difference in body weight or food intakes among groups OO diet which was limited in linoleic acid content resulted in a significantly lower tumor yield. This result was abolished by supplemental linoleic acid; the results support a linoleic acid requirement of about 1% by weight for induced mammary tumorigenesis in rodents
Hirose et al., 1990 (Ref. 125)	The effects of diets supplemented with perilla oil (n-3 linoleic rich) and soybean and safflower oils (n-6, linoleic-rich) on DMBA-induced mammary and colon carcinogenesis	Female SD rats 5-week old 10/groups	Diet: 10% perilla oil 10% SBO 10% SO SO SBO Perilla oil 18:2n-6 7.6 57.6 15.9% 20:4n-6 - 0.2 0.1% 18:3n-3 0.1 .7 13.7 Rats were fed the diets for 11 weeks after the injection of initiator (7, 12-DMBA) and promotor (1, 2-dimethylhydrazine, DMH). Incidence and development of tumor measured	Mammary Perilla oil significantly lowered tumor yield compared to SBO or SO (4.4, 6.5, 5.7, tumors per rat: perilla oil, SBO, or SO, respectively) No difference in yield between SBO and SO. No difference in incidence among groups Colon Perilla oil significantly lowered tumor incidence compared to SOB or SO (4, 9, or 9% incidence: perilla oil, SBO, or SO). No difference in incidence between SO and SBO No difference in yield among groups	Perilla oil may not have provided adequate linoleic acid for tumor growth

BILLING CODE 4160-01-C

9. The portion of Table 2, appearing on page 2813 is corrected to read as follows:

Table 2--continued

Study	Objectives; Tumor Types	Experimental Animals	Methods	Results	Comments
Bunce and Abou-El-Ela, 1992 Ref 135	To measure eicosanoid synthesis and ornithine decarboxylase activity in mammary tumors in rats fed varying levels of n-3 and n-6 fatty acids	Virgin female Sprague-Dawley rats 50 day old 25 groups	Diet wt% per diet I 20 - - - - II - 20 - - - III - - 20 - - IV - - - 20 - V 15 - - - 5 VI 10 - - - 10 VII 5 - - - 15 VIII - - - 10 n-6FA n-3FA % per diet I 12.1 - II 16.8 - III 11.3 5 IV 12.6 - V 9.3 1.1 VI 6.9 2.4 VII 3.6 1.3 VIII 6.2 2.4 Rats were administered i.g. 7, 12-DMBA and fed diets for 112 days Incidence and multiplicity of the tumor examined. Prostaglandin PGE, LTB4, and LTC4 synthesis and ornithine decarboxylase (ODC) activity also tested	Incidence of adenocarcinoma: significantly lower in groups III, VI, and VII than groups II, IV, and VIII; n-3 FA level or n-6 FA n-3FA ratio did not consistently affect the incidence Tumor yield (number rat was significantly lower in group II than groups IV and III; n-3 or n-6 FA did not consistently affect the yield No difference in latency period among groups	Diets provided adequate linoleic acid for growth of the animal as well as the tumor
O'Neill et al., 1991 Ref 112	To measure modulation of colonic nuclear aberrations and microcapsule-trapped jejunal intestinal metabolism in benzopyrene treated mice consuming human diets	Male C57 BL mice 4-week old [illegible] groups	Diet: I & II III IV V Unit Fat 15 15 45 15 energy % Protein 2.1 2.1 2.1 2.1 wt% Fiber 2.1 2.1 2.1 5.6 wt% Fiber: nonstarch polysaccharide Protein: beef protein Mice were fed the diets for 3 weeks and received benz a pyrene by gavage. Colonic nuclear aberration was examined histologically and by using HPLC	Benz a pyrene increased the nuclear aberrations by 8-fold The extent of benz a pyrene-induced nuclear aberrations was decreased to 2-to 3-fold by increased fiber or fat in the diet	FA composition in the diet not reported and the adequacy of dietary EFA is not known Nuclear aberration, not cancer development, was measured

BILLING CODE 4160-01-C

10. On page 2816, in Table 2, in the first entry under the "Comments" column, in line 6, the word "assayed" is corrected to read "passaged".

11. On page 2817, in Table 2, in the first entry under the "Objectives/Tumor Types" column, in line 2, "suspectibility" is corrected to read "susceptibility".

12. On page 2819, in Table 2, under the "Methods" column, in the second line, "land" is corrected to read "lard".

Dated: March 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7670 Filed 3-30-93; 4:07 pm]

BILLING CODE 4160-01-F

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21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Abbott Laboratories. The ANADA provides for the use of a generic isoflurane for induction and maintenance of anesthesia in horses and dogs.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Rollins, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8612.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Rd., North Chicago, IL 60064, filed ANADA 200-070, which provides for the use of a generic isoflurane (99.9 percent isoflurane solution) for induction and maintenance of anesthesia in horses and dogs.

Approval of ANADA 200-070 for Abbott Laboratories' isoflurane is a generic copy of Anaquest's isoflurane in NADA 135-773. The ANADA is approved as of March 11, 1993, and the regulations are amended in 21 CFR 529.1186 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1186 [Amended]

2. Section 529.1186 *Isoflurane* is amended in paragraph (b) by removing "No. 010019" and adding in its place "Nos. 010019 and 000074".

Dated: March 24, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93-7665 Filed 4-1-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole and Lincomycin; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that appeared in the **Federal Register** of August 5, 1992 (57 FR 34515), which amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The document was published with an inadvertent error that referred to lincomycin as a Category II drug. This document corrects the error.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8643.

SUPPLEMENTARY INFORMATION: In FR Doc. 92-18469, appearing on page 34515, in the **Federal Register** of Wednesday, August 5, 1992, on page 34516, the last paragraph in the first column is corrected to read as follows:

"These are new animal drugs used in Type A medicated articles to make Type C medicated feeds. While lincomycin is a Category I drug, fenbendazole is a Category II drug, and thus, as provided in 21 CFR 558.4(e), the Category II requirements relative to an approved medicated feed application apply. Therefore, as provided in 21 CFR 558.3 and 558.4(b), an approved Form FDA 1900 is required for making a Type C medicated feed containing fenbendazole in combination with lincomycin as in the approved subject NADA and in §§ 558.258 and 558.325 as amended."

Dated: March 29, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93-7664 Filed 4-1-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[Docket No. R-146]

RIN 2133-AA99

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services; Calculation of Maintenance and Repair Subsidy Rates

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the methodology for determining and paying operating-differential subsidy (ODS) for maintenance and repair (M&R) expenses, not compensated by insurance, incurred by subsidized operators of bulk cargo vessels that receive ODS for M&R under their ODS contracts. It eliminates the current requirements for establishing a per diem ODS rate for the payment of M&R expenses that is based on historical costs, and reinstates a procedure previously set forth in the regulations

that requires payment of ODS for M&R expenses actually incurred. The payments are subject to findings by the Maritime Administration (MARAD) that, in accordance with the Merchant Marine Act, 1936, as amended (the Act), the M&R expenses incurred are fair and reasonable, as initially determined by MARAD, subject to audit by the Office of the Inspector General of the Department of Transportation. These amendments are intended to foster economic growth for U.S.-flag vessel operators receiving M&R subsidy by facilitating earlier payment of actual M&R subsidy.

EFFECTIVE DATE: This rule is effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2323.

SUPPLEMENTARY INFORMATION: Section 603(b) of the Act (46 App. U.S.C. 1173(b)) provides, among other things, for the payment of ODS for the fair and reasonable cost to the operator of M&R not compensated by insurance that was incurred in the operation of subsidized U.S.-flag vessels in the foreign commerce of the United States. Section 603(f) (46 App. U.S.C. 1173(f)) provides that ODS for M&R expenses shall be paid at 90 percent of ODS accrued, pending audit of the expenses, whereupon the remaining 10 percent shall be paid. The Act does not contain any specific procedures for determining ODS for M&R expenses, nor does it provide clarification of payment procedures. The language of the Act, however, clearly indicates that ODS for M&R shall be paid for all fair and reasonable expenses actually incurred. The regulations at 46 CFR part 252 were amended in 1986 to incorporate, among other things, a per diem ODS rate system for M&R, using historical costs rather than actual expenses incurred and accrued by the subsidized operators.

Prior to the 1986 amendments, the system for determining and paying ODS for M&R expenses was set forth in the regulations as follows. The difference between U.S. and foreign M&R costs was established as a percentage differential rate (PDR) based on cost estimates received from U.S. and foreign shipbuilding centers for a standard set of repair specifications for a typical bulk cargo vessel in international trade. Because of the time required to accumulate the cost estimates prepared by the various shipbuilding centers, final PDRs for a given year were not completed for approximately 18 months following the close of that year. In the interim, the subsidized operators billed ODS for M&R, based on actual expenses incurred, using the latest PDR incorporated in their ODS contracts at the time. As required by the Act, the subsidized operators billed the ODS monthly, at 90 percent of the M&R subsidy accrued, for voyages completed during the month.

MARAD paid the final 10 percent after: (1) Making a determination that, as required by the Act, the expenses were fair and reasonable; (2) completion of the audit of the expenses; and (3) computation of the ratio of subsidized vs. nonsubsidized days during the subsidized year. The computation of the ratio of subsidized vs. non-subsidized days was required to ensure that only expenses attributable to subsidized periods were allowed for subsidy payment. A subsequent adjustment in payments was made upon determination of the final PDR for M&R applicable to that year, and represented the difference between the final PDR and the PDR initially used to bill ODS for M&R during the year.

When the ODS regulations at 46 CFR part 252 were amended in November 1986, the ODS rates for M&R became effective for calendar year 1988. Under the procedure now in effect, the methodology for calculating the PDR for M&R did not change. However, rather than providing for payment of ODS for actual expenses incurred in the subsidized calendar year, the regulations now require the establishment of a per diem rate based on expenses incurred during an historical period immediately preceding the subsidized calendar year, ranging from 24 to 36 months in length, and including the most recent expenses for drydocking. The expenses actually incurred in the historical period must still be adjudged fair and reasonable by MARAD, as required by the Act, and are audited for MARAD by the Office of the Inspector General, Department of Transportation.

The expenses included in the historical period are divided by the number of operating days in the period to derive a subsidizable per diem expense. That per diem expense is then escalated to the subsidizable calendar year through use of an index that produces a nominal escalation rate. The latest PDR for M&R calculated is applied to the per diem expense to obtain a final per diem ODS amount. The operators bill the per diem ODS amount monthly at 100 percent, but only for days that the vessels are engaged in subsidized service.

The intent of the M&R regulations, as amended in 1986 and now in effect, was to eliminate the delay in determining final ODS payment amounts for M&R expenses and also to quantify definitively such amounts so as to provide the subsidized operators with a level of certainty for future planning purposes about the amount of ODS receivable. When the amendment to the regulations was initially published, comments received generally supported the foregoing goals. However, the comments also reflected a general concern that, as the vessels get older and require increasing amounts of maintenance and repair, the level of M&R expenses would increase at a rate that would invalidate the use of historical M&R expenses, even when escalated by using the index defined in the regulations, particularly for vessels carrying corrosive liquid cargoes.

Several operators viewed this result as being inconsistent with the Act, which requires full reimbursement for fair and reasonable expenses incurred. They requested that the former system for determining ODS for M&R, as previously described, be retained. Ultimately, the subsidized bulk vessel operators accepted the methodology contained in the amended regulations on the assumption that M&R expenses incurred would, in large measure, be recouped over time under a continuing program for payment of ODS.

Having several years of experience with the per diem system of subsidy calculation and payment, the subsidized bulk vessel operators have expressed their renewed concerns about the fairness of the current system for determining the M&R component of ODS. In a number of discussions with MARAD staff, several operators have reemphasized their belief that the current system for determining ODS for M&R will work an increasing economic hardship on the subsidized bulk vessel operators as their vessels grow older. Furthermore, the operators are convinced that they will not be fully compensated for the increasing M&R expenses (especially the major expenses related to drydockings) that they will incur on their aging vessels and, therefore, will suffer significant adverse economic impact. The current system also harms the operators' ability to compete effectively with foreign operators because it unduly influences the operators' decisions as to when and where to repair their ships. This condition exists because the timing of drydocking under the present system affects the calculation of the constructed per diem subsidy. The operators view these circumstances as contrary to the

intent of the Act and have repeatedly asked for a return to the former system for determining and paying ODS for M&R.

The arguments presented by the operators are compelling. Therefore, consistent with the intent of the Act, this rule eliminates the per diem methodology for determining and paying ODS for M&R and reinstates the previous provisions of the rule that set forth the former system for making such payments, with two changes as described below.

In accomplishing the transition from the current system for determining and paying ODS for M&R, the subsidized bulk vessel operators would remain under the current per diem system until commencement of the next drydocking period following the effective date of this rule. Upon entry of each subsidized vessel into the shipyard, payment under the per diem system would cease for that vessel. Thereafter, the operator would be allowed to bill ODS for M&R expenses actually incurred for the vessel.

Under the former system, initial billings of ODS for M&R were made at 90 percent of ODS accrued, pending completion of the necessary determinations by MARAD, as previously described, and audits of expenses. Rather than requiring initial billings at 90 percent, this rule provides that initial billings will be at a percentage of ODS as negotiated between MARAD and the operator of each of the subsidized bulk vessels (not to exceed the statutory limit of 90 percent). This change is necessary since examination of the actual operating experience of the subsidized bulk vessel operators shows that, for a number of vessels, the ratio of subsidized vs. nonsubsidized days is too low to allow initial billings at 90 percent of ODS. To allow billings at 90 percent in these instances could result in an unwarranted overpayment of ODS. MARAD's computation of the ratio of subsidized vs. nonsubsidized days has historically been linked to the calendar year in which the last voyage terminated. The rule is being amended to formally enunciate this procedure.

Also, as previously discussed, the former system for paying ODS for M&R requires an adjustment to the ODS paid to reflect the difference between the PDR initially used to bill ODS for M&R expenses in a year, i.e., the latest PDR incorporated in the ODS contract, and the final PDR for M&R applicable to that year, as subsequently calculated. The amendments in this rule provide that ODS for M&R expenses shall be billed utilizing the latest PDR calculated by MARAD staff, which shall be considered the final PDR for M&R payment purposes. This will maintain the concept embodied in the per diem system of making final ODS payments for M&R with no subsequent adjustment to reflect a recalculation of the PDR.

Comments

A Notice of Proposed Rulemaking (NPRM) regarding these changes in the calculation of maintenance and repair subsidy rates for bulk vessels was published in the **Federal Register** November 6, 1992 at 57 FR 53083. One response was received on behalf of Ocean Chemical Carriers, Inc. and Ocean Chemical Transport, Inc. This comment was entirely supportive of the NPRM.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies, and it is considered nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Because the economic impact should be minimal, further regulatory evaluation is not necessary.

In summary, this rule amends an existing regulation by modifying the requirements of a 1986 amendment that established a per diem ODS rate for the payment of M&R expenses that is based on historical costs. In lieu thereof, it reinstates former provisions in the regulations for the payment of ODS on the basis of M&R expenses actually incurred by the subsidized operator. The 1986 amendments were intended to accelerate final ODS payments for M&R and to definitively quantify such payments. For these reasons, the 1986 amendment was accepted by the subsidized operators notwithstanding their expressed concerns that, as their vessels grew older, the level of M&R expenses for the vessels would increase at a rate that would invalidate the use of historical costs, even when escalated by using the index defined in regulations. The impact on vessels that carry corrosive liquid cargoes is particularly disadvantageous. The acceptance of the 1986 amendment by the operators was based on the assumption that they would substantially recoup, over time, M&R expenses that they had incurred. This has not been the case. This rule will ensure payment for M&R expenses actually incurred.

The rule is being made effective retroactively to January 1, 1993, because the new rate year for computation of the M&R component of ODS begins on that date.

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Regulatory Flexibility Act

MARAD certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

MARAD has considered the environmental impact of this rulemaking and has concluded that there is no impact and that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no new or revised reporting requirements that require approval by the Office of Management and Budget pursuant to provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The reporting requirements in § 252.23 have received OMB approval under control numbers 2133–024 and 2133–005.

List of Subjects in 46 CFR Part 252

Grant programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, MARAD amends 46 CFR part 252 as follows:

PART 252—[AMENDED]

1. The citation of authority for part 252 is revised to read as follows:

Authority: 46 app. U.S.C. 1114(b), 1117, 1121, 1171, 1172, 1173, and 1175; 49 CFR 1.66.

§ 252.30 [Amended]

2. Section 252.30 is amended as follows:

a. In paragraph (a), by adding to the first sentence of text before the period, the words "except for the ODS rates applicable to maintenance and repair expenses, as described separately in § 252.32".

b. In paragraph (a), by adding in the third sentence, after "ODSA", the parenthetical "(with the exception of ODS rates applicable to maintenance and repair expenses)".

§ 252.32 [Amended]

3. Section 252.32 is amended as follows:

a. In paragraph (a), by revising the heading "*Basis for subsidy.*" to read "*Subsidy items.*"; and by removing the entire text of the paragraph after "46 CFR part 272," and adding in its place the words "incurred by the operator during the calendar year."

b. In paragraph (b), by revising the heading and introductory text to read as set forth below.

c. In paragraph (b)(3), by removing all the sentences after the third sentence and adding in their place the sentence "If such information is unavailable, repairing practices shall be determined on the basis of the industry as a whole."

d. In paragraph (b)(4), by revising the paragraph heading, to read "*M&R subsidy rate.*"

e. In the table in paragraph (b)(4), by removing in the heading the words "U.S.–FOREIGN COST DIFFERENTIAL, 1985" and adding in their place the words "MAINTENANCE and REPAIR SUBSIDY RATE"; and by removing in the first column the words "U.S.-foreign cost differential" and adding in their place the words "Subsidy rate".

f. By revising paragraph (c) introductory text to read as set forth below.

§ 252.32 Maintenance (upkeep) and repairs.

* * * * *

(b) *Subsidy rate.* The subsidy rate for maintenance and repair shall be the U.S.-foreign cost differential determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition. See paragraph (b)(4) of this section for an example calculation.

* * * * *

(c) *Data submission requirement.* The operator is required to submit a Subsidy Repair Summary (Form MA–140) quarterly, in accordance with 46 CFR part 272.

* * * * *

§ 252.40 [Amended]

4. Section 252.40 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 252.40 Payment of subsidy.

* * * * *

(b) *Maintenance and repair subsidy.* In the case of payments for maintenance and repair subsidy only, the subsidized operator shall submit an initial voucher and include for payment in such voucher a percentage of the ODS payable for the period covered by the voucher, which percentage shall be negotiated between MARAD and the subsidized operator, but in no instance shall exceed 90 percent. Upon the completion of MARAD's determinations that the expenses are fair and reasonable, MARAD's computation of the ratio of subsidized vs. nonsubsidized days during the calendar year in which the last voyage terminated, and the Office of the Inspector General's audit of subsidizable expenses, the subsidized operator shall submit a final voucher for an adjustment of the amount of subsidy paid.

By Order of the Acting Maritime Administrator.

Dated: March 30, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93–7719 Filed 4–1–93; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–195; RM–7091, RM–7146, RM–8123, RM–8124]

Radio Broadcasting Services; Beverly Hills, Chiefland, Holiday, Micanopy, and Sarasota, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C3 for Channel 246A at Beverly Hills, Florida, and modifies the construction permit of Station WXOF, Beverly Hills, Florida, to specify operation on Channel 292C3; Channel 246C2 for Channel 292A at Holiday, Florida, and modifies the license of Station WLVU, Holiday, Florida, to specify operation on Channel 246C2; Channel 247C2 for Channel 249A at Micanopy, Florida, and modifies the license of Station WRRX, Micanopy, Florida, to specify operation on Channel 247C2; Channel 293C2 for Channel 292A at Sarasota, Florida and modifies the license of Station WSRZ, Sarasota, Florida, to specify operation on Channel 293C2; and Channel 300A for Channel 247A at Chiefland, Florida, and modifies the construction permit of Station WLQH, Chiefland, Florida, to specify operation on Channel 300A. See 57 FR 42537, published September 15, 1992. The reference coordinates for the Channel 292C3 allotment at Beverly Hills, Florida, are 28–44–09 and 82–29–56; the Channel 246C2 allotment at Holiday, Florida, are 28–16–51 and 82–42–52; the Channel 247C2 allotment at Micanopy, Florida, are 29–38–55 and 82–25–30; the Channel 293C2 allotment at Sarasota, Florida, are 27–27–49 and 82–40–01; and Channel 300A at Chiefland, Florida, are 29–31–00 and 82–53–11. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT:

Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–195, adopted March 9, 1993, and released March 29, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida is amended by removing Channel 246A and adding Channel 292C3 at Beverly Hills; removing Channel 247A and adding Channel 300A at Chiefland; removing Channel 292A and adding Channel 246C2 at Holiday; removing Channel 249A and adding Channel 247C2 at Micanopy; and removing Channel 292A and adding Channel 293C2 at Sarasota.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 93-7621 Filed 4-1-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket Nos. 92-259, 90-4, 92-295; FCC 93-144]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this Report and Order, adopts the rules needed to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 (Cable Act of 1992" or "1992 Act"). The 1992 Cable Act requires the Commission to adopt rules establishing carriage rights for commercial and noncommercial broadcast television stations. This action is taken in order to comply with the 1992 Act.

EFFECTIVE DATE: Sections 76.58(a) and 76.59 are effective April 2, 1993; §§ 76.56 and 76.58(e) are effective June 2, 1993, §§ 76.64 and 76.302 are effective June 17, 1993; all other provisions are effective May 3, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, Policy and Rules Division, (202) 632-5414 or Jonathan Levy, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 92-259, FCC 93-144, adopted March 11, 1993, and released March 29, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC reference Center, 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopis of the Report and Order

1. By this Report and Order ("Order"), the Commission adopts the rules needed to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Act"). On November 5, 1992, the Commission adopted a Notice of Proposed Rule Making ("Notice"), 57 FR 56298 (November 27, 1992), in the proceeding to consider two provisions of the Cable Act of 1992 concerning the carriage of broadcast signals by cable television systems and other "multichannel video programming distributors". The first of these, set forth in Sections 4 and 5 of the 1992 Act, concerns mandatory signal carriage ("must-carry") rights of commercial and noncommercial television broadcasting stations that are "local" to the area served by a cable system. The second provision, set forth in Section 6 of the 1992 Act, is one that prohibits cable operators and other multichannel video programming from carrying the signals of broadcast stations without first obtaining their consent in certain circumstances. While each of the provisions is distinct and functions in a separate fashion, they are related in that, once every three years commercial broadcasters must now choose whether their relationship with local cable systems will be governed by the must-carry rules or retransmission consent requirement. The Commission decided to address these two matters in a single rulemaking proceeding, based primarily on administrative convenience.[1]

2. *Implementation Schedule.* The rules and requirements described herein are subject to a number of different implementation and effective dates. On the date of publication of this summary of the Report and Order, the Commission will begin to accept petitions for special relief for modifying the local television markets of commercial broadcast stations. Starting on that date, cable operators must notify broadcast licensees and cable subscribers at least 30 days before deleting any broadcast television from carriage or repositioning any such signal. On May 3, 1993, cable operators must designate their principal headend, send a certified letter identifying that principal headend to all qualified noncommercial educational stations and notify by certified mail those local stations, commercial and noncommercial, that may not be entitled to carriage because they either fail to meet the signal strength requirement or may cause increased copyright liability to the cable system. Cable systems must begin carriage of the complement of commercial must-carry signals on June 2, 1993. On that date, a cable operator must send by certified mail a list of the broadcast television signals carried on its system, and their channel positions, to all local broadcasters, commercial and noncommercial, including those not designated as must-carry signals and those not carried on its system. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide such equipment, the operator also must notify subscribers on the need for and the use of such equipment by June 2, 1993. By June 17, 1993, local stations must elect whether they want retransmission consent or must-carry rights and, for those selecting must-carry status, state their preferred channel position. In addition, on that date, cable operators must place in their public files a list identifying the must-carry signals and the designated location of their principal headend. On October 6, 1993, the retransmission consent and channel positioning provisions of the rules become effective, and all stations must be carried pursuant to their provisions, on that date.

3. Carriage of Noncommercial Educational Television Stations. Under section 615(l)(1) of the 1992 Act, a noncommercial educational (NCE) station qualifies for must-carry rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, or corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting.[2] An NCE station is also considered qualified if it is owned and operated by a municipality and transmits predominately noncommercial programs for educational purposes. In the Order, the Commission determined that a municipally-owned station will be deemed to transmit predominately noncommercial programming for

[1] On December 23, 1992, a three-judge court of the U.S. District Court for the District of Columbia held that it will hear only constitutional challenges to the must-carry rules pursuant to section 23 of the Cable Act of 1992, which provides that challenges to the constitutionality of sections 4 and 5 shall be heard by a district court of three judges. Turner Broadcasting Systems, Inc. v. Federal Communications Commission, No. 92 Civ. 2247 (D. D.C. Dec. 23, 1992). Thus, constitutional challenges to the retransmission consent and other provisions of the 1992 Act will be considered separately. As these matters are currently under court review, we will not address them here.

[2] The statutory must-carry requirements for NCE stations became effective on December 4, 1992, the general effective date of the Cable Act of 1992. On December 9, 1992, the U.S. District Court for the District of Columbia issued a "Standstill Order" that contemplates that during the pendency of the District Court case the Commission will take the full 120 days permitted under the statute to resolve any complaint filed by an NCE station. *Turner Broadcasting Systems, Inc.* v. *Federal Communications Commission*, CA Nos. 92-2247, *et al.* (D.D.C. Dec. 9, 1992).

educational purposes if it broadcasts such programming, as it is defined in § 73.621 of the Commission's Rules, for at least 50 percent of its broadcast week.

4. Section 615(l)(1) of the 1992 Cable Act provides that the term qualified NCE station also includes the translator of any NCE station with five watts or higher power serving the franchise area, a full-service station or translator licensed to a channel reserved for noncommercial educational use, and such stations and translators operating on channels not so reserved as the Commission determines are qualified NCE stations. In the Order, the Commission concludes that stations and translators on non-NCE channels will be considered qualified if they meet the qualification criteria set forth in Section 5 of the 1992 Cable Act.

5. Section 615(l)(2) of the 1992 Act defines a qualified local NCE station as an NCE station licensed to a principal community whose reference point, as defined in § 76.53 of the Commission's Rules, is within 50 miles of the principal headend of the cable system, or whose Grade B service contour, as defined in § 73.683(a) of the Commission's Rules, encompasses the principal headend of the cable system. The Notice proposed that a cable operator with multiple headend facilities should be permitted to select which of those headends will serve as its "principal headend," as long as the choice is not intended to circumvent the system's must-carry obligations. The Commission concludes that a cable system with multiple headends may select its own principal headend. It will require an operator to designate its principal headend by May 3, 1993, and notify all qualified NCE stations of this choice on that date. The Commission expects that the principal headend will generally be the headend serving the most subscribers, accommodating the most signal proceeding equipment, or lying closet to the geographical center of the system. The Commission will require an operator to place in its public file the location of its designated principal headend by June 17, 1993. A cable operator may change its principal headend only for good cause (*e.g.*, where the system adds communities that necessitate redesignation or relocation of its headend). An operator making any subsequent change in its principal headend must notify all stations carried on its system pursuant to the must-carry rules at least 60 days before the change takes place, and include the new designation in its public file.

6. The 1992 Cable Act requires cable operators to carry all qualified local NCE television stations requesting carriage, except that systems with 12 or fewer usable activated channels, must carry the signal of one qualified local NCE station and systems with 13 to 36 usable activated channels, must carry up to three qualified local NCE stations. Cable systems with 36 or fewer channels that operate beyond the presence of a qualified local NCE station are further required to import and carry a qualified NCE station. In addition, section 615(c) requires that cable operators continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990, regardless of the proximity of those stations to the system's principal headend. Further, section 615(h) provides that qualified NCE signals shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

7. As proposed in the Notice, the Commission adopts the 1992 Cable Act definition of "activated channels" as "channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use." It also adopts the statutory definition of "usable activated channels" as "activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as defined by the Commission."

8. In the Order, the Commission concludes that, if a cable system with 36 or fewer channels receives requests for carriage of qualified local NCE stations in excess of its must-carry obligations, the cable system may select which signals to carry. The 1992 Cable Act exempts medium and large capacity systems from carriage of certain duplicating signals. Section 615(b)(3)(C) provides that a cable operator with 13 through 36 channels shall not be required to carry the more than one local NCE station affiliated with the same state public television network, if the programming of one station substantially duplicates the programming of another such station. Similarly, section 615(e) provides that systems with more that 36 channels shall not be required to carry the signals of additional local NCE stations if the programming of those stations substantially duplicates the programming of a qualified local NCE station requesting carriage. The Commission adopts a two-part test for these purposes. First, the amount of duplicative (simultaneous or non-simultaneous) prime time weekly programming broadcast over the course of a three-month period will be calculated. Second, the amount of duplicative (simultaneous or non-simultaneous) weekly programming broadcast outside of prime time over the course of the same three-month period will be determined. The end of the three-month period must fall within 30 days prior to the date the cable system notifies the NCE station that it is denying or discontinuing carriage based on substantial duplication. Only if the station duplicates more than 50 percent of the other station's weekly programming in both of these respects will it be denied must-carry status. The Commission will use the definition of "prime time" in § 76.5(n) of the Commission's Rules (*i.e.*, 5–10 PM in the central time zone and 6–11 PM in all other time zones; stations in mountain time zone may choose either). For application of this test, if a station broadcasts a program in prime time that is broadcast on another station during the day, the two broadcasts will not be considered duplicative. Moreover, programs broadcast in foreign languages will not be considered duplicative of the same programs broadcast in English and only identical episodes of a series will be considered duplicative.

9. In the Notice, the Commission sought comment on implementation of section 615(d) of the Act, which permits a cable operator to place a qualified NCE station on a channel reserved for PEG programming when no other channel capacity exists. The Commission declines to adopt stringent requirements regarding the use of PEG channels for NCE must-carry purposes. The Commission concludes that adoption of additional PEG channel requirements and procedures here would infringe upon the discretion given to franchising authorities under this Section of the 1992 Act and under Section 611 of the Communications Act. Thus, the Commission defers at this time to the judgment of franchising authorities with respect to the procedures to be used to delineate the rights of must-carry NCE stations and PEG channel users, respectively.

10. Section 615(k) of the 1992 Act requires a cable operator, upon request by any person, to identify the NCE signals carried on its system in fulfillment of must-carry requirements. The Notice sought comment on procedures for providing this information and whether the

Commission should require a cable operator to retain a list in its public file of all stations carried on its system pursuant to the must-carry rules. The Commission will require that, by June 17, 1993, a cable operator shall include in its public file a list of the NCE stations carried on its system pursuant to the must-carry rules, including the call sign, city of license, broadcast channel number and cable channel position on the system for each must-carry station, and whether the station was carried on the cable system on March 29, 1990. The Commission also will require that this list be provided in writing within 30 days in response to a written inquiry.

11. *Carriage of Commercial Television Stations.* Section 614(a) requires each cable operator to carry local commercial television stations and qualified low power television stations. Pursuant to Section 614(b), most cable operators must set aside up to one-third of their usable activated channel capacity for the carriage of local commercial stations, although systems with 12 or fewer usable activated channels are only required to carry at least three such stations. In addition, such cable systems with 12 or fewer channels are exempt from the commercial must-carry requirements if they serve 300 or fewer subscribers, as long as they do not delete from carriage any signal of a broadcast television station.

12. Since the Cable Act of 1992 gives the Commission minimal discretion in implementing the general must-carry obligation provisions, these statutory provisions will be added to the Commission's Rules and will be effective on June 2, 1993. In addition, the Commission adopts October 5, 1992, the date this Act was enacted, as the date for judging whether a system with 12 or fewer channels and 300 or fewer subscribers need only carry those broadcast stations that it carried on that date.

13. For purposes of these must-carry obligations, a "local commercial television station" is defined in section 614(h)(1)(A) of the 1992 Act as any full power commercial television broadcast station licensed by the Commission that is located in the same television market as the cable system. The term does not include: (1) Low power television stations, television translator stations, or passive repeaters; (2) a television broadcast station that would be considered a distant signal under section 111 of the Copyright Act, unless such station agrees to indemnify the cable operator for any copyright liability resulting from carriage on the cable system; or (3) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, unless such station agrees to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal. The Commission adds this specific statutory definition of a local commercial television station entitled to must-carry rights to its rules. However, the Commission will require cable operators to notify by certified mail by May 3, 1993, those local signals that may not be entitled to carriage because they either (1) fail to meet the signal strength requirement or (2) may cause increased copyright liability. In addition, on the date cable systems begin carrying their complement of commercial must-carry signals, June 2, 1993, cable operators will be required to send by certified mail to all local broadcast stations a list of all broadcast television signals carried on their systems and their channel positions. This notification must be sent to all local television stations, including those not designated as must-carry signals and those not carried on the system.

14. In response to the questions in the Notice about the statutory requirements to make all must-carry signals available to all subscribers and all cable-connected television sets, the Commission believes that the 1992 Act is clear in its requirement that all local commercial television stations carried in fulfillment of the must-carry requirements must be provided to every cable subscriber and must be viewable on all television sets that are connected to the cable system by a cable operator or for which the cable operator provides a connection. The Act further states that, if a cable operator authorizes subscribers to install additional receiver connections, but does not provide such connections or the equipment and materials for such connections, the operator must notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box. Thus, the Commission will require cable operators provide such notification to all affected subscribers by June 2, 1993. The notice must explain the circumstances under which additional equipment is needed, whether the equipment is available from the cable operator or available from local stores and provide information regarding installation of such equipment. The Commission will permit cable operators to include this notice in a monthly billing statement. In addition, the Commission will require cable operators to provide new subscribers with such notification at the time of the initial installation and all affected subscribers once a year of the need for additional equipment to receive the must-carry signals.

15. Consistent with its decision regarding identification of NCE stations carried to fulfill the must-carry requirements, the Commission also will require that, by June 17, 1993, a cable operator must place in its public file a list of the local commercial broadcast stations carried on its system pursuant to section 614. For each must-carry signal, the list must identify the call sign, city of license, broadcast channel number and channel position on the cable system. In response to a written request for the system's list identifying its must-carry signals, a cable operator will be required to respond within 30 days, in writing.

16. The 1992 Act provides that a local commercial television station will be entitled to must-carry status on all cable systems located in the same Area of Dominant Influence (ADI), as defined by Arbitron, as the station. The *Notice* requested comment regarding the appropriate procedures for accommodating the sporadic changes that occur in ADI assignments from year to year, for determining the relevant market for stations located outside the continental U.S. and for determining the market of cable systems serving communities in multiple ADIs. The Commission will establish a scheme whereby ADI designations will be set for a three-year period designed to coincide with the three-year election time frame for the must-carry/retransmission consent election. The current list of ADIs will be in effect for the initial election period. For the next election period in 1996, the Commission will use the list published in the Spring of 1995; for the election in 1999, the applicable list of ADIs will be the one published in the Spring of 1998, etc. Thus, each broadcast television station will be considered local in those counties listed in the same ADI to which it is assigned. Each station also will be considered a must-carry station in its home county, even if that station is assigned to an ADI different from that of its home county. For Alaska and Hawaii, the Commission believes that Nielsen's DMAs, which are developed in a manner similar to the ADIs, should be used. Furthermore, the Commission will consider Puerto Rico, U.S. Virgin Islands and Guam each to be a separate individual ADI.

17. The Commission believes it is appropriate to require a cable operator

to provide the subscribers in each community its serves with the broadcast television stations that are local to that community. Thus, in situations where a cable system serves communities in more than one county and those counties are assigned to different ADIs, the cable operator will be subject to different must-carry obligations depending on the location of the community served. Where it is technically possible, the cable operator may offer different must-carry channel line-ups in different communities based on the location. Alternatively, if the cable operator is unable to alter its channel line-up on a community-by-community basis, the commercial stations in the multiple ADIs will be considered local to all the communities for must-carry purposes.

18. Section 614(h)(1)(C) of the 1992 Act permits the Commission to add communities to or subtract communities from a station's television market to better reflect marketplace conditions following a written request. The Commission also may determine that particular communities are part of more than one television market. The statute specifies that, when considering requests to modify a television station's market, the Commission shall afford particular attention to the value of localism by taking into account such factors as (1) whether the station, or similarly situated stations, have been historically carried on the cable system or systems within such community; (2) whether the station provides coverage or other local service to the community; (3) whether any other station qualified for carriage provides coverage of news or programming of local interest; and (4) the local viewing patterns in both cable and noncable homes in the community. The Commission sought comment on the procedural aspects of requests for modifications to ADI markets and whether more specific or additional criteria are needed to implement this provision.

19. The Commission concludes that requests for modification of a station's ADI market should be made in accordance with the procedures specified in § 76.7 of its rules for special relief filings. It will allow either broadcasters or cable operators to file market modification requests, since either party may have legitimate interests in such matters, and will begin accepting such requests immediately. In order not to restrict the types of evidance that can be submitted, the Commission declines to adopt additional criteria. Consistent with section 614(h)(C)(iii), cable operators will be required to maintain the status quo with regard to signal carriage.

20. Section 614(f) requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in § 76.51 of the existing rules, as part of the implementation of these must-carry provisions. This list was derived largely from Arbitron's 1970 prime time household rankings. The Commission notes that since Congress specifically directed the Commission to use current ADI markets for determining must-carry rights, it appears that updating the Section 76.51 list would primarily affect copyright liability under the compulsory license, although it would also have some impact on the application of the Commission's territorial exclusivity, syndicated exclusivity and network nonduplication rules.

21. On the basis of the record, the Commission does not believe that a major update of the § 76.51 market list is necessary. Wholesale changes in or reranking the markets on the list would have significant implications under the copyright law and the Commission's broadcast and cable program exclusivity rules that the Commission is not prepared to make on the present record. Therefore, at this time, the Commission will only update the existing list by adding the following designated communities: (1) Rename the Columbus, Ohio, market to include Chillicothe; (2) add New London to the Hartford-New Haven-New Britain-Waterbury, Connecticut, market; and (3) change the Atlanta, Georgia, market to Atlanta-Rome. The Commission will consider further revisions to this list on a case-by-case basis under an expedited rulemaking procedure whereby it will issue a notice of proposed rulemaking based on the submitted petition without first seeking public comment on whether it should do so.

22. The Notice asked commenters to consider the potential effects of any modifications to current market designations on other existing rules and potential conflicts caused by using different geographic areas for must-carry rules and other purposes. The Commission believes that it has alleviated many concerns by making only minor, well-documented revisions to the existing top 100 market list. Since market rankings will remain the same, the zones of exclusivity protection will be unchanged for each market, except in those few cases where additional designated communities are now named. Thus, the Commission will not modify its syndicated exclusivity or network nonduplication rules at this time. With respect to copyright matters, the Commission believes that Congress intended for its updated § 76.51 list to be applied to assess copyright liability, since ADIs are used for market designations for must-carry purposes.

23. The 1992 Act requires the Commission to define the term "network" for purposes of applying the must-carry provisions in situations where the programming schedules of two or more stations are similar. In the Notice, the Commission observed that section 614(b)(2) and one part of Section 614(b)(5) address duplicating network affiliates and the second part of Section 614(b)(5) addresses any duplicating local commercial signal and proposed a source-neutral definition that incorporated the substantial duplication concept for purposes of both sections 614(b)(2) and 614(b)(5). Upon evaluation, the Commission now believes that it is appropriate to treat the provisions of sections 614(b)(2) and section 614(b)(5) separately as the two provisions are intended to accommodate different situations and are addressed separately in the statute and its legislative history.

24. Specifically, the Commission will adopt the definition of a "network" applicable to the filing of network affiliation agreements (§ 73.3613(a)(i)) of "an entity that offers programming on a regular basis for 15 or more hours per week to at least 25 affiliates in 10 or more states." To define "substantial duplication" for the application of section 614(b)(5), the Commission uses the guidance provided in the legislative history that indicates that this term is intended to refer to the "simultaneous transmission of identical programming on two stations" and which "constitutes a majority of the programming on each station." Accordingly, two stations will be considered to substantially duplicate each other "if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week." Moreover, for purposes of this definition, identical programming means the identical episode of the same program series.

25. Pursuant to section 614(a) of the 1992 Act, a cable system's signal carriage obligation includes carriage of "qualified" low power television (LPTV) stations in certain limited circumstances where full power stations are absent. An LPTV station, as defined in section 614(h)(2), qualifies for must-carry rights if the station conforms to the Commission's LPTV rules, broadcasts for at least the minimum number of hours required of commercial broadcast stations by the Commission, and adheres to certain Commission

requirements regarding non-entertainment programming and employment. However, an LPTV station will not be qualified unless the Commission determines that the provision of programming by such station would address local news and informational needs not being adequately served by full power television stations, because such full power stations are distant from the LPTV station's community of license. In addition, the LPTV station must comply with the Commission's interference regulations for LPTV stations; it must be within 35 miles of the cable system's principal headend and deliver to the headend a good quality over-the-air signal; its community of license and the franchise area of the cable system must both have been located outside of the largest 160 Metropolitan Statistical Areas (MSAs) on June 30, 1990, and the population of the LPTV station's community of license on that date must not have exceeded 35,000; and there cannot be any full power television station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

26. The Notice first inquired whether a case-by-case determination by the Commission of an LPTV station's qualification for must-carry status would be required. In the Order, the Commission decided that the statutory definition of a qualified LPTV station is sufficiently rigorous to eliminate the need for such Commission determinations. As a general rule, the Commission believes that an LPTV station asserting must-carry rights must provide the cable operator with the same evidence regarding its must-carry qualifications (including its role in addressing community needs) that the station would present to the Commission should its request for carriage be denied. The cable operator will then be obligated to give full consideration to the request, and to respond to the LPTV station within the time frames specified herein. In the event an LPTV station asserting must-carry rights is denied carriage, the station must follow the procedures detailed herein with respect to remedies for denial of carriage.

27. Cable systems are required to carry a qualified LPTV station only if there are not sufficient full power local commercial television stations to fulfill the cable operator's must-carry obligations under section 614(b). Assuming this requirement is met, section 614(c)(1) provides that a cable system with 35 or fewer channels must carry one qualified LPTV station and other systems must carry two such signals.

28. A cable operator required to carry more than one signal of a qualified LPTV station may place the additional station on public, educational or governmental (PEG) channels not in use for their designated purposes, subject to approval by the franchising authority. Consistent with the discussion regarding the use of PEG channels for NCE carriage, the Commission will defer all such decisions to the franchising authority.

29. Section 614(g) provides that a cable operator will neither be required to carry nor be prohibited from carrying the signal of a commercial television station that is predominantly used for the transmission of sales presentations or program length commercials until the Commission completes a related proceeding to determine whether such broadcast television stations serve the public interest, convenience, and necessity and are entitled to must-carry status. On January 14, 1993, the Commission initiated such a proceeding.[3] Until a final definition of "predominantly utilized for the transmission of sales presentations or program length commercials" is adopted in MM Docket No. 93–8, an interim definition is needed in order to implement section 614(g).

30. In the Notice, the Commission sought comment on whether an appropriate interim definition would be one that considers channels to be "predominantly utilized" for such purposes if more than 50 percent of their programming week consists of sales presentations or program length commercials. The Commission concludes that its proposed definition is appropriate for use during the interim period because it is simple to apply. It declines, however, to adopt commenters' suggestion to use the definition of commercial matter in Section 76.225 to describe such programming, as it also describes traditional commercials. The Commission believes that it is generally understood that the programming in question includes sales presentations longer than traditional commercials inserted in programming.

31. Manner of Carriage. Pursuant to sections 614(b)(3)(A) and 615(g)(1) of the 1992 Act, cable operators are faced with three broad categories of carriage content obligation. First, cable operators are mandated to carry must-carry signals in their entirety, including the primary video, accompanying audio and line 21 closed caption transmissions of both qualified local commercial and NCE stations. Second, cable operators are required, where technically feasible, to carry program-related material on the vertical blanking interval (VBI) or subcarriers of both types of stations. Third, with respect to local qualified NCE stations, cable operators, where technically feasible, must carry program-related material that may be necessary for the receipt of programming by handicapped persons or for educational or language purposes. Lastly, the 1992 Act gives cable operators discretion to carry any other information in a station's VBI or subcarriers.

32. With respect to determining what is program-related material, the Commission believes the best guidance is to be found in the factors enumerated in the copyright decision *WGN Continental Broadcasting* v. *United Video*, 685 F.2d 218 (7th Cir. 1982). There, the Court held that the copyright of a television program include program material encoded in the VBI when "related images" are involved. With regard to the "technical feasibility" of the carriage of program-related material in the VBI or on subcarriers, the Commission generally concludes that such carriage should be considered "technically feasible" if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material. However, the Commission would consider signal carriage to be "technically feasible" if only nominal costs, additions or changes of equipment are necessary.

33. The 1992 Act permits a cable operator, where appropriate and technically feasible, to remove signal enhancements, such as ghost-cancelling information carried in a commercial station's VBI if the cable operator employs such technology at the cable system's headend. Thus, the Commission determined that ghost-cancelling technology can only be stripped from the television signal if the cable operator applies an adequate alternative methodology at the headend. It also believes that the same treatment should apply to NCE stations.

34. Section 614(b)(6) provides that the signals of local commercial television stations carried pursuant to the new must-carry rules must be carried on either (1) the same channel on which the station is broadcast over the air, (2) the cable channel on which it was carried on July 19, 1985, or (3) the cable channel on which it was carried on January 1, 1992. Similarly, section 615(g)(5) requires that NCE signals

[3] See Notice of Proposed Rule Making in MM Docket 93–8, 58 FR 7875 (February 10, 1993).

carried pursuant to must-carry requirements must appear on the cable system channel number on which the qualified local NCE station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station. In either case, the station is entitled to choose among these alternatives or to select another channel that is mutually agreed upon by the station and cable operator.

35. In the Order, the Commission observes that the Act clearly contemplates that the broadcaster, not the cable operator, gets to select which of the channel positioning alternatives will apply in its case. The Commission will require stations to indicate their choice of channel position when they initially elect retransmission consent or must-carry status, although cable operators will have until October 6, 1993, to fulfill such requests. In the interim, channel positioning will be at the discretion of the cable operator.

36. With respect to conflicts between the carriage or channel positioning rights of a must-carry signal and prior agreements between cable operators and cable programming services, the Commission finds that the provisions of the 1992 supersede any such contracts. Moreover, the Commission declines to adopt a formal priority structure for resolving conflicting channel position claims among broadcasters at this time. Nonetheless, the Commission suggests that parties give consideration to maintaining current channel positions to avoid disruptions.

37. The notice solicited comment on whether the Commission's recently adopted Cable Technical Report and Order[4] satisfies the requirements for signal quality standards specified in the 1992 Act. The Commission believes its current technical standards, when taken as a whole, ensure no material degradation occurs on any video signal delivered to a subscriber. The notice also cited the requirement adopted in the Cable Technical Report and Order that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation of broadcast television signals. Given that the Commission's current technical standards adopted in the Cable Technical Report and Order require a cable operator to provide to the subscriber a good quality signal for all classes of cable channels, including broadcast channels, without material degradation, the Commission is not convinced that additional requirements for broadcast television stations are needed at this time. The Commission continues to believe that its technical standards, considered as a whole, currently ensure that cable systems will deliver a good quality picture to subscribers.

38. A broadcast television station is not entitled to must-carry status if it does not deliver a good quality signal to the cable system's headend. The Commission states that it expects cable operators to cooperate with broadcasters in such cases and to provide the relevant data for the broadcaster to determine whether it wishes to pay for the signal improvements required to attain must-carry status. The Commission concludes that it is the television station's obligation to bear the cost of delivery of a good quality signal, including equipment improvement expenses.

39. Procedures. The 1992 Act requires a cable operator to provide written notice to a local television station, and subscribers in the case of NCE stations, at least 30 days prior to either deleting from carriage or repositioning that station on the system. In addition, a cable operator may not delete or reposition a local commercial station during a ratings period. In the Notice, the Commission sought comment on the implementation of these provisions, including whether it should require cable operators to notify subscribers of changes in commercial must-carry signal carriage, as is required by the Act for NCE stations. In the Notice, the Commission also proposed to prohibit deletion or channel repositioning solely during the four national four-week ratings periods—roughly February, May, July and November. Generally, the Commission adopts the proposed notification requirements, including notification of subscribers about changes in the carriage of both commercial and noncommercial stations. Furthermore, consistent with the Commission's March 11, 1993, action in its customer service proceeding (Report and Order in MM Docket No. 92–263, FCC 93–145) cable operators will be required to notify any broadcaster 30 days prior to deletion or repositioning of its signal.

40. Under the 1992 Act, a cable operator is generally prohibited from accepting or requesting compensation for carriage or channel positioning of a television station, NCE or commercial, carried in fulfillment of the must-carry requirements. However, as discussed above, a station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system. Moreover, the cable operator may accept payments as indemnification for any increased copyright liability resulting from carriage of commercial must-carry stations that would be considered distant signals for copyright purposes. In this regard, the Commission expects cooperation between cable operators and broadcasters to ensure that operators are compensated for the cost of carriage of "distant" must-carry signals and that broadcast licensees pay only their fair share. Thus, a broadcaster will only be responsible for the increased copyright costs associated with carriage of its station as a must-carry signal.

41. Section 614(d)(1) and section 615(j) of the 1992 Act provide for the resolution of carriage and channel positioning disputes between a broadcast station and a cable operator. The Act requires a local commercial station to notify the cable operator of an alleged violation, and further requires the cable operator to respond within 30 days, prior to that station filing a complaint with the Commission. An NCE station is permitted to file a complaint with the Commission prior to notifying the cable operator. Once a complaint is filed, the Commission has 120 days to either dismiss the complaint or take remedial action. The Notice sought comment on whether the special relief provisions of § 76.7 should be used, with modified time periods and the difference in treatment of local commercial stations and NCE stations.

42. The Commission believes that the special relief procedures of § 76.7 provide the best method of expediting complaints filed pursuant to sections 614(d)(1) and 615(j) because time is of the essence under 120-day statutory limit. Therefore, the Commission is amending § 76.7 to accommodate the filing of complaints, which will be exempt from the fee provisions of § 76.7.

43. In the Order, the Commission recommends that commercial station's initial notification to the cable operator of an alleged failure to comply with its must-carry obligations be made with the same level of specificity, raising all issues, as the station would raise before the Commission if the request should be denied. This initial notification will act as a condition precedent to a commercial station filing a complaint with the Commission, and will serve as a primary part of the pleadings in the event a complaint is filed. The Commission also believes the cable operator's response to a commercial

[4] See Report and Order in MM Docket Nos. 91–169 and 85–38, 57 FR 11000 (April 1, 1992), (Cable Technical Report and Order) and Memorandum Opinion and Order in MM Docket Nos. 91–169 and 85–38, 57 FR 61009 (December 23, 1992) (Cable Technical Reconsideration).

station should contain the same level of specificity as the cable operator would raise before the Commission in defense of a complaint against it. This initial response will serve as a primary part of the pleadings in the event a complaint is filed by an aggrieved commercial station.

44. With respect to an NCE station, although the statute gives the NCE station the right to directly file a complaint with the Commission, it is anticipated, though not required, that if there is any question relating to the carriage obligations of the cable system, the NCE station will make inquiries of the cable system prior to filing a complaint. In the event the NCE station chooses to notify a cable operator of an alleged failure to comply with the Act, the Commission believes it appropriate that it uses the procedures outlined for commercial stations. If the NCE station chooses to avail itself of the plain language of the statute and file a complaint directly with the Commission, the NCE station must serve the cable system as provided in § 76.7 of the Commission's rules.

45. The Notice proposed a 30- or 60-day time limit from the triggering action in which to allow stations to file complaints. The Commission believes that a time limit for the filing of a must-carry or channel positioning complaint is appropriate and concludes that it is appropriate that a station be required to file its complaint within sixty (60) days of an "affirmative action" by a cable operator which directly affects the rights and interests of the station. An affirmative action for these purposes includes a notice from the cable operator of its intent to discontinue carriage or reposition the channel, or a denial from a cable operator in response to a demand by the station for either carriage or channel position.

46. The Act requires the Commission to make a determination regarding a must-carry complaint within 120 days after it is filed. Thus, the Notice suggested that cable operators be given ten (10) days to respond to a complaint filed with the Commission by either a commercial or an NCE station in order to meet this deadline. The Commission believes that the twenty (20) day opportunity to reply or oppose a complaint set forth in that rule will be sufficient time for cable operators to react to either a commercial or NCE station complaint. These amended provisions of 76.7 will be applied to all complaints.

47. The Act provides that the Commission shall require a cable system that has failed to meet its must-carry obligation to carry the affected commercial station for at least 12 months. With respect to NCE stations, the Act states that the Commission shall determine the needed remedial actions. The Commission believes that 45 days is an appropriate amount of time for the cable operator to implement any order of the Commission; however, the Commission reserves the right to reduce or extend such period of time where warranted by the circumstances of a particular case. Although the statute appears to contemplate remedial action on behalf of NCE stations be determined on a case-by-case basis, the Commission anticipates that orders relating to such complaints will also carry a 45-day deadline.

48. Retransmission consent. The new section 325(b) of the Communications Act provides that, as of October 6, 1993, no cable system or other multichannel video programming distributor shall retransmit the signal of any broadcasting station unless the multichannel distributor has the express authority of the originating station or, in the case of a cable system, a television broadcasting station has elected to assert must-carry rights. The new subsection contains four exceptions. The retransmission consent requirements do not apply to: (1) Noncommercial broadcasting stations; (2) home satellite dish reception of superstations provided that the signal was retransmitted by a satellite carrier on May 1, 1991; (3) home satellite dish reception of network stations, provided that reception is by an unserved household; and (4) cable or other multichannel distributor retransmission of superstations provided that the signal was obtained from a satellite carrier and the originating station was a superstation as of May 1, 1991.

49. The Commission finds that retransmission consent requirements do apply to commercial radio signals and to low power television signals, unless a low power television signal is being carried pursuant to the must-carry rules. Retransmission consent requirements also apply to distant commercial television signals that are not superstations, notwithstanding the fact that television stations cannot opt for must-carry rights with respect to cable systems outside their local market. However, the retransmission consent requirements do not apply to foreign stations.

50. The Commission determines that "multichannel video programming distributor" should be defined to include satellite master antenna television systems, but that a pure video dial tone provider is not a multichannel distributor. Rather, customers of a pure video dialtone provider would be responsible for meeting retransmission consent obligations. The Commission also determines that provision of local broadcast signals by master antenna television facilities or VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. To ensure that these conditions are met, the facilities in question must be the property of the building owner or individual subscriber.

51. The statute requires commercial television broadcast stations to make an election between must-carry and retransmission consent rights within one year of the date of enactment of the 1992 Act and every three years thereafter. The Commission adopts the following schedule for implementing the must-carry and retransmission consent requirements.

52. Effective April 2, 1993, cable operators will be required to give subscribers 30 days notice of deletion or repositioning of any television broadcast station carried. As of May 3, 1993, cable systems must notify qualified noncommercial educational stations of the location of their principal headend and notify any local television stations that may not be entitled to must-carry status due to failure to meet signal strength requirements or imposition of increased copyright liability on cable systems.

53. On June 2, 1993, cable systems must begin carriage of their complement of commercial must-carry signals. Cable operators will not be required to conform to the channel positioning rules until the retransmission consent requirements go into effect. By June 17, 1993, local commercial television stations will be required to make their initial election of must-carry or retransmission consent status, and stations electing must-carry must notify cable operators of their preferred channel positions. The retransmission consent and channel positioning requirements will take effect on October 6, 1993. Subsequent election deadlines are October 1 of 1996, 1999, etc. Those elections will take effect on January 1 of 1997, 2000 etc.

54. The Commission notes that cable operators wishing to drop signals due to a failure to reach retransmission consent agreements will be required to notify subscribers by September 6, 1993 and that the lead time for preparing such notifications for insertion in subscriber bills and for making necessary equipment changes may be even longer. Therefore, the Commission expects that, in general, retransmission consent

agreements will be concluded by early August of 1993.

55. Stations will be required to make the same election for cable systems with overlapping franchise areas. If a station fails to make an election by the deadline, the default election will be must-carry. Stations will be required to place copies of all election statements in their public files and to send each cable operator in the local market a copy of the station's election statement with respect to that operator. New television stations must make their initial must-carry/retransmission consent elections within 30 days of commencing regular broadcasts, and this initial election will take effect 90 days after it is made.

56. The Commission, rejecting its tentative conclusion, finds that the requirement in new section 614(b)(3)(B) that cable operators must "carry the entirety of the program schedule of any television station carried on the cable system" (subject to Commission rules on sports broadcasting, syndicated exclusivity, and network nonduplication) applies to all television stations carried, including retransmission consent and must-carry stations. Moreover, local television signals carried pursuant to retransmission consent agreements count against the must-carry signal complement required.

57. The Commission determines that retransmission consent is a new right, created by the Communications Act, that vests in a broadcasters' signal. This right is distinct from copyright, which applies to the programming carried on the signal. Broadcasters may bargain away their retransmission consent rights. However, in order to maintain the Congressionally-mandated distinction between retransmission consent and copyright, the Commission finds that any bargaining must be for retransmission consent rights in the entire signal and not for individual programs carried on the signal. Thus, any retransmission rights acquired will be for the entire signal of a broadcast station. The Commission expects purely contractual disputes to be resolved in the courts, but broadcast stations and, in certain circumstances, television networks, may file complaints with the Commission regarding alleged violations of section 325(b).

58. With respect to ensuring that retransmission consent fees do not result in basic service tier rates that are not reasonable, the Commission determines that its rate regulation proceeding is the appropriate forum for addressing reasonableness of retransmission consent rates. Accordingly, the Commission declines to adopt specific regulations limiting retransmission consent rates.

59. The new retransmission consent rules also prohibit exclusive retransmission consent agreements. The Commission will revisit this issue in three years. Additionally, the Commission concludes that television broadcast stations that elect retransmission consent may exercise network nonduplication rights and denies a petition from the National Cable Television Association to revisit the network nonduplication rules.

Final Regulatory Flexibility Analysis

60. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and Purpose of this Action

This action is taken to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to the mandatory carriage of broadcast signals ("must-carry") and retransmission consent.

II. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis, however comments received in response to the Notice of Proposed Rule Making indicate that smaller cable systems that primarily serve rural areas are concerned about their ability to compete effectively under the same regulatory scheme as that applied to larger cable systems. Concerns focus generally on the smaller system's ability to financially meet technical requirements and to effectively negotiate for retransmission rights in its market.

III. Significant Alternatives Considered and Rejected

None. The Act is specific with regard to the must-carry and retransmission rights available to broadcasters and the resulting obligation on cable systems. The Act provides that rights and obligations are proportionate to the size of the business.

61. The Secretary shall cause a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ordering Clauses

62. Accordingly, *it is ordered*, That pursuant to authority contained in Section 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth in below.

63. *It is further ordered*, That pursuant to the need to avoid disruption to cable subscribers and broadcast television stations during the transition to the new broadcast signal carriage rules and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), section 76.58(a) and 76.59 of the rules set forth below will be effective April 2, 1993.

64. *It is further ordered*, That §§ 76.56 and 76.58(e) of the rules set forth below will be effective June 2, 1993.

65. *It is further ordered*, That §§ 76.64 and 76.302 of the rules set forth below will be effective June 17, 1993.

66. *It is further ordered*, That all other sections of the rules set forth below will be effective May 3, 1993.

67. *It is further ordered*, That the Petition for Rule Making filed by the National Cable Television Association on January 19, 1993, is denied.

68. *It is further ordered*, That MM Docket No. 90–4 is terminated.

69. *It is further ordered*, That MM Docket No. 92–295 is terminated.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 543, 552.

2. Section 76.5 is amended by revising paragraph (b) and adding paragraphs (nn), (oo) and (pp) to read as follows:

§ 76.5 Definitions.

* * * * *

(b) *Television station; television broadcast station.* Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 of this chapter, and any

television broadcast station licensed by a foreign government: *Provided, however,* That a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage, program exclusivity, or retransmission consent authorization pursuant to subpart D or F of this part, but may otherwise be carried if consistent with the rules on any service tier.

* * * * *

(nn) *Activated channels.* Those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational or governmental use.

(oo) *Usable activated channels.* Those activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. See part 76, subpart K.

(pp) *Principal headend.* (1) The headend, in the case of a cable system with a single headend or,

(2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this part. The designation of a principal headend shall be made by May 3, 1993, and each cable system shall place in its public file the location of its designated principal headend by June 17, 1993, as provided in § 76.302. Except for good cause, an operator may not change its choice of principal headend.

3. Section 76.7 is revised in its entirety to read as follows:

§ 76.7 Special relief and must-carry complaint procedures.

(a)(1) *Petitions for special relief.* On petition by a cable television system operator, a franchising authority, an applicant, permittee, or licensee of a television broadcast or translator station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(2) *Complaints filed pursuant to § 76.61.* In response to a complaint filed by a television broadcast station under § 76.61 (must-carry complaint), the Commission may order a cable television system operator to commence or resume carriage of the complaining station, or position or reposition the complaining station's channel on the cable television system, pursuant to subpart D of this part.

(b) The petition for special relief or must-carry complaint may be submitted informally, by letter, but shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested is granted.

(c)(1) The petition for special relief or must-carry complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for special relief or must-carry complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(3) An original and two (2) copies of the petition for special relief or must-carry complaint, and all subsequent pleadings shall be filed in accordance with § 0.401(a) of this chapter, except the petitions for special relief requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Must-carry complaints filed pursuant to § 76.61 are not covered by part 1, subpart G of this chapter and do not require fees.

(4)(i) Must-carry complaints filed pursuant to § 76.61(a) (Complaints regarding carriage of local commercial television stations) shall be accompanied by the notice from the complainant to the cable television system operator (§ 76.61(a)(1)), and the cable television system operator's response (§ 76.61(a)(2)), if any. If no timely response was received, the complaint should so state.

(ii) Must-carry complaints filed pursuant to § 76.61(b) (Complaints regarding carriage of qualified local NCE television stations) should be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(iii) No must-carry complaint filed pursuant to § 76.61 will be accepted by the Commission if filed more than sixty (60) days after the date of the specific event described in this paragraph. Must-carry complaints filed pursuant to § 76.61(a) or § 76.61(b) should affirmatively state the specific event upon which the complaint is based, and shall establish that the complaint is being filed within sixty (60) days of such specific event. With respect to must-carry complaints filed pursuant to § 76.61(a), the specific event shall be

(A) The denial by a cable television system operator of a request for carriage or channel position contained in the notice required by § 76.61(a)(1), or

(B) The failure to respond to such notice within the time period allowed by § 76.61(a)(2). With respect to must-carry complaints filed pursuant to § 76.61(b), the specific event shall be when the complainant first believes that the cable television system operator has failed to comply with the applicable provisions of subpart D of this part.

(d) Interested persons may submit comments or oppositions to a petition for special relief or a must-carry complaint within twenty (20) days after the date of public notice of the filing of such petition or complaint. For good cause shown in the petition for special relief or must-carry complaint, the Commission may, by letter or telegram to known interested persons, specify an altered time for such submissions. Comments or oppositions shall be served on the petitioner or complainant and on all persons listed in petitioner's or complainant's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(e) The petitioner or complainant may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of a petition for special relief and the responsive pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission will resolve must-carry complaints pursuant to paragraphs (a)(4) and (b)(2) of § 76.61. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings

and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(g) On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

Note: Each party filing a petition, comments, opposition or other pleading pursuant to § 76.7 is responsible for the continuing accuracy and completeness of all information in such document. The provisions of § 1.65 of this chapter are wholly applicable to pleadings involving § 76.7, except that where specific provisions of the latter conflict with the former, the specific provisions of § 76.7 are controlling, e.g., where requirements for service on specified parties of certain information may vary.

4. Section 76.51 is amended by revising the names of markets ranked numbers 18, 19 and 27, and by adding a note at the end of the section, to read as follows:

§ 76.51 Major television markets.

* * * * *

(18) Atlanta-Rome, Ga.

(19) Hartford-New Haven-New Britain-Waterbury-New London, Ct.

* * * * *

(27) Columbus-Chillicothe, Ohio

* * * * *

Note: Requests for changes to this list shall be made in the form of a petition for rulemaking pursuant to § 1.401 of this chapter, except that such petitions shall not be subject to the public notice provisions of § 1.403 of this chapter.

5. Section 76.55 is added to subpart D to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

For purposes of the must-carry rules set forth in this subpart, the following definitions apply:

(a) *Qualified noncommercial educational (NCE) television station.* A qualified NCE television station is any television broadcast station which

(1)(i) Under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as an NCE television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) Has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of the Communications Act of 1934, as amended; or

(2) Is owned and operated by a municipality and transmits noncommercial programs for educational purposes, as defined in Section 73.612 of this chapter, for at least 50 percent of its broadcast week.

(3) This definition includes:

(i) The translator of any NCE television station with five watts or higher power serving the franchise area,

(ii) A full-service station or translator if such station or translator is licensed to a channel reserved for NCE use pursuant to § 73.606 of this chapter, or any successor regulations thereto, and

(iii) Such stations and translators operating on channels not so reserved but otherwise qualified as NCE stations.

(b) *Qualified local noncommercial educational (NCE) television station.* A qualified local NCE television station is a qualified NCE television station:

(1) That is licensed to a community whose reference point, as defined in § 76.53 is within 50 miles of the principal headend, as defined in § 76.5(pp), of the cable system; or

(2) Whose Grade B service contour encompasses the principal headend, as defined in § 76.5(pp), of the cable system.

(c) *Local commercial television station.* A local commercial television station is any full power television broadcast station, other than a qualified NCE television station as defined in paragraph (a) of this section, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market, as defined below in paragraph (e) of this section, as the cable system, except that the term local commercial television station does not include:

(1) Low power television stations, television translator stations, and passive repeaters with operate pursuant to part 74 of this chapter.

(2) A television broadcast station that would be considered a distant signal under the capable compulsory copyright license, 17 U.S.C. 111, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(3) A television broadcast station that does not deliver to the principal headend, as defined in § 76.5(pp), of a cable system either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, *i.e.*, the input to the first active component of the signal processing equipment relevant to the signal at issue, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(d) *Qualified low power station.* A qualified low power station is any television broadcast station conforming to the low power television rules contained in part 74 of this chapter, only if:

(1) Such station broadcasts for at least the minimum number of hours of operation required by the Commission for full power television broadcast stations under part 73 of this chapter;

(2) Such station meets all obligations and requirements applicable to full power television broadcast stations under part 73 of this chapter, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(3) Such station complies with interference regulations consistent with its secondary status pursuant to part 74 of this chapter;

(4) Such station is located no more than 35 miles from the cable system's principal headend, as defined in § 76.5(pp), and delivers to that headend an over-the-air signal of good quality;

(5) The community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(6) There is no full power television broadcast station licensed to any community within the county or other equivalent political subdivision (of a State) served by the cable system.

(e) *Television market.* For purposes of the must-carry rules:

(1) A local commercial broadcast television station's market shall be defined as its Area of Dominant

Influence (ADI) as determined by Arbitron and published in its Television ADI Market Guide or any successor publication, as noted below, except that for areas outside the contiguous 48 states the area of dominant influence may be defined using Nielsen's Designated Market Area (DMA), where applicable, and that Puerto Rico, the U.S. Virgin Islands and Guam will each be considered one ADI;

(2) A cable system's television market(s) shall be the one or more ADIs in which the communities it serves are located;

(3) In addition, the county in which a station's community of license is located will be considered within its market.

Note: For the 1993 must-carry/retransmission consent election, the ADI assignments specified in the 1991–1992 *Television ADI Market Guide*, available from the Arbitron Ratings Co., 312 Marshall Ave., Laurel, MD, will apply. ADI assignments will be updated at three-year intervals. For the 1996 election period, the 1994–1995 ADI list will be used; the applicable list for the 1999 election will be the 1997–1998 list, etc.

(f) *Network.* For purposes of the must-carry rules, a commercial television network is an entity that offers programming on a regular basis for 15 or more hours per week to at least 25 affiliates in 10 or more states.

6. Section 76.56 is added to subpart D to read as follows:

§ 76.56 Signal carriage obligations.

(a) *Carriage of qualified noncommercial educational stations.* A cable television system shall carry qualified NCE television stations in accordance with the following provisions:

(1) Each cable operator shall carry on its cable television system any qualified local NCE television station requesting carriage, except that

(i) Systems with 12 or fewer usable activated channels, as defined in § 76.6(oo), shall be required to carry the signal of one such station;

(ii) Systems with 13 to 36 usable activated channels, as defined in § 76.5(oo), shall be required to carry at least one qualified local NCE station, but not more than three such stations; and

(iii) Systems with more than 36 usable activated channels shall be required to carry the signals of three qualified local NCE educational television stations; however a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station.

Note: For purposes of this paragraph, a station will be deemed to "substantially duplicate" the programming of another station if it broadcasts the same programming, simultaneous or non-simultaneous, for more than 50 percent of prime time, as defined in § 76.5(n), and more than 50 percent outside of prime time over a three-month period.

(2)(i) In the case of a cable system with 12 or fewer channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import one qualified NCE television station.

(ii) A cable system with between 13 and 36 channels that operates beyond the presence of any qualified local NCE stations, the cable operator shall import at least one qualified NCE television station.

(3) A cable system with 12 or fewer usable activated channels shall not be required to remove any programming service provided to subscribers as of March 29, 1990, to satisfy these requirements, except that the first available channel must be used to satisfy these requirements.

(4) A cable system with 13 to 36 usable activated channels which carries the signal of a qualified local NCE station affiliated with a State public television network shall not be required to carry more than one qualified local NCE station affiliated with such network, if the programming of such additional stations substantially duplicates, as defined in the note in paragraph (a)(1) of this section, the programming of a qualified local NCE television station receiving carriage.

(5) Notwithstanding the requirements of paragraph (a)(1) of this section, all cable operators shall continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. This requirement may be waived with respect to a particular cable operator and a particular NCE station, upon the written consent of the cable operator and the station.

(b) *Carriage of local commercial television stations.* Effective June 2, 1993, a cable television system shall carry local commercial broadcast television stations in accordance with the following provisions:

(1) A cable system with 12 or fewer usable activated channels, as defined in § 76.5(oo), shall carry the signals of at least three local commercial television stations, except that if such system had 300 or fewer subscribers on October 5, 1992, it shall not be subject to these requirements as long as it does not delete from carriage any broadcast television station.

(2) A cable system with more than 12 usable activated channels, as defined in § 76.5(oo), shall carry local commercial television stations up to one-third of the aggregate number of usable activated channels of such system.

(3) If there are not enough local commercial television stations to fill the channels set aside under paragraphs (b)(1) and (b)(2) of this section, a cable operator of a system with 35 or fewer usable activated channels, as defined in § 76.5(oo), shall, if such stations exist, carry one qualified low power television station and a cable system with more than 35 usable activated channels shall carry two qualified low power stations.

(4) Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (b)(1) or (b)(2) of this section, the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that

(i) Under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(ii) If the cable operator elects to carry an affiliate of a broadcast network, as defined in § 76.55(f), such cable operator shall carry the affiliate of such broadcast network whose community of license reference point, as defined in § 76.53, is closest to the principal headend, as defined in § 76.5(pp), of the cable system.

(5) A cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more then one local commercial television station affiliated with a particular broadcast network, as defined in § 76.55(f). However, if a cable operator declines to carry duplicating signals, such cable operator shall carry the station whose community of license reference point, as defined in § 76.53, is closest to the principal headend of the cable system. For purposes of this paragraph, substantially duplicates means that a station regularly simultaneously broadcasts the identical programming as another station for more than 50 percent of the broadcast week. For purposes of this definition, only identical episodes of a television series are considered duplicative and commercial inserts are excluded from the comparison. When the stations being compared are licensed to communities in different time zones, programming aired by a station within one hour of the identical program being

broadcast by another station will be considered duplicative.

(6) A cable operator is not required to carry on any tier, and is not prohibited from carrying on any tier, the signal of any commercial television station whose programming week consists of more than 50 percent sales presentations or program length commercials.

(c) *Use of public, educational, or governmental (PEG) channels.* A cable operator required to carry more than one signal of a qualified low power station or to add qualified local NCE stations in fulfillment of these must-carry obligations may do so, subject to approval by the franchising authority pursuant to Section 611 of the Communications Act of 1934, as amended, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) *Availability of signals.* (1) Local commercial television stations carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.

(2) Qualified local NCE television stations carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(3) If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation.

(e) *Identification of must-carry signals.* A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the requirements of this section. Pursuant to § 76.302, a cable operator must place a list of the broadcast television signals carried in fulfillment of these must-carry obligations in its public file.

(f) Carriage of additional broadcast television signals on such system shall be at the discretion of the cable operator, subject to the retransmission consent rules, § 76.64. A cable system may also carry any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal, including, but not limited to, multichannel television sound and teletext.

7. Section 76.57 is added to subpart D to read as follows:

§ 76.57 Channel positioning.

(a) At the election of the licensee of a local commercial broadcast television station carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992.

(b) At the election of the licensee of a qualified local NCE broadcast television station carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the qualified NCE television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985.

(c) Any signal carried in fulfillment of the must-carry obligations may be carried on such other channel number as is mutually agreed upon by the station and the cable operator.

(d) At the time a local commercial station elects must-carry status pursuant to § 76.64, such station shall notify the cable system of its choice of channel position as specified in paragraphs (a)–(c) of this section. A qualified NCE stations shall notify the cable system of its choice of channel position when it requests carriage. Channel positioning requests from local commercial stetions shall be fulfilled by the cable operator no later than October 6, 1993.

Note: Any existing agreement for channel position between a local commercial station entitled to must-carry status and a cable operator entered into prior to June 26, 1990, may continue through the expiration of such agreement.

8. Section 76.58 is added to subpart D to read as follows:

§ 76.58 Notification.

(a) Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

Note: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods—generally including February, May, July and November—commonly known as audience sweeps.

(b) By May 3, 1993, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

(c) A cable operator shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend, and shall include the new designation in its public file.

(d) By May 3, 1993, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend or

(2) May cause an increased copyright liability to the cable system.

(e) By June 2, 1993, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

9. Section 76.59 is added to subpart D to read as follows:

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station or a cable system, may deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

(b) Such requests for modification of a television market shall be submitted in accordance with § 76.7, petitions for special relief.

(c) A cable operator shall not delete from carriage the signal of a commercial

television station during the pendency of any proceeding pursuant to this section.

10. Section 76.60 is revised in its entirety to read as follows:

§ 76.60 Compensation for carriage.

A cable operator is prohibited from accepting or requesting monetary payment or other valuable consideration in exchange either for carriage or channel positioning of any broadcast television station carried in fulfillment of the must-carry requirements, except that

(a) Any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system; or

(b) A cable operator may accept payments from stations which would be considered distant signals under the cable compulsory copyright license, 17 U.S.C. 111, as indemnification for any increased copyright liability resulting from carriage of such signal.

Note: A cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the must-carry requirements, through, but not beyond, the date of expiration of an agreement between a cable operator and a local commercial television station entered into prior to June 26, 1990.

11. Section 76.61 is added to subpart D to read as follows:

§ 76.61 Disputes concerning carriage.

(a) *Complaints regarding carriage of local commercial television stations.* (1) Whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to §§ 76.56 and 76.57, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

(2) The cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

(3) A local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator may file a complaint with the Commission in accordance with the procedures set forth in § 76.7 relating to must-carry complaints. In addition to the requirements of § 76.7, such complaint shall specifically allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(4) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other time period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

(b) *Complaints regarding carriage of qualified local NCE television stations.* (1) Whenever a qualified local NCE television station believes that a cable operator has failed to comply with the signal carriage or channel positioning requirements, pursuant to §§ 76.56–76.57, the station may file a complaint with the Commission in accordance with the procedures set forth in § 76.7. In addition to the requirements of § 76.7, such complaint shall specifically allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(2) If the Commission determines that a cable operator has failed to meet its must-carry obligations, the Commission shall order that, within 45 days of such order or such other period as the Commission may specify, the cable operator reposition the complaining station or, in the case of an obligation to carry a station, commence or resume carriage of the station and continue such carriage for a period of time the Commission deems appropriate for the specific case under consideration. If the Commission determines that the cable operator has fully met the must-carry requirements, it shall dismiss the complaint.

12. Section 76.62 is revised in its entirety to read as follows:

§ 76.62 Manner of carriage.

(a) Cable operators shall carry the entirety of the program schedule of any television station carried unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under § 76.67 or subpart F of part 76.

(b) Each such television broadcast signal carried shall be carried without material degradation in compliance with technical standards set forth in subpart K of this part.

(c) Each local commercial television station whose signal is carried shall, to the extent technically feasible and consistent with good engineering practice, be provided no less than the same quality of signal processing and carriage provided for carriage of any other type of standard television signal.

(d) Each qualified local noncommercial educational television station whose signal is carried shall be provided with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried.

(e) Each commercial broadcast television station carried pursuant to § 76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(f) Each qualified local NCE television station carried pursuant to § 76.56 shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes.

§ 76.63 [Removed]

14. Section 76.63 is removed.

15. Section 76.64 is added to subpart D to read as follows:

§ 76.64 Retransmission consent.

(a) After 12:01 a.m. on October 6, 1993, no multichannel video programming distributor shall retransmit the signal of any commercial broadcasting station without the express authority of the originating station, except as provided in paragraph (b) of this section.

(b) A commercial broadcast signal may be retransmitted without express authority of the originating station if—

(1) The distributor is a cable system and the signal is that of a commercial television station (including a low-power television station) that is being carried pursuant to the Commission's must-carry rules set forth in § 76.56;

(2) The multichannel video programming distributor obtains the signal from a satellite carrier and the originating station was a superstation on May 1, 1991; or

(3) The distributor is a satellite carrier and the signal is transmitted directly to a home satellite antenna, provided that:

(i) The broadcast station is not owned or operated by, or affiliated with, a broadcasting network and its signal was retransmitted by a satellite carrier on May 1, 1991, or

(ii) The broadcast station is owned or operated by, or affiliated with a broadcasting network, and the household receiving the signal is an unserved household.

(c) For purposes of this section, the following definitions apply:

(1) A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing;

(2) A superstation is a television broadcast station other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier;

(3) An unserved household with respect to a television network is a household that

(i) Cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity of a primary network station affiliated with that network, and

(ii) Has not, within 90 days before the date on which that household subscribes, either initially or on renewal, received secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with the network.

(4) A primary network station is a network station that broadcasts or rebroadcasts the basic programming service of a particular national network;

(5) The terms "network station," and "secondary transmission" have the meanings given them in 17 U.S.C. 111(f).

(d) A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.

(e) Provision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor.

(f) Commercial television stations are required to make elections between retransmission consent and must-carry status according to the following schedule:

(1) The initial election must be made by June 17, 1993.

(2) Subsequent elections must be made at three year intervals; the second election must be made by October 1, 1996 and will take effect on January 1, 1997; the third election must be made by October 1, 1999 and will take effect on January 1, 2000, etc.

(3) Television stations that fail to make an election by the specified deadline will be deemed to have elected must carry status for the relevant three-year period.

(4) New television stations must make their initial election within 30 days of commencing regular broadcasts; such initial elections shall take effect 90 days after they are made.

(5) Television broadcast stations that become eligible for must carry status with respect to a cable system or systems due to a change in the market definition may, within 30 days of the effective date of the new definition, elect must-carry status with respect to such system or systems. Such elections shall take effect 90 days after they are made.

(g) If one or more franchise areas served by a cable system overlaps with one or more franchise areas served by another cable system, television broadcast stations are required to make the same election for both cable systems.

(h) On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place copies of all of its election statements in the station's public file, and shall send via certified mail to each cable system in the station's defined market a copy of the station's election statement with respect to that operator.

(i) Notwithstanding a television station's election of must-carry status, if a cable operator proposes to retransmit that station's signal without according the station must-carry rights (*i.e.*, pursuant to § 76.56(f)), the operator must obtain the station's express authority prior to retransmitting its signal.

(j) A cable system that changes its technical configuration in such a way as to integrate two formerly separate cable systems must give 90 days notice of its intention to do so to any television broadcast stations that have elected must-carry status with respect to one system and retransmission consent status with respect to the other. If the system and the station do not agree on a uniform election 45 days prior to integration, the cable system may require the station to make such a uniform election 30 days prior to integration.

(k) Retransmission consent agreements between a commercial broadcast station and a multichannel video programming distributor shall be in writing and shall grant consent for retransmission of the station's entire signal. Broadcasters may assign their retransmission consent rights to another party, provided that the right assigned encompasses retransmission of the entire signal of the broadcast station.

§ 76.66 [Removed]

16. Section 76.66 is removed.

17. Section 76.92 is amended by adding paragraph (g) before the note to read as follows:

§ 76.92 Network non-duplication; extent of protection.

* * * * *

(g) A community unit is not required to delete the duplicating network programming of any qualified NCE television broadcast station that is carried in fulfillment of the cable television system's mandatory signal carriage obligations, pursuant to § 76.56.

* * * * *

18. Section 76.300 is amended by revising paragraph (a) to read as follows:

§ 76.300 Scope of applications.

(a) The provisions of §§ 76.302, 76.306, and 76.307 are applicable to all cable television systems.

* * * * *

19. Section 76.302 is added to subpart H to read as follows:

§ 76.302 Required recordkeeping for must-carry purposes.

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to § 76.56. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend.

(c) Such records must be maintained in accordance with the provisions of § 76.305(b).

(d) Upon written request from any person, a cable operator is required to provide the list of signals specified in paragraph (a) of this section in writing within 30 days of receipt of such request.

[FR Doc. 93–7702 Filed 4–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 921184–3027]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary restrictions with request for comments.

SUMMARY: NMFS notifies owners and operators of vessels conducting gill net fishing from Cape Canaveral (Brevard County) to Jupiter Inlet (Palm Beach County) Florida, that, for the next 30 days, upon request, they must carry a NMFS-approved observer aboard such vessel(s). Owners and operators are also advised that authorized officers may conduct boardings and require the retrieval of nets to investigate incidental takes of sea turtles by gill net fisheries in this area. These actions are necessary to determine the level of incidental take of threatened and endangered sea turtles in gill net fisheries within this area. High stranding rates of green turtles along approximately 100 miles (161 km) of ocean beaches, the documented take of marine turtles entangled in gill nets, and the need to identify accurately the source of mortality justifies the immediate imposition of these requirements. NMFS may extend this requirement beyond 30 days and/or impose temporary sea turtle conservation measures on gill net fisheries as necessary to protect adequately sea turtles.

DATES: This action is effective from March 30, 1993 through April 29, 1993. Comments on this action must be submitted by April 29, 1993.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either "endangered" or "threatened" under the Endangered Species Act of 1973 (ESA), U.S.C. 1531 *et seq.* Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in U.S. coastal waters. Sea turtle take by other types of fishing gear has also been documented, but the specific amount and extent of impact to turtles by other gear types is unknown. Gill nets of different mesh sizes have been reported to take sea turtles; for example, gill nets have been reported to take loggerhead turtles in South Carolina sturgeon fisheries, and loggerhead and green turtles along the Atlantic coast of central and southern Florida. In fact, gill nets were the preferred means of capturing turtles when turtle fisheries were allowed in U.S. waters.

Recent Events

Gill net fisheries predominantly targeting Spanish mackerel, bluefish, and pompano in State waters of the south Atlantic off Florida have long been suspected of taking green turtles. These fisheries are in nearshore waters where an extensive sabellarid and hardbottom reef formation has been identified as the primary developmental habitat for juvenile green turtles. Between January 1989 and September 1992, a total of 316 green turtles stranded along approximately 100 miles (161 km) of ocean beaches from Brevard through Martin Counties, Florida, and gill net fisheries are the most likely source of these mortalities. At least 24 incidents of entanglement in monofilament gill and trammel nets have been documented within the area from Brevard County to Palm Beach County Florida from January 1988 through May 1992, and many stranded turtles on beaches exhibit wounds on necks or flippers characteristic of entanglement. Little or no shrimping or other fishing activities are known to occur in this area.

Last year, NMFS issued an advance notice of proposed rulemaking (57 FR 30709, July 10, 1992) that specifically identified these fisheries as possibly having a significant adverse impact on the recovery of endangered and threatened sea turtles and requested comments on the need to impose monitoring requirements and/or

conservation measures. The State of Florida provided comments on that notice and listed its concerns with respect to these fisheries. In addition, the Department of the Interior provided comments in support of NMFS' request for information on the take of turtles in non-shrimp trawl fisheries and specifically recommended that NMFS monitor gill net fisheries to determine the magnitude of capture, injury and death of the various species of turtles.

By a letter dated November 6, 1992, the Florida Marine Fisheries Commission (FMFC) advised NMFS of its plans to establish a seasonal green turtle conservation area from the shoreline extending seaward 1 nautical mile (1.85 km), bounded by Sebastian Inlet, Florida, on the north, to Jupiter Inlet, Florida, on the south, where gill nets would be banned seasonally. The proposed conservation area and gill net ban were designed to "reduce the amount of entanglement gear in the region and to separate juvenile green turtles from fishing nets in the area and during the season when most strandings have been reported."

On January 26, 1993, the Governor and Cabinet of Florida decided not to implement the FMFC's plan. Given the fact that gill nets will not be banned seasonally by Florida from Brevard County to Palm Beach County, there is a likelihood that mortality to endangered green turtles will continue to occur. NMFS believes that an observer program and boardings are needed to document any takings of sea turtles.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that gill net fisheries may be taking endangered and threatened sea turtles, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), pursuant to 50 CFR 227.72(e)(6)(ii), has determined that this action is necessary to avoid unauthorized taking that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator has determined that incidental takings of sea turtles during gill net fishing in the restricted area are unauthorized unless those takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion addressing the potential adverse effects on endangered and threatened species was conducted in 1989 for the implementation of section 114 of the Marine Mammal Protection Act (16 U.S.C. 1383a). That opinion concluded that "bottom trawl fisheries, gill net fisheries, and longline fisheries may have significant adverse impacts on the recovery of these species, and additional information on the amount/extent of incidental take is needed."

A biological opinion on the current action analyzed the impact of Florida gill net fisheries on threatened and endangered sea turtles. That opinion reemphasized the need for an observer program and additional monitoring by NMFS personnel to determine the impact of gill net fisheries on listed species. The incidental take statement issued with that opinion allows for the documented take by mortality or injury of one Kemp's ridley, green, or hawksbill, or leatherback sea turtle, or two loggerhead sea turtles. If observer reports or other information indicate that the authorized take is met or exceeded, consultation must be reinitiated, and the Assistant Administrator may impose conservation measures.

Requirements

The definitions in 50 CFR 217.12, as revised by the final rule published at 57 FR 57348 (December 4, 1992), are applicable to this action and are all relevant provisions in 50 CFR parts 217, 222, and 227. For example, under 50 CFR 227.71(b)(1), it is unlawful to own, operate, or be aboard a vessel unless that vessel is in compliance with all applicable provisions of § 227.72(e); more specifically, § 227.71(b)(3) states that it is unlawful to fish for or possess fish or wildlife contrary to a restriction specified or issued under § 227.72(e)(6).

The term "Florida gill net restricted area" means all inshore and offshore waters of the Atlantic area from Cape Canaveral (28°24.6′ N. latitude) to Jupiter Inlet (26°26.6′ N. latitude), Florida. A "gill net vessel" means any vessel that is equipped with one or more gill or trammel nets that is capable of, or used for, fishing for Spanish mackerel, bluefish or pompano, or any vessel possessing any one or more of these species that has one or more gill or trammel nets aboard. The terms "fishing" and "to fish" are defined at 50 CFR 217.12.

NMFS hereby notifies owners and operators of gill net vessels in the Florida gill net restricted area that, effective March 30, 1993, they must register with the Director, Southeast Region, NMFS, and carry a NMFS-approved observer onboard such vessel(s) if requested to do so. The owner and operator must comply with the terms and conditions accompanied by any such request to carry an observer.

The owner or operator of a gill net vessel in the Florida gill net restricted area must register with the Director, Southeast Region, NMFS by telephoning (813) 893–3163. Pursuant to 50 CFR 227.72(e)(6)(iv)(A)–(F), the following information is required: The name and official number (or registration number) of the vessel; the names, mailing and street addresses, and telephone numbers of the vessel owner and operator; the permit number or other identification of relevant state or Federal fishing permit(s); where and when the vessel intends to fish; and where and when the vessel will depart on any fishing trip, with sufficient specificity to allow for an observer to embark on the trip. The owner or operator of a gill net vessel is required to immediately provide NMFS with any changes in the information provided at the time of registration by telephoning in the changes to the number listed above. Failure to do so immediately will void the registration, which will render unlawful any subsequent entry of the gill net vessel into the Florida gill net restricted area when this observer requirement is in effect.

Owners and operators of gill net vessels in the Florida gill net restricted area must comply immediately with instructions and signals issued by an authorized office including instructions and signals to haul back a net for inspection in accordance with 50 CFR 620.8(b)–(d). Failure to do so is a violation of 50 CFR 227.71(b)(7). Furthermore, owners and operators of gill net vessels in the Florida gill net restricted area must comply with the requirements of 50 CFR 227.71(b)(8) and (9).

Any person who does not comply with any requirement in this notice, including any term or condition in any written notification issued hereunder, is in violation of § 227.71(b)(3).

Sea Turtle Conservation Measures

The Assistant Administrator, at any time, may modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Conservation measures may be imposed if monitoring to assess sea turtle mortality indicates that the incidental take level is approaching, has met, or has exceeded the incidental take level established by the biological opinion for this notice action issued as a result of consultation under section 7 of the ESA. That level is one documented take by mortality or injury of a Kemp's ridley, green, hawksbill, or leatherback sea turtle; or two takes by mortality or injury of loggerhead sea turtles.

Additionally, the Assistant Administrator will impose restrictions on the fishery if significant or unanticipated levels of lethal or nonlethal takings or stranding of sea turtles associated with fishing activities in the restricted area occur. Such restrictions may include extending the monitoring requirements, requirements to reduce the soak time of nets, or reduce the length of nets, or area or seasonal closures.

Notification will be published in the **Federal Register** announcing any additional sea turtle conservation measures, including any extension of the 30-day requirement to carry an observer, upon request, on gill net vessels in the Florida gill net restricted area.

Classification

The Assistant Administrator has determined that this restriction is necessary to provide adequate protection for listed sea turtles and is consistent with the ESA and other applicable law. This restriction does not require a regulatory impact analysis under E.O. 12291 because it is not a major rule.

The Assistant Administrator, pursuant to sections 553(b)(B) and 553(d) of the Administration Procedure Act (APA), finds there if good cause to waive both the notice and opportunity for comment and delay in effective date provisions of the APA for this action. There is currently a high level of gill net fishing activity for pompano, and immediate action is necessary to determine accurately the level of incidental take of turtles by this fishery and to ensure the conservation of endangered and threatened sea turtles. In addition, comments were solicited and considered for potential observer requirements for the gill net fisheries off Florida last year (57 FR 30709, July 10, 1992), and no advance preparation by gill net fishermen, other than registration, is required. Consequently it is unnecessary, impracticable and contrary to the public interest not to make this rule immediately effective.

Because of the need to take immediate action to determine accurately the level of incidental take of sea turtles and to ensure the conservation of sea turtles, it is not possible to fully comply with the review procedures of E.O. 12291. Under the provisions of section 8(a)(1) of E.O. 12291, this action has been reported to the Director of the Office of Management and Budget (OMB) together with a statement of the reasons why full compliance is not possible.

Because neither section 553 of the APA nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

This action allows the Assistant Administrator to establish a registration program as authorized by the final rule (57 FR 57348, December 4, 1992), codified at 50 CFR 227.72(e)(6)(iv). Such a program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, registration by vessels fishing in the Florida gill net restricted area. This collection has been approved by OMB under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine Mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: March 26, 1993.

Michael F. Tillman,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–7710 Filed 3–30–93; 2:43 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185–3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS issues an inseason adjustment closing the season for the shortraker/rougheye rockfish target species category (SRRE). This action prohibits retention of SRRE in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Area (BSAI) for the remainder of 1993. This action is necessary to prevent overfishing of SRRE. It is intended to meet the objectives of the North Pacific Fishery Management Council.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), March 30, 1993, through 12 midnight, A.l.t., December 31, 1993. Comments are invited through April 14, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn. Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resources Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Magnuson Act requires that conservation and management measures shall prevent overfishing. The 1993 overfishing level for SRRE in the AI is 1,220 metric tons (mt).

The specified total allowable catch (TAC) for SRRE in the AI is 1,100 mt (58 FR 8703, February 17, 1993). The specified initial TAC for SRRE is 935 mt. The difference, 165 mt, is assigned to a non-specific operational reserve as required by § 675.20(a)(3). The harvest of SRRE in the AI through the period ending March 13, 1993, was 745 mt, leaving a difference of 475 mt between the current harvest and the overfishing level. At this time, SRRE is closed to all

directed fishing in the AI (58 FR 15291, March 22, 1993).

NMFS anticipates that further retention of SRRE, even after the closure to directed fishing, will result in a total harvest that will exceed the overfishing level. Maximum retainable bycatch amounts are governed by directed fishing standards at § 675.20(h)(3)(iii). These regulations allow vessels to retain bycatch of SRRE in amounts less than 10 percent of the total amount of all sablefish, Greenland turbot, and other rockfish target species categories for which directed fisheries are open that are retained at the same time on the vessel during the same trip plus 1 percent of the total amount of other fish species retained at the same time on the vessel during the same trip.

Substantial fishing effort will be directed at remaining amounts of target species categories in the AI during the remainder of the 1993 fishing year. For example, trawl vessels will be allowed to target on certain other rockfish target species categories on April 4, 1993, when the first seasonal bycatch allowance of Pacific halibut becomes available to support directed fishing for any rockfish species by vessels using trawl gear (58 FR 8703, February 17, 1993). One rockfish species is Pacific ocean perch (POP). More than 11,000 mt of POP will be available in the AI for directed fishing by vessels using trawl gear. A substantial amount of SRRE could be caught and retained as a result of current directed fishing standards. Because the directed fishing standard for SRRE is 10 percent of the amount of Pacific ocean perch, NMFS anticipates that the remaining 365 mt of the 1,100 mt TAC specified for SRRE could be caught while harvesting only 3,650 mt of POP if fishermen were to retain maximum allowable bycatch of SRRE.

If the entire 1,100 mt TAC is harvested, only 120 mt would remain between the TAC and the overfishing level of 1,220 mt. Substantial amounts of POP and other groundfish species are yet to be harvested. Even at very small bycatch rates of SRRE in these fisheries, NMFS anticipates that the overfishing amount specified for SRRE easily could be reached.

Therefore, NMFS is closing the season for SRRE in the AI for the remainder of the 1993 fishing year under authority of § 675.20(e) to prevent overfishing of SRRE. NMFS is requiring that SRRE be treated in the same manner as prohibited species, as described in § 675.20(c) and is prohibiting retention of SRRE in the AI effective from 12 noon, A.l.t., March 30, 1993, through 12 midnight, A.l.t., December 31, 1993.

As required by § 675.20(e)(4), NMFS has determined that this inseason adjustment will protect the species in need of conservation protection, but allow fisheries to continue for other species. In making this determination, NMFS further determined that this adjustment is the least restrictive necessary to achieve the purpose of the adjustment. As required by § 675.20(f), NMFS considered relevant information in making the required determinations under paragraph (e)(2) of § 675.20, including the effect of overall fishing effort within the AI, which is summarized above, as well as the following economic impacts on affected fishing business. Operators of fishing vessels will be impacted by this action because they will not be allowed to retain a portion of the SRRE TAC that could have been harvested and processed. The amount of SRRE that would have been caught would have had an estimated gross wholesale value of $900,000. On the other hand, fishermen will be allowed to fish for other groundfish species, which might otherwise have been closed to prevent overfishing of SRRE. These species include sablefish, Pacific ocean Perch, sharpchin/northern rockfish, and "other red rockfish." The combined gross wholesale value of the remaining TAC amounts for these species is about $17 million. An amount up to this gross wholesale might have been foregone without this action.

NMFS notes that directed fishing for certain rockfish target species categories by vessels using trawl gear in the AI will commence April 4, 1993. Maximum bycatches of SRRE are expected on that date, which will increase the likelihood that SRRE will be overfished. Prohibiting retention of SRRE is needed on that date to prevent overfishing. Because of the need for immediate action, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment or for delaying the effective date of this notice. However, comments will be received for a period of 15 days after the effective date of this inseason adjustment (see **ADDRESSES**).

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

NMFS prepared a regulatory flexibility analysis for the rule authorizing this adjustment.

This inseason adjustment complies with the National Environmental Policy Act because its impacts have not changed significantly from those considered in the environmental assessment prepared for the 1993 final specifications for the BSAI groundfish fishery. Therefore, this inseason adjustment is categorically excluded from the requirement to prepare an environmental assessment.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-7732 Filed 3-30-93; 2:43 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 921185-3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for the offshore component in the AI.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), March 31, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2)(iii) the pollock TAC for the offshore component in the AI was established by the final notice of groundfish specifications (58 FR 8703, February 17, 1993) as 28,509 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 27,009 mt, with consideration that 1,500 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is closing directed fishing for pollock by the offshore component in the AI, effective from 12 noon, A.l.t., March 31, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–7730 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 62
Friday, April 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Complaints Against Registered Persons; Class Action Suits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission"or "CFTC") requests comments on proposed rules implementing class action suits against registered persons. The Futures Trading Practices Act of 1992, H.R. 707, 102 Cong., 2d Sess., P.L. 102–546 directs the Commission to propose rules implementing class action suits within 270 days of its enactment. Additionally, the Commission is to determine whether such rules are necessary, taking into account resources available to the Commission. This notice sets forth proposed rules as a new subpart G of part 12 and questions to which the Commission invites the public to respond.

DATES: Comments are due no later than June 1, 1993.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

Section 224 of the Futures Trading Practices Act of 1992, H.R. 707, 102 Cong., 2d Sess., P.L. 102–546 (Oct 28, 1992) originated as a provision of the Senate's version of the Futures Trading Practices Act of 1989, S. 1729. It authorizes an action in reparations to be "brought * * * by any one or more persons * * * for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission."

Initially, the Commission opposed the provision because generally reparations proceedings are fact intensive and not easily amenable to such a procedure.[1] However, the provision was incorporated without change into the Futures Trading Practices Act of 1992. H.R. 707, effective Oct. 28, 1992 (Pub. L. 102–546).

II. Request for Comments

The Futures Trading Practices Act does not mandate that the Commission adopt final rules providing for class actions unless the Commission decides such a rule should be permitted after considering "the potential impact of such actions on resources available to the reparations system * * * and the relative merits of bringing such actions in Federal court." Because the Commission is unsure of the desirability and need for class action suits in reparations it seeks comments on the following questions:

1. Under what circumstances would class actions in reparations be appropriate?

2. Do you know of any factual situations in the past in which a class action, if available, would have been appropriate? In this regard, commentors are invited to provide examples of past reparations cases they believe would have been appropriate for consideration as a class. Similarly, commentors are invited to provide examples of class actions filed in other forums that they believe would have been appropriate for the reparations forum.

3. Given that reparations proceedings are fact intensive and heavily dependent on the circumstances of the particular case, what kind of procedure could be developed in which the necessary facts would be established for a class of individual investors?

4. Are data available regarding the average time frame for class actions, costs to both sets of parties, attorneys' fees, and use of government resources? If so, please submit the data and its source.

5. Given the present ability to pursue class actions in federal courts, what would be the advantage of adopting procedures implementing class actions before the Commission?[2]

6. What are the relative merits of bringing class action suits in the reparations forum compared with the federal courts?

7. What resources will the Commission need in order to hear class actions?

III. Proposed Rule

In the event that the Commission determines that there is a need for class action suits, that such actions will not have a significant negative effect on the Commission's resources, and that the Commission can provide a useful forum as compared with the federal courts (See, S. Rep. No. 102–22, 102d Cong. 1st Sess. 13 (1991)), rules governing class actions will need to be adopted. Consequently, we are also setting forth proposed rules for comment.

In formulating this proposal, the Commission has looked to the Federal Rules of Civil Procedure, specifically Rule 23, Class Actions (28 U.S.C.) ("Federal Rule" or "Rule 23"), for guidance. The Commission has decided that for the purpose of eliciting ideas and comments from the public it makes most sense to begin with an adaptation of Rule 23. Should the Commission adopt Rule 23, with modifications, it intends to look to the federal courts for its interpretation and application.

The Federal Rule provides for class actions when certain specified criteria are met. These criteria ensure that a class action, rather than individual actions, is appropriate. Subdivision (a) of Rule 23, redrafted here as Regulation § 12.500, set forth "the prerequisites for maintaining any class action in terms of the numerousness of the class making joinder of the members impracticable, the existence of questions common to the class, and the desired qualifications of the representative parties." (FED. R. CIV. P. 23 advisory committee's note

[1] See Futures Trading Practices Act of 1991—S. 207, Hearings before the Committee on Agriculture, Nutrition, and Forestry, 102d Cong., 1st Sess. 102, 106 (1989) (letter of Wendy Gramm, Chairman of the CFTC) and S. Rep. No. 102–22, 102d Cong. 1st Sess. 67, 71 (1991) (letter of Wendy Gramm, Chairman of the CFTC).

[2] Class actions have been brought in federal courts by customers for violations of the Act. See, *eg., Paterson v. Stovall*, 528 F.2d 108 (7th Cir. 1976), *In re First Com. Corp. of Boston Customer Ac. Lit.*, 89 B.R. 283 (D. Mass. 1988), and *First Com Corp. of Boston Customer Accounts Lit.*, 119 F.R.D. 301 (D. Mass. 1987).

1966 amendment.) Subdivision (b), redrafted as Regulation § 12.501, "describes the additional elements which in varying situations justify the use of class actions." *Id.* Subdivision (c), appearing as § 12.502, requires a determination, "as early as may be practicable, whether an action brought as a class is to be so maintained. The determination depends in each case on satisfaction of the terms of subdivision (a) and the relevant provisions of subdivision (b)" (§§ 12.500 and 12.501). *Id.* Whereas in Rule 23, the district court judge certifies that the class action is maintainable, in the Commission's proposal the Administrative Law Judge will make that decision. Under Rule 23, the district judge has broad discretion in deciding whether to certify a class action; absent a showing of abuse of discretion, the judge's determination will not be disturbed.

Section 12.502(d), corresponding to Subdivision 2(c)(4) of Rule 23, is especially noteworthy for reparations complainants.

As in the Federal Rule, the proposed provision "recognizes that an action may be maintained as a class action as to particular issue only. For example, in a fraud or similar case the action may retain its 'class' character only through the adjudication of liability to the class; the members of the class may thereafter be required to come in individually and prove the amounts of their respective claims." *Id.* In this example, class members also would have to prove that they relied on the fraudulent statements.

As in Subdivision (d) of the Federal Rule, § 12.503 authorizes the Administrative Law Judge to issue orders necessary for the orderly and expeditious conduct of the proceedings. Section 12.504 of the proposal, following Subdivision (e) of the Federal Rule, requires that the judge approve all dismissals or compromises of the action.

Additionally, should the Commission decide to adopt the proposed rules, it proposes to modify §§ 12.2, 12.25, 12.26, and 12.304. The Commission proposes to add a definition of "class action" to the definition section, § 12.2. For the purpose of economy and efficiency, the definition allows a class action regardless of the amount of the damages claimed by individuals, when a class action is otherwise maintainable under the regulations. Thus, initially, all class actions would be heard by Administrative Law Judges, even if the aggregate amount of damages sought would not exceed $10,000 and the summary decisional procedure would otherwise apply. A filing fee of $250 for class actions would be added to § 12.25 governing filing fees. Section 12.26 sets forth the procedure for commencing a reparation proceeding; the proposed modification covers class actions. Finally, § 12.304 which describes the functions and responsibilities of Administrative Law Judges would be modified by adding a new paragraph (k) and redesignating paragraphs (k) through (m) as (l) through (n). The new paragraph (k) would grant the necessary authority to the Administrative Law Judges for the administration of class action suits.

Consequently, the Commission also seeks responses to the following questions:

1. Is it appropriate to use Rule 23 as a model for the Commission's rule? If not, is there a more appropriate model?

2. Are the proposed modifications to Rule 23 and the Commission's regulations appropriate for class actions before the Commission?

3. Should the Commission adopt additional modifications to the proposal?

4. Will complainants be able to utilize the proposed rule? Please explain.

Suggestions are welcome. Commentors should keep in mind that the Commission is likely to follow court precedent in interpreting the rule.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has determined that part 12 reparation rules are not subject to the provisions of RFA.[3] Because they do not impose regulatory obligations on commodity professionals and small commodity firms, and because, if instituted, class action suits will only streamline, simplify, and expedite the reparations process by consolidating numerous individual complaints into a single action, the Commission does not expect the proposed rule to have a significant economic impact on a substantial number of small business entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605–(b)), the Acting Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any member of the public who believes that this rule would have a significant impact on small businesses.

[3] 49 FR 6602, 6621 (February 22, 1984).

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures

PART 12—RULES RELATING TO REPARATION PROCEEDINGS

The Commodity Futures Trading Commission proposes to amend part 12 of chapter I of title 17 of the Code of Federal Regulations as follows:

1. The authority citation for part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12(a)(5), and 18.

2. In § 12.2 paragraph (bb) is added to read as follows:

§ 12.2 Definitions.

* * * * *

(bb) *Class action* means, regardless of the amount of damages claimed, a procedure elected by a group of complainants with common questions of law or fact and certified by an Administrative Law Judge under subpart G.

3. In § 12.25 paragraph (a)(4) is added to read as follows:

§ 12.25 Filing fees.

(a) *Fees payable upon filing a complaint.* * * *

(4) A class of complainants who elect to proceed by class action shall pay a filing fee of $250.

* * * * *

4. In § 12.26 paragraph (d) is added to read as follows:

§ 12.26 Commencement of a reparation proceeding.

* * * * *

(d) A group of complainants with common questions of law or fact who have elected to proceed by class action pursuant to subpart G of these rules must pay the filing fee required by § 12.25 and file a complaint pursuant to § 12.13 and a motion requesting a class action. The motion must set forth information which indicates that a class action is maintainable under §§ 12.500 and 12.501. Upon receipt of the filing fee and the motion, if in his opinion the facts warrant taking such action, the Director of the Office of Proceedings shall forward to an Administrative Law Judge the pleadings, the materials of record, and the motion. The Administrative Law Judge shall make a determination as to whether a class action may be maintained as described in § 12.502. Prior to such determination the Administrative Law Judge may require further information or briefs from the parties if, in the judge's discretion, he deems it necessary.

5. In § 12.304, paragraphs (k) through (m) are redesignated as paragraphs (l) through (n) and a new paragraph (k) is added to read as follows:

§ 12.304 Functions and responsibilities of the Administrative Law Judge.

* * * * *

(k) In accordance with subpart G of this part, to determine whether a class action suit may be maintained, to issue such orders as may be necessary for the conduct of such proceedings, and to dismiss or approve the compromise of class actions;

* * * * *

6. A new Subpart G—Class Actions (§§ 12.500–12.504) is added to read as follows:

Subpart G—Class Actions

12.500 Prerequisites to a class action.
12.501 Class actions maintainable.
12.502 Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.
12.503 Orders in conduct of actions.
12.504 Dismissal or compromise.

Subpart G—Class Actions

12.500 Prerequisites to a class action.

One or more members of a class may sue or be sued as representative parties on behalf of all only if—

(a) The class is so numerous that joinder of all members is impracticable;

(b) There are questions of law or fact common to the class;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(d) The representative parties will fairly and adequately protect the interests of the class.

12.501 Class actions maintainable.

An action may be maintained as a class action if the prerequisites of § 12.500 are satisfied, and in addition:

(a) The prosecution of separate actions by or against individual members of the class would create a risk of—

(1) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(2) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making reparations appropriate with respect to the class as a whole; or

(c) The Administrative Law Judge finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(1) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(4) The difficulties likely to be encountered in the management of a class action.

§ 12.502 Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(a) As soon as practicable after the commencement of an action brought as a class action, the Administrative Law Judge shall determine by order whether it is to be so maintained. An order under this Subpart may be conditional, and may be altered or amended before the decision on the merits.

(b) In any class action maintained under § 12.501(c), the Administrative Law Judge shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that—

(1) The judge will exclude the member from the class if the member so requests by a specified date;

(2) The judgment, whether favorable or not, will include all members who do not request exclusion; and

(3) Any member who does not request exclusion may, if the member desires, enter an appearance in accordance with § 12.9.

(c) The judgment in an action maintained as a class action under § 12.501 (a) or (b), whether or not favorable to the class, shall include and describe those whom the judge finds to be members of the class. The judgment in an action maintained as a class action under § 12.501(c), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in § 12.502(b) was directed, and who have not requested exclusion, and whom the Administrative Law Judge finds to be members of the class.

(d) When appropriate—

(1) An action may be brought or maintained as a class action with respect to particular issues, or

(2) A class may be divided into subclasses and each subclass treated as a class, and the provisions of this Subpart shall then be construed and applied accordingly.

§ 12.503 Orders in conduct of actions.

In the conduct of actions to which this rule applies, the Administrative Law Judge may make appropriate orders:

(a) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(b) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Administrative Law Judge may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(c) Imposing conditions on the representative parties or on intervenors;

(d) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and

(e) Dealing with similar procedural matters.

The orders may be combined with an order under § 12.304 and may be altered or amended as may be desirable from time to time.

§ 12.504 Dismissal or compromise.

A class action shall not be dismissed or compromised without the approval of the Administrative Law Judge, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Administrative Law Judge directs.

Issued by Order of the Commission.

Dated: March 29, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–7673 Filed 4–1–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 62 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the removal of siltation structures prior to two years after the last augmented seeding upon a demonstration that alternative measures are the best technology currently available for sediment control.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 3, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on April 27, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 19, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated March 4, 1993 (Administrative Record No. OH–1841), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 62. In this amendment, Ohio proposes to revise three rules in the Ohio Administrative Code (OAC) to authorize the removal of siltation structures prior to two years after the last augmented seeding upon a demonstration that alternative measures are the best technology currently available (BTCA) for sediment control. The demonstration of BTCA must be specific and contained in or amended into the permit and will be reviewed on a case-by-case basis by the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief). As part of and in support of the amendment, Ohio also submitted Administrative Record information discussing Ohio's intended implementation of this proposal.

(1) OAC 1501:13–4–05 Paragraph (E)(1)(g) and 13–4–14 Paragraph (E)(1)(f)

Ohio is revising these two paragraphs to provide that the plan in each permit application for protection of the hydrologic balance shall describe the measures to be taken to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area. If the applicant proposes to remove siltation structures sooner than two years after the last augmented seeking of a drainage area, the applicant shall describe specific alternative sediment control measures that are the best technology currently available and describe the applicability of those measures for the drainage area. Such description shall be referred to in the timetable and plans for removal of sediment control structures required by paragraph (H)(1)(b)(iv) or (H)(1)(c)(iv) of this rule.

(2) OAC 1501:13–4–05 and 13–4–14 Paragraph (H)(1)(b)(iv)

Ohio is revising these two paragraphs to provide that the detailed design plans for impoundment structures that meet or exceed size or other criteria of MSHA shall describe the timetable and plans to remove each structure, if appropriate, with reference to the description required in the reclamation plan under paragraph (E)(1)(g)/(f) of this rule if the applicant proposes to remove siltation structures sooner than two years after the last augmented seeding of the drainage area.

(3) OAC 1501:13–4–05 and 13–4–14 Paragraph (H)(1)(c)(iv)

Ohio is revising these two paragraphs to insert the same proposed language as quoted above for paragraph (H)(1)(b)(iv) in order that the language also apply to the detailed design plans for impoundment structures that do not meet the size or other criteria of MSHA.

(4) OAC 1501:13–9–04 Paragraph (B)(1)

Ohio is revising this paragraph to provide that all surface drainage from the disturbed area shall be passed through a sedimentation pond before leaving the permit area until vegetation is established, at which time vegetation of the area may be the best technology currently available, provided that drainage from the area:

(a) Meets effluent limitations; and

(b) Does not contribute suspended solids to streamflow.

(5) OAC 1501:13–9–04 Paragraph (G)(2)(e)

Ohio is revising this paragraph to provide that in no case shall a siltation structure be removed sooner than two years after the last augmented seeding unless, after vegetation is established, the operator demonstrates and the Chief approves under paragraph (E)(1)(g) of rule 1510:13–4–05 or paragraph (E)(1)(f) of rule 1501:13–4–14 of the Administrative Code alternative methods of sediment control as the best technology currently available.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on April 19, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 1993.

Carl C. Close,

Assistant Director Eastern Support Center.

[FR Doc. 93-7631 Filed 4-1-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zones, Atlantic Ocean South of the Entrance to the Chesapeake Bay, Virginia Beach, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish two danger zones in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay to accommodate current U.S. Navy nighttime training requirements. The proposed amendments will include restrictions on use of the water area after darkness when the ranges are in use and one of the danger zones will be expanded seaward 2,500 yards. It should be noted, however, that the expanded area continues to be within the boundaries of the existing larger danger zone. The expansion of the danger zone is necessary to provide an additional measure of safety for vessels operating in the area.

DATES: Written comments must be submitted on or before May 3, 1993.

ADDRESSES: Comments must be submitted to: HQUSACE, Attn: CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Henderson at (804) 441-7653 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C.3), the Corps of Engineers is proposing to amend the regulations in 33 CFR 334.380 and 334.390.

The Commanding Officer, Fleet Combat Training Center, Atlantic, U.S. Navy, has requested that the danger zones be amended to reflect changes in the use of the areas. The purpose of the change is to accommodate current nighttime naval training at the ranges. There are no changes proposed which would prohibit the public's use of the area. Presently, from sunrise until sunset, vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit. This amendment, if approved, shall make this restriction on transit of the area to apply 24 hours a day. The Navy will continue to display red flags while firing is in progress during daylight hours and will display red flashing lights during periods of darkness to alert mariners that the range is in use.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. I hereby certify that if adopted, this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), transportation, restricted areas.

In consideration of the above, the Corps of Engineers is proposing to amend part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.380 is revised to read as follows:

§ 334.380 Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia; naval firing range.

(a) *The danger zone.* All of the water within a sector extending seaward a distance of 7,500 yards between radial lines bearing 35° true and 92° true, respectively, from a point on the shore at latitude 36°47′33″N, longitude 75°58′23″W.

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations which are visible from the water a minimum distance of four (4) nautical miles.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range at Fleet Combat Center. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on any ranges during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigational lights, or which would preclude a vessel from observing the red range flags or lights.

(6) The regulations in this section shall be enforced by the Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, Virginia, and other such agencies as he/she may designate.

3. Section 334.390, paragraphs (b)(1), (2), (4) and (5) are revised to read as follows:

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

* * * * *

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

* * * * *

(4) Lookout posts will be manned by the activity or agency operating the firing range at the Fleet Combat Center, Atlantic, Dam Neck, Virginia Beach, Virginia.

(5) There shall be no firing on the range during periods of low visibility as defined by the Inland and International Rules of the Road.

* * * * *

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–7567 Filed 4–1–93; 8:45 am]

BILLING CODE 3710–92–M

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33 CFR Part 334

Restricted Area, Norfolk Naval Shipyard, Elizabeth River, Portsmouth, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish a naval restricted area in the waters of the Southern Branch, a tributary to the Elizabeth River, at the Southgate Annex of the Norfolk Naval Shipyard in Portsmouth, Virginia. The Commander of the Norfolk Naval Shipyard has requested that the existing restricted area in the waters adjacent to the shipyard be amended to enlarge the restricted area. The proposed amendment is necessary for the security of naval vessels at the shipyard and to provide an additional measure of safety for vessels operating in the area by preventing them from navigating too close to the shipyard.

DATES: Written comments must be submitted on or before May 3, 1993.

ADDRESSES: Comments must be submitted to: HQUSACE, Attn: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Henderson at (804) 441–7653 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C.3), the Corps of Engineers is proposing to amend the regulations in 33 CFR 334.290. The Commanding Officer, Norfolk Naval Shipyard, Portsmouth, Virginia, has requested that the existing restricted area regulations be amended to enlarge the restricted area. This amendment will add a small area at the south end of the existing restricted area. The area will not be expanded further out from the shore. The enlarged area will provide additional security and safety for the shipyard facilities, vessels, and naval personnel while also making the area safer for vessels operating in the area because they will be a greater distance

from the hazards associated with shipyard operations. If this amendment is approved, the public will be prohibited from entering both the existing and the enlarged restricted area.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have significant economic impact on a substantial number of small businesses (i.e., small businesses and small Government jurisdictions.) It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), transportation, restricted areas. In consideration of the above, the Corps of Engineers is proposing to amend part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Section 334.290 is amended by revising paragraph (a)(3) to read as follows:

§ 334.290 Elizabeth River, Southern Branch, Va., naval restricted areas.

(a) *The areas* * * *

(3) *Southgate Terminal Area* Beginning at a point at the northeast corner of the Southgate Terminal Annex of the Norfolk Naval Shipyard at latitude 36°48′23″, longitude 76°17′39″; thence east to latitude 36°48′23″, longitude 76°17′29″; thence southerly along the western boundary of the Norfolk Harbor 35-foot channel to latitude 36°48′04″, longitude 76°17′33″; thence southwesterly to latitude 36°47′59.6″, longitude 76°17′35.7″; thence southwesterly to latitude 36°47′58.8″, longitude 76°17′38.8″; thence northwesterly to latitude 36°47′59.3″, longitude 76°17′42.3″; thence northwesterly to latitude 36°48′03.6″, longitude 76°17′48.1″, and thence along the shoreline in a northerly direction to the point of beginning.

* * * * *

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–7568 Filed 4–1–93; 8:45 am]

BILLING CODE 3710–92–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 93–85; FCC 93–154].

Message Forwarding Systems in the Amateur Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the rules for the amateur service by modifying the Commission's compliance policy for stations participating in message forwarding and voice repeater systems. This action addresses six petitions for rulemaking concerning amateur stations participating in message forwarding systems. The petitioners indicate that § 97.103(a) of the Commission's rules, 47 CFR 97.103(a), hampers unnecessarily the operation of high speed message forwarding systems and repeaters. They claim that the potential for transmitting large numbers of messages in these systems cannot be achieved because this section does not distinguish between the responsibilities of the station originating and those only forwarding or repeating violative communications. The effect of the proposed rule would be to hold the licensee and control operator of the station originating the message and the control operator of the first forwarding station accountable for communications transmitted within a message forwarding system.

DATES: Comments must be filed on or before July 1, 1993. Reply comments must be filed on or before August 1, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: The Commission's Notice of Proposed Rule Making, adopted March 18, 1993, and released March 29, 1993, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. This action proposes to amend the rules for the amateur service by modifying the Commission's compliance policy for stations participating in message forwarding and voice repeater systems. The proposed rules are set forth at the end of this document.

2. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. This is a non-restricted notice and comment rule making proceeding. See § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for provisions governing permissible *ex parte* contacts.

4. In accordance with Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rule changes would not if promulgated, have a significant economic impact on a substantial number of small entities. The Amateur Radio Service may not currently be used to transmit any communication to facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

5. This Notice of Proposed Rulemaking and the proposed rule amendments are issued under the authority of sections 4(i), 303(b), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(b), (g), and (r).

6. A copy of this Notice of Proposed Rulemaking will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Compliance policy, Packet networks, Radio, Repeaters.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 would continue to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609, unless otherwise noted.

2. Section 97.3 would be amended by redesignating paragraphs (a)(28) through (a)(44) as paragraphs (a)(29) through (a)(45), respectively, adding a new paregraph (a)(28), and revising newly redesignated paragraph (a)(36) to read as follows:

§ 97.3 Definitions.

(a) * * *

(28) *Message forwarding system.* A group of amateur stations participating in a voluntary, cooperative, interactive arrangement where communications are sent from the control operator of an originating station to the control operator of one or more destination stations by one or more forwarding stations.

* * * * *

(36) *Repeater.* An amateur station that instantaneously retransmits on a different channel the angle-modulated phone or image emission transmission of another amateur station.

* * * * *

3. Section 97.109(e) would be revised to read as follows:

§ 97.109 Station control.

* * * * *

(e) No station may be automatically controlled while transmitting third party communications, except a station participating as a forwarding station in a message forwarding system.

4. Section 97.205 would be amended by adding new paragraph (g) to read as follows:

§ 97.205 Repeater station.

* * * * *

(g) The control operator of a repeater is not accountable for violative communications that the repeater retransmits inadvertently.

5. Subpart C of part 97 would be amended by adding new § 97.217 to read as follows:

§ 97.217 Message forwarding system.

(a) Any amateur station may participate in a message forwarding system, subject to the privileges of the class of operator license held.

(b) The control operator of the station originating a message and the control operator of the first station retransmitting that message are accountable for violative communications that are transmitted in a message forwarding system. The control operators of other stations inadvertently retransmitting violative communications in a message forwarding system are not accountable for the violative communications.

[FR Doc. 93–7669 Filed 4–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for Two Grassland Plants From the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed endangered species status for *Pseudobahia bahiifolia* (Hartweg's golden sunburst) and *Pseudobahia peirsonii* (San Joaquin adobe sunburst) and that the comment period is reopened and extended. The Service will allow all interested parties to submit oral and written comments on the proposal, during the hearing and comment period. A proposed rule for both species was published in the **Federal Register** on November 30, 1992 (57 FR 56549).

DATES: The comment period on the proposal is opened and extended until May 3, 1993. The public hearing will be held from 6 to 8 p.m. on April 21, 1993, in Bakersfield, California. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Kern County Administrative Center Board Chambers, 1115 Truxtun Avenue, Bakersfield, California. Written comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller (see **ADDRESSES**) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

Pseudobahia bahiifolia and *Pseudobahia peirsonii* are native species restricted to non-native grasslands and occasionally the grassland woodland ecotone of the San Joaquin Valley of California. Sixteen populations of *Pseudobahia bahiifolia* are distributed in Fresno, Madera, and Stanislaus Counties. *Pseudobahia peirsonii* is known from 17 sites in Fresno, Tulare, and Kern Counties. Both these plants occupy habitat which faces ongoing and threatened destruction by one or more of the following: agricultural development, competition from non-native plants, water projects, mining, highway projects, recreational activities, and transmission line maintenance. A proposal to list these two plants as endangered was published in the **Federal Register** on November 30, 1992 (57 FR 56549).

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to the proposed rule, the Service received three separate requests for a public hearing. As a result, the Service scheduled a public hearing on April 21, 1993, from 6 to 8 p.m. at the Kern County Administrative Center Board Chambers, 1115 Truxton Avenue, Bakersfield, California. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period closes on May 3, 1993. Written comments should be submitted to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Ken Fuller (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: March 26, 1993.

David L. McMullen,

Acting Regional Director, Fish and Wildlife Service, Portland, Oregon

[FR Doc. 93–7718 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 62
Friday, April 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch Program and School Breakfast Program: Nutrient Standard Menu Planning Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's intention to authorize selected school food authorities to participate in an expanded demonstration project under the National School Lunch and School Breakfast Programs to test an alternate menu planning system based on the analysis of nutrients. The results of this project will enable the Department to determine the viability of this approach as an alternative to the traditional meal patterns and to identify the technical assistance that the Department will need to provide, as well as the resources the school food authorities must have, in order to implement a nutrient standard rather than the food-based meal patterns. It is the Department's intention that the nutritional integrity of the program be maintained through adherence to the Recommended Dietary Allowances and the Dietary Guidelines for Americans.

DATES: Applications to participate in this demonstration project must be submitted on or before October 1, 1993. The Department will conclude its selection of school food authorities to participate in the demonstration project by April 1, 1994.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C 601–612) and thus is exempt from the provisions of the Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553 and No. 10.555 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983).

Background

As indicated in 7 CFR 210.10(b), the intent of the meal pattern for the National School Lunch Program (NSLP) has been to provide a nutritious, well-balanced meal that will, when averaged over a period of time, approximate one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDAs) for key nutrients and calories for children of each age/grade group. The regulation setting forth the required meal pattern for the School Breakfast Program (SBP), 7 CFR 220.8, does not have a specific dietary goal, but the Department has informally set as a goal that breakfast should provide approximately one-fourth of the RDA for key nutrients and calories when averaged over a period of time.

In recent years, concerns about the nutritional content of school meals have emerged. While there is evidence from survey research that the NSLP provides a nutrient dense meal and provides significant amounts of protein and micronutrients, there are also concerns that the fat and sodium levels of the program are higher than desirable. The concerns raised about the program reflect the view that the diets of Americans, in general, contain excessive amounts of fat, cholesterol and sodium. As a first step in dealing with these concerns, the Human Nutrition Information Service, on behalf of the Department and in conjunction with the Department of Health and Human Services, issued the third edition of "Dietary Guidelines for Americans" on May 14, 1990. The Dietary Guidelines, originally published in 1980, are required to be updated at five year intervals by section 301 of Public Law No. 101–445, the National Nutrition Monitoring and Related Research Act of 1990. The latest edition of the Dietary Guidelines has established a goal that no more than 30 percent of calories consumed should be from fat (not more than ten percent of which should be from saturated fat). The Dietary Guidelines also recommended moderating intakes of sodium and sugar. The Department is committed to implementing the nutritional criteria of the new Guidelines in the school lunch and breakfast programs.

The Department also recognizes that it may be necessary to revise the current meal patterns to implement the Dietary Guidelines in schools. To this end, the Department expects, in a separate rule making, to solicit comments to assist in the development of revised meals patterns for the NSLP and SBP.

Nutrient Standard Menu Planning Demonstration

The Department will test an alternative method of menu planning for ensuring the nutritional quality of school meals—Nutrient Standard Menu Planning (NSMP). This method would require school meals served during a week to meet the goal of one-third of the RDA for lunch and one-fourth of the RDA for breakfast, for that period, as well as meeting the goal from the Dietary Guidelines that no more than 30 percent of total calories come from fat. Pursuant to the Department's authority in 7 CFR 210.10(i) and 220.8(e) to waive the requirements concerning adherence to required meal patterns, it would no longer be necessary for demonstration project schools to comply with the component and quantity requirements of 7 CFR 210.10 and 220.8. Instead, food services would have the flexibility to plan meals and analyze the nutrient content of all foods to be served in those meals. However, milk must continue to be offered during all meal services. Adjustments would be made to individual menus as needed to ensure that, on average, the RDA and Dietary Guidelines goals as stated above are maintained.

Currently, the Department is monitoring a pilot test of NSMP conducted by the State of California Department of Education. Based on the State of California's experience with a few schools, the Department believes that NSMP may offer some potential in meeting the nutritional goals of the school lunch and breakfast programs.

The California pilot furnishes some indication that NSMP provides more flexibility in meal planning than the

food grouping approach, that meals provide nutrients in amounts at least comparable to those in the current meal patterns, and that food costs may be no higher than under the current meal patterns.

Based on these preliminary results, the Department considers that NSMP may provide a significant tool for implementing the Dietary Guidelines in schools and for improving menu planning in general. Therefore, the Department intends to test NSMP on an expanded scale.

Solicitation of Proposals

The Department is issuing this notice to solicit requests from school food authorities (SFAs) wishing to participate in this demonstration project. The Department envisions this demonstration as a three-year test and anticipates admitting approximately 35 SFAs in the first year. To ensure as broad a base as possible, the Department intends that the pool of selectees will be diverse in terms of size, geographic location and food service practices. However, the principal criteria for selection will be demonstrated nutritional expertise and computer capability sufficient to operate the necessary software. Sites which do not currently have access to nutritional expertise or computer capabilities may participate provided they demonstrate that these capabilities will be acquired. Participation in both the NLSP and the SBP will not be a necessary requisite for SFAs seeking to participate in the demonstration project.

The National Nutrient Database for Child Nutrition Programs

The Department recognizes that implementation of NSMP is dependent upon the SFA's ability to analyze and manipulate nutrition data on a vast array of foods. While many nutrient databases are currently available, few of these are specific to the Child Nutrition Programs, and they do not contain the types of foods, descriptions, weights and measurements used in these programs. Therefore, the Department is developing a centralized nutrient database which will include processed and prepared foods used in school food services as well as the school food service recipes. It is the Department's intent that this database will be regularly maintained and updated to ensure that the information is accurate and current. The Department expects to have a working prototype of the National Nutrient Database for Child Nutrition Programs (NNDCNP) completed by January 1994. The Department will then make this database available to participating SFAs and computer software companies to use in developing programs to conduct nutrient analysis. The NNDCNP must be incorporated into the software that is utilized by demonstration project SFAs.

Submission of Requests

SFAs wishing to participate in this demonstration project should request an information packet and application by contacting Robert Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, 3101 Park Center Drive, 10th Floor, Alexandria, VA 22303, (703) 305–2618. This packet will include information on computer requirements, policy guidance, and instructions for completing and submitting an application. The information packet will include the criteria the Department will rely upon in its evaluation of applications. Final applications shall be submitted in writing not later than October 1, 1993. The Department will select SFAs by April 1, 1994 and will work these sites to implement the project during the fall/winter of School Year 1994/1995.

Subsequent Solicitations

As noted above, the Department envisions this demonstration project as a three-year test ending in June 1997. Therefore, SFAs not initially selected may wish to apply for inclusion in School Years 1995/1996 and 1996/1997. The Department intends to issue notices soliciting additional proposals for these school years in the Spring of 1994 and the Spring of 1995, respectively.

Dated: March 29, 1993.

Andrew P. Hornsby, Jr.,

Acting Administrator.

[FR Doc. 93–7684 Filed 4–1–93; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Boundary and Annexation Survey.

Form Number(s): BAS–1, 1A, 2, 2A, 3, 3A, 4, 33L, 33LM, and 1L1 through 23LB (22 letters, 1 postcard, and 1 insert notice).

Agency Approval Number: 0607–0151.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 6,980 hours.

Number of Respondents: 7,270.

Avg Hours Per Response: 58 minutes.

Needs and Uses: The Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information on the creation of newly incorporated municipalities and minor civil divisions (MCDs), the dissolution of incorporated municipalities and MCDs, and changes to the boundaries of counties, incorporated municipalities, and MCDs. The survey provides accurate identification of geographic areas for the decennial and economic censuses and support for the annual population estimates program. It is also used to update the municipal, MCD, and county inventory for the Federal Information Processing Standards (FIPS) program at the U.S. Geological Survey and the National Institute of Standards and Technology. Other Federal Agencies use BAS results in their legislative programs.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–7749 Filed 4–1–93; 8:45 am]

BILLING CODE 3510-07-F

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held April 21 & 22, 1993, in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and

Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda:

Executive Session—April 21, 8:30 a.m.–2 p.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session—April 21, 2 p.m.–5 p.m.

2. Opening remarks by the Chairmen.
3. Presentation of papers or comments by the public.
4. Technology presentation by Silicon Graphics, Inc.: The Grand Challenge Machines.
5. Update on regulatory changes affecting computer exports.
6. Discussion on hand carrying small computers.
7. Recent changes to electronic submissions.

Executive Session—April 22, 8:30 a.m.–2 p.m.

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session—April 22, 2 p.m.–5 p.m.

9. Reports from working groups.
10. Report on liaison activities.

The General Sessions of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: March 29, 1993.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 93–7632 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–588–602]

Determination Not To Revoke Antidumping Duty Order; Carbon Steel Butt-Weld Pipe Fittings From Japan

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on carbon steel butt-weld pipe fittings from Japan.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Robin Alexander or Pamela Woods, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4271.

SUPPLEMENTARY INFORMATION: Pursuant to 19 CFR 353.25(d)(4)(i), on February 17, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 8736) a notice of its intent to revoke the antidumping duty order on carbon steel butt-weld pipe fittings from Japan (52 FR 4167 dated February 10, 1987). We invited interested parties to comment on our intent to revoke the order and served written notice of the intent to revoke on each interested party on the Department's service list.

The Department may revoke an antidumping duty order pursuant to 19 CFR 353.25(d)(4) if for four consecutive annual anniversary months no interested party has requested an administrative review of an order and no interested party objects to the revocation or requests an administrative review. We had not received a request to conduct an administrative review of the antidumping order on butt-weld pipe fittings from Japan for four consecutive annual anniversary months. On February 24, 1993, the U.S. Fittings Group, an *ad hoc* trade association of U.S. manufacturers of carbon steel butt-weld pipe fittings, an interested party under 19 CFR 353.2(k)(5), objected to our intent to revoke this antidumping order.

Based on the objection, the Department has concluded pursuant to 19 CFR 353.25(d)(1)(i) that the order continues to be of interest to an interested party. Therefore, we no longer intend to revoke this antidumping order.

Dated: March 25, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–7635 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade, Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. The review covers one exporter and the period October 3, 1990, through March 31, 1992. As a result of this review, the Department has preliminarily determined that a dumping margin exists for this exporter.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Timothy Volker, or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4106, 482–8120, or 482–3814, respectively.

Background

On April 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 14920) the antidumping duty order on fresh

and chilled Atlantic salmon from Norway. On April 8, 1992, the Department published a notice of "Opportunity to Request Administrative Review" (57 FR 11934). On April 30, 1992, two respondents, Skaarfish and Salmonor, requested that we conduct an administrative review of this antidumping duty order for the period October 3, 1990, through March 31, 1992. We published a notice of initiation of the antidumping administrative review on May 22, 1992. On June 25, 1992, Salmonor withdrew its request for review in a timely manner. The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho (silver); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09.

United States Price

The United States price is based on purchase price, in accordance with section 772(b) of the Tariff Act, because all sales were made directly to unrelated parties prior to importation into the United States.

Purchase price is based on airpacked, c.i.f. prices to unrelated customers in the United States. It was discovered at verification that commissions were incurred on an FOB basis rather than the reported CIF basis. We adjusted the reported commissions accordingly. Deductions were made, where appropriate, for air freight, foreign inland freight, inland/marine insurance and Norwegian export duties in accordance with section 772(d)(2) of the Tariff Act.

Foreign Market Value

The Department determined that home market sales did not constitute a viable basis for calculating foreign market value (FMV). Therefore, in accordance with section 353.49(b) of the Department's regulations, the Department chose sales to France as the basis of FMV. France is the largest third country market with the most similar merchandise to that sold in the United States, based on information submitted by Skaarfish. Because many of Skaarfish's sales were determined to be below cost of production (COP) during the investigation, the Department automatically initiated a COP investigation for the purposes of this first administrative review. Just as the Department found in the investigation, we believe that in comparing third-country sales to COP, we should regard the reseller/exporter's acquisition prices as irrelevant to the below-cost analysis and instead use the costs incurred by the fish farmers, the actual producers of the subject merchandise, to calculate the COP benchmark. The processing performed by Skaarfish is insignificant and not performed on all of the merchandise purchased and resold by Skaarfish.

Since there were approximately 200 salmon farmers that supplied Skaarfish during the period of review, the Department determined that sampling was both administratively necessary and methodologically appropriate to calculate a representative cost of producing the subject merchandise for purposes of this administrative review. Based on comments submitted by the petitioner and the respondent, the Department determined that the most significant factor influencing the costs of producing salmon is farm location. We allocated the sample across regions on the basis of each region's share of Skaarfish's total purchases during the POR.

To sample farms from each region, we assigned to each farm a selection probability based on its share of its region's sales to Skaarfish. We use unequal selection probabilities because we are estimating a volume weighted-average of farm-specific costs. We then chose two farms from the northern region and 18 farms from the southern region for a total of 20 farms. Four farms were selected twice; as a result, we included the COP of these four farms twice in our simple average calculation of 20 farms. A simple average was used in the final calculation because the weighting factors were accounted for at the farm selection stage.

We sent COP questionnaires through Skaarfish to the 16 salmon farmers, 12 of which responded to the Department's questionnaire. These 12 responses, along with deficiency responses and verification results, were analyzed and relied upon, where appropriate, in reaching the preliminary results of review.

We calculated the COP for each farm by summing all costs for the 1989 and 1990 generation salmon. These costs include smolt, feed, labor, and overhead. We allocated the costs on a per kilogram basis over net production quantities. We then adjusted those costs to reflect losses in the processing stage. General and administrative expenses and net interest expenses incurred for the sale of salmon in 1990 and 1991 were allocated to the salmon sold during the period of review. The fish farms did not submit costs for the first three months of 1992 because these costs do not correspond to the 1989 and 1990 generation salmon under review.

We made adjustments to include money owed to farmers by the Fiskeoppdretterenes Salgslag (FOS) when it went bankrupt. Based on information we collected at verification, we adjusted the farmers' cost for smolt, feed, labor, depreciation, and fees on a farm-specific basis where appropriate. Appropriate freezing fees were added to calculate COP.

For the four farms that did not respond to the questionnaire, the farm that failed verification and the farm that failed to report consolidated costs as required, we used best information available (BIA) to determine their COP. This BIA was based on the highest COP we calculated for all responding farms.

We calculated a simple average COP from the sampled farmers' individual COPs. We added Skaarfish's cost of processing, packing, selling, general and administrative expenses, along with the appropriate fees and taxes, to the simple-averaged farmer COP. Using these costs we calculated the total cost of production COP on a Norwegian Kroner per-kilogram basis.

Third country prices were compared to the calculated COP. We adjusted third country prices to reflect deductions for foreign inland freight, inland/marine insurance, third market credit, Norwegian export duties, brokerage and handling, freight, third country import duties and third country warranties. We determined that over 90 percent of sales were made at prices below the total COP and over an extended period of time. Furthermore, there is no information on the record demonstrating that prices of below cost sales would recover all costs within a

reasonable period of time. Therefore, we disregarded all third country sales and used constructed value (CV) as the basis for determining foreign market value.

To calculate CV, the statutory minimum profit of 8 percent was added because Skaarfish's actual profit was less than the statutory minimum. Imputed credit was added. We made no adjustments to the cost of production based on salmon weight because there are no quantifiable cost differences associated with producing salmon of differing weights.

Preliminary Results of Review

As a result of our comparison of the United States price to constructed value, we have preliminarily determined that the following margin exists for the period October 3, 1990, through March 31, 1992:

Skaarfish A/S	13.17%

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 13.17 percent. This rate represents the highest rate for any firm with shipments in this administrative review, or the most recent period in which shipments occurred, other than those firms receiving a rate based entirely on the best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–7747 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–056]

Melamine From Japan; Determination Not to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on melamine from Japan.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4106.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department), may revoke an antidumping duty order or finding, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation or requests an administrative review (19 CFR 353.25(d)(4)(iii)(1992)). We had not received a request to conduct an administrative review of the antidumping duty order on melamine from Japan (42 FR 6366, February 2, 1977) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on February 17, 1993, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to revoke to each interested party on the Department's service list.

On February 17, 1993, Melamine Chemicals, Inc., an interested party under 19 CFR 353.2(k)(3), objected to our intent to revoke this finding. Therefore, because a domestic interested party objects to the revocation, we no longer intend to revoke this antidumping finding.

Dated: March 25, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–7748 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–810]

Postponement of Preliminary Antidumping Duty Determination: Pads for Woodwind Instrument Keys from Italy Manufactured by Luciano Pisoni Accessori Strumenti Musicali A Fiato

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–2778.

Postponement

On November 10, 1992, the Department of Commerce (the

Department) initiated an antidumping duty investigation of pads for woodwind instrument keys (pads) manufactured by Luciano Pisoni Accessori Strumenti Musicali A Fiato (Pisoni) from Italy. On March 5, 1993, petitioner requested that the Department postpone our preliminary determination by two weeks. On March 10, 1993, the Department granted this request and postponed the preliminary determination until April 13, 1993 (58 FR 14558, March 18, 1993).

The Department finds that this investigation is extraordinarily complicated due to certain complex issues regarding the exclusion of Pisoni (the respondent in this investigation) from the existing antidumping duty order on pads from Italy, and its relationship to another manufacturer of pads from Italy. Additionally, the respondent is cooperating in this investigation. Therefore, we are postponing the date of the preliminary determination in this investigation until not later than May 19, 1993. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 24, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-7633 Filed 4-1-93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of 4 Permits.

On December 7, 1992, notice was published (57 FR 57823) that an application had been filed by the Idaho Cooperative Fish and Wildlife Research Unit (P497A), to take listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*).

On December 10, 1992, notice was published (57 FR 58461) that an application had been filed by the Shoshone-Bannock Tribes (P510A), to take listed Snake River spring/summer chinook salmon (*O. tshawytscha*).

On February 9, 1993, notice was published (58 FR 7769) that an application had been filed by the Columbia River Inter-Tribal Fish Commission by and through the Bureau of Indian Affairs (P513), to take listed Snake River spring/summer chinook salmon (*O. tshawytscha*).

On December 3, 1992, notice was published (57 FR 57157) that an application had been filed by the National Marine Fisheries Service, Coastal Zone and Estuarine Studies Division (P770#64), to take listed Snake River Sockeye salmon (*O. nerka*) and listed Snake River fall and spring/summer chinook salmon (*O. tshawytscha*).

The above applications were submitted for the purposes of scientific research and enhancement as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

Notice is hereby given that on March 23, 1993 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued Permits for the above taking subject to certain conditions set forth therein.

Issuance of these Permits, as required by the Endangered Species Act of 1973, was based on a finding that such Permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of these Permits; (3) are consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. These Permits were also issued in accordance with and are subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The applications, Permits and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: March 23, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-7468 Filed 4-1-93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Issuance of Modification No. 3 to Permit No. 585

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: On June 16, 1987, notice was published in the **Federal Register** (52 FR 22835) that Permit No. 585 had been issued to the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149.

Notice if hereby given that on March 26, 1993, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the regulations governing endangered and threatened fish and wildlife (50 parts 217–227), NMFS modified Permit No. 585 to extend the effective date through December 31, 1993.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, TEL: (301/713–2219); and

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702, TEL: (813/893–3366).

Dated: March 26, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-7711 Filed 4-1-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for a Scientific Research Permit. (P342C)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Notice is hereby given that Mr. John Calambokidis, Cascadia Research Collective, Waterstreet Building, suite 201, 218½ West Fourth Avenue, Olympia, WA 98501, requests authorization to approach annually, up to 5 times each, up to 400 humpback whales (*Megaptera novaeangliae*), 400 blue whales (*Balaenoptera musculus*), and to approach annually, up to 10 times each, up to 100 gray whales (*Eschrichtius robustus*), over a five-year period during the course of photo-identification studies. The proposed activities will be carried out in the waters of California, Oregon, and Washington, with a possibility of activities also being conducted in international waters of the North Pacific (including off Mexico and Central America).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding

copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Services.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: March 29, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7709 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Modification No. 1 to Scientific Research Permit 770 (P66G).

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 770 issued to the Alaska Department of Fish and Game, P.O. Box 3–2000, Juneau, AK 99802, on March 20, 1992 (57 FR 10649), has been modified to allow additional sampling of harbor seals and spotted seals and the use of Temple tags with miniature VHF radios attached instead of Allflex tags. The Permit was also modified to allow the research to be conducted in waters of southeast Alaska. This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221).

Dated: March 26, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–7712 Filed 4–1–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit and Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

March 29, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and amending a restraint period.

EFFECTIVE DATE: March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated March 24, 1993, the Governments of the United States and Lao People's Democratic Republic agreed to establish a specific limit for cotton and man-made fiber woven shirts in Categories 340/640 for three consecutive one-year periods, beginning on January 1, 1993 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current limit for Categories 340/640 for the new restraint period which began on January 1, 1993 and extends through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 6037, published on February 11, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 29, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 5, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period which began on October 30, 1992 and extends through October 29, 1993.

Effective on March 30, 1993, pursuant to a Memorandum of Understanding (MOU) dated March 24, 1993 between the Governments of the United States and the Lao People's Democratic Republic, you are directed to increase the current limit for Categories 340/640 to 125,000 dozen [1] for the new restraint period beginning on January 1, 1993 and extending through December 31, 1993.

Import charges already made to the limit for Categories 340/640 shall be retained. Of these charges, you are directed to deduct 23,843 dozen for goods exported during the period October 30, 1992 through December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 93-7746 Filed 4-1-93; 8:45 am]
BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 3, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Tray, Desk, Plastic
7520-01-094-4307
7520-01-094-4308
7520-01-094-4309
7520-01-094-4310
7520-01-094-4311
7520-01-094-4312
Nonprofit Agency: Royal Maid Association for the Blind, Hazlehurst, Mississippi.

Towel, Paper

7920-00-965-1709
(Requirements for GSA Regions 3 and 4)
Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas.

Services

Food Service Attendant, Naval Undersea Warfare Center, Building 35, Keyport, Washington.
Nonprofit Agency: Holly Ridge Center, Bremerton, Washington.

Janitorial/Custodial, Federal Justice Building, 99 NE. 4th Street, Miami, Florida.
Nonprofit Agency: Goodwill Industries of South Florida, Inc., Miami, Florida.

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 93-7689 Filed 4-1-93; 8:45 am]
BILLING CODE 6820-33-P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 3, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On March 6, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (57 FR 8115) of the proposed addition to the Procurement List.

In response to a letter from the Committee, comments were received from the current contractor for this service. The contractor claimed that addition of this service to the Procurement List would have a devastating effect on the company because the contract represents a significant amount of its sales and a considerably larger amount of its gross profit. The contractor indicated that it based its pricing for the service on the assumption that the Government would exercise all options in the contract, permitting the contractor to amortize its equipment costs. It indicated that it has no other Government contracts and does not anticipate finding another to replace this one if the service is added to the Procurement List, due to Government downsizing and the depressed condition of the local economy. As a consequence, the contractor claims it would have to discharge its work force, which consists largely of minorities and women, who would have great difficulty obtaining other employment in the area, which has a high unemployment rate. The contractor also stated that it is a minority and veteran-owned firm, which has received awards and long been recognized for its voluntary actions to aid in the employment of people with disabilities. It further indicated that the contracting activity had informed the company that it is opposed to terminating the current contract.

The contracting officer for this service informed the Committee that he intends to exercise all options on the existing contract, although reductions in the number of military personnel at the installation would cause the scope of the contract to be reduced. The contracting officer also stated that, while he would prefer to retain the current contractor because its performance has been better than earlier contractors, he realizes that this cannot be assured under the competitive bidding system. He indicated that he has no objection to the nonprofit agency performing this service.

The percentage of the current contractor's sales which this service represents does not reach the level which the Committee normally considers to constitute severe adverse impact. During the option periods of the current contract, the contractor will be

able to amortize its equipment costs and seek other contracts to replace this one. The Committee considers that the option periods will give the contractor adequate time to pursue additional business opportunities and plan for the retention and welfare of its employees.

In regard to the loss of employment for the contractor's minority and women employees, which would not occur until the options on the current contract are completed, the Committee considers the impact to be outweighed by the jobs that will be created for people with severe disabilities, whose unemployment rates, which exceed 65%, are well above the rates which apply to the contractor's employees.

The nonprofit agency which will perform the service has told the Committee that it intends to employ as many of the current contractor's employees as the Committee's requirements for employment of people with disabilities permit, further minimizing the impact of the Committee's action on the current contractor's employees.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, U.S. Army Detroit Arsenal Complex, Warren, Michigan.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–7690 Filed 4–1–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List scouring powder to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 3, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 11, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (57 FR 58796) of the proposed addition of this powder to the Procurement List. Comments were received during the development phase of this addition to the Procurement List from a division of one of the current contractors and a Member of Congress. The contractor claimed that because a large part of its sales are to the Government, loss of its scouring powder contract could have a potentially devastating impact on the facility which makes the powder. The Congressman seconded the contractor's claim and noted the detrimental effect on economic development and job creation in the surrounding community which loss of the contract would cause.

The percentage of the contractor's total corporate sales represented by its contract for the scouring powder is not normally considered by the Committee to constitute severe adverse impact. The contractor did not have the previous contract for this item, so it can not be said to be unusually dependent on sales of this item to the Government. The contractor has not indicated that it cannot use its facility to produce other products to minimize its loss. Consequently, the Committee has concluded that addition of the scouring powder to the Procurement List will not have a severe adverse impact on the contractor.

Neither commenter has provided information which details the effect which the Committee's action would cause on the surrounding community. The Committee believes that any job losses which may occur are outweighed by the creation of jobs for people with severe disabilities, whose unemployment rates exceed 65%, far above those of other segments of the population.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Scouring Powder
7930–01–294–1115

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–7691 Filed 4–1–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List a commodity and

services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: May 3, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 29 and February 5, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 6477 and 7216) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to Procurement List:

Commodity

Congressional Record Microfiche (GPO Program C90–S) 7690–00–NSH–0022
(Requirements for the U.S. Congress)

Services

Administrative Services
NASA, 4200 Complex
Marshall Space Flight Center, Alabama

Food Service
Naval Station
Pascagoula, Mississippi

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Shirt, Operating, Surgical 6532–00–299–9627
Dining Packet
7360–01–J19–2026

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 93–7692 Filed 4–1–93; 8:45 am]
BILLING CODE 6820–33–P

COPYRIGHT ROYALTY TRIBUNAL

[Docket Nos. 92–1–90 CD]

Commencement of the 1990 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice commencing 1990 cable royalty distribution proceeding.

SUMMARY: The Copyright Royalty Tribunal announces that a Phase I controversy exists concerning the distribution of the royalties paid by cable systems in the 1990 time period.

EFFECTIVE DATE: The 1990 cable royalties controversy is declared, effective April 2, 1993. A prehearing conference is scheduled for April 15, 1993.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: With the exception of the joint Stipulation of Settlement of Claim of National Public Radio to 1990 Cable Royalty Fund, the parties to the 1990 Cable Royalty Distribution Proceeding have advised the Tribunal that a controversy exists regarding the distribution of the royalties paid by cable systems for the 1990 time period. Accordingly, the Tribunal declares, effective April 2, 1993, that a controversy exists in Phase I of the 1990 cable royalty distribution.

It should also be noted that the parties have proposed procedural schedules, which differ greatly. Moreover, even though the Tribunal allotted the parties time to resolve the Nielsen data access issue, Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association reported to the Tribunal, on March 18, 1993, that the parties had been unable to resolve the issue.

Therefore, in order to expedite the proceeding, the Tribunal will hold a prehearing conference on April 15, 1993, at 10 a.m. Parties should be prepared to discuss the following matters:

(a) Whether Phase I of the 1990 cable royalty distribution proceeding should be bifurcated, with stage one involving resolution of the Nielsen data access issue;

(b) If Phase I is to be bifurcated, whether stage one should involve a paper hearing or an oral hearing to resolve the Nielsen data access issue;

(c) Procedural dates;

(d) Any other relevant preliminary matters.

Dated: March 29, 1993.

Cindy Daub,
Chairman.

[FR Doc. 93–7624 Filed 4–1–93; 8:45 am]
BILLING CODE 1410–09–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to Gas Technology Information, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(B) to Gas Technology Information, Inc. under Grant Number DE–FG01–93FE62811. Under the grant, Gas Technology Information, Inc. will establish and operate the International Center for Gas Technology Information, providing an international clearing house of information to facilitate the introduction of new gas-related technologies in the global energy markets. The following nations are funding the project: Belgium, Canada, Denmark, France, Germany, Ireland, Italy, Japan, Netherlands, Norway, Portugal, Spain, United Kingdom, and

the United States. DOE's contributions are valued at $2,294,000.

SCOPE: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(B) that Gas Technology Information, Inc. would conduct the project using third party funding; however, DOE's support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is planning or conducting such a project. The anticipated project period of the proposed grant is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Stanley T. Colt, PR–322.1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 634–4414.

Scott Sheffield,

Acting Director, Division "B" Office of Placement and Administration.

[FR Doc. 93–7715 Filed 4–1–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Re-Notice of Application Filed With the Commission

March 29, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No: 6939–030.

c. Date Filed: March 8, 1993, as revised on March 25, 1993.

d. Applicants: City of Jackson, Ohio and certain Ohio Municipalities (see attached list).

e. Name of Project: Belleville.

f. Location: On the Ohio River in Wood County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Peter C. Kissel, Alan I. Robbins, Baller Hammett, P.C., 1225 Eye Street, NW., suite 1200, Washington, DC 20005, (202) 682–3300.

i. FERC Contact: Patricia Massie, (202) 219–2681.

j. Comment Data: April 30, 1993.

k. Description of Transfer: The City of Jackson, Ohio (licensee), proposes to partially transfer its interest in the license for the Belleville Project to include a group of Ohio municipalities with electric distribution systems as co-licensees with Jackson. The Transferees, including Jackson, have executed a joint development agreement whereby each of the municipalities would own an undivided share of the project proportionate to each municipality's commitment and right to purchase power from the project. Operation and management of the project would be overseen by a board consisting of representatives of each of the participating cities. The purpose of the transfer is to allow each of the municipalities to use its share of project output as a power supply source for its electric system, and to facilitate project financing.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

Belleville Hydro Project Final List of Participants (March 25, 1993)

Mr. David Noel, Village Administrator, Village Arcadia P, P.O. Box 235, Arcadia, Ohio 44804–0235

Ms. Debbie Vanculin, Village Clerk, Village of Arcanum, 104 W. South Street, Arcanum, Ohio 45304–1199

Mr. Bob Raff, Superintendent of Utilities, Village of Beach City, 301 North Church Avenue, Beach City, Ohio 44608–0328

Mr. Daryl Stockburger, Utilities Director, City of Bowling Green, 304 North Church Street, Bowling Green, Ohio 43402

Ms. Janice Stump, Clerk/Treasurer, B.P.A., Village of Bradner, 130 North Main Street, Brander, Ohio 43406–0536

The Honorable Michael Schwab, Mayor, Village of Brewster, 310 Wabash Avenue, Brewster, Ohio 44613–1340

Mr. Stan Day, Director of Utilities, Bryan Municipal Light & Water, 841 E. Edgerton Street, Bryan, Ohio 43506

Mr. Keith Chamberlin, Village Manager, Village of Columbiana, 28 W. Friend Street, Columbiana, Ohio 44408–1299

Mr. Jerry Clink, President, Board of Public Affairs, Village of Custar, 9063 High Street, Custar, Ohio 43511–0056

Mr. Bob Bye, Superintendent, City of Cuyahoga Fall, 2550 Bailey Rd., Cuyahoga Falls, Ohio 44221

Mr. Dale Mathys, Village Administrator, Village of Edgerton, P.O. Box 609, Edgerton, Ohio 43517

Ms. Janet Jones, Clerk/Treasurer, Village of Eldorado, P.O. Box 250, Eldorado, Ohio 45321

Ms. Sharon Toney, Clerk, Village of Elmore, P.O. Box 1, Elmore, Ohio 43416

Mr. Edward Griswold, Village Administrator, Village of Genoa, 509 Main Street, Genoa, Ohio 43430–1626

Village of Glouster, 16 Front Street, P.O. Box Street, Glouster, Ohio 45732–1221

Mr. Dan Byrd, Superintendent, Grafton Municipal Utility Service, 1029 South Main Street, Grafton, Ohio 44044

Ms. Lollie Brossia, Utility Clerk, Village of Haskins, 100 North Main, Haskins, Ohio 43525

Mr. Richard Slifko, Superintendent, City of Hubbard Light & Water Department, 220 West Liberty Street, Hubbard, Ohio 44425–1706

Mr. John Rogers, Director of Electric Utilities, Hudson Municipal Electronic Department, 27 East Main Street, Hudson Village, Ohio 44236–3004

Mr. Ron Speakman, Safety Service Director, City of Jackson, P.O. Box 664, Jackson, Ohio 45640

Mr. W. Michael Dodds, Village Administrator, Village of Jackson Center, 122 E. Pike Street, P.O. Box V, Jackson Center, Ohio 45334–0821

Mr. Thomas Wilson, Pres., Board of Public Affairs, Village of Lodi, Box 95, 108 Ainsworth, Lodi, Ohio 44254–1303

Ms. Nancy L. Banks, Clerk/Treasurer, Village of Lucas, 101 First Avenue, Lucas, Ohio 44843–0213

Mr. Gary DeWalt, Village Administrator, Village of Milan, 9 East Church Street, Milan, Ohio 44846

Mr. Virgil Arling, Village Administrator, Village Minister, 29 S. Hanover Street, Box #1, Minster, Ohio 45865–0001

Mr. Joe Gravenhorst, Superintendent, Monroeville Light, Water & Sewer Department, 2 South Main Street, Monroeville, Ohio 44847

Mr. John Bitler, Village Administrator, Village Montpelier, 211 North Jonesville Street, Montpelier, Ohio 43543–1007

Ms. Terry Dunn, City Menger, City Napoleon, 255 W. Riverview, P.O. Box 151, Napoleon, Ohio 43545–1748

Mr. Clarence Art, Village Administrator, Village of New Bremen, 214 N. Washington Street, New Bremen, Ohio 45869–1151

Mr. Sam Natoil, Service Director, City of Niles, 34 West State Street, Niles, Ohio 44446

Ms. Bonnie Kreager, Utility Clerk, Village of Oak Harbor, 228 Park Street, Oak Harbor, Ohio 43449–0232

Mr. Shaski Mehta, Director, Oberlin Municipal Light & Power System, 289 Professor Street, Oberlin, Ohio 44074

Ms. Marge Cox, Utility Clerk, Village of Pemberville, 115 Main Street, P.O. Box 109, Pemberville, Ohio 43450–0109

Mayor Bruce Kidston, Village of Pioneer, P.O. Box 335, Pioneer, Ohio 43554–0335

Mr. Kenneth Blue, Village Administrator, Village of Prospect, 139 North Main Street, Prospect, Ohio 43342–0186

Mr. Nevin Reiter, President, Board of Public Affairs, Village of Republic, 219 Washington Street, P.O. Box 68, Republic, Ohio 44867–0068

Mr. Kevin Bittaker, Superintendent, Village of Seville, 44 West Main Street, P.O. Box 46, Seville, Ohio 44273–0046

Ms. Virginia Morningstar, Board of Public Affairs Clerk, Village of South Vienna, P.O. Box 54, South Vienna, Ohio 45369

Mr. James Wierwille, Village Administrator, Village of Versailles, P.O. Box 166, Versailles, Ohio 45280–0166

Mr. William Lyren, Director of Public Service, City of Wadsworth, 145 High Street, Wadsworth, Ohio 44281

Mr. Ronald Zimmerman, Superintendent, Village Waynesfield, 104 West Perry Street, Waynesfield, Ohio 45896

Mr. Robert Dupee, Director of Utilities, Wellington Municipal Utilities, 98 Johns Street, Wellington, Ohio 44090

Mr. Robert Rickard, Village Administrator, Village of Woodville, 212 Bridge Street, Woodville, Ohio 43469–0156

Standard Paragraphs

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST", or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Office of Hydropower Licensing, Division of Project Compliance and Administration, Federal Energy Regulatory Commission, ATTN: HL–21, room 1148 UCP, at the above address. A notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. *Agency Comments*—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7626 Filed 4–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2431–008, et al.]

Hydroelectric Applications; Wisconsin Electric Power Co., et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New Major License.

b. *Project No.:* 2431–008.

c. *Date Filed:* December 2, 1991.

d. *Applicant:* Wisconsin Electric Power Company.

e. *Name of Project:* Brule Hydro Project.

f. *Location:* On the Brule River in Florence County, Wisconsin, and Iron County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Porter, Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201, (414) 221–2500.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Comment Date:* April 30, 1993.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) A 157.5 foot long earth dike, located at the right end of the dam when facing downstream, with a crest elevation of 1206.1 feet NGVD and a crest width of 9 feet, constructed of homogeneous silty sandy material and a concrete corewall; (2) a 225 foot long earth dike, located between the auxiliary spillway and the west gravity wall, with a crest elevation of 1206.1 feet NGVD and a minimum crest width of 24 feet, constructed of homogeneous silty sand material and a concrete corewall; (3) a 880 foot long earth dike, located about 1.4 miles upstream of the dam, with a crest elevation of 1203.8 feet NGVD and a crest width of 6 feet, constructed of sand fill material; (4) a reservoir with a surface area of 545 acres and a total volume of 8,800 acre-feet at the normal maximum surface elevation of 1198.8 feet NGVD; (5) a reinforced concrete spillway on bedrock with a crest elevation of 1187.1 feet NGVD containing eight 12 foot by 14 foot wide Tainter gates, electrically operated by individual hoists; (6) a auxiliary spillway, located at the left end of the dam when facing downstream, composed of two bays, separated by a concrete wall, each containing an erodible fuse plug with a 60 foot long by 6 foot wide crest at an elevation of 1204.62 feet NGVD; (7) a 1000 foot long auxiliary spillway channel, located adjacent to the downstream apron of the auxiliary spillway, with a base width of 40 feet and a 1.7% slope; (8) a 68 foot long concrete gravity wall, located at the right end of the powerhouse when facing downstream, keyed into bedrock, with a top elevation of 1205.0 feet NGVD and a top width of 9 feet; (9) a 73 foot long concrete gravity wall, located at the left end of the powerhouse when facing downstream, keyed into bedrock, with a top elevation of 1205.0 and a top width of 9 feet; (10) a 79 foot long concrete gravity wall, located at the left end of the spillway when facing downstream; (11) a powerhouse with a reinforced concrete substructure on bedrock, 74.5 feet long by 48 feet wide, and a steel frame brick superstructure, 74.5 feet long by 48 feet wide containing, (a) a mobile 10-ton crane, (b) three Francis-type turbines, vertical shaft, manufactured by James Leffel and company, rated at 3,100 hp, 3,100 hp and 3,300 hp and, (c) three Westinghouse 6,600 V, 3 phase, 60-cycle generators, rated at 2,000 kW, 2,000 kW and 1,355 kW; and (12) a transmission system containing, (a) four single phase 1,667 kVA, 60-cycle transformers, one of which is a spare, (b) a switch gear along with associated metering and protection equipment, (c) a 345 foot long 69 kV transmission line.

No changes are being proposed for this new license. The applicant estimates that the installed project capacity is 5.335 MW with an average annual generation of 14.9 GWH. The project dam and facilities are owned by the applicant. There are 1.82 acres of U.S. lands enclosed within the project boundary. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201, or by calling (414) 221–2500.

2 a. *Type of Application:* New Major License.

b. *Project No.:* 2433–004.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Grand Rapids Hydro Project.

f. *Location:* On the Menominee River in Marinette County, Wisconsin, and Menominee County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R. A. Krueger, Senior Vice President, Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307, (414) 433–1598.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Comment Date:* April 30, 1993.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) The existing Grand Rapids Dam, 1,402 feet long, composed of (a) a 900-foot long concrete core earth fill section, (b) a 208-foot long reinforced concrete ungated ogee spillway with 24-inch high flashboards extending along the crest, (c) a 278-foot long reinforced concrete gated spillway with eight 12.0 by 12.5-foot Tainter gates, 141 feet long, and seven 14.0 by 14.5-foot Tainter gates, 122 feet long, (d) a log sluice and fishway, both currently unusable; (2) an existing one story poured concrete boiler house, used to melt ice in area of Tainter gates; (3) an existing impoundment with a surface area of 300 acres and a total volume of 2,141 acre-feet at the normal maximum surface elevation of 664.45 NGVD; (4) an existing power canal, 3,200-feet long and approximately 10-feet deep; (5) an existing concrete guard lock bridge, 16-feet high by 145-feet long, with thirteen 10-foot locks; (6) an existing powerhouse, a 121-foot long by 35-foot wide reinforced concrete structure, containing (a) a trash sluice with control gate, (b) three twin Francis turbines, manufactured by S. Morgan Smith and rated at 1,700 hp, one double runner Francis turbine, manufactured by General Electric and rated at 2,500 hp, and one DH horizontal turbine, manufactured by Allis-Chalmers and rated at 2,400 hp, (c) two 3-phase, 60-cycle, horizontal type generators, manufactured by Westinghouse and rated at 1,100 kW, one 3-phase, 60-cycle, horizontal type generator, manufactured by General Electric and rated at 1,400 kW, and one 3-phase, 60-cycle, generator, manufactured by Allis-Chalmers and rated at 1,900 kW; and (7) existing appurtenant facilities.

No changes are being proposed for this new license. The applicant estimates that the installed project capacity is 7.02 MW with an average annual generation of 40 GWH. The project dam and facilities are owned by the applicant. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307, or by calling (414) 433–1598.

3 a. *Type of Application:* New Major License.

b. *Project No.:* 2525–004.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Caldron Falls.

f. *Location:* On the Peshtigo River near Stephenson in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R.A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307–9002, (414) 433–1268.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* April 30, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 178-foot-long reinforced concrete gravity dam; (2) a 121-foot-long reinforced concrete ogee spillway; (3) a 110-feet-long gated reinforced concrete ogee spillway between the ungated spillway and the gravity dam; (4) a 413-foot-long earthen dike located at the southeast end of the dam; (5) a reservoir with a surface area of 1,180 acres at surface elevation 982.0 feet NGVD and a storage area of 11,570 acre-feet; (6) two 10-foot diameter penstocks with lengths of 210 feet and 220-feet; (7) a powerhouse containing two generating units each with a rated capacity of 3,200 kW; and, (8) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 20.1 GWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation, 700 North Adams Street, Green Bay, WI 54307–9002, or by calling (414) 433–1268.

4 a. *Type of Application:* New Major License.

b. *Project No.:* 2595–004.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* High Falls.

f. *Location:* On the Peshtigo River near Stephenson in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R. A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307–9002, (414) 433–1268.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* April 30, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) Two existing reinforced concrete gravity dam non-overflow sections 397 feet long and 123 feet long (2) a 128-foot-long reinforced concrete ungated ogee spillway; (3) a 105-foot-long reinforced concrete gated

spillway; (4) two earthen dikes, one 1,425 feet long and one 2,600 feet long; (5) a reservoir with a surface area of 1,670 acres at surface elevation 897.0 feet NGVD and a storage area of 15,810 acre-feet; (6) seven 60-foot-long penstocks; (7) a powerhouse containing 5 generating units with a total rated capacity of 7,000 kW; and, (8) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 18.8 GWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation, 700 North Adams Street, Green Bay, WI 54307–9002, or by calling (414) 433–1268.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11373–000.

c. *Date Filed:* January 12, 1993.

d. *Applicant:* Southern Cal Energy Limited Partnership.

e. *Name of Project:* Boulder Valley Pumped Storage Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management, approximately 30 miles northeast of San Diego, in San Diego County, California. BLM lands are located in sections 1, 2, 11, and 12 in T14S, R1W.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert D. Looper, So. Cal Energy Limited Partnership, 1555 Shoreline Dr., suite 200, Boise, Idaho 83702, (208) 338–2604.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* April 30, 1993.

k. *Description of Project:* The applicant is exploring three alternative schemes for the proposed pumped storage project. Each alternative would use the city of San Diego's existing San Vicente reservoir and dam as a lower reservoir. The first alternative would also consist of: (1) A 140-foot-high dam and 60-acre upper reservoir; (2) a 24-foot-diameter, 17,000-foot-long penstock; (3) a powerhouse containing three generating units with a total installed capacity of 500 MW; (4) a 6-mile-long transmission line interconnecting with an existing San Diego Gas & Electric Company transmission line; and (5) appurtenant facilities.

The second alternative would also consist of: (1) A 180-foot-high dam, a 240-foot-high dam, and a 100-acre upper reservoir; (2) a 30-foot-diameter, 3,000-foot-long penstock; (3) a powerhouse containing three generating units with a total installed capacity of 400 MW; (4) a 6-mile-long transmission line interconnecting with an existing San Diego Gas & Electric Company transmission line; and (5) appurtenant facilities.

The third alternative would also consist of: (1) A 200-foot-high dam, a 20-foot-high dike, and a 60-acre upper reservoir; (2) a 30-foot-diameter, 6,000-foot-long penstock; (3) a powerhouse containing three generating units with a total installed capacity of 400 MW; (4) a 6-mile-long transmission line interconnecting with an existing San Diego Gas and Electric Company transmission line; and (5) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $1,000,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11376–000.

c. *Date Filed:* January 22, 1993.

d. *Applicant:* Rock Canyon Hydro Associates Current Power Technologies, Inc.

e. *Name of Project:* Rock Canyon Hydroelectric Project.

f. *Location:* Within the Uinta National Forest, on Rock Canyon Creek, near the town of Provo, in Utah County, Utah. Sections 27, 28, and 29 in T6S, R3E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Creek Place, P.O. Box 870, Springville, Utah 84663–0870, (801) 489–0089.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* April 30, 1993.

k. *Description of Project:* The proposed project would consist of: (1) The city of Provo's eight existing concrete drop inlet structures located at various springs in Rock Canyon; (2) the city of Provo's existing water collection system including 13,250 feet of 6-inch-diameter and 12-inch diameter pipeline and penstock; (3) a powerhouse containing one generating unit with an installed capacity of 460 kW; and (4) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $35,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11377–000.

c. *Date Filed:* January 28, 1993.

d. *Applicant:* Chance Pond Brook Associates.

e. *Name of Project:* Webster Lake Hydro Project.

f. *Location:* On the Chance Pond Brook, near Franklin, Merrimack County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Victor A. Engel, Chance Pond Brook Associates, 145 Abbott Road, Concord, NH 03303, (603) 225–3068.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Comment Date:* April 30, 1993.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 100-foot-long and 4-foot-high concrete dam; (2) an existing 612-acre reservoir at a normal water surface elevation of 400.2 feet USGS; (3) a proposed 200-foot-long, 3-foot-diameter steel penstock; (4) a new powerhouse containing a single 70-kW generator; (5) a proposed 50-foot-long tailrace; (6) a 200-foot-long transmission line; and (7) appurtenant facilities. The average annual generation would be 200 MWh. The applicant estimates that the cost of the studies under the terms of the permit would be $40,000. All power generated would be sold to a local utility company. The site is owned by the New Hampshire DES Resource Division, Concord, NH 03301.

l. This notice also consists of the following standard paragraphs: A5, A7, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11378–000.

c. *Date Filed:* January 28, 1993.

d. *Applicant:* Chance Pond Brook Associates.

e. *Name of Project:* Lower Chance Pond Brook Hydro Project.

f. *Location:* On the Chance Pond Brook, near Franklin, Merrimack County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Victor A. Engel, Chance Pond Brook Associates, 145 Abbott Road, Concord, NH 03303, (603) 225–3068.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Comment Date:* April 30, 1993.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) A reconstructed 40-foot-long and 12-foot-high concrete dam; (2) an existing 3-acre reservoir; (3) a proposed 600-foot-long, 3-foot-diameter steel penstock; (4) a new powerhouse containing a single 225-kW generator; (5) a proposed 50-foot-long tailrace; (6) a 200-foot-long transmission line; and (7) appurtenant facilities. The average annual generation would be 500 MWh. The applicant estimates that the cost of the studies under the terms of the permit would be $40,000. All power generated would be sold to a local utility company. The site is owned by the Oak Materials Group, P.O. Box 1448, Lacrosse, WI 54601. The applicant does not anticipate any need for studies concerning the reconstruction of the dam and requests a waiver from other requirements of § 4.81(c)(2) pursuant to subsection 385.207 of the regulations in Exhibit 2 of its permit application.

1. This notice also consists of the following standard paragraphs: A5, A7, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11380–000.

c. *Date Filed:* February 2, 1993.

d. *Applicant:* Sho-Deen, Inc.

e. *Name of Project:* Low Head Hydro Power Facilities.

f. *Location:* On the Fox River near Geneva in Kane County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 17 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Kent Shodeen, 13 South Seventh Street, Geneva, IL 60134.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Comment Date:* May 30, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An existing 13-foot-high modified ogee dam owned by the State of Illinois; (2) a reservoir with a surface area of 89 acres at a surface elevation of 786 m.s.l. and a storage capacity of 270 acre-feet; (3) three new 90-inch diameter steel penstocks; (4) a new powerhouse containing three generating units each with a rated capacity of 450 kW; and, (5) a new 500-foot-long transmission line. The applicant estimates the average annual energy production to be 6.2 GWh and the cost of the work to be performed under the preliminary permit to be $185,000.

l. *Purpose of Project:* The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Major License (Notice of Tendering).

b. Project No.: 10847–001.

c. Date filed: February 26, 1993.

d. Applicant: Creamer and Noble Energy, Inc.

e. Name of Project: Crystal Creek Pumped Storage.

f. Location: On the San Bernardino Mountain Range in San Bernardino County, California, partially on U.S. lands administered by the Bureau of Land Management and by the U.S. Forest Service within San Bernardino National Forest. Township 3N, Ranges 1E and 1W; Township 4N, Ranges 1W and 2W; San Bernardino Meridian.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. K. Reed Noble, Creamer and Noble Energy, Inc., 435 East Tabernacle, St. George, UT 84770, (801) 673–4677.

i. FERC Contact: James Hunter at (202) 219–2839.

j. Brief Description of Project: The proposed project will not be located on any natural body of water, but will consist of two man-made reservoirs with a connecting penstock, a powerhouse with an installed capacity of 500 megawatts, and a transmission line connecting to the Southern California Edison transmission system. Water for the initial fill and for make-up will be purchased, and is expected to come from a well in the foothills above Lucerne Valley.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

1. In accordance with § 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

11 a. Type of Application: Original License for Minor Project (Tendered Notice).

b. Project No.: 11285–001.

c. Date filed: February 25, 1992.

d. Applicant: Casitas Municipal Water District (CMWD), Oak View, California.

e. Name of Project: Lake Casitas Power Recovery Facility.

f. Location: Partially on lands administered by the Bureau of Reclamation (BOR)—on an existing pipeline between the Casitas dam and CMWD's water distribution facility, near the City of San Buena Ventura, in Ventura County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John J. Johnson, General manager, Casitas Municipal Water District, 1055 Ventura Avenue, P.O. Box 37, Oak View, CA 93022, (805) 649–2251.

i. FERC Contact: Mr. Surender M. Yepuri, P.E. (202) 219–2847.

j. *Brief Description of Project:* The proposed project consists of a minor water power facility on an existing 51-inch-diameter penstock between the BOR's existing Casitas dam and CMWD's proposed water treatment plant. The proposed installed capacity is one megawatt.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

1. In accordance with § 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than April 26, 1993, and must serve a copy of the request on the applicant.

12 a. *Type of Application:* Minor License.

b. *Project No.:* 11392–000.

c. *Date Filed:* March 11, 1993.

d. *Applicant:* J & T Hydro Company.

e. *Name of Project:* Ramseur Hydro Project.

f. *Location:* On Deep River in Randolph County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Hill, Ms. Jo Ann Hill, P.O. Box 447, Ramseur, NC 27316, (919) 824–8268.

i. *FERC Contact:* Michael Dees, (202) 219–2807.

j. *Deadline Date:* May 10, 1993.

k. *Description of Project:* The project consists of a dam, reservoir, headrace, and a powerhouse with an installed capacity of 300 kW.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Standard Paragraphs

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. *Filing and Service of Responsive Documents*—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: March 29, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7629 Filed 4-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA92-9-000]

Central Louisiana Electric Company, Inc.; Order Withdrawing Notice and Instituting Proceedings Under Part 41

Issued March 30, 1993.

The Notice of Consent to Shortened Proceedings, issued March 18, 1993, is hereby withdrawn and superseded by the present Order Instituting Proceedings Under Part 41 of the Commission's Regulations.

On January 26, 1993, the Chief Accountant issued a report under delegated authority to Central Louisiana Electric Company, Inc. (Company) summarizing the results of an audit performed by the Division of Audits for the period January 1, 1987 through December 31, 1991. 62 FERC ¶ 62,054. The Chief Accountant noted the Company's disagreement with Exception No. 1 in Part I of the report regarding the Company's accounting for sales of accounts receivables.

By letter filed February 23, 1993, the Company consented to disposition of this matter under the shortened procedures set forth in 18 CFR Part 41. Accordingly, the Secretary under delegated authority from the Commission hereby institutes proceedings under Part 41 of its regulations to determine the appropriate accounting treatment of the above matter.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

The following procedural schedule is established:

(1) The Company, any interested person, and the Commission's staff shall file initial briefs in response to this order on the accounting issue no later than 45 days after the date of publication of this order in the **Federal Register.**

(2) Reply briefs shall be due no later than 20 days thereafter.

An original and fourteen copies of all briefs must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

It is ordered that:

(A) Proceedings under Part 41 of the Commission's regulations are hereby instituted with regard to Exception No. 1 as described in Part I of the audit report.

(B) The procedural schedule set forth in the body of this order is hereby adopted.

(C) This order shall be published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7681 Filed 4-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-454-000]

Northeast Utilities Service Co.; Filing

March 29, 1993

Take notice that on March 15, 1993, Northeast Utilities Service Company (NU) tendered for filing agreements among Connecticut Light and Power Company, Western Massachusetts Electric Company and Massachusetts Electric Company. The agreements are for borderline sales involving the areas of Greenville, Massachusetts, Southwick, Massachusetts, Granby, Connecticut, Belchertown, Massachusetts, Northhampton, Massachusetts, Health, Massachusetts, Hawley, Massachusetts, East Longmeadow, Massachusetts and Sheffield, Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7627 Filed 4-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-453-000]

Northeast Utilities Service Co.; Filing

March 29, 1993

Take notice that on March 15, 1993, Northeast Utilities Service Company (NU) tendered for filing, on behalf of The Connecticut Light and Power Company, Holyoke Power & Electric Light, Holyoke Water Power Company and Western Massachusetts Electric Company, a Memorandum of Understanding Joint Use of Specified Local Transmission and Distribution Facilities dated as of January 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7628 Filed 4-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-33-000]

NW Energy (Williams Lake) Limited Partnership; Correction to Notice of Filing

March 30, 1993.

In the first paragraph of the notice issued March 22, 1993, (58 FR 16406, March 26, 1993), the correct address of the applicant should be 1066 West Hastings Street, suite 2120, Vancouver, British Columbia V6E 3X1.

Lois D. Cashell,

Secretary.

[FR Doc. 93-7679 Filed 4-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA91-47-000]

Public Service Company of Colorado; Order Withdrawing Notice and Instituting Proceedings Under Part 41

Issued March 30, 1993.

The Notice of Consent to Shortened Proceedings, issued March 18, 1993, is hereby withdrawn and superseded by the present Order Instituting Proceedings Under Part 41 of the Commission's Regulations.

On January 19, 1993, the Chief Accountant issued a report under delegated authority to Public Service Company of Colorado (Company) summarizing the results of an audit performed by the Division of Audits. 62 FERC ¶ 62,049. The Chief Accountant noted the Company's disagreement with three items included in part I, Contested

Matters, of the report regarding the Company's:

(1) Billing of buyout and fuel financing charges from a power supplier through its fuel adjustment clause (FAC);

(2) Billing of the cost of power purchased from independent power production facilities through its FAC; and

(3) Accounting for sales of customer accounts receivables in its operating expense accounts.

By letter filed February 25, 1993, the Company consented to disposition of these matters under the shortened procedures set forth in 18 CFR part 41. Accordingly, the Secretary under authority delegated by the Commission hereby institutes proceedings under part 41 of its regulations to determine the appropriate accounting treatment of the above matters.

Additionally, resolution of Contested Matter Nos. 1 and 2 may have rate implications requiring refunds under sections 205 and 206 of the Federal Power Act. For this reason, the Company, as part of its initial brief in this proceeding shall (1) explain why it should not be required to make refunds of any amounts found to have been improperly collected due to an inappropriate accounting treatment of these items, and (2) propose an allocation of refunds among customers in the event that they are ultimately ordered pursuant to the treatment previously specified by the Commission staff.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

The following procedural schedule is established:

(1) The Company, any interested person, and the Commission's staff shall file initial briefs in response to this order on the accounting and refund issues no later than 45 days after the date of publication of this order in the **Federal Register**.

(2) Reply briefs shall be due no later than 20 days thereafter.

An original and fourteen copies of all briefs must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

It is ordered:

(A) Proceedings under part 41 of the Commission's regulations are hereby instituted with regard to Contested Matter Nos. 1, 2, and 3 as described in part I of the audit report.

(B) The Company, as part of its initial brief in this proceeding, shall (1) explain why it should not be required to make refunds of any amounts found to have been improperly collected due to the inappropriate tariff billing practice set forth in Contested Matter Nos. 1 and 2, and (2) propose an allocation of refunds among customers in the event that refunds are ultimately ordered pursuant to the treatment previously specified by the Commission staff.

(C) The procedural schedule set forth in the body of this order is hereby adopted.

(D) This order shall be published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7680 Filed 4–1–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO–RTP–0327; FRL–4609–8]

Draft Alternative Fuels Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces the extension of the public comment period for the external review draft of the: "Alternative Fuels Research Strategy," prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development.

DATES: In the January 19, 1993 **Federal Register** (58 FR 4991), EPA announced that January 25 through March 25, 1993, would be the public comment period for the external review draft of this document. The Agency is now extending the public comment period to April 26, 1993. Comments must be in writing and postmarked by the April date.

ADDRESSES: To obtain a copy of the external review draft, interested parties should contact the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; FAX (513) 569–7566; and request the external review draft of the "Alternative Fuels Research Strategy." Please provide your name, mailing address, and the EPA document number, EPA/600/AP–92/002.

The external review draft will also be available for public inspection at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

Comments on the external review draft should be sent in writing to the Project Manager for Alternative Fuels, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Dr. J. Michael Davis, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–4162, [FAX] (919) 541–0245.

SUPPLEMENTARY INFORMATION: For further information on the external review draft of the "Alternative Fuels Research Strategy" see 58 FR 4991 (January 19, 1993).

Dated: March 25, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–7698 Filed 4–1–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4610–1]

Public Water System Supervision Program Revision for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Maryland has revised their approved State Public Water System Supervision Primacy Program. Maryland has adopted drinking water regulations for: (1) Filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria that corresponds to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and E. Coli) that corresponds to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding

Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions and EPA hereby approves any official determinations made by Maryland with regard to filtration or ground water under the direct influence of surface water under the Federal Surface Water Treatment Rule.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by May 3, 1993 to the Acting Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Acting Regional Administrator. However, if a substantial request for a public hearing is made by May 3, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Acting Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on May 3, 1993.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Acting Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107

Maryland Department of the Environmental, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Ghassan M. Khaled, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597–8992.

Dated: March 12, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, EPA, Region 3.

[FR Doc. 93–7696 Filed 4–1–93; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4598–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 15, 1993 through March 19, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–BLM–J65198–WY Rating EC2, Green River Resource Area Land and Resource Management Plan, Implementation, Rock Springs District, Sweetwater, Fremont, Uinta, Sublette and Lincoln Counties, WY.

Summary: EPA had environmental concerns regarding the proposed project. The final EIS should include information on the physical effects of all activities, any proposed mitigation, and a cumulative effects analysis.

ERP No. D–BLM–K67016–NV Rating EO2, Cortez Gold Mines Expansion Project, Construction and Operation, Mining Plan of Operations, Right-of-Way Permits, Special-Use Permit, NPDES and Section 404 Permits, Crescent Valley, south of Battle Mountain District, Lander and Eureka Counties, NV.

Summary: EPA expressed environmental objections with the proposed project regarding potential impacts to water quality and biological resources. Additional information was requested in the Final EIS on impacts to water quality, vegetation, and wildlife as well as facility design, monitoring and reclamation.

ERP No. D–COE–G32052–00 Rating EO2, West Pearl River Navigation Project, Operation and Maintenance, Portions of West Pearl River to the vicinity of Bagalusa, Implementation, Washington and St. Tammany Parishes, LA and Pearl River County, MS.

Summary: EPA had environmental objections based on the potential impacts associated with the proposed mitigation measures (management of bottomland forests, construction and operation of a greentree reservoir) and the lack of a comprehensive analysis of impacts for the entire project life. Furthermore, EPA believed that the EIS failed to comply with the Clean Water Act section 404 (b)(1) guidelines by not addressing other practicable alternatives which would have less adverse impacts on the aquatic ecosystem.

ERP No. D–FAA–C51013–NJ Rating EC2, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Implementation, NJ.

Summary: EPA expressed concerns that the draft EIS did not fully evaluate the impacts of flight pattern changes associated with the EECP, or present measures to mitigate the project's adverse impacts. Also, the draft EIS did not fully support the FAA's statement that the EECP did not impact flight patterns below 3,000 feet AGL. Accordingly, EPA requests that additional information be presented in the final EIS to address these issues.

ERP No. D–UAF–G11023–TX Rating EC2, Bergstrom Air Force Base (AFB) Disposal and Reuse, Implementation, Travis County, TX.

Summary: EPA recommended that the final EIS include additional information on the extent of contamination at installation restoration program sites and on installation restoration program scheduling.

ERP No. DS–FHW–C40244–PR Rating EC2, PR–3 Relocation, PR30 (Humacao South bypass Extension) to PR–15 at Guayama, Funding, Updated Information, PR.

Summary: EPA believed that this document addresses EPA's major concerns about the deficiencies in the draft EIS. However, EPA had remaining concerns about the proposed project's wetlands impacts that should be resolved through the section 404 permit process.

ERP No. DS–FHW–D40118–00 Rating EU2, Appalachian Corridor Construction, Elkins, WV to I–81 in VA, Updated Information concerning Legislative, Procedural and Project Surrounding Changes, Funding, Possible Section 10, 404 and CGD Permits and Right-of-Way Acquisition, several Counties, WV and VA.

Summary: EPA found the southern scheme environmentally unacceptable because of significant adverse impacts to aquatic and terrestrial resources. The two northern schemes are more environmentally acceptable because they present more opportunities to avoid and minimize impacts to the environment. EPA requested more information on cumulative and secondary impacts be included in the next environmental document.

Final EISs

ERP No. F–AFS–J65191–UT Kamas Valley Grazing Allotment Management Plan, Implementation, Wasatch-Cache

National Forest, Kamas Ranger District, Summit County, UT.

Summary: EPA expressed environmental concerns regarding the proposed project. These concerns were for the lack of adoquate information on water quality and a clear plan for monitoring of project impacts.

ERP No. F–BLM–L65158–OR Lower Deschutes Wild and Scenic River Management Plan, Implementation, Addresses Alternatives for Access to Public Lands Upstream from the Deschutes Club Locked Gate, Wasco County, OR.

Summary: EPA had no objections to the preferred alternative as it was described in the final EIS.

ERP No. F–FHW–H40142–MO Page Avenue Extension, Bennington Place, crossing the Missouri River Bridge to I–70 or US 40, Funding, COE Section 404 Permit and US Coast Guard Bridge Permit, St. Louis and St. Charles Counties, MO.

Summary: EPA still had objections to the proposed project due to wetland and indirect/secondary impacts. EPA does not believe that the red alignment will comply with section 404 (b)(1) Guidelines. EPA requested to be included on the wetland mitigation consultation team.

ERP No. F–FHW–H40146–MO Ozark Mountain Highroad Corridor Construction from existing US 65/MO–F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE Section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO.

Summary: EPA had no objections to the proposed project. The team Administration and the Missouri Highway and Transportation Department (MHTDO) serves as an example of how the process can successfully work to resolve concerns before they become issues.

Dated: March 30, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–7745 Filed 4–1–93; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4598–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly Receipts Environmental Impact Statements filed March 22, 1993 through March 26, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930095, DRAFT EIS, FHW, CA, East Sonora Bypass Corridor Construction, CA–108 from Post Mile M1.8 to Post Mile R6.9 near Sonora, Funding and Right-of-Way, City of Sonora, Tuolumne County, CA, Due: May 17, 1993, Contact: James C. Jelinek (209) 948–7918.

EIS No. 930096, DRAFT EIS, FHW, CA, CA–101 Transportation Improvement Project, between Milpas Street in the City of Santa Barbara and 1.1 Miles North of the Ventura County Line in the City of Carpinteria, Funding, COE Section 404 Permit and NPDES Permit, Santa Barbara and Ventura Counties, CA, Due: May 21, 1993, Contact: Gary L. Ruggerone (805) 549–3182.

EIS No. 930097, DRAFT EIS, AFS, OR, Santiam Pass Demo Project, Harvesting Timber and Road Construction, Willamette National Forest, McKenzie Ranger District, Linn County, OR , Due: May 17, 1993, Contact: Joe Zook (505) 822–3381.

EIS No. 930098, DRAFT EIS, FHW, FL, FL–312 Extension Project, Construction, FL–207 to US 1/FL–5 north of the City of St. Augustine, Funding, Right-of-Way Permit, COE Section 404 and NPDES Permits, St. John County, FL, Due: May 17, 1993, Contact: J. R. Skinner (904) 681–7223.

EIS No. 930099, FINAL SUPPLEMENT, COE, KY, IL, Lower Ohio River Navigation Study Area Improvements, Locks and Dams 52 & 53 (Olmsted Locks and Dams) Replacement and Additional Modifications, Cumberland River to Mississippi River Several Counties, KY and IL, Due: May 3, 1993, Contact: Michael Turner (502) 582–6015.

EIS No. 930100, DRAFT EIS, NPS, UT, Timpanogos Cave National Monument General Management and Develop Concept Plans, Implementation, American Fork Canyon, Utah County, UT, Due: June 11, 1993, Contact: Susan K. McGill (801) 756–5239.

EIS No. 930101, DRAFT EIS, GSA, Atlanta Federal Center Consolidation for the housing of several Federal Agencies, Site Specific, Rich's Department Store Martin Luther King, Jr., Drive, Atlanta, GA, Due: May 17, 1993, Contact: Judith M. Cobb (404) 331–7780.

EIS No. 930102, DRAFT SUPPLEMENT, NOA, MA, Northeast Multi-Species Fishery Management Plan, Update Information, Amendment 5, Implementation, Due: May 17, 1993, Contact: Nancy Foster (301) 713–2239.

EIS No. 930103, DRAFT EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements, I–70 in Fallowfield Township to PA–51 in Jefferson Borough, Funding, COE Section 404 Permit and NPDES Permit, Mon Valley, Washington and Allegheny Counties, PA, Due: May 24, 1993, Contact: Manuel A. Marks (717) 782–3461.

EIS No. 930104, DRAFT EIS, FHW, GU, US Navy Facilities Relocation and Development, from the Republic of the Philippines to the Territory of Guam, Implementation and COE Section 404 Permit, GU, Due: May 17, 1993, Contact: Stanley Uehara (808) 471–9338.

Dated: March 30, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–7744 Filed 4–1–93; 8:45 am]

BILLING CODE 6560–50–U

[OPPTS–66017; FRL 4579–2]

Receipt of Applications for Approval to Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of applications.

SUMMARY: EPA Headquarters has received applications from Clean Berkshire, Inc., Kanti Technologies, Inc., Vector Group, Inc., TechPro, Inc., and the Naval Civil Engineering Laboratory of Port Hueneme for nationwide approvals to dispose of polychlorinated biphenyls (PCBs). This approval process is done under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of these requests, and requesting comments.

DATES: Comments should be received by May 3, 1993.

ADDRESSES: Three copies of written comments, identified with the document control number (OPPTS–66017) should be submitted to: TSCA Public Docket Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–699, 401 M St., SW., Washington, DC 20460. The applications (without confidential business information) and comments received in response to this notice are available for public inspection and copying at the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office in Rm. E–G102 at the address noted above from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental

Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202–554–1404), TDD: (202–554–0551).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Assistant Administrator for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) share the approval authority for permitting alternative PCB disposal technologies. The Regional Administrator has the authority to approve disposal applications when the disposal will take place in that region only or, in the case of research and development (R&D), on PCB disposal methods involving less than 500 pounds of PCB material. The Assistant Administrator for OPPTS has the authority to approve disposal applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R&D, on disposal methods involving 500 pounds or more of PCB material. The Assistant Administrator for OPPTS may delegate the authority to review and approve any aspect of a disposal system to the Director, Chemical Management Division (CMD) or to a Regional Administrator. The rationale for permit approval authority is discussed in "Polychlorinated Biphenyls (PCBs); Procedural Amendment of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval," published in the **Federal Register** of March 30, 1983 (48 FR 13181).

In general, EPA may approve alternative methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the applicant to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, descriptions of process and control equipment, monitoring and sampling methods, a quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

Once EPA receives a permit application, the application is reviewed for completeness. If the application is not complete, EPA lists its deficiencies in a letter to the applicant and the applicant can remedy the application. Once an application is complete and acceptable, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves the demonstration test plan, requires modification or additions to the process demonstration test plan, or disapproves the test plan and notifies the applicant. Once the Agency accepts a disposal process demonstration test plan, a demonstration test approval is issued by EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA Regional office and State and local governments where the process demonstration will take place. This 30–day period provides the public an opportunity to discuss local issues related to the planned disposal operation. If the process demonstration test fails, the application cannot be approved. Individual problems with a particular process demonstration are addressed on a case-by-case basis.

EPA will grant or deny approval for full-scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, a 30–day notice is required before operation may begin at any site other than where the process demonstration took place.

Clean Berkshire, Inc. in Lanesboro, Massachusetts, proposes to thermally treat PCBs in their High Temperature Incinerator (HTI). The company plans to demonstrate their unit at the F.T. Rose Disposal Pit Superfund site in April/May 1993. Operating conditions will closely follow commercial operations.

Kanti Technologies, Inc., in Amherst, New York, proposes to use the dechlorination technology to dispose of PCBs from contaminated dielectric fluid. Operating conditions will closely follow commercial operations.

Vector Group, Inc., in Cincinnati, Ohio, demonstrated a mobile solvent extraction system by cleaning an air compressor system at a site in Sterling, Virginia, in April 1992. Operating conditions closely followed commercial operations. EPA issued an approval on February 2, 1993.

TechPro, Inc., in Springfield, Virginia, demonstrated a mobile chemical dechlorination system by destroying PCBs in Mineral Oil Dielectric Fluid (MODEF) at a site in Nitor, West Virginia, in August 1992. Operating conditions closely followed commercial operations. Their tentative schedule calls for operations to begin in the Summer of 1993.

Finally, the Naval Civil Engineering Laboratory of Port Hueneme, California, proposes to demonstrate a mobile chemical dechlorination system by destroying PCBs in soil and coral at a site in Guam, Marianas Islands. Operating conditions will closely follow commercial operations. Their tentative schedule calls for operations to begin in August 1993.

In determining whether to approve these applications, EPA will take into consideration, along with other factors, any comments received on each application.

Dated: March 29, 1993.

John W. Melone,

Director, Chemical Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–7699 Filed 4–1–93; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before May 17, 1993. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, room 2220, 1801 L Street NW., Washington, DC 20507; Telephone (202) 663–4279.

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7316.

Type of Request—Extension (No Change)

Title: Recordkeeping Requirements of Uniform Guidelines on Employee Selection Procedures.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Business/other institutions, State or local governments, farms.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: Any employer, labor organization, employment agency, covered by Federal equal employment opportunity laws.

Responses: 666,000.

Reporting Hours: 1,604,000.

Applicable under Section 3504(h) of Public law 96–511: Not applicable.

Number of Forms: None.

Abstract-Needs/Users: Data used by the EEOC and the co-signatures in investigating, conciliating, and litigating charges of employment discrimination, by complainants in establishing violations of Federal equal employment laws, and by respondents in defending against allegations of employment discrimination.

For the Commission.

Kassie A. Billingsley,

Acting Management Director, Equal Employment Opportunity Commission.

[FR Doc. 93–7683 Filed 4–1–93; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

OMB Control No.: 3060–0355

Title: Rate of Return Reports, FCC 492 and FCC 492A

Expiration Date: 04/30/95

Description: Filing of FCC Form 492 and FCC Form 492A is required by §§ 1.795 and 65.600 of the FCC Rules and section 219 of the Communications Act of 1934, as amended. Filing of the FCC Form 492 on a quarterly basis is required from each local exchange carrier or group of affiliated carriers which is not subject to §§ 61.41 through 61.49 of the Commission's Rules and which has filed individual access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492A report with the Commission for the calendar year. The forms are necessary to enable the Commission to monitor the access tariffs and to enforce maximum rate of return prescriptions and price cap earnings levels. Call (202) 632–1374 to obtain copies of FCC Form 492 and FCC Form 492A.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7619 Filed 4–1–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–3; DA 93–328]

Private Land Mobile Radio Services; Arkansas Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Arkansas (Region 4). As a result of accepting the Plan for Region 4, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: March 18, 1993.
Released: March 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On December 3, 1992, Region 4 (Arkansas) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Arkansas.

2. The Arkansas Plan was placed on Public Notice for comments due on February 22, 1993, 58 FR 5730 (January 22, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Arkansas and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Arkansas.

4. Therefore, we accept the Arkansas Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Arkansas may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–7617 Filed 4–1–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–352]

Comments Invited on New Mexico Public Safety Plan

March 26, 1993.

The Commission has received the public safety radio communications plan for New Mexico (Region 29).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 29 consists of the state of New Mexico. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may

file comments on or before May 3, 1993 and reply comments on or before May 18, 1993. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93–86 New Mexico—Public Safety Region 29.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7618 Filed 4–1–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–982–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–982–DR), dated March 13, 1993, and related determinations.

EFFECTIVE DATE: March 22, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated March 13, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 13, 1993:

The counties of Baker, Broward, Collier, Franklin, Gilchrist, Glades, Gulf, Lafayette, Leon, Monroe, Nassau, Sumter, and Wakulla for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–7685 Filed 4–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–980–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–980–DR), dated March 4, 1993, and related determinations.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated March 4, 1993, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1993:

Walton County for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–7687 Filed 4–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3112–EM]

Virginia; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Virginia (FEMA–3112–EM), dated March 25, 1993, and related determinations.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the situation in the Commonwealth of Virginia, which occurred as a result of severe winter storm conditions on March 13–14, 1993, is of sufficient severity and magnitude to warrant an emergency declaration under Title V, Section 501(a), of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the Commonwealth of Virginia.

You are authorized, under Title V of the Stafford Act, to coordinate all emergency relief efforts and specifically to provide Federal emergency assistance in the affected areas for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared emergency:

FEMA intends to provide assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, minor, and principal arterial roads for emergency vehicles in the counties of Accomack, Albermarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King George, King & Queen, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Surry, Sussex, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe, and York and independent cities of the Commonwealth of Virginia as follows: City of

Alexandria, Bedford, Bristol, Buena Vista, Charlottesville, Chesapeake, Clifton Forge, Colonial Heights, Covington, Danville, Emporia, Fairfax, Falls Church, Franklin, Fredericksburg, Galax, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Martinsville, Newport News, Norfolk, Norton, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, South Boston, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–7686 Filed 4–1–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to engage *de novo* in acting as agent for issuers in private placement of all types of securities including providing related advisory services, and to buy and sell all types of securities on the order of investors as a riskless principal pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–7651 Filed 4–1–93; 8:45 am]

BILLING CODE 6210–01–F

Farmers & Traders Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 26, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Farmers & Traders Bancshares, Inc., Shabbona, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Traders State Bank, Shabbona, Illinois.

2. Suburban Bancorp, Inc., Palatine, Illinois; to acquire 100 percent of the voting shares of Huntley Bancshares, Inc., Huntley, Illinois, and thereby indirectly acquire State Bank of Huntley, Huntley, Illinois. In connection with this application, Huntley Acquisition Corporation, Palatine, Illinois, has applied to become a bank holding company by merging with Huntley Bancshares.

Board of Governors of the Federal Reserve System, March 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–7650 Filed 4–1–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 871 0004]

ASFE, the Association of Engineering Firms Practicing in the Geosciences; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Maryland-based association of engineering firms from engaging in a variety of practices designed to prevent its members from participating in price competition, giving favorable pricing or credit terms, engaging in competitive bidding, or advertising.

DATES: Comments must be received on or before June 1, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Renee Henning, FTC/H–380, Washington, DC 20580. (202) 326–2610 or 326–2621.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of ASFE, the Association of Engineering Firms Practicing in the Geosciences, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of ASFE, the Association of Engineering Firms Practicing in the Geosciences (hereinafter sometimes referred to as "proposed respondent" or "ASFE"), a corporation, and it is now appearing that ASFE is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between ASFE, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent ASFE is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 8811 Colesville Road, suite G106, Silver Spring, Maryland 20910.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. "ASFE" or "respondent" means ASFE, the Association of Engineering Firms Practicing in the Geosciences, a corporation, its predecessors, subsidiaries, successors, and assigns, and their respective directors, officers, committees, other organizational subgroups, agents, representatives, and employees, and their respective successors and assigns;

B. "Bidding" or "competitive bidding" means a method of procurement whereby one or more engineering professionals are asked to submit or do submit a partial or full bid, fee quotation, price quotation, cost estimate, cost proposal, or fee schedule, or a proposed partial or full bid, fee quotation, price quotation, cost estimate, cost proposal, or fee schedule (for work of which any part is to be or was performed by, or under the direction, supervision, or guidance of, an engineering professional). For purposes of this order, "bidding" or "competitive bidding" also means a request (to an engineering professional) for a partial or full bid, fee quotation, price quotation, cost estimate, cost proposal, or fee schedule, or a proposed partial or full bid, fee quotation, price quotation, cost estimate, cost proposal, or fee schedule;

C. "Engineering professional" means an engineering firm, an engineer or other employee of an engineering firm, a design consultant firm, a design consultant or other employee of a design consultant firm, a design professional firm, a design professional or other employee of a design professional firm, a design firm, a designer or other employee of a design firm, a member of ASFE, or an employee of a member of ASFE;

D. "Insurer" means an insurance firm, a reinsurance firm, or a person that performs any underwriting service or any other insurance-related or reinsurance-related service;

E. "Member" means an engineering firm or other person that belongs to ASFE;

F. "Or" means "and/or." (In other words, for purposes of this order, "or" includes "and" and may have a disjunctive or conjunctive meaning; provided, however, that in sentences where "or" is preceded by "either," that "or" has only the disjunctive meaning.);

G. "Peer review" means the examination or review of any policies or practices of any engineering professional by another engineering professional or by the respondent; and

H. "Person" means a natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity.

II

It is ordered, That respondent, individually or in concert with any other person, directly or indirectly, through any corporate or other device, in connection with any of respondent's

activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, participating in, or carrying out any agreement, between or among engineering professionals, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, bidding; or

B. Disseminating to any engineering professional any information relating to any specific, named or unnamed, engineering professional's intention or decision with respect to engaging in or not engaging in bidding.

III

It is further ordered, That respondent, individually or in concert with other person, directly or indirectly, through any corporate or other device, in connection with any of respondent's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from restricting, regulating, impeding, declaring unethical, interfering with, or advising against any engineering professional's:

A. Engaging in or being asked to engage in price competition or bidding;

B. Offering or charging or being asked to offer or charge a low price, a price below another engineering professional's price, a reduced price, or any particular price;

C. Offering or granting or being asked to offer or grant interest-free credit or any other credit term; or

D. Engaging in or being asked to engage in advertising, other than false or deceptive advertising.

Nothing contained in parts II and III of this order shall prohibit respondent from disseminating truthful and non-deceptive information relating to the effect of any method of procurement upon public health, safety, and welfare, or liability exposure, including information regarding advantages or disadvantages of any method of procurement, provided that, for a period of ten (10) years after the date this order becomes final, any such information shall be accompanied by a statement that respondent takes no official position with respect to any method of procurement and that the ultimate choice as to the method of engaging the services of an engineering professional in any circumstance is a matter of independent judgment freely exercised by individual engineering professionals and their prospective clients.

IV

It is further ordered, That respondent, individually or in concert with any other person, directly or indirectly, through any corporate or other device, in connection with any of respondent's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from initiating, promoting, adopting, entering into, continuing, carrying out, or pursuing any peer review program, or other plan or course of action, that calls for or authorizes or that ASFE knows or has reason to know allows any review, evaluation, or consideration of any engineering professional's fee schedule; contract continuing any pricing information or credit term; price proposal; or policy or practice concerning pricing, bidding or other method of procurement of the services of an engineering professional, or any credit term.

V

It is further ordered, That respondent, individually or in concert with any other person, directly or indirectly, through any corporate or other device, in connection with any of respondents activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from disseminating to any insurer any information relating to any engineering professional's fee schedule; contract containing any pricing information or credit term; price proposal; pricing; bidding or other method of procurement of the services of an engineering professional; credit term; or advertising.

VI

It is further ordered, That respondent, individually or in concert with any other person, directly or indirectly, through any corporate or other device, in connection with any of respondent's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from stating that any of the following activities affects any engineering professional's ability to obtain or retain insurance:

A. Engaging in or being asked to engage in price competition or bidding;

B. Offering or charging or being asked to offer or charge a low price, a price below another engineering professional's price, a reduced price, or any particular price;

C. Offering or granting or being asked to offer or grant interest-free credit or any other credit term; or

D. Engaging in or being asked to engage in advertising.

VII

Nothing contained in this order shall prohibit respondent from:

A. Exercising rights protected under the First Amendment of the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding; or

B. Formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising representation that are false or deceptive.

VIII

It is further ordered, That, within ninety (90) days after the date this order becomes final, respondent shall remove from its policy statements or guidelines and from any of its governing documents or other publications any provision, policy statement, or interpretation of policy that is inconsistent with the provisions of parts II, III, IV, V, VI, or VII of this order.

IX

It is further ordered, That, for a period of five (5) years after the date this order becomes final, respondent shall maintain in its files a copy of the minutes of each meeting of its members and of each meeting of its board of directors; a copy of all correspondence relating to price competition, competitive bidding, other method of procurement of the services of an engineering professional, engineering professional fee or price or pricing, credit, or advertising; and a copy of all of its publications relating to price competition, competitive bidding, other method of procurement of the services of an engineering professional, engineering professional fee or price or pricing, credit, or advertising. Respondent shall make such copies of minutes, correspondence, and publications available for inspection and copying by representatives of the Federal Trade Commission upon written request and reasonable notice.

X

It is further ordered, That, within forty-five (45) days after the date this order becomes final, respondent shall mail to each of its directors, officers, employees, and members a copy of the order and complaint in this proceeding.

XI

It is further ordered, That, for a period of five (5) years after the date this order becomes final, respondent shall provide a copy of the order and complaint in this proceeding to each new employee of ASFE at the time that employee is hired and to each new applicant for ASFE membership at the time that applicant becomes a member of ASFE.

XII

It is further ordered, That: (A) within ninety (90) days after the date this order becomes final, respondent shall file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order; and (B) one year from the date this order becomes final and continuing annually for four (4) years thereafter and at such other times as the Commission may by written notice request, respondent shall file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

XIII

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of the order.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from ASFE, the Association of Engineering Firms Practicing in the Geosciences ("ASFE"), an agreement containing a consent order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of the matter focused primarily on whether ASFE and ASFE members acted to restrict competitive bidding and other forms of price and non-price competition through: (1) The use of an ASFE peer review program that examined the policies or practices of ASFE members as to pricing, bidding, credit, and advertising; (2) an insurance program (which was a major source of liability insurance for ASFE members and which involved an insurance company controlled by ASFE members) that also examined ASFE member pricing, bidding, credit, and advertising; (3) a bid-reporting arrangement; and through (4) exchanges of price information, salary information, contract information, and other financial information.

The agreement containing the consent order ("order") would, if issued by the Commission, settle the complaint that alleges that ASFE and ASFE members combined or conspired to impede or restrain competitive bidding, the granting of favorable credit terms, advertising, and the submission of bids to bid requestors; and that ASFE members have exchanged price information and other information that would facilitate anticompetitive behavior, with the purpose or effect of hampering or restraining price competition or other competition in the provision of services, including geotechnical engineering services. The complaint states that the acts and practices charged in the complaint constitute unfair methods of competition in violation of section 5 of the Federal Trade Commission Act.

The order requires ASFE individually or in concert with others to abandon the above-described practices. Specifically, the order requires ASFE to cease and desist from (1) encouraging engineers not to engage in competitive bidding; (2) disseminating any information to engineers on other engineers' competitive bidding practices, pricing, or credit terms; (3) impeding engineers' offering reduced prices or favorable credit terms; (4) examining engineers' bidding, pricing, and credit practices, both generally and through peer reviews; (5) disseminating to any insurer any information relating to any engineering professional's pricing, credit, or bidding practices; and (6) informing ASFE members and bid requestors that competitive bidding will jeopardize their obtaining and retaining liability insurance.

The order prohibitions in paragraphs II and III that forbid certain communications do not forbid truthful and nondeceptive dissemination of information about bidding practices and their effects on public health, safety, and welfare, or liability exposure with respect to bidding practices. However, for ten years ASFE must also accompany such information with a statement that respondent takes no official position with respect to any method of procurement and that methods of procurement are a matter of independent judgment of its members. A general proviso to the order also preserves First Amendment protections with respect to respondent's ability to lobby federal and state governmental units or to participate in federal or state administrative or judicial proceedings. That proviso also preserves ASFE rights to formulate ethical guidelines governing conduct by its members with respect to false and deceptive advertising.

It is anticipated that the order will resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and order, nor is it intended to modify the terms of the agreement and order in any way.

Donald S. Clark,

Secretary.

Statement of Commissioner Roscoe B. Starek III

In the Matter of Association of Soil and Foundation Engineers.

[File No. 871-0004]

I concur in the Commission's decision to accept for public comment the proposed Consent Order with the Association of Soil and Foundation Engineers ("ASFE"). I find more than sufficient reason to believe that ASFE's actions violate section 5 of the FTC Act. But I am concerned that the Consent Order with ASFE may be interpreted to permit the very activity it is aimed to prevent.

ASFE's troublesome activities can be characterized accurately as a concerted campaign to prevent its members from bidding competitively against each other. In the place of competitive bidding, ASFE encouraged "negotiated contracts," in which an engineering firm is selected prior to any discussion of price. In its newsletter, ASFE has boasted of its widespread success in discouraging competitive bidding. Moreover, there is clear evidence that negotiated contracts result in higher prices than competitive bidding.

The actions of ASFE include a grass-roots campaign to discourage members from competitive bidding, another campaign to discourage customers (including local, state, and federal government agencies) from soliciting bids, a peer review program that criticized members for bidding and sometimes suggested price increases to members, and misrepresentations to members about the effect of competitive bidding on their liability insurance coverage.

In addition to the fact that this activity is facially egregious, it flies in the face of the Supreme Court's ruling in *National Society of Professional Engineers*.[1] In that case, the Court held unlawful a professional association's canon of ethics prohibiting its members from competitive bidding, finding: "[w]hile this is not price fixing as such, no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement * * *"[2] The Court went on to reject the claimed defense that bidding adversely affected the quality of services, stating that such a defense was "nothing less than a full frontal assault on the basic policy of the Sherman Act * * * tantamount to a repeal of the statute."[3]

Even though ASFE did not forbid competitive bidding in a canon of ethics, it engaged in a concerted campaign to discourage bidding. This distinction can be relevant in cases in which the potential competitive consequences of restraints are ambiguous. Anticompetitive consequences may not always be inferred when an association does not compel adherence, and when the degree of adherence is ambiguous. But in this matter, we have evidence that ASFE's campaign was widely successful in achieving an anticompetitive result.

Egregious violations such as those of ASFE merit strong action by the Commission. I would have preferred a stronger and more explicit reference in the Complaint to ASFE's anticompetitive campaign. The Complaint's vague references to actions that "impede or restrain" bidding[4] do not specifically address the widespread and multifaceted campaign to thwart competitive bidding.

My concern with the Consent Order is with a possible interpretation of the "safe harbor" in part III. While ASFE is ordered to "cease and desist from restricting, regulating, impeding, declaring unethical, interfering with, or advising against" bidding,[5] the safe harbor permits ASFE to disseminate "truthful and nondeceptive information relating to the effect of any method of procurement upon public health, safety, and welfare, or liability exposure, including information regarding advantages or disadvantages of any method of procurement * * *"[6] This safe harbor does not explicitly require substantiation, and it could be interpreted to allow unsubstantiated claims that otherwise violate the Order.

When the Commission enforces section 5 of the F.T.C. Act in consumer protection cases, we insist that an objective claim be supported by a reasonable basis for it to be "truthful and nondeceptive."[7] In concurring with the Commission's decision to accept the proposed Order, I do not interpret the safe harbor in Part III to allow ASFE to make unsubstantiated assertions to members, customers, and potential customers that otherwise violate the Order. In my view, ASFE cannot take advantage of the safe harbor unless it bears the burden of substantiating such representations. Absent such a requirement, it appears that much of ASFE's egregious behavior may be "fenced out" rather than "fenced in" to the proposed Order.

[1] 435 U.S. 679 (1978).
[2] *Id.*, at 692–93.
[3] *Id.*, at 695.
[4] Complaint, ¶ 12.
[5] Consent Order, Part III.
[6] *Id.*
[7] *See* FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 839 (*appended to Thompson Medical Co.* 104 F.T.C. 648 (1984)).

[FR Doc. 93–7726 Filed 4–1–93; 8.45 am]
BILLING CODE 6750–01–M

[File No. 901 0166]

AE Clevite, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Michigan manufacturer of locomotive engine bearings and its parent company, T&N PLC, from fixing prices or from inviting its competitors to fix or raise prices for locomotive engine bearings in the future. The consent agreement would require AE Clevite and T&N, for three years, to provide copies of the FTC complaint and consent order to the directors and officers of the company, subsidiaries, and divisions engaged in the design, manufacture, marketing or sale of locomotive engine bearings in the United States.

DATES: Comments must be received on or before June 1, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/H–380, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of AE Clevite, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Heavywall Bearing Division of J.P. Industries, Inc., a Michigan corporation, the predecessor in interest of AE Clevite, Inc. ("AE Clevite"), a Michigan corporation (hereinafter sometimes referred to as "proposed respondent"), which is an indirect, wholly-owned subsidiary of T&N PLC ("T&N"), a United Kingdom corporation, and it now appearing that AE Clevite and T&N are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between AE Clevite and T&N, by their duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent AE Clevite is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal offices located at 325 East Eisenhower Parkway, Ann Arbor, Michigan 48101–3388. Proposed respondent is an indirect, wholly-owned subsidiary of T&N, a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its principal offices located at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent and signatory T&N waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission

thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent or by T&N that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Solely for purposes of the proposed complaint and order contemplated hereby, signatory T&N recognizes proposed respondent as its agent, and acknowledges that once the order has been issued, T&N will be bound by the provisions of the order that pertain directly to T&N.

8. Proposed respondent and T&N have read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent and T&N further understand that they may be liable for civil penalties in the amount provided by law for each violation of any provision of the order that pertains to them after the order becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. "Respondent" means AE Clevite, its predecessors, successors, assigns, subsidiaries and divisions, including Glacier Clevite Heavywall Bearing, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns;

B. "T&N" means T&N plc and all direct or indirect majority-owned subsidiaries and divisions of T&N plc that are engaged in the design, manufacture, marketing, advertising, offering for sale, sale, or distribution of engine bearings;

C. "Engine bearings" means the components of internal combustion engines characterized by interfacing surfaces with relative motion of a sliding nature that provide support to a shaft rotating over a thin film of oil (including half bearings, bushings, and thrust washers); and

D. "Locomotive engine bearings" means engine bearings having a wall thickness of greater than one-quarter of an inch for use within locomotive engines.

II

It is ordered, That respondent and T&N, in connection with the design, manufacture, marketing, advertising, offering for sale, sale, or distribution of locomotive engine bearings in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from engaging, directly or indirectly, through any corporation, subsidiary, division, or other device (including through T&N or T&N's other subsidiaries, divisions or affiliated companies), in the following acts or practices:

A. Requesting, proposing, urging or advocating that any competitor fix, raise, establish, maintain or stabilize prices, price levels or service levels;

B. Entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, or agreement with any competitor to fix, raise, establish, maintain, or stabilize prices, price levels, or service levels; or

C. Inviting any competitor to raise prices by stating its willingness to follow or match any change in prices, price levels or service levels by any competitor.

Provided, however, That nothing contained herein shall prevent respondent from unilaterally raising, lowering, or otherwise altering its prices, price levels or service levels, publicly announcing any such change, or explaining the reasons for such a change to persons who are not competitors, such as customers, investors, securities analysts, news and financial reporters and the like.

III

It is further ordered, that:

A. Within thirty (30) days of the date on which this order becomes final, respondent and T&N shall provide a copy of the complaint and order to all of their directors and officers, and respondent shall provide a copy of the complaint and order to all of its management employees and all other employees engaged in the marketing, advertising, offering for sale, sale, or distribution of locomotive engine bearings to customers in the United States who have authority to affect the prices at which such locomotive engine bearings are sold;

B. For a period of three (3) years from the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director or an officer of T&N or a director, officer or management employee of respondent, or other employee of respondent engaged in the marketing, advertising, offering for sale, sale, or distribution of locomotive engine bearings to customers in the United States who has authority to affect the prices at which such locomotive engine bearings are sold, respondent or T&N shall provide a copy of the complaint and order to such person;

C. For a period of three (3) years from the date on which this order becomes final, and within thirty (30) days after the date on which any entity becomes a T&N majority-owned subsidiary, unincorporated division, or other operating entity engaged in the design, manufacture, marketing, advertising, offering for sale, sale, or distribution of locomotive engine bearings to customers in the United States, T&N shall provide a copy of the complaint and order to all directors, officers, management employees, and all other employees of such entity engaged in the marketing, advertising, offering for sale, sale, or distribution of locomotive engine bearings to customers in the United States who have authority to affect the prices at which such locomotive engine bearings are sold; and

D. Respondent and T&N shall require each person to whom a copy of the

complaint and order is furnished pursuant to subparagraphs III.A., B., and C. of this order to sign and submit to respondent within thirty (30) days of the receipt thereof a statement that: (1) Acknowledges receipt of the complaint and order; (2) represents that the undersigned has read and understands the order; (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject respondent and T&N to penalties for violation of the order; and (4) identifies the undersigned by name, address, and telephone number.

IV

It is further ordered, That respondent shall:

A. Within sixty (60) days of the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require, file with the Commission a verified written report setting forth in detail the manner and form in which respondent and T&N have complied and are complying with this order;

B. For a period of three (3) years after the date on which this order becomes final, maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with competitors of respondent relating to any aspect of pricing or service for locomotive engine bearings to customers in the United States, and records pertaining to any action taken in connection with any activity covered by paragraphs II, III, and IV of this order; and

C. Notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries engaged in the design, manufacture, marketing, advertising, offering for sale, sale, or distribution of locomotive engine bearings, or any other change in respondent that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from AE Clevite, Inc. ("AE Clevite").

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Heavywall Bearing Division ("HBD") of J.P. Industries, Inc. ("JPI") was the predecessor in interest of Glacier Clevite Heavywall Bearings, which is a division of respondent AE Clevite. The complaint alleges that in a conversation between the general manager of the HBD of JPI and the managing director of Miba Gleitlager AG ("Miba"), the JPI HBD official advised the Miba official that the prices at which Miba sold locomotive engine bearings in the United States aftermarket were lower than those of the JPI HBD, and "as a result, they were ruining the marketplace." Following the Miba official's denial that it was Miba's intent to undercut prices, the JPI HBD official caused comparative price information to be transmitted to Miba. The complaint alleges that this conduct was an implicit invitation by the JPI HBD for Miba to refrain from competition in the pricing of locomotive engine bearings sold in the United States aftermarket. The challenged conduct did not relate to any proposed bona fide integration between the parties. The complaint further alleges that this conduct violates section 5 of the Federal Trade Commission Act.

AE Clevite has signed a consent agreement containing the proposed consent order. The order prohibits AE Clevite and its parent T&N plc ("T&N") from requesting, proposing, urging or advocating that any competitor fix, raise, establish, maintain or stabilize prices, price levels or service levels. The proposed consent order also prohibits AE Clevite and T&N from entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, or agreement with any competitor to fix, raise, establish, maintain, or stabilize prices, price levels, or service levels. The order's provisions apply to the design, manufacture, marketing, advertising, offering for sale, sale, and distribution of locomotive engine bearings (defined as engine bearings having a wall thickness of greater than one-quarter of an inch for use within locomotive engines).

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of AE Clevite, Inc., File No. 901-0166

Based on the reasoning articulated in my earlier statement on invitations to collude,[1] I have voted in favor of accepting the consent agreement in this matter for public comment. Several aspects of this case are worthy of note, however.

As previously indicated, I believe that in this novel area of Commission enforcement, the Commission should be cautious to ensure that the activity challenged is, in fact, an attempt to engage in a naked restraint of trade, rather than in a joint venture or other potentially efficient agreement. See Quality Trailer Statement at 6–7. Here, the conduct alleged in the Commission's complaint to be a violation of section 5 of the Federal Trade Commission Act is described as "an implicit invitation by [respondent for its competitor] to refrain from competition in the pricing of locomotive engine bearings sold in the United States aftermarket." Complaint, Paragraph 9. At first blush, an "implicit" invitation might suggest something other than a solicitation to fix prices.

Two factors alleviate any such concern here. First, as the Analysis of Proposed Consent Order to Aid Public Comment notes, "[t]he challenged conduct did not relate to any proposed bona fide integration between the parties." Under such circumstances, it is difficult to envision what efficiency-enhancing motive there might have been for complaining to a competitor that its lower prices were "ruining the market place", and subsequently sharing comparative price lists with that competitor. Complaint, Paragraph 8. Based on available information, as in *Quality Trailer Products*, this appears to be attempted price-fixing. Second, the theory of potential harm is strong in this case, in light of the 95 percent combined market share of the two competing parties to the discussion. Complaint, Paragraph 7. While, as I have previously indicated, an "iron-clad" demonstration of potential harm is not an element of this sort of Section 5 offense, Quality Trailer Statement at 6–7, the presence of potential injury (and, therefore, motive) makes the inference of an attempted price-fix more credible.

Finally, I would note that the proposed order in this matter, like the order in *Quality Trailer Products*, could be construed to prohibit, in addition to price-fixing solicitations, an invitation to enter into a procompetitive joint venture that, incidentally, involves setting prices. Again, I interpret these constraints to be fencing-in provisions designed to facilitate enforcement of the order, rather than intent by the Commission to discourage solicitations to joint venture, or to engage in other legitimate action by that may involve price discussions.

[1] See Concurring Statement of Commissioner Deborah K. Owen in the Matter of Quality Trailer Products Corporation (File No. 911–0068) ("Quality Trailer Statement").

In another case, the Commission may wish to consider less restrictive relief, depending upon the needs of the company involved and the egregiousness of the offense.[2]

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[File No. 912 3086]

Fone Telecommunications, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York marketer of "900" number information services from misrepresenting premium offers, would require a preamble statement at the beginning of each children's message giving the child a chance to hang up without charge, and would require the company to provide a means for parents to prevent, or not to charged for, unauthorized calls by their children. In addition, the consent agreement would prohibit the respondent from misrepresenting the ease with which a premium is obtainable and would require the disclosure of all material terms and conditions for obtaining any premium offers.

DATES: Comments must be received on or before June 1, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Toby Levin or Carol Kando, FTC/S-4002, Washington, D.C. 20580. (202) 326-3156 or 326-3152.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the matter of Fone Telecommunications, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Fone Telecommunications, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

IT IS HEREBY AGREED that by and between Fone Telecommunications, Inc. by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Fone Telecommunications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 444 Madison Avenue, suite 212, New York, New York 10022.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it have fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the term, *children* or *child* shall mean a person of age twelve or under.

For purposes of this order, the term *information service for children* shall mean a telephone message accessed through a numbered exchange (*e.g.*, "900") for which a fee is charged,

[2] Here, as in *Quality Trailer Products*, the proposed order includes a proviso exempting certain conduct from the general proscriptions. The fact that the exempted conduct varies in the two cases (discussing prices with respect to certain sales between competitors vs. unilateral price changes and announcements thereof to non-competitors) illustrates the Commission's ability to fine-tune its mandates.

consisting of recorded statements promoted or sold primarily to children.

For purposes of this order, the term *premium* shall mean any item respondent offers to send to those who call its information service for children.

For purposes of this order, the term *information service message* shall mean any live or recorded story, program or other communication transmitted to callers of respondent's information service for children.

For purposes of this order, the term "video entertainment" shall mean any advertisement intended for dissemination on television broadcast, cablecast, home video, or theatrical release.

I

It is Ordered that respondent Fone Telecommunications, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, the ease with which a premium is obtainable.

II

It is further Ordered that respondent Fone Telecommunications, Inc., its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or transmission of any information service for children in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing as specified below to disclose, clearly and prominently, whenever an offer of any premium is made, all the material terms, conditions and obligations upon which receipt and retention of the premium is contingent. Such terms, conditions, and obligations shall include, but not be limited to, the number of calls necessary to receive the premium, if more than one, and the need to have a writing implement and paper available to record the necessary information given during the information service message.

The disclosure shall be made in a manner understandable to children, and shall be made in the same medium in which the offer of the premium is made and, in addition, in any information service message.

III

It is further ordered that respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for an information service for children that does not include the following statement:

"KIDS, YOU MUST ASK YOUR MOM OR DAD AND GET THEIR PERMISSION BEFORE YOU CALL. THIS CALL COSTS MONEY."

The above-required disclosure shall be presented in a manner designed to ensure clarity and prominence as follows:

A. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The disclosure shall appear immediately following the first video presentation of the "900" telephone number, but in any event shall begin within the first fifteen (15) seconds of the advertisement. The audio portion shall be presented in a slow and deliberate manner. Each line of the video portion shall be at least as large as one-half of the size of the largest presentation of the "900" number that appears on the screen during the advertisement, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the audio disclosure.'

B. In any print advertisement, the disclosure shall be parallel to the base of the advertisement and shall be placed in close proximity to the 900 number. All lines of the disclosure when taken together shall be the same size or larger than the largest presentation of the 900 number, but in any event the type size of each line of the disclosure shall be no less than 12 point, bold-face type.

C. In any radio advertisement, the disclosure shall be presented in a slow and deliberate manner and shall appear immediately following the first presentation of the "900" telephone number, but in any event it shall begin within the first fifteen (15) seconds of the advertisement.

Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertisement in any medium.

IV

It is further ordered that respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement in any medium for any information service for children that does not include a disclosure of the cost of a call to the information service. This disclosure shall be presented in a manner designed to ensure clarity and prominence. In any video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement.

V

It is further Ordered that respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing to be disseminated any information service message for children that does not include, at the beginning of the message, an introductory preamble that states in a slow, deliberate and clear manner the following:

"THIS TELEPHONE CALL COSTS MONEY. IF YOU DO NOT HAVE YOUR MOM OR DAD'S PERMISSION, HANG UP NOW AND THERE WILL BE NO CHARGE FOR THIS CALL."

VI

It is further Ordered that respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from billing or causing to be billed, or collecting any funds or causing any funds to be collected, for any call to any information service for children terminated within no less than five (5) seconds of the end of the introductory preamble, as required by Paragraph V of this Order.

VII

It is further Ordered that respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from inducing children to call their information service for children and thereby incur charges,

without providing any reasonable means for the person responsible for payment of such charges to exercise control over the transaction. For purposes of this Paragraph, if the respondent does not provide, prior to placement of any call by a child, a reasonable means for the person responsible for payment to avoid unauthorized calls, the provision of a reasonable means to exercise control over the transaction shall be the use of the respondent's best efforts to ensure that one-time refunds or credits are provided upon request for unauthorized calls made by children, as specified below. Best efforts shall include at least the following:

A. Contracting with the appropriate interstate common carrier or local exchange carrier to:

(1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "CHILD CALL;"

(2) Place in all telephone bills containing charges for calls to respondent's information service for children, clearly and prominently in close proximity to the itemization of those charges, a toll-free or local telephone number specified to be used for consumer inquiries concerning charges on the telephone bill; provided, that a general billing inquiry telephone number for customer inquiries concerning charges on the telephone bill shall satisfy this requirement;

(3) Refer all customers who call the toll-free number inquiring about the charges for respondent's information service for children to their local exchange carrier for information regarding the availability of blocking in their jurisdiction; and

(4) Provide a one-time prompt and full credit or refund at the customer's request for all such calls, whether such request is made to the toll-free or local telephone number specified herein or in any other manner; provided, that respondent must contract with the carrier to provide a second prompt and full credit or refund to any customer who requests the first credit or refund during a period of the billing cycle where unauthorized calls have been made, but do not yet appear on the customer's bill, and subsequently requests a second credit or refund for the unauthorized calls made before the date of the first request for a credit or refund;

Provided, that if the interstate common carrier utilized by respondent employs local exchange carriers to provide billing inquiry services, respondent shall be in compliance with subparagraphs A (3) and (4) of this Paragraph if its contract with the interstate common carrier provides that the interstate common carrier notify each local exchange carrier of the interstate common carrier's policies to:

(i) Provide the customer with information regarding the availability of blocking of 900 number calls; and

(ii) Provide upon request one-time refunds or credits for unauthorized calls by children, as provided in subparagraph A(4) of this Paragraph.

B. In the event that respondent receives any information that the interstate common carrier has failed to fulfill its obligations under the contract required by subparagraph A of this Paragraph, immediately notifying the interstate common carrier:

(1) Of the existence of the alleged failure(s);

(2) Of the carrier's responsibility to fulfill its obligations under the contract;

(3) Of the need to investigate and correct all past failures; and

(4) That if a pattern or practice of failures continues, respondent will terminate the use of said carrier for any information service for children; and

C. Terminating the use of said interstate common carrier for any information service for children, in the event that the interstate common carrier does not correct all past failures or continues to fail to fulfill its obligations under said contract.

D. Compliance with the requirements set forth in subparagraphs A–C of this Paragraph is deemed to be satisfactory compliance with this Paragraph.

Provided, that for purposes of this Paragraph, the mere inclusion of any audio or video disclosure relating to parental authorization in advertisements or information service messages is expressly deemed not to be a reasonable means, prior to placement of any call by a child, for the person responsible for payment to avoid unauthorized calls.

VIII

It is further ordered that for three (3) years from the date of service of this Order, respondent, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: (1) All advertisements for information services for children and all corresponding information service messages; (2) a record of all credit or refund requests made for charges billed for respondent's information services for children; (3) all documents relating to compliance with Paragraph VII of this Order; and (4) all consumer complaints and dispositions thereof relating to respondent's information services for children.

IX

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition or any other corporate change that may affect compliance obligations arising out of this Order.

X

It is further ordered that respondent shall forthwith distribute a copy of this Order to each of respondent's operating divisions and any carrier(s) or other entities providing billing and/or collection service for their information services for children.

XI

It is further ordered that respondent, shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Fone Telecommunications, Inc. ("respondent" or "Fone").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Fone's television advertisements for its pay-per-call information services for children. These are services accessed by calling a numbered telephone exchange (*e.g.*, 900), in which callers hear recorded stories, or games featuring fictional characters, such as Santa Claus.

The Commission's complaint in this matter charges respondent with

engaging in unfair and deceptive practices in connection with the advertising and sale of its information services for children. According to the complaint, respondent's ads represented that children who complete a call to respondent's information service for children would readily and easily obtain the "gift" (or "premium") specified in the advertisement simply by calling the advertised number. This representation is alleged to be false and misleading. In order to obtain the premium, callers were required to follow a number of complex steps that children could not reasonably follow. For example, callers needed to transcribe an address given rapidly and without warning after the recorded story message.

The complaint also alleges that respondent's advertisements failed to disclose that there are material terms and conditions for obtaining the premium, including the need for a writing implement and paper to transcribe the ordering information.

Finally, the complaint alleges that respondent has unfairly induced children to call its information services without providing any reasonable means for the person responsible for paying the charges to exercise control over the transaction. These practices are alleged to cause substantial consumer injury and constitute unfair practices.

The consent order contains provision designed to remedy the violations charged and to prevent respondent from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits respondent from misrepresenting in the advertising or sale of its information services for children the ease with which a premium is obtainable. The order defines information services for children as fee-charged phone services accessed through a numbered exchange consisting of live or recorded statements promoted or sold primarily to children aged twelve or under.

Part II of the order requires respondent to disclose, clearly and prominently, whenever an offer of premium is made, all of the material terms, conditions and obligations upon which receipt and retention of any premium is contingent. These terms must include, at a minimum, the number of calls needed to receive the premium, if more than one, and the need for a writing implement and paper to transcribe the ordering information. The disclosure must be made in the same medium as the premium offer and also in the recorded message.

Part III of the order requires respondent to include the following disclosure, presented in a manner designed to ensure clarity and prominence, in its advertisements for its information services for children: "Kids, you must ask your mom or dad and get their permission before you call. This call costs money." The order specifies with particularity the manner in which the disclosures shall be presented in different media.

Part IV of the order requires respondent to disclose in a manner designed to ensure clarity and prominence, in all of its advertisements for information services for children, the cost of the telephone call to such services.

Part V of the order requires respondent to include, at the beginning of every recorded phone message for children, the following introductory message in a slow, deliberate and clear manner: "This Telephone Call Costs Money. If You Do Not Have Your Mom or Dad's Permission, Hang Up Now And There Will Be No Charge For This Call."

Part VI of the order prohibits respondent from collecting any funds for any call terminated within five seconds of the end of the introductory preamble required by part V. Part VII of the order requires that respondent not induce children to call its information services for children unless it provides a reasonable means for persons responsible for payment to exercise control over the transaction. If respondent does not provide a reasonable means for such persons to avoid unauthorized calls before they are made, respondent must use its best efforts to ensure that one-time credits or refunds are provided upon request for unauthorized calls made by children. "Best efforts" is defined to include, at a minimum, contracting with the appropriate phone company to: (1) Identify in all telephone bills containing charges for calls to respondent's information service for children each telephone call to such service by the characters "Child Call;" (2) place in all bills containing charges for respondent's information service for children, a toll-free number for customer inquiries; (3) refer all customers who call such toll-free number to their local phone company for information on blocking of 900 calls; and (4) provide a one-time prompt and full refund or credit, upon request, for unauthorized calls made by children. Best efforts also requires respondent to monitor the phone company's compliance with the order requirements and take certain action, including termination of its contract with the phone company, if the phone company does not fulfill its obligations under its contract with respondent.

Part VIII of the order requires respondent to maintain and make available to the Federal Trade Commission for inspection and copying all advertisements for information services for children and all corresponding information service messages, records of all credits or refund requests and their dispositions, all consumer complaints, and all documents relating to the implementation of part VII, for a period of three years.

Part IX of the order requires respondent to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of this order.

Part X of the order requires respondent to distribute a copy of the order to each of its operating divisions and to any entity providing billing and/or collection services for its information services for children.

Part XI of the order requires respondent to file a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93-7724 Filed 4-1-93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3416]

National Association of Social Workers; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Washington, DC-based, professional association from restraining competition among social workers by restricting or banning truthful, non-deceptive advertising or solicitation by its members, and from restricting social workers from paying a fee to any patient referral service.

DATES: Complaint and Order issued March 3, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Robert Schroeder, Seattle Regional

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Avenue, Seattle, WA. 98174. (206) 202–6350.

SUPPLEMENTARY INFORMATION: On Thursday, December 24, 1992, there was published in the **Federal Register**, 57 FR 61424, a proposed consent agreement with analysis In the Matter of National Association of Social Workers, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–7723 Filed 4–1–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0034]

The Stevan M. Rogers Farm; Proposal to Withdraw Approval of an Application for Medicated Animal Feeds; Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), is providing an opportunity for hearing on a proposal to withdraw an application for medicated feed held by the Stevan M. Rogers Farm. The proposed withdrawal is based on new information showing the firm's methods and controls used for manufacturing medicated animal feeds containing a new animal drug are inadequate to preserve the identity, strength, quality, and purity of the new animal drug therein and on the fact that these inadequacies were not corrected within a reasonable time after written notice from FDA.

DATES: Requests for hearing and data and information in support of the hearing request are due by May 3, 1993.

ADDRESSES: Requests for hearing in response to this notice should be identified with Docket No. 93N–0034 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen A. Kandra, Center for Veterinary Medicine (HFV–246), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8765.

SUPPLEMENTARY INFORMATION: CVM is providing an opportunity for hearing on a proposal to withdraw approval of a medicated feed application (MFA) held by the Stevan M. Rogers Farm, Rural Rt. 1, P.O. Box 89, Chrisman, IL 61924, for the manufacture of animal feeds bearing or containing a new animal drug. The Stevan M. Rogers Farm raises swine and manufactures feed for swine. The firm holds MFA F126–508, which was approved January 19, 1981, under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)). MFA F126–508 was approved for manufacture of swine feed bearing or containing the new animal drug carbadox which is used as an antibiotic.

To manufacture an animal feed bearing or containing a new animal drug, a firm must file an MFA (Form FDA 1900) with FDA and obtain its approval. FDA does not approve such an application unless, among other things, the firm agrees to comply with the agency's current good manufacturing practice (CGMP) regulations for animal feeds (21 CFR part 225), which are intended to help ensure that feed bearing or containing a new animal drug meets the requirements of the act pertaining to identity, strength, quality, and purity. The agency determines whether the firm's manufacture of medicated feed is in compliance with the CGMP regulations by inspecting the facilities and controls used for, and the methods used in, the manufacture, processing, and packing of the feed by the firm.

On February 3 and 4, 1988, FDA inspected the Stevan M. Rogers Farm. The inspection revealed significant deviations from the CGMP's for medicated feeds. The FDA investigator noted the deviations on an inspectional observations form (Form FDA 483) (Ref. 1), issued a copy to Mr. Rogers and discussed the deviations with him. Later, the deviations were again brought to the attention of Mr. Rogers in a notice of adverse findings (NAF) letter, dated June 14, 1988 (Ref. 2). The deviations included the following:

1. No procedures or provisions existed for cleaning or flushing mixing equipment between batches of medicated feeds, as required by 21 CFR 225.65(a).

2. Complete drug receiving and inventory records were not kept, as required by 21 CFR 225.42(b)(5).

3. A daily drug inventory record was not maintained, as required by 21 CFR 225.42(b)(6).

4. Daily comparison of the actual amount of drug used with the theoretical drug usage was not performed, as required by 21 CFR 225.42(b)(7).

5. No periodic assays were run on medicated feed for the drug component, as required by 21 CFR 225.58(b)(1).

6. A Master Record File did not exist, and the batch production records were incomplete, as required by 21 CFR 225.102(b)(1) and (b)(2), respectively.

In March 1988, the firm submitted an MFA to the agency for the use of the drug pyrantel tartrate. Based on the failed inspection, the agency denied approval of the application. On July 10, 1989, the firm responded in writing, claiming that it had corrected most of the violations.

On December 17, 1990, FDA conducted a followup inspection which revealed that corrections had not been made. The investigator noted the CGMP deviations on a Form FDA 483 (Ref. 3), issued a copy to Mr. Rogers and discussed them with him. The deviations were as follows:

1. The Master Record File lacked the name of the medicated feed, manufacturing instructions, and initials of the responsible person, as required by 21 CFR 225.102(b)(1).

2. A daily inventory record was not maintained, as required by 21 CFR 225.42(b)(6).

3. No assays of medicated feeds were performed for drug potency in the last year, as required by 21 CFR 225.58(b)(1).

4. Drug receiving records lacked lot numbers and condition of product, as required by 21 CFR 225.42(b)(5).

5. Batch production records were incomplete and were not checked at the end of the day, as required by 21 CFR 225.102(b)(4).

The previously mentioned deviations were detailed in a regulatory letter sent to the firm and dated March 4, 1991 (Ref. 4). The letter informed the firm that: (1) Until it corrected the violations, the agency would not approve additional MFA's, and (2) if the corrections were not made promptly, the agency was prepared to seek withdrawal of the existing approval for the manufacture of feeds medicated with carbadox.

The letter also mentioned two additional deviations revealed by the review of inspection documents: (1)

Variations in batch sizes occured while the amount of drug remained constant, resulting in varying concentrations of carbadox in the finished feed (MFA F126–508 limits carbadox concentration to 50 grams per ton); and (2) the firm had combined carbadox with other new animal drugs for which it does not have approval.

Finally, the letter required the firm to inform the agency within 10 days of the steps taken to correct the violations. The firm did not respond to the regulatory letter, and it also failed to respond to a letter dated April 17, 1991 (Ref. 5), requesting a response to the regulatory letter.

The firm was scheduled for a re-inspection which was completed December 9, 1991. The re-inspection revealed that no corrections had been made and conditions remained the same as in 1990. The FDA investigator again noted the CGMP deviations on Form FDA 483, dated December 9, 1991 (Ref. 6), issued a copy to Mr. Rogers and also discussed the deviations with him. As a result of that inspection, CVM sent a certified letter, dated February 26, 1992 (Ref. 7), to the firm (received March 4, 1992), notifying it of FDA's intention to withdraw approval of the carbadox MFA if the firm did not request voluntary withdrawal of the approval. The firm was given 10 days to respond but, once again, failed to do so.

Accordingly, CVM is proposing to withdraw approval of MFA F126-508 held by the Stevan M. Rogers Farm, under section 512(m)(4)(B)(i) and (m)(4)(B)(ii) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in a environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Form FDA 483 inspection of February 3 and 4, 1988.

2. NAF, FDA to the Stevan M. Rogers Farm, dated June 14, 1988.

3. Form FDA 483 inspection of December 17, 1990.

4. Regulatory letter, FDA to the Stevan M. Rogers Farm, dated March 4, 1991.

5. Letter, FDA to the Stevan M. Rogers Farm, dated April 17, 1991.

6. Form FDA 483 inspection of December 9, 1991.

7. Letter, FDA to the Stevan M. Rogers Farm, dated February 26, 1992.

Therefore, notice is given to the Stevan M. Rogers Farm, and to any other interested persons who may be adversely affected, that CVM proposes to issue an order under section 512(m)(4)(B)(i) and (m)(4)(B)(ii) of the act withdrawing approval of MFA F126–508 and all amendments and supplements thereto, on the grounds that new information, evaluated together with the evidence available when the applications were approved, shows that the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such animal feed are: (1) Inadequate to assure and preserve the identity, strength, quality, and purity of the new animal drug therein, and (2) were not made adequate within a reasonable time after receipt of written notice from FDA specifying the inadequacies.

In accordance with provisions of section 512 of the act and regulations promulgated under it (21 CFR part 514), and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84), CVM hereby provides an opportunity for a hearing to show why approval of the MFA identified in this notice, and all amendments and supplements to the application, should not be withdrawn under section 512(m)(4)(B)(i) and (m)(4)(B)(ii) of the act. Any hearing would be subject to the provisions of 21 CFR part 12.

An applicant who decides to seek a hearing shall file on or before May 3, 1993, a written notice of appearance, request for hearing, and the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 514.200.

Procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for a hearing, submission of information and analysis to justify a hearing, other comments, and a grant or denial of a hearing, are contained in 21 CFR 514.200.

The failure of a sponsor to file a timely, written appearance and request for a hearing as required by 21 CFR 514.200 shall be construed as an election not to avail himself of the opportunity for a hearing. In such case, the Director, Center for Veterinary Medicine, under the authority delegated to him in 21 CFR 5.84(a)(2), without further notice will enter a final order withdrawing approval of the application.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the documentation and analysis in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the MFA, or that the request for a hearing is not made in the required format or with the required analysis, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing. If a hearing is requested and is justified by the sponsor's response to this notice, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will begin will be issued as soon as practicable.

All submissions under this notice shall be filed in four copies and, except as provided in 21 CFR 10.20(j), may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512 (21 U.S.C. 360b)) and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84).

Dated: March 29, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93–7667 Filed 4–1–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0043]

Center for Veterinary Medicine's List of Guidelines; Updating

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the May 1992 document entitled "Information and Resources," which contains a list of guidelines available from the Center for Veterinary Medicine (CVM) is being updated. CVM has grouped the guidelines into four categories based on the current status of each guideline: Guidelines that have become obsolete and that are being removed from the list; guidelines that are still applicable but that are undergoing revision and once revised, will be made available in draft for public comment; recently developed

draft guidelines and draft guidelines under development that are not listed in the May 1992 document, but for which notices of availability have been or will soon be published in the **Federal Register** inviting public comment; and current guidelines that remain on the list and that do not require revision at this time. A new section of the list entitled "Other Available Information" will contain a list of generic animal drug policy letters, "CVM's Policy and Procedures Manual Guides," various toxicology and environmental handbooks, and documents that are not guidelines but are intended to aid in animal drug development.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Current guidelines, policy letters, and "Information and Resources" may be requested from the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8755. Send two self-addressed adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing that CVM is updating its May 1992 list of guidelines that is included in a compilation of educational materials distributed by CVM's Communications and Education Branch. CVM has grouped the guidelines into four categories based on the current status of each guideline: (1) Guidelines that have become obsolete and that are being removed from the list; (2) guidelines that are still applicable but that are undergoing revision and once revised, will be made available in draft for public comment; (3) recently developed draft guidelines and draft guidelines under development that are not listed in the May 1992 document but for which notices of availability have been or will soon be published in the **Federal Register** inviting public comment; and (4) current guidelines that remain on the list and that do not require revision at this time. The numerical designation of the guidelines is identical to that of the May 1992 list.

Guidelines state procedures or practices that may be useful to the persons to whom they are directed, but are not legal requirements. Guidelines represent the agency's position on a procedure or a practice at the time of their issuance. A person may follow a guideline or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. A guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. Where a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline. CVM invites public comments on all guidelines at any time.

Documents that are not guidelines but that are intended to aid in animal drug development are being moved to a new section of the list entitled "(E) Other Available Information." The generic animal drug policy letters are being added to that section as are references to "CVM's Policy and Procedures Manual Guides" and to various toxicology and environmental handbooks.

II. Four Categories of Guidelines and Other Available Information

The following includes a list of CVM's four categories of guidelines, based on the current status of the guideline, and a new category of document entitled "Other Available Information."

A. Obsolete Guidelines

(The numerical designation of each guideline is identical to that of the May 1992 list.)

1. "Anticoccidial Guidelines" (January 1974). These guidelines are being replaced by the "Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry" (April 1992) (57 FR 20835, May 15, 1992).

2. "The Anthelmintics Guidelines." These guidelines have been replaced by species-specific guidelines (e.g., "Guidelines for the Effectiveness Evaluation of Swine Anthelmintics;" similarly entitled guidelines are available for bovine, equine, and canine/feline).

4. "Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle." These guidelines deal with a special class of product that was once, but is no longer, of particular significance to CVM. The principles embodied in the guidelines are more accurately presented in CVM's 1990 "Bioequivalence Guideline."

6. "Guidelines for Submitting NADA's for Generic Drugs Reviewed for Effectiveness Under the National Academy of Sciences/National Research Council, Drug Efficacy Study Implementation" (NAS/NRC DESI) Program (October 1971, editorial revisions in March 1976). These guidelines are obsolete because FDA is no longer accepting generic "me too" NADA's under the NAS/NRC DESI program.

8. "Guidelines for Toxicological Investigations." These guidelines have been replaced by guideline number 3, "General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals" (September 1986) (See guideline number 3 in section II.B. of this document.)

11. "BVM Environmental Guidelines." These guidelines have been replaced by the "FDA Environmental Assessment Technical Assistance Handbook" which is listed under "Other Available Information." The handbook (order number PB 87–175345) is available from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161, (703–487–4650).

12. "BVM Policy and Procedures Guide: Export of New Animal Drugs for Investigational Use." This guideline has been moved to "CVM's Policy and Procedures Manual Guides" as Guide 1240.3030.

14. "Guideline and Format for Reporting the Details of Clinical Trials Using an Investigational New Animal Drug in Food-Producing Animals." This document is not so much a guideline as it is a suggested format for reporting to CVM certain information required by 21 CFR 511.1. Accordingly, it has been moved from the guidelines section of the list to "Other Available Information," as indicated in section II.E. of this document. It is available from the Communications and Education Branch and routinely accompanies outgoing CVM correspondence on investigational new animal drugs.

15. "Guideline and Format for Reporting the Details of Clinical Trials Using an Investigational New Animal Drug in Non-Food Producing Animals" (February 1977). This document is not so much a guideline as it is a suggested format for reporting to CVM certain information required by 21 CFR 511.1. Accordingly, it has been moved from the guideline section to "Other

Available Information" in section II.E. of this document.

17. "Working Guidelines for Assigning Residue Tolerances" (September 1978). These guidelines have been replaced by guideline number 3 (see section II.B. of this document).

18. "Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria."

19. "Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria."

20. "Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria."

Guidelines 18, 19, and 20 are moved from the guidelines section of the list to "Other Available Information," as indicated in section II.E. of this document, because they reflect CVM policies rather than guidelines, but they remain intact and are still available from CVM.

27. "New Animal Drug Determination" (June 1980). This document is actually Guide 1240.3500 (revised July 24, 1989) in "CVM's Policy and Procedures Guides."

28. "Fast Track Drug Classification Guide" (July 1980). This guideline has been superseded by another policy and procedures guide entitled "Animal Drug Applications Expedited Review Guide 1240.3135" (June 6, 1990).

32. "Guideline for Threshold Assessment." This guideline is included in guideline number 3 (See section II.B. of this document.).

34. "Biomass Guideline." This guideline has been incorporated into guideline number 3 (See section II.B. of this document.).

38. "Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs" (August 1984). Sponsors are advised to check with the appropriate CVM division for advice during protocol development for these drugs.

B. Guidelines Still Applicable But Undergoing Revision

(The numerical designation of each guideline is identical to that of the May 1992 list.)

CVM recognizes that certain aspects of the following guidelines should be revised to reflect new regulatory philosophies or new scientific principles. CVM recommends that sponsors check with the appropriate CVM division before initiating studies under any of the following guidelines which are currently being revised:

3. "General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals" (September 1986). All seven guidelines in this document are being revised.

5. "Stability Guidelines" (December 1990).

9. "Preclearance Guidelines for Production Drugs" (October 1975).

21. "BVM Position Statement—Status of Nutritional Ingredients in Animal Drugs and Feed" (April 1976) (BVM will be changed to CVM).

24. "Guidelines for Drug Combinations for Use in Animals" (October 1983).

25. "Guidelines for the Efficacy Evaluation of Equine Anthelmintics" (January 1979).

26. "Guidelines for the Preparation of Data to Satisfy the Requirements of Section 512 of the Act Regarding Animal Safety, Effectiveness, Human Food Safety and Environmental Considerations for Minor Use of New Animal Drugs" (April 1986).

29. "Guidelines for the Effectiveness Evaluation of Swine Anthelmintics" (September 1980).

30. "Guidelines for Anti-infective Bovine Mastitis Product Development" (June 1985).

31. "Guidelines for the Evaluation of Bovine Anthelmintics" (July 1981).

33. "Target Animal Safety Guidelines for New Animal Drugs" (June 1989).

35. "Bioequivalence Guideline" (April 1990).

36. "Guidelines for Efficacy Evaluation of Canine/Feline Anthelmintics" (July 1985).

C. Recently Developed Guidelines

The following draft guidelines were recently developed by CVM, and notices of their availability have been published in the **Federal Register** to invite public comment:

- "Guideline on the Conduct of Clinical Investigations: Responsibilities of Clinical Investigators and Monitors for Investigational New Animal Drugs" (57 FR 20495, May 13, 1992).
- "Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry" (57 FR 20835, May 15, 1992).
- "Guideline for Formatting, Assembling, and Submitting New Animal Drug Applications" (57 FR 34299, August 4, 1992).
- A series of four guidelines entitled "Animal Drug Manufacturing Guidelines, 1992" (57 FR 37979, August 21, 1992).
- "Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances" (57 FR 38517, August 25, 1992).
- "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle" (58 FR 8054, February 11, 1993).
- "Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products" (58 FR 7894, February 10, 1993).
- "Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Anti-Infective Bovine Mastitis Products" (58 FR 7893, February 10, 1993).

The following draft guidelines are being developed by CVM. Once they are completed, notices of their availability will be published in the **Federal Register** to invite public comment.

- "Guideline for Conducting an In-vivo Bioavailability/Pharmacokinetics Investigation."
- "Guideline for Animal Drug Master Files."
- "Guideline on Sterile Process Validation."

D. Current Guidelines Not Requiring Revision or Deletion

(The numerical designation of each guideline is identical to that of the May 1992 list.)

7. "Antibiotic Residues in Milk, Dairy Products, and Animal Tissues: Methods, Reports, and Protocols" (October 1968). This microbiological, analytical methods manual is still acceptable but it is being moved to the "Other Available Information" category in section II.E. of this document because it is not a guideline.

10. September 1976 amendment of section II(G)(1)(b)(4) of the "Preclearance Guidelines" (October 1975).

13. "Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds" (revision of Medicated Block) (January 1985).

16. FOI Summary Guideline (May 1985).

22. "Guideline Labeling of Arecoline Base Drugs Intended for Animal Use."

23. "Medicated Free Choice Feeds—Manufacturing Control" (July 1985).

37. "Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation" (March 1984).

E. Other Available Information

In addition to guidelines, CVM has policy and procedure guides that are indexed in "CVM's Policy and Procedures Manual Guides;" these documents are available upon request from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6310.

CVM has also prepared various handbooks, format guides, position statements, and policy letters that are intended to help drug sponsors understand how to interpret certain CVM procedures, positions, and

policies. These documents are included in this section for convenient reference:

- "Center for Veterinary Medicine Policy and Procedures Manual."
- "CVM's Position on Unapproved Aquaculture Drugs."
- "Guide for Reporting Drug Shipment(s) for Clinical Trials."
- "Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria."
- "Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria."
- "Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria."
- "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (Red Book), NTIS Order No. PB83–170696."
- "FDA Environmental Assessment Technical Assistance Handbook," NTIS Order No. PB87–175345/AS.

The following are Generic Animal Drug and Patent Term Restoration Act (GADPTRA) policy letters and a description of their contents:

- First Policy Letter (dated November 23, 1988) (53 FR 50460, December 15, 1988) including a description of the patent and exclusivity information to be submitted to FDA by holders of approved NADA's and NADA applicants.
- Second Policy Letter (dated June 7, 1989) (54 FR 26111, June 21, 1989) including: Format and content for suitability petitions, format and content for ANADA's, manufacturing requirements for ANADA's, and environmental review of generic animal drugs.
- Third Policy Letter (dated August 2, 1989) (54 FR 35534, August 28, 1989) including: "Exclusivity for Human Food Safety Data Submitted in Supplemental Application," "Withdrawal Period for Generic Drugs," "Substitution of an Active Ingredient in a Combination Drug or in a Feed Use Combination," "Labeling Requirements for Generic Drugs," and "Can a Generic Animal Drug Sponsor Obtain Exclusivity for an Innovation Approved Under a Supplement to an ANADA and Can the Pioneer Drug Sponsor Copy the Generic Innovation Without Submitting Additional Data?"
- Fourth Policy Letter (dated November 2, 1989) (55 FR 3107, January 30, 1990) including: "Actions Concerning ANADA's When a Pioneer Drug has Been Withdrawn from Sale," "Effect of GADPTRA on Approval of Pre-62 Drugs Under the DESI Program," and "Generic Feed Use Combination Drugs (Type A Article, Type B or Type C Medicated Feeds)."
- Fifth Policy Letter (dated April 12, 1990) (55 FR 24645, June 18, 1990) including the "Bioequivalence Guideline" (April 12, 1990).
- Sixth Policy Letter (dated October 17, 1990) (55 FR 45860, October 31, 1990) including: "Withdrawal Period for Generic Animal Drug Products" and "Eligibility of a New Salt or Ester of a Pioneer Animal Drug."
- Seventh Policy Letter (dated March 20, 1991) (56 FR 15083, April 15, 1991) including: "Guidance for Analytical Methods for ANADA's," "ANADA's, NADA's and Supplemental Approvals for Subtherapeutic Antibiotics," "Hybrid Applications," and "Waivers of *In Vivo* Bioequivalence Studies for Topical Products."
- Eighth Policy Letter (dated July 23, 1991) (56 FR 41561, August 21, 1991) including policy concerning generic copying of certain drugs that were subject to review under the DESI program.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7668 Filed 4–1–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0036]

Determination of Regulatory Review Period for Purposes of Patent Extension; DAYPRO®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DAYPRO® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DAYPRO®. DAYPRO® (oxaprozin) is indicated for acute and long-term use in the management of the signs and symptoms of osteoarthritis and rheumatoid arthritis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DAYPRO® (U.S. Patent No. 4,190,584) from John Wyeth & Brother Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated February 12, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DAYPRO®

represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DAYPRO® is 7,765 days. Of this time, 4,038 days occurred during the testing phase of the regulatory review period, while 3,727 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* July 29, 1971. Applicant claims July 28, 1971, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 29, 1971, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* August 17, 1982. The applicant claims August 10, 1982, as the date the new drug application (NDA) for DAYPRO® (NDA 18–841) was initially submitted. However, FDA records indicate that NDA 18–841 was initially submitted on August 17, 1982.

3. *The date the application was approved:* October 29, 1992. FDA has verified the applicant's claim that NDA 18–841 was approved on October 29, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 1, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 29, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–7666 Filed 4–1–93; 8:45 am]

BILLING CODE 4160–01–P

Health Care Financing Administration

[HSQ–203–N]

Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations—Kentucky

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice, in accordance with section 1153(i) of the Social Security Act, gives at least 6 months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) end. It also specifies the period of time in which in-State organizations may submit a statement of interest so that they may be eligible to compete for those contracts. The State currently affected is Kentucky, whose contract expires September 30, 1993.

DATES: Written statements of interest must be received at the address specified no later than 5 p.m. e.s.t., May 3, 1993.

Due to staffing and resource limitations, we cannot accept statements submitted by facsimile (FAX) transmission.

ADDRESSES: Statements of interest must be submitted to: Health Care Financing Administration, OBA, Attn.: Brian Hebbel, room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelso, (410) 966–7214.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of Title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services furnished under Title XVIII of the Act (Medicare) and under certain other Federal programs to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality that meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enhance the cost-effectiveness and efficiency of the peer review process.

In June of 1984, HCFA began awarding contracts to PROs. We currently maintain 53 PRO contracts with organizations that provide medical review activities for 49 of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the combined review area of the State of Hawaii, Guam and American Samoa. The organizations that are eligible to contract as PROs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with sections 1152 and 1153 of the Act and our regulations at 42 CFR 462.102 and 462.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and is representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer representative on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding a new subsection (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date of expiration, and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submits a proposal within the specified period of time, HCFA may not automatically renew the

contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. An in-State organization is defined as an organization that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 11 PRO contracts with entities that do not meet the statutory definition of an in-State organization. The area affected for purposes of this notice is Kentucky.

II. Provisions of the Notice

This notice announces that the current contract between HCFA and the out-of-State PRO responsible for review in Kentucky is scheduled to expire on September 30, 1993. Interested in-State organizations may submit statements of interest to be the PRO for the State of Kentucky. The statements must be received by HCFA no later than [30 days after date of publication in the **Federal Register**], and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State). In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be Either a Physician Sponsored or a Physician Access Organization

1. Physician sponsored organization

i. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, and be representative of the physicians practicing in the review area.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. In order to meet the substantial number requirement of A.1.i., an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of A.1.i., an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its statement of interest, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician access organization

i. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. An organization meets the requirements of A.2.i. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least One Individual Who is a Representative of Consumers on its Governing Board

If one or more organizations meet the above requirements in a PRO area, and submit statements of interest in accordance with this notice, HCFA will consider those organizations to be potential sources for the contract that is expiring on September 30, 1993. These organizations will be entitled to participate in a full and open competition for the PRO contract to provide medical review services for Kentucky.

III. Regulatory Impact Statement

This notice announces the date when a contract with an out-of-State PRO expires, and the period of time in which in-State organizations may file statements of interest. We have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

IV. Information Collection Requirements

This notice contains information collection requirements that have been approved and assigned Control Number OMB 0938–0526 by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This approval expires on May 31, 1994.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: March 9, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–7798 Filed 3–31–93; 11:19 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Announcement of Application Deadlines for Fiscal Year 1993 for Selected Programs of the Maternal and Child Health Bureau

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Advance notice of application deadline dates.

SUMMARY: The Health Resources and Services Administration's Maternal and Child Health Bureau (MCHB) expects to provide funding for new and competing renewal grant projects and cooperative agreements for the following programs during fiscal year 1993. The HRSA is announcing anticipated application deadline, award, funding and project period information for the following categories of: (1) Special Projects of Regional and National Significance (SPRANS) under the MCH Federal Set-Aside Program, funded under section 502(a) of the Social Security Act; and (2) Pediatric AIDS Health Care Demonstration Projects, funded under Public Law 102–394.

FOR FURTHER INFORMATION CONTACT: Potential applicants may contact Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440 for application information and other programmatic information concerning these programs. Requests should specify the category or categories of activities for which an application is requested.

SUPPLEMENTARY INFORMATION: A Notice of Availability of Funds will be published in the **Federal Register** for each of these programs, announcing program provisions, priorities, and

review criteria. The actual amounts available for awards and their allocation may vary from those in this notice, based on the volume and quality of applications received.

Set forth below is the application information, in table form:

MCH Federal Set-Aside Grant and Cooperative Agreements Anticipated Deadline, Award, Funding, and Project Period Information, by Category FY 1993

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
(1) Grants in the following areas:				
1.1 Research	Cycle 1: May 4, 1993 Cycle 2: August 2, 1993	up to 20	$2.5 million	up to 5 years.
1.2 Training:				
1.2.1 Long term	May 3, 1993	up to 35	4.5 million	up to 5 years.
1.2.2 Continuing education	July 1, 1993	up to 30	500,000	up to 3 years.
1.3 Genetic disease testing, counseling and information.	May 7, 1993	up to 7	1.7 million	3 years.
1.4 Special MCH improvement projects (MCHIP) of regional and national significance in the following areas:				
1.4.1 Maternal, infant, child, and adolescent health.	June 8, 1993	up to 18	2.0 million	up to 3 years, except as noted.
1.4.2 State systems development initiative	June 22, 1993	up to 59	5.9 million	2–3 years.
1.4.3 CSHCN habilitative services priorities	May 11, 1993	5–10	1.5 million	up to 4 years.
1.4.4 Hemophilia center/title V collaboration	May 14, 1993	2	100,000	2–3 years.
1.4.5 Comprehensive hemophilia treatment center grants.	June 4, 1993	up to 30	4.9 million	3 years.
1.4.6 Data utilization	June 15, 1993	up to 15	1.2 million	up to 3 years.
1.4.7 Healthy tomorrows partnership for children.	May 28, 1993	up to 5	250,000	5 years.
1.4.8 Field-initiated projects	July 1, 1993	10–15	500,000	up to 5 years.
(2) Cooperative agreements (MCHIPs) in the following areas:				
2.1 CSHCN policy and program coordination	May 11, 1993	1	up to $500,000	4 years.
2.2 Comprehensive hemophilia cooperative agreements.	May 14, 1993	up to 3	2 million	up to 4 years.

Pediatric Aids Health Care Demonstration Grants and Cooperative Agreements Anticipated Deadline, Award, Funding, and Project Period Information by Category FY 1993

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
(1) Grants in the following categories:				
1.1 Pediatric AIDS health care demonstration projects.	May 14, 1993	up to 8	$2.6 million	3 years.
1.2 Pediatric AIDS comprehensive center demonstration projects.	May 14, 1993	up to 2	1.9 million	3 years.
1.3 Hemophilia treatment center expansion for HIV/AIDS.	May 14, 1993	up to 2	150,000	3 years.
(2) Cooperative agreement in the following category:				
2.1 Pediatric/family HIV/AIDS health care demonstration program resource centers cooperative agreements.	May 14, 1993	up to 2	1.9 million	1–3 years.

Dated: March 30, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–7757 Filed 4–1–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, on April 19, 1993, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting

will be closed to the public on April 19 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/496–7030, will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as, sign language interpretation or other reasonable accommodations should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7657 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Subcommittee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Subcommittee A, National Cancer Institute, National Institutes of Health, on April 14–15, 1993, at the Executive Plaza North, Conference Rooms E and F, Rockville, Maryland 20892.

This meeting will be open to the public April 14 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on April 14 from 930 a.m. to recess and on April 15 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, Tel. 301/496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 26, 1993

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7654 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Subcommittee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Subcommittee A, National Cancer Institute, National Institutes of Health, on April 19, 1993, at the Chevy Chase Holiday Inn, Palladium West Conference Room, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on April 19 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr . Susan E. Feinman, Scientific Review Administrator, Developmental Therapeutics Contracts Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/402–0944, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: March 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7656 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the National Cancer Advisory Board Program Project Task Force

Pursuant of Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, Program Project Task Force, April 21, 1993, at 6130 Executive Boulevard, Executive Plaza North, Room 600A, Bethesda, Maryland 20892 and will be conducted as a telephone conference with the use of a speaker phone.

The entire meeting will be open to the public from 1 p.m. to approximately 4 p.m. The Task Force will review data and formulate strategy for the overall

P01 review mechanism as it relates to the National Cancer Program. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892–9903 (301/496–5708) will provide a summary of the meeting and a roster of the Task Force members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Lorrie Smith (301/496–5147) in advance of the meeting.

Mrs. Barbara S. Bynum, Executive Secretary, Program Project Task Force, National Cancer Advisory Board, National Cancer Institute, Executive Plaza North, room 600A, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892–9903 (301/496–5147) will furnish substantive program information.

Dated: March 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7658 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, June 8, 1993, from 8:30 a.m. to 3:15 p.m., at the Hyatt Regency Bethesda Hotel, 1 Bethesda Metro Center, Bethesda, Maryland, 20814 (301) 657–1234. The entire meeting is open to the public. The Coordinating Commission is meeting to discuss the progress of the National Heart Attack Alert Program with its participating organizations.

Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Ms. Mary McDonald, Coordinator, of the National Heart Attack Alert Program, Health Education Branch, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496–1051.

Dated: March 29, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93–7655 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 19–21, 1993, Building 31, Conference Rooms 9 and 10, Building 31, Bethesda, Maryland.

This meeting will be open to the public on May 19, from 12 noon to 5:30 p.m. in Conference Room 9, for the discussion of program policies and issues; and from 8:30 a.m. to 1:30 p.m. on May 20, in Conference Room 10, for opening remarks, report of the Director, NIGMS, and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 20 from 1:30 p.m. to 5:30 p.m., and on May 21 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301 will provide a summary of the meeting and a roster of council members. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, room 938, Bethesda, Maryland 20892, telephone: 301–496–7061 will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93–859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]).

Dated: March 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7659 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the applications an/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute of Deafness and Other Communication Disorders Special Emphasis Panel

Dates of Meeting: April 27–29, 1993

Time of Meeting: April 27—8 a.m. until recess; April 28—8 a.m. until recess; April 29—8 a.m. until adjournment

Place of Meeting: Chevy Chase, MD, Holiday Inn

Agenda: Review of Applications for NIDCD–NASA Center for Vestibular Research

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, Room 400B, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: March 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–7660 Filed 4–1–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Indian Health Service; Medical Reimbursement Rates for Calendar Year 1993; Inpatient and Outpatient Medical Care

Notice is given that the Assistant Secretary for Health, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calendar Year 1993: Emergency Non-Beneficiaries, Beneficiaries of other Federal Agencies, Medicare, and Medicaid Beneficiaries.

Inpatient Hospital Per Diem Rate (Medicaid Only)

$450 (Lower 48)
$527 (Alaska)

Part B Inpatient Ancillary Per Diem (Medicare Only)

$202 (Lower 48)
$237 (Alaska)

Outpatient Per Visit Rate (Medicare and Medicaid)

$88 (Lower 48)
$147 Alaska

Outpatient Surgery (Medicare Only)

Established Rates for Freestanding ASCs

These rates will be effective February 1, 1993.

Dated: March 25, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

[FR Doc. 93–7623 Filed 4–1–93; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–25]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Navy*: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; *U.S. Air Force*: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; *GSA*: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; *Corps of Engineers*: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, rm. 4133, Washington, DC 20314–1000; (202) 272–0520; (These are not toll-free numbers).

Correction

Property number 579220001 was inadvertently published as suitable/available in the March 19, 1993 notice. The property should have been published as suitable/to be excess.

Dated: March 26, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

Suitable/Available Properties

BUILDINGS (by State)

Iowa

Bldg. 00106, Fort Dodge
Ft. Dodge Co: Webster IA 50501–
Landholding Agency: Air Force
Property Number: 189310051
Status: Unutilized
Comment: 200 sq. ft., 1-story wood frame, needs rehab, most recent use—storage.

Maine

31 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: Air Force
Property Number: 189310052
Status: Excess
Comment: 2916–2097 sq. ft., 1–2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages.

LAND (by State)

California

Land—2.5 acres
Hamilton Army Airfield
Novato Co: Marin CA 94945–
Landholding Agency: COE—BC
Property Number: 329310001
Status: Excess
Base closure Number of Units: 1
Comment: 2.5 acres, potential utilities, access restriction, subject to flooding, wetlands and storm water runoff, potential for contamination from adjoining areas.

Suitable/Unavailable Properties

BUILDINGS (by State)

New York

(P) Form. Alex. Bay CG Station
Landon Road, Wellesley Island
Alexandria Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549310006
Status: Excess
Comment: 2500 sq. ft. 2-story wood bldg., new septic system needed, needs rehab with approximately 15 acres of land.
GSA Number: 2–GR–NY–0730A.

Unsuitable Properties

BUILDINGS (by State)

Hawaii

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Other
Comment: Extensive deterioration.

[FR Doc. 93–7588 Filed 4–1–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation. The lands involved are in the vicinity of Juneau, Alaska.

Serial No.	Approximate land description	Acreage
AA–10513	T. 51 S., R. 66 E., Copper River Meridian, Alaska.	7 acres.
AA–10505	T. 36 S., R. 63 E., Copper River Meridian, Alaska.	16.7 acres.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until May 3, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93–7615 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–JA–M

[040–4410–02]

Availability of Draft Oklahoma Resource Management Plan/ Environmental Impact Statement (OK RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area, announces the availability of the Draft Oklahoma RMP/EIS for public review and comment. This document analyzes land use planning options for BLM managed Federal lands and minerals throughout the state of Oklahoma.

DATES: Comments on the Draft RMP/EIS will be accepted if they are submitted or post-marked no later than July 2, 1993. Comments can be sent to: Paul Tanner, Area Manager, BLM, Oklahoma Resource Area, 221 North Service Road, Moore, Oklahoma 73160, or submitted at one of the four public hearings. The public hearings conducted to receive oral and written comments on the Draft Oklahoma RMP/EIS will be at the following locations:

Date	Time	City/location
June 3, 1993 ...	3 p.m. ...	Moore, Ok. BLM Office, 221 North Service Road.
June 7, 1993 ...	3 p.m. ...	Tulsa, Ok. BLM Office, 9522–H East 47th Place.
June 9, 1993 ...	3 p.m. ...	McAlester, Ok. Holiday Inn, 1500 George Nigh Expressway.
June 10, 1993 .	3 p.m. ...	Lawton, Ok. Ramada Inn, 601 North 2nd Street.

Oral testimony at these hearings will be limited to ten minutes per person. A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Oklahoma planning process.

SUPPLEMENTARY INFORMATION: The Draft Oklahoma RMP/EIS identifies and analyzes the future options for managing the approximately 2 million acres of Federal land and mineral estate situated within Oklahoma administered by the BLM, Tulsa District, Oklahoma Resource Area.

The Oklahoma RMP is being prepared using the BLM planning regulations issued under the authority of the

Federal Land Policy and Management Act of 1976.

When completed, the RMP will provide a comprehensive framework for managing and allocating Federal lands and minerals within Oklahoma over the next 20 years.

The contents of this Draft RMP/EIS primarily focus on resolving four land allocation or resource management issues.

The four Planning issues include: (1) Oil and Gas Leasing, (2) Coal Leasing, (3) Townsite Disposal, and (4) Red River Management.

Four RMP alternatives have been developed to describe the different management options available to the BLM for addressing these issues. These alternatives were developed to respond to the issues and concerns expressed by the public and BLM in earlier phases of the planning effort. Each alternative presents a different blend of resource allocation levels and uses.

Alternative A. No Action

This alternative represents a continuation of present resource allocation levels and management practices. This alternative provides a baseline for comparison of other alternatives, and may not adequately resolve the issues identified in the RMP/EIS.

Alternative B. Maximum Resource Production Alternative

This represents an alternative which would promote maximum resource production and development. This would provide for maximizing both oil and gas and coal leasing as well as intensive surface resource management of any identified Federal lands along the Red River. This alternative would attempt to resolve the RMP/EIS issues by emphasizing economic development and commodity production from the public resource.

Alternative C. Maximum Resource Protection Alternative

This represents an alternative which would promote maximum resource protection. This alternative would provide for elimination of mineral leasing as well as decrease potential surface uses or impacts to the Federal lands along the Red River. Also known as the conservation alternative this alternative would place an emphasis on maintaining or improving environmental values and conservation of public resources.

Alternative D. The Preferred or Balanced Alternative

This alternative is a combination of the previous alternatives and provides for a variety of uses by incorporating features of the other three alternatives.

FOR FURTHER INFORMATION OR COPIES OF THE DRAFT RMP/EIS CONTACT: Paul W. Tanner, Area Manager, or Brian D. Mills, RMP Team Leader, Oklahoma Resource Area, 221 North Service Road, Moore, Oklahoma 73160. **Telephone:** (405) 794–9624.

Dated: March 24, 1993.

Larry L. Woodard,

State Director.

[FR Doc. 93–7613 Filed 4–1–93; 8:45 am]

BILLING CODE 4310-HM-M

[OR–943–4210–06; GP3–165; OR–45689]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 40 acres of public land out of Federal ownership. This action will also open 116.30 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 40 acres in Douglas County, Oregon, from Federal ownership to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 21 S., R. 11 W.,
Sec. 33, lot 8 and SE¼SE¼;
Sec. 34, lots 5 and 6.
T. 22 S., R. 11 W.,
Sec. 3, lot 15.

The areas described aggregate 116.30 acres in Douglas County.

3. At 8:30 a.m., on May 10, 1993, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on May 10, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on May 10, 1993, the lands described in paragraph 2 will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on May 10, 1993, the lands described in paragraph 2 will be opened to applications and offers under the mineral leasing laws.

Dated: March 25, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–7609 Filed 4–1–93; 8:45 am]

BILLING CODE 4310-33-M

[UT–060–03–4333–04]

Recreation Permits and Restrictions

March 26, 1993.

AGENCY: Bureau of Land Management, Moab District, Utah.

ACTION: Notice of noncommercial recreation permit requirements and restrictions upon recreation use.

SUMMARY: This notice extends requirements for individual noncommercial special recreation permits (SRPs) to portions of the Colorado, Green, and San Juan Rivers; establishes SRP and fee requirements for overnight use of certain recreation areas; and extends river protection measures involving recreation use to include additional public lands along the Green and Colorado Rivers. Actions are implemented under the authority of 43 CFR 8364.1, 8365 through 8365.2–5, and 8372.0–7 through 8372.6.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Moab District Office, P.O. Box 970, Moab, Utah 84532 at (801) 259–6111.

SUPPLEMENTARY INFORMATION: Noncommercial, individual, SRPs are currently required all year for float trips on the Green River between Sand Wash

and Swaseys Rapid and for the San Juan River between Montezuma Creek and Clay Hills Crossing. In 1993, noncommercial, individual, SRPs are required for all Colorado River float trips between the Westwater Ranger Station and Cisco Landing from April 1 through September 30 and for overnight use during the month of October. Beginning in 1994, the requirement to obtain a permit for this section of the Colorado River is extended to include October day trips. Payment of use fees is required to obtain permits for use of these river areas, where permits are required, between April 1 and October 31, except the Montezuma Creek to Sand Island portion of the San Juan River.

Individuals and groups making overnight use of the Big Bend recreation area on the Colorado River are required to obtain a noncommercial special recreation permit and pay a use fee. Permits are necessary to manage intensive recreation use and protect natural and scenic resources at Big Bend. Noncommercial permits and use fees may be required at the following recreation sites and areas within the Moab District as the Bureau of Land Management completes planned site improvements and posts permit and use requirements where the authorized officer determines that resources require special management and control measures for their protection: The Hittle Bottom; Dewey Bridge; Hal Canyon; Goose Island; Onion Creek; Richardson Amphitheater; Jaycee Park; Sand Island; Comb Wash; San Rafael Bridge; Swaseys Rapid; Nefertiti Rapid; Mineral Bottom; and Kokopelli's Trail recreation sites; the Labyrinth Canyon Special Recreation Management Area; the Slickrock Planning Area; and designated, undeveloped Colorado Riverway sites. The Slickrock Planning Area and the Utah section of Kokopelli's Trail are designated as special areas for permitting purposes. Maps showing these areas are available from the Grand Resource Area.

Basic protection measures applicable to river areas managed by the Bureau of Land Management in southeastern Utah are extended to include the Labyrinth Canyon and the "daily" section of the Green River. The protective measures apply to public lands within ¼ mile of the Green River for the daily section defined as Nefertiti rapid launch area to the Swaseys rapid take-out and for Labyrinth Canyon defined as Interstate 70 to the boundary of Canyonlands National Park. The following requirements apply to both areas: Firewood collection is limited to driftwood. All garbage, trash, solid human waste, and campfire ash and charcoal must be carried out of the areas and disposed of properly. Individuals on overnight river float trips are required to possess a durable metal fire pan at least 12 inches wide with at least a 1.5 inch lip around its outer edge and to utilize it to contain their campfires. Beginning on January 1, 1994, recreational users on overnight river float trips will be required to possess and utilize washable, reusable toilet systems that allow for disposal of solid human body waste through authorized sewage systems, except when camping at sites with permanent public toilets. Group size for Labyrinth Canyon trips is limited to twenty-five persons. The discharge of firearms for all purposes is prohibited at improved recreation sites along the daily section. Outside of these improved recreation sites, the discharge of firearms for non-hunting purposes is prohibited along the Green River daily section.

The Bureau of Land Management is implementing restrictions upon recreation use on public lands within the Colorado Riverway Planning Area to prevent further deterioration of the area's natural and scenic resources and for public health and safety. The riverway includes approximately 22,158 acres of public land and stretches from Dewey Bridge to the boundary of private lands at the Moab Salt Plant. The planning area is roughly defined by the canyon of the Colorado River and the section of Kane Creek from Hunters Canyon to the Colorado River. A map of the area may be viewed at the Grand Resource Area Office located at 885 South Sand Flats Road, Moab, Utah 84532. Within the riverway, overnight camping on public lands is restricted to improved recreation sites with facilities managed for overnight use and designated, undeveloped campsites. Designated, undeveloped campsites are identified with posts and a tent symbol. At improved recreation sites, campfires may only be built at fire grills and designated campfire rings. Outside of improved recreation sites, campfires may only be built in fire pans or existing fire rings at designated, undeveloped camping areas. Firewood collection is limited to river driftwood. Campers using designated, undeveloped, campsites without permanent public toilets are required to carry out solid human body waste and must possess and utilize washable, reusable toilet systems, such as porta-potties or recreational vehicles with holding tanks, that allow for the disposal of solid human body waste through authorized sewage systems. Individuals on overnight river trips must carry out all campfire ash and charcoal and dispose of it properly outside of the area. Overnight camping and fires are prohibited at the following areas: The parking area adjacent to Utah highway 128 at the mouth of Negro Bill Canyon, Take-out Beach boat ramp and the adjacent upstream beach area, Sandy beach, the beach area at Big Bend Recreation Site, Hittle Bottom boat ramp/launch area, the Rocky Rapid launch area, Short Canyon, and within the flood plain of the lower section of Kane Creek. The Fisher Towers, Negro Bill Canyon, Hunter Canyon, and Corona Arch trails are closed to mountain bikes. The discharge of firearms for all purposes is prohibited at improved recreation sites within the riverway. Outside of improved recreation sites, the discharge of firearms for non-hunting purposes is prohibited from Dewey Bridge to Hittle Bottom and from Castle Creek to the western end of the riverway. Visitors are required to adhere to vehicle control signs and devices, i.e., "No Parking" and "One-Way Signs" installed for public safety and protection of resources.

Personnel exempt from the requirements of this notice include any Federal, State, or local officer, and members of any organized rescue or fire-fighting force in the performance of an official duty, or any person authorized by the Bureau. These orders shall remain in effect until rescinded or modified by the authorized officer.

Roger Zortman,

District Manager.

[FR Doc. 93-7653 Filed 4-1-93; 8:45 am]

BILLING CODE 4310-DO-M

[CA-067-02-4740-10]

Establishment of a Supplementary Rule

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a supplementary rule prohibiting persons under 21 years of age from possessing alcoholic beverages on public land.

BACKGROUND: Underage drinking is a growing problem on public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands. This rule will allow BLM officers to restrict the possession of alcoholic beverages by minors in a manner consistent with state law.

EFFECTIVE DATE: This restriction will be effective April 2, 1993 and will remain

in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: State Staff Ranger, Bureau of Land Management, California State Office, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, (916) 978–4727.

SUPPLEMENTARY INFORMATION: The authority for this restriction is provided in 43 CFR 8365.1–6. Violation of this restriction is punishable by fine and/or imprisonment.

Dated: March 24, 1993.

Ed Hastey,

State Director.

[FR Doc. 93–7611 Filed 4–1–93; 8:45 am]

BILLING CODE 4130–40–M

[OR–942–00–4730–02: GP3–158]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 2 E., accepted March 8, 1993
T. 41 S., R. 7 E., accepted February 18, 1993
T. 2 N., R. 2 W., accepted February 24, 1993
T. 29 S., R. 3 W., accepted March 2, 1993
T. 36 S., R. 3 W., accepted February 25, 1993
T. 37 S., R. 3 W., accepted February 25, 1993
T. 14 S., R. 6 W., accepted March 15, 1993
T. 14 S., R. 7 W., accepted March 15, 1993
T. 21 S., R. 7 W., accepted March 10, 1993
T. 19 S., R. 9 W., accepted February 22, 1993
T. 19 S., R. 11 W., accepted February 17, 1993
T. 30 S., R. 13 W., accepted March 12, 1993

Washington

T. 35 N., R. 3 W., accepted March 1, 1993 (Amended)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 24, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–7612 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Public Hearings Scheduled to Receive Testimony Concerning the Adequacy of the Draft Environmental Impact Statement "Refuges 2003—A Plan for the Future of the National Wildlife Refuge System"

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of public hearings to receive comments on the draft environmental impact statement for the future management of the national wildlife refuges.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is holding public hearings to receive comments on the Draft Environmental Impact Statement "Refuges 2003—A Plan for the Future of the National Wildlife Refuge System." Notice of availability of the draft document was published in the **Federal Register**, Vol. 58, No. 47, Friday, March 12, 1993, Notices.

DATES AND ADDRESSES: The public hearings will be held from 1–5 p.m. and 7–10 p.m. at the following locations on the dates listed: April 29, 1993, Holiday Inn, Ballston Room, Arlington at Ballston, I–66 and Glebe Road, 4610 North Fairfax Drive, Arlington, Virginia 22203; May 11, 1993, Ramada Atlanta Airport, 1419 Virginia Avenue, Atlanta, Georgia 30337; May 13, 1993, YWCA Leadership Development Center, 9440 N. 25th Ave., Phoenix, Arizona 85021; May 18, 1993, FWS Regional Office, B.P.A. Building, 911 NE. 11th Ave., 1st Floor Auditorium, Portland, Oregon 97232; May 20, 1993, Fairview Community Recreation Center, 1121 E. 10th Ave., Anchorage, Alaska 99501; May 25, 1993, Minnesota Valley National Wildlife Refuge, 3815 E. 80th Street, Bloomington, Minnesota 55425; May 26, 1993, Radisson Hotel, 2 Forbes Road, Woburn, Massachusetts 01801; June 1, 1993, FWS Regional Office, 3rd Floor Conference Room, 134 Union Boulevard, Lakewood, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Rob Shallenberger, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The Service has prepared a draft environmental impact statement entitled "Refugees 2003—A Plan for the Future of the National Wildlife Refuge System" pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. This draft statement was developed with assistance from the comments received at the various public meetings held throughout the United States, a team of wildlife and environmental experts in the various fields reviewed in the draft statement, and the expertise of the professional staff within the Division of Refuges of the Service, including field stations, Regional Offices and the Washington Office. A summary of the draft statement has been prepared and was sent to all persons and organizations who participated in any part of the review process, such as scoping meetings or in other types of communication with the planning team. Copies of the complete draft statement was sent to Federal and State agencies, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request at the Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, 670 ARLSQ, Arlington, VA 22203.

Copies of the Draft Environmental Impact Statement are available for public review at the Regional Offices of the Service at the following addresses:

Region 1—

California, Hawaii, Idaho, Nevada, Oregon, and Washington, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, suite 1692, 911 NW. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—

Arizona, New Mexico, Oklahoma and Texas, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota, 55111; Telephone (612) 725–3507.

Region 4—

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 W. Gate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8200.

Region 6—

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—

Alaska, Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3538.

Dated: March 26, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–7678 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Environmental Assessment for Temporary Access Route; Availability and Public Comment Period

In accordance with the National Environmental Policy Act (P.L. 91–190), the National Park Service, U.S. Department of the Interior, announced that an Environmental Assessment has been prepared, for the use of a temporary access route to the Race Point Beach corridor of Cape Cod National Seashore for Off-Road Vehicles. This assessment is available for public and interagency review. Copies have been sent to known parties of interest; others may request copies from the Superintendent, Marconi Area, South Wellfleet, Massachusetts 02663, or phone (508) 349–3785, extension 213. This temporary access route, for use during the critical reproductive period, is necessary to protect and aid the recovery of the piping plover shore bird which is a Federally listed threatened species.

The document review period is running from April 3 to May 3, 1993. Comments should be received by the Superintendent by May 5, 1993.

Dated: March 25, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 7637 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan, Draft Environmental Impact Statement, Timpanogos Cave National Monument, UT

AGENCY: National Park Service, Interior.

ACTION: Availability of draft environmental impact statement and general management plan for Timpanogos Cave National Monument.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Timpanogos National Monument, Utah.

DATES: The DEIS/GMP will remain available for public review through June 11, 1993. If any public meetings are held concerning the DEIS/GMP, they will be announced at a later date.

ADDRESSES: Comments on the DEIS/GMP should be sent to the Superintendent, Ms. Sue McGill, Timpanogos Cave National Monument, Rural Route 3, P.O. Box 200, American Fork, Utah 84003–9803. Public reading copies of the DEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Timpanogos Cave National Monument, Telephone: (801) 756–5238

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION:

The DEIS/GMP analyzes 5 alternatives to accomplish the management objectives and resolve the issues as listed below:

Management Objectives

To provide opportunities for visitors to safely enjoy and gain an understanding and appreciation of the natural processes that form the Timpanogos Cave system.

To manage natural resources to maintain the natural setting surrounding the cave and complement adjacent wilderness areas managed by the U.S. Forest Service.

To insure that management and development of the monument balances with preservation and protection of cultural and natural resources, with efforts to provide for visitor enjoyment and to accommodate administrative needs and obligations.

Issues

The issues involve visitor and employee safety, circulation and congestion of vehicles and pedestrians, floodplains, geologic hazards, avalanches, facility needs relative to administrative and maintenance operations, housing, natural and cultural resource management impacts, and interpretation.

Alternatives

The alternatives represent a diverse range of options including (1) Proposed Plan—Maintain a full range of visitor and administrative services and facilities but relocate the majority of them outside the monument and implement a visitor transportation system, (2) Alternative A—Maintain a full range of visitor and administrative services but confine all development proposals to the area within the monument, (3) Alternative B (Minimum Action)—Limit development to the

minimum essential for accommodating visitors to the cave and meeting administrative needs, (4) Alternative C (Mothball/Caretaker)—Until adequate funding becomes available to move facilities outside the monument, vacate and secure access to all structures and permit access to the cave only for bona fide research purposes. Another local, Federal, or State agency would be responsible for overseeing the area under a memorandum of agreement, and (5) Alternative D (no action)—Under this alternative, existing facilities and management actions would remain unchanged.

The DEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on water resources, floodplains, wetlands, geology, soils, vegetation, wildlife, threatened and endangered species, air quality, archaeological, historical and ethnographic resources, visitor use, socioeconomic data, other agencies, management and operations, and cumulative impacts.

FOR FURTHER INFORMATION CONTACT: Superintendent, Timpanogos Cave National Monument, at the above address and telephone number.

Dated: March 18, 1993.

Michael D. Snyder,

Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–7636 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–70–M

Chesapeake and Ohio Canal National Historic Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held at 1 p.m., Saturday, April 3, 1993, at Trinity Episcopal Church chapel, Shepherdstown, West Virginia.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Ms. Diane C. Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland
Ms. Anne L. Gormer, Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Mr. George M. Wykoff, Jr., Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Ms. Mary Elizabeth Woodward, Shepherdstown, West Virginia
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Laidley E. McCoy, Charleston, West Virginia
Ms. Jo Ann M. Spevacek, Burke, Virginia
Mr. Charles J. Weir, Falls Church, Virginia
Ms. Donna Pope, Alexandria, Virginia

The agenda for this meeting includes Old and New Business, Superintendent's Report and public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: March 24, 1993.

Chrysandra L. Walter,

Acting Regional Director, National Capital Region.

[FR Doc. 93–7616 Filed 4–1–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Associated Grocers, Incorporated, 3301 South Norfolk, Seattle, Washington 98124

2. Wholly-owned subsidiary which will participate in the operations, and State of Incorporation: Market Food Services, Inc., State of Incorporation: Washington.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7705 Filed 4–1–93; 8:45 am]

BILLING CODE 7035–01–M

[No. 40265]

Georgia-Pacific Corporation—Petition for Declaratory Order—Certain Rates and Practices of Oneida Motor Freight, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice; Request for comments.

SUMMARY: The Commission is seeking public comment on the approach for determining the reasonableness of motor carrier rates assessed for past transportation that it articulated in Georgia-Pacific Corp.—Pet. for Declaratory Order, 9 I.C.C.2d 103 (1992).

DATES: Comments are due by May 3, 1993.

ADDRESSES: Send an original and 15 copies of comments referring to No. 40265 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: We are requesting comment from all interested persons with respect to the approach that we articulated in Georgia-Pacific Corp.—Pet. for Declaratory Order, 9 I.C.C.2d 103 (1992) (*Georiga-Pacific*) for determining the reasonableness of motor carrier rates assessed for past transportation. In particular, we invite comments on the impact (if any) of the recent Supreme Court decision in *Reiter v. Cooper*, 61 U.S. Law Week 4232 (U.S. March 8, 1993) (No. 91–1496). Interested persons may also comment on any other aspect of concern regarding the approach, including any foreseeable evidentiary concerns with the approach.

Comments should be submitted within 30 days; we do not expect to grant any extensions of time to file comments. Following receipt of the comments, we will reexamine the approach set forth in Georgia-Pacific and act as quickly as possible to make such adjustments (if any) as may appear necessary. We will then issue scheduling orders for each pending case in our docket involving the reasonableness of motor carrier rates assessed for past transportation, requiring those cases to go forward under whatever approach is ultimately

adopted. We will serve a decision on the parties to all undercharge cases now pending before us.

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees; United States v. Lore Fiano, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 10, 1992, two proposed Consent Decrees in *United States* v. *Lore Fiano, et al.*, Civil No. 2:91CV00814, were lodged with the United States District Court for the District of Connecticut. The proposed Consent Decrees settle the United States' claims that the defendants had violated provisions of the National Emission Standards for Hazardous Air Pollutants for Asbestos ("NESHAP") promulgated pursuant to the Clean Air Act.

Under the terms of the Consent Decrees, settling defendants will pay a total of $68,250 in civil penalties, comply with the asbestos NESHAP and the Clean Air Act in the future, and undertake certain additional activities as part of a remedial program.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Lore Fiano*, D.O.J. Ref. 90–5–2–1–1602.

The proposed Consent Decrees may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, 10th Floor, Boston, Massachusetts 02203. Copies of the Consent Decrees may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044, (202–272–2072). A copy of the proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 per Decree (25 cents per page reproduction cost) made payable to Consent Decree Library.

John C. Cruden,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–7652 Filed 4–1–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Meetings and Agenda

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 21 and 22, 1993. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 21, 1993

10 a.m.—Committee on Compensation and Working Conditions

1. New PC system to 'cost out' collective bargaining settlements
2. Employment Cost Index public use file
3. Impact of the Financial Accounting Standards Board standard 106 (unfunded liability for health insurance for future retirees) on the Employment Cost Index

10 a.m.—Committee on Employment and Unemployment

1. Progress in understanding and incorporating the benchmark adjustment for March 1991
2. Impact of the Current Population Survey (CPS) redesign
3. Results of the user survey
4. Summary of Bortnick and Ports Monthly Labor Review article, "Job Search Methods of the Unemployed, 1991"
5. Impact of the Department of Commerce decision on use of the 1990 Census of Population by survey sponsors
6. Other business

1 p.m.—Committee on Occupational Safety and Health Statistics

1. Status report on redesign of the annual survey of Occupational Injuries and Illnesses (ROSH)
2. Proposed format for presenting data from ROSH
3. University of Michigan study on injury severity
4. BLS research on methods for measuring costs of injuries and illnesses
5. Status report on the Census of Fatal Occupational Injuries
6. "Capture/Recapture" method for estimating undercounts of fatal injuries
7. Program budgets
8. Other business

3:15 p.m.—Committee on Productivity-Foreign Labor

1. Summary of recent developments in the Office of Productivity and Technology
2. Service sector productivity
   a. An overview: problems of developing improved service sector measures
   b. Service sector work at the industry level
3. Report on international technical assistance and training

Thursday, April 22, 1993

9 a.m.—Committee on Prices

1. Consumer Price Index
   a. Treatment of coupons
   b. Treatment of mail order outlets
2. Producer Price Index: New output price indexes for hospitals
3. Other business

9 a.m.—Committee on Economic Growth

1. Update on work in the economic growth and employment projections programs
2. An analysis of the projected impact of the decline in defense expenditures

1 p.m.—Board of the Business Research Advisory Council

1. Chairperson's remarks
2. Deputy Commissioner's remarks
3. Brief committee reports
   a. Committee on Compensation and Working Conditions
   b. Committee on Employment and Unemployment
   c. Committee on Occupational Safety and Health Statistics
   d. Committee on Productivity-Foreign Labor
   e. Committee on Economic Growth
   f. Committee on Price Indexes
4. Discussion: The Economic Classification Policy Committee and SIC revision
5. Chairperson's closing remarks

The meetings are open to the public. Persons planning to attend these meetings as observers may obtain more information from Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5886.

Signed at Washington, DC the 25th day of March 1993.

William G. Barron, Jr.,

Deputy Commissioner.

[FR Doc. 93–7700 Filed 4–1–93; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–28,364]

Ardyne, Inc.; Grand Haven, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 1, 1993 in response to a worker petition which was filed on March 1, 1993 on behalf of workers at Ardyne, Inc., Grand Haven, Michigan.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of March, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7706 Filed 4–1–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,517]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Arkla Exploration Co.

ARKLA Exploration Co. a/k/a Seagull Mid-South Inc., Shreveport, LA and Operating at Various Locations in the Following States:

TA–W–27,517A Arkansas
TA–W–27, 517C Oklahoma
TA–W–27, 517D Texas
TA–W–27, 517B Louisiana (except Shreveport)
TA–W–27, 517E Mississippi

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 21, 1992, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on November 3, 1992 (57 FR 49722). The Certification was subsequently amended on February 16, 1993 to show the proper name of the worker group.

New information received from the company shows that several workers of Arkla Exploration were laid off in Arkansas, Louisiana, Oklahoma, Texas and Mississippi.

The intent of the Department's certification is to include all workers of Arkla Exploration Company who were adversely affected by increased imports of crude oil and natural gas. Accordingly, the Department is amending the certification to show the additional locations.

The amended notice applicable to TA–W–27, 517 is hereby issued as follows:

"All workers of Arkla Exploration Company a/k/a Seagull Mid-South, Inc., Shreveport, Louisiana and operating at various locations in the States of Arkansas, Louisiana (except Shreveport), Oklahoma, Texas and Mississippi who became totally or partially separated from employment on or after July 14, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 25th day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7701 Filed 4–1–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,933]

Bethlehem Steel Corporation; Bar Mill Plant; Lackawanna, NY; Revised Determination on Reopening

The Department of Labor, on its own motion, reopened the investigation regarding workers of Bethlehem Steel Corporation, Bar Mill Plant, Lackawanna, New York. The workers produce bar mill products. The Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance was issued on February 24, 1993.

Subsequently, new data has been received by the Department regarding customer imports of bar mill products during the relevant periods under investigation.

On reopening the investigation, the Department found that the new information indicates that a major customer of the subject firm significantly increased their imports of bar mill products while decreasing their purchases from the subject firm during the relevant periods.

In addition, the Department found that sales and employment at the subject firm have declined during the relevant periods.

Conclusion

After careful review of the additional facts obtained on reopening the investigation, it is concluded that increases of imports of articles like or directly competitive with bar mill products produced at Bethlehem Steel Corporation, Bar Mill Plant, Lackawanna, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bethlehem Steel Corporation, Bar Mill Plant, Lackawanna, New York producing bar mill products who became totally or partially separated from employment on or after October 13, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 10th day of March, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7708 Filed 4–1–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,869]

Monessen, Inc., Monessen, PA; Revised Determination on Reopening

On March 25, 1993, the Department, at the request of the United Steelworkers of America, reopened its investigation for the former workers of Monessen, Inc., in Monessen, Pennsylvania. The initial investigation resulted in a negative determination on December 18, 1992 because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met.

The investigation findings show that the predominant portion of Monessen's production in 1992 consisted of coke which was sold to its parent company—Sharon Steel in Farrell, Pennsylvania—which did not import coke nor were its workers under a worker group certification.

A review of the investigation files shows that Monessen had an integrated production relationship with Sharon Steel since Sharon took all of Monessen's coke for the production of steel. A further review shows that workers at Sharon (TA–W–28,048) were certified for trade adjustment assistance on March 5, 1993 and that Sharon's reduced purchases of coke from Monessen resulted in worker separations at Monessen. These findings permit the "contributed importantly" test to be met for workers of Monessen.

Other findings show that the Monessen plant ceased production in September 1992 and all production workers were laid off at that time.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with carbon and alloy flat rolled steel

products produced by Sharon Steel contributed importantly to the decline in sales or production and to the total or partial separation of workers at the subject plant. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers and former workers of Monessen, Inc., Monessen, Pennsylvania who became totally or partially separated from employment on or after September 21, 1991 and before April 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of March 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–7707 Filed 4–1–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character an in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretery of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

New York:
NY93–27 (Apr. 2, 1993)
NY93–28 (Apr. 2, 1993)
NY93–29 (Apr. 2, 1993)
Vermont:
VT93–13 (Feb. 19, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware:
DE93–2 (Feb. 19, 1993)
DE93–5 (Feb. 19, 1993)
New Jersey:
NJ93–3 (Feb. 19, 1993)
New York:
NY93–13 (Feb. 19, 1993)
NY93–16 (Feb. 19, 1993)
Pennsylvania:
PA93–31 (Feb. 19, 1993)
West Virginia:
WV93–3 (Feb. 19, 1993)

Volume II

Indiana:
IN93–2 (Feb. 19, 1993)
IN93–6 (Feb. 19, 1993)
Michigan:
MI93–1 (Feb. 19, 1993)
MI93–2 (Feb. 19, 1993)
MI93–3 (Feb. 19, 1993)
MI93–4 (Feb. 19, 1993)
MI93–5 (Feb. 19, 1993)
MI93–7 (Feb. 19, 1993)
MI93–12 (Feb. 19, 1993)
MI93–17 (Feb. 19, 1993)
Texas:
TX93–1 (Feb. 19, 1993)
TX93–2 (Feb. 19, 1993)
Wisconsin:
WI93–7 (Feb 19, 1993)

Volume III

Arizona:
AZ93–3 (Feb. 19, 1993)
Colorado:
CO93–1 (Feb. 19, 1993)
CO93–13 (Feb. 19, 1993)
Montana:
MT93–1 (Feb. 19, 1993)
North Dakota:
ND93–1 (Feb. 19, 1993)
ND93–2 (Feb. 19, 1993)
ND93–5 (Feb. 19, 1993)
Washington:
WA93–8 (Feb. 19, 1993)
WA93–9 (Feb. 19, 1993)
WA93–10 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400

Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 26 day of March 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–7483 Filed 4–1–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–028]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: April 29, 1993, 8 a.m. to 4:30 p.m.; and April 30, 1993, 8 a.m. to noon.

ADDRESSES: ARC Professional Services Group, suite 950, 500 E Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546–0001 (202/544–0500).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Update
—Congressional Update
—Aeronautics Research & Technology Subcommittee Discipline Review Reports
—Task Force Updates
—Advanced Situation Awareness and Terrain Avoidance
—Multi-Agency Advanced Manufacturing Technology Program
—Generic Hypersonics Technology Program

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 29, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–7649 Filed 4–1–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–027]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register Citation of Previous Announcement

58 FR 9223, Notice Number 93–01, February 19, 1993.

Previously Announced Dates and Addresses of Meeting

March 30, 1993, 9:30 a.m. to 5:15 p.m.; and March 31, 1993, 8:15 a.m. to 4:30 p.m.; The National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546.

Changes in the Meeting

Dates changed to April 13, 1993, 9:30 a.m. to 5:15 p.m.; and April 14, 1993, 8:15 a.m. to 4:30 p.m. Address changed to the National Council on The Aging, Inc., Conference Room B, 409 Third Street SW., suite 200, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–0346).

Dated: March 29, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–7648 Filed 4–1–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before May 17, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are

updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of State, Bureau of Educational and Cultural Affairs (N1–59–93–4). Routine, facilitative, and duplicative records.
2. Department of the Treasury, Internal Revenue Service (N1–58–92–2). Comprehensive schedule for the Statistics on Income Division.
3. Commission on Assignment of Women in the Armed Forces (N1–220–93–1). Public opinion mail.
4. Federal Communications Commission (N1–173–93–1). Digests of hearings on the telephone industry and copies of transcripts of hearings on the World Wide Broadcasting Corporation.
5. Federal Emergency Management Agency, National Fire Academy (N1–311–93–1). Records relating to the certification of instructors.
6. Federal Emergency Management Agency (N1–397–91–1). Administrative records from the files of the defunct Defense Civil Preparedness Agency Staff College, including still photos.
7. Office of Thrift Supervision (N1–483–93–10). Budget formulation records.
8. Office of Thrift Supervision, Director's Office (N1–483–93–11). Interagency meeting files, Implementation Group subject files.
9. Tennessee Valley Authority, Resource Group (N1–142–91–17). Quality Resources Project File.
10. Tennessee Valley Authority, Customer Group (N1–142–92–19). Transmission Line Crew Training Films.
11. United States Secret Service (N1–87–92–1). Duplicate, fragmentary, and unidentifiable training films.

Dated: March 23, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–7614 Filed 4–1–93; 8:45 am]

BILLING CODE 7515–01–M

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of textual materials and Watergate-related portions of Nixon White House tapes among the Nixon Presidential historical materials.

DATES: The National Archives intends to make the integral file segments of textual materials and Watergate-related portions of Nixon White House tapes described in this notice available to the public beginning May 17, 1993. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before May 3, 1993.

ADDRESSES: The materials will me made available to the public at the national Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions asserting claims of legal rights or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 56.4 cubic feet. In addition, the National Archives is proposing to open 41 segments of Watergate-related Nixon White House tapes from 25 separate conversations, totaling approximately 3 hours of listening time.

White House Central Files

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the ninth of a series of openings of Central Files; the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; and February 19, 1992; and July 24, 1992.

Some of the materials designated for opening on May 17, 1993, were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below is a subject category of the Subject Files that will be made available to the public on May 17, 1993.

Subject category	Volume (cubic feet)
Federal Government (FG): FG 6–14 Office of Telecommunications Policy	1.0

Four file groups from the Staff Member and Office Files will also be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on May 17, 1993:

File group	Volume (cubic feet)
Robert Finch	20.0
James W. McLane	3.2
Michael Raoul-Duval	12.0
Glen E. Wegner	20.0

A number of documents which were previously withheld from public access because they were national security classified have been reviewed and declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on May 17, 1993.

	Volume (cubic feet)
Previously restricted material	less than .2.

Nixon White House Tapes

This is the third opening of Nixon White House tapes. The first opening, on May 28, 1980, included 12½ hours

of conversations used as evidence in Watergate trials. The second opening, on June 4, 1991, included 47½ additional hours of conversations obtained by the Watergate Special Prosecution Force but not used in court.

The National Archives proposed to open Watergate-related segments from Nixon White House tapes for May and June 1972. The National Archives will propose additional abuse of power segments for public access on a periodic basis in monthly groupings as final review and processing is completed.

There are no transcripts for these tapes. Tape logs, prepared by the National Archives, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The sound recordings will be made available to the general public in the research room at 845 S. Pickett Street, Alexandria, Virginia, Monday through Friday between 8 a.m. and 4:30 p.m. Listening stations will be available for public use on a first come, first served basis. The National Archives reserves the right to limit listening time in response to heavy demand. In accordance with current regulations, no copies of the sound recordings will be sold or otherwise provided. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log entries will be available for purchase.

Public access to some of the items in the textual file segments and some portions of the White House tapes will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (PRMPA Regulations).

Dated: March 30, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–7733 Filed 4–1–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting and Commissioning Overview Section) will be held on April 20–21, 1993 from 9 a.m.—5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include opening remarks, policy discussion and guidelines review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682/5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: March 30, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–7676 Filed 4–1–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Thermal Systems; Notice of Amendments

The following three announcements are being amended to reflect changes in meeting dates and locations. The notice for these meetings originally appeared in the March 25, 1993 issue of the **Federal Register**, Vol. 58, No. 56, pp. 16209–16210.

Name: Special Emphasis Panel in Chemical and Thermal Systems.

Date and Time: April 14–15, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Young Investigator Awards Program.

Contact Persons: Drs. Stephen Traugott and M.C. Roco, Program Directors, Division of Chemical and Thermal Systems, (202) 357–9606.

Date and Time: April 29–30, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Initiation Awards Program.

Contact Persons: Drs. Stephen Traugott and M.C. Roco, Program Directors, Division of Chemical and Thermal Systems, (202) 357–9606.

Date and Time: May 11–12, 1993; 8:30 p.m. to 5 p.m.

Place: Room 1133, National Science Foundation, 1800 G Street, NW., Washington, DC.

Agenda: Review and evaluate nominations for the NSF Research Equipment Grants Program.

Contact Persons: Drs. Stephen Traugott and M.C. Roco, Program Directors, Division of Chemical and Thermal Systems, (202–357–9606.

Type of Meetings: Closed.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–7682 Filed 4–1–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 15–17, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on March 25, 1993.

Thursday, April 15, 1993

8:30 a.m.—8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.—10:30 a.m.: Current License Renewal Issues (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff and the industry on the status of current license renewal issues, and how the Maintenance Rule might be

used as a means to address the activities required of the licensees by the License Renewal Rule.

10:45 a.m.—12:15 p.m.: Resolution of SECY–90–016 Follow-On Issues (Open)—The Committee will review and comment on the NRC staff's proposed resolutions for the SECY–90–016 follow-on issues. Representatives of the NRC staff and the industry will participate, as appropriate.

1:15 p.m.—2:15 p.m.: Safety Goals/ Large Release (Open)—The Committee will review and comment on a revised Commission Paper on the definition of a large release within the context of the implementation of the NRC Safety Goal Policy. Representatives of the NRC staff will participate.

2:15 p.m.—5:15 p.m.: SALP Program (Open)—The Committee will discuss the overall SALP process and the changes made or proposed since the Regulatory Impact Survey. Representatives of the NRC staff and the industry will participate.

5:15 p.m.—6 p.m.: Research on Organizational Factors (Open)—The Committee will discuss a proposed ACRS report on the NRC-sponsored research on organizational factors. Representatives of the NRC staff will participate, as appropriate.

Friday, April 16, 1993

8:30 a.m.—9 a.m.: Regulatory Guide for the Implementation of the Revised 10 CFR part 20 (Open)—The Committee will review and comment on the proposed final regulatory guide DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants." Representatives of the NRC staff will participate, as appropriate.

9: a.m.—10 a.m.: Meeting with the Director of the Office of Policy Planning (Open)—The Committee will meet with the Director of the Office of Policy Planning and discuss matters of mutual interest.

10:15 a.m.—11:45 a.m.: Maintenance Guidance Documents (Open)—The Committee will review and comment on the NRC staff's proposed guidance documents for the implementation of the Maintenance Rule. Representatives of the NRC staff and the industry will participate.

11:45 a.m.—12:30 p.m.: Generic Issue 152 "Design Basis for Valves that Might be Subjected to Significant Blowdown Loads" (Open)—The Committee will discuss a proposed ACRS report on the NRC staff's proposed priority ranking of this generic issue. Representatives of the NRC staff will participate, as appropriate.

1:30 p.m.—3 p.m.: Reactor Operating Experience (Open)—The Committee will hear a briefing regarding the effects of Hurricane Andrew on the Turkey Point Nuclear Plant. Representatives of the NRC staff and the industry will participate.

3:15 p.m.—4 p.m.: Future ACRS Activities (Open)—The Committee will discuss the report of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee.

4 p.m.—5 p.m.: Appointment of New Members (Open/Closed)—The Committee will discuss the qualifications of candidates proposed for appointment to the Committee.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5 p.m.—6 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

6 p.m.—6:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss NRC staff responses to recommendations made in ACRS reports.

Saturday, April 17, 1993

8:30 a.m.—10 a.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss the status of ACRS Subcommittee assignments, including (a) activities of the NRC Region II office, (b) severe accident issues related to the GE ABWR, (c) the ABB/CE 80+ control room mock-up, (d) use of advanced graphics in nuclear power plant design process, and (e) the conduct and planning of ACRS business.

10 a.m.—12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

12:30 p.m.—1 p.m.: Miscellaneous (Open)—The Committee will discuss matters considered but not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepared telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 8 a.m. and 4:30 p.m. est.

Dated: March 29, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–7663 Filed 4–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–36]

Combustion Engineering, Inc.; Establishment of Local Public Document Room

The Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for the uranium fuel facility of Combustion Engineering, Inc., located in Hematite, Missouri.

Members of the public may now inspect and copy documents and correspondence related to the Hematite facility of Combustion Engineering, Inc., at the Jefferson College Library, 1000 Viking Drive, Hillsboro, Missouri 63050. The library is open on the following schedule: Monday through Thursday

7:30 a.m. to 8 p.m.; Friday 7:30 a.m. to 4 p.m.; and Saturday 9 a.m. to 12 noon.

For Further Information Contact: Interested parties in the Jefferson County area may contact the LPDR directly through Ms. Loretta Ponzar, Technical Services/Documents Librarian, telephone number (314) 789–3951. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 492–4344, or toll-free 1–800–638–8081.

Dated at Bethesda, Maryland, this 30th day of March, 1993.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–7661 Filed 4–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–04530, 030–06923; License Nos. 19–00915–03, 19–00915–06; EA 93–028]

Department of Agriculture, Washington, DC 20250; Confirmatory Order Modifying License (Effective Immediately)

I

The U.S. Department of Agriculture (Licensee), Washington, DC is the holder of Byproduct/Source Material Licenses Nos. 19–00915–03 and 19–00915–06 (Licenses), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 33. License No. 19–00915–03 authorizes the Licensee to use byproduct material for research and development; in gauging and measuring devices; in field applications as approved by the Radiation Safety Committee (RSC); and for research studies in humans as approved by a Radioactive Drug Research Committee that has been approved by the Food and Drug Administration, and by the Licensee's Radiation Safety Committee (RSC). This is a large, multi-site, broad scope license with no stated possession limit. License No. 19–00915–06 authorizes the Licensee to use cobalt-60 and cesium-137 sealed sources in irradiators at sites and by users approved by the Licensee's RSC.

Licensed activities are conducted by a number of organizations within the Licensee's organization, including (1) the Agriculture Marketing Service (AMS); (2) the Animal, Plant, and Health Inspection Service (APHIS); (3) the Agricultural Research Service (ARS); (4) the Federal Grain Inspection Service (FGIS); (5) the Food Safety and Inspection Service (FSIS); (6) the National Forest Service (NFS); and (7) the Soil Conservation Service (SCS). Over 3500 permits have been currently issued to individuals in these services to use licensed material at numerous locations around the country.

The Licenses were most recently renewed on February 10, 1990 and May 22, 1986, respectively, and would have expired on February 28, 1991 and May 31, 1991, respectively. Both Licenses continue in force, pursuant to 10 CFR 30.37(b), because of the timely filing of applications by the Licensee to renew the Licenses.

II

Between March 5 and September 23, 1992, the NRC performed inspections of licensed activities at ten of the Licensee's facilities throughout the country. The inspections were continued until October 19, 1992, so that the NRC could review additional information submitted by the licensee. During the inspections, twelve violations of NRC requirements were identified, five of which were repetitive of violations identified during previous NRC inspections. Those repetitive violations involved: (1) Failure by the Licensee's radiation safety staff to inspect USDA facilities at the required frequency; (2) the failure to perform leak tests of sealed sources at certain locations at the required frequency, as well as the failure, at times, to maintain records of results of leak tests when they were performed; (3) the failure to evaluate incinerator ash and to maintain records of licensed material disposed of by incineration; (4) the failure to secure licensed material at certain locations; and (5) the failure to post required documents at certain facilities. In addition to the repetitive violations, seven other violations were identified, as described in the Notice of Violation and Proposed Imposition of Civil Penalty issued concurrently.

These repetitive violations, and, in particular, the violation involving the failure by the Licensee to inspect certain locations at the required frequency, are particularly disturbing to the NRC since the Licensee possesses a multi-site, broad scope license which places a significant responsibility on the RSC, as well as the Radiation Safety Officer (RSO), to ensure that licensed activities are conducted safely and in accordance with NRC requirements. Although the NRC issued a proposed civil penalty to the Licensee on August 16, 1990, for other violations of NRC requirements to emphasize the importance of Licensee management (including the RSC and the RSO) aggressively monitoring and evaluating licensed activities, sufficient management attention has not been provided to the program, as evidenced by the recent findings.

In the letter to the Licensee dated August 16, 1990, transmitting the Notice of Violation and Proposed Civil Penalty, the NRC noted that the Licenses issued to the Licensee allow great latitude in the management of the radiation safety program, and that in return for that latitude, the NRC expects an unusually high degree of responsibility by the Licenses to assure that all requirements of the NRC Licenses are met, and to identify and promptly correct potential violations of NRC requirements. The Licensee's repeated failure to maintain sufficient control of radioactive materials raises significant questions regarding the adequacy of its oversight of activities at its facilities, as well as the ability of the Licensee to assure that activities at those facilities are conducted safely and in accordance with Commission requirements.

Furthermore, although the Licensee made commitments, in a letter dated September 10, 1990, to have an audit of the program performed within six months, and to augment its inspection program by having Area Health and Safety Managers perform site reviews, these commitments were not implemented. The continued failure to perform inspections at the required frequencies, as identified during NRC's 1988, 1989, 1990, and 1992 inspections, demonstrates that the Licensee has not adequately discharged its responsibilities to assure that all requirements of the NRC Licenses are met. The failure of the Licensee to perform inspections of the various locations authorized under the Licenses at appropriate intervals has resulted in a lack of oversight of licensed activities and repeated failures to identify and correct other violations of regulatory requirements.

Accordingly, without additional requirements, there is inadequate assurance that licensed activities will be adequately controlled at the Licensee's facilities.

III

During an enforcement conference on January 19, 1993, and in a telephone conversation on March 2, 1993, between Ms. Jean Giles of the Licensee's staff and Mr. Richard Cooper and Ms. Betsy Ullrich of the NRC Region I staff, the Licensee committed to retaining an independent expert to perform an assessment of its radiation safety program. In addition, the Licensee committed to developing and implementing an improvement program based on the findings of the assessment. In view of the concerns set forth in section II of this Order, I have concluded that these additional actions are needed to increase and improve management attention to licensed activities and that the Licensee's commitments, as described in section IV, are necessary to assure that these activities are conducted safely and in accordance with NRC requirements. Specifically, I have determined that the public health and safety require that License Nos. 19–00915–03 and 19–00915–06 be modified to confirm the Licensee's commitment to: (1) Obtain an independent assessment of the Licensee's radiation safety program with particular attention to the management of that program, including an evaluation of which, if any, activities should be suspended until compliance with NRC requirements can be assured and (2) develop and implement in a timely manner an improvement program to correct the deficiencies identified by the assessment. The Licensee consented to the issuance of this Confirmatory Order during the March 2, 1993 telephone call referenced above. Pursuant to 10 CFR 2.202, based on the significance of the violations described above and on the licensee's consent to the Order, I have also determined that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 33, it is hereby ordered, effective immediately, that license nos. 19–00915–03 and 19–00915–06 are modified as follows:

A. The Licensee shall retain an expert, independent of the Licensee's staff, to perform an assessment of the Licensee's radiation safety program and provide recommendations for a performance improvement program based on the assessment findings and the specific concerns and violations described in the letter transmitting this Order and the attached Notice of Violation. Within 60 days from the date of this Order, the Licensee shall submit to the Regional Administrator, NRC Region I, for approval, the credentials of one or more experts (Consultant) with experience in the management and implementation of a broad scope radiation program, including activities similar to those authorized under the Licensee's program, to perform an assessment of the Licensee's radiation safety program. The Consultant shall have extensive experience in: (1) Assessing the adequacy of organizational and management structures; (2) planning and implementation of broad scope radiation protection and health physics programs; (3) assessing the adequacy of implementation of these programs; (4) developing recommendations for changes in resources, management, training, assignment of responsibilities and program requirements to ensure resolution of identified deficiencies; and (5) NRC licensing and regulatory requirements.

B. Within 30 days of NRC approval of the consultant selection as described above, the Licensee shall submit to the Regional Administrator, NRC Region I, for approval, an assessment plan. In developing the assessment plan, the Licensee or Consultant shall review the documents submitted to NRC in support of the license renewal applications and consider incorporation within the scope of the assessment any proposed changes in the Licensee's program. The consultant must commit to notify the licensee at any time during the program review if a specific location using radioactive materials does not have sufficient personnel or financial resources to comply with the USDA license. The assessment of the Licensee's radiation safety program shall include, but not be limited to, a review of the following:

1. The adequacy of organizational and management structures. For example, review the assigned responsibilities and authorities within the USDA organization including the relationship of the RSO with management and the respective users in each organizational unit, the relationship between the RSC and the organizational units, and the authority granted to the RSC and RSO. Additionally, review the USDA management methods for assuring that the radiation safety program complies with NRC requirements and that the program is provided the resources needed to implement potential corrective actions.

2. The adequacy of the radiation safety programs at specific locations:

(a) The Licensee's program for training and periodic retraining of individuals working with NRC-licensed materials in NRC regulations, the conditions of the Licenses, the Licensee's procedures, and in safe practices for using licensed material;

(b) The Licensee's program for approving individuals for the use of licensed materials, the adequacy of the RSC's review of specific projects authorized under the Licenses, an the adequacy of the RSC's periodic reviews of approved users; and

(c) The Licensee's program for developing and implementing procedures for the safe use of licensed materials.

3. The adequacy of the Licensee's management, oversight, and inspection functions including:

(a) The Licensee's program for training and qualifying management, users, RSC members, the RSO, and radiation safety staff involved in managing, supervising, inspecting and auditing licensed activities;

(b) The scope, methods, and frequency of the Licensee's program for surveillance and audits performed by the corporate and local radiation safety staff at individual locations to determine compliance by individual users of licensed materials with NRC regulations, the conditions of the Licenses, and the Licensee's own procedures for the safe use of radioactive material. This review should also include the licensee's effectiveness in ensuring broad and lasting corrective action for problems identified;

(c) The radiation safety staffing, both within the radiation safety department and at individual locations throughout the country; and

(d) The adequacy of the record keeping and documentation systems.

The assessment shall include: (1) Reviews performed at the licensee's corporate radiation safety office; (2) on-site reviews of activities and records maintained at sufficient numbers and types of users and geographical areas to represent an adequate sample of the Licensee's program; and (3) interviews and observations of selected authorized users working at the various locations.

C. Within 120 days of NRC approval of the assessment plan, the Consultant shall submit to the Licensee and the Regional Administrator, NRC Region I, the written assessment report; recommendations for a performance improvement program; and recommendation of groups and categories of activities that might be suspended from licensed activities until such time that the Licensee has sufficient financial and personnel

resources and expertise to properly manage these activities.

D. Within 60 days of receipt of the Consultant's report, the Licensee shall submit a performance improvement plan to the Regional Administrator, NRC Region I, either describing the methods of implementing each of the recommendations of the assessment report, or providing justification for not adopting any of the specific recommendations. This plan shall include:

1. Action items completed or to be completed with appropriate priorities assigned;

2. Completion date or date scheduled for completion of each specific action item; and

3. The system for monitoring and tracking the status and completion of the action items.

E. During implementation of the Consultant's assessment, as well as the subsequent performance improvement plan, the Licensee shall provide written quarterly status reports to the NRC Region I office concerning the findings of the assessment, the development of the improvement plan, and the implementation of the plan. Upon completion of all action items, a final report shall be submitted to the Regional Administrator, NRC Region I.

The Regional Administrator, NRC Region I, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

Any person, other than the Licensee, adversely affected by this Confirmatory Order, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), 57 FR 20194 (May 12, 1992), any person other than the licensee adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order of proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 26th day of March 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 93-7662 Filed 4-1-93; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Forges Field Development, Plymouth County, MA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Forges Field Development, Plymouth County, Massachusetts, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 1, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Ms. Maureen Redshaw, Resolution Trust Corporation, c/o BEI/Ritz Asset Management, 3000 Hadley Road; Department VF, South Plainfield, NJ 07080, (908) 412-9100; Fax (908) 412-9119.

SUPPLEMENTARY INFORMATION: The Forges Field Development property is located on Mast Road and Route 3, to the south and east, in Plymouth County, Massachusetts. The property has recreational value and is adjacent to the Myles Standish State Forest. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The Forges Field Development property consists of approximately 628.1 acres of undeveloped land. The site is wooded with extensive areas that have been cleared in the past few years. The property contains numerous hills and small isolated wetland areas in the valleys. The land across Long Pond Road, at the southwest corner of the site, is part of the Myles Standish State Forest.

Property size: Approximately 628.1 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 1, 1993, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal Government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 1, 1993, to Ms. Maureen Redshaw at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Forges Field Development

Federal Register Publication Date: July 1, 1993.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101-591, section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: March 30, 1993.

Resolution Trust Corporation.
William J. Tricarico,
Assistant Secretary.
[FR Doc. 93-7728 Filed 4-1-93; 8:45 am]
BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Oak Summit, San Bernardino County, CA

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Oak Summit, located in San Bernardino County, California, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until July 1, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Jack Carney, Resolution Trust Corporation, c/o Oak Tree/Landmark, 79-9999 Old Avenue 52, La Quinta, CA 92253, (619) 564-8105; Fax (619) 564-8126.

SUPPLEMENTARY INFORMATION: The Oak Summit property is located in the foothills of the San Gabriel Mountains approximately 5 miles northeast of the Ontario International Airport, and 3 miles north of the intersection of Etiwanda and Interstate Highway 15. The property contains a wash area, freshwater marsh, and is adjacent to the San Bernardino National Forest. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).This property may be marketed to the broader market during this 90-day notice and subsequent 90-day negotiation period, if applicable.

Characteristics of the property include: The Oak Summit property consists of approximately 761.8 acres of undisturbed raw land located in the foothills of the San Gabriel Mountains. The property contains a wash area and a coastal and valley freshwater marsh. This property is adjacent to the San Bernardino National Forest to the north.

Property size: Approximately 761.8 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before July 1, 1993, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by July 1, 1993, to Mr. Jack Carney at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Oak Summit
Federal Register Publication Date: April 2, 1993.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101-591, Section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: March 30, 1993.
Resolution Trust Corporation.
William J. Tricarico,
Assistant Secretary.
[FR Doc. 93-7729 Filed 4-1-93; 8:45 am]
BILLING CODE 6714-01-M

SELECTIVE SERVICE SYSTEM

Proposed Health Care Personnel Delivery System (HCPDS)

AGENCY: Selective Service System.
ACTION: Request for comments.

SUMMARY: The Selective Service System seeks public comments on the development of its standby, post-mobilization Health Care Personnel Delivery System (HCPDS).

DATES: Comments from the public should be submitted in writing no later than May 15, 1993.

ADDRESSES: Send comments to Richard S. Flahavan, Associate Director for Operations, Selective Service System, 1023—31st Street NW., Washington, DC 20435, telephone (202) 724-0851.

SUPPLEMENTARY INFORMATION:

1. Authority

Section 10(h) Military Selective Service Act, as amended by section 715, Public Law 100-180, approved December 4, 1987, in pertinent part provides:

> The Selective Service System shall be maintained as an active standby organization with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency (including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces) * * *.

2. Statutory Responsibility

The HCPDS, if ever implemented, would enable the Selective Service System to fulfill its statutory emergency manpower mobilization responsibility. Maintenance of a viable standby HCPDS for possible use in a future emergency fulfills a statutory peacetime Selective Service System responsibility.

3. Description of Subject Matter

Included herein are: (a) the currently proposed HCPDS concept, revised and expanded from that published at 54 FR 33644-33654, August 15, 1989; and, (b) background material on health care occupational deferments and advisory committees to provide pertinent historical backdrop.

4. Principal Changes From 1989 Concept

a. Registering in Other Than Highest Skill

Subspecialists who are qualified in a basic specialty shown on the list as required to register would be required to register in that basic specialty; for example, those qualified as hand surgeons (a subspecialty) would have to register as orthopedic surgeons (basic specialty). Although not specifically addressed in the 1989 concept, this was not the original intent. The need in the civil sector's local health care delivery system for a particular subspecialist's services could be a basis for an essentiality deferment.

b. State Advisory Committee Review at Local Board's Option

The 1989 concept called for every claim for essentiality deferment to be reviewed by a State Health Care Personnel Advisory Committee. Such review is in the current concept at the option of the local board concerned. Provision has been made for the various State Health Care Personnel Advisory Committees to publish, at their discretion, their assessments of which skills may be said to be essential or not essential to the health care delivery systems in particular geographic areas. Where such determinations cannot be

made for other geographical areas, those areas would simply be omitted from the lists published by the State Health Care Personnel Advisory Committee.

c. Single Occupational Deferment, Class 2–AM, Essentiality

The 1989 concept's Class 2–EM has been deleted and all occupational deferments for health care personnel on the basis of essentialty, whether essentiality to the local health care delivery system or some other basis identified in the future, have been combined under Class 2–AM.

d. Conscription Liability of Dual Registrants

Dual registrants would be age 20–25 men registered both as general registrants and as health care registrants. The 1989 concept provided that: "Once a record is annotated on the RIMS data base, processing as a general registrant ceases and further processing takes place under HCPDS procedures from the HCPDS data base." Under the current concept, a dual registrant would be liable for selection under both systems, and would be processed under the procedures of the system in which selected, if any.

5. Future Changes Possible

The concept remains subject to future change. The Selective Service System has contacted concerned Federal policy-making agencies concerning a Department of Defense recommendation that a registrant enrolled in education and/or training leading to qualification in a health care skill be deferred.

Robert W. Gambino,

Director of Selective Service.

Date signed: March 24, 1993.

Proposed HCPDS Concept

1. Introduction

a. Background

In accordance with 1987 legislation,[1] the Selective Service System (SSS) has developed a standby, post-mobilization Health Care Personnel Delivery System (HCPDS). The HCPDS is ready for immediate operation, if required by a future national emergency, to register and deliver health care personnel to the Department of Defense (DOD) for induction into the armed forces. Conscription under HCPDS will occur only after the Congress and President conclude that military health care personnel levels, including post-mobilization volunteers for military service, might be insufficient to care adequately for any potential casualties. The HCPDS emergency procedures must respond promptly in augmenting military health care capabilities.[2] SSS will maintain HCPDS on-the-shelf, with periodic reviews, tests, and updates, ready for possible emergency implementation. SSS cannot register, classify, select, or issue induction orders to health care personnel unless the Congress provides statutory authority and the President directs such processing.

b. General

A system flow chart showing major HCPDS processing steps is at Annex A. HCPDS was designed to: respond rapidly; be fair, equitable, flexible, simple, and workable; minimize adverse impact on local civilian health care delivery systems while conscripting civilian health care personnel to meet military needs;[3] and, parallel and interface with the SSS Registrant Information and Management System (RIMS).[4] In 1989 a broad concept for HCPDS was coordinated with concerned Federal agencies, briefed to several health care personnel associations and media representatives, and published in the **Federal Register**.[5] The 1989 HCPDS concept met with widespread acceptance, indicative of agreement with the Congressional determination that this standby system was necessary insurance and should be built to enhance military medical readiness. This revised, expanded HCPDS concept contains further details and some differences when compared to the 1989 concept. Further changes could result from any major revisions in DOD's mobilization requirements, significant changes in other Federal agencies' related contingency plans, new technology, needed enhancements identified in peacetime testing, and other factors.

c. Definition of Terms

See Annex B, Definitions, Abbreviations, and Acronyms.

d. Standby Proposed Legislation

SSS has provided the Assistant Secretary of Defense for Force Management and Personnel (OASD–FM&P) with standby proposed legislation. This proposed legislation will be retained on the shelf at DOD for possible use in a contingency. HCPDS has been developed within the framework of that standby proposed legislation and certain related references.[6]

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[1] *1987 Legislation.* Section 715 of Public Law 100–180, National Defense Authorization Act for Fiscal Year 1988/1989, signed by the President on December 4, 1987, which amended Section 10(h) of the Military Selective Service Act (MSSA) [50 U.S.C. App. 460(h)]. The amendment to the law and legislative intent materials are at Annex C. Although the resultant MSSA wording calls for a conscription system for health care personnel capable of immediate operation, Congress intended certain readiness constraints, such as a prohibition on readying forms beyond the prototype stage per the report language at Annex C.

[2] *Current Readiness for Worst-Case Scenario.* For example, the one-step combined examination and induction ADP system was completed in January 1991 and immediately provided a capability estimated to permit SSS first deliveries to DOD for examination and induction by M+42, assuming prompt passage of authorizing legislation. SSS has completed the associated operational non-automated policies and procedures, prototype forms, prototype reports, prototype computer-generated letters, other associated prototype materials. SSS will continue to review plans and procedures to ensure that HCPDS time frames are as short as is reasonable. The time required by SSS to implement HCPDS and begin making first deliveries of health care personnel depends upon the degree of SSS preparation authorized and achieved before M-Day.

[3] *Military and Civilian Health Care System Needs.* Today, in a time of peace, many of the health care skills potentially needed by DOD are in relatively short supply. During any major military conflict the availability of certain specialists, especially those with shock-trauma skills, would become scarcer because some would be called upon to treat military casualties. During such an emergency, a basic national objective would be to utilize carefully the nation's critical health care skills. By providing for a health care occupational essentiality deferment, the HCPDS could meet the armed forces' health care personnel needs while minimizing the impact on local civilian health care systems.

[4] *RIMS.* RIMS is the SSS system for conscripting general registrants to meet DOD needs for untrained manpower to receive subsequent military training and service. RIMS has been evaluated in many mobilization exercises and found to be an effective registrant processing system. Substantial portions of HCPDS were modeled on RIMS. The SSS RIMS Manual contains the policy and procedures to be used in processing general registrants eligible for military or alternative service under the MSSA, as amended. Copies of the current RIMS Manual are available to the public and may be obtained at minimal cost by directing a request to the Manager, Publications and Records Division, National Headquarters, SSS, Washington, DC 20435. SSS would not revise the RIMS Manual to include provisions on HCPDS and the processing of health care registrants until authority to do so was provided by new legislation and implemented by new SSS regulations.

[5] *Federal Register Citation (1989 HCPDS Concept).* 54 FR 33644–33654, August 15, 1989.

[6] *Related References.* HCPDS is consistent with: Executive Order 12656, November 18, 1988, "Assignment of Emergency Preparedness Responsibilities," Sections 1202(1) and (2), et. al., 53 FR 47491, Major Emergency Action HS–HR–03, September 1991, "Defer Workers with Critical Skills from Conscription." This document, published by FEMA, describes action which might be implemented "to ensure that civilian workers with critical skills needed for defense production, government service and other purposes during national security emergencies are not drafted into military service." It provides that: The Department of Commerce, with assistance by DOD and other Federal agencies, will compile the List of Currently Essential Activities; The Department of Labor will use this list and other available data to compile the List of Critical Occupations. At the same time, the Office of Personnel Management will compile information from departments and agencies on

e. DOD Mobilization Requirements

At Annex D are DOD's potential mobilization requirements "for planning purposes only" as provided to SSS in September 1988. These requirements show potential shortfalls of 72,936 health care personnel as well as a DOD worst-case-scenario need for SSS deliveries starting at D+10. DOD plans to refine periodically these estimated mobilization requirements, which are based on various dynamic factors, such as threat assessments, plans for contingency operations, and computer modeling assumptions. Although built-in flexibility permits HCPDS to respond relatively fast to changes in DOD's manpower requirements, DOD officials understand that even with peacetime registration SSS could not make first deliveries until M+13.

f. DOD Recruiting of Volunteers on Mobilization

Upon total mobilization, DOD will recruit health care personnel through at least M+90, the same period in which DOD plans to recruit untrained manpower from among general registrants. SSS will not accept and process health care personnel as volunteers for induction during that period. However, a standby proposed revision to the Military Selective Service Act (MSSA) will provide authority for SSS to establish a program to process volunteers for induction should the need arise.

g. Inclusion of Females

In any health care personnel draft, Congress and the President would decide, at the proper time, whether to include females with males. The HCPDS package on-the-shelf includes females and males without differentiation because all military health care jobs are non-combatant. To be prepared for any contingency, however, HCPDS has been constructed so that it may be quickly adjusted to accommodate—by specialty—males first, males alone, or any gender mix/sequence prescribed by proper authority.

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essential Federal Government personnel that should be deferred; All data will be provided to the National Security Council, which will make recommendations to the Director, SSS. The Director will weigh these recommendations along with other considerations such as the manpower requirements of the armed forces and decide which occupations will be considered for deferment.

Part 325, "Emergency Health and Medical Occupations," 44 CFR Ch. 1.

Part 334, "Graduated Mobilization Response," 44 CFR Ch. 1.

Federal Personnel Manual Part M–303, "Deferment from Military Service," maintained by the Office of Personnel Management as a standby issuance for implementation in certain national security emergencies.

h. SSS HCPDS M-Day Timetable

In a worst-case scenario, SSS plans for actions to be accomplished according to the following timetable, assuming emergency funds were available prior to enactment of authorizing legislation and appropriations:

Action	Estimated Date
SSS Receives Mobilization Notice.	M-Day.
SSS Notifies Support Agencies of MOU Implementation.	M-Day.
Mobilization Orders to SSS Reserve Forces Officers.	M-Day or M+1.
Initiate Forms/Materials Production/Distribution.	M-Day or M+1.
Law:	
Staffed within Government ..	M+3.
Enacted by Congress and Signed by President.	M+10.
Presidential Proclamation/SSS Press Release.	M+10.
SSS Regulations Issued	M+11.
Mass Registration Starts	M+13.
First Registration Forms Received.	M+15.
Start IRS and SSA Data Entry	M+16.
First Tapes Shipped by IRS and SSA.	M+16.
First IRS and SSA Tapes Received at SSS Data Management Center (DMC).	M+17.
First DMC Registration Data Base Cycle (300,000 registrants).	M+18.
Announce Lottery	M+21.
3.4 Million Data Base	M+29.
Complete Induction Program Runs.	M+31.
First SSS Mailgram Induction Orders Issued.	M+32.
First Health Care Registrants Report to MEPS.	M+42.

i. *Shift from Emergency to Steady-State Conscription Procedures*

As soon as possible after any emergency "one-step" (combined examination and induction) HCPDS operations, SSS would shift to a steady-state system for conscripting health care registrants. The shift would be to a two-step examination and induction method by which health care registrants would be (1) ordered for examination and, if found qualified, (2) subsequently ordered for induction. During the initial days of a mobilization the Nation could not afford the time required to examine registrants before forwarding them for induction. The emergency procedures necessary to provide general registrant inductees as quickly as possible, with little or no advance leadtime to SSS, call for DOD to examine and immediately induct qualified registrants. This one-step (combined examination and induction) method would create uncertainty in the minds of registrants and less than optimum SSS flexibility to schedule registrants to report to MEPS. Under the one-step, emergency method, registrants would not know when they reported for induction whether they would be found qualified and immediately inducted or disqualified and sent home. SSS capability to estimate the number of registrants reporting to MEPS would be adversely impacted because of uncertainty as to the number who would file claims for deferment or exemption. Although the one-step method is suitable for use during the early stages of an emergency, it is not intended for long term, steady-state operation. The two-step method provides for more orderly scheduling and flow of registrants to the Military Entrance Processing Stations (MEPS). It eliminates many of the show-rate uncertainties inherent in the emergency procedures and provides greater registrant convenience and less uncertainty. Inductions could begin under the two-step method if sufficient advance warning, authority, and funds were given to SSS.

j. Future Enhancements

Additional HCPDS follow-on enhancements are being established using as many existing SSS general registrant procedures as practicable. Although these additional enhancements will not permit SSS to make deliveries to DOD sooner than M+42, they will make the overall conscription system for health care registrants more equitable. They include:

—A two-step examination and induction capability.
—An alternative service work assignment capability to assign appropriate jobs for health care registrants found to be conscientious objectors opposed to all military service.
—A health care registration compliance system to identify, for further Government action, those persons who may have been required to register but who appear to have not done so.
—Procedures for the examination and induction of overseas health care registrants.

2. Coordination

a. General

In 1989, before publication in the **Federal Register**, SSS coordinated a broad HCPDS concept with various officials, both in and out of Government. After receipt of public comments in response to subsequent publication in the **Federal Register**, SSS built an

automated system to support emergency, one-step combined examination and induction conscription operations.

b. Coordination with DOD

SSS coordination with DOD is continuous, and is now focused on DOD's planning guidance to the military services on the examination, credentialing, and induction of health care registrants ordered to Military Entrance Processing Stations (MEPS) by SSS.

c. Coordination with Other Government Agencies

Coordination with other government agencies has been accomplished in accordance with their related mobilization authorities, responsibilities, and plans. Interagency factors have been and will continue to be identified and addressed as required to make HCPDS an integral part of overall national emergency policies, plans, and standby systems. Agencies with roles which relate to HCPDS in some way include:

(1) *Policy Planning Agencies.* Office of Management and Budget (OMB)[7], Department of Health and Human Services (HHS), Federal Emergency Management Agency (FEMA), Department of Labor (DOL), Office of Personnel Management (OPM), Veterans Administration (VA).

(2) *Support Agencies.* U.S. Postal Service (USPS), Department of State (DOS), Internal Revenue Service (IRS), Social Security Administration (SSA), Government Printing Office (GPO), Department of Justice (DOJ), other agencies as required.

d. Review Outside Government

Following the coordination of this revised and expanded concept within the Government, the concept was discussed with interested health care associations. After their input, SSS is publishing this concept in the **Federal Register** to ensure widespread notice and opportunity for public comment.

3. Organizational Structure

The following advisory committees will augment the SSS organizational structure to provide advice to the Director and the local and appeal boards.

[7] *Future OMB Coordination.* At the appropriate time, OMB would be involved in the coordination of the proposed health care personnel legislative package with other interested agencies throughout the Federal Government.

a. National Health Care Personnel Advisory Committee

(1) *General.* An SSS uncompensated National Health Care Personnel Advisory Committee would be established by SSS regulation, immediately upon mobilization, to advise the Director of Selective Service on the administration of existing or proposed MSSA provisions concerning the registration, classification, and selection for induction of health care personnel. This National Advisory Committee will meet the standards prescribed by the Federal Advisory Committee Act (FACA), Pub. L. 92–463, which require that an advisory committee have: clearly defined functions; balanced membership; safeguards to ensure that it will not be inappropriately influenced by the appointing authority or special interest groups; provisions for the submission of reports; and, staffing, equipment, and funding adequate to accomplish its mission.

(2) *Functions and Membership.* The committee's functions and membership are envisioned as set forth in the proposed charter at annex F. The committee membership will be proportionally representative of the race, sex and national origin of health care registrants. Committee members shall not be members of the uniformed services (active, reserve, or retired). No age limit would apply. Tenure would be limited to ten years. At least one physician (M.D. or D.O.), one dentist, one registered nurse, one allied health specialist, two health care technicians/specialists and one member representing the general public shall be appointed to the committee.

(3) *Chairperson.* The Director of Selective Service would designate one member to serve as Chairperson. It is anticipated that a senior physician with demonstrated experience in public health matters would be the person so designated.

(4) *Independence.* Although national health care associations have established the health care and educational standards in common usage throughout the country and in the DoD, and members of the National Advisory Committee would be familiar with the positions taken by these associations, the members would be expected to provide independent advice to SSS on matters affecting all health care personnel.

(5) *Appointment.* All appointment procedures described below for State Health Care Advisory committee members would also apply to members of the National Advisory Committee, except that nomination procedures would be as established by the SSS Director and appointment authority remains with the SSS Director.

(6) *Administrative Support.* A SSS staff member designated by the SSS Director would serve as non-voting secretary to the National Advisory Committee. This secretary would arrange travel and meeting schedules, prepare written records of meetings, handle day-to-day coordination of the Committee's business, and provide other administrative support. A written summary record of the activities of each meeting approved by the chairperson would be forwarded by this secretary to the Director, SSS, or his designee, following each meeting.

(7) *Meetings.* After members were selected, oriented to the SSS and the general principles incorporated in the FACA, the National Advisory Committee would be expected to meet in Washington, D.C., on an as-needed basis, at the call of the Chairperson. This arrangement would not preclude the Committee from conducting telephonic conferences.

(8) *Possible Peacetime Establishment.* Although extensive preparations exist as a part of SSS current readiness to conscript general registrants,[8] no SSS national health care advisory committee has operated for almost two decades. In 1988 an Executive Order directed that agency plans for operations during national emergencies be coordinated with the private sector.[9] Although HCPDS will continue to be reviewed with interested health care organizations, future consideration may be given to the peacetime establishment of a National Health Care Personnel Advisory Committee in order to bring HCPDS mobilization readiness closer to that which exists for conscripting general registrants, if authorized by new legislation.

b. State Health Care Advisory Committees

(1) *General.* Use of uncompensated State health care advisory committees to advise local and appeal boards on the civilian community's health care needs and available resources, in connection

[8] *Current SSS Uncompensated Personnel.* For example, nationwide the SSS currently is authorized to appoint just over 11,000 uncompensated members of local boards, appeal boards, and civilian review boards. Approximately 10,300 uncompensated members have been appointed and trained so that they would be ready to classify persons for possible military service, etc., when necessary.

[9] *Citation to Executive Order.* Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," November 18, 1988, section 201(8), at page 4.

with registrant claims for Class 2–AM deferments, constitutes an important HCPDS feature. The State advisory committees would help attain the best utilization of critically-skilled, and likely scarce, human resources. Their establishment, before or immediately upon mobilization, would be a key factor in ensuring an effective HCPDS program. Statutory exception is being developed to provide relief from all aspects of the FACA which would apply to SSS one-step emergency conscription operations.

(2) *Authority for Establishment.* Section 10(b)(3) of the MSSA authorizes the creation of such committees.

(3) *Functions.* The principal function of State Health Care Advisory Committees would be to provide periodic guidance and expert advice to local boards, under existing guidelines and community circumstances, on the availability of certain specialties and subspecialties in particular geographic areas. In addition, the advisory committee would provide advice on individual cases when such advice is requested by the local board. In performing these functions, the members could consult with a variety of health care organizations and personnel. However, State health care advisory committees would be expected to exercise independent judgment in making recommendations to local and appeal boards. State advisory committees would have to ensure that any periodically-published recommendations to the local boards were kept up-to-date. The committee recommendations would be solely advisory.

(4) *Membership.* State Advisory Committees would consist of at least seven persons, but not more than eleven, excluding non-voting support personnel. Members would be appointed from among State residents who were outstanding in medicine, nursing, dentistry, and the other health care sciences and specialties identified as needed by DoD, except for a member of the public selected to represent the general interests of the community. Members, as a minimum, would include a physician (M.D. or D.O.), a dentist, a nurse, two other technicians/specialists (one of which would be familiar with State educational and licensing requirements for health care specialists), and a member representing the general public.[10] The committee membership will be proportionally representative of the race, sex and national origin of health care registrants in the State. Members will not be members of the uniformed services (active, reserve, or retired). There would be no age limit and tenure would be limited to ten years. Where warranted by workload, a State advisory committee could ask the State Director to establish State advisory committee panels for particular subordinate geographical areas. Where satellite panels were established, a panel chairperson would be designated by the State Director and the chairperson of the originally-constituted State advisory committee would continue to be recognized as the chairperson of the overall State advisory committee. The membership of panels would be constituted on the same basis as above.

(5) *Appointment.* The Advisory Committee members would be recommended by the State Director of Selective Service to the SSS Director through the Region Director. However, in an emergency the Director could authorize appointments to be made solely by State Directors. The State Director would designate one of the members to serve as chairperson of the committee.[11] Before acting in an official capacity members would be required to execute the standard SSS oath of office and waiver of pay used in appointing uncompensated local board members. Members may be reimbursed for actual expenses incurred in attending official meetings of committees to which they have been appointed. They could not accept remuneration from any other source for services rendered in connection with SSS matters.

(6) *Administrative Support.* The necessary committee administrative support would be provided by SSS through the concerned State Director.

(7) *Meetings.* Meetings of State Advisory Committees would be on an ad hoc basis, as authorized by the State Director. Records of meetings would be maintained by the office of the State Director.

4. Registration

a. Who

Civilian health care personnel will be required to register as directed in a Presidential Proclamation authorized by new legislation. Active duty military personnel and lawfully admitted nonimmigrant aliens are exempt from registration as provided by the MSSA. Initially, only individuals who are professionally qualified, or who later become so qualified, and who are age 20 through 44 inclusive, would be required to register. The proposed revision to the MSSA calls for liability for registration and service to age 55 to provide a margin of additional registrants, if needed. However, the proposed standby Presidential Proclamation calls for registration initially of only those ages 20 through 44, because DOD's potential worst-case mobilization requirements for the vast majority of specialties would be met by those within this age group.

(1) *Dual Registrants.* Males ages 20 through 25 inclusive, although already registered as general registrants, would be required to register again as health care personnel and would become dual registrants with both a general registrant record and a health care registrant record. The number of dual registrants would be extremely small; SSS estimates that the total number of age 20 male general registrants required to register under HCPDS would be less than 14,000.[12] (Age 20 is the prime year of vulnerability for the general registrant.) During automated registration record processing, HCPDS registration records will be compared to the records in the general registrant data base. Whenever a "match" results, both records will be flagged to indicate inclusion of the registrant on both data bases. Additional processing of the general registrant record would not stop. This is a change from the 1989 concept and explained further in section 5h

[10] *Federal Advisory Committee Act (FACA) Requirements.* According to Comptroller General decision B–202455, April 20, 1981, (60 Comp. Gen. 386) on compliance with the FACA "All interests need not be represented or represented equally to meet FACA and Federal Energy Administration Act balance of membership requirements. Required standard must be judged on case-by-case determination depending on statute or charter creating committee."

[11] *Typical Procedure Formerly Used to Designate Chairpersons.* During the 1950–73 "Doctors Draft," the chairpersons of State medical advisory committees were physicians who were State health commissioners, or equivalent, or the heads of the American Medical Association organizations in the States. If neither of these individuals was able to serve as chairperson, they generally were asked to nominate a suitable senior physician to serve as the chairperson.

[12] *Extremely Few Health Care Registrants Would Be Dual Registrants.* SSS estimates that few health care registrants would be in the general registrant first priority selection group and also vulnerable to selection for induction as general registrants (those reaching age 20 in the year in which RIMS inductions started). The actual number of health care registrants initially subject to induction early on as general registrants likely would be less than 13,300 shown here as the overwhelming majority (over 99%) of health care registrants would not be dual registrants because they would be either (1) male health care registrants not subject to induction as general registrants because of their age, or, (2) female health care registrants not required to register as general registrants. The estimated number of dual registrants was calculated by SSS as follows:*

under the induction selection procedures.

(2) *Specialty in Which Required to Register.* A registrant will be registered in no more than one health care specialty at a time, the specialty needed by DOD with the highest education and/or experience requirements (see the prototype instructions at Annex G).

(3) *Physician Graduate Medical Education (GME).* Under current DOD requirements and HCPDS plans, physicians enrolled in GME in order to complete specialty training would not be required to register, unless already qualified in another specialty required to register.[13] If already qualified in another specialty required to register, the registrant attending GME/training would register in the specialty in which already qualified.

(4) *Other Specialty Qualifying Education and Training.* Similarly for the non-physician specialties, only those individuals who had fully completed the required specialty-qualifying education/training would be required to register.

Occupation	Total male employment	Percent age 20–24	Dual registrant No.
Registered nurses	81,000	4.4	3,564
Dietitians	5,000	7.4	2,096
Inhalation techs	28,000	10.5	2,940
Occupational therapists	3,000	16.7	501
Physical therapists	15,000	13.3	1,996
Physicians assistants	30,000	10.8	3,240
Clinical lab techs	65,000	12.3	7,995
Health record techs	4,000	11.2	448
Radiologic techs	37,000	11.5	4,255
Licensed practical nurses	10,000	8.7	870
Health techs, n.e.c	60,000	17.5	10,500
Dental assistants	2,000	5.2	104
Nursing aides, orderlies, & attendants	126,000	24.4	30,744
Podiatrists	8,000	.....	128
Veterinarians	30,000	.....	180
SSS Estimate**	.....	.....	10,441
Total	.....	.....	80,000

Only about 80,000 (per above SSS extrapolation from BLS data) of the 3,400,000 individuals to be registered under HCPDS would be dual registrants. Thus only about 2.3% of the health care registrants could be dual registrants. 80,000 divided by 6 (the 6 ages: 20, 21, 22, 23, 24, 25) equals approximately 13,300 per age group if they were spread evenly by age. However, qualified health care personnel would tend to be concentrated more towards age 25 than age 20. Those originally concentrated in the higher ages would, over time, age out of the range of vulnerability as general registrants. Thus, many of the original 80,000 dual registrants would only be dual registrants for the period before they aged out of liability as a general registrants. The general registrant first priority selection group would include 19-year-olds not eligible to register under HCPDS.

*Basic estimate data was obtained from the BLS statistics—1986 figures—using only Age 20–24 data as estimates for age 25 were unavailable in the specialties concerned. BLS figures on "Health-diagnosing" were excluded.

**SSS estimate of numbers to age 26.

[13] *Fully-Qualified Personnel Required by DOD in Emergency.* Unless DOD mobilization requirements were revised to include general duty medical officers, only individuals who had completed GME specialty training in a DOD-needed specialty would be required to register. If a draft of health care personnel ever were to be required in a major conflict, the emergency situation would require that DOD's initial requirements be met only with fully-qualified personnel and not by individuals with only partially-completed specialty training. Existing DOD health care personnel assets, military and civilian, would be fully committed to treating casualties and could not be devoted to the further training of only partially-trained, newly-assigned personnel.

b. Where

The same registration sites at which young men now register as general registrants will be used to register health care personnel. These sites are U.S. Postal Service (USPS) classified sites within the United States, possessions, and territories, and Department of State (DOS) posts overseas. To provide maximum service, health care personnel also could register at any SSS office. Additional registration sites might be used if a need is established in a given mobilization scenario. For example, special registrars might visit facilities with large concentrations of needed health care personnel to facilitate mass registration.

c. How

In an emergency, registration of health care personnel would be conducted in two major phases, an initial mass registration, followed by an indefinite period of continuous registration. HCPDS registration procedures parallel those currently used for general registrants except that a health care specialty code is also entered on the registration form by the health care registrant.

(1) *Initial Mass Registration.* Persons qualified as health care specialists, on or after the base date established, would be required to register in a mass registration if of registration age. The base date would be a date about six months before the first day of the mass registration. Both the base date and dates for mass registration would be established in the registration proclamation. Mass registration would last no more than seven days, including weekends, in order to accomplish the anticipated 3.4 million registrations in the worst case.

(2) Continuous Registration. During continuous registration, which would commence two weeks after the end of the initial mass registration, persons would be required to register within 15 days of the dates on which they become liable to register. In the case of immigrant aliens entering the country, this would be not later than 15 days after such entry if otherwise required to register. Those ages 20–44 who become newly qualified in a listed health care specialty would be required to register within 15 days of such qualification. Those already qualified in a listed specialty when reaching age 20 would be required to register within 15 days after reaching age 20. Those required to register at any time previously, but who failed to do so, would be under continuing obligation to register during continuous registration as long as they remained of registration age.

(3) *Special Supplemental Mass Registration(s).* Special supplemental mass registration(s) of additional health care personnel would be conducted only if required by the developing situation to cover additional needed health care specialties and/or age groups. Another proclamation or appropriate legal document would be published directing them.

d. Registration Site Material Production and Distribution

Upon implementation of HCPDS, the following materials would be printed and delivered to each registration site in the United States: registration posters and forms; instruction sheets for persons completing registration forms; Information for Health Care Registrants booklets; claim forms; registration site personnel instructions and control forms for mailing completed registration forms. Camera ready prototypes of each item will be prepared in enough copies for printing at designated locations. Standby contingency arrangements will be made in advance for rapid action on M-Day, or earlier, should the authority to print be received prior to M-Day. These arrangements will direct that specific quantities of the items be delivered directly to registration sites.[14]

e. Collection of Completed Registration Forms

(1) *U.S. Postal Service (USPS) Sites.* During mass registration, each USPS registration site would forward completed health care personnel registration forms on a daily basis to a

[14] *Distribution of Registration Site Materials.* An SSS automated mailing label system has been designed by SSS to facilitate rapid forms and materials distribution by printing contractors, first directly to USPS and DOS registration sites in predetermined size packs. The mailing labels reflect each item and the quantity of each item to be sent by the vendor to each registration site. Where appropriate, label sequences will be arranged so that, where daily mailings are required, the initial shipments will be to those registration sites having the greatest estimated in-transit mailing time from the contractor's plant. The mailing label system is flexible and, if required, can accommodate multiple vendors producing and distributing multiple items. Vendors unable to produce labels upon receipt of electronically-transmitted data or magnetic tape will be provided pre-printed labels by SSS. Materials for each DOS post will be sent via air mail to ensure the most reasonable delivery time. After vendors have shipped materials directly to the using sites, bulk replacement supply stocks will be shipped. Where necessary, replacement USPS stocks will be shipped to USPS Management Sectional Centers until adequate stocks are shipped to the two USPS Supply Centers. DOS replacement stocks will be positioned at SSS National Headquarters.

predesignated Internal Revenue Service (IRS) or Social Security Administration (SSA) facility for data entry. During continuous registration, USPS registration sites would send completed health care registration forms to SSS together with registration forms completed by general registrants on the regular cycle.

(2) *Department of State (DOS) Sites.* DOS posts would return completed health care personnel registration forms to the single designated SSS facility on a weekly basis using Air Mail or Air Pouch.

(3) *Control of Completed Registration Forms.* Each time a registration site forwards completed registration forms a completed control-report form also will be sent, enclosed with completed forms.

f. Processing of Registration Information

SSS requires outside support for the rapid processing of mass registration data to expedite the emergency conscription of health care personnel. A memorandum of understanding (MOU) with SSS has been signed by the IRS and the SSA providing for these agencies to support SSS in processing mass registration data in a national emergency.[15]

[15] *IRS and SSA MOU's.* IRS and SSA each have agreed to provide, on the basis of reimbursement for actual expenses, HCPDS administrative, data entry, and microfilm support for one-half of the total mass registration workload, or 1,750,000 registration forms, processed at the rate of 150,000 per day by each agency. The registration forms would be extracted, batched, serially numbered, microfilmed, keyed, and key verified by IRS and SSA, and keyed data transferred daily to SSS. Key entry of the data and transfer to SSS would total approximately 300,000 registrations per day starting 3 days after mass registration began. Microfilm services would include daily processing, quality checking, duplication, and shipping of microfilm to SSS.

g. Registration Notices to Registrants

Registration record error correction and/or data base editing would be accomplished as rapidly as possible by SSS, primarily using computer-generated letters to registrants. Computer-generated registration acknowledgments, a prototype of which is at Annex H, would be mailed as quickly as possible to new health care registrants in the same manner as for general registrants.

5. Selection and Induction

The following emergency HCPDS selection and induction procedures parallel, where practicable, the current emergency one-step combined examination and induction procedures covering general registrants.

a. PSG–M Assignment

The first step in the HCPDS induction process is the assignment of a Random Sequence Number (RSN) and Priority Selection Group—Medical (PSG–M) to each registrant record. Health care personnel registering in the initial mass registration will have their registration records established in the HCPDS data base as a group on the same date and will be assigned RSN's from a SSS lottery held upon mobilization. All registrants from the initial mass registration will be assigned to the First Priority Selection Group—Medical (PSG–M) for 365 consecutive days, which period constitutes their year of prime vulnerability. The clock will start on the same day for all initial mass registrants. The first priority group will also include other health care personnel, either late mass registrations or continuous registrants who register later, using their accession date as a start date. Each of these registrants will remain in the first priority for a 365 day period, starting with the establishment of a valid registration record in the data base. An RSN from a lottery table will be assigned to each new record.

Figure 1 shows three registrants: the first registered at the completion of the initial mass registration in month 1 (e.g. April); the second and third registered later when they became qualified as health care personnel, one in month 4 (August), and the other during month 8 (December). From months 8 through 12 (December through March) all are in the First PSG–M together. If none of the three are reached for induction, Registrant No. 1 moves to the second priority group in month 13 (i.e. the next April), Registrant No. 2 moves to second priority the next August, and registrant No. 3 the next December.

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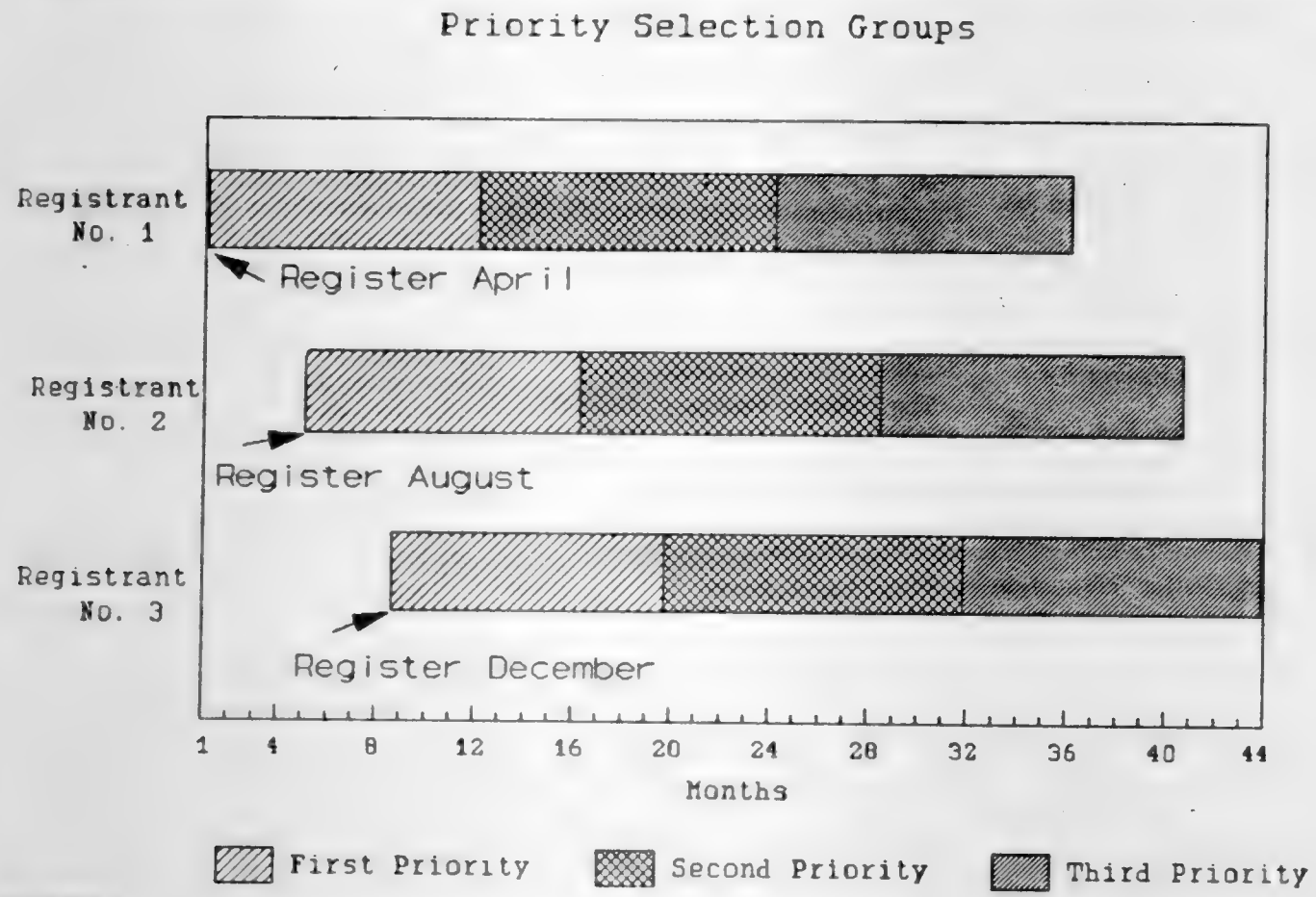

Figure 1

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b. Selection

Selection of health care registrants for induction within their specialty is based upon: (1) Priority Selection Group—Medical; (2) Year of Birth (YOB), within the PSG–M,[16] from youngest to oldest; (3) Random Sequence Number within each individual YOB group. If registrants are depleted in the First Priority Selection Group, selection continues from the second and then progressively lower priority selection groups.

c. Overcall

In order to ensure that DOD requirements are met, enough registrants must be ordered for induction to cover losses anticipated due to postponement, deferment and exemption requests, failures to report, and disqualifications by DOD.

(1) *DOD Rejection Rates.* Under the former "doctors' draft," registrants practicing their professions in the private sector were considered able to do the same in a military health care environment notwithstanding physical conditions which would cause rejection as a general registrant. If similar standards are applied under an HCPDS scenario, the DOD rejection rate for health care personnel for physical reasons should be significantly lower than that estimated for general registrants.

(2) *Other Fall-Out Rates.* It is likely that the overcall rate will vary depending upon the specialty called and the demographics of the population being ordered. Registrants in the technician level specialties will have different postponement, deferment, and exemption rates than will physicians. Populations which are principally female, such as nurses or dental technicians, may include many mothers who could request hardship deferments. Estimates of the expected fall-out rate will be made using the best historical and demographic data available. These losses will then be converted to an overcall factor and this factor applied to each specialty required by DOD in order to determine the PSG, YOB, and RSN cut-off number used to select the registrants to be called for induction.

d. Sequence of Processing

The sequence of SSS actions for selection and induction follows:

(1) Receive specific requisition from DOD.

(2) Calculate the number of registrants to be ordered for induction by specialty to meet the DOD requirement and set PSG–M/YOB/RSN cut-off for each specialty.

(3) Select and order registrants for induction by specialty according to the order of call shown below.

(4) Process registrant claims for postponement, deferment, and/or exemption.

e. Order of Call

Registrants will be selected for induction in the following sequence:

(1) Registrants whose claims have been denied, registrants whose "reexamination believed justified" dates have expired, and registrants who have been classified 1–A–OM (Conscientious Objector available for noncombatant military service).

(2) Registrants whose postponements have expired in the order of the date of expiration of the postponement. If necessary, the RSN shall be used as a tie breaker for registrants in a postponement expired status.

(3) Registrants whose deferments have expired or who no longer qualify for exemption in RSN sequence. Selection will begin with registrants from the youngest YOB group, then by RSN.

(4) Registrants in the First Priority Selection Group—Medical. Selection will begin with registrants from the youngest YOB group, then by RSN.

(5) Registrants in the Second and progressively lower Priority Selection Groups—Medical in the same manner as above.

f. Induction

(1) Assignment to Local Board and Area Office. Assignment to a local board and area office will be made at the time the registrant is initially selected for induction based on the registrant's permanent address. The ZIP Code Assignment File will be used to determine the local board/area office covering the registrant's permanent address ZIP Code.

(2) Scheduling to MEPS and Issuance of Induction Order. Registrants will be scheduled to a MEPS on the basis of their permanent address ZIP Code in accord with the ZIP Code Assignment File. An alternate MEPS, as specified in the file, will be used to adjust for overfill/underfill at the individual MEPS. The first induction notice will be mailed to the current mailing address. Registrants will be ordered by mailgram to report to the MEPS on a date not earlier than 10 days from the date of mailing of the order. The orders will specify the documentation required to determine professional qualifications and thus each will be tailored to the specialty called. Registrants initially ordered for induction will be issued an "Order to Report for Induction." Previously ordered registrants will be issued either an "Order to Report for Induction" or a "Notice of Rescheduled Induction Reporting Date" depending on their current status. Registrants residing overseas will be issued orders by mail and will be scheduled to report to an overseas military location.

(3) MEPS Processing. When an ordered registrant appears at the MEPS, the registrant is examined to determine physical, moral, and professional/technical qualifications. The results of this processing are entered into the MEPS reporting system and transmitted to SSS via MEPCOM.

g. Information for Health Care Registrants

A publication similar to the current Information for Registrants booklet for general registrants would be made available to the public at post offices and all SSS offices providing additional information on induction and claims processing for health care registrants.

h. Dual Registrants

(1) General. A dual registrant would be concurrently liable for selection for induction under the health care registrant system and under the general registrant system, but if selected for induction under one system would have his processing for selection under the other system suspended pending the outcome of the first selection.[17] That is, while a dual registrant would be liable under both systems at the same time, he could be selected and processed for induction only under one system at a time. Liability to conscription under the general registrant and health care

[16] *Year of Birth (YOB) as Selection Factor.* YOB was included as the second factor on which health care registrant records would be sorted in the selection procedure in order to ensure that a youngest first order of induction is maintained. A youngest YOB first selection order, which has been established in SSS regulations for general registrants, has several benefits. Younger registrants generally will be less critical to the continued maintenance of an adequate level of health care services in their communities. They also will have had less time to establish practices, resulting in fewer claims for essentiality deferments and fewer requests for postponements to settle business affairs. Reduced claim rates would speed deliveries to DOD. With certain exceptions, by and large there should be only minimal increase in financial hardship claims compared to general registrants because health care registrants would enter military service as commissioned officers, as warrant officers, or in advanced enlisted grades, as determined by DOD. This expected lower claims rate might be offset, however, by an increased claim rate if health care registrants on average tended to have more young children than general registrants and more frequently requested deferment based on hardship to dependents.

[17] Inactivation of Both Health Care and General Registrant Record. Except where examination by MEPS revealed a condition disqualifying for induction as both a health care registrant and as a general registrant both SSS registration records would be deactivated and annotated accordingly

registrant conscription systems does not overlap; no rights or vulnerability within one system would extend to a dual registrant in the other system.

(2) Selection as a Health Care Registrant. If a dual registrant selected for induction as a health care registrant were to be found not professionally qualified in any health care specialty required to register, his health care registrant record would be inactivated and his general registrant record processing reactivated. A dual registrant ordered to MEPS for induction as a health care registrant cannot be inducted by MEPS as a general registrant while under SSS induction orders as a health care registrant. If found not qualified in the specialty for which ordered, but qualified in another specialty the registrant may volunteer for any specialty in which qualified, if DOD has a need for that specialty.

(3) Selection as a General Registrant. If selected and reporting for induction as a general registrant, the dual registrant could only be inducted under any acceptability standards applicable to general registrants. If found not qualified as a general registrant the dual registrant will be classified 4–F as a general registrant, and his health care registrant record reactivated. Any different acceptability standards applicable to health care registrants could be applied only if a dual registrant volunteered to enter the military service in a health care role at the time he reported for induction as a general registrant.

6. Classification, Claims, and Appeals

a. General

Classification is the exercise of the authority to determine claims or questions on inclusion or exemption of registrants from training and service under the MSSA. The classification, claims, and appeals process is crucial to ensuring the protection of all registrants' rights. The basic classification structure established in RIMS for general registrants would also be used for health care registrant processing and the associated procedures for processing general registrant claims and appeals as contained in the RIMS Manual generally also apply to health care registrants' claims and appeals.

b. Classification Structure

The various classification bodies and the authority of each are as follows:

(1) Upon activation of HCPDS, the Director of Selective Service assigns classification 1–HM (not currently subject to induction processing) to all health care registrants. Upon receipt of a requisition for health care personnel from the Secretary of Defense, all health care registrants selected for induction are assigned to Class 1–AM (available for unrestricted military service). Further, the Director will classify a health care registrant into an appropriate class when the Secretary of Defense has certified the registrant to be a member of the armed forces, active or reserve, or the registrant has been found disqualified for service.

(2) The Director will authorize area offices to classify health care registrants who have been ordered to report for induction into any administrative classification for which they have filed a claim and documented their eligibility. Area office personnel will initially decide all administrative claims submitted by registrants. Claims denied by area office personnel are subject to local board review, when requested by the registrant.

(3) A local board may classify a health care registrant into any judgmental class that the registrant has requested and for which the registrant is eligible. Claims denied by a local board are subject to appeal when requested by the registrant.[18]

(4) A District Appeal Board may classify a health care registrant into any class that the registrant requested and for which the registrant is eligible when a local board denial of a claim is appealed.

(5) The National Appeal Board may classify a health care registrant into any class that the registrant requested and for which the registrant is eligible when a District Appeal Board denial of a claim is appealed to the President (National Appeal Board). Appeals to the National Appeal Board cannot be made when the District Appeal Board denial decision was unanimous.

c. Classifications, Deferments and Exemptions

(1) Classification Categories. To expedite the classification process and reduce the volume of claims to be decided by the local board, the classification categories have been divided into two groups: administrative and judgmental. Administrative classification claims are established on the basis of specific official documents required for each classification. Judgmental claims for reclassification are those requiring a local board to determine whether the evidence submitted meets the criteria established for the requested classification. Administrative and judgmental classifications are identified in annex E. Health care registrant classifications will contain an "M" suffix for prompt identification and for statistical purposes.

(2) Registrant's Responsibility When Making a Claim. Upon issuance of an Order to Report for Induction, a registrant may file a written claim for postponement of induction and/or reclassification with any SSS area office. The registrant's induction date is automatically delayed by the submission of a claim, pending resolution of the claim. Within the time period designated on the induction order, a registrant must file all classification claims concurrently. Registrants filing claims must document their eligibility to the satisfaction of the area office or the local board. Where appropriate for the type of claim filed, a registrant may submit a statement, and statements of other persons, to prove the factual basis of the claim, in addition to any specific form(s) or other type of documentation required for the classification requested. It is the responsibility of the registrant to request, in writing, a personal appearance before the local and appeal board to discuss a judgmental claim if such personal appearance is desired. Claimants considered for Class 1–OM or 1–A–OM are required to appear before the local board. Travel expenses incurred by the registrant to appear before a board are not paid or reimbursed by the Government, except for the SSS-required personal appearance by a claimant for conscientious objector deferment who is required to travel 200 miles or more. Registrants who do not file claims or whose claims are denied are required to report for induction as ordered.

d. Postponement of Induction

(1) General. Postponement does not cancel an induction order, but results in a rescheduled induction reporting date. Health care registrants will be eligible for all of the same postponements as general registrants and for the same reasons as prescribed for general registrants, plus provisions for three additional postponements for health care registrants only. Postponements shall be granted to a specific date but will be terminated at any time prior to the established expiration date if the reason for which granted ceases to exist. At the expiration or termination of a

[18] *Others Authorized to Appeal to District Appeal Board.* As noted in the SSS RIMS Manual, "The Director of Selective Service, or the State Director for Local Boards within his State, may appeal to a District Appeal Board any classification action of a Local Board whenever he deems it necessary to assure fair and equitable administration of Selective Service law." (Paragraph 3a, Section D, Chapter 4.)

postponement, the registrant will be rescheduled for induction.

(2) Available to All Registrants. Postponements available to both regular and health care registrants who qualify are:

—A family emergency beyond the registrant's control.
—A registrant's illness or injury.
—The registrant is scheduled to take a state or national examination to be eligible to practice his profession or occupation.
—The registrant has been accepted at a military service academy or for one of the specified Reserve Officer Training Corps programs.
—The registrant is scheduled to be inducted on a religious holiday observed historically by a church, religious sect, or organization of which the registrant is a member.
—The registrant is, at the time ordered for induction, enrolled as a student, attending and making satisfactory progress in a full-time course of instruction at a high school,[19] college, university or similar institute of learning.

(3) Available Only to Health Care Registrants. In addition to those postponements available to general registrants, the following postponements also are available to health care registrants who qualify:[20]

(a) *To Enhance Medical Specialty.* When the registrant, at the time ordered to report for induction, is satisfactorily completing a full-time course of academic instruction at a technical training institution, college, university, or similar institution of learning to obtain a higher level of accreditation or proficiency in a health care specialty, and is in the final academic/residency year toward completion of that course of instruction.

(b) *To Find a Replacement.* When the health care services currently being rendered by the registrant are both critical to the health of the citizens in the community and temporarily irreplaceable, a postponement for a period not to exceed 90 days may be granted to give the community's local government officials time to find a replacement. In such case, the area office must be notified immediately when a replacement is found. Health care registrants rendering critical services they believe to be indefinitely irreplaceable should request an essentiality occupational deferment, which could be granted for a longer period than possible for a postponement of induction.

(c) *To Close Practice.* To the extent permitted by the severity of an emergency, or whenever the two-step examination and induction procedures were in use, a health care registrant's request for postponement of induction to close a civilian practice, for a period not to exceed 90 days, would be considered by Selective Service. In a worse-case scenario, however, the granting of time to close one's civilian practice would be handled by DOD, after the registrant's entrance into the service, in the form of a short period of emergency leave. DOD has agreed to provide health care personnel with as much time as practical for this endeavor, but the individual's parent service must base emergency leave decisions on the priority of its needs for personnel to treat casualties. In a worst-case mobilization, military needs might not always provide adequate time for the closing of one's practice in the most businesslike manner. The Soldiers and Sailors Civil Relief Act, as amended, provides certain protection in this regard.

(4) *Postponing Authorities.* All claims for postponement of induction are initially considered by an authorized area office employee. If the area office denies a claim for the statutory student postponement described in subparagraph (2) above, or one of the postponements listed in subparagraph (3)(a), (3)(b), or (3)(c) above, the registrant may request local board review of the claim. No other postponement claims are subject to local board consideration. Registrants who believe they qualify for postponement at the time they are ordered for induction should file a claim, and the required documentation, with their area office. The postponing authority will base the decision to grant or deny the claim based on the documents provided for the file. The MEPS Liaison Officer (MLO) who represents SSS at the MEPS is authorized to grant a postponement of not more than ten days to a registrant when an emergency occurs while the registrant is enroute to, or during processing at the MEPS.

e. Claims

(1) *General.* A claim is a request by a registrant for postponement or reclassification. Health care registrants will be eligible to file claims for all postponements, deferments, and exemptions available to general registrants.[21] However, a dual registrant may request an essentiality deferment only when ordered as a health care registrant. Claims must be filed by the registrant after receiving an induction order and before the scheduled induction date. The filing of a claim will delay the registrant's reporting date until the claim is decided. Claims for postponements and administrative classifications, to include documented separations from military service because of hardship or conscientious objection, will be initially decided by area office personnel, with denials of student postponements and administrative classifications subject to local board review when requested by the registrant. Claims for judgmental classifications, i.e., essentiality, hardship, conscientious objection, ministerial and ministerial student status, must be decided by the registrant's local board.

(2) *Persons Authorized to Appear Before Local Boards.* Conscientious objector claimants are required to appear personally before the local board unless previously separated from military service for reasons of conscientious objection. Other judgmental claimants and registrants requesting local board review of area office denials may ask in writing to appear personally before the local board to discuss the claim. Registrants appearing before a local board are permitted to present up to three witnesses, use an interpreter if one is required, be accompanied by an advisor, and submit additional written or oral information to support their claim. Registrants may not be represented at their personal appearance by anyone acting as an attorney or legal counsel. Tape recorders are not permitted.

(3) *Termination of Eligibility.* Registrants are eligible for deferment or exemption only so long as the reason for the deferment or exemption exists.

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[19] *High School Postponments for General Registrants.* A general registant's induction may be postponed so long as he is doing satisfactory work as a full-time student in a high school, or other secondary school, and he has not reached age 20. If he is 20 years old at the time the order to report for induction is issued, he must be in the last academic year to obtain a postponement.

[20] *No Postponement Category for Pregnancy.* No special postponement, deferment, or exemption category is provided for pregnancy because under DOD physical examination guidelines, pregnant health care registrants would be found to be temporarily unacceptable and categorized as "reexamination believed justified" at some future time. A pregnant health care registrant receiving an induction order may submit a doctor's certificate to the local board attesting to the pregnancy and specifying the estimated date of child birth. The doctor's certificate would be forwarded to the MEPS, which would review it and establish a rescheduled induction reporting date sometime after the estimated date of child birth. The local board must be notified immediately upon any change of the condition on which any induction delay was approved.

[21] *Hardship Deferment is Available to All Registrants.* For example, after health care registrants with children or other dependents received induction orders they may submit claims for the same hardship deferment as general registrants.

Upon expiration of a registrant's deferment or termination of a deferment or exemption, the registrant will be returned to the appropriate order of call sequence (see paragraph 5e above) and ordered for induction with the next call for the specialty involved before those not previously ordered are selected.

f. Appeals.

(1) *General.* The HCPDS appeals process corresponds to the appeals system established by RIMS for general registrants.[22] Health care registrants will be afforded the opportunity to request the local board to review and decide any claim for student postponement or administrative classification denied by the area office. A local board decision to deny an administrative classification may be appealed to the District Appeal Board when the denial decision is not unanimous. Any local board decision to deny a claim for judgmental reclassification may be appealed to the District Appeal Board. A District Appeal Board claim denial may be appealed to the President (National Appeal Board) if the vote to deny is not unanimous. The decision of the National Appeal Board is final and is not subject to further review or appeal within SSS. The National Health Care Personnel Advisory Committee does not participate in the appeals process in any way.

(2) *Persons Authorized to Appear Before Appeal Boards.* A health care registrant may appear personally before a District Appeal Board or the National Appeal Board, as applicable, to discuss the claim(s). A person appearing before an appeal board may use an interpreter if one is required, be accompanied by an advisor, and submit additional written or oral information to support the claim(s). Registrants may not present witnesses or be represented at their personal appearance by anyone acting as an attorney or legal counsel.

(3) *State Health Care Advisory Committee Actions.* If no State health care advisory committee recommendation had been reviewed by the local board, such recommendation could be requested by the District Appeal Board. An appeal board may request the recommendation of a State health care advisory committee only when a local board has not already obtained such recommendation. Where an advisory committee has already rendered a recommendation, that recommendation will be a part of the written record sent to the appeal board. An appeal board may, however, gather additional facts as a part of exercising its classification authority.

g. Essentiality Deferment.

(1) *General.* In addition to all deferments and exemptions available to general registrants under RIMS, a new class 2–AM (essentiality occupational deferment) is provided under HCPDS for health care registrants, as a judgmental classification category. Health care occupations will be eligible for deferment consideration under Class 2–AM when announced in SSS regulations by the Director of Selective Service as necessary in the national health, safety, or interest. Provision for an essentiality deferment acknowledges the fact that during a major military conflict it would be in the best interests of the nation to defer certain civilian health care personnel so they may continue to serve in their current roles rather than enter military service. However, without advance advice from the NSC, only deferment based on essentiality to a community's health care delivery system will be designated at this time in proposed standby SSS regulations.[23] Subject to change pending future NSC advice to SSS, no other health care personnel occupations can be said at this time to warrant such advance designation.[24]

(2) *Criteria for Essentiality Deferments.*

(a) *General.* The broad criterion for all essentiality deferments is that the individual health care registrant's civilian occupation be determined to be necessary in the national health, safety, or interest. A health care registrant shall be considered necessary to the maintenance of the national or community health, safety, or interest when all of the following conditions exist:

—The registrant is, or but for a seasonal or temporary interruption would be, engaged in medicine and health care research, teaching health care professionals, or engaged in other health care services critical to an identified community.

—The registrant cannot be replaced because of a shortage of persons with similar qualifications or skill in such activity.

—The removal of the registrant would cause a critical loss of effectiveness in such national or community activity in which the registrant serves.

Revised or additional criteria for 2–AM deferments could be established by the Congress by statute or by the NSC/SSS.[25]

(b) *Essentiality to Community Health Care System.* To qualify for a Class 2–

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[22] *Appeals Provisions for General Registrants.* RIMS Manual procedures on appeals by general registrants are based on provisions in Part 1651, "Classification by District Appeal Board," of SSS regulations, 32 CFR Chapter XVI.

[23] *Other Potential Essentiality Occupations.* In any extreme future conflict, for example, the following might be considered for designation as eligible for deferment under Class 2–AM:

—Essential staff members at certain health care facilities, such as uniformed service or Department of Veterans Affairs (VA) hospitals, which would care for military casualties before the activation of the National Disaster Medical System (NDMS).*

—Personnel performing critical health care services in a civilian capacity related to defense activities, such as a volunteer member of the NDMS, or a staff member of a hospital with beds used by, or committed to and expected to be used by, NDMS.

—Certain teachers in medical schools.

—Specialists engaged in research and development relating to long term public health, such as that at regional or national medical institutions, such as the Mayo Clinic and similar organizations.

*–The NDMS was created in 1984, following the 1983 recommendation of the Interagency Health Working Group of the Emergency Mobilization Preparedness Board. NDMS is designed to handle mass casualties, whether from a natural disaster or major military conflict. NDMS is a cooperative effort among HHS, DOD, VA, FEMA, and the private sector. In the case of a major overseas military conflict, the NDMS could use voluntarily pre-committed beds from private hospitals to backup the DOD–VA hospital system in caring for military casualties. The NDMS Director is an HHS official.

[24] *Informal Endorsement by Representatives of Concerned Agencies.* Both the Department of Health and Human Services (HHS), responsible under E.O. 12656 for the allocation of health care personnel between the civil and military sectors in a national security emergency, and FEMA, responsible for broad contingency planning monitoring, and for resolving resource disputes between claimant agencies as well as reporting to the NSC on Government-wide emergency readiness, have informally agreed with such advance designation. The VA's representative has also agreed. Thus, both SSS and representatives of directly concerned responsible agencies have informally agreed that allowing for essentiality deferments based on essentiality to the community's health care delivery system would be certain under any emergency HCPDS scenario.

[25] *Further Interagency National Security Emergency Contingency Planning.* Additional pre-emergency interagency planning as to potential Class 2–AM deferments may occur pursuant to E.O. 12656, which indicates that the head of each Federal agency shall:

—"Make policy recommendations to the NSC regarding national security emergency preparedness activities and functions of the Federal Government." [Section 201(7)]

—"Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in the response to national security emergencies." [Section 201(8)]

—"Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response." [Section 201(9)]

—"Develop plans to set priorities and allocate resources among civilian and military claimants." [Section 202(4)]

—"Identify occupations and skills for which there may be a critical need in the event of a national security emergency." [Section 202(5)]

AM essentiality deferment on the basis of essentiality to a community's health care system, a health care registrant would have to be engaged in direct patient care to the public, or engaged in services which support this direct patient care, such as X-ray technicians.[26] Class 2–AM would not apply to those engaged in patient care which was not available generally to all members of the public residing within the community. In determining if the health care registrant's continued services were essential to the community served, the local board would consider whether (all items listed would be considered in each case):

—The specific health care services provided were essential to the maintenance of the health, safety, or welfare of the community.
—The removal of the registrant would result in an extreme shortage or elimination of a critical community service.
—The service could be performed by other qualified persons available to the community, or if the registrant could be replaced by another qualified person within the time allotted by a postponement of induction into the uniformed services.
—The registrant was currently practicing in the community concerned. A registrant would be found not essential to a community where the registrant had never practiced, except where the registrant had signed, at least six months before the date of the induction order, a contractual commitment to serve in that community and the failure to do so would result in an extreme shortage or elimination of a critical community service.
—The nation would be best served, considering that the needs of the community must be balanced against the needs of the military services, by granting or denying the deferment claim.
—Any additional criteria as might be prescribed by the SSS Director by regulation were met.

(3) *Subspecialty as Basis for Claiming 2–AM Deferment.* Subspecialists qualified in basic specialties identified as needed by DOD would be required to register in their basic specialties. For example, if orthopedic surgeons were required to register, those qualified as hand surgeons (an orthopedic surgeon subspecialty) would be required to register as orthopedic surgeons (basic specialty). If a hand surgeon were to be ordered to report for induction as an orthopedic surgeon, the surgeon could submit a community essentiality deferment claim based on continued practice as a hand surgeon being essential to the community served, even though the particular community might have a more than adequate number of other orthopedic surgeons. Supporting statements provided with a claim should cover, besides the general statements described for all Class 2–AM deferments, statements from persons familiar with the need and availability of the specialty concerned within the community concerned.

(4) *Claim Documentation.* SSS claim forms would be made available at all U.S. Postal Service and Department of State registration sites and at all SSS offices. If the one-step combined examination and induction process were being used, no claim would be accepted from a health care registrant who had not been issued an order to report for induction.[27] Health care registrants seeking essentiality deferments should submit statements and documents from their employers substantiating their claims. Self-employed health care registrants should submit supporting statements from other health care providers or administrators familiar with the services provided by the claimant. Local boards and appeal boards may gather pertinent facts from any source necessary.

(5) *Claim Processing Procedures.* The processing of claims for Class 2–AM deferment would follow the pattern in RIMS for general registrants, except for the adjudication of claims and State advisory committees recommendations to local and appeal boards.

(6) *Recommendation of State Health Care Advisory Committee.* The granting or denial of the Class 2–AM deferment claim would rest with the local board. However, if a State health care advisory committee supporting the registrant's local board had been established by the time the claim was received, the local board would have an opportunity to seek and review that committee's recommendation before granting or denying the claim. A claim and supporting materials would be forwarded to that committee whenever the local board determined that it required the committee's specific recommendation. The National Advisory Committee would not be empowered to participate in any way in the State health care advisory committee's recommendations on registrants.

(7) *Action In Absence of State Health Care Advisory Committee.* If such advisory committee had not been established for the local board by the time it received a Class 2–AM claim, the local board would not delay taking final action on the claim pending the establishment and recommendation of such committee.

(8) *Form of State Health Care Advisory Committee Recommendations.* The advisory committee's recommendation would be in the form of either:

(a) A specific written statement issued by the advisory committee as to the essentiality of basic specialties and subspecialties in the community concerned. Such statements would be periodically updated by the State advisory committee when required by changing circumstances.

(b) The advisory committee's recommendation concerning any individual case referred to it by a local or appeal board.

(9) *Documentation of Local Board Decision.* The local board would include a statement of the reason(s) for claim denial in the registrant's file. No such documentation would be required when a claim was granted.

Annex Description

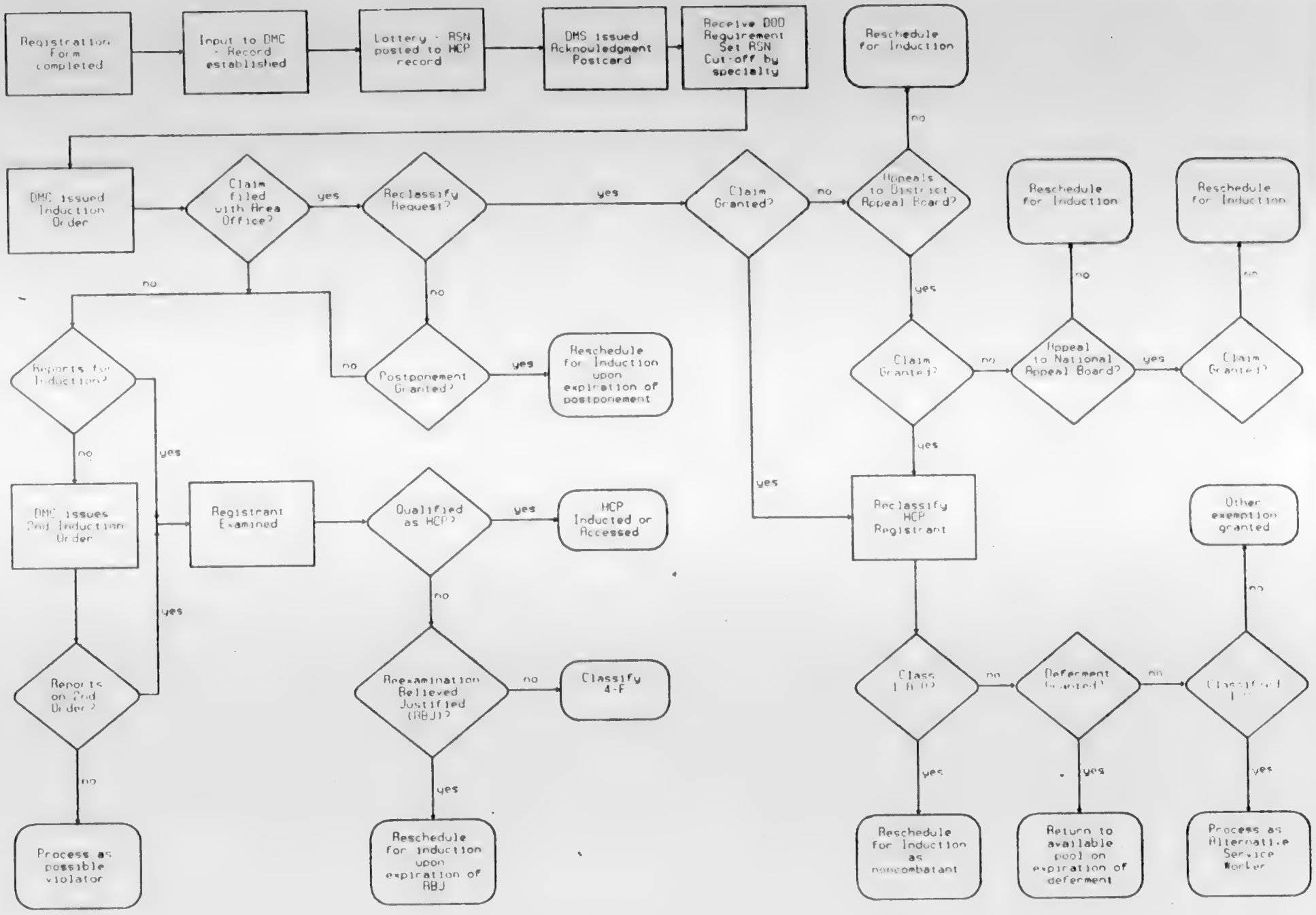
A System Flow Chart
B Definitions, Abbreviations, and Acronyms
C Amendment to MSSA of December 4, 1987
D DOD Mobilization Shortfall Requirements Beginning at D+10
F SSS Health Care Registrant Classifications
E Proposed Charter, National Health Care Personnel Advisory Committee
G Health Care Specialties Code List With Instructions (Prototype)
H Health Care Registration Acknowledgment (Prototype)

Annex A—System Flow Chart

BILLING CODE 8015–01–P

[26] *Eligibility for Essentiality Deferment.* Eligibility for the essentiality deferment of a person engaged in health care support services, such as an X-ray technician, was not stated in the 1969 concept paper.

[27] *Claims Under Two-Step System.* Under the two-step examination and induction system, a claim would not be accepted unless an order to report for examination had been sent to the health care registrant.



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Annex B—Definitions, Abbreviations, and Acronyms

Class. A category designated by Selective Service for grouping and processing registrants according to established criteria (also called "classification").

Classification. (1) The initial exercise of the authority to determine a registrant's claims or questions with respect to a registrant's inclusion into a specific class for, or exemption from, training and service under the Military Selective Service Act (MSSA), by the official act of designating a registrant's class; and/or,

(2) The subsequent exercise of aforementioned authority by designating a new class for a registrant (i.e., reclassification).

(3) A category designated by Selective Service for grouping and processing registrants according to established criteria (also called "class").

Continuous Registration. Ongoing registration of persons liable for registration as prescribed by a Presidential Proclamation and implementing Selective Service Regulations.

Credentialing. The verification process of reviewing licenses, diplomas, training certificates and related materials for professional qualification of health care personnel. Credentialing will be accomplished by the uniformed services in support of the United States Military Entrance and Processing Command (USMEPCOM).

D-Day. The day hostilities commence.

General Registrants. Registrants registered under RIMS (called "regular registrants" in the 1989 concept paper).

Essentiality Deferment. A Class 2–AM (Registrant Deferred Because of Essentiality of Occupation) available to health care registrants determined to be providing health care services which must be continued (1) due to their criticality to the maintenance of the national health, safety, and interest, and (2) because the services cannot reasonably be provided by others. Such services may be at a national, regional, or community level.

Health Care Personnel. Persons who are qualified for practice or employment in an occupation to provide health care, to humans or animals, which has been deemed essential by the President to meet the needs of the Armed Forces, without regard to whether such persons meet standards prescribed by the Secretary of Defense.

Health Care Registrant. A person registered under authority of (proposed) Section 3(a)(2) of the Military Selective Service Act, (i.e., a person qualified for practice or employment in an occupation to provide health care to humans or animals).

State Health Care Advisory Committee. A group of civilian uncompensated SSS employees appointed by the Director of Selective Service to review health care needs and resources and make assessments and recommendations to local and appeal boards in connection with the essentiality of specific health care personnel submitting claims for Class 2–AM deferments based upon essentiality of occupation.

Mass Registration. Registration of specific categories of persons over a specified, limited period of time as required by a Presidential Proclamation or other authorized issuance.

M-Day. The day SSS commences mobilization.

MEPS. A Military Entrance Processing Station, which is a military installation to which registrants are ordered to report for determination of their acceptability for military service or alternative service and for induction processing into the armed forces of the United States.

MSSA. The Military Selective Service Act, as amended, (50 U.S.C. App. 451 et. seq.).

National Health Care Personnel Advisory Committee. A committee, to be authorized by Selective Service Regulations and appointed as SSS uncompensated personnel by the Director of Selective Service, to provide advice to the Director of Selective Service on selection, classification, induction, and related policies pertaining to health care personnel.

RIMS. The Selective Service System's Registrant Information and Management System, which encompasses the policies, procedures, and automated data systems for processing general registrants for induction or alternative service.

Annex C—Amendment to MSSA of December 4, 1987

Public Law 100–180, Section 715, National Defense Authorization Act for Fiscal Year 1988/1989, December 4, 1987, amended section 10(h) of the MSSA. Section 10(h) now states that:

"The Selective Service System shall be maintained as an active standby organization with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency (*including a structure for registration and classification of persons qualified for practice or employment in a health care occupation essential to the maintenance of the Armed Forces)* and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency."

[Italic portion shows language added by amendment.]

Following are excerpts from the House and Senate Committee Reports on this legislation.

Section 715—Standby Capability for Selective Service Registration of Health Care Personnel

Although the committee has proposed a number of provisions to increase the number of health professionals with critical combat skills in the active and reserve forces during peacetime, the committee believes that a back-up system for the rapid registration of health care professionals after the declaration of a national emergency should be implemented. The committee, therefore, recommends authorizing the Selective Service System to implement a system for the post-mobilization registration of health care professionals.

Specifically, the committee envisions that the Selective Service System would perform the following tasks under this authority: (1) design a computer program to facilitate registration in the event of a national emergency—no names or lists would be included; (2) develop adjudication procedures for claims and appeals in the event of registration; and (3) produce sample forms for registration but not distribute them unless registration is authorized in the future.

The committee emphasizes that this authority neither encompasses a peacetime draft nor a peacetime registration system; rather, it would only permit the Selective Service System to develop a structure for the possible registration and classification of health care professionals to be implemented after the President declares a national emergency and after Congress passes legislation providing specific registration and conscription authority.

The committee believes that a system for the post mobilization registration of health care professionals would help address medical readiness personnel shortfalls as well as provide a safeguard against disaster in the event that major hostilities erupt before voluntary initiatives produce adequate numbers and kinds of military health professionals. The committee emphasizes, however, that the Department of Defense must actively pursue other medical readiness initiatives and work closely with professional health associations to attract and retain health professionals committed to military service because effective voluntary programs are the first line of defense. (Committee on Armed Services, U.S. House of Representatives, House Report 100–58, p. 213)

Title VII—Health Care Provisions—Post-Mobilization Registration of Health Care Professionals

The Selective Service has requested authority to spend funds to design and develop a standby system to prepare for the post-mobilization registration and classification of persons with essential health care delivery skills. This standby system will reduce the time it would require Selective Service to call up health care personnel in the event of war or national emergency.

The provision recommended by the committee (sec. 703) provides authority for Selective Service to expend funds to develop such a standby system. This provision does not grant authority to Selective Service to register or to induct medical personnel. (Committee on Armed Services, U.S. Senate, Senate Report 100–57, p. 149)

Annex D—Potential DoD Mobilization Shortfalls (Requirements) (September 1988—for Planning Purposes Only)

Physicians 8,706: Allergy & Immunology 11; Anesthesiology 1,723; Aviation/Aerospace Medicine 792; Colon-Rectal Surgery 5; Dermatology 64; Emergency Medicine 49; Internal Medicine-General 377; Neurological Surgery 157; Neurology 83; Ophthalmology—includes all subspecialties 75; Orthopedic Surgery 2,367; Otolaryngology 109; Pathology—includes all subspecialties 65; Preventive Medicine 159; Psychiatry—includes all subspecialties 310; Radiology 119; Surgery General 1,819; Thoracic Surgery 279; Urology 143

Registered Nurses 26,130: Medical/Surgical Nursing (General/Other Nurses) 21,056; Mental Health Nurses 510; Certified Registered Nurse Anesthetist 1,764; Operating Room Nurses 2,800.

Dentists 1,015: Endodontics 69; General Dentistry (includes persons qualified in "comprehensive/operative dentistry") 13; Oral Pathology/Diagnosis 3; Oral Maxillofacial Surgery 504; Periodontics 75; Prosthodontics 351.

Allied Health Specialists (Requires Degree) 2,102: Audiology & Speech 38; Biomedical Laboratory Services (all subspecialties) 282; Diet Therapy 514; Entomology 82; Environmental Health Services 206; Occupational Therapy 113; Physical Therapy 496; Physicians Assistant 102; Physiology 5; Podiatry 127; Psychology (Clinical) 137.

Veterinarians (includes all subspecialties) 311.

Health Care Specialists/Technicians 34,672: Animal Health Specialist/Technician 305; Biomedical Equipment Maintenance & Repair Specialist/Technician 992; Biomedical Laboratory Specialist/Technician (and all subgroups) 3,208; Dental Care, General, Specialist/Technician 1,550; Dental Laboratory Specialist/Technician 287; Diet Therapy/Hospital Food Service Specialist/Technician 1,815; Environmental Health Specialist/Technician 820; Medical Administration Specialist/Technician (includes Medical Record Technician or Librarian) 2,314; Medical Care and Treatment Specialist/Technician (includes 8,652 medical specialists and 923 respiratory specialists on DOD list) 9,575 (individuals qualified in Licensed Practical/Vocational Nursing would be required to register in this specialty); Medical Supply/Logistics Specialist/Technician 1,777; Mental Health/Psychiatric Specialist/Technician 986; Occupational Therapy Specialist/Technician 256; Ophthalmology/Optometry Specialist/Technician (and all subgroups—includes 189 ophthalmology specialists, 216 optical lab technicians, and 149 optometry specialists on DOD list) 554; Orthopedic Specialist/Technician 637; Pharmacy Specialist/Technician 2,454; Physical Therapy Specialist/Technician 838; Radiology Specialist/Technician 1,471; Surgery Specialist/Technician (and subgroups) 4,833.

Annex E—SSS Classifications

This Annex sets forth Selective Service Classifications which would be assigned to health care registrants under HCPDS, using the suffix "M" to designate them as a separate group from general registrants. These classes would be assigned at such time as became authorized and necessary in connection with HCPDS processing.

ADMINISTRATIVE CLASSIFICATIONS

Classification	Description
1–AM:	Registrant Available for Unrestricted Military Service.
1–CM:	Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.

ADMINISTRATIVE CLASSIFICATIONS—Continued

Classification	Description
1–D–DM:	Deferment for Certain Members of a Reserve Component or Student Taking Military Training.
1–D–EM:	Exemption of Certain Members of a Reserve Component or Student Taking Military Training.
1–HM:	Registrant Not Currently Subject to Processing for Induction or Alternative Service.
1–O–SM:	Conscientious Objector to All Military Service (Separated).
1–WM:	Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.
3–A–SM:	Registrant Deferred Because of Hardship to Dependents (Separated).
4–AM:	Registrant Who Has Completed Military Service.
4–A–AM:	Registrant Who Has Performed Military Service for a Foreign Nation.
4–BM:	Official Deferred by Law.
4–CM:	Alien or Dual National.
4–FM:	Registrant Not Acceptable for Military Service.
4–GM:	Registrant Exempted from Service Because of Death of a Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status.
4–TM:	Treaty Alien.
4–WM:	Registrant Who Has Completed Alternative Service.

JUDGMENTAL CLASSIFICATIONS

Classification	Description
1–A–OM:	Conscientious Objector Available for Noncombatant Military Service Only.
1–OM:	Conscientious Objector to all Military Service.
2–AM:	Registrant Deferred Because of Essentiality of Occupation.
2–DM:	Registrant Deferred Because of Study Preparing for the Ministry.
3–AM:	Registrant Deferred Because of Hardship to Dependents.
4–DM:	Minister of Religion.

Annex G—Health Care Specialties Code List With Instructions

Registration Requirement. If you were qualified or working in any of the health care specialties listed below at any time after MM/DD/YY, you are required to register with the Selective Service System. The only exclusion is if you currently are officially disqualified from engaging in such work. Subspecialists who are qualified in a basic specialty shown on this list are to register in that basic specialty; for example, those qualified as hand surgeons (a subspecialty) are to register as orthopedic surgeons (basic specialty). Register in only one health care specialty—the specialty in which you have the highest education and/or greater experience.

Job Categories (Specialty Titles). Your actual specialty, or job category, may be different from those titles listed. Some other frequently used titles are included in the column on the right to assist you in identifying the specialty that best fits your category. Enter in the applicable space the code number which most closely identifies your health care specialty title. The code number you designate will be entered into your registration record. When you receive your registration acknowledgment that code number will be shown along with the name of the corresponding specialty.

Multiple Qualifications. If you are qualified in more than one specialty enter the code for the one appearing on this list which required the highest education and/or greater experience.

Change/Correction of Specialty—Proof Required. Once registered with Selective Service in a health care specialty you are required to submit written proof to change your specialty as recorded at Selective Service. The proof should be a copy of one of the following, as appropriate: professional license, specialty certification, certificate of board eligibility/certification, or statement from your employer.

Loss of Authorization to Perform in Specialty in Which Registered. If, after registering in a specialty, you lose your official license, certification, or other form of authorization to perform in that specialty, you must provide Selective Service with a copy of the official document cancelling your license, certification or other form of authorization. If you are still permitted to engage in another health care specialty, you must change your specialty code to reflect the specialty in which you are still authorized to perform health care services if it is on this list (and submit proof of qualification in that specialty following the above instructions for change/correction of specialty).

Some other frequently used titles which are included in this specialty (To Be Determined)

Code	Specialty
Health care specialists/technicians:	
32110	Animal Health Specialist/Technician.
32600	Biomedical Equipment Maintenance & Repair Specialist/Technician.
31100	Biomedical Laboratory Specialist/Technician (to include all subgroups).
33000	Dental Care, General, Specialist/Technician.
33100	Dental Laboratory Specialist/Technician.
32500	Diet Therapy/Hospital Food Service Specialist/Technician.
32200	Environmental Health Specialist/Technician.

Code	Specialty
34010	Medical Admin Specialist/Technician (includes Medical Record Technician or Librarian).
30000	Medical Care and Treatment Specialist/Technician.
34020	Medical Supply/Logistics Specialist/Technician.
30200	Mental Health/Psychiatric Specialist/Technician.
30320	Occupational Therapy Specialist/Technician.
32300	Ophthalmology/Optometry Specialist/Technician (and all subgroups).
30410	Orthopedic Specialist/Technician.
31200	Pharmacy Specialist/Technician.
30310	Physical Therapy Specialist/Technician.
31300	Radiology Specialist/Technician.
30100	Surgery Specialist/Technician (and subgroups).
Physicians:	
61020	Allergy and Immunology.
61040	Anesthesiology.
61010	Aviation/Aerospace Medicine.
61240	Colon and Rectal Surgery.
61070	Dermatology.
61030	Emergency Medicine.
61120	Internal Medicine General.
61310	Neurological Surgery.
61130	Neurology.
61170	Ophthalmology To Include Subspecialties.
61320	Orthopedic Surgery To Include all Sub-specialties.
61190	Otolaryngology.
61200	Pathology Includes all Sub-specialties.
61230	Preventive Medicine.
61250	Psychiatry To Include All Subspecialties.
61270	Radiology.
61301	Surgery General.
61341	Thoracic Surgery.
61360	Urology.
Dentists:	
63020	Endodontics.
63110	General Dentistry.
63030	Oral Pathology/Diagnosis.
63040	Oral Maxillofacial Surgery.
63070	Periodontics.
63080	Prosthodontics.
Registered Nurses:	
65090	General and Other Nurses.
65070	Mental Health Nursing.
65020	Nurse Anesthetist.
65030	Operating Room Nurse.
Veterinarians:	
67000	Veterinarians Includes All Subspecialties.
Allied Health Specialties (requires degree):	
68010	Audiology and Speech.
68020	Biomedical Laboratory Services Includes All Sub-Specialties.
68100	Diet Therapy.
68031	Entomology.
68030	Environmental Health Services.
68062	Occupational Therapy.
68061	Physical Therapy.
68110	Physician Assistant.
68080	Physiology.
68090	Podiatry.
68071	Psychology (Clinical).

Annex H—Health Care Registration Acknowledgment (Prototype)

Selective Service System, P.O. BOX 4739, NORTH SUBURBAN, IL 60197–4636.

Selective Service System—Health Care Registration Acknowledgment Letter

March 21, 199X

5–00000211–8 10 60128–000001
John Calvin Lindsay,
Rt 5 Medical Center Rd, Medicalville, KY 42701.

Dear Health Care Registrant: This is your Health Care Registration Acknowledgment Letter; keep it as proof of your registration with the Selective Service System. This letter and enclosed Correction/Change Form (SSS Form 3B-HC) both reflect the information currently in your record. You have been assigned the Health Care Registrant Selective Service Number shown below. If you write to Selective Service be sure to include this number for identification purposes. The specialty title shown below is based on the specialty code selected and may not exactly match your actual title.

If there are errors or omissions in the information shown, immediately submit corrections on the enclosed form. IF YOUR HEALTH CARE SPECIALTY IS INCORRECTLY SHOWN, PROOF OF YOUR CORRECT SPECIALTY IS REQUIRED IN ORDER TO CHANGE IT (see enclosure for specialties, codes and further instructions). Proof is also required in connection with changes to your name or date of birth. Send SSS Form 3B-HC showing corrections (and any required proof) to the address shown above. Within about three weeks you should receive a new Registration Acknowledgment Letter showing the corrections made to your record. Call Selective Service at 708–688–6888 if you have not received a new letter after five weeks.

If the information shown is correct, save the enclosed SSS Form 3B–HC for reporting any future changes. Federal law requires that, until you reach age 45, you maintain correct information in your record. You are required to notify Selective Service of changes in any of the information in your record within 10 days after the change.

Failure to maintain a correct registration record violates the Military Selective Service Act. The maximum penalty for a violation of that Act is a $250,000 fine or five years in prison or both.

If corrections are necessary, complete the attached form and mail it to: Selective Service System, P.O. Box 4639, North Suburban, IL 60197–4639.

REGISTRATION RECORD INFORMATION

Selective Service No.	Date of birth	Social Security Account No.	Phone	Sex	Specialty code	Last action date
5–00000211–8	05–16–60	431–35–6054	501–423–2684	M	34010	07–08–90

Specialty Title: Medical Admin Specialist/ Technician (Includes Medical Record Tech/Libr)

Current Address
Rt 5 Medical Center Road, Medicalville , KY 42701

Permanent Address
Rt 5 Medical Center Road, Medicalville, KY 42701

Other Information:

Classification	Priority selection group—(PSG)	PSG end date*	Random sequence #
1–HM 1	1	07–07–91	366

*For further information on Priority Selection Group see the "Information for Health Care Registrants" booklet available at Post Offices. If you need information not in that booklet, contact the nearest Selective Service office or call 708–688–6888.

Robert W. Gambino
Director
SSS Form 3A-HC (Date) (Proposed Prototype)
OMB

Selective Service System—Health Care Registration Correction/Change Form

If corrections/changes are necessary, complete this form and mail to: Selective Service System, P.O. Box 4639, North Suburban, IL 60197–4639.

1. *General:* Use this form to update information in your Selective Service Health Care Registration Record. Correct any incorrect information shown below. Enter any missing information. If you have more than one of these correction/change forms, use the one with the most recent "Last Action Date."

2. *If information below is complete and correct:* Retain this form for possible future use.

3. *If update is needed:* Write in the correct information below the incorrect information, sign and mail this form to Selective Service in the enclosed envelope. NOTE: A CHANGE IN SPECIALTY REQUIRES PROOF. SEE THE ENCLOSURE FOR A LIST OF SPECIALTY CODES AND INSTRUCTIONS. Proof is also required in connection with a change in name or date of birth.

4. *Specialty title:* Your specialty title, shown below, was automatically printed using the specialty code you previously selected. This title was printed here only to assist you in ensuring that you entered your correct specialty code. Because of differences in titles used by different health care organizations, this specialty title may not exactly match your actual title. You may change your specialty title only by writing in a different specialty code and submitting it with the necessary proof.

5. *Not for other personal information:* DO NOT use this form to submit additional information about yourself or your situation. If such information is needed, we will contact you.

6. *For information/questions:* For further information, see the "Information for Health Care Registrants" booklet available at Post Offices (if overseas, at U.S. embassies and consular offices). If you need information not in that booklet, contact the nearest Selective Service office or write or call the Registration Information Office, P.O. Box 4638, North Suburban, IL 60197–4638 (708–688–6888).

7. *For active duty uniformed service personnel only:* While on active duty, a uniformed service member must keep registration record information correct as to name, date of birth, and Social Security Account Number. If you submit a change, please also update your current mailing address, if necessary, so that we may mail you a new Acknowledgment Letter and Correction/Change Form.

Selective Service No.	Date of birth	Social Security account No.	Phone	Sex	Specialty code	Last action date
5–00000211–8	05–16–60	431–35–6054	501–423–2684	M	34010	07–08–90

Name: John Calvin Lindsay.
Specialty Title: Medical Admin Specialist/ Technician (Includes Medical Record Tech/ Libr).
Current Address: Rt 5 Medical Center Road Medicalville, KY 42701.
Permanent Address: Rt 5 Medical Center Road, Medicalville, KY 42701.

(Signature of Health Care Registrant) (Date)
Enclosures (Preaddressed Envelope & Health Care Specialties Code List With Instructions)
SSS Form 3B–HC (Date) (Proposed Prototype)
OMB-####-####

Background—Health Care Occupational Deferments and Advisory Committees

Note: Review of this background is not required to understand the HCPDS concept, but it is provided for those interested in brief historical information.

1. National Policy Declarations by Congress. In the first section of the Military Selective Service Act (MSSA) the Congress declared that the obligations of serving in the armed forces "should be shared generally, in accordance with a system of selection that is fair and just, and which is consistent with the maintenance of an effective national economy." The Congress further declared that, "adequate provision for national security requires maximum effort in the fields of scientific research and development, and the fullest possible utilization of the Nation's technological, scientific, and other critical manpower resources."

2. Presidential Deferment Authority. In providing for the implementation of national policy, the Congress gave the President discretionary authority under subsection 6(h) of the Act to defer the military service obligations of "persons whose employment in industry * * * or other occupations or employment * * * is found to be necessary to the maintenance of the national health, safety, or interest." That subsection also directs that the criteria for deferments be administered uniformly throughout the United States whenever practicable, forbids blanket deferments for entire occupational groups, and requires that a registrant be considered for deferment only on the basis of the registrant's individual status.

3. National Security Council (NSC).

a. *General.* Implementing occupational deferment policy is established by the President through the National Security Council in accordance with Section 4(g) of the MSSA, as amended [50 U.S.C. App. 454(g)], which states: "The National Security Council shall periodically advise the Director of the Selective Service System (SSS) and coordinate with him the work of such State and local volunteer advisory committees which the Director of Selective Service may establish, with respect to the identification, selection, and deferment of needed professional and scientific personnel and those engaged in, and preparing for, critical skills and other essential occupations. In the performance of its duties under this subsection the National Security Council shall consider the needs of both the Armed Forces and the civilian segment of the population."

b. *Recommendation in 1967 on Greater NSC Role.* In 1967, the Civilian Advisory Panel on Military Manpower Procurement recommended to the Congress that legislation be enacted calling for the NSC to play a greater role in the identification of essential activities and critical occupations.[1]

[1] *Civilian Advisory Panel on Military Manpower Procurement Report to the Committee on Armed Services, House of Representatives,* February 28, 1967, at pages 12–13, states the following concerning occupational deferment policy:

"1. On November 30, 1966, there were 236,590 occupational deferments. These included a variety of skills, a number of unskilled, and about 20,000 apprentices. The deferred individuals were involved in industry, science, engineering, and health resources:

c. *Most Recent NSC Advice.* Dr. Henry A. Kissinger's memorandum of April 23, 1971, copy at Enclosure 1, contains the most recent NSC advice to SSS on health care personnel to be considered for deferment. However, as shown by the first two "considerations" in Enclosure 1, as well as by the materials at Enclosure 2, such advice was generally based on recommendations from several Federal agencies and supplemented by counsel from a Presidentially-appointed national advisory committee.

4. Department of Health and Human Services (HHS) Role.

Section 801(3), E.O. 12656, "Assignment of Emergency Preparedness Responsibilities," designates HHS as the Federal agency responsible for planning for the allocation of health care personnel between the military and civil sector in a national mobilization emergency. During interagency coordination, HHS representatives informally concurred [2] with the provisions in the broad concept for HCPDS published in 1989, including:

—Health care personnel essentiality deferments.

—The use of health care advisory committees to accomplish peer review of any claims for health care occupational deferment to ensure that local boards exercising judgmental deferment authority were equipped with professional advice as to the necessity of the claimant's continued service in a civilian health care role.

5. Federal Emergency Management Agency (FEMA) Role.

Section 1701(6), E.O. 12656, indicates that FEMA has the broad role of coordinating "the implementation of policies and programs for efficient mobilization of Federal, State, local, and private sector resources in response to national security emergencies."

6. SSS Role.

SSS traditionally has been a mechanism by which the needs of the armed forces have been balanced with those of the civil sector. This balancing was accomplished by SSS Local Boards either granting or denying deferment claims stating that a person's continued service in a civilian capacity was essential to the community's health care delivery system, or otherwise essential to the national interest. Under the HCPDS, the Director of Selective Service generally would implement occupational deferment policies established by the Congress and the President, or recommended by the NSC, rather than independently establish such policies.[3]

7. Historical Perspective on National and State Advisory Committees.

a. *Initial Statutory Authority and Responsibilities.* Authority for the National Advisory Committee to the Selective Service System on the Selection of Physicians, Dentists, and Allied Specialists and for State Volunteer Medical Advisory Committees was added to the Selective Service Act of 1948,[4] as amended, and later became section 4(j) of the MSSA.

b. *First National Advisory Committee.* On October 4, 1950, by Executive Order (EO) 10166, President Truman established the first National Advisory Committee to the Selective Service System on the Selection of Physicians, Dentists, and Allied Specialists and appointed the membership of his Health Resources Advisory Committee to that Committee. The members of the Committee were nationally-recognized leaders in the various health fields.[5] EO 10166 excerpts are at Enclosure 3.

c. *Reconstitution in 1968 of National Advisory Committee.* The National Advisory Committee continued as an advisory committee to the Selective Service System until June 24, 1968, when EO 11415 was promulgated. EO 11415, excerpts at Enclosure 4, established one advisory committee to advise both the SSS and the Office of Emergency Planning of the White House.

d. *Major Responsibilities.* The major responsibilities of the National Advisory Committee under that authority were:[6] advising the Selective Service System with respect to the selection of medical, dental, and allied specialists; coordinating the work of State and local volunteer advisory committees in considering the relative needs of the Armed Forces and of the civilian population for the services of medical, dental, and allied specialists; making determinations with respect to medical, dental, and allied specialists who are recommended for deferment on the basis of community essentiality.

e. *State Advisory Committees.* In October 1950, the National Advisory Committee established a State Volunteer Medical Advisory Committee in each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, New York City, and Southern California. Historically the State Volunteer Medical Advisory Committees were composed of five members: Chairman (M.D.); Dentist; State Health Officer (M.D.), Veterinarian; and, Nurse.[7] Typically, the Chairman of the State advisory committee was the head of the American Medical Association (AMA) organization in the State/political subdivision concerned.[8] Thus,

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"2. The United States Department of Commerce maintains the official list of Currently Essential Activities. The Department of Labor maintains the official list of Currently Critical Occupations.

"3. The list of Currently Essential Activities relates to.—. educational services, . . . health and welfare. . . .

"4. The list of Currently Critical Occupations includes occupational titles which range from physicians . . . and . . . teachers to . . . and veterinarians, among others.

"5. The criterion generally followed in the identification of the Critical Occupation is that persons employed therein are not readily available and are in short supply * * *

"7. The administration of the present system of granting occupational deferments appears to be satisfactory and no evidence of abuse was presented. However, there is evidence of lack of uniformity among local boards in the identification and determination of critical skills, occupations and professions. The Panel believes that the determination of those to whom occupational deferments are granted is a matter of highest importance in the proper utilization of our most skilled human resources, especially those in shortest supply.

"8. Both our national security and the armed forces require the wise and effective use of our national supply of highly specialized and highly skilled manpower. Decisions concerning the best use of our most skilled manpower should be made where the issues of total national security are the primary consideration—not just the need and demands of the military forces *per se*.

"9. Therefore, the Panel recommended that the Congress amend the legislation establishing the National Security Council to provide for establishing a national manpower resources board, reporting to the National Security Council, to determine and promulgate lists of highly essential and critically-needed categories of occupations and professions, and to issue appropriate recommendations to the Director of Selective Service to enable local boards to make necessary judgments regarding deferral of each individual employed in or preparing . . . for these critical and essential activities. In this connection, the Panel recommended that final determination and approval of the list of Currently Essential Activities and list of Currently Critical Occupations be vested in the National Security Council . . ."

[2] HHS letter of March 23, 1989, to SSS from J. Jarrett Clinton, M.D. Assistant Surgeon General.

[3] In the past, however, SSS has been more directly involved in the process of making policy on the allocation of manpower between the military and civil sectors. For example, the following was set forth on page 7, Report to the President by the Director, SSS, on the experience of SSS in administering the Selective Service Act of 1948, as extended, for the period July 9, 1950—June 19, 1951: "On January 3, 1951, the President appointed Charles E. Wilson to head a newly created Office of Defense Mobilization (ODM). Among other things, the ODM was given over-all responsibility for manpower policies and their coordination. An Interagency Committee on Manpower Policy was set up by the Director of ODM, to advise him on various problems relating to manpower, *including its allocation to meet both civil and military requirements. The Director of Selective Service was included therein.* This group was also to review Federal policies, plans, and programs relating to manpower as well as proposed legislation and executive orders." (Emphasis added)

[4] Public Law 779, approved September 9, 1950, and commonly known at the time as the "Physicians and Dentists Draft Act," and which provided for the registration, classification, and induction of "certain medical, dental, and allied specialist categories," added this section 4(j).

[5] November 1964 paper, "Summary of World War II and Korea Experience in the Allocation of Professional Personnel to the Military and Non-military Segments of the Population," Frederick J. Haase, Office of the Health Adviser, Office of Emergency Planning, Executive Office of the President, at page 4. This 81-page paper contains substantial historical information, such as the fact that the Procurement and Assignment Service, established on October 30, 1941, to help balance civilian and military needs for certain professionals, was hit with pressing, "Herculean tasks" before it could get properly organized and its staff trained—at page 7. It also reports that certain problems were never fully resolved during WW II.

[6] *Semi-annual Report to the Congress by the Director of Selective Service for the period July 1 1972—December 31, 1972*, at page 50.

[7] Ibid.

[8] From SSS interview of June 15, 1988, with Ms. Jacqueline Gleason (former support staff member to the SSS National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists, former support staff member to the National Health Resources Advisory Board, Office of Emergency Planning, the White House, former Manager, Health Manpower Statistics Branch, HEW, and former Emergency Coordinator, HEW).

significantly, each State advisory committee characteristically had at least two members (Chairman and State Medical Officer) with State-wide knowledge and experience in, and focus on, the particular State's health care needs, resources and delivery system.

f. Local Advisory "Subcommittees."

(1) *Appointment.* Subcommittees were established by the chairmen of the State committees and as many members of the subcommittees were appointed as the State Chairman deemed necessary to carry out the work of his State committee. Generally, particularly in the more populous States, localized subcommittees were formed using county boundaries because the State-level advisory committee lacked sufficient in-depth knowledge about all the State's local health care delivery systems' and their day-to-day situations, which prevented the former from evaluating community essentiality claims with relative confidence.

(2) *Membership.* Typically, each local advisory committee was comprised of membership similar to the State committees, except generally both a county medical officer and the head of the AMA organization in the county were involved—which provided the local subcommittee with the necessary detailed knowledge and experience in, and focus on, the local area's health care needs and delivery system, which enabled it to provide informed advice to local boards on essentiality claims.

(3) *Role.* Like the scientific advisory committees, these local advisory subcommittees were advisory only and "asking or receiving help from them is not an abandonment of the responsibility placed by the Congress upon local boards to classify registrants."[9] The work of these committees consisted of considering and advising as to the availability for service of individual registrants practicing medicine, dentistry, veterinary medicine, or allied specialties. "In other words, a local committee recommends whether a physician, dentist, or veterinarian is available for military service or is temporarily filling, until he can be replaced, a position which is essential to the national health, safety, or interest, either in his community practice, his hospital position, or because of his teaching obligations."[10]

g. Age and Tenure Limits. Originally there were no age or tenure limits for members of the State advisory committees. However, as a result of Public Law (PL) 92–129, September 28, 1971, which amended the MSSA to prescribe age and tenure limits for local and appeal board members,[11] a maximum age limit of 65 years of age and a tenure limit of ten years were self imposed on SSS medical advisory committee members in July 1972.[12]

h. Future Plans as Outlined in 1972. The SSS Director indicated the following "future plans" in a 1972 report to the Congress.[13] "In keeping with the continuing authority under the MSSA, as amended,[14] and current SSS policy, the National Advisory Committee will: monitor the supply and availability of health manpower in order to maintain readiness to provide advice to the SSS for mobilization purposes; provide guidance and training to the State committee chairmen on a periodic basis to maintain the competency of the committees to respond rapidly to future mobilization situations; review the membership of the State Volunteer Medical Advisory Committees annually in terms of age and tenure limits and appoint replacements to maintain each State committee membership as follows: Chairman (M.D.); Dentist; and, State Health Officer (M.D.); maintain and distribute up-to-date State committee membership rosters."

i. Termination of Statutory Basis for Committees and Subcommittees. The statutory basis for the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists, expired on July 1, 1973. This resulted in the termination of that Committee; as well as termination of the several State medical advisory committees.[15]

j. 1973 Plans for State Medical Specialty Advisors to State Directors. In December 1973, to fill the void left by the termination of State medical advisory committees, the SSS Director planned "to provide for the establishment of State medical specialty advisors to the several State Directors." The Director indicated[16] that such advisors would: be selected from among outstanding practitioners in the necessary medical specialties; be appointed based upon recommendation of the State Director of Selective Service; have duties which included making recommendations regarding the community essentiality of medical specialists seeking deferments due to professional occupation during any period of active inductions.

k. National Advisory Committee Reconstituted in 1974. The SSS Director reconstituted that Committee, effective January 1, 1974, as an agency committee.[17] The charter of that reconstituted committee appears at Enclosure 5. Earlier the SSS Director had reported to the Congress: "* * * I have commenced action to reconstitute the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists as an agency committee under the Federal Advisory Committee Act. It is my opinion that if actions to procure health professionals by other than voluntary means become necessary, the experience of this committee will be invaluable. Further, since the procedures by which health professionals are inducted differ from the general induction procedures, I think this committee can render valuable service in the planning for standby beyond fiscal year 1974."[18]

8. Other Potential Essentiality Deferment Occupations.

Except for essentiality to a community's health care delivery system, SSS stopped short of designating other health care occupations as qualifying for a Class 2–AM deferment under any scenario as (a) none were identified by concerned agencies in the coordination leading up to the 1989 concept paper, and (b) such independent designation by SSS would tend to usurp the jurisdiction of concerned agencies and the NSC. Although the Director of Selective Service is empowered to establish other occupational deferments by regulation absent the direction of the NSC, it is unlikely that this would be done for several reasons, such as:

a. Although E.O. 12656 designates the NSC as the President's instrument for developing and administering national security emergency preparedness policy and as the principal forum for consideration of such policy, it also emphasizes the need for interagency coordination of such policy. Ample historical precedent exists to show that the NSC is strongly guided by the occupational deferment policy recommendations of agencies such as HHS. The 1968 recommendation to the NSC,

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[9] *Annual Report to the Congress by the Director of Selective Service for Fiscal Year 1955*, at page 23, with reference to scientific advisory committees.

[10] *Annual Report to the Congress by the Director of Selective Service for Fiscal Year 1952*, at page 59.

[11] *Semi-annual Report to the Congress by the Director of Selective Service for the period July 1, 1971–December 31, 1971*, at page 20, which states that prior to the 1971 amendments to the Military Selective Service Act and regulations changes, "Citizens could not be appointed to local or appeal boards unless they were at least 30 years of age. They could not serve beyond their 75th birthday, or for more than 25 years." And that, "The (new) regulations implement the 1971 amendments which limit service on local and appeal boards to 20 years and set a maximum age limit for service at age 65. A minimum age limit of age 18 has been set for appointment to local boards." A revised tenure limit of 20 years for local and appeal board members, effective January 1, 1972, was added to section 10(b)(3) of the MSSA on September 28, 1971, by section 101(26) of Public Law 92–129. However, employment age limits in general, including those established by SSS for local and appeal board members, were considered unconstitutional and set aside pursuant to The Age Discrimination Act of 1975 (PL 94–135) of November 28, 1975. Such age limits were not actually stricken until enactment of the provisions in section 208 of The Uniformed Services Pay Act (PL 97–60) on October 14, 1981.

[12] *Semi-annual Report to the Congress by the Director of Selective Service for the period July 1, 1972–December 31, 1972*, at pages 50–51, which further stated that Public Law 92–129 also provided for the SSS to move to a standby status upon the expected achievement of an all volunteer Armed Forces by July 1, 1973. Effects of the intent of PL 92–129 upon the State Volunteer Medical Advisory Committees were discussed by the National Advisory Committee and (SSS Director) in February 1972. It was decided that the committees should be revised before July 1, 1973, and continue to be maintained on a standby basis after that date, but that age and tenure limits should be instituted and the elimination of the veterinarian and nurse from the State committees, since relatively few nurses and veterinarians had been called in special calls. Chairmen of the State committees could still establish subcommittees with nurses and veterinarians, as well as osteopaths, optometrists, or other health professions as necessary. The new policies, effective July 1, 1972, resulted in 266 separations—184 State committee chairmen or members and 82 subcommittee members.

[13] Ibid, at page 52.

[14] The last extension of section 4(j) of the MSSA, as amended, was to July 1, 1973, pursuant to section 103 of Public Law 92–129.

[15] *Semi-annual Report to the Congress by the Director of Selective Service for the period July 1, 1973–December 31, 1973*, at page 4.

[16] Ibid.

[17] Ibid.

[18] *Semi-annual Report to the Congress by the Director of Selective Service for the period January 1–June 30, 1973*, at page 16.

herein, illustrates the combined signatures of the heads of several concerned agencies and the interagency nature of sensitive and critical manpower issues.

b. Subsequent to the 1967 addition of provisions on NSC advice to the Director of Selective Service in section 4(g) of the Military Selective Service Act (MSSA), as amended, except for the essentiality to a community's health care system deferment currently designated for health care registrants, the Director has not proposed specific occupations for occupational deferment in the absence of NSC advice. Based on April 1971 advice from the NSC, however, the Director instructed Selective Service local boards that medical specialists under induction orders or likely to be selected, whose induction would create a community hardship that the Nation should not accept, should be considered for deferment on the basis of community essentiality.[19] The Director informed the Congress that on May 3, 1971, *"Acting on advice of the National Security Council* the Selective Service System announced that physicians and allied medical specialists subject to the up-coming draft may be considered for deferments based on community essentiality. One of the factors which will determine whether deferments are granted will be evaluations by local medical advisory committees for the areas in which registrants are currently employed. Final determination on whether to reopen and consider individuals for deferments will be made by the local board." (Emphasis added)

c. The NSC's February 1968 advice to the Director of Selective Service on occupational deferments concluded that, among other things: (a) The Secretaries of Defense, Labor, and Commerce should maintain a continuing surveillance over the Nation's manpower needs and identify any particular occupation or skill that may warrant deferment on a uniform national basis; and, (b) the NSC itself was to be notified in such event so that it could consider the need and advise the Director of Selective Service accordingly.

d. The President's April 23, 1970 message to Congress on the nation's system of conscription stated, "It is my judgment, and that of the National Security Council, that future occupational, agricultural and student deferments are no longer dictated by the national interest. I am issuing today an Executive Order to direct that no future deferments shall be granted on the basis of employment. Very few young men at age 19 are in such critical positions that they cannot be replaced." On that same day, April 23, 1970, (a) the President signed Executive Order 11527 amending the Selective Service regulations; and (b) the Director of Selective Service issued Local Board Memorandum 105, which provided in part: "Executive Order No. 11527 requires that as of April 23, 1970 no future deferments will be granted for the following classifications: (a) Occupational deferments based on employment; * * * Until further notice from the Director of Selective Service local boards will not issue any new deferments on the basis of occupation, except as indicated in subparagraphs (a) and (b) below. The Director of Selective Service and the National Security Council have decided that no occupations are now critical or essential to the nation, as defined by Section 1622.22 of the regulations." (The exceptions listed were limited to cases where, before April 23, 1970, a II–A deferment had been granted or a request for occupational deferment had been received or postmarked."

e. FEMA's Major Emergency Action HS–HR–03, "Defer Workers with Critical Skills from Conscription," currently states, "The decision on which occupations would be deferred would rest with the Director, SSS, with the advice of the NSC."

f. Occupational deferments have been a source of debate. This was particularly so during the Vietnam Era. The elimination of occupational deferments, as well as student and paternity deferments, was a significant consideration in major outside studies of the draft and among the more profound resultant reforms of the draft implemented in the early 1970's.

9. Deferment of Government Employees.

a. *Selective Training and Service Act of 1940.* There was some criticism of SSS concerning occupational deferments in general for Federal employees under the Selective Training and Service Act of 1940, as amended, despite the very specific provisions of the statute setting up the same standards for them as for other men.

"The Government was accused of being a haven for 'draft dodgers' and it was contended that Selective Service local boards were unduly impressed by the 'high-sounding names' of Federal agencies and the jobs therein. It was said that occupational deferment was being given to Federal employees even though they were not actually 'necessary, irreplaceable men engaged in essential occupations.' It was also said they were being deferred even when no requests had been made by their 'agency heads.'

"In an effort to standardize the deferment procedure for Government employees in the executive branch of the Government, the President issued Executive Order No. 9309 on March 6, 1943. It provided for committees within individual agencies as well as a central review committee to certify as to the deferment merits of the individual's qualifications for the job as well as the essential nature of the job itself. To establish similar uniformity throughout the other two branches of the Federal Government, Congress enacted Public Law No. 23, approved April 8, 1943, to establish committees in both the judicial and legislative branches. This law further specifically prohibited the System from giving any consideration to deferment for a Federal employee unless a request was presented by authority of the committee in his branch of Government."[20]

b. *Federal Personnel Manual (FPM) Provisions.* FPM provisions call for Federal agencies to "establish and make appointments to standby agency committees on selective service deferment,"[21] and indicates that, ". . . the Department of Labor has overall responsibility for all emergency civilian manpower programs except for health manpower, which is the responsibility of the Department of Health, Education, and Welfare."[22]

5 Enclosures

1. "Memorandum of Advice Respecting Occupational Deferments for Medical and Allied Specialists," April 23, 1971, from Dr. Henry A. Kissinger
2. SSS Local Board Memorandum No. 95, as amended April 23, 1970, "Advice of National Security Council with Respect to Occupational and Graduate Student Deferments" (with attachments)
3. Excerpts from Executive Order 10166, October 4, 1950
4. Excerpts from Executive Order 11415, June 24, 1968
5. Charter (January 1974) National Advisory Committee to the Selective Service System on the Selection of Physicians, Dentists, and Allied Specialists

Enclosure 1 to Background—NSC's 1973 Advice—April 23, 1971—Memorandum of Advice Respecting Occupational Deferments for Medical and Allied Specialists

In accordance with Section 4(g) of the Military Selective Service Act of 1967, and Section 1622.22(a) of Title 32 of the Code of Federal Regulations, the National Security Council advises

It is in the national interest that procedures be instituted for granting deferments for medical and allied specialists subject to special induction calls under the standards enunciated in Section 1622.23(a) of Title 32 of the Code of Federal Regulations.

These recommendations are based on the following considerations:

The National Health Resources Advisory Committee—National Advisory Committee to the Selective Service System on the selection of physicians, dentists, and allied specialists under its authority granted in Section 4(j) of the Military Selective (Service) Act, 1967, has concluded that a civilian need exists to defer certain doctors who are essential to and irreplaceable in their communities.

The Secretaries of Defense, Labor, Commerce and Health, Education, and Welfare concur in this finding.

The National Security Council has reviewed this conclusion in light of its memorandum of advice of February 15, 1968

[19] Provided they were engaged in that critical work on February 25, 1971, or that a contract for their services had been made by that time. The Director reported to the Congress that, "We instructed local boards, in their review of these requests for deferment, to seek the advice of the medical advisory committee in the State where the man was working. I have required that a deferment be granted only when the registrant is involved directly in patient care and when the removal of the man would cause an extreme shortage of an especially critical community service for which no replacement can be recruited."

[20] *The Selective Service Act, Special Monograph No. 2, Volume II, Chapters X–XXIV,* Selective Service System, 1954, at page 769–770.

[21] *FPM Chapter 910, "Mobilization Readiness,* paragraph 1–3b(12), at page 910–4 (December 1982).

[22] *FPM Supplement 910–1, Book 1, "Emergency Preparedness Planning,"* Chapter 1, paragraph C, at page 1–6 (undated (1971)).

and is in agreement with it. It stresses, however, that the critical needs of the Armed Forces in this time of strife are equally compelling and cannot be allowed to suffer with the implementation of this advice.

The National Security Council limits this advice regarding deferments solely to medical and allied specialists whose occupation has been found by the applicable state medical advisory board to represent an especially critical community service and to cases where a replacement cannot be found by the community involved in the time allotted by a postponement of induction.

Henry A. Kissinger

Enclosure 2 to Background—SSS Local Board Memorandum No. 95 (April 23, 1970)

National Headquarters, Selective Service System, Washington DC 20435.

Law: Sec. 4(g), Sec. 6(h)(2)—SSS Reg. 1622.20, 1622.21, 1622.22, 1622.23, 1622.23a, 1622.24, 1622.26.

Local Board Memorandum No. 95, Issued: April 19, 1968, As Amended: April 23, 1970.

Subject: Advice of National Security Council with Respect to Occupational and Graduate Student Deferments

1. Under advice received February 16, 1968, from the National Security Council with respect to occupational deferments, the lists of essential activities and critical occupations are suspended.

2. With respect to graduate school deferments, the National Security Council advises that it is not essential for the maintenance of the National health, safety, or interest to provide student deferments for graduate study in fields other than medicine, dentistry, and allied medical specialties; except that this recommendation does not affect existing regulations governing deferment for graduate students who entered their second or subsequent year of graduate study in the fall of 1967. It does affect students graduating from college this year, as well as those who entered the first year of graduate school last fall. I concur in the recommendation made by the Council.

3. For the information and guidance of all Selective Service personnel, the full text of the memorandum of advice from the National Security Council is attached to this Local Board Memorandum and is made a part of it.

(S) Curtis W. Tarr

Attachments Retained in Transmittal Memorandum No. 132 (TM 139).

National Headquarters, Selective Service System, Washington D.C. 20435. Law: Sec. 4(g), Sec. 6(h)(2)—SSS Reg. 1622.20, 1622.21, 1622.22, 1622.23, 1622.23a, 1622.24, 1622.26 *Local Board Memorandum No. 95, Issued: April 19, 1968.*

Subject: Advice of National Security Council with Respect to Occupational and Graduate Student Deferments

1. Under advice received February 16, 1968, from the National Security Council with respect to occupational deferments, the lists of essential activities and critical occupations are suspended, *leaving each local board with discretion to grant, in individual cases, occupational deferments based on a showing of essential community need.* (Emphasis added)

2. With respect to graduate school deferments, the National Security Council advises that it is not essential for the maintenance of the National health, safety, or interest to provide student deferments for graduate study in fields other than medicine, dentistry, and allied medical specialties; except that this recommendation does not affect existing regulations governing deferment for graduate students who entered their second or subsequent year of graduate study in the fall of 1967. It does affect students graduating from college this year, as well as those who entered the first year of graduate school last fall. I concur in the recommendation made by the Council.

3. For the information and guidance of all Selective Service personnel, the full text of the memorandum of advice from the National Security Council is attached to this Local Board Memorandum and is made a part of it.

(S) Lewis B. Hershey, *Director*

Attachment (TM 132)

National Security Council, Washington, D.C. 20506, February 15, 1968. Memorandum for the Director of Selective Service.

In accordance with the Military Selective Service Act of 1967, attached is the advice of the National Security Council with respect to occupational and graduate student deferments.

(S) Bromley Smith, *Executive Secretary*

Attachment (TM 132).

National Security Council, Washington, D.C. 20506. Memorandum of Advice Respecting Occupational and Graduate School Deferments

I. *Background*—In accordance with Section 4(g) of the Military Selective Service Act of 1967, the National Security Council has for some time been considering the advice it should render to the Director of the Selective Service System with respect to occupational and graduate student deferments, after giving specific consideration to the needs of both the Armed Forces and the civilian segment of the population. For this purpose, the Council also sought the judgments of the Secretary of Health, Education and Welfare, the Secretary of Labor, and the Secretary of Commerce.

II. *The Issues Considered*

—Will the manpower needs of the Armed Forces and the civilian population best be served by retaining, modifying, or suspending the "List of Currently Essential Activities" and "I. List of Currently Critical Occupations"?

—Is it essential to the national health, safety and interest to provide student deferments in fields of graduate study other than the medical, dental and allied medical specialties?

III. *Conclusions*—A. *Occupational Deferments*—The National Security Council advises that:

—Deferments based on the lists of essential activities and critical occupations should be suspended.

—The Secretaries of Defense, Labor, and Commerce should maintain a continuing surveillance over the Nation's manpower needs and identify any particular occupation or skill that may warrant qualifying for deferment on a uniform national basis. When any such occupation or skill is so identified, the Council will be notified so that it may consider the need and advise the Director of the Selective Service System accordingly.

This recommendation is based on these considerations:

—The needs of the Armed Forces do not now require such occupational deferments.

—The needs of the civilian economy do not now require such occupational deferments.

—The inherent inequity, at a time when men are called upon to risk their lives for the nation, in any such occupational deferments from military service which may in practice turn into permanent exemptions.

—The lack of justification for such deferments lists as evidenced by the fact that more than half the occupational deferments actually granted are to men in occupations not on the "List of Currently Essential Activities" and "List of Currently Critical Occupations".

B. *Graduate Students*—The National Security Council advises that:

—It is not essential for the maintenance of the national health, safety and interest to extend student deferments for graduate study to fields other than medicine, dentistry and the allied medical specialties, where deferment is now required by Selective Service regulations.

—The Secretaries of Defense, Labor, Commerce, and Health, Education, and Welfare will maintain a continuing surveillance over the Nation's manpower and educational needs to identify any area of graduate study that may warrant qualifying for deferment in the national interest. When any such field is so identified, the Council will be notified so that it may consider the need and advise the Director of the Selective Service System accordingly.

This recommendation does not affect existing regulations gove: ng deferments for graduate students who entered their second or subsequent year of graduate study in the Fall of 1967. It does affect those students graduating from college this year, and also those who entered the first year of graduate school last Fall, since the regulations provide that the latter group were to be deferred for one academic year only.

This recommendation is based on the following considerations:

—Such graduate deferments are not now required in the national interest.

—The unfairness that would result from exempting men in some fields of graduate study and not in others, as well as the accompanying distortions that would result from the tendency to select draft deferred fields of study.

—The inequities that result from graduate deferments because many of those deferments can be pyramided into exemption from military service. This is unfair—particularly in time of armed conflict—to all the young men who do not have the opportunity or the finances to attend graduate school.

—The absence of a significant military manpower need served by graduate school

deferments, in contrast both to (1) undergraduate deferments, which produce a substantial supply of military officers, and (2) graduate school deferments for doctors, dentists and allied medical specialists, many of whom later serve as medical officers in the Armed Forces under the Doctor Draft Law.

IV. *Transmission of Advice*—The National Security Council directs its Executive Secretary to transmit this memorandum of advice to the Director of the Selective Service System, with the concurrence of each of the undersigned. February 15, 1968. (S) Dean Rusk, Secretary of State. (S) Robert S. McNamara, Secretary of Defense. (S) Price Daniel, Director, Office of Emergency Planning. (S) Henry H. Fowler, Secretary of the Treasury. (S) Leonard H. Marks, Director, United States Information Agency. (TM 132)

Department of Labor, Department of Commerce, Department of Health, Education, and Welfare, Washington, D.C. February 14, 1968.

Memorandum for The National Security Council

We have been considering the question whether there is any current justification for maintaining, for deferment purposes, the "List of Currently Essential Activities" and the "List of Currently Critical Occupations".

We find that the needs of the civilian economy do not require deferments based on these lists.

The lack of need of such deferments is further evidenced by the fact that more than half the occupational deferments Actually granted are to men in occupations not on the lists.

Such uniform national deferments are also inherently inequitable—at a time when men are called upon to risk their lives for the Nation, and such deferments from military service may in practice turn into permanent exemptions.

We, therefore, recommend that draft deferments based on the lists of essential activities and critical occupations be suspended.

We also recommend that a continued surveillance be maintained over the Nation's manpower needs, to identify any particular occupation or skill that may later warrant qualifying for deferment on a uniform national basis.

We have also been considering the question whether student deferments now required by law for undergrade work, should be extended to graduate study in fields, other than medicine and dentistry.

We conclude that any such extension of the privilege of deferment from the obligations of military service is not essential for the maintenance of the national health, safety and interest.

As the Marshall Commission found, and as the Congressional Hearings on the draft law evidenced, graduate school deferments may often be pyramided into exemption from military service. This is unfair to the thousands of other young men, who lack the social and economic advantages to pursue graduate study. In a time of armed conflict, it is patently unjust. The injustice would be compounded by allowing some areas of graduate study and not others to qualify for a preferred status of deferments.

Doctors and dentists present a unique situation. There is no inequity involved here because a significantly large percentage of physicians and dentists serve in the Armed Forces after graduation under the Doctor's Draft Law than of any other group subject to the draft.

To keep watch over the situation should critical manpower needs develop, we recommend that a continuing surveillance be maintained to identify any area of graduate study that may later warrant deferment in the national interest.

(S) John W. Gardner, *Secretary of Health, Education, and Welfare*. (S) Willard Wirtz, *Secretary of Labor*. (S) A. B. Trowbridge, *Secretary of Commerce*. (TM 132)

Enclosure 3 to Background—Excerpts From Executive Order 10166—Establishing the National Advisory Committee on the Selection of Doctors, Dentists, and Allied Specialists

Under the authority of section 4(j) of the Selective Service Act of 1948, as amended September 9, 1950, by Public Law 81–779, President Truman ordered, on October 4, 1950, as follows:

"1. There is hereby established the National Advisory Committee on the Selection of Doctors, Dentists, and Allied Specialists (hereinafter referred to as the Committee), which shall be composed of such members as may be appointed by the President, and the chairman of which shall be designated by the President."

"2. In performing its functions, as prescribed by the said section 4(j) of the Selective Service Act of 1948 as amended, the Committee shall consult with the Director of Selective Service and with such other officials and agencies as may be necessary, including the Secretary of Defense and appropriate officials of the Departments of the Army, Navy, and Air Force, the Department of Labor, the National Security Resources Board, and the Federal Security Agency."

"3. All executive departments and agencies of the Federal Government are requested to cooperate with the Committee and to furnish it such available information as it may require for the performance of its duties. * * *"

Section 4(j) had called for the President to establish this National Advisory Committee in order to advise Selective Service, and coordinate the work of subsequent State and local volunteer advisory committees, concerning the selection of needed medical and dental and allied specialists. The National Advisory Committee and the State and local volunteer advisory committees, composed from among individuals who were outstanding in medicine, dentistry, and the sciences allied thereto, were to consider the needs of both the Armed Forces and the civilian population for the services of medical, dental, and allied specialist personnel.

Enclosure 4 to Background—Excerpts From Executive Order 11415—Reconstituting the National Advisory Committee on the Selection of Doctors, Dentists, and Allied Specialists and the Health Resources Advisory Committee

Under the authority of section 303 of the National Security Act of 1947, as amended, and section 4(j) of the Military Service Act of 1967, President Johnson ordered, on June 24, 1968, as follows:

"Section 1.(a) There is hereby established the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists, which shall be composed of such members as may be appointed by the President pursuant to section 3 of this order."

"(b) The Committee shall perform the functions prescribed by section 4(j) of the Military Selective Service Act of 1967, as amended."

"Sec. 2.(a) There is hereby established the National Health Resources Advisory Committee, which shall be composed of such members as may be appointed by the President pursuant to section 3 of this order."

"(b) The Committee shall advise the Director of the Office of Emergency Planning concerning the allocation, utilization, and administration of health resources, including manpower, material, and facilities under various mobilization situations and on problems of the non-governmental health community relating to emergency preparedness. In carrying out these advisory functions, the Committee shall provide advice to the Director concerning, among other things, improved utilization and conservation of health manpower, health manpower data collection and interchange systems, the impact of warlike emergencies on the health industry and health services, the national medical emergency stockpile programs, and the vulnerability of the health industry."

"Sec. 3. The Committees established by this order shall have a common membership consisting of twelve members to be appointed by the President from private life. The President shall designate one of those members to serve as chairman of both Committees. Such members shall, in conformity with section 4(j) of the Military Selective Service Act of 1967, as amended, be selected from among individuals who are outstanding in medicine, dentistry, and the sciences allied thereto."

"Sec. 4.(a) In carrying out their functions, the Committees shall, as appropriate, consult with the Director of Selective Service and such other officials and agencies as may be appropriate, including the Secretary of Defense and officials of the Departments of the Army, Navy, and Air Force, the Department of Labor, the Department of Health, Education, and Welfare, and the Office of Emergency Planning. The Director of Selective Service and the Director of the Office of Emergency Planning shall designate representatives from the Selective Service System and the Office of Emergency Planning, respectively, who shall attend all meetings of these Committees."

"(b) All executive departments and agencies shall cooperate with the Committees established by this order, and furnish them

such available information as the Committees may need for the accomplishment of their functions."

"Sec. 5. The Selective Service System and the Office of Emergency Planning shall, under such arrangements as may be mutually agreed upon, provide administrative and staff support and defray the necessary expenses of the Committees established by this order, including the compensation of members thereof within the limits of applicable law. The Selective Service System shall, within the limits of applicable law, defray the necessary expenses of those State and local Committees which may, in conformity with section 4(j) of the Military Selective Service Act of 1967, as amended, be designated by the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists."

"Sec. 6. In order to permit the establishment of a single membership for the two Committees, the appointment of present members of the two Committees shall expire as of the date of this order. Executive Order No. 10166 and Executive Order No. 10185 are hereby revoked."

In this order, President Johnson noted that: the Health Resources Advisory Committee had been established on August 5, 1950 and been in operation continuously since then; the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists had been established on October 4, 1950; there was similarity in the health manpower advisory functions of the two committees; the members of the Health Resources Advisory Committee had also been designated as members of the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists; the common membership had been designed to avoid any duplication of functions and to minimize the opportunity for conflicting Federal policies or competing requirements on the use of health manpower; the common membership arrangement had been discontinued in 1961 and the two committees had had separate memberships since that time; and, on the basis of experience under both arrangements, it had been determined that the purposes of the two committees would be better accomplished and the public interest better served if they shared a common membership.

Enclosure 5 to Background—National Advisory Committee to the Selective Service System on the Selection of Physicians, Dentists, and Allied Specialists—Charter (January 1974)

Pursuant to the provisions of section 9(c) of the Federal Advisory Committee Act, Public Law 92–463 (1972), the following charter is prescribed for the Selective Service System Advisory Committee on the Selection of Physicians, Dentists and Allied Specialists.

A. The Committee's official designation is the Selective Service System Advisory Committee on the Selection of Physicians, Dentists and Allied Specialists. It is hereinafter referred to as the Committee. The Committee established by this charter shall consist of seven members to be appointed by the Director of Selective Service from private life. The Director shall designate one of those members to serve as Chairman of the Committee. Such members shall be selected from among individuals who are outstanding in medicine, dentistry, and the sciences allied thereto.

B. The objective of the Committee is to provide professional advice to the Director of Selective Service with respect to the selection of needed medical, dental and allied specialist categories of persons when such selection is required by the provisions of the Military Selective Service Act. The Committee's activity is national in scope.

C. The Committee shall terminate at the expiration of the two year period following the effective date hereof unless the Committee is renewed by appropriate action prior to that time.

D. The Committee will submit its reports to the Director of Selective Service.

E. The necessary support for the Committee will be provided by the Selective Service System.

F. The duty of the Committee is to furnish advice to the Director of Selective Service as requested regarding the selection of registrants in medical specialties. In the performance of its functions, the Committee shall give appropriate consideration to the respective needs of the Armed Forces and of the civilian population for the services of medical, dental, and allied specialist personnel; and, in determining the medical, dental, and allied specialist personnel available to serve the needs of any community, shall give appropriate consideration to the availability in such community of medical, dental, and allied special personnel who have attained the 35th anniversary of their birth. It shall also be the duty of the Committee to make determinations with respect to persons in residency training programs who shall be recommended for deferment for the purpose of completing such residency programs, if and when such deferments are authorized by law, and in making such determinations shall give appropriate consideration to the respective needs of the Armed Forces and the civilian population. The determinations and recommendations of the Committee arising from the performance of the above described duties will be solely advisory in nature.

G. The estimated annual operating costs for the Committee in dollars is $13,600 and the estimated annual man-years is 1 year.

H. The estimated number of meetings of the Committee is four and the estimated frequency of meetings is two every 6 months.

I. The Charter file date is January 1, 1974.

Byron V. Pepitone

(A copy of this Charter was published in the *Semi-annual Report to the Congress by the Director of Selective Service for the period July 1, 1973–December 31, 1973*, at page 14. Notice of the establishment of this committee appeared at 38 FR 35549, December 28, 1973.)

[FR Doc. 93–7144 Filed 4–1–93; 8:45 am]

BILLING CODE 8015–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32052; File No. SR–BSE–92–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Revising Its Floor Member Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the Examination Specifications for its Floor Member Examination.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

a. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Floor Member Examination was created as an Exchange regulatory initiative designed to codify, clarify and give specificity to compliance obligations of Exchange members and member organizations. The BSE's Floor Member Examination is a qualifications examination intended to ensure that the individual floor members have the

[1] See Securities Exchange Act Release No. 31736 (January 15, 1993), 58 FR 6026 (January 25, 1993), whereby the Commission granted temporary accelerated approval of the BSE's Floor Member Examination until April 15, 1993.

knowledge, skills and abilities necessary to carry out their job responsibilities. The Examination Specifications detail the areas covered by the exam and break down the proportion of examination questions culled from each area.

Independent floor brokers and specialists who are employed by member firms on the trading floor must take and pass the examination before the commencement of employment on the trading floor in order to be in compliance with the requirements of the Constitution and Rules of the Board of Governors.[2] Floor clerks, with the consent of the Exchange, however have three months from commencement of employment to pass the exam.[3]

2. Statutory Basis

The statutory basis for the Floor Member Examination lies in Section 6(c)(3)(B) of the Act in that it is the responsibility of the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Floor Member Examination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on Floor Member Examination.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–92–10 and should be submitted by April 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7693 Filed 4–1–93; 8:45 am]

BILLING CODE 8010–01–M

[2] The BSE requires that independent floor brokers, specialists and floor clerks pass the Exchange's Floor Member Examination. Independent floor brokers and specialists must first pass the Floor Broker Examination before acting in their respective capacity. See BSE Constitution Art. IX, Sec. 3(d) and Rules of Board of Governors, Chapter XIV, Section 2152(b)(2), Independent Floor Brokers; Chapter XV, section 2155.01 Dealer-Specialists.

[3] The BSE's rules permit a floor clerk to perform limited clerical duties, with the consent of the Exchange, for three months without having passed the Floor Member Examination. See Chapter XIV, section 2153 (iii).02, Floor Clerks.

[Release No. 35–25770]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 26, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 19, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power and Light Company (70–7760)

Mississippi Power and Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, an electric-utility subsidiary company of Entergy Corporation, has filed a post-effective amendment to its application under sections 9(a) and 10 of the Act and Rule 40 thereunder.

By order dated August 30, 1990 (HCAR No. 25140) ("Order"), MP&L was authorized, among other things, to acquire notes from residential, commercial and industrial customers of three programs ("Programs") that it created to meet additional electric utility needs in its service territory. The Programs included the: (1) Space Conditioning Program, which involves the marketing, selling, leasing, financing, acquisition and installation of, and selling service plans and manufacturer's warranties or other maintenance agreements for, space conditioning equipment; (2) Premium Power Program, involving audits of customers' facilities to detect power quality and reliability problems and marketing, selling, leasing and financing the acquisition and installation of surge suppressors, power conditioning products and standby power supplies; and (3) Electrotechnologies Program, involving the marketing, selling, leasing of, financing of and selling service plans in connection with, industrial and commercial equipment utilizing electric power. In connection with these Program, MP&L was authorized to provide customer financing in an amount not exceeding $23 million in the aggregate. Financing under the individual Programs was limited to: (1) $1 million for the Space Conditioning Program; (2) $2 million for the Premium Power Program; and (3) $20 million for the Electrotechnologies Program.

In the two and one-half years in which the Programs have been in effect,

the only significant activity has been in the Space Conditioning Programs. Therefore, MP&L requests, that the $23 million of customer financing previously authorized by the Commission be reallocated among the Programs as follows: (1) $6 million for the Space Conditioning Program; (2) $5 million for the Premium Power Program; and (3) $12 million for the Electrotechnologies Program. The overall limitation on customer financing authorized in the Order would remain unchanged. All other terms and conditions of the Programs, as authorized by the Order, would also remain unchanged.

American Electric Power Company, Inc. (70–7776)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a post-effective amendment under section 12(b) of the Act and Rule 45 thereunder sections 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By Commission orders dated December 7, 1990 and April 3, 1992 (HCAR Nos. 25201 and 25509), the Commission authorized AEP, among other things, to make cash capital contributions ("Contributions") from time-to-time to Columbus Southern Power Company ("Columbus"), an electric public-utility subsidiary company of AEP, from January 1, 1991 through December 31, 1993, of up to $70 million. AEP now requests authorization to increase the total authorized Contributions to Columbus from $70 million to $75 million. In addition, AEP requests authorization to make Contributions from time-to-time to Appalachian Power Company ("Appalachian"), also an electric public-utility subsidiary company of AEP, of up to $25 million through December 31, 1993.

The proceeds of the Contributions will be added to the general funds of Columbus and Appalachian and will be used to pay their general obligations, including expenditures incurred in their various construction projects, and for other corporate purposes.

Consolidated Natural Gas Company (70–8167)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration under sections 6 and 7 of the Act and Rule 50(a)(5) thereunder.

CNG proposes to issue and sell on or before June 30, 1995 up to $400 million principal amount of debentures ("Debentures"). The Debentures will be sold in one or more series at a price, exclusive of accrued interest, which will be not less than 98% nor more than 101% of the principal amount and at an interest rate which will be a multiple of ⅛, 1/10, or 1/20 of 1%. The Debentures will mature in not more than thirty years and will be issued in accordance with the indenture between CNG and Chemical Bank (successor by merger to Manufacturers Hanover Trust Company), as Trustee, dated May 1, 1971. CNG proposes to issue and sell the Debentures either by competitive bidding, including the alternative bidding procedures authorized by the Commission's State of Policy Concerning Application of Rule 50 under the Public Utility Holding Company Act of 1935 (HCAR No. 22623, Sept. 2, 1982), or by an exception to competitive bidding under Rule 50(a)(5) through negotiated public or private offerings. In the event Rule 50 is rescinded as proposed by the Commission in HCAR No. 25668 (Nov. 4, 1992), CNG requests authority to be permitted to issue and sell Debentures under competitive bidding including the aforesaid alternative procedures without prior Commission approval.

The proceeds from the sale of the Debentures will be added to CNG's treasury fund and subsequently used to (1) finance, in part, capital expenditures of CNG and CNG's subsidiaries, (2) finance the purchase of CNG's common stock in the open market, and/or (3) acquire, retire, or redeem securities of which CNG is an issuer without the need for prior Commission approval pursuant to Rule 42 under the Act. CNG states that the proceeds from the sale of the Debentures will not be used to acquire any interest in an exempt wholesale generator as define in section 32(a)(1) of the Act or any interest in a foreign utility company as defined in section 33(a)(3) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7630 Filed 4–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19363; 812–8266]

Thomson Fund Group, et al.; Application

March 29, 1993

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for amendment to prior orders for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Thomson Fund Group (the "Trust"), Thomson Investor Services Inc. (the "Distributor"), and all subsequently organized registered investment companies having the Distributor or an entity controlling, controlled by, or under common control with the Distributor as principal underwriter (the "Subsequent Funds").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) for an amendment to prior orders exempting applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rules 22c–1 and 22d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would amend prior orders permitting the Trust and Subsequent Funds to impose or waive a contingent deferred sales charge ("CDSC") on certain redemptions. Applicants seek to amend the prior orders to permit the waiver of the CDSC (i) in connection with redemptions by certain tax qualified plans, and (ii) in connection with certain periodic redemptions under an automatic withdrawal plan.

FILING DATE: The application was filed on February 9, 1993 and amended on March 11, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 21, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Station Place, 7th Floor South, Stamford, Connecticut 06902.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust. The Trust also is a series company, as described in rule 18f–2 under the Act, which currently offers shares of eleven separate series (the "Funds") for sale to investors. The Distributor serves as the Trust's principal underwriter.

2. The Trust offers a class of shares ("Class B Shares") subject to a CDSC. The CDSC is imposed in reliance upon prior orders granted by the SEC (the "Prior Orders"), which exempt applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rules 22c–1 and 22d–1 thereunder.[1]

3. A CDSC is imposed on Class B shares if an investor redeems an amount that causes the current value of the investor's account for a Fund to fall below the total dollar amount of purchase payments subject to the CDSC. Whether a CDSC is imposed and the amount of the charge depends on the number of years since the investor made a purchase payment from which an amount is being redeemed. In determining whether a CDSC is payable, it is assumed that the purchase payment from which the redemption is made is the earliest purchase payment from which a redemption or exchange has not already been effected. In accordance with the Prior Orders, a CDSC of up to 5% may be imposed on purchase payments made before July 1, 1991. Pursuant to no-action relief granted to the Trust,[2] a CDSC of 1% is imposed on redemptions of purchases made on or after July 1, 1991.

4. As permitted by the Prior Orders, the CDSC is waived for (a) any partial or complete redemption in connection with a distribution (i) upon attaining age 59½ in the case of an individual retirement account ("IRA") or Keogh Plan, or (ii) following retirement under a tax qualified plan other than an IRA or Keogh Plan; (b) redemptions resulting from the tax-free return of an excess contribution to an IRA; (c) any partial or complete redemption following death or disability (as defined in the Internal Revenue Code of 1986, as amended (the "Code")) of a shareholder (including one who owns the shares as joint tenant with his or her spouse) from an account in which the deceased or disabled is named, provided the redemption is requested within one year of the death or initial determination of disability; or (d) redemptions by trustees, officers and employees of the Trust and by employees of the Distributor and the investment manager of the Trust.

5. Applicants request amendment of the Prior Orders to waive the CDSC in connection with redemptions involving a partial or complete redemption by a tax qualified plan in connection with a distribution without penalty under section 72 of the Code. These additional distributions are as follows: (a) Upon attaining age 59½ in the case of a qualified employer retirement plan; (b) as part of a series of substantially equal periodic payments in the case of a qualified employment retirement plan or an IRA; (c) upon separation from service and attaining age 55 in the case of a qualified employer retirement plan; (d) a complete redemption in connection with a distribution from a qualified employer retirement plan in connection with the termination of such plan or the termination of employment and the transfer of assets to another employer's qualified retirement plan or to an IRA; and (e) redemptions arising in connection with a qualifying loan from a qualified employer retirement plan.

6. Applicants also propose to waive the CDSC for certain periodic redemptions pursuant to an automatic withdrawal plan. An automatic withdrawal plan is a plan by which an investor may designate a sum of money to be paid automatically on a monthly or quarterly basis to the investor or another designated person. To be eligible for the CDSC waiver with respect to a redemption from an automatic withdrawal plan, an investor would be required to maintain a minimum balance in his or her account, and the amount of the periodic redemption would be subject to certain maximums established from time to time by the Distributor.

Applicants' Legal Analysis

The Prior Orders granted exemptions from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rules 22c–1 and 22d–1 thereunder. For the reasons described in the Prior Orders, applicants believe it is appropriate to impose the CDSC on redemptions generally and to waive the CDSC on certain redemptions. Applicants now request an amendment of the Prior Orders to the extent necessary to permit the Trust and any Subsequent Fund to waive the CDSC with respect to the waiver categories described above.

Applicants' Condition

Each applicant agrees that as a condition of granting the requested relief, the applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed , adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7694 Filed 4–1–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release Nos. 13825 (Mar. 15, 1984) (notice) and 13877 (Apr. 10, 1984) (order); as amended by Investment Company Act Release Nos. 15136 (June 6, 1986) (notice) and 15187 (June 30, 1986) (order), and 16574 (Sept. 27, 1988) (notice) and 16609 (Oct. 25, 1988) (order).

[2] Thomson Fund Group, *et al.* (pub. avail. Apr. 29, 1991).

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits filed Under Subpart Q During the Week Ended March 26, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 45580.

Date filed: March 22, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 19, 1993.

Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity to permit Delta to continue to provide scheduled air transportation of persons, property and mail between Los Angeles, California, the intermediate point Salt Lake City, Utah and the coterminal points Calgary and Edmonton, Alberta, Canada.

Docket Number: 48428.

Date filed: March 25, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 22, 1993.

Description: First Amendment to the Application of Charter Way Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations and in response to the Department's Request for Additional Information, respectfully requests to amend this application to also request authority to conduct domestic scheduled passenger air transportation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–7721 Filed 4–1–93; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended March 26, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48717.

Date filed: March 23, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/P 0573 dated February 5, 1993. Europe-South East Asia R–1 to R–21.

Proposed Effective Date: April 1, 1993.

Docket Number: 48720.

Date filed: March 24, 1993.

Parties: Members of the International Air Transport Association.

Subject: Comp Telex TG/635—Reso 024f—Italy.

Proposed Effective Date: April 15, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–7722 Filed 4–1–93; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program; Pueblo Memorial Airport, Pueblo, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Director of the Pueblo Memorial Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980).

On September 10, 1992, the FAA determined that the noise exposure maps submitted by the Director of Aviation under part 150 were in compliance with applicable requirements. On March 9, 1993, the Assistant Administrator for Airports approved the Pueblo Memorial Airport noise compatibility program. All of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Pueblo Memorial Airport noise compatibility program is March 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Pueblo Memorial Airport, effective March 9, 1993. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Denver, Colorado.

The City of Pueblo submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Pueblo Memorial Airport. The Pueblo Memorial Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 10, 1992. Notice of this determination was published in the **Federal Register** on September 22, 1992.

The Pueblo Memorial Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that the FAA evaluate and approve this material as a

noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on September 10, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 12 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective March 9, 1993. Outright approval was granted for program elements B–2, B–3, B–6, B–7, B–8, and B–9; program elements A–1 and A–2 were approved as voluntary measures; no action was taken by FAA on program elements A–3 and B–1, and program elements B–4 and B–5 received approval in part.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on March 9, 1993. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Pueblo Memorial Airport.

Issued in Renton, Washington on March 19, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–7739 Filed 4–1–93; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 27151]

Summary of Petition Received; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received and of disposition of petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of a petition filed by United Airlines, Inc. seeking relief from specific requirements of the Federal Aviation Regulations (14 CFR chapter 1 and part 93), and the disposition of that petition. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

DATES: Effective upon publication.

ADDRESSES: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Manager, Air Traffic and Airspace Law Branch, (AGC–230), Regulations Division, Office of the Chief Counsel, 800 Independence Ave., SW., Washington DC 20591; telephone (202) 267–3491.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 30, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petition

Docket No.: 27151
Petitioner: United Airlines, Inc.
Sections of the FAR affected: 14 CFR 93.217(a)(5) and (6), and 93.223(c)
Description of Relief Sought/ Disposition: To prevent withdrawal of takeoff and landing slots from United Airlines, Inc. at Chicago's O'Hare International Airport (O'Hare) for use by carriers engaged in international operations at O'Hare.

Denial, March 30, 1993, Exemption No. 5627

[FR Doc. 93–7848 Filed 3–31–93; 4:15 pm]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use a Passenger Facility Charge (PFC) at Lubbock International Airport, Lubbock, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 3, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern Case, Director of Aviation, city of Lubbock, Texas at the following address: City of Lubbock, Texas, Lubbock International Airport, Rt 3, Box 389, Lubbock, TX 79401

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of Lubbock, Texas, Lubbock International Airport, Director of Aviation, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0610, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 18, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Lubbock is substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 16, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1993.

Proposed charge expiration date: June 1, 2003.

Total estimate PFC revenue: $17,578,382.00.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

Airport Master Plan Update
Purchase Snow Removal Equipment
Security/Access Control and Fencing

Airport Land Acquisition
Airfield Guidance Signs and Emergency Generator, ARFF Clothing and Equipment, and Phase 1 Paved Runway and Taxiway Shoulders.
Passenger Facility Charge Application
Emergency Access Roads and Terminal Apron Access Road
Phase 2 Paved Runway and Taxiway Shoulders
Acquire Airfield Operations Equipment—Ramp Sweeper
Phase 3 Paved Runway and Taxiway Shoulders

Projects to Impose Only PFC's

Runway 17R Runway Protection Zone Land Acquisition
Aircraft Rescue and Fire Fighting (ARFF) Training Area—Burn Pit
Airport Land Acquisition
Conduct Part 150 Noise Study
Commercial Apron and Taxiway
Acquire Airfield Operations Equipment—Backhoe and Dump Truck
Strengthen Taxiway H
Acquire Airfield Operations Equipment
Construct Taxiway W1
Aircraft Deicing Apron and Connecting Taxiway
Acquire Airfield Operations Equipment

Proposed class or classes of air carriers to be exempted from collecting PFC's: Part 135 Charter Operators who operate aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0610.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lubbock International Airport.

Issued in Fort Worth, Texas on March 19, 1993.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 93–7738 Filed 4–1–93; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 62
Friday, April 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning Farm Credit System (FCS) Building Association matters.

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 2, 1993, from 9:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matters to be considered at the meeting are:

Closed Session*

A. New Business

1. FCS Building Association
a. Personnel Matters
b. Personnel Matters—Executive Session.

Date: March 30, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (2) and (6).

[FR Doc. 93–7814 Filed 3–31–93; 10:21 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 10:03 a.m. on Tuesday, March 30, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the probable failure of certain insured banks.

Recommendation concerning an administrative enforcement proceeding.

Matters relating to a certain financial institution and a certain bridge bank.

Matters relating to the Corporation's supervisory activities.

Matters relating to the Corporation's corporate activities.

Personnel matter.

In calling the meeting, the Board determined, on motion of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 30, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–7801 Filed 3–31–93; 9:38 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 15400, March 22, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:

9 a.m., Thursday, April 1, 1993
9 a.m., Friday, April 2, 1993

CHANGES IN THE MEETING: The following topic was added to the agenda during the closed portion of the meeting.

- Federal Home Loan Bank Presidents' 1992 Incentive Compensation Awards

The above matter is exempt under Section 552b(c)(6) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–7820 Filed 3–31–93; 12:00 pm]

BILLING CODE 6725–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 5, 1993.

Open meetings will be held on Monday, April 5, 1993, at 9:30 a.m. and on Wednesday, April 7, 1993, at 10 a.m., in Room 1C30.

Closed meetings will be held on Monday, April 5, 1993, following the 9:30 a.m. open meeting and on Tuesday, April 6, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, April 5, 1993, at 9:90 a.m., will be:

Oral argument on an appeal by Meyer Blinder, president of Blinder Robinson, Inc., formerly a registered broker-dealer from an administrative law judge's supplemental initial decision. Blinder has appealed from the sanction imposed based upon his violation of the antifraud provisions of the securities laws. For further information, please contact Jonathan E. Gottlieb at (202) 272–2092.

The subject matter of the closed meeting scheduled for Monday, April 5, 1993, following the 9:30 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Tuesday, April 6, 1993, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Reject Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Litigation matter.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, April 7, 1993, at 10 a.m., will be:

1. Consideration of whether to adopt, on a temporary basis, a new exception to Rule 10b–6 and new Rule 10b–6A(T) under the Securities Exchange Act of 1934, which would permit "passive market making" during distributions of certain NASDAQ securities. The new provisions would allow "passive market making" during the two business day "cooling-off" period of Rule 10b–6, that is, the period when Rule 10b–6 otherwise would prohibit such transactions. In general, a passive market maker's bids would be limited by the level of bids of market makers that are not participating in the distribution. Conforming amendments also would be adopted to Rules 502(d) and 508 of Regulations S–K and S–B under the Securities Act of 1933. For further information, please contact Liz Pucciarelli Hensley or Susan H. Schleisner at (202) 272–2848.

2. Consideration of whether to adopt rule 23c–3 under the Investment Company Act of 1940 ("Act"), rule 14e–6 under the Securities Exchange Act of 1934 (the "Exchange Act"), amendments to rule 10b–6 and 13e–4 under the Exchange Act, and whether to publish new staff guide 10 and revised staff guide 2 to Form N–2. Rule 23c–3 will permit closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value, as well as discretionary repurchase offers not more frequently than once every two years. Amendments to rules 10b–6 and 13e–4 will exempt from those rules closed-end repurchase offers pursuant to rule 23c–3 under the Act, and rule 14e–6 will exempt such closed-end repurchase offers from rules 14e–1 and 14e–2.

Consideration also will be given to whether to propose for public comment an amendment to rule 415 under the Securities Act of 1933 (the "Securities Act"), new rule 485A under the Securities Act, and amendments to Form N–2. The amendment to rule 415 would permit continuous or delayed offerings by closed-end investment companies making periodic repurchase offers under rule 23c–3. New rule 485A would provide for automatic effectiveness of post-effective amendments and new registration statements filed by such closed-end investment companies, and amendments to Form N–2 would relate to the proposed new offering and registration procedures. For further information, please contact Robert G. Bagnall at (202) 272–2048.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith (202) 272–2100.

Dated: March 29, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–7846 Filed 3–31–93; 12:34 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
April 2, 1993

Part II

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AB91

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to add a new part 685 to title 34 of the Code of Federal Regulations containing regulations for the Federal Direct Loan Demonstration Program, hereafter referred to as the Federal Direct Student Loan Program (FDSLP). These regulations would implement a new loan demonstration program under the provisions of the Higher Education Act of 1965 (HEA) as reauthorized by Public Law 102–325, enacted on July 23, 1992.

Under this program student and parent loan capital would be provided directly by the Federal Government rather than through private lenders.

The proposed new FDSLP regulations would govern the Federal Direct Stafford Loan Program, the Federal Direct Supplemental Loans for Students Program, and the Federal Direct PLUS Program, collectively referred to as the Federal Direct Student Loan Program.

DATES: Comments must be received on or before May 17, 1993.

ADDRESSES: Comments should be addressed to Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue, SW., (2100 Corridor, L'Enfant Plaza), Washington, DC 20202–5162.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, Telephone: (202) 732–1818. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The reauthorization of the HEA established the FDSLP, a program designed to test the effectiveness of a direct student loan program in comparison to the Federal Family Education Loan programs (FFEL programs), formerly known as the Guaranteed Student Loan Programs. In the FFEL programs, the Secretary works with private lenders and guaranty agencies to provide loans to students and parents of students attending postsecondary schools. In the FDSLP, the Federal government provides loan capital and the Secretary performs those functions performed in the FFEL programs by private lenders and guaranty agencies. These functions will be performed primarily by contractors under the Secretary's direction. Loans will be made under the FDSLP for the period beginning July 1, 1994 and ending June 30, 1998.

The Department of Education (ED) and the General Accounting Office (GAO) will analyze and evaluate the FDSLP and compare this demonstration program to the FFEL programs. At the end of the demonstration period, GAO is required to recommend to Congress whether to modify, continue, expand, or terminate the loan demonstration program and whether to replace all or some of the FFEL programs. In addition, the Secretary is also evaluating the FDSLP and will be making recommendations as appropriate.

Direct student loans are provided under a mandatory part of the Federal budget in the same way that the FFEL programs are funded. This means that participating schools will have access to the loan capital needed for eligible students and parents the schools choose to fund. For the most part, direct student loans will be financed through U.S. Treasury borrowings from the sale of government securities. A small amount of capital, in the form of loan subsidies, will be provided through the appropriations process.

The Secretary's administrative costs for operating the FDSLP have already been appropriated through the end of the demonstration program. This means that there is no uncertainty about whether funding for administrative support is available. Within ED, the FDSLP has a staff dedicated solely to developing, implementing, and overseeing the program.

Direct student loans are a replacement (not an additional) program; that is, each direct loan replaces a loan that could have been made under the FFEL programs. Schools participating in the FDSLP are not eligible to participate in the FFEL programs. However, direct loans will be eligible for consolidation under the Federal Consolidation Program. Direct loans will be made for the period beginning July 1, 1994 and ending June 30, 1998.

The FDSLP consists of the same loan components as the FFEL programs. There is a direct loan counterpart to Federal Stafford loans, Federal Supplemental Loans to Students (SLS), and Federal PLUS loans. The terms and conditions of direct loans, including loan limits, are the same as the terms and conditions of the FFEL programs loans.

The Secretary will select a cross section of schools currently participating in the FFEL programs to participate in this demonstration program. The group of schools selected must have an aggregate FFEL programs loan volume of approximately $500 million in the most recent fiscal year for which data is available. A control group of schools of the same size and characteristics continuing to participate in the FFEL programs will be selected and monitored for comparative evaluation purposes. Schools may form a consortium to apply to participate in the FDSLP, and selected schools may form a consortium to administer the program. Because of the increased loan limits and the projected growth in loan volume, the Secretary estimates that the first-year FDSLP loan volume would be approximately $700 million.

The Secretary proposes that a participating school, acting as an agent on behalf of ED, determine student and parent loan amounts, prepare promissory notes, and disburse funds to borrowers following procedures similar to those used in the FFEL programs. Servicing and collecting direct loans is the responsibility of the Secretary.

In designing the FDSLP, the Secretary has three major goals: (1) To create simple processes and flexible systems for borrowers and schools; (2) to provide adequate administrative support and customer service to borrowers and schools; and (3) to minimize potential liabilities for schools and the taxpayers.

There has been considerable concern over potential liabilities facing schools participating in the FDSLP. In reality, with the exception of handling the promissory note, potential liabilities under the FDSLP are the same as under the Federal Pell Grant Program and the current FFEL programs. For instance, under the Federal Pell Grant and FFEL programs, if a school certifies an award in excess of the amount for which the borrower is eligible, the school is liable for the difference; this is true in the FDSLP as well. An additional area of potential liability to which a school will be exposed in the FDSLP relates to promissory notes. The Secretary proposes that a school be liable for FDSLP funds delivered by the school to a borrower if the school cannot furnish a corresponding completed signed promissory note from the borrower to the Secretary. The proposed regulations prohibit a school from delivering any loan proceeds without first obtaining a completed promissory note from the borrower. It should be noted that many schools currently participate in the Federal Perkins loan program, which also requires that institutions obtain

completed promissory notes from students. Section 685.407 of these proposed regulations sets forth the potential liability that an institution must assume as a condition for participating in the FDSLP.

The Secretary and the GAO will conduct a comprehensive evaluation of the FDSLP and compare this demonstration program to the FFEL programs. The evaluations would also contain recommendations for modifications, continuation, expansion, suspension, or termination of the FDSLP.

Background

The concept of direct lending for student loans is not a new one. Advocates of direct lending cite simplification and standardization among the benefits of a direct lending program. Schools and borrowers would interact with one entity under a direct loan program rather than with multiple guarantors, lenders, and secondary markets that comprise the FFEL programs. In addition, advocates point to the significant savings the Federal Government is likely to experience under a direct lending program. GAO studies indicate that a full-scale direct lending program could save the Federal Government nearly $1 billion per year over current FFEL program expenditures.

The Credit Reform Act of 1990 (CRA) (Pub. L. 101–508, 12 U.S.C. section 661 *et seq*), changed the budget and accounting procedures used by the Federal Government for Federal credit programs. Prior to the passage of the CRA, all loan capital was considered a direct cost in the year in which the capital was obligated. Under the CRA, however, only the subsidy cost over the life of the loans (*i.e.*, interest subsidy and default costs) is considered a program cost. This means that direct loans now are budgeted and accounted for in the same manner as guaranteed loans, thus facilitating cost comparisons between the two types of programs.

When Congress passed the 1992 amendments to the HEA, the FDSLP was authorized to demonstrate the feasibility and cost effectiveness of direct loans. The comparison and evaluation of the FDSLP and the FFEL programs will determine the costs and benefits of the two types of lending programs.

School Selection and Participation

The Secretary will select a group of schools for participation in the FDSLP that represents a cross section of schools participating in the FFEL programs. Schools will have an opportunity to apply to participate in the FDSLP. The Secretary is identifying the types and sources of data currently available within ED in an effort to minimize the information schools would be required to submit in applications.

Initial selection of schools for the demonstration project will be made from the applicant group. If a representative sample of schools cannot be obtained from among the schools that apply, the Secretary is required to select additional schools.

The Secretary is required to consider a number of factors in selecting a cross section of schools, including:

- Institutional control (public, private, proprietary),
- Length of the academic program,
- Highest degree offered,
- Size of the student enrollment,
- Percentage of FFEL programs borrowers,
- Geographic location,
- Annual loan volume,
- Default experience, and
- Demographic composition of the student body.

In addition, the FFEL programs loan volume at schools selected to participate in the FDSLP must not represent an amount more than 15 percent of the amount of loan guarantees of any guaranty agency in the most recent year for which data is available. The Secretary also is not allowed to select schools from a State where the Secretary cannot determine that the guaranty agency designated to serve that State would remain financially sound if those schools are selected.

The Secretary proposes to establish two additional requirements for school participation in the FDSLP:

(a) A school participating in the FDSLP must meet the minimal computer hardware configuration requirements of the Electronic Data Exchange (EDE). (Namely, the Secretary proposes that schools have an IBM-compatible personal computer (PC), 512K RAM, DOS version 3.3 or later, 4 MB space available on a hard disk, a floppy drive, and a 1200, 2400, or 9600 baud Hayes compatible asyncronous modem; or a mainframe computer supporting IBM 3780 RJE protocol and HASP using binary synchronous communications at 2400 and 4800 bits/second; and, a printer that prints on 8½ by 11 inch paper.) Currently, schools participating in the campus-based programs, which include the Federal Perkins Loan Program, the Federal Supplemental Educational Opportunity Grants Program, and the Federal Work-Study Program, must do so electronically, and the majority of schools participating in the Federal Pell Grant Program do so electronically as well. The Secretary proposes that the FDSLP use electronic technology to the maximum extent possible, and that all participating schools communicate electronically with ED from the beginning of the FDSLP. Necessary PC software would be developed by ED and provided to the schools without charge. (Specifications would be provided to schools that prefer to use a computer other than a personal computer.) ED would also provide technical assistance and training to participating schools.

(b) To apply to participate in the FDSLP, a school must have a cohort default rate that is less than 25 percent in at least one of the two most recent years for which default rates have been calculated. The FDSLP is not to serve as a haven for schools that would be subject to sanctions under the FFEL programs. Nevertheless, the Secretary wishes to have some schools with relatively high default rates participate in the FDSLP in order to test the ability of the FDSLP to fulfill the needs of all institutions.

The Secretary invites comment on these requirements for schools to participate in the FDSLP. Specifically, the Secretary would like to know if the computer hardware configuration requirement would mean a substantial number or type of schools might not be able to participate, either individually or through a consortium.

Implementation

ED is in the preliminary stages of developing the FDSLP systems and procedures. These designs are neither complete nor in final form, but the Secretary would like to share with the community a description of the implementation plans to date. Following is a discussion of these plans

Loan Origination

The first FDSLP loans will be made for the period beginning July 1, 1994. Beginning with the 1994–95 academic year, all applications for Federal student aid will go through the Central Processor System (CPS) to determine title IV eligibility. The school would receive an official output from the CPS in the form of a Student Aid Report (SAR) from the student, or an Electronic Student Aid Report (ESAR), which may be on tapes, cartridges, or rosters. With this official output, the school would be able to assemble a financial aid award package.

A school participating in the FDSLP would package FDSLP loans in the same manner as it currently packages FFEL programs loans. In addition, the school

would create a loan-origination record using software provided by the Secretary to reformat the data received from the CPS. The school would be required to add additional data such as type of loan, loan amount, and disbursement dates.

The Secretary is designing the FDSLP system with the goal of providing schools flexibility in administering the program. As schools have different needs, various options would be available. The promissory notes used in the FDSLP will be developed by the Secretary and provided to schools. In the loan origination process, the ED-provided software would allow schools to computer-generate promissory notes and disclosure statements. In addition, the FDSLP servicer will have the capability to develop promissory notes and disclosure statements on behalf of schools and ship them in bulk to the schools.

A student or parent who accepts a FDSLP loan would complete the promissory note and return it to the school; the school may not disburse FDSLP funds to a borrower without a completed promissory note.

Funds Disbursement

A school participating in the FDSLP would draw down loan funds using a process similar to the process for drawing down funds for other ED programs. The FDSLP system would, however, differ from the other ED programs in two ways. First, a school would transmit a specific FDSLP funding request that is separate from its funding requests for other programs. Because FDSLP loan capital comes from both U.S. Treasury borrowings and appropriated subsidy, these funds must be tracked separately, and they cannot be used for purposes other than making FDSLP loans. The actual transmission request and subsequent electronic transfer of funds would be the same as funding for the Federal Pell Grant Program. The Secretary proposes to use the Automated Clearinghouse (ACH) process through the Federal Reserve Banking system to deposit funds in a school's designated bank account. Currently, this process takes an average of 24 to 48 hours from the school's request for funds until the school's actual receipt of funds.

The second difference reflects the entitlement nature of the FDSLP funds. Because the amount of loan capital is determined by the eligibility of student and parent borrowers at a school, there is no maximum funding level authorized for a participating FDSLP school. The FDSLP system would, however, incorporate internal fund controls to monitor school draw-down requests; this would flag any requests that appear excessive and flag schools that have failed to follow reconciliation requirements. These flags would initiate immediate inquiry and intervention.

A school would restrict funding requests to funds needed for disbursements to borrowers over a three-day period. The software provided by the Secretary would compute gross disbursements, origination fees and insurance premiums, and net disbursements on the basis of the loan amount entered by the school. A school's funding requests would reflect the net amount to be disbursed to borrowers.

To disburse funds to a borrower, a school must first ensure that it has on file a completed and signed promissory note. For each loan disbursed, a school would record the actual disbursed amount and the disbursement date in the loan-origination record and transmit all completed loan records and promissory notes to the Secretary. The FDSLP sends a confirmation/disclosure letter to borrowers after each disbursement.

A school would be required to reconcile loan disbursements and draw downs that occurred within a 30-day period by the end of the next 30-day period. To reconcile files, a school's disbursement records must match the FDSLP records. For example, loan records and promissory notes for all disbursements made in July 1994 must be transmitted to the Secretary by the end of August 1994. In addition, the disbursement records plus ending cash balance for that period must equal the amount of funds drawn down during July 1994. The software provided to participating schools will be designed assist schools in this reconciliation process.

Loan Servicing

The Secretary is responsible for servicing and collecting FDSLP loans. The Secretary is designing a system to track a borrower's status beginning with the date funds are disbursed. Accordingly, periodic statements will be sent informing the borrower of the status of his or her account and requesting the borrower to provide the Secretary with any updated information. In addition, a school participating in the FDSLP is required to complete, at least semi-annually, student status confirmation reports (SSCRs) to update the status of its students. This process would be similar to the SSCR process in the current FFEL programs. The software provided by the Secretary also would support and assist this process.

A participating school would be required to follow requirements similar to the FFEL programs requirements related to exit counseling, deferment request processing, recordkeeping, and administrative and fiscal controls.

Repayment terms for FDSLP borrowers are identical to repayment terms under the FFEL programs. At this time design work is not completed for the income-contingent repayment option. The Secretary will propose a mechanism to implement this option in the near future.

The Secretary will exercise special collection efforts for borrowers who become more than 90 days delinquent in repaying a FDSLP loan. Borrowers who default on a FDSLP loan would be subject to all of ED's default-collection activities. At the time of default, the borrower's loan would be transferred to ED's debt-collection system.

Evaluation

The Secretary and the GAO will evaluate the experiences of ED, the participating schools, students, and parents in the FDSLP. The GAO evaluation is required to include an assessment of the experiences of the control group of FFEL programs schools. GAO is required to submit an interim report to Congress not later than January 1, 1997 and a final report not later than May 1, 1998.

Among the factors that the Secretary and GAO may evaluate and compare are the:

- Costs incurred by the Federal Government and schools in each of the loan programs;
- Cost of loan capital in each of the loan programs;
- Administrative burden of each program for the Federal Government and for schools;
- General experience of both borrowers and schools within each of the programs;
- Administrative performance of ED;
- Timeliness and availability of loan capital;
- Delinquency and default rates, as well as the associated costs;
- Effectiveness of the loan origination, delivery, and servicing systems;
- Effectiveness of income contingent repayment; and
- Experiences of schools that participate as part of a consortium.

As a result of the evaluations, the Secretary and GAO would make recommendations concerning: (1) Modifications to the FDSLP; (2) the continuation, expansion, suspension, or termination of the FDSLP; and (3)

replacement of all or some of the FFEL programs.

Summary

As the FDSLP is in many ways very similar to the FFEL programs, the Secretary has, to the extent practical, elected to adopt regulations applicable to the FFEL programs. Accordingly, these regulations are modeled after the regulations governing the FFEL programs. Those provisions affecting only lenders and guaranty agencies are not necessary as those functions are assumed by the Secretary in the FDSLP.

Although the HEA currently does not authorize borrowers attending FDSLP schools to receive unsubsidized Stafford loans, the Secretary has been assured that this was a legislative oversight that is likely to be corrected by a technical amendment. Accordingly, although unsubsidized Stafford loans are not referenced in these proposed regulations, if the technical amendment is enacted unsubsidized loans will be included in the final regulations. The Secretary invites comments on the inclusion and treatment of unsubsidized Stafford loans in the final regulations.

Subpart A—Purpose and Scope

Subpart A is modeled after subpart A in the FFEL programs regulations (34 CFR part 682) and contains a description of what types of loans would be made, the entities involved, and the definitions used in the FDSLP.

Subpart B—School Selection and Participation

Subpart B includes the eligibility requirements for schools participating in the FDSLP and the procedures the Secretary would follow in selecting schools to participate in the FDSLP and in the control group that would be monitored for comparative and evaluation purposes. Schools participating in the FDSLP must have a cohort default rate of less than 25 percent in one of the two most recent years for which cohort default rates have been calculated and must be capable of participating in ED's Electronic Data Exchange. Subpart B also includes procedures whereby a school selected for the FDSLP or the control group may appeal its selection.

Subpart C—Borrower Provisions

Subpart C contains the conditions of borrower eligibility which are identical to the borrower eligibility provisions in the FFEL programs. Those provisions regarding the charges for which FDSLP borrowers would be responsible and the conditions of repayment, including forbearance, are also included in subpart C and are modeled after the FFEL programs provisions regarding repayment. As the provisions regarding deferment are very complex and the eligibility requirements for FDSLP borrowers are identical to those of FFEL programs borrowers, the deferment section (34 CFR 685.305) cross-references the deferment section of the FFEL programs regulations (34 CFR 682.210).

Subpart D—Requirements, Standards, and Payments for FDSLP Schools

Subpart D contains those provisions pertaining to a FDSLP school and is modeled after subpart F of the FFEL programs regulations. One significant difference between subpart D and subpart F of the FFEL programs regulations is that FDSLP schools, in the agreement signed with the Secretary, make a blanket certification that information provided to the Secretary with regard to a borrower's eligibility for a FDSLP loan is correct and consistent with the borrower eligibility requirements in subpart C. If a school participating in the FDSLP wishes to withdraw from the FDSLP it may do so under the procedures contained in subpart B. In order to discourage schools from withdrawing from the FDSLP and skewing the cross section and the evaluation results, the Secretary is proposing that after a school has begun participation in the FDSLP and withdraws it would be prohibited from participating in the FFEL programs for the duration of the demonstration program—the period ending June 30, 1998. Participation in the FDSLP is limited and the participants will be selected in order for a cross section of FFEL programs participants to be obtained. The fiscal control and fund accounting procedures are modeled after 34 CFR 690.81 which contains the fiscal control and fund accounting procedures for the Federal Pell Grant Program.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small institutions of higher education.

Many provisions of the proposed regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed by the regulations. However, these requirements are modeled on existing regulations for Federal Family Education Loan programs and the Federal Perkins Loan Program. Institutions of higher education are therefore familiar with these requirements, and the regulations would not have a significant additional impact on these institutions.

Paperwork Reduction Act of 1980

Sections 685.305, 685.307, 685.401, 685.402, 685.403, 685.404, and 685.408 contain information collection requirements. As required by the Paperwork Reduction Act of 1980 (PRA), the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)) In addition, the application to participate in the FDSLP or the control group will be submitted for review and comment under the PRA.

This notice affects students who apply for Federal student financial assistance authorized by title IV of the Higher Education Act of 1965, as amended, and postsecondary institutions administering the FDSLP. Annual public reporting burden for this collection of information is estimated to average 28 minutes for each of the estimated 334,107 individuals providing information regarding eligibility for a loan or a deferment and 12 minutes for a postsecondary institution for each of the estimated 621,552 responses relating to postsecondary institutions' administration of a student loan program including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in 490 L'Enfant Plaza East, SW., 2100 Corridor, Washington, DC between the hours of

8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To expedite ED's review and response, comments should be identified by specific sections of the NPRM and presented sequentially.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

Dated: March 30, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 685 to read as follows:

PART 685—FEDERAL DIRECT STUDENT LOAN PROGRAM

Subpart A—Purpose and Scope

Sec.

685.100 The Federal Direct Student Loan Program.
685.101 Participation in the FDSLP.
685.102 Definitions.
685.103 Applicability of subparts.

Subpart B—School Eligibility and Selection

685.200 Application instructions for schools to participate in the FDSLP or the control group.
685.201 Requirements for schools to participate in the FDSLP.
685.202 Selection process for schools in the FDSLP.
685.203 Selection process for schools in the control group.
685.204 Appeal procedure for schools selected to participate in the FDSLP or the control group.

Subpart C—Borrower Provisions

685.300 Borrower eligibility.
685.301 Obtaining and repaying a loan.
685.302 Charges for which FDSLP borrowers are responsible.
685.303 Loan limits.
685.304 Repayment of a loan.
685.305 Deferment.
685.306 Forbearance.
685.307 Borrower responsibilities.

Subpart D—Requirements, Standards and Payments for FDSLP Schools

685.400 Agreement between an eligible school and the Secretary for participation in the FDSLP.
685.401 Rules for a school making loans in the FDSLP.
685.402 Correspondence school schedule requirements.
685.403 Disbursing borrowers' loan proceeds and counseling borrowers.
685.404 Determining the date of a student's withdrawal.
685.405 Payment of a refund to the Secretary.
685.406 Withdrawal procedure for schools participating in the FDSLP.
685.407 Remedial actions.
685.408 Administrative and fiscal control and fund accounting requirements for schools participating in the FDSLP.
Appendix A—Addendum to Program Participation Agreement for participation in the Federal Direct Student Loan Program.

Authority: 20 U.S.C. 1087a *et seq.*

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (FDSLP), the Secretary makes loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students.

(2) Federal Direct Supplemental Loans for Students (SLS) Program, which provides loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students.

(b) The Secretary makes a FDSLP loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.101 Participation in the FDSLP.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and technical schools selected by the Secretary may participate in the FDSLP. Participation in the FDSLP enables an eligible student or his or her parents to obtain a loan to pay for the student's cost of education at his or her institution.

(2) A school that is participating in the FDSLP may not certify loans under the Federal Family Education Loan Program, as defined in 34 CFR part 600.

(b) Eligible students who are enrolled at a school participating in the FDSLP may borrow under the Federal Direct Stafford Loan and Federal Direct SLS programs. Parents of eligible dependent students may borrow under the Federal Direct PLUS program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Work-Study Program
Federal Consolidation Loan Program
Federal Direct Student Loan Program (FDSLP)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Supplemental Loans for Students (SLS) Program
Independent student
Parent
State
U.S. citizen or National

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) programs
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the FFEL programs under the Higher Education Act of 1965, as amended, 34 CFR part 682:

Act

Endorser
Expected family contribution
Federal Insured Student Loan Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Post-deferment grace period

(b) The following definitions also apply to this part:

Actual interest rate: The annual interest rate charged on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that may be charged under the Act on a loan.

Borrower: An individual to whom a FDSLP loan is made.

Co-maker: One of two individuals who are joint borrowers on a Federal Direct PLUS loan and who are jointly and severally liable for repayment of the loan.

Default: The failure of a borrower and endorser, if any, or joint borrowers on a Federal Direct PLUS loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: The delivery of loan proceeds by a school to a borrower, either directly or through the crediting of the student's account with the school.

Estimated cost of attendance: The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a FDSLP loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance: (1) The estimated amount of assistance that a student has been or will be awarded, for a period of enrollment for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under Chapters 30, 31, 32, and 35 of Title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Federal Direct Stafford loan eligible for interest subsidies, Federal Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(viii) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL program or FDSLP loan was received, the amount of Federal Stafford, Federal SLS, and Federal PLUS loan proceeds withheld by the lender or the amount of Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loan proceeds withheld by the Secretary on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Federal Direct SLS and Federal Direct PLUS loan amounts;

(ii) Private and state-sponsored loan program loan amounts; and

(iv) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution: The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

FDSLP school: A school that has an agreement with the Secretary under § 685.400 to participate in the FDSLP.

Federal Direct PLUS Program: A loan program authorized by Title IV-D of the Act which provides loans to parents of undergraduate students attending FDSLP schools with loans that have the same terms and conditions as Federal PLUS Program loans.

Federal Direct Stafford Loan Program: A loan program authorized by Title IV-D of the Act which provides loans to students attending FDSLP schools with loans that have the same terms and

conditions as Federal Stafford Loan Program loans.

Federal Direct Supplemental Loans for Students (SLS) Program: A loan program authorized by Title IV-D of the Act which provides loans to students attending FDSLP schools with loans that have the same terms and conditions as Federal SLS Program loans.

Grace period: The period that begins on the day after a Federal Direct Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-time student: A student enrolled in a school that is participating in the FFEL programs or the FDSLP and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Origination fee: A fee, payable by the borrower, that is used to help defray the costs of the FDSLP.

Loan period: The period for which a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan is intended. The loan period must coincide with a bona fide academic term established by the school, for which institutional charges are normally assessed.

Repayment period: (1) For a Federal Direct Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2) For a Federal Direct SLS loan, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, the date the last disbursement is made and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Federal Direct PLUS loan, the period that begins on the date the loan is disbursed and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance.

School: (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) *Promote the availability* means—

(A) Provide a prospective or enrolled student with loan application forms;

(B) Provide other information relating to the FDSLP to a prospective or enrolled student in order to encourage the student to finance his or her education with a FDSLP loan; or

(C) Otherwise use the availability of FDSLP loans as a recruiting or retention tool.

Temporarily totally disabled: The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Totally and permanently disabled: The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student: A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.103 Applicability of subparts.

(a) Subpart A of this part contains general information regarding the purpose and scope of the FDSLP.

(b) Subpart B of this part contains provisions regarding eligibility and selecting schools that will participate in the FDSLP.

(c) Subpart C of this part contains provisions that apply to borrowers in the FDSLP.

(d) Subpart D of this part contains certain requirements that apply to schools in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—School Eligibility and Selection

§ 685.200 Application instructions for schools to participate in the FDSLP or the control group.

A school that wishes to apply to participate in the FDSLP or the control group must apply in accordance with procedures established by the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.201 Requirements for schools to participate in the FDSLP.

(a) A school participating in the FDSLP must be an eligible institution as defined in 34 CFR part 600.

(b) A school participating in the FDSLP must have—

(1) The minimum computer configuration required for participation in the Electronic Data Exchange, which is—

(i) An IBM-compatible personal computer with;

(A) 4 MB space available on a hard disk;

(B) MS-DOS or IBM PC-DOS version 3.3 or later;

(C) One floppy drive; and

(D) A 1200, 2400, or 9600 baud Hayes compatible asyncronous modem; or

(ii) A mainframe computer supporting IBM 3780 RJE protocol and HASP using binary synchronous communications at 2400 and 4800 bits/second; and

(2) A printer that prints on 8-1/2 by 11 inch paper.

(c) A school applying to participate in the FDSLP must have a cohort default rate as defined in section 435(m) of the Act that is less than 25 percent in at least one of the two most recent years for which cohort default rates have been published by the Secretary.

(d) A school applying to participate in the FDSLP must be located in a State.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.202 Selection process for schools in the FDSLP.

(a) *General.* The Secretary uses statistical methodology to ensure that a cross section of schools that participate in the FFEL programs is represented in the FDSLP.

(b)(1) The Secretary groups the universe of FFEL programs participants by various categories into "cells," taking into consideration institutional control, length of academic program, size of student enrollment, percentage of FFEL programs student borrowers, geographic location, annual loan volume, default experience, and demographic composition of the student body.

(2) If a school applies for participation in the FDSLP, it is selected unless there are too many applicant schools from the cell to which the school belongs.

(3) If there are too many applicants from a particular cell, the Secretary makes random selections from among the applicants to give each applicant the same probability of selection.

(4) If there are too few applicants from a particular cell, all applicants are selected, and the Secretary randomly selects additional schools from that cell from among the non-applicants to obtain the desired cross section of schools participating in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.203 Selection process for schools in the control group.

(a) *General.* After determining which schools would participate in the FDSLP, the Secretary selects a control group using a statistical methodology to ensure a cross section of schools from the remaining universe of schools participating in the FFEL programs.

(b) The procedures set forth in § 685.202 to select schools for participation in the FDSLP are also used to select schools for the control group.

(c) The fact that a school applies for participation in the FDSLP but is not selected neither increases nor decreases the school's probability of being selected to be in the control group.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.204 Appeal procedure for schools selected to participate in the FDSLP or the control group.

(a) *General.* A school may appeal to the Secretary to decline its selection to participate in the FDSLP or the control group. Such an appeal must demonstrate good cause (for example, extreme administrative burden) for the Secretary to grant the school's appeal.

(b) A selected school that does not wish to participate must appeal to the Secretary within fifteen (15) days of the date the school is notified of its selection to participate. The Secretary does not grant an appeal that is made after fifteen (15) days of when the school was notified unless the school can demonstrate extenuating circumstances that prevented the appeal from being made on a timely basis.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart C—Borrower Provisions

§ 685.300 Borrower eligibility.

(a)(1) *Student borrower.* A student is eligible to receive a Federal Direct Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(1)(iii) of this section, a dependent undergraduate student, is eligible to receive a Federal Direct SLS loan, if the student is enrolled in an FDSLP school, meets the requirements for an eligible student under 34 CFR part 668, and—

(i) In the case of an undergraduate student who seeks a Federal Direct Stafford loan or Federal Direct SLS loan for the cost of attendance at a school that participates in the Federal Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Federal Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Federal Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(ii) In the case of any student who seeks a Federal Direct SLS loan for the cost of attendance at a school that participates in the FDSLP, has—

(A) Received a determination of need for a Federal Direct Stafford loan, and if determined to have need in excess of $200, has requested a Federal Direct Stafford loan from the school; and

(B) Received a certification of graduation from a school providing secondary education or the recognized equivalent;

(iii) For purposes of a dependent undergraduate student's eligibility for a Federal Direct SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the Federal Direct PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a Federal Direct PLUS loan does not constitute an exceptional circumstance;

(iv)(A) Reaffirms any FFEL programs or FDSLP loan amount that previously was cancelled due to the borrower's total and permanent disability, or that was discharged in bankruptcy, or written off; and

(B) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(*1*) Signing a new promissory note or repayment schedule; or

(*2*) Making a payment on the loan;

(v)(A) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that any FDSLP loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(vi) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, has passed an independently administered examination approved by the Secretary; and

(vii) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(2) *Special conditions for subsidized Federal Direct Stafford Loan borrowers.* (i) To qualify for interest benefits on a Federal Direct Stafford loan, a borrower must demonstrate financial need in accordance with Title IV, Part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Parent borrower.* A parent is eligible to receive a Federal Direct PLUS loan, if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirement of paragraphs (a)(1)(iv) and (a)(1)(v) of this section; and

(7)(i)(A) Does not have an adverse credit history; or

(B) Has an adverse credit history, but has obtained a co-signer who does not have an adverse credit history.

(ii) For purposes of this paragraph (b)(7)(i), an *adverse credit history* means that as of the date of the credit report, the individual is 90 or more days delinquent on any debt.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a Federal Direct SLS loan, Federal Direct PLUS loan, State-sponsored loan or other non-Federal loan obtained for a period of enrollment to replace the expected family contribution for that loan period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.301 Obtaining and repaying a loan.

(a)(1) *Application for a Federal Direct Stafford loan.* To obtain a Federal Direct Stafford loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Stafford loan and the school is willing to make the loan, the school shall obtain a completed promissory note from the student and originate the loan on behalf of the Secretary.

(2) *Application for a Federal Direct SLS loan.* To obtain a Federal Direct SLS loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct SLS loan, and the school is willing to make the loan, the school shall obtain a completed promissory note from the borrower and originate the loan on behalf of the Secretary.

(3) *Application for a Federal Direct PLUS loan.* To obtain a Federal Direct PLUS loan, both the student and the parent shall complete and submit a Free Application for Federal Student Aid. If the borrower is eligible for a Federal Direct PLUS loan and the school is willing to make the loan, the school shall obtain a completed promissory note from the parent and originate the loan on behalf of the Secretary.

(b) *Repaying a loan*—(1) *General.* The borrower is obligated to repay the full amount of the loan, late fees, collection costs, and any interest not subsidized by the Secretary.

(2) *Federal Direct Stafford loan repayment.* Generally, a borrower is not required to make any payments on the principal of a Federal Direct Stafford loan during the time the borrower is in school. If the borrower qualifies, the Secretary subsidizes the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to pay the accruing interest on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan except during authorized periods of deferment.

(3) *Federal Direct SLS loan repayment.* The repayment period for a Federal Direct SLS loan begins immediately on disbursement of the loan. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower requests that repayment on the Federal Direct SLS loan be deferred until the borrower's grace period on the Stafford loan expires. The borrower is responsible for the interest that accrues during the life of the loan.

(4) *Federal Direct PLUS loan repayment.* The repayment period for a Federal Direct PLUS loan begins immediately on disbursement of the loan. The first payment on the principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) *Deferment of repayment.* Repayment of principal on an FDSLP loan may be deferred under the circumstances described in 34 CFR 685.305.

(6) *Default.* If a borrower defaults on a loan, the Secretary adds collection costs to the amount owed by the borrower.

(c) *Cancellation*—(1) *Death.* If a borrower, or the student on whose behalf a parent borrowed, dies, the obligation of the borrower and any endorser to make any further payments is canceled.

(2)(i) *Total and permanent disability.* If a borrower becomes totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled.

(ii) A physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State must certify the borrower's total and permanent disability in order for the loan obligation to be canceled.

(3) *Bankruptcy.* If a borrower has his or her loan obligation discharged in bankruptcy, the obligation of the borrower to make any further payments on the loan is canceled.

(4) *Co-makers.* If a Federal Direct PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.302 Charges for which FDSLP borrowers are responsible.

(a) *Interest.*—(1) *Applicable interest rates under the Federal Direct Stafford Loan Program.*

(i) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has an outstanding balance on a previous Federal Stafford or Federal Direct Stafford loan, the applicable interest rate is the applicable rate charged on that previous loan.

(ii) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford or Federal Direct Stafford loan but has an outstanding balance of principal or interest on a Federal PLUS or Federal SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Federal Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988 the applicable interest rate is 8 percent.

(iii) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford, Federal PLUS or Federal SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Federal Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford loan but has an outstanding balance of principal or interest on a Federal SLS or Federal PLUS loan that was disbursed on or after October 1, 1992 or a Federal Consolidation loan that repaid a Federal Stafford loan for which the first disbursement is on or

after October 1, 1992, the applicable interest rate is 8 percent.

(v) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance of principal or interest on any FFEL programs or FDSLP loan, the applicable rate is a variable rate, applicable to each July 1—June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury Bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vi) For a Federal Direct Stafford loan with an interest rate of 10 percent during repayment, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the Secretary—

(A) Calculates an adjustment in an amount specified under paragraph (a)(1)(vii) of this section; and

(B) Credits the adjustment to reduce the outstanding principal balance of the loan if the borrower's account is not more than 30-days delinquent on December 31 of any year for which an adjustment is payable.

(vii) For the purpose of paragraph (a)(1)(vi), the amount of an adjustment for a calendar quarter is equal to—

(A) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(B) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal); and

(C) Divided by 4.

(viii) For a fixed interest rate Federal Direct Stafford loan made to a borrower with an outstanding FFEL programs loan, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the Secretary—

(A) Calculates an adjustment in an amount specified under paragraph (a)(1)(ix) of this section; and

(B) Credits the adjustment to reduce the outstanding principal balance of the loan if the borrower's account is not more than 30 days delinquent on December 31 of any year for which an adjustment is payable.

(ix) For the purpose of paragraph (a)(1)(viii), the amount of an adjustment for a calendar quarter is equal to—

(A) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(B) Multiplied by the outstanding principal balance of the loan;

(C) Divided by 4; and

(D) Prorated for the portion of the quarter during which the borrower is responsible for the payment of interest on the loan.

(2) *Applicable interest rates under the Federal Direct PLUS Program.* The applicable interest rate on a Federal Direct PLUS loan is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(ii) 10 percent.

(3) *Applicable interest rates under the Federal Direct SLS Program.* The applicable interest rate on a Federal Direct SLS Program loan is a variable rate, applicable to each July 1—June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1—June 30 period, plus 3.1 percent; or

(ii) 11 percent.

(b) *Capitalization.* (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) The Secretary may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period;

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) Under the Federal Direct SLS and Federal Direct PLUS programs, the Secretary requires the borrower to pay on a monthly or quarterly basis, or capitalize on a quarterly basis, interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a FFEL programs or FDSLP loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(4) For a borrower who is in a period of deferment, or a required medical or dental internship forbearance, and has agreed to monthly or quarterly payments of interest, the Secretary capitalizes past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that would accrue through the remainder of that period.

(c) *Origination fee for Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loans.* The Secretary—

(1) Charges a borrower an origination fee on a subsidized Federal Direct Stafford loan not to exceed the maximum rate specified by Federal statute;

(2) Charges a borrower an origination fee on a Federal Direct SLS or Federal Direct PLUS loan of 5 percent of the principal amount of the loan;

(3) Deducts the origination fee from the proceeds of the loan;

(4) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the fee from each disbursement; and

(5) Refunds by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(d) *Insurance premium.* The Secretary—

(1) Charges the borrower an insurance premium of up to 3 percent of the principal amount of the Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan;

(2) Deducts the insurance premium from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the insurance premium from each disbursement; and

(4) Refunds by a credit against the borrower's loan balance the portion of the insurance premium previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(e) *Late charge.* (1) The Secretary requires the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. This charge does not exceed six cents for each dollar of each late installment.

(2) The Secretary requires the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 10 days after it is due.

(f)(1) *Collection charges before default.* Notwithstanding any provisions of State law, the Secretary requires that the borrower or any endorser pay costs incurred by the Secretary or his agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Fees on checks returned due to non-sufficient funds.

(2) *Collection charges after default.* If a borrower defaults on an FDSLP loan, he or she is assessed collection costs under the formula in 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.303 Loan limits.

(a) *Federal Direct Stafford Loan Program annual limits.* (1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed—

(i) $2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) $1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, for that second year may not exceed—

(i) $3,500 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,325 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,175 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(3) In the case of a student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) $3,675 for enrollment in a program of study of at least two-thirds of an academic year but less than an academic year in length; and

(iii) $1,825 for a program of study of at least one-third of an academic year in length but less than two-thirds of an academic year in length;

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed $8,500.

(b) *Federal Direct Stafford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Federal Direct Stafford and Federal Stafford Loan Program loans made to a student may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Federal Direct PLUS Program annual limit.* The total amount of all Federal Direct PLUS loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of education minus other estimated financial assistance for that student.

(d) *Federal Direct PLUS Program aggregate limit.* The total amount of all Federal Direct PLUS Program loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(e) *Federal Direct SLS Program annual limit.* The total amount of all Federal Direct SLS loans, in combination with Federal SLS loans, that a student may borrow for any academic year of study—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(i) $5,000 for enrollment in a program of study of at least a full academic year;

(ii) $3,325 for enrollment in a program of study of at least two-thirds of an academic year but less than a full academic year in length; and

(iii) $1,675 for enrollment in a program of study of at least one-third of an academic year but less than two-thirds of an academic year.

(3) In the case of a graduate or professional student, may not exceed $10,000.

(f) *Federal Direct SLS Program aggregate limit.* The total unpaid principal amount of Federal Direct SLS and Federal SLS loans may not exceed—

(1) $23,000 for an undergraduate student.

(2) $73,000 for a graduate or professional student.

(g) *Minimum loan interval.* The annual loan limits applicable to a student shall apply to the greater of—

(1) The length of the school's academic year; or

(2) Seven consecutive months.

(h) *Treatment of Federal Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Federal Consolidation loan counted against a borrower's aggregate loan limits—

(1) For the Federal Direct Stafford Loan Program, equals the percentage of the original amount of the Federal Consolidation loan attributable to the Federal Stafford and Federal Direct Stafford loans; and

(2) For the Federal Direct SLS Loan Program, equals the percentage of the original amount of the Federal Consolidation loan attributable to the Federal SLS and Federal Direct SLS loans.

(i) In no case may a Federal Direct Stafford, Federal Direct PLUS, or Federal Direct SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Federal Direct Stafford loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.304 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a Federal Direct PLUS loan, the 10-year repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2)(i) For a Federal Direct SLS loan, the 10-year repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(ii) of this section, the first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For a Federal Direct SLS borrower who has not yet entered repayment on a Federal Direct Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Federal Direct Stafford loan.

(3) Except as provided in paragraphs (a) (4) and (5) of this section, for a Federal Direct Stafford loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is 7 percent per year, 9 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school; and

(ii) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(4) For a borrower of a Federal Direct Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 685.402. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 685.402.

(5) A Federal Direct Stafford loan borrower may upon written request begin the repayment period prior to the end of the grace period. In this event, a borrower waives the remainder of the grace period.

(6) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(7)(i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a borrower is entitled to at least 5 years, but not more than 10 years, to repay a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, calculated from the beginning of the repayment period.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 685.305 or § 685.306, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, and 10-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the Secretary a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the Secretary at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by the Secretary, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the Secretary may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1)(ii) and (2) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program and FDSLP loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the Secretary agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance, as described in § 685.306, or deferment, as described in § 685.305, has been approved.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.305 Deferment.

An FDSLP borrower is entitled to the same deferments as an FFEL programs borrower under the conditions specified in 34 CFR 682.210, with references therein to an FFEL programs borrower understood to mean an FDSLP borrower, references therein to a Federal Stafford, Federal SLS, or Federal PLUS loan understood to mean a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, and references therein to a lender understood to mean the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.306 Forbearance.

(a)(1) An FDSLP borrower may receive forbearance from the Secretary if the borrower is willing but unable to make scheduled loan payments. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. A forbearance is granted by the Secretary only if the borrower requests forbearance in accordance with procedures established by the Secretary, and

(i) The Secretary believes that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 685.305 and the Secretary does not subsidize the interest benefits on behalf of the borrower under § 685.300(a)(2).

(2) If two individuals are liable for repayment of a Federal Direct PLUS loan as co-makers, the Secretary grants forbearance only if the ability of both individuals to make scheduled payments has been impaired.

(3) If payments of interest are forborne, they are capitalized.

(b) Upon the written request of a borrower whose eligibility for an internship or residency deferment under 34 CFR 682.210(n) has expired, the Secretary grants forbearance of payment of principal, and, unless otherwise indicated by the borrower, interest, in 12-month intervals, until the borrower

has completed the internship or residency.
(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.307 Borrower responsibilities.

(a) The borrower shall give the school, as part of the origination process for a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan—

(1) A statement, as described in 34 CFR Part 668, that the loan will be used for the cost of the student's attendance;

(2) Information demonstrating that the borrower is eligible for the loan;

(3) Information concerning the outstanding FFEL programs and FDSLP loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(4) A statement authorizing the school to release information to the Secretary relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b) The borrower shall promptly notify—

(1) The Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The school of any change in local address during enrollment.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart D—Requirements, Standards, and Payments for FDSLP Schools

§ 685.400 Agreement between an eligible school and the Secretary for participation in the FDSLP.

(a)(1) *General.* Participation of a school in the FDSLP means that the school's students are eligible to receive FDSLP loans. To participate in the FDSLP, a school must—

(i) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(ii) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(2) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(i) The Act and applicable regulations;

(ii) The Student Assistance General Provisions, 34 CFR Part 668; and

(iii) The Institutional Eligibility regulations, 34 CFR Part 600.

(b) In the participation agreement, the school shall—

(1) Certify that information provided to the Secretary with regard to each student's or parent's eligibility for an FDSLP loan will be correct and consistent with borrower eligibility requirements.

(2) Agree to use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting requested information to the Secretary.

(3) Agree to timely forward promissory notes for loans made under the FDSLP as well as other information required by the Secretary.

(4) Agree to comply with conditions that the Secretary may require for testing income-contingent repayment methods.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

§ 685.401 Rules for a school making loans in the FDSLP.

(a) *General.* An FDSLP school, acting as the agent of the Secretary, is responsible for all loan-making duties, including determining the amount of the loan, processing the promissory note and other required forms, approving the borrower for the loan, explaining to the borrower his or her rights and responsibilities under the loan, and having the borrower sign the promissory note.

(b) (1) A school participating in the FDSLP shall ensure that any information it provides to the Secretary in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate.

(2) The information to be provided to the Secretary by the school about the borrower receiving the loan must include—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.300 and § 685.302;

(ii) The student's estimated cost of attendance for the period for which the loan is sought;

(iii) The student's estimated financial assistance for the period for which the loan is sought;

(iv) For a Federal Direct Stafford loan, the student's eligibility for interest benefits;

(v) For a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, the disbursement date(s) and disbursement amounts of the loan proceeds; and

(vi) The student's loan amount.

(3) A school may not certify a Federal Direct Stafford, Federal Direct PLUS, or Federal Direct SLS loan application, or combination of loan applications, for a loan amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.303; or

(ii) Exceeds the student's estimated cost of attendance, less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Federal Direct Stafford that is eligible for interest benefits, the borrower's expected family contribution for that period.

(4) A school may refuse to certify a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FDSLP loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income.

(5) A school may not assess a fee for the completion or certification of any FDSLP loan data.

(c) *Disbursing a loan.* Before disbursing a loan, a school must determine that all required information has been provided by the borrower and, if applicable, the student. A school may not ask the borrower to sign an FDSLP promissory note before it has been fully completed.

(d) *Promissory note.* (1) The Secretary provides promissory notes for use in the FDSLP and a school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school shall obtain from the borrower an executed legally enforceable promissory note as proof of the borrower's indebtedness.

(3) A school shall give the borrower and any endorser or co-maker a copy of each executed promissory note.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.402 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.403 Disbursing borrowers' loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's disbursement of a borrower's Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) A school may not deliver any loan proceeds without first obtaining an executed legally enforceable promissory note from the borrower.

(2) (i) Except in the case of a late disbursement under paragraph (e) of this section, or as provided in (b)(2)(iii) of this paragraph, a school may disburse loan proceeds only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 685.300, from the beginning of the loan period certified by the school.

(ii) If, after the first disbursement is made to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may make the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iii) If, prior to when the loan is made to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make the first disbursement of the loan and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the proceeds of an FDSLP loan.* (1) The school shall, not more than 30 days prior to the first day of the loan period, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FDSLP program loan to be made, and after the student has registered either—

(i) Disburse the proceeds to the student borrower subject to paragraph (d)(3) of this section; or

(ii) Credit the student's account in accordance with paragraph (d)(2) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(3) of this section not later than 45 days after the disbursement of the funds.

(2) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 685.404(c).

(3) A school may not make the first disbursement of a Federal Direct Stafford or Federal Direct SLS loan to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Federal Direct Stafford, or Federal Direct SLS loan until 30 days after the first day of the student's program of study.

(d) *Disbursing FDSLP loan proceeds.* (1) A school may not make a loan if the student does not register for the loan period.

(2)(i) For purposes of paragraph (c)(1)(ii) of this section, a school may not make the first disbursement of a loan by crediting a registered student's account earlier than 3 weeks before the first day of classes of the loan period.

(ii) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(3) For purposes of paragraph (c)(1) of this section, a school may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the loan period.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in § 685.404(c) shall notify the Secretary of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the Secretary—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of any loan proceeds delivered by the school to the student.

(e) *Late disbursement.* (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the period of enrollment for which the loan was intended; or

(ii) Before the end of the period of enrollment for which the loan was intended but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school may make a late disbursement only if it has received a completed promissory note prior to whichever condition specified in paragraph (e)(1) of this section applies.

(3) Notwithstanding paragraph (e)(2), a school may not make—

(i) A late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to delayed delivery under § 685.403(c)(3);

(ii) A late second or subsequent disbursement of a Federal Direct Stafford or Federal Direct SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(iii) Any late disbursement that under 34 CFR part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(f) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Federal Direct Stafford and Federal Direct SLS borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to making the first disbursement of the proceeds of the first Federal Direct Stafford or Federal Direct SLS loan made to a borrower who has not received a Federal Stafford or Federal SLS loan for attendance at the school and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling

materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming; and

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Federal Stafford, Federal SLS, Federal Direct Stafford, or Federal Direct SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Federal Direct Stafford or Federal Direct SLS loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)–(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Before the delivery of any Federal Direct Stafford or Federal Direct SLS loan disbursement, if a school learns that the borrower would receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Federal Direct SLS, Federal Direct PLUS, or State-sponsored or private loan to cover the expected family contribution, if not already done; or

(2) Reduce the disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.404 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the Secretary the date that the student has withdrawn from the school and for determining when a refund must be paid under § 685.405.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 685.402. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to the Secretary, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)–(b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) 60 days; or

(ii) 6 months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.405 Payment of a refund to the Secretary.

(a) *General.* By applying for an FDSLP loan, a borrower authorizes the school to pay directly to the Secretary that

portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to an FDSLP loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to an FDSLP loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 685.404(b) (1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 685.404(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.406 Withdrawal procedure for schools in the FDSLP.

(a) A school participating in the FDSLP may withdraw if it demonstrates to the Secretary that continued participation in the FDSLP would present an undue burden on the school.

(b) A school that withdraws from the FDSLP may not participate in the FFEL programs through June 30, 1998.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.407 Remedial actions.

(a) *General.* The Secretary requires a school to purchase that portion of an FDSLP loan that is unenforceable, that the borrower was ineligible to receive, or for which, contrary to the school's certification, the borrower was ineligible to receive interest subsidies. The school shall make arrangements acceptable to the Secretary for reimbursement of interest the Secretary has subsidized for any loan determined to be ineligible for interest subsidies. The Secretary requires the repayment of funds and the purchase of loans if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest subsidies, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or purchasing of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FDSLP in accordance with 34 CFR part 668, subpart G.

(e) The Secretary may take any other action necessary to enforce the Secretary's rights under the agreement specified in 34 CFR 685.400.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.408 Administrative and fiscal control and fund accounting requirements for schools participating in the FDSLP.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days—

(i) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(c) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1)(i) Shall keep all records required under the regulations in this part for 5 years following the last day of the borrower's attendance at the school;

(2) Shall keep for 5 years after completion, copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide, in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(d) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 685.103;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Federal Direct Stafford loan for which the borrower applies for interest subsidies under § 685.300, the data used to determine the student's expected family contribution;

(7) In the case of a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan—

(i) The date the school made each loan disbursement and the amount of that disbursement; and

(ii) A copy of the borrower's written authorization required under § 685.403(c)(1) to transfer the initial and subsequent disbursements of each FDSLP loan;

(8) The student's job placement, if known; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a school promptly shall provide the Secretary with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Federal Direct Stafford, or Federal Direct SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter.

(g)(1) *Accounting requirements.* A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1). The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all of the school's other financial activities.

(2) The school shall account for receiving and expending FDSLP funds in accordance with generally accepted accounting principles.

(h)(1) *FDSLP bank account.* The school shall establish and maintain a separate bank account as trustee for the Secretary and the borrower for FDSLP funds. The account shall require the written approval of the borrower for each FDSLP loan for which funds are released from the account. The school shall notify in writing the bank where the FDSLP account is located that the FDSLP account contains Federal funds. This notice must be given by including the word "Federal" in the name of the school's FDSLP account.

(2) Any interest earned on FDSLP funds deposited in the account described in (h)(1) is considered Federal funds and may not be used by the school for any purpose other than making FDSLP loans.

(i) A school shall divide the functions of authorizing payments and disbursing funds so that no single office has responsibility for both functions to borrowers under the FDSLP.

(j) Funds received by a school under this part may be used only to make FDSLP loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1087a *et seq.*)

Appendix A—Addendum to Program Participation Agreement for Participation in the Federal Direct Student Loan Program

Name of Institution _____

Address of Institution _____

_____

IRS Employer Identification Number _____

OPE Identification Number _____

The postsecondary educational institution listed above, referred to hereafter as the "Institution" and the United States Secretary of Education, referred to hereafter as the "Secretary," agree that this addendum is made a part of the Program Participation Agreement (PPA) between the Institution and Secretary, executed for the Secretary on _____. The purpose of this addendum is to allow the Institution to participate in the Federal Direct Student Loan Program (FDSLP), authorized by Title IV, Part D of the Higher Education Act of 1965, as amended (the HEA).

The Institution and the Secretary agree that the following Article is added to the PPA:

"ARTICLE IVA. Federal Direct Student Loan Program—Specific Provisions

1. The Institution agrees to establish and maintain a direct loan program at the Institution, subject to the program statutes and implementing regulations of Title IV, Part D of the HEA, under which the Institution will:

a. Determine the eligibility in accordance with section 484 of the HEA of student and parent borrowers who seek student financial assistance at the Institution;

b. Estimate the need of each student in accordance with Title IV, Part F, of the HEA;

c. Originate loans to eligible students and eligible parents in accordance with Title IV, Part D, and not charge any administrative fees to such students or parents for such origination activities;

d. Provide timely information concerning the status of student and parent borrowers to the Secretary or the Secretary's agents for loan collection purposes;

e. Use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting information to the Secretary.

f. Participate in the FDSLP for its duration, subject to procedures for withdrawal established by section 455 of the HEA.

2. The Institution agrees that the note or evidence of obligation on the loan shall be the property of the Secretary and that the Institution will act as the agent of the Secretary for the purpose of making loans under the FDSLP.

3. The Institution will accept responsibility and liability stemming from its failure to perform its functions under this agreement.

4. The Institution agrees that students at the Institution and their parents (with respect to such students) will not be eligible to participate in the Federal Stafford Loan program, the Federal Supplemental Loans to Students program, or the Federal PLUS loan program for the period during which such institution participates in the FDSLP.

5. If the Secretary offers income contingent repayment and the institution is selected by the Secretary pursuant to section 453(f) of the HEA, the Institution agrees:

a. to offer borrowers the option of income contingent repayment, based on an annual review of the borrower's Federal income tax return, to any student who applies for a loan under the FDSLP;

b. to include terms and conditions in the notes or other agreements entered into by the borrower, required by the regulations governing the FDSLP, to facilitate the testing of income contingent repayment methods, including the requirement that the borrower disclose subsequent income.

c. that the notes or other agreements entered into by the borrower will provide for the discharge of loans after not more than 25 years of income contingent repayment, as specified by the Secretary by regulation.

6. The Institution agrees to provide borrowers with the loan information specified in section 463A of the HEA.

7. The Institution will provide access to the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or persons designated by these officials, to program and accounting records.

Signature of Chief Executive Officer

Date

Print name and title

For the Secretary

Date

[FR Doc. 93-7795 Filed 3-31-93; 10:55 am]
BILLING CODE 4000-01-U

Reader Aids

Federal Register

Vol. 58, No. 62

Friday, April 2, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, APRIL

17081–17320.....1
17321–17490.....2

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12842.....17081

12 CFR

226.....17083

21 CFR

Ch. I.....17085
1.....17085
5.....17091, 17093, 17094, 17095, 17096, 17105, 17105
12.....17095
14.....17095
20.....17096, 17097
74.....17098
100.....17096, 17097
101.....17085, 17096, 17097, 17099, 17100, 17101, 17102, 17103, 17104
102.....17102, 17103
104.....17104
105.....17096, 17104
130.....17103, 17105
131.....17105
133.....17105
135.....17103, 17105
136.....17103
137.....17103
139.....17103
145.....17103
146.....17103
150.....17103
152.....17103
155.....17103
156.....17103
158.....17103
160.....17103
161.....17103
163.....17103
164.....17103
166.....17103
168.....17103, 17105
169.....17103
172.....17098
177.....17098
178.....17098
186.....17098
189.....17098
1308.....17106

Proposed Rules:
100.....17171
101.....17171
102.....17171
135.....17172
161.....17171

24 CFR

50.....17164
574.....17164
905.....17164
3500.....17165

Proposed Rules:
125.....17172

26 CFR

1.....17166

30 CFR

Proposed Rules:
935.....17173

34 CFR

377.....17308

36 CFR

Proposed Rules:
1191.....17175

40 CFR

Proposed Rules:
80.....17175

46 CFR

174.....17316

47 CFR

61.....17166
64.....17167

Proposed Rules:
2.....17180
80.....17180
97.....17180

50 CFR

658.....17169

Proposed Rules:
226.....17181
672.....17193, 17196
675.....17196, 17200

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 31, 1993

ELECTRONIC BULLETIN BOARD

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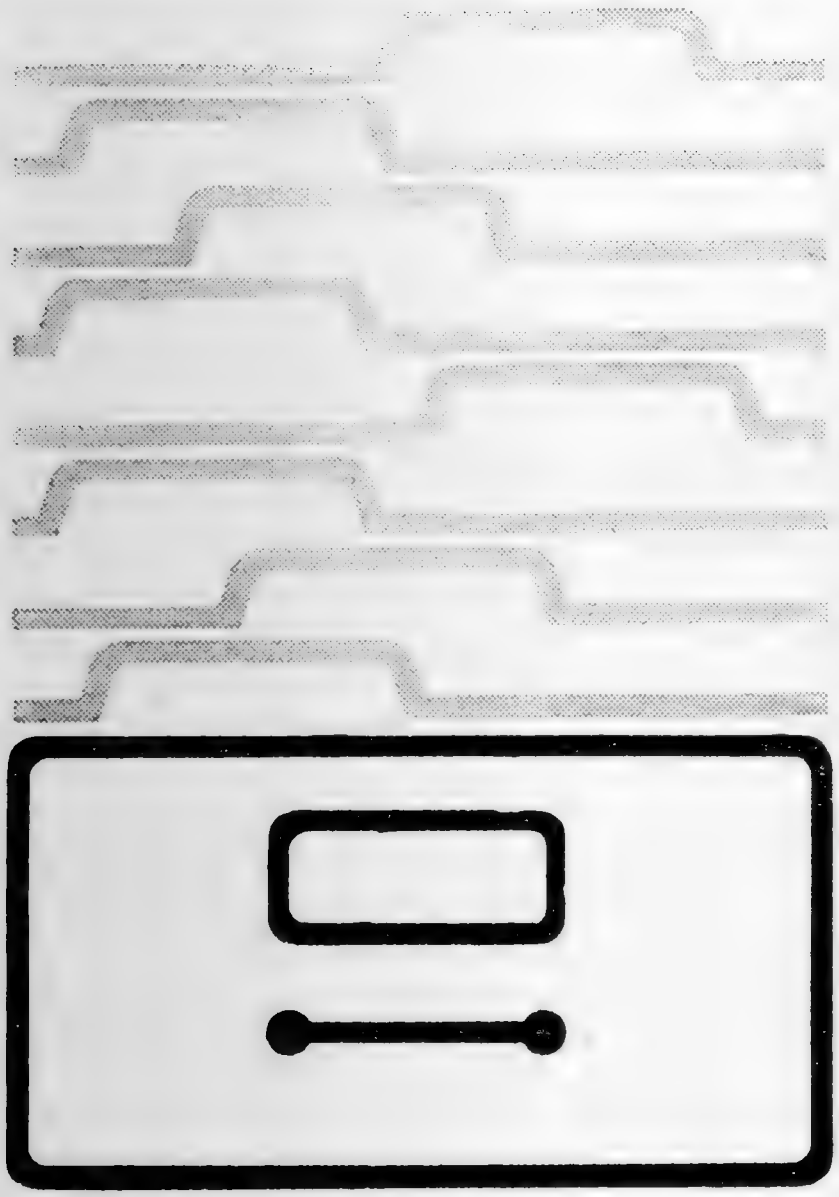

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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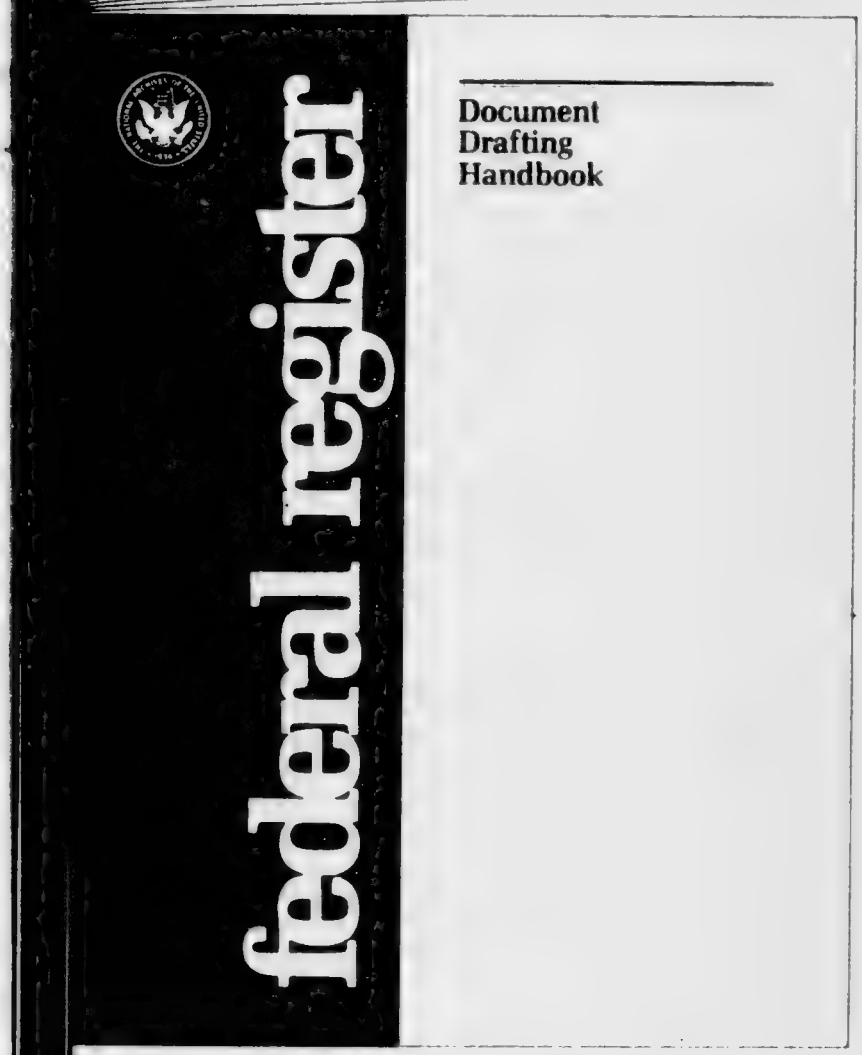

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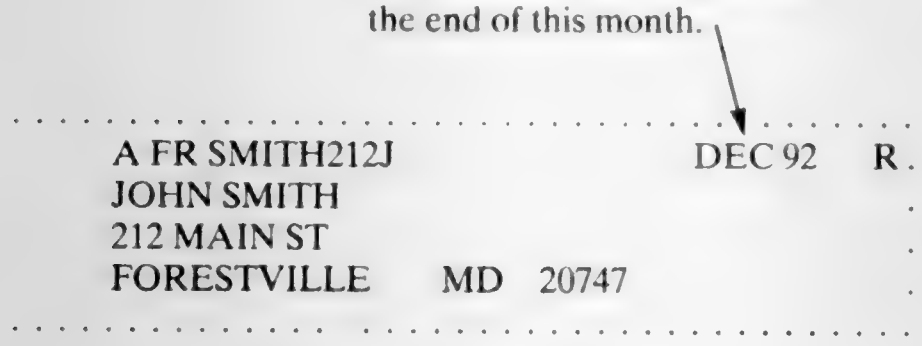

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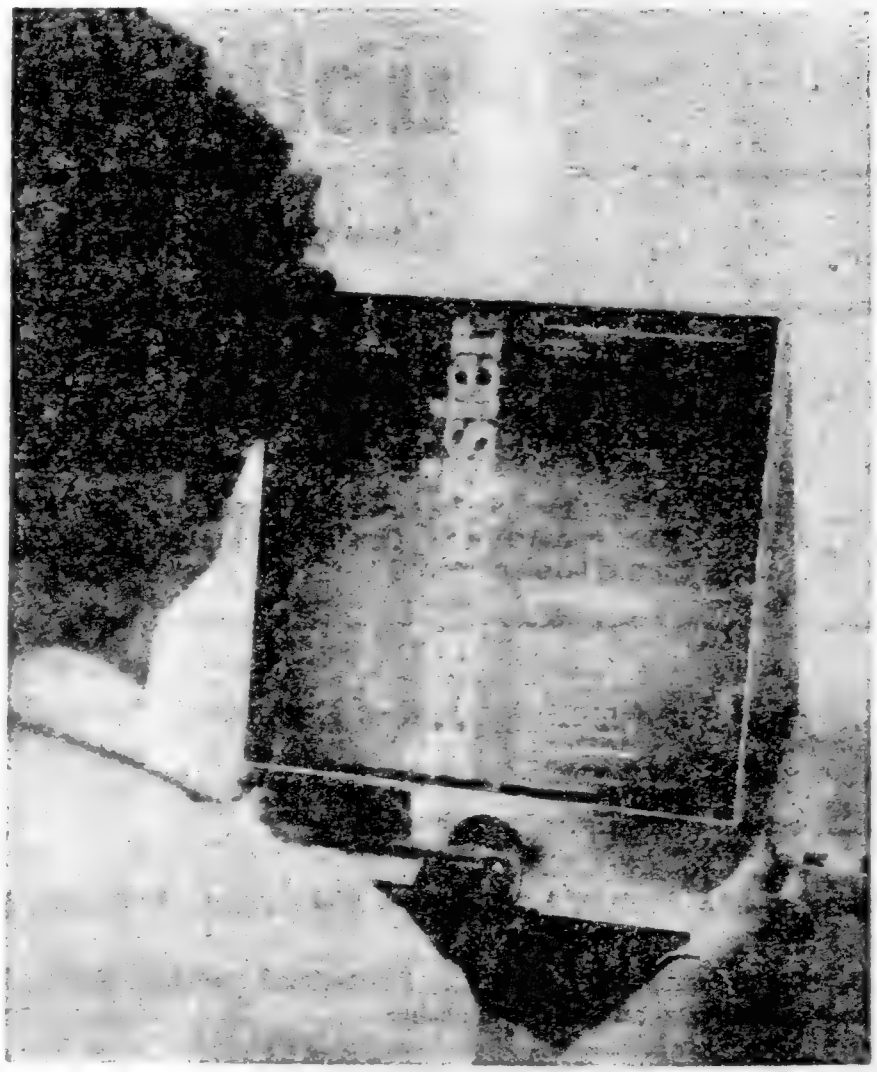

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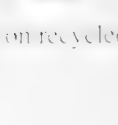

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Contents

Federal Register

Vol. 58, No. 63

Monday, April 5, 1993

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Rinderpest, foot-and-mouth disease, hog cholera, and swine vesicular disease; disease status change for France
Correction, 17642

Army Department
NOTICES
Environmental statements; availability, etc.:
Fort Lewis, WA; mechanized or armor combat forces, 17578

Centers for Disease Control and Prevention
NOTICES
Meetings:
Tuberculosis Elimination Advisory Council, 17591

Coast Guard
RULES
Port and waterways safety:
Inland waterways navigation regulations—
Lake Huron to Lake Erie; speed limits; establishment, 17526
Santa Cruz Island, CA (Pacific Ocean South); security zone, 17526
Regattas and marine parades:
Chesapeake Bay Offshore Challenge, 17525
PROPOSED RULES
Ports and waterways safety:
New York Harbor, NY; safety zone, 17567

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Commodity customer protection; risk disclosure by futures commission merchants and introducing brokers; bankruptcy disclosure, 17495
NOTICES
Meetings; Sunshine Act, 17641

Congressional Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration preview report for 1994 FY transmittal to Congress and OMB, 17576

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 17641

Copyright Royalty Tribunal
NOTICES
Satellite carrier royalty fees:
Distribution proceedings, 17576

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 17577
Meetings:
National Security Telecommunications Advisory Committee, 17576

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
KCS Energy Marketing, Inc., 17579
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Carson Energy Group, 17578

Energy Information Administration
NOTICES
Forms; availability, etc.:
Natural gas program package, 17579

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Nachtrab, Gunther R., 17571

Federal Aviation Administration
RULES
Control areas, 17494
Transition areas, 17494
PROPOSED RULES
Jet routes, 17541
Transition areas, 17543
NOTICES
Passenger facility charges; applications, etc.:
Gillette-Campbell County Airport, WY, 17638

Federal Communications Commission
RULES
Practice and procedure:
Tariff filing petitions, 17528
Television broadcasting:
Cable television systems—
Regulated cable services; rate freeze, 17530
PROPOSED RULES
Radio services, special:
Maritime and aviation services and private operational-fixed microwave service; amendments, 17568
NOTICES
Automated Reporting Management Information Systems (ARMIS); revision, 17588

Federal Deposit Insurance Corporation
PROPOSED RULES
Assessment schedule on Bank Insurance Fund; reserve ratio increase, 17533

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Florida, 17589

Federal Energy Regulatory Commission
PROPOSED RULES
Federal Power Act; approved forms; FERC-714 et al., 17544
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Cleveland Electric Illuminating Co. et al., 17580
Natural gas certificate filings:
Arkla Energy Resources Co. et al., 17583
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Louisiana Natural Resources Department, 17585
Applications, hearings, determinations, etc.:
Arkla Energy Resources Co., 17585
CNG Transmission Corp., 17585, 17586
Great Bay Power Corp., 17586
Great Lakes Gas Transmission Limited Partnership, 17586
Kern River Gas Transmission Co., 17586
Lee Vining Project, CA, 17583
Natural Gas Pipeline Co. of America, 17587
Ogden Haverhill Associates, 17587
Trunkline Gas Co., 17587
Wyoming Interstate Gas Co., Ltd., 17588

Federal Maritime Commission
NOTICES
Agreements filed, etc., 17589

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 17641

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Alliance Financial Corp. et al., 17590
First Mutual Bancorp, M.H.C., et al., 17590
Yoh, Harold Lionel, Jr., et al., 17591

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Antibiotic drugs, etc., 17515
Monensin, 17516
Color additives:
1,4-Bis[4-(2-methacryloxyethyl)phenylamino]-anthraquinone copolymers; contact lenses coloring, 17506
FD&C Blue No. 1, 17510
Vinyl alcohol/methyl methacrylate-dye reaction products, 17508
Food additives:
Adjuvants, production aids, and sanitizers—
2-(2H-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol, 17514
Oxidatively refined montan wax acids; polyhydric alcohol esters, 17512
Phosphoric acid, etc., 17512
Polymers, adjuvants, production aid, and sanitizers—
2,2'-[1,2,-ethanediylbis(oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)]-3-oxo-butanamide, 17513
PROPOSED RULES
Human drugs:
Dandruff, seborrheic dermatitis, and psoriasis drug products (OTC); monograph amendment, 17554
Labeling of drug products (OTC); interchangeable words; monograph requirement, 17553
NOTICES
Biological products:
Export applications—
Hepatitis C Virus-Encoded Antigen (Recombinant c100-3, HC-23, HC-29, and HC-34) Abbot MATRIX HCV, 17593
Ortho Blood Grouping Reagents Anti-A, Anti-B, Anti-A, B, Anti-D, Anti-CDE: (Monoclonal); Control, Ortho BioVue System, 17592
Ortho Blood Grouping Reagents Anti-A, Anti-B, Anti-D: (Monoclonal); Control, Reverse Diluent, Ortho BioVue System, 17593
Ortho Blood Grouping Reagents Anti-D, Anti-C, Anti-E, Anti-c, Anti-e: (Monclonal); Control, Ortho BioVue System, 17592
Medical devices:
Medtronic PCD Tachyarrhythmia Control System; premarket approval, 17594

Foreign Claims Settlement Commission
NOTICES
Meetings: Sunshine Act, 17641

Forest Service
NOTICES
Appealable decisions; legal notice:
Intermountain region, 17570

Geological Survey
NOTICES
Meetings:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 17623

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Federal claims; interest rates on overdue debts, 17591

Health Care Financing Administration
RULES
Medicaid and medicare:
Revaluation of assets; correction, 17527

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless individuals and children; primary health and substance abuse services, 17599

Pediatric Acquired Immune Deficiency Syndrome (AIDS) health care demonstration projects, 17595

Housing and Urban Development Department
PROPOSED RULES
Public and Indian housing:
Emergency shelter grants program—
Indian tribes and Alaskan native villages, 17764
NOTICES
Grants and cooperative agreements; availability, etc.:
Emergency shelter grants program—
Indian tribes and Alaskan native villages, 17766
Lobbying of HUD personnel; reports, 17644

Interior Department
See Geological Survey
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
RULES
Procedure and administration:
Time and place of examination, 17517
Resident alien; definition
Correction, 17516
PROPOSED RULES
Income taxes, etc.:
Valuation tables; correction, 17557
NOTICES
Electronic filing; information return of U.S. persons with respect to certain foreign corporations (Form 5471), 17640

International Trade Administration
NOTICES
Export trade certificates of review, 17572

Interstate Commerce Commission
NOTICES
Rail carriers:
State intrastate rail rate authority—
New Mexico, 17626
Railroad operation, acquisition, construction, etc.:
Connecticut Rail System, Inc., 17625
New Hampshire & Vermont Railroad Co., 17627
Rail service abandonment:
Burlington Northern Railroad Co., 17625
Rail services abandonment:
Georgia Northern Railway Co., 17626
Wheeling & Lake Erie Railway Co., 17627

Justice Department
See Foreign Claims Settlement Commission
RULES
Americans with Disabilities Act; implementation:
Nondiscrimination on basis of disability—
Public accommodations and commercial facilities, 17521
State and local government services, 17520
PROPOSED RULES
Americans with Disabilities Act; implementation:
Nondiscrimination on basis of disability—
Transportation facilities and accessible automated teller machines (ATMs), 17558

Land Management Bureau
NOTICES
Meetings:
Vale District Multiple-Use Advisory Council, 17623
Motor vehicle use restrictions:
Colorado, 17623

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Credit Union Administration
RULES
Credit unions:
Report of crime or catastrophic act and Bank Secrecy Act compliance; uniform multi-agency criminal referral form, 17491
Items heard at closed Board meetings withheld from public or made available after meetings; determination procedure, 17492

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 17639

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Western Pacific Region pelagic
Correction, 17642
PROPOSED RULES
Endangered and threatened species:
Harbor porpoise; Gulf of Maine population, 17569
NOTICES
Endangered and threatened species:
Pacific salmon; artificial propagation interim policy, 17573

National Transportation Safety Board
RULES
Practice rules:
Civil penalty proceedings, 17531

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 17578

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northeast Nuclear Energy Co., 17627
Regulatory guides; issuance, availability, and withdrawal, 17628
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 17628
Portland General Electric Co. et al., 17629

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Medical care:
Indian health service—
Contract health service delivery area redesignation, 17602
Vaccine information materials:
Diphtheria, tetanus, and pertussis (DTP) pamphlet; addendum availability, 17603

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 17630

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Salinas Valley Seawater Intrusion Program, CA, 17624

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 17630, 17634
Philadelphia Stock Exchange, Inc., 17633
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, 17634
Applications, hearings, determinations, etc.:
China Growth Fund, Inc., 17635
Customedix Corp., 17636
Delaware Group Trend Fund, Inc., et al., 17636
High Plains Corp., 17637

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Arizona, 17638
Minnesota, 17638

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Critical populations demonstration grant program, 17606
Residential treatment for pregnant and postpartum women services program, 17610
Residential treatment for women and children; demonstration program, 17614
Target cities cooperative agreement demonstration program, 17618

Tennessee Valley Authority
PROPOSED RULES
Freedom of Information Act; implementation, 17553

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 17577, 17639
Meetings:
Debt Management Advisory Committee, 17640

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 17643

Part III
Department of Housing and Urban Development, 17763

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
Proposed Rules:
94.....17462

12 CFR
748.....17491
791.....17492
Proposed Rules:
327.....17533

14 CFR
71 (2 documents).....17494
Proposed Rules:
71 (2 documents).....17541, 17543

17 CFR
1.....17495
30.....17495
33.....17495
180.....17495
190.....17495

18 CFR
Proposed Rules:
141.....17544
1301.....17553

21 CFR
73 (2 documents).....17506, 17508
74.....17510
178 (4 documents).....17512, 17512, 17513, 17514
558 (2 documents).....17515, 17516
Proposed Rules:
330.....17553
358.....17554

24 CFR
Proposed Rules:
576.....17764

26 CFR
301 (2 documents).....17516, 17517
Proposed Rules:
1.....17557

28 CFR
35.....17520
36.....17521
Proposed Rules:
36.....17558

33 CFR
100.....17525
162.....17525
165.....17525
Proposed Rules:
165.....17567

42 CFR
413.....17527

47 CFR
1.....17528
61.....17528
76.....17530
Proposed Rules:
80.....17568
87.....17568
94.....17568

49 CFR
821.....17531
826.....17531

50 CFR
611.....17462
685.....17462
Proposed Rules:
216.....17569

Rules and Regulations

Federal Register
Vol. 58, No. 63
Monday, April 5, 1993

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 748

Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

SUMMARY: The Board is amending § 748.1 in order to conform NCUA's regulations to the new procedures for completion and submission of the uniform criminal referral form. This action is intended to improve reporting of crimes relating to financial institutions and to establish a standardized form which can be entered into the new interagency computer data base.

EFFECTIVE DATE: May 5, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John Ianno or Jon Canerday, Office of General Counsel, at the above address, or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION: Currently, under § 748.1(c) of NCUA's Regulations, all federally insured credit unions must file a criminal referral whenever a crime or suspected crime occurs at their offices. The report must be filed within seven business days of discovery of the event. The regulation requires that the credit unions follow the filing and reporting instructions on the form.

An Interagency Bank Fraud Working Group ("Working Group") was formed in 1984 to address problems and to promote cooperation toward the goal of improving the federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve federal agencies, including NCUA, the other federal financial institution regulatory agencies, the Federal Bureau of Investigation, the Secret Service, the Department of Justice, and the Treasury Department.

A subcommittee of the Working Group studied the criminal referral process and developed a single, uniform criminal referral form. The new criminal referral form will standardize criminal referral data and facilitate its automation. It will replace the existing NCUA Form 2362, but, in substance, will require the same information.

NCUA and the other federal financial regulatory agencies have adopted uniform reporting and filing requirements for suspected criminal activity. The new uniform criminal referral form will be used for making these reports. It has been designed so that the information collected can be readily entered into the new criminal referral data base. This system will enhance the regulatory and law enforcement agencies' ability to investigate and track information pertaining to criminal referrals made to law enforcement agencies, as well as administrative actions taken by the federal financial regulatory agencies. Credit unions will be notified when the new form becomes available. Copies will be distributed to all federally insured credit unions. Until the new form becomes available, credit unions may comply with their filing requirements by using NCUA's current Criminal Referral Form. This form is designated NCUA Form #2362 and is available through NCUA's Regional Offices.

The final rule lengthens the time federally insured credit unions have to file a criminal referral from seven (7) business days, under the present regulation, to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed, unless the credit union is informed in writing by a representative of the National Credit Union Administration that the materials may be discarded sooner. It is anticipated that notification will occur only in the exceptional case where the Office of General Counsel receives notice from the Department of Justice that prosecution has been declined. The retention period is necessary because the statute of limitations for banking-related offenses has been increased to ten (10) years. In order to prosecute these offenses, criminal investigatory agencies must have the documents supporting the offenses available to them.

The regulation has been modified to expressly state that failure to comply with its requirements could result in an administrative action by the NCUA. This codifies the current state of the law.

Fifteen letters were received in response to the request for comments in the proposed amendment. Eleven were from credit unions, two from national credit union organizations, and two from state credit union leagues. All of the comments, except one, were generally in favor of the amendments.

One credit union expressed concern that the thirty-day period to report suspected criminal activity is insufficient. We believe that the increased filing time will permit thorough documentation and reporting by the credit union. Credit unions are encouraged to file as soon as possible after discovery of reportable activity. However, a credit union need only provide what evidence it has to support the suspected offense within the thirty-day period. If additional relevant evidence becomes available, the credit union should provide that information to the appropriate investigatory authority. If additional related losses are discovered, the credit union should file a supplemental or new criminal referral form. In the event of ongoing activity, they should contact appropriate law enforcement agencies by telephone and then file a timely referral form.

One credit union objected to the use of the language "suspected crime." The use of this language does not represent a change from the current regulation. The decision regarding whether certain activities constitute criminal activity which should be prosecuted is one which will be made by the U.S. Attorney after thorough investigation. The credit union is responsible for reporting situations which are believed, in good faith, to represent violations of applicable criminal laws. This is why the language "suspected crime" is used. Credit unions making such reports, in good faith, are shielded from liability. See 31 U.S.C. 5318(g).

One commenter asked that the agencies develop a computer format to

facilitate easy filing. This project is currently underway. It is expected to be available in the near future. One credit union asked whether there is a mechanism for removing a person's name from the system. The data base will permit the entry of subsequent information regarding the disposition of a referral.

It was suggested that credit unions be permitted to discard materials in advance of the ten-year period in the event a decision is made not to prosecute the individual involved. NCUA has decided to modify the language in § 748.1(c)(2) to permit this when appropriate and authorized by NCUA.

It was suggested that the credit unions be required to mail the form to NCUA for distribution. The distribution as set forth in the proposed amendment is considered to be the most efficient and will be retained for several reasons. It is important that the form go to criminal investigatory authorities as soon as possible. Forwarding to NCUA for remailing will slow this process. Similarly, if NCUA is required to open, copy, and then remail the original to FinCEN, this could degrade the quality of the original and affect the scanning process. The Board believes it is more cost efficient for all concerned if each institution handles its own distribution rather than having NCUA process and distribute the hundreds of forms which are filed each year.

One national organization asked about the use of the data base and one state league indicated that the proposal was unclear regarding the principal use of the information. The primary purpose of a criminal referral is to alert appropriate agencies to begin a criminal investigation of the circumstances described in the report. The information is also placed in a data base, accessible only to NCUA and appropriate agencies, for statistical and tracking purposes. It will be used by NCUA to assist in review of applications submitted by candidates for senior positions in "troubled" credit unions.

Regulatory Flexibility Act

The NCUA Board certifies that this final amendment will not have a significant financial impact on a substantial number of small credit unions or other small entities. The proposed regulation simply repeats, in slightly modified form, the preexisting requirement of federally insured credit unions to file criminal referrals pertaining to known and suspected crimes. It also extends the period of time for filing a referral. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the final amendment does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collection of information contained in a criminal referral form is approximately .6 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be forwarded directly to the OMB Desk Officer at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, ATTN: Jerry Waxman.

Executive Order 12612

This final amendment applies to all federally insured credit unions. However, it makes no substantive changes and imposes no significant additional burdens on federally insured credit unions than those under the present rule. It lengthens the time federally insured credit unions have to file a criminal referral form from seven (7) business days, under the present regulation, to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government because federally insured credit unions are currently required to report crimes or suspected crimes which occur at their offices.

List of Subjects in 12 CFR Part 748

Security program, Filing of reports, Bank Secrecy Act compliance programs and procedure.

By the National Credit Union Administration Board on March 25, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its Regulations as follows:

PART 748—[AMENDED]

1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766 (a); 12 U.S.C. 1786 (q); 31 U.S.C. 5311.

2. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Criminal Referral Form.* (1) Each federally insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Interagency Criminal Referral Form, within thirty calendar days after discovery. Each federally insured credit union must follow the instructions and reporting requirements accompanying the Interagency Criminal Referral Form. Copies of the Interagency Criminal Referral Form may be obtained from the appropriate NCUA Regional Office.

(2) Each federally insured credit union shall maintain a copy of any Interagency Criminal Referral Form that it files and the original of all attachments to the form for a period of ten years from the date of the report, unless the credit union is informed in writing by a representative of the National Credit Union Administration that the materials may be discarded sooner.

(3) Failure to file Interagency Criminal Referral Forms in accordance with the instructions accompanying the Form may subject the federally insured credit union, its officers, directors, agents, or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Interagency Criminal Referral Forms will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained in Interagency Criminal Referral Forms will be entered into an interagency data base and will assist the federal government in taking appropriate action.

[FR Doc. 93–7773 Filed 4–2–93; 8:45 am]

BILLING CODE 7535–01–U

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12 CFR Part 791

Rules of Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its Regulation implementing the Sunshine Act to modify the procedure for determining whether items heard at a closed Board meeting should continue to be withheld after the meeting.

The proposed amendments are intended to better achieve the goals of the Sunshine Act and to provide for a simpler, more effective, and more consistent method of decisionmaking.

EFFECTIVE DATE: May 5, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Margaret R. Suuberg, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 682–9630.

SUPPLEMENTARY INFORMATION: Section 791.18(c) of the NCUA Rules and Regulations implements Section 552b(f)(2) of the Government in the Sunshine Act ("Sunshine Act"), 5 U.S.C. 552b(f)(2). Section 552b(f)(2) provides, in part that the agency shall make promptly available to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c).

Section 552b(f)(2) requires an agency to determine whether matters heard at a closed meeting should be withheld after the meeting rather than made available to the public. However, it does not require the specific procedure currently in use by the NCUA Board.

The Sunshine Act does not require that any specific procedures be followed in making the determination under section 552b(f)(2). The Board is, therefore, free to prescribe its own procedures. The determination to withhold portions of the record from the public does not require a recorded vote of the Board members, and need not be made by the Board members at all. Most agencies have delegated the determination responsibility to either the general counsel, the secretary, or the director of public information. An agency's review and determination need not occur at the meeting, and, in most cases, are carried out after the meeting.

Under the current procedure pursuant to § 791.18(c), at the end of the meeting, the Board decides whether items discussed at the meeting should be withheld from public disclosure under § 791.12(a) of NCUA's Regulations (which contains the same exemptions as section 552b(c) of the Sunshine Act, 12 U.S.C. 552b(c)). Having the Board make such determinations at the end of the meeting has proven time consuming, and at times confusing, particularly in those cases where a determination could better be made after review of the record. Current § 791.18(c) provides that if the Board does not make the necessary determination with regard to any item or items, the Board Secretary must make the determination after consultation with the General Counsel and the Board members. This approach as well has proven time consuming and impracticable.

On September 9, 1992, the NCUA Board issued a proposed amendment to § 791.18(c) (see, 57 FR 42532, 9/15/92). The proposal and this final rule require the General Counsel, or his designee, to make the necessary determination after consultation with the Board Secretary. Since the determination whether to withhold is essentially a legal one, the General Counsel should have the primary responsibility for making that determination. The Board believes that the practice will better achieve the goals of the Sunshine Act than does the method now in use. The new procedure will be simpler and more effective, as well as provide for a consistent method of decisionmaking.

The rule also contains one technical amendment. The current version of the regulation incorrectly cites the Privacy Act as 5 U.S.C. 522a. The correct citation for the Privacy Act is 5 U.S.C. 552a. The rule corrects that error.

Four comment letters were received: One from a natural person federal credit union, one from a corporate credit union, one from a state credit union league, and one from a national credit union trade association. All of the commenters fully supported the proposed rule. They agreed that the determination whether a closed meeting item should be made public is a legal one and best made by the General Counsel. The commenters believed that the proposed amendment would make for a more effective decision-making process and would better accomplish the goals of the Sunshine Act.

This final amendment is identical to the proposed rule.

Paperwork Reduction Act

The amendment imposes no paperwork requirements on the public. It relates solely to internal Board procedure.

Regulatory Flexibility Act

The NCUA Board certifies that this amendment will not have a significant impact on a substantial number of small credit unions (those under $1 million in assets) because the amendment relates solely to internal Board procedures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The amendment relates solely to internal Board procedures, and will have no effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, NCUA Board, Promulgation of rules and regulations, Public observation of meetings, Sunshine Act.

By the National Credit Union Administration Board on March 25, 1993

Becky Baker,

Secretary of the Board.

Accordingly, NCUA hereby amends 12 CFR part 791 as follows:

PART 791—RULES OF BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766; 12 U.S.C. 1789; and 5 U.S.C. 552b.

2. Section 791.18(c) is revised as follows:

§ 791.18 Public availability of meeting records and other documents.

* * * * *

(c) Following each meeting or any portion of a meeting closed pursuant to § 791.12(a), the General Counsel or his designee, after consultation with the Secretary of the Board, shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. 552a (the Privacy Act) contain information which should be withheld pursuant to § 791.12(a). If, at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

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[FR Doc. 93–7772 Filed 4–2–93; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 93–AWA–4]

Amendment to the Atlantic Low and Pacific Low Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; temporary amendment.

SUMMARY: The Offshore Airspace Reconfiguration final rule published in the **Federal Register** on March 2, 1993, amended the Federal Aviation Regulations (FAR), in part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate, and implemented, to the extent practicable, a uniform base altitude of 5,500 feet mean sea level (MSL) for offshore airspace areas. Further, the offshore airspace areas were divided into "high" and "low" areas. This action temporarily amends certain offshore airspace low areas from April 1, 1993 through July 22, 1993, because the FAA has discovered that by raising the base altitude, certain air traffic services to major coastal airports might be adversely affected.

EFFECTIVE DATES: This amendment is effective April 1, 1993 through July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, ATP–230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9251.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published March 2, 1993, amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate. Further, the offshore airspace areas were divided into high and low areas. In addition to combining and simplifying the offshore airspace areas, an effort was made to establish a uniform floor of 5,500 feet MSL, to the extent practicable. It was recently discovered that certain air traffic control operations require additional controlled airspace. Therefore, the FAA has decided to reduce the floor of the Atlantic Low and Pacific Low offshore airspace areas back to the floors previously specified for the Brunswick, North Atlantic, Barnegat, NJ, Newport, OR, San Francisco, CA, and Santa Barbara, CA additional control areas. This will enable the FAA to conduct a micro-review of the air traffic control operations conducted within these airspace areas to determine the amount of controlled airspace necessary to contain certain air traffic control operations. The Atlantic Low and Pacific Low additional control areas were published in FAA Order 7400.7A–Supplement dated February 24, 1993, and effective April 1, 1993, which is incorporated by reference in 14 CFR 71.1. The additional control areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the FAR temporarily changes the base altitudes of the Atlantic Low and Pacific Low additional control areas from 5,500 feet MSL to 2,000 feet and 5,000 feet respectively. It reinstates the base altitudes that previously existed in these offshore airspace areas. This action enables air traffic control to continue to provide services with the requisite flexibility, such as descending and off-airway radar vectors, as necessary to sequence arrivals into major coastal areas such as Boston and New York. Because the public needs to be made immediately aware of the reinstatement of these altitudes, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. In consideration of the safety need to lower the base of controlled airspace, the FAA finds that good cause exists, pursuant to 5 U.S.C. 553(d), for making the amendment effective in less than 30 days to promote the safe and efficient handling of air traffic in these offshore airspace areas.

List of Subjects in 14 CFR Part 71

Airspace, Airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, is temporarily amended effective April 1, 1993, through July 22, 1993, as follows:

Section 71.163 Designation of Additional Control Areas

* * * * *

Atlantic Low [temporarily revised April 1, 1993, through July 22, 1993]

That airspace extending upward from 2,000 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat 28°00'00" N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline.

* * * * *

Pacific Low [temporarily revised April 1, 1993, through July 22, 1993]

That airspace extending upward from 5,000 feet MSL bounded on the north by the Vancouver FIR boundary, on the east by a line 12 miles from and parallel to the U.S. shoreline, on the south by the northwest boundary of Warning Area W–291, and on the west by the Oakland Oceanic CTA/FIR boundary excluding that airspace with Federal Airways.

* * * * *

Issued in Washington, DC, on March 31, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–7844 Filed 3–31–93; 12:10 pm]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–29]

Establishment of Transition Area: Walnut Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area located at Walnut Springs, TX. The development of a new special instrument approach procedure (SIAP) to the Flat Top Ranch Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the very high frequency omnidirectional range/distance measuring equipment (VOR/DME) runway (RWY) 18 SIAP. Additionally, this action changes the

status of the Flat Top Ranch Airport from visual flight rules (VFR) operations only, to include operations under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 U.T.C., May 27, 1993.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, Systems Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5535.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Walnut Springs, TX (57 FR 24412).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received; however, one comment was received from the United States Air Force (USAF). The USAF expressed concern with the close proximity between the new SIAP into the Flat Top Ranch Airport and several military training routes in the area. They recommended that the user be alerted to the location and scope of these routes. We concur with the recommendation made by the USAF. If the user of this SIAP is not aware of the military flight activity in the vicinity of the Flat Top Ranch Airport, they should be given this information. The USAF concerns have been delivered to the FAA Flight Procedures Branch, who works directly with the proponent in the development of this SIAP. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Transition areas were published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area located at Walnut Springs, TX. The development of a new VOR/DME RWY 18 SIAP to the Flat Top Ranch Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace to aircraft executing the VOR/DME RWY 18 SIAP. This action changes the status of the Flat Top Ranch Airport from VFR operations only to include IFR operations.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ASW TX TA Walnut Springs, TX [New]

Flat Top Ranch Airport, TX
(latitude 32°03'36" N., longitude 097°47'41" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Flat Top Ranch Airport.

* * * * *

Issued in Forth Worth, TX, on March 16, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–7852 Filed 4–2–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33, 180 and 190

Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On October 7, 1992, the Commodity Futures Trading Commission ("Commission") published for comment proposed amendments to Sections 1.55, 30.6, 33.7, 180.3, 190.06 and 190.10 of its regulations (the "Proposal")[1] to simplify and enhance the effectiveness of the risk disclosure process. Based upon its review of the comments received and reconsideration of the proposed amendments, the Commission has determined to adopt the amendments with certain modifications, as discussed herein. Most notably, as adopted, the amendments extend the availability of the proposed simplified account opening procedure to all categories of customers, except with respect to the separate endorsements required under Rule 180.3 concerning dispute resolution agreements, and further reduce account redocumentation requirements in the context of bulk transfers of customer accounts.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION

I. Background

In proposing the disclosure amendments discussed herein, the Commission sought to assure that the risk disclosure process remains effective

[1] 57 FR 46101. A sixty-day period for public comment was provided. Commission rules are found in Title 17 of the Code of Federal Regulations, unless otherwise noted.

notwithstanding market trends such as growing cross-border trading activity and development of electronic trading systems, which have increased the complexity of the risk disclosure process. The Commission also proposed rule amendments designed to refine and simplify the risk disclosure process generally to eliminate unnecessary administrative burdens on customers and market professionals while assuring that the objectives of risk disclosure requirements continue to be achieved and to clarify disclosure and notice requirements applicable in the context of bulk transfers of customer accounts.

Currently, at the time of opening an account, commodity futures and options customers are provided with, and must separately acknowledge receipt and understanding of, risk disclosure statements required by Commission Rules 1.55, 30.6, 33.7 and 190.10. Rule 1.55(a) requires a futures commission merchant ("FCM") or, in the case of an introduced account, an introducing broker ("IB"), to provide each new customer with a risk disclosure statement containing the language set forth in Rule 1.55(b) and to receive an acknowledgment, signed and dated by the customer, confirming that he received and understood the disclosure statement before a commodity futures account may be opened for the customer. [2] Rule 33.7 imposes comparable disclosure and acknowledgment requirements where an FCM (or IB) opens a commodity option account. Rule 30.6(a)(1) requires that a separate disclosure statement be provided to each new foreign futures or option customer prior to opening a foreign futures or foreign option account for such customer but separate acknowledgment thereof by the customer is required only if the FCM or IB has received general discretionary authority to engage in foreign futures or foreign option trading on behalf of the customer. [3] Rule 190.10 prohibits FCMs [4] from accepting property other than cash for the account of a customer to margin, guarantee, or secure futures contracts without first furnishing the customer with the disclosure statement prescribed in Rule 190.10(c)(2) and receiving a signed acknowledgment from the customer that he received and understood the contents of such statements. [5] In addition, pursuant to Rule 190.06(d), a customer must also be provided with the opportunity, when first entering into a hedging contract, to specify whether in the event of bankruptcy such customer prefers that open contracts in a hedge account be liquidated by the trustee without seeking customer instructions.[6]

In addition, self-regulatory organizations ("SROs") have adopted rules establishing risk disclosure requirements applicable to foreign futures and options in connection with the establishment of trading linkages between domestic and foreign futures exchanges and to certain electronic trading systems.[7]

The rule amendments proposed by the Commission were designed to reduce the number of required risk disclosure statements and customer acknowledgments, permit simpler account opening procedures, and address the special disclosure and notice requirements applicable in the context of bulk transfers of customer accounts by: (1) Providing a consolidated risk disclosure statement applicable to domestic futures transactions as well as foreign futures and option transactions, thereby eliminating the necessity for separate disclosure statements under Rules 1.55 and 30.6; (2) eliminating the requirement that the Rule 190.10 disclosure concerning treatment of non-cash margin be acknowledged by the customer; (3) clarifying that the Rule 1.55 risk disclosure statement may be included in a booklet of account opening documents, provided it appears on the cover page or first page of such booklet; (4) providing that the Commission may approve a risk disclosure statement that has been approved by a foreign jurisdiction or foreign SRO for use in lieu of the Commission-required risk disclosure statement; (5) permitting, for specified categories of customers, use of a single acknowledgment format in lieu of the multiple acknowledgments and elections currently required; and (6) clarifying and simplifying the requirement of notice to the Commission of bulk transfers and account opening procedures to be followed by a firm receiving a bulk transfer.

The Commission received nine comment letters on the proposed amendments. The commenters included one person registered as an FCM, one trade association and one law firm representing Commission registrants, two domestic commodity exchanges, two foreign SROs, one foreign commodity exchange and one domestic SRO. All commenters strongly supported the Proposal but many advocated expansion of various aspects of the relief provided.

Based upon its review of the comments received and reconsideration of the proposed amendments, the Commission has determined to adopt the proposed amendments with certain modifications discussed below. The Commission believes that the amendments to Commission Rules 1.55, 30.6, 33.7, 180.3, 190.06 and 190.10 as adopted are responsive to the concerns of the commenters and further the regulatory objectives of this rulemaking. The following discussion focuses principally on the changes or clarifications to the proposed amendments made in the final rule amendments. Additional background on these rule amendments may be found in the **Federal Register** release setting forth the Proposal.

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[2] Rule 1.55(c) requires the FCM or, in the case of an introduced account, the IB, to retain the acknowledgment in accordance with Rule 1.31. Because of the other amendments to Rule 1.55 discussed herein, that paragraph will be redesignated as paragraph (e) but is otherwise unchanged.

[3] Rule 166.2 requires that discretionary authority to effect foreign futures or foreign options transactions must be specifically authorized in writing and expressly documented. This requirement remains unchanged.

[4] The requirement applies to FCMs and other "commodity brokers," except for clearing organizations, within the meaning of Rule 190.01(f), which defines "commodity broker" to include, in addition to FCMs and clearing organizations, commodity option dealers as defined in Section 761(b) of the Bankruptcy Code, foreign FCMs as defined in Section 761(12) of the Bankruptcy Code, and leverage transaction merchants as defined in Section 761(14) of the Bankruptcy Code.

[5] If the statement is contained in the customer agreement, the customer must separately endorse the page on which the disclosure statement appears. This disclosure statement is designed to assure that customers depositing property other than cash for margin purposes understand that the return of such property is subject to the pro rata distribution provisions of the Bankruptcy Code and therefore may not be returnable even if identified as property deposited by a specific customer.

[6] Further, a customer opening an account to trade commodity futures or options may be requested to enter into an arbitration or other dispute resolution agreement, which must be separately endorsed pursuant to Rule 180.3 in order to be effective. Rule 180.3 provides, among other things, that if an arbitration or other customer dispute settlement agreement between a commodity professional and its customer is contained as a clause or clauses within a broader agreement, the customer cannot be bound by such an agreement unless he separately endorses the clause or clauses constituting the arbitration or dispute settlement agreement and the cautionary language specified in the rule.

[7] *See* National Futures Association ("NFA") Compliance Rule 2–28, the Chicago Mercantile Exchange ("CME") Rule 874 and Commodity Exchange, Inc. Rule 5.14 which address risk disclosure requirements applicable to foreign futures and options as a result of trading linkages between domestic and foreign futures exchanges. *See also* CME Rule 577 and Chicago Board of Trade ("CBOT") Rule 9A.20 which address the risk disclosure requirements applicable to the users of the GLOBEX electronic trading system and New York Mercantile Exchange Rule 6.22 which addresses the risk disclosure requirements applicable to the users of the ACCESS electronic trading system.

II. Discussion

A. Risk Disclosure Enhancement

1. Consolidation of 1.55 and 30.6 Disclosure Statements

Most commenters strongly supported the Commission's general objective of simplifying the disclosure process without reducing its efficacy and, in particular, the proposed consolidation of the risk disclosure statement currently required by Rule 1.55 for domestic futures transactions with the statement required by Rule 30.6 for foreign futures and foreign options transactions. In addition, some commenters recommended that the Commission shorten the Rule 33.7 options disclosure statement and consolidate it with the new combined domestic futures and foreign futures and options disclosure statement. In the latter connection, the Commission notes that certain international regulators are endeavoring to develop a single risk disclosure statement that could be used in multiple jurisdictions for domestic and cross-border transactions in futures and options. The Commission is monitoring developments in this area and anticipates that if a universal statement of this nature is developed, it will consider permitting the use of such a statement in lieu of the new consolidated Rule 1.55 risk disclosure statement as well as the options disclosure statement required by Rule 33.7. Option disclosure issues are more fully discussed *infra*.

One commenter expressed concern that the amended Rule 1.55 statement, by omitting domestic options but including foreign options, may leave customers with the impression that domestic options entail greater risk than foreign options. However, the Commission believes that the consolidated statement as adopted is designed to recognize, in paragraphs (7) and (8) thereof, the particular risks of foreign transactions, as compared to domestic transactions. Although the Commission believes that the benefits of consolidation of the Rule 1.55 and 30.6 statements warrant adoption of the proposed amendment at this time, this action does not preclude later refinements of the domestic options disclosure statement as indicated above in response to international developments, among other things.

The Commission has determined to adopt the proposed revisions of Rules 1.55 and 30.6 creating a consolidated domestic futures and foreign futures and options risk disclosure statement generally as proposed. The consolidated risk disclosure statement is designed to contain the substance of the separate risk disclosure statements currently prescribed by Rules 1.55 and 30.6 and is consistent with the purposes of those rules, *i.e.*, to provide customers with a clear, succinct and prominent disclosure of relevant risks. Further, the revised risk disclosure statement may obviate the need for special linked market disclosures currently required by some SROs.[8]

The Commission has made one addition to the consolidated statement, which addresses one of the issues on which the Commission sought comment in the Proposal. The Commission generally requested comment as to the relative costs and benefits of requiring additional disclosures concerning the scope of protections afforded by segregation of customer funds, the financial status of the FCM holding such funds and the absence of commodity account insurance. Most commenters on this issue questioned the desirability of additional disclosures in these areas in light of the Commission's express goal of simplifying the disclosure process and argued that additional disclosures would be contrary to the purpose of the amendments the Commission has proposed. However, one commenter stated that an "informational document" on these topics should be available to FCMs and IBs for distribution to interested customers and another commenter strongly recommended requiring additional disclosures in these areas, contending that the trading public does not understand that segregation of funds does not provide a complete safeguard against loss of customer funds or that commodity futures and option accounts are not protected by account insurance.

The Commission recognizes that disclosure requirements specifically addressing the scope of the protections afforded futures customers' funds could be difficult to formulate in a manner sufficiently comprehensive to not be misleading. However, the Commission has determined to incorporate in the one-page Rule 1.55 risk disclosure statement, as amended herein, a statement recommending that the customer consult with his broker concerning the protections available to safeguard funds or property deposited in connection with futures transactions. This amendment reflects the fact that no brief statement can assure that customers understand the nature and limitations of applicable funds protections. However, this statement should highlight the importance of this subject and encourage customers to inquire as to matters such as the availability of insurance and the disposition of customer funds in bankruptcy. Other issue relating to the Commission's request for comment concerning customer funds protections are discussed *infra*.

As noted in the preamble to the proposed rules,[9] the Commission intends that the consolidated risk disclosure statement may be presented to a non-English speaking customer in the foreign language that such customer understands rather than in English, provided that the disclosure statement provided is an accurate translation of the English version and that the English text is provided upon request. Delivery of the consolidated risk disclosure statement to a foreign customer would not preclude delivery to that customer of any additional disclosure documents required by a foreign regulator.

The Commission emphasizes that delivery of the consolidated risk disclosure statement, like delivery of the current Rule 1.55 risk disclosure statement, would remain subject to the proviso that Rule 1.55 "does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law."[10] Differences among products may warrant such additional disclosure. For example, the Commission has required additional disclosure with respect to foreign options offered on exchanges that employ futures-style margining, due to the fact, among others, that such margin systems affect options pricing. See, *e.g.*, 54 FR 50348, Exhibit B (December 6, 1989); 54 FR 50356, Exhibit B (December 6, 1989).

The Commission intends that the new consolidated Rule 1.55 statement may be used in place of the currently separate Rule 1.55 and 30.6 statements but will permit the existing separate statements to be used until FCMs and IBs wish to print new account forms. However, forms not in compliance with the revised rule may not be used beyond July 1, 1994. In light of the consolidation of the Rule 30.6 and 1.55 statements, the Commission has determined to eliminate Rule 30.6(a)(2), which requires separate

[8] *See* note 7, *supra*.

[9] *See* Proposal at 46103.

[10] This proviso is currently contained in paragraph (d) of Rule 1.55. Because of the other amendments to Rule 1.55 discussed herein, that paragraph would be redesignated as paragraph (f) but is otherwise unchanged. Similarly, Rule 30.6 (e) of the Commission's foreign futures rules states that Rule 30.6 does not relieve an FCM, IB, commodity pool operator ("CPO") or commodity trading advisor ("CTA") "from any other disclosure obligation it may have under applicable law or regulation."

acknowledgment of the Rule 30.6 statement where discretionary authority to engage in foreign futures or foreign options transactions has been granted. However, the requirement of Rule 166.2(b) of express written authorization to effect transactions in foreign futures or foreign options on a discretionary basis remains unchanged. The Commission further notes that if an FCM or IB uses the Rule 1.55 and Rule 30.6 separate statements between July 1, 1993 and July 1, 1994, it must continue to obtain a separate acknowledgment of the Rule 30.6 disclosure statement where discretionary authority to engage in foreign futures or foreign options transactions has been granted.

2. Use of Foreign Risk Disclosure Statement to Satisfy Rule 1.55

The Commission also proposed a new provision, new paragraph (c) of Rule 1.55, to recognize that the Commission may approve for use in lieu of the prescribed Rule 1.55 statement a risk disclosure statement approved by one or more foreign regulatory agencies or SROs if the Commission determines that such statement is reasonably calculated to provide the disclosures specified in Rule 1.55. By providing a mechanism for the substitution of a foreign risk disclosure statement or an internationally recognized risk disclosure statement for the Rule 1.55 statement, where the Commission and the applicable foreign jurisdiction have previously approved the use of the statement for such purposes, this provision could simplify the risk disclosure process for firms conducting cross-border business. As noted in the Proposal, the Commission believes that it is desirable to reduce duplicative disclosure requirements resulting from cross-border futures transactions, provided that any special risks of foreign trading are disclosed. The three commenters who addressed this aspect of the Commission's proposals commented favorably upon it. The Commission is adopting new paragraph (c) of Rule 1.55 as proposed.

3. Elimination of 190.10(c) Acknowledgment

Also in the interest of simplifying the risk disclosure process, the Commission proposed to eliminate the requirement of Rule 190.10(c)(1)(ii) that customers acknowledge receipt and understanding of the prescribed disclosure concerning the treatment of non-cash margin in FCM bankruptcies. As the Commission noted in the Proposal, the commodity broker provisions of the Bankruptcy Code, which mandate pro rata distribution of cash and non-cash customer property, including property specifically identifiable to a customer, have been in effect for approximately fifteen years and the Commission's bankruptcy rules for ten years. The Commission therefore suggested that although disclosure concerning this aspect of the treatment of customer property for purposes of distribution in FCM bankruptcies continues to be appropriate, the required acknowledgment can be eliminated without materially reducing customer protection. The Commission received two comments, both favoring adoption of the proposed amendment.

The Commission has determined to adopt the proposed revision of Rule 190.10(c) to eliminate the acknowledgement requirement of Rule 190.10(c)(1)(ii).[11] As noted in the Proposal, however, elimination of the separate acknowledgment requirement would not apply to the extent that a Rule 190.10(c)(2) disclosure statement incorporates a subordination agreement for a customer depositing margin in foreign depositories.[12] Separate acknowledgment of the 190.10(c)(2) disclosure statement in this context is a substitute for execution of a separate subordination agreement. A separate acknowledgment also would continue to be necessary where subordination is required for certain purposes, such as for participation in cross-margining programs, because such subordination is a contractual undertaking that must be executed by the customer. See Financial and Segregation Interpretation No. 12, *supra* note 12.

4. Single Signature Acknowledgment Format

The Commission proposed to codify in proposed Rule 1.55(d) "no-action" relief previously granted by the Division of Trading and Markets ("Division") permitting FCMs opening accounts for certain categories of institutional and highly accredited customers to obtain a single signature of the customer at the end of the customer agreement or on a separate check-off page in lieu of the multiple separate acknowledgments of the various disclosures and elections required by Commission rules. As proposed, use of the single signature acknowledgment format would have been limited to customers who are "qualified eligible participants" ("QEPs") as defined in Rule 4.7(a)(1)(ii)[13] and persons or entities constituting eligible persons under Rule 4.5(a).[14]

All four commenters who addressed this aspect of the Proposal supported the single signature procedure for required disclosure statements and elections. Three of the four commenters, however, urged the Commission to extend the availability of this procedure to all customers. These commenters noted, among other things, that since when an account is opened customers generally receive and must acknowledge all prescribed disclosures at the same time, it is reasonable to permit the customer to acknowledge all such statements by means of a single signature. Such commenters contend that separate signatures do not convey the required disclosures more clearly and compellingly. One commenter also suggested that the single signature format be useable for certain other customer consents, in particular, those

[11] Elimination of Rule 190.10(c)(1)(ii) has allowed the text of paragraph (c)(1)(i) of Rule 190.10 to be incorporated into existing paragraph (c)(1).

[12] *See* Financial and Segregation Interpretation No. 12—"Deposit of Customer Funds in Foreign Depositories," 53 FR 46911 (November 21, 1988). The Commission stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated into the Rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46913–46914. The Commission's staff is separately reviewing Financial and Segregation Interpretation No. 12 based upon its experience, the increase in foreign currency transactions and recent changes in U.S. banking regulations.

[13] Generally, under Rule 4.7, the term QEP includes the following categories of customers: (1) brokers or dealers registered under the Securities Exchange Act, FCMs and certain CPOs and CTAs registered under the Commodity Exchange Act ("Act"), as amended by the Futures Trading Practices Act of 1992, Pub. L. No. 102–546, 106 Stat. 3590 (October 28, 1992). To be QEPs, CPOs and CTAs must have been registered and active as such for two years. Alternatively, CPOs must operate pools which contain in the aggregate total assets in excess of $5,000,000 and CTAs must provide commodity interest trading advice to commodity accounts which contain in the aggregate total assets in excess of $5,000,000 deposited at one or more FCMs. QEPs also include: (1) natural persons and entities, including certain corporations, partnerships or similar entities, commodity pools, banks, savings and loan associations, insurance companies, registered investment companies and employee benefit plans, which meet a portfolio requirement and in certain instances other requirements with respect to total assets, net worth or annual income; (2) certain non-United States persons; and (3) entities in which all the equity owners are QEPs. With respect to category (1) above, to qualify as a QEP the person or entity must satisfy a portfolio requirement which requires: (i) ownership of in excess of $2 million in securities of unaffiliated issuers or other investment property; (ii) having had on deposit at an FCM at any time during the preceding six months in excess of $200,000 in exchange-specified initial margin and option premiums for commodity interest trading; or (iii) ownership of a portfolio comprised of a combination of (i) and (ii). See 57 FR 34853 (August 7, 1992).

[14] Persons or entities constituting eligible persons under Rule 4.5(a) are: (1) registered investment companies; (2) state regulated insurance companies; (3) state or federally regulated financial depository institutions; and (4) certain pension plans subject to regulation under the Employee Retirement Income Security Act of 1974.

required under Rule 155.3 to authorize an FCM to knowingly take the other side of a customer's order and to authorize an FCM to transfer funds from a customer's segregated account to another account.

The Commission has reviewed the proposed amendments in light of the comments received and has determined to expand the relief granted so as to permit FCMs and IBs to employ a single signature acknowledgment format for all categories of customers for various disclosures required by Commission rules. The Commission believes that a single signature acknowledgment of such disclosures in the form specified in Rule 1.55(d) provides a mechanism for meaningful confirmation of the customer's review of the relevant disclosures. As in the Proposal, Rule 1.55(d) will permit the FCM or IB to provide a list of required disclosure statements and the election under Rule 190.06(d) on a separate page or a page incorporated in the customer agreement. The customer must acknowledge receipt and understanding of each specified disclosure document and make the election required by 190.06(d) by checking a box next to the description of the appropriate disclosure statement or election. Thus, by signing a single signature line at the bottom of the page such customer acknowledges receipt and understanding of all the disclosure statements checked and indicated its applicable election. The required wording of the various risk disclosure statements, except as set forth elsewhere in this release, and of the election is unchanged.

As adopted, this amendment permits use of the "single signature" format only for the acknowledgements required by Rules 1.55(a)[15] and 33.7(a) and the election required by Rule 190.06(d) and may *not* be used for the endorsements required by Rule 180.3 with respect to arbitration and other dispute resolution agreements except with respect to QEPs as defined in Rule 4.7(a)(1)(ii) and for certain persons or entities within the purview of Rule 4.5(a).[16] The Commission does not believe that use of such a format for endorsement by public customers of the arbitration agreement and cautionary language specified in Rule 180.3 is appropriate, given the very specific mandate and the underlying objectives of that rule. Rule 180.3 was intended to ensure that a customer entering into an agreement for arbitration or other dispute resolution procedures does so on an informed, voluntary basis. To this end, the rule prescribes cautionary disclosures and requires that "[i]f the agreement is contained as a clause or clauses of a broader agreement" the customer must "separately endorse the clause or clauses containing the cautionary language and other provisions specified in this section." Rule 180.3(b)(2). Given these specific requirements of Rule 180.3(b)(2) as well as the fact that the rule 180.3 endorsement is designed to highlight the customer's assent to a dispute resolution methodology ancillary to the opening of a futures account, the Commission believes that except for customers satisfying the Rule 4.7 or Rule 4.5 criteria the Rule 180.3 requirements should not be the subject of the simplified "single signature" requirement. All other customers must separately endorse the clause or clauses relevant to arbitration as specified in Rule 180.3.

For similar reasons, the Commission has determined not to modify the requirements necessary to permit an FCM to knowingly take the other side of a customer's order[17] or to transfer funds from a customer's segregated account to an account that is not segregated. In each case, specific customer consent is required to ensure that the customer has actually authorized specific transactions that may result in a loss of important statutory protections.[18]

Finally, one commenter questioned the need for providing the prescribed disclosures to persons or entities constituting eligible persons under Rule 4.5(a) (1)–(4) and QEPs as defined in Rule 4.7(a)(1)(ii)(A) (1)–(4).[19] The commenter argued that such persons have investment expertise and experience necessary to understand the risks involved in trading futures or commodity options. The Commission believes that the new single signature format and other rule revisions discussed herein should significantly simplify the distribution and acknowledgment of required disclosures and that it would be inappropriate to create wholesale exemptions from the basic risk disclosure requirements based upon provisions of other rules designed to address different concerns. For example, in Rule 4.7 the Commission addressed the specific disclosure requirements applicable in the context of managed futures interest, *i.e.*, commodity pools and accounts guided or directed by a CTA, offered to QEPs and did not address disclosure requirements applicable where customers direct their own trading, which may be the case when the disclosures specified under Rules 1.55, 33.7 and 190.06 are applicable. The Commission also did not relieve CPOs and CTAs from all disclosure duties to QEPs but, rather, exempted them from the specific disclosure requirements of part 4.

5. Clarification of the Separate Statement Requirement of Rule 1.55

The Commission's proposals also included an amendment of Rule 1.55 to clarify its holding in *Batra* v. *E.F. Hutton & Company, Inc.*, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,937 at 34,283 (CFTC September 30, 1987)[20] concerning the requirement that "a separate written disclosure statement containing only the

[15] The separate acknowledgement required under Rule 30.6(a)(2) is necessary only when an FCM or, in the case of an introduced account, an IB, has received general discretionary trading authority to engage in foreign futures or foreign option trading on behalf of a foreign futures or foreign option customer. With consolidation of the Rule 1.55 and 30.6 disclosure statements, acknowledgement of the consolidated Rule 1.55 risk disclosure statement will satisfy the acknowledgement requirement of current Rule 30.6(a)(2), and thus Rule 30.6(a)(2) has been deleted. However, as discussed *supra*, to the extent that firms continue to use inventories of the separate Rule 1.55 and Rule 30.6 risk disclosure statements between the effective date of these rules and July 1, 1994, they must continue to obtain separate acknowledgement of the Rule 30.6 disclosure statement where discretionary authority to engage in foreign futures and options transactions has been granted.

[16] The Commission has clarified the application of this aspect of the rule to Rule 4.5 entities by listing in Rule 180.3(b)(2) the entities to whom the rule is intended to apply, rather than cross-referencing Rule 4.5.

[17] Rule 155.3(b)(2) provides that an FCM shall not "knowingly take, directly or indirectly, the other side of any order of another person revealed to the futures commission merchant * * * by reason of their relationship to such other person" without first obtaining the consent of such person and only in conformity with contract market rules approved by the Commission.

[18] Rule 155.3(b)(2) implements the specific prohibition of section 4b(a)(2)(C)(iv) of the Act with respect to taking the opposite side of a customer order only with such customer's consent and addresses the inherent conflict of interest that arises when an FCM is the opposite party to a transaction with its own customer.

A separate writing clearly evidencing the customer's authorization for a removal of funds from a customer's segregated account and transfer of such funds to another appropriate account such as a securities account or return of such funds be treated as the property of the depositing customer pursuant to section 4d(2) of the Act, 7 U.S.C. § 6d, and to protect such funds against loss or misappropriation. The commission has consistently declined to permit FCMs to include the requisite authorization to transfer funds from a customer's segregated commodity account to any other account of that customer carried by the FCM in customer account agreements. *See* CFTC Interpretative Letter No. 77–19 [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH), ¶ 20,528, (December 28, 1977); CFTC Interpretative Letter No. 83–13 [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,966 (May 6, 1983); and Division of Trading and Markets Interpretative Letter No. 86–2 [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,933 (February 18, 1986).

[19] *See* notes 13 and 14 *supra*.

[20] For a more detailed discussion of the *Batra* case, *see* Proposal at 46105.

language set forth in paragraph (b)" of Rule 1.55 be provided to each customer. The proposed amendment was designed to make clear that the prescribed risk disclosure statement may be provided as a physically separate document or in a booklet containing other commodity interest account materials, provided that the Rule 1.55 risk disclosure statement appears as the cover page or the first page, and is the only material on such page, of the booklet.

The Commission has determined to adopt this amendment as proposed. The Commission received four comments concerning this proposal, all supporting the proposal. One commenter asked that the Commission confirm that the "first page" of a booklet is the first page that contains substantive text and that a table of contents or customer application could therefore precede the "first" page. The Commission intends, however, that the risk disclosure statement appear on the cover page or the first page of the booklet, by which it means the page immediately following the cover page. Consequently, there may be no intervening table of contents or other material between the cover page and the disclosure statement.

B. Account Transfers

1. Disclosure to Customers

The Commission proposed several rule amendments designed to simplify and clarify the procedures for bulk transfers of customer account, *i.e.*, account transfers made other than at the request of the customer. The Commission's proposals related to two aspects of the transfer process: required disclosure to customers and notice to the Commission. With respect to disclosure duties, the Commission noted as a threshold matter that a customer's consent must be obtained prior to a transfer of that customer's account from one FCM (or IB) to another. Consequently, unless the customer account agreement validly evidences the customer's prospective consent to the transfer of his account to another FCM or IB, specific affirmative consent by the customer to the proposed transfer in advance of the transfer would be required. Where the account agreement contains a valid "assignment" clause in which the customer generally authorizes transfer of its account to an assignee firm, the Division has generally considered 'implied" or "negative" consent of the customer, as evidenced by the customer's lack of objection to the proposed transfer within a reasonable time after receipt of written notice of the proposed transfer, sufficient.[21]

The Proposal addressed the application of the risk disclosure rules in the bulk transfer context, a subject of frequent requests for relief by FCMs and IBs involved in the bulk transfer process, by providing that accounts could be opened at the transferee firm accepting a bulk transfer without immediate compliance by the firm with the risk disclosure and acknowledgment requirements of Rules 1.55, 33.7 and 190.10(c). As proposed, the amendments would have codified the "no-action" relief generally given in this context to permit transfers of accounts to be made rapidly by allowing new disclosure statements to be given, and acknowledgments thereof received from customers, a short period after the transfer. The Commission proposed to establish by rule that compliance with the risk disclosure requirements of Rules 1.55, 33.7 and 190.10 could be completed within sixty days following a bulk transfer. Therefore, in the event of a bulk transfer of accounts from one FCM or IB to another, the Commission registrant to whom such accounts were transferred would be required to deliver to the holders of such accounts the risk disclosure statements required by Rules 1.55, 33.7 and 190.10 and receive from such customers the signed acknowledgments required by Rules 1.55 and 33.7 within sixty days of the transfer.[22]

The Commission received only one comment on its proposals relating to bulk transfers and that comment supported the proposals as "in the best interest of retail customers, FCMs, IBs, DSROs as well as the CFTC."[23] However, upon reconsideration, the Commission has determined that modification of the proposal to provide more meaningful relief and greater clarity as to applicable procedures is warranted. First, the Commission has determined to revise the Proposal to eliminate the requirement, as set forth in proposed Rules 1.55(a)(2), 33.7(a)(3) and 190.10(c)(1)(ii), that in all cases FCMs and IBs receiving bulk transfers of customer accounts provide each customer whose account is transferred new risk disclosure statements pursuant to those rules and obtain acknowledgments thereof from the customer within sixty days of the transfer of such accounts. The Commission believes that where such customers have been provided the requisite risk disclosures by the transferor firm, the customer has duly signed the required acknowledgments of his receipt and understanding of such statements, and the transferee firm has adequate evidence of the customer's receipt and acknowledgment of such statements, such as photocopies of the signed and dated customer acknowledgments, it is unnecessary to require that the transferee firm duplicate the disclosure and acknowledgment process as to those accounts.[24] The Commission continues to believe that prudent business practice may call for complete "repapering," including execution of new account agreements and appropriate disclosures, of accounts that have been transferred but does not consider a general regulatory requirement to this effect to be necessary where the transferee firm can establish that the customer has received and acknowledged receipt and understanding of required disclosures.

The Commission has made several changes in the rule amendments as proposed to reflect this modification. First, the amendments have been redrafted such that the requirements relating to distribution and acknowledgment of the risk disclosure statements in the bulk transfer context, rather than being separately addressed in new provisions in Rule 1.55 and the various other disclosure provisions affected, are now consolidated into one provision in new Rule 1.65, which as adopted addresses both disclosure to customers and notice to the Commission concerning bulk transfers. This should make the rules applicable to bulk transfers more accessible as well as eliminate unnecessarily duplicative text. Technical amendments to modify the individual risk disclosure provisions, which prohibit opening of an account unless the specified disclosures are given and acknowledged, to reflect that these provisions do not obtain in the context

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[21] *See* Proposal at 46106.

[22] The amendment to Rule 190.10 set forth herein eliminates the requirement that an FCM obtain a separate acknowledgment of the disclosure required by the rule. Consolidation of the Rule 30.6 disclosure statement with the Rule 1.55 risk disclosure statement obviates separate treatment of the Rule 30.6 statement in this context.

[23] *See* Letter from Mary Beth Rooney, Associate Director Regulatory Reporting and Research, Office of Investigations and Audits, CBOT to Jean Webb, Secretary, CFTC, dated December 8, 1992.

[24] However, if, for example, a transferee firm wished to engage in the trading of domestic exchange-traded options on behalf of a customer whose account had been transferred and the transferee firm is unable to obtain from the transferor firm adequate evidence of the customer's receipt and acknowledgment of the risk disclosure statement required by Rule 33.7, the transferee firm must then provide such risk disclosure statement and obtain such acknowledgment from the affected customer prior to engaging in any domestic exchange-traded options trading on behalf of that customer.

of bulk transfers of accounts pursuant to Rule 1.65 are necessary, however. Rule 1.55, for example, is modified to state that "[e]*xcept as provided in § 1.65 of this chapter*, no futures commission merchant or, in the case of an introduced account, no introducing broker may open a commodity futures account for a customer unless the futures commission merchant or introducing broker first" furnishes the separate written disclosure requirement and receives the acknowledgment required by the rule.

With respect to the distribution of risk disclosure statements and acknowledgment thereof, Rule 1.65 as adopted provides that a transferee firm accepting a bulk transfer of customer accounts must provide the risk disclosure statements and obtain the acknowledgments required under Commission rules as to each transferred account within sixty days of the transfer *unless* the transferee firm has clear written evidence that the customer holding such account has received and, as applicable, acknowledged the relevant disclosure document in accordance with the requirements of Rules 1.55, 33.7 and 190.10(c).

With respect to disclosure to customers, Rule 1.65 will reflect the requirement that the customer's consent must be obtained prior to the transfer of the customer's account from one FCM to another. Absent a provision in the customer account agreement that evidences the customer's prospective consent to the transfer of his account to another FCM, there must be express consent by the customer to movement of the account. As discussed in the Proposal, the Division of Trading and Markets has previously stated that where the transferor firm's agreement with the customer authorizes prospective assignments of customer accounts, a "negative consent" letter may be used to secure the customer's consent to a proposed transfer. As adopted, Rule 1.65(a)(2) will specify the notice that must be given to the customer where such a general authorization has been given in the account agreement and the transferor firm provides notice to the customer whose account it proposes to transfer in order to obtain the customer's "negative consent" to the transfer. The required contents of the notice, which were discussed generally in the Proposal,[25] must apprise the customer: (i) Of the material facts concerning the proposed transfer, including the reasons for the transfer and the identity of the proposed transferee firm;[26] (ii) that they need not accept the proposed transferee firm but instead may direct the transferor firm either to liquidate the account or transfer it to a different firm of the customer's choice; (iii) that failure to respond to the letter by a specified deadline, which must afford the customer a reasonable time period for objection,[27] may be construed as consent to the transfer; and (iv) of the name, telephone number and address of a contact person at the transferor firm and a clear statement as to the means by which the customer may object or respond to the notice of the proposed transfer. The Commission also recommends as a matter of prudent business practice that the information noted above be provided to customers whose specific consent must be obtained prior to the transfer of his account.

2. Notice of Commission

The Commission also proposed to clarify and refine its existing requirement that transferor firms give advance notice to the Commission of transfers outside the ordinary course of business. The Commission has adopted these amendments, also contained in new Rule 1.65, as proposed. As noted in the release, although Rule 190.06(b) requires notice to the Commission when an FCM intends to make any transfer of customer accounts that is not at the customer's request or "in the ordinary course of business," some firms apparently are unaware that this notice requirement applies outside of the bankruptcy context as well as subsequent to a bankruptcy filing. The proposed amendment was designed to clarify the notice requirement by establishing a separate notice provision outside of Part 190, which contains the Commission's bankruptcy rules, and to simplify the notice requirement by providing a quantitative standard for determining when notice is required that limits the requirement to bulk transfers representing a substantial portion of the accounts introduced or carried by the transferor firm and a clear statement of the content of the required notice.

As proposed, notice to the Commission would be required of all transfers made other than at the customer's instance that involve twenty-five percent or more of the total number of customer accounts carried or introduced by the transferor FCM or IB. If twenty-five percent of the firm's total customer accounts constitute fewer than one hundred accounts, notice will be required for transfers involving fifty percent of the firm's total customer accounts. Computation of the number and percentage of accounts would be based on the number of accounts of the transferor firm, without regard to whether such accounts are transferred to a single transferee or multiple firms. The notice is required to be filed with the Commission five business days prior to the transfer, or where such notice is impracticable, as soon as possible and in any event no later than the day of the transfer.

The Commission has determined to adopt this notice requirement as proposed. As noted in the release accompanying the proposal, the notice requirement is intended to provide the Commission with early notice of substantial bulk transfers which may signal financial difficulties at a registrant or other changes in its business that may have customer protection implications. The notice thus is designed to provide the Commission with information useful to it in discharging its oversight responsibilities but does not imply Commission approval or acquiescence in the transfer. Conforming changes have been made to the Rule 190.06(b) notice requirement such that that requirement applies only to transfers made after the filing of a bankruptcy petition and notice pursuant to that provision is not required if notice pursuant to Rule 1.65(b) has been filed. This requirement is necessary because the Commission must receive notice of all bulk transfers effected post-bankruptcy in order to preserve its ability to disapprove of such transfers.

C. Other Disclosure Issues

The Commission's release also requested comment concerning a number of other disclosure issues raised by industry participants.

[25] Proposal at 46106, note 27.

[26] Material facts in this context, for example, might include the fact that the transferor firm was ceasing business due to pending law enforcement or disciplinary proceedings against the firm or that certain affiliations between the transferee firm and the transferor firm, such as common principals, exist. *See CFTC* v. *Commodity Fluctuation Systems, Inc.*, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,654 (S.D.N.Y., July 2, 1985), *aff'd in unpublished opinion*, 788 F.2d 4 (2d Cir. Feb. 28, 1986).

[27] What will constitute a reasonable period may be affected by the particular context of the transfer, including such factors as the number of customer accounts, customer location, reason for and extent of advance knowledge of the need to transfer, and the time required for delivery of the transfer notice and the response thereto. Commission staff has generally required at least ten business days for customer responses when the transfer was not occasioned by a financial emergency. *See* Proposal at 46106, note 27.

1. Disclosure Concerning Electronic Trading Systems

Recognizing that disclosure documents specific to particular electronic trading systems have been developed by various SROs to supplement the Rule 1.55 disclosure statement, the Commission requested comment in the Proposal as to the desirability of a uniform electronic trading system disclosure document or modification of the Rule 1.55 statement to address electronic trading systems and enable market participants to avoid the use of multiple disclosure documents and addressing specific trading systems. The Commission received four comments in response to this request. Although there was no evident consensus as to the appropriate regulatory approach in this area, three commenters, including one exchange that currently operates an electronic trading system, an industry trade association, and NFA, all questioned whether, at this juncture, development of a Commission-prescribed disclosure statement in this area is necessary. The NFA commented, for example, that in light of "the relative infancy of and the limited experience with electronic trading systems * * * the development of specialized disclosure documents currently best remains with the exchanges utilizing these systems."[28] The CME recommended that the need for disclosure of automated order entry and matching systems be reviewed, including whether general statements concerning such systems can be consolidated into the Rule 1.55 statement and that each exchange developing such a system should continue to determine the appropriate level of disclosure.[29] The Futures Industry Association questioned the need for any prescribed disclosure with respect to electronic trading systems but concluded that if the Commission determines that such disclosure is necessary, it would support development of a uniform disclosure document for all such systems.[30] The fourth commenter, the CBOT, cautioned that significant differences among electronic trading systems make it "difficult, though not impossible, to consolidate existing disclosure documents into one electronic trading disclosure document."[31]

In light of the comments received, the Commission has determined to give further consideration to the issues raised concerning disclosure about electronic trading systems, including whether a standardized statement is desirable and feasible.

2. Simplified Options Disclosure

In the Proposal, the Commission stated that it was considering development of a "plain language" options disclosure statement and requested comment concerning the desirability of developing a simpler options disclosure format and other possible improvements in options disclosure. Generally, the commenters who addressed this issue supported the development of a plain language options disclosure statement but also encouraged the Commission to consider incorporating the required options disclosure into the revised Rule 1.55 disclosure statement. As noted *supra*, appears that a consolidated futures and options disclosure statement designed to be useable for domestic and cross-border transactions may be developed for use internationally. If these efforts come to fruition, such a proposal may provide a basis for revisiting Commission requirements for options disclosure. The Commission intends to defer other initiatives to refine options disclosure requirements pending the outcome of these international efforts.

3. Disclosure Concerning Protection of Customer Funds

As noted above, the Commission has included in the new consolidated Rule 1.55 risk disclosure statement a statement advising the customer to familiarize himself with the protections available to safeguard his funds or property by consulting with his broker. The Commission believes that this statement is responsive to the comments received on the subject of whether additional disclosure should be required as to the scope of the protection of customer funds under the Act and Commission regulations. Pursuant to comment, the Commission may also consider developing, with the help of the SROs, an informational booklet which would explain the functions of segregation and other customer protections, and making such a booklet available to FCMs and IBs for distribution to customers on a request basis.

[28] See Letter from Daniel J. Roth, General Counsel, NFA to Jean A. Webb, Secretary, CFTC, dated January 5, 1992.

[29] See Letter from William J. Brodsky, President and Chief Executive officer, CME to Jean A. Webb, Secretary, CFTC, dated December 14, 1992.

[30] See Letter from John M. Damgard, President, Futures Industry Association to Jean A. Webb, Secretariat, CFTC, dated December 7, 1992.

[31] See letter from Mary Beth Rooney, Associate Director Regulatory Reporting and Research, Office of Investigations and Audits, CBOT to Jean A. Webb, Secretary, CFTC, dated December 8, 1992.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the PRA, the Commission has submitted the proposed rule amendments and the proposed rule and their associated information collection requirements to the Office of Management and Budget. The amendments to Rules 30.6, 33.7, 190.06 and 190.10 do not change the burdens associated with those rules. The groups of rules of which they are a part have the following burdens:

Rule 30.6–(3038–0035)

Average Burden Hours per Response.....18.50
Number of Respondents.....420
Frequency of Response.....occasionally

Rule 33.7–(3038–0007)

Average Burden Hours per Response.....50.59
Number of Respondents.....190,370
Frequency of Response.....occasionally

Rules 190.06 and 190.10–(3038–0021)

Average Burden Hours per Response.....30
Number of Respondents.....402
Frequency of Response.....occasionally

The burden associated with the group of rules which encompasses Rules 1.55, 180.3 and Rule 1.65 is:

Rules 1.55, 180.3 and 1.65–(3038–0022)

Average Burden Hours per Response.....81.83
Number of Respondents.....1342
Frequency of Response.....occasionally

No additional burden is associated with the amendments to Rule 1.55. The burden associated with Rule 1.65 (3038–0024) is borne by FCMs and IBs and is as follows:

Average Burden Hours per Response.....1.0
Number of Respondents.....20
Frequency of Response.....occasionally

Copies of the OMB approved information collection package associated with these amendments to the rules and the new rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that FCMs should not be considered

small entities for purposes of the RFA.[32] With respect to IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some IBs should be considered small entities, and if so, that it would analyze the economic impact on them of any rule.[33] Because the amendment to the Commission's rules discussed herein will not result in any significant additional burdens to the above-mentioned registrants and may in practice result in a reduction of certain existing burdens, the Commission believes that the rule amendment will not have a significant economic impact on such entities. No comments were received on this issue.

List of Subjects

17 CFR Part 1

Customer protection, Risk disclosure statements.

17 CFR Part 30

Foreign futures and option transactions, Customer protection, Risk disclosure statements.

17 CFR Part 33

Commodity futures, Domestic exchange-traded commodity option transactions.

17 CFR part 180

Arbitration or other dispute settlement procedures, Consumer protection.

17 CFR Part 190

Bankruptcy

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4d, 4f and 8a of the Act, as amended, 7 U.S.C. 2, 6b, 6d, 6f and 12a, the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 1a, 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 41, 4m, 4n, 4o, 5 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, and 20 of the Commodity Exchange Act, 7 U.S.C. §§ 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21 and 24.

[32] 47 FR 18618–18620 (April 30, 1982).

[33] 47 FR 18618–18620 (April 30, 1982) (commodity trading advisors and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers).

2. Section 1.55 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (c) and (d) as paragraphs (e) and (f) and by adding new paragraphs (c) and (d) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a) (1) Except as provided in § 1.65, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a commodity futures account for a customer unless the futures commission merchant or introducing broker first:

(i) Furnishes the customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions) or as otherwise approved under paragraph (c) of this section; *Provided, however,* that the disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page; and

(ii) Receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement.

(b) The language set forth in the written disclosure document required by paragraph (a) of this section shall be as follows:

Risk Disclosure Statement

The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You should be aware of the following points:

(1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

(2) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

(3) Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, since market conditions on the exchange where the order is placed may make it impossible to execute such orders.

(4) All futures positions involve risk, and a "spread" position may not be less risky than an outright "long" or "short" position.

(5) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

(6) You should consult your broker concerning the nature of the protections available to safeguard funds or property deposited for your account.

All of the points noted above apply to all futures trading whether foreign or domestic. In addition, if you are contemplating trading foreign futures or options contracts, you should be aware of the following additional risks:

(7) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(8) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

This Brief Statement Cannot, of Course, Disclose all the Risks and Other Aspects of the Commodity Markets

I hereby acknowledge that I have received and understood this risk disclosure statement.

Date

Signature of Customer

(c) The Commission may approve for use in lieu of the risk disclosure document required by paragraph (b) of this section a risk disclosure statement approved by one or more foreign regulatory agencies or self-regulatory organizations if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by paragraph (b) of this section. Notice of foreign jurisdiction risk disclosure

statement approvals will be published in the **Federal Register**.

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by §§ 33.7 and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in § 1.55 and §§ 33.7 and 190.06 of this chapter, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement or election that the customer has received and understood such disclosure statement or made such election;

(2) The acknowledgment referred to in subparagraph (d)(1) of this section must be accompanied by and executed contemporaneously with delivery of the disclosures and elective provisions required by § 1.55 and §§ 33.7 and 190.06 of this chapter;

* * * * *

3. Section 1.65 is added to read as follows:

§ 1.65 Notice of bulk transfers and disclosure obligations to customers.

(a) *Notice and Disclosure to Customers.* (1) Prior to transferring a customer account to another futures commission merchant or introducing broker other than at the request of the customer, a futures commission merchant or introducing broker must obtain the customer's specific consent to the transfer.

(2) If the customer account agreement contains a valid consent by the customer to prospective transfers of the account, the transferor futures commission merchant or introducing broker may transfer the account if the customer is provided with written notice of, and a reasonable opportunity to object to, the transfer and the customer has not asserted an objection to the transfer or given other instructions as to the disposition of the account. The notice to the customer must include:

(i) A clear statement of the reason(s) for the transfer, the name, address and telephone number of the proposed transferee firm and other information material to the transfer;

(ii) A statement that the customer is not required to accept the proposed transfer and may direct the transfer or firm to liquidate the account or transfer the account to a firm of the customer's selection;

(iii) The name, telephone number and address of a contact person at the transferor firm to whom the customer may give instructions as to the disposition of the account;

(iv) Notice that a failure to respond to the letter within a specified time period, which must be a reasonable period in the circumstances, will be deemed consent to the transfer; and

(v) A clear statement as to the means by which the customer may object to or otherwise respond to the notice of proposed transfer.

(3) Where customer accounts are transferred to a futures commission merchant or introducing broker, other than at the customer's request, the transferee introducing broker or futures commission merchant must provide each customer whose account is transferred with the risk disclosure statements and acknowledgments required by § 1.55 (domestic futures and foreign futures and options trading), and §§ 33.7 (domestic exchange-traded commodity options) and 190.10(c) (non-cash margin—to be furnished by futures commission merchants only) of this chapter and receive the required acknowledgments within sixty days of the transfer of accounts. This requirement shall not apply:

(i) As to customers owning transferred accounts for which the transferee futures commission merchant or introducing broker has clear written evidence that the customer has received and acknowledged the required disclosure documents; or

(ii) If the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) and such futures commission merchant maintains the relevant acknowledgments required by § 1.55(a)(1)(ii) and § 33.7(a)(1)(ii) of this chapter and can establish compliance with § 190.10(c) of this chapter.

(b) *Notice to the Commission.* Each futures commission merchant or introducing broker shall file with the Commission, at least five business days in advance of the transfer, notice of any transfer of customer accounts carried or introduced by such futures commission merchant or introducing broker that is not initiated at the request of the customer, where the transfer involves the lesser of:

(1) 25 percent of the total number of customer accounts carried or introduced by such firm if that percentage represents at least 100 accounts; or

(2) 50 percent or more of the total number of customer accounts carried or introduced by such firm. The computation of the percentage and number of accounts must be based on the total number of accounts carried by the transferor futures commission merchant or introduced by the introducing broker, irrespective of whether such accounts are transferred to a single or multiple transferees.

(c) The notice required by paragraph (b) of this section shall include:

(1) The name, principal business address and telephone number of the transferor futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of each transferee futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of the notice to customers informing them of the proposed transfer and providing an opportunity to object to such transfer; and

(6) A statement of the number of accounts to be transferred and the estimated liquidating equity of the accounts to be transferred.

(d) The notice required by paragraph (b) of this section shall be filed with the Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; the National Futures Association Attn: Vice President-Compliance; and the designated self-regulatory organization for the transferor firm.

(e) In the event that the notice required by paragraph (b) of this section cannot be filed with the Commission at least five days prior to the account transfer, the transferee futures commission merchant or introducing broker shall file such notice as soon as practicable and no later than the day of the transfer. Such notice shall include a brief statement explaining the circumstances necessitating the delay in filing.

(f) The requirements of this section shall not affect the obligations of a futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to transfer of accounts.

(g) If a proposed transfer is not completed in accordance with the notice required to be filed by paragraph (b) of this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

4. The authority citation for part 30 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c, and 12(a).

5. Section 30.6 is amended by revising paragraph (a) to read as follows:

§ 30.6 Disclosure.

(a) *Futures commission merchants and introducing brokers.* Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a foreign futures of option account for a foreign futures or option customer unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in § 1.55(b) of this chapter or as otherwise approved under § 1.55(c) of this chapter (except for nonsubstantive additions such as captions), which has been acknowledged in accordance with § 1.55 of this chapter; *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

6. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

7. Section 33.7 is amended by revising paragraph (a) to read as follows:

§ 33.7 Disclosure.

(a) (1) Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open or cause the opening of a commodity option account for an option customer unless the futures commission merchant or introducing broker first:

(i) Furnishes the option customer with a separate written disclosure statement as set forth in this section or includes such statement in a booklet containing the customer account agreement and other disclosure statements required by Commission rules; and

(ii) Subject to the provisions of § 1.55(d) of this chapter, receives from the option customer an acknowledgment signed and dated by the option customer that he received and understood the disclosure statement.

(2) The disclosure statement and the acknowledgment shall be retained by the futures commission merchant or the introducing broker in accordance with § 1.31 of this chapter. The disclosure statement must be as set forth in paragraph (b) of this section, typed or printed in type of not less than 10-point size, and, where indicated, in all capital letters.

* * * * *

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

8. The authority citation for part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6k, 7a, 12a, and 21 unless otherwise noted.

9. Section 180.3 is amended by revising paragraph (b)(2) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * *

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. Such futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter for the following classes of customers only:

(i) An investment company registered under the Investment Company Act of 1940;

(ii) An insurance company subject to regulation by any State;

(iii) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States;

(iv) A pension plan subject to Title I of the Employee Retirement Income Security Act of 1974, an employee welfare benefit plan subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974, and a plan defined as a government plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974;

(v) A foreign entity that is regulated in a manner comparable to the entities specified in paragraphs (b)(2)(i)–(iv) of this section; or

(vi) A person who is a "qualified eligible participant" as defined in § 4.7(a)(1)(ii) of this chapter.

* * * * *

PART 190—BANKRUPTCY RULES

10. The authority citation for part 190 continues to read as follows:

Authority: 7 U.S.C. 2, 4a, 6c, 6g, 7, 7a, 12, 19, 23, and 24 and 11 U.S.C. 362, 546, 548, 556 and 761–766.

11. Section 190.06 is amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 190.06 Transfers.

* * * * *

(b) *Notice.* Unless notice has been filed pursuant to § 1.65(b) of this chapter, if a futures commission merchant, or a person required to be registered as a futures commission merchant, intends to transfer commodity contracts held by or for a commodity broker from or for the account of a customer to another person registered as a futures commission merchant after a petition in bankruptcy has been filed by or against such commodity broker, the transferor must notify the Commission no later than is required under § 190.02(a)(2).

* * * * *

(d) *Customer instructions.*—(1) *Customer instructions.* A commodity broker must provide an opportunity for each customer to specify when undertaking its first hedging contract whether, in the event of bankruptcy, such customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee without seeking customer instructions. Such commodity broker may obtain evidence of the customer instructions as provided in § 1.55(d) of this chapter.

* * * * *

12. Section 190.10 is amended by revising paragraph (c)(1) to read as follows:

§ 190.10 General.

* * * * *

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in § 1.65 of this chapter, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer to margin,

guarantee, or secure a commodity contract unless, the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldfaced print in at least ten point type, which may be provided as either a separate, written document or incorporated into the customer agreement.

* * * * *

Issued in Washington, DC, on March 30, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-7727 Filed 4-2-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C-0203]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone to form contact lenses and to identify clearly the color additive as the reaction product of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with other monomers. This action is in response to a petition filed by Bausch & Lomb, Inc.

DATES: Effective May 6, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by May 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of December 19, 1990 (55 FR 52099), FDA announced that a color additive petition (CAP 1C0229) had been filed by Bausch & Lomb, Inc., 1400 North Goodman St., Rochester, NY 14692-0450. The petition proposed to amend § 73.3106 (21 CFR 73.3106) of the color additive regulations to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with hydroxyethyl methacrylate/*N*-vinyl pyrrolidone copolymer to color contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

In a notice published in the **Federal Register** of August 11, 1992 (57 FR 35832), FDA announced that Bausch & Lomb, Inc., had also requested that § 73.3106 be amended to list the color additive as the copolymer formed as the reaction product of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with the contact lens monomers, either hydroxyethyl methacrylate or a blend of hydroxyethyl methacrylate and *N*-vinyl pyrrolidone.

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of the reaction product of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone as a color additive in manufacturing contact lenses is subject to this listing requirement. The color additive is formed into contact lenses in such a way that at least some of the color additive will come in contact with the eyes when lenses are worn. In addition, the lenses are intended to be placed on the eyes for several hours a day, each day, for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. Identity

The color additive is produced by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (CAS Reg. No. 121888-69-5) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone monomers. The resulting copolymeric product is formed into a contact lens.

IV. Safety Evaluation

The agency believes that because 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone has a significantly lower molecular weight than the subject copolymer, it would be more readily absorbed into the body than the subject copolymer and would thus be expected to show a greater toxic effect. Therefore, the safety evaluation of the subject color additive focused primarily on 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone.

FDA concludes from the data submitted in the petition and from other relevant information that the average daily exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone from this petitioned use in contact lenses would be no greater than 0.04 micrograms (µg) per person per day. The agency-calculated upper limit was based on two factors. First, the maximum use level anticipated by the petitioner is 100 parts per million of the lens material or 8 µg per lens of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone in a contact lens (Ref. 1). Second, the agency made two worst-case assumptions: (1) The user will replace these lenses once each year with a new pair of identical lenses, and (2) 100 percent of the 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone will migrate from the lenses into the eyes over the 1-year period. Because these assumptions are worst-case estimates, exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone from this use is likely to be far less than 0.04 µg per person per day (Ref. 1).

To establish the safety of the subject additive, the petitioner conducted toxicity studies with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, colored lenses, and colored lens extracts. The studies included six in vitro cytotoxicity studies, four by the agar overlay method (with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, lens, and lens extract), and two by the direct-contact method (with 1,4-bis[4-(2-methacryloxyethyl)

phenylamino]anthraquinone and lens extract). The maximum noncytotoxic concentration of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone was determined to be 1,810 µg per milliliter (mL) by the direct-contact method using mouse fibroblast cells. Both the lenses and lens extracts were found to be noncytotoxic to mouse fibroblast cells. A 21-day ocular irritation study with contact lenses in rabbits and a guinea pig maximization study (Kligman) with lens extracts were also conducted. These studies demonstrated no evidence of ocular irritation or an allergic response in the test animals.

To relate the 1,810 µg/mL no-effect level, established in the direct-contact cytotoxicity study for 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, to the 0.04 µg per person per day exposure from wearing the colored lenses, the agency calculated the maximum concentration level in each eye that would result from the use of the contact lens. The agency estimated that the daily exposure in each eye would be 0.02 µg and that this would be diluted by the average daily tear film of 1.2 mL produced in each eye. This concentration is equal to a maximum daily concentration in the tear flow of the eye of 0.02 µg dye per mL. This concentration represents more than a 90,000 fold safety factor, for this proposed use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone.

Based upon the available toxicity data, the small amount of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone used to form the color additive in the contact lenses, and the agency's exposure calculation for 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, FDA finds that the reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone, is safe for use as a color additive in contact lenses. FDA further concludes that the safety margin is sufficiently large that no limitation is required beyond the usual limitation that the reactants may be used in amounts not to exceed the minimum reasonably required to accomplish the intended technical effect. Batch certification is not required to ensure safety.

V. Conclusions

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of the reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone to form colored contact lenses, and that the color additive is safe and suitable for its intended use. FDA also agrees with the petitioner's request to amend § 73.3106 to list the color additive as the reaction product of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with other monomers, either hydroxyethyl methacrylate or a blend of hydroxyethyl methacrylate and *N*-vinyl pyrrolidone, to form a contact lens material.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated April 8, 1991, from the Food and Color Additives Review Section to the Indirect Additives Branch, "CAP 1C0229: Bausch & Lomb, submission of 10-2-90. 1,4-Bis[4-(2-methacryloxyethyl)-phenylamino]- anthraquinone (Reactive Blue 246) as a colorant in contact lenses."

IX. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

2. Section 73.3106 is revised to read as follows:

§ 73.3106 1,4-Bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymers.

(a) *Identity*. The color additive is 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (CAS Reg. No. 121888–69–5), copolymerized with hydroxyethyl methacrylate monomer or a blend of hydroxyethyl methacrylate

and *N*-vinyl pyrrolidone monomers to form the contact lens material.

(b) *Uses and restrictions.* (1) The substances listed in paragraph (a) of this section may be used in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization and compliance with these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to contact lenses made from the color additives.

(c) *Labeling.* The label of the color additives shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of these color additives is not necessary for the protection of the public health and, therefore, the color additives are exempt from the certification requirements of section 706(c) of the act.

Dated: March 18, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7769 Filed 4–2–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 73

[Docket No. 89C–0480]

Listing of Color Additives for Coloring Contact Lenses; Vinyl Alcohol/Methyl Methacrylate-Dye Reaction Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use in coloring contact lenses of the reaction products formed by chemically bonding the following reactive dyes, alone or in combination, to the vinyl alcohol/methyl methacrylate copolymeric lens material:

(1) C.I. Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, tetrasodium salt] (CAS Reg. No. 17095–24–8);

(2) C.I. Reactive Orange 78 [2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-] (CAS Reg. No. 68189–39–9);

(3) C.I. Reactive Yellow 15 [benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-] (CAS Reg. No. 60958–41–0);

(4) C.I. Reactive Blue No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt] (CAS Reg. No. 2580–78–1); and

(5) C.I. Reactive Blue 21 [copper, (29*H*,31*H*-phthalocyaninato(2-)-N^{29}, N^{30}, N^{31}, N^{32})-, sulfo((4-((2-(sulfooxy) ethyl)sulfonyl)phenyl)amino)sulfonyl derivatives] (CAS Reg. No. 73049–92–0).

This action is in response to a petition filed by CIBA Vision Corp.

DATES: Effective May 6, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by May 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of December 19, 1989 (54 FR 51945), FDA announced that a color additive petition (CAP 9C0217) had been filed by CIBA Vision Corp., P.O. Box 105069, Atlanta, GA 30348. The petition proposed that the color additive regulations be amended to provide for the safe use of six vinyl sulfone reactive dyes to color contact lenses prepared from a copolymer that is the reaction product of the dye and a polyvinyl alcohol/methyl methacrylate copolymer. The dyes are as follows:

(1) C.I. Reactive Black 5 (2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, tetrasodium salt, CAS Reg. No. 17095–24–8);

(2) C.I. Reactive Blue 21 (copper, (29*H*,31*H*-phthalocyaninato(2-)-N^{29}, N^{30}, N^{31}, N^{32})-, sulfo((4-((2-(sulfooxy) ethyl)sulfonyl)phenyl)amino)sulfonyl derivatives, CAS Reg. No. 73049–92–0);

(3) C.I. Reactive Orange 78 (2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, CAS Reg. No. 68189–39–9);

(4) C.I. Reactive Yellow 15 (benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-, CAS Reg. No. 60958–41–0);

(5) C.I. Reactive Blue No. 19 (2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt, CAS Reg. No. 2580–78–1); and

(6) C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt, CAS Reg. No. 98114–32–0).

Since publication of the filing notice, Ciba Vision Corp. has changed its address to 11460 Johns Creek Pkwy., Duluth, GA 30136–1518. Additionally, the color additive regulation providing for the safe use in coloring contact lenses of the reaction of C.I. Reactive Red 180 with vinyl alcohol/methyl methacrylate copolymer has been addressed in a previous final rule (January 8, 1993, 58 FR 3225). In the filing notice of December 19, 1989, the chemical nomenclature of C.I. Reactive Yellow 15 was incorrectly cited. This final rule corrects that error.

The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive comes into direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of the vinyl alcohol/methyl methacrylate-dye reaction products as color additives in contact lenses is subject to this listing requirement. The color additives are added to contact lenses in such a way that at least some of the color additives will come into contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day, for 1 year or more. Thus, the color additives will be in direct contact with the body for a significant period of time. Consequently, the use of the color additives currently before the agency is subject to the statutory listing requirement.

III. Identity

The color additives are the reaction products formed when the reactive dyes are chemically bonded, either alone or in combination, with the vinyl alcohol/methyl methacrylate copolymer. Specifically, the dyes are reacted with contact lenses fabricated from the vinyl alcohol/methyl methacrylate copolymer. During the reaction, the sulfate groups of the dyes are replaced by ether

linkages to the copolymeric lens material. As a result, a thin layer of colored copolymeric material forms on the surface of the lenses. As part of the manufacturing process, the lenses are thoroughly washed to remove unbound dye.

IV. Safety Evaluation

The agency believes that because the five reactive dyes have significantly lower molecular weights than the vinyl alcohol/methyl methacrylate-dye copolymers, they would be more readily absorbed into the body than the copolymeric color additives and would thus be expected to show a greater toxic effect. Therefore, the safety evaluation of the subject color additives focused primarily on the reactive dyes.

FDA concludes from the data submitted in the petition and from other relevant information that the exposure to each of the dyes from its use to produce the color additives in the contact lenses is no greater than 3 nanograms (ng) per person per day. The exposures calculated by the agency were based on extraction studies conducted by the petitioner on previously regulated contact lenses colored with the vinyl alcohol/methyl methacrylate-C.I. Reactive Red 180 reaction product, from which the agency has determined that the amount of C.I. Reactive Red 180 that could migrate from the colored contact lenses is no more than 0.6 micrograms (µg) per lens.

Because the chemical bonding of the five subject dyes to the vinyl alcohol/methyl methacrylate copolymeric lens material is expected to be similar to that observed in the vinyl alcohol/methyl methacrylate-C.I. Reactive Red 180 reaction product, the exposure to the five reactive dyes is likely to be no greater than that determined for C.I. Reactive Red 180.

The agency has also made the worst-case assumptions that: (1) A user will replace lenses colored with the vinyl alcohol/methyl methacrylate-dye copolymers once each year with a new pair of lenses tinted with the same color additive; and (2) 100 percent of the 0.6 µg of extractable dye will migrate from the lenses into the eyes over the 1-year period. Because these assumptions include numerous conservatisms, actual exposure to the reactive dyes from their use to produce color additives in contact lenses is likely to be far less than 3 ng per person per day (Ref. 1).

In evaluating the safety of the five reactive dyes, the agency considered two in vitro cytotoxicity studies on the reactive dyes by the direct-contact method that were contained in its files. From these studies, the maximum noncytotoxic concentrations for the reactive dyes using mouse fibroblast cells were determined to be 500 µg per milliliter (mL) for C.I. Reactive Black 5; 1,000 µg/mL for C.I. Reactive Orange 78; 750 µg/mL for C.I. Reactive Yellow 15; 250 µg/mL for C.I. Reactive Blue No. 19; and 100 µg/mL for C.I. Reactive Blue 21.

In addition, the petitioner conducted toxicity tests to establish that the vinyl alcohol/methyl methacrylate-dye reaction products are safe for use in coloring contact lenses. These tests included in vitro cytotoxicity studies on the lenses and on lens extracts using mouse fibroblast cells and the agar-overlay method. The petitioner also conducted acute systemic toxicity tests on mice using lens extracts and 21-day ocular irritation studies on rabbits using the colored lenses. The above-referenced studies demonstrated no evidence of cytotoxicity, acute systemic toxicity, or ocular irritation.

To relate the no-effect levels established in the direct-contact cytotoxicity studies on the reactive dyes to the 3 ng per person per day exposure from wearing the colored lenses, the agency calculated the maximum concentration level of reactive dye in each eye that would result from the use of the contact lens. The agency estimated the daily exposure to reactive dye in each eye would be no greater than 1.5 ng, and this daily exposure would be diluted by the average daily tear film of 1.2 mL produced in each eye. This concentration is equal to a maximum daily concentration in the tear flow of the eye of 1.25 ng per mL for each of the five reactive dyes. When this concentration is compared with the no-effect levels from the in vitro cytotoxicity tests, this represents safety factors of: At least 400,000-fold for C.I. Reactive Black 5, at least 800,000-fold for C.I. Reactive Orange 78, at least 600,000-fold for C.I. Reactive Yellow 15, at least 200,000-fold for C.I. Reactive Blue No. 19, and at least 80,000-fold for Reactive Blue 21 for this use in contact lenses.

Based upon the available toxicity data, the small amount of vinyl alcohol/methyl methacrylate-dye reaction products in the contact lenses, and the agency's exposure calculation, FDA finds that the reaction products formed by chemically bonding the five reactive dyes, either alone or in combination, to vinyl alcohol/methyl methacrylate copolymer are safe for coloring contact lenses. FDA further concludes that the use of the color additive shall be limited to the amount necessary to accomplish the intended coloring effect. Batch certification is not required to ensure safety.

V. Conclusions

Based on data contained in the petition and other relevant information, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of vinyl alcohol/methyl methacrylate-dye reaction products as color additives in contact lenses, and that the additive is safe and suitable for the intended use. Therefore, the agency is amending § 73.3127 (21 CFR 73.3127) of the color additive regulations by revising paragraphs (a), (b)(1), and (b)(2) to provide for the use of the subject color additives.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated July 7, 1992, from the Food and Color Additives Review Section, to the Direct Additives Branch, CAP 9C0217 Ciba Vision, exposure estimates for reactive dyes, submission dated June 12, 1992.

IX. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be

separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

2. Section 73.3127 is amended by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 73.3127 Vinyl alcohol/methyl methacrylate-dye reaction products.

(a) *Identity.* The color additives are formed by reacting the dyes, either alone or in combination, with a vinyl alcohol/methyl methacrylate copolymer, so that the sulfate groups of the dyes are replaced by ether linkages to the vinyl alcohol/methyl methacrylate copolymer. The dyes are:

(1) C.I. Reactive Red 180 [5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114-32-0).

(2) C.I. Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, tetrasodium salt] (CAS Reg. No. 17095-24-8).

(3) C.I. Reactive Orange 78 [2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl]phenyl)azo)-] (CAS Reg. No. 68189-39-9).

(4) C.I. Reactive Yellow 15 [benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-] (CAS Reg. No. 60958-41-0).

(5) C.I. Reactive Blue No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl]phenyl)amino)-, disodium salt] (CAS Reg. No. 2580-78-1).

(6) C.I. Reactive Blue 21 [copper, (29*H*,31*H*-phthalocyaninato(2-)-N^{29}, N^{30}, N^{31}, N^{32})-, sulfo((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)sulfonyl derivatives] (CAS Reg. No. 73049-92-0).

(b) *Uses and restrictions.* (1) The substances listed in paragraph (a) of this section may be used to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) As part of the manufacturing process, the lenses containing the color additives are thoroughly washed to remove unbound reactive dye.

* * * * *

Dated: March 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7843 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 74

[Docket No. 91C-0033]

Listing of Color Additives Subject to Certification; FD&C Blue No. 1

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of manganese dioxide as an oxidizing agent in the manufacture of FD&C Blue No. 1. This action is in response to a petition filed by the Hilton Davis Co.

DATES: Effective May 6, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections by May 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wes Long, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of March 1, 1991 (56 FR 8781), FDA announced that a color additive petition (CAP 0C0227) had been filed by the Hilton Davis Co., 2235 Landon Farm Rd., Cincinnati, OH 45237, proposing that the color additive regulations for FD&C Blue No. 1 be amended to provide for the safe use of manganese dioxide to manufacture the color additive. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

II. Identity

Although the identity of the color additive FD&C Blue No. 1 in part 74 (21 CFR part 74) remains the same, the manufacturing process that is specified in § 74.2101(a) will be modified to include the option of using manganese dioxide as an oxidant. The manufacturing process for FD&C Blue No. 1 in § 74.1101(a)(2) for externally applied drugs conforms to the requirements in § 74.2101(a). Currently, no manufacturing process is specified for FD&C Blue No. 1 in the identity section for foods (§ 74.101(a)(1)) or ingested drugs (§ 74.1101(a)(1)).

In the final rule issued in the **Federal Register** of September 28, 1982 (47 FR 42563), FD&C Blue No. 1 was permanently listed for use in externally applied drugs and in cosmetics. The agency concluded that a brief description of the manufacturing process was necessary to provide adequate assurance of safety until suitable specifications could be developed. The manufacturing process for FD&C Blue No. 1 in cosmetics was specified in § 74.2101(a) and cross-referenced in § 74.1101(a)(2) for externally applied drugs. At that time, the agency also stated its intention to amend the identity requirements for FD&C Blue No. 1 for foods in § 74.101(a) and, by cross-reference, for ingested drugs in § 74.1101(a)(1), to include a description of the manufacturing

process. This action is still planned by the agency.

III. Specifications

This document modifies the specifications for FD&C Blue No. 1 in § 74.101(b) to include a specification for manganese impurity. This specification is included in § 74.1101(b) for externally applied and ingested drugs, and this specification is included in § 74.2101(b) for cosmetics by cross-reference to § 74.101(b).

IV. Uses

The manufacturing process is specified in § 74.2101(a) for cosmetics, and it is specified by cross-reference in § 74.1101(a)(2) for externally applied drugs, but it is not specified in § 74.101(a)(1) for foods or in § 74.1101(a)(1) for ingested drugs. Inclusion of the description of the manufacturing process in the regulation for use of FD&C Blue No. 1 in ingested drugs and foods will be the subject of a separate action to be initiated by the agency. However, the intended uses of FD&C Blue No. 1 manufactured using manganese dioxide as the oxidizing agent will include food, drug, and cosmetic uses. FDA has evaluated the safety of FD&C Blue No. 1 manufactured using manganese dioxide for use in foods, drugs, and cosmetics.

V. Conclusions

Based on data contained in the petition and other relevant information, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of manganese dioxide as an oxidant in the manufacture of FD&C Blue No. 1. The agency also concludes on the basis of that data and material that the use of manganese dioxide as an alternative oxidant will not affect the identity of the color additive and that the color additive will continue to perform its intended coloring effect in foods, drugs, and cosmetics. Thus, FD&C Blue No. 1 manufactured using manganese dioxide as the oxidizing agent is suitable for this use. The agency, therefore, is amending the color additive regulations in §§ 74.101 and 74.2101 to provide for use of manganese dioxide in the manufacture of FD&C Blue No. 1.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

2. Section 74.101 is amended by revising paragraph (b) to read as follows:

§ 74.101 FD&C Blue No. 1.

* * * * *

(b) *Specifications.* FD&C Blue No. 1 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 15.0 percent.

Water-insoluble matter, not more than 0.2 percent.

Leuco base, not more than 5 percent.

Sum of *o*-, *m*-, and *p*-sulfobenzaldehydes, not more than 1.5 percent.

N-Ethyl,*N*-(*m*-sulfobenzyl)sulfanilic acid, not more than 0.3 percent.

Subsidiary colors, not more than 6.0 percent.

Chromium (as Cr), not more than 50 parts per million.

Manganese (as Mn), not more than 100 parts per million.

Arsenic (as As), not more than 3 parts per million.

Lead (as Pb), not more than 10 parts per million.

Total color, not less than 85.0 percent.

* * * * *

3. Section 74.2101 is amended by revising paragraph (a) to read as follows:

§ 74.2101 FD&C Blue No. 1.

(a) *Identity.* The color additive FD&C Blue No. 1 is principally the disodium salt of ethyl[4-[*p*-[ethyl(*m*-sulfobenzyl)amino]-α-(*o*-sulfophenyl)benzylidene]-2,5-cyclohexadien-1-ylidene](*m*-sulfobenzyl)ammonium hydroxide inner salt with smaller amounts of the isomeric disodium salts of ethyl[4-[*p*-[ethyl(*p*-sulfobenzyl)amino]-α-(*o*-sulfophenyl)benzylidene]-2,5-cyclohexadien-1-ylidene](*p*-sulfobenzyl)ammonium hydroxide inner salt and ethyl[4-[*p*-[ethyl(*o*-sulfobenzyl)amino]-α-(*o*-sulfophenyl)benzylidene]-2,5-cyclohexadien-1-ylidene](*o*-

sulfobenzyl)ammonium hydroxide inner salt. Additionally, FD&C Blue No. 1 is manufactured by the acid catalyzed condensation of one mole of sodium 2-formylbenzenesulfonate with two moles from a mixture consisting principally of 3-[(ethylphenylamino)methyl] benzenesulfonic acid, and smaller amounts of 4-[(ethylphenylamino)methyl] benzenesulfonic acid and 2-[(ethylphenylamino)methyl] benzenesulfonic acid to form the leuco base. The leuco base is then oxidized with lead dioxide and acid, or with dichromate and acid, or with manganese dioxide and acid to form the dye. The intermediate sodium 2-formylbenzenesulfonate is prepared from 2-chlorobenzaldehyde and sodium sulfite.

* * * * *

Dated: March 18, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7841 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 178

[Docket No. 92N-0388]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the titles of material incorporated by reference in the regulation that provides for the use of polyhydric alcohol esters of oxidatively refined (Gersthofen process) montan wax acids (§ 178.3770 (21 CFR 178.3770)). The titles of the material included in § 178.3770(a)(2), (a)(3), (b)(2), (b)(3), (d)(2), and (d)(3) were inadvertently transposed. Therefore the agency is inserting the correct titles for the incorporated material.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In reviewing its regulations on food additives, FDA has determined that the titles of certain material incorporated by reference in § 178.3770 are incorrect. In each of the paragraphs listed below the titles of the methods ("Standard Test Method for Saponification Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978) and "Standard Test Method for Acid Number (Empirical) of Synthetic Natural Waxes" (Revised 1978)) are transposed.

Upon review, the agency determined that these errors occurred when it amended the incorporating regulatory text in 21 CFR parts 170 through 189 to make clear that an incorporation by reference was intended as required by 1 CFR part 51 (47 FR 11835, March 19, 1982). These errors appeared in § 178.3770(a)(2), (a)(3), (b)(2), and (b)(3). This error was later extended to § 178.3770(d)(2) and (d)(3), which were added in the **Federal Register** of July 9, 1990 (55 FR 28020).

FDA concludes that notice and comment rulemaking to correct these errors is impracticable, contrary to the public interest, and unnecessary because these corrections rectify mistakes that are clear on their face, and which do not involve any controversial or substantive matters (5 U.S.C. 553(b)(B)).

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3770 *Polyhydric alcohol esters of oxidatively refined (Gersthofen process) montan wax acids* is amended in paragraphs (a)(2), (b)(2), and (d)(2) by removing the words "ASTM method D1386-78 ("Standard Test Method for Saponification" and adding in their place the words "ASTM method D 1386-78 ("Standard Test Method for Acid"; and in paragraphs (a)(3), (b)(3), and (d)(3) by removing the words "ASTM method D1387-78 ("Standard Test Method for Acid" and adding in their place the words "ASTM method D 1387-78 ("Standard Test Method for Saponification"; and in paragraph (d)(2) by removing "20 to 30" and replacing it with "20-30".

Dated: February 12, 1993.

Jerry Burke,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-7766 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 178

[Docket No. 91F-0020]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphoric acid, mono- and dihexyl esters, compounds with tetramethylnonylamines and C_{11-14}-alkylamines as components of surface lubricants that may contact food. This action is in response to a petition filed by the Ciba-Geigy Corp.

DATES: Effective April 5, 1993; written objections and requests for a hearing by May 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 5, 1991 (56 FR 4632), FDA announced that a food additive petition (FAP 0B4232) had been filed by the Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, proposing that § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) be amended to provide for the safe use of phosphoric acid, mono- and dihexyl esters reacted with tetramethylnonylamines and C_{11-14}-alkylamines as components of surface lubricants that may contact food. Upon further review, however, the agency has noted that the same additive is currently regulated in 21 CFR 178.3570 as phosphoric acid, mono- and dihexyl esters, compounds with tetramethylnonylamines and C_{11-14}-alkylamines. FDA is therefore adopting the name that is currently used in 21 CFR 178.3570, to avoid confusion over the identity of the additive.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe and that § 178.3910(b)(2) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3910 is amended in the table in paragraph (b)(2) by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Phosphoric acid, mono- and dihexyl esters, compounds with tetramethylnonylamines and C_{11-14}-alkylamines (CAS Reg. No. 80939-62-4).	For use only at levels not to exceed 0.5 percent by weight of the finished surface lubricant formulation.
* * * * *	

* * * * *

Dated: February 24, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-7767 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 178

[Docket No. 91F-0464]

Indirect Food Additives; Colorants for Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-[1,2-ethanediylbis(oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180) as a colorant in polymers that are intended to contact food. This action is in response to a petition filed by Hoechst Celanese Corp.

DATES: Effective April 5, 1993; written objections and requests for a hearing by May 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 17, 1992 (57 FR 2106), FDA announced that a food additive petition (FAP 1B4289) had been filed by Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 2,2'-[1,2-ethanediylbis(oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180) as a colorant in polymers that are intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment

with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3297 is amended in the table in paragraph (e) by revising the entry for "2,2'-[1,2-Ethanediylbis(oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide * * *," under the heading "Limitations" to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
• • •	• • •
2,2'-[1,2-Ethanediylbis(oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180, CAS Reg. No. 77804-81-0).	For use at levels not to exceed 1.0 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through G described in Table 2 of § 176.170(c) of this chapter.
• • •	• • •

Dated: March 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-7768 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 178

[Docket No. 92F-0014]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to increase the level of safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a stabilizer in polycarbonate resins intended for contact with food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective April 5, 1993; written objections and requests for a hearing by May 5, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 11, 1992 (57 FR 5005), FDA announced that a food additive petition (FAP 2B4306) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to increase the level of safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a stabilizer in polycarbonate resins intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry "2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol * * *" appearing under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * *	* * *
2-(2*H*-Benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol (CAS Reg. No. 70321-86-7).	For use only: 1. At levels not to exceed 0.5 percent by weight of polyethylene phthalate polymers complying with § 177.1630 of this chapter. 2. At levels not to exceed 3.0 percent by weight of polycarbonate resins complying with § 177.1580 of this chapter.
* * * *	* * *

Dated: March 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-7835 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 558

[Docket No. 92P-0303]

New Animal Drugs For Use in Animal Feeds; Antibiotic, Nitrofuran, and Sulfonamide Drugs in the Feed of Animals; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations, to add PennField Oil Co. to the list of sponsors of Type A medicated articles. The agency inadvertently omitted PennField Oil Co. from the list. This action corrects that error.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: PennField Oil Company (POC), 14040 Industrial Rd., Omaha, NE 68137, is a manufacturer and distributor of animal health products regulated by FDA. Among its products are certain Type A medicated articles containing chlortetracycline, oxytetracycline, and oxytetracycline in combination with neomycin base. Currently, under the provisions of § 558.15 (21 CFR 558.15), POC has interim marketing privileges for those articles. However, due to an oversight, FDA failed to include POC in § 558.15 when the agency initially added the sponsors of the listed Type A medicated articles to § 558.15 (41 FR 8282, February 25, 1976). Consequently, POC filed a petition requesting that the agency correct the omission. In response to the petition, FDA reviewed the relevant files and concluded that POC's petition should be granted. Accordingly, § 558.15 (g)(1) and (g)(2) are amended by adding PennField Oil Co. to the "Drug sponsor" columns of the tables.

This action constitutes the agency's response to POC's citizen petition, Docket No. 92P-0303, filed pursuant to 21 CFR 10.30. However, this action does not constitute approval of POC's applications for chlortetracycline or oxytetracycline.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.15 [Amended]

2. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the table in paragraph (g)(1) under the heading "Type A article" for the entry "Chlortetracycline" by revising the drug sponsor name to read "American Cyanamid Co., Fermenta Animal Health Co., Feed Specialties Co., Inc., Pfizer, Inc., PennField Oil Co., and VPO, Inc." and for the entry "Oxytetracycline" by revising the drug sponsor name to read "Pfizer, Inc., PennField Oil Co., VPO,

Inc., and Purina Mills, Inc.", and in the table in paragraph (g)(2) under the heading "Type A article" for the entry "Oxytetracycline and neomycin base" by revising the drug sponsor name to read "Pfizer, Inc., PennField Oil Co., and VPO, Inc." wherever it appears.

Dated: February 12, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-7765 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to add a caution statement that medicated feed containing monensin is not to be fed to lactating dairy cattle. The statement is currently included on the approved label. This document is a followup to a final rule that amended the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8638.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is the holder of approved NADA 95-735, providing for the use of monensin in the feed of cattle and goats. As issued in the **Federal Register** of June 5, 1992 (57 FR 23953), the amended regulations in § 558.355 *Monensin* (21 CFR 558.355) inadvertently failed to include a caution statement included on the approved label that the drug is not to be fed to lactating dairy cattle. Accordingly, this document adds the required caution statement to § 558.355 by adding new paragraph (d)(7)(vi).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by adding new paragraph (d)(7)(vi) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(7) * * *

(vi) Do not feed to lactating dairy cows.

* * * * *

Dated: February 23, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93-7839 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8411]

RIN 1545-AH13

Definition of Resident Alien; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8411), which were published in the **Federal Register** for Monday, April 27, 1992 (57 FR 15237). This document contains final Income Tax Regulations relating to the definition of a resident alien. Changes to the applicable tax law were made by the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATE: April 27, 1992.

FOR FURTHER INFORMATION CONTACT: David A. Juster, (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance under sections 871, 904, 953, 1303, 1441, 3121, 3306, 6013 and 7701(b) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8411 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8411), which were the subject of FR Doc. 92-8496, is corrected as follows:

1. On page 15242, column 1, in § 301.7701(b)-0, the entries under § 301.7701(b)-2(d) are corrected to read as follows:

§ 301.7701(b)-0 Outline of regulations provisions for section 7701 (b)-1 through (b)-8.

* * * * *

§ 301.7701(b)-2 Closer connection exception.

* * * * *

(d) Closer connection to a foreign country.

(1) In general.

(2) Permanent home.

* * * * *

§ 301.7701(b)-2(d) [Corrected]

2. On page 15244, column 2, § 301.7701(b)-2(d), the paragraphs designated as paragraphs (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), and (d)(10) are correctly designated as paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(iv), (d)(1)(v), (d)(1)(vi), (d)(1)(vii), (d)(1)(viii),(d)(1)(ix), (d)(1)(x), respectively.

3. On page 15244, column 2, § 301.7701(b)-2(d), line 2, the text following the paragraph heading is correctly designated as paragraph (d)(1) introductory text and a paragraph heading is added to read as follows:

"*Country*—(1) *In general.* For purposes of section 7701(b)".

4. On page 15244, column 2, § 301.7701(b)-2(d), the undesignated paragraph preceding paragraph (e) is correctly designated as paragraph (d)(2), and the first two lines are corrected to read "(2) *Permanent home.* For purposes of paragraph (d)(1)(i) of this section, it is immaterial whether a permanent".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-7762 Filed 4-2-93; 8:45 am]

BILLING CODE 4830-01-U

26 CFR Part 301

[T.D. 8469]

RIN 1545–AM64

Time and Place of Examination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that describe the criteria to be utilized by Internal Revenue Service employees in setting a time and place of examination. The general approach is to schedule a time and place that is reasonable under the circumstances. The Service is issuing these regulations pursuant to section 6228(b) of the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATE: These regulations are effective on April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202–622–3620 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7605 of the Internal Revenue Code (Code). Section 7605(a) of the Code states that the time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. Section 6228(b) of Technical and Miscellaneous Revenue Act of 1988 (TAMRA) directs that regulations under section 7605 governing the time and place for examinations be revised.

The Service published temporary regulations and a notice of proposed rulemaking by cross-reference to the temporary regulations in the **Federal Register** on April 3, 1990 (55 FR 12344, 12386). A nonsubstantive correction was published on May 30, 1990 (55 FR 21862, 21886). Prior to the issuance of the temporary regulations, the regulations under section 7605 of the Code provided, in general terms that the time and place for examination are to be fixed by an employee of the Service and are to be reasonable under the circumstances.

The temporary regulations, and now the final regulations, provide more specific guidance. In keeping with both the spirit of TAMRA and the policy of the Service, it is the goal of these regulations that the Service employee setting the time and place for examination will maximize the convenience of the taxpayer within the constraints of sound and efficient tax administration.

Explanation of Provisions

The regulations provide general guidance regarding the time and place of examination in paragraph (a). Subsequent paragraphs provide more specific guidance as to the time of examination, the type of examination, the place of examination, taxpayer requests to change the place of examination, and transfers of examinations initiated by the Service. The Service received public comments concerning the temporary regulations from nine parties. Although all of the issues raised by these parties had been considered prior to the publication of the notice of proposed rulemaking, these issues were given further consideration and are discussed below. Several changes have been made to the final regulations in response to these comments. A number of stylistic and clarifying changes also have been made.

General Guidance

The temporary regulations provide that the time and place of examination is to be determined by an Internal Revenue Service employee, and that in scheduling examinations, employees are to endeavor to be reasonable.

The temporary regulations provide that standards set forth in the temporary regulations dealing with the reasonableness of time and place of examination do not apply to criminal investigations. In addition, the temporary regulations provide that the regulatory standards would be used as guidelines for international examinations, but that in the case of a conflict between the regulations and the policies and procedures of the Office of the Assistant Commissioner (International), the policies and procedures would apply. However, the basic concept underlying the regulations, a district, has no significance, for example, to an audit in a foreign country. Accordingly, the final regulations generally except international examinations from the regulations. The Service solicits comments as to whether regulations should be promulgated regarding the time and place of examinations that fall under the jurisdiction of the Office of the Assistant Commissioner (International).

Two commentators objected to the unilateral authority granted to the Service's employee assigned to the case and suggested that an appeals procedure be established for taxpayers who do not agree that the time and place is reasonable. The final regulations do not adopt this suggestion. A taxpayer who believes a Service employee is not properly applying these regulations has the right to appeal to that person's supervisor. Thus, a formal appeals procedure would add a layer of bureaucracy to the examination process while providing little or no benefit to taxpayers.

Time of Examination

The temporary regulations provide that it is reasonable for the Service to schedule an examination during the Service's normal business hours, and that it is reasonable to schedule an examination without regard to seasonal fluctuations in the business of the taxpayer or the taxpayer's representative. The temporary regulations further provide that the Service will try to minimize scheduling problems for taxpayers and their representatives.

One commentator suggested that the regulations call for examinations to take place during the taxpayer's normal business hours, rather than the Service's. Another commentator suggested that the Service should schedule evening or weekend examinations for taxpayers who find the Service's normal business hours to be disruptive. In addition, two commentators suggested that seasonal fluctuations in the taxpayer's or representative's business should be taken into account. Finally, one commentator suggested the Service consider rescheduling an examination if a taxpayer is unable to attend because of a religious or secular holiday.

These alternatives were considered in drafting the temporary regulations. In many cases it will be possible for examinations to be scheduled to at least partially accommodate a taxpayer's schedule. However, in other cases it is administratively impracticable for the Service to accommodate a taxpayer's schedule. For example, many Service offices are very small and do not have staff available to conduct examinations at times other than normal business hours. Therefore, since the regulations provide that the Service will attempt to minimize scheduling problems for taxpayers and their representatives, the regulations were not revised. It is expected that the Service normally will accommodate taxpayers in the case of religious or secular holidays.

Type of Examination

The temporary regulations provide that the Service will determine whether

an examination will be an office examination or a field examination based upon the complexity of the return and which form of examination will be more conducive to effective and efficient tax administration. An exception is provided for cases of clear need, such as when the taxpayer's advanced age or infirm physical condition make it unreasonably difficult to travel to a Service office, or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a Service office.

Place of Examination

The temporary regulations provide that the Service's initial determination of where an examination will take place generally will be based upon the address shown on the tax return selected for examination. The temporary regulations provide that office examinations of individuals (including sole proprietorships) generally are to be conducted at the Service office within the taxpayer's district that is closest to the taxpayer's residence. Because the Service sometimes conducts office examinations of estates, trusts, and other entities, the final regulations also provide that office examinations of entities generally are to be conducted at the Service office closest to where the original books, records and source documents of the entity are maintained. As in the temporary regulations, the final regulations provide for a different office to be used for examinations if the closest Service office does not have an examination group or the personnel needed to conduct the examination.

Another commentator suggested limits on the time and distance a taxpayer should be required to travel to an alternative office selected by the Service. To accommodate these concerns, the final regulations provide that in appropriate circumstances the Service will take into account the distance a taxpayer would have to travel to a Service office. (Due to different population densities in different geographic areas, it is not practical to limit travel to a specific distance.) Moreover, consistent with current Service practice, this applies not only to alternative offices (as requested by the commentator) but also in determining whether it is reasonable to require a taxpayer to travel to the office closest to the taxpayer's residence. Thus, for example, the Service may establish temporary satellite locations closer to taxpayers' residences rather than require taxpayers to travel a long distance to what would otherwise be the Service office closest to their residences.

With regard to field examinations, the regulations provide for the examination to generally take place at the location where the original books, records, and source documents pertinent to the examination are maintained. The regulations also provide that if a business is so small that a field examination would essentially require the taxpayer to close the business or would unduly disrupt business operations, the Service generally will agree to conduct an office examination (instead of a field examination) at a Service office within the district where the original books, records, and source documents are maintained.

Taxpayer Requests To Change Place of Examination

The temporary regulations provide that taxpayers may make written requests to the Service to change the place of examination. The Service is to consider requests on a case-by-case basis, taking into account the following factors: The location of the taxpayer's current residence or principal place of business; the location where the taxpayer's books, records, and source documents are maintained; the location where the Service can perform the examination most efficiently; the resources available at the location to which the taxpayer has requested a transfer; and other factors indicating that conducting the examination at a particular location could pose undue inconvenience to the taxpayer. The regulations also provide that the business location of the taxpayer's representative generally will not be considered in determining the place for an examination. In addition, the regulations provide that as a condition to transferring an examination of a taxpayer for which the applicable statute of limitations will expire within thirteen months, the Service may require the taxpayer to extend the limitations period.

Several commentators asserted that the location of the taxpayer's representative's office should be one of the factors considered by the Service, if not the controlling factor. Several reasons were given for conducting examinations at a taxpayer representative's office, including protecting the taxpayer's right to representation, cost savings to the taxpayer, and comfort, efficiency and convenience for the Service employee.

Nothing in the regulations precludes an office or field examination from being conducted on the business premises of the taxpayer's representative on the basis of the other factors described in the regulations. Under those factors, the Service is likely to conduct examinations at the office of a taxpayer's representative, for example, if the representative maintains the taxpayer's books, records, and source documents at his or her office, or if there are other reasons why that office is the location where the Service can perform the examination most efficiently. However, if the business location of the taxpayer's representative were a separate factor, the Service might well be required to conduct examinations at distant locations of nonlocal representatives. This could adversely affect the Service's ability to freely examine the taxpayer's books and records, and would be likely to increase the cost of those examinations. It would be unfair for the Service—and ultimately the general taxpaying public—to bear those increased costs. Given that qualified local representatives are generally available to taxpayers, it seems unlikely that causing a taxpayer to bear the cost of its choice of nonlocal representation will significantly affect the taxpayer's ability to be properly represented in an examination. Therefore, no change was made to the regulations regarding the consideration of the location of the taxpayer's representative as a separate factor.

One commentator objected that for purposes of requiring a taxpayer to extend the applicable statute of limitations as a precondition to a transfer, the thirteen month period is too long. The Service's administrative practices require this thirteen month period to be retained. However, to provide additional protection to taxpayers, the regulations have been revised to limit to one year the period for which the Service may require the taxpayer to extend the statute of limitations.

Transfers Initiated by the Service

The temporary regulations make it clear that the Service may initiate a transfer of an examination to further the effectiveness and efficiency of the examination.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of

the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Nancy O. Ryan of the Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Paragraph 1. The authority citation for part 301 is amended in part by removing the citation for Section 301.7605–1T and adding in its place a new citation for Section 301.7605–1 to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.7605–1 also issued under section 6228(b) of the Technical and Miscellaneous Revenue Act of 1988; * * *

Par. 2. Section 301.7605–1 is amended by:

1. Adding paragraph (a);
2. Redesignating paragraphs (b) and (c) as paragraphs (h) and (i), respectively;
3. Adding paragraphs (b) through (g);
4. Adding paragraph (j);
5. The additions and revisions read as follows:

§ 301.7605–1 Time and place of examination.

(a) *Time and place of examination to be reasonable*—(1) *In general.* The time and place of examination pursuant to the provisions of sections 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 of the Internal Revenue Code are to be fixed by an officer or employee of the Internal Revenue Service, and officers and employees are to endeavor to schedule a time and place that are reasonable under the circumstances. This section sets forth general criteria for the Service to apply in determining whether a particular time and place for an examination are reasonable under the circumstances. Officers and employees should exercise sound judgment in applying these criteria to the circumstances at hand and should balance convenience of the taxpayer with the requirements of sound and efficient tax administration.

(2) *International examinations.* Except for the provisions of paragraph (b)(2) of this section, this section does not apply to examinations that fall under the jurisdiction of the Office of the Assistant Commissioner (International).

(3) *Criminal investigations.* Except for the provisions of paragraph (b)(2) of this section, this section does not apply to criminal investigations.

(b) *Time of examination*—(1) *Date and time of examination.* It is reasonable for the Service to schedule the day (or days) for an examination during a normally scheduled workday (or workdays) of the Service, during the Service's normal business hours. It is reasonable for the Service to schedule examinations throughout the year, without regard to seasonal fluctuations in the businesses of particular taxpayers or their representatives. However, the Service will work with taxpayers or their representatives to try to minimize any adverse effects in scheduling the date and time of an examination.

(2) *Date of appearance when summons is used.* If a summons is issued under authority of section 7602(a)(2) of the Internal Revenue Code, or under the corresponding authority of sections 6420(e)(2), 6421(g)(2), or 6427(j)(2), the date fixed for appearance before an officer or employee of the Service must be no less than 10 days from the date of the summons.

(c) *Type of examination*—(1) *In general.* The Service will determine whether an examination will be an office examination (*i.e.*, an examination conducted at a Service office) or a field examination (*i.e.*, an examination conducted at the taxpayer's residence or place of business, or some other location that is not a Service office), based upon the complexity of the return and which form of examination will be more conducive to effective and efficient tax administration.

(2) *Office examination held in location other than Service office in case of clear need.* The Service will grant a request to hold an office examination at a location other than a Service office in a case of clear need, such as when it would be unreasonably difficult for the taxpayer to travel to a Service office because of the taxpayer's advanced age or infirm physical condition, or when the taxpayer's books, records, and source documents are too cumbersome for the taxpayer to bring to a Service office.

(d) *Place of examination*—(1) *In general.* The Service generally will make an initial determination of the place for an examination, including the Internal Revenue Service district to which an examination will be assigned, based upon the address shown on the return for the period selected for examination. Requests by taxpayers to transfer the place of examination will be resolved on a case-by-case basis, using the criteria set forth in paragraph (e) of this section.

(2) *Office examinations*—(i) *In general.* An office examination of an individual or sole proprietorship generally is based on the residence of the individual taxpayer. An office examination of a taxpayer that is an entity generally is based on the location where the taxpayer entity's original books, records, and source documents are maintained. An office examination generally will take place at the closest Service office within the district encompassing the taxpayer's residence or at the closest Service office within the district where the taxpayer entity's books, records, and source documents are maintained. It generally is not reasonable for the Service to require a taxpayer to attend an examination at an office within an assigned district other than the closest Service office.

(ii) *Exception.* If the office within the assigned district closest to an individual taxpayer's residence or the location where a taxpayer entity's books, records and source documents are maintained does not have an examination group or the appropriate personnel to conduct the examination, it generally is reasonable for the Service to require the taxpayer to attend an examination at the closest Service office within the assigned district that has an examination group or the appropriate personnel.

(iii) *Travel considerations.* In scheduling office examinations, the Service in appropriate circumstances will take into account the distance a taxpayer would have to travel.

(3) *Field examinations*—(i) *In general.* A field examination will generally take place at the location where the taxpayer's original books, records, and source documents pertinent to the examination are maintained. In the case of a sole proprietorship or taxpayer entity, this will usually be the taxpayer's principal place of business.

(ii) *Exception for certain small businesses.* If an examination is scheduled by the Service at the taxpayer's place of business and the

taxpayer represents to the Service in writing that conducting the examination at the place of business would essentially require the business to close or would unduly disrupt business operations, the Service, upon verification, will change the place of examination to a Service office within the district where the taxpayer's books, records, and source documents are maintained.

(iii) *Site visitations.* Regardless of where an examination takes place, the Service may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The Service generally will visit for these purposes on a normal workday of the Service during the Service's normal duty hours.

(e) *Requests by taxpayers to change place of examination*—(1) *In general.* The Service will consider, on a case-by-case basis, written requests by taxpayers or their representatives to change the place that the Service has set for an examination. In considering these requests, the Service will take into account the following factors—

(i) The location of the taxpayer's current residence;

(ii) The location of the taxpayer's current principal place of business;

(iii) The location at which the taxpayer's books, records, and source documents are maintained;

(iv) The location at which the Service can perform the examination most efficiently;

(v) The Service resources available at the location to which the taxpayer has requested a transfer; and

(vi) Other factors that indicate that conducting the examination at a particular location could pose undue inconvenience to the taxpayer.

(2) *Circumstances in which the Service normally will permit transfers.* A request by a taxpayer to transfer the place of examination will generally be granted under the following circumstances:

(i) *Office examination.*—(A) If the current residence of the taxpayer, in the case of an individual or sole proprietorship, or the location where the taxpayer's books, records, and source documents are maintained, in the case of a taxpayer entity, is closer to a different Service office in the same district as the office where the examination has been scheduled, the Service normally will agree to transfer the examination to the closer Service office.

(B) If the current residence of a taxpayer, in the case of an individual or sole proprietorship, or the location where a taxpayer entity's books, records, and source documents are maintained, is in a district other than the district where the examination has been scheduled, the Service normally will agree to transfer the examination to the closest Service office in the other district.

(ii) *Field examinations*—(A) If a taxpayer does not reside at the residence where an examination has been scheduled, the Service will agree to transfer the examination to the taxpayer's current residence.

(B) If, in the case of an individual, a sole proprietorship, or a taxpayer entity, the taxpayer's books, records, and source documents are maintained at a location other than the location where the examination has been scheduled, the Service will agree to transfer the examination to the location where the taxpayer's books, records, and source documents are maintained.

(3) *Transfer for convenience of taxpayer's representative.* The location of the place of business of a taxpayer's representative will generally not be considered in determining the place for an examination. However, the Service in its sole discretion may determine, based on the factors described in paragraph (e)(1) of this section, to transfer the place of examination to the representative's office.

(4) *Transfer within thirteen months of expiration of limitations period.* If any applicable period of limitations on assessment or collection provided in the Internal Revenue Code will expire within thirteen months from the date of a taxpayer's request to transfer the place of an examination, the Service may require, as a condition for an otherwise permissible transfer, that the taxpayer first agree in writing to extend the limitations period for up to one year.

(5) *Transfer to office with insufficient resources.* The Service is not required to transfer an examination to an office or district that does not have adequate resources to conduct the examination.

(f) *Safety of Service officers and employees.* Notwithstanding any other provision of this regulation, officers and employees of the Service may decline to conduct an examination at a particular location if it appears that the possibility of physical danger may exist at that location. In these circumstances, the Service may transfer an examination to a Service office and take any other steps necessary to protect its officers and employees.

(g) *Transfers initiated by Service.* Nothing in this section shall be interpreted as precluding the Service from initiating the transfer of an examination if the transfer would promote the effective and efficient conduct of the examination. Should a taxpayer request that such a transfer not be made, the Service will consider the request according to the principles and criteria set forth in paragraph (e) of this section.

* * * * *

(j) *Effective date.* Paragraphs (a) through (g) of this section, inclusive, are effective for examinations scheduled after April 2, 1993.

§ 301.7605–1T [REMOVED]

Par. 3 Section 301.7605–1T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: March 16, 1993.

James Fields,

Assistant Secretary of the Treasury.

[FR Doc. 93–7606 Filed 4–2–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 35

[Order No. 1694–93]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This document contains technical amendments to the Department of Justice regulations on nondiscrimination on the basis of disability in state and local government services, which implements title II of the Americans with Disabilities Act. This final rule makes some technical corrections to the regulations and amends the regulations to reference an Office and Management and Budget control number in compliance with the Paperwork Reduction Act of 1980, as amended.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington DC 20035–6118, or at (202) 514–0301 (Voice) or (202) 514–0383 (TDD) (the Divisions' ADA Information Line). These telephone numbers are not toll-free numbers.

Copies of this rule are available in the following alternate formats: Large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained

by calling (202) 514–0301 (Voice) or (202) 514–0383 (TDD). The rule is also available on electronic bulletin board at (202) 514–6193. These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1991 (56 FR 35694), the Department of Justice published its final regulation implementing title II of the Americans with Disabilities Act (ADA), Public Law 101–336, which prohibits discrimination against qualified individuals with disabilities by state and local governmental entities. As published, the title II regulation contained errors, which are corrected by this rule. In addition, to comply with the requirements of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 35), the Department has obtained control numbers from the Office of Management and Budget for the information collection requirements contained in §§ 35.105 and 35.150 of the title II regulation. This rule amends the regulation to include references to the control numbers applicable to each section.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings and facilities, Civil rights, Drug abuse, Historic preservation, Intergovernmental relations, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 306(b) of the Americans With Disabilities Act, Public Law 101–336, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

1. The authority citation for 28 CFR part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Public Law 101–336 (42 U.S.C. 12186).

2. Section 35.105 is amended by adding a parenthetical containing the Office of Management and Budget control number at the end of the section, to read as follows:

§ 35.105 Self-evaluation.

* * * * *

(Approved by the Office of Management and Budget under control number 1190–0006)

§ 35.133 [Amended]

3. Section 35.133(a) is amended by revising the word "accommodation" to read "entity".

4. Section 35.150 is amended by adding a parenthetical containing the Office of Management and Budget control number at the end of the section, to read as follows:

§ 35.150 Existing facilities.

* * * * *

(Approved by the Office of Management and Budget under control number 1190–0004)

§ 35.151 [Amended]

5. Section 35.151(c) is amended in the first sentence by revising the reference "4.1.6(1)(j)" to read "4.1.6(1)(k)".

Dated: January 21, 1993.

Stuart M. Gerson,

Acting Attorney General.

[FR Doc. 93–7191 Filed 4–2–93; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 36

[Order No. 1679–93]

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities

AGENCY: Department of Justice.

ACTION: Final rule: technical amendment.

SUMMARY: This document contains technical amendments to the regulations on nondiscrimination on the basis of disability by public accommodations and in commercial facilities, which implement title III of the Americans with Disabilities Act (ADA) and to appendix A to those regulations. This final rule makes some technical corrections to the regulations and amends the regulations to reference an Office and Management and Budget control number in compliance with the Paperwork Reduction Act of 1980, as amended.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, or at (202) 514–0301 (Voice) or (202) 514–0383 (TDD) (the Divisions' ADA Information Line). These telephone numbers are not toll-free numbers.

Copies of this rule are available in the following alternate formats: Large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained by calling (202) 514–0301 (Voice) or (202) 514–0383 (TDD). The rule is also available on electronic bulletin board at (202) 514–6193. These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1991 (56 FR 35544), the Department of Justice published final regulations implementing title III of the ADA, Public law 101–336 (42 U.S.C. 12181–12189), which prohibits discrimination on the basis of disability by private entities in places of public accommodation and requires that all new places of public accommodation and commercial facilities and all alterations to such facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities. As published, the regulations contained errors, which are corrected by this rule. No notice or public procedure is necessary for the issuance of the technical amendments and corrections made by this rule. 5 U.S.C. 553(b)(B).

Section 36.406 of the regulations, "Standards for new construction and alterations," provides that new construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to the regulations. Appendix A contains the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) published by the Architectural and Transportation Barriers Compliance Board (Access Board) as a final rule on July 16, 1991 (56 FR 35408). As published, the guidelines contained errors which were corrected by the Access Board on January 14, 1992 (57 FR 1393). This document makes those same corrections to appendix A to the Department of Justice's regulation.

To comply with the requirements of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), the Department has obtained a control number from the Office of Management and Budget for the information collection requirements contained in § 36.603 of the regulations. This notice also amends § 36.603 to reference the control number applicable to that section.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order No. 12291, and has no

implications for federalism requiring a federalism assessment under section 6 of Executive Order No. 12612.

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, Reporting and recordkeeping requirements.

Dated: January 28, 1993.

Stuart M. Gerson,

Acting Attorney General.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 306(b) of the Americans with Disabilities Act, and for the reasons set forth in the preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; sec. 306(b), Public Law 101–336, 104 Stat. 361, 362 (42 U.S.C. 12186).

2. Section 36.603 is amended by adding a parenthetical containing the Office of Management and Budget control number at the end of the section, to read as follows:

§ 36.603 Filing request for certification.

* * * * *

(Approved by the Office of Management and Budget under control number 1190–0005)

3. Appendix A to part 36 is amended as follows:

a. The appendix is amended by adding in the first sentence of section 4.30.4 the words "(0.8 mm) minimum" after "1/32 in".

b. The appendix is amended in the third entry in the first column of the table in paragraph (1) of section 7.3 by revising "8–15" to read "9–15".

Pages 53 and 62 of appendix A to part 36 are republished with the amendments included to read as follows:

Appendix A to Part 36—Standards for Accessible Design

* * * * *

BILLING CODE 4410–01–M

4.29 Detectable Warnings.

4.29.1 General. Detectable warnings required by 4.1 and 4.7 shall comply with 4.29.

4.29.2* Detectable Warnings on Walking Surfaces. Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 Detectable Warnings on Doors To Hazardous Areas. (Reserved).

4.29.4 Detectable Warnings at Stairs. (Reserved).

4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915 mm) wide, complying with 4.29.2.

4.29.6 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or detectable warnings complying with 4.29.2.

4.29.7 Standardization. (Reserved).

4.30 Signage.

4.30.1* General. Signage required to be accessible by 4.1 shall comply with the applicable provisions of 4.30.

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 Character Height. Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.

Height Above Finished Floor	Minimum Character Height
Suspended or Projected Overhead in compliance with 4.4.2	3 in. (75 mm) minimum

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in (0.8 mm) minimum, upper case, sans serif or simple serif type and shall be accompanied with Grade 2 Braille. Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.

4.30.5* Finish and Contrast. The characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters and symbols shall contrast with their background — either light characters on a dark background or dark characters on a light background.

4.30.6 Mounting Location and Height. Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.

4.30.7* Symbols of Accessibility.

(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The

8.0 Libraries

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles (of each design)
1 - 4	1
5 - 8	2
9 - 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt, or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

(3) Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 7.2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of approach allowed.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

[FR Doc. 93-7192 Filed 4-2-93; 8:45 am]
BILLING CODE 4410-01-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-93-13]

Special Local Regulations for Marine Events; Chesapeake Bay Offshore Challenge; Chesapeake Bay, Ocean View, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Chesapeake Bay Offshore Challenge to be held on May 22, 1993, on the Chesapeake Bay off Ocean View, Norfolk, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations are effective from 9 a.m. to 5 p.m., May 22, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 9 a.m. to 5 p.m., May 23, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Hampton Roads (Operations) (804) 483-8559.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received at the district office until March 16, 1993, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LCDR Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

Offshore Productions Unlimited submitted an application to hold the Chesapeake Bay Offshore Challenge. The race will consist of approximately 50 powerboats, from 20 to 45 feet in length racing over a closed course off the Ocean View beachfront. As part of the application, Offshore Productions Unlimited requested that the Coast Guard provide control of spectator and commercial traffic along the beachfront and within the regulated area.

Discussion of Regulations

These regulations will regulate the area surrounding the Chesapeake Bay Offshore Challenge. The race course runs along the beachfront from East Ocean View to just east of Willoughby Beach, south of Thimble Shoals Channel, and east of the entrance to Little Creek. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Since Thimble Shoals Channel, and the approach to Little Creek Harbor will not be closed, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for eight hours, and the effect on routine navigation is expected to be minimal since Little Creek Harbor and Thimble Shoals Channel will not be closed during the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this rule on non-participating small entities will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0513 is added to read as follows:

§ 100.35-T0513 Chesapeake Bay, Ocean View, Norfolk, Virginia.

(a) *Definitions:* (1) *Regulated area.* The waters of the Chesapeake Bay commencing at a point on the shoreline at latitude 36°58'09.0" North, longitude 76°17'20.0" West; thence north to latitude 36°59'49" North, longitude 76°17'20" West; thence east southeast to latitude 36°59'01" North, longitude 76°10'38" West; thence south southwest to the shoreline at latitude 36°55'52" North, longitude 76°11'21" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(3) *Spectator Anchorage Area.* The waters in the Chesapeake Bay off Ocean View bounded by a line connecting the following five points: (1) Latitude 36°59'35.0" N, Longitude 76°15'15.0" W; (2) Latitude 36°59'54 0" N, Longitude 76°15'14.0" W; (3) Latitude 36°59'55.0" N, Longitude 76°14'32.0" W; (4) Latitude 36°59'42.0" N, Longitude 76°13'38.0" W; (5) Latitude 36°59'23.0" N, Longitude 76°13'39.0" W.

(b) *Special Local Regulations.* (1) Except for participants in the Chesapeake Bay Offshore Challenge and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated

area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage area specified in paragraph (a)(3) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race or practice heat is not being run.

(5) Vessel operators are advised to remain clear of the regulated area during the effective periods of this regulation.

(c) *Effective periods:* The regulations are effective from 9 a.m. to 5 p.m., May 22, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 9 a.m. to 5 p.m., May 23, 1993.

Dated: March 25, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93-7871 Filed 4-2-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 162

[CGD9 93-01]

Temporary Amendment to Inland Waterways Navigation Regulations Establishing Speed Limits on Connecting Waters From Lake Huron to Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Ninth Coast Guard District, is making a temporary amendment to the inland waterways navigation regulations at 33 CFR 162.138 establishing speed limits on connecting waters from Lake Huron to Lake Erie in order to allow nondisplacement power vessels less than 100 gross tons to exceed the normal speed limits, when approval for each transit is granted by the Coast Guard Captain of the Port, during the 1993 season. This temporary amendment is necessary to prevent an undue restriction on commerce, but will only be invoked by the Coast Guard Captain of the Port when he determines that no undue risk to safety will result.

EFFECTIVE DATES: These regulations become effective on April 1, 1993, and terminate on November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Captain Dennis W. Cleaveland, U.S. Coast Guard, Chief of the Ninth Coast Guard District Marine Port & Environmental Safety Branch, room 2069, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3994.

SUPPLEMENTARY INFORMATION: On January 13, 1993, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (58 FR 4130). Interested persons were requested to submit comments by March 1, 1993. No comments were received. The Commander of the Ninth Coast Guard District has decided to promulgate the final rule as proposed, for the reasons previously given in the notice of proposed rulemaking.

Drafting Information

The drafters of these regulations are Captain Dennis W. Cleaveland, U.S. Coast Guard, project officer, Ninth Coast Guard District Marine Port & Environmental Safety Branch, and Commander M. Eric Reeves, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This amendment does not impose any new regulatory requirements in an area not heretofore regulated by the Federal Government, and does not impose any requirements or restrictions on State or local authorities.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. In fact, the Coast Guard is making this amendment in part in order to avoid causing the existing regulations to have an unintended economic impact on a new mode of commercial operation. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 162

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 162 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. A temporary section 162.T139 is added as follows:

§ 162.T139 Nondisplacement Vessels under 100 Gross Tons.

(a) Notwithstanding § 162.134 and 162.138(a), nondisplacement vessels 20 meters or more in length but under 100 gross tons may operate in the nondisplacement mode at speeds not more than 40 miles per hour, and may overtake other vessels, when conditions otherwise safely allow and approval is granted by the Coast Guard Captain of the Port or District Commander prior to each transit of the area. Except for provisions on overtaking other vessels, the provisions in § 162.134 continue to apply.

(b) This section becomes effective on April 1, 1993 and terminates on November 30, 1993.

Dated: March 16, 1993.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93-7873 Filed 4-2-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Los Angeles-Long Beach Regulation 93-03]

Security Zone Regulations: Pacific Ocean South of Santa Cruz Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Security Zone in the Territorial Waters south of Santa Cruz Island in the vicinity of Yellow Bluff.

The zone is needed to safeguard national defense assets against destruction/loss/injury from sabotage or other subversive acts, accidents, or causes of a similar nature while undergoing operational testing. Entry into this zone is prohibited unless authorized by the Captain of Port.

EFFECTIVE DATES: This regulation becomes effective at 1200, 2 April 1993 and terminates at 2400, 2 May 1993.

FOR FURTHER INFORMATION CONTACT: Capt J.B. Morris at 310–980–4429.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction/loss/injury to national defense assets involved in operational testing.

Drafting Information

The drafters of this regulation are CAPT J. B. MORRIS, Captain of the Port, Los Angeles-Long Beach and CAPT B. WEULE, Eleventh Coast Guard District Legal Officer.

Discussion of Regulation

The operations requiring this regulation will begin on 2 April 1993. This Security Zone is necessary to ensure the security and safety of national defense assets during operational testing. Entry into the zone may be allowed if testing permits and there are no hazards to transiting vessels or test equipment. Requests to enter the zone should be addressed to the Coast Guard patrol vessel(s) on scene or the representative of the Captain of the Port Los Angeles-Long Beach embarked in the M/V CAVALIER.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1231; 50 USC 191; 49 CFR 1.46; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1103 is added to read as follows:

§ 165.T1103 Security zone: Pacific Ocean, California.

(a) *Location.* The following area is a Security Zone: The Territorial Waters south of Santa Cruz Island, California; in the vicinity of Yellow Bluff; bounded on the north by Santa Cruz Island, on the south by latitude 33–56N, on the east by longitude 119–34W, and on the west by longitude 119–41W.

(b) *Effective date.* This regulation becomes effective at 1200, 2 April 1993 and terminates at 2400, 2 May 1993.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person may swim, skin dive, or scuba dive in the waters within the Security Zone, and no vessel may enter, remain in, or transit the Security Zone without the permission of the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: March 23, 1993

J. B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 93–7872 Filed 4–2–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–311–CN]

RIN 0938–AB68

Medicare and Medicaid Programs; Revaluation of Assets; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (BPD–311–F) that were published September 23, 1992 (F.R. Doc. 92–22582) (57 FR 43906). The regulations describe new limitations on the valuations of assets acquired as the result of changes in ownership occurring on or after July 18, 1984. These changes affect hospitals and skilled nursing facilities under the Medicare program, and hospitals, nursing facilities, and intermediate care facilities for the mentally retarded under the Medicaid program.

EFFECTIVE DATE: October 23, 1992.

FOR FURTHER INFORMATION CONTACT:
Bruce Oliver—Medicare Provisions, (410) 966–4519
Betty Kern—Medicaid Provisions, (410) 966–4580

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections (BPD–311–F, published September 23, 1992 (57 FR 43906)) describes new limitations on the valuation of assets acquired as the result of changes in ownership occurring on or after July 18, 1984. These changes affect hospitals and skilled nursing facilities under the Medicare program and hospitals, nursing facilities, and intermediate care facilities for the mentally retarded under the Medicaid program.

Need for Correction

1. Prior to the publication of the September 23, 1992, final rule, 42 CFR 413.134(f)(4) essentially provided that gains and losses realized on the exchange or trade-in of assets were not included in allowable costs because the undepreciated basis of the old asset is added to the historical cost of the new asset. No mention of losses (there are no gains) from donations of assets was made under § 413.134(f). In an exchange or a trade-in, by definition, there is an old asset and a new asset (that is, the old asset is exchanged or traded-in for a new asset). In a donation, there is only an old (donated) asset. Therefore, the second sentence of revised § 413.134(f)(4), which discusses how to compute the cost of a new asset, could only have applicability to the exchange or trade-in of an asset.

2. The following language, which appears in section 110.A., *Sale and Leaseback Agreements—Rental Charges,* of the Provider Reimbursement Manual, has existed virtually since the beginning of the Medicare program: "If all these conditions were not met, the rental charge cannot exceed the amount which the provider would have included in reimburseable costs had he retained legal title to the facilities or equipment, *such as interest on mortgage, taxes, depreciation, insurance and maintenance costs"* (emphasis added). Moreover, prior to the publication of the September 23, 1992, final rule, 42 CFR 413.130(b)(3) read, "If the conditions of paragraph (b)(2) of this section are not met, the amount a provider may include in its capital-related costs as rental or lease expense under a sale and leaseback agreement may not exceed the amount that the provider would have included in its capital-related costs had the provider retained legal title to the facilities or equipment, such as interest on mortgage, taxes, depreciation, and insurance costs." This language has been in the regulations since 1983 (the

advent of the prospective payment system).

When we developed regulations at § 413.130(b)(4) (which deal with the inclusion of the costs attributable to certain sale and leaseback arrangements in allowable costs), we intended to use the same long-standing and well understood language that appears in the above cited sections of the Provider Reimbursement Manual and regulations, as supplemented by the addition of the parenthetical phrase "the costs of ownership." The text of § 413.134(h)(3) was intended to parallel the language of § 413.130(b)(4). However, the phrase "for costs" that appears between "equipment" and "such" in § 413.134(h)(3) inadvertently was added during the regulation clearance process; the parallel language in regulations at § 413.130(b)(4) was not revised. The words "for costs" make this section no longer parallel with § 413.130(b)(4), confuse the meaning of the sentence, and should be deleted.

3. In addition, as published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Accordingly, 42 CFR part 413 is corrected by making the following correcting amendments:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note)).

§ 413.130 [Corrected]

2. In § 413.130(b)(4) introductory text, first sentence, the phrase "provider would have included in capital-related costs" is revised to read "provider would have included in its capital-related costs".

§ 413.134 [Corrected]

3. In § 413.134(b)(8), in the second sentence, the word "Exempt" is revised to read "Except"

§ 413.134 [Corrected]

4. In § 413.134(f)(4), in the second sentence, the phrase "exchange, trade-in, or donation," is revised to read "exchange or trade-in,".

§ 413.134 [Corrected]

5. In § 413.134(h)(3) introductory text, in the first sentence, in the phrase "had the provider retained legal title to the facilities or equipment for costs", a comma is inserted after "equipment" and the phrase "for costs" is deleted.

§ 413.134 [Corrected]

6. In § 413.134(h)(3)(i), in the first sentence, the phrase "are less than the annually costs of ownership," is revised to read "are less than the annual costs of ownership,".

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; and No. 93.773, Medicare—Hospital Insurance Program)

Dated: March 25, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management

[FR Doc. 93–7869 Filed 4–2–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 61

[CC Docket No. 92–117; FCC No. 93–94]

Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts rules to adjust the pleading cycle for petitions seeking investigation, suspension, or rejection of tariff filings made on 14 days' notice. The Commission is seeking more time to evaluate arguments against the lawfulness of these tariffs. This action will allow the Commission the additional time sought.

EFFECTIVE DATE: March 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pat M. Nagle, (202) 632–6917.

SUPPLEMENTARY INFORMATION: On June 1, 1992, this Commission released a Notice of Proposed Rulemaking (57 FR 24205, June 8, 1992), to consider adjusting the pleading cycle for petitions seeking investigation, suspension, or rejection of tariff filings made on 14 days' notice under § 1.773 of the Commission's Rules. The Commission has adopted streamlined review for a number of different types of tariff filings. For example, under price cap regulation, AT&T Communications and certain local exchange carriers (LECs) may file tariff transmittals for below-cap, within-band rate changes on 14 days' notice. Also, the Interexchange Order amended our rules to exclude most of AT&T's business services from price cap regulation and to streamline tariff review of these services. Pursuant to the Interexchange Order non-dominant carriers are also allowed to file tariffs on 14 days' notice. In allowing streamlined review of these various tariffs, the Commission has emphasized that such review is not equivalent to automatic acceptance of a rate or other tariff change; parties continue to have the opportunity to petition tariff filings and address issues such as discrimination.

In order to allow the Commission time to evaluate arguments against the lawfulness of tariffs filed on 14 days' notice, the Commission now requires that petitions seeking investigation, suspension, or rejection of these tariffs be filed within six calendar days after the date of the filing. The Commission requires that replies be filed within three calendar days after the latest date that petitions could be filed. Because of the shortened pleading cycle, against these tariffs must also be served in person or by facsimile on the filing carrier. Petitioners choosing service by fax must send a follow-up copy via first-class mail. Carriers retain the option to serve their replies to petitioners by mail. Finally, the Commission amends § 61.33 of its rules, 47 CFR 61.33, to require all letters of transmittal for 14-day tariff filings to include an address and designated individual for personal service and a fax number for fax service.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows: The Commission is adopting this Report and Order to provide the Commission additional time to review pleadings filed in 14-day tariff proceedings. The Order reduces the pleading cycles by one day and requires parties to serve petitions either personally or via facsimile.

Accordingly, it is ordered, That the policies, rules and requirements set forth herein are adopted.

It is further ordered, That pursuant to authority contained in sections 1, 4(i), and 201–204 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–204, part 1 and part 61 of the Commission's Rules, 47 CFR part 1 and part 61, are amended as set forth below.

It is further ordered, That the provisions in this Report and Order will

be effective 30 days after **Federal Register** publication.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, and Telecommunications.

47 CFR Part 61

Communications common carriers.

Amendments to the Code of Federal Regulations

Title 47 of the Code of Federal Regulations, parts 1 and 61 are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.4 is amended by revising the text of paragraph (g) preceding example 10 to read as follows:

§ 1.4 Computation of time.

* * * * *

(g) Unless otherwise provided (e.g., § 1.773 of the Rules), if the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

* * * * *

3. Section 1.773 is amended by revising paragraph (a)(1) introductory text, the first sentence of paragraph (a)(1)(i) and the first and last sentences of paragraph (a)(2) introductory text; redesignating paragraphs (a)(2) (i) through (iii) as paragraphs (a)(2) (ii) through (iv), respectively, and revising them; adding new paragraph (a)(2)(i); adding paragraph (a)(4); redesignating paragraphs (b)(1) (i) through (iv) as paragraphs (b)(1) (ii) through (v), respectively, and revising them; adding new paragraph (b)(1)(i); revising paragraph (b)(2), and redesignating paragraph (c) as paragraph (b)(3) and revising it, to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) *Petition*-(1) *Content.* Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision thereof shall specify the filing's Federal Communications Commission tariff number and carrier transmittal number, the items against which protest is made, and the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act. No petition shall include a prayer that it also be considered a formal complaint. Any formal complaint shall be filed as a separate pleading as provided in § 1.721. (i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision of such a publication, must specify the pertinent Federal Communications Commission tariff number and carrier transmittal number; the matters protested; and the specific reasons why the tariff warrants investigation, suspension, or rejection.

* * *

* * * * *

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. * * * Thereafter, the request shall be confirmed by petition filed and served in accordance with § 1.773(a)(4).

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 6 days after the date of the tariff filing.

(ii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 7 days after the date of the tariff filing.

(iii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 15 days after the date of the tariff filing.

(iv) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing mode on 90 or more days notice shall be filed and served within 25 days after the date of the tariff filing.

* * * * *

(4) *Copies, Service.* An original and 4 copies of each petition shall be filed with the Commission and separate copies served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice may be served on the filing carrier by mail.

(b) (1) * * *

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days after the date the petition is due to be filed with the Commission.

(ii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 4 days after service of the petition.

(iii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 5 days after service of the petition.

(iv) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 8 days after service of the petition.

(v) Where all petitions against a tariff filing have not been filed on the same day, the publishing carrier may file a consolidated reply to all the petitions. The time for filing such a consolidated reply will begin to run on the last date for timely filed petitions, as fixed by paragraphs (a)(2) (i) through (iv) of this section, and the date on which the consolidated reply is due will be governed by paragraphs (b)(1) (i) through (iv) of this section.

(2) *Computation of time.* Intermediate holidays shall be counted in determining the 3-day filing date for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice. Intermediate holidays shall not be counted in determining filing dates for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice. When a petition is permitted to be served upon the filing carrier by mail, an additional 3 days (counting holidays) may be allowed for filing the reply. If the date for filing the reply falls on a holiday, the reply may be filed on the next succeeding business day.

(3) *Copies, Service.* An original and 4 copies of each reply shall be filed with the Commission and separate copies served simultaneously upon the Chief, Common Carrier Bureau, and the Chief, Tariff Division, and the petitioner. Replies may be served upon petitioner personally, by mail or via facsimile.

PART 61—TARIFFS

4. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

5. Section 61.33 is amended by redesignating paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively, and adding a new paragraph (d), to read as follows:

§ 61.33 Letters of transmittal.

* * * * *

(d) In addition to the requirements set forth in paragraph (a) of this section, any carrier filing a new or revised tariff made on less than 15 days' notice must include in the letter of transmittal the name, room number, street address, telephone number, and facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions against the filing as required under § 1.773(a)(4) of this chapter.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7622 Filed 4–2–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–266; FCC 93–176]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Temporary rule.

SUMMARY: The Commission has adopted an Order instituting a rate freeze for regulated cable services. This action will provide time for the Commission and local authorities to implement the Commission's rate regulations adopted on April 1, 1993 in response to the Cable Act of 1992. This freeze will ensure that for 120 days, effective April 5, 1993, and terminating on August 3, 1993, rates for regulated cable services will not increase over the April 5, 1993, level.

EFFECTIVE DATE: April 5, 1993. Termination date August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, (202) 632-1295; or Jennifer A. Manner, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's Order in MM Docket No. 92–266; FCC 93–176, adopted and released April 1, 1993.

I. Introduction

1. In this Order, we freeze for 120 days rates for cable services, other than premium and pay-per-view service offerings, provided by cable systems subject to regulation under the Cable Television Consumer Protection and Competition Act of 1992.[1]

II. Discussion

2. In a Report and Order adopted on April 1, 1993 we are establishing regulations to implement rate regulation of cable service as required under the Cable Act of 1992.[2] Those standards and procedures govern regulation of the rates of the basic service tier by franchising authorities, and by the Commission in individual instances of rates for cable programming services. We anticipate that our regulations will become effective approximately 75 days after adoption,[3] and that, as a practical matter, it will take an additional period of time for franchise authorities to become certified to regulate the basic service tier,[4] and for consumers to be able to file complaints to invoke Commission oversight of rates for cable programming services.

3. We are concerned that during the period between the adoption of our rules and the date that a local franchising authority can establish regulation of the basic service tier rates, and that consumers can file complaints with the Commission concerning potentially unreasonable rates for cable programming services, cable operators could raise rates, effectively undermining the statutory purpose of reasonable rates pending implementation of our rules. In particular, cable operators would be able to raise rates prior to the initiation of regulation that would otherwise govern their ability to raise rates from existing levels. Therefore, as of the date of publication in the **Federal Register** of this Order and necessary rule changes, we are freezing for 120 days the rates for cable services, other than premium channel or pay-per-view services, offered by systems subject to rate regulation under the Cable Act of 1992.[5] This should provide sufficient time for our regulations to become effective, local authorities to become certified to regulate the basic service tier, and consumers to become familiar with necessary local and federal procedures. In addition, the rate freeze should not harm cable operators because current rates will remain in effect and because this freeze is of relatively brief duration.[6]

4. This freeze will be effectuated by requiring that the average monthly subscriber bill for services subject to rate regulation under the statute may not increase above the average monthly subscriber bill determined under rates in effect on the **Federal Register** publication date.[7] This freeze does not

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[1] Cable Television Consumer Protection and Competition Act, Public Law No. 102–385, sections 3, 9, 14, 106 Stat. 1460 (1992) ("Cable Act of 1992"). This freeze will apply to rates in effect as of the date of publication of this Order and implementing rule changes in the **Federal Register**.

[2] Report and Order and Further Notice of Proposed Rulemaking, in MM Docket 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation FCC No. 93–177, adopted April 1, 1993. ("Report and Order").

[3] The Administrative Procedure Act requires that in most cases substantive rules be published in the **Federal Register** at least 30 days prior to their effective date. See 5 U.S.C. § 553(d); See also 47 CFR § 1.427. We anticipate that the Report and Order will be released approximately 30 days after adoption, and that our regulations will be printed in the **Federal Register** within 15 days after that. Thus, under this schedule, our regulations would become effective approximately 75 days after adoption. Further, our regulations involving information collection require approval of the Office of Management and Budget under the Paperwork Reduction Act. See 44 U.S.C. 3507(b).

[4] See 47 U.S.C. 543.

[5] The Cable Act of 1992 provides that only cable systems subject to effective competition as defined in the statute are subject to rate regulation. Under the statute a system is subject to effective competition if: (A) fewer than 30 percent of the households in the franchise area subscribe to a cable system; (B) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (C) the franchising authority itself is a multichannel video programming distributor and offers video programming to at least 50 percent of the households in the franchise area. See Communications Act, section 623(1)(1), 47 U.S.C. 543 (1)(1). For purposes of the freeze, each cable operator will have the responsibility of determining in good faith whether it is subject to effective competition as defined in the statute. Cable operators not subject to effective competition as defined in the statute who raise rates in violation of the freeze will be subject to forfeitures. See Communications Act, sections 503(b), 47 U.S.C. 503(b).

[6] We will entertain petitions for emergency relief from cable operators. We will consider lifting this freeze for a particular cable operator if it can show that the freeze would impose severe economic hardship or threaten the viability of continued cable service.

[7] The average monthly subscriber bill shall be calculated by determining for a monthly billing cycle the sum of all billed monthly charges for all services subject to rate regulation under section 623 of the Communications Act and dividing that sum by the number of subscribers receiving any of those regulated services. Services subject to rate regulation under section 623 of the Communications Act are the basic service tier, cable programming services tiers, and equipment used to receive either the basic service tier and/or cable programming services tiers. The average monthly

preclude adding subscribers, retiering, or the providing of additional equipment and services as long as the average monthly subscriber bill for these services does not increase over the level as of the **Federal Register** publication date.[8] Cable systems may additionally increase the charge for a tier or provision of equipment as long as the average monthly subscriber bill does not increase over the level as of the **Federal Register** publication date. This flexibility will simultaneously permit cable operators to make reasonable changes in service offerings in response to the rules we establish for rate regulation under the Cable Act of 1992 and still protect consumers.

5. We find good cause under the Administrative Procedure Act to make this freeze effective upon publication in the **Federal Register.**[9] As explained, absent a freeze cable operators could raise rates prior to the first practical opportunity for local authorities and the Commission to regulate rates for the basic service tier and cable programming services, effectively thwarting the statutory intent of reasonable rates. Accordingly we will make this freeze effective upon publication of this Order and implementing rule changes in the **Federal Register.** We additionally find that we have sufficient authority to impose this freeze.[10]

subscriber bill determined under rates in effect on the **Federal Register** publication date shall be calculated based on customer charges for the most recent monthly billing cycle ending prior to the **Federal Register** publication date.

[8] Under the Cable Act of 1992, rates for video programming offered on a per channel or per event basis are not subject to regulation. Thus, the freeze does not preclude cable operators from raising rates for such services. In addition, in the Report and Order we have determined that equipment that is used only to receive unregulated programming is not subject to regulation. The freeze does not prohibit rate increases for such equipment.

[9] The Administrative Procedure Act generally requires publication in the **Federal Register** of substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days advance publication in the **Federal Register** for good cause. See 5 U.S.C. § 553(d)(1); See also 47 C.F.R. 1.427(b).

[10] Section 623(b)(1) of the Communications Act provides that "[t]he Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable" in situations where a cable system is not subject to effective competition. This section provides sufficient authority for the Commission to freeze rates for the basic service tier in order to assure that rates for the tier are reasonable under the regulations we are adopting in the Report and Order. The Cable Act of 1992 also requires that the Commission establish regulations to prevent evasions of rate regulation. See 47 U.S.C. 543(h). If the Commission froze only basic service tier rates, cable operators could evade the freeze by retiering to move programming from the basic tier to higher tiers. This would thwart the intended effect of the freeze of assuring that rates for the basic service tier are reasonable because it would permit the cable operator to charge the frozen basic service tier rate for fewer channels on the basic tier. Thus, the freeze of cable programming services is necessary to fully effectuate the freeze for the basic service tier and is within the scope of our authority under sections 623(b)(1) and 623(h). Section 4(i) of the Communications Act, 47 U.S.C. 154(i), also provides support for our action.

III. Ordering Clauses

6. Accordingly, *it is ordered,* That, pursuant to sections 4(i) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 543, that rates for cable services offered by cable systems subject to regulation under section 623 of the Communications Act are frozen as of the date of publication of this Order in the **Federal Register** for 120 days as described in this Order.

7. *It is further ordered,* That part 76 of the Commission's rules is amended as set forth below.

8. *It is further ordered,* That this Order, is effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

Part 76—Cable Television Service

1. The current authority citation for part 76 is suspended.

2. A new authority citation is added for part 76 to read as follows:

Authority: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 307, 308, 309, 532, 533, 535, 543, 552.

3. Subpart O is added to part 76 to read as follows:

Subpart O—Rate Regulation

Sec.

76.1090—Temporary Freeze of Cable Rates

Subpart O—Rate Regulation

§ 76.1090 Temporary Freeze of Cable Rates

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, for a period of 120 days.

(b) The average monthly subscriber bill shall be calculated by determining for a monthly billing cycle the sum of all billed monthly charges for all cable services subject to rate regulation under this rule and dividing that sum by the number of subscribers receiving any of those services. The average monthly subscriber bill determined under rates in effect on April 5, 1993, shall be calculated based on customer charges for the most recent monthly billing cycle ending prior to April 5, 1993.

[FR Doc. 93-7939 Filed 4-2-93; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 821 and 826

Rules of Practice in Civil Penalty Proceedings

AGENCY: National Transportation Safety Board.

ACTION: Extension of comment and reply periods.

SUMMARY: The FAA has requested a 2-week extension of time to file its comments and the NTSB has granted the request. The time to reply to any FAA comments is also extended an equal amount of time.

DATES: FAA comments are now due April 12, 1993. Any replies to the FAA's comments are due May 5, 1993. Replies to other comments remain due April 21, 1993.

ADDRESSES: An original and two copies of any comments and replies must be submitted to: Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594, Attention: Civil Penalty Rules.

FOR FURTHER INFORMATION CONTACT: Daniel D. Campbell, General Counsel, (202) 382-6540.

SUPPLEMENTARY INFORMATION: At 58 FR 11379, February 25, 1993, the interim rule on practice in civil penalty proceedings was published requesting comments by March 29, 1993 and reply comments by April 21, 1993. By letter-petition filed March 29, 1993, the Administrator of the Federal Aviation Administration sought an extension of time to file his comments in this proceeding. For good cause shown, that request is granted. Any person seeking to reply to FAA comments has until May 5, 1993, to do so. Replies to comments filed by other persons, however, continue to be due on April 21, 1993.

As required by the Regulatory Flexibility Act, it is certified that this action will not have a substantial impact on a significant number of small entities. The rules are not major rules for the purposes of Executive Order

12291. This action also will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

Issued in Washington, DC on this 29th day of March, 1993.

Daniel D. Campbell,

General Counsel.

[FR Doc. 93–7735 Filed 4–2–93; 8:45 am]

BILLING CODE 7533–01–M

Proposed Rules

Federal Register
Vol. 58, No. 63
Monday, April 5, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB14

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is proposing to revise its existing schedule for increasing the reserve ratio of the Bank Insurance Fund (BIF) to the designated reserve ratio of 1.25 percent. Under section 7(b) of the Federal Deposit Insurance Act (FDI Act), the Board must set semiannual assessment rates for BIF members in accordance with the BIF recapitalization schedule promulgated by the FDIC. In addition to proposing a revision to the BIF recapitalization schedule, the Board also is proposing to retain the current assessment rates applicable to members of the BIF and members of the Savings Association Insurance Fund (SAIF) for the semiannual period beginning July 1, 1993. The intended effects of this proposed rule are to revise the BIF recapitalization schedule by incorporating updated assumptions about the future of the banking industry and to provide for the recapitalization of the BIF and SAIF, within the designated periods of time, by retaining the current assessment rates for BIF and SAIF members.

DATES: Written comments must be received by the FDIC on or before May 5, 1993.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in the FDIC's Reading Room, room 7118, 550 17th Street, NW., Washington, DC, on business days between 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Arthur J. Murton, Deputy Director, Division of Research and Statistics, (202) 898–3938; George French, Associate Director, Division of Research and Statistics (202) 898–3929; or Jennifer L. Eccles, Senior Financial Analyst, Division of Research and Statistics, (202) 898–8537, Federal Deposit Insurance Corporation, Washington, DC.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It would not impose burdens on depository institutions of any size and would not have the type of economic impact addressed by the Act. Moreover, to the extent the proposed rule relates to the assessment rates to be paid by BIF member institutions, the Act does not apply to a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) are not applicable here.

The Proposed Rule

1. Statutory Requirements

Section 7(b)(1)(C)(iv) of the FDI Act (12 U.S.C. 1817(b)(1)(C)(iv)) states that the FDIC may, by regulation, amend a BIF recapitalization schedule promulgated under clause (iii) of section 7(b)(1)(C) of the FDI Act. Pursuant to clause (iii) of section 7(b)(1)(C) of the FDI Act, the FDIC adopted a BIF recapitalization schedule effective November 2, 1992. 57 FR 45263 (October 1, 1992). The Board is proposing to exercise its authority under section 7(b) of the FDI Act to revise the BIF recapitalization schedule to incorporate recent industry financial data and to reflect corresponding updated assumptions about the future of the banking industry.

Section 7(b) of the FDI Act states, in relevant part, that the semiannual rates for BIF members must be set in accordance with the BIF recapitalization schedule. 12 U.S.C. 1817(b)(1)(C)(ii). The proposed revisions to the BIF recapitalization schedule are anticipated to become effective on or before July 1, 1993. In that connection, the Board is proposing to retain the current rate schedule for BIF members for the semiannual period beginning July 1, 1993, and subsequent semiannual periods. The Board's rationale for retaining the current BIF assessment rates is provided below.

Section 7(b) of the FDI Act also provides, in relevant part, that, if the reserve ratio for the SAIF is less than the designated reserve ratio of 1.25 percent, the Board must set an assessment rate for SAIF members, as the Board determines to be appropriate, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time. *Id.* at 1817(b)(1)(D)(i). For the reasons discussed below, the Board is proposing to retain the current assessment rate schedule for SAIF members for the semiannual period beginning July 1, 1993, and subsequent semiannual periods.

2. Proposed Revisions to the BIF Recapitalization Schedule

A. Background

The Board adopted a BIF recapitalization schedule effective November 2, 1992. 57 FR 45265 (October 1, 1992). In establishing the recapitalization schedule, the Board reviewed a set of assumptions regarding the three primary factors affecting the long-term condition of the BIF. Those factors were the number and size of future bank failures, the costs of resolving those failures, and the amount of assessment income received from BIF member institutions.

Because future economic conditions affecting these factors cannot be predicted with certainty, the FDIC

assumed values for each factor ranging from reasonably optimistic to reasonably pessimistic. Projected failed bank assets were divided into two categories: Short-term and long-term. The range of short-term projections was based on various public and private sector forecasts, with the mid-point generally consistent with the results of FDIC projections. Long-term failed bank assets projections, as well as assumptions regarding resolution costs and growth in the banking industry (which affects assessment revenue) were based on historical experience.

Various scenarios representing a combination of values across the range were examined for each of the factors, and each scenario was assigned a probability based on the combination of the respective probabilities estimated for each of the values individually. Composite projections were derived from the various scenarios and probabilities. The existing recapitalization schedule was developed from these projections and reflected the premium revenues expected to be derived from the risk-based premium system adopted by the Board. [1]

[1] On October 1, 1992, the Board issued a regulation establishing a transitional risk-based deposit insurance system under which institutions posing a higher risk of loss to the BIF or to the Savings Association Insurance Fund will pay deposit premiums at a higher rate than will lower-risk institutions. 57 FR 45278 (October 1, 1992). The Board established this system in order to mitigate the effects of the higher assessment rates required to recapitalize the funds.

B. 1992 Performance Overview: BIF-Member Institutions

FDIC-insured commercial banks recorded their four highest-ever quarterly profits in 1992, resulting in record annual earnings of $32.2 billion and a return on assets of 0.96 percent. Only 6.5 percent of all banks were unprofitable for the year, compared to 11.6 percent in 1991. The 1992 performance resulted from favorable interest rates and improving asset quality.

Noncurrent loans and other real estate owned improved to 2.51 percent of total assets at year-end 1992 from 2.99 percent at year-end 1991. One hundred commercial banks failed or received assistance in 1992, the lowest total since 1984. At year-end 1992, the average equity-to-assets ratio for commercial banks was 7.52 percent, compared to 6.75 percent a year earlier. Nearly 96 percent of all commercial and BIF-insured savings banks qualify as well-capitalized under FDICIA standards, with another 3 percent categorized as adequately capitalized.[2] These two groups hold 99 percent of the industry's total assets. Critically undercapitalized banks declined from 40 (with total assets of $15 billion) on September 30, 1992, to 19 (with total assets of $2 billion) on December 31.

The 414 BIF-insured savings banks reported an aggregate profit of $385 million for the fourth quarter and net earnings of $1.4 billion for the year. This marked the fourth consecutive quarterly profit for this group of institutions after 11 consecutive quarters of losses, and the first full-year profit since 1988.

These improvements should not obscure the fact that significant potential trouble spots continue to exist Troubled asset rates remain at historically high levels, and problems—particularly in real estate lending—persist in some regional markets. Troubled assets in the Northeast improved during 1992 but remain high at 3.49 percent, while the West deteriorated to 3.44 percent by year-end.

Furthermore, 787 commercial banks remain on the FDIC's "Problem List". Although this is the lowest year-end level since 1983, assets of "Problem" banks are $408 billion, and while assets have declined for three consecutive quarters, they remain higher than at any time prior to 1991. Seventy-six BIF-insured savings banks with $56 billion in assets remain on the problem list. These figures are down from their peak (88 institutions in 1992 and $82 billion in assets in 1991) levels, but are still high by historical standards.

[2] Based on Call report information only and not reflecting supervisory upgrades or downgrades.

C. BIF Recapitalization Schedule Assumption Changes

Given the significant improvement in the condition of the banking industry since the date of the Board's adoption of the BIF recapitalization schedule, the Board has reconsidered all the assumptions affecting the recapitalization schedule. The FDIC's assumptions for the proposed recapitalization schedule are summarized in Table 1 below.

TABLE 1.—BIF RECAPITALIZATION SCHEDULE ASSUMPTIONS, MARCH 1993

[Dollars in billions]

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Assumptions:															
1. Deposit and Asset Growth	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
2. FDIC Borrowing Rate	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
3. FDIC Investment Rate	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
4. Bank Industry Assets	3,721	3,825	3,932	4,042	4,155	4,272	4,391	4,514	4,641	4,770	4,904	5,041	5,183	5,328	5,477
5. Failed Bank Assets	44	25	45	50	32	28	22	19	19	20	21	21	22	22	23
6. Loss Ratio	.....	14%	14%	14%	14%	14%	14%	14%	14%	14%	14%	14%	14%	14%	14%
7. Insured Deposits	1,943	1,950	2,005	2,061	2,119	2,178	2,239	2,302	2,366	2,433	2,501	2,571	2,643	2,717	2,793
8. Average Assessment Base	2,429	2,438	2,506	2,577	2,649	2,723	2,799	2,877	2,958	3,041	3,126	3,213	3,303	3,396	3,491
9. Assessment Rate	0.230%	0.248%	0.246%	0.246%	0.246%	0.246%	0.246%	0.246%	0.246%	0.246%	0.135%	0.100%	0.100%	0.100%	0.100%
10. Assessment Revenue	5.6	6.0	6.2	6.3	6.5	6.7	6.9	7.1	7.3	7.5	4.2	3.2	3.3	3.4	3.5
11. Net Income	6.9	1.2	0.8	2.4	2.9	3.8	4.1	4.4	4.8	5.1	1.9	0.9	0.9	0.9	0.9
12. Fund	(0.1)	1.1	1.9	4.3	7.2	11.0	15.1	19.5	24.3	29.4	31.3	32.1	33.0	33.9	34.8
13. Ratio	−0.01%	0.06%	0.09%	0.21%	0.34%	0.50%	0.67%	0.85%	1.03%	1.21%	1.25%	1.25%	1.25%	1.25%	1.25%

Failed bank assets. The short-term (1993–1998) failed bank asset assumptions in the recapitalization schedule have been updated. Long-term failed bank assets continue to be calculated based on a percentage of total industry assets. The percentage used, 0.42 percent, is based on a weighted average of historical bank failure rates, and reflects the expectation that the industry will stabilize at failure rates considerably below the current highs but not as low as the nearly inconsequential rates that prevailed prior to the deregulation and financial innovation of the 1980s. Table 2 below presents a comparison of failed bank assets assumptions used in the original schedule, and as revised.

TABLE 2.—FAILED BANK ASSET ASSUMPTIONS

[Dollars in billions]*

Year	Annual projections			Cumulative difference
	Revised	Original	Difference	
1992	44	37	7	7
1993	25	76	−51	−44
1994	45	68	−23	−67
1995	50	52	−2	−69
1996	32	35	−3	−71
1997	28	31	−3	−74
1998	22	26	−4	−78
1999	19	25	−6	−84
2000	19	25	−6	−89
2001	20	20	0	−89
2002	21	20	1	−89
2003	21	20	1	−88
2004	22	21	1	−87
2005	22	21	1	−86
2006	23	22	1	−85

*Numbers may not add due to rounding.

FDIC loss rates. FDIC staff performed an analysis of the loss on failed bank assets to determine an appropriate updated projected loss rate for a revised recapitalization schedule. The loss rate was lowered from 17 percent, in the original recapitalization schedule, to 14 percent.

There are two reasons for this change. First, loss rates in recent years appear to have decreased. By updating a five-year moving average of loss rates, the figure declines by approximately 1.5 percent of assets. Second, the balance sheets of banks, including those expected to fail, have shifted in recent years to assets which historically have resulted in lower losses when banks fail. Adjusting for this change further reduces the estimated loss rate by 1.5 percent of assets.

Deposit and industry asset growth rates. The growth rate assumption affects the fund projections in several ways. First, industry assets are used to project long-term failed bank assets. Thus, a higher growth rate will yield higher long-term failed bank assets. Next, deposit growth rates affect the growth of insured deposits and the assessment base. To the extent that insured deposits grow faster, a higher fund balance will be required to achieve a 1.25 percent reserve ratio. Additionally, a higher assessment base yields higher assessment revenue.

While the banking industry's asset growth in 1992 was higher than projected in the existing recapitalization schedule, growth in insured deposits and the assessment base was lower than projected. Consequently, the recapitalization schedule employs the same conservative 2.8 percent growth rate as used in the original schedule.

The actual average assessment base in 1992, calculated based on actual assessment revenue collected during the year, was slightly lower than the level estimated in the original recapitalization schedule (based on a 2.8 percent growth rate). The 1993 projected average assessment base was estimated by using the average of the projected first semiannual period base given assessment revenue received to date and the projected second semi-annual period base, assuming a 1 percent semi-annual growth.

Assessment revenue. One of the intended effects of the risk-related premium system is to reward banks that pose less risk to the fund, and therefore motivate banks to improve their financial performance. A bank's financial performance is affected by economic conditions influencing overall industry performance, as well. Thus, when banking and thrift industry conditions improve, as has been the case over the past year, banks and thrifts will shift toward the lower-paying end of the assessment schedule, thereby generating less assessment revenue to the BIF and SAIF. Concurrently, improved conditions lower the exposure of the funds, thereby requiring a lower outflow of fund resources.

The reverse is true when conditions deteriorate: institutions pay higher assessment rates as they move into higher-paying cells, thereby supporting the greater needs of the fund. While assessment revenue will vary over time, it will remain consistent with the BIF recapitalization schedule in that revenue will move in the same direction as fund exposure.

In a similar fashion, the weighted average assessment rate for each fund will change over time as the distribution of institutions shifts among the cells of the matrix. The result is a lower average assessment rate for the fund than initially anticipated for 1993. Last September, the projected weighted-average assessment rate based on the estimated distribution of institutions using June 1992 data was 25.4 basis points. Based on BIF assessment revenue received to-date for the first semi-annual period of 1993, it appears that the actual average rate will be closer to 25.1 basis points, generating semi-annual assessment revenue of $3.04 billion.

By adjusting the distribution to reflect capital ratios at December 31, 1992, the second semi-annual average assessment rate was estimated to be slightly less than 24.6 basis points, producing revenue of $3.01 billion. The average assessment rate for the year 1993 is thus projected to be 24.8 basis points.

D. Proposed Revised Recapitalization Schedule

Given the changes to the assumptions described above, staff ran the BIF projections to determine a revised recapitalization schedule. Lower failed bank assets and loss rate assumptions combined with current assessment rates result in recapitalization of the fund in 2002, four years sooner than projected in the existing schedule. The revised results are shown with the original schedule below in Table 3.

TABLE 3.—COMPARISON OF RECAPITALIZATION SCHEDULES

[In percent]

Semi-annual period	Reserve ratio	
	Original	Revised
1991.2	−0.36	−0.36
1992.1	−0.28	−0.28
1992.2	−0.37	−0.01
1993.1	−0.44	0.03
1993.2	−0.50	0.06
1994.1	−0.52	0.08
1994.2	−0.53	0.09
1995.1	−0.53	0.15
1995.2	−0.52	0.21
1996.1	−0.51	0.28
1996.2	−0.49	0.34
1997.1	−0.45	0.42
1997.2	−0.40	0.50
1998.1	−0.34	0.59
1998.2	−0.28	0.67
1999.1	−0.21	0.76
1999.2	−0.14	0.85
2000.1	−0.06	0.94
2000.2	0.03	1.03
2001.1	0.13	1.12
2001.2	0.22	1.21
2002.1	0.32	1.25
2002.2	0.41	1.25
2003.1	0.51	1.25
2003.2	0.61	1.25
2004.1	0.72	1.25
2004.2	0.82	1.25
2005.1	0.93	1.25
2005.2	1.04	1.25

TABLE 3.—COMPARISON OF RECAPITALIZATION SCHEDULES—Continued

[In percent]

Semi-annual period	Reserve ratio	
	Original	Revised
2006.1	1.15	1.25
2006.2	1.25	1.25

Alternatively, recapitalizing the fund over 15 years requires an annual average assessment rate of approximately 20 basis points beginning in the second semi-annual period of 1993. As noted below, an average rate below 23 basis points will not be allowed by statute as of January 1, 1994 until the BIF is recapitalized.

Under the revised assumptions, the BIF is recapitalized by the first semi-annual period of 2002.

3. Proposed Retention of Current BIF Member Assessment Rates

A. Current BIF Assessment Rates

The current annual assessment rates applicable to BIF members range from 0.23 to 0.31 percent. The BIF assessment rate schedule is contained in § 327.13(c)(2) of the FDIC's regulations. 57 FR 45286 (October 1, 1992), to be codified at 12 CFR 327.13(c)(2).

B. Need for Retaining the Current Rates

The Board proposes to maintain BIF-member assessment rates at their current levels for the second semi-annual assessment period of 1993. Although the average assessment rate for BIF members obtained under the current rates is expected to recapitalize the BIF sooner than originally projected in the 15-year recapitalization schedule (and a lower average rate would recapitalize the BIF over the original 15 year period), the BIF is projected nevertheless to remain below its congressionally mandated 1.25 percent target for nine years. The Board believes that, because it is possible to recapitalize the BIF sooner than 15 years without placing an undue burden on the banking industry, it is in the public interest to do so. Furthermore, although there is currently no minimum prescribed average assessment rate for BIF members, the Board will be prohibited by law from lowering the average rate below 23 basis points as of January 1, 1994, until the fund has reached the designated reserve ratio of 1.25 percent. See section 302 of the FDIC Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2239).

C. Impact on BIF Industry of Retaining Current Rates

In setting assessment rates the FDIC considers the impact of such rates on insured institutions, including the effect on income and capital. Table 4 provides information on the effect of the assessment burden on BIF-insured institutions under the current premium-rate matrix, which incorporates a range of premiums from 23 basis points of domestic deposits to 31 basis points. As noted above, the Board is proposing to retain these assessment rates. For purposes of comparison, however, Table 4 provides information on the change in assessment burden between the current rate matrix and the flat rate of 23 basis points that was in effect in 1992.

The distribution of institutions among insurance groups in Table 4 is as of the first assessment period in 1993. These groupings were set based on mid-1992 financial data. However, the financial data reported in Table 4 are for year-end 1992. In addition, the assessment revenue figures are annualized estimates based on Call Report data and do not correspond exactly to amounts actually received by the FDIC.

TABLE 4.—IMPACT OF PROPOSED ASSESSMENTS SCHEDULE ON BIF—INSURED INSTITUTIONS*

[Risk groups are as of 6/30/92. Financial data are as of 12/31/92]

12/31/92 Primary Insurer—Capital Classification; Supervisory Subgroup	BIF									All BIF—Insured Institutions
	Well Capitalized			Adequately Capitalized			Undercapitalized			
	A	B	C	A	B	C	A	B	C	
Assessment rate	23	26	29	26	29	30	29	30	31	
Number of institutions	8,915	1,642	494	223	133	194	15	16	179	11,811
Total assets ($ mill.)	$1,973,284.9	$402,559.9	$98,892.3	$411,713.4	$482,181.4	$270,647.2	$10,278.7	$1,175.7	$60,843.8	$3,711,577.4
Assessment base	1,379,829.6	312,393.6	76,725.7	281,780.6	270,306.6	115,496.5	1,996.2	1,028.4	52,095.5	2,491,652.7
Equity capital	161,393.2	30,046.5	7,207.3	30,036.5	31,358.5	16,067.6	776.2	77.5	3,038.9	280,002.2
Noninterest income	$33,847.4	$5,974.6	$1,377.0	$7,706.3	$10,130.6	$6,677.4	$350.6	$14.9	$819.8	$66,898.7
Noninterest expense	66,894.2	15,906.5	4,399.9	15,549.9	18,444.9	11,860.6	458.1	60.4	2,667.0	136,241.6
Securities gains/losses	1,980.6	677.0	306.5	370.6	502.2	342.9	0.4	1.7	125.5	4,307.4
Income before taxes	34,385.0	4,134.0	183.9	6,323.9	3,160.2	452.4	236.5	(7.4)	(332.2)	48,536.3
Applicable taxes	10,635.1	1,339.4	54.9	2,151.6	852.7	317.3	89.9	(0.8)	(11.8)	15,428.3
Income before extr items	23,749.9	2,794.6	129.0	4,172.3	2,307.5	135.1	146.5	(6.6)	(320.4)	33,108.0
Extraordinary items	123.7	185.5	39.3	(6.5)	100.3	25.9	0.3	0.3	(1.5)	467.4
Net income	23,873.6	2,980.0	168.4	4,165.8	2,407.8	161.0	146.9	(6.3)	(321.9	33,575.4
Estimated assessments, 1993 rates	$3,173.6	$812.2	$222.5	$732.6	$783.9	$346.5	$5.8	$3.1	$161.5	$6,241.7
—Percent of total overhead	4.74%	5.11%	5.06%	4.71%	4.25%	2.92%	1.26%	5.11%	6.06%	4.58%
—Percent of pre-tax net income	9.20%	18.80%	99.66%	11.60%	24.04%	72.44%	2.44%	NM	NM	12.74%
—Percent of noninterest income	9.38%	13.59%	16.16%	9.51%	7.74%	5.19%	1.65%	20.74%	19.70%	9.33%
—Percent of equity capital	1.97%	2.70%	3.09%	2.44%	2.50%	2.16%	0.75%	3.98%	5.31%	2.23%
Estmated assessments, 1992 rate	$3,173.6	$718.5	$176.5	$648.1	$621.7	$265.6	$4.6	$2.4	$119.8	$5,730.8
—Percent of total overhead	4.74%	4.52%	4.01%	4.17%	3.37%	2.24%	1.00%	3.92%	4.49%	4.21%
—Percent of pre-tax net income	9.20%	16.63%	79.04%	10.26%	19.07%	55.54%	1.94%	NM	NM	11.69%
—Percent of noninterest income	9.38%	12.03%	12.82%	8.41%	6.14%	3.98%	1.31%	15.90%	14.62%	8.57%
—Percent of equity capital	1.97%	2.39%	2.45%	2.16%	1.98%	1.65%	0.59%	3.05%	3.94%	2.05%
Impact of rate change, '92–'93	$0.0	$93.7	$46.0	$84.5	$162.2	$80.8	$1.2	$0.7	$41.7	$510.9
—Percent of change in premium	0.0%	13.0%	26.1%	13.0%	26.1%	30.4%	26.1%	30.4%	34.8%	8.9%
—Percent of total overhead	0.00%	0.59%	1.05%	0.54%	0.88%	0.68%	0.26%	1.19%	1.56%	0.38%
—Percent of pre-tax net income	0.00%	2.17%	20.62%	1.34%	4.97%	16.90%	0.51%	NM	NM	1.04%
—Percent of noninterest income	0.00%	1.57%	3.34%	1.10%	1.60%	1.21%	0.34%	4.84%	5.08%	0.76%
—Percent of equity capital	0.00%	0.31%	0.64%	0.28%	0.52%	0.50%	0.15%	0.93%	1.37%	0.18%

* Assessment base estimates are taken from quarterly financial reports and do not refelct other adjustments. This table does not adjust for "Oakar" institutions.
N/M—Not meaningful.

Seventy-five percent of BIF members are paying the same assessment rate they paid in 1992, 23 basis points. This represents about 4.7 percent of overhead (defined as total noninterest expense) for these institutions as a group. Measuring the burden in other ways, premiums for this group amounted to a little over eight percent of pre-tax net income, 9.4 percent of noninterest income, or about two percent of equity capital.

The remaining 25 percent of BIF members are estimated to pose a higher risk to the BIF and are paying more than 23 basis points—and, therefore, more than they paid in 1992. The measured burden of assessments is greater for these institutions than for the lowest-rate-paying institutions, not only because of their higher premium rates but also because of their lower income and capital. In fact, two of the highest rate-paying groups had negative net income in aggregate, so that ratios of assessments to income are not meaningful. For other insurance groups, assessments ranged from about two percent to about 50 percent of pre-tax net income. These figures highlight the drawbacks of measuring the assessment burden relative to income: reported income is highly variable over time due to variations in provisions, chargeoffs and the spread between short-term and long-term interest rates.

Better measures of burden are the assessment rate relative to capital, and relative to total overhead expense. For no insurance group does the assessment exceed 5.3 percent of equity capital, and for six of the nine groups the assessment is less than three percent of equity capital.

Perhaps the most stable and intuitively understandable measure of the assessment burden among those presented here is the relation to total overhead expense. For this purpose, overhead is salaries and benefits, expenses on premises and fixtures as well as all other noninterest expense—in short, all the costs of running the bank other than funding costs. Deposit insurance expenses currently range from 1.3 percent to 6.1 percent of overhead and generally are in the four-to-six percent range. Two groups have a lower assessment burden relative to overhead, but this is only because they have very high overhead expenses.

Further perspective on these figures can be obtained through comparisons with prior years. As shown below in Table 5, because of improving net income, the ratio of BIF assessments to pre-tax net income has declined since 1991, to about the same ratio which prevailed in 1990 when premium rates were half what they are now. Relative to equity capital and overhead, assessments have slightly less than doubled since 1990, although to relatively moderate levels.

TABLE 5.—IMPACT OF ASSESSMENT RATES ON BIF-MEMBER INSTITUTIONS

[In percent]

	1990	1991	1992	1993*
Average assessment rate	0.12	0.215	0.23	0.248
Pre-tax net income	11.82	16.93	10.65	11.30
Overhead expense	2.33	3.95	4.21	4.58
Equity capital	1.21	2.09	2.05	2.23

*Estimated 1993 assessments as a percent of 1992 income, expense and capital amounts.

Based on this analysis, the Board believes that the current levels of BIF-member deposit insurance premiums are not unduly burdensome. This is especially the case since deposit insurance presumably benefits most institutions by lowering somewhat the interest rates they must pay for deposits.

4. Proposed Retention of the Current SAIF Member Assessment Rates

A. Current SAIF Member Assessment Rates

The current annual assessment rates applicable to SAIF members range from 0.23 to 0.31 percent. The SAIF assessment rate schedule is contained in § 327.23(d)(2) of the FDIC's regulations. 57 FR 45286 (October 1, 1992), to be codified at 12 CFR 327.23(d)(2).

B. Need for Retaining the Current Rates

In October 1992 (effective beginning with the first semiannual period in 1993), the Board set rates for SAIF members consistent with the requirement to recapitalize the SAIF within a reasonable period of time. 57 FR 45272 (October 1, 1992). The Board proposes to maintain SAIF-member assessment rates at their current levels for the second semiannual assessment period of 1993, for several reasons. First, although much of the industry has shown consistent improvement over the past year, a number of problem institutions remain. Second, the SAIF is projected to be negative until 2001 if it is recapitalized solely through industry assessments, due to the large percentage of assessment revenue diverted to the Financing Corporation. Finally, tremendous uncertainty remains concerning the appropriations of Treasury funding to support the SAIF. Given the above, the Board believes there is no compelling reason to change the assessment rates for SAIF members at present.

Moreover, section 7(b)(1)(D)(iv) of the FDI Act provides that from January 1, 1991, through December 31, 1993, the assessment rate for SAIF members shall not be less than 0.23 percent. 12 U.S.C. 1817(b)(1)(D)(iv).

C. Impact on SAIF Industry of Retaining Current Rates

In setting SAIF assessment rates the FDIC is required to consider the impact of such rates on insured institutions, including the effect on income and capital. Table 6 provides information on the effect of the assessment burden on SAIF-insured institutions under the current premium-rate matrix, which incorporates a range of premiums from 23 basis points of domestic deposits to 31 basis points. As noted above, the Board is proposing to retain these assessment rates. For purposes of comparison, however, Table 6 provides information on the change in the assessment burden between the current rate matrix and the flat rate of 23 basis points that was in effect in 1992.

The distribution of institutions among insurance groups is as of the first assessment period in 1993. These groupings were set based on mid-1992 financial data. However, the financial data reported in Table 6 are for year-end 1992. In addition, the assessment revenue figures are annualized estimates based on Thrift Financial Report data and do not correspond exactly to amounts actually received by the FDIC.

TABLE 6.—IMPACT OF PROPOSED ASSESSMENTS SCHEDULE ON SAIF—INSURED INSTITUTIONS*

[Risk groups are as of 6/30/92. Financial data are as of 12/31/92]

12/31/92 Primary Insurer—Capital Classification (as of 6/30/92); Supervisory Subgroup (6/30/92)	SAIF									All SAIF—Insured Institutions
	Well Capitalized			Adequately Capitalized			Undercapitalized			
	A	B	C	A	B	C	A	B	C	
Assessment rate	23	26	29	26	29	30	29	30	31	
Number of institutions	1,301	194	28	150	124	67	12	42	118	2,036
Total assets ($ mill.)	$388,693.9	$65,033.9	$11,392.1	$144,031.1	$76,195.1	$28,392.2	$7,560.2	$15,056.6	$89,490.9	$825,846.0
Assessment base	312,983.1	48,315.5	8,320.3	111,219.5	58,040.0	21,668.9	2,292.0	11,596.5	68,646.5	643,082.4
Equity capital	32,835.0	4,602.3	1,051.7	8,356.6	4,573.9	1,645.7	167.0	695.4	4,074.8	58,002.4
Noninterest income	$2,890.4	$575.4	$166.8	$1,295.1	$594.5	$325.2	$518.8	$82.5	$829.9	$7,278.7
Noninterest expense	8,364.1	1,852.7	418.5	3,286.0	1,916.7	968.7	441.0	299.6	2,638.1	20,185.5
Securities gains/losses	168.5	27.2	10.9	45.6	25.1	15.6	1.4	6.0	73.4	373.8
Income before taxes	6,175.5	512.3	25.4	1,332.4	222.3	16.5	31.5	135.4	(290.6)	8,160.8
Applicable taxes	2,138.5	224.4	19.2	359.7	65.2	3.1	11.3	51.3	64.2	2,936.9
Income before extr items	4,037.0	287.9	6.2	972.7	156.8	13.8	20.2	84.1	(355.8)	5,223.1
Extraordinary items	110.4	14.0	17.0	125.8	14.5	5.6	0.4	(68.7)	33.5	252.6
Net income	4,147.4	301.9	23.2	1,098.6	171.4	19.0	20.6	15.5	(322.2)	5,475.2
Estimated assessments, 1993 rates	$719.9	$125.6	$24.1	$289.2	$168.3	$65.0	$6.6	$34.8	$212.8	$1,646.3
—Percent of total overhead	8.61%	6.78%	5.77%	8.80%	8.78%	6.71%	1.51%	11.61%	8.07%	8.16%
—Percent of pre-tax net income	11.45%	23.87%	56.95%	19.83%	71.15%	294.03%	20.84%	52.14%	N/M	19.57%
—Percent of noninterest income	24.91%	21.83%	14.47%	22.33%	28.31%	19.99%	1.28%	42.15%	25.64%	22.62%
—Percent of equity capital	2.19%	2.73%	2.29%	3.46%	3.68%	3.95%	3.98%	5.00%	5.22%	2.84%
Estimated assessments, 1992 rates	$719.9	$111.1	$19.1	$255.8	$133.5	$49.8	$5.3	$26.7	$157.9	$1,479.1
—Percent of total overhead	8.61%	6.00%	4.57%	7.78%	6.96%	5.14%	1.20%	8.90%	5.98%	7.33%
—Percent of pre-tax net income	11.45%	21.11%	45.17%	17.54%	56.43%	225.42%	16.53%	39.97%	N/M	17.58%
—Percent of noninterest income	24.91%	19.31%	11.47%	19.75%	22.45%	15.32%	1.02%	32.32%	19.02%	20.32%
—Percent of equity capital	2.19%	2.41%	1.82%	3.06%	2.92%	3.03%	3.16%	3.84%	3.87%	2.55%
Impact of rate change, '92–'93	$0.0	$14.5	$5.0	$33.4	$34.8	$15.2	$1.4	$8.1	$54.9	$167.3
—Percent change in premium	0.0%	13.0%	26.1%	13.0%	26.1%	30.4%	26.1%	30.4%	34.8%	11.3%
—Percent of total overhead	0.00%	0.78%	1.19%	1.02%	1.82%	1.57%	0.31%	2.71%	2.08%	0.83%
—Percent of pre-tax net income	0.00%	2.75%	11.78%	2.29%	14.72%	68.61%	4.31%	12.17%	N/M	1.99%
—Percent of noninterest income	0.00%	2.52%	2.99%	2.58%	5.86%	4.66%	0.27%	9.84	6.62%	2.30%
—Percent of equity capital	0.00%	0.31%	0.47%	0.40%	0.76%	0.92%	0.82%	1.17%	1.35%	0.29%

* Assessment base estimates are taken from quarterly financial reports and do not reflect other adjustments. This table does not adjust for "Oakar" institutions.
N/M—Not meaningful.

Sixty-four percent of SAIF members are paying the same assessment rate they paid in 1992, 23 basis points (not including Oakar institutions). This represents about 8.6 percent of overhead (defined as total noninterest expense) for these institutions as a group. Measuring the burden in other ways, premiums for this group amounted to about 10.3 percent of pre-tax net income, 24.9 percent of noninterest income, or just over two percent of equity capital.

The remaining 36 percent of SAIF members have been estimated to pose a higher risk to the SAIF and are paying more than 23 basis points—and, therefore, more than they paid in 1992. The measured burden of assessments is greater for these institutions than for the lowest-rate-paying institutions, not only because of their higher premium rates but also because of their lower income and capital. In fact, the highest-rate-paying group had negative net income in aggregate, so that ratios of assessments to income are not meaningful. For other insurance groups, assessments ranged from about 10 percent to about 75 percent of pre-tax net income. These figures highlight the drawbacks of measuring the assessment burden relative to income: reported income is highly variable over time due to variations in provisions, chargeoffs and the spread between short-term and long-term interest rates.

Better measures of burden are the assessment rate relative to capital, and relative to total overhead expense. The general level of assessments relative to equity capital is broadly similar to the ratios for BIF members. Although slightly higher than the BIF ratios due to SAIF members' somewhat lower equity ratios, the ratio of assessments to equity is generally between two percent and four percent, and slightly exceeds five percent for two of the weakest insurance groups.

Perhaps the most stable and intuitively understandable measure of the assessment burden among those presented here is the relation to total overhead expense. For this purpose, overhead is salaries and benefits, expenses on premises and fixtures as well as all other noninterest expense—in short, all the costs of running the thrift other than funding costs. In general, deposit insurance expenses currently range from six percent to nine percent of SAIF-members' overhead. The exception is two insurance groups with small numbers of institutions—12 and 42—that have assessment-to-overhead ratios of about two percent and 12 percent, respectively. The ratio of assessments to overhead is generally two to three percentage points higher for SAIF members than for BIF members, due to BIF members' slightly higher overhead expenses.

Table 7 below compares the relative expense of assessment rates on SAIF members over the years. Because of improving net income, the ratio of SAIF assessments to pre-tax net income has declined since 1991. Assessments continue to be between 7 percent and 8.2 percent of overhead expense. Finally, improvements in thrift industry capital have resulted in a lower assessment expense to equity capital ratio since 1990.

TABLE 7.—IMPACT OF ASSESSMENT RATES ON SAIF MEMBER INSTITUTIONS

[In percent]

	1990	1991	1992	1993*
Average assessment rate	0.208	0.23	0.23	0.253
Pre-tax net income	N/M	27.12	14.95	16.37
Overhead expense	7.88	8.11	7.33	8.16
Equity capital	3.47	3.19	2.55	2.84

*Estimated 1993 assessments as a percent of 1992 income, expense and capital amounts.

Based on this analysis, the Board believes that the current levels of SAIF-member deposit insurance premiums are not unduly burdensome. This is especially the case since deposit insurance presumably benefits most institutions by lowering somewhat the interest rates they must pay for deposits.

Request for Public Comment

The Board hereby requests comment on all aspects of the proposals to amend the BIF recapitalization schedule and to retain current BIF and SAIF assessment rates. Comments are welcome on whether (and, if so, by how much) to change the assessment rates beginning with the semiannual period starting on July 1, 1993. Interested persons are invited to submit written comment during a 30-day comment period.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated above, the Board proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Paragraph (d) of § 327.13 is revised to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(d) *Recapitalization schedule.* The following schedule, which begins with the semiannual assessment period ending December 31, 1991, indicates the stages by which the Corporation seeks to achieve the BIF designated reserve ratio of 1.25 percent:

Semi-annual period	Target reserve ratio (percent)
1991.2	– 0.36
1992.1	– 0.28
1992.2	– 0.01
1993.1	0.03
1993.2	0.06
1994.1	0.08
1994.2	0.09
1995.1	0.15
1995.2	0.21
1996.1	0.28
1996.2	0.34
1997.1	0.42
1997.2	0.50
1998.1	0.59
1998.2	0.67
1999.1	0.76
1999.2	0.85
2000.1	0.94
2000.2	1.03
2001.1	1.12
2001.2	1.21
2002.1	1.25

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of March, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–7720 Filed 4–2–93; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASO–22]

Proposed Alteration of Jet Routes; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to alter the descriptions of several jet routes located in the State of Florida. An increase in the separation of the current jet route structure between Charleston, SC, Ormond Beach, FL, Savannah, GA,

and Craig, FL, from the western boundary of Warning Areas W–157, W–158, and W–159, would enhance aviation safety. This action would provide greater airspace clearance from these warning areas.

DATES: Comments must be received on or before May 25, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 92–ASO–22, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describe the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several jet routes located in the State of Florida. An increased separation of the current jet route structure between Charleston, SC, Ormond Beach, FL, Savannah, GA, and Craig, FL, from the western boundary of Warning Areas W–157, W–158, and W–159, would enhance aviation safety. This action would provide greater airspace clearance. Jet routes are published in Section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet Routes

* * * * *

J–51 [Revised]

From Craig, FL; INT Craig 004°T(007°M) and Savannah, GA, 197°T(198°M) radials; Savannah; Columbia, SC; INT Columbia 042° and Flat Rock, VA, 212° radials, Flat Rock; Nottingham, MD; Dupont, DE, to Yardley, NJ

* * * * *

J–55 [Revised]

From Miami, FL; INT Miami 335° and Craig, FL, 192° radials; Craig; INT Craig 004°T(007°M) and Savannah, GA, 197°T(198°M) radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raliegh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

J–79 [Revised]

From Key West, FL, via Miami, FL; Palm Beach FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 356°T(356°M) and Savannah, GA, 184°T(185°M) radials; INT Savannah 184°T (185°M) Charleston, SC, 212°T(217°M) radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Hyannis, MA, 205° radials; Hyannis; INT Hyannis 003° and Bangor, ME, 206° radials; Bangor.

* * * * *

J–103 [Revised]

From Ormond Beach, FL; INT Ormond Beach 356°T(356°M) and Savannah, GA, 184°T(185°M) radials; Savannah.

* * * * *

J-121 [Revised]

From Craig, FL; INT Craig 016°T(019°M) and Charleston, SC, 212°(217°M) radials; Charleston; Kinston, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; SEa Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Sandy Point, RI; INT Sandy Point 031° and Kennebunk, ME, 190° radials; to Kennebunk.

* * * * *

J-174 [Revised]

From Craig, FL; INT Craig 016°T(019°M) and Charleston, SC, 212°T(217°M) radials; Charleston; Wilmington, NC; Dixon NDB, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Hampton, NY; INT Hampton 069° and Hyannis, MA, 237° radials; Hyannis; to the INT of Hyannis 080° and Nantucket, MA, 066° radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°43'59" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Issued in Washington, DC, on March 29, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-7851 Filed 4-2-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASW-21]

Proposed Revocation of Transition Area: Rosanky, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke the 700 foot above ground level (AGL) transition area at Rosanky, TX. The cancellation of the nondirectional radio beacon (NDB) Runway (RWY) 10 special instrument approach procedure (SIAP) serving the Double D Ranch Airport, has made this proposed action necessary. Controlled airspace will no longer be needed to contain instrument flight rule (IFR) operations at this location. Concurrently with this action the Double D Ranch Airport will be the changed from instrument flight rules (IFR) operations to visual flight rules (VFR) operations only.

DATES: Comments must be received on or before May 7, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92-ASW-21, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours at the System Management Branch, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92-ASW-21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the transition area at Rosanky, TX. The cancellation of the NDB RWY 10 SIAP serving the Double D Ranch Airport has necessitated this proposal. The NDB RWY 10 SIAP is the only instrument approach serving the Double D Ranch Airport. Controlled airspace will no longer be needed to contain instrument flight rules (IFR) operations at this location. Concurrently with this action the Double D Ranch Airport would be the changed from IFR operations to VFR operations only. Transition areas are published in section 71.181 of Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be removed subsequently from the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas.

* * * * *

ASW TX TA Rosanky, TX [Removed]

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Issued in Fort Worth, TX on March 16, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–7853 Filed 4–2–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM93–10–000]

New Reporting Requirement Under the Federal Power Act and Changes to Form No. FERC–714; Proposed Rulemaking

March 30, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to create a new reporting requirement, Form 715, which informs potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints as required under section 213(b) of the Federal Power Act (as amended by the Energy Policy Act of 1992).

The Commission also proposes to amend Form No. FERC–714, Annual Electric Control and Planning Area Report. The proposed conforming and other changes in the Form FERC–714 involve eliminating some information requirements proposed to be collected under the new reporting form, eliminating some information no longer needed, and modifying some existing information requirements.

In addition to implementing the information requirements of section 213(b), this proposal is intended to support the Commission's expanded responsibilities under Federal Power Act sections 211 and 212, as amended by the Energy Policy Act of 1992, and to provide information for analyses of filings by, or requests for transmission services under the FPA, as amended by the Energy Policy Act.

DATES: Written comments must be received by the Commission by May 20, 1993.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Daniel L. Larcamp (Legal Information), Assistant General Counsel, Electric Rates and Corporate Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2088.

William Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0849.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the Notice of Proposed Rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend part 141 of its regulations by adding a section mandating that "transmitting utilities" [1] inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints as required under section 213(b) of the Federal Power Act (FPA), as added by the Energy Policy Act of 1992 (Energy Policy Act).[2] The Commission also proposes to amend Form No. FERC–714, Annual Electric Control and Planning Area Report, to make conforming and other changes.

The proposed regulation creates a new reporting form, FERC Form No. 715, Annual Transmission Planning and Evaluation Report.[3] This report would be submitted to the Commission annually by each transmitting utility, as defined in section 3(23) of the FPA, which owns or operates transmission facilities at or above 100 kilovolts (kV) (respondents).[4] Information relating to smaller utilities (with facilities less than 100 kV) will be reflected in the transmission data furnished by the larger, reporting transmitting utilities with whom they are interconnected. Requests for waiver of this reporting requirement for transmitting utilities that do not perform transmission system planning will be entertained. Such requests should identify the particular entity that does the transmission planning for the transmitting utility seeking waiver, and should state that the required information is included in that other entity's submission.

The proposed new reporting form, FERC Form No. 715, requires Respondents to:

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[1] A transmitting utility is any electric utility (i.e., investor-owned, cooperative, municipal or state agency), qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale. See section 3(23) of the Federal Power Act, as added by the Energy Policy Act of 1992.

[2] Public Law No. 102–486, 106 Stat. 2776 (1992)

[3] Although there is some overlap between the existing Form No. FERC–714 and the proposed new reporting form, the Commission has decided not to combine them into one form because the definition of respondents and the purpose of the new reporting form differs substantially from the Form No. FERC–714. Instead, the Commission has addressed overlapping reporting requirements by eliminating a number of schedules from Form No FERC–714.

[4] The carrying capacity of lines below 100 kV is relatively small and, thus, the ability of those lines to provide transmission is limited. This threshold also reduces the reporting burden on relatively small transmitting utilities. However, this threshold will not affect a transmitting utility's status as a transmitting utility.

(1) Authorize their regional or subregional organization to release regional or subregional base case power flows [5] in electronic form to the public if the Respondents participate in the development of, and use of, regional power flow studies (Respondents who do not participate in regional processes are required to submit their corporate base case power flows to the Commission);

(2) Submit associated (regional, subregional, and corporate) transmission system maps and diagrams;

(3) Submit a detailed description of transmission planning reliability criteria (used to evaluate system performance) for the time frames and planning horizons used in regional and corporate planning;

(4) Submit a detailed description of the Respondent's transmission planning assessment practices (including how reliability criteria are applied); and

(5) Submit a detailed evaluation of the Respondent's anticipated system performance as measured against its reliability criteria using its assessment practices which include the application of the transmission reliability criteria.

The Commission requests comments on whether information reported on a regional or subregional basis provides the public with adequate information consistent with the objectives of the proposed rule. The Commission also requests comments on ways that transmitting utilities or regional or subregional entities could best make the electronic base case power flow data and the other information available to the public.

The proposed new Form No. FERC–715 is authorized by, and is intended to implement the information requirements of section 213(b) of the FPA. It will also support the Commission's expanded responsibilities under sections 211 and 212 of the FPA (as amended by the Energy Policy Act), and assist in rate or other regulatory proceedings.

The proposed changes to Form No. FERC–714 involve eliminating and modifying several existing information requirements. Schedules VIII (Control Area Transmission Power Flow Data), XIII (Planning Area Transmission Line Data), and XV (Planning Area Transmission Maps and Diagrams) would be eliminated because the information will be collected with the proposed new reporting form. Schedule XIV (Hydroelectric Data) would also be eliminated because the information is no longer needed to fulfill our regulatory responsibilities under Parts I or II of the FPA. Schedule VII (Control Area System Lambda) currently reports monthly statistics on system lambda (marginal system dispatch cost) data. The Commission proposes instead to collect hourly system lambda data (in electronic form) for the entire year.

In addition, Form No. FERC–714 Schedules X (Planning Area Monthly Net Energy for Load), XI (Planning Area Summer and Winter Actual and Forecast Peak Demand and Annual Net Energy for Load), and XII (Planning Area Hourly Demand Data By Specified Week) are proposed to be consolidated into a requirement that the Respondent release to the public in electronic form hourly demand and demand and energy forecast data. As in the case of the proposed new reporting form, FERC–714 Respondents are required to authorize their regional or subregional organizations to make publicly available such load data on behalf of their individual systems. Respondents who are not members of a regional or subregional organization are required to submit the hourly load information in electronic form to the Commission. If a regional or subregional organization does not avail itself of the opportunity to consolidate reporting for its members, Respondents will be required to submit the information individually. Additionally, the Commission also solicits comments on ways to further encourage the electronic filing of data and to improve the usefulness of such data.

The rationale and authority for collecting the information in Form No. FERC–714 is provided in Commission Order No. 531, issued December 6, 1991. The electronic submission of hourly system lambda [6] and hourly demand data, as well as annual forecast demand and energy data and information, is intended to permit the replication of production cost simulations used in generation and associated transmission planning.

In order to carry out its regulatory responsibilities in this era of increased wholesale electric market competition, the Commission must better monitor the performance of that market. As a part of this effort, the Commission recently modified the FERC Form No. 1 to require a more detailed reporting of wholesale purchases, sales and other coordination transactions in more detail. The proposed requirement to report system lambda data on an hourly basis, instead of monthly statistics, will enable the Commission to more effectively monitor and understand the performance of the wholesale electric market. Hourly system lambda data may also be useful to prospective generators in deciding where to locate.

Hourly system lambda data will also help to support the Commission's responsibilities under sections 205(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA), as implemented in part by the Commission's publication of Power Pooling in the United States (1981).[7] The Commission's expanded authority to order transmission service, the competitive changes occurring in the industry, and the development of new entities, such as regional transmission groups, may necessitate review of the recommendations contained in the original study.

II. Reporting Burden

The annual reporting burden for the proposed new reporting form, FERC Form No. 715, is estimated to be 100 hours per response, annually. The annual reporting burden for the collection of Form No. FERC–714 information is estimated to be reduced from 86 to 50 hours per response (the current reporting burden for Form No. FERC–714 is 23,200 hours for 270 respondents reporting once annually). These estimates include time for reviewing instructions, gathering and maintaining the data, and reviewing the collection of information. Comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, should be filed at the Federal Energy Regulatory Commission, 825 North Capitol Street

[5] Base case power flows are best estimate simulations of the operations of regional transmission grids.

[6] System lambda data reflects the system incremental cost of energy.

[7] Section 205(b) states that the Commission, in consultation with the reliability councils established under section 202(a) of the Federal Power Act, the Secretary, and the electric utility industry shall study the opportunities for (A) conservation of energy; (B) optimization in the efficiency of use of facilities and resources; and (C) increased reliability, through pooling arrangements. Not later than 18 months after the date of enactment of PURPA, the Commission was to submit a report containing the results of such study to the President and the Congress.

It also provides that the Commission may recommend to electric utilities that such utilities should voluntarily enter into negotiations where the opportunities referred to above exist. The Commission is to report annually to the President and the Congress regarding any such recommendations and subsequent actions taken by electric utilities, by the Commission, and by the Secretary under PURPA, the Federal Power Act, and any other provisions of law. Such annual reports are to be included in the Commission's annual report required under the Department of Energy Organization Act.

Part of the Commission's recommendations contained in Power Pooling in the United States (1981) related to regional coordinated development

NE., Washington, DC 20426 (attention: Michael Miller, Information Policy and Standards Branch (202) 208–1415) and sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

A. Historical and Planning Context

The Commission, and its predecessor the Federal Power Commission, have had a long and continuing relationship with the electric utility industry and its efforts to enhance coordination and interconnection to maintain reliability and achieve economic benefits. The early "Power Surveys"[8] kept the Commission informed of industry trends, including planning practices and information requirements. Since the formation of the regional reliability councils and the North American Electric Reliability Council (NERC) in the late 1960s, the Commission and its staff have met with, and the Commission staff currently maintains "observer" status on, the NERC Board of Trustees and its Engineering Committee. The Commission staff also attends various regional reliability council meetings. Additionally, the regional reliability councils and NERC have been routinely providing various planning and operating publications. Historically, electric utilities have planned their systems under the assumption that generation resources sited within their service territories would be under their direct control for both planning and operating purposes. If they sited generation some distance from load centers, electric utilities built high capacity transmission facilities to bring that power to their load centers. They also planned and coordinated high capacity transmission interconnections with neighboring utilities for improved reliability and efficiency, and, as a result, achieved generation investment and operating cost savings. To achieve these mutual benefits, electric utilities have freely exchanged technical information and pooled their engineering talent. Thus, regional transmission grids developed incrementally in a coordinated manner. Following the Northeast power failure of November 9–10, 1965, the regional reliability councils and NERC were formed to expand regional and national coordination among utilities to further enhance reliability. These organizations over time have developed highly structured institutions and processes for collecting, merging and disseminating planning (including transmission planning) and operating information.

One of the most data intensive efforts by power system planners is associated with the development of base case power flow simulations. Computer simulation of static power flows is by far the most commonly used analytic tool for evaluating the adequacy of the transmission system. Such power flow simulations are also used as a starting point for other, more detailed, transient and dynamic studies of the behavior of the system. In order to accurately represent power flows on a transmitting utility's system, that utility must also model the power flows over a broader region. For example, NERC's Multiregional Modeling Working Group (MMWG), formed by NERC's Engineering Committee, provides one such vehicle whereby transmitting utilities can provide and obtain consistent power flow technical information. As approved by NERC's Engineering Committee, the MMWG "is responsible for developing a library of solved load flow cases for use by the Regions and their member systems in planning and evaluating future systems and current operating conditions."[9]

Each year, as directed by NERC's Engineering Committee, the transmitting utility members of the MMWG develop a set of solved power flow cases for various future years from data supplied and merged into regional or multi-regional representations of power flows. These cases usually represent conditions at the time of the summer and winter peak loads, as well as during an off-peak period. The regional reliability councils, or the various subregions, use these solved cases to perform their own planning reliability assessments. This process also ensures that planning studies performed by an individual transmitting utility will be based on a set of common assumptions.

B. Energy Policy Act Responsibilities

1. Section 211 Transmission Orders

The Energy Policy Act amended section 211 of the FPA to expand the Commission's authority to order transmission service upon application, and after notice and opportunity for an evidentiary hearing. This authority is subject to various conditions and requirements. For instance, amended section 211 provides that the Commission may not issue an order under section 211 if it finds that such order would unreasonably impair the continued reliability of electric systems affected by the order. The statute provides that the Commission, in making such an assessment, must consider consistently applied regional or national reliability standards, guidelines, or criteria.

Commission consideration of applications under amended section 211 could involve a number of technical issues, such as determining availability of transmission capacity and verifying reliability impacts. The proposed information requirements will assist the Commission in promptly addressing and resolving such issues.

2. Section 213 Information Requirements

Section 213 sets forth procedures for transmitting utilities to respond to requests for transmission service, and provides for the collection of information on transmission availability and constraints. Section 213(a) requires a transmitting utility to provide a response to a request for transmission service, including the utility's basis for proposed rates and its analysis of physical or other constraints affecting provision of the service. In addition, section 213(b) requires that the Commission, within one year of the section's enactment, promulgate a rule requiring annual filings of information adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints. Thus, the Commission is required under the new legislation to gather information on transmission availability.

Among other things, the information required by section 213(b) will assist all potential generating entities in determining where to build facilities. These potential transmission customers likely will be performing feasibility studies to assess the relative cost impacts of their siting, trading, and contract options prior to contacting a transmitting utility about providing service. If properly implemented, section 213(b) can provide potential generating entities (as well as potential power purchasers, such as customers seeking additional or alternative sources of generation) with important planning information regarding physical or other constraints of a transmitting utility which may affect the transmission service under consideration and which will enable the potential transmission

[8] The 1964 and 1970 National Power Surveys, published by the Federal Power Commission in October 1964 and December 1971 respectively, and Power Pooling in the United States published by the Commission in December 1981.

[9] NERC, Engineering Committee Program Review Scope of the MMWG, App. II, p. II–7 (Final Rev. Draft, February 1993).

customer to evaluate the possible cost implications of those constraints.

The Commission anticipates that transmission service requests resulting from preliminary studies based upon section 213(b) information ultimately could require more extensive, detailed analysis which would incorporate the most recently available information and specific information about the requested transmission service.[10] However, it is in the public interest that all potential transmission customers make well-informed requests for service. Adequate pre-request information will allow the requestor to make better decisions, and may reduce the potential for disputes as well as reduce administrative and transactional costs.

The informational requirements proposed in this rulemaking provide an opportunity to improve efficiency, to expedite negotiations, and to reduce the number of section 211 applications. One of the Commission's goals in proposing the new data requirements is to foster successful negotiations that culminate in voluntary transmission rate agreements filed under part 35 of the regulations. If an agreement cannot be reached, an application may be filed by the transmission requestor under section 211. The proposed informational requirements should assist the Commission in processing applications under section 211 by making readily available most, if not all, of the information needed for analysis of the dispute.

In addition, the proposed new reporting form requires little, if any,[11] information other than that already maintained by regional and subregional organizations and provided to member utilities for purposes of coordinated regional planning.[12]

C. Existing Form No. FERC–714

Even prior to the Energy Policy Act's changes to the FPA, the Commission's regulatory responsibilities included resolving various technical issues relating to the use of the interconnected transmission grid. In its effort to fulfill these regulatory responsibilities, the Commission requires electric utilities to submit Form No. FERC–714, Annual Electric Control and Planning Area Report. The regulatory reporting requirement (currently contained in § 141.51 of the commission's regulations, 18 CFR 141.51 (1992)) has existed, in various forms and under various names, for more than 50 years.

In 1990, the Commission modified Form No. FERC–714 to better reflect current industry operations and the increasingly competitive bulk power market. The modifications were directed at gathering more accurate and more useful information regarding transmission capabilities and uses of the interconnected grid. The 1990 changes to the Form No. FERC–714 included shifting the report in basis from the "electric system" to the "control area" (the operational entity that schedules and controls power flows in interconnected grids). The revised form also required information from the "planning area" (the entity that has the ultimate responsibility for system planning, including transmission additions, to meet forecasted demand).

Under Form No. FERC–714, control areas currently submit (for each reporting year) system lambda data and the results of base case power flows for the summer and winter peak periods. In lieu of hard copy submissions, the Commission encourages submission of hourly system lambda data and base case power flow models on electronic media in any of the various standard formats now in use by the industry. A number of respondents currently submit these data electronically.

For a planning area, the respondent also submits maps, diagrams, transmission line statistics (*e.g.*, circuit miles by voltage class), selected hourly loads (that would allow estimation of the annual load profile for the reporting year), and ten-year seasonal load forecasts. Resource plans, including proposed transmission additions, are not submitted on this form but are currently collected through other DOE/EIA information collection forms.

With the Congress' creation of the new section 213(b) reporting requirement, conforming changes to Form No. FERC–714 data collection must be proposed. This proposed rulemaking also suggests modifications to the Form No. FERC–714 based upon the Commission's experience with collecting and using this information since the 1990 revision.

D. Authority

The Commission is authorized and, indeed, required to collect data under section 213(b) from transmitting utilities, as defined in section 3(23) of the FPA. Section 213(b) states that not later than 1 year after the enactment of this section (*i.e.*, by October 24, 1993), the Commission shall promulgate a rule requiring that information be submitted annually to the Commission by transmitting utilities which is adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints.

The Commission may also collect data under sections 307(a) and 311 of the FPA. Section 307(a) provides that the Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provisions of the FPA or any rule, regulation or order thereunder, or to aid in the enforcement of the provisions of the FPA or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which the FPA relates.[13]

Section 311 provides that in order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State.[14]

The Commission needs planning and operating data from interconnected entities whether or not they are public utilities subject to the Commission's rate jurisdiction. The information is necessary to understand the interconnected electrical network. Due to the nature of electrical networks, a particular transaction's impact on an interconnected network cannot in all

[10] Under section 213(a) of the FPA, a transmitting utility is required to provide a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services. The information provided under this proposed rule will enable the requestor of transmission service to evaluate preliminarily the information provided under section 213(a) and make its own, independent judgment about the validity of the transmitting utility's response to its request.

[11] Potential Respondents commenting on this proposal that believe the new reporting requirement will impose significant new data collection and maintenance requirements should document this assertion in their comments.

[12] Of course, as previously noted, more detailed information may be required to support individual filings under section 205 or responses to section 211 applications, especially if expansion may be required.

[13] 16 U.S.C. 825f(a)

[14] 16 U.S.C. 825j

cases be assessed adequately without information from all connected systems. Entities such as federal, public, or cooperative systems, which are not public utilities under Part II of the FPA, may affect or be affected by a transaction. The Commission may need transmission data from such entities for potential interconnection and wheeling orders.[15] Such orders can apply to all segments of the electric utility industry. For example, the Energy Policy Act gives the Commission authority to order wheeling by "transmitting utilities" as defined in new section 3(23) of the FPA. Such entities include electric utilities (irrespective of public, cooperative or private ownership status), qualifying facilities and Federal power marketing agencies which own or operate electric power transmission facilities used for the sale of electric energy at wholesale.

E. National Association of Regulatory Utility Commissioners (NARUC) Interest in Common Databases

The Commission recently received a proposal from NARUC to enhance the consultative process among Federal and state regulators.[16] Among other things, the proposal states a need to develop common databases and modeling capabilities for transmission planning, forecasting, siting, and access. The proposal points out the need for consistent data used in transmission system modeling. The Commission's proposal to require access to industry standard power flow data may accomplish much of what NARUC seeks.

IV. Discussion

A. Information Requirements

1. Interpreting the "Adequate to Inform" Language in Section 213(b)

Section 213(b) requires submittal of information adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints. However, there is no simple measure or definition of electric transmission capacity. The Commission must interpret the statutory meaning of the phrase "adequate to inform" in the context of this definitional problem. The determination of available transmission capacity requires an understanding of electric utility operations and planning, *i.e.*, how utilities determine whether existing transmission capacity is sufficient to support current and proposed needs.

Any attempt to develop a general measure of transmission availability requires estimating the ability to reliability transmit power between combinations of transmission network receipt and delivery points within a broad region. For example, the eastern interconnected system is a high voltage network consisting of innumerable combinations.

Power flows on electric transmission grids are based on the laws of physics. The size, complexity, and interdependence among interconnected systems make planning and operating electric systems a difficult engineering problem. The problem is further complicated by the fact that power flows on a transmission network are dynamic, changing instantaneously as loads, generator output, inter-company trades, and the configuration of facilities change.

Line capacity varies with system conditions. Multiple factors can limit the usable capacity of a particular transmission corridor. For example, there are thermal limits on lines, that, if exceeded, will cause loss of line service life and may cause lines to sag dangerously beyond prescribed limits. There are voltage criteria, which, if not met with sufficient reactive power support, can limit power transfers. In addition, there are first contingency reliability limits, which require the system to withstand the loss of any one major element. Often lines must operate below their individual thermal limits in order to meet reliability criteria. Therefore, a less than fully loaded line does not necessarily indicate available transmission capability. Substantial engineering judgment is involved in evaluating these factors and setting reasonable operating limits to ensure safe, economic and reliable operation.

Any estimate of transmission availability is based on assumptions and projections about a large number of factors affecting the use of the system over appropriate time frames. Transmission can take place potentially between any two points within an interconnected transmission system, creating numerous possibilities. The service can be short-term or long-term, starting immediately or not starting for several years. As the requested service moves farther out in time, seemingly small changes in input values and assumptions may yield very different results in forecast output conditions.

Given the complexity of the electric system, the variety of services needed, and the many factors to be considered in maintaining system reliability, it is the Commission's judgment that the fundamental information used and assumptions made by the transmitting utility to perform its planning and operating studies are required to adequately provide meaningful information. That is, the Commission's experience indicates that it is not practical to provide a simple measure of transmission availability that would cover all potential transmission service requests. In the Commission's opinion, a better approach is to provide potential customers the basic planning tools of the existing and planned-for system so they can perform their own studies and reach their own conclusions. The Commission believes that the informational requirements proposed herein are the minimum necessary to satisfy the statutory mandate of "adequate information."

2. The Information Sought Is Relevant to Emerging Competitive Wholesale Markets

The Commission believes that access to planning and operating information by vertically integrated utilities (and more fundamentally, the potential ability to restrict access to such information to competitors) can be an important source of market power. This is especially relevant as greater competition emerges in wholesale electricity markets. It is possible that a utility could use its access to superior information to its advantage in competing with other suppliers, especially with those that do not own transmission facilities and therefore do not have access to relevant information. The proposed informational requirements should help to address this potential source of market power. In the Commission's view, the proposed requirements, applying to all but the smallest transmitting utilities, will help to foster a more competitive wholesale market, consistent with the Energy Policy Act's objectives.

3. Information Sharing in Regional Transmission Groups

On November 10, 1992, the Commission issued a Request for Public Comment seeking input on how the Commission might implement what is called the "Consensus Draft" on regional transmission groups (RTGs).[17] The "Consensus Draft" includes a requirement that members "share transmission planning information." The Commission intends to coordinate

[15] Such orders may result from applications under sections 202(b), 210 and 211 of the FPA. 16 U.S.C. 824a(b), 824i, 824j.

[16] NARUC Proposal to the FERC for Consultative Process on Electricity Transmission Issues, November 1992.

[17] Notice of Request for Public Comments on Regional Transmission Group Proposal, 57 FR 54580 (Nov. 19, 1992); 61 FERC ¶ 61,232 (1992).

and conform any information requirements evolving from that effort with this rulemaking.

4. The Commission's Need for Operating and Planning Information

Transmission service cases brought before the Commission will either be initiated by filings by transmission service providers (public utilities) under section 205 or by dissatisfied transmission service requestors under sections 206 or 211. The Commission needs to have a thorough understanding of the relevant transmission systems and utility operations to better assist its deliberations on these filings and potential technical disputes.

Having transmission planning and operating data available will augment the Commission's technical understanding of the increasingly dynamic changes taking place in the electric industry and will enable it to more effectively process filings or complaints.

Having baseline planning and operating information available prior to a filing of an application permits voluntary and more prompt resolution of technical disputes. The Commission believes that access to baseline information and analyses by all market participants assists in conflict resolution. Requiring transmitting utilities to make available or submit basic planning and operating information (which would be similar to that used by the utility in proceedings before the Commission) should help all market participants to cut through basic technical issues quickly and focus on disputed issues specific to the case at hand. If a section 211 application is filed, participants will be better able to request case specific information, or to limit issues, if they have access to common baseline information which is being suggested in this proposed rulemaking. This cannot help but expedite and improve the administrative process at the Commission and reduce administrative and transactional costs.

B. Minimizing the Burden of New Information Requirements

The Commission's objective is to meet its statutory obligations by striking a balance between the need for information adequate to inform and, at the same time, minimizing the burden on reporting utilities. Therefore, the Commission, to the greatest extent possible, is limiting its data collection to information that is currently developed in the normal course of business, that is consistent and reproducible, that relies upon industry standards, and that is maintained in common electronic formats.

Additionally, if power flow data are reported by individual transmitting utilities, there would be a potential for submission of a massive amount of data. The Commission estimates that there may be over 200 individual transmitting utilities who will meet the reporting threshold. Assuming power flow data representing cases for five to ten system planning conditions (*i.e.*, seasonal on- and off-peak periods in future years), there could be thousands of submitted power flow cases. Because of regional considerations in transmission planning, the Commission also sees the potential for an individual transmitting utility reporting large amounts of data which would duplicate in part another transmitting utility's response.

Therefore, the Commission believes that regional or subregional power flow data that is developed and used by member transmitting utilities would be the most desirable way to meet the objectives of the new informational requirements under section 213(b) of the FPA while minimizing the reporting burden. There are currently about 16 regional or subregional organizations.[18] On that basis, the number of submitted power flow cases could be greatly reduced. Reporting by these organizations would relieve respondents and the Commission of the administrative burden of processing, storing and disseminating voluminous information. The Commission believes that the intent of section 213(b) will be met, and the Commission's data needs will be met, if interested parties, including third-party developers, have access to these regional power flow cases.

The Commission currently does not see the need to expand this information requirement to include data that would be needed for other studies, such as dynamic stability studies. Such studies, if necessary, would more appropriately be performed after a specific request for transmission service has been made and more specific information on the project is available. However, the Commission requests comments on this issue.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[19] require that OMB approve certain information and record keeping requirements imposed by an agency. The information requirements contained in this proposed rule are contained in FERC–715 "Annual Transmission Planning and Evaluation Report" (1902–) and FERC–714 (1902–0140). The Commission uses and will use the data collected in these information requirements to carry out its regulatory responsibilities under the FPA, PURPA and the Energy Policy Act. Moreover, the collection of data is mandated by the Energy Policy Act. The Commission's Office of Electric Power Regulation uses the data to obtain a better overall picture of annual power generation and transmission and to ensure consistency in the reporting of electric utility industry operational data. In particular, the data collected provides greater comprehension of interconnected control area operations. The Commission has also deleted reporting requirements because the Commission can obtain certain data from other sources.

The Commission is submitting to the Office of Management and Budget a notification that these collections of information are either being modified or are creating new requirements. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch (202) 208–1415). Comments on the requirements of the proposed regulation can be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[20] requires rulemakings to either contain a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most transmitting utilities do not fall within the definition of "small entity,"[21] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be

[18] These organizations include the regional reliability councils or their subregions.

[19] 5 CFR 1320.12 (1992).

[20] 5 U.S.C. 601–612.

[21] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

prepared for any Commission action that may have a significant adverse effect on the human environment.[22] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[23] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[24] The proposed rule does not substantially change the effect of the underlying legislation. Accordingly, no environmental consideration is necessary.

VIII. Public Comment Procedures

The Commission invites all interested persons to submit written comments on this proposal. An original and 14 copies of such comments should be filed with the Commission by April 19, 1993. The Commission also requests commenters to file an executive summary of their comments, not to exceed 3 pages in length. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM93–10–000.

All written submissions will be placed in the Commission's public file and will be available for public inspection at the Commission's Public Reference Section, room 3408, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 141

Electric power, Statements and reports.

In consideration of the foregoing, the Commission proposes to amend part 141 in chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 141—STATEMENT AND REPORTS (SCHEDULES)

1. The authority citation for part 141 is revised to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 141.300 is added to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

(a) *Who must file.* Any transmitting utility, as defined in section 3(23) of the Federal Power Act, which owns or operates transmission facilities at or above 100 kilovolts must complete FERC Form No. 715.

(b) *When to file.* FERC Form No. 715 must be filed on or before each January 1.

(c) *What to file.* FERC Form No. 715 must be filed with the Federal Energy Regulatory Commission in accordance with the instructions on that form.

Note: The instructions for filling out FERC Form No. 715 appear in appendix A. The changes to Form No. FERC–714 appear in appendix B. Neither appendix will appear in the Code of Federal Regulations.

Appendix A

Form Approved
OMB No. 1902
Expires: 12/31/96

Annual Transmission Planning and Evaluation Report FERC Form No. 715

This report is mandatory under section 213(b) of the Federal Power Act and 18 CFR 141.300.

The information collected by this report is not considered confidential and will not be treated as such.

The public reporting burden for this collection of information is estimated to average 100 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Federal Energy Regulatory Commission, Information Policy and Standards Branch, ED23.1, 941 No. Capitol St. NE., Washington, DC 20426, and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FERC Form No. 715 Contents

General Information
General Instructions
Terms and Definitions
Specific Instructions
Part 1: Identification and Certification
Part 2: Power Flow Base Cases
Part 3: Transmitting Utility Maps and Diagrams
Part 4: Transmission Planning Reliability Criteria
Part 5: Transmission Planning Assessment Practices
Part 6: Evaluation of Transmission Performance

Instructions for Completing the FERC Form No. 715 Annual Transmission Planning and Evaluation Report

General Information

I. Purpose of Report

FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is required pursuant to section 213(b) of the Federal Power Act (FPA) to provide information adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints.

II. Who Must Submit

Each transmitting utility, as defined in section 3(23) of the Federal Power Act, which owns or operates transmission facilities at or above 100 kilovolts must report the information requested under the listed items in the prescribed manner. A designated agent, *i.e.*, regional transmission group, North American Electric Reliability Council (NERC), regional reliability council, formal power pool, other group, or a larger transmitting utility to which a smaller transmitting utility is interconnected, may submit and make readily available to the public without condition some of the requested information on behalf of the transmitting utility. The transmitting utility would remain responsible for submitting or making available all data not submitted or made available on its behalf by a designated agent. If a designated agent is submitting or making available information on behalf of a transmitting utility, it must so specify.

III. Where to Submit

One original and two copies of FERC Form No. 715, Annual Transmission Planning and Evaluation Report, should be mailed to: Office of Electric Power Regulation, Federal Energy Regulatory Commission, room 2410, ER–10.1, 825 North Capitol St. NE., Washington, DC 20426.

IV. When to Submit

The report is to be filed annually on or before January 1.

V. Further Information

Questions concerning the FERC Form No. 715, Annual Transmission Planning and Evaluation Report, may be directed to _____.

VI. Sanctions and Confidentiality Statements

FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is mandatory under the Federal Power Act. The information reported in this report is not considered confidential.

General Instructions

The Federal Energy Regulatory Commission has determined that to satisfy section 213(b) of the FPA it is necessary for potential transmission customers, State regulatory authorities, and the public to be able to reasonably anticipate the outcome of technical studies which would be performed by transmitting utilities in assessing the availability of transmission capacity to satisfy a request for transmission service. Therefore, transmitting utilities are required: (1) To

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[22] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. and Regs. ¶ 30,783 (1987).

[23] 18 CFR 380.4.

[24] 18 CFR 380.4(a)(2)(ii) (1992).

either authorize any regional or subregional transmission planning or reliability organizations to which they belong to publicly release, on an unconditional basis, any regional or subregional power flow cases developed for the purposes of members' transmission planning, or, if the Respondent does not belong to such an organization, or the organization does not release such data, to submit such data themselves; and (2) to submit an annual report which includes: maps and one-line diagrams; a description of reliability criteria and transmission planning assessment practices used; and an evaluation under the reliability criteria of the current and future performance of the transmitting utility's system.

It is assumed that most transmitting utilities participate in the development, by a regional or subregional organization to which they belong, of regional or subregional power flow cases. The purpose of this process is to ensure consistency of assumptions and accuracy of data.

These power flow cases are used by individual members as the starting place for their own transmission planning studies. A detailed description of a transmitting utility's reliability criteria, planning practices and evaluation of system performance is essential to perform planning studies, assess the availability of transmission, identify known constraints, and anticipate the outcome of transmitting utility technical studies made in response to an actual request for service.

Terms and Definitions

Transmission Planning Reliability Criteria—The measuring systems and performance standards used for assessing the actual or projected ability of the bulk electric transmission system to deliver power to load reliably. Failure to attain a specified performance standard indicates the need to consider adding or rearranging facilities, changing operating modes or other responses.

Examples of criteria that might apply to simulated testing of the bulk electric transmission system are:

(a) No cascading outage following any specified set of contingencies.

(b) No overloaded facilities following a specified contingency.

(c) All voltages within prescribed limits.

Transmitting Utility—Any electric utility (FPA section 3(22)), qualifying cogeneration facility (FPA section 3(18)(B)), qualifying small power production facility (FPA section 3(17)(A)), or Federal power marketing agency (FPA section 3(19)) which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale. (FPA section 3(23)).

Specific Instructions

Part 1: Identification and Certification

Provide the following information:

1. Transmitting Utility Name
2. Transmitting Utility Mailing Address
3. Contact Person Name
4. Contact Person Title
5. Contact Person Telephone Number
6. Contact Person Facsimile Number
7. Certifying Official Name
8. Certifying Official Title
9. Certifying Official Signature

Part 2: Regional or Subregional Power Flow Base Cases

Respondents participating in a regional or subregional process (for consolidating and ensuring the consistency and accuracy of the power flow information used by the respondent for transmission planning) are required to either: (1) Authorize the regional or subregional organization to release, without conditions to the public in an easily accessible electronic format, the most current regional or subregional input data to *solved* power flow base cases that the transmitting utility would ordinarily use as the starting point for its transmission planning studies; or (2) if the organization does not release such data, submit such data themselves.

If a respondent participates in such a regional or subregional process, it is required to submit the following items:

1. Regional or subregional organization name
2. Regional or subregional organization mailing address
3. Regional or subregional organization contact person
4. Regional or subregional organization contact person title
5. Regional or subregional organization contact person telephone number
6. Regional or subregional organization contact person facsimile number
7. Description of process for public access or regional or subregional power flow information.
8. Description of power flow cases currently available from regional or subregional organization, including time frame, conditions, format and media.

If a respondent does not participate in the development of regional or subregional transmission planning power flow cases, it is required to submit its own, equivalent, power flow cases directly to the Commission along with this report. Such respondents must submit for each solved power flow case the input data file (in formats described below) and the corresponding output data file (in ASCII format) showing the solved real and reactive power flows, voltages, real and reactive generation and loads, solution parameters, etc.

Regional and subregional organizations authorized by their members to provide access to solved power flow cases should make them available electronically on 3.5 inch diskette or via a computer bulletin board in the format associated with the power flow program used by the regional or subregion in the course of their transmission studies. It is expected that in nearly all cases, the format will be one of the following:

—The Raw Data File format of the PTI (Power Technologies, Inc.) PSS/E Power flow program.
—The Card Deck Image format of the Philadelphia Electric Power flow program.
—The Card Deck format of the WSSC Power flow program.
—The IEEE Common Format for Exchange of Solved Power flows (Tape format, 132 characters per record).

For respondents submitting their own cases, the input data to the solved base cases and associated ASCII output data are to be supplied on 3.5 inch diskette in the format associated with the power flow program used by the respondent in the course of their transmission studies, as described above.

The input data to the solved power flows cases are forward looking. For example, the power flow cases made available, or submitted, might include:

—One-, two-, five-, and ten-year forecasts under summer and winter peak conditions
—A one-year forecast under light load/heavy transfers condition

This example is similar to a schedule of base cases proposed by NERC's Multiregional Modeling Working Group for development at the time this form was created. A regional or subregional organization may develop fewer or even more cases depending on its needs.

These cases are expected to be of sufficient detail such that network equivalents, extend sufficiently beyond the electrical borders of the transmitting utility so that power transfers within a reasonable market area could be simulated without significant loss of accuracy.

The power flow cases should include all branch circuit ratings (*i.e.*, normal, long-term and short-term emergency, etc.) which are used by the respondent. Additionally, a data-dictionary which cross references the bus or line terminal names (which are often abbreviated) with the actual names is to be made available or submitted.

Part 3 Transmitting Utility Maps and Diagrams

1. The respondent is required to submit one copy of general transmission maps and single-line schematic diagrams. The maps and diagrams should be those prepared in the general course of business for planning and operating purposes. The guidelines provided below indicate the type of information and the level of detail desired. If the respondent has readily available more than one set of maps and/or diagrams, it is requested that the set submitted best provide the level of detail described below.

2. The transmitting utility's general maps should show the geographic locations and names of:

A. Generating plants,
B. Switching stations,
C. Substations,
D. Service areas, and
E. Interconnections with other utilities.

3. The transmitting utility's single-line schematic diagrams should show and identify:

A. AC and DC transmission lines and facilities, including their nominal operating and design voltages,
B. Electrical connections,
C. Generating plants,
D. Transformation facilities,
E. Phase angle transformers, and
F. VAR control equipment, *i.e.*, shunt and series capacitors and inductors, etc.

4. On the maps or in separate documentation, a legend should be provided that shows the symbols used on the map or diagram to represent generators, transmission lines, transformers, capacitors, reactors, buses, etc.

5. If maps and diagrams have not changed from those currently on file at FERC, the

respondent should make a statement to that effect. In such event, new maps or diagrams need not be submitted; they need only be submitted if they have been revised.

Part 4 Transmission Planning Reliability Criteria

Each respondent is to provide the transmission planning reliability criteria used to assess and test the strength and limits of its transmission system to meet its load responsibility as well as to move bulk power between and among other electric systems.

If the respondent subscribes to the NERC and regional reliability council transmission reliability criteria, the documents containing such criteria should be submitted unless such documents are supplied through readily available NERC publications or available in the regional reliability council OE–411 reports submitted to the DOE. In such cases, only the title, source and effective date of each publication or document need be submitted.

If the transmitting utility subscribes to more detailed criteria compatible with the NERC or regional reliability council through its interconnection or pooling agreements with others, then such additional criteria must also be submitted.

Finally, it is expected that the transmitting utility will have additional detailed criteria. For example, each utility generally sets its own voltage limit criteria on its bulk system as well as its lower voltage system since NERC and the regional reliability councils generally do not. As another example, particular criteria may differ from the council and may be justified by the geography of the area, type of loads being served, system configuration, weather consideration, or other reasons. All such additional criteria must be submitted.

The above criteria in totality will represent that which the transmitting utility uses to determine available transmission capacity needed to meet potential transmission requests as well as its own native load. The description of criteria must be sufficiently detailed to allow its use by others in planning studies that reasonably replicate those of the respondent.

Part 5 Transmission Planning Assessment Practices

The criteria submitted under part 4 of this form set the limits of transmission use. However, assessment practices used by the transmitting utility in applying these criteria are as important as the criteria themselves. These practices developed through experience and study include consideration of detailed factors which may not be explicitly listed in criteria submitted under part 4. For example, a utility might have certain operating restrictions and limitations which must be met by appropriate modelling within a simulation study.

Also through experience and study, each transmitting utility has developed a list of critical facilities it normally uses in performing its contingency analyses. The list of such facilities must be identified and submitted under this part.

The respondent's description of its practical application of the criteria identified in part 4 must be documented and provided under this part. This description of the respondent's transmission planning assessment practice must be sufficiently detailed to allow its use by others in planning studies that reasonably replicate those of the respondent.

Part 6 Evaluation of Transmission System Performance

The transmitting utility must provide an evaluation or assessment of the performance of its transmission system in future time periods based on the application of its reliability criteria, using the submitted power flow cases in part 2. It must provide a clear understanding of existing and likely future transmission constraints, their sources, how they were identified, and a description of plans to mitigate the constraints. The evaluation must provide a clear understanding of the existing and expected system performance of the respondent's transmission system and where to look for potential weaknesses. Also, results of studies which set transmission limits because of stability problems uncovered through dynamic system simulation must be presented.

The required evaluation may be separate from traditional utility transmission planning studies which are not generally undertaken unless there is a specified need. The required evaluation is not necessarily an "operating study" which is generally performed twice a year to test the transmission system's capabilities for the upcoming peak load season. The evaluation of system performance required in this part is similar to but more forward looking than those operating studies.

Appendix B

Proposed Changes to Form No. FERC–714

The existing form FERC–714 is proposed to be amended by eliminating Schedules VIII, XIII, XIV and XV, and consolidating Schedules X, XI, and XII. The proposed new table of contents (reorganized and renumbered) is as follows:

Part I: Identification and Certification
Part II: Control Area Information
Schedule 1: Generating Plants Included in Reporting Control Area
Schedule 2: Control Area Monthly Capabilities at Time of Monthly Peak Demand
Schedule 3: Control Area Net Energy for Load and Peak Demand Sources by Month
Schedule 4: Adjacent Control Area Interconnections
Schedule 5: Control Area Scheduled and Actual Interchange; Base Power Transfers and Incremental Transfer Capability
Schedule 6: Control Area Hourly System Lambra
Part III: Planning Area Information
Schedule 1: Electric Utilities that Compose the Planning Area
Schedule 2: Planning Area Hourly Demand and Forecast Summer and Winter Peak Demand and Annual Net Energy For Load
Part IV: Notes

The existing Schedule VII, Control Area System Lambda is proposed to be replaced by the following:

Part II Schedule 6: Control Area Hourly System Lambda

Submit on a 3.5 inch diskette formatted for the DOS operating system the following data file in ASCII format: the control area's system lambda for each hour of the year starting with 12 midnight, January 1, 1993, central standard time. The file should have 8760 records (8784 for leap years). Each record is to contain the system lambda value at the clock hour in dollars per megawatthour (mills per kilowatthour).

Control Area Hourly System Lambda. For control areas where demand following is primarily performed by thermal generating units, the system lambda is derived from the economic dispatch function associated with automatic generation control performed at the controlling utility or pool control center. Excluding transmission losses, the fuel cost ($/hr) for a set of on-line and loaded thermal generating units (steam and gas turbines) is minimum[1] when each unit is loaded and operating at the same incremental fuel cost ($/MWh)[2] with the sum of the unit loadings (MW) equal to the system demand plus the net of interchange with other control areas. This single incremental cost of energy is the system lambda. System lambdas are likely recalculated many times in one clock hour. However, the indicated system lambda occurring on each clock hour would be sufficient for reporting purposes.

For control areas where demand following is performed during some periods of the year by hydro generating units and consequently a system lambda may not be available, a note in Part IV indicating that fact for each such period should be provided.

An explanation describing the reason for the unavailability of system lambda information and a definite plan for reporting the information with target date must be provided as a note in Part IV. The Commission expects that all Energy Management Systems, with proper instructions, can record the system lambda being used for economic dispatch of the control area's thermal units. The reporting of system lambda along with the other information reported on a control area basis is intended to describe the operation of such areas from information that should be readily available. The Commission is not requesting that incremental or marginal cost (either short or long term) be developed and provided according to any formula. Nor are "avoided cost rates" being requested that, pursuant to PURPA 210, electric utilities file with state commissions or otherwise make available for prospective qualified facilities.

The existing Schedule X, Planning Area Monthly Net Energy for Load, Schedule XI, Planning Area Summer and Winter Actual and Peak Demand and Annual Net Energy for Load, and Schedule XII, Planning Area

[1] Some utilities may also include variable operation and maintenance costs which are considered "dispatchable." Therefore the costs to be minimized could include a variable O&M component as well as the fuel costs.

[2] Because unit heat rates and fuel costs vary, some units may not be able to operate at the same incremental fuel cost as the other units and thus those units may be loaded differently.

Hourly Demand Data By Specified Week, are proposed to be replaced by the following:

Part III Schedule 2: Planning Area Hourly Demand and Forecast Summer and Winter Peak Demand and Annual Net Energy For Load

Respondents, which participate in a national, regional or subregional process for consolidating and ensuring the consistency and accuracy of actual and forecast demand information are required to authorize the national, regional or subregional organization to release that information to the public without conditions and in an easily accessible electronic format.

If the respondent does not participate in the development of national, regional or subregional actual and forecast demand information, it is required to submit its own, equivalent, demand information directly to the Commission along with this report, as follows.

Respondents must submit on a 3.5 inch diskette formatted for the DOS operating system the following data file in ASCII format: the planning area's actual hourly demand, in megawatts, for each hour of the year starting with 12 midnight, January 1, 1993, central standard time. The file should have 8760 records (8784 for leap years).

Also provide on the diskette a file containing the planning area's forecast summer and winter peak demand, in megawatts, and annual net energy for load, in megawatthours, for the next ten years.

[FR Doc. 93–7825 Filed 4–2–93; 8:45 am]
BILLING CODE 6717–01–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed Rule.

SUMMARY: The Tennessee Valley Authority is proposing to amend its Freedom of Information Act regulations to more accurately reflect its direct reasonable operating costs in searching for and reviewing records requested under the Freedom of Information Act.

DATES: Comments must be received by May 5, 1993.

ADDRESSES: Comments regarding this proposed rule should be sent to Mark R. Winter, TVA, 1101 Market Street (MR 2F), Chattanooga, TN 37402–2801. As a convenience to commenters, TVA will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (615) 751–2902. Receipt of FAX transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, (615) 751–2523.

SUPPLEMENTARY INFORMATION: TVA is proposing to amend 18 CFR 1301.2(c)(1) to more accurately reflect its direct reasonable operating costs in searching for and reviewing records requested under the Freedom of Information Act. The rates proposed reflect an average rate for the range of TVA pay grades typically involved in responding to Freedom of Information Act requests. For time spent by clerical employees, the charge is currently $8.35 per hour. For time spent by supervisory and professional employees, the charge is currently $19.75 per hour. TVA is proposing to amend the charges to $10.10 per hour and $32.20 per hour, respectively. In conformance with section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, TVA is also proposing to amend 18 CFR 1301.2(d)(2) by reducing the amount of search time that will be provided without charge from 4 hours to 2 hours.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is proposed to be amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

2. Section 1301.2 is amended by revising paragraph (c)(1) and the first sentence of paragraph (d)(2) to read as follows:

§ 1301.2 Schedule of fees.

* * * * *

(c) * * *

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files, the charge is $10.10 per hour. For time spent by supervisory and professional employees, the charge is $32.20 per hour.

* * * * *

(d) * * *

(2) Except for documents provided in response to a commercial use request, the first 100 pages and the first 2 hours of search time will be provided without charge. * * *

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William S. Moore,

Manager, Information Support Services.

[FR Doc. 93–7610 Filed 4–2–93; 8:45 am]
BILLING CODE 8120–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 92N–0454]

RIN 0905–AA06

Labeling of Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its general labeling policy for over-the-counter (OTC) drug products to allow for the interchangeable use of certain words in labeling required by an OTC drug monograph. Examples include "doctor" and "physician," and "consult" and "ask." Thus, the phrase "consult a doctor" could be used interchangeably with the phrases "ask a doctor," "consult a physician," and "ask a physician." This proposal provides alternate terminology in the labeling of OTC drug products.

DATES: Written comments by June 4, 1993. The agency is proposing that the final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: The agency has proposed in a number of tentative final monographs and has included in a number of final monographs a provision that the words "doctor" and "physician" may be used interchangeably in the labeling of OTC drug products. (See, for example, §§ 333.150(e), 333.350(e), and 336.50(e); 21 CFR 333.150(e), 333.350(e), and 336.50(e).) Instead of including this provision in each OTC drug monograph, the agency is proposing to include such a provision in § 330.1 (21 CFR 330.1) as part of the general conditions under which an OTC drug is generally recognized as safe, effective, and not misbranded.

The agency believes that there are other monograph terms for which substitutes could be used, at

manufacturers' discretion. One example is the word "consult" that appears in the directions for many OTC drug monograph ingredients. (See, for example, §§ 333.150(c)(1), 333.350(c)(2), and 340.50(c)(2); 21 CFR 333.150(c)(1), 333.350(c)(2), and 340.50(c)(2).) The agency believes the simpler term "ask" could be used in its place. "Ask" is shorter and may be better understood by consumers. Thus, the phrases "consult a physician," "consult a doctor," "ask a physician," and "ask a doctor" would be allowed interchangeably.

The agency believes that these terms, and possibly others, could be used interchangeably, and that a provision to this effect should also be included in § 330.1, rather than in each OTC drug monograph. Accordingly, the agency is proposing to amend § 330.1 to provide for the use of certain terms interchangeably in the labeling of OTC drug products. The agency is proposing to add paragraph (i) to § 330.1 as follows:

The following terms may be used interchangeably in any of the labeling established in parts 331 through 358 of this chapter:

(1) "Ask" or "consult".

(2) "Doctor" or "physician".

The agency is also aware that other terms included in various OTC drug monographs may be used interchangeably. The agency invites comments and suggestions as to such other terms. The terms selected should be general in nature and appear in more than one OTC drug monograph. After considering the comments and suggestions received, the agency will issue an appropriate proposal in a future issue of the **Federal Register**.

The agency has examined the economic consequences of this proposed rule and determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). If this proposed rule becomes a final rule, the labeling options could be implemented at very little cost by manufacturers at the next printing of labels, for those products for which the manufacturer chooses to make a change. Thus, the proposal would have no significant economic impact. The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before June 4, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before June 4, 1993. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 330 be amended as follows:

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 330.1 is amended by adding new paragraph (i) to read as follows:

§ 330.1 General conditions for general recognition as safe, effective and not misbranded.

* * * * *

(i) The following terms may be used interchangeably in any of the labeling established in parts 331 through 358 of this chapter:

(1) "Ask" or "consult".

(2) "Doctor" or "physician".

* * * * *

Dated: January 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7770 Filed 4–2–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 358

[Docket No. 82N–0214]

RIN 0905–AA06

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking to amend the final monograph for over-the-counter (OTC) dandruff, seborrheic dermatitis, and psoriasis drug products to include 0.6 percent micronized selenium sulfide for the control of dandruff. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by June 4, 1993; written comments on the agency's economic impact determination by June 4, 1993. The agency is proposing that the final rule based on this proposal be effective 12 months after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 4, 1991 (56 FR 63554), FDA issued a final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products in subpart H of part 358 (21 CFR part 358, subpart H). The monograph lists selenium sulfide 1 percent in § 358.710(a)(5) as an active ingredient that is used for the control of dandruff. The selenium sulfide included in the monograph is not micronized (reduced to a fine particle size).

In developing this monograph, the agency considered data from five studies conducted to demonstrate the safety and effectiveness of 0.6 percent micronized selenium sulfide in the control of dandruff and seborrheic dermatitis (56 FR 63554 at 63559). Only two of those studies (Protocols CP–CA83 and CP–CA70) can be regarded as well-designed controlled clinical trials.

Each study involved a double-blind comparison of the antidandruff efficacy of 0.6 percent micronized selenium sulfide, 1 percent nonmicronized selenium sulfide, and shampoo vehicle in treating dandruff symptoms. One study (Protocol CP–CA83) showed a statistically significant mean reduction of total dandruff scores from baseline that was greater in subjects using 0.6 percent micronized selenium sulfide and in subjects using 1 percent nonmicronized selenium sulfide than in subjects using the shampoo vehicle. The study also showed that 0.6 percent micronized selenium sulfide is as effective as 1 percent nonmicronized selenium sulfide. The other study (Protocol CP–CA70) showed that 0.6 percent micronized selenium sulfide was statistically equal in effectiveness in reducing dandruff to the 1 percent nonmicronized formulation, but failed to demonstrate that 0.6 percent micronized selenium sulfide was statistically more effective than the shampoo vehicle. The other three studies were not regarded as well-designed controlled clinical trials for several reasons. One study (Protocol 84–050) did not include a placebo, and the active control used did not provide very convincing results. One study (Protocol 82–028) was a dose-searching clinical trial that included neither a placebo nor an FDA-approved active control. The other study (Protocol 81–013) compared the antidandruff efficacy of a shampoo containing 0.2 percent micronized selenium sulfide with a shampoo containing 1 percent nonmicronized selenium sulfide. The agency found that study to be irrelevant because it did not involve the testing of 0.6 percent micronized selenium sulfide. The agency determined that the data submitted were insufficient to establish the effectiveness of 0.6 percent micronized selenium sulfide in the control of dandruff and seborrheic dermatitis. The agency stated that one additional well-controlled study of adequate sample size was needed to show that 0.6 percent micronized selenium sulfide is effective for the control of dandruff and that data from separate studies are needed to show its effectiveness for the control of seborrheic dermatitis (56 FR 63554 at 63561).

Subsequent to the closing of the administrative record for the submission of data to the notice of proposed rulemaking for OTC dandruff, seborrheic dermatitis, and psoriasis drug products, one additional study (Ref. 1) was submitted on April 30, 1991 to show the effectiveness of 0.6 percent micronized selenium sulfide in the control of dandruff symptoms. The agency has processed the submission as a request to amend the monograph.

Reference

(1) Comment No. RPT 3, Docket No. 82N–0214, Dockets Management Branch.

II. The Agency's Tentative Conclusions on the Submitted Data

1. One comment submitted data from a randomized, double-blind, parallel group, placebo-controlled clinical study (Ref. 1) to show the effectiveness of 0.6 percent micronized selenium sulfide as an OTC active ingredient for the control of dandruff. The study was conducted at a single study center for 8 weeks. The study was designed to compare the efficacy of an antidandruff shampoo containing 0.6 percent micronized selenium sulfide (described in Comment 2) to: (1) The shampoo vehicle without the antidandruff ingredient, and (2) an antidandruff shampoo containing 1 percent nonmicronized selenium sulfide (a monograph ingredient).

Two hundred and twenty potential participants were selected for the study. Participants were to be at least 18 years of age with a diagnosis of dandruff, but with no history of adverse reaction to antidandruff shampoo ingredients and with no other skin disease, open lesions, crusts, or excoriations (scratches or abrasions) on the scalp. Participants could not be pregnant, breast-feeding, or less than 4 weeks post partum. Participants using oral contraceptives had to be on the same product for at least 6 weeks. Participants agreed to use a nonantidandruff shampoo for the first 2 weeks of the study (to eliminate the effects of previously used antidandruff shampoos) and not to use any other hair grooming products except hair spray for the 6-week duration of the study. Swimming was not allowed, and only one member per household could participate in the study. After the 2-week wash-out period, potential participants were examined for both loose and adherent dandruff and were scored separately in each of five areas of the scalp using numeric scores ranging from 0 to 4, representing no readily apparent dandruff (0) to very severe dandruff (4). Thus, if a participant scored 4 on all five areas of the scalp for both loose and adherent dandruff, a total score of 40 was possible. A total dandruff (loose and adherent) score of 21 or more was required for enrollment in the study.

Of the potential participants, 169 met the enrollment criteria. The subjects ranged in age from 19 to 76 years old, with a mean of 43 years. Thirty four percent of the subjects were male and 66 percent were female; 93.5 percent were caucasian, 4.5 percent were black, and 2 percent were hispanic.

The subjects were assigned at random to one of the three shampoo preparations, which were similar in appearance. All subjects and the investigator were blinded to which shampoo the subjects received during the treatment period. Subjects used the assigned shampoo twice weekly (Wednesday and Saturday) for 6 weeks. Dandruff was assessed weekly by the investigator prior to that day's scheduled shampoo.

Dandruff scores were analyzed both for reduction in total dandruff and for rate of reduction in total dandruff. Half of the subjects missed either week 1 or week 2 evaluations because they fell on a religious holiday. Therefore, weeks 1 and 2 were not analyzed. Further, 13 subjects did not return after baseline assessment and were excluded from both analyses (reduction in total dandruff and the rate of reduction in total dandruff). Fifteen additional subjects missed at least one visit during the treatment phase and were excluded only from the rate of reduction analysis. Thus, data from 141 subjects were included in the rate of reduction analysis, and data from 156 subjects were included in the change in total mean dandruff analysis.

Subjects in the 0.6 percent micronized and 1.0 percent nonmicronized selenium sulfide groups exhibited a greater statistically significant reduction ($p = 0.05$) in the total dandruff scores and in the rate of reduction in total dandruff scores than the subjects in the vehicle group. There was no significant difference in either the reduction in total mean dandruff score or the rate of reduction scores observed between subjects in the 0.6 percent micronized and 1 percent nonmicronized selenium sulfide groups. There were no significant differences among the three treatment groups in age, baseline dandruff score, race, hair length, or scalp condition. The baseline difference among groups with respect to sex was significant. An exploratory analysis with terms for treatment, sex, and treatment-by-sex interaction revealed neither a significant main effect due to sex nor a significant interaction between treatment and sex. This was true for baseline dandruff scores as well as reduction in dandruff score from the baseline to weeks 3, 4, 5, and 6. At baseline there was no indication that any of the three groups differed with respect to total dandruff score. An exploratory analysis was done of the differences among treatments in

dandruff scores from baseline to week 6, using sex, race, hair length, and scalp condition as blocking factors and continuous variables age and total dandruff scores at week 0 as covariates. The sponsor found no indication that any of those factors affected the response. Although the difference due to sex was significant at baseline, further analysis showed no difference in the change of total dandruff score between sexes, nor was there an effect due to sex and treatment interaction.

Comparisons of the 0.6 percent micronized selenium sulfide and the 1 percent nonmicronized selenium sulfide with the shampoo vehicle showed that both active preparations were superior to the vehicle in reducing dandruff. The mean reduction from baseline in total dandruff scores at week 6 for the three groups were as follows: -48.3 percent for the 0.6 percent micronized selenium sulfide group, -47.4 percent for the 1 percent nonmicronized selenium sulfide group, and -23.8 percent for the placebo group. The p values for pairwise comparisons were as follows: $p = 0.049$ for 0.6 percent micronized selenium sulfide versus 1 percent nonmicronized selenium sulfide, $p = 0.001$ for 0.6 percent micronized selenium sulfide versus placebo, and $p = 0.001$ for 1 percent nonmicronized selenium sulfide versus placebo. The rate of reduction in total dandruff scores in log units per week were as follows: -0.056 for the 0.6 percent micronized selenium sulfide, -0.065 for the 1 percent nonmicronized selenium sulfide, and -0.023 for the placebo. The p values for pairwise comparisons of rate of reduction were as follows: $p = 0.062$ for the 0.6 percent micronized selenium sulfide versus 1 percent nonmicronized selenium sulfide, $p = 0.001$ for 0.6 percent micronized selenium sulfide versus placebo, and $p = 0.001$ for 1 percent nonmicronized selenium sulfide versus placebo. Statistically significant results were found at week 3, 4, and 5 between 0.6 percent micronized selenium sulfide and vehicle ($p = 0.005$, 0.0005, and 0.007, respectively) and between 1 percent nonmicronized selenium sulfide and vehicle ($p = 0.0001$, 0.0001, and 0.0001, respectively).

No serious adverse events were reported in the study. One adverse event, itching of the scalp and hair loss, was reported in the 0.6 percent micronized selenium sulfide group, but the investigator noticed no inflammation or hair loss. Several adverse events (e.g., itching, burning, rash) were reported in two subjects in the active control group and in two subjects in the placebo group. The number of adverse events reported in the 0.6 percent selenium sulfide group in this study (Ref. 1) and in the earlier studies (Ref. 2) were minimal. The agency concludes that the reported adverse events did not indicate any safety problems with this ingredient.

Thus, based on this additional study (Ref. 1) and on the studies previously submitted (Ref. 2), the agency tentatively concludes that 0.6 percent micronized selenium sulfide is safe and effective for OTC use in the control of dandruff.

References

(1) Comment No. RPT 3, Docket No. 82N–0214, Dockets Management Branch.

(2) Comment No. LET007, Docket No. 82N–0214, Dockets Management Branch.

2. The comment also described the micronized selenium sulfide used in the study as follows: "selenium sulfide which has been finely ground to have a median particle size of approximately 5 microns with not more than 0.1 percent greater than 15 microns and not more than 0.1 percent less than 0.5 microns."

The agency finds that this specification provides for a more uniform particle size than the example provided in the preamble to the final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products that stated: 90 percent of particles should be less than 10 microns; 99 percent should be less than 20 microns; and no particles should be greater than 20 microns (56 FR 63554 at 63561). The agency has reviewed the specification for micronized selenium sulfide described by the comment and tentatively concludes that it is adequate for this monograph. However, when describing the particle size, the term micron (μ) should be replaced by the term micrometer (μm) to conform to present-day nomenclature. Therefore, the agency is proposing to define selenium sulfide micronized according to the specification described by the comment (using up-to-date terminology) by adding new paragraph (e) in § 358.703, as follows: "Selenium sulfide that has been finely ground and that has a median particle size of approximately 5 micrometers (μm), with not more than 0.1 percent of the particles greater than 15 μm and not more than 0.1 percent of the particles less than 0.5 μm."

Based on this additional study, the previous studies submitted, and the comment's definition of micronized selenium sulfide, the agency tentatively concludes that 0.6 percent micronized selenium sulfide is safe and effective for OTC use in the control of dandruff. Accordingly the agency is proposing to amend the final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products to include 0.6 percent micronized selenium sulfide in § 358.710(a) as an active ingredi,ent for the control of dandruff. Products containing this active ingredient should bear the appropriate labeling found in § 358.750. The agency is also proposing to add a definition for selenium sulfide, micronized to § 358.703, based on the specifications described by the comment, as follows: "selenium sulfide which has been finely ground and that has a median particle size of approximately 5 micrometers (μm), with not more than 0.1 percent of the particles greater than 15 μm and not more than 0.1 percent of the particles less than 0.5 μm."

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce. Products containing 0.6 percent micronized selenium sulfide as an active ingredient used for the control of dandruff may not be marketed OTC until a final monograph amendment is issued, unless the product is the subject of an approved application or abbreviated application.

The agency has examined the economic consequences of this proposed rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC dandruff, seborrheic dermatitis, and psoriasis drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act

(Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC dandruff, seborrheic dermatitis, and psoriasis drug products is not expected to pose such an impact on small businesses. This proposed rule will not remove any existing products from the market or require any reformulation or relabeling of existing products. The proposed rule will increase the scope of active ingredients available to industry for this class of OTC drug products. This proposed rule would allow OTC drug products containing 0.6 percent micronized selenium sulfide and labeled for the control of dandruff to be marketed without having to obtain an approved application, as is currently required. This will be beneficial to small manufacturers. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC dandruff, seborrheic dermatitis, and psoriasis drug products. Comments regarding the impact of this rulemaking on OTC dandruff, seborrheic dermatitis, and psoriasis drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may on or before June 4, 1993, submit written comments on the proposed regulation to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before June 4, 1993. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 358 be amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 358.703 is amended by adding paragraph (e) to read as follows:

§ 358.703 Definitions.

* * * * *

(e) *Selenium sulfide, micronized.* Selenium sulfide that has been finely ground and that has a median particle size of approximately 5 micrometers (μm), with not more than 0.1 percent of the particles greater than 15 μm and not more than 0.1 percent of the particles less than 0.5 μm.

3. Section 358.710 is amended by redesignating paragraph (a)(6) as paragraph (a)(7) and by adding new paragraph (a)(6) to read as follows:

§ 358.710 Active ingredients for the control of dandruff, seborrheic dermatitis, or psoriasis.

* * * * *

(a) * * *

(6) Selenium sulfide, micronized, 0.6 percent.

* * * * *

Dated: January 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–7771 Filed 4–2–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–100–88]

RIN 1545–AM81

Valuation Tables; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to the correction of notice of proposed rulemaking.

SUMMARY: This document contains corrections to the correction of notice of proposed rulemaking (PS–100–88), which was published in the Federal Register for Wednesday, February 3, 1993 (58 FR 6922). The proposed regulations relate to the valuation of certain partial interests in property under section 7520 of the Internal Revenue Code of 1986, as added by section 5031 of the Technical and Miscellaneous Revenue Act of 1988.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction of the proposed regulations that is the subject of this document corrected amendments to regulations under 7520 of the Internal Revenue Code.

Need for Correction

As published, the document contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction of proposed regulations (PS–100–88), which was the subject of FR Doc. 93–1630, is corrected as follows:

§ 1.170A–12 [Corrected]

1. On page 6923, column 1, under instructional paragraph 2a., § 1.170A–12(b)(2), second line under "lx" in the explanation of the formula at the top of the page, the language "in Table LN of § 20.2031–7 of this" is corrected to read "in Table 80CNSMT of § 20.2031–7 of this".

2. On page 6923, column 2, under instructional paragraph 2a., § 1.170A–12(b)(3), under *Example*, first line in the column following the formula, the language "less its expected value at the end of 45 years)." is corrected to read "less its expected value at the end of 45 years ($20,000))."

3. On page 6923, column 1, under instructional paragraph 2a., § 1.170A–12(e)(2), second line under "lx and ly" in the explanation of the formula in the middle of the page, the language "and y set forth in Table LN of § 20.2031–" is corrected to read "and y set forth in Table 80CNSMT of § 20.2031–".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–7764 Filed 4–2–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[Order No. 1693–93]

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend appendix A to the Department of Justice regulation on nondiscrimination on the basis of disability by public accommodations and in commercial facilities, implementing title III of the Americans with Disabilities Act, to incorporate the accessibility guidelines for transportation facilities issued by the Architectural and Transportation Barriers Compliance Board (Board). The rule also would amend the part of the regulation setting the reach range requirement for accessible automated teller machines (ATMs), based on information received in connection with a petition for rulemaking received by the Board. These changes will better ensure compliance with the standards for accessible design.

DATES: To be assured of consideration, comments must be in writing and must be received on or before May 5, 1993. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: All comments on this proposed rule should be sent to: Stewart B. Oneglia, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Rulemaking Docket 004, P.O. Box 66118, Washington, DC 20035–6118.

Comments will be available for public inspection at the offices of the Architectural and Transportation Barriers Compliance Board, suite 1000, 1331 F Street NW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except legal holidays, from April 14, 1993, until the Department publishes this rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (202) 514–0301 (Voice), (202) 514–0383 (TDD) (the Division's ADA Information Line). These telephone numbers are not toll-free numbers.

Copies of this rule are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Coordination and Review Section at (202) 514–0301 (Voice) or (202) 514-0383 (TDD). The rule is also available on electronic bulletin board at (202) 514–6193. These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Prior Comments

All timely comments received by the Board on the proposed transportation rule issued by the Board on March 20, 1991 (56 FR 11874), and on the proposed rule relating to ATM reach ranges issued by the Board on September 8, 1992 (57 FR 41006), will be deemed by the Department to have been submitted in response to this proposed rule and will be thoroughly analyzed and considered by the Department prior to the adoption of any final rule. Therefore, it is not necessary for any timely comments submitted to the Board on those proposed rules to be resubmitted to the Department. All comments previously received by the Board on its proposed rules will be available for public inspection (along with any new comments received by the Department on this proposed rule) at the Board's offices at the address set forth above.

Background

On July 26, 1991 (56 FR 35544), the Department of Justice published its final regulation implementing title III of the Americans with Disabilities Act (ADA), Public Law 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodation, and requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities. (Title III also requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible to persons with disabilities.)

Subpart D of the regulation, "New Construction and Alterations," sets forth the requirements for new construction and alterations and is based on section 303 of the Act. It addresses such issues as what facilities are covered by the new construction requirements, what an alteration is, the application of the elevator exception, the path of travel obligations resulting from an alteration to a primary function area, requirements for commercial facilities located in private residences, and the application of alterations requirements to historic buildings and facilities.

Section 36.406 of the regulation, standards for new construction and alterations, provides that new construction and alterations subject to the regulation shall comply with the standards for accessible design published as appendix A to the regulation. Appendix A contains the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which was separately published by the Architectural and Transportation Barriers Compliance Board as a final guideline on July 26, 1991 (56 FR 35408). Section 36.406 of the regulation implements the requirements of sections 306(b) and 306(c) of the Act, which require the Attorney General to promulgate standards for accessible design for buildings and facilities subject to the Act, and requires those standards to be consistent with the supplemental minimum guidelines and requirements for accessible design published by the Board pursuant to section 504 of the Act. Sections 5 through 9 of appendix A are special application sections and contain additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, and transient lodging. Section 10 of ADAGG, which was intended to establish special access requirements for transportation facilities, was reserved when the Department's final rule was published. On September 6, 1991 (56 FR 45500), the Board published a final rule amending the guidelines by adding final guidelines for transportation facilities as a new section 10, and on January 14, 1992 (57 FR 1396), the Board published corrections to that section. The Department now proposes to amend appendix A to part 36 to include that section, as corrected.

Furthermore, on September 8, 1992 (57 FR 41006), the Board published a Notice of Proposed Rulemaking proposing to amend the reach range requirements for accessible ATMs under ADAAG based on new information received in connection with a petition for rulemaking. The Board's proposed amendment sets out the reach ranges for controls when a person using a wheelchair can make a forward approach only, a parallel approach only, or both a forward and parallel approach to an ATM. To address the reach over an obstruction resulting from recessed controls and the installation of surrounds in front of ATMs, the proposed amendment includes a table of reach depths and maximum heights for

the placement of the controls where the reach depth to any control is more than 10 inches from a parallel approach. A detailed discussion of the proposed amendment is contained in the Board's proposed rule.

The Department now also proposes to amend appendix A to part 36 to incorporate those changes proposed by the Board.

Regulatory Process Matters

This notice of proposed rulemaking has been reviewed by the Office of Management and Budget under Executive Order 12291. The Department has determined that it is not a major rule for purposes of that Executive Order.

The Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, it is not subject to the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, Reporting and recordkeeping requirements.

Dated: January 21, 1993.

Stuart M. Gerson,

Acting Attorney General.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 306(b) of the Americans with Disabilities Act, Public Law 101–336, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; sec. 306(b), Pub. L. 101–336, 104 stat. 361, 362 (42 U.S.C. 12186).

Appendix to § 36.406 [Amended]

2. The Appendix to § 36.406 is amended by removing "[10, Reserved]" in the third column for the entry "Transportation Facilities" and adding, in lieu thereof, "10.".

3. Appendix A to part 36 is amended by republishing the introductory text of section 4.1.3, by revising paragraph (20) including the "Exception" in section 4.1.3, by revising section 4.34 and sections 4.34.1 through 4.34.4, and by adding section 4.34.5, to read as follows:

Appendix A to Part 36—Standards for Accessible Design

* * * * *

4.1.3 Accessible Buildings: New Construction.

Accessible buildings and facilities shall meet the following minimum requirements:

* * * * *

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

Exception: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

* * * * *

4.34 Automated Teller Machines

4.34.1 General.

Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.

4.34.2 Clear Floor Space.

The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 In (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height from the floor shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 In (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height from the floor shall be as follows:

Reach depth		Maximum height	
In	Mm	In	Mm
10	255	54	1370
11	280	53½	1360
12	305	53	1345
13	330	52½	1335
14	355	51½	1310
15	380	51	1295
16	405	50½	1285
17	430	50	1270
18	455	49½	1255
19	485	49	1245
20	510	48½	1230
21	535	47½	1205
22	560	47	1195
23	585	46½	1160
24	610	46	1170

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least on of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

Exception: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls.

Controls for user activation shall comply with 4.27.4.

4.34.5 Equipment for Persons with Vision Impairments.

Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.

* * * * *

4. Appendix A to part 36 is amended by republishing sections 9.5.2(2) (a) through (f) and 9.5.3; revising the heading of section 10 and adding the text to section 10 as set forth below. Pages 67 through 71 of appendix A are published with the revisions and additions to read as follows:

Appendix A to Part 36—Standards for Accessible Design.

* * * * *

BILLING CODE 4410-01-M

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3, one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and, if provided, at least one tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

(f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one accessible floor.

9.5.3. Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

10. TRANSPORTATION FACILITIES.

10.1 General. Every station, bus stop, bus stop pad, terminal, building or other transportation facility, shall comply with the applicable provisions of 4.1 through 4.35, sections 5 through 9, and the applicable provisions of this section. The exceptions for elevators in 4.1.3(5), exception 1 and 4.1.6(1)(k) do not apply to a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal, or facilities subject to Title II.

10.2 Bus Stops and Terminals.

10.2.1 New Construction.

(1) Where new bus stop pads are constructed at bus stops, bays or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

(2) Where provided, new or replaced bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter. Such shelters shall be connected by an accessible route to the boarding area provided under paragraph (1) of this section.

(3) Where provided, all new bus route identification signs shall comply with 4.30.5. In addition, to the maximum extent practicable, all new bus route identification signs shall comply with 4.30.2 and 4.30.3. Signs

10.3 Fixed Facilities and Stations

that are sized to the maximum dimensions permitted under legitimate local, state or federal regulations or ordinances shall be considered in compliance with 4.30.2 and 4.30.3 for purposes of this section.

EXCEPTION: Bus schedules, timetables, or maps that are posted at the bus stop or bus bay are not required to comply with this provision.

10.2.2 Bus Stop Siting and Alterations.

(1) Bus stop sites shall be chosen such that, to the maximum extent practicable, the areas where lifts or ramps are to be deployed comply with section 10.2.1(1) and (2).

(2) When new bus route identification signs are installed or old signs are replaced, they shall comply with the requirements of 10.2.1(3).

10.3 Fixed Facilities and Stations.

10.3.1 New Construction. New stations in rapid rail, light rail, commuter rail, intercity bus, intercity rail, high speed rail, and other fixed guideway systems (e.g., automated guideway transit, monorails, etc.) shall comply with the following provisions, as applicable:

(1) Elements such as ramps, elevators or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public. The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. Where the circulation path is different, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30 5, and 4.30.7(1) shall be provided to indicate direction to and identify the accessible entrance and accessible route.

(2) In lieu of compliance with 4.1.3(8), at least one entrance to each station shall comply with 4.14, Entrances. If different entrances to a station serve different transportation fixed routes or groups of fixed routes, at least one entrance serving each group or route shall comply with 4.14, Entrances. All accessible entrances shall, to the maximum extent practicable, coincide with those used by the majority of the general public.

(3) Direct connections to commercial, retail, or residential facilities shall have an accessible route complying with 4.3 from the point of connection to boarding platforms and all transportation system elements used by the public. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements used by the public.

(4) Where signs are provided at entrances to stations identifying the station or the entrance, or both, at least one sign at each entrance shall comply with 4.30.4 and 4.30.6. Such signs shall be placed in uniform locations at entrances within the transit system to the maximum extent practicable.

EXCEPTION: Where the station has no defined entrance, but signage is provided, then the accessible signage shall be placed in a central location.

(5) Stations covered by this section shall have identification signs complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Signs shall be placed at frequent intervals and shall be clearly visible from within the vehicle on both sides when not obstructed by another train. When station identification signs are placed close to vehicle windows (i.e., on the side opposite from boarding) each shall have the top of the highest letter or symbol below the top of the vehicle window and the bottom of the lowest letter or symbol above the horizontal mid-line of the vehicle window.

(6) Lists of stations, routes, or destinations served by the station and located on boarding areas, platforms, or mezzanines shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. A minimum of one sign identifying the specific station and complying with 4.30.4 and 4.30.6 shall be provided on each platform or boarding area. All signs referenced in this paragraph shall, to the maximum extent practicable, be placed in uniform locations within the transit system.

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, and 4 34.4. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4 27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4 29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between the rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

10.3.2 Existing Facilities: Key Stations.

(15) Where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility and system to the maximum extent practicable.

(16) Where provided in below grade stations, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate before the risers begin to form. All escalator treads shall be marked by a strip of clearly contrasting color, 2 inches in width, placed parallel to and on the nose of each step. The strip shall be of a material that is at least as slip resistant as the remainder of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

(17) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

EXCEPTION: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

(18) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(19) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor

10.3.2 Existing Facilities: Key Stations.

(1) Rapid, light and commuter rail key stations, as defined under criteria established by the Department of Transportation in subpart C of 49 CFR part 37 and existing intercity rail stations shall provide at least one accessible route from an accessible entrance to those areas necessary for use of the transportation system.

(2) The accessible route required by 10.3.2(1) shall include the features specified in 10.3.1 (1), (4)-(9), (11)-(15), and (17)-(19).

(3) Where technical infeasibility in existing stations requires the accessible route to lead from the public way to a paid area of the transit system, an accessible fare collection system, complying with 10.3.1(7), shall be provided along such accessible route.

(4) In light rail, rapid rail and commuter rail key stations, the platform or a portion thereof and the vehicle floor shall be coordinated so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 1-1/2 inches under all normal passenger load conditions, and the horizontal gap, measured when the vehicle is at rest, is no greater than 3 inches for at least one door of each vehicle or car required to be accessible by 49 CFR part 37.

EXCEPTION 1: Existing vehicles retrofitted to meet the requirements of 49 CFR 37.93 (one-car-per-train rule) shall be coordinated with the platform such that, for at least one door, the vertical difference between the vehicle floor and the platform, measured when the vehicle is at rest with 50% normal passenger capacity, is within plus or minus 2 inches and the horizontal gap is no greater than 4 inches.

EXCEPTION 2: Where it is not structurally or operationally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38, shall suffice.

(5) New direct connections to commercial, retail, or residential facilities shall, to the maximum extent feasible, have an accessible route complying with 4.3 from the point of connection to boarding platforms and all transportation system elements used by the public. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements used by the public.

10.3.3 Existing Facilities: Alterations.

(1) For the purpose of complying with 4.1.6(2) Alterations to an Area Containing a Primary Function, an area of primary function shall be as defined by applicable provisions of 49 CFR 37.43(c) (Department of Transportation's ADA Rule) or 28 CFR 36.403 (Department of Justice's ADA Rule).

10.4. Airports.

10.4.1 New Construction.

(1) Elements such as ramps, elevators or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. Where the circulation path is different, directional signage complying with 4.30.1, 4.30.2, 4.30.3 and 4.30.5 shall be provided which indicates the location of the nearest accessible entrance and its accessible route.

(3) Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(4) Where public pay telephones are provided, and at least one is at an interior location, a public text telephone shall be provided in compliance with 4.31.9. Additionally, if four or more public pay telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location:

(a) a main terminal outside the security areas;
(b) a concourse within the security areas; or
(c) a baggage claim area in a terminal.

Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(5) Baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2.4. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(6) Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons with a hearing loss or who are deaf. Such methods may include, but are not limited to, visual paging systems using video monitors and computer technology. For persons with certain types of hearing loss such methods may include, but are not limited to, an assistive listening system complying with 4.33.7.

(7) Where clocks are provided for use by the general public the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with their background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility to the maximum extent practicable.

(8) Security Systems. [Reserved]

10.5 Boat and Ferry Docks.

[Reserved]

BILLING CODE 4410-01-C

5. In part 36, the appendix to appendix A is amended by republishing section **A4.33.6, A4.33.7, Table A2,** A5.0, A5.1, A7.0, A7.2(3), and A7.3 and adding new sections A10.3 and A10.3.1(7) as set forth below. Page A17 is republished with the additions to read as follows:

Appendix A to Part 36—Standards for Accessible Design

* * * * *

Appendix

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BILLING CODE 4410-01-M

A4.33.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 Types of Listening Systems. *An assistive listening system appropriate for an assembly area for a group of persons or where the specific individuals are not known in advance, such as a playhouse, lecture hall or movie theater, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for an assembly area will necessarily be geared toward the "average" or aggregate needs of various individuals.* A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, *magnetic induction* loops are the most feasible type of listening system for people who use hearing aids *equipped with "T-coils,"* but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them *without special receivers.* Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

Table A2, reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief," shows some of the advantages and disadvantages of different types of assistive listening systems. In addition, the Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

A5.0 Restaurants and Cafeterias.

A5.1 General. *Dining counters (where there is no service) are typically found in small carry-out restaurants, bakeries, or coffee shops and may only be a narrow eating surface attached to a wall. This section requires that where such a dining counter is provided, a portion of the counter shall be at the required accessible height.*

A7.0 Business and Mercantile.

A7.2(3) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

A7.3 Check-out Aisles. *Section 7.2 refers to counters without aisles; section 7.3 concerns check-out aisles. A counter without an aisle (7.2) can be approached from more than one direction such as in a convenience store. In order to use a check-out aisle (7.3), customers must enter a defined area (an aisle) at a particular point, pay for goods, and exit at a particular point.*

A10.3 Fixed Facilities and Stations.

A10.3.1(7) Route Signs. *One means of making control buttons on fare vending machines usable by persons with vision impairments is to raise them above the surrounding surface. Those activated by a mechanical motion are likely to be more detectable. If farecard vending, collection, and adjustment devices are designed to accommodate farecards having one tactually distinctive corner, then a person who has a vision impairment will insert the card with greater ease. Token collection devices that are designed to accommodate tokens which are perforated can allow a person to distinguish more readily between tokens and common coins. Thoughtful placement of accessible gates and fare vending machines in relation to inaccessible devices will make their use and detection easier for all persons with disabilities.*

[FR Doc. 93–7190 Filed 4–2–93; 8:45 am]
BILLING CODE 4410–01–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–93–006]

Safety Zone: Fleet Week, New York Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone, on May 26, 1993, to protect the maritime community from the possible dangers and hazards to navigation associated with a parade of Naval vessels traveling through New York Harbor in close proximity to each other. A moving safety zone will be established 500 yards fore and aft, and 200 yards on either side of the designated column of vessels in the parade route. Entry into or movement within this Safety Zone is prohibited unless authorized by the Captain of the Port (COTP), New York.

DATES: Comments must be received on or before May 5, 1993.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Waterways Management Office, Bldg. 109, between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Any person wishing to visit the office must contact the Waterways Management Office at (212) 668–7933 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access. The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection on copying at the address above.

FOR FURTHER INFORMATION CONTACT: LTJG Joseph J. Gleason, Project Manager, Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 93–006) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. If he determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LTJG Joseph J. Gleason, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On February 16, 1993, Intrepid Sea Air Space Museum submitted a request to hold a parade of U.S. and foreign Naval and Coast Guard ships through the Port of New York and New Jersey on May 26, 1993. The proposed regulations would establish a moving safety zone 500 yds foreward of the lead parade vessel; 500 yards aft of the last vessel; and 200 yds either side of the designated column as it moves northward from the Lower Bay in New York Harbor to the Hudson River. No vessel will be permitted to enter or move within this area unless permitted to do so by Captain of the Port, New York.

This regulation is required to protect the maritime public from possible dangers and hazards to navigation associated with a parade of large deep draft naval vessels traveling through New York Harbor in close proximity. These large vessels will be transitting with limited maneuverability and therefore require a clear traffic lane in order to safely navigate to their destination.

This regulation is issued pursuant to 33 U.S.C. 1231, and 50 U.S.C. 191 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). With room to maneuver around the zone, the waterways will not be completely closed. Due to this safety zone's moving nature it will not affect any single location for a prolonged period of time. For the above reasons and the fact that commercial traffic will not be significantly delayed, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

With room to maneuver around the zone, the waterways will not be completely closed to traffic. Due to this safety zone's moving nature it will not affect any single location for a prolonged period of time. For the above reasons the Coast Guard expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under statutory authority to protect public safety, and thus they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary section, 165.T 01–006 is added to read as follows:

§ 165.T 01–006 Safety zone: Fleet Week, New York Harbor, NY

(a) *Definition.* "Parade of Ships" means those Coast Guard, Navy, and certain foreign or commercial vessels authorized by the Captain of the Port, New York (COTP) to participate in the Naval parade.

(b) *Location.* This safety zone covers the following areas: a line drawn from Norton Point due west to the Staten Island shore and south of the Verrazano Bridge; the waters of the Upper Bay including the Narrows and the Anchorage Channel; and the waters of the Hudson River south of the George Washington Bridge.

(c) *Effective period.* This safety zone will be effective from 9 a.m. until 2 p.m. on May 26, 1993.

(d) *Regulations.* Vessels not authorized to participate in the "Parade of Ships" must remain at least 500 yards foreward of the lead parade vessel; 500 yards aft of the last parade vessel and 200 yards port and starboard of the designated parade column.

Dated: March 4, 1993.

R.M. Larrabee,

Captain, U.S. Coast Guard Captain of the Port, New York.

[FR Doc. 93–7870 Filed 4–2–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80, 87 and 94

[PR Docket No. 93–39; FCC 93–113]

Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making (Notice). The Notice is part of a Commission-wide initiative to reexamine burdensome regulations. Accordingly, the Notice proposes to relax or eliminate certain rules that impose unnecessary regulatory burdens in certain private radio services.

DATES: Comments must be filed on or before May 14, 1993; and reply comments on or before June 1, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632–6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice, FCC 93–113, adopted February 23, 1993; and released March 25, 1993. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 337–1433.

Summary of Notice

1. First, the Notice proposes amending §§ 80.25(a) and 87.27 of the Commission's Rules, 47 CFR 80.25(a) and 87.27, to extend the current license term for aircraft and ship station licenses from five years to ten years. Section 307(c) of the Communications Act of 1934 (Communications Act), 47 U.S.C. 307(c) authorizes a ten-year term for such licenses. The current five year term requirement imposes an unnecessary burden both on the licensees, who must prepare and file the application form (there is a $35 application fee), and on the Commission, which must process the approximately 125,000 ship station and 40,000 aircraft station license applications it receives each year. Accordingly, the Commission proposes to modify §§ 80.25 and 87.27 to provide a ten-year license term for ship and aircraft station licenses.

2. Second, the Notice proposes to eliminate the requirement contained in § 94.85 of the Commission's Rules, 47 CFR 94.85, that licensees in the Private Operational Fixed Microwave Service perform specified measurements to ensure that their transmitters are maintained within the frequency tolerances required by § 94.67, 47 CFR 94.67. The records specified in § 94.85, however, are not currently used by the Commission. Licensees must comply with our frequency tolerance rules at all times, so a one-time measurement serves little purpose. There does not appear to be a need, therefore, for a rule that requires licensees to follow a predesignated set of steps to prove compliance.

3. Finally, the Notice proposes to eliminate the requirement contained in §§ 94.113 (a), (b), (d), (e), (f), and (g) of the Commission's Rules, 47 CFR 94.113 (a), (b), (d), (e), (f), and (g), that licensees in the Private Operational Fixed Microwave Service maintain numerous records on station maintenance, including transmitter measurements and antenna inspections. Because licensees are required to maintain their systems in conformance with our rules, it is unnecessary to require specifically that they retain maintenance records. The purpose of retaining such records is to provide evidence of conformance with equipment specifications. If a station fails Commission inspection, or causes interference due to technical deficiencies, however, past compliance does not rectify current violation of the Commission's Rules. Failure to meet the Commission's technical standards, whether efforts have been made to do so or not, subjects a licensee to consequences such as the imposition of a monetary forfeiture. Therefore, the Commission proposes to eliminate the unnecessary and burdensome obligations imposed by §§ 94.113 (a), (b), (d), (e), (f), and (g).

Initial Regulatory Flexibility Analysis

3. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this Notice. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines stated above. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

A. Reason for Action

4. The Commission is proposing rules affecting certain private radio services in order to eliminate a substantial burden on the public, reduce administrative costs and to improve government efficiency.

B. Objectives

5. We seek to reexamine the requirements of certain private radio service rules in order to reduce unnecessary burdens on the industry and administrative costs to the Commission and thereby increase efficiency in the affected private radio services and within the Commission.

C. Legal Basis

6. The proposed action is authorized under sections 4(i), 303(r) and 307(c) of the Communications Act, 47 U.S.C. 154(i), 303(r) and 307(c).

D. Reporting, Recordkeeping and Other Compliance Requirements

7. License terms in the aviation and marine radio services would be extended from five years to ten years. Private operational fixed microwave service licensees would have unnecessary reporting requirements eliminated.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

8. None.

F. Description, Potential Impact, and Small Entities Involved

9. The proposals would eliminate reporting requirements for private operational fixed microwave service licensees and extend the license terms for ship and aircraft station licensees. Consequently, the proposals would remove regulatory burdens on small businesses and, in the aviation and marine context, return approximately $2,900,000 to the economy. Further, the proposals would reduce administrative burdens associated with administering the affected private radio services.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

10. None.

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

List of Subjects

47 CFR Part 80

Radio.

47 CFR Part 87

Radio.

47 CFR Part 94

Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7819 Filed 4–2–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 921232–2332]

Threatened Fish and Wildlife; Listing of the Gulf of Maine Population of Harbor Porpoise as Threatened

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to extend comment period on proposed rule.

SUMMARY: On January 7, 1993, NMFS proposed to designate the Gulf of Maine (GME) population of harbor porpoise as threatened under the Endangered Species Act (ESA), and provided for a 90-day comment period on the proposed rule. NMFS announces that, due to a request for a series of public hearings, the comment period will be extended to allow for these hearings.

DATES: New Information and comments must be submitted on or before August 7, 1993.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, NMFS, Office of Protected Resources at (301) 713–2322, or Doug Beach, NMFS, Northeast Regional Office at (508) 281–9254.

SUPPLEMENTARY INFORMATION: On January 7, 1993, NMFS proposed that the GME harbor porpoise population be listed as threatened under the ESA (58 FR 3108). Requests for public hearings on the proposed rule had to be received by NMFS by February 22, 1993. Requests for public hearings were received from the following organizations: The New Hampshire Commercial Fishermens Association, Rye, New Hampshire; the Maine Gillnetters Association, Stonington, Maine; the International Wildlife Coalition, North Falmouth, Massachusetts; and the New England Fishery Management Council (NEFMC), Saugus, Massachusetts.

To accommodate these requests, NMFS will hold a series of public hearings at several locations in Massachusetts, New Hampshire and Maine. The specific locations of these meetings are being organized by NMFS' Northeast Regional Office and will be announced by mid-April in a following **Federal Register** notice. The hearings will be held at locations convenient to ports along the New England coastline, will likely be convened in the evening, and will occur during mid-late May. The timing of these hearings will be arranged so that they do not conflict with public hearings that have already been scheduled on Amendment 5 to the Northeast Multispecies Fishery Management Plan.

An additional public hearing will be likely held at NMFS, Silver Spring, Maryland. The date of this meeting will be provided in the above mentioned notice.

Therefore, to allow for the series of public hearings, NMFS is hereby extending the comment period on the proposed rule to list the GME harbor porpoise as threatened under the ESA until August 7, 1993.

Dated: March 26, 1993.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 92–7752 Filed 4–2–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 30, 1993. The list of newspapers will remain in effect until October 1993 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: K. Dale Torgerson, Regional Appeals and Litigation Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5279.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermounation Region

For decisions made by the Regional Forester affecting National Forests in Idaho: The Idaho Statesman, Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada: The Reno Gazette-Journal, Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming: Casper Star-Tribune, Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah: Standard-Examiner, Ogden, Utah.

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: Standard-Examiner Ogden, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions: Vernal Express, Vernal, Utah.

Vernal District Ranger decisions: Vernal Express, Vernal, Utah.

Flaming Gorge District Ranger for decisions affecting Wyoming: Casper Star Tribune, Casper, Wyoming.

Flaming Gorge District Ranger for decisions affecting Utah: Vernal Express, Vernal, Utah.

Roosevelt and Duchesne District Ranger decisions: Uintah Basin Standard, Roosevelt, Utah.

Boise National Forest

Boise Forest Supervisor decisions: The Idaho Statesman, Boise, Idaho.

Mountain Home District Ranger decisions: Mountain Home News, Mountain Home, Idaho.

Boise District Ranger decisions: The Idaho Statesman, Boise, Idaho.

Idaho City District Ranger decisions: The Idaho City World, Idaho City, Idaho.

Cascade District Ranger decisions: The Advocate, Cascade, Idaho.

Lowman District Ranger decisions: The Idaho City World, Idaho City, Idaho.

Emmett District Ranger decisions: The Messenger-Index, Emmett, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: Casper Star-Tribune, Casper, Wyoming.

Jackson District Ranger decisions: Casper Star-Tribune, Casper, Wyoming.

Buffalo District Ranger decisions: Casper Star-Tribune, Jackson, Wyoming.

Big Piney District Ranger decisions: Casper Star-Tribune, Jackson, Wyoming.

Pinedale District Ranger decisions: Casper Star-Tribune, Casper, Wyoming.

Greys River District Ranger decisions: Casper Star-Tribune, Casper, Wyoming.

Kemmerer District Ranger decisions: Casper Star-Tribune, Casper, Wyoming.

Caribou National Forest

Caribou Forest Supervisor decisions: Idaho State Journal, Pocatello, Idaho.

Soda Springs District Ranger decisions: Idaho State Journal, Pocatello, Idaho.

Montpelier District Ranger decisions: Idaho State Journal, Pocatello, Idaho.

Malad District Ranger decisions: Idaho State Journal, Pocatello, Idaho.

Pocatello District Ranger decisions: Idaho State Journal, Pocatello, Idaho.

Challis National Forest

Challis Forest Supervisor decisions: The Challis Messenger, Challis, Idaho.

Middle Fork District Ranger decisions: The Challis Messenger, Challis, Idaho.

Challis District Ranger decisions: The Challis Messenger, Challis, Idaho.

Yankee Fork District Ranger decisions: The Challis Messenger, Challis, Idaho.

Lost River District Ranger decisions: The Challis Messenger, Challis, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions: The Daily Spectrum, St. George, Utah.

Pine Valley District Ranger decisions: The Daily Spectrum, St. George, Utah

Cedar City District Ranger decisions: The Daily Spectrum, St. George, Utah.

Powell District Ranger decisions: The Daily Spectrum, St. George, Utah.

Escalante District Ranger decisions: The Daily Spectrum, St. George, Utah.

Teasdale District Ranger decisions: The Daily Spectrum, St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions: Richfield Reaper, Richfield, Utah.

Loa District Ranger decisions: Richfield Reaper, Richfield, Utah.

Richfield District Ranger decisions: Richfield Reaper, Richfield, Utah.

Beaver District Ranger decisions: Beaver Press, Beaver, Utah.

Fillmore District Ranger decisions: Millard County Chronicle-Progress, Fillmore, Utah.

Humboldt National Forest

Humboldt Forest Supervisor decisions: Elko Daily Free Press, Elko, Nevada.

Mountain City District Ranger decisions: Elko Daily Free Press, Elko, Nevada.

Jarbidge and Ruby Mountain District Ranger decisions: Elko Daily Free Press, Elko, Nevada.

Ely District Ranger decisions: Ely Daily Times, Ely, Nevada.

Santa Rosa District Ranger decisions: Humboldt Sun, Winnemucca, Nevada.

Jarbidge District Ranger decisions: Twin Falls Times News, Twin Falls, Idaho.

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions: Sun Advocate, Price, Utah.

Sanpete District Ranger decisions: Mt. Pleasant Pyramid, Mt. Pleasant, Utah.

Ferron District Ranger decisions: Emery County Progress, Castle Dale, Utah.

Price District Ranger decisions: Sun Advocate, Price, Utah.

Moab District Ranger decisions: The Times Independent, Moab, Utah.

Monticello District Ranger decisions: The San Juan Record, Monticello, Utah.

Payette National Forest

Payette Forest Supervisor decisions: Idaho Statesman, Boise, Idaho.

Weiser District Ranger decisions: Signal American, Weiser, Idaho.

Council District Ranger decisions: Council Record, Council, Idaho.

New Meadows, McCall, and Krassel District Ranger decisions: Star News, McCall, Idaho.

Salmon National Forest

Salmon Forest Supervisor decisions: The Recorder-Herald, Salmon, Idaho.

Cobalt District Ranger decisions: The Recorder-Herald, Salmon, Idaho.

North Fork District Ranger decisions: The Recorder-Herald, Salmon, Idaho.

Leadore District Ranger decisions: The Recorder-Herald, Salmon, Idaho.

Salmon District Ranger decisions: The Recorder-Herald, Salmon, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: The Times News, Twin Falls, Idaho.

Burley District Ranger decisions: South Idaho Press, Burley, Idaho.

Twin Falls District Ranger decisions: The Times News, Twin Falls, Idaho.

Ketchum District Ranger decisions: Wood River Journal, Hailey, Idaho.

Sawtooth National Recreation Area: Challis Messenger, Challis, Idaho.

Fairfield District Ranger decisions: The Times News, Twin Falls, Idaho.

Targhee National Forest

Targhee Forest Supervisor decisions: The Post Register, Idaho Falls, Idaho.

Dubois District Ranger decisions: The Post Register, Idaho Falls, Idaho.

Island Park District Ranger decisions: The Post Register, Idaho Falls, Idaho.

Ashton District Ranger decisions: The Post Register, Idaho Falls, Idaho.

Palisades District Ranger decisions: The Post Register, Idaho Falls, Idaho.

Teton Basin District Ranger decisions: The Post Register, Idaho Falls, Idaho.

Toiyabe National Forest

Toiyabe Forest Supervisor decisions: Reno Gazette-Journal, Reno, Nevada.

Carson District Ranger decisions: Reno Gazette-Journal, Reno, Nevada.

Austin District Ranger decisions: Reno Gazette-Journal, Reno, Nevada.

Bridgeport District Ranger decisions: The Review-Herald, Mammoth Lakes, California.

Tonopah District Ranger decisions: Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada.

Las Vegas District Ranger decisions: Las Vegas Review Journal, Las Vegas, Nevada.

Uinta National Forest

Uinta Forest Supervisor decisions: The Daily Herald, Provo, Utah.

Pleasant Grove District Ranger decisions: The Daily Herald, Provo, Utah.

Heber District Ranger decisions: The Daily Herald, Provo, Utah.

Spanish Fork District Ranger decisions: The Daily Herald, Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: Salt Lake Tribune, Salt Lake City, Utah.

Salt Lake District Ranger decisions: Salt Lake Tribune, Salt Lake City, Utah.

Kamas District Ranger decisions: Salt Lake Tribune, Salt Lake City, Utah.

Evanston District Ranger decisions: Uintah County Herald, Evanston, Wyoming.

Mountain View District Ranger decisions: Uintah County Herald, Evanston, Wyoming.

Ogden District Ranger decisions: Ogden Standard Examiner, Ogden, Utah.

Logan District Ranger decisions: Logan Herald Journal, Logan, Utah.

Dated: March 29, 1993.

Robert C. Joslin,

Deputy Regional Forester.

[FR Doc. 93-7809 Filed 4-2-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges: Gunther R. Nachtrab

Order

In the Matter of: Gunther R. Nachtrab, individually with addresses at Ateilier 751, Kachiane Lodge Arcade, Taos, New Mexico 87571 and 216-M Pueblo Norte #107, Taos, New Mexico 87571, and formerly doing business as The Electronics Exchange, Text Editing Equipment, and Tee, Respondents.

Whereas, on April 18, 1988, then-Acting Assistant Secretary for Export Enforcement William V. Skidmore entered an Order against Gunther R. Nachtrab (hereinafter referred to as Nachtrab) and several of his companies [1] which, in pertinent part, provided that:

It is Therefore ordered: First, that a civil penalty in the amount of $15,000 is assessed against Nachtrab. Payment of the civil penalty will be made to the Department in three installments: the first installment of $1,500 will be paid within 30 days of service of this Order on Nachtrab; a second installment of $6,750 will be paid to the Department on or before April 1, 1989; the third and final installment of $6,750 will be paid to the Department on or before October 1, 1990. Each payment shall be made in the manner specified in the attached instructions.

Second, that Nachtrab, for a period ending eight years from the date of this Order, is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

* * * * *

C. As authorized by section [7]88.16(c) of the [Export Administration] Regulations,[2] the denial period set forth above is suspended for a period of eight years from the date of this Order * * *. The eight-year denial period will be waived at the end of the suspension period provided that during the period of suspension Nachtrab has committed no violation of the [Export Administration] Act [3] or any regulation, order or license issued under the Act [footnotes not in original].

Whereas, pursuant to §§ 788.17(b) and 788.16(c) of the Regulations, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), has applied to the undersigned to modify the Order of April 18, 1988, by revoking the suspension of the eight-year period of denial, thereby imposing a denial period of eight years from the date of modification, because Nachtrab has failed to pay portions of the civil

[1] The Order also applied to Nachtrab's companies: The Electronics Exchange, Text Editing Equipment, and TEE. Those companies have ceased operation. Accordingly, this Order is not applicable to them. Under the provisions of this Order, however, if Nachtrab seeks to reconstitute these, or any other companies, the Department will initiate an Order to Show Cause why any company related to Nachtrab in the conduct of trade or related services should not be made subject to the provisions of this Order.

[2] When the Order of April 18, 1988 was issued, the Export Administration Regulations (the Regulations) were found at 15 CFR parts 368-399. Effective October 1, 1988, the Regulations were redesignated as 15 CFR parts 768-799 (53 FR 37751, September 28, 1988). The redesignation merely changed the first number of each Part from "3" to "7". The Regulations are currently codified at 15 CFR parts 768-799 (1992).

[3] The Export Administration Act of 1979 (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1992)) (the Act) expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

penalty imposed by the Order of April 18, 1988;[4]

Whereas, on December 14, 1992, Nachtrab was ordered by the undersigned to show cause in writing on or before January 8, 1993, why the Order of April 18, 1988, as amended by the Department's letter of April 11, 1989, should not be modified as requested by the Department for failure to pay portions of the civil penalty that was assessed;

Whereas, on January 7, 1993, Nachtrab requested an extension, for an additional four weeks, to respond to the Order to Show Cause, which request was granted by the undersigned on January 11, 1993;

Whereas, On February 1, 1993, Nachtrab responded to the Order to Show Cause, admitting that he had failed to pay portions of the civil penalty imposed by the April 18, 1988 Order, but, rather than showing cause for his failure to pay, simply requested that the civil penalty imposed in that Order be waived;

Whereas, I find that the Nachtrab has failed to show cause why the suspended denial period should not be reinstated, as requested by the Department;

Now, Therefore, Pursuant to Sections 788.17(b) and 788.16(c) of the Regulations and in consequence of Nachtrab's failure to pay portions of the civil penalty as required by the Order of April 18, 1988;

It Is Hereby Ordered that the Order of April 18, 1988, is modified, as follows:

First, the suspension of the eight-year period of denial of all U.S. export privileges imposed against Nachtrab by the Order of April 18, 1988 is hereby revoked. Accordingly, Gunther Nachtrab, individually with addresses at Atelier 751, Kachiane Lodge Arcade, Taos, New Mexico 87571, and 216–M Pueblo Norte #107, Taos, New Mexico 87571, formerly doing business as The Electronics Exchange, Text Editing Equipment, and TEE, and all his successors, assigns, officers, partners, representatives, agents, and employees, shall, for a period of eight years from the date of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. All outstanding individual validated licenses in which Nachtrab appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Nachtrab's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are also revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in § 788.3(c) of the Regulation, any person, firm, corporation, or business organization related to Nachtrab by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

D. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Second, This Order shall be served on Nachtrab and published in the **Federal Register**.

Entered this 26th day of March, 1993.

This Order is effective immediately.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 93–7756 Filed 4–2–93; 8:45 am]

BILLING CODE 3510–DT–M

[4] Specifically, Nachtrab has not paid the installment of $6,750 originally due on April 1, 1989 and rescheduled by a letter dated April 11, 1989 from the Department to Nachtrab's then-attorney, or the installment of $6,750 due on October 1, 1990. Thus, a total of $13,500 in penalties is currently owed and overdue under the terms of the Order.

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later

than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 91–A0007."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 91–00007, which was issued on January 21, 1992 (57 FR 5133, February 12, 1992).

Summary of the Application

Applicant: National Association of Energy Service Companies ("NAESCO"), 1440 New York Avenue, Washington, DC 20005, Contact: A. John Armstrong, Counsel, Telephone: (703) 356–3100.

Application No.: 91–A0007.

Date Deemed Submitted: March 25, 1992.

Request for Amended Conduct: NAESCO seeks to amend its Certificate to add Energy Performance Services, Inc. of Houston, Texas, and its Subsidiary—Energy Performance Services of North America of Montreal, Quebec, Canada, as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)).

Dated: March 30, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93–7794 Filed 4–2–93; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

[Docket No. 921136–2286]

Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of interim policy.

SUMMARY: NMFS announces its interim policy on how it will consider artificial propagation in the listing and recovery of Pacific salmon under the Endangered Species Act (ESA). This policy provides guidelines to assist in the conservation of listed species and to help avoid additional species listings. This policy also provides guidance for evaluating artificial propagation in section 7 consultation, section 10 permitting, and recovery planning pursuant to the ESA.

DATES: This interim policy takes effect immediately and will remain in effect until revised or superseded. Comments on this policy will be accepted until June 4, 1993.

ADDRESSES: Comments and information should be addressed to Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rob Jones, Protected Species Branch, Environmental and Technical Services Division, NMFS, 911 N.E. 11th Avenue, room 620, Portland, OR 97232 (503/230–5429), or Marta Nammack, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, at 301/713–2322.

SUPPLEMENTARY INFORMATION: The evaluation of the species' status for listing or delisting under the ESA depends on natural populations, which for Pacific salmon are defined as the progeny of naturally reproducing fish. Natural fish are also the focus of evaluations to determine whether a Pacific salmon population represents an evolutionarily significant unit (ESU) of the biological species and hence can be considered a "species" under the ESA. Pacific salmon from artificial propagation programs may be candidates for use in recovery programs depending on available knowledge of the similarity of the naturally and artificially propagated fish in genetic, phenotypic, and life-history traits, and in habitat characteristics.

In considering recovery options for a listed species, an objective assessment of uncertainties and potential risks should be undertaken and management alternatives requiring less intervention evaluated before implementing artificial propagation. Artificial propagation of listed salmon species for recovery must attempt to avoid these risks by preserving the genetic and ecological distinctiveness of the listed species. Artificial propagation of a listed salmon species is not a substitute for eliminating the factors causing or contributing to the species' decline, and recovery programs should reflect integrated planning that addresses these factors. In addition, artificial propagation of unlisted species should be conducted in a manner that minimizes adverse impacts to listed and unlisted species. Whether for recovery, fishery production or other mitigation purposes, artificial propagation must minimize the potential for deleterious effects on both listed and unlisted species if it is to be consistent with the conservation of genetic and ecological diversity in Pacific salmon.

Background

The ESA (16 U.S.C. 1531 *et seq.*) was enacted in 1973 in recognition that:

> Various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth untempered by adequate concern and conservation (sec. 2(a)).

In passing the ESA, Congress acknowledged that these species are of:

> Esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people (sec. 2(a)).

To be considered for listing under the ESA, a group of organisms must constitute a "species," which is defined to include:

> Any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (sec. 3(15)).

NMFS has determined that, to qualify as a distinct population segment, a Pacific salmon population must be substantially reproductively isolated and represent an important component in the evolutionary legacy of the biological species. A Pacific salmon population (or group of populations) meeting these criteria is considered to be an ESU (56 FR 58612, November 20, 1991). The ESU concept recognizes that long-term species viability depends on the maintenance of genetic variability within the biological species.

The stated purposes of the ESA are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve (these) purposes * * * (sec. 2(b)).

The ESA, thus, mandates the restoration of threatened and endangered species in their natural habitats to a level at which they can sustain themselves without further legal protection. For Pacific salmon (*Oncorhynchus*), the ESA's focus is, therefore, on natural populations—the progeny of naturally spawning fish—and the ecosystems upon which they depend.

Despite this emphasis on conserving species in their natural habitat, the ESA recognizes that conservation of listed species may be facilitated by artificial means. The ESA defines conservation to include:

> The use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such

methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation * * * (sec. 3(3)).

Artificial propagation may represent a potential method to conserve listed salmon species when the artificially propagated fish are determined similar to the listed natural population in genetic, phenotypic, and life-history traits, and in habitat use characteristics. Regardless of this, however, evaluations of the status of the population under the ESA depend on the viability of the population in the natural habitat and on the status of ongoing conservation measures.

With respect to Pacific salmon, there is considerable experience in the use of artificial propagation for supporting fisheries. Because Pacific salmon have a moderately high fecundity (typically several thousand eggs per female) and a high natural mortality through the early life-history stages, successful fish hatcheries generally produce many more juveniles for release into the ecosystem than are produced by natural fish in the wild. This increased juvenile production in some cases has resulted in increased returns of adult fish and has supported recreational, tribal, and commercial fisheries. However, the efficacy of artificial propagation as a tool for conserving natural salmon populations has not been clearly demonstrated.

Because there is, at present, considerable uncertainty about artificial propagation as a means to increase natural salmon populations, and because artificial propagation may have profound consequences for the viability of natural salmon populations, consideration of its use should be based on an objective assessment of genetic and ecological risks, balancing the potential for deleterious effects against risk to the population of irreversible harm or extinction if artificial propagation is not implemented.

Genetic problems that may arise through artificial propagation are of three general types. First, taking wild broodstock may contribute directly to the decline of the natural population. A severe reduction in population size may in turn lead to erosion of genetic variability and reduced fitness due to inbreeding depression—both factors that are believed to increase the risk of extinction faced by a population. Second, in addition to contributing to the loss of within-population genetic variability, artificial propagation can substantially reduce genetic differences between populations. For example, hatchery fish often stray at a higher rate than natural fish. Breeding between hatchery strays and local, natural fish may erode adaptive genetic differences between populations that are the result of long years of natural selection. Transfers of fish among hatcheries or transplanting fish outside their native area often exacerbate this problem. Finally, adaptation to hatchery conditions can lead to domestication during artificial propagation. Because the hatchery environment differs in many ways from that encountered in the wild, the selective pressures experienced by the two types of fish also differ markedly. The general result is genetic change in a hatchery population relative to its natural ancestors, and such changes may reduce the ability of the population to survive and reproduce in the wild. Moreover, these changes magnify the adverse consequences of interbreeding between hatchery and wild fish that results from straying or stock transfers.

Artificial propagation may also pose a variety of ecological risks to salmon populations. These risks include increased competition and predation, displacement of natural fish, altered migratory and spawning behavior, and disease transfer. For example, the release of large numbers of hatchery fish can elevate levels of competition for food, habitat, or mates and may lead to displacement of natural fish from their habitat. Attendant reductions in the size of natural populations may increase the risk of local extinction if abundance or density falls below threshold levels necessary for persistence. Hatchery juveniles are often larger than natural juveniles of the same age and will use resources that are otherwise available to natural fish. The intensity of competition is likely to be an increasing function of the number of hatchery fish released. Predators attracted to concentrations of hatchery fish may also prey on fish from natural populations, which may not be able to sustain the increased predation rates. A similar phenomenon occurs when harvest levels in mixed-stock fisheries are increased to take advantage of abundant hatchery fish. A high abundance of hatchery fish in migration corridors may also alter the migratory behavior of natural fish. Finally, diseases may be transferred between hatchery and natural salmon populations, and the risk of this occurring increases with the number of infected hatchery fish released into the wind.

These genetic and ecological risks of artificial propagation can pose serious threats to natural salmon populations. The viability of natural populations depends on their genetic and ecological diversity, and the use of artificial propagation to restore salmon abundance should not be allowed to erode this diversity.

Since 1990, NMFS has listed four distinct population segments ("species") of Pacific salmon as threatened under the ESA (Sacramento River winter chinook salmon: 55 FR 46515, November 5, 1990; Snake River sockeye salmon: 56 FR 58619, November 20, 1991; and Snake River spring/summer and fall chinook salmon: 57 FR 14653, April 22, 1992). Artificial propagation has been used to preserve genetic resources of these species and is being considered in interagency cooperative efforts for the conservation and recovery planning for each of them. Impacts resulting from artificial propagation must be minimized to avoid conflicts with recovery of listed species and to avoid additional listings of currently unlisted species. NMFS has developed this interim policy regarding the artificial propagation of Pacific salmon to aid in minimizing these impacts. The guidelines described in this policy are intended to meet the ESA's objective to conserve the diversity of Pacific salmon in their natural habitats.

Policy Statement

NMFS will consider artificial propagation of Pacific salmon under the ESA as follows:

(1) Whether a natural population is considered distinct and hence a "species" under the ESA will be determined solely by the two criteria that define an ESU—its reproductive isolation and its contribution to the biological species' evolutionary legacy. Genetic resources important to the species' evolutionary legacy may reside in hatchery fish as well as in natural fish, in which case the hatchery fish can be considered part of the biological ESU in question. Hatchery fish considered to be part of the ESU could also be included as part of the listed species and protected under the ESA. Concurrent with a determination to list a salmon species under the ESA, a determination should be made whether any existing hatchery fish can be considered part of the biological ESU and whether or not the hatchery fish should be included as part of the listed species. This class of fish includes pre-spawning adults held in an artificial propagation facility; eggs or juveniles held in a facility; and fish that were released from a facility prior to the listing but have not completed their life cycle. Determinations about existing

hatchery fish should be conducted as follows.

If available information indicates that either (1) the hatchery population in question is of a different genetic lineage than the listed natural populations, (2) artificial propagation has produced appreciable changes in the hatchery population in characteristics that are believed to have a genetic basis, or (3) there is substantial uncertainty about the relationship between existing hatchery fish and the natural population, the existing hatchery fish will not be considered part of the biological ESU and will not be included as part of the listed species. In this case, direct take of fish from the listed species for broodstock would not be permitted, and hatchery operations would need to be consistent with ESA requirements (see item (5) of this policy statement below).

If available information indicates that existing hatchery fish can be considered part of the biological ESU, a decision must be made whether to include them as part of the listed species. In general, such fish will not be included as part of the listed species. An exception may be made for existing hatchery fish if they are considered to be essential for recovery. This situation might occur if the natural population faces a high, short-term risk of extinction, or if the hatchery population is believed to contain a substantial proportion of the genetic diversity remaining in the species. In such cases, the existing hatchery population should be included as part of the listed species, and would be protected under the ESA. All aspects of hatchery operation involving that population, including collection of natural or returning hatchery fish for broodstock, would then require a permit to enhance the propagation or survival of the listed population (see section 10(a)(1)(A) of the ESA).

If existing hatchery fish can be considered to be part of the biological ESU (and hence could be considered for use in recovery efforts), but are not judged essential for recovery, they will generally not be included in the listed species. In this case, a decision must be made whether to devote future hatchery operations to recovery and conservation under the ESA or to focus on other goals (e.g. fishery enhancement). If hatchery operations are directed toward recovery, then integration of natural broodstock of the listed species into the existing hatchery population would be possible under an enhancement permit (see section 10(a)(1)(A) of the ESA). If the hatchery population is managed for purposes other than ESA recovery efforts, directed take of natural fish from the listed species for broodstock would be prohibited, and all aspects of the hatchery operations would need to be consistent with the ESA (see item (5) of this policy statement below). In either case, the amount of time required for all existing hatchery fish to complete their life cycle would represent a transition period for the hatchery population. At the end of this transition period, the hatchery fish would either become part of the listed species (if the recovery alternative is followed) or would be excluded from the listed species (if other goals are pursued).

Under any scenario, progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.

Any of the above determinations would be subject to review if substantial new information about the relationship between the natural and artificially propagated fish became available.

(2) Consideration of the use of artificial propagation in the recovery of listed species should be based on an objective assessment of potential risks. Genetic and ecological risks (see Background), together with the inevitable disruption in life-history patterns resulting from artificial propagation, must be balanced against risks to the species if artificial propagation is not used to facilitate a timely recovery. In assessing potential risks to the listed species, it is essential that all factors responsible for the species' decline be identified as early and as completely as possible. Addressing these factors should be given highest priority in recovery programs for listed species. Artificial propagation is only one of several possible recovery options. Artificial propagation should receive foremost consideration for recovery only when it is believed that recovery within an acceptable time is not likely by addressing these other factors alone; it should not be seen as a substitute for resolving the basic problems that brought the species to the point at which it required ESA protection.

(3) The intent of using artificial propagation for the recovery of listed species is to facilitate rapid restoration of the natural population in the ESU and minimize the risk of further decline. To achieve these goals without disrupting the ecological and genetic integrity of the natural population, artificial propagation must not lead to appreciable differences between naturally and artificially produced fish in characteristics believed to be genetically based. Several general guidelines are provided to reduce this possibility and minimize risk if artificial propagation is used:

(a) Artificial propagation for recovery should be viewed as a temporary measure, to be held to the minimum necessary for recovery.

(b) Donor stocks intended for artificial propagation must have originated from within the ESU, and the choice of donor stock should take into account existing population structure within the ESU. Under extreme circumstances, use of broodstock from outside the ESU may merit consideration. This option might be considered if the species is reduced to individuals of a single sex or if substantial inbreeding depression gives little hope for recovery of the remaining population without additional genetic material. Contrasting risks of inbreeding and outbreeding depression should be weighed to minimize loss of genetic diversity within and among populations that might result from the choice of donor stock.

(c) Sampling and mating of broodstock should be conducted to provide a representative sample for artificial propagation and, if possible, to allow a representative sample to spawn in the wild. The scale of supplementation that results from artificial propagation should attempt both to maintain a high effective population size for the ESU as a whole and to minimize deleterious ecological effects on natural fish.

(d) Artificial selection of artificially propagated salmon should be avoided, and natural selection in the artificial propagation facility should be minimized to reduce adaptation to the artificial environment. Critical uncertainties exist regarding the best ways to culture and release fish for supplementing natural populations, but undesirable effects may be reduced when artificial propagation is limited to a very few generations and to a small portion of the life cycle, when mortality during artificial culture is held to a minimum, and when the propagation regime attempts to simulate prominent features of the natural environment. In extreme cases where a natural population is threatened with imminent extinction, measures that involve artificial culture for an entire life cycle (i.e., a captive broodstock program) may be appropriate to protect the population and augment its abundance above a dangerously low level. In addition, safeguards to protect fish from mortality and catastrophic loss during artificial propagation should receive high priority.

(4) Effective supplementation and recovery program require careful and systematic monitoring and evaluation.

As part of such programs, monitoring and evaluation should assess long-term as well as short-term effects of artificial propagation on genetic and ecological interactions between artificially and naturally propagated fish. In addition to providing a means to follow genetic and phenotypic relationships between the two groups and to adjust recovery strategies in response to these relationships, monitoring and evaluation is essential to determining when artificial propagation is no longer necessary for recovery and should be terminated. In general, artificial propagation for ESA recovery should cease and all recovery options be reevaluated if artificial propagation is no longer believed to be necessary for timely recovery, if naturally reproducing fish have risen in abundance above levels for delisting, if appreciable differences between artificially and naturally propagated fish have emerged during a recovery program, or if there is evidence that artificial propagation is impeding recovery. (Successful recover under the ESA does not preclude the use of artificial propagation for purposes such as fishery enhancement so long as these activities are not likely to cause relisting or new listings.)

(5) Artificial propagation of unlisted species must not impede the recovery of listed species or compromise the viability or distinctiveness (and hence be a factor in the listing) of unlisted Pacific salmon. Genetic interactions between different populations, and the deleterious ecological effects of artificial propagation, should be minimized by avoiding stock transfers, restricting broodstock to local populations, modifying culture practices so that they do not induce genetic changes that can disrupt the genetic integrity of other populations, and managing mixed-stock harvests to minimize the catch of natural fish.

Artificial propagation of unlisted species may result in an incidental "take" of a listed species (ESA, sec. 3(18)). Incidental take of a listed salmon species (take that results from, but is not the purpose of, an otherwise lawful activity) can legally occur only after fulfilling the requirements of section 7(a)(2) (for Federal actions) or 10(a)(1)(B) (for non-Federal actions) of the ESA. Direct and indirect risks to listed species discussed above (see Background) are examples of incidental take of listed Pacific salmon. (Directed or intentional take of a listed species may be permitted under section 10(a)(1)(A) of the ESA only if it would further a *bona fide* and necessary or desirable scientific purpose or enhance the propagation or survival of the listed species. Therefore, directed take of a listed salmon species for enhancement of an unlisted population is not permissible.)

In general, the recommendations provided in 3(b)–(d) above for the use of artificial propagation in the recovery of listed species provide a working foundation or the operation of existing and future artificial propagation facilities in the face of increasing conservation activities. To ensure its compatibility with the ESA, artificial propagation must not compromise the existing genetic and ecological integrity of natural Pacific salmon populations.

Public Comments Solicited

NMFS is soliciting information, comments or recommendations on any aspect of this interim policy from all concerned parties. NMFS will consider all information, comments and recommendations received before publishing a final policy.

Technical Paper

Prior to developing this interim policy, the NMFS Northwest Fisheries Science Center and Northwest Region prepared a paper entitled "Pacific Salmon and Artificial Propagation Under the Endangered Species Act." This technical paper is available upon request (see **FOR FURTHER INFORMATION CONTACT**) and contains more detailed guidance on the application of this policy to Pacific salmon.

Dated: March 30, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–7807 Filed 4–2–93; 8:45 am]

BILLING CODE 3510–22–M

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 1994 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Preview Report for Fiscal Year 1994 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 93–7991 Filed 4–2–93; 8:45 am]

BILLING CODE 3107–02–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 93–1–DRD]

1992 Audio Home Recording Act Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of declaration of controversy.

SUMMARY: This notice is issued to advise the public that the Copyright Royalty Tribunal has determined that controversies exist in the above-referenced proceeding.

DATES: The declaration of controversy is effective March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: This notice is issued, pursuant to Section 1007(b) of the Audio Home Recording Act of 1992 and Section 301.72 of the Tribunal's regulations, to advise the public that the Copyright Royalty Tribunal has determined that controversies exist in the Musical Works Fund and the Sound Recordings Fund. See 17 U.S.C. 1007(b); 37 CFR 301.72.

The Tribunal has been informally advised that certain of the claimants in the Musical Works Fund have reached a settlement agreement in principal. However, the agreement is not a universal settlement.

Accordingly, the Tribunal finds that controversies exist in the Musical Works Fund and the Sound Recordings Fund, effective March 31, 1993. Based upon its determination, the Tribunal announces the commencement of the 1993 Audio Home Recording Act Distribution Proceeding. The general structure and schedule of the proceeding will be announced at a later date.

Dated: March 31, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–7847 Filed 4–2–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DOD.

ACTION: Notice of meeting.

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Wednesday, April 28, 1993 from 9 a.m. to 1:30 p.m. at the Mitre-Hayes Building, 7525 Colshire Drive, McLean, VA 27006. The agenda is as follows:

—Administrative Remarks/NSTAC Planning Review
—Operations Working Group—NS/EP Panel
—IES–OMNCS–COP Ad Hoc Issues Group
—Enhanced Call Completion Ad Hoc Group
—Wireless Services Task Force
—DOE Telecommunications Electric Service Priority Initiative
—Energy Task Force
—Network Security Steering Committee
—Emergency Preparedness/National Coordinating Center Plans
—New Business

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692–9274 or write the Manager, National Communications System, 701 S. Court House Road, Arlington, VA 22204–2198.

Dated: March 29, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7799 Filed 4–2–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Industrial Base Assessment Baseline and Update Questionnaires; DD Forms 2649 and 2650

Type of Request: New collection

Number of Respondents: 8,000

Responses per Respondent: 1.5

Annual Responses: 12,000

Average Burden per Response: 4.3 hours

Annual Burden Hours: 52,000

Needs and Uses: The Industrial Base Assessment Baseline and Update Questionnaires are directed at DoD industrial base businesses to examine essential, unique, and endangered industrial base capabilities, and to determine time sensitivities that prevent achievement of planned weapon system programs. The information collected will be used to perform industrial base oversight for the Office of the Secretary of Defense.

Affected Public: Businesses of other for-profit, Small businesses or organizations, and Federal agencies or employees

Frequency: One-time (Baseline Questionnaire) and On occasion (Update Questionnaire)

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Peter N. Weiss

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William P. Pearce

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: March 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7800 Filed 4–2–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Joint Recruiting Advertising Program.

Type of Request: New collection.

Average Burden Hours/Minutes per Response: 1 min.

Responses Per Respondent: 1.

Number of Respondents: 18,650.

Annual Burden Hours: 311.

Annual Responses: 18,650.

Needs and Uses: Section 503, title 10 U.S. Code, directs the Secretary of Defense to conduct intensive recruiting campaigns for the Armed Forces encouraging military service. The Joint Recruiting Advertising Program (JRAP) supports Armed Forces recruitment efforts with cost-effective advertising support. The JRAP ROTC Scholarship Folder generates qualified ROTC scholarship applications.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: March 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7802 Filed 4–2–93; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and Applicable Form Number: Healthcare Provider Questionnaire; NAVCRUIT 6000/1.

Type of Request: New collection.

Average Burden Hours/Minutes per Response: 1.5 hours.

Responses per Respondent: 1.

Number of Respondents: 600.

Annual Burden Hours: 900.

Annual Responses: 600.

Needs and Uses: The information collected is used by a selection board and a professional review board to determine an applicant's qualifications for a commission in the United States Navy or United States Naval Reserve as a medical doctor, dentist, or healthcare professional requiring credentialing.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain of retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: March 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7303 Filed 4–2–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Preparation of Environmental Impact Statement at Fort Lewis, WA

AGENCY: Department of Defense, United States Army.

ACTION: Notice of intent.

SUMMARY: This NOI is for the preparation of an Environmental Impact Statement (EIS) for the possible stationing at Fort Lewis, WA, in CY94 of Mechanized or Armor combat forces which could range in size from a brigade to a roundout division plus associated support elements. The Army is going through a variety of force structure analyses as part of its continuing effort to downsize while fully supporting the National Military Strategy. Part of this effort includes the possible stationing of combat forces at Fort Lewis in lieu of the 7th Infantry Division. These forces could range anywhere from a brigade plus its supporting elements to a roundout (two brigade) division with its associated support. Another consideration is the potential for home porting of strategic sealift vessels. There is a possibility that the Army may expect to reposition some Roll-on/Roll-off ships to the vicinity to facilitate a rapid deployment capability. These combat forces would most likely come from locations outside the Continental United States (OCONUS). The proposed federal action to be discussed in the EIS is the impact of these combat forces upon Fort Lewis, its associated training areas, and surrounding community. Alternatives to be considered include:

a. No action (status quo).

b. Stationing of one combat brigade plus its support elements with or without strategic sealift vessels.

c. Stationing of two combat brigades plus a division headquarters and associated support elements with or without strategic sealift vessels.

Scoping Process

Comments received as a result of this notice will be used to assist the Army in identifying potential impacts on the quality of the human and natural environment. Individuals and organizations are invited to participate in the scoping meeting to be held at Fort Lewis, Washington in the Spring of 1993 (tentative). Notification of the time and location of the scoping meeting will be announced in local newspapers and other media. In addition, individuals or organizations may participate in the scoping process by sending written questions and comments to the address below.

Although Headquarters, Department of the Army (ATTN: DAMO–FDO) is the proponent for this action, Headquarters I Corps and Fort Lewis is the agency responsible for the scoping process.

ADDRESSES: Questions regarding this proposal or written comments should be forwarded to Randall W. Hanna, Chief, Environmental and Natural Resources Division, Headquarters I Corps and Fort Lewis, Attn: AFZH–DEQ, Fort Lewis, WA 98433–5000. Comments and suggestions should be received at Fort Lewis no later than 15 days following the public scoping meeting.

Dated: March 30, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 93–7797 Filed 4–2–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee will meet on April 19-20, 1993. The meeting will be held at the Commander, Mine Warfare Command and the Charleston Naval Shipyard in Charleston, South Carolina. The meeting will commence at 12 p.m. and terminate at 5:30 p.m. on April 19 and commence at 8 a.m. and terminate at 3 p m. on April 20, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the Committee on littoral and amphibious warfare and defense conversion technology initiatives. The agenda will include briefings, discussions, and demonstrations related to very shallow water mine warfare and countermeasures, Fleet and mine warfare training, command and control, laser technology, advanced industrial management concepts and nontypical shipyard marketing strategies and manufacturing practices.

These briefings, discussions, and demonstrations will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact:Commander R. C. Lewis, USN, Office of the Chief of Naval Research,800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: March 30, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–7774 Filed 4–2–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 93–06–Certification Notice—116]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: The Carson Energy Group has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing is available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternative fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Sacramento Municipal Utility District (SMUD) and the Sacramento Regional County Sanitation District (Joint Power Authority)
Operator: Joint Power Authority
Location: Sacramento County
Plant Configuration: Combined cycle cogeneration
Capacity: 97.7 megawatts
Fuel: Natural gas
Purchasing Utilities: SMUD
Expected in-Service Date: 2nd Quarter 1995

Issued in Washington, DC, on March 26, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7850 Filed 4–2–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–33–NG]

KCS Energy Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting KCS Energy Marketing, Inc. (KCS) blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery after April 10, 1993, the date KCS's current authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 30, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7875 Filed 4–2–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Natural Gas Program Package

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Revision and Extension of the Natural Gas Program Package Forms and Solicitation of Comments

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law No. 6–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision and/or extension to the Forms EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition;" EIA–191, "Underground Gas Storage Report;" EIA–191S, "Weekly Underground Gas Storage Report;" EIA–627, "Annual Quantity and Value of Natural Gas Report;" EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers;" and EIA–857S, "Weekly Report of Natural Gas Supplies and Deliveries to Consumers." Also, a question has been added to the standard list of questions for potential data users to solicit comments on preferences as to whether EIA should publish additional data measured in metric units.

DATES: Written comments must be submitted by May 5, 1993. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Margo Natof, Reserves and Natural Gas Division, Office of Oil and Gas, Energy Information Administration, EI–441, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, 202/586–6303.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Margo Natof at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Form EIA–176 provides the EIA with the major elements of information used in conjunction with data collected in other EIA surveys to develop supply and disposition gas balances and relevant gas cost, price, and related information at the State level.

Form EIA–191 collects monthly data on the location, ownership, capacity, and operations of all active underground natural gas storage fields. Storage data are a critical link in understanding the deliverability of the natural gas system and overall system operations.

The information collected on Form EIA–627 is used by the DOE to provide data on the quantity and value of natural gas production and the number of producing gas wells, by State.

Form EIA–857 is designed to fill a gap in the natural gas data collected by EIA as part of its core program. Specifically, the data collected monthly on Form EIA–857 on a State level consist of purchased gas average price,

consumption of natural gas by sector, and average price by sector. These data provide timely information needed to measure the combined impact of government, industry, and consumer actions, geographic location; interfuel competition; climatic conditions; and a host of other factors upon the natural gas industry and natural gas consumers.

The standby forms EIA–191S and EIA–857S are designed to fill gaps in the natural gas data collections where monthly data do not provide sufficient information for responses to natural disasters, severe weather, or other catastrophic events. The data would permit EIA to monitor the impact of regional disruptions on a weekly basis when the EIA Administrator determines that conditions or events warrant more frequent data. The standby forms are intended only for use as determined necessary in extreme situations. The EIA would notify OMB of the intent to use the forms, the region(s) affected, and the estimated burden.

Data from forms EIA–176, 191, and 857 are published in EIA's primary data publications, the *Natural Gas Monthly*, and *Natural Gas Annual*. If implemented the EIA–191S and EIA–857S data will be used to support policy positions and public information releases.

II. Current Actions

EIA is seeking a three-year extension of the existing Natural Gas Program Package with changes to several forms.

- Changes to form EIA–176 include the addition of two line items to the main body of the form to collect information on deliveries of natural gas to nonutility power producers and transportation of gas to nonutility power producers for the account of others.
- No changes are proposed for reporting requirements for the Form EIA–191, but EIA is requesting that the provision for confidentiality of the data filings be removed.
- On the EIA–627, EIA has expanded the section "Value of Marketed Production" to request monthly values to be reported annually.
- Changes to the EIA–857 are the addition of line items for reporting deliveries of natural gas to nonutility power producers and transportation of natural gas for the account of others to nonutility power producers.
- No changes are proposed for Forms EIA–191S or EIA–857S.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and/or revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden per response for each collection is estimated to average as follows: EIA–176, 19.8 hours per response; EIA–191, 3.6 hours per response; EIA–627, 4.7 hours per response; and EIA–857, 4 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in customary U.S. units, e.g., cubic feet of natural gas. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters. If yes, please specify what information (e.g., natural gas production, consumption, and imports), and in which EIA publication(s) you would like to see such information. EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in these forms.

Comments submitted in response to this notice will be summarized and/or included in the requset for OMB approval of the forms; they also will become a matter of public record.

Statutory Authorities: Sections 3506(a) and (c)(1), Paperwork Reduction Act of 1980, as amended, Pub. L. No. 96–511, 44 U.S.C. 3506(a) and (c)(1).

Issued in Washington, DC March 26, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–7874 Filed 4–2–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–471–000, et al.]

Cleveland Electric Illuminating Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Cleveland Electric Illuminating Company

[Docket No. ER93–471–000]

March 26, 1993.

Take notice that on March 22, 1993, the Cleveland Electric Illuminating Company (CEI) tendered for filing the following revisions to the Agreement For Installation And Operation of a 138 KV Synchronous Interconnection between CEI and the City of Cleveland, Ohio (City) dated April 17, 1975, as amended (CEI Rate Schedule FERC No. 12) (the Agreement):

1. Revised Section 4.3—Power Flow Control;

2. Revised Service Schedule A—Emergency Control;

3. Revised Service Schedule B—Firm Power Service;

4. New Service Schedule E—Non-Displacement Power;

5. New Service Schedule F—Economy Power;

6. New Service Schedule G—Spinning Reserve Capacity and Supplemental Reserve Capacity Service; and

7. New Service Schedule H—AGC Facilities Service.

CEI states that the proposed changes to the Agreement are designed to establish a more rational operating relationship between CEI and the City and to facilitate more efficient utilization of CEI's facilities when they are not needed to serve the City. CEI proposes to make the changes to the Agreement effective on June 1, 1993, and has requested waiver of certain portions of § 35.13 of the Commission's regulations under the Federal Power Act in order to make the changes effective at this time.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Power Administration

[Docket No. EF93–4021–000]

March 26, 1993.

Take notice that the Assistant Secretary, Conservation and Renewable Energy, U.S. Department of Energy, on March 22, 1993, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended August 23, 1991, 56 FR 41835, an annual power rate of $2,076,444 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Sam Rayburn Dam Hydroelectric Project (Rayburn) to the Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC). The rate was confirmed and approved on an interim basis by the Assistant Secretary in Rate Order No. SWPA–28 for the period April 1, 1993, through September 30, 1997, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of $1,810,368, which the Commission approved on a final basis October 11, 1988, under Docket No. EF88–4021–000 for the period July 1, 1988, through September 30, 1991. The annual rate of $2,076,444 is based on the 1993 Revised Power Repayment Study for Rayburn and represents an annual increase in revenue of $266,076, or 14.7 percent, to satisfy repayment criteria.

The Assistant Secretary, Conservation and Renewable Energy has also submitted for confirmation and approval on a final basis an extension of the annual power rate of $1,810,368 effective from October 1, 1991, through March 31, 1993. The extension was confirmed and approved on an interim basis by the Assistant Secretary, Conservation and Renewable Energy in Rate Order SWPA–24 effective October 1, 1991, through September 30, 1992, and Rate Order SWPA–26 effective October 1, 1992, through March 31, 1993.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ES93–27–000]

March 26, 1993.

Take notice that on March 19, 1993, Kentucky Utilities Company (Kentucky) filed an application with the Federal Energy Regulatory Commission (Commission) under section 204 of the Federal Power Act for an order or other appropriate determination (i) that the Commission does not have jurisdiction to approve the securities issuances because such issuances are regulated by the Virginia State Corporation Commission or (ii) authorizing Kentucky to issue not more than $100 million of unsecured short-term notes and commercial paper to be issued from time to time, with a final maturity date no later than December 31, 1994.

Comment date: April 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Mesquite Lake Associates, Ltd.

[Docket No. EL93–26–000]

March 26, 1993.

On March 22, 1993, Mesquite Lake Associates, Ltd. (Mesquite), tendered for filing a request for a declaratory order. Mesquite, the owner and operator of a small power production facility, requests that the order state that Mesquite's failure to have filed with the Commission either an application for recertification or a notice of self-certification for its facility in connection with a change in the facility's power production capacity, does not in and of itself affect the status of the facility as a qualifying small power production facility.

Comment date: April 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER93–470–000]

March 26, 1993.

Take notice that on March 22, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing Amendment No. 1 to Service Schedule EP (Economic Energy Participation) of the Interchange Contract between Cajun Electric Power Cooperative, Inc. and Southern Companies. The Amendment contains a number of revisions to Schedule EP. Southern Companies state that the modifications will have no effect on the rate or will result in a rate decrease. Southern Companies also request waiver of the sixty day prior notice requirement and an immediate effective date.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company

[Docket No. ER93–474–000]

March 26, 1993.

Take notice that on March 22, 1993, Central Power and Light Company (CPL) submitted for filing a letter amendment to the Interconnection Agreement (Agreement) between CPL and the South Texas Electric Cooperative (STEC). The letter amendment modifies the Agreement to clarify that the Rural Electrification Administration must approve the Agreement, not execute it, for the Agreement to become effective.

Copies of the filing have been sent to STEC and the Public Utility Commission of Texas.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas Gas & Electric Company

[Docket No. ER93–473–000]

March 26, 1993.

Take notice that on March 22, 1993, Western Resources, Inc., on behalf of Kansas Gas and Electric Company (KG&E), tendered for filing a proposed change to its Federal Power Commission Electric Service Tariff No. 83. KG&E states that the proposed change is to add one additional year to the current Short Term Peaking Power Service Schedule and to increase the amount of peaking capacity from 15 MW to 20 MW, effective June 1, 1993.

Copies of the filing have been service upon The Empire District Electric Company and the Kansas Corporation Commission.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER93–472–000]

March 26, 1993.

Take notice that on March 22, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, the Letter Agreement (Subsequent Agreement) which has been executed by SDG&E and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA).

The Subsequent Agreement was executed pursuant to the Umbrella Agreement and provides for specific exchange of capacity and energy from May 1, 1993 through April 30, 1997.

SDG&E respectfully requests waiver of the notice provisions of Section 35.3 of the Commission's Regulations to permit the Subsequent Agreement to become effective May 1, 1993.

Copies of the filing were served upon the Public Utilities Commission of the State of California and BPA.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Southern Utilities Company

[Docket No. ER93–476–000]

March 26, 1993.

Take notice that Iowa Southern Utilities Company (ISU) on March 23, 1993, tendered for filing as an initial rate schedule a Transmission Agreement whereby ISU will provide transmission services to the City of Pella, an Iowa Municipal Utility (Pella) during a ten year term to enable Pella to receive energy from Muscatine Power and Water (MPW). ISU proposes an effective date of May 1, 1993, and requests waiver of the Commission's notice requirement.

A copy of the filing was served upon the Iowa State Utilities Board and Pella.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Power Administration

[Docket No. ER93–4081–000]

March 26, 1993.

Take notice that the Assistant Secretary, Conservation and Renewable Energy, U.S. Department of Energy, on March 22, 1993, submitted to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended August 23, 1991, 56 FR 41835, an annual power rate of $284,580 for the sale of power and energy by the Southwestern Power Administration (Southwestern) from the Robert Douglas Willis Hydropower Project (Robert D. Willis) to the San Rayburn Municipal Power Agency (SRMA). The rate was confirmed and approved on an interim basis by the Assistant Secretary in Rate Order No. SWPA–27 for the period April 1, 1993, through September 30, 1997, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of $408,648, which the Commission approved on a final basis January 22, 1992, under Docket No. EF92–4081–000. The annual rate of $284,580 is based on the 1993 Revised Power Repayment Study for Robert D. Willis and represents an annual decrease in revenue of $124,068, or 30.4 percent to satisfy repayment criteria.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Company

[Docket No. ER93–79–000 and ER93–80–000]

March 26, 1993.

Take notice that on March 23, 1993, Montaup Electric Company (Montaup) amended its filings in these dockets by submitting additional information requested by Staff concerning the assignment of direct costs. Montaup requests waiver of the 60-day notice requirement so that the effective date of January 1, 1993 requested in its original submittals in these dockets may be preserved.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER93–352–000]

March 26, 1993.

Take notice that on March 22, 1993, Public Service Company of New Mexico (PNM) submitted for filing a letter of clarification with respect to an Economy Energy Agreement between PNM and Louis Dreyfus Electric Power, Inc. (LDEP). Under the Agreement, PNM and LDEP will make economy energy available to one another at rates reflecting current market conditions but not below the seller's incremental cost to make the sale. The letter of clarification clarifies the pricing methodologies applicable to sales by LDEP to PNM.

Copies of the filing have been served upon LDEP and the New Mexico Public Service Commission.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER93–313–000]

March 29, 1993.

Take notice that on March 22, 1993, Niagara Mohawk Power Corporation (Niagara) tendered for filing an amendment to its January 11, 1993 filing in the above-referenced docket.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company

[Docket No. ER93–412–000]

March 29, 1993.

Take notice that on March 18, 1993, Northern States Power Company (Northern States) tendered for filing a Supplemental Filing to its filing filed on March 1, 1993 in this docket.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Montana Power Company

[Docket No. ER93–422–000]

March 29, 1993.

Take notice that on March 3, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a new Form of Service Agreement signed by Bonneville Power Administration under FERC Electric Tariff, 2nd Revised Volume No. 1 (M–1 Tariff). Montana requests that the Commission (a) accept the Form of Service Agreement for filing, to become effective March 4, 1993; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the Agreement less 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served uopn Bonneville Power Administration.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Power & Light Company

[Docket No. ER93–174–000]

March 29, 1993.

Take notice that on March 18, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its filing filed on November 17, 1992 filing in this docket.

Comment date: April 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Electric Company

[Docket No. ER92–354–001]

March 29, 1993.

Take notice that on March 9, 1993, Commonwealth Electric Company (Commonwealth) tendered for filing its compliance filing pursuant to the Commission's letter issued on November 10, 1992.

Comment date: April 9, 1993, in accordance with Standard Paragraph E end of this notice.

18. Camden Cogen L.P.

[Docket No. QF90–87–003]

March 29, 1993.

On March 19, 1993, Camden Cogen L.P., of Houston, Texas 77002, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. According to

the applicant, the request for recertification is due to an increase in capacity from 136.8 MW to 183.5 MW the addition of a second gas turbine generator and heat recovery boiler, and the addition of a new limited partner. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility which will be located in Camden, New Jersey was initially certified by Commission as a qualifying cogeneration facility on June 5, 1990, *Camden Cogen L.P.*, 51 FERC ¶ 62,210 (1990), and recertified on January 21, 1992 58 FERC ¶ 62,049 (1992). A notice of self-recertification was also filed on October 25, 1991 (Docket No. QF90–87–001).

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Power & Light Company

[Docket No. ER93–116–000]

March 29, 1993.

Take notice that on March 22, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its November 6, 1992 filing in the above-referenced docket.

Comment date: April 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7823 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1388–001]

Availability of Environmental Assessment; Southern California Edison

March 30, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for new license for the Lee Vining Project, located on Lee Vining Creek, in Mono County, California, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7783 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–267–000, et al.]

Arkla Energy Resources Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources Company

[Docket No. CP93–267–000]

March 29, 1993.

Take notice that on March 23, 1993, Arkla Energy Resources Company (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93–267–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate existing facilities in Arkansas for the delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic end-users, under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to operate the facilities, which were installed as taps for right-of-way grantors, as delivery taps for resale to end-users which are not right-of-way grantors. It is stated that sales would be on a firm basis. AER states that the taps would be used for the delivery of 1 Mcf on a peak day and 85 Mcf on an annual basis to each of two end-users, one located in Pike County, Arkansas, and one located in Polk County, Arkansas.

It is stated that AER was authorized in Docket No. CP92–504–000 to sell gas to ALG and that the volumes delivered using the facilities proposed for operation herein are within ALG's certificated entitlement. It is asserted that AER's tariff does not prohibit the addition of new delivery points. It is further asserted that AER has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers. It is explained that no new facilities are proposed to be constructed herein.

Comment date: May 13, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP93–272–000]

March 29, 1993.

Take notice that on March 25, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93–272–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate the facilities necessary to establish seven new points of delivery to existing wholesale customers, under the authorization issued in Docket No. CP83–76–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate the facilities necessary to establish seven additional points of delivery for sales service, as follows:

Wholesale customer	Residential	Industrial	Estimated peak day volumes (Dth)	Estimated annual volumes (Dth)
Columbia Gas of Kentucky, Inc		1	4,000	392,000
Columbia Gas of Ohio, Inc	6		9	900

It is stated that the additional points of delivery have been requested by Columbia's wholesale customers for residential, commercial and industrial service. According to Columbia, the quantities of gas to be provided through the new delivery points are within Columbia's currently authorized level of service and will be within existing peak day and annual entitlement nominations of such customers. The sales to be made through the proposed points will be under Columbia's currently effective service agreement with such customers under Rate Schedule CDS.

Columbia states that it will comply with the environmental requirements of § 157.206(d) of the Commission's regulations prior to the construction of any proposed facilities.

Comment date: May 13, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Eastern Shore Natural Gas Company

[Docket No. CP93–270–000]

March 29, 1993.

Take notice that on March 25, 1993, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 1769, Dover, Delaware 19903–1769, filed in Docket No. CP93–270–000 requests pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct a new delivery point to Formosa Plastics Corporation (Formosa), abandon an existing delivery point to Formosa, and to abandon interruptible service to Akzo Chemical Inc. (Akzo), under the blanket certificate issued to Eastern Shore in Docket No. CP83–40–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore states that it requests authorization to construct a new delivery point and to abandon the existing delivery point for Formosa. It is stated that Formosa is an industrial direct sales customer in New Castle County, Delaware. In addition, Eastern Shore states that it requests authorization to abandon interruptible service to Akzo. It is stated that Akzo, which has closed its facility and no longer requires service from Eastern Shore, was an industrial direct sales customer located adjacent to Formosa's facility in New Castle County, Delaware. It is further stated that the existing delivery point for both Formosa and Akzo is located on Akzo property.

Eastern Shore states that due to Akzo's closing, it must relocate Formosa's existing delivery point off of Akzo property. Eastern Shore states that the proposed relocation of the Formosa delivery point would require the installation of a meter and appurtenant equipment and approximately 784 feet of 4-inch service lateral. It is stated that Eastern Shore would incur partial costs of the proposed relocation; a portion of the costs will be paid for by Formosa.

It is stated that the existing Formosa delivery point, which Eastern Shore requests to abandon herein, is located on School House Road in Castle County, Delaware. Eastern Shore states that Formosa is the only customer served through the Formosa delivery point and that Formosa has consented to its abandonment in writing.

It is further stated that Akzo has permanently closed its Delaware facility which received interruptible service through the Formosa delivery point. Eastern Shore states that Akzo has consented in writing to the abandonment of the interruptible service.

Comment date: May 13, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP93–265–000]

March 29, 1993.

Take notice that on March 23, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–265–000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct an interconnection between ANR and ANR Production Company (ProdCo) in Custer County, Oklahoma, and provide interruptible transportation service for Texaco Exploration & Production, Inc. (Texaco), under the blanket certificates issued in Docket Nos. CP82–480–000 and CP88–532–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR proposes to construct an interconnection between ANR and ProdCo at the Custer Processing Plant, which ProdCo operates. ANR states that the capacity of the proposed interconnection would be approximately 40MMcf of natural gas per day. ANR indicates that ProdCo would reimburse ANR for the $155,000 of estimated construction cost of the proposed facilities. ANR also states that it would transport Texaco's gas to the proposed interconnection under ANR's FERC Rate Schedule ITS. ANR states that construction of the proposed facilities would have no impact on ANR's peak day nor would it have any impact on annual entitlements of any of ANR's existing customers. ANR also states that the construction of this interconnection would not result in any detriment or disadvantage to ANR's other customers.

Comment date: May 13, 1993, in accordance with Standard Paragraph G at the end of this notice.

United Gas Pipe Line Company

[Docket No. CP93–264–000]

March 29, 1993.

Take notice that on March 22, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–264–000 a request pursuant to § 157.205 of the Commission's Regulations to construct a sales tap to deliver natural gas to Monsanto Company (Monsanto) in St. Charles Parish, Louisiana under United's blanket certificate issued in Docket No. CP82–430–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to install an eight-inch tap and approximately 100 feet of eight-inch pipe on United's 16-inch Lirette-Mobile line in St. Charles Parish, Louisiana to deliver natural gas to Monsanto, on an interruptible basis, under an existing transportation agreement dated February 24, 1992, under United's ITS Rate Schedule. United states that these facilities would provide Monsanto with the security and flexibility of being tied to two sources of supply and would not have an impact

on United's curtailment plan since no change in service level or character of service is proposed. United states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit modification of facilities. United states that the estimated cost of the facilities is $28,081.

Comment date: May 13, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7824 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–06430T, Louisiana–19]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 30, 1993.

Take notice that on March 26, 1993, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Haynesville Zone, Reservoir A underlying a portion of the McKenzie Field, Claiborne Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers portions of the following sections:

Township 22 North, Range 7 West

Section 21: S/2SE/4
Section 22: S/2S/2
Section 23: S/2S/2
Section 25: NW/4
Section 26: N/2
Section 27: N/2
Section 28: N/2NE/4

The notice of determination also contains Louisiana's findings that the referenced part of the Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7791 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–97–000]

Arkla Energy Resources Company; Filing

March 30, 1993.

Take notice that on March 26, 1993, Arkla Energy Resources Company ("AER") filed a petition for a waiver of certain balancing provisions of its tariff. AER also requested that the Commission waive § 154.22 of the Commission's regulations to permit the tariff waiver to become effective April 1, 1993.

AER requests a waiver of certain provisions of Section 5.3 of AER's Transportation General Terms and Conditions. AER states that under section 5.3(c)(v) of the tariff, shippers would be required to cash out their imbalances at the "Excess Imbalance Rate." Further, shippers who have "Excess Imbalances" for the 1992–93 winter period would be required, pursuant to Section 5.3(c) (ii) and (iii), to cash out excess imbalances at the "Unauthorized Banking Rate."

AER seeks a waiver of these provisions of Section 5.3 of its tariff so as to permit shippers on AER's system additional time to correct their imbalances on AER and to avoid charges the shippers otherwise would have incurred. AER explains that the waiver of the tariff provisions would allow for a fair and orderly transition to Order No. 636 on AER's system.

Further, AER requests that the Commission waive section 154.22 of the Commission's regulations so as to permit AER to waive the specified tariff provisions as of April 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7790 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–22–000]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

March 30, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on March 25, 1993, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's regulations, and sections 12 and 16 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six copies of the following tariff sheets for its FERC Gas Tariff, First Revised Volume No. 1:

Twenty-Ninth Revised Sheet No. 31
Twenty-First Revised Sheet No. 32
Twenty-Fifth Revised Sheet No. 34
Twentieth Revised Sheet No. 35

The tariff sheets are proposed to become effective April 1, 1993. CNG states that the purpose of this filing is to revise its PGA rate to reflect increases in natural gas spot prices. The instant filing reflects an ACD/CD/RQ commodity rate increase of $0.1829/dt (as compared to CNG's rates as filed in Docket No. TF93–2–22–000).

CNG states that copies of the filing are being mailed to CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 285.214 and 385.211. All motions or protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7786 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–211–033]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

March 30, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on March 25, 1993, filed the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2A:

Original Sheet Nos. 689 through 696

CNG states that the purpose of this filing is to implement the Commission's orders issued on May 7, 1991 in Docket No. RP88–211–000, and September 22, 1992 in Docket No. CP92–491–000 to provide restructured storage service under the GSS Rate Schedule for specified customers.

CNG states that copies of its filing were served to the affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7787 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–495–000]

Great Bay Power Corporation; Filing

March 30, 1993.

Take notice that on March 26, 1993, Great Bay Power Corporation (Great Bay) submitted for filing a proposed purchased power agreement (Agreement) with UNITIL Power Corp. (UNITIL Power). Great Bay states that the proposed Agreement provides for sales of .8696% of the capacity and associated energy of the Seabrook Nuclear power Plant Unit 1 (Seabrook), representing approximately 10 megawatts. The purchase price for such power is 5.0 cents per kilowatt-hour of energy actually delivered, as adjusted from time to time pursuant to the Purchased Power Agreement. Service under the Purchased Power Agreement is scheduled to commence on May 1, 1993, subject to Commission approval, and end on October 31, 2010. The Purchased Power Agreement provides UNITIL with the option to extend the term for an additional 12 years. Great Bay requests waiver of 18 CFR 35.3 to permit the Purchased Power Agreement to become effective May 1, 1993. Great Bay also requests expedited consideration so that an order may issue prior to May 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7822 Filed 4–2–93; 8:45 a.m]

BILLING CODE 6717–01–M

[Docket No. RP91–143–021]

Proposed Changes in FERC Gas Tariff; Great Lakes Gas Transmission Limited Partnership

March 30, 1993.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on March 25, 1993, tendered to the Federal Energy Regulatory Commission ("Commission") for filing as part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheets, to be effective as of October 1, 1992 and January 1, 1993:

Substitute Sixth Revised Sheet No. 2*
Substitute Seventh Revised Sheet No. 2**
Substitute Seventh Revised Sheet No. 3*
Substitute Eighth Revised Sheet No. 3**

* To be effective as of October 1, 1992.

** To be effective as of January 1, 1993.

Great Lakes states that the purpose of its filing is to amend certain of its previously approved tariff sheets to implement the partial settlement approved by the Commission in the above-captioned proceeding on February 3, 1993, so as to reflect Great Lakes' currently effective ACA and GRI Surcharge funding units.

Great Lakes requests waiver of the Commission's Regulations to the extent necessary to permit the amended tariff sheets to go into effect on the proposed effective dates.

Great Lakes states that it is tendering the proposed tariff sheets without prejudice to: (1) Its position, on appeal, that its system rates should be designed on a rolled-in basis: (2) its position as to the implementation of incremental ratemaking on the Great Lakes' system in the litigation phase of Docket No. RP91–143–000; and (3) Great Lakes' position in its restructuring proceedings in Docket No. RS92–63–000.

Great Lakes further states that copies of this filing were posted and served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7784 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–226–000]

Kern River Gas Transmission Co.; Informal Settlement Conference

March 30, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on April 7, 1993, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the

purpose of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Kathleen Dias at (202) 208–0524 or John Roddy at (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7792 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–33–008]

Change in Tariff; Natural Gas Pipeline Company of America

March 30, 1993.

Take notice that on March 25, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, First Revised Sheet Nos. 119 through 121 and Original Sheet No. 121A, to be effective April 24, 1993.

Natural states that the purpose of the filing is to update the list of shared operating personnel between Natural and its marketing affiliate in accordance with Section 250.16(d)(2) of the Commission's Regulations.

Natural states that copies of the filing were mailed to Natural's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7785 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES93–18–000 and ES93–18–001]

Odgen Haverhill Associates; Issuance of Commission Letter Order and Comment Period

March 30, 1993.

Take notice that on March 29, 1993, the Chief Accountant, pursuant to delegated authority, issued a letter order to Odgen Haverhill Associates (Odgen Haverhill) conditionally granting blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Odgen Haverhill.

The March 29, 1993 letter order, in ordering paragraphs (A), (B) and (C), reads as follows:

(A) Within 30 days of the date of this letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by Odgen Haverhill should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214).

(B) Absent a request for hearing within the period set forth above, Odgen Haverhill is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(C) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Odgen Haverhill's issuances of securities or assumption of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is April 28, 1993.

Copies of the full text of the letter order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7793 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–013]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

March 30, 1993.

Take notice that Trunkline Gas Company (Trunkline) on March 26, 1993 tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 as listed in appendix A attached to the filing and the revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1 as listed on appendix B attached to the filing.

Trunkline proposes that the tariff sheet listed on appendix A become effective November 1, 1992 and the tariff sheet listed on appendix B become effective February 1, 1993.

Trunkline states that tariff sheets listed on appendix A attached to the filing to reflect correct pagination are submitted in full compliance with the Commission's Letter Order dated February 26, 1993 in the above referenced proceeding. Additionally, Fourth Revised Sheet No. 9–CP.01, also listed on appendix A, is being resubmitted to reference only those surcharges applicable to Rate schedules PT—Firm as of November 1, 1992.

Trunkline states the revised tariff sheet listed on appendix B reflects a correction in the calculation of the excess/overrun charge under Rate Schedule PT for firm transportation during the off-peak period of April through October.

Trunkline states that copies of this filing are being mailed to Trunkline's jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7789 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–39–010]

Wyoming Interstate Gas Company, Ltd.; Compliance Filing

March 30, 1993.

Take notice that on March 5, 1993 Wyoming Interstate Gas Company, Ltd. ("WIC") filed tariff sheets in compliance with the Federal Energy Regulatory Commission's ("Commission") Order dated February 3, 1993, in Docket Nos. RP85–39–009 and RS92–90–000. Such tariff sheets are proposed to become effective on March 1, 1993.

WIC states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at WIC's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7788 Filed 4–2–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 93–360; AAD 92–46]

Revision of ARMIS USOA Report (FCC Report 43–02)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This order completes the automation of the Annual Report Form M (Form M) and requires carriers to incorporate eighteen of the remaining Form M schedules into the Commission's Automated Reporting Management Information System (ARMIS). Thirteen of the Form M schedules are eliminated. This action increases the Commission's ability to accumulate, check, analyze and publish data in a more timely and efficient manner.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Ackerman, Federal Communications Commission, Accounting and Audits Division, Common Carrier Bureau, Washington, DC 20554, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Chief of Common Carrier Bureau's Memorandum Opinion and Order, DA 93–360, adopted March 26, 1993 and released March 29, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the public reference room of the Commission's Accounting and Audits Division, 2000 L Street NW., room 812, Washington, DC 20554. The full text of this decision may also be purchased from the Commission's contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

The following collection of information contained in the Order has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt (202) 395–4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information and Records Branch, Room 416, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Public reporting burdens for the collections of information are estimated as follows: FCC Report 43–02 (OMB Control No. 3060–0395) estimated average of 240 hours per estimated annual 50 responses; Form M (OMB Control No. 3060–0099) estimated average of 1400 hours per responses per estimated annual 52 responses. The recordkeeping requirement for FCC Report 43–02 (OMB Control No. 3060–0395) is estimated to average 2 hours per recordkeeper with an estimated number of 50 recordkeepers. Total annual burden for all respondents is 92,900 hours. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

The proposals in this proceeding will not cause a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[1]

Summary of Memorandum Opinion and Order

1. The Chief, Common Carrier Bureau, has revised the ARMIS USOA Report (FCC Report 43–02) to complete the automation of the Annual Report Form M schedules into ARMIS. In the process of automating the Form M schedules, a study was made of the Commission's information needs and thirteen Form M schedules were eliminated, one new schedule containing investment and depreciation information was added, six schedules were revised and twelve schedules were incorporated without change into the ARMIS USOA Report. The automation of the Form M will allow the Commission to accumulate, check, analyze, and publish the data in a more timely and efficient manner. After the analysis of the pleadings received in this proceeding, the Chief, Common Carrier Bureau modified the proposals in the Order Inviting Comments and extended the due date for 1992 submittal of the ARMIS USOA Report and the Form M to June 30, 1993. The Chief, Common Carrier Bureau, also adopted a number of technical and clerical charges to correct and clarify certain aspects of the ARMIS schedules.

Ordering Clause

2. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201–205, 215, 218, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 201–205, 215, 218, 219, and 220, that the ARMIS USOA Report (FCC Report 43–02) is revised, and Annual Report Form M is amended, effective June 30, 1993.

Federal Communications Commission.

Cheryl A. Tritt,

Chief, Common Carrier Bureau.

[FR Doc. 93–7818 Filed 4–2–93; 8:45 am]

BILLING CODE 6712–01–M

[1] 5 U.S.C. 601(3).

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–982–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–982–DR), dated March 13, 1993, and related determinations.

EFFECTIVE DATE: March 20, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 16, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–7867 Filed 4–2–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–982–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–982–DR), dated March 13, 1993, and related determinations.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC, 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 26, 1993, the President amended the major disaster declaration of March 13, 1993, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows.

I have determined that the damage in certain areas of the State of Florida resulting from severe storms, tornadoes, flooding, high tides, and high wind on March 12, 1993, and continuing is of sufficient severity and magnitude to warrant the expansion of the incident type to include damage resulting from cold temperatures and freezing conditions in the major disaster declaration of March 13, 1993, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act").

All other conditions specified in the original declaration remain the same.

Please notify the Governor of the State of Florida and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–7868 Filed 4–2–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed: Totem Ocean Trailer Express, Inc. et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., room 962. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. : 126–011406.

Title: Totem Ocean Trailer Express, Inc./K–Line Equipment Interchange Agreement.

Parties:

K-Line,
Totem Ocean Trailer Express.

Filing Party: Alan P. Sherbrooke, Esq., Garvey, Schubert & Baker, 18th Floor, 1191 Second Avenue, Seattle, WA 98101–2939.

Synopsis: The proposed agreement would permit the parties to interchange empty and loaded containers, and related equipment, in the trade between ports and inland points in Alaska with interchange in either Seattle or Tacoma, Washington.

Dated: March 30, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–7750 Filed 4–2–93; 8:45 am]

BILLING CODE 6730–01–M

Transpacific Westbound Rate; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010689–053.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hapag Lloyd AG
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment permits the parties to include service contracts in the India Sub-Continent Trade to ports in the Far East. The parties have requested a shortened review period.

Agreement No.: 224–200757.

Title: Port of Vancouver/ELMA S.A.

Parties:

Port of Vancouver ("Port")
Empresa Lines Maritimas Argentinas S.A. ("ELMA")

Synopsis: The Agreement provides for a sharing of the terminal revenues consisting of dockage, wharfage, and service facilities charges. In return

ELMA agrees to designate the Port as its Columbia River Port of Call.

Agreement No.: 224–200758

Title: Port of New York and New Jersey/Evergreen America Corp.

Parties: The Port of New York and New Jersey ("Port")

Evergreen America Corp. ("Evergreen")

Synopsis: The Agreement provides that the Port will pay to Evergreen a container incentive fee of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993 provided that each container is shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 224–200759

Title: Port of New York and New Jersey/Bermuda Container Lines.

Parties: The Port of New York and New Jersey ("Port")

Bermuda Container Lines. ("Bermuda")

Synopsis: The Agreement provides that the Port will pay to Bermuda a container incentive fee of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993 provided that each container is shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 224–200760

Title: Port of New York and New Jersey/Netumar Lines

Parties: The Port of New York and New Jersey ("Port")

Netumar Lines ("Netumar")

Synopsis: The Agreement provides that the Port will pay to Netumar a container incentive fee of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993 provided that each container is shipped by rail to or from points more than 260 miles from the port.

Dated: March 30, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–7751 Filed 4–2–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Alliance Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Alliance Financial Corporation, New Buffalo, Michigan; to engage *de novo* in various brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. Capital Directions, Inc., Mason, Michigan; to engage *de novo* through its subsidiary, Monex Financial Services, Inc., Mason, Michigan, in consumer financial counseling pursuant to § 225.25(b)(20); investment or financial advice pursuant to § 225.25(b)(4); and tax planning and preparation pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be conducted in Mason, Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First National Security Company, DeQueen, Arkansas; to engage *de novo* in making commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the States of Arkansas, Oklahoma and Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Security Corporation, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Leasing Company, Salt Lake City, Utah, in higher residual value leasing pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–7817 Filed 4–2–93; 8:45 am]

BILLING CODE 6210–01–F

First Mutual Bancorp, M.H.C., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the

evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 29, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Mutual Bancorp, M.H.C., Dectur, Illinois; to become a bank holding company by acquiring at least 51 percent of the voting shares of First Mutual Bank, S.B., Decatur, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Interstate BancSystem, Inc., Billings, Montana; to merge with Commerce Bancshares of Wyoming, Inc., Sheridan, Wyoming, and thereby indirectly acquire First Interstate Bank of Commerce, Sheridan, Wyoming.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. The First National Bank Holding Company, Longmont, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Longmont, Longmont, Colorado.

Board of Governors of the Federal Reserve System, March 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-7816 Filed 4-2-93; 8:45 am]

BILLING CODE 6210-01-F

Harold Lionel Yoh, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 26, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Harold Lionel Yoh, Jr., Bryn Mawr, Pennsylvania; John Philip Follman, Radnor, Pennsylvania; Robin Ledwith (also known as James R. Ledwith) in his capacity as trustee of separate trusts for the benefit of members of the Yoh and Follman families, to acquire 18.58 percent of the voting shares of Founders' Bank, Bryn Mawr, Pennsylvania.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. William Osborn Barrett, San Antonio, Texas; to acquire an additional 22.54 percent for a total of 23.17 percent; and Marcus Barrett, San Antonio, Texas, to acquire an additional 22.54 percent for a total of 22.92 percent of the voting shares of Stone Oak Bankshares, Inc., San Antonio, Texas, and thereby indirectly acquire Stone Oak National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, March 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-7815 Filed 4-2-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅜% for the quarter ended March 31, 1993. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: March 29, 1993.

George H. Strader,

Deputy Assistant Secretary, Finance

[FR Doc. 93-7854 Filed 4-2-93; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET)

Times and Dates: 8:30 a.m.-4 p.m., April 29, 1993. 8:30 a.m.-2:30 p.m., April 30, 1993.

Place: Lenox Inn-Buckhead, The Conference Center, 3387 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Criteria for a model tuberculosis program; surveillance case definition; isoniazid-associated hepatitis mortality; tuberculin skin testing and screening guidelines; updates on recent epidemic investigations; revision of the "Statement on Prevention and Control of Tuberculosis in Correctional Facilities"; and an update on the National Coalition to Eliminate Tuberculosis.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Dixie E. Snider, Jr., M.D., Associate Director for Science, and Executive Secretary, ACET, National Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E-07, Atlanta, Georgia 30333, telephone 404/639-2766.

Dated: March 29, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control and Prevention

[FR Doc. 93-7808 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 93N-0125]

Drug Export; Blood Grouping Reagents Anti-D, Anti-C, Anti-E, Anti-c, Anti-e: (Monoclonal); Control, Ortho Biovue™ System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological product Blood Grouping Reagents Anti-D, Anti-C, Anti-E, Anti-c, Anti-e: (Monoclonal); Control, Ortho BioVue™ System to Australia, Canada, Japan, and New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-295-9070.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Route 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the biological product, Blood Grouping Reagents Anti-D, Anti-C, Anti-E, Anti-c, Anti-e: (Monoclonal); Control, Ortho BioVue™ System, to Australia, Canada, Japan, and New Zealand. The Blood Grouping Reagents Anti-D, Anti-C, Anti-E, Anti-c, Anti-e: (Monoclonal); Control, Ortho BioVue™ System is a glass bead column agglutination in vitro diagnostic test for recognition of the D(RH1), C(RH2), E(RH3), c(RH4), and e(RH5) antigens on human red blood cells. The application was received and filed in the Center for Biologics Evaluation and Research on February 12, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 15, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 19, 1993.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93-7837 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0128]

Drug Export; Ortho™ Blood Grouping Reagents Anti-A, Anti-B, Anti-A, B, Anti-D, Anti-CDE: (Monoclonal); Control, Ortho BioVue™ System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological product Ortho™ Blood Grouping Reagents Anti-A, Anti-B, Anti-A, B, Anti-D, Anti-CDE: (Monoclonal); Control, Ortho BioVue™ System to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-9070

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Route 202, Raritan, NJ 08869 has filed an application requesting approval for the export of the biological product Ortho™ Blood Grouping Reagents Anti-A, Anti-B, Anti-A,B, Anti-D, Anti-CDE: (Monoclonal); Control, Ortho BioVue™ System to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. The Ortho™ Blood Grouping Reagents Anti-A, Anti-B, Anti-A,B, Anti-D, Anti-CDE: (Monoclonal); Control, Ortho BioVue™ System is a glass bead column agglutination in vitro diagnostic test for recognition of the A, B, D, C and E

antigens on human red blood cells. The application was received and filed in the Center for Biologics Evaluation and Research on February 12, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 15, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 19, 1993.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93-7838 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0127]

Drug Export; Hepatitis C Virus-Encoded Antigen (Recombinant c100-3, HC-23, HC-29, and HC-34) Abbott MATRIX® HCV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories, has filed an application requesting approval for the export of the biological product Hepatitis C Virus-Encoded Antigen (Recombinant c100-3, HC-23, HC-29, and HC-34) Abbott MATRIX® HCV to Austria, Belgium, Denmark, Federal Republic of Germany, Finland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration,1401 Rockville Pike, Rockville, MD 20852-1448, 301-295-9070.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Abbott Park, IL 60064, has filed an application requesting approval for the export of the biological product, Hepatitis C Virus-Encoded Antigen (Recombinant c100-3, HC-23, HC-29, and HC-34) Abbott MATRIX® HCV, to Austria, Belgium, Denmark, Federal Republic of Germany, Finland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom. The Hepatitis C Virus-Encoded Antigen (Recombinant c100-3, HC-23, HC-29, and HC-34) Abbott MATRIX® HCV is an in vitro immunodot assay, which has been developed to qualitatively detect antibodies to putative structural and nonstructural proteins expressed from the HCV genome in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on January 11, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 15, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 19, 1993.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research

[FR Doc. 93-7840 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0126]

Drug Export: Blood Grouping Reagents Anti-A, Anti-B, Anti-D: (Monoclonal); Control; Reverse Diluent, Ortho Biovue™ System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological product Blood Grouping Reagents Anti-A, Anti-B, Anti-D: (Monoclonal); Control; Reverse Diluent, Ortho BioVue™ System to Australia, Canada, Japan, and New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-295-9070.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub.

L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Route 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the biological product, Blood Grouping Reagents Anti-A, Anti-B, Anti-D: (Monoclonal); Control; Reverse Diluent, Ortho BioVue™ System, to Australia, Canada, Japan, and New Zealand. The Blood Grouping Reagents Anti-A, Anti-B, Anti-D: (Monoclonal); Control; Reverse Diluent, Ortho BioVue™ System is an in vitro diagnostic, qualitative test for the determination of the ABO blood group and D(RH1) antigen on human red blood cells. The application was received and filed in the Center for Biologics Evaluation and Research on February 12, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 15, 1993, and to provide an additional copy of the submission directly to the contact person identified above to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 19, 1993.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93–7842 Filed 4–2–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93M–0083]

Premarket Approval of Medtronic® PCD™ Tachyarrhythmia Control System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Medtronic® PCD™ Tachyarrhythmia Control System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 11, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 5, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1018.

SUPPLEMENTARY INFORMATION: On March 11, 1991, Medtronic, Inc., Minneapolis, MN 55432–3576, submitted to CDRH an application for premarket approval of the Medtronic® PCD™ Tachyarrhythmia Control System. The PCD™ System consists of the Models 7216A and 7217B PCD™ (Pacer-Cardioverter-Defibrillator) Device; the Models 6897 and 6921 Unipolar, Epicardial, Oval Patch Lead, or Cardiac Pacemakers, Inc. (CPI), commerically available patch leads; the Model 5355 External Tachyarrhythmia Control Device™ (ETCD™) and Model 9788 Memorymod™ Software Module. Accessories for the ETCD™ include the Models 5412 and 5418 and 5419 Patient Cables, the Model 5414 Test Load, and the Model 5417 Electrogram Cable. Lead accessories include the Model 6886 Lead Adapter, the Model 6920 Sizing Sleeve, and the Model 6701 Lead End Cap. The device is an implantable pacer cardioverter defibrillator and is indicated for use in patients who are at high risk of sudden death due to ventricular tachyarrhythmia.

Current medical research indicates that such patients should: (1) Have survived at least one episode of a cardiac arrest, presumably due to a ventricular tachyarrhythmia as evidenced by resuscitation using a transthoracic defibrillator. The ventricular tachyarrhythmia should not be caused by an acute myocardia infarction; or (2) in the absence of a prior cardiac arrest, have recurrent, sustained ventricular tachycardias that occur spontaneously or can be induced, despite the most efficacious antiarrhythmic drug therapy that can be tolerated chronically.

The PCD™ system's pulse generator may be used as a replacement for a previously implanted, commercially available Automatic Implantable Cardioverter Defibrillator and is intended for use only with the defibrillation lead systems with which it has been tested, which are Medtronic epicardial patch leads and CPI patch leads.

On February 3, 1992, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On February 11, 1993, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under

§ 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 5, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 23, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93-7836 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Pediatric Acquired Immune Deficiency Syndrome (AIDS); Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1993 funds are available for grants and cooperative agreements for Pediatric AIDS Health Care Demonstration Projects. Projects will be funded to demonstrate strategies and innovative models for medical intervention in pediatric AIDS and coordinated medical and social services for children, youth, women of childbearing age, and families affected by Human Immunodeficiency Virus (HIV) infection, AIDS or other related conditions, or those at risk for developing infection. Funds were appropriated for this purpose by Public Law 102-394.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS national activity for setting priority areas. The Pediatric AIDS Health Care Demonstration grant program directly addresses the Healthy People 2000 objectives related to the priority area of HIV infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock Number 017-001-0474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202 783-3238).

ADDRESSES: Grant applications for Pediatric AIDS Health Care Demonstration Projects (PHS form #5161-1, approved under OMB #0937-0189) must be obtained from and submitted to: Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1440.

DATES: The application deadline date is May 14, 1993. Competing applications will be considered to be on time if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing or those sent to an address other than specified in the **ADDRESS** section will be returned to the applicant.

Applicants will be notified of grant awards in July 1993. The starting dates for projects will be specified in the program guidance.

FOR FURTHER INFORMATION CONTACT: Additional information regarding technical and program issues may be obtained from: Beth Roy, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, room 18A-19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-9051. Requests for information concerning business management issues should be directed to: John Gallicchio, Grants Management Officer (GMO), Maternal and Child Health Bureau, at the address specified in the **ADDRESS** section.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Through September 1992, the Centers for Disease Control (CDC) had received reports of 242,146 cases of AIDS. Of these, 4,051 have been infants and children 0-12 years of age and 912 have been adolescents 13-19 years of age, and the number of new cases of AIDS among children is up 50 percent since 1990. Approximately one half of the known cases in this pediatric population have died. Minority children comprise the vast majority of pediatric AIDS cases; 47 percent of cases are black and 24 percent are Hispanic. In addition, more than half of the hemophilia population has been exposed to HIV because of their reliance on blood products which were not tested for HIV antibody prior to May 1985, with the result that children with hemophilia ages 13-19 comprise 30 percent of all AIDS cases in that age group.

The number of adolescents testing positive for HIV is increasing steadily as more children with HIV infection reach puberty and more adolescents become infected. With 37,206 reported cases of AIDS in individuals between ages 25 and 29, most were infected with HIV as adolescents. Only about two to five percent of adolescents who test positive for HIV are receiving care, and many do not enter the health system until they have AIDS symptoms. In addition, some youths who are HIV infected or at risk are runaways, homeless, or estranged from their families, which intensifies the need for outreach, prevention, and support services.

The escalation in the number of women of childbearing age who have HIV infection has, through perinatal transmission, increased pediatric AIDS to epidemic proportions. The CDC has reported that from an estimated 28 cases in 1980, the number of AIDS cases in women between ages 20 and 40 had increased to 18,715 cases by September 1992. Acquired Immunodeficiency Syndrome is now one of the five leading causes of death among women in this age group. Faced with their own illness, many women must also be caregivers to HIV/AIDS-infected infants and mates.

As more women become incapacitated or die, more children are orphaned, compounding the devastation of families.

The number of persons with HIV infection involved in clinical trials versus the number of people eligible for clinical trials is small. Women and children, especially minorities, are underrepresented in federally financed trials, although efforts are being made to involve them in such research. This limits access to experimental therapies as well as the basic health care services that many receive only through participation in clinical trials.

The Pediatric AIDS Demonstration Program, initiated in 1988, has grown from 13 projects to a total of 45 projects, including 30 demonstration projects, 2 comprehensive consortia, and 13 special projects addressing national issues. The program has evolved as knowledge about the effects of the HIV/AIDS epidemic and treatment has evolved and advanced. In 1988, the focus of the program was on the coordination of services for the prevention of and intervention in pediatric AIDS and the management and care of infected children. Since then, the program has been broadened to address the needs of children, youth, women, and families affected by the HIV infection, AIDS or related conditions, or those at risk for developing the HIV infection. Currently, the focus of the program is to improve and expand the system of comprehensive services for the affected population through enhanced collaboration and coordination of services.

This coordination includes those activities supported by Title V of the Social Security Act, the Pediatric AIDS Health Care Demonstration Projects currently funded by MCHB, the established network of hemophilia treatment centers, and other Department of Health and Human Services AIDS activities, particularly those funded under Title XXVI of the Public Health Service Act, known as the Ryan White C.A.R.E. Act. The comprehensive system of services for children, youth, women, and families affected by the HIV should be coordinated with the existing service and financing programs, including Medicaid, that generally serve children and families with special health care needs.

Purpose

The purpose of the funding is to improve and expand the system of comprehensive care services for children, youth, women, and families who are affected by HIV and AIDS or are at risk. With funds authorized and appropriated under Public Law 102–394, the program will support innovative strategies and modes of service delivery to respond to the multiple problems arising from the epidemic of HIV infection and AIDS affecting children, youth, women, and families. Activities under the demonstration grants should address the following goals:

—Foster the development of comprehensive care systems that provide culturally-competent, family-centered, community-based, coordinated care.
—Emphasize prevention within the comprehensive care system in order to reduce the spread of the HIV infection to vulnerable populations, especially minorities and adolescents.
—Increase the access of HIV-infected children, youth, women, and their families to comprehensive care services.
—Ensure the delivery of high quality care with an emphasis on ambulatory care services that may reduce unnecessary hospital stays.
—Sustain comprehensive care systems for HIV-infected children, youth, women, and their families through appropriate financing mechanisms.

Funding Categories

Four categories of projects will be funded in FY 1993—three grant categories and one cooperative agreement category. Applications which do not fall within these program categories will not be considered.

The first category of grants, the Pediatric AIDS Health Care Demonstration Projects, initiated in 1988, must: (1) Develop, organize, deliver, and arrange for culturally-competent, community-based, family-centered, coordinated services to children, youth, women, and families affected by HIV; and (2) develop prevention programs to reduce perinatal transmission and the spread of the infection to vulnerable populations, especially, minorities and adolescents. These projects should serve as models for other communities and should identify and coordinate the range of resources needed to provide appropriate and effective care to the target population of children, youth, women, and families affected by the HIV infection. Projects will focus on local capacity-building, making maximum use of all available public and private resources for reaching and providing health care and supportive services to the target population. Projects should strengthen the infrastructure for the comprehensive system of care by broadening the coalition of agencies, providers, community organizations and families participating in services planning, coordination, and financing. These include other appropriate Federal, State, and local programs serving children with special health care needs (e.g., Medicaid, developmental disabilities, special education) and providers, payers, organizations, and support groups in the private sector with a similar focus. Preference for funding in this category will be given to the competing renewal of currently funded projects serving children, youth, women, and families affected by the HIV infection which demonstrate an established model of a comprehensive and coordinated system of care that is culturally-competent, family-centered, and community-based. This means that these projects will be funded ahead of new groups of applications in this category.

The second category of grants, Pediatric AIDS Comprehensive Center Demonstration Projects, should develop public-private consortia among institutions, health and social and service providers, and HIV/AIDS affected families in order to develop, enhance, and maintain comprehensive and coordinated systems of care that are culturally-competent, family-centered, and community-based to serve children, youth, women, and families affected by HIV/AIDS. This grant category places greater emphasis than the preceding category of grants on private sector contributions, research and training activities, and program and policy development at the local level. The Comprehensive Centers must:

—Develop and maintain a formal infrastructure comprised of key community-based agencies, institutions, health and social providers—including organizations which represent racial and ethnic minorities—and family representatives to develop a system of comprehensive coordinated care within the defined service area.
—Conduct needs assessment, planning and policy development for the organization, financing, and delivery of comprehensive care services to the target population.
—Develop strategies to diversify public and private sector financing to support the efforts and goals of the Comprehensive Center. The consortium will demonstrate efforts to secure substantial funding from the private sector to ensure long-term financial viability of the comprehensive system of care.
—Provide or arrange for the delivery of culturally-competent, family-

centered, coordinated, community-based, comprehensive care to the target population through the coordination and integration of community resources.
—Provide advocacy for the HIV/AIDS affected target population through public awareness and education to the community.
—Provide education, technical assistance, and consultation to providers and organizations.
—Identify, develop, and implement policies that affect third-party payment and access to services for the target population.
—Develop a data reporting and evaluation system for the comprehensive care system to assess the appropriateness, efficacy, and effectiveness of care delivered. Utilize the data base to conduct research, planning, and policy development.

Preference for funding under the Pediatric AIDS Comprehensive Center Demonstration Projects will be given to the competing renewal of currently funded projects that demonstrate expertise in developing public-private consortia among institutions, health and social service providers, and HIV/AIDS affected families for the purpose of developing, enhancing, or maintaining models of comprehensive systems of HIV/AIDS care for the targeted population.

The third funding category is an initiative to expand the capability of established hemophilia treatment centers to provide pediatric and family HIV/AIDS services to unserved or underserved HIV/AIDS affected populations. The devastating impact to HIV/AIDS on children and families with hemophilia has required the hemophilia treatment centers to expand their capacity to provide HIV medical services in addition to the ongoing provision of hemophilia comprehensive care services. As a result, hemophilia treatment centers have become a valuable resource within States and communities to provide care for children and youth with hemophilia who are HIV infected and have the potential to serve as a resource for the broader population of HIV affected children and families.

Funding to expand the efforts of the hemophilia treatment center network must be directed to expanding capacity to provide culturally-competent, family-centered, community-based, coordinated services to unserved or underserved children and youth with hemophilia and other children and families affected with HIV/AIDS, especially minority populations. The funding must provide support to hemophilia treatment centers in geographic areas with an unserved or underserved population of HIV/AIDS-infected children with hemophilia. In addition, funds should be used to expand the capability of hemophilia treatment centers to service HIV-infected children and youth without hemophilia in geographic areas where no current services exist, such as in rural areas, or in areas where children and youth are currently underserved. This initiative should include efforts to increase the level of coordination and integration between the hemophilia treatment centers and other programs serving children and families in the service area. Preference for funding in this category will be given to hemophilia treatment centers currently supported by MCHB.

The fourth funding category, cooperative agreements for Pediatric/Family HIV/AIDS Health Care Demonstration Program Resource Centers, will support projects which serve as resource centers for the conduct of technical assistance and consultation, for input into program and policy development for comprehensive systems of HIV/AIDS care, for dissemination of information and educational materials on HIV/AIDS as it relates to affected children, youth, women, and families to foster communication, collaboration and linkages at the national, State, and local level.

Applicants for funding under the cooperative agreement should be capable of accomplishing the overall Pediatric AIDS Program goals in one or more of the following program areas:
—Increased knowledge and promotion of the development and maintenance of comprehensive, coordinated, systems of care that are culturally-competent, family-centered, and community-based for children, youth, women, and families affected by HIV/AIDS.
—Increased provider capacity and knowledge through education and guidelines for appropriate levels of HIV/AIDS care.
—Increased knowledge of public and private funding sources and third-party reimbursement for the target population.
—Increased empowerment of families affected by HIV/AIDS through family and provider education, facilitation of family networks and self-help groups, and facilitation of family and professional collaboration.

Preference for funding under the Pediatric/Family HIV/AIDS Health Care Demonstration Program Resource Centers Cooperative Agreements will be given to resource centers and organizations which have demonstrated previous expertise at the national or State level in planning for and developing culturally-competent, family-centered, community-based, comprehensive systems of care for children, youth, women, and families affected by HIV/AIDS.

The MCHB has substantial programmatic involvement in the planning, development and administration of the cooperative agreements described above. Federal involvement will include:
—Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate oversight.
—Making available the services of experienced MCHB personnel as participants in the planning and development of all phases of the project.
—Participating, as appropriate, in any conferences and meetings conducted during the period of the cooperative agreement, including advisory committee meetings.
—Assisting and referral in the establishment of federal interagency contacts that may be needed in carrying out the project and achieving MCHB program dissemination and communication goals.
—Participating in the dissemination of project products broadly within the maternal and child health community through existing clearinghouses and resource centers.
—Participating with project staff in the design of project evaluation protocols and methodologies.

Time does not permit proposing the funding categories described above for public comment.

Availability of Funds

Approximately $20.2 million is available for Pediatric AIDS Health Care Demonstration Projects, of which approximately $6.5 million will be available for competing renewals and new competitive grants and cooperative agreements. The following is an approximation of funds available and the number of grants anticipated to be awarded in each category:
—Category (1)—$2.6 million, up to 8 grants.
—Category (2)—$1.9 million, up to 2 grants.
—Category (3)—$150,000, up to 2 grants.
—Category (4)—$1.9 million, up to 2 agreements.

For categories (1), (2), and (3), project periods are three years. For category (4),

project periods are from one to three years, depending upon the proposed scope of work.

Special Concerns

Pediatric AIDS Health Care Demonstration Program grantees supported by HRSA should coordinate their projects with other Federal, State, and local programs concerned with AIDS, including but not limited to: (1) Title V programs: Maternal and Child Health Services Block Grants, including Hemophilia Services Projects, and other relevant Special Projects of Regional and National Significance grants under Title V; (2) HRSA activities and programs funded under authority of the Ryan White C.A.R.E. Act; (3) Healthy Start projects to reduce infant mortality in the communities where such projects are in operation (Aberdeen Area Indian Nation communities, Baltimore, Maryland, Birmingham, Alabama, Boston, Massachusetts, Chicago, Illinois, Cleveland, Ohio, Detroit, Michigan, Lake County, Indiana, New Orleans, Louisiana, New York, New York, Oakland, California, Philadelphia, Pennsylvania, Pittsburgh, Pennsylvania, Pee Dee Regions, South Carolina, and Washington, DC); (4) Community Health Centers and Migrant Health Centers; (5) CDC HIV/AIDS prevention activities; (6) Medicaid; (7) the Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), (8) the Center for Substance Abuse Prevention, SAMHSA (9) the National Institute on Drug Abuse, National Institutes of Health (NIH); (10) HRSA AIDS Education and Training Centers Grants; (11) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development, NIH; (12) the clinical drug trials or other relevant research conducted by other institutes of the NIH, such as the NIAID Clinical Trials Groups, NIAID Community Programs for Clinical Research on AIDS, and the General Clinical Research Centers; (13) discretionary grants by the Administration for Children and Families to demonstrate innovative approaches to providing child welfare services for infants with AIDS; (14) State and local tuberculosis control programs; and (15) organizations which represent racial and ethnic minorities.

To the maximum extent possible, HRSA's Pediatric AIDS Health Care Demonstration Program grantees also should work closely with community-based AIDS service organizations, local AIDS service activities supported by the Robert Wood Johnson Foundation, or other foundations and organizations with AIDS activities. All grantees located in the 18 high priority metropolitan areas that presently meet the eligibility standard of 2601(a) of the PHS Act, as identified in the Ryan White C.A.R.E. Act should seek representation on the C.A.R.E. Planning Councils, either as individual grantees or through agency representation.

The NIH supports a number of studies involving women and children with HIV infection. It is especially important that the Pediatric AIDS Health Care Demonstration and the Hemophilia Treatment Center Network Projects located in the same geographic areas as the research studies facilitate appropriate access to the studies for the women and children they serve.

The MCHB places special emphasis on improving service delivery to women and children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that Pediatric Health Care Demonstration projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there are compelling programmatic or other justifications for not doing so. The Bureau's intent is to ensure that project interventions and outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically under-represented groups is supported through programs and projects sponsored by the MCHB.

Consistent with the statutory purpose and with particular attention to inclusion of women and persons from culturally distinct populations, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best meet the purposes of the Pediatric Health Care Demonstration program and address achievement of the Healthy People 2000 objectives related to HIV infection.

Eligible Applicants

Public and nonprofit and for-profit private entities are eligible to apply for these grants and cooperative agreements. Eligible entities include public or private hospitals, university medical centers, State or local health departments including drug abuse treatment agencies, health care and community organizations. Eligible applicants for the third funding category, the hemophilia demonstration initiative, will be limited to established hemophilia treatment centers.

Review Criteria

Applications for grant categories will be reviewed and rated by objective review panels using the review criteria specified below, as appropriate.

—Severity of need. Adequacy of documentation of the impact of HIV/AIDS on children, youth, women, and families in the service area including: identification of HIV risk factors, description of trends in the HIV epidemic, and determination and documentation of unmet service needs.

—Applicant's ability to demonstrate an organized comprehensive system of family-centered, community-based, coordinated care. Adequacy of documentation of collaboration/coordination with appropriate community agencies and providers, particularly Title V, Ryan White, and Healthy Start agencies.

—Goals, objectives, and activities for 1993. Clarity of delineation of goals and objectives and appropriateness of the timeline for proposed activities. Consistency of the 1993 plan with the Hemophilia and Pediatric AIDS Program goals and the extent to which it addresses the needs identified in the needs assessment.

—Reporting and evaluation requirements. Adequacy of the strategy and proposed steps to implement a data and evaluation system and to use the information collected for program planning and management.

—Organizational structure and setting necessary to implement the proposed goals and objectives.

—Budget justification based on project methodology and required resources.

—For competing renewal applications, adequacy of documentation of progress related to meeting goals and objectives of the current project period.

—For Comprehensive Centers, the extent to which applicants secure funding from private sources, the ability to develop and maintain formal infrastructures, and capability for program planning and capacity building.

Applications for cooperative agreements will be reviewed and rated by objective review panels using the review criteria specified below:

—Adequacy of knowledge and understanding of the problem.

—Proposed approach of the applicant.

—Capabilities of the applicant.

—Budget justification based on project methodology and required resources.

Allowable Costs

The MCHB may support reasonable and necessary costs of Pediatric AIDS Health Demonstration Project grants within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contractual, consultants, and others, as well as indirect costs. The MCHB adheres to administrative standards reflected in the Code of Federal Regulation 45 CFR part 92 and 45 CFR part 74. All other sources of funding to support this project must be accurately reflected in the applicant's budget.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements will apply. Financial reporting will be required in accordance with 45 CFR part 74, subpart H, with the exception of State and local governments, to which 45 CFR part 92.20 will apply.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937-0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The Pediatric AIDS Health Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161-1 with revised face sheet HHS Form 424 and with Program Narrative and Checklist approved under OMB 0937-0189) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration Program is 93.153.)

Dated: March 30, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93-7759 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-15-P

Availability of Funds for Grants To Provide Health Care for the Homeless and Health Care Services for Homeless Children

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the appropriation for fiscal year (FY) 1993 includes approximately $56.0 million for discretionary grants to provide primary health care and substance abuse services to homeless individuals and to homeless children. The grants will be awarded under section 340 of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 256.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. This grant program is related to the objectives cited for special populations, particularly people with low income, minorities, and the disabled, which constitute a significant portion of the homeless population. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

DUE DATES: Applications for competing and noncompeting continuation grants were due August 1, 1992. These applicants were given individual notice of this deadline. Applications for special expansions and special initiatives are due May 7, 1993. Applications are considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES: Application kits (Form PHS 5161-1 with revised fact sheet HHS Form 424, as approved by the Office of Management and Budget under control number 0937-0189) may be obtained from, and completed applications should be mailed to, the appropriate PHS Regional Grants Management Officer (RGMO) (see appendix). The RGMO can also provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, or Mr. James L. Gray, Chief, Health Care for the Homeless Branch, Division of Programs for Special Populations, Bureau of Primary Health Care (BPHC), at 5600

Fishers Lane, Rockville, Maryland 20857 (telephone 301–443–2512).

SUPPLEMENTARY INFORMATION:

Service Expansions

Approximately $3.0 million is available to current homeless and homeless children grantees, on a competitive basis, to support 30–45 service expansion awards at a range of $50,000–$125,000. Included in this are funds for infant mortality reduction (up to the age of 3 years) expansions and tuberculosis (TB) expansions. Each grantee is eligible to apply for no more than one service expansion award. Each award will be for a 12-month budget period. Grantees who have demonstrated satisfactory performance in attaining 1992 goals and objectives, and who have received favorable funding consideration for FY 1993, are eligible to receive service expansion awards.

Special Initiatives

Approximately $4.0–$5.0 million is available to current homeless and homeless children grantees, on a competitive basis, to support 50-75 one-time only special initiative awards, ranging between $50,000 and $100,000. No more than $100,000 will be awarded for any one initiative. Each grantee is eligible to apply for no more than one special initiative award. Each award will be for a 12-month budget period. Grantees who have demonstrated satisfactory performance in attaining FY 1992 goals and objectives, and who have received favorable funding consideration for FY 1993, are eligible to receive special initiative awards.

Competing and Noncompeting Continuations

Early in FY 1993, approximately 99 noncompeting continuation grants totaling approximately $44 million and 11 competing continuation grants totaling approximately $4 million were awarded to organizations which received grants in FY 1992. The range of project support was $100,000–$2 million per 12-month period, depending upon the number of individuals who will receive care through this effort.

Service Expansions

General Information

Service expansions are grants to current homeless and homeless children grantees to (a) create a new delivery site, or (b) expand service capacity at an existing site, including the addition of providers and support costs and/or the enhancement of existing information systems. Applicants must be prepared to provide the full range of comprehensive primary health services, including substance abuse services, required under section 340, and should be designed to meet the Health Care for the Homeless Program Expectations. Required services are as follows: (1) Health services, including substance abuse services, at locations accessible to homeless individuals, (2) emergency health services, at all hours, (3) referrals as appropriate to medical facilities for necessary hospital services, (4) mental health services for homeless individuals who are mentally ill are required to be provided by referral to entities that provide such services, unless the applicant will provide such services directly, (5) outreach services to inform homeless individuals of the availability of health services, and (6) aid in establishing eligibility for assistance and in obtaining services under entitlement programs.

Service expansion proposals may address specific populations of homeless individuals (i.e., substance abusers, mentally ill, ethnic groups, elderly, and HIV) and/or needs for services at specific delivery sites. All proposals must be linked to the required health services described in the program statute.

As an example, funds are available to support infant mortality reduction expansions targeting infants under three years of age. Infant mortality reduction expansions should address one or more of the following activities:

(a) Primary health services; including prenatal care;

(b) Case management services;

(c) Community education, outreach, and case funding; and

(d) Client education, including parenting and child development education.

As a further example, funds are available to support enhanced TB prevention and treatment expansions. These expansions should (1) ensure that an acceptable level of tuberculosis care and control is maintained in the homeless community served; for example, activities in improved case management services, outreach and case finding, and improved monitoring of treatment and tracking; and (2) provide a system of intensive TB control measures especially in high incidence areas and in high risk homeless populations; for example, activities in direct observational therapy, maintaining a TB Registry on clients, community and health professions education, and effective linkages with homeless housing programs.

As an additional example, funds may be used to provide primary health care to homeless individuals with HIV infection or at risk for infection. Types of HIV health care services for the population could include expanded outreach, risk reduction counseling and testing, transmission prevention, case management, referral, and appropriate medical evaluation and clinical care.

To the extent possible, grantees are encouraged to link with homeless housing programs and entities receiving grants under the AIDS Housing Opportunity Act, subtitle D, of Public Law 101–625, the Cranston-Gonzales National Affordable Housing Act.

Opportunities for service expansion are not limited to the services cited above. Additional areas for service expansion, as determined by the applicant's appropriate needs assessment, may be proposed.

Only those competing and noncompeting continuation grantees which have demonstrated satisfactory progress to date in attaining stated goals and objectives for FY 1992, and have received favorable consideration and funding for FY 1993, will be eligible to receive support for service expansion.

Evaluation Criteria

When determining whether Federal support will be made available to service expansion requests, the BPHC will convene one or more Objective Review Committees to evaluate applications for technical merit. The evaluation criteria are as follows:

a. Justification of need for the proposed service expansion, based on demographic and/or health status indicators for the user population;

b. Where applicable, justification of need for enhancing the organization's information systems capability;

c. Identification of new population(s) to be served;

d. The clarity and the appropriateness of the proposed goal(s) and objectives of the proposed service expansion;

e. The feasibility of the service expansion's planned implementation within the resources and time frame proposed;

f. Extent to which integration of services is planned with State and local agencies which provide services and support to the targeted population;

g. Evidence of efforts to strengthen relationships with State Medicaid agencies to enhance financing for primary care services;

h. The relationship of the expansion to the existing project plan of the applicant agency;

i. Evidence of a system or program to track progress and outcomes; and

j. Adequacy and appropriateness of the proposed budget.

SPECIAL INITIATIVES

General Information

The purpose of the Health Care for the Homeless (HCH) grant program is to provide primary health care and substance abuse services to homeless individuals and to homeless children. Accordingly, the program encourages grantees to increase their efforts to improve the health status of homeless individuals and homeless children and to increase coordination with other programs to assist these populations. Recognizing the complexity of factors impacting upon health care for homeless individuals and homeless children, current grantees are encouraged to pursue innovative approaches to link homeless individuals with existing service support systems. As a means to increase the homeless person's access to needed primary health and mental health services, approximately $4.0–$5.0 million will be available to support one-time only special initiatives aimed at enhancing outreach and referral activities.

Requests from existing homeless and homeless children grantees for support of special initiatives will be reviewed by an Objective Review Committee, consisting of experts in the provision of health services to homeless individuals and to homeless children. Special initiative funding will not exceed $100,000 per initiative.

Listed below are the activities that will receive consideration for funding in support of services aimed at enhancing outreach and referral:

(1) Enhancement of local outreach efforts, particularly with emergency shelter and runaway and homeless youth shelter systems, as a means to increase access to health services;

(2) Strengthening mental health referral systems through enhanced collaborative efforts, e.g., community coalitions and linkages;

(3) Development of enhanced quality assurance systems to maximize organizational performance in the delivery of primary health care services; and

(4) Strengthening innovative approaches to prevention and entitlement activities; e.g., homeless health fairs and on-site eligibility processing.

Evaluation Criteria

All applications seeking support for special initiatives will be evaluated for technical merit on a competitive basis by an Objective Review Committee based upon the following evaluation criteria:

a. Relative need for the initiative and assessment of its potential impact upon the user population;

b. Degree to which the initiative is consistent with the grantee's overall project plan;

c. Extent to which linkages and/or coalitions are planned to strengthen outreach and referral systems;

d. Extent to which the proposed initiative will facilitate the delivery of effective primary health care services;

e. Evidence of efforts to strengthen relationships with State Medicaid agencies to enhance financing for primary care services;

f. Extent to which integration of services is planned with State and local agencies which provide services and support to the target population;

g. Appropriateness of the plan to continue support for the initiative after the expiration of Federal support; and

h. Adequacy and appropriateness of the proposed budget.

Other Award Information

The Health Care for the Homeless Program has been determined to be a program which is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate deadline dates. The BPHC does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs", Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements).

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 13.151.

Dated: March 30, 1993.

Robert G. Harmon,

Administrator

Appendix

Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F Kennedy Federal Building, Boston, MA 02203 (617) 565–1482

Region II: Steven Wong, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278 (212) 264–4496

Region III: Martin Bree, Grants Management Officer, PHS Regional Office III, P O. Box 13716, Philadelphia, PA 19101 (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323 (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603 (312) 353–6700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202 (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64106 (816) 426–5841

Region VIII: Susan Jaworowski, Acting Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294 (303) 844–4461

Region IX: Al Tevis, Acting Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102 (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121 (206) 553–7997

[FR Doc. 93–7758 Filed 4–2–93; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Redesignation of Contract Health Service Delivery Area

AGENCY: Indian Health Service, HHS.

ACTION: Final notice.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) is redesignating the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Grand Traverse Band of Ottawa and Chippewa Indians ("The Band"). The Grand Traverse CHSDA was comprised of Leelanau County in Michigan. This county was designated as the Band's CHSDA when the IHS published its updated list of CHSDAs in the **Federal Register** of January 10, 1984 (49 FR 1291). The redesignated CHSDA is comprised of six counties in the State of Michigan, i.e., Leelanau, Antrim, Benzie, Grand Traverse, Manistee, and Charlevoix. This notice is issued under authority of 43 FR 34654, August 4, 1978.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Deputy Director, Division of Legislation and Regulations, Office of Planning, Evaluation and Legislation, Indian Health Service, room 6–34, 5600 Fishers Lane, Rockville, MD 20857, telephone 301–443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of the Interior acknowledged the Band as an Indian tribe, effective May 27, 1980 (45 FR 19321). The Band contracts with the IHS under the Indian Self-Determination Act (Pub. L. 93–638, as amended) to provide direct services at a clinic facility and also to provide, for eligible Indians, services purchased from private sector health care providers. Such purchased services are called "contract health services."

On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDAs (43 FR 34654, codified at 42 CFR 36.22, last published in the 1986 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the new eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations contained in the 1986 edition of the Code of Federal Regulations in effect on September 15, 1987. See 42 CFR 36.21 *et seq.* (1986).

As applicable to the Band, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 36.22(a)(6) (1986)). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we published the proposal to redesignate the Band's CHSDA in the **Federal Register** of November 16, 1992, requesting public comment (57 FR 54098). No comments were received.

Since approximately 1981, the Band has been providing contract health services to its tribal members residing in the proposed five-county area consisting of Antrim, Benzie, Grand Traverse, Leelanau, and Manistee Counties of Michigan. Under existing regulations, the CHSDA for the Band consists of only Leelanau County. On November 8, 1990, the Band requested the Secretary to redesignate its CHSDA as a six-county area, including Charlevoix County in Michigan. The Band based its request on the fact that the Department of the Interior, through the Bureau of Indian Affairs, has designated a tribal service area for the Band to include these six counties. We agree with the tribe's proposal for a six-county CHSDA.

In applying the aforementioned CHSDA redesignation criteria required by operative regulations (43 FR 35654), the following findings are made:

(1) The Band's enrollment records show that there are 100 tribal members residing in Charlevoix County. It is estimated that approximately 20 members of other federally recognized tribes also reside within that county. While 1980 U.S. Census data indicates that there are more than 120 Indians in Charlevoix County, the others are either not federally recognized or do not have close social and economic ties to the Band and are, therefore, not eligible for contract health services under existing law.

(2) The Band has determined that contract health services would be available to all of its members and to all federally recognized Indians in Charlevoix County having social and economic affiliation with the Band.

(3) Although the Band's reservation is in Leelanau County, Charlevoix County borders Antrim County in its current service area and shares a water boundary with Leelanau County. The traditional lands of the Band are within the six counties surrounding and adjacent to the Grand Traverse Bay of Lake Michigan.

(4) It is estimated that the current eligible contract health service population will be increased by 120 individuals, changing the active patient population from 913 to 1,033, assuming 100 percent utilization for Charlevoix County eligibles. Based upon data from the 1990 application of the health services priority system and the modified resource requirements methodology, the total clinical work units (CWUs) generated by the user population of 913 was 6,790, or 7.4 per individual. Assuming the same utilization, the 120 new users will generate an additional 888 CWUs. The calculated cost per CWU in the inpatient and ambulatory care category, which includes contract health care costs, was $59.87 for the Band. Therefore, potential added costs for contract health services resulting from new users is approximated at $59.87×888=$53,165. Total resources available to the program in 1990 were

$1,058,000 with total resources needed of $1,077,000, resulting in a 98-percent level of need funded. Addition of $53,165 to total resources needed results in an increase to $1,130,165 and a 94-percent level of need funded. The increase in unmet need from 2 percent to 6 percent would not be expected to result in an increase in funding for the Band. The impact on existing health services will not be substantial, although medical priorities for service may have to be imposed if resources become insufficient to meet the total demand for health care. The current level of need funded of 94 percent will allow sufficient flexibility to assure that there will be no significant reduction in the level of contract health services to current CHSDA residents, so the designation of the six-county CHSDA is within available resources.

Accordingly, after considering the Band's request in light of the criteria specified in the regulations, I hereby redesignate the CHSDA of the Band to consist of Leelanau, Antrim, Benzie, Grand Traverse, Manistee, and Charlevoix Counties of Michigan.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Dated: March 30, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 93-7834 Filed 4-2-93; 8:45 am]

BILLING CODE 4160-16-M

Tetanus/Diphtheria and Tetanus Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Vaccine Information Pamphlet entitled, "Diphtheria, Tetanus, and Pertussis: What You Need to Know," was developed by HHS and is codified at 42 CFR part 110. This pamphlet's major emphasis is on the vaccines recommended for children and infants (DTP and DT); it also provides information about the tetanus and diphtheria toxoids (Td) and tetanus toxoid (T) used for adults. Emergency room physicians and other health-care workers who administer these vaccines to adults have commented that a separate Vaccine Information Pamphlet dealing exclusively with Td and T was desirable. In response to these comments, a separate pamphlet dealing with these toxoids has been prepared. A Notice of Proposed Rulemaking (NPRM) will be published under the rulemaking procedures mandated by 42 U.S.C. 300aa–26 to codify this pamphlet. The Centers for Disease Control and Prevention recommends use of the following interim Td/T pamphlet pending completion of the rulemaking and publication of a Td/T pamphlet as a final rule.

DATES: Effective on April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein M.D., Director, Division of Immunization, National Center for Prevention Services, 1600 Clifton Rd., NE., Mailstop E–05, Centers for Disease Control and Prevention, Atlanta, GA 30333, telephone (404) 639–1880.

SUPPLEMENTARY INFORMATION: Title XXI, section 2126 of the Public Health Service Act (42 U.S.C. 300aa–26) requires the Secretary to develop and disseminate information materials on the vaccines included in the vaccine injury table (i.e., diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis). Vaccine information materials covering these vaccines were published as a Final Rule in the **Federal Register** on October 15, 1991 (56 FR 51798; codified at 42 CFR part 110). Since April 15, 1992, any health-care provider intending to administer one of the covered vaccines must provide a copy of the relevant materials to the vaccine recipient, or in the case of a minor, to the parent or legal representative of the vaccine recipient, prior to administration of the vaccine. (Alternatively, health-care providers may provide other written information which meets the requirements of the law.)

The major emphasis of the Vaccine Information Pamphlet entitled, "Diphtheria, Tetanus, and Pertussis: What You Need to Know," is on the combination vaccines recommended for children and infants (DTP and DT); it also provides information about the tetanus and diphtheria toxoids (Td) and tetanus toxoid (T) used for adults. Emergency room physicians and other health-care workers who administer these vaccines to adults have commented that a separate Vaccine Information Pamphlet dealing exclusively with Td and T was desirable. In response to these comments, a separate pamphlet dealing with these toxoids has been prepared. Its use with adult populations will assist health-care workers in situations where Td or T is administered. An NPRM will be published under the rulemaking procedures mandated by 42 U.S.C. 300aa–26 for codifying this pamphlet.

As an alternative to using the Vaccine Information Pamphlet entitled, "Diphtheria, Tetanus, and Pertussis: What You Need to Know," when administering Td or T vaccine, the Centers for Disease Control and Prevention recommends use of the following interim Td/T pamphlet pending completion of the rulemaking and publication of a Td/T pamphlet as a Final Rule.

Tetanus and Diphtheria: What You Need to Know

Please Read This Information Before you get a Vaccine!

Before vaccines were available, hundreds of people became ill with tetanus each year and thousands became ill with diphtheria.

The benefits of the vaccines to prevent these diseases are greater than the possible risks for almost all people. A person who receives vaccines benefits from the protection they provide. When many people are vaccinated, everyone benefits because the chance for spread of disease is reduced.

These diseases may cause serious health problems. Therefore, it is important to be protected by vaccine shots.

Every vaccine has risks as well as benefits. Most problems that happen after receiving vaccines are mild, but a few people will have a serious problem.

Td vaccine (Tetanus and diphtheria) is specially made for children age 7 years and older and for adults. Tetanus vaccine (T) is still used by some doctors, but the combined Td vaccine is recommended by most experts.

What are these Diseases?

Diphtheria is a very serious disease. It can make a person unable to breathe, cause paralysis or heart failure. About 1 out of every 10 people who get diphtheria dies of it.

Only a few cases of diphtheria were reported in the United States during the past few years. This is mostly because people have had shots to protect them.

Tetanus, sometimes called lockjaw, is a very serious disease that can occur after a cut or wound lets the germ into the body. Tetanus makes a person unable to open his or her mouth or swallow, and causes serious muscle spasms. People with tetanus usually have to stay in the hospital for a long time. In the United States, tetanus kills 3 of every 10 people who get the disease. Since 1975, only 50 to 90 cases of tetanus have been reported each year

Adults who have not received a series of at least three doses of tetanus and diphtheria vaccine during their lifetime

should do so. It is important to continue this protection by getting a booster of Td every 10 years and after cuts and wounds, because risk of exposure to tetanus is higher then. Almost no cases now occur in children or adults because they have taken the shots and are usually protected.

What About the Vaccines and Their Benefits?

Three or more Td shots keep at least 85 people of 100 from getting diphtheria and 95 people of 100 from getting tetanus for at least 10 years.

What are the Risks of These Vaccines?

Td and T vaccines cause few problems. They may cause mild fever or soreness, swelling, and redness where the shot was given. These problems usually last for 1 to 2 days. After the primary series, these vaccines should be given only once every 10 years. If adults receive these vaccines more often, they can have a lot of soreness and swelling where the shot was given.

There is a very rare chance that serious problems or even death could occur after getting Td or T. Such problems could happen after taking any medicine or after receiving any vaccine.

When Should you get Td or T Vaccine?

You should get your first Td vaccine about 10 years after your last DT (Diphtheria and Tetanus) or DTP (Diphtheria, Tetanus, and Pertussis) vaccination. For most people, this will be around the ages of 14 to 16. Following this first dose, you should get a booster vaccine every 10 years. If you get a serious cut, your doctor may recommend you get a booster as part of your treatment.

When Should Your Child get Other Vaccines?

If the person receiving this vaccine is a minor, you may be interested in receiving vaccine information materials on all of the vaccines recommended for most infants and children and the age when most experts suggest they should get each dose of vaccine. Ask your doctor or nurse for the information.

Are the Benefits of the Vaccines Greater Than the Risks?

Yes, for almost all people.

People who get diphtheria or tetanus usually are seriously ill. After reading this pamphlet and talking with your doctor or nurse, you can decide what is best.

When Should a Shot Be Delayed?

Delay getting the Td or T shot if the person getting the vaccine is sick with something more serious than a minor illness such as a common cold.

But

- If the person getting the vaccine is in need of Td or T as part of wound care, the vaccination should be given.

When Should the Td or T Vaccine not be Given?

A person should not get another Td or T shot if a serious allergic problem (swelling in the mouth, throat, or face, or difficulty breathing) occurred within a few hours after getting an earlier Td or T and had no other obvious cause. Talk with your doctor or nurse about any problem.

Should Pregnant Women Receive Td or T?

Babies born under unsanitary conditions to women who have not been vaccinated against tetanus have an increased risk of getting tetanus as newborns. This can be prevented by giving Td or T vaccine to women. Women who have not received Td or T earlier should be given the vaccine when they are pregnant.

Td and T vaccines are not known to cause special problems for pregnant women or their unborn babies. While doctors usually do not recommend giving any drugs or vaccines to pregnant women, a pregnant woman who needs Td or T vaccine should get it.

What To Look for and to do After the Shot

Talk with the doctor or nurse who gives the shot about taking medicines or other measures to reduce fever and soreness from the vaccine.

This pamphlet lists the problems that may occur after receiving Td or T vaccine.

As with any serious medical problem, if the person has a serious or unusual problem after getting the vaccine, call a doctor or get the person to a doctor promptly.

If the person receiving the vaccine does have a reaction to the vaccine, you can help your doctor by writing down exactly what happened.

Use this form or write on a piece of paper exactly what happened, what day it happened, and the time it happened.

Type of Vaccine and Date Received: _____

Problems

_____

Day and Time Problem Started

_____

_____

_____

Have the Problem Reported

The Public Health Service is interested in finding out if any serious problems may be related to Td or T vaccines, especially those that occur within 4 weeks after the shot. If you believe that the person receiving the vaccine had a serious problem or died because of the shot:

Call this number:

And ask the doctor or health department to report the problem on a Vaccine Adverse Event Report form. If you think the problem was not reported, you should report the problem yourself. You can get the form by calling this toll-free number: 1–800–822–7967.

Get Information About Possible Help

A U.S. Government program provides compensation for some persons injured by vaccines. For more information, call this toll-free number: 1–800–338–2382 or contact: The U.S. Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657.

Interim toxoids: April 5, 1993.

Dated: March 24, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

BILLING CODE 4160–18–M

VACCINE ADMINISTRATION RECORD

The doctor or clinic may keep this record in your medical file or your child's medical file. They will record what vaccine was given, when the vaccine was given, the name of the company that made the vaccine, the vaccine's special lot number, the signature and title of the person who gave the vaccine, and the address where the vaccine was given.

"I have read or have had explained to me the information in this pamphlet about diphtheria and tetanus (lockjaw) disease and Td (Tetanus/diphtheria) and Tetanus (T) vaccines. I have had a chance to ask questions that were answered to my satisfaction. I believe I understand the benefits and risks of the Td and Tetanus vaccines and ask that the vaccine checked below be given to me or to the person named below for whom I am authorized to make this request."

Vaccine to be given: Td ☐ Tetanus ☐

Information about person to receive vaccine (Please print.)					
Name: Last	First	Middle Initial		Birthdate	Age
Address: Street		City	County	State	Zip
Signature of person to receive vaccine or person authorized to make the request (parent or guardian): X _____ Date _____					

For Clinic/Office Use

Clinic/Office Address: _____

Date Vaccine Administered: _____

Vaccine Manufacturer: _____

Vaccine Lot Number: _____

Site of Injection: _____

Signature of Vaccine Administrator: _____

Title of Vaccine Administrator: _____

[FR Doc. 93-7677 Filed 4-2-93; 8:45 am]
BILLING CODE 4160-16-C

Substance Abuse and Mental Health Services Administration

Demonstration Grant Program for Model Comprehensive Treatment for Critical Populations

AGENCY: Substance Abuse and Mental Health Services Administration.

ACTION: Notice of availability of funds.

Introduction

The Center for Substance Abuse Treatment (CSAT) is announcing a continuation of its Critical Populations Demonstration Grant Program to expand the availability of high quality treatment services for individuals who suffer from alcohol and drug problems. Under this announcement, funds are available to improve treatment outcomes for certain individuals whose health and welfare are especially at-risk due to their involvement with alcohol and drugs. These critical populations include substance abusing: adolescents (aged 10–21), racial, and ethnic minority populations, women and their children, residents of public housing, and individuals living in rural areas, including migrant farm workers and their families. In response to the growing substance abuse treatment needs of critical populations as defined above, and building upon prior initiatives of the Office for Treatment Improvement (CSAT's predecessor agency), CSAT will provide funds to develop and implement a range of effective treatment services appropriate to suit the needs of the critical populations defined in this notice. Effective treatment services are considered to be those proven to improve treatment outcomes.

Improved treatment outcomes for critical populations are defined to include: Reduced alcohol and drug use; increased rates of employment and/or education; reduced rates of criminal activity and lower rates of involvement with the criminal and juvenile justice systems; reduced rates of violent acts (whether criminal or not); reduction of high-risk behaviors associated with the spread of the HIV/AIDS; improved overall health status; improved psychological and psychiatric health; and improved social functioning. CSAT's philosophy is that addiction is a complex and often chronic phenomenon, and that bio-psycho-social factors which contribute to the onset and maintenance of addiction may vary markedly from individual to individual. As a consequence, treatment is most successful when practitioners are able to: (1) Comprehensively assess each individual's bio-psycho-social needs; and (2) provide a sustained continuum of comprehensive therapeutic services specifically designed to meet the unique needs of the individual. It is estimated that approximately $29 million will be available to support approximately 50–70 projects under this program announcement in FY 93. Actual funding levels will depend upon the availability of appropriated funds.

Approximately 25% of available funds will be used to support projects in rural areas. Approximately 10% of available funds will be used to support competitive renewals among current grantees. Support may be requested for an initial period of 3 years. Annual awards for continuation funding will be subject to availability of funds and progress achieved. Applications for competing renewals from programs that initially received 3 year grants, may request up to 2 years of additional support, subject to availability of funds.

For providers interested in women's services, in addition to this program announcement, Congress appropriated funds to be awarded under Section 508 of the Public Health Service Act to support specifically the enhancement or creation of new addiction treatment capacity for comprehensive, residential treatment programs for alcohol and other drug abusing women who are pregnant and/or postpartum, and their infants and children. (See AS–93–03, Grant Program for Residential Treatment for Pregnant and Postpartum Women.) Congress also appropriated funds to be awarded under Section 510 of the Public Health Service Act to projects specifically to demonstrate the utility and effectiveness of proposed residential treatment approaches for alcohol and other drug abusing women who are not pregnant or postpartum, and their dependent children. (See AS–93–05, Demonstration Program for Residential Treatment for Women and Their Children.)

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority health and human service objectives. This Program Announcement, Demonstration Grant Program for Model Comprehensive Treatment for Critical Populations, is related to the Healthy People 2000 objectives established for Alcohol and Other Drug Abuse (Chapter 4) and HIV Infection (Chapter 18). Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202)–783–3238).

Receipt Dates: The deadline for the initial receipt of applications is June 21, 1993. Thereafter, applications will be received two times per year on January 10, and May 10. Applications must be received by the published application receipt date(s). However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

Applicants are advised that use of the above receipt dates may vary somewhat between fiscal years, depending on availability of funds. Accordingly, after FY 1993, CSAT will annually publish a notice of availability of funds and statement of applicable receipt dates, as well as the receipt point, for this program. Applicants are strongly encouraged to ascertain such information before preparing and submitting applications.

CONSEQUENCES OF LATE SUBMISSION: Applications received after the specified receipt dates are subject to assignment to the next review cycle or may be returned to the applicant without review.

ADDRESSES: Grant application kits (including Form PHS 5161–1, with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: United Information Systems, 3206 Tower Oaks Boulevard, 4th Floor, Rockville, Maryland 20852, (301) 984–4222.

Completed applications must be sent to: United Information Systems, at the same address as above, attention: Center for Substance Abuse Treatment Programs:

FOR FURTHER INFORMATION:

For program issues:

Center for Substance Abuse Treatment, Critical Populations Branch, Division of National Treatment Demonstrations, Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6533.

For grants management issues:

Christine Chen, Center for Substance Abuse Treatment, Grants Management Officer, Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9665.

SUPPLEMENTARY INFORMATION:

Program Goals

The overarching goal of this demonstration program is to expand the knowledge base regarding which interventions or array of interventions have the greatest impact on improving treatment outcomes for critical populations as described above. Additional goals for the program are as follows: (1) To provide, for individual members of each of these critical populations, comprehensive treatment approaches designed to address the multiple health and human service needs of individuals, their families and collaterals, thereby maximizing retention and patient/client outcome; (2) to reduce alcohol and drug abuse; (3) to reduce the incidence of TB, HIV infection, sexually transmitted diseases (STDs) and other infectious diseases among these groups; (4) to develop documented models of service delivery that can be replicated in similar communities; (5) to reduce crime associated with alcohol and drug abuse; and (6) to increase work productivity and family and social functioning among alcohol and drug abusers.

Program Requirements

All CSAT-sponsored demonstration programs proceed on the Public Health Model, treatment and prevention of infectious disease is a fundamental objective of all treatment programming. As a consequence, screening (includes pre- and post-test counseling relative to HIV/AIDS), treatment and prevention of HIV/AIDS, tuberculosis, STDs, hepatitis, bacterial pneumonia, and other infectious disease entities that typically co-exist with chronic alcohol and drug use, is a requirement for projects funded under this announcement. These services may be provided through linkages with existing public health agencies and/or they may be supported using a combination of grant funds and entitlements (e.g., Medicaid). All applicants will be expected to provide evidence that the grant project will meet this requirement.

In order to achieve the primary goal of this program, i.e., to improve treatment outcomes for critical populations, successful applicants are expected to structure a proposed project approach which ensures that treatment programming is responsive to the complexity and diversity of individual treatment needs. CSAT considers that responsive, state-of-the-art treatment programs have certain characteristics in common, however; the most fundamental of these is the program's ability to:

(1) Conduct comprehensive, standardized assessments of individual characteristics (biomedical, neuropsychiatric, psychological, social, socio-economic, behavioral).

(2) Ensure that each individual is provided with a continuum of services and interventions specifically designed to meet his/her unique needs and that these interventions are provided in a manner that is socially and culturally appropriate, as well as effective.

(3) Evaluate the impact of the treatment and habilitative continuum, both during treatment, and (in some cases) at intervals following treatment completion.

(4) Utilize evaluation findings to identify which interventions appear to work best for different individuals.

(5) Maintain a substantial degree of flexibility in order to correct/refine treatment programming.

Target Population(s)

Projects must be designed to meet the needs of only one population group from the categories listed below. Each proposal will be assigned and reviewed according to the designated population category.

- Substance Abusing Women and Their Children—females with children regardless of age; or females over the age of 12 without children. Children include individuals from birth to age 10.

Note: Only projects proposing ambulatory/outpatient services will be considered under this announcement with priority given to projects which provide on-site primary care services to women and pediatric care to children.

- Adolescents—alcohol and/or drug involved individuals (males and females) aged 10–21, especially those who are chronic truants or who have dropped out of school; or who are at high risk for the consequences of sustained substance abuse, including early death due to suicide, homicide or accidents directly related to intoxication, overdose, and HIV or hepatitis B infection.
- Racial and Ethnic Minority Populations—adult individuals (over 18) who are members of racial/ethnic minority populations, especially those who live at or below the poverty line, including: Black Americans, Hispanic Americans (Mexican American, Puerto Rican, Cuban American, Latin American), Asians/Pacific Islanders, Native Hawaiians, Native Americans, and Alaska Natives, particularly adult males.
- Residents of Public Housing—Families or individuals residing in public housing units within cluster communities that are subsidized by local and/or federal governments. CSAT includes residents of public housing as a discrete population group within this program announcement for the following reasons: (1) The primary population groups identified in the "ADAMHA Reorganization Act", section 510 (a) and (b) (adolescents, racial and ethnic minority populations, substance abusing women and their children) are the primary residents of public housing communities (including those in rural areas); (2) dramatic increases in substance abuse and the serious problems related to substance abuse are threatening the very fabric of these communities; and (3) most community based substance abuse treatment programs do not include public housing as part of their catchment area and ready access to treatment is critical to the success of programs geared to serving the needs of these frequently isolated communities.
- Individuals Living in Rural Areas, Including Migrant Farm Workers—For purposes of this announcement, a rural area is one—"Where a significant number of the population lives in the country, or in small towns with populations of less than 5,000. Exceptions could include a large rural county with a major city (greater than 10,000), but at least 30–40% of the population of the catchment area live in the country." [1] Migrant farm workers and their families include those who do not live permanently in the geographic area but move after seasonal labor is complete.

Projects serving homeless individuals as defined in the McKinney Homeless Assistance Act (Pub. L. 100–77, as amended) are an eligible subpopulation under the above designated population categories. Providers are also encouraged to submit proposals that address the needs of individuals who belong to one of the above critical populations and are also disabled. As defined in the Americans with Disabilities Act of 1990, "disability" means: (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual, (B) a record of such an impairment, or (C) being regarded as having such an impairment.

CSAT recognizes that any given group of individuals that constitutes a service

[1] Definition provided by the National Rural Institute on Alcohol and Drug Abuse.

population may possess characteristics common to more than one of the Critical Populations described above. However, award candidates must submit only one application that targets a single Critical Population category, in order to facilitate review and award decisions. In determining under which category to apply, applicants should assess which attribute or characteristic of their patient/client population has the greatest implications for the scope and character of an appropriate service milieu.

Eligibility Requirements

Applicants

Prior to passage of the ADAMHA Reorganization Act of 1992, CSAT was limited, under Section 509G(b)(1) of the Public Health Service Act, to awarding discretionary grants to States. As a result of statutory changes made last year, CSAT has developed discretionary grant policy that: (1) Provides the opportunity for a broad pool of public and private non-profit providers of substance abuse treatment and recovery services to request support; and, (2) uses application and award procedures that will ensure close coordination with Single State Agencies for Alcohol and Drug Abuse (SSAs) in each State. While all public and private non-profit providers of substance abuse treatment and recovery services are eligible to apply, CSAT intends that, in most instances, the SSA will serve as the grantee for individual provider projects that receive support under this announcement. This policy is consistent with CSAT's goals: (1) To coordinate Federal, State and local treatment planning and data collection efforts; and, (2) to work in partnership with State SSAs to administer discretionary funds to the maximum extent practicable.

All eligible public and private non-profit providers must submit their proposals through the SSA in their State, and SSAs must forward all such proposals to CSAT (for provider eligibility criteria, see *Provider Eligibility* below). Indian Tribal Authorities constitute an exception and may apply directly to CSAT without going through an SSA. In rare cases where an SSA does not wish to forward individual providers applications, providers may submit their proposals directly to CSAT. Before submitting a proposal directly to CSAT, it is the provider's responsibility to determine whether their State SSA intends to forward provider proposals submitted under this announcement. If an SSA does not intend to forward eligible proposals, providers should contact CSAT to determine the appropriate application procedure.

State SSAs can exercise one of two options when forwarding applications to CSAT:

1. SSAs seeking to be the applicant/grantee (i.e., financially and legally responsible for administration of grants post-award) must compile all provider proposals and forward them to CSAT under cover of a PHS Application form signed by the Director of the SSA. SSA applications submitted according to this procedure must also include a copy of a letter from the Director of the SSA, listing the provider proposals being forwarded under the State application. In addition, a copy of this letter must be included in each project proposal. CSAT will assume that SSAs electing to submit a State application in this manner intend to function as the grantee for awards made under this announcement. In this event, the SSA will receive between 2% and 6% of the total amount of the State award to cover State administrative costs. Prior to making an award to the State, CSAT will take into consideration whether the SSA has the capacity, resources, and authority to execute the full range of grant administration responsibilities for provider projects within its jurisdiction (see criteria described under *Award Criteria for State Applicants).*

2. SSAs deciding not to be the applicant (i.e., legally and financially responsible for administration of grants post-award) should forward all provider proposals received under this announcement to CSAT, accompanied only by a cover letter from the Director of the SSA listing the provider proposals contained in the State submission. For States electing this option, CSAT will award grants directly to successful providers within the State.

Under either option, States are invited to make award recommendations to the Director of CSAT by July 30, 1993 for the current year's application, or within 60 days of the application deadline in future years.

Provider Eligibility

Evidence of capability to perform must accompany each provider proposal, and must consist of at least one of the following:

1. Documentation of the existence of an infrastructure upon which to initiate a treatment program for the target population. Such documentation must be in the form of a letter from the SSA, or the governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction.

2. Documentation that the provider, or ant least one member of a provider consortium, has provided substance abuse treatment or recovery services to the target population for a minimum of two years prior to the date of application.

A letter from the SSA, or the governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction, certifying the provider's experience, as above, will suffice to meet this requirement.

3. Documentation that the provider is licensed or accredited to provide substence abuse treatment or recovery services by appropriate certification or credentialing bodies (e.g., State or sub-state licensing, Joint Commission on Accreditation for Health Organizations, Commission on Accreditation of Rehabilitation Facilities). Such documentation may be in one of two forms:

- A notarized copy of the provider's license or certification of accreditation, or;
- A letter from the SSA, or the governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction, certifying the provider's licensure status (addiction treatment program, mental health care program, primary health care facility, rehabilitation facility, recovery home, etc.).

Facility

In cases where the provider's proposal involves the use of facilities on a site where addiction treatment and/or primary health care or related services do not presently exist, the documentation provided must attest to the fact that a suitable and accessible facility is available, and is in compliance with, or capable of being readily brought into compliance with, all State health, safety and fire regulations.

Note—Providers that are not licensed or accredited to provide substance abuse treatment or recovery services at the time of application and that receive awards under this announcement are expected to obtain licensure as rapidly as possible following the grant award, except in cases where the awardee's State does not offer licensure.

Special Requirements

Coordination With Other Federal/Non-Federal Programs

Providers seeking support under this announcement are encouraged to coordinate their proposed projects with related health and human service programs located in their service area.

Intergovernmental Review (E.O. 12372)

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's process. For proposed projects serving more than one State, the provider applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any state process recommendations to the following address: Center for Substance Abuse Treatment, CSAT Review Office, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, ATTN: SPOC.

The due date for state process recommendations is no later than 60 days after the deadline date for the receipt of applications. The Center for Substance Abuse Treatment does not guarantee to accommodate or explain SPOC comments that are received after the cut-off date.

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep the State and local health officials apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

In rare cases where an SSA does not wish to forward Provider applications to CSAT, community-based nongovernmental providers must submit a PHSIS to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the pertinent receipt date for applications. The PHSIS consists of the following information:

a. A copy of the face page of the application (Standard Form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Review Criteria

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures for grants.

Applicants that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts.

The five criteria that will be used in assessing technical merit of provider applications submitted under this announcement, and the relative weight assigned to each criterion, are as follows:

Proof of Need—

- Adequacy of description of the need for the proposed services for the defined target population, as evidenced by objective indicators of alcohol and other drug abuse and related morbidity indicators for the target population; e.g., CDC's AIDS and TB incidence data, DAWN and DUF statistics, or other available indicators of need which may be readily available and which can be extrapolated to the targeted geographic area.
- Extent to which the estimated number of substance abusing individuals in the target population exceed existing treatment capacity for the population in the target area as described in the application narrative.
- Extent to which the target population group is defined by age, race, ethnicity, gender and other characteristics.

Relevance/Adequacy of Program Design—25%

- Appropriateness of proposed project goals to goals of the grant announcement and extent to which approaches are relevant to the target population.
- Extent to which proposed services and activities are realistic and achievable, and consistent with the applicant's stated objectives.
- Adequacy of procedures to identify, assess and retain clients/patients in treatment, and of referral processes.
- Demonstrated ability to design, operate, and evaluate the project in a gender-sensitive and culturally relevant manner.
- Relevance of the proposed project to state of the art substance abuse treatment practices specific to the targeted critical population.
- Potential for replicability of demonstration grant project in similar communities.
- Extent to which proposed treatment and behavioral modification activities, along with existing services, are likely to contribute to reductions in alcohol and drug use and recidivism, and a decrease in the spread of HIV, STDs, and TB among the target population and their collaterals.

Resources and Management—20%

- Evidence of (1) capability and experience of the provider organization; and (2) a reasonable and effective project management plan.
- Feasibility of proposed project in terms of (1) timeframes and (2) adequacy, availability, and accessibility of facilities and other required resources.
- Qualifications/experience of the proposed project director, consultants and key personnel, and adequacy of the proposed staff selection process and staff training plan specific to the target population needs.
- Evidence of formal linkage with substance abuse treatment, health, welfare, criminal justice, education, employment, and community service providers.

Budget—15%

- Reasonableness and appropriateness of each section of the budget for each year of the proposed activities.
- Projected or anticipated cost effectiveness (cost per patient for treatment services).
- Clear and specific line item justifications for the proposed budget for each program component.

Evaluation—15%

- Qualifications of proposed evaluation staff.
- Adequacy and feasibility of proposed evaluation plan and methodology.
- Evidence of provider's willingness to participate in the CSAT's national evaluation efforts.
- Evidence that the proposed evaluation design has appropriate age/gender and cultural relevance for the target population.

For competing renewals, 50 percent of the total priority score will be based on

the review criteria listed above and 50 percent of the total priority score will be based upon the following two review criteria:

Performance—50%

- Documented progress towards achieving goals and objectives as specified in original grant proposal as measured by quarterly reports, annual reports and staff reports for the past 3 years.
- Comprehensiveness of the service delivery model as compared to CSAT's Comprehensive Care Model.
- Process and in-treatment outcome evaluation results.

National Model—50%

- Potential for program to serve as a national model and training site based on these queries: (1) Does the approach merit replication based on efficacy and cost-efficacy; (2) whether the program can be replicated (not dependent on some unique local circumstance) and (3) is there sufficient detailed documentation on program process and procedures to permit ready replication.

Award Decision Criteria

Provider applications recommended for approval by the Initial Review Group and the appropriate advisory council, if established, will be considered for funding on the basis of their overall technical merit as determined through the peer review process. Other award criteria will include:

(1) Availability of funds.

(2) Relevance of the project to CSAT demonstration program priorities.

(3) Need, as evidenced by available objective indicators of drug abuse in the target population, e.g., CDC's AIDS and TB incidence data, DAWN and DUF statistics.

(4) Reasonable geographic distribution of awards throughout the United States and territories.

(5) Distribution of awards to both urban and rural settings.

(6) (Except for proposals submitted by Indian Tribal Authorities) Extent to which the proposed project is endorsed and supported by the relevant State SSA.

Award Criteria for State Applicants

In cases where the State SSA applies for funding, CSAT will take into consideration the following factors to determine whether or not to make awards directly to State SSAs:

- The extent to which the SSA has clearly demonstrated the ability to obligate funds at the provider level within 90 days of Federal award to the State, and to obligate funds in an amount equal to the volume of grant funds earmarked for the provider.[2]
- Whether the State has undergone, or is enrolled in, the Statewide Technical Review and Technical Assistance component of CSAT's State Systems Development Program.

It is CSAT's intent to award grants primarily to State SSAs; however, CSAT reserves the option of awarding grants directly to providers in the event that an SSA does not meet one or more of the above criteria or chooses not to forward proposals to CSAT.

Evaluation

In the event that CSAT conducts a cross-site evaluation of this initiative, participation will be required by all grantees under this announcement.

Reporting Requirements

Interim and final progress reports and financial status and expenditure reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Authority and Regulations

Grants awarded under this PA are authorized under Section 510 (a), and b(1) and (5) of the Public Health Service Act, as amended (42 U.S.C. 290bb–3).

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Grants must be administered in accordance with the PHS Grants Policy Statement (Revised October 1, 1990).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.902.

Dated: March 31, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–7826 Filed 4–2–93; 8:45 am]

BILLING CODE 5160–20–M

Services Grant Program for Residential Treatment for Pregnant and Postpartum Women

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of availability of funds.

INTRODUCTION: The Center for Substance Abuse Treatment (CSAT), is soliciting grant applications to expand the availability of comprehensive, high quality treatment services for pregnant and postpartum women and their infants who suffer from alcohol and other drug use problems. Under this announcement, funds are available for alcohol and other drug abuse treatment services delivered in a residential setting, coupled with primary health, mental health and social services for women, their infants and children that can improve overall treatment outcomes for pregnant or postpartum women, their children, and other family members. It is estimated that approximately $24.6 million will be available to support approximately 26 projects under this program announcement in FY 93. Of this amount, a minimum of $2 million will be used to support projects among Native American and Alaska Native populations for the reduction of Fetal Alcohol Syndrome and Fetal Alcohol Effects (FAS and FAE). Actual funding levels will depend upon the availability of appropriated funds. Projects approved and recommended for funding will be awarded funds sufficient to fund the first full year. However, a maximum of 25% of the first year's funds will be available to the grantee during the start-up phase. Funds for implementation of services will be released after completion of start-up activities. Support may be requested for a project period of up to 5 years. However, because a substantial portion of the FY 1993 funds come from a one-time set-aside from the Substance Abuse Block Grant, support for years 2–5 of an approved grant project period is contingent on the availability of future fund appropriations for this program.

Funding availability for any new projects is also dependent on such appropriations.

In addition to this program announcement, Congress appropriated funds to be awarded under section 510 of the Public Health Service Act to projects specifically to demonstrate the utility and effectiveness of proposed residential treatment approaches for alcohol and other drug abusing women who are not pregnant or postpartum, and their dependent children. (See AS–93–05, Demonstration Program for Residential Treatment for Women and Their Children.) CSAT is also continuing its Critical Populations Demonstration Grant Program, announcement AS–93–02, to improve and expand the provision of alcohol and other drug treatment services for specific population sub-groups, including alcohol and other drug abusing women and their children. Services for women under Critical

[2] Funds are considered to be obligated at the service delivery unit level when funds become available for expenditure by the service provider or providers that submitted the proposal; funds must be obligated in full amount to the provider, and not pro-rated based on differing State fiscal periods, etc.

Populations are limited to those delivered in an ambulatory/outpatient setting.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national public health initiative. This Program Announcement, "Residential Treatment Programs for Pregnant and Postpartum Women" is related to the Healthy People 2000 objectives established for Alcohol and Other Drug Abuse (Chapter 4), Maternal and Infant Health (Chapter 14), HIV Infection (Chapter 18), Sexually Transmitted Diseases (Chapter 19), and Immunization and other Infectious Diseases, (Chapter 20). Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

RECEIPT DATES: The deadline for the initial receipt of applications is June 28, 1993. Thereafter, applications will be received two times per year on January 10, and May 10. Applications must be received by the United Information Services, at the address below on or before the deadline dates. However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

CONSEQUENCES OF LATE SUBMISSION: Applications received after the specified receipt dates are subject to assignment to the next review cycle or may be returned to the applicant without review.

Applicants are advised that use of the above receipt dates may vary somewhat between fiscal years, depending on availability of funds. Accordingly, after FY 1993, CSAT will annually publish a notice of availability of funds and statement of applicable receipt dates, as well as the receipt point, for this program. Applicants are strongly encouraged to ascertain such information before preparing and submitting applications.

ADDRESSES: Grant application kits (including Form PHS 5161–1, with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: United Information Systems, 3206 Tower Oaks Boulevard, 4th Floor, Rockville, Maryland 20852, (301) 984–4222.

Completed applications must be sent to: United Information Systems, at the same address as above, attention: Center for Substance Abuse Treatment Programs.

FOR FURTHER INFORMATION CONTACT:

For program issues: Division of Clinical Programs, Women's and Children's Program Branch, Center for Substance Abuse Treatment, Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8160.

For grants management issues: Christine Chen, Grants Management Officer, Center for Substance Abuse Treatment, Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9665.

SUPPLEMENTARY INFORMATION:

Program Goals

CSAT has a strong commitment, backed by the legislative mandate in Public Law 102–321, to improve treatment availability and effectiveness for pregnant and postpartum women, their infants and children who suffer from alcohol and other drug problems. CSAT will support residential comprehensive treatment programs for pregnant and postpartum women and their children that strive to improve treatment outcomes according to the following domains for women, their infants and children (as appropriate):

- Decrease alcohol and other drug use.
- Improve physical health, promote safe and healthy pregnancies and perinatal outcome, and reduce patient/client morbidity and mortality, especially incidence of HIV seroprevalence, TB, and STDs.
- Improve psychiatric/psychological/emotional health and well-being.
- Improve family/social functioning (e.g., mother/child bonding, stability and safety for children in a drug and alcohol free environment, in concert with other agencies) particularly for women involved with or at risk of becoming involved with the foster care/child welfare system.
- Enhance the socio-economic well being of women and the family unit by improving employment status, accessibility to housing, and human services.
- Decrease involvement in and exposure to crime, interpersonal violence, child abuse and neglect, and sexual abuse.
- Enhance the cognitive/educational development of infants and children with inter-uterine exposure to alcohol and other drugs, e.g. assessment of cognitive functioning and provision of developmentally appropriate education.

CSAT's philosophy is that addiction is a chronic, complex, bio-psycho-social disease phenomenon, and that treatment is most successful when providers offer: (1) a sustained continuum of comprehensive therapeutic interventions; and (2) readily accessible post-treatment continuity of treatment support and relapse prevention. It is intended that *all* successful applicants include internal quality assurance and evaluation components in their proposals in order to ensure service enhancements are assessed for effectiveness.

Target Population(s)

By virtue of their increased vulnerability, and limited access to high quality health and human services, CSAT has identified the following special sub-populations of pregnant and postpartum women with alcohol and other drug abuse problems as the Target Populations under this program: Racial and ethnic minority individuals (includes Black Americans, Hispanic Americans (Mexican American, Puerto Rican, Cuban American, Latin American), Asian Pacific Islanders, Native Hawaiians, Native Americans, and Alaska Natives); women who have been physically or sexually abused; women and children at risk for involvement in the foster care/child welfare system; women in public housing; women in the criminal justice system; homeless and low-income women; women in rural catchment areas; women with infectious diseases such as TB, HIV, and sexually transmitted diseases; pregnant young women (adolescent females); and women who have co-occurring disorders of substance abuse and mental illness. Significant others and extended families of women who are members of these target populations should be considered for inclusion in program activities, if in the best interest of the women and children.

Eligibility Requirements

Applicants

Prior to passage of the ADAMHA Reorganization Act of 1992, CSAT was limited, under section 509(b)(1) of the Public Health Services Act, to awarding discretionary grants to States. As a result of statutory changes made last year, CSAT has developed a discretionary grant policy that: (1)

Provides the opportunity for a broad pool of public and private non-profit providers of substance abuse treatment and recovery services to request support; and, (2) uses application and award procedures that will ensure close coordination with Single State Agencies for Alcohol and Drug Abuse (SSAs) in each State. While all public and private non-profit providers of substance abuse treatment and recovery services are eligible to apply, CSAT intends that, in most instances, the SSA will serve as the grantee for individual provider projects that receive support under this announcement. This policy is consistent with CSAT's goals: (1) To coordinate Federal, State and local treatment planning and data collection efforts, and; (2) to work in partnership with State SSAs to administer discretionary funds to the maximum extent practicable.

All eligible public and private non-profit providers must submit their proposals through the SSA in their State, and SSAs must forward all such proposals to CSAT (for provider eligibility criteria, see Provider Eligibility below). Indian Tribal Authorities constitute an exception and may apply directly to CSAT without going through an SSA. In rare cases where an SSA does not wish to forward individual providers applications, providers may submit their proposals directly to CSAT. Before submitting a proposal directly to CSAT, it is the provider's responsibility to determine whether their State SSA intends to forward provider proposals submitted under this announcement. If an SSA does not intend to forward eligible proposals, providers should contact CSAT to determine the appropriate application procedure.

State SSAs can exercise one of two options when forwarding applications to CSAT:

1. SSAs seeking to be the applicant/grantee (i.e., financially and legally responsible for administration of grants post-award) must compile all provider proposals and forward them to CSAT under cover of a PHS Application form signed by the Director of the SSA. SSA applications submitted according to this procedure must also include a copy of a letter from the Director of the SSA, listing the provider proposals being forwarded under the State application. In addition, a copy of this letter must be included in each project proposal. CSAT will assume that SSAs electing to submit a State application in this manner intend to function as the grantee for awards made under this announcement. In this event, the SSA will receive between 2% and 6% of the total amount of the State award to cover State Administrative costs. Prior to making an award to the State, CSAT will take into consideration whether the SSA has the capacity, resources, and authority to execute the full range of grant administration responsibilities for provider projects within its jurisdiction (see criteria described under Award Criteria for State Applicants).

2. SSAs deciding not to be the applicant (i.e., legally and financially responsible for administration of grants post-award) should forward all provider proposals received under this announcement to CSAT, accompanied only by a cover letter from the Director of the SSA listing the provider proposals contained in the State submission. For States electing this option, CSAT will award grants directly to successful providers within the State.

Under either option, States are invited to make award recommendations to the Director of CSAT by July 30, 1993 for the current year's application, or within 60 days of the application deadline in future years.

Provider Eligibility

Evidence of capability to perform must accompany each provider proposal, and must consist of at least one of the following:

1. Documentation of the existence of an infrastructure upon which to initiate a treatment program for the target population. Such documentation must be in the form of a letter from the SSA, or the governmental entity (e.g. county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction.

2. Documentation that the provider, or at least one member of a provider consortium, has provided substance abuse treatment or recovery services to the target population for a minimum of two years prior to the date of application.

A letter from the SSA, or the governmental entity (e.g. county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction, certifying the provider's experience, as above, will suffice to meet this requirement.

3. Documentation that the provider is licensed or accredited to provide substance abuse treatment or recovery services by appropriate certification or credentialing bodies (e.g. State or sub-state licensing, Joint Commission on Accreditation for Health Organizations, Commission on Accreditation of Rehabilitation Facilities). Such documentation may be in one of two forms:

- A notarized copy of the provider's license or certification of accreditation, or;
- A letter from the SSA, or the governmental entity (e.g. county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction, certifying the provider's licensure status (addiction treatment program, mental health care program, primary health care facility, rehabilitation facility, recovery home, etc.).

Facility

In cases where the provider's proposal involves the use of facilities on a site where addiction treatment and/or primary health care or related services do not presently exist, the documentation provided must attest to the fact that a suitable and accessible facility is available, and is in compliance with, or capable of being readily brought into compliance with, all State health, safety and fire regulations.

Note.—Providers that are not licensed or accredited to provide substance abuse treatment or recovery services at the time of application and that receive awards under this announcement are expected to obtain licensure as rapidly as possible following the grant award, except in cases where the awardee's State does not offer licensure.

Special Requirements

Coordination With Healthy Start

In order to assist Healthy Start Communities in their goal to reduce infant mortality by at least 50% in high incidence areas, funding priority may be given to highly rated projects proposing to serve women residing in communities targeted by Healthy Start grantees. For purposes of this funding priority, the Healthy Start grantee must endorse only one application. Endorsement documentation must be included in the proposal.

Non-Federal Matching Funds

Matching funds are required and may be financial or in-kind; must be derived from non-Federal sources (i.e., State or sub-state non-Federal revenues, foundation grants, plant, equipment or services), and must be not less than $1 for each $9 of Federal funds provided in years one and two, and not less than $1 for each $3 of Federal funds provided in all subsequent years. A letter from the Single State Agency Director, endorsed by the Governor, that attests to the

availability of non-Federal matching support for the proposed projects must accompany the application, in the special Requirements section.

Intergovernmental Review

Intergovernmental Review (E.O. 12372): Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any state process recommendations to the following address: CSAT Review Office, Center for Substance Abuse Treatment, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, ATTN: SPOC.

The due date for state process recommendations is no later than 60 days after the deadline date for the receipt of applications. The Center for Substance Abuse Treatment does not guarantee to accommodate or explain SPOC comments that are received after the cut-off date.

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep the State and local health officials apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

In rare cases where an SSA does not wish to forward Provider Applications to CSAT, community-based nongovernmental Providers must submit a PHSIS to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the pertinent receipt date for applications. The PHIS consists of the following information:

a. A copy of the face page of the application (Standard Form 424).

b. A summary of the project, not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Review Criteria

Applications submitted in response to this PA will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures for grants.

The criteria that will be used in assessing technical merit of individual applications submitted under this announcement, and the relative weight assigned to each criterion, are as follows:

1. Proof of Need.....25 points

- Adequacy of description of the need for the proposed services, as evidenced by objective indicators of alcohol and other drug abuse in the target population; e.g., CDC's incidence data on infectious diseases such as AIDs, TB, and STDs; DAWN and DUF Statistics, and other available indicators of need which may be readily available and which can be extrapolated to the targeted geographic area.
- Extent to which the estimated number of pregnant and postpartum substance abusing women in the target area exceed existing capacity for treatment services, as described in the application narrative.
- Extent to which the target population of substance abusing women who are pregnant and postpartum is defined by age, race, ethnicity, and other characteristics.

2. Relevance/Adequacy of Program Design.....25 points

- Appropriateness of applicant's proposed goals and objectives to the goals of the PA;
- Extent to which proposed treatment services are achievable and realistic and consistent with goals and objectives stated in the application.
- Compliance with and adequacy of the service approaches as required in the program announcement, with specific reference to: procedures for identifying, assessing, and retaining patients in treatment; referral processes; and the proposed treatment approaches.
- Demonstrated ability to implement a gender-specific and culturally competent project as evidenced in such areas as treatment strategies, staffing and evaluation, reflecting the composition of the target population.
- Evidence that the proposed project builds on the state-of-the-art on substance abuse treatment among pregnant and postpartum women.

3. Resources, Planning, and Management.....20 points

- Evidence of organizational capability and experience of applicant organization, and a logical and feasible management plan.
- Evidence of adequate plans for all phase-in activities and a reasonable timeline for completion.
- Evidence of formal linkages with substance abuse treatment, physical and mental health, welfare, criminal justice, employment, housing and other community service providers.
- Feasibility of proposed project in terms of time frames, estimated number of individuals who will receive services, and adequacy and availability of facilities and resources.
- Qualifications/experience of the proposed project director, consultants and staff; appropriateness of job descriptions; adequacy of the proposed staff selection process and staff training plan specific to the needs of this population.

4. Budget.....15 points

- Reasonableness/appropriateness of budget for the phase-in period and for implementation of first year's services and budget for each year of proposed services.
- Cost effectiveness (cost per patient for treatment services)
- Clear and reasonable justification for each line item in the budget for all phase-in activities, and program and management components.

5. Program Evaluation.....15 points

- Clarity/feasibility/appropriateness of proposed process and outcome evaluation design and methodology.
- Extent to which the staff proposed for the evaluation demonstrate the expertise needed for this task.

Award Decision Criteria

Applications recommended for approval by the Initial Review Group and the appropriate advisory council, if in place, will be considered for funding on the basis of their overall technical merit as determined through the peer review process. Other award criteria will include:

1. Availability of Federal funds.

2. Need, as evidenced by objective indicators of substance abuse and related problems in the target population (CDC, HIV and TB incidence data).

3. Projects proposing to serve women residing in communities targeted by Healthy Start grantees.

4. Balance of the geographic distribution of awards throughout the United States.

5. Projects proposing to serve Native American and Alaska native populations for the reduction of Fetal Alcohol Syndrome and Fetal Alcohol Effects.

6. Extent to which the proposed project will receive matching funds from State or sub-state agencies or other non-Federal (private or public) sources, as required.

7. Evidence of Provider's willingness to participate in CSAT's national evaluation efforts.

8. (Except for proposals submitted by Indian Tribal Authorities) the extent to which the State SSA endorses Federal support of the proposed project.

Award Criteria for State Applicants

In cases where the State SSA applies for funding, CSAT will take into consideration the following factors to determine whether or not to make awards directly to State SSAs:

- The extent to which the SSA has clearly demonstrated the ability to obligate funds at the provider level within 90 days of Federal award to the State, and to obligate funds in an amount *equal* to the volume of grant funds earmarked for the provider.[1]
- Whether the State has undergone, or is enrolled in, the Statewide Technical Review and Technical Assistance component of CSAT's State Systems Development Program.

It is CSAT's intent to award grants primarily to State SSAs; however, CSAT reserves the option of awarding grants directly to providers in the event that an SSA does not meet one or more of the above criteria or chooses not to forward proposals to CSAT.

Terms and Conditions of Support

Reporting Requirements

Interim and final progress reports and financial status and expenditure reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Participation in CSAT's National Evaluation Efforts

Applicants should submit a statement of willingness to participate in CSAT's national evaluation efforts.

[1] Funds are considered to be obligated at the service delivery unit level when funds become available for expenditure by the service provider or providers that submitted the proposal; funds must be obligated in full amount to the provider, and not pro-rated based on differing State fiscal periods, etc.

Authority and Regulations

Grants awarded under this PA are authorized under section 508 of the Public Health Service Act, as amended (42 U.S.C. 290bb–1).

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Grants must be administered in accordance with the PHS Grants Policy Statement (Revised October 1, 1990).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.101.

Dated: March 31, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–7828 Filed 4–2–93; 8:45 am]

BILLING CODE 5160–20–M

Demonstration Grant Program for Residential Treatment for Women and Their Children

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of availability of funds.

INTRODUCTION: The Center for Substance Abuse Treatment (CSAT), is soliciting grant applications to expand the availability of comprehensive, high quality residential treatment services for women (who are not pregnant or postpartum) and their dependent children who suffer from alcohol and other drug abuse problems. Under this announcement funds are available to demonstrate that alcohol and other drug abuse treatment services, delivered in a residential setting coupled with primary health, mental health and social services for both women and children, can improve overall treatment outcomes for the woman, her children, and the family unit as a whole. It is estimated that approximately $13.9 million will be available to support approximately 18 projects under this program announcement in FY 93. Actual funding levels will depend upon the availability of appropriated funds. Projects approved and recommended for funding will be awarded funds sufficient to fund the first full year. However, a maximum of 25% of the first year's funds will be available to the grantee during the start-up phase. Funds for implementation of services will only be released after completion of start-up activities.

Support may be requested for a project period of up to 5 years. However, funding availability for any new projects is dependent on appropriations.

In addition to this program announcement, Congress appropriated funds to be awarded under section 508 of the Public Health Service Act to support specifically the enhancement or creation of new addiction treatment capacity for comprehensive, residential treatment programs for alcohol and other drug abusing women who are pregnant and/or postpartum, and their infants and children. (See AS–93–03, Services Grant Program for Residential Treatment for Pregnant and Postpartum Women.) CSAT is also continuing its Critical Populations Demonstration grant program, announcement AS–93–02, to improve and expand the provision of alcohol and other drug treatment services for specific population sub-groups, among them alcohol and other drug abusing women and their children. Services for women under Critical Populations are limited to those delivered in an ambulatory/outpatient setting.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national public health initiative. This Program Announcement, "Demonstration Grant Program for Residential Treatment for Substance Abusing Women and Their Children" is related to the Healthy People 2000 objectives established for Alcohol and Other Drug Abuse (Chapter 4); HIV Infection (Chapter 18); Sexually Transmitted Diseases (Chapter 19); and Immunization and Infectious Diseases, (Chapter 20). Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

RECEIPT DATES: The deadline for the initial receipt of applications is June 28, 1993. Thereafter, applications will be received two times per year on January 10, and May 10. Applications must be received by United Information Services, at the address below on or before the deadline dates. However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

CONSEQUENCES OF LATE SUBMISSION: Applications received after the specified receipt dates are subject to assignment to the next review cycle or may be returned to the applicant without review.

Applicants are advised that use of the above receipt dates may vary somewhat between fiscal years, depending on availability of funds. Accordingly, after FY 1993, CSAT will annually publish a notice of availability of funds and statement of applicable receipt dates, as well as the receipt point, for this program. Applicants are strongly encouraged to ascertain such information before preparing and submitting applications.

ADDRESSES: Grant application kits (including Form PHS 5161–1, with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: United Information Systems, 3206 Tower Oaks Boulevard, 4th Floor, Rockville, Maryland 20852, (301) 984–4222.

Completed applications must be sent to: United Information Systems, at the same address as above, attention: Center for Substance Abuse Treatment Programs.

FOR FURTHER INFORMATION CONTACT:

For program issues: Division of Clinical Programs, Women's and Children's Program Branch, Center for Substance Abuse Treatment, Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8160.

For grants management issues: Christine Chen, Grants Management Officer, Center for Substance Abuse Treatment, Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9665.

SUPPLEMENTARY INFORMATION:

Program Goals

CSAT has a strong commitment, backed by the legislative mandate in Public Law 102–321, to improve treatment availability and effectiveness for women and children who suffer from alcohol and other drug abuse problems. In keeping with this commitment, CSAT will support proposed demonstration projects designed to enhance and/or expand residential addiction treatment programs for women and their children that are consistent with both of the following goals:

(1) To implement effective substance abuse treatment approaches for women that build on state-of-the-art practical knowledge and research findings;

(2) to develop documented models of effective service delivery that can be replicated in similar communities.

CSAT will support residential comprehensive treatment programs for women and their children that strive to improve treatment outcomes according to the following domains for women and their children (as appropriate):

- Decrease alcohol and other drug use.
- Improve physical health, and reduce patient/client morbidity and mortality, especially incidence of HIV seroprevalence, TB, and STDs.
- Improve psychiatric/psychological/emotional health and well-being.
- Improve family/social functioning (e.g., mother/child bonding, stability and safety for children in a drug and alcohol free environment, in concert with other agencies) and prevent interaction with, particularly for those at risk for involvement in, the foster care/child welfare system.
- Enhance the socio-economic well being of women and the family unit by improving employment status, accessibility to housing, and human services.
- Decrease involvement in and exposure to crime, interpersonal violence, child abuse and neglect, and sexual abuse.
- Enhance the cognitive/educational development of children with inter-uterine exposure to alcohol and other drugs . . . (assessment of cognitive functioning and provision of developmentally appropriate education).

CSAT's philosophy is that addiction is a chronic, complex, bio-psycho-social disease phenomenon, and that treatment is most successful when providers offer: (1) A sustained continuum of comprehensive therapeutic interventions; and (2) readily accessible post-treatment continuity of treatment support and relapse prevention. It is intended that all successful applicants include internal quality assurance and evaluation components in their proposals in order to ensure service enhancements are assessed for effectiveness.

Target Population(s)

By virtue of their increased vulnerability, and limited access to high quality health and human services, CSAT has identified the following special subpopulations of substance abusing women as Target Populations under this program: Racial and ethnic minority individuals—Black Americans, Hispanic Americans (Mexican American, Puerto Rican, Cuban American, Latin American), Asian Pacific Islanders, Native Hawaiians, Native Americans, and Alaska Natives—women who have been physically or sexually abused; women and children involved or at risk of involvement with the foster care/child welfare system; women in public housing; women in the criminal justice system; homeless and low-income women, women in rural catchment areas; women with infectious diseases such as TB, HIV, and sexually transmitted diseases (STDs); adolescent females; and women who have co-occurring disorders of substance abuse and mental illness. Significant others and extended families of women who are members of these target populations should be considered for inclusion in program activities, if in the best interest of the women and children.

Eligibility

Applicants

Prior to passage of the ADAMHA Reorganization Act of 1992, CSAT was limited, under section 509G(b)(1) of the Public Health Services Act, to awarding discretionary grants to States. As a result of statutory changes made last year, CSAT has developed a discretionary grant policy that: (1) Provides the opportunity for a broad pool of public and private non-profit providers of substance abuse treatment and recovery services to request support, and (2) uses application and award procedures that will ensure close coordination with Single State Agencies for Alcohol and Drug Abuse (SSAs) in each State. While all public and private non-profit providers of substance abuse treatment and recovery services are eligible to apply, CSAT intends that, in most instances, the SSA will serve as the grantee for individual provider projects that receive support under this announcement. This policy is consistent with CSAT's goals: (1) To coordinate Federal, State and local treatment planning and data collection efforts; and, (2) to work in partnership with State SSAs to administer discretionary funds to the maximum extent practicable.

All eligible public and private non-profit providers must submit their proposals through the SSA in their State, and SSAs must forward all such proposals to CSAT (for provider eligibility criteria, see Provider Eligibility below). Indian Tribal Authorities constitute an exception and may apply directly to CSAT without going through an SSA. In rare cases where an SSA does not wish to forward individual providers applications,

providers may submit their proposals directly to CSAT. Before submitting a proposal directly to CSAT, it is the provider's responsibility to determine whether their State SSA intends to forward provider proposals submitted under this announcement. If an SSA does not intend to forward eligible proposals, providers should contact CSAT to determine the appropriate application procedure.

State SSAs can exercise one of two options when forwarding applications to CSAT:

1. SSAs seeking to be the applicant/grantee (i.e., financially and legally responsible for administration of grants post-award) must compile all provider proposals and forward them to CSAT under cover of a PHS Application form signed by the Director of the SSA. SSA applications submitted according to this procedure must also include a copy of a letter from the Director of the SSA, listing the provider proposals being forwarded under the State application. In addition, a copy of this letter must be included in each project proposal. CSAT will assume that SSAs electing to submit a State application in this manner intend to function as the grantee for awards made under this announcement. In this event, the SSA will receive between 2% and 6% of the total amount of the State award to cover State administrative costs. Prior to making an award to the State, CSAT will take into consideration whether the SSA has the capacity, resources, and authority to execute the full range of grant administration responsibilities for provider projects within its jurisdiction (see criteria described under Award Criteria for State Applicants).

2. SSAs deciding not to be the applicant (i.e., legally and financially responsible for administration of grants post-award) should forward all provider proposals received under this announcement to CSAT, accompanied only by a cover letter from the Director of the SSA listing the provider proposals contained in the State submission. For States electing this option, CSAT will award grants directly to successful providers within the State.

Under either option, States are invited to make award recommendations to the Director of CSAT by July 30, 1993 for the current year's application, or within 60 days of the application deadline in future years.

Provider Eligibility

Evidence of capability to perform must accompany each provider proposal, and must consist of at least one of the following:

1. Documentation of the existence of an infrastructure upon which to initiate a treatment program for the target population. Such documentation must be in the form of a letter from the SSA, or the governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction.

2. Documentation that the provider, or at least one member of a provider consortium, has provided substance abuse treatment or recovery services to the target population for a minimum of two years prior to the date of application.

A letter from the SSA, or the governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction, certifying the provider's experience, as above, will suffice to meet this requirement.

3. Documentation that the provider is licensed or accredited to provide substance abuse treatment or recovery services by appropriate certification or credentialing bodies (e.g., State or sub-state licensing, Joint Commission on Accreditation for Health Organizations, Commission on Accreditation of Rehabilitation Facilities). Such documentation may be in one of two forms:

- A notarized copy of the provider's license or certification of accreditation, or;
- A letter from the SSA, or the governmental entity (e.g., county, regional or city) immediately responsible for monitoring, overseeing or administering addiction treatment or other health and human services in the provider's jurisdiction, certifying the provider's licensure status (addiction treatment program, mental health care program, primary health care facility, rehabilitation facility, recovery home, etc.).

Facility

In cases where the provider's proposal involves the use of facilities on a site where addiction treatment and/or primary health care or related services do not presently exist, the documentation provided must attest to the fact that a suitable and accessible facility is available, and is in compliance with, or capable of being readily brought into compliance with, all State health, safety and fire regulations.

Note.—Providers that are not licensed or accredited to provide substance abuse treatment or recovery services at the time of application and that receive awards under this announcement are expected to obtain licensure as rapidly as possible following the grant award, except in cases where the awardee's State does not offer licensure.

Special Requirements

Project activities must provide residential care to alcohol and drug dependent women and their children. Where a residential facility for the program does not yet exist, one must be identified prior to the award of any grant and the assurance of its availability for the entire proposed project period must be provided. New construction is not permitted.

The residential treatment facility must meet all applicable State and local child care and residential licensing requirements. Also, facilities proposed must be in compliance with all State health, safety and fire regulations. In identifying facilities, providers must be particularly sensitive to the public health needs of this population, including vulnerability for tuberculosis (TB). Documentation of these considerations and/or compliances must be provided in the proposal.

Assessing housing suitable for project activities may be facilitated by working with local Public Housing Authorities. Housing and Urban Development (HUD) Handbook 7465.1 REV 2, dated August 1987 (Ch. 6) permits a Public Housing Authority (PHA) to designate select units for occupancy by members of a specific target population, and/or contract with a social service provider to manage certain dwelling units, if it so chooses. A PHA may also submit a request for authorization from HUD to lease/modify dwelling space for non-dwelling purposes such as a Substance Abuse Treatment Center. PHAs and providers considering such approaches should discuss such proposals with the local HUD Field Office prior to development of an application.

Intergovernmental Review

Intergovernmental Review (E.O. 12372): Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive

any necessary instructions on the State's process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any state process recommendations to the following address: CSAT Review Office, Center for Substance Abuse Treatment, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, ATTN: SPOC.

The due date for state process recommendations is no later than 60 days after the deadline date for the receipt of applications.

The Center for Substance Abuse Treatment does not guarantee to accommodate or explain SPOC comments that are received after the cut-off date.

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep the State and local health officials apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

In rare cases where an SSA does not wish to forward Provider Applications to CSAT, community-based nongovernmental providers must submit a PHSIS to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the pertinent receipt date for applications. The PHSIS consists of the following information:

a. A copy of the face page of the application (Standard Form 424).

b. A summary of the project, not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Review Criteria

Applications submitted in response to this PA will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures for grants.

The criteria that will be used in assessing technical merit of individual applications submitted under this announcement, and the relative weight assigned to each criterion, are as follows:

1. Proof of Need ..... 25 points

- Adequacy of description of the need for the proposed services, as evidenced by objective indicators of alcohol and drug abuse in the target population; e.g., CDC's incidence data on infectious diseases such as AIDS, TB, and STDs; DAWN and DUF Statistics, and other available indicators of need which can be extrapolated to the targeted geographic area.
- Extent to which the number of substance abusing women in the target area exceed existing capacity for treatment services.
- Extent to which the target population of substance abusing women is defined by age, race, ethnicity, and other characteristics.

2. Relevance/Adequacy of Program Design ..... 25 points

- Appropriateness of proposed project goals to program announcement goals, and extent to which proposed approaches are relevant to the target population of women and children.
- Extent to which proposed treatment services are achievable and realistic and consistent with the goals and objectives stated in the Provider Application.
- Compliance with and adequacy of the service approaches required in the program announcement, with specific reference to: procedures for identifying, assessing, and retaining patients in treatment; to referral processes; and to the proposed service approaches.
- Demonstrated ability to implement a gender-specific and culturally competent project as evidenced in such areas as treatment strategies, staffing and evaluation, reflecting the composition of the target population.
- Evidence that the proposed project builds on the state-of-the-art on substance abuse treatment among women.
- Ability to document and evaluate the relative efficacy of various approaches in caring for alcohol and other drug dependent women and their children.
- Potential for replicability in similar communities.

3. Resources and Management ..... 20 points

- Evidence of organizational capability and experience of provider organization, and a logical and feasible management plan.
- Evidence of adequate plans for all phase-in activities and a reasonable timeline for completion.
- Evidence of formal linkages with substance abuse treatment, physical and mental health, welfare, criminal justice, employment, housing and other community service providers.
- Feasibility of proposed project in terms of time frames, estimated number of individuals who will receive services, and adequacy and availability of facilities and resources.
- Qualifications/experience of the proposed project director, consultants and staff; adequacy of the proposed staff selection process and staff training plan specific to the needs of this population.

4. Budget ..... 15 points

- Reasonableness/appropriateness and effectiveness of budget for phase-in period and for implementation of first year's services and budget each year of proposed services.
- Cost-effectiveness (cost per patient for treatment services).
- Clear and reasonable justification for each line item in the budget for all phase-in activities, and program and management components.

5. Program Evaluation ..... 15 points

- Clarity/feasibility/appropriateness of proposed process and in-patient outcome evaluation designs and methodologies.
- Extent to which the staff proposed for the evaluation demonstrate the expertise needed for designing and implementing evaluation studies of community-based treatment approaches.

Award Decision Criteria

Applications recommended for approval by the Initial Review Group and the appropriate advisory council, if in place, will be considered for funding on the basis of their overall technical merit as determined through the review process. Other award criteria will include:

1. Availability of Federal funds.
2. Need, as evidenced by objective indicators of substance abuse and related problems in the target population. (CDC, HIV and TB data).
3. Balance of the geographic distribution of awards throughout the United States.
4. Evidence of Provider's willingness to participate in CSAT's national evaluation efforts.
5. (Except for proposals submitted by Indian Tribal Authorities) the extent to which the State SSA endorses Federal Support of the proposed project.
6. The degree to which a proposed project provides a potential national model in an area, or for a sub-population, for which few or no models currently exist.

Award Criteria for State Applicants

In cases where the State SSA applies for funding, CSAT will take into

consideration the following factors to determine whether or not to make awards directly to State SSAs:

- The extent to which the SSA has clearly demonstrated the ability to obligate funds at the provider level within 90 days of Federal award to the State, and to obligate funds in an amount *equal* to the volume of grant funds earmarked for the provider.[1]
- Whether the State has undergone, or is enrolled in, the Statewide Technical Review and Technical Assistance component of CSAT's State Systems Development Program.

It is CSAT's intent to award grants primarily to State SSAs; however, CSAT reserves the option of awarding grants directly to providers in the event that an SSA does not meet one or more of the above criteria or chooses not to forward proposals to CSAT.

Terms and Conditions of Support

Reporting Requirements

Interim and final progress reports and financial status and expenditure reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Participation in CSAT's National Evaluation Efforts

Applicants should submit a statement of willingness to participate in CSAT's national evaluation efforts.

Authority and Regulations

Grants awarded under this PA are authorized under section 510 of the Public Health Service Act, as amended (42 U.S.C. 290bb–3) amended by Public Law 102–321, utilizing funds made available through the appropriation for Treasury, Postal Service and General Government Appropriations Public Law 102–393). This appropriation, signed into law on October 10, 1992, provided $5 million in FY 1993 resources derived from the Office of National Drug Control Policy Special Forfeiture Fund to be used for substance abuse treatment in residential settings for women and their children. Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Grants must be administered in accordance with the PHS Grants Policy Statement (Revised October 1, 1990).

[1] Funds are considered to be obligated at the service delivery unit level when funds become available for expenditure by the service provider or providers that submitted the proposal; funds must be obligated in full amount to the provider, and not pro-rated based on differing State fiscal periods, etc.

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.102.

Dated: March 31, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–7829 Filed 4–2–93; 8:45 am]

BILLING CODE 5160–20–M

Cooperative Agreements for Addiction Treatment and Recovery Systems in Target Cities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of availability of funds.

INTRODUCTION: The Center for Substance Abuse Treatment (CSAT) is announcing a continuation of its Target Cities Cooperative Agreement Demonstration Program. Under the auspices of this program, CSAT will support activities designed to improve the delivery, accessibility and effectiveness of addiction treatment and recovery services in large metropolitan areas, and to foster coordination among these programs and related health, housing, welfare, job training, community redevelopment, other social programs and institutions, and the interdiction and legal systems (e.g., police, courts, jails). It is estimated that approximately $30 million will be available to support up to 14 awards under this announcement, to include awards for new Target Cities sites as well as for the continuation of existing Target Cities programs (hereafter called competing renewals). It is expected that approximately 30 percent of available funds will be awarded for competing renewals; however, the amount of funds awarded to new versus existing sites will be decided primarily on the basis of the merit of applications received under this announcement. It should be noted that review and award criteria differ for new versus existing Target Cities applications (see **Review Criteria** and **Award Decision Criteria**).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national public health initiative. The Target Cities Cooperative Agreement Demonstration Program is designed to facilitate achieving the Healthy People 2000 objectives established for Alcohol and Other Drugs (Chapter 4) and HIV Infection (Chapter 18). Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0; or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

For new Target Cities applications, support may be requested for up to five (5) years. Support for competing renewals of existing grantees may be requested for a maximum of two years. Annual awards will be made subject to continued availability of funds and progress achieved.

RECEIPT DATES: The deadline for the initial receipt of applications is July 6, 1993. Thereafter, applications will be received one time per year on January 10. Applications must be received by the published application receipt date; however, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday.

CONSEQUENCES OF LATE SUBMISSION: Applications received after the specified receipt dates are subject to assignment to the next review cycle or may be returned to the applicant without review.

Applicants are advised that use of the above receipt date may vary somewhat between fiscal years, depending on availability of funds. Accordingly, after FY 1993, CSAT will annually publish a notice of availability of funds and statement of applicable receipt dates, as well as the receipt point, for this program. Applicants are strongly encouraged to ascertain such information before preparing and submitting applications.

ADDRESSES: Grant application kits (including Form PHS 5161–1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: United Information Systems, Inc., 3206 Tower Oaks Boulevard, 4th Floor, Rockville, MD 20852, ATTN: CSAT Demonstration Programs, (301) 984–4222.

Completed applications must be sent to United Information Systems at the same address as above.

FOR FURTHER INFORMATION:

For program issues: Program Management Officers, Systems Improvement Branch, Center for Substance Abuse Treatment, Rockwall

II, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8802.

For grants management issues: Christine Chen, Grants Management Officer, Center for Substance Abuse Treatment, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9665.

SUPPLEMENTARY INFORMATION:

Cooperative Agreements

Cooperative Agreements entail substantial programmatic involvement by CSAT staff above and beyond the levels required for traditional grant program management, to include CSAT participation in policy development and program structure, and CSAT approval of contracts/spending plans.

Program Goals

The goals of the Target Cities Cooperative Agreement Demonstration Program are to:

(1) Increase access to treatment for those in need of treatment;

(2) Increase the effectiveness of addiction treatment and recovery services in large metropolitan areas (i.e., to improve treatment outcomes for individuals with alcohol and drug problems, and their families);

(3) Foster coordination among addiction treatment and recovery programs and related health (e.g., TB/HIV/STDs), housing, welfare, job training, education, community redevelopment, social programs and institutions, and the legal system (e.g., police, courts, jails) as a means of involving alcohol- and drug-involved individuals in treatment and achieving improved treatment outcomes; and

(4) Develop methods by which metropolitan systems of care can continually improve treatment effectiveness.

Improved treatment outcomes for alcohol and drug-involved individuals are defined to include: Reduced alcohol and drug use; reduced spread of infectious disease (e.g., STDs/HIV/TB); increased overall physical, psychiatric and psychological health; increased employment; improved social and family functioning; decreased morbidity among children and addicted parents; and reduced involvement with the criminal justice system.

To achieve these goals, CSAT will support systemic improvement initiatives that will also foster the development of a self-correcting and self-improving treatment system. Ideally, a self-correcting, self-improving system would have the capability to:

(1) Conduct comprehensive, standardized assessments of the bio-psycho-socio-economic characteristics of alcohol and drug-involved individuals and their families who present for treatment.

(2) Refer these individuals and their family members to the treatment programs and health services programs where they are most likely to derive benefits, rather than to the service provider to whom the individual first applies (i.e., objective matching of individuals and families with appropriate interventions).

(3) Ensure that treatment and recovery programs provide a continuum of treatment, recovery, rehabilitation and human services specifically designed to meet the unique needs of the individuals and families they serve, and that these interventions are provided in a readily accessible manner that is clinically, socially, and culturally appropriate, as well as effective.

(4) Evaluate the appropriateness of the assessment, referral, treatment and support continuum in terms of both individual and family outcomes during treatment, and in some cases, at intervals following treatment completion.

(5) Utilize evaluation findings to identify which individuals (and families) fare best in which programs, as well as to monitor the effectiveness of different treatment and recovery programs operating within the system.

(6) Maintain a substantial degree of flexibility in order to correct system functioning and/or composition in a manner that allows the system to respond to changing individual, family and demographic characteristics in the community.

Building a self-improving treatment system of this type will require a substantial commitment on the part of all components of the system: All addition treatment and recovery programs; primary health care providers; mental health care providers; social service system components; government health and human services agencies; police/interdiction; and the legal/judicial system. At a minimum, the majority of publicly-funded (including those receiving Federal grant funds) addition treatment and recovery programs in a potential Target Cities site (as determined by the most recent NDATUS Survey) must agree to participate in the system (see **Review Criteria**).

The linkage and integration of existing addiction treatment and recovery programs and related health and human services programs for the benefit of alcohol- and drug-involved individuals and their families is a primary goal of this program.

Applicants should coordinate proposed Target Cities projects with related programs of the PHS, the Department of Health and Human Services (DHHS), and the Departments of Justice (DOJ), Housing and Urban Development (HUD) and Labor (DOL). To the extent practicable, applicants are especially encouraged to coordinate proposed projects submitted under this announcement with PHS Healthy Start programs, the Community Partnership program administered by the Center for Substance Abuse Prevention and the Community Policing program administered by the DOJ.

Eligibility Requirements

Support may be requested on behalf of cities with a population in excess of 266,000 according to 1990 census data published by the Bureau of the Census, U.S. Department of Commerce. Eligibility however, is limited to the Single State Agency (SSA) for alcohol and drug abuse in each State. [For purposes of this announcement, "State" is defined as the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the successor States to the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)]. Under the auspices of CSAT's State Systems Development Program, or SSDP, CSAT is working in partnership with the SSA in each State to conduct sub-state needs assessments and to develop Statewide Prevention and Treatment Plans. CSAT intends that SSAs shall be the applicant State agency as a means to coordinate the activities sponsored under the SSDP with Target Cities projects funded under this announcement.

Each State may request support for up to two new Target Cities projects and one continuation for an existing Target Cities program, if applicable. No State may submit more than three proposals for Target Cities projects; this is a means to facilitate geographic, demographic, and qualitative diversity of applications. While there are annual receipt dates for applications under this announcement, the availability of funds for award in fiscal year 1993 is limited. States applying for more than one qualified site must priority rank the proposals in their applications with the understanding that geographic diversity will factor strongly in the award decision-making process, and it is unlikely that more than one new Target Cities award will be made to any one State that applies under this announcement. Applications received

for new versus existing Target Cities sites will be subject to review and award based on special criteria (see **Review Criteria** and **Award Decision Criteria**).

SSAs must apply on behalf of a consortium of State and local agencies and public and private entities who provide or have jurisdictions over: addiction treatment and recovery services; primary health care; mental health services; social services; housing; job training; interdiction; and legal case processing for each applicant city. In developing consortia, SSAs are encouraged to seek assistance and/or collaboration from private foundations and businesses with philanthropic interests in the applicant Target Cities site(s).

For each Target Cities application, the SSA must provide a letter of agreement as evidence of collaboration and involvement on the part of a consortium of appropriate State and local agencies and public/private entities involved in health and human service delivery in the Target Cities site. Local agencies are defined to include city, county, and/or regional agencies, as appropriate, in cases where more than one governmental body has jurisdiction over the delivery of services in the affected site.

The degree to which the letter of agreement provides evidence of multi-disciplinary public/private collaboration will factor prominently in the review and award decision-making processes for this program (see **Review Criteria** and **Award Decision Criteria**). The individuals whose signatures appear in the letter of collaboration will eventually form the nucleus of a policy steering committee that will be tasked with continuous project oversight during the term of the project. It is expected that the specifics of policy steering committee membership and the extent of interagency collaboration among steering committee members will be decided during the first six months of the project post-award.

However, at a minimum, the consortium as defined in the letter of agreement that accompanies the initial application must include: The SSA, the public health care agency for the State, the mental health care agency for the State, the social service agency for the State, and all sub-state agencies with addiction treatment and recovery, health care, mental health care, social services and police/interdiction services for the affected city. The Mayor of the target jurisdiction must also be included as part of the consortium.

Eligibility is restricted to State SSAs, acting in concert with State and local health and allied health officials and private/public service providers, in order to maximize the long-term benefit of these awards. It is anticipated that the high degree of inter-disciplinary State and local government involvement in these projects will facilitate planning and integration of services, as well as State support of systemic improvements in selected sites after Federal support for the program is no longer available.

Competition is also being limited to applications for projects in cities with a population over 266,000 (representing the top 60 cities in population size) so as to maximize the impact of available funds in large cities of particularly high drug abuse incidence. Applicants will have to demonstrate, with the use of statistics, that the proposed target city has drug abuse problems of crisis proportions. It is also assumed that only cities of such size will have the number and diversity of providers and programs that would justify the development of intake and management.

The primary intent of this program is to implement systemic improvement initiatives designed to enhance the effectiveness of the existing addiction treatment, and health and human services infrastructure in participating sites.

However, provided proposals are structured to achieve the primary objectives of this program, CSAT is willing to support expansion and/or creation of new capacity on a limited basis for treatment of populations having special treatment needs (e.g., pregnant women or adolescents).

Non-Federal Matching Funds

There is no non-Federal matching requirement for participation in this program. However, those applicants that document the existence of non-Federal resources available to support the Cooperative Agreement (e.g., foundation grants) will receive a preference for award (see **Award Decision Criteria**).

Target Jurisdiction and Populations

Other than State costs specified under the Terms and Conditions section (see below), funds awarded through Target Cities Cooperative Agreements are designed primarily to serve the needs of residents living within the municipal limits of the Target Cities site. At the State's option, however, proposed activities may also draw on resources located in areas surrounding the municipal boundaries, if use of such resources will enhance services for municipal residents. Support may also be requested for activities involving improvements in services and/or coordination with surrounding jurisdictions, but the primary focus of the project activities must be residents who live within the municipal boundaries of the Target Cities site.

Applicant cities with populations of 1 million or more may propose to focus on a sub-city jurisdiction that does not encompass the entire metropolitan area. However, the sub-city jurisdiction which is to be the focus of the Cooperative Agreement must include those communities where there is a documented and significant degree of need for addiction treatment and recovery services relative to other communities in the metropolitan area.

The target population(s) which is/are to be the focus of the proposed Cooperative Agreement must consist of those individuals who meet all three of the following criteria:

(1) Live or reside in the target jurisdiction;

(2) Suffer from alcohol and drug problems; and

(3) Are unemployed or under-employed, for whom treatment must be subsidized through public means.

Individuals who fit these criteria, regardless of their race, ethnicity, gender, or age, are considered appropriate for the focus of applicant proposals received under this announcement. Documentation supporting the degree of need for treatment services, together with data regarding area of residence, age, gender, race/ethnicity, and socio-economic characteristics of the target population(s) which are to be the focus of the Cooperative Agreement must be included as part of each application.

Recommended Approaches

A variety of approaches to systemic treatment improvement are considered appropriate in order to attain the goals defined above. CSAT recognizes that no two metropolitan jurisdictions are alike. Applicants may include any number of different system-wide improvement projects in proposals submitted under this announcement, provided their relevance and appropriateness are thoroughly documented.

However, there are certain activities which must be included as part of every application. Specifically, the service system components already existing in the applicant metropolitan area, together with the system enhancements requested in the application, must be designed to result in a system that has the following characteristics at a minimum:

(1) The capability to conduct an assessment of treatment staff training requirements followed by the design and implementation of continuing professional education and other staff

training programs, and the evaluation of these activities.

(2) Design and implementation of one or more central intake, assessment and referral facilities wherein:

(a) A standardized, comprehensive intake assessment process is utilized, to include: A physical; screening for HIV, TB, sexually transmitted diseases and other infectious diseases; alcohol and drug use history; a psycho-social assessment; and, where warranted, a psychiatric evaluation;

(b) A standardized protocol for matching individuals with a continuum of appropriate treatment, recovery, and support services is utilized; and

(c) A case management system capable of tracking individuals across participating SDUs.

(3) A process whereby individual economic and social welfare needs are thoroughly assessed and addressed, including a determination of eligibility and subsequent registration for AFDC, Food Stamps, Supplemental Security Income, and other appropriate public services.

(4) Established linkages and formal referral processes whereby the ongoing preventive and primary health care needs of alcohol and drug-involved individuals and their families will be satisfied.

(5) A system whereby alcohol- and drug-involved individuals in the juvenile and adult criminal justice systems are case-managed through various stages of the treatment and legal case processing system (CDC recommendations should be followed regarding HIV and TB counseling/testing and referring).

(6) An automated Management Information System (MIS) capable of capturing: Current program characteristics; intake, assessment, referral and outcome data for individuals participating in treatment; and capacity utilization for every participating SDU.

(7) An evaluation or management unit capable of utilizing the MIS to determine: how successfully referrals were made; how long patients/clients remained in treatment; and which patients/clients derived benefit from which programs.

(8) A quality assurance mechanism and provision of targeted technical and financial assistance designed to ensure that the quality of service delivery in participating SDUs is continually enhanced.

Following the initiation of these services, alternative sources of support for primary health care (e.g., Medicaid) should be utilized to maintain service delivery, and budgets should reflect the expectation that programs will make every effort to secure third party reimbursements for those services rendered to eligible individuals.

In cases where SSAs apply for expansion or creation of treatment capacity, the affected providers of treatment and recovery services must be non-profit organizations, and the SSA must provide sufficient evidence that there is an infrastructure (facility, qualified staff, equipment, etc.) upon which to build new capacity in a cost-effective manner.

No more than 25 percent of the funds should be requested for expansion or creation of new addiction treatment capacity.

Review Criteria

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts.

Applications submitted in response to this Program Announcement will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures for grants.

There are two sets of review criteria for this program: One set applies to new Target Cities applicants, and one set applies to existing Target Cities programs requesting a competitive renewal.

The following criteria will be included in the technical merit review of applications for new Target Cities Cooperative Agreements:

Degree of Need (Weight: 25%)

- Adequacy and comprehensiveness of the needs assessment.
- Size of the gap between demand for treatment and availability of treatment services.
- Extent to which degree of need and diversity of required interventions justifies public investment in centralized intake and customized referral methods.

Adequacy and Feasibility of Proposal (Weight: 25%)

- Clarity and appropriateness of project goals and objectives given documented needs assessment data.
- Evidence that the proposed project is ethnically, racially, and culturally relevant to target populations identified in the needs assessment.
- Logic and feasibility of project management plan.
- Appropriateness of plans for capacity expansion for special populations in need and extent to which need is thoroughly documented.

Appropriateness Relative to Program Goals (Weight: 20%)

- Extent to which proposed projects are consistent with the project objectives of the Target Cities program, as defined under **Recommended Approaches** in this Announcement.
- Adequacy of the structure/plan for an automated MIS.
- Degree to which documented needs are matched by an appropriate range of treatment methods (e.g., clinical, pharmacologic, social, behavioral).

Coordination, Management and Resources (Weight: 20%)

- Evidence of support and specific commitments from State and local entities with jurisdiction over relevant institutions defined in the Announcement.
- Demonstrated willingness of a relevant array of addiction treatment and recovery programs to participate in a centralized intake, assessment and referral system.
- Evidence that the overall plan involves coordination with other public and private programs in the relevant fields of health and human services, labor, education, housing, interdiction, community development, and the legal and corrections systems.
- Qualifications and experience of the project director and other key personnel.
- Availability of adequate facilities, human resources and equipment.
- Appropriateness of budget request and proposed timetable for accomplishing program objectives.

Adequacy of Evaluation Plan (Weight: 10%)

- Clarity/feasibility/appropriateness of proposed process and inpatient outcome evaluation design and methodolgy.
- Extent to which there is an ongoing collection of incidence and prevalence data for substance abuse, HIV, STDs, and TB among the target population.
- Extent to which proposed staff demonstrate evaluation expertise.

The following criteria will be included in the technical merit review of applications for existing Target Cities Cooperative Agreements submitting proposals for competing renewals:

In general, IRG review of competing renewals will give equal weight to the quality of proposed projects and to evidence of past accomplishments. The weights accorded to each review criterion applied to competitive renewals (below) reflect this balance.

Relevance, Appropriateness and Adequacy (of continuation application) (Weight: 50%)

Applications for competitive renewals will be subject to the same review criteria as for new applicants. These are described above, and include:

- Degree of Need
- Adequacy and Feasibility of Proposal
- Appropriateness Relative to Program Goals
- Coordination, Management and Resources
- Adequacy of Evaluation Plan

Evidence of Past Accomplishment (Weight: 50%)

- Central or centralized intake system is fully operational, and has the following characteristics:

—utilizes a standardized intake assessment that permits objective referral to appropriate treatment providers;
—refers individuals to appropriate treatment providers;
—refers individuals to a broad spectrum of treatment providers (e.g., clinical, pharmacologic, therapeutic community, other social settings, ambulatory);
—screens and/or refers individuals for screening and treatment of infectious diseases and medical problems;
—has a fully operational automated MIS for patient referral and tracking, including production of management information reports; and
—monitors capacity utilization daily and maintains a single unified waiting list for the entire community.

- Evaluation plan has been fully implemented, having certain characteristics:

—is able to generate progress reports on local evaluation (at least one evaluation progress report must have been submitted to CSAT); and
—there is a functional design for measuring the impact of project activities; evidence that findings of evaluation were used to develop corrective action or systems improvement plans.

- The degree to which the applicant has maximized the amount of funds expended on direct services and minimized resources expended on administration and oversight.
- The degree to which there has been a general enhancement of addiction treatment programs, either directly or through improved coordination with health, mental health, education, law enforcement, judicial, correctional, and human services agencies.
- The degree to which there has been treatment program staff training and development and to what extent there has been a commensurate impact on treatment process and outcome.
- Evidence of extent to which one or more of the following special initiatives has been fully implemented and evaluated:

—The Faith Initiative
—Head Start Initiative
—Criminal Justice Linkage
—Projects for Special Populations

(These activities have been communicated in detail to all currently funded Target Cities projects)

Award Decision Criteria

Applications recommended for approval by the Initial Review Group and the appropriate advisory council, if established, will be considered for funding on the basis of their overall technical merit as determined through the review process. Other award criteria will include:

- Availability of funds.
- Geographical distribution throughout the United States.
- Evidence of need, as indicated by CDC AIDS and TB incidence data, Drug Use Forecasting (DUF) data, Drug Abuse Warning Network (DAWN) data, and other objectives indicators.
- Focus on members of racial and ethnic minority populations and other individuals considered to be at greatest risk for alcohol and drug-related morbidity and mortality.
- Extent to which the applicant State has demonstrated its ability to rapidly deploy Federal funds to service delivery units following receipt of Federal funds.
- Coordination with other Federal programs, especially the PHS Healthy Start Initiative, the CSAP Community Partnership Program and the DOJ Community Policing program.
- Extent to which the applicant consortium is composed of representatives spanning the array of health and human services, labor, education, housing, interdiction, and judicial and correctional entities relevant to the success of a community-wide, multi-disciplinary improvement project.
- Degree to which applications document the provision of non-Federal resources for support of the Cooperative Agreement, especially foundation and other private sector support.

For Competing Renewals Only:

- Extent to which applicant has achieved project goals and objectives during prior project periods.

Other factors being equal, cities that have been declared high intensity drug trafficking areas by the Office of National Drug Control Policy will be given special consideration. However, such designation is neither a necessary nor a sufficient condition for award.

Terms and Conditions

Funds awarded under CSAT Target Cities Cooperative Agreements must be utilized to carry out the goals and objectives of the program as described elsewhere in this announcement. In addition, the following terms and conditions apply:

(1) Up to 5 percent of the total award, or actual cost, whichever is less, may be allocated to support allowable administrative costs incurred by the State SSA, the city or county (as appropriate). The remaining 95% must be utilized to support direct services. The allocation of allowable administrative costs between the SSA, the City and/or County (as appropriate) should be determined based upon the relative roles and oversight responsibilities for each entity. Volume and allocation of allowable administrative costs must be justified in the application and subsequent management implementation plan for the Cooperative Agreement and is subject to CSAT approval.

(2) CSAT staff must approve selection of the project coordinator if a specific individual is not named in the submitted application, as well as approve the hiring of future project coordinators should the initial project coordinator step down or become otherwise unable to execute his/her responsibilities.

(3) The Cooperative Agreement funds may not be used to compensate any person at a rate in excess of $125,000 per year.

(4) Facility renovation or alteration costs cannot exceed the lesser of $150,000 or 25% of the total funds reasonably expected to be awarded by the PHS for the direct costs for the award period. Construction costs or purchases of facilities are not allowed.

(5) Standardized assessment protocols proposed for use in the context of the Cooperative Agreement must be approved by CSAT.

(6) Awardees and SDUs within each awardee jurisdiction are required to participate in a CSAT-sponsored Evaluation Study.

National Evaluation Participation: In addition to local evaluation efforts, successful applicants will be required to participate in a CSAT-sponsored national program evaluation which may or may not be identical to NTIES. While not every city will be selected for participation, agreement to participate in any CSAT-sponsored national

evaluation is a requirement of the Cooperative Agreement.

Intergovernmental Review (Executive Order 12372)

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. The SPOC should send any state process recommendations to the following address: Review Branch, Office of Scientific Analysis, Center for Substance Abuse Treatment; Rockwall II Building, 10th Floor, 5600 Fishers Lane, Rockville, MD 20857, ATTN: SPOC/ Target Cities.

The due date for state process recommendations is no later than 60 days after the deadline date for the receipt of applications.

The Center for Substance Abuse Treatment does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Authority and Regulations

Cooperative Agreements awarded under this Announcement are authorized under Section 510(b)(5) of the Public Health Service Act, as amended (42 USC 290bb–3).

Federal regulations at Title 45 CFR Parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Grants must be administered in accordance with the PHS Grants Policy Statement (Revised October 1, 1990).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.196.

Dated: March 30, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental, Health Services Administration.

[FR Doc. 93–7827 Filed 4–2–93; 8:45 am]

BILLING CODE 8160–20–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, the EOS Land Processes DAAC Science Advisory Panel will meet at the U.S. Geological Survey Earth Resources Observation System (EROS) Data Center near Sioux Falls, South Dakota. The Panel, comprised of scientists from academic and government institutions, will provide Land Processes DAAC management with advice and consultation on a broad range of scientific and technical topics relevant to the development and operation of DAAC systems and capabilities.

Topics to be reviewed and discussed by the Panel include Land Processes DAAC status reports on FY 1993 activities, Panel review of and recommendations on FY 1994 proposed activities; review of EROS Data Center Landsat data programs and activities; discussions leading to recommendations on Land Processes DAAC science support programs, imaging spectrometer and radar activities, and information management system development; and other topics.

DATES: May 3–5, 1993, commencing at 1 p.m. on May 3 and adjourning at 4 p.m. on May 5.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Bailey, Land Processes DAAC Project Scientist, EROS Data Center, Sioux Falls, South Dakota 57198 at (605) 594–6001.

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: March 25, 1993.

Dallas L. Peck,

Director, U.S. Geological Survey.

[FR Doc. 93–7753 Filed 4–2–93; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[OR–030–03–4333–01: G3–170]

Meeting, Vale District Multiple-Use Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held May 5, 1993.

The agenda of the meeting will include: Leslie Gulch ACEC Management Plan; Jordan and Malheur Resource Management Plan; Ecosystem Management; and Trans-Pacific Geothermal Project.

The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for the Council's consideration. Anyone wishing to make oral statements may do so at 1 p.m. on the day of the meeting.

Summary minutes of the Council's meeting will be maintained in the District Office and will be available for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days of the meeting.

DATES: The meeting will begin at 10 a.m. MST Wednesday, May 5, 1993.

ADDRESSES: The meeting will take place in the conference room of the District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 503 473–3144).

James E. May,

District Manager.

[FR Doc. 93–7879 Filed 4–2–93; 8:45 am]

BILLING CODE 4310–33–M

[CO–070–4340–01–241A]

Seasonal Road and Area Use Restriction Order for the Glenwood Springs Resource Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Seasonal road use restriction.

SUMMARY: This order, issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2, restricts motorized vehicle use on several roads and areas on public lands in the Glenwood Springs Resource Area, Grand Junction District. Seasonal Closed Areas identified below are

closed to all motorized travel on and off roads and trails. Seasonal Limited Areas identified below are closed to all motorized off road travel; motorized travel by vehicle under 48" wide is allowed on existing roads and trails. The only exception will be for law enforcement, other emergency personnel, or BLM employees or other authorized personnel while engaged in official duties.

This order affects public lands administered by the Bureau within the following areas:

Roan Cliffs; T. 4 S., R. 95 W., T. 5 S., R. 93 W., Seasonal Limitation.
Horse Mountain; T. 4 S., R. 93 W., Seasonal Limitation.
West Elk; T. 4 S., R. 92 W., T. 5 S., R. 92 W., T. 4 S., R. 91 W., T. 5 S., R. 91 W., Seasonal Limitation.
Fuches Gulch; T. 5 S., R. 90 W., Seasonal Closure.
Harvey Gap; T. 5 S., R. 91 W., Seasonal Limitation.
Sheep Creek; T. 3 S., R. 87 W., T. 3 S., R. 86 W., Seasonal Limitation.
Castle Peak; T. 3 S., R. 84 W., Seasonal Limitation.
North Hardscrabble; T. 5 S., R. 84 W., T. 5 S., R. 85 W., Seasonal Limitation.
The Crown; T. 8 S., R. 86 W., T. 8 S., R. 87 W., Seasonal Closure.
Light Hill; T. 8 S., R. 86 W., Seasonal Closure.
Holgate Mesa; T. 8 S., R. 88 W., T. 8 S., R. 89 W., Seasonal Closure.
Center Mountain; T. 6 S., R. 90 W., T. 7 S., R. 90 W., Seasonal Limitation.
Gibson Gulch; T. 7 S., R. 91 W., Seasonal Limitation.
Uncle Bob Mountain; T. 7. S., R. 91 W., T 8 S., R. 91 W., 6th Principal Meridian, Seasonal Limitation.

EFFECTIVE DATES: This restriction order shall be effective from the date of publication until rescinded or modified by the Authorized Officer. The restrictions are aimed at the spring thaw-snow melt season and big game movement to their transition ranges normally from March 15 to April 30. However, due to variable climatic conditions, the actual dates of the season may vary and the restrictions may be lifted at an earlier or later date. Road and area conditions will be inspected frequently to identify when saturated soil conditions no longer exist. The seasonal restrictions will be lifted on a case by case basis when soil conditions are dry enough to safely support motorized vehicle travel without causing considerable adverse effects or once the majority of the big game animals have moved through the area.

SUPPLEMENTARY INFORMATION: The roads and areas affected by this order will be posted with appropriate regulatory signs. Additional information including detailed maps of the restricted areas, roads and trails are available in the Resource Area Office and District Office at the addresses shown below. The restrictions are necessary to prevent adverse effects upon roads and trails on public land, upon soils and vegetation, to reduce sedimentation in the area's streams, to reduce stress on big game after a hard winter and to protect the safety of persons using public lands. The above normal snow pack, unfrozen soils and cool spring is causing more snow melt to percolate deeply into the soil rather than running off. Soils which are deeply saturated make roads and off road areas highly vulnerable to damage by deep rutting from the passage of standard sized motorized vehicles and Off Highway Vehicles. Rutting on roads and off road areas would interfere with natural runoff patterns causing accelerated erosion and resulting in sediment translocation. Impassable road conditions would also expose travelers to high dangers of losing control of vehicles in rugged terrain and becoming stranded in remote areas. Heavy recreational use in areas supporting big game can create significant stress to these animals and increase the likelihood of abortion, especially after a hard winter.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945–2341. Timothy Hartzell, District Manager; Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3050.

Timothy Hartzell,

Grand Junction District Manager.

[FR Doc. 93–7755 Filed 4–2–93; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Reclamation

Salinas Valley Seawater Intrusion Program, Monterey County, CA

AGENCY: Bureau of Reclamation in cooperation with the Corps of Engineers.

ACTION: Notice of availability; final environmental impact statement (INT–FES 93–07).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation), in cooperation with the Corps of Engineers, has prepared the final environmental impact statement (FEIS) for the Salinas Valley Seawater Intrusion Program, Monterey County, California.

Under provisions of the Small Reclamation Projects Act (Public Law 84–984, as amended) Monterey County Water Resources Agency and Monterey Regional Water Pollution Control Agency have applied for Federal loans to respectively develop an irrigation water supply project and a wastewater Reclamation facility which would provide for irrigation water supply, reduce seawater intrusion into the Salinas River aquifers, and eliminate disposal of secondary treated wastewater into the Monterey Bay Marine Sanctuary.

ADDRESSES: Single copies of the FEIS may be obtained on request from the Regional Director listed below:

Regional Director, Bureau of Reclamation, Attention: MP–205, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978–5002

Copies of the FEIS are available for inspection at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of the Interior, room 7455, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 343–4662
Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, CO 80225; telephone: (303) 236–6963
Bureau of Reclamation, Mid-Pacific Region Office Library, Room W–1321, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978–5160
Monterey County Water Resources Agency, 855 E. Laurel Drive, Building G, Salinas, CA 939054; telephone: (408) 755–4860.

Libraries:

Aromas Branch Library, Blohm Street, Aromas, California
Bradley Branch Library, PO Box 21, Bradley, California
Castroville Branch Library, 11266 Merritt Street, Castroville, California
Gonzales, Branch Library, 349 Belden Street, Gonzales, California
Harrison Memorial Library, PO Box 800, Carmel, California
Marina Branch Library, 371 Carmel Avenue, Marina, California
Pacific Grove Public Library, 550 Central at Fountain, Pacific Grove, California
Park Branch Harrison Memorial Library, PO Box 800, Carmel, California
Prunedale Branch Library, 17822 Moro Road, Salinas, California
San Lucas Branch Library, PO Box 75, San Lucas, California
Seaside Branch Library, 550 Harcourt Street Seaside, California
Steinbeck Library, 110 W. San Luis Street, Salinas, California
Big Sur Branch Library, PO Box 217, Big Sur, California

Carmel Valley Branch Library, 65 West Carmel Valley Road, Carmel Valley, California
El Gabilan Branch Library, Salinas Public Library, 1400 North Main Street, Salinas, California
Greenfield Branch Library, 131 El Camino Real, Greenfield, California
King City Branch Library, 212 S. Vanderhurst, King City, California
Monterey Public Library, 625 Pacific Street, Monterey, California
Pajaro Branch Library, 305 Salinas Road, Pajaro, California
Parkfield Library, PO Box 3563, Parkfield Route, San Miguel, California
San Ardo Branch Library, PO Box 192, San Ardo, California
Santa Lucia Branch, Salinas Public Library, 615 Williams Road, Salinas, California
Soledad Branch Library, 179 Main Street, Salinas, California

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Chelini, Regional Loan Engineer, Mid-Pacific Region, Sacramento, CA 95825, telephone: (916) 978–5002.

SUPPLEMENTARY INFORMATION: During public review of the draft environmental impact report/draft environmental impact statement (DES 91–03), agencies and the general public expressed concern with the effects of the preferred program (alternative 3). In response to these concerns, the preferred program was modified in two ways that would reduce the environmental impacts without introducing any new environmental impacts. First, the construction of a diversion structure was eliminated, including any reliance from increased water deliveries from Nacimiento and San Antonio Reservoirs. Second, due to elimination of the diversion structure, the pipeline connecting the tertiary treatment plant with the Castroville irrigation system was shortened and realigned to cross the Salinas River in a less environmentally sensitive area than previously proposed. In addition, the Monterey County Water Resources Agency is delaying action on the potable water system component of the program until additional information relative to growth-inducing impacts can be obtained. Discussion of that component has been removed from the FEIS.

Dated: December 31, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 93–7878 Filed 4–2–93; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 Sub-No. 341X]

Burlington Northern Railroad Company—Abandonment Exemption—In Skagit County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of its 11.42-mile rail line between milepost 22.00, at Sedro Woolley, and milepost 33.42, at Hamilton, in Skagit County, WA, subject to environmental, trail use/rail banking, and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 5, 1993. Formal expressions of intent to file an offer of financial assistance [1] under 49 CFR 1152.27(c)(2) must be filed by April 15, 1993, petitions to stay must be filed by April 20, 1993; and petitions to reopen must be filed by April 30, 1993. Requests for a public use condition must be filed by April 15, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 341X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: March 29, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7857 Filed 4–2–93; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Finance Docket No. 32233]

Connecticut Rail Systems, Inc.; Acquisition and Operation Exemption

Connecticut Rail Systems, Inc. (CRSI), a wholly owned noncarrier subsidiary of Providence and Worcester Railroad Company (P&W), has filed a verified notice of exemption: (1) To acquire approximately 10.2 miles of rail line owned by Consolidated Rail Corporation (Conrail) in the State of Connecticut; and (2) to acquire incidental overhead trackage rights and freight service rights over approximately 74 miles of rail lines in the State of Connecticut. CRSI will become a class III rail carrier. Parties expected to consummate the transaction after the effective date and after all conditions specified in the Purchase and Sale Agreement have been satisfied.

CRSI will acquire a 10.2-mile line known as Conrail's Middletown Secondary Track between milepost 4.8± at North Haven, CT, and milepost 15.0± at Reeds Gap, CT.[1] The incidental overhead trackage rights and freight service rights that CRSI will acquire as part of the transaction will be as follows:

(1) Conrail's freight service rights and trackage rights for both overhead and local freight service over the Danbury Branch owned by the Connecticut Department of Transportation (CDOT) between milepost 41.3± at South Norwalk, CT, and milepost 64.9± at Danbury, CT, a distance of approximately 23.6 miles.

(2) Conrail's freight service rights and trackage rights for both overhead and local freight service over the Waterbury Branch owned by CDOT between Devon, CT, and Derby, CT, a distance of approximately 8.9 miles.

(3) Overhead trackage rights over Conrail's Middletown Secondary Track from milepost 4.8±, to and through

[1] In a verified notice of exemption filed on March 10, 1993, Danbury Terminal Railroad Company (DTRR) agreed to grant overhead and local trackage rights to CRSI over DTRR's Danbury Secondary Line. *See* Finance Docket No. 32270, Connecticut Rail Systems, Inc.—Trackage Rights Exemption—Danbury Terminal Railroad Company. The trackage rights became effective on March 17, 1993. Consummation of the line sale and trackage rights transactions will enable CRSI to transport aggregate traffic on a single-line basis from Wallingford (Reeds Gap) to Danbury, CT.

Cedar Hill Yard, to a point of connection with the Shore Line owned by the National Railroad Passenger Corporation (Amtrak) at Shoreline Junction, CT, and with the Hartford Line owned by Amtrak at Air Line Junction, CT, a distance of approximately 4.8 miles.

(4) Overhead trackage rights for freight service on Amtrak's Shore Line between milepost 77.00± at East Haven, CT, and milepost 72.83± at New Haven, CT, a distance of approximately 4.17 miles.

(5) Overhead trackage rights for freight service on Amtrak's Hartford Line between milepost 2.2± at Air Line Junction and the Mill River Connection on the Shore Line, a distance of approximately 0.9 miles.

(6) Non-exclusive overhead trackage rights over the lines owned by CDOT between milepost 72.83± (at a point of connection with Amtrak's Shore Line) at New Haven and milepost 41.3± (at a point of connection with CDOT's Danbury Branch) at South Norwalk, CT, a distance of approximately 31.53 miles, including the right to connect with CDOT's Waterbury Branch at Devon (provided that such rights shall be granted only to the extent that Conrail may do so without diminishing its right to continue its freight operations on the lines).

The transaction is related to a petition for exemption filed concurrently in Finance Docket No. 32234, Providence and Worcester Railroad Company—Control Exemption—Connecticut Rail Systems, Inc. In that proceeding, P&W seeks an exemption under 49 U.S.C. 10505 to continue in control of CRSI when CRSI becomes a carrier upon consummation of the transaction described in this notice of exemption.[2]

Any comments must be filed with the Commission and served on: Terence M. Hynes, Sidley & Austin, 1722 Eye Street, Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 30, 1993.

[2] To avoid an unlawful control violation pursuant to 49 CFR 1013, P&W expected to execute a Voting Trust Agreement with an independent trustee to deposit all of the shares of Common Stock of CRSI into an irrevocable voting trust.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93-7855 Filed 4-2-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub. No. 126X)]

Georgia Northern Railway Co.—Abandonment Exemption

Georgia Northern Railway Company (GN) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon approximately 3.4 miles of rail line between mileposts AN-1.6 and AN-5.0 at Albany, in Dougherty and Lee Counties, GA.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) service of verified notice on governmental agencies) have been met.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 5, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 15, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 26, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: F. Blair Wimbush, Norfolk, Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by April 9, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 30, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-7860 Filed 4-2-93; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist. 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Ex Parte No. 383; Sub-No. 22]

Intrastate Rail Rate Authority—New Mexico

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of New Mexico to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective on May 5, 1993 and will expire on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 29, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7859 Filed 4–2–93; 8:45 a.m.]

BILLING CODE 7035–01–M

[Docket No. AB–227; Sub-No. 3X]

The Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Jefferson, Harrison and Belmont Counties, OH

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by The Wheeling & Lake Erie Railway Company of its 14.5-mile line of railroad extending between milepost 0.5, at Adena, and milepost 15.0, near St. Clairsville, in Jefferson, Harrison and Belmont Counties, OH. The exemption is subject to standard employee protective conditions, an environmental condition, and a historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 5, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 15, 1993, petitions to stay must be filed by April 20, 1993, and petitions to reopen must be filed by April 30, 1993. Requests for a public use condition must be filed by April 26, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–227 (Sub-No. 3X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 29, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7858 Filed 4–2–93; 8:45 am]

BILLING CODE: 7035–01–M

[Finance Docket No. 32268]

New Hampshire and Vermont Railroad Company—Trackage Rights Exemption—Boston and Maine Corporation and Springfield Terminal Railway Company

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) have agreed to grant overhead trackage rights to New Hampshire and Vermont Railroad Company over approximately 40.48 miles of B&M line leased by ST. The segment at issue extends between milepost 163.67 at Woodsville, NH, and milepost 123.19 at White River Junction, VT. The trackage rights became effective on March 18, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on John R. Nadolny, Iron Horse Park, North Billerica, MA 01862.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 25, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7856 Filed 4–2–93; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from 10 CFR part 50, appendix J, Paragraphs III.D.2(a) and III.D.3 to the Northeast Nuclear Energy Company (NNECO or the licensee) for the Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant temporary relief from the 2-year schedular requirement associated with Types B and C periodic local leak-rate tests (LLRTs), with the exception of penetration X–25/202D, and allow the tests to be performed during the Cycle 14 refueling outage.

The Need for the Proposed Action

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J.

Appendix J to 10 CFR part 50, Paragraph III.D.2(a) and III.D.3, require, in part, that Types B and C LLRTs shall be performed in no case at intervals greater than 2 years.

On April 7, 1991, NNECO commenced the most recent containment LLRT program at Millstone Unit 1 in accordance with 10 CFR part 50, appendix J, Type B and C periodic test requirements. As a result of the unusually long 1991 (Cycle 13) refueling outage, a shutdown for licensed operator requalification training and erosion/corrosion inspections, and an unplanned shutdown for service water system piping inspections and repair,

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[1] *See Exempt. of Rail Abandonment—Offers of Finan Assist.*, 4 I.C.C.2d 164 (1987).

the Cycle 14 refueling outage has been rescheduled from February 1993 to approximately February 1994. The requirement to perform Type B and C LLRTs within a 2-year interval would require a plant shutdown during Cycle 14 solely to perform LLRTs, given the current Millstone Unit 1 refueling outage schedule. Such a shutdown would result in an increase in occupational radiation exposure and an additional transient on the plant.

Environmental Impacts of the Proposed Action

The proposed exemptions would postpone the Type B and C tests approximately 10 months. Millstone Unit 1 has a history of good LLRT performance, with the exception of penetration X-25/202D which has failed its "As-Found" tests during several refueling outages. Penetration X-25/202D will be tested during Cycle 14 to confirm that previous corrective actions have been effective. Therefore, no exemption is being requested for this penetration. The remaining penetration test results indicate improved overall containment integrity, as shown by Millstone Unit 1's last two individual leak rate test "As-Left" tests. The NRC staff has reviewed the proposed exemptions and concluded the extension of the test period for the Type B and C tests will not compromise containment integrity. This conclusion is based, in general, on good LLRT performance, with the exception of penetration X-25/202D, during the last several refueling outages. The unexpected delay in start-up from the last refueling outage and two mid-cycle shutdowns extended the refueling cycle length, therefore, the time for which the containment was actually exposed to normal plant operating environment is less than the maximum Type B and C test intervals. In addition, the licensee has committed to two compensatory measures. The licensee has agreed to test as many penetrations as practical on line and to test as many penetrations as possible during any future unplanned outages.

Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to deny the exemptions requested. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Nuclear Power Station, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this proposed action, see the licensee's letter dated January 18, 1993, as supplemented by letter dated March 22, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 30th day of March 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-7812 Filed 4-2-93; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Withdrawal

The NRC staff is withdrawing from all consideration Task DG-8005, "Assessing External Radiation Doses from Airborne Radioactive Materials," which was issued for public comment in October 1991 as a draft regulatory guide proposed for Division 8, "Occupational Health," of the Regulatory Guide Series (56 FR 58256, 11/18/91).

Public comments on the draft guide indicated that few potential users considered the guide was needed. Some of the proposed guidance in DG-8005 is already provided in Regulatory Guide 8.34, "Monitoring Criteria and Methods To Calculate Occupational Radiation Doses," and Regulatory Guide 8.7, "Instructions for Recording and Reporting Occupational Radiation Exposure Data." Therefore, the NRC staff will not proceed with the development of Task DG-8005.

The Regulatory Guide Series was developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications. [5 U.S.C. 552(a)]

Dated at Rockville, Maryland, this 22nd day of March 1993.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 93-7811 Filed 4-2-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

Cleveland Electric Illuminating Company, et al.; Perry Nuclear Power Plant, Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning a Petition dated September 29, 1992, submitted by Steven C. LaTourette on behalf of the Lake County Board of County Commissioners (Petitioners). The Petition requested that the Nuclear Regulatory Commission (NRC) take action, so that (1) a public hearing is held prior to construction of an onsite, low-level radioactive waste storage facility at the Perry Nuclear Power Plant and (2) the construction of the storage facility is suspended until (a) the NRC or the licensee produces an environmental impact statement on the risks due to onsite storage of low-level radioactive waste and (b) the NRC promulgates regulations regarding storage of low-level radioactive wastes at nuclear power plant sites. The Petitioners asserted as grounds for this request that the temporary storage will have to be extended beyond the current 5-year limit for temporary storage, necessitating licensing approval under

10 CFR part 30, thus triggering the need for an environmental impact statement and a public hearing; the risk of storing low-level radioactive waste on site was not envisioned in the original environmental impact statement; and the construction of a storage facility is a fundamental change in the operating license of the plant and a more significant change than anticipated by the 10 CFR 50.59 procedures.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the request. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206" (DO–93–05), which is available for public inspection in the Commission's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555, and at the Local Public Document Room at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy of the Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of that Decision within that time period.

Dated at Rockville, Maryland, this 28th day of March 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7810 Filed 4–2–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Exemption; Portland General Electric Co., et al., (Trojan Nuclear Plant)

I.

On November 21, 1975, the Commission issued Facility Operating License No. NPF–1 to Portland General Electric Company, et al., (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon. The licensee provided, among other things, that the facility is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II.

Section 50.54(q) of 10 CFR 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR 50. Section IV.F.2 of appendix E requires that each licensee annually exercise its emergency plan. The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(ii) of 10 CFR 50 indicates special circumstances exist when application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III.

The licensee made a good faith effort to conduct the 1992 exercise. The scope and objectives for the 1992 exercise were submitted to the NRC for review on August 12, 1992. The exercise was originally scheduled for November 17, 1992. The licensee experienced a steam generator tube leak that resulted in a plant shutdown on November 9, 1992. To accommodate forced outage maintenance activities, the exercise was rescheduled to be conducted on December 15, 1992. However, as a result of the continued forced outage, the 1992 annual exercise could not be practicably performed on December 15, 1992. The licensee was granted a one-time schedular exemption to allow the 1992 emergency plan exercise to be deferred until the first quarter of 1993. It was anticipated that the 1992 exercise would be conducted before March 31, 1993. The licensee did maintain a drill program in 1992 which fully met the drill commitments made in their emergency plan.

By letter dated February 15, 1993, the licensee requested an exemption from the requirement of 10 CFR 50, appendix E, section IV.F.2, for the 1992 exercise currently scheduled to be conducted in the first quarter of 1993. The licensee stated that special circumstances exist, in that they have permanently ceased operation of the Trojan Nuclear Plant, and the plant has been shut down and defueled.

IV.

The NRC staff has reviewed the request for an exemption from the annual exercise requirement of 10 CFR 50, appendix E, section IV.F.2, and prepared a Safety Evaluation, dated March 29, 1993. In its review, the staff considered the following items:

a. The licensee has, by letter dated January 27, 1993, requested modification of the Trojan operating license to a "possession only" license. The licensee certified by letter dated February 2, 1993, that fuel had been removed from the reactor vessel and placed in the spent fuel pool. Further, the licensee, by letter dated February 17, 1993, certified that it would not move fuel back into the containment building without prior NRC approval.

b. Recent NRC inspection reports (50–344/91–26, 92–04, 92–13, 92–14, and 92–23) indicate that the licensee has maintained in effect emergency plans which meet the requirements of 10 CFR 50.54(q).

c. The underlying purpose of 10 CFR 50, appendix E, section IV.F.2, is to test the adequacy of timing and content of implementing procedures and methods, to test the emergency equipment and communications networks, and to ensure that the emergency organization personnel are familiar with their duties at sites with an operating reactor.

The certification by the licensee that the reactor is shut down and defueled and will not be refueled without prior notification of the NRC creates a special circumstance. Because the Trojan Nuclear Plant is not now in an operational status, the likelihood of risks of an accident resulting in offsite releases has been reduced. In addition, the licensee has maintained emergency plans that otherwise satisfy § 50.54(q). Therefore, the conduct of an annual exercise is not necessary to achieve the underlying purpose of 10 CFR 50, appendix E, section IV.F.2.

V.

For the reasons stated above, the Commission has determined that, pursuant to 10 CFR 50.12, the Exemption requested by the licensee in its letter of February 15, 1993, is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii). Accordingly, the Commission hereby grants an Exemption from the 10 CFR 50, appendix E, section IV.F.2 requirement for an annual exercise in 1992 on the condition that the plant does not resume operation. Should the licensee decide to restart, the exercise must be conducted before the plant resumes operation. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (58 FR 16556—March 29, 1993).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of March 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7813 Filed 4–2–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Aged Monitoring Questionnaire.

(2) *Form(s) submitted:* G–19c.

(3) *OMB Number:* 3220–0178.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* Annually.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 12,000.

(9) *Total annual responses:* 12,000.

(10) *Average time per response:* .1 hour.

(11) *Total annual reporting hours:* 1,200.

(12) *Collection description:* The collection obtains information about aged annuitants between 89 to 105 years of age. These annuitants may no longer be competent *or* their death may not have been reported. Under the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to someone other than the annuitant if it is in the annuitant's interest. The RRB must terminate payments to a deceased annuitant.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–7754 Filed 4–2–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32066; File No. SR–NYSE–93–16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Auxiliary Closing Procedures for Days on Which Settlement of Quarterly Index Expirations ("QIXs") is Based.

March 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 12, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the use of auxiliary closing procedures for assisting in handling the order flow associated with expiring stock options and index products on monthly "expiration Fridays"[3] to days on which the settlement value of "Quarterly Index Expirations" ("QIXs") will be based, currently the last trading day of each calendar quarter. The Exchange requests that the proposed rule change be approved on a pilot basis, expiring on October 31, 1993.[4]

The Exchange requests the Commission to find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Accelerated approval of the proposed rule change would allow the auxiliary closing procedures to be in place in time for the first expiration of QIXs on March 31, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has recently approved the listing and trading on the Chicago Board Options Exchange, Inc. ("CBOE") and on the American Stock Exchange, Inc. ("Amex") of QIX options on several stock indexes that will expire on the first business day following the end of each calendar quarter.[5] The exercise settlement value of QIXs will be based on the *closing* value of the index on the last trading day of each calendar quarter. The CBOE and Amex intend to trade QIXs in addition to the existing index options, which expire on the Saturday immediately following the third Friday ("expiration Friday") of the month. The indexes for which QIX options have been approved include the Standard & Poor's (S&P) 100 and 500

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Expiration Friday is the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. The NYSE auxiliary closing procedures for expiration Fridays were initially approved by the Commission on a pilot basis for a one-year period beginning in November, 1988 and extending through October, 1989. The pilot has since been extended each year between October, 1989 through October, 1993 on a one-year pilot basis. See Securities Exchange Act Release No. 26293 (November 17, 1988), 53 FR 47599; No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); No. 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–38); No. 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); No. 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR–NYSE–91–31); and No. 31386 (October 30, 1992), 57 FR 52814 (approving File No. SR–NYSE–92–30).

[4] See letter from Donald Siemer, Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated March 22, 1993.

[5] See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (order approving File No. SR–CBOE–92–13); and Securities Exchange Act Release No. 31844 (February 9, 1993), 58 FR 8796 (February 17, 1993) (order approving File No. SR–Amex–92–29).

and MidCap Indexes, the Major Market Index and the Institutional Index.[6]

The Exchange has in place, on a pilot basis on expiration Fridays, special auxiliary closing procedures designed to handle the large order flow and possible order imbalances associated with expiring derivative products. In view of the introduction of QIXs, the Exchange believes it is appropriate to extend the use of auxiliary closing procedures to the last trading day of each calendar quarter as these procedures have proven to be an effective means of reducing some of the excess market volatility which may result from entering market-at-the-close ("MOC") orders related to trading strategies involving index derivative products.

The procedures currently require the entry by 3 p.m. of all MOC orders in positions relating to any strategy involving any derivative index product. The procedures also require the Exchange to make public MOC order imbalances of 50,000 shares or more in the so-called "pilot stocks"[7] as soon as possible after 3 p.m. and then again after 3:30 p.m. and 3:45 p.m. Any MOC orders in the pilot stocks entered after 3 p.m. must offset a published imbalance and must *not* liquidate a position relating to a strategy involving any derivative index product. The procedures prohibit the cancellation or reduction of any MOC order in any stock after 3:45 p.m. except in cases of legitimate error.

The Commission has previously expressed its belief that basing the settlement of index products on opening, as opposed to closing, prices on expiration Fridays helps to alleviate stock market volatility associated with such closing price settlements. The CBOE has recognized this by phasing-out closing settlement of its regular S&P 500 index options ("SPX") in favor of an opening settlement.[8] The Exchange is concerned that the QIXs may displace the regular S&P contracts and bring the end-of-day imbalances and excess volatility associated with expiration Fridays.

The Exchange considers the extension of auxiliary closing procedures to QIX expirations to be an interim measure for dealing with end of day excess volatility associated with expiring contracts. The Exchange urges the CBOE, the Amex and the Commission to consider basing the settlement value of QIXs on NYSE opening prices rather than closing prices on the last trading day of the calendar quarter. The Exchange continues to believe that settlement of all derivative products based on opening prices represents the most effective and practical way to deal with order imbalances and the potential for excess volatility.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–16 and should be submitted by April 26, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to extend its expiration Friday procedures to days on which the settlement value of QIXs will be based, currently the last trading day of each calendar quarter, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.[9] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE proposal to extend the Exchange's expiration Friday auxiliary closing procedures to those days on which QIX options will expire furthers the objectives of section 6(b)(5) of the Act.

The NYSE's auxiliary closing procedures for expiring contracts have been utilized on quarterly expiration Fridays dating back to September 1986. The Commission has extended these procedures to all expiration Fridays (monthly and quarterly expirations) on a yearly pilot basis since 1988.[10] These procedures resulted from efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index derivative instrument trading strategies. Until recently, stock indexes and related derivative products based on NYSE listed securities have settled on expiration Fridays. The Commission, however, recently approved Amex and CBOE proposed rule changes which provide for the listing and trading of QIX options on several stock indexes that will expire on the first business day following the end of each calendar

[6] QIX options on the S&P 100 and 500 Indexes trade on the CBOE. QIX options on the S&P MidCap 400 Index, the Major Market Index and the Institutional Index trade on the Amex.

[7] On expiration Fridays, the "pilot stocks" are the fifty highest weighted stocks underlying the S&P 500 Index and any of the stocks underlying the Major Market Index not included in that group. Under the proposed rule change, the "quarterly pilot stocks" will be the fifty highest weighted S&P 500 stocks, any component stocks of the Major Market Index not included in this group, and the ten highest weighted stocks of the S&P MidCap 400 Index. Under the proposal, the current procedures that apply to the pilot stocks on expiration Fridays will apply to the quarterly pilot stocks on QIX expiration days.

[8] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving File No. SR–CBOE–92–09).

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] See *supra* note 3.

quarter.[11] The settlement of QIX products, by definition, will be based on closing values of the underlying indexes on the last trading day of each calendar quarter. Accordingly, the Commission believes that it is appropriate to extend the expiration Friday closing procedures to QIX expiration days in order to address potential market volatility which may be associated with QIX expirations.

As noted above, the expiration Friday closing procedures place limitations on MOC order entry with regard to orders related to any strategy involving an expiring derivative index product, and the procedures restrict the cancellation of MOC orders after 3:45 p.m. In addition, the existing procedures provide for the dissemination of MOC order imbalances of 50,000 shares or more in any of the "pilot stocks." On expiration Fridays, the "pilot stocks" are the fifty highest weighted stocks underlying the S&P 500 index, and any of the stocks underlying the Major Market Index not included in that group. Under the proposal, the auxiliary closing procedures used on QIX expiration days will be identical to those currently used on expiration Fridays, except that the MOC imbalance publication procedures will apply to the "quarterly pilot stocks." The quarterly pilot stocks are the fifty highest weighted S&P 500 stocks, any component stocks of the Major Market Index not included in this group, and the ten highest weighted stocks of the S&P MidCap 400 Index.[12]

The Commission continues to believe that, by requiring early submission of MOC orders and disseminating imbalances, the NYSE should be able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies, thereby reducing the risk of extreme volatility associated with expirations. In this regard, the NYSE's most recent report concerning expiration Friday volatility and the expiration Friday closing procedures indicates that the procedures have worked relatively well and may have resulted in more orderly markets at the close on expiration Fridays.[13] The Commission agrees with the NYSE that, on days in which some index derivative products expire based on closing stock prices, such procedures are necessary to provide a mechanism to handle the large imbalances that can be engendered by firms unwinding index derivative related positions. Thus, the Commission is approving, on a pilot basis, the extension of the use of the NYSE's auxiliary closing procedures to the last trading day of each calendar quarter in order to assist in offseting the effects of expiring QIX options.

The NYSE has requested that the present proposal be approved on a pilot basis expiring on October 31, 1993. The Commission notes that the pilot program in place for auxiliary closing procedures on expiration Fridays will also expire on that date. In the most recent order approving the extension of the pilot program for expiration Friday closing procedures, the Commission requested that, no later than June 1, 1993, the NYSE supply the Commission with specific data concerning the effects of the procedures on expiration Fridays through March 31, 1993.[14] In that order, the Commission also requested that the NYSE submit a follow-up report, no later than July 31, 1993, concerning the operation of the procedures from the April through the June, 1993 expiration Fridays. Finally, the Commission requested that, no later than July 31, 1993, the NYSE file a proposed rule change with the Commission requesting either an extension of the expiration Friday pilot procedures for an additional year or permanent approval of those procedures.

The Commission requests that the NYSE submit a report evaluating the QIX expiration pilot procedures, providing similar information to that which the Commission previously requested concerning the expiration Friday pilot procedures.[15] Specifically, the Commission requests that the NYSE include in the report due June 1, 1993 data and analysis concerning the effects of the auxiliary closing procedures on the March, 1993 QIX expiration, and similar information concerning the June, 1993 QIX expiration in the report due to the Commission by July 31, 1993. The Commission also requests that the NYSE submit a proposed rule change to the Commission no later than July 31, 1993, requesting either an extension of the present QIX expiration pilot program, or its permanent approval.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the NYSE to initiate the auxiliary closing procedures on the March 31, 1993 QIX expiration. Further, the use of expiration Friday auxiliary closing procedures, which are substantially similar to the auxiliary closing procedures proposed for QIX expirations, has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[16]

It is therefore ordered, pursuant to section 19(b)(2)[17] that the proposed rule change is hereby approved on a pilot basis through October 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[11] See *supra* note 5.

[12] Stocks in the MidCap 400 Index currently are not included as pilot stocks in expiration Friday procedures because options on the MidCap 400 settle based on opening values. The Commission, however, approved the use of closing settlement values for QIX on the MidCap 400 and, accordingly, believes it is appropriate to include the ten highest weighted stocks of the MidCap 400 in the QIX pilot stocks.

[13] See Securities Exchange Act Release No. 31386 (October 30, 1992), 57 FR 52814 (approving File No. SR–NYSE–92–30).

[14] *Id.* The Commission requested that the NYSE report on: (1) the names of the pilot stocks and the imbalance (if any) at 3:30 p.m. and at the close for those stocks that had an imbalance of MOC orders of 50,000 shares or more at 3 p.m.; (2) the names of the stocks and the imbalance (if any) at the close for those stocks that did not have an imbalance at 3 p.m., but, due to cancellations, had imbalances of 50,000 shares or more at 3:30 p.m.; (3) for those stocks with an imbalance of 50,000 shares or more at 3 or 3:30, the names of the stocks where the imbalance changed from one side of the market (sell or buy) to the other side (buy or sell) due to cancellations of MOC orders; (4) for all pilot stocks, all MOC order imbalances (of any size) as of 4 p.m.; (5) the change in price of the closing transactions from the previous trade for all pilot stocks; (6) the change in price of the closing transactions from the price of transactions at 4 p.m. (if there were no transactions precisely at 4 p.m., the NYSE is to use the price from the transaction effected closest in time to 4 p.m.) for all pilot stocks; (7) for each pilot stock, the number of shares in MOC orders submitted by 3 p.m. that were cancelled for any reason prior to the close; (8) the change in the Dow Jones Industrial Average at the close on each expiration Friday; (9) opening prices and daily trading ranges of the pilot stocks on expiration Fridays, as well as the following Mondays; and (10) price volatility as measured by the change in price from the last regular way trade to the closing price, including historical data analyzing price volatility at the close prior to the implementation of the prohibition on cancelling MOC orders after 3:45 p.m. and the other MOC procedures.

[15] The information outlined in note 11, *supra*, may have to be altered slightly to apply to QIX. For example, opening prices and daily trading ranges of the QIX pilot stocks would have to be provided for the QIX expiration days, as well as the following trading day.

[16] See *supra* note 3.

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34-32069; File No. SR-PHLX-93-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Parity Transaction Splits During the Foreign Currency Option Evening Trading Segment

March 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Rule 1014(h) and the corollary Options Floor Procedure Advice B-7 to permit foreign currency options specialists who are on parity with other market specialists to participate in 50% of contraside contract volume during the hours of 6 p.m. and 3 a.m. e.s.t. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1014(h), which governs parity and priority on the foreign currency options floor. Generally, PHLX rules 119 and 120 provide that priority of bids and offers in the trading crowd is afforded based first on price and then on time. Accordingly, the first-voiced highest bid and lowest offer have precedence. When bids/offers are voiced simultaneously or it is not possible to determine which were voiced first, these bids/offers are said to be on parity and any contracts executed are generally divided equally among these interests. Each trade establishes a new auction such that all bids and offers must be reestablished and all interests at the best price are on parity. With respect to PHLX traded foreign currency options, Rule 1014(h) provides that customer orders of less than 100 contracts receive priority over other bids and offers that otherwise would be on parity. Furthermore, customer orders of 100 contracts or more are treated the same as orders for ROTs or specialists for purposes of Rule 1014(h). Also under 1014(h), bids and offers remain on parity until at least 10% of the size of the previous bid and offer or 100 contracts, whichever is greater, subsequently trades in that series.

The PHLX proposes to authorize as an incentive to specialists in the PHLX's evening foreign currency options trading segment, 50% participation in instances where a parity transaction is executed. This provision would apply only to specialists between the hours of 6 p.m. and 3 a.m. (e.s.t.). Specifically, a specialist who is on parity would be entitled to 50% of the contraside contracts executed, with the remainder of those contracts divided as equally as practicable amongst the remainder of the trading crowd in accordance with the parity and priority rules in Rule 1014(h). It should be noted that Rule 1919 provides that orders placed on the specialist's book must be executed before the specialist may trade in that series for his own account, therefore, providing further customer protection.

The PHLX Board of Governors has recognized the unique responsibilities and burdens of specialist units in staffing and participating in the evening trading segment. During the foreign currency options evening trading segment, the specialists generally undertake a major portion of the market making responsibility and are charged with providing a continuous market regardless of the level of ROT presence and participation in the evening segment. Accordingly, in order to encourage and maintain critical specialist commitment to the evening trading segment, the PHLX proposes to entitle specialists who are on parity to participate in an execution to the extent of 50% of the contraside interest. ROTs and other market participants may nevertheless continue to attain priority, and a larger participation in the transaction, by improving the market.

The Exchange notes that the proposed rule change is being established in conjunction with transaction charge exemptions afforded to specialists and ROTs pursuant to a corollary rule filing.[1] Both proposed rule changes are designed to encourage active market participation during the evening trading segment while assuring the continued availability of foreign currency options participants to act as specialists and ROTs during the evening trade segment. The PHLX has repeatedly cited the advantages of extended trading hours for foreign currency options market customers and participants. The added hours provide increased liquidity and a market that reflects relative currency valuations in immediate response to world events, thereby accommodating the needs of international business and commercial participants. In channeling business transactions to the Exchange, the PHLX provides all the benefits and safeguards of an exchange-listed auction marketplace with a specialist and competing ROT system, which furthers the proposes of Section 6(b)(5) of the Act and in particular, protects investors and the public interest as well as facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[1] See Exchange Act Release No. 31987 (March 9, 1993) (order approving File No. SR-PHLX-93-04)

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–05 and should be submitted by April 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7861 Filed 4–2–93; 8:45 am]

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Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Four Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Four Over-the-Counter Issues.

March 29, 1993.

On March 12, 1993, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, i.e., securities not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7–10423	INTCW	Intel Warrants. Common Stock. $.01 par value.
7–10424	QVCN	Q.V.C. Network, Inc. Common Stock. $.01 par value.
7–10425	SCOT	Scott & Stringfellow. Common Stock. $.02 par value.
7–10426	KINN	Kinnard Investments, Inc. Common Stock. $.02 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–10427	AURA	Aura Systems. Common Stock. $.005 par value.
7–10428	APBI	Applied Bioscience. Common Stock. $.01 par value.
7–10429	BSTN	Boston Technology Inc. Common Stock. $.001 par value.
7–10430	TOPP	The Topps Company, Inc. Common Stock. $.01 par value.

Replacement issues are being requested due to a lack of trading activity.

Comments

Interested persons are invited to submit, on or before April 19, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7776 Filed 4–2–93; 8:45 am]

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[Release No. 34–32065; File No. SR–NYSE–92–21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 421 (Periodic Reports)

March 30, 1993.

On September 12, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 421 (Periodic Reports) to require the electronic transmission of monthly short position reports by members and member organizations.

The proposed rule change was published for comment in Securities Exchange Act Release No. 31285 (October 5, 1992), 57 FR 46611 (October 9, 1992). No comments were received on the proposal.

NYSE Rule 421 requires members and member organizations to report total short positions (i.e., positions resulting from short sales, as that term is defined in Securities Exchange Act Rule 3b–3)[3] in listed securities on a monthly basis. These reports are presently submitted to the Exchange in paper form (on the NYSE's Form MF–2 or MF–2 Summary Form). The NYSE uses the data, in general, for surveillance of market activity. The Exchange also publishes short interest information in a monthly release to listed companies, the investing public, market professionals and other interested parties.

The Exchange proposes to amend Rule 421 to eliminate the paper forms currently in use. Members and member organizations will, instead, be required to transmit their short position information electronically, through the Securities Industry Automation Corporation ("SIAC").[4] There will be

[2] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] 17 CFR 240.3b–3 (1992).

[4] The NYSE will require members to transmit their short positions electronically ninety days after SEC approval of this proposal and will notify members accordingly via an information memo. During the ninety-day transition period, members and member organizations will be contacted by a

alternative methods to input the data into SIAC (e.g., by personal computer or by central processing unit).[5] Neither the substance of the report nor its end use will change.

The NYSE states that requiring electronic transmission of monthly short interest data will improve the Exchange's efficiency in the processing and compilation of such data and facilitate the Exchange's continuing efforts to reduce keypunching. The Exchange believes that the proposal, by providing for enhanced automation, will help ensure that the Exchange's regulatory and surveillance capabilities keep pace with today's market environment and thereby protect investors and the public interest. The Exchange also believes that the proposal will assist in preventing fraudulent and manipulative acts and practices and thereby promote just and equitable principles of trade.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with section 6(b)(5) of the Act[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

The Commission believes that the purposed rule change should enhance the NYSE's regulatory and surveillance capabilities with respect to the processing and compilation of short position reports. The information required to be submitted on short positions will not change under NYSE rules. Rather, only the method of filing the information will change under the proposal being approved herein.

Electronic reporting should allow the Exchange to process short position data more accurately and efficiently. This, in turn, should enhance the NYSE's ability to detect market manipulation. For example, a large change in a short position may indicate insider trading or some other form of market manipulation. The proposed rule change also should assist the NYSE in identifying member financial irregularities. For example, a large change in a short position may indicate that a member is experiencing financial difficulties. Moreover, electronic reporting should improve the quality (i.e., more timely publication) of the short interest information made available by the Exchange to listed companies, the investing public, market professionals and other interested parties.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–92–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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SIAC representative and will receive instructions about how to transmit their short position reports electronically. See letter from Pat Dorilio, Rule & Interpretive Standards, NYSE, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated March 22, 1993 (containing draft information memo). The Commission believes this delay is appropriate to allow for the orderly implementation of the proposal.

[5] In the text of its rule filing, the NYSE prescribed these two methods, personal computer ("PC") or central processing unit ("CPU"), as the automated formats to be used in reporting short positions. The NYSE's information memo, *see supra* note 4, specifies that members or member organizations with a direct link to SIAC will be able to transmit CPU-to-CPU; otherwise, reports will be sent via the same PC the member or member organization uses for other NYSE applications. Before revising these prescribed methods, the NYSE should consult with the Commission to determine whether it must file a proposed rule change pursuant to Section 19(b) of the Act.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[Rel. No. IC–19369; 811–6532]

China Growth Fund, Inc.; Application for Deregistration

March 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: China Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on March 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 200 Park Ave., New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Maryland corporation and a closed-end, non-diversified management investment company registered under the Act. On January 14, 1992, applicant filed a notification of registration on Form N–8A. On June 12, 1992, applicant filed a registration statement on Form N–2. Applicant never made a public offering of its shares.

2. On January 13, 1992, applicant issued 10,000 shares of its common stock to Lloyd George Management (B.V.I.) Limited, an affiliate of applicant's investment adviser, in consideration of $100,000. On January 11, 1993, applicant distributed all of its assets, consisting of cash in the amount of $101,991, to such shareholder.

3. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged in, nor does it presently intend to engage in, business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 93–7863 Filed 4–2–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Customedix Corporation, Common Stock, $.01 Par Value) File No. 1–7081

March 30, 1993.

Customedix Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, the decision to withdraw the Common Stock from listing and registration on the BSE is based on the fact that such shares are currently listed and registered on the American Stock Exchange. According to the Company, the listing on the BSE is duplicative, provides no significant advantages to the Company or its stockholders and is an unnecessary expense.

Any interested person may, on or before April 20, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–7865 Filed 4–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19365; 812–7943]

Delaware Group Trend Fund, Inc., et al.; Notice of Application

March 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Delaware Group Trend Fund, Inc., Delaware Group Tax-Free Fund, Inc., Delaware Group Decatur Fund, Inc., Delaware Group Government Fund, Inc., Delaware Group Delaware Fund, Inc., Delaware Group Delchester High-Yield Bond Fund, Inc., Delaware Group DelCap Fund, Inc., Delaware Group Treasury Reserves, Inc., DMC Tax-Free Income Trust—PA, Delaware Group Value Fund, Inc., and Delaware Group Global & International Funds, Inc., all future investment companies for which Delaware Management Company, Inc. ("DMC"), Delaware International Advisers Ltd. ("Delaware International"), or any entity controlled by or under common control with DMC or Delaware International, serves as investment adviser, or for which Delaware Distributors, Inc. ("DDI"), or any entity controlled by or under common control with DDI, serves as principal underwriter (collectively referred to as the "Funds"), and any series or class of the Funds, DMC, Delaware International, and DDI.[1]

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seeks an order to permit them to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC under certain circumstances.

FILING DATE: The application was filed on June 12, 1992, and amended on November 2, 1992 and December 2, 1992. By letters dated March 24, 1993 and March 29, 1993, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Commerce Square, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Fund is registered under the Act as an open-end management investment company and is organized either as a Pennsylvania business trust or a Maryland corporation. DMC or Delaware International is the investment adviser of each Fund. DDI is the principal underwriter of the shares of each Fund.

2. Certain of the Funds currently offer shares subject to a front-end sales load, a rule 12b–1 distribution plan, or both. Applicants intend to eliminate the front-end sales load with respect to purchases of $1 million or more.

3. In addition, certain classes of purchasers may purchase shares at net asset value without payment of an initial sales charge at any dollar level. These investors include: Officers, directors, and employees (including former officers, directors, and employees who had been employed for at least 10 years) of any Fund, DMC, any affiliate, any Fund or affiliate that may in the future be created, legal counsel to the Funds, and registered representatives of broker-dealers who have entered into a dealer's agreement with DDI, spouses, parents, brothers, sisters, and children (regardless of age) of such current and former officers, directors, employees, counsel, and registered representatives, any employee benefit plan established by any of the foregoing Funds, corporations, counsel, or broker-dealers, and clients of registered representatives of authorized investment dealers within six months of a change of the registered

[1] DMC or Delaware International currently serves as investment adviser and DDI currently serves as principal underwriter for Delaware Group Tax-Free Money Fund, Inc., and Delaware Group Cash Reserve, Inc., Delaware Pooled Trust, Inc. and Delaware Group Premium Fund, Inc. These companies do not presently intend to rely on the exemptive order sought by the application. However, if the companies determine to impose a CDSC consistent with the requested order, it is intended that they would be covered by the order.

representative's employment, if the purchase is funded by proceeds from an investment where a sales charge has been imposed but no CDSC or other charge has been assessed upon redemption of such investment.

4. Applicants propose to impose a CDSC on redemptions of shares that were purchased without the imposition of a sales charge if such shares are redeemed within a specified period after the end of the calender month in which the purchase order was accepted. Applicants currently intend that the CDSC will be imposed for a period of 12 months.

5. The amount of the CDSC currently is anticipated to be 1% of an amount equal to the lesser of (a) the net asset value at the time of purchase of the shares being redeemed, or (b) the net asset value of such shares at the time of redemption. The CDSC only will be imposed on amounts representing purchase payments, and not on increases in value of the shares or on shares purchased through reinvestment of dividends and distributions.

6. No CDSC will be imposed on any shares purchased prior to the effective date of the requested order. In addition, while applicants may in the future determine to change the specified terms of the CDSC, such changes will not affect previously purchased shares. In determining whether a CDSC is applicable, it will be assumed that a resumption will be made first of shares not subject to the CDSC, and then of shares held for the longest period of time. All investments made during a calendar month, regardless of when during the month the investment occurred, will age one month on the last day of that month and each subsequent month.

7. No CDSC will be imposed on exchanges of shares among the Funds, or on any other exchange between a Fund and any other investment company within the same group of investment companies, as defined in rule 11a–3, as the Funds, at the time of the exchange. If shares ("Exchange Shares") are acquired in exchange for shares subject to a CDSC (the "Original Shares"), and such Exchange Shares are redeemed within 12 months following the purchase of the Original Shares, a CDSC will be imposed on the redemption of the Exchange Shares. This policy will apply without regard to the number of exchanges within 12 months. In addition, if the Exchange Shares are of a money market fund not subject to any sales load, the period of time that such Exchange Shares are held will not count towards satisfying the holding period for purposes of calculating the CDSC payable with respect to the Original Shares. An administrative fee may be imposed on each exchange as contemplated by rule 11a–3. In any event, all exchanges will be effected in accordance with the provisions of section 11(a) and rule 11a–3.

8. Applicants intend to waive the CDSC on the following:

(a) Redemptions effected pursuant to a Fund's right to liquidate a shareholder's account if the aggregate net asset value of the shares held in the account is less than the effective minimum account size;

(b) Distributions to participants from a retirement plan qualified under section 401(a) or 401(k) of the Internal Revenue Code of 1986, as amended (the "Code"), or due to death of a participant in such a plan;

(c) Redemptions pursuant to the direction of a participant or beneficiary of a retirement plan qualified under section 401(a) or 401(k) of the Code with respect to that retirement plan;

(d) Distributions from a 403(b) plan or an IRA due to death or disability or the shareholder, or attainment of age 59½ by the shareholder;

(e) Tax-free returns of excess contributions to an IRA;

(f) Distributions by other employee benefit plans to pay benefits;

(g) Distributions described in items (b), (d), and (f) above pursuant to the Fund's systematic withdrawal plan;

(h) Redemptions by persons within the classes of shareholders described in paragraph 3 above; and

(i) Redemptions by registered unit investment trusts which have invested in a Fund with a CDSC and which are permitted to invest in the Fund pursuant to an existing exemptive order.[2]

9. With respect to the waiver of a CDSC on the redemption of a shareholder who is a client of a registered representative of an authorized investment dealer and who purchased such shares with the redemption proceeds of another open-end investment company, applicants will take such steps as may be necessary to determine that such shareholder has not paid a CDSC, fee, or other charge in connection with the redemption of shares of such other open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a CDSC, fee, or any other charge was imposed upon the redemption, and in addition, either (a) requiring that such shareholder provide an activity statement reflecting the redemption that supports the shareholder's representation, or (b) reviewing a copy of the current prospectus of the other open-end investment company and determining that such company does not impose a CDSC, fee, or other charge in connection with the redemption of shares.

10. If a CDSC is paid in connection with a redemption of shares followed by a reinvestment effected within 90 days after redemption pursuant to each Fund's reinstatement privilege, applicants intend to credit the shareholder for the time he or she held the redeemed shares since the initial purchase date. Therefore, the reinstated shares will be subject to the CDSC if redeemed within 12 months of the initial purchase of the shares redeemed. Applicants reserve the right to discontinue the credit described above. The reinvestment privilege is intended for investors who erroneously redeemed within 90 days. Shareholders who use the reinvestment privilege must inform the Fund, at the time of reinvestment, that they are using the privilege to receive credit for the time they held the redeemed shares since the initial purchase date. The exchange privilege is distinguishable from the reinvestment privilege in that the exchange privilege may be used by shareholders who want to move some or all of their investment in one Fund to another without a CDSC being imposed at the time of exchange.

Applicants' Condition: As a condition to the requested relief, applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7862 Filed 4–2–93; 8:45 am]

BILLING CODE 8010–01–M

[2] Government Securities Equity Trust, Investment Company Act Release Nos. 18763 (June 8, 1992) and 18836 (July 7, 1992) (order).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (High Plains Corporation, Common Stock, $.10 Par Value) File No. 1–8680

March 30, 1993.

High Plains Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing

and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on February 2, 1993, to withdraw the Company's Common Stock from listing on the PSE and list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and the decision was based upon the belief that the cost of listing concurrently on both the PSE and the NASDAQ/NMS outweighed the benefits of being listed on both exchanges. The Company believes there will be no loss of liquidity for the stockholders of the Company as a result of its decision to withdraw its Common Stock from listing on the PSE.

Any interested person may, on or before April 20, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-7866 Filed 4-2-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Phoenix District Advisory Council; Public Meeting

The U.S. Small Business Administration Phoenix District Advisory Council will hold a public meeting at 8:30 a.m. on Wednesday, April 14, 1993, at the Best Western Woodlands Plaza Hotel, Flagstaff, Arizona, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James P. Guyer, District Director, U.S. Small Business Administration, Central and One Thomas, suite 800, 2828 N. Central Avenue, Phoenix, Arizona 85004-1025, (602) 640-2400.

Dated: March 29, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-7831 Filed 4-2-93; 8:45 am]

BILLING CODE 8025-01-M

Minneapolis District Advisory Council; Public Meeting

The U.S. Small Business Administration Minneapolis District Advisory Council will hold a public meeting at 12 noon on Friday, April 23, 1993, at the Decathlon Athletic Club, 7800 Cedar Avenue South, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370-2306.

Dated: March 29, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Council.

[FR Doc. 93-7830 Filed 4-2-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Gillette-Campbell County Airport, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Gillette-Campbell County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 5, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Campbell County Airport Board, Gillette, Wyoming, at the following address: 2000 Airport Road #28, HCR 84, Gillette, Wyoming 82716.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Campbell County Airport Board, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Don O'Brien, (303) 286-5549; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, suite 300; Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Gillette-Campbell County Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 23, 1993, the FAA determined that the application to impose a PFC submitted by Campbell County Airport Board was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 25, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1993

Proposed charge expiration date: May 30, 1999

Total estimated PFC revenue: $331,540.00

Brief description of proposed project: Terminal building; airport layout plan (ALP); mandatory signs; taxiway lighting; snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air ambulance; Part 135 On-demand air taxi; and Part 121—Unscheduled air carriers.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration,

Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gillette-Campbell County Airport.

Issued in Renton, Washington, on March 23, 1993.

Edward G. Tatum,

Manager, Airports Division Northwest Mountain Region.

[FR Doc. 93–7849 Filed 4–2–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 92–69; Notice 2]

Determination That Nonconforming 1974 BMW R75/6 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1974 BMW R75/6 motorcycles are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1974 BMW R75/6 motorcycles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1974 BMW R75/6), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally mnaufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle orginally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1974 BMW R75/6 motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1992 (57 FR 62417) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry and appropriate vehicle eligibilty number indicating that the vehicle is eligible for entry. VSP 30 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1974 BMW R75/6 motorcycle not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1974 BMW R75/6 motorcycle originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 29, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–7760 Filed 4–2–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

Office of Thrift Supervision

OMB Number: New.

Form Number: None.

Type of Review: New collection

Title: Attorney Letter Pilot Test Information Collection.

Description: Necessary to provide the OTS feedback from a pilot test of a revised attorney letter that is sent to thrift counsel as part of the examination.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: (Other) One-time survey.

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 93–7782 Filed 4–2–93; 8:45 am]

BILLING CODE 4810–25–M

Departmental Offices

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC, on May 4 and 5, 1993, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on May 4 and the preparation of a written report to the Secretary of the Treasury on May 5, 1993.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under subsection 552b(c)(9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92–463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by subsection 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: March 29, 1993.

Deborah J. Danker,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 93–7804 Filed 4–2–93; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

1993 Electronic/Magnetic Filing: Form 5471

AGENCY: Internal Revenue Service, Treasury.

ACTION: Form 5471—Information Return.

SUMMARY: The Internal Revenue Service is planning to conduct an automated pilot program during the 1993 filing period for Form 5471 (Information Return of U.S. Persons With Respect To Certain Foreign Corporations) with all related schedules to be filed via magnetic tape, diskette or electronically (via modem to modem). This pilot program will be available without geographic limitation, although all processing is centralized at the Internal Revenue Service Center in Philadelphia, Pennsylvania. Participants must have secured prior authorization from the Internal Revenue Service (IRS). Interested parties can obtain copies of the draft Procedures by writing or calling the IRS. Comments on the program are welcome.

DATES: Letter of Application can be submitted year round.

ADDRESSES: Internal Revenue Service, Philadelphia Service Center, Magnetic Media Office, D.P. 115, 11601 Roosevelt Blvd., Philadelphia, PA 19154. Telephone: (215) 969–7533 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Internal Revenue Service is receiving an increasing number of computer prepared returns, and is exploring methods to use the flexibility provided by computer preparation to achieve efficiencies of processing. Electronic/magnetic tape filing eliminates most of the manual processes required by IRS to handle paper documents, which will increase the quality of the final product, speed up the processing and reduce unnecessary correspondence.

Generally, the Procedures will call for the filing of returns on electronic/magnetic tape of all the data currently supplied on the paper return, including schedules and statements which usually accompany the return. Additionally, filers will be required to test before acceptance into the program. The Form 5471 pilot program is being offered to filers and software developers.

Joseph H. Cloonan,

Director, Philadelphia Service Center.

[FR Doc. 93–7761 Filed 4–2–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 63
Monday, April 5, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, April 2, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–7947 Filed 4–1–93; 11:08 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 17304.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, April 27, 1993.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has added a discussion of upcoming items of Commission business to the meeting on April 27, 1993 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–7994 Filed 4–1–93; 3:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 17304.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, April 13, 1993.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has added a discussion of upcoming items of Commission business to the meeting on April 13, 1993 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–7995 Filed 4–1–93; 3:28 pm]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Commission Meeting, Wednesday April 7, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Methylene Chloride.

The staff will brief the Commission on the consumer use of products containing methylene chloride (DCM) and present options and recommendations for consideration by the Commission.

For a recorded message containing the latest agenda information, call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: April 1, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–7963 Filed 4–1–93; 12:51 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, April 8, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Ronny Boswell v. National Cement Company*, Docket No. SE 90–112–DM (Issues include whether the judge had jurisdiction to award damages to Boswell pursuant to 30 U.S.C. § 815(c)(3) and whether the judge's award was supported by substantial evidence.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–7997 Filed 4–1–93; 3:30 pm]

BILLING CODE 6735–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 8–93

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Wednesday, April 21, 1993 at 10:30 a.m.

SUBJECT MATTER: Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone (202) 208–7727.

Dated at Washington, DC, on March 31, 1993.

Judith H. Lock,

Administrative Officer.

[FR Doc. 93–7940 Filed 4–1–93; 11:06 am]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 58, No. 63
Monday, April 5, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92-196-1]

Change in Disease Status of France Because of Rinderpest and Foot-and-Mouth Disease

Correction

In the correction to proposed rule document 93-5986 appearing on page 15901 in the issue of Wednesday, March 24, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 920942-3013]

RIN 0648-AF12

Pelagic Fisheries of the Western Pacific Region

Correction

In rule document 93-5908 beginning on page 14170 in the issue of Tuesday, March 16, 1993, in the second column, under **SUMMARY**, in the fourth line, "making" should read "marking".

BILLING CODE 1505-01-D

Federal Register

Monday
April 5, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

Reports of Lobbying Information Filed for 1991 Under Section 112 of the HUD Reform Act of 1989; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. N–93–3596; FR–3461–N–01]

Reports of Lobbying Information Filed for 1991 under Section 112 of the HUD Reform Act of 1989

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: Section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989, added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.* A final rule was published on May 17, 1991, at 56 FR 22912, establishing the requirements of section 13 as a new part 86 of title 24 of the Code of Federal Regulations.

Part 86 establishes, among other things, the standards under which:

—persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

Section 86.30(b) requires the Department to compile the information submitted as soon as practicable after the close of the calendar year with respect to which the information is filed and to published this information annually in a notice in the **Federal Register**.

The information contained in Appendices A through D of this notice reflects registrations and reports submitted to the Department for calendar year 1991. This notice does not involve analysis or make inferences from the information provided.

Appendix A is the 1991 annual report of persons making expenditures for lobbying activities.

Appendix B is the annual report of persons receiving payment for lobbying activities.

Appendix C is a list of individuals who registered as lobbyists under Section 112.

Appendix D is a list of entities who registered as lobbyists under section 112.

FOR FURTHER INFORMATION CONTACT: Office of Ethics, room 2158, Department of Housing and Urban Development, 452 Seventh Street SW., Washington, DC 20410. Telephone (202) 708–3815; TDD (202) 708–3815. (These are not toll-free numbers.) Questions regarding this report should be submitted in writing to the above address.

Dated: March 12, 1993.

Michael F. Hill,

Deputy Assistant Secretary for Resources Planning and Operations.

BILLING CODE 4210–01–M

Appendix A

11/23/1992 — **Lobbyist & Consultant Activity** — Page 1

Annual Report of "Persons" Making Expenditures for Lobbying Activities
HUD Form 2883 For Calendar Year: 1991

Registrant Name and Address	To Whom Paid	Date of Agreement / Date of Expenditure	Amount
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617	ALTERCARE, INC. 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 Federal Action No.: **042-43083**	01/01/1991 01/01/1991	$ 50,000.00 $ 12,500.00
	LOUISVILLE HEALTH CARE CENTER, INC 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 Federal Action No.: **042-43084**	01/01/1991 01/01/1991	$ 50,000.00 $ 12,500.00
	CAREMERICA CORP. 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 Federal Action No.: **046-43034**	01/01/1991 01/01/1991	$ 50,000.00 $ 12,500.00
	NIGHTSONG LIMITED PARTNERSHIP 8633 NORTH MAIN STREET WHITMORE LAKE, MI 48189 Federal Action No.: **044-43058**	01/01/1991 04/01/1991	$ 30,000.00 $ 5,000.00
	NIGHTSONG LIMITED PARTNERSHIP 8633 NORTH MAIN STREET WHITMORE LAKE, MI 48189 Federal Action No.: **044-43058**	01/01/1991 01/01/1991	$ 25,000.00
	MILLER BEACH LIMITED PARTNERSHIP 134 NORTH LASALLE STREET CHICAGO, IL 60606 Federal Action No.: **073-43095**	01/01/1991 / /	
CRUZ DEVELOPMENT & ASSOC., LTD. ONE JOHN ELIOT SQUARE BOSTON, MA 01770	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: **066-35203**	09/10/1991 12/20/1991	$ 10,000.00 $ 4,983.82
	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: **066-35203**	09/10/1991 11/01/1991	$ 10,000.00 $ 2,600.00
SHELTER AMERICA CORPORATION 718-17TH STREET, SUITE 600 P.O. BOX 260 DENVER, CO 80201	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	06/19/1991 10/25/1991	$ 4,328.29
PAINEWEBBER INCORPORATED 1285 AVE OF THE AMERICAS NEW YORK, NY 10019	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **FHA 031-13014**	09/20/1991 12/19/1991	$ 50,000.00 $ 50,000.00
REILLY MORTGAGE GROUP, INC. 1951 KIDWELL DR., SUITE 700 VIENNA, VA 22182	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **FHA 052-43041**	08/13/1991 10/10/1991	$ 10,000.00 $ 10,000.00
	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **FHA 123-11016**	11/12/1991 12/11/1991	$ 8,000.00 $ 8,000.00
LAKESIDE SQUARE LTD PARTNERSHIP 9225 KATY FREEWAY SUITE 302 HOUSTON, TX 77024	BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: **071-55087/IL-06-E-0000E3**	08/21/1991 12/21/1991	$ 20,000.00 $ 20,000.00
NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607	PORTER, STEEL, HUMPHREYS, PORTER & MCLAMB, P.O. BOX 13646 RESEARCH TRIANGLE PARK RALEIGH, NC 27709-3646 Federal Action No.: **FAF-194**	10/15/1991 11/21/1991	$ 827.87
	PORTER, STEEL, HUMPHREYS, PORTER & MCLAMB, P.O. BOX 13646 RESEARCH TRIANGLE PARK RALEIGH, NC 27709-3646 Federal Action No.: **FAF-104**	/ / 12/17/1991	$ 1,396.68
	PORTER, STEEL, HUMPHREYS, PORTER & MCLAMB, P.O. BOX 13646 RESEARCH TRIANGLE PARK RALEIGH, NC 27709-3646 Federal Action No.: **FAF-104**	/ / 12/17/1991	$ 2,692.00
MT HOUSING ASSOCIATES ATTN: CHRIS BOWDEN ONE UNION ST., SUITE 301 PORTLAND, ME 04101	BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: **012-35376-LD-EC-L8**	/ / 07/29/1991	$ 8,756.64
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **012-35376-LD-EC-L8**	09/30/1991 10/01/1991	$ 2,000.00 $ 2,000.00
STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	RAWLE, WILLIAM DAVID OFFICE OF ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Federal Action No.: **052-35441**	05/06/1991 12/31/1991	$ 47,800.00 $ 29,143.26
CJB DEVELOPMENT, INC. 3900 N. CAUSEWAY BOULEVARD SUITE 865, LAKEWAY 1 METAIRIE, LA 70002	SCHNEIDER, ELLEN V. 2100 PENNSYLVANIA AVE., NW SUITE 400 WASHINGTON, DC 20037 Federal Action No.: **64-35272**	09/20/1991 12/31/1991	$ 919.33
KUSHNER, BEN L. 19101 MYSTIC POINTE DR. AVENTURA, FL 33180	TENNANT, WILLIAM S. C/O KROOTH & ALTMAN 2101 L ST., NW, SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **067-10502**	11/15/1991 11/15/1991	$ 2,500.00 $ 2,500.00

11/23/1992 HUD Form 2883 For Calendar Year: 1991 Page 2

PW FUNDING INC. 787 SEVENTH AVE, 29TH FLOOR NEW YORK, NY 10019	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.:	/ / / /	
REAL PROPERTY SERV. CORP. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	/ / 09/10/1991	$ 60.43
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	/ / 05/21/1991	$ 561.25
REAL PROPERTY SERV. CORP. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 12/30/1991	$ 90.70
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 12/30/1991	$ 97.26
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 11/11/1991	$ 12.68
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 10/10/1991	$ 349.95
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 09/10/1991	$ 518.36
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 08/09/1991	$ 249.26
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 04/10/1991	$ 5,535.75
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 04/10/1991	$ 319.25
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 04/19/1991	$ 476.69
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 02/20/1991	$ 922.49
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 02/20/1991	$ 2,166.40
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 01/30/1992	$ 4,613.29
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 10/10/1991	$ 230.00
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 09/10/1991	$ 477.50
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 08/09/1991	$ 177.75
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 04/19/1991	$ 117.50
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 04/10/1991	$ 841.29
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202	01/01/1976 01/20/1991	$ 672.52

11/23/1992 **HUD Form 2883 For Calendar Year: 1991** Page 3

REAL PROPERTY SERV. CORP. (Continued)	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 02/20/1991	$ 187.73
	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.:	01/01/1976 01/30/1991	$ 168.75
GADSDEN HOUSING DEVELOPMENT CORP. 422 CHESTNUT STREET GADSDEN, AL 35902	ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: 211	07/31/1991 12/24/1991	$ 17,000.00
	STERNE, AGEE & LEACH, INC. 1901 6TH AVE. NORTH SUITE 2100 BIRMINGHAM, AL 35203 Federal Action No.: 211	07/31/1991 12/24/1991	$ 32,020.00
	PECK, SHAFFER & WILLIAMS Federal Action No.: 211	07/31/1991 12/24/1991	$ 10,115.00
ARLINGTON VILLAGE APTS. PART. 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35387-PM-L8-SR	11/30/1989 12/31/1991	$ 47,705.00
BLUFFS DEVELOPMENT PARTNERSHIP 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35412-PM	07/01/1989 12/31/1991	$ 69,853.00
BRUCE MANOR, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 052-55005-LDC-LPA	12/31/1989 12/31/1991	$ 94,417.00 $ 94,417.00
CAMPUS APTS. PARTNERSHIP 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35385-PM-L8-SR	07/01/1989 12/31/1991	$ 35,353.00
TOWNEHOUSE MANOR II 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 052-55016-LDI	01/01/1990 12/31/1991	$ 71,815.00
TOWNHOUSE MANOR III 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 052-44108-LDP	01/01/1990 12/31/1991	$ 92,234.00
LAVALLE PROPERTY ASSOCIATES 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 000-10736-RKF	01/01/1990 12/31/1991	$ 475,610.00
PARKWOOD APARTMENT PARTNERSHIP 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35344-PM-L8	07/01/1989 12/31/1991	$ 40,935.00
PARKWOOD APTS. PARTNERSHIP II 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35351-PM-L8	07/01/1989 12/31/1991	$ 81,755.00
LOGAN-LAWS FINANCIAL CORPORATION P.O. BOX 2266 JOHNSON CITY, TN 37605	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	06/19/1991 12/13/1991	$ 1,390.00
ASBURY WOODS LIMITED PARTNERSHIP STERLING-MEAD, INC. P.O. BOX 42464 CINCINNATI, OH 45242	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 046-35584	09/17/1991 10/04/1991	$ 1,250.00 $ 1,250.00

Appendix B

Registrant Name and Business Address	Report of Money or Other thing of Value Received for Lobbying Person Making Payment	Amount	Report of Money or Other Thing of Value Expended for Lobbying Person Being Paid	Amount
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005	PRESIDENTIAL MORTGAGE COMPANY 21031 VENTURA BLVD. WOODLAND HILLS, CA 91364 Federal Action No.: EXPLAINED Purpose: REPRESENTATION IN CONNECTION WITH OBTAINING FHA LENDER APPROVAL	$ 405.00	BROWNSTEIN ZEIDMAN AND SCHOMER 1401 NEW YORK AVE. SUITE 900 WASHINGTON, DC 20005-2102 Federal Action No.: EXPLAINED Purpose: REPRESENTATION IN CONNECTION WITH OBTAINING FHA LENDER APPROVAL	$ 405.00
	AEGIS HOLDING CORPORATION 33 WHITEHALL ST. NEW YORK, NY 10004-2112 Federal Action No.: EXPLAINED Purpose: REPRESENTATION IN CONNECTION WITH OBTAINING FHA LENDER APPROVAL	$ 553.48	BROWNSTEIN ZEIDMAN AND SCHOMER 1401 NEW YORK AVE. SUITE 900 WASHINGTON, DC 20005-2102 Federal Action No.: EXPLAINED Purpose: REPRESENTATION IN CONNECTION WITH OBTAINING FHA LENDER APPROVAL	$ 553.48
	LAKESIDE SQUARE LTD PARTNERSHIP 9225 KATY FREEWAY SUITE 302 HOUSTON, TX 77024 Federal Action No.: 071-55087/IL06-E000-0E3 Purpose: REPRESENTATION IN CONNECTION WITH OBTAINING SECTION 8 RENT INCREASES	$ 20,000.00	BROWNSTEIN ZEIDMAN AND SCHOMER 1401 NEW YORK AVE. SUITE 900 WASHINGTON, DC 20005-2102 Federal Action No.: 071-55087/IL06-E000-0E3 Purpose: REPRESENTATION IN CONNECTION WITH OBTAINING SECTION 8 RENT INCREASES	$ 20,000.00
	HISTORIC RESTORATION, INC. 400 LAFAYETTE STREET SUITE 110 NEW ORLEANS, LA 70130 Federal Action No.: 064-44801 Purpose: REPRESENTATION IN CONNECTION WITH 102(D) LOW INCOME CREDIT REVIEW	$ 141.79	BROWNSTEIN ZEIDMAN AND SCHOMER 1401 NEW YORK AVE. SUITE 900 WASHINGTON, DC 20005-2102 Federal Action No.: 064-44801 Purpose: REPRESENTATION IN CONNECTION WITH 102(D) LOW INCOME CREDIT REVIEW	$ 141.79
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004	PAVILLION PROPERTIES 5000 THURMOND MALL COLUMBIA, SC 29201 Federal Action No.: 054-57001 Purpose: OBJECTION TO NOTICE OF ELECTION TO ASSIGN MORTGAGE	$ 2,503.20	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 054-57001 Purpose: OBJECTION TO NOTICE OF ELECTION TO ASSIGN MORTGAGE	$ 2,503.20
	THE PATRICIAN FINANCIAL COMPANY 4600 MONTGOMERY LANE SUITE 200 BETHESDA, MD 20814 Federal Action No.: GNMA CS MSF 700658C Purpose: ISSUER APPROVAL	$ 1,907.25	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: GNMA CS MSF 700658C Purpose: ISSUER APPROVAL	$ 1,907.25
	SECURITAD ASSOCIATES EMPIRE STATE BUILDING SUITE 2305 NEW YORK, NY 10118 Federal Action No.: NY-36-0004-029 Purpose: SECTION 8 RENT SPECIAL ADJUSTMENT	$ 2,500.00	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: NY-36-0004-029 Purpose: SECTION 8 RENT SPECIAL ADJUSTMENT	$ 2,500.00
	727 THROGS NECK EXPRESSWAY, INC. 377 OAK ST GARDENS CITY, NY 11530-6543 Federal Action No.: 012-43147 Purpose: INSURED MORTGAGE INITIAL ENDORSEMENT	$ 7,833.86	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 012-43147 Purpose: INSURED MORTGAGE INITIAL ENDORSEMENT	$ 7,833.86
	SENIOR CITIZENS HOUSING COMM. INC. C/O JAMES J. BYRNE 36 NORTH NEW YORK AVENUE HUNTINGTON, NY 11743 Federal Action No.: 012-KH020 Purpose: RELEASE FROM REPLACEMENT RESERVE	$ 4,979.80	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 012-KH020 Purpose: RELEASE FROM REPLACEMENT RESERVE	$ 4,979.80
	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110 Federal Action No.: 101-94005 Purpose: TPA APPROVAL ADDITIONAL FAN NUMBERS 101-94006 125-94004 117-94006 117-94007 118-36603 118-94002	$ 2,227.10	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 101-94005 Purpose: TPA APPROVAL ADDITIONAL FAN NUMBERS 101-94006 125-94004 117-94006 117-94007 118-36603 118-94002	$ 2,227.10

POWELL GOLDSTEIN FRAZER & MURPHY (Continued)	PARK ESPLANADE LIMITED PARTNERSHIP C/O CLAREMONT CORPORATION BATTERYMARCH PARK II QUINCY, MA 02169 Federal Action No.: **064-00050** Purpose: NOTE MODIFICATION	$ 513.50	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: **064-00050** Purpose: NOTE MODIFICATION	$ 513.50
	HUTTON ADVANTAGED PROPERTIES II LIMITED PARTNERSHIP 625 MADISON AVE. NEW YORK, NY 10022 Federal Action No.: **114-35294** Purpose: HUD-HELD LOAN PROVISIONAL WORK-OUT	$ 5,000.00	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: **114-35294** Purpose: HUD-HELD LOAN PROVISIONAL WORK-OUT	$ 5,000.00
	CRUZ DEVELOPMENT & ASSOC., LTD. ONE JOHN ELIOT SQUARE BOSTON, MA 01770 Federal Action No.: **066-35203** Purpose: PARTIAL ASSIGNMENT	$ 14,983.85	POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: **066-35203** Purpose: PARTIAL ASSIGNMENT	$ 14,983.85
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202	RAC GARDENS CO., C/O NAT. CORP. FOR HOUSING PART. 1225 EYE ST., NW WASHINGTON, DC 20005 Federal Action No.: **012-44991** Purpose: LEGAL SERVICES - SECTION 8 OVER-ASSISTANCE PAYMENTS	$ 8,993.78	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **012-44991** Purpose: LEGAL SERVICES - SECTION 8 OVER-ASSISTANCE PAYMENTS	$ 8,993.78
	JEFFERSON VILLAGE APTS. C/O THE CAFRITZ-FREEMAN GROUP, INC 1150 17TH ST., NW SUITE 500 WASHINGTON, DC 20036 Federal Action No.: **000-35330** Purpose: LEGAL SERVICES- BOND REFUNDER	$ 2,000.00	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **000-35330** Purpose: LEGAL SERVICES-BOND REFUNDER	$ 2,000.00
	COBBLER SQUARE C/O GREYSTONE SERV. CORP. 3399 PEACHTREE, #2090 ATLANTA, GA 30326 Federal Action No.: **071-35496** Purpose: LEGAL SERVICES- BOND REFUNDER	$ 2,500.00	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **071-35496** Purpose: LEGAL SERVICES-BOND REFUNDER	$ 2,500.00
	DURANT TRAILS/WINDSOR FOREST C/O HIGHLAND MORTGAGE CO. 1029 22ND ST., SOUTH BIRMINGHAM, AL 35205 Federal Action No.: **053-46014** Purpose: LEGAL SERVICES-FHA INSURANCE CLAIM	$ 3,550.00	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **053-46014** Purpose: LEGAL SERVICES-FHA INSURANCE CLAIM	$ 3,550.00
	MARINE TERRACE C/O MT HOUSING ASSOCIATES ONE UNION ST. PORTLAND, MA 04101 Federal Action No.: **012-35376** Purpose: LEGAL SERVICE-OFFICE OF GEN. COUNSEL LEGAL OPINION (SECTION 8)	$ 2,000.00	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **012-35376** Purpose: LEGAL SERVICES - OFFICE OF GENERAL COUNSEL LEGAL OPINION (SECTION 8)	$ 2,000.00
	MESSIAH BAPTIST C/O WESTCHESTER ASSOCIATES 17 WEST LOCKWOOD ST LOUIS, MO 63119 Federal Action No.: **012-44004** Purpose: LEGAL SERVICES-HOPE II	$ 5,000.00	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **012-44004** Purpose: LEGAL SERVICES - HOPE II	$ 5,000.00
	SUSSEX ST./ESSEX ST. STATION C/O MONOCOLE MGMT., MONOCLE BUILDING BETHESDA, MD 20814 Federal Action No.: **000-10568/000-10551** Purpose: LEGAL SERVICES	$ 5,589.98	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **000-10568/000-10551** Purpose: LEGAL SERVICES	$ 5,589.98
	BENNING PARK/GAINESVILLE C/O REAL PROPERTY SERV., INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008 Federal Action No.: **000-55005/000-55008** Purpose: LEGAL SERVICES	$ 4,538.09	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **000-55005/000-55008** Purpose: LEGAL SERVICES	$ 4,538.09
	BURLINGTON MANOR C/O REAL PROPERTY SERV., INC. 1935 CAMINO VIDA ROBLE CARSBAD, CA 920008 Federal Action No.: **035-35109** Purpose: LEGAL SERVICES	$ 621.28	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: **035-35109** Purpose: LEGAL SERVICES	$ 621.28

DUNNELLS, DUVALL & PORTER (Continued)	GATES AVENUE APTS. C/O REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008 Federal Action No.: FHA NO. 012-55183 Purpose: LEGAL SERVICES	$ 9,763.54	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 012-55183 Purpose: LEGAL SERVICES	$ 9,763.54
	CLIFTON TERRACE C/O MARSHALL-BLACKWELL GROUP 6131 FALLS OF NEUSE RD, BOX 18447 RALEIGH, NC 27619-8447 Federal Action No.: 000-55034 Purpose: LEGAL SERVICES	$ 22,104.28	DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-55034 Purpose: LEGAL SERVICES	$ 22,104.28
BERMAN, STANLEY 1290 AVE OF THE AMERICAS NEW YORK, NY 10104	CARTER, JASON D. 235 WEST 48TH ST. NEW YORK, NY 10036 Federal Action No.: 012-35620 Purpose: NEGOTIATE WORKOUT AGREEMENT	$ 13,500.00	BERMAN, STANLEY 1290 AVE OF THE AMERICAS NEW YORK, NY 10104 Federal Action No.: 012-35620 Purpose: NEGOTIATE WORKOUT AGREEMENT	$ 13,500.00
RAWLE, WILLIAM DAVID OFFICE OF ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-35441 Purpose: ASSIGNMENT OF FHA INSURED LOAN TO FHA	$ 29,143.26	RAWLE, WILLIAM DAVID OFFICE OF ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-35441 Purpose: ASSIGNMENT OF FHA INSURED LOAN TO FHA	$ 29,143.26
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005	FAIRVIEW TAKOMA LIMITED PART. 2401 RESEARCH BOULRVARD SUITE 240 ROCKVILLE, MD 20850 Federal Action No.: 000-10684 Purpose: To obtain approval to refinance GNMA backed project	$ 198.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-10684 Purpose: TO OBTAIN APPROVAL TO REFINANCE GNMA BACKED PROJECT	$ 198.00
	RIVERVIEW TOWERS LIMITED PART. 301 MILLIKEN BOULEVARD P.O. BOX 671 FALL RIVER, MA 02722 Federal Action No.: EXPLAINED Purpose: TO INCLUDE STATE ASSISTED PROJECTS IN LIHPRHA REGULATIONS	$ 220.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: EXPLAINED Purpose: TO INCLUDE STATE ASSISTED PROJECTRS IN LIHPRHA REGULATIONS	$ 220.00
	CHARLESBANK APARTMENTS, INC. C/O THE NILES COMPANY, INC. 303 CONGRESS ST. BOSTON, MA 02210 Federal Action No.: 023-3502R-MP Purpose: TO PERMIT RESERVE FOR REPLACEMENT ACCOUNTS TO BE USED AS 241 LOAN EQUITY	$ 1,639.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-3502R-MP Purpose: TO PERMIT RESERVE FOR REPLACEMENT ACCOUNTS TO BE USED AS 241 LOAN EQUITY	$ 1,639.00
	46TH STREET REHAB ASSOCIATES 4201 CONNECTICUT AVE., NW SUITE 600 WASHINGTON, DC 20008 Federal Action No.: 000-44141 Purpose: TPA CLARIFICATIONS	$ 55.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44141 Purpose: TPA CLARIFICATIONS	$ 55.00
	H.P. CORPORATION 4201 CONNECTICUT AVE., NW SUITE 600 WASHINGTON, DC 20008 Federal Action No.: 000-55060 Purpose: TPA CLARIFICATIONS	$ 55.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-55060 Purpose: TPA CLARIFICATIONS	$ 55.00
	HIGEN ASSOCIATES 1790 BROADWAY NEW YORK, NY 10019 Federal Action No.: 012-55019 Purpose: TPA - ELIHPA	$ 291.50	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 012-55019 Purpose: TPA-ELIHPA	$ 291.50
	FAIRVIEW COMPANY 1790 BROADWAY NEW YORK, NY 10019 Federal Action No.: 012-55026 Purpose: TPA - ELIHPA	$ 291.50	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 012-55026 Purpose: TPA-ELIHPA	$ 291.50
	FRANKLIN SQUARE APARTMENTS, INC. 1575 TREMONT ST. BOSTON, MA 02120 Federal Action No.: 023-32008R Purpose: TO PERMIT RESERVE FOR REPLACEMENT ACCOUNTS TO BE FOR SECTION 241 EQUITY	$ 1,749.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-32008R Purpose: TO PERMIT RESERVE FOR REPLACEMENT ACCOUNTS TO BE FOR SECTION 241 EQUITY	$ 1,749.00

HESSEL AND ALUISE, P.C.
(Continued)

CLARIDGE HOUS. ALEX. ASSOCIATES C/O THE CAFRITZ COMPANY 1825 K ST., NW WASHINGTON, DC 20036 Federal Action No.: VA-39-HD-27-041 Purpose: INVESTMENT OF RESERVES	$	143.00
HALLMARK PROPERTIES, LTD. 2951 TEWNTY EIGHTH ST. SUITE 2040 SANTA MONICA, CA 90405 Federal Action No.: 031-32014 Purpose: MORTGAGE WORKOUT	$	1,694.00
FREDERICK DOUGLASS APTS. 2951 20TH ST SUITE 2040 SANTA MONICA, CA 90405 Federal Action No.: 031-32012 Purpose: MORTGAGE WORKOUT	$	352.00
LORING TOWER ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 023-062-MI Purpose: TO PERMIT 236 SUBSIDY TO BE USED FOR CONSTRUCTION PERIOD INTEREST	$	594.00
CARTER ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 023-135-MI Purpose: TO PERMIT 236 SUBSIDY TO BE USED FOR CONSTRUCTION PERIOD INTEREST	$	968.00
UNITED FRONT HOMES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 023-113-MI Purpose: TO PERMIT 236 SUBSIDY TO BE USED FOR CONSTRUCTION PERIOD INTEREST	$	275.00
ATHENS ARMS ASSOCIATION C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., N.W., 6TH FL. WASHINGTON, DC 20005 Federal Action No.: 061-55068 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
GREATER RICHMOND COMM. DEV. CORP. #1 & ASSOC., C/O NAT. CORP. FOR HOUS. PART, 1225 EYE ST., NW 6TH WASHINGTON, DC 20005 Federal Action No.: 121-44366 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
GREATER RICHMOND COMM. DEV. CORP. #1 & ASSOC., C/O NAT. CORP. FOR HOUS. PART, 1225 EYE ST., NW 6TH WASHINGTON, DC 20005 Federal Action No.: 121-44365 Purpose: TO CHANGEA DRAFT LIHPRHA APPRAISAL GUIDELINES	$	22.72
CENTER SQUARE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 034-44901 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
CHEER ROAD LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 053-44059 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: VA-39-HD27-041 Purpose: INVESTMENT OF RESERVES	$	143.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-32014 Purpose: MORTGAGE WORKOUT	$	1,694.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-32012 Purpose: MORTGAGE WORKOUT	$	352.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-062-MI Purpose: TO PERMIT 236 SUBSIDY TO BE USED FOR CONSTRUCTION PERIOD INTEREST	$	594.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-135-MI Purpose: TO PERMIT 236 SUBSIDY TO BE USED FOR CONSTRUCTION PERIOD INTEREST	$	968.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-113-MI Purpose: TO PERMIT 236 SUBSIDY TO BE USED FOR CONSTRUCTION PERIOD INTEREST	$	275.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-55068 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 121-44366 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 121-44365 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44901 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 053-44059 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C. (Continued)	KIMBERLY ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 000-44091 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	CHERRY ESTATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 042-35109 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	COLLEGE PARK ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 034-44105 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	COLONIAL TERRACE I ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 061-55011 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	COLONIAL TERRACE II ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 061-55017 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	COLONY APARTMENTS COMPANY LIMITED C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 062-44049 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	DENSALEM GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 034-44031 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	DENSALEM GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 034-44056 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	DORAL GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 034-44096 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	CYPRESS GARDENS LIMITED C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 121-44347 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	DARBY TOWNOUSES ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 034-44014 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44091 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-35109 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44105 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-55011 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-55017 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 062-44049 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44031 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44056 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44096 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 121-44347 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44014 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C.
(Continued)

EASTON TERRACE I ASSOC. LIMITED PART., C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **112-55012** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
EASTON TERRACE II ASSOC. LIMITED PART., C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **112-55031** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
ELDEN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **000-44086** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
INDIAN VALLEY III LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **112-44006** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
FEDERAL SQUARE VILLAGE, LTD. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **101-44038** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
FIELD ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **016-44072** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
FOREST GREEN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **063-44037** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
FOXWOOD MANOR ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **034-44095** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
GENESE GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **012-55079** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
COTTONWOOD APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **136-44221** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
GREENFIELD APTS. LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **051-55018** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **112-55012** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **112-55031** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **000-44086** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **112-44006** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **101-44038** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **016-44072** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **063-44037** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **034-44095** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **012-55079** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **136-44221** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **051-55018** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C. (Continued)	GREENFIELD NORTH APT. LIMITED PART C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 051-44030 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	GULFWAY LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. D225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 115-44009 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HAINES ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 127-35140 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HARRIS PARK LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 440-44010 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HATILLO HOUSING ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 056-35092 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	MAPLE PARK WEST LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 101-44063 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HOLLYBUSH GARDENS ASSOCIATES LIMIT PART. C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 035-44015 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	GATES MILLS VILLA I C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 042-44062 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HUDSON TERRACE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 013-44019 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	INDIAN VALLEY LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 042-44028 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	INDIAN VALLEY II LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 042-44079 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 051-44030 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 115-44009 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 127-35140 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 044-44010 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35092 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 101-44063 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 035-44015 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44062 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 013-44019 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44028 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44079 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C.
(Continued)

INDIAN VALLEY III LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **042-44164** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
KENNETH ARMS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **136-44229** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
KIMBERTON LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST. NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **232-44123** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
LAKE FOREST APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST, NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **033-44123** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
LORING TOWER APTS. LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **092-44802** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MANZANITA ARMS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **136-44209** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MEADOWOOD ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **062-44019** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MEADOWOOD ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **062-44081** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MEADOWOOD ASSOCIATES III LIMITED PART.,C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **052-44145** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MEADOWS APTS. LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **125-55010** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MILLIKEN APTS. LIMITED PARTNERSHIP C/O NHP, GENERAL PARTNERSHIP 1225 EYE ST., NW WASHINGTON, DC 20005 Federal Action No.: **023-44122** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **042-44164** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **136-44229** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **232-44013** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **033-44123** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **092-44802** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **136-44029** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **062-44019** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **062-44081** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **052-44145** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **125-55010** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **023-44122** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C.
(Continued)

MIRAMAR HOUSING ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **056-35132** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MONMOUTH ASSOC. LIMITED PARTNER. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **127-35157** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MONTBLANC HOUSING ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **056-35107** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
FORT CARSON ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **101-44075** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
MUSKE LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HSG. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **047-55021** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
NORTHGATE VILLAGE LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **061-44124** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
NORTH LAKE TERRACE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **112-55011** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
NORTHWEST TERRACE ASSOC. LIM. PART C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **112-55019** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
OAK PARK APTS LTD. PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **051-44096** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
DIP LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **000-44205** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
PALM HOUS. LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **042-35022** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **056-35132** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **127-35157** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **056-35107** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **101-44075** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **047-55021** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **061-44124** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **112-55011** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **112-55019** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **051-44096** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **000-44205** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **042-35022** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C
(Continued)

PENDLETON RIVERSIDE APTS. OREG LTD C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **126-44093** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **126-44093** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
PENN HALL ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **127-35159** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **127-35159** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
PRIDE GARDENS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **065-35185** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **065-35185** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
RANCHO ARMS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **136-44215** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **136-44215** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
RODEO DRIVE LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **122-44453** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **122-44453** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
SAN JUAN APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **136-44905** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **136-44905** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
SAN JUAN DEL CENTRO LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **101-44018** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **101-44018** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
LOCUS PARK ASSOCIATES C/O NAT'L CORP. FOR HSNG. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **052-44124** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **052-44124** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
SOUTHMONT APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **082-35111** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **082-35111** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
SPRING MEADOW LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **023-44087** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **023-44087** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
STOCK ISLAND LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: **066-44081** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: **066-44081** Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C.
(Continued)

SUNSET PLAZA APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 065-35044 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
CENTRAL VILLAGE ASSOCIATES C/O NAT. CORP. FOR HOUS. PART. 1225 EYE ST., NW, SIXTH FLOOR WASHINGTON, DC 20005 Federal Action No.: 112-55037 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
TUMAST ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 122-35356 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
TIMBERLAKES APTS. LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 113-44018 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
TRINITY HILLS VILLAGE APARTMENTS LIMITED PART., C/O NAT. CORP. OF HOUS. PART., 1225 EYE ST. NW 6TH WASHINGTON, DC 20005 Federal Action No.: 086-35033 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
TYEE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 176-44024 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
VERDES DEL ORIENTE C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 122-44154 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
VILLAGE GREEN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 063-44024 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
LOMAS VERDES ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: RQ46-H005-030 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
WASHINGTON MANOR LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 114-44008 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
WASHINGTON NORTHGATE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 033-55031 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 065-35044 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-55037 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-35356 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 113-44018 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 086-35033 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 176-44024 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-44154 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 063-44024 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: RQ46-H005-030 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 114-44008 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 033-55031 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72

HESSEL AND ALUISE, P.C.
Continued)

WASHINGTON WESTGATE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 033-55024 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
WATERMAN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST. NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 122-44086 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
OAK WEST LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE STREET, N.W. 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 110-44023 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
EMORY GROVE C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 000-55066 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
WOODCREST APARTMENTS, LTD. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 133-44034 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
WOODLAND COOS BAY, LTD. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 126-44118 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
WOODMARK LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 000-44062 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
RIDGEWOOD HILLS LTD. C/O MS. LENORE VARNEY, TERRA MGMT. 4813 DEEDS RD. PATASKALA, OH 43062 Federal Action No.: SECT 8:OHIO-E000-070 Purpose: TO OBTAIN SECTION 8 RENT INCREASE FOR SECURITY PURPOSES	$	1,529.00
LITHEDA APARTMENTS, INC. P.O. BOX 249 MATO REY, PR 00919 Federal Action No.: 056-35001 Purpose: PARTIAL RELEASE OF SECURITY - INCREASE SECTION 8	$	2,167.00
HORIZON, A LIMITED PARTNERSHIP 935 EAST BROAD ST. COLUMBUS, OH 43205 Federal Action No.: 043-35257 Purpose: RELEASE OF SURPLUS CASH	$	836.00
VILLAGE GREEN LTD. P.O. BOX 9770 ALEXANDRIA, VA 22301 Federal Action No.: 044-35516 Purpose: ISSUES SURROUNDING FAF BOND REFUNDING	$	110.00

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 033-55024 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-44086 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 110-44023 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-55066 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 133-44034 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 126-44118 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44062 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$	27.72
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: SECT.8 OHIO-E000-070 Purpose: TO OBTAIN SECTION 8 RENT INCREASE FOR SECURITY PURPOSES	$	1,529.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35001 Purpose: PARTIAL RELEASE OF SECURITY - INCREASE SECTION 8	$	2,167.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 043-35257 Purpose: RELEASE OF SURPLUS CASH	$	836.00
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 044-35516 Purpose: ISSUES SURROUNDING FAF BOND REFUNDING	$	110.00

HESSEL AND ALUISE, P.C. (Continued)	CAROL SUE APARTMENTS PARTNERSHIP C/O A.J. WARD 701 MADISON ST. GRETNA, LA 70057 Federal Action No.: 064-35102 Purpose: TO AGREE TO THE TERMS OF A PROVISIONAL WORKOUT	$ 110.00	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 064-35102 Purpose: TO AGREE TO THE TERMS OF A PROVISIONAL WORKOUT	$ 110.00
	BRUNSWICK VILLAGE LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005 Federal Action No.: 031-55075 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$ 27.72	HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-55075 Purpose: TO CHANGE DRAFT LIHPRHA APPRAISAL GUIDELINES	$ 27.72
ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006	JOHN L. NUVEEN & CO., INC. ATTN: W. FREDERICK FULLER, II 333 N. WACKER DR. CHICAGO, IL 60606 Federal Action No.: 198 Purpose: SECTION 8 REFINANCING	$ 75,000.00	ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: 198 Purpose: SECTION 8 REFINANCING	$ 75,000.00
	GADSDEN HOUSING DEVELOPMENT CORP. 422 CHESTNUT STREET GADSDEN, AL 35902 Federal Action No.: 211 Purpose: SECTION 8 REFINANCING	$ 17,000.00	ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: 211 Purpose: SECTION 8 REFINANCING	$ 17,000.00
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037	REILLY MORTGAGE GROUP, INC. 1951 KIDWELL DR., SUITE 700 VIENNA, VA 22182 Federal Action No.: 052-43041 Purpose: INITIAL ENDORSEMENT	$ 10,000.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 052-43041 Purpose: INITIAL ENDORSEMENT	$ 6,630.00
	BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: 052-43041 Purpose: INITIAL ENDOREMENT; OBTAIN EARLY START APPROVAL	$ 14,358.25	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 052-43041 Purpose: INITIAL ENDORSEMENT; OBTAIN EARLY START APPROVAL	$ 9,519.52
	UNIVERSAL CONSTRUCTORS, INC. P.O. BOX 28 HIGHWAY 286 MCMINNVILLE, TN 37110 Federal Action No.: 92-1751-DB (CDP) Purpose: LIMITED DENIAL OF PARTICIPATION	$ 23,310.23	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 92-1751-DB (CDP) Purpose: LIMITED DENIAL OF PARTICIPATION	
	NEW JERSEY HOUSING & MORTGAGE FINANCE AGENCY 3625 QUAKERBRIDGE ROAD TRENTON, NJ 08650 Federal Action No.: 031-32037 Purpose: ASSIGNMENT AND REFINANCING LOAN	$ 51,000.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 031-32037 Purpose: ASSIGNMENT AND REFINANCING LOAN	$ 33,813.00
	STANDARD MORTGAGE CORPORATION 300 PLAZA, ONE SHELL SQUARE NEW ORLEANS, LA 70139 Federal Action No.: 082-11024-PM Purpose: FHA INSURED LOAN CLOSING	$ 1,250.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 082-11024-PM Purpose: FHA INSURED LOAN CLOSING	$ 828.75
	HCMF CORP. 1480 SOUTH MAIN ST. BLACKSBURG, VA 24060 Federal Action No.: 051-43048-PM Purpose: BOND REFUNDING TRANSACTION	$ 1,250.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 051-43048-PM Purpose: BOND REFUNDING TRANSACTION	$ 828.75
	HCMF CORP. 1480 SOUTH MAIN ST. BLACKSBURG, VA 24060 Federal Action No.: 051-43055-PM Purpose: BOND REFUNDING TRANSACTION	$ 1,250.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 051-43055-PM Purpose: BOND REFUNDING TRANSACTION	$ 828.75
	MANUFACTURERS HANOVER SECURITIES CORP. 270 PARK AVENUE NEW YORK, NY 10017 Federal Action No.: 013-43057-PM-IC Purpose: LOAN REFINANCING	$ 33,605.29	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 013-43057-PM-IC Purpose: LOAN REFINANCING	$ 22,280.31

KROOTH & ALTMAN
(Continued)

HAROLD MOORE & ASSOCIATES 1798 WILSON PARKWAY FAYETTEVILLE, TN 37344 Federal Action No.: **086-35213-PM** Purpose: BOND REFUNDING TRANSACTION	$ 2,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **086-34213-PM** Purpose: BOND REFUNDING TRANSACTION	$ 1,657.50
VILLAGE DRIVE LIMITED 17992 MITCHELL SOUTH, SOUTH 100 IRVINE, CA 92714 Federal Action No.: **143-35096-PM** Purpose: BOND REFUNDING TRANSACTION	$ 5,923.87	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **143-35096-PM** Purpose: BOND REFUNDING TRANSACTION	$ 3,927.53
STERLING-MEAD, INC. 8280 MONTGOMERY RD., SUITE 305 ASBURY WOODS RETIREMENT VILLA CINCINNATI, OH 45236 Federal Action No.: **046-35573-PM** Purpose: BOND REFUNDING TRANSACTION	$ 1,250.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **046-35573-PM** Purpose: BOND REFUNDING TRANSACTION	$ 828.75
STERLING-MEAD, INC. 8280 MONTGOMERY RD., SUITE 305 ASBURY WOODS RETIREMENT VILLA CINCINNATI, OH 45236 Federal Action No.: **046-35584** Purpose: BOND REFUNDING TRANSACTION	$ 1,250.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **046-35584** Purpose: BOND REFUNDING TRANSACTION	$ 828.75
GERONOTOLOGICAL SERVICES OF AMER. 431 SOUTH DEARBORN, SUITE 506 CHICAGO, IL 60605 Federal Action No.: **071-36627** Purpose: TRANSFER OF PHYSICAL ASSETS	$ 5,000.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **071-36627** Purpose: TRANSFER OF PHYSICAL ASSETS	$ 3,315.00
KIRK CORPORATION 201 JUNIPER CIRCLE STREAMWOOD, IL 60207 Federal Action No.: **071-35586-PM** Purpose: CONDO CONVERSION PROPOSAL	$ 2,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **071-35586-PM** Purpose: CONDO CONVERSION PROPOSAL	$ 1,657.50
CATES COMPANY 6584 POPLAR AVENUE SUITE 340 MEMPHIS, TN 38138 Federal Action No.: **081-35197-PM** Purpose: BOND REFUNDING TRANSACTION	$ 2,000.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **081-35197-PM** Purpose: BOND REFUNDING TRANSACTION	$ 1,326.00
BEN KUSHNER 19101 MYSTIC POINTE AVENTURA, FL 33180 Federal Action No.: **067-10502** Purpose: BOND REFUNDING TRANSACTION	$ 2,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **067-10502** Purpose: BOND REFUNDING TRANSACTION	$ 1,657.50
GREENTREE APTS. LIMITED PART. C/O MR. MICHAEL H. PODELL, M.H. PODELL COMPANY, 1199 HOWARD AVE. BURLINGAME, CA 94010 Federal Action No.: **121-35773** Purpose: BOND REFUNDING	$ 2,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **121-35773** Purpose: BOND REFUNDING	$ 1,657.50
PAINEWEBBER INCORPORATED 1285 AVE OF THE AMERICAS NEW YORK, NY 10019 Federal Action No.: **031-13014** Purpose: LOAN REFINANCING	$ 50,000.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **031-13014** Purpose: LOAN REFINANCING	$ 33,150.00
REYNOLDS METALS COMPANY 6601 W. BROAD ST. RICHMOND, VA 23261-7003 Federal Action No.: **067-35276** Purpose: BOND REFUNDING TRANSACTION	$ 2,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **067-35276** Purpose: BOND REFUNDING TRANSACTION	$ 1,657.50
THOMAS C. PARSHALL ALLIED SVCS. FOR THE HANDICAPPED 475 MORGAN HIGHWAY, PO BX 1103 SCRANTON, PA 18501 Federal Action No.: **034-43060-MP** Purpose: MANAGEMENT ACTION	$ 2,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **034-43060-MP** Purpose: MANAGEMENT ACTION	$ 1,657.50
ST. JAMES MERCY HOSPITAL 411 CANISTEO ST. HORNELL, NY 14843 Federal Action No.: **014-13016-MP** Purpose: FINAL ENDORSEMENT BY HUD OF HOSPITAL FEDERAL INSURED MORTGAGE NOTE	$ 8,500.00	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **014-13016-MP** Purpose: FINAL ENDORSEMENT BY HUD OF HOSPITAL FEDERAL INSURED MORTGAGE NOTE	$ 5,635.50

KROOTH & ALTMAN
(Continued)

MBIA
113 KING ST.
ARMONK, NY 10504

Federal Action No.: 052-35323
Purpose: PERFECTION OF FHA INSURANCE CLAIM

MBIA
113 KING ST.
ARMONK, NY 10504

Federal Action No.: 075-35314-PM
Purpose: PERFECTION OF FHA INSURANCE CLAIM

MERRILL LYNCH CAPITAL MARKETS
250 VESEY STREET
NEW YORK, NY 10281

Federal Action No.: 012-13031-NP-RC
Purpose: LOAN REFINANCING

DORMITORY AUTHORITY OF THE STATE
OF NEW YORK
161 DELAWARE AVE.
DELMAR, NY 12054
Federal Action No.: 014-10003
Purpose: INITIAL ENDORSEMENT

GOLDMAN SACHS & CO.
85 BROAD
NEW YORK, NY 10004

Federal Action No.: 012-13032-NP-RC
Purpose: MANAGEMENT ACTION

BANC ONE CAPITAL CORPORATION
13100 WORLDGATE DRIVE, SUITE 270
HERNDON, VA 22070

Federal Action No.: 123-11016
Purpose: INITIAL ENDORSEMENT

REILLY MORTGAGE GROUP, INC. $ 8,000.00
1951 KIDWELL DR., SUITE 700
VIENNA, VA 22182

Federal Action No.: 123-11016
Purpose: INITIAL ENDORSEMENT

KIDDER PEABODY HMB SERVICES
HANOVER SQUARE
NEW YORK, NY 10005

Federal Action No.: EXPLAINED
Purpose: (MEHARRY MEDICAL COLLEGE)
DISCUSSIONS ON HOW TO STRUCTURE INITIAL APPLICATION TO HHS FOR APPROVAL OF FUTURE HUD FINANCING

KIDDER PEABODY HMB SERVICES
HANOVER SQUARE
NEW YORK, NY 10005

Federal Action No.: EXPLAINED
Purpose: (SAMPSON HOSPITAL)
DISCUSSIONS ON HOW TO STRUCTURE INITIAL APPLICATION TO HHS FOR APPROVAL OF FUTURE HUD FINANCING

NEW COMMUNITY URBAN RENEWAL CORP.
233 WEST MARKET ST.
NEWARK, NJ 07103

Federal Action No.: 031-57001
Purpose: FINAL ENDORSEMENT BY HUD OF NURSING FACILITY

SHELTER DEVELOPMENT CORPORATION
218 N. CHARLES ST., SUITE 500
BALTIMORE, MD 21201

Federal Action No.: 052-32035
Purpose: BOND REFUNDING TRANSACTION

PERINI SERVICES INC.
2424 PARADISE CHURCH RD.
HAGERSTOWN, MD 21740

Federal Action No.: 034-430776-PA
Purpose: INITIAL ENDORSEMENT

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 052-35323
Purpose: PERFECTION OF FHA INSURANCE CLAIM

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 075-35314-PM
Purpose: PERFECTION OF FHA INSURANCE CLAIM

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 012-13031-NP-RC
Purpose: LOAN REFINANCING

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 014-10003
Purpose: INITITAL ENDORSEMENT

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 012-13032-NP-RC
Purpose: MANAGEMENT ACTION

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 123-11016
Purpose: INITIAL ENDORSEMENT

KROOTH & ALTMAN $ 5,304.00
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 123-11016
Purpose: INITIAL ENDORSEMENT

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.:
Purpose: DISCUSSIONS ON HOW TO STRUCTURE INITIAL APPLICATION TO HHS FOR APPROVAL OF FUTURE HUD FINANCING

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.:
Purpose: DISCUSSIONS ON HOW TO STRUCTURE INITIAL APPLICATION TO HHS FOR APPROVAL OF FUTURE HUD FINANCING

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 031-57001
Purpose: FINAL ENDORSEMENT BY HUD OF NURSING FACILITY

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 052-32035
Purpose: BOND REFUNDING TRANSACTION

KROOTH & ALTMAN
2101 L ST., NW
SUITE 210
WASHINGTON, DC 20037
Federal Action No.: 034-430776-PA
Purpose: INITIAL ENDORSEMENT

KROOTH & ALTMAN (Continued)	WALLICK COMPANIES POST OFFICE BOX 1023 COLUMBUS, OH 43216 Federal Action No.: **061-44015** Purpose: PREVIOUS PARTICIPATION PROBLEMS FORM 2530 WALLICK COMPANIES POST OFFICE BOX 1023 COLUMBUS, OH 43216 Federal Action No.: **009-001** Purpose: PREVIOUS PARTICIPATION PROBLEMS FORM 2530 PW FUNDING INC. 787 SEVENTH AVE, 29TH FLOOR NEW YORK, NY 10019 Federal Action No.: **035-13007** Purpose: INITIAL ENDORSEMENT		KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **061-44015** Purpose: PREVIOUS PARTICIPATION PROBLEMS FORM 2530 KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **009-001** Purpose: PREVIOUS PARTICIPATION PROBLEMS FORM 2530 KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **035-13007** Purpose: INITIAL ENDORSEMENT
PORTER, STEEL, HUMPHREYS, PORTER & MCLAMB, P.O. BOX 13646 RESEARCH TRIANGLE PARK RALEIGH, NC 27709-3646	NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607 Federal Action No.: **FAF194** Purpose: APPROVAL AND EXECUTION OF THE FAF REFUNDING AGREEMENT FOR THE N.C. HSNG FIN AGENCY MULTI FAMILY HOUSING BOND REFUNDING BONDS.	$ 5,117.23	PORTER, STEEL, HUMPHREYS, PORTER & MCLAMB, P.O. BOX 13646 RESEARCH TRIANGLE PARK RALEIGH, NC 27709-3646 Federal Action No.: **FAF194** Purpose: APPROVAL AND EXECUTION OF THE FAF REFUNDING AGREEMENT FOR THE N.C. HSNG FIN AGENCY MULTI FAMILY HOUSING BOND REFUNDING BONDS.	$ 5,117.23
STERNE, AGEE & LEACH, INC. 1901 6TH AVE. NORTH SUITE 2100 BIRMINGHAM, AL 35203	GADSDEN HOUSING DEVELOPMENT CORP.. C/O W. D. RUSSELL, JR., DORTCH, RIHGT & RUSSELL, 239 COLLEGE ST. GADSDEN, AL 35901 Federal Action No.: **211** Purpose: SECTION 8 REFINANCING	$ 32,020.00	STERNE, AGEE & LEACH, INC. 1901 6TH AVE. NORTH SUITE 2100 BIRMINGHAM, AL 35203 Federal Action No.: **211** Purpose: SECTION 8 REFINANCING	$ 32,020.00
JOHN L. NUVEEN & CO., INC. ATTN: W. FREDERICK FULLER, II 333 N. WACKER DR. CHICAGO, IL 60606	NEW HAMPSHIRE HOUS. FIN. AUTHORITY 24 CONSTITUTION DR. BEDFORD, NH 03102 Federal Action No.: **198** Purpose: REFUNDING OF SECTION 8 BONDS		ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: **198** Purpose: REFUNDING OF SECTION 8 BONDS	$ 75,000.00
ALEX. BROWN & SONS, INC. 135 EAST BALT. ST. BALTIMORE, MD 21202	STATE OF DELAWARE 18 THE GREEN P.O. BOX 1401 DOVER, DE 19903 Federal Action No.: **FAF 193** Purpose: INVESTMENT BANKING ACTIVITIES IN CONNECTION WITH BOND REFUNDING PROPOSALS RELATING TO PROJECTS ASSISTED BY THE SEC. 8 PROGRAM NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607 Federal Action No.: **194** Purpose: INVESTMENT BANKING ACTIVITIES IN CONNECTION WITH BOND REFUNDING PROPOSALS RELATING TO PROJECTS ASSISTED BY THE SEC. 8 PROGRAM	$ 23,691.20	ALEX. BROWN & SONS, INC. 135 EAST BALT. ST. BALTIMORE, MD 21202 Federal Action No.: **FAF 193** Purpose: INVESTMENT BANKING ACTIVITIES IN CONNECTION WITH BOND REFUNDING PROPOSALS RELATING TO PROJECTS ASSISTED BY THE SECTION 8 PROGRAM ALEX. BROWN & SONS, INC. 135 EAST BALT. ST. BALTIMORE, MD 21202 Federal Action No.: **194** Purpose: INVESTMENT BANKING ACTIVITIES IN CONNECTION WITH BOND REFUNDING PROPOSALS RELATING TO PROJECTS ASSISTED BY THE SECT. 8 PROGRAM	$ 23,691.20
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606	PAUL STEWART APARTMENT ASSOCIATES PHASE I 205 WEST MONROE, SUITE 5 WEST CHICAGO, IL 60606 Federal Action No.: **071-44145** Purpose: MANAGEMENT AND OPERATIONS CONSULT. PAUL STEWART APTS. ASSOC. PHASE II 205 WEST MONROE, SUITE 5 WEST CHICAGO, IL 60606 Federal Action No.: **071-44175** Purpose: MANAGEMENT AND OPERATIONS CONSULT. PAUL G. STEWART APTS. ASSOC., PHASE III, PEOPLE CO-OP FOR HOUS GEN. PART., 400 E 41ST ST. CHICAGO, IL 60653 Federal Action No.: **071-35319** Purpose: MANAGEMENT AND OPERATIONS CONSULT.	$ 9,000.00 $ 6,000.00 $ 5,000.00	TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: **071-44145** Purpose: MANAGEMENT AND OPERATIONS CONSULT. TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: **071-44175** Purpose: MANAGEMENT AND OPERATIONS CONSULT. TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: **071-35319** Purpose: MANAGEMENT AND OPERATIONS CONSULT.	

WEINER, MCCAFFREY, BRODSKY, KAPLAN
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797

COMNET MORTGAGE SERVICES, INC. $ 217.16
70 VALLEY STREAM PARKWAY
P.O. BOX 2101
VALLEY FORGE, PA 19482
Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

CTX MORTGAGE OMPANY $ 746.00
3333 LEE PARKWAY, 11TH FL.
DALLAS, TX 75219

Federal Action No.: FHA NO. 51358
Purpose: (1) ASSIST IN OBTAINING AGENCY APPROVALS

CTX MORTGAGE OMPANY $ 454.00
3333 LEE PARKWAY, 11TH FL.
DALLAS, TX 75219

Federal Action No.: FHA NO 51358
Purpose: (2) ASSIST IN OBTAINING AGENCY APPROVALS

DANIELSON HOLDINGS C/O FESHBACH
BROTHERS
425 SHERMAN AVE, SUITE 220
PALO ALTO, CA 94306
Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

MCCOWN, DELEEUW & COMPANY 900 $ 416.50
THIRD AVENUE, 28TH FLOOR
NEW YORK, NY 10022

Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

MDS LOAN SERVICES 301 WEST 11TH $ 55.00
STREET
KANSAS CITY, MO 64105

Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

WATERFIELD MORTGAGE COMPANY, INC. $ 3,425.00
7500 WEST JEFFERSON BOULEVARD
FORT WAYNE, IN 46804

Federal Action No.: EXPLAINED
Purpose: RESPOND TO HUD AUDIT AND PARTICIPATE IN SETTLEMENT NEGOTIATIONS AT INVITATION OF MORTGAGEE REVIEW BOARD

MELLON BANK CORPORATION $ 5,374.00
500 GRANT STREET, SUITE 1910
PITTSBURGH, PA 15258

Federal Action No.: FHA NO. 05120
Purpose: (1) ASSIST WITH FHA SERVICING

MELLON BANK CORPORATION $ 754.50
500 GRANT STREET, SUITE 1910
PITTSBURGH, PA 15258

Federal Action No.: FHA NO. 41477
Purpose: (2) GENERAL REPRESENTATION

MERIDIAN MORTGAGE CORPORATION $ 1,195.00
TWO DEVON SQUARE
744 WEST LANCASTER AVENUE
WAYNE, PA 19087
Federal Action No.: FHA NO. 42641
Purpose: (1) GENERAL REPRESENTATION

MERIDIAN MORTGAGE CORPORATION $ 3,086.50
TWO DEVON SQUARE
744 WEST LANCASTER AVENUE
WAYNE, PA 19087
Federal Action No.: FHA NO. 42641
Purpose: (2) FRAUD REPORTED TO HUD

MERIDIAN MORTGAGE CORPORATION $ 943.00
TWO DEVON SQUARE
744 WEST LANCASTER AVENUE
WAYNE, PA 19087
Federal Action No.: FHA NO. 42641
Purpose: (3) FAILURE TO INSURE FOR ENVIRONMENTAL PROBLEMS

WEINER, MCCAFFREY, BRODSKY, KAPLAN
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 217.16
Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 746.00
Federal Action No.: FHA NO. 51358
Purpose: (1) ASSIST IN OBTAINING AGENCY APPROVALS

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 454.00
Federal Action No.: FHA NO. 51358
Purpose: (2) ASSIST IN OBTAINING AGENCY APPROVALS

WEINER, MCCAFFREY, BRODSKY, KAPLAN
Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 416.50
Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 55.00
Federal Action No.: EXPLAINED
Purpose: ASSIST IN OBTAINING AGENCY APPROVALS

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 3,425.00
Federal Action No.: EXPLAINED
Purpose: RESPOND TO HUD AUDIT AND PARTICIPATE IN SETTLEMENT NEGOTIATIONS AT INVITATION OF MORTGAGEE REVIEW BOARD

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 5,374.00
Federal Action No.: FHA NO. 05120
Purpose: (1) ASSIST WITH FHA SERVICING

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 754.50
Federal Action No.: FHA NO. 41477
Purpose: (2) GENERAL REPRESENTATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 1,195.00
Federal Action No.: FHA NO. 42641
Purpose: (1) GENERAL REPRESENTATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 3,086.50
Federal Action No.: FHA NO. 42641
Purpose: (2) FRAUD REPORTED TO HUD

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 943.00
Federal Action No.: FHA NO. 42641
Purpose: (3) FAILURE TO INSURE FOR ENVIRONMENTAL PROBLEMS

WEINER, MCCAFFREY, BRODSKY, KAPLAN
(Continued)

MERIDIAN MORTGAGE CORPORATION
TWO DEVON SQUARE
744 WEST LANCASTER AVENUE
WAYNE, PA 19087
Federal Action No.: FHA NO. 42641
Purpose: (4) FRAUD REPORTED TO HUD

HOME OWNER FUNDING CORP. OF AMER. $ 616.00
THREE BURLINGTON WOODS
BURLINGTON, MA 01803

Federal Action No.: EXPLAINED
Purpose: (1) GENERAL REPRESENTATION

HOME OWNER FUNDING CORP. OF AMER. $ 1,521.00
THREE BURLINGTON WOODS
BURLINGTON, MA 01803

Federal Action No.: EXPLAINED
Purpose: (2) ASSIST IN OBTAINING AGENCY APPROVALS FOR NEW ENTITY AS RESULT OF CORPORATE REORGANIZATION

HOME OWNER FUNDING CORP. OF AMER. $ 517.00
THREE BURLINGTON WOODS
BURLINGTON, MA 01803

Federal Action No.: EXPLAINED
Purpose: (3) ASSIST IN OBTAINING AGENCY APPROVALS FOR NEW ENTITY AS RESULT OF CORPORATE REORGANIZATION

TEMPLE-INLAND FINANCIAL SERVICES
301 CONGRESS
AUSTIN, TX 78767

Federal Action No.: EXPLAINED
Purpose: ASSIST IN MONITORING REVIEW OF ORIGINATION PRACTICES OF GURANTY FEDERAL SAVINGS BANK

LUMBERMEN'S INVESTMENT CORPORATION $ 1,020.00
301 CONGRESS, P.O. BOX 40
AUSTIN, TX 78767

Federal Action No.: EXPLAINED
Purpose: GENERAL REPRESENTATION

SECURITY FINANCIAL & MORTGAGE CORP $ 4,060.50
P.O. BOX 31912
ST LOUIS, MO 63131

Federal Action No.: FHA NO. 24909
Purpose: GENERAL REPRESENTATION

MIDWEST MORTGAGE COMPANY $ 597.89
501 WEST I-44 ROAD, P.O. BOX 26750
OKLAHOMA CITY, OK 73126-0750

Federal Action No.: EXPLAINED
Purpose: ASSIST IN MATTER CONCERNING SUSPENSION OF FHA APPROVAL

UNION BANK OF LITTLE ROCK $ 3,243.89
P.O. DRAWER 3318
LITTLE ROCK, AR 72203

Federal Action No.: EXPLAINED
Purpose: ASSIST WITH RESPONSE TO FHA AUDIT OF MORTGAGE ORIGINATIONS

CHIEF HOUSING $ 95.00
BONNAVILLA HOMES
P.O. BOX 127 WEST HIGHWAY 34
AURORA, NE 68818
Federal Action No.: EXPLAINED
Purpose: TITLE I LEGAL ISSUE CLARIFICATION

ENTRECAP INTERNATIONAL, INC.
1600 REDBUD BOULEVARD, SUITE 301
MCKINNEY, TX 75069

Federal Action No.: EXPLAINED
Purpose: ASSIST WITH POTENTIAL SERVICING RIGHTS PURCHASE

WEINER, MCCAFFREY, BRODSKY, KAPLAN
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: FHA NO. 42641
Purpose: (4) FRAUD REPORTED TO HUD

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 616.00
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: (1) GENERAL REPRESENTATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 1,521.00
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: (2) ASSIST IN OBTAINING AGENCY APPROVALS FOR NEW ENTITY AS RESULT OF CORPORATE REORGANIZATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 517.00
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: (3) ASSIST IN OBTAINING AGENCY APPROVALS FOR NEW ENTITY AS RESULT OF CORPORATE REORGANIZATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: ASSIST IN MONITORING REVIEW OF ORIGINATION PRACTICES OF GUARANTY FEDERAL SAVINGS BANK

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 1,020.00
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: GENERAL REPRESENTATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 4,060.50
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: FHA NO. 24909
Purpose: GENERAL REPRESENTATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 597.89
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: ASSIST IN MATTER CONCERNING SUSPENSION OF FHA APPROVAL

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 3,243.89
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: ASSIST WITH RESPONSE TO FHA AUDIT OF MORTGAGE ORIGINATIONS

WEINER, MCCAFFREY, BRODSKY, KAPLAN $ 95.00
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: TITLE I LEGAL ISSUE CLARIFICATION

WEINER, MCCAFFREY, BRODSKY, KAPLAN
& LEVIN, P.C.
1350 NEW YORK AVE. NW, SUITE 800
WASHINGTON, DC 20005-4797
Federal Action No.: EXPLAINED
Purpose: ASSIST WITH POTENTIAL SERVICING RIGHTS PURCHASE

WEINER, MCCAFFREY, BRODSKY, KAPLAN (Continued)	FINMARK ASSOCIATES, INC. 8425 KEYSTONE CROSSING, SUITE 270 INDIANAPOLIS, IN 46240 Federal Action No.: EXPLAINED Purpose: ASSIST WITH POTENTIAL SERVICING RIGHTS PURCHASE		WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH POTENTIAL SERVICING RIGHTS PURCHASE
	FIRST BANKERS MORTGAGE CORP. 1512 LAKE AIR, SUITE 120 WACO, TX 76702 Federal Action No.: EXPLAINED Purpose: ASSIST WITH GNMA APPROVALS	$ 330.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH GNMA APPROVALS $ 330.00
	HOME OWNER FUNDING CORP. OF AMER. THREE BURLINGTON WOODS BURLINGTON, MA 01803 Federal Action No.: EXPLAINED Purpose: ASSIST WITH GNMA SUBCONTRACTOR ISSUES	$ 615.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH GNMA SUBCONTRACTOR ISSUES $ 615.00
	LOGAN-LAWS FINANCIAL CORPORATION P.O. BOX 2266 JOHNSON CITY, TN 37605 Federal Action No.: HUD MTG. NO. 50188-9 Purpose: ASSIST WITH TITLE I ISSUES	$ 1,390.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: HUD MTG. NO. 50188-9 Purpose: ASSIST WITH TITLE I ISSUES $ 1,390.00
	MANUFACTURED HOUSING INSTITUTE 1745 JEFFERSON DAVIS HIGHWAY, #511 ARLINGTON, VA 22202 Federal Action No.: EXPLAINED Purpose: ASSIST WITH TITLE I ISSUES		WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH TITLE I ISSUES
	OLD STONE MORTGAGE CORPORATION 500 108TH AVE., NE SUITE 1200 BELLEVUE, WA 98004 Federal Action No.: HUD MTG. NO. 55433-0000-0 Purpose: ASSIST WITH GNMA ISSUES	$ 280.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: HUD MTG. NO. 55433-0000-0 Purpose: ASSIST WITH GNMA ISSUES $ 280.00
	PHH US MORTGAGE CORPORATION 55 HADDONFIELD ROAD CHERRY HILL, NJ 08002 Federal Action No.: EXPLAINED Purpose: ASSIST WITH FHA TITLE I ISSUES	$ 2,280.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH FHA TITLE ISSUES $ 2,280.00
	RFI INCORPORATED 10299 GRAND RIVER AVE., SUITE P BRIGHTON, MI 48116 Federal Action No.: EXPLAINED Purpose: ACQUISITION OF ASSETS OF MIDWEST DAKOTA SERVICES CORP. FROM THE RESOLUTION TRUST CORP.	$ 758.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ACQUISITION OF ASSETS OF MIDWEST DAKOTA SERVICES CORPORATION FROM THE RESOLUTION TRUST CORPORATION $ 758.00
	HOMESTEAD SAVINGS & LOAN ASSOC. 979 BROADWAY MILLBRAE, CA 94030 Federal Action No.: FHA NO. 04713 Purpose: MEETING WITH HUD OFFICIAL RE: CLAIMS AUDIT LITIGATION	$ 13,379.75	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: FHA NO. 04713 Purpose: MEETING WITH HUD OFFICIAL RE: CLAIMS AUDIT LITIGATION $ 13,379.75
	PLATTE VALLEY MORTGAGE CORPORATION 601 FIFTH AVENUE SCOTTSBLUFF, NE 69361 Federal Action No.: EXPLAINED Purpose: ASSIST WITH AGENCY APPROVALS	$ 1,000.00	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH AGENCY APPROVALS $ 1,000.00
	SHELTER AMERICA CORPORATION 718 SEVENTH STREET, SUITE 600 P.O. BOX 260 DENVER, CO 80201 Federal Action No.: EXPLAINED Purpose: ASSIST WITH GNMA/FHA TITLE I ISSUES	$ 4,328.29	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH GNMA/FHA TITLE I ISSUES $ 4,328.29
	SOUTHTRUST BANK OF ALABAMA, NA 112 NORTH 20TH STREET, 6TH FLOOR BIRMINGHAM, AL 35201 Federal Action No.: EXPLAINED Purpose: ASSIST WITH TITLE I ISSUES	$ 327.50	WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED Purpose: ASSIST WITH TITLE I ISSUES $ 327.50

O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617	ALTERCARE, INC. 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 **Federal Action No.:** 042-43083-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE	$ 25,000.00	O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 **Federal Action No.:** 042-43083 Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE	$ 25,000.00
	LOUISVILLE HEALTH CARE CENTER, INC 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 **Federal Action No.:** 042-43084-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORT INS.	$ 25,000.00	O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 **Federal Action No.:** 042-43084-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE	$ 25,000.00
	LOUISVILLE HEALTH CARE CENTER, INC 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 **Federal Action No.:** 042-43089-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INS. (FED. ACT. # WITHDRAWN FROM FED. CONSID. 10/91)	$ 25,000.00	O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 **Federal Action No.:** 042-43089-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE (FED. ACT. # WITHDRAWN FROM FED. CONSID. 10/91)	$ 25,000.00
	CAREMERICA CORP. 7222 DAY AVENUE, S.W. NAVARRE, OH 44662 **Federal Action No.:** 046-43034-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE	$ 25,000.00	O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 **Federal Action No.:** 046-43034-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE	$ 25,000.00
	NIGHTSONG LIMITED PARTNERSHIP 8633 NORTH MAIN STREET WHITMORE LAKE, MI 48189 **Federal Action No.:** 044-43058-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE	$ 25,000.00	O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 **Federal Action No.:** 044-43058-EC-PM Purpose: ASSIST MORTGAGOR IN PREPARING & FILING APPLICATIONS FOR PROJECT MORTGAGE INSURANCE.	$ 25,000.00
	MILLER BEACH LIMITED PARTNERSHIP 134 NORTH LASALLE STREET CHICAGO, IL 60606 **Federal Action No.:** 073-43095 Purpose: ASSIST MORTGAGOR IN CLOSING PROJECT MORTGAGE APPLICATION	$ 200.00	O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 **Federal Action No.:** 073-43095 Purpose: ASSIST MORTGAGOR IN CLOSING PROJECT MORTGAGE APPLICATION	$ 200.00
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	ARLINGTON VILLAGE APTS. PART. 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 073-35387-PM-L8-SR Purpose: ON-GOING COMMUNICATION WITH HUD REGARDING RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 073-35387-PM-L8-SR Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00
	BLUFFS DEVELOPMENT PARTNERSHIP 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 073-35412-PM Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 073-35412-PM Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00
	BOLTON COURT APTS. PARTNERSHIP 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 073-35386-PM-L8-SR Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00.	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 073-35386-PM-L8-SR Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00
	BRUCE MANOR, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 052-55005-LDC-LPA Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00	REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 **Federal Action No.:** 052-55005-LDC-LPA Purpose: ON-GOING COMMUNICATION WITH HUD REGARDING DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES	$ 2,000.00

REALTY INVESTMENT COMPANY, INC.
(Continued)

CAMPUS APARTMENTS PARTNERSHIP $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 073-35385-PM-L8-SR
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

TOWNEHOUSE MANOR II $ 2,000.00
10770 COLUMBIA PIKE
SUITE G100
SILVER SPRING, MD 20901
Federal Action No.: 052-55016-LDI
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

TOWNHOUSE MANOR III $ 2,000.00
10770 COLUMBIA PIKE
SUITE G100
SILVER SPRING, MD 20901
Federal Action No.: 052-44108-LDP
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

LAVALLE PROPERTY ASSOCIATES $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 000-10736-REF
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

PARKWOOD APARTMENT PARTNERSHIP $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 073-35344-PM-L8
Purpose: ON-GOING COMMUNICATIOIN WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

PARKWOOD APTS. PARTNERSHIP II $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 073-35351-PM-L8
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

REALTY INVESTMENT COMPANY, INC. $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 073-35385-PM-L8-SR
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASE AND USE/ESTABLISHMENT OF RESERVES

REALTY INVESTMENT COMPANY, INC. $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 052-55016-LDI
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

REALTY INVESTMENT COMPANY, INC. $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 052-44108-LDP
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

REALTY INVESTMENT COMPANY, INC. $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 000-10736-REF
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

REALTY INVESTMENT COMPANY, INC. $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 073-35344-PM-L8
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

REALTY INVESTMENT COMPANY, INC. $ 2,000.00
10770 COLUMBIA PIKE, SUITE G100
SILVER SPRING, MD 20901

Federal Action No.: 073-35351-PM-L8
Purpose: ON-GOING COMMUNICATION WITH HUD RE: DETERMINATION OF RENT INCREASES AND USE/ESTABLISHMENT OF RESERVES

Appendix C

11/23/1992 — Lobbyist & Consultant Activity — Page 1

Registration (Individual)
HUD Form 2881-A For Calendar Year: 1991

Registrant's Name and Business Address	Self-Employed	Registrant's Employer and Business Address	Person Registrant has been Retained By	Exempt From Annual Report
PACIS- SAPUAY, BELINDA 12078 VAN NUYS BLVD. LAKEVIEW TERRACE, CA 91342 Was Gov't Empl.: No	Yes	Federal Action No.: 92-TS-214-1010	MANAGEMENT ASSISTANCE GROUP, INC. 881 ALMA REAL DR. SUITE 205 PACIFIC PALLISADES, CA 90272	No
O'DONNELL, VINCENT F. COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PL., SUITE 200 BOSTON, MA 02111 Was Gov't Empl.: No	No	COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.:	COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305	Yes
SUSSMAN, CARL A. COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE, SUITE 200 BOSTON, MA 02111-1305 Was Gov't Empl.: No	No	COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.:	COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305	Yes
GONDEK, MICHAEL 19 TEMPLE PL., SUITE 200 BOSTON, MA 02111 Was Gov't Empl.: No	No	COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.:	COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305	Yes
KILGORE-ERNST, DEBRA 22253 HORIZON PL. CHATSWORTH, CA 91311 Was Gov't Empl.: No	Yes	Federal Action No.: EXPLAINED	MANAGEMENT ASSISTANCE GROUP, INC. 881 ALMA REAL DR. SUITE 205 PACIFIC PALLISADES, CA 90272	No
BELL, JIMMY KING MULTIFAMILY TECHNICAL SERVICES 4651 WOODSTOCK RD., SUITE 203, 124 ROSWELL, GA 30075 Was Gov't Empl.: No	Yes	Federal Action No.: 063-35027-66	GOLD COAST ENTRPRS.OF PENACOLA INC MR C.A. HOBBS P.O BOX 3007 PENSACOLA, FL 32506	Yes
BUTLER, WARREN H. 7005 ARANDALE RD. BETHESDA, MD 20817 Was Gov't Empl.: No	Yes	Federal Action No.: B-88-AA-06-0092	DENNIS GAAB, DIRECTOR, OFFICE OF ECONOMIC RESOURCES CITY OF FRESNO, 2300 TULARE ST. FRESNO, CA 93721	No
FOWBLE, DENISE L. ATTN: HOUSING MGMT. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-35441	STATE OF MARYLAND DEPT. HOUS. AND COMMUNITY DEV. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	Yes
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-041	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-040	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-039	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-038	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-032	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-036	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No

FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-035	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA -06-0008-034	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA 06-0008-033	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-032	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-031	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-030	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-06-0008-009	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11724	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11723	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11721	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11719	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11717	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11716	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11714	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11713	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No

FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11610	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11609	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11608	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11607	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11605	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11604	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11603	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11601	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11602	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11699	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11697	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11696	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11694	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 800-11692	SNAP V LIMITED PARTNERSHIP C/O NHP, IT'S GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: GA-87-09-01-006	SNAP IV LIMITED PARTNERSHIP C/O NHP, GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No

FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 012-44090	THE RAC GARDENS CO., A LIMITED PARTNERSHIP, C/O NHP GEN. PART 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 023-44122-LD	MILLIKEN APTS. LIMITED PARTNERSHIP C/O NHP, GENERAL PARTNERSHIP 1225 EYE ST., NW WASHINGTON, DC 20005	No
FARAGASSO, PEGGY 495 N. PICKETT ST. ALEXANDRIA, VA 22304 Was Gov't Empl.: No	Yes	Federal Action No.: 052-44183	STAFFORD APTS. LIMITED PARTNERSHIP C/O NHP, GENERAL PARTNER 1225 EYE ST., NW WASHINGTON, DC 20005	No
GREGORY, CATHERINE MARIE DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903 Was Gov't Empl.: No	No	DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903 Federal Action No.: 193	DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903	Yes
JASMINE, FRANK NEW YORK CITY HOUSING AUTHORITY 1225 EYE ST., NW, SUITE 500 WASHINGTON, DC 20005 Was Gov't Empl.: No	No	NEW YORK CITY HOUSING AUTHORITY ATTN: STEVE LOVE, INTERGOVT REL 250 BROADWAY RM 620 NEW YORK, NY 10007 Federal Action No.:	NEW YORK CITY HOUSING AUTHORITY LAURA BLACKBURNE, CHAIR 250 BROADWAY NEW YORK, NY 10007	Yes
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: FHA-000-44147-LD	LOUDOUN HOUSE LIMITED PARTNERSHIP 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: FHA-042-35187-LD	ANTIOCH APARTMENTS, LTD. 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: FHA-042-35311-RC-PM-L8-R	PAGE-WYMORE APARTMENTS, LTD. 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: FHA-042-35316-RC-PM-L8	GLENVILLE NSA ASSOCIATES 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: FHA-042-44080-LDP	SPRING HILL ASSOCIATES 1225 EYE ST., NW SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: FHA-042-35331-PM-L8	SHAKER BOULEVARD GARDEN A LIMITED PARTNERSHIP, 1225 EYE ST., NW SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: 042-35365	LAKE AVENUE ASSOCIATES 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: 042-35378-RC-PM-L8-R	BOARDWALK APARTMENTS LIMITED 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: 042-35389-RC-PM-L8-R	SKIBO HOMES, LTD 1225 EYE ST., NW, SUITE 601 WASHINGTON, DC 20005	No
HOFFER, JOHN 4810 S. 29TH ST., C-1 ARLINGTON, VA 22206 Was Gov't Empl.: No	Yes	Federal Action No.: 042-55051-LD-SHM	PARK PLACE I COMPANY, A LIMITED PARTNERSHIP, 1225 EYE ST., NW SUITE 601 WASHINGTON, DC 20005	No
KOONTZ, RALPH M. 4247 STACEY RD. JACKSONVILLE, FL 32250 Was Gov't Empl.: No	Yes	Federal Action No.:	ROYAL AMERICAN DEVELOPMENT, INC. 1002 W. 23RD ST., SUITE 400 PANAMA CITY, FL 32405	No

KRISTOL, DANIEL MARVIN 1310 KING, ST. P.O. BOX 1328 WILMINGTON, DE 19801 Was Gov't Empl.: No	No	PRICKETT, JONES, ELLIOTT, KRISTOL & SCHNEE, P.A. 1310 KING ST., P.O. BOX 1328 WILMINGTON, DE 19801 Federal Action No.: 193	DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903	No
KUCAB, A. ROBERT 3300 DRAKE CIRCLE, SUITE 200 RALEIGH, NC 27607-3300 Was Gov't Empl.: No	No	NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607 Federal Action No.: FAF-194	NORTH CAROLINA HOUS. FIN. AGENCY AND NORTH CAROLINA HOUS. TRUST FUND, 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27611	No
LOVE, STEVEN NEW YORK CITY HOUSING AUTHORITY 250 BROADWAY- ROOM 620 NEW YORK, NY 10007 Was Gov't Empl.: No	No	NEW YORK CITY HOUSING AUTHORITY ATTN: STEVE LOVE, INTERGOVT REL. 250 BROADWAY RM 620 NEW YORK, NY 10007 Federal Action No.: EXPLAINED	NEW YORK CITY HOUSING AUTHORITY LAURA BLACKBURNE, CHAIR 250 BROADWAY NEW YORK, NY 10007	Yes
MCCULLOUGH, MICHAEL NATIONAL ASSOC. OF HOME BUILDERS 15TH AND M ST., NW WASHINGTON, DC 20005 Was Gov't Empl.: No	No	NATIONAL ASSOCIATION OF HOME BUILD NAHB 15TH AND M ST., NW WASHINGTON, DC 20005 Federal Action No.: 054-35543	NAHB ON BEHALF OF STILLMAN KNIGHT STILLMAN KNIGHT 3500 EASTERN BLVD. MONTGOMERY, AL 36123	No
NORRIS JR., HUGH JONES 3300 DRAKE CIRCLE, SUITE 200 RALEIGH, NC 27607-3300 Was Gov't Empl.: No	No	NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607 Federal Action No.: FAF-194	NORTH CAROLINA HOUS. FIN. AGENCY AND NORTH CAROLINA HOUS. TRUST FUND, 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27611	No
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8001-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8034-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8033-V	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8033-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8134-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3134-V	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3122-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: 044-33-91	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
QUINN, JAMES T. P.O. BOX 28066 RALEIGH, NC 27611 Was Gov't Empl.: No	No	NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607 Federal Action No.: FAF-194	NORTH CAROLINA HOUS. FIN. AGENCY AND NORTH CAROLINA HOUS. TRUST FUND, 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27611	No
HATCHER, RICHARD GORDON 2210 HAYES ST GARY, IN 46404 Was Gov't Empl.: No	No	R. GORDON HATCHER & ASSOC., INC. 2210 HAYES ST. GARY, IN 46404 Federal Action No.: 073-43095	EDWARD & DAVID BLUMENFELD BLUMENFELD LTD 134 NORTH LASALLE ST. CHICAGO, IL 60602	No

ERBEN, RANDALL HARVEY 5311 CONN. AVE., NW #2 WASHINGTON, DC 20015	Yes		CAMELOT RETIREMENT COMMUNITY OF MCALLEN 2105 CYNTHIA MCALLEN, TX 78503	Yes
Was Gov't Empl.: Yes		Federal Action No.: 115-35272		
In What Capacity: SENIOR TRIAL ATTORNEY [ASSISTANT DIRECTOR], DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.				
RUBENSTEIN, DONALD NEW YORK CITY HOUSING DEV. CORP. 75 MAIDEN LANE - 8TH FLOOR NEW YORK, NY 10038 Was Gov't Empl.: No	No	NEW YORK CITY HOUSING DEV. CORP. 75 MAIDEN LANE, 8TH FLOOR NEW YORK, NY 10038 Federal Action No.: 012-35624	NEW YORK CITY HOUSING DEV. CORP. 75 MAIDEN LANE, 8TH FLOOR NEW YORK, NY 10038	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8801-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3134-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3122-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3131-V	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8033-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8033-V	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHAVER, PAMELA MICH. STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8034-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
SHERIDAN, PATRICK M. ATTN: HOUSING MGMT. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-35441	STATE OF MARYLAND DEPT. HOUS. AND COMMUNITY DEV. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	Yes
SIMS, PAULA M. DELAWARE STATE HOUS. AUTH. 820 NORTH FRENCH ST. WILMINGTON DE 19801 Was Gov't Empl.: No	No	DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903 Federal Action No.: 193	DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903	Yes
VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8033-V	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8034-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8001-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3122-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes

VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3134-V	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-3134-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
VALENCIC, LARRY 401 S. WASHINGTON SQUARE LANSING, MI 48909 Was Gov't Empl.: No	No	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909 Federal Action No.: C-8033-E	PENNINGS, RICHARD W. MICHIGAN STATE HOUS. DEV. AUTH. 401 S. WASHINGTON SQUARE LANSING, MI 48909	Yes
MCFARLAND MARGARET OFFICE OF ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-32035	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	Yes
DUNN, ELIZABETH M. OFFICE OF THE ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-32035	STATE OF MARYLAND DEPT. OF HOUSING AND COMMUNITY 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023	Yes
KIEWE, ROY A. ATTN: HOUSING MANAGEMENT 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-35441	STATE OF MARYLAND DEPT. HOUS. AND COMMUNITY DEV. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	Yes
RAWLE, WILLIAM DAVID OFFICE OF ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-35441	STATE OF MARYLAND DEPT. HOUS. AND COMMUNITY DEV. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	Yes
GRAY, KIRK L. 7188 CRADLEROCK WAY SUITE 106 COLUMBIA, MD 21045 Was Gov't Empl.: Yes In What Capacity: PROGRAM ADVISOR, OFFICE OF SINGLE FAMILY HOUSING	No	THE GRAY GROUP SUITE 106 7188 CRADLEROCK WAY COLUMBIA, MD 21045 Federal Action No.: 89-6-207	CARBONE, VINCENT P. R.P. CARBONE CONSTRUCTION COMPANY 6449 WILSON MILLS ROAD CLEVELAND, OH 44143	No
TREMAIN,ESQ, INEZ K. TISHLER & WALD, LTD. 55 W. MONROE STREET, SUITE 700 CHICAGO, IL 60603 Was Gov't Empl.: No	No	TISHLER & WALD LTD. 55 W. MONROE STREET, SUITE 700 CHICAGO, IL 60603 Federal Action No.: OH1600006011	BENCHMARK WINSTON HOUSE ASSOC LTD 4053 MAPLE ROAD AMHERST, NY 14226-1072	Yes
TREMAIN,ESQ, INEZ K. TISHLER & WALD, LTD. 55 W. MONROE STREET, SUITE 700 CHICAGO, IL 60603 Was Gov't Empl.: No	No	TISHLER & WALD LTD. 55 W. MONROE STREET, SUITE 700 CHICAGO, IL 60603 Federal Action No.: 046-38009-PM-PAC-L8	BENCHMARK WINSTON HOUSE ASSOC LTD 4053 MAPLE ROAD AMHERST, NY 14226-1072	Yes
TREMAIN,ESQ, INEZ K. TISHLER & WALD, LTD. 55 W. MONROE STREET, SUITE 700 CHICAGO, IL 60603 Was Gov't Empl.: No	No	TISHLER & WALD LTD. 55 W. MONROE STREET, SUITE 700 CHICAGO, IL 60603 Federal Action No.: OH10M00311	BENCHMARK WINSTON HOUSE ASSOC LTD 4053 MAPLE ROAD AMHERST, NY 14226-1072	Yes
RUSHMAN, MICHAEL J. ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Was Gov't Empl.: No	No	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Federal Action No.: CMSFB545 - ABBOT BLOCK	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401	Yes
KEHOE, KATHY BEYER ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Was Gov't Empl.: No	No	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Federal Action No.: 026-44005 HIGHGATE APTS	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401	Yes
KEHOE, KATHY BEYER ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Was Gov't Empl.: No	No	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Federal Action No.: CMSFB545 - ABBOTT BLOCK	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401	Yes
ZNAMIEROWSKI, SUSAN COBB ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Was Gov't Empl.: No	No	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Federal Action No.: 026-44005	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401	Yes

ZNAMIEROWSKI, SUSAN COBB ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Was Gov't Empl.: No	No	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401 Federal Action No.: CMSFB545 - ABBOTT BLOCK	HOUSING VERMONT ONE BURLINGTON SQUARE BURLINGTON, VT 05401	Yes
BELL, JIMMY KING MULTIFAMILY TECHNICAL SERVICES 4651 WOODSTOCK RD., SUITE 203, 124 ROSWELL, GA 30075 Was Gov't Empl.: No	Yes	Federal Action No.: 086-35079	H&G ASSOCIATES, INC. ATTN: JOHN BLAIR 5819 OLD HARDING ROAD, SUITE 207 NASHVILLE, TN 37205	Yes
BELKOWITZ, DAVID POST OFFICE BOX 10 RICHMOND, VA 23202 Was Gov't Empl.: No	No	HIRSCHLER FLEISCHER WEINBERG COX AND ALLEN PO BOX 10 (23202) 701 EAST BYRD ST RICHMOND, VA 23219 Federal Action No.: 051-10517	BELKOWITZ, DAVID POST OFFICE BOX 10 RICHMOND, VA 23202	No
MCFARLAND MARGARET OFFICE OF ATTORNEY GENERAL 100 COMMUNITY PLACE CROWNSVILLE, MD 21032-2023 Was Gov't Empl.: No	No	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023 Federal Action No.: 052-44056LDP	STATE OF MARYLAND DEPT HOUS. AND COMMUNITY DEVELOP. 100 COMMUNITY PL. CROWNSVILLE, MD 21032-2023	Yes
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 Was Gov't Empl.: No	Yes	Federal Action No.: 073-43095	MILLER BEACH LIMITED PARTNERSHIP 134 NORTH LASALLE STREET CHICAGO, IL 60606	No
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 Was Gov't Empl.: No	Yes	Federal Action No.: 044-43058-EC-PM	NIGHTSONG LIMITED PARTNERSHIP 8633 NORTH MAIN STREET WHITMORE LAKE, MI 48189	No
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 Was Gov't Empl.: No	Yes	Federal Action No.: 042-43089-EC-PM	LOUISVILLE HEALTH CARE CENTER, INC 7222 DAY AVENUE, S.W. NAVARRE, OH 44662	No
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 Was Gov't Empl.: No	Yes	Federal Action No.: 042-43084-EC-PM	LOUISVILLE HEALTH CARE CENTER, INC 7222 DAY AVENUE, S.W. NAVARRE, OH 44662	No
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 Was Gov't Empl.: No	Yes	Federal Action No.: 042-43083-EC-PM	ALTERCARE, INC. 7222 DAY AVENUE, S.W. NAVARRE, OH 44662	No
O'BRIEN, ROBERT M. 404 SOUTH FRANCIS STREET SOUTH BEND, IN 46617 Was Gov't Empl.: No	Yes	Federal Action No.: 046-43036-EC-PM	CAREMERICA CORP. 7222 DAY AVENUE, S.W. NAVARRE, OH 44662	No

Appendix D

Registrant's Name and Address	Person Who has Retained Registrant for Lobbying	Registrant Representative's Name	Was Gov't Empl.	In What Capacity
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: EXPLAINED	CALIFORNIA MORTGAGE SERVICES 400 N. TUSTIN, SUITE 300 SANTA ANA, CA 92705	AVRAKOTOS, COSTAS A. SCHULMAN, PHILLIP L. BROWNSTEIN, PHILIP M.	No No No	
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: EXPLAINED	JOEL R. SCHULTZ, PRESIDENT PRESIDENTIAL MORTGAGE COMPANY 21031 VENTURA BOULEVARD WOODLAND HILLS, CA 91364	SCHULMAN, PHILLIP L. AVRAKOTOS, COSTAS A.	No No	
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: EXPLAINED	RIVERVIEW TOWERS LIMITED PART. 301 MILLIKEN BOULEVARD P.O. BOX 871 FALL RIVER, MA 02722	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No	
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.:	CENTRAL VILLAGE ASSOCIATES C/O MAT. CORP. FOR HOUS. PART. 1225 EYE ST. NW SIXTH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No	
POTOMAC FUNDING, INC. SUITE 200 2000 L ST., NW WASHINGTON, DC 20036-4907 Federal Action No.: TPA TOWERS EAST	COMMONWEALTH HEALTH CORPORATION 800 PARK ST. BOWLING GREEN, KY 42102	HIPPS JR, GEORGE O.	No	
THE JEFFERSON GROUP, INC. 1341 G ST. NW SUITE 1100 WASHINGTON, DC 20005 Federal Action No.:	CITY OF CAROLINA P.O. BOX 8 CAROLINA, PR 00630	DALIOT ORTIZ, JOSE A. PARET, S. PIERRE	No No	
THE JEFFERSON GROUP, INC. 1341 G ST. NW SUITE 1100 WASHINGTON, DC 20005 Federal Action No.: EXPLAINED	CITY OF CAROLINA P.O. BOX 8 CAROLINA, PR 00630	DALIOT ORTIZ, JOSE A. PARET, S. PIERRE	No No	
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.:	UNIVERSAL CONSTRUCTORS, INC. P.O. BOX 28 HIGHWAY 286 MCMINNVILLE, TN 37110	KNOLL, E. JOSEPH ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No	
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: EXPLAINED	KIDDER, PEABODY HMB SERVICES, INC. ATTN: JAMES LAVIGNE 10 HANOVER SQUARE NEW YORK, NY 10005	COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No	
REZNICK, FEDDER & SILVERMAN 4520 EAST-WEST HIGHWAY SUITE 300 BETHESDA, MD 20814 Federal Action No.:	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037	REZNICK, DAVID VANCE, RONALD G.	No No	

INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.:	INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003	RAMSEY ESQ, TIMOTHY	No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	WESTMINSTER- WILLARD PL. APT. MR. ALPHONSE MOURAD, A/K/A MANDELLA APTS., 10 HAMMOND ST. ROXBURY, MA 02120	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. NEILL, CATHERINE R. EATON, DAVID N.	No No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	MCKERLEY MANAGEMENT SERVICES, INC. FORREST MCKERLEY, 1 FISHER AVE. P.O. BOX 9018 PENACOOK, NH 03303	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	ST. GEORGE HEALTH CARE CENTER C/O SOUTHERN CARE MANAGEMENT 403 OLD ORANGBURG RD. SUMMERVILLE, SC 29483	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	PISATORO, RICHARD WHITEHALL CATERED LIVING JOHNSTON, RI 00000	RICHARDS JR, J. WALSH NEILL, CATHERINE R. EATON, DAVID N.	No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	WOODBRIDGE NURSING CENTER C/O MERIDIAN WEST ASSOCIATES 6252 CLEARWOOD RD. BETHESDA, MD 20817	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	BRIARWOOD HILL APARTMENTS C/O WEST ROCK ORGANIZATION P.O. BOX 2752 WESTPORT, CN 06880	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: EXPLAINED	PALMETTO COMM. RES. CARE FACILUTY C/O GUERDON HEALTH CARE, INC. 811 LAURENS RD GREENVILLE, SC 29607	RICHARDS JR, J. WALSH NELSON, LARRY NFILL, CATHERINE R. EATON, DAVID N.	No No No No
THACHER PROFFITT & WOOD 1500 K ST., NW SUITE 200 WASHINGTON, DC 20005 Federal Action No.: MORT # 750-03-00000	DAIWA FINANCE CORP. ONE WORLD FINANCIAL CENTER 200 LIBERTY ST. 25TH FLOOR NEW YORK, NY 10281-1003	KOLAR, JOSEPH M.	No
THACHER PROFFITT & WOOD 1500 K ST., NW SUITE 200 WASHINGTON, DC 20005 Federal Action No.: MTG # 750-89-0000-9	CITICORP MORTGAGE, INC. MAIL STOP 66, 670 MASON RIDGE CENTER DR. ST LOUIS, MO 63141	KOLAR, JOSEPH M. BUCKLEY, JEREMIAH S.	No No
UNIVERSAL CONSTRUCTORS, INC. P.O. BOX 28 HIGHWAY 286 MCMINNVILLE, TN 37110 Federal Action No.: EXPLAINED	UNIVERSAL CONSTRUCTORS, INC. P.O. BOX 28 HIGHWAY 286 MCMINNVILLE, TN 37110	ELLIOTT, LARRY D.	No
WILSON FINANCIAL GROUP, INC. 9500 SOUTH DADELAND BOULEVARD, SUITE #700 MIAMI, FL 33156 Federal Action No.:	MR. LUIS GONZALEZ, GENERAL PARTNER KANKO DEVELOPMENT CORPORATION 17842 S.W. 107 AVE., #25 MIAMI, FL 33157	WILSON FINANCIAL GROUP, INC. WILSON JR., DONALD D.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COLONIAL SAVINGS & LOAN 2624 WEST FREEWAY FORT WORTH, TX 76102	KAPLAN, PETER E. NILES, STEPHENS D.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MIDWEST FUNDING CORPORATION 1020 31ST ST., SUITE 401 DOWNERS GROVE, IL 60515	AVRAKOTAS, GUS MONDOR, PAUL A. SHEARER, ANN B.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	PHH US MORTGAGE CORPORATION 55 HADDONFIELD RD CHERRY HILL, NJ 08002	BRODSKY, JAMES A. MONDOR, PAUL A. SHEARER, ANN B.	No No No

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COMMONWEALTH MORTGAGE 2425 W. LOOP SOUTH HOUSTON, TX 77027	WEINER, HARVEY E.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	IMPERIAL SAVINGS OF AMERICA 9275 SKY PARK COURT SAN DIEGO, CA 92123	WEINER, HARVEY E. SHEARER, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FIRST WESTERN CORPORATION 9333 NORTH 90TH ST., SUITE 201 SCOTTSDALE, AR 85258	WEINER, HARVEY E. PAYNE, PATRICIA L. SOULE, JEFFREY A. ANDREANO, RICHARD J. SHEARA, ANN B.	No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COMMONWEALTH MORTGAGE 2425 W. LOOP SOUTH HOUSTON, TX 77027	WEINER, HARVEY E. SOULE, JEFFREY A. SHEARA, ANN B.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	AMERICAN SOUTHERN FINANCIAL CORP. 3094 NORTH COLUMBIA ST. MILLEDGEVILLE, GA 31061	BRODSKY, JAMES A. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COMNET MORTGAGE SERVICES, INC. 70 VALLEY STREAM PARKWAY P.O. BOX 2101 VALLEY FORGE, PA 19482	KAPLAN, PETER E. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MONDRIAN CORPORATION 5959 WESTHEIMER, SUITE 366 HOUSTON, TX 77057	WEINER, HARVEY E. SOULE, JEFFREY A. SHEARA, ANN B.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	HSA MORTGAGE COMPANY P.O BOX 30769 MIDLAND, TX 79712-0769	WEINER, HARVEY E. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COMMONWEALTH MORTGAGE 2425 W. LOOP SOUTH HOUSTON, TX 77027	WEINER, HARVEY E. KIDER, MITCHEL H. MILES, STEPHENS D. GOODMAN, SHEILAH A.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	CITYFED MORTGAGE COMPANY 30 WARDER ST. SPRINGFIELD, OH 45501	CARRICK, JOHN M. MONDOR, PAUL A.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FIRST UNION MORTGAGE CORPORATION TWO FIRST UNION CENTER CHARLOTTE, NC 28288-0630	KIDER, MITCHEL H. MILES, STEPHENS D. MONDOR, PAUL A. CARRICK, JOHN M.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	METMOR FINANCIAL, INC. 9225 INDIAN CREEK PARKWAY OVERLAND PARK, KA 66210	KAPLAN, PETER E. KIDER, MITCHEL H. MILES, STEPHENS D. MONDOR, PAUL A. MONDOR, PAUL A.	No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MERIDIAN MORTGAGE CORPORATION TWO TWO DEVON SQUARE 744 WEST LANCASTER AVE WAYNE, PA 19087	KIDER, MITCHEL H. MONDOR, PAUL A.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	SHELTER AMERICA CORPORATION 718-17TH STREET, SUITE 600 P.O. BOX 260 DENVER, CO 80201	BRODSKY, JAMES A. MONDOR, PAUL A.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	J.I. KISLAK MORTGAGE CORPORATION 7900 MIAMI LAKES DR. WEST MIAMI LAKES, FL 33016-5897	KAPLAN, PETER E. MILES, STEPHENS D. GOODMAN, SHEILAH A.	No No No

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	HOME OWNERS FUNDING CORP. OF AMER. THREE BURLINGTON WOODS BURLINGTON, MA 01803	BRODSKY, JAMES A. MONDOR, PAUL A.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	CYPRESS FINANCIAL CORPORATION 170 NORTH FAIR OAKS AVE SUITE 204 PASSADENS, CA 91103	KIDER, MITCHEL H. MONDOR, PAUL A.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	SHELTER AMERICA CORPORATION 718-17TH STREET, SUITE 600 P.O. BOX 260 DENVER, CO 80201	BRODSKY, JAMES A. MARGULIES, IRVING P. SHEILDS, RANDAL D. MONDOR, PAUL A.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	WILLIAM MYNATT 560 JACQULYN LANE LAKE FOREST, IL 60045	WEINER, HARVEY E. BRODSKY, JAMES A. ANDREANO, RICHARD J. PAYNE, PATRICIA L. CARRICK, JOHN M. SHEARA, ANN B.	No No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	AMERICA FIRST COMPANIES 1004 FARNAM ST. OMAHA, NE 68102	BRODSKY, JAMES A. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: EXPLAINED	VICTORIA MORTGAGE CORP. C/O MCCOWN DELEEUW & CO., 900 3RD AVE, 28TH FL., ATTN:BRIAN KERESTER NEW YORK, NY 10022	KAPLAN, PETER E. MELNICK, RICHARD J. SHEARA, ANN B.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	GUARANTY FEDERAL SAVINGS BANK ATTN: JERRY KILLINGSWORTH 8333 DOUGLAS AVE DALLAS, TX 75225	KIDER, MITCHEL H. NOEL, LISA M.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MIDWEST FUNDING CORPORATION 1020 31ST ST., SUITE 401 DOWNERS GROVE, IL 60515	BRODSKY, JAMES A. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	PRUDENTIAL MORTGAGE COMPANY 5325 SPECTUM DR. FREDERICK, MD 21701	SHEARA, ANN B.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COMMONWEALTH MORTGAGE 2425 W. LOOP SOUTH HOUSTON, TX 77027	WEINER, HARVEY E. NILES, STEPHENS D. SOULE, JEFFREY A. ANDREANO, RICHARD J. SHEARA, ANN B.	No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	COMMONWEALTH MORTGAGE 2425 W. LOOP SOUTH HOUSTON, TX 77027	WEINER, HARVEY E. COMMONWEALTH MORTGAGE NILES, STEPHENS D. GOODMAN, SHEILAH A. STEPHENS, JAY A. HESSEL, MARK SHEILDS, RANDAL D. MONDOR, PAUL A.	No No No No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	HARBOURTON ENTERPRISES 33 WITHERSPOON ST., THIRD FL. PRINCETON, NJ 08542	MELNICK, RICHARD J. CARRICK, JOHN M. SHEARA, ANN B.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	METMOR FINANCIAL, INC. 9225 INDIAN CREEK PARKWAY OVERLAND PARK, KA 66210	KAPLAN, PETER E. NILES, STEPHENS D. GOODMAN, SHEILAH A.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	ALLIANCE MORTGAGE COMPANY 4500 SALISBURY RD JACKSONVILLE, FL 32216	KAPLAN, PETER E. NILES, STEPHENS D. GOODMAN, SHEILAH A.	No No No

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FIRST UNION MORTGAGE CORPORATION TWO FIRST UNION CENTER CHARLOTTE, NC 28288-0630	KIDER, MITCHEL H. NILES, STEPHENS D. MONDOR, PAUL A. GOODMAN, SHEILAH A.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	HOMESTEAD SAVINGS AND LOAN ASSN. 979 BROADWAY MILLBRAE, CA 94010	WEINER, HARVEY E. MARGULIES, IRVING P. SHEARA, ANN B. GOODMAN, SHEILAH A. HESSEL, MARK NILES, STEPHENS D. SHEILDS, RANDAL D.	No No No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LUMBERMEN'S INVESTMENT CORPORATION TEMPLE-INLAND BUILDING 301 CONGRESS, P.O. BOX 40 AUSTIN, TX 78767	KIDER, MITCHEL H. NILES, STEPHENS D. MONDOR, PAUL A.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	CITYFED MORTGAGE COMPANY 30 WARDER ST. SPRINGFIELD, OH 45501	BRODSKY, JAMES A. NILES, STEPHENS D. CARRICK, JOHN M. GOODMAN, SHEILAH A.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FLEETWOOD ENTERPRISES, INC. 3125 MYERS ST RIVERSIDE, CA 92523	BRODSKY, JAMES A. MONDOR, PAUL A.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FIRST NATIONWIDE BANK 3951 LENNANE DR. SACRAMENTO, CA 95834	WEINER, HARVEY E. NILES, STEPHENS D. HESSEL, MARK GOODMAN, SHEILAH A.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FIRST BANKERS MORTGAGE 1512 LAKE AIR, 120 WACO, TX 76702	BRODSKY, JAMES A. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	DANIELSON HOLDINGS 425 SHERMAN AVENUE, SUITE 220 PALO ALTO, CA 94306	KAPLAN, PETER E. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	CTX MORTGAGE OMPANY 3333 LEE PARKWAY, 11TH FL. DALLAS, TX 75219	KAPLAN, PETER E. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MERIDIAN MORTGAGE CORPORATION TWO TWO DEVON SQUARE 744 WEST LANCASTER AVE WAYNE, PA 19087	KIDER, MITCHEL H.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LOMAS FINANCIAL CORPORATION 2001 BRYAN TOWER DALLAS, TX 75201	MARGULIES, IRVING P. KIDER, MITCHEL H. SHEILDS, RANDAL D. NILES, STEPHENS D. MONDOR, PAUL A.	No No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	WATERFIELD MORTGAGE COMPANY 7500 WEST JEFFERSON BOULEVARD FT. WAYNE, IN 46804	KAPLAN, PETER E. KIDER, MITCHEL H. MONDOR, PAUL A.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	SECURITY FINANCIAL AND MORTGAGE CORP. P.O. BOX 31912 ST. LOUIS, MO 63131	KIDER, MITCHEL H.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LUMBERMEN'S INVESTMENT CORPORATION TEMPLE-INLAND BUILDING 301 CONGRESS, P.O. BOX 40 AUSTIN, TX 78767	KIDER, MITCHEL H. NILES, STEPHENS D.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MIDFIRST BANK, FSB 3232 WEST RENO P.O. BOX 76149 OKLAHOMA CITY, OK 73147	MARGULIES, IRVING P.	No

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	SOUTHTRUST BANK OF ALABAMAN, N.A. 112 NORTH 20TH STREET BIRMINGHAM, AL 35201	BRODSKY, JAMES A.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LOMAS FINANCIAL CORPORATION 2001 BRYAN TOWER DALLAS, TX 75201	KAPLAN, PETER E. KIDER, MITCHEL H. NILES, STEPHENS D. MONDOR, PAUL A.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LUMBERMEN'S INVESTMENT CORPORATION TEMPLE-INLAND BUILDING 301 CONGRESS, P.O. BOX 40 AUSTIN, TX 78767	KIDER, MITCHEL H. NILES, STEPHENS D. MONDOR, PAUL A.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MELLON BANK CORPORITION 500 GRANT STREET, SUITE 1910 1 MELLON BANK CENTER PITTSBURGH, PA 15258	KAPLAN, PETER E. KIDER, MITCHEL H. STEPHENS, JAY A.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FIRST UNION MORTGAGE CORPORATION TWO FIRST UNION CENTER CHARLOTTE, NC 28288-0630	KAPLAN, PETER E. KIDER, MITCHEL H. NOEL, LISA M.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	REDMAN INDUSTRIES REDMAN PLAZA EAST, SUITE 200 2550 WALNUT HILL LANE DALLAS, TX 75229	BRODSKY, JAMES A. NOEL, LISA M.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	FLEETWOOD ENTERPRISES, INC. 3125 MYERS ST RIVERSIDE, CA 92523	BRODSKY, JAMES A. NOEL, LISA M.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	HOME OWNERS FUNDING CO[illegible]. OF AMER. THREE BURLINGTON WOODS BURLINGTON, MA 01803	BRODSKY, JAMES A. NOEL, LISA M.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	NATIONAL MANUFACTURED HOUSING FIN. ASSOCIATION 1350 NEW YORK AVE., NW, SUITE 800 WASHINGTON, DC 20005-4797	BRODSKY, JAMES A. NOEL, LISA M.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	MERIDIAN MORTGAGE CORPORATION TWO TWO DEVON SQUARE 744 WEST LANCASTER AVE WAYNE, PA 19087	KAPLAN, PETER E. KINDER, MITCHEL NOEL, LISA M.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	KINTON, MCCONKIE & POELMAN 1800 EAGLE GATE TOWER 60 EAST SOUTH, TEMPLE SALT LAKE CITY, UT 8411	BRODSKY, JAMES A. CARRICK, JOHN M. MONDOR, PAUL A.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	DEERFIELD FINANCIAL GROUP 252 CLAYTON ST DENVER, CO 80206	WEINER, HARVEY E. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	NVR MORTGAGE 7601 LEVINSVILLE ROAD, SUITE 302 MCLEAN, VA 22102	KAPLAN, PETER E. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	WATERFIELD MORTGAGE COMPANY 7500 WEST JEFFERSON BOULEVARD FT. WAYNE, IN 46804	KAPLAN, PETER E. KIDER, MITCHEL H. MONDOR, PAUL A. NOEL, LISA M.	No No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LUMBERMEN'S INVESTMENT CORPORATION TEMPLE-INLAND BUILDING 301 CONGRESS, P.O. BOX 40 AUSTIN, TX 78767	KIDER, MITCHEL H. NILES, STEPHENS D. CARRICK, JOHN M.	No No No

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LOMAS MORTGAGE USA 2001 BRYAN TOWER SUITE 3500 DALLAS, TX 75201	MARGULIES, IRVING P. NILES, STEPHENS D. SHEILDS, RANDAL D.	No No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	HEIGHT OF TEXAS P.O. BOX 4618 HOUSTON, TX 77210-4618	KAPLAN, PETER E. NILES, STEPHENS D.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	METMOR FINANCIAL, INC. 9225 INDIAN CREEK PARKWAY OVERLAND PARK, KA 66210	NILES, STEPHENS D. MONDOR, PAUL A.	No No
ALEX. BROWN & SONS, INC. 135 EAST BALT. ST. BALTIMORE, MD 21202 Federal Action No.: FAF-194	NORTH CAROLINA HOUS. FIN. AGENCY AND NORTH CAROLINA HOUS. TRUST FUND, 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27611	REILLY, MARY K. BRUNNER, GREGORY M.	No No
ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: FAF-212-ABC	HOUSING AUTH. OF THE CITY OF EL PASO 1600 MONTANA AVE. EL PASO, TX 79902	CANZANO, PETER L. MILLER, DAVID L. ETHRENSAAL, BRUCE	No No No
ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: FAF-211	GADSDEN HOUSING DEVELOPMENT CORP.. C/O W. D. RUSSELL, JR., DORTCH, RIHGT & RUSSELL, 239 COLLEGE ST. GADSDEN, AL 35901	CANZANO, PETER L. MILLER, DAVID L. ETHRENSAAL, BRUCE	No No No
ARTER HADDEN HAYNES & MILLER 1801 K STREET, NW, 4TH FLOOR ATTN: PETER J. CANZANO WASHINGTON, DC 20006 Federal Action No.: FAF-198	JOHN L. NUVEEN & CO., INC. ATTN: W. FREDERICK FULLER, II 333 N. WACKER DR. CHICAGO, IL 60606	CANZANO, PETER L. MILLER, DAVID L.	No No
ALEX. BROWN & SONS, INC. 135 EAST BALT. ST. BALTIMORE, MD 21202 Federal Action No.: FAF-193	DELAWARE STATE HOUSING AUTHORITY 18 THE GREEN, P.O. BOX 1401 DOVER, DE 19903	REILLY, MARY K. BRUNNER, GREGORY M.	No No
BARRETT & SCHULER 2550 M ST., NW #375 WASHINGTON, DC 20037 Federal Action No.: B-82-MC-34-0108	NEWPORT ASSOC. PHASE I DEV. LIMIT PARTNERSHIP AND NEWPORT ASSOC. DEV. CO., 2 SIXTH ST JERSEY CITY, NJ 00000	BARRETT, DAVID M. SCHULER, JOSEPH E. MURRAY, NANCY A.	No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-10526	UNVERITY TOWERS ASSOC./UNIVERSITY TOWERS APT. CORP., C/O ROTHENBERG ROSENFIELD ASSOC., 505 PARK AVE. NEW YORK, NY 10022	KELLY,JOHN L. RUNES, RICHARD N. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-11029	PARK LANE ASSOCIATES C/O GRENADIER REALTY CORP. 1310 PENNSYLVANIA AVE. BROOKLYN, NY 11239	KELLY,JOHN L. RUNES, RICHARD N. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-35MI/NY36-H108-057	STARRETT CITY INC./STARRETT CITY ASSOC., C/O GRENDIER REALY CORP. 1310 PENNSYLVANIA AVE. BROOKLYN, NY 11239	RUNES, RICHARD N. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-35049	SUEHAR ASSOCIATES C/O ALPERT & ALPERT DEVELOPMENT, LTD., ONE PARKER PLAZA FORT LEE, NJ 07024	KELLY,JOHN L. RUNES, RICHARD N. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-32267	ROOSEVELT ISLAND ASSOCIATES C/O STARRETT HOUSING CORPORATION 909 THIRD AVE., 16TH FLOOR NEW YORK, NY 10022	KELLY,JOHN L. RUNES, RICHARD N. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-35091	JODANI ASSOCIATES C/O ALPERT & ALPERT DEVELPOMENT, LTD., ONE PARKER PLAZA FORT LEE, NJ 07024	KELLY,JOHN L. RUNES, RICHARD N. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No

BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-35376-LD-EC-L8	MT HOUSING ASSOCIATES C/O HRC INVESTMENT CORPPORATION 428 CUMBERLAND AVE PORTLAND, MN 04101	KELLY,JOHN L. RUNES, RICHARD M. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 012-35586	MOHAWK HOUSING ASSOCIATES C/O SHNAY & SONS 111 GREAT NECK RD - SUITE 512 GREAT NECK, NY 11021	KELLY,JOHN L. RUNES, RICHARD M. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWN & WOOD ONE WORLD TRADE CENTER NEW YORK, NY 10048-0057 Federal Action No.: 071-35332	DORAL PALZA APARTMENT C/O CAROL MANAGEMENT 600 MADISON AVE NEW YORK, NY 10022	KELLY,JOHN L. RUNES, RICHARD M. MARRERO, VICTOR BERKMAN, ANDREW S. O'HARA, HEDWIG	No No No No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 067-94025	NATIONAL DEVELOPMENT CORPORATION 4615 FIFTH AVE. PITTSBURGH, PA 15233	SCHOMER, MORTON W.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-08816	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-08812	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-05411	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-07400	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-05409	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-05410	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-08814	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-08815	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 071-55087/IL06-E000-083	LAKESIDE SQUARE LTD PARTNERSHIP 9225 KATY FREEWAY SUITE 302 HOUSTON, TX 77024	SCHOMER, MORTON W. SCHREIBERG, SHELDON L. D'ELIA, FILOMENA	No No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-03943	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 800-05100	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No

BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 000-00813	MISTICK DEVELOPMENT 1300 BRIGHTON RD PITTSBURGH, PA 15233	SALMON III, ROBERT S.	No	
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 033-35167	NATIONAL DEVELOPMENT CORPORATION 4415 FIFTH AVE. PITTSBURGH, PA 15213	SCHOMER, MORTON W.	No	
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 066-36637	NATIONAL DEVELOPMENT CORPORATION 4415 FIFTH AVE. PITTSBURGH, PA 15233	SCHOMER, MORTON W.	No	
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 033-35161	NATIONAL DEVELOPMENT CORPORATION 4415 FIFTH AVE. PITTSBURGH, PA 15233	SCHOMER, MORTON W.	No	
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 066-94013	NATIONAL DEVELOPMENT CORPORATION 4415 FIFTH AVE. PITTSBURGH, PA 15233	SCHOMER, MORTON W.	No	
CHATHAM VILLAGE L.P. C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 N. MAIN ST. ANN ARBOR, MI 48107-8649 Federal Action No.: 044-10516	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH FLZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 031-43181	LOVE FUNDING CORPORATION 1220 19TH ST NW, SUITE 801 WASHINGTON, DC 20036	BOYKIN, HAMILTON H. SEGAL, PETER W. WINN, ALLAN R. HEYMAN, STEVEN S. GART, RONALD S. CASANO, WILLIAM C. LEVIN JR., JOSEPH J. ELLENTUCK, ALBERT B. ORRICK JR., JOHN R. CASEY, PAUL K. BROTHERS II, HENRY J. BOOHER, W. THOMAS MILANO, JAMES J. HALL, STEPHEN W.	No No No No No No No No No No No No No Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J. WALSH, CARLA PERANTONI INGRAM, JOHN M. FREEMAN, JOHN M. CHANIN, JOHANNA F. MILONE JR, GUY R. JOHNSON, J. MARIE PARKER, LYNN PERRY OLIVERI JR., WARREN S. THATCHER, LINDA H.	No No No No No No No No No No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 000-46038	BATMAN/MCNAIR ASSOCIATES LTD. 196 VAN BUREN ST. P.O. BOX 17194 WASHINGTON, DC 20041	BOYKIN, HAMILTON H. SEGAL, PETER W. WINN, ALLAN R. HEYMAN, STEVEN S. GART, RONALD S. CASANO, WILLIAM C. LEVIN JR., JOSEPH J. ELLENTUCK, ALBERT B. OLIVERI JR., WARREN S. ORRICK JR., JOHN R. CASEY, PAUL K. BROTHERS II, HENRY J. BOOHER, W. THOMAS MILANO, JAMES J. HALL, STEPHEN W.	No No No No No No No No No No No No No Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J. WALSH, CARLA PERANTONI INGRAM, JOHN M. FREEMAN, JOHN M. THATCHER, LINDA H. CHANIN, JOHANNA F. MILONE JR, GUY R. JOHNSON, J. MARIE	No No No No No No No No	

COLTON AND BOYKIN (Continued)		PARKER, LYNN PERRY	No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 114-11103-PUR	LOVE FUNDING CORPORATION 1220 19TH ST NW, SUITE 801 WASHINGTON, DC 20036	BOYKIN, HAMILTON H. SEGAL, PETER W. WINN, ALLAN R. HEYMAN, STEVEN S. GART, RONALD S. CASANO, WILLIAM C. LEVIN JR., JOSEPH J. ELLENTUCK, ALBERT B. OLIVERI JR., WARREN S. ORRICK JR., JOHN R. CASEY, PAUL K. BROTHERS II, HENRY J. BOOHER, W. THOMAS MILANO, JAMES J. HALL, STEPHEN W.	No No No No No No No No No No No No No No Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J. WALSH, CARLA PERANTONI INGRAM, JOHN M. FREEMAN, JOHN M. THATCHER, LINDA H. CHANIN, JOHANNA F. MILONE JR, GUY R. JOHNSON, J. MARIE PARKER, LYNN PERRY	No No No No No No No No No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 063-EH205	LAKEVIEW CENTER, INC. 1221 WEST LAKEVIEW AVE. PENSACOLA, FL 32501	BOYKIN, HAMILTON H. WINN, ALLAN R. HEYMAN, STEVEN S. GART, RONALD S. CASANO, WILLIAM C. LEVIN JR., JOSEPH J. ELLENTUCK, ALBERT B. OLIVERI JR., WARREN S. ORRICK JR., JOHN R. CASEY, PAUL K. BROTHERS II, HENRY J. BOOHER, W. THOMAS MILANO, JAMES J. HALL, STEPHEN W.	No No No No No No No No No No No No No Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J. WALSH, CARLA PERANTONI INGRAM, JOHN M. FREEMAN, JOHN M. THATCHER, LINDA H. CHANIN, JOHANNA F. MILONE JR, GUY R. JOHNSON, J. MARIE PARKER, LYNN PERRY SEGAL, PETER W.	No No No No No No No No No No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 035-10506	BERK & BERK ATTN: MR. HARVEY J. BERK 2657 EAST 14TH ST. BROOKLYN, NY 11235	BOYKIN, HAMILTON H.	No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 052-35481	INTERSTATE GENERAL CO. 222 SMALLWOOD VILLAGE CENTER ST. CHARLES, MD 20601	BOYKIN, HAMILTON H. SEGAL, PETER W. WINN, ALLAN R. HEYMAN, STEVEN S. GART, RONALD S. CASANO, WILLIAM C. LEVIN JR., JOSEPH J. ELLENTUCK, ALBERT B. OLIVERI JR., WARREN S. ORRICK JR., JOHN R. CASEY, PAUL K. BROTHERS II, HENRY J. BOOHER, W. THOMAS MILANO, JAMES J. HALL, STEPHEN W.	No No No No No No No No No No No No No Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J. WALSH, CARLA PERANTONI INGRAM, JOHN M. FREEMAN, JOHN M. THATCHER, LINDA H. CHANIN, JOHANNA F. MILONE JR, GUY R.	No No No No No No No	

COLTON AND BOYKIN (Continued)		JOHNSON, J. MARIE	No	
		PARKER, LYNN PERRY	No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 052-35477	INTERSTATE GENERAL CO. 222 SMALLWOOD VILLAGE CENTER ST. CHARLES, MD 20601	BOYKIN, HAMILTON H.	No	
		SEGAL, PETER W.	No	
		WINN, ALLAN R.	No	
		HEYMAN, STEVEN S.	No	
		GART, RONALD S.	No	
		CASANO, WILLIAM C.	No	
		LEVIN JR., JOSEPH J.	No	
		ELLENTUCK, ALBERT B.	No	
		OLIVERI JR., WARREN S.	No	
		ORRICK JR., JOHN R.	No	
		CASEY, PAUL K.	No	
		BROTHERS II, HENRY J.	No	
		BOCHER, W. THOMAS	No	
		MILANO, JAMES J.	No	
		HALL, STEPHEN W.	Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J.	No	
		WALSH, CARLA PERANTONI	No	
		INGRAM, JOHN M.	No	
		FREEMAN, JOHN M.	No	
		THATCHER, LINDA H.	No	
		CHANIN, JOHANNA F.	No	
		MILONE JR, GUY R.	No	
		JOHNSON, J. MARIE	No	
		PARKER, LYNN PERRY	No	
COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 035-10506	BERK & BERK ATTN: MR. HARVEY J. BERK 2657 EAST 14TH ST. BROOKLYN, NY 11235	BOYKIN, HAMILTON H.	No	
		SEGAL, PETER W.	No	
		WINN, ALLAN R.	No	
		HEYMAN, STEVEN S.	No	
		GART, RONALD S.	No	
		CASANO, WILLIAM C.	No	
		LEVIN JR., JOSEPH J.	No	
		ELLENTUCK, ALBERT B.	No	
		OLIVERI JR., WARREN S.	No	
		ORRICK JR., JOHN R.	No	
		CASEY, PAUL K.	No	
		BROTHERS II, HENRY J.	No	
		BOCHER, W. THOMAS	No	
		MILANO, JAMES J.	No	
		HALL, STEPHEN W.	Yes	SENIOR TRIAL ATTORNEY (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J.	No	
		WALSH, CARLA PERANTONI	No	
		INGRAM, JOHN M.	No	
		FREEMAN, JOHN M.	No	
		THATCHER, LINDA H.	No	
		CHANIN, JOHANNA F.	No	
		MILONE JR, GUY R.	No	
		JOHNSON, J. MARIE	No	
		PARKER, LYNN PERRY	No	
COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.: 023-55013	FORTES L. FORTES HOUSE CORPORATION 541 SHAWMUT AVE. ROXBURY, MA 02118	GONDEK, MICHAEL	No	
COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.: 023-55020	NEIGHBORHOOD OF AFFORDABLE HOUSING INC. 29 PARIS ST. EAST BOSTON, MA 02128	O'DONNELL, VINCENT F.	No	
COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.: 023-EH084	CHARLAME PARK HOMES I HOUSING COOP. CORPORATION 28 NORTH CHARLAME COURT ROXBURY, MA 02119	GONDEK, MICHAEL	No	
DAVENPORT, EVANS, HURWITZ & SMITH 513 SOUTH MAIN AVE. P.O. BOX 1030 SIOUX FALLS, SD 57106 Federal Action No.: FHA 091-35170	SUNNYCREST VILLAGE 3900 S. TERRY AVE. SIOUX FALLS, SD 57106	KNUDSON, DAVID L.	No	
		CUTLER, RICHARD A.	No	
COMMUNITY ECON. DEV. ASSIT. CORP. 19 TEMPLE PLACE SUITE 200 BOSTON, MA 02111-1305 Federal Action No.: 023-55027	DORCHESTER BAY ECONOMIC DEVELOPMENT CORPORATION 594 COLUMBIA RD, SUITE 302 DORCHESTER, MA 02125	O'DONNELL, VINCENT F.	No	

DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 053-46014	HIGHLAND MORTGAGE COMPANY ATTN: DUDLEY R. HINDMAN P.O. BOX 55465 BIRMINGHAM, AL 35255	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. DUNNELLS, C. RICHARD	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 000-35235	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R.	No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 06-008-009;030-041	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R.	No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-35331	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R.	No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-44147	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R.	No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-35331	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R.	No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-44103	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R.	No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 012-35376	MT HOUSING ASSOCIATES ATTN: CHRIS BOWDEN ONE UNION ST. SUITE 301 PORTLAND, ME 04101	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. DUNNELLS, C. RICHARD	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 012-4409	NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS, 1225 EYE ST., NW ATTN; JOEL BONDER WASHINGTON, DC 20005	STERLING, SCOTT A. DUNNELLS, C. RICHARD SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 064-35272	CJB DEVELOPMENT, INC. 3900 N. CAUSEWAY BOULEVARD SUITE 865, LAKEWAY 1 MATAIRIE, LA 70002	SCHNEIDER, ELLEN V. STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 064-35272	CJB DEVELOPMENT, INC. 3900 N. CAUSEWAY BOULEVARD SUITE 865, LAKEWAY 1 MATAIRIE, LA 70002	SCHNEIDER, ELLEN V. STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 017-35234	STERLING DEVELOPMENT GROUP, INC. ONE PARK PL. ATTN: JOHN SCOBIE HARTFORD, CT 06106	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. DUNNELLS, C. RICHARD	No No No No No No No

DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-35330	THE CAFRITZ-FREEMAN GROUP, INC. 1150 17TH ST., NW , SUITE 500 ATTN: MR. JOHN K. FREEMAN WASHINGTON, DC 20036	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P.	No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 064-35249	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: RSC-129-35085 PM	J.K. JAYNES CORPORATION 2305 MORENA BOULEVARD SAN DIEGO, CA 92110	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 074-35007	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 084-44104	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 140-35025	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 103-35065	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 071-44134	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 046-34013	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 012-55183	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 017-10503	KONOVER & ASSOCIATES 2410 ALBANY AVE. ATTN: MICHAEL KONOVER WEST HARTFORD, CT 06117	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B. DUNNELLS, C. RICHARD	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 017-10502	KONOVER & ASSOCIATES 2410 ALBANY AVE. ATTN: MICHAEL KONOVER WEST HARTFORD, CT 06117	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN B.	No No No No No No

DUNNELLS, DUVALL & PORTER (Continued)		DUNNELLS, C. RICHARD	No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 000-55008	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 073-35362	OXFORD DEVELOPMENT CORP. ON BEHALF OF SHADELAND MILLS ASSOCIATES 7316 WISCONSIN AVE. BETHESDA, MD 20814	SCHNEIDER, ELLEN V. STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 000-10568	MONOCLE MANAGEMENT MONOCLE BUILDING BETHESDA, MD 20814	SCHNEIDER, ELLEN V. STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 017-10505	KONOVER & ASSOCIATES 2410 ALBANY AVE. ATTN: MICHAEL KONOVER WEST HARTFORD, CT 06117	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. DUNNELLS, C. RICHARD	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 000-55005	REAL PROPERTY SERVICES, INC. 1935 CAMINO VIDA ROBLE CARLSBAD, CA 92008	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: FHA 052-44163-LDT-EC	NATIONAL HOUSING PARTNERSHIP/NCHP 1225 EYE ST., NW WASHINGTON, DC 20005	LEVINE, JERRY STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. DUNNELLS, C. RICHARD	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-3202 Federal Action No.: 000-55036	MARSHALL-BLACKWELL GROUP 6131 FALLS OF NEUSE RD P.O. BOX 18447 RALEIGH, NC 27619-8447	DUNNELLS, C. RICHARD STERLING, SCOTT A. SCHNEIDER, ELLEN V. NESBITT, LAFONTE FELTER, CAROLYN P. BARON, SUSAN R. LEVINE, JERRY	No No No No No No No
FARBMAN/STEIN AND COMPANY 820 KIRTS BLVD. SUITE 100 TROY, MI 48084 Federal Action No.: B-79-AA-26-0032	RIVERFRONT ASSOCIATES 820 KIRTS BLVD., SUITE 100 TROY, MI 48084	MILLER, LARRY FARBMAN, BURTON EISENBERG, WILLIAM WILLIAMS, HEDLEY STROUD, DOUGLAS	No No No No No
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON 1001 PENN. AVE., NW, SUITE 800 WASHINGTON, DC 20004-2505 Federal Action No.: UDAG B-87-AA-06-0619	SOUTH GATE BUSINESS & INDUSTRIAL PARK DEV., C/O G&K MGMT. CO., INC 5150 OVERLAND AVE., P.O. BOX 3623 CULVER CITY, CA 90230	ZAX, LEONARD A. ANTHONY JR., T. J.	No No
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON 1001 PENN. AVE., NW, SUITE 800 WASHINGTON, DC 20004-2505 Federal Action No.: UDAG B-85-AA-11-0031	WARNER THEATRE ASSOCIATES LIMITED PARTNERSHIP, C/O THE KAEMPFER CO. 1250 24TH ST., NW WASHINGTON, DC 20037	ZAX, LEONARD A. IRIS, KERRY L.	No No
FOLEY & LARDNER ONE SOUTH PINCKNEY'S ST. SUITE 701, P.O. BOX 1407 MADISON, WI 53701-1497 Federal Action No.: 075-44039-LDP	HOUSING AUTHORITY OF THE CITY OSH- KOSH 600 MERRITT AVE OSHKOSH, WI 54901	RADELET, TIMOTHY J. HILDEBRANDT, JOSEPH P. RENFERT, BLAINE R. HOLCOMBS, GLENN D. LAWRENCE, WAYMAN C. FOGARTY, MARK P.	No No No No No No
FOLEY & LARDNER ONE SOUTH PINCKNEY'S ST. SUITE 701, P.O. BOX 1407 MADISON, WI 53701-1497 Federal Action No.: 075-44039-LDP	HOUSING AUTHORITY OF THE CITY OSH- KOSH 600 MERRITT AVE OSHKOSH, WI 54901	RADELET, TIMOTHY J. HILDEBRANDT, JOSEPH P. RENFERT, BLAINE R. HOLCOMBS, GLENN D. LAWRENCE, WAYMAN C.	No No No No No

COLTON AND BOYKIN SUITE 500 EAST 1025 THOMAS JEFFERSON ST., NW WASHINGTON, DC 20007 Federal Action No.: 031-43181	LOVE FUNDING CORPORATION 1220 19TH ST NW, SUITE 801 WASHINGTON, DC 20036	BOYKIN, HAMILTON H. SEGAL, PETER W. WINN, ALLAN R. HEYMAN, STEVEN S. GART, RONALD S. CASANO, WILLIAM C. LEVIN JR., JOSEPH J. ELLENTUCK, ALBERT B. OLIVERI JR., WARREN S. ORRICK JR., JOHN R. CASEY, PAUL K. BROTHERS II, HENRY J. BOOHER, W. THOMAS MILANO, JAMES J. HALL, STEPHEN W.	No No No No No No No No No No No No No No Yes	SENIOR TRIAL ATTORNEY. (ASSISTANT DIRECTOR), DIVISION OF ENFORCEMENT, COMMODITIES FUTURES TRADING COMMISSION.
		FREEDMAN, JAMES J. WALSH, CARLA PERANTONI INGRAM, JOHN M. FREEMAN, JOHN M. THATCHER, LINDA H. CHANIN, JOHANNA F. MILONE JR, GUY R. JOHNSON, J. MARIE PARKER, LYNN PERRY	No No No No No No No No No	
FOWLERVILLE DEVELOPMENT ASSOCIATES C/O MCKINLEY PROPERTIES P.O. OX 8649, 320 N. MAIN ANN ARBOR, MI Federal Action No.: 26-47-382240051	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH ELZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No	
FRIENDSHIP PLACE C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 N. MAIN ANN ARBOR, MI Federal Action No.: 044-38007	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH ELZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No	
GINSBURG, FELDMAN & BRESS, CHARTER 1250 CONNECTICUT AVE., NW SUITE 800 WASHINGTON, DC 20036 Federal Action No.: VA 39K004001	ALEXANDRIA REDEVELOPMENT AND HOUS. AUTHORITY 600 N. FAIRFAX ST. ALEXANDRIA, VA 22314	BERG, JRFFREY C. GOLDSTEIN, N. LINDA	No No	
GLENCOE HILLS OF ANN ARBOR C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 N. MAIN ANN ANBOR, MI Federal Action No.: 044-10546	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH ELZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No	
THE GRAY GROUP SUITE 106 7100 CRADLEROCK WAY COLUMBIA, MD 21045 Federal Action No.: CMHA 89-6-207	R.P CARBONE CONSTRUCTION CO. 6449 WATSON MILLS RD. CLEVELAND, OH 44143	GRAY, KIRK L. BUCHES, DAVID W. WILSON, V.C. OLSON, ANGUS T. BAUGH, JAMES E.	Yes No No No No	PROGRAM ADVISOR, OFFICE OF SINGLE FAMILY HOUSING
ALAN J. HAYMAN, HAYMAN COMPANY 28588 NORTHWESTERN HIGHWAY, SUITE 300 SOUTHFIELD, MI 48034 Federal Action No.: MI 88021-A	ALAN J. HAYMAN, HAYMAN COMPANY 28588 NORTHWESTERN HIGHWAY SUITE 300 SOUTHFIELD, MI 48034	HAYMAN, ALAN J. HAYMAN, STEPHEN P.	No No	
ALAN J. HAYMAN, HAYMAN COMPANY 28588 NORTHWESTERN HIGHWAY, SUITE 300 SOUTHFIELD, MI 48034 Federal Action No.: 044-92003-R-207	ALAN J. HAYMAN, HAYMAN COMPANY 28588 NORTHWESTERN HIGHWAY SUITE 300 SOUTHFIELD, MI 48034	HAYMAN, ALAN J. HAYMAN, STEPHEN P.	No No	
ALAN J. HAYMAN, HAYMAN COMPANY 28588 NORTHWESTERN HIGHWAY, SUITE 300 SOUTHFIELD, MI 48034 Federal Action No.: 044-35468	ALAN J. HAYMAN, HAYMAN COMPANY 28588 NORTHWESTERN HIGHWAY SUITE 300 SOUTHFIELD, MI 48034	HAYMAN, ALAN J. HAYMAN, STEPHEN P.	No No	
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44091	KIMBERLY ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No	
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-35109	CHERRY ESTATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No	

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 136-44229	KENNETH ARMS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-32003	PAVILION APTS. 2951 28TH ST. SUITE 2040 SANTA MONICA, CA 90405	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-32012	FREDERICK DOUGLASS APTS. 2951 28TH ST SUITE 2040 SANTA MONICA, CA 90405	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44164	INDIAN VALLEY III LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44079	INDIAN VALLEY II LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44028	INDIAN VALLEY LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 013-44019	HUDSON TERRACE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 035-44015	HOLLYBUSH GARDENS ASSOCIATES LIMIT PART., C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-44062	GATES MILLS VILLA I C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 101-44063	MAPLE PARK WEST LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35092	NATILLO HOUSING ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 033-55024	WASHINGTON WESTGATE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 033-55031	WASHINGTON NORTHGATE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 114-44008	WASHINGTON MANOR LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: RQ46-H005-030	LOMAS VERDES ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 063-44024	VILLAGE GREEN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 127-35140	HAINES ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 044-44010	HARRIS PARK LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 012-55079	GENESE GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 136-44221	COLTONWOOD APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 051-55018	GREENFIELD APTS. LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 051-44030	GREENFIELD NORTH APT. LIMITED PART C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 115-44009	GULFWAY LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-32008R	FRANKLIN SQUARE APARTMENTS, INC. 1575 TREMONT ST. BOSTON, MA 02120	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-44086	WATERMAN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 052-44145	MEADOWOOD ASSOCIATES III LIMITED PART.,C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 125-55010	MEADOWS APTS. LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-44122	MILLIKEN APTS. COMPANY C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35132	MIRAMAR HOUSING ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 127-35157	MONMOUTH ASSOC. LIMITED PARTNER. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 121-44347	CYPRESS GARDENS LIMITED C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44014	DARBY TOWNOUSES ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-55012	EASTON TERRACE I ASSOC. LIMITED PART., C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-55031	EASTON TERRACE II ASSOC. LIMITED PART., C/O NAT. CORP. FOR HOUS. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44086	ELDEN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-44006	INDIAN VALLEY III LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 101-44038	FEDERAL SQUARE VILLAGE, LTD. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 016-44072	FIELD ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 063-44037	FOREST GREEN LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44095	FOXWOOD MANOR ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: OHIO-E000-070	RIDGEWOOD HILLS LTD. C/O MS. LENORE VARNEY, TERRA MGMT. 4813 DEEDS RD. PATASKALA, OH 43062	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 064-35102	CAROL SUE APARTMENTS PARTNERSHIP C/O A.J. WARD 701 MADISON ST. GRETNA, LA 70057	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-35025R-MP	CHARLESBANK APARTMENTS, INC. C/O THE NILES COMPANY, INC. 303 CONGRESS ST. BOSTON, MA 02210	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-135-MI	CARTER ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-116-MI	WOLLASTON MANOR ASSOCIATES C/O NATIONAL CORP. OF HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-113-NI	UNITED FRONT HOMES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 086-35033	TRINITY HILLS VILLAGE APARTMENTS LIMITED PART., C/O NAT. CORP. OF HOUS. PART., 1225 EYE ST. NW 6TH WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 113-44010	TIMBERLAKES APTS. LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-35356	TUMAST ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44062	WOODMARK LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 126-44110	WOODLAND COOS BAY, LTD. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 133-44034	WOODCREST APARTMENTS, LTD. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-55066	EMORY GROVE C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 118-44023	OAK WEST LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE STREET, N.W. 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 176-44024	TYEE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 065-35044	SUNSET PLAZA APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 066-44081	STOCK ISLAND LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-44087	SPRING MEADOW LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 082-35111	SOUTHMONT APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 101-44018	SAN JUAN DEL CENTRO LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 136-44905	SAN JUAN APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-444453	RODEO DRIVE LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 136-44215	RANCHO ARMS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 065-35185	PRIDE GARDENS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 127-35159	PENN HALL ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 122-44154	VERDES DEL ORIENTE C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	LARSON, BRUCE R.	No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 033-44123	LAKE FOREST APARTMENTS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST, NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 232-44013	KIMBERTON LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST. NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44105	COLLEGE PARK ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-55011	COLONIAL TERRACE I ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-55017	COLONIAL TERRACE II ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 062-44049	COLONY APARTMENTS COMPANY LIMITED C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44031	DENSALEM GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44056	DENSALEM GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44096	DORAL GARDENS ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 121-44366	GREATER RICHMOND COMMUNITY DEV. CORP. #2 & ASSOC., NAT. CORP. HOUS PART., 1225 EYE ST., NW, 6TH FL. WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 121-44365	GREATER RICHMOND COMM. DEV. CORP. #1 & ASSOC., C/O NAT. CORP. FOR HOUS. PART, 1225 EYE ST , NW 6TH WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-55068	ATHENS ARMS ASSOCIATION C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., N.W., 6TH FL. WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: VA-39-HD27-041	CLARIDGE HOUS. ALEX. ASSOCIATES C/O THE CAFRITZ COMPANY 1825 K ST., NW WASHINGTON, DC 20036	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35001	LITHEDA APARTMENTS, INC. P.O. BOX 249 HATO REY, PR 00919	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35001	MORA DEVELOPMENT CORPORTION P.O BOX 249 HATO REY, PR 00919	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35070	EL VERDE ASSOCIATES P.O. BOX 249 HATO REY, PR 00919	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35072	SANTA PAULA APARTMENTS P.O. BOX 249 HATO REY, PR 00919	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 044-35516	VILLAGE GREEN LTD. P.O. BOX 9770 ALEXANDRIA, VA 22301	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 012-55019	HIGEN ASSOCIATES 1790 BROADWAY NEW YORK, NY 10019	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 012-55026	FAIRVIEW COMPANY 1790 BROADWAY NEW YORK, NY 10019	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44141	46TH STREET REHAB ASSOCIATES 4201 CONNECTICUT AVE., NW SUITE 600 WASHINGTON, DC 20008	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-55037	CENTRAL VILLAGE ASSOCIATES C/O NAT. CORP. FOR HOUS. PART. 1225 EYE ST., NW, SIXTH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-55060	H.P. CORPORATION 4201 CONNECTICUT AVE., NW SUITE 600 WASHINGTON, DC 200[illegible]	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 043-35257	HORIZON, A LIMITED PARTNE[illegible]HIP 935 EAST BROAD ST. COLUMBUS, OH 43205	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-32014	HALLMARK PROPERTIES, LTD. 2951 TEWNTY EIGHTH ST. SUITE 2040 SANTA MONICA, CA 90405	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-55015	REYNOLD'S TERRACE APARTMENTS 2951 TEWNTY-EIGHTH ST. SUITE 2040 SANTA MONICA, CA 90405	HESSEL, ARTHUR R.	No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 062-44081	MEADOWOOD ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 023-062-NI	LORING TOWER ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 092-44802	LORING TOWER APTS. LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 136-44209	MANZANITA ARMS C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 062-44019	MEADOWOOD ASSOCIATES LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 031-55075	BRUNSWICK VILLAGE LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 034-44901	CENTER SQUARE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 053-44059	CHEEK ROAD LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 126-44093	PENDLETON RIVERSIDE APTS. OREG LTD C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 042-35022	PALM HOUS. LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-44205	DIP LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 051-44096	OAK PARK APTS LTD. PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-55019	NORTHWEST TERRACE ASSOC. LIM. PART C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No

HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 061-44124	NORTHGATE VILLAGE LIMITED PART. C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 047-55021	MISKE LIMITED PARTNERSHIP C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 101-44075	FORT CARSON ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 056-35107	MONTBLANC HOUSING ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 112-55011	NORTH LAKE TERRACE ASSOCIATES C/O NATIONAL CORP. FOR HOUS. PART. 1225 EYE ST., NW, 6TH FLOOR WASHINGTON, DC 20005	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-10684	FAIRVIEW TAKOMA LIMITED PART. 2401 RESEARCH BOULEVARD SUITE 240 ROCKVILLE, MD 20850	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HESSEL AND ALUISE, P.C. SUITE 1250 ONE THOMAS CIRCLE, NW WASHINGTON, DC 20005 Federal Action No.: 000-10731	JUBILEE ENTERPRISE OF GREATER WASH 1640 COLUMBIA RD., NW WASHINGTON, DC 20009	HESSEL, ARTHUR R. ALUISE, TIMOTHY J. GURKIN, JOANNE	No No No
HGM ARCHITECTURE INC. 805 N. MAIN ST. P.O. BOX 976 OSKOSH, WI 54902 Federal Action No.: WI39-P113001-002-003	WINNEBAGO COUNTY HOUS. AUTHORITY ATTN: JOHN FRANZEN - DIRECTOR 600 MERRITT AVE., P.O. BOX 397 OSHKOSH, WI 54902-0397	HANSCHE, RONALD D.	No
HONIGMAN MILLER SCHWARTZ AND COHN 2290 FIRST NATIONAL BUILDING 660 WOOWARD AVE. DETROIT, MI 48226 Federal Action No.: 044-10574 REV	ESSEX AT HAMPTON SUITE 350, 32605 W. 12 MILE RD. FARMINGTON HILLS, MI 48334	WINKELMAN, SHELDON P. BANAS, C. LESLIE	No No
HONIGMAN MILLER SCHWARTZ AND COHN 2290 FIRST NATIONAL BUILDING 660 WOOWARD AVE. DETROIT, MI 48226 Federal Action No.: 044-10566 REV	PINE HILL PARTNERS SUITE 350, 32605 W. 12 MILE RD. FARMINGTON HILLS, MI 48334	WINKELMAN, SHELDON P. BANAS, C. LESLIE	No No
HONIGMAN MILLER SCHWARTZ AND COHN 2290 FIRST NATIONAL BUILDING 660 WOOWARD AVE. DETROIT, MI 48226 Federal Action No.: 044-35073-PM	BERNARD B. BROWN 26645 WEST 12 MILE RD. SUITE 115 SOUTHFIELD, MI 48034	ROTHSTEIN, J. ADAM	No
HONIGMAN MILLER SCHWARTZ AND COHN 2290 FIRST NATIONAL BUILDING 660 WOOWARD AVE. DETROIT, MI 48226 Federal Action No.: 044-36610	STEARNS BUILDING LIMITED PART. SUITE 350, 32605 W. 12 MILE RD. FARMINGTON HILLS, MI 48334	WINKELMAN, SHELDON P. BAERGEN, ELIZABETH	No No
THE JEFFERSON GROUP, INC. 1341 G ST. NW SUITE 1100 WASHINGTON, DC 20005 Federal Action No.: B-85-AA-72-0219	CITY OF CAROLINA P.O. BOX 8 CAROLINA, PR 00630	DALIOT ORTIZ, JOSE A. PARET, S. PIERRE	No No
THE JEFFERSON GROUP, INC. 1341 G ST. NW SUITE 1100 WASHINGTON, DC 20005 Federal Action No.: B-87-MC-72-0007	CITY OF SAN JUAN OLD SAN JUAN CITY HALL P.O. BOX 4355 SAN JUAN, PR 00905	DALIOT ORTIZ, JOSE A. PARET, S. PIERRE	No No
THE JEFFERSON GROUP, INC. 1341 G ST. NW SUITE 1100 WASHINGTON, DC 20005 Federal Action No.: RQ46-R013-002	CITY OF TRUJILLO ALTO CITY HALL TRUJILLO ALTO, PR 00760	DALIOT ORTIZ, JOSE A. PARET, S. PIERRE	No No

THE JEFFERSON GROUP, INC. 1341 G ST. NW SUITE 1100 WASHINGTON, DC 20005 Federal Action No.: 90-MY-241-1023	CITY OF SAN JUAN OLD SAN JUAN CITY HALL P.O. BOX 4355 SAN JUAN, PR 00905	DALIOT ORTIZ, JOSE A. PARET, S. PIERRE	No No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 129-44-033	GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436	EDSON, CHARLES L.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 129-44-012	GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436	EDSON, CHARLES L.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 121-44-050	GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436	EDSON, CHARLES L.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 122-44-246	THE SPIEKER COMPANIES 1032 ELWELL COURT PALO ALTO, CA 94303	EDSON, CHARLES L.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 075-36604	AIM ACQUISITION PARTNERSHIP C/O CRI, INC. 11200 ROCKVILLE PIKE ROCKVILLE, MD 20852	EDSON, CHARLES L.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 075-36604	AIM ACQUISITION PARTNERSHIP C/O CRI, INC. 11200 ROCKVILLE PIKE ROCKVILLE, MD 20852	WILCOX, JUSTINE E.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 052-44056	CIRCLE TERRACE ASSOCIATES LIMITED PARTNERSHIP, C/O LANDEX CORP. 222 JEFFERSON BLVD., 2ND FLOOR WARWICK, RI 02886	GOLDSTEIN, RICHARD S.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 046-35584	STERLING-MEAD, INC. 8280 MONTGOMERY RD., SUITE 305 ASBURY WOODS RETIREMENT VILLA CINCINNATI, OH 45236	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 016-10003	DORMITORY AUTHORITY OF THE STATE OF NEW YORK 161 DELAWARE AVE. DELMAR, NY 12054	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 061-44015	THE WALLICK COMPANIES P.O. BOX 1023 COLUMBUS, OH 43216	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E.	No No No No No No No No No

KROOTH & ALTMAN (Continued)		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 009-001	THE WALLICK COMPANIES P.O. BOX 1023 COLUMBUS, OH 43216	ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 014-13016 MP	ST. JAMES MERCY HOSPITAL 411 CANISTEO ST. HORNELL, NY 14843	ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 92-1751-DB	UNIVERSAL CONSTRUCTORS, INC. P.O. BOX 28 HIGHWAY 286 MCMINNVILLE, TN 37110	ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 034-430776-PA	PERINI SERVICES INC. 2424 PARADISE CHURCH RD. HAGERSTOWN, MD 21740	ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 046-35573-PM	STERLING-MEAD, INC. 8280 MONTGOMERY RD., SUITE 305 ASBURY WOODS RETIREMENT VILLA CINCINNATI, OH 45236	TENNANT, WILLIAM S.	No
		ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No

KROOTH & ALTMAN (Continued)		DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 086-35213-PM	HAROLD MOORE & ASSOCIATES 1798 WILSON PARKWAY FAYETTEVILLE, IN 37344	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 071-36627	GERONTOLOGICAL SERVICES OF AMER. 431 SOUTH DEARBORN, SUITE 506 CHICAGO, IL 60605	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 071-35586-PM	THE KIRK CORPORATION 201 JUNIPER CIRCLE STREAMWOOD, IL 60207-1899	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 081-35197-PM	THE CATES COMPANY 6584 POPLAR AVE., SUITE 340 MEMPHIS, TN 38138	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No No

KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 012-13032-MP-EC	GOLDMAN SACHS & CO. 85 BROAD NEW YORK, NY 10004	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 051-43055-PM	HOMF CORP. 1480 SOUTH MAIN ST. BLACKSBURG, VA 24060	TENNANT, WILLIAM S.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 067-10502	MR. BEN L. KUSHNER 19101 MYSTIC POINTE DR. AVENTURA, FL 33180	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 052-43041	REILLY MORTGAGE GROUP, INC. 1951 KIDWELL DR., SUITE 700 VIENNA, VA 22182	SMITH, HARRISON C. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. KNOLL, E. JOSEPH GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. GEORGE, MARY JO MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 012-13031-MP-EC	LOUIS J. ROMANOSKI MERRILL LYNCH CAPITAL MARKETS 250 VESEY ST NEW YORK, NY 10281-1201	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. KNOLL, E. JOSEPH	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 013-43057-PM-IC	MANUFACTURERS HANOVER SECURITIES CORP. 270 PARK AVENUE NEW YORK, NY 10017	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E.	No No No No No No No No No

KROOTH & ALTMAN (Continued)		KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. KNOLL, E. JOSEPH	No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 031-13014	PAINEWEBBER INCORPORATED 1285 AVE OF THE AMERICAS NEW YORK, NY 10019	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 035-13007	PW FUNDING INC. 787 SEVENTH AVE, 29TH FLOOR NEW YORK, NY 10019	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 082-11024-PM	F. OWEN KENDRICK, VICE PRESIDENT STANDARD MORTGAGE CORPORATION 300 PLAZA, ONE SHELL SQUARE NEW ORLEANS, LO 70139	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 143-35096-PM	VILLAGE DRIVE LIMITED 17992 MITCHELL SOUTH, SOUTH 100 IRVINE, CA 92714	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 052-32035	SHELTER DEVELOPMENT CORPORATION 218 N. CHARLES ST., SUITE 500 BALTIMORE, MD 21201	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH	No No No No No No

KROOTH & ALTMAN (Continued)		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: FHA 031-57001	NEW COMMUNITY URBAN RENEWAL CORP. 233 WEST MARKET ST. NEWARK, NJ 07103	ALTMAN, VICTOR A.	No
		ALTMAN, NORMAN S.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 051-43048-PM	HCMF CORP. 1480 SOUTH MAIN ST. BLACKSBURG, VA 24060	TENNANT, WILLIAM S.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: EXPLAINED	KIDDER, PEABODY HMB SERVICES, INC. ATTN: JAMES LAVIGNE 10 HANOVER SQUARE NEW YORK, NY 10005	ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
		KROOTH & ALTMAN	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 052-35323	MBIA 113 KING ST. ARMONK, NY 10504	BARSKY, DAVID A.	No
		ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No
		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 051-43048-PM/051-43055-PM	HCMF CORP. 1480 SOUTH MAIN ST. BLACKSBURG, VA 24060	TENNANT, WILLIAM S.	No
		ALTMAN, NORMAN S.	No
		ALTMAN, VICTOR A.	No
		BARSKY, DAVID A.	No
		CLANCY, PATRICK J.	No
		COLE, D. RANDOLPH	No
		DELANY, WILLIAM J.	No
		GEORGE, MARY JO	No
		GRESZES, MARIO B.	No
		VIHSTADT, JOHN E.	No
		KIJEWSKI, JOSEPH A.	No
		LIBRETTA, DONALD F.	No
		MAZER, MICHAEL E.	No
		TENNANT, WILLIAM S.	No
		OPERT, JON I.	No
		PERNA, JAMES F.	No

KROOTH & ALTMAN (Continued)		SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **FHA 031-32037**	NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY 3625 QUAKERBRIDGE RD., CN 18550 TRENTON, NJ 08650-2085	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. KNOLL, E. JOSEPH	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **FHA 034-43060-MP**	ALLIED SERVICES FOR THE HANDICAP ATTN: THOMAS C. PARSHALL 475 MORGAN HWY., P.O. BOX 1103 SCRANTON, PN 18501	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. KNOLL, E. JOSEPH	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **075-35314-PM**	MBIA 113 KING ST. ARMONK, NY 10504	BARSKY, DAVID A. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **052-43041**	BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070	GEORGE, MARY JO ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. KNOLL, E. JOSEPH GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KUTAK ROCK & CAMPBELL 1650 FARNAM OMAHA, NE 68102-2186 Federal Action No.: **FHA 086-43025-PM-IC**	THE FOUNDERS COMPANY 144 2ND AVE. NORTH SUITE 200 NASHVILLE, TN 37201	PETR, JOHN L.	No

KUTAK ROCK & CAMPBELL 1650 FARNAM OMAHA, NE 68102-2186 Federal Action No.: **DEN-377 (6-10-74)**	AURARIA HIGHER EDUCATION CENTER 1027 9TH STREET PARK CAMPUS BOX A, P.O. BOX 173361 DENVER, CO 80217-3361	MITRE, ANN MARIE MARIENTHAL, FREDERIC H.	No No	
LANDEX OF MARYLAND, INCORPORATED C/O LANDEX CORPORATION 222 JEFFERSON BLVD., 22ND FLOOR WARWICK, RI 02886 Federal Action No.: **FHA 052-44056**	CIRCLE TERRACE ASSOCIATES LIMITED PARTNERSHIP, C/O LANDEX CORP. 222 JEFFERSON BLVD., 2ND FLOOR WARWICK, RI 02886	SIEGEL, JUDITH S.	No	
LANDMAN & BEATTY 1070 MARKET TOWER 10 WEST MARKET ST. INDIANAPOLIS, IN 46204 Federal Action No.: **FHA 073-35506-PM**	COMMUNITY PLACE APARTMENTS C/O PARKPLACE PROPERTIES, INC. 8888 KEYSTONE CROSSING, # 650 INDIANAPOLIS, IN 46240	LANDMAN JR., BERNARD BEATTY, JAMES W.	No No	
MORRIS, MORTON, RUSH & CLYMER, A SUBSIDIARY OF POOR RICHARD CORP. SUITE 24, 340 E 64TH ST. NEW YORK, NY 10021 Federal Action No.: **012-11096**	1199 HOUSING CORPORATION BOARD OF DIRECTORS 2120 FIRST AVE. NEW YORK, NY 10027	WIRS, PETER J.	No	
MASSACHUSETTS HOUSING FINANCE AGCY C/O NAT'L COUNCIL/STATE HOUSING 444 N. CAPITOL ST., N.W. WASHINGTON, DC 20001 Federal Action No.: **000-NAT'L AFFORD. HOUSING**	MASSACHUSETTS HOUSING FINANCE AGCY C/O NAT'L COUNCIL/STATE HOUSING 444 N. CAPITOL ST., N.W. WASHINGTON, DC 20001	MCEVOY, JOHN T. LOGUE III, JAMES L. THOMPSON, BARBARA J. DESANTIS, DAVID E. LANDI, LORETTA A. MONTFORT, ELLEN HOWARD, KYLAND SABATION, ROSEMARIE A. WATSON, ELIZABETH A. LAFLEUR, LINDA PETHERICK, GLENN D. WATTERS, BECKY	No Yes No No No No No No No No No No	DEPUTY ASSISTANT SECRETARY FOR MULTIFAMILY HOUSING
NORTH CAROLINA HOUS. FIN. AGENCY 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27607 Federal Action No.: **FAF-194**	THE NORTH CAROLINA HOUSING FINANCE AGENCY AND THE NORTH CAROLINA HOUS TRUST FUND, 300 DRAKE CIR., #200 RALEIGH, NC 27607	KUCAB, A. ROBERT QUINN, JAMES T. NORRIS JR., HUGH JONES	No No No	
JOHN L. NUVEEN & CO., INC. ATTN: W. FREDERICK FULLER, II 333 N. WACKER DR. CHICAGO, IL 60606 Federal Action No.: **FAF-212-ABC**	HOUSING AUTH. OF THE CITY OF EL PASO 1600 MONTANA AVE. EL PASO, TX 79902	JOHNSTON JR., DOUGLAS F. FULLER II, FREDERICK H.	No No	
JOHN L. NUVEEN & CO., INC. ATTN: W. FREDERICK FULLER, II 333 N. WACKER DR. CHICAGO, IL 60606 Federal Action No.: **FAF-198**	NEW HAMPSHIRE HOUS. FIN. AUTHORITY 24 CONSTITUTION DR. BEDFORD, NH 03102	JOHNSTON JR., DOUGLAS F. FULLER II, FREDERICK H.	No No	
PATTON, BOGGS & BLOW 2550 M ST., NW WASHINGTON, DC 20037 Federal Action No.: **VA39-2276-201;000-EH-007**	THE LEWINSVILLE RETIR. RES., INC. C/O VAN SCOYOC ASSOC., INC. 2775 S QUINCY ST., SUITE 600 ARLINGTON, VA 22206	CHIAVIELLO, ANNE J.	No	
PERTERSEN, TEWS & SQUIRES, P.A. 4800 IDS CENTER 80 SOUTH EIGHTH ST. MINNEAPOLIS, MN Federal Action No.: **092-44003**	DOMINIUM GROUP INCORPORATED 3140 HARBOR LANE, SUITE 102 PLYMOUTH, MI 55447	NEMO JR, JOSEPH M.	No	
PORTER, STEEL, HUMPHREYS, PORTER & MCLAMB, P.O. BOX 13646 RESEARCH TRIANGLE PARK RALEIGH, NC 27709-3646 Federal Action No.: **FAF-194**	NORTH CAROLINA HOUS. FIN. AGENCY AND NORTH CAROLINA HOUS. TRUST FUND, 3300 DRAKE CIRCLE SUITE 200 RALEIGH, NC 27611	HUMPHREYS, ANN M.	No	
POTOMAC FUNDING, INC. SUITE 200 2000 L ST., NW WASHINGTON, DC 20036-4907 Federal Action No.: **052-0071**	CONCORD MORTGAGE COMPANY SUITE 175 6701 ROCKLEDGE DR. BETHESDA, MD 20817	LONGO, JOHN M.	No	
POTOMAC FUNDING, INC. SUITE 200 2000 L ST., NW WASHINGTON, DC 20036-4907 Federal Action No.: **054-35384-PM-WALSH-28**	COMMONWEALTH HEALTH CORPORATION 800 PARK ST. BOWLING GREEN, KY 42102	HIPPS JR, GEORGE O.	No	

POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA 114-35294	GALVESTON-STEWARTS LANDING, LTD. WHITNEY MGMT. CORP., THE RELATED CO., 625 MADISON AVE NEW YORK, NY 10022	SIMONS, LAWRENCE B. KNAPP, JOHN J. FREEDMAN, ANTHONY S.	No No No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA 054-57001	PAVILLION PROPERTIES 5000 THURMOND MALL COLUMBIA, SC 29201	KNAPP, JOHN J. SIMONS, LAWRENCE B.	No No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 066-35203	CRUZ DEVELOPMENT & ASSOC., LTD. ONE JOHN ELIOT SQUARE BOSTON, MA 01770	SIMONS, LAWRENCE B. MCILWAIN, JOHN K. FREEDMAN, ANTHONY S. KNAPP, JOHN J. DA.ES, GEORGE L.	No No No No No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: NY-36-0004-029	SECURITAD ASSOCIATES EMPIRE STATE BUILDING SUITE 2305 NEW YORK, NY 10118	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA 012-43147	727 THROGS NECK EXPRESSWAY, INC. 377 OAK ST GARDENS CITY, NY 11530-6543	KNAPP, JOHN J. SIMONS, LAWRENCE B.	No No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 064-00050	CLAREMONT CORPORATION BATTERMARCH PARK II QUINCY, MA 02169	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA 053-35491	CROSLAND PROPERTIES P.O. BOX 11797 CHARLOTTE, NC 28220	KNAPP, JOHN J. SIMONS, LAWRENCE B.	No No
PROPERTY DEVELOPMENT ASSOC. LTD 550 WASHINGTON AVE CARNEGIE, PN 15106 Federal Action No.: 033-43042-MPIC	PRESBYTERIAN ASSOCIATES ON AGING 1215 HULTON RD OAKMONT, PN 15139	MCCARTHY, JAMES W.	No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 00010736-REP	LAVALLE PROPERTY ASSOCIATES 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
REZNICK, FEDDER & SILVERMAN 4520 EAST-WEST HIGHWAY SUITE 300 BETHESDA, MD 20814 Federal Action No.:	KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037	REZNICK, DAVID VANCE, RONALD G.	No No
RENO, CAVANAUGH & HORNIG 122 C ST., NW, SUITE 875 WASHINGTON, DC 20001 Federal Action No.: MROP APPLIC. FL2-1, 2-1A	HOUSING AUTHORITY OF THE CITY OF SAINT PETERBURG P.O. BOX 12849 ST. PETERSBURG, FL 33733-2849	CAVANAUGH, GORDON	No
THE RICHMAN GROUP OF MARYLAND INC C/O THE RICHMAN GROUP 10 VALLEY DR. GREENWICH, CT 06831 Federal Action No.: 052-44056	CIRCLE TERRACE ASSOCIATES LIMITED PARTNERSHIP, C/O LANDEX CORP. 222 JEFFERSON BLVD., 2ND FLOOR WARWICK, RI 02886	RICHMAN, RICHARD P.	No
RIDGEMONT APARTMENTS L.P. C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 N. MAIN ANN ARBOR, MI Federal Action No.: 044-10512	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH ELZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No
ROBINSON SILVERMAN PEARCE ARONSOHN & BERMAN 1290 AVE. OF THE AMERICAS NEW YORK, NY Federal Action No.: 012-35620	CARTER, JASON D. 235 WEST 48TH ST. NEW YORK, NY 10036	BERMAN, STANLEY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 000-55074	CHICAGO COMMUNITY DEVELOPMENT CORP. 343 S. DEARBORN, SUITE 1110 CHICAGO, IL 60604	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH M.	No No

INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: IL0048G406	SHELL DEV. CORP. ON BRHALF OF THE WOODLAND PARK PARTNERS LIMITED 40 SKOKIE BLVD. NORTHBROOK, IL 60062	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 067-36627	AMERICAN INSURED MORTGAGE INVEST. L.P.- SERIES 86 10 UNION SQUARE EAST NEW YORK, NY 10003	RAMSEY ESQ, TIMOTHY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 067-36629	INTEGRATED FUNDING, INC. AND AMER. INSURED MORTGAGE INVESTORS L.P. SERIES 88, 10 UNION SQUARE EAST NEW YORK, NY 10003	RAMSEY ESQ, TIMOTHY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-10563	RESCORP MORTGAGE, INC. ONE EAST WACKER DR. SUITE 2900 CHICAGO, IL 60601-2098	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-44081	CHICAGO COMMUNITY DEVELOPMENT CORP. 343 S. DEARBORN, SUITE 1110 CHICAGO, IL 60604	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-55049	AARON I. MICHAELSON ON BEHALF OF A.I.M. PARTNERSHIP NO. 4 77 WEST WASH., ST., SUITE 1420 CHICAGO, IL 60602	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-55109	VOICE OF THE PEOPLE IN UPTOWN 4927 N. KENMORE CHICAGO, IL 60640	FISHER, PAUL E. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-55177	ROBERT E. ROHLWING ON BEHALF OF WESTWIND ASSOCIATES 475 WEST TERRA COTTA AVE. CRYSTAL LAKE, IL 60014	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-35554	INTEGRATED FUNDING INC. 10 UNION SQUARE EAST FIFTH FLOOR NEW YORK, NY 10003	RAMSEY ESQ, TIMOTHY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-35577	BURNHAM DEVELOPMENT COMPANY BURNHAM WELLS I 115 SOUTH LASALLE ST., SUITE 2860 CHICAGO, IL 60603	RAMSEY ESQ, TIMOTHY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 071-36625	INTEGRATED FUNDING, INC. AND AMER. INSURED MORTGAGE INVESTORS L.P. SERIES 88, 10 UNION SQUARE EAST NEW YORK, NY 10003	RAMSEY ESQ, TIMOTHY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 072-43092	ANDREW ERKES, EFFREY DAVIS, KENNETH DAVIS, DOWNSTATE HEALTH CARE INV. PART., 200 W. SUPERIOR CHICAGO, IL 60601	RAMSEY ESQ, TIMOTHY	No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 092-36616	INTEGRATED FUNDING, INC. AND AMER. INSURED MORTGAGE INVESTORS L.P. SERIES 88, 10 UNION SQUARE EAST NEW YORK, NY 10003	RAMSEY ESQ, TIMOTHY FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 114-11023	ROBERT E. ROHLWING ON BEHALF DICK- INSON OAKS ASSOC. LIMITED PART. 475 WEST TERRA COTTA AVE. CRYSTAL LAKE, IL 600014	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No
INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 114-35033	ROBERT E. ROHLWING ON BEHALF SAND- PIPER COVE APTS. LIMITED PART. 475 WEST TERRA COTTA AVE. CRYSTAL LAKE, IL 600014	GOLDMAN, ROBERT H. FRIEDGUT, ELIZABETH H.	No No

INTEGRATED RESOURCES AMERICAN INS. MORTGAGE INVESTORS - SERIES 85 10 UNION SQUARE EAST NEW YORK, NY 10003 Federal Action No.: 131-NB0001TL	BETHEL NEW LIFE, INCORPORATED 367 NORTH KARLOV CHICAGO, IL 60624	PARKER, JAMES A. HUMMEL, GREGORY W. ARNOLD, JEFFREY S.	No No No
SCHOONER COVE ASSOCIATES C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 N. MAIN ANN ARBOR, MI Federal Action No.: 044-10517	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH FUERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No
SHAW, PITTMAN, POTTS & TROWBRIDGE 2300 N ST., NW WASHINGTON, DC 20037 Federal Action No.: FHA 052-44113	MONUMENTAL MANAGEMENT, INC. 230 WILSON ST. BALTIMORE, MD 21217	HUTTLER, STEPHEN B. MINTZ ESQ, MICHAEL J. MCMAHON, ELIZABETH T.	No No No
SHAW, PITTMAN, POTTS & TROWBRIDGE 2300 N ST., NW WASHINGTON, DC 20037 Federal Action No.: FHA 052-44129	MONUMENTAL MANAGEMENT, INC. 230 WILSON ST. BALTIMORE, MD 21217	HUTTLER, STEPHEN B. MINTZ ESQ, MICHAEL J. MCMAHON, ELIZABETH T.	No No No
STERNE, AGEE & LEACH, INC. 1901 6TH AVE. NORTH SUITE 2100 BIRMINGHAM, AL 35203 Federal Action No.: PAF-211	GADSDEN HOUSING DEVELOPMENT CORP.. C/O W. D. RUSSELL, JR., DORTCH, BIGGT & RUSSELL, 239 COLLEGE ST. GADSDEN, AL 35901	MORGAN, FRANK G.	No
THE STOLAR PARTNERSHIP 911 WASHINGTON AVE. ST. LOUIS, MO 63103 Federal Action No.: 072-EH219	SOUTHERN ILLINOIS VOA ELDERLY HOUS INC. 3013 W. CAUSEWAY BLVD. METAIRIE, LA 70002	HARRIS, HARVEY A. HETLAND, JANICE E. FEATHERSTON, BARBARA J.	No No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: FHA 085-55002-LDC	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: FHA 085-32005-R	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: FHA 085-44901-LDC	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: FHA 085-55006-LDC-R	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: FHA 085-35391-PM	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: 312-29-ONC-0006-0021-02	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: 085-43045-SR-NP-150001-SR	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: FHA 085-35361-PM-SR	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: 085-35354-PM-SR	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: 085-94002	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No
ST. LOUIS DEVELOPMENT CORPORATION 330 N. 15TH ST. ST. LOUIS, MO 63103 Federal Action No.: 085-94003	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	CAMPBELL, MARY SIEGEL, SARAH	No No

THE STOLAR PARTNERSHIP 911 WASHINGTON AVE. ST. LOUIS, MO 63103 Federal Action No.: 085-HH-008-MP-CMI-L8	INDEPENDENCE CENTER 4380 W. PINE ST. LOUIS, MO 63108	HARRIS, HARVEY A. HETLAND, JANICE E. FEATHERSTON, BARBARA J.	No No No
THE STOLAR PARTNERSHIP 911 WASHINGTON AVE. ST. LOUIS, MO 63103 Federal Action No.: 29-CMC-0006-0021-02	TECHNICAL ASSISTANCE CORPORATION 330 N. 15TH STREET ST. LOUIS, MO 63103	HARRIS, HARVEY A. HETLAND, JANICE E. FEATHERSTON, BARBARA J.	No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 024-43044	THE MEADOWS AT EAST MOUNTAIN 160 ALLEN ST. RUTLAND, VT 05701	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 053-43044	HARFORD GARDENS NURSING HOME 4703-4709 HAMPNETT RD BALTIMORE, MD 00000	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 024-43043	THE VIKING NURSING HOME SCOTT DYER RD. CAPE ELIZABETH, ME 00000	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: 024-43040	THE COURVILLE AT GREAT BAY FRESHET RD. MADBURY, NH 00000	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: 014-43065	LEONARD NURSING HOME BLUE BARN RD. REXFORD, NY 12065	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 034-43073	BRIARLEAF NURSING HOME 252 BELMONT AVE. DOYLESTOWN, PA 18901	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 056-43018	ST. THOMAS NURSING HOME BOX #237 ST. THOMAS U.S., VI 00801	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 118-11005	CAESARS GARDENS APARTMENTS 448 S. MINGO TULSA, OK 00000	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 117-11020	STEPHANIE LEE APARTENTS 684 N.W. 12TH ST. MOORE, OK 00000	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 035-43049	GREENBRIAR NURSING HOME 190 N. EVERGREEN AVE. WOODBURY, NJ 08096	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 066-35211	WEST LAKES ON THE GREEN 173RD DRIVE MIAMI, FL 00000	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
SUBURBAN MORTGAGE ASSOC., INC. 7316 WISCONSIN AVE. #208 BETHESDA, MD 20814 Federal Action No.: FHA 122-13007	GRANDA HILLS COMMUNITY HOSPITAL 10445 BALBOA BLVD. GRANADA HILLS, CA 91344	RICHARDS JR, J. WALSH NELSON, LARRY NEILL, CATHERINE R. EATON, DAVID N.	No No No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 071-KH451	ELMWOOD PARK SENIOR COMPLEX, INC ATTN: SARO CACCAMO, PRESIDENT 1001 EAST TOUHY AVE., SUITE 50 DES PLAINES, IL 60018	BROWN, RALPH I. GROSS, ELEANOR	No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 071-KH490	MRS. BARBARA A. NAIDITCH, PRES. AUGUSTANA GROUP HOME FOR HAND. INC 2088 TENNYSON LANE HIGHLAND PARK, IL 60035	BROWN, RALPH I. GROSS, ELEANOR	No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 071-KH544	REV. DONALD M. HALLBERG, PRES. LUTHERAN SOCIAL SERV. OF IL. 1001 E. TOUHY AVE., SUITE 50 DES PLAINES, IL 60018	BROWN, RALPH I. GROSS, ELEANOR	No No

TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: WI014-BG701	KENOSHA CIVI CENTER II ASSOC. LMTD PTNRSHP. P.O. BOX 1070 WAUKEGAN, IL 60079	BROWN, RALPH I.	No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 071-35319-PM/L8	PAUL G. STEWART APTS. ASSOC., PHASE III, PEOPLE CO-OP FOR HOUS GEN. PART., 400 E 41ST ST. CHICAGO, IL 60653	BROWN, RALPH I. BONNER, FRED L.	No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 071-44145	PAUL G STEWART APTS ASSOC PHASE II ATTN: 'DOUGLAS R. WOODWORTH 405 N. WABASH, SUITE P2 CHICAGO, IL 60611	BROWN, RALPH I. BOGHER, W. THOMAS	No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 071-44175	PAUL G STEWART APTS ASSOC PHASE II ATTN: DOUGLAS R. WOODWORTH 405 N. WABASH, SUITE P2 CHICAGO, IL 60611	BROWN, RALPH I. BONNER, FRED L.	No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: 072-35054	STARVED ROCK HOMES DEV. CORP. ATTN: CINDI HERRERA 526 E. NORRIS DR. OTTAWA, IL 61530	BROWN, RALPH I. BONNER, FRED L.	No No
TECHNICAL ASSIST. CORP. FOR HOUS. 205 W. MONROE ST., SUITE 5WEST CHICAGO, IL 60606 Federal Action No.: RIM-2502-AP19	REV. DONALD M. HALLBERG, PRES. LUTHERAN SOCIAL SERV. OF IL. 1001 E. TOUHY AVE., SUITE 50 DES PLAINES, IL 60018	BROWN, RALPH I. GROSS, ELEANOR	No No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 043-35278	LIBERTY PLAZA, LTD LIBERTY PLAZA APTS. 253 ABBEYVILLE RD., #107 MEDINA, OH 44256	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 042-35344	LITTLE BARK MANOR, LTD LITTLE BARK MANOR APTS. 914 QUAIL DR. FREMONT, OH 43420	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 042-35345	LITTLE BARK VIEW, LTD. LITTLE BARK VIEW APTS. 913 QUAIL DR. FREMONT, OH 43420	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 043-35238	MCARTHUR PARK, LTD MCARTHUR PARK APTS. 640 MCARUTHUR PARK DR. MCARTHUR, OH 45651	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 046-35557	PARKSIDE APTS., LTD PARKSIDE APTS. 500 BOWIE DR. DAYTON, OH 45408	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 043-35208	PLAINS PLAZA, LTD. PLAINS PLAZA APTS. 45 EAST 4TH ST. THE PLAINS, OH 45780	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 046-10513	RIDGEWOOD APTS, LTD RIDGEWOOD APTS. 5842 WINNESTE AVE. CINCINNATI, OH 45232	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 41-21-1335578	SUNBURY HEIGHTS, LTD. SUNBURY HEIGHTS APTS. 170 MCGILL ST. SUNBURY, OH 43074	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 073-35349	WILLOW GLEN, LTD WILLOW GLEN APTS. 2800 SOUTH MAIN ST. NEW CASTLE, IN 47362	VARNEY, LENORE E.	No

TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 042-35343	BAY MEADOWS, LTD. BAY MEADOWS APTS. 1195 WEST FREMONT RD. PORT CLINTON, OH 43452	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 042-35342	BUCYRUS PLAZA, LTD. BUCYRUS PLAZA APTS. P.O. BOX 77 BUCYRUS, OH 44820	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 043-35211	GLENWOOD VILLAGE, LTD. GLENWOOD VILLAGE APTS. 200 BELMONT RD. BETHESDA, OH 43719-9751	VARNEY, LENORE E.	No
TERRA MGMT. COMPANY, INC. 4813 DEEDS RD. PATASKALA, OH Federal Action No.: 061-58501	IMPERIAL ESTATES, LTD. IMPERIAL ESTATES APTS. 2170 WEST 13TH ST. JACKSONVILLE, FL 32209	VARNEY, LENORE E.	No
VILLAGE OF KALAMAZOO C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 S. MAIN ANN ARBOR, MI 48107-8649 Federal Action No.: 047-44046	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH FLZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No
PHILLIP C. WALLIS, COMMUNITY INVET. FOT AFFORDABLE HOUS. 2745 S. GREELEY ST. MILWAUKEE, WI 53207 Federal Action No.: 075-44039	JOHN FRANZEN, EXECUTIVE DIRECTOR HOUSING AUTH. OF THE CITY OF OSHKOSH, 600 MERRITT AVE. OSHKOSH, WI 54901	WALLIS, PHILIP C. POEHLMAN, JAMES	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: 51350-09-997	CTX MORTGAGE OMPANY 3333 LEE PARKWAY, 11TH FL. DALLAS, TX 75219	KIDER, MITCHEL H.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.: 031-1405582	UNION MODERN MORTGAGE CORP. 712 WEST THIRD ST. LITTLE ROCK, AR 72203	MARGULIES, IRVING P.	No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	LSI FINANCIAL GROUP 425 NORTH MCKINLEY # 1250 LITTLE ROCK, AR 72295	MARGULIES, IRVING P. SHEARA, ANN B.	No No
WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C. 1350 NEW YORK AVE. NW, SUITE 800 WASHINGTON, DC 20005-4797 Federal Action No.:	ENTRECAP INTERNATIONAL INC. 1600 REDBUD BOULEVARD, SUITE 301 MCKINNEY, TX 75069	BRODSKY, JAMES A. MILES, STEPHENS D. CARRICK, JOHN M. SIDMAN, MARK E.	No No No No
WILSON FINANCIAL GROUP, INC. 9500 SOUTH DADELAND BOULEVARD, SUITE #700 MIAMI, FL 33156 Federal Action No.:	MR. LUIS GONZALEZ, GENERAL PARTNER KANKO DEVELOPMENT CORPORATION 17842 S.W. 107 AVE., #25 MIAMI, FL 33157	WILSON JR., DONALD D.	No
WINDOVER ASSOCIATES C/O MCKINLEY PROPERTIES P.O. BOX 8649, 320 N. MAIN ANN ARBOR, MI Federal Action No.: 044-94040	MCKINLEY ASSOCIATES D. KEITH HAYWARD P.O. BOX 8649 ANN ARBOR, MI 48107	LARSON, BRUCE R. TYLER, WILLIAM C. HAYWARD, D. KEITH FLZERMAN, MICHAEL S. ROSE, GREGORY M.	No No No No No
LGB AND ASSOCIATES 133 S. 11TH ST. ST. LOUIS, MO 63108 Federal Action No.: MO1-7, MO1-7A	ST. LOUIS PUBLIC HOUSING AUTH. 4100 LINDELL BLVD. ST. LOUIS, MO 63108	BERRA, LOUIS G.	No
LGB AND ASSOCIATES 133 S. 11TH ST. ST. LOUIS, MO 63108 Federal Action No.: MO1-20	ST. LOUIS PUBLIC HOUSING AUTH. 4100 LINDELL BLVD. ST. LOUIS, MO 63108	BERRA, LOUIS G.	No
LGB AND ASSOCIATES 133 S. 11TH ST. ST. LOUIS, MO 63108 Federal Action No.: MO1-6	ST. LOUIS PUBLIC HOUSING AUTH. 4100 LINDELL BLVD. ST. LOUIS, MO 63108	BERRA, LOUIS G.	No

BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.:	MARGARETTEN & COMPANY, INC. MARGARETTEN PLAZA 205 SMITH ST., P.O. BOX 3022 PERTH AMBOY, NJ 088862	AVRAKOTOS, COSTAS A. SCHULMAN, PHILLIP L. RIGGIN, STACEY	No No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.:	AEGIS HOLDING CORPORATION 33 WHITEHALL ST. NEW YORK, NY 10004-2112	SCHULMAN, PHILLIP L. AVRAKOTOS, COSTAS A. RIGGIN, STACEY	No No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.:	MORTGAGE ACCESS 1625 ROUTE 10 EAST MORRIS PLAINS, NJ 07950	AVRAKOTOS, COSTAS A. PLATT, LAURENCE E. NOTO III, THOMAS J. RIGGIN, STACEY	No No No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.:	LEHIGH VALLEY MORTGAGE 1405 NORTH CEDARCREST ALLENTOWN, PN 18104	AVRAKOTOS, COSTAS A. SCHULMAN, PHILLIP L. BROWNSTEIN, PHILIP N. RIGGIN, STACEY	No No No No
HGM ARCHITECTURE INC. 805 N. MAIN ST. P.O. BOX 976 OSKOSH, WI 54902 Federal Action No.:	WINNEBAGO COUNTY HOUS. AUTHORITY ATTN: JOHN FRANZEN - DIRECTOR 600 MERRITT AVE., P.O. BOX 397 OSHKOSH, WI 54902-0397	HANSCHE, RONALD D.	No
HGM ARCHITECTURE INC. 805 N. MAIN ST. P.O. BOX 976 OSKOSH, WI 54902 Federal Action No.:	UNITED CEREBRAL PALSEY 201 CEAPE AVE OSHKOSH, WI 54901	HANSCHE, RONALD D.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: 064-44801	HISTORIC RESTORATION INC. 400 LAFAYETTE STREET, SUITE 110 NEW ORLEANS, LA 70130	LARSON, BRUCE R.	No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 052-44108-LDP	TOWNEHOUSE MANOR III 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L. EVERNGAM III, WILLIAM H.	No No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 052-55016-LDI	TOWNEHOUSE MANOR III 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAUGHER, ROBERT L.	No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35387-PM-L8-SR	ARLINGTON VILLAGE APTS. PART. 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35386-PM-L8-SR	BOLTON COURT APTS. PARTNERSHIP 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35385-PM-L8-SR	CAMPUS APTS. PARTNERSHIP 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35351-PM-L8	PARKWOOD APTS. PARTNERSHIP II 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No

REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35344-PM-LB	PARKWOOD APARTMENT PARTNERSHIP 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 073-35412-PM	THE BLUFFS DEVELOPMENT PART. 10770 COLUMBIA PIKE SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
REALTY INVESTMENT COMPANY, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901 Federal Action No.: 052-55005-LDC-LPA	BRUCE MANOR, INC. 10770 COLUMBIA PIKE, SUITE G100 SILVER SPRING, MD 20901	EVERNGAM III, WILLIAM H. SHREVE, CHRISTINE A. LUNDSTROM, MATT WHITE, RICHARD BELL, DEBORAH BAINUM, STEWART BAUGHER, ROBERT L.	No No No No No No No
DUNNELLS, DUVALL & PORTER 2100 PENNSYLVANIA AVE. SUITE 400 WASHINGTON, DC 20037-1202 Federal Action No.: FHA 012-44004	WESTCHESTER ASSTS, C/O FLYNN INVESTORS 1984 LTD, DELOITTE & TOUCHE, CENTURY TOWER PLAZA #200 LOS ANGELES, CA 90067-2900	BARON, SUSAN R. STERLING, SCOTT A. DUNNELLS, C. RICHARD NESBITT, LAFONTE FELTER, CAROLYN P. LEVINE, JERRY	No No No No No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 121-55016	PARWOOD APARTMENTS, PHASE I 5441 PARAMOUNT BLVD. LONG BEACH, CA 90805	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 122-55069	PARWOOD APARTMENTS, PHASE II 5441 PARAMOUNT BLVD. LONG BEACH, CA 90805	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 129-44005	SECOND IMPERIAL MANOR 2002 RIMBEY DRIVE SAN DIEGO, CA 92154	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 129-44012	CORONADO ASSOCIATES, PHASE I 1183 25TH AVE. SAN DIEGO, CA 92154	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
PATTON, BOGGS & BLOW 2550 M ST., NW WASHINGTON, DC 20037 Federal Action No.: 071-55100	TOWERS, LTD 881 ALMA REAL DRIVE SUITE 205 PACIFIC PALISADES, CA 90272	CHIAVIELLO, ANNE J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: CB ESP 700658C	THE PATRICIAN FINANCIAL COMPANY 4800 MONTGOMERY LANE SUITE 200 BETHESDA, MD 20814	KNAPP, JOHN J.	No
KELLEY DRYE & WARREN 2300 M ST NW WASHINGTON, DC 20037 Federal Action No.: 071-35594	46TH & VINCENNES LIMITED PARTNERSHP C/O RON GATTON ONE EAST WACKER DRIVE SUITE 2030 CHICAGO, IL 60601	GOLDSTEIN, RICHARD S.	No
PULLER GROUP, INC. 8275 ALLISON POINTE TRAIL INDIANAPOLIS, IN Federal Action No.: 35-1800615	PULLER, KENNETH A. 8275 ALLISON POINTE TRAIL INDIANAPOLIS, IN 46250	PULLER, KENNETH A. VAN DYNE, JR. ALBERT P. (BUD) HUTCHCRAFT, CLINTON E. HOOVER, WARREN ASPLAY, KIM B. DEVOE, SHERRY L. OTTERMAN, CHARLENE HARRIMAN, DONNA K. CALDERON, STEPHANI SMYRNIS SCHULTZ, KENDRA P. BROWN, ESQ DOUGLAS R	No No No No No No No No No No No
ADAM-MAROTT ASSOCIATES 2625 W. MERIDIAN STREET INDIANAPOLIS, IN Federal Action No.: 073-35465	PULLER, KENNETH A. 8275 ALLISON POINTE TRAIL INDIANAPOLIS, IN 46250	BROWN, ESQ DOUGLAS R HARRIMAN, DONNA K.	No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: CA 010-B6711	JULIAN WEINSTOCK CONSTRUCTION CO. INC. 4400 COLDWATER CANYON 200 STUDIO CITY, CA 91604	SALMON III, ROBERT S.	No

MONARCH MANAGEMENT & REALTY, INC 8275 ALLISON POINTE TRAIL SUITE 375 INDIANAPOLIS, IN Federal Action No.: 35-1294928	SCHULTZ, KENDRA P. 8275 ALLISON POINTE TRAIL #375 INDIANAPOLIS, IN 46250	OTTERMAN, CHARLENE CALDERON, STEPHANI SMYRNIS SCHULTZ, KENDRA P. HARRIMAN, DONNA K. BROWN, ESQ DOUGLAS R	No No No No No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: 012-EH020	SENIOR CITIZENS HOUSING COMM. INC. C/O JAMES J. BYRNE 30 NORTH NEW YORK AVENUE HUNTINGTON, NY 11743	KNAPP, JOHN J.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: $0388-8-0035465	NORTH AMERICAN THRIFT AND LOAN 2865 EAST COAST HIGHWAY CORONA DEL MAR, CA 92625	SCHULMAN, PHILLIP L. AVRAKOTOS, COSTAS A.	No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: FR 2581-N-02	RELATED CAPITAL CORPORATION 625 MADISON AVENUE NEW YORK, NY 10022	SALMON III, ROBERT S.	No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 129-44033	CORONADO ASSOCIATES, PHASE II 1183 25TH AVENUE SAN DIEGO, CA 92154	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 129-44008	PLAZA MANOR ASSOCIATES 2721 PLAZA BOULEVARD NATIONAL CITY, CA 92050	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 129-44011	VISTA TERRACE HILLS 1601 DEL SUR BLVD SAN YSIDRA, CA 92173	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: 121-44059	HAWAIIAN GARDENS APARTMENTS 11950 CENTRALIA ROAD SUITE 828 HAWAIIAN GARDENS, CA 90716	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.: CA16-K0040009	JULIAN WEINSTOCK CONSTRUCTION CO. INC. 4400 COLDWATER CANYON 200 STUDIO CITY, CA 91604	SALMON III, ROBERT S.	No
HAWAIIAN GARDENS APARTMENTS 11950 CENTRALIA ROAD SUITE 828 HAWAIIAN GARDENS, CA 90716 Federal Action No.: 1129-44186	HAWAIIAN GARDENS APARTMENTS 11950 CENTRALIA ROAD HAWAIIAN GARDENS, CA 90716	COLLIER, MARTIN D. GERSTEN, ALBERT H.	No No
LATHAM & WATKINS SUITE 1300 1001 PENNSYLVANIA AVE. N.W WASHINGTON, DC 20004 Federal Action No.: HOPA DOCKETT NO H-91-3231	RETIREMENT HOUSING FOUNDATION 401 EAST OCEAN BOULEVARD LONG BEACH, CA 90802	KELLEY, WILLIAM C.	No
LATHAM & WATKINS SUITE 1300 1001 PENNSYLVANIA AVE. N.W WASHINGTON, DC 20004 Federal Action No.: 2530 CLEARANCE	NATIONAL AFFORDABLE HOUSING TRUST 2335 NORTH BANK DRIVE COLUMBUS, OH 43220	KELLEY, WILLIAM C.	No
LATHAM & WATKINS SUITE 1300 1001 PENNSYLVANIA AVE. N.W WASHINGTON, DC 20004 Federal Action No.: 081-EH 126	NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220	KELLEY, WILLIAM C.	No
LATHAM & WATKINS SUITE 1300 1001 PENNSYLVANIA AVE. N.W WASHINGTON, DC 20004 Federal Action No.: 081-EH131	UNITED CHURCH HOMES 170 EAST CENTER STREET MARION, OH 43302	KELLEY, WILLIAM C.	No
LATHAM & WATKINS SUITE 1300 1001 PENNSYLVANIA AVE. N.W WASHINGTON, DC 20004 Federal Action No.: 081-EH 102	NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220	KELLEY, WILLIAM C.	No
BROWNSTEIN, ZEIDMAN & SCHOMER 1401 NEW YORK AVE., NW SUITE 900 WASHINGTON, DC 20005 Federal Action No.:	SAXON EQUITIES CORP 21 DIVISION AVENUE P.O. BOX 70 LEVITTOWN, NY 11756	AVRAKOTOS, COSTAS A. RIGGIN, STACEY	No No

POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 125-94008	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 125-94007	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 125-10515	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 125-10511	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	LARSON, BRUCE R.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO. 118-94002	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 101-94005	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 101-94006	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA 125-94004	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO. 117-94006	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 117-94007	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
POWELL GOLDSTEIN FRAZER & MURPHY 1001 PENN. AVE., NW SUITE 600 WASHINGTON, DC 20004 Federal Action No.: FHA NO 118-36603	THE BOSTON FINANCIAL GROUP, INC 101 ARCH STREET BOSTON, MA 02110	KNAPP, JOHN J.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: 143-35096	VILLAGE DRIVE LIMITED 17992 MITCHELL SOUTH, SOUTH 100 IRVINE, CA 92714	ROBERTS, WILLIAM E. ADAMS, JOHN W. BEISLER, MARK C. BUTLER, SAMUEL J. CROFT, JAMES F. DANIELS, FRANK W. GLASSER, TIMOTHY G. GOODMAN, DAVID L. MACKOV, LINDA L.	No No No No No No No No No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: 061-35305-PM-L8	ASBURY D. SNOW, JR. PRESIDENT SANBURY CORPORATION 6405 BARFIELD ROAD, N.E. ATLANTA, GA 30328	ROBERTS, WILLIAM E. ADAMS, JOHN W. BEISLER, MARK C. BUTLER, SAMUEL J. CROFT, JAMES F. DANIELS, FRANK W. GLASSER, TIMOTHY G. GOODMAN, DAVID L. MACKOV, LINDA L.	No No No No No No No No No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: 061-35332-PM-L8	ASBURY D. SNOW, JR. PRESIDENT SANBURY CORPORATION 6405 BARFIELD ROAD, N.E. ATLANTA, GA 30328	ROBERTS, WILLIAM E. ADAMS, JOHN W. BEISLER, MARK C. BUTLER, SAMUEL J. CROFT, JAMES F. DANIELS, FRANK W.	No No No No No No

BANC ONE CAPITAL CORPORATION (Continued)		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 **Federal Action No.: 082-35222-PM-LS**	ASBURY D. SNOW, JR. PRESIDENT SANBURY CORPORATION 6405 BARFIELD ROAD, N.E ATLANTA, GA 30328	ROBERTS, WILLIAM E.	No
		ADAMS, JOHN W.	No
		BEISLER, MARK C.	No
		BUTLER, SAMUEL J.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 **Federal Action No.: 066-35161 PM-LS**	ADIMAS MANAGEMENT CORPORATION C/O PETE FIELD 1029 SOUTH 22ND STREET BIRMINGHAM, AL 35205	ROBERTS, WILLIAM E.	No
		ADAMS, JOHN W.	No
		BEISLER, MARK C.	No
		BUTLER, SAMUEL J.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: 000-55063	NEW PARKCHESTER HOUSING COOPERATIVE 2905 POMEROY ROAD, SE WASHINGTON, DC 20020	ROBERTS, WILLIAM E.	No
		ADAMS, JOHN W.	No
		BEISLER, MARK C.	No
		BUTLER, SAMUEL J.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: 000-35318-PM/SR	INTERSTATE GENERAL CO. 222 SMALLWOOD VILLAGE CENTER ST. CHARLES, MD 20601	ROBERTS, WILLIAM E.	No
		ADAMS, JOHN W.	No
		BEISLER, MARK C.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 **Federal Action No.: DC 39-8023-017**	CAPITOL HILL TOWERS APARTMENTS 20600 CHAGRIN BOULEVARD TOWER EAST, SUITE 1000 SHAKER HEIGHTS, OH 44122	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: **FHA 042-44098**	NILES CHURCHES FOR HOUSING 568 NORTH ROAD SE WARREN, OH 44484	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 **Federal Action No.: FHA 042-35141**	COMMUNITY APARTMENTS 20600 CHAGRIN BOULEVARD TOWER EAST, SUITE 1000 SHAKER HEIGHTS, OH 44122	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 **Federal Action No.: FHA 042-35188**	FENWAY MANOR APARTMENTS 20600 CHAGRIN BOULEVARD TOWER EAST, SUITE 1000 SHAKER HEIGHTS, OH 44122	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 **Federal Action No.: FHA 043-35233**	NPA ASSOCIATES 20600 CHAGRIN BOULEVARD TOWER EAST, SUITE 1000 SHAKER HEIGHTS, OH 44122	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		HADDIX, GLENNA	No
		GRANT, BILL	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: **FHA 042-44089**	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: **FHA 042-44803**	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: **FHA 043-44068**	AMERICAN HOUSING GUILD P.O. BOX 85304 SAN DIEGO, CA 92138	LOONEY, LARRY	No
		KOBY, JANE	No
		LEININGER, ANN	No
		GRANT, BILL	No
		HADDIX, GLENNA	No

ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44031	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44174	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44144	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44274	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 043-44072	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA LOONEY, LARRY	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44009	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44066	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 043-44028	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA LOONEY, LARRY	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: 046-44165	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44070	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-55046	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN HADDIX, GLENNA GRANT, BILL	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-55054	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 123-11016	BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070	ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No

KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: 121-35773	GREENTREE APTS. LIMITED PART. C/O MR. MICHAEL H. PODELL, M.H. PODELL COMPANY, 1199 HOWARD AVE. BURLINGAME, CA 94010	TENNANT, WILLIAM S. ALTMAN, NORMAN S. ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO E. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. OPERT, JON I. PERNA, JAMES F. SELDON, ROBERT C. SMITH, HARRISON C. MILTON, MICHAEL J.	No No No No No No No No No No No No No No No No No No
KUTAK ROCK & CAMPBELL 1650 FARNAM OMAHA, NE 68102-2186 Federal Action No.: FHA 052-32035	MARYLAND COMMUNITY DEV. ADMIN. 100 COMMUNITY PLAZA CROWNSVILLE, MD 21032-2023	TEISBERG, JANICE C.	No
MORTON A. BARUCH, ASSOCIATES, INC. 2440 RESEARCH BLVD SUITE 330 ROCKVILLE, MD Federal Action No.:	ROBERT SAMPSON INTERSTATE REALTY MGMT., LEAST STOW RD., P.O. BOX 994 MARLTON, MD 08053-0994	BARUCH, MORTON A.	No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-35196	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44156	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 046-35409	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-35040	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-55049	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-55031	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 033-44149	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44151	SUGARBERRY APARTMENTS CORPORATION 9090 WILSHIRE BOULEVARD, SUITE 201 BEVERLY HILLS, CA 90211	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-44001	WARREN HEIGHTS APARTMENTS, PHASE I 20600 CHAGRIN BLVD. TOWER EAST, SUITE 1000 SHAKER HEIGHTS, OH 44122	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No
ABEL BISHOP & CLARKE REALTY COMPANY 535 SOUTH ABBE ROAD ELYRIA, OH 44035 Federal Action No.: FHA 042-35380	AMESBURY-ROSALIND ESTATES LTD. 20600 CHAGRIN BLVD. TOEWR EAST, SUITE 1000 SHAKER HEIGHTS, OH 44122	LOONEY, LARRY KOBY, JANE LEININGER, ANN GRANT, BILL HADDIX, GLENNA	No No No No No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 056-EH265/RQ46-T851-027	NATIONAL CHURCH RES. GUAYNABO, PR 2335 N BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 056-EH211	NATIONAL CHURCH RES. OF SAN JUAN PR I 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 123-EH064/AZ20-T851-005	NCR OF WATERFORD HOUSING DEV. FUND COMPANY, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 123-EH064/AZ20-T851-005	NATIONAL CHURCH RES. OF ARIZONA II 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI	No No No No No No No No No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-KH022/OH16-T701-024	NATIONAL CHURCH RES. OF MIDDLETOWN OHIO 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 04535159/WV-150011005	WESTVIEW MAOR ASSOCIATES 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 042-KH254/OH12-T041-021	WESTHAVEN, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-HH001	NCR/VISION CENTER INDEPENDENT 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No

NATIONAL CHURCH RESIDENCES (Continued)		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-35152/0H16-0008-045	STYGLER VILLAGE LIMTED PARTNERSHIP 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: MI120-P157-001	STERLING HEIGHTS HOUSING COMMISSIO 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 045EH044/WV15-T821-008	OAK HILL CITIZENS FOR BETTER HOUS. INC. 2335 N. BANK DR. COLUMBIA, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 045RH057/WV15-T841-004	TEAYS VALLEY MANOR, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 045RH010/WV15-T781-005	RIVERMONT PRESBYTERIAN HOMES, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY	No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 0440043-M/044043/MI	RESEARCH PARK LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PART. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 04544004/WV15M000017	KANAWHA VALLEY HOMES, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY	No No No No No No No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 04535106/WV15-0008-015	LEWISBURG MANOR ASSOCIATES 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 042-EH156/OH12-T821-011	ISLAND PARKWAY MANOR 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 0453098/WV-150008017	ELKINS MANOR ASSOCIATES 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 0145EH061/WV-15T841008	ELK RIVERVIEW TERRACE APTS. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No

NATIONAL CHURCH RESIDENCES (Continued)		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 045RH090/WV 15T871005	EDGEWOOD VILLAGE, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 045RH087/WV 15T871002	RITCHIE COUNTY SENIOR HOUSING, INC 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: WV-15M000021/WV15M00048/0	WEST VIRGINIA HOMES, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: OH16R000004/OH16R000-013	BRISTOL COURT 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: WV-15001002/04535144	BEVERLY MANOR ASSOCIATES 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 031-[redacted]238	NATIONAL CHURCH RES. OF KERARNY NJ 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 067-[redacted]299	NATIONAL CHURCH RES. OF HOLLY HILL INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No

NATIONAL CHURCH RESIDENCES (Continued)		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 065-EH196	NATIONAL CHURCH RES. OF COLUMBUS MS 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 112-EH103/TX16-T851-020	NATIONAL CHURCH RES. OF WACO, TX 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 122-EH523	NATIONAL CHURCH RES. OF SOUTHERN CALIFORNIA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 136-EH062/CA30-T831-001	NATIONAL CHURCH RES. OF SACRAMENTO CA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No

NATIONAL CHURCH RESIDENCES (Continued)		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014 KH-275/NY06-T871-012	NCR OF WHITEHALL HOUSING DEV. FUND 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 013EH059/NY06-T811-004	NCR OF SIDNEY HOUSING DEV. FUND CO., INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH010-NP-MAR-L8/PA28	NATIONAL CHURCH RES. OF SHARPSBURG PENNSYLVANIA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH269/PA28-T881-007	NATIONAL CHURCH RES. OF SHALER, PA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 056-EH180/RO46-T831-012	NATIONAL CHURCH RES. OF FAJARDO PR 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 113-EH023/TX16-T861-008	NATIONAL CHURCH RES. OF MINERAL WELLS, TX. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH103/PA28-T811-020	NATIONAL CHURCH RES. OF BRIGTON HEIGHTS. PENNSYLVANIA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM	No No No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043EH047/OH16-T801-013	NATIONAL CHURCH RES. OF WAPAKONETA OH. 2335 N. BANK SR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-EH034/OH16/T791-010	NATIONAL CHURCH RES. OF BALTIMORE OHIO 2335 N. BANK. DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 122-EH311/CA16-T831-050	NATIONAL CHURCH RES. OF LAGUNA BEACH, CA. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 024-EH085/VT16-T811-002	NATIONAL CHURCH RES. OF PITTSFORD VERMONT 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN	No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 122-EH155/CA16-T011-007	NATIONAL CHURCH RES. OF ALAHMPRA CALIFORNIA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-EH315/OH16-T891-011	NATIONAL CHURCH RES. OF NORTHERN COLUMBUS 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 0440093/044093HI	YOUNG MANOR LIMITED DIVIDEND HOUS. ASSOCIATES LIMTED PARTNERSHIP 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 042-EH124/OH12/T811-014	NATIONAL CHURCH RES. OF TOLEDO 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		ARMSTRONG, JIM	No
		HERDLE, LEVERNE	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 084-EH078/MO16/T831-001	NATIONAL CHURCH RES. OF BLUE SPRINGS, MO 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 085-EH137/MO36-T861-010	NATIONAL CHURCH RES. OF DEXTER, MO 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-EH068/MY06-T811-005	NCR OF WARSAW HOUSING DEV. FUND CO INC. 2335 W. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No

NATIONAL CHURCH RESIDENCES (Continued)		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 044-EH100/MI28-T831-006	NATIONAL CHURCH RES. OF BELLEVILLE MI 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 031-EH182/NJ39-T841-025	NATIONAL CHURCH RES. OF LOPATCONG NJ 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 122-EH347/CA16-T841-031	NATIONAL CHURCH RES. OF CUDAHY, CA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-EH050/OH16-T801-016	NATIONAL CHURCH RES. OF JOHNSTOWN OHIO 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No

NATIONAL CHURCH RESIDENCES (Continued)		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-EH103/NY06-T781-008	NCR OF WHEATFIELD HOUSING DEV. FUND COMPANY, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 112-EH106/TX16-T861/006	NATIONAL CHURCH RES. OF SHERMAN, TX 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 044-KH216	NATIONAL CHURCH RES. OF SHELBY, MI 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 122-EH367/CA16-T841-051	NATIONAL CHURCH RES. OF SAN DIEGO CA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-EH271	NCR OF QUEENSBURY HOUSING DEV. FUND CO., INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 066-EH257	NATIONAL CHURCH RES. OF N. FT. MYERS, FL. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH286	NATIONAL CHURCH RES. OF LAWRENCE PARK, PA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM	No No No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **WV28-0378-201/045 EH 001**	WEST VIRGINIA HOMES, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **034-10545-RKF**	NATIONAL CHURCH RES. OF DELMONT PA 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		WISDOM, SHERRY	No
		MASON, RAY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **043-EH014/0816-2180-201.**	NATIONAL CHURCH RES. OF CHILLICOTH OHIO 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **042-EH410/0812-T871-021**	RIVERVIEW TERRACE, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No

NATIONAL CHURCH RESIDENCES (Continued)		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 133-EU018/TX16-T851-019	NATIONAL CHURCH RES. OF ANDREEWS TX 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-EH314	NATIONAL CHURCH RES. OF ZANESVILLE OH 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 031-EH227/NJ39-T871-007	NATIONAL CHURCH RES. OF SOUTH RIVER, NJ 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No

NATIONAL CHURCH RESIDENCES (Continued)		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-KH226/HY06-T871-013	NCR OF SOLVAY HOUSING DEV. FUND COMPANY, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 073-KH317	NATIONAL CHURCH RES. OF RICHMOND IN 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-KH221/HY06-T871-008	NCR OF WEBSTER HOUSING DEV. FUND COMPANY, INC. 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 031-KH201/NJ39-T861-003	NATIONAL CHURCH RES. OF EAST BRUNSWICK, NJ 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD	No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 123-EH075/AZ20-T861-007	NATIONAL CHURCH RES. OF WICKENBURG AZ 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 017-EH105/CT26-T821-010	NATIONAL CHURCH RES. OF STAMFORD CT 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 013-EH085/NY06-T821-013	MCR OF GREENPORT HOUSING DEV. FUND COMPANY, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 085-EH086/MO36-T821-028	NATIONAL CHURCH RES. OF O'FALLON, MO 2335 NORTH BANKS DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No

NATIONAL CHURCH RESIDENCES (Continued)		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 000-EH086/MD39-T831-003	NATIONAL CHURCH RES. OF CAPITOL HEUGHTS, MD, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 101-EH120/C099-T871-003	NATIONAL CHURCH RES. OF SOUTHERN COLORADO 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 102-EH158/KA16-T861-010	NATIONAL CHURCH RES. OF MANHATTAN KS 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 067-EH227/FL29-T851-039	NATIONAL CHURCH RES. OF LAKE COUNTY, FL. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 013-EH101/MY06-T831-027	NCR OF CAMILUS HOUSING DEV. FUND COMPANY, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 044-EH093/MI28-T821-034	NATIONAL CHURCH RES. OF HARPER WOODS, MI. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 066-EH197/FL29-T851-043	NATIONAL CHURCH RES. OF HIALEAH, FL, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD	No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 063-EH140/FL29-T811-029	NAT. CHURCH RES. OF JACKSONVILLE, FL., INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 114-EH151/TX24-T871-014	NATIONAL CHURCH RES. OF COLUMBUS MS 2335 N. BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 052-EH062/MD06-T811-005	NATIONAL CHURCH RES. OF MARYLAND INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH101/PA20-T811-018	NATIONAL CHURCH RES. OF NESHANNEOC PENNSYLVANIA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No

NATIONAL CHURCH RESIDENCES (Continued)		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 013-KH139/NY06-T851-034	NCR OF GRANVILLE HOUSING DEV. FUND COMPANY, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 067-KH186/FL29-T831-039	NATIONAL CHURCH RES. OF EASTERN FLORIDA, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 082-KH-057/AR37-T821-002	NATIONAL CHURCH RES. OF WEST MEMPHIS, AR 2330 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 115-EH150/TX59-5071-005	NATIONAL CHURCH RES. OF AUSTIN, TX 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 123-MH077/AZ20-T861-009	NATIONAL CHURCH RES. OF SURPRISE, AZ 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 046-EH201/OH10-T881-014	NATIONAL CHURCH RES. SENIOR HOUS. I 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 013-EH062/NY06-T811-024	NCR OF BALLSTON SPA HOUSING DEV. FUND CO., INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No

NATIONAL CHURCH RESIDENCES (Continued)		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 **Federal Action No.: 033-EH192/PA28-T841-024**	NATIONAL CHURCH RES. OF DERRY, PA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **033-EH211/PA28-T851-015**	NATIONAL CHURCH RES. OF CENTRAL PENNSYLVANIA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 **Federal Action No.: 122-EH391/CA16-T851-014**	NATIONAL CHURCH RES. OF CYPRESS CA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 **Federal Action No.: 081-EH102/TN40-T841-011**	NATIONAL CHURCH RES. OF PARIS, TN 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No

NATIONAL CHURCH RESIDENCES (Continued)		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 045-BH004/WV15-2509-204	NATIONAL CHURCH RFS. OF CEREDO, WEST VIRGINIA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 102-EH125/KS16-T842-010	NATIONAL CHURCH RFS. OF OTTAWA, KS 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-EH248/NY06-T881-012	NCR OF CASTLETON HOUS. DEV. FUND COMPANY, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 044-KH-166/MI28-T851-006	NATIONAL CHURCH RES. OF CANTON, MI 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-KH073/OH16-T811-011	NATIONAL CHURCH RES. OF RUSSELL'S POINT, OHIO 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 123-KH085/AZ20-T871-002	NATIONAL CHURCH RES. OF SUPERIOR, AZ 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 085-KH120/MO36-T851-006	NATIONAL CHURCH RES. OF MISSOURI 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM	No No No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-EH046/OH16-T801-012	NATIONAL CHURCH RES. OF BELPRE 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 114-EH119/TX24-T861-005	NATIONAL CHURCH RES. OF EL CAMPO, TX 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 042-8H015	NATIONAL CHUICH RES. OF CUYAHOGA FALLS, OH 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 113-EH030/TX61/T871-008	NATIONAL CHURCH RES. OF CLEBURNE, TX 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No

NATIONAL CHURCH RESIDENCES (Continued)		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 064-EH065/LA48-T811-008	NATIONAL CHURCH RES. OF RUSTON, LOUISIANA, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 081-EH126-/TN40-T861-014	NATIONAL CHURCH RES. OF BOLIVAR, TN 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH072/PA28-T801-011	NATIONAL CHURCH RES. OF BROOKLINE PENNSYLVANIA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 024-EH124/VT36-T821-020	NATIONAL CHURCH RES. OF RUTLAND, VT 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 114-EH076/TX24-T831-009	NATIONAL CHURCH RES. OF SOUTH, TX 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-EH140/NY06-T831-034	NCR OF LYONS HOUSING DEV. FUND CO. INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 044-EH020/MI20-T791-004	NATIONAL CHURCH RES. OF STERLING HEIGHTS, MICHIGAN 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No

NATIONAL CHURCH RESIDENCES (Continued)		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **042-EH146/OH12-T821-001**	NATIONAL CHURCH RES. OF FINDLAY, OH 2335 NORTH BANK DR. COLUMBUS, OH 43228	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **087-EH013/TN37-T791-003**	NATIONAL CHURCH RES. OF KINGSPORT INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **031-EH144/NJ39-T831-013**	NATIONAL CHURCH RES. OF NEW JERSEY 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: **123-EH020/AZ20-T821-006**	NATIONAL CHURCH RES. OF GLENDALE, AZ 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No

NATIONAL CHURCH RESIDENCES (Continued)		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 085-EH034/MO36-T801-002	NATIONAL CHURCH RES. OF ST. CHARLE MISSOURI 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 114-EH166/TX24-T801-012	NATIONAL CHURCH RES. OF WHARTON, TX 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 043-EH110/OH16-T821-010	NATIONAL CHURCH RES. OF MT. STERLING, OH 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W.	No
		KASBERG, JOE	No
		MILLER, ROBERT	No
		SPRUANCE, MELANIE	No
		EVERETT, SHAUNESSY	No
		KAYUHA, DAVE	No
		WALKER, JOHN	No
		STOCK, JOHN	No
		MONKS, JAN	No
		MAST, BARB	No
		BRAININ, DAVID	No
		LOVE, CLARENCE	No
		DAMICO, FRANK	No
		POPE, GINGIE	No
		HERDLE, HOWARD	No
		HERDLE, LEVERNE	No
		ARMSTRONG, JIM	No
		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No

NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 033-EH159/PA28-T831-016	NATIONAL CHURCH RES. OF MERCER, PA 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 065-EH055/MS26-T811-002	NATIONAL CHURCH RES. OF STARKVILLE MS, INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 115-EH119/TX59-T851-009	NATIONAL CHURCH RES. OF NEW BRAUNFELS, TX 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM CARD, JIM MEZIE, LOU KINARD, MIMI WILKINSON, NANCY FRIED, PAULETTE MASON, RAY WISDOM, SHERRY	No No No No No No No No No No No No No No No No No No No No No No No No
NATIONAL CHURCH RESIDENCES 2335 NORTH BANK DRIVE COLUMBUS, OH 43220 Federal Action No.: 014-EH177/NY06-T851-014	NCR OF VICTOR HOUS. DEV. FUND CO., INC. 2335 NORTH BANK DR. COLUMBUS, OH 43220	SLEMMER, THOMAS W. KASBERG, JOE MILLER, ROBERT SPRUANCE, MELANIE EVERETT, SHAUNESSY KAYUHA, DAVE WALKER, JOHN STOCK, JOHN MONKS, JAN MAST, BARB BRAININ, DAVID LOVE, CLARENCE DAMICO, FRANK POPE, GINGIE HERDLE, HOWARD HERDLE, LEVERNE ARMSTRONG, JIM	No No No No No No No No No No No No No No No No No

NATIONAL CHURCH RESIDENCES (Continued)		CARD, JIM	No
		MEZIE, LOU	No
		KINARD, MIMI	No
		WILKINSON, NANCY	No
		FRIED, PAULETTE	No
		MASON, RAY	No
		WISDOM, SHERRY	No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.: 042-43093	BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.: 046-11025	CONNOR, MURPHY & BUHRMAN ATTN: LAWRENCE S. CONNOR 6826 LOOP RD. CENTERVILLE, OH 45459	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.: 046-11024	CONNOR, MURPHY & BUHRMAN ATTN: LAWRENCE S. CONNOR 6826 LOOP RD. CENTERVILLE, OH 45459	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	HITORIC RESTORATION INC. ATTN: CHUCK RUTLEDGE 400 LAFAYETTE ST., SUITE 110 NEW ORLEANS, LA 70130	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	VILLAGE GREEN ASSOCIATES II ATTN: CHARLES FAWCETT 16655 CHESTERFIELD AIRPORT ROAD CHESTERFIELD, MI 63017	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	THE ELDERLY HOUSING CORPORATION OF MARION, IN., ATTN: JENNIFER JANNEY 121 NORTH WASHINGTON ST. MARION, IN 46952	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	THE RANDALL GROUP ATTN: STEVE MOZINSKI 9500 SOUTH WEST BARBUR BLVD. # 300 PORTLAND, OR 97219	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	THE RANDALL GROUP ATTN: STEVE MOZINSKI 9500 SOUTH WEST BARBUR BLVD. # 300 PORTLAND, OR 97219	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	THE RANDALL GROUP ATTN: STEVE MOZINSKI 9500 SOUTH WEST BARBUR BLVD. # 300 PORTLAND, OR 97219	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	THE RANDALL GROUP ATTN: STEVE MOZINSKI 9500 SOUTH WEST BARBUR BLVD. # 300 PORTLAND, OR 97219	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.:	THE RANDALL GROUP ATTN: STEVE MOZINSKI 9500 SOUTH WEST BARBUR BLVD. # 300 PORTLAND, OR 97219	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
BOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.: 046-11026	CONNOR, MURPHY & BUHRMAN ATTN: LAWRENCE S. CONNOR 6826 LOOP RD. CENTERVILLE, OH 45459	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No

HOCC FUNDING CORPORATION WORLDGATE DRIVE SUITE 270 HERNDON, VA 22070 Federal Action No.: **KALAMAZOO PROP. APTS.**	KALAMAZOO PROPERTIES LMTD. PART. I 3083 WASHINGTON STREET, BOX 218 GRANDVILLE, MI 49468	ROBERTS, WILLIAM E. GOODMAN, DAVID L. BEISLER, MARK C. DANIELS, FRANK W.	No No No No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-11024**	GEORGE CALLANTINE & ASSOCIATES 1010 JORIE BOULEVARD OAK BROOK, IL 60521	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-14002**	SUNNYSIDE PRESERVATION PARTNERSHIP 101 E. ONTARIO, SUITE 350 CHICAGO, IL 60611	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **054-35100**	FAIRFIELD ARMS LIMITED PARTNERSHIP 35 E. WACKER DR., SUITE 1300 CHICAGO, IL 60601	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-35607**	RESCORP DEVELOPMENT, INC. ONE E. WACKER DR., SUITE 2900 CHICAGO, IL 60601	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **000-55009**	CHICAGO COMMUNITY DEVELOPMENT CORP 343 S. DEARBORN ST., SUITE 1110 CHICAGO, IL 60604	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-55049**	A.I.M. PARTNERSHIP NO. 4 3026 CARMEL DR. FLOSSMOOR, IL 60422	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-55050**	M. MYERS PROPERTIES, INC. 401 N. WABASH AVE., SUITE 2412 CHICAGO, IL 60611	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-55109**	VOICE OF THE PEOPLE IN UPTOWN 4927 N. KENMORE CHICAGO, IL 60640	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-55117**	TOWN MANAGEMENT 1015 N. CLARK ST. CHICAGO, IL 60610	LARSON, BRUCE R.	No
DEVELOPERS MORTGAGE CORPORATION 221 N. LASALLE STREET, SUITE 3010 CHICAGO, IL 60601 Federal Action No.: **071-55168**	LIGHT ASSOCIATES LIMITED 35 E. WACKER DR., SUITE 1300 CHICAGO, IL 60601	LARSON, BRUCE R.	No
GERSTEN MANAGEMENT COMPANY 15760 VENTURA BLVD. SUITE 828 ENCINO, CA 91436 Federal Action No.: **121-44059**	HAWAIIAN GARDENS APARTMENTS 11950 CENTRALIA ROAD SUITE 828 HAWAIIAN GARDENS, CA 90716	GERSTEN, ALBERT H.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: **065-35418-PM**	FOREST HILLS, LTD P.O BOX 12690 JACKSON, MS 39236	ADAMS, JOHN W. BEISLER, MARK C. BUTLER, SAMUEL J. CROFT, JAMES F. DANIELS, FRANK W. GLASSER, TIMOTHY G. GOODMAN, DAVID L. MACKOV, LINDA L.	No No No No No No No No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: **071-35441**	WIL-FREDS DEVELOPMENT CO. 274 E. INDIAN TRAIL AURORA, IL 60505	ADAMS, JOHN W. BEISLER, MARK C. CROFT, JAMES F. DANIELS, FRANK W. GLASSER, TIMOTHY G. GOODMAN, DAVID L. MACKOV, LINDA L.	No No No No No No No
KROOTH & ALTMAN 2101 L ST., NW SUITE 210 WASHINGTON, DC 20037 Federal Action No.: **123-11016**	BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070	ALTMAN, VICTOR A. BARSKY, DAVID A. CLANCY, PATRICK J. COLE, D. RANDOLPH DELANY, WILLIAM J. GEORGE, MARY JO GRESZES, MARIO B. VIHSTADT, JOHN E. KIJEWSKI, JOSEPH A. LIBRETTA, DONALD F. MAZER, MICHAEL E. TENNANT, WILLIAM S. OPERT, JON I. PERNA, JAMES F.	No No No No No No No No No No No No No No

KROOTH & ALTMAN (Continued)		SELDON, ROBERT C.	No
		SMITH, HARRISON C.	No
		MILTON, MICHAEL J.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: **065-35418-PM**	FOREST HILLS, LTD P.O BOX 12690 JACKSON, MS 39236	ROBERTS, WILLIAM E.	No
		ADAMS, JOHN W.	No
		BEISLER, MARK C.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: **064-11027**	WALL BOULEVARD ASSOCIATES, LTD. ATTENTION: JANE HARRISON P.O. BOX 160306 MOBILE, AL 36616	ADAMS, JOHN W.	No
		ROBERTS, WILLIAM E.	No
		BEISLER, MARK C.	No
		BUTLER, SAMUEL J.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: **064-11026**	OAKLEIGH ASSOCIATES ATTENTION: CHESTER J. STEFAN P.O. BOX BOX 160306 MOBILE, AL 36616	ADAMS, JOHN W.	No
		ROBERTS, WILLIAM E.	No
		BEISLER, MARK C.	No
		BUTLER, SAMUEL J.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No
BANC ONE CAPITAL CORPORATION 13100 WORLDGATE DRIVE, SUITE 270 HERNDON, VA 22070 Federal Action No.: **065-35423-PM**	WINDSOR VILLAGE, LTD. P.O. BOX 160306 MOBILE, AL 36616	ADAMS, JOHN W.	No
		ROBERTS, WILLIAM E.	No
		BEISLER, MARK C.	No
		BUTLER, SAMUEL J.	No
		CROFT, JAMES F.	No
		DANIELS, FRANK W.	No
		GLASSER, TIMOTHY G.	No
		GOODMAN, DAVID L.	No
		MACKOV, LINDA L.	No

[FR Doc. 93-7647 Filed 4-2-93; 8:45 am]
BILLING CODE 4210-01-C

Federal Register

Monday
April 5, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 576
Emergency Shelter Grants Program; Proposed Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 576

[Docket No. R-93-1642; FR-3458-P-01]

Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rules.

SUMMARY: Secretary 832 of the National Affordable Housing Act created a set-aside for Indian tribes and Alaskan Native villages in the Emergency Shelter Grants (ESG) program. The set-aside is being implemented for purposes of immediately available funds through a notice of funding availability (NOFA) published elsewhere in today's **Federal Register**. The Department proposes to amend its regulations governing the ESG program to adopt the set-aside allocation and distribution methodology implemented in the NOFA.

DATES: *Comment Due Date:* June 4, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Department, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4300. A telecommunications device for deaf persons (TDD) is available at (202) 708–2565. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0135.

Background

The Emergency Shelter Grants Program (42 U.S.C. 11371–11377) (ESG program) was originally established as a formula program in section 101(g) of Public Law 99–500 (approved October 18, 1986, 100 Stat. 1783–242), making appropriations for Fiscal Year 1987 as provided for in H.R. 5313. The program was reauthorized, with amendments, in the Stewart B. McKinney Homeless Assistance Act, Public Law 100–77, approved July 22, 1987 (1987 McKinney Act). This proposed rule addresses section 833(f) (104 Stat. 4359) of the National Affordable Housing Act, Public Law 101–625 (approved November 28, 1990, 104 Stat. 4079) (NAHA), which authorizes set-asides for Indian tribes in the ESG program. The definition of Indian tribes also incorporates Alaskan native villages. Because section 832 of NAHA does not establish any specific mechanism for the distribution of the set-aside funds to eligible grantees, the Department has developed the NOFA published elsewhere in today's **Federal Register**.

The ESG Program is intended to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. This proposed rule would include the allocation and distribution methodology developed for the set-aside into the ESG program regulations in 24 CFR part 576. Other statutory changes to the ESG program that are applicable to both formula grantees and grantees under the set-aside competition will be the subject of a future rulemaking procedure.

Extension of Eligibility to Indian Tribes

Section 832(f) of NAHA expressly extends eligibility for assistance under the ESG program to Indian tribes, and has the effect of applying the same formula as used in the Community Development Block Grant (CDBG) program for determining the amount of ESG funds to be set-aside for Indian tribes. The one percent figure for the Indian tribe set-aside is dictated by sections 832(f)(3) and 913(b) of NAHA. The Department has developed a three-phase process for allocation of ESG program funds to Indian tribes. First, one percent of the total ESG program appropriation is reserved for tribes, and the remaining 99 percent is allocated to ESG program formula cities and counties, territories, and States.

The second phase is the allocation of the one percent total set-aside to the six HUD field offices responsible for the Indian CDBG program. In the final phase, grant awards are made to tribes through a competition conducted by the six HUD field offices, using rating criteria described in the NOFA published elsewhere in today's **Federal Register**.

In developing the second and third phases of this process, the Department identified three goals:

(a) Providing enough money to fund at least one project in each HUD Indian CDBG program region;

(b) Maintaining a reasonably equitable distribution of funds among Indian program regions; and

(c) Reflecting the actual population of Native Americans on reservations and in urban areas.

After extensive preliminary research, the Department tested two alternative approaches that it had determined would best meet the three identified goals. Both of these approaches involved supplementing a base amount that would be allocated to each of the appropriate field offices. However, under the first alternative the supplemental amount would be calculated using the same formula percentage received by the field office in the previous fiscal year under the Indian CDBG Program. Under the second alternative the supplemental amount would be calculated according to the percentage of Native American, Eskimo, and Aleut populations in the 20 largest Standard Metropolitan Statistical Areas served by each field office, using 1990 Census of Population figures.

The Department tested three base amounts, and compared funding levels that resulted from the application of each of the two alternative approaches under consideration. Because of the level of funds available, a base amount of 15 percent of the total allocation for Indian tribes was established for each region to meet the first two of the goals identified for the Indian tribe ESG Program allocation. In Region 10, where there are two field offices administering the Indian CDBG Program, the Department determined that a base amount of 7.5 percent of the total allocation for Indian tribes should be allocated to each of those field offices.

Comparisons of the ultimate funding levels under each of the alternative approaches showed that there would be little difference between the approaches in the amount that each field office would receive. As a result, the Department believes the approach that uses the previous fiscal year's percentage under the Indian CDBG

Program meets the three identified goals, and has the advantages of simplicity and consistency, because the Department already administers other program funds using the same methodology. Therefore, this is the approach that the Department has adopted in the NOFA, and on which it is requesting comments by this proposed rule.

The Department expects to publish a final rule that will codify this approach in a new section of 24 CFR part 576, and will make conforming amendments to part 576 as necessary.

Other Matters

Major Rule

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. An analysis of the rule indicates that it would not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this proposed rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to the implementation of statutory changes that recognize the eligibility of Indian tribes for emergency shelter grant funds.

Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have federalism implications, because the regulatory changes would not have substantial direct effects on States, including units of local government and other political subdivisions established by the States; on the relationship between the Federal Government and the States; or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of the proposed rule are limited to implementation of statutory changes that make Indian tribes eligible for assistance under the ESG program.

Exective Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.231.

List of Subjects in 24 CFR Part 576

Community facilities, Grant programs—housing and community development, Emergency shelter grants, Homeless, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR part 576, Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act, by adopting as regulatory amendments the allocation and distribution method set forth in the NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages published in today's **Federal Register**.

Authority: 42 U.S.C. 3535(d) and 11376.

Dated: February 16, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs, Office of Community Planning and Development.

[FR Doc. 93–7805 Filed 4–2–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-3492; FR-3201-N-01]

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability.

SUMMARY: This notice announces the availability of $1,964,000 in funds for emergency shelter grants (ESG) to be allocated to Indian tribes and Alaskan Native villages by competition. For purposes of future funding rounds, interested persons may comment on the procedure for allocating and distributing the set-aside funds by referring to the proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published elsewhere in today's **Federal Register**. These grants will be governed by all provisions applicable to the ESG program, including the provisions in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) that became effective upon the enactment of the law, such as the authorization to make eligible the use of grant funds for staff costs relating to the operation of emergency shelters up to a maximum amount of 10% of the grant, and the requirement that the recipient establish a "formal process" in order to terminate assistance under the program. Eligible activities include the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, payment of certain operating and essential services expenses, and homeless prevention activities. This notice contains:

(1) Information concerning eligible applicants;

(2) Information on funding available within each HUD Indian program region;

(3) Information on application requirements and procedures; and

(4) A description of applicable statutory changes to the ESG program.

DATES: Applications for assistance will be available beginning April 12, 1993, and must be received by the appropriate HUD Office of Indian Programs by no later than 4 p.m. local time (i.e., the time in the office where the application is submitted) on June 28, 1993. At the time of submission, one copy of the completed application must also be sent to HUD Headquarters at the address stated below. A determination that an application was received on time will be made solely on receipt of the original application at the Office of Indian Programs.

This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of ineligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: An original of the application must be sent to the HUD Office of Indian Programs serving the area in which the applicant's project is located. A list of addresses and telephone numbers for the Offices of Indian Programs appears as an Appendix to this NOFA. At the same time, a copy of the completed application must also be sent to the following address: James N. Forsberg, Director, Office of Special Needs Assistance Programs, U.S. Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–4300, or (202) 708–2565 (voice/TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0135.

I. Purpose and Substantive Description

A. Authority and Purpose

The ESG program was first established in section 101(g) of Public Law 99–500 (approved October 18, 1986, 100 Stat. 1783–242), making appropriations for FY 1987 as provided in H.R. 5313. The program was reauthorized with amendments in the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987, sections 411–417) (as amended, "McKinney Act"). Section 832(f) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990, 42 U.S.C. 11371–11378) (NAHA) provided for the explicit eligibility of Indian tribes for ESG program assistance and established a set-aside allocation for Indian tribes. Funding was provided for this program in the Department's appropriation acts for fiscal years 1991 (Pub. L. 101–507, approved November 5, 1990), 1992 (Pub. L. 102–139, approved October 29, 1991), and 1993 (Pub. L. 102–389, approved October 6, 1992). Regulations governing the Emergency Shelter Grants (ESG) program are found at 24 CFR 576, except where superseded by statutory amendments under NAHA and the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), as discussed below.

Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. The term "emergency shelter" is defined in 24 CFR 576.3. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities that have not previously received direct ESG assistance.

(1) *Definition of "Indian tribe."* Section 832(f)(1) of NAHA provides that the definition of the term "Indian tribe" has the same meaning given that term in section 102(a)(17) of the Housing and Community Development Act of 1974. An Indian tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native village, of the United States, that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 6701) before repeal of that Act. Eligibility for assistance under the Indian Self-Determination and Education Assistance Act is determined by the Bureau of Indian Affairs.

(2) *Emergency shelter* means any facility, the primary purpose of which is to provide temporary or transitional shelter for the homeless in general or for specific populations of the homeless.

B. Statutory Amendments

This notice addresses section 832 of the NAHA (104 Stat. 4359), which contains numerous amendments to the McKinney Act, and several amendments to the ESG program in the 1992 Act. These statutory amendments supersede applicable provisions of the program regulations found at 24 CFR 576. The Department is publishing in this notice a description of the statutory changes to assist Indian tribes in complying with program requirements, including the NAHA and 1992 Act amendments.

National Affordable Housing Act Amendments: The NAHA changes are described in the following sections I.B(1)–(6) of this NOFA.

(1) *Extension of eligibility to Indian tribes.* Section 832(f) of NAHA expressly extends eligibility for assistance under the ESG program to Indian tribes, and has the effect of applying the same formula as used in the Community Development Block Grant (CDBG) program for determining the amount of ESG funds to be set-aside for Indian tribes. The one percent figure for the Indian tribe set-aside is dictated by sections 832(f)(3) and 913(b) of NAHA. The Department has developed a three-phase process for allocation of ESG program funds to Indian tribes. First, one percent of the total ESG program appropriation is reserved for tribes, and the remaining 99 percent is allocated to ESG program formula cities and counties, territories, and States.

The second phase is the allocation of the one percent total set-aside to the six HUD field offices responsible for the Indian CDBG program. In the final phase, grant awards are made to tribes through a competition conducted by the six HUD field offices, using rating criteria described in Section I.F of this NOFA.

In developing the second and third phases of this process, the Department identified three goals:

(a) Providing enough money to fund at least one project in each HUD Indian CDBG program region;

(b) Maintaining a reasonably equitable distribution of funds among Indian program regions; and

(c) Reflecting the actual population of Native Americans on reservations and in urban areas.

After extensive preliminary research, the Department tested two alternative approaches that it had determined would best meet the three identified goals. Both of these approaches involved supplementing a base amount that would be allocated to each of the appropriate field offices. However, under the first alternative the supplemental amount would be calculated using the same formula percentage received by the field office in the previous fiscal year under the Indian CDBG Program. Under the second alternative the supplemental amount would be calculated according to the percentage of Native American, Eskimo, and Aleut populations in the 20 largest Standard Metropolitan Statistical Areas served by each field office, using 1990 Census of Population figures.

The Department tested three base amounts, and compared funding levels that resulted from the application of each of the two alternative approaches under consideration. Because of the level of funds available, a base amount of 15 percent of the total allocation for Indian tribes was established for each region to meet the first two of the goals identified for the Indian tribe ESG Program allocation. In Region 10, where there are two field offices administering the Indian CDBG Program, the Department determined that a base amount of 7.5 percent of the total allocation for Indian tribes should be allocated to each of those field offices.

Comparisons of the ultimate funding levels under each of the alternative approaches showed that there would be little difference between the approaches in the amount that each field office would receive. As a result, the Department believes the approach that uses the previous fiscal year's percentage under the Indian CDBG Program meets the three identified goals, and has the advantages of simplicity and consistency, because the Department already administers other program funds using the same methodology. Therefore, this is the approach that the Department has adopted in this NOFA. For purposes of implementing a final rule that will govern future funding rounds, the Department has opened for public comment the allocation and distribution approach described in this NOFA. The proposed rule containing information on submission of comments is published elsewhere in today's **Federal Register**.

(2) *Administrative costs.* Section 832(b)(1) of NAHA permits recipients to use up to 5% of an annual ESG Program grant for administrative purposes. Administrative costs include: costs of accounting for the use of grant funds; preparing reports for submission to HUD or to the State; obtaining program audits; conducting environmental reviews; coordinating program activities; and similar costs related to administering the grant. These costs do not include the costs of carrying out other activities eligible under the ESG program.

(3) *Use of funds for essential services.* Section 832(c) of NAHA increased from 20% to 30% the percentage of a grant that may be used to provide essential services. Consistent with this amendment, the Department will apply its waiver authority in section 414(b) of the McKinney Act to the new, higher 30% limitation. As with the previous 20% cap, the 30% limit is to be measured against the aggregate amount of each emergency shelter grant to an Indian tribe. Section 832(f)(6) of NAHA makes the limitations on the provision of essential services applicable to Indian tribes.

(4) *Use of funds for prevention of homelessness.* Homelessness prevention was added as a category of eligible activities by section 423 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–688, approved November 7, 1988), which also treated these activities as "essential services." However, section 832(d) of NAHA withdraws homelessness prevention activities from categorization as "essential services", and imposes a separate limit of 30% of the aggregate amount of assistance to any recipient, including an Indian tribe, that may be used for efforts to prevent homelessness.

Thus, under NAHA, essential services and homelessness prevention are now each subject to a 30% cap. However, unlike the category of essential services, there is no statutory authority to permit a waiver of the cap on the amount of assistance that may be used for homelessness prevention activities. By its express terms, the statutory waiver is available only in the category of essential services.

(5) *Confidentiality of records for family violence services.* Section 832(e) of NAHA requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG Program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter. This new certification is included in the application kit, as provided in Section III of this NOFA

(6) *Establishes habitability standards.* Section 832(g) of NAHA requires the Secretary to prescribe the minimum standards of habitability appropriate to ensure that emergency shelters assisted by this program are environments that provide appropriate privacy, safety, and

sanitary and other health-related conditions for homeless persons and families. A description of the Minimum Habitability Standards and the required certification is included in the application kit, as provided in Section III of this NOFA. The Habitability Standards that have been developed under section 832(g) of NAHA to apply to emergency shelters are as follows:

(a) *Structure and materials.* The shelter shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(b) *Access.* The shelter shall be accessible and capable of being utilized without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire.

(c) *Space and security.* Each occupant shall be afforded adequate space and security for the occupant's person and belongings. Each occupant shall be provided an acceptable place to sleep.

(d) *Interior air quality.* Every room or space shall be provided with natural or mechanical ventilation. The shelter shall be free of pollutants in the air at levels that threaten the health of the occupants.

(e) *Water supply.* The water supply shall be free from contamination at levels that threaten the health of the recipients.

(f) *Sanitary facilities.* Shelter occupants shall have access to sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(g) *Thermal environment.* The shelter shall have adequate heating and cooling facilities in proper operating condition.

(h) *Illumination and electricity.* The shelter shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(i) *Food preparation and refuse disposal.* All food preparation areas shall contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(j) *Sanitary condition.* The shelter and its equipment shall be maintained in sanitary condition.

Housing and Community Development Act of 1992 Amendments: The 1992 Act changes are described in the following sections I.B(7)–(9) of this NOFA.

(7) *Certification of involvement of homeless individuals and families.* The recipient must certify that, to the maximum extent practicable, it will involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing services and in constructing, renovating, maintaining, and operating facilities, where assistance is provided for those activities under the program.

(8) *Termination of assistance.* The recipient may terminate assistance provided to an individual or a family only in accordance with a formal process established by the recipient that recognizes the rights of the individuals affected, which may include a hearing.

(9) *Eligibility of staff costs.* Staff costs relating to the operation of emergency shelters are specifically recognized as an eligible activities, but not more than 10 percent of the amount of any grant may be used for these costs.

C. CHAS and NEPA Requirements

(1) Indian tribes are not included in NAHA's definition of "jurisdiction", the entity charged with submitting a Comprehensive Housing Affordability Strategy (CHAS) under section 105 of NAHA. Therefore, Indian tribes are not required to submit a CHAS. Furthermore, Indian tribes will not be required to certify to consistency with the State's CHAS to receive ESG funding. The Department reiterates its position stated in adopting the CHAS Interim Rule (56 FR 4484, February 4, 1991) that, given the sovereign status of Indian tribes, a State cannot be deemed the appropriate jurisdiction to apply its housing strategy to programs administered by Indian tribes (see 56 FR 4481–82).

(2) The assumption of environmental responsibilities specified in section 104(g)(1) of the Housing and Community Development Act of 1974 was authorized for certain recipients of assistance under the McKinney Act, pursuant to section 443 of the McKinney Act. Assumption of the responsibilities for the ESG program is set forth in 24 CFR 576.52, and shall apply to Indian tribes in the same manner as described for a unit of general local government or territory.

D. Allocation Amounts

This notice announces the availability of a total of $1,964,000 in funding provided by the Department's appropriations acts for fiscal years 1991, 1992, and 1993 for competitive grants to Indian tribes for emergency shelter grants. Indian Program Office set-aside allocations of the total amount are detailed in the following chart:

Chart 1.—Allocation of ESG Set-Aside for Indian Tribes by HUD

[Indian Program Offices for FYs 1991–1993]

Chicago (Region V)	$325,428
Oklahoma City (Region VI)	376,433
Denver (Region VIII)	373,687
Phoenix (Region IX)	528,051
Seattle (Region X)	167,700
Anchorage (Region X)	192,701
Total	1,964,000

HUD reserves the right to negotiate reductions in the amounts requested by applicants based on the overall demand for the funds. HUD further reserves the right to reallocate these amounts as provided in section I.G, Ranking and Selection, of this NOFA. Each Indian tribe must spend all of the grant amounts it was awarded within 24 months of the date of the grant award by HUD. Any emergency shelter grant amounts that are not spent within this time period may be recaptured and added to the following fiscal year's ESG set-aside for Indian tribes.

E. Eligibility and Threshold Requirements

Applications are invited from Indian tribes for assistance under the emergency shelter grants set-aside program. Private nonprofit organizations are not eligible to apply directly to HUD for a grant, but may receive funding from a grantee if the grantee determines that the nonprofit has the financial and organizational capacity to carry out the proposed activities.

The selection process for the Indian tribe set-aside program consists of a preliminary threshold review. HUD will review an application to determine whether:

(1) The application is adequate in form, time, and completeness;

(2) The applicant is eligible; and

(3) The proposed activities and persons to be served are eligible for assistance under the program.

F. Rating Criteria

Applications that fulfill each of the threshold review requirements described in section I.E., Eligibility and Threshold Requirements, of this NOFA will be rated up to 1,000 points based on the following criteria. Successful applicants must receive points under each of the criteria.

(1) *Applicant capacity (200 points).* HUD will award up to 200 points to an applicant that demonstrates the ability to carry out activities under its proposed program within a reasonable time, and in a successful manner, after execution of the grant agreement by HUD. Reviewers' knowledge of the applicant's previous experience will weigh heavily

in the scoring. Documented evidence of poor or slow performance will enter strongly into that determination. The applications that rate highest on this criterion will show substantial experience as an organization and/or staff in past endeavors that are directly related to the proposed project.

(2) *Need (200 points).* HUD will award up to 200 points to an applicant that demonstrates the existence of an unmet need for the proposed shelter/housing in the area to be served. The applicants with the highest scores on this criterion will be the ones that:

(a) Clearly define the unmet housing and essential services needs of the homeless population proposed to be served in the area to be served by the project;

(b) Document the greatest unmet need relative to the other applications reviewed;

(c) Demonstrate in-depth knowledge of the population to be served and its needs; and

(d) Set forth an outreach strategy that assures that the intended population will be served.

(3) *Service to hard-to-reach homeless population (150 points).* HUD will award up to 150 points to an applicant that proposes to serve that part of the Indian homeless population that is most difficult to reach and serve, i.e., those persons having a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, sleeping accommodations for human beings. In urban areas, this is usually referred to as living "on the street." To the extent that Indians living on reservation live in such situations (e.g., sleeping in cars, boxes, out in the open), they meet the definition of hard-to-feach.

If an applicant is already operating a shelter, information relating to the previous places of residence of current residents, existing outreach and intake provisions, and referral sources would offer relevant evidence. For new facilities, HUD will focus upon proposed outreach and intake provisions, and, especially, the degree to which those procedures would maximize the likelihood that hard-to-reach homeless persons would be served by the facility. The outreach strategy/intake procedures should be clearly described in the application.

(4) *Appropriateness of essential services (150 points).* HUD will award up to 150 points to an applicant that proposes essential services that:

(a) Are appropriate to the needs of the population proposed to be served;

(b) Are used or coordinated with existing sources of supportive services and networks of support in the community; and

(c) Help, to the degree possible, to move residents to longer term housing situations.

(5) *Quality of the housing or shelter (150 points).* HUD will award up to 150 points to an applicant that proposes shelter/housing that meets or exceeds the minimum habitability standards, is appropriate to the shelter needs of the population proposed to be served, and ensures the safety and security of the residents of the shelter/housing.

(6) *Assurance of residents' transition from emergency housing (150 points).* HUD will award up to 150 points to an applicant that has or will have mechanisms in place to move residents of the emergency housing to transitional or permanent housing. The mechanisms for moving people in emergency housing to longer term situations might include case management, contacts with other community agencies/organizations for housing referrals, housing counseling, rental assistance, and transitional or permanent housing operated by the same organization that is operating the facility to be funded with Indian ESG funds. HUD will be looking for the means by which residents of the emergency housing will move to transitional or permanent housing that is affordable and appropriate to their needs.

G. Ranking and Selection

Applications from Indian tribes within the area served by the applicable HUD Office of Indian Programs will be assigned a rating score and placed in ranked order, based upon the rating criteria listed in section I.F. of this NOFA. Only those applications receiving points under each of the rating criteria, and at least 500 points in total, will be given funding consideration. In the final stage of the selection process, qualified applicants will be selected for funding in accordance with their ranked order within each region or field office, to the extent that funds are available within that region or field office.

In the event of a tie between applicants, the applicant with the highest total points for rating criterion (2), Need, in section I.F of this NOFA, will be selected. In the event of a procedural error that, when corrected, would warrant selection of an otherwise eligible applicant under this NOFA, HUD may select that applicant when sufficient funds become available.

Depending on the availability of funds, the Department may fund qualified applications regardless of location. If an Indian program office has insufficient funds to make awards to all of its qualified applicants, the Department may reallocate funds to this office from any other Indian program office that has funds remaining after making awards to all of its qualified applications.

II. Application Process

A. Obtaining Applications

Application packages will be available beginning February 15, 1993, from the HUD Offices of Indian Programs listed in the appendix to this NOFA.

B. Submitting Applications

Information regarding the submission of applications is included in the package.

An original application must be received at the HUD Office of Indian Programs serving the area in which the applicant's project is located by no later than 4 p.m. local time (i.e., the time in the office where the application is submitted) on June 28, 1993. A list of Offices of Indian Programs appears as an Appendix to this NOFA. Applications transmitted by FAX will not be accepted.

At the time of submission, one copy of the completed application must also be sent to HUD's Office of Special Needs Assistance Programs at the address listed at the beginning of this NOFA. A determination that an application was received on time will be made solely on receipt of the original application at the Office of Indian Programs.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of ineligibility brought about by unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

(1) Applicant Information, including name, address, contact person, and telephone number.

(2) Standard Form 424;

(3) Certifications of compliance with the requirements of:

(a) 24 CFR 576.21(a)(4)(ii), concerning assistance provided for homelessness

prevention activities; § 567.51(b)(2)(v), concerning the funding of ESG activities in commercial facilities; § 576.73, concerning the continued use of buildings as emergency shelters or the population to be served; § 576.75, concerning building standard; § 576.77, concerning assistance to the homeless; and § 576.80, concerning displacement and relocation;

(b) The Indian Civil Rights Act (25 U.S.C. 1301), and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07);

(e) Executive Orders 11625, 12432, and 12138, promoting the use of minority business enterprises and women-owned businesses to the maximum extent consistent with the Indian Self-Determination and Education Assistance Act;

(f) The requirements of 24 CFR part 24, concerning the Drug-Free Workplace Act of 1988;

(g) Section 832(e)(2)(C) of NAHA, concerning the confidentiality of records pertaining to any individual provided family violence prevention or treatment services;

(h) Section 832(g) of NAHA, concerning minimum hability standards prescribed by the Department;

(i) Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, concerning assumption of the HUD environmental review responsibilities;

(j) Section 576.71(b)(2)(vii), concerning compliance with tribal law in the submission of an application for an emergency shelter grant, and possession of legal authority to carry out emergency shelter grant activities.

(k) Prohibitions on the use of Federal funds for lobbying, and the completion of SF–LLL, Disclosure Form to Report Lobbying, if applicable.

(l) 42 U.S.C. 11375(c)(7), as added by the Housing and Community Development Act of 1992, concerning the involvement through employment, volunteer services, or otherwise, to the maximum extent practicable, of homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities.

(4) Form HUD–2880, Applicant/Recipient Disclosure/Update Form, if applicable.

(5) Project Summary and Proposed Budgets.

(6) Description of the homeless population to be served.

(7) Facility Description.

(8) Narrative addressing the rating criteria.

(9) Matching funds certification and documentation, as required under § 576.51(b)(2)(ii), § 576.71, and section 415(a) of the McKinney Act (42 U.S.C. 11375(a)).

IV. Corrections to Deficient Applications

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of, and in accordance with, HUD's letter notifying the applicant of any such deficiency. If the applicant fails to submit the corrections within the 14-day cure period, HUD will disqualify the application.

The opportunity to submit corrections applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application.

V. Other Matters

A. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7.30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in the Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds set aside for Indian tribes for emergency shelter activities, and invites applications from eligible applicants.

C. Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that this notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance, and general well-being. Since any impact on families is beneficial, no further review is considered necessary.

D. Section 102, HUD Reform Act; Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development

Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Section 112 HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Urban Department Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

H. The Catalog of Federal Domestic Assistance program number is 14.231.

Authority: 42 U.S.C. 11376; 42 U.S.C. 3535(d).

Dated: February 16, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs, Community Planning and Development.

Appendix—HUD Offices of Indian Programs

All HUD numbers may be reached via Telecommunications Devices for the Deaf (TDD) by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300 (not a toll-free number). Any additional TDD number that is available for an individual program office is listed after the appropriate office's address.

Chicago (includes all States east of the Mississippi River plus Iowa and Minnesota):
Director, Office of Indian Programs, Chicago Regional Office, Ralph H. Metcaffe Federal Building, 77 W. Jackson Blvd., Chicago, IL 60606–5760; (312) 353–4532; TDD (312) 353–7143.

Oklahoma City (includes Oklahoma, Louisiana, Kansas, and Texas, except West Texas):
Director, Indian Programs Division, Oklahoma City Office, Alfred P. Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73101–3202; (405) 231–4101; TDD (405) 231–4181.

Denver (includes Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming):
Director, Office of Indian Programs, Denver Regional Office, Executive Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–2963; TDD (303) 844–6158.

Phoenix (includes Arizona, New Mexico, West Texas, Hawaii, California, and Nevada):
Director, Indian Programs Office, Two Arizona Center, 400 N. Fifth St., Suite 1650, Arizona Center, Phoenix AZ 85004–2361; (602) 379–4156; TDD (602) 379–4461.

Seattle (includes Washington, Idaho, and Oregon):
Director, Office of Indian Programs, Seattle Regional Office, Federal Office Building, 909 1st Ave., Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

Anchorage (includes Alaska):
Director, Community Planning and Development Division, Anchorage Office, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513–7537; (907) 271–3669; (TDD only via 1–800–877–8339).

[FR Doc. 93–7806 Filed 4–2–93; 8:45 am]

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Monday, April 5, 1993

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Weekly Compilation of Presidential Documents	523–5230

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Electronic Bulletin Board	275–1538, 275–0920
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Privacy Act Compilation	523–3187
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TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, APRIL

17081–17320.....1
17321–17490.....2
17491–17772.....5

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12842.....17081

9 CFR

Proposed Rules:
94.....17462

12 CFR

226.....17083
748.....17491
791.....17492

Proposed Rules:
327.....17533

14 CFR

71.....17494

Proposed Rules:
71.....17541, 17543

17 CFR

1.....17495
30.....17495
33.....17495
180.....17495
190.....17495

18 CFR

Proposed Rules:
141.....17544
1301.....17553

21 CFR

Ch. I.....17085
1.....17085
5.....17091, 17093, 17094, 17095, 17096, 17105, 17105
12.....17095
14.....17095
20.....17096, 17097
73.....17506, 17508
74.....17098, 17510
100.....17096, 17097
101.....17085, 17096, 17097, 17099, 17100, 17101, 17102, 17103, 17104
102.....17102, 17103
104.....17104
105.....17096, 17104
130.....17103, 17105
131.....17105
133.....17105
135.....17103, 17105
136.....17103
137.....17103
139.....17103
145.....17103
146.....17103
150.....17103
152.....17103
155.....17103
156.....17103
158.....17103
160.....17103
161.....17103
163.....17103
164.....17103
166.....17103
168.....17103, 17105
169.....17103
172.....17098
177.....17098
178.....17098, 17512, 17512, 17513, 17514
186.....17098
189.....17098
558.....17515, 17516
1308.....17106

Proposed Rules:
100.....17171
101.....17171
102.....17171
135.....17172
161.....17171
330.....17553
358.....17554

24 CFR

50.....17164
574.....17164
905.....17164
3500.....17165

Proposed Rules:
125.....17172
576.....17764

26 CFR

1.....17166
301.....17516, 17517

Proposed Rules:
1.....17557

28 CFR

35.....17520
36.....17521

Proposed Rules:
36.....17558

30 CFR

Proposed Rules:
935.....17173

33 CFR

100.....17525
162.....17525
165.....17525

Proposed Rules:
165.....17567

34 CFR

377.....17308

36 CFR

Proposed Rules:
1191.....17175

40 CFR

Proposed Rules:
80.....17175

42 CFR

413.....17527

46 CFR

174.....17316

47 CFR

1.....17528
61.....17166, 17528
64.....17167
76.....17530

Proposed Rules:
2.....17180
80.....17180, 17568
87.....17568
94.....17568
97.....17180

49 CFR

821.....17531
826.....17531

50 CFR

611.....17462
658.....17169
685.....17462

Proposed Rules:
216.....17569
226.....17181
672.....17193, 17196
675.....17196, 17200

LIST OF PUBLIC LAWS

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Last List March 31, 1993

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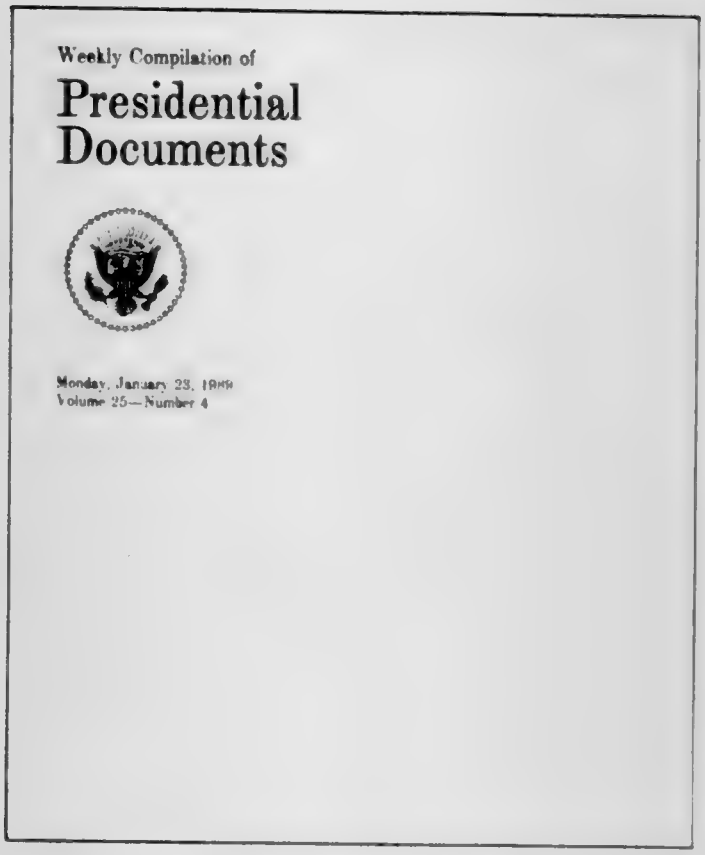

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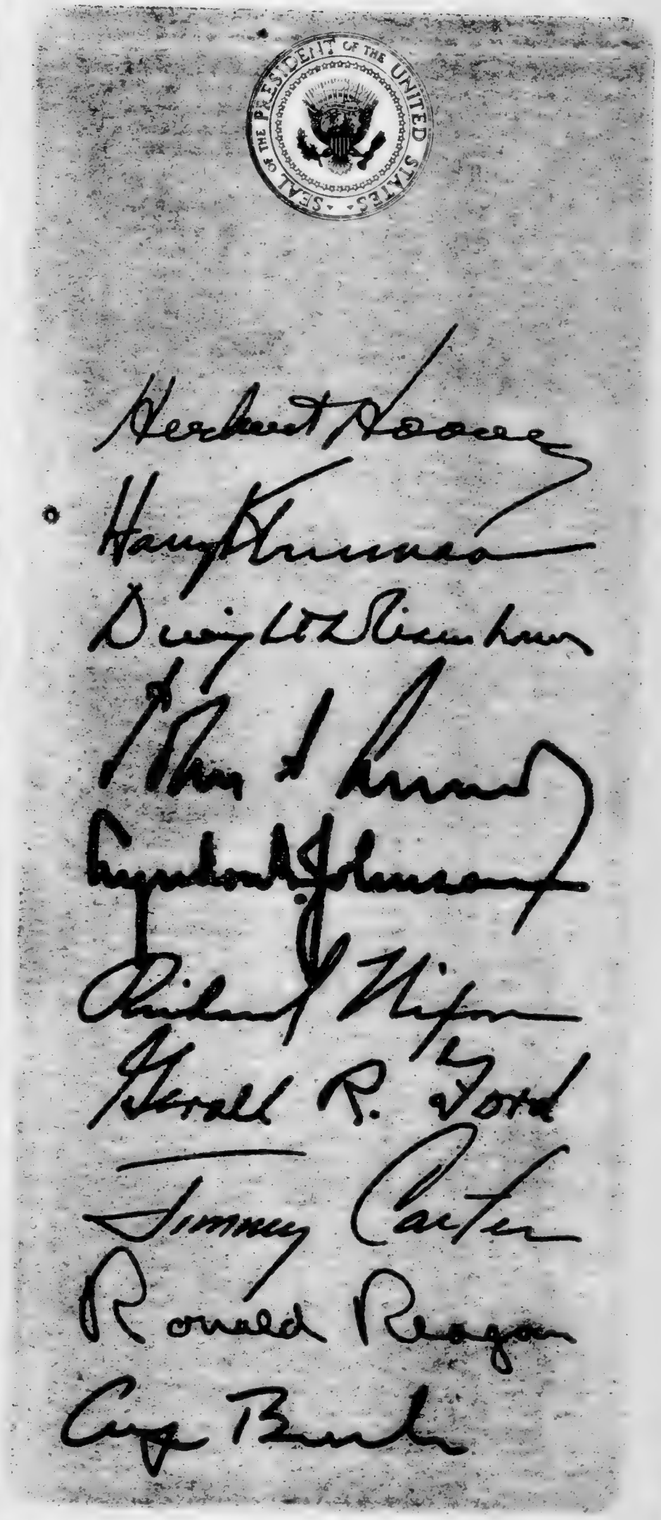

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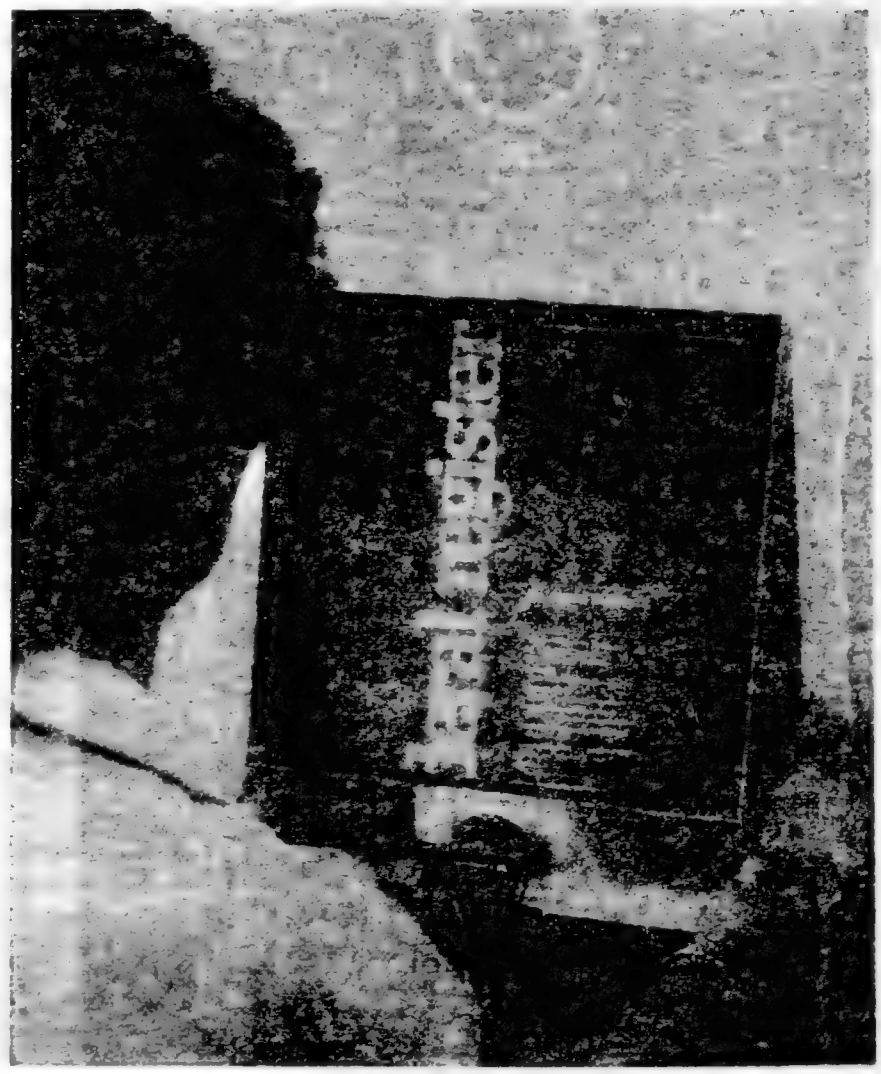

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Contents

Federal Register

Vol. 58, No. 64

Tuesday, April 6, 1993

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
British Technology Group USA, 17826

Agriculture Department
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farmers Home Administration
See Forest Service
See Rural Electrification Administration
NOTICES
Import quotas and fees:
Meat import limitations; quarterly estimates, 17825

Animal and Plant Health Inspection Service
NOTICES
Genetically engineered organisms for release into environment; permit applications, 17825

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Leakage-free linearly varying axial permanent magnet field source, etc., 17868

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Childhood leukemia and paternal ionizing radiation exposure; epidemiology study; NIOSH meeting, 17894
Meetings:
Vital and Health Statistics National Committee, 17894
Proposed environmental protocol for methods determination for obtaining respiratory wood dust exposure levels by task; construction industry; NIOSH meeting, 17894

Coast Guard
RULES
Class II civil penalties, 17926

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Sri Lanka, 17863

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Wheat acreage reduction; 1994 program, 17807

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Caribe Marketing & Sales Co. Inc., 17864
Ektelon, Inc., 17866

Copyright Office, Library of Congress
RULES
Claims registration:
Daily newspapers; group registration; correction, 17778

Defense Department
See Army Department
See Navy Department
NOTICES
Meetings:
Science Board task forces, 17868

Education Department
NOTICES
Meetings:
Indian Education National Advisory Council, 17874

Employment and Training Administration
NOTICES
Adjustment assistance:
Nerco Oil & Gas, Inc., 17908
Meetings:
Unemployment Compensation Advisory Council, 17908
Applications, hearings, determinations, etc.:
Dover Electronics Co. et al., 17909
Five Sons Coats, 17910

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Electricity export and import authorizations, permits, etc.:
Central Power & Light Co., 17880
Citizens Utilities, 17881
Environmental restoration and waste management:
Mixed waste, plans for treating; submission schedule; Federal Facility Compliance Act implementation, 17875

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 17780
Pennsylvania, 17778
Air quality planning purposes; designation of areas:
Tennessee, 17783
NOTICES
Agency information collection activities under OMB review, 17891
Drinking water:
Public water supply supervision program—
Hawaii, 17892
North Dakota, 17891
Meetings:
Clean Air Act Advisory Committee, 17892

Water pollution control:
Clean Water Act—
Total maximum daily loads; lists of waters; availability, 17892

Executive Office of the President
See Presidential Documents

Farmers Home Administration
NOTICES
Agency information collection activities under OMB review, 17827

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arkansas, 17786
California, 17786
Florida, 17786
Radio services, special:
Private land mobile services—
Qualified private carrier paging systems at 900 MHz; channel exclusivity, 17787
PROPOSED RULES
Common carrier services:
Domestic nondominant common carriers; tariff filing requirements, 17813
Radio services, special:
Private land mobile services—
Qualified private carrier paging systems at 900 MHz; channel exclusivity, 17819
Radio stations; table of assignments:
Arizona, 17816, 17817, 17818
California, 17816
Texas, 17818
NOTICES
Agency information collection activities under OMB review, 17893
Rulemaking proceedings; petitions filed, granted, denied, etc., 17894

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 17883
Clearfield Partners, L.P., 17881
Columbia Gas Transmission Corp., 17884
El Paso Natural Gas Co., 17884
Florida Power & Light Co., 17884
Great Lakes Gas Transmission Limited Partnership, 17885
KN Energy, Inc., 17886
Mississippi River Transmission Corp., 17886
Northern Natural Gas Co., 17886, 17887
United Gas Pipe Line Co., 17887

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
SeaEscape Cruises Limited, 17894

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Burlington Northern Railroad Co., 17921

Federal Reserve System
NOTICES
Notices
Meetings; Sunshine Act, 17924

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
United Surety & Indemnity Co., 17922

Fish and Wildlife Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 17776

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
Export applications—
Bacitracin zinc Type A medicated article for chicken, turkey, and swine feeds, 17895
Biological products:
Export applications—
Ortho Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K (Monoclonal); Control, Ortho BioVue System, 17895
Mannan, Muhammad Z.; debarment order, 17896

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority), 17776
NOTICES
Appeal exemption; timber sales:
Uinta National Forest, UT, 17858
Environmental statements; availability, etc.:
Boise National Forest, ID, 17859
Meetings:
Allegheny Wild and Scenic River Advisory Council, 17860

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 17882
Special refund procedures; implementation, 17887

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Intercompany transfer pricing regulations; correction, 17775

International Trade Administration
NOTICES
Applications, hearings, determinations, etc.:
Naval Hospital Oakland et al., 17861

Transportation Department et al., 17861
University of Georgia Research Foundation et al. 17862

Interstate Commerce Commission
RULES
Practice and procedures:
Fee billing and debt collection. 17788

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Rand Project, CA, 17905
Realty actions; sales, leases, etc.:
Colorado, 17906
New Mexico, 17906
Resource management plans, etc.:
Box Elder Resource Area, UT. 17907

Library of Congress
See Copyright Office, Library of Congress

National Credit Union Administration
PROPOSED RULES
Credit unions:
Organization and operations—
Supervisory committee audits and verifications, 17808

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 17910

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Glazing materials—
Rigid plastic, 17787

National Institutes of Health
NOTICES
Meetings:
National Institute of Mental Health, 17897
Public Health Service research grant application; committee to revise, 17897

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 17806
Pacific halibut, 17791
Marine mammals:
Bottlenose dolphins in U.S. Mid-Atlantic coastal-migratory stock depletion; taking and importation restrictions, 17789
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 17821

National Park Service
NOTICES
Meetings:
Gettysburg National Military Park Advisory Commission, 17907
National Register of Historic Places.
Pending nominations, 17907

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 17924

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closures—
Dahlgren Division, Naval Surface Warfare Center, VA, 17873
Element II, breakwater pier construction, Naval Station Everett, WA, 17873
Facilities development and relocation of Navy activities to Guam from Philippines, 17874

Nuclear Regulatory Commission
NOTICES
Meetings:
International Nuclear Event Scale (INES) reporting system; NRC participation; meeting, 17911
Regulatory Review Group, 17911
Notices
Meetings; Sunshine Act, 17924
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 17914
Duquesne Light Co., 17912

Presidential Documents
PROCLAMATIONS
Special observances:
Education and Sharing Day, U.S.A. (Proc. 6540), 17773

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Associated Electric Cooperative, Inc., 17860

Securities and Exchange Commission
NOTICES
Securities uniformity law; annual conference, 17915
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 17918
Cincinnati Stock Exchange, Inc., 17919
International Securities Clearing Corp., 17920

Small Business Administration
NOTICES
Disaster loan areas:
Florida, 17921
Interest rates; quarterly determinations, 17921
License surrenders:
Old Stone Capital Corp., 17921

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing certified laboratories meeting minimum standards, list, 17897
Grants and cooperative agreements; availability, etc.:
Community care and effective services and supports (access) for homeless persons with severe mental illness; demonstration projects, 17899

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming, 17811

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service

United States Information Agency
NOTICES
Agency information collection activities under OMB review, 17922

Veterans Affairs Department
NOTICES
Meetings:
Career Development Committee, 17923

Separate Parts In This Issue

Part II
Department of Transportation, Coast Guard, 17926

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue

3 CFR

Proclamations:
6540.....17773

7 CFR

Proposed Rules:
1413.....17807

12 CFR

Proposed Rules:
701.....17808

26 CFR
1.....17775

30 CFR

Proposed Rules:
950.....17811

33 CFR
20.....17926

36 CFR
242.....17776

37 CFR
202.....17778

40 CFR
52 (2 documents).....17778, 17780
81.....17783

47 CFR
73 (3 documents).....17786,
90.....17787

Proposed Rules:
61.....17813
73 (7 documents).....17816, 17817, 17818
90.....17819

49 CFR
552.....17787
1002.....17788
1017.....17788
1018.....17788
1312.....17788
1313.....17788
1314.....17788

50 CFR
100.....17776
216.....17789
301.....17791
672.....17806

Proposed Rules:
672.....17821
675.....17821

Federal Register
Vol. 58, No. 64
Tuesday, April 6, 1993

Presidential Documents

Title 3—

The President

Proclamation 6540 of April 2, 1993

Education and Sharing Day, U.S.A., 1993

By the President of the United States of America

A Proclamation

As America approaches a new century, we face hard truths and must take strong steps. As a Nation, we must provide hope for all Americans and opportunity for them to compete and to succeed. A sound, well-rounded education that prepares students for achievement and success is a moral imperative and an economic necessity.

The United States must work to improve the quality of education for all students, to ensure access and opportunity, and to build public-private partnerships, all of which will help students meet high standards of achievement. Accomplishing that mission will require the involvement of everyone—not just teachers and administrators, but every person, every family, and every community. We must take responsibility for ensuring the success of generations to follow. I commend the leadership and commitment of those inside and outside of schools who are working each day to promote and encourage excellence in education for all Americans.

Our Founders saw themselves in the light of posterity. We must do the same. John Kennedy reminded us that civilization is a race between education and catastrophe—and it is up to us to determine the winner.

To recognize the work of Rabbi Menachem Mendel Schneerson, the leader of the Lubavitch movement, on the occasion of his 91st birthday on April 2, 1993, the Congress, by House Joint Resolution 150, has designated April 2, 1993, as "Education and Sharing Day, U.S.A." and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 2, 1993, as Education and Sharing Day, U.S.A. I call upon the people of the United States, government officials, educators, and volunteers to observe the day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-8153
Filed 4-2-93; 3:24 pm]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 58, No. 64
Tuesday, April 6, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8470]

RIN 1545–AR21

Intercompany Transfer Pricing Regulations Under Section 482; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8470, which was published in the **Federal Register** for Thursday, January 21, 1993 (58 FR 5263). The temporary regulations relate to intercompany transfer pricing.

EFFECTIVE DATE: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary and proposed regulations under section 482 were published in the **Federal Register** on January 21, 1993 (58 FR 5263 and 5310). The temporary regulations are generally effective for taxable years beginning after April 21, 1993. Regulations §§ 1.482–1 and 1.482–2, promulgated in 1968, were redesignated as §§ 1.482–1A and 1.482–2A, and are effective for taxable years beginning on or before April 21, 1993. The temporary regulations reserved § 1.482–2T (a), (b), and (c), dealing with loans and advances, services, and rentals of tangible property, respectively. Text accompanying those provisions referenced to § 1.482–2A (a) through (c). The purpose of this reference was to inform the reader that the provisions of the 1968 regulations dealing with loans and advances, services, and rentals of tangible property continue to apply under the temporary regulations. This correction notice is to clarify such intent and to provide that the provisions of former § 1.482–2 (a), (b), and (c) will continue to apply as the text of § 1.482–2T (a), (b), and (c), respectively.

The temporary regulations also reserved § 1.482–7T on cost sharing to await further action on the cost sharing regulations that were proposed in January, 1992. The 1992 proposed cost sharing regulations will be the basis of the final regulations that will be promulgated as § 1.482–7, and therefore, are the provisions on which comments are solicited. The intent was to have the cost sharing provisions of the 1968 regulations apply during the period before finalization of the 1992 proposed regulations. This correction notice is to clarify such intent and to provide that the text of § 1.482–2A(d)(4), the 1968 regulations cost sharing provisions, will continue to apply as § 1.482–7T during the period before further action is taken on the 1992 proposed cost sharing regulations.

Need for Correction

As published, T.D. 8470 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8470), which was the subject of FR Doc. 93–1109, is corrected as follows:

1. On page 5271, column 2, instructional Par. 1a. is corrected to read as follows:

"**Par. 1a.** Section 1.482–1 is redesignated as § 1.482–1A and an undesignated centerheading preceding § 1.482–1A is added to read as follows:".

2. On page 5271, column 2, immediately preceding instructional Par. 2., instructional Par. 1b. and its regulatory text is added to read as follows:

Par. 1b. Section 1.482–2A is added and § 1.482–2 (d) and (e) are redesignated as § 1.482–2A (d) and (e) to read as follows:

§ 1.482–2A Determination of taxable income in specific situations.

(a)–(c) For applicable rules, see § 1.482–2T (a) through (c).

* * * * *

3. On page 5271, column 2, instructional Par. 2. is corrected to read as follows:

"**Par. 2.** Sections 1.482–0T, 1.482–1T and 1.482–3T through 1.482–7T are added. Section 1.482–2 is redesignated as § 1.482–2T, and § 1.482–2T (d) is added to read as follows:".

4. On page 5271, column 2, in the table of contents under § 1.482–0T, the entries for § 1.482–2T (a) through (c) and § 1.482–7T are correctly added to read as follows:

§ 1.482–0T Outline of regulations under section 482.

* * * * *

§ 1.482–2T Determination of taxable income in specific situations.

(a) Loans or advances.
(1) Interest on bona fide indebtedness.
(i) In general.
(ii) Application of paragraph (a) of this section.
(A) Interest on bona fide indebtedness.
(B) Alleged indebtedness.
(iii) Period for which interest shall be charged.
(A) General rule.
(B) Exception for certain intercompany transactions in ordinary course of business.
(C) Exception for trade or business of debtor member located outside the United States.
(D) Exception for regular trade practice of creditor member or others in creditor's industry.
(E) Exception for property purchased for resale in a foreign country.
(iv) Payment; book entries.
(2) Arm's length interest rate.
(i) In general.
(ii) Funds obtained at situs of borrower.
(iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.
(A) Applicability.
(B) Safe haven interest rate based on applicable Federal rate.
(C) Applicable Federal rate.
(D) Lender in business of making loans.
(E) Foreign currency loans.
(3) Coordination with interest adjustments required under certain other Code sections.
(4) Examples.
(b) Performance of services for another.
(1) General rule.
(2) Benefit test.
(3) Arm's length charge.
(4) Costs or deductions to be taken into account.
(5) Costs and deductions not to be taken into account.

(6) Methods.
(7) Certain services.
(8) Services rendered in connection with the transfer of property.
(c) Use of tangible property.
(1) General rule.
(2) Arm's length charge.
(i) In general.
(ii) Safe haven rental charge.
(iii) Subleases.

* * * * *

§ 1.482–7T Cost Sharing.

* * * * *

§ 1.482–1T [Corrected]

5. On page 5275, column 2, § 1.482–1T(c)(3)(iii), third line from the bottom of the paragraph, the language "allocated or imputed under § 1.482–2(a)" is corrected to read "allocated or imputed under § 1.482–2T(a)".

6. On page 5278, column 1, § 1.482–1T(d)(3)(i)(B), *Example (2).*, line 13, the language "fees paid by S2 to P for the use of P" is corrected to read "fees paid by S2 to P for the use of P's".

7. On page 5282, column 3, § 1.482–2T (a) through (c), lines 1–3, are corrected by removing the text and adding five asterisks in their place to read as follows:

§ 1.482–2T Determination of taxable income in specific situations.

* * * * *

(d) * * *

§ 1.482–3T [Corrected]

8. On page 5285, column 2, § 1.482–3T(c)(4), paragraph (ii) of *Example 10.*, last line in the column, the language "XY then a further adjustment to their gross" is corrected to read "XY a further adjustment to their gross".

§ 1.482–4T [Corrected]

9. On page 5289, column 1, § 1.482–4T(e)(3)(i), line 3, the language "as provided in § 1.482–2A(d)(4) (cost" is corrected to read "as provided in § 1.482–7T (cost".

10. On page 5289, column 2, § 1.482–4T(e)(3)(iii), last line in the paragraph, the language "will be determined under § 1.482–2A(c)" is corrected to read "will be determined under § 1.482–2T(c)".

11. On page 5293, column 1, § 1.482–7T is correctly added in the appropriate place to read as follows:

§ 1.482–7T Cost sharing.

Where a member of a group of controlled entities an interest in intangible property as a participating in a bona fide cost-sharing arrangement with respect to development of such intangible property, the district shall not make allocations with respect to such except as may be appropriate to reflect each arm's length share of the costs and risks of developing property. A bona fide cost-sharing arrangement is agreement, in writing, between two or more members of controlled entities providing for the sharing of costs risks of developing intangible property that may be produced. In order for the arrangement to qualify as a bona fide arrangement, it must reflect an effort in good faith by participating members to bear their respective shares of the costs and risks of development on an arm's length basis. In order for the sharing of costs and risks to be on an arm's length basis, the terms and conditions must be comparable to those which would have been adopted by parties similarly situated had they entered into such arrangement. If an oral cost-sharing arrangement, into prior to April 16, 1968, and continued in effect that date, is otherwise in compliance with the prescribed in this section, it shall constitute a bona fide cost-sharing arrangement if it is reduced prior to January 1, 1969.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–7763 Filed 4–5–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1992–1993 Subsistence Taking of Fish and Wildlife Regulations; Amendment

AGENCY: Forest Service, USDA; and Fish and Wildlife Service, Interior.

ACTION: Final Rule; amendment.

SUMMARY: The Federal Subsistence Board (Board) has recently amended that portion of the Subsistence Management Regulations for Federal Public Lands in Alaska, subpart D, which prescribes the harvest of moose on public lands in GMU 25(D) West. As a result, the regulations now authorize only those Alaskan residents of Beaver, Birch Creek, and Stevens Village to harvest moose on public lands in GMU 25(D) West. Residents of Beaver, Birch Creek and Stevens Village may harvest moose for subsistence uses during the following split season: August 25 to September 25 and November 1 to February 28. However, when a total of 35 bulls have been harvested in the entirety of GMU 25(D) West, no additional harvest of moose on public lands in GMU 25(D) West shall be permitted. Provided that 35 bulls have not been harvested in the entirety of GMU 25(D) West, a qualified resident of the three identified villages may either harvest a moose on his or her own, or designate an equally qualified resident to harvest a moose on the former's behalf.

EFFECTIVE DATE: September 22, 1992, through June 30, 1993.

ADDRESSES: Alternate permits for designated hunters are available from the Refuge Manager, Yukon Flats National Wildlife Refuge, P.O. Box 346, Bethel, Alaska 99559; telephone (907) 543–3151.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Subsistence Office, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 271–2326. Norman R. Howse, Assistance Director for Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION: Becoming effective on July 1, 1992, Subpart D of the Subsistence Management Regulations for Public Lands in Alaska permitted individual harvest of bull moose on public lands in GMU 25(D) West by those Alaskan residents who qualified for, and secured, an applicable Federal moose permit or those Alaskan residents who qualified for, and secured, an applicable State Tier II permit (57 FR 22530, May 28, 1992). In addition, the regulations established a three-part season (Aug. 25 to Sept. 25; Dec. 1 to Dec. 10; and Feb. 18 to Feb. 28) and indicated that all moose hunting on public lands in GMU 25(D) West would terminate when 35 bulls have been harvested in the entirety of GMU 25(D) West.

On July 7, 1992, the Board, pursuant to the aforementioned regulations, received a Request for Reconsideration (Request) filed on behalf of the Native Village of Stevens and the Dinyee Corporation. The Request urged the Board to amend the regulations pertaining to subsistence moose harvest on public lands in GMU 25(D) West. Specifically, three changes were sought: (1) That moose hunting on all lands in that portion of GMU 25(D) West within the boundaries of the Yukon Flats National Wildlife Refuge be authorized only for the residents of Stevens Village,

Beaver, and Birch Creek, or alternatively, that moose hunting on all public lands within GMU 25(D) West be authorized only for residents of those villages; (2) that the moose hunting season be changed to allow hunting throughout the year, or alternatively, from August 25 to February 28; and (3) that the bag limit of 1 bull moose per person, up to a total harvest of 35 bulls, be changed to community bag limits for Stevens Village, Beaver, and Birch Creek.

On September 15, 1992, the Board, in addressing those requests, met to reconsider the previously adopted Federal subsistence regulations which affected the harvest of moose on public lands in GMU 25(D) West. First, the Board affirmed its previous decision to terminate all moose harvest on public lands in GMU 25(D) West when 35 bulls have been harvested in the entirety of GMU 25(D) West. The Board found that such a provision was necessary to assure the continued viability of that moose population.

Second, the Board considered the alleged necessity for, and the implications of, a year-round subsistence harvest for moose. The Board found that a year-round season did not necessarily represent the customary and traditional use of moose in that area and would likely increase moose harvest levels, including the harvest of female moose in that population. The Board considered the potential for an increase in the inadvertent harvest of cows that might be mistakenly identified as antlerless bulls during late winter hunting and for the potential increase in intentional illegal take of cows. The Board determined that a split season of Aug. 25 to Sept. 25 and Nov. 1 to Feb. 28 would accommodate the customary and traditional use of moose by the affected rural Alaska residents, assist the Board in assuring the continued viability of the moose population in GMU 25(D) West, and eliminate the harvest of moose during the warmest season when meat is much more susceptible to spoilage. Therefore, the Board established a split moose harvest season of Aug. 25 to Sept. 25 and Nov. 1 to Feb. 28 as the Federal subsistence season for moose in GMU 25(D) West. The period of Sept. 26 to Oct. 31 was not included as that represents the rutting season when bull moose meat is unpalatable and not taken for subsistence uses.

Third, the Board analyzed the need for confining moose harvest on public lands in GMU 25(D) West to residents of Beaver, Birch Creek, and Stevens Village. Although unable to identify a precise moose harvest total that would reflect the customary and traditional uses of moose by residents of the three villages, the Board nevertheless recognized that the anticipated subsistence moose harvest by those residents, under the aforementioned season, would most likely approximate or potentially exceed the total allowable harvest of 35 bulls. Therefore, in order to assure the continued viability of the moose population and provide for the continuation of subsistence uses, the Board closed public lands in GMU 25(D) West to moose harvest by individuals other than residents of Beaver, Birch Creek, or Stevens Village.

Fourth, the Board weighed the benefits and detriments of implementing community bag limits for the three communities. The Board recognizes the value of community bag limits in accommodating customary and traditional practices, and has incorporated provisions for community bag limits and alternate permitting systems in the regulations. However, the implementation of community bag limits requires careful planning to ensure that appropriate limits are established and that effective harvest monitoring systems are developed. Presently, the Board finds it impracticable to establish community bag limits for Stevens Village, Beaver, and Birch Creek this year. Nevertheless, to ensure the continuation of subsistence uses and to ensure the conservation of healthy populations, the Board considered and adopted an apparent equivalent of community bag limits.

Because some hunters have customarily and traditionally harvested more than their personal need in order to share with other family or community members who find it impossible to provide for their own need, the Board has authorized the use of an alternate subsistence permit that would allow one person, who qualifies to engage in subsistence uses of moose, to designate another person who is equally qualified. The designee, with the alternate permit, may harvest a moose on public lands in GMU 25(D) West for the qualified person who is unable to harvest a moose himself or herself.

The Board finds these amendments, which became effective September 22, 1992, and expire on June 30, 1993, to be exempt from the Administrative Procedures Act (APA) requirement that there be public notice and opportunity for the public to comment on these amendments prior to their publication. Specifically, the Board has determined that such requirements in this instance are impracticable, unnecessary, and contrary to the public interest.

In an effort to accommodate, expeditiously, the customary and traditional uses of moose on public lands in GMU 25(D) West, the Board amended only that portion of the regulations related to moose harvest on the affected public lands. Without these modifications, there are exists a likelihood that residents of Beaver, Birch Creek, and Stevens Village would be denied their customary and traditional uses of moose.

Notice and comment procedures at this time would impede and delay the subsistence priority for the village residents, provide insignificant benefits in nature and impact, and fail to serve the public interest. Therefore, the Board has not applied the notice and comment procedures prior to publication of these amendments.

In addition, the Board finds good cause to implement these amendments as of September 22, 1992, the date on which the Board made its decision known to the representative for the three villages and the State of Alaska. Delay in the effective date would permit Alaskans who do not reside in one of the three villages to continue harvesting moose on public lands in GMU 25(D) West, thereby restricting the customary and traditional uses of moose by residents of the three villages. Because such a restriction would adversely affect the subsistence priority afforded to residents of the three villages, the Board finds these amendments to be exempt, under the APA, from the requirement that they be published thirty days prior to their effective date.

In light of the Board's decision, the following amendments are made in identical fashion to 36 CFR part 242 and 50 CFR part 100.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, 36 CFR part 242 and 50 CFR part 100 are amended as follows:

36 CFR PART 242—[AMENDED]

50 CFR PART 100—[AMENDED]

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3566; 43 U.S.C. 1733.

2. Effective September 22, 1992, through June 30, 1993, in both 36 CFR part 242 and 50 CFR part 100, subpart D is amended as follows:

In the table in § _____.25(m) (25) the listing for "Moose: Unit 25(D) (West)" in columns 1 and 2 (Bag Limits and Open Seasons) the second paragraph is revised to read:

§ _____. **Subsistence taking of wildlife.**

* * * * *

(m) * * *

(25) * * *

Bag limits	Open seasons
* * * * * * *	
Moose:	
* * * * * * *	
Unit 25(D)(West)—that portion of Unit 25(D) not within the Dalton Highway Corridor Management Area, lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek, and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek To Nelson Mountain on the Unit 25(D) boundary—1 bull by Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. All moose harvest on public lands in this unit will be closed when a total of 35 bulls have been harvested in the entirety of Unit 25(D) West. Federal public lands in Unit 25(D)(West) are closed to taking of moose by anyone other than residents of Beaver, Birch Creek, and Stevens Village.	Aug. 25 to Sept. 25 and Nov. 1 to Feb. 28.
* * * * * * *	

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Ron McCoy,

Interim Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

[FR Doc. 93–7717 Filed 4–5–93; 8:45 am]

BILLING CODE 4310-55-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 93–1]

Registration of Claims to Copyright; Technical Amendments

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This final rule is issued to correct errors caused by the redesignation in § 202.3 of paragraphs (b)(6) and (b)(7) to (b)(7) and (b)(8) respectively and the addition of a new paragraph (b)(6) for Group Registration of daily newspapers published on September 1, 1992, in the **Federal Register** at page 39615. Paragraph citations and a registration fee found in footnote "6" in § 202.3 are also being amended.

EFFECTIVE DATE: April 6, 1993.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Office is making technical amendments necessitated by the addition of a new § 202.3(b)(6) and the redesignation of former § 202.3(b)(6) and 202.3(b)(7) to § 202.3(b)(7) and § 202.3(b)(8) respectively. The office is also making technical amendments in footnote "6" to § 202.3(c)(2). The references in that footnote are amended to refer to § 202.3(b)(7) instead of (b)(6) and the copyright fee of $10 is amended to read $20.

List of Subjects in 37 CFR Part 202

Copyright registration.

Final Regulation

In consideration of the foregoing, part 202 of 37 CFR, chapter II is amended in the manner set forth below.

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Sec. 702, Pub. L. 94–553, 90 Stat. 17 U.S.C. 702. Paragraph 202.3 is also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

Section 202.3 is amended as follows:

2. In paragraph (b)(3)(ii) introductory text remove "(b)(6)" and add in its place "(b)(7)."

3. In paragraph (b)(7)(ii) introductory text remove "§ 203.3(b)(6)" and add in its place "§ 203.3(b)(7)."

4. In paragraph (b)(7)(ii)(C) remove "(b)(6)(i)(E)" and add "(b)(7)(i)(E)."

5. In footnote 6 to paragraph (c)(2) remove "(b)(6)" and add "(b)(7)," remove "(b)(6)(i)(E)" and add "(b)(7)(i)(E)," and remove "$10" and add "$20."

Dated: March 25, 1993.

Ralph Oman,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 93–7777 Filed 4–5–93; 8:45 am]

BILLING CODE 1410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA13–5–5607; FRL–4522–3]

Approval and Promulgation of Air Quality Implementation Plans: Pennsylvania; Group III CTG; RACT for VOC From Synthetic Organic Chemical Manufacturing Industries (SOCMI) in Philadelphia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, Department of Environmental Resources (PADER). This revision establishes and requires

reasonably available control technology (RACT) to control fugitive volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industries (SOCMI). This revision has been submitted by PADER at the request of Philadelphia Air Management Service (AMS) to fulfill its 1982 ozone SIP commitment to adopt all applicable control technique guidelines (CTGs) published by EPA. The intended effect of this action is to approve the Philadelphia SOCMI regulations. This action is being taken in accordance with section 110 and part D of the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on May 6, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Harrisburg, PA 17105–8468; Department of Public Health, Air Management Services, 321 University Avenue, Spelman Building, Philadelphia PA 19104.

FOR FURTHER INFORMATION CONTACT: Aquanetta Dickens, (215) 597–4554.

SUPPLEMENTARY INFORMATION: On May 11, 1992 (57 FR 20068), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of revisions to Philadelphia Air Management Regulation V to control VOC from SOCMI. The formal SIP revision was submitted by the Commonwealth of Pennsylvania at the request of the Philadelphia Air Management Services on September 9, 1991. The specific requirements of Philadelphia's RACT regulations for the control of fugitive emissions from SOCMI and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. Only one comment was received on the NPR.

Response to Public Comments: On June 11, 1992, the U.S. Small Business Administration, Office of Chief Counsel for Advocacy submitted a letter of comment on the NPR published on May 11, 1992 (57 FR 20068), entitled "Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Group III CTG: RACT for VOC from SOCMI."

The Small Business Administration (SBA) commented that EPA did not comply with Section 605(b) of the Regulatory Flexibility Act (RFA) which requires a certification and statement of the proposed rule. Section 605(b) also requires the certification and statement be transmitted to the Chief Counsel for Advocacy. The SBA requested that EPA make the appropriate corrections in order to comply with the RFA.

Response: The SBA previously waived the requirement in the RFA that EPA transmit a copy of the regulatory flexibility certification to the Chief Counsel for Advocacy on SIP approvals. EPA has conferred with the SBA and additional language has been added to this notice providing the rationale for this waiver at the paragraph regarding section 605(b) of the RFA.

Final Action: EPA is approving amendments to Philadelphia Air Management Regulation V for the control of fugitive emissions from SOCMI submitted on September 9, 1991 as a revision to the Pennsylvania SIP.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action approving Pennsylvania's revision to Regulation V to control VOC leaks from SOCMI facilities has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C 7410(a)(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving revisions to Philadelphia's Air Management Regulation V to control VOCs from SOCMI must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 29, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(78) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(78) Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on September 9, 1991. The effective date of the regulation submitted is May 23, 1988.

(i) *Incorporation by reference.* (A) A letter from the Pennsylvania Department of Environmental Resources dated September 9, 1991 submitting a revision to the Pennsylvania State Implementation Plan.

(B) Section XIII, Process Equipment Leaks of Philadelphia Air Management Regulation V—Control of Emissions of Organic Substances from Stationary Sources. The effective date of the regulation submitted is May 23, 1988.

(C) Compliance Guidelines for Philadelphia Air Management Regulation V, Section XIII. The effective date of the compliance guidelines submitted is May 23, 1988.

(ii) *Additional materials.* (A) Remainder of the May 23, 1988 State submittal.

[FR Doc. 93–7911 Filed 4–5–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 52

[IL17–1–5173; FRL–4607–7]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving continuous emission monitoring regulations as a revision to the Illinois State Implementation Plan (SIP). The revision complies with 40 CFR 51.214 and part 51, appendix P and provides a legally enforceable procedure for continuously monitoring and recording emissions to determine the status of compliance of certain stationary source categories. The applicable rules are contained in part 201 of title 35 of the Illinois Administrative Code (35 IAC); subpart J, § 201.281 and subpart L, §§ 201.401–201.408.

EFFECTIVE DATE: This action will be effective on June 7, 1993 unless USEPA receives notice by May 6, 1993 that adverse or critical comments will be submitted. If the effective date is postponed, timely notice of proposal will be published in the **Federal Register** to provide for a new comment period.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location:

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

As specified in 40 CFR 51.214, a State Implementation Plan (SIP) is required to provide a legally enforceable procedure for continuously monitoring and recording emissions to determine the status of compliance of certain stationary source categories specified under 40 CFR part 51, appendix P. Appendix P specifies additional requirements for monitoring systems including recording and reporting requirements. On December 15, 1988, the Illinois Pollution Control Board (IPCB) adopted amendments to Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter a: Permits and General Provisions; Part 201: Permits and General Provisions; Subpart J: Monitoring and Testing, and Subpart L: Continuous Monitoring. To comply with 40 CFR 51.214, on March 17, 1989, the Illinois Environmental Protection Agency (IEPA), submitted 35 IAC; Part 201; Subpart J (Monitoring and Testing), Section 201.281, and Subpart L (Self-Monitoring) to the USEPA as a revision to the SIP.

The regulations had been jointly proposed to the IPCB in 1988 by the Illinois Manufacturers Association, the Illinois Environmental Protection Agency and Citizens for a Better Environment (CBE) in response to a lawsuit CBE filed in 1980. *Citizens for a Better Environment* v. *Costle*, 515 F. Supp. 264, 268–69 (N.D. Ill. 1981). CBE's suit sought, among other things, to have USEPA initiate a federal rulemaking to adopt provisions satisfying the monitoring requirements under section 110 of the Clean Air Act. Subsequent to the filing of CBE's suit, the IEPA began developing monitoring rules for Illinois and in March, 1984, the IEPA proposed monitoring regulations in 35 IAC, part 285. In April, 1984, the IEPA withdrew the monitoring regulations, and based on new information, modified and reproposed them. Final monitoring regulations were adopted by IEPA in January, 1985 and submitted to USEPA as a revision to the SIP in March, 1985. However, USEPA notified the IEPA in June, 1985, that it would disapprove the monitoring regulations and afforded the IEPA thirty days to either withdraw the rules or notify USEPA that the deficiencies would be corrected. As a result of negotiations, the parties to the litigation reached a tentative agreement which, among other things, required the adoption of the final agreed-upon monitoring regulations by the IPCB within one year of the filing of proposed rules. The proposed rules were filed with the IPCB on November 10, 1987, adopted and submitted to the USEPA on March 17, 1989.

At the time of submission, these regulations were reported to affect approximately nineteen (19) industrial facilities. The Illinois rulemaking was a joint proposal by industry, the IEPA and environmental groups and was judged to be economically reasonable.

The IPCB Final Opinion and Order for this docket contained all subsections of Subpart L. However, when the IPCB submitted it to the Secretary of State, subsections (a) and (b) of Section 201.405—Excess Emission Reporting, were inadvertently omitted. Thus, on November 15, 1989, the IPCB adopted a Final Opinion and Order for correcting the official copy of Section 201.405 to incorporate these subsections. This rulemaking was submitted to the USEPA on August 28, 1990.

II. Discussion

The Illinois regulations contain provisions that meet the requirements of 40 CFR 51.214 and part 51, appendix P. Generally, sections of the Illinois regulations correspond to provisions of 40 CFR 51.214 or appendix P. This correspondence is described below.

Subpart J: Illinois' amendments to 35 IAC, part 201, subpart J, Section 201.281, Permit Monitoring Equipment Requirements amended Subpart J, to provide for applicability of Subpart L, Continuous Monitoring Requirements, to emission sources and air pollution control equipment. This amendment of subpart J complies with the

requirements of 40 CFR part 51, appendix P (1.1).

Subpart L: This subpart contains continuous monitoring provisions and includes sections that address continuous monitoring requirements (201.401), alternative monitoring (201.402), exempt sources (201.403), monitoring system malfunction (201.404), excess emission reporting (201.405), data reduction (201.406), retention of information (201.407), and compliance schedules (201.408).

40 CFR part 51, appendix P applies to a minimum of four source categories: (1) Fossil fuel fired steam generators with an annual average capacity factor greater than 30%, (2) sulfuric acid plants of greater than 300 tons per day production capacity, (3) nitric acid plants of greater than 300 tons per day production capacity, and (4) certain fluid bed catalytic cracking unit catalyst regenerators. Section 201.401(a) of Subpart L specifies the sources subject to continuous monitoring requirements and complies with the requirements of appendix P (2.1–2.4).

The Illinois regulations do not contain provisions for granting extensions of the time provided for installation of monitors, which is specifically allowed, if a State so chooses, under 40 CFR 51.214 and appendix P Section 1.3.

Section 201.401(b) requires that continuous monitoring equipment meet the performance specifications set forth in paragraphs 3.1 through 3.8 of 40 CFR part 51, appendix P. However, the Illinois regulations specifically limit this requirement to the provisions of the 1987 edition of 40 CFR, thus excluding amendments and revisions to appendix P that have been made since 1987. Although, to date, no changes have been made to appendix P since 1987, appendix P references and incorporates specifications in 40 CFR part 60, appendices A and B, to which several revisions have been made since 1987. Section 201.401(b) also requires continuous monitoring equipment to meet performance specifications set forth in the relevant portions of 35 IAC 230 Appendices A and B. 35 IAC 230 appendices A and B reference 40 CFR part 60, Appendices A and B and require the performance specifications detailed in these Appendices. Therefore, Illinois has provided a mechanism whereby Illinois can incorporate updates to the technical requirements in 40 CFR part 60, appendices A and B by amending 35 IAC 230 appendices A and B to include later editions of 40 CFR part 60, appendices A and B. Illinois has expressed the intention to update these technical requirements for performance specifications by amending 35 IAC 230 appendices A and B. Additionally, the federally enforceable operating permit can be used to require any relevant updated portions of 40 CFR part 60, appendices A and B that may apply to that particular facility.

Section 201.402: Alternative Monitoring, allows alternative monitoring to be prescribed, on a case-by-case basis, by permit and complies with 40 CFR part 51, appendix P (6.0). Section 201.403 exempts sources subject to monitoring requirements that are part of a new source performance standard adopted by USEPA pursuant to section 111 of the Clean Air Act and complies with 40 CFR part 51, appendix P (1.2). Section 201.404: Monitoring System Malfunction, exempts unavoidable malfunctions and repairs and complies with 40 CFR part 51, appendix P (1.4). Section 201.405: Excess Emission Reporting, lists reporting requirements for excess emissions and complies with 40 CFR part 51, appendix P (4.0). Section 201.406: Data Reduction, regulates the method to convert monitoring data to the units of the emission limitation, and complies with 40 CFR part 51, appendix P (5.0). Section 201.407: Retention of Information, requires that information be retained for at least two years from the date of collection and complies with 40 CFR 51.214(d)(1). Section 201.408: Compliance Schedules, requires owners and operators of sources to install and monitor in accordance with the compliance schedule in the permit, and complies with 40 CFR 51.214(f)(1).

Illinois' regulations do not contain any description of generally applicable alternative monitoring procedures to be submitted for the Administrator's approval under appendix P (3.9). Therefore, USEPA is not today approving any generally applicable alternative monitoring procedures, but rather is approving Illinois' provisions for case-by-case approval of alternative monitoring requirements under certain conditions, as specified in appendix P (6.0).

Special Consideration/Alternative Monitoring Requirements: appendix P (6.0) provides for case-by-case determination of alternative monitoring procedures if certain conditions are met. The Illinois regulations contain corresponding provisions that comply with the requirements of appendix P (6.0).

Appendix P Section 6.0 Special Consideration, allows a State to approve on a case-by-case basis, alternative monitoring requirements different from the provisions of parts 1–5 of appendix P. Such case-by-case approved alternative monitoring requirements may be prescribed when installation of a continuous monitoring system or monitoring device specified in appendix P would not provide accurate determination of emissions; when an affected facility is infrequently operated (some affected facilities may operate less than one month per year); when a State determines that monitoring systems prescribed in appendix P cannot be installed due to physical limitations at the facility; or when the requirements would impose an extreme economic burden on a source owner or operator. In these cases, a State may set forth alternative emission monitoring and reporting requirements for the source that will satisfy the intent of appendix P (e.g. periodic stack tests). In Section 201.402, Illinois has fulfilled this appendix P requirement by specifying its criteria for determining the physical plant limitations or extreme economic situations that it will use to determine whether alternative monitoring requirements may be substituted for otherwise applicable monitoring requirements.

Section 201.402: Alternative Monitoring, provides that alternative monitoring requirements for a particular source subject to Section 201.401(a): Continuous Monitoring Requirements, shall be prescribed by permit upon a demonstration by the owner or operator that the continuous monitoring requirement under Section 201.401 (a) is technically unreasonable or infeasible due to physical plant limitations or would impose an extreme economic burden. Under Section 201.402, the criteria for determining whether alternative monitoring may be appropriate are the likelihood of inaccurate measurements, physical constraints for equipment placement, and economic burdens on the facility. Specifically, Section 201.402 provides that before alternative monitoring may be prescribed in the permit, it must be demonstrated that compliance with the requirements of section 201.401: (1) Would not provide accurate determination of nitrogen dioxide, sulfur dioxide, carbon dioxide, percent oxygen, or opacity; or (2) the monitoring equipment cannot be installed due to the facility's physical constraints such as size, space or strength of materials or due to safety considerations; or (3) would impose an extreme economic burden in proportion to the significance of the monitoring information which would be provided, in that the cost of monitoring would exceed the norm for similar sources and those costs would have a significant adverse effect on the profitability of the operations. In such

instance, Illinois must then set forth alternative emission monitoring and reporting requirements to satisfy the intent of the Federal regulations as specified in 40 CFR 51.214 and part 51, appendix P, and these requirements will be incorporated into the sources operating permit.

III. Illinois' Operating Permit Program

In the past, USEPA's general response to State rules containing discretionary provisions has been disapproval of the rules on the basis that discretionary provisions have the potential to allow modification of the SIP without USEPA review and approval. Such discretion may render the plan inadequate to attain and maintain the associated national ambient air quality standards (NAAQS).

However, on December 17, 1992 (57 FR 59928), USEPA approved Illinois' operating permit program for the purpose of issuing federally enforceable construction and operating permits as part of the approval of the new source review program under Title I of the Clean Air Act. Therefore, the terms and conditions of both Illinois construction permits and operating permits are now federally enforceable. In a letter dated November 18, 1991, which is part of the administrative record of this approval, Illinois committed to send each permit to USEPA for review prior to Illinois' issuance of the permit. Illinois understands that any permit USEPA determines does not meet the requirements and intent of 40 CFR 51, appendix P and notifies IEPA during the 30 day public comment period as provided for in Illinois' public participation requirements (Section 203.150) will not be federally enforceable. The participation requirements in Section 203.150 also mandate notice to the public of a proposed permit issuance and provide for a comment period. USEPA may deem a permit not federally enforceable if monitoring provisions do not comply with the requirements of 40 CFR 51.214 and part 51, appendix P. USEPA's determination will: (1) Be done according to appropriate procedures, and (2) be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements and the requirements of USEPA's underlying regulations. Among other things, underlying requirements include the requirements of 40 CFR 51.214, part 51, appendix P, and Illinois' approved SIP. Should USEPA deem an operating permit containing alternative monitoring requirements not federally enforceable, the underlying continuous monitoring requirements to which the source would be subject would be the Federal requirements contained in Section 201.401 of the State rule. Moreover, Illinois' regulations require compliance with applicable Federal law (Section 203.205). It is important to note that nothing in today's regulation supersedes or prevents regulation under 40 CFR part 75 of a source subject to Acid Rain monitoring requirements under that part.

USEPA believes that sufficient safeguards exist to allow USEPA to approve this limited discretionary provision, because: (1) Illinois' operating and construction permits are federally enforceable under the approved Title I permit program; (2) under the approved permit program, Illinois has committed to send these permits to USEPA for review prior to Illinois' approval of the permit, and (3) a mechanism exists whereby USEPA may deem a permit not "federally enforceable", resulting in the source being subject to the underlying continuous monitoring requirements.

IV. USEPA's Rulemaking Action

Rulemaking Action: For the reasons stated above, USEPA approves the incorporation of Subpart J, Section 201.281 and Subpart L Sections 201.401–201.408 of 35 IAC into the Illinois SIP.

USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 17, 1993 unless, by May 6, 1993, notice is received that adverse or critical comments will be submitted.

If notice of adverse or critical comment is received, this action will be withdrawn before its effective date by publishing two notices. One notice will withdraw the final action and the second will begin a new rulemaking period by announcing proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 7, 1993.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it acts on USEPA's request.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements even though the submittal preceded the date of enactment.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Continuous emissions monitoring.

Dated: March 12, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

1. The Authority citation for part 52 continues to read as follows:

(Authority 42 U.S.C. 7401–7671q.)

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c) (89) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(89) On March 17, 1989, and August 28, 1990, the State of Illinois submitted a revision to the Illinois State Implementation Plan. The revision is contained in subpart J, § 201.281 and subpart L, §§ 201.401-.408 of part 210 of title 35 of the Illinois Administrative Code. This revision provides a legally enforceable procedure for continuously monitoring and recording emissions to determine the status of compliance of certain stationary source categories and complies with 40 CFR 51.214 and part 51, appendix P. The rules were adopted by the Illinois Pollution Control Board on December 15, 1988, published (13 Ill. Reg. 2066) and became effective February 3, 1989. The rules were corrected for an omission, published on November 15, 1989, (13 Ill Reg. 19444), and became effective December 5, 1989. In a November 18, 1991, letter from Bharat Mathur, then Manager, Division of Air Pollution Control, Illinois Environmental Protection Agency (IEPA) to Stephen Rothblatt, Chief, Regulation Development Branch, Region 5, USEPA, Illinois committed to notify USEPA of any pending construction or operating permit application during the 30 day public comment period which is part of Illinois' permit issuance process (Section 203.150). This commitment is part of the administrative record of USEPA's approval of the Illinois' operating permit program for the purpose of issuing federally enforceable operating permits at 40 CFR 52.720 (c) (84) and 52.737 on December 17, 1992 (57 FR 59928). USEPA may deem a permit not federally enforceable if monitoring provisions do not comply with the requirements of 40 CFR 51.214, part 51, appendix P or § 51.165.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter a: Permits and General Provisions; Part 201: Permits and General Provisions, Subpart J: Monitoring and Testing, Section 201.281; and Subpart L: Continuous Monitoring, Sections 201.401 through 201.408, adopted at Ill. Reg. 2066, effective February 3, 1989.

3. Section 52.743 is added to read as follows:

§ 52.743 Continuous monitoring.

(a) Alternative monitoring requirements established under Section 201.402 of Title 35, IAC must be either: Incorporated into a federally enforceable operating permit or construction permit or submitted to USEPA for approval as a revision to the Illinois State Implementation Plan (SIP). Illinois shall set forth alternative emissions monitoring and reporting requirements to satisfy the intent of 40 CFR part 51, appendix P whenever Illinois exempts any source subject to Section 201.401 from installing continuous emission monitoring systems. Illinois may exempt a source if the source cannot install a continuous emission monitoring system because of physical plant limitations or extreme economic reasons, according to the criteria of Section 201.402.

(b) As codified at 40 CFR 52.737 (USEPA's approval of the Illinois operating permit program for the purpose of issuing federally enforceable construction and operating permits), USEPA reserves the right to deem an operating permit not federally enforceable. Such a determination will be made according to appropriate procedures including operating permit requirements promulgated at 54 FR 27274 (June 28, 1989) and will be based upon either; the permit, permit approval procedures or state or local permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA's underlying regulations. Among other things, underlying requirements include 40 CFR 51.214 and part 51, appendix P and Illinois' approved SIP, 40 CFR part 52. Should USEPA deem an operating or construction permit containing alternative monitoring requirements not federally enforceable, the underlying continuous monitoring requirements at Section 201.401 of the State rule would be the Federal requirements contained in the SIP to which the source would be subject. This interpretation of the impact of an operating permit deemed not federally enforceable by USEPA on a source to which it was issued was acknowledged by the State in a March 3, 1993, letter from Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency, to Stephen Rothblatt, Chief, Regulation Development Branch, Region 5, USEPA.

[FR Doc. 93-7909 Filed 4-5-93; 8:45 am]

BILLING CODE 6560-60-P

40 CFR Part 81

[TN-102-5683; FRL-4610-2]

Redesignating a Portion of Fayette County, Tennessee to Nonattainment for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act), EPA is authorized to require states to redesignate areas (or portions thereof) in the affected State as nonattainment, attainment, or unclassifiable with respect to the National Ambient Air Quality Standard (NAAQS) for lead. In this action, EPA is revising the lead designation for Fayette County, Tennessee, from unclassifiable to nonattainment. Previously, consistent with section 107(d)(3)(A) of the Act, EPA provided notification to the Governor of Tennessee that EPA believes a portion of Fayette County should be redesignated from unclassifiable to nonattainment. The redesignation is based upon a monitored violation of the lead NAAQS.

DATES: This action will be effective June 7, 1993, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Information supporting this action is available for public inspection and copying (a reasonable fee may be charged for copying) during normal business hours at the following agencies:

Public Information Reference Unit, Attn: Jerry Kurtzweg, ANR 443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, U.S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Conservation and Environment, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531.

FOR FURTHER INFORMATION CONTACT: Leslie Cox, of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION:

I. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for lead pursuant to section 107(d)(3) of the Act,

42 U.S.C. 7407(d)(3), on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate. As provided in section 107(d)(3), the EPA may, at any time, notify the Governor of an affected State that available information indicates that the designation of an area should be revised.

Following the process outlined in section 107(d)(3), on March 13, 1992, EPA Region IV notified the Governor of Tennessee that, based on a monitored violation of the lead NAAQS, EPA believes that a portion of Fayette County should be redesignated as nonattainment for lead. The EPA identified the area in a **Federal Register** notice published on May 1, 1992, 57 FR 18874. The Governor of Tennessee was required to submit to EPA the designation he considered appropriate for the pertinent portion of Fayette County within 120 days after notification. (See section 107(d)(3)(B).) The EPA must promulgate the redesignation that EPA deems necessary and appropriate, consistent with section 107(d)(3)(c) of the Act.

Section 107(d)(1)(A), 42 U.S.C. 7407(d)(1)(A), sets out definitions of nonattainment, attainment, and unclassifiable areas. These definitions provide the controlling legal standard for any designations or redesignations to the relevant attainment status. The EPA has proposed that a portion of Fayette County, Tennessee, addressed in today's notice, be redesignated nonattainment. A nonattainment area is defined as any area that does not meet, or that significantly contributes to, ambient air quality in a nearby area that does not meet the national primary or secondary ambient air quality standard for the relevant pollutant [1] (see section 107(d)(1)(A)(i)).

Thus, in determining the appropriate boundaries for the nonattainment area proposed today, EPA has considered not only the area where the violation of the lead NAAQS is occurring, but also nearby areas which significantly contribute to such violations.

II. Background for Lead

In 1978, when EPA promulgated the lead NAAQS, EPA believed that implementation and maintenance of the lead NAAQS should be in accordance with the SIP requirements set forth in section 110, rather than Part D. The EPA believed that section 107 and Part D requirements were intended by Congress to apply only to NAAQS which were in effect when the Act was revised in 1977. In these cases, SIP's had already been adopted, the attainment dates had already passed, and the SIP's had proven to be inadequate. The designation process was intended as a mechanism to initiate new SIP revisions for those existing NAAQS. Since the attainment date for the lead NAAQS at that time had not yet arrived, no lead SIP's had yet been proven inadequate. Consequently, lead did not meet the circumstances which initially resulted in a need for nonattainment designations and plan revisions under Part D. Therefore, EPA did not designate areas for lead upon promulgation of the lead NAAQS in 1978.

The Act, as amended in 1990, clearly defines EPA's authority to designate areas for lead. Initial designations for lead are governed by section 107(d)(5) of the Act, 42 U.S.C. 7407(d)(5). Consistent with that provision, after passage of the 1990 amendments, EPA designated many areas of the country as nonattainment and unclassifiable for lead. See 56 FR 56694 (November 6, 1991). The portion of Fayette County, Tennessee, addressed in today's action was among those designated unclassifiable for lead. See, e.g., 56 FR 56707–56708, 56829 (codified at 40 CFR 81.343).

As described above, EPA is also authorized by the Act, as amended, to initiate the redesignation of any areas (or portions thereof) as nonattainment for lead, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, and, planning and control considerations the Administrator deems appropriate. The EPA believes that monitoring and/or modeling information should be used in establishing lead nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act. As indicated previously, nonattainment areas consist of any area that does not meet the relevant NAAQS or that significantly contributes to a violation of the relevant NAAQS in a nearby area. On March 13, 1992, EPA Region IV notified the Governor of Tennessee that EPA believed that the portion of Fayette County designated as unclassifiable for lead should be redesignated as nonattainment for lead. In a **Federal Register** notice published on May 1, 1992, 57 FR 18874, EPA identified Fayette County as a lead area for which EPA had notified the Governor of Tennessee that the area's lead designation should be revised to nonattainment. After notification, the Governor of Tennessee was required to submit to EPA the redesignation he considered appropriate for the area in question within 120 days. (See section 107(d)(3)(B).) The Governor responded on July 14, 1992. The EPA must now promulgate the redesignation EPA deems necessary and appropriate consistent with section 107(d)(3)(C).

III. Today's Action for Fayette County, Tennessee

In today's action, EPA is redesignating a portion of Fayette County, Tennessee, for lead in accordance with the section 107(d)(3) redesignation process described above. The EPA announced in a notice published on May 11, 1992, (57 FR 18874) that it believed that the portion of Fayette County listed in that notice, should be redesignated as nonattainment for lead based on a monitored violation of the lead NAAQS. The primary and secondary lead NAAQS are 1.5 ug/m^3 maximum arithmetic mean averaged over a calendar quarter. (See 40 CFR 50.12.) A monitor near Ross Metals recorded a quarterly value of 4.14 ug/m^3 in 1991. On July 14, 1992, Tennessee Department of Environment and Conservation Commissioner, J.W. Luna, responded that the State of Tennessee agreed with EPA that the size of the nonattainment area should be that area encompassed by a circle with a radius of one kilometer. He noted that the circle should be centered on Universal Transverse Mercator Coordinate 267.59 East 3881.30 North (zone 16) instead of the coordinates specified in the March 13, 1992, letter to the Governor—267.59 East 3881.60 North (zone 16). The State's recommended coordinates center on a point located approximately at the midpoint of the lead source complex. The earlier proposal by EPA centers on a point where the monitoring station that recorded the exceedance of the lead NAAQS is located. EPA concurs with this revision. Technical information supporting the redesignation of Fayette County may be found in the docket associated with this notice. This information is available at the address indicated in the **ADDRESSES** section of this notice.

IV. Significance of Today's Action for Fayette County

Tennessee must submit an implementation plan to EPA within 18 months after promulgation of the nonattainment redesignation, meeting the requirements of Part D, Title I of the Act (see section 191(a) of the Act, 42 U.S.C. 7514(a)) for Fayette County. The

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution of a pollutant to a violation of the NAAQS for that pollutant in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

implementation plan must provide for attainment of the lead NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final nonattainment designation (see section 192(a) of the Act, 42 U.S.C. 7514a(a)).

Final Action

EPA is today designating a portion of Fayette County, Tennessee, around the Ross Metals facility as nonattainment based on a monitored violation of the lead NAAQS. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective June 7, 1993. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and three subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. A third notice will finalize the action EPA deems appropriate after considering any comments submitted during the public comment period.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits these regulations. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, Lead.

Dated: March 8, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

40 CFR part 81, subpart C, is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

2. Section 81.343 is amended by revising the entry for "Fayette County" in the Lead table to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Fayette County (part) Area encompassed by a circle centered on Universal Transverse Mercator coordinate 267.59 E 3881.30 N (Zone 16) with a radius of 1.0 kilometers.	June 7, 1993	Nonattainment ...	.....	.....
* * *	*	*	*	*

* * * * *

[FR Doc. 93–7910 Filed 4–5–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–271; RM–8102]

Radio Broadcasting Services; Mountain Pine, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 270A to Mountain Pine, Arkansas, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Mark Jones. See 57 FR 56540, November 30, 1992. Coordinates used for Channel 270A at Mountain Pine are 34–34–18 and 93–10–12. With this action, the proceeding is terminated.

DATES: *Effective* May 13, 1993. The window period for filing applications on Channel 270A at Mountain Pine, Arkansas, will open on May 14, 1993, and close on June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–271, adopted March 8, 1993, and released March 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Mountain Pine, Channel 270A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7896 Filed 4–5–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–276; RM–8113]

Radio Broadcasting Services; Arvin, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 223A to Arvin, California, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Farmworkers Communications, Inc. See 57 FR 57409, December 4, 1992. Coordinates used for Channel 223A at Arvin are 35–12–56 and 118–42–22. With this action, the proceeding is terminated.

DATES: *Effective* May 13, 1993. The window period for filing applications on Channel 223A at Arvin, California, will open on May 14, 1993, and close on June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–276, adopted March 8, 1993, and released March 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Arvin, Channel 223A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7898 Filed 4–5–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–203; RM–8057]

Radio Broadcasting Services; Indiantown and Okeechobee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 276C2 from Okeechobee, Florida to Indiantown, Florida, as its community of license, at the request of Okeechobee Broadcasters, Inc. The allotment of Channel 276C2 to Indiantown will provide that community with its first local aural transmission service, in accordance with § 1.420(i) of the Commission's Rules. See 57 FR 41911, September 14, 1992. Channel 276C2 can be allotted to Indiantown in compliance with the Commission's minimum distance separation requirements at petitioner's desired site. The coordinates are North Latitude 27–11–55 and West Longitude 80–21–37. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 13, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–203, adopted March 8, 1993, and released March 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 276C2, Okeechobee and adding Channel 276C2, Indiantown.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7891 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 93–35; FCC 93–101]

Private Land Mobile Radio Services; Channel Exclusivity for Qualified Private Carrier Paging Systems at 900 MHz

AGENCY: Federal Communications Commission.

ACTION: Temporary rule; freeze on applications.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making to amend the rules governing private carrier paging at 900 MHz to grant channel exclusivity to qualified local, regional, and national paging systems. Because of the potential impact of the proposed rules on existing paging systems and the future assignment of paging channels, the Commission will not accept new applications for 900 MHz private paging channels from the adoption date of the Notice (February 18, 1993) through the conclusion of the rule making. Applications accepted for filing prior to the Notice will be processed normally, and current licensees must complete construction consistent with their existing authorizations.

This action is procedural in nature, and is therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act, 5 US.C. 553.

EFFECTIVE DATE: February 18, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Furth, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: The freeze order is set forth in the Commission's Notice of Proposed Rule Making, PR Docket No. 93–35, FCC 93–101, adopted February 18, 1993, and released March 31, 1993. (Further information regarding the proposed rules set forth in the Notice is published elsewhere in this issue.) The text of the Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 90

Business and industry, Channel exclusivity, Private carrier paging, Private land mobile radio services, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7987 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Glazing Materials; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the American Automobile Manufacturers Association (AAMA), requesting that Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials*, be amended to allow wider use of rigid plastic glazing materials. After conducting its review, the agency has decided not to grant the petition because use of plastic glazing in areas requisite for driving visibility could result in safety problems involving fracturing, abrasion resistance, strength, and head contact. Because the petitioner did not submit sufficient data related to these safety concerns, the agency has decided to deny the petition. However, the agency continues to be interested in alternative glazing concepts, especially as they relate to the prevention of occupant ejection. The agency therefore encourages organizations and individuals to submit information on this subject to the agency.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6651.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials*, specifies performance requirements for glazing materials for use in motor vehicles and motor vehicle equipment. The purpose of the standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency to motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

Standard No. 205 provides that, with certain exceptions, glazing materials for use in motor vehicles must conform with the American National Standard Institute's "Safety Code for Safety Glazing in Motor Vehicles Operating on Land Highways" Z26.1–1977, as supplemented by Z26.1a, July 3, 1980 (ANSI Standard Z26.1). ANSI Standard Z26.1 sets forth 31 separate tests to which various types of glazing materials (which are referred to as "items" of glazing) can be subjected.

Rigid plastic materials such as those referenced in this rulemaking are considered to be Item 4 and Item 5 glazing. Standard No. 205 permits the use of these rigid plastic materials in areas not requisite for driving visibility, such as in openings in the vehicle's roof. However, the Standard prohibits their use in areas that are requisite for driving visibility.

Petition for Rulemaking

On August 31, 1992, the American Automobile Manufacturers Association (AAMA), submitted a petition for rulemaking, requesting that Standard No. 205 be amended to allow wider use of rigid plastic glazing. The petitioner stated that use of rigid plastic glazing would improve fuel economy because this material weighs approximately half as much as tempered glass of the same thickness. AAMA contended that these weight benefits would be especially important in the development of electric vehicles and other alternative fuel vehicles.

As mentioned above, Standard No. 205 permits the use of rigid plastic glazing only at locations not requisite for driving visibility. The petitioner believed that this limitation was prompted by the fact that plastic glazing is less resistant to abrasion than glass Nevertheless, AAMA contended that coated plastic glazing resists abrasion well enough to be permitted in some areas requisite for driving visibility Accordingly, the petitioner requested that Standard No. 205 be amended to

incorporate a new category of glazing entitled "Item 17—safety plastic material" that could be used in fixed or hinged windows rearward of the "B" pillar, in locations which are requisite for driving visibility. In addition, the petitioner recommended that the plastic glazing be required to meet tests that it believed ensured resistance to breakage as well as all the necessary visibility characteristics.

Agency Determination

After reviewing the petition in light of the available information, NHTSA has decided to deny AAMA's petition to allow plastic glazing in areas requisite for driving visibility. The reasons for this decision are set forth below. The agency notes that the use of plastic glazing in areas requisite for driving visibility raises potential safety problems related to fracturing, abrasion resistance, strength, and head contact. The petitioner did not provide any data addressing these safety concerns.

Fracturing. NHTSA is concerned that use of rigid plastics in the requested areas could create dangerous conditions for occupants. In the 1980s, the agency conducted several side impact tests using different types of rigid plastics in the driver's side window. While the rigid plastic typically remained intact after popping out of the window frame, some tests indicated that after breaking, rigid plastics could leave sharp pointed shards in the window frame, which an occupant's head could easily contact. NHTSA is also concerned about the occupant injury potential of large shards of rigid plastic glazing being propelled inward by impacts with trees, poles, or vehicles. Such situations could result in serious laceration and puncture injuries. While the Standard currently allows for the use of rigid plastics in certain limited areas of a motor vehicle, use of such rigid plastics in areas requisite for driving visibility behind the "B" pillar would significantly increase the likelihood of an occupant's head contacting broken rigid plastic glazing.

Abrasion resistance. The agency notes that AAMA petitioned for requirements that would subject rigid plastics to less stringent abrasion requirements than the Standard's present requirements for materials allowed in areas requisite for driving visibility. Accordingly, the agency is concerned that, under the petition, rigid plastics with greater susceptibility to reduced visibility would be allowed.

Strength. With respect to the dart and ball impact tests which evaluate glazing strength, AAMA petitioned for requirements that would subject rigid plastics to less stringent impacts than required by the current Standard. For instance, in Test No. 10, a dart drop is used to assess the behavior of plastics when impacted by a small, hard object. The height of the dart drop varies with the thickness of the glazing being tested. The present test requires a drop height of 12 feet when the test specimen has a thickness of 0.187 inches. The petitioner requested that the test be modified so that if a piece of Item 17 glazing were less than 0.187 thick, then the drop height would be 10 feet. Similarly, Test No. 13 (Ball Test) strength test has a drop height of 12 feet when the plastic has a thickness of 0.187 inches. AAMA petitioned to change the drop height to 10 feet for glazing less than 0.187 inches thick. The agency notes that the petitioner did not explain the reason for requesting the lower height. NHTSA is concerned that use of lower drop heights would result in the use of weaker glazing having more dangerous fracture characteristics.

Head Contact. The agency is also concerned about the interaction of an occupant's head with this rigid plastic glazing. At present, rigid plastics are used in areas where contact with the head is unlikely. In contrast, for the new areas being considered, such as behind the "B" pillar, head contact is much more likely. For tempered glass, the glass may shatter from the crash force itself or when the head makes contact with the glazing at relatively low force levels. It is not clear what the result would be in contacts between an occupant's head and rigid plastics. The agency is concerned that use of this type of rigid plastic glazing could increase head injuries.

In accordance with 49 CFR part 552, the agency has completed its technical review of the petition. Because the petitioner did not submit sufficient data related to these safety concerns, the agency has decided to deny the petition. However, the agency continues to be interested in alternative glazing concepts, especially as they relate to the prevention of occupant ejection. The agency therefore encourages organizations and individuals to submit information on this subject to the agency.

Future Considerations

NHTSA is interested in exploring alternative glazing concepts such as requested in the AAMA petition that might, in part, be used to reduce the likelihood of ejection through areas of glazing. In fact, the agency currently is conducting research in this area. Although the agency is denying the AAMA petition for lack of supportive data, interested persons are invited to submit technical data or comments about plastic glazing materials to the Docket Section, National Highway Traffic Safety Administration, room 5108, 400 Seventh Street, SW., Washington, DC 20590.

The Rohm & Haas Company has presented technical information about plastic glazing to agency representatives. This information has been placed in the public docket.

Authority: 15 U.S.C.; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on March 30, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–7924 Filed 4–5–93; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1017, 1018, 1312, 1313 and 1314

[Ex Parte No. 508]

Fee Billing and Debt Collection

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; Stay of Effective Date.

SUMMARY: On February 9, 1993, in Fee Billing Debt Collection, 9 I.C.C. 2d, and published at 58 FR 7748, the Commission published final rules in this proceeding which are to be effective on April 1, 1993. Due to technical difficulties with the development of the computerized fees and billing system which will support the fee billing and collection program, it is necessary to stay the effective date of these rules until further notice.

EFFECTIVE DATES: Effective April 1, 1993, the effective date of these rules is stayed until further notice.

FOR FURTHER INFORMATION CONTACT: Anthony Jacobik, Jr., (202) 927–5827 [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: For the reason set forth above, under the authority of 49 CFR 1011.5(a)(2), the final rules set forth in 49 CFR parts 1002, 1017, 1018, 1312, 1313 and 1314 at 58 FR 7748 on February 9, 1993, are stayed until further notice.

Decided: March 31, 1993.

By the Commission, Chairman McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–7949 Filed 4–1–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 90880-2106]

RIN 0648-AD02

Taking and Importing of Marine Mammals; Depletion of the Coastal-Migratory Stock of Bottlenose Dolphins Along the U.S. Mid-Atlantic Coast

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS designates the coastal-migratory stock of bottlenose dolphins along the U.S. mid-Atlantic coast as depleted under the Marine Mammal Protection Act (MMPA). This action is required by the MMPA when a species or population stock is determined to have fallen below its optimum sustainable population (OSP) level. NMFS has determined that the stock is below a level that can maintain maximum net productivity, which is the lower bound of the OSP range, as a result of a mortality event that occurred in 1987–88 in which the stock likely declined by more than 50 percent. Under the MMPA, this designation requires the application of certain restrictions on taking and importation, and the preparation and implementation of a conservation plan to restore the stock to its OSP.

EFFECTIVE DATE: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

During 1987–88, an unusually large number of Atlantic bottlenose dolphins (*Tursiops truncatus*) died and washed ashore along the U.S. east coast from New Jersey to central Florida. Based on the best available scientific information, NMFS concluded that the coastal-migratory stock of bottlenose dolphins along the mid-Atlantic coast had declined by more than 50 percent.

NMFS published an advance notice of proposed rulemaking (ANPR) (54 FR 41654, October 11, 1989) indicating that it was considering listing the stock as depleted and requesting additional information. NMFS then published a proposed rule (56 FR 40594, August 15, 1991) with a 45-day comment period. Both the ANPR and the proposed rule contained a background discussion of specific information leading to this rule. Background previously presented will not be repeated here.

Comments and Responses

After the comment period closed, some concerns were raised about the model employed in making the initial determination. Even though conservative values had been employed, there was concern that a broader range of values should have been used for the model parameters. It was also noted that more recent information on some of the population dynamics parameters has been published since the initial model was developed.

NMFS responded to these concerns and conducted a risk analysis based on the model initially used in making the determination, incorporating more recent information and providing for a range of values for the model parameters. In this analysis of population dynamics, uncertainty in model input parameters was incorporated via Monte Carlo methods, wherein the underlying model was iterated a large number of times (in this case, 1,000 iterations were run) with randomly selected, independent combinations of model parameters, based on measured or assumed distributions of the parameters. Population status in 1988 relative to 1987 as a result of the die-off was modeled as:

$$R_{88}=[(1-M*mult)-M]$$

where R_{88} is population status in 1988 relative to 1987, M represents annual percentage natural mortality rate, and *mult* represents the estimated multiplier of mortality due to the die-off as defined in Scott *et al.* (1988). Uncertainty in M was incorporated in the analysis by randomly assigning values from a uniform distribution ranging from 0.056 to 0.1. Uncertainty in *mult* was also incorporated by an independent random draw from a uniform distribution with a range from 7.98 to 10.97. The endpoints of this range represent the lowest and highest ratios of strandings reported from June 1987 through April 1988 to the number reported in each of the previous 3 years' data for the same months and areas of the coast.

The dynamics of the bottlenose dolphin stock before and after the die-off were assumed to be adequately described by the Pella-Tomlinson delay difference model. This model is described in Scott *et al.* (1988). The affected bottlenose dolphin population was assumed to be in equilibrium prior to the die-off. This assumption allowed estimation of status relative to carrying capacity under a range of estimated human-induced mortality rates. Human-induced mortality rates were estimated from stranding data as described in Scott *et al.* (1988) as:

$$F=M*((1/(1-p))-1)$$

where F represents the human-induced mortality rate (annual percentage, M represents the annual natural mortality rate, and p represents the proportion of strandings classified as resulting from human activities during the 3-year period immediately prior to the die-off. Uncertainty in the estimate of p was incorporated by recalculating p for each iteration based on the number of successes (human-induced mortality classifications) from a random draw of a binomial distribution with parameters p=0.093 (36/386) and n=386. Uncertainty about lags in the population dynamics was incorporated via a random draw from a uniform distribution ranging from 0–14 years. Uncertainty in maximum net productivity level (MNPL) and in the population maximum annual rate of increase (ROI) was incorporated via random draws from uniform distributions with ranges of 0.6–0.8 and 0.02–0.06, respectively. The models were used to project population status until the year 2010. For each year of these projections, the frequency of model results indicating that population status was less than MNPL was used as a model-conditional estimate of the probability that the modeled population was depleted. Sensitivity of the model results to individual parameters was examined by fixing each parameter as a constant value within the defined ranges.

The simulation incorporating uncertainty of all input parameters was considered the best assessment of the status of the bottlenose dolphin stock relative to MNPL, which is the lower limit of OSP. In all of the simulations considered, the models estimated that it is highly likely that the population is currently below MNPL. In all models considered, results indicated there were at least even odds that the population would remain below MNPL through the turn of the century and that there is a non-negligible chance that the population could remain below MNPL beyond the year 2010. The report containing the additional modeling is available (see **FOR FURTHER INFORMATION CONTACT**).

Ten written comments were received in response to the proposed rule from a Federal agency, a coalition representing aquaria, conservation groups, and other interest parties. Eight commenters

supported the rule, and two opposed it. Some commenters were under the impression that the rule applied to either all bottlenose dolphin populations or to all populations along the Atlantic and Gulf coasts. The designation will only apply to the coastal-migratory stock along the U.S. mid-Atlantic coast. It does not apply to offshore stocks in the Atlantic, resident coastal populations along the Atlantic coast, or stocks in the Gulf of Mexico. Several commenters made recommendations for recovery actions. These recommendations are not germane to the designation decision, but will be used to prepare the conservation plan for this stock. Specific comments are addressed below:

Comment: At present, there is no comprehensive estimate of the size of the stocks of bottlenose dolphins, and an OSP determination cannot be made without such information.

Response: NMFS has conducted survey work on the population in question, and the estimates of population were contained in the ANPR. However, the determination that this stock is depleted was based primarily on calculations using natural mortality figures and mortality figures involved in the 1987–88 epizootic. These calculations indicated that the mortality rate during the event was more than 50 percent.

Comment: The dolphin population is abundant and healthy. Herds in excess of 100 individuals were documented off Virginia Beach in August 1991.

Response: No documentation was submitted to support this comment. Regardless, the existence of herds in excess of 100 individuals does not in itself allow any inference about stock status relative to OSP. Observations of abundance alone, without regard to some measure of the environment's carrying capacity, is not sufficient for OSP determinations. Furthermore, such observations, in the absence of comparisons to historic abundance levels or other controls in the sense of experimental design, provide no support for the conclusion that the "dolphin population is abundant and healthy."

Comment: Population surveys during and after the epizootic do not bolster the case for depletion.

Response: No documentation was provided as to the "population surveys" cited by the commenter. If there are surveys other than those conducted by NMFS that NMFS is unaware of, NMFS would like the opportunity to review them and the methodology involved.

NMFS' own surveys conducted during the epizootic indicate that dolphin density was lower in the offshore zone than estimated from pre-epizootic surveys. No comparable population survey data are yet available to draw inferences about the coastal population of dolphins. However, the model used to determine that this stock is depleted does not depend directly on abundance estimates, but instead is a population dynamics model.

Comment: NMFS did not consider whether the population was initially above carrying capacity.

Response: There are no data of which NMFS is aware to indicate that the pre-epizootic population could have been above carrying capacity. In making the determination that this stock is depleted relative to OSP, NMFS took the conservative approach and used recent population estimates, rather than higher figures of historical abundance. These recent estimates of the population size along the mid-Atlantic coast before the epizootic are well below turn-of-the-century abundance estimates based on cumulative removals from shore stations harvests. Even if the historical abundance estimates indicated that the turn-of-the-century population was above carrying capacity, the use of recent abundance estimates would put the pre-epizootic population below the historical carrying capacity.

Comment: Dolphin mortality was overestimated in the model because NMFS assumed that only 50 percent of dead dolphins stranded. A higher percentage (70–85 percent) of the animals that died were documented in Virginia because of an increase in effort to recover carcasses due to the publicity surrounding the epizootic.

Response: The commenter provided no documentation to support the conclusion that a higher percentage of animals were recovered in Virginia, and it is unlikely that 70–85 percent of the dead animals would strand. On NOAA cruises during the mortality event, dead animals were observed as much as 10 miles (18.5 km.) offshore. Aerial overflights also observed dead floating animals offshore. Dead dolphins are initially negatively buoyant and subject to predation. Even in semi-enclosed areas where there have been individual animal identifications, no recovery estimate approaches 70 percent of total mortality. To assume that 70–85 percent of the dead animals were recovered is unrealistic.

The models used to make the determination that this stock is depleted were based on actual strandings in areas where beach coverage had been good in prior years (index areas) rather than on an assumption that only 50 percent of the dead animals had been recovered. Restricting the analysis to beachfront index areas where high coverage rates were known to occur during the pre-epizootic period results, the magnitude of increase in strandings during the epizootic was more than ten times greater than pre-epizootic rates. NMFS recognized that pre-epizootic coverage of Virginia beaches had not been sufficient to be useful in making the determination of depletion, and thus Virginia data were not used in the weighting. NMFS notes, however, that Virginia data indicated that the difference between pre-epizootic and epizootic stranding rates was even greater in Virginia, i.e., 15–20 times pre-epizootic mortality rates.

Comment: NMFS estimated normal annual mortality at 7–14 percent.

Response: The range of natural mortality rates assumed applicable to the affected dolphin population came from research results published in the scientific literature. Since the first status assessment was completed by NMFS, additional information on the range of natural mortality rates has become available. In response to the more recent information, NMFS revised the natural mortality rates assumed applicable to the dolphin population to a range from 5.6 to 10 percent per year. As indicated above, a revised stock assessment was conducted using various values within this range. The value actually used in the initial model (7 percent) is well within this range. These values are widely accepted in the scientific literature.

Comment: NMFS assumed that the stranding rate is proportional to natural mortality.

Response: The analysis did assume that the stranding rate was a consistent index of mortality rate. Without anomalous wind and weather conditions, there should be a consistency in the percentages of dead animals that strand. There is no evidence to suggest that anomalous oceanographic or weather patterns could have accounted for the observed difference between the 1987–88 stranding rate and the average of the prior 3 years. Furthermore, such anomalous conditions are unlikely over a 9-month period and a large geographical range (New Jersey to Florida). In order to prevent a possible bias created by increased effort in searching for stranded animals in areas where strandings had not previously been documented, NMFS only used index areas where responses to strandings had been consistent over the years in making its determination.

Comment: The case is based largely on a number of assumptions that will be difficult, if not impossible to verify.

Response: The assumptions applied in the analysis are biologically reasonable. The parameter ranges used in the analysis result in a large range of reductions from the pre-epizootic relative abundance level. In fact, the estimated reduction in relative abundance as a result of the epizootic of over 50 percent may be a conservative estimate of reduction from carrying capacity. The range of values used supports the determination that this stock is depleted.

Comment: Estimates of mortality should properly be based on consistent pre- and post-event population indices.

Response: Such a method would be a direct method of assessing the impact of the mortality on the dolphin population, but it is not the only method for assessing the impact. The methodology used to make the determination that this stock is depleted, as discussed in the background to the proposed rule, is scientifically robust.

Comment: Assessment of impact using the number of animals that stranded relative to the population depends on the accuracy of abundance estimates and the relationship between carcass counts (probably biased by uneven reporting) and the true mortality.

Response: The method discussed in the comment was examined by NMFS and was rejected for use in the assessment. The determination that this stock is depleted is based primarily on calculations using the widely accepted natural mortality rates discussed above and the mortality figures involved in the epizootic.

Comment: Available population data are inadequate to make determinations about stock status relative to OSP. The wide range in population estimates necessary to achieve 95-percent confidence limits is further evidence that the current information relating to depletion is weak.

Response: The model used to assess stock reduction did not utilize abundance estimates directly, and so the imprecision of the available estimates is not relevant to the determination. A range of parameter values that bracket the stock-specific parameter values were used in the assessment. This range of values used supports the determination that this stock is depleted at a 90-percent confidence interval.

Comment: The epizootic was a natural event.

Response: Whether it was natural or not is irrelevant to a determination that the population is below OSP.

Comment: It is unclear if both nearshore and offshore stocks were affected by the epizootic.

Response: Although it is uncertain as to whether the offshore stock was affected by the epizootic, body length and coloration characteristics of stranded animals indicate that virtually all of the stranded animals were from the smaller coastal stock. This depletion determination does not apply to the offshore stock.

Final Determination

Based on the best available scientific information and a review of public comments received on the ANPR and the proposed rule, NMFS is listing the stock as depleted.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this final rule is exempt from the requirements of Executive Orders 12291 and 12612, the Paperwork Reduction Act, and the Regulatory Flexibility Act, because section 115(a)(2) of the MMPA requires listing decisions to be based "solely on the basis of the best scientific information available."

Nevertheless, the General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities because it would have no economic effects save those mandated by statute.

A designation of depletion in this instance, which is similar to a listing action under section 4(a) of the Endangered Species Act, is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

References

Scott, G.P., D.M. Burn, and L.J. Hansen. 1988. The dolphin die-off: Long-term effects and recovery of the population. Proceedings, OCEANS '88. 3:819–823. IEEE Catalog No. 88–CH2585–8.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: March 31, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service, National Oceanic and Atmospheric Administration

For the reasons set out in the preamble 50 CFR part 216 is amended as follows:

PART 216–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.15, a new paragraph (d) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(d) Bottlenose dolphin (*Tursiops truncatus*), coastal-migratory stock along the U.S. mid-Atlantic coast.

[FR Doc. 93–7932 Filed 4–5–93; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 301

[Docket No. 930219–3069]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and approval of catch sharing plan.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), on behalf of the International Pacific Halibut Commission (IPHC), publishes regulations promulgated by the IPHC and approved by the United States Government to govern the Pacific halibut fishery. The IPHC regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

NOAA also approves a 1993 Catch Sharing Plan (Plan) developed by the Pacific Fishery Management Council (PFMC) in accordance with the Northern Pacific Halibut Act of 1982 (Halibut Act) to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fishermen off the coasts of Washington, Oregon, and California (IPHC statistical Area 2A). Secretarial regulations necessary to achieve the sport fisheries allocations in the Plan specify the seasons, quotas, and bag limits in each of the sport fishery areas. In addition, the Secretarial rule provides for flexible inseason management measures for the sport fisheries to achieve the allocations in each geographic area.

EFFECTIVE DATE: April 5, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, NMFS, Alaska Region, P.O. Box 21668,

Juneau, AK 99802, telephone 907–586–7221; Rolland A. Schmitten, Regional Director, NMFS, Northwest Region, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115, telephone 206–526–6140; or Donald McCaughran, Executive Director, IPHC, P.O. Box 5009, University Station, Seattle, WA 98105, telephone 206–624–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness and to inform persons subject to the regulations of the restrictions and requirements established therein.

The IPHC held its annual meeting on January 25–29, 1993, in Vancouver, B.C., and adopted regulations for 1993. The substantive changes from the previous IPHC regulations published at 57 FR 12878 (April 14, 1992) include: (1) New commercial catch limits and fishing seasons; (2) new treaty Indian halibut catch limits; (3) new sport fishing limits in Area 2A, which includes all waters off the coasts of Washington, Oregon, and California; (4) an experimental fishery in a new subarea 4D–N, in the portion of Area 4D north of latitude 62°30′00″ N., authorized for 1993 only, with a separate quota and a 1,000-pound (0.45 metric ton (mt)) trip limit through August 10; (5) new careful release regulations; (6) a new logbook requirement for recording personal use catch; (7) deletion of the three-halibut possession limit and the 32-inch (81.3 cm) minimum size limit in the Area 2B sport fishery because they were not implemented by Canada and reversion of the possession limit back to being the same as the bag limit; and (8) deletion of the Area 2A sport seasons and bag limits because they are being implemented by the Secretary of Commerce (Secretary) under section 5 of the Halibut Act, 16 U.S.C. 773c.

Because the commercial fishery in Area 2A is likely to exceed the sub-quota for this fishery during the first 10-hour opening, the IPHC will need to impose vessel trip limits. However, because it is unknown at this time how many vessels might participate in the Area 2A fishery, the IPHC staff will determine and announce the vessel trip limits necessary to avoid exceeding the sub-quota prior to the July 27 opening when better information is available on the number of vessels that may participate in the fishery.

Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NOAA directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocation be necessary.

The North Pacific Fishery Management Council (NPFMC) did not develop any additional Pacific halibut regulations for 1993. The NPFMC's previous regulations in § 301.11(d) (55 FR 23085, June 6, 1991); and §§ 301.11(e), 301.13 (a), (b), (e), (f), (g), (i), and (j), and 301.16(h) (53 FR 20327, June 3, 1988) also have been implemented by the IPHC and remain in effect without change except that §§ 301.13 and 301.16 have been renumbered as 301.14 and 301.17 respectively. The NPFMC's previous regulation in § 301.10(g) (56 FR 19618, April 29, 1991) also is republished for the convenience and information of the public.

The PFMC has prepared catch sharing plans since 1988 to allocate the TAC of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California. For 1993, the PFMC recommended continuation of the proportionate sharing between user groups approved for 1992, with some revisions within the sport fisheries. A complete discussion of the PFMC's recommendation and background on the development of the 1993 Plan and the proposed sport fishing regulations were published in the **Federal Register** on February 19, 1993 (58 FR 9138) with a request for public comments. This action responds to public comment on the proposed Plan and proposed sport regulations and announces approval of the Plan and the final rule.

Comments and Responses on the Secretarial Proposed Rule and the Catch Sharing Plan

Comments on the proposed 1993 Catch Sharing Plan were received from the State of Washington and representatives of the treaty Indian tribes. Their comments are summarized below with responses.

Comment 1: The tribal fisheries structuring should ensure that the intent of the Plan for year-round tribal ceremonial and subsistence fishery is not affected by overages in the tribal commercial fishery as occurred in 1991.

Response: The 1993 Plan stipulates that the allocations for all user groups are distributed as sub-quotas to ensure that any overage or underage by any one user group will not affect achievement of the allocation of TAC for other user groups. The Plan further stipulates that the tribal ceremonial and subsistence fishery and the tribal commercial fishery are to be managed separately; any overages in the commercial fishery should not affect the ceremonial and subsistence fishery. This intent has been incorporated into IPHC regulations.

Comment 2: The Washington Department of Fisheries, in consultation with anglers and IPHC staff, recommended that the Puget Sound sport fishery opening date be delayed 2 days so that the final weekend day of the season, July 18, can be open.

Response: The recommended change is within the PFMC's allocation objectives for Washington sport fisheries in 1993 as described in the plan consistent with the Catch Sharing Plan. Therefore, the proposed regulations at § 301.20(d)(2)(i) were revised to provide the additional weekend opening on July 18 and the opening date was changed to open on Thursday, May 13. The IPHC has concurred that these changes in dates will not cause the projected catch for this season to be exceeded.

Comment 3: The Washington Department of Fisheries is proposing to modify in State regulations the Bonilla-Tatoosh line that separates inside and ocean sport fishing areas to make it more easily detected by sport users. The State recommends that the Bonilla-Tatoosh line in the proposed halibut sport regulations be modified to intersect the buoy off Duntze Rock and then proceed to Tatoosh Island so that the line would be consistent with their proposed change for other sport fisheries. The revised line would be from Bonilla Point (latitude 48°35′44″N., longitude 124°43′00″W.) to the buoy adjacent to Duntze Rock

(latitude 48°24'55"N., longitude 124°44'50"W.) to Tatoosh Island lighthouse (latitude 48°23'30"N., longitude 124°44'00"W.) to Cape Flattery (latitude 48°22'55"N., longitude 124°43'42"W.)

Response: The Bonilla-Tatoosh line defined in the proposed rule is the traditional line used to delineate the boundary of "inside" State waters and is used as the northeastern boundary of the fishery management area for the Federal fishery management plans for salmon and groundfish. Because of the traditional use of this line for multiple fishery management and enforcement purposes, NMFS does not believe it is appropriate to change the definition of the line without providing public notice and comment period and ensuring that the views of the Coast Guard and Department of State are considered before the line is changed. NMFS will consider publishing a notice of a proposed change to the Bonilla-Tatoosh line for the 1994 sport fishing regulations if the State makes such a request before publication of the proposed regulations for 1994.

Accordingly, the proposed regulations at § 301.20(d) have been modified as described in the responses to comments. Further, the numbering of the proposed sport regulations have been changed to § 301.21 in the final rule because a new § 301.13 was added by the IPHC. Also, to maintain consistency with IPHC regulations, § 301.21(d)(2) of the final sport regulations was modified to clarify that it was promulgated by NMFS, and § 301.21(d)(4) was renumbered (d)(5) because, at the IPHC's request, a new § 301.21(d)(4) was inserted.

NMFS also announces Secretarial approval of the 1993 catch sharing plan recommended by the PFMC. The comments described above did not result in any changes to the Plan. Specific regulations implementing portions of the 1993 Plan were adopted by the IPHC and published herein. NMFS has implemented the sport fishery portion of the catch sharing plan, as applied to the Area 2A TAC, in § 301.21(d) of these regulations. The final approved 1993 Catch Sharing Plan for Pacific halibut in Area 2A is described below.

1993 Catch Sharing Plan for Area 2A

The 1993 Catch Sharing Plan (Plan) allocates 25 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A1–1, and 75 percent to non-Indian fishermen in Area 2A. The allocation to non-Indian fishermen is divided 50 percent to commercial users and 50 percent to sport users. The sport allocation is further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California. The sport fisheries are divided into geographic areas, each having separate seasons, quotas, bag limits, and other restrictions. The Washington sport allocation applies to the coastal and inland waters off Washington, as well as waters off the coast of Oregon north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. The allocations are distributed as sub-quotas to ensure that any overage or underage by any one user group will not affect achievement of the allocation of TAC for other user groups. The Plan distributes the 600,000-pound (272.2 mt) TAC in Area 2A as sub-quotas between users as follows:

	Pounds	Mt
Treaty Indian sub-quota ...	150,000	68.0
Non-Indian Commercial sub-quota	225,000	102.1
Washington Sport sub-quota	137,250	62.3
Oregon Sport sub-quota ..	87,750	39.8
Total	600,000	272.2

The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described below.

Treaty Indian Fisheries

Twenty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in Subarea 2A–1, which includes that portion of Area 2A north of 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude (defined in 50 CFR 301.20(c)). The treaty Indian allocation is to provide for a tribal commercial fishery and a ceremonial and subsistence fishery. These two fisheries are to be managed separately; any overages in the commercial fishery would not affect the ceremonial and subsistence fishery. The commercial fishery will be managed to achieve an established sub-quota, while the ceremonial and subsistence fishery will be managed for a year-round season. The tribal ceremonial and subsistence fishery will commence on January 1 and continue year-round through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person. The tribal estimate of ceremonial and subsistence catch for a year-round fishery in 1993 is 14,000 pounds (6.4 mt). The tribal commercial fishery is allocated a sub-quota of 136,000 pounds (61.7 mt), which is equal to the tribal allocation of 150,000 pounds (68.0 mt) less the tribal estimate of ceremonial and subsistence catch for a year-round season. The tribal commercial fishery will commence on March 1 and continue through October 31 or until the tribal commercial sub-quota is taken, whichever occurs first. Any halibut sold by treaty Indians during the commercial fishing season must comply with the IPHC regulations on size limits for the non-Indian fishery. Halibut taken for ceremonial and subsistence purposes may not be offered for sale or sold. Regulations necessary for the treaty Indian allocative measures are implemented in the 1993 IPHC regulations.

Commercial Fisheries (Non-Indian)

The non-Indian commercial fishery is allocated 37.5 percent of the Area 2A TAC. The Plan does not address the structuring of the commercial season(s). The commercial fishery opening date(s), duration, and vessel trip limits for Area 2A, as necessary to ensure that the sub-quota for this fishery is not exceeded, were determined by the IPHC.

Sport Fisheries (Non-Indian)

The non-Indian sport fisheries are allocated 37.5 percent of the Area 2A TAC. The sport fishery allocation is further divided, with 22.9 percent of the Area 2A TAC to areas off Washington/northern Oregon and 14.6 percent to areas off Oregon/California. The sport fisheries are divided into five geographic areas, each having separate seasons, sub-quotas, bag limits, and other restrictions as necessary to achieve allocation objectives. The Washington sport allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast.

The Washington sport fisheries structuring is based on the following allocation objectives adopted by the PFMC.

1. Provide a stable sport opportunity for anglers in inside waters, and provide incentive to anglers to fish in Puget Sound with a two fish bag limit.

2. Maximize the season length for viable fishing opportunity on the remote halibut grounds off northwest Washington, and stagger the seasons to spread out this opportunity to maximize the benefit to anglers who utilize these grounds.

3. On the south coast, structure the season to ensure stability, and maximize

the season length during time periods when sport salmon fishing opportunities are not available.

The Oregon sport fisheries structuring is based on the following allocation objectives adopted by the PFMC.

1. Provide special opportunity for anglers out of Pacific City and Garibaldi, where a long-standing relatively small fishery has existed.

2. Provide early opportunity to anglers along the central and south coast of Oregon, especially Newport anglers.

3. Provide opportunity for anglers out of all Oregon ports south of Cape Falcon, especially small boat anglers.

4. Provide a short period of opportunity for all ports south of Cape Falcon and allow charterboats and larger private boats to fish productive areas in deeper water off Newport.

5. Provide anglers in California the opportunity to fish in a fixed season.

The details of the sport fisheries structuring for the five sport fishery areas are as follows.

Washington Inside Waters (Puget Sound and Straits)

This area is allocated 32.5 percent of the Washington sport sub-quota, which is 44,606 pounds (at the 1993 TAC level of 600,000 pounds (272.2 mt)). The season in this area is open 6 days per week (closed Wednesdays) from May 13 to July 18 for a projected catch of 41,606 pounds (20.2 mt). Due to inability to monitor the catch in this area inseason, no inseason adjustments will be made, and estimates of actual catch will be made post-season. The daily bag limit is two halibut per person per day with no size limit.

Washington North Coast Between the Straits and Queets River

This area is allocated 62.3 percent of the Washington sport sub-quota at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt). The area allocation is further divided with 85 percent to be used in a spring fishery (opening in May) and 15 percent for a summer fishery (opening in July). The spring fishery will open on May 1 and continue 7 days per week until 85 percent of the sub-quota is taken. The summer fishery will open on July 2 for 2 days per week (Fridays and Saturdays) and continue until September 30 or until the area sub-quota is taken, whichever occurs first. The daily bag limit is one halibut per person per day with no size limit.

Southern Washington/Northern Oregon (Between Queets River and Cape Falcon, OR)

This area is allocated 5.2 percent of the Washington sport sub-quota at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt). The season will open 2 days per week (Thursdays and Fridays) from May 20 to June 10. If allowable harvest for this area remains after this season, it will open again on July 2 on Fridays only and continue until September 30 or until the area sub-quota is taken, whichever occurs first. The daily bag limits is one halibut per person per day with no size limit.

South of Cape Falcon to the California Border

This area is allocated 97.4 percent of the Oregon sport sub-quota. The daily bag limit for all seasons in this area is two halibut per person per day, one with a minimum 32-inch size limit and the second with a minimum 50-inch size limit. Eighty percent of this area sub-quota is for a May 1 opening that is divided into two regions, each with a sub-quota. The remainder is for a July 12 opening (3 percent) and an August 4 opening (17 percent). At the 1993 Area 2A TAC of 600,000 pounds (272.2 mt), the four seasons are as follows.

1. The region south of Cape Falcon and north of the Nestucca Bay entrance (latitude 45°09′45″ N.) is allocated 3 percent of the area sub-quota for a May 1 opening. The season will open on May 1 and continue every day until July 11 or until 3 percent of the sub-quota is estimated to have been taken, whichever occurs first.

2. The region south of Nestucca Bay entrance and north of California border is allocated 77 percent of the area subquota for a May 1 opening. The season will open on May 1 and continue 5 days per week (Wednesday through Sunday) until July 11 or until 77 percent of the sub-quota is estimated to have been taken, whichever occurs first.

3. This season, applying to the entire area, will open on July 12 in waters inside the 30-fathom curve and will continue every day until August 3 or until 3 percent of the sub-quota is estimated to have been taken, whichever occurs first.

4. The last season, also applying to the entire area, will open on August 4, with no depth restrictions. The fishery is open 5 days per week, Wednesday through Sunday until September 30 or until the area sub-quota is estimated to have been taken, whichever occurs first.

Any poundage remaining after the earlier seasons will be added to the next season. If poundage added to the last season is sufficient to allow for additional fishing opportunity, an inseason action should be taken to add additional open days to each week.

California—South of the California Border

This area is allocated 2.6 percent of the Oregon sport sub-quota. The daily bag limit is one halibut per person per day with a minimum 32-inch size limit. At the 1993 Area 2A TAC of 600,000 pounds (272.2 mt), the season will commence on May 1 and continue every day until September 30 for a projected catch of 2,281 pounds (1.03 mt). Due to the inability to monitor inseason, no inseason adjustments will be made and estimates of actual catch will be made post-season.

Classification

International Pacific Halibut Commission Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* vs. *NMFS*, 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act (APA) and E.O.12291 do not apply to this notice of the effectiveness and content of the IPHC regulations. Because notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply. These regulations do not contain a collection-of-information requirement subject to the Paperwork Reduction Act. This notice of final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Secretarial Rule and Catch Sharing Plan

A regulatory impact review prepared by the PFMC for the 1992 Plan to fulfill the requirements of E.O. 12291 indicates that actions taken under the Plan are not "major" and a Regulatory Impact Analysis is not required. These findings also apply to the 1993 Plan because it is a continuation of the prior Plans approved in 1990, 1991, and 1992. Because the 1993 Plan is consistent with catch sharing plans that have been in place since 1990, it will not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA), and the Assistant Administrator determined that there would be no significant impact on the human environment resulting from the regulations and that preparation of an environmental impact statement was not required by section

102(2)(C) of NEPA or its implementing regulations. The environmental impacts of the 1993 Catch Sharing Plan and alternatives are no different than those evaluated in the 1990 EA. Therefore, this action is categorically excluded from the NEPA requirements to prepare another EA in accordance with NOAA Administrative Order 216–6, Section 6.02a.3. Copies of the 1990 EA and the 1992 regulatory impact review are available (see **ADDRESSES**).

The APA states that regulations will not become effective until 30 days after publication in the **Federal Register** unless the agency finds good cause for an earlier effective date. NMFS finds good cause to waive the 30-day cooling-off period in order to implement the sport fishing regulations by May 1, 1993. If this rule is not effective by May 1, 1993, sport fishing for Pacific halibut would not open as expected by anglers on May 1, 1993. This would cause adverse impacts on anglers traveling to coastal communities expecting to be able to fish for Pacific halibut on May 1st as well as negative economic impacts on the coastal communities and charterboat operations that are dependent on Pacific halibut fishing at this time of year. Therefore, a delay in implementation after May 1 is contrary to the public interest.

This rule and Catch Sharing Plan do not contain a collection-of-information requirement subject to the Paperwork Reduction Act and do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This action has been determined to be consistent to the maximum extent practicable with applicable state coastal management programs in accordance with section 307 of the Coastal Zone Management Act. The Catch Sharing Plan was submitted for review by the responsible state agencies of California, Oregon, and Washington. The State of Washington agreed with the determination of consistency. The States of California and Oregon did not respond within the statutory time period; therefore, consistency is inferred.

The Secretarial rule included at § 301.20(j) merely provides notice of the boundaries of the treaty Indian tribes usual and accustomed fishing places as prescribed under Federal judicial decisions. Therefore, opportunity for prior public comment and a delayed effectiveness period are unnecessary and are not being provided under the APA, 5 U.S.C. 553. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: March 31, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

301.1 Short title.
301.2 Interpretation.
301.3 Licensing vessels.
301.4 Inseason actions.
301.5 Application.
301.6 Regulatory areas.
301.7 Fishing periods.
301.8 Closed periods.
301.9 Closed area.
301.10 Catch limits.
301.11 Fishing period limits.
301.12 Size limits.
301.13 Careful release of halibut.
301.14 Vessel clearance in Area 4.
301.15 Logs.
301.16 Receipt and possession of halibut.
301.17 Fishing gear.
301.18 Retention of tagged halibut.
301.19 Supervision of unloading and weighing.
301.20 Fishing by United States treaty Indian tribes.
301.21 Sport fishing for halibut.
301.22 Previous regulations superseded.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part,

Automated hook stripper (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks;

Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered;

Commission means the International Pacific Halibut Commission;

Daily bag limit means the maximum number of halibut a person may take in any calendar day from Convention waters;

Fishery officer means any State, Federal, or Provincial officer authorized to enforce this part, including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the U.S. Coast Guard (USCG);

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

Land, with respect to halibut, means to bring to shore and to offload;

License means a halibut fishing license issued by the Commission pursuant to § 301.3 of this part;

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel;

Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

Person includes an individual, corporation, firm, or association;

Regulatory area means an area referred to in § 301.6 of this part;

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached;

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing;

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(c) In this part, all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

§ 301.3 Licensing Vessels.

(a) No person shall operate or fish for halibut from a United States vessel, nor possess halibut on board a United States vessel, used either for commercial

fishing or as a charter vessel, unless the Commission has issued a license in respect of that vessel.

(b) No person shall operate or fish for halibut from a Canadian vessel, nor possess halibut on board a Canadian vessel, used as a charter vessel, unless the Commission has issued a license in respect of that vessel.

(c) A license issued in respect of a vessel referred to in paragraphs (a) and (b) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by fishery officers of the Contracting Parties.

(d) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from fishery officers of either Contracting Party, or from the Commission.

(f) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(g) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(h) Licenses issued under this section shall be valid only during the year in which they are issued.

(i) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(j) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(k) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

§ 301.4 Inseason actions.

(a) The Commission is authorized to establish or modify regulations during the season after determining that such action;

(1) Will not result in exceeding the catch limit established preseason for each regulatory area;

(2) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(b) Inseason actions may include, but are not limited to, establishment or modification of the following:

(1) Closed areas;
(2) Fishing periods;
(3) Fishing period limits;
(4) Gear restrictions;
(5) Recreational bag limits;
(6) Size limits; or
(7) Vessel clearances.

(c) Inseason changes will be effective at the time and date specified by the Commission.

(d) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

§ 301.5 Application.

(a) This part applies to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.6 to 301.19 of this part apply to commercial fishing for halibut.

(c) Section 301.20 of this part applies to fishing for halibut by United States treaty Indian tribes in the State of Washington.

(d) Section 301.21 of this part applies to sport fishing for halibut.

(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.6 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the states of California, Oregon, and Washington;

(b) Area 2B includes all waters off British Columbia;

(c) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (latitude 58°11′57″ N., longitude 136°38′18″ W.), and south and east of a line running 205° true from said light;

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41′15″ N., longitude 155°35′00″ W.) to Cape Ikolik (latitude 57°17′17″ N., longitude 154°47′18″ W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44′50″ N., longitude 154°08′44″ W.), then 140° true;

(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (latitude 54°29′00″ N., longitude 164°20′00″ W.) and south of latitude 54°49′00″ N. in Isanotski Strait;

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.9 of this part that are east of longitude 172°00′00″ W. and south of latitude 56°20′00″ N.;

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20′00″ N.;

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9 of this part which are east of longitude 171°00′00″ W., south of latitude 58°00′00″ N., and west of longitude 168°00′00″ W.;

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00′00″ W.;

(j) Subarea 4D–N includes that portion of Area 4D that is north of latitude 62°30′00″ N.; and

(k) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9 of this part, east of longitude 168°00′00″ W., and south of latitude 65°34′00″ N. See Figure 1 of this part.

§ 301.7 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and apply where the catch limits specified in § 301.10 of this part have not been taken.

COMMERCIAL FISHING PERIODS IN EACH REGULATORY AREA

2A	2B	2C–3A–3B	4A	4B	4D	4D–N
7/27	3/01–10/31	6/10–6/11	6/10–6/11	6/06	8/11–*	6/06–6/07
8/10		9/08–*	8/11–*	6/08	8/26–*	6/08–6/09
8/24–*		10/06–*	8/26–*	6/10	9/24–*	6/10–6/11
		10/25–*	9/08–*	6/12	10/06–*	6/12–6/13
			9/24–*	6/14		6/14–6/15
		6/10–6/11	10/06–*	6/16		6/16–6/17
		9/08–*		6/18		6/18–6/19
		10/06–*		6/20		6/20–6/21
		10/25–*		6/22		6/22–6/23
				6/24		6/24–6/25
				6/26		6/26–6/27
				6/28		6/28–6/29
				6/30		6/30–7/01
				7/02		7/02–7/03
				7/04		7/04–7/05
				7/06		7/06–7/07
				7/08		7/08–7/09
				7/10		7/10–7/11
				7/12		7/12–7/13
				7/14		7/14–7/15
				7/16		7/16–7/17
				7/18		7/18–7/19
				7/20		7/20–7/21
				7/22		7/22–7/23
				7/24		7/24–7/25
				7/26		7/26–7/27
				7/28		7/28–7/29
				7/30		7/30–7/31
				8/01		8/01–8/02
				8/03		8/03–8/04
				8/05		8/05–8/06
				8/07		8/07–8/08
				8/11–*		8/09–8/10
				8/26–*		
				9/08–*		
				9/24–*		
				10/06–*		

*Date to be announced by the Commission.

COMMERCIAL FISHING PERIODS IN EACH REGULATORY AREA

4C	4E
6/06–6/07	6/06–6/08
6/08–6/09	6/09–6/11
6/10–6/11	6/12–6/14
6/12–6/13	6/15–6/17
6/14–6/15	6/18–6/20
6/16–6/17	6/21–6/23
6/18–6/19	6/24–6/26
6/20–6/21	6/27–6/29
6/22–6/23	6/30–7/02
6/24–6/25	7/03–7/05
6/26–6/27	7/06–7/08
6/28–6/29	7/09–7/11
6/30–7/01	7/12–7/14
7/02–7/03	7/15–7/17
7/04–7/05	7/18–7/20
7/06–7/07	7/21–7/23
7/08–7/09	7/24–7/26
7/10–7/11	7/27–7/29
7/12–7/13	7/30–8/01
7/14–7/15	8/02–8/04
7/16–7/17	8/05–8/07
7/18–7/19	8/08–8/10
7/20–7/21	8/11–8/13
7/22–7/23	8/14–8/16
7/24–7/25	8/17–8/19
7/26–7/27	8/20–8/22

COMMERCIAL FISHING PERIODS IN EACH REGULATORY AREA—Continued

4C	4E
7/28–7/29	8/23–8/25
7/30–7/31	8/26–8/28
8/01–8/02	8/29–8/31
8/03–8/04	9/01–9/03
8/05–8/06	9/04–9/06
8/07–8/08	9/07–9/09
8/09–8/10	9/10–9/12
8/11–8/12	9/13–9/15
8/13–8/14	9/16–9/18
8/15–8/16	9/19–10/31
8/17–8/18.	
8/19–8/20.	
8/21–8/22.	
8/23–8/24.	
8/25–8/26.	
8/27–8/28.	
8/29–8/30.	
8/31–9/01.	
9/02–9/03.	
9/04–9/05.	
9/06–9/07.	
9/08–9/09.	
9/10–9/11.	
9/12–9/13.	
9/14–9/15.	
9/16–9/17.	

COMMERCIAL FISHING PERIODS IN EACH REGULATORY AREA—Continued

4C	4E
9/18–9/19.	
9/20–9/21.	
9/22–9/23.	
9/24–9/25.	
9/26–9/27.	
9/28–9/29.	
9/30–10/01.	
10/02–10/03.	
10/04–10/05.	
10/06–10/07.	
10/08–10/09.	
10/10–10/11.	
10/12–10/13.	
10/14–10/15.	
10/16–10/17.	
10/18–10/19.	
10/20–10/21.	
10/22–10/23.	
10/24–10/25.	
10/26–10/27.	
10/28–10/29.	
10/30–10/31.	

(b) Each fishing period in Area 2A shall begin at 0800 hours and terminate at 1800 hours Pacific Standard or Pacific

Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(c) The fishing period in Area 2B shall begin and terminate at 1200 hours Pacific Standard Time, on the dates set out in the table to this section, unless the Commission specifies otherwise.

(d) Except as provided in paragraph (e) of this section, each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E, and subarea 4D–N shall begin and terminate at 1200 hours Alaska Standard or Alaska Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(e) The 6/06 through 8/07 fishing periods inclusive in Area 4B shall begin at 0800 hours and terminate at 2000 hours Alaska Standard or Alaska Daylight Time, as applicable, unless the Commission specifies otherwise.

(f) All commercial fishing for halibut in Area 2A and 2B shall cease at 1200 hours Pacific Standard Time on October 31.

(g) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

§ 301.8 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.7 of this part in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to §§ 301.17 (g) and (h) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.9 Closed area.

All waters in the Bering Sea that are north of latitude 54°49′00″ N. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (latitude 54°36′00″ N., longitude 164°55′42″ W.) to a point at latitude 56°20′00″ N., longitude 168°30′00″ W.; thence to a point at latitude 58°21′25″ N., longitude 163°00′00″ W.; thence to Strogonof Point (latitude 56°53′18″ N., longitude 158°50′37″ W.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.10 Catch limits.

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	225,000	102
2B	10,500,000	4,763
2C	10,000,000	4,536
3A	20,700,000	9,389
3B	6,500,000	2,948
4A	2,020,000	916
4B	2,300,000	1,043
4C	800,000	363
4D	780,000	354
4D–N	20,000	9
4E	120,000	54

(b) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(c) Notwithstanding paragraphs (a) and (b) of this section, Area 2B will only close when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or October 31, whichever is earlier.

(d) If the Commission determines that the catch limit specified in any regulatory area in paragraph (a) of this section would be exceeded in an unrestricted 24-hour, 10-hour, or 12-hour fishing period as specified in §§ 301.7 (b), (c), (d) or (e), the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(e) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 27,200,000 pounds (12,337 mt) for the combined areas is taken.

(f) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 4,320,000 pounds (1,959 mt) for the combined areas is taken.

(g) Notwithstanding paragraph (a) of this section, the portion of Area 4E that is south and east of a line from 58°21′25″ N. latitude, 163°00′00″ W. longitude to Cape Newenham (at 58°39′00″ N. latitude, 162°10′25″ W. longitude) shall be closed to fishing for halibut when the Commission determines that 30 percent of the catch limit for Area 4E has been taken from this portion of Area 4E, except that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of this line will be available for harvest in the portion of Area 4E that is south and east of this line, subject to the other provisions of this part.

(h) Notwithstanding paragraph (a) of this section, any catch limit remaining in subarea 4D–N at the close of the August 9–10 fishing period, specified in § 301.07 of this part, will be added to the Area 4D catch limit.

(i) When under paragraphs (b), (c), (d), (e), (f), (g), or (h) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.11 Fishing period limits.

(a) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(c) Length classes are shown in the following table:

Overall length	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56–+	H

(d) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 mt) of halibut per fishing period.

(e) Notwithstanding paragraph (b) of this section, all vessels fishing in subarea 4D–N shall be limited to a maximum catch of 1,000 pounds (0.45 mt) of halibut per fishing period.

(f) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4E shall be limited to a maximum catch of 6,000 pounds (2.7 mt) of halibut per fishing period.

(g) Notwithstanding paragraph (f) of this section, a vessel will be permitted to make multiple fishing trips in Area 4E during the fishing period between September 19 and October 31, but each trip shall be limited to a maximum catch of 6,000 pounds (2.7 mt) of halibut and each trip shall be subject to the vessel clearance requirements in § 301.14 of this part.

(h) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.

(i) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.

(j) No vessel that fishes for halibut in a regulatory area for which a fishing period limit is in effect shall fish in any other regulatory area during that fishing period.

§ 301.12 Size limits.

(a) No person shall take or possess any halibut that

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part; or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

(c) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

§ 301.13 Careful release of halibut.

All halibut in excess of a vessel's fishing period limit, when fishing period limits as determined or specified in § 301.11 of this part are in effect, or halibut below the minimum size limit specified in § 301.12 of this part, shall be immediately released and returned to the sea with a minimum of injury by:

(a) Hook straightening outboard of the roller;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

§ 301.14 Vessel clearance in Area 4.

(a) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, 4D, 4E or subarea 4D–N must obtain a vessel clearance before such fishing in each such area and fishing period that applies, and before the unloading of any halibut caught in said areas and fishing periods, unless specifically exempted in paragraphs (h), (i), (j), or (k) of this section.

(b) The vessel clearances required under paragraph (a) of this section for Areas 4A, 4C, 4D 4E or subarea 4D–N may be obtained only at Dutch Harbor or Akutan, Alaska, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(c) The vessel clearances required under paragraph (a) of this section for Area 4B may only be obtained at Nazan Bay on Atka Island, Alaska, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(d) The vessel operator shall specify the specific fishing period and regulatory area in which fishing will take place.

(e) Vessel clearances required under paragraph (a) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0800 and 1800 hours, local time.

(f) No halibut shall be on board at the time of clearance required by paragraph (e) of this section.

(g) Vessel clearances required under paragraph (a) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the closings in that Area, between 0800 and 1800 hours, local time.

(h) Any person that fishes for halibut only in Area 4B and lands their total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (a) of this section.

(i) Any person that fishes for halibut only in Area 4C and lands their total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (a) of this section.

(j) Any person that fishes for halibut only in Area 4E and lands their total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.9 of this part is exempt from the clearance requirements of paragraph (a) of this section.

(k) Any person that fishes for halibut only in subarea 4D–N and lands their total annual halibut catch at a port within subarea 4D–N is exempt from the clearance requirements of paragraph (a) of this section.

§ 301.15 Logs.

(a) The operator of any vessel that is 5 net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Separate from other records maintained on board the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of 2 years by the owner or operator of the vessel;

(4) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following offloading halibut.

(c) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his crew members, or any other person for personal use, shall be recorded in the vessel's log within 24 hours of offloading.

(d) No person shall make a false entry in a log referred to in this section.

§ 301.16 Receipt and possession of halibut.

(a) No person shall receive halibut from a United States vessel that does not have the license required by § 301.3 of this part on board the vessel.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from

which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State fish tickets or Federal catch reports, showing the date, locality, name of vessel, Halibut Commission license number (United States), and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) No person shall make a false entry on a State fish ticket or Federal catch report referred to in paragraph (b) of this section.

(d) A copy of the fish tickets or catch reports referred to in paragraph (b) of this section shall be

(1) Retained by the person making them for a period of 2 years from the date the fish tickets or catch reports are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(e) No person shall possess any halibut that he or she knows to have been taken in contravention of this part.

(f) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (b) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (d) of this section.

(g) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.17 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(d) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number.

(e) The markings specified in paragraph (d) of this section shall be in characters at least 4 inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(f) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be—

(1) Floating and visible on the surface of the water, and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(g) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) Notwithstanding paragraphs (g) and (h) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut in Areas 4B, 4C, 4E and subarea 4D–N as described in § 301.6 (g), (h), (j), and (k) of this part when the closed period prior to the scheduled fishing period is less than 72-hours in duration.

(j) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(k) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

§ 301.18 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining, landing, or selling a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by a fishery officer.

§ 301.19 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of fishery officers to assure the fulfillment of the provisions of this part.

§ 301.20 Fishing by United States treaty Indian tribes.

(a) Except as provided in this section, all regulations of the Commission in this part apply to halibut fishing in subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington.

(b) For purposes of this part, United States treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all waters off the coast of Washington that are north of latitude 46°53'18" N. and east of longitude 125°44'00" W., and all inland marine waters of Washington.

(d) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 1 through October 31, or until 136,000 pounds (61.7 mt) is taken, whichever occurs first.

(e) Ceremonial and subsistence fishing for halibut in subarea 2A–1 is permitted with hook and line gear from January 1 to December 31, and is estimated to take 14,000 pounds (6.4 mt).

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per day per person.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the provisions of § 301.12 of this part, Size limits.

(i) Any member of a United States treaty Indian tribe as defined in paragraph (b) of this section, who is engaged in commercial or ceremonial and subsistence fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

(j) The following table sets forth the fishing areas of each of the 12 United States treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

Tribe	Boundaries
Makah	North of 48°02'15" N. latitude (Norwegian Memorial), west of 123°42'30" W. longitude, and east of 125°44'00" W. longitude.
Quileute	Between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River), and east of 125°44'00" W. longitude.
Hoh	Between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River), and east of 125°44'00" W longitude.
Quinault	Between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude.
Lower Elwha	
Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Klallam Tribe may fish under rights secured by treaties with the United States.
Jamestown	
Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Klallam Tribe may fish under rights secured by treaties with the United States.
Port Gamble	
Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Klallam Tribe may fish under rights secured by treaties with the United States.
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgment), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Swinomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.
Suquamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
Skokomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

§ 301.21 Sport fishing for halibut.

(a) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(b) In all waters off Alaska:

(1) The sport fishing season is from February 1 to December 31; and

(2) The daily bag limit is two halibut of any size per day per person.

(c) In all waters off British Columbia:

(1) The sport fishing season is from February 1 to December 31; and

(2) The daily bag limit is two halibut of any size per day per person.

(d) In all waters off California, Oregon, and Washington:

(1) To total allowable catch of halibut shall be limited to

(i) 137,250 pounds (62.3 mt) north of Cape Falcon (latitude 45°46'000" N.), and

(ii) 87,750 pounds (39.8 mt) south of Cape Falcon.

(2) The sport fishing areas, area sub-quotas, fishing dates, and daily bag limits promulgated by NMFS are as follows except as modified under the inseason actions in paragraph (d)(3) of this section.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (latitude 48°35'44" N., longitude 124°43'00" W.) to the lighthouse on Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°43'42" W.), there is no sub-quota. The daily bag limit is two halibut of any size per day per person. The fishing season is May 13 through July 18, six days a week (closed Wednesdays).

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (latitude 47°31'42" N.), the sub-quota is 85,507 pounds (38.8 mt). The daily bag limit is one halibut of any size per day per person and the sport fishing seasons are:

(A) May 1 through July 1, 7 days a week, or until 72,681 pounds (33.0 mt) are estimated to have been taken and the season is closed by the Commission; and

(B) July 2 through September 30, 2 days a week (Friday and Saturday), or until the area sub-quota of 85,507 pounds (38.8 mt) is estimated to have been taken and the season is closed by the Commission, whichever occurs first

(iii) In the area between the Queets River, Washington, and Cape Falcon, Oregon (latitude 45°46'00" N.), the sub-

quota is 7,137 pounds (3.2 mt). The daily bag limit is one halibut of any size per day per person. The fishing season is from May 20 through June 10, 2 days a week (Thursday and Friday). Immediately after the season closes, the Regional Director, in consultation with the affected states and Commission staff, will determine if the sub-quota for this area was taken. If the sub-quota was not taken and sufficient harvest remains for at least 1 day of fishing, the Regional Director will re-open the fishery on July 2 through September 30, 1 day a week (Friday), or until 7,137 pounds (3.2 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(iv) In the area off Oregon between Cape Falcon and the California border (latitude 42°00′00″ N.), the sub-quota is 85,469 pounds (38.8 mt). The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 centimeters) and the second with a minimum overall size limit of 50 inches (127.0 centimeters). The fishing seasons are:

(A) May 1 through July 11, 7 days a week, between Cape Falcon and Nestucca Bay (latitude 45°09′45″ N.), or until 2,564 pounds (1.2 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first;

(B) May 1 through July 11, 5 days a week (Wednesday through Sunday), between Nestucca Bay and the California border, or until 65,811 pounds (29.9 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first;

(C) July 12 through August 3, 7 days a week, in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the California border, or until 2,564 pounds (1.2 mt) are estimated to have been taken (except that any poundage remaining unharvested after the earlier seasons will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(D) August 4 through September 30, 5 days a week (Wednesday through Sunday), from Cape Falcon to the California border, or until a total of 85,469 pounds (38.8 mt) for this area are estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(v) In the area off the California coast, there is no sub-quota. The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 centimeters). The fishing season in this area is May 1 through September 30, 7 days a week.

(3) Flexible inseason management provisions in Area 2A.

(i) The Regional Director, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after determining that such action:

(A) Is necessary to allow allocation objectives to be met; and

(B) Will not result in exceeding the catch limit established preseason for each area.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(iii) Notice procedures.

(A) Actions taken under paragraph (d)(3) of this section will be published in the **Federal Register**.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

(iv) Effective dates.

(A) Any action issued under paragraph (d)(3)(iii) of this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the **Federal Register**, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Director determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after the filing of the action with the **Federal Register**.

(C) any inseason action issued under paragraph (d)(3) of this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(v) Availability of data. The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Fisheries Management Division, 7600 Sand Point Way NE, Seattle, Washington.

(4) The Commission shall determine and announce closing dates to the public for any area in which the sub-quotas under paragraph (d)(2) are estimated to have been taken.

(5) When the Commission has determined that a sub-quota under paragraph (d)(2) of this section is estimated to have been taken and announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled under paragraph (d)(2) or (d)(3) of this section, or announced by the Commission.

(e) Any minimum overall size limit in this section shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(f) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(g) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(h) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(i) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(j) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(k) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(l) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(m) The operator of a charter vessel shall be liable for any violations of this part committed by a passenger aboard said vessel.

§ 301.22 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

BILLING CODE 3510-22-M

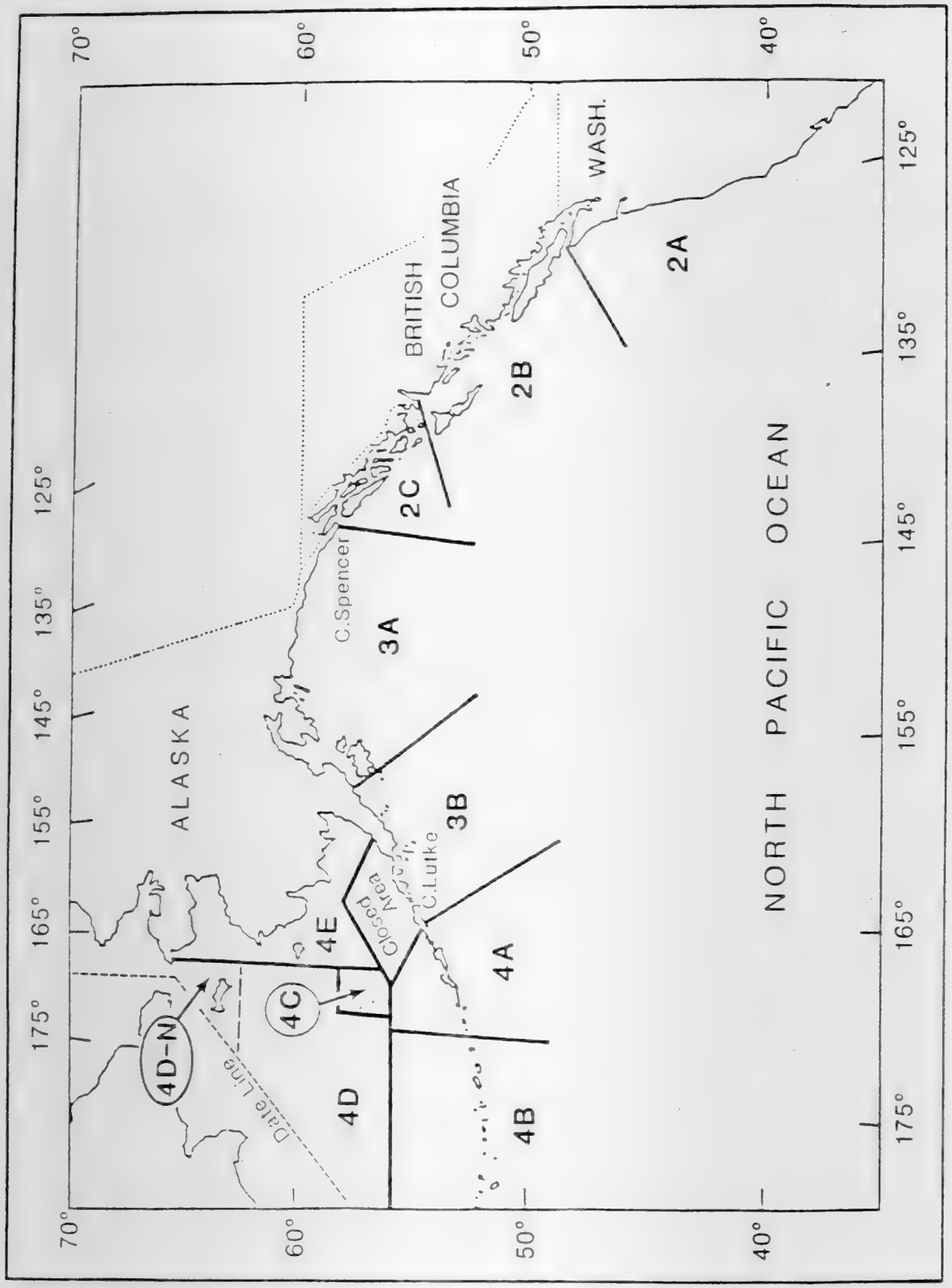

FIGURE 1 TO PART 301

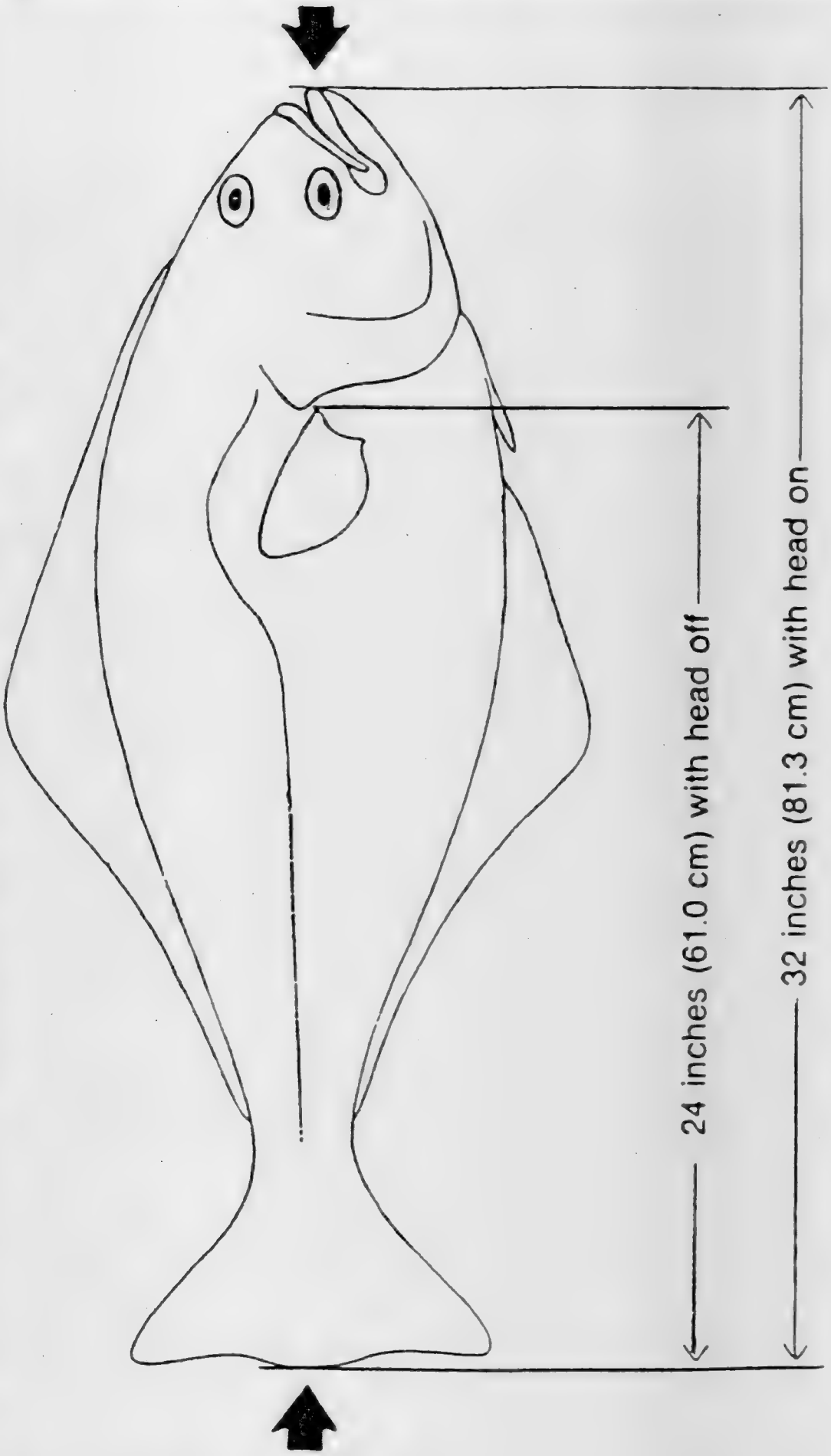

FIGURE 2 TO PART 301

[FR Doc. 93-7919 Filed 4-5-93, 8:45am]

BILLING CODE 3510-22-C

50 CFR Part 672

[Docket No. 921107-3068]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the "other species" category in the Western Regulatory Area, Statistical Area 61, in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the "other species" category total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 2, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the "other species" category TAC in the Western Regulatory Area was established by the notice of final specifications (58 FR 16787, March 31, 1993) as 3,045 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the "other species" category TAC in the Western Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 2,770 mt; 275 mt remain to be taken as incidental catch in directed fisheries for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the "other species" category in the Western Regulatory Area effective from 12 noon, A.l.t., April 2, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-7915 Filed 3-31-93; 4:39 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 64
Tuesday, April 6, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AC75

1994 Wheat Program, Acreage Reduction

AGENCY: Commodity Credit Corporation, USA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1994 crop of wheat. This action is required by the Agricultural Act of 1949 (the 1949 Act), as amended.

DATES: Comments must be received on or before May 3, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3740–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Grains Analysis Division, USDA, ASCS, room 3740–S, P.O.Box 2415, Washington, DC 20013–2415 or call 202 720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12991 and Departmental Regulation 1521–1

This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "major." A Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impacts of implementing each option is available from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wheat Production Stabilization—10.058.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 107B(o) of the 1949 Act to request comments with respect to the subject matter of this rule. The Preliminary Regulatory Impact Analysis referred to above determined that determining the 1994 wheat ARP will have no significant economic impact on small entities because the regulatory burden on the affected entities would remain the same regardless of the determinations made by this action. Thus, CCC certifies that this rule will have no significant economic impact on a substantial number of small entities.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This rule does not involve the preemption of State law; it is not retroactive; and it does not involve any exhaustion of administrative remedy issues.

Paperwork Reduction Act

The amendment to 7 CFR part 1413 set forth in this final rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 107B of the 1949 Act, an Acreage Reduction Program (ARP) is required to be implemented for the 1994 wheat crop if it is determined that the total supply of wheat would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of wheat to desirable goals. A paid land diversion program is not considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D and title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce wheat in excess of the permitted acreage for the farm plus any wheat acreage planted in accordance with the flexibility provisions provided by section 504 of the 1949 Act are ineligible for loans and purchases and all payments with respect to that crop on the farm.

If an ARP program for the 1994 crop is in effect, the program must be announced no later than June 1, 1993. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of wheat since the program was first announced. These adjustments must be made no later than July 31, 1993.

In addition, section 1302 of the Agricultural Reconciliation Act of 1990 provides that if June 30, 1992, the United States does not enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement of Tariffs and Trade, the Secretary is authorized to waive any minimum ARP requirement for the 1993 through 1995 crops of wheat, as appropriate, to protect the interests of American agricultural producers and

ensure the international competitiveness of United States agriculture. Because the U.S. did not enter into an agreement by June 30, 1992, the Secretary is authorized to waive any minimum ARP requirement for 1994 wheat.

In accordance with section 107B of the 1949 Act, not less than 60 days before the program is announced for a crop of wheat, proposals for public comment on various program options for the crop of wheat are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1994 wheat ARP, the Secretary will choose a specific ARP percentage from within a range established by the estimated ending stocks-to-use (S/U) ratio for the 1993/94 wheat marketing year. If it is estimated that the 1993/94 S/U in percentage terms will be—

(i) More than 40 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(ii) Equal to or less than 40 percent, the ARP may not be more than 0 to 15 percent.

The S/U for the 1993/94 marketing year at 28.7 percent is estimated to be well below 40 percent. Based on this estimate, the 1994 ARP may be not more than 15 percent.

In addition, section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1994 crop of wheat may not be less than 7 percent. This provision does not apply if the beginning stocks of soybeans for the 1991/92 marketing year are less than 325 million bushels or if the estimated S/U for the 1993 wheat crop is less than 34 percent.

The current estimate of soybean stocks on September 1, 1991, is 329 million bushels. The estimated S/U for the 1993/94 wheat crop is 28.7 percent. Thus, under current supply and use estimates for soybeans and wheat, the minimum 7-percent-ARP provision is not applicable. In any case, the Secretary could waive this minimum ARP under section 1302 of the Agricultural Reconciliation Act of 1990 as discussed above.

The 1994 ARP options considered are:

Option 1. 5-percent ARP.

Option 2. 10-percent ARP.

Option 3. 15-percent ARP.

The estimated impacts of the ARP options are shown in Table 1.

TABLE 1.—ESTIMATED IMPACTS OF 1994 ARP OPTIONS

Item	Option 1	Option 2	Option 3
ARP (%)	5	10	15
Participation (%)	84	83	82
Planted Acres (Million acres)	71.5	68.5	65.7
Production (Million bushels)	2,350	2,265	2,185
Domestic Use (Million bushels)	1,178	1,158	1,143
Exports (Million bushels)	1,225	1,210	1,200
Ending stocks (Million bushels)	700	650	595
Season Average Producer Price ($ / bushel)	2.80	2.88	2.98
Deficiency Payments & Marketing Loan Benefits ($ million)	2,097	1,814	1,523

Accordingly, comments are requested as to whether there should be a 1994 acreage reduction percentage, and, if so, whether it should be 5 percent, 10 percent, 15 percent, or some other percentage within the range of 0 to 15 percent. The final determination of this percentage will be set forth at 7 CFR Part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308; 1308a; 1309; 1441–2; 1444–2; 1444f; 1445b–3a; 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54(a)(1) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1)(i) 1991 wheat, 15 percent;

(ii) 1992 wheat, 5 percent;

(iii) 1993 wheat, 0 percent;

(iv) 1994 wheat, if announced, shall be within the range of 0 to 15 percent, as determined and announced by CCC.

* * * * *

Signed April 2, 1993 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–8135 Filed 4–2–93; 3:57 pm]

BILLING CODE 3410–05–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to amend its regulations governing credit union supervisory committee audits and verifications. The proposal would require independent annual audits (opinion audits) for federally insured credit unions with assets exceeding $50 million, and add a nonstatistical sampling option for independent, licensed, certified public accountants in the verification of members' accounts consistent with applicable generally accepted auditing standards (GAAS). The proposal would also require that the supervisory committee and/or its auditors provide NCUA the option to

photocopy working papers supporting the audit. If the supervisory committee or its auditors fail to do so, NCUA could reject the audit as inadequate in meeting the regulatory requirement. The proposal would also amend applicable sections of the current regulation to more properly reflect accounting/auditing terms-of-art without otherwise changing the intent of the regulation.

DATES: Comments must be received on or before June 7, 1993.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Accounting Officer, Office of Examination and Insurance (202) 682–9640, or Michael McKenna, Attorney, Office of General Counsel (202) 682–9630, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The current regulation, § 701.12, sets forth the supervisory committee's responsibility in meeting the audit and verification requirements of the Federal Credit Union Act. A supervisory committee audit is required at least once every calendar year covering the period since the last audit. The scope of the audit must be that which, as a minimum, tests the federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures and classification, and internal controls (§ 701.12(b)). A written report on the audit must be made to the board of directors and, if requested, NCUA (§ 701.12(c)). Working papers must be maintained and made available to NCUA (§ 701.12(c)). Independence requirements must be met (§ 701.12(d)); standards governing verifications—100 percent verification or statistical sampling—are set forth (§ 701.12(e)). Section 741.2 makes these requirements applicable to federally insured state-chartered credit unions.

As explained more fully below, the proposal adds a requirement for annual audits (opinion audits) by independent, licensed, certified public accountants for federally insured credit unions with assets greater than $50 million. The NCUA Board feels this is necessary due to the increasing complexity of credit union financial statements. In line with this philosophy, the agency recently began collecting quarterly call report data on larger credit unions. The requirement for an opinion audit will go hand in hand with this increased collection of financial data to facilitate the adequate supervision and examination of federal credit unions. The General Accounting Office had recommended such a requirement as a result of their 2-year study of NCUA and the credit union system ("Credit Unions: Assuring Future Soundness.")

In addition, the proposal expands the requirement of the supervisory committee and their compensated auditors to make original working papers available for NCUA review, to also allow photocopying by any authorized employee of NCUA. Credit unions are encouraged to include a clause in their engagement letters with outside auditors assuring the advanced agreement to allow regulators to review and to photocopy original working papers, as needed.

The proposal would amend applicable sections of the current regulation to more properly reflect accounting/auditing terms-of-art without changing the intent of the existing regulation. Certain terms, (e.g., "audit," "review," "generally accepted auditing standards" (GAAS), "generally accepted accounting principles" (GAAP)), have a specific meaning within the accounting profession and the usage of some of these terms in the current regulation is inconsistent and/or confusing in relation to the profession's usage. This will minimize differences in usage of terminology and should alleviate confusion.

And finally, the proposal adds a nonstatistical sampling option consistent with applicable generally accepted auditing standards for independent, licensed, certified public accountants in the verification of members' accounts. The current regulation permits two approaches to member account verification: 100 percent sampling or statistical sampling. The additional option is consistent with our efforts to minimize differences between regulatory accounting/auditing practices and GAAP/GAAS.

The NCUA Board invites comments on all matters in this proposed amendment and particularly on the following specific issues and alternatives that the NCUA Board may consider in a final amendment to the regulation. Is the $50 million asset size threshold for requiring an "opinion audit" by an independent, licensed certified public accountant a reasonable threshold? Should there be an intermediate asset size above which a supervisory committee audit (limited to a § 701.12 scope rather than an opinion audit) may be permitted if conducted by an independent licensed certified public accountant, say from $20 to under $50 million in assets? Should a third level of permissible "audit" be permitted; e.g., from $5 to under $20 million in assets, a supervisory committee audit conducted by a professional accountant; from $20 to under $50 million, a supervisory committee audit conducted by an independent, licensed, certified public accountant; from $50 million or more in assets, an "opinion audit" conducted by an independent, licensed, certified public accountant? Should a time period be specified in the amended regulation as to when requested original working papers must be provided for review and photocopying or should the standard be that which represents a "reasonable period of time?" The NCUA Board invites the accounting standards-setters and others within the accounting/auditing profession to comment on the proposed amendment's usage of accounting/auditing "terms-of-art"; are the terms properly set forth in the proposed amended regulation?

Analysis of Proposed Major Changes to Subsection 701.12(b) Audits

Requirement for an "Opinion" Audit

Currently, § 701.12 has no requirement for an opinion audit by an independent, licensed, certified public accountant. An opinion audit by an independent, licensed, certified public accountant is only required when serious and persistent recordkeeping deficiencies exist. (See § 701.13—Requirements for an Outside Audit, paragraph (a)(3).) This proposal would require all federally insured credit unions with an asset size of $50 million or greater to have an opinion audit performed by an independent, licensed, certified public accountant. The audit will be of the scope required by generally accepted auditing standards for the expression of an opinion on the financial statements. This requirement will affect approximately 3,680 federally insured credit unions (28.8 percent of federally insured credit unions).

Whenever possible, the NCUA Board urges smaller credit unions to use independent, licensed, certified public accountants for meeting the requirements of § 701.12 as well.

Changes in Terminology

In subsection (b), the term "audit" is replaced by "supervisory committee audit." "Audit" is a term-of-art within the accounting profession generally having as its objective the expression of an opinion on the fairness with which an entity's financial statements present fairly, in all material respects, financial position, results of operations and cash flows in conformity with GAAP. Since the required minimum scope of a

supervisory committee audit is, in many cases, less than an audit as defined above, we felt the substitution of "supervisory committee audit" for "audit" in the regulation is a clarifying change.

The terminology "generally accepted auditing procedures and standards" is replaced by three alternatives that more clearly describe how the annual supervisory committee audit requirement may be satisfied. (Subparagraphs (b)(1)(i) (A) through (C).) A credit union's supervisory committee may meet their annual audit responsibilities by:

A. An audit performed by an independent, licensed, certified public accountant in accordance with GAAS.

B. An "agreed upon procedures engagement" performed by an independent, licensed, certified public accountant in accordance with *applicable* GAAS that in itself, or combined with procedures performed by the supervisory committee, encompasses the scope of a supervisory committee audit, or

C. Professional auditing procedures performed by the supervisory committee or its designated representative that encompasses the scope of a supervisory committee audit.

Option A. is an opinion audit and may exceed the minimum regulatory scope requirements for a supervisory committee audit. Option B. is less in scope than an opinion audit but sufficient in scope to meet regulatory supervisory committee audit requirements. Option C. is sufficient in scope to meet regulatory supervisory committee audit requirements but is performed by an individual(s)/a firm(s) without professional certification by the AICPA and/or state boards of accountancy licensing. Credit unions with assets in excess of $50 million may only use option A. (Subparagraph (b)(1)(ii).)

Analysis of Proposed Major Changes to Subsection 701.12(c)—Audits

Access to, and Photocopying of, Original Working Papers

The proposal expands the requirement that the supervisory committee and its compensated auditors to not only make original working papers available for NCUA review by providing for photocopying by any authorized employee of NCUA. The proposal provides that the failure to do so could result in NCUA finding the supervisory committee audit unacceptable in meeting the requirements of § 701.12. The need for this requirement has grown out of the recent increased resistance by independent accounts hired by supervisory committees to permit the photocopying of selected original working papers, as necessary, in support of the opinion audit. Without such working papers, it is often difficult for NCUA to establish that the supervisory committee audit scope has been met. It is NCUA's intent to use the photocopied original working papers for official purposes only in conjunction with our responsibilities to supervise and examine credit unions.

Analysis of Proposed Major Changes to Subsection 701.12(e) Verifications

Use of Nonstatistical Sampling

The proposal also adds a nonstatistical sampling option consistent with applicable generally accepted auditing standards for independent, licensed, certified public accountants in the verification of members' accounts.

In the preamble to the 1985 revision to this regulation, the NCUA Board indicated its intent to permit "* * * sampling plan(s) that would be acceptable in the verification process to detect fraud or manipulation of members' accounts". It seems fairly clear that the NCUA Board's intent, with regard to establishing sampling policy, was to hold licensed, independent, certified public accountants to their governing professional standards. Current standards provide guidance for the auditor's design and implementation of audit sampling plans. The standards endorse both a statistical approach and a nonstatistical approach to sampling by concluding that either approach can provide sufficient evidential matter, as required by the third standard of fieldwork * * *. The third standard of fieldwork requires that sufficient competent evidential matter be gathered by the auditor as a basis for formulating an opinion on the final statements. Evidence may be defined as any information that has an impact on determining whether the financial statements are presented in accordance with generally accepted accounting principles (AICPA Professional Standards, AU Section 350, "*Auditing Sampling.*")

The proposed change would permit an *independent, licensed, certified public accountant's* use of a nonstatistical sample in the verification of members' accounts if all of the following criteria are met:

a. The sample is made in compliance with applicable professional standards.

b. The sample continues to be sufficient in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded (§ 701.12(e)).

c. The independent accountant attests to the sample's sufficiency in verifying members' accounts as to existence, proper cut off, valuation, ownership, disclosures and classification, and internal controls (§ 701.12(b)).

It is not the NCUA Board's intention to permit other than independent, licensed, certified public accountants to use nonstatistical sampling in the verification of members' accounts nor do we wish to promote nonstatistical sampling methods over 100 percent verifications and statistical sampling methods.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. As to small credit unions, the proposed amendment clarifies without imposing additional burden. Accordingly, the NCUA Board determines and certifies that this proposed amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed amendment does not change the paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 701

Civil rights, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 25, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, it is proposed that 12 CFR part 701 be amended as set forth below:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798 and Public Law 101–73. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 12 U.S.C. 3601–3610.

2. Section 701.12 is amended by revising paragraphs (b), (c) and (e).

§ 701.12 Supervisory committee audits and verifications.

* * * * *

(b) (1) A "supervisory committee audit" of each Federal credit union shall occur at least once every calendar year and shall cover the period elapsed since the last audit. The supervisory committee audit shall be made using applicable professional auditing procedures, which as a minimum, should test the Federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures and classification, and internal controls. The annual supervisory committee audit requirement may be satisfied by one of the following:

(i) For credit unions with assets less than $50 million (measured as assets on file per yearend call report):

(A) An audit performed by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards;

(B) An "agreed upon procedures engagement" performed by an independent, licensed, certified public accountant in accordance with applicable generally accepted auditing standards that, in itself or combined with procedures performed by the supervisory committee, encompasses the scope of a supervisory committee audit; or

(C) Professional auditing procedures performed by the supervisory committee and/or their designated representative that encompasses the scope of a supervisory committee audit.

(ii) For credit unions with assets of $50 million or greater (measured as assets on file per yearend call report), the supervisory committee annual audit requirement can only be met through an audit performed by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards.

(2) Upon completion, a written report of the supervisory committee audit shall be promptly made available to the board of directors of the Federal credit union and, upon request, the National Credit Union Administration's regional director. It is the responsibility of the supervisory committee to ensure that the completion of the annual supervisory committee audit is timely, that applicable generally accepted auditing standards are followed, that an adequate audit of the credit union records is made, and that the written audit report is promptly prepared and reported to the board of directors.

(c) The supervisory committee and/or its independent auditors shall be responsible for the preparation and the maintenance of original working papers used to support each supervisory committee audit. Such original working papers shall be made available by the supervisory committee and its independent auditors for review and photocopying, if requested, by any authorized employee of NCUA. If the credit union supervisory committee fails to do so, NCUA can reject the supervisory committee audit as inadequate in meeting the requirements of Section 701.12. Credit unions should secure advanced agreement in their engagement letters with outside auditors that original working papers supporting the audit will be available for regulatory review and photocopying.

* * * * *

(e) (1) The verification of members' accounts shall be made using any of the following methods:

(i) A controlled verification of 100 percent of members' share and loan accounts;

(ii) A controlled random statistical sampling method that accurately tests sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded. That sampling procedure must provide each member account an equal chance of being selected.

(iii) Independent, certified public accountants are provided the additional option of sampling members' accounts using nonstatistical sampling methods consistent with applicable generally accepted auditing standards, provided the sampling method accurately tests sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded. Independent, licensed, certified public accountants will be responsible for documenting their sampling procedures and attesting to the sampling method's adequacy in testing the accounts to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded.

(2) Records of those accounts verified will be maintained and will be retained until the next verification of members' accounts is completed.

[FR Doc. 93–7703 Filed 4–5–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: OSM is announcing the receipt of two proposed amendments to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments are legislative changes to the Wyoming Environmental Quality Act enacted by the Fifty-second Legislature of the State. Enrolled Act No. 32 clarifies that the revision provisions at Wyoming Statutes W.S. 35–11–406(h) pertain to non-coal permits only. Enrolled Act No. 31 amends W.S. 35–11–406(j) specifying persons to be notified of mining permit applications both within the permit area and lands immediately adjacent to the permit area (within ½ mile)

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. May 6, 1993. If requested, a public hearing on the proposed amendment will be held on May 3, 1993. Requests to present oral

testimony at the hearing must be received by 4 p.m., m.d.t. on April 21, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Dennis Hemmer, Director, Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777–7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78684). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

II. Proposed Amendment

By separate letters dated March 19, 1993 (Administrative Record Nos. WY–23–01 and WY–23–02), Wyoming submitted statutory changes to its approved Coal Program pursuant to legislation passed by Wyoming's Fifty-second Legislature (1993 General Session) as proposed amendments to its program pursuant to SMCRA. Enrolled Act No. 32 [Amending W.S. 35–11–406(h)] is a State effort to satisfy a program amendment requirement at 30 CFR 950.16(o). It would clarify the legislation enacted by the 1992 Legislature that limited the period for raising deficiencies in a mining permit by the Administrator to one hundred fifty (150) days, as pertaining to non-coal permits only.

Enrolled Act No. 31 [Amending W.S. 35–11–406(j)] is a State-initiated action that requires all surface owners within and adjacent to the permit area (within ½ mile) to be notified of the mine permit application. Notification is also required to be given to an operator or lessee of record of any oil or gas well or lease within the permit area.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the proposed rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t., April 21, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 30, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93-7950 Filed 4-5-93; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93-36; FCC 93-103]

Tariff Filing Requirements for Nondominant Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking proposes to streamline, to the maximum extent possible, the tariff filing requirements for domestic nondominant common carriers. The Notice proposes to allow nondominant common carriers to file their interstate tariffs on not less than one day notice, to allow such carriers to state in their interstate tariffs a range of rates or a maximum rate, and to ease the tariff form requirements for such carriers. These rules are necessary in the wake of a recent court decision which found the Commission's forbearance policy unlawful. As a result of that decision, all nondominant common carriers are required to file tariffs for their interstate services. The proposed rules are designed to ease the existing tariff filing requirements for domestic nondominant common carriers.

DATES: Comments must be filed on or before March 29, 1993, and reply comments must be filed on or before April 19, 1993.[1]

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andy Lachance, Common Carrier Bureau, Policy and Program Planning Division, (202) 632-1305.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 93-36, adopted and released on February 19, 1993.

The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 857-3800, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Notice of Proposed Rulemaking (NPRM)

1. This NPRM proposes rule changes that would ease in the near term the existing tariff filing requirements for domestic nondominant common carriers. On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit vacated the *Fourth Report* of the *Competitive Carrier* proceeding. In so doing, the court invalidated the Commission's long-standing "forbearance" policy under which nondominant carriers—carriers lacking market power—were permitted to refrain from filing tariffs. As a result of the court's decision, nondominant carriers are now obligated to file tariffs with the Commission.

2. Consistent with the overall policy findings made originally in *Competitive Carrier*, and recently reaffirmed by the Commission, we tentatively conclude that, as a matter of policy, existing tariff regulation of nondominant carriers inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends. Based on these policy findings, we tentatively conclude that the public interest would be served in the near term by streamlining, to the maximum extent possible consistent with our statutory obligations, our tariff regulation of all domestic nondominant carriers. We seek comment on these proposals. We also seek comment on whether any categories of nondominant carriers, such as nondominant wireless carriers, can and should be regulated differently than nondominant carriers generally.

3. First, we propose to reduce the current fourteen-day notice period applicable to nondominant carrier tariff filings. We tentatively conclude that the current fourteen-day notice period, although an improvement over longer notice periods, will have, in the absence of permissive detariffing, an anticompetitive impact on nondominant carrier competition. The advance notice period allows competitors time to begin, and possibly complete, development and implementation of a market response before the tariff becomes effective. As such, the notice period delays the benefits customers receive from new offerings, and discourages carriers from taking pro-consumer actions. Accordingly, we propose to reduce the notice period required before tariffs may take effect to not less than one day.

4. We also tentatively conclude that we have legal authority to implement this proposal. We seek comment on this proposal. In particular, we seek comment concerning the benefits and drawbacks of the current streamlined tariff filing notice period applicable to services of nondominant carriers. We also seek comment on whether any alternative notice period would better serve the public interest. In addition, we seek comment on our legal authority to adopt such a proposal.

5. We tentatively conclude that the rule changes proposed in this notice should not apply to the provision of operator services by nondominant carriers. Nondominant carriers providing operator services were not previously subject to permissive detariffing. Rather, these carriers are required to file informational tariffs for their operator services pursuant to section 226(h) of the Communications Act. We seek comment on this tentative conclusion.

6. We propose to further reduce the tariff filing burdens on nondominant carriers by limiting the type of information we require to appear in tariffs. We propose to require nondominant common carriers to

[1] *Editorial Note:* This document was received at the Office of the Federal Register on March 29, 1993.

include in their tariff only the information required under this section of the Act. We also propose to modify the rate information required by our rules. Currently carriers are required to prepare and file new schedules each time they wish to implement minor rate revisions. We propose to allow nondominant carriers to state in their tariffs either a maximum rate or a range of rates. This proposal would eliminate the need for nondominant carriers to file new schedules whenever rate changes are either under the maximum rate or within specified ranges—whichever is appropriate.

7. We seek comment on the lawfulness of these proposals, and, in particular, on whether they comply with section 203(a) of the Act. We also encourage parties to recommend additional or alternative means by which we may lawfully reduce the tariff filing burdens for nondominant carriers.

8. Next, we proposed to amend the tariff form requirements for domestic nondominant carriers. We tentatively conclude that our tariff form requirements for nondominant carriers are unnecessary. We therefore propose to modify substantially or eliminate the tariff form requirements for these carriers. First, we propose to establish new rules for nondominant carriers and to modify the existing form requirements to state that these rules apply only to dominant common carriers. We propose to adopt the following form requirements for nondominant common carrier tariffs:

1. In order to facilitate the processing, storage, and availability of the scores of tariffs we expect to receive from nondominant carriers, we propose to require nondominant carriers to file tariffs and updates on a three and one half inch floppy diskettes that contain the complete tariff. We proposed to require that updates be integrated into the complete tariff and that the entire tariff, as modified, be refiled on diskettes.

2. We propose to give carriers flexibility in indicating material that is new or changed. Carriers would be required to indicate in the tariff, in whatever way they prefer, that new or changed material is present.

3. We propose that, in lieu of formal transmittal letter requirements, carriers will be permitted to file a cover letter in a form of their choice. We propose to require that cover letters are 8½ by 11 inches in size, that they identify the carrier, and that they briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter.

4. We propose to allow carriers to state, in any form, the tariff charges and the classifications, practices and regulations affecting such charges required under section 203(a) of the Act.

9. We tentatively conclude that our proposals to modify those requirements for nondominant carriers are consistent with the Act. We seek comment regarding the costs and benefits of applying the current tariff form requirements to nondominant carriers. Furthermore, we solicit comments on the proposals set forth above and on any additional or alternative means of reducing the administrative burden on nondominant carriers.

10. Finally, we propose new rules governing how a nondominant carrier tariff filing is made. We propose to adopt the following tariff filing rules:

1. Nondominant carriers must send a paper copy of the cover letter, fee form and fee to the Mellon Bank.

2. Carriers must file with the Secretary of the Commission a copy of the cover letter and tariff filing on diskette. This copy would be for the Commission's official records and would not be generally available to the public.

3. Carriers must also send a paper copy of the cover letter and one diskette to the Public Reference Room. This copy would be available for public reference.

4. Carriers updating tariffs already on file would file a paper copy of the cover letter and diskette containing the complete tariff, with the new or changed material inserted.

Ex Parte Rules

11. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally Section 1.1206(a) of the Commission's Rules. 47 CFR 1.1206(a).

Initial Regulatory Flexibility Act Analysis

Reason for Action

12. On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission's long-standing "forbearance" policy under which nondominant carriers—carriers lacking market power—were permitted to refrain from filing tariffs. As a result of the court's decision, nondominant carriers are now obligated to file tariffs with the Commission. This rulemaking is initiated in order to seek comment on a proposal to reduce the tariff filing burdens on carriers affected by the court's decision.

Objectives

13. The Commission seeks to eliminate unnecessary and costly regulations placed upon nondominant carriers by streamlining our tariff filing requirements for such carriers to the maximum extent possible under the Communications Act.

Legal Basis

14. This proposed action is taken pursuant to Sections 1, 4(i), 4(j), 201–205, and 403 of the Communications Act as amended; 47 U.S.C. 154(i), 154(j), 201–205, 403.

Reporting, Recordkeeping and Other Compliance Requirements

15. The proposed rules are designed to ease the reporting, recordkeeping and compliance requirements for nondominant common carriers. Specifically, the Notice proposes to allow such carriers to file only the information required under section 203 of the Act. The proposed rules would also eliminate the need for carriers to file tariff amendments for rate changes within a specified range. Finally, the proposed rules would require nondominant carriers to file tariffs on three and one half inch floppy diskettes, and eliminate many of technical tariff form requirements that apply to dominant carrier tariffs.

Description, Potential Impact, and Number of Small Entities Involved

16. Any rule changes in this proceeding would affect all common carriers classified as nondominant by the Commission by changing the tariff filing requirements for such carriers. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

17. The Notice asks parties to recommend any alternative means of reducing the tariff filing requirements for nondominant carriers.

Ordering Clauses

18. Accordingly, *It is Ordered* That Notice is Hereby Given of the proposed regulatory changes described above, and that Comment is Sought on these proposals.

19. *It is further ordered* That pursuant to applicable procedures set forth in

§§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments Shall Be Filed with the Secretary, Federal Communications Commission, Washington, DC 20554 on or before March 29, 1993, and reply comments Shall Be Filed with the Secretary on or before April 19, 1993. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wishing each Commissioner to receive a personal copy of their comments must file an original plus nine copies. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street NW., Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, the International Transcription Services, Inc., suite 140, 2100 M Street NW., Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554.

Paperwork reduction: The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street NW., room 246, Washington, DC 20554. Persons wishing to comment on this collection of information should direct their comments to Jonas Niehardt, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Tariff Filing Requirements for Nondominant Common Carriers
OMB Control Number: None.
Action: Proposed new collection.
Respondents: Business or other for profit.
Frequency of Response: On occasion.
Estimated Annual Burden: 5000 responses; 40.5 hours per response; 202,500 hours total.

Needs and Uses: The Notice of Proposed Rulemaking solicits public comment on tariff filing requirements for domestic nondominant common carriers. The information will be used by the Commission staff to determine whether the services offered are just and reasonable as required by the Communications Act. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner. If the tariffs were not filed, the carriers could be found in violation of section 203 of the Communications Act.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Proposed Amendatory Text

Part 61 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. A new § 61.20 is added and an undesignated center heading is added immediately preceding § 61.20 to read as follows:

General Rules for Domestic Nondominant Carriers

§ 61.20 Method of filing publications.

(a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which the publication is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all tariff publications requiring fees as set forth in part 1, subpart G, of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one diskette containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a) of this section.

3. A new § 61.21 is added to read as follows:

§ 61.21 Cover letters.

(a) Except as specified in 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8½ by 11 inches in size. All cover letters should briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter as required by § 61.20(b).

(b) A separate cover letter may accompany each publication, or an issuing carrier may file as many publications as desired with one cover letter.

Note: If a receipt for accompanying publication is desired, the cover letter must be sent in duplicate. One copy showing the date of receipt by the Commission will then be returned to the sender.

4. A new § 61.22 is added and an undesignated center heading is added immediately preceding § 61.22 to read as follows:

Specific Rules for Domestic Nondominant Carriers

§ 61.22 Composition of tariffs.

(a) The tariff must be submitted on a 3½ inch diskette, formatted in an IBM compatible form using MS DOS 5.0 and Word Perfect 5.1 software. The diskette must be clearly labelled with the carrier's name, Tariff Number, and the date of submission. The cover letter must be submitted on 8½ by 11 inch paper, and must be plainly printed in black ink.

(b) The tariff must contain the carrier's name, and the information required by section 203(c) of the Act. Rates may be expressed in a manner of the carrier's choosing and may include ranges or maximums.

(c) Changes to a tariff must be made by refiling the entire tariff on a new diskette, with the changed material included. The carrier must indicate in the tariff what changes have been made.

5. A new § 61.23, is added to read as follows:

§ 61.23 Notice requirements.

(a) Every proposed tariff filing must bear an effective date and, except as otherwise provided by regulation, special permission, or Commission order, must be made on at least the number of days notice specified in this section.

(b) Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date. In computing the notice period required, all days including Sundays and holidays must be counted.

(c) Tariff filings of domestic nondominant carriers must be made on at least 1 day notice.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7620 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. MM 93–72, RM–8154]

Radio Broadcasting Services; Ridgecrest and Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Roy William Mayhugh, tr/as KLOA Radio, licensee of Station KLOA-FM, Channel 285A, Ridgecrest, California, seeking the substitution of Channel 285B1 for Channel 285A and modification of the license for Station KLOA-FM accordingly. In order to accommodate the request, petitioner also seeks the substitution of Channel 283A for Channel 285A at Lenwood, California, and modification of the authorization for Station KIQQ-FM.

Petitioner's modification proposal for Station KLOA-FM complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 285B1 at Ridgecrest, or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates used for Channel 285B1 at Ridgecrest are 35–36–27 and 117–37–29, and for Channel 283A at Lenwood, 34–51–20 and 117–02–57. Mexican concurrence will be requested for the Lenwood allotment.

DATES: Comments must be filed on or before May 21, 1993, and reply comments on or before June 7, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Roy William Mayhugh, KLOA Radio, 731 N. Balsam St., Ridgecrest, CA 93555.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–72, adopted March 8, 1993, and released March 31, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7934 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–68, RM–8130]

Radio Broadcasting Services; Paradise Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Scottsdale Talking Machine & Wireless Company, Inc., permittee of Station KXLL (FM), Channel 290A, Paradise Valley, Arizona, seeking the substitution of FM Channel 290C3 for Channel 290A and modification of its authorization accordingly. Coordinates for this proposal are 33–32–30 and 111–57–12. Mexican concurrence will be requested for this allotment.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 290C3 at Paradise Valley, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 20, 1993, and reply comments on or before June 4, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–68, adopted March 8, 1993, and released March 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-7889 Filed 4-5-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-69, RM-8106]

Radio Broadcasting Services; San Carlos and Oracle, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Desert West Air Ranchers Corporation, permittee of Station KOYF (FM), Channel 279A, San Carlos, Arizona, seeking the substitution of Channel 276C2 for Channel 279A and modification of its authorization accordingly. In order to accommodate the request, petitioner seeks the substitution of Channel 279A for Channel 276A at Oracle, Arizona, and modification of the license of Station KLQB(FM), Channel 276A, accordingly. An Order to Show Cause is issued to Golden State Broadcasting Corporation, licensee of Station KLQB(FM). Coordinates for Channel 276C2 at San Carlos are 33-23-13 and 110-44-25; coordinates for Channel 279A at Oracle are 32-37-07 and 110-47-20. Mexican concurrence will be requested for this proposal.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 276C2 at San Carlos, Arizona, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 21, 1993, and reply comments on or before June 7, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Desert West Air Ranchers Corporation, Attn: Ted Tucker, President, P.O. Box 36717, Tucson, AZ 85740.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-69, adopted March 8, 1993, and released March 31, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-7893 Filed 4-5-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-70, RM-8168]

Radio Broadcasting Services; Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Farmworkers Communications, Inc., requesting the allotment of FM Channel 283C2 to Wellton, Arizona, as that community's first local aural transmission service. Coordinates for this proposal are 32-40-18 and 114-08-18. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before May 21, 1993, and reply comments on or before June 7, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Anne Thomas Paxson, Esq., Borsari & Paxson, 2033 M Street, NW., suite 630, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-70, adopted March 8, 1993, and released March 31, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-7894 Filed 4-5-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-71, Rm-8134]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Circle S Broadcasting Co., permittee of Station KFMA (FM), Channel 229A, Wickenburg, Arizona, seeking the substitution of Channel 231C3 for Channel 229A and the modification of its authorization accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 231C at Wickenburg or require the petitioner to demonstrate the availability of an additional equivalent class channel. Additionally, since Wickenburg is located within 320 kilometers of the Mexican border, international coordination of this proposal with Mexico is required, pursuant to the terms of the United States-Mexican FM Broadcasting Agreement of 1972, 24 UST 1815, TIAS NO. 7697. Coordinates for this proposal are 33–51–31 and 112–53–04.

DATES: Comments must be filed on or before May 21, 1993, and reply comments on or before June 7, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Aaron P. Shainis and Lee J. Peltzman, Esqs., Baraff, Koerner, Olender & Hochberg, P.C., 5335 Wisconsin Avenue, NW., suite 300, Washington, DC 20015.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–71, adopted March 8, 1993, and released March 31, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7895 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–67, RM–8114]

Radio Broadcasting Services; Globe, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Linda C. Potyka, permittee of Station KRXS(FM), Channel 247A, Globe, Arizona, seeking the substitution of Channel 247C3 for Channel 247A and modification of her permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 33–17–37 and 110–50–09. Mexican concurrence will be requested for this allotment.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 247C3 at Globe, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 20, 1993, and replay comments on or before June 4, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–67, adopted March 8, 1993, and released March 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7897 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–66, RM–8102]

Radio Broadcasting Services; Huntsville and Willis, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by New Wavo Communication Group, Inc., licensee of Station KVST–FM, Channel 279C3, Huntsville, Texas, seeking the reallotment of Channel 279C3 to Willis, Texas, and modification of New Wavo's authorization to specify Willis as the station's community of license. Channel 279C3 can be allotted to Willis in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) northwest to accommodate New Wavo's desired site. The coordinates for Channel 279C3 at Willis are 30–26–55 and 95–31–48. In accordance with § 1.420(i) of the

Commission's Rules, we will not accept competing expressions of interest in use of Channel 279C3 at Willis or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before May 20, 1993, and reply comments on or before June 4, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Rosslyn, Virginia 22209 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT:

Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–66, adopted March 8, 1993, and released March 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–7888 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 93–35; FCC 93–101]

Private Land Mobile Radio Services; Channel Exclusivity for Qualified Private Carrier Paging Systems at 900 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed to amend the rules governing private carrier paging (PCP) at 900 MHz to grant channel exclusivity to qualified local, regional, and national paging systems. This action was initiated by a petition for rule making filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc.

DATES: Comments must be filed on or before May 6, 1993, and reply comments must be filed on or before May 21, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: David L. Furth, Private Radio Bureau, (202) 634–2443

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 93–35, FCC 93–101, adopted February 18, 1993, and released March 31, 1993. The full text of the Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Notice of Proposed Rule Making

A. Introduction and Background

1. In this Notice, we propose to amend Part 90 of the Commission's rules to grant channel exclusivity to qualified 900 MHz PCP systems. Under our proposal, PCP systems consisting of six or more transmitters would be entitled to local exclusivity in most areas, and larger systems could obtain regional or nationwide exclusivity. The proposal would be implemented on 35 of the 40 private paging channels at 900 MHz, while five channels would continue to be assigned on a shared basis. Exclusivity would be conditioned on completion of construction within eight months of licensing, with "slow growth" extensions allowed under some circumstances. Existing systems meeting the new criteria would obtain immediate exclusivity, and all other existing systems would be grandfathered. We request comments on the merits of exclusivity for PCP systems generally, and on the specifics of this proposal.

2. Under our current rules, the 40 private paging frequencies at 900 MHz are assigned on a shared basis, with applications subject to frequency coordination to maximize efficient channel use. Since these rules were adopted in 1982, however, the demand for paging services has increased dramatically, particularly for services that can be offered on a regional or national basis. To meet this demand, paging companies have occupied most of the available spectrum on common carrier paging channels and on PCP channels below 900 MHz, and demand for 900 MHz PCP channels, while historically limited, is now increasing as alternative spectrum grows scarce.

B. Need for Exclusivity

3. As demand for paging spectrum grows, the sharing of paging frequencies, although technically feasible, threatens to discourage optimally efficient use. Paging operators on a common frequency must invest in costly monitoring or interconnection equipment. Air time on shared frequencies must be allotted among multiple users, causing delays in message transmission. We are concerned that licensees may be inhibited from investing in state-of-the-art systems because of the possibility that other licensees could be assigned to the same frequency.

4. In light of these developments, we propose to establish some form of channel exclusivity for 900 MHz PCP systems. We believe that exclusivity should be implemented sooner rather than later, notwithstanding the relative lack of crowding on 900 MHz PCP channels at present. So long as the spectrum is not heavily used, we have the flexibility to prevent congestion before it occurs. Conversely, if we choose to maintain the *status quo* until crowding occurs, we risk losing flexibility and being unable to implement any new approach at all.

5. The proposal set forth in the Notice is based on a proposal submitted by the National Association of Business and Educational Radio, Inc. (NABER), which was developed based on discussions within the private paging industry. We generally concur with NABER's suggested approach, but believe that some aspects of its proposal should be modified. We request comments on the

technical basis and practical effect of the NABER proposal and our proposed modifications. We also invite commenters to discuss further modifications or alternatives that would promote the general objectives of this proceeding.

C. Local Systems

6. In all but the three largest urban markets, we propose to grant local exclusivity to any PCP system comprised of at least six contiguous transmitters (to be "contiguous," each transmitter must be within 25 miles of at least one other transmitter in the system). This minimum should ensure adequate coverage in most markets, while the capital investment required to build such a system is likely to discourage speculative applications. To obtain exclusivity in the three largest markets, however, we tentatively conclude that more than six transmitters should be required, and request comment on the appropriate number.

7. For those systems that qualify for local exclusivity, we propose to impose minimum mileage separations on co-channel licensees. Required separation distances would be based on the antenna height and effective power of the protected system's transmitters. We have recently adopted this approach for 900 MHz common carrier paging frequencies (which are already assigned on an exclusive basis), and believe the same approach can be used for PCP systems without the licensing process becoming more burdensome.

D. Regional Systems

8. Under our proposal, regional systems comprised of 70 or more transmitters situated in no more than 12 adjacent states would receive the same co-channel protection as local systems, except that protection would be extended to non-contiguous transmitters in the system. However, to prevent applicants from attempting to "block out" major markets through strategic transmitter placement, regional system operators proposing to serve any of the top 30 markets would be required to meet the criteria for local exclusivity in those markets.

E. Nationwide Systems

9. We further propose to enable large nationwide PCP systems to obtain nationwide exclusivity. To qualify, such systems would be required to (1) have a minimum of 300 transmitters, (2) provide service to fifty or more markets, including at least twenty-five of the top fifty markets, and (3) serve at least two markets in each of seven regions patterned after the seven RBOC regions. We believe this standard will distinguish truly national paging systems from those that are essentially regional in character.

F. Channel Allocation

10. The proposed rules would apply to 35 of the 40 900 MHz PCP channels. The remaining five channels will continue to be assigned on a non-exclusive basis. We anticipate that this reserve will be particularly useful to small non-commercial systems that do not need or desire an exclusive channel assignment. We do not consider it necessary to reserve these channels exclusively for non-commercial use, however, nor do we intend to prohibit non-commercial licensees from seeking exclusivity on any channel covered by the proposed rules. Therefore, we propose that commercial and non-commercial operators be equally eligible to apply for any PCP channel.

G. Construction and Technical Requirements

11. Under our proposal, exclusivity would be granted conditionally upon frequency assignment, and would run for eight months from initial licensing. Applicants seeking to build larger systems (30 or more transmitters) could apply for up to three years to construct based on a showing of reasonable need for the extension, a detailed construction timetable, and evidence of financial ability to construct the system. If the system were not constructed and operating at the end of the relevant construction period, exclusivity would be forfeited and the channel made available to other applicants.

12. To discourage speculative applications, the Notice proposes minimum technical standards for each transmitter to be counted towards the number required for channel exclusivity. Specifically, each transmitter must have 100 watts minimum output power and simulcast capability, and all transmitters must function together as part of a single operating system.

13. Some commenters on NABER's petition contend that the construction and technical requirements alone will not prevent speculation, and call for the imposition of loading standards as an additional requirement for exclusivity. We have elected not to incorporate a loading standard into our proposal. Our experience has been that loading standards are burdensome to administer and difficult to calibrate to the realities of the paging marketplace. We also believe that other aspects of this proposal will sufficiently discourage speculation.

14. To prevent applicants from applying for multiple frequencies to block entry by potential competitors, we propose that applicants be limited to requesting one frequency at a time at any location. An application would not be entitled to request a second frequency in a given area unless and until it completed construction and commenced operation of a qualified system in that area on the initial frequency.

H. Treatment of Existing Systems

15. The Notice proposes to extend exclusive channel rights to all systems that qualify for such protection at the time the rules go into effect. Although this would result in immediate exclusivity for some existing PCP systems, we believe there will still be sufficient spectrum for new applicants. We do not regard this as a preference in favor of existing systems, but as a fair and equitable measure that reflects the investment that these licensees have already made when others did not choose to.

16. We also propose to grandfather all existing systems that do not qualify for exclusivity, so that small existing systems may continue operating without being forced to change frequencies or location. In our view, some form of grandfathering is essential to protect the interests of existing licensees, although grandfathering may limit the opportunities for new licensees to obtain exclusive spectrum. We request comment on what impact grandfathering would have on existing systems and on the ability of new systems to obtain exclusive frequencies.

I. Coordination

17. The Notice seeks comment on whether frequency coordination should continue to be required if the proposed rules are adopted. While we have relied on coordination in assigning shared frequencies, assigning exclusive frequencies may require a revised approach. Nevertheless, coordination may continue to be important to making the licensing process efficient and equitable. We therefore propose to continue to use coordination procedures, but would allow PCP applicants to select from any of the three recognized frequency coordinators (NABER, ITA, or APCO) to obtain coordination.

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to amend Part 90 of its rules to provide channel exclusivity to qualified private carrier

paging systems on certain channels in the 929–930 MHz band. This change will promote the efficient use of paging channels by encouraging investment in new paging technology and the development of more efficient paging systems providing local, regional, and nationwide service.

Legal Basis

The proposed action is authorized under Sections 4(1), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r), and 332(a) (1988).

Reporting, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

The proposal would not affect the status of existing paging systems, but would change the requirements for obtaining authorization to expand existing systems or construct new systems. Both large and small private carrier paging applicants would be required to submit additional information in the licensing process to demonstrate compliance with geographic separation standards. Approximately two or three hundred existing licensees and an unknown number of potential applicants could be affected by the proposal.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice discusses a variety of alternatives, none of which would have significantly greater or lesser impact than the proposal presented.

IRFA Comments

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines set forth in this notice.

List of Subjects in 47 CFR Part 90

Business and industry, Channel exclusivity, Private carrier paging, Private land mobile radio services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7988 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 930357–3057]

RIN 0648–AF05

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement additional requirements for the careful release of Pacific halibut taken incidental to the hook-and-line gear fisheries for groundfish in the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA). This action is necessary to reduce halibut bycatch mortality rates, increase the amount of groundfish harvested by hook-and-line gear fisheries under halibut bycatch mortality restrictions, and potentially decrease overall halibut bycatch mortality in the groundfish fisheries. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time (A.l.t.), April 20, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may be obtained from the same address (telephone 907–586–7228).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Biologist, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary of Commerce (Secretary) in accordance with the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. These FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). These FMPs are implemented by regulations governing the U.S. fisheries at 50 CFR parts 672 and 675. Additional regulations applicable to the U.S. fisheries are codified at 50 CFR part 620.

Fisheries for groundfish in the BSAI and GOA are prosecuted with a variety of gear types. Each gear type causes different problems for bycatch of prohibited species, including Pacific halibut. Prohibited species catch (PSC) limits are established that may be apportioned to gear groups and fisheries as bycatch allowances. Gear groups and fisheries that reach seasonal bycatch allowances are closed through specific time periods. Fisheries that reach annual bycatch allowances are closed for the remainder of the year, often with large quantities of groundfish total allowable catch (TAC) amounts remaining. Management measures have been implemented to limit prohibited species bycatch and reduce bycatch rates in a manner that maintains an opportunity for fishermen to harvest available TAC amounts of groundfish. In the case of Pacific halibut, PSC limits established for the groundfish fisheries are in terms of mortality rather than actual amounts of halibut caught. Mortality limits encourage the development of measures that reduce bycatch rates and increase survival of discarded bycatch. Actions taken by the groundfish fleet to reduce mortality rates can result in more groundfish harvest before specified mortality limits are reached.

Regulations at § 675.21(a) establish a 900-metric ton (mt) halibut bycatch mortality limit for non-trawl gear in the BSAI. During 1993, 825 mt of this limit is apportioned to the hook-and-line fishery for Pacific cod and the remaining 75 mt is apportioned to all other non-trawl gear fisheries (58 FR 8703, February 17, 1993). The 1993 halibut bycatch mortality limit specified for the GOA hook-and-line gear groundfish fisheries under regulations at § 672.20(f) is 750 metric tons (58 FR 16787, March 31, 1993).

During its September 22–27, 1992, meeting, the Council received a proposal from the International Pacific Halibut Commission (IPHC) recommending a requirement to cut gangions from hook-and-line gear when Pacific halibut were hooked incidentally. The intent of this proposal was to reduce the halibut bycatch mortality rates experienced in the GOA and BSAI hook-and-line fisheries and increase the amounts of groundfish that could be harvested by fishermen using hook-and-line gear under bycatch

mortality limits. At the September meeting, the Council requested that an analysis be prepared on management measures requiring the release of halibut by cutting the gangion of each halibut caught incidentally. During the development of the analysis, members of the fishing industry responded favorably to the proposal and suggested additional methods for the careful release of halibut. These methods accomplish the goal of reducing halibut mortality by removing the hook from Pacific halibut caught on hook-and-line gear and are less costly to industry and less harmful to halibut. NMFS and IPHC staff included these methods as alternatives in the draft analysis on careful release measures.

At its December 7–13, 1992, meeting, the Council reviewed the draft EA/RIR/IRFA that contained different alternatives for mandatory careful release procedures to reduce halibut bycatch mortality rates. The Council also considered: (1) New information on estimates of halibut bycatch mortality rates based on 1991 observer data; (2) testimony and recommendations on careful release procedures from the Council's Advisory Panel, fishing industry representatives, and the general public; (3) the applicability of mandatory careful release procedures to unobserved vessels; and, (4) the anticipated effect of mandatory careful release measures on assumed mortality rates.

Given this information, the Council recommended that a proposed rule be submitted to the Secretary for review that would implement mandatory careful release measures for halibut. These measures would be applicable to all hook-and-line vessels fishing for groundfish off Alaska. The Council further recommended that NMFS, in cooperation with the IPHC, use the best information available to derive mortality rate assumptions for observed and unobserved vessels using careful release methods.

Under the proposed rule, the operators of all vessels fishing for groundfish with hook-and-line gear would be required to use careful release procedures. These procedures would require that halibut caught on groundfish hook-and-line gear be released outboard of the vessel's rails by one of the following methods: (1) Cutting the gangion; (2) positioning the gaff under the hook for the purpose of twisting the hook from the halibut; or (3) using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel to straighten the hook. In addition, puncturing a halibut with any device (including "gaffing" a halibut) or permitting the halibut to come in contact with the vessel or any gear attached to a vessel, which contact causes, or has the capability of causing, the halibut to be punctured by the gaff or other device or stripped from the hook, would be prohibited.

Implementation of this rule would reduce halibut bycatch mortality rates. Reducing the mortality rates of halibut taken incidentally by hook-and-line vessels would increase the amounts of groundfish harvested because fisheries would less likely be closed prematurely because the halibut bycatch limits are taken. The mandatory careful release measures proposed in this rule would also reduce overall halibut mortality in the hook-and-line gear fisheries because TAC amounts of groundfish are more likely to be harvested before halibut bycatch mortality limits are reached. Without mandatory careful release measures, such as those proposed in this rule, the hook-and-line fleet will continue to compete for groundfish at higher than necessary halibut bycatch mortality rates typical of open access fisheries. NMFS and IPHC staff analyzed 1990–1991 observer data on halibut condition factors to determine the appropriate discard mortality rates when careful release measures are used. The IPHC compared observed mortality rates to those achieved during scientific tagging studies and found that, overall, careful release procedures could lower assumed discard mortality rates by about 50 percent.

The implementation of mandatory careful release procedures and associated reductions in assumed bycatch mortality rates would provide hook-and-line fishermen an incentive to comply with these procedures because all vessel operators benefit from lower halibut bycatch mortality rates. Additionally, the rates attained through careful release will be assessed inseason, and compared to available data on: (1) Bycatch rates; (2) condition of halibut; and (3) halibut mortality. Assumed halibut mortality rates could be adjusted accordingly, if deviations from the assumed rates are substantiated. A reduction in the assumed mortality rates could allow more groundfish to be harvested under halibut bycatch mortality restrictions, increase revenues to the hook-and-line fleet, and potentially reduce total bycatch mortality of Pacific halibut in the hook-and-line fisheries.

Under mandatory careful release measures, assumed mortality rates for the 1993 hook-and-line fisheries would be based on the best available information, including 1990 and 1991 observer data and data from the IPHC tagging studies of carefully released halibut. Under the proposed rule, the following assumed mortality rates would be used for the 1993 hook-and-line groundfish fisheries:

ASSUMED MORTALITY RATES UNDER MANDATORY CAREFUL RELEASE MEASURES FOR HOOK-AND-LINE GEAR IN 1993

	Observed vessels	Unobserved vessels
BSAI all	12.5 percent	15.0 percent.
GOA sablefish.	14.0 percent	17.0 percent.
GOA other.	11.5 percent	14.0 percent.

Assumed mortality rates for the hook-and-line fisheries were derived from data as follows: (1) For observed vessels, the rate is the midpoint of the assumed mortality rate derived from 1990 and 1991 observer data and a 7 percent discard mortality rate derived from the IPHC's tagging study; and (2) for unobserved vessels, the rate is the midpoint between the 1993 assumed rate for observed vessels under the implementation of careful release measures and the rate assumed for 1993 in absence of careful release measures. Since mandatory careful release procedures cannot be verified on unobserved vessels, the 1993 mortality rates were averaged to reflect the expected level of compliance. Assumed mortality rates under the proposed rule yield an overall decrease in the discard mortality rate from rates experienced without careful release. As data become available for 1992 and 1993, assumed mortality rates will be reevaluated. If significant changes in these rates occur as data become available, the mortality rates may be changed accordingly. A midseason assessment of these assumptions would provide fishermen a measure of the effectiveness of their efforts and may allow more of the TACs to be harvested.

NMFS anticipates that the proposed implementation of mandatory careful release procedures would have an impact on all hook-and-line vessels fishing for groundfish off Alaska. However, the cost of implementation to each vessel operator is not expected to be significant relative to gross annual receipts. Furthermore, the potential benefits of reduced halibut bycatch mortality to the groundfish fisheries and the directed halibut fisheries would be justified these costs.

NMFS, upon reviewing the reasons for the proposed actions concurs with the Council's recommendation. NMFS proposes that mandatory careful release

measures be implemented for halibut taken incidental to the hook-and-line gear fisheries for Alaska groundfish.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

NMFS and the IPHC prepared an EA for this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

NMFS prepared an IRFA as part of the RIR, which concludes that this proposed rule, if adopted, would have a significant net economic benefit on a substantial number of small entities. In 1992, 2,047 vessels were issued Federal permits to use hook-and-line gear to fish for Alaska groundfish in Federal waters. Most of these vessels deliver to shoreside processing operations and are considered small entities for purposes of the Regulatory Flexibility Act because gross annual receipts are less than $2 million per vessel. All hook-and-line vessels would be impacted by the proposed action to prohibit the release of Pacific halibut caught with hook-and-line gear by any method other than careful release procedures, however, the benefits of this impact outweigh the costs. If all vessel operators chose to cut gangions, the annual maximum cost for gear loss is estimated to be $103 per vessel. The proposed rule sets forth other options for careful release of halibut that involve less gear damage and annual compliance costs would be reduced accordingly.

The proposed action would result in lower halibut mortality rate assumptions for all hook-and-line fisheries in the GOA and BSAI. For fisheries that would be constrained by halibut bycatch mortality restrictions under current mortality rate assumptions, a larger proportion of the TAC would be harvested. Although fishing patterns and associated TAC and bycatch restrictions vary annually, an estimate of potential benefits to the hook-and-line fleet is based on data from the 1992 BSAI hook-and-line fishery for Pacific cod. Assuming that a 825-mt halibut bycatch mortality allowance had been in place for this fishery in 1992, an increase of about $21.4 million in gross wholesale value could have been realized under mandatory careful release measure.

For fisheries currently constrained by the TAC, less halibut mortality would occur in the process of harvesting current TACs. Although information is not available to predict the extent of halibut mortality savings under the preferred alternative, each metric ton reduction in halibut bycatch mortality could result in a $1,270 to $1,390 increase in net revenues to the directed setline halibut fishery. Other positive effects can not be quantified, but in the aggregate, could be substantial in consideration of the amount of groundfish harvested by hook-and-line vessels in waters off Alaska.

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Regional Director determined the fishing activities conducted under these regulations implementing the preferred action would not affect any endangered or threatened species listed under the Endangered Species Act in a way that was not already considered in previous biological opinions. Therefore, NMFS has determined that no further section 7 consultation is required for adoption of this action.

The Regional Director determined that fishing activities conducted under this rule would not adversely impact marine mammals.

List of Subjects in 50 CFR Parts 672 and 675.

Fisheries, Reporting and recordkeeping requirements.

Dated: March 30, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, paragraph (k) is added to read as follows.

§ 672.7 General prohibitions.

* * * * *

(k) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title.

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than the following:

(i) Cutting the gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut; or

(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be punctured by the gaff or other device or stripped from the hook.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.7, paragraph (m) is added to read as follows.

§ 675.7 General prohibitions.

* * * * *

(m) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title.

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than the following:

(i) Cutting the gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut; or

(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be punctured by the gaff or other device or stripped from the hook.

[FR Doc. 93–7845 Filed 4–5–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 64
Tuesday, April 6, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1993 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1993 (58 FR 536), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1993 is 1,144.7 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 is 1,259.1 million pounds.

Done at Washington, DC this 31st day of March, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–7952 Filed 4–5–93; 8:45 am]

BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

[Docket No. 93–040–1]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 13 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT**."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–060–01	Northrup King Company	03–01–93	Soybean plants genetically engineered to express tolerance to the herbicide glyphosate.	Arkansas, Illinois, Iowa.
93–060–02	Pioneer Hi-Bred International, Incorporated.	03–01–93	Corn plants genetically engineered to express a viral coat protein for resistance to certain viruses and a marker gene for tolerance to the phosphinothricin class of herbicides.	Iowa, Nebraska.

Application No.	Applicant	Date received	Organisms	Field test location
93–060–03, renewal of permit 92–049–02, issued on 06–05–92.	InterMountain Canola Company.	03–01–93	Rapeseed plants genetically engineered to express tolerance to the herbicide glyphosate.	Idaho.
93–060–04	Monsanto Agricultural Company.	03–01–93	Tomato plants genetically engineered with a marker gene that confers herbicide tolerance and a gene that confers an increase in the solid content of fruit.	Florida.
93–060–05	Monsanto Agricultural Company.	03–01–93	Corn plants genetically engineered to express a delta-endotoxin from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects and a marker gene for tolerance to the herbicide glyphosate.	Minnesota.
93–060–06	Monsanto Agricultural Company.	03–01–93	Corn plants genetically engineered to express a delta-endotoxin from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects and a marker gene for tolerance to the herbicide glyphosate.	Indiana, Nebraska.
93–063–01	Miles Incorporated	03–04–93	Tobacco plants genetically engineered to express a stilbene phytoalexin synthase gene, which may confer resistance to fungi.	Florida, Kansas.
93–063–02	Interstate Payco Seed Company.	03–04–93	Corn plants genetically engineered for tolerance to the phosphinothricin class of herbicides.	Wisconsin.
93–063–03	Dairyland Seed Company, Incorporated.	03–04–93	Soybean plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.	Florida.
93–063–04, renewal of permit 92–049–01, issued on 05–21–92.	Monsanto Agricultural Company.	03–04–93	Tomato plants genetically engineered to express a heterologous aminocyclo-propane-1-carboxylic acid (ACC) degradation gene to delay ripening and a marker gene for herbicide tolerance.	California, Illinois.
93–063–05	American Crystal Sugar Company.	03–04–93	Sugar beet plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.	Minnesota, North Dakota.
93–067–01, renewal of permit 92–034–03, issued on 05–14–92.	Heinz U.S.A	03–08–93	Tomato plants genetically engineered to express a pectin methylesterase (PME) antisense gene to increase the soluble solid content.	California.
93–067–02, renewal of permit 90–360–01, issued on 04–24–93.	University of Idaho	03–08–93	Potato plants genetically engineered to express a gene to confer tolerance to the herbicide bromoxynil.	Idaho.

Done in Washington, DC, this 31st day of March 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–7953 Filed 4–5–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Research Service

Intent To Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to British Technology Group USA, Gulph Mills, Pennsylvania, on U.S. Patent No. 4,530,935, "Insect Repellents," issued July 23, 1985, and U.S. Patent Application Serial Number 07/530,485, "Plant Transformation by Gene Transfer into Pollen," filed June 1, 1990. British Technology Group USA is a domestic corporation that is incorporated in the State of Delaware. Notice of availability for licensing of Patent No. 4,530,935 was given in the **Federal Register** on December 9, 1983, and such Notice for S.N. 07/530,485 was given on October 23, 1990.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Baltimore Boulevard, Building 005, Room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Technology Transfer, at the Beltsville address given above; telephone 301–504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said inventions to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument, pursuant to 37 CFR 404.11(c), which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator

[FR Doc. 93–7954 Filed 4–5–93; 8:45 am]

BILLING CODE 3410–03–M

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for expedited clearance under 5 CFR 1320.18. The Agency solicits comments on subject submission. This action is necessary in order for the Agency to codify changes to 7 CFR Part 1965, subpart B, and 1965, subpart E, as required by the Housing and Development Act of 1987, the Housing and Urban Development Reform Act of 1989 (HR 1), technical amendments to HR 1 contained in the National Affordable Housing Act of 1990 (Cranston-Gonzalez) and the Housing and Community Act of 1992. It is also to implement the Agency's response to audit recommendations found in GAO/RCED–92–150 dated June 23, 1992.

These regulation changes are needed to improve protections for existing tenants in FmHA Multi-Family Housing projects that are allowed to prepay and specify tenant protection requirements mandated of project owners. The regulation also standardizes the method for developing incentives offered to borrowers, allowing FmHA to retain existing low-income housing for an average cost of $26,000 per unit versus approximately $36,000 per unit to develop new rental units. The effect of these regulation changes will foster consistent application for developing the incentives offered and facilitate processing prepayment requests.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patrick Sheridan, Chief, Property Management Branch, FmHA Housing Programs, Multi-Family Servicing and Property Management Division, USDA, Washington, DC 20250, Telephone (202) 720–1599.

SUPPLEMENTARY INFORMATION: The Agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S C. Chapter 35). It is requested that OMB approve this submission within 21 days.

The supporting statements attached explain the need for the changes to FmHA Regulation 1965–B, Security Servicing for Multiple Housing Loans, and Form FmHA 1944–33A, Consolidated Loan Agreement, Form FmHA 1944–34A, Consolidated RRH Loan Agreement, Form FmHA 1944–35A, Consolidated Loan Resolution, and Form FmHA 1965–16, Multiple Family Housing Reamortization Agreement, and the addition of FmHA Regulation 1965–E, Prepayment and Displacement Prevention of Multiple Family Housing Loans:

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507

Supporting Statements

7 CFR 1965–B, Security Servicing for Multiple Housing Loans

1. Explanation of the circumstances that make the collection of information necessary.

The Farmers Home Administration (FmHA) is authorized under Section 514, 515, 516 and 521 of Title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such multiple family housing projects are intended to meet the housing needs of persons or families having low- to moderate-incomes, senior citizens, the handicapped, and domestic farm laborers.

FmHA has the responsibility of assuring the public that the housing projects financed are owned and operated as mandated by Congress. The 1965–B regulation was issued to insure proper servicing actions are accomplished for projects financed with multiple family housing loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are carried out as intended and to improve the Agency's ability to assure the continued availability of the facilities financed under FmHA multiple housing programs to eligible users.

Without the provisions of this regulation, FmHA would be unable to provide the necessary guidance to the FmHA field staff to assist borrowers in processing servicing actions affecting their projects. FmHA also would not be able to quickly respond to servicing requests from borrowers, initiate servicing actions or establish a uniform procedure for processing such requests from borrowers. FmHA must be able to assure Congress and the general public that all projects financed with multiple family housing funds will be maintained for the purposes for which they are intended, and for the benefit of those they are mandated to serve.

Public Law 95–375 provides administrative powers for the Secretary of Agriculture to carry out the provisions of Title V of the Housing Act of 1949, as amended. This law provides for making rules and regulations necessary to carry out the purposes of Title V. The purpose of the applicable Sections 514, 515, 516 and 521 of the Housing Act as stated above is to provide rental housing to eligible low- (including very low-) and moderate-income tenants at affordable rental rates. FmHA has been charged with the responsibility of protecting the interest of the taxpayer's funds and to assure that the objectives of the loans and grants are carried out as intended. In an effort to carry out the responsibilities of assuring that the objectives of the law are met, it is required that information be collected to assure program objectives and integrity is maintained.

Public Law 88–352, "Civil Right Act of 1964 as amended, "Title VI Public Laws 90–284 and 93–383, "Civil Rights Act of 1968, "Titles VII and IX, Public Law 93–383, "Sex Discrimination, "Executive Order 11246, the Equal Credit Opportunity Act of 1974, and the "Fair Housing Amendments Act of 1988" are also applicable to the 514, 515, 516 and 521 programs. Civil Rights compliance reviews are conducted to assure nondiscrimination in these Federally assisted programs. The owners are, therefore, required to keep certain information, such as a list of applicants, list of tenants, verifications of income of the tenants, and records of rejected applicants, and make such information available to the compliance review officer upon request.

The Housing and Community Development Act of 1987 required that rural rental housing borrowers wishing to prepay their FmHA financed loans must be offered a fair incentive to not prepay the loan when FmHA makes the decision that the housing continues to be needed to serve low- and moderate-income tenants. If the borrower rejects the incentive, the housing must be offered for sale to a non-profit organization. Prepayment can only be accepted if FmHA decides there is no need for the housing or if no nonprofit organization can be found to purchase the project at fair market value.

Procedures to enact the Housing and Community Development Act of 1987 are currently contained in section 1965.90 and Exhibit E to 7 CFR 1965–B. When published in final form, 7 CFR 1965–E will replace prepayment

procedures contained in section 1965.90 and Exhibit E to 7 CFR 1965–B. The paperwork burden assigned to these two procedures will result in a reduction in paperwork burden for 7 CFR 1965–B. The paperwork burden for 7 CFR 1965–E will be submitted with the final 7 CFR 1965–E regulation.

2. Indicate how, and by whom, and for what purpose the information is to be used and the consequence to the Federal Program if the collection of the information was not conducted.

The information will be prepared and submitted to FmHA by the borrower or the borrower's representative. FmHA forms and guides will be provided by FmHA to assist the borrower and/or representative in the preparation of information and to streamline the collection and review of the information.

The information required is collected on a project-by-project basis and is in accordance with the Housing Act of 1949, as amended, so that FmHA can provide guidance and be assured of compliance with the terms and conditions of loan, grant, and/or subsidy agreements.

Respondents providing the information covered by this justification can be classified as either borrowers or attorneys. Collectively, borrowers include individuals, State or local governments, farms, businesses or other for-profit organizations, non-profit organizations, and small businesses or organizations. Attorneys include those representing both transferors and transferees. On occasion, representatives from other sources of credit may also be required to provide information.

Failure by FmHA to monitor borrower operations through review of collected information and consultive supervision would reasonably lead to noncompliance with statutory intent in some instances and financial default in others.

Corrective action to remove such noncompliance or default would be costly to FmHA and the public in terms of program integrity, public confidence, dollars, staff morale, and time. In addition, failure to monitor borrower operations could result in a decrease in safe, affordable housing to tenants living in such FmHA financed multiple family type housing.

The Housing Act of 1949, as amended, and the Consolidated Farm and Rural Development Act authorizes FmHA to provide financial assistance to individuals, organizations, private nonprofit corporations, profit corporations, consumer cooperatives and public bodies that are unable to obtain credit through regular commercial sources at reasonable rates and terms. The facilities financed by this financial assistance include, but are not limited to, multiple family housing projects, water and waste distribution systems, health care and fire protection facilities. The borrower/grantee organizations are required to prepare periodic FmHA financial reports to enable FmHA to fulfill its statutory mandate for supervision of borrower operations. Information is also required for eligibility determinations to allow continued participation in the program, as necessary, to achieve the objectives of the loan and to protect the interest of the Government and the tenants.

A summary of the information collection burden is descried as follows:

Reporting Requirements—No Forms

The documents and descriptions that follow are non-form written communications or documentations prepared and presented by borrowers and/or their attorneys making servicing requests to FmHA. Such written communication is the minimum amount required to document the request and verify compliance with statutory, regulatory, or administrative requirements needed to maintain program integrity and assure the continued compliance with established procedures and regulations issued to meet the objectives of the respective multiple family housing loan or grant program. Information submitted is generally brief and to the point.

Request for Additional Indebtedness on Security Property

To maintain program integrity and assure the maintenance of the FmHA security property, borrowers are required to provide written requests to further encumber the property. Such requests are generally brief and succinct, citing the purpose and alternatives available. Average response time per person is .25 hours.

Consent of Lienholders

Before FmHA consents to any transaction which affects its security or lien position where other lien holders are involved, the consent of such other lienholders must be obtained. This consent is typically in the form of a letter which provides an agreement on the disposition of any funds resulting from the transaction and must be consistent with the respective loan program requirements. This consent is required to assure that program objectives continue to be met after the completion of the transaction and that FmHA's security position has not been jeopardized. Average response time is .75 hours per person per incidence.

Organizational Membership Change

To assure the continued eligibility of borrower organizations, changes in the membership requires FmHA approval. Statutorily, the Agency is restricted to allowing only eligible borrowers to participate. To assure this continued eligibility, certain information must be submitted for approval. This includes a list of members; financial statements from general partners and stockholders with more than a ten percent interest in the project or a statement of net worth for limited partners, statements identifying identity of interest and experience, statements evidencing the lack of other available credit, evidence of the assumption of original or withdrawing partner's obligations, and amendments to the organizational documents. These items are consistent with the obligation imposed of the Agency to carry out the Congressional mandate. Average response time per occurrence is 4.25 hours.

Opinion From Transferor's Legal Counsel

This opinion is prepared by the transferor's legal counselor to certify that the financial arrangements do not include any provisions which would knowingly be unacceptable to FmHA. This regulation provides explicit prohibitions against placing a lien on the project or project income to secure equity financing. Such financing is prohibited because it would adversely affect the rental rates of low and moderate income tenants, inhibit the Agency's ability to effectively service loans, diminish security value, and reduce program integrity. This is a one-time response per transfer and is maintained in the District loan file. Response time averages 0.5 person hours per transfer.

Advice of Transferee's Attorney

The transferee will provide evidence of his/her attorney's review of the loan agreement or resolution being assumed and opinion on the amendments being made to accurately reflect the transferee's opinion. This information is being required to assure that a complete understanding of the obligations being assumed is reached before the transferee becomes obligated. It also provides the transferee with an opportunity to propose and adopt appropriate revisions to the original loan agreement/resolution which may be more favorable in terms of the types of accounts and records which must be maintained and to comply with applicable regulations.

The response time averages 0.5 hours per response.

Continued Liability Agreement

This agreement will be used to acknowledge the continued liability of present debtors who transfer their loans to ineligible transferees and the debt is scheduled for payment in more than 5 years. This agreement is used to maintain program integrity and assure the timely payment of the account. Average response time is 10 minutes per person.

Junior Creditor Agreement

Creditors junior (subordinate) to the FmHA lien must agree in writing to forestall foreclosure until a discussion with FmHA is held. They must also give a reasonable notice of their proposed servicing action. The agreement must further specify any operating plans they may have in conjunction with their servicing action. This agreement permits FmHA the opportunity to verify its position and assure the objectives of the loan will not be precluded by the impending liquidation action by a junior creditor. This information is requested only in cases where a junior lien is being considered and is supplied by the potential lien holder. Average response time is 1.0 hour per incidence.

Reporting Requirements—Forms

All forms identified are used to provide and/or document servicing requests and approvals and to comply with basic eligibility requirements under the authorizing statutes and/or equal opportunity provisions.

Form FmHA 1944–33A, Consolidated Loan Agreement

This form is used by individuals operating on a profit basis or a limited profit basis to consolidate two or more Loan Agreements. Execution of this agreement results in the borrower consolidating reporting requirements for eligible projects, thus reducing the reporting burden for the borrower and the review time by FmHA staffs. Average response time is 15 minutes per response.

Form FmHA 1944–34A, Consolidated Loan Agreement

This form is used by partnerships operating on a profit basis or a limited profit basis to consolidate two or more Loan Agreements. Execution of this agreement results in the borrower consolidating reporting requirements for eligible projects, thus reducing the reporting burden for the borrower and the review time by FmHA staffs. Average response time is 15 minutes per response.

Form FmHA 1944–35A, Consolidated Loan Agreement

This form is used by corporations operating on a nonprofit, limited profit or profit basis to consolidate two or more Loan Agreements. Execution of this agreement results in the borrower consolidating reporting requirements for eligible projects, thus reducing the reporting burden for the borrower and the review time by FmHA staffs. Average response time is 15 minutes per response.

Form FmHA 1965–16, Reamortization Agreement

This is a new form that has been in use since 6/91. OMB clearance was inadvertently omitted. This agreement will be used to modify the payment schedule of a promissory note. It provides the borrower the opportunity to operate successfully and carry out the purpose of the loan. Average response time is 30 minutes per response.

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

The reporting burden identified is of a specific nature pertaining to a unique project. Because of this specificity and the unspecified format, improved information technology would not avail itself to reducing the burden. Technical or legal obstacles to reduce the burden would be encountered because each project/borrower is unique and involves a unique set of circumstances that cannot be brought into a uniform format.

4. Describe efforts to identify duplication.

Every effort has been made to reduce duplication in the information collection associated with this regulation. Whenever possible, requirements have been eliminated and flexibility provided to allow borrowers the opportunity to provide the information in whatever format is available to them. In cases where FmHA already has the information, the borrower need only refer to the existing information rather than repeat it.

5. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in the preceding Item 2.

The information requested is not similar to that found elsewhere in the program. It is reactionary to the unique request of the borrower. No other servicing reports are available for use or modification. The borrower would advise if original data already provided were still appropriate.

6. Methods used in the collection of information to minimize the burden on borrowers.

Every effort has been made to minimize time, effort, and cost to small or unsophisticated borrowers. The information required is not inconsistent with the actions of a prudent businessman involved with a real estate transaction.

7. Describe the consequence to the Federal program if the collection were conducted less frequently.

The frequency for collection of information established by FmHA has been determined by many years of experience in administering a financial assistance program in general and, more specifically, administering a multi-housing program. Experience has revealed to FmHA that lack of collected information can lead to misunderstandings of statutory intent by borrowers. Consequently, the time and cost to FmHA to correct any misunderstanding diverts FmHA resources (time, money, and staff) from efficiently pursuing efforts to meet the mandated objectives of servicing the needs of eligible and qualified members of the rural public. At the same time, FmHA is cognizant that many borrowers meet or comply with statutory intent and should not be unnecessarily burdened with reporting requirements. Further, lack of information upon which to base servicing options and decisions could lead to potential fraud, abuse, and waste in the multiple family housing program and the inability to take corrective action at an early date.

8. Explain any special circumstances which require information to be recorded in a manner inconsistent with the guidelines in 5 CFR 1320.6.

This regulation is consistent with the information collection and reporting requirement guidelines contained in 5 CFR 1320.

9. Describe efforts to consult with persons outside the agency to obtain their views on the information to be recorded.

The following organizations and their representatives were consulted in the process of reviewing any revisions to the 1965–B regulation to obtain their viewpoints in all aspects, i.e., consistency with the law, clarity, reporting burden, reporting format, and the elements of data to be recorded, disclosed, or reported:

(1) National Association of Home Builders (NAHB), 15th & M Street, NW., Washington, DC 20005, (202) 822–0236, Johanna Shreve, Executive Director, Rural Council, 1991

(2) Council for Rural Housing and Development, 2300 M Street, NW., Washington, DC 20037, (202) 955–9715, Anna M. Moser, Executive Director, 1991
(3) Institute of Real Estate Management, 430 N. Michigan Avenue, Chicago, Illinois 60611–4090, (312) 661–1930, Charles A. Achilles, Staff Vice President, Legislative Affairs and Services Division, 1991
(4) Housing Assistance Council, Inc., 1025 Vermont Avenue NW., Suite 606, Washington, DC 20005, (202) 842–8600, Moises Losa, Executive Director 1991

Consultation with the above organizations involved meeting with committees of persons on behalf of the respective organizations. The discussions revealed a divergence of opinion on some topics but no major problems were identified that could not be resolved.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Privacy Act and Freedom of Information Act governs confidentiality of any information received.

11. Provide additional justification for any questions of a sensitive nature that are commonly considered private.

The reporting requirements of this regulation do not ask any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private in nature.

12. Provide estimates of annualized cost to the Federal Government and to the respondents.

The estimated annual cost to the Federal Government for FmHA to revise and administer this regulation is based on the approximate amount of time that employees directly involved in the preparation and administration of the regulation times an average cost factor. The cost factor includes salaries, personnel benefits, travel, communications, utilities, rent, printing and reproduction, supplies and materials, equipment, insurance claims, indemnities, etc. Therefore, the annual cost to the Federal Government is $850,000.

Three wage classes are used to estimate cost of public burden (Class I—legal; Class II—other lenders; and Class III—owner). These wage classes are based on current knowledge of the Multiple Family Housing Management and Servicing staff in the National Office of Farmers Home Administration. The staff keeps current on cost information through field visits with FmHA field staff, the public and through review of publications.

The estimated annual cost to the public is as follows:

Class I—Legal: $60/hour×1,443 man-hours=	$86,580
Class II—Others: $20/hour×41 man-hours=	820
Class III—Owner: $25/hour×103 hours=	2,575
Total annual cost to the public	89,975

13. Provide estimates of the burden of the collection of the information.

The response information is based on information gained from the experience of borrowers and FmHA staff working together and from information obtained through interviews, consultations, and field visits with FmHA field staff.

All responses are on occasion depending on the nature of the servicing request. The burden on respondents varies from .167 to 1.00 man-hours.

The variation in man-hours is due to the complexity of some information and the level of expertise of the respondent. Routine submissions average less than one-half man-hour.

14. Explain reasons for changes in burden including the need for any increase.

The change in burden is due to many servicing actions being completed prior to this date that will not be repeated and the increased expertise of those completing the actions, resulting in less time to respond to requests for servicing actions.

15. For collections of information whose results are planned to be published.

The reporting requirements contained in this package do not require the results of such activity to be published for statistical use.

7 CFR 1965–B, SECURITY SERVICING FOR MULTIPLE HOUSING LOANS

Section of regulations	Title	Form No. (if any)	Estimated number of respondents	Reports filed annually	Total annual responses (d)x(e)	Estimated number of man-hours per response	Estimated total man-hours (f)x(g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
1965.55(a)(9)	Request for Additional Indebtedness on Security Property.	Written	20	On occasion	20	0.25	5.0
1965.61(f)	Consent of Lien Holders	Written	20	On occasion	20	0.75	15.0
1965.63(e)	Organizational Membership Changes	Written	300	On occasion	300	4.25	1,275.0
1965.65(b)(3)(vi)	Opinion from Transfer's Legal Counsel	Written	200	On occasion	200	0.50	100.0
1965.65(c)(9)	Advice of Transferee's Attorney	Written	200	On occasion	200	0.50	100.0
1965.65(d)(5)	Continued Liability Agreement	Written	10	On occasion	10	.167	2.0
1965.83(b)(4)	Junior Creditor	Written	20	On occasion	20	1.00	20.0
Reporting Requirements—Forms							
1965.68(d)(2)	Consolidated Loan Agreement	FmHA 1944–33A	10	On occasion	10	0.25	3.0
1965.68(d)(2)	Consolidated Loan Agreement	FmHA 1944–34A	50	On occasion	50	0.25	13.0
1965.68(d)(2)	Consolidated Loan Agreement	FmHA 1944–35A	15	On occasion	15	0.25	4.0
1965.70(d)(1)	Reamortization Agreement	FmHA 1965–16	100	On occasion	100	0.50	50.0
Reporting Requirements Approved Under Other Numbers							
1965.77(b)	Consent to Sale or Other Disposition of Security Property.	FmHA 465–1 (0515–0086).					
Docket total					945		1,587.0

United States Department of Agriculture; Farmers Home Administration

Form FmHA 1944–33A (11–88)

Consolidated Loan Agreement

Form Approved, OMB No. 0575–0100; Approval Expires 2/96

☐ RRH Insured Loan to an Individual Operating on a Profit Basis, or;

☐ RRH Loan to an Individual Operating on a Limited Profit Basis

1. *Parties and Terms Defined.* This consolidated agreement dated _____ of the Undersigned _____, herein called "Borrower" whether one or more, whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government", is made in consideration of loans, herein called "the loans", to Borrower in the amount of $____ made or insured, or to be made or insured, by the Government pursuant to sections 515(b) of the Housing Act of 1949 to build _____ projects. The loans may be sold and insured by the Government. The loans shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing". The indebtedness and other obligations of Borrower under the notes evidencing the loans, the related security instrument and any related agreement are herein called the "loan obligations".

2. The following projects are consolidated which involved ____ loans:

_____

_____

_____

3. *Equal Opportunity and Nondiscrimination Provisions.* The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement", including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Borrower Contribution.* The amount of $____ was contributed from the Borrower's own funds for land purchase or development.

5. *Accounts for Housing Operations and Loan Servicing.* The Borrower shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: a General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* The Borrower shall from the Borrower's own funds deposit in the General Operating Account the total amount of $____ consisting of the individual amounts listed in the loan agreement being consolidated.

b. *Reserve Account.* Transfers at a rate not less than $____ annually which is the total of the amounts listed in the loan agreements being consolidated shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $____ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR 1930–C. With prior consent of the Government, funds in the Reserve Account may be used by the Borrower:

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0100), Washington, DC 20503.

For any purpose desired by the Borrower, provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 4b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

To pay in dividends to the Borrower of up to 8 percent per annum of the borrower's initial investment of $____ provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 4b to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

6. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Borrower shall comply with all appropriate FmHA regulations and shall:

a. Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

b. Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government or its representative to inspect such books and records at all reasonable times.

c. If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

d. Unless the Government gives prior consent:

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

e. Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C for prior review.

f. If required by the Government, modify and adjust any matters covered by clause (e) of this section.

g. Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

h. If the return on investment for any year exceeds 8 percent per annum of Borrower's initial investment for $ ____, the Government may require that the Borrower reduce the following year and/or refund the excess return on the investment to the tenants or use said excess in a manner that will best benefit the tenants.

7. *General Provisions.*

a. It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

b. Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, in related agreement executed by Borrower in connection with the loan.

c. The provisions of this agreement are representations to the Government, to induce the Government, to consolidate the loan agreements of or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

d. Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

e. Any notice, consent, approval, waiver or agreement must be in writing.

f. This resolution may be cited in the security instrument and any other instruments as the "Consolidated Loan Agreement of _____, 19 ____".

g. Borrower previously entered into Loan Agreements with the Government having the following dates

_____

_____

All such previous loan agreements are consolidated into this Consolidated Loan Agreement and the multifamily housing units covered by such previous loan agreements shall be operated as a single project under the terms and conditions of this Consolidated Loan Agreement. Violation of this Consolidated Agreement shall constitute an event of default under the security instruments which may be described in such previous loan agreements.

Borrower has delivered to Government several evidences of debt which provided for payments on various days of each month. To provide for orderly administration of the indebtedness, Borrower agrees to change the scheduled payment date on the following promissory notes, assumption agreements, or reamortization agreements to the first day of each following month until the debt evidenced by each instrument described is paid in full:

Date	Amount	Date	Amount

_____

h. This Consolidated Loan Agreement shall be effective on the date it is approved by Government.

_____

Witness

_____

Borrower

_____

Witness

_____

Borrower

_____

(Approval Date)

_____

(Approval Official)

Form Approved; OMB No. 0575–0100
Approval Expires 2/96

Consolidated RRH Loan Agreement

☐ To a Partnership Operating on a Profit Basis
☐ To a Limited Partnership Operating on a Profit Basis
☐ To a Partnership Operating on a Limited Profit Basis
☐ To a Limited Partnership Operating on a Limited Profit Basis

1. *Parties and Terms Defined.* This consolidated agreement dated _____of the _____, a Partnership, duly organized and operating under _____, herein called "Partnership", whose post office address is _____, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government", is made in consideration of loans, herein called "the loans", to Partnership in the amount of $_____made or insured, or to be made or insured, by the Government pursuant to sections 515(b) of the Housing Act of 1949 to build _____projects. The loan may be sold and insured by the Government. The loans be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing". The indebtedness and other obligations of the Partnership under the notes evidencing the loans, the related security instrument and related agreement are herein called the "loan obligations".

2. The following projects are consolidated which involve _____ loans: _____

_____

_____

3. *Execution of Loan Instruments.* To evidence the loan the Partnership has issued promissory notes (herein referred to as "the note"), signed by _____ for the amount of the loan, payable in installments over a period _____, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government _____ are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government, _____are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Partnership under the note, the related security instrument, and any related agreement are herein called the "loan obligation".

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0100), Washington, D.C. 20503.

4. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement", including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement (Under Title VI, Civil Rights Act of 1964)", a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

5. *Borrower Contribution.* The amount of $_____was contributed by the Partnership from its own funds for the land purchase or development.

6. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930–C so long as the loan obligation remain unsatisfied; A General Fund Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Partnership shall from its own funds deposit in the General Operating Account the total amount of $_____consisting of the individual amounts listed in the loan agreements being consolidated.

b. *Reserve Account.* Transfers at a rate not less than $_____annually which is the total of the amounts listed in the loan agreements being consolidated shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $_____and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930–C. With prior consent of the Government funds in the Reserve Account may be used by the Partnership.

To pay dividends to the partners of up to 8 percent per annum of the borrower's initial investment of $_____, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

To pay dividends to the partners or for any other purpose desired by the Partnership, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will not be less than that required by subsection 6b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

7. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall comply with all appropriate FmHA regulations and shall:

a. Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

b. Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

c. If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

d. Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the agreement shall prevail and govern.

e. Unless the Government gives prior consent:

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or others property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any general partner(s) *nor permit the general partner(s) to maintain less than an aggregate of 5 percent financial interest in the organization* nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

f. Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C to the Government for prior review.

g. If required by the Government, modify and adjust any matters covered by clause (f) of this section.

h. Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

i. Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

j. Do other things as may be required by the government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

k. If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $_____, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

8. *General Provisions.*

a. It is understood and agreement by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

b. The provisions of this agreement are representations to the Government, to induce the Government, to consolidate the loan agreements of the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

c. Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

d. Any notice, consent, approval, waiver, or agreement must be in writing.

e. This agreement may be cited in the security instrument and any other instruments as the "Consolidated Loan Agreement" of _____, 19____.

g. Borrower previously entered into Loan Agreements with the Government having the following dates _____

All such previous loan agreements are consolidated into this Consolidated Loan Agreement and the multifamily housing units covered by such previous loan agreements shall be operated as a single project under the terms and conditions of this Consolidated Loan Agreement. Violation of this Consolidated Agreement shall constitute an event of default under the security instruments which may be described in such previous loan agreements.

Borrower has delivered to Government several evidences of debt which provided for payments on various days of each month. To provide for orderly administration of the indebtedness, borrower agrees to change the scheduled payment date on the following promissory notes, assumption agreements, or reamortization agreements to the first day of each following month until the debt evidenced by each instrument described is paid in full:

Date	Amount	Date	Amount

g. This Consolidated Loan Agreement shall be effective on the date it is approved by Government.

Partnership Name
By:

Witness

Witness

Witness

Borrower

Borrower

Borrower

Approval Date

Approval Official

Position 5

Form Approved
OMB No. 0575–0100
Approval Expires 2/96

United States Department of Agriculture; Farmers Home Administration

Consolidated Loan Resolution

☐ RRH Loan to a Broadly Based Nonprofit Corporation
☐ RRH Loan to a Profit Type Corporation
☐ RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis

Consolidated Loan Resolution of _____, 19_____. Resolution of the Board of Directors of _____providing for consolidation of loan resolutions totaling $ _____to finance rental housing and related facilities in a rural area for _____the collection, handling, and disposition of income, the issuance of installment, promissory note and real estate security instrument, and related matters.

Whereas _____(herein referred to as the "Corporation") is a corporation duly organized and operating under _____, the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas. The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill.

Be it Resolved:

1. *Application for Loan.* The Corporation has applied for and obtained loans (herein called "the loans") totaling $ _____from the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to sections 515 of the Housing Act of 1949. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing".

2. The following projects are consolidated which involve _____ loans: _____

3. *Execution of Loan Instruments.* To evidence the loans the Corporation has issued a promissory notes (herein referred to as "the Notes"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loans, payable in installments over a period _____, bearing interest at rates and containing other terms and conditions, prescribed by the Government. To secure the notes or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation".

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0100), Washington, D.C. 20503.

4. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan; and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

5 *Borrower Contribution.* The amount of $_____was contributed from the corporation's own funds for the land purchase or development.

6. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930–C as long as the loan obligations remain unsatisfied: A General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* The Corporation shall, from its own funds, deposit in the General Operating Account the total amount of $_____consisting of the individual amounts listed in the loan resolutions being consolidated.

b. *Reserve Account.* Transfers at a rate not less than $_____annually which is the total of the amounts listed in the loan resolutions being consolidated shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $_____and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930–C. With prior consent of the Government funds in the Reserve Account may be used by the Corporation:

To pay dividends to stockholders or for any other purpose duly authorized by the board, of up to 8 percent per annum of the borrower's initial investment of $_____provided the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

To pay dividends to stockholders or for any other purpose duly authorized by the board, provided the board determines that after disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

7. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall comply with all applicable FmHA regulation and shall:

a. Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

b. Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

c. If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

d. Unless the Government gives prior consent:

(a) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer of encumbrances of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) No cause of permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

e. Submit for the housing the required reports as per FmHA Regulations 7 CFR Part 1930–C to the Government for prior review.

f. If required by the Government, modify and adjust any matters covered by clause (e) of this section.

g. Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

h. Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

i. Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

j. If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $_____, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investments to the tenants or use said excess in a manner that will best benefit the tenants.

8. *General Provisions.*

a. It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and

that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretation.

b. The provisions of this resolution are representations to the Government, to induce the Government, to consolidate the loan resolutions of the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

c. Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

d. Any notice, consent, approval, waiver, or agreement must be in writing.

e. This resolution may be cited in the security instrument and any other instruments as the "Consolidated Loan Resolution of _____, 19____.".

f. Borrower previously entered into Loan Resolutions with the Government having the following dates

_____.

All such previous loan resolutions are consolidated into this Consolidated Loan Resolution and the multifamily housing units covered by such previous loan resolutions shall be operated as a single project under the terms and conditions of this Consolidated Loan Resolution. Violation of this Consolidated Resolution shall constitute an event of default under the security instruments which may be described in such previous loan resolutions.

Borrower has delivered to Government several evidences of debt which provide for payments on various days of each month. To provide for orderly administration of the indebtedness, borrower agrees to change the scheduled payment date on the following promissory notes, assumption agreements, or reamortization agreements to the first day of each following month until the debt evidenced by each instrument described is paid in full:

Date
Amount
Date
Amount

g. This Consolidated Loan Resolution shall be effective on the date it is approved by Government.

CERTIFICATE

The undersigned,_____, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby that the foregoing is a true copy of a resolution duly adopted by the board of directors on _____, 19____, which has not been altered, amended, or repealed.

(Date)

(Secretary)

(Approval Date)

(Approval Official)

BILLING CODE 3410-07-M

USDA-FmHA
Form FmHA 1965-16
(Rev. 6-91)

MULTIPLE FAMILY HOUSING REAMORTIZATION AGREEMENT

Form Approved
OMB No. 0575-0100
Approval Expires 2/96

INSTRUCTIONS — Type or print in capitalized elite type in spaces marked ( ).

1. Borrower Case Number	2. Project Number	3. Loan Number
4 a. Borrower Name	5. Type of Reamortization (see FMI)	6. Date of Reamortization
b. Project Name	7. Total Amount of Reamortization	8. Type of Note Code (see FMI)
	9. Bond Code 0 = Not Applicable 1 = Serial Bonds 2 = Single Bond	10. Repayment Period
11. Note Interest Rate	12. Approval Date	

Complete Items 13 Through 15 For Labor Housing Daily Interest Accrual

13. Interest Only Due Date	14. Daily Interest Accrual Installment Amount
15. Daily Interest Accrual Installment Due Date	

Complete Items 16 Through 19 For Delinquency Reamortization Only

16. Delinquent Interest	17. Past Due Interest
18. Past Due Principal	19. Accrued Interest Reamortized

Public reporting burden for this collection of information is estimated to average 1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0100), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

39

Position 2

FmHA 1965-16 (Rev 6-91)

BILLING CODE 3410-07-C

The United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (called the "Government"), is the owner and holder of a promissory note or assumption agreement in the principal sum of _____Dollars ($_____), plus interest on the unpaid principal of _____percent (_____) per year which was made or assumed by _____and _____(called "I/we"), dated _____, 19_____, and payable to the order of the Government. The unpaid principal balance (including advances) is $_____. The interest due (including interest on advances) to date is $_____. The late fee to date is $_____. The total debt to date is $_____, which is now principal.

Because one or more of the conditions set forth in Farmers Home Administration regulations have been met for obtaining a reamortization of the debt the government agrees to grant this reamortization of said loan and I/we agree to make payments in accordance with the installment information shown below.

The first installment in the amount of $_____, will be due and payable on _____, 19_____. Thereafter, regular installments each in the amount of $_____will be due and payable on the first day of each month until the principal and interest are paid, except that the final installment of the entire debt, if not paid sooner will be due and payable on _____, _____.

Payments of principal and interest shall be applied, and late fee charges shall be assessed in accordance with FmHA's accounting procedure in effect on the date of receipt of the payment. Borrower agrees to pay late charges in accordance with Farmers Home Administration regulations in effect when a late charge is assessed.

Nothing in this agreement affects any of the terms or conditions of the note or assumption agreement, or the instruments securing it, other than the payment schedule (which includes the due date of the final installment), and the method of applying payments on the account.

Upon default in the payment of any one of the above installments or in case of a failure to comply with any of the conditions and agreements contained in the above-described note or assumption agreement or the instruments securing it, the Government at its option may declare the entire debt immediately due and payable and may take any other action authorized therein.

_____

(Borrower)

_____

(Date)

_____

(Borrower)
United States of America
Farmers Home Administration
By: _____
Title: _____
Date: _____

7 CFR 1965–E, Prepayment and Displacement Prevention of Multiple Family Housing Loans

1. Explanation of the circumstances that make the collection of information necessary.

The Housing and Community Development Act of 1987 required that when Rural Rental Housing borrowers wished to prepay their loans, FmHA must first decide if the housing continues to be needed to serve low- and moderate-income tenants, and if so, to offer the borrower a fair incentive to not prepay the loan. If the borrower rejects the incentive, the housing must be offered for sale to a nonprofit organization or public agencies. Only if no nonprofit organization or public agencies can be found to purchase the project at the fair market value can the loan be prepaid.

Procedure to enact this law was originally written as an interim rule as section 1965.90 and Exhibit E to 7 CFR 1965–B. This regulation will replace those portions of 7 CFR 1965–B dealing with prepayment. The paperwork burden assigned to these sections will be transferred to 7 CFR 1965–E.

2. Indicate how, and by whom, and for what purposes the information is to be used and the consequence to Federal program if the collection of information was not conducted.

When a request to prepay a rural rental housing loan is received, FmHA must determine the need for the housing to remain in the low-income program. FmHA must also determine the extent of any incentive offer to keep the housing within the FmHA program. The incentive offer is based on the local housing market so as to be fair to the borrower. For FmHA to make these determinations, the borrower must submit sufficient documentation on the local housing market, as well as documentation that prepayment can actually be made. This documentation is the bulk of this paperwork burden package. The remainder of the package deals either with minimal steps to be taken in the process or abbreviated forms of applications for either incentive loans or loans to nonprofits or public agencies to purchase the project.

A summary of the information collection burden is described as follows:

Reporting Requirements—No Forms

Nonprofits and public agencies wishing to be notified of prepayment requests

National and regional nonprofit organizations and public agencies interested in purchasing projects under this regulation must contact the National Office of the Farmers Home Administration to have their names placed on a potential purchaser list. Local nonprofit organizations and public agencies which wish to only purchase projects in one District need only contact the applicable FmHA District Office. The notification to Farmers Home Administration must be updated annually. Average response time is 5 minutes per response.

Borrower submits prepayment request

For Farmers Home Administration to determine the borrower's ability to prepay and the need for the rental housing to remain in the low-income program, the borrower must submit documentation on the local housing market and the ability to prepay. This documentation is the bulk of this paperwork burden. Average response time is 5 man-hours per response.

Tenant requests Letter of Priority Entitlement (LOPE)

Farmers Home Administration must immediately notify each tenant that a request for prepayment has been received and advise the tenant that all displaced tenants and those experiencing rent overburden due to the proposed prepayment will be eligible for Letters of Priority Entitlement that will place them at the top of all occupancy waiting lists for any FmHA project in any location for which they qualify. Average response time is 5 minutes per response.

Borrower accepts or rejects incentive package

Within 30 days, the borrower must accept or reject the incentive offer in writing. Average response time is 5 minutes per response.

Borrower advertises project for sale to a nonprofit or public agency

If no incentive agreement is reached between Farmers Home Administration and the borrower and the prepayment cannot be accepted because a need remains for the housing and the borrower does not qualify for an exception, the borrower must offer to sell the project to a nonprofit organization or public agency. The borrower must first advertise the housing for sale to qualified local nonprofit organizations and public

agencies. If no local nonprofit organization or public agency submits an offer to purchase the project, the borrower is expected to contact each organization or agency on the regional or nationwide potential buyer list with an offer to sell and with enough information about the project to allow the prospective purchaser to make an informed decision. Average response time is one hour per response.

Recordkeeping Requirements

Payment in full

After Farmers Home Administration has recommended that prepayment can be accepted, the borrower must post a notice of the restrictive-use provisions in a public area until all restrictive-use provisions expire. In addition, the borrower must maintain records that document compliance with the restrictive-use provisions and must certify annually to Farmers Home Administration that units are rented to appropriate tenants at appropriate rents and that such records are available for Government inspection upon request. We estimate this burden to be 15 minutes per year.

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

This regulation conforms very closely to the legislation, thus reduction in the burden would not be possible. The applications involved for this procedure require less paperwork than most RRH loan applications. 7 CFR 1965–E will replace the burden in subsection 1965.90 and Exhibit E to 7 CFR 1965–B. The paperwork burden being assigned to 7 CFR 1965–E is greater than that deleted from these two procedures. Since the interim rule was published, the time estimates per respondent have increased while the number of respondents has decreased. We have made the determination that since the application packages for an equity incentive loan are smaller than in the majority of regular loan-making and transfer procedures of 7 CFR 1944–E and 7 CFR 1965–B, the burden more appropriately belongs in this package rather than as part of the loan making instructions of 7 CFR 1944–E and the transfer section of 7 CFR 1965–B. At the time of the interim rule, changes in 7 CFR 1944–E and 7 CFR 1965–B were inadvertently omitted. We have also added additional categories of burden not noted before.

4. Describe efforts to identify duplications.

In cases where FmHA already has the information, the borrower need only refer to the existing information rather than repeating it.

5. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in the preceding Item 2.

The information requested is unique to the individual request. In some cases, FmHA has the information and it need not be repeated. In other cases, however, such as housing market data, the existing information may be obsolete and current data would be required. The borrower would advise if the original data were still appropriate.

6. Methods used in the collection of information to minimize the burden on borrowers.

Every effort has been made to minimize time, effort, and cost to borrowers. Borrowers are allowed to refer to information already in the FmHA files. The borrower would provide the requested information upon which FmHA would base the decision to prepay.

7. Describe the consequence to Federal program if the collection were conducted less frequently.

The frequency of collection is once per borrower request to prepay. This cannot be changed since any other requests would be based on a different geographic location and/or a different period of time. Request to prepay are strictly the borrower's option. If FmHA does not have current and appropriate information, the decision to accept or reject the prepayment request and the amount of an incentive offer, if any, would be made inappropriately.

Nonprofit organizations or public agencies who wish to be notified of any prepayment requests must update their request to remain on the list on an annual basis so that non-interested entities can be purged from the list.

Tenants requesting letters of priority entitlements need apply only once.

8. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

This data collection is consistent with the guidelines contained in 5 CFR 1320.6.

9. Describe the efforts to consult with persons outside the agency to obtain their views on the information to be recorded.

The following organizations and their representatives were consulted in the process of reviewing any revisions to the regulations dealing with prepayment to obtain their viewpoints in all aspects, i.e., consistency with the law, clarity, reporting burden, reporting format, and the elements of data to be recorded, disclosed, or reported:

(1) National Association of Home Builders (NAHB), 15th & M Street, NW., Washington, DC 20005, (202) 822–0236, Johanna Shreve, Executive Director, Rural Council, 1991

(2) Council for Rural Housing and Development, 2300 M Street, NW., Washington, DC 20037, (202) 955–9715, Anna M. Moser, Executive Director, 1991

(3) Institute of Real Estate Management, 430 N. Michigan Avenue, Chicago, Illinois 60611–4090, (312) 661–1930, Charles A. Achilles, Staff Vice President, Legislative Affairs and Services Division, 1991

(4) Housing Assistance Council, Inc., 1025 Vermont Avenue, NW., Suite 606, Washington, DC 20005, (202) 842–8600, Moises Losa, Executive Director, 1991

Consultation with the above organizations revealed a divergence of opinion on some topics, but no major problems were identified that could not be resolved.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Confidentiality is not assured, except for personal income information. Tenant and borrower financial information will not be revealed to the public. Other information would be subject to the "Freedom of Information Act" and the "Privacy Act."

11. Provide additional justification for any questions of a sensitive nature that are commonly considered private.

No personal information is requested. All information concerns the project and the housing market.

12. Provide estimates of annualized cost to the Federal Government and to the respondents.

The annual cost for Farmers Home Administration to develop and administer this regulation is determined by multiplying the number of employees involved in the preparation, review and administration of the regulation times the National average cost factor. The average cost factor is a budget factor and includes salaries, personnel benefits, travel and transportation expenses, supplies and materials, equipment, and etc. Therefore, the annual cost to the Federal Government is $613,180.

The following wage classes were used to estimate cost of public burden. Theses wage classes are based on current knowledge obtained in consultation with persons involved in the multiple family housing program.

Class I—Owner: $25.00/hr.× 519 man-hours=$12,975
Class II—Tenant: $4.00/hr. × 8 man-hours=32
Class III—Others: $20/hr. × 20=400
Total Cost to the Public—$13,407

13. Provide estimates of the burden of the collection of information.

The estimates of burden are based on information gained from the experience of borrowers and FmHA staff working together since the interim regulation covering prepayment has been in effect.

14. Explain reasons for changes in burden including the need for any increase.

There is no change in burden. This is the initial request for clearance.

15. For collections of information whose results are planned to be published.

The reporting requirements contained in this package do not require the results of such activity to be published for statistical use.

7 CFR 1965–E, PREPAYMENT AND DISPLACEMENT PREVENTION OF MULTIPLE FAMILY HOUSING LOANS

Sec. of regulations	Title	Form No. (if any)	Estimated No. of respondents	Reports filed annually	Total annual responses (d) × (e)	Estimated No. of man-hours per response	Estimated total man-hours (f) × (g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Reporting requirements—no forms:							
1965.203	Nonprofits wishing to be notified of prepayment requests.	Written	200	1	200	.08	16.0
1965.205 Exhibit C.	Borrower submits prepayment request.	Written	100	On occasion	100	5.00	500.0
1965.213(c)(6)	Borrower accepts or rejects incentive offer.	Written	100	On occasion	100	.08	8.0
1965.216(b)	Borrower advertises for sale to a non-profit.	Written	20	On occasion	20	1.00	20.0
Total reporting:.					420		544.0
Recordkeeping requirements:							
1965.215(e)(6)	Payment in full		10			.25	3.0
Docket Total:.							547.0

The following are the information collection requirements contained in amendments to part 1965 for which OMB approval is requested:

Subpart B—Security Servicing for Multiple Housing Loans

49. Section 1965.55(a)(7) is amended by revising the reference from "§ 1965.90 of this subpart" to "Subpart E of this part."

50. Section 1965.65 is amended by redesignating paragraphs (c) (11) through (15) as paragraphs (c) (12) through (16) respectively, redesignating paragraph (d)(7) as paragraph (d)(8), and redesignating paragraphs (f)(13) and (f)(14) as paragraphs (f)(14) and (f)(15) respectively; by adding new paragraphs (c)(11), (d)(7), and (f)(13); by revising the reference in the fourth sentence of the introductory text of paragraph (c)(10) from "§ 1944.215 (k) of Subpart E of Part 1944 of this chapter" to "§ 1944.215 (n) of Subpart E of Part 1944 of this chapter"; by revising the title of Form FmHA 1944–7 in the first sentence of newly redesignated paragraph (c)(12) from "Interest Credit and Rental Assistance Agreement" to "Multiple Family Housing Interest Credit and Rental Assistance Agreement"; by removing the title of Form FmHA 1944–50 in the fourth sentence of newly redesignated paragraph (c)(12); by revising the words "Other Real Estate (ORE)" to "Nonprogram Property (NP)" in the first sentence of newly redesignated paragraph (d)(8); and by revising paragraphs (b)(3), (b)(4), (c)(1), (c)(3), (c)(5), the first sentence of the introductory text of paragraph (c)(10), the introductory text of paragraph (f)(4), the first sentence of paragraph (f)(7), paragraph (f)(8), and the last sentence (in parenthesis) of paragraph (f)(12) to read as follows:

Sec. 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(b) * * *

(3) The transferor shall not receive an equity payment as part of a transfer unless:

(i) All unpaid FmHA indebtedness against the property is assumed;

(ii) All real estate and personal property taxes owed by the project are current;

(iii) All FmHA loan payments on the project are current;

(iv) The reserve account is at the authorized level at the time of the transfer;

(v) The State Director receives National Office authorization to proceed, if the preceding requirements cannot be met and it can be demonstrated that no other alternative, including liquidation, would be in the best interests of FmHA and the tenants; and

(vi) When the transfer is NOT being made in connection with a request for prepayment of the FmHA loan;

(A) Any equity payment paid to the transferor shall be paid in cash at the time of the transfer; or

(B) If paid on terms;

(*1*) The rates and terms are documented and the transferee is able to show that the obligation can be met from outside sources of income without jeopardizing the operation of the project. No rental or other project income (except authorized return to owner as specified in the loan agreement or resolution) shall be used to make payments on the obligation;

(*2*) No present or future liens will be attached to the secured project real estate, personal property, accounts, or revenue from the operation of the project;

(*3*) The equity payment to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those

identified in the transferee's organizational documents approved by FmHA;

(4) The seller does not and will not have a reversionary interest in the FmHA encumbered property;

(5) In the case of a limted partnership, the right of FmHA to approve or disapprove the substitution of general partners in accordance with § 1965.63 of this subpart has not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by FmHA for partner changes in the case of default; and the right to assign partnership interests is restricted to only the limited partners' interests and such right does *not* include the general partners' interests;

(6) An opinion is provided from the transferee's legal counsel certifying that the financial and other arrangements comply with all FmHA requirements of this section; and

(7) An assignment of project income will be taken by FmHA in accordance with the requirements of § 1944.221(b) of Subpart E of Part 1944 of this chapter as additional security with the advice and guidance of OGC;

(vii) When the transfer is being made to avert prepayment of the FmHA loan, an equity loan may be made in accordance with the provisions of Subpart E of this part and Subpart E of Part 1944 of this chapter. If additional equity is to be paid by the purchaser to the seller above the amount of equity recognized by FmHA in the prepayment valuation of the project, the provisions of paragraph (b)(3)(vi) of this section will apply.

(4) No payment will be received by the transferor for regular equity or equity in connection with a prepayment action unless all FmHA loans against the project are assumed in full or the payment to the transferor is applied in total against non-FmHA prior liens. The State Director may require that all or a part of any equity payment be applied against other FmHA loans owed by the borrower on other FmHA projects owned by the borrower that are not current, if the FmHA loans against the project being purchased are assumed in full and all prior liens paid in full.

* * * * *

(c) * * *

(1) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in Exhibits A–1 or A–2 of Subpart E of this part.

* * * * *

(3) For rental and RCH (as applicable) projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferor will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Any RA determined to not be needed will be reassigned in accordance with the provisions of paragraph XV of Exhibit E to Subpart C of Part 1930 of this chapter. Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA, reserve and other accounts must be at the scheduled level at the time of transfer.

* * * * *

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferor unless authorized in accordance with Subpart E of this Part to avert prepayment.

* * * * *

(10) When the transfer is *NOT* being made in connection with a request for prepayment of the FmHA loan, a limited profit RRH transferee's initial investment and rate of return in the project will remain the same as that originally provided to the transferor. * * *

* * * * *

(11) When the transfer is being made to avert prepayment of the FmHA loan, the recognized equity and/or rate of return may be increased in connection with an incentive offer made under the provisions of Subpart E of this part.

* * * * *

(d) * * *

(7) Transfers to ineligible applicants of projects subject to restrictive-use provisions will continue to retain the applicable restrictive-use provisions and cause the project to be operated in conformance with FmHA instructions. If it is determined by FmHA that the housing is no longer needed to house eligible tenants in accordance with the provisions of Subpart E of this part, the restrictive-use provisions may be released.

* * * * *

(f) * * *

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will *always* be required for transfers on new terms.) An FmHA designated MFH appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the FmHA designated MFH appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the FmHA designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal by attaching information on the present market value. A new appraisal will be prepared according to the requirements of FmHA Instruction 1922–B (available in any FmHA office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. An independent appraisal may *NOT* be accepted from the transferor or transferee for the initial appraisal required of FmHA under provisions of Subpart E of this part. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an FmHA prepared appraisal are:

* * * * *

(7) The following paragraph is to be inserted in Form FmHA 1965–9 whenever the full amount of equity has not been paid in cash or through an equity loan made by FmHA to avert prepayment:

* * * * *

(8) ALL RRH, RCH, and LH loans including those approved prior to December 21, 1979, which are transferred to eligible applicants will become subject to the restrictive-use provisions of Section 502 (c) of Title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate Exhibits A–1 or A–2 in accordance with Sections 1965.214(g), and 1965.216(c)(3) of Subpart E of this Part must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/resolution. The restrictive-use period will begin on the date the transfer and assumption is closed.

* * * * *

(12) * * * (Subsequent loans will not be made to pay equity unless authorized in accordance with Subpart E of this part to avert prepayment.)

(13) The following additional information is required for an equity loan to a nonprofit organization in conjunction with the transfer:

(i) Identity of Interest statement between transferor and transferee,

(ii) Statement of experience of organization and all principals,

(iii) Management Plan and Agreement in accordance with Exhibit B of Subpart C of part 1930 of this chapter,

(iv) Proposed Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

(v) Option or purchase agreement,

(vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(vii) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants based on the proposed budget.

(viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined,

(ix) A breakdown of packaging and administration costs to be paid with any advance to nonprofit organizations or public agencies purchasing a project to avert prepayment, if an advance has not previously been applied for,

(x) If needed, a request for initial operating funds and a detailed breakdown of expenses anticipated to be paid from the funds, and

(xi) District Office comments and recommendations and the State Office evaluation.

* * * * *

51. Section 1965.68 is amended by redesignating paragraph (c)(8) as paragraph (c)(9); by adding a new paragraph (c)(8); by revising the reference in paragraph (c)(3) from "Subpart C of Part 1930 of this chapter" to "Exhibit B of Subpart C of Part 1930 of this chapter"; and by revising paragraph (c)(7) to read as follows:

Sec. 1965.68 Consolidation.

(c) * * *

* * * * *

(7) For consolidation of loan agreements/resolutions of loans in which no loan to build or acquire new units was made on or after December 15, 1989, the restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A–1 of Subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/resolution and security instruments as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the consolidation is effective.

(8) For consolidation of loan agreements/resolutions of loans for which a loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

* * * * *

52. In Section 1965.70, paragraph (b)(3) is redesignated as (b)(4); a new paragraph (b)(3) is added; paragraph (a) is amended by revising the reference "§ 1965.90 of this subpart" to "Exhibit A–1 of Subpart E of this part"; paragraph (b) is amended by adding the word "or" to the end of subparagraph (2); and paragraph (d)(8) is revised to read as follows:

Sec. 1965.70 Reamortization.

* * * * *

(b) * * *

(3) The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment; or

* * * * *

(d) * * *

(8) The prepayment restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A–1 of Subpart E of this part for RRH, RCH or LH loans will be added with the advice of OGC, to the loan agreement/resolution and security instruments, as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the reamortization agreement is effective.

* * * * *

53. Section 1965.77(d)(2)(iii) is amended by adding the words "and Subpart E of this part" after "§ 1965.90 of this subpart."

54. In Section 1965.89, the introductory text of paragraph (c) is amended by revising the reference "Exhibit E of this subpart" to "Subpart E of this part", paragraph (c)(1) is amended by revising the reference "Exhibit E of this Subpart" to "Subpart E of this part", and paragraph (d) is amended by revising the reference "paragraph VI A of Exhibit E of this subpart" to "Subpart E of this part".

55. Section 1965.90 is revised to read as follows:

Sec. 1965.90 Payment in full.

(a) *Prepayment of multi-family housing loans.* Subpart E of this part must be complied with for all multi-family housing loans that are planned to be prepaid prior to the scheduled final due date of the loan.

(b) *Borrower responsibility.* Borrowers must advise the District Office servicing the account of any plan to pay the account in full 6 months prior to the date of the planned payment in full.

(c) *FmHA responsibility.* The FmHA District Office must ensure payments in full and releases of security are processed in accordance with Subpart D of Part 1951 of this chapter and other appropriate program requirements and regulations. FmHA's interest in property insurance will be released in accordance with § 1806.4(a)(3) of Subpart A of Part 1806 of this chapter (paragraph IV A 3 of FmHA Instruction 426.1). In all cases, references to County Supervisors will be construed to mean District Directors when applied to multi-family housing borrowers.

56. Section 1965.92 is amended by revising the references of "Exhibit D" in the third sentence and "Exhibit D" in the last sentence to read "Exhibit A," and by adding the phrase "within 30 days of the servicing action" to the end of the last sentence of the paragraph.

57. Section 1965.100 is amended by revising the first sentence to delete "collection of information" and insert "reporting and recordkeeping" in its place, to insert "contained" after "requirements", and to insert "number" after "control". The second sentence is revised by changing "5 minutes" to "10 minutes" and ".60 hours" to "1.67 hours".

58. Exhibits A, B, C, E, E–1, E–2, E–3 and E–4, of subpart B to part 1965 are removed and exhibit D is renumbered exhibit A and exhibit F is renumbered exhibit B.

59. Subpart E of part 1965 is added to read as follows:

PART 1965—REAL PROPERTY

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

Table of Contents

Sec.
1965.201 General.
1965.202 Definitions.
1965.203 Nonprofit organization and public agency interest lists.
1965.204 Processing prepayment requests and related rent increases.
1965.205 Borrower request to prepay.
1965.206 Review of borrower prepayment request by Servicing Office.
1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.
1965.208 Restrictive-use provisions related to LH projects with grants.
1965.209 Restrictive-use provisions after prepayment.
1965.210 Loans approved prior to December 14, 1989—FmHA actions when processing prepayment requests.
1965.211 Evaluation of the borrower's ability to prepay the loan.
1965.212 Appraisals.
1965.213 Offer of incentives to borrowers.
1965.214 Offering and processing of incentives.
1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment.
1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.
1965.217 Processing applications for transfers to nonprofit corporations or public agencies.
1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.
1965.219 FmHA processing of prepayment.
1965.220—1965.221 [Reserved]
1965.222 Violations of restrictive-use provisions.
1965.223 Relationshp with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.
1965.224 Prepayment of loans caused by advance payments on the account.
1965.225—1965.248 [Reserved]
1965.249 Exception authority.
1965.250 OMB control number.
Exhibits to Subpart E:
Exhibit A–1—Required Clauses for Active Borrowers With Projects Subject to Restrictive-Use Provisions as a Result of Specific Loan Making or Loan Servicing Actions
Exhibit A–2—Required Clauses for Projects Made Subject to Restrictive-use Provisions When a Loan is Transferred to a Nonprofit Organization or Public Agency to Avert Prepayment
Exhibit A–3—Required Clauses for Prepaid Projects Which Were Subject to Restrictive-use Provisions Prior to the Prepayment
Exhibit A–4—Required Clauses for Prepaid Projects Which Became Subject to Restrictive-use Provisions at the Time of Prepayment
Exhibit B—Report on Prepayment
Exhibit C—Checklist for Requesting Prepayment
Exhibit D—Methodology for Determining Prepayment Incentives
Exhibit D–1—Worksheet for Incentive Calculations
Exhibit E—Administrative Guidance for Making Prepayment Determinations
Exhibit F—Prepayment and Displacement Prevention Grant Agreement
Exhibit G–1—Restrictive-Use Agreement (To be used with Exhibit A–3 of this subpart)
Exhibit G–2—Restrictive-Use Agreement (To be used with paragraph (A) to Exhibit A–4 of this subpart)

Exhibit G–3—Restrictive-Use Agreement (To be used with paragraph (B) to Exhibit A–4 to this subpart)
Exhibit G–4—Restrictive-Use Agreement (To be used with paragraph (C) to Exhibit A–4 to this subpart)

Sec. 1965.201 General

Requests to pay Multi-Family Housing (MFH) loans in full require that certain actions be taken to ensure the affordability of housing for specified tenants for a guaranteed period of time. The requirement applies to all projects, whether or not they are subject to restrictive-use provisions or prohibitions on prepayment. This subpart provides step-by-step guidance for use by Farmers Home Administration (FmHA) and MFH borrowers when prepayment requests are made. The steps outlined are mandated by the Rural Rental Housing Displacement Prevention Provisions of the Housing and Community Development Act of 1987. When a MFH project is subject to multiple FmHA MFH loans, and the borrower offers prepayment or payment in full for one or more but not all of the MFH loans on the project, the borrower will not be allowed to pay off the most restrictive loan without invoking the prepayment provisions of this Subpart, unless the borrower agrees to be bound by the more restrictive provisions for the balance of the time period remaining on the more restrictive loan being paid in full.

Sec. 1965.202 Definitions

Affordable housing. Housing with a rent rate which does not create new or increased rent overburden for tenants of prepaying projects.

Displaced tenant. A displaced tenant is a tenant who is either forced to move from a project or a tenant who experiences new or increased rent overburden as a result of prepayment of a MFH loan. The new or increased rent overburden may occur at the time of prepayment or at any time in the future restrictive-use provisions are in force.

Income limits. Very low, low, and moderate income are defined in accordance with exhibit C of subpart A of part 1944 of this chapter (available in any FmHA office).

Letter of priority entitlement (LOPE). A letter issued by FmHA to a tenant displaced through a prepayment action that will give the tenant priority on waiting lists at any FmHA project for which they may qualify.

Local nonprofit corporation or public agency. A public agency or nonprofit corporation which operates primarily in the local community and its trade area. Local nonprofit corporations must have a broad based board reflecting various interests in the community or trade area. A public agency must be organized in accordance with State and local statutes. Either type of organization must include as one of its primary purposes developing or managing low-income housing or community development projects, which meet the requirements of § 1944.211 (a)(10)(i) of subpart E of part 1944 of this chapter. County-wide agencies/corporations may meet the definition of local organization if, in the judgment of the District Office, the community's trade area is county-wide. Tenant associations and cooperatives may meet the definition if they are organized as nonprofit organizations.

Market Area. The market area is the community in which the project is located and those outlying rural areas are impacted by the project (excluding all other established communities).

Minorities. Individuals such as members of the following groups: African-American, not of Hispanic Origin; Hispanic; American Indian or Alaskan Native; and Asian or Pacific Islander. Refer to FmHA Instruction 1900–A (available in any FmHA office) for further clarification and a description of each group.

Prepayment. A loan which has been paid by the borrower in full, before the loan maturity date. After a prepayment, no FmHA loan remains on the property and the property is removed from the FmHA program, although restrictive-use provisions may remain.

Prohibition on prepayment. Loans which may not be prepaid to the final amortization date as described in § 1965.208 of this subpart.

Protected population. Individuals or families, whether very low, low, or moderate income, who are current tenant or wish to occupy rural rental housing (RRH) or labor housing (LH), and who are protected by a particular restrictive-use provision.

Regional or national nonprofit corporation or public agency. Any public agency or nonprofit corporation meeting the conditions in § 1965.216 (c) of this subpart, which operates in an area larger than the local community and its trade area, or, if a nonprofit corporation, does not also have a broadly-based membership and board of director reflecting various interests in the community or trade area, and does not have among its officers or directorate persons or parties with a material interest in (or persons or parties related to any person or party with such an interest) in loans financed under Section 515 that have been prepaid. The primary purposes of the organization need not include developing or managing low-income housing or community development projects.

Rent overburden. Shelter costs (rent and anticipated utility costs) exceeding 30 percent of a tenant's adjusted income, or the amount of payment designated by a third-party payor as shelter cost, whichever is greater.

Restrictive-use provisions. Conditions restricting the use of the property to housing for very low-, low- and/or moderate-income tenants, whether or not the FmHA loan is in force or has been paid in full as described in § 1965.209 of this subpart.

Section 8. Tenant rental subsidies as provided under the Housing and Urban Development (HUD) Section 8 Housing Assistance Payment Program.

Unsubsidized conventional housing. Housing which receives no interest or project based rent subsidies, and which has no maximum income limits for its residents. When a borrower submits a request for prepayment of the FmHA loan, the anticipated use of the project will be considered as unsubsidized conventional housing.

Sec. 1965.203 Nonprofit Organization and Public Agency Interest Lists

Nonprofit organizations and public agencies interested in being notified of projects being offered for sale by FmHA borrowers wishing to prepay should contact FmHA. Local nonprofit and public agencies wishing to purchase projects in one district need only contact the applicable FmHA District Office. Organizations or agencies interested in one state only should contact the FmHA State Office. National and regional nonprofit organizations interested in receiving multi-state notifications should contact the FmHA National Office. Interested organizations should submit their names, addresses, contact persons, and the areas in which they wish to purchase. The notification to FmHA must be updated annually if the organization wishes to continue to receive notifications of pending prepayments. FmHA will send notices requesting the update at least 30 days prior to removing the organization's name from the list. The National Office will not verify the eligibility of the organizations requesting notification, but will periodically forward the names of interested organizations to State Offices. The State Office will periodically compile a list of interested nonprofit organizations and public agencies and forward the list to its District Offices.

Sec. 1965.204 Processing Prepayment Requests and Related Rent Increases

(a) *Chronological order of steps in processing prepayment requests.* Prior to approving prepayment of an FmHA MFH loan, FmHA must determine the eligibility and ability of the borrower to prepay the loan; attempt to keep needed housing in the very low-, low-, and moderate-income market; and ease the transition of tenants that may be affected by the conversion of a federally-financed project to unsubsidized conventional housing. The remainder of this procedure provides the chronological order for the actions to be taken:

(1) Borrower written request for prepayment (§ 1965.205 and Exhibit C of this subpart).

(2) Required notifications (§ 1965.206 of this subpart).

(3) Evaluation of borrower ability to prepay (§ 1965.211 and Exhibit E of this subpart).

(4) FmHA incentive offer and borrower decision regarding incentives (§§ 1965.213 and 1965.214 and exhibits D and E of this subpart).

(5) Evaluation of project need by FmHA (§ 1965.210 and exhibit E of this subpart).

(6) Approval of prepayment under exception authority (§ 1965.215 and exhibit of this subpart).

(7) Sale to nonprofit organizations or public agencies (§§ 1965.216 and 1965.217 of this subpart).

(8) Approval of prepayment in the absence of interest in purchase by nonprofit organization or public agency (§§ 1965.218 and 1965.219 of this subpart).

(9) Actions to be taken in the event of restrictive-use violations (§ 1965.222 of this subpart).

(10) Relationship of these procedures to other servicing actions (§ 1965.223 of this subpart).

(11) Prepayment of loans due to advance payments or completion of amortized payments (§ 1965.224 of this subpart).

(b) *Rent increases resulting from prepayment process.* If rent increases are necessary due to the making of an equity loan to avert prepayment with or without a transfer, the procedures for tenant notifications and comment will be followed as set forth in paragraphs IV C and V B of exhibit C to subpart C of part 1930 of this chapter. The reason for the rent increase will be shown as "to meet the additional expense incurred in order to avert removal or (name of project) from the FmHA program."

Sec. 1965.205 Borrower Request To Prepay

(a) Prior to initiating a formal prepayment request, borrowers considering prepaying their loans should meet with the applicable FmHA Servicing Office to discuss the prepayment request and the requirements of this procedure. The borrower will be provided with exhibit C of this subpart, to aid in completing the prepayment request package.

(b) At the meeting, the Servicing Office will inform the borrower that the project will be evaluated as unsubsidized conventional multi-family housing for the purposes of determining eligibility for incentives. An appraisal will be completed to determine if any equity exists in the project when valued as unsubsidized conventional multi-family housing. The components of the incentive offer, if any, will be dependent upon the amount of equity as follows:

(1) If the project has equity in excess of the borrower's initial investment, an equity loan and a combination of additional incentives may be considered;

(2) If no equity exists, but it can be shown that the project can be prepaid and operated successfully in the subject market, a combination of incentives not including an equity loan will be considered; or

(3) If, based upon the Servicing Office's knowledge of the market it appears likely the project would not qualify for an equity loan, the Servicing Office should so inform the borrower during the meeting. However, in no instance will the Servicing Office personnel discourage eligible borrowers from submitting a prepayment request, should the borrower so desire.

(c) Borrowers seeking to prepay MFH loans must submit a complete prepayment request to the Servicing Official at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with § 1965.215(f)(2) of this subpart). A prepayment request will not be considered complete nor will the 180-day period begin until all of the following items have been submitted:

(1) A written request to prepay the FmHA loan on a specified date;

(2) Complete and documented information necessary to prepare the prepayment report as outlined in exhibit B of this subpart and to make the required determination needed to develop an incentive offer as outlined in exhibit D of this subpart. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;

(3) Documentation of the borrower's ability to prepay under the conditions specified in the prepayment request. Exhibit C of this subpart should be used as guidance for the documentation necessary;

(4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;

(5) A statement from the borrower accepting restrictive-use provisions in the release documents if the borrower wishes to prepay the loan subject to restrictions; and

(6) Evidence that actions required by any applicable State laws related to prepayment have been met.

Sec. 1965.206 Review of Borrower Prepayment Request by Servicing Office

The Servicing Office will determine whether the prepayment request is in conformance with § 1965.205 of this subpart. Within 15 working days of receipt of a prepayment request, the Servicing Office will take the following actions:

(a) *Return of incomplete requests.* If an incomplete request is submitted, the Servicing Official will return the request to the borrower specifying the additional information needed.

(b) *Receipt of complete requests.* If a complete prepayment request is submitted, the Servicing Official will:

(1) *Acknowledge the request.* Send an acknowledgment letter to the borrower specifying the date of receipt of the complete request and informing the borrower that prepayment commitments should not be finalized until FmHA issues a letter of approval.

(2) *Notify current tenants.* Notify each tenant household by Certified Mail, Return Receipt Requested, of the receipt of the prepayment request and prepare notices for the borrower to post in public areas of the project. The notices are to remain posted until a final determination is made on the prepayment request or the prepayment offer is withdrawn. The Servicing Official will not wait to determine if submitted information is accurate or if the prepayment will be accepted or denied before notifying tenants. FmHA Guide Letter 1965–E–2 (available in any FmHA office) may be used as a guide. The following issues are to be addressed in the letter:

(i) The borrower proposes to prepay the FmHA loan and remove the housing from the FmHA program if all prepayment requirements imposed by FmHA are met;

(ii) FmHA's preliminary determination that the borrower's request to prepay will/will not be approved;

(iii) The likely effect of the prepayment on tenants living at the project. Include:

(A) The level at which rents at the project are projected to be set if prepayment is accepted;

(B) Restrictive-use provisions the borrower has agreed to maintain and the term of the restrictions;

(C) Whether Section 8 or State or local subsidy will remain with the project; and

(D) Whether the borrower has the option to terminate Section 8 assistance at the next renewal period (opt-out), and if so, when.

(iv) FmHA must make a determination as to whether tenants would be displaced due to increased rents, and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure before deciding to accept the prepayment;

(v) Conditions under which prepayment will be accepted;

(vi) A 30-day tenant comment period will be available for tenants to present comments concerning the proposed prepayment. Tenants will be allowed to review the information used by FmHA to make the determinations regarding prepayment;

(vii) Tenants will be given immediate priority for other federally-financed housing if there will be any displacement;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance of the prepayment and action dates;

(ix) Tenants will be given the opportunity to submit evidence at any appeal hearing the borrower may request;

(x) If prepayment is accepted, tenants choosing to stay in their units and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for cause unrelated to prepayment; and

(xi) Any other information relevant to the case.

(3) *Notify National Office.* The Servicing Office is to notify the FmHA State Office, who will notify the Assistant Administrator, Housing, FmHA National Office, in writing using the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office). National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request by the Servicing Office.

(4) *Notify other agencies.* The FmHA State and Servicing Offices, as appropriate, will notify other agencies of the borrower's intent to prepay the FmHA loan. The agencies contracted will include nonprofit organizations; local, State, and Federal agencies; and public organizations who have expressed an interest in purchasing a project and who provide housing assistance to low- and moderate-income people. The interest list, compiled in accordance with § 1965.203 of this subpart, is to be used in notifying organizations of the borrower's intent to prepay. Letters sent to the agencies will inform the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a nonprofit organization or public agency. Organizations contacted will be advised that an offer to sell may be forthcoming. Generally, the FmHA State Office will notify State and Federal agencies and the appropriate Servicing Office will notify local agencies.

(5) *New tenant notification.*

(i) The borrower will be required to submit for approval proposed language to be used as an addendum to leases for all tenants moving into the project while the prepayment request is pending. The language will specify the effect of the prepayment on the tenants if prepayment is accepted. The recommended language to be included in the leases is as follows:

"The mortgage on this project may be repaid to the Federal Government on or after

(*date*). (At that time)/(date restrictive-use provisions expire)/(other relevant date), your rent may be raised to _____ and/or you may be asked to move from this project."

(ii) The borrower will also be required to provide new tenants with copies of all letters sent to existing tenants advising them of the status of the prepayment. The Servicing Office will also send new tenants any additional correspondence sent to existing tenants, but will inform the new tenants that they will not be eligible for an LOPE.

(6) *On-going tenant notification.* The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

Sec. 1965.207 Prohibition on Prepayment for Loans Made on or After December 15, 1989, To Build or Acquire New Units.

Loans made on or after December 15, 1989, to build or acquire new RRH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in Subpart E of Part 1944 of this chapter.

Sec. 1965.208 Restrictive-Use Provisions Related to LH Projects With Grants

For LH projects with *any* size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

Sec. 1965.209 Restrictive-Use Provisions After Prepayment

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

(1) A servicing action;

(2) Acceptance of prepayment incentives; or

(3) Restrictions accepted as a condition of prepayment as specified in this subpart and Exhibits A–1 through A–4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category in the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in § 1965.215(e)(6) of this subpart.

Sec. 1965.210 Loans Approved Prior to December 14, 1989—FmHA Actions When Processing Prepayment Requests

For loans approved prior to December 14, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer accepted has expired.

Sec. 1965.211 Evaluation of the Borrower's Ability To Prepay the Loan

The borrower's ability to prepay the loan will be evaluated in accordance with Exhibit E of this subpart. If it is determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

Sec. 1965.212 Appraisals

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower's current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-FmHA project based tenant subsidies will be valued as assets of the project for inclusion in the appraisal. FmHA Instruction 1922–B (available in any FmHA office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

Sec. 1965.213 Offer of Incentives to Borrowers

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower's loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes an equity loan is accepted, the equity loan may be processed and closed with the current borrower or any eligible transferee.

(a) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart:

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. For LH loans, no authority exists to provide equity loans as an incentive.

(2) *Rental assistance.* Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(iii) Reamortizing the existing debt under the provisions of § 1965.70 of Subpart B of this Part should be examined to determine if reamortization will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.

(3) *Increase the maximum annual return on investment.*

(i) *Borrower equity.* The borrower's equity in the project may be increased. The new equity is the difference between the value of the project appraised as unsubsidized conventional housing in conjunction with the incentive loan (if offered) and the unpaid balances of all loans against the project, including the incentive loan. If no new appraisal is made, equity will be determined by subtracting the outstanding balances of all loans against the project from the value shown in the most recent FmHA appraisal completed for the project prior to receipt of the prepayment request.

(ii) *Rate of return.* Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package which may include an increased rate of return. The rate to be offered will be the greater of the borrower's current rate established in the initial loan, or 2 percent above the 30-year Treasury Bond rate, rounded to the nearest ¼ percent. The appropriate Treasury Bond rate will be

determined from newspapers or available financial publications and will be the rate published for the first day of the month following receipt of the complete prepayment request. The rate of return for borrowers receiving equity loans will remain at the rate currently established in the initial loan.

(iii) *Receipt of increased return.* Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in paragraph XII B of exhibit B of subpart C of part 1930 of this chapter.

(4) *Excess Section 8 rents.* For projects with project-based Section 8 rents, the owner may be permitted to receive rents considered in excess of the amounts needed to meet annual project operating and maintenance, debt service, and reserve expenses. In conjunction with the acceptance of excess Section 8 rents as an incentive, the reserve account will be adjusted to reflect adequate funding for long-term repair, replacement and maintenance costs.

(5) *Conversion or modification of interest credit.* Convert full profit loans to limited profit Plan II loans or increase the interest subsidy for loans with Section 8 assistance to make contract rents more financially feasible. The conversion would be accomplished by changing the designation of the project to Plan II.

(b) *Development of incentive package.*

(1) *Borrowers requesting immediate conversion from low and moderate-income use.* The required borrower information and criteria to be used in determining the incentives to offer, along with the steps to develop the incentive offer, are listed in Exhibits D and E of this subpart.

(2) *Projects committed to low- and moderate-income use after prepayment by parties other than FmHA.* In accordance with Exhibits D and E of this subpart, incentives will be reduced in proportion to the length of time a project is committed to low- and moderate-income use after prepayment through requirements of parties other than FmHA. The commitment for extended use may be voluntary or required by legal restrictions on use. The effect on the value of the project will be taken into consideration during the appraisal process.

(3) *Adjustment of project reserve accounts.* The reserve account must be maintained in conformance with the requirements of paragraph XIII B2c of exhibit B of subpart C of part 1930 of this chapter. At the time an incentive offer is developed, the maximum reserve amount should be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project.

(c) *Letter offering incentives to borrowers.* Within 20 days of the end of the tenant comment period, a letter will be sent to borrowers outlining the elements of the incentive offer developed in accordance with this section and Exhibits D and E of this subpart. The letter will include the following:

(1) A statement that the package is a one-time incentive being offered in return for the extension of the low and moderate income use of the housing. The letter will establish that, by accepting the incentives outlined in the letter, the borrower will be subject to a restrictive-use provision obligating the housing to low- and moderate-income use in the FmHA program for 20 years from the date the extended use agreement is executed, and prohibited from future incentive offers on the project so long as the restrictive-use provisions remain in effect.

(2) The amount of the equity loan being offered (if any). Any offer of an equity loan will include a statement that the borrower is subject to:

(i) A continued eligibility determination in accordance with Subpart E of Part 1944 of this chapter; and.

(ii) Appropriation limitations. When an incentive offer that includes an equity loan is accepted by a borrower, funding the components of the offer is considered binding on FmHA. If funds are not immediately available to fund an incentive loan, the amount of the offer will be included on a funding waiting list maintained by the National Office. Priority for funding is based on the date of receipt of the original complete prepayment request, as specified in § 1965.205 of this subpart.

(3) The maximum amount of any increased return on investment offered.

(4) The number of RA units that will be provided to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(5) Interest credit or additional interest credit if needed to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(6) The offer of borrower receipt of excess project-based Section 8 rents, if applicable.

(7) The offer must be accepted or rejected in writing within 30 days, or the prepayment request will be voided.

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on FmHA. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

Sec. 1965.214 Offering and Processing of Incentives

(a) *Borrower does not respond to incentive offer.* If the borrower does not respond to the incentive offer within 30 calendar days of the date of the letter offering incentives, the State Office will advise the National Office by means of FmHA Guide Letter 1965–E–1 (available in any FmHA office) to remove the name from the waiting list. Tenants and any agencies notified in accordance with § 1965.206(b) of this subpart will be notified by the Servicing Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) *Borrower rejects the incentive offer.* If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with § 1965.215(b) and Exhibit E of this subpart. Tenants will be notified that the borrower has rejected the incentive offer and that a decision will be made by FmHA whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) *Borrower indicates acceptance of the incentive package.* If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application in accordance with exhibit A–11 of subpart E of Part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in § 1965.212 of this subpart, one will be made at this time in accordance with FmHA Instruction 1922–B (available in any FmHA office). The Servicing Official will determine the feasibility of the loan, including any needed reamortization of existing loans. No equity loan is to be made without sufficient RA to protect current tenants against new or increased rent overburden.

(d) *Application for transfer with incentives.* If a transfer is to take place simultaneously with the incentive, a complete transfer application package, in accordance with § 1965.65 of Subpart B of Part 1965 of this chapter, will be submitted. A completed application for an equity loan, if applicable, will be completed and submitted in accordance with paragraph (c) of this section. The determination of borrower eligibility, evaluation of the transfer and any equity loan will be made concurrently. If a proposed transferee is determined not to be eligible for the transfer and assumption, appeal rights concerning transferee eligibility will be provided to the proposed transferee. If the FmHA decision is upheld, the borrower will be given an additional 15 days to reconsider whether to accept the original incentive offer.

(e) *Notification that incentives are ready for funding.* When the borrower indicates that the final incentive offer is acceptable, and the processing of the incentive application is complete, the Servicing Official will notify the State Office, which in turn will notify the National Office of all required information through use of FmHA Guide Letter 1965–E–1 (available in any FmHA office).

(1) All interested agencies contacted in accordance with § 1965.206(b) of this subpart and tenants will be advised that prepayment of the loan will not take place. If the ownership is to be transferred, tenants will be so advised. Any rent increases resulting from acceptance of an incentive offer will be processed in accordance with § 1965.204(b) of this subpart.

(2) The National Office will issue authorizations to obligate incentives to the extent possible, depending upon the availability of loan funds and RA. Authorizations will be issued in the order in which complete prepayment requests were received as set forth in § 1965.205 of this subpart. To fully utilize all available prepayment incentive loan funds and RA, projects with fully processed incentive packages may be authorized prior to authorizing packages with earlier receipt dates for which incentives have not been fully processed. Any other required National Office authorizations will be given at the same time.

(f) *Processing the incentives.* When authorization to proceed is received, the Servicing Office will process the incentives,

with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate. (Note: If the project is to be transferred at the time the incentive is processed, all obligations will be made to the transferee.):

(1) If the annual return on investment is increased, a statement will be added to the loan agreement specifying that, "The maximum annual return on investment is being increased by $_____ for a total maximum annual return of $_____." No equity level or rate of return need be mentioned.

(2) If a conversion of profit type is made, the procedures of paragraph IV A 2 e of exhibit B of subpart C of part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," will be executed.

(3) Any change in the amount of RA will require the execution of a new RA agreement or a change in the existing RA agreement, as described in paragraph V C of exhibit E of subpart C of part 1930 of this chapter.

(4) Loans for equity will be made in accordance with subpart E of part 1944 of this chapter. In accordance with § 1951.517(b)(1) of subpart K of part 1951 of this chapter, the equity loan will be established as a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project will be converted to PASS. All assumptions and transfers will be processed in accordance with § 1965.65 of subpart B of this part. All existing project loans may be consolidated and reamortized in accordance with §§ 1965.68 and 1965.70 of subpart B of this part, unless consolidation is not necessary to maintain feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent loans must be brought current, cost items paid in full, and project operating and reserve accounts brought current. All project operating and reserve accounts will remain at authorized levels during and after the closing of the incentive package, regardless of whether a transfer was included as part of the prepayment. All taxes, assessments and other liens must be prorated, brought current or paid in full as appropriate. Deferred maintenance identified in previous inspections must be performed before any equity may be received by the borrower or transferor, as applicable.

(g) *Restrictive-use provisions.* The restrictive-use provisions contained in exhibit A–1 of this subpart will be inserted in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate with the advice of OGC.

Sec. 1965.215 Borrower Rejection of Incentive Offer—Approving/Disapproving Prepayment

(a) *Approving or disapproving prepayment.* If the borrower rejects the incentive offer and indicates a preference to prepay, prepayment may be approved in accordance with paragraph (d) of this section within 180 days of the decision that the prepayment can be accepted if the determinations required in paragraph (c) of this section can be made. Exhibit E of this subpart provides additional guidance for making the necessary determinations. The State Director or other designated official in the National Office, with the recommendation of the Servicing Official, will make the decision to either approve or disapprove the prepayment request.

(b) *Determining the need for housing.*

(1) The Servicing Office or other designated office will review the following, using Exhibit E of this subpart as a guide:

(i) Local market conditions;

(ii) Information submitted as support for the prepayment request;

(iii) Responses to the 30-day tenant comment period;

(iv) The effect of the prepayment on minorities, handicapped individuals, and families with children; and

(v) Any other relevant information.

(2) The results of the determination of need will be documented in the case file.

(c) *Conditions under which prepayment may be approved.* In certain instances, prepayment may be approved after a borrower has rejected this incentive offer. If the decision is made to approve a prepayment request, restrictive-use provisions will be inserted in the deed, deed of release or satisfaction, if the project is determined to be needed under the provisions of the following subparagraphs (1)(i) and (ii). The borrower will also execute the applicable restrictive-use agreement. If the project has Section 8 assistance, the local HUD Area Office must be notified. To determine whether a prepayment offer can be approved, the following decision steps must be followed by the Servicing Office:

(1) *The loan is not currently subject to restrictive-use provisions nor prohibition on prepayment.* To determine whether a loan not subject to restrictive-use provisions or prohibition on prepayment may prepay, and if so, what restrictions must be inserted in the release documents, the following determinations must be made.

(i) If the Servicing Office cannot make the determination that housing opportunities to minorities will not be materially affected as a result of the prepayment, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive language found in paragraph (A) or (B) of Exhibit A–4 of this subpart, and to execute the applicable Restrictive-Use Agreement found in Exhibit G–2 or G–3 of this subpart;

(A) Maintain the housing for low- and moderate-income people for a minimum period of 20 years from the date of the closing of the last loan or servicing action. At the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and (A) of this subpart; or

(B) If 20 years from the date of the closing of the last loan or servicing action has already lapsed, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and (B) of this subpart;

(ii) If the Servicing Office determines that housing opportunities to minorities will *not* be materially affected as a result of prepayment, but that there is an inadequate supply of safe, decent, and affordable rental housing within the market area, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive-use language found in paragraph (C) of Exhibit A–4 of this subpart and agrees to execute the Restrictive-Use Agreement found at Exhibit G–4 of this subpart:

Maintain the housing for current eligible tenants in occupancy as of the date of the prepayment for the life of the project or until the current tenants are no longer eligible for the housing under FmHA regulations, or the tenants choose to vacate of their own will. The owner will ensure the tenants will not be displaced due to a change in the use of the housing, an increase in the rental or other charges as a result of the prepayment, or a decrease in income. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project.

(iii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, and that there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions. The provisions of paragraph (c)(3) of this section will apply.

(2) *The loan is subject to restrictive-use provisions and the borrower agrees to continue to adhere to the provisions after prepayment.* In accordance with Exhibit A–3 of this subpart, the borrower agrees to continue to maintain the housing in accordance with the restrictions already in effect. The borrower must also agree to execute the Restrictive-Use Agreement found at Exhibit G–1 to this Subpart.

(3) *It is determined by FmHA that restrictions are not needed.* If actions in accordance with § 1965.206(b)(2) of this subpart and paragraph (e)(3) of this section have been taken to ensure that alternative rental housing will be made available to each tenant upon displacement, the prepayment may be accepted without restrictions if:

(i) For loans not subject to restrictive-use provisions nor prohibition on prepayment, it is determined by FmHA that housing opportunities for minorities will not be materially affected as a result of the prepayment. Exhibit E of this subpart will be used to assist in making this determination.

(ii) For loans subject to restrictive-use provisions, it is determined Federal or other financial assistance provided to residents will no longer be provided, due to no fault, action or lack of action on the part of the borrower. If a borrower applies to have restrictions removed after prepayment because Federal or other financial assistance will no longer be provided, the restrictions will be released only if the loss of Federal or other financial assistance could not have been reasonably anticipated at the time of acceptance of the prepayment.

(iii) Regardless of whether or not the loan is subject to restrictive-use provisions, a

determination is made by FmHA that there is no longer a need for the housing (in accordance with exhibit E of this subpart).

(4) *Projects with both LH loans and grants.* If a prepayment is accepted on an LH loan for a project which also has an LH grant, restrictive-use provisions for the project may be released only under the conditions specified in the Grant Agreement.

(5) *Documentation.* Thorough documentation of the reasons and decision to approve prepayment will be entered in the casefile and appended to the prepayment report. Any additional materials used to reach the decision will be included in the casefile.

(d) *Borrower notification of approval or disapproval of prepayment.* The Servicing Office or other designated office will notify the borrower as to whether the prepayment has been approved or disapproved within:

(1) 15 days of the borrower's rejection of an incentive offer for loans not subject to restrictive-use provisions nor prohibited from prepayment; or

(2) 60 days of a complete prepayment request by a borrower subject to restrictive-use provisions.

(e) *Processing acceptance of prepayment.* After approval of a prepayment, the following actions must be taken:

(1) *Completion of the prepayment report and notification of the National Office.* If prepayment is approved, the Servicing Office or other designated office will complete a prepayment report in the format of exhibit B of this subpart, and submit the report with all documentation on each prepaid loan to the State Director or other designated official for indefinite retention. Any information for the report supplied by the borrower must include documentation and verification by the Servicing Office. For prepayment of on-farm labor housing units, only items relevant to the on-farm units need be completed. The State Office will notify the National Office in the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office) indicating that the prepayment has been accepted. A copy of the prepayment report will be included in the materials forwarded to the National Office.

(2) *Notify interested agencies.* All interested agencies notified in accordance with § 1965.206(b)(4) of this subpart will be notified of the decision to accept the prepayment. Agencies which may aid displaced tenants will be advised of any anticipated displacement, the level at which post-prepayment rents will be set and any restrictive-use provisions which will remain in the deeds of release. Other agencies will be advised that no offer to sell will be made.

(3) *Notify tenants.* The Servicing Office will send an additional notice to tenants at least 60 days prior to the prepayment. The prepayment may not take place less than 60 days from the tenant notification or 180 days from the initial notification unless an exception is allowed in accordance with paragraph (f)(2) of this section. *Tenant notices will be sent CERTIFIED MAIL to each tenant and also posted at the project in public areas. Copies of the notice will remain posted at the project until the prepayment is accepted and all existing tenants voluntarily vacate their units.* The notice and attachments will contain all of the following information appropriate for the prepayment action and any other relevant information necessary to allow tenants to make informed choices (FmHA Guide Letter 1965–E–3 (available in any FmHA office) and attachments are provided as a guide for this purpose). The notice will contain the following applicable statements and information:

(i) All relevant information concerning the prepayment has been reviewed and FmHA has decided to accept the prepayment on (*date*).

(ii) Fully detailed reason(s) describing why the prepayment was approved. Also include the reasons for acceptance of the prepayment in less than 180 days (if applicable).

(iii) At the time or prepayment, rents are expected to be $_____.

(iv) The tenant will be affected by this change on (*date the tenant's current lease expires, date of the prepayment, or other mandated date, whichever is later.*)

(v) (The following statement should be included if the loan is being prepaid but will retain restrictive-use provisions.) All current eligible tenants may continue to occupy the housing until the tenants decide to voluntarily move, the tenants no longer meet eligibility requirements or the restrictive-use provisions expire on (*insert expiration date*), whichever is sooner. The rents of current eligible tenants may not be increased as a result of current owner actions to exceed levels which create new or increased rent overburden as established by FmHA regulations, in accordance with Title V of the Housing Act of 1949, during the period of eligible tenant occupancy during the restricted period. However, declines in tenant income shall not require corresponding reductions in rent levels. A tenant, or those wishing to occupy the housing (if applicable), as well as the Government, may seek enforcement of the provisions. Annual income recertifications will continue to be required in order to protect eligible tenant rents. The preceding requirements are binding on the current owner and any successors in interest.

(vi) (The following statement should be included if the project has project-based Section 8 rents.) Eligible tenant rents will continue to be subsidized by the Department of Housing and Urban Development (HUD) until (*insert the date the Section 8 contract expires*). (If applicable, include the following) If Section 8 subsidies are not continued after (*insert the date the Section 8 contract expires*), the owner of the project will continue eligible tenant rents at levels that will not create or increase rent overburden until (*insert date the restrictive-use period expires*). However, declines in tenant income shall not require corresponding reductions in rent levels.

(vii) (The following statement should be included if project-based HUD Section 8 or other subsidies will expire prior to 2 years after the prepayment.) Eligible tenants currently residing in the project who may subsequently be displaced or experience rent overburden due to the prepayment may qualify for certain protections. The following protections are available to eligible tenants who believe they have experienced displacement or rent overburden:

(A) Letters of Priority Entitlement (LOPE) to other FmHA housing. Tenants may apply for LOPEs up until the day the tenants' rents are scheduled to be increased. These letters will be valid for 60 days after issuance. All LOPEs will be issued in accordance with Title VI of the Civil Rights Act of 1964, as codified in Subpart E of Part 1901 of this chapter.

(B) Tenants currently receiving rental assistance (RA) will be able to continue to receive RA if they move to other FmHA financed housing in which they are eligible for RA.

(C) Tenants choosing to stay in their units after prepayment and pay higher rents, with or without Federal, State or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(viii) Eligible tenants residing in prepaying projects will also be sent:

(A) A list of project names, locations, number of apartments, senior citizen or family designation, and unit sizes of other FmHA projects in the market area.

(B) The names and locations of other subsidized housing; and

(C) Addresses and telephone numbers of the applicable HUD area office, and other agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(ix) Tenants will be allowed to review the information used to make any of the determinations regarding acceptance of the prepayment, prepayment rent increases and alternatives to prepayment.

(4) *Issue LOPEs.* Upon request by a tenant for an LOPE, the Servicing Official will prepare the letter and forward the letter to the tenant (FmHA Guide Letter 1965–E–4 (available in any FmHA office) may be used as a guide). The LOPE, which is to be addressed to FmHA borrowers, will include:

(i) A tenant with an LOPE has 60 days to apply in writing to other FmHA projects in any location in the country.

(ii) A tenant with an LOPE is to be placed at the top of all waiting lists in FmHA projects applied to, which have appropriate units the tenant qualifies for. Such tenants will follow only those tenants with LOPEs who were previously placed on the waiting list. Handicapped tenants on the list for handicapped units which have appropriate design features will maintain priority over non-handicapped tenants with LOPEs.

(iii) The tenant will not be removed from the priority position on the waiting list until the tenant moves to a unit utilizing an LOPE or is purged from the waiting list in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

(iv) If the tenant holding the LOPE is receiving RA in the prepaying project, and uses the LOPE to move to a Plan II project for which the tenant would qualify for RA, the RA will be transferred to the project to which the tenant moves. The RA will be reassigned to that tenant without competition. RA brought to a project by a tenant from a prepaying project will remain at the receiving project if the tenant

subsequently moves to another FmHA project.

(v) If the tenant's current security deposit of (*a specified amount*) has not been released by the prepaying project by the date a tenant moves, the new landlord will be encouraged to defer collection of the new security deposit until the tenant's current deposit is refunded, even if the date of release is after the date the tenant occupies the new unit.

(5) *Approval of tenant leases.* Prior to accepting the prepayment, the Servicing Office will also review and approve a modified tenant lease to be used for all protected tenants during any applicable restrictive-use period. This lease will explain the restrictive-use provisions, who is protected, describe the limits on rents during the period of restrictions, explain that no tenant can have a lease renewal denied for other than "good cause" (which cannot include income level), that charges, rules and regulations, and services may not change substantially from those applicable at present, and explain all other provisions necessary to protect affected tenants including Fair Housing Act Amendment provisions. The lease shall retain provisions for annual income certification. The approved lease, with signatures of both the borrower and FmHA, will be maintained by the Servicing Office until expiration of the restrictive-use period, although FmHA will not be responsible for monitoring compliance. If the owner wishes to make subsequent modifications to the lease, FmHA will review the lease to ensure that none of the modifications are contrary to the intent of this regulation.

(6) *Borrower responsibilities after prepayment.* Prior to accepting the prepayment, the Servicing Official will meet with the borrower to discuss borrower obligations under restrictive-use and fair housing provisions remaining in effect after the prepayment is accepted. The Servicing Official will review the applicable restrictive-use requirements, if any, in detail with the borrower. In particular, the Servicing Official will explain that the applicable provisions of Subpart C of Part 1930 of this chapter specific to tenant rights and relations shall remain in effect during the restrictive-use period. Owners of prepaid projects will be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in Subpart C of Part 1930 of this chapter, and also adhere to applicable local, State, and Federal laws. The borrower will be informed that it is the borrower's responsibility to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The former borrower must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels in accordance with the applicable restrictive-use provisions. The former borrower must also agree to make the documentation available for Government inspection upon request. The former borrower and any successors in interest will be required to provide the following signed and dated certification to the applicable Servicing Office or other designated office within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions:

(Name of owner) certifies that *(name of project)* is being operated in compliance with the restrictive-use provisions contained in *(applicable release document)* and the Restrictive-Use Agreement which set forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. *(Name of borrower)* understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Government to seek enforcement of the provisions.

The borrower must also agree to execute the applicable Restrictive-Use Agreement found at Exhibits G–1 thru 4 to this Subpart.

(7) *Servicing Office responsibilities after prepayment.* Upon prepayment, the Servicing Office will send a notice to all tenants informing the tenants of the acceptance of the prepayment. The borrower will be notified that a copy of the notice must be posted and maintained in public areas in the project until all restrictive-use provisions expire. FmHA Guide Letter 1965–E–5 (available in any FmHA office) will be used for the notice. The Servicing Office or other designated office will monitor receipt of the certification referred to in paragraph (e)(6) of this section and maintain case files on the prepaid project until such time as the restrictive-use provisions expire. The Servicing Office or other designated office will take such actions as necessary to follow-up on receipt of the annual certifications from each prepaid borrower. If the Servicing Office is unable to obtain borrower cooperation, the Servicing Office shall refer the case to the State Office for transmittal to the National Office for further servicing guidance and/or enforcement actions.

(8) *Payment in full and release of security.* Prior to releasing security instruments, FmHA must be certain that full payment has been received. Security instruments will be released in accordance with § 1965.90(b) of Subpart B of Part 1965 of this chapter.

(9) *Sale to nonprofit organization or public agency at end of restrictive-use period.* Borrowers who are subject to the restrictive-use provisions contained in paragraph (A) or (B) of Exhibit A–4 of this subpart are required to attempt to sell the project to a nonprofit organization or public agency at the end of the restrictive-use period. Advertising the project for sale will be carried out in the same manner and time period as required for sale to nonprofits or public agencies within the program as stated in § 1965.216 (b), (c), and (d) of this subpart. Advertising will be conducted for a minimum of 180 days beginning at least 6 months prior to the expiration of the restrictive-use period. If 6 months do not remain between the date of prepayment and the end of the restrictive-use period the project will be advertised for sale for a minimum of 180 days.

(f) *Denial, postponement, waiver, or withdrawal of prepayment request.*

(1) *Denial of prepayment request.* Borrowers for whom there is no prohibition on prepayment will be denied to prepay if the conditions required for prepayment stated in paragraph (c) of this section and Exhibit E of this subpart cannot be met, or if information submitted with the prepayment request cannot be verified. If the borrower is denied a request to prepay, the Servicing Official will send a letter to the borrower stating the reasons for the denial and the right to appeal the rejection, in accordance with Subpart B of Part 1900 of this chapter and §§ 1965.213 and 1965.215 and Exhibits D and E of this subpart. The letter denying the prepayment request may revise the original incentive offer if *new* information documenting the loss the borrower may suffer if not allowed to prepay has been brought to the attention of the Servicing Office. If a letter is sent offering a revised incentive, rights to appeal the denial will not be included.

(2) *Postponement of prepayment requests.* Prepayment requests will be denied if the request was received less than 180 days in advance of the projected prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant comments, verify information submitted with the prepayment report, and verify that all tenant leases are extended for a 180-day period from the date of the prepayment request and include current rents and conditions. Prepayment will be postponed if necessary to allow sufficient time for the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases are extended to the end of the 60 days, and at least 30 days has passed since the first notification letters were sent. The extension of tenant leases *does not* substitute for the insertion of restrictive-use provisions in the release documents or for allowing sufficient time for tenant comments.

(3) *Withdrawal or cancellation of prepayment requests.* Prepayment authorization will be cancelled if the prepayment is not received within 180 days of the final approval of the prepayment.

(g) *Borrower appeals of prepayment disapproval.* The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the rejection, in accordance with subpart B of part 1900 of this chapter. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending, given the right to send written testimony to the appeal officer, and have one representative at the appeal hearing. If the decision to deny prepayment is upheld or the incentive offer is modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based upon the borrower response and whether the loan is subject to restrictive-use provisions, the Servicing

Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

Sec. 1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted

In instances where the borrower is not subject to restrictive-use provisions and no incentive agreement can be reached between FmHA and the borrower, and the prepayment cannot be accepted under § 1965.215 and Exhibit E of this subpart because a need remains for the housing, the borrower will be required to offer to sell the project to a nonprofit organization or public agency. The following steps will be taken:

(a) *Determination of fair market value.* Within 60 days of the termination of any appeals or the decision to deny prepayment if no appeal was requested, the fair market value of the project as unsubsidized conventional housing will be determined. The value arrived at will result from two appraisals. One appraisal will be the appraisal contracted and paid for by FmHA that was used to establish the incentives previously offered. The second appraisal will be obtained and paid for by the borrower. Both appraisals will be conducted by qualified independent appraisers in accordance with FmHA Instruction 1992–B (available in any FmHA office). If the fair market values arrived at are within 10 percent of each other, the Servicing Office and the borrower will negotiate to arrive at a mutually acceptable value. If the values differ by more than 10 percent, the independent appraisers will be asked to review their appraisals to determine if the values can be reconciled to within 10 percent. If FmHA and the borrower are unable to negotiate a mutually acceptable value or the appraisers are unable to reconcile their appraisals within 30 days of the completion of the appraisals, the State Office and the borrower will jointly select a third independent qualified appraiser whose appraisal will be binding on FmHA and the borrower. The third appraisal will be completed within 60 days of selection of the appraiser. The cost of the third appraisal shall be divided evenly between FmHA and the borrower.

(b) *Efforts to market and sell the project to nonprofit organizations or public agencies.* Once the fair market value of the project has been established, the borrower is to attempt to market the project to nonprofit organization and public agencies. The following actions are to take place:

(1) The Servicing Official is to provide the borrower with a list of nonprofit organizations and public agencies which have notified FmHA of their interest in purchasing projects that are attempting to prepay The list will include nonprofit organizations and public agencies that have notified the FmHA Servicing, State, and National Offices of their interest.

(2) The Servicing Official will instruct the borrower to contact each nonprofit organization and public agency on the list within 10 days of establishing project fair market value. The sequence of contacting nonprofit organizations and public agencies is set forth in paragraphs (b)(3) (i) and (ii) of this section. Materials notifying nonprofit organizations and public agencies of the project's availability will include sufficient information regarding the project and its operation for interested purchasers to make an informed decision. If an interested purchaser requests additional information concerning the project, the borrower shall promptly provide the requested materials.

(3) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. However, if the purchaser is determined to be ineligible, the borrower must resume advertising until a minimum of 180 days has passed. The borrower may satisfy the 180-day requirement by continuing advertising and sales efforts during the eligibility review of an interested purchaser. If additional offers are received during this time period, the offers will be reserved as back-up offers until the eligibility determination of the initial purchaser is completed.

(i) *Sales preference to local nonprofit organizations or public agencies.* The borrower will first advertise the project for sale to qualified local nonprofit organizations or public agencies as defined in § 1965.202 of this subpart. The Servicing Official will be responsible for determining that all appropriate means for contacting such organizations have been utilized including local media, and all necessary information provided. Exclusive advertising to local nonprofit organizations and public agencies must continue for a minimum of 60 days. If more than one qualified nonprofit corporation or public agency submits an offer to purchase the project, a local nonprofit organization or public agency must be given preference over a regional or nationwide organization, regardless of when offers to purchase are received.

(ii) *Advertising to regional or nationwide organizations.* If no qualified local nonprofit organization or public agency is found to purchase the housing within the first 60 days, the Servicing Official will authorize the borrower to advertise for an existing qualified national or regional nonprofit organization to purchase the housing. Advertising must begin between 60 and 120 days after advertising to local organizations began. Advertisements will be placed, as appropriate, in national housing publications and other media determined appropriate by the State Office or other designated office, including those serving minority groups exclusively.

(c) *Qualifications of nonprofit borrower to purchase.* Notwithstanding the requirements of § 1944.211 (a)(10) of Subpart E of Part 1944 of this chapter, nonprofit organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in § 1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by self management or through a management agent.

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the FmHA Administrator determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities. Generally, transfers between qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferor or a member of the nonprofit entity holds an ownership interest.

(3) Agree to obligate itself and successors in interest to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities, although no currently eligible moderate-income tenants will be required to move. The provision in Exhibit A–2 of this subpart will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate.

(4) Show financial feasibility of the project including anticipated funding to be authorized in accordance with § 1965.217 (d) of this subpart. Financial feasibility may also include any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of ownership or controlling interest, regardless of degree, except as management agent between:

(i) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such interest) in loans financed under Section 515 that have been prepaid; and

(ii) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in the purchasing entity.

(6) Evidence compliance with paragraph (c)(5) of this section. An officer legally authorized to execute documents on behalf of the purchasing nonprofit entity shall execute the following statement:

"(*Name of purchasing nonprofit entity*) certifies that no officer or directorate of (*name of purchasing nonprofit entity*) has been a person or party with a material interest (or persons or parties related to any person or party with such interest) in any loans financed under Section 515 that have been prepaid."

(d) *Priority between nonprofit organizations and public agencies.* If more than one qualified organization or public agency submits an offer to purchase the project, the following criteria, in descending order of importance, will be used to establish priority:

(1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;

(2) Nonprofit organizations and public agencies with the most successful experience

in developing and managing subsidized housing; and

(3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

Sec. 1965.217 Processing applications for transfers to nonprofit corporations or public agencies

(a) *Determining eligibility.* After an option to purchase is signed between a borrower and nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with § 1965.65 (f) of subpart B of this part. FmHA will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent loan. Consolidation and reamortization of the loans will be considered when a transfer takes place.

(b) *Appeal rights when a purchaser is not selected.* If a nonprofit organization or public agency is not accepted by FmHA to purchase the project because the purchaser is found to be ineligible, the transfer is found to be not feasible or because the organization has lower priority than another applicant in accordance with § 1965.216 (b), (c), or (d) of this subpart, appeal rights will be given to the applicant organization in accordance with Subpart B of Part 1900 of this chapter.

(c) *Authorization for transfer.* When the transfer and loan(s) are ready to be obligated, the National Office will be notified in the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office). If the loan will exceed the State Director's approval authority, the entire case file shall be sent to the National Office for review. The National Office will give approval authority and authorize funding for purchase of projects which have complied with the provisions outlined in this section. Subject to the nationwide maximum funding allowed, the authorizations will be issued in date order the complete prepayment request was received by the Servicing Office.

(d) *Special loans and grants available to nonprofit organizations and public agencies.* Loans and grants are available to nonprofit organizations and public agencies to purchase and assist in the purchase of prepaying projects and to pay first year operating expenses. Loans to nonprofit organizations and public agencies may not exceed 102 percent of the fair market value of the project. Grants for costs related to purchasing a project may not exceed $10,000.

(1) *Loans to nonprofit organizations and public agencies.* Loans to nonprofit organizations or public agencies will be approved in accordance with subpart E of part 1944 of this chapter for the following purposes:

(i) A loan sufficient to enable the nonprofit organization or public agency to purchase a project at the fair market value;

(ii) With proper justification, first year operating expenses not to exceed 2 percent of the project's appraised fair market value if current operating funds are not sufficient.

(2) *Special advances to nonprofit organizations or public agencies to cover costs related to purchasing a project.* A grant may be made to a nonprofit organization or public agency to cover any direct costs, other than the purchase price, incurred by the organization or agency in purchasing and assuming responsibility for a project and related facilities. To be eligible for grant funds, the organization or agency must be able to obtain an accepted purchase offer for a project offered for sale by a borrower under § 1965.216 of this subpart.

(i) *Grant purposes.* Eligible purposes of the grant include:

(A) Direct costs to the organization or agency that are based on written estimates for legal fees for purchasing the project, architectural fees, and/or other expenses as described in § 1944.222 of subpart E of part 1944 of this chapter and as authorized by the State Director. Legal fees for organizing the entity are not an eligible cost;

(B) Fees, for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the organization or agency in the packaging of the loan docket and project as well as legal, technical, and professional fees incurred. Legal fees for organizing the entity are not an eligible cost. FmHA will allow payments to eligible organizations packaging applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract. The packaging organization may not represent or be associated with anyone else, other than the purchasing nonprofit organization or public agency, who may benefit in any way in the proposed transaction.

(ii) *Administrative requirements.* The following policies and regulations apply to grants made under this section:

(A) The policies and regulations contained in Subpart S of Part 1940 of this chapter apply to grantees under this subpart.

(B) The policies and regulations contained in Subpart Q of Part 1940 of this chapter apply to grantees under this subpart.

(C) The grantee will retain records for three years from the date Standard Form (SF)–269A, "Financial Status Report," is submitted. The records will be accessible to FmHA and other Federal officials in accordance with 7 CFR part 3015.

(D) Annual audits will be required if the grantee has received more than $25,000 of Federal assistance in the year in which the grant funds were received. The audits will be due 13 months after the end of the fiscal year in which funds were received.

(*1*) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015 and 3016 and OMB Circular A–128.

(*2*) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A–133.

(iii) *Obtaining payment for costs.* To obtain advance funds or reimbursement of costs, the nonprofit organization or public agency must:

(A) Submit to the appropriate FmHA Servicing Office SF–270, "Request for Advance or Reimbursement," for an amount not to exceed $10,000;

(B) Submit a copy of the accepted purchase offer or option to purchase and assume responsibility for a prepaying project and related facilities;

(C) As soon as possible after obtaining an accepted purchase order or option, submit a complete transfer and loan package (if applicable), as described in § 1965.65 to Subpart B of Part 1965 of this chapter for transfers and Subpart E of Part 1944 of this chapter for loans to purchase the project;

(D) If less than $10,000 is advanced or reimbursed at the time of submittal of the grant application package and the applicant expects that further advances or reimbursements may be needed, additional funds may be requested so long as the total advanced or reimbursed does not exceed $10,000. SF–270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than the closing date of the transfer and loan and shall be submitted on SF–270;

(E) Fully document all requests for advances with line item estimates on SF–270. Requests for reimbursement shall be documents with itemized bills or receipts for each item listed on SF–270;

(F) Include SF–269A with the grant application if the entire amount of the grant is being requested at that time. If the grant will be advanced or reimbursed in more than one draw, SF–269A will be submitted with the final draw;

(G) Include a signed statement for all grant applications which states, "Neither the organization nor any of its employees are associated with or represent anyone in this transaction other than the applicant."

(iv) *Processing grants.* The following actions will be taken by FmHA when a grant application is received:

(A) The FmHA Approval Official will review each grant application package for the amount authorized. The FmHA Approval Official will execute and distribute Form FmHA 1940–1, "Request for Obligation of Funds," in accordance with the Forms Manual Insert;

(B) The Servicing Official will be responsible for reviewing the eligibility of costs estimated to be incurred or submitted for reimbursement;

(C) A grant agreement, prepared in substantially the same format as Exhibit F of this subpart and authorized by grant resolution, will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed in the casefile.

(D) A grant resolution authorizing the appropriate officers of the applicant to execute the grant agreement will be adopted by the applicant's board of directors or other form of governing body. A certified copy is to be submitted to FmHA for the file.

(e) *Servicing Office actions when a transfer and subsequent loan is authorized.* When notified by the State Office that the National Office has authorized the transfer and subsequent loan, the Servicing Office will:

(1) Submit the assumption to the State Office of approval in accordance with § 1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the transferee in accordance with

paragraph XV B 1 of exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. The notification should state that any rent increases resulting from the transfer and loan will be processed in accordance with § 1965.204 (b) of this subpart.

(4) Transfer all existing loans in the project on new rates and terms and consolidate and reamortize, if necessary, to maintain project feasibility and reduce rental subsidy payments.

(5) Ensure that all delinquent accounts are brought current, cost items paid in full, project accounts brought current and transferred with the project, and all taxes and liens paid or prorated at closing as applicable. Deferred maintenance identified in previous inspections must be acceptably completed before the transferor may retain any equity.

(6) Insert the restrictive-use provisions contained in Exhibit A–2 of this subpart in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

(f) *Rental subsidies.* No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of Exhibit E of Subpart C of Part 1930 of this chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

Sec. 1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available

Borrowers not subject to restrictive-use provisions or prohibitions on prepayment may prepay without restrictions within 120 days of meeting either of the following requirements.

(a) *No offer to purchase.*

(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

(2) The project has been offered to regional and national organizations for at least a 60-day period of the 180 days;

(3) Documentation is provided showing that all organizations whose names were provided by the District or State Office were contacted in accordance with § 1965.216(b) of this subpart and offered the housing for purchase;

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. (NOTE: An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on FmHA funding when no funding is available.); and

(5) Funds have been available for the purpose of carrying out a transfer/sale during this period.

(b) *Funds are not available.* A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have been exhausted for a period of 15 months. This determination is not related to the length of time the particular project has been on the waiting list. The National Office will periodically advise State Offices of the status of the waiting list and the availability of funds.

Sec. 1965.219 FmHA processing of prepayment

When a prepayment is accepted in accordance with § 1965.218 of this subpart, the Servicing Office will process the prepayment in accordance with the applicable provisions of § 1965.215(e) (1), (2), (3), (4), and (8) of this subpart.

Sec. 1965.220–1965.221 [Reserved]

Sec. 1965.222 Violations of restrictive-use provisions

Should the Servicing Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use provisions set out in Exhibit A–3 or A–4 of this subpart or the Restrictive-Use Agreements set out in Exhibits G–1 thru 4 of this subpart by the owner of a previously FmHA-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The Servicing Office or other designated office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should the preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report, and Servicing Office recommendation will be forwarded to the State Office or other designated office for review and action.

(c) If the State Office or other designated office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be notified. The State Office or other designated office will ask the OGC to provide advice in such cases and, if appropriate, refer the case to the Department of Justice or other appropriate agency for enforcement. A copy of any complaint requesting enforcement of the restrictive-use provisions submitted to the Department of Justice or other appropriate agency should also be forwarded to the Administrator.

Sec. 1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties

(a) *Acceleration of accounts.* Accelerations of accounts will be prepared in accordance with FmHA Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA office). Any FmHA loan made after December 21, 1979, prepaid in response to an acceleration of the account will be required to have the appropriate restrictive-use language inserted in the deed of release or satisfaction, as appropriate upon the advice of OGC. Any FmHA loan made on or before December 21, 1979, with payment-in-full made in response to an acceleration of the account, will be required to have the appropriate restrictive-use language inserted on the instrument recorded in the real estate records, as appropriate upon the advice of OGC, *only* if the payment occurs within 1 year after the borrower had initiated a request to prepay the loan(s). The restrictions used will be those contained in exhibit A–3 of this subpart for loans subject to restrictive-use provisions or prohibited from prepaying. The restrictive-use period will extend for the remaining term of the accelerated loan or length of the existing restrictive-use period, whichever is applicable.

(b) *Foreclosure.* If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be retained and added to the deed in accordance with Exhibit A–3 or A–4 of this subpart and paragraph (a) of this section.

(c) *Inventory property.* Restrictive-use provisions will be retained for projects taken into or sold out of FmHA inventory in accordance with Exhibits A–1 through A–4 of this subpart and paragraph (a) of this section, unless a determination is made in accordance with § 1965.215 and exhibit E of this subpart that the restrictions may be released or that the property is determined non-program property. Tenants will receive all appropriate notifications as they would for prepaying projects not being accelerated.

(d) *Bankruptcy.* Bankruptcy proceedings will have no effect on contractual requirement for restrictive-use.

Sec. 1965. 224 Prepayment of loans caused by advance payments on the account

If the loan on a project, in which the last loan to build or acquire new units was obligated prior to December 15, 1989, reaches or falls below six remaining payments due to borrower voluntary advance payments or mandatory extra payments required by FmHA regulation or law, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. FmHA will inform the borrower that, by law, prepayment regulations must be followed for all loans requesting prepayment subsequent to enactment of the law. The borrower will be required to submit all applicable information required by § 1965.205 of this subpart and complete all applicable actions required by this subpart before a final payment can be accepted.

Sec. 1965.225–1965.248 [Reserved]

Sec. 1965.249 Exception authority

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, adversely affect the accomplishment of the purposes of the RRH or LH programs, or result in undue hardship on the tenants by applying the requirements. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

Sec. 1965.250 OMB control number

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–xxxx. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of 1.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–xxxx), Washington, DC 20503.

Required Clauses for Active Borrowers With Projects Subject to Restrictive-Use Provisions as a Result of Specific Loan Making or Loan Servicing Actions

The following Multi-Family Housing projects are subject to restrictive-use provisions as set forth in their loan documents or security instruments:

(a) All loans approved between December 21, 1979, and December 15, 1989;

(b) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989;

(c) Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action (e.g., transfer, reamortization, consolidation) as described in Subpart B of Part 1965 or this chapter, or an incentive to deter prepayment of the loan as described in this subpart.

All loans or servicing actions meeting the above criteria with prepayment incentives obligated or approved after the effective date of this regulation, will be subject to the following restriction. The restriction will be inserted in the deed, conveyance instrument, loan agreement/resolution, assumption agreement, interest credit agreement, or reamortization agreement, as appropriate. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed or made subject to such restrictions as a result of a servicing action or incentive to not prepay.

"The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 514 or Section 515 of Title V of the Housing Act of 1949, as amended, and FmHA regulations then extant during this 20 year period beginning *(the date the last loan on the project is obligated, or date the project was last made subject to the prepayment restrictive use provisions as a result of servicing actions or incentive to not prepay the loan, authorized under this subpart or other subparts).* Until *(date),* no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision, as well as the Government."

Required Clauses for Projects Made Subject to Restrictive-Use Provisions When a Loan Is Transferred to a Nonprofit Organization or Public Agency To Avert Prepayment

Multi-Family Housing projects made subject to restrictive-use provisions because of a transfer and subsequent loan to a nonprofit organization or public agency in order to avert prepayment of the loan as described in this subpart are subject to restrictions which are set forth in the loan instruments or security agreements. Loans meeting the preceding conditions with prepayment incentives obligated after the effective date of this regulation will be required to have the following restriction inserted in the deed, conveyance instrument, loan resolution, and assumption agreement, as applicable:

"The borrower and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in Farmers Home Administration regulations then extant during the remaining useful life of the project. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government. Throughout the remaining useful life of this project, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower."

The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project, unless the Government subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superseded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

Required Clauses for Prepaid Projects Which Were Subject to Restrictive-Use Provisions Prior to the Prepayment

The required clauses contained in this Exhibit pertain to the following multi-family projects, unless an exception to the restrictive-use provisions has been granted in accordance with this subpart:

(a) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989;

(b) Any loan made subject to restrictive-use provisions as a result of a transfer, consolidation, or reamortization as set forth in this subpart;

(c) Any loan made subject to restrictive-use provisions as a result of accepting an incentive to not prepay as set forth in this subpart;

(d) Any loan previously subject to restrictive-use provisions being accelerated.

The preceding projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G–1 to this subpart.

"The owner and any successors in interest agree that the housing located on this property will be used only as authorized under section 514 or 515 of Title V of the Housing Act of 1949, as amended, and 7 CFR part 1965, subpart E, or other regulations then extant until (*insert date shown on existing restrictive-use provisions).* A tenant or applicant for occupancy may seek enforcement of this provision as well as the Government. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set so that the effect will not differ from what have been, had the project remained in the FmHA program. The owner agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for (*insert "low- and moderate-income" or "very low- and low-income" as shown on existing*

restrictive-use provisions) tenants for the remainder of the restrictive-use period."

The provisions provide protections to the same categories of tenants who were protected while the loan(s) were in effect, to the same extent that the tenants were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

Required Clauses for Prepaid Projects Which Became Subject to Restrictive-Use Provisions at the Time of Prepayment

Multi-Family Housing projects which were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979, that were not subsequently made subject to restrictive-use provisions as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions. The conditions for which restrictive-use provisions are not required are set forth in § 1965.215 of this subpart.

(A) *20-year Restrictive-Use Provisions.* These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with Farmers Home Administration (FmHA) regulation upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G–2 to this subpart.

"The owner and any successors in interest agree to use the housing as required in 7 CFR part 1965, Subpart E or other regulations then extant during this 20-year period beginning *(date of the last loan or servicing action)* for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the Government. Prior to *(date period ends)* no eligible person occupying or wishing to occupy the housing shall be required, to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending *(date)*, the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA."

(B) *Loans Over 20 Years Old.* These provisions are used when all loans were obligated and applicable servicing actions took place for the project over 20 years prior to the prepayment, and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public agency in accordance with § 1965.216 of this subpart. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G–3 to this subpart.

"The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration."

(C) *Current Tenants Restrictive-Use Provisions.* These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of the prepayment, for as long as the current tenants wish to remain at the project. The provision may only be used if it is determined by FmHA that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G–4 to this subpart.

"The owner and any successors in interest agree to use the housing for the purpose of housing eligible low- and moderate-income people occupying the project at the time the prepayment was accepted, as provided in 7 CFR part 1965, subpart E, and other applicable regulations then extant. No eligible person currently occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates for current tenants as of the date of the prepayment will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision as well as the Government."

Exhibit F

Prepayment and Displacement Prevention grant agreement

This Agreement dated _____, 19____, between _____which is organized and operating under _____ herein call "Grantee,"

(Authorizing Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," Witnesseth:

Whereas

Grantee has determined to undertake a project of acquisition of a mult-family housing project financed by the Grantor to house rural residents and has duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such project.

Grantor has agreed to grant the Grantee a sum not to exceed $_____subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time it is determined that the Grantee has failed to comply with the conditions of the grant.

Now, Therefore, In consideration of said grant by Grantor to Grantee, to be made pursuant to section 502 of the Housing Act of 1949 to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved, as defined by applicable Farmers Home Administration (PmHA) instructions.

Grantee agrees that grantee will

A. Attempt to acquire said project in accordance with FmHA regulations.

B. If acquired, either directly or through contract, manage, operate and maintain the project continuously in an efficient and economic manner.

C. Make services of said project available within its capacity to all eligible rural residents without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or national origin. For more specific requirements see 7 CFR parts 3 and 15, Subparts A and B.

D. Provide Grantor with such periodic reports as it may require and permit periodic inspections of its operations by a representative of the Grantor.

E. to execute Forms FmHA 400–1, "Equal Opportunity Agreement," and FmHA 400–4, "Assurance Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan or transfer being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

F. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the

date of the default. Default by the Grantee will constitute termination of the grant, thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made. For further provisions regarding enforcement see 7 CFR 3016.43.

G. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR 3016.20, which will include:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purpose.

4. Accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR 3016 prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursements for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

L. Except as specifically provided in this agreement, comply with the applicable provisions of USDA's general grant regulations set out in 7 CFR 3016.

M. Comply with the requirements of 7 CFR 3017, Subpart F, relating to drug-free workplace requirements and 7 CFR Part 3018 relating to restrictions on lobbying.

Grantor Agrees that it

A. Will make available to Grantee for the purpose of this Agreement not to exceed $_____ which it will advance to Grantee in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee with such assistance as Grantor deems appropriate in acquiring the project.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of this Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph F of this exhibit or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

In Witness Whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

_____

and attested and its corporated seal affixed by its duly authorized

_____

Attest

_____

By _____

_____

(Title)

By _____

_____

(Title)

United States of America Farmers Home Administration

By _____

_____

(Title)

Exhibit G–1

Restrictive-Use Agreement

(To be used with Exhibit A–3 to this subpart)

(*Name of Borrower*), herein referred to as owner, and any successors in interest agree that the (*Name of Project*), herein referred to as housing, will be used only as authorized under Section 514 or 515 of Title V of the Housing Act of 1949, as amended, and 7aCode of Federal Regulations (CFR) Part 1965, Subpart E, or other Farmers Home Administration (FmHA) regulations then in existence until (*Date Shown on existing restrictive-use provisions*) for the purpose of housing low-and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. During the restrictive period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set so that the effect will not differ from what would have been had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR Part 1930, Subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR Part 1930, Subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until (*Date restrictive-use period ends*):

(Name of Owner) certifies that *(Name of Project)* is being operated in compliance with the restrictive-use provisions contained in *(Applicable release document)* and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. *(Name of Owner)* understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

_____

(Title)

Exhibit G–2

Restrictive-Use Agreement

(To be used with paragraph (A) to Exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the *(Name of Project)*, herein referred to as housing, as required in 7áCode of Federal Regulations (CFR) Part 1965, Subpart E, or other Farmers Home Administration (FmHA) regulations then in existence during the 20-year period beginning *(date of the last loan or servicing action)* for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to *(date period ends)*, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending *(date)*, the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until *(date restrictive-use period ends)*:

(Name of Owner) certifies that *(Name of Project)* is being operated in compliance with the restrictive-use provisions contained in *(Applicable release document)* and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. *(Name of Owner)* understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

_____

(Title)

Exhibit G–3

Restrictive-Use Agreement

(To be used with paragraph (B) to Exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration (FmHA) in accordance with the provisions of 7áCode of Federal Regulations (CFR) part 1965, subpart E. The owner agrees to use the housing as required in 7 CFR part 1965, subpart E, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to a sale to a nonprofit organization or public agency, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the sales period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the sales period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until a sale to nonprofit organization or public agency takes place:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

_____

(Title)

Exhibit G–4

Restrictive-Use Agreement

(To be used with paragraph (C) to Exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required in 7áCode of Federal Regulations (CFR) Part 1965, Subpart E, and other applicable Farmers Home Administration (FmHA) regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions for these tenants such that the effect will not differ from what would have been, had the project remained in the FmHA program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful

life of the project or until the last existing tenant voluntarily vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision, as well as the United States.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the remaining useful life of the project or until the last existing tenant voluntarily vacates. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until the last existing tenant voluntarily vacates:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____

Owner: _____

By: _____

_____

(Title)

Dated: March 18, 1993.

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–7364 Filed 4–5–93; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Exemption of the Payson Canyon Timber Salvage Project, Uinta National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics in the Payson Canyon area, Spanish Fork Ranger District, Uinta National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective April 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Sensibaugh, Resource Assistant, Spanish Fork Ranger District, Uinta National Forest, 44 West 400 North, Spanish Fork, Utah 84660, telephone: 801–342–5260.

SUPPLEMENTARY INFORMATION: Six years of drought in central Utah have reduced soil moisture and weakened conifer trees. Consequently, fir engraver beetle populations have dramatically increased and reached epidemic levels in the Payson Canyon area of the Uinta National Forest. Within the project area, it is estimated that 20%-30% of the trees larger than 8 inches in diameter have died as a result of insect damage during the past five years.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Uinta National Forest and Forest Pest Management personnel have developed a proposal to harvest dead and dying timber and reforest damaged acres. The Forest Service has completed the Payson Canyon Salvage Sale analysis and associated Decision Memo, identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Payson Canyon Salvage Sale is located approximately 7 miles south of Payson, Utah. The Forest will salvage dead and dying trees on approximately 450 acres within the 900-acre project area and recover approximately 2.5 MMBF. The Payson Canyon project will harvest dead, dying and susceptible trees using ground-based logging systems. Cutting units range from 6 to 50 acres in size. The affected stands are all even-aged in structure, and even-aged harvest methods will be used to regenerate these stands. Harvest methods will range from shelterwood to patch clearcut, as dictated by the beetle infestation. Natural regeneration will be used to reforest shelterwood and seed tree areas with white fir. Areas where residual overstory densities offer site protection ranging from shelterwood to heavy seed tree will be planted with Douglas-fir. Areas where patch clearcuts exceed one acre in size will be planted with ponderosa pine. Areas offering site protection between clearcut and moderate seed tree densities will be planted with a mix of Douglas-fir and ponderosa pine.

There is no permanent road construction proposed for the project. Temporary work roads will be obliterated upon completion of salvage operations.

Management direction for the Payson Canyon area is established in the Uinta National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action for the Payson Canyon Salvage Sale is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Regional Forest Pest Management Specialists and Uinta National Forest Timber Staff have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not completely control the epidemic, these activities will: (1) Help break up insect breeding cycles, (2) recover valuable timber that would otherwise deteriorate, and (3) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the green trees that are infested with fir engraver beetles prior to larval maturation and flight to new trees. It is also extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through timber salvage operations, breeding insects can be removed in the logs and Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Payson Canyon Salvage Sale may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project were

delayed because of an appeal (delays of up to 150 days are possible), it would be likely the salvage harvest could not be implemented during the 1993 normal operating season. This would result in sustained high beetle populations and subsequent infestation and death of additional trees. It would also result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $250,000. Of this, approximately $62,500 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to one-fourth of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Payson Canyon Salvage Sale, Spanish Fork Ranger District, Uinta National Forest, from appeal. The project analysis file contains specialist reports disclosing the affects on the environment and addressing issues resulting from the proposal.

Dated: March 29, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93-7927 Filed 4-5-93; 8:45 am]

BILLING CODE 3410-11-M

Rocky Canyon Timber Sale, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Boise National Forest initially published a Notice of Intent to prepare an Environmental Impact Statement for the proposed Rocky Canyon Timber Sale in the **Federal Register** on December 13, 1991 (Vol. 56, No. 240, pages 65039 and 65040). That notice was revised on April 23, 1992 (Vol. 57, No. 79, page 14824) to change the responsible official. Planning activities for the proposed project were postponed, however, due to Boise National Forest priorities with major fire suppression, fire salvage, and pest salvage efforts. Since over six months have passed since notification of this proposal and the proposed activities have changed, a revision of the Notice of Intent is necessary.

The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of proposed timber harvest and reforestation activities in the vicinity of Rocky Canyon, Boom, and Tie Creek drainages, on the Emmett Ranger District, Boise National Forest. The project area is located approximately 10 miles north of Crouch, Idaho, and about 65 miles north of Boise, Idaho. The proposed activities are within the Bear Wallow Inventories Roadless Area (IRA).

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: The Emmett Ranger District will mail an information package and request for comments in early April 1993 to a number of individuals, organizations, and agencies who participated in earlier scoping efforts. Legal notices inviting comment will also be published in the local newspapers. Written comments and suggestions concerning the proposal are encouraged. To be considered in the Draft Environmental Impact Statement (DEIS), comments should be received on or before April 27, 1993.

ADDRESSES: Submit written comments to: Duane Butler, District Ranger; Emmett Ranger District; Boise National Forest; 1805 Highway 16; room 5; Emmett, Idaho, 83617.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to: Chris Worth, EIS Team Leader, Emmett Ranger District, phone (208) 365-7000.

SUPPLEMENTARY INFORMATION: The proposed action is to harvest approximately 6 million board feet (MMBF) of sawtimber from about 3,200 acres, by commercial thinning, improvement cuttings, sanitation/salvage, group selection, and clearcuts with reserve trees. Helicopter yarding would be used on about 95 percent of the harvested acres, because much of the terrain is steep, highly erosive, and unsuitable for ground based logging systems. The remaining 5 percent would be harvested with conventional ground-based systems. Up to 40 percent of the Bear Wallow IRA could be affected. A transportation system is largely in place from the past West Fork Helicopter (1974) and the Hardscrabble (1977) timber sales. Consequently, development would be limited to reconstructing existing helicopter landings and short access road spurs on the periphery of the IRA.

As part of this project, about 600 acres of mature timber stands within the project area would be designated, and managed, as old growth habitat. In addition, approximately six miles of the Middle Fork Payette River road (Forest Rd. 698) would be improved by aggregate surfacing and other measures to reduce sedimentation and protect water quality.

The main purpose of the proposed action is to help achieve the desired future condition of a healthy, resilient forest in which important resource values, including healthy timber stands, are sustained. The action is also needed to maintain and develop large diameter trees within designated old growth areas, improve water quality and fisheries habitat of the Middle Fork Payette River, and to provide wood fiber to the local timber industry and timber-dependent communities.

The project area consists of approximately 5,500 acres of National Forest lands located in T10N, R4E, Sec 1, 2, 11, and 12; T10N, R5E, Sec 25, 26, 35, and 36; and T11N, R5E, Sec 19, 30, and 29 through 32. All timber harvest activities would occur within the Bear Wallow Inventoried Roadless Area.

Alternatives to this proposal will consider various amounts and combinations of activities. The most significant differences between alternatives will be: (1) The extent of clearcuts with reserve trees prescribed; (2) the amount of the IRA that is treated; (3) the volume of timber harvested; and (4) the level of improvement to a portion of the Middle Fork Payette river road. A "No Action" (i.e., none of the proposed activities would be implemented) alternative will also be considered in the analysis.

As lead agency, the Forest Service will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Each alternative will include mitigation measures and monitoring requirements.

The Rocky Canyon EIS will tier to the 1990 Boise Land and Resource Management Plan (Forest Plan) and the Forest Plan Final Environmental Impact Statement (FEIS). The Forest Plan provides guidance for management activities within the project area through its goals, objectives, standards, and management area direction. The project area is located in the Scriver Creek Management Area 45 of the Forest Plan. Direction for this area emphasizes the maintenance of high quality visual resource along the Middle Fork Payette River, improvement of fish habitat and water quality, fire management to reduced wildfire-caused damage to productive timberlands and private

developments, and protection of wildlife winter range along the lower Middle Fork Payette River.

A number of public comments were received in response to the December 1991 timber sale proposal. Based on these earlier scoping efforts, the following preliminary issues have been identified:

1. The Middle Fork Payette River has been designated by the State of Idaho as a "stream segment of concern." Timber harvesting and road construction may create sediments which decrease fish populations and degrade water quality in the Middle Fork Payette River.

2. Proposed timber harvest may affect the undeveloped character of the Bear Wallow IRA, dispersing backcountry users to other nearby roadless areas, e.g. Peace Rock IRA. The Forest Service should explain what the recreation impacts to other roadless areas may occur.

3. Logging is important to timber-dependent communities. The use of helicopter yarding systems may reduce the county's ability to generate revenues, as well as jeopardize the sale's economic viability.

4. The Middle Fork Payette River is eligible for designation as a Recreational river under the Wild and Scenic Rivers Act. Timber harvesting may change the characteristics of the area, making it unsuitable for possible designation.

5. Timber harvest may fragment upland and stream corridors within the area, affecting biological and ecosystem diversity.

Other issues commonly associated with timber harvest activities may include: prescribed fire/fuel abatement, forest health, cultural resources, and soils. This list may be verified, expanded, or modified based on public scoping for the present proposal.

Commencing with the initial scoping process, public participation is an important part of environmental analysis process. The Forest Service will be seeking information, comments, and suggestions from Federal, State, and local agencies and other individuals or organizations who may be interested or affected by this proposal. Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to: identify the major issues to be analyzed in depth; design alternatives to the proposed action; identify the potential environmental effects of the proposed action and alternatives; and determine potential cooperating agencies.

The Boise Forest Supervisor is the responsible, deciding official.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in July 1993. At that time the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of Rocky Canyon area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible and address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3).

The Forest Service believes, at this early stage of scoping, it is important to inform potential reviewers of several court rulings related to public participation in the environmental analysis process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could have been raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022, Ninth Circuit, 1986; and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of existing caselaw, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

Dated: March 31, 1993.

Stephen P. Mealey,

Forest Supervisor, Boise National Forest.

[FR Doc. 93-7926 Filed 4-5-93; 8:45 am]

BILLING CODE 3410-11-M

Advisory Council Meeting, Allegheny Wild and Scenic River, Allegheny National Forest, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny Wild and Scenic River will meet at 7 p.m., Tuesday, April 20, 1993, at the Franklin Public Library, Franklin, PA.

The Northern Advisory Council will meet at 6:45 p.m., Wednesday, April 21, 1993, at the Oil City Public Library, Oil City, PA.

The focus of the meetings will be to review shared values established at the March meetings; set goals and objectives for the Councils; and establish priorities for developing specific management recommendations to accomplish these objectives.

Meetings are open to the public. A sign language interpreter will be provided if requested by April 12, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723-5150 or 814/726-2710 (TTY).

Dated: March 26, 1993.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93-7901 Filed 4-5-93; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Associated Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impacts resulting from a proposal by Associated Electric Cooperative, Inc. to convert its Thomas Hill Plant to burn low sulfur western coal. The FONSI is based on a borrower's environmental report prepared by Associated Electric Cooperative, Inc. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the borrower's environmental report as its environmental assessment for the proposed conversion of the Thomas Hill Plant to burn low sulfur western coal.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: The Thomas Hill Plant is located on

approximately 900 acres at the south end of the Thomas Hill Reservoir in northwest Randolph County, Missouri, about 13 miles northwest of Moberly.

The modifications to the existing Thomas Hill Plant will consist of the following:

1. Construction of a 6,700 foot loop track within the existing plant boundaries. The base for the loop rail track will be designed in such a manner that the area enclosed can be used as a disposal pond;

2. Modifications to the fuel handling and storage system consisting of three conveyors, a sample house, a telescoping chute, and reclaim hoppers;

3. Modifications to the existing boilers including sootblowing equipment, upgrading of inspection ports, increasing forced draft fan capacity, and modifying the cyclone burners to handle the different slag characteristics of western coal;

4. Add a bypass duct around the scrubber on Unit 3;

5. Modifications to Unit 2 to meet particulate emission limits which may include de-rating the unit, flue gas conditioning, or replacing the original precipitator;

6. Fly ash from Units 1 and 2, will no longer be mixed with scrubber sludge from Unit 3. Fly ash will be pneumatically conveyed to a silo and loaded onto trucks for transport to the disposal area;

7. Establish new settling basins for solids removal; and

8. Increase water use at the plant to keep the coal handling area clean to prevent fire in the area.

A number of alternatives to the one being proposed, including no action, were considered. These involve various alternative ways to meet the requirements of the Clean Air Act Amendments of 1990 such as the purchase of sulfur dioxide allowances, adding scrubbers to the existing plant, and a number of ways to phase in the conversion to low sulfur western coal. A number of alternatives considered will result in the closing of Associated Electric Cooperative, Inc.'s, Prairie Hill Mine at some point in time. A consequence of closing the mine will be the loss of mining related jobs which in turn will have an effect on the local economy.

Copies of the environmental assessment and FONSI are available for review during normal business hours at, or can be obtained from, REA at the address provided herein or from Mr. Charles Means, Associated Electric Cooperative, Inc., P.O. Box 754, Springfield, Missouri 65801–0754.

Dated: March 31, 1993.

James B. Huff, Sr.,

Administrator.

[FR Doc 93–7951 Filed 4–5–93; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Transportation, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 am and 5 pm in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–136. *Applicant:* Department of Transportation, McLean, VA 22101–2296. *Instrument:* (2) Gyratory Shear Compactors. *Manufacturer:* MAP, France. *Intended Use:* See notice at 57 FR 48598, October 27, 1992.

Docket Number: 92–138. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Electronic Controlled High Intensity Lamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 48599, October 27, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–7886 Filed 4–5–93; 8:45 am]

BILLING CODE 3510–DS–F

Naval Hospital Oakland, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–127. *Applicant:* Naval Hospital Oakland, Oakland, CA 94627–5000. *Instrument:* Electron Microscope, Model JEM-100CX . *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 57 FR 44362, September 25, 1992. *Order Date:* June 12, 1992.

Docket Number: 92–139. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 57 FR 49456, November 2, 1992. *Order Date:* April 23, 1992.

Docket Number: 92–140. *Applicant:* The Lankenau Hospital, Wynnewood PA 19096. *Instrument:* Electron Microscope, Model JEM-1200EX-II. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 57 FR 48599, October 27, 1992. *Order Date:* June 11, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–7887 Filed 4–5–93; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–004. *Applicant:* University of Georgia Research Foundation, Room 620 Boyd Graduate Studies Research Center, Athens, GA 30602–7411. *Instrument:* GC/IR Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for measurement of isotopic abundances of ^{13}C to ^{12}C in a mixture of organic compounds without laborious sample preparation requirements. Specific to this task is the investigation of flavor and food products, which are composed of numerous organic compounds, for their source material and process elucidation. In addition, the instrument will be used for educational purposes in graduate courses dealing with the isotopes of carbon, hydrogen, nitrogen, oxygen and sulfur. *Application Received by Commissioner of Customs:* February 1, 1993.

Docket Number: 93–009. *Applicant:* Iowa State University, Purchasing Department, Ames, IA 50011. *Instrument:* ICP Mass Spectrometer. *Manufacturer:* Turner Scientific, United Kingdom. *Intended Use:* The instrument will be used to conduct interdisciplinary research to understand and evaluate the linkages of food production, processing, distribution, and design of new foods to consumer demands, food selection, and consumption for nutritional assurance and health maintenance. In addition, the instrument will be used for educational purposes in the courses Food Science and Human Nutrition 699A, Graduate Research -- Nutrition; Food Science and Human Nutrition 575, Nutrient Content of Processed Foods; Food Science and Human Nutrition 506, Laboratory Methods. *Application Received by Commissioner of Customs:* February 5, 1993.

Docket Number: 93–011. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695–7212. *Instrument:* Sonic Telemetry Transmitters and Receivers, Models V3-6L and VR-20. *Manufacturer:* VEMCO, Canada. *Intended Use:* The instrument will be used to track striped bass migratory patterns from the start (March-April) to the end of summer. The research will be conducted by graduate students working towards the MS and Ph.D. degrees in Zoology, Ecology, and Fisheries and Wildlife Sciences. *Application Received by Commissioner of Customs:* February 13, 1993.

Docket Number: 93–012. *Applicant:* American Red Cross, J.H. Holland Laboratory, 15601 Crabbs Branch Way, Rockville, MD 20855. *Instrument:* Electron Microscope, Model CM12/STEM. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for investigations of ultrastructural changes that occur in tissues and cells from human or animal sources and biologically important macromolecules after exposure to a variety of experimental interventions that are designed to mimic or detect processes that cause disease. Special emphasis in these studies will be given to the regulation of gene expression and the localization and quantitation of specific gene products. *Application Received by Commissioner of Customs:* February 12, 1993.

Docket Number: 93–013. *Applicant:* University of Colorado Health Sciences Center, 4200 E 9th Avenue, Box C-272, Denver, CO 80262. *Instrument:* UV Flashlamp, Model XF-10. *Manufacturer:* Hi Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of cytosolic calcium in cultured cells from cows and rats in experiments to determine if and how hypoxia alters ion channel function and calcium homostasis. *Application Received by Commissioner of Customs:* February 12, 1993.

Docket Number: 93–014. *Applicant:* U.S. Department of Agriculture, ARS, NAA, Appalachian Soil and Water Conservation Research Laboratory, P.O. Box 876, Airport Road, Beckley, WV 25802–0867. *Instrument:* Comair Root Length Scanner. *Manufacturer:* Hawker de Havilland Ltd., Australia. *Intended Use:* The instrument will be used for measurement of plant root length of forage species during investigations to identify the best tillage methods to use to increase crop production. *Application Received by Commissioner of Customs:* February 17, 1993.

Docket Number: 93–015. *Applicant:* Arizona State University, Tempe, AZ 85287. *Instrument:* Electron Microscope. *Manufacturer:* Arbeitsgruppe Bauer, Germany. *Intended Use:* The instrument will be used to determine the surface structures of metals and semiconductors through investigations of phenomena such as phase transitions, adsorption, reactions, nucleation and growth, on crystal surfaces in real time. *Application Received by Commissioner of Customs:* February 17, 1993.

Docket Number: 93–016. *Applicant:* Texas A&M University, Latex Program Office, Latex Task A-31, 833 Graham Road, College Station, TX 77843. *Instrument:* Submersible Fluorimeter and Accessories, Model AQUATRACKA MkIII. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the chlorophyll content of seawater on site. Measurements will be taken at over 100 locations in the NW Gulf of Mexico during each of 13 seasonal cruises conducted for the purpose of hydrographic survey by the LATEX program. *Application Received by Commissioner of Customs:* February 25, 1993.

Docket Number: 93–017. *Applicant:* North Carolina State University, Box 7212, Raleigh, NC 27695–7212. *Instrument:* RHEED Oscillation System, Model RDV-48. *Manufacturer:* Staib Instrumente GmbH, Germany. *Intended Use:* The instrument will be used for studies of the surface structure of semiconductor materials. Experiments will be conducted involving in-situ observation on surfaces during growth of the materials including substrate materials in a molecular beam epitaxy system. In addition, the instrument will be used for educational purposes in the course MAT 699: Thesis Research which involves research directed toward achievement of advanced university degrees of master of science and doctorate of philosophy. *Application Received by Commissioner of Customs:* March 1, 1993.

Docket Number: 93–018. *Applicant:* Saint Louis University, Department of Earth and Atmospheric Sciences, 3507 Laclede Avenue, St. Louis, MO 63103. *Instrument:* Seismograph. *Manufacturer.* G. Streckeisen, Switzerland. *Intended Use:* The instrument will be used to record earthquakes and to deduce from those recordings the source characteristics of those earthquakes and to study the properties of the earth through which seismic waves pass. In addition, the instrument will be used in the course GEO-A472: Seismological

Instrumentation to teach students how to calibrate instruments and observe the data produced by the instruments. *Application Received by Commissioner of Customs:* February 26, 1993.

Docket Number: 93–019. *Applicant:* Washington State University, Pullman, WA 99164. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* The instrument will be used to study geologic materials: rocks and minerals collected from the Rico area, Colorado, the Galapagos Islands, the Republic area, Washington, and the Battle Mountain area, Nevada. The areas of investigation will include:

(1) Using oxygen isotope ratios of rocks which have reacted with hot fluids in the fossil geothermal area at Rico, Colorado to measure the size of the plume and of the geothermal area, and to determine the sources of fluids involved in the geothermal activity,

(2) Measurement of oxygen isotope ratios in volcanic rocks erupted from volcanoes in the Galapagos Islands and

(3) Measurement of oxygen and hydrogen isotope ratios in samples collected from the Fortitude gold deposit, Battle Mountain, Nevada and the Overlook gold deposit near Republic, Washington, with the objective of determining fluid sources and flowpaths for these deposits.

In addition, the instrument will be used for educational purposes in the course Geology 584, Isotope Geology. *Application Received by Commissioner of Customs:* February 26, 1993.

Docket Number: 93–020. *Applicant:* Massachusetts Institute of Technology, Department of Chemistry, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* 'Canterbury' Cryostopped-flow Sample Handling Unit and Anaerobic Kit, Models SHU-41 and OPT.417. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for continuing studies to understand the biological role of iron in oxygen carrying proteins and in oxygenase enzymes. *Application Received by Commissioner of Customs:* February 26, 1993.

Docket Number: 93–021. *Applicant:* Colorado State University, Department of Chemistry, Center and Pitkin, Fort Collins, CO 80523. *Instrument:* Trisector Double Focusing Geometry Mass Spectrometer, Model Autospec-5000. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used to conduct various research projects that include the following:

(1) Total synthesis of avermectin and calyculin,

(2) Total synthesis of antifungal agents,

(3) Redox glycosidation,

(4) Application of mass spectrometry to the immunochemical definition of the cell wall of the leprosy and tubercle bacilli,

(5) The role of mass spectrometry in past and future research on the structural basis of the immunogenicity and pathogenesis of mycobacteria,

(6) Study of vanadium bio-organic chemistry and biochemistry,

(7) Development of new, useful synthetic organic methodology utilizing organotransition metal chemistry, and the application of that methodology to the synthesis of natural and unnatural biologically active compounds,

(8) A new program which deals with new asymmetric methodology to form C-C and C-H bonds with total absolute stereochemistry,

(9) Several research projects spanning bio-organic chemistry, synthetic organic chemistry and molecular biology and

(10) Studies to provide new information on the stereochemistry of the individual enzymatic processes involved in CPA metabolism.

Application Received by Commissioner of Customs: March 1, 1993.

Docket Number: 93–022. *Applicant:* University of Rochester, Department of Pathology and Laboratory Medicine, 601 Elmwood Avenue, Rochester, NY 14642. *Instrument:* Electron Microscope, Model H-7100. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* The instrument will be used to examine human tissue to determine its ultrastructure, i.e. the minute components of various cell types and their physical interrelationships. In addition, the instrument will be used to provide audiovisual materials that will be used to introduce students to the basic mechanisms of human disease. *Application Received by Commissioner of Customs:* March 8, 1993.

Docket Number: 93–023. *Applicant:* Virginia Commonwealth University, MCV School of Dentistry, 521 N. 11th Street, Box 566, Richmond, VA 23298. *Instrument:* ACTA Rotating Wear Testing Machine. *Manufacturer:* Academic Center for Dentistry, The Netherlands. *Intended Use:* The instrument will be used for studies of intraoral wear behavior of dental restorative materials. *Application Received by Commissioner of Customs:* March 11, 1993.

Docket Number: 93–024. *Applicant:* University of Alabama at Birmingham, UAB Station, Birmingham, AL 35294. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Perkin Elmer-Sciex, Canada. *Intended Use:* The instrument will be used for a variety of analyses, including large macromolecules (proteins, pieces of DNA, etc.) and trace levels of anti-cancer and anti-AIDS drugs in serum and urine. *Application Received by Commissioner of Customs:* March 11, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–7885 Filed 4–5–93; 8:45 am]

BILLING CODE 3510-DS-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 1, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile and apparel products.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the Democratic Socialist Republic of Sri Lanka has notified the U.S. Government that one of the two institutions (currently Greater Colombo Economic Commission and Ministry of Textile Industries) authorized to issue visas for textile and apparel products exported from Sri Lanka has changed its name from "Greater Colombo Economic Commission" to "Board of Investment of Sri Lanka."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on April 1, 1993, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of textile and apparel products, produced or manufactured in

Sri Lanka and exported from Sri Lanka prior to May 1, 1993 which are accompanied by a visa stamp bearing either the name "Greater Colombo Economic Commission" or "Board of Investment of Sri Lanka."

Effective on May 1, 1993, a visa stamp bearing the designation "Greater Colombo Economic Commission" will no longer be accepted. Shipments exported on and after May 1, 1993 must be accompanied by a visa stamp with the designation "Board of Investment of Sri Lanka."

Visas issued by the Ministry of Textile Industries will continue to be accepted.

See 53 FR 34573, published on September 7, 1988.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 1, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 1, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka which are not properly visaed by the Government of the Democratic Socialist Republic of Sri Lanka.

Effective on April 1, 1993, you are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of textile and apparel products, produced or manufactured in Sri Lanka and exported from Sri Lanka prior to May 1, 1993 which are accompanied by a visa stamp with either the designation "Greater Colombo Economic Commission" or "Board of Investment of Sri Lanka."

Shipments of textile products, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after May 1, 1993 must be accompanied by a visa stamp with the designation "Board of Investment of Sri Lanka" (formerly "Greater Colombo Economic Commission").

Visas issued by the Ministry of Textile Industries, the other authorizing institution, will continue to be accepted.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–7935 Filed 4–5–93; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 93–C0005]

Caribe Marketing and Sales Co., Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Federal Hazardous Substances Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Ektelon, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 21, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 93–C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: March 21, 1993.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. Caribe Marketing & Sales Co., Inc. (hereinafter, "Caribe"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Caribe knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. Jurisdiction

2. The Commission has jurisdiction over Caribe and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. § 2053.

4. Caribe is a corporation organized and existing under the laws of the United States Commonwealth of Puerto Rico since 1983, with its principal corporate offices located at 1900 Fernandez Juncos Avenue, Santurce, Puerto Rico 00910. Caribe is engaged in the business of importing, exporting, and selling children's toys, stationery, and houseware.

III. Allegations of the Staff

5. Between July 1991, and November 16, 1991, Caribe caused the introduction into interstate commerce of the following toys and rattles intended for use by children under three years of age.

Name of product/Item No.	Number of units	Hazard	Collection date
Fun Time Little Little Town Play Set, Toy/543	36	Choke	08/21/91
Pull Along Take a Part Loco, Toy/3211	108	Choke	08/21/91
Pull Along Dr. Robot Phone Bank, Toy/689	82	Choke/Aspiration	08/21/91
Cloud Buster Plane, Toy/AK128	480	Choke/Aspiration	10/22/91

Name of product/item No.	Number of units	Hazard	Collection date
Maracas, Toy/864	864	Choke/Aspiration	10/22/91
Baby Rattles, Rattle/7307	1008	Choke/Aspiration	10/08/91
	720	Choke/Aspiration	10/24/91

6. The toys identified in paragraph five above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. The rattles identified in paragraph five above are subject to, but failed to comply with, the Commission's Requirements for Rattles, 16 CFR part 1510, in that when tested under the "use and abuse" test procedures set forth in 16 CFR 1500.51, separated parts of the rattle enter and penetrate the rattle test fixture specified in 16 CFR 1510.4.

8. Because separated parts of the toys identified in paragraph five above fit completely within the test cylinder as specified in 16 CFR 1501.4, each of the toys identified in paragraph five above presents a "mechanical hazard" within the meaning of (a) section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

9. Because separated parts of the rattles enter and penetrate the rattle text fixture specified in 16 CFR 1510.4, each of the rattles identified in paragraph five above presents a "mechanical hazard" within the meaning of (a) section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

10. Pursuant to 16 CFR 1500.18(a)(9), each of the toys identified in paragraph five above is a "banned hazardous substance" within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance).

11. Pursuant to 16 CFR 1500.18(a)(1), each of the rattles identified in paragraph five above is a "banned hazardous substance" within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance).

12. Knowingly causing of the introduction into interstate commerce of the aforesaid banned hazardous toys and rattles are prohibited acts pursuant to section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which civil penalties may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Caribe

13. Caribe denies the allegations of the staff set forth in paragraphs five through twelve above that it has knowingly introduced or caused the introduction into commerce of the aforesaid banned hazardous toys or rattles, or that it has violated the FHSA as alleged by the staff.

V. Agreement of the Parties

14. The Consumer Product Safety Commission has jurisdiction over Caribe and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

15. Caribe agrees to pay to the Commission a civil penalty in the amount of fifteen thousand and 00/100 dollars ($15,000.00), as follows: Fifteen hundred and 00/100 dollars ($1,500.00) within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement; six thousand and 00/100 dollars ($6,000.00) on or before January 22, 1993; and seven thousand and five hundred dollars and 00/100 ($7,500.00) on or before June 22, 1993. Interest shall be paid at the federal legal rate of interest for each day any payment is not made after its due day. The entire balance shall become due and payable if any payment is not made within thirty (30) days after its due date. Payment in full shall constitute settlement of the staff's allegations set forth in paragraphs five through twelve above that Caribe knowingly violated the FHSA.

16. The Commission does not make any determination that Caribe knowingly violated the FHSA. The Commission and Caribe agree that this Agreement is entered into for the purposes of settlement only.

17. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Caribe knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Caribe failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

18. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

20. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Caribe to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

22. The provisions of the Settlement Agreement and Order shall apply to Caribe and each of its successors and assigns.

Respondent Caribe Marketing & Sales Co., Inc.

Dated: September 18, 1992.

Manuel Fernandez-Barroso,

President, 1900 Fernandez Juncos Avenue, Santurce, Puerto Rico 00910.

Commission Staff.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: October 2, 1992.

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: October 2, 1992.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Caribe Marketing & Sales Co., Inc. (hereinafter, "Caribe"), a corporation, and the staff of the Consumer Product Safety Commission' and the Commission having jurisdiction over the subject matter and Caribe; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further ordered, That upon final acceptance of the Settlement Agreement, Caribe shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of fifteen thousand and 00/100 dollars ($15,000.00) as follows: Seven thousand and five hundred dollars and 00/100 ($7,500.00) within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement; and seven thousand and five hundred dollars and 00/100 ($7,500.00) on or before June 22, 1993. Interest shall be paid at the federal legal rate of interest for each day any payment is not made after its due day. The entire balance shall become due and payable if any payment is not made within thirty (30) days after its due date. Payment in full shall constitute settlement of the staff's allegations set forth in paragraphs five through twelve above that Caribe knowingly violated the FHSA.

Provisionally accepted and Provisional Order issued on the 31st day of March 1993.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-7965 Filed 4-5-93; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 93-C0004]

Ektelon, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR part 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Ektelon, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 21, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 93–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: March 31, 1993.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement

This Settlement Agreement and Order entered into between Ektelon, Inc., a corporation (hereinafter, "Ektelon") and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

1. Ektelon is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 8929 Aero Drive, San Diego, California 92123. Ektelon sells and distributes racquetball equipment nationwide.

2. The staff is the staff of the Consumer Product Safety Commission, a federal independent regulatory agency (hereinafter, "Commission") created by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2053.

II. Jurisdiction

3. This matter concerns a particular model of the Interceptor Eyeguard (hereinafter, "Eyeguard") which was distributed by Ektelon for sale to consumers for use in the recreational sport of racquetball during the time period of November 1989 to March 1990. The Eyeguard is, therefore, a "consumer product" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

4. Between November 1989 and March 1990, Ektelon sold and distributed the model of the Eyeguard in question, under the Ektelon label, nationwide. Ektelon is, therefore, a "private labeler" and "distributor" of a "consumer product" which has been "distributed in commerce," as those terms are defined in sections 3(a) (1), (5), (7), and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (5), (7), and (11).

III. Product

5. The Eyeguard is a safety device intended to be worn by the racquetball player to protect the user against injury to the eye. The Eyeguard is made with a nylon frame, and polycarbonate lenses and side shields.

IV. Staff's Allegations of Defect and Violation of the Reporting Requirement of 15 U.S.C. 2064(b)

6. Between November 1989 and March 1990, Ektelon distributed nationwide approximately 1385 Eyeguards that contained improperly installed lenses. The lenses were incorrectly ground by subcontractors and did not fit properly in the Interceptor frames. When hit directly by a racquetball, the lens could pop inward and cause injury to the eye and surrounding facial area.

7. Between January 1990 and October 1990, Ektelon learned of eight (8) incidents involving a lens popping inward and causing injuries. Ektelon voluntarily recalled the Eyeguard, but did not report the defect associated with the Eyeguard to the Commission.

8. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires a manufacturer of a consumer product who obtains information that reasonably supports

the conclusion that its product contains a defect which could create a substantial product hazard to inform the Commission immediately of the defect. In February 1990, Ektelon knew, or should have known, that the Eyeguard contained a defect which could create a substantial product hazard within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2). The knowing failure of Ektelon to report the defect to the Commission is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), for which a civil penalty may be assessed and recovered pursuant to section 20 of the CPSA, 15 U.S.C. 2069.

V. Response of Ektelon

9. Ektelon denies each and all of the staff's allegations with respect to its Interceptor Eyeguard, including that in February 1990, Ektelon possessed information which reasonably supported the conclusion that the Eyeguard contained a defect which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a); and therefore, denies that it failed to meet its obligation to report the information concerning the Eyeguard to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

10. Immediately after being apprised of a possible problem with the Eyeguard lenses, Ektelon conducted an internal investigation. This investigation showed that approximately 1385 of the Eyeguards shipped for distribution had improperly installed lenses. However, in the interest of preventing further injuries, Ektelon initiated a voluntary recall on March 12, 1990. Ektelon believes that virtually all of the Interceptor Eyeguard units in question have been returned to Ektelon. Based on the limited number of injuries, the nature of the injuries reported, and the information in Ektelon's possession concerning the number of Eyeguards with improperly installed lenses actually distributed in commerce, Ektelon believed that a report was not required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

11. The model of the Eyeguard in question was distributed from November 1989 to March 1990. This matter does not relate to the current Interceptor Eyeguard distributed by Ektelon.

VI. Agreement of the Parties

12. Ektelon agrees that the Commission has jurisdiction in this matter solely for purposes of entry and enforcement of this Settlement Agreement and Order pursuant to sections 15(b), 19(a)(4), and 20 of the CPSA, 15 U.S.C. 2064(b), 2068(a)(4), and 2069.

13. Ektelon agrees to pay to the Commission a civil penalty in the amount of twenty-five thousand dollars ($25,000) within thirty (30) days after receipt of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in full settlement of the staff's allegations that Ektelon knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), by failing to notify the Commission of the allegedly defective Eyeguard.

14. The Commission makes no determination that the Eyeguard contains a defect which could create a substantial product hazard or that a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred. Statements contained herein are in connection with the compromise of a disputed claim, and nothing in this Settlement Agreement and Order shall be deemed by the Commission as an admission by Ektelon of any fault, liability, or statutory violation.

15. The payment of the penalty provided in paragraph 13 of this Settlement Agreement, and the waivers of the procedural rights by Ektelon contained in paragraph 16 of this Settlement Agreement, are made in the interest of avoiding the time and cost of litigation, and without any admission of liability on the part of Ektelon. In making this payment and these waivers of procedural rights, Ektelon does not concede that its Eyeguard contained a defect which could create, or which created, a substantial product hazard within the meaning of section 15(b) of the CPSA, 15 U.S.C. 2064(b) or that it had a reporting obligation under section 15(b).

16. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Ektelon knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint had issued; and, the parties agree to the issuance of a press release announcing the Agreement, which is appended hereto as "Exhibit A."

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

19. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the twenty-five thousand dollars ($25,000) settlement amount by Ektelon, the Commission agrees not to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the Ektelon Interceptor Eyeguards sold and distributed between November 1989 and March 1990, which are the subject of this Settlement Agreement and Order.

20. The parties further agree that the Order attached hereto as "Exhibit B" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2051 *et seq.*; and that a violation of the Order shall subject Ektelon to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

22. The provisions of the Settlement Agreement and Order shall apply to Ektelon and to each of its successors and assigns.

Respondent

Dated: January 8, 1993.

By: Norman Peck,

President, Ektelon Corporation.

Commission Staff

David Schmeltzer,

Assistant Executive Director Office of Compliance and Administrative Litigation

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Administrative Litigation.

Dated: February 2, 1993

By: Earl A. Gershenow, Trial Attorney, Division of Administrative Litigation, Counsel for the Commission staff, Office of Compliance and Administrative Litigation

Draft Press Release

Ektelon, Inc. to Pay $25,000 to Settle Civil Penalty Case.

WASHINGTON, DC.—The U.S. Consumer Product Safety Commission

(CPSC) has voted provisionally to accept a settlement agreement in the matter of Ektelon, Inc., a corporation, in which Ektelon, Inc. will pay $25,000 to resolve allegations that the firm failed to report in a timely manner an alleged defect in a discontinued version of its Interceptor Eyeguard as required under the Consumer Product Safety Act (CPSA). The Interceptor Eyeguard is a safety device worn like eyeglasses to protect the eyes from injury while playing racquetball.

CPSC staff alleged that between January 1990 and October 1990, Ektelon learned of eight incidents involving the lens of the discontinued Eyeguard popping inward and causing injury, but did not report the alleged defect associated with the eyeguard to the Commission as required by the CPSA.

Ektelon, located in Princeton, New Jersey, distributes racquetball equipment nationwide. In 1990, Ektelon voluntarily recalled the allegedly defective model of the Interceptor Eyeguard. Ektelon believes that virtually all of the units that contained the improperly installed lenses have been returned to the company. No units made on or after March 1990 are involved in this matter.

CPSC seeks civil penalties to deter violations of the laws it administers as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The Commission's objective is to help reduce the estimated 28.6 million injuries and 21,700 deaths that occur each year with the 15,000 different types of consumer products within CPSC's jurisdiction.

Note: To report an unsafe consumer product or a product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1–800–638–2272. A teletypewriter for the hearing impaired is available at 1–800–638–8270; the Maryland TTY number is 1–800–492–8104.

Order

Upon consideration of the Settlement Agreement entered into between respondent Ektelon, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Ektelon, Inc.; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, That upon final acceptance of the Settlement Agreement, Ektelon, Inc. shall pay to the order of the Consumer Product Safety Commission a civil penalty in the amount of twenty-five thousand and 00/00 dollars ($25,000.00) within twenty (20) days after receipt of the Final Order in this matter.

Provisionally accepted and Provisional Order issued on the 31st day of March, 1993.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–7964 Filed 4–5–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Acquisition Reform (Phase I)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase I) will meet in closed session on April 15, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will define the scope and method for proceeding with a comprehensive modification to the process by which the Department of Defense acquires goods and services.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–7941 Filed 4–5–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Availability of U.S. Patents for Non-exclusive, Exclusive or Partially Exclusive Licensing

ACTION: Notice of availability.

AGENCY: U.S. Army Research Laboratory, Electronics and Power Sources Directorate, DOD.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, United States Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010, telephone (908) 532–4112.

SUPPLEMENTARY INFORMATION: These patents cover a wide variety of technical arts including permanent magnet designs for various applications, power sources, phased array antennae, microstrip devices and applications, varying types resonators and oscillators for different applications, as well as many other different technical arts.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the Army Research Laboratory, Electronics and Power Sources Directorate, wishes to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

1. *Title:* Leakage-Free Linearly Varying Axial Permanent Magnet Field Source.
   Inventor: Herbert A. Leupold.
   Patent No: 4,701,737—10/20/87.
2. *Title:* Method of Making a Long Lived High Current Density Cathode from Tungsten and Iridium Powders.
   Inventors: Louis E. Branovich, Gerard L. Freeman, Bernard Smith.
   Patent No: 4,708,681—11/24/87.
3. *Title:* Stripline Transformer Adapted for Inexpensive Construction.
   Inventor: Stephen Levy.
   Patent No: 4,717,834—01/05/88.
4. *Title:* Resonator Insensitive to Paraxial Accelerations.
   Inventors: Arthur Ballato, Mitsou Nakazawa.
   Patent No: 4,720,651—01/19/88.
5. *Title:* Method of Making a Low Aging Piezoelectric Resonator.
   Inventor: John A. Kosinski.
   Patent No: 4,725,754—02/16/88.
6. *Title:* Method of Making a Thermionic Field Emitter Cathode.
   Inventors: Bernard Smith, Louis E.

Branovich.
Patent No: 4,734,073—03/29/88.

7. *Title:* Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Barium Iridiate as the Impregnant.
Inventors: Louis E. Branovich, Gerald L. Freeman, Bernard Smith.
Patent No: 4,736,150—04/05/88.

8. *Title:* Method of Increasing the Useful Life of Rechargeable Lithium Batteries.
Inventor: Otto C. Wagner.
Patent No: 4,736,150—04/05/88.

9. *Title:* Method of Making a High Stability Quartz Crystal Oscillator.
Inventor: John R. Vig.
Patent No: 4,741,076—05/03/88.

10. *Title:* Microstrip to Dielectric Waveguide Transition.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,745,377—05/17/88.

11. *Title:* Phase Scan Antenna.
Inventors: Richard A. Stern, Richard W. Babbitt, John J. Borowick.
Patent No: 4,746,926—05/24/88.

12. *Title:* Millimeter-Wave Microstrip Circulator.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,749,966—06/07/88.

13. *Title:* Cathode Material for Use in Lithium Electrochemical Cell and Lithium Electrochemical Cell Including Said Cathode Material.
Inventors: Michelle C. Uchiyama, Steven M. Slane, Mark Salomon.
Patent No.: 4,751,157—06/14/88.

14. *Title:* Amorphus Cathode Material For Use in Lithium Electrochemical Cell and Lithium Electrochemical Cell Including the Amorphus Cathode Material.
Inventors: Michelle C. Uchiyama, Steven M. Slane.
Patent No.: 4,751,158—06/14/88.

15. *Title:* Organic Electrolyte For Use in A Lithium Rechargeable Electrochemical Cell and Lithium Rechargeable Electrochemical Cell Including Said Organic Electrolyte.
Inventors: Edward J. Plichta, Steven M. Slane, Mark Salomon.
Patent No.: 4,751,160—06/14/88.

16. *Title:* Electromagnetic Railgun With a Non-Explosive Magnetic Flux Compression Generator.
Inventor: Louis J. Jasper, Jr.
Patent No.: 4,753,153—06/28/88.

17. *Title:* High-Q Stress-Compensated Crystal Device.
Inventor: John A. Kosinski.
Patent No.: 4,754,187—06/28/88.

18. *Title:* Switchable Millimeter Wave Microstrip Circulator.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No.: 4,754,237—06/28/88.

19. *Title:* Millimeter Wavelength Monolithic Ferrite Circulator/ Antenna Device.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No.: 4,755,827—07/05/88.

20. *Title:* Method of Communicating Rare Earth Magnet Alloys Into Fine Particles.
Inventors: Robert D. Finnegan, Joseph P. Klimek.
Patent No.: 4,760,966—08/02/88.

21. *Title:* Method of Precisely Adjusting the Frequency of a Piezoelectric Resonator.
Inventor: John R. Vig.
Patent No.: 4,761,298—08/02/88.

22. *Title:* Permanent Magnet Structures for the Production of Transverse Helical Fields.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No.: 4,764,743—08/16/88.

23. *Title:* Method of Producing Transducer Isolation in Surface Acoustic Wave Processor.
Inventors: Arthur Ballato, Elio A. Maraiani.
Patent No.: 4,733,138—09/27/88.

24. *Title:* Defect Detection and Thickness Mapping of the Passination Layer(s) of Integrated Circuits.
Inventor: Richard G. Sartore.
Patent No.: 4,777,364—10/11/88.

25. *Title:* Switchable Dielectric Waveguide Circulator.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No.: 4,777,454—10/11/88.

26. *Title:* Contacless Hall Coefficient Measurement and Method.
Inventors: Arthur Ballato, Herbert A. Leupold.
Patent No: 4,785,232—11/15/88.

27. *Title:* Phase Scan Antenna Array.
Inventors: Richard A. Stern, Richard W. Babbitt, Gerald F. Mikucki.
Patent No: 4,785,304—11/15/88.

28. *Title:* Lithium Electrochemical Cell Including Aprotic Solvent-Dialpixl Carbonate Solvent Mixture.
Inventors: Steven M. Slane, Edward J. Plichta, Mark Salomon, Michelle C. Uchiyama.
Patent No: 4,786,499—11/22/88.

29. *Title:* A SAW Dispersive Delay Device.
Inventor: Elio A. Mariani.
Patent No: 4,801,836—01/31/89.

30. *Title:* Microstrip Resonance Isolator.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,806,886—02/21/89.

31. *Title:* Local Preservation of Infinite Uniform Magnetization Field Configuration Under Source Truncation.
Inventor: Herbert A. Leupold.
Patent No: 4,810,986—03/07/89.

32. *Title:* Bakeable Evacuative Container Assembly for Hot Isostatic Pressing.
Inventor: Joseph P. Klimek.
Patent No: 4,831,124—03/21/89.

33. *Title:* Method of Washing Solids With Liquified Gases.
Inventors: Michael Binder, Charles W. Walker, Jr., Robert J. Mammone, William L. Wade, Jr., Sol Gilman.
Patent No: 4,816,080—03/28/89.

34. *Title:* Patterning Optical & X-Ray Marks for Integrated Circuit Fabrication.
Inventor: William B. Glendinning.
Patent No: 4,816,361—03/28/89.

35. *Title:* Traveling Wave Tube Oscillator/Amplifier With Superconducting RF Circuit.
Inventor: Louis J. Jasper, Jr.
Patent No: 4,820,688—04/11/89.

36. *Title:* Dual Channel High Electron Dialiclity Field Effect Transistor.
Inventor: Gerald J. Iafrate, Louis C. Poli, Thomas R. AuCoin, Linda S. Heath.
Patent No: 4,821,093—04/11/89.

37. *Title:* Optimal Periodic Permanent Magnet Structure for Electron Beam Focusing Tubes.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No: 4,831,351—05/16/89.

38. *Title:* High-Field Permanent-Magnet Structures.
Inventor: Herbert A. Leupold.
Patent No: 4,835,506—05/30/89.

39 *Title:* Periodic Permanent Magnet Structures.
Inventor: Herbert A. Leupold.
Patent No: 4,835,137—05/30/89.

40. *Title:* Method of making An Acceleration Hardened Resonator.
Inventor: Arthur Ballato.
Patent No: 4,836,882—06/06/89.

41. *Title:* Clad Magic Ring Wigglers.
Inventor: Herbert A. Leupold.
Patent No: 4,839,059—06/13/89.

42. *Title:* Microstrip Phase Scan Antenna Array.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,839,659—06/13/89.

43. *Title:* Millimeter Wave Microstrip Modulator/Switch.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,845,449—07/04/89.

44. *Title:* SAW Circuit for Generating Continuous Time Coherent RF Carriers.
Inventors: Thomas W. Grudkowski.
Patent No: 4,860,017—08/22/89.

45. *Title:* Optical Gain Control of GaAs Microwave Monolithic Integrated Circuit Distributed Amplifier.
Inventors: Arthur Paolella, Peter Herczfeld.

Patent No: 4,859,965—08/22/89.
46. *Title:* Superconducting Shielded PYX PPM Stacks.
Inventor: Herbert A. Leupold.
Patent No: 4,859,973—08/22/89.
47. *Title:* Periodic permanent Magnet Structures.
Inventor: Herbert A. Leupold.
Patent No: 4,859,976—08/22/89.
48. *Title:* Single Transistor Dual Mode Crystal Oscillator.
Inventors: Gregory J. Malinowski, Stanley S. Schodowski.
Patent No: 4,859,969—08/22/89.
49. *Title:* Field Adjustable Transverse Flux Sources.
Inventor: Herbert A. Leupold.
Patent No: 4,862,128—08/29/89.
50. *Title:* Superconducting Shielded PYX PPM Stacks.
Inventor: Herbert A. Leupold.
Patent No: 4,862,126—08/28/89.
51. *Title:* Method of Making a Millimeter Wave Monolithic Integrated Circuit.
Inventor: Arthr Paolella.
Patent No: 4,861,426—08/29/89.
52. *Title:* Compact Millimeter Wave Microstrip Circulator.
Inventors: Richard A. Stern, Richard W. Babbit.
Patent No: 4,862,117—08/29/89.
53. *Title:* High-Field Permanent-Magnet Structures.
Inventor: Herbert A. Leupold.
Patent No: 4,862,117—08/29/89.
54. *Title:* Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Low Melting Point Impregnant.
Inventors: Louis E. Branovich, Bernard Smith, Gerald L. Freeman, Donald Echart.
Patent No: 4,863,410—09/05/89.
55. *Title:* Harmonically Pumped Monolithic Planar Doped Barrier Mixer.
Inventors: Samuel Dixon, Jr., Thomas R. AuCoin, Raymond L. Ross.
Patent No: 4,864,654—09/05/89.
56. *Title:* Magnesium/Manganese Dioxide Electrochemical Cell.
Inventors: Louis P. Jarvis, Michael T. Brundage and Terrill B. Atwater.
Patent No: 4,869,980—09/26/89.
57. *Title:* Method of Making a Crystal Oscillator Desenitized to Acceleration Fields.
Inventors: Arthur Ballato.
Patent No: 4,871,986—10/03/89.
58. *Title:* Method of Making a Cathode From Tungsten and Aluminum Powders.
Inventors: Louis E. Branovich, Bernard Smith, Gerald L. Freeman, Donald W. Eckart.
Patent No: 4,872,864—10/10/89.
59. *Title:* Planar Monolithic Millimeter Wave Mixer.
Inventors: Samuel Dixon, Jr.
Patent No: 4,878,253—10/31/89.
60. *Title:* Improved Slotted Microstrip Antenna.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,879,562—11/07/89.
61. *Title:* Millimeter Wave Microstrip Non-Reciprocal Phase Shifter.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,881,052—11/14/89.
62. *Title:* Improved Slotted Microstrip Antenna.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,879,562—11/07/89.
63. *Title:* Millimeter Wave Microstrip Non-Reciprocal Phase Shifter.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,881,052—1114/89.
64. *Title:* Method of Making a Multi-Dimensional Quantum-Well Array.
Inventors: Thomas R. AuCoin, Walter D. Braddeck, IV, Gerald J. Iafrate.
Patent No: 4,883,769—11/28/89.
65. *Title:* Compact Millimeter Wave Microstrip latching Phase Shifter.
Inventors: Richard A. Stern, Richard W. Babbitt.
Patent No: 4,887,054—12/12/89.
66. *Title:* Periodic Permanent Magnet Structures.
Inventors: Herbert A. Leupold.
Patent No: 4,887,058—12/12/89.
67. *Title:* Thin Film All Polymer Capacitor & Method of Making.
Inventors: Robert J. Mammone.
Patent No: 4,891,733—01/02/90.
68. *Title:* Superconducting PYX Structures.
Inventors: Herbert A. Leupold.
Patent No: 4,893,103—01/09/90.
69. *Title:* Method of Overcoating a High Current Density Cathode.
Inventors: Bernard Smith, Gerald L. Freeman, Louis E. Branovich.
Patent No: 4,894,257—01/16/90.
70. *Title:* Method of Using a Ferromagnet Material Having a High Permeability and Saturation Magnetization at Low Temperatures.
Inventor: Herbert A. Leupold.
Patent No: 4,894,360—01/16/90.
71. *Title:* Method of Making a Cathode From Tungsten and Iridium Powders Using a Reaction Product From Reacting Barium Peroxide with an Excess of Tungsten as the Impregnant.
Inventors: Louis E. Branovich, Gerald L. Freeman, Bernard Smith, Donald W. Eckart.
Patent No: 4,895,699—01/23/90.
72. *Title:* High Accuracy Frequency Standard & Clock System.
Inventor: John R. Vig.
Patent No: 4,899,117—02/06/90.
73. *Title:* Asynchronous Marx Generators Utilizing Photoconductive Semi-conductor Switches.
Inventors: Maurice Weiner, Anderson H. Kim, Lawrence J. Bovino.
Patent No: 4,900,947—02/13/90.
74. *Title:* Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Mixture of Barium Peroxide and a Coated Emitter as the Impregnant.
Inventors: Louis E. Branovich, Bernard Smith, Gerald L. Freeman, Donald W. Eckhart.
Patent No: 4,911,626—03/27/90.
75. *Title:* Apparatus for Fabrication of Permanent Magnet Toroidal Rings.
Inventor: Herbert A. Leupold.
Patent No: 4,911,627—03/27/90.
76. *Title:* SAW Slanted Array Correlator (SAC) With Separate Amplitude Compensation Channel.
Inventors: Elio A. Mariani, William J. Skudera, Jr.
Patent No: 4,912,356—03/27/90.
77. *Title:* Method of Transforming a Passive Ferromagnetic Material Into a Permanent Magnet.
Inventors: Herbert A. Leupold.
Patent No: 4,917,736—04/17/90.
78. *Title:* Method of Measuring the Thermalhysteresis of Quartz Crystal Resonators.
Inventor: Raymond L. Filler.
Patent No: 4,918,376—04/17/90.
79. *Title:* Method of Mass Producing Superconducting Persistent Current Rings.
Inventor: Herbert A. Leupold.
Patent No: 4,928,081—Issued 5/22/90.
80. *Title:* Method of Making a Cathode From a Tungsten Powder.
Inventors: Louis E. Branovich, Bernard Smith, Gerald L. Freeman, Donald W. Eckart.
Patent No: 4,928,418—Issued 05/29/90.
81. *Title:* High Temperature Subconducting Thin Film Structure & Method of Making.
Inventors: Joel R. Shappirio, Thomas R. AuCoin, John J. Finnegan.
Patent No: 4,940,693—Issued 07/10/90.
82. *Title:* SAW Slanted Array Correlator (SAC) With Separate Amplitude Compensation Channel.
Inventors: Elio A. Mariani, William J. Skudera, Jr.
Patent No: 4,941,133—Issued 07/10/90.
83. *Title:* Method of Making a Resonator From a Boule of Lithium Tetraborate and Resonator so Made
Inventors: Arthur Ballato, John A. Kosinski.

Patent No: 4,950,937—Issued 08/21/90.

84. *Title:* Temperature Compensated Crystan Oscillator (TCXO) With Improved Temperature Compensation.
Inventor: John A. Kosinski.
Patent No: 4,951,007—Issued 08/21/90.

85. *Title:* Permanent Magnet Structure For a Nuclear Magnetic Resonance Imager For Medical Diagnostics.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No: 4,953,555—Issued 09/04/90.

86. *Title:* Method of Preparing a Thin Diamond Film.
Inventor: Richard A. Neifeld.
Patent No: 4,954,365—Issued 09/04/90.

87. *Title:* High Temperature Molten Salt Thermal Electrochemical Cell.
Inventors: Edward J. Plichta, Wishvender K. Behl.
Patent No: 4,954,403—Issued 09/04/90.

88. *Title:* Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Quaternary Compound as the Impregnant.
Inventors: Louis E. Branovich, Bernard Smith, Gerald L. Freeman, Donald W. Eckart.
Patent No: 4,957,463—Issued 09/18/90.

89. *Title:* Method of Modifying the Dielectric Properties of an Organic Polymer Film.
Inventors: Michael Binder, Robert J. Mammone.
Patent No: 4,957,602—Issued 09/18/90.

90. *Title:* Connector for Splicing Optical Fibers.
Inventor: Howard Winhansky.
Patent No: 4,964,689—Issued 10/23/90.

91. *Title:* Real-Time Rejection Circuit to Automatically Reject Multiple Interfering Hopping Signals While Passing a Lower Level Desired Signal.
Inventors: William J. Skudera, Jr., Stuart D. Albert.
Patent No: 4,965,581—Issued 10/23/90.

92. *Title:* Microwave Transmission Line and Method of Modulating the Phase of a Signal Passed Through Said Line.
Inventor: Richard A. Neifeld.
Patent No: 4,967,167—Issued 10/30/90.

93. *Title:* Rechargeable Lithium Battery System.
Inventors: Steven M. Slane, Edward J. Plichta.
Patent No: 4,983,476—Issued 01/08/91.

94. *Title:* Null Offset Voltage Compensation for Operational Amplifiers.
Inventor: Lawrence R. Groehl.
Patent No: 4,983,926—Issued 01/08/91.

95. *Title:* Method of Smoothing Patterned Transparent Electrode Stripes in Thin Film Electroluminescent Display Panel Manufacturer.
Inventors: Robert J. Zeto, Eugene Hryckowian, deceased, by Linda V., executor, David C. Morton, John A. Costello, John C. Conrad.
Patent No: 4,986,876—Issued 01/22/91.

96. *Title:* Miniature Porous Electrode and Method of Making.
Inventor: Charles W. Walker, Jr.
Patent No: 4,988,588—Issued 01/29/91.

97. *Title:* Method of Making a Transducer From a Boule of Lithium Tetraborate & Transducer So Made.
Inventor: Arthur Ballato, John A. Kosinski.
Patent No: 4,990,818—Issued 02/05/91.

98. *Title:* High Resolution, Wide Band Chirp-Z Signal Analyzer.
Inventors: William J. Skudera, Jr., Charles E. Konig.
Patent No: 4,994,740—Issued 02/19/91.

99. *Title:* Acoustic Charge Transport Processor.
Inventor: Arthur Ballato.
Patent No: 4,994,772—Issued 02/19/91.

100. *Title:* Enhanced Magnetic Field Within Enclosed Cylindrical Cavity.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No: 4,994,777—Issued 02/1991.

101. *Title:* Adjustable Twister.
Inventor: Herbert A. Leupold.
Patent No: 4,994,778—Issued 02/19/91.

102. *Title:* SAW Transducer With Improved Bus-Bar Design.
Inventors: Elio A. Mariani, Clinton S. Hartmann.
Patent No: 4,999,535—Issued 03/12/91.

103. *Title:* Method of Making a Cathode From Tungsten & Iridium Powders Using A Reaction Product From Reacting A Group III A Metal With Barium Peroxide As An Impregnant.
Inventors: Louis E. Branovich, Donald W. Eckart, Bernard Smith, Gerald L. Freeman.
Patent No: 5,007,874—Issued 04/16/91.

104. *Title:* High Temperature Rechargeable Molten Salt Cell.
Inventors: Edward J. Plichta, Wishvender K. Behl.
Patent No: 5,011,750—Issued 04/30/91.

105. *Title:* Multicolor Infrared Photodetector.
Inventor: Kwong-Kit Choi.
Patent No: 5,013,918—Issued 05/07/91.

106. *Title:* Triangular Section Permanent Magnet Structure.
Inventor: Herbert A. Leupold.
Patent No: 5,014,028—Issued 05/07/91.

107. *Title:* Method of Making a Long Life High Current Density Cathode From Aluminum Oxide and Tungsten Oxide Powders.
Inventors: Louis E. Branovich, Gerald L. Freeman, Donald W. Eckarat, Bernard Smith.
Patent No: 5,022,883—Issued 06/11/91.

108. *Title:* Permanent Magnet Field Sources of Radial Orientation.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No: 5,028,902—Issued 07/02/91.

109. *Title:* High Power Photo-conductor Bulk GAAS Switch.
Inventors: Anderson H. Kim, Maurice Weiner, Robert J. Youmans, Robert J. Zeto, Michelle A. Dornath-Mohr, Melvin J. Wade.
Patent No: 5,928,971—Issued 07/02/91.

110. *Title:* Electron Paramagnetic Resonance Instrument With Superconductive Cavity.
Inventor: Louis J. Jasper, Jr.
Patent No: 5,030,914—Issued 07/09/91.

111. *Title:* Infrared Hot-Electron Transistor.
Inventor: Kwong-Kit Choi.
Patent No: 5,031,013—Issued 07/09/91.

112. *Title:* Permanent Magnet Field Sources of Conical Orientation.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No: 5,034,715—Issued 07/23/91.

113. *Title:* High Temperature Rechargeable Molten Salt Battery.
Inventors: Edward J. Plichta, Wishvender K. Behl.
Patent No: 5,035,963—Issued 07/30/91.

114. *Title:* High Energy Product Radially Oriented Toroidal Magnet and Method of Making.
Inventor: Herbert A. Leupold.
Patent No: 5,041,419—Issued 08/20/91.

115. Title: Method of Sensing Contamination in the Atmosphere.
Inventor: John R. Vig.
Patent No: 5,042,288—Issued 08/27/91.

116. Title: High Temperature Molten Salt Thermal Cell Including a Ternary Metal Sulfide Cathode.
Inventors: Edward J. Plichta, Wishvender K. Behl.
Patent No: 5,045,416—Issued 09/03/91.

117. Title: Radial Transmission Line For Waveform Generation and Power Accumulation.
Inventors: Maruice Weiner, Lawrence J. Bonvino, Anderson H. Kim.
Patent No: 5,047,621—Issued 09/10/91.

118. Title: Open Cryogentic Microwave Test Chamber.
Inventors: Thomas E. Koscica, Richard W. Babbitt, William C. Drach.
Patent No: 5,052,183—Issued 10/01/91.

119. Title: Compensation for Magnetic Nonuniformities of Permanent Magnet Structures.
Inventors: Manlio G. Abele, Ramesh Chandra, Henry Rusinek, Ernest Potenziani, II, Herbert A. Leupold.
Patent No: 5,055,812—Issued 10/08/91.

120. Title: Low Cost SAW Packaging Technique.
Inventor: Elio A. Mariani.
Patent No: 5,059,848—Issued 10/22/91.

121. Title: Fabrication of Permanent Magnet Toroidal Rings.
Inventor: Herbert A. Leupold.
Patent No: 5,063,004—Issued 11/05/91.

122. Title: Periodic Permanent Magnet Structure With Increased Useful Field.
Inventor: John P. Clarke.
Reissue No: Re.33,736—Issued 11/05/91.

123. Title: Narrow Band Microstrip Isolator.
Inventors: Richard W. Babbitt, Adam Rachlin, Thomas E. Koscica.
Patent No: 5,068,627—Issued 11/26/91.

124. Title: Dipole For Magnetic Field Compensation.
Inventor: Herbert A. Leupold.
Patent No: 5,072,204—Issued 12/10/91.

125. Title: Optical Control of a Microwave Switch.
Inventors: Dana J. Sturzebecher, Arthur Paolella.
Patent No: 5,073,717—Issued 12/17/91.

126. Title: Optical Control of a Microwave Switch.
Inventor: Arthur Paolella.
Patent No: 5,073,713—Issued 12/187/91.

127. Title: Method of Making an Improved Scandate Cathode.
Inventors: Louis E. Branovich, Donald W. Eckart, Gerard L. Freeman, Bernard Smith.
Patent No: 5,074,818—Issued 12/24/91.

128. Title: Variable Inverted Microstrip Coax Test Fixture.
Inventors: Richard W. Babbitt, Thomas E. Koscica, Adam Rachine.
Patent No: 5,075,630—issue 12/24/91.

129. Title: Enhanced Magnetic Field Within Enclosed Annular Cavity.
Inventors: Herbert A. Leupold, Ernest Potenziani, II.
Patent No: 5,075,662—Issued 12/24/91.

130. Title: Stepped Magnetic Field Source.
Inventor: Herbert A. Leupold.
Patent No: 5,084,690—Issued 01/28/92.

131. Title: Optical Control Circuit For A Microwave Monolithic Integrated Circuit.
Inventor: Arthur Paolella.
Patent No: 5,086,281—Issued 02/04/92.

132. Title: Method of Preparing A Lumbered Quartz Bar For Sweeping and Then Sweeping Said Lumbered Quartz Bar.
Inventor: John G. Gualtieri.
Patent No: 5,986,549—Issued 02/11/92.

133. Title: High Temperature Molten Salt Bipolar Stacked Module Battery.
Inventors: Edward J. Plichta, Wishvender K. Behl.
Patent No: 5,098,800—Issued 03/24/92.

134. Title: Constant Gap Cladded Twister.
Inventor: Herbert A. Leupold.
Patent No: 5,099,217—Issue 03/24/92.

135. Title: Drop-in Magnetically Turnable Microstrip Bandpass Filter.
Inventors: Richard W. Babbitt, Adam Rachlin, Lothar Windinger.
Patent No: 5,101,182—Issued 03/31/92.

136. Title: High-Field, Permanent Magnet Flux Source.
Inventor: Herbert A. Leupold.
Patent No: 5,103,200—Issued 04/07/92.

137. Title: Magnetic Cladding For Use In Periodic Permanent Magnet Stacks.
Inventor: Herbert A. Leupold.
Patent No: 5,107,238—Issued 04/21/92.

138. Title: Method of Depositing A Superconducting Film By Electrophoresis.
Inventors: Arthur Tauber, Robert D. Finnegan, Michelle A. Dornath Mohr, Frank A. McBride.
Patent No: 5,110,767—Issued 05/05/92.

139. Title: SAW Slanted Array Correlator With Amplitude Error Compensating Polymer Reflective Array Grating.
Inventor: Elio A. Mariani.
Patent No: 5,113,115—Issued 05/12/92.

140. Title: Critical Field and Continuity Testing Method and Device for Super-conducting Materials Using the Change in Internal Area of a Superconducting Loop.
Inventor: Herbert A. Leupold.
Patent No: 5,113,135—Issued 05/12/92.

141. Title: Adjustable Magnetic Field Superconducting Solenoid.
Inventor: Herbert A. Leupold.
Patent No: 5,113,163—Issued 05/12/92.

142. Title: Electrode For Use in A High Temperature Rechargeable Molten Salt Battery and Method of Making Said Electrode.
Inventors: Edward J. Plichta, Wishvender K. Behl.
Patent No: 5,114,432—Issued 05/12/92.

143. Title: Method of Preparing a Scandate Cathode by Impregnating a Porus Tungsten Billet with BA3AL206 Coating the Top Surface With a Mixture of SC6W012, SC2(WO4)3, and Win A 1:3:2 Mole Ratio, and Heating IN.
Inventors: Louis E. Branovich, Gerald L. Freeman, Donald W. Eckart.
Patent No: 5,114,742—Issued 05/19/92.

144. Title: High Temperature Molten Salt Electrochemical Cell.
Inventors: Wishvender K. Behl, Edward J. Plichta.
Patent No: 5,114,805—Issued 05/19/92.

145. Title: Microwave Oscillator Using A Ring Resonator and Operable As A Remote Temperature Sensor.
Inventors: Michael Cummings, Roland Cadotte, Jr., Adam Rachlin.
Patent No: 5,115,210—Issued 05/19/92.

146. Title: Simplified Clock Distribution In Electronic Systems.
Inventors: Douglas C. Johnson, Arnold Bard, Patrick F. McHugh.
Patent No: 5,120,989—Issued 06/09/92.

147. Title: Hemispherical Cladding For Permanent Magnet Solenoids.
Inventor: Herbert A. Leupold.
Patent No: 5,126,713—Issued 06/30/92.

148. Title: Amplitude Error Compensated SAW Reflective Array Correlator.
Inventor: Elio A. Mariani.
Patent No: 5,130,597—Issued 07/14/92.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 93–7902 Filed 4–5–93; 8:45 am]
BILLING CODE 3710-08-M

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for Base Realignment of Dahlgren Division, Naval Surface Warfare Center, Dahlgren, VA

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500–1508), the Department of Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for Base Realignment of Dahlgren Division, Naval Surface Warfare Center (NSWCDD).

The DEIS has been distributed to various Federal, State and local government agencies and elected officials, special interest groups, and libraries. A limited number of single copies are available at the address listed at the end of this notice.

The Department of Navy will hold a public hearing to inform the public of the DEIS findings and to solicit comments. It will be held on April 28, 1993, at 7:30 p.m. at the King George High School Auditorium, King George, Virginia.

The public hearing will be conducted by the Navy. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study and will be given equal consideration.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by May 10, 1993, to become part of the official record.

NSWCDD is relocating personnel positions and programs from the NSWC White Oak Detachment in Silver Spring, Maryland; the NSWC Coastal Systems Station in Panama City, Florida; and the Naval Command, Control and Oceanic Surveillance Center in San Diego, California. Personnel and programs will not be relocated from the Naval Undersea Warfare Center in New London, Connecticut, as originally proposed in the Notice of Intent to Prepare an EIS [57 FR 20258 (May 12, 1992)]. This relocation will implement requirements stemming from the Defense Base Closure and Realignment Act of 1990. The relocation includes: Upgrading the sewage treatment plant to accommodate the increase in the workforce at NSWCDD, the construction and operation of a Consolidation Research, Development, Test and Evaluation Laboratory; the renovation of space in a number of existing buildings; and improvements to B Gate at U.S. Route 301. The action involves relocation of approximately 906 personnel positions and their families (approximately 2,113 people).

Additional information concerning this notice may be obtained by contacting Mr. Larry Chernikoff (Code 20A), Chesapeake Division, Naval Facilities Engineering Command, 901 M Street, SE., Building 212, Washington, DC 20374–5018, telephone: (202) 433–3387.

Dated: April 1, 1993.
Michael P. Rummel,
LCDR, JAGC, USN, Federal Register Liaison Officer.
[FR Doc. 93–7982 Filed 4–5–93; 8:45 am]
BILLING CODE 3810-AE-M

Public Hearing for the Draft Supplemental Environmental Impact Statement for Element II, Breakwater Pier, Naval Station Everett, Everett, WA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Supplemental Environmental Impact Statement (DSEIS) for Element II, Breakwater Pier Construction at Naval Station Everett, Everett, Washington.

The DSEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DSEIS findings and to solicit comments will be held on April 26, 1993, at 7 p.m., in the Ginni Stevens Hearing Room, Snohomish County Administration Building, 3000 Rockefeller Avenue, Everett, Washington.

The public hearing will be conducted by the Navy. Federal, State, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by May 24, 1993, to become part of the official record.

This DSEIS addresses Element II of NAVSTA Everett Carrier Battle Group homeporting. Element II is intended to provide additional berthing and wave attenuation for a seven ship battle group that includes an aircraft carrier and various escort ships. Element II is part of a phased homeport construction effort including waterfront development at NAVSTA Everett. Element I, dredging and construction of the carrier pier and south marginal wharf, has been completed. The proposed action includes two main components: (1) The construction of a breakwater that includes the dredging and disposal of marine sediments, and (2) the construction of a pier surface on the breakwater superstructure. The breakwater portion will provide wave attenuation for vessels moored at Everett as well as allowing for fish passage along the shoreline. The new pier would be fitted with electric, sewer, water lines, and other utilities. Approximately 150,000 cubic yards of sediment will be dredged to provide the necessary depths to accommodate the escort ships. Dredged material will be disposed at the Port Gardner Puget Sound Dredge Disposal Analysis site, located 2.2 miles southwest of the project site.

Additional information concerning this notice may be obtained by contacting: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command,

3505 NW Anderson Hill Road, Silverdale, Washington, 98383–9130, (Attn: Don Morris, Code 231DM), telephone (206) 396–5976.

Dated: April 1, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–7983 Filed 4–5–93; 8:45 am]

BILLING CODE 3810–AE–M

Public Hearings for the Draft Environmental Impact Statement for Proposed Facilities Development and Relocation of Navy Activities to the Territory of Guam from the Republic of the Philippines

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy, in cooperation with the U.S. Air Force and U.S. Army Corps of Engineers, has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed facilities development and relocation of Navy activities to the Territory of Guam from the Republic of the Philippines.

The DEIS has been distributed to various federal, territory, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

Two public hearings to inform the public of the DEIS findings and to solicit comments will be held on April 20, 1993; one beginning at 2 p.m., and a second at 7 p.m., in the Governor's Cabinet Conference Room at the Executive Building in Adelup, Guam.

The public hearing will be conducted by the Navy. Federal, territory, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by May 18, 1993, to become part of the official record.

U.S. Navy facilities in the Philippines were closed in 1992. This DEIS addresses the relocation of activities from the Philippines and the development of facilities at Navy and Air Force installations on Guam. Approximately 1,380 military billets and 1,450 dependents will ultimately be relocated to Guam. There will be several changes in military activities on Guam because of the relocation of various commands from the Philippines. To accommodate these new activities, a total of 25 military construction projects are proposed: 19 located in the Apra Harbor area and the remainder at Andersen Air Force Base (AFB), Naval Magazine, and Nimitz Hill. Facilities at Andersen AFB include a hangar/apron/washrack and renovation of bachelor quarters. In the Apra Harbor Complex, projects include 300 family housing units, Orote Power Plant expansion, Apra Harbor Sewage Treatment Plant modifications, gantry crane and rails, waterfront utilities, and various administrative facilities. Missile magazines and an inert storehouse are proposed at Naval Magazine Guam.

Additional information concerning this notice may be obtained by contacting: Mr. Stanley Uehara (Code 232), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860–7300, telephone (808) 471–9338.

Dated: April 1, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–7981 Filed 4–5–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 26–30, 1993, from 9 a.m. to approximately 5 p.m. each day.

ADDRESSES: The meeting will be held at the Ramada Hotel Old Town, 901 North Fairfax Street, Alexandria, Virginia, 22314, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342(b)(2) of the Indian Education Act, the Council is directed to review applications for assistance and to make recommendations to the Secretary of Education with respect to their approval. The duly authorized Proposal Review Committee of the Council will meet in closed session starting at approximately 9 a.m. and will end at approximately 5 p.m. each day during the proposal review session. The agenda will include reviewing grant applications for assistance for programs authorized by subparts 1, 2, and 3 of the Indian Education Act of 1988 including applications for (1) Discretionary grants to Indian Controlled Schools; (2) Educational Services for Indian Children; and (3) Educational Services for Indian Adults.

The discussion during the review process may disclose sensitive information about applicants, qualifications of proposed staff, funding level requests and the names and comments of expert reviewers. Such discussion would disclose commercial or financial information obtained from a person, and is privileged or confidential and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

Records are kept of all Council proceedings, and are available for public inspection. A summary of activities of this closed meeting which are informative to the public consistent with the policy of title 5 U.S.C. 552b shall be available for public inspection

within 14 days of the meeting at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: March 23, 1993.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–7906 Filed 4–5–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Environmental Restoration and Waste Management

Publication of Schedule for Submitting Plans for Treating Mixed Waste Generated or Stored at Each Site as Required by the Federal Facility Compliance Act of 1992

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to section 105 of the Federal Facility Compliance Act of 1992, the Department of Energy (DOE) is publishing this schedule for submitting Plans for Treating Mixed Waste for each facility at which DOE generates or stores mixed waste. DOE proposes to prepare two interim versions of the plan required by the Act for each of its sites to facilitate discussions among States and other interested parties. DOE also commits to begin working with the regulatory agencies as soon as possible and throughout the process on the plans.

DATES: Written comments on the schedule and other information discussed here should be provided no later than May 21, 1993.

ADDRESSES: Comments should be directed to: Marilyn E. Stone, EM–331, Trevion II, U.S. Department of Energy, Washington, DC 20585–0002.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Stone, Office of Environmental Restoration and Waste Management (EM–331), Trevion II, U.S. Department of Energy, Washington, DC 20585–0002; telephone: (301) 903–7921.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this Notice is to fulfill the requirement in section 3021(c)(1) of the Resource and Conservation Recovery Act (RCRA), as amended on October 6, 1992 by section 105(a) of the Federal Facility Compliance Act of 1992 (Pub. L. 102–386) (the Act). This section requires DOE to publish a schedule for submitting plans for each facility at which DOE generates or stores mixed waste. The plans must describe the development of treatment capacities and technologies for treating the site's mixed waste (hereafter referred to as site treatment plans or plans). These plans, required by RCRA section 3021(b), as amended by the Act, must be submitted to the State in which the site is located or to the U.S. Environmental Protection Agency (EPA) for review and approval, approval with modification, or disapproval.

The site treatment plans will address DOE's compliance with the RCRA land disposal restrictions (LDR) for mixed waste, which is waste containing both a hazardous waste subject to RCRA, and source, special nuclear or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*). LDR provisions require treatment of hazardous waste (including mixed waste) to certain standards prior to land disposal and prohibit storage of LDR wastes that do not meet LDR standards, except for the purposes of accumulating sufficient quantities to facilitate proper recovery, treatment, and disposal of the waste. DOE is currently storing mixed waste because the treatment capacity for such wastes is not adequate, either at the DOE sites or in the commercial sector.

In preparing this Notice, DOE has discussed the proposed process for preparing the plans and the submission schedule with the EPA and many of the States in which its facilities are located.

DOE is inviting comment on the process for developing the plans, the proposed schedule, and other issues. DOE will proceed with the approach and schedule discussed herein unless significant comments received on the Notice indicate that modifications are appropriate. In that event, DOE would publish a notice in the **Federal Register** announcing its intent to revise the schedule by June 21, 1993 and identifying a date for publishing a revised schedule.

II. Relevant Provisions of the Federal Facility Compliance Act

Section 102(a)(3) of the Act waives sovereign immunity for Federal facilities for fines and penalties for violations of RCRA, State, interstate, and local hazardous and solid waste management requirements. However, for a period of three years following enactment, the Act delays the waiver for violations of the LDR storage prohibition, RCRA section 3004(j), involving mixed waste at DOE facilities. The delay, however, is contingent upon the management of the waste being in compliance with all other applicable requirements. The waiver is not delayed for DOE facilities that are subject to an existing agreement, permit, or administrative or judicial order addressing compliance with the LDR storage prohibition for mixed wastes.

The Act further delays the waiver of sovereign immunity beyond the three year period at a facility if DOE is in compliance with an approved plan for developing treatment capacity and technologies for mixed waste generated or stored at the facility and an order requiring compliance with the plan. Section 3021(b) of RCRA, as amended by the Act, sets out the required content for the plans, which must cover all mixed waste at the site, regardless of the time of generation, and the process by which such plans must be approved. For mixed waste for which identified treatment technologies exist, the plan must provide a schedule for submitting permit applications, entering into contracts, initiating construction, conducting systems testing, starting operations, and processing mixed wastes. For mixed waste without an identified treatment technology, the plan must include a schedule for identifying and developing technologies, identifying the funding requirements for research and development, submitting treatability study exemptions, and submitting research and development permit applications. In cases where DOE proposes radionuclide separation, the plan must also include an estimate of the volume of waste generated by radionuclide separation, an estimate of the volume of waste that would exist without such separation, and cost estimates and underlying assumptions. Section 3021(b)(1)(C) of RCRA states that the plans may provide for centralized, regional or on-site treatment of mixed waste, or any combination thereof.

DOE is to submit the plans to either the State or EPA. The Act requires the plan to be submitted to the State in which the facility is located if (1) The State has authority under State law to prohibit land disposal of untreated mixed waste and (2) EPA has authorized the State to regulate the hazardous components of mixed waste under RCRA. If the State does not meet these criteria, the plan must be submitted to EPA.

Within six months after DOE submits a plan, the Act requires the receiving agency (the State or EPA) to solicit and consider public comments, and approve, approve with modifications, or disapprove the plan. In making its

determination, the approving agency must consult with EPA and any State(s) in which a facility affected by the plan is located. Upon approving a plan, the agency must issue an order requiring compliance with the approved plan.

The Act provides an alternative to submitting a plan. The State in which a DOE facility is located may waive the plan requirement if the State enters into an agreement with DOE addressing compliance with the LDR storage prohibition for mixed waste at the eligible facility, and issues an order requiring compliance with that agreement.

In addition, a site is not required to prepare a plan if it is subject to a permit establishing a schedule for treatment of its mixed wastes, or an existing agreement or order which governs mixed waste treatment, to which the State is a party.

Section 3021(a) of RCRA, as amended by the Act, requires DOE to submit a national inventory report to EPA and the governor of each State in which DOE stores or generates mixed waste within 180 days of the date of enactment. This national inventory report must provide an inventory of DOE's mixed waste and an inventory of DOE's treatment capacities and technologies for treating the mixed waste. The information contained in this report will be used by DOE as a starting point in developing the treatment plans.

III. DOE Sites That Generate or Store Mixed Waste

The Act requires that a plan be submitted for each site where DOE generates or stores mixed waste. Table 1 lists the sites that DOE has identified that currently generate or store mixed waste. The list also contains some sites not now generating or storing mixed waste, but that are expected to generate mixed waste within the next five years; these sites are identified as such in Table 1.

As DOE continues to review waste streams and as operations change, additional sites may be identified. For example, some sites may become mixed waste generators in the future as a result of restoration or decommissioning and decontamination activities. In addition, further assessment may show that some sites included below do not generate mixed waste.

Table 1 also identifies whether the plan would be submitted to the State or to EPA, based on the current status of State laws and RCRA authorizations under the criteria established in section 3021(b)(2) of RCRA.

TABLE 1—SITES AT WHICH DOE GENERATES OR STORES MIXED WASTE (OR MAY GENERATE WITHIN THE NEXT 5 YEARS)

Facility	State	Agency to receive plan (EPA/State)
Energy Technology Engineering Center (ETEC).	California ..	State.
General Atomics		
General Electric Vallecitos [1]		
Lawrence Livermore National Laboratory		
Lawrence Berkeley Laboratory		
Laboratory For Energy-Related Health Research		
Mare Island Naval Shipyard		
Sandia National Laboratory—California		
Grand Junction Project Office.	Colorado ..	State.
Rocky Flats Plant		
Knolls Atomic Power Laboratory, Windsor [1].	Connecticut.	State.
Pinellas Plant	Florida	State.
Pearl Harbor Naval Shipyard.	Hawaii	EPA.
Argonne National Laboratory—West.	Idaho	State.
Idaho National Engineering Laboratory		
Ames Laboratory ..	Iowa	EPA.
Argonne National Laboratory—East.	Illinois	State.
Site A/Plot M, Palos Forest Preserve [1]		
Paducah Gaseous Diffusion Plant.	Kentucky ..	State.
Portsmouth Naval Shipyard.	Maine	EPA.
Kansas City Plant .	Missouri ...	State.
Weldon Spring Site Remedial Action Project		
University of Missouri		
Nevada Test Site .	Nevada	State.
Middlesex Sampling Plant.	New Jersey.	EPA.
Princeton Plasma Physics Laboratory [1]		
Inhalation Toxicology Research Institute.	New Mexico.	State.
Los Alamos National Laboratory		
Sandia National Laboratory—New Mexico		
Waste Isolation Pilot Project [1]		
Brookhaven National Laboratory.	New York .	State.
Colonie Interim Storage Site		
Knolls Atomic Power Laboratory, Kesselring		
Knolls Atomic Power Laboratory, Schenectady		
West Valley Demonstration Project		
Battelle Columbus Laboratories Decommissioning Project [1].	Ohio	State.
Fernald Environmental Management Project		
Mound Plant		
Portsmouth Gaseous Diffusion Plant		
RMI Titanium Inc.		
Bettis Atomic Power Laboratory.	Pennsylvania.	EPA.
Charleston Naval Shipyard.	South Carolina.	State.
Savannah River Site [1]		
K–25 Site, Oak Ridge Reservation.	Tennessee	State.
Oak Ridge National Laboratory, Oak Ridge Reservation		
Y–12 Plant, Oak Ridge Reservation		
Pantex Plant	Texas	State.
Norfolk Naval Shipyard.	Virginia	EPA.
Hanford Site	Washington.	State.
Puget Sound Naval Shipyard		

[1] Denotes a site that is not currently generating or storing mixed waste but may generate or store mixed waste within the next five years.

The Act defines mixed waste as wastes containing both hazardous waste as defined in RCRA and source, special

nuclear, or byproduct material subject to the Atomic Energy Act (AEA) of 1954 (42 U.S.C. 2011 *et seq.*). The terms "source, special nuclear, or byproduct material" are defined in the AEA, and the term "byproduct" is further clarified in 10 CFR 962.3. The term "mixed waste" as defined in the Act does not include all hazardous waste containing radionuclides. For example, it does not include hazardous waste containing naturally-occurring or accelerator-produced radioactive material, generally referred to as NARM. Hazardous wastes containing radioactive material such as radium and its decay products, which are naturally occurring, are not "mixed waste" under the Act, nor are wastes containing materials made radioactive in an accelerator used for particle physics research. These wastes are regulated as hazardous waste under RCRA, and the radioactive component is controlled under DOE Orders, but are not subject to the requirements in the Act pertaining to mixed waste, including the requirement to prepare a plan. DOE has small quantities of this type of waste at a few research facilities, such as Stanford Linear Accelerator Center in California and the Fermi National Accelerator Laboratory in Illinois, that generate only NARM-containing hazardous waste that is not "mixed waste."

Although site treatment plans are not required for such waste streams or for a site that produces only wastes containing NARM or radionuclides other than source, special nuclear or byproduct materials, DOE intends to consider such wastes in its planning efforts to ensure there is adequate capacity to treat the wastes to applicable standards. In addition, some DOE facilities, such as Los Alamos National Laboratory, generate hazardous waste containing NARM as well as mixed waste. These wastes are managed in the same storage and treatment facilities and are essentially commingled. In such a case, the site treatment plan will generally include both types of waste.

Most of the sites in Table 1 are DOE-owned facilities, but some sites are included for other reasons. For example, the legislative history of the Act states that joint DOE and Department of Navy efforts conducted under E.O. 12344 (42 U.S.C. 7158) are also subject to requirements in the Act pertaining to mixed waste. Therefore, Naval Shipyards are included where mixed waste may be generated and stored from work supporting the nuclear propulsion plants of ships. The Table also includes sites which, while not DOE sites, conduct or have conducted activities under contract to DOE. As required by the contract, DOE will ultimately be responsible for mixed wastes generated as a result of the DOE-sponsored activities. General Atomics and Battelle Columbus Laboratories Decommissioning Project are examples of such sites. In addition, the Table includes sites in the Formerly Utilized Site Remedial Action Program (FUSRAP), where DOE is undertaking cleanup activity; these are the Colonie Interim Storage Site and the Middlesex Sampling Plant.

As illustrated by Table 1, DOE anticipates the plans will be submitted to the States, rather than EPA, for approval at most sites, since the majority of States have or soon will have authority under RCRA to regulate the hazardous components of mixed waste and authority under state law to prohibit land disposal of untreated mixed wastes. All of the plans for the DOE sites with significant amounts of mixed waste are located in States with the appropriate authorities to approve plans.

IV. General Principles Underlying the Process for Developing Site Treatment Plans

In developing this Notice, DOE has sought and received input on the schedule and other aspects of the plan development process from a number of States and from EPA in several forums. Many discussions have taken place at the site level. A number of DOE sites have held discussions with their State regulators to discuss DOE's proposed approach and the State's views and preferences on the process for preparing the plans, the schedules for submitting plans, and the interactions among the States, EPA, and DOE while the plans are being developed.

DOE has also received input from States, EPA and other interested parties on a national level. On December 3, 1992, DOE published a draft "Strategy for the Development of a National Compliance Plan (NCP) for DOE Mixed Waste" (57 FR 57170) for public comment, and also held a meeting with EPA and the States in December 1992 to discuss the NCP proposal. At that time, DOE proposed in the draft NCP Strategy to prepare an integrated national plan to ensure the development of adequate mixed waste treatment capacity throughout the DOE complex and establish schedules for bringing needed facilities into operation; DOE's proposed site treatment plans would have been developed in conjunction with and be based on the NCP. DOE will be publishing a summary of comments it received on the draft NCP strategy and a detailed response in the Federal Register in the near future.

Based on comments received, DOE has revised its approach from that described in the NCP Strategy. The process DOE intends to follow in developing the plans, and the schedule for submitting the plans, is intended to accommodate States' expressed preference to begin discussions on the plans as soon as possible in order to provide opportunity for early deliberation on technology, capacity, technology development and equity concerns. Specifically:

- The process accommodates the States' preference to begin discussions on the plans immediately, or as soon as practicable. The process will ensure that States and EPA are provided with information and opportunities for input throughout the development of the plans.
- The schedule provides time and opportunity for necessary discussions among States and DOE sites. Some States have expressed concerns that the distribution of DOE mixed waste treatment facilities must be equitable and have indicated they plan to discuss equity issues with other States, with support and involvement from EPA, the public, and DOE. The schedule provides time for these discussions to take place and allows the States and others to work from comparable information on all sites.
- The schedule reflects that some sites will need more time than others to identify treatment alternatives and prepare a plan for their LDR mixed wastes. For example, some sites with significant quantities of waste have already committed to constructing specific treatment facilities for many of their waste streams and have identified technology options for others. Other sites will need more time to identify appropriate treatment options. The schedule allows the sites to propose their plans as early in the process as they can and provides an opportunity to coordinate final plans with the final plans at other DOE sites.
- The schedule allows for discussions of technical and policy issues associated with the plans at both the site and the national level throughout the process. The goal is to resolve as many issues as possible before the final proposed plans are submitted to the States and EPA.
- The schedule also reflects the need to closely coordinate the site treatment plans with DOE's ongoing efforts to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (PEIS). The PEIS process will provide States, EPA, the public, and DOE with an

understanding of the environmental impacts of a wide range of strategic alternatives for configuration of DOE's treatment, storage, and disposal facilities nationwide.

• The schedule is designed with a goal of having all plans in place and orders issued by October 6, 1995.

V. Description of the Process and the Schedule

The development of site treatment plans will be a complex task involving all levels of the DOE organization, and a DOE site's submittal of information or a plan as discussed below reflects this involvement. DOE Field and Site Offices will have the lead role in developing the plans at each site and working with the regulatory agencies and the local public. DOE Headquarters will also be closely involved in the development of the plans and will coordinate among the sites and with the States and the public to ensure the plans are consistent with the needs, capabilities and requirements for the DOE complex.

A. Sites Will Begin Providing Information to Their States, or EPA, Early in the Process and Will Work With Their Regulators and the Public Throughout the Development of the Plans

In response to the preference expressed by several States, sites will meet as soon as possible with the regulatory agency that will be approving their plans to discuss general site information on waste streams, technologies, treatment facilities and other information in the Mixed Waste Inventory Reports. Each site will also define with the regulatory agency the nature and frequency of interactions among the DOE site, the regulatory agency, and others during the preparation of the plan. For example, some States may want frequent meetings with the site to keep abreast of progress and issues. Each site will work with its regulatory agency or agencies to establish a mechanism that reflects their needs and preferences.

In conjunction with the development of the plans, DOE would also like to work with the State or EPA to establish the provisions of the order for the site to be issued after the plan is approved. The order will provide the framework for implementing commitments in the plan and will define the responsibilities and relationship of the parties over the long term.

DOE also believes that the public should be informed and involved in the development of the site treatment plans. The Act requires the regulatory agency to provide for public participation during its review of the plan that DOE submits. The process DOE has developed, however, offers additional opportunities for involving the public and keeping them informed of progress and options being considered for treating mixed waste. DOE sites will work with the regulatory agency to develop a public involvement approach for each site.

B. DOE Sites Will Provide Site Treatment Plans in Three Phases During the Development Process: A "Conceptual Plan" by October 1993, a "Draft Plan" no Later Than August 1994, and a "Final Proposed Plan" no Later Than February 1995, Providing States, EPA, and Other Interested Parties With a Comparable Base of Information About Each Site's Waste, Technologies, Technology Development, and Treatment Options

Although the Act requires only that DOE submit a plan for review and approval, DOE intends to provide two interim versions of the plan to facilitate discussions between the site and the regulatory agency and among the States, EPA, and other interested parties on technical and equity issues. The interim plans will also facilitate information exchange among the sites and regulatory agencies and help identify common technical problems and needs. The interim plans will provide information about the technology needs, existing and planned treatment facilities, and treatment options, including potential options for treating off-site wastes, with each version containing increasingly complete and detailed information.

The interim plans will be provided to the regulatory agency that will be approving the final proposed plan for its review and will serve as a vehicle to receive State and EPA input and as a basis for considering national issues. Interim plans will also be available to other States or the public upon request.

These early plans afford an opportunity for significant discussions among the parties on equity issues based on the information provided in each version of the plan. The results of those discussions will be reflected in the ensuing plan.

DOE also intends to prepare summary documents of the conceptual, draft, and final plans to provide a national picture of DOE's technology needs and possible options for treatment of its mixed waste. The summaries will be provided to all States and made available to other interested parties.

C. Each DOE Site Will Prepare a "Conceptual Site Treatment Plan" by October 1993

The purpose of the conceptual plan is to provide as much information as possible on treatment technology needs and treatment capacity for each site's mixed waste. The conceptual plan will also provide a preliminary identification of options for treating the site's waste, which may include on-site, commercial, and off-site facilities, as well as potential barriers to an option, if known.

The detail and completeness of information provided in the conceptual plan are expected to vary significantly from site to site. At some sites, the information may be very limited; at other sites with identified existing or planned treatment capacity for many of their mixed wastes, the conceptual plan will contain more specific information. The intent of the conceptual plan, however, is to provide a starting point for discussion. Each site will provide the best information it can by October 1993. While sites will be providing some information to the regulatory agencies before the conceptual plan is prepared, the conceptual plan serves as a formal means of capturing the available information for all DOE sites at one point in time. The conceptual plans provide an early opportunity to see how the information from DOE's national inventory reports is translated into site-specific treatment approaches.

D. Each Site Will Submit a "Draft Site Treatment Plan" no Later Than August 1994

The draft site treatment plan will be a draft version of the plan required by the Act and will identify the current preferred option for treating each site's mixed wastes. The draft plan will identify specific treatment facilities for treating mixed wastes, including the location of the facilities, and will propose schedules as required by the Act. The proposals in the draft plan will reflect the results of discussions among States, EPA, DOE and others based on the conceptual plans.

While DOE commits to providing a draft plan for each site no later than August 1994, DOE intends that sites will provide their States or EPA with a draft plan as soon as they are able to do so. For example, a large site with planned treatment capacity for the majority of its wastes, such as a site operating under an existing LDR agreement, may be able to provide its draft plan earlier than August 1994 and may even be able to merge its conceptual and draft plans. A site with small quantities of wastes and few waste streams may also be able to

complete its draft plan earlier if, for example, it identifies a commercial facility that can accept its wastes.

E. Each DOE Site Will Submit the "Final Proposed Plan" Required by the Act no Later Than February 1995 to the Appropriate Agency for Review and Approval

It is DOE's intent in adopting a multi-stage process that the majority of technical, equity, and other issues will be satisfactorily addressed by the time the final proposed site treatment plan is submitted to the appropriate regulatory agency for review and approval. DOE also anticipates that discussions on the provisions of the order will have been completed or nearly completed. DOE believes, therefore, that submission of final plans by February 1995 will allow sufficient time for the regulatory agencies to review and approve the plans and issue orders to implement the plans by October 1995.

The February 1995 deadline does not preclude sites from submitting plans prior to that date. However, DOE believes it is important that any plan submitted earlier should not preclude full participation by the site and State in equity discussions or restrict possible future decisions to treat off-site waste.

F. Alternative Approach Considered

An alternative approach DOE considered was to have each site prepare only one site treatment plan for State or EPA approval on a staggered schedule over the next three years. Sites further along in identifying needed treatment technologies and facilities (generally some of the major DOE sites) would submit their plans earlier, while sites not as far along would submit their plans later. However, there are significant drawbacks to this approach.

If DOE sites were to submit their plans on a staggered schedule, the sites most likely to be ready to submit plans earlier in the process would be large DOE sites that already have existing mixed waste treatment facilities or commitments to construct facilities on site. Some other sites, particularly smaller sites, require more time to identify appropriate treatment technologies and related engineering requirements for their waste streams, and to identify and evaluate potential on-site and off-site treatment facility options. While DOE's national mixed waste inventory report provides a starting point, these sites need to conduct additional technical evaluations to identify appropriate technological approaches for their wastes before they can identify the specific capacity and schedules required by the Act.

If some DOE sites submit site treatment plans early in the process, which are then approved, other sites not as far along in the process and their host States will not have had adequate time to evaluate whether to approach those sites and their States concerning acceptance of their waste. Thus, sites submitting their plans early could commit to technologies and schedules without considering the need to accommodate off-site waste. For example, a treatment facility may require some modification in design or capacity in order to accept the other site's waste. Consequently, options to accept off-site waste may effectively be precluded without an adequate opportunity for all sites and States to participate equally in the planning process.

DOE believes it should evaluate the feasibility of regional and central treatment facilities, as allowed for in the Act, since it is not likely to be feasible to treat all wastes on-site at each of the 50 sites generating mixed waste. DOE recognizes, however, that States have equity concerns related to the potential siting of such facilities. A staggered schedule for submittal of plans would make it difficult for the States to discuss equity issues because the States would not have the necessary information on their sites at the same time.

In addition, a staggered approach makes it more difficult to identify common technology development needs among sites and to determine with regulators which DOE site or sites are best suited to undertake specific efforts on behalf of other sites. Since developing the necessary treatment technologies for mixed waste will be an expensive effort, DOE wants to minimize duplication of efforts and undertake the work in a cost-effective manner. The first DOE sites to submit treatment plans may not necessarily be the best sites to perform the technology development work for each mixed waste stream. However, it would be difficult for those sites to demonstrate to their regulators that another site can undertake the technology development work if the other site has not yet submitted its plan.

VI. Discussion of Special Circumstances

A. Sites With Existing RCRA LDR Agreements That Include the State

Section 3021(b)(1)(A)(ii) of RCRA, as amended by the Act, provides that a facility is not required to prepare a plan if it is subject to an existing agreement or order with a State which governs mixed waste treatment.

The Hanford Site is the only DOE site with such an agreement addressing the site's mixed waste inventory. (Other DOE sites have existing agreements with the States that address wastes resulting from environmental restoration activities, discussed in section VI.D of this Notice.) At the Hanford Site, DOE, EPA and the State of Washington have entered into a Tri-Party Agreement that contains requirements pertaining to mixed waste treatment. The May 17, 1989, Hanford Agreement was amended on September 24, 1990, to include LDR compliance. Under the agreement, the Hanford Site submitted an LDR Plan for Mixed Wastes and updates the LDR Plan annually.

DOE believes the Hanford Site is not required to submit a site treatment plan. DOE has discussed this issue with the State and EPA and has requested their confirmation that a plan is not required. The site received EPA concurrence with this view on March 18, 1993, and is awaiting a response from the State. If a plan is not required, the Hanford Site will work with other sites in developing their site plans and will participate in site and State discussions.

B. Sites With Existing RCRA LDR Agreements With EPA

DOE currently has four LDR agreements with EPA that require the development of treatment capacity for mixed waste:

- DOE has executed two LDR Agreements for mixed waste for the Rocky Flats Plant in Colorado to date. The first LDR Agreement, executed on September 19, 1989, among DOE, EPA and the State, was superseded by a second LDR agreement with EPA on May 10, 1991. Under the current Agreement, DOE submitted a Comprehensive Treatment and Management Plan (CTMP) in June 1992 to EPA for review and approval. The CTMP was also provided to the State for information.
- DOE executed a LDR Agreement with EPA for the Savannah River Site in South Carolina on March 13, 1991. The Agreement identifies specific treatment facilities with milestones for bringing those facilities on-line and requires submittal of a mixed waste treatment plan, updated semi-annually.
- DOE executed an LDR Agreement with EPA for the Oak Ridge Reservation in Tennessee on June 12, 1992. The Agreement requires a treatment plan for mixed wastes with identified existing treatment facilities, submitted on December 12, 1992; a treatment strategy for wastes without identified existing

treatment, submitted on March 12, 1993; and a treatment plan for wastes without identified existing treatment, to be submitted by March 12, 1995.

• The Paducah Gaseous Diffusion Plant in Kentucky executed an LDR Agreement with EPA on June 30, 1992. The Agreement is structured the same as the Oak Ridge Reservation agreement and includes milestones for a treatment plan for wastes with identified treatment submitted on December 30, 1992 and a treatment plan for wastes without identified treatment due on March 30, 1995.

Since these agreements do not include the States, these facilities are required to submit site treatment plans. Alternatively, the State could waive the plan requirement and develop an agreement and order with the site as provided for in section 3021(b)(5) of RCRA. In either case, to the extent possible, DOE intends that these sites follow the process outlined above in section V for submission of site treatment plans, or of equivalent products required under a new agreement with a State. There may, however, be some variation in the process or schedule to ensure compatibility with milestones in the existing agreements.

DOE's primary concern is that any commitments resulting from the submission and approval of the site treatment plan not conflict with commitments under existing agreements with EPA and that there ultimately be a transition of authority from EPA to the State when the plans are approved and the State issues an order. DOE will work with the States and EPA to address these concerns.

C. Sites With Small Quantities of Waste

DOE has identified 50 sites in 22 States that may generate or store mixed waste. The quantities of waste at each site, however, vary tremendously, with most mixed waste in the DOE complex located at a few sites. The Hanford Site has the largest quantity of waste of the DOE sites, with more than 200,000 m^3 of mixed waste in its inventory. Savannah River Site, with more than 100,000 m^3 in storage, has the second largest amount. By contrast, Grand Junction Project Office has 0.62 m^3 mixed waste in storage (less than three drum-equivalents) with 0.12 m^3 projected to be generated over the next five years; the Ames Laboratory in Iowa has 0.05 m^3 currently in storage and does not expect to generate any mixed waste from operations in the future because of its application of waste minimization techniques (additional mixed waste may be generated by future restoration activities at Ames).

The practical and cost-effective options for treating wastes are likely to be different at sites with very small amounts of mixed wastes than at large sites. In developing its plans for small sites, DOE will explore the feasibility of on-site treatment options such as bench scale units and mobile treatment units. Off-site options such as use of commercial facilities and shipping to another DOE facility with appropriate existing or planned technology will also be evaluated.

For sites with small quantities of mixed waste, the conceptual and draft plans will identify the type of treatment required and the treatment options. If treatment at another DOE facility is ultimately proposed as DOE's preferred option after consideration of equity issues, the final proposed plan would identify the site and facility or facilities where the waste will be sent, while the plan for the site receiving the waste would ensure the capacity and design of its treatment facility was adequate to accommodate the site's mixed waste.

D. Environmental Restoration Sites

Table 1 includes environmental restoration sites that currently generate or are expected to generate mixed waste within the next five years. In some cases, such as the Savannah River Site, restoration activities comprise a portion of the waste generation activity at the site. In others, such as Colonie Interim Storage Site, a FUSRAP site, the entire site is undergoing restoration, and all the waste generated results from restoration activities.

Most restoration activities are being carried out pursuant to enforceable agreements or orders. These include Interagency Agreements (IAG) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) with the State, EPA, or with both; corrective action permits under section 3004(u) of RCRA, or orders under 3008(h) of RCRA with the State or EPA. At some sites, a combination of RCRA, CERCLA, and State authorities are used to direct the cleanup.

Such restoration agreements establish a process and schedule for investigating the site, evaluating potential remedial actions, and selecting and implementing the remedial action. Decisions are documented in a Record of Decision (ROD) under the CERCLA process, or in equivalent documents under other authorities. The process involves regulators, as well as the public.

In many ways, the information to be provided in a plan under the Act duplicates the information that a site must develop under a CERCLA IAG or comparable agreement. If a separate site treatment plan is prepared, it is critical that it be consistent with the time frames in the agreement and reflect, rather than replace, the decisions established through the restoration process.

Each site will work with its State and with EPA to develop an approach that is appropriate for the restoration activities at the site and ensures compliance with the Act and with restoration authorities.

Issued in Washington, DC, on April 1, 1993.

Paul D. Grimm,

Acting Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–8042 Filed 4–5–93; 8:45 am]

BILLING CODE 6450–01–P

[Docket EA–94–A]

Issuance of Amended Electricity Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy,

ACTION: Notice of issuance.

SUMMARY: The Office of Fossil Energy has issued an amended electricity export authorization to Central Power and Light Company.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Lise Howe (Program Attorney) at 202–586–2900.

SUPPLEMENTARY INFORMATION: On March 30, 1993, the Office of Fossil Energy (FE) issued an amended electricity export authorization to Central Power and Light Company (CPL) to transmit electric energy to Mexico over five interconnections.

In considering this application the DOE reviewed the environmental impacts associated with the proposed export and determined that this action was eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Guidelines implementing the National Environmental Policy Act of 1969 (NEPA). FE also determined that the export of electric energy to Mexico as requested by CPL, and conditioned in the ordering language, would not

adversely impact the reliability of the U.S. electric power supply system.

A copy of the export authorization is available for public inspection and copying at the Department of Energy, Room 3F–090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued in Washington, DC, on March 30, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7959 Filed 4–5–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. EA–65 and EA–66–A]

Electricity Export Authorization; Application and Issuance of Temporary Order

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application and issuance of temporary order.

SUMMARY: Citizens Utilities has requested an electricity export authorization in order to assist Hydro-Quebec during a planned temporary outage of Hydro-Quebec's Stanstead substation during September 1993. In addition, on March 31, 1993, the DOE issued a temporary order authorizing Citizens to export electric energy to Hydro-Quebec during a brief test of the facilities to be used on or about April 18, 1993.

DATES: Comments, protests or requests to intervene must be submitted on or before May 6, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Lise Howe (Program Attorney) 202–586–2900.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

Citizens Utilities (Citizens) was issued a Presidential permit, pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to construct, connect, operate, and maintain a 10,000 volt electric transmission facility at the United States-Canada border near Derby Line, Vermont. This electric transmission facility was constructed in order to import into the United States electric energy from Hydro-Quebec to supply Citizens' service area in Vermont.

On March 24, 1993, Hydro-Quebec informed Citizens that it plans to install two capacitor banks at its Stanstead substation which will cause an interruption of service to Canadian customers served by the substation for approximately eight days during September 1993. Hydro-Quebec further requested that Citizens assist it by supplying electricity to these Canadian customers during the interruption. On March 31, 1993, Citizens filed an application with the Department of Energy (DOE), pursuant to section 202(e) of the Federal Power Act, to export electric energy to Hydro-Quebec to satisfy the Hydro-Quebec request.

Citizens further requested immediate permission to perform a test back-feed of up to 18 megawatts (MW) for approximately one hour during the week of April 18, 1993, to assure Hydro-Quebec that the proposed export of electric power to supply the Stanstead load is technically feasible. On March 31, 1993, in Docket EA–66, the Deputy Assistant Secretary for Fuels Programs issued a temporary order providing for testing use of these facilities in the export mode for a period not to exceed 90 minutes on or about April 18, 1993.

The request for comments in Docket EA–66–A is for the application by Citizens Utilities for use of these same facilities for export of electric energy during the planned outage in September 1993.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Eileen G. Richard, Citizens Utilities, High Ridge Park, Stamford, CT 06905.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, March 31, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–7962 Filed 4–5–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG93–34–000]

Clearfield Partners, L.P.; Correction to Notice of Application

March 31, 1993.

The caption in this proceeding, as shown on the Notice issued on March 25, 1993, (58 FR 16819, March 31, 1993), should be "Clearfield Partners, L.P.," and not "Diamond Energy, Inc." The notice correctly stated that Diamond Energy, Inc. was filing on behalf of its to-be-formed subsidiary, Clearfield Partners, L.P. which is the Applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7916 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of February 15 Through February 19, 1993

During the week of February 15 through February 19, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

James J. Laventon, 2/19/93, LFA–0267

On January 25, 1992, James J. Laventon filed an Appeal from a determination issued to him on January 14, 1993, by the Acting Director of the Information & Administrative Services Division (Acting Director) of the Strategic Petroleum Reserve Project Management Office of the Department of Energy (DOE). In that determination, the Acting Director denied Mr. Laventon's request for information pursuant to the Freedom of Information Act (FOIA). Specifically, the Acting Director stated that the DOE did not have a copy of the contract responsive to Mr. Laventon's request. In considering the Appeal, the DOE confirmed that the Acting Director following procedures which were reasonably calculated to uncover the requested contract and that it was destroyed on June 10, 1992 pursuant to the DOE's Records Inventory Disposition Schedule. Accordingly, the DOE denied Mr. Laventon's request.

Milton L. Loeb, 2/17/93, LFA–0265

Milton L. Loeb filed an Appeal from a denial by the Albuquerque Field Office of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Mr. Loeb challenged Albuquerque's withholding of the computer source code of software developed by a contractor for the DOE, and its failure to address other portions of his request. The DOE determined that the requested source code was not an agency record, and ordered the Field Office to issue a supplemental determination with respect to the requested material not yet considered. Accordingly, the Appeal was granted in part and denied in part.

Request for Exception

Pioneer International, Inc., 2/16/93, LEE–0036

Pioneer International, Inc., filed a Statement of Objections to the Proposed Decision and Order (PDO) issued on December 17, 1992 tentatively denying exception relief from the requirement that the firm file the Energy Information Administration (EIA) Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the Statement of Objections, the DOE rejected the firm's objections to the PDO and found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. The DOE also determined that the firm did not have "clear hands" because it had failed to file the form. Accordingly, the DOE issued a Final Decision and Order determining that the exception request should be denied.

Refund Applications

Atlantic Richfield Company/Westfield Arco, 2/19/93, RR304–55

The DOE issued a Decision and Order denying two Applications for Refund in the Atlantic Richfield Company Subpart V special refund proceeding on behalf of Westfield ARCO and its owner, Mr. Steven P. Stawinski, Jr. (Case Nos. RF304–3953 and RF304–13252). In each submission, Mr. Stawinski had certified that neither he, nor any representative, had ever filed any other Applications in the ARCO proceeding. Because of these misrepresentations the DOE denied the two remaining Westfield ARCO Applications, with prejudice to a refiling. His brother, Ron Stawinski, had been a 50 percent partner in the Westfield outlet and, totally unaware of the previous submissions, had signed only the last Application. The DOE determined that Mr. Ron Stawinski was indeed eligible to seek a refund in the ARCO proceeding, and subsequently granted him a refund based on 50 percent of the purchases of ARCO refined product made by Westfield ARCO.

Shell Oil Company/Chala Enterprises, Inc., 2/16/93, RF315–7847, RF315–10215, RF315–10276, RF315–10277

This Decision and Order considered the four Applications for Refund filed separately on behalf of Chala Enterprises, Inc. by four brothers: Salvadore, H. George, Raymond, and Richard Chala. These men were the sole stockholders of Chala Enterprises, Inc., which was dissolved after the refund period ended. Because each brother owned a 25% interest in the firm, each brother received a refund based on 25% of the total gallonage. Moreover, the firm was involved in a Chapter 7 bankruptcy proceeding when it was doing business during the refund period under the name St. George Oil Corporation. The Chala brothers submitted a copy of the bankruptcy order that approved the account, discharged the Trustee, and closed the estate. Because the estate is closed and unable to receive any additional assets, the right to the refund reverts back to the shareholders of the corporation. Therefore, the four Chala brothers are the proper recipients of the present refund. Accordingly, each brother received a refund of $1,847 ($1,250 in principal and $597 in interest).

Texaco Inc./Bay Service Station, 2/18/93, RR321–122

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Bay Service Station (Bay) in the Texaco Inc. special refund proceeding. In *Texaco Inc./Don Wolfe's Texaco (Don Wolfe's)*, Kei Nakamura, the owner of Bay, was granted a principal refund of $3,638 based on 3,594,745 gallons of Texaco motor gasoline purchases. Because Coast Oil Company, a reseller of petroleum product and Bay's supplier, purchased only 92 percent of its motor gasoline from Texaco, the volumetric amount used to compute Bay's refund was reduced by eight percent. In the Motion for Reconsideration, the DOE found that Coast maintained separate inventory accounting and that the prices it charged Bay were based solely on the cost of Texaco product, and concluded that Mr. Nakamura should receive a refund based on the difference between Bay' full allocable share and the principal refund he was granted in *Don Wolfe's*. Consequently, Mr. Nakamura will receive an additional refund $426 ($319 principal plus $110 interest).

Texaco Inc./J.B. Parker, Dist., 2/19/93, RF321–19609

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application for Refund that was filed in the Texaco refund proceeding by J.B. Parker (Case No. RF321–5790). In the Decision, the OHA modified a prior Decision approving that Application and rescinded in part the refund that was granted to Mr. Parker. That refund was based upon the premise that Mr. Parker owned and operated his distributorship during the entire period from March 1973 through December 1980. Subsequently, the OHA learned that another applicant has filed a refund application for purchases made by this distributorship after January 1, 1979, and Mr. Parker admitted that he sold the distributorship effective on that date. Consequently, the OHA determined that Mr. Parker was not entitled to a refund

for purchases made by the distributorship after January 1, 1979 and required him to remit $1,323 to the DOE.

Texaco Inc./Oakwood Oil Company, Inc., 2/18/93, RF321–17021

The DOE issued a Decision and Order concerning an Application for Refund filed by Oakwood Oil Co., Inc. (Oakwood) in the Texaco Inc. Subpart V special refund proceeding. This applicant sought a refund equal to its full allocable share based on its purchases of Texaco motor gasoline. In support of its claim of injury above the medium-range presumption level, the firm submitted information showing the status of its cumulative banked gasoline costs at the end of the "banking" regulation period and a competitive disadvantage analysis for its purchases of regular and premium gasoline from Texas. Oakwood did not, however, submit separate purchase volume figures for regular and premium gasoline in its competitive disadvantage analysis. Therefore, in each analysis all gallons of motor gasoline purchased from Texaco were utilized. Since both analyses showed strongly positive results, no attempt at apportioning purchases between the grades was undertaken. The total refund amount granted in this decision was $93,793 ($69,807 principal and $23,986 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Astroline Corporation	RR304–51	02/19/93
Atlantic Richfield Company/Franko Oil Company	RF304–12702	02/17/93
Atlantic Richfield Company/Grafton ARCO *et al*	RF304–13553	02/19/93
City of Okolona *et al*	RF272–82840	02/17/93
Clark Oil & Refining Corp./Jerome Schram Super 100 *et al*	RF342–256	02/19/93
Duarte Unified School District *et al*	RF272–83623	02/16/93
Gulf Oil Corporation/McKenzie Construction Co. *et al*	RF300–18789	02/19/93
Gulf Oil Corporation/State of Louisiana	RF300–20309	02/17/93
Gulf Oil Corporation/William L. Brown Ranch *et al*	RF300–18536	02/16/93
Rocky River Gulf Engel Fuel Service, Inc	RF272–82528, RF272–82722	02/17/93
Rosemont Elementary School District 78 *et al*	RF272–79255	02/17/93
Shell Oil Company/Tilghman's Shell #1 *et al*	RF315–7640	02/17/93
St. Johnsville Central School	RF272–81766	02/17/93
Texaco Inc./Better Stop Texaco *et al*	RF321–59	02/17/93
Texaco Inc./Bill's Texaco *et al*	RF321–16517	02/18/93
Texaco Inc./Bob's Service Station *et al*	RF321–5	02/17/93
Texaco Inc./Shaw & 99 Texaco	RF321–19608	02/18/93
Texaco Inc./Tony's Texaco *et al*	RF321–1818	02/18/93
Transportation Lease Corp	RF272–89301	02/16/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Appelhans Oil Co	RF300–15172
Arthur L. Cooley	RD272–26039
Central Petroleum	RF300–18359
City of Holly Hill	RF272–88057
City of Manborough	RF272–88044
City of West Richland	RF272–88026
City of Wiggins	RF272–88019
East Tennessee Gulf	RF300–14295
G.M.C. Delco Remy Division.	RD272–24129
Jack Moreno Gulf	RF300–14237
Joe's Service Center	RF300–14293
Lockesburg School District	RF272–83626
Machise Interstate Trans. Company, Inc.	RF300–14278
Murray's Gulf	RF300–13426
Nixon's Gulf, Inc	RF300–18518
Rachles Gasoline Co	RF300–15166
Salado Texaco Truck Stop	RF321–18347
Shamrock Shell II	RF315–7598
Sioux Valley Coop	RF304–13491
South Greene Market	RF300–16131
Swansea Oil Co., Inc	RF300–15167
Town of Westborough	RF272–88025
Township of Maple Shade	RF272–88046
Township of Warren	RF272–88032
Whitman-Hanson School District.	RF272–88051
Yosemite Union High	RF272–88049

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 31, 1993.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 93–7960 Filed 4–5–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. CP93–275–000]

Alabama-Tennessee Natural Gas Co.; Request Under Blanket Authorization

March 30, 1993.

Take notice that on March 26, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP93–275–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap to Minnesota Mining and Manufacturing Company (3M) under Alabama-Tennessee's blanket certificate issued in Docket No. CP85–359–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Alabama-Tennessee asserts that 3M is an end user of natural gas presently served indirectly by Alabama-Tennessee through the municipally owned

facilities of the City of Decatur, Alabama.

Alabama-Tennessee states that it proposes to add a sales tap on its system in Morgan County, Alabama in order to provide direct natural gas transportation deliveries to 3M. Alabama-Tennessee further states that it would deliver up to 4,500 dekatherms of natural gas per day to 3M.

Alabama-Tennessee asserts that the proposed service will have no impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7971 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

[Docket No. TQ93–4–21–000]

March 31, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 29, 1993, tendered for filing the following proposed changes in its FERC Gas Tariff, First Revised Volume No. 1:

April 1, 1993

1st Revised Thirty-fourth Revised Sheet No. 26
1st Revised Twenty-seventh Revised Sheet No. 26.1
1st Revised Thirty-second Revised Sheet No. 26A
1st Revised Twenty-seventh Revised Sheet No. 26A.1
1st Revised Twenty-second Revised Sheet No. 26B.1
1st Revised Sixteenth Revised Sheet No. 26C.1
1st Revised Twenty-third Revised Sheet No. 26D
1st Revised Thirtieth Revised Sheet No. 163

Columbia states the sales rates set forth on 1st Revised Twenty-seventh Revised Sheet No. 26.1 reflect an increase on 40.36¢ per Dth in the commodity rate when compared with the total CDS rates reflected in its last PGA filing which was filed on February 26, 1993 and became effective on March 1, 1993. In addition, the transportation rates set forth on 1st Revised Sixteenth Revised Sheet No. 26C.1 and 1st Revised Twenty-Third Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.97¢ per Dth.

Columbia states that copies of the filing is being mailed to Columbia's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7980 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–271–000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

March 31, 1993.

Take notice that on March 25, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP93–271–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authority under its blanket certificate issued in Docket No. CP82–435–000, to operate certain delivery taps originally installed and used for Section 311(a), subpart B transportation, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso indicates that these six delivery taps, i.e.,

Sedona Meter Station, Yavapai County, Arizona;
Chino Valley Meter Station, Yavapai County, Arizona;
Loma Linda Tap, Greenlee County, Arizona;
H & H Seed Company Tap, Yuma County, Arizona;
Golden Shores Meter Station, Mohave County, Arizona;
and Foothills Meter Station, Yuma County, Arizona.

were initially installed to provide section 311 transportation service to certain LDCs connected to El Paso's system. El Paso now requests NGA authorization to operate the six delivery taps in order to provide the LDCs and their customers greater flexibility in the selection of transportation services, and the shippers that are ineligible for Subpart B transportation service access to additional delivery points on El Paso's system.

El Paso contends that it has sufficient capacity to meet the existing contractual obligations of its other customers plus the additional volumes which would be requested due to NGA certification of the six delivery taps.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7973 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–465–000]

Florida Power & Light Co.; Filing

March 31, 1993.

Take notice that on March 19, 1993, Florida Power & Light Company (FPL) tendered for filing the following rate schedules: (i) Transmission Service Tariff Nos. 1, 2 and 3; (ii) amendments to each of FPL's Agreements to Provide Specified Transmission Service; (iii) an amendment to the Agreement to Provide Coordination Transmission Service and Additional Transmission Service Between FPL and the Utility Board of the City of Key West, Florida; (iv) a revised Wholesale Electric Service Tariff

for partial requirements and full requirements service; (v) revised Attachments A and B to the Aggregate Billing Partial Requirements Service Agreement Between FPL and Seminole Electric Cooperative, Inc. ABPRSA); and (vi) amendments to the Service Schedules in each of FPL's interchange contracts.

When effective, FPL's three transmission tariffs will make transmission service available over FPL's transmission system to eligible entities. FPL's Tariff No. 1 makes available long-term firm transmission service, FPL's Transmission Tariff No. 2 makes available short-term firm transmission service, and FPL's Transmission Tariff No. 3 makes available non-firm transmission service.

In coordination with the filing of FPL's transmission tariffs, FPL has filed amendments to its Agreements to Provide Specified Transmission Service to other utilities in the State of Florida. Under the amendments, the existing rates, terms and conditions applicable to service provided under Schedules TA, TB, TC, TD, TF, and TX in the Specified Transmission Service Agreements will be superseded by those in Transmission Tariff Nos. 2 and/or 3. The amendments also revise the charges applicable to the provision of service under Schedule TO to the Agreement to Provide Specified Transmission Service between FPL and the Florida Municipal Power Agency. FPL has also filed an amendment to the Agreement to Provide Coordination Transmission Service and Additional Transmission Service between FPL and the Utility Board of the City of Key West, Florida, under which the existing rates, terms and conditions applicable to service provided under the agreement will be superseded by those in Transmission Tariff Nos. 2 and 3.

FPL has filed a revised Wholesale Electric Service Tariff that, when effective, will supersede FPL's existing Wholesale Electric Service Tariff. Under this tariff, FPL will make available to eligible entities partial requirements and full requirements wholesale electric service.

In coordination with its filing of a revised Wholesale Electric Service Tariff, FPL has filed revisions to the rates, terms and conditions in the ABPRSA. Third Revised Attachment A to the ABPRSA contains similar formula rates and other terms relating to charges for service as are contained in FPL's revised Wholesale Electric Service Tariff. Revised Attachment B to the ABRPSA contains terms and conditions of service similar to the General Terms and Conditions of service in FPL's revised Wholesale Electric Service Tariff.

FPL also filed amendments to its interchange contracts with other utilities in the State of Florida and with the Southern Companies. The amendments modify the rates, terms and conditions in the interchange contract service schedules by substituting Service Schedules AF, BF, CF, DF, and XF for Service Schedules A, B, C, D, and X with respect to sales by FPL and by substituting revised Service Schedules A–S and BS.

FPL states that the filing is in accordance with Section 35 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7970 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff and Withdrawal of Proposed Tariff Sheets

[Docket Nos. RP89–186–055; RP90–20–000]

March 31, 1993

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on March 25, 1993, tendered to the Federal Energy Regulatory Commission ("Commission") for filing as part of its FERC Gas Tariff, Original Volume Nos. 2 and 3, the following amended tariff sheets, to become effective on April 1, 1993:

Primary Tariff Sheets

Original Volume No. 2:

Substitute Nineteenth Revised Sheet No. 77
Subetitute Fifteenth Revised Sheet No. 151

Original Volume No. 3:

Eighth Revised Sheet No. 2
Ninth Revised Sheet No. 3

Alternate Tariff Sheets

Original Volume No. 2:

Substitute Alternate Nineteenth Revised Sheet No. 77
Substitute Alternate Fifteenth Revised Sheet No. 151

Original Volume No. 3:

Alt. Eighth Revised Sheet No. 2
Alt. Ninth Revised Sheet No. 3

Great Lakes states that the purpose of its filing is to amend certain of its tariff sheets filed to comply with Opinion Nos. 368, Great Lakes Gas Transmission Limited Partnership, "Opinion and Order Affirming in Part and Reversing in Part Initial Decision" 57 FERC ¶ 61, 141 (1991), and 368–A, Great Lakes Gas Transmission Limited Partnership, "Opinion and Order Denying Rehearing" Docket Nos. RP89–186–008, *et al.* (issued February 3, 1993) to (1) reflect pagination changes necessitated by its March 23, 1993 supplement to its compliance filing implementing the partial settlement in Docket Nos. RP91–143–000, *et al.*, and (2) amend certain previously approved tariff sheets to reflect the proper combination of settlement base tariff rates and ACA and CRI surcharges, necessitated by the settlement approved in Docket No. RP91–143–000, *et al.*

Great Lakes states that except for the pagination revisions, the proposed tariff sheets reflect no changes from its original and amended compliance tariff filings. Great Lakes requested waiver of the Commission's Regulations to the extent necessary to permit the amended tariff sheets to go into effect on the April 1, 1993 date proposed.

In addition, Great Lakes provided notice that it is withdrawing the following tariff sheets from its March 9, 1993 filing:

Primary Tariff Sheets

Original Volume No. 3:

Sixth Revised Sheet No. 2
Seventh Revised Sheet No. 3

Alternate Tariff Sheets

Original Volume No. 3:

Alt. Sixth Revised Sheet No. 2
Alt. Seventh Revised Sheet No. 3

Great Lakes further states that it is tendering the proposed tariff sheets without prejudice to: (1) Its position, on appeal, that its system rates should be designed on a rolled-in basis; (2) its position as to the implementation of incremental ratemaking on the Great Lakes' system in the litigation phase of Docket No. RP91–143–000; and (3) Great Lakes' position in its restructuring

proceedings in Docket No. RS92–63–000.

Great Lakes states that copies of this filing were posted and served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7979 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–277–000]

K N Energy, Inc.; Request Under Blanket Authorization

March 31, 1993.

Take notice that on March 29, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP93–277–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate six sales taps for the delivery of natural gas for end users, under the blanket certificate issued in Docket No. CP83–140–000, as amended, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that by order issued November 23, 1984, in Docket No. CP83–140–002, the Commission amended K N's blanket certificate issued pursuant to subpart F of part 157 of the Commission's Regulations to allow K N to use the prior notice procedure in connection with requests to construct and operate on-system sales taps for new or existing direct retail customers to the extent allowed under K N's tariff provisions concerning limitations on deliveries and thereby waived § 157.211(b)(2) of the regulations as to such requests. In this request, K N proposes to construct and operate sales taps to various end users located along its jurisdictional pipelines. Details of each retail sale is shown on the attached appendix.

K N states that the natural gas delivered through these taps would ultimately be consumed by end users served directly from K N's general system supply. It is indicated that the proposed sales taps are not prohibited by any of K N's existing tariffs, and the additions of the new sales taps would have no significant impact on K N's peak day and annual deliveries. It is also indicated that the gas would be priced in accordance with the currently filed rate schedules authorized by the applicable state and local regulatory bodies having jurisdiction over the sales. K N also states that each customer would reimburse K N for a portion of the facility costs through imposition of a connection charge of $400.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7974 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–4–004]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 31, 1993.

Take notice that on March 29, 1993, Mississippi River Transmission Corporation ("MRT"), 9900 Clayton Road, St. Louis, MO 63124 moved into effect certain rates and revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 1–A of its FERC Gas Tariff.

MRT states that the tariff sheets reflected on Appendix A to the filing are to become effective April 1, 1993, pursuant to the Commission's October 30, 1992 and January 21, 1993 orders in the above-referenced docket. MRT states that a copy of its motion and the accompanying tariff sheets has been served on all jurisdictional customers and interested state commissions and all persons on the Commission's official service list in Docket No. RP93–4–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7977 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–68–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 31, 1993.

Take notice that Northern Natural Gas Company (Northern), on March 29, 1993, tendered for filing to become part of Northern's FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, proposed to be effective April 1, 1993:

Second Revised Sheet No. 244

The above sheet reflects a proposed change in Northern's Receipt Point Scheduling Penalty parameters that include under normal conditions the penalty would be determined at a contract level rather than at each point of receipt.

Northern states that copies of the filing have been mailed to all of Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. In accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or

protests must be filed on or before April 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7976 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA93–1–59–001]

Northern Natural Gas Co.; Filing

March 31, 1993.

Take notice that Northern Natural Gas Company (Northern) on March 29, 1993, filed with the Federal Regulatory Energy Commission (Commission) its compliance with the February 25, 1993 Order Accepting Filing for Informational Purposes.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–7978 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–274–000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

March 31, 1993.

Take notice that on March 26, 1993, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP93–274–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18. CFR 157.205) for authorization to construct and operate a sales tap for the delivery of natural gas to Entex, Inc. (Entex) in Pike County, Mississippi, under United's blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate the tap for service to Entex, a jurisdictional sales customer, for resale to one agricultural customer, under United's Rate Schedule DG. It is stated that United will use the tap for the delivery of volumes up to 2,353 MMBtu equivalent of natural gas per day. It is asserted that these deliveries would be within Entex's currently authorized entitlement from United. It is estimated that the cost of installing the tap is $1,500. It is explained that United has sufficient capacity to render the proposed deliveries without detriment or disadvantage to its other existing customers. It is asserted that United's tariff dies not prohibit the addition of a sales tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protect is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 93–7972 Filed 4–5–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $32,500, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a Remedial Order issued to Starks Shell Service, Case No. LEF–0034. The OHA has determined that the funds obtained from Starks, plus accrued interest, will be distributed to those injured as a result of Starks' violation of Federal petroleum price regulations.

DATE AND ADDRESS: Applications for Refund must be filed in duplicate, addressed to "Starks Special Refund Proceeding," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Applications should display a prominent reference to case number "LEF–0034" and be postmarked by September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $32,500, plus accrued interest, remitted to the DOE pursuant to an August 22, 1984 Remedial Order issued to Starks Shell Service. The Remedial Order found that, during the period April 1, 1980 through January 28, 1981, Starks sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute these funds in two stages. In the first stage, we will accept claims from those injured as a result of Starks' overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. A claimant who meets these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Starks during the period April 1, 1980 through January 28, 1981, and the degree to which they can demonstrate injury.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked by September 30, 1993. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this

notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 25, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Starks Shell Service
Date of Filing: June 7, 1991
Case Number: LEF–0034

On June 7, 1991, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Starks Shell Service (Starks) remitted to the DOE pursuant to an August 22, 1984 Remedial Order. Starks has remitted $32,500 pursuant to the order, to which $2,060 in interest has accrued as of December 31, 1992. In accordance with the provisions of the procedural regulations of 10 CFR part 205, subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order establishes the procedures which OHA will employ to distribute these funds.

I. Background

During the period relevant to this proceeding, Starks operated two Shell-branded retail service stations located in Seaside, California. The ERA issued two Proposed Remedial Orders (PROs) to Starks on May 29, 1981. The PROs alleged that, during the period April 1, 1980 through January 28, 1981, Starks sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. After considering the firm's objections to the PROs, the DOE amended the PROs and issued a final Remedial Order on August 22, 1984. Starks Shell Service, 12 DOE ¶ 83,015 (1984). On September 24, 1984, Starks notified the DOE that it intended to appeal the Remedial Order to the Federal Energy Regulatory Commission (FERC). On May 6, 1985, after Starks failed to go forward on appeal, Starks' notice of intent to appeal was dismissed by the FERC. Starks Shell Service, No. RO65–1–000 (May 6, 1985) (order terminating proceeding for lack of prosecution). Starks has since remitted $32,500 to the DOE, in compliance with the Remedial Order, to which $2,060 in interest has since accrued as of December 31, 1992, making available a total of $34,560 (the Starks Remedial Order fund) for distribution through subpart V.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 et seq., Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Starks Remedial Order fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. Refund Procedures

On November 30, 1992, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Starks Remedial Order fund. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 57 FR 57448 (December 4, 1992). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Starks Remedial Order fund.

Consequently, the procedures will be adopted as proposed, with the exception of certain injury presumptions originally proposed that we have determined will not be required in this proceeding. In particular, because Starks was a retailer of motor gasoline, we expect that the group of potential applicants will be limited to: (i) Ultimate consumers ("end-users") of gasoline sold by Starks or (ii) regulated entities, such as public utilities, and cooperatives. Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers. However, if a refiner, reseller, or retailer should file an application in the Starks refund proceeding, we may utilize the appropriate presumptions, which are set forth in detail in the Proposed Decision and Order.

A. First Stage Refund Procedures

We will implement a two-stage refund procedure for distribution of the Starks Remedial Order fund by which purchasers of gasoline from Starks during the period covered by the Remedial Order may submit Applications for Refund in the initial stage. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from Starks during the period covered by the Remedial Order.

Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g.*, Marathon Petroleum Co., 14 DOE ¶85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the allocable subpart V regulations at 10 CFR 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally in all of Starks' sales of gasoline during the period covered by the Remedial Order. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[1] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the

[1] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Starks' overcharges. See, *e.g.*, Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co., 20 DOE ¶85,788 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

Remedial Order fund is equal to the number of gallons purchased from Starks during the period covered by the Remedial Order times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0581. We derived this figure by dividing the amount of the Remedial Order fund, $32,500, by 559,231 gallons, the volume of gasoline which Starks sold from April 1, 1980 through January 28, 1981. A firm that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[2]

In addition to the volumetric presumption, we will also adopt the following presumptions regarding injury for end-users, regulated firms, and cooperatives.

2. End-Users

In accordance with prior subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from Starks whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, *e.g.*, Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (TOGCO). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Accordingly, end-users of gasoline purchased from Starks need only document their purchase volumes from Starks during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

3. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *e.g.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member-purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See Marathon, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[3]

B. Refund Application Requirements

To apply for a refund from the Starks Remedial Order fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[4] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) The applicant's use of gasoline purchased from Starks: *e.g.*, consumer (end-user), cooperative, or public utility;

(3) A monthly purchase schedule covering the period April 1, 1980 through January 28, 1981. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(5) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Starks refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(6) If the applicant is or was in any way affiliated with Starks, it should explain this affiliation, including the time period in which it was affiliated;[5]

(7) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the

[2] As in previous cases, we will establish a minimum refund amount of $15. In this proceeding, any potential claimant purchasing less than 258 gallons of gasoline from Starks would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See Exxon Corp., 17 DOE ¶85,590, at 89,150 (1988) (Exxon).

[3] A cooperative's purchases of gasoline from Starks which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See Total Petroleum Inc./Farmers Petroleum Cooperative, Inc., 19 DOE ¶ 85,215 (1989).

[4] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[5] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of Starks were not injured by Starks' overcharges. See, *e.g.*, Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is so because Starks presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,811 (1987), *amended claim denied*, 17 DOE ¶ 85,291 (1988), *reconsideration denied*, 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate of Starks was granted a refund, Starks would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

type of sale (e.g., sale of corporate stock, sale of company assets);

(8) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(9) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Starks Special Refund Proceeding, Case No. LEF–0034." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than September 30, 1993, and sent to: Starks Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

In addition, we will adopt the following procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Each such filing service shall, contemporaneously with its first filing in the Starks proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[6] This statement should contain the following information:[7]

A description of the procedures used to solicit refund applications in the Starks proceeding and copies of any solicitation materials mailed to prospective Starks applicants;

(2) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(3) A description of how the filing service obtains and verifies the information contained in refund applications;

(4) A description of the procedures used to forward refunds to its clients;

(5) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order in this proceeding, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Starks proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourthly, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HG–13, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Finally, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in this proceeding.

C. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Starks Remedial order fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted by Starks Shell Service pursuant to the Remedial Order dated August 24, 1984 may now be filed.

(2) Applications for Refund must be postmarked no later than September 30, 1993.

Dated: March 25, 1993.

George B. Breznay

Director, Office of Hearings and Appeals

[FR Doc. 93–7961 Filed 4–5–93; 8:45 am]

BILLING CODE 6450–01–M

[6] This statement should be submitted under separate cover and reference the Starks refund proceeding, Case No. LEF–0034.

[7] This information with regard to some filing services has already been requested and received by this Office. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of the Proposed Decision and Order in this proceeding (November 30, 1992) need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (1)–(5) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that may have been made.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4609-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air Radiation

Title: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (EPA ICR No. 116.04; OMB No. 2060-0060). This ICR requests renewal of the existing clearance.

Abstract: Automotive aftermarket part manufacturers must submit an application for certification that includes testing, reporting, and keeping records of their parts' emission performance and durability. The manufacturers must demonstrate to EPA which parts are certified and for which vehicle they are certified. The Agency needs the information to verify compliance with Federal emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 381 hours per response, including time for reviewing instructions, searching existing data sources, testing, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle, aftermarket part manufacturers.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden on Respondents: 3,048.

Frequency of Collection: As part is certified.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20530.

Dated: March 26, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-7985 Filed 4-5-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4610-4]

Public Water System Supervision Program Revision for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of North Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. North Dakota's PWSS program, administered by the North Dakota Division of Municipal Facilities, has adopted regulations for filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, Legionella, heterotrophic bacteria and public notice that correspond to the NPDWR for filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, Legionella, heterotrophic bacteria and public notice promulgated by EPA on June 29, 1989 (54 FR 27486-27541) and October 28, 1987 (52 FR 41534-41550). The Environmental Protection Agency (EPA) has completed its review of North Dakota's primacy revisions and has determined that they are no less stringent. EPA therefore approves North Dakota's primacy revisions. This determination shall become effective May 6, 1993.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before May 6, 1993. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Jack W. McGraw, Acting Regional Administrator, c/o Bob Clement (8WM-DW), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of North Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of North Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on May 6, 1993. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Drinking Water Branch, 999 18th Street (4th floor), Denver, Colorado; (2) North Dakota State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502-5520.

FOR FURTHER INFORMATION CONTACT: Bob Clement, Drinking Water Branch, EPA

Region VIII 8WM–DW, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1259.

Dated: March 26, 1993.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 93–7912 Filed 4–5–93; 8:45 am]

BILLING CODE 6560–60–P

[FRL–4609–6]

Public Water System Supervision Program; Program Revision for the State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Hawaii is revising its approved State Public Water System Supervision Program. Hawaii has adopted: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690) and corrected on July 1, 1988 (53 FR 25108); (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534); and (3) new secondary fluoride regulations approved by EPA on October 28, 1987 (52 FR 41550). EPA has determined that these three sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by May 6, 1993 to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective May 6, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Hawaii Department of Health, Five Waterfront Plaza, suite 250, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; and EPA, Region IX, Water Management Division, Water Supply Section (W–6–1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Corine Li, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744–1858.

(Sec. 1413 of the Safe Drinking Water Act as amended [1986]; and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: March 23, 1993.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 93–7913 Filed 4–5–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4610–6]

Clean Air Act Advisory Committee; Special Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR., No. 217, 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATE: Notice is hereby given that a subcommittee of the Clean Air Act Advisory Committee (the Subcommittee on Early Reductions and Pollution Prevention) will hold a special open meeting on April 22 and 23, 1993 from 9 a.m. to 4 p.m., at the Carolina Inn, 211 Pittsboro Avenue, Chapel Hill, North Caroline 27514. Seating will be available on a first come, first served basis.

The CAAAC subcommittee members will discuss and attempt to develop consensus on recommendations for several issues related to EPA's rulemaking under section 112(g) of the Clean Air Act Amendments of 1990. The rule is currently under development and has not yet been proposed. The following is a list of some of the topics for discussion at the meeting:

—Case-by-case by Maximum Achievable Control Technology (MACT)
—Definition of modification:
—Exclusions for emissions up to permitted levels
—Exclusions for alternative operating scenarios detailed in the operating permit
—Definition of source
—De minimis levels and hazard ranking approach, including definitions, bioaccumulation and the use of modeling
—Flexible delegation of the Section 112(g) program to state and local agencies
—Approvability of a state or local top-down control approach as "equivalent"
—Approvability of a state or local program without offsets
—Administrative process for MACT and offset determinations
—112(d) compliance extensions for facilities that have implemented case-by-case determinations under 112(g)
—Procedures for satisfying record keeping requirements of 112(g)

The public will have opportunity to comment on the issues discussed by the subcommittee. The recommendations of the CAAAC (subcommittee) and the public will assist in the continued development of the 112(g) rule.

INSPECTION OF THE COMMITTEE DOCUMENTS: The documents being discussed by the subcommittee members are available to the public.

For more information, contact Jane Caldwell-Kenkel.

For further information concerning this special meeting of the CAAAC, please contact Dr. Jane Caldwell-Kenkel, Office of Air Quality Planning and Standards, US EPA (919) 541–0328, FAX (919) 541–4028, or by mail at US EPA, Office of Air Quality Planning and Standards, MD–13, Research Triangle Park, North Carolina 27711.

Dated: March 30, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–7833 Filed 4–5–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4610–5]

CWA Section 303(d) Lists for Arkansas, Louisiana and Texas

AGENCY: U.S. Environmental Protection Agency, Region 6.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency, Region 6, is announcing the

availability of, and soliciting public comment on, lists of waters identified by the States of Arkansas, Louisiana, and Texas as requiring the development of Total Maximum Daily Loads under section 303(d) of the Clean Water Act. The comments will inform EPA's decision to either approve or disapprove the State lists.

FOR FURTHER INFORMATION CONTACT: Mimi Dannel, U.S. EPA Region 6 (6W–QT), 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–655–6642.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act requires States to identify waters that do not or are not expected to meet applicable water quality standards through implementation of existing required controls. States must establish a priority ranking for these waters, taking into account the pollution severity and designated uses of the waters. For listed waters, States are to develop, in accordance with their priority ranking, water quality protection plans termed Total Maximum Daily Loads (TMDLs). TMDLs include a determination of pollutant loadings compatible with achievement of applicable State water quality standards. State section 303(d) lists and TMDLs are submitted to EPA for approval or disapproval.

Early EPA guidance to the States regarding the public participation required for the development of section 303(d) lists was not clear. As a result, EPA is soliciting comments on the Arkansas, Louisiana, and Texas 1992 section 303(d) lists. All future biennial submissions of section 303(d) lists will provide for public comment at the State level.

The lists are available by mail or for public inspection at the EPA Region 6 office between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except holidays. To request a copy of a list, to make arrangements to examine the lists, or to submit comments, contact the Agency representative identified above. Comments must be submitted within thirty days of the publication of this notice.

Following the close of the comment period, EPA will approve or disapprove the State lists and will issue a response to comments received. A copy of EPA's decision and response to comments document will be sent to all parties submitting comments in response to this notice.

Dated: March 15, 1993.

Mimi Dannel,

TMDL Coordinator.

[FR Doc. 93–7984 Filed 4–5–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 31, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None

Title: Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands (Report and Order, PR Docket No. 92–80)

Action: New collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting and other: 47 CFR 21.915 and 21.33(b) amendments are one-time submissions

Estimated Annual Burden: 2,040 responses; .33 hours average burden per response; 673 hours total annual burden

Needs and Uses: Report and Order (R&O), PR Docket No. 92–80 the Commission amends several rules and requirements proposed in the Notice of Proposed Rulemaking (NPRM), adopted 4/9/92, aimed at reducing the delays associated with processing applications for stations in the Multipoint Distribution Service (MDS) and curtailing the filing of speculative MDS applications. We believe that the rule change adopted in the attached R&O will serve the public interest by improving the conditions for competition in the multichannel video distribution marketplace in accordance with our goals and the Congressional directives recently set forth in the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 106 Stat. 1460 (1992). Discussion of some of the rules and requirements modified by the Commission actions in the R&O follows: Modification of 47 CFR 21.15(a), 21.33(b), 21.901(f)(1), 21.29 and 21.39, 21.913(g) and 74.985(g), and 21.902. Section 21.901(d)(2) is also amended and recodified as § 21.915. The information collected pursuant to the attached R&O and current part 21 requirements will be used by the Commission to determine whether the applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies. Without such information the Commission could not determine whether to issue construction authorizations and licenses to the applicants that provide telecommunications services to the public and therefore, fulfill its stetutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7986 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

OMB Control No.: 3060–0105.

Title: Licensee Qualification Report, FCC Form 430.

Expiration Date: 02/28/96.

Description: The Licensee Qualification Report is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. Part 22 applicants are required to file FCC Form 430 when soliciting authority for assignment or transfer of control if a current one is not on file as required by item 18 on FCC Form 490. FCC Form 430 is used by the Commission personnel to determine whether applicants are legally qualified to become or to remain common carrier telecommunications licensees, as required by the Communications Act. FCC Form 430 will be updated to

display the 02/28/96 expiration date. A Public Notice will be issued to announce the availability of the updated edition of the FCC Form 430 and the deadline for filing the current 1990 edition of the form.

Federal Communication Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7989 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1934]

Petitions For Reconsideration of Actions in Rule Making Proceedings

March 26, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed on or before April 21, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Provision of Access for 800 Service. (CC Docket No. 86–10)
Number of Petitions Filed: 6

Subject: Amendment of § 21.902 of the Commission's Rules Governing use of Frequencies in the 2.1 and 2.5 GHz Bands. (PR Docket No. 92–80)
Number of Petitions Filed: 1

Subject: Implementation of section 10 of the Cable Consumer Protection and Competition Act of 1992.
Indecent Programming and other types of Materials on Cable Access Channels. (MM Docket No. 92–258)
Number of Petitions Filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–7892 Filed 4–5–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended: SeaEscape Cruises Limited, 8751 W. Broward Blvd., suite 400; Plantation, Florida 33324.

Vessel: SCANDINAVIAN SONG.

Dated: March 30, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–7925 Filed 4–5–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting on Epidemiology Study of Childhood Leukemia and Paternal Exposure to Ionizing Radiation

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Epidemiology Study of Childhood Leukemia and Paternal Exposure to Ionizing Radiation.

Time and Date: 9 a.m.–4:30 p.m., April 21, 1993.

Place: Alice Hamilton Laboratory, Conference Room A, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to obtain individual advice and guidance regarding the technical and scientific merits of the proposed Epidemiologic Study of Childhood Leukemia and Paternal Exposure to Ionizing Radiation being conducted as a cooperative agreement between Battelle Pacific Northwest Laboratories and NIOSH. The individual participants will review the proposed study protocol, recommend changes of scientific merit, and advise on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Anne T. Fidler, Sc.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R44, Cincinnati, Ohio 45226, telephone 513/841–4400.

Dated: March 31, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–7929 Filed 4–5–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting (working session).

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., April 21, 1993.

Place: Room 337–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee's report on State and Community Health Status will be reviewed for further consideration before submission to the full committee.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: March 31, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–7930 Filed 4–5–93; 8:45 am]

BILLING CODE 4160–18–M

Centers of Disease Control and Prevention

Proposed Environmental Protocol for the Determination of Methods for Obtaining Respiratory Wood Dust Exposure Levels by Task in the Construction Industry; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Proposed Environmental Protocol for the Determination of Methods for Obtaining Respiratory Wood Dust Exposure Levels by Task in the Construction Industry.

Time and Date: 8:30 a.m.–12 noon, April 21, 1993.

Place: Appalachian Laboratory, Room 203, NIOSH, CDC, 994 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to discuss the proposed wood dust exposure study of workers in the building construction industry related to the NIOSH research project entitled, "Wood Dust Exposure in the Construction Industry." The study protocol is available from the contact person. Comments will be accepted by letter until the time of the meeting. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Frank J. Hearl, NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 117, Morgantown, West Virginia 26505, telephone 304/291–4423.

Dated: March 31, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–7931 Filed 4–5–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0092]

Animal Drug Export; Bacitracin Zinc Type A Article

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Archer Daniels Midland Co. has filed an application requesting approval for export to 21 countries of bacitracin zinc Type A medicated article for use in chicken, turkey, and swine feeds.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8602.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review an application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525, has filed an application requesting approval for export to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Iceland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom of the animal drug bacitracin zinc Type A medicated article. The drug is used for increased rate of weight gain and improved feed efficiency in growing chickens and turkeys, and growing/finishing swine, and for increase in egg production and improved feed efficiency in laying chickens.

The application was received and filed in the Center for Veterinary Medicine on November 10, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 16, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: March 18, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine

[FR Doc. 93–7900 Filed 4–5–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0129]

Drug Export; Ortho™ Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K: (Monoclonal); Control, Ortho Biovue™ System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostics Systems, Inc., has filed an application requesting approval for the export of the biological product Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K: (Monoclonal); Control, Ortho BioVue™ System to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–9070.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency

publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Route 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the biological product Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K: (Monoclonal); Control, Ortho BioVue™ System to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Ortho Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K: (Monoclonal); Control, Ortho BioVue™ System is a glass bead column agglutination in vitro diagnostic test for recognition of the C, E, c, e and K antigens on human red blood cells. The application was received and filed in the Center for Biologics Evaluation and Research on February 12, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 16, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 19, 1993.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 93-7936 Filed 4-5-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0466]

Muhammad Z. Mannan; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Mr. Muhammad Z. Mannan, 111 Port Ave., Ronkonkoma, NY 11779, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Mannan was convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Mannan has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: April 6, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 1992, the United States District Court for the District of Maryland entered judgment against Mr. Muhammad Z. Mannan for one count of conspiracy to make false statements to an agency of the United States, and two counts of aiding and abetting the making of false statements to an agency of the United States, Federal felony offenses under 18 U.S.C. 371, 18 U.S.C. 1001, and 18 U.S.C. 2.

As a result of these convictions, FDA served Mr. Mannan by certified mail on January 13, 1993, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Mannan did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Muhammad Z. Mannan has been convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Muhammad Z. Mannan is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective on April 6, 1993 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Mannan in any capacity, during his period of debarment, will be subject to civil money penalties. If Mr. Mannan, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Mannan during his period of debarment.

Any application by Mr. Mannan for termination of debarment under section 306(d)(4) of the act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. 92N-0466 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–7937 Filed 4–5–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Meeting

The Division of Extramural Activities of the National Institute of Mental Health announces an ad hoc concept review. This committee will be performing a review of a Request for Applications entitled "Psychoanalytic Study of Neuropsychological Test Performance in HIV/AIDS."

This meeting will be held April 14, 1993, from 9 a.m. to adjournment, in room 15–99, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, and will be open to the public. Attendance by the public will be limited to space available. Any person wishing to attend should notify the contact person by April 12, 1993.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Ad Hoc Concept Review Committee.

Contact: Jean G. Noronha, Ph.D., Room 9C–15, Parklawn Building, Telephone: (301) 496–6470

Meeting Date: April 14, 1993.

Place: Room 15–99, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20557

Open: April 14, 9 a.m. to adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: April 1, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–8052 Filed 4–5–93; 8:45 am]

BILLING CODE 4140–01–M

Committee to Revise the Public Health Service 398 Research Grant Application

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of committee to revise the PHS 398 Research Grant Application.

SUMMARY: A committee of the National Institutes of Health (NIH), with representatives from within the Public Health Service (PHS), has begun work on revising the PHS 398 Research Grant Application (which includes the Institutional National Research Service Award), the PHS 2590 Noncompeting Continuation Research Grant Application, the PHS 416–1 Individual National Research Service Award, and the PHS 416–9 Noncompeting Continuation Individual National Research Service Award. The committee welcomes any suggestions or comments from the scientific community or from other interested persons regarding ways to improve the application kits. Suggestions could concern items such as clarity of instructions, other support, structure of the scientific proposal, biographical sketch, and personnel information.

ADDRESSES: Please send suggestions or comments on or before April 19, 1993; to: Ms. Barbara Wassell, Project Clearance Liaison, Division of Research Grants, National Institutes of Health, Westwood Building, room 5, Bethesda, MD 20892.

Dated: March 15, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93–8051 Filed 4–5–93; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, Room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954–0770, 205–538–0012/800–247–3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257
American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900
California Toxicology Services, 1925 East Dakota Avenue, suite 206, Fresno, CA 93726, 209–221–5655/800–448–7600
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093
CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)
Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214–929–0535
Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006
Drug Labs of Texas, 15201 I–10 East, suite 125, Channelview, TX 77530, 713–457–3784
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompano Beach, FL 33062, 305–946–4324
ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601–236–2609
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6377
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030, 713–793–6080
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, suite E, Provo, UT 84604, 800–967–9766
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229 513–569–2051
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835
Mayo Medical Laboratories, 200 SW First Street, Rochester, MN 55905, 507–284–3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900 (name changed: formerly Bio-Analytical Technologies)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories Incorporated d.b.a. National Reference Laboratory Substance Abuse Division, 1400 Donelson Pike, suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 512–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 NW 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program, effective March 1, 1993: PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601–236–5600/800–237–7352.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–7975 Filed 4–5–93; 8:45 am]

BILLING CODE 4160–20–M

Cooperative Agreements for Demonstration Projects on Access to Community Care and Effective Services and Supports (ACCESS) for Homeless Persons With Severe Mental Illness

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Request for application.

Introduction

The Center for Mental Health Services (CMHS) announces the availability of support for projects that will demonstrate and evaluate services integration approaches for homeless persons with severe mental illnesses, particularly those with co-occurring alcohol and/or other substance use disorders. This Request for Applications (RFA) addresses one of the major action steps set forth in Outcasts on Main Street: Report of the Federal Task Force on Homelessness and Severe Mental Illness. Potential applicants may obtain a copy of this report through Policy Research Associates, 262 Delaware Avenue, Delmar, New York 12054 (telephone: 1–800–444–7415).

Funds will be awarded through a cooperative agreement mechanism that will authorize the Federal government to be an active participant in this program and to obtain specific evaluation data across project sites, advise program and integration activities based on evaluation findings, coordinate the collection, compilation, aggregation and analysis of a core data set, and convene meetings of a coordinating group comprised of key project staff and Federal staff for the purpose of facilitating evaluation activities and discussing programmatic issues.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This RFA, Access to Community Care and Effective Services and Supports (ACCESS), is related to the objectives set forth in Chapter 6, Mental Health and Mental Disorders, in Healthy People 2000: National Health Promotion and Disease Prevention Objectives. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0; or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Program Description

History

The Federal Task Force on Homelessness and Severe Mental Illness was convened in May, 1990 by the Federal Interagency Council on the Homeless to develop a plan of action to end homelessness among people who are severely mentally ill. Consisting of representatives from all major Federal departments whose policies and programs directly affect the homeless severely mentally ill population, the Task Force also sought advice from experts in mental health research and housing administration, citizen advocates, mental health consumers, and State and local officials. Outcasts on Main Street: Report of the Federal Task Force on Homelessness and Severe Mental Illness describes their recommendations and over 50 action steps to be undertaken by the departments and agencies represented on the Task Force to improve access and remove impediments to housing, treatment, and supports, and to promote services integration.

The Task Force reached broad consensus that ending homelessness among people with severe mental illness requires an integrated system of care that offers access to essential services and to affordable and safe housing. To encourage the development of such systems in communities across the Nation, the Department of Health and Human Services (HHS), in collaboration with the Departments of Housing and Urban Development (HUD), Labor (DOL), Education (DOEd), Veterans Affairs (VA), and Agriculture (USDA), is initiating this ACCESS program.

Target Population

The target population includes all persons, 18 years of age and over, who are homeless and have a severe mental illness, with special emphasis on those individuals who have co-occurring mental illnesses and alcohol and/or drug use disorders.

The term "homeless" or "homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals not intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Severe mental illness refers to persistent mental or emotional disorders (including, but not limited to, schizophrenia, schizoaffective disorders, mood disorders, and severe personality disorders) that significantly interfere with a person's ability to carry out such primary aspects of daily life as self-care, household management, interpersonal relationships, and work or school.

It is estimated that at least half of the homeless people who are severely mentally ill also suffer from alcohol and/or other drug use problems. The Task Force identified this group as having a unique and particularly difficult time escaping from homelessness. This population represents a high percentage of those who have never been successfully engaged in existing service programs. Communities often lack the capacity to serve individuals who suffer from both mental illness and addictive disorders.

Program Goals

The long-term goal of the Access to Community Care and Effective Services and Supports (ACCESS) program is to foster enduring partnerships that will improve the integration of existing Federal, State, local and voluntary services to homeless people. The more immediate goal is to identify promising approaches to services integration and to evaluate their effectiveness in providing services to individuals with severe mental illnesses, particularly those with co-occurring substance use disorders.

Project Requirements

All projects must meet the following requirements:

- Each State applicant must identify two communities to participate in the ACCESS program. The communities could include two different catchment areas or some other defined service areas within a city or county, two towns, two cities, or two counties. The two communities must be matched as closely as possible in terms of the estimated number of homeless individuals with mental illnesses, local housing stock (defined in terms of affordability, including availability of subsidized housing, vacancy rates, and physical conditions), population size, median income, and type of community (e.g., rural, urban, suburban). Identifying two comparable communities is required to assess the impact of services integration approaches on agencies and client outcomes.
- Both communities should be able to enroll each year 75 to 100 homeless persons with mental illnesses, including those with co-occurring substance use disorders. Individuals who are currently identified as clients by the mental health agency should not be included in this total. Because of expected delays in project start-up during the first year, it is assumed that fewer people will be enrolled during the first year. Therefore, communities will be expected to enroll 300 to 400 persons during this five year program. Enrollment occurs when the homeless person signs a written statement indicating willingness to accept case management services and participate in the evaluation study.
- One community will serve as the services integration site and will receive funds (no less than 10% and no more than 15% of the total grant amount) to develop and implement a services integration approach that engages or leverages other agencies into providing essential services (see *Potential Integration Approaches* which follows). As documented in Outcasts on Main Street, these services include assertive outreach, case management, housing, mental health treatment, substance abuse treatment, health care, income support and benefits, rehabilitation, vocational training and employment assistance, consumer and family involvement, and legal protection.

In a services integration site, a homeless person with a severe mental illness should be able to enter by any service "door", be assessed, and obtain access to the full complement of services that individual wants and needs—both immediately and on an ongoing basis.

- The second community will serve as the comparison site. Available grant funds will be allocated between the comparison site and the services integration site so that each has comparable levels of assertive outreach and case management in order to enroll and serve 75 to 100 homeless persons annually in the ACCESS program. Any remaining funds may be split between the two communities to address other gaps in services for the population.
- The application is to include both a services integration plan and a "non-integrated" plan for each community. In other words, the application must include a plan for implementing services integration as well as a plan for providing services only in *each* of the communities. All four plans should be culturally and ethnically appropriate for the respective communities. The communities must be directly involved in designing the services integration approaches that may be implemented in their jurisdiction as well as the services that will be provided.

• Applicants must agree to have CMHS randomly determine which community will be selected as the services integration site and which community will be the comparison site. In addition, the communities must agree to implement the service condition to which CMHS assigns them, participate in the cross-site evaluation, submit quarterly evaluation reports and participate on a coordinating committee for the ACCESS program.

• The State, in cooperation with local governments, must assist the communities in developing the two services integration approaches and in designating the mental health agencies that will have primary responsibility for the implementation of the projects. In addition, the State must facilitate the implementation of the plans in the services integration site and the comparison site, provide administrative oversight of the entire project, participate on a national coordinating committee for the ACCESS program, and other activities as necessary.

• The applicant must describe how the proposed services integration strategies are consistent with the State's comprehensive community mental health services plan (in accordance with the requirements of Title II, Section 1912 of Public Law 102–321, The ADAMHA Reorganization Act), and with the local Comprehensive Housing Affordability Strategy (CHAS) plan (as defined by Pub. L. 101–625, The Cranston-Gonzales National Affordable Housing Act).

• The Social Security Administration (SSA) has agreed to implement special procedures for expediting the processing of Social Security Income (SSI) disability claims and to provide SSI program waivers for counting in-kind support, maintenance and resource limits. Communities are expected to indicate commitment in pursuing these benefits.

• At a minimum, the applicant must include State and local mental health and substance abuse treatment, housing, health care, and income supports and entitlement programs in the proposed services integration approaches. An explanation of how mental health and substance abuse treatment, housing, health care, and income supports and entitlements will be provided must be described in each services integration approach.

• Letters are required from State and local representatives of mental health, substance abuse, housing, health care and income supports and entitlement agencies describing their commitment to this project. Letters are also required from the local housing authorities in each community assuring that the housing plans are consistent with the CHAS, and from the Governor and officials of the appropriate local governments (e.g., mayor, county director) indicating their support for the project.

Potential Integration Approaches

All applications should identify services integration approaches that establish linkages among State and local mental health agencies, substance abuse agencies, housing programs, health care programs, and income support and entitlement programs. Examples of State and local activities that might be included in an overall services integration plan are the following:

• Interagency agreements to make or accept referrals, share client or program information, or jointly administer programs;

• Establishment of non-categorical funds that allow for flexibility in funding;

• Creation of service coalitions or task forces;

• Program and agency consolidation;

• Joint funding of programs;

• Creative use of mainstream and targeted Federal resources and State, local and private funds relevant to the needs of the target population;

• Co-application/co-eligibility procedures, e.g., using a single form or procedure to determine eligibility for two or more separate programs in order to simplify the application process, lessen the paperwork burden, and provide a broader range of services for clients;

• Use of special waiver authorities;

• Coordination of State or local level housing and human service planning initiatives;

• Interagency team case management in which different agencies or departments form joint or jointly-trained teams;

• Co-location of multiple services and/or service providers at one facility;

• Multi-agency client information and referral systems; and

• Cross-training.

Agency and Client-level Outcomes

Services integration strategies should be directed towards creating a local service system that is client-centered, inclusive, accessible, comprehensive, continuous and accountable.

Agency-level outcomes that result from an integrated service system include, but are not limited to the following:

• Multiple portals of entry into the system for clients;

• Enduring inter-agency partnerships;

• Clear delineation of responsibility, authority and accountability;

• Coordination of interagency resources;

• Comprehensive approach to individual clients; and

• Comprehensive range of services that are accessible and continuous.

Effective changes in the organization and operation of agencies should be designed to positively affect clients. Client-level outcomes that might result from an integrated service system include an increase in:

• The proportion of persons who remain engaged in mental health and substance abuse treatment;

• The number of persons receiving all or most of the income support and entitlements and benefits for which they are eligible;

• Access to and utilization of safe, clean, appropriate, and affordable hosing and improved residential stability;

• Participation in such programs as primary health care, rehabilitation, vocational training, employment assistance, and competitive employment; and

• Client satisfaction with services and subjective improvement in quality of life.

Utlimately an integrated service system should increase the likelihood that individuals, regardless of changes in their clinical condition, are sustained in their housing, have access to necessary services and supports, have opportunities for meaningful employment and social relations, and are empowered to make choices and accept responsibility in matters affecting their lives.

Eligibility Requirements

Applicants must be State mental health authorities or the equivalent in the District of Columbia, Puerto Rico, Guam, other territories and Indian Tribes. Eligibility is restricted in order to maximize cooperation necessary to implement the cooperative agreement. Collaborative arrangements or consortia are encouraged where the State mental health authority is the lead and legal recipient of funds, with housing and human resource agencies as partners in the application. It is aniticpated that the high degree of State and local government involvement in these projects will facilitate planning and integration of services, as well as State support of systemic improvements in selected sites after Federal support for the program is no longer available.

Since grant funds will be used in part to bring homeless persons into service settings to address their needs, the

grantee is expected to maintain their service commitment to these individuals beyond the period of Federal support.

Availability of Funds

It is estimated that approximately $17 million will be available to support eight to ten (8–10) awards under this RFA in FY 1993. Actual funding levels will depend upon the availability of funds at the time of the award.

Period of Support

Support may be requested for five (5) years. Annual awards will be made subject to continued availability of funds and successful implementation of the proposal. Because funding for this program is expected to remain level, applicants should ask for roughly the same amount of funding (including direct and indirect) during each of the five years of the project. Applicants are encouraged to obtain State and local funding and in-kind support to supplement project funds.

Special Requirements

Supplementation of Existing Funds

The award recipients may not use funds awarded under this RFA to replace funds that are currently supporting or are committed to support activities proposed in the application. A letter from the sponsoring institution/agency which certifies that Federal funds will not be used to supplement or replace funds already committed for proposed projects must be provided in the appendices.

Rapid Award of Federal Funds

The CMHS places considerable emphasis on rapid award of Federal funds by the State and implementation of individual projects by the subrecipients. Therefore, CMHS will give funding priority to projects in those States that provide a written assurance that funds will be awarded to subrecipients within two (2) months following the date of Federal grant award. Priority consideration will be given to States whose past performance demonstrates repaid deployment of funds to subrecipients and to those States with a history/track record of rapid award of CMHS and/or NIMH grant funds. For States that wish to make such an assurance, a letter from the Director of the State applicant agency certifying rapid obligation of funds following the date of grant award must be included in the appendices.

Letters of Intent

State mental health authorities planning to submit an application in response to this RFA are requested to submit a letter of intent 60 days prior to the receipt date. Such notification will be used by CMHS for purpose of review and program planning. This letter is voluntary and does not obligate the organization to submit an application. The letter should be no longer than one page and should succinctly indicate:

—The number and title of the RFA
—The name of the potential applicant State
—The name and affiliation of the proposed project director, i.e., the individual assigned to coordinate the development and conduct of the project
—The overall scope of the proposed project, including names of the two communities and a brief description of the likely goals and objectives.

Letters of intent should be directed to: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 11C–26, Rockville, Maryland 20857, ATTN: ACCESS/Letter of Intent.

Coordination with Other Federal/Non-Federal Programs

Examples of Federal agencies and programs with which applicants may find coordination productive include:

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration:

- Center for Mental Health Services
  - Community Support Program
  - Projects for Assistance in Transition from Homelessness
  - Refugee Mental Health Program
  - Emergency Mental Health Services Program
- Center for Substance Abuse Treatment
  - Drug Abuse Treatment Improvement Projects
  - Grants for Substance Abuse Treatment in State and Local Criminal Justice Systems
- Center for Substance Abuse Prevention
  - Communication Programs for the Prevention of Illegal Drug Use or Illegal
  - Use of Abuse of Alcohol

Social Security Administration

National Institutes of Health

- National Institute of Mental Health
- National Institute on Alcohol Abuse and Alcoholism
- National Institute on Drug Abuse

Health Care Financing Administration
  - Medicaid

Health Resources and Services Administration
  - Health Care for the Homeless Program
  - Health Care in Public Housing Program

Center for Disease Control

Indian Health Service

Other Federal Departments

Department of Agriculture
  - Food Stamps
  - USDA Food Programs
  - Farmers Home Administration Surplus Properties

Department of Education
  - Adult Education for the Homeless Program

Department of Housing and Urban Development
  - Shelter Plus Care
  - Supportive Housing Program-Permanent Housing for Handicapped Homeless
  - Supportive Housing Program-Transitional Housing
  - Section 8 Moderate Rehabilitation Assistance for SRO Dwellings
  - Housing Opportunities for Persons with AIDS
  - Emergency Shelter Grants Program
  - Supplemental Assistance for Facilities to Assist the Homeless
  - Section 202/811
  - Comprehensive Housing Affordability Strategy
  - Title V Surplus Properties

Department of Labor
  - Job Training for the Homeless Demonstration Program
  - Homeless Veterans Reintegration Projects

Intergovernmental Review (E.O. 12372)

Applications submitted in response to this RFA are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through HHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instruction on the State's applicable procedure. A current listing of SPOCs is included in the applicant kit. The SPOC should send any State process recommendations to the following address: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 11C–26, Rockville, Maryland 20857, ATTN: SPOC.

The due date for State process recommendations is no later than 60

days after the deadline date for the receipt of applications. The CMHS does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Role of Federal Staff in Cooperative Agreements

The use of the Cooperative Agreement mechanism is in anticipation of substantial pre- and post-award Federal programmatic participation in the conduct of the project. It is anticipated that CMHS staff participation in this program will be substantial. Such involvement may include:

Provision of technical assistance; consultation on and participation in the redesign or modification of systems change; contribution of guidance to enhance the potential reproducibility of results; provision of support services for training, evaluation, and data collection; arrangement of meeting designed to support activities of the individual cooperative agreement awardees; membership on policy, steering or other working groups established to facilitate accomplishment of the project goals; authorship or co-authorship of publications to make results of the project available to other service programs, policymakers, etc.

Role of Grantee in Cooperative Agreements

The grantee (including the State and local sites) is expected to participate fully with CMHS staff and their evaluators in the implementation and evaluation of the demonstration project. Activities include providing access to client and agency-level information, responding to feedback from the formative evaluation, collecting data, participating in special evaluation studies, and obtaining commitment for participation from other service agencies.

Confidentiality

Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR part 2) are applicable to any information about alcohol and other drug abuse patients obtained by a program if the program is federally assisted in any manner (42 CFR 2.12(b)). This means that all project alcohol/drug abuse patient records are confidential and may be disclosed and used only in accordance with 42 CFR part 2.

Inclusion of Women and Minorities

The CMHS urges applicants to give added attention (where feasible and appropriate) to the inclusion of racial/ethnic minority groups and women in the program. If they are not included, a clear rationale for exclusion should be provided. Racial/ethnic minority group and gender differences should be described and addressed in the application.

Evalation

The CMHS will be responsible for conducting a cross-site evaluation that will include both formative/process and outcome evaluations. The purpose of the evaluation is to describe the different services integration approaches and to assess whether different services integration strategies result in measurable changes in the performance of agencies involved in the integration effort as well as client outcomes. In addition, the evaluation will document any changes that occurred in the comparison sites so as to identify potential explanations that challenge the services integration approach as the source of change. The evaluation will be conducted by contractors paid by and accountable to CMHS. All grantees and their subrecipients will be required to participate in this evaluation. CMHS will obtain OMB clearance of evaluation data collection plans prior to their implementation. These plans will include required common data elements across sites.

The grantees will provide 4 FTE staff who will collect process and outcome data and input data at both sites. These costs should be included in the application budget and account for between 10% and 15% of total costs. The applicant must provide assurances that the staff from all the relevant agencies will cooperate fully in the evaluation.

Participation Protection

Applicants and awardees are expected to implement procedures developed by CMHS and approved by an Institutional Review Board (IRB) that address confidentiality, informed consent and other ethical issues pertinent to the protection of participants in proposed projects.

Application Procedures

All applicants must use application form PHS 5161-1 (Rev. July, 1992), which contains Standard Form 424 (face page). The following information should be typed in Item Number 10 on the face page of the applicant form: ACCESS Cooperative Agreements.

Grant application kits (including Form PHS 5161-1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937-0189) may be obtained from: Homeless Program Section, Adult Serious Mental Illnesses Branch, Division of Demonstration Programs, Center for Mental Services, 5600 Fishers Lane, room 7C-08, Rockville, MD 20857, (301) 443-3706.

Applicants must submit: (1) An original copy signed by the authorized official of the applicant organization, with the appropriate appendices; and (2) two additional legible copies of the application and all appendices to the following address: Center for Mental Health Services, Division of Research Grants, NIH, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

Only one application seeking Public Health Service (PHS) support for the same programmatic service demonstration activities with the same population may be submitted to the PHS, and that same application may be submitted in response to only one PHS Program Announcement or Request for Applications.

Application Characteristics

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions, no supplementary or corrective material will be accepted after the receipt date unless specifically requested by or agreed to in prior discussion with the Review Administrator of the Initial Review Group assigned to review the application. Because there is no guarantee that such late material will be considered for review, it is important that the application be complete at the time of submission.

The original and 2 copies (including appendices) must be unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. The application will be reproduced in order to provide sufficient copies for review. Do not include anything that cannot be photocopied using automatic processors. Do not attach or include anything stapled, folded, pasted, or in a size other than 8½ x 11" on white paper. Heavy or lightweight paper will clog the photocopy machine and could be destroyed by the machine. Only one side should have printing. Odd sized

*If an oversight carrier or express mail is used, the Zip Code is 20816.

attachments of any kind will not be copied.

Application materials could accidentally get out of order when being reproduced, thus every sheet of the proposal must have a page number. It is requested that pages be numbered consecutively from beginning to end (for example, page 1 for the cover page, page 2 for the Abstract, etc.) The appendices should be labeled and separated from the narrative and budget section, and the page numbers continued in the sequence. Appendix material should not be used to extend the narrative portions of the applications. Do not include excessive or over-sized material, e.g., posters. Do not use photo reduction or condense type closer than 15 characters per inch.

Application Receipt and Review Schedule

The schedule for receipt and review of applications under this announcement is as follows:

Receipt date	IRG review	Council review	Earliest start date
June 17, 1993	August 1993.	September 1993.	September 1993

The DRG system requires that applications must be received by the published application receipt date(s). However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

Consequences of Late Submission

Applications received after the above receipt date will not be accepted and will be returned to the applicant without review.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/Substance Abuse Mental Health Services Administration (SAMHSA) peer review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

- It is received after the specified receipt date.
- It is incomplete.
- It is illegible.
- It exceeds the specified page limits.
- It does not conform to instructions for format, which include that it be typed single-spaced, using standard size black type not smaller than 15 characters per 1 inch or 2.5 centimeters, one column per page, with conventional border margins (1 inch or 2.5 centimeters), on only one side of standard size 8½ × 11 paper that can be photocopied.
- It is non-responsive to the announcement.
- The material presented is insufficient to permit an adequate review (e.g., an incomplete or clearly inadequate evaluation plan).

Returned applications may not be resubmitted due to the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Notification of the IRG recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications will undergo a second level of review by the appropriate advisory council, once established, whose review may be based on policy considerations as well as technical merit.

Review Criteria

Each grant application is evaluated on its own merits. The following are the review criteria that will be used:

Significance of Project Plans

- Potential significance and generalizability of the services integration plans of each site.
- Adequacy and appropriateness of the proposed services integration approaches to each site.
- Adequacy and appropriateness of the proposed "non-integrated" services plans to each site.

Feasibility, Capability, and Commitment to Project

- Feasibility of implementing the proposed project.
- Qualifications and experience of applicant organization, State project coordinator, project director at each site, and other key personnel.
- Specific letters of commitments from proposed collaborators including relevant public, private, and nonprofit stakeholders to participate in all aspects of the program.

Comparability of Communities

- Comparability of the two communities in terms of estimated number of homeless individuals with mental illnesses, local housing stock (defined in terms of affordability, including availability of subsidized housing, vacancy rates, and physical conditions), population size, median income, and type of community (e.g., rural, urban, suburban).
- Evidence of access to, and availability of, appropriate and adequate target populations.

Reasonableness of Resource Allocation

- Adequacy of available resources.
- Appropriateness of the proposed budget for the implementation of the integration plan at each site.
- Reasonableness of the proposed budget and justification of how it creates equivalent levels of services across the two sites.

Award Criteria

Applications recommended for approval by the IRG and the appropriate advisory council, if established, will be considered for funding on the basis of overall technical merit as determined through the review process. In some cases, pre-award site visits may be conducted to gather additional information. Other award criteria will include:

- Availability of funds.
- Geographic distribution.
- Focus on racial/ethnic minority populations, and women.
- Numbers of people to be served.
- Cooperation in the evaluation activities.
- Use of new or redirected Federal, State, local, private, and voluntary funds, including leveraging of funds.
- Rapid award of Federal funds.

Terms and Conditions of Support

Allowable Items of Expenditure

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs that can be specifically identified with the project and allowable indirect costs. In order to recover allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, applicants should contact the appropriate office of the DHHS Division of Cost Allocation referenced in the list of "Offices Negotiating Indirect Cost Rates," included in the application kit.

Funds cannot be used to supplant current funding for existing activities (see section on Supplantation of Existing Funds). Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out service activities under the approved project;
- Supplies, communications, and rental of equipment and space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support approved project activities.

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period or cover non-programmatic activities.

Grant funds may not be used to pay for inpatient detoxification or treatment, or to purchase housing. However, funds may be used to pay for one-time rental assistance.

Alterations and Renovations

Costs for alterations and renovations (A&R) will be allowable only where such alterations and renovations are necessary for the success of the program. However, as subject to the PHS Grants Policy Statement, the maximum amount of funds budgeted or used for A&R under a single grant during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of $150,000 or 25% of the total funds reasonably expected to be awarded by the PHS for direct costs for such three-year period. (The maximum amount of PHS grant funds that may be applied to any single A&R project is $150,000.) Construction costs are not allowed.

Administrative Costs

No less than 95 percent of the total direct costs awarded to each State must be allocated to the subrecipients. The State may recover the lesser of its actual costs of administration (direct and indirect costs) of the grant, or 5 percent of the total direct costs of awards made to subrecipients within the State. This amount should cover personnel, travel and other related costs associated with the administration of the grant.

States that own and operate the community mental health system are excepted from the above ruling and will be allowed to retain 100 percent of the grant funds to implement the program. Not more than 5% of the total direct costs may be used to cover the actual costs of administration (direct and indirect costs) of the grant.

Other Costs

A working group comprised of the Project Director from the State applicant agency and Project Coordinators from each of the two communities will meet with CMHS staff to facilitate evaluation research activities and discuss programmatic issues. Applicants should budget for the attendance of the Project Director and the Project Coordinators for each of the communities at three 3-day meetings per year in the Washington, DC area.

Reporting Requirements

Quarterly, annual and final progress reports and financial status reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Contacts for Additional Information

Questions concerning program issues may be directed to: Frances L. Randolph, Dr. P.H. or Walter Leginski, Ph.D., Homeless Program Section, Adult Serious Mental Illnesses Branch, Division of Demonstration Programs, Center for Mental Health Services, 5600 Fishers Lane, room 7C–08, Rockville, MD 20857, (301) 443–3706.

Questions regarding grants management issues may be directed to: Mr. Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, room 7C–23, Rockville, MD 20857, (301) 443–4456.

Authority and Regulations

Statutory Authority: Cooperative agreements awarded under this RFA are authorized under Section 520A of the Public Health Service Act, as amended (42 U.S.C. 290bb-32).

Applicable Federal Regulations: Federal regulations at 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

PHS Grants Policy Statement: Grants must be administered in accordance with the PHS Grants Policy Statement (Revised October 1, 1990).

Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.125.

Dated: March 31, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse, Mental Health and Services Administration.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–065–03–4191–03]

Notice of Intent; Proposed Rand Project, Kern County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management and County of Kern will prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to assess the potential environmental impacts that may be associated with development of the proposed Rand Project. A public scoping meeting has been scheduled in connection with the preparation of that document. Rand Mining, a wholly owned subsidiary of Glamis Gold Inc., has filed applications with the Bureau and County for development of an open-pit, heap-leach gold mine in the Randsburg Area of Kern County, California. The Rand Project is located approximately 20 miles south of Ridgecrest, California. The project will ultimately affect approximately 1000 acres, and includes the following activities: Mining, construction and operation of the heap-leach processing facilities, construction and maintenance of roads, upgrading of an existing water well field and pipeline, and reclamation of disturbed lands. The EIS/EIR will be prepared by the Bureau and County with the assistance of an independent environmental consulting firm selected by the agencies. The following issues have been preliminarily identified for analysis: Water resources, vegetation and wildlife resources (including special interest species), cultural resources, recreation, visual resources, air quality, and public health and safety. In accordance with the National Environmental Policy Act and California Environmental Quality Act requirements, the EIS/EIR will also consider alternatives to the proposed action. Alternatives and additional issues may be identified as a result of the public scoping process.

One scoping meeting is scheduled for public and agency input to determine the full scope of issues which should be addressed in the EIS/EIR. The date, time and location of the public meeting is as follows:

Date and time	Location
April 21, 1993 7:00 p.m.	Johannesburg, California, Rand District Community Building, Hwy 395, Johannesburg, CA 93528.

This notice is a request for environmental information that you or your organization feels should be addressed in the EIS/EIR. Detailed information may be included in your response. Written comments should be sent to the address below no later than May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Taylor, Project Manager, Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555, 619/375–7125.

Dated: March 31, 1993.

Lee Delaney,

Area Manager.

[FR Doc. 93–7928 Filed 4–5–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4210–05; COC–52557]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC–52557; Recreation and Public Purposes Classification for Lease and Sale, Boulder County, Colorado.

SUMMARY: The following public lands have been found suitable and are hereby classified for lease and sale under the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*), and are segregated from the public land laws including the general mining laws, except for applications under the R&PP Act.

Sixth Principal Meridian, Colorado

T.1N., R.71W., Section 8: Lots 171 and 183.

The site contains approximately 9.07 acres.

The Sunshine Fire Protection District has filed an application for this site for use as a fire station.

DATES: Until May 24, 1993, interested parties may submit comments on this action.

ADDRESSES: Comments should be directed to the Canon City District Manager, BLM, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain at (303) 239–3712.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections this proposal will become final.

Donnie R. Sparks,

District Manager.

[FR Doc. 93–7903 Filed 4–5–93; 8:45 am]

BILLING CODE 4310–JB–M

[NM–060–03–4210–04; NMNM 82227]

Realty Action, Exchange, Valencia County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action (NORA) for proposed land exchange.

SUMMARY: The following described public land located in Valencia County, New Mexico, has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 6N., R. 3E.,
Sec. 7, lots 3 to 5, inclusive;
Sec. 12, lots 2 to 4, inclusive;
T. 6N., R. 4E.,
Sec. 3;
Sec. 4, N½, SE¼, and E½SE¼;
Sec. 5, NW¼;
Sec. 7, lots 1 and 2, E½NW¼, and NE¼;
Sec. 8, lots 3 and 4;
Sec. 9, lots 1 to 4, inclusive and N½;
Sec. 10, lots 1 to 4 inclusive and N½;
Sec. 11, lots 1 to 4 inclusive and N½;
Sec. 12 lots 1 to 4 inclusive, N½, and E½SE¼SE¼.
T. 7N., 4. 4E.,
Sec. 25, SE¼;
Sec. 26, lots 1 to 4 inclusive, S½N½, and S½;
Sec. 27, lots 1 to 4 inclusive, S½N½, and S½;
Sec. 28, lots 1 to 3 inclusive and SW¼SW¼;
Sec. 33;
Sec. 35, W½NE¼ and E½NW¼.

Containing 5,845.87 acres.

DATES: Comments must be received by May 21, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM, 1717 West Second Street, Roswell, New Mexico, 88201.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, BLM, Roswell Resource Area, 505–624–1790.

SUPPLEMENTARY INFORMATION: The above described land is a part of the previously-noticed Rio Bonito Exchange. This notice includes the Valencia County public land in the Exchange as selected lands. The parties to the Exchange, as well as the terms and conditions of the Exchange, are fully described in previous **Federal Register** notices. The NORA for the Rio Bonito Exchange was published in the **Federal Register** on Thursday, April 9, 1992, at 12332, of Vol. 57, No. 69, and amended in the **Federal Register** on Wednesday, May 13, 1992, at 20503, of Vol. 57, No. 93, and corrected in the **Federal Register** on Tuesday, May 19, 1992, at 21332, Vol. 57, No. 97. The Exchange is scheduled to occur prior to the end of 1993.

The BLM has prepared an Environmental Assessment to address impacts of the Exchange and this document is available for review. The Exchange is in conformance with the Rio Puerco Resource Management Plan and the Amended West Roswell Management Framework Plan but not with Lincoln County's Interim Land Use Plan of January 14, 1992.

Lands transferred from the United States will contain the following patent reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the land.

3. A reservation to the United States, U.S. Forest Service, for access to the Cibola National Forest boundary at Lolito Springs.

The land will be conveyed subject to all valid existing rights, rights-of-way, easements, and leases of record, including a Federal grazing lease issued to Cordova Ranch Partnership for Allotment 0447 on March 1, 1992, for a term of 10 years. A Notice to cancel this grazing lease was issued on December 8, 1992, and the grazing lease may be cancelled by the BLM any time after December 8, 1994, in accordance with the Notice and 43 Code of Federal Regulations 4110.4–2(b). The rights of the United States as lessor of the lease will be reserved until the lease terminates or is cancelled or relinquished.

Publication of this notice in the **Federal Register** will segregate the public land from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon issuance of patent or 2 years from the date of this notice or upon publication of a termination of segregation.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments to the Roswell District Manager at the above address. Any objections will be reviewed by the State Director, Santa Fe, New Mexico, who may sustain, vacate, or modify this realty action. In the absence of any objections, this NORA will become the final determination of the Department of the Interior.

Dated: March 26, 1993.

Leslie M. Cone,

District Manager.

[FR Doc. 93-7905 Filed 4-5-93; 8:45 am]

BILLING CODE 4310-FB-M

[UT-020-03-4333-02]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Box Elder Resource Management Plan (RMP) and prepare the associated Environmental Assessment (EA), which includes public lands in Box Elder County, Utah.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Leon Berggren, Bear River Resource Area Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977-4300.

SUPPLEMENTARY INFORMATION: This notice is intended to inform the public of the planning effort and to invite public participation in the identification of the planning issues. Public comment will be solicited throughout the planning process. The amended Box Elder RMP will be prepared under 43 CFR part 1610, to meet the requirements of section 202 of the Federal Land Policy and Management Act. Decisions generated during this planning process will supersede the decisions in the 1985 Box Elder RMP. The Box Elder RMP manages mineral interests on other public lands.

The RMP amendment and EA will address the general planning issue of management prescriptions for acquired lands. In addition, there are two specific acquired areas to be addressed in the plan amendment; first is the Central Pacific Railroad Grade between the area 6 miles west of Corrine and the Golden Spike National Historic Site. It is proposed that this extension would be managed as a bicycle trail or for other nonmotorized use only. The second is a block of land known as the "Chournos Block," which will be acquired for its valuable wildlife habitat. There are no plans to allocate livestock forage permanently within the block. There may be an opportunity for primitive recreation sites, but off-highway vehicles may be limited to existing or designated roads and trails.

Public participation is being sought at this initial state in the planning process to ensure the RMP amendment addresses all issues, problems, and concerns from those interested in the management of lands within the Bear River Resource Area. Necessary amendments to the approved plan will keep the document current and viable.

G. William Lamb,

Acting State Director.

[FR Doc. 93-7933 Filed 4-5-93; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission, National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the next meeting of the Gettysburg National Military Park Advisory Commission.

DATES: April 29, 1993.

TIME: 2 p.m.-4 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, briefings on the results of the Deer EIS scoping meetings and Gettysburg's portion of the Economic Stimulus Program, and an operational update on the park.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

Charles P. Clapper,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93-7882 Filed 4-5-93; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 27, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 21, 1993.

Beth L. Savage,

Acting Chief of Registration, National Register.

ALASKA

Anchorage Borough-Census Area

Anchorage Cemetery, 535 E. 9th Ave., Anchorage, 93000320

Ketchikan Gateway Borough-Census Area

Chief Kashakes House, Mile 2.5 S. Tongass Hwy., Saxman, 93000338

The Star, 5 Creek St., Ketchikan, 93000336

Matanuska-Susitna Borough-Census Area

Talkeetna Historic District, Roughly bounded by C, First, D and Front Sts., Talkeetna, 93000321

ARIZONA

Maricopa County

Curtis Cottage (Prescott Territorial Buildings MRA), 125 S. McCormick, Prescott, 93000344

FLORIDA

Marion County

Lake Weir Yacht Club, New York Ave. Eastlake Weir, 93000319

Volusia County

El Pino Parque Historic District, 1412-1604 N. Halifax Dr., Daytona, 93000318

ILLINOIS

La Salle County

O'Conor, Andrew J., III, House, 637 Chapel St., Ottawa, 93000324

Mason County

Havana Water Tower, Jct. of Pearl and Main Sts., NE corner, Havana, 93000325

IOWA

Des Moines County

Union Hotel, 301–311 S. Main St., Burlington, 93000326

Johnson County

Muscatine Avenue Moffitt Cottage Historic District (Small Homes of Howard F. Moffitt in Iowa City and Coralville), 1322–1330 Muscatine Ave., Iowa City, 93000327

Lee County

Sheaffer, Craig and Virginia, House, 10 High Point, Fort Madison, 93000329

Marshall County

Glick—Sower House, 201 E. State St., Marshalltown, 93000331

Woodbury County

Motor Mart Building, 520 Nebraska St., Sioux City, 93000330

LOUISIANA

East Feliciana Parish

Lane Plantation House, 7684 Lane Ln., Ethel vicinity, 93000322

Natchitoches Parish

City Hotel, Jct. of LA 120 and Rains Ave., Marthaville, 93000317

MARYLAND

Prince George's County

Smith, Harry, House, 4707 Oliver St., Riverdale, 93000342

MINNESOTA

Ramsey County

West Summit Avenue Historic District, Summit Ave. between Lexington Pkwy, and Mississippi R. Blvd., St. Paul, 93000332

NEW JERSEY

Ocean County

Willits—Andrews Farmstead Site and Pulaski Monument, Address Restricted, Tuckerton vicinity, 93000334

NEW YORK

New York County

Osborne Apartments, 205 W. 57th St., New York, 93000333

Suffolk County

Shelter Island Heights Historic District, Roughly bounded by St. Johns St., Tower Hill Rd. Sunnyside Ave., Meadow Pl., Chase Cr. and Dering Harbor, Shelter Island Heights, 93000335

NORTH CAROLINA

Buncombe County

Eliada Home, 2 Compton Dr., Asheville, 93000314

Forsyth County

Crews, Thomas A., House, 4997 Main St., Walkertown, 93000316

Johnston County

US Post Office, Former, 405 E. Market St., Smithfield, 93000315

Warren County

Buxton Place, NC 58 W side, 0.2 mi. N of jct, with NC 1628, Inez vicinity, 93000323

RHODE ISLAND

Providence County

Furnace Carolina Site, Address Restricted, Cumberland, 93000341

Washington County

Kingston Hill Farm, 549 Old North Rd., South Kingstown, 93000343

WISCONSIN

Fond Du Lac County

Moose Temple, 17—23 Forest Ave., Fond du Lac, 93000340

Milwaukee County

Lake Park, 2900 N. Lake Dr. and 2800 E. Kenwood Blvd., Milwaukee, 93000339

Sheboygan County

Roth, Henry and Henrietta, House, 822 Niagara Ave., Sheboygan, 93000337.

[FR Doc. 93–7881 Filed 4–5–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–26,041, TA–W–26, 041A]

Nerco Oil and Gas, Inc., Vancouver, WA and Portland, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reconsideration applicable to all workers of the subject firm in Vancouver, Washington. The Notice was published in the Federal Register on October 11, 1991 (56 FR 51405).

The Department is correcting the subject certification to include the Vancouver headquarters workers who were transferred to Portland, Oregon prior to their layoff.

The intent of the Department's certification is to include all workers of Nerco Oil and Gas, Inc., Vancouver, Washington who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA–W–26,014 is hereby issued as follows:

"All workers of Nerco Oil and Gas, Inc., Vancouver, Washington and Portland, Oregon who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of March 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7968 Filed 4–5–93; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992, (**Federal Register**, February 3, 1992, pg 4067). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program; and to make recommendations for improvement. The Council has also been directed to focus on specific subjects such as the use of regional or sub-State triggers for the Extended Benefit (EB) program, the work search requirement for the EB program, and eligibility and unemployment coverage for alien agricultural labor.

TIME AND PLACE: The meeting will be held from 9:30 a.m. to 5 p.m., on May 11, 1993, at the Postal Square Building, 2 Massachusetts Ave., NE., Washington, DC, Meeting Room 2.

AGENDA: The agenda for the meeting is as follows:

(a) Introduction of Council Members.
(b) Introduction of Council Staff.
(c) Welcome by the Secretary of Labor.
(d) Discussion of Current Trends in Employment and Unemployment.
(e) Discussion of Unemployment Compensation, Results of Recent Research on Coverage and Eligibility.
(f) Discussion of the State of Unemployment Compensation Financing.
(g) Procedures for the Administration and Operation of the Council.
(h) Discussion of Issues and Determination of Priorities for Review and Research.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Designated Federal

Official (DFO), listed below, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send fifteen (15) copies to Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210, (202) 219–7831.

Signed at Washington, D.C., this 30th day of March 1993.

Carolyn M. Golding,

Assistant Secretary of Labor.

[FR Doc. 93–7969 Filed 4–5–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February & March 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,195; Dover Electronics Co., Conklin, NY

TA–W–28,124; Valeo Climate Control Corp., Fort Worth, TX

TA–W–28,022; ERA Coats, Paterson, NJ

TA–W–28,184; Takata Fabrication Corp., Auburn Hills, MI (Formerly Known as Takata Fisher, St. Clair Shores, MI)

TA–W–28,140; Paterson Canning Co., Paterson, NJ

TA–W–28,136; Goodyear Tire & Rubber Co., Logan, OH

TA–W–28,156; Fireye, Inc., Derry, NH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–28,287; Shell Mining Co., Houston, TX

Aggregate imports of products like or directly competitive with coal manufactured at Shell Mining Co was negligible during the relevant period.

TA–W–28,318; Boelens Well Service Limited Liability Co Thermopolis, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,259; Maxim Engineers, Inc., Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,290; Conoco, Inc., Administration, Houston, TX

TA–W–28,291; Conoco, Inc., Marketing, Chattanooga, TN

TA–W–28,292; Conoco, Inc., Refining, Lake Charles, LA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,293; Conoco, Inc., Calcining, Moundsville, WV

TA–W–28,294; Conoco, Inc., Trading, Wichita Falls, TX

TA–W–28,295; Conoco, Inc., Terminals, Elk Grove, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,296; Conoco, Inc., Supply, Grapevine, TX

TA–W–28,297; Conoco, Inc., Transportation, Atlanta, GA

TA–W–28,298; Conoco, Inc., Pipeline, Billings, MT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,253; Southern Mechanical, Inc., Frankston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,083; Beaver Lumber Co., Inc., Beaver, WA

U.S. imports of softwood lumber declined absolutely and relative to domestic shipments in the twelve month period of November–October, 1991–1992 compared to the same twelve month period of November–October, 1990–1991.

TA–W–28,286 and TA–W–28,286A; Cox Exploration, Inc., Corpus Christi, TX and Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,130 & TA–W–28,131; Wells Oilfield Specialities, Inc., Coalinga, CA, and Bakersfield, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,238; Baker Hughes Tubular Services a/k/a ICO, Inc., Headquartered in Houston, TX and Operating Out of the Following Locations: A; Casper, WY, B; Edmond, OK C; Odessa, TX, D; Amelia, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–28,231; The Leslie Fay Co., In., Wilkes Barre, PA

A certification was issued covering all workers separated on or after January 5, 1991.

TA–W–28,038; Pacific Enterprises Oil Co., Wichita Falls, TX

A certification was issued covering all workers separated on or after November 12, 1991.

TA–W–28,125; Florsheim Shoe Co., Anna, IL

A certification was issued covering all workers separated on or after December 1, 1992 and before March 1, 1993.

TA–W–28,207; Tetley, Inc., Morris Plains, NJ

A certification was issued covering all workers separated on or after January 7, 1992.

TA–W–28,074; Park Avenue Exploration Corp., Oklahoma City, OK

A certification was issued covering all workers separated on or after November 23, 1991.

TA–W–28,075; Fidelity Gas Systems, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after November 23, 1991.

TA–W–28,255, TA–W–28,256, TA–W–28,257; Grace Offshore Co, Headquarters, New Orleans, LA, Booker Div., Houma, LA and Huthnance Div., New Iberia, LA

A certification was issued covering all workers separated on or after January 15, 1992.

TA–W–28,419; Norton Drilling Co., Lubbock, TX

A certification was issued covering all workers engaged in exploration and drilling separated on or after December 2, 1991.

TA–W–28,216; Cotone, Inc., Jersey City, NJ

A certification was issued covering all workers engaged in the production of ladies' coats separated on or after January 5, 1992.

TA–W–28,322; CHC Girard & Associates, Shreveport, LA

A certification was issued covering all workers engaged in Drilling, Exploration and production of oil and gas separated on or after January 29, 1992.

TA–W–28,205; Pioneer Industrial Products, Plant #1, Willard, OH

A certification was issued covering all workers engaged in the production of Rubber Gloves separated on or after January 6, 1992.

TA–W–28,302; Reltoc Manufacturing Co., Beaverton, AL

A certification was issued covering all workers separated on or after January 28, 1992.

TA–W–28,196; Grayling Oil, Inc., Hobart, OK

A certification was issued covering all workers separated on or after January 5, 1992.

TA–W–28,250; Dana Corp., Spicer Transmission, Toledo, OH

A certification was issued covering all workers engaged in the production of truck transmission parts separated on or after December 19, 1992.

TA–W–28,303; Obion and Denton, New Albany, MS

A certification was issued covering all workers engaged in the production of children's sleepwear separated on or after January 26, 1992.

TA–W–28,337; Link-Belt Construction Equipment Co., Lexington, KY

A certification was issued covering all workers engaged in the production of cranes and excavators separated on or after January 4, 1992.

TA–W–28,149; Dee-Ville Blouse Co., Danielsville, PA and TA–W–28,150; Dee-Ville Cutting, Slatington, PA

A certification was issued covering all workers engaged in the production of women's blouses and skirts separated on or after December 28, 1991.

TA–W–28,111; West Tech, Inc., Van Dale, Inc., Long Lake, MN

A certification was issued covering all workers engaged in the production of farm machinery separated on or after December 28, 1991.

TA–W–28,369; Amoco Corp, Information Technology Dept., Chicago, IL

A certification was issued covering all workers engaged in the production of crude oil and natural gas separated on or after February 22, 1992.

TA–W–28,066; Lyndhurst Coat, South Hackensack, NJ

A certification was issued covering all workers engaged in the production of outerwear separated on or after November 10, 1991.

TA–W–28,180; West Point Pepperell, Inc., Biddeford, ME

A certification was issued covering all workers engaged in the production of comforters and accessories separated on or after October 29, 1991. It was also determined all workers at the West Point Pepperell, Inc., Biddeford, ME engaged in the production of vellux blankets and flocked yardgoods are denied.

TA–W–28,249; Texaco Exploration and Production, Inc., Velma, OK

A certification was issued covering all workers engaged in exploration and production of crude oil, natural gas and liquid and natural gas separated on or after January 11, 1992.

TA–W–28,181; Hill-Loma, Inc., DBA The Hill Acme Co. & Loma Machine, Gorham, ME

A certification was issued covering all workers separated on or after October 27, 1991.

TA–W–28,101; Harcros Pigments, Inc., Emeryville, CA

A certification was issued covering all workers separated on or after December 1, 1991.

TA–W–28,330; Northern Telecom, Inc., Morton Grove, IL

A certification was issued covering all workers engaged in the production of central office connectors and data collection systems telecommunication equipment separated on or after February 4, 1992.

TA–W–28,315; National Tel-Tronics Div., (Excluding the assembly Dept), Meadville, PA

A certification was issued covering all workers engaged in production of electronic connectors, plastic parts, and cable assemblies separated on or after August 25, 1992.

TA–W–28,264; National Refractories & Minerals, Magnesia Plant, Moss Landing, CA

A certification was issued covering all workers separated on or after January 22, 1992.

I hereby certify that the aforementioned determinations were issued during the months of February and March 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 29, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7967 Filed 4–5–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,217]

Five Sons Coats, Jersey City, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 19, 1993 in response to a worker petition which was filed by the International Ladies Garment Workers Union on January 5, 1993 on behalf of workers at Five Sons Coast, Jersey City, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of March 1993

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–7966 Filed 4–5–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the

Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before May 6, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW, room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW, room 3002, Washington DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW, room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: Process of Application, Evaluation, Award, and Report of NEH Summer Stipends.
Form Number: OMB No. 3136–0050.
Frequency of Collection: Annual.
Respondents: Scholars, writers, and teachers in the humanities.
Use: Application for funding, evaluation, award-making, and reporting for NEH Summer Stipends.
Estimated Number of Respondents: 11,724.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: 1.53 per respondent.
Estimated Total Annual Reporting and Recording Burden: 18,074 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–7918 Filed 4–5–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Limited Participation by NRC in the IAEA International Nuclear Event Scale

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting.

SUMMARY: The NRC staff will hold a public meeting to briefly discuss the NRC's trial participation in the International Nuclear Event Scale (INES) reporting system. The INES methodology and associated rating criteria will be briefly described. Examples of events rated using the INES methodology will be provided.

DATES: Public Meeting is scheduled for May 6, 1993.

ADDRESSES: Public meeting will be held at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, Telephone (301) 652–2000, between 2 p.m. and 3 p.m. Copies of Generic Letter 92–09, "Limited Participation by NRC in the IAEA International Nuclear Event Scale," dated December 31, 1992 are available for review in the NRC Public Document Room at 2120 L Street, NW., (Lower Level), Washington, DC, telephone (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Contacts: Tim McGinty—Phone: (301) 492–9916, FAX: (301) 492–7142. Joseph Giitter—Phone: (301) 492–9005, FAX: (301) 492–7142.

SUPPLEMENTARY INFORMATION: Interested individuals may address relevant remarks or comments to the NRC staff at the meeting. To facilitate the scheduling of available time for speakers and orderly conduct of the meeting, members of the public who wish to speak at the meeting, should request the opportunity to speak in advance of the meeting.

To request the opportunity to speak at the public meeting, contact one of the cognizant NRC staff members listed in the For Further Information Contact section. Indicate as specifically as possible the topic(s) of your comment. Provide your name and a telephone number at which you can be reached, if necessary, before the meeting.

Dated at Bethesda, Maryland this 25th day of March, 1993.

Ken E. Brockman,

Chief, Incident Response Branch, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data.

[FR Doc. 93–7944 Filed 4–5–93; 8:45 am]

BILLING CODE 7590–01–M

NRC PRA Technology Subgroup of the Regulatory Review Group; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of public meeting.

SUMMARY: On January 4, 1993, the executive Director for Operations appointed a Regulatory Review Group. The group is conducting a comprehensive and disciplined review of power reactor regulations and related NRC processes, programs, and practices with special attention placed on the feasibility of substituting unnecessarily prescriptive requirements and guidance with performance based requirements and guidance founded on risk insights. A public meeting is being held to discuss how a PRA can be used to provide more flexibility in the regulations and in the implementation of the regulations. This notice provides the time and place of the meeting and notification that subsequent material will be made available prior to the meeting. Comments are being solicited on this material at the meeting.

DATES: Meeting has been scheduled for May 6, 1993 from 8 am to 1pm.

ADDRESSES: Meeting will be held at the U.S. NRC offices, 11555 Rockville Pike, in room 12B11, in Rockville, Md. Attendees will be required to sign in. Requests to speak on a topic in response to the published material should be sent by mail or facsimile to M.T. Drouin at 5650 Nicholson Lane, MS#324, Rockville, MD 20852, fax (301) 443–7836. To ensure adequate space is reserved for meeting, notification of attendance is appreciated.

FOR FURTHER INFORMATION CONTACT: M.T. Drouin (301) 492–3917.

SUPPLEMENTARY INFORMATION: The material will be placed in the Public Document Room on April 26, 1993. Topics that will be covered in material include:

- Potential Applications of PRA-based Methods. This issue will address such items as—technical specification compliance (e.g., LCO extension, AOTs, STIs), equipment testing, and graded approach to quality assurance.
- Required Conditions for Use of PRA Analyses in Regulation. This issue will address such items as—scope of analysis, acceptable boundary conditions and assumptions, data quality, frequency of PRA update (e.g., need for a "living" PRA), and level of NRC review.

The meeting will commence with the NRC providing introductory remarks, statements on the objectives of the

Regulatory Review Group and the meeting. The NRC does not intend to publish any additional material, other than what is discussed in this notice.

SUBJECT: NRC Regulatory Review Group, PRA Subgroup.

Dated at Rockville, Maryland, this 30 day of March 1993.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Regulatory Review Group.

[FR Doc. 93–7943 Filed 4–5–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–66 and NPF–73 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 located in Shippingport, Pennsylvania.

The proposed amendments would modify the Technical Specifications and Bases to allow sleeving at the steam generator tube support plate and tubesheet regions in accordance with processes performed by the vendors, Babcock & Wilcox and Westinghouse.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the no significant hazards consideration standards.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Some steam generator tubes have been found to have a varying amount of wall degradation. When the degradation is extensive, the normal practice of plugging defective tubes reduces the effectiveness of the steam generators and eventually will reduce the performance of the nuclear steam supply system. An alternative to plugging tubes is installing a sleeve as a new pressure boundary inside the original tube to bridge the degraded area, thus permitting the tubes to remain in service. The integrity of the repaired steam generator tubes will be equivalent to that of the original tube and will allow the tube to continue performing its heat transfer function.

The proposed change allows the installation of steam generator tube sleeves in accordance with the vendor methodologies provided by the B&W Kinetic welded sleeving process described in NRC approved topical report BAW–2094P, Revision 1 and the Westinghouse laser welded sleeving process described in WCAP–13483, Revision 1, provided for NRC review and acceptance. The sleeve installation process procedures described in BAW–2094P, Revision 1 will be revised to include the kinetic sleeve "tooling" and installation process parameter changes described in NRC approved BAW–2045PA, Revision 1, January 1992, "Recirculating Steam Generators Kinetic Qualification for ¾ Inch OD Tubes." These changes were incorporated to resolve field problems or to improve the sleeve installation rate and will not alter the basic installed configuration of the sleeve as described in BAW–2094P, Revision 1. We have reviewed the methodology described in BAW–2094P, Revision 1 and determined that they are applicable to the Beaver Valley units and provide a safe and efficient alternative to plugging. We have reviewed the methodologies described in these vendor reports and determined that they provide a safe and efficient alternative to plugging. Eddy current techniques are available to perform sleeve and tube inspections for defect detection and to verify power installation of the sleeve. Available techniques are capable of providing adequate defect sensitivity in the required areas of the tube and sleeve pressure boundary. Proprietary methods described in the vendor reports with supporting qualification data demonstrate the inspectability of the sleeve and underlying tube. In addition, we are committing to qualify the adequacy of any system that is used for periodic inservice inspection and to evaluate and, if practical, implement testing methods as better methods are developed and qualified for use.

The structural integrity of the repaired tube is restored to that of an undegraded tube and the tube and sleeves will be inspected periodically in accordance with the technical specification surveillance requirements. Sleeving does not affect the UFSAR steam generator tube rupture accident, therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from [any] accident previously evaluated?

Both the structural integrity and the heat transfer capability of the stem generators will not be significantly affected by the installation of sleeves. In addition, the sleeves are attached to the inside of the tubes and cannot interact with any of the other plant systems. The sleeves have been analyzed and tested and the repair methods have been evaluated to ensure they satisfy the required design conditions. Sleeving returns the degraded tube to a serviceable condition and the sleeved tube functions in essentially the same manner as the original tube. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The heat transfer capabilities of the steam generators will be improved by utilizing the sleeving process rather than the currently required plugging. Installing sleeves slightly reduces the RCS flow and heat transfer capabilities, however, this reduction is significantly less than that of tubes that have been plugged. Sleeving maintains the structural integrity of the steam generators to ensure the RCS pressure boundary is adequate for the expected design conditions, therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 6, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Walter R. Butler: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 30, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 1st day of April 1993.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7945 Filed 4–5–93; 8:45 a.m.]

BILLING CODE 7590–01–M

[Docket No. 50-295]

Exemption

In the matter of Commonwealth Edison Company (Zion Station, Unit No. 1).

I

The Commonwealth Edison Company (the licensee), is the holder of Facility Operating License No. DPR-39 which authorizes operation of Zion Station, Unit 1, at a steady-state power level not in excess of 3250 megawatts thermal. The facility consists of a pressurized water reactor located at the licensee's site in Lake County, Illinois. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In its letter dated January 12, 1993, Commonwealth Edison Company (the licensee) applied for an exemption from the Commission's regulations. The subject exemption is from the requirements in appendix J to 10 CFR part 50 that a set of three Type A tests (Containment Integrated Leak Rate Tests or CILRT) be conducted, at approximately equal intervals during each 10-year service period and that the third of these tests be performed when the plant is shut down for the 10-year plant inservice inspections required by 10 CFR 50.55a.

III

The NRC staff notes that the first CILRT of the second 10-year service period was conducted in March 1988. This represents a test interval of 43 months from the preceding CILRT, which was performed 8 months into the second 10-year service period due to NRC concerns with the validity of the test results from the second and third Type A tests of the first 10-year service period. The second CILRT was conducted in March 1992, 48 months after the first, because the controlling fuel cycle lasted for 29 months due to two major forced outages. The next refueling outage, which is also the 10-year plant inservice inspection outage, is scheduled for October 1993. Since the interval between the last Type A test and the refueling outage date is only 19 months, the licensee proposes to move the next scheduled Type A test to the refueling outage currently scheduled to start in September 1995. The interval between the two successive Type A tests on the unit would then be 43 months. The time interval between CILRT should be about 40 months based on performing three such tests at approximately equal intervals during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months (25 percent variation) is typically authorized to permit flexibility in scheduling the CILRTs. For the purpose of performing CILRT, this one-time exemption extends the current service period by approximately 24 months beyond the normal 10-year service period. The NRC staff concludes that the deviation from the scheduling requirements of Section III.D.1.(a) to conduct three Type A tests during each 10-year service period is not significant, as the interval between two successive tests will be 43 months. Accordingly, the staff finds, for the reasons set forth above, that the subject exemption request meets the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)) to ensure containment integrity, which requires three Type A tests be conducted in a 10-year period, at approximately equal intervals.

The licensee also requested an exemption from the requirement of 10 CFR part 50, appendix J, Section III.D.1.(a), that the third Type A test of the second 10-year service period be conducted during the 10-year plant inservice inspections. The requested exemption would permit continued performance of Type A testing at a 40 ±10-month interval. For the purpose of performing CILRT, this one-time exemption allows the facility to conduct the third Type A test of the second 10-year service period during the outage after the one for the 10-year plant inservice inspections. The NRC staff concludes that the deviation from the scheduling requirement of Section III.D.1.(a) to conduct the third Type A test during the shut down for the 10-year plant inservice inspections is not significant, as it will be conducted during the succeeding refueling outage. Since the methodology and acceptance criteria in 10 CFR part 50 appendix J and the structural integrity requirements of the containment are not being changed by this exemption, performance of the third CILRT of the second 10-year service period independent of the plant shutdown for the 10-year inservice inspections will still meet the underlying purpose of the rule, which is to ensure containment isolation integrity. Accordingly, for the reasons set forth above, the staff finds that the subject exemption request meets the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)) to ensure containment integrity, which requires the third Type A test to be conducted during the 10-year inservice inspections.

On this basis, the NRC staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that extending the service period and conducting the third Type A test during the refueling outage after the one for the 10-year plant in-service inspections will not present an undue risk to the public health and safety. Since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of approximately 24 months beyond the 10-year service period will not have a significant safety impact.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to requirements of 10 CFR part 50, appendix J, section III.D.1(a):

For the Zion Nuclear Power Station, Unit 1, the current service period may be extended by approximately 24 months beyond the normal 10-year service period, for the purpose of conducting the third periodic Type A test for the second 10-year service period during the Cycle 14 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (58 FR 16717).

Dated at Rockville, Maryland this 31st day of March 1993.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–7942 Filed 4–5–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–6985, File No. S7–14–93]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference on uniformity of securities laws, and requesting written comments.

SUMMARY: In conjunction with a conference to be held on April 26, 1993, the Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for the conference. This meeting is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, to maximize the effectiveness of securities regulation in promoting investor protection, and to reduce burdens on capital formation through increased cooperation between Commission and the state securities regulatory authorities.

DATES: The conference will be held on April 26, 1993. Written comments must be received on or before April 20, 1993 in order to be considered by the conference participants.

ADDRESSES: Written comments should be submitted in triplicate by April 20, 1993 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comments should refer to File No. S7–14–93 and will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William E. Toomey or Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 272–2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act") [1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, as responsible for complying with the federal securities laws as well as all applicable state regulations. It has long been recognized that there is a need to increase uniformity between federal and state regulatory systems, and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The policy of that section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) Maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and a reduction in the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1993 meeting will be the tenth such conference.

II. 1993 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[3] are planning the 1993 Conference on Federal-State Securities Regulation (the "Conference") to be held April 26, 1993 in Washington, DC. At the Conference, representatives from the Commission and NASAA will form into working groups in the areas of corporation finance, market regulation, investment management, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to representatives of the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. However, each working group, in its discretion, may invite certain self-regulatory organizations to attend and participate in certain sessions.

Representatives of the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments on the issues set forth below. In addition, comment is requested on other appropriate subjects that commenters wish to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight, and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal exemption for limited offerings. Regulation D was adopted by the Commission in March 1982 and, on September 21, 1983, NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to complement Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. Because Regulation D provides the framework for ULOE, NASAA's assistance in developing proposals to improve Regulation D is extremely important. In recent years the Commission, with NASAA's cooperation, has adopted significant changes to Regulation D.[4]

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[1] 15 U.S.C. 77a et seq.

[2] Public Law 96–477, 94 Stat. 2275 (October 21, 1980).

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[4] Securities Act Release No. 6663 (October 2, 1986) [51 FR 36385]; Securities Act Release No.

Continued

To date, more than half the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE. The conferees will discuss viable options to convince non-participating states to adopt ULOE and to encourage consistency in its use.

b. Small Business Initiative

On July 30, 1992, the Commission adopted a number of important rulemaking changes, often described as the Small Business Initiative, which are designed to improve the overall capacity to help finance new companies, and to provide new opportunities for investors.[5] Among other things, the Commission Small Business Initiative resulted in simplified registration and reporting systems for "small business issuers", generally defined as companies whose revenues are less than $25 million a year. In addition, the ceiling for the Regulation A exemption was raised from $1,500,000 to $5,000,000, and issuers contemplating a Regulation A offering are now permitted to use a written document to "test the waters" for investor interest prior to assuming the expense of an offering. The Commission also eliminated the federal requirement for the use of the Rule 504 exemption under Regulation D, and prohibited the use of this exemption by blank check companies.

The participants will discuss the impact of these changes, and the need for any additional exemptive relief in the small business area. In particular, the participants will consider the effect of the modifications to Rule 504 on the administration of State securities laws, and whether the amended Rule poses difficulties for State regulators working with limited offerings. The participants will also review their experience with Regulation A and, in particular, "test the waters" documents.

Public comment is invited on the efficacy of the Small Business Initiative. Comment is also sought with respect to any other uniform exemptions that might be developed to enhance the ability of issuers to raise capital, while protecting legitimate interests of investors.

c. Disclosure Policy and Standards

The Commission regularly reviews and revises its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination of this effort with the states has been most beneficial. Recently, both the Commission and the states have devoted considerable attention to issues arising from the so-called "roll-up" of limited partnerships. A roll-up usually involves the combination or reorganization of one or more partnerships. The conferees will again consider the special disclosure problems involved in such transactions with emphasis on the disclosure rules adopted by the Commission to improve the quality of information provided to investors.[6]

Commenters are invited to discuss other areas where federal-state cooperation in the area of disclosure standards could be of particular significance as well as any ways in which federal-state cooperation could be improved.

d. Multinational Securities Offerings

In June 1991, the Commission and the Canadian Securities Administrators adopted a multijurisdictional disclosure system that permits certain Canadian and U.S. issuers to offer securities, undertake tender offers, and file periodic reports using the disclosure procedures of their home jurisdiction.[7] On September 14, 1989, NASAA endorsed the multijurisdictional disclosure system as originally proposed and called upon its membership to take any action necessary to accommodate the offerings covered by the system within state securities laws. Based upon the information obtained from a survey of securities administrators, NASAA, on August 30, 1990, adopted Model Rules to the Uniform Securities Act (1956) and recommended their adoption to the membership, where necessary to accommodate the Canadian multijurisdictional system.

Current developments relating to the multijurisdictional disclosure system and to the actions taken by the states in connection therewith will be discussed at the conference.

On June 5, 1991, the Commission published for comment an exemptive rule, a registration form and an order that would permit tender offers, exchange offers and business combinations relating to a foreign issuer's securities to proceed in the United States on the basis of the applicable regulation of the target company's home jurisdiction, where a small percentage of the shares sought are held of record by U.S. holders.[8] The Commission also published for comment an exemptive rule and a registration form to facilitate rights offerings of equity securities by foreign private issuers to their existing U.S. shareholders.[9] These proposed exemptions and new registration forms will be discussed, with special consideration being given to methods of coordinating federal and state regulations to accommodate such multinational offerings.

Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

(2) Market Regulation Issues

a. Central Registration Depository ("CRD")

The CRD is a computerized filing and data processing system operated by the NASD that maintains information concerning NASD member broker-dealers and their registered personnel for access by state regulators and self-regulatory organizations. It permits a broker-dealer to make one filing and for the information in that filing to be communicated electronically to the appropriate state regulators. Effective January 25, 1993, the Commission commenced full participation in the CRD by accepting filing of broker-dealer registration filings and amendments (Form BD) and requests for withdrawal (Form BDW) through the system, thereby providing for "one stop filing" and eliminating the need for firms to file paper copies with the Commission. Commission participation in the system will also result in the inclusion in the CRD of approximately 3000 registered broker-dealers that are currently not included because they are not members of the NASD. The participants will discuss the SEC's participation in the CRD and the plans for phased implementation of non-NASD broker-dealers. The participants will also discuss the current project initiated by the NASD to redesign and upgrade the CRD system.

b. Customer Complaint System

Last year, the staff of the Commission, NASAA, and the NASD reached an understanding reconciling the Commission's and NASAA's differing interpretations of the word "proceeding" as used in Item 7(G) of Form BD. Based on this understanding, a definition of "proceeding" was added to Form BD. As part of the

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6758 (March 3, 1988) [53 FR 7866]; Securities Act Release No. 6825 (March 14, 1989) [54 FR 11369].

[5] Securities Act Release No. 33-6949 (July 30, 1992) [57 FR 36442].

[6] Securities Act Release No. 6922 (October 30, 1991) [56 FR 57237].

[7] Securities Act Release No. 6902 (June 21, 1991) [56 FR 30036].

[8] Securities Act Release No. 6897 (June 5, 1991) [56 FR 27562].

[9] Securities Act Release No. 6896 (June 5, 1991) [56 FR 27564].

understanding, the Commission and the NASD agreed to provide state securities regulators with their customer complaint information through an NASD database accessible through the CRD. The Commission and NASAA participants will discuss the current operation of the customer complaint system and any problems that have arisen.

c. Penny Stock Practices

In May 1992, the Commission adopted new penny stock rules designed to provide customers with additional information about the penny stock markets and the penny stock dealer recommending to them a penny stock transaction. These rules, Rule 3a51–1, Rules 15g–1 through 15g–6, and Schedule 15G under the Exchange Act, all were effective as of January 1, 1993. The conferees will discuss the operation of these and other penny stock rules, including the Commission's cold calling rule, Rule 15c2–6, and whether the scope of the rules is appropriate. The conferees also will discuss how penny stock dealers are adapting their practices in response to the rules.

d. Sales of Securities by Financial Institutions

In response to the fall in interest rates, banks and other financial institutions have suffered large outflows of funds from certificates of deposit and other savings vehicles. As a result, financial institutions have sought to offer mutual funds and other securities services to their customers, either directly or through arrangements with broker-dealers. The conferees will discuss these developments, any concerns raised by sales of securities on the premises of financial institutions, and possible responses available to the conferees.

e. Small Business Listing Standards

Several national securities exchanges have submitted proposals to the Commission to create a second tier of listing standards for small issues. The second tier standards generally are substantially lower than the regular listing standards in most categories (such as outstanding float, number of shareholders, total assets, etc.). The purpose of the second tier is to help smaller business raise capital by providing easier access to an exchange listing. Two examples of alternative listing standards are the American Stock Exchange's ECM market and the PSE proposal to list SCOR offerings. Because companies listed on the American Stock Exchange are exempt by state statute or regulation from blue sky registration of offerings in virtually every state, and Pacific Stock Exchange issues are granted a similar exemption in many states, these second tier companies would not be subject to blue sky registration. To address this, the American Stock Exchange has taken measures to prevent its Emerging Company Marketplace issuers from availing themselves of both the initial and secondary trading blue sky exemptions normally accorded Amex-listed companies. The Pacific Stock Exchange proposal also specifically states that issuers listed under SCOR are not entitled to blue sky exemptions. Nevertheless, questions have been raised about this issue and other issues arising out of the creation of a tier of substantially smaller and less mature issuers for stock exchange trading. Participants will discuss the benefits and problems involved in small business listing standards.

f. Additional Issues

The participants will also discuss other issues of mutual interest relating to the regulation of broker-dealers. Possible discussion topics include the following:

1. Broker-dealer books and records retention requirements, particularly electronic storage such as optical disc technology;

2. Supervisory responsibilities of broker-dealers with "franchised" branch offices or large numbers of "independent contractors;"

3. Sales practices of broker-dealers with respect to mutual funds, municipal securities and collateralized mortgage obligations;

4. Continuing assessment/education requirements for associated persons of broker-dealers;

5. Testing of mutual fund salesmen (Series 6); and

6. Issues relating to the disclosure of additional information relating to regulatory matters, litigation and arbitration (including settlements) involving associated persons of broker-dealers.

(3) Investment Management Issues

a. Investment Companies

(1) *Report on investment company regulation by the Division of Investment Management.* On May 1, 1992, the Division of Investment Management released its report on investment company regulation, Protecting Investors: A Half Century of Investment Company Regulation. The report proposed new legislation and the adoption or amendment of certain Commission rules governing the activities of investment companies registered under the Investment Company Act of 1940.[10] The Commission has already acted upon a number of these recommendations. For example, the Commission has adopted a rule conditionally exempting structured financing from the Investment Company Act and has proposed a rule to create new procedures for the redemption or repurchase of fund shares. In the upcoming months, the Division expects the Commission to consider additional rule proposals and legislation consistent with the report's recommendations. For example, the Commission expects Congress to consider legislation expanding the "private" investment company exception from registration under section 3(c)(1) of the Act. The conferees are expected to discuss these developments and how they may affect the regulation of investment companies and similar entities by the Commission and by the states.

(2) *Investment company disclosure and filing requirements.* Investment companies register with the Commission under the Investment Company Act, register their securities under the Securities Act of 1933, and comply with the proxy and reporting requirements under the Securities Exchange Act of 1934. Most investment companies also are required to register the shares they offer for sale in a state under that state's securities law. While many states permit investment companies to satisfy their filing requirements by filing a copy of the registration statement filed with the Commission, states may require the filing of additional documents, or require that documents be filed at different times.

The Commission and the states have worked to coordinate, to the extent possible, the filing and disclosure requirements for investment companies. For example, in 1983 the Commission adopted a new two-part disclosure format for mutual funds under which all investors receive a shorter prospectus containing essential information about the fund and the risks investment in the fund present, while other more detailed information about the fund is available to investors requesting it in a Statement of Additional Information ("SAI"). When the new format was adopted, representatives of NASAA made substantial efforts to assure that the new format would also be viewed as meeting state disclosure requirements.

Conferees will discuss the status of federal and state efforts toward the goal of more uniform federal and state investment company disclosure

[10] 15 U.S.C. 80a-1 *et seq.*

requirements and filing procedures. Among other things, conferees will discuss:

(A) Two Part Format

State regulators have expressed certain concerns about whether important information about mutual fund investment is "drifting" from the prospectus to the SAI. State regulators are also concerned about perceived inconsistencies in the manner in which information is set forth and explained in the fee table in the prospectus. Conferees are expected to discuss these concerns, whether there has been non-compliance by some registrants with existing requirements for prospectus and fee table disclosure, and whether the Commission should review its rules governing the allocation of information between the prospectus and SAI and fee table presentation.

(B) State Disclosure Guidelines

State regulators are currently considering proposed guidelines for disclosure of investment companies' investments in high yield, or "junk" bonds and the risks associated with such investments. State regulators have also published for comment guidelines regarding investment companies' policy on share transactions initiated by instructions communicated over the telephone. The conferees are expected to discuss whether there is a need for, and the expected effect of, these guidelines and whether they would be consistent with the Commission's rules.

b. Investment Advisers

On January 26, 1993, the Investment Adviser Regulatory Enhancement and Disclosure Act of 1993 was introduced in the House of Representatives. The bill would amend the Investment Advisers Act of 1940 to require registered investment advisers to pay annual fees to fund the Commission's program for inspecting advisers. The bill would also codify the Commission "brochure" rule [11] that requires advisers to furnish clients a written disclosure document, typically part II of Form ADV, the uniform registration for investment advisors used by the Commission and the states. The bill would impose additional requirements upon advisers, and would authorize the Commission to establish a "one-stop" filing system allowing advisers to make one filing that would be transmitted electronically to the Commission and the states. The conferees will discuss the status of the bill, as well as rule proposals that might result from the legislation, and the impact the legislation might have upon proposed joint Commission and state action such as revisions to Form ADV.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include Edgar, the Commission's pilot electronic disclosure system, the coordination of Commission rulemaking procedures with the states, training and educating staff examiners and analysts, and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

Dated: March 31, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7955 Filed 4-5-93; 8:45 am]

BILLING CODE 8010-01-M

[11] Rule 204-3 under the Investment Advisers Act of 1940, 17 CFR 275.204-3.

[Release No. 34-32067; File No. SR-Amex-92-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Adoption of SICA Amendments to the Uniform Rules Which Govern the Administration of Securities Industry Arbitration

March 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 1, 1993, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] See letter from Janice M. Stroughter, Director of Hearings and Special Counsel, Amex, to Betsy Prout, Esq., Office of Self-Regulatory Oversight, Commission, dated November 5, 1992.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

The Amex is proposing to adopt the Securities Industry Conference on Arbitration ("SICA") proposed amendments to the uniform rules which govern the administration of securities industry arbitration.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to amend its rules and procedures governing the administration of arbitration. These amendments codify modifications to the Uniform Code of Arbitration already approved by SICA.

New Rule 600(d) will provide that class actions shall not be eligible for submission to arbitration; however, an individual may plead the same facts in arbitration as those pled in a pending or former class action if certification is denied to the class, or if the class is decertified, or if the individual is excluded from the class by the court or if the individual elects not to participate in the class. In that regard, Rule 427 governing pre-dispute arbitration clauses will, in conformity with the new class action rule, require that all new pre-dispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to arbitration.

It should be noted that in order to conform the Amex rules with the Uniform Code of Arbitration adopted by the Amex in 1980, proposed Rule 600 will also contain the language found in

Article VIII of the Exchange's Constitution which sets forth the duty of members to arbitrate disputes arising in connection with business conducted among themselves or with customers.

Currently, Exchange Rule 621 does not specifically provide a mechanism for resolving pre-hearing matters in simplified proceedings, *i.e.*, in those cases where the amount in dispute is less than $10,000. The Amex is proposing to amend this rule to codify the applicability of the discovery procedures to simplified arbitration.

Currently, all awards must bear interest from the date of the award and must be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Amended Rule 618 will require that interest accrue on awards from the date of the award only if the award is not paid within the required 30-day period or if a motion to vacate has been unsuccessful, or as specified by the arbitrators.

A number of other procedural changes are proposed:

- Rule 600(c) will allow the Exchange to refer claims arising out of transactions in a readily identifiable market to the forum for that market when the claimant so consents.
- Rule 602 will classify individuals who are registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators.
- Rule 602(f) will classify the time limitations applicable to any party wishing to exercise a peremptory challenge.
- Rule 608(d) will clarify the rule regarding failure of a party to appear at a hearing or continuation of any hearing.
- Rule 612 will clarify that arbitrators are empowered to take appropriate action, such as assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals in order to obtain compliance with any ruling by the arbitrators.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-28 and should be submitted by April 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-7958 Filed 4-5-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32068; File No. SR-CSE-92-11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Arbitration Fees

March 30, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1992, the Cincinnati Stock Exchange, Inc. ("CSE"' or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its arbitration rules to conform its arbitration fees to those charged by other self-regulatory organizations ("SROs").[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] See Securities Exchange Act Release No. 30702 (May 14, 1992), 57 FR 24701 (order granting accelerated approval to File No. SR-BSE-91-03); Securities Exchange Act Release No. 30109 (December 20, 1991), 56 FR 67341 (order approving File No. SR-NASD-91-54); Securities Exchange Act Release No. 29721 (September 23, 1991), 56 FR 49812 (order approving File No. SR-MSRB-91-04); Securities Exchange Act Release No. 29352 (June 20, 1991), 56 FR 29511 (order approving File No. SR-Phlx-90-03); Securities Exchange Act Release No. 29151 (May 1, 1991), 56 FR 21512 (order approving File No. SR-CBOE-90-35); Securities Exchange Act Release No. 29087 (April 15, 1991), 56 FR 18601 (order approving File No. SR-Amex-90-24); Securities Exchange Act No. 28783 (January 15, 1991), 56 FR 2783 (order granting accelerated approval to File No. SR-PSE-90-31); Securities Exchange Act Release No. 28421 (September 10, 1990), 55 FR 38181 (order approving File No. SR-NYSE-90-19); and Securities Exchange Act Release No. 28086 (June 1, 1990), 55 FR 23493 (order approving File No. SR-NASD-90-03).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform the fee schedule in CSE's arbitration rules [3] with those adopted by other SROs in 1990. The proposed rule change is part of an updating process by which CSE seeks to keep its arbitration rule uniform with those of other SROs.

2. Statutory Basis

The proposed changes are consistent with section 6(b) of the Act, and in particular with section 6(b)(4) in that they provide for the equitable allocation of reasonable fees among persons using CSE's facilities, and section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed changes should have no adverse impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–92–11 and should be submitted by April 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7957 Filed 4–5–93; 8:45 am]

BILLING CODE 8010–01–M

[3] The CSE proposes to amend its arbitration fees in Rules 9.2, Simplified Arbitration; 9.18, Adjournments; and 9.30, Schedule of Fees for Customer Disputes.

[Release No. 34–32075; International Series Release No. 529; File No. SR–ISCC–93–1]

Self-Regulatory Organizations; Filing of Proposed Rule Change by International Securities Clearing Corporation Relating to a Data Transmission Link With Euroclear

March 31, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 1, 1993, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule filing is to implement a data transmission link agreement with Euroclear.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) ISCC Rule 40 provides that ISCC may establish links with foreign financial institutions and may require members to enter into such agreements as ISCC deems necessary in order to use a link. Pursuant to the authority granted by ISCC Rule 40, ISCC has established a data transmission link with Euroclear Systems, a clearance and settlement system for internationally traded securities, located in Brussels, Belgium. All members who wish to access this link will be required to enter into a supplemental Member's Agreement amendment (the "Amendment").

Access to the Euroclear link will be limited to those members who use a service bureau approved by ISCC. Automatic Data Processing, Inc. ("ADP") is the first service bureau to be approved to process these transactions. Each member will be required to authorize ISCC to accept data from the service bureau on behalf of the member. Such authorization will be contained in the Amendment.

The link procedures provide that the service bureau will submit data to ISCC on the member's behalf. ISCC will perform a limited edit function and, if the data passes the edit, will reformat the data into Euroclear formats and transmit the data to Euroclear. Euroclear will confirm receipt. Output from Euroclear will not flow through ISCC, but will go directly to the ISCC member from Euroclear.

ISCC members currently enter into a members agreement ("Members Agreement") which, among other things, limits ISCC's liability to the member for errors or omissions. Each broker/dealer that uses the services of ADP also enters into an agreement with ADP that limits ADP's liability to the broker/dealer for errors or omissions. ISCC's limitation of liability in the Members Agreement is not as broad as the one contained in ADP's agreement. To protect ISCC from any gap between the two agreements, the Amendment will contain a provision that limits ISCC's liability from errors or omissions on the part of ADP.

[1] 15 U.S.C. 78s(b)(1).

(b) Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions, it is consistent with section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ISCC has notified its members of the proposed changes to its procedures and to date has received no written comments. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–ISCC–93–1 and should be submitted by April 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–7956 Filed 4–5–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2636; Amdt. #1]

Florida (and Contiguous Counties in Georgia); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with amendments dated March 15, 20, 22, and 26, 1993, to include Baker, Broward, Collier, Dixie, Franklin, Gilchrist, Glades, Gulf, Lafayette, Leon, Monroe, Nassau, Sumter, Suwannee, and Wakulla Counties in the State of Florida as a disaster area as a result of damages caused by excessive rainfall, tornadoes, flooding, high tides and gale force winds. The incident type for this disaster is also hereby expanded to include damages resulting from cold temperatures and freezing conditions during the period of this disaster which has been established as beginning on March 12 and continuing through March 16, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bay, Calhoun, Gadsden, and Liberty in the State of Florida and Charlton, Camden, Grady, Thomas, and Ware Counties in the State of Georgia may be filed until the specified date at the aforementioned location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 12, 1993 and December 13, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 30, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–7884 Filed 4–5–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 7⅝ percent for the fiscal quarter beginning April 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April–June quarter of FY 93, this rate will be 6⅝ percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–7883 Filed 4–5–93; 8:45 am]

BILLING CODE 8025–01–M

[License#01/13–0008]

Old Stone Capital Corporation; License Surrender

Notice is hereby given that Old Stone Capital Corporation ("OSCC"), 150 South Main St. Providence, Rhode Island 02903 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). OSCC was licensed by the Small Business Administration on July 20, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 4, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–7938 Filed 4–5–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS–AP–No. s 3197 and 3209]

Burlington Northern Railroad Co.; Cancellation of Public Hearing

The Federal Railroad Administration (FRA) has cancelled the public hearing on the captioned signal petitions because petition BS–AP–No. 3209 has been withdrawn by the railroad and presently the FRA finds a public hearing unwarranted for petition BS–AP–No.

3197. The hearing had been scheduled for April 22, 1993, in Aberdeen, South Dakota.

In the now-withdrawn application the Burlington Northern Railroad Company petitioned the FRA seeking approval of the proposed discontinuance and removal of the traffic control and automatic block signal system on the single main track, between Stateline, milepost 602.2 and Mobridge, South Dakota, milepost 805.1, on the Dakota Division, 12th Subdivision and between Mobridge, milepost 805.1 and Terry, Montana, milepost 1078.9, on the Montana Division, 27th Subdivision, a distance of approximately 477 miles. (See the original hearing notice in **Federal Register**, Vol. 58, No. 32, Friday, February 19, 1993, page 9233.)

The FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Issued in Washington, DC on March 31, 1993.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 93–7923 Filed 4–5–93; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; United Surety and Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29397 to reflect this addition:

United Surety and Indemnity Company. Business Address: P.O. Box 3432, Old San Juan Station, San Juan, PR 00902–3432. Underwriting Limitation [b]: $149,000. Surety Licenses [c]: PR. Incorporated in: Puerto Rico.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6602.

Dated: March 29, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–7899 Filed 4–5–93; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension to an information collection entitled "Artistic Ambassador Program Biographic Information Form for Auditioners", under OMB Control Number 3116–0172. Estimated burden hours per response is 1½ hours. Respondents will be required to respond only one time.

DATES: Comments are due on or before May 6, 1993.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. Jeffery Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paperwork Reduction Project: OMB No. 3116–0172) is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

TITLE: Artistic Ambassador Program Biographic Information Form for Auditioners.

FORM NUMBER: IAP–121.

ABSTRACT: This form is intended to obtain information from aspiring musicians who are interested in competing for the chance to represent the United States overseas. Candidates are screened, and through a process of elimination, finalists are selected. Overseas tours are from 4 to 6 weeks in duration, during which the successful candidates will give concerts for foreign audiences and represent the United States through personal contacts and the presentation of American art and culture. This program is intended to fulfill the requirements for the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, imposed upon USIA to strengthen international cooperative relations through tours in foreign countries by creative performing artists.

PROPOSED FREQUENCY OF RESPONSES:

No. of Respondents—88

Recordkeeping Hours—0

Total Annual Burden—132

Dated: March 31, 1993.

Rose Royal,

Federal Register Liaison.

[FR Doc. 93–7890 Filed 4–5–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Career Development Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Career Development Committee will be held at the Omni Inner Georgetown Hotel, 2121 P Street NW., Washington, DC 20037, April 28 through April 30, 1983, starting at 8 a.m., April 28. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Department of Veterans Affairs. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, and Clinical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 9:30 a.m. on April 28, 1993, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Dr. Rhoda Au, Executive Secretary of the Career Development Committee (12A3), Department of Veterans Affairs, Washington, DC 20420, (202) 523–6876, prior to April 21, 1993. The meeting will be closed from 8:30 a.m. to 5:30 p.m. on April 29, and 8 a.m. to 5:30 p.m. on April 30 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Public Law 92–463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Rhoda Au, Ph.D., Acting Chief, Career Development Program, Medical Research Service (12A3), Department of Veterans Affairs, Washington, DC 20420 (phone 202–523–6876).

Dated: March 29, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–7948 Filed 4–5–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 64

Tuesday, April 6, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 12, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 2, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93-8152 Filed 4-2-93; 3:22 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, April 13, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6035—Safety Study: Recreational Boating Safety.

5579A—Highway Accident Report: Mayflower Contract Services, Inc., Tour Bus Plunge from Tramway Road and Overturn Crash, Palm Springs, California, July 31, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR FURTHER INFORMATION CONTACT: Bea Hardesty, (202) 382-6525

Dated: April 2, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93-8113 Filed 4-2-93; 1:02 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 5, 12, 19, and 26, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 5

Tuesday, April 6

10:00 a.m.
Briefing by IIT on Unauthorized Forced Entry into the Protected Area at TMI-1 (Public Meeting)
(Contact: Sam Collins, 817-860-8183)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) Commission Vote on Authorization of Full Power License for Comanche Peak (Unit 2) (Tentative)
(i) Motion for Stay of Full Power License for Comanche Peak, Unit 2, and Petition to Intervene in Comanche Peak Proceedings (Contact: Charles Mullins, 301-504-1606)
(ii) Comanche Peak Unit 2 Full-Power Licensing (Contact: Suzanne Black, 301-504-1318)

Week of April 12—Tentative

Thursday, April 15

8:00 a.m.
Briefing on Review of SALP Process and Assessment of NRC Inspection Program (Public Meeting)
(Contact: Gary Zech, 301-504-1017)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 19—Tentative

Thursday, April 22

2:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:35 p.m.
Briefing on Design Basis Threat Reevaluation (Public Meeting)
(Contact: Robert Burnett, 301-504-3365)

4:00 p.m.
Briefing on Design Basis Threat Reevaluation (Closed—Ex. 1)

Friday, April 23

2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: ABB/CE, 301-881-7040)

Week of April 26—Tentative

Friday, April 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific itemsare identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: April 2, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-8142 Filed 4-2-93; 3:31 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
April 6, 1993

Part II

Department of Transportation

Coast Guard

33 CFR Part 20
Class II Civil Penalties; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 20

[CGD 91-228]

RIN 2115-AE39

Class II Civil Penalties Under the Federal Water Pollution Control Act and the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is issuing an Interim Final Rule (IFR) addressing practice and procedure for cases assessing class II civil penalties under section 311(b) of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90), and section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Coast Guard is issuing the regulations to make available the enhanced enforcement capabilities provided by the OPA 90 amendments to FWPCA. All class II penalties will be assessed following notice and opportunity to be heard in proceedings that meet the requirements of the Administrative Procedures Act (APA). In addition, with regard to the FWPCA, this rule provides for public notice of a class II civil penalty action and an opportunity for interested persons to comment on the proposed civil penalty, to present evidence at a hearing, and to seek a hearing if none is scheduled. To the extent discussed in the preamble, these rules will apply to the assessment of class II civil penalties during the public comment period.

DATES: The interim final rule is effective on April 6, 1993. Comments must be received on or before June 7, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 92-228), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Pamela M. Pelcovits, OPA 90 Staff, U.S. Coast Guard Headquarters, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, (202) 267-6823.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages the public to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-228) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are George J. Jordan, Attorney-Advisor, Office of the Chief Administrative Law Judge, U.S. Coast Guard Headquarters and Charles T. Vekert, Attorney-Advisor, OPA 90 Staff, U.S. Coast Guard Headquarters.

Background and Purpose

Section 4301 of OPA 90 (Pub. L. 101-380) amends the civil penalties provisions of section 311(b) of the FWPCA (33 U.S.C. 1321(b)) by establishing three types of civil penalties: class I, class II and judicial. This rulemaking addresses procedures for class II civil penalties. The owner, operator or person in charge of a vessel or onshore or offshore facility from which oil or hazardous substances are discharged in violation of 33 U.S.C. 1321(b)(3) may be assessed a class I or class II civil penalty. Also, a failure or refusal to comply with pollution removal and prevention regulations issued under 33 U.S.C. 1321(j) may lead to the assessment of a class I or class II penalty. OPA 90 also amends 33 U.S.C. 1321(b) by increasing the maximum civil penalty for administratively assessed civil penalties. For class I civil penalties, the dollar amount is increased from $5,000 to a maximum of $10,000 per violation with a penalty not to exceed $25,000. Class I civil penalties are administratively assessed by existing Coast Guard procedures covered by 33 CFR subpart 1.07. OPA 90 also imposed class II civil penalties. The amount of a class II civil penalty must not exceed $10,000 per violation per day with a maximum penalty not to exceed $125,000.

The OPA 90 amendments also provide extensive procedural requirements for assessing a class II civil penalty resulting from a FWPCA violation.

In order to assess a class II civil penalty, the person charged with a FWPCA violation (the "respondent" in this preamble and the regulations) must be afforded notice and opportunity for a hearing on the record in accordance with the APA (5 U.S.C. 551 *et seq.*). Additionally, there must be public notice and an opportunity for comment before the Coast Guard issues an order assessing a class II civil penalty. The Coast Guard must provide an opportunity for any person who commented on the proposed order (the "interested person" in this preamble and the rules) to attend and present evidence at any hearing in the case or to petition for a hearing if there has been none.

The Coast Guard is also responsible for the assessment of civil penalties under section 109 of CERCLA (42 U.S.C. 9609(b)). Section 109 of CERCLA has a penalty section similar to the penalty section in the FWPCA. CERCLA divides administratively assessed penalties into class I and class II and has similar requirements for assessing class II penalties using hearings pursuant to the APA. However, the CERCLA provisions do not provide for public notice of any proposed order or participation by interested persons. These regulations also address the assessment of class II civil penalties under section 109 of CERCLA by the Coast Guard, except that the provisions for interested persons do not apply in CERCLA proceedings.

Regulatory Procedure

The Coast Guard is publishing these procedural regulations as an IFR in order to make available the enhanced enforcement capabilities provided by the OPA 90 amendments to FWPCA. Under the APA, procedural rules are

exempt from the notice and comment procedures and, under 5 U.S.C. 553 (b)(3)(B), the promulgating agency may for good cause omit notice and comment. However, the Coast Guard is requesting comment on these rules and has provided a means whereby the rules will not apply to respondents so requesting. Therefore, the Coast Guard has determined that these regulations may be promulgated without prior notice and opportunity for comment.

Since the public interest would not be served by delaying the effective date of the interim rules, and respondents may request that a case not be processed under the interim rules, the Coast Guard has also determined that under 5 U.S.C. 553 (d), these rules may be made effective upon publication.

Applicability

While the Coast Guard is making the procedural rules for class II civil penalties effective on the date of publication of the IFR, a respondent in any complaint issued by the Coast Guard prior to the publication of final regulations may submit a request that the complaint be withdrawn as provided in § 20.311. The Coast Guard representative will act on all such requests by filing a notice of withdrawal under § 20.311(a)(2). The result of the withdrawal will be that the Coast Guard, at its discretion, may reissue the complaint under the final regulations or may refer the case to the Department of Justice for a civil penalty under section 311(b)(7) of the FWPCA (33 U.S.C. 1321(b)(7) or section 109(c) of CERCLA (42 U.S.C. 9609(c)).

Discussion

1. General

These rules of practice and procedure apply to cases in which the Coast Guard seeks to assess class II civil penalties under the FWPCA (33 U.S.C. 1321(b)(6)) or class II civil penalties under CERCLA (42 U.S.C. 9609(b)). These statutes require that class II civil penalties are to be assessed only after notice and the opportunity to be heard pursuant to the APA, and the purpose of the regulations is to establish procedures that are consistent with the APA. Most importantly, they ensure that a respondent has all the rights afforded a party under the APA. The following discussion explains how the rules operate and, where important, why a particular provision was chosen among several alternative rules used by other Federal agencies and courts.

The Coast Guard used existing procedural rules as guides in developing these rules. Primary sources are the Federal Aviation Administration's (FAA) civil penalty rules (14 CFR part 13), the Federal Maritime Commission's (FMC) Rules of Procedures (46 CFR part 502), the Environmental Protection Agency's (EPA) Consolidated Rules of Procedure, (40 CFR part 22), and the Coast Guard's existing rules concerning suspension and revocation (46 CFR part 5). Also, the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Evidence were consulted, as well as numerous recommendations of the Administrative Conference of the United States (ACUS).

2. Administrative Law Judges

The regulations provide that an Administrative Law Judge (ALJ) will administer, hear, and decide class II civil penalty cases. In addition to this general statement of authority, the rules list specific authority, including the power: (1) To schedule and hold settlement conferences or other prehearing conferences for the simplification of issues; (2) to rule on prehearing motions or any other motions that may occur during the hearing; (3) to order discovery; and (4) to adjudicate the case and prepare a proposed order. The description of the duties of an ALJ in the regulations is based on section 556(c) of the APA and FAA's rules (14 CFR 13.205). While Coast Guard ALJs are not provided specific authority to issue orders of contempt to sanction the conduct of attorneys during administrative hearings, they are not precluded from issuing orders that bar any person, including an attorney, from a specific proceeding for obstreperous or disruptive behavior. The ability of the ALJ to bar a person from a proceeding is based on the authority to adjudicate, which includes the power to protect a proceeding from disruption.

An ALJ may disqualify himself or herself upon becoming aware of any facts that might affect or seem to impair impartiality. A party (defined in the regulations as a respondent or Coast Guard) may make a motion to disqualify the judge on the ground of bias or any other reason. If an ALJ is disqualified, or is otherwise unable to perform, the Chief Administrative Law Judge (CALJ) will designate another ALJ to serve. If a motion to disqualify is denied, the decision may be appealed according to the procedures for appeals set forth in these regulations.

As provided in the APA, ex parte communications are forbidden. Further, an ALJ cannot be subject to the direction of a Coast Guard employee with duties related to enforcement, prosecution or investigation. Coast Guard employees whose duties are related to enforcement, prosecution or investigation are not to participate in or advise with regard to the rendering of an ALJ's decision and order or an order on appeal, except as a witness or counsel.

3. Filing and commencement

Cases will be administered from the Office of the CALJ at Coast Guard Headquarters in Washington, D.C. A class II civil penalty case will be commenced by mailing or delivering the original complaint to the Hearing Docket Clerk in the Office of the CALJ. Both the duties of the Hearing Docket Clerk and the accepted forms of service are covered in the regulations. The issue of service is discussed next in this preamble. A copy of the complaint will be served upon the respondent by the Coast Guard. After the complaint is received, the CALJ assigns an ALJ to the case. This ALJ will be responsible for the day-to-day administration of the case through the filing of a decision and order.

If the respondent does not file an answer, or appear at a hearing, then a default judgment may be issued by the ALJ. The default rules are based on the default rules of the EPA (40 CFR 22.17).

4. Service

Service is the process of giving notice to the respondent that a case has been filed and delivering a copy of the complaint to the respondent. Service may be by either personal service or by mail.

The Coast Guard considered using only personal service. Personal service requires that the complaint be physically handed to the respondent or an agent with authority to accept service for the respondent. It may be made by a private process server or by certified mail, return receipt requested.

Service by regular mail is less costly than personal service and less time consuming. The Federal court system allows service of a summons by mail in both civil and criminal cases (Fed. R. Civ. Proc. 4(c)(2)(C)(ii); Fed. R. Crim. Proc. 4(c)(3)). This method has been very successful in the Federal court system and is described in these regulations.

Service may be made through first-class mail or personal delivery. Other methods of service, such as electronic or facsimile transmission, must be approved by the ALJ or the Hearing Docket Clerk. The documents must be filed with the Hearing Docket Clerk and the ALJ and served to the counsel or representative of record. If no such representative has been designated, the party must be served.

Personal service is completed when the document is handed to the person to be served, delivered to his or her office during business hours, or delivered to his or her residence. For service by first-class mail or electronic means, service is complete upon deposit in the mail or electronic transmission.

The Coast Guard seeks comment on the service requirements of this rule. Most of the service rules have been based on FAA's rules in 14 CFR 13.211 and the ACUS Draft Model Rules of Administrative Procedures (ACUS Model Rules).

5. Complaint and Answer

The rule refers to the charging document as the "complaint." This term is used for similar documents filed in a Federal court civil action. The rules of the Environmental Protection Agency (EPA) also use the term "complaint" (40 CFR 22.14) for the document used to initiate a class II civil penalty proceeding.

Specificity in initial pleadings is desirable for both parties. Specific allegations in a complaint and specific responses in an answer eliminate uncontested issues, narrow and focus any contested issues between the parties, and place contested issues squarely before the ALJ.

Under this rule, the complaint will include a description of the acts or omissions of the person that constitute the basis for assessing the class II civil penalty, will identify the statute or regulation allegedly violated, and will set out the proposed amount of the civil penalty sought. This provision is based on FAA's rules (14 CFR 13.208) and EPA's rule (40 CFR 22.14). The Coast Guard believes that this is the information needed to give a respondent "meaningful notice" of the charges so that a defense can be prepared.

A general denial of a complaint is considered a failure to file an answer.

A respondent is required to address each numbered paragraph in the complaint. If a respondent disagrees with all allegations in a paragraph, the respondent may deny the entire paragraph. Allegations in a separately-numbered paragraph that are not specifically denied are deemed to be admitted as true.

A failure to file an answer at all without good cause will be considered an admission of the truth of each allegation and subject the respondent to a default order.

The Coast Guard is required to suggest in the complaint a location for any hearing. If the respondent does not agree with the proposed location, the respondent is required to suggest a different location for the hearing in the answer if necessary. However, the ALJ will set the location for the hearing. In doing so, the ALJ will give "due regard" to the convenience of the parties and consider factors such as where the majority of the witnesses reside or work, and where the incident occurred.

6. Representation

A respondent may be represented by himself or herself, an attorney, or any other authorized representative, provided that the designated representative files a notice of appearance. The provisions of the regulations on representation comply with the statutory requirements of the APA and the Agency Practice Act (5 U.S.C. 500) and are based on the FMC's rules (46 CFR 502.21, 502.26 and 502.27) and the ACUS Model Rule.

7. Pleadings

The ALJ will serve on each party and interested person copies of the notices of hearings. Further, the ALJ will serve on each party notices, rulings, orders, and similar documents issued by the ALJ. Any person filing a document with the ALJ must serve a copy of the document on each party, accompanied by a certificate of service.

8. Participation by Interested Persons and Public Notice

The FWPCA states that when the Coast Guard seeks to assess a class II civil penalty, the public must be given notice and an opportunity to comment on the proposed assessment. These rules provide for public notice in the **Federal Register** and subsequent participation, as set out in OPA amendments to the FWPCA, by persons who identify themselves as "interested persons." These rules are based on EPA's rules concerning participation of interested persons in similar class II civil penalties under 40 CFR 22.38. Since procedures for assessing class II penalties under section 109 of CERCLA do not cover interested persons, these procedures do not apply in cases brought under CERCLA.

Any person wishing to participate in a proceeding as an interested person must file a written notice of intent to comment with the Hearing Docket Clerk within 30 days after the public notice is published in the **Federal Register**. A copy of any comments filed will be served upon each party, in accordance with the provisions for filing and service. An ALJ may accept late comments at the ALJ's discretion.

An interested person will be notified by the Hearing Docket Clerk of any hearing held in the case and of the ALJ's decision and order. Interested persons are not parties to class II civil penalty proceedings.

In a hearing, the interested persons shall have a reasonable opportunity to be heard and to present evidence. This means they may present briefs and introduce oral or documentary evidence. The ALJ may limit evidence introduced by interested persons in the same manner as with parties. Irrelevant, immaterial or cumulative evidence may be excluded. Parties may move to block admission of evidence by interested parties on those grounds.

An ALJ may provide notice to interested persons to attend prehearing conferences. If an interested person attends a prehearing conference, the interested person will be asked to provide witness lists and copies of exhibits to the ALJ and the parties.

The APA limits certain procedural rights-e.g., the right to cross-examination and the right to request subpoenas to compel the attendance of witnesses or to produce evidence at a hearing, to parties. Accordingly, the Coast Guard, as does the EPA, will not permit interested persons to cross-examine witnesses or to request subpoenas. Given the statutory limitation of the participation of interested persons to the reasonable opportunity to be heard and to present evidence, the coast Guard believes that granting interested persons these rights would unnecessarily delay the proceedings, create undue burdens or expense on the parties, and needlessly complicate the issues in the case.

For similar reasons, interested persons are not permitted to attend settlement conferences. Interested persons will receive notice of any settlement agreement and consent order and will have the right to request a hearing, as more fully discussed later in this section.

A copy of the decision and order will be served upon each interested person. If the ALJ's decision and order is appealed, the decision of the Commandant on appeal will be served on each interested person.

If the ALJ decides the case without a hearing (e.g., the respondent admits the violations and does not dispute the proposed penalty; or the case is decided by a summary decision, or a settlement agreement and consent order, or a motion to dismiss or a default order), the OPA 90 amendments to the FWPCA provide an interested person the opportunity to petition the Commandant to set aside the ALJ's decision and order and to provide a hearing. Such a petition must be filed within 30 days after the issuance of the decision and order.

If the evidence presented by the interested person in support of the

petition is considered material and was not considered in the issuance of the ALJ's decision and order, the Commandant will set aside the ALJ's order and will direct the ALJ to provide a hearing. Whenever a hearing is denied, the Commandant will provide the petitioner notice of the denial and the reasons for the denial. A notice setting forth the reasons for denial also will be published in the **Federal Register**. The Coast Guard seeks public comment on this implementation of the notice and comment requirements set out in the OPA 90 amendments to the FWPCA.

9. Intervention

The rules of several agencies permit non-parties to join civil penalty proceedings as intervenors. These agencies include EPA (40 CFR 20.11), FAA (14 CFR 13.206) and DOT (14 CFR 302.15). Intervention can be given as a matter of right or at the discretion of the ALJ.

The Coast Guard is not providing provisions to permit intervention because the statutory requirements expressly sets out limited participation by interested persons and because the Coast Guard has not identified any reasons to provide additional participation in class II civil penalty proceedings at this time. Further, the Coast Guard is concerned that motions to intervene and actual intervention by persons with interests less directly affected than those of the respondents could delay the proceedings and compliance the issues in a case. The IFR does not provide for intervention. However, the Coast Guard is interested in comments on the appropriateness of intervention in class II civil penalty proceedings. The Coast Guard may change the regulations if it decides that permitting intervention is warranted. It is the Coast Guard's expectation that any subsequent intervention rules would permit intervention only if the ALJ found that intervention would not unduly broaden the issues or delay the proceedings. Further, the ALJ would grant a motion to intervene only if the intervenor would be bound by any order or decision entered in the case and the intervenor has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

If the Coast Guard were to permit intervention, the Coast Guard envisions that the ALJ would determine the extent of an intervenor's participation in a class II civil penalty proceeding depending on the intervenor's interest and ability to improve the proceeding. The ALJ's order granting intervention would set out filing and service requirements for intervenors, any discovery rights, and the degree of participation in a hearing. Public comment on this issue is requested.

10. Discovery

Discovery is the process by which the parties are allowed to learn relevant facts about the case known to the other parties. There are three categories of discovery addressed in the rules: (1) Interrogatories (written questions that must be answered under oath) to the parties; (2) depositions (sworn testimony of the parties or other persons who have knowledge of facts relevant to the case before a hearing); and (3) requests for inspection and copying of documents and requests for production of tangible evidence or inspection of immovable tangible evidence.

The reasons that courts and administrative agencies allow discovery include the following: (1) Reducing surprise at trial, which may give an unfair advantage to a party; (2) ensuring that all the facts relevant to the case are placed before the tribunal; and (3) promoting settlements by giving both parties a sound basis to evaluate their cases before trial. On the other hand, discovery procedures may potentially be misused if not focused on the limited issues to be addressed at the class II penalty proceeding.

The OPA 90 amendments to the FWPCA state that rules for discovery for class II civil penalty hearings may be issued. The Coast Guard considered several alternatives in the area of discovery. Some agencies, such as the EPA, have minimal specific discovery rules, and discovery is at the discretion of the ALJ (40 CFR 22.19(f)). The National Transportation Safety Board (NTSB) also has non-specific discovery rules under the control of the ALJ, but uses the FRCP as guidelines. FMC and FAA have extensive discovery rules that are similar to the discovery permitted under the FRCP, although tailored to accommodate the less formal requirements of administrative practice.

The Coast Guard is establishing limited discovery rules that authorize the ALJs to order discovery as appropriate. These rules use the FRCP as a basis for the regulations that set out procedures for any discovery that may be allowed by the ALJ. The Coast Guard seeks public comment on the use of discovery and the discovery procedures.

11. Conferences and Settlement

In Executive Order 12778 (56 FR 55195, October 25, 1991), the President directed that an agency that adjudicates administrative claims shall, to the extent practical and consistent with applicable law, implement ACUS Recommendation 86–7 entitled "Case Management as a Tool for Improving Agency Adjudication" (1 CFR 305.86–7). The Attorney General of the United States has stated that this applies to agencies that have hearings before ALJs (Memorandum of Preliminary Guidance on Implementation of the Litigation Reforms of Executive Order 12778; 57 FR 3640, January 30, 1992). ACUS Recommendation 86–7 provides that presiding agency officers attempt to promote party agreement on both procedural and substantive issues in order to reduce hearing time and, if appropriate, avoid hearings altogether.

To achieve these purposes, the rules provide that the presiding ALJ may require a prehearing conference. At the conference, the parties or their representatives may discuss how to expedite a hearing on the merits of the case by the following methods: (1) Obtaining admissions of fact; (2) agreeing to stipulations regarding the authenticity of documents; (3) reducing cumulative evidence; (4) identifying witnesses; (5) exchanging documents each party intends to introduce into evidence; (6) obtaining rulings on any pending motions; and (7) taking any other action appropriate to the case. The rules are based on 5 U.S.C. 556(c)(6)–(8), EPA's rules (40 CFR 22.19(a)) and FMC's rules (46 CFR 502.94).

Conferences may also be held for settlement of the case. Any proposed settlement will be in the form of a settlement agreement, a consent order and a motion for its entry. This rule is based on ACUS recommendations and EPA's rules (40 CFR 22.18). Only parties may discuss possible settlement of the case. Alternate dispute resolution may be authorized by the ALJ with the consent of all of the parties. The Coast Guard seeks public comment on the use of settlement and prehearing conferences.

12. Standard of Proof

In *Steadman* v. *Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, 67 L.Ed.2d 69 (1981), the Supreme Court determined that in administrative hearings the standard of proof required for purposes of due process is "preponderance of the evidence." For this reason, the rules provide that the standard of proof in class II civil penalty cases is "preponderance of the evidence."

13. Rules of Evidence

The rules follow the requirements of the APA and provide that a party is entitled to present oral or documentary evidence and rebuttal evidence. Parties

may also conduct cross-examination, as may be required for a full and true disclosure of the facts. The Coast Guard has based most of these rules on FAA's rules (14 CFR 13.222–13.226) and FMC's rules (46 CFR 502.156–157 and 502.162).

The ALJ may admit any relevant oral or documentary evidence, unless it is privileged. However, the ALJ may exclude evidence if it is unfairly prejudicial, confusing, would cause delay, or is needlessly cumulative.

Hearsay evidence is admissible in administrative adjudications under the APA. The fact that it is hearsay may lower the weight given to the evidence but does not affect its admissibility. If there is an objection to evidence, the party making the objection must give the legal grounds for the objection. If evidence is excluded, then the party whose evidence is excluded may have an offer of proof included in the record.

The ALJ has the power to exclude proprietary information pertaining to business matters such as trade secrets and other confidential or sensitive material. A non-proprietary summary or extract may be required in lieu of the original evidence. If the proprietary matter must be part of the record in order to avoid prejudice to a party, then the ALJ may arrange for a party to have access to the proprietary information with safeguards for confidentiality.

The ALJ may accept a fact as proven without requiring formal proof (official notice). In particular, the ALJ may take official notice of facts that are within the specialized knowledge of the Coast Guard.

If a person is available for cross-examination, then a sworn written statement by the person may be entered into the record instead of direct testimony. This requirement is consistent with the Supreme Court's decision in *Richardson* v. *Perales*, 402 U.S. 389, 91 S Ct 1420, 28 L.Ed.2d 842 (1971), and is based on the ACUS Draft Rules, the Commodity Futures Trading Commission's (CFTC) rules (17 CFR 10.66(d)), and FMC's rules (14 CFR 502.157). The Coast Guard is seeking public comment on the rules of evidence.

14. Summary Decision

Any party may request a summary decision at any time up to 15 days before the hearing. It is not necessary to provide affidavits with the motion. the ALJ may grant the motion for summary decision if there is no genuine issue as to any material fact and if a party is entitled to a summary decision as a matter of law. The ALJ may consider filed documents, affidavits, material obtained by discovery, and matters officially noted when making this decision. If the opposing party cannot present by affidavit facts essential to justify opposition to the motion, then the ALJ may deny the motion or grant a continuance to obtain the necessary affidavits. The summary decision rule is based on ACUS Recommendation No. 70–3 (1 CFR 305.70–3), EPA's rule (40 CFR 22.20), and FAA's rule (14 CFR 13.218(f)(5)).

15. Decision, Record, and Hearing

The rules provide that the ALJ's decision must contain the reasons and basis of findings and conclusions. The decision also must contain an appropriate order, a notice of a right to appeal, and the date upon which the order will be effective.

The official record of each case will be maintained in the Office of the CALJ. The official record will include a transcript of any hearing, exhibits received into evidence, and other documents submitted in the case.

16. Order, Public Notice, and Petitions To Set Aside Order

The decision by an ALJ, if not appealed, constitutes the final order in the case. If there is no appeal, any interested person may request a hearing at this time if none has been held. Upon appeal, unless the Commandant remands the case for further proceedings, the Commandant's order is the final order in the case and any interested person may submit a petition for hearing, if none was held, at that time.

17. Appeals

The IFR provides for appeals on any question of law or finding of fact. The Commandant may review the transcript and exhibits in order to determine whether the ALJ committed prejudicial error. The rules for appeals are based on the Coast Guard's current rules for appeal (46 CFR part 5, subpart J) and FAA's civil penalty appeal rules (14 CFR 13.233).

An appeal brief must set forth in detail the specific objection to the decision, the basis for the appeal, the reasons supporting the appeal, and the relief requested. Any party may file a reply brief, and the Commandant may allow any person to file an amicus brief.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). Because the Coast Guard finds that these procedural rules will not have a direct economic impact, no Regulatory Evaluation is necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of the rulemaking to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

If, however, you think that your business qualifies as a small entity and that this rulemaking will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this rulemaking will economically affect your business.

Collection of Information

This rulemaking contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. Procedural rules do not require environmental impact studies. The Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 20

Administrative practice and procedure; Authority delegations (Government agencies), Penalties, Water pollution control, Waterways.

For the reasons set forth in the preamble, 33 CFR part 20 is added as follows:

PART 20—CLASS II CIVIL PENALTIES

Subpart A—General

Sec.
20.101 Scope.
20.102 Definitions.
20.103 Construction and waiver of rules.

Subpart B—Administrative Law Judges

20.201 Assignment.
20.202 Powers.
20.203 Unavailability.
20.204 Withdrawal or disqualification.
20.205 Ex parte communications.
20.206 Separation of functions.

Subpart C—Pleadings and Motions

20.301 Representation.
20.302 Filing of documents and other materials.
20.303 Form and content of filed documents.
20.304 Service of documents.
20.305 Amendment or supplementation of filed documents.
20.306 Computation of time.
20.307 Complaint.
20.308 Answer.
20.309 Motions.
20.310 Default by respondent.
20.311 Withdrawal or dismissal.

Subpart D—Proceedings

20.401 Initiation of class II civil penalty proceedings.
20.402 Public notice.
20.403 Consolidation or severance of class II civil penalty proceedings.
20.404 Interested persons.

Subpart E—Conferences and Settlement

20.501 Prehearing and other conferences.
20.502 Settlement.
20.503 Alternative dispute resolution.

Subpart F—Discovery

20.601 General.
20.602 Additional response.
20.603 Interrogatories.
20.604 Requests for production of documents or things for inspection or other purposes.
20.605 Depositions.
20.606 Protective order.
20.607 Sanctions for failure to comply.
20.608 Subpoenas.
20.609 Motion to quash or modify.

Subpart G—Hearings

20.701 Standard of proof.
20.702 Burden of proof.
20.703 Presumptions.
20.704 Scheduling and notice of hearing.
20.705 Failure of party to appear.
20.706 Witnesses.
20.707 Telephone testimony.
20.708 Witness fees.
20.709 Closing of the record.
20.710 Proposed findings, closing arguments, and briefs.

Subpart H—Evidence

20.801 General.
20.802 Admissibility of evidence.
20.803 Hearsay evidence.
20.804 Objections and offers of proof.
20.805 Proprietary information.
20.806 Official notice.
20.807 Exhibits and documents.
20.808 Written testimony.
20.809 Stipulations.

Subpart I—Decisions and Orders

20.901 Summary decision.
20.902 Decision of the administrative law judge.
20.903 Record of proceedings.
20.904 Petitions to set aside an order and provide a hearing.
20.905 Reopening.

Subpart J—Appeals

20.1001 General.
20.1002 Record on appeal.
20.1003 Procedures for appeal.
20.1004 Civil penalty appeal decisions.

Subpart K—Finality and Availability of Orders

20.1001 Finality of order.
20.1102 Availability of decisions and orders.

Authority: 33 U.S.C. 1321; 42 U.S.C. 9609; 49 CFR 1.46.

Subpart A—General

§ 20.101 Scope.

(a) Except as specifically noted, these rules of practice and procedure apply to the following civil penalty proceedings before the United States Coast Guard:

(1) Class II civil penalties assessed under section 311(b) of the Federal Water Pollution Control Act, (33 U.S.C. 1321(b)(6)).

(2) Class II civil penalties assessed under section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)), except that § 20.404 and any other provision for interested persons do not apply to penalties assessed under 42 U.S.C. 9609(b).

(b) In the absence of a specific provision, procedure will be consistent with the Federal Rules of Civil Procedure (28 U.S.C. Appendix).

§ 20.102 Definitions.

(a) *Administrative Law Judge* means any person designated by the Commandant under the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 33 U.S.C. 1321(b)(6) and 42 U.S.C. 9609(b).

(b) *Chief Administrative Law Judge* means the Administrative Law Judge appointed as the Chief Administrative Law Judge of the U.S. Coast Guard by the Commandant.

(c) *Civil penalty proceeding* means a trial-type proceeding for the assessment of a civil penalty that offers an opportunity for an oral, fact-finding hearing before an Administrative Law Judge.

(d) *Coast Guard Representative* means a Coast Guard official who has been designated to prosecute a class II civil penalty.

(e) *Commandant* means the Commandant of the U.S. Coast Guard. The term Commandant includes the Vice-Commandant of the Coast Guard acting on behalf of the Commandant in any proceeding.

(f) *Complaint* means a document issued by a Coast Guard Representative alleging a violation of the Federal Water Pollution Control Act, as amended, or a rule, regulation, or order issued under that Act; or a violation of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or a rule, regulation, or order issued under that Act.

(g) *Hearing Docket Clerk* means an employee of the Office of the Chief Administrative Law Judge who is responsible for receiving documents, determining their completeness and legibility, and distributing them to the Administrative Law Judge and others, as required by this part.

(h) *Interested person* means a person who, as provided in § 20.404, comments on a proposed class II civil penalty assessment or files in writing a notice of intent to present evidence in any hearing held on the proposed class II civil penalty assessment.

(i) *Mail* includes U.S. first-class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

(j) *Motion* means a request for an order or ruling from an Administrative Law Judge.

(k) *Party* means a respondent or the Coast Guard.

(l) *Person* includes an individual, partnership, corporation, association, public or private organization, or a government agency.

(m) *Personal delivery* includes hand-delivery or use of a contract or express courier service. "Personal delivery" does not include the use of government interoffice mail service.

(n) *Pleading* means a complaint, an answer, and any amendment of these documents permitted under this part.

(o) *Respondent* means a person charged with a violation in a complaint issued under this part.

§ 20.103 Construction and waiver of rules in this part.

(a) The rules in this part will be construed to secure a just, speedy, and inexpensive determination in every class II civil penalty proceeding.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief Administrative Law Judge or the Administrative Law Judge may, after notice, waive any of the rules in this part to prevent undue hardship or manifest injustice, or if the expeditious conduct of a case so requires.

Subpart B—Administrative Law Judges

§ 20.201 Assignment.

An Administrative Law Judge, assigned by the Chief Administrative Law Judge following receipt of the complaint, shall preside over each class II civil penalty proceeding.

§ 20.202 Powers.

The Administrative Law Judge shall have all powers necessary to the conduct of fair, expeditious, and impartial hearings, including the power to—

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law;

(c) Rule on motions;

(d) Order discovery as provided in this part;

(e) Hold hearing or settlement conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Issue an order and decision;

(i) Exclude any person from a hearing or conference for disrespect, disorderly or rebellious conduct; and

(j) Take any other action consistent with law and Coast Guard policy authorized by the Chief Administrative Law Judge.

§ 20.203 Unavailability.

(a) In the event that an Administrative Law Judge is unable to perform the duties described in § 20.202 or otherwise becomes unavailable, the Chief Administrative Law Judge shall designate a successor.

(b) If a hearing has been commenced and an Administrative Law Judge is unable to proceed, a successor Administrative Law Judge may proceed with a hearing in a case. The successor Administrative Law Judge may, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor Administrative Law Judge may, within his or her discretion, recall any other witness.

§ 20.204 Withdrawal or disqualification.

(a) An Administrative Law Judge may at any time disqualify herself or himself.

(b) Prior to the filing of the Administrative Law Judge's decision, any party may move that the Administrative Law Judge disqualify herself or himself on the ground of personal bias or for any other reason. Promptly upon discovery of the alleged facts, a party shall file with the Administrative Law Judge an affidavit constituting grounds for a motion to disqualify.

(1) The Administrative Law Judge shall rule upon the motion, stating the grounds for her or his ruling. If the Administrative Law Judge concludes that the motion is timely and has merit, the Administrative Law Judge shall disqualify herself or himself and withdraw from the class II civil penalty proceeding. If he or she does not disqualify herself or himself and withdraw from the class II civil penalty proceeding, he or she shall proceed with the adjudication, or if the hearing has been concluded, he or she shall proceed with the issuance of a decision and order.

(2) An Administrative Law Judge's denial of a motion for disqualification may be appealed to the Commandant according to the procedures in subpart J of this part. When the appeal is made, the Administrative Law Judge forwards the motion and supporting affidavits or sworn statements with the ruling to the Commandant. The Administrative Law Judge may proceed with the hearing unless the Commandant determines that proceeding with the hearing is prejudicial to the appeal.

§ 20.205 Ex parte communications.

Ex parte communications are governed by section 557(d) of the Administrative Procedures Act (5 U.S.C. 557(d)).

§ 20.206 Separation of functions.

(a) An Administrative Law Judge may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigating or prosecuting functions for the Coast Guard.

(b) No officer, employee or agent of the Coast Guard engaged in the performance of investigations or prosecutorial functions in connection with any class II civil penalty proceeding shall, in that adjudication or one that is factually related, participate or advise in the decision of the Administrative Law Judge or the Commandant on appeal, except as a witness or counsel in the adjudication or appellate review.

Subpart C—Pleadings and Motions

§ 20.301 Representation.

(a) A party may appear either without counsel or other representatives, by an attorney, or by other duly authorized representative. An attorney or other duly authorized representative shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;

(2) The person on whose behalf the appearance is made; and

(3) The person's and representative's mailing addresses and telephone numbers.

(b) Notice, including the items listed in paragraph (a) of this section, must also be given for any withdrawal of appearance.

(c) An attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal representation of membership is sufficient proof, unless otherwise ordered by the Administrative Law Judge.

(d) Any person who is not an attorney shall file a statement setting forth the basis of his or her authority to act as a duly authorized representative. The Administrative Law Judge may deny appearance as a representative to any person who the Administrative Law Judge finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper personal conduct.

§ 20.302 Filing of documents and other material.

(a) All documents and material relating to a class II civil penalty proceeding, must be filed at the following address: Chief Administrative Law Judge, Commandant (G–CJ), U.S. Coast Guard, 2100 Second St., SW., Washington, D.C. 20593–0001. Attention: Hearing Docket Clerk.

(b) An executed original and one copy of each document (including exhibits and supporting affidavits) must be filed with the Hearing Docket Clerk. One additional copy of each filed document must be filed with the assigned Administrative Law Judge. Copies need not be signed, but the name of the person signing the original must be shown on each copy.

(c) In the absence of the assignment of a case to an Administrative Law Judge, the Administrative Law Judge's copy will be filed with the Chief Administrative Law Judge.

(d) Filing may be made by first-class mail or personal delivery. Other methods, such as facsimile transmission or other electronic means, may be permitted at the discretion of the Hearing Docket Clerk or the Administrative Law Judge.

(e) When the Hearing Docket Clerk determines that a document, or other material, offered for filing does not comply with requirements of this part, the Hearing Docket Clerk may decline to accept the document or other material for filing and return it unfiled or may accept it and advise the person offering it of the deficiency and require the deficiency to be corrected.

§ 20.303 Form and content of filed documents.

(a) A filed document must identify clearly—

(1) The title of the proceeding;

(2) The docket number of the case if one has been assigned;

(3) A designation of the type of filing (e.g., petition, notice, motion to dismiss, etc.);

(4) The name and designation of the filing party; and

(5) The filer's address, telephone number, and facsimile transmission number (if any) and, if represented, the name, address, telephone number, and facsimile transmission number (if any) of the filer's representative.

(b) All filed documents must be—(1) 8½ by 11 inches in size except, when necessary, tables, charts, and other attachments may be larger if folded to the size of the filed documents to which they are physically attached;

(2) Printed on one side of the page and be clearly typewritten, printed, or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) Double-spaced except for footnotes and long quotations, which may be single-spaced;

(4) Have a left margin of at least 1½ inches and other margins of at least 1 inch; and

(5) Bound on the left side, if bound.

(c) All documents must be in the English language or, if in a foreign language, accompanied by a certified translation.

(d) The original of every filed document must be signed by the submitting person or his or her attorney or representative. Except as otherwise provided, filed documents need not be verified or accompanied by an affidavit. The signature constitutes a certification by the signing person that he or she has read the filed document, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not intended to cause delay.

§ 20.304 Service of documents.

(a) A copy of each document issued by the Administrative Law Judge in the proceeding is served upon each party. The Administrative Law Judge shall serve a copy of notices of hearings upon each interested person, as determined under § 20.404.

(b) Unless otherwise ordered by the Administrative Law Judge, one copy of all documents filed with the Hearing Docket Clerk must be served upon each party by the persons filing them.

(c) Every document filed with the Hearing Docket Clerk and required to be served upon all parties must be accompanied by a certificate of service signed by or on behalf of the party or person making the service, stating that service has been made. Certificates of service should be in substantially the following form:

I hereby certify that I have this day served the foregoing document(s) upon the following parties (or designated representatives) in this proceeding at the address indicated by (specify the method):

(1) [Name/address] _____

(2) [Name/address] _____

Dated at _____, this ___day of _____, 19___

(Signature)

For

Capacity_____.

(d) Service may be made by first-class mail or personal delivery. Other methods of service, such as facsimile transmission or other electronic means, may be used, other than for service of the complaint and answer, at the discretion of the Administrative Law Judge. The Hearing Docket Clerk may place limitations on the times of and circumstances for service by facsimile transmission or other electronic means.

(e) Unless otherwise ordered by the Administrative Law Judge, all documents filed in accordance with § 20.302 must be served upon counsel and representatives, or if not represented, the persons themselves. Service upon counsel or representative will constitute service upon the person to be served.

(f) Service must be made at the address of the counsel or representative, or, if not represented, at the last known address of the residence or principal place of business of the person to be served.

(g) If service is made by personal delivery, delivery is complete when the document is handed to the person to be served or delivered to the person's office during business hours or, if the person to be served has no office, is delivered to the person's residence and deposited in a conspicuous location. If service is by first-class mail, facsimile transmission, or other electronic means, service is complete upon deposit in the mail or electronic transmission.

(h) A document that was properly addressed, was sent in accordance with this subpart, and returned, showing that it was not claimed, or was refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

§ 20.305 Amendment or supplementation of filed documents.

(a) A person shall amend or supplement a previously filed pleading or document if the person learns of a material change that may affect the outcome of the class II civil penalty proceeding. However, no amendment will be allowed that would broaden the issues, without an opportunity for the parties to reply to the amendment and to allow preparation for the broadened issues.

(b) The Administrative Law Judge may approve other amendments or supplements to filed documents.

(c) Parties shall notify the Hearing Docket Clerk, Administrative Law Judge, and all other parties and their representatives of any change of address.

§ 20.306 Computation of time.

(a) In computing any period of time prescribed in this part, the day on which the designated period begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the period of time prescribed is 7 days or less, intermediate Saturdays, Sundays, and Federal holidays are excluded in the computation.

(b) If service or filing is by domestic mail, 3 days will be added to the designated period for response.

(c) If service or filing is by mail to a foreign country, 14 days will be added to the designated period for response.

(d) An Administrative Law Judge, for cause shown, may at any time in his or her discretion—

(1) With or without motion or notice, order a time period extended if request for extension is made before the end of the original time period, or as extended by a previous order; or

(2) Upon motion made after the expiration of the time period, permit the act to be done where the failure to act was excusable.

§ 20.307 Complaint.

(a) The complaint must set forth—

(1) The statute or regulation allegedly violated·

(2) The pertinent facts involved; and
(3) The amount of the requested class II civil penalty.
(b) The Coast Guard Representative should request the place of hearing when filing the complaint.

§ 20.308 Answer.

(a) The respondent shall file a written answer to the complaint not later than 20 days after service of the complaint. The answer must conform with the filing and service requirements of this subpart.
(b) The person filing an answer shall indicate whether he or she agrees with the place of hearing proposed in the complaint, and if necessary, shall request another location for the hearing when filing the answer.
(c) An answer must state whether or not the respondent intends to contest any of the violations set forth in the complaint. The answer must include any affirmative defense that the respondent intends to assert at the hearing.
(1) The answer must admit or deny each numbered paragraph of the complaint. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the complaint that is not specifically denied in the answer is deemed admitted.
(2) A general denial of the complaint is deemed a failure to file an answer.
(d) A respondent's failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.

§ 20.309 Motions.

(a) A person applying for an order or ruling not specifically provided in this subpart shall do so by motion. All written motions must comply with the form, filing and service requirements of this subpart. All motions must state clearly and concisely—
(1) The purpose of and the relief sought by the motion;
(2) The statutory or regulatory authority relied upon; and
(3) The facts alleged to constitute the grounds requiring the relief requested.
(b) A proposed order may be attached to a motion.
(c) Motions must be in writing, except that a motion made at a hearing will be sufficient if stated orally upon the record, unless the Administrative Law Judge directs that it be reduced to writing.
(d) Except as otherwise provided in this part, a party must file any response to a motion within 10 days of receipt of service of a written motion. When a motion is made during a hearing, an oral response may be made at the hearing or in writing, within a reasonable time, as determined by the Administrative Law Judge.
(e) Unless otherwise ordered by the Administrative Law Judge, the filing of a motion does not stay a proceeding.
(f) Rulings will be made on the record either orally or in writing. The Administrative Law Judge may summarily deny dilatory, repetitive, or frivolous motions.

§ 20.310 Default by respondent.

(a) A respondent may be found to be in default upon failure to file a timely answer to the complaint, failure to comply with a prehearing or hearing order, or, after motion, upon failure to appear at a conference or hearing without good cause being shown.
(b) Any motion for a default order must conform to the rules of form, service, and filing of this subpart and must include a proposed default order. The respondent alleged to be in default has 20 days from service to reply to the motion.
(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. The penalty proposed in the complaint will be assessed and will become due and payable by respondent without further proceedings 30 days after a final order is issued.
(d) Upon finding that a default has occurred, the Administrative Law Judge shall issue a default order against the defaulting party. This order will constitute the Administrative Law Judge's decision, and will be filed with the Hearing Docket Clerk.
(e) A default order must include findings of fact showing the grounds for the judgment, conclusions regarding all material issues of law or fact, and the penalty or sanction which is assessed, as appropriate.
(f) For good cause shown, the Administrative Law Judge may set aside a default order.

§ 20.311 Withdrawal or dismissal.

(a) A class II civil penalty proceeding may be withdrawn without an order of the Administrative Law Judge in the following manner:
(1) By the filing of a stipulation by all parties who have appeared in the class II civil penalty proceeding;
(2) By the filing of a notice of withdrawal by the Coast Guard Representative at any time before the respondent has served a responsive pleading; or
(3) By the filing of a notice of withdrawal by the Coast Guard representative at any time after the respondent has served a responsive pleading, together with a certification by the representative that the withdrawal is made in good faith. After the serving of respondent's pleading the Coast Guard may file only one notice of withdrawal in any proceedings arising from the same facts.
(b) Unless otherwise stated in the stipulation or notice of withdrawal, a withdrawal under paragraph (a) of this section is without prejudice.
(c) Except as provided in this section, a class II civil penalty proceeding may not be withdrawn except by order of an Administrative Law Judge upon such terms and conditions as the Administrative Law Judge deems proper.
(d) Any party may move to dismiss the complaint, including a request for relief, for—
(1) Failure of another party to comply with the requirements of this part or with any order of the Administrative Law Judge;
(2) Failure to prosecute the civil penalty proceeding; or
(3) Failure to show a right to relief based upon the facts or law.
(e) Unless the Administrative Law Judge specifies otherwise, a dismissal under this section, other than a dismissal for lack of jurisdiction, constitutes a hearing upon the merits, and is the initial decision and order of the Administrative Law Judge.

Subpart D—Proceedings

§ 20.401 Initiation of class II civil penalty proceedings.

A class II civil penalty proceeding is initiated when the complaint is filed with the Hearing Docket Clerk.

§ 20.402 Public notice.

Upon the filing of a complaint under section 311 of the Federal Water Pollution Control Act, as amended, the Commandant or his or her representative shall provide notice and 30 days public comment on the proposed issuance of an order assessing a class II civil penalty which is responsive to the complaint. The notice is published in the **Federal Register**.

§ 20.403 Consolidation or severance of class II civil penalty proceedings.

(a) An Administrative Law Judge may for good cause, with the approval of the Chief Administrative Law Judge and with notice and opportunity to object provided to all parties, consolidate any or all matters at issue in two or more class II civil penalty proceedings

docketed under this part. Good cause includes cases where there are common parties or questions of fact and where such consolidation would expedite the cases, and the interests of justice would be served. Consolidation will not be granted if it will prejudice any rights available under this part or if it will affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(b) Unless directed otherwise by the Chief Administrative Law Judge, the presiding Administrative Law Judge may by motion or on his or her own motion, for good cause shown, order any class II civil penalty proceeding severed with respect to some or all parties, claims, and issues.

§ 20.404 Interested persons.

(a) A person not a party to a class II civil penalty proceeding under this part, who wishes to be an interested person in the proceeding, must file with the Hearing Docket Clerk within 30 days after publication in the **Federal Register** of the public notice required by § 20.402 either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing to be held in the proceeding.

(b) For good cause shown, the Administrative Law Judge may accept late comments or late notice of intent to present evidence.

(c) An interested person shall be given notice of any hearing to be held on the proceeding and of the decision and order issued in the case. In any hearing, the interested person shall have a reasonable opportunity to be heard and to present evidence.

(d) Interested persons shall not be accorded the right of cross-examination.

(e) If a hearing is not held before issuance of the decision and order, an interested person may petition the Commandant to set aside the order and to provide a hearing in accordance with the procedures in § 20.905.

Subpart E—Conferences and Settlement

§ 20.501 Prehearing and other conferences.

(a) The Administrative Law Judge may direct the parties to attend one or more conferences prior to or during the course of the hearing. Parties may request a conference by motion.

(b) The Administrative Law Judge may provide notice of a conference to interested persons, as the Administrative Law Judge deems appropriate.

(c) Reasonable notice of the time and place of the conference will be given to the parties. A conference may be held in person, by telephone conference, or other appropriate means.

(d) Parties, and interested persons when attending, shall come to all conferences fully prepared for a useful discussion of all issues involved in the conference, both procedural and substantive, and authorized to make commitments with respect to the proceedings.

(e) Unless excused by the Administrative Law Judge, failure of a party to attend a conference, after being served with reasonable notice of the time and place, will constitute a waiver of all objections to the agreements reached in the conference and to any order or ruling that results.

(f) The Administrative Law Judge may order that any or all of the following be addressed or furnished before, at, or after, the conference:

(1) Motions for discovery.

(2) Motions for consolidation or severance of parties or issues in the civil penalty proceeding.

(3) Method of service and filing.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(6) Stipulations and admissions of fact and of the content and authenticity of documents.

(7) A discussion of the desirability of limiting and grouping witnesses, so as to avoid duplication.

(8) Requests for official notice and particular matters to be resolved by reliance upon the agency's substantive standards, regulations, and rules.

(9) Offers of settlement.

(10) Proposed date, time, and place of the hearing.

(11) Other matters that may aid in the disposition of the civil penalty proceeding.

(g) A conference is not to be stenographically reported or otherwise recorded unless authorized by the Administrative Law Judge.

(h) At a conference, the Administrative Law Judge may dispose of any procedural matters on which he or she is authorized to rule.

(i) Actions taken as a result of a conference may be recorded in—

(1) A written report;

(2) A stenographic transcript if ordered by the Administrative Law Judge; or

(3) A statement by the Administrative Law Judge on the record at the hearing summarizing the actions taken.

§ 20.502 Settlement.

(a) The parties shall have the opportunity to submit a proposed settlement to the Administrative Law Judge.

(b) A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry. It must also include the reasons why it should be accepted, and it must be signed by the parties or their representatives.

(c) A proposed settlement agreement must contain the following:

(1) An admission of all jurisdictional facts.

(2) An express waiver of further procedural steps before the Administrative Law Judge, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order.

(3) A statement that the order will have the same force and effect as an order made after a full hearing.

(4) A statement that matters in the pleading, if any, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

§ 20.503 Alternative dispute resolution.

The Administrative Law Judge may appoint a settlement adjudicator or order other alternative dispute resolution proceedings with the consent of all parties.

Subpart F—Discovery

§ 20.601 General.

(a) Unless otherwise ordered by the Administrative Law Judge, each party and interested person who has filed written notice of intent to present evidence under § 20.404 shall make available to all other parties and to the Administrative Law Judge—

(1) The names of any expert and other witnesses intended to be called, together with a brief narrative summary of their expected testimony; and

(2) Copies of all documents and exhibits which the party intends to introduce into evidence.

(b) The Administrative Law Judge may direct the parties to exchange witness lists and documents at a prehearing conference ordered under § 20.501 or may direct the exchange to be accomplished by correspondence.

(c) The Administrative Law Judge may establish a schedule for conducting discovery in the proceedings and shall serve a copy of the schedule on each party.

(1) The schedule may include dates by which exchanges of witness lists and

exhibits, requests for discovery, and any objections to discovery requests are to be filed.

(2) Unless otherwise ordered by the Administrative Law Judge, exchange of witness lists and documents shall be completed no less than 15 days prior to hearing, and final exchanges should be made in accordance with § 20.807.

(d) Further discovery shall be permitted only by order upon determination by the Administrative Law Judge—

(1) That such discovery will not in any way unreasonably delay the proceeding;

(2) That the information to be obtained is not otherwise obtainable;

(3) That such information has significant probative value;

(4) That the information requested is not cumulative or repetitious; and

(5) That the method or scope of discovery requested by the party is not unduly burdensome or expensive and is the least burdensome method available.

(e) A motion for discovery shall set forth—

(1) The circumstances warranting the taking of the discovery;

(2) The nature of the information expected to be discovered; and

(3) The proposed method of discovery and the time and place where it will be taken.

(f) If the Administrative Law Judge determines that the motion should be granted, the Administrative Law Judge shall issue an order for the taking of discovery together with conditions and terms.

§ 20.602 Additional response.

(a) A party is under a duty to supplement in a timely fashion—

(1) The documents and exhibits that the party intends to introduce into evidence; and

(2) The identify of each person expected to be called as a witness, the subject matter on which the person is expected to testify, and a summary of the testimony.

(b) A party is under a duty to amend in a timely fashion any information previously provided if the party later obtains information upon the basis of which—

(1) The party knows the information was incorrect or incomplete when made; or

(2) The party knows that the information, though correct when made, is no longer accurate and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

(c) An additional duty to supplement may be imposed by order of the Administrative Law Judge.

§ 20.603 Interrogatories.

(a) Any party requesting interrogatories shall make a motion to the Administrative Law Judge. The motion must include—

(1) A statement of the purpose and general scope of the interrogatories; and

(2) The proposed interrogatories.

(b) The Administrative Law Judge will review the proposed interrogatories and may enter an order approving the service of some or all of the proposed interrogatories or may deny the motion.

(c) A party shall serve on the party named in the interrogatories the approved written interrogatories.

(d) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated instead of a response. A party, the party's attorney, or the party's representative shall sign the party's responses to interrogatories.

(e) Responses or objections must be made within 30 days after the service of the interrogatories.

(f) If the response to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served, from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the response is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient response to specify the records from which the answer may be derived or ascertained. The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. The specification must include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

§ 20.604 Requests for production of documents or things for inspection or other purposes.

(a) Any party requesting production of documents or things for inspection or other purposes shall make a motion to the Administrative Law Judge. The motion must state with particularity—

(1) The purpose and scope of the request; and

(2) The documents and materials which are requested to be produced.

(b) The Administrative Law Judge will review the motion and may enter an order approving or denying the motion in whole or in part.

(c) A party shall serve on the party in possession, custody or control of the documents the order to produce, or to permit inspection and copying of document(s).

(d) A party may, after approval of an appropriate motion by the Administrative Law Judge, inspect and copy, test, or sample any tangible things that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.

(e) A party may, after approval of an appropriate motion by the Administrative Law Judge, serve on another party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or area. A request to permit entry upon property must set forth with reasonable particularity the item to be inspected and must specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(f) The party upon whom the request is served shall respond within 30 days after the service of the request. Inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection must be stated.

§ 20.605 Depositions.

(a) The Administrative Law Judge shall order depositions only upon a showing of good cause and upon a finding that:

(1) The information sought cannot be obtained more readily by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(b) Testimony may be taken by deposition upon approval of the Administrative Law Judge of a motion made by any party.

(1) The motion must state—

(i) The purpose and scope of the deposition;

(ii) The time and place it is to be taken;

(iii) The name and address of the person before whom the deposition is to be taken;

(iv) The name and address of each witness from whom a deposition is to be taken;

(v) The documents and materials which the witness is requested to produce; and

(vi) Whether it is intended that the deposition be used at a hearing instead of live testimony.

(2) The motion must state if the deposition is to be by oral examination, by written interrogatories, or a combination of the two. The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(c) Upon a showing of good cause, the Administrative Law Judge may enter and serve upon the parties an order to obtain the testimony of the witness.

(d) If the deposition of a public or private corporation, partnership, association, or governmental agency is ordered, the organization named must designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. Subject to the provisions of 49 CFR part 9 with respect to Coast Guard witnesses, the designated persons shall testify as to matters reasonably known to them.

(e) Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine.

(f) The witness being deposed may have counsel or another representative present during the deposition.

(g) Except as provided in paragraph (n) of this section, depositions are stenographically recorded and transcribed. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken.

(h) Subject to objections to the questions and responses as were noted at the time of taking of the deposition and which would have been sustained if the witness were personally present and testifying, a deposition may be offered into evidence by the party taking it against any party who was present or represented at the taking of the deposition or who had notice of the deposition.

(i) The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

(j) During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the Administrative Law Judge for a ruling on the objection(s). The Administrative Law Judge may then limit the scope or manner of taking the deposition.

(k) When a deposition is taken in a foreign country, it may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the Administrative Law Judge.

(l) Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence.

(m) A deposition may be taken by telephone conference call upon such terms, conditions, and arrangements as are prescribed in the order of the Administrative Law Judge.

(n) The testimony at a deposition hearing may be recorded on videotape, upon such terms, conditions and arrangements as are prescribed in the order of the Administrative Law Judge, at the expense of the party requesting the recording. The video recording may be in conjunction with an oral examination by telephone conference held pursuant to paragraph (m) of this section. After the deposition has been taken, and copies of the video recording provided to parties requesting them, the person recording the deposition shall immediately place the videotape in a sealed envelope or a sealed videotape container, attaching to it a statement identifying the proceeding and the deponent and certifying as to the authenticity of the video recording, and return the videotape by accountable means to the Administrative Law Judge. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

§ 20.606 Protective order.

(a) In considering a motion for an order of discovery or a motion by a party or the person from whom discovery is sought to reconsider or amend an order of discovery, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including—

(1) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(2) That the discovery may be had only by a method of discovery other than that selected by the seeking party;

(3) That particular matters may not be inquired into, or that the scope of the discovery shall be limited to particular matters;

(4) That discovery shall be conducted with no one present except persons designated by the Administrative Law Judge;

(5) That a trade secret or other proprietary information may not be disclosed, may be disclosed only in a designated way, or may be disclosed only to designated persons; or

(6) That the party or the other person from whom discovery is sought file specified documents or information under seal to be opened as directed by the Administrative Law Judge.

(b) The Administrative Law Judge may permit a party or a person from whom discovery is sought and who is seeking a protective order to make all or part of the showing of good cause *in camera*. A record of the *in camera* proceedings must be made. If the Administrative Law Judge enters a protective order, any *in camera* record of the showing must be sealed and only released as required by law.

(c) The Administrative Law Judge may upon motion by a party or by a person from whom discovery is sought—

(1) Restrict or defer disclosure by a party of the name of a witness or, in the case of an agency witness, any prior statement of the witness; and

(2) Prescribe other appropriate measures to protect a witness.

(d) Any party affected by any such order shall have an adequate opportunity, once learning of the name of the witness and obtaining a narrative summary of expected testimony, or in the case of a Coast Guard witness, any prior statement or statements, to prepare for cross-examination and for the presentation of the party's case.

§ 20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the Administrative Law Judge may take such action as is just, including but not limited to the following:

(a) Infer that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the class II civil penalty proceeding, designated facts will be considered to be established.

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon documents or other evidence withheld.

(d) Order that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.

(e) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown.

§ 20.608 Subpoenas.

(a) The Administrative Law Judge may issue subpoenas for the attendance and the giving of testimony or for the production of books, papers, documents, or any other relevant evidence. Parties shall request the issuance of subpoenas by motion.

(b) Upon application and for good cause shown, the Administrative Law Judge shall apply to the United States District Court to issue an order compelling the appearance and testimony of witnesses or for the production of evidence.

(c) The person making service shall prepare a written statement setting forth the date, time and manner of service or set forth the reasons the subpoena was not served. The statement shall be under oath or affirmed under the penalties of perjury. The statement shall be attached to a copy of the subpoena and returned to the Administrative Law Judge who issued the subpoena.

§ 20.609 Motion to quash or modify.

(a) The person to whom a subpoena is directed may, by motion with notice to the party requesting the subpoena, petition the Administrative Law Judge to quash or modify the subpoena.

(b) Except when made at a hearing, the motion must be filed within 10 days after service of a subpoena for attendance of a witness or a subpoena for production of evidence, but in any event at or before the time specified in the subpoena for compliance.

(c) If served at the hearing, the person to whom the subpoena is directed may, by oral application at the hearing, or within a reasonable time fixed by the Administrative Law Judge, petition the Administrative Law Judge to quash or modify the subpoena.

(d) The Administrative Law Judge may quash or modify the subpoena if it is reasonable or requires evidence not relevant to any matter in issue or may deny the request.

Subpart G—Hearings

§ 20.701 Standard of proof.

The party with the burden of proof shall prove the party's case or affirmative defense by a preponderance of the evidence.

§ 20.702 Burden of proof.

(a) Except in the case of an affirmative defense, or as provided in paragraph (b) of this section, the burden of proof is on the Coast Guard.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§ 20.703 Presumptions.

In all class II civil penalty proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but a presumption does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the party on whom it was originally placed.

§ 20.704 Scheduling and notice of hearing.

(a) The Administrative Law Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Administrative Law Judge, as early as possible, shall fix the time, place, and date for the hearing and shall notify all parties and interested persons.

(b) A request for a change in the time, place, or date of a hearing may be granted by the Administrative Law Judge.

(c) At any time after commencement of a proceeding, any party may move to expedite the scheduling of a proceeding. A party moving to expedite a proceeding shall—

(1) Describe the circumstances justifying the motion to expedite; and

(2) Incorporate in the motion affidavits to support any representations of fact.

(d) Following timely receipt of the motion and any responses, the Administrative Law Judge may expedite pleading schedules, prehearing conferences, and the hearing, as appropriate.

§ 20.705 Failure of party to appear.

A default order under § 20.310 may be entered against a party failing to appear at a hearing unless—

(a) Prior to the time for the hearing, the party shows good cause as to why neither the party nor the party's representative can appear; or

(b) Within 30 days of an order to show good cause, the party shows good cause for failure to appear.

§ 20.706 Witnesses.

(a) Witnesses shall testify under oath or affirmation.

(b) If a witness fails or refuses to testify, the failure or refusal to answer any question found by the Administrative Law Judge to be proper shall be grounds for striking all or part of the testimony which may have been given by the witness, or for any other action deemed appropriate by the Administrative Law Judge.

§ 20.707 Telephone testimony.

(a) The Administrative Law Judge may order that testimony of a witness be taken by telephone conference call. A person presenting evidence may request by motion to have testimony taken by telephone conference call. The telephone conference call will be arranged so that all participants can listen to and speak to each other in the hearing of the Administrative Law Judge. The Administrative Law Judge shall ensure that all participants in the telephone conference are properly identified to allow a proper record to be made by the reporter. Telephone conferences are governed by this part.

(b) A witness may be subpoenaed to testify by telephone conference call. The subpoena in such instances is issued under the procedures in § 20.608.

§ 20.708 Witness fees.

(a) Witnesses, other than employees of a Federal agency, summoned in a class II civil penalty proceeding shall receive the same fees and mileage as witnesses in the courts of the United States.

(b) The party who calls a witness is responsible for any fees and mileage to be received by the witness under paragraph (a) of this section.

§ 20.709 Closing of the record.

At the conclusion of the hearing, the record of the proceeding, as described in § 20.903, will be closed unless the Administrative Law Judge directs otherwise. Once the record is closed, it may be reopened at the discretion of the Administrative Law Judge. The Administrative Law Judge may correct the transcript of the hearing by appropriate order.

§ 20.710 Proposed findings, closing arguments, and briefs.

Before the Administrative Law Judge's decision and upon terms which the Administrative Law Judge may find reasonable, any party shall be entitled to file a brief, proposed findings of fact and conclusions of law, or both. Before the close of the hearing, the Administrative Law Judge may hear oral argument to the extent the Administrative Law Judge deems appropriate. Any brief, proposed findings of fact and conclusions of law, and oral argument must be included as part of the record of the proceeding.

Subpart H—Evidence

§ 20.801 General.

A party is entitled to present its case or defense by oral, documentary, or demonstrative evidence; to submit rebuttal evidence; and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.

(a) The Administrative Law Judge may admit any relevant oral or documentary evidence, unless privileged.

(b) Relevant evidence is evidence having any tendency to make the existence of any material fact more probable or less probable than it would be without the evidence.

(c) The Administrative Law Judge may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay may be considered by the Administrative Law Judge when determining the probative weight of the evidence.

§ 20.804 Objections and offers of proof.

(a) A party shall state briefly the grounds for objection to the admission or exclusion of evidence. Rulings on all objections must appear in the record. Only objections made before the Administrative Law Judge may be raised on appeal.

(b) Whenever evidence is excluded, the party offering such evidence may make an offer of proof, which must be included in the record.

§ 20.805 Proprietary information.

(a) Without limiting the discretion of the Administrative Law Judge to give effect to applicable privileges, the Administrative Law Judge may limit introduction of evidence or issue such protective or other orders that in his or her judgment may be consistent with the objective of preventing undue disclosure of proprietary matters, including, but not limited to, matters of a business nature.

(b) Where the Administrative Law Judge determines that information in documents containing proprietary matters should be made available to another party, the Administrative Law Judge may direct the party having possession of the documents to prepare a non-proprietary summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(c) If the Administrative Law Judge determines that this procedure is inadequate and that proprietary matters must form part of the record in order to avoid prejudice to a party, the Administrative Law Judge may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to the evidence.

§ 20.806 Official notice.

The Administrative Law Judge may take official notice of such matters as might be judicially noticed by the courts or of other facts within the specialized knowledge of the Coast Guard as an expert body. Where a decision or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice must be stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§ 20.807 Exhibits and documents.

(a) All exhibits must be numbered and marked with a designation identifying the party introducing the exhibit. The original of each exhibit offered in evidence or marked for identification must be filed and retained in the record of the proceeding, unless the Administrative Law Judge permits the substitution of copies for the original document. Copies of each exhibit must be supplied by the party introducing the exhibit to the Administrative Law Judge and to every party to the proceeding.

(b) Unless otherwise directed by the Administrative Law Judge, proposed exhibits to be offered upon direct examination should be exchanged or made available for inspection 5 days prior to the hearing. The authenticity of all exhibits submitted prior to the hearing will be deemed admitted unless written objection is filed and served on all parties, or unless good cause is shown for failure to file a written objection.

§ 20.808 Written testimony.

The Administrative Law Judge may enter into the record written statements of witnesses that are sworn or affirmed under penalties of perjury. Witnesses whose testimony is presented by written statement shall be available for oral cross-examination.

§ 20.809 Stipulations.

The parties and interested persons may, by stipulation in writing at any stage of the proceeding or orally at the hearing, agree upon any pertinent facts or other matters fairly susceptible of stipulation. Stipulations are binding on the parties to the stipulation.

Subpart I—Decisions and Orders

§ 20.901 Summary decision.

(a) Any party may, after commencement of the proceeding and at least 15 days before the date fixed for the hearing, with or without supporting affidavits, move for a summary decision in the party's favor in all or any part of the proceeding on the grounds that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The Administrative Law Judge may set the matter for argument and call for the submission of briefs.

(b) The Administrative Law Judge may grant the motion if the filed documents, affidavits, material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue as to any material fact and that a party is entitled to a summary decision as a matter of law.

(c) Affidavits must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of facts contained in the opposing party's pleadings. The response to the motion, by affidavits or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot, for reasons stated, present by affidavit matters essential to justify the party's opposition, the Administrative Law Judge may deny the motion for summary decision, may order a continuance to permit information to be obtained, or may make such other order as is just.

(e) The denial of all or any part of a motion for summary decision shall not be subject to interlocutory appeal.

§ 20.902 Decision of the administrative law judge.

(a) After the closing of the record of the proceeding, the Administrative Law Judge shall prepare a decision containing—

(1) Findings on all material issues of fact and conclusions of law, and the basis for each;

(2) An order as to the final disposition of the case, including the assessment of a class II civil penalty, as appropriate;

(3) The date upon which the decision will become effective;

(4) A statement of further right to appeal; and

(5) If no hearing was held, a statement of the right of any interested person to petition the Commandant to set aside the order.

(b) The decision of the Administrative Law Judge must be based upon a consideration of the whole record of the proceedings.

§ 20.903 Record of proceedings.

(a) The record of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings will constitute the official record of a proceeding. Any proceedings regarding the disqualification of an Administrative Law Judge will be included in the record.

(b) Any person may examine the record of a proceeding at the Hearing Docket Office, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Any person may secure a copy of part or all of the record after payment of reasonable costs for duplication in accordance with 49 CFR part 7.

§ 20.904 Petitions to set aside an order and provide a hearing.

(a) If no hearing is held on a class II civil penalty complaint alleging a violation under the FWPCA, any interested person may petition the Commandant, within 30 days after issuance of the order, to set aside the order and to provide a hearing.

(b) If the evidence presented by the interested person in support of the petition is material and was not considered in the issuance of the order, the Commandant shall immediately set aside the order and direct that a hearing be held in accordance with the requirements of this part.

(c) If the Commandant denies a hearing requested under this section, the Commandant shall provide to the interested person, and publish in the **Federal Register**, notice of and the reasons for the denial.

§ 20.905 Reopening.

(a) To the extent permitted by law, the Administrative Law Judge for good cause shown in accordance with paragraph (c) of this section, may reopen the record of a proceeding for the purpose of taking additional evidence.

(b) Any party may file a motion to reopen the record within 30 days of the closing of the record of a proceeding.

(1) Any motion to reopen the record must clearly set forth the facts sought to be proven and the reasons claimed to constitute grounds for reopening the record.

(2) A party who does not file a response to any motion to reopen the record will be deemed to have waived any objection to the motion, provided that no other party has raised the same objection.

(c) If the Administrative Law Judge has reason to believe that reopening the record of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record of the proceeding may be reopened by the Administrative Law Judge before the Administrative Law Judge's decision becomes final.

Subpart J—Appeals

§ 20.1001 General.

(a) A party may appeal the Administrative Law Judge's decision by filing a notice of appeal with the Commandant. A party shall file the notice of appeal with the Commandant (G–CJ), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, Attention: Hearing Docket Clerk. A Party shall file the notice of appeal not later than 10 days after service of the Administrative Law Judge's decision on the parties and shall serve a copy of the notice of appeal on each party and interested person.

(b) A party may appeal only the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

(3) Whether there were any abuses of discretion by the Administrative Law Judge.

§ 20.1002 Record on appeal.

(a) The record of the proceeding will constitute the record for decision on appeal.

(b) if the respondent requests a copy of the transcript of the hearing in the notice of appeal and the hearing was recorded or transcribed at government expense, the transcript will be provided upon payment of the fees prescribed in 49 CFR 7.95. If the services of a government contractor were utilized, the transcript must be obtained under the provisions of 49 CFR 7.99.

§ 20.1003 Procedures for appeal.

(a) A party shall file an appeal brief with the Commandant and shall serve a copy of the appeal brief on each other party.

(1) The appeal brief must set forth the party's specific objections to the initial decision or rulings. The appeal brief must set forth, in detail—

(i) The basis for the appeal;

(ii) The reasons supporting the appeal; and

(iii) The relief requested in the appeal.

(2) When the party relies on material contained in the record for the appeal, the appeal brief must specifically refer to the pertinent portions of the record.

(3) The appeal brief must be submitted to the Commandant within 60 days after service of the Administrative Law Judge's decision and order, or if a transcript was requested in accordance with § 20.1002(b), within 60 days after receipt of the transcript. After this time has elapsed, additional filings will not be considered as a part of the record of the appeal, unless an extension of time has been granted in writing by the Commandant or the Commandant's designee and the extended time limit has been met.

(b) Any party may file a reply brief with the Commandant no later than 35 days after being served with the appeal brief. The party filing a reply brief will serve a copy on all parties. If the party filing a reply brief relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript of the hearing in the reply brief.

(c) A party may not file more than one appeal brief or reply brief, unless the party has petitioned the Commandant in writing, and the Commandant or the Commandant's designee has granted leave to file an additional brief. The Commandant will allow a reasonable time for the party to file the additional brief.

(d) The Commandant has sole discretion to permit oral argument on the appeal. On the Commandant's own initiative or upon written petition by any party, the Commandant may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(e) The Commandant may allow any person to file an amicus curiae brief in an appeal of an initial order.

§ 20.1004 Civil penalty appeal decisions.

(a) The Commandant shall review the record on appeal to determine if the Administrative Law Judge committed

prejudicial error in the proceedings or that the Administrative Law Judge's decision should be affirmed, modified, or reversed. The Commandant may affirm, modify, or reverse the Administrative Law Judge's decision or may remand the case for further proceedings.

(b) The Commandant shall issue a decision and order on an appeal in writing and shall serve a copy of the decision and order on each party and interested person.

Subpart K—Finality and Availability of Orders

§ 20.1101 Finality of order.

(a) Unless appealed pursuant to subpart J of this part, the decision and order issued by the Administrative Law Judge will constitute the final order assessing or denying a class II civil penalty.

(b) If the Commandant issues a decision and order under subpart J of this part, the decision and order of the Commandant constitute the final order assessing or denying a class II civil penalty.

§ 20.1102 Availability of decisions and orders.

(a) Copies of decisions and orders made in the adjudication of class II civil penalties are available for inspection and copying at—

(1) The document inspection facility at any Coast Guard District Headquarters; or

(2) The Coast Guard Headquarters Hearing Docket Office Public Reading Room.

(b) Requests for a copy of a decision and order may be made to the Hearing Docket Clerk. The person requesting a copy will be billed for the copying costs in accordance with 49 CFR 7.93.

Dated: March 30, 1993.

P.E. Versaw,

Chief Counsel, Rear Admiral, U.S. Coast Guard.

[FR Doc. 93-7713 Filed 4-5-93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 64

Tuesday, April 6, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, APRIL

17081–17320.....1
17321–17490.....2
17491–17772.....5
17773–17942.....6

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12842.....17081

Proclamation:
6540.....17773

7 CFR

Proposed Rules:
1413.....17807

9 CFR

Proposed Rules:
94.....17462

12 CFR

226.....17083
748.....17491
791.....17492

Proposed Rules:
327.....17533
701.....17808

14 CFR

71.....17494

Proposed Rules:
71.....17541, 17543

17 CFR

1.....17495
30.....17495
33.....17495
180.....17495
190.....17495

18 CFR

Proposed Rules:
141.....17544
1301.....17553

21 CFR

Ch. I.....17085
1.....17085
5.....17091, 17093, 17094, 17095, 17096, 17105, 17105
12.....17095
14.....17095
20.....17096, 17097
73.....17506, 17508
74.....17098, 17510
100.....17096, 17097
101.....17085, 17096, 17097, 17099, 17100, 17101, 17102, 17103, 17104
102.....17102, 17103
104.....17104
105.....17096, 17104
130.....17103, 17105
131.....17105
133.....17105
135.....17103, 17105
136.....17103
137.....17103
139.....17103
145.....17103
146.....17103
150.....17103
152.....17103
155.....17103
156.....17103
158.....17103
160.....17103
161.....17103
163.....17103
164.....17103
166.....17103
168.....17103, 17105
169.....17103
172.....17098
177.....17098
178.....17098, 17512, 17512, 17513, 17514
186.....17098
189.....17098
558.....17515, 17516
1308.....17106

Proposed Rules:
100.....17171
101.....17171
102.....17171
135.....17172
161.....17171
330.....17553
358.....17554

24 CFR

50.....17164
574.....17164
905.....17164
3500.....17165

Proposed Rules:
125.....17172
576.....17764

26 CFR

1.....17166, 17775
301.....17516, 17517

Proposed Rules:
1.....17557

28 CFR

35.....17520
36.....17521

Proposed Rules:
36.....17558

30 CFR

Proposed Rules:
935.....17173
950.....17811

33 CFR

20.....17926
100.....17525

162.....17525
165.....17525
Proposed Rules:
165.....17567

34 CFR
377.....17308

36 CFR
242.....17776
Proposed Rules:
1191.....17175

37 CFR
202.....17778

40 CFR
52.....17778, 17780
81.....17783
Proposed Rules:
80.....17175

42 CFR
413.....17527

46 CFR
174.....17316

47 CFR
1.....17528
61.....17166, 17528
64.....17167
73.....17786
76.....17530
90.....17787
Proposed Rules:
2.....17180
61.....17813
73.....17816, 17817, 17818
80.....17180, 17568
87.....17568
90.....17819
94.....17568
97.....17180

49 CFR
552.....17787
821.....17531
826.....17531
1002.....17788
1017.....17788
1018.....17788
1312.....17788
1313.....17788
1314.....17788

50 CFR
100.....17776
216.....17789
301.....17791
611.....17462
658.....17169
672.....17806
685.....17462
Proposed Rules:
216.....17569
226.....17181
672.....17193, 17196, 17821
675.....17196, 17200, 17821

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 31, 1993

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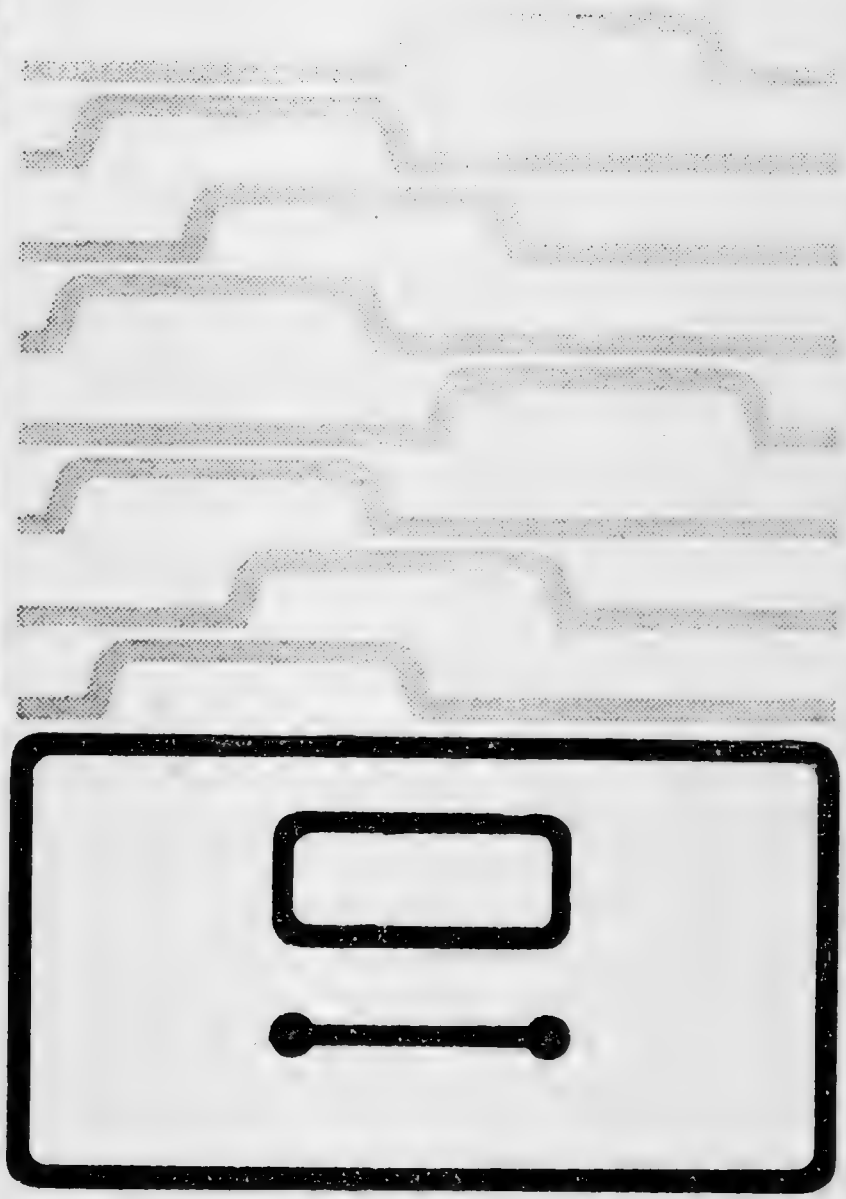

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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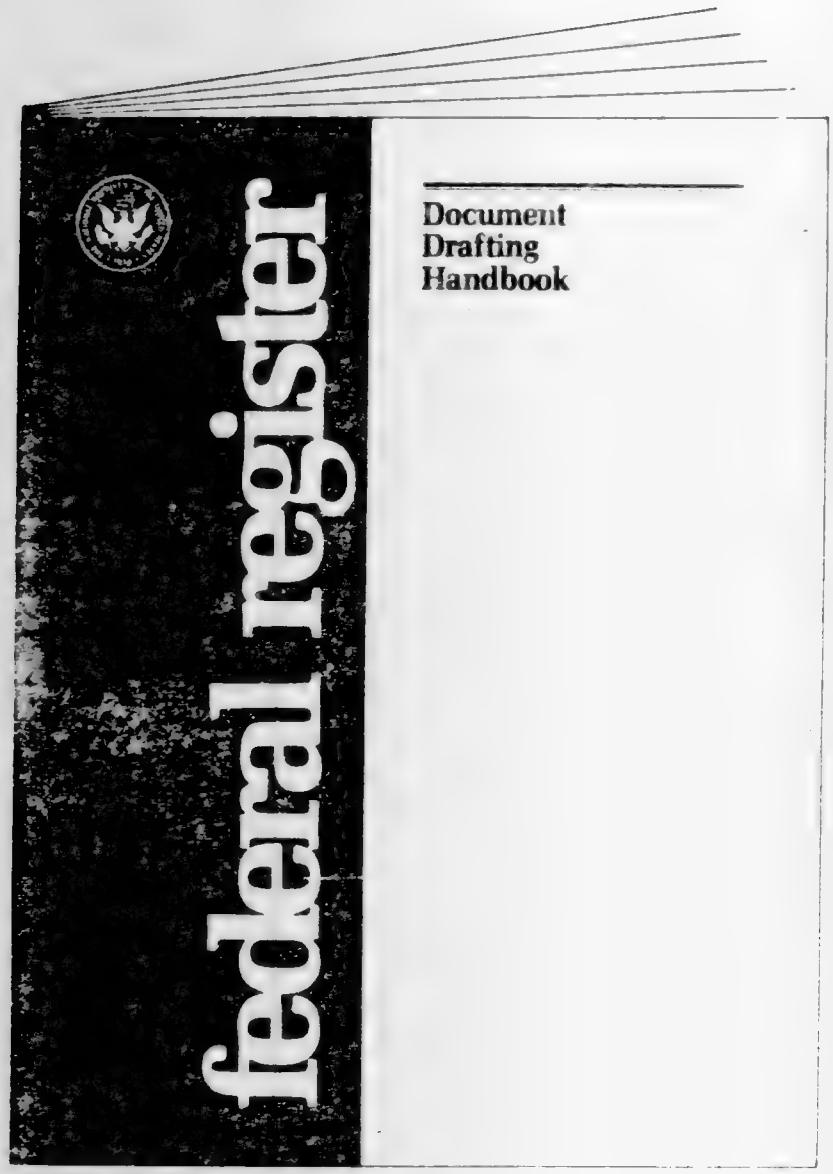

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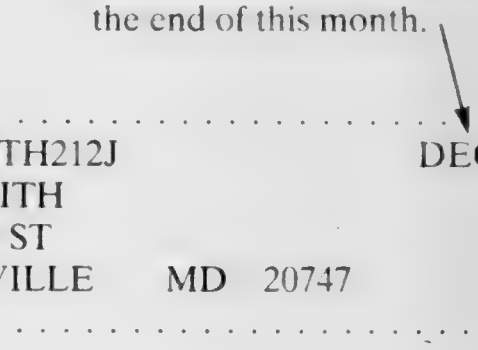

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federal register

Wednesday
April 7, 1993

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Contents

Federal Register

Vol. 58, No. 65

Wednesday, April 7, 1993

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 18110
Meetings:
Malaria Vaccine Program Advisory Committee, 18109

Agricultural Marketing Service
RULES
Milk marketing orders:
New England et al., 17946
Tennessee, 17947

Agriculture Department
See Agricultural Marketing Service
See Federal Crop Insurance Corporation
See Rural Electrification Administration

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Hamilton Army Airfield, CA, 18082
Theater missile defense (TMD) and sensor programs; test range areas, 18082

Coast Guard
RULES
Regattas and marine parades:
Lake Worth Sunfest '93, 18008
Miami Beach Super Boat Race, 18009

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 18078

Commission on Immigration Reform
NOTICES
Meetings, 18081

Committee for the Implementation of Textile Agreements
NOTICES
Textile consultation; review of trade:
Pakistan; correction, 18081

Commodity Futures Trading Commission
RULES
Federal speculative position limits, 17973
PROPOSED RULES
Federal speculative position limits, 18057

Consumer Product Safety Commission
NOTICES
Meetings:
Cigarette Fire Safety Technical Advisory Group, 18082

Defense Department
See Army Department
See Engineers Corps

Economic Development Administration
NOTICES
Project specific environmental documents; availability, 18078

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Service delivery areas; guidance letter, 18114

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
CER Corp., 18085

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Richmond Harbor, CA; deep-draft navigation improvements, 18083
Terrebonne Parish, LA; hurricane and wetland protection, 18084

Environmental Protection Agency
RULES
Administrative practice and procedure:
OMB approval numbers; technical amendments, 18014
Air quality implementation plans; approval and promulgation; various States:
Maryland, 18010
Tennessee, 18011
PROPOSED RULES
Air programs:
Architectural and Industrial (AIM) Maintenance Coating Negotiated Rulemaking Advisory Committee; meeting, 18062
Drinking water:
Disinfection by-products negotiated rulemaking advisory committee; meeting, 18062
Waste management; solid:
Degradable rings, 18062
NOTICES
Meetings:
Biological and health effects of radiofrequency radiation; conference, 18093
Pesticide registration, cancellation, etc.:
Du Pont Benomyl 50W, etc., 18093
Pesticides; emergency exemptions, etc.:
Tebuconazole, 18095

Executive Office of the President
See Management and Budget Office

Export-Import Bank
NOTICES
Agency information collection activities under OMB review, 18095

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Airport noise control; Stage 2 airplanes operating in 48 contiguous United States and District of Columbia; phaseout and nonaddition (transition to all Stage 3), 18138
Airworthiness directives:
General Dynamics, 17972
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 18051
Short Brothers, plc, 18053
Transition areas, 18054, 18055
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Pilot compartment view design considerations, 18132
Airport noise compatibility program:
Capital Airport, IL, 18132
Organization, functions, and authority delegations:
Crescent City, CA, 18134
Santa Barbara, CA, 18134

Federal Crop Insurance Corporation
RULES
Administrative regulations:
Crop insurance application; 1993 and succeeding crop years regulations, 17943
Food Security Act of 1985; implementation, 17944

Federal Election Commission
RULES
Contribution and expenditure limitations and prohibitions:
Transfers of funds from State to Federal campaigns; transmittal to Congress, 17967

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Kentucky, 18096
Maryland, 18096
Tennessee, 18096

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act) and natural gas companies (Natural Gas Act):
Uniform systems of accounts; revisions to account for Clean Air Act allowances, etc., 17982
NOTICES
Environmental statements; availability, etc.:
Consumers Power Co., 18086, 18087
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 18087
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Louisiana Natural Resources Department, 18090
Texas Railroad Commission, 18090
Applications, hearings, determinations, etc.:
Carnegie Natural Gas Co., 18091
CNG Transmission Corp., 18091
Mississippi River Transmission Corp., 18091
National Fuel Gas Supply Corp., 18092
Panhandle Eastern Pipe Line Co., 18092
Texas Gas Transmission Corp., 18092
Trunkline Gas Co., 18092

Federal Housing Finance Board
RULES
Affordable housing program; maximum subsidy limitations, 17968

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Aero Expediting Inc. et al., 18096

Federal Mediation and Conciliation Service
RULES
Agency ethics regulations; amendments, 18007

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Citizens Bancorp Investment, Inc., 18097
Comerica Inc. et al., 18097
Gatlin, James Richard, et al., 18098
HNB Holding Co., Inc., et al., 18098
Huntington Bancshares Inc. et al., 18098

Federal Trade Commission
PROPOSED RULES
Appliance labeling; energy costs and consumption, 18056
NOTICES
Premerger notification waiting periods, early terminations, 18099

Fish and Wildlife Service
RULES
Endangered and threatened species:
Ka'u silversword, 18029
Seabeach amaranth, 18035
PROPOSED RULES
Endangered and threatened species:
Mann's bluegrass, 18073

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Diluted juice beverages; ingredients declaration, 18057

Geological Survey
NOTICES
Agency information collection activities under OMB review, 18107, 18108

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health community integrated service systems set-aside program, 18100

Housing and Urban Development Department
NOTICES
Mortgage and loan insurance programs:
Section 235(r) interest rates, 18105

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
American Indian/Alaska Native tribal organizations—
Tribal recruitment and retention of health professionals into Indian health programs, 18100

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Ferrosilicon from—
Kazakhstan and Ukraine, 18079

International Trade Commission
NOTICES
Import investigations:
Anisotropically etched one megabit and greater drams, components, and products containing drams, 18110
Anti-theft deactivatable resonanat tags and components, 18110
New steel rails from United Kingdom, 18110
Specimen container systems and components including alignment indicator labels, and method of use, 18111

Interstate Commerce Commission
PROPOSED RULES
Contracts and exemptions:
Rail transportation of scrap paper, 18072
NOTICES
Motor carriers:
Released rates authority; household goods, 18111
Railroad operation, acquisition, construction, etc.:
Frick, Daniel R., 18112
Winamac Southern Railway Co., 18113
Railroad services abandonment:
Austin & Northwestern Railroad Co., Inc., 18112
CSX Transportation, Inc., 18112
Northwestern Oklahoma Railroad Co., 18113

Justice Department
NOTICES
Pollution control; consent judgments:
Easton Area Joint Sewer Authority et al., 18114

Labor Department
See Employment and Training Administration
See Veterans Employment and Training, Office of Assistant Secretary

Land Management Bureau
RULES
Public land orders:
Idaho, 18018
NOTICES
Agency information collection activities under OMB review, 18105
Caliente Resource Area, CA; temporary visitation restriction order, 18106
Realty actions; sales, leases, etc.:
Colorado, 18106
Withdrawal and reservation of lands:
Utah, 18106

Management and Budget Office
NOTICES
Procurement:
Commercial activities, performance (Circular A–76), 18120

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 18108

National Highway Traffic Safety Administration
RULES
Fuel economy standards:
Light trucks; 1995 model year, 18019
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors, 18134

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Scientific and commercial development of vaccine to prevent human genital tract infection by human papillomaviruses, 18103

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Boundary recommendation information; availability, 18079
Meetings:
South Atlantic Fishery Management Council, 18080
Permits:
Marine mammals, 18081

Nuclear Regulatory Commission
RULES
Spent fuel storage casks, approved; list additions, 17948
PROPOSED RULES
Radiation protection standards:
NRC-licensed facilities; radiological criteria for decommissioning; workshop, 18049
NOTICES
Generic letters:
Instrument response time limits technical specification relocation tables, 18118
Applications, hearings, determinations, etc.:
Indiana Michigan Power Co., 18119

Office of Management and Budget
See Management and Budget Office

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health

Rural Electrification Administration
PROPOSED RULES
Local account computations, procedures and policies, 18043

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 18120
Boston Stock Exchange, Inc., 18121
Chicago Board Options Exchange, Inc., 18122
Cincinnati Stock Exchange, Inc., 18123
Midwest Stock Exchange, Inc., 18124
National Association of Securities Dealers, Inc., 18125, 18126
New York Stock Exchange, Inc., 18128
Philadelphia Stock Exchange, Inc., 18129
Applications, hearings, determinations, etc.:
Connecticut Mutual Investment Accounts, Inc., et al., 18130

State Department
NOTICES
Organization, functions, and authority delegations:
Deputy Secretary, 18132

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 18108, 18109

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Commercial Space Transportation Office, Director, 18018

Treasury Department
NOTICES
Agency information collection activities under OMB review, 18134, 18135, 18136

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants and cooperative agreements; availability, etc.:
Stewart B. McKinney Homeless Assistance Act—Homeless veterans reintegration project, 18116

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 18138

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
400 (2 documents).....17943, 17944
1001.....17946
1002.....17946
1011.....17947
Proposed Rules:
1785.....18043
1786.....18043

10 CFR
72.....17948
Proposed Rules:
20.....18049

11 CFR
110.....17967

12 CFR
960.....17969

14 CFR
11.....18138
39.....17972
Proposed Rules:
39 (2 documents).....18051, 18053
71 (2 documents).....18054, 18055

16 CFR
Proposed Rules:
305.....18056

17 CFR
150.....17973
Proposed Rules:
150.....18057

18 CFR
101.....17982
201.....17982

21 CFR
Proposed Rules:
101.....18057

29 CFR
1400.....18007

33 CFR
100 (2 documents).....18008, 18009

40 CFR
52 (2 documents).....18010, 18011
60.....18014
61.....18014
122.....18014
264.....18014
265.....18014
403.....18014
707.....18014
Proposed Rules:
Ch. I (2 documents).....18062
238.....18062

43 CFR
PLO 6961.....18018

49 CFR
1.....18018
523.....18019
525.....18019
533.....18019
537.....18019
Proposed Rules:
1039.....18072

50 CFR
17 (2 documents).....18029, 18035
Proposed Rules:
17.....18073

Rules and Regulations

Federal Register
Vol. 58, No. 65
Wednesday, April 7, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

Application for Crop Insurance; Regulations for the 1993 and Succeeding Crop Years; the Crop Insurance Application

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations by adding a general statement to the application making applicants aware of their responsibility to comply with "Sodbuster and Swampbuster" provisions of the Food Security Act of 1985.

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250; Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), FCIC is required to submit to the Office of Management and Budget (OMB) any required collection of information. Pursuant to this requirement, FCIC has submitted the crop insurance application (FCI–12) contained in this rule to OMB for approval.

Amendments to the Food Security Act of 1985 (Pub. L. 99–198) specifically require that, in order to be eligible for Federal Crop Insurance benefits, an applicant must comply with all conservation requirements (Sodbuster/Swampbuster). Therefore it is determined that this amendment conforms the regulation to the statutory requirements.

Accordingly, pursuant to 5 U.S.C. 553, as this rule is interpretive, good cause is found to make this rule final upon publication.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by amending subpart D to read as follows:

1. The authority citation for 7 CFR part 400, subpart D continues to read as follows:

Subpart D—Application for Crop Insurance; Regulations for the 1993 and Succeeding Crop Years

Authority: 7 U.S.C. 1506, 1516.

1 a. The heading for subpart D is revised to read as set forth above.

2. Section 400.38 is amended by revising all text that appears before the "Collection of Information and Data (Privacy Act)" statement, as follows:

§ 400.38 The crop insurance application.

United States Department of Agriculture
Federal Crop Insurance Corporation
Crop Insurance Application
Continuous Contract

1. Name of Applicant

2. Applicant's Authorized Representative

3. Street or Mailing Address

4. City and State

5. ZIP Code
[ ][ ]-[ ][ ][ ]-[ ][ ][ ][ ]
[ ]
6. State County
[ ][ ][ ][ ][ ]
7. Contract Number

8. County

9. State

[ ][ ][ ][ ][ ][ ][ ]
10. Identification Number
[ ][ ][ ][ ][ ]
11. SSN TAX

12. Type of Entity
13. Is Applicant Over 18: Yes_____ No_____

If No, Date of Birth

A. The applicant subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted or grown, whichever is applicable, on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election, amount of insurance or plan of insurance. The premium rate and applicable production guarantee or amount of insurance per acre shall be those shown on the applicable county actuarial table filed in the service office for each crop year.

14. Effective crop year	15. Crop	16. Type, class, plan of ins.	17. Price election or amount of ins.	18. Level election	For agency use only 19 (A)	20. (P)	21.
					[ ]		
					[ ]		
					[ ]		
					[ ]		
					[ ]		
					[ ]		
					[ ]		
					[ ]		

N S I O T—F U R
23. Crop(s) NOT insured the first year:

B. This application is hereby accepted by the Corporation except that the Corporation may reject the application on the basis that (1) the Corporation has determined that the risk is excessive under the provisions of the individual crop insurance regulations; (2) any material fact is concealed or misrepresented or fraud occurs in the application; or submission of the application; (3) the applicant is indebted to any United States Government Agency and that indebtedness is delinquent; (4) the applicant is indebted for crop insurance coverage provided by any company reinsured by the Corporation and that indebtedness is delinquent; (5) the applicant previously had crop insurance terminated for violation of the terms of the contract or the regulations, or for failure to pay the applicant's indebtedness; (6) the applicant is debarred by any United States Government Agency; or (7) the applicant has failed to provide complete and accurate information to material requests this application.

Rejection shall be accomplished by depositing notification thereof in the United States mail, postage paid to the above address. Unless rejected as provided above, or the time for filing applications has passed at the time this application is filed, the contract shall be in effect for the crops and crop years specified and shall continue for each succeeding crop year until cancelled or terminated as provided in the contract. This accepted application, the insurance policy(ies), the applicable appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage coverage levels, premium rates, and where applicable, the production guarantees, amounts of insurance, or plans of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

24. [ ] Applicant does not have like insurance on any of the above crops.

25. [ ] Previous Carrier:

26. [ ] Policy Number:

27. [ ] Applicant's Signature

28. [ ] Date
[ ][ ][ ][ ][ ][ ][ ]
29. Code No.

30. Witness to Signature

31. Location of Farm Headquarters

32. Address of Your Service Office
Phone: _____
Phone: _____

I am aware and agree to comply with all requirements regarding the conservation provisions of the Food Security Act of 1985 (the Act) Sodbuster/Swampbuster provisions. I understand that I must be in compliance with the Act including reporting requirements to the applicable ASCS office for a crop insurance indemnity to be paid. I also understand that if I have not met these requirements, or if ASCS determines that I am out of compliance, an indemnity payment will not be made on this policy. Any graduated sanctions imposed by any agency under the Act must be paid in full prior to receipt of any of any indemnity paid.

Signature of Insured _____

Date _____

Agent's Initials _____

See Reverse Side of Form for Statement Required by Privacy Act of 1974.

33. Page ___ of ___ pages

* * * * *

Done in Washington, DC, on April 1, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–8107 Filed 4–6–93; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 400

General Administrative Regulations; Food Security Act of 1985, Implementation; Denial of Benefits

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations to be consistent with language found in the Food and Security Act of 1985 as amended by the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Matt L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individuals industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The lack of general conformity existing in FCIC's regulations concerning denial of benefits and graduated sanctions has resulted in considerable duplication of effort between FCIC, other USDA agencies, and the insurance industry. The revised provisions will provide greater conformity with the language found in the Food Security Act of 1985 and should eliminate unnecessary confusion. The rule also addresses graduated sanctions which may be imposed on an insured who fails to meet the requirements of the sodbuster and swampbuster provisions contained in the Food Security Act of 1985.

Amendments to the Food Security Act of 1985 (Pub. L. 99–198) allow graduated sanctions and cause FCIC's present regulation Subpart F of 7 CFR part 400 to no longer conform to the statutory requirements because the sanctions required by FCIC's regulation impose a stricter penalty. Additionally, it has been determined that the requirement of obtaining the AD–1026 prior to the sales closing date is unmanageable and requires much additional paperwork and effort on the part of both the insured and the agent. Therefore it is determined that this amended relieves an unnecessary restriction and conforms the regulation to the statutory requirements.

Accordingly, pursuant to 5 U.S.C. 553, as this rule is interpretive and relieves a restriction, good cause is found to make this rule final upon publication.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by amending subpart F to read as follows:

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

1. The authority citation for 7 CFR part 400, subpart F continues to read as follows:

Authority: 7 U.S.C. 1501 *et seq.*

2. Section 400.47 is amended by removing paragraphs (d) and (e); redesignating paragraphs (f), (g), (h), and (i) as paragraphs (d), (e), (f) and (g); and revising paragraph (a) to read as follows:

§ 400.47 Denial of crop insurance.

(a) Any person convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year will be ineligible for crop insurance during that crop year and the four succeeding crop years.

(1) The insurance of such person insured by FCIC who found to be ineligible under paragraph (a) of this section will be null and void, and any indemnity paid on such insurance must be returned in full to FCIC. Any premium paid for insurance coverage declared null and void will be returned, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid.

(2) Any person ineligible for crop insurance under the provisions of paragraph (a) of this section may make application for crop insurance for the crop year following the applicable period of ineligibility by submitting a new application. The previous application and policy of insurance will be cancelled.

* * * * *

3. Section 400.49 is revised to read as follows:

§ 400.49 Certification.

Each applicant for insurance under the Federal Crop Insurance Act, as amended, is required to certify on Form AD–1026 (Highly Erodible Land and Wetland Conservation Certification) that such applicant will not produce an agricultural commodity on highly erodible land or converted wetland during the applicable crop year unless such production is exempt in accordance with the provisions at 7 CFR 12.5. Failure of the applicant to certify with the appropriate agency in a timely manner or to remain in compliance may result in denial of crop insurance and certain benefits associated with the crop insurance program.

4. Section 400.50 is added to subpart F to read as follows:

§ 400.50 Graduated sanctions.

A person who is determined under 7 CFR 12.4 to be ineligible for certain United States of Agriculture (USDA) benefits as the result of producing an agricultural commodity on highly erodible land and/or production of an agricultural commodity on a wetland may regain eligibility for crop insurance if the appropriate agency determines the person qualifies for a good faith exemption, or if any sanction imposed upon that person has been satisfied.

Done in Washington, DC on April 1, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–8108 Filed 4–6–93; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 1001 and 1002

[DA–93–02]

Milk in the New England and New York-New Jersey Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of March through November 1993 the provisions of the seasonal production incentive payment plans of the New England and New York-New Jersey Federal milk orders that require 20 cents in March, 30 cents in April, and 40 cents in May and June to be deducted from payments to producers. The suspensions are necessary to increase the cash flow of dairy farmers this spring when some of them will be facing financial difficulties. The suspensions were requested by cooperative associations representing producers who provide much of the milk supply for the two markets.

EFFECTIVE DATE: March 1, 1993 through November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 17, 1993; published February 23, 1993 (58 FR 10993).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on dairy farmers and will have no impact on regulated handlers.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the orders regulating the handling of milk in the New England and New York-New Jersey marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on February 23, 1993 (58 FR 10993) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Three comments were received and they are summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of March through November 1993 the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. Paragraphs (c) and (d) of § 1001.62 and

2. Paragraphs (d) and (e) of § 1002.61.

Statement of Consideration

The action suspends for the months of March through November 1993 the provisions of the New England and New York-New Jersey orders that require deductions from and additions to producer blend/uniform prices to be made for the purpose of encouraging dairy farmers to level out their production during the year. The provisions provide for the deduction of 20 cents per hundredweight from the blend/uniform price paid to producers to be made for the month of March, 30 cents for the month of April, and 40 cents for May and June. The funds retained from these deductions are then added to the pooled milk values under the two orders in the amounts of 25, 30, and 30 percent of the total deducted for the months of August, September, and October, respectively. The remaining 15 percent plus interest earned on the aggregate funds is added for the month of November. By artificially depressing producer income in the spring and enhancing it above otherwise prevailing levels in the fall, the provisions provide an incentive to producers to level out the seasonality of their milk production to more closely reflect fluid milk demand patterns.

The suspensions were requested on behalf of twelve cooperative associations representing over 70 and 40 percent of the producers associated with the New England and the New York-New Jersey orders, respectively. The cooperative associations proposing the suspensions are Agri-Mark, Inc., Atlantic Dairy Cooperative, Inc., Chateaugay Cooperative Marketing Association, Inc., Conesus Milk Producers Cooperative Association, Inc., Dairylea Cooperative, Inc., Eastern Milk Producers Cooperative Association, Inc., Franklin-St. Lawrence Cooperative, Inc., Konhokton Milk Producers Cooperative Association, Inc., Middlebury Milk Producers Cooperative Association, Inc., St. Albans Cooperative Creamery, Inc., Sullivan County Dairy Association, Inc., and Upstate Milk Cooperatives, Inc.

Proponents contend the suspensions are needed because of the decline in blend prices paid to producers anticipated by the cooperatives for the spring months of 1993. The proponents stated that the expected blend prices, if adjusted by the "Louisville plan" deductions, would be even further below dairy farmers' cash costs than the unadjusted prices would be. In addition the adjustment would occur at a time when farmers will need money for planting and other expenses.

The proponents explained that the further reduction of pay prices to

producers this spring due to the operation of the seasonal incentive plans, beyond that resulting from anticipated supply-demand conditions and occurring at a time when farm cash requirements are at their seasonal peak, would accentuate the financial problems expected from the drop in milk prices in the coming spring. The proponents indicated that there will be some price recovery in the coming fall to a level near that of last fall, thereby providing for the seasonal price swings intended under the "Louisville" plan.

Three comments were filed by interested parties in response to the invitation in the notice proposing this action. Crowley Foods, Inc. and Oneida-Lewis filed comments in support of the proposed action. The Oneida-Lewis comments stated that blend prices are expected to fall below $11.00 for the next three months at a time when income is needed to meet large expenses that come with spring. The comments pointed out that the action would have no impact on handlers' income or expenses.

Comments opposing the suspension were received from Allied Federated Cooperatives (Allied), a federation of 29 bargaining and marketing local cooperatives, comprised of nearly 1,500 or 9 percent of the 16,800 dairy farmers supplying these markets. The comments claimed that low farm prices and seasonality are two separate issues and that low farm gate prices will not be helped by removing the seasonality provisions.

Allied's opposing comments stated that market statistics indicate that a seasonal incentive program is still needed. Commentors argued that producers have been successful in decreasing swings in production between the spring and fall months from 1965 to 1985. The comments claimed that the Louisville Plan has been a part of that success. However, the comments pointed out for the years of 1990 and 1992, statistics show movement toward a greater seasonality problem. The Allied comments added that keeping the plan in place helps address the problem of seasonality while farmers as a group do not lose money, nor is any new money generated, by the Louisville Plan.

The blend prices paid to producers under the orders are predicted to decline during the spring months of 1993. The further reduction of pay prices to producers this spring due to the operation of the seasonal incentive plan, beyond that resulting from anticipated supply-demand conditions and occurring at a time when farm cash requirements are at their seasonal peak, would accentuate any financial problems farmers may have from the reduction in milk prices in the coming spring. Normal seasonal price variations will result in increased prices in the fall months, when the seasonal payment plans would operate to enhance prices to producers. Therefore, producers who have made an effort to shift production from spring to fall should benefit from higher prices in the coming fall months.

It is evident that there is widespread support for this action among producers supplying these two markets. Proponents note that the position of some dairy farmers is such that they cannot afford to take lower returns in the spring in exchange for higher prices in the fall.

Therefore, the seasonal incentive plans of the two markets are hereby suspended for the months of March through November 1993. It is unlikely that dairy farmers who have made a long-term effort to shift production from spring to fall will abandon such a production pattern because of the expected seasonal variation in prices over the remainder of 1993.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and assure orderly marketing conditions in the marketing areas in that the action lessens the regulatory impact of the orders on dairy farmers and will have no impact on regulated handlers;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment was filed in opposition to this action and the issues raised therein are dealt with in the statement of consideration.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register.**

List of Subjects in 7 CFR Parts 1001 and 1002

Milk marketing orders.

It is therefore ordered, That the following provisions in 7 CFR parts 1001 and 1002 are suspended from March 1 through November 30, 1993.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. The authority citation for 7 CFR parts 1001 and 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1001.62 [Amended]

2. Sections 1001.62 (c) and (d) are suspended for the period March 1 through November 30, 1993.

PART 1002—MILK IN THE NEW YORK–NEW JERSEY MARKETING AREA

§ 1002.61 [Amended]

3. Sections 1002.61 (d) and (e) are suspended for the period March 1 through November 30, 1993.

Dated: April 1, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–8116 Filed 4–6–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1011

[DA–92–32]

Milk in the Tennessee Valley Marketing Area; Temporary Revision of Supply Plant Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This revision temporarily eases a supply plant shipping requirement that at least 40 percent of the producer milk physically received at a supply plant be shipped to a distributing (bottling) plant in order to qualify the supply plant for pooling under the Tennessee Valley order. The revision reduces the shipping requirement to 30 percent during the months of March 1993 through July 1993. This action is necessary in order to prevent some uneconomic movements of milk in order to pool some of the milk received at a proprietary supply plant that recently became associated with this market.

EFFECTIVE DATE: March, 1, 1993 through July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/ Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, 202–720–6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Reduction of Supply Plant Shipping

Percentage: Issued November 16, 1992; Published November 23, 1992 (57 FR 54948).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

This Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1011.13(e)(3) of the Tennessee Valley order.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 54948) concerning the reduction of the supply plant shipping requirements of the order for the months of March 1993 through July 1993. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by December 23, 1992. One comment in support was received.

Statement of Consideration

In order for a supply plant to maintain its pool status, the Tennessee Valley order requires such plants to ship to pool distributing plants a minimum of 60 percent of the total quantity of milk physically received at the supply plant during the months of August through November and January and February and 40 percent in each of the other months. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

Armour Food Ingredients Company (Armour), a proprietary supply plant operator that recently became pooled under this order, requested the revision. Armour asserts that its Springfield, Kentucky, plant can meet the 60 percent shipping requirement during the fall months of the year by supplying the fluid milk plant operated by Southern Belle Dairy at Somerset, Kentucky. Armour indicated that they would have difficulty meeting the 40 percent shipping requirement in the spring, since milk production increases and distributing plants need a lessor proportion of the market's milk supply. The handler claimed that this could result in some of their producers not having their milk pooled or Armour would have to engage in some inefficient and uneconomic hauling of milk to pool this milk.

Comments in support of this action were received from Southern Belle Dairy Company, Inc., (Southern). Southern stated that their organization operates a fluid milk plant located in Somerset, Kentucky, and that Southern receives supplemental milk from Armour. Southern stated that milk production for Kentucky and the region where the supplemental milk is produced has increased about 3 percent above last year and is expected to increase further. Southern stated that as this occurs Southern will need less of the Armour milk and that Armour will need to move milk to manufacturing plants in order to qualify their supply plant for pooling.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the percentage set forth in § 1011.13(e)(3) should be decreased from 40 percent to 30 percent to prevent uneconomic shipments of milk from supply plants to distributing plants under the Tennessee Valley order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of March 1993 through July 1993;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments in opposition were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

It is therefore ordered, That the following provision in 7 CFR part 1011 is temporarily revised from March 1, 1993 through July 31, 1993.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. The authority citation for 7 CFR part 1011 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1011.13 [Amended]

2. In paragraph (e)(3) of § 1011.13, the phrase "40 percent" is temporarily revised to read "30 percent" for the period of March 1, 1993, through July 31, 1993.

Dated: April 1, 1993.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 93–8117 Filed 4–6–93; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AE15

List of Approved Spent Fuel Storage Casks: Additions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its list of approved spent fuel storage casks to add one spent fuel storage cask to the list of approved casks. This amendment will allow holders of power reactor operating licenses to store spent fuel in this approved cask under a general license.

EFFECTIVE DATE: May 7, 1993.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from the individuals listed under the next heading below.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803, or Mr. James F. Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2692.

SUPPLEMENTARY INFORMATION:

Background

The NRC published a notice of proposed rulemaking in the **Federal Register** on June 26, 1992 (57 FR 28645). The comment period closed on September 9, 1992, but was subsequently reopened, as discussed below. The proposed rule would have amended 10 CFR 72.214 to include two additional spent fuel storage casks (i.e., the Transnuclear, Inc., TN–24 cask and the Pacific Sierra Nuclear Associates, VSC–24 cask) on the list of approved spent fuel storage casks that power reactor licensees may use under the provisions of a general license.

Subsequent to the expiration of the September 9, 1992 public comment period, the NRC took steps to implement the provision of § 2.790(c) of its regulations (41 FR 11808 (1976)) that provides that information submitted to NRC in a rulemaking proceeding which subsequently forms the basis for a final rule will not be withheld from public disclosure by NRC. Accordingly, on January 21, 1993, additional information, which was previously categorized as vendor proprietary information, was placed in the Public Document Room (PDR) and all Local Public Document Rooms. The additional information made available in the PDR related only to the VSC–24 cask. The second cask (TN–24) will be covered separately in a subsequent notice. In addition, the comment period for the June 26, 1992, proposed rule on the VSC–24 cask was reopened to provide opportunity for public comment on the additional information (January 21, 1993; 58 FR 5301). This comment period expired on February 22, 1993. Further NRC rulemaking activities are planned for the TN–24 cask which is, therefore, not covered in this notice of final rule.

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) includes the following directive: "The Secretary (of DOE) shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." After subsequent DOE technical evaluations and based on a full review of all available data, the Commission approved dry storage of spent nuclear fuel in a final rule published in the **Federal Register** on July 18, 1990 (55 FR 29181). The final rule established a new subpart K within 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites."

Irradiated reactor fuel has been handled under dry conditions since the mid-1940's when irradiated fuel examinations began in hot cells. Light water reactor fuel has been examined dry in hot cells since approximately 1960. Some of these fuels have been stored continuously in hot cells under dry conditions for approximately two decades. Experience with storage of spent fuel in dry casks is extensive. (54 FR 19379 (1990)). Further, as discussed below, the United States has extensive experience in the licensing and safe operation of independent spent fuel storage installations (ISFSI's). At the beginning of 1993 five site specific licenses for dry cask storage had been issued. They are: Virginia Power's Surry Station, issued July 2, 1986; Carolina Power and Light's (CP&L) HB Robinson Station, issued August 13, 1986; Duke Power's Oconee Station, issued January 29, 1990; Public Service of Colorado's Fort St. Vrain facility, issued November 4, 1991; and Baltimore Gas and Electric's (BG&E) Calvert Cliffs Station, issued November 25, 1992. All have commenced operation and loaded fuel with the exception of BG&E. Two hundred and fifty-two assemblies are in storage at Virginia Power, 56 assemblies are in storage at CP&L, 96 assemblies are in storage at Duke Power, and 1482 fuel elements are in storage at Public Service of Colorado; BG&E anticipates loading fuel later in 1993.[1]

As a result of the growing use of dry storage technology experience, NRC has gained over 25 staff years of experience in the review and licensing of dry spent fuel storage systems. To further support the NRC technical staff, the agency draws upon the knowledge and experience of outside scientists and engineers recognized as experts within their respective fields in the performance of the independent safety analysis of the systems and components submitted by applicants for dry cask licenses or certification. Reviews of numerous applications, seeking either site-specific ISFSIs, certificates of compliance or approval of a topical report, have been conducted over the past 7 years.

Section 133 of the NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor." This directive was implemented on July 18, 1990 (55 FR 29181) by the publication in the **Federal Register** of a final rule establishing a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks." As a result of that 1990 rulemaking, four dry casks were listed in § 72.214 of subpart K as approved by the NRC for storage of spent fuel at power reactor sites under a general license.

The final rule adds one additional spent fuel storage cask, the VSC–24 cask, to the list of approved casks in § 72.214. The cask being approved, the VSC–24 cask, is discussed in further detail below. In addition, based on public comments, the Safety Evaluation Report (SER) and Certificate of Compliance for the VSC–24 were modified. Each modification is discussed below as part of the "Analysis of Public Comments" section of this **Federal Register** notice.

Pacific Sierra Nuclear Associates (PSNA) submitted a "Topical Report on the Ventilated Storage Cask System for Irradiated Fuel" for their VSC–24 cask in February 1989. (VSC means "ventilated storage cask." Twenty-four (24) refers to the number of individual spent fuel assemblies which the VSC–24

[1] EIA Service Report SR/CNEAF/92–01 Spent Fuel Discharges from U.S. Reactors 1990, March 1992.

is designed to hold.) The NRC completed its review and issued its Safety Evaluation Report (SER) in April 1991 approving the Topical Report for referencing in a site-specific license application. PSNA later submitted its approved Topical Report in the form of a "Safety Analysis Report for the Ventilated Storage Cask System" in November 1991 requesting certification for use under a general license. The NRC conducted additional evaluations and issued a draft Certificate of Compliance and draft SER, dated April 1992, in support of the Notice of Proposed Rulemaking published in the **Federal Register** on June 26, 1992. Based on further staff review and analysis of public comments, with this final rulemaking, NRC is approving the VSC–24 cask for use under a general license and is simultaneously issuing a final Certificate of Compliance and SER.

The paramount objective of 10 CFR part 72 is protecting the public health and safety, by providing for the safe confinement of the fuel and preventing the degradation of the fuel cladding. The review criteria used by the NRC for review and approval of dry cask storage under 10 CFR part 72 consider the following: Siting, design, quality assurance, emergency planning, training, and physical protection of the fuel. Included in the review of a specific system, either for a certificate of compliance or a site-specific license, are the following: Earthquakes, high winds, tornados, tornado driven missiles, lightning, and floods. In addition, applicants must demonstrate to NRC's satisfaction that their proposed dry cask system will resist man-made events such as explosions, fires and drop or tipover accidents.[2]

The VSC–24 cask, when used in accordance with the conditions specified in its Certificate of Compliance, meets the requirements of 10 CFR part 72. This conclusion is reached after a detailed evaluation of the VSC–24 cask by the NRC as documented in the NRC staff's SER. Thus, use of the VSC–24 cask, as approved by the NRC, provides adequate protection of the public health and safety and the environment. Holders of power reactor operating licenses under 10 CFR part 50 will be permitted to store spent fuel in this cask under a general license. A copy of the Certificate of Compliance is available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

[2] The design bases for these events and accidents are contained within 10 CFR part 72

Public Responses

In response to the June 26, 1992, and January 21, 1993, **Federal Register** notices, 232 comments were received from individuals, public interest groups, environmental groups, associations, industry representatives, Congressional representatives, and States. Although a number of the comments were received after the respective September 9, 1992 and February 22, 1993 comment closure dates for the two notices, NRC has considered comments received including those received after the comment closure dates.

As a part of this rulemaking action, NRC received requests for further opportunity to comment and in particular, for NRC to hold a public hearing to review the merits of this action. One request was from Frank J. Kelley, Attorney General of the State of Michigan, dated December 30, 1992, which requested a public hearing. Chairman Selin responded by letter of January 25, 1993, and proposed a transcribed public meeting with the Attorney General to discuss the dry spent fuel cask approval process, to answer questions, and to provide opportunity for interested members of the public to present comments. That public meeting was held on February 23, 1993, from 9:30 a.m. until 12 noon in Lansing, Michigan. The Attorney General, his staff, representatives of the NRC staff, and approximately one hundred interested citizens attended the meeting. The meeting was transcribed and the transcript of that meeting, including questions and comments of the Attorney General and citizens attending and participating in the meeting, has been considered by the NRC and is included in the analysis of comments. Additional written comments received within five working days subsequent to the meeting have also been considered by the NRC and are included in the analysis of comments below. (See comment response number 57 for information on NRC's response to request for a hearing.)

A number of comments were related to disposal of high-level waste, use of dry cask storage technology in general, or use of the VSC–24 cask specifically by Consumers Power Corporation at the Palisades Nuclear Generating Station. Examples of each include:

—Consumers Power Company knew years in advance that the day would come when their spent fuel pool would be full. They should have planned ahead of time for this day. Consumers Power should be required to build a new spent fuel pool, store their waste elsewhere, or to shut down the plant at Palisades;
—Concern was expressed that the review process might become unreasonably delayed and without approval for additional storage capacity, the Palisades plant ultimately will be forced to shut down, a result that would have serious economic consequences for southwestern Michigan.
—The Federal government's failure to resolve questions about the permanent storage of nuclear wastes leaves both the plant and public with limited options: additional storage in pools, additional storage in dry casks or plant shutdown. The federal government has an obligation to resolve the issue of permanent or interim storage. It would be difficult to overstate the need for dispatch in doing so, as hundreds of American communities will eventually face this problem.
—Ten years ago, there was an erroneous assumption that the search for and construction of a final resting place for high-level waste would be much swifter than it has been. A "demonstration" program required by law was supposed to have been for temporary storage. Because of the societal and technical obstacles which radioactive waste disposal presents, even a temporary "demonstration" program is likely to have much longer-term implications. Temporary dry cask storage in Michigan should not become de facto permanent disposal.
—It is not fair to the public of Michigan to link Consumers Power Company's attempts to continue the safe storage of its nuclear fuel with the insistence by others that we shut down Palisades and every other nuclear plant in the country.

These comments deal with broad policy and program issues relating to the storage and disposal of high-level radioactive waste including the Department of Energy's repository program. However, commenters will find a summary of relevant information on many of these broad issues in the responses to comments set out in response numbers 41, 52, 61, and 69 in the following analysis of comments.

Many of the comment letters contained comments that were similar in nature. These comments have been grouped as appropriate and addressed as single issues. The NRC has identified and responded to 75 separate issues that include the significant points raised by each commenter.

Many commenters discussed topics that were not the subject of this

rulemaking and thus were not specifically addressed by the staff as a part of this final rulemaking action. These comments expressed opposition to the use of dry cask storage and included suggestions such as the following:

(1) Nuclear plants generating radioactive waste should be shut down;
(2) The production of radioactive waste should be stopped when the existing spent fuel pool (and off-load-reactor capacity) is full;
(3) A formal hearing should be required at each site using dry storage casks;
(4) The Palisades Nuclear Plant should be shut down;
(5) The embrittlement of the reactor pressure vessel at Palisades dictates that the plant be shut down and no additional spent fuel generated;
(6) The use of nuclear power should be stopped and existing sites cleaned up;
(7) The use of storage only casks at Palisades is a violation of public trust; and
(8) A research and development program should be conducted on productive uses of spent fuel and on alternative energy sources.

Finally, many commenters expressed concern over the ability of dry cask storage designs to safely store spent fuel. The following responses to these comments reflect a small but important portion of NRC's review of health, safety, and environmental aspects of the VSC–24 cask, to ensure that the cask is designed to provide protection of the public health and safety and environment under both normal conditions and severe, unlikely, but credible accident conditions. Dry cask storage systems are massive devices, designed and analyzed to provide shielding from direct exposure to radiation, confine the spent fuel in a safe storage condition, and prevent releases to the environment. They are designed to perform these tasks relying on passive heat removal and confinement systems without moving parts and with minimal reliance on human intervention to safely fulfill their function for the term of storage. The designs include margins of safety under both normal and accident conditions to provide additional assurance of protection for the public health and safety, the common defense and security and the environment.

Analyses of Public Comments

A. A number of commenters raised issues relating to cask handling and the ability of the cask to withstand drop and tipover accidents.

1. *Comment.* Some commenters expressed concern about the operational safety of the VSC–24 cask relating to loading the multi-assembly sealed basket (MSB) into the ventilated concrete cask (VCC) and retrieving it. Particularly, the commenters contended that the loading procedure of placing the MSB transfer cask (MTC) on top of the VCC is precarious and the procedure for retrieving the MSB from the VCC is not clearly explained. One commenter indicated that there are unreviewed safety issues associated with handling equipment including the lifting cables, lifting yoke, lugs, and transfer vehicle, that need further review. Another commenter asked about the training and oversight of personnel performing these activities. Another asked, that if the transfer cask is on top of the VCC in the fuel handling building and a seismic event occurs causing tipover, would this type of event be considered in a § 50.59 evaluation?

Response. Use of the VSC–24 cask system inside the fuel handling building (including use of the MTC to load and retrieve the MSB from the VCC) would be conducted in accordance with the 10 CFR part 50 reactor operator's license. These cask handling operations, including loading, retrieval and training, must be evaluated by the general licensee, as required by 10 CFR 72.212(b)(4), to ensure that the procedures are clear and can be conducted safely. The MTC and MSB have been evaluated against the criteria for controlling heavy loads found in NRC publication NUREG–0612 ("Control of Heavy Loads at Nuclear Power Plants") and American National Standards Institute (ANSI) N14.6, "Special Lifting Devices for Shipping Containers Weighing 10,000 Pounds or More." The lifting yoke associated with the MTC is a special purpose device designed to ANSI N14.6 criteria to ensure that the yoke can safely lift the wet MTC containing the MSB out of the spent fuel pool and can safely lift the dry MTC and MSB to the top of the VCC.

Specific requirements for lifting yokes, cables, and lugs have been identified in the Certificate of Compliance and SER and are not unreviewed safety issues. Part 72 requires that, prior to the use of a cask under the general license, the licensee determine whether activities related to storage of spent fuel under the general license involve any unreviewed safety questions or change to the facility technical specifications, as provided under 10 CFR 50.59. Load handling activities and possible load drop events and structural and radiological consequences are necessary evaluations under 10 CFR 50.59.

For example, the utility's specific analyses for load handling activities at the Palisades plant illustrate the type of mandatory evaluation by the cask user that NRC requires before the VSC–24 cask can be used under 10 CFR part 72, subpart K. Among others, one specific event analyzed is the evaluation of the drop of a loaded MTC onto the VCC with tipover of the MTC onto the load distribution system in the track alley area. This analysis would encompass the tipover scenario described above by the commenter who questioned whether it would be part of a utility's § 50.59 evaluation. The result of this analysis shows that the MSB would not fail and that, while local yielding of the transfer cask may occur, the transfer cask would not fail and could be lifted back to the pool for recovery of all spent fuel in the cask.

2. *Comment.* One commenter questioned whether, if the MTC were lifted up by the MSB, the weight of the loaded MSB and the MTC would bear on the MSB welds. Another commenter questioned whether the MSB lifting rings could support the weight of the MSB and MTC.

Response. The weight of the MSB and the MTC could be supported by the MSB structural weld and the rings. The weld has been analyzed for this situation and was found to meet the design criteria of paragraphs 4.2.1.1 and 4.2.1.2 of ANSI N14.6, 1986. This standard, which is considered conservative, is specifically written for special lifting devices for shipping containers of radioactive materials. This situation of lifting both the MSB and MTC will not occur under normal operating conditions. However, if it does occur, as discussed above, the weld and the rings can support the weight of the MSB and MTC.

3. *Comment.* One commenter noted that tiles at the bottom of the VCC could break when the MSB is lowered onto them.

Response. There are numerous ceramic tiles arranged on the base of the VCC which serve as a separator between the flat bottom surface of the MSB and the parallel surface of the VCC liner to prevent the possibility of localized corrosion. Although these tiles could break, there is a substantial margin of safety to prevent breakage. However, if some breakage occurs, the tiles will still perform their function of providing a slight gap between the MSB and the VCC. Although it is not necessary, the Certificate of Compliance has been

revised to include a statement that the operating procedures for handling the MSB over the VCC should include the consideration for reducing the likelihood of fracturing the ceramic tiles by impact load.

4. *Comment.* One commenter questioned why the NRC allows an 80 inch lift height when a drop of over 18 inches may cause enough damage to compromise shielding. Another commenter indicated that the operation of moving the VSC–24 cask from the heavy haul trailer across a piece of "bridge steel" to the storage pad sounded dangerous. One commenter also stated that if the MSB is not centered inside the VCC, possible damage could occur to the coating of the VCC liner or the ceramic tiles on the bottom of the VCC.

Response. The NRC evaluated a possible drop of the cask and has established conditions limiting the lift height for the VSC–24 cask. These conditions include a requirement to inspect the cask after any tipover or drop from a height greater than 18 inches, and the prohibition against lifting the VSC–24 cask to a height greater than 80 inches. The purpose of the 80 inch lift condition is to ensure that the MSB maintains its confinement capability even in the event of a drop of the VSC–24 cask. The MSB has been designed to meet the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) code under Service Level D conditions and a drop of 80 inches should only result, at most, in denting of the MSB shell. The purpose of the inspection for any drop from a height greater than 18 inches is to ensure that the shielding is not compromised and that any damage is immediately identified and repaired. On-site transport procedures with auxiliary equipment such as the "bridge steel" described in the Safety Analysis Report (SAR) have been reviewed and are considered to be appropriate to the design, suitable for use and to meet safety requirements which are not part of the regulations in 10 CFR part 72. Possible damage to the ceramic tiles was discussed in the response to Comment Number 3. Finally, damage to the coating of the VCC liner would not have safety significance because the liner is not a confinement boundary and does not contribute significantly to shielding. The principal purpose of the VCC liner is to provide an inner form for the concrete during fabrication.

5. *Comment.* One commenter indicated that if there were a problem with a VSC–24 cask, it could not be removed to the fuel handling building because that is not allowed when the temperature is below 0 °F, and that the temperature in Michigan and Wisconsin is often below 0 °F.

Response. The purpose of restricting VSC–24 cask movement to ambient temperatures above 0 °F is to prevent the possibility of brittle fracture of the MSB in the event of a drop accident. There is a 50 °F margin of safety because the MSB material maintains ductile properties at a test temperature of −50 °F. If a situation for return to the fuel handling building arises while the ambient temperature is below 0 °F, a key option would be for the licensee to determine that the actual MSB material temperature is above 0 °F. In that event movement of the MSB could be accomplished safely without concern for brittle fracture. The MSB would most likely be above 0 °F because of the heat produced by the stored spent fuel. Another option available to a licensee would be not to move the MSB until an ambient temperature above 0 °F is reached.

6. *Comment.* Some commenters stated that a cask tipover accident while the VSC is on the pad was not considered, even though this type of accident was considered for other casks. Some commenters also noted that drop evaluations of the MSB were performed for only one orientation, although the NRC requires multiple drop orientations for other designs.

Response. A cask tipover accident was not specifically performed for the VSC–24 cask. However, PSNA performed an engineering analysis of cask drops from both vertical and horizontal positions which represent more severe accidents than a tipover. Therefore, NRC concluded it was not necessary to perform a tipover analysis. With respect to drop orientation, the MSB was analyzed for both vertical and horizontal drop orientations.

7. *Comment.* One commenter asserted that the design of the MSB is such that it is susceptible to buckling under certain off-normal and accident conditions. The commenter further indicated that this is a departure from previous spent fuel cask design and licensing criteria which allow no buckling of the basket structure.

Response. The NRC believes that this commenter refers to the fuel basket and not the MSB shell. The MSB basket structure was analyzed and the NRC concluded that buckling would not be a safety concern as discussed below. The critical load for buckling was calculated for a single storage tube and compared to the actual load under a vertical deceleration of 124 g that would result from a drop of 80 inches. The results of the analysis indicate that there is a safety factor of 5 for a tube against buckling. Because of the conservative approach in analyzing a single fuel storage tube rather than the entire basket, the NRC believes that a higher safety factor would exist for the basket assembly. Thus, the NRC is not departing from previous design and licensing criteria.

8. *Comment.* Some commenters noted that the NRC allowed PSNA to use Electric Power Research Institute (EPRI) report NP–4830 in their VSC–24 cask SAR, but did not allow vendors of metal casks to reference this report in their SAR's.

Response. The concept set forth in EPRI Report No. NP–4830 is to provide for consideration of the cask reinforced concrete bearing pad behaving as a pad on an elastic foundation. In previous structural reviews of cask systems, the bearing pad has been very conservatively assumed to be infinitely rigid. The response of the pad to a dropped or overturned cask has an influence on the magnitude of the force the spent fuel support system and confinement envelope must resist. The NRC identified various issues related to the details of the concept and its application by the applicant.

Rather than relying on the EPRI report, NRC independently calculated the stresses experienced by the MSB during a drop accident. Based on these independent calculations, NRC confirmed that the design of the MSB will provide an ample margin of safety during a drop accident. Therefore, NRC concluded that the design of the MSB was acceptable and that there was reasonable assurance that the confinement integrity will be maintained even if the postulated drop accident does occur.

In order to provide additional information on the application of the concept of an elastic bearing pad to spent-fuel casks, the NRC has initiated a contract to conduct drop tests of casks from heights in the 18 to 80 inch range. This should provide test data that would be used to assess the capability of the specific computational techniques contained in EPRI NP–4830 to predict the behavior of dropped casks. Following this testing, the NRC will consider the issue of the applicability of the EPRI report, including its applicability to a postulated drop of a steel cask on concrete pads.

9. *Comment.* The effect of a dynamic load factor (DLF) on the MSB was not considered nor was it shown to be insignificant.

Response. The effect of a DLF was considered and found to be significant. The applicant applied a maximum

possible DLF of 2.0 to the average decelerations acting on the MSB. As a result of using a DLF of 2.0, the decelerations were increased from 62 g to 124 g and 22 g to 44 g respectively, for the vertical and horizontal orientations. As noted above in comment response number 8, although NRC staff did not endorse the methods used by the vendor to determine these loads, the NRC independently concluded that these design loadings are acceptable.

10. *Comment.* One commenter provided a calculation of the results of a hypothetical accident involving a VSC–24 cask. The conditions of the hypothetical accident were a cask tipover while the cask was under maximum internal pressure. The results indicated that the welds of the MSB would be overstressed.

Response. The NRC reviewed this calculation and based on that review, concluded the calculation did not state the consequences of the hypothetical accident. Most importantly, the size and configuration of the welds assumed in the calculation understated the strength of the welds and their ability to withstand the hypothetical event. The strength of these welds, which meet ASME Boiler and Pressure Vessel Code criteria, has been thoroughly analyzed by the applicant and the NRC. Although a cask tipover was not specifically performed for the VSC–24 cask, a horizontal drop accident, more severe than a tipover, was analyzed as a bounding case. This analysis demonstrated that, under the conditions of a horizontal drop while the MSB is under maximum internal pressure, the welds would not be overstressed.

B. A number of commenters raised issues relating to releases of radioactivity from surface contamination and leakage from the casks under normal and accident conditions.

11. *Comment.* Some commenters expressed concern that there would be a small release of radioactive particulates from the MSB exterior surface during off-normal conditions and that the radioactive releases from storage casks, when combined with other releases from the reactor, would exceed dose limits at the reactor site boundary.

Response. The NRC interprets this comment to mean that during off-normal conditions there is the potential for release of radioactive contamination from the exterior surface of the MSB. The consequences of any release of contamination from the MSB exterior surface (whether normal or off-normal) is evaluated in the SAR. However, the Certificate of Compliance, in Section 1.2.5. "Maximum MSB Removable Surface Contamination" contains specifications for limiting the amount of radioactive contamination permitted on the external surface of the MSB. These specifications are conservative, and are based, in part, on equivalent criteria used for the safe transportation of radioactive material (see 10 CFR 71.87(i)). Hence, compliance with them will ensure that off-site dose limits of the NRC's regulations will be met for normal and off-normal conditions alike. The general licensee must also use the cask in accordance with the reactor operating license and the Certificate of Compliance. The general licensee is also responsible for complying with other Commission regulations regarding radioactivity release limits. Therefore, potential releases from the MSB when combined with routine releases from the reactor should not exceed dose limits at the site boundary.

12. *Comment.* Commenters indicated that casks placed close to the shore of Lake Michigan represent a serious threat to the environment, especially to the Great Lakes which have 20 percent of the world's surface fresh water.

Response. A utility's use of the VSC–24, for the storage of spent fuel in casks at a reactor site, would not have a significant impact on the environment. This finding is supported by the NRC safety and environmental evaluations for the VSC–24 cask, including the applicant's demonstration of compliance of the cask with NRC requirements, as well as by the 1990 rulemaking on dry cask storage and the 1984 and 1989 waste confidence proceedings. While the VSC–24 cask is being approved for use under a general license, it can only be used by a licensee provided the reactor site parameters (e.g., average ambient temperature, seismic accelerations, flood water velocity, fires and explosions, etc.), are enveloped by the cask design basis, as specified in the SAR and SER. Proper use of a certified storage cask at any site (whether near Lake Michigan, a river, a bay, or an ocean) with site parameters that are bounded by the cask design, would not have a significant impact on the environment.

13. *Comment.* Some commenters expressed concern that extremes in temperatures and humidity would cause dry casks to leak.

Response. The VSC–24 cask design was analyzed for possible effects of extremes in temperature and humidity. These analyses showed no leakage will occur as a result of temperature or humidity extremes. The thermal analysis presented in the SAR and the NRC evaluation documented in section 4.0 of the SER considered temperature extremes for both hot and cold conditions. Based on this analysis, the NRC concludes no breach of the MSB confinement barrier or leakage from the MSB will occur.

14. *Comment.* Some commenters speculated that a catastrophic release of radiation may occur from a possible explosion caused by spontaneously flammable uranium hydride in the presence of oxygen. It is postulated that the temperature inside the cask will be hot enough to rupture fuel rods which will, in turn, cause the presence of hydrogen to create uranium hydride.

Response. The NRC does not believe that an explosion inside a storage cask caused by flammable uranium hydride in the presence of oxygen is credible for the following reasons. Oxygen gas is not expected to be present because all casks are designed to have an inert atmosphere. Further, the formation of uranium hydride is not credible due to the lack of a significant source of hydrogen. Finally, all casks are designed so that the internal temperature will not cause the fuel rods to rupture. Therefore, the conditions necessary for this scenario to occur would not exist.

15. *Comment.* The SER states that there is no credible chain of events that could spread contamination from the MSB. Only air-coolant loss due to blockage was considered. Commenters indicated that the SER should also consider the effect of flooding of the hot cask and steam explosion. A concern was also expressed regarding the structural integrity of the pads which may, in the case of Palisades, be built on a sand dune area that shifts.

Response. The SER for the VSC–24 cask did consider the effects of flooding as well as air-coolant loss due to blockage of the vents. The analysis showed the release of contamination from the exterior surface of the MSB due to flooding is possible but the resultant contamination would not be significant. Steam explosions involving water contacting molten metal are not credible under dry spent fuel storage conditions In addition, explosions due to steam forming under flooding conditions are not considered credible due to the fact that if steam were to be formed, it would be released non-violently through the vents.

With respect to the comment on structural integrity of the pads, the certificate of compliance requires, per 10 CFR 72.212(b), that written evaluations be performed by the licensee prior to cask use to establish that cask storage pads and areas have been designed to adequately support the

static load of the stored casks. Consequently, the structural integrity of the pads would have to be evaluated and verified before the licensee could use the VSC–24 at the Palisades site or at any site.

16. *Comment.* A number of comments related to gaseous releases from dry storage casks. Commenters asked the following questions. What happens to gaseous components of the decay chain? Are they released to the environment? If not, is pressure buildup over time being considered? A commenter expressed the opinion that casks should have individual radionuclide emission monitoring. An issue was raised about the effects of release of krypton-85 (Kr–85) gas on electric conditions in the atmosphere.

Response. The gaseous components of the decay chain are expected to be retained within the matrix of the spent fuel or within the fuel rod. In the case of pinhole leaks in the fuel rod cladding, the MSB is designed as a secondary confinement barrier to retain gaseous products. Therefore, because no gaseous components are released to the environment, no routine monitoring of effluent from the outlet vents is required. The primary reason for requiring the use of ASME section III instead of other standards is to ensure the confinement of fission products. Pressure build-up of gaseous components in the MSB is not significant due to the age of the fuel and integrity of the fuel rod cladding; however, the MSB has been analyzed for a hypothetical condition in which all the fuel rods rupture. The resulting pressure within the MSB is negligible. The purpose of maintaining an inert atmosphere in the MSB cavity is to ensure that fuel rod cladding degradation does not occur, thereby preventing gross fuel rod cladding rupture. In addition to ensuring that new pin hole leaks do not develop in the fuel clad during the storage period, the licensee is responsible for monitoring the environment within the MSB prior to its opening to ensure that no unplanned release of radioactive material takes place. The amount of Kr–85 that could be potentially released from dry cask storage is so small that it would not significantly affect the physics or chemistry of the atmosphere.

C. A number of comments were received that focused on monitoring, surveillance, and inspection activities associated with dry cask storage of spent fuel, particularly as they relate to the VSC–24 cask.

17. *Comment.* Some commenters suggested that, with respect to the VSC–24 cask, the NRC did not enforce 10 CFR 72.122(h)(4) which reads, "Storage confinement systems must have the capability for continuous monitoring in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions," and 10 CFR 72.122(i) and 10 CFR 72.128(a)(1) which require monitoring of systems and components that are important to safety over anticipated ranges of normal and off-normal operation. Also, one commenter suggested that because the VSC–24 cask requires surveillance to ensure that the vents are not blocked, the requirement that the cooling system must be a passive system (10 CFR 72.236(f)) is violated.

Response. NRC approval of the VSC–24 cask system is not inconsistent with 10 CFR 72.122(h)(4), 72.122(i) or 72.128(a)(1). Although the cited sections of 10 CFR part 72, subpart F, refer to "monitoring" or "continuous monitoring," they do not specify the details for particular monitoring programs to allow the NRC to require monitoring programs that are appropriate for the particular storage system design. The NRC has and will consider continuous monitoring where it believes continuous monitoring is needed to determine when corrective action needs to be taken. To date, under the general license, NRC has accepted continuous pressure monitoring of the inert helium atmosphere as an indicator of acceptable performance of mechanical closure seals for dry spent fuel storage casks.

The NRC does not consider such continuous monitoring for the VSC–24 cask double weld seals to be necessary because: (1) There are no known long-term degradation mechanisms which would cause the seal to fail within the design life of the MSB and (2) the possibility of corrosion has been included in the design (See SER Section 5.3.1). These conditions ensure that the internal helium atmosphere will remain. Therefore, an individual continuous monitoring device for each MSB is not necessary. However, the NRC considers that other forms of monitoring casks including periodic surveillance, inspection and survey requirements, and application of preexisting radiological environmental monitoring programs of part 50 licensees during the period of use of the MSB canisters with seal weld closures can adequately satisfy the requirements of 10 CFR 72.122 (h)(4).

With respect to the issue of instrumentation and control systems to monitor systems which are important to safety (10 CFR 72.122 (i)), the user of the VSC–24 cask will, as provided in Chapter 14 of the SER and in Section 1.3.1 of the Certificate of Compliance, be required to verify by a temperature measurement, the cask thermal performance on a daily basis to identify conditions which threaten to approach cask design temperature criteria. The cask user will also be required to conduct a daily visual surveillance of the cask air inlets and outlets as required by Chapter 14 of the SER and Section 1.3.1 of the Certificate of Compliance.

While the MSB and VCC are considered components important to safety that comprise the VSC–24 cask design, they are not considered operating systems in the same sense as spent fuel pool cooling water systems or ventilation systems which may require other instrumentation and control systems to ensure proper functioning. Hence, due to this passive design, temperature monitoring and surveillance activities are appropriate and sufficient for this design, they assure adequate protection of the public health and safety, and meet the requirements of § 72.122 (i).

18. *Comment.* Several commenters expressed concern related to the inlet and outlet vents, on the VSC–24 cask, which are necessary to allow cooling of the storage container by natural circulation. Some commenters also questioned the adequacy of the surveillance requirements for the VSC–24 cask and suggested that electronic continuous monitoring and recording of air outlet temperature should be required on each cask. Specific concerns include:

(a) Vent blockage by bugs, webs, snow, and ice;

(b) Frequency of vent outlet surveillance for blockage;

(c) Drive-by or walk-through inspection is inadequate to observe outlet blockage; and

(d) Critical temperatures associated with the VSC should be monitored.

Response. The NRC is requiring, as part of the VSC–24 Certificate of Compliance, that surveillance and measurement of the thermal performance of the cask be conducted by the licensee on a daily basis. The licensee is responsible for establishing the specific method of measurement; the licensee can measure the inlet and outlet air annulus temperatures, or it could also measure the MSB surface temperature, the VCC inner wall temperature or perform other appropriate measurements. The method selected by the licensee must provide a positive indication of the approach of

materials to cask design temperature criteria.

In addition, analyses of safety margins of components important to safety show that even assuming surveillance were not conducted at the required daily frequency, and both the inlet and outlet vents were blocked for a 30 hour period, there would still be no loss of safety function or any immediate threat to the health and safety of the public. This conclusion is based on the adiabatic heatup thermal analysis of the VSC–24 cask, which assumes that all vents are blocked, and no heat is rejected by the cask. The concrete and cladding temperature criteria that could be exceeded under this conservative analysis, assuming complete blockage, signify the onset of very slow degradation mechanisms, not an imminent loss of safety function.

The NRC also agrees with the comment that visual surveillance of exterior air inlets and outlets may be inadequate and may not lead to a positive determination of blockage because the design includes screens placed over the vents to prevent wildlife from entering the VCC. Consequently, the NRC has revised the Certificate of Compliance surveillance requirement to make the integrity of the screens be part of the visual surveillance. A physical examination of the vent is required if its associated screen shows any evidence of breach.

19. *Comment.* One commenter suggested that approval of the VSC–24 cask should be denied because the snow shield was eliminated and that the analysis of air flow of the VSC took it into consideration.

Response. The snow shield was eliminated because it was not considered effective in resolving the problem of vent blockage by snow. A visual surveillance requirement is considered more effective in addressing the issue of vent blockage by snow. The Certificate of Compliance has been revised to add a daily surveillance requirement, as discussed in Comment 18, which would include checking for snow blockage during periods of snow accumulation. In addition the inclusion of a snow shield in the original design actually decreased air flow and therefore, its removal increases the thermal efficiency of the cask.

20. *Comment.* One commenter questioned how the condition of the inlet vents is checked for damage after the lifting arms are inserted into the air inlets for transfer.

Response. Lifting the VSC–24 cask using the hydraulic roller skid, which involves insertion of lifting arms into the air inlets, has been analyzed. The results indicate that the shear and bearing capacities of the concrete surrounding the air inlet vents (per American Concrete Institute (ACI) criteria 349–85) are not exceeded and no damage is expected. Therefore, there is no need to inspect vents for damage following use of the hydraulic roller skid.

21. *Comment.* The general licensee must have specific plans for the constant and careful monitoring of the casks and for the safeguarding of the waste to prevent catastrophic accidents or terrorism.

Response. In accordance with 10 CFR 72.212(b)(5), each reactor licensee must have a physical security organization and program to detect intrusion into the protected area including acts of terrorism, and to take any corrective action. The physical security program, as well as environmental monitoring and radiation protection programs for each reactor facility, provide the necessary monitoring for the casks and safeguarding of the spent fuel. Thus, the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions to protect the public health and safety. (Also see response to Comment Number 33 below).

D. A number of commenters raised technical issues related to the thermal analysis of the VSC–24 cask and thermal performance of the cask under normal, off-normal, and accident conditions.

22. *Comment.* One commenter questioned whether NRC intends to establish 75 °F as a standard ambient temperature criteria for all storage casks and expressed concern that this temperature may not be applicable for the majority of power reactor sites.

Response. The NRC does not intend to establish 75 °F, or other standard ambient condition criterion, for all cask designs. The cask vendor establishes ambient temperature criteria on which the cask is designed. In the case of the VSC–24 cask, PSNA chose 75 °F. Each reactor licensee can then only use those casks which have design bases that envelop the reactor site ambient temperatures. For example, if a power reactor site has an average annual ambient temperature greater than 75 °F, then that reactor licensee cannot use a cask with a 75 °F ambient design temperature.

23. *Comment.* One commenter questioned how heat transfer for the VSC–24 cask is affected by the fact that there are no provisions for centering the MSB inside the VCC.

Response. Heat transfer for the VSC–24 cask is not significantly affected by lack of centering of the MSB inside the VCC. Therefore, no precise centering of the MSB inside the VCC is needed. However, the physical arrangement of the system restricts lateral movement and does not allow the MSB to be far from center as it is lowered into the VCC.

24. *Comment.* One commenter raised the concern that the VCC concrete temperatures do not comply with the ACI–349 temperature criteria.

Response. The NRC has accepted deviations from the ACI–349 Code, Appendix A.4 for the concrete temperature criteria. However, while accepting the deviation, the NRC has identified a specified maximum thermal expansion coefficient for fine and coarse aggregates in the concrete which allows operation at higher temperatures. The selection of specific fine and coarse aggregates in the concrete prevents microcracking between the cement and aggregates in the anticipated temperature range of the VCC. Thus, deviation from the ACI–349 temperature criteria is not a cause for concern and does not compromise safety.

25. *Comment.* One commenter claimed that NRC has used the unsupported assumption that 48 hours is sufficient time to reach thermal equilibrium for the irradiated fuel assemblies (high level radioactive waste) that have been removed from water storage and sealed in the metal canister.

Response. The commenter refers to the time period allowed for a loaded VSC–24 cask system to reach thermal equilibrium conditions. For the purpose of thermal equilibrium, the VSC–24 cask system is considered to be placed in service when the concrete cask cover plate is installed.

It should be noted that the Certificate of Compliance has been changed to require that the inlet and outlet air temperatures, for all VSCs placed in service, be measured until the cask reaches initial thermal equilibrium. Furthermore, a daily measurement of the thermal performance of the VSC–24 cask is required. Therefore, any reference to assumed 48 hour thermal equilibrium is covered by the enhanced surveillance requirements. The 48 hour period was selected to provide a basis for baseline measurements. There is no safety significance if thermal equilibrium is achieved in a shorter or longer time.

26. *Comment.* One commenter noted that in chapter 9 of the SER, the NRC staff found it necessary to impose a pre-operational test to verify the heat removal capacity of the VSC–24 cask system. The commenter claimed that

this was required because predicted fuel clad temperatures are a "mere" 4 °F below their design criteria on a 75 °F ambient day. It was further asserted that with a predicted fuel clad temperature of 4 °F below design criteria for the off-normal condition limit, even a successful pre-operational test would not assure that the design criteria is met within the bounds of statistical uncertainty, particularly since the calibration of their temperature sensing equipment has a tolerance of plus or minus 1 °F.

Response. The NRC has imposed a test to benchmark the heat removal capacity for the first VSC–24 cask placed in-service. However, the 4 °F margin stated on page 9–4 of chapter 9 of the SER cited by the commenter, is a typographical error. The correct margin is 24 °F, as stated on page 4–7 of the SER. This 24 °F margin is the difference between the maximum allowable fuel clad temperature and the calculated fuel clad temperature, assuming an average annual ambient temperature of 75 °F for normal continuous conditions. For off-normal conditions involving higher ambient temperatures, a maximum fuel clad temperature of 708 °F was calculated assuming an ambient temperature of 100 °F. This temperature is 4 °F below an acceptable fuel clad temperature criterion of 712 °F. The NRC accepted this margin on the basis of the following conservative factors applied in the off-normal case analyzed in the SAR:

a. The calculation assumes steady state conditions. It would take several days of sustained 100 °F ambient temperature to approach the calculated fuel clad temperature value of 708 °F.

b. The fuel temperature criterion is based on prevention of fuel failures due to long-term degradation mechanisms. Short term variations in the average temperature, such as when the daily summer average temperatures exceed 85 °F, have no effect on the long term degradation mechanisms that affect the fuel cladding. Therefore, the annual average 75 °F temperature would be a more realistic condition to use in the calculation than the 100 °F temperature actually used in the calculation.

c. Heat conduction in the axial direction is treated conservatively because little credit is taken for heat transfer out of the ends of the MSB canister.

d. Fuel clad temperature is treated conservatively because a peak heat generation rate rather than an average was used in the calculation.

These conservative factors used in the calculation of fuel clad temperatures provide reasonable assurance that the actual temperature will be lower than the calculated temperature, considering uncertainties, and therefore this 4 °F margin below the fuel clad temperature criterion is acceptable.

27. *Comment.* One commenter questioned whether cladding failures would affect the temperature of the MSB or the VCC and the heat removal capacity of the VSC–24 cask. Another asked why helium was used to fill the cask. The only helium cooled reactor in the country, Ft. St. Vrain, was operational merely 15% of the time.

Response. Fuel cladding failure is not expected to occur because the VSC–24 cask is designed to maintain an inert helium atmosphere inside the MSB to prevent fuel cladding failure. However, fuel cladding failure would neither affect the temperature of the MSB or VCC nor affect the heat removal capacity of the VSC–24 cask. The temperature of the MSB and the VCC depends on the heat generated by the fuel in the MSB, which is not affected by a fuel cladding failure. In addition, heat removal capacity of the VSC–24 cask depends on the airflow on the outside of the MSB which also is unaffected by fuel conditions inside the MSB. Helium was chosen because it is inert and it has good heat transfer characteristics. The fact that the Ft. St. Vrain reactor used helium as a coolant did not contribute to its operational problems.

28. *Comment.* One commenter wanted clarification of "approximately 24 kW," when referring to the heat source loaded into the first MSB for tests conducted by the licensee to verify heat removal capacity of the VSC system. The commenter also indicated that the Certificate of Compliance is overly restrictive in requiring a 24 kW heat load for the first cask because some reactors do not have spent fuel assemblies which could make up the 24 kW heat load. The commenter recommended that the requirement be changed to require that the first cask be loaded with a heat load as high as practicable (but not to exceed 24 kW) to verify the calculated heat removal capability. Another commenter asked why not test the cask with artificial thermal loads rather than with spent fuel.

Response. The intent of the language, "approximately 24 kW" was to provide some flexibility to a potential user because there is no way to ensure that the first fuel placed in the cask will have a heat load of exactly 24 kW that was used in the thermal analysis. The purpose of the test is to measure the cask performance and establish baseline data. Following loading and temperature testing of the cask with a 24 kW loading, the licensee would be able to load fuel at lower thermal ratings without the need to provide NRC with separate temperature test data and additional analysis since the 24 kW heat loading is a bounding analysis. However, because the cask vendor has not provided thermal analyses at lower heat loadings, the NRC believes that if a licensee's first fuel loading has a heat load less than 24 kW, the licensee should conduct both a temperature measurement and a thermal analysis. The purpose of conducting both the analysis and the measurement is to measure system performance and to establish baseline data for the expected inlet and outlet temperature difference. The Certificate of Compliance has been revised to this effect and the word "approximately" has been deleted. With respect to the issue of artificial thermal loads, the NRC will accept alternate heat loads other than spent fuel and the Certificate of Compliance has been revised accordingly. A licensee could use such an artificial heat source to test an initial cask at a bounding heat load of 24 kW prior to loading fuel.

29. *Comment.* One commenter noted that Page 4–1 of the SER for the VSC–24 cask states that the applicant will remove any cask from service which has inlets and outlets blocked. It should say "or" instead of "and."

Response. The statement refers to a proposal made by the applicant and is correct as quoted on page 4–1. However, the NRC did not accept this proposal because the applicant did not provide acceptable evidence that the cask will be adequately cooled in the event of a full blockage of either all inlets or outlets. Sections 1.3.1 and 1.3.4 of the Certificate of Compliance require that a VCC be removed from service whenever either all inlets or all outlets are found to have blockage for 24 hours and the concrete temperature criterion of 350 °F has been exceeded. This conclusion is also stated on page 4–1 of the SER.

30. *Comment.* One commenter noted that Table 4.1–1 of the November 1991 SAR for the VSC–24 cask fails to state what the temperature difference would be if all inlets were blocked over a long-term.

Response. The commenter is correct. However, a temperature criterion of 350 °F has been established for the concrete cask. Calculations indicate that a temperature of 350 °F could be reached after 30 hours if either all inlets or all outlets are blocked. If this situation is identified, the licensee must demonstrate that accident temperature criteria have not been exceeded or is required to take the cask out of service.

NRC notes that reaching 350 °F is not an unsafe condition with respect to the containment integrity of the MSB or the stored fuel. Rather it is a criterion for deciding whether to take the VCC out of service. This action is highly conservative, since only the onset of very slow degradation occurs if the concrete temperature reaches 350 °F. As discussed below, in response to Comment Number 31, a conservative adiabatic heatup analysis determined that it would take 7 days to reach unacceptable fuel clad temperatures. The NRC considers that within this time frame, the licensee's enhanced daily surveillance program, which must include a component that verifies the thermal performance of the cask, would identify the blockage and allow sufficient time for necessary corrective actions to be taken.

31. *Comment.* One commenter indicated that the safety evaluation for the tipover of the VCC only considered the structural aspects of the accident and ignored the thermal consequences. The issue raised was that the VSC–24 cask uniquely requires a vertical orientation to adequately remove heat and that heat removal in the horizontal configuration is degraded even if all vents are unblocked which should not be assumed.

Response. Thermal consequences of a VSC–24 cask tipover were considered and are bounded by the adiabatic heat-up analysis performed for the cask. Adiabatic heat-up is not affected by orientation, either horizontal or vertical. The adiabatic analysis determined that it would take approximately seven days to reach unacceptable fuel clad temperatures. The NRC considers that within this timeframe the licensee would take necessary corrective actions to return the cask to an upright position.

32. *Comment.* One commenter stated that an analysis based on Diffusion Controlled Cavity Growth (DCCG) has been the only method accepted by the NRC to determine the maximum allowable fuel cladding temperature. The commenter further stated that it was not apparent that an analysis based on DCCG had been performed in evaluating maximum cladding temperature for the VSC–24 cask.

Response. The NRC agrees that DCCG is the only current method acceptable to the NRC to determine maximum allowable fuel clad temperature. The VSC–24 cask was evaluated by this method. See Section 5.3.3 of the SER.

E. A number of commenters expressed concern about emergency planning and response to contingencies.

33. *Comment.* Some commenters expressed concern that no evacuation plan was required. They also stated that there is a lack of contingency planning for catastrophic events. They noted these events could include but would not be limited to:

a. Direct or indirect lightning strikes on the casks;
b. Plane crash into the casks;
c. Sabotage;
d. Earthquakes;
e. Fire; and
f. Emergency planning for cask malfunctions.

A commenter wanted the utility to notify either state or local government before loading casks to make sure local services were aware and would know how to respond if necessary under the emergency plan.

Response. The Code of Federal Regulation, 10 CFR parts 50 and 72 requires that nuclear plant structures, systems and components important to safety shall be designed and appropriately protected against dynamic effects, including the effects of tornado-driven missiles, that may result from events and conditions outside the nuclear power unit. This includes the effects of possible airplane crashes.

The licensee's site evaluation for a nuclear plant also considers the effect of nearby transportation and military activities. A licensee proposing to use the VSC–24 cask is required to evaluate and verify that the SER for the facility encompasses the design basis analysis performed for the VSC–24 or any certified cask. Generally, a cask's inherent design will withstand tornado missiles and other design loads and thus, also provides protection against the collision forces imposed by light general aviation aircraft (i.e. 1500–2000 pounds) which constitute the majority of aircraft in operation today. NUREG–0800, Section 3.5.1.6 "Standard Review Plan for Light Water Reactors", contains methods and acceptance criteria for determining if the probability of an accident involving larger aircraft (both military and civilian) exceeds the acceptable criterion. It is incumbent upon the licensee to determine whether or not the reactor site parameters are enveloped by the cask design basis as required by 10 CFR 72.212(b)(3). This would include an evaluation demonstrating that the requirements of § 72.106 have been met.

NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site independent spent fuel storage installations (ISFSIs) in the 1990 rulemaking that added subparts K and L to 10 CFR part 72 (55 FR 29181). NRC regulations in 10 CFR part 72 establish physical protection and security requirements for an ISFSI located within the owner controlled area of a licensed power reactor site. Section 72.212(b)(5) requires that the spent fuel in the ISFSI be protected against the design basis threat for radiological sabotage using provisions and requirements comparable to those applicable for other spent fuel at the associated reactor subject to certain additional conditions and exceptions described in 10 CFR 72.212. Each utility licensed to have an ISFSI at its reactor site is required to develop security plans and install a security system that provides high assurance against unauthorized activities which could constitute an unreasonable risk to the public health and safety. The security systems at an ISFSI and its associated reactor are similar in design features to ensure the detection and assessment of unauthorized activities. All alarm annunciations at the ISFSI are monitored by the security alarm stations at the reactor site. Response to intrusion is required. Each ISFSI is periodically inspected by NRC and annually audited by the licensee to ensure that the security systems are operating within their design limits. The validity of the threat is continually reviewed, with a formal evaluation every six months by the NRC.

An adequate evacuation plan exists for the use of certified casks because of the fact that the existing reactor emergency plan covers the entire site. In addition, contingency planning for the events described above exists because these events are covered within the emergency plans of the reactor facilities which will use the cask. In accordance with 10 CFR 72.212(b), the reactor licensee must review the emergency plan to ensure it provides adequate protection. The licensee's emergency plan provides for responsive action if an event has happened which has the possibility of creating an emergency or after an actual emergency has occurred. Through communications between the utility and governments, the contents of the emergency plan and the actions to be executed by each entity for various situations are understood. In addition, the utility is required to conduct a periodic emergency exercise involving the utility and government agency staff.

34. *Comment.* One commenter stated that there was no contingency for accidents except to reload the spent fuel back into the cooling pool which may not be possible due to lack of pool storage space or impact on the spent fuel due to the accident.

Response. Because of the design features, as well as the procedures and requirements discussed elsewhere in

this response and the associated safety analysis, the likelihood of an accident occurring which will require removal of the spent fuel from the cask is very small. However, even if such an unlikely accident occurs, the cask design is required to have capability to permit retrieval. (10 CFR 72.122(l)). NRC does not require a licensee to maintain a reserve capability in the spent fuel pool. Many licensees may do so, however, and they would, therefore, have the option of returning the fuel to the pool in the unlikely event of an accident requiring removal of fuel from the cask. In addition, licensees will have other options available to cover this unlikely contingency including temporary storage in a spare storage cask or use of an existing certified transportation cask. Licensees would have to consider these, and other available options, in the unlikely event an accident occurs requiring removal of the fuel.

F. Other comments which do not specifically fit those categories above follow below. These comments deal with a broad range of other technical and procedural issues.

35. *Comment.* There are outstanding safety issues that the NRC expects to resolve in the first test.

Response. The NRC SER addresses all significant safety issues, and there are no outstanding safety issues about the VSC–24 cask that remain unresolved. Accordingly, the first test does not involve any safety issue. Its purpose, rather, is to benchmark the heat removal capability of the VSC–24 cask.

36. *Comment.* One commenter asked that a requirement to submit a report to the NRC within 15 days of the test and evaluation of the first cask and prior to construction of the second cask be added to the VSC–24 cask Certificate of Compliance. Also the report and subsequent NRC review should be placed in NRC's Public Document Room.

Response. A letter report summarizing the results of the thermal test and evaluation of the first cask placed in service will be submitted to the NRC and placed in the Public Document Room. The licensee may, at their own financial risk, fabricate additional casks prior to using the first cask. If the first cask does not perform as specified, the NRC would prevent use of the other casks or modify conditions on how they could be used.

37. *Comment.* It is unacceptable from a public health and safety standpoint to conduct the first full scale test of a VSC–24 cask at a reactor site because it places the power plant workers, the public, and the environment at risk. Two commenters stated that the VSC–24 had not been tested to the full range of climatic conditions.

Response. Although the volume of data that is available to support certification of the VSC–24 cask does not include results of full scale tests, the available data is more than sufficient to show that the use of the VSC–24 cask by a licensee will not place power plant workers, the public, or the environment at any undue risk. Also the conditions of use for the VSC–24 cask in the Certificate of Compliance ensure adequate protection of the workers, the public, and the environment. Further, the VSC–24 cask has been designed and will be fabricated to well established criteria of the ASME B&PV and ACI codes. In addition, it uses construction materials which have well known and documented properties to provide the necessary structural strength and radiation shielding to meet regulatory requirements. While the NRC has not relied on testing of the VSC–17 cask (a smaller version of the VSC–24 cask design) for approval of the VSC–24 cask, the VSC–17 cask has been tested by DOE at its Idaho National Engineering Laboratory. The report "Performance Testing and Analysis of the VSC–17 Ventilated Concrete Cask," EPRI TR–100305, dated May 1992, concluded that the VSC–17 cask can be safely used at reactor sites. While the VSC–24 cask approval does not rely on the VSC–17 cask, the designs are similar and many parallels in design and function can be drawn. DOE testing of the VSC–17 demonstrates that ventilated storage cask technology can provide safe storage of spent fuel. Thus, in view of the above, although the commenter's observation that the VSC–24 had not been fully tested under climatic conditions is technically correct, the cask has been designed for ambient temperature extremes from −40 °F to +100 °F and meets the ASME and ACI requirements.

38. *Comment.* One commenter noted that Consumers Power does not have a plan to remove spent fuel stored under general license from the reactor site as required by 10 CFR 72.218.

Response. The licensee is not required to have a plan to remove spent fuel stored on site under the general license until an application to terminate the reactor operating license is submitted to the NRC. This requirement is found in 10 CFR 72.218(b) and 10 CFR 50.54(bb).

39. *Comment.* One commenter noted that the NRC does not specifically require inspections against 10 CFR 72.236(j)–(m). Questions were raised regarding quality assurance problems encountered during the inspection of systems currently in operation, and during the construction of the first five casks, that are expected to be placed in service. Another question was raised pointing out that the vendor did not use weld inspectors qualified/certified to American Weld Society D.1.1.

Response. The NRC ensures compliance with 10 CFR 72.236 (j) and (k) through inspections, and ensures compliance with 10 CFR 72.236 (l) and (m) through the cask approval process. This process will identify different areas that may need correction, but that is the purpose of an inspection program. If a violation of the requirements is detected, the NRC can impose penalties, or even stop work. The NRC takes note of the fact that problems noted by the commenters were identified as a result of NRC's inspection program during the construction of specific casks. This experience reemphasizes the need for close and continuing quality surveillance under vendor and user QA programs during all VSC–24 and other cask construction activities. The NRC will continue to conduct the inspections of construction activities in accordance with NRC's Inspection Procedures in conjunction with vendor's quality assurance (QA) program, specifications, drawings, etc. to ensure quality work. As to the specific point of the qualification of welds and inspectors, the NRC notes that the welds referenced were not structural welds and, as allowed by the vendor's fabrication specifications, do not have to be qualified to the same extent as a structural weld.

40. *Comment.* Concern was expressed that the measurement of actual effectiveness of a technology in delivering stated requirements must be demonstrated empirically, and that the NRC has not demonstrated the goal of this technology, defined acceptance criteria, or specified how compliance is demonstrated. Some commenters also expressed concern that the review of the concrete cask was not done at the same level as that performed for metal casks and that no independent computer analyses were performed for the design event review. Some commenters noted that the review requires more than limited computer models.

Response. For the issue of acceptance criteria, the NRC has established specific requirements in 10 CFR part 72 that must be met in order to obtain a Certificate of Compliance for a cask. The details of the review and bases for the NRC concluding that the cask meets the requirements of 10 CFR part 72 are provided in the SER. The goal of dry cask storage technology is to store spent fuel safely. That goal, and the

effectiveness of the technology, previously has been demonstrated empirically and experimentally. Different cask designs may require different types of analysis to demonstrate their safety, and therefore different review methods may be appropriate to reach that conclusion. In each case the level of review performed is that needed to provide assurance of adequate protection of the public health and safety.

41. *Comment.* Some commenters claimed that part 72, subpart K was originally intended to apply to metal casks only. Concrete cask systems were not addressed in the original rulemaking.

Response. As discussed below, both the language and history of subpart K show that it applies to any NRC-approved dry cask storage system including concrete casks systems, and commenters are therefore mistaken in their view that it was intended for metal casks only.

Subpart K applies "to casks approved under the provisions of this part" which includes casks approved by NRC under 10 CFR part 72, subpart L. Subpart L contains NRC's approval conditions "for NRC spent fuel storage casks designs" which would include concrete casks. None of the approval conditions in subpart L requires that the cask must use a metal cask design.

Additionally, there is information on concrete storage technologies in the subpart K rulemaking record that would not support limiting it only to metal casks. Specifically, the Commission's notice of proposed rulemaking (NPRM) for subpart K referenced the Canadians' use of "concrete casks called silos" in describing "the knowledge and experience of dry spent fuel storage in concrete casks." 54 FR 19379–80 (May 5, 1989). The proposed rule also referenced DOE's demonstration of dry storage in sealed storage casks (SSC) which it described as "an above-ground, steel-lined, reinforced concrete cylinder or cask." Id. Further, it cited experience gained from spent fuel storege "in stainless steel canisters stored inside concrete modules at the H.B. Robinson 2 site * * *" Id. If the Commission had intended to limit subpart K to metal casks, it would not have included data from other dry storage technologies in the record supporting its action.

Although the Commission has not previously approved concrete storage systems (or casks) under subpart L, it expressly noted such systems might be approved (and thereby included in subpart K) in the future. In particular, the Commission gave the following explanation for not approving certain concrete module designs in the final subpart K rule:

> A major reason that these spent fuel storage systems (e.g., NUHOMS; Modular Vault Dry Store), which are being considered by the Commission for use under a general license, are not being approved at this time is that they have components that are dependent on site-specific parameters and, thus, require site-specific approvals. 55 FR 29181 (July 18, 1990).

Moreover, the NPRM included the statement that "(t)he Commission has evaluated and approved, in specific licenses issued under 10 CFR part 72, other types of dry storage modules (and t)hese methods may be approved in the future for use under a general license." 54 FR 19382. It also noted that "(s)torage casks certified in the future will be routinely added to the listing in § 72.214 through rulemaking procedures." 54 FR 19380.

These statements collectively show the Commission specifically envisioned the possibility of future rulemaking (i.e., the procedure NRC is now using) to add concrete storage systems to the list of approved spent fuel storage casks in subpart K. Consequently, concrete storage systems can be "casks approved under the provisions of this part" for purposes of part 72, subpart K if, for example, they are not dependent on site-specific parameters and therefore do not require site-specific approvals and if they conform to the approval conditions of subpart L.

Finally, it is noteworthy that the Commission adopted subparts K and L for the express purpose of implementing certain interim storage provisions of the Nuclear Waste Policy Act of 1982 that, significantly, are not limited to metal casks. 54 FR 19379 (May 5, 1989). In particular, the Act authorized the Commission to approve by rule "one or more (storage) technologies" for use at reactor sites. (Sec. 218(a) (42 U.S.C. 10198(a)). The Act also directed the Commission to establish procedures for the licensing of "any technology" approved by the Commission under section 218. (Sec. 133 (42 U.S.C. § 10153)). Therefore, because the Act's provisions are not limited only to metal storage cask designs, it would be inconsistent with the Commission's purpose to limit the application of subparts K and L to such designs.

42. *Comment.* One commenter requested the proceeding be stopped until the NRC revises all regulatory requirements pertaining to the storage of high-level waste and spent fuel to require testing procedures which include testing to destruction.

Response. The NRC does not require testing to destruction or other tests if we have confidence in the analyses which are done or if the design relies on nationally recognized codes and standards. Testing to destruction is an option that can be used to confirm design adequacy. However, destructive tests of an entire cask are not necessary to evaluate a design when other non-destructive tests or destructive testing of the components will provide the necessary information to evaluate a design.

43. *Comment.* Some commenters expressed concerns that fuel handling could be under less than ideal conditions and that storage could be under harsh environmental conditions. Sites where the VSC–24 cask is proposed for use would experience low winter temperatures, freeze-thaw cycles, high humidity, and marine conditions. Concern was also expressed that harsh environmental conditions and damage to the MSB protective coating will degrade the containers as a result of corrosion, embrittlement, cracks, fatigue and other aging effects which would affect the ability of the cask to survive over extended periods.

Response. Handling of fuel and loading of the cask is performed under well controlled conditions in the reactor's fuel handling building using written procedures developed in accordance with the reactor operating license. The VSC–24 system has been evaluated for the possible effects of harsh environmental conditions and the MSB has been evaluated for the possible effects of corrosion due to humid and marine environmental conditions. As a result of the corrosion analysis of the MSB, the NRC found the design acceptable with the consideration of localized corrosion mechanisms (i.e., pitting, stress corrosion cracking, crevice corrosion and galvanic corrosion) as well as general corrosion. Localized corrosive attack on the MSB surfaces is minimized by choice of materials and design features such as the ceramic tiles between the VCC liner and the bottom surface of the MSB. Furthermore, the NRC allows no credit for the attributes of the paint.

Aging issues attributed to fatigue for the MSB were evaluated according to the ASME B&PV Code, Section III, and it met acceptable standards.

Temperature extremes, such as freeze-thaw cycles which exist in the Great Lakes region, were considered in the evaluation of the VSC–24 cask. According to the conditions for cask use, the user of the VSC–24 system will perform site-specific analyses to verify that the temperature conditions assumed in the analysis bound the conditions existing at the site.

The possibility of MTC and MSB cracks was addressed as a part of ferritic material considerations. Based on guidance provided in ANSI N14.6 and NUREG CR–1815 the NRC established test and operating limits for the MTC and the MSB to preclude the possibility of brittle fracture.

Finally, the VCC is designed and fabricated to American Concrete Institute Code requirements which consider durability under extreme conditions for extended periods. The cask is also subject to annual visual surface inspections for chipping, spalling, or other surface defects. Any surface defects found can be easily corrected. The fluence of the neutron flux within the spent fuel is five orders of magnitude less than the fluence encountered within an operating reactor, and therefore embrittlement of the MSB is not of concern.

44. *Comment.* A commenter asked how the NRC will correct the problem when something goes wrong with the VSC–24 cask. In the event of a tipover or drop of a loaded VCC, the commenter believes the licensee should be required to report the incident to the NRC within 4 hours and the NRC, rather than the licensee, should determine whether the MSB and/or the VCC should be reloaded for spent fuel storage.

Response. The licensee is responsible for correcting problems when they occur. The NRC is responsible for ensuring that the licensee takes appropriate corrective action. These rules reflect existing regulatory practice and procedure. The regulations and Certificate of Compliance identify specific events and conditions where the licensee would have to notify the NRC.

In accordance with 10 CFR 72.216(a) the licensee is required to report cases involving any defect as a result of a tipover or a drop to the NRC within 4 hours. The licensee would also have to inspect and evaluate the MSB after any tipover or drop of 18 inches or higher. Based on that evaluation, the licensee, not the NRC, would be responsible for determining continued use of that cask. NRC's responsibility is to monitor and oversee the licensee's activities. NRC has, however, the authority to order the licensee to cease use of a cask, if that were determined to be necessary.

45. *Comment.* One commenter stated that the double seal welds at the top of the MSB do not comply with the ASME Code, Section III, Subsection NC.

Response. The double seal welds at the top of the MSB meet all of the ASME requirements except the volumetric inspection requirement. This inspection is not possible due to the presence of the radioactive fuel loaded into the MSB. However, an additional margin of safety is provided because: (1) The welded joint is a double weld; (2) the weld joint has been analyzed according to ASME Section III criteria for all load conditions including accidental drop; (3) the pressure inside the canister during normal storage operations is approximately atmospheric, resulting in very low stress intensities; and (4) the confinement integrity is established by ASME code test procedures, which include dye penetrant testing of the root and cover welds of both the inner and outer welds. In addition, the NRC is requiring testing for helium leaks prior to the placing of the MSB in storage.

46. *Comment.* A number of commenters questioned the lack of transportability of casks and the apparent noncompliance with the requirement of 10 CFR 72.236(m). Several commenters expressed concern that the VSC–24 cask is not compatible with transportation requirements. Several commenters questioned how the spent fuel will be transported to a Federal Repository and what will be the additional handling cost.

Response. These casks are currently approved for storage of spent fuel, not off-site transportation. Therefore, there is no need for the VSC–24 cask to be compatible with transportation requirements. These casks are only moved between the fuel handling building and the storage pad at the site where the fuel will be stored. Although 10 CFR 72.236(m) states, "To the extent practicable in the design of storage casks, consideration should be given to compatibility with removal of the stored spent fuel from a reactor site, transportation, and ultimate disposition by the Department of Energy," there is no requirement that the storage cask itself be transportable off site. If the cask vendor wants to have its cask used for the transportation of spent fuel, it would have to obtain a transportation Certificate of Compliance issued by the NRC under 10 CFR part 71.

The mechanism for transporting the spent fuel from a reactor site to a Federal Repository is unknown at this time. However, it could be by truck, rail, barge, or some combination. Also, the handling costs are unknown since DOE compatibility requirements are not known and regulatory requirements at the time of transfer could be different.

47. *Comment.* One commenter pointed out the NRC indicates that the analyses presented in the SAR are "based on non-consolidated, zircaloy-clad fuel with no cladding failures." Please clarify whether there exists an inconsistency between "no cladding failures" and the language which the NRC uses in Table 1–1, Characteristics of Spent Fuel to be Stored in the VSC–24 System, referring to Fuel Cladding as: "Zircaloy clad fuel with no known or suspected gross cladding failures."

Response. The NRC agrees that there is an inconsistency. Acceptability is based on zircaloy clad fuel with no known or suspected gross cladding failures. Section 1.2.1 of the Certificate of Compliance has been revised to "specify no known or suspected gross cladding failures." The intent of this specification is to rely on the cladding to safely confine the UO_2 fuel material within the rods to preclude operational safety problems during its removal from storage. Fuel cladding with pin hole leaks is still capable of confining the fuel and therefore is acceptable for storage. In addition the inert atmosphere and fuel clad initial temperatures provide assurance that the cladding will be protected during storage against degradation that leads to gross rupture.

48. *Comment.* Commenters stated that there is no evidence that PSN considered the effects of worst case tolerance combinations in the structural analysis.

Response. There are several generic areas where improper tolerance combinations could jeopardize the structural integrity of a design. These areas are:

(1) Over-tolerance of weight which could result in unallowable stress levels for some components;

(2) Improper tolerances for dynamic parts such as in machinery which could result in interference and failure;

(3) Improper tolerance for fuel positioning in the basket;

(4) Improper tolerances of parts of an assembly which could lead to induced stresses from an interference fit or the converse situation, i.e., loose tolerances which could lead to an ill-defined load path; and

(5) Improper tolerances which might cause a heat conduction path to exist or not exist.

The NRC has reviewed and verified that tolerances specified in the application would prohibit a weight which is above the load used in the calculation package. The NRC also reviewed specified dimensioning, which, when followed as required, will prohibit interference and failure of dynamic parts such as machinery or fuel positioning in the basket. The NRC reviewed the vendor's calculations to assure that the loads which were analyzed and heat conduction paths account for the range of tolerances. For these reasons, the NRC has concluded that tolerance combinations are

adequately addressed for the vendor's structural and thermal analysis.

49. *Comment.* A commenter indicated that the VSC–24 was exempted from established cladding temperature criteria for short term normal condition events, in which the maximum fuel cladding temperature limit is exceeded by as much as 170 °F.

Response. The VSC–24 has not been exempted from a short term temperature limit for fuel cladding. In comparing the short-term and long-term thermal hydraulic evaluation shown in Table 4.1–1 of the SAR, the short-term temperature will exceed the long-term temperature by as much as 170 °F. This higher temperature, however, is acceptable during the short-term while the fuel is dried prior to filling the MSB with an inert gas (helium), weld sealing the MSB, and final placement of the MSB in the cask for interim storage. The NRC conservatively assumed that air was present during the drain-down and dry-out periods and calculated the oxidation rate. The maximum length of fuel oxidation for defective fuel was determined. The cladding strain was estimated to be less than 1 percent. Therefore no defect extension or fuel powdering is anticipated. The short term increased temperature is desirable to ensure removal of moisture. Following dry-out and helium introduction, the temperature will drop below the long term limit.

50. *Comment.* Some of the commenters indicated that the SER for the VSC–24 cask allows k_{eff} of 0.98 and that this deviates from the normally accepted limit of 0.95 specified in NRC Regulatory Guide 1.13, Proposed Revision 2, "Spent Fuel Storage Facility Design Basis." The commenter indicated that NRC should allow other vendors to modify their cask to k_{eff} of 0.98. One commenter expressed concern that the benchmark experiments that were cited in the analysis dated to the 1970's and because of their age were considered inappropriate for use, and commented that there was a difference in the geometry between the benchmark calculations and the VSC–24.

Response. The k_{eff} of 0.95 is guidance and is thus, not a requirement. As such, a licensee has flexibility and may propose an alternative limit. Based upon NRC review, NRC accepted the licensee's proposed use of a k_{eff} of 0.98 for the accident case of misloading the MSB with all fresh fuel of maximum enrichment and optimum moderation conditions. This accident condition borders on the incredible since it requires a mutually exclusive condition: that is, 24 unirradiated fuel assemblies that have heat generation rates sufficient to produce enough boiling for optimum moderation. Therefore, NRC would accept a k_{eff} of 0.98 for any cask generically for this accident case, but a k_{eff} of 0.95 would apply otherwise. The conditions of nuclear criticality, and the experiments that provide that information can be and have been measured with a high degree of accuracy, since the 1940's. The age of the data is not significant. It is desirable that the benchmark experiments represent the system under evaluation as closely as possible. The features or parameters that are important to this purpose are the fuel composition and enrichment, the geometry of the fuel assembly, i.e., rod diameter and pitch, cladding type, and any neutron absorbers in the vicinity of the fuel pins. These parameters must be properly considered in the processing of nuclear cross sections used in criticality analysis so that the benchmark experiments are used to determine a method bias, or systematic error that may result from the particular set of nuclear cross section data that are used, or from the methods used to process the cross section data. Once method bias is determined for the particular fuel parameters, the calculations are quite insensitive to the macroscopic geometry of the system.

Therefore, it is not necessary that the gross or macroscopic geometry of the benchmark experiments be similar to the VSC design as long as the method bias has been determined for the appropriate fuel parameters. The B&W critical experiments have been widely used for this purpose since they were performed using light water reactor fuel assemblies similar to those used in many light water reactors.

51. *Comment.* One commenter indicated that the Certificate of Compliance for the VSC–24 cask is unnecessarily restrictive in requiring that the MSB contain 2850 ppm boron solution while it is being loaded. This concentration of boron would keep k_{eff} less than 0.95 even if all 24 storage spaces in the MSB were loaded with fuel assemblies which average 4.2 weight percent (wt.%) U_{235}. Some nuclear power plants do not have 4.2 wt.% U_{235} fuel on site. Therefore, there is no possibility of fuel containing that concentration of U_{235} being loaded in a MSB. The commenter recommended that the Certificate of Compliance requirement for boron concentration in the MSB cavity water be changed to allow other concentrations to be used such that the boron concentration used would maintain k_{eff} less than 0.95 even if fuel assemblies containing the highest wt.% U_{235} in the spent fuel pool were placed in the MSB.

Response. The NRC agrees that the boron specification in the Certificate of Compliance for the VSC–24 cask may be restrictive. The boron specification is consistent with the maximum allowable uranium enrichment (4.2 wt.%), based on the criticality analysis presented in the SAR. The Certificate of Compliance specification for boron concentration in water is a bounding condition which was chosen to limit reliance on administrative controls to determine the proper required boron concentration for each cask loading. A method like that proposed by the commenter, to determine the boron concentration required, based on the maximum initial U_{235} enrichment of fuel at each reactor site, could be considered as a future amendment to the Certificate of Compliance.

52. *Comment.* Some commenters suggested that the NRC should consider limiting the cask storage time and expressed concern that cask storage could become permanent if the DOE might not accept fuel as they are required to do. Commenters also noted that the NRC requirement that cask viability be evaluated for "at least" 20 years, does not, in itself, guarantee safety in the apparently likely event the casks remain years or decades beyond the original intended duration.

Response. By approval of the Certificate of Compliance, the NRC has limited the cask storage time to 20 years. After the 20-year period, the certificate can be renewed, with each renewal period not to exceed 20 years, upon demonstration of continued protection of the public health and safety and the environment. In the event that safe storage of spent fuel in a particular cask cannot be demonstrated beyond 20 years, an alternate means of storage will be required. Finally, DOE is required by the Nuclear Waste Policy Act of 1982 to accept spent fuel for ultimate disposal. As one commenter noted, DOE is proposing a new strategy in which Congress would authorize it to select a site in time to receive spent fuel for interim storage by 1998.

53. *Comment.* Commenters indicated that PSN made an error in calculating the dose rate at the gap between the MSB and MTC. PSN had 440 mrem/hr compared to NRC's calculated 4140 mrem/hr. Why weren't these discrepancies resolved? How would welders be protected?

Response. PSN did not make an error in their calculation. Rather, they made an error when transcribing a calculated value to an SAR table. This discrepancy is identified and resolved in the SER (pg

6–12). With respect to protection of welders, the operating procedures and radiation protection program of the licensee will include precautions so that the exposure of personnel working with the system inside the fuel handling building will be maintained within the dose limits of 10 CFR part 20.

54. *Comment.* Commenters stated that the reported dose of 130 mrem/hr for the VSC–24 cask sides is still 6 times higher than the stated limit/ specification of 20 mrem/hr.

Response. The limit of 20 mrem/hr stated in section 1.2.4 of the Certificate of Compliance applies to the sides of the VCC, at the pad. The 130 mrem/hr value quoted in the comment refers to the maximum dose rate at the sides of the MTC when loaded with the MSB, inside the fuel handling building. Because the MSB has not been loaded into the VCC cask at this point, it is not subject to the 20 mrem/hr specification.

55. *Comment.* Commenters believed that PSN made several mistakes in calculating how much radiation might come off the surface of the VSC–24 cask. Because the VSC–24 cask has never been built, it is fair to say that no one has any definite idea of what the actual dose rates will be. In addition, some commenters noted that conclusions drawn from testing a prototype are of dubious import "when dealing with the effects of radiation."

Response. As stated in section 6.3 of the SER, a number of errors were discovered in the vendor's shielding analysis. An adequate explanation for these errors was offered by the vendor. However, the NRC made independent confirmatory calculations to estimate the dose levels associated with the VSC–24 system. The vendor's shielding design and expected dose rates along the surface of the VCC were determined to be acceptable based on a comparison with the independent NRC calculations. NRC agrees with the commenter that the actual dose rates from specific fuel loaded into the cask cannot be exactly determined a priori. However, dose calculations can readily predict expected dose rates for the VSC–24 cask with sufficient accuracy to assure that NRC limits will not be exceeded. In addition, these calculations tend to be conservative and tend to overestimate actual dose rates that would be experienced during actual operations. Prototype testing was not used in evaluation of the adequacy of the shield design for the VSC–24 cask. Finally, the licensee will conduct surveys to ensure compliance with regulatory requirements and the Certificate of Compliance.

56. *Comment.* Commenters believed that PSN benchmarking of shielding codes against measured dose rates for the VSC–24 cask was grossly in error. Further, PSN did not benchmark the SKYSHINE–II calculation method. The NRC calculated direct and air-scattered dose rates, at various distances from the cask, which were many times higher than the PSN calculated dose rates.

Response. PSN's benchmarking of the ANISN and QAD computer codes for dose rate calculations was found by the NRC to be incomplete because it did not address differences in dose rates calculated by the ANISN and QAD computer codes. The NRC conducted independent confirmatory calculations to estimate the dose levels associated with the VSC–24 cask system for comparison with the vendor's calculations. Based on that comparison, the NRC concluded the design provided acceptable shielding.

Although PSN did not benchmark the SKYSHINE–II calculation method, they used that method to calculate site boundary dose rates. Based on review of their calculations and independent NRC calculations, the NRC concluded that PSN had not calculated conservative neutron and gamma dose rates at the site boundary. However, even with the NRC's more conservatively calculated site boundary dose rates, the NRC concluded that general licensees using the VSC–24 cask will meet all applicable regulatory requirements.

In addition, the NRC also requires any VSC–24 user to measure the external cask surface dose rates to ensure the cask has been properly loaded and radiation monitoring to ensure compliance with regulatory requirements.

57. *Comment.* A number of commenters requested a public hearing on this rulemaking. Approximately half of the commenters requested that a full public hearing be held at each reactor facility site prior to the use of dry cask storage at that site.

Response. Consistent with the applicable procedure, the NRC does not intend to hold formal public hearings on the VSC–24 cask rule or separate hearings at each reactor site prior to use of the dry cask technology approved by the Commission in this rulemaking. Rulemaking procedures, used by the NRC for generic approval of the VSC–24 cask, including the underlying staff technical reviews and the opportunity for public input, are more than adequate to obtain public input and assure protection of the public health, safety and the environment. Further, in this rulemaking, NRC has taken extra steps to elicit and fully consider public comments on the VSC–24 technology.

Section 133 of the Nuclear Waste Policy Act of 1982 authorizes NRC to approve spent fuel storage technologies by rulemaking. When it adopted the generic process in 1990 for review and approval of dry cask storage technologies, the Commission stated that "casks * * * (are to) be approved *by rulemaking* and any safety issues that are connected with the casks are properly addressed in that rulemaking rather than in a hearing procedure." 55 FR 29181 (July 18, 1990). Rulemaking under NRC rules of practice, described in 10 CFR 2.804 and 2.805, provides full opportunity for expression of public views, but does not use formal hearings of the type requested by commenters.

In this proceeding, rulemaking clearly provided adequate avenues for members of the public to provide their views regarding NRC's proposed approval of the VSC–24 cask, including the opportunity to participate through the submission of statements, information, data, opinions and arguments. In this connection, the NRC staff prepared for public examination two separate, technical evaluations for the VSC–24 dry cask system, each time making detailed, documented findings of compliance with NRC safety, security and environmental requirements. The staff's first evaluation, prepared in March 1991, reviewed and approved the VSC–24 for reference in a site-specific application for an independent spent fuel storage installation. In May 1992, the NRC staff reviewed the VSC–24, and approved the design for purposes of initiating this rulemaking to grant a generic approval of the design. In addition, the staff conducted a third review in response to the public comments on the VSC–24 in this rulemaking, again finding compliance with NRC requirements as set forth in this notice of final rule and response to comments.

In addition to reviewing systematically and in depth the technical issues important to protecting public health, safety and the environment, the NRC has taken extra steps to obtain and fully consider public views on the VSC–24 technology, and has made every effort to respond to public concerns and questions about the VSC–24 cask's compliance with NRC safety, security and environmental requirements. The initial public comment period opened on June 26, 1992, and closed on September 9, 1992. In addition, NRC received a number of comments after the close of that period, all of which were fully considered. Subsequently, NRC extended the period

for submission of public comments until February 22, 1993. Thus, the public comment period for this rule has effectively been almost nine months. In addition, the NRC staff made every effort to consider comments received after February 22, 1993. Further, the staff proposed and participated in a public meeting near one of the nuclear plants proposing to use the VSC–24 cask (i.e., Palisades), with the Attorney General of the State of Michigan, to provide further opportunity for public input on the safety, security and environmental compliance issues in this rulemaking. NRC also participated in an earlier meeting of the Van Buren County Commission near the plant site.

Under these circumstances, formal hearings would not appreciably add to NRC's efforts to ensure adequate protection of public health, safety and the environment, and are unnecessary to NRC's full understanding and consideration of public views on the VSC–24 cask.

58. *Comment.* Commenters believed that a full democratic process is needed in this decision.

Response. Because this rulemaking was conducted pursuant to the procedures for approving dry storage casks for use under a general license, as required by Congress in the Nuclear Waste Policy Act of 1982, and pursuant to the public notice and comment procedures of the Administrative Procedures Act, the resulting final rule approving the VSC–24 cask is the product of a process prescribed by law.

59. *Comment.* One commenter stated that the gap between the MSB and the MTC is given as 0.5 inch in WEP–109.001.4 and as 1.0 inch in Figure 5–5 of WEP–109.w13. This commenter also stated that the dose rate was not clear.

Response. The difference in the referenced gap size is a consequence of changes made as a result of earlier reviews. The final design was based on the 0.5 inch gap as indicated in WEP–109.001.4. The calculation of WEP–009.0013, which uses a 1.0 inch gap, is therefore conservative for shielding calculations. Because the gamma dose is more than 30 times that due to neutrons, any small decrease in the neutron dose rate, due to a smaller gap, would not significantly change the calculated neutron and gamma dose rates used to assess occupational exposure. In addition, these calculations conservatively neglect the shielding ring which would further reduce dose rate.

60. *Comment.* Commenters expressed concern that VSC–24 casks were being built at the Palisades Nuclear Plant before approval or certification.

Response. The NRC granted Pacific Sierra Nuclear Associates' request for an exemption to fabricate a limited number of the casks before issuance of the Certificate of Compliance under its NRC approved quality assurance program, and at its financial risk. The NRC's finding, based on the SAR for the VSC–24 cask and the NRC's SER, concluded that beginning fabrication prior to the issuance of the Certificate of Compliance would pose no undue risk to public health and safety. Use of these casks is dependent on satisfactory completion of NRC's certification process.

61. *Comment.* Some commenters requested that the NRC prepare an environmental impact statement (EIS) and update the Generic EIS for the handling and storage of spent fuel. The EIS should be submitted to the Environmental Protection Agency (EPA) and to the State of Michigan. Some commenters also requested that action on this rule be delayed until the Wisconsin Environmental Impact Statement is complete.

Response. The potential environmental impacts of utilities using the VSC–24 cask (or any of the other spent fuel casks approved by NRC (10 CFR 72.214)) have been fully considered and are documented in a published Environmental Assessment (EA) covering this rulemaking. Further, as described below, the EA indicates that use of the casks would not have significant environmental impacts. Specifically, the EA notes the 30-plus years of experience with dry storage of spent fuel, identifies the previous extensive NRC analyses and findings that the environmental impacts of dry storage are small, and succinctly describes what impacts there are, including the non-radiological impacts of cask fabrication (i.e., the impacts associated with the relatively small amounts of steel, concrete and plastic used in the casks are expected to be insignificant), the radiological impacts of cask operations (i.e., the incremental offsite doses are expected to be a small fraction of and well within the 25 mrem/yr limits in NRC regulations), the potential impacts of a possible dry cask accident (i.e., the impacts are expected to be no greater than the impacts of an accident involving the spent fuel storage basin), and the potential impacts due to possible sabotage (i.e., the offsite dose is calculated to be about one rem). All of the NRC analyses collectively yield the singular conclusion that the environmental impacts and risks are expected to be extremely small.

The absence of significant environmental impacts from dry cask storage at a reactor site is also the conclusion of other NRC EA's for previously approved dry casks analyzed in earlier rulemakings addressing part 72, and in the Commission's Waste Confidence decisions in 1984 (August 31, 1984; 49 FR 34658) and 1989 (September 29, 1989; 54 FR 39765). In the 1984 Waste Confidence decision, the Commission concluded there was reasonable assurance spent fuel can be safely stored at reactor sites without significant environmental impacts, for at least 30 years beyond expiration of NRC reactor operating licenses. The 1989 Waste Confidence decision review reaffirmed prior Commission conclusions on the absence of significant environmental impacts.

Thus, given the Commission's specific consideration of the environmental impacts of dry storage summarized above, and given the absence of any new information casting doubt on the conclusion that such impacts are expected to be extremely small and not environmentally significant, no meaningful environmental insights are likely to be gained from further preparation of either an EIS or an updated GEIS for the dry storage methodology.

The EA covering the proposed rule, as well as the finding of no significant impact (FONSI) prepared and published for this rulemaking, fully comply with the NRC environmental regulations in 10 CFR part 51. Moreover, since the Commission's environmental regulations in part 51 implement NEPA and give proper consideration to the guidelines of CEQ, they assure that the EA and the FONSI conform to NEPA procedural requirements, and that further analyses are therefore not legally required.

In connection with the EA and FONSI, it bears emphasizing that 10 CFR part 72, subpart K already authorizes dry cask storage and already approves dry casks for use by utilities to store spent fuel at reactor sites. See 10 CFR 72.214 for a listing of information on Cask Certificate Nos. 1000 through 1003. The present rulemaking is accordingly for the limited purpose of adding one more cask to the list of casks already approved by NRC. Furthermore, the cask, to be added to the NRC list by this rulemaking will comply with all applicable NRC safety requirements.

Finally, this rulemaking applies to cask use by any power reactor licensee within the United States. Therefore, it is not dependent on any one individual State's actions including preparation of a separate EIS by any State. Further, nothing in this rulemaking would preclude any State from implementing

its environmental statutes and regulations as may otherwise be permitted by law.

62. *Comment.* Commenters believed that a cost/benefit analysis should be prepared. One commenter proposed a cost comparison formula which would estimate costs associated with dry cask storage over the next 1000 years.

Response. A regulatory analysis, which considers both benefits and impacts of adding the VSC–24 cask to the list of NRC-approved casks under 10 CFR part 72, subpart K, was prepared in support of this rulemaking action. It was included as a part of the notice of proposed rulemaking and is also included in this final rulemaking notice. This regulatory analysis reflects the limited economic scope of this rulemaking. The 1000 year cost comparison identified above assumes 1000-year interim storage at Palisades, an assumption the NRC is not proposing or adopting in this rulemaking. The NRC Waste Confidence decisions concluded there is reasonable assurance the Federal government will begin receiving spent fuel for disposal by 2025. Thus, the likelihood of 1000-year interim storage at Palisades is extremely small.

63. *Comment.* One commenter wanted letter reports to the NRC distributed to local and state government authorities and local libraries in the vicinity of facilities using the VSC–24 cask.

Response. The NRC interprets this comment as applying to letter reports required by the Certificate of Compliance. Letter reports sent to the NRC are routinely placed in the Public Document Room and Local Public Document Rooms near each facility. Local Public Document Rooms are located in public, university, and special libraries. A directory of Local Public Document Rooms is published by the NRC as NUREG BR–88. The NRC would respond to State requests for copies of such reports through NRC's State Relations Program.

64. *Comment.* Commenters indicated that operating procedures, evaluation reports, and training programs should be submitted to the NRC, state and local government authorities, and placed in local libraries near such facilities.

Response. These documents expand on generically approved procedures in the SAR, Certificate of Compliance, or in the case of the boron determination, on national standards. In accordance with the NRC requirements, licensees are not required to submit this information to the NRC or other government authorities. Rather, this information is evaluated by the licensee and is available for inspection by the NRC. The NRC's inspection program includes requirements to inspect these procedures.

65. *Comment.* Commenters stated that the VSC–24 is not a cask. The designer called it a cask system.

Response. The NRC considers it to be a cask. It is called a cask system because it consists of several components.

66. *Comment.* Commenters believe that there is poor management at Consumers Power Company. NRC Information Notice 91–56 says they still have a provisional license after 20 years. Consumers Power Company had serious quality control violations, below average operating capacity, and faulty construction at Midland.

Response. Although this comment is not directly related to this rulemaking, which is to provide generic approval of the VSC–24 cask design that is not dependent on site specific consideration for any one licensee, NRC notes that its Systematic Assessment of Licensee Performance (SALP) program is an integrated staff effort to collect available observations and data on a periodic basis and to evaluate licensee performance, including Consumers Power, on the basis of this information. The most recent SALP report for Palisades, covering the period January 1, 1991 through March 31, 1992, states in summary, "Overall performance at the Palisades Nuclear Power Plant was characterized by generally steady or improving results and showed a conservative and safe operating philosophy. The overall degree of management attention and effectiveness was acceptable in all areas." Finally, the Palisades Nuclear Plant was granted a full term operating license on February 21, 1991.

The SALP report for the preceding period from September 1, 1989 through December 31, 1990 provided similar conclusions and stated, "the degree of management attention and effectiveness ranged from commendable in some areas to needing attention in others. Overall, the conduct of activities was appropriately directed to assurance of safety. Management appeared proactive and effective in demonstrating a conservative operating philosophy and establishing high standards of performance in operations, maintenance/surveillance, and security."

67. *Comment.* One commenter believed that the Certificate of Compliance should list all NRC regulations controlling the use of the VSC–24 cask for the storage of spent fuel.

Response. The Certificate of Compliance contains a general reference to the provisions of 10 CFR part 72, which includes in subpart K, the regulations relevant to the storage of spent fuel under a general license. A specific reference to each regulation section is, therefore, unnecessary.

68. *Comment.* One commenter was favorable to the VSC–24 cask stating that it was cost-effective, made in the U.S.A., additional shielding could be added at low cost if required, the welded closure requires no monitoring, and risk is minimized by weld sealing the MSB in the reactor fuel handling building. Another commenter noted that this rulemaking is a positive action which should decrease cost and increase the safety of storing fuel. Another commenter noted the Palisades spent fuel pool is closer to Lake Michigan than the cask pad, both in terms of distance and elevation. The storage of spent fuel in a pool requires active systems for shielding, cooling and reactivity control. The VSC is passive, requiring no pumps, valves, or heat exchangers.

Response. None required.

69. *Comment.* Commenters believed that it is not acceptable to increase the number of approved cask designs. The goal must be the function of the cask itself to contain radioactivity in high concentrations and prevent it from dispersing into the biosphere as well as to shield workers and others from radiation exposure. Some suggested that alternative actions to dry cask storage should be considered.

Response. The NRC, in implementing the Nuclear Waste Policy Act of 1982, has an obligation to approve the use of casks for the storage of spent fuel, provided these casks meet applicable regulatory requirements, The NRC agrees with the commenter that these casks should contain radioactivity and protect workers, the public, and the environment. The previous rulemaking of 1990 (55 FR 29181) found that spent fuel stored in dry storage casks designed to meet the NRC regulatory requirements can contain radioactivity safely. This rulemaking adds one cask design, which meets the safety requirements previously developed. The previous responses to comments, as well as the detailed safety and environmental analyses underlying this rulemaking, and described elsewhere in this notice, all reveal that the VSC–24 cask will conform to the NRC requirements, and that its use should not pose the potential for significant environmental impacts.

The principal alternatives available to the NRC would be procedural in nature, whereby dry cask spent fuel storage could be approved under other existing

or new parts of title 10, Code of Federal Regulations. Regardless of the method selected to approve such dry cask spent fuel storage, all would have similar environmental impacts.

The NWPA directed that the NRC approve one or more technologies, that have been developed and demonstrated by DOE, for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site-specific review. The NWPA also directed that the NRC, by rulemaking, set forth procedures for licensing the technology. Regulations for accomplishing this are in place. Therefore, the no action alternative is not acceptable.

Alternative spent fuel storage technologies exist. However, at this time, the NRC considers them neither sufficiently demonstrated nor practicable for use under the general license provisions of subpart K of 10 CFR part 72 without additional site-specific reviews. If other storage technologies become more amenable to this type of action, they could be considered at a later time.

70. *Comment.* Commenters expressed concern that Pacific Nuclear, Inc., the original designer and manufacturer of the VSC–24 cask system, had ended its involvement with the cask. Reasons cited included the issue of liability, negligence issues that might surface in the future with the cask, the fact that the original designers divested themselves due to concern about the cask, and who would be responsible in the event of leakage. Commenters also questioned whether NRC had attempted to ascertain the reason for the divestiture action by Pacific Nuclear to discover if the reason related to safety of the cask, liability, or any other consequences.

Response. NRC is not aware of any safety, negligence, liability or legal concerns which prompted Pacific Nuclear, Incorporated to divest itself from the VSC–24 cask. The key individual involved in the design and development of the VSC–24 was also involved in the design and development of a new modular horizontal concrete spent fuel storage system (NUHOMS design) and formed a new company, Pacific Sierra Nuclear, for the commercial manufacture and marketing of the VSC–24 storage system. NRC focuses its efforts on assuring safety and environmental protection through reviews of applications for licenses and safety analysis reports. If a new company applies for a certificate of compliance, that new company must meet all NRC requirements as would any existing company. Through NRC's review and independent evaluation of the applicant's safety evaluation report and through this rulemaking action, NRC will assure that the cask meets part 72 requirements and can be used by individual nuclear power plant licensees with full assurance of protection of the public health and safety and the environment. The NRC has experienced no difficulty obtaining safety information or answers to its questions from either firm, either before, or after the divestiture.

Following the divestiture, Pacific Nuclear sent a letter containing comments on the VSC–24 design. The staff satisfactorily resolved and answered these comments with a letter; both the Pacific Nuclear and NRC letters are available in the Public Document Room. The issues contained in this exchange of letters and all other safety issues related to the design of the VSC–24 are described in the staff's SER.

71. *Comment.* A commenter noted that Consumers Power's comments to the NRC during this rulemaking indicate that they do not have the kind of fuel that was specified in the Certificate of Compliance for the casks at Palisades. They noted it is hard to believe that the NRC does not know what kind of fuel it is licensing the cask for, but noted that appeared to be the case. The commenter further noted that any approval given by the NRC would have to be site specific and not generic and therefore, this would require a hearing.

Response. The type of fuel that is being approved for storage in the VSC–24 cask is specified in the vendor's Safety Analysis Report as well as in the Certificate of Compliance and SER prepared by the NRC staff. NRC regulations require the vendor to specify the type of spent fuel to be stored in the cask before NRC approval, and NRC thoroughly reviewed the vendor's SAR and spent fuel specifications and made them appropriate items for public comment in this rulemaking. Commenters are therefore mistaken in saying the type of fuel to be stored in the VSC–24 cask is not known.

The kind of fuel to be loaded into and stored in the VSC–24 cask at Palisades, should Consumers Power proceed with use of the VSC–24 cask, must be acceptable fuel for storage in the cask and must meet the Certificate of Compliance specifications mentioned above for acceptable fuel which may be stored in the cask. In this regard, the Certificate of Compliance and SER have been clarified to specifically identify the fuel assembly classes acceptable for storage in the VSC–24 cask and to identify limits for physical dimensions, weight, burnup, decay power, and radiation source term for other fuels that may be stored in the VSC–24 cask. NRC regulations prohibit Consumers Power from using the VSC–24 cask in violation of the Certificate of Compliance spent fuel specifications, and Consumers Power must perform written evaluations before using the cask that verify all Certificate of Compliance conditions are met.

As is evident from this and other responses to public comments, this rulemaking provides NRC approval for storage of spent fuel in the VSC–24 at any site in accordance with the generic conditions and specifications in the Certificate of Compliance. As noted, it does not constitute a site-specific approval of the VSC–24 cask for use by Consumers Power at the Palisades plant.

72. *Comment.* A number of commenters requested that the comment period be extended principally citing the fact that NRC had released a large volume of highly technical material associated with the VSC–24 cask and that the 30 day reopening of the comment period which NRC had provided was not a sufficient time for review and comment on the material. Commenters also questioned why the information was not released earlier.

Response. NRC is not granting an additional extension to the comment period. First, the new information that was released is only an increment to that previously disclosed. In addition, most of the individual pages released are computer output printouts, the results of which were previously available in various documents made available at the beginning of the public comment period. In the **Federal Register** Notice (January 21, 1993; 58 FR 5301) announcing the comment period extension, NRC made clear the limited, incremental character of the technical information. The information of the cask vendor being disclosed at this time added detail to the information NRC previously placed in the Public Document Room at the outset of this rulemaking. It complements and supplements the design information already disclosed, providing further detail on such matters as the vendor's design calculations (often in the form of computer runs) and specific data inputs for models used by the vendor for such calculations, as well as cask design details such as reinforcing steel sizing and shield lid thickness. The information being disclosed therefore provides additional specificity for the public about the technical information that was considered by the NRC staff in preparing the principal NRC documents underlying this rulemaking. These documents include the proposed

Certificate of Compliance for the cask and the associated NRC staff SER and related EA, which were previously placed in the NRC Public Document Room at the outset of this proposed rulemaking.

Second, the initial public comment period opened on June 26, 1992, and closed on September 9, 1992. The comment period was reopened on January 21, 1993 and ended on February 22, 1993. In addition, at the public meeting held with the Michigan Attorney General on February 23, 1993, NRC assured that comments received within five working days after that meeting would be considered. Although the comment periods have closed, NRC has considered all comments received. Thus, the public comment period for this rule has effectively been almost nine months which the NRC believes constitutes more than sufficient time for this type of rulemaking.

73. *Comment.* One commenter questioned the validity of neglecting gamma dose at the nozzles.

Response. The referenced Case 5 calculates the dose rate as the MSB is lowered into the VCC during transfer. Dose is estimated at the point of maximum exposure, that is, at the outlet vent and the top of the VSC. Under these circumstances, the entire distribution of radioactive material in the spent fuel assemblies contributes to the dose in a transient fashion. The assumption that the source is directly from the active fuel which is aligned with the air exhaust is conservative, since it is the highest and is sustained for a short period of time. Other MSB/VCC relative positions during transfer would yield smaller dose rates. Calculations demonstrated that the dose rate from gamma-emitting radioactive material in the nozzle is three orders of magnitude less than the dose rate from the active fuel section.

74. *Comment.* A commenter noted that the geometry for dose calculations was based on an earlier design and not on the latest configuration.

Response. The changes in design referred to by the commenter were slight repositionings of the inlet air duct. The reorientation involves minor changes of both the horizontal and vertical orientation of the duct but does not change the circuitous path which contributes to radiation protection. In addition, the analysis does not take credit for the 0.5-inch steel liner of the duct which would offset any small changes in dose due to reorientation of the duct. Therefore, the design changes do not result in a significant change in the radiation dose rate calculations.

75. *Comment.* Commenters asked who would be responsible for oversight of fuel stored in casks after decommissioning of the reactor, shipment of the fuel off-site, and for decommissioning of the casks after stored fuel was shipped off-site.

Response. In accordance with 10 CFR 50.54(bb), all operating nuclear power reactor licensees are required, no later than 5 years prior to the expiration of the operating license, to provide the NRC, for review and approval, the licensee's program to manage and provide funding for the management of all irradiated fuel. NRC's review of the licensee's fuel management program will be undertaken as part of continued licensing under the provisions of part 50 and part 72 of the Commission's regulations.

With respect to decommissioning, the licensee may select a decommissioning alternative that will:

1. Allow storage of spent fuel in the spent fuel pool, in which case the licensee will be required to maintain its part 50 license;

2. Allow storage of fuel in a certified cask under the provisions of part 72 as long as the part 50 license remains in effect; or

3. Allow storage in an on-site independent spent fuel storage installation under the site-specific licensing provisions of part 72.

For any of the above alternatives, the licensee will be responsible for safe storage of spent fuel during the period of storage, for later shipment off-site for further storage or disposal and for final decommissioning of the reactor spent fuel pool, dry storage cask or ISFSI to a level permitting unrestricted release of the site and facility. The requirements for decommissioning are provided in 10 CFR part 72.30, which defines decommissioning planning, financial assurance and recordkeeping provisions.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, the Commission has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the Commission. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the Environmental Assessment and the Finding of No Significant Impact are available from Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0132.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72, which provided for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use these casks if: (1) They notify the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's Certificate of Compliance; and (3) the other conditions of the general license are met. As part of the 1990 rulemaking, four spent fuel storage casks were approved for use at reactor sites, and were listed in 10 CFR 72.214. That rulemaking envisioned that storage casks certified in the future could be routinely added to the listing in § 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR 72.230.

The alternative to this proposed action is to withhold certification of these new designs and to consider the granting of a site-specific license to each utility that applied for permission to use these new casks. This alternative would be more costly and time consuming because each site-specific license application would require a specific review. In addition, withholding certification would ignore the rulemaking procedures and criteria in 10 CFR part 72, subparts K and L, for the addition of new cask designs. Further, it is in conflict with the Congressional direction in sections 133 and 218 of the Nuclear Waste Policy Act of 1982 to establish procedures for the licensing of technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for

additional site reviews. Also, this alternative would exclude new vendor cask designs from the approved NRC list under subpart K without cause and would arbitrarily limit choice of cask designs available to power reactor licensees under the general license.

This final rulemaking will eliminate the above problems. Further, this action will have no adverse effect on the public health and safety.

The benefit of this final rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs which can be used under a general license. However, the newer cask designs may or may not have an advantage over the existing designs in that power reactor licensees may or may not prefer to use the newer casks. The new cask vendors with casks to be listed in § 72.214 benefit by being able to obtain NRC certificates once for a cask design which can then be used by many power reactor licensees under the general license. Vendors with cask designs already listed may be adversely impacted in that power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA requirements to establish a procedure and to consider applications to certify and list approved casks. The NRC also benefits because it will be able to certify a cask design based on one generic safety and environmental review, for use by multiple licensees. This final rulemaking has no significant identifiable impact or benefit on other government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for protection of the public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; thus, this action is recommended.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, will not have a significant economic impact on a substantial number of small entities. This amendment affects only licensees owning and operating nuclear power reactors and cask vendors. The owners of nuclear power plants do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and, thus, a backfit analysis is not required for this final rule, because this amendment does not involve any provisions which would impose backfits as defined in § 50.109(a)(1).

List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c)(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1007 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007
SAR Submitted by: Pacific Sierra Nuclear Associates
SAR Title: Safety Analysis Report for the Ventilated Storage Cask System
Docket Number: 72–1007
Certification Expiration Date: May 7, 2013.
Model Number: VSC–24

Dated at Rockville, MD, this 1st day of April 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 93–8112 Filed 4–6–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1993–14]

Transfers of Funds from State to Federal Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On January 8, 1993 the Commission published the text of revisions to its rules governing transfers of funds from state to federal campaigns. 58 FR 3474 (January 8, 1993). The new rule prohibits the transfer of funds from state to federal campaign committees. The Commission announces that this new regulation will be effective July 1, 1993. Further information is provided in the supplementary information that follows:

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Today, the Commission is announcing the effective date of its new rule prohibiting transfers of funds from state to federal campaigns. See 11 CFR 110.3(c)(6). Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before it is finally promulgated. These regulations were retransmitted to Congress on January 5, 1993. Thirty legislative days expired in both the House of

Representatives and the Senate on March 18, 1993.

The new rule at 11 CFR 110.3(d) prohibits transfers of funds or other assets from a candidate's campaign committee or account for any nonfederal election to his or her principal campaign committee or other authorized committee for a federal election. The rule applies to transfers from any nonfederal campaign committee, including campaign committees for any state or local office. This notice uses the terms "nonfederal" and "state" interchangeably, so that, where the term "state campaign committee" is used, it includes campaign committees for any state or local office.

The effective date for this new rule in July 1, 1993. This effective date reflects a change from the implementation plan outlined by the Commission in its January 8, 1993 Retransmission Notice. 58 FR 3474 (January 8, 1993). The Retransmission Notice indicated that the Commission expected to be able to make the rule effective on April 1, 1993. However, in early March, it became apparent that the legislative review period would not expire in time for the Commission to make the rule effective on April 1 as originally intended.

If the Commission were to follow its usual procedure of making the rule effective as soon as possible, the effective date would be sometime during the second or third week of April. This could have an adverse effect on special elections scheduled during that time period. Consequently, the Commission decided to revise its plan for implementing the rule. See 58 FR 14310 (March 17, 1993). Under the revised plan, the effective date for the rule is July 1, 1993.

The Retransmission Notice also indicated that the Announcement of Effective Date would explain how the Commission will apply the rule during the 1994 election cycle. The rule prohibits all transfers from state to federal committees after July 1, 1993. Campaign committees that transfer funds before July 1, 1993 and use those funds for special elections held before that date are not affected by the rule announced today. Those transfers are governed by the Commission's prior rule at 11 CFR 110.3(c)(6).

Campaign committees that transfer funds before July 1, 1993 in anticipation of an election held after that date have not violated the rule announced today. However, in order to prevent active commingling of federal and nonfederal campaign funds in the candidate's federal campaign account, any funds or assets transferred from a nonfederal committee that remain in the federal campaign account on July 1, 1993 must be removed from that account before July 31, 1993. Committees should use the identification method described in 11 CFR 110.3(c)(5)(ii) to determine which nonfederal funds are still in the campaign account as of July 1, 1993 and must be removed. Failure to remove those funds before July 31, 1993 is a violation of the rule announced today.

Announcement of Effective Date

11 CFR 110.3(d), as published at 58 FR 3474–76, is effective July 1, 1993.

Dated: April 2, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–8080 Filed 4–6–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 93–17]

Affordable Housing Program Maximum Subsidy Limitations

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Board) is amending its regulation governing the Affordable Housing Program (AHP) to revise the maximum subsidy requirements applicable to projects receiving subsidized advances or other assistance from the Federal Home Loan Banks (Banks) under the AHP.

DATES: This rule is effective April 7, 1993. Comments must be received by the Board on or before June 7, 1993.

ADDRESSES: Send comments to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Diane E. Dorius, Deputy Director, Affordable Housing & Community Investment Division, Housing Finance Directorate, (202) 408–2576; Sharon B. Like, Attorney-Advisor, Office of Legal & External Affairs—Legal Division, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Statutory Requirements

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) provides that, pursuant to regulations promulgated by the Board, each Bank shall establish an Affordable Housing Program (AHP) to subsidize the interest rate on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. 12 U.S.C. 1430(j)(1). The Act provides that the Board's regulations shall permit Bank members to use subsidized advances received from the Banks to: (A) Finance homeownership by families with incomes at or below 80 percent of the median income for the area; or (B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term. *Id.* section 1430(j)(2).

The Act further requires, among other things, that the Board's regulations establish uniform standards for subsidized advances under the AHP and subsidized lending by member institutions supported by such advances, including maximum subsidy limitations. *See id.* section 1430(j)(9)(F). In addition, the Act provides that the Board's regulations coordinate activities under the AHP with other federal or federally-subsidized affordable housing activities to the maximum extent possible. *Id.* sec. 1430(j)(9)(G).

B. Initial AHP Regulation—28 Percent Maximum Subsidy Rule

The Board's initial AHP regulation, *see* 12 CFR part 960 (55 FR 7479 (March 2, 1990)), implemented the statutory requirement for maximum subsidy limitations by limiting the subsidy on any single project to that amount necessary to reduce the target household's housing expenses to not less than 28 percent of gross monthly income. See 12 CFR 960.9 (1990). The 28 percent requirement was selected because it is a widely accepted "front ratio" in the mortgage qualification process. Because many of the households targeted by the AHP currently spend more than half of their income on housing, 28 percent was considered a significant reduction in housing expenditures, while still representing a fair and substantial portion of income being contributed toward the household's housing costs. (*See* 56 FR 8688, 8689 (March 1, 1991)).

C. Current AHP Regulation—20 Percent Maximum Subsidy Rule

The Board adopted a final AHP regulation (the current AHP regulation), which modified portions of the initial regulation, in 1991. See 12 CFR part 960

(1991) (56 FR 8688 (March 1, 1991)). Many commenters on the AHP regulation had urge that the maximum subsidy rule be changed because the requirement was too rigid and would hamper the AHP's effectiveness in serving the needs of very low-income households. See 56 FR 8689 (March 1, 1991). The final regulation revised the maximum subsidy rule by lowering the proportion of gross monthly income that must be spent on housing from 28 percent to 20 percent. See 12 CFR 960.9 (1991). Specifically, § 960.9 of the current regulation provides that:

(a) A Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing cost (excluding utilities) for targeted households in the targeted income group to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(b) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank. 12 CFR 960 9.

Section 960.13 of the current regulation implements the requirement for coordination with other affordable housing programs in section 10(j)(9)(G) of the Act, see 12 U.S.C. 1430(j)(9)(G), by providing that the Board and the Bank shall coordinate activities under this part, to the maximum extent possible, with other federal, state, or local agencies and non-profit organizations involved in affordable housing activities. 12 CFR 960.13.

II. Analysis of Interim Final Rule

A. Problems of Coordination With Other Housing Programs

Application of the 20 percent maximum subsidy requirement has made coordination of the use of the AHP with certain federal and state affordable housing programs difficult. In some cases, projects have been unable to accept funding from both the AHP and the other housing program because the housing payments that households would be required to make under the AHP maximum subsidy rule would exceed the maximum payment permitted to be charged under the other program.

For example, the Department of Housing and Urban Development's (HUD) Section 8 rental assistance program requires beneficiaries to pay as rent, including utility costs, the greater of 10 percent of gross monthly income, 30 percent of adjusted monthly income, or the portion of welfare payments that are specifically designated to meet a household's monthly housing costs. 42 U.S.C. 1437A(1). The Farmers Home Administration (FmHA) has similar monthly payment requirements under its migrant farm labor housing program. *id.* section 1486. Adjustments to income include deductions for every child in the family, certain medical expenses, child care costs, and other specific costs. *id.* section 1437a(5). In some cases, 20 percent of gross monthly income under the AHP is greater than 30 percent of adjusted income under the other programs. Those projects where the minimum 20 percent housing payment required under the AHP would exceed the maximum payment permissible under these other programs will have difficulty coordinating the various funding sources to make the minimum and maximum payment requirements of the various programs work.

B. Ineligibility of Low-Income Households for AHP Assistance

In addition, application of the 20 percent maximum subsidy rule under the AHP has resulted in a number of low- and very-low income households—the intended beneficiaries of the AHP—who would otherwise meet the AHP statutory criteria, becoming ineligible for AHP assistance because such households would fail to pay at least 20 percent of their gross monthly income for housing costs (excluding utility costs). For example, certain projects that would provide below-market interest rate loans or direct subsidies to very low-income elderly households who own their homes free of debt but need repair or rehabilitation funds are not eligible for AHP assistance under the current AHP regulation. Because the households make no mortgage payments, their monthly housing costs would not be at least 20 percent of their gross monthly income.

Similarly, applicants requesting direct subsidies for very low-income households for downpayment and closing cost assistance to purchase moderately-priced homes have been determined to be ineligible for AHP assistance. These projects are designed to limit the amount of the household's mortgage payments so that the household has available income remaining for the payment of food, clothing and employment-related expenses. However, because the household's monthly housing costs are intentionally limited, such costs would not be at least 20 percent of the household's gross monthly income, as required under the current AHP regulation.

A third area where ineligibility for AHP assistance has arisen involves households who invest their labor to reduce their housing costs. Households at the lower end of the economic scale often find it difficult to aggregate the capital for downpayment and closing costs. Ongoing housing expenses of homeownership are often burdensome for these households. To respond to these problems, programs have been created which allow people to use their time and energy participating in home building and rehabilitation activities to acquire equity or solve problems of habitability. These approaches are known as self-help or sweat equity programs. The consequence is to lower the capital requirement for downpayment and closing costs. More importantly, mortgage payments are lower, at times pushing housing costs below 20 percent of gross monthly income, thus causing the household to become ineligible for AHP assistance under the current maximum subsidy rule.

C. Conflicting Treatment of Utility Costs

By not recognizing utility expenses as part of a household's total housing expenses, the AHP's 20 percent rule makes it difficult for the AHP to be used with certain other federal and state housing programs and treats households whose rent includes all utilities more favorably than households who have to pay separately for utilities.

For example, as explained above, the HUD Section 8 program requires rental households to pay a portion of their income as rent, which includes utilities or a reasonable utility allowance. Since the AHP's 20 percent payment does not cover utility expenses in addition to rent, in areas of the country with high utility expenses, the AHP's 20 percent rule actually requires rental households to pay more than 30 percent of their income for their total shelter costs. This payment may be a higher percentage of income paid for rent and utilities than HUD permits under the Section 8 program.

In addition, some rental and multifamily homeownership projects that involve common ownership of some elements of the project include all or some utility costs in the regular rent or homeowner operating assessments or fees charged to the households. Other similar projects require households to pay all utilities separately from such rent or homeowner assessments or fees.

Since utility costs can actually comprise a large proportion of a family's total housing expense, in order to treat all AHP eligible households equitably, the estimated cost of utilities should be included as an allowable housing expense to which the 20 percent rule is applied.

D. Noncompliance With 20 Percent Rule and Recapture Requirements

Through their monitoring of AHP funded projects, some of the Banks have determined that a number of projects otherwise eligible under the AHP statutory criteria have used AHP funds to assist households that are paying less than 20 percent of their gross monthly income on rental or homeownership housing costs. Under § 960.8 of the current AHP regulation, improperly used subsidies must be recaptured and made available by the Bank for future projects. See 12 CFR 960.8.

From a practical standpoint, enforcement of the recapture provision of the AHP regulation for such improperly used subsidies would contravene a fundamental purpose of the AHP, which is to provide housing for low- and moderate-income households that meet the statutory income eligibility requirements. Ultimately, recapture of funds could result in the displacement of low-income residents from the AHP projects. Or, it could result in a substantial hardship by recapturing funds from non-profit housing developers and harming residents of modest means whom they might otherwise serve.

E. Interim Final Rule Amendments to Current Regulation and Request for Public Comments

The limitations of the 20 percent rule discussed above have led a number of AHP project sponsors, member institutions, Bank Affordable Housing Advisory Councils and Bank Community Investment Officers, as well as other housing advocates, to request that the Board modify or eliminate the maximum subsidy rule. However, the Board is subject to the statutory constraint that its regulation must establish maximum subsidy limitations. *See* 12 U.S.C. 1430(j)(9)(F). The 20 percent rule was adopted to comply with this statutory requirement.

Currently, the Board is in the process of reviewing the AHP regulation and plans to offer further clarification of its provisions at a later date. However, the Board has determined that the difficulties caused by the 20 percent rule warrant more immediate attention. Accordingly, the Board is publishing this interim final rule to amend the 20 percent rule.

In addition, the Board is requesting comments from the public on alternative ways in which it can meet the statutory requirement for maximum subsidy limitations. The Board recognizes that, in addition to a minimum housing cost-to-income ratio requirement set forth in the interim final rule, there may be other alternative solutions that would ensure that a project is not over-subsidized.

The amendments to the 20 percent rule adopted in this interim final rule are discussed in more detail below.

1. Section 960.9(a)—General Rule

Section 960.9(a)(1) of the interim final rule revises the current AHP regulation to provide that, instead of applying to all AHP projects, the 20 percent maximum subsidy rule shall apply as a general rule, subject to specific exceptions set forth in new § 960.9(b) of the interim final rule.

The current regulation does not define monthly housing costs paid by homeowner or rental households, and excludes utility expenses from such costs. For the reasons discussed in II.A.–D. above, the Board has determined that reasonable estimates of utility costs should be counted toward monthly housing costs, whether those costs are included in rental payments or homeowner or rent assessments, or are paid separately. New § 960.9(a)(2) of the interim final rule defines monthly housing costs as:

(i)(A) For homeowner households, mortgage principal and interest payments, real property taxes, homeowner's insurance, and a reasonable estimate of utility costs excluding telephone service; or

(B) For rental households, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service; and

(ii) For households in condominium, cooperative, mutual housing or other projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit.

For this purpose, reasonable estimates of utility costs may be the utility allowances approved for any federal, state or local government housing subsidy program used in the AHP project. For example, reasonable utility cost estimates may be the utility allowances approved by HUD for rental units of similar type and size, such as the utility allowances under: the Section 8 rental assistance program, see 42 U.S.C. 1437(f), 24 CFR 813.102; the public housing program, see 42 U.S.C. 1437(d), 24 CFR 965.470; or the section 236 mortgage insurance program, see 12 U.S.C. 1715z–1f(1), 24 CFR 236.2. Utility rate information or average utility consumption data by unit type and size obtained from a local utility supplier, as well as actual utility costs for occupied projects, also may be used to estimate reasonable utility costs.

New § 960.9(a)(3) of the interim final rule provides that a household is only required to meet the 20 percent requirement at the time it initially purchases or occupies a unit. This limitation, which was discussed in the preamble to the current AHP regulation, see 56 FR 8688, 8693 (March 1, 1991), was originally applied only to homeownership projects, and is now codified and extended to rental projects in the interim final rule.

2. New Section 960.9(b)—Alternative Maximum Subsidy Requirements

New § 960.9(b) of the interim final rule sets forth several alternative maximum subsidy requirements to the general 20 percent maximum subsidy rule, which are intended to address the problems discussed in II.A.–D. above.

New § 960.9(b)(1) of the interim final rule provides that the 20 percent rule shall not apply where a rental housing project receiving AHP funding also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the rental household meets the housing payment requirements of the other program. This provision responds to the problems of coordination with other housing programs discussed in II.A. and C. above.

New § 960.9(b)(2) of the interim final rule provides that the 20 percent rule shall not apply where the total AHP funding ultimately benefiting a qualifying very low-income homeowner household already owning and occupying his or her home is $10,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and where the AHP funds are used to rehabilitate the homeowner's dwelling unit. This provision responds to the problems of ineligibility for AHP assistance discussed in II.B. above. The $10,000 cap per very low-income owner-

occupying household was chosen to assure that the homeowner beneficiaries of the AHP could qualify for assistance to undertake rehabilitation of major components of their home even if they had reduced their monthly housing expense by paying off their mortgage and had no debt.

New § 960.9(b)(3) of the interim final rule provides that for all other qualifying homeowners that are not very low income, the 20 percent rule shall not apply where the total AHP funding ultimately benefiting the qualifying homeowner household at a particular project is $5,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics). This provision responds to the problems of ineligibility for AHP assistance discussed in II.B. above. The $5,000 cap per household was chosen to assure that the homeowner beneficiaries of the AHP could qualify for assistance to undertake rehabilitation of their homes even if they had reduced their monthly housing expense by paying off their mortgage and had no debt.

In addition, the maximum subsidy amount assures that households could qualify for downpayment and closing cost assistance and maintain modest total housing costs. The competitive nature of the AHP has so far helped to control the per household AHP cost at an average of $3,624, and it is fully expected that the competitive pressures will help maintain reasonable average per household AHP costs in the future.

The two amounts of maximum subsidy assistance were chosen to differentiate between two categories of homeowners. The higher $10,000 amount responds to the special nature of the need for significant rehabilitation of very low-income, owner-occupied housing. Often, such homeowners have little or no debt on their property, usually due to their longevity in the property. At the same time, due to a lack of financial resources, these homeowners have deferred the maintenance, improvement or replacement of major components of the dwelling unit. To prevent further deterioration leading to inhabitability or loss of the dwelling unit, rehabilitation must be undertaken. In these cases, it is not unusual for the need to include a new roof, structural repairs and weatherization. For these reasons, a higher maximum subsidy amount was established for this category of homeowner.

New § 960.9(b)(4) of the interim final rule provides that the 20 percent rule shall not apply where AHP funding is received by a household which is participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor, working cooperatively with others, to construct or rehabilitate the housing in which the household resides or other program participants live. This provision responds to the problems of AHP assistance ineligibility discussed in II.B. above. Households would qualify for this exception if they are performing construction or rehabilitation activity that is valued at $2,000 or more per household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and the program involves supervision by skilled builders or rehabilitators of the work performed.

3. Section 960.9(c)

Section 960.9(c) of the interim final rule is a redesignation of § 960.9(b) in the current regulation, and retains the language of this former provision.

III. Notice and Public Participation

A. Administrative Procedure Act

For the reasons further discussed below, the Board is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, to publish a general notice of proposed rulemaking for this interim final rule. However, the Board considers comments from the public helpful in formulating clear and effective regulations. Accordingly, the Board is requesting public comment on this interim final rule. The Board will consider any public comments received on this interim final rule in developing a final rule on maximum subsidy limitations.

Publication of notice of a proposed rulemaking is not required because the Board finds that there is good cause that notice and comment procedure is contrary to the public interest in this instance. *See id.* section 553(b)(B). As discussed in more detail in II.A.–D. above, application of the 20 percent maximum subsidy rule in the current AHP regulation has caused significant operational problems for the AHP. Specifically, the current maximum subsidy rule has resulted in difficulties of coordination with certain other federal and state affordable housing programs whose maximum household payment requirements conflict with the AHP 20 percent payment requirement. The 20 percent rule also has resulted in households who are the AHP's intended beneficiaries and would otherwise meet the Act's AHP criteria but for the 20 percent rule, becoming ineligible for AHP assistance. In addition, there has been an inequity in accounting for utility costs between the AHP and other assistance programs used with AHP projects, which has had an adverse effect on the intended beneficiaries of the AHP.

Accordingly, the Board is issuing this interim final rule in order to remedy these problems immediately so that the AHP will operate more effectively and reach the ultimate beneficiaries it is intended to serve. Compliance with the public procedure requirements of APA section 553 is contrary to the public interest because it would hamper the Board's ability to rectify these problems in a timely fashion so that the AHP can continue to serve its intended beneficiaries.

Implementation of the interim final rule without prior public notice will not create a hardship for those households and projects subject to the rule because, as discussed in more detail in II.E. above, the new rule relieves some of the restrictions of the current 20 percent rule.

The Board therefore finds good cause that compliance with notice and comment procedures in adoption of this interim final rule would be contrary to the public interest. *See id.*

B. Effective Date

The APA provides generally that a substantive rule shall be published by an agency not less than 30 days before its effective date, except (i) a substantive rule which grants or recognizes an exemption or relieves a restriction, or (ii) as otherwise provided by the agency for good cause found and published with the rule. *See id.* section 553(d)(1), (3).

For the reasons stated in III.A. above, the Board finds that under APA section 553(d)(1), *id.* section 553(d)(1), this interim final rule may be effective upon publication without a 30-day delay in the effective date because the rule relieves a restriction. In addition, for the reasons stated in III.A. above, the Board finds that under APA section 553(d)(3), *id.* section 553(d)(3), there is good cause that this interim final rule be effective upon publication.

IV. Regulatory Flexibility Act

The Board is not required by the Regulatory Flexibility Act (Reg Flex Act), 5 U.S.C. 601 *et seq.*, to prepare a regulatory flexibility analysis for this interim final rule. The Reg Flex Act requires that a regulatory flexibility analysis be prepared whenever an agency promulgates a proposed or final rule after being required by APA section

553, *id.* sec. 553, to publish a general notice of proposed rulemaking. See 5 U.S.C. 603(a), 604(a). The Board is not required to publish a general notice of proposed rulemaking for this interim final rule because the Board has found good cause that notice and comment is contrary to the public interest in the adoption of this interim final rule. *See id.* sec. 553(b)(B), and III.A. above. Accordingly, the Board is not required to prepare such an analysis for this interim final rule.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX, subchapter E, part 960, Code of Federal Regulations, is hereby amended as follows:

SUBCHAPTER E—AFFORDABLE HOUSING

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

2. Section 960.9 is revised to read as follows:

§ 960.9 Maximum subsidy.

(a) *General.* (1) Except as provided in paragraph (b) of this section, a Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing costs (as defined in paragraph (a)(2) of this section) for targeted households in the targeted income group of 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(2) For purposes of paragraph (a)(1) of this section, monthly housing costs are defined as:

(i)(A) For homeowner households, mortgage principal and interest payments, real property taxes, homeowners' insurance, and a reasonable estimate of utility costs excluding telephone service; or

(B) For rental households, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service; and

(ii) For households in condominium, cooperative, mutual housing or other projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit.

(3) A household subject to the 20 percent requirement set forth in paragraph (a)(1) of this section is only required to meet such requirement at the time it initially purchases or occupies a unit.

(b) *Alternative maximum subsidy requirements.* (1) The requirements in paragraph (a) of this section shall not apply where a Bank provides subsidized advances or other subsidized assistance to a member for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the rental household meets the housing payment requirements of the other program.

(2) The requirements in paragraph (a) of this section shall not apply where the total amount of Bank subsidized advances or other subsidized assistance ultimately benefiting a qualifying very low-income homeowner household who already owns and occupies his or her dwelling unit is $10,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and where such AHP assistance is used to rehabilitate the homeowner's dwelling unit.

(3) The requirements in paragraph (a) of this section shall not apply where the total amount of Bank subsidized advances or other subsidized assistance ultimately benefiting a qualifying homeowner household that is not very low income at a particular project is $5,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics).

(4) The requirements in paragraph (a) of this section shall not apply where a Bank provides subsidized advances or other subsidized assistance ultimately benefiting a qualifying household which is participating in a self-help, sweat equity, or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of $2,000 per qualifying household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), working cooperatively with others, to construct or rehabilitate the housing in which the household resides or other program participants live, and that involves supervision by skilled builders or rehabilitators of the work performed.

(c) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

By the Federal Housing Finance Board

Dated: March 26, 1993.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–8055 Filed 4–6–93; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–202–AD; Amendment 39–8505; AD 93–04–03]

Airworthiness Directives; General Dynamics Convair Model 340, 440, and C–131B through C–131H (Military) Series Airplanes, Including Those Modified for Turbo-Propeller Power

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the applicability statement for the above-captioned Airworthiness Directive that was published in the **Federal Register** on March 15, 1993 (58 FR 13701). This correction adds clarifying information to the applicability of the rule. In all other respects, the original document is correct.

DATES: Effective April 19, 1993.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of April 19, 1993 (58 FR 13701, March 15, 1993).

SUPPLEMENTARY INFORMATION: Final Rule Airworthiness Directive (AD) 93–04–03, amendment 39–8505, applicable to all General Dynamics Convair Model 340, 440, and C–131B through C–131H (military) series airplanes, was published in the **Federal Register** on March 15, 1993 (58 FR 13701). That AD requires an inspection of both horizontal stabilizers and vertical stabilizer attach fittings, and rework of the fittings, if necessary; as well as a

hardness test of the stabilizer taper pins and split sleeve bushings, and replacement of these items, if necessary.

The applicability of AD 93–04–03 indicated that it applied to "all" models of the subject airplanes. Use of the phrase "all models" implies that the applicability extends to all derivatives of those models as well; in the case of AD 93–04–03, it extends to models that have been modified for turbo-propeller power. Although the applicability statement in the notice that preceded the final rule included wording specifically referring to the inclusion of turbo-propeller-powered models, the applicability of the final rule did not include this information.

To ensure that there is no confusion on this point among affected operators, this document revises the applicability statement of AD 93–04–03 to include this informational material. The applicability of the AD now reads as follows:

"Applicability: Model 340, 440, and C–131B through C–131H (military) series airplanes, all serial numbers, certificated in any category, including those modified for turbo-propeller power."

Since none of the regulatory information has been changed, the entire final rule is not being republished.

Issued in Renton, Washington, on April 1, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8060 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has long established and enforced under its rulemaking authority speculative position limits for futures contracts on various agricultural commodities. On April 13, 1992, the Commission proposed to amend these rules.

Based upon its consideration of the comments received and upon its independent analysis, the Commission is promulgating interim final rules amending Federal Speculative position limits. These interim amendments, as promulgated herein, generally maintain the current speculative position limit levels for the delivery months and increase limit levels for the deferred months, providing differing levels for single month and all-months-combined limits. Moreover, as proposed, speculative position limits for both futures and options thereon are being combined into a single limit. In addition, the interim final rules continue to provide an exemption for spread positions within the same crop-year at the level proposed by the Commission. In this regard, the Commission, for further clarification, has added a definition of "crop year" which enumerates the first new crop delivery month for each commodity on which there are Federal speculative position limits.

The interim final rules adopted by the Commission differ from the proposed rules by increasing the position limit levels to less than originally proposed and by phasing-in the implementation of these increases in two steps; the first to take effect in sixty days and the second to take effect as of March 31, 1994. The originally-proposed speculative position limit levels remain pending. The Commission is reopening the comment period on the originally proposed levels elsewhere in this issue of the **Federal Register**. The Commission will make a final determination on these levels after having had an opportunity to observe the impact of these two interim, phased increases.

EFFECTIVE DATE: The interim final rules will become effective on June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Speculative position limits have been a tool for the regulation of the futures markets for over a half-century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations. See H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935); See also, H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986).

In this regard, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1), states that:

> [e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, section 4a(1) of the Act provides the Commission with the authority to:

> fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

B. Regulatory Framework

Currently, the Commission directly administers speculative position limits on futures contracts for most of the domestic agricultural commodities enumerated in section 2(a)(1) of the Act. *See*, 17 C.F.R. Part 150.[1] Since its creation, the Commission periodically has reviewed its policies pertaining to speculative position limits.[2]

In 1987, the Commission completely revised Federal speculative position limits. 52 FR 38914 (October 20, 1987). As part of these revisions, the Commission added Federal speculative

[1] Commission Rule 1.61, 17 CFR 1.61, requires that, absent an exemption, exchanges adopt and enforce speculative position limits for all contract markets which are not subject to Commission-set limits. In addition, Commission Rule 1.61 permits exchanges to adopt and enforce their own speculative position limits for those contracts which have Federal speculative position limits, as long as the exchange limits are not higher than the Commission's.

[2] Initially, for example, the Commission redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and in 1979 issued its Statement of Policy On Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979).

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests (52 FR 27195 (July 20, 1987)), and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission Rule 150.3(a)(4), an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities which use independent account controllers. The Commission subsequently amended Commission Rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

Most recently, the Commission solicited public comment on, and subsequently approved, an exchange request for an exemption for futures and option contracts on certain financial instruments from the Commission Rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

position limits for soybean meal and soybean oil, which previously were not included because of an historical anomaly. The Commission also amended the structure and levels of the Federal speculative position limits. It restructured speculative position limits by establishing them by contract market, rather than generically by commodity. Although the Commission proposed generally to increase limit levels progressively from the spot month limit, which were not proposed to be increased, to a higher individual-month limit with a yet-higher all-futures combined limit, the rules as promulgated generally did not provide for such stepped increases. Instead, the rules as amended generally maintained the existing structure of a uniform spot and single month level with an increase only for the all-months-combined level.[3]

C. History of this Rulemaking

In 1991, the Commission received four petitions for rulemaking, the first from the Chicago Board of Trade ("CBT"), the second from the New York Cotton Exchange ("NYCE"), the third from the Kansas City Board of Trade ("KCBT") and the fourth from the Minneapolis Grain Exchange ("MGE"). These petitions requested that the Commission amend its rules to increase Federal speculative limits in the CBT corn, wheat, oats, soybeans and soybean oil and meal futures contracts, in the NYCE's cotton No. 2 futures contract, and in the KCBT's and MGE's wheat futures contracts. The CBT also requested that the Commission expand the current exemption for spread positions between months within the same crop-year to an exemption for spread positions between any months, outside of the spot month, regardless of the crop year and to increase the overall level of this exemption.[4] The CBT separately sought Commission approval for increases to the exchange-set speculative position limits on these commodities.[5]

The CBT and NYCE petitions were discussed at the April 22, 1991, meeting of the Commission's Agricultural Advisory Committee. On August 2, 1991, the Commission published in the **Federal Register** notice of the Petitions for Rulemaking of the CBT and the NYCE and requested public comment on them.[6] 56 FR 37049. This notice requested public comment on six issues, including the general issues of the relative costs and benefits of increasing the limits, the appropriateness of the current and requested speculative position limits, and any adverse effects which could be anticipated from increasing the limits. Thirty-six comments were filed with the Commission in response to this request.

Subsequently, on April 13, 1992, the Commission proposed several revisions to the structure of Federal speculative position limits. 57 FR 12766. The comment period on the proposed amendments, which originally expired on June 12, 1992, was reopened and extended until August 3, 1992. 57 FR 27202 (June 18, 1992).

The Commission proposed three revisions to Federal speculative position limits. First, the Commission proposed to unify speculative position limits for both futures and options thereon, reasoning that, because price movements in the two markets are highly related, the unified system more readily reflects the economic reality of a position in its totality. Moreover, unified speculative limits provide the trader with greater flexibility. Further, traders should find such a unified speculative position limit easier to use and to understand. Finally, as a consequence of the simpler structure, unified speculative position limits would be easier to administer, resulting in more accurate and timely market surveillance. These benefits would accrue without imposing additional regulatory burdens on traders. See, 57 FR 12769.

Secondly, the Commission proposed to maintain spot-month limits at their current levels and to expand the levels for the single-month and all-months limits by amounts consistent with the increased level, at the time of the proposal, of each market's combined open interest in futures and delta-adjusted options. In particular, the Commission proposed to establish such limits by placing greater reliance on the percentage of the average open interest which the limit represents. Accordingly, the Commission proposed to set the levels of speculative position limits at ten percent of the average combined futures and delta-adjusted option open interest, up to open interest levels of 25,000 contracts. Thereafter, speculative position limit levels would increase at a marginal rate of 2.5 percent. In addition, the Commission proposed a

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[3] Not all Federal limits were promulgated with an identical spot month and single month limit. Generally, in promulgating these limits, the Commission noted that the applicable data supported a range of possible solutions. Those commenting on the grain and soybean complex limits expressed a strong preference for retaining the existing structure for limits, in part, in an attempt to promote greater liquidity in the back months. As the Commission noted:

"[t]he 'telescoping feature of this structure-raising the single month level from the spot month level concerned many commenters . . . . In general, the commenting exchanges objected on the grounds that 'telescoping' could be conducive to unnecessary and artificial price aberrations.

"In contrast, those commenting on the proposed speculative position limits in cotton did not object to the higher single month limit level." 52 FR 38916.

In light of the strong preferences expressed by the commenters, at that time, and the range of acceptable solutions which the data supported, the Commission acceded to the views of the commenters, adopting final rules for the grains and soybean complex which did not have the stepped increase between the spot month limit and the single month limit. However, the Commission's experience monitoring both Federal and exchange-set limits with stepped increases, as it expected, has been favorable, with none of the adverse consequences hypothesized by the opposing commenters occurring.

[4] Specifically, the CBT and NYCE Petitions requested that the speculative position limits for these commodities be raised in the single month and all-months categories. The petitions, with the exception of CBT oats, did not ask that the spot month limits be changed. The CBT and NYCE supported their Petitions for increased speculative position limits based on the growth in volume of trading and on an increased frequency of large speculative positions near single month limits in individual futures months in these commodities since the limits were last amended in 1987. Both the KCBT's request of an increase consistent with the increases requested by the CBT, and the MGE's request of an increase in the all-months limit from six million bushels to nine million bushels were based upon concerns of competitive parity.

[5] Separately, the CBT has proposed to amend its speculative position limits for futures contracts consistent with the amended limits requested in its Petition for Rulemaking, and separately, to double its limits for options on futures contracts in the above-referenced commodities. Those exchange-set option speculative position limits currently have no corresponding Federal limits. CBT speculative limits for options establish separate levels for outright positions in each type or quadrant of option—long puts, short puts, long calls and short calls—as well as various spread positions between options and futures. Currently the levels of these outright limits are 600 futures-equivalent contracts in corn, wheat and soybeans, and 720 in soybean meal, 540 in soybean oil and 400 in oats. A futures-equivalent option position is one in which the absolute number of options is adjusted to reflect the option's risk factor using the delta coefficient. This delta coefficient, which lies between −1 and 1, indicates the expected relationship between changes in the option premium and changes in the price of the underlying future.

The KCBT also proposed to increase its outright position limits for each quadrant of wheat options from 600 to 1200 future-equivalent contracts and to increase the limits for certain types of futures/option and option/option spread positions. The NYCE proposed to increase its limits applicable to certain option/option and future/option spread positions in its cotton No. 2 contracts.

These proposed amendments to the various exchanges' futures and option speculative position limit rules are currently under advisement pending completion by the Commission of this rulemaking proceeding. *See*, Section 4a(e) of the Act.

[6] The Petitions of the KCBT and the MGE were submitted to the Commission following publication in the **Federal Register** of the request for public comment.

minimum speculative position limit level of 1,000 contracts. See, 57 FR 12770.

These limit levels are as follows:

CURRENT AND PROPOSED FEDERAL SPECULATIVE POSITION LIMIT FOR SELECTED NON-DORMANT CONTRACTS IN CONTRACTS OR CONTRACT EQUIVALENTS[1]

	Current futures limits (Net long or short)			Current option limits by quadrant[3] (Net long or short)	Proposed unified futures/option limits (Net long or short)		
	Spot month	Single month	All months	All months	Spot month	Single month[2]	All months
CBT Corn	600	600	2400	600	600	5500	9000
CBT Soybeans	600	600	2400	600	600	3500	5500
CBT Wheat	600	600	1800	600	600	3000	4000
CBT Soybean oil	540	540	1620	540	540	3000	4000
CBT Soybean meal	720	720	2160	720	720	3000	4000
CBT Oats	400	400	400	400	600	1000	1500
KCBT Hard winter wheat	600	600	1800	600	600	2000	3000
MGE Spring wheat	600	600	1200	600	600	1000	1500
NYCE Cotton No. 2	300	450	900	300	300	2500	3500
MCE Corn	600	600	600	600	600	600	600
MCE Wheat	600	600	600	600	600	600	600
MCE Soybeans	600	600	600	600	600	600	600

[1] Unlike current Commission Rule 150.2, which establishes limit levels in terms of bushels, bales, tons, or pounds of the commodity, this table expresses all limits in terms of futures contract equivalents. The symbol "CBT" means Chicago Board of Trade, "KCBT" means Kansas City Board of Trade, "MGE" means Minneapolis Grain Exchange, "NYCE" means New York Cotton Exchange, and "MCE" means MidAmerica Commodity Exchange.

In the case of commodities traded on the MCE, the number of contracts are expressed in terms equivalent to the larger size delivery units which are traded on the CBT. In addition pursuant to exchange rules, the spot month limit noted for MCE soybean meal decreases to lower levels as the delivery month progresses.

Dormant or otherwise non-extant contracts which are not set out in this table include NYCE cotton #1; KCBT gulf wheat, soybeans, and corn; MGE durum wheat, corn, oats, and soybeans; and Chicago Rice and Cotton Exchange ("CRCE") wheat, corn, and cotton. The limits for these contracts are proposed to be deleted. In addition, MGE white wheat, MCE soybean meal, and MCE oats are not shown in this table, but are included in the proposed regulations.

[2] The single month futures limit is increased under current rules to two times the amount to the extent that excess is part of a spread between months of the same future within the same crop year, and excluding the spot month. However, the single month limit is proposed to be increased to the all months level provided that the excess is a futures/futures, option/futures or options/option spread relating to the option and underlying future, within the same crop year and excluding the spot month.

In addition, under current exchange rules, higher single month future limits are in effect for positions representing delta-neutral spreads between futures and options, pursuant to the exemption stated in Paragraph 150.3.

[3] Exchange-set speculative limits are specified by individual type or quadrant (i.e., long calls, short calls, long puts and short puts) and apply for each quadrant to all months. Higher limits are specified for delta neutral option/option and option/future spread positions within the same crop year.

In proposing these limits, the Commission noted that:

> its large trader data indicates that limits based on open interest as described above should accommodate the normal course of speculative positions in agricultural markets. The levels derived using this method of analysis generally are consistent with the largest exchange-set speculative limits approved by the Commission under Rule 1.61 for contract markets in agricultural commodities at corresponding levels of open interest. However, the Commission, based on its surveillance experience and monitoring of exchange and Federal speculative position limits, is satisfied that the levels indicated by this methodology, although near the outer bounds of the levels which have been approved previously, nevertheless will achieve the prophylactic intent of Section 4(a) of the Act and Commission Rule 1.61, thereunder. (Footnote omitted).

57 FR 12771.

Finally, the Commission proposed to amend the intra-crop year spread exemption by revising the exemption's limit levels to equal the all-months level, as petitioned. The Commission did not propose to extend this exemption to positions which are spread between two crop-years based upon the potential for the separate legs of an inter-crop year spread to act more independently and the greatly lessened need for any specific inter-month spread in light of the proposed increases to the speculative position limits. 57 FR 12772.

D. Comments Received

Sixty-three comments were received by the Commission. These commenters included 3 futures exchanges; a broad-based futures industry association, 4 futures commission merchants; 26 commodity pool operators, commodity trading advisors or associations of such entities; 20 groups or firms representing agricultural interests and 8 individual agricultural producers and one exchange member. In addition, the proposed rules were a topic of discussion at the October 19, 1992 meeting of the Commission's Agricultural Advisory Committee.

By and large, commodity pool operators, commodity trading advisors, and futures commission merchants strongly favored the amendments. Some agricultural interests, including agricultural processors and their representatives and participants in the cotton industry, either supported or recommended specific changes to particular aspects of the proposals. Similarly, the exchanges, and others, opposed particular aspects of the proposed rules. Most agricultural producers and their representative

organizations strongly opposed any increase to these speculative position limits.

Many of the commodity pool operators and commodity trading advisors opined that the current limits were a significant constraint on further development of these futures and options markets. They argued that increasing speculative position limits will lead to greater liquidity in the markets, increasing their over-all efficiency. The existence of the limits, in their view, placed these markets at a competitive disadvantage to other regulated and non-regulated markets, foreign and domestic, which do not have such limits. Moreover, these comments suggested that they were unaware of problems in foreign markets which do not impose speculative position limits.

These commenters also pointed to the growth in the futures and the underlying cash markets as supporting increases to speculative position limits. They argued that in light of the growth in the futures and options markets since 1987, the proposed absolute increases to speculative position limits were not really increases, but merely adjustments to maintain the relative parity of the limits to open interest in the markets.

Finally, commodity pool operators and commodity trading advisors commented that fears of increased price volatility as a result of their trading were unfounded. They noted that any market user lacks incentive to trade positions which are beyond the market's capacity. As one commenter stated:

> no creditable academic research supports such perceptions that an increase in limits would entail potential for price volatility or aberrations. Moreover, commodity trading advisors and pool operators clearly have no incentive to take positions in excess of a market's capacity to provide liquidity. Taking such positions is counter to the interests of a CTA and its clients because they would be the primary victims of any market impact caused by the initiation of large illiquid positions. Other market participants would ordinarily be able to benefit at the expense of the CTA and its clients in these circumstances. The consequences of such trading would be devastating to CTAs because they are compensated in large measure by performance-related fees and are often evaluated on the basis of past performance records * * *.

Not all of those supporting the proposed rules were commodity pool operators or trading advisors. Among those supporting increases to speculative position limits were several producer organizations and a merchant involved in the cotton trade. These commenters stated the view that the increase to speculative position limits would add liquidity, thereby enhancing price discovery to the commercials. As one of these commenters stated:

> A cotton merchant's business relies heavily on the ability to hedge. To do this efficiently, a liquid market is necessary and this liquidity comes from the speculative base. Increased speculative participation will facilitate and increase hedging opportunities and increase the efficiency of the market.
>
> As a futures market participant, I realize that the commodity futures industry has changed over the last decade. The individual investor has now joined the commodity pools. In order for these pools to continue to trade cotton, they need increased position limits. The cotton futures market must evolve with the futures market industry and speculative limit increases are necessary to retain the vital role speculators play in the marketplace.

Other agricultural interests favored increasing speculative position limits, but not as proposed by the Commission. One commenter, an association of grain and oilseed merchandisers and processors, stated that it:

> Generally supports the concept of raising the federal speculative position limits on grains and oilseeds contracts. We believe that an increase in these limits may provide needed liquidity, facilitating the management of risk for both long and short hedgers.

Nevertheless, this commenter opined that it was concerned:

> about how these limit increases will affect those contracts with low average daily volume such as the oats and soymeal contracts where excessive speculative activity could undermine the process of price discovery. These contracts are examples of the problems arising when limits are based solely on open interest with no consideration given to average daily volume.

In contrast, most agricultural producers and their representative organizations, opposed any increase to speculative position limits. One commenter, typical of many, opined that in "our opinion * * * raising the limits will increase the volatility of our cash grain markets." Several of these commenters also opposed short selling and any trading by speculators. Many of these commenters also opined that more data and study were necessary to demonstrate that these increases are necessary and appropriate, and to understand the potential impact on price volatility, if any, from increases to speculative position limits. Another commenter, expressing these reservations, stated that—

> volatility not related to the underlying factors such as supply, demand, crop condition, and weather, but rather to computerized charts and arcane systems is not a virtue. Of paramount importance for this industry is a wheat futures and options market large enough and the individual traders in the market small enough that no block trade can skew the market away from its original purpose of price discovery and risk transfer.
>
> The concept of grouping speculators together in pools or funds under a unified management seems to confound that original purpose. Power placed in the hands of a few entities provides opportunities that programs may be designed to manipulate the wheat markets in ways which reduce hedging effectiveness.

Generally, the exchanges opposed particular aspects of the proposals. The CBT, for example, stated that it supported the "general direction" of the proposed changes, but objected to the Commission's proposal, specifically, on the basis that the "proposed unified futures and options limits in all months combined result in a lower overall exposure on one side of the market than the Board of Trade's proposed separate futures and options limits would allow." Several other commenters agreed with this view, suggesting that the combined futures/option limit resulted in a lower over-all limit than separate limits would permit.

The CBT further suggested that the Commission should delete Federal limits altogether, and should not bring limits on options under Federal limits. In addition, the CBT objected that the unified limit, when applied to the MidAmerica Commodity Exchange "result[s] in a 67 percent decrease in total exposure in a single month for MCE Corn." Finally, the CBT "strongly opposed the Commission's continued prohibition on th[e] exemption for inter-crop year spreads," stating that, "in the majority of cases, inter-crop year spreads have a predictable relationship."

The KCBT and MGE strongly opposed basing speculative position limits on the open interest in their markets. Both of these exchanges commented that wheat contracts traded on the CBT, KCBT, and MGE traditionally had the same speculative position limits. Both the KCBT and MGE objected to the disparity among the speculative position limits of the various wheat contract markets which was proposed by the Commission. Both exchanges argued that disparate speculative position limits would put the smaller exchanges at an undue competitive disadvantage.

Both commenters maintained that despite the disparity in the level of average open interest among the three exchanges, other factors supported levels of speculative position limits for the smaller exchanges equivalent to the levels set for similar contracts traded on the CBT. Accordingly, the KCBT stated that:

[t]he chief consideration behind expanded limits for a futures contract with physical delivery is the breadth and liquidity of the underlying cash market * * * [T]he fundamentals of the cash market underlying the Kansas City contract are more supportive of the increased limits than are the relevant statistics for the Chicago contract. This means that if increased limits are approved for Chicago, there is no regulatory reason why the same limits should not be approved for Kansas City.

In addition to its reliance upon a broader and deeper underlying cash market than that underlying the CBT wheat contract, the MGE also opposed disparate treatment among the exchanges on the basis that there is no adverse regulatory history regarding trading on the MGE at current speculative position limits. Accordingly, the MGE argued that:

[t]here could be no more telling refutation of the thinking underlying this proposal than the fact that the MGE has not suffered even a hint of difficulty as a result of its current speculative position limits. Absent any indication of trouble in its market and lacking any indication that the proposal would solve any of these non-existent problems, a proposal to reduce MGE's position limits appears precipitate and arbitrary. This is particularly so as the MGE's ability to monitor the positions of its traders and to deter manipulation has only improved since the current position limits were put in place. [Emphasis omitted].

Many commenters supported the Commission's proposal in general, but opposed particular aspects of it. However, commenters were also divided in their views on these specific issues. For example, an association representing agricultural processors and a commodity pool operator/commodity trading advisor agreed with the CBT in opposing unified futures and options limits because of their "different risk profiles." The commodity pool operator also noted unfavorably that the Commission's unified limits resulted in lower over-all limits than the CBT proposed separate limits.

Other commenters, however, strongly supported the Commission's proposed unification of futures and option limits. One commenter, an option trader, favored the Commission's proposal, stating that it—

will help to solve an ongoing problem seen in options on futures trading which is the relative low level of position authority granted to the "delta-neutral" trader. Your approach will rationalize the process by allowing sufficient limit authority to the option trader thereby removing the costly necessity of continually reconfiguring positions by "conversion" and "reverse conversion" spreads in an attempt to remain within the arcane "quadrant" regulations.

The business of the option trader is mainly the arbitrage of large risk positions into risk neutral positions through offsets in options and futures. My experience shows that these "neutral" spreads are kept in inventory for a considerable length of time. This is due to the propensity of speculators and commercials to be net buyers of calls and net sellers of puts. The resulting positions are often not unwound until option expiration. It is not unusual to see a large option trader effectively blocked out of further business because of inventoried neutral spreads which now must count against the quadrant limitations.

Your proposal, if adopted, will add liquidity to the options and futures market and will tend to decrease the net risk present in these markets * * *.

On a similar note, an association of agricultural processors lauded the increased flexibility of unified limits, stating:

Unifying or combining the trading limits on both futures and options contracts seems to be very reasonable * * *. With the flexibility created by futures and options contracts allowing traders to move freely between the two markets, new and exciting forms of hedging are evolving * * *. If speculative limits are unified, more certainty of market movement should be achieved * * *.

An association representing all segments of the managed futures industry agreed that the reasons stated by the Commission for unifying futures and options speculative position limits "including the harmonization of limits calculations with the methods employed by exchanges and greater ease of application by traders, are compelling." And a general farm organization supported unified futures and option limits, stating that unified limits:

properly recognize the functional relationship between futures and options contracts. Expansion of the definition of "long position" and "short position" to include the delta-adjusted futures-equivalent of put and call options will better capture the true market share of any particular speculative position.

Similarly, a commodity pool operator supported the Commission's analysis, agreeing that unified limits are "easier to use, understand and administer," and agreeing that "price movements in the futures and options markets are closely related."

A second specific issue dividing commenters was the application of the spread exemption only to intra-crop year positions. The CBT "strongly" opposed the proposed intra-crop year spread exemption, disagreeing with the Commission's conclusion that the individual legs of an inter-crop year spread may act independently and therefore behave more like outright, rather than spread, positions. The CBT countered that:

in the majority of cases, inter-crop year spreads have a predictable relationship. The rare instances where this relationship does not hold are usually caused by drought or some other unpredictable event, the severity of which one only becomes known near the end of one crop year and the beginning of the next. In this circumstance, the Commission's proposal is likely to magnify the difference in cash market fundamentals between the two crop years by limiting the liquidity spread traders are able to provide in the futures markets. This occurs because the contrasting cash market conditions usually become known to the market near the end of the crop year. Since spread traders have few, if any, remaining old crop contract months to spread into near the end of the crop year, the amount of liquidity they are able to provide is severely restricted at a crucial time.

Many commenters agreed with the CBT's view that no distinction between intra- and inter-crop year spreads should be made. These commenters contended that such a distinction, besides being unnecessary, could reduce the overall benefit of including a spread exemption in the rules. One commenter, for example, stated that:

[w]ithout equalizing the intra and inter-crop levels, the liquidity which spread traders bring to the market can diminish in contract months near the end of a crop year compared to the contract months near the beginning of the crop year. This harms market efficiency and price discovery. We believe equalizing the limits for intra and inter-crop year spreads is warranted.

Other commenters, however, agreed with the Commission's position that the individual legs of an inter-crop year spread position may act more like outright positions. As one commenter noted:

While the speculator may not agree, a hedger realizes fully that an inter-crop year spread is in fact nothing more than a double speculation. All of the underlying market movers are normally different between old crop and new crop wheat. Limiting speculation differently for inter-crop and intra-crop spreads is logical and based upon sound reasoning.

Many commenters expressed the concern that the increasing speculative position limits would result in greater price volatility. Several of these commenters contended that, to the extent that expanding speculative position limits results in increased price volatility, the Commission should impose alternative means of restricting trading. In this regard, several commenters suggested that limits on intra-day trading should be considered in conjunction with raising speculative position limits. In this regard, one

commenter suggested that the Commission limit "the amount of net position accumulation that a trader could amass during any one 15 minute trading interval." This commenter reasoned that such a rule would:

> Spread the trading activity (and thus the price discovery activity) over more of the trading day. Such a restriction on trading activity would not prevent a trader from amassing or disposing of a limit position in a single day. It would, however, restrict the ability of a single trader to manipulate or unduly influence prices in a concentrated time period.

Similarly, a second commenter noted that the Commission should place a limitation on the amount of trading which a single speculator could undertake during the last fifteen minutes of a trading session.

Taking a slightly different tack, several commenters, representing various agricultural interests, recommended that the Commission proceed, but in a more cautious manner. In particular, they recommended that to the extent the Commission proceeds with raising speculative position limits, it do so on a limited, or test basis. In particular, one commenter recommended that:

> it would seem prudent to at least implement new limits for one commodity on a trial basis. During this trial period, the Commission could monitor the movement of the futures market relative to supply and demand data underlying the market for the test commodity. This observation period would provide a better basis for making permanent changes in speculative limits.

A second commenter proposed an alternative to a one-commodity trial. This commenter suggested that the Commission approve, for a one-year period, expanded speculative position limits for all contract markets but at an amount less than that proposed by the Commission. It reasoned that:

> [t]he Commission idea of basing speculative limit levels on open interest history has merit, but we feel that the increases proposed are too big at this time. We feel that the Commission should halve the recommended increases in speculative limits. Then, after a proper review of factors, such as increased volatility, CFTC would be in a better position to determine whether the price discovery system was being distorted by these larger speculative trading limits. If price distortion is not evident, then limits could be increased to the levels proposed by CFTC.

As discussed above, many commenters advocated taking additional time to study the need for, and the possible effects of, increasing further speculative position limits. In their view the trial implementation of expanded speculative limits would provide such an additional opportunity.

II. The Interim Final Rules

The Commission has considered increasing Federal speculative position limits for over two years, including two separate occasions for public comment regarding these issues.[7] In addition, these issues have been the subject of discussion at several meetings of the Commission's Agricultural Advisory Committee.

Based on its consideration of the comments received, both in response to the Notice of Petition of Rulemaking and Notice of Proposed Rulemaking, and based upon its independent analysis growing out of a long history of direct administration of Federal speculative limits and over ten-years of oversight of exchange-set speculative position limits, the Commission is adopting interim amendments to Federal speculative position limits. These interim final rules, and in particular, the modifications made to the rules as proposed, are discussed in greater detail below.

A. Implementation of Revised Structure and Levels of Limits

As detailed in the Notice of Proposed Rulemaking, the Commission, based upon its ten years experience of oversight of exchange-set speculative limits as well as its even longer history directly administering the Federal limits, proposed to set the level of both the single month and the all-months-combined limits at ten percent of the combined markets' delta-adjusted open interest. For those markets with a combined open interest greater than 25,000, the level would have increased at a marginal rate of 2.5 percent. In addition, the Commission proposed a minimum speculative limit level of 1,000 contracts. *See*, e.g., 57 FR 12770.

However, as discussed above, several commenters suggested that the Commission proceed with these proposals cautiously. They reasoned that a trial program would provide the Commission with an opportunity to observe the adverse effects, if any, on the market of these proposals during their implementation. Such a trial would also give the Commission an opportunity, in conjunction with the adoption of any final rules, to take any remedial actions which may be appropriate should the concerns of various commenters regarding increased price volatility resulting from these actions prove to be correct.

The Commission previously has introduced significant regulatory initiatives incrementally, with great success. The Commission's three-year pilot program for the introduction of exchange-traded options is a good example of the successful phased introduction by the Commission of a sweeping regulatory initiative. Under this program, the Commission steadily expanded the initial limited trading in such instruments as it became apparent that it could do so prudently. *See*, 46 FR 54500 (Nov. 3, 1981).

Although the Commission believes that the proposed amendments clearly would have "achieve[d] the prophylactic intent of section 4(a) of the Act and Commission rule 1.61" while addressing the need for the regulated futures markets to remain competitive with other, less regulated markets, it is also mindful that a significant number of commenters remain concerned regarding the effect, if any, that the proposed changes might have had on the hedging and price-basing utility of these markets. In light of these continuing concerns, and the Commission's past experience with the phased-introduction of various regulatory initiatives, the Commission has determined that changes to speculative position limits should be undertaken incrementally.

Specifically, the Commission is adopting interim amendments to Federal speculative positions limits in two steps. Subsequently, it will consider adopting fully the proposed limits as final a year after the second-interim step is implemented. Because it is implementing this expansion of speculative position limits in a cautious manner, the Commission believes that it is preferable to permit all of the contract markets to participate in the phased expansion of speculative position limits, as recommended by one commenter, rather than limiting it to one or two selected contracts.

The first step will combine futures and option limits, for the reasons explained below, at their current levels. This will not increase the over-all exposure that a speculator may hold in the market but should provide significant relief by permitting far-greater flexibility in the composition of the positions which may be held. For some traders, this increased flexibility will result in a higher effective limit. This transition period will permit the exchanges and traders alike to become

[7] In this regard, one commenter complained that this period constituted, "an unacceptable delay" and advocated that the Commission grant sole responsibility to establish and monitor speculative position limits in these markets to the exchanges. Other commenters, in contrast, commended "the painstaking diligence with which the Commission has encouraged presentation of all pertinent evidence concerning its proposal."

accustomed to the use of a unified futures and option limit in these commodities.

Approximately one year later, in March 1994, the speculative position limits will increase halfway to the level proposed by the Commission in the Notice of Proposed Rulemaking. At that time, as provided in a separate notice published elsewhere in this issue of the **Federal Register**, the comment period on the originally-proposed speculative position limit levels, reopens. These proposed limit levels are included above.

The comment period will close on April 30, 1995, approximately one year after the second interim increase to speculative position limits became effective. The Commission expects that within sixty days following the close of the comment period it will consider adopting those originally-proposed levels as final rules. This approach will provide the Commission with an opportunity to observe the effect on the market, if any, of these interim changes before adopting the originally-proposed limit levels as final. In light of the time that is being provided for further observation and study of the originally-proposed levels and the effect of the interim increases, the Commission will adhere strictly to this timetable in its consideration of whether to adopt as final the proposed levels.

In this regard, the Commission also is directing the Division of Economic Analysis to report to it on the progress of the implementation of each of the two interim increases in Federal speculative position limits and the observed effects these increases may have, if any, on the markets. These reports must be forwarded to the Commission no later than one year after the implementation date of each increase. Accordingly, a report on the first step must be forwarded to the Commission by March 31, 1994 and on the second by March 31, 1995. If after the second report, the staff's recommendation is to increase the limits to the levels originally-proposed and if the Commission concurs, the Commission would take expeditious action to implement those levels.

These reports, using already available data, should consider the staff's surveillance experience with these changes to the speculative position limits, including the level of speculative participation in the markets, possible changes in liquidity, in bid-ask spreads and in price fluctuations. They should also consider the effect, if any, on commercial use of the market after increased speculative position limits are in effect. In addition, the second report should include a recommendation to the Commission regarding the advisability of adopting as final rules the originally-proposed levels.

B. Structure of Position Limits

As discussed above, commenters differed on the advisability of unifying futures and option limits. For example one commenter expressed concern about the different risk exposures of options and futures positions. Nevertheless, the Commission remains convinced, for the reasons stated in the Notice of Proposed Rulemaking, that a structure of unified limits is appropriate, and "that the benefits of revising the structure of Federal speculative position limits to include unified futures and option limits outweigh any potential inconvenience from so doing."[8] Accordingly, because such positions would be netted automatically under a unified speculative position limit, the Commission is removing and reserving Rule 150.3(a)(2) which exempts from Federal speculative position limits positions in option contracts which offset the futures positions. In addition, the Commission is amending Rule 150.2 to include option positions on a futures-equivalent basis within the applicable speculative position levels and is amending Rule 150.1 by adding definitions of "futures-equivalent," "long" position and "short position."[9]

In this regard, the Commission received no adverse comment regarding the technical aspects of its proposed rules to unify futures and option limits. As discussed in the Notice of Proposed Rulemaking, unified limits require a degree of continual monitoring. In this regard, the Commission notes in particular, that "futures-equivalent" is defined as an option contract which has been adjusted by the previous day's risk factor, or delta coefficient for that option. The Commission is hereby reiterating, however, that, as it stated in the Notice of Proposed Rulemaking, it will adhere to the convention that traders will be deemed to be in compliance where, although the previous day's delta coefficient is typically used in determining compliance, a favorable change in the delta coefficient during a trading session causes a position to come into compliance if adjusted by that day's delta, rather than the previous day's delta coefficient.[10] *See*, 57 FR 12769, n.7.

C. Parity of Speculative Position Limit Levels

As proposed, the speculative limits for the KCBT and the MGE wheat, and the MGE oats, contracts diverged from that of the CBT. Previously, speculative position limits for all three contracts had been nearly the same.[11] In proposing differing limits, the Commission had relied upon the difference in the level of open interest among the three contract markets. However, the Commission also stated that speculative position limits, especially for the spot month, appropriately could be based upon an analysis of current deliverable supplies and the history of various spot month expirations. 57 FR 12770.

In light of the breadth and liquidity of the cash markets underlying the KCBT and the MGE wheat, and the MGE oats, contracts, the Commission is persuaded that there would be little regulatory harm in maintaining the parity of limits among the exchanges. In so doing, the Commission notes that it is rare to have more than one successful contract trading on the same commodity. Moreover, as the MGE commented, the smaller exchanges have had a history of meeting their regulatory responsibilities at position limits comparable to those of the CBT. Accordingly, the Commission has determined that initially it will set the speculative position limits at the same level for the applicable wheat and oats contracts. Of course, if experience

[8] 57 FR 12769. Several commenters objected to the Commission's proposal because it requires the Commission's direct administration of option speculative position limits, in addition to futures limits, in the enumerated commodities. In proposing to unify these limits, however, the Commission has been careful not to unnecessarily increase regulatory burdens as a consequence of its action. Accordingly, the Commission did not propose any modification to existing reporting, or other, burdens. 57 FR 12769, n. 9. Moreover, the Commission already is involved in monitoring option positions for compliance with certain spread exemption provisions which are now permitted under Commission rules. As previously noted, one aspect of the unified structure is to simplify compliance with these existing provisions.

[9] Such long positions are defined to include, for options, long calls and short puts, and for futures, long futures. Short positions mirror the long positions.

[10] Exchanges which use deltas for exchange-set speculative position limits are required to publish the delta coefficient on a daily basis under Commission Rule 16.01, 17 C.F.R. 16.01 (1991). Not all exchanges currently publish delta coefficients for every contract market in which there are Federal speculative position limits. The proposed rule was based upon the assumption that those contract markets which do not currently publish delta coefficients will undertake to do so. Although the Commission specifically requested comment on the burden that this might place on any exchange which currently does not calculate and publish the delta coefficient, none commented on this issue.

[11] Specifically, the spot month and individual month limits for each of these three markets is 600 contracts. The all-months limit for the KCBT and CBT is 1800 contracts and for the MGE spring wheat is 1200 contracts.

during the phase-in of these interim rules suggests otherwise, the Commission may determine to set divergent, final limits.[12]

Based upon the above determinations regarding the implementation, structure and levels of speculative position limits, the limits originally-proposed remain pending and the Commission is adopting interim final rules, as follows:[13]

COMPARISION OF CURRENT FUTURES AND OPTION LIMITS FOR OUTRIGHT POSITIONS WITH THE LEVELS FOR COMBINED POSITIONS WHICH WILL BE EFFECTIVE UNDER REVISIONS TO PART 150 OF THE COMMISSION'S REGULATIONS

Contract market	Individual nonspot months					All months combined				
	Current limits[1]		Combined futures/options[2] (in futures equivalents)			Current limits[1]		Combined futures/options[2] (in futures equivalents)		
	Futures	Options	Phase 1	Phase 2	Pending proposed limits	Futures	Options	Phase 1	Phase 2	Pending proposed limits
Chicago Board of Trade (CBT)										
Corn	600	600	1200	3400	5500	2400	600	3000	6000	9000
Soybeans	600	600	1200	2400	3500	2400	600	3000	4300	5500
S. meal	720	720	1440	2200	3000	2160	720	2880	3400	4000
S. oil	540	540	1080	2000	3000	1620	540	2160	3100	4000
Oats	400	400	800	900	1000	400	400	800	1200	1500
Wheat	600	600	1200	2100	3000	1800	600	2400	3200	4000
MidAmerica Commodity Exchange (MCE)										
Corn	600	600	1200	1200	1200	600	600	1200	1200	1200
Wheat	600	600	1200	1200	1200	600	600	1200	1200	1200
Soybeans	600	600	1200	1200	1200	600	600	1200	1200	1200
Kansas City Board of Trade (KCBT)										
Wheat	600	600	1200	2100	3000	1800	600	2400	3200	4000
Minneapolis Grain Exchange (MGE)										
Spring wheat	600	600	1200	2100	3000	1200	600	2400	3200	4000
White wheat	600	600	1200	1200	1200	600	600	1200	1200	1200
New York Cotton Exchange (NYCE)										
Cotton	450	300	750	1600	2500	1200	300	1500	2500	3500

[1] Currently the limits for futures for the specified markets are specified in Part 150 of the Commission's rules and the option limits are specified in the respective exchanges rules. With the exception of the MCE, the limits are shown here in terms of the contract size traded on each exchange. For comparative purposes, the MCE limits are expressed here in terms of the larger contract sizes which are traded on the larger primary CBT market with which the MCE contract market maintains a changer relationship. In each case, the size of the MCE contract is 1000 bushels, while the contract size on the CBT is 5000 bushels.

The numbers shown for options apply on the per quadrant basis (i.e., long put, short put, long call, short call) and are typically expressed in terms of futures-equivalent contracts (i.e., the nominal number of options adjusted by their respective delta values). Only the MGE does not express its option limits in terms of futures equivalents.

For both options and futures for each commodity, there are a number of exemptions or higher levels for option/option, option/futures or futures/futures spread positions involving the option and/or underlying futures. This table pertains to outright positions and these higher levels for spead position are not indicated.

[2] The new limits specified under Part 150 will apply to combined net long or short combined positions in futures and options where options are calculated on a futures-equivalent basis (i.e., each option would be adjusted by its delta value). Long positions will include long futures, long calls, and short puts and short positions will include short futures, short calls, and long puts. Again, with the exception of the MCE, the limits are expressed in terms of the contract size traded on each exchange.

Again, shown in the table are limits for outright positions. There would be no limit on spreads between futures and options which have the same contract month. For option/option, option/future, or futures/futures spreads between months within the same crop year, the applicable limit in any one month would be that shown in the table for all months combined.

[12] The levels set for the MidAmerica Commodity Exchange ("MCE") in the first step are being carried over to the second step, as well, adjusted slightly from those which were proposed. Despite the Commission's determination to keep the levels of the KCBT and the MGE's wheat contracts the same as the CBT's, the Commission believes that increasing the MCE's limits to the CBT's levels is not appropriate in light of the special relationship of the MCE to the CBT, the primary market in these contracts. Based upon the level of open interest of trading in the MCE contracts, the Commission does not believe that trading on the MCE will be constrained by maintaining these limits, separate from those of the CBT, at these levels. The Commission would consider exemptive relief for MidAmerica changers should that or other similar relief appear to be necessary, during the phase-in period.

[13] The Commission has specified that the final rules will become effective sixty days from their promulgation in order to give the exchanges an opportunity, where necessary, to amend exchange speculative position limits rules to bring them into compliance with the Commission's revisions, *see* Section 4a(e) of the Act, 7 U.S.C. 6a(e).

D. Spread Exemptions.

Historically, the reason for including the spread exemption in the structure of speculative position limits was the relatively low limit for individual month limits, especially in comparison to the all-months limits. Generally, individual months limits were set at the same level at the spot month limits in these contracts. Accordingly, the spread exemption may have been an important means for traders to exceed the relatively low individual month limit.

As the Commission noted in the Notice of Proposed Rulemaking, however, the "increases to the individual month limits being proposed herein, in general, should diminish the need for such an exemption." 57 FR 12772. Despite the expected lessened need for any spread exemption, the Commission proposed to continue the exemption in its current form, which applies to spreads within the same crop year, but at a level equal to the all-months limit, as petitioned by the CBT.

The Commission remains unconvinced that the exemption for inter-month spreads should be modified at this time to permit generally such spreads across crop-years in excess of the speculative position limits which are being greatly expanded herein. The Commission remains concerned that, depending upon conditions in the underlying cash market, the separate legs of inter-crop year spreads may act more like separate outright positions than a spread within the same crop-year. In light of the increases to the limits being adopted herein, the Commission believes that such a modification of the spread exemption should be undertaken cautiously and only after greater experience with the increased limits and based upon a demonstrated need for such additional relief. Accordingly, the Commission is adopting, as final, an exemption permitting the separate legs of positions which are spread against other months within the same crop year, in total or in combination with outright positions in the same month, to equal the all-months level. Of course, the level of the outright positions cannot exceed the single month limit, nor does this exemption apply to positions within the spot month.

In addition, the Commission, to provide greater certainty and for ease of reference, is adopting a definition of "crop year." The Commission previously did not define "crop year," not did it propose such a definition in conjunction with these revisions, instead relying on its informal usage in various Commission statistical compilations and on the general industry understanding of when new crop years begin. In this regard, the Commission's monthly "Commitments of Traders" publication has long provided statistical information based, in part, on crop years as identified by the Commission. However, codification of this long-accepted Commission usage of crop year within these rules should provide greater certainty and ease of reference to the public.

Accordingly, for purposes of these rules, the Commission is specifying that for the following commodities, the first delivery month of the "crop-year" is as follows:

Commodity	Beginning delivery month
corn	December.
cotton	October.
oats	July.
soybeans	September.
soybean meal	October.
soybean oil	October.
wheat (spring)	September.
wheat (winter)	July.

These beginning delivery months were, and are, tailored to, and consistent with, new-crop production in those regions which are tributary to the delivery points on the futures contracts in these commodities.

III. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that large traders are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These speculative position limits affect only the largest speculative traders in a particular contract market. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action herein proposed will not have a significant economic impact on a substantial number of small entities. However, the Commission invited comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities. No comments were received regarding this issue.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on January 12, 1993 and assigned OMB control number 3038–0013 to these rules. The burden associated with this entire collection, including these final rules, is as follows:

Average Burden Hours Per Response.....1.03
Number of Respondents.....165
Frequency of Response.....3.82

The burden associated with these specific final rules is as follows:

Average Burden Hours Per Response.....1.00
Number of Respondents.....155
Frequency of Response.....3.00

Copies of the OMB approved information collection package associated with this rule may be obtained from the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Position limits, Spread exemptions.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, and, in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 5, 5a, 6b, 6c, and 15, 7 U.S.C. 2, 4, 4a, 6a, 6c, 7, 7a, 12a, 13a, 13a–1, and 19, the Commission hereby amends part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5).

2. Section 150.1 is amended by adding new paragraphs (f), (g), (h) and (i) to read as follows:

§ 150.1 Definitions.

* * * * *

(f) *Futures-equivalent* means an option contract which has been adjusted by the previous day's risk factor, or delta coefficient, for that option which has been calculated at the close of trading and published by the applicable exchange under § 16.01 of this chapter.

(g) *Long* position means a long call option, a short put option or a long underlying futures contract.

(h) *Short* position means a short call option, a long put option or a short underlying futures contract.

(i) For the following commodities, the first delivery month of the "crop year" is as follows:

Commodity	Beginning delivery month
corn	December.
cotton	October.
oats	July.
soybeans	September.
soybean meal	October.
soybean oil	October.
wheat (spring)	September.
wheat (winter)	July.

3. Section 150.2 is revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

Contract	Unit of limit	As of [insert effective date of rule]			As of March 31, 1994		
		Spot month	Single month	All-months	Spot month	Single month	All-months
CHICAGO BOARD OF TRADE							
Corn	Million bushels	3	6	15	3	17	30
Oats	Million bushels	3	4	4	3	4.5	6
Soybeans	Million bushels	3	6	15	3	12	21.5
Wheat	Million bushels	3	6	12	3	10.5	16
Soybean oil	60,000 pounds	540	1,080	2,160	540	2,000	3,100
Soybean meal	100 tons	720	1,440	2,880	720	2,200	3,400
MIDAMERICA COMMODITY EXCHANGE							
Corn	Million bushels	3	6	6	3	6	6
Oats	Million bushels	2	2	2	2	2	2
Soybeans	Million bushels	3	6	6	3	6	6
Wheat	Million bushels	3	6	6	3	6	6
Soybean meal	100 tons	400	400	400	400	400	400
MINNEAPOLIS GRAIN EXCHANGE							
Hard red spring wheat	Million bushels	3	6	12	3	10.5	16
White wheat	Million bushels	3	6	6	3	6	6
Oats	Million bushels	3	4	4	3	4.5	6
NEW YORK COTTON EXCHANGE							
Cotton No. 2	Hundred bales	300	750	1,500	300	1,600	2,500
KANSAS CITY BOARD OF TRADE							
Hard winter wheat	Million bushels	3	6	12	3	10.5	16

4. Section 150.3 is amended by removing and reserving paragraph (a)(2) and by revising paragraph (a)(3) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(3) Spread or arbitrage positions between single months of a futures contract and/or, on a futures-equivalent basis, options thereon, outside of the spot month, in the same crop year; *provided however,* That such spread or arbitrage positions, when combined with any other net positions in the single month, do not exceed the all-months limit set forth in § 150.2; or

* * * * *

Issued in Washington, DC, this 30th day of March, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-8134 Filed 4-6-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101 and 201

[Docket No. RM92-1-000]

Order No. 552; Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A

Issued March 31, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: This final rule adopts accounting requirements for: Allowances for emission of sulfur dioxide under the Clean Air Act Amendments of 1990; and assets and liabilities created through the ratemaking actions of regulatory agencies. The final rule also adopts new reporting schedules and revises other schedules to be used by jurisdictional companies in reporting information on allowances and regulatory assets and liabilities.

EFFECTIVE DATE: The final rule is effective January 1, 1993. The information collection provisions, however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Gregory A. Berson, Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 219-2603.

Michael Bardee, Office of General Counsel, Federal Energy Regulatory

Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0626.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document, excluding Appendix A (revised pages for FERC Form Nos. 1, 1–F, 2 and 2–A) and Appendix B (list of commenters), in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule, excluding Appendices A and B, will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Jerry J. Langdon, Martin L. Allday, and Branko Terzic.

Final Rule

Table of Contents

I. Introduction
II. Public Reporting Burden
III. Discussion
A. Effect On Ratemaking
B. Allowance Classification
1. General Rule
2. Withheld Allowances
3. Existing Contracts
C. Valuation of Allowances
1. General Rule—Historical Cost
2. Cost Allocation for Package Purchases
3. Allowance Trades Between Affiliates
4. Allowance Futures
5. Allowances Acquired Through Exchanges
D. Inventory Method
1. Weighted Average Cost Method
2. Vintaging of Allowances
E. Expense Recognition of Allowances
1. Timing of Recognition
2. Account Used for Recognition
3. Allowance Inventory Shortages
4. Penalties
F. Gain or Loss Disposition of Allowances
G. Regulatory Assets and Liabilities
H. Reporting Requirements
IV. Regulatory Flexibility Act
V. Environmental Statement
VI. Information Collection Statement
VII. Effective Date
Changes in 18 CFR Part 101
Changes in 18 CFR Part 201

I. Introduction

On December 2, 1991, the Commission issued a notice of proposed rulemaking (NOPR) proposing to amend its Uniform Systems of Accounts (USofA) for public utilities, licensees and natural gas companies to establish: (1) Uniform accounting requirements for allowances, arising from Title IV of the Clean Air Act Amendments of 1990 (CAAA),[1] for emission of sulfur dioxide; and (2) generic accounts to record assets and liabilities created through the ratemaking actions of regulatory agencies.[2]

Sixty-seven parties filed comments on the NOPR. The comments filed by a number of parties were untimely, but the Commission will consider these untimely comments in this proceeding, given the absence of any undue prejudice or delay.

In response to the comments received, the Commission has decided to adopt a final rule generally consistent with the NOPR, but with several significant changes. The major accounting proposals retained from the NOPR include: The classification of allowances in new inventory Accounts 158.1 and 158.2; the valuation of most allowances at historical cost; the use of the weighted average cost method for determining the cost of allowances issued from inventory; the expensing of allowances in new Account 509; and the use of several new accounts for regulatory assets and liabilities.

The major changes from the accounting proposed in the NOPR include: the use of fair value in the valuation of allowances traded between affiliates; and the elimination of the NOPR's two-step process of accounting for regulatory assets and liabilities in favor of a one-step process that is more consistent with past practices.

The Commission also is adopting new reporting schedules and revising other schedules to be used by jurisdictional companies in reporting information on allowances and regulatory assets and liabilities in four of its Annual Reports (FERC Form Nos. 1, Annual Report of Major public utilities, licensees and others (Form 1); 1–F, Annual Report of Nonmajor public utilities and licensees (Form 1–F); 2, Annual Report of Major natural gas companies (Form 2); and 2–A, Annual Report of Nonmajor natural gas companies (Form 2–A)).[3] These new and revised schedules incorporate the final rule's changes and are contained in Appendix A.[4]

As the Commission stated in the NOPR, the objective in adopting this final rule is to provide useful financial and statistical information to regulatory agencies and other users of the financial statements by establishing sound and uniform accounting and reporting requirements for allowance transactions and for regulatory assets and liabilities. The final rule is not intended to promote or discourage particular CAAA compliance strategies or to prescribe the ratemaking treatment for allowances. The final rule is intended to be "rate neutral."

II. Public Reporting Burden

The Commission believes that any additional annual reporting burdens for collection of information resulting from this rule will be minimal. The Commission notes that usual business practices would require utilities to account for and report allowance transactions and regulatory assets and liabilities even in the absence of the rule. By adopting the rule, the Commission gives certainty as to how utilities should account for and report such transactions and thereby facilitates the usefulness of utility financial statements to all users.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415), and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Discussion

A. Effect On Ratemaking

The Commission stated in the NOPR that the proposed rules were not intended to prescribe the ratemaking treatment for allowances and would not bar regulatory commissions (including this Commission) from adopting any

[1] Pub. L. No. 101–549, Title IV, 104 Stat. 2399, 2584 (1990).

[2] FERC Statutes and Regulations, Regulations Preambles ¶ 32,481 (1991), 56 FR 64567 (Dec. 11, 1991).

[3] The current versions of these forms bear the following OMB approval numbers: Form 1, No. 1902–0021; Form 1–F, No. 1902–0029; Form 2, No. 1902–0028; and Form 2–A, No. 1902–0030.

[4] Appendix A is not being published in the **Federal Register**, but is available from the Commission's Public Reference Room.

particular ratemaking treatment.[5] The proposed rules were intended to be "rate neutral."

Comments.[6] The Iowa Working Group[7] and the North Carolina Staff support the goal of rate neutrality. The North Carolina Staff argues, for example, that the USofA should provide information about economic events affecting a utility, and not direct those economic events by prescribing certain ratemaking practices.

Similarly, EPA asks the Commission to reiterate that this rulemaking addresses only accounting, not ratemaking. However, EPA also encourages the Commission to issue a policy statement in a separate proceeding on allowance ratemaking.

The Ohio Staff argues that the NOPR's proposed accounting may not in fact be "rate neutral." As an example, the Ohio Staff asserts that the NOPR's proposal to classify allowances as inventory suggests that allowances should be included in rate base in an amount equal to the twelve-month average balance of allowances, instead of the balance on a date certain, as is typical for plant-in-service. The Ohio Staff asks the Commission to reiterate its goal of rate neutrality in both this order and the general instructions of the USofA. The Ohio Staff also recommends that the description of Account 158.1, Allowance Inventory, state that the Commission is not requiring nor recommending any particular rate base or ratemaking treatment.

EEI and others[8] urge the Commission to develop a ratemaking framework coincident with the development of accounting rules. EEI argues that doing so would allow the accounting rules to be developed more meaningfully. Wisconsin Public Service argues that a ratemaking framework will give utilities guidance in developing compliance plans and assist states in developing their own ratemaking frameworks.

EEI and others[9] ask the Commission to state that utilities will be allowed to recover prudently incurred costs as operating expenses and that unused allowances bought for operations are to be included in rate base. Similarly, Centerior argues that the final rule should be consistent with the goal of full recovery of all prudently incurred compliance costs. Florida Power & Light asserts that, at a minimum, the Commission should state that it intends the proposed new accounts to be commensurate to existing accounts for ratemaking purposes.

EEI, Central & South West and Gulf States ask the Commission to state that the economic value of allowances should be reflected in pricing when allowances are used in sales for resale, affiliate trades and power pool operations. Gulf States argues that this recovery is needed in order to fairly compensate retail customers who often will experience significant rate increases to pay for scrubbers or low sulfur coal. Centerior argues that the Commission should indicate that nothing in the final rules is intended to preclude a utility's ability to recover the economic value of allowances.

Deloitte & Touche recommends the initiation of a generic proceeding on ratemaking issues in order to remove some of the uncertainty about when utilities may recover prudently-incurred compliance costs. Deloitte & Touche argues that differences in regulatory certainty about the recoverability of the costs of some compliance methods, *e.g.*, fuel switching compared to buying allowances, could hinder least cost planning and the development of the allowance market. Deloitte & Touche states that existing Commission policies would require wholesale power sales to be priced at the seller's costs, including allowances obtained at zero cost, even though state regulators are unlikely to allow utilities to dispose of allowances without recompense.

Pennsylvania Power & Light asks the Commission to resolve the ratemaking for allowances in this rulemaking or in a separate generic rulemaking, instead of case-by-case. Pennsylvania Power & Light argues that a generic rulemaking would allow all interested parties, and not just the parties to individual rate filings, to participate in resolving the rate issues.

Duke Power also argues that this proceeding should address ratemaking issues. Duke Power argues that most state commissions look to generally accepted accounting principles (GAAP)[10] as reflected in the USofA to provide a framework for cost recovery.

NRECA urges the Commission to undertake the task of allocating compliance costs and cost savings between ratepayers and stockholders and among classes of ratepayers of multi-jurisdictional utilities. NRECA states that, because of possible regulatory tension among the state commissions in such situations, the Commission is uniquely able to perform this task.

Commission Response. The Commission understands the need for the eventual development of a ratemaking framework for allowances, but declines to prescribe such a framework in this final rule. The NOPR did not propose a ratemaking framework and did not solicit comments on that subject. Most commenters did not address the subject. Moreover, the bulk of the cost of allowances and compliance will be within the ratemaking jurisdiction of the various States and not this Commission. There is not likely to be a single ratemaking framework appropriate in each and every ratemaking jurisdiction for utilities subject to this Commission's accounting jurisdiction.

The Commission does, however, have accounting jurisdiction over almost the entire industry involved with allowances and this rulemaking was initiated to meet the need for timely action on accounting issues. As stated in the NOPR, this rule is intended to provide useful financial and statistical information to users of a utility's financial statements by establishing uniform accounting and reporting requirements for allowance transactions. The rule is "rate neutral" in that the prescribed accounting will reflect the economic effects of whatever ratemaking treatment is granted. The rule does not dictate or favor one particular rate treatment over another. The Commission sees no need to expand the scope of this accounting rule for the rate issues raised by the commenters. The ratemaking treatment for allowances will be dealt with in other forums.

B. Allowance Classification

1. General Rule

The NOPR proposed to classify allowances in two new inventory accounts in the "Current and Accrued

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[5] FERC Statutes and Regulations ¶ 32,481 at 32,572.

[6] All of the commenters are listed in Appendix B to this order. Abbreviations for the commenters are also listed in Appendix B.

[7] The Iowa Working Group consists of the Iowa Utilities Board, the Iowa Office of the Consumer Advocate, Interstate Power Company, Iowa Power and Light Company, Iowa Public Service Company, Iowa Southern Utilities, Iowa Electric Light and Power Company and Iowa-Illinois Gas and Electric Company.

[8] Florida Power & Light, Gulf States and Wisconsin Public Service.

[9] Cincinnati Gas & Electric, Con Edison, Gulf States and Wisconsin Electric.

[10] GAAP is a technical term in financial accounting. GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. GAAP incorporates the accounting profession's consensus at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, when these changes should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and what financial statements should be prepared.

Assets" section of the Balance Sheet: Account 158.1, Allowance Inventory and Account 158.2, Allowances Withheld. The NOPR explained that using these new accounts might avoid preconceptions that could arise about the nature of allowances if existing accounts were used. The NOPR stated that the new accounts would not dictate any particular ratemaking treatment and thus would be consistent with the goal of establishing "rate neutral" accounting.

Commenters supporting the NOPR. NARUC and the Florida Commission support the creation of the new accounts. The Florida Commission states that the new accounts are theoretically supportable and compatible with foreseeable ratemaking treatments in Florida.

APPA also supports the new accounts, stating that separate accounts for allowances will facilitate regulatory review of allowance trading and use. APPA states that the new accounts would maintain account specificity in formula rates and avoid lengthy interrogatories to identify such costs.

Exceptions for State ratemaking. The Illinois Commission argues that utilities with primary rate jurisdiction at the state level should be allowed to modify the Commission's accounting to conform to state requirements. The Illinois Commission asserts that state regulators may wish to allow recovery of allowance costs through a fuel clause and that such recovery in Illinois is allowed only for costs cleared through Account 151. The Illinois Commission argues that costs recorded in the new accounts may not be recoverable in the fuel clause in Illinois absent a change in state law.

Similarly, EEI and others[11] assert that utilities should be allowed to use the accounting required by a state commission of primary jurisdiction instead of the Commission's accounting rules. Kentucky Utilities argues that federal and state jurisdictional differences should be minimized, whenever possible, in order to avoid the need for "two sets of books." Kentucky Utilities asserts that maintaining multiple records for similar items would add to the burden of recording and reporting accounting transactions.

Classification as fuel. A number of commenters propose to classify allowances in a new subaccount of Account 151, Fuel Stock, primarily because this treatment would allow fuel clause recovery of allowance costs.[12] Delmarva Power, for example, argues that the cost of allowances will be a necessary part of the cost of fuel stock. Potomac Electric states that the fuel clause should be used for all compliance costs, including all gains and losses from allowance trades, because the least cost approach to CAAA compliance combines fuel switching and allowance purchases.

EEI argues that using the fuel clause would avoid the frequent and costly rate cases otherwise needed to track possibly volatile and unpredictable costs and benefits. EEI asserts that using a new subaccount within an existing account could avoid possibly expensive renegotiations and litigation over existing contracts.

PSI Energy argues that using fuel subaccounts for allowances would not violate the goal of rate neutrality because regulatory commissions will thoroughly review any proposed ratemaking for allowances, even if allowance costs are recorded in fuel subaccounts. Similarly, Wisconsin Public Service argues that fuel subaccounts could accommodate a regulatory decision to treat allowances differently from fuel for ratemaking purposes.

Centerior supports classifying allowances in existing Account 151, Fuel Stock. According to Centerior, the Commission has offered no concrete evidence that using the existing inventory account for fuel would suggest a predisposition to a particular ratemaking treatment.

The North Carolina Staff opposes the use of fuel inventory accounts for allowance costs, arguing that allowances are not fuel and are not closely enough related to fuel to be recorded in fuel accounts. The North Carolina Staff asserts that the integrity of the fuel inventory accounts should not be compromised simply to facilitate certain ratemaking procedures.

The Wisconsin Municipal Group[13] argues that allowance costs are ineligible for fuel clause treatment and that the Commission should not waive its regulations to allow such treatment. The Wisconsin Municipal Group asserts that allowance costs have nothing to do with the cost of fuel and, thus, should not be recovered through the fuel clause.

Classification as plant cost. Con Edison asserts that allowance costs relate more to plant than fuel. Con Edison states that allowances bought or sold by a utility result principally from, or are a trade-off for, plant capital expenditures. Con Edison states that the need for allowances could be reduced by fuel switching, but even this alternative is a trade-off against plant capital expenditures.

Wisconsin Electric argues that allowances should be classified as plant costs in existing Account 303, Miscellaneous Intangible Plant, which includes "the cost of patent rights, licenses, privileges and other intangible property necessary or valuable in the conduct of utility operations * * *." In support, Wisconsin Electric asserts that an allowance is an intangible item with an undetermined life (since it may be used in any year after issuance). Wisconsin Electric argues that inventory accounts, on the other hand, generally include physical materials that will be used within the next year.

Duke Power questions whether allowances should be classified in a work-in-progress account similar to Account 107, Construction Work In Progress, or Account 120.1, Nuclear Fuel In Process. Duke Power argues that a work-in-progress account would allow for the accrual of carrying costs for what could be sporadic expenditures for allowances.

Other classifications. Virginia Power argues that allowances should be classified based on the economics of the underlying transaction. Virginia Power argues, for example, that the cost of allowances obtained in fuel-related trades should be included in the invoice price of fuel in Account 151, Fuel Stock. Virginia Power cites the example of a coal supplier who bundles allowances with a sale of high sulfur coal. Virginia Power argues that using these allowances is integral to burning this particular coal and that the accounting for, and the costs of, the allowances and the coal should not be separated.

AEP proposes classifying allowances in existing accounts based on the ratemaking for each utility, *e.g.*, whether allowances are treated for ratemaking purposes as plant-related or fuel-related. Under this approach, AEP argues, utilities could recover allowance costs under existing account-specific formula rates without renegotiating contracts or

[11] Allegheny Power, American Gas Association, Commonwealth Edison, Con Edison, Kentucky Utilities and PacifiCorp.

[12] EEI, American Gas Association, Allegheny Power, Baltimore Gas & Electric, Cincinnati Gas & Electric, Central & South West, Consumers Power, Delmarva Power, IES Industries, Ohio Edison, Penn Power, PJM, Potomac Electric, PSE&G, PSI Energy and Wisconsin Public Service.

[13] The Wisconsin Municipal Group consists of many of the wholesale customers of Wisconsin Electric Power Company, Wisconsin Power & Light Company, Wisconsin Public Service Corporation, and Northern States Power Company (Wisconsin). The group is made up of 43 municipalities, 4 cooperatives, and 2 municipal electric companies, which in turn are made up of an additional 32 municipalities.

litigating to obtain Commission approval.

Coopers & Lybrand argues that a utility that is allocated allowances exceeding those needed for current year emissions has excess allowances that can be sold immediately or carried forward for future use or sale. Coopers & Lybrand asserts that only these excess allowances should be recorded as assets, with income recognized in the year they are allocated but not used, since they represent a probable future economic benefit. Coopers & Lybrand argues that using an inventory account is inappropriate because allowances are more analogous to financial instruments. Coopers & Lybrand supports the creation of new accounts, but believes they should more appropriately reflect the marketable nature of allowances.

The Michigan Staff recommends requiring utilities to maintain records for Accounts 158.1 and 158.2 by affected generating unit, if known. The Michigan Staff argues that this information will permit matching of allowances to expenditures incurred to reduce emissions and thus facilitate favorable ratemaking and tax treatment.

Long-term asset classification. NYDPS and others [14] propose the creation of a separate inventory account for allowances that cannot or will not be used in the current year, with allowances being reclassified to current assets when they are estimated to be used in the current year. NYDPS argues that this approach comports with GAAP and specifically with Accounting Research Bulletin No. 43, which defines a current asset as one "expected to be realized * * * or consumed during the normal operating cycle [generally one year]." [15] NYDPS argues that regulators may be reluctant to permit rate base inclusion of allowances not usable until years later.

Arthur Andersen, AICPA and Gulf States support the creation of an account similar to the account for nuclear fuel. Arthur Andersen argues that many purchased allowances will not be used in the current operating cycle and, thus, under Accounting Research Bulleting No. 43, are not a current asset and cannot be treated as inventory.

Allowances purchased for speculation. AICPA and others [16] argue that allowances purchased for speculative purposes, instead of as a hedge against price increases on allowances needed for operational purposes, should be recorded in Account 124, Other Investments.

Commission response. In the NOPR, the Commission stated that the purpose of this rule is to provide guidance, uniformity and consistency in accounting and reporting for allowance transactions.[17] As reiterated above, this rule is not intended to prescribe the ratemaking treatment for allowances or bar regulatory commissions from adopting any particular ratemaking treatment.

The Commission will not adopt the recommendation of a number of commenters that utilities should be allowed to use the accounting required by a state commission of primary jurisdiction, instead of the Commission's accounting rules. Uniform accounting is a linchpin of effective regulation of the public utility industry.[18] The Commission does not think it is in the public interest to allow the use of alternative accounting practices because of diverse state ratemaking practices.

Upon reviewing the comments, the Commission finds that the proposed new allowance accounts (Accounts 158.1 and 158.2) will best meet the stated objectives. Although allowances have characteristics that could support several different classifications, including classification as fuel or financial instruments, allowances are distinguishable from any of these. Allowance usage is only one of several possible components of a utility's overall CAAA compliance strategy; the cost of each component should be classified separately from the cost of other components (*e.g.*, capital and operating costs for scrubbers, fuel costs from fuel-switching, purchased power costs). Because allowances are so different from the other categories, the Commission believes they warrant their own account classification.

Classifying allowances into new accounts will enhance the usefulness of a utility's financial statements by readily providing users of those statements with information about allowances. Combining allowances in existing accounts developed for other assets would make full financial disclosure more difficult.

Classifying allowances in new accounts is also consistent with the goal of prescribing unbiased, "rate neutral" accounting. The commenters who argue against using new accounts suggest that account classification influences ratemaking. They propose classifying allowances in existing accounts for, *e.g.*, fuel, in order to facilitate a desired ratemaking result. It is not the Commission's intention to dictate any particular ratemaking result through this accounting rule. The Commission's objective is to provide sound and uniform accounting that will accommodate whatever ratemaking treatment is ultimately found appropriate in each ratemaking jurisdiction.

The Commission does not believe that using new accounts would preclude rate recovery or cause utilities to incur unnecessary litigation costs in order to recover their allowance costs. The use of existing accounts could improperly permit utilities to recover allowance costs under automatic adjustment mechanisms or under pre-existing contracts without a regulatory determination that allowance costs should be recovered in such ways. The use of existing accounts may wrongly deny utilities, their customers and their regulators the opportunity to address the ratemaking treatment of allowances.[19]

Some commenters argue for account classification based on the ratemaking for each utility or the "economics" of the underlying transaction.[20] While the

[14] Price Waterhouse, EEI, Allegheny Power, Atlantic Electric, Gulf States and Potomac Electric.

[15] Accounting Research Bulletin No. 43, *Restatement and Revision of Accounting Research Bulletins*, Ch. 3, ¶4, *in Accounting Statements—Originial Pronouncements* (1991).

[16] Arthur Andersen, Deloitte & Touche, EEI, Atlantic Electric, Centerior, Commonwealth Edison, Florida Power & Light and PSI Energy.

[17] FERC Statutes and Regulations ¶32,481 at 32,574.

[18] S. Rep. No. 621, 74th Cong., 1st Sess. (1935) (accompanying the bill which became Parts II and III of the Federal Power Act) states: "Section 301 [of the Federal Power Act] requires every licensee and every public utility subject to the act to keep its accounts in the manner prescribed by the Commission: it thus takes a long step in the direction of the uniform accounting which is so essential in the electric industry. The authority of the Commission over the accounts of companies under its jurisdiction extends to the entire business of such companies."

[19] Some commenters argue for the creation of an allowance recovery clause, like a fuel clause, that would transfer the costs and benefits from the sales and use of allowances to ratepayers. Others argue for and against fuel clause recovery. The Commission declines to address these arguments here because the scope of this rulemaking is limited to accounting issues.

[20] Virginia Power argues, for example, that allowances acquired in a package with high sulfur coal should be classified as a component of the cost of fuel, since they are an integral part of burning this particular coal. This argument, however, oversimplifies the analysis by ignoring other factors that also may affect a utility's CAAA compliance strategy. These other factors include the number of allowances already held by the utility, the degree to which the utility is controlling emissions (*e.g.*, with scrubbers), and the utility's intended use of the allowances (*e.g.*, for current or future year compliance or for speculation).

Commission agrees that accounting should accommodate the ratemaking process and reflect the economic substance of transactions,[21] the accounting adopted in this final rule will accomplish these goals yet provide consistent and uniform accounting treatment of allowances. Also, separating allowance costs from the other costs of a transaction will offer easy access to useful information on allowances by utility managers, regulators and other readers of utility financial statements. Conversely, inconsistent account classification based on the particulars of each transactions would not provide the uniform accounting essential to the Commission's regulation of utilities[22] and would impede access to useful information on allowances.

The Commission rejects the argument that the relationship between allowances and power generation justifies classifying allowances as fuel. Fuel is not the only determinant of allowance usage. Utilities will use allowances based on their SO_2 emission levels. Emission levels, in turn, reflect a number of factors, including the use and effectiveness of a utility's pollution control equipment, its generating efficiency and mix at any given time and its load dispatching practices. Even if a direct relationship could be shown between the amount of fuel burned and the utility's emissions, the accounting result would necessarily be the same as that provided by the rule, *i.e.*, allowances would be charged to expense based on the amount of SO_2 emissions. The Commission sees no advantage, from an accounting standpoint, in classifying allowances as fuel.

On the other hand, the comments suggest that the major benefit to utilities in classifying allowances as fuel is that it will facilitate rate recovery of allowance costs (*e.g.*, through fuel adjustment clauses, account-specific formula rates, and other rate recovery mechanisms). However, as explained above, facilitating rate recovery is not a valid basis for classifying allowances in the fuel accounts.

Another issue raised by commenters is whether to use separate classifications for current and long-term allowances. They assert that allowances that will not be used during a utility's normal operating cycle (generally one year) are long-term assets, not current inventories. While the Commission generally agrees that some allowances may not be used during a utility's normal operating cycle and are therefore long-term in nature, the Commission does not find it necessary to create new accounts for separate classification of such allowances. Instead, the Commission will require that current and long-term allowances be classified separately on the balance sheet for reporting purposes only. Reclassification for reporting purposes will achieve the correct balance sheet categorization of non-current allowances without imposing additional accounting burdens on utilities.[23]

The Michigan Staff asks the Commission to require utilities to maintain Accounts 158.1 and 158.2 by affected generating unit. The Commission notes that although allowances are initially allocated based on the emission levels of specific generating units, allowances can be used for any unit owned or operated by the same person. The Commission does not perceive the merits of classifying allowances by affected generating unit and declines to require this approach. Nothing in this rule, however, would prohibit a utility from maintaining any additional level of detail deemed necessary in subsidiary records, including information on allowances by affected generating unit.

A number of commenters assert that the prescribed accounting must first be consistent with GAAP for non-regulated enterprises and then reflect the effects of regulation in accordance with Statement of Financial Accounting Standards No. 71 of the Financial Accounting Standards Board (FASB).[24] The Commission disagrees. To carry out its responsibilities under the Federal Power Act (FPA) and the Natural Gas Act (NGA), the Commission has been given authority to prescribe accounting and financial reporting requirements for jurisdictional companies.[25] The Commission, for ratemaking and other purposes, needs financial statements that allow it to determine the current cost of service and to monitor past performance under approved rates.[26] If GAAP conflicts with the accounting and financial reporting needed by the Commission to fulfill its statutory responsibilities, then GAAP must yield. GAAP cannot control when it would prevent the Commission from carrying out its duty to provide jurisdictional companies with the opportunity to earn a fair return on their investment and to protect ratepayers from excessive charges and discriminatory treatment.

Having said this, the Commission notes that its accounting rules are, with limited exceptions, consistent with GAAP.[27] Any exceptions are necessary, in the Commission's view, to provide for appropriate recognition of assets, liabilities and equity capital, and for proper matching of revenues and costs. The Commission's authority to prescribe the accounting needed or appropriate for regulatory purposes under the FPA and NGA is unambiguous. Thus, while the Commission believes the accounting prescribed in this rule is generally consistent with GAAP for non-regulated entities, any differences from GAAP are needed or appropriate in order for the Commission to fulfill its statutory duties. For these reasons, the Commission declines to explicitly adopt FASB pronouncements as requirements subsumed in the USofA, as some commenters seem to suggest.

A number of commenters urge the Commission to segregate allowances obtained for speculative purposes from those obtained for compliance purposes. Although the NOPR stated that speculative allowances should not affect inventory pricing since they do not relate to utility operations,[28] it did not propose separate account classification for such allowances. EEI and others recommend that speculative allowances be classified as investments in Account 124, Other Investments, with any gains on losses on disposition recorded

[21] *See e.g.*, Termination of Inquiry on Accounting for Phase-In Plans, FERC Statutes and Regulations ¶ 35,524, 57 FR 13064 (1992).

[22] *E.g., id.* at n.l.

[23] Reclassification only for balance sheet purposes is not unique. The USofA already provides for reclassification at the balance sheet date for certain accounts. For example, see Account 164.1, Gas Stored Underground-Current, and paragraph A of Account 166, Advances for Gas Exploration, Development, and Production, 18 CFR part 201 (1992). For allowances, the Commission is simply requiring use of the same account numbers for both current and non-current allowances.

[24] FASB, Statement of Financial Accounting Standards No. 71, *Accounting for the Effects of Certain Types of Regulation* (1982), *in Accounting Statements—Original Pronouncements* (1991). Since 1973, the Securities and Exchange Commission has recognized FASB as the designated organization in the private sector responsible for establishing accounting and reporting standards. FASB's purpose is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors and users of financial information.

[25] *See* Sections 301, 302 and 304 of the FPA, 16 U.S.C. §§ 825, 825a and 825c (1988), and Sections 8, 9 and 10 of the NGA, 15 U.S.C. §§ 717g, 717h and 717i (1988). *See also* 15 U.S.C. § 79t(b) (1988).

[26] *See* Notice of Inquiry on Accounting for Phase-In Plans, FERC Statutes and Regulations ¶ 35,521 at 35,666–67, 53 FR 20496 (1988).

[27] *See* Statement of Policy on Post-Employment Benefits Other Than Pensions, 61 FERC ¶ 61,330 at 62,201 (1992).

[28] FERC Statutes and Regulations ¶ 32,481 at 32,579.

"below-the-line."[29] The commenters assert that separate account classification is needed to avoid inappropriate costing of allowances used for compliance purposes and to distinguish speculative allowances for ratemaking purposes. The Commission agrees and will require that allowances obtained for speculative purposes be accounted for as investments in Account 124. Any costs or benefits incurred or realized through transactions involving speculative allowances, including gains or losses on disposition of such allowances, should be charged or credited to Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate. As with other aspects of this final rule, however, this accounting treatment would not be dispositive of the ratemaking treatment for such costs and expenses.

2. Withheld Allowances

As noted in the NOPR, section 416 of the CAAA requires EPA to withhold 2.8 percent of the annual allocation of allowances, for the purpose of sale or auction by EPA.[30] The Commission proposed that, since the utility cannot use these withheld allowances, they should be accounted for separately from other allowances in Account 158.2, Allowances Withheld.

Comments. NARUC, the Florida Commission and the Georgia Commission support the NOPR's proposed accounting treatment. The Ohio staff also agrees with using a separate account for withheld allowances.

AICPA, Deloitte & Touche, Price Waterhouse and Gulf States oppose the creation of Account 158.2. AICPA argues that the account would add recordkeeping and reporting requirements but may not improve the usefulness of the information provided. Price Waterhouse argues that the distinction between this account and Account 158.1, Allowance Inventory, is not important enough to warrant separate accounts and that any needed information can be obtained from the proposed reporting requirements.

Commission Response. The Commission believes that Account 158.2 is needed to distinguish between allowances that are eligible for the utility's use and those that are not. Allowances withheld by EPA may never be available for the utility's use[31] and should not be included with allowances that are available for use. Also, only those allowances available for the utility's use should enter into the determination of the weighted average cost of allowances used during a period. In the Commission's view, the minimum amount of recordkeeping needed to maintain a separate account for withheld allowances is worth the benefits of improved information and the simplification of monthly computations of allowance inventory cost.

3. Existing Contracts

Since the NOPR proposed to create new accounts for allowances, the Commission invited comments on whether and, if so, how the proposed regulations should apply to existing contracts expressly based on the existing accounts in the USofA, *e.g.*, account-specific cost-of-service formula rates or joint operating agreements.[32]

Comments. NARUC and the Florida Commission support application of the final rule to such contracts, arguing that contractual relationships should not dictate the accounting requirements of the USofA. The Michigan Staff agrees, stating that existing contracts should be amended to reflect the costs and benefits realized from allowances.

The NC Municipal Agency argues that the final rule should not affect the determination of rate matters under existing agreements. The Agency argues that attempting to apply this rule to existing account-specific contracts would likely pose a substantial risk of unpredictable and improper outcomes, including the risk of disturbing the economic balance underlying existing formulas or agreements. The Agency argues that, if the final rule applies to existing contracts, and the Commission decides to account for allowances by revising accounts already included in existing agreements, the Commission should state that its revision of those accounts will "reopen" all affected rate agreements. If this were done, the Agency argues, the affected parties could then reaffirm or renegotiate their arrangements or, if needed, seek a Commission resolution of disputed issues.

NRECA argues that the final rules should not apply automatically to existing contracts with account-specific rates. NRECA argues that to do so would be tantamount to retroactive ratemaking.

The Georgia Commission argues that, for existing wholesale formula rates, the Commission could mandate a cost recovery framework allowing recovery of costs recorded in new accounts that would have been included in the formula if the accounts existed when the contracts were executed. The Georgia Commission argues that, otherwise, these contracts will need to be modified.

Several commenters recommend avoiding complications with existing contracts by classifying allowances in existing accounts, instead of new accounts. AEP argues that, in order for utilities to recover allowance costs under existing account-specific formula rates without renegotiations or litigation, allowances should be classified in existing accounts based on the ratemaking adopted for each utility. Atlantic Electric and Gulf States ask the Commission to use existing accounts in prescribing a cost recovery framework for existing formula rates. PSI Energy asserts that, to ease the transition for companies with existing account-specific contracts, allowances should be recorded in subaccounts of existing accounts. If the Commission uses new accounts, AEP and Gulf States ask the Commission to automatically amend existing commission-approved contracts.

If new accounts are used for allowances, EEI, Duke Power, PSI Energy, Southern Company and Virginia Power argue that, for existing contracts intended to recover system average costs, the Commission should specify that the return of and return on the prudently incurred costs of complying with the CAAA should be included in the determination of costs to be recovered, even though the costs are recorded in new accounts not listed in the contracts. EEI and Southern Company assert that, when pricing mechanisms are intended to recover the cost of specific units instead of system average costs, the final rule should allow economic value to be charged in appropriate instances.

The Ohio Staff recommends that the parties to existing contracts should be required to keep sufficient information on allowance trades so that when an order is issued, amounts can be reclassified in the new accounts.

Commission Response. As an initial matter, the Commission holds that allowance-related costs should be accounted for as prescribed in this rule even if service is provided under an existing contract. In light of the need for

[29] "Below-the-line" accounts contain amounts that are not operating income or expenses and, therefore, are not generally included in rates.

[30] FERC Statutes and Regulations ¶ 32,481 at 32,582.

[31] Withheld allowances will be offered by EPA for sale or auction. Any allowances not sold or auctioned will revert to the utility from which they were withheld. When such allowances become available for the utility's use, they should be transferred to Account 158.1.

[32] FERC Statutes and Regulations ¶ 32,481 at 32,576.

accounting uniformity and consistency, the fact that service is being provided under existing contracts does not warrant an exception from this rule.

The more fundamental issue raised by the commenters is whether the Commission, in this rulemaking, should seek to resolve all uncertainly on the ratemaking for such costs under existing contracts. The Commission believes that issuing an edict in this rulemaking on the recovery of allowance costs under existing contracts would not be in the public interest. Trying to resolve all uncertainty about ratemaking for allowance costs under existing contracts would contravene the Commission's "rate neutrality" intent and, on the record here, would likely generate considerable confusion. If the Commission in this proceeding were to order the automatic inclusion of allowance costs in existing contracts, there could be unintended effects on cost determinations and responsibilities under existing contracts. At least at this time, the better course is for affected parties, if necessary, to renegotiate their contracts to provide for a consensual treatment of the costs and benefits of allowances, and to file such changes pursuant to part 35 of the Commission's regulations.

C. Valuation of Allowances

1. General Rule—Historical Cost

The Commission proposed in the NOPR to measure the value of allowances, as a general rule, based on historical cost.[33] The NOPR defined historical cost as the amount of cash or its equivalent paid to acquire an asset, *i.e.*, its historical exchange price. Under this approach, allowances obtained from EPA at no cost to the recipient would be recorded at zero cost, while purchased allowances would be recorded at their historical exchange price.

Support for the NOPR. Many commenters support the use of historical cost.[34] The Department of Energy states, for example, that historical cost satisfies accounting disclosure needs, yet allows for independent ratemaking treatment for allowances. APPA asserts that any cost basis other than historical cost may lead to miscalculation of rate base. APPA argues that recording allowances at fair value could unjustifiably overstate a utility's assets and operating expenses. The American Gas Association states that historical cost is appropriate for valuing all allowances and in consistent with valuations used for most other regulated assets, including inventory.

Wisconsin Public Service states that using measures other than historical cost would raise verification issues because the allowance market is unlikely to be highly developed by the time allowances must be initially recorded. Wisconsin Public Service asserts that other measures would likely require utilities to record significant assets and offsetting regulatory liabilities. Wisconsin Public Service asserts that the confusion caused by recording large assets and offsetting liabilities for allowances would outweigh any benefits derived.

Deloitte & Touche supports the use of historical cost for allowances awarded by EPA at zero-cost, stating that this approach is consistent with GAAP. Deloitte & Touche also states, however, that these allowances will have significant economic value, based on the market price for traded allowances. Deloitte & Touche asserts that using historical cost for a valuable economic asset such as zero-cost allowances might not present users of financial statements and regulators with useful and relevant financial information. Thus, Deloitte & Touche urges the Commission to undertake a study of this issue.

Decline in value of allowances. GPU argues that if historical cost is used, the final rule should address the issue of market value declines. GPU proposes that the excess of cost over market which is deemed significant and permanent should not be written off to the income statement, but should remain on the balance sheet and be expensed when charged to ratepayers in the ratemaking process or determined to be uncollectible.

Atlantic Electric asserts that technological advances could reduce the value of allowances held in inventory and argues that this event should be given accounting recognition. Atlantic Electric believes that the accounting should reflect the "lower of cost or market."

Allowances from overcompliance. The Ohio Staff asserts that the NOPR did not adequately address the accounting for allowances freed up by overcompliance, *i.e.*, whether the cost of overcompliance should be reflected in the cost of allowances. The Ohio Staff asks: what is the cost of allowances freed up by overcompliance; how should the costs be determined; and where should these allowances be recorded?

Indirect costs. The Ohio Staff suggests that the cost of purchased allowances should include costs directly related to purchasing specific allowances. The Ohio Staff asserts that costs not directly related to purchasing specific allowances should be expensed in the period in which they are incurred. Similarly, Atlantic Electric asserts that certain "handling" and administrative costs incurred in acquiring allowances should be included in allowance costs. Pennsylvania Power & Light asserts that allowance costs should include the costs of acquiring, maintaining and disposing of allowances, *e.g.*, broker fees, incentive bonuses and selling commissions.

Fair value. AEP supports using fair value instead of historical cost when doing so is needed to allocate compliance costs equitably to all ratepayers. AEP agrees with using historical cost for purchased allowances but argues that using this method for allowances allocated by EPA at zero cost may send the wrong signal to regulators, *i.e.*, that allocated allowances always should be valued at zero. AEP asserts that this approach, if used for ratemaking, could distribute compliance costs inequitably between ratepayers and could discourage allowance trades between affiliates in least cost compliance strategies and among non-affiliates in a power pool.

AEP asserts that using historical cost for allocated allowances is contrary to Accounting Principles Board (APB) Opinion No. 29[35] and a recent FASB exposure draft on accounting for contributions.[36] According to AEP, both documents support the use of fair value in accounting for assets received in nonmonetary transactions.

Coopers & Lybrand argues that allocated allowances should initially be recorded at current market value, with credits to operating expenses, and thereafter "marked to market."[37] Coopers & Lybrand agrees with recording purchased allowances at cost, but proposes that they also be later "marked to market," *i.e.*, valued at

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[33] FERC Statutes and Requirements ¶ 32,481 at 32,576–77.

[34] Department of Energy NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission, AICPA, Arthur Andersen, Baltimore Gas & Electric, Centerior, Central & South West, Con Edison, Delmarva Power, Gulf States, Virginia Power, Wisconsin Electric, Wisconsin Public Service, APPA and the American Gas Association.

[35] FASB, Accounting Principles Board Opinion No. 29, *Accounting for Nonmonetary Transactions, in Accounting Standards—Original Pronouncements* (1991).

[36] FASB Exposure Draft on *Accounting for Contributions Received and Contributions Made and Capitalization of Works of Art, Historical Treasures and Similar Assets*, File Reference No. 096–B (October 1990).

[37] Coopers & Lybrand actually applies its recommendation only to "excess" allowances, *i.e.*, allowances allocated in a given year but not needed to offset the recipient's emissions in that year. Coopers & Lybrand argues that no accounting recognition is needed for allowances used to offset emissions in the year in which the allowances are allocated.

current market price. Coopers & Lybrand asserts that this method would prevent utilities from recognizing the gain on sale of unused allocated allowances, accumulated over time, entirely in the period of the sale. Coopers & Lybrand argues that this method also provides the most relevant information about the utility's available allowances at each reporting date and about gains and losses incurred during the reporting period. Coopers & Lybrand states that the "marked to market" method depends upon the development of a market which will allow fair value to be determined within reasonable limits.

Rate considerations. EEI agrees with using historical cost for purchased allowances and states that most EEI members agree that allowances allocated by EPA at no cost should be recorded at zero cost. EEI and others [38] argue, however, that the economic value of allowances should be reflected in the pricing of allowances used in sales for resale and in the operation of power pools. EEI asserts that utilities should be allowed to recover a fair share of the cost from wholesale customers in order to properly compensate retail customers, many of whom will face rate increases to pay for scrubbers or low sulfur coal. EEI argues that this is particularly important for allowances allocated by EPA at zero cost. EEI states that, while these ratemaking issues may be deemed beyond the scope of this rulemaking, the Commission should at least discuss this generally so that utilities will know the likely results as they choose compliance strategies.

Commission response. The great majority of the commenters generally favored using historical cost for both allocated allowances and purchased allowances. For the reasons given in the NOPR and those cited by the commenters, the Commission believes that historical cost is the appropriate measure of the accounting value of allowances. Historical cost is the primary measurement used in the USofA, as well as GAAP, for recording intangibles and most other utility assets.[39] Historical cost also is readily ascertainable, verifiable and free from bias, and provides useful information to regulators, investors and other users of a utility's financial statements. The characteristics of historical cost make it especially appropriate for use in regulatory accounting.

The use of historical cost for accounting purposes, however, is not intended to control or prejudge the ratemaking valuation of allowances. The Commission's determination in this rule applies only to the accounting for allowances.

To the extent that using historical cost for a valuable economic asset such as zero-cost allowances is perceived as limiting the usefulness and relevance of utility financial statements, utilities can alleviate this concern by disclosing the economic value of allowances in the footnotes to their financial statements. This final rule allows, but does not require, disclosure of such information in this way, if utility management considers disclosure desirable.

Certain commenters supported valuing allowance inventories at the "lower of cost or market," *i.e.*, requiring utilities to write-down their allowance inventories to net realizable value to reflect permanent changes in the value of allowances. The Commission declines to adopt this recommendation. At least in the near term, the historical cost of allowance inventories will be less than market value for most utilities, due to combining zero-cost allowances with the cost of purchased allowances in the inventory pool. However, even if the historical cost of allowances were to exceed market value, it does not necessarily follow that rates would be set on a basis less than historical costs. Thus, at least for now, any need for writing down allowance inventories will be decided case-by-case. If an asset is impaired, and rate recovery is not assured, the write-off should be recorded in Account 426.5, Other Deductions.

Several commenters assert that the accounting valuation of allowances should include costs directly related to purchasing specific allowances, *e.g.*, broker fees and selling commissions. The Commission believes that significant, directly-assignable acquisition costs should be included in the historical cost of the allowances. In theory perhaps all indirect costs of acquiring inventory should be added to the inventory's purchase price. However, the effort involved in identifying and allocating relatively small amounts of indirect costs would probably exceed the benefits derived from more precise costing. Also, such allocations would probably involve the use of arbitrary assumptions and make compliance determinations more controversial and not necessarily more accurate. Thus, the Commission will limit the inclusion of such costs to significant, directly-assignable costs of acquiring allowances. Other costs incident to acquiring allowances should be charged to an appropriate functional expense account when incurred.

The Ohio Staff asks whether the cost of freeing up allowances by overcomplying, *e.g.*, installing scrubbers or switching fuels, should be reflected in the historical cost of allowances. The answer is no.[40] The cost of allowances should include only the historical cost of acquiring the allowances themselves, not the additional costs incurred for overcompliance. Although compliance costs may relate indirectly to allowances, *e.g.*, by "freeing up" allowances or affecting a utility's decision to buy allowances or the price a utility is willing to pay for allowances, overcompliance costs are not part of the cost of the allowances themselves.[41] Because the money spent for overcompliance relates most directly to the item(s) acquired, *e.g.*, the scrubber or the higher cost fuel, the cost of overcompliance should be accounted for in the cost of the item acquired. There is no need, from an accounting perspective, to assign any part of the cost of overcompliance to allowances.

AEP asserts that using historical cost for allowances allocated by EPA is contrary to APB Opinion No. 29 and a FASB exposure draft on accounting for contributions.[42] The Commission does not believe that allocated allowances are within the scope of the FASB exposure draft, since the draft applies only to voluntary transfers, while EPA has a statutory duty to transfer the allocated allowances as prescribed by the CAAA. Moreover, the exposure draft cited by AEP, as since revised and re-proposed by FASB, would not apply to "transfers of assets from governmental units to business enterprises," an exemption

[38] Allegheny Power, Iowa-Illinois, PacifiCorp, PJM and Wisconsin Public Service.

[39] "Historical cost" should not be confused with "original cost." Original cost, when used in connection with plant, is the cost to the first person devoting the property to public service. Historical cost is the acquisition cost of assets. The historical cost of purchased plant for a public utility would be the sum of the original cost and any related acquisition adjustments. See 18 CFR Parts 101 and 201, Account 114, Plant Acquisition Adjustments.

[40] See FERC Statutes and Regulations ¶ 32,481 at 32,577 n. 38 ("The cost of any such [compliance] investments or expenditures would be accounted for independent of the allowances obtained as a result of such investments or expenditures, in the accounts already established for such costs in the USofA.")

[41] For example, if a utility paid $500 for an allowance, its historical cost would be $500. Installing a scrubber in order to "free up" this allowance would not increase the cost of the allowance itself. Although overcompliance may add to the utility's options, *e.g.*, to sell the allowance or save it for future needs, overcompliance does not affect the cost of the allowance itself.

[42] The Commission notes that AICPA, in its comments, disagrees with AEP's interpretation of APB Opinion No. 29. According to AICPA, allowances do not qualify as nonreciprocal transfers eligible for fair value accounting treatment under APB Opinion No. 29 because the CAAA impose a reciprocal obligation on utilities to limit their sulfur dioxide emissions.

which appears to apply to allowances.[43] But, even if allowances are within the scope of APB Opinion No. 29 or the FASB exposure draft, the Commission believes for the reasons stated above that general GAAP is not controlling in this proceeding.

Coopers & Lybrand argues that "excess" allocated allowances, *i.e.*, those not needed for current year emissions, should be recorded at fair value and later "marked-to-market." The Commission declines to adopt this recommendation in this accounting rule as not needed for sound accounting. Cooper & Lybrand's method differs from the historical cost method solely in the timing of the recognition of compliance costs and gains and losses on disposition of allowances. If compliance costs and gains or losses are recognized in different periods for ratemaking purposes than for accounting purposes, the provisions on regulatory assets and liabilities adopted below will capture the economic effects of such rate actions.

Finally, the Commission rejects the argument that fair value should be used for accounting purposes in order to facilitate the use of fair value for ratemaking purposes. If fair value is used for allowances in ratemaking but not in accounting, the rule adopted herein can accommodate this result through the recognition of regulatory assets and liabilities. In any event, prescribing or prejudging the ratemaking treatment for allowances is beyond the scope of this accounting rulemaking. In conclusion, for all the reasons stated above, the Commission adopts the use of historical cost as the accounting measure of allowances.

2. Cost Allocation for Package Purchases

For allowances obtained in a package with other commodities, *e.g.*, fuel or electricity, the NOPR proposed to determine the historical cost of the allowances based on their fair market value at the time of purchase.[44] The NOPR also proposed to allocate the purchase price for a stream of allowances on the basis of fair value or, if fair value cannot be determined, on a present value basis using a discount rate based on the rate on ten-year U.S. Government bonds, *i.e.*, a risk-free interest rate.

Allowances acquired as part of a package. NARUC, the Florida Commission and the Georgia Commission support the use of fair value in determining the historical cost of allowances obtained as part of a package. NARUC, Delmarva Power and the Michigan Staff also suggest an optional method based on allocating the package's historical cost in proportion to the ratio of each item's fair market value to that of all items. In support, the Michigan Staff argues that using fair value only for the allowance part of the package may distort the cost allocation.

Cincinnati Gas & Electric opposes the adoption of a mandatory valuation method for determining the value of allowances obtained in a package. Cincinnati Gas & Electric asserts that the value of allowances should be determined in each case based on the facts and circumstances of the case.

Stream of allowances. The Ohio Staff agrees with the proposed method of allocating costs for a stream of allowances. Allegheny Power states that, if fair value cannot be determined for a stream of allowances, the present value method is an acceptable method unless the contract specifies a different cost allocation.

EEI and others[45] argue that the Commission should not prescribe present value or any other method as the sole alternative to fair value. EEI argues that, if fair value cannot be determined, the facts and circumstances of each trade should be reviewed to determine which method most accurately allocates the cost of individual allowances in a stream of allowances. EEI also states that FASB has begun an inquiry into present value accounting and argues that it would be premature to adopt a present value approach until FASB's inquiry is completed. PSI Energy argues that, without market data, and because there have been no trades to determine reasonable methods for allocating future costs, mandating a single method may be inappropriate.

Atlantic Electric asserts that, if the use of present value is required, the final rule should describe how to account for the difference between the purchase price and the present value.

The discount rate. AICPA argues that using a risk-free interest rate in a present value analysis ignores significant market and interest-rate risks. AICPA contends instead that utilities should be required to use any interest rate that properly reflects prevailing risk (*e.g.*, the incremental borrowing rate). Price Waterhouse argues that a company-specific incremental rate should be used when prescribed by GAAP. Arthur Andersen supports using the utility's incremental borrowing rate or its authorized rate of return as the discount rate.

EEI and Allegheny Power assert that the discount rate should correspond to the time period of the stream of allowances and propose using a company's incremental borrowing rate for the applicable years. EEI argues that this is the discount rate used in other present value calculations under FASB Statement No. 13[46] and is more relevant to the circumstances of each utility.

PSI Energy and Deloitte & Touche argue that utilities should be allowed more flexibility in determining the discount rate. PSI Energy argues that participating in the allowance trading market will pose risks and that these risks will not be properly reflected in a risk-free rate. PSI Energy also states that using a risk-free rate would conflict with the discounting theory used in making financial decisions.

Detroit Edison supports using a discount rate based on Moody's Long-Term A grade bond yield or a similar average yield. Detroit Edison agrees that using a rate that achieves uniformity and comparability among public utilities is beneficial but opposes the use of a risk-free rate.

Commission Response. The use of fair value in determining the historical cost of allowances acquired as part of a "package" was supported by most of those who commented on this aspect of the NOPR. The Commission finds this approach appropriate and, with the clarifications below, will adopt the use of fair value as the measure of allowances acquired as part of a "package."

The NOPR proposed to determine the historical cost of allowances acquired as part of a package based on the fair market value of only the allowances. NARUC and others suggest an optional method using the ratio of the allowances' fair market value to the total fair market value of all elements of the package. The fair market value of allowances could be determined in at least three ways: by comparing the price of the "package" with and without the allowances; by direct reference to market prices; and by use of the ratios suggested by NARUC. Of the three, direct reference to market prices will be most readily determinable and easiest to verify. This method would be easier for utilities to use and regulators to verify than a ratio-based method, since the

[43] FASB Exposure Draft on *Accounting for Contributions Received and Contributions Made*, File Reference No. 121-A at 2 (November 1992).

[44] FERC Statutes and Regulations ¶32,481 at 32, 577-78.

[45] Atlantic Electric, Commonwealth Edison, Con Edison, Detroit Edison, PSI Energy, Virginia Power and Wisconsin Electric.

[46] FASB, Statement of Financial Accounting Standards No. 13, *Accounting for Leases* (1976), *in Accounting Statements—Original Pronouncements* (1991).

former focuses on the fair value of only the allowances and the latter addresses the fair value of all components of a package. Moreover, these two methods would produce the same result in most cases, differing only in the presumably infrequent case in which the transfer price differs from the sum of the fair market values of all components of the package. In the more likely case in which the transfer price equals the sum of the fair market values, a ratio-based approach would lead to unnecessary effort in documenting the fair value of non-allowance components of package trades and unduly complicate the determination of allowance values. Thus, the Commission declines to require the use of a ratio-based method in all cases. Instead, the Commission will adopt the NOPR's method as the primary method. However, if reliable market prices for allowances are not available, or if the sum of the fair market values for all parts of the package is determined and does not equal the transfer price, then an alternative method may be used. In such a circumstance, the utility proposing to use an alternative method will be required to make a sufficient showing in support of its decision to use an alternative method.

Several commenters objected to the required use of present value when fair value cannot be determined, instead recommending the use of contractually-specified amounts or amounts determined based on the circumstances of each case. The Commission disagrees. A primary objective of this rule is to provide uniform accounting for allowances. Permitting utilities unlimited discretion in choosing the method for valuing allowances would be contrary to that objective. The Commission believes that, in the absence of fair value, it is necessary to prescribe a uniform method that is both objective and reflective of the value of allowances on the date of their acquisition.[47] The present value approach reasonably achieves these goals, is rational and systematic and reflects the higher value of an allowance usable today compared to one usable only in the future. Although other measures may be more precise in particular circumstances, the gain in objectivity and uniformity more than offsets any possible loss in precision. Therefore, the Commission will limit the measure of the historical cost of allowances acquired as part of a package to present value, if fair value is not determinable.

A number of commenters challenge the proposed use of the interest rate on ten-year U.S. Government bonds in present value determinations. They argue that utilities should be allowed to use a rate that better reflects the risks involved in trading allowances as well as each utility's particular circumstances. They also assert that the discount rate should correspond to the time period of the stream of allowances. The Commission finds merit in these arguments. Accordingly, the final rule will provide for the use of the utility's incremental borrowing rate instead of the interest rate on ten-year U.S. Government bonds.[48] Incremental borrowing rates, while not as objective as government bond rates, will correspond more closely to the rate utilities will use in considering allowance purchases and will better allocate the cost of the purchases. Incremental borrowing rates also are widely accepted by the accounting profession and used in a number of present value determinations, including the valuation of receivables and payables, leases, and plant abandonments.

Prescribing the use of present value at this time is not premature even though FASB is still conducting an inquiry on present value measurement. The FASB inquiry relates to whether discounted present value should be used as the measure of assets and liabilities that will be realized through future receipts or payments. In contrast, the Commission is simply prescribing the use of present value as a technique for allocating the actual historical cost of a purchase among allowances of different vintages.[49] Therefore, the present value measurement adopted in this rule is different from the determination at issue in the FASB inquiry.

3. Allowance Trades Between Affiliates

The NOPR proposed that a company obtaining allowances from an affiliate should record as its cost the inventory cost of the affiliate that first obtained the allowances.[50] The NOPR stated that any difference between this cost and the sale price should be recognized as an equity contribution between affiliates and recorded in Account 211, Miscellaneous Paid-in Capital.

Comments. NARUC, the Florida Commission and the Georgia Commission support the Commission's proposal, so long as records allow state regulators to determine the proper ratemaking treatment.

EEI and others[51] argue that allowances traded between affiliates should be valued at fair value. These commenters raise many different arguments. For example, EEI and certain others[52] argue that the proposed rule would discourage affiliate trades, contrary to the decision by Congress to exempt allowance trades from the jurisdiction of the Securities and Exchange Commission (SEC).[53] Southern Company and AEP argue that the proposed accounting would undo the Congressional intent to allow affiliates to transfer allowances on a basis other than cost.

Allegheny Power asserts that affiliate trades are scrutinized by the Commission, various state commissions, internal and external auditing groups, and the SEC. Allegheny Power argues that trades at less than fair value would raise prudence questions.

Allegheny Power asserts that open market trading by affiliates would be more costly, less efficient and possibly less reliable than intra-system trading. Similarly, EEI argues that affiliates trading on the open market would incur unnecessary transaction costs. EEI and Centerior argue that the proposed rule would impair the ability of affiliated utilities to engage in least cost compliance planning. Southern Company argues that if affiliates cannot transfer allowances between themselves at fair value, they may not be able to maintain allowance reserves on a system-wide basis and might increase the number of allowances that each utility holds.

PacifiCorp asserts that, unless fair value is used for affiliate trades, full cost recovery is not possible and the allowance market will not develop. The Illinois Commission argues that the proposed accounting, by discouraging affiliate allowance trades, may impede

[47] When contractual values approximate fair market value, they may be used as the measure of fair market value. Only in the absence of fair value must present value be used.

[48] The incremental borrowing rate is the interest rate that, at the time of the allowance acquisition, the utility would have incurred to borrow sufficient additional funds to purchase the allowance(s) for the amount of time the utility expects to hold the allowances.

[49] Atlantic Electric asks how to account for the difference between the purchase amount and the present value. There will not be a difference, however, since the present value calculation merely allocates the total purchase amount among the acquired assets by vintage.

[50] FERC Statutes and Regulations ¶ 32,481 at 32,578.

[51] Coopers & Lybrand, Price Waterhouse, Chicago Board of Trade, Allegheny Power, Atlantic Electric, Central & South West, Con Edison, Consumers Power, the Iowa Working Group, GPU, Gulf States, IES Industries, Kentucky Utilities, NRECA, PacifiCorp and Virginia Power.

[52] Allegheny Power, Atlantic Electric, AEP, Central & South West and Southern Company.

[53] *See* Section 403(j) of the CAAA, 42 U.S.C. § 7651b(j).

the establishment of an active allowance market.

The Chicago Board of Trade argues that using current market value would properly make affiliates indifferent between trading on the open market or with an affiliate. The Board argues that using a valuation method other than market value could encourage affiliates to trade with each other on a non-competitive basis instead of on the open market. The Board asserts that affiliate trades deprive other interested parties of the public price signals needed to help minimize compliance costs.

The Iowa Working Group argues that the NOPR's proposed accounting could lead to cross-subsidization within multi-state companies. The Group asserts that, in seeking least cost compliance, holding companies or affiliated utilities may overcontrol emissions at one company's unit to avoid making reductions at another company's unit. The Group states that, when the allowances freed up by overcontrol are transferred from the first company to the second one, the use of zero-cost accounting could result in the first company subsidizing the second one.

The Group also argues that the proposed accounting may lead to cross-subsidization between a holding company's regulated and unregulated operations. The Group states that, under the NOPR's proposed accounting, a holding company could transfer allowances at zero-cost from a regulated company to an unregulated affiliate. The Group asserts that the unregulated affiliate could realize below-the-line profits by selling such allowances.

AICPA, Coopers & Lybrand and Deloitte & Touche argue that using original cost for allowances acquired from affiliates is inconsistent with GAAP, which, according to AICPA, usually does not distinguish between assets acquired from affiliates and those acquired externally in similar trades. AICPA asserts that the Commission should use its enforcement powers to determine the appropriateness of affiliate trades.

The Environmental Defense Fund, Centerior, Ohio Edison and Penn Power argue that affiliate trades should be treated the same as non-affiliate trades, *i.e.*, an allowance obtained from an affiliate should be valued at the sale price, not the seller's original cost. The Environmental Defense Fund asserts that the oversight of state regulators, especially if trades are between affiliates in two different states, should assure that prices reflect market value.

APPA states that fair market value could be used for affiliate trades if proper reporting measures assure that the market is disciplined by full and timely disclosure of market price information. APPA argues that if detailed information, including price and terms, is not available on all allowance trades, affiliates should be required to transfer allowances at historical cost.

NYDPS supports using historical cost for trades between an unregulated entity and an affiliated regulated utility, but supports using fair value for trades between two affiliated regulated utilities. NYDPS argues that trades between affiliated regulated utilities, unlike trades involving an unregulated affiliate, are subject to adequate state and federal oversight and present less risk of manipulation, since regulators will likely allocate any profit transfers to ratepayers' benefit. If fair value is used for trades between regulated affiliates, NYDPS proposes that a discount (*e.g.*, five to ten percent of market value) be applied to the derived market value, to recognize economies resulting from avoiding market transaction costs.

NRECA asks the Commission to clarify that the term "affiliate" is being used in the corporate legal sense and does not include entities whose only relationship is that of co-owners of a generating plant.

Commission Response. The great majority of commenters disagree with the NOPR's proposed accounting for affiliated transactions. These commenters argue that the proposed accounting may: discourage affiliate trades; unnecessarily raise the cost of acquiring allowances; impair system-wide least cost planning; raise prudence questions even when parties have acted prudently; provide misleading price signals to the allowance market; result in cross-subsidization between affiliates; and conflict with GAAP.

The Commission finds these arguments persuasive and, as explained below, has decided not to adopt the proposed accounting for affiliate transactions. The Commission believes that the cited deficiencies can be avoided by requiring the same accounting for affiliate transactions as for non-affiliate transactions. Thus, the Commission will require that all allowance transactions, including transactions with affiliates, be accounted for in the same manner, *i.e.*, the purchase price (historical cost) of an allowance will be the attribute used for accounting valuation regardless of whether the allowance is purchased from an affiliate or non-affiliate.

However, since affiliate transactions are by definition less than arm's length, the Commission will require certain additional safeguards for allowance transactions between affiliates. As support for accounting entries used to record purchases from and sales to affiliates, the Commission will require the transacting utilities to maintain enough information to allow ready identification, analysis, and verification of the market value of allowances at the time of the transaction, as well as other relevant information supporting the reasonableness of the exchange price.[54] The burden of proving the fairness of any value assigned to the allowances will rest with both the selling and purchasing utility. These safeguards, along with safeguards inherent in existing accounting practices (*e.g.*, consolidated income statements for affiliates) and in ratemaking prudence reviews, should prevent abusive affiliate trades intended to inflate assets or improperly benefit shareholders.

NYDPS proposes the application of a Commission-determined discount to the market value of allowances acquired from affiliates, to recognize economies resulting from avoiding market transaction costs. The Commission finds this refinement unnecessary. As explained above, the final rule allows the inclusion of market transaction costs in the historical cost of allowances. If savings in market transaction costs are achieved by trading with affiliates, the Commission believes the book cost of the allowances should reflect such savings. However, sufficient information on market transaction costs for non-affiliate trades should be obtainable without the need to establish an arbitrary percentage at this time. The Commission has adequate authority to correct any abuses that may occur in this regard.

In response to NRECA's request for clarification of the term "affiliate," the Commission intends the term to mean companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting company. This is the same definition contained in Definition 5 of the USofA.[55]

4. Allowance Futures

In the NOPR, the Commission distinguished between hedge transactions and speculative transactions and proposed to treat a trade as a hedge transaction only when the utility, at the time it entered into a futures contract, designated the

[54] If the allowance market is not highly active, a range indicative of the current market value could be inferred from the prior and subsequent transaction prices that are available.

[55] 18 CFR part 101, Definition No. 5.

transaction in contemporaneous documents as one entered into for hedging purposes.[56] The Commission proposed to defer the costs or benefits of hedging transactions in Account 186, Miscellaneous Deferred Debits, or Account 253, Other Deferred Credits, and to include such amounts in Account 158.1, Allowance Inventory, when the related allowances were acquired, sold or otherwise disposed of. The Commission proposed to record the costs or benefits of speculative transactions in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions.

Comments. EPA supports the inclusion of accounting rules for allowance futures, stating that the rules will facilitate utilities' use of allowance futures to manage risk associated with the allowance market.

NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission and APPA support the proposed accounting treatment for allowance futures. NARUC proposes extending the same rules to "forward contract" trades outside of the organized exchanges, while the New York Mercantile Exchange proposes extending the rules to energy futures and options (*e.g.*, on crude oil and natural gas). The Ohio Staff agrees with the proposal to defer costs or benefits from hedging trades and include such amounts in inventory when the allowances are acquired, sold or otherwise disposed of. NRECA emphasizes that allowances held for investment purposes should be segregated in a separate account from allowance inventory held for operating purposes.

AICPA, Arthur Andersen, Deloitte & Touche and Price Waterhouse generally support the NOPR's proposal but assert that the deferred amounts should be recorded in the allowance accounts, not in Accounts 186 and 253. AICPA argues that deferral in the allowance accounts comports with FASB Statement No. 80.[57] Coopers & Lybrand argues that the proposed accounting for futures contracts should be replaced by a reference to FASB Statement No. 80.

Similarly, EEI and others [58] cite FASB Statement No. 80 and argue that the costs or benefits of hedging transactions should be included in inventory as the costs or benefits occur, and not deferred until the transaction is complete. In support, Atlantic Electric asserts that this approach would allow the average price of allowances in inventory to reflect hedging costs regardless of when specific allowances are included in inventory. Atlantic Electric questions whether the NOPR's proposed accounting conforms to the accounting for hedging of other assets, *e.g.*, fuel supplies.

The Wisconsin Municipal Group asserts that the proposed accounting could cause ratepayers to bear the risk of a hedging trade by paying a return on allowances included in rate base, while shareholders would receive any gain on the trade. The Group asserts that this could occur because the gain or loss on a hedging trade would be recorded in below-the-line Accounts 421 and 426.5, while the allowances would be recorded in Accounts 158.1 or 158.2 and might be included in rate base. The Group asserts that a procedure should be adopted for allowances used in hedging trades to ensure that these allowances will not be included in rate base.

The California Commission asserts that all costs of both hedging and speculation should be recorded in a non-operating subaccount of Account 421. The California Commission argues that distinguishing hedging from speculation would be neither feasible nor purposeful. Instead, the California Commission argues, the proposed accounting would further burden the regulatory process by requiring regulators to evaluate a utility's designation of a trade as either hedging or speculation, to ensure that the utility is only passing on reasonably incurred costs and not siphoning off gains that should be used to reduce its revenue requirement. The California Commission argues that its proposal would discourage utilities from playing in the futures market and avoid unnecessary accounting and regulatory complexities.

Detroit Edison argues that utilities should not be required to designate a transaction as one entered into for hedging purposes. Detroit Edison asserts that utilities should be presumed to enter into futures contracts for the purpose of hedging rather than speculating.

AICPA and others [59] argue that allowances purchased for speculative purposes should be recorded in Account 124, Other Investments. EEI, Atlantic Electric, Commonwealth Edison and Florida Power & Light also assert that any gains or losses on disposition of these allowances should be recorded in Account 421, Miscellaneous Nonoperating Income.

Commission Response. The Commission will limit the scope of the final rule on hedge accounting to allowance futures traded on an organized exchange. Futures trading is an established, standardized practice for which uniform accounting requirements are practical. There are numerous other methods of hedging (*e.g.*, forward contracts) that do not enjoy the same level of standardization as futures contracts and therefore may require different accounting.[60] FASB is reviewing the accounting in these areas and the Commission finds it appropriate in this instance not to go beyond the limited hedge accounting rules adopted herein until FASB's review is completed.

The Commission agrees with certain commenters that Account 124, Other Investments, should be designated as the proper account for recording allowance futures transactions entered into for speculative purposes. However, the Commission is not convinced that other changes are needed in the proposed accounting for futures transactions. From an informational standpoint, there is considerable benefit in requiring deferral of the costs and benefits of futures trading in Account 186 or Account 253 until the futures contract is closed. Further, the amounts of the accounting charges and credits resulting from the Commission's method should be the same as would be produced under FASB Statement No. 80, and would merely be displayed differently on the balance sheet. The Commission fails to see how this difference in display creates a conflict with GAAP. Also, since the Commission is requiring the use of a weighted average cost method in determining the cost of allowances issued from inventory, the costs and benefits from futures transactions, unless deferred as proposed in the NOPR, could affect the income statement before the cost of the related allowances is expensed. This potential mismatch is avoided if separate deferrals in Accounts 186 and 253 are required.

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[56] FERC Statutes and Regulations ¶ 32,481 at 32,578–79.

[57] FASB Statement of Financial Accounting Standards No. 80, *Accounting for Futures Contracts*, ¶ 6, *in Accounting Statements—Original Pronouncements* (1991).

[58] AEP, Atlantic Electric, Baltimore Gas & Electric, Centerior, Cincinnati Gas & Electric, Commonwealth Edison, Delmarva Power, Gulf States, Pennsylvania Power & Light and PSI Energy.

[59] Arthur Andersen, Deloitte & Touche, EEI, Atlantic Electric, Centerior, Commonwealth Edison, Florida Power & Light and PSI Energy.

[60] In fact, according to a FASB Research Report on hedging (FASB, *Hedge Accounting: An Exploratory Study of the Underlying Issues* (1991)), more than 75 different hedging products exist today.

5 Allowances Acquired Through Exchanges

The Commission proposed in the NOPR to account for allowances received in exchanges based on the inventory value of the allowances given up.[61] For example when no monetary consideration (or "boot") is involved, the value of allowances received in an exchange would equal the inventory cost of the allowances given. When a utility pays boot in an exchange, the value of the acquired allowances would be the sum of the inventory cost of the allowances given up and the boot paid.

Comments. NARUC, the Georgia Commission and the Ohio Staff support the proposed rules. The Florida Commission also supports the proposed rules, so long as utility records allow a detailed review of individual transactions, including an identification of transactions between affiliated companies.

PSI Energy and the Ohio Staff state that the proposal is consistent with GAAP, specifically with APB Opinion No. 29, "Accounting for Nonmonetary Transactions." PSI Energy asserts that the final rule should refer to APB Opinion No. 29 as the accounting rule for allowance exchanges.

Delmarva Power & Light supports the proposed rule but notes that the NOPR is silent regarding an exchange involving dissimilar nonmonetary assets. Delmarva asserts that when an exchange of dissimilar nonmonetary assets occurs, the accounting should be based on the fair values of the assets involved.

Price Waterhouse opposes the NOPR's proposal to base the value of allowances obtained in an exchange on the inventory cost of the allowances given in exchange, plus any boot paid. Price Waterhouse argues that APB Opinion No. 29 requires that such exchanges be accounted for based on fair value.

AEP opposes the use of historical cost in accounting for allowances acquired through exchanges, citing the same concerns it raised against using historical cost generally.

Commission Response. The Commission has carefully analyzed the comments on allowance exchanges and believes that there is no need to modify the original proposal. To the extent, if any, that GAAP would require the use of fair value in accounting for an exchange when this rule would require the use of historical cost, the Commission deviates from GAAP for reasons stated above. If ratemaking does not follow the accounting for exchanges, the economic effects of any differences can be adequately provided for by recording regulatory assets and liabilities, as discussed below.

D. Inventory Method

1. Weighted Average Cost Method

The NOPR proposed to use a weighted average cost method for determining the cost of allowances issued from inventory.[62] The Commission stated that this method provides a rational, systematic and objective measure of the cost of allowances used or sold during a period and mitigates the effect of price changes on income and inventory balances. The Commission also stated that if a utility was required to use another inventory method for ratemaking purposes, any differences in allowance inventory values and expense amounts for rate and accounting purposes would be accounted for as regulatory assets and liabilities.

Comments. A number of commenters support the use of the weighted average cost method.[63] The Florida Commission notes that this method comports with the method used in Florida for fuel inventory pricing. The Illinois Commission states that the weighted average cost method prevents utilities from manipulating allowance costs and that such manipulation could cause fluctuations in the expensed allowances as well as in gain or loss recognition. APPA states that the weighted average cost method will cause the least seasonal variation in unit cost.

AICPA argues that the Commission should adopt an averaging method (*e.g.*, weighted average cost) and require use of that method unless a utility demonstrates that another method better reflects the cost of the allowances. Similarly, Deloitte & Touche suggests modifying the rule to express a preference for the weighted average cost method, but allow the use of other methods when appropriate.

The Ohio Staff supports using the weighted average cost method now, but recommends that the Commission reconsider the issue after the Internal Revenue Service rules on the tax treatment of allowances. Alternatively, the Ohio Staff suggests allowing companies to change costing methods if required.

The North Carolina Staff argues that a utility should be allowed to use, for accounting purposes, the inventory method used by most of its regulatory jurisdictions (or the jurisdictions controlling most of the utility's revenues). The North Carolina Staff argues that this approach would reduce the amount of regulatory assets and liabilities, so long as most of the jurisdictions use the same method.

EEI and many others[64] oppose the mandatory use of a particular inventory method. They argue instead that utilities should be allowed to use any method that is consistent with GAAP, best fits the utility's activity in acquiring and using allowances and is allowed by the primary ratemaking jurisdiction. EEI argues that this approach would avoid unnecessary use of regulatory assets and liabilities.

Several commenters assert that the Commission does not prescribe a single inventory method for materials and supplies or fuel and should not do so for allowances. Virginia Power, for example, notes that Account 154, Plant Materials and Operating Supplies, allows the use of a "cumulative average, first-in-first-out [FIFO], or such other method of inventory accounting as conforms with accepted accounting standards consistently applied."[65] Iowa-Illinois states that it uses the last-in-first-out (LIFO) method for coal inventories and argues that, since allowance usage will track fuel usage, allowance and fuel usage should be valued similarly. Baltimore Gas & Electric argues that the Commission should require only that the inventory method used for allowances be consistent with the method used for the related fuel inventory.

Florida Power & Light argues that, while the weighted average cost method is appropriate for fungible inventories such as fuel, where it is impossible to distinguish between fuel bought at different prices and stored in the same tank, allowances are individually serialized and can be distinguished from each other. Florida Power & Light argues that EPA has proposed to require specific identification of allowances and that the Internal Revenue Service is likely to require specific identification. Florida Power & Light argues that the use of different inventory methods for

[61] FERC Statutes and Regulations ¶ 32,481 at 32,579.

[62] FERC Statutes and Regulations ¶ 32,481 at 32,579–82.

[63] NARUC, the California Commission, the Florida Commission, the Georgia Commission, the Illinois Commission, PSI Energy and APPA.

[64] Allegheny Power, the American Gas Association, Baltimore Gas & Electric, Centerior, Central & South West, Cincinnati Gas & Electric, Commonwealth Edison, Con Edison, Consumers Power, Florida Power & Light, Gulf States, Iowa-Illinois, Kentucky Utilities, PacifiCorp, Wisconsin Electric, Atlantic Electric, Delmarva Power, IES Industries, NYSEG, Ohio Edison, PG&E, PJM, Penn Power, Pennsylvania Power & Light, Potomac Electric, PSE&G, Southern Company, Virginia Power and Wisconsin Public Service.

[65] 18 CFR Part 101, Account 154, Plant Materials and Operating Supplies.

accounting, tax and environmental purposes would result in unwarranted administrative burdens without discernible benefits to utilities or their ratepayers.

Allegheny Power argues that the specific identification method is appropriate for allowances because it can prevent distortions in the valuation of allowances charged to retail customers. Allegheny Power argues, as an example, that if a company buys allowances for a specific nonaffiliated trade, the cost of those allowances should be allowed to follow that trade and not affect the costs charged to regular customers. Allegheny Power argues that companies may also buy allowances for future needs, and that the average cost method can cause current ratepayers to pay for allowances that will not benefit them.

AEP and Arthur Andersen assert, contrary to the NOPR,[66] that the use of different inventory methods for accounting and ratemaking purposes does not require accounting for differences in inventory values and expense amounts as regulatory assets and liabilities, so long as the ratemaking method is allowed by GAAP. Southern Company argues that recording regulatory assets and liabilities for all differences between inventory values for accounting and ratemaking purposes is unnecessary, costly and administratively burdensome. Cincinnati Gas & Electric argues that such accounting could confuse users of financial statements, with no apparent gain in usefulness or clarity.

EEI and others[67] assert that differences between two generally accepted accounting methods (*e.g.*, when a state commission and this Commission require different methods) are not regulatory assets under FASB Statement No. 71.

Ohio Edison and Penn Power assert that the proposal to use regulatory assets and liabilities to reflect differences in inventory methods in an unnecessary complication and that concerns continue to be raised by the SEC and accountants about the collectability of regulatory assets. They argue that, while these concerns are often baseless, their existence demonstrates the perception of higher risk associated with such assets.

Atlantic Electric argues that the Commission must assess the effects of allowances valued at present value on the weighted average cost method. Atlantic Electric asserts that amortization of inventory costs can be distorted by commingling costs of allowances associated with future use with costs of allowances with more current application.

AICPA and Deloitte & Touche dispute the NOPR's statement that "there is no need, for inventory purposes, to separately identify which allowances were used * * *." They argue that serialization of allowances would better enable independent auditors to confirm the existence of allowances and the completion of trades, and allow utilities to design effective internal control and tax systems for allowances.

The Ohio Staff recommends that if EPA adopts serialization, utilities should be required to maintain records detailing the cost associated with each serial number.

Commission Response. Based on careful consideration of the comments, the Commission has decided to adhere to its proposal to require the use of a single inventory method, the weighted average cost method, for allowance inventory accounting. While there is merit in the recommendation of some commenters to allow the use of any inventory method that complies with GAAP and is used for ratemaking purposes, such benefits are outweighed by the need to limit management's discretion in determining income and inventory balances and by the benefits of having a uniform accounting method.

The weighted average cost method has the advantage of objectivity in that it limits management discretion in determining income and inventory balances. By comparison, the other common inventory methods (specific identification, LIFO and FIFO) provide management greater flexibility to manipulate inventory and income balances by timing purchases and sales of allowances and by specifying which allowances are transferred or used.[68] While the Commission has allowed utilities to use these other methods for certain inventories, the allowance inventory will differ from other inventories, in that some allowances will be received at zero cost from EPA and others will be purchased at market price. This cost dichotomy does not exist for other inventories and magnifies management's ability to alter income and inventory balances under inventory methods other than weighted average cost method. The latter method is needed in this instance to prevent the accounting manipulation made possible by the unique disparity of allowance costs.

Also, the uniformity gained by requiring all utilities to use a single inventory method produces other valuable benefits. Many utilities operate in more than one rate jurisdiction and it is possible that all such jurisdictions will not use the same method to price inventory issuances for ratemaking purposes. However, a single inventory method is essential for accounting purposes. For example, if one jurisdiction uses LIFO for ratemaking purposes and another uses FIFO, the principles of sound accounting would militate against the use of both methods in the utility's inventory accounting or the adoption of different inventory pools for each jurisdiction.

Moreover, such jurisdictional differences are likely to occur, and require the use of regulatory asset and liability accounts, regardless of the method the Commission prescribes for accounting purposes. Thus, the use of regulatory asset and liability accounts cannot be avoided merely by allowing utilities to select the accounting method they find desirable.

Apart from multi-jurisdictional conflicts, the use of a uniform inventory method will also help ensure comparability of financial data within the industry. Different inventory methods can substantially alter a utility's apparent financial performance and, even if the method used is disclosed, make comparisons to other utilities needlessly difficult.

The Commission disagrees with the commenters who assert that, based on FASB Statement No. 71, the use of different inventory methods for ratemaking and accounting purposes would not give rise to regulatory assets and liabilities under the USofA so long as both methods are allowed by GAAP. Regulatory assets and liabilities are defined differently under the final rule than under FASB Statement No. 71. In relevant part, the final rule defines regulatory assets and liabilities as arising from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the USofA's general requirements but for it being probable that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services. The final rule, however, requires the use of a single inventory method for allowances—weighted average cost. Thus, under the final rule's definition of regulatory assets and liabilities, the use of a different inventory method for ratemaking

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[66] FERC Statutes and Regulations ¶ 32,581 at 32,581–82.

[67] American Gas Association, Baltimore Gas & Electric, Conterior, Central & South West, Commonwealth Edison, Gulf States, Pennsylvania Power & Light, PJM and Wisconsin Public Service.

[68] See FERC Statutes and Regulations ¶ 32,481 at 32,579–80.

purposes could produce regulatory assets or liabilities, even if the other method is allowed by GAAP. Under FASB Statement No. 71, on the other hand, regulatory assets represents differences between the way costs are recognized for regulatory purposes and the way costs are recognized for enterprises in general. Several inventory methods are acceptable under GAAP for industries in general. Thus, under FASB's definition of regulatory assets and liabilities, the use of different inventory methods for rates and accounting would not produce regulatory assets and liabilities so long as both methods are allowed by GAAP.

Some commenters appear to misunderstand how the Commission intends the weighted average cost method to be applied when allowances in inventory are of different vintages. Proposed General Instruction 21(D) stated:

> Inventory included in Accounts 158.1 and 158.2 must be accounted for on a vintage basis using a weighted-average method of cost determination. Allowances usable but not used in the current year must be carried forward to the next vintage year inventory with the appropriate recognition of their inventory cost in the next vintage year's weighted-average cost.

Therefore, the application of this method would not commingle or distort costs of currently usable allowances with the cost of allowances usable only in future years. The only time that the cost of different vintages are combined in the same inventory cost pool is when a currently usable allowance is not used and is therefore available for use in the succeeding year(s).

As to the Internal Revenue Service (IRS) rules on the tax treatment of allowances, the Commission notes that in Revenue Procedure 92–91 (issued November 6, 1992) the IRS issued guidance on certain federal income tax consequences of the allowance program. Nothing in that guidance is directly on point with respect to inventory methods and, in any event, the tax treatment would not dictate the appropriate financial accounting treatment. To the extent there are timing differences between the tax recognition and the financial accounting, the USofA provides for appropriate recognition of the tax effect of such differences.

As to the comments on serializing allowances, the Commission does not dispute that serialization would help independent auditors to confirm the existence of allowances and the completion of trades, and help utilities to design effective internal control and tax systems for allowances. In fact, the Commission would encourage the use of serial numbers for such purposes. For reasons stated above, however, the Commission is adopting a weighted average cost inventory method, which does not require specific identification or cost information by each allowance's serial number.

2. Vintaging of Allowances

The Commission proposed in the NOPR to require the grouping of allowances in inventory by vintage, *i.e.*, by the year in which the allowances are first eligible for use.[69] Under this approach, only those allowances usable during the current year (including allowances carried over from prior years) would be included in determining the weighted average cost of the vintage.

Comments. Vintaging is supported by Delmarva Power, NARUC, the California Commission, the Florida Commission, the Georgia Commission, the Illinois Commission, the Ohio Staff and APPA.

Consumers Power opposes vintaging, arguing that the Commission has not required vintaging for any other inventory account. Consumers Power asserts that vintaging of allowances will impose an unnecessary administrative burden.

The Wisconsin Municipal Group also opposes vintaging, arguing that vintaging is inconsistent with the NOPR's statements that all allowances are fungible. The Wisconsin Municipal Group asserts that the weighted average cost of the allowances expensed should be calculated using all allowances in inventory.

Commission Response. The Commission will retain the vintaging requirement in the final rule. Vintaging is essential for proper costing of allowances used or otherwise disposed of during each year. An allowance not yet eligible for use does not have the same value as an allowance currently eligible for use. To include as-yet-unusable allowances with the weighted average cost of currently usable allowances would, in the Commission's view, produce distorted costing.

E. Expense Recognition of Allowances

1. Timing of Recognition

The Commission proposed in the NOPR to require utilities to charge to expense on a monthly basis the number of allowances, including fractional amounts, corresponding to the amount of sulfur dioxide emitted.[70] The Commission noted that this method results in the recognition of expenses during the period in which the related energy is produced and used and matches costs to the revenues received for production, thus accurately reflecting the results of operations during each period.

Comments. Many commenters supported the proposal for monthly allowance expense accrual.[71] EEI comments that this approach is consistent with the principle of accrual accounting.

Arthur Andersen recommends that the cost basis used for expense recognition should be recalculated on a weighted average cost, year-of-eligible-use basis each month in determining the monthly expense amount.

Florida Power & Light agrees that allowances should be expensed on a monthly basis, but argues that the expensing should be based on management's annual compliance plan. Florida Power & Light argues that, since months are integral parts of an annual period and not discrete periods, monthly costs should reflect the relative portion of the total anticipated annual allowance expense according to the compliance plan.

Coopers & Lybrand recommends replacement of the NOPR's proposal with a reference to APB Opinion No. 28, "Interim Financial Reporting."[72] Coopers & Lybrand argues that APB Opinion No. 28 provides sufficient guidance on costs and expenses for interim reporting purposes.

APPA states that, for some utilities with generating units using alternative monitoring systems, emission data may not be available when the utility closes its expense records for a given month. APPA asserts that these utilities should be allowed to rely on estimates based on fuel sampling and use, with a year-end true-up coinciding with the extended allowance recording period adopted in EPA's regulations. Similarly, Delmarva Power asserts that allowances should be charged to expense monthly based on an estimate of the number of allowances used each month, with a year-end true-up to actual usage.

EPA notes that whenever emission data are missing or unavailable, a utility must calculate emissions consistent with estimates prescribed by EPA. EPA asserts that allowance expensing should

[69] FERC Statutes and Regulations ¶32,481 at 32,582.

[70] FERC Statutes and Regulations ¶32,481 at 32,583.

[71] NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission, the Ohio Staff, EEI, Centerior, Cincinnati Gas & Electric, Commonwealth Edison, Consumers Power, Gulf States, Pennsylvania Power & Light, PSI Energy and APPA.

[72] APB Opinion No. 28, *Interim Financial Reporting, in Accounting Statements—Original Pronouncements* (1991).

be based on whatever data (including data substituted for missing data) are used to determine emissions and allowance obligations under the Clean Air Act. EPA argues that this result would properly correlate a utility's allowance accounting with its actual allowance obligations and costs.

Commission Response. The Commission will adopt the proposal to require utilities to charge to expense on a monthly basis the cost of allowances, including fractional amounts, corresponding to the amount of sulfur dioxide emitted. As suggested by Arthur Andersen, the cost basis used for expense recognition should be recalculated on a weighted average cost, year-of-eligible-use basis each month. The Commission recognizes that in some instances actual emission data may not be available when the utility closes its expense records for a given month. The use of reasonable estimates in such circumstances, with true-ups to actual data in the month the facts become known, is acceptable for financial reporting purposes.

2. Account Used for Recognition

The Commission proposed in the NOPR to require utilities to record the expense of allowances in a new account entitled Account 509, Allowances.[73] The Commission stated that classification in Account 509 would properly recognize the nature of allowances as part of the cost of production, but would not require any particular ratemaking treatment.

Comments. The proposed rule is supported by Arthur Andersen, NARUC, the Florida Commission, the Georgia Commission and the Ohio Staff.

The Illinois Commission does not oppose the creation of Account 509 but argues that utilities should be allowed to modify this requirement to conform to the accounting mandated by state regulators. The Illinois Commission argues that it may wish to allow fuel clause recovery of allowance expenses and, to do so, may have to require utilities to record allowance expenses in Account 501, Fuel. Similarly, Duke Power argues that mandating the use of an account other than Account 501 will preclude many companies from recovering allowance costs through fuel clauses under existing statutes.

EEI and many other commenters[74] support the recognition of allowance expense in a new subaccount within Account 501. Iowa-Illinois argues, for example, that using a new subaccount of Account 501 would facilitate fuel clause recovery because many fuel clauses, including those in Iowa-Illinois' retail jurisdictions, limit recoverable costs to those included in specific accounts. PSI Energy argues that using a subaccount of Account 501 would not dictate any particular ratemaking treatment or violate the goal of rate neutrality because state commissions will thoroughly review the rate treatment of allowances.

AEP opposes the creation of a new account, instead supporting the use of existing accounts such as Account 501 or Account 506, Miscellaneous Steam Power Expenses. AEP argues that short-term sales are generally priced at full recovery of fuel costs plus partial recovery of O&M costs, so that using existing accounts, particularly Account 501, may allow recovery from short-term energy buyers of the full fair value of the allowances used for the sale.

Virginia Power argues that the cost of using allowances obtained in fuel-related trades should be recognized in Account 501. As an example, Virginia Power describes a sale of high sulfur coal bundled with allowances, in which the allowances are needed because burning the high sulfur coal will generate substantial emissions.

APPA opposes the use of Account 501 for allowances. APPA argues that allowances should be held in a separate account to facilitate correct rate mechanisms such as formula rates. APPA argues that the recovery of allowances in rates will be a distinct and separate issue, so that allowances should not be treated as part of an aggregate figure.

Commission Response. The Commission will adopt Account 509, Allowances, as the proper account for recording allowance expenses. Most of the commenters opposing the use of Account 509 argue that the use of other existing accounts would facilitate rate recovery. However, as explained above, the Commission intends for this accounting rule to be rate neutral, *i.e.*, to not favor one particular rate treatment over another. Using a new account will best accomplish this objective. Furthermore, the use of a separate account for expensing allowances will simplify access to useful information on a utility's allowance program.

3. Allowance Inventory Shortages

The NOPR proposed that if a utility emits more sulfur dioxide than it has allowances in inventory, the utility should accrue in inventory (Account 158.1) the estimated cost of obtaining the needed allowances.[75] The utility would charge Account 158.1 for the estimated cost of the needed allowances and credit the proper liability account. Any difference between the estimated and actual cost of allowances would be charged to Account 158.1.

Comments. Consumers Power, NARUC, the Florida Commission and the Georgia Commission support the proposed rules. The Ohio Staff generally agrees with the proposed rule but recommends that any estimated amounts charged to the allowance inventory account should be designated as estimates. The Ohio Staff also recommends that utilities be required to keep records supporting the cost estimates.

A number of commenters argue that the cost of meeting an allowance inventory shortage should be expensed immediately, along with the related liability, instead of being charged to inventory.[76] AICPA argues that any difference between actual and estimated costs should be charged to expense rather than Account 158.1.

Commission Response. The Commission will adopt the accounting proposed in the NOPR. The Commission proposed using Account 158.1 for recording allowance accruals, instead of direct expensing, to be consistent with the use of the weighted average cost method of costing allowances issued from inventory, and to ensure the completeness of information reported to the Commission annually on utility allowance programs.

To clarify the Commission's intent, however, there should be no delay in expensing the estimated cost of allowances when a utility has fewer allowances than it needs for its emissions to date. When accruals are required, Account 158.1 effectively becomes e clearing account in which the monthly cost of accrued allowances is charged and credited in the same month. In such cases, the use of Account 158.1 will provide auditable information needed to complete the required reporting schedule. Likewise, when differences between the estimated cost of allowances and the actual cost

[73] FERC Statutes and Regulations ¶ 32,481 at 32,583.

[74] Allegheny Power, Baltimore Gas & Electric, Central & South West, Cincinnati Gas & Electric, Commonwealth Edison, Consumers Power, Delmarva Power, Gulf States, IES Industries, Iowa-Illinois, Ohio Edison, Penn Power, PJM, Potomac Electric, PSI Energy and PSE&G.

[75] FERC Statutes and Regulations ¶ 32,481 at 32,583.

[76] AICPA, Arthur Andersen, Deloitte & Touche, EEI, Atlantic Electric, Baltimore Gas & Electric, Commonwealth Edison, Gulf States, Iowa-Illinois and Pennsylvania Power & Light.

become known, the adjustments should be made through Account 158.1 and Account 509 within a single month. With these clarifications, the proposed accounting meets the commenters' concerns on expensing allowance costs in the proper period and at the same time ensures the completeness of data for Account 158.1.

4. Penalties

The Commission stated in the NOPR that, if a utility incurs a fine or penalty as a result of noncompliance with the CAAA, the USofA requires the fine or penalty to be recorded in Account 426.3, Penalties, a below-the-line account.[77]

Comments. Commenters agreeing with the proposed treatment include Consumers Power, NARUC, the California Commission, the Florida Commission, the Georgia Commission and the Illinois Commission.

EEI and Allegheny Power propose the designation of penalty accounts both below and above the line.[78] Allegheny Power asserts that the NOPR assumed that penalties are not recoverable in rates, an assumption that Allegheny Power argues may not be true depending on the circumstances and on regulatory decisions.

EEI and Florida Power & Light assert that penalties imposed for noncompliance should be reviewed to determine the cause of the noncompliance. They argue that if a utility has acted prudently to meet emission limits and events outside its control caused the noncompliance, the penalty should be allowed in cost-of-service.

The North Carolina Staff opposes the creation of an above-the-line account for CAAA-related penalties. The North Carolina Staff asserts that designation of an above-the-line account could encourage a utility to record penalties in that account without prior regulatory approval, due to its belief that the costs should be recovered in rates. The North Carolina Staff asserts that such actions not only may misclassify such costs, but also would make it more difficult to ascertain the utility's total penalties.

Commission Response. The Commission continues to believe that the proper account to use for all fines and penalties incurred through noncompliance with the CAAA is Account 426.3, Penalties. However, the use of this account is not intended to preclude a ratemaking body from considering any amounts recorded therein for ratemaking purposes. The Commission notes, however, that IRS Revenue Procedure 92–91, discussed above, states that the $2,000 per ton penalty imposed under the CAAA is not deductible for Federal income tax purposes.

F. Gain or Loss on Disposition of Allowances

The NOPR proposed a two-step process for accounting for gains and losses on the sale, exchange, or other disposition of allowances. The first step would be to recognize the gain or loss in income, in either of two new above-the-line accounts: Account 411.8, Gains from Disposition of Allowances, or Account 411.9, Losses from Disposition of Allowances. The second step would be to recognize the economic effect of regulators' actual or expected ratemaking treatment of the gain or loss, by recording entries in new generic accounts for regulatory assets and liabilities: Account 182.3, Other Regulatory Assets; Account 244, Other Regulatory Liabilities; Account 407.3, Regulatory Debits; and Account 407.4, Regulatory Credits.

Comments. NARUC, the Florida Commission, the Georgia Commission, the Illinois Commission and the Ohio Staff support the proposed treatment. NARUC states that the proposed treatment would allow gains and losses to remain in the new accounts for regulatory assets and liabilities pending a ruling by state regulators.

The Michigan Staff proposes an accounting treatment for using the gain from allowance sales to offset expenditures made to reduce sulfur dioxide emissions. Under this proposal, the net gain from allowance sales would first be recorded as a deferred credit in a new clearing account. The utility's management then would decide how to use the funds. If the funds are passed on to stockholders and/or ratepayers, the clearing account would be reduced and Account 244, Other Regulatory Liabilities, would be credited. If the funds are used to offset expenditures made to reduce emissions, the clearing account would again be reduced, but the credit entries would be made in the affected plant, deferred debit, or operating expense accounts. The Michigan Staff argues that this treatment would encourage utilities to finance emission reductions with the funds generated from allowance sales.

Allegheny Power argues that the accounting for gains and losses on disposition of allowances should allow for deferrals with subsequent amortization over the expected benefit period and/or in accordance with regulatory direction. Allegheny Power analogizes to previous investment tax credit programs.

PSI Energy, Detroit Edison and Atlantic Electric oppose the two-step process of first recording gains or losses in income and then accounting for the regulatory treatment of such gains or losses. PSI Energy asserts that this process could distort the income statement by accounting for a single transaction as two offsetting amounts in the income statement. PSI Energy suggests instead that the economic effects of the regulatory treatment of allowance-related gains or losses should be accounted for under the provisions of FASB Statement No. 71.

AICPA and Arthur Andersen argue that the proper accounting for a gain on sale of allowances is as follows: (1) If there is uncertainty as to the regulatory treatment, the gain should be deferred pending resolution of the uncertainty; (2) If there is certainty as to the regulatory treatment, the gain should be accounted for consistent with FASB Statement No. 71, to the extent a regulatory liability results; and (3) If the gain, or any part thereof, accrues to shareholders, that amount should be recognized as income currently and recorded in Account 421, Miscellaneous Nonoperating Income. AICPA argues that a loss should be recognized currently and recorded in Account 421, unless a regulatory asset is established under FASB Statement No. 71.

A number of commenters proposed the designation of accounts both above and below the line for gains and losses on allowance trading.[79] Price Waterhouse argues that provision should be made for below-the-line recognition when circumstances warrant. EEI argues that below-the-line accounts are needed because state regulators may not always follow the procedure proposed by the Commission. Centerior argues that using only above-the-line accounts unfairly prejudices future ratemaking with a bias toward allocating these amounts solely to customers.

A number of commenters see no need to create new accounts for gains and losses on disposition of allowances and instead suggest modifying existing accounts, both above and below the line, to accommodate gains and losses

[77] FERC Statutes and Regulations ¶ 32,481 at 32,583.

[78] "Above-the-line" accounts contain amounts that reflect operating income and expenses and are generally included in rates.

[79] Price Waterhouse, EEI, Allegheny Power, Baltimore Gas & Electric, Centerior, Florida Power & Light, GPU, Iowa-Illinois, PacifiCorp and Pennsylvania Power & Light.

on allowance trades.[60] PJM and PSE&G assert, for example, that new accounts are not needed because the Commission has stated that the sale of allowances is the same as the sale of any other asset.

AEP argues that the final rule should prescribe accounting for sharing gains and losses between ratepayers and shareholders. AEP argues that when a commission's past precedent indicate that gains will be shared between ratepayers and shareholders, the latter's portion of the gain should be initially recorded below-the-line to avoid subsequent reclassification.

Deloitte & Touche argues that a gain accruing to the benefit of shareholders should be credited directly to Account 421, Miscellaneous Nonoperating Income, rather than first being credited to Account 411.8, Gains from Disposition of Allowances. Otherwise, Deloitte & Touche states, the same gain could be reported twice in the income statement.

Commission Response. Upon considering the comments on this issue, the Commission has decided to simplify the proposed accounting for gains and losses on disposition of allowances. The NOPR proposed a two-step process under which a utility would first recognize these gains and losses in its income statement and then account for the economic effects of the regulatory treatment by recording a regulatory liability or asset. The Commission now considers this two-step process unnecessary and undesirable. Instead, the Commission will adopt, in large part, the suggestions of AICPA and Arthur Andersen.

Gains on dispositions of allowances should be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain should be deferred in Account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, *e.g.*, if regulators have ordered the gain to be passed onto ratepayers over several years, the gain will not be recognized in income. Instead, it will be credited to Account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to Account 411.8, Gains from Disposition of Allowances.

Losses on disposition of allowances that qualify as regulatory assets should be charged directly to Account 182.3, Other Regulatory Assets. All other losses should be charged to Account 411.9, Losses from Disposition of Allowances.

The Commission declines to adopt the suggestion of several commenters that it provide for below-the-line recognition of gains or losses on disposition of allowances (other than gains or losses relating to speculative investments, as discussed above). The USofA does not, and should not, require each transaction to be shown above or below the line based upon whether customers or stockholders bear the expense or receive the benefits of the transaction. Instead, the nature of the transaction determines whether it is shown as utility operating income (above-the-line) or as other income and deductions (below-the-line). With enactment of the CAAA, allowance transactions are expected to become an integral part of utility operations, especially if the market for allowance trading develops as intended. The above-the-line classification required herein does not dictate how gains and losses on dispositions of allowances should be apportioned between ratepayer and stockholders, but merely reflects the fact that allowance transactions are a part of utility operations.

G. Regulatory Assets and Liabilities

The Commission proposed in the NOPR to provide accounting for regulatory assets and liabilities, *i.e.*, assets and liabilities created through the ratemaking actions of regulatory agencies and not specifically provided for in other accounts. The NOPR proposed to create four new accounts for regulatory assets and liabilities: Account 182.3, Other Regulatory Assets; Account 244, Other Regulatory Liabilities; Account 407.3, Regulatory Debits; and Account 407.4, Regulatory Credits. The first two are balance sheet accounts; the latter two are income accounts.

As proposed, Account 182.3 would include costs incurred and charged to expense which have been, or are soon expected to be, authorized for recovery through rates and which are not specifically provided for in other accounts. Regulatory assets would be recorded by charges to Account 182.3 and credits to Account 407.4. Amounts in Account 182.3 would be amortized to Account 407.3 over the appropriate rate recognition period.

Account 244 would include liabilities imposed by the ratemaking actions of regulatory agencies and not specifically provided for in other accounts. Included in Account 244 would be revenues or gains realized and credited to income that the company is required, or is expected to be required, to use to reduce future rates. Regulatory liabilities would be established by credits to Account 244 and debits to Account 407.3. Amounts included in Account 244 would be amortized to Account 407.4 over the appropriate rate recognition period.

Support for the NOPR

National Fuel Gas, the Florida Commission and the Ohio Staff support the proposed rule. The Ohio Staff states that the proposed treatment will provide uniformity in the way utilities report the economic effects of regulatory actions and will facilitate review of regulatory assets and liabilities.

Support for the Status Quo

Virginia Power and PSI Energy oppose any change in current accounting practices for regulatory assets and liabilities. Virginia Power argues that the accounting practices used over the years have worked well and should be considered GAAP for regulated entities. PSI Energy argues that the USofA already provides sufficient guidance and accounts for regulatory assets and liabilities and that financial reporting rules ensure the itemization in financial statements of significant regulatory assets or liabilities.

Procedural Objections

A large number of commenters urge deletion of this issue from this proceeding and initiation of a separate rulemaking on regulatory assert and liabilities.[61] Many of these commenters assert that the issue of regulatory assets and liabilities is too important and complex to be included in a rulemaking on accounting for allowances.

Pennsylvania Power & Light and Wisconsin Electric argue that this proceeding should address only those regulatory assets and liabilities related to allowances and that other regulatory assets and liabilities should be considered in a separate rulemaking.

AICPA, Arthur Andersen and Deloitte & Touche argue that the following issues should be exempted from the final rule pending further study: whether FASB instructs regulated enterprises to account for certain effects on income taxes only on the balance sheet, not on the income statement; whether deferred returns from phase-in plans and other similar deferrals should be reported below-the-line; and whether some items

[60] Baltimore Gas & Electric, Commonwealth Edison, GPU, Ohio Edison, PJM, PSE&G and Penn Power.

[61] AICPA, Arthur Andersen, Coopers & Lybrand, Deloitte & Touche, EEI, Central & South West, Commonwealth Edison, Con Edison, Detroit Edison Duke Power, Gulf States, Kansas City Power & Light, Kentucky Utilities, PJM, Potomac Electric, PSE&G and Wisconsin Public Service.

are classified in a way unique to the regulatory process and are not accounted for as proposed in the NOPR.

General Substantive Objections

AEP argues that, according to FASB, regulatory assets and related deferred income taxes should be reflected only on the balance sheet. PSI Energy argues that the income statement presentation of phase-in plans should be specifically excluded from the final rule.

AEP also argues that, if a utility is deferring significant costs, *e.g.*, through a phase-in plan, and is accruing a return on the unrecovered balances, the NOPR may wrongly move the credit for the deferred return from below-the-line to above-the-line. AEP argues that this result would distort both operating and non-operating income and is contrary to the regulatory intent to provide the credit as compensation to investors, not as a reduction of the cost of service.

Centerior argues that a new account is needed for the deferral of return through a carrying charge because crediting such amounts to Account 407.4, an above-the-line account, would be inconsistent with past Commission practice. Centerior argues that the Commission has consistently required the carrying charge to be credited to Account 421, Miscellaneous Nonoperating Income, a below-the-line account.

EEI argues that the Commission should allow certain regulatory assets and liabilities, such as the gross-up of portions of previously-recorded AFUDC, to be classified with the plant accounts. EEI also argues that certain costs should be presented separately from other regulatory assets and liabilities. EEI states, for example, that the net phase-in costs capitalized in each period or the net amount of previously allowable phase-in costs recovered during each period should be reported as a separate item of other income or expense in the income statement.

Applicability of Accounts 407.3 and 407.4

EEI argues that utilities should be allowed to use accounts other than 407.3 and 407.4 if state regulators have previously allowed such use. EEI argues that if state regulators have allowed the use of other accounts, the requirement to use Accounts 407.3 and 407.4 should apply only prospectively. Allegheny Power and Kansas City Power & Light assert that use of the new accounts should not be required if the commission with primary ratemaking jurisdiction requires the use of other accounts.

Southern Company argues that the new accounts should apply only to new regulatory assets and liabilities. Southern Company asserts that the new accounts could lead to cost recovery problems under existing contracts and joint ownership agreements under which costs previously deferred are now being amortized to an account reflected in formulary billings. Southern Company argues that a change in account classification would jeopardize cost recovery and could require costly renegotiation of contracts and agreements.

AEP argues that, if Accounts 407.3 and 407.4 are adopted, these accounts should not apply to deferred income taxes. AEP argues that the needed information is not always available for individual book/tax timing differences, especially those involving plant-in-service. AEP argues that identifying the proper accounts in which deferred taxes should be recorded can be difficult or impossible.

Several commenters argue that regulatory assets and liabilities should be recorded in income statement accounts reflecting the nature of the underlying transactions, regardless of when the transactions are recognized.[82] The American Gas Association, for example, asserts that financial statement readers are more interested in the nature of a company's transactions than in the differences between GAAP for non-regulated and regulated businesses. The Association asserts that, when necessary, utilities and regulators can determine the effect of regulation for ratemaking purposes and that these differences should not be the focus of the statements.

Effect on Coverage Ratios

EEI, AEP, Gulf States and Virginia Power assert that using new Accounts 407.3 and 407.4 will distort the computation of coverage ratios under SEC rules. They assert that, under the standard coverage formula, the adjustments to income taxes would be added back to determine earnings for coverage purposes, but the related adjustments to the regulatory asset and liability income statement accounts would not be added back.

Defining Regulatory Assets and Liabilities

A number of commenters argue that regulatory assets and liabilities should be defined more consistently with FASB Statement No. 71.[83] They argue, for example, that the USofA should allow recognition of regulatory assets and liabilities only when rate recovery is probable, *i.e.*, likely to occur, not just reasonably expected. Otherwise, they argue, utilities might have to report the same transactions under two sets of accounting principles.

NARUC notes that Account 182.3 includes regulatory assets related to the amortization or normalization of certain costs, and suggests that the account be clarified to include only those regulatory assets "related to the amortization of specific and significant non-recurring or infrequent operating or maintenance expense items * * *." In support, NARUC states that the word "normalization" is ambiguous. The North Carolina Staff similarly argues that, in any ratemaking decision, regulators may adopt several adjustments to set rates at an average, or "normal" level, but not to provide for recovery of a specific cost in a period other than the one in which it would be recognized for accounting purposes. The North Carolina Staff argues that, contrary to the implication in the NOPR, it would be inappropriate to record a regulatory asset of liability for such adjustments.

Inconsistent Classification

Many commenters note that proposed Account 182.3, Other Regulatory Assets, is classified as a deferred asset while proposed Account 224, Other Regulatory Liabilities, is classified as a current liability. A number of commenters argue that regulatory assets and liabilities should both be classified in deferred accounts.[84] Others propose the establishment of both current and deferred accounts for both regulatory assets and liabilities.[85] Still others find either of these two approaches acceptable.[86] The American Gas Association and Con Edison argue that the classification of a regulatory asset or liability as current or deferred should be determined by GAAP.

Commission Response. The Commission now believes that, although separate accounts for regulatory assets and liabilities should still be established in this rulemaking, the two-step process described in the NOPR is not generally necessary and in some instances may

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[82] American Gas Association, Baltimore Gas & Electric, Columbia Gas, Con Edison, Virginia Power and Wisconsin Public Service.

[83] AEP, AICPA, Arthur Andersen, EEI, Centerior, Commonwealth Edison, Consumers Power, the Georgia Commission, NARUC, the North Carolina Staff, Price Waterhouse, PSI Energy and Virginia Power.

[84] AEP, Baltimore Gas & Electric, Centerior, Delmarva Power, PacifiCorp, PJM, Ohio Edison, Penn Power and Wisconsin Electric.

[85] Allegheny Power, Central & South West, PG&E, Virginia Power, Price Waterhouse and Potomac Electric.

[86] EEI, Cincinnati Gas & Electric, Commonwealth Edison, Gulf States, IES Industries, NYSEG, PSI Energy and Wisconsin Public Service.

contribute to inappropriate results. Based upon the comments received, the Commission will make certain changes in the accounting required for regulatory assets and liabilities.

For consistency in the balance sheet presentation of regulatory assets and liabilities, the Commission will renumber proposed Account 244, Other Regulatory Liabilities, to Account 254. Account 254 will be in the deferred credits section of the balance sheet, thus paralleling the placement of Account 182.3, Other Regulatory Assets, in the deferred debits section of the balance sheet.

The Commission will require that deferred returns and/or carrying charges accrued on regulatory assets and liabilities be credited to Account 421, Miscellaneous Nonoperating Income, or charged to Account 431, Other Interest Expense, as appropriate. Both of these accounts are below-the-line. This change, recommended by several commenters, is needed to conform the required accounting treatment to the accounting used in recording deferred returns and/or carrying charges in other circumstances.

The Commission will also redefine regulatory assets and liabilities to use terms more similar to those used in FASB Statement No. 71, in order to avoid unnecessary differences between financial statements issued for regulatory purposes and general purpose financial statements. The term "probable," as used in the definition adopted herein for regulatory assets and liabilities, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved.[87]

Finally, to reduce other possible conflicts with current practices, the Commission will modify the proposed text of the accounts for regulatory assets and liabilities. Under the originally-proposed accounting for regulatory assets and liabilities, all entries to Accounts 182.3 and 244 (now 254) would have been through charges or credits to Accounts 407.3 and 407.4. Also, the proposed accounting would have required current expense (revenue) recognition consistent with the USofA requirements as determined without regard to the creation of regulatory assets and liabilities; whereas, the current practice is generally not to recognize the expense (revenue) but to capitalize the cost (or recognize a liability). The proposed accounting would therefore, have affected income statement accounts even though net income was not affected (*i.e.*, a liability would be recorded along with an equal regulatory asset or an asset would be recorded along with an equal regulatory liability). Although net income would not have been affected, the NOPR's proposed accounting could have distorted various financial ratios, such as pre-tax interest coverage calculations. Thus, the Commission will adopt Accounts 407.3 and 407.4, as modified, to provide for separate income and expense recognition only in appropriate situations, such as for the net amount capitalized for phase-in plans in each period and the net amount of previously capitalized allowable costs recovered during each period.

H. Reporting Requirements

Based on the proposed accounting for allowances and regulatory-created assets and liabilities, the NOPR proposed to require new schedules and changes to existing schedules in the Annual Reports (Forms 1, 1–F, 2 and 2–A) filed by electric utilities, licensees and natural gas companies. Of particular note, the NOPR proposed a new schedule for reporting the number and cost of allowance transactions, to include a utility's beginning- and end-of-year balance of allowances; acquisitions by issuance and returns from EPA; acquisitions by purchases and transfers; relinquishments by charges to expense; relinquishments by sales and transfers; net sales proceeds; and gains and losses.

Allowance Trading Information

EPA supports the NOPR's proposal to require reporting of allowance trades, asserting that the information will be helpful to other regulators and traders in the allowance market. The Ohio Staff also supports the proposed reporting requirements and asks that utilities additionally be required to report market-related information, *e.g.*, each allowance trade, the parties thereto and the corresponding amounts. The Ohio Staff asks the Commission to compile the market information and make it available to all state commissions.

The Iowa Working Group argues that market price and contract term data must be collected and made available because of the planned or expected use of fair value for certain accounting purposes (*e.g.*, inter-affiliate trades) and ratemaking purposes. The Group asks the Commission to compile a database on allowance prices and contract terms for all jurisdictional utilities beginning in 1994, for two years or until the private market takes over this function. The Group proposes that the Commission require quarterly filings of price and contract term information, and compile the information in a publicly available database, omitting the names of the traders.

APPA argues that the proposed reporting requirements are not adequate for purposes of determining fair market value at the time of a given trade. APPA argues that the Commission should require full and timely public disclosure of the details on allowance trades, including market price information. APPA and the NC Municipal Agency assert that such information will promote a vigorous allowance market by minimizing uncertainties about reasonable prices and terms. APPA argues that the availability of price information also will discipline the market by facilitating public inspection of trades by utilities, brokers, regulators and consumer advocates. APPA asks the Commission to consider using an electronic bulletin board to collect information as each transaction closes, requiring identification of the purchaser and seller, quantity, price, vintage, and terms and conditions.

EEI and others[88] argue that information on allowance trades should be kept confidential. EEI argues, for example, that EPA does not require the parties to disclose the price in private sales. AEP asserts that, if a public market does not develop, trading information will be private and, if disclosed, could adversely affect future trading possibilities. PSI Energy asserts that, while the information in the proposed reporting requirements will be needed for an active trading market and informed regulatory decisions, there are more appropriate, less detailed means of acquiring the information, *e.g.*, through market-driven mechanisms such as brokers, newsletters or futures contracts on the Chicago Board of Trade. Virginia Power, Consumers Power and Pennsylvania Power & Light argue that information on allowance trades should be reported in aggregate, not by the specifics of each trade. These commenters and others express concern generally about the scope of information sought on allowances, and suggest conforming this reporting requirement to the requirements for nuclear fuel materials, materials and supplies or the monthly cost and quality of fuels.

[87] Webster's New World Dictionary of the American Language, 2d college ed. (New York: Simon and Schuster, 1982) at 1132. This is the meaning referred to in FASB Concepts Statement No. 6, *Elements of Financial Statements*, ¶ 25 n.18 and ¶ 35 n.21, (1985) (superseding FASB Concepts Statement No. 3), *in Accounting Standards—Original Pronouncements* (1991).

[88] AEP, Canterior, Consumers Power, Detroit Edison, Gulf States, Iowa-Illinois, PJM, PSE&G, Virginia Power and Wisconsin Electric.

Technical Changes

Consumers Power asserts that Instruction No. 2 for page 228, Allowances, requiring that all allowance acquisitions be recorded at historical cost, is not consistent with proposed General Instruction 21, prescribing the use of fair value for the acquisition of allowances eligible for use in different years. Consumers Power argues that Instruction No. 2 should be expanded to address reporting for allowances usable in future years.

Consumers Power also argues that lines 31–36 and 42–46 of page 228, requiring data on Net Sales Proceeds and Gains or Losses by the period in which the allowances are first eligible for use, are not need for analyzing the activity of the allowances account and should be eliminated.

Consumers Power asserts that lines 37–40 of page 228, requiring data on allowances withheld, do not provide for any reduction in withheld allowances sold at EPA's direct sales or auctions. Consumers Power recommends the addition of a line for sales to reduce the Allowances Withheld amount to what is available to the utility.

The Wisconsin Municipal Group argues that page 228 should be amended to show the calculation of the weighted average cost of allowances.

Pennsylvania Power & Light seeks clarification of a possible inconsistency on the Statement of Cash Flows, pages 120 and 121 of FERC Form 1. Pennsylvania Power & Light notes the proposed identification, in the section for investment activities, of the net increase (decrease) in allowances and assumes that this item includes only allowances held for speculation. Pennsylvania Power & Light argues that a similar line should be included in the section on operating activities for allowances held for the utility's use.

AEP proposes raising the level below which a utility, for reporting purposes, may aggregate minor items in Account 182.3, Other Regulatory Assets, and Account 244, Other Regulatory Liabilities. The Commission proposed in the NOPR to allow grouping of items equal to less than five percent of the year-end balance or amounts less than $50,000, whichever is less. AEP proposes changing $50,000 to $100,000, in order to avoid excessive reporting detail on immaterial amounts.

Pennsylvania Power & Light asserts that page 232, Other Regulatory Assets, and page 278, Other Regulatory Liabilities, should include an additional column for Balances at Beginning of Year, to match similar presentations elsewhere in FERC Form 1.

Washington Gas recommends expanding the proposed instructions to Form Nos. 2 and 2–A, to clarify that the amortization period for regulatory assets and liabilities need not be disclosed when regulators have not issued a final order establishing the appropriate rate recovery period.

Baltimore Gas & Electric and Florida Power & Light argue that the proposed reporting of regulatory assets and liabilities in FERC Forms 1 and 2 is inconsistent with the proposed accounting for those assets and liabilities. Baltimore Gas & Electric asserts that, under the proposed accounting, regulatory assets and liabilities may be created and extinguished only by entries to new accounts 407.3 and 407.4. Baltimore Gas & Electric asserts, however, that the proposed pages in Forms 1 and 2 would require disclosure of the offsetting income statement accounts used to set up and amortize regulatory assets and liabilities.

The Michigan Staff recommends revising the proposed instructions for Account 244, Other Regulatory Liabilities, in Part 201 to delete the reference to the disposition of allowances, unless it is anticipated that natural gas companies will own allowances as part of their regulated business. The Michigan Staff asserts that if a natural gas company did acquire allowances, consideration should be given to recording their cost in Account 121, Non-utility Property.

Commission Response. Upon considering the comments on allowance trading information generally, the Commission has decided to adhere, for now, to the approach proposed in the NOPR. Requiring annual reporting of allowance trading information strikes a balance between those commenters seeking confidentiality for trading data and those seeking more extensive disclosure than was proposed in the NOPR.

The Commission does not agree that the reporting requirements will create a competitive burden for utilities required to file data on revenues from allowance sales and costs of allowance purchases. The Commission is not persuaded that such utilities will be at a competitive disadvantage. Also, such price data is needed by regulators in setting rates and in determining the fair value of allowances and may be helpful to market participants considering allowance trading.

On the other hand, the Commission does not yet perceive a definite need to increase the reporting requirements for allowance trading. While more frequent reporting of allowance trading, *e.g.*, monthly reporting, might prove useful to market participants, other sources may develop to meet any such need and, if so, would obviate the need for more frequent reporting to this Commission. For example, the data and information available from EPA auctions, the Chicago Board of Trade and other sources might exceed the information the Commission is requiring.

For this reason, the Commission will adopt the proposed reporting requirements on allowance trading. In doing so, however, the Commission acknowledges that the issue of the quality and timeliness of data available to regulators and market participants may need to be revisited, depending on how other sources of market information develop.

The Commission has carefully reviewed the other comments on the Annual Report forms and believe that only minor changes are required in the NOPR's proposals. The Commission will: (1) Add a line in the Net Cash Flow from Operating Activities section of the Statement of Cash Flows (page 120) to show the net increase or decrease in allowance inventories; and (2) clarify that the line for the net increase or decrease in allowances shown in the Net Cash Flows from Investment Activities section (page 121) applies only to allowances held for speculation. Also, on pages 228 and 229, the Commission will insert the lines for net sales before the line that shows end-of-year balances. Finally, the Commission will make other minor changes to conform the reporting forms to the accounting changes adopted above.[89]

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[90] requires rulemakings either to contain a description and analysis of the effect the proposed rule will have on small entities or to certify that the rule will not have a substantial economic effect on a substantial number of small entities. Because most public utilities and gas companies do not fall within the RFA's definition of small entities,[91] the Commission certifies that this rule will not have a "significant economic

[89] As noted above, Appendix A consists of facsimiles of the revised forms, incorporating the final rule's changes. Appendix A is not being published in the **Federal Register**, but is available from the Commission's Public Reference Room.

[90] 5 U.S.C. 601–12 (1988).

[91] 5 U.S.C. 601(3) (1988) (citing section 3 of the Small Business Act, 15 U.S.C. 632 (1988). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a) (1988).

impact on a substantial number of small entities."

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant effect on the human environment.[92] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[93] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural or that does not substantively change the effect of legislation or regulations being amended.[94] Because this final rule is merely procedural, no environmental consideration is necessary.

VI. Information Collection Statement

The regulations of the Office of Management and Budget (OMB) [95] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this final rule are contained in FERC Form No. 1, "Annual Report of Major public utilities, licensees and others" (OMB approval No. 1902–0021); FERC Form No. 1–F, "Annual Report of Nonmajor public utilities and licensees" (OMB approval No. 1902–0029); FERC Form No. 2, "Annual Report of Major natural gas companies" (OMB approval No. 1902–0028); and FERC Form No. 2–A, "Annual Report of Nonmajor natural gas companies" (OMB approval No. 1902–0030).

The Commission uses the data collected in these annual reports to carry out its audit program and continuous review of the financial conditions of regulated companies. Public utilities and gas companies are required to file these forms annually.

The Commission believes that the final rule will facilitate the Congressional objective of encouraging public utilities to choose the least-cost method of complying with the CAAA's more stringent emission limitation requirements. The dissemination of this information will assist all parties in assessing the costs of implementing alternative compliance strategies. By requiring uniform and consistent accounting and reporting, the final rule will make available to regulatory agencies, public utilities, and the general public, comparable financial and statistical information about allowances established under the CAAA. This information should prove useful in evaluating the cost of compliance with the CAAA, thereby aiding regulatory agencies in their ratemaking activities and promoting an efficient market for allowances, without significantly increasing the reporting burden for public utilities.

The Commission also believes that the addition of new accounting and reporting requirements for regulatory assets and liabilities will provide useful information without significantly increasing the reporting burden for public utilities and gas companies. Regulatory assets and liabilities exist only because of the economic effects of regulation. Regulated entities and the general public have a need for information on the nature of such items and will benefit from uniform and consistent accounting and reporting of such items.

Kansas City Power & Light disagrees with the NOPR's statement that the proposed two-step accounting for regulatory assets and liabilities would provide useful information without significantly increasing the reporting burden. Kansas City Power & Light argues that the accounting proposed in the NOPR would require it to hire an additional person to do recordkeeping but that the proposed level of detail would not be useful to the utility or its stockholders.

In response, the Commission notes that the final rule does not adopt the NOPR's two-step process. Instead, the accounting for regulatory assets and liabilities adopted in the final rule is simpler and more consistent with past practices than the accounting proposed in the NOPR. Compared to the NOPR, the final rule will reduce the burden of accounting for and reporting regulatory assets and liabilities and should satisfy Kansas City Power & Light's concern. With these changes, the Commission believes even more strongly that the final rule's treatment of regulatory assets and liabilities is justified by the gain in useful information for regulators and the public.

The final rule has been submitted to OMB for its review. Interested persons may obtain information on the information collection requirements of the final rule by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415). Comments on the requirements of the final rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

VII. Effective Date

This rule is effective January 1, 1993. The information collection provisions, however, will not become effective until approved by OMB.

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform system of accounts.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform system of accounts.

In consideration of the foregoing, the Commission amends parts 101 and 201, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for part 101 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

2. In part 101, Definitions 30 through 38 are redesignated as 31 through 39 and new Definition 30 is added to read as follows:

Definitions

* * * * *

30. *Regulatory Assets and Liabilities* are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable:

A. that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or

B. in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

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[92] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes & Regulations ¶30,783 (1987).

[93] 18 CFR 380.4.

[94] 18 CFR 380.4(a)(2)(ii).

[95] 5 CFR 1320.12.

3. In part 101, General Instructions, paragraph 21 is added to read as follows:

* * * * *

General Instructions

* * * * *

21. *Allowances.*

A. Title IV of the Clean Air Act Amendments of 1990, Public Law No. 101–549, 104 Stat. 2399, 2584, provides for the issuance of allowances as a means to limit the emissions of certain airborne pollutants by various entities, including public utilities. Public utilities owning allowances, other than those acquired for speculative purposes, shall account for such allowances at cost in Account 158.1, Allowance Inventory, or Account 158.2, Allowances Withheld, as appropriate. Allowances acquired for speculative purposes and identified as such in contemporaneous records at the time of purchase shall be accounted for in Account 124, Other Investments.

B. When purchased allowances become eligible for use in different years, and the allocation of the purchase cost cannot be determined by fair value, the purchase cost allocated to allowances of each vintage shall be determined through use of a present-value based measurement. The interest rate used in the present-value measurement shall be the utility's incremental borrowing rate, in the month in which the allowances are acquired, for a loan with a term similar to the period that it will hold the allowances and in an amount equal to the purchase price.

C. The underlying records supporting Account 158.1 and Account 158.2 shall be maintained in sufficient detail so as to provide the number of allowances and the related cost by vintage year.

D. Issuances from inventory from inventory included in Account 158.1 and Account 158.2 shall be accounted for on a vintage basis using a monthly weighted-average method of cost determination. The cost of eligible allowances not used in the current year shall be transferred to the vintage for the immediately following year.

E. Account 158.1 shall be credited and Account 509, Allowances, debited so that the cost of the allowances to be remitted for the year is charged to expense monthly based on each month's emissions. This may, in certain circumstances, require allocation of the cost of an allowance between months on a fractional basis.

F. In any period in which actual emissions exceed the amount allowable based on eligible allowances owned, the utility shall estimate the cost to acquire the additional allowances needed and charge Account 158.1 with the estimated cost. This estimated cost of future allowance acquisitions shall be credited to Account 158.1 and charged to Account 509 in the same accounting period as the related charge to Account 158.1. Should the actual cost of these allowances differ from the estimated cost, the differences shall be recognized in the then-current period's inventory issuance cost.

G. Any penalties assessed by the Environmental Protection Agency for the emission of excess pollutants shall be charged to Account 426.3, Penalties.

H. Gains on dispositions of allowances, other than allowances held for speculative purposes, shall be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain shall be deferred in Account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, the gain will be credited to Account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to Account 411.8, Gains from Disposition of Allowances. Losses on disposition of allowances, other than allowances held for speculative purposes, shall be accounted for as follows. Losses that qualify as regulatory assets shall be charged directly to Account 182.3, Other Regulatory Assets. All other losses shall be charged to Account 411.9, Losses from Disposition of Allowances. (*See* Definition No. 30.) Gains or losses on disposition of allowances held for speculative purposes shall be recognized in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

I. The costs and benefits of exchange-traded allowance futures contracts used to protect the utility from the risk of unfavorable price changes ("hedging transactions") shall be deferred in Account 186, Miscellaneous Deferred Debits, or Account 253, Other Deferred Credits, as appropriate. Such deferred amounts shall be included in Account 158.1, Allowance Inventory, in the month in which the related allowances are acquired, sold or otherwise disposed of. Where the costs or benefits of hedging transactions are not identifiable with specific allowances, the amounts shall be included in Account 158.1 when the futures contract is closed. The costs and benefits of exchange-traded allowance futures contracts entered into as a speculating activity shall be charged or credited to Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

4. In part 101, Balance Sheet Accounts, Accounts 158.1, 158.2, 182.3 and 254 are added to read as follows:

Balance Sheet Accounts

* * * * *

158.1 Allowance Inventory.

A. This account shall include the cost of allowances owned by the utility and not withheld by the Environmental Protection Agency. *See* General Instruction No. 21 and Account 158.2, Allowances Withheld.

B. This account shall be credited and Account 509, Allowances, shall be debited concurrent with the monthly emission of sulfur dioxide.

C. Separate subdivisions of this account shall be maintained so as to separately account for those allowances usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the acquisition cost, if any, of the allowance.

158.2 Allowances withheld.

A. This account shall include the cost of allowances owned by the utility but withheld by the Environmental Protection Agency. (*See* General Instruction No. 21.)

B. The inventory cost of the allowances released by the Environmental Protection Agency for use by the utility shall be transferred to Account 158.1, Allowance Inventory.

C. The underlying records of this account shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the acquisition cost, if any, of the allowances.

* * * * *

182.3 Other regulatory assets.

A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. (*See* Definition No. 30.)

B. The amounts included in this account are to be established by those charges which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of

developing the rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, Account 407.4, Regulatory Credits shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of Account 407.4 shall be charged to Account 407.3, Regulatory Debits, concurrent with the recovery of the amounts in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

* * * * *

254 Other regulatory liabilities.

A. This account shall include the amounts of regulatory liabilities, not includible in other accounts, imposed on the utility by the ratemaking actions of regulatory agencies. (*See* Definition No. 30.)

B. The amounts included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: 1) such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or 2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, Account 407.3, Regulatory Debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: 1) all regulatory liabilities established through the use of Account 407.3 shall be credited to Account 407.4, Regulatory Credits; and 2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

C. If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account 421, Miscellaneous Nonoperating Income, or Account 434, Extraordinary Income, as appropriate, in the year such determination is made.

D. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

* * * * *

5. In Part 101, Income Accounts, Accounts 407.3, 407.4, 411.8 and 411.9 are added to read as follows:

Income Accounts

* * * * *

407.3 Regulatory debits.

This account shall be debited, when appropriate, with the amounts credited to Account 254, Other Regulatory Liabilities, to record regulatory liabilities imposed on the utility by the ratemaking actions of regulatory agencies. This account shall also be debited, when appropriate, with the amounts credited to Account 182.3, Other Regulatory Assets, concurrent with the recovery of such amounts in rates.

407.04 Regulatory credits.

This account shall be credited, when appropriate, with the amounts debited to Account 182.3, Other Regulatory Assets, to establish regulatory assets. This account shall also be credited, when appropriate, with the amounts debited to Account 254, Other Regulatory Liabilities, concurrent with the return of such amounts to customers through rates.

* * * * *

411.8 Gains from disposition of allowances.

This account shall be credited with the gain on the sale, exchange, or other disposition of allowances in accordance with paragraph (H) of General Instruction No. 21. Income taxes relating to gains recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

411.9 Losses from disposition of allowances.

This account shall be debited with the loss on the sale, exchange, or other disposition of allowances in accordance with paragraph (H) of General Instruction No. 21. Income taxes relating to losses recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

* * * * *

6. In part 101, Operation and Maintenance Expense Accounts, Account 509 is added to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

509 Allowances.

This account shall include the cost of allowances expensed concurrent with the monthly emission of sulfur dioxide. (See General Instruction No. 21.)

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

7. The authority citation for Part 201 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

8. In part 201, Definitions 31 through 39 are redesignated as 32 through 40 and new Definition 31 is added to read as follows:

Definitions

* * * * *

31. *Regulatory Assets and Liabilities* are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable: 1) that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or 2) in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

* * * * *

9. In part 201, Balance Sheet Accounts, Accounts 182.3 and 254 are added to read as follows:

Balance Sheet Accounts

* * * * *

182.3 Other regulatory assets.

A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. (*See* Definition No. 31.)

B. The amounts included in this account are to be established by those charges which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services. Where specific identification of the particular source of the regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, Account 407.4, Regulatory Credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of Account 407.4 shall be charged to Account 407.3, Regulatory Debits, concurrent with the recovery of the amounts in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

* * * * *

254 Other regulatory liabilities.

A. This account shall include the amounts of regulatory liabilities, not includible in other accounts, imposed on the utility by the ratemaking actions of regulatory agencies. (*See* Definition No. 30.)

B. The amounts included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: (1) Such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or (2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, Account 407.3, Regulatory Debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: (1) All regulatory liabilities established through the use of Account 407.3 shall be credited to Account 407.4, Regulatory Credits; and (2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

C. If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account 421, Miscellaneous Nonoperating Income, or Account 434, Extraordinary Income, as appropriate, in the year such determination is made.

D. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

* * * * *

10. In part 201, Income Accounts, Accounts 407.3 and 407.4 are added to read as follows:

Income Accounts

* * * * *

407.3 Regulatory debits.

This account shall be debited, when appropriate, with the amounts credited to Account 254, Other Regulatory Liabilities, to record regulatory liabilities imposed on the utility by the ratemaking actions of regulatory agencies. This account shall also be debited, when appropriate, with the amounts credited to Account 182.3, Other Regulatory Assets, concurrent with the recovery of such amounts in rates.

407.4 Regulatory credits.

This account shall be credited, when appropriate, with the amounts debited to Account 182.3, Other Regulatory Assets, to establish regulatory assets. This account shall also be credited, when appropriate, with the amounts debited to Account 254, Other Regulatory Liabilities, concurrent with the return of such amounts to customers through rates.

* * * * *

[FR Doc. 93-7917 Filed 4-6-93 8:45 am]
BILLING CODE 6717-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1400

Repeal of Agency Promulgated Ethics Regulations

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is repealing provisions of its regulations on the ethical conduct of employees. Most of the repealed provisions are superseded by Office of Government Ethics (OGE) rules establishing uniform standards of conduct and financial disclosure requirements for executive branch employees. FMCS, in accordance with OGE guidance, is not repealing provisions of the regulations concerning clearance to engage in certain outside activities.

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Eileen B. Hoffman, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, 202-653-5305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In 1968, the Federal Mediation and Conciliation Service (FMCS) issued part 1400 of the regulations (29 CFR part 1400, 33 FR 5768), primarily pursuant to Executive Order 11222 (30 FR 6469) and regulations issued by the Civil Service Commission (5 CFR 735.104, 33 FR 12487). Executive Order 12674 (April 12, 1989), as modified by Executive Order 12731 (October 17, 1990), revoked Executive Order 11222 (section 501(a)) and directed the Office of Government Ethics (OGE) to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable." (section 201).

OGE has now issued 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006, August 7, 1992). These standards of conduct, when they became effective on February 3, 1993, superseded agency regulations promulgated pursuant to 5 CFR part 735 and authorized agencies to issue (jointly with OGE) "[s]upplemental agency

regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635 (§ 2635.105(a), 57 FR 35043). Part 2635 does not supersede and its requirements for supplemental agency regulations do not apply to regulations that an agency has authority, independent of Part 2635, to issue (§ 2635.105(c)(3), 57 FR 35044).

The FMCS is amending Part 1400 by repealing provisions of Subparts A through E that will be superseded when OGE's regulations take effect (February 3, 1993) (removal of §§ 1400.735–10, 11, 13–18, 30–35). The FMCS is considering regulations that will supplement subpart H of part 2635 (Outside Activities) (57 FR 35061–66) by requiring employees to obtain prior approval of certain outside activities. Hence, it is not removing § 1400.735–12 (Outside employment and activities) of the regulations. As permitted by § 26335.803 (Prior approval of outside employment and activities) (578 FR 35062), 29 CFR 1400.735–12 will remain in effect for one year after the effective date of OGE's final rule (February 3, 1993) or until the issuance of FMCS supplemental agency regulations, whichever occurs first. The FMCS is removing § 1400.735–13 (Financial interest) of the regulations. However the FMCS will be considering whether to issue supplemental agency regulations addressing the holding and acquiring of specific financial interests, as provided in paragraph (a) of § 2635.403 (Prohibited financial interests) of OGE's regulations (57 FR 35053). The FMCS will issue any supplemental regulations with OGE in a separate rulemaking.

In addition, although part 2635 does not supersede all provisions of subpart E (§§ 1400.735–50 to 1400.735–53) (Review of Statements, Disciplinary Action and Counselling Services) provision of the regulations, the FMCS is removing the entire section as unnecessary because the information and instructions contained therein regarding the ethics counseling procedures will be distributed to its employees pursuant to OGE's final rule establishing new subpart G of 5 CFR part 2638, Executive Agency Ethics Training Programs (57 FR 11886, April 7, 1992). Subpart E will therefore be superfluous.

OGE also has issued 5 CFR part 2634, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees (57 FR 11800, April 7, 1992). Effective October 5, 1992, these regulations superseded the current executive branch confidential reporting regulation at 5 CFR part 735, subpart D and § 735.106 and agencies implementing regulations. Therefore, the FMCS is further amending subpart D by removing §§ 1400.735–40 through 1400.735–42 (Statement of Employment and Financial Interests) of the regulations.

The FMCS has concluded that with the removal of the provisions discussed above (purpose and scope), and §§ 1400.735–1 and 1400.735–2 (Definitions) of the regulations no longer are necessary. Therefore, it also is removing these sections.

Sections 1400.735–17 (Gambling, betting and lotteries) and 1400.735–18 (General conduct prejudicial to the Government) of the regulations are not superseded by part 2635 or any other OGE regulation. However, pursuant to Executive Order 12674, OPM has issued a final rule to complement part 2635 by establishing executive branch-wide standards in these areas that will be enforceable by the employing agency (57 FR 57433, November 30 1992, to be codified at 5 CFR 735.201, 735.203). Accordingly, the FMCS is removing §§ 1400.735–17 and 1400.735–18.

This rule relates to agency management and personnel (5 U.S.C. 553(a)(2)). As such, the notice of proposed rulemaking and delayed effective date requirements of the Administrative Procedure Act do not apply (5 U.S.C. 553 (b) and (d)).

List of Subjects in 29 CFR Part 1400

Responsibilities and discipline, Standards of conduct.

Dated: March 18, 1993.

Bernard E. DeLury,

Director, Federal Mediation and Conciliation Service.

Accordingly, part 1400 is amended as follows:

PART 1400—[AMENDED]

1. The authority citation for part 1400 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

§§ 1400.735–1, 1400.735–2 [Removed]

2. Subpart A of part 1400 is amended by removing § 1400.735–1 (Introduction) and § 1400.735–2 (Definitions).

§§ 1400.735–10, 1400.735–11, 1400.735–13—1400.735–18 [Removed]

3. Subpart B of part 1400 is amended by removing §§ 1400.735–10 through 1400.735–11, 1400.735–13 through 1400.735–18.

§§ 1400.735–30—1400.735–35 [Removed]

4. Subpart C consisting of §§ 1400.735–30 through 1400.735–35 is removed.

§§ 1400.735–40—1400.735–42 [Removed]

5. Subpart D consisting of §§ 1400.735–40 through 1400.735–42 is removed.

§§ 1400.735–50—1400.735–53 [Removed]

6. Subpart E consisting of §§ 1400.735–50 through 1400.735–53 is removed.

[FR Doc. 93–8063 Filed 4–6–93; 8:45 am]

BILLING CODE 6732–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 93–16]

Special Local Regulations: Lake Worth, ICW, Mile 1022

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Lake Worth Sunfest '93. This event will be held on April 30 through May 2, 1993, from 11 a.m. e.d.t. (Eastern Daylight Time) to 10 p.m. e.d.t. on April 30, and from 9 a.m. e.d.t. to 8 p.m. e.d.t. on May 1 and 2. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on April 30, 1993 and terminate on May 2, 1993, from 11 a.m. e.d.t. to 10 p.m. e.d.t. on April 30, and from 9 a.m. e.d.t. to 8 p.m. e.d.t. on May 1 and 2.

FOR FURTHER INFORMATION CONTACT: LTJG M. Rudningen, Coast Guard Group Miami, (305) 535–4536.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until February 10, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT J. Losego, Project Attorney, Seventh

Coast Guard District Legal Office, and LTJG M. Rudningen, Project Officer, Coast Guard Group Miami.

Discussion of Regulations

There will be approximately 45 racers in race boats, ski boats, jet skis, and canoes, ranging in size from 12 to 17 feet, participating in the Lake Worth Sunfest '93. High-speed race boats traveling up to 120 mph, and canoes, jet skis, and water skiers, require calm waters to perform and create an extra hazard in the navigable waters. As a result, there will be a no wake zone in the Lake Worth Intracoastal Waterway between the Royal Palm Bridge and the Flagler Memorial Bridge where the event will take place.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0716 is added to read as follows:

§ 100.35–T0716: Lake Worth Sunfest '93.

(a) *Regulated area:* A regulated area is established in the Lake Worth Intracoastal Waterway (ICW), between the Flagler Memorial Bridge and the Royal Palm Bridge, with the northern boundary formed by latitude 26′–42′–48″, and the southern boundary formed by latitude 26′–42′–19″. The eastern and western boundaries of the regulated area are formed by the shoreline of the ICW.

(b) *Special local regulations:*

(1) The regulated area is a no wake zone. All transiting vessels shall operate at a speed so as to not cause a wake or at five (5) knots, whichever is slower.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Sunfest '93 event on each respective day, all vessels may resume normal operations.

(c) *Effective dates:* These regulations become effective on April 30, 1993 and terminate on May 2, 1993, from 11 a.m. e.d.t. to 10 p.m. e.d.t. on April 30, and from 9 a.m. e.d.t. to 8 p.m. e.d.t. on May 1 and 2. These times are effective, unless the regulated area is sooner terminated by the Patrol Commander.

Dated: March 25, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–8110 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD7 93–18]

Special Local Regulations: City of Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Miami Beach Super Boat Race. This event will be held on May 2, 1993, from 12 noon e.d.t. (Eastern Daylight Time) until 3 p.m. e.d.t. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on May 2, 1993, from 12 noon e.d.t. until 3 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: LTJG M.W. Rudingen, Coast Guard Group Miami, at (305) 535–4536.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until January 18, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT Jacqueline Losego, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Mark W. Rudningen, Project Officer, Coast Guard Group Miami.

Discussion of Regulations

Super Boat Racing, Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats ranging in length from 24 to 50 feet. There will be approximately two-hundred (200) spectator craft. The race will be run in the Atlantic Ocean just off Miami Beach. The race course is an elongated oval of 14.7 miles with four corner check points and will be three-hundred (300) feet wide.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0718 is added to read as follows:

§ 100.35–0718 City of Miami Beach, FL

(a) *Regulated area:* A regulated area is established by a line that connects four corner check points and the start/finish line of the race course: check point #1, position 25–52′45″ N, 80–06′29″ W; check point #2, position 25–52′45″ N, 80–06′45″ W; check point #3, position 25–46′30″ N, 80–07′30″ W; check point #4, position 25–46′30″ N, 80–07′00″ W; and start/finish, position 25–47′15″ N, 80–07′10″ W. The regulated area also extends 200 feet outside the race course, includes the center of the race course, and includes the area between the shoreline and the race course.

(b) *Special local regulations:*

(1) Entry into the regulated area is prohibited to nonparticipating vessels, unless authorized by the Patrol Commander. At the completion of the scheduled races and departure of participants from the regulated area, traffic may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective dates;* These regulations become effective on May 2, 1993 from 12 noon e.d.t. until 3 p.m. e.d.t.

Dated: March 25, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–8109 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–8–1–5429; FRL–4604–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to the SIP Provisions for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision amends the Code of Maryland Air Regulations (COMAR) 10.18.03 to conform with the EPA ambient air quality standard set forth in 40 CFR 50.8 regarding carbon monoxide, and COMAR 10.18.06 to exempt stationary sources from the requirement to incinerate carbon monoxide under certain conditions. The intended effect of this action is to approve the Maryland carbon monoxide regulations. This action is being taken in accordance with section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This action will become effective June 7, 1993 unless notice is received on or before May 7, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On December 15, 1987, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). This SIP revision request consisted of amendments to COMAR 10.18.01, General Provision, COMAR 10.18.02, Permits, Approval and Registration, COMAR 10.18.03, State Adopted National Ambient Air Quality Standards and Guidelines, COMAR 10.18.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 10.18.10, Control of Iron and Steel Production Installations of the SIP. This rulemaking notice deals only with the revisions to COMAR 10.18.03.04 and COMAR 10.18.06.04 which include SIP provisions for the control of carbon monoxide.

Summary of the SIP Revision

The language of COMAR 10.18.03.04 has been modified to restate the ambient air quality standard for carbon monoxide as nine parts per million (ppm) maximum for an eight hour concentration, or 35 ppm maximum for a one-hour concentration. This revision to the language of COMAR 10.18.03.04 makes it consistent with the federal language set forth at 40 CFR 50.8. In addition, Maryland revised COMAR 10.18.03.04 by repealing the secondary standard for carbon monoxide to conform with the federal repeal of this standard.

Revisions to COMAR 10.18.06.04 provide Maryland the regulatory means to exempt stationary sources from the SIP requirement to incinerate carbon monoxide emissions if those emissions are not combustible and ambient air quality standards will not be violated. To be exempted from the requirements of COMAR 10.18.06.04, a source must show by an acceptable modeling demonstration that there will be no interference with the attainment or maintenance of ambient air quality standards for carbon monoxide. In addition, the source must demonstrate that the gas mixture containing carbon monoxide will not support combustion. EPA has determined that these provisions for exempting sources from COMAR 10.18.06.04 will not conflict with nor exempt any sources from applicable New Source Performance Standards (NSPS), Lowest Available Emission Rate (LAER), and Best Available Control Technology (BACT) requirements.

EPA approval of the revision to COMAR 10.18.06.04 does not constitute pre-approval of any specific exemptions granted under this provision. Therefore, in order for any exemption granted by Maryland to be approved by EPA, it must be submitted and approved to EPA as a SIP revision. Until and unless EPA approves such an exemption as a SIP revision, the source remains subject to the federally enforceable requirements of COMAR 10.18.06.04.q

EPA is approving this SIP revision without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 7, 1993.

Final Action

EPA is approving amendments to the Maryland Air Quality Regulations, Comar 10.18.03, State Adopted National Ambient Air Quality Standards and Guidelines, carbon monoxide and

COMAR 10.18.06.04, General Emission Standards, Prohibitions and Restrictions, carbon monoxide in areas III, and IV. The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action to approve revisions to COMAR 10.18.03.04 and COMAR 10.18.06.04 of the Maryland SIP has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: March 3, 1993.

William T. Wisniewski,

Acting Regional Administrator, Region III.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on December 15, 1987.

(i) Incorporation by reference. (A) Letter from the Maryland Department of Environment dated December 15, 1987 submitting a revision to the Maryland State Implementation Plan.

(B) Amendments to the Code of Maryland Air Regulations (COMAR) 10.18.03, State Adopted National Ambient Air Quality Standards and Guidelines limited to the amendment of 10.18.03.04, carbon monoxide and COMAR 10.18.06, General Emission Standards, Prohibitions, and Restrictions, limited to the amendment of 10.18.06.04, carbon monoxide in areas III and IV. The amendments to COMAR 10.18.03.04 and 10.18.06.04 were adopted by the Maryland Department of the Environment on November 4, 1987 and made effective on January 5, 1988.

[FR Doc. 93–8017 Filed 4–6–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[TN–012–4121; FRL–4505–8]

Approval and Promulgation of Implementation Plans; Tennessee: Revised SO_2 Limits for the New Johnsonville Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 2, 1983, the State of Tennessee officially submitted the sulfur dioxide (SO_2) nonattainment State Implementation Plan (SIP) for the New Johnsonville area to EPA. This submittal contained the control strategy demonstration and the SO_2 emission limits for sources located in the nonattainment area. Action on this submittal was delayed when the February 8, 1982, stack height regulation was challenged and portions were remanded on October 11, 1983. Several sources in the New Johnsonville area were affected by this remand. EPA promulgated new stack height regulations on July 8, 1985. Tennessee complied with the new federal regulations by demonstrating that all sources in the State met the new requirements and by developing new generic stack height regulations which became State-effective on November 22, 1987. On January 22, 1988, EPA's stack height regulations were, again, remanded.

Although the latest stack height remand has not been settled, EPA is today approving this nonattainment plan due to enforcement related issues. Also, on January 6, 1988, the State of Tennessee requested that the nonattainment area of New Johnsonville be redesignated to attainment for both the primary and secondary SO_2 standards. All requests for area redesignations from nonattainment to attainment must include a maintenance plan as a revision to the SIP pursuant to section 175A of the Clean Air Act Amendments of 1990 (CAAA). Action on the redesignation request is delayed pending the submittal of an approvable maintenance plan by the State of Tennessee.

EFFECTIVE DATE: This action will be effective May 7, 1993.

ADDRESSES: Copies of the material relevant to this action may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.
Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.
Division of Air Pollution Control, Tennessee Department of Environment and Conservation, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Leslie Cox, of the EPA Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: In the early 1970's, Tennessee utilized the example region concept in establishing SO_2 emission limits for sources that were causing or contributing to ambient air violations. As a result of this example region concept, all power plants were subject to SO_2 emission limits of 1.2 lbs/mmBTU (pounds per million British Thermal Unit). Tennessee Valley Authority's (TVA) Johnsonville Steam Plant, located in the New Johnsonville SO_2 nonattainment area which includes portions of Benton and Humphreys Counties, was one such facility. During this same time period, TVA took the position that the 1970 Clean Air Act (CAA) did not require constant emission limits as the only mechanism for achieving the National Ambient Air Quality Standard (NAAQS) for SO_2. TVA had proposed to meet the NAAQS through the use of intermittent or supplemental controls. EPA, together with Alabama, Kentucky, and Tennessee, which have TVA facilities, did not agree on TVA's proposal and required the emission limits to be continuously met. TVA took the issue to court, but, on April 19, 1976, the Supreme Court refused to hear the case and the lower court's position siding with EPA and the three States was upheld.

This resulted in TVA immediately being in noncompliance at most of its facilities. As a result, on September 28, 1979, a consent decree was entered into by EPA, the Commonwealth of Kentucky, and various public interest groups (*Tennessee Thoracic Society, et al., and United States* v. *S. David Freemand, et al.*, Civil Action No. 7703286–NA–CV, United States District Court for the Middle District of Tennessee, Nashville Division). The consent decree required that TVA install 600 megawatts of SO_2 scrubber capacity and use a complying coal to meet an SO_2 emission limit of 3.4 lbs/mmBTU. Modeling indicated that this SO_2 emission limit would protect the NAAQS. On December 22, 1980, the Court issued a revised consent decree which no longer required the installation of scrubbers but maintained the 3.4 lbs/mmBTU SO_2 limit.

The State of Tennessee chose not to be a party to the consent decree and left the details of the final settlement to EPA and the other parties. Although the SIP contained an SO_2 emission limit of 1.2 lbs/mmBTU for the Johnsonville area, EPA, et al., agreed through the consent decree that an SO_2 emission limit of 3.4 lbs/mmBTU would continue to protect the NAAQS for SO_2, so this limit became part of the consent decree.

EPA then began negotiations with the Tennessee Air Pollution Control Board (TAPCB) in order to get the approved SIP SO_2 emission limit of 1.2 lbs/mmBTU revised to 3.4 lbs/mmBTU. Since the limits dealt with a nonattainment area, all sources of SO_2 emissions had to be analyzed and factored into the State's attainment demonstration. The major SO_2 sources in the New Johnsonville nonattainment area are TVA's Johnsonville Steam Plant, Consolidated Aluminum Corporation (CONALCO), E.I. De Nemours Du Pont (Du Pont), and Inland Container Corporation. There are numerous smaller SO_2 sources in the nonattainment area which are listed in the Technical Support Document for this SIP revision. Emission limits for all of the sources were developed using the limits contained in the consent decree, a modeling analysis, and current air quality data. The nonattainment plan predicted attainment of the primary and secondary SO_2 NAAQS by December 31, 1982, and December 31, 1987, respectively.

Since the New Johnsonville TVA facility never complied with the State's federally approved SO_2 emission limit of 1.2 lbs/mmBTU, no net increase in actual SO_2 emissions will result from the approval of this new limit. In fact, a net reduction occurred because this facility had emissions in excess of 6.0 lbs/mmBTU of SO_2 before the consent decree was filed.

Control Strategy Demonstration/ Modeling

The modeling techniques used in the demonstration supporting this SIP revision are, for the most part, based on the modeling guidance in place at the time that the analysis was performed (EPA's "Guideline on Air Quality Models" (1978)). Since that time, the modeling guidance has been changed by EPA (EPA's "Guideline on Air Quality Models" (Revised), EPA–450/2–78–027R (1986) and Supplement A (1987)). The analysis supporting the control strategy and the Benton and Humphreys Counties SO_2 redesignation was included in a July 9, 1986, letter from Bruce Miller of EPA's Region IV Air Programs Branch to Joe Tikvart of the Source Receptor Analysis Branch and Tom Helms of the Control Programs Operation Branch. This letter outlined the sources and/or areas in Region IV to be grandfathered under the 1978 EPA modeling practice. More recently, revisions to this guidance have been promulgated by EPA (51 FR 32176, September 9, 1986, and 53 FR 392, January 6, 1988). Because the modeling analysis was substantially complete prior to the issuance of the revised guidance, EPA accepts this analysis. If, for some reason, the State must reassess this or any other analysis in the future, then any new modeling analysis must be done in accordance with the modeling guidance in effect at that time.

The models used for the attainment demonstration were the Air Quality Display Model (AQDM), PTMTP, CRSTER, and the Buoyant Line and Point Source Dispersion model (BLP). Five years (1966–1970) of meteorological data from the Nashville, Tennessee, National Weather Service (NWS) site was used in AQDM, to estimate the SO_2 emissions as an annual arithmetic average. PTMTP was used to determine the 3-hour and 24-hour average concentrations. CRSTER was run using the 1964 Nashville NWS data to calculate concentrations from single point sources, with the exception of CONALCO. The days representing adverse conditions were then modeled by PTMTP using CRSTER output meteorology. The wind directions were modified to combine the most adverse dispersion parameters with source alignments causing maximum additive impacts. BLP, which is designed to handle unique modeling problems associated with aluminum reduction plants, was used to model CONALCO.

The New Johnsonville area modeling analysis included two addenda. The first addendum resulted from a public hearing comment to revise the emissions data for some sources and to support the use of BLP. The second addendum resulted from TVA's petition to establish an SO_2 emission standard for their boilers based on 24-hour average variability, rather than the 3-hour average that was evaluated in the initial modeling. These addenda meet EPA requirements and are acceptable.

In the modeling submittal for each source, analyses were done for three separate emission inventories—the base

year (1977) inventory, the interim restriction (1982–1987) inventory, and the final Reasonably Available Control Technology (RACT) emissions inventory. The maximum concentrations for each analysis are listed in Table III of the Technical Support Document. The background concentration was supplied by the State. The 3-hour, 24-hour, and annual background concentrations are 15, 5, and 2 $\mu g/m^3$ (micrograms per cubic meter), respectively. Adding these values to their respective averaging times yields a total 3-hour, 24-hour, and annual concentration of 1003, 235, and 50 $\mu g/m^3$, respectively. The modeling illustrates that the SO_2 NAAQS will not be adversely affected by the SO_2 sources in the New Johnsonville area. Therefore, TVA's emission limit of 3.4 lbs/mmBTU as a source specific emission limit, supported by the previously discussed modeling, is approvable. Emission limits for the SO_2 sources (other than TVA) are based on RACT emission limits and these limits are listed in the State of Tennessee's Rule 1200–3–19–.14, Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.

Stack Heights

The New Johnsonville nonattainment plan has been affected by stack height issues since it was submitted to EPA on August 2, 1983. Action was delayed on the plan due to the February 8, 1982, stack height regulations (47 FR 5864) which subsequently were challenged by the Sierra Club Legal Defense Fund, Inc.; Natural Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania.

On October 11, 1983, the U.S. Court of Appeals for the District of Columbia ordered EPA to reconsider portions of the "stack height" regulations for stationary sources (*Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983)). These regulations, which implemented section 123 of the CAA, were published on February 8, 1982 (47 FR 5864). In its decision, the Court of Appeals struck down the following two provisions of these regulations:

1. The allowance of plume impaction credit; and
2. The setting of a two-stage process for State implementation.

The Court also remanded several other issues to the Agency for reconsideration:

1. The definition of "excessive concentrations;"
2. The definition of "dispersion techniques;"
3. The automatic allowance of credit for stack height increases where the resulting stack height is at, or lower than, the formula height;
4. The allowance of credit for new sources tied into old stacks which are above the GEP height;
5. The failure to set a specific "nearby" limitation for GEP demonstrations; and
6. The requirement that sources claim credit based on the 2.5H formula to demonstrate actual reliance on that formula.

Only the first three aforementioned remanded issues affected the New Johnsonville submittal and all further action was stayed until new regulations could be promulgated.

On July 8, 1985, (50 FR 27892) EPA published stack height regulations that resolved the overturned and remanded issues of 1983. Hence, Tennessee was required to demonstrate that sources in the State could meet the new requirements and to develop regulations that complied with the federal regulations. Tennessee's regulations became State-effective on November 22, 1987. However, before EPA could process the nonattainment plan, the stack height regulations were remanded again. On January 22, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision in *NRDC* v. *Thomas*, 838 F.2d 1244 (D.C. Cir. 1988) on the 1985 stack height regulations. Although the Court upheld most of the provisions of the rules, the following three portions were remanded to EPA for review:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51 100(ii)(2)).

The first issue of this remand affected the New Johnsonville area submittal and caused the SIP revision to be placed on hold.

Enforcement Issues

EPA has decided to act on the New Johnsonville nonattainment area plan due to potential enforcement related issues. EPA is concerned that the federally approved emission limits for this area may be inappropriate. In order to avoid any enforcement complications, Region IV believes that it is in the best interest of EPA, the State of Tennessee, and the SO_2 sources in the New Johnsonville area to process the revised emission limits. However, the State and the sources may need to be evaluated for compliance with any future revisions to the stack height regulations as a result of this litigation.

On August 8, 1990, EPA proposed approval of Tennessee's SO_2 nonattainment plan (55 FR 32268) and no comments were received during the comment period.

Final Action

EPA's review of the Tennessee SIP revision submitted on August 2, 1983, indicates that a revision of the SO_2 emission limit of 1.2 lbs/mmBTU to 3.4 lbs/mmBTU will protect the SO_2 NAAQS in the New Johnsonville area.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Clean Air Act Amendments (CAAA) enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Therefore, EPA is today approving the revised SO_2 SIP, applicable to the New Johnsonville area, with the exception of the request to redesignate areas from nonattainment to attainment for the primary and secondary SO_2 standards submitted to EPA on January 6, 1988. All requests for redesignation have been put on hold until the State submits a maintenance plan pursuant to section 175A of the CAAA.

For further information on EPA's analysis, the reader may consult the Technical Support Document for this submittal, which contains a detailed review of the material submitted. This document is available at the EPA address listed in this notice.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of

Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Today's action makes final the action proposed at 55 FR 32269, August 8, 1990. As noted elsewhere in this notice, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the SIP for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 6, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(107) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(107) Revisions to the New Johnsonville SO_2 portion of the Tennessee State Implementation Plan submitted on August 2, 1983, by the State of Tennessee through the Tennessee Air Pollution Control Board.

(i) Incorporation by reference.

(A) Revisions to the following Tennessee Air Pollution Control Regulations which became State-effective on December 13, 1982:

1200–3–3–.05—Achievement

(B) Revisions to the following Tennessee Air Pollution Control Regulations which became State-effective on December 17, 1982:

1200–3–19–.14—Sulfur Dioxide Emission Regulation for the New Johnsonville Nonattainment Area

(C) Revisions to the following Tennessee Air Pollution Control Regulations which became State-effective on August 1, 1984:

1200–3–14–.01(2)—General Provisions

1200–3–14–.02(1)(a)—Non-process Emissions Standards

(ii) Other material.

None

[FR Doc. 93–8018 Filed 4–6–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 60, 61, 122, 264, 265, 403, and 707

[FRL–4611–5]

Technical Amendments to OMB Approval Numbers

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendments.

SUMMARY: EPA is publishing technical amendments to various EPA regulations with Office of Management and Budget (OMB) information collection request control numbers. EPA is also providing notice of an ongoing evaluation of the status of its regulations under the Paperwork Reduction Act (PRA).

EFFECTIVE DATE: This final rule is effective on April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION: EPA is examining the status of information collection requests (ICRs) under the PRA. As part of that review, EPA is today publishing technical amendments to update various regulations promulgated under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. The amended regulations are codified at 40 CFR parts 60, 61, 122, 264, 265, 403, and 707. EPA is publishing the current ICR control numbers issued for these regulations by OMB pursuant to the PRA. Most of the amendments constitute insertions of a control number, generally at the end of one or more specific sections in each regulatory subpart.

This action updates certain regulations with ICRs previously approved by OMB to reflect the control numbers assigned by OMB. The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to issue these amendments without prior notice and comment. Due to the technical nature of these amendments, further notice and public comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

In addition, EPA has learned that OMB approvals for some ICRs may have lapsed or the ICRs may otherwise not be in conformance with the PRA. This may affect EPA's assessment of penalties for certain recordkeeping and reporting requirements. Accordingly, EPA has undertaken a review of applicable regulations for the purpose of determining whether there have been lapses or other problems in ICR approvals. EPA is also examining its pending enforcement cases to determine if any alleged violations might be affected. EPA will identify affected regulations resulting from its review and will take any other appropriate action.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 61

Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental Protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 264

Air pollution control, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 265

Air pollution control, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 403

Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 707

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 1, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Subpart D is amended by adding § 60.48 to read as follows:

§ 60.48 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0026.

3. Subpart Da is amended by adding a parenthetical statement to the end of § 60.49a to read as follows:

§ 60.49a Reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0023)

4. Subpart E is amended by adding § 60.55 to read as follows:

§ 60.55 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0040.

5. Subpart Ea is amended by adding a parenthetical statement to the end of § 60.59a to read as follows:

§ 60.59a Reporting and recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0210)

6. Subpart G is amended by adding § 60.75 to read as follows:

§ 60.75 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0019.

7. Subpart I is amended by adding § 60.94 to read as follows:

§ 60.94 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0083.

8. Subpart J is amended by revising the parenthetical statement at the end of § 60.107 to read as follows:

§ 60.107 Reporting and recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0022)

9. Subpart Ka is amended by adding § 60.116a to read as follows:

§ 60.116a OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0121.

10. Subpart Kb is amended by adding a parenthetical statement to the end of § 60.115b to read as follows:

§ 60.115b Recordkeeping and reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0074)

11. Subpart L is amended by adding § 60.124 to read as follows:

§ 60.124 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0080.

12. Subpart M is amended by adding § 60.134 to read as follows:

§ 60.134 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0110.

13. Subpart O is amended by adding a parenthetical statement to the end of § 60.155 to read as follows:

§ 60.155 Reporting.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0035)

14. Subpart T is amended by adding § 60.205 to read as follows:

§ 60.205 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0037.

15. Subpart U is amended by adding § 60.215 to read as follows:

§ 60.215 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0037.

16. Subpart V is amended by adding § 60.225 to read as follows:

§ 60.225 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0037.

17. Subpart W is amended by adding § 60.235 to read as follows:

§ 60.235 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0037.

18. Subpart X is amended by adding § 60.245 to read as follows:

§ 60.245 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0037.

19. Subpart Y is amended by adding § 60.255 to read as follows:

§ 60.255 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0122.

20. Subpart AA is amended by adding a parenthetical statement to the end of § 60.276 to read as follows:

§ 60.276 Recordkeeping and reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0038)

21. Subpart CC is amended by adding § 60.297 to read as follows:

§ 60.297 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0054.

22. Subpart DD is amended by adding § 60.305 to read as follows:

§ 60.305 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management

and Budget and assigned OMB control number 2060–0082.

23. Subpart GG is amended by adding § 60.336 to read as follows:

§ 60.336 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0028.

24. Subpart HH is amended by revising the parenthetical statement at the end of § 60.343 to read as follows:

§ 60.343 Monitoring of emissions and operations.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0063)

25. Subpart KK is amended by adding § 60.375 to read as follows:

§ 60.375 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0081.

26. Subpart NN is amended by adding § 60.405 to read as follows:

§ 60.405 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0111.

27. Subpart QQ is amended by adding a parenthetical statement to the end of § 60.434 to read as follows:

§ 60.434 Monitoring of operations and recordkeeping.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0105)

28. Subpart UU is amended by adding § 60.475 to read as follows:

§ 60.475 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0002.

29. Subpart AAA is amended by adding a parenthetical statement to the end of § 60.537 to read as follows:

§ 60.537 Reporting and recordkeeping.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0161)

30. Subpart DDD is amended by adding a parenthetical statement to the end of § 60.565 to read as follows:

§ 60.565 Reporting and recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0145)

31. Subpart GGG is amended by adding § 60.594 to read as follows:

§ 60.594 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0067.

32. Subpart III is amended by adding a parenthetical statement to the end of § 60.615 to read as follows:

§ 60.615 Reporting and recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0197)

33. Subpart III is further amended by removing the parenthetical statement at the end of § 60.616.

34. Subpart NNN is amended by adding a parenthetical statement to the end of § 60.665 to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0197)

35. Subpart NNN is further amended by removing the parenthetical statement at the end of § 60.666.

36. Subpart PPP is amended by revising the parenthetical statement at the end of § 60.684 to read as follows:

§ 60.684 Recordkeeping and reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0114)

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Subpart C is amended by adding § 61.35 to read as follows:

§ 61.35 OMB control number.

The information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 2060–0092.

3. Subpart F is amended by adding a parenthetical statement to the end of § 61.70 to read as follows:

§ 61.70 Reporting.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0071)

4. Subpart F is further amended by adding a parenthetical statement to the end of § 61.71 to read as follows:

§ 61.71 Recordkeeping.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0071)

5. Subpart M is amended by adding a parenthetical statement to the end of § 61.145 to read as follows:

§ 61.145 Standard for demolition and renovation.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0101)

6. Subpart M is further amended by removing the parenthetical statement at the end of § 61.146.

7. Subpart M is further amended by revising the parenthetical statement at the end of § 61.153 to read as follows:

§ 61.153 Reporting.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0101)

8. Subpart O is amended by removing the parenthetical statement at the end of §§ 61.176 and 61.177.

9. Subpart P is amended by removing the parenthetical statement at the end of §§ 61.185 and 61.186.

10. Subpart V is amended by revising the parenthetical statement at the end of § 61.247 to read as follows:

§ 61.247 Reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2060–0068)

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.41 [Amended]

2. Section 122.41 is amended by removing the first parenthetical phrase.

§ 122.41 [Amended]

3. Section 122.41 is amended by adding the following parenthetical at the end of the section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2040–0004, 2040–0110 and 2040–0068)

§§ 122.44, 122.48 [Amended]

4. Sections 122.44 and 122.48 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2040–0004)

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

§ 264.120 [Amended]

2. Section 264.120 is amended by removing the parenthetical at the end of the section.

§§ 264.112, 264.113, 264.115, 264.116, 264.118, 264.119, 264.120 [Amended]

3. Sections 264.112, 264.113, 264.115, 264.116, 264.118, 264.119, and 264.120 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050–0120.)

§§ 264.142, 264.144, 264.147 [Amended]

4. Sections 264.142, 264.144, and 264.147 are amended by removing the parenthetical at the end of each section.

§§ 264.142, 264.143, 264.144, 264.145, 264.147, 264.148, 264.149, 264.150 [Amended]

5. Sections 264.142, 264.143, 264.144, 264.145, 264.147, 264.148, 264.149, and 264.150 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050–0120)

6. Subpart AA is amended by revising the parenthetical statement at the end of § 264.1035 to read as follows:

§ 264.1035 Recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

7. Subpart AA is further amended by revising the parenthetical statement at the end of § 264.1036 to read as follows:

§ 264.1036 Reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

8. Subpart BB is amended by revising the parenthetical statement at the end of § 264.1062 to read as follows:

§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

9. Subpart BB is further amended by revising the parenthetical statement at the end of § 264.1064 to read as follows:

§ 264.1064 Recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

10. Subpart BB is further amended by revising the parenthetical statement at the end of § 264.1065 to read as follows:

§ 264.1065 Reporting requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

§ 265.120 [Amended]

2. Section 265.120 is amended by removing the parenthetical at the end of the section.

§§ 265.112, 265.113, 265.115, 265.116, 265.118, 265.119, 265.120 [Amended]

3. Sections 265.112, 265.113, 265.115, 265.116, 265.118, 265.119, and 265.120 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050–0120)

§§ 265.142, 265.144, 265.147 [Amended]

4. Sections 265.142, 265.144, and 265.147 are amended by removing the parenthetical at the end of each section.

§§ 265.142, 265.143, 265.144, 265.145, 265.147, 265.148, 265.149, 265.150 [Amended]

5. Sections 265.142, 265.143, 265.144, 265.145, 265.147, 265.148, 265.149, and 265.150 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2050–0120)

§ 265.1035 [Amended]

6. Subpart AA is amended by revising the parenthetical statement at the end of § 265.1035 to read as follows:

§ 265.1035 Recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

§ 265.1064 [Amended]

7. Subpart BB is amended by revising the parenthetical statement at the end of § 265.1064 to read as follows:

§ 265.1064 Recordkeeping requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0050)

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95–217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100–4).

§§ 403.6, 403.7, 403.8, 403.9, 403.10, 403.12, 403.13, 403.15, 403.17, and 403.18 [Amended]

2. Sections 403.6, 403.7, 403.8, 403.9, 403.10, 403.12, 403.13, 403.15, 403.17, and 403.18 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2040–0009)

PART 707—CHEMICAL IMPORTS AND EXPORTS

1. The authority citation for part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

§§ 707.65, 707.67, 707.70, 707.72, 707.75 [Amended]

2. Sections 707.65, 707.67, 707.70, 707.72, 707.75 are amended by adding the following parenthetical at the end of each section to read as follows:

(Information collection requirements are approved by the Office of Management and Budget under control number 2070–0030)

[FR Doc. 93–8125 Filed 4–5–93; 11:53 am]
BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6961

[ID-943-4210-06; IDI-15634-01]

Partial Revocation of Executive Order dated July 2, 1910; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 40 acres of National Forest System land withdrawn for Bureau of Land Management's Powersite Reserve No. 91 within the St. Joe National Forest. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange under the Arkansas-Idaho Land Exchange Act of 1992 (Pub. L. 102-584). This action will open the land to surface entry. The land has been open to mining under the provisions of the Mining Claims Restoration Act of 1955 and these provisions are no longer required. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which withdrew National Forest System land for Powersite Reserve No. 91, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 45 N., R. 3 E.,
Sec. 3, SW¼SW¼.

The area described contains 40 acres in Shoshone County.

2. At 9 a.m. on May 7, 1993, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: March 29, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93-8010 Filed 4-6-93; 8:45 am]

BILLING CODE 4310-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-260]

Organization and Delegation of Powers and Duties; Delegation of Authority to the Director, Office of Commercial Space Transportation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Director, Office of Commercial Space Transportation (OCST), certain authority vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102-588). The purpose of this rulemaking is to amend 49 CFR part 1 to reflect the delegated authority.

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Elaine Orfanos David, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, U.S. Department of Transportation, room 10424, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9305.

SUPPLEMENTARY INFORMATION: The National Aeronautic and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102-588) (NASA FY 93 Authorization Act) authorizes, among other things, appropriations for various programs of NASA. In addition, the NASA FY 93 Authorization Act further amends the Commercial Space Launch Act of 1984, as amended (49 U.S.C. App. 2601 *et seq.*) (the Act), by, among other things, authorizing FY 93 appropriations for carrying out the Secretary's responsibilities under the Act and assigning to the Secretary other responsibilities in furtherance of U.S. commercial space transportation.

Specifically, section 505 of the NASA FY 93 Authorization Act authorizes, subject to appropriation of funds to the Secretary, the establishment of a grant program for U.S. commercial space transportation infrastructure development, and directs the Secretary to consult with the Department of Defense, NASA, and other appropriate Federal agencies concerning the selection of projects for grants. Section 506 of the NASA FY 93 Authorization Act directs the NASA Administrator and Secretary of Defense, as appropriate, in coordination with the Secretary, to conduct an inventory and identify all U.S. Government-owned launch support facilities, and identify those that could be made available to non-Federal entities on a reimbursable basis.

The functions assigned to the Secretary under Executive Order 12465 (February 24, 1984) relating to commercial expendable launch vehicle activities, and those vested in the Secretary by the Act are already delegated to the Director, Office of Commercial Space Transportation (OCST), as set forth in 49 CFR 1.68. This rulemaking is necessary to delegate to the Director, OCST, the additional responsibilities assigned to the Secretary under the NASA FY 93 Authorization Act.

Because this rulemaking relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth herein, part 1 of title 49, Code of Federal Regulations is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.68 is amended by adding a new paragraph (c) to read as follows:

§ 1.68 Delegations to Director of Commercial Space Transportation.

* * * * *

(c) Carry out the functions vested in the Secretary by the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (Pub. L. 102-588; November 4, 1992).

Issued in Washington, DC, this 26 day of March, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93-8082 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Parts 523, 525, 533, 537

[Docket No. 91–50; Notice 3]

RIN 2127 AE42

Light Truck Average Fuel Economy Standards Model Year 1995

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1995. The issuance of the standard is required by Title V of the Motor Vehicle Information and Cost Savings Act. The (combined) standard for all light trucks manufactured by a manufacturer is 20.6 mpg for MY 1995. This final rule also converts certain measurements into metric units.

DATES: The amendment is effective May 7, 1993. The standard applies to the 1995 model year. Petitions for reconsideration must be submitted within 30 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added a new title, title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. Standards are required to be set at least 18 months prior to the beginning of the model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 205015, June 22, 1976)).

On October 8, 1991, NHTSA published in the **Federal Register** (56 FR 50694) a questionnaire concerning fuel economy standards for MYs 1995–1997. The comments received in response to the questionnaire are available in Docket No. 91–50.

After analyzing the responses to the questionnaire and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing average fuel economy standards for light trucks for MYs 1995–97. 57 FR 61377 (December 24, 1992). The agency proposed to select the standards from within a range of 20.5–21.0 mpg for MY 1995, and 20.5–21.5 mpg for MYs 1996 and 1997. These ranges were based on the agency's tentative evaluation of manufacturer capabilities.

In response to the December 24, 1992 NPRM, the agency received comments from General Motors (GM), Ford, Chrysler, the American Automobile Manufacturers Association (AAMA, formerly the Motor Vehicle Manufacturers Association), Rover Group, the National Automobile Dealers Association, and about 50 organizations concerned about the continuing availability to consumers of a full range of light trucks, including, among others, the Coalition for Vehicle Choice, Consumer Alert, and the Competitive Enterprise Institute (CEI). The issues raised by the commenters are addressed below.

II. Summary of Decision

Based on its analysis, the agency is establishing a combined average fuel economy standard for MY 1995 at 20.6 mpg. NHTSA will reach a decision later with respect to the light truck CAFE standards for MY 1996–97. The limited time available to promulgate a final rule for MY 1995 has precluded a thorough consideration of the issues related to light truck CAFE standards for those later model years.

III. Manufacturer Capabilities for MY 1995

In evaluating manufacturers' fuel economy capabilities for MY 1995, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Final Regulatory Impact Analysis (FRIA), which is being placed in the docket for this notice. Some of the information included in the FRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information whose release could cause competitive harm. The public version of the FRIA omits the confidential information.

A. Manufacturer Projections

1. General Motors

As discussed in the NPRM, General Motors (GM) projected in December 1991 that it could achieve a light truck CAFE level of 20.2 mpg for MY 1995. In its February 1993 comment on the NPRM, GM revised its projection slightly downward, to 20.1 mpg. By comparison, in a mid-model year report submitted in July 1992, GM projected a MY 1992 CAFE of 20.2 mpg, and in a pre-model year report submitted in December 1992, that company projected a MY 1993 CAFE of 19.9 mpg.

GM stated in its February 1993 comment that the light truck CAFE standard for MY 1995 "should be set no higher than 20.5 mpg, and even that may be too high."

2. Ford

Ford projected in January 1992, and again in its February 1993 comment, that it could achieve a light truck CAFE level of 20.8 mpg for MY 1995. This projection is subject to risk factors which, according to Ford's comment on the NPRM, could reduce its CAFE level to as low as 20.4 mpg. By comparison, in a mid-model year report submitted in July 1992, Ford projected a MY 1992 CAFE of 20.2 mpg, and in a pre-model year report submitted in December 1992, that company projected a MY 1993 CAFE of 20.5 mpg.

Ford recommended in its comment on the NPRM that the agency establish the MY 1995 standard at the same level as the MY 1994 standard, 20.5 mpg.

3. Chrysler

Chrysler projected in December 1991 that it could achieve a domestic light truck CAFE level of 20.5 mpg for MY 1995. In its February 1993 comment on the NPRM, Chrysler revised its projection slightly upward, to 20.6 mpg. This compares to a projection of 21.2

mpg for MY 1992 in Chrysler's July 1992 mid-model year report, and 21.0 mpg for MY 1993 in Chrysler's December 1992 pre-model year report.

Chrysler commented that it supports a standard of 20.5 mpg for MY 1995 because it does not anticipate any major improvements in light truck fuel economy through new technological applications.

4. Other Manufacturers

Most light truck manufacturers other than GM, Ford and Chrysler only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those three companies. By way of example, in their pre-model year reports for 1993, Toyota projected a light truck CAFE of 21.8 mpg, Isuzu 21.8 mpg, Mazda 24.0 mpg, Mitsubishi 22.3 mpg, Subaru 29.3 mpg, Suzuki 28.9 mpg, and Volkswagen 21.3 mpg.

In the NPRM, NHTSA noted that two companies, Range Rover and PAS, projected MY 1992 light truck CAFE levels that are well below those of the large domestic manufacturers. In their mid-model year reports for MY 1992, Range Rover projected a CAFE level of 16.3 mpg and PAS 19.2 mpg. The agency notes that in their pre-model year reports for MY 1993, Range Rover projected a CAFE level of 15.0 mpg and PAS 28.8 mpg. Both of these companies sell a small number of light trucks in the U.S., on the order of about 5,000 vehicles or less. PAS modifies GM light trucks. That company's higher MY 1993 projection reflects the presence of dedicated and dual energy compressed natural gas (CNG) vehicles in its fleet.

One other company which has a CAFE capability below that of the large domestic manufacturers is UMC, a small domestic producer of delivery vans. That company projects selling 1,200 light trucks in MY 1993, with a CAFE of 18.8 mpg.

B. Possible Additional Actions to Improve MY 1992 CAFE

The agency analyzed the additional actions which manufacturers may be able to take to improve their CAFE levels above those that they currently project for MY 1993. These actions may be divided into two categories: further technological changes and product restrictions.

1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies that manufacturers are able to apply within the available time.

The agency's FRIA discusses the fuel efficiency enhancing technologies which are expected to be available by MY 1995. However, for MY 1995, limited leadtime is a significant constraint on the increased use of these technologies. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, as the agency discussed in establishing its final rule for MYs 1993–94, once a new design is established and tested as feasible for production, the leadtime necessary to design tools and test components is typically 30 to 36 months. Some potential major changes may take even longer. Leadtimes for new vehicles are usually at least three years. Further, light trucks have a long model life, i.e., 8–10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed financial impact. NHTSA notes that AAMA stated in its comment that the above leadtimes, which the agency cited in the NPRM, are more typical for passenger cars and that truck leadtimes are even longer.

Given the leadtime constraint, the agency does not believe that manufacturers can achieve significant improvements in their projected MY 1995 CAFE level by additional technological actions.

2. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. Such product restrictions, if made necessary by selection of a CAFE standard that is above manufacturers' capabilities, could result in adverse economic impacts on the industry and the economy as a whole.

To develop an independent indicator of the potential impacts of a standard above the maximum feasible level on GM's production, the agency estimated the loss of production associated with sufficient production restrictions to raise its CAFE by 0.5 mpg. To estimate this effect, the agency eliminated production of GM's least fuel efficient models until the desired improvement in CAFE was achieved. NHTSA stated in the NPRM that this approach tends to yield the maximum possible negative impacts, because it does not include the possibility of consumers accepting a smaller truck or engine, or switching to vehicles over 8500 pounds GVWR. Also, it ignores the possibility of additional technological improvements to these truck fleets, or compliance through the use of credits earned in other model years.

For MY 1995, the NHTSA analysis indicates that to increase its CAFE by 0.5 mpg by restricting sales, GM could suffer a sales loss of up to 174,000 units of its projected light truck production for that year. The potential job losses under this scenario in manufacturer and supplier industries could total nearly 30,000. In addition to the adverse impact on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use.

Also, such product restrictions could unduly limit consumer choice.

GM commented that it takes issue with NHTSA's statement that its analysis of job losses is necessarily an upper bound. That company stated that it could be that a manufacturer's product restrictions would not be done by eliminating the least fuel efficient vehicles first from its CAFE fleet, but a manufacturer could instead choose to restrict products based not only on their fuel efficiency but also their profit contributions. GM stated that this strategy could lead to larger lost sales and jobs.

Given the considerations discussed above, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve their MY 1995 CAFE levels.

C. Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA takes "industrywide considerations" into account in setting fuel economy standards. In carrying this out, the agency has traditionally focused on the least capable manufacturer with a substantial share of light truck sales. For MY 1995, the agency has determined that GM is the least capable manufacturer with a substantial share of sales.

1. GM

As indicated above, GM currently projects its MY 1995 light truck CAFE level at 20.1 mpg. It has also identified certain risks related to technology and mix which it says could reduce its CAFE level by as much as 0.3 mpg. As discussed in the FRIA, however, the agency has analyzed these potential risks and relieves that they are unlikely to occur. In addition, GM has identified an additional product action it is considering which could also reduce its

CAFE. However, NHTSA believes the issues of whether GM will actually take the product action, and if so, what the fleet penetration would be for MY 1995, are too speculative to justify an adjustment to GM's CAFE capability. NHTSA notes that it is not identifying the product action because it is confidential business information.

After carefully evaluating GM's product plan, NHTSA believes that company is capable of achieving a MY 1995 light truck CAFE of 20.6 mpg. The factors explaining the 0.5 mpg difference between GM's projection and the agency's estimate of its capability are discussed below.

First, as discussed in the NPRM, GM projects that a much larger portion of its MY 1995 fleet will have four-wheel drive (4WD) than it has had in recent years, or that its competitors are projecting. The agency stated in the NPRM that it is not aware of any reason to expect that the 4WD market will continue to increase. NHTSA also stated that it believes there are alternatives to 4WD, including traction control. The agency stated that if the 4WD share of GM's light truck fleet for MY 1995 is consistent with both that company's and its competitors' historical levels, its CAFE would be 0.1 mpg higher.

GM commented that it believes its forecast of MY 1995 4WD penetration is realistic, stating that competitor's actions in the 4WD segments, the use of all-wheel drive configurations and market data for future years support its projections. GM also argued that traction control is not an alternative to 4WD trucks since it has little benefit for off-road applications.

The agency continues to believe that it is unlikely that the 4WD market share will increase appreciably for the fleet in general or for GM over the timeframe between now and MY 1995. Since the mid-1980's, the 4WD share of total light truck sales for each model year has consistently fallen within the range of 32–35 percent. No data have been presented to the agency which demonstrate that this share will significantly change by MY 1995. The agency notes that, while it agrees that traction control isn't an alternative to 4WD for off-road applications, it would be a viable alternative for on-road use for many consumers. No evidence has been presented to the agency which shows that there will be increased need or demand for more 4WD or off-road vehicles.

As discussed in the FRIA, since NHTSA believes that GM's MY 1995 product plan overstates the percentage of 4WD vehicles that it will sell, the agency has adjusted that company's CAFE projection to reflect a more realistic share. In making this adjustment, the agency assumed that GM's 4WD percentage for MY 1995 will be the same as for MY 1985, the model year in which GM had its highest 4WD share ever. NHTSA also refined the analysis presented in the PRIA to more accurately reflect the particular vehicles that GM is likely to sell more of and less of. This adjustment has the effect of increasing GM's MY 1995 CAFE projection by more than 0.2 mpg.

GM's MY 1995 project plan also indicates decreased sales of certain fuel-efficient vehicles. NHTSA does not believe that the magnitude of this decrease is realistic, since it believes that GM will make efforts to maintain market share. The agency has adjusted GM's MY 1995 projection to reflect a more likely market share of these vehicles. This adjustment has the effect of increasing GM's MY 1995 CAFE projection by 0.1 mpg.

NHTSA stated in the NPRM that the GM fleet leads the other manufacturers in every engine performance calculation carried out by the agency and that GM's performance levels are detrimental to its fuel economy performance. The agency indicated that if GM's light truck fleet for MY 1995 were closer to the values achieved by other manufacturers for the various performance measurements, GM's CAFE values might be improved by between 0.3 and 0.4 mpg.

GM commented that it disagrees with the agency's assessment in the NPRM that GM's CAFE could be boosted 0.4 mpg by lowering engine performance. That company stated that it believes that NHTSA's performance adjustment was based on an incorrect sales weighted analysis of GM's performance levels compared to its competitors. GM stated that a manufacturer's average performance level, like many other vehicle attributes such as average weight or engine displacement, is a function of the mix it sells. That company stated that when its mix is compared to its competitors' mix, GM's performance levels do not appear to be out of line with other manufacturers.

As discussed in the FRIA, the agency has evaluated GM's comment concerning comparative performance levels. NHTSA has also reviewed revised MY 1995 fleet projections submitted by GM and Ford, which resulted in reduced fleet average values for almost all performance measures. In light of these adjustments, NHTSA has concluded that the performance level of the GM fleet is only slightly greater than its competitors and that the value of a CAFE adjustment if GM were to reach comparable levels of performance is only about 0.1 mpg. The agency believes that GM can make a small improvement it its MY 1995 light truck CAFE by bringing its performance levels more in line with its competitors, which would improve its CAFE by slightly over 0.1 mpg.

NHTSA also believes that there are other opportunities available to GM to make small improvements in its MY 1995 light truck CAFE. While there is insufficient leadtime to make any major technological changes, GM could slightly increase the penetration of some engine and transmission technology improvements that are not projected for full implementation. Among other things, that company could pull some projected MY 1996 programs forward to introduction for mid-MY 1995. The agency believes that these actions would enable GM to improve its CAFE by almost 0.1 mpg.

By adjusting GM's MY 1995 product plan to reflect all of the factors stated above, NHTSA has concluded that GM is capable of achieving CAFE of 20.6 mpg.

2. Ford

As indicated above, Ford currently projects its MY 1995 light truck CAFE level at 20.8 mpg. It has also identified certain risks which it says could reduce its CAFE level by as much as 0.4 mpg. As discussed in the FRIA, NHTSA has evaluated the risks identified by Ford and believes that a risk factor of 0.2 mpg is reasonable. Taking account of risks, NHTSA has concluded that Ford can achieve CAFE of at least 20.6 mpg.

3. Chrysler

As indicated above, Chrysler currently projects its MY 1995 light truck CAFE level at 20.6 mpg. After evaluating Chrysler's product plan, NHTSA has concluded that Chrysler can achieve CAFE of at least 20.6 mpg.

While NHTSA has focused its analysis on GM, the least capable manufacturer with a substantial share of sales, the agency does not believe that company's capability is significantly below that of Ford and Chrysler. As indicated above, Ford projects a MY 1995 CAFE of 20.8 mpg, subject to risks, and Chrysler projects a MY 1995 CAFE of 20.6 mpg.

NHTSA has concluded that Ford and Chrysler can achieve CAFE levels of at least 20.6 mpg. The agency believes that the ability of Ford and Chrysler to improve their CAFE levels above their projections is small. In particular, the factors that led NHTSA to conclude that GM can achieve a CAFE of 0.5 mpg above its projection are generally not applicable to Ford and Chrysler.

IV. Other Federal Standards

In determining the maximum feasible economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability.

A. Safety Standards

As discussed in the FRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MY 1995. These include revisions to FMVSS Nos. 208, *Occupant Crash Protection*; 214, *Side Impact Protection*; 216, *Roof Crush Resistance*; 108, *Lamps, Reflective Devices and Associated Equipment*; and 201, *Occupant Protection in Interior Impacts*. In addition, the agency is considering whether to propose a safety standard to improve rollover protection.

1. FMVSS 208

On March 26, 1991, NHTSA published (56 FR 12472) a final rule requiring automatic restraints on trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. These requirements phase-in at the following rate for each manufacturer: 20 percent of light trucks manufactured from September 1, 1994 to August 31, 1995; 50 percent of light trucks manufactured from September 1, 1995 to August 31, 1996; 90 percent of light trucks manufactured from September 1, 1996 to August 31, 1997; and all light trucks manufactured on or after September 1, 1997. Thus, the requirement will affect 20 percent of MY 1995 light trucks. Although light truck manufacturers may comply, as passenger car manufacturers have in the past, with the automatic restraint requirements by using automatic belts or air bags, NHTSA expects that essentially all light truck manufacturers will comply by using air bags.

To encourage the use of more innovative automatic restraint systems (primarily air bags) in light trucks, during the first four years of the phase-in (i.e., through MY 1998) manufacturers may count each light truck equipped with such a restraint system for the driver's position, and a dynamically tested manual safety belt for the right-front passenger's position, as a vehicle complying with the automatic restraint requirements. Beginning with MY 1999, however, all light trucks are required to provide automatic restraints for both the driver and right-front passenger positions.

Title II of the Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to amend its automatic restraint requirements to mandate that 80 percent of MY 1998, and all MY 1999 light trucks be equipped with driver and passenger-side air bags. Since NHTSA expects that essentially all manufacturers will rely on air bags for compliance with the light truck automatic restraints requirements, this provision should have a negligible substantive impact, and will not affect MY 1995 fuel economy capabilities.

In the FRIA for the light truck automatic restraint rulemaking, NHTSA estimated weight increases per vehicle ranging from 15.3 pounds for a driver's-side air bag to 35.7 pounds for both driver and right-front passenger air bags (including "secondary weight," i.e., weight added for supporting structure, etc.). Fuel economy would be reduced by about 0.05 to 0.11 mpg.

The automatic restraint weight estimates provided by the manufacturers were generally consistent with those previously developed by the agency. NHTSA calculates that the manufacturers' estimates translate into fuel economy penalties of 0.04–0.08 mpg for MY 1995. These weight effects are reflected in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard.

2. FMVSS 214

On June 14, 1991, NHTSA published (56 FR 27427) a final rule extending the "quasi-static" test requirements of FMVSS 214 to trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. On July 13, 1992, NHTSA published (57 FR 30917) a final rule establishing a brief phase-in for the requirements of this rule. Manufacturers must meet the requirements for all of their light trucks as of September 1, 1994. The "quasi-static" requirements have the effect of requiring each side door to be designed to mitigate occupant injuries in side impacts. It measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder against it. Manufacturers generally comply with the standard by reinforcing the side doors with metal beams or rods.

In the FRIA accompanying the rule, NHTSA estimated that the requirements of FMVSS 214 would result in an average weight increase of 24.8 to 26.7 pounds (including secondary weight). This weight increase could result in a fuel economy degradation of 0.1 mpg.

The weight estimates provided by the manufacturers for quasi-static side impact protection translate, according to NHTSA calculations, into fuel economy penalties of approximately 0.04–0.06 mpg for MY 1995. These weight effects are included in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard.

The agency is also considering other regulatory requirements to protect light truck occupants in side impacts. The agency addressed a number of possible requirements in an ANPRM published on August 19, 1988 (53 FR 31716).

In addition, on June 5, 1992, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, NHTSA published (57 FR 24009) an ANPRM concerning whether passenger car dynamic side impact protection requirements should be extended to light trucks. Since any additional requirements in this area would take effect after MY 1995, there will be no impact on MY 1995 fuel economy capabilities.

3. FMVSS 216

On April 17, 1991, NHTSA published a final rule (56 FR 15510) amending FMVSS 216, *Roof Crush Resistance*, to extend its requirements to light trucks with GVWRs of 6,000 pounds or less. Previously, the standard applied only to passenger cars. The effective date of the rule is September 1, 1994.

FMVSS 216 is intended to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover crashes. This standard established strength requirements for the forward portion of the roof to increase the resistence of the roof to intrusion and crush.

The agency believes that this requirement will have a negligible impact on light truck manufacturers' MY 1995 fuel economy capabilities. Most light trucks already meet the standard. NHTSA calculates that the manufacturers' weight impact estimates translate into fuel economy penalties of about 0.003–0.030 mpg for MYs 1995–97. These weight effects are included in the manufacturers' fuel economy projections.

4. FMVSS 108

On April 19, 1991, NHTSA published (56 FR 16015) a final rule requiring new light trucks to be equipped with center high-mounted stoplamps (CHMSLs). The effective date is September 1, 1993. With an estimated weight effect of about one pound, this rule will have a negligible CAFE effect.

5. FMVSS 201

On February 8, 1993, NHTSA published (58 FR 7506) a notice proposing to amend FMVSS 201 to require passenger cars and light trucks to meet a new in-vehicle component test to provide protection when an occupant's head impacts upper interior components (such as A-pillars and side rails) during a crash. The estimated weight effect for light trucks for this proposed requirement averages six to nine pounds per vehicle. However, since this proposed requirement would not become effective until after MY 1995, it will have no effect on MY 1995 CAFE capabilities.

6. Rollover Prevention

The Intermodal Surface Transportation Efficiency Act of 1991 required NHTSA to publish an ANPRM or NPRM by May 31, 1992 to provide "protection against unreasonable risk of rollovers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less." On January 3, 1992, NHTSA published (57 FR 242) an ANPRM announcing that the agency is considering whether to propose a safety standard to reduce the casualties associated with rollovers of passenger cars, pickup trucks, vans, and utility vehicles. In addition, on September 29, 1992, NHTSA published a notice (57 FR 44721) announcing the availability of a document describing the agency's planned rulemaking effort, data analyses, and physical research to address the problem of rollover crashes and resulting injuries and fatalities.

Since NHTSA has not yet proposed any requirements in this area, it will not have an impact on MY 1995 CAFE capabilities.

B. Revised Emissions Standards

The Clean Air Amendments of 1990 (CAAA) impose more stringent exhaust emissions standards on light trucks. Standards are also becoming tighter in California. Under the CAAA, new standards begin phasing-in, starting with MY 1994 for trucks with GVWRs up to 6,000 pounds. The phase-in provides for compliance by 40 percent for MY 1994, 80 percent for MY 1995, and 100 percent for MY 1996 and afterwards. For light trucks over 6,000 pounds GVWR, more stringent standards begin to take effect in MY 1996. Fifty percent of these vehicles must comply with the new standards in MY 1996; all light trucks over 6,000 pounds GVWR must meet the new standards for MY 1997 and later.

Current standards for exhaust emissions will tighten substantially under the CAAA. Over the "full useful life" of a vehicle, emissions standards will be 0.80 grams/mile for total hydrocarbons, and will range (depending on vehicle and test weight) from 0.31 to 0.56 grams/mile for non-methane hydrocarbons, from 4.2 to 7.3 grams/mile for carbon monoxide, from 0.6 to 1.53 grams/mile for oxides of nitrogen, and from 0.10 to 0.12 grams/mile for particulate matter.

The CAAA also require EPA to establish standards for carbon monoxide emissions at 20 degrees Fahrenheit. These standards take effect beginning with MY 1994. Further, for all gasoline-fueled motor vehicles, the CAAA require EPA to promulgate regulations covering evaporative emissions (1) during operation ("running losses") and (2) over two or more days of non-use.

In their questionnaire responses, none of the auto companies provided substantial detail on the possible impacts of these standards on MY 1995–97 light truck fuel economy capabilities. GM stated, "The total impact of the Clean Air Act Tier I and the California emissions standards on truck fuel economy is unknown at this time. * * * Although not quantified, preliminary indications are that there will be some lost opportunities to improve fuel economy when redesigning our powertrains to comply with these standards."

Ford stated that, "[M]ost troublesome is the effect of compliance with the amended Clean Air Act. We project that compliance has reduced the average truck fuel economy by 0.3 mpg after inclusion of technology which has an offsetting effect * * * and it negates other technology benefits."

NHTSA indicated in the NPRM and PRIA that it believes the net impact on CAFE capabilities due to changes in emissions requirements is likely to be minimal. Some of the new requirements will lead to fuel savings, while others may lead to fuel economy losses. Benefits will be obtained from enhanced evaporative controls and the "low temperature" carbon monoxide standards because manufacturers will sharpen their fuel-control systems, using techniques such as sequential port fuel injection. Slight fuel economy losses may result from tighter hydrocarbon and nitrous oxides emissions standards, particularly for larger engines.

In their comments on the NPRM, the manufacturers did not provide data indicating that new emissions requirements would have a significant effect on MY 1995 CAFE capabilities. GM stated the following:

> The impact of tighter Federal emissions standards enacted by the 1990 Clean Air Act Amendments is not expected to have a direct fuel economy impact related to engine efficiency. However, there will be weight increases on some engines if dual catalytic converters are required.
>
> * * * California TLEV emissions standards will most likely impact fuel economy. However, these impacts * * * have not yet been reflected in GM's CAFE forecasts.
>
> * * * Tighter evaporative emission standards requiring larger canisters and adding purge controls will add weight to the vehicle and impact fuel economy.

In its comment, Ford stated:

> Ford believes that NHTSA's list of other Federal standards that might have an impact on light truck fuel economy during MYs 1995–97 is insufficient. A more comprehensive list would include Potential Revisions to the Federal Test Procedure (FTP) such as higher speeds and accelerations and electric dynamometer true road load calibration, IM240 Short Test Requirements, Onboard Diagnostics, Cold CO Testing, Enhanced Evaporative Testing Requirements, Section 177 States, [and] Fuels or Fuel Additives such as reformulated gasoline and MMT.
>
> At this point, Ford has not allocated resources to collectively assess the fuel economy implications, of required emission control system calibration strategies and hardware, that may be associated with the above, requirements. However, it is reasonable to believe that several of these potential requirements will have a significant impact on light truck fuel economy.

NHTSA believes that the actual and potential Federal standards identified by Ford will not have any significant impact on MY 1995 light truck fuel economy capabilities. The agency's specific analysis of the impacts of each of these standards is presented in the FRIA. A summary of the agency's analysis follows:

1. Potential Revisions to the Federal Test Procedure

EPA has not to date proposed any revisions to the FTP, so no impact is expected for MY 1995.

2. IM240 Short Test Requirements

EPA has issued new inspection and maintenance test procedures to help ensure that vehicle emission controls function properly in real-world use, and has proposed new short Certification Short Test procedures. However, EPA's analyses have not indicated that there would be any impact on manufacturers' fuel economy capabilities as a result of these rulemakings.

3. Onboard Diagnostics

EPA has issued a final rule on onboard diagnostics that applies to MY 1994 and later passenger cars and light trucks, but EPA believes that this will not affect certification fuel economy.

4. Cold CO Testing

EPA has issued new low temperature carbon monoxide testing requirements which will apply to 80 percent of MY 1995 passenger cars and light trucks, but NHTSA believes that the requirements will not result in any fuel economy loss and may actually result in a slight fuel economy benefit.

5. Enhanced Evaporative Testing Requirements

EPA has recently issued enhanced evaporative emissions standards. Any negative impact on certification fuel economy (due to increased weights of upgraded evaporative emissions control system) would be very slight, and, in any case, this requirement does not begin to take effect until MY 1996.

6. Section 177 States

The term "Section 177 States" refers to states which voluntarily adopt the more stringent California emissions standards. At this time, it appears that Massachusetts, Maine, and New York are the only states that may adopt the California emissions standards by MY 1995. Moreover, this adoption may be affected by a recent Federal court decision which overturned New York's adoption of the California emissions standards. NHTSA has not received any data showing any impact on MY 1995 light truck fuel economy capabilities as a result of states other than California adopting the California emissions standards.

7. Fuels or Fuel Additives Such as Reformulated Gasoline and MMT

EPA has not proposed any changes in the current certification test fuel, so NHTSA does not expect any fuel economy impact for MY 1995 light trucks.

NHTSA has not made any adjustments to the manufacturers' CAFE projections to account for any impacts of changing emissions standards during MY 1995. The agency notes that Ford appears to be the only manufacturer that explicitly included a potential fuel economy loss (an average of 0.3 mpg) in its MY 1995 CAFE projection. Since Ford is not the "least capable" manufacturer and NHTSA is not basing the selection of the MY 1995 light truck CAFE standard primarily on Ford's capability, it is unnecessary to resolve whether Ford's capability should be adjusted upward because of Ford's inclusion of this fuel economy loss in its projection.

C. Test Weight for Light Trucks Over 6000 Pounds GVWR

The CAAA require that, beginning with MY 1996, many light trucks over 6000 pounds GVWR be tested, for emissions purposes, at the average of curb weight and GVWR. This requirement applies to one-half the "over 6000 pound" fleet in MY 1996 and all of this fleet in MY 1997. Previously, test weights were determined based on "loaded vehicle weight," (LVW) which is defined as curb weight plus 300 pounds. Loaded vehicle weight has been the sole basis used to calculate "equivalent test weight," which is the weight used for dynamometer testing. EPA has defined the average of vehicle curb weight and GVWR to be "adjusted loaded vehicle weight" (ALVW) (see 56 FR 25739), which will be used as the basis for determining equivalent test weight for emission testing of the "over 6000 pound" test fleet described above. ALVW is higher than the LVW, and if light trucks are tested at ALVW, there will be a loss in the estimated fuel economy.

The CAAA do not require fuel economy testing to be performed at ALVW. However, because exhaust emissions testing must be done at ALVW for light trucks over 6000 pounds GVWR, use of a different test weight system for fuel economy could require manufacturers and EPA (when conducting confirmatory tests) to test each of these trucks twice: once at its "equivalent test weight" based on LVW for fuel economy purposes and once based on ALVW for exhaust emissions purposes. Another approach would be for EPA to mandate that trucks over 6000 pounds GVWR be fuel economy tested at ALVW and for NHTSA to consider any resulting deleterious fuel economy effect in establishing CAFE standards for the affected model years. A third approach would be to have a manufacturer-specific test procedure adjustment to account for the proportion of its fleet affected by this requirement.

Domestic auto manufacturers have pointed out that testing at the higher weights would have a negative fuel economy impact. Using MY 1992 data, GM claimed a potential impact in MY 1997 of at least 0.5 mpg. Ford estimated a possible loss in MY 1997 of 0.2–0.3 mpg. Chrysler did not give a specific number but agreed that fuel economy would be lowered. Import manufacturers are unlikely to have any significant penalty from this test procedure change because they produce few, if any, light trucks with a GVWR exceeding 6000 pounds.

In a letter dated February 18, 1992, EPA stated that NHTSA should set CAFE standards with the heavier test weight in mind and stated that dual testing would entail increased expenses. EPA also noted that EPCA requires integrated fuel economy and emissions testing, although this requirement is limited by the language "to the extent practicable."

After the EPA letter was sent, MVMA (now AAMA) indicated to EPA that requiring the heavier test weight would also increase testing expenses, by forcing separate fuel economy tests for light trucks above and below 6,000 pounds GVWR. In addition, MVMA raised concerns that changing the basis for determining fuel economy on only a portion of the light truck fleet (*i.e.*, those above 6,000 pounds GVWR) would cause consumer confusion and affect the competitiveness of manufacturers with a higher proportion of the sales of the heavier light trucks.

In the NPRM, NHTSA requested comments on the appropriate means of handling this issue in the context of setting the MY 1995–97 light truck fuel economy standards. The agency stated that if EPA mandates fuel economy testing at ALVW, NHTSA would account for the impacts of this testing in establishing light truck fuel economy standards.

In January 7, 1993 letters to AAMA and AIAM, EPA stated:

> Manufacturers should be aware of the NHTSA proposed rule on light truck average fuel economy standards * * * Included in the proposal is a request for comments on the consequences of performing fuel economy testing for heavy light-duty trucks under two different equivalent test weight approaches. The EPA will consider all relevant comments made during the NHTSA proposal comment period when developing an EPA guidance document or rulemaking on this subject.
>
> * * * The EPA plans to defer to NHTSA's policy decisions on issues such as the competitiveness effects of the alternatives. Once NHTSA determines the desirable CAFE solution and puts it into place, the EPA will follow with conforming amendments to either its regulations or policy as required.

In commenting on the NPRM, GM, Ford, Chrysler, AAMA and Rover Group all supported the continuation of fuel economy testing at LVW. AAMA's comment was typical, "Retention of the LVW criteria will avoid needless test and CAFE data base complexities, avoid added customer confusion when comparing fuel economy labels and avoid creation of unrealistic competitive fuel economy rating differences."

After considering the comments on the new emissions test procedure requirements, NHTSA has concluded that the simplest and most equitable procedure for both manufacturers and the Federal government is to continue fuel economy certification using LVW values for all classes of vehicles. Although the statutory requirement on ALVW testing does not apply until MY 1996, NHTSA is making a decision on this issue now so that manufacturers will face less uncertainty in their fuel economy planning processes. NHTSA has informed EPA of its decision and, in a March 4, 1993 letter to NHTSA, EPA agreed to abide with NHTSA's decision and stated that it would undertake "the regulatory and guidance revisions needed to allow dual testing."

D. Phase-out of Chlorofluorocarbons

Under terms of the international Montreal Protocol, the United States and other industrialized nations have agreed to halt production of chlorofluorocarbons (CFCs) by the year 2000. In February 1992, President Bush announced that the United States would phase-out production by the end of 1995.

Both Ford and General Motors identified weight penalties for eliminating the use of CFCs in their vehicles' air conditioning systems of seven pounds or less for each MY 1995–97. NHTSA estimated that these weight additions could result in an average fuel economy penalty of 0.02 mpg. These weight effects are included in the manufacturers' fuel economy projections.

V. Domestic/Import Fleet Distinction

Since near the beginning of the CAFE program, NHTSA has required manufacturers to meet light truck CAFE standards separately for their domestic and import fleets. More specifically, manufacturers have been required to meet standards separately for their "captive imports" and "other" vehicles. The purpose of this requirement, which is similar but not identical to Title V's two-fleet rule for passenger cars, has been to ensure that the domestic manufacturers did not meet higher light truck CAFE standards simply by importing a large number of fuel-efficient light trucks, at the expense of U.S. jobs.

In the NPRM, NHTSA proposed to eliminate the domestic/import fleet distinction for light trucks beginning with MY 1995 and instead require that manufacturers combine all of their light truck production in calculating CAFE. The agency explained that there is no statutory requirement to separate a manufacturer's light trucks into two fleets and that, under the market conditions of recent years, the maintenance of a distinction between captive import and other light trucks has not been necessary to discourage the importation of captive imports to the detriment of U.S. jobs. The agency noted that neither Ford nor GM currently market any imported trucks, and Chrysler's imported truck fleet is nearing the level of insignificance.

NHTSA had decided that this issue warrants further consideration. Given the time constraints associated with issuing a final rule for the MY 1995 light truck CAFE standard, the agency has decided not to eliminate the domestic/import fleet distinction as part of this final rule. The agency notes that while the domestic manufacturers supported making the proposed change, they did not indicate that it is creating any problems for them at this time.

VI. Metrication

Inasmuch as it is the policy of the U.S. to designate the metric system as the preferred system to measurement, NHTSA proposed to make a number of metric conversions in its fuel economy regulations. These included the following:

Section 523.5(b)(2)(iv) Running clearance of not less than 20 centimeters (presently 8 inches).

Section 523.5(b)(2)(v) Front and rear axle clearances of not less than 18 centimeters each (presently 7 inches).

Section 525.7(e)(4) Basic engine, displacement, and SAE rated net power, kilowatts (presently net horsepower).

Section 533.4(b)(2) * * * *4-wheel drive, general utility vehicle* means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters (presently 110 inches), and that has a body shape similar to 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser.

Section 537.7(c)(4)(iii) Engine displacement, liters (presently cubic inches or liters).

Section 537.7(c)(4)(v) SAE net rated power, kilowatts (presently net horsepower).

Chrysler commented that it does not oppose the switch to metric units but is concerned that the change may lead to the use of inconsistent units. It requested that consistency be maintained. It stated, as an example, that kilowatts should be used for engine output and for power absorption unit (PAU) settings. NHTSA notes that PAU settings are set forth in EPA regulations, and that it will be up to EPA to determine what metric conversions are appropriate for its regulations. However, NHTSA does not believe that the metric conversions it proposed create any problems related to consistency. Accordingly, the agency is adopting them as proposed.

VII. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year EPCA was passed, and peaked at 46.4 percent in 1977, at a cost of $75 billion (stated in 1987 dollars). Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil. Over 40 percent of the country's petroleum needs have been imported in every year since 1988, peaking at 44.3 percent in 1990 before slipping to 41.9 percent in 1991. In 1992, imports rose again to 43.6 percent. Sharply lower oil prices in the past decade, however, cut the value of oil imports to $43.1 billion in 1991 (1987 dollars).

Similarly, the percentage of oil imported from OPEC sources, which peaked at 70 percent in 1977, and declined to a low of 36 percent in 1985, has been steadily rising since then, and was 53.7 percent in 1991. In 1992, OPEC's share declined slightly to 51.9 percent.

The average cost of crude oil imports jumped from $4.08 per barrel in 1973 to $12.52 in 1974 as a result of the oil embargo against selected countries, including the United States, by Arab members of OPEC. Additional increases in the cost of oil occurred in 1979–80, due to unrest in Iran which eliminated a substantial portion of that country's oil output), and in 1980–81, when the outbreak of the Iran-Iraq war reduced supply from the area. In 1981, the United States adopted a policy of reliance on market forces and decontrolled the price of oil. Since 1981, prices have fallen as conservation efforts continue. In 1990–91, petroleum prices were affected by the conflict in the Persian Gulf. In the beginning of 1992, the continued worldwide economic recession and high levels of crude oil production by OPEC member countries together held down oil prices. In October 1992, the refiner acquisition cost of imported crude oil was $19.22 per barrel, three percent below the October 1991 level.

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed,

and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 96 percent of the energy consumed in the transportation sector. Despite legislation such as the Clean Air Act Amendments of 1990 and California's strict "clean fuel" and emissions standards, gasoline will likely remain the predominant fuel in the transportation sector. Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985 to 9.0 million barrels per day in 1992. Domestic production is expected to continue declining in 1993. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former communist countries contain 9 percent.

Long-term projections of petroleum prices, supply, and demand are now influenced by a wide range of uncertainties associated with sweeping economic and political changes in the former U.S.S.R. and in Eastern Europe, environmental issues, and the role of Middle East countries in determining the world's future oil supplies and prices, and future energy demands in populous developing countries. The Department of Energy projects that oil prices will be between $14 and $29 (1991 dollars) per barrel in the year 2000, and will rise to between $18 and $38 per barrel by 2010. DOE projects a continuing decline in domestic oil production to between 3.54 and 6.73 million barrels per day in 2010, with imports rising to between 25 percent and 64 percent of total use.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.
>
> The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.
>
> Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

Based on the above, NHTSA concludes that there is a continuing need for the nation to conserve energy.

The increase in market share of light trucks points to the need for enhanced fuel economy for this class of vehicle. Light trucks are less fuel efficient and are driven more miles over their lifetime than passenger automobiles. In 1991, over half of the energy in the transportation sector was used by light-duty vehicles (automobiles and light trucks). Light trucks have steadily increased their share of petroleum use in the transportation sector. In 1973, light trucks accounted for approximately 12 percent of transportation petroleum use, a figure which increased to roughly 20 percent by 1989.

Light trucks meeting the MY 1995 standard will be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

VIII. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–55 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has traditionally set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of

the market. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980.

C. Petroleum Consumption

The maximum energy savings that could result from the MY 1995 standard can be illustrated by considering the potential effects of a standard set at different levels. Since Ford and Chrysler project MY 1995 CAFE levels of 20.6 mpg or above, a standard set at 20.6 mpg would not likely have any effect on those companies. Since GM currently projects a CAFE level of 20.1 mpg, a standard set at 20.6 mpg would encourage it to achieve a higher CAFE level. If GM achieved CAFE of 20.6 mpg rather than 20.1 mpg, while selling the same number of vehicles, there would be a 2.4 percent reduction in the gasoline consumption of the MY 1995 GM fleet.

If the agency set the standard at a level 0.5 mpg higher, i.e., 21.1 mpg and GM were able to achieve that CAFE level while selling the same number of vehicles, there would be a 4.8 percent reduction in the gasoline consumption of the GM fleet, as compared to a CAFE of 20.1 mpg. If Ford and Chrysler were able to achieve that CAFE level, there would be an additional reduction in gasoline consumption associated with their fleets.

However, if the manufacturers achieved a particular higher CAFE level only by restricting the sales of their large light trucks, consumers might tend to keep their older, less fuel-efficient light trucks in service longer or purchase still larger light trucks that are not subject to CAFE standards, i.e., light trucks with GVWRs between 8,500 and 10,000 pounds. Also, to the extent that a particular manufacturer such as GM might find it necessary to restrict sales of its large light trucks, consumers might be able to transfer their purchases of those same types of vehicles to another manufacturer which has less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts on energy consumption of alternative higher fuel economy standards above 20.6 mpg (the level the agency has determined to be GM's capability) would be less than theoretical calculations comparing different levels of industry-wide CAFE.

D. The MY 1995 Standard

Based on its analysis described above and on manufacturers' projections, the agency concludes that the major domestic manufacturers can achieve the light truck fuel economy levels listed in the following table:

Manufacturer	Approximate market share (percent, based on MY 1992)	CAFE (mpg)
GM	33	20.6
Ford	29	20.6
Chrysler	20	20.6

As indicated above, most light truck manufacturers other than GM, Ford and Chrysler only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those companies. Only two light truck manufacturers, Range Rover and UMC, are expected to have fuel economy levels lower than the major domestic manufacturers. Since both of those companies have an extremely small market share, NHTSA concludes that setting a standard based on their capabilities would be inconsistent with a determination of maximum feasibility that takes industrywide considerations into account, as required by statute.

As indicated above, NHTSA has concluded that GM is the least capable manufacturer with a substantial share of sales for MY 1995. NHTSA also concludes that 20.6 mpg is the maximum feasible standard for MY 1995. For the reasons discussed below, this level balances the potential petroleum savings associated with a higher standard against the difficulties of manufacturers facing a potentially higher standard.

The agency believes that a 20.6 mpg light truck CAFE standard for MY 1995 will make a positive contribution to petroleum conservation by encouraging GM, which has the largest market share of any light truck manufacturer, to achieve a higher CAFE level than it currently projects while remaining within its fuel economy capability. The agency notes that the 20.6 mpg standard is 0.5 mpg higher than GM's current MY 1995 CAFE projection.

A 20.6 mpg standard will not unduly restrict consumer choice or have adverse economic impacts on the large domestic manufacturers. The current product plans of Ford and Chrysler indicate that they expect to achieve MY 1995 CAFE levels that are 20.6 mpg or slightly higher. Therefore, they will not have to make any changes in their product plans to achieve the level of the standard.

While GM's current product plan shows an expected MY 1995 CAFE of 20.1 mpg, NHTSA's analysis indicates that company can achieve a CAFE of 20.6 mpg. As discussed above, this conclusion is based on the following assumptions: (1) the 4WD share of the market will not significantly increase between now and MY 1995, (2) GM will make successful efforts to maintain market share of certain vehicles, (3) GM can make minor changes in the performance levels of its vehicles to bring them more in line with its competitors, and (4) GM can make small improvements by increasing the penetration of some engine and transmission technology improvements that are not projected for full implementation. All of these actions are very minor and, the agency believes, within GM's capability.

NHTSA believes that a higher standard than 20.6 mpg for MY 1995 could result in serious economic difficulties for GM. While GM can achieve 20.6 mpg CAFE without significant product restrictions, such restrictions could be required to achieve a CAFE higher than 20.6 mpg. Given leadtime constraints, NHTSA believes that the first potential fuel-efficiency actions that GM or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed in other notices, however, the agency does not believe that marketing actions can be relied upon to significantly improve a manufacturer's CAFE. See, e.g., MY 1993–94 light truck CAFE final rule, 56 FR 13775, April 4, 1991. If such marketing actions were unsuccessful in whole or in part, GM would likely have to engage in significant product restrictions to achieve the level of a higher CAFE standard. Such product restrictions could result in adverse economic consequences for GM, its employees and the economy as a whole and limit consumer choice, especially with regard to the load-carrying needs of light truck purchasers.

As indicated above, while NHTSA has concluded that GM is the least capable manufacturer with a substantial share of sales, the agency believes that GM's capability is not significantly below that of Ford and Chrysler. Therefore, even if the agency were to set a standard above GM's capability, the standard could not be much above 20.6 mpg and still

remain within the capability of the majority of the industry.

NHTSA believes that the 20.6 mpg standard balances the potentially serious adverse economic consequences for GM that could result from a higher standard with the potential for increased petroleum savings. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above GM's capability would not justify the potential harm to that company and the economy as a whole.

Consumer Alert and CEI requested that NHTSA consider the safety effects of its decision. Those commenters stated that the agency should not in any way avoid analyzing the potential safety consequences of a decision to increase the CAFE standards for light trucks. Consumer Alert and CEI cited the record of NHTSA's rulemaking concerning the MY 1990 passenger car CAFE standard, although they recognized that the safety consequences of a decision to raise the CAFE standard for light trucks may differ somewhat.

In the context of passenger car CAFE standards, NHTSA has recognized that CAFE standards could adversely affect safety to the extent that they result in significant reductions in car size and/or weight. This issue was discussed at length in the agency's notice terminating rulemaking on the MY 1990 passenger car CAFE standard. See 58 FR 6939, February 3, 1993.

An analysis of the extent to which significantly higher light truck CAFE standards could affect safety is more complex than for passenger car standards, since purchasers would have many more options for substitution (e.g., different kinds of light trucks, trucks with a high enough GVWR that they are not subject to CAFE standards, etc.). The agency notes that since light trucks are generally significantly larger and heavier than passenger cars, any safety effects of a particular weight reduction would likely be smaller than for cars.

While NHTSA recognizes that significantly higher light truck CAFE standards could adversely affect safety, to the extent that they resulted in significant reductions in light truck size and/or weight, the available evidence indicates that a MY 1995 standard of 20.6 mpg will not have any impact on safety. NHTSA notes that, in setting the light truck CAFE standards for recent model years, the agency did not include in its analyses of manufacturer capabilities any product plan actions that would significantly affect the weight, size or cost of the vehicles the manufacturers planned to offer. The agency also notes that the average equivalent test weight of light trucks has increased from 3,805 pounds in MY 1984 to 4,169 pounds in MY 1992. Therefore, NHTSA believes that CAFE standards have not had any measurable effect on light truck weight or size.

The agency also notes that the levels of the light truck CAFE standards have not varied significantly for more than a decade. The light truck CAFE standards for MY 1987–89 and MY 1994 were set at 20.5 mpg, and, as far back as MY 1984, the standard was 20.0 mpg.

NHTSA therefore believes that the size and weight of current and planned light trucks are not significantly different from what would have occurred in the absence of CAFE standards. As discussed above, Ford and Chrysler will meet or exceed the level of the 20.6 mpg standard for MY 1995 without making any changes in their product plans. While GM will need to make some changes in its product plan to achieve a MY CAFE of 20.6 mpg, the agency does not believe that it is necessary, or likely, for that company to take actions that would have any adverse effect on safety, in order to achieve that CAFE level.

As indicated above, in determining that GM can achieve a MY 1995 CAFE level of 20.6 mpg, NHTSA adjusted GM's projected CAFE level of 20.1 mpg based on several factors. First, the agency adjusted it upward to reflect more realistic mix assumptions with respect to 4WD market share and maintaining market share of certain more fuel-efficient vehicles. Since this adjustment simply reflects the agency's judgment of what GM is likely to be able to sell, based on historical experience, the adjustment does not include or compel any actions with safety implications.

NHTSA also concluded that GM can improve its projected MY 1995 CAFE by a slight reduction in vehicle performance. This would involve changes in such things as axle ratios. The agency believes that a slight reduction in performance would not have any adverse safety consequences.

Finally, the agency concluded that GM could improve its MY 1995 CAFE by increasing the penetration of some engine and transmission technology improvements that are not projected for full implementation. This action would not result in reduced vehicle weight.

Since the 20.6 mpg light truck CAFE standard for MY 1995 will not lead to significant reductions in light truck size or weight, or shifts toward less safe vehicles, the agency concludes that it is not likely to have any impact on safety.

This final rule will not have any retroactive effect. Under section 509(a) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state my not adopt or maintain separate fuel economy standards applicable to vehicles covered by the Federal standard. Under section 509(b) of the Cost Savings Act (15 U.S.C. 2009(b)) a state may not require fuel economy labels on vehicles covered by section 506 of the Cost Savings Act (15 U.S.C. 2006) which are not identical to the Federal standard. Section 509 does not apply to vehicles procured for the State's use. Section 504 of the Cost Savings Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

IX. Impact Analyses

A. Economic Impacts

The agency has considered the economic implications of the standard for MY 1995 and determined that it is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Final Regulatory Impact Analysis (FRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environmental Impacts

The agency has analyzed the environmental impacts of the MY 1995 light truck average fuel economy standard in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Copies of the Environmental Assessment are available from the Docket Section. The agency has concluded that no significant environmental impact will result from this rulemaking action.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the standard will be classified

as a "small business" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, the standard will not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

D. Impact of Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the MY 1995 standard will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, NHTSA submitted a pre-publication copy of the NPRM to the Department of Energy (DOE) for review. While NHTSA did not receive any comments from DOE before the NPRM was published, that Department did submit a comment one week after publication. DOE stated that it continues to view improvements in light truck fuel economy as critical to improving transportation efficiency and reducing oil consumption in the United States. It indicated that it had reviewed the NPRM and accompanying PRIA and was "concerned that the short lead time available to manufacturers considerably restricts their actions, especially for model years 1995 and 1996." DOE recommended that NHTSA proceed with the proposed ranges for the standards for MY 1995–96 but suggested that MY 1997 be handled in a separate rulemaking to be initiated as soon as possible in 1993.

In accordance with section 502(j) of the Cost Savings Act, NHTSA also submitted this final rule to DOE for review. That Department stated that it concurs with the establishment of 20.6 mpg as the light truck CAFE standard for MY 1995. It also recommended that the Department of Transportation initiate a new rulemaking that includes model years 1996 through 2000. DOE stated that by setting the CAFE standards in a timely fashion and including model years beyond those for which manufacturers had already completed their product plans, the Department of Transportation will have considerably greater scope in estimating "technological feasibility" and "economic practicability" in determining maximum feasible average fuel economy levels. DOE stated that through this approach, it believes the CAFE law can be used to achieve its maximum social benefit.

List of Subjects

49 CFR Part 523

Classification, Motor vehicles.

49 CFR Part 525, 533, and 537

Energy conservation, Motor vehicles.

In consideration of the foregoing, 49 CFR parts 523, 525, 533, and 537 are amended as follows:

PART 523—[AMENDED]

1. The authority citation for part 523 is revised to read as follows:

Authority: 15 U.S.C. 2002; 49 CFR 1.50.

2. Sections 523.5(b)(2) (iv) and (v) are revised to read as follows:

§ 523.5 Light truck.

* * * * *

(b) * * *

(2) * * *

(iv) Running clearance of not less than 20 centimeters.

(v) Front and rear axle clearances of not less than 18 centimeters each.

PART 525—[AMENDED]

1. The authority citation for part 525 is revised to read as follows:

Authority: 15 U.S.C. 2002; 49 CFR 1.50.

2. Section 525.7(e)(4) is revised to read as follows:

§ 525.7 Basis for petition.

* * * * *

(e) * * *

(4) Basic engine, displacement, and SAE rated net power, kilowatts;

* * * * *

PART 533—[AMENDED]

1. The authority citation for part 533 is revised to read as follows:

Authority: 15 U.S.C. 2002; 49 CFR 1.50.

3. Table III in § 533.5(a) is revised to read as follows:

§ 533.5 Requirements.

(a) * * *

Table III

Model Year	Combined standard	
	Captive imports	Other
1992	20.2	20.2
1993	20.4	20.4
1994	20.5	20.5
1995	20.6	20.6

* * * * *

2. Section 533.4(b)(2) is amended by revising the definition of *4-wheel drive, general utility vehicle* to read as follows:

§ 533.4 Definitions.

* * * * *

(b) * * *

(2) * * *

4-wheel drive, general utility vehicle means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters, and that has a body shape similar to 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser.

* * * * *

PART 537—[AMENDED]

1. The authority citation for part 537 is revised to read as follows:

Authority: 15 U.S.C. 2005; 49 CFR 1.50.

2. Sections 537.7(c)(4) (iii), and (iv) are revised to read as follows:

§ 537.7 Pre-model year and mid-model year reports.

* * * * *

(c) *Model type and configuration fuel economy and technical information.*

* * *

(4) * * *

(iii) Engine displacement, liters;

(iv) SAE net rated power, kilowatts;

* * * * *

Issued: April 1, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–8136 Filed 4–2–93; 2:39 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018–AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Argyroxiphium Kauense (Ka'u Silversword)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a plant, *Argyroxiphium Kauense* (Ka'u Silversword), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species is known only from 2 populations on the Island of Hawaii, totaling an estimated 540 individuals. The greatest threat to the survival of this species is the small

number of populations with its limited gene pool, depressed reproductive vigor, and population structure heavily skewed toward immature individuals. That is compounded by a requirement for cross-pollination and single flowering within the lifetime of an individual plant. Expansion of the populations beyond protective fencing is limited by predation and habitat degradation by feral animals. Because browsing differentially affects more mature plants and results in reduced seed viability, reproductive success in this species depends on continued protection of the populations against feral ungulates. With just two extant populations, the species also risks stochastic extinction from events such as lava flows and associated wildfires. This rule implements the protection and recovery provisions provided by the Act for this plant.

EFFECTIVE DATE: May 7, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Argyroxiphium kauense was first collected above Kapapala on the south slope of Mauna Loa by Charles N. Forbes in 1911. That and another collection were both sterile and identified as *A. sandwicense* var. *macrocephalum* Gray by David D. Keck. After the first flowering and fruiting material were collected in 1956, *A. sandwicense* var. *kauense* was described by Joseph F. Rock and Marie C. Neal (1957), who named the plant after the Kau District, where it grows. Later that year, Otto and Isa Degener (1957) elevated the new variety to species rank.

All subsequent collections and confirmed sightings are from three areas: off Powerline Road in Upper Waiakea Forest Reserve (South Hilo District), at Ke a Pohina on Kahuku Ranch (Kau District), and in the general vicinity of Ainapo Trail in both Kapapala Forest Reserve (Kau District) and Kahuku Ranch. *Argyroxiphium kauense* is known to be extant at the first two of those three localities. The Ainapo population has not been seen since 1986, despite a search of the area in 1990 (William Paty, Hawaii Board of Land and Natural Resources, *in litt.*, 1990; Charles Wakida, Hawaii Division of Forestry and Wildlife (Hawaii DOFAW), *in litt.*, 1990; Steve Bergfeld, Hawaii DOFAW, pers. comm., 1992; Jack Lockwood, U.S. Geological Survey, pers. comm., 1990). The species occurs on State and privately owned land. Due to insufficient material, the identity of an historic collection from Hualalai cannot be confirmed; it could possibly be *A. kauense* (Carr 1985, 1990; Elizabeth Powell, University of Nevada, *in litt.*, 1990; E. Powell, pers. comm., 1990).

Argyroxiphium kauense is a rosette shrub, usually single-stemmed, its vegetative stems about 3 to 70 centimeters (cm) (1 to 24 inches (in)) long, and flowering stems about 0.7 to 2.5 meters (m) (2 to 8 feet (ft)) long. The leaves are very narrowly sword-shaped, 3- to 4-angled in cross section, about 20 to 40 cm (8 to 16 in) long and 0.5 cm (0.2 in) wide at the middle, nearly covered with dense, silky, silvery gray hairs. The flowering stalk as many branches, each with a flowering head of 3 to 11 ray flowers each about 1 cm (0.4 in) long, and 50 to 200 disk flowers each about 0.6 cm (0.2 in) long. The white or yellow to wine-red flowers bloom in August and September. The fruits are dry and black. *Argyroxiphium kauense* is distinguished from closely related species by its narrower leaves, hairs not completely covering the leaf surface, and fewer ray flowers per head (Carr 1985, 1990).

Argyroxiphium kauense grows primarily in moist forest openings or bogs at about 1,600 to 2,320 m (5,300 to 7,600 ft) elevation, although plants also occur on well-drained substrates in relatively dry sites (Carr 1990; Rick Warshauer, U.S. Fish and Wildlife Service, *in litt.*, 1979; J. Lockwood, pers. comm., 1990). The substrate is 'a'a or pahoehoe lava, sometimes with wet humus, on flat to steep and irregular ground (Degener *et al.* 1976, Meyrat 1982). The vegetation is most typically dry scrub or scrub forest dominated by *Metrosideros polymorpha* ('ohi'a) with such associates as *Styphelia tameiameiae* (pukiawe), *Coprosma ernodeoides* ('aiakanene), *Dodonaea viscosa* ('a'ali'i), *Geranium cuneatum* (nohoanu), and *Vaccinium reticulatum* ('ohelo) (Hawaii Heritage Program 1991; Donald Reeser, National Park Service, *in litt.*, 1974; R. Warshauer, *in litt.*, 1979). The open bog site shares those associates but is dominated by sedges (*Oreobolus furcatus, Rhynchospora chinensis* ssp. *spiciformis* (kuolohia), and *Carex montis-eeka*) (Clarke 1982).

The greatest threat to the survival of this species is the small number of populations with a limited gene pool, depressed reproductive vigor, and population structure heavily skewed toward immature individuals. That is compounded by a dependency on cross-pollination, and single flowering within the lifetime of an individual plant.

Expansion of the populations is limited by predation and habitat degradation by feral animals. Pigs (*Sus scrofa*) and goats (*Capra hircus*) were introduced to the island over a century ago. Mouflon sheep (*Ovis musimon*) and pigs have greatly reduced this species' numbers in the Ke a Pohina population over the past two decades. Outside protective fencing, feral pigs prevent seedling establishment, and pigs and mouflon sheep prevent the plants from reaching maturity (E. Powell, *in litt.*, 1985). Because browsing differentially affects more mature plants and results in reduced seed viability (E. Powell, pers, comm., 1992; pers. observation, 1991), the reproductive success of this species is dependent on continued protection of the population against feral ungulates. With just two extant populations, the species also risks stochastic extinction from events such as lava flows and associated wildfires (Kimura and Nagata 1980; Powell 1986; Linda Cuddihy, National Park Service, *in litt.*, 1990; E. Powell, pers, comm., 1990).

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. *Argyroxiphium kauense* was included in that notice as endangered. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR

17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published a notice of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Argyroxiphium kauense* was treated as a Category 1 candidate for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Argyroxiphium kauense* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989.

On August 6, 1990, the Service published in the **Federal Register** (55 FR 31860) a proposal to list *Argyroxiphium kauense* as endangered. The proposal was based primarily on information supplied by Dr. Elizabeth Powell and observations by botanists and naturalists. The Service now determines *Argyroxiphium kauense* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the August 6, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on October 5, 1990. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in The Hawaii Tribune-Herald on August 17, 1990, which invited general public comment.

Comments were received from three parties: one from a conservation organization that noted it had no information to add to the proposed rule; one from a private individual in support of listing the species, but offering no additional information; and one from a private party not favoring listing, commenting on the proposed rule, and correcting information presented in the proposed rule.

The latter respondent indicated that the Service overstated the threat of grazing by mouflon in the Ke a Pohina population, and suggested that a blight could be responsible for damage to leaf tips. This respondent also indicated that no browsing, grazing, or rooting by feral herbivores has occurred within the fenced area of the Ke a Pohina population. However, as described in Factor C under "Summary of Factors Affecting the Species," mouflon have damaged the *Argyroxiphium kauense* plants both in and out of the fenced area. One fenced population is not enough to be assured of long-term survival of a species. The numbers of plants and populations of this species are sufficiently small that, given its threats, it must still be considered endangered. The correction provided by the latter respondent has been incorporated into this final rule. The Service did not receive any information indicating that the species is more widespread or under lesser threat than previously thought.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Argyroxiphium kauense* should be classified as an endangered species. Procedures and criteria prescribed by Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Argyroxiphium kauense* (Rock & Neal) Degener & I. Degener (Ka'u silversword) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Feral and domesticated animals (goats, pigs, sheep (*Ovis aries*), and cattle (*Bos taurus*)) have altered and degraded the vegetation of much of Hawaii, including the areas where *Argyroxiphium kauense* may have formerly grown, and where it still exists (Mitchell 1981; Scott *et al.* 1986; Tomich 1986; E. Powell, *in litt.*, 1985). The former range of this species may have extended in a band around the southern and southeastern flanks of Mauna Loa at about 1,830 m (6,000 ft) in elevation, as well as its northeastern flank, and possibly also included Hualalai (E. Powell, *in litt.*, 1985, 1990; E. Powell, pers. comm., 1990). The territorial government apparently built "the Kau fence" on Mauna Loa's southeast flank in the 1930s in order to keep feral goats of the lava uplands from invading the lower forests, indicating that these animals probably did impact the range of *A. kauense* (Tomich 1986). Although no specific documentation indicates that feral animals reduced the former range of this species, recent observations show that feral mouflon sheep, pigs, and goats damage and consume *A. kauense*, and mechanically disturb the adjacent ground (Clarke 1982; Stone 1985; E. Powell, *in litt.*, 1985; D. Reeser, *in litt*, 1974; R. Warshauer, *in litt.*, 1979; pers. obs., 1991). Mouflon sheep and pigs have reduced this species' numbers considerably over the past 2 decades (Carr 1990; Clarke 1982; E. Powell, *in litt.*, 1985; E. Powell, Lani Stemmermann, University of Hawaii, and Kaoru Sunada, private florist, pers. comms., 1990).

When rooting, feral pigs knock over and uproot plants. That caused a decrease in the (then unfenced) Powerline Road population from about 1,000 plants of all size classes in 1975, to 20 plants, all immature, in 1984 (E. Powell, *in litt.*, 1985). The fence erected at that site for the Upper Waiakea Bog Plant Sanctuary did not enclose the entire population (Carolyn Corn, Hawaii DOFAW, L. Cuddihy, and L. Stemmermann, pers. comms., 1990). Pigs have severely disturbed the remainder of the bog, destroying all but one unfenced *Argyroxiphium kauense* plant (E. Powell, pers. comms., 1990, 1992). Pig rooting has thus destroyed former habitat and continues to destroy potential habitat of this species (J. Lockwood and E. Powell, pers. comms., 1990). In contrast, within the fenced Sanctuary, the population has increased from 20 to nearly 200 individuals in 8 years (E. Powell, *in litt.*, 1990; E. Powell, pers. comm., 1992). Pigs have also uprooted seedlings of *A. kauense* at the Ke a Pohina population, and have uprooted other native species at all three recently known populations (E.

Powell, *in litt.*, 1985; R. Warshauer, *in litt.*, 1979). Signs of pigs were noted at and near the Ke a Pohina population in 1991 and 1992 (S. Bergfeld, pers. comm., 1992; pers. obs., 1991). Although abundant seedlings of *A. kauense* have been noted at sites where pigs rooting has occurred (C. Wakida, pers. comm., 1990), subsequent rooting up of seedlings outweighs the extent to which pigs temporarily provide sites for seedling establishment (E. Powell, *in litt.*, 1985, 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and potentially threatens the Powerline Road population of *Argyroxiphium kauense*. The species is of some horticultural and ornamental interest (now growing at Kew Gardens), and in the past, seed was collected for propagation (Degener *et al.* 1976). However, such activity is now minimal.

C. Disease or Predation

Feral mouflon sheep, pigs, and goats are known to feed on *Argyroxiphium kauense* (Clarke 1982; E. Powell, *in litt.*, 1985; D. Reeser, *in litt.*, 1974; Gerald Carr, University of Hawaii, and K. Sunada, pers. comms., 1990). Grazing by mouflon either kills plants or causes them to resprout with multiple stems and greatly reduced vigor (E. Powell, *in litt.*, 1985). The Ke a pohina population of *A. kauense* declined markedly over the past 2 decades, apparently as a result of the activities of a herd of mouflon. The original 8 mouflon released by the landowner in 1968 increased to approximately 2,000 animals by 1992 (Eugene Yap, South Point Safaris, pers. comm., 1992). Although the landowner is now controlling their numbers, mouflon are still present adjacent to the Ke a Pohina population (S. Bergfeld, pers. comm., 1992; pers. obs., 1991).

In 1974, the Ke a Pohina population of *A. kauense* numbered thousands of plants, including 250 mature, flowering individuals with rosettes up to 1 m (3 ft) in diameter (Degener *et al.* 1976; K. Asherman, *in litt.*; 1985; L. Stemmermann, pers. comm., 1990). Two years later, 2,071 plants with a diameter over 8 cm (3 in) were counted at this population (Charles Lamoureux, University of Hawaii, pers. comm., 1990). In 1984, there were about 2,000 plants, but only 1 was in flower and less than 5 percent of the plants were larger than 25 cm (10 in) in diameter (E. Powell, *in litt.*, 1985, 1990). Almost all larger (mature) plants were dead, and grazing damage was evident on plants as small as 5 cm (2 in) in diameter, even within the fence erected by the landowner to protect this species (E. Powell, *in litt.*, 1985, 1990). Mouflon had eaten the growing tips of nearly all large individuals, greatly reducing this population's potential for regeneration (G. Carr and L. Stemmermann, pers. comms., 1990). By 1991, the population had declined to approximately 340 individuals, with 4 plants in flower and less than 1 percent of the plants larger than 25 cm (10 in) in diameter (pers. obs., 1991). Browsing damage by mouflon was again evident on a number of individuals (per. obs., 1991). *Argyroxiphium kauense*, *Machaerina*, and *Astelia* were the only species showing signs of browse damage (E. Powell, *in litt.*, 1990; pers. obs., 1991).

Only two plants are known to grow outside the fence in the Kea a Pohina area (E. Yap, pers. comm., 1992; pers. obs., 1991). Seed would be expected to blow outside the fence and germinate, as the habitat is similar on either side of the fence (pers. obs., 1991). Predation pressure from mouflon very likely confines this population to the fenced exclosure. The landowner has initiated a policy of removing mouflon from the area of the Ke a Pohina population. Because animal densities are typically very low there, game control personnel monitor the site infrequently (E. Yap, pes. comm., 1992).

Grazing damage by pigs on the leaves and stems of *Argyroxiphium kauense* and grazing damage on leaves that had regrown following grazing are documented for the Powerline Road population (Clarke 1982). Since evidence of pigs has been reported at Ke a Pohina (S. Bergfeld, pers. comm., 1992; pers. obs., 1991), predation by pigs is a potential threat to both populations of *A. kaunese*. The landowner and Hawaii DOFAW completed improvements to the fence at Ke a Pohina in 1992 (S. Bergfeld, pers. comm., 1992). Therefore, feral ungulates may currently be excluded from the fenced portion of both remaining populations of this species. The degree of future threat by feral ungulates to *A. kauense* depends heavily on maintenance of fencing.

The widely scattered, unfenced Ainapo population was most likely destroyed by predation by feral goats (J. Lockwood, pers. comm., 1990). Heavy browsing damage by feral goats to the apex and lateral leaves of *Argyroxiphium kauense* was documented in 1974 at that population (D. Reeser, *in litt.*, 1974). Goats are a potential threat to the two remaining populations of *A. kauense* (L. Cuddihy, E. Powell, C. Wakida, pers. comms., 1990).

Despite claims that alien insects threaten this species, only native pollinators and native non-pollinating insects have been confirmed as damaging seed, and only to a minor extent (Degener *et al.* 1976; Kimura and Nagata 1980; E. Powell, pers. comm., 1990). Most of the seed collections examined by Powell (*in litt.*, 1990) had negligible seed parasitism. *Tephritis* (fly) larvae primarily consume inviable seed, so that even the few collections with appreciable seed parasitism did not impact the seed set negatively (E. Powell, *in litt.*, 1990). No significant threats to *Argyroxiphium kauense* from disease are known.

D. The Inadequacy of Existing Regulatory Mechanisms

One population of *Argyroxiphium kauense* is located on private land. The other population is in a plant sanctuary within a State forest reserve. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act [HRS, Sect. 195D–4(a)] states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species [HRS, Sect. 195D–5(c)]. Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of *A. kauense* therefore activates and reinforces the protection available under State law. The Act also offers additional protection because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy any endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course

of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations (two) increases the potential for extinction from stochastic events. A single human-caused or natural environmental disturbance could destroy a significant percentage of the known extant individuals, or the limited gene pool may further depress reproductive vigor.

Two aspects of the reproductive system of *Argyroxiphium kauense* further exacerbate this problem: individual plants flower only once and then die, and flowers must be cross-pollinated from a different plant (Powell 1986; E. Powell, *in litt.*, 1990). If too few plants flower at the same time, or if flowering plants are too widely separated for pollination by insects, no seed will be set. The survival of these relatively small, isolated populations with already depressed reproductive vigor is therefore threatened.

The present demography of the populations, heavily skewed toward immature individuals, is of concern. Only about 3 percent of the plants in the Ke a Pohina population were of probable reproductive maturity in 1991; 66 percent of the population had a rosette diameter under 8 cm (3 in), a size far from reproductive maturity (E. Powell, pers. comm., 1992; pers. obs., 1991). An estimated 12 percent of the Powerline Road population was reproductively mature in 1992 (E. Powell, pers. comm., 1992). Powell's research on the closely related taxon, *Argyroxiphium sandwicense* ssp. *sandwicense* (Mauna Kea silversword), indicates that an estimated minimum of 20 mature plants is necessary for successful reproduction in a population (i.e., 2 individuals flowering simultaneously) (E. Powell, pers. comm., 1992). The Ke a Pohina population currently has approximately 10 individuals of probable reproductive maturity (pers. obs. 1991), putting it at risk of gradual extinction until more individuals reach maturity and reproduce successfully.

The Powerline Road population, with 25 reproductively mature plants (E. Powell, pers. comm., 1992), is only marginally above the estimated minimum level for successful reproduction. Powell's research on *A. sandwicense* ssp. *sandwicense* indicates that the abundance of large pre-flowering plants is far more critical to the survival of the population than the number of young plants (E. Powell, *in litt.*, 1990). In that taxon, a loss of 20 percent of the mature individuals can tip the balance against the survival of a population (E. Powell, pers. comm., 1992). In *A. kauense*, as with most plant species, smaller individuals have a higher natural rate of mortality than larger plants. Since larger individuals are preferentially browsed by feral animals, ensuring the reproductive success of *A. kauense* relates directly to continued protection against feral ungulates.

Ground rooted up by feral animals, as discussed in Factor A, also provides sites for invasion by more aggressive non-native plant species. Alien plants are common at the Powerline Road population and may be spreading in response to pig rooting, as is the case in other Hawaiian bogs (where weeds often spread at the expense of a related species of *Argyroxiphium*) (Clarke 1982; Loope *et al.* 1991; Medeiros *et al.* 1991; L. Cuddihy, pers. comm., 1990). While alien plants pose a potential threat, they are not a serious threat to *A. kauense* at present (Karen Asherman, The Nature Conservancy, *in litt.*, 1985; L. Cuddihy and E. Powell, pers. comms., 1990).

The reproductive potential of *Argyroxiphium kauense* is also limited by the low viability of seed from vegetatively branched individuals. Inflorescences on branched individuals are greatly reduced in comparison with those on unbranched plants. Seed collected from a number of branched plants at the Ke a Pohina population had a viability of 0 to 0.6 percent (G. Carr, pers. comm., 1991; E. Powell, pers. comm., 1992). Branched individuals account for about 50 percent of the larger individuals at the Ke a Pohina population, and all of the individuals flowering there in 1991 (pers. obs.). At the Powerline Road population, about 5 percent of the plants in 1990 were branched (E. Powell, pers. comm., 1992). In older accounts, branched individuals of *A. kauense* were reported to be very rare (Degener *et al.* 1976). Predation is known to cause branching in silverswords. The high proportion of branching in the Ke a Pohina population is very likely due to browsing by mouflon prior to fencing improvements (E. Powell, pers. comm., 1992; pers. obs., 1991). Improving the reproductive potential of *A. kauense* depends on continued protection of the two populations against feral ungulates.

Lava flows and the wildfires they ignite are a serious potential threat to both populations of *Argyroxiphium kauense* (Degener *et al.* 1976; Kimura and Nagata 1980; L. Cuddihy, *in litt.*, 1990; E. Powell, pers. comm., 1990). The larger Ke a Pohina population is located within a half mile of a 1950 flow from the active southwest rift of Mauna Loa. In 1984, a lava flow approached the Powerline Road population, where fire is a potential threat to *A. kauense* in dry years (E. Powell, *in litt.*, 1990; L. Stemmermann, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Based on the Service's evaluation, the preferred action is to list *Argyroxiphium kauense* as endangered. The small number of populations and limited distribution make this species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Expansion of the populations is limited by predation and habitat degradation by feral animals. Because browsing differentially affects more mature plants and results in reduced seed viability, reproductive success in this species is dependent on continued protection of the populations against feral ungulates. The low remaining number of individuals, poor species reproductive potential, population structure skewed toward immature individuals, and vulnerability to destruction by lava flows and wildfires indicate that the species is in danger of extinction throughout all or a significant portion of its range; it therefore fits the definition of endangered as defined in the Act. The determination of endangered status for this species thus appears warranted. Critical habitat is not being designated for this species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such a determination would result in no known benefit to *Argyroxiphium kauense*.

One of the two extant populations is on State land; State agencies can be alerted to the presence of the plant without the publication of critical habitat descriptions and maps. As discussed under Factor B in the Summary of Factors Affecting the Species, *Argyroxiphium kauense* could be threatened by taking. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would

increase the degree of threat to this plant from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plant and, thus, can make it attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and landowners have been notified of the importance of protecting the habitat of this species.

Protection of the species' habitat will be addressed through the recovery process. There are no Federal activities within the currently known habitat of this plant. Therefore, the Service finds that designation of critical habitat for *Argyroxiphium kauense* is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known that would affect this species, as all known populations are on State or privately owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Argyroxiphium kauense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy the species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because *Argyroxiphium kauense* is uncommon in cultivation and is very rare in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Asteraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Asteraceae—Aster family:						
Argyroxiphium kauense.	Ka'u Silversword	U.S.A. (HI)	E	497	NA	NA
•	•	•	•	•	•	•

Dated: March 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–8075 Filed 4–6–93; 8:45 am]

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50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Amaranthus pumilus (Seabeach Amaranth) Determined To Be Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Amaranthus pumilus* (seabeach amaranth) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This annual herb is limited to populations in New York, North Carolina, and South Carolina. *Amaranthus pumilus* is threatened throughout its range by beach stabilization structures, beach erosion and tidal inundation, beach grooming, herbivory by insects and feral animals, and, in certain limited circumstances, by off-road-vehicles (ORVs). This action extends Federal protection under the Act to seabeach amaranth.

EFFECTIVE DATE: May 7, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/665–1195).

SUPPLEMENTARY INFORMATION:

Background

Amaranthus pumilus, described by C. S. Rafinesque (1808) from material collected in New Jersey, is an annual plant in the Amaranth family. Germination takes place over a relatively long period of time, generally from April to July. Upon germinating, this plant initially forms a small unbranched sprig, but soon begins to branch profusely into a clump, often reaching a foot in diameter and consisting of 5 to 20 branches. Occasionally a clump may get as large as a yard or more across, with a hundred or more branches. The stems are fleshy and pink-red or reddish, with small rounded leaves that are 1.3 to 2.5 cm in diameter. The leaves are clustered toward the tip of the stem, are normally a spinach-green color, and have a small notch at the rounded tip. Flowers and fruits are relatively inconspicuous, borne in clusters along the stems. Flowering begins as soon as plants have reached sufficient size, sometimes as early as June, but more typically commencing in July and continuing until the death of the plant in late fall. Seed production begins in July or August and reaches a peak in most years in September but continues until the death of the plant.

Weather events, including rainfall, hurricanes, and temperature extremes, and predation by webworms have strong effects on the length of seabeach amaranth's reproductive season. As a result of one or more of these influences, the flowering and fruiting period can be terminated as early as June or July. Under favorable circumstances, however, the reproductive season may extend until January, or sometimes later (Bucher and Weakley 1990, Weakley and Bucher 1991, Radford et al. 1968).

Amaranthus pumilus is endemic to Atlantic coastal plain beaches, where it is currently known from 13 populations in New York, 34 populations in North Carolina, and 8 populations in South Carolina. The species occurs on barrier island beaches, where its primary habitat consists of overwash flats at accreting ends of islands and lower foredunes and upper strands of noneroding beaches. It occasionally establishes small temporary populations in other habitats, including sound-side beaches, blowouts in foredunes, and sand and shell material placed as beach replenishment or dredge spoil. Seabeach amaranth appears to be intolerant of competition and does not occur on well-vegetated sites. The plant acts as a sand binder, with a single large plant being capable of creating a dune up to 6 decimeters high, containing 2 to 3 cubic meters of sand, although most are smaller (Weakley and Bucher 1991). As stated by Weakley and Bucher (1991):

> Seabeach amaranth appears to need extensive areas of barrier island beaches and inlets, functioning in a relatively natural and dynamic manner. This allows it to move around in the landscape, as a fugitive species, to occupy suitable habitat as it becomes available.

Historically, seabeach amaranth occurred in 31 counties in 9 States from Massachusetts to South Carolina. Seabeach amaranth has now been

eliminated from six of the States in its historic range. Of the 55 remaining populations in New York, North Carolina, and South Carolina, 9 are located on lands administered by the National Park Service, 1 is on land administered by the Department of Defense, 1 is on New York City park land, 9 are on State parks and reserves, 3 are on county parks, 2 and part of another are on municipal land, 1 is on land administered by the U.S. Fish and Wildlife Service, and the remaining 28 and part of another population are on private lands. The 41 populations known to have been extirpated are believed to have succumbed as a result of "hard" beach stabilization structures (seawalls, riprap, etc.), storm-related erosion, heavy recreational beach use by ORVs, and possibly as a result of herbivory by webworms. The continued existence of *Amaranthus pumilus* is threatened by these activities, as well as by beach grooming and some forms of "soft" beach stabilization, such as sand fencing and planting of beach-grasses.

The Service recognized *Amaranthus pumilus* as a category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the **Federal Register** on November 28, 1983 (48 FR 53640). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. Subsequent revisions of the 1983 notice have maintained *Amaranthus pumilus* in category 2. Recent surveys conducted by Service, State, and Nature Conservancy personnel presented sufficient information for the Service to propose to list *Amaranthus pumilus* as threatened on May 26, 1992 (57 FR 21921).

Summary of Comments and Recommendations

In the May 26, 1992, proposed rule; the October 20, 1992, notice of public hearing and extension of the comment period (57 FR 47833), the November 5, 1992, public hearing; and notifications associated with these activities, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: Star News, Wilmington, North Carolina; Post and Courier, Charleston, South Carolina; Newsday, New York, New York; and Coastland Times, Manteo, North Carolina. In response to a formal request, a public hearing on the proposal to list *Amaranthus pumilus* as a threatened species was held on November 5, 1992, at Cape Hatteras School, Buxton, North Carolina. A notice of the hearing and reopening of the comment period to November 16, 1992, was published in the **Federal Register** on October 20, 1992. The public hearing notice announced the purpose, time, and location of the hearing and extended the formal comment period on the proposal in order to ensure that all interested parties had ample time to provide information on the proposed rule.

All written comments and oral statements presented at the public hearing and those received during comment periods are covered in the following discussion. Comments of similar content are grouped together; these and the Service response to each are discussed below.

Seven written responses to the proposed rule were received during the initial comment period. Five of these comments were from State agencies, and two were from private conservation organizations.

The North Carolina Department of Agriculture, the North Carolina Natural Heritage Program, the New York State Department of Environmental Conservation, the North Carolina Division of Parks and Recreation, and the New York Natural Heritage Program all strongly supported the addition of seabeach amaranth to the Federal list of threatened species; they provided updated information on the status of the species in North Carolina and New York. The Service has incorporated the additional information on the status and conservation of the species, as appropriate, into this document.

The Center for Plant Conservation and the Long Island Chapter of The Nature Conservancy also strongly supported the addition of this species to the Federal list of threatened species.

The Dare County, North Carolina, Board of Commissioners requested a public hearing on the Service's proposal and requested additional information on the plant and maps of population locations. In addition, they requested a presentation to the Board of Commissioners by the Service. This additional information was provided, and a presentation was given to the Board on August 17, 1992.

The public hearing on the proposed rule to list seabeach amaranth as a threatened species was held on November 5, 1992, in the auditorium of the Cape Hatteras School, Buxton, North Carolina. Fifteen verbal statements were made at the public hearing, and eight written statements were provided, one of which was a copy of a verbal statement given. Nine written comments were received during the comment period extension.

Statements at the Public Hearing

The Dare County Board of Commissioners expressed opposition to the proposed addition of seabeach amaranth to the Federal list. The commissioners' representative stated that 80 percent of the land in Dare County is in Federal ownership, and the commissioners felt that the county had already "absorbed enough of the regulatory bureaucracy." They also expressed their fear that the beaches of the county would no longer be available for public recreation if this plant were added to the threatened species list. The Service does not believe there is a need to completely exclude public recreation from the beaches in order to conserve seabeach amaranth in Dare County, nor does the Service have the authority to do so. This plant occupies much of the same habitat already used for nesting by the piping plover, which has been listed as threatened since 1985, and the loggerhead sea turtle, which has been listed as threatened since 1978. The Service has worked with the Federal agencies involved in managing these species' habitats, without excluding public recreation from large areas of the beach. Areas of nesting habitat for the two animal species have been roped off to allow these species to complete their reproductive cycle without eggs and young being crushed by ORVs. The Service believes that seabeach amaranth can be conserved by means of the same management. In fact, many of the areas that represent the best habitat for seabeach amaranth are those that are already roped off for nesting shorebirds and loggerhead sea turtles. The Service does not believe there is a need to close off significant additional areas.

Several respondents suggested that local planting projects be attempted in lieu of listing the species. The Service responded that, although the offers of volunteer help were much appreciated and can be incorporated into recovery efforts for the species, much of the habitat within the species' historic range has been rendered permanently unsuitable for it by the construction of seawalls and the placement of riprap on beaches. In addition, simply cultivating the plants or planting seeds, even on apparently suitable habitat, will not alleviate all the threats of seabeach amaranth. In many areas, heavy infestations by caterpillars have caused

massive defoliations and reproductive failure in this species, even in large populations. The species is also eaten by feral livestock in certain areas. A species which has already been eliminated from two-thirds of its historic range, by definition, is in danger. Under the Endangered Species Act of 1973, as amended, Congress required that the Fish and Wildlife Service list such species as endangered or threatened.

One respondent presented a proposal to recover the species by planting it on off-shore spoil islands that are not generally accessible to people and using it to stabilize areas of beach adjacent to N.C. Highway 12 where erosion threatens the main highway on the Outer Banks. One of the Act's primary purposes, as stated in section 2(b), is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." Cultivation of endangered and threatened species can be a positive conservation tool, and it is often identified as a task necessary for the ultimate recovery of species. The cultivation of threatened species and their reintroduction into areas where they have been extirpated, but where suitable habitat still remains, is a key part of the Service's recovery program for listed species. However, attempting to plant seabeach amaranth in areas that do not represent suitable habitat, such as eroding and otherwise unstable parts of islands, would, in all likelihood, not be successful. These annual plants must be able to survive over an entire season in order to set seed for the following year. The Service believes that cultivation of seabeach amaranth without protecting the natural ecosystems upon which it depends would not meet the requirement of the Act. The range of environmental requirements for successful reestablishment of this species in the wild is not fully understood and will require additional research before anyone can reintroduce the species with confidence that the reintroduction will be successful. Nevertheless, the Service intends to seek out protected areas of suitable habitat where the species has been extirpated and reintroduce it to those areas in hopes of eventual recovery.

One respondent expressed concern that Federal excise tax revenues legislated under the Pittman-Robertson and Dingell-Johnson Acts were not being made available for endangered species conservation. These funds, being a tax on hunters and sport fishermen, are used by the Service and the States for the conservation of wildlife species.

Many of the comments at the public hearing regarded the potential economic impact that the listing of the species would have on local businesses. These concerns were directly related to the fear that this listing would result in the exclusion of vehicles and people from the beaches, thereby curtailing surf fishing and tourism in general. The Act requires the Service to base its listing decisions upon the best biological data available, not economic considerations. However, the Service believes that the conservation of seabeach amaranth in Dare County can be achieved without any noticeable effects on the local economy. There are only two extant populations of the plant in the county, and the area occupied by the plants is only a small percentage of the total beach available to the public for recreation. There are over 80 miles of beach in Dare County; much of this is publicly owned beach that is part of Cape Hatteras National Seashore and Pea Island National Wildlife Refuge. Seabeach amaranth occupies approximately 2.5 percent of this beach area in two discrete locations. Cape Hatteras Point, an extremely popular area used by surf fishermen and other recreational users, has consistently supported one of the largest populations of seabeach amaranth remaining within the range of the species. The Service considers this ample evidence of the compatibility of this species with these types of human use. The drivers of ORVs, which could be a threat to the species at this location, have demonstrated respect for designated vehicle corridors and areas that are roped off for the protection of nesting shorebirds and sea turtles.

One respondent asked if germ plasm from seabeach amaranth had been collected for long-term preservation. The Service responded that some efforts in this regard have been made; however, material has not been collected from all remaining populations. This would be a part of the Service's recovery program for the species.

One respondent stated that, because critical habitat areas were not identified and specific management proposals were not part of the proposed rule, it was unclear what the public was being asked to respond to. The Service did not propose specific management programs for the species in the proposed rule, since this will be a part of the recovery program following the addition of the species to the Federal list of endangered and threatened species. Much remains unknown about the life history requirements and population biology of this species. Further research must be undertaken before sound management proposals can be developed. The Service has determined that designation of critical habitat for this species is not prudent at this time due to its vulnerability to taking and vandalism. In Dare County, the two extant populations are located on Park Service lands. This agency is well aware of their presence and is taking steps to protect them. (See further discussion in the "Critical Habitat" section of this rule.)

One respondent expressed concern about the impact of the listing of seabeach amaranth on the Oregon Inlet jetty project. The Service responded that this species has never been found at Oregon Inlet. The closest known population to that area is approximately 40 miles to the south. Nevertheless, if the plant were to be found at Oregon Inlet at some point in the future, before the jetties were built and after the species was listed, the Service and the U.S. Army Corps of Engineers would go through the section 7 consultation process and attempt to eliminate or minimize impacts to the plant while allowing the project to proceed to the maximum extent possible. The loggerhead sea turtle, a species already on the Federal threatened species list, nests at Oregon Inlet and was the subject of a formal consultation there. At the conclusion of the consultation, it was decided that the project could proceed with certain modifications without jeopardizing the continued existence of this species.

One of the respondents wanted to discuss piping plovers and the draft proposal to designate critical habitat for this species. Since this was not the subject of the hearing, plover issues were not addressed.

One respondent stated that he did not believe that the Service's data had spanned a long enough period of time to support the listing of the species as threatened. The Service responds that observations of this plant have been made since the early 1800s. It is now completely extirpated from six of the nine States within its historic range; many of the remaining populations are currently subject to threats, and South Carolina's populations have been reduced by 90 percent in the last 4 years. From 1988 to 1989, a rangewide reduction in population numbers of 76 percent was noted. Although this plant naturally fluctuates to some extent from one year to the next, such large rangewide reductions in populations are alarming. Over one-fifth of the historic populations in South Carolina have been extirpated. Half of the populations remaining in that State have fewer than

25 plants each, and the total State census in 1990 was only 188 plants. New York has a total State census of only 357 plants and only one population containing over 100 plants. North Carolina, the remaining stronghold for the species, has 18 populations with over 100 plants each. Thirty percent of North Carolina's remaining populations have fewer than 25 plants each. The very small remaining populations are extremely vulnerable to extirpation.

One private landowner from Dare County supported the listing of the species. Another took no position on the listing but recommended that study areas be chosen with care so as not to unduly impact the economy of the area.

Written Statements Received After the Public Hearing

Nine written comments were received during the comment extension period—one from a State agency, one from a Federal agency, and seven from private individuals.

The North Carolina Department of Environment, Health, and Natural Resources, Division of Parks and Recreation, supported the protection of seabeach amaranth under the Act, stating that:

> The proposed rule is well written and very accurately and thoroughly describes the status of and threats to seabeach amaranth. The reduction of a vascular plant species to a third of its former range is highly unusual. Plant species are frequently reduced to small populations distributed in a scattered pattern over their former ranges, but the loss of seabeach amaranth from major portions of its former range (such as the stretch of coast from northern North Carolina north through Virginia, Maryland, Delaware, and New Jersey to southern New York) is dramatic and is cause for grave concern over the species' future. The distribution and status of seabeach amaranth in North Carolina shows that the species survives well on beaches with a wide range of recreational uses, including late fall and winter fishing season use of the beach by vehicles. Seabeach amaranth and the majority of recreational users favor the same conditions—wide, sandy beaches. In fact, protection of seabeach amaranth should help assure the maintenance of wide, sandy, recreational beaches. Some of the larger populations of seabeach amaranth are found on beaches with moderate to heavy recreational use, such as Cape Hatteras Point, Wrightsville Beach, Hammocks Beach State Park, Fort Macon State Park, the north end of West Onslow Beach, and the west end of Holden Beach. The proven compatibility of recreational beach use and seabeach amaranth habitat should allay potential concerns among the public over the proposed listing. A number of other Federal- and State-listed endangered or threatened species characteristically use the same habitat as seabeach amaranth—including sea turtles, piping plovers, least terns, and others. Conservation of a healthy, upper beach ecosystem will favor all these species.

A professional ecologist from the State of New York strongly recommended that seabeach amaranth be listed as threatened, stating, "I think it most probable that the species would become extinct if it were not given such protection * * *."

A response from Camp Lejeune Marine Corps Base in North Carolina stated no position on the listing of the plant but reiterated their commitment to "* * * sound natural resource management in concurrence with the execution of requisite military training in the interest of our nation's defense." Camp Lejeune is habitat for several other federally and State-listed species of plants and animals. Their response further stated, "Military training and the conservation of federally listed species have been effectively coordinated in a manner that ensured protection and allowed military training requirements to be adequately performed." They requested that the seabeach amaranth management guidelines not vary substantially from the management guidelines already in place for the sea turtles which nest in the same areas.

Six private individuals opposed the addition of seabeach amaranth to the Federal threatened species list based upon their fears that the beaches in Dare County, North Carolina, would no longer be available for public recreation as a result. One of these respondents commented further that he did not believe sufficient historical data existed to support listing the species, since "biological stocks in North Carolina are in good shape." The Service reiterates its commitment to work with local people to conserve this species and the belief that conservation of the species and public recreation on the beaches are compatible. Regarding the status of North Carolina populations, the Service is required to consider the status of the species rangewide, not just within particular political boundaries. Although there are several large populations remaining in North Carolina, the species is in much worse condition throughout the rest of its range, where it has been completely eliminated from six of the nine States it occupied historically. The criteria for adding species to the Federal list are contained in section 4 of the Act. These criteria, as they relate to the currently known status of seabeach amaranth, are addressed in the "Summary of Factors Affecting the Species" section of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Amaranthus pumilus* should be classified as threatened. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amaranthus pumilus* Rafinesque (seabeach amaranth) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Amaranthus pumilus has been and continues to be threatened by destruction or adverse alteration of its habitat. Since the species was discovered, it has been eliminated from approximately two-thirds of its range, primarily as a result of beach stabilization efforts and storm-related erosion. All of the remaining 55 populations are currently threatened by these factors (Bucher and Weakley 1990, Weakley and Bucher 1991, Clemants and Mangels 1990, Mangels 1991).

In September of 1989, Hurricane Hugo struck the Atlantic coast near Charleston, South Carolina, causing extensive flooding and erosion north to Cape Fear, North Carolina, with less severe effects extending northward throughout the range of seabeach amaranth. This was followed by several severe Northeasters in the winter of 1989–1990 and by Hurricane Bertha in the late summer of 1990. These last storms, although not as significant as Hurricane Hugo, caused substantial erosion of many barrier islands in the heart of seabeach amaranth's remaining range. The 1990 surveys revealed that the effects of these climatic events were substantial. Thirteen populations of the species reappeared on Long Island, New York, many in places that had been surveyed repeatedly in the past (Mangels 1991). As stated by Weakley and Bucher (1991):

> It is not known whether these populations represented long-distance dispersal of seeds (perhaps by ocean currents), short-distance dispersal from previously undiscovered populations on Long Island, or the exposure of local seedbanks.

In the Carolinas, populations were severely reduced. In South Carolina, where the effects of Hurricane Hugo and subsequent dune reconstruction were

extensive, amaranth numbers went from 1,800 in 1988 to 188 in 1990, a reduction of 90 percent. Even with the addition of the New York populations, rangewide totals were reduced 76 percent from 1988. Ironically, although storms and related erosion of beaches threaten seabeach amaranth because of its currently restricted range and reduced populations, attempts to stabilize beaches against these natural geophysical processes is often more destructive to the species and to the beaches themselves in the long run. Weakly and Bucher (1991) state:

> Seabeach amaranth never occurs on shorelines where bulkheads, seawalls, or rip rap zones have been constructed. Not only does construction of these structures occur in the primary habitat of seabeach amaranth, but water and wind erosion lower the profile of the beach seaward of the armoring. The upper beach habitat required by seabeach amaranth (above inundation by tidal action) ceases to exist as the beach is steadily eroded. * * * widespread use of seawalls, jetties, and other hard stabilization structures in New Jersey and other northern states is apparently associated with the extirpation of seabeach amaranth in those states. Of all the states in the former range of seabeach amaranth, North Carolina has made the least use of seawalls. The continued presence of seabeach amaranth in North Carolina and in the part of South Carolina's coast lacking seawalls, is probably not accidental or coincidental.

Even nonstructural beach stabilization techniques, such as sand fences and planting of beach-grass, are generally detrimental to seabeach amaranth. Weakley and Bucher (1991) noted that seabeach amaranth only very rarely occurred when sand fences and vegetative stabilization had taken place and, in these situations, was present only as rare scattered individuals.

In some instances beach erosion and lowering of barrier islands has been accelerated by manmade structures built far from the ocean. Damming of large coastal rivers reduces the sediment load carried by the rivers to the coastal environment. Weakley and Bucher (1991) state:

> There is evidence in several cases that this has reduced the coastal sediment budget, leading to increased erosion rates. Construction of the Santee Dam on the Santee River in South Carolina, impounding Lake Marion, has probably caused the increased erosion of islands in the vicinity of the mouth of the Santee * * * all of the islands in the vicinity of the Santee's mouth are currently marginal habitat for seabeach amaranth, and it has been extirpated from a number of islands by the frequency of overwash.

Beach renourishment can have positive impacts on this species. Although more study is needed before the long-term impacts can be accurately assessed, several populations are shown to have established themselves on renourished beaches and have thrived through subsequent applications of dredged material (Weakley an Bucher 1991; W. Adams, U.S. Army Corps of Engineers, personal communication, 1991).

Intensive recreational use of beaches threatens amaranth populations in some instances. Pedestrian traffic, even during the growing season, generally occurs in areas where it has little effect on populations of seabeach amaranth. However, ORV use of the beach during the growing season can have detrimental effects on the species if traffic is not routed around the plants. The fleshy stems of this plant are brittle and easily broken and do not generally survive even a single pass by a truck tire. Therefore, even minor beach traffic over the plants during the growing season is detrimental, causing mortality and reduced seed production (Weakley and Bucher 1991). ORV traffic is allowed at many of the beaches where this species remains, and those sites where vehicles are allowed to run over amaranth plants generally show severe population declines. In contrast, dormant season ORV use has shown little evidence of significant detrimental effects, unless it results in massive physical erosion or degradation of the site. In some cases, winter ORV traffic may actually provide some benefits for the species by setting back succession of perennial grasses and shrubs with which seabeach amaranth cannot compete successfully. Extremely heavy use of an *Amaranthus* site, even in the winter, may have some negative impacts, however, including pulverization of seeds.

Seabeach amaranth appears to be vulnerable to extirpation in two of the three States in which it remains. South Carolina now has only one population with over a hundred plants and a total State census of 188 plants, and New York has only one population with over a hundred plants and a total State census of 357 plants. The many very small populations remaining are highly vulnerable to extirpation from a variety of natural and manmade factors.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Amaranthus pumilus, although it does not have showy flowers and is not currently a component of the commercial trade in native plants, is an attractive and colorful plant, with a prostrate growth habit that could lend itself to planting on beach-front lots. Its effectiveness as a sand binder could make it even more attractive for this purpose. In addition, other amaranths have been cultivated as food crops in North, Central, and South America for nearly 10,000 years and continue to be grown as important crops in temperate and tropical climates throughout the world. "Its importance is magnified by its nutritional value, high in several amino acids often lacking in diets with little meat" (Weakley and Bucher 1991). Currently, seabeach amaranth is being investigated by the U.S. Department of Agriculture and several universities and private institutes for its potential use in crop development and improvement. Its favorable traits of salt tolerance and large seeds could be of commercial value if combined with other desirable crop traits. However, overcollection of seabeach amaranth plants or seeds from wild populations could threaten its continued existence. Because the species is easily recognizable and accessible, it is vulnerable to taking, vandalism, and the incidental trampling by curiosity seekers that could result from increased publicity about the species and the specific areas where it grows.

C. Disease of Predation

No evidence of disease has been seen in seabeach amaranth. However, predation by webworms is a major source of mortality and lowered fecundity. Moderate to severe herbivory by webworms was seen in most populations in both 1987 and 1988, when many populations, particularly the larger ones, were largely defoliated by early fall. Weakley and Bucher (1991) state, "Defoliation at this season appears to result in premature senescence and mortality, reducing seed production (the most basic and critical parameter in the life cycle of an annual species)." Even though the four webworm species so far identified on seabeach amaranth are all native, their use of barrier island habitats has probably been increased by extensive conversion of coastal plain ecosystems to agricultural use and the resulting introduction of weedy plants, which also serve as hosts for the caterpillars. Therefore, the level of predation experienced by seabeach amaranth is probably unnaturally high. Weakley and Bucher (1991) believe that webworm herbivory is a contributing, rather than a leading, factor in the decline of the species. They state, "The combination of extensive habitat alteration and chronic sever herbivory could be a deadly one for seabeach amaranth." On North Carolina's Outer Banks, feral horses graze on seabeach amaranth. The extent and impact of this

herbivory, however, is minor compared to the effects of webworm predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Amaranthus pumilus is afforded legal protection in North Carolina by the General Statutes of North Carolina, §§ 106–202.15, 106–202.19 (N.C. Gen. Stat. section 106 (Supp. 1991)), which provide for protection from intrastate trade (without a permit) and for monitoring and management of State-listed species, and which prohibit taking of plants without written permission of landowners. *Amaranthus pumilus* is listed in North Carolina as threatened. The species is recognized in South Carolina as threatened and of national concern by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. In New York the species is not currently listed, since it was only recently rediscovered there. State legislation offers no protection to the habitat of seabeach amaranth in any of the three States where it remains, and habitat loss/modification and predation appear to be the main threats to the continued existence of the species. Federal/State regulation of development in coastal areas under the Coastal Areas Management Act has undoubtedly helped protect the habitat of seabeach amaranth; however, the scope of these regulations is limited and does not preclude all forms of habitat degradation that adversely affect this species. The Endangered Species Act would provide additional protection and encouragement of active management and recovery actions for *Amaranthus pumilus*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Little is known about the demographics and reproductive requirements of this species in the wild. As a fugitive species dependent on a dynamic landscape and large-scale geophysical processes, seabeach amaranth is extremely vulnerable to habitat fragmentation and isolation of small populations. As stated by Weakley and Bucher (1991):

> In New Jersey and New York, it has been extirpated or severely diminished by the fortification and modification of a portion only of the coastline. Rendering 50 percent or 75 percent of a coastline "permanently" unsuitable may doom seabeach amaranth, because any given area will become unsuitable at some time because of natural forces. If a seed source is no longer available in the vicinity, amaranth will be unable to reestablish itself when the area is once again suitable. In this way, it can be progressively eliminated even from generally favorable stretches of habitat surrounded by "permanently" unfavorable areas * * * fragmentation of habitat in the north has apparently led to regional extirpation, resulting from the separation of suitable habitat areas from one another by too great a distance to allow recolonization following natural catastrophes. Though apparently suitable habitat is present in a number of northern states formerly part of seabeach amaranth's range, it is no longer found there * * * seabeach amaranth grows above the high tide line, and is intolerant of even occasional flooding during its growing season. It does not, however, grow more than a meter or so above the beach elevation on the foredune or anywhere behind the foredune (except very rarely and extraordinarily). It is, therefore, dependent on a terrestrial, upper beach habitat, unflooded during the growing season from May into the fall. This zone is absent on barrier islands that are experiencing significant rates of beach erosion. If data and hypotheses suggesting future increases in sea level are correct, beach erosion will accelerate and put further pressure on seabeach amaranth.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Amaranthus pumilus* as threatened. With the species already having been extirpated from two-thirds of its historic range, and based upon the threats to most of the remaining populations, it warrants protection under the Act. Threatened status seems appropriate since there are 55 remaining populations, including some large ones in areas protected from development and beach stabilization.

Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Amaranthus pumilus* at this time. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Amaranthus pumilus* is vulnerable to taking, and taking prohibitions are difficult to enforce. Take is regulated by the Act with respect to threatened plants only in cases of removal and reduction to possession from lands under Federal jurisdiction. Most populations of *Amaranthus pumilus* are located on private lands. Although North Carolina general statutes prohibit collection of *Amaranthus pumilus* without permission from the landowner, unlawful taking is difficult to enforce, and publication of critical habitat descriptions would make it more vulnerable to taking and vandalism, increasing enforcement problems for the State of North Carolina. In addition, while listing under the Act increases public awareness of the species' plight, it can also increase the desirability of a species to collectors. As stated previously, *Amaranthus pumilus* is an attractive plant, whose populations are easily accessible. It also could be adversely affected by increased visits to and associated trampling of occupied sites by curiosity seekers as a result of critical habitat designation and accompanying increases in specific publicity.

For the foregoing reasons, it would not be prudent to determine critical habitat for *Amaranthus pumilus*. The Federal and State agencies and landowners involved in protecting and managing the habitat of this species have been informed of the plant's locations and the importance of its protection. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued

existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Amaranthus pumilus* and its habitat in the future include, but are not limited to, the following: Construction of beach stabilization structures, such as jetties, groins, bulkheads, and sand fences; beach renourishment and deposition of dredged spoil; and regulation of recreational beach use on Federal lands. The Service will work with the involved agencies to secure protection and proper management of *Amaranthus pumilus* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers.

In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bucher, M., and A. Weakley. 1990. Status survey of seabeach amaranth (*Amaranthus pumilus* Rafinesque) in North and South Carolina. Report to North Carolina Plant Conservation Program, North Carolina Department of Agriculture, Raleigh, NC, and Endangered Species Field Office, U.S. Fish and Wildlife Service, Asheville, NC. 149 pp.

Clemants, S. and C. Mangels. 1990. *Amaranthus pumilus*—1990 New York State status survey. Report to U.S. Fish and Wildlife Service, Newton Corner, MA. 11 pp.

Mangels, C. 1991. Seabeach amaranth in New York State. New York Flora Association Newsletter 2(2):7–8.

Radford, A., H. Ahles, and C. Bell. 1968. Manual of the vascular flora of the Carolinas. University of North Carolina Press, Chapel Hill, NC.

Rafinesque schmaltz, C.S. 1808. Essential generic and specific characters of some new genusses (sic) and species of plants observed in the United States of America, in 1803 and 1804. The Medical Repository II(5)356–363.

Weakley, A., and M. Bucher. 1991. Status survey of seabeach amaranth (*Amaranthus pumilus* Rafinesque) in North and South Carolina, second edition (after Hurricane Hugo). Report to North Caroline Plant Conservation Program, North Carolina Department of Agriculture, Raleigh, NC, and Endangered Species Field Office, U.S. Fish and Wildlife Service, Asheville, NC. 149 pp.

Author

The primary author of this final rule is Ms. Nora Murdock (see "ADDRESSES" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50, of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

(1) The authority citation for 50 CFR part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

(2) Amend § 17.12(h) by adding the following, in alphabetical order under Amaranthaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Amaranthaceae—Amaranth family:						
Amaranthus pumilus ...	Seabeach amaranth	U.S.A. (DE, MA, MD, NC, NJ, NY, RI, SC, and VA).	T	498	NA	NA

Dated: March 11, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–8076 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 58, No. 65
Wednesday, April 7, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1785 and 1786

RIN 0572-AA65

Loan Account Computations, Procedures and Policies

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to codify, update and consolidate its loan account computations, policies and procedures contained in REA Bulletin 20–9:320–12. Bulletin 20–9:320–12 is outdated and will be rescinded upon publishing of the final rule. Codifying the policies and procedures will streamline and consolidate information on loan accounting.

DATES: Public comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than May 7, 1993.

ADDRESSES: Comments may be mailed to Robert D. Ruddy, Director, Financial Operations Division, Rural Electrification Administration, room 2001-South Building, U.S. Department of Agriculture, Washington, DC 20250. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for inspection in room 2238-South Building during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Robert D. Ruddy, Director, address as above, telephone number (202) 720–0823.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It will not (1) Preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Have any retroactive effect; and (3) Require administrative procedures before parties may file suit to challenge the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.852, Rural Telephone Bank (RTB) Loans, and 10.854, Rural Economic Development (RED) Loans and Grants. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, to governmental and nongovernmental entities from coverage under this Order.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use, or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Background

Loan account computations, procedures, and policies in REA Bulletin 20–9:320–12 require updating, consolidating and clarifying. Bulletin 20–9:320–12 is outdated and codifying

the procedures of this Bulletin will streamline and consolidate information on loan accounting. Upon publishing the final rule, Bulletin 20–8:320–12 will be rescinded.

REA proposes to revise 7 CFR part 1785 by:

(1) Redesignating the existing Subpart A, Loan Payments and Statements, as subpart F, and adding a new subpart A which contains the general purposes, definitions and information on the availability of sample documents related to this part.

(2) Redesignating and revising the existing Subpart B, REA Cushion of Credit Account Computation and Procedures, as subpart D, and adding a new subpart B which describes billing procedures. These procedures include billing options, the computation of various types of periodic installments and amounts due, and Federal Financing Bank (FFB) maturity date extensions.

(3) Adding a new subpart C which describes the procedures for applying loan repayments, overpayments, prepayments, and special payments.

(4) Adding a new subpart D which describes the policies and procedures for REA's cushion of credit payments. This subpart incorporates the policies of previously designated subpart B and provisions of the RE Act (7 U.S.C. 901 *et seq.*), which describes types of payments used in calculating the interest differential.

(5) Adding a new subpart E which describes statements sent to borrowers and certified public accountants. These statements include bills, transaction statements, confirmation schedules, maturity extension notifications, and interest rate notifications.

7 CFR part 1786 is being amended to include a cross reference statement of the general policies and procedures regarding prepayments which can be found in 7 CFR 1710.110, 1719.54 and 1785.102(b).

List of Subjects

7 CFR Part 1785

Electric power, Loan programs—communications, Loan programs—energy, Rural areas, Telephone.

7 CFR Part 1786

Electric power, Federal Financing Bank, Loan programs—communications, Loan program—energy, Rural areas, Telephone.

For the reasons set out in the preamble, title VII, parts 1785 and 1786 of the Code of Federal Regulations, are proposed to be amended as follows.

1. Part 1785 is revised as follows:

PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES

Subpart A—General

Sec.

1785.1 General statement.
1785.2 Definitions.
1785.3 Availability of sample documents.
1785.4–1785.49 [Reserved]

Subpart B—Billings

1785.50 General.
1785.51 Billing dates.
1785.52 Computing periodic installments.
1785.53 Computation of interest and principal due.
1785.54 Types of bills.
1785.55 FFB maturity date extensions.
1785.56–1785.99 [Reserved]

Subpart C—Application of Payments

1785.100 General.
1785.101 Payments for amounts billed.
1785.102 Overpayments, prepayments and special payments.
1785.103–1785.149 [Reserved]

Subpart D—Cushion of Credit Account Computations and Procedures

1785.150 General.
1785.151 Assets of the subaccount.
1785.152 Establishing an REA cushion of credit payment account.
1785.153 Cushion of credit payment account computations.
1785.154 Application of RETRF cushion of credit payments.
1785.155–1785.199 [Reserved]

Subpart E—Statements Furnished Borrowers and CPA's

1785.200 Statement of interest and principal due.
1785.201 Statement of loan account and transactions.
1785.202 Confirmation schedules.
1785.203 FFB maturity extension notifications.
1785.204 Interest rate notifications.
1785.205–1785.249 [Reserved]

Subpart F—Loan Payments and Statements

1785.250—1785.257 [Reserved]
1785.258 Basis dates and termination of unadvanced fund commitments—electric.

Authority: 7 U.S.C. 901 *et seq.*

Subpart A—General

§ 1785.1 General statement.

This part sets forth:

(a) Provisions of the notes, bonds or agreements for loans from Rural Electrification Administration (REA), Rural Telephone Bank (RTB), Federal Financing Bank (FFB), Rural Economic Development (RED), Rural Communication Development Fund (RCDF), and restructured loans; and

(b) Policies and procedures for debt service computations, and payments.

§ 1785.2 Definitions.

The following definitions will apply for the purpose of this part:

Account receivable means an amount owed REA for payment to a lender on behalf of a borrower, in accordance with the terms of a loan guarantee provided by REA.

Accrued interest means current interest since the last payment date neither received nor past due.

Accumulated (deferred) interest means interest on loans approved before June 5, 1957, which was allowed to accumulate through the basis date and is payable over the remaining life of the note.

Advance means loan funds disbursed to a borrower on an executed note. These funds are advanced upon the request of a borrower and approval by REA, RTB, or FFB.

Advance payment means a voluntary unscheduled payment made prior to October 2, 1987, and credited to the advance payment account of a borrower. These payments apply to REA insured loans only.

Basis date means a date determined by the terms of the note that begins a period for the payment of both interest and principal.

Bill means a Statement of Interest and Principal Due.

Current interest means interest payable periodically as it accrues.

Cushion of credit account means an account where all voluntary payments or overpayments on Rural Electric and Telephone Revolving Fund loans after October 1, 1987, are to be applied. The monthly balances of these accounts and the advance payment accounts are used as the basis to determine the amount available for grants and zero interest loans for rural economic development under section 313 of the RE Act (7 U.S.C. 901 *et seq.*). These accounts earn 5 percent per annum interest.

Cushion of credit payment means a voluntary unscheduled payment made after October 1, 1987, credited to the cushion of credit account of a borrower (REA insured loans only).

Debt service payment means a scheduled payment of interest and/or principal.

FFB note means a note evidencing a loan by REA and funded by FFB, which REA services and guarantees payment.

Interest credit means an amount earned on balances of a borrower's advance payment or cushion of credit account, and credited against current interest due.

Loan rescission means the rescission of a loan or part thereof by the REA Administrator, the RTB Governor, or their designee, and the termination of

the obligation to make, approve or guarantee advances of any portion of the loan.

Maturity extension means an extension of an FFB short-term maturity.

Note means note, bond or other promise to pay borrowed money, and any amendment such as a basis date or deferral agreement.

Prebasis period means the time, between the date of a note and its basis date, when only interest is due.

Prepayment means a voluntary unscheduled payment which the borrower instructs REA to apply directly and immediately to a note.

Price or price on such advance means the present value which is an amount that, if the account were purchased and held to maturity, would yield an amount equal to a loan from the U.S. Treasury to FFB to finance an advance having the identical interest and payment schedule as the advance being prepaid.

RCDF note means a note evidencing a loan made by REA for financing community antenna television services or facilities.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA note means a note, bond, or other obligation evidencing indebtedness created by a loan made by REA pursuant to title I, II or III of the RE Act.

RED note means a note evidencing a loan made by REA for rural economic development.

Restructured note means an REA note for the restructured debt of a borrower. Since the terms of each restructured agreement are unique and agreed upon by the borrower and REA, the term of the notes will vary depending on the specific agreement.

RETRF means, for the purpose of this part, the Rural Electric and Telephone Revolving Fund from which REA loans are made and into which REA payments are recorded.

RTB note means a note evidencing a loan made by the Rural Telephone Bank.

Special payment means a payment required under a loan contract, mortgage, note, agreement, approval for sale of a capital asset, or other document, and applied in accordance with the terms of the document.

Subaccount means the Rural Economic Development Subaccount established pursuant to the RE Act as part of the RETRF.

Supplemental bill means a bill for an amount due before the next regular billing date and not included in the last billing.

§ 1785.3 Availability of sample documents.

Copies of the following sample documents applicable to this part are available from the Financial Operations Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500:

(a) Sample A—Maturity date extension letters;

(b) Sample B—Statements of Interest and Principal Due (bills);

(c) Sample C—Description of electronic funds transfer message utilizing Fedwire;

(d) Sample D—Description of Automated Clearing House (ACH) electronic funds transfer;

(e) Sample E—Cycle plan and borrowers' state code;

(f) Sample F—Statement of Loan Account and Transactions;

(g) Sample G—Audit confirmation schedules;

(h) Sample H—Interest rate notifications;

(i) Sample I—Computation of RTB prepayment premium;

(j) Sample J—Letter requesting prepayment or early extension of a short-term advance, or prepayment of a long- term advance on FFB notes dated after calendar year 1982;

(k) Sample K—Letter requesting prepayment of a long-term advance on FFB notes dated prior to calendar year 1983.

§§ 1785.4–1785.49 [Reserved]

Subpart B—Billings

§ 1785.50 General.

Bills for debt service payments will be sent to borrowers approximately 15 days before the payment due date. The amounts shown on the bills will be the consolidation of the amounts due on all notes. Payments are due on the due date; however, if the due date is a Saturday, Sunday or holiday, payment must be made on the preceding work day to avoid the payment being classified as past due.

§ 1785.51 Billing dates.

REA issues bills as follows:

(a) Quarterly, which applies to all loans approved prior to September 1, 1982. A Statement of Interest and Principal Due and Statement of Loan Account and Transactions are sent to approximately one-third of the borrowers each month. All loans funded by FFB are billed on a calendar quarter basis by REA;

(b) Monthly, which applies to:

(1) All REA and RTB loans approved on or after September 1, 1982, and for amounts due REA for guaranteed payments (Accounts Receivable);

(2) Borrowers with loans approved both prior to and after September 1, 1982, who will receive:

(i) One consolidated bill for all monthly and quarterly accounts in the month their regular quarterly installment is due;

(ii) A bill for their monthly installments only, the other two months of each quarter; and

(iii) A quarterly Statement of Loan Account and Transactions showing all activity for the quarter; and

(c) Other which applies to borrowers who have notes or bonds specifying annual or semi-annual payments or have a repayment schedule are issued bills on the dates and in the amounts stated in the note or bond.

§ 1785.52 Computing periodic installments.

(a) *Level debt service installments.* The installment amount on REA, RTB and FFB notes is computed by FFB or REA as of the basis date. When applicable, the unpaid principal balance as of the basis date is multiplied by the amortization rate stated in the note to determine the installment. The installment includes current interest and the amortization of principal. The amount of the installment for notes issued by electric borrowers will be increased for the appropriate number of periods when a deferment of payments, allowed under section 12 of the RE Act (7 U.S.C. 901 *et seq.*), for energy resource conversation occurs. The installment will revert to the original amount when the deferred amount has been repaid.

(b) *Level principal installments.* The installment amount on FFB, RED and REA notes is computed as of the basis date. To arrive at the periodic installment necessary to fully amortize the principal by the maturity date, the unpaid principal balance as of the basis date is divided by the number of repayment periods through the maturity date of the note. Level principal installments, along with accrued interest on the unpaid balance, must be paid monthly or quarterly, as applicable. Interest does not accrue on RED notes as they are non-interest bearing.

(c) *Graduated principal installments.* The installment amount on FFB notes changes after one-third of the repayments have been made. The amount of each of the first one-third (or the nearest number of payments that rounds to one-third) of the total number of principal payments must substantially equal one-half of the

amount of each of the remaining principal payments. Graduated quarterly payments of principal, along with accrued interest on the unpaid balance, must be paid on each payment date.

§ 1785.53 Computation of interest and principal due.

(a) *Current interest.* (1) Interest on REA, RTB and RCDF notes is computed on the unpaid principal balance for the actual number of days the balance is outstanding. Interest on advances in the prebasis period, made in the month billed, will not be included in the current bill but will be included in the next bill for the total number of days outstanding from the date of the advance to the billing date;

(2) An interest credit is allowed for early payments and additional interest is charged for late payments. Interest adjustments for early or late payments are reflected in the next billing. Interest credit or additional interest charged is not made on final payments of $1 or less;

(3) RED notes require the borrower to pay a late charge on any payment not made within ten (10) days of the due date of the bill. This late charge is submitted on a separate billing;

(4) Interest on FFB notes is computed on the unpaid principal balance for the actual number of days the balance is outstanding. Interest credit is not allowed for early payments;

(5) Interest on accounts receivable is computed:

(i) For guaranteed payments on FFB notes dated prior to September 1, 1987, on the amount paid to the lender by REA for the actual number of days the payment is outstanding at the same interest rate(s) as the related FFB advances(s); and

(ii) For guaranteed payments on FFB notes executed subsequent to September 1, 1987, at a rate of 1½ times the rate to be determined by the U.S. Treasury taking into consideration the prevailing market yield on the remaining maturity of the most recently auctioned 13-week United States Treasury Bills. This rate is reestablished every 13 weeks and applies to the adjusted principal balance outstanding, which includes accrued unpaid interest as of that date. Except for balances of $1 or less, interest credit is given and additional interest is charged for early or late payments.

(b) *Principal.* (1) For level debt service notes, the interest computed in accordance with paragraph (a)(1) or (a)(2) of this section shall not exceed the interest due for the installment period, and is subtracted from the installment to determine the principal due.

(2) For level principal and graduated principal notes, the amount of the installment is the amount of principal due.

(c) Accumulated interest due is the amount of the installment established for this interest.

§ 1785.54 Types of bills.

(a) Periodic debt service bills are sent to borrowers approximately 15 days before the due date. Amounts shown on the bill represent a consolidation of amounts due on all notes (see § 1785.51(a)(b) and (c)). Accounts which have not reached their maturity date, but whose outstanding balance will be paid upon receipt of the payment due will have a notation on the bill stating that "PAYMENT OF THIS BILL WILL PAY IN FULL ACCOUNT(S) *(account number)*".

(b) Maturity bills identify accounts reaching the maturity date and are for principal and/or accumulated interest outstanding balances and current interest if any. REA, RTB and RCDF maturity bills are sent to borrowers approximately 30 days before the maturity date. The maturity bill has a notation stating "PAYMENT OF THIS MATURITY BILL WILL PAY IN FULL ACCOUNT *(account number)*". FFB maturity bills are sent about 14 days before the maturity date and have the following notations: "IF MATURITY DATE IS TO BE EXTENDED, PAY INTEREST ONLY" (used when principal payments have not begun) and "A MINIMUM PAYMENT OF $ *(amount)* REQUIRED" (only used when principal payments have begun).

(c) Supplemental bills are for amounts due in addition to the borrower's periodic debt service bill or maturity bill. The reason for the billing is noted on the supplemental bill. Supplemental bills are mailed to FFB borrowers when the extension of the maturity date occurs in the month in which a regular quarterly installment is due, and the maturity date is not the quarterly due date. The bill covers current interest due from the extension date through the end of the billing period at the new interest rate. Supplemental bills are also sent to REA and RTB borrowers for amounts due on advances made in the month an account enters the principal repayment period, if the month is a billing month and the debt service bills have been sent to the borrower before the advance.

(d) Fee bills are for an amount of one one-thousandth of one percent (0.00001) per year of the amount outstanding as of December 31 on FFB notes, or FFB amended notes, dated after *October 1, 1983.* The fee bills are sent to FFB borrowers, on March 31 of each year, or if that day is not a business day, the first business day thereafter.

§ 1785.55 FFB maturity date extensions.

(a) *Regular extensions of short-term maturity date*—(1) *Notification to borrower.* REA will mail an original and one copy of a maturity date extension letter to the borrower approximately 60 days before the short-term maturity date of an advance.

(2) *Borrower notification to REA.* The borrower will complete the extension letter, and return the original copy to reach REA at least 10 days before the maturity date.

(b) *Early maturity extension of short-term maturity date.* (1) A borrower may request, as specified in the note, an early maturity extension of any FFB advance with a short-term maturity date to a long-term maturity date. Approval of the appropriate REA regional director will be obtained before the request is forwarded by REA to FFB. FFB will treat an early maturity extension as a prepayment for purposes of computing a price. Therefore, in consideration of such an extension, FFB will require a borrower to pay an amount representing the sum of:

(i) The difference between the amount of the advance being extended, and a price on such advance which will result in a yield (based on a quarterly rate) for a period from the date of early maturity extension to the stated maturity date equal to the U.S. Treasury new issue rate for a comparable period. The price will be computed by FFB using the Treasury New Issue Yield Curve as of the close of business 2 days prior to the extension date (if the price is less than the face amount, the difference will be applied against accrued interest); and

(ii) Accrued interest on the advance to the effective date of the extension;

(2) Since the exact amount to be paid to FFB pursuant to paragraph (b)(1) of this section is not known until the day before the effective date of an extension, REA will notify the borrower by telephone of the amount to be paid. If the calculation in paragraph (b)(1) of this section results in a discount that exceeds the accrued interest, REA will return the net amount to the borrower. All payments must be transferred to REA on or before the extension date via electronic funds transfer.

§§ 1785.56–1785.99 [Reserved]

Subpart C—Application of Payments

§ 1785.100 General.

(a) REA and RTB loan contracts, amending loan contracts or amendments to loan contracts, for loans approved after December 31, 1980, require

borrowers to make debt service payments exceeding $10,000 by electronic funds transfer utilizing the Treasury Fedwire Deposit System (FDS). Borrowers may transfer funds electronically utilizing the Automated Clearance House (ACH) system in lieu of the FDS if they choose, so long as their payments do not exceed $100,000 per month. Information about the electronic funds transfer can be obtained from the Director, Financial Operations Division, room 2001—South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. FFB and RED borrowers are also required to make debt service payments by electronic funds transfer (31 U.S.C. 321, 3301, 3302 and 3720).

(b) Borrowers will be given credit for their payment as of the date checks are received or electronically transferred funds are credited to REA.

§ 1785.101 Payments for amounts billed.

(a) Payments on accounts receivable amounts and REA, RTB, FFB and RCDF notes, made in response to a bill will be applied, as applicable, in the following order, beginning with the oldest note:

(1) First late charges; then

(2) To premium; then

(3) To current interest due on all notes; then

(4) To accumulated interest due; then

(5) To principal due on all notes; then

(6) To the cushion of credit account (REA notes only); and then

(7) To fees due.

(b) REA electric borrowers who have an Energy Resources Conservation Agreement (ERC) can defer principal payments by deducting amounts equal to the ERC loans made to their consumers. The amount deducted will not exceed the amount stated in the ERC agreement. The installment on notes which have principal payments deferred will be increased by an amount sufficient to amortize the deferred principal and interest over the period stated in the ERC agreement. At the end of the deferment period, the installment will be reduced by the amount of the increase.

(c) Payments on RED notes are applied to principal due.

(d) Payments on restructured notes will be applied as specified in the restructure agreement; or, if the agreement does not so specify, payments will be applied in accordance with paragraph (a) of this section.

§ 1785.102 Overpayments, prepayments and special payments.

(a) Overpayments of an REA bill will be applied to the borrower's cushion of credit account. RTB, RCDF, RED or FFB borrowers are contacted by REA to determine the disposition of the overpayment.

(b) Prepayments will be applied as follows:

(1) REA, RCDF and RED prepayments will be applied to the principal outstanding on the note(s) identified by the borrower. If the prepayment results in an account being paid in full, a payment of interest accrued to the payment date must be made;

(2) RTB prepayments are applied directly to the note(s) identified by the borrower. There is a prepayment premium which is explained in the RTB note;

(3) FFB prepayments of any advance with a short-term maturity date (2 to 7 years) can be prepaid either in whole or in part at any time before the maturity date. Approval of the appropriate REA regional director must be obtained before the request is forwarded to FFB for concurrence. In consideration for accepting the prepayment, FFB requires a borrower to pay an amount representing the sum of:

(i) The difference between the face amount of the advance being prepaid, and a price on such advance which will result in a yield for a period from the date of prepayment to the stated maturity date equal to the U.S. Treasury new issue rate for a comparable period. The price will be computed by FFB using market yields on U.S Treasury securities as of the close of business 2 days prior to the prepayment date (if the price is less than the face amount, the difference will be applied against accrued interest), and

(ii) Accrued interest on the advance to the date of the prepayment;

(4) Prepayment of principal of any FFB long-term advance on notes executed prior to January 1, 1983, may be made prior to 12 years after the end of the calendar year in which the advance was made. The borrower will be required to pay a sum equal to the total of accrued interest from the last payment date through the date of prepayment plus the higher of:

(i) The principal being prepaid plus an amount equal to one 100 percent of the amount of interest for one year on the prepaid principal; or

(ii) A price which would, if such advance were purchased and held to the maturity thereof, produce a yield to the purchaser for the period from the date of prepayment to the maturity thereof equal to the interest rate which would be set on a loan from the Secretary of the Treasury to the FFB to finance an advance having a payment schedule identical to the advance. Such prepayment price shall be calculated by the FFB as of the close of business 2 business days prior to the date of such prepayment using standard U.S. Treasury Department calculation methods. Provisions for making prepayments and prepayment premiums are set forth in paragraph 9 of the FFB note dated prior to January 1, 1983. Notes executed subsequent to December 31, 1982, may be prepaid at any time (see paragraph (b)(3) of this section). The provisions for making prepayments and prepayment premiums are set forth in the FFB Note;

(5) Since the exact amount to be paid to FFB is not known until the day before the effective date of a prepayment, REA will notify the borrower by telephone of the amount to be paid. All payments must be transferred to REA on or before the prepayment date via electronic funds transfer; and

(c) Special payments representing proceeds from the sale of property, and special payments made under a loan contract or mortgage provision will be applied as agreed upon by REA and the borrower. It is the responsibility of borrowers with concurrent loans to apportion and remit all repayments in accordance with the terms of the common mortgage.

§§ 1785.103–1785.149 [Reserved]

Subpart D—Cushion of Credit Account Computations and Procedures

§ 1785.150 General.

This subpart sets forth policies and procedures of the REA cushion of credit payments program. The cushion of credit payments program will be maintained only for insured loans evidenced by obligations of the RETRF. A subaccount, known as the "Rural Economic Development Subaccount", is established within the RETRF for purposes of promoting rural economic development. This subaccount will be used to provide rural economic development grants and zero-interest loans to borrowers under the RE Act (7 U.S.C. 901 *et seq.*).

§ 1785.151 Assets of the subaccount.

The assets of the subaccount will be determined by crediting, on a monthly basis, the sum of the following:

(a) The result obtained by multiplying the outstanding cushion of credit payments and the advance payments by the difference converted on a monthly basis, between the average weighted interest rate paid on outstanding certificates of beneficial ownership issued by the RETRF and the 5 percent rate of interest provided to borrowers on cushion of credit payments; plus

(b) The repayment of loans made pursuant to section 313 of the RE Act; plus

(c) Other sources as provided by Congress.

§ 1785.152 Establishing an REA cushion of credit payment account.

A cushion of credit account will be automatically established by REA for each borrower who makes a payment after October 1, 1987, in excess of amounts then due on an REA note. This account will bear interest at a rate of 5 percent per annum. All payments on REA notes which are in excess of required payments and not otherwise designated by the borrower will be deposited in the borrowers' cushion of credit account. Payments received in the month in which an installment is due will be applied to the installment due. However, if the regular installment payment is received at a later date in the month, the first payment received will be applied retroactively to a cushion of credit account and the second will be applied to the installment due.

§ 1785.153 Cushion of credit payment account computations.

(a) *Payments.* Cushion of credit payments are credited to the borrowers' cushion of credit accounts.

(b) *Interest.* Interest at the rate of 5 percent per annum will be credited on a quarterly basis to cushion of credit accounts. Interest earned will appear as a reduction of the interest billed on the borrower's REA notes and will be separately shown on the bill.

§ 1785.154 Application of RETRF cushion of credit payments.

(a) If a maturing installment on an REA note or a note which has been guaranteed by REA is not paid by its due date, funds will be withdrawn from the borrower's cushion of credit account and applied as of the installment due date beginning with the oldest notes as follows:

(1) To late charges, if any; then

(2) To current interest due on all notes; then

(3) To the accumulated interest due, if any, on all notes; and then

(4) To the principal due on all notes.

(b) A borrower may reduce the balance of its cushion of credit account only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under the RE Act.

§§ 1785.155–1785.199 [Reserved]

Subpart E—Statements Furnished Borrowers and CPA's

§ 1785.200 Statement of interest and principal due.

(a) A Statement of Interest and Principal Due (bill) is mailed to borrowers for amounts due on outstanding balances of REA, RTB, FFB, RCDF and accounts receivable approximately 2 weeks before the due date. The bill shows the due date, principal due, interest due and, interest credit on overdue amount, if any.

(b) An amortization schedule will be mailed to RED borrowers before the principal repayment period begins. This schedule will take the place of periodic bills.

§ 1785.201 Statement of loan account and transactions.

A statement of loan account and transactions is mailed to REA, RTB, FFB and RCDF borrowers at the end of a given period, usually every 3 months. This statement shows the beginning balance, transactions for the period, amounts billed and unpaid, and closing balances for each account and/or note, using transaction codes to identify the type of transaction. These statements are mailed to borrowers approximately 2 weeks after the end of the cycle quarter.

§ 1785.202 Confirmation schedules.

Confirmation schedules, as of the audit date, are mailed to borrower's certified public accountants (CPA) on record with REA. This schedule confirms note information and outstanding balances for each account as of the audit date.

§ 1785.203 FFB maturity extension notifications.

FFB maturity extension notifications are mailed to borrowers approximately 60 days before the short-term maturity date. This notification gives the borrower information on the advance maturity and states options for the extension of the advance.

§ 1785.204 Interest rate notifications.

(a) Interest rate notifications are mailed to FFB borrowers and RTB borrowers who have variable interest rate notes. These notifications are sent upon computation of the interest rate and include interest rate, advance or extension date, amount of advance or extension, and account number.

(b) If the FFB advance or extension was long-term or short-term and will reach the principal repayment period within 2 years from the date of the advance or prior extension, an amortization installment is included on the notification.

§§ 1785.205—1785.249 [Reserved]

Subpart F—Loan Payments and Statements

§§ 1785.250—1785.257 [Reserved]

§ 1785.258 Basis dates and termination of unadvanced fund commitments—electric.

(a) *Termination of loan fund advances.* Loan contracts or amendments thereto providing for insured loans approved by the REA Administrator on or after June 1, 1984, shall provide that the Government's obligation to advance insured loan funds pursuant to such loan contracts, as amended, will terminate without further action by the Government after four years from the date of the loan contract or the most recent amendment thereto, unless the REA Administrator agrees, in writing, to an extension of the obligation.

(b) *Request for extension.* The REA Administrator may agree to an extension of the Government's obligation to advance loan funds if the borrower demonstrates to the Administrator's satisfaction that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an REA-approved construction workplan). To apply for an extension, borrowers must mail to the appropriate area office, at least 120 days before the Government's obligation to advance loan funds terminates, the following:

(1) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(2) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(3) Notice of the estimated date for the completion of construction.

(c) *Approval of extension.* If the REA Administrator approves a request for an extension, the borrower will be notified in writing of the extension and the terms and conditions thereof.

2. The authority citation for part 1786 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

3. Subpart A of part 1786 is revised as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS.

Subpart A—General

1786.1 General statement
1786.2–1786.24 [Reserved]

Subpart A—General

§ 1786.1 General Statement.

The general policies and procedures of the Rural Electrification Administration (REA), the Rural Telephone Bank (RTB) and, the Federal Financing Bank (FFB) regarding prepayments provided for in the notes or loan contracts can be found in 7 CFR 1710.110, 1719.54, and 1785.102(b).

§§ 1786.2–1786.24 [Reserved]

* * * * *

Dated: April 1, 1993.

Robert Peters,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc 93–8022 Filed 4–6–93; 8:45 am]

BILLING CODE 3410–15–F

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is preparing to initiate an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission intends to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff develops the draft proposed rule. The Commission plans to conduct a series of workshops to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing the radiological criteria for decommissioning.

DATES: The fifth workshop will be held in Philadelphia, Pennsylvania on April 13 and 14, 1993 and will be open to the public April 13, 1993 from 9 a.m. to 5:45 p.m.; April 14, 1993, from 8:30 a.m. to 4 p.m. In addition, the staff of the Nuclear Regulatory Commission and the Environmental Protection Agency will be available the evening before the workshop, Monday, April 12, 1993, from 7 p.m. to 9:30 p.m. to provide information on the intent and format of the workshop and to receive comments from members of the public who may not be able to attend the workshop. The workshop agenda also provides for scheduled opportunities throughout the workshop for the public to comment on the rulemaking issues and the workshop discussions. The scheduled public comment periods include: 12:15 p.m.–12:45 p.m.; 3:15 p.m.–3:30 p.m.; and 5:15 p.m.–5:45 p.m. on Tuesday, April 13; and 10 a.m.–10:15 a.m.; 12 p.m.–12:30 p.m.; and 2:45 p.m.–3:15 p.m. on Wednesday, April 14. All sessions will be held at the Sheraton Valley Forge Hotel, North Gulph Road and First Avenue, King of Prussia, Pennsylvania, 215–337–2000.

As discussed later in this notice, the workshop discussions will focus on the issues and approaches identified in a Rulemaking Issues Paper prepared by the NRC staff. The Commission will accept written comments on the Rulemaking Issues Paper from the public, as well as from workshop participants. Written comments should be submitted by May 28, 1993.

ADDRESSES: Send written comments on the Rulemaking Issues Paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The Rulemaking Issues Paper is available from Francis X. Cameron (See "**FOR FURTHER INFORMATION CONTACT**").

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to ensure the safe and timely decommissioning of nuclear facilities which it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Once licensed activities have ceased, licensees are required to decommission their facilities so that their licenses may be terminated. This requires that the radioactivity in land, groundwater, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then demonstrate that all facilities have been properly decontaminated and that radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

The types of nuclear fuel cycle facilities that will require decommissioning include nuclear power plants; non-power (research and test) reactors; fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. In addition there are currently about 24,000 materials licensees. About one third of these are NRC licensees, while the remainder are licensed by Agreement States acting under the authority of the Atomic Energy Act, section 274. These licensees include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 50% of NRC's 7,500 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities should be relatively simple because there is usually little or no residual radioactive contamination. Of the remaining 50%, a small number (e.g. radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations that could produce substantial radioactive contamination in portions of the facility. These facilities, like the fuel cycle facilities identified above, must be decontaminated before they can be safely released for unrestricted use.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and be decommissioned. Therefore, both the number and complexity of facilities that will require decommissioning is expected to increase.

The Commission believes that there is a need to incorporate into its regulations radiological criteria for termination of licenses and release of land and structures for unrestricted use. The intent of this action would be to provide a clear and consistent regulatory basis

for determining the extent to which lands and structures must be decontaminated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. A rulemaking effort would also provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

The new criteria would apply to the decommissioning of power reactors, non-power reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and materials licenses. The criteria would apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. The proposed criteria would not apply to uranium (other than source material) mines and mill tailings, high-level waste repositories, or low-level waste disposal facilities.

Until the new criteria are in place, the Commission intends to proceed with the decommissioning of nuclear facilities on a site-specific basis as the need arises considering existing criteria. Case and activity-specific risk decisions will continue to be made as necessary during the pendency of this process.

The Enhanced Participatory Rulemaking

The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning. Accordingly, the Commission is initiating an enhanced participatory rulemaking to establish these criteria. The objective of the rulemaking is to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the NRC staff develops the draft proposed rule. The NRC staff will consider this commentary in the development of the draft proposed rule, as well as document how these comments were considered in arriving at a regulatory approach. The Commission believes that this will be an effective method for illuminating the decision making process on complex and controversial public health and safety issues. This approach will ensure that the important issues have been identified; will assist in identifying potential information gaps or implementation problems; and will facilitate the development of potential solutions to address the concerns that affected interests may have in regard to the rulemaking.

The early involvement of affected interests in the development of the draft proposed rule will be accomplished through a series of workshops. A workshop format was selected because it will provide representatives of the affected interests with an opportunity to discuss the rulemaking issues with one another and to question one another about their respective positions and concerns. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement and disagreement, it is not the intent of the workshop process to attempt to develop a consensus agreement on the rulemaking issues. In addition to the commentary from the workshop participants, the workshops will be open to the public and the public will be provided with the opportunity to comment on the rulemaking issues and the workshop discussions at discrete intervals during the workshops.

The workshops were initially announced in the **Federal Register** on December 11, 1992 (57 FR 58727). The complete schedule for the workshops is:

January 27 and 28, 1993.	Chicago, Illinois.
February 23 and 24, 1993.	San Francisco, California.
March 12 and 13, 1993.	Boston, Massachusetts.
March 23 and 24, 1993.	Dallas, Texas.
April 13 and 14, 1993.	Philadelphia, Pennsylvania.
April 29 and 30, 1993.	Atlanta, Georgia.
May 6 and 7, 1993 ...	Washington, DC.

The normal process for conducting Commission rulemakings is NRC staff development of a draft proposed rule for Commission review and approval, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, and preparation of a draft final rule for Commission approval. In the enhanced participatory rulemaking, not only will comments be solicited before the NRC staff prepares a draft proposed rule, but the mechanism for soliciting these early comments will also provide an opportunity for the affected interests and the NRC staff to discuss the issues with each other, rather than relying on the traditional one-to-one written correspondence with the NRC staff. After Commission review and approval of the draft proposed rule that is developed using the workshop commentary, the general process of issuing the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

Participants

In order to have a manageable discussion among the workshop participants, the number of participants in each workshop must be limited. Based on discussions with experts on workshop facilitation, the NRC staff believes that the optimum size of the workshop groups is fifteen to twenty participants. Due to differing levels of interest in each region, the actual number of participants in any one workshop, as well as the number of participants that represent a particular interest in any one workshop, may vary. Invitations to attend the workshops will be extended by the NRC staff using several selection criteria. First, to ensure that the Commission has the benefit of the spectrum of viewpoints on the issues, the NRC staff is attempting to achieve the participation of the full range of interests that may be affected by the rulemaking. The NRC staff has identified several general interests that will be used to select specific workshop participants—state governments, local governments, tribal governments, Federal agencies, citizens groups, nuclear utilities, fuel cycle facilities, and non-fuel cycle facilities. In addition to these interests, the staff also plans to invite representatives from the contracting industry that performs decommissioning work and representatives from professional societies, such as the Health Physics Society and the American Nuclear Society. The NRC anticipates that most of the participants will be representatives of organizations. However, it is also possible that there may be a few participants who, because of their expertise and influence, will participate without any organizational affiliation.

The second selection criterion is the ability of the participant to knowledgeably discuss the full range of rulemaking issues. The NRC staff wishes to ensure that the workshops will elicit informed discussions of options and approaches, and the rationale for those options and approaches, rather than simple statements of opinion. The NRC staff's identification of potential

participants has been based on an evaluation of such factors as the extent of a potential participant's experience with a broad range of radiation protection issues and types of nuclear facilities, specific experience with the decommissioning issue, and the extent of a potential participant's substantive comment and participation on previous Commission regulatory or licensing actions.

The third criterion emphasizes participation from organizations within the region encompassed by the workshop. As much as practicable, those organizations that primarily operate within the region, as opposed to regional units of national organizations, will have priority in terms of participating in the corresponding regional workshops. Organizations with a national standing will be part of the "national" workshop to be held in Washington, DC.

Workshop Format

To assure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused on the Rulemaking Issues Paper discussed below. However, the workshop format will be sufficiently flexible to allow for the introduction of any additional issues that the participants may want to raise. At each workshop, the NRC staff will begin each discussion period with a brief overview of the rulemaking issues to be discussed and the remainder of the workshop will be devoted to a discussion of the issues by the participants. The workshop commentary will be transcribed and made available to participants and to the public.

Personnel from The Keystone Center, a nonprofit organization located in Keystone, Colorado, will serve as neutral facilitators for each workshop. The facilitators will chair the workshop sessions and ensure that participants are given an opportunity to express their viewpoints, assist participants in articulating their interests, ensure that participants are given the opportunity to question each other about their respective viewpoints, and assist in keeping the discussion moving at a pace that will allow all major issue areas to be addressed.

Rulemaking Issues Paper

The NRC staff has prepared a Rulemaking Issues Paper to be used as a focal point for the workshop discussions. This paper, which will be distributed to participants in advance of the workshops, sets forth in neutral terms the issues that must be addressed in the rulemaking, as well as background information on the nature and extent of the problem to be addressed. In framing the issues and approaches discussed in the Rulemaking Issues Paper, the NRC staff has attempted to anticipate the variety of views that exist on these approaches and issues. The paper will provide assistance to the participants as they prepare for the workshops, suggest the workshop agenda, and establish the level of technical discussion that can be expected at the workshops. The workshop discussions are intended to be used by the staff in developing the draft proposed rule. Prior to the workshops no staff positions will be taken on the rulemaking approaches and issues identified in the Rulemaking Issues Paper. As noted earlier, to the extent that the Rulemaking Issues Paper fails to identify a pertinent issue, this may be corrected at the workshop sessions.

The discussion of issues is divided into two parts. First are two primary issues dealing with: (1) The objectives for developing radiological criteria; and (2) application of practicality considerations. The objectives constitute the fundamental approach to the establishment of the radiological criteria, and the NRC staff has identified four distinct possibilities including: (1) Risk Limits, which is the establishment of limiting values above which the risks to the public are deemed unacceptable, but allows for criteria to be set below the limit using practicality considerations; (2) Risk Goals, where a goal is selected and practicality considerations are used to establish criteria as close to the goal as practical; (3) Best Effort, where the technology for decontamination considered to be the best available is applied; and (4) Return to Preexisting Background, where the decontamination would continue until the radiological conditions were the same as existed prior to the licensed activities.

Following the primary issues are several secondary issues that are related to the discussions of the primary issues, but which the NRC staff believe warrant separate presentations and discussions. These secondary issues include the time frame for dose calculation, the individuals or groups to be protected, the use of separate criteria for specific exposure pathways such as groundwater, the treatment of radon, and the treatment of previously buried materials.

The Rulemaking Issues Paper will be provided to each potential workshop participant. Additional copies will be available to members of the public in attendance at the workshop. Copies will also be available from the NRC staff contact identified above. In addition to the comments on the Rulemaking Issues Paper provided at the workshops, the Commission is also receptive to the submittal of written comments on the rulemaking issues, as noted under the heading "**DATES**".

Dated at Rockville, MD this 1st day of April, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–8111 Filed 4–6–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–15–AD]

Airworthiness Directives; Aerospatiale Model ATR72–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72–100 and –200 series airplanes. This proposal would require a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished; and, if necessary, a one-time general visual inspection of the fastener holes for peening or cracks, and modification or repair, as necessary. This proposal is prompted by a report that, during assembly, spotfacing of some fastener holes in the front and rear wing spar fittings was not performed on these airplanes. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing spar fittings.

DATES: Comments must be received by June 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m.,

Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale del'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72–100 and –200 series airplanes. The DGAC advises that, during assembly, spotfacing of some fastener holes at wing ribs 13 and 15 in the front and rear wing spar fittings was not performed on these airplanes. If spotfacing of the fastener holes in this area is not accomplished, cracks may develop and propagate at the fitting attachments. This condition, if not corrected, could result in reduced structural integrity of the wing spar fittings.

Aerospatiale has issued Service Bulletin ATR72–57–1008, dated November 19, 1992, that describes procedures for a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished. If if no spotfacing has been accomplished, a one-time general visual inspection of the fastener holes for peening or cracks is recommended, and modification, if necessary. The modification consists of installing a shim and replacing existing nuts with self-aligning nuts, which would preclude the possibility for the propagation of cracks at the fitting attachments. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–262–016(B), dated November 25, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished. If no spotfacing has been accomplished, a one-time general visual inspection of the fastener holes for peening or cracks would be required; and modification or repair, as necessary. The inspections and modification would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,470, or $770 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 93–NM–15–AD.

Applicability: Model ATR72–100 and –200 series airplanes on which Modification 3196 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing spar fittings, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection of the fastener holes on the front and rear wing spar fittings to ensure that spotfacing of the fastener holes has been accomplished, in accordance with Aerospatiale Service Bulletin ATR72–57–1008, dated November 19, 1992.

(1) If spotfacing of the fastener holes has been accomplished, no further action is required by this AD.

(2) If spotfacing of the fastener holes has not been accomplished, prior to further flight, perform a one-time general visual inspection of the fastener holes for peening or cracks, in accordance with the service bulletin.

(i) If no peening or crack is found, prior to further flight, install a shim and replace existing nuts with self-aligning nuts, in accordance with the service bulletin.

(ii) If any peening or crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 1, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8061 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–12–AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes. This proposal would require repetitive inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. This proposal is prompted by reports of fatigue cracking in the attachment lugs of the horizontal stabilizer that developed during fatigue testing conducted by the manufacturer. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the attachment of the horizontal stabilizer to the airplane.

DATES: Comments must be received by June 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Short Brothers, PLC, Model SD3–60 series airplanes. The CAA advises that, during fatigue testing conducted by the manufacturer on a Model SD3–60 series airplane, cracks developed in the attachment lugs of the horizontal stabilizer. Such cracking, if not detected and corrected, could result in reduced structural integrity of the attachment of the horizontal stabilizer to the airplane.

Short Brothers, PLC, has issued Service Bulletin SD360–55–19, dated January 18, 1993, that describes procedures for repetitive ultrasonic inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of

the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive ultrasonic inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 81 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $71,280, or $880 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 93–NM–12–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the attachment of the horizontal stabilizer to the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings on the horizontal stabilizer or within 3 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 4,000 landings, perform an ultrasonic inspection to detect cracking in the attachment lugs of the horizontal stabilizer in accordance with Shorts Service Bulletin SD360–55–19, dated January 18, 1993. If any cracked lug is found, prior to further flight, replace the lug with a serviceable part in accordance with the service bulletin and continue to inspect at intervals not to exceed 4,000 landings in accordance with this paragraph.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 1, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–8059 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AGL–6]

Proposed Transition Area Alteration, Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter the existing Pontiac, IL, transition area to accommodate a new VOR runway 24 Standard Instrument Approach Procedure (SIAP) to the new Pontiac Municipal Airport, Pontiac, IL. This proposal would also reflect the new location of Pontiac Municipal Airport by updating the airport's geographic position. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before May 25, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–6, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the existing Pontiac, IL, transition area to accommodate a new VOR runway 24 SIAP to the new Pontiac Municipal Airport, Pontiac, IL. This proposal would also reflect the new location of Pontiac Municipal Airport by updating the airport's geographic position.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AGL IL TA Pontiac, IL Revised]

Pontiac Municipal Airport, IL
(lat. 40°55'25" N, long. 88°37'32" W)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Pontiac Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on March 15, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–8084 Filed 4–6–93; 8.45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–5]

Proposed Transition Area Establishment, Fort Atkinson, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a transition area near Fort Atkinson, WI, to accommodate a new VOR–A instrument approach procedure to Fort Atkinson Municipal Airport, Fort Atkinson, WI. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before May 25, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–5, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Fort Atkinson, WI, to accommodate a new VOR–A instrument approach procedure to Fort Atkinson Municipal Airport, Fort Atkinson, WI.

The development of the procedure requires that the FAA establish the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

AGL WI TA Fort Atkinson, WI [New]
Fort Atkinson Municipal Airport, WI
(lat. 42°57'47" N, long. 88°49'04" W)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of Fort Atkinson Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on March 1[illegible] 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–8083 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Extension of time in which to submit comments on proposed amendments to the Appliance Labeling Rule.

SUMMARY: The Federal Trade Commission is seeking public comment on proposed amendments to the Appliance Labeling Rule that were published on March 5, 1993. The time for filing such comments has been extended by the Presiding Officer from April 19, 1993, to May 20, 1993.

DATES: Written comments will be accepted until May 20, 1993.

ADDRESSES: Comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Enforcement Division, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: By notice of March 5, 1993,[1] the Commission announced it was seeking public comment on proposed amendments to the Appliance Labeling rule, including a proposed new format for the Energy Guide labels the rule requires. Requests that the comment period be extended until May 20, 1993 have been filed by

[1] 58 FR 12818.

two participants. The Commission's staff does not oppose the requested extension of time. In light of the foregoing, the Presiding Officer has extended the period for the receipt of such comments to May 20, 1993.

Lewis F. Parker,

Chief Presiding Officer.

[FR Doc. 93–8130 Filed 4–6–93; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits; Reopening of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: On April 13, 1992, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of Proposed Rulemaking relating to Commission-set speculative position limits. 57 F.R. 12766. Based upon its consideration of the comments received and upon its independent analysis, the Commission, elsewhere in this issue of the **Federal Register**, is promulgating interim final rules amending Federal speculative position limits.

The interim final rules adopted by the Commission differ from the proposed rules by increasing the position limit levels to less than originally proposed and by phasing-in the implementation of these increases in two steps; the first to take effect in sixty days and the second to take effect as of March 31, 1994. The originally-proposed speculative position limit levels remain pending. The Commission will make a final determination on these proposed levels after having had an opportunity to observe the impact of these two interim, phased increases.

In light of the apparent widespread interest in the proposed revisions to these rules, and because it wishes to ensure that all interested parties have an adequate opportunity to submit informed comments, especially with regard to the actual experience in implementing these two interim increases, the Commission is reopening the comment period concerning the originally proposed speculative position limit levels, on March 31, 1994. This coincides with the beginning of the second interim increase to speculative position limits. The Commission will consider whether to adopt the proposed speculative position limit levels as final shortly after the comment period closes on April 30, 1995.

DATES: The comment period on the pending, proposed levels will reopen on March 31, 1994 through April 30, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Revision of Federal Speculative Position Limits."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

Issued in Washington, DC, this 30th day of March, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–8133 Filed 4–6–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0075]

RIN 0905–AC48

Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to exempt food that purports to be a beverage that contains any fruit or vegetable juice from the requirement that the label of the food bear a statement on the information panel as to the percentage of juice contained in the food. The proposed exemption is for 1 year. If the agency adopts this exemption, such food will not have to bear a percent juice declaration until May 8, 1994. This proposal is in response to requests from industry for such an exemption on the grounds that compliance with this requirement by May 8, 1993, will cause such great costs to the industry as to be impracticable and result in unfair competition.

DATES: Written comments by May 7, 1993. The agency proposes that any final rule that may issue based on this proposal become effective on the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Submit written comments, data or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2897), FDA published a final rule amending the food labeling regulations to establish in § 101.30 (21 CFR 101.30) requirements for label declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. The agency also revised the existing common or usual name regulation for diluted fruit or vegetable juice beverages in § 102.33 (21 CFR 102.33). In addition, the agency revoked the common or usual name regulations for noncarbonated beverage products that contain no fruit or vegetable juice, § 102.30 (21 CFR 102.30), and for diluted orange juice beverages, § 102.32 (21 CFR 102.32). This final rule was part of FDA's ongoing rulemaking on juices and juice beverages. It also responded to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), which amended section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) to provide that foods that purport to be beverages containing vegetable or fruit juice must bear a statement with appropriate prominence on the information panel of the label of the total percentage of such fruit or vegetable juice contained in the food.

In the percent juice labeling proposal, which published in the **Federal Register** of July 2, 1991 (56 FR 30452), FDA proposed November 8, 1991, as the effective date for the percent juice labeling requirements, consistent with section 10(c) of the 1990 amendments. However, comments from the food industry strongly urged FDA to adopt a different effective date. These comments maintained that the November 8, 1991, effective date would not allow the food industry enough time to develop the required labeling and would significantly increase costs because the present label inventory would have to

be discarded. The comments also urged FDA to make the effective date of the percent juice declaration requirement consistent with the effective date of the regulations implementing the mandatory nutrition labeling (section 403(q) of the act) and health and nutrient content claims (section 403(r) of the act) provisions of the act, which were also added by the 1990 amendments. Although FDA agreed with the comments, it had no authority to extend an effective date that was established by statute.

On August 17, 1991, Congress amended the 1990 amendments to delay the effective date of the percent juice labeling requirements (Pub. L. 102–108). Notice of this change in the effective date was given in the **Federal Register** of November 27, 1991 (56 FR 60877). Under this amendment, the percent juice labeling requirement for fruit and vegetable juice beverages applies to labels attached to these products after May 8, 1993.

The agency received a comment to the percent juice labeling proposal requesting a temporary exemption from the May 8, 1993, statutory effective date established by Public Law 102–108 (see the discussion in comment 60 of the January 6, 1993, final rule (58 FR 2897 at 2923)). The comment requested that the requirement for percent juice declaration on the labels of beverages purporting to contain juice be implemented concurrently with any later date that the agency may prescribe under section 10(a)(3)(B) of the 1990 amendments for the application of the nutrition labeling and nutrient content claim provisions of the act. The comment suggested that the effective date for the percent juice declaration be delayed on the basis of the proviso in section 403(i) of the act that "to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary." The comment cited case law and previous FDA policy as precedent for the requested temporary exemption.

The agency, at that time, was not persuaded by the arguments and assertions presented in the request for a temporary exemption from the statutory compliance date of May 8, 1993, for the requirement of percent juice declaration. However, the agency acknowledged that section 403(i) of the act provides authority for an exemption, and that it has provided some exemptions in the past. The agency noted that Congress had twice specifically considered when the requirement for percent juice declaration should be effective, and that Congress had failed to include a provision for a delay of the application of this provision in the 1990 amendments, in contrast to the provision that it had made for such a delay for the nutrition labeling and nutrient content claims provisions (58 FR 2897 at 2924, January 6, 1993). In addition, the agency noted the absence of any indication in the legislative history of the 1990 amendments that Congress wished to delay the implementation of percent juice declaration on beverages purporting to contain juice (58 FR 2897 at 2924). Based on these factors, the agency concluded that a temporary exemption based on section 403(i) of the act was not appropriate. However, because the amendments to the common or usual name regulations in part 102 (21 CFR part 102) were not directly responsive to the 1990 amendments (which amended section 403(i) of the act), and in order to minimize costs, FDA established May 8, 1994, as the effective date for the amendments to the common or usual name regulation for juice beverages (58 FR 2897 at 2924).

II. Requests for Exemption

Since issuance of the January 6, 1993, final rule on percent juice labeling, FDA has received letters from the National Food Processors Association (NFPA), Washington, DC, the Processed Apples Institute, Inc. (PAI), Atlanta, GA, and two firms that produce labels and printed containers for the beverage industry that requested that FDA delay the announced effective date of May 8, 1993, to May 8, 1994, the date on which the common or usual name regulations for juice beverages (§ 102.33), the nutrition labeling regulations (§ 101.9 (21 CFR 101.9)), and other related regulations are effective. These requests assert that the May 8, 1993, effective date will result in such excessive costs that it will be impracticable for most companies to make the labeling change in a timely manner, and that it will put the juice and juice products industries at a competitive disadvantage by limiting the products that they can market.

The letter from NFPA (Ref. 1) contains a report of a survey that it initiated on January 14, 1993, with members of the NFPA Juice Products Technical Committee. The committee consists of representatives of 28 companies that manufacture foods that purport to be beverages that contain fruit or vegetable juice. The companies ranged from relatively small firms, with a few million dollars per year in annual sales, to multi-billion dollar corporations.

The association stated that as of January 19, 1993, a total of 19 companies, or 68 percent of the survey population, had responded. Companies responding account for about 67 percent of the national processed juice market and about 50 percent of the domestic processed juice product market. The products represented include canned, aseptically packaged, refrigerated, and frozen fruit juices, vegetable juices, diluted juice products, and blended juices. NFPA noted that the reported products do not include all products that will be subject to percent juice declarations, such as flavored carbonated beverages that may purport to contain juice by use of a label vignette or advertising images. In addition, NFPA stated that products packed on site in produce departments of retail markets, supermarkets, and other food retail establishments are outside the scope of the survey.

According to NFPA, the companies responding to its survey have a total of 550 juice and juice beverage products that will be affected by the percent juice label declaration requirement. The 19 responding companies will have to change a total of 9,466 labels, of which 8,087 are private labels.

NFPA reported that the survey data show that the costs of complying with the May 8, 1993, effective date for percent juice labeling will exceed $388 million. Contributing to the costs are: (1) The more than 741 million labels or packages (individual units) that must be discarded due to the May 8, 1993, date, resulting in a dollar value of approximately $53 million; (2) $181 million for returns from the trade for beverages in distribution before May 8, 1993, that the trade may refuse because it does not bear percent juice labeling; and (3) total dollar costs of $154 million to redesign and reprint a 6-month working supply of juice product labels.

NFPA explained that the large volume of labels and printed containers that must be discarded and the high costs result from several factors:

First, the survey respondents conduct a great deal of private label business and maintain an average of 15 labels per product to cover their private label accounts.

Second, many juice beverages are not seasonal in nature, and a fairly high level of packing inventory is needed to maintain continuing business.

Third, for certain seasonal products, in particular those using domestic citrus fruit, the season is now in progress. Some products cur.ently in production may not be able to enter into interstate

commerce before May 8, 1993. NFPA maintained that this delay may necessitate destruction not only of the label or printed package, but of the beverage contents of the package on or after May 8, 1993, because these products may not be perceived as current production.

The association stated that the new data illustrate the impracticability of complying with the short compliance period for percent juice label declarations and demonstrate that the juice beverage industry will be placed at a serious competitive disadvantage with respect to other beverage industries that will not be required to assume these costs.

NFPA noted that, despite good faith efforts to comply with the May 8, 1993, effective date for percent juice labeling, none of the 19 firms responding to the NFPA survey reported that they can take delivery of a 6-month replacement inventory of labels or packages for their affected products by the effective date. However, about 40 percent of the responding firms stated that they can replace a working level of label or package inventory some time in June 1993. Some firms, chiefly those with many private label accounts, indicated that the process of label and package inventory replacement will not be complete until 1994.

NFPA noted that the estimated delivery dates are based on the presumption that survey respondents will convert their labels to comply with percent juice labeling only. The estimated dates do not represent the dates that juice product companies could also take delivery of labels or printed packages that comply with mandatory nutrition labeling regulations, which will entail more extensive label redesign and longer timeframes. It further noted that the estimated delivery dates are for labels and printed packages and do not represent the dates that goods in commerce would be in compliance.

According to NFPA, anecdotal information from label and package suppliers to the juice and beverage industry underscores the impracticality of the May 8, 1993, deadline. These suppliers have stated that despite their best efforts to fulfill their customers' orders, they are unable to promise delivery of new labels and printed packages before the May 8, 1993, deadline. Several suppliers have stated that even with skilled craftsmen, such as film technicians and cylinder engravers, each working around the clock for the next 16 weeks, the volume of work to be completed is so vast that it simply cannot be accomplished in time for the May 8, 1993, effective date for percent juice labeling.

The PAI letter (Ref. 2) stated that private label packers are in jeopardy because of the wide variety of products that they pack for a multiplicity of customers. Each of these customers usually has products packed in several sizes and flavors. PAI reported that the private label packers are responsible for ensuring that the label complies with applicable Federal and State regulations, but that it was virtually impossible to prepare to comply with section 403(i)(2) of the act until the final rule was published. PAI noted that one of its smaller members has 1,564 stock keeping units (SKU's) that require changes. If this firm were to meet the May 1993 deadline, it would have to scrap 48 million labels. More importantly, PAI stated, their inability to replace all of these labels in the short compliance period will cause them to lose business to competitors, resulting in a gross loss of some $10 million between May 1993 and May 1994.

FDA also received letters from two producers of labels and packages used by juice products manufacturers who requested that the agency postpone the effective date until May 8, 1994. One manufacturer of lithographed cans pointed out that the beverage can industry is seasonal, and that the plurality of sales in the United States takes place during the summer months, between May and September. It stated that depending on individual customer specifications, storage and transportation logistics, and the orders received from various beverage packers, plants must produce cans as far as 9 months in advance. Hence, many of the beverage cans to be sold after May 8, 1993, were produced as early as September 1992, more than 3 months before the issuance of the percent juice labeling final rule. It maintained that while these cans were in conformity with FDA regulations at the time of production, they will be out of compliance at the time of their sale if an extension of the percent juice labeling requirement is not provided.

The comment also pointed out that given the short time for compliance of 4 months, manufacturers cannot possibly replace all of their lithographs according to the needs of their customers (who will need time themselves to redesign their labels) quickly enough to ensure that cans produced after May 8, 1993, will conform to the new percent juice labeling requirement. In addition, the comment maintained, not providing for a postponement of the effective date of § 101.30 will cost the can manufacturers and their customers untold dollars to dispose of cans already produced.

A comment from another firm, requesting a delay in the effective date for percent juice labeling, stated that economic impact on that firm is prohibitive because of the costs of destroying labels and of developing new labels twice in 1 year to comply both with the May 8, 1993, date for percent juice labeling and the May 8, 1994 date, for the other food labeling regulations issued under the 1990 amendments. The comment added that it may have to withdraw from sale to their small wholesalers and retailers their entire juice product line because the firm cannot afford the cost.

FDA acknowledges that the short time period for compliance with the percent juice labeling requirements, by May 1993, and the different effective date for nutrition labeling and other food labeling changes, by May 8, 1994, will increase costs to manufacturers substantially. Therefore, the agency has evaluated the economic impact of an exemption.

III. Economic Impact

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking.

The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

In the proposal to require label declaration of percentage juice, published in the **Federal Register** of July 2, 1991 (56 FR 30452), FDA determined that the costs of the proposed requirements would be $40 million, based on a 6-month compliance period. FDA received no comment on the original proposal objecting to its determination of the costs. Therefore, in the final Regulatory Impact Analysis (RIA), published in the **Federal Register** of January 6, 1993 (58 FR 2927), FDA did not amend its original estimate of the costs of declaring percentage juice.

NFPA, in its comments requesting a 1-year exemption from complying with the new percent juice labeling requirements (Ref. 1), presented estimates of costs that far exceed FDA's

original estimate of $40 million. The agency's estimates were based on a study conducted by Research Triangle Institute for FDA (Ref. 3). This study consisted of both interviews with food manufacturers and a mailed survey.

The agency notes that although its estimates were based on a 6-month compliance period, firms actually will have only 4 months to comply with the percent juice labeling requirement. The agency, therefore, has reviewed the data and amended its estimate of the costs associated with a 4-month compliance period. The cost of administrative activities are estimated to be $1 million for a 4-month compliance period. Analytical costs are estimated to be $300,000 and are not dependent on the length of the compliance period. Label inventory disposal costs are estimated to be approximately $18 million for a 4-month compliance period. Incremental printing costs, most accurately described as redesign costs, are estimated to be $32 million. Therefore, total administrative, analytical, printing, and inventory disposal costs of the declaration of percent juice requirements are approximately $52 million for a 4-month compliance period.

In addition, juice product manufacturers are required to comply with common or usual name regulations, nutrition labeling, nutrient content claims, and other requirements of the 1990 amendments by May 8, 1994. Juice product manufacturers will incur an additional $19 million to change their labels in response to these other labeling regulations.

The agency believes that, because of the demand on the printing industry caused by the 1990 amendments, it is unlikely that most juice product manufacturers will be able to change their labels to comply with all labeling requirements by May 8, 1993. Therefore, juice products manufacturers would be expected to change labels twice—first, to comply with percent juice declaration requirements by May 8, 1993, and again, 1 year later, to comply with all other label requirements. The effect of the two dates is to place juice products at a competitive disadvantage with respect to other beverage products, as other beverage industries will not be forced to relabel their products twice.

FDA notes that NFPA reported both costs of replacing labels that are destroyed and the value of the destroyed label inventory. As stated in the final RIA, disposed label inventory is valued at its replacement cost. Therefore, to include both the costs of labels ordered to replace existing inventory and the value of the destroyed label inventory would be double counting. For this reason, FDA considers NFPA's estimate of $154 million in printing costs for a 4-month compliance period to be overstated.

NFPA also estimated that juice products not labeled in compliance with current regulations, valued at approximately $181 million, would be rejected by distributors and returned to the manufacturer. Products labeled before May 8, 1993, are not subject to the percent juice declaration requirements. Therefore, FDA will not require the destruction of any juice products labeled before that date. However, respondents to NFPA's survey explained that some distributors may perceive that these products are not current production and not saleable. These distributors would return the product to the manufacturer. While some products may be returned, the agency is convinced that costs of returns are likely to be small. Although some distributors may not accept products without the new labeling, certainly not all distributors will do so. Thus, manufacturers most likely will be able to sell the returned product to the same or other distributors at the same or a reduced price.

The agency considers it unlikely that many products actually will be destroyed as a result of this rule. Although a lower price results in reduced profits for manufacturers, such lower profits are not a societal cost, i.e., a use of real resources. Instead, these reduced profits are viewed as a transfer between producers and distributors.

Upon consideration of the estimates provided by NFPA, the agency has amended its estimates of the costs of complying with the requirements of the percentage juice regulations by May 8, 1993. FDA believes that its estimate of costs may have been understated. FDA estimates that declaration of the percent of juice in beverage products by May 8, 1993, would cost manufacturers approximately $52 million.

However, because FDA is proposing to provide a temporary exemption from the effective date of the requirements for percent juice declaration until May 8, 1994, as explained below, manufacturers will be able to coordinate these changes with other mandated label changes. Therefore, this proposal would reduce the incremental costs of declaring the percent of juice in beverage products by $51 million in direct costs. Thus, the cost that manufacturers of juice products will incur if they are exempted from the effective date of the percent juice declaration to May 8, 1994, is approximately $1 million. This regulation is expected to reduce the benefits of percent juice labeling only slightly. FDA expects that many manufacturers will provide labeling prior to the effective date. Also, it is unlikely that many consumers will alter juice consumption patterns during this interim if the information is provided.

IV. The Proposal

Based on the new information about the costs and difficulties of complying with percent juice labeling that was submitted in the letters from NFPA, PAI, and label and container manufacturers, FDA has reconsidered its determination not to exempt juice products from this requirement. After reconsideration, FDA has determined that it is appropriate to propose an exemption from the May 9, 1993, effective date of the percent juice labeling requirements for the following reasons: As stated above in the economic impact assessment, the NFPA survey data show that compliance by May 8, 1993, is impracticable and will result in unfair competition. According to NFPA, the juice industry will incur substantial costs because it will need to discard labels, packages, and cans after May 8, 1993, and redesign and print new labels and packages that bear percent juice declaration in accordance with new § 101.30. Although some manufacturers may have products returned, as explained in the economic discussion, because the requirement does not apply to goods labeled before May 8, 1993, these returns are not appropriately considered in a determination of whether compliance is impracticable, or whether it would cause unfair competition. Despite the substantial difference in FDA's estimated costs for compliance with percent juice labeling compared to those provided by NFPA ($51 million versus $388 million), the agency is concerned that the regulations not burden any segment of the industry needlessly or unfairly. FDA estimates that if the effective date is postponed for 1 year, until May 8, 1994, the costs of the requirements would be only approximately $1 million, significantly less than either estimate.

In addition to costs, the question of impracticability is directly affected by the ability of suppliers to provide new labels and packages for juice products to meet the short effective date. NFPA stated that the capacity of label and package suppliers to produce the necessary labels is a serious concern, especially for direct labels on such packages as composite containers and laminated aseptic boxes. It noted that one supplier with a lot of business in

aseptic beverage packaging estimates that it would take them over 200 working days to process all changes to their beverage packages (Ref. 4). There are less than 80 days until May 8, 1993. Thus, NFPA stated that many juice product companies will fail to meet the May 8, 1993, effective date for percent juice declarations on some or all of their juice products. This could result in juice being withheld from the market.

The agency recognizes that some manufacturers may need to change labels twice—first, to comply with percent juice declaration requirements by May 8, 1993, and later to comply with the mandatory nutrition labeling and other new labeling requirements by May 8, 1994. The early effective date for juice product labels places manufacturers of these affected juice products at a competitive disadvantage with respect to manufacturers of other beverage products (e.g., soft drinks, tea, and coffee) that will not have to relabel their products twice.

The need for additional time for the industry to comply has also been noted by a Senator and two Congressmen in a letter to the agency, dated January 25, 1993 (Ref. 5). Although the Congressmen did not suggest a new effective date for compliance with percent juice labeling, they urged to agency to act promptly on NFPA's request.

The agency tentatively finds that providing an exemption from the effective date until May 8, 1994, will allow manufacturers sufficient time to efficiently redesign and print their labels to provide for percent juice labeling. It will enable manufacturers to make such changes at the same time as changes are made for compliance with the other new food labeling regulations issued under the 1990 amendments, such as nutrition labeling. It will also reduce the unfair competitive effects of the regulation and allow all segments of the beverage industry to compete on a more equitable basis. Further, as discussed above, the agency does not believe that the delay in effective date will result in a significant reduction in consumer benefits to be derived from this regulation. Thus, after considering the new information on direct costs to the juice beverage industry to comply, as well as the shortened time for compliance and its effect on manufacturers' ability to obtain revised labels and printed packages for all affected juice products, FDA tentatively concludes that a temporary exemption from the May 8, 1993, effective date under section 403(i) of the act based on impracticability and unfair competition is warranted. Therefore, FDA is proposing to amend § 101.30 to add § 101.30(m), which exempts beverages that purport to contain fruit or vegetable juice from the requirements of the percent juice labeling regulations until May 8, 1994.

The agency recognizes that some juice products may be labeled before the proposed new effective date of May 8, 1994, and not bear percent juice declarations but will still be in the distribution channels on or after that date. Thus, FDA is proposing to provide in the exemption for those products, provided that the manufacturer can demonstrate that the juice products were actually labeled before May 8, 1994. Finally, because of the imminence of May 8, 1993, FDA is proposing to make any final rule resulting from this proposal effective on the date of publication.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter to David Kessler, Commissioner of Food and Drugs, from Lester M. Crawford, Executive Vice President, Scientific Affairs, NFPA, Washington, DC, January 19, 1993.

2. Letter to David Kessler, Commissioner of Food and Drugs, from Larry C. Davenport, Executive Director, PAI, Inc., Atlanta, GA, January 7, 1993.

3. Research Triangle Institute Compliance Costs of Food Labeling Regulations, FDA Contract #223–87–2097, Project Officer—Richard A. Williams, Jr., December 1990.

4. Letter to David Kessler, Commissioner of Food and Drugs, from John R. Cady, President, NFPA, Washington, DC, January 11, 1993.

5. Letter to David Kessler, Commissioner of Food and Drugs, from Henry A. Waxman, U.S. House of Representatives; Howard M. Metzenbaum, U.S. Senate; and Thomas J. Bliley, Jr., U.S. House of Representatives, January 25, 1993.

VII. Request for Comments

Interested persons may, on or before May 7, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency concludes that a shortened comment period of 30 days is necessary to ensure prompt publication of final regulations because of the nearness of the effective date. Because of the urgency of issuing final regulations, the agency is announcing that it will be unable to extend the comment period. Further, the agency may not be able to consider untimely comments, i.e., those comments received after May 7, 1993.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.30 is amended by adding new paragraph (m) to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

* * * * *

(m) Products purporting to be beverages that contain fruit or vegetable juices are exempted from the provisions of this section until May 8, 1994. All products that are labeled on or after that date shall comply with this section.

Dated: March 25, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–8073 Filed 4–6–93; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4611–3]

Open Meeting of the Disinfection By-Products Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Disinfection By-Products Negotiated Rulemaking Advisory Committee will meet on April 29–30 to develop consensus that can be used as the basis of a proposed rule.

DATES: On April 29, the meeting will start at 9:30 a.m. and go til completion. On April 30, the meeting will start at 9 a.m. and go til completion though we'll do our best to end by 4 p.m.

ADDRESSES: The Committee will meet at The Quality Hotel, 415 New Jersey Avenue, NW., Washington, DC 20001, [202] 638–1616.

FOR FURTHER INFORMATION CONTACT: For further information on substantive aspects of the rule, call Stig Regli of EPA's Water Office at [202] 260–7379. For further information on the meeting, call Gail Bingham, the Committee Co-Chair, at [202] 778–9632.

Dated: April 2, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–8126 Filed 4–6–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Ch. I

[FRL–4611–6]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Arlington, Virginia to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on April 22–23. On April 22, the meeting will start at 10 a.m. and run until 6 p.m. On April 23, it will start at 8 a.m., and end by 3 p.m.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, Arlington, Virginia, 22204, (703) 521–2122.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919–541–5408. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–468–5822.

Dated: April 2, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–8124 Filed 4–6–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 238

[FRL–4547–5]

RIN 2050–AD09

Degradable Ring Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this proposal in response to Pub. L. 100–556, which in general requires that plastic ring carriers (for bottles and cans) be made of degradable material. Such ring carriers must be processed from a material that, in addition to performing its intended function of carrying beverages, degrades quickly and does not pose a greater threat to the environment than nondegradable materials. Currently, all ring carriers, as defined by Pub. L. 100–556, on the world market are processed from a photodegradable resin.

The Agency has chosen to propose a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. The proposed performance standard includes three factors: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. This performance standard will allow the processors of ring carriers the flexibility needed to use new technology that degrades differently than the current photodegradable technology.

DATES: Comments on this proposed rule must be submitted on or before May 7, 1993.

ADDRESSES: Persons who wish to comment on this notice must provide an original and two copies of their comments, include the docket number (F–93–DPRP–FFFFF), and send them to EPA RCRA Docket (OS305), U.S. EPA, 401 M Street SW., Washington, DC 20460. The background materials for this regulation are available for viewing at the RCRA Information Center (RIC), room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. The RIC is open from 9 to 4 Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost $.15 per page.

FOR FURTHER INFORMATION: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424–9346. In the Washington, DC metropolitan area, call (703) 412–9810. For information regrading specific aspects of this notice, contact Tracy Bone, Office of Solid Waste (OS–301), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260–5649.

SUPPLEMENTARY INFORMATION:

I. Authority
II. Background
  A. Mechanisms of Degradation
  B. Factors Affecting Degradation
  C. State Laws
  D. Other Programs and Investigations Concerning Degradable Plastics
III. EPA's Proposed Findings
  A. Feasibility of Producing Degradable Ring Carriers
  B. Comparison of Threats from Nondegradable Ring Carriers to Degradable Ring Carriers
IV. Approach to This Proposed Ring Carrier Standards
V. Major Issues
  A. Definition of Degradable
  B. Physical Endpoint for Degradation
  C. Time Limit for Degradation
  D. Environmental Conditions for Degradation
  E. Applicability and Compliance
  F. Recycling
VI. Enforcement and Effective Date
VII. Administrative Designation and Regulatory Analysis
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
VIII. References

I. Authority

The U.S. Environmental Protection Agency (EPA) is proposing this rule under the authority of sections 101, 102, and 103 of Public Law 100–556 (the "Act" or "Statute"). Although this statute has been codified in Subtitle B of the Resource Conservation and Recovery Act (42 U.S.C.A. 6914b and 6914b–1), it does not amend RCRA. In section 101 of this law, Congress found that: (1) Nondegradable plastic ring carrier devices have been found in large quantities in the marine environment; (2) fish and other wildlife have become entangled in such ring carriers; (3) such ring carriers can remain intact in the

marine environment for decades, posing a threat to fish and other marine wildlife; and (4) sixteen states (as of 1988) had enacted laws requiring that ring carriers be made of degradable material in order to reduce litter and protect fish and wildlife. Since passage of the Act, eleven additional states have passed laws of this kind.

As a result of these findings, Congress required EPA under section 103 of the Act to promulgate a rule that would require that plastic ring carriers (as defined in section 102(1)) be made of "naturally degradable material which, when discarded, decomposes within a period established by such regulation." 42 U.S.C. 6914b–1. The period to be established under the rule for such decomposition or degradation is to be "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." *Id.* Section 102(2) of the Act defines "naturally degradable material" to mean a "material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis." 42 U.S.C. 6914b(2). EPA, however, may not require the use of a degradable ring carrier if it is not "feasible" or if the degradable ring carriers present greater threats to the environment than nondegradable ring carriers. 42 U.S.C. 6914b–1.

II. Background

Concern about the disposal of plastic materials dates back to the early 1970s. Degradable plastics were seen by some as a solution for the problems of littering, landfill capacity, and wildlife entanglement and were developed for agricultural uses (mulch film, seedling pots) as well as medical applications (sutures, implants).

The mechanisms of plastics degradation have been understood for many years. Plastics scientists traditionally have worked to inhibit the degradative processes to make plastic products more durable. In the 1970s, in response to public concern regarding solid waste management, scientists used their understanding of plastics degradation to develop an array of degradable plastics. Virtually all of these products are made of materials developed in the 1970s.

Renewed public concern over solid waste management and resource conservation in the past few years has been met by a resurgence of corporate and academic research into degradable plastics, and by the commercialization of various products designed to degrade. Specifically, there has been great interest in finding degradable plastics made from non-petroleum-derived materials.

The Agency is unable to determine if naturally-derived plastics have less impact on the environment than the petroleum-derived degradable plastics in use for ring carriers because, as explained below, industry has not developed any naturally-derived degradable plastics that can function as a ring carrier (as defined in Pub. L. 100–556) for the Agency to analyze. The Agency has written this rule based on data available for the photodegradable, petroleum-based plastic currently used for ring carriers; however, it does not intend to impose any barriers to new plastic technology.

A. Mechanisms of Degradation

Plastics are polymers (chemicals made of repeating subunits) most often derived from petroleum (referred to here as "synthetic plastics"). There are plastics derived from other natural materials that have many of the same properties as synthetic plastics and have been used to make degradable products. Starch, for example, is a naturally-derived plastic that may include over 10,000 linked subunits. Starch has been blended with synthetic plastics to form garbage bags that fall apart as the starch degrades. Lactic acid is used to make surgical sutures that degrade within the body after the incision has healed.

Plastics degrade by a number of different physical and chemical processes. In photodegradation, light causes physical changes that cause the plastic to become brittle and crumble into small pieces. Fragments may range in size from several centimeters in diameter to invisible macromolecular particles.

The molecular structure of the plastic is not changed.

Plastics may also be designed to be completely broken down and assimilated into the environment. These plastics differ from those that undergo photodegradation in that chemical changes occur in the structure of polymer molecules, and the ultimate products are different from the original plastic. This chemical breakdown and alteration may be caused by one of a number of processes, including chemical reactions with natural compounds (*e.g.*, dissolution by naturally-occurring acids) and biological activity (*e.g.*, biodegradation). Degradable plastics also may be designed to combine degradation processes; they may break down to smaller fragments due to photodegradation and then rely on biodegradation to complete the process. For the purposes of this regulation, "biodegradable plastic" is meant to describe any plastic that is intended to completely assimilate into the environment regardless of the derivation of the material or the combination of degradation processes involved in assimilation. In this notice EPA will use the term "degradable plastics" to include photodegradable, and biodegradable plastics as well as plastics that degrade by any other means. EPA requests comments on the definitions in this section.

Synthetic plastics typically cannot be assimilated by living organisms; consequently, they are usually not biodegradable. Biodegradation, however, is the most common degradation process for naturally-derived products.

B. Factors Affecting Degradation

Two key factors affecting degradation are the time required for degradation, and the environment in which degradation takes place. Given enough time or a harsh enough environment, all materials, including plastics not designed to degrade, will degrade. A meaningful definition of degradability must include a time limit that is appropriate for the planned use and targeted method of disposal for specific degradable products. The time limit varies significantly for degradable products designed for different end uses. For example, surgical sutures may be required to degrade in a few days, while an agricultural mulch film may have a desired life of several months prior to its degradation.

Environmental conditions also play a critical role in controlling degradation. The rate of biodegradation is primarily determined by temperature, moisture, and the presence of oxygen. For example, biodegradation is very slow in municipal solid waste landfills since these facilities are engineered to exclude water and air. In desert environments, the absence of water retards biodegradation. In northern climates, temperature is typically the factor that controls biodegradation rates. The intensity and wavelengths of light, are the most important factors in determining the rate of photodegradation. Light intensity and wavelength also play roles in some types of biodegradation. Since landfills exclude light, photodegradable plastics do not degrade quickly in landfills.

C. State Laws

In 1977, the State of Vermont enacted the first law banning the use of nondegradable ring carriers. By the end

of 1991, 27 states have passed legislation specifically prohibiting the sale of nondegradable ring carriers. State legislation typically is written to prohibit the sale of nondegradable ring carriers by retail stores. Most of these states indicated that the primary purposes for adopting the legislation were to promote litter reduction and to address wildlife entanglement concerns. The states that have adopted legislation banning nondegradable ring carriers, the dates the legislation took effect, the time limit required for degradation under each state law, and allowable mechanisms for degradation, are listed in reference 26.

D. Other Programs and Investigations Concerning Degradable Plastics

Reflecting the significant public and legislative interest in the use of degradable plastics, a number of organizations have addressed the issues related to degradable plastics in the past few years. These organizations include EPA, the U.S. General Accounting Office, the Congressional Office of Technology Assessment, the U.S. Food and Drug Administration (FDA), the U.S. Federal Trade Commission (FTC), the National Institute of Standards and Technology, the American Society for Testing and Materials (ASTM), the Department of Defense, and many state and local governments. Except for EPA, ASTM, and the Department of Defense, the organizations and states addressing degradable plastics issues are focusing more on litter and landfill capacity problems than on the risk to marine mammals or on degradation in the marine environment.

The ASTM D–20 committee (Ref. 1) has developed standards for testing degradable plastics under certain environmental conditions (including photodegradation and composting). They are working on a test to simulate and measure degradation under marine conditions. Further discussion of ASTM's efforts concerning degradability is found in section V.

The Department of Defense is working on biodegradable plastics. The U.S. Army Natick Research Development & Engineering Center and its Biodegradable Packaging Program is working on ways to help the Navy control its disposal of packaging wastes at sea (Ref. 2). The major emphasis of the program is to develop biodegradable materials and products, such as drinking cups, food wraps, and eating utensils, using starch-based materials.

FTC has issued guidance (Ref. 3) which applies to anyone making an environmental claim that a product is degradable. FDA is responsible for reviewing product petitions designed for food packaging, including any product that may come in contact with food that may be degradable. Neither organization intends to provide testing standards for degradable plastic products.

III. EPA's Proposed Findings

A. Feasibility of Producing Degradable Ring Carriers

The statute requires the Agency to require the use of degradable ring carriers unless it determines that manufacture of the ring carriers would not be "feasible." To make this determination, EPA examined the ring carrier industry, which produces the degradable resin currently being used in ring carriers.

Plastic ring carriers used to package multiple bottles and cans were first manufactured in the early 1960s. Both the design for these ring carriers and the machinery used to apply the ring carriers are patented by Illinois Tool Works, Inc. (ITW).

In the past, ring carriers were made exclusively from low density polyethylene (LDPE). In the 1970s, several state legislatures enacted laws requiring ring carriers to be degradable. Ethylene carbon monoxide, (E/CO) a photodegradable resin, was developed by Eastman Chemical in the 1940's and commercialized by Du Pont Chemical. In the late 1960's, anticipating litter concern over the ring carrier, ITW Hi-cone produced for use a ring carrier made from E/CO. Use of photodegradable ring carriers expanded throughout the 1970s and 1980s as additional states adopted laws banning nondegradable ring carriers. Today, all ring carriers, as defined by Pub. L. 100–556, on the world market are processed from E/CO resin (Refs. 4 through 6).

E/CO is produced by incorporating carbon monoxide into the plastic chain of polyethylene. E/CO degrades when ultraviolet radiation is absorbed by the carbon monoxide molecules, causing a cleavage in the co-polymer chain (Ref. 1). Aside from the photodegradability of E/CO, its general properties and processing characteristics are almost identical to LDPE (Ref. 7).

Three industry segments participate in the manufacture and use of ring carriers: (1) Resin suppliers; (2) processors, who manufacture ring carriers from plastic resin and market them to end users; and (3) consumers of ring carriers, including manufacturers and bottlers of beverages (and some other products) that are packaged with ring carriers. Fifty to 75 million pounds of plastic resin (Refs. 4 through 5) are processed into 8.1 billion ring carriers annually (Ref. 8). The ring carrier market is approximately $135 million per year (Ref. 9). Three companies in the United States currently produce ring carriers, as defined under section 102 of Public Law 100–556. Ring carriers are not currently processed in, or imported from foreign markets.

Three companies supply the 50 to 75 million pounds of plastic resins that are used in the manufacture of ring carriers each year (Ref. 4). These resin producers previously supplied LDPE as well as E/CO to ring carrier processors (Refs. 4 through 6).

At the present time, ring carrier processors do not plan to manufacture ring carriers from degradable material other than E/CO (Ref. 11). One of the major ring carrier processors has tested many of the degradable resins that are commercially available in hopes of finding a biodegradable plastic suitable for production of ring carriers. This company has stated that it has not found an alternative to E/CO that meets its standards for extrudability, strength, durability, and degradation rate. Among photodegradable resins, this company claims that its internal testing has shown that none degrades as rapidly as E/CO. Among current starch-based biodegradable resins, the company has determined that available resins are hypersensitive to heat used in ring carrier production, and will not meet degradation time requirements in many states (Ref. 11).

Resin suppliers reported that they are not aware of any other currently available degradable resins that could be used in ring carrier applications. They also indicated that their own development of an alternative to the E/CO resin could be a lengthy process that would involve extensive research and testing (Refs. 5 and 6).

B. Comparison of Threats From Nondegradable Ring Carriers to Degradable Ring Carriers

This regulation is being written in response to Public Law 100–556. The statute and the legislative history indicate entanglement of fish and wildlife as the impetus for the Statute.

In developing today's proposed regulation, EPA must address the degradation products that could be released from degradable ring carriers. The Statute requires that ring carriers be made of "naturally degradable materials", defined as a material which, "when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces." "Environmentally benign" is not an easily definable term, because

some impacts may be associated with the release of virtually any compound or material in the environment.

Public Law 100–556 also specifies that EPA will require ring carriers to be processed from degradable material unless "the Administrator determines * * * that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items." To meet this requirement, EPA has reviewed existing information, including an EPA-funded study on the environmental impacts of both degradable and nondegradable ring carriers (Ref. 16). On the basis of this analysis, which is summarized in the following section, EPA has tentatively concluded that the data do not support a conclusion that degradable ring carriers pose more of a threat in the environment than nondegradable ring carriers, and that this issue should not prevent the Agency from issuing today's proposed regulation.

1. Environmental Concerns Related to Nondegradable Ring Carriers

This section reviews the impact of improper disposal of nondegradable ring carriers as well as other types of plastic packaging that may be substituted for ring carriers. EPA's 1990 Report to Congress: Methods to Manage and Control Plastic Wastes contains a comprehensive review of the impacts of plastics on marine fish and wildlife. This discussion is based on that report and on information from the draft EPA report, Accelerated Environmental Exposure, Laboratory Testing, and Recyclability Study of Photo/Biodegradable Polymers and the beach cleanups sponsored by EPA and National Oceanic and Atmospheric Administration and conducted by the Center for Marine Conservation (CMC), summarized in Cleaning North America's Beaches; 1990 Beach Cleanup Results (as well as from the 1988 and 1989 editions of this document).

The improper disposal of plastic articles, including ring carriers, results in aesthetic degradation of the environment and exposes wildlife to entanglement and ingestion hazards. EPA was unable to find data on the extent of wildlife hazards; however, if large numbers of ring carriers are improperly disposed, EPA believes that these impacts could be significant. The ubiquity of ring carriers in the environment is demonstrated by the thousands of ring carriers collected every year in beach cleanups around the country. Table 1 shows the number of ring carriers found in each state in 1988, 1989, and 1990 during CMC beach cleanup campaigns.

The number of volunteers varies from year to year and from state to state; therefore, data on the number of ring carriers are not accurate enough to be used to indicate yearly trends or patterns among states. These data do show, however, that large numbers of ring carriers are found. Nearly 35,000 ring carriers were collected during the 1990 beach cleanup. The beach cleanup survey did not attempt to differentiate between ring carriers made of degradable materials and ring carriers made of nondegradable plastic; therefore, these numbers most likely include both kinds of ring carriers.

EPA assumes that the total number of ring carriers that wash up on the entire U.S. coastline in a year is much higher. In 1990, less than 4 percent of the total U.S. coastline (Ref. 13 and CMC) was included in the cleanup. The number of ring carriers discarded in the marine environment is impossible to estimate, but is likely to be substantially greater than the 35,000 collected in 1990.

Entanglement of wildlife in ring carriers or other debris can cause strangulation, drowning, reduced ability to obtain food, increased difficulty in escaping predators, wounds and associated infections, and altered behavior patterns. Specific documentation of wildlife entanglement in ring carriers is scarce. In a CMC survey of the 30 states that border an ocean or the Great Lakes, 17 state environmental agencies specifically listed wildlife entanglement in ring carriers as a problem when asked if plastic debris posed any environmental hazards in their state.

TABLE 1.—NUMBER OF RING CARRIERS FOUND (BY STATE) IN THE NATIONAL BEACH CLEANUPS OF 1988, 1989, AND 1990

State	1988	1989	1990
Alabama	414	538	565
Alaska*	221	158	10
California*	977	3,405	3,450
Connecticut*	15	156	277
Delaware*	548	615	604
Florida	8,104	8,145	5,803
Georgia	209	14	53
Hawaii*	2,530	2,552	2,652
Louisiana*	1,240	1,022	1,962
Maine*	375	498	421
Maryland	89	91	653
Massachusetts*	674	1,114	917
Mississippi	1,164	1,244	1,654
New Hampshire	.....	85	83
New Jersey*	130	267	211
New York*	163	609	1,824
North Carolina	1,192	1,065	2,467
Oregon*	346	541	497
Pennsylvania	16	4	19
Puerto Rico	376	145	82
Rhode Island*	887	986	919
South Carolina	558	.....	240
Texas	10,319	11,406	7,872
Virginia	149	166	291
Virgin Islands	245	49	247
Washington	356	215	478

TABLE 1.—NUMBER OF RING CARRIERS FOUND (BY STATE) IN THE NATIONAL BEACH CLEANUPS OF 1988, 1989, AND 1990—Continued

State	1988	1989	1990
Total	30,808	35,090	34,722

* Degradable ring rule legislation enacted by 1988 (Ref. 26).

In its 1987 study Plastics in the Ocean: More Than a Litter Problem, CMC reported that ring carriers are one of the two items most commonly reported as the cause of entanglement (the other was monofilament fishing line). In addition, the national beach cleanup campaigns found three birds entangled in ring carriers in 1988; one bird, one fish, and one crustacean entangled in ring carriers in 1989; and three gulls and three fish entangled in 1990. There is no way to estimate the number of entangled wildlife that do not reach the areas of the beach involved in the cleanup or that reach these areas on a day other than the day of the cleanup. These data reflect only one day a year for only a small percentage of coastal property.

Information developed by CMC through interviewing state officials indicates that the following types of animals have been found entangled in ring carriers: Canada geese, ducks, gulls, osprey, pelicans (including endangered brown pelicans), loons, herons, other unspecified bird species, sea lions, sea turtles, raccoons, crabs, and several unspecified fish species. EPA has, however, no data as to the frequency of these events or whether the rate of this problem is increasing or decreasing.

2. Environmental Concerns Related to Degradable Ring Carriers

The majority of degradable plastics are either biodegradable or photodegradable. Very few plastics incorporating other mechanisms of degradability (*e.g.*, hydrolytically degradable plastics) have been offered for widespread application, although such plastics are currently used in a few niche markets (*e.g.*, degradable surgical sutures, and water-dissolvable packaging). Currently, a photodegradable plastic is used to produce all ring carriers. The use of a biodegradable plastic for disposable plastic products (including ring carriers) has been called for in many states concerned with plastic disposal (Ref. 15). Therefore, this section will present information on the risks posed by both photodegradable and biodegradable plastics.

a. *Fragments.* All ring carriers that reach marine waters will eventually degrade into fragments due to forces in the marine environment. Degradable ring carriers will reduce to fragments much more rapidly than ring carriers that are not designed to degrade. The Agency is unable to analyze the impact of the fragments of degraded ring carriers upon ingestion of debris by marine species or other animals. EPA found no field or experimental evidence on the size distribution of such fragments, nor could it find data allowing it to determine whether such fragments could resemble food to diving birds. There has been no report to the Agency of an ingestion problem due to fragments of ring carriers. It is possible that ingestion of ring carrier fragments will occur, but EPA does not have data that would support a conclusion that this could pose a significant hazard to marine wildlife. As the Agency documented in its Report to Congress: Methods to Manage and Control Plastic Wastes (Ref. 17), pellets from the plastic manufacturing process are ubiquitous in the world's oceans; they are the most common item of marine debris in most harbor and nearshore environments that have been studied, and have been found in significant quantities hundreds of miles from the nearest coast. In comparison with this source of plastic pellets in the marine environment, EPA concludes that the potential incremental impact of ring carrier fragments is small.

EPA also notes that key supporters of both the House and Senate bills fully expected that EPA would promulgate a rule requiring the use of the photodegradable E/CO ring carriers that were just coming into widespread use in the late 1980's. For example, Representative Studds explained that:

> [t]his legislation addresses a visible problem with a straightforward and painless solution by requiring the use of a commercially available degradable plastic ring that is not appreciably more expensive than its nondegradable counterpart. It is a constructive solution to an identified and avoidable problem—and is, to my knowledge, without opposition.

134 Cong. Rec. H9530 (daily ed., Oct. 4, 1988). See also 134 Cong. Rec. S16374 (daily ed., Oct. 14, 1988) (remarks of Senator Chaffee). In light of these expectations, EPA believes that it is reasonable to propose to require degradable carriers in the absence of any data indicating that degradable carriers pose greater risks than nondegradable ones.

Since no biodegradable carriers have been developed, it is even more difficult for EPA to compare the risks of fragments from these carriers to the risks of strangulation from nondegradable carriers. Nevertheless, EPA believes that the risks from fragments from biodegradable carriers could be less than the risks from the current photodegradable carriers, if the fragments degrade at a more rapid rate than photodegradable plastics.

The Agency requests comment on these findings; specifically EPA requests data on the size distribution of fragments of degraded ring carriers, and any evidence that might relate to their ingestion by and impact on marine wildlife. In the absence of such data, however, EPA does not intend to conclude that the risks of ingesting degraded fragments exceed the risks of entanglement.

b. Degradation by-products. Many of the degradable plastics in use today are made by modifying a plastic resin by incorporating an additive that promotes the breakdown of the plastic to a commonly used resin. The degradable plastic formulation should not be more toxic than the nondegradable resin it is made from unless the additive itself is toxic. The breakdown products of degradable plastics are the same for nondegradable plastics they are made from with the exception of the additives. For example, E/CO is made from LDPE with carbon monoxide added to allow the formulation to photodegrade. The breakdown products for E/CO should be the same as for LDPE with the exception of any impact carbon monoxide might have.

c. Additives used in plastics. EPA is aware that a number of the additives used in plastic processing are, in a pure and concentrated form, toxic; however, it is relatively uncommon for additives to be released from plastics to the environment (Ref. 17) in significant quantities.

Among biodegradable plastics, EPA is aware of no evidence to suggest that additives promoting degradation may pose an environmental hazard (Ref. 17). Starch is the most common degradable additive in current biodegradable plastics (Ref. 17). To date, no

manufacturer has produced a ring carrier from a biodegradable plastic (Refs. 4 through 6); therefore, no information exists regarding potential additives that might be incorporated into future biodegradable ring carriers. In the absence of any information on materials that may be used to make biodegradable ring carriers, EPA cannot conclude that a potential threat to the environment exists from the release of toxic additives from biodegradable ring carriers.

The E/CO copolymer is made degradable by incorporation of carbon monoxide (CO) into the polymer chain. Carbon monoxide makes up one percent of the plastic. Degradation of E/CO may proceed by one of two photochemical reactions. In the predominant reaction, responsible for approximately 90 percent of polymer chain scissions at ambient temperatures, CO is not released upon degradation; it remains incorporated in the plastic fragments. CO is released into the environment only by the second photochemical reaction (Ref. 7), therefore, for any ring carrier, no more than 10 percent of the CO will be released which is only 0.1 percent, by weight, of the entire ring carrier. In addition, only the ring carriers that photodegrade (*i.e.*, littered rather than landfilled or incinerated) will release CO. The Agency is unable to estimate the number of ring carriers that are improperly disposed of each year and, therefore, cannot precisely estimate the amount of CO released annually into the environment. However, the Agency does not believe that the amount of CO released poses a significant risk to human health or the environment.

Carbon monoxide is the only additive incorporated into the E/CO copolymer currently used in the manufacture of all degradable ring carriers. Preliminary toxicity data provided by ITW (Ref. 18) as well as by the EPA-funded study (Ref. 16), indicate that the degraded plastic and extractives are without observable toxicity.

It is possible that future plastic ring carriers may contain chemicals that cause adverse impacts on the environment. EPA encourages processors of all plastics proposed for use in ring carriers to conduct thorough testing and analysis of the additives as well as the complete formulation, to ensure that they will not pose a hazard as they degrade. If EPA determined that a new degradable plastic was likely to have adverse impacts, and that these impacts presented a greater threat than nondegradable carriers, it could propose to prohibit its use under Pub. L. 100–556. Citizens that obtain information suggesting that a degradable ring carrier would pose a greater threat to the environment than nondegradable ring carriers could submit that information to EPA and request it to investigate.

IV. Approach to This Proposed Ring Carrier Standards

Public Law 100–556 requires ring carriers to be processed from a material that, in addition to performing its intended function of carrying beverages, degrades quickly and does not pose a threat to the environment. In addition to these requirements, the Agency identified two additional goals for this regulation.

First, the Agency does not want to create barriers to the development of new technology. As discussed in section V, the Agency has chosen to propose a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. This performance standard will allow the processors of ring carriers the flexibility needed to use new technology that degrades differently than the current degradable technology. A plastic that biodegrades completely (i.e., all products of degradation are assimilated into the environment) would be preferable to the current technology which degrades into smaller pieces of plastic. The Agency intends to avoid placing barriers in the way of new plastic technology capable of functioning as a ring carrier.

Second, the Agency does not intend to interfere with local, state, or other federal programs pertaining to the regulation of degradable plastics as long as the goals of the statute are preserved. Over half of the states have enacted legislation requiring the use of degradable ring carriers. State requirements (Ref. 26) vary widely in time frames for degradation, definitions of plastic articles covered, testing requirements, and degradation processes. Given that Congress did not provide enforcement authority for this rule (as discussed in detail in Section VI), EPA does not believe Congress intended this rule to preempt more stringent state and local regulations.

V. Major Issues

A. Definition of Degradable

At the present time, no clear consensus exists on a definition for degradable plastics. Because of the several mechanisms of degradability, and the variety of products degradable plastics could be used for, it is unlikely that a single definition of degradability will ever be applicable for all degradable plastics. Today's proposed regulation, for example, establishes a performance standard to determine degradability for beverage ring carriers. This standard is not necessarily relevant to degradable plastics intended for other end uses.

As discussed in section two of the preamble, definitions of the terms "photodegradable," and "biodegradable" as applied to plastics are currently the subject of debate among the technical, commercial and regulatory communities. The Agency has chosen not to define the terms but rather to require that any materials used to make ring carriers meet a performance standard that reflects the intent of the statute. The use of a performance standard is intended to allow regulatory flexibility for the changing technology of the degradable plastic field and to prevent barriers to new technology.

B. Physical Endpoint for Degradation

The rate and extent of degradation are typically assessed by measuring changes in the physical properties of a material. For degradable plastics, a common method used to quantify the extent of degradation is to assess the "brittleness" of the material by measuring the amount of stress that must be applied before the plastic breaks. Brittleness can be measured in many ways, including, tensile strength and the elongation of the plastic prior to breaking.

The Agency is proposing "percent elongation at break" to measure degradation. The ring carrier design requires the plastic to be elastic enough to stretch over the cans and then return to the original diameter and grasp the cans. If the plastic loses its elasticity, the cans will fall out of the carrier. There are data that show a close correlation between the loss of elasticity (i.e., becomes brittle) and the rate of degradation. Brittleness can be used to predict the loss of physical integrity of the plastic which correlates to a reduced risk to wildlife from entanglement. "Elongation at break" is accepted by the scientific community as an appropriate method for measuring brittleness, and therefore, degradation of plastics.

Plastic that has degraded to the point of 5 percent elongation at break means it will stretch only 5 percent of its original length before crumbling. The LDPE resin used to make ring carriers stretches readily. Ring carriers made from LDPE normally can be stretched to more than several hundred percent of their original length before breaking. Once the plastic material has been exposed to degrading factors, the material becomes more brittle and no longer can stretch very much before the

plastic breaks. At one hundred percent elongation at break, ring carriers lose their ability to function and the cans fall out of the carriers (Ref. 11).

Ring carriers degraded past the point of being able to hold beverage cans probably pose little threat to marine wildlife. Unfortunately, there is no precise way to select a level of brittleness that is safe for all marine species because of the difference in strength between marine species. The statute requires the Agency to choose a time period for degradation that allows ring carriers to continue to function effectively as beverage holders.

A law enacted in Massachusetts specified degradation to the point of 20 percent elongation at break as sufficient to protect wildlife. Before 5 percent elongation at break is reached, ring carriers should pose little threat of entanglement to fish and wildlife. Measuring brittleness below 5 percent is impracticable because at lower values the plastic is too fragile to load into the test equipment. Industry and the scientific community commonly use 5 percent elongation at break as the physical endpoint for the measurement of degradability in plastic material. The Agency is proposing that all ring carriers be able to degrade to the endpoint of 5 percent elongation at break. EPA requests comment on whether 5 percent is too strict an endpoint and whether 20 percent or some other number would be more appropriate.

C. Time Limit for Degradation

The Agency is required by the statute to establish a time limit for degradation that is, "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." Although it would be ideal to set a time limit that is not expected to pose any risk to marine wildlife, it is likely that some risk to marine wildlife will remain because it is not technically possible to design a ring carrier that degrades immediately upon disposal in a marine environment, but is also strong enough for its intended use (holding beverages). Therefore, the Agency has chosen a time limit for degradation that is based on the best performance observed in actual testing of the E/CO ring carriers currently in use. The time degradable ring carriers require to degrade is a fraction of the time nondegradable ring carriers were estimated to remain intact; therefore, the risk from degradable ring carriers will be much less than the risk posed by nondegradable ring carriers.

The Agency investigated whether or not the material currently being used to make ring carriers, E/CO, degrades under marine conditions. E/CO clearly degrades when exposed to sunlight on land. Most E/CO exposure studies have focused on terrestrial rather than marine exposure.

Limited data is available on the rate of degradation of E/CO under marine conditions (Refs. 16, and 19 through 22). In a study performed by Research Triangle Institute for EPA, it took 35 days for E/CO ring carriers to reach 5 percent elongation at break in the marine environment. The testing was done during the month of July, off the coast of Miami, Florida. Miami, in July, receives one of the highest average amounts of UV absorption in the country, therefore is an optimal environment for degradation of either biodegradable or photodegradable ring carriers. A timeframe of 35 days is probably as quick as an E/CO ring carrier can photodegrade in a marine environment. Ring carriers made from LDPE, but without carbon monoxide added, were also tested in Miami and after 59 days were degraded to only 158.2 percent elongation at break. This study also tested ring carriers off the coast of Seattle, Washington, during this same time period. After 94 days, E/CO ring carriers had degraded to 14.5 percent elongation at break. After 101 days, the LDPE ring carriers had not degraded significantly (676.5 percent as compared to an initial unexposed value of 759.9 percent). E/CO ring carriers will degrade more slowly in areas of the country that receive less UV than Miami and also degrade more slowly during winter months than during summer months. Nonetheless, the E/CO ring carriers degrade more quickly than LDPE ring carriers under all environmental settings that include some sunlight.

Based on these data, it is the Agency's conclusion that 35 days of exposure to sunlight in Miami in the summer is the shortest time to achieve 5 percent elongation at break. Ring carriers discarded in marine environments other than Miami and similar environments, during seasons other than summer, take longer to degrade. Based on these considerations the proposed rule establishes a time period of 35 days during June and July in a location below the latitude 26 degrees North in continental United States waters. The Agency requests comments on the 35 day time limit under the above conditions—specifically whether it provides enough protection for entangled wildlife and whether the time period for degradation is feasible for current ring technology.

EPA does not intend to require *in situ* testing. The testing can be done under laboratory conditions as long as the exposure conditions are equivalent to the standard above. For photodegradable ring carriers, the most important exposure condition is UV. Based on modeling data, this 35 day time period in Miami averages about 10,000 kilojoules of UV (Ref. 27). This converts to approximately 250 light hours in the photodegradation exposure apparatus described in the ASTM test, D–5208 "Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics." EPA believes, based on industry data (Ref. 11) that this test run on Cycle A for no more than 250 light hours is equivalent to 35 days under marine conditions in a location below the latitude 26 degrees North. ASTM test G–26, "Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials," is a second method that can be used to expose plastics to UV. EPA data (Ref. 16) using this procedure to degrade E/CO indicates that the ring carrier reaches 5 percent elongation at break within 200 hours. EPA believes this test (see reference 16 for test conditions) is equivalent to 35 days under marine conditions in a location below the latitude 26 degrees North in continental United States waters.

EPA realizes that a ring carrier that degrades in 35 days in Miami will take longer to degrade in other parts of the country. E/CO ring carriers lose their ability to function after a few days when exposed to full sunlight (for example if the beverage cans are displayed outside) in southern climates, during the summer (Ref. 11). It will take longer for a ring carrier to degrade in the same climate during winter (seasonal variation of UV is greater than geographic). Any regulation requiring a shorter timeframe during the entire year or the same time limit in a more northern area of the country will not allow the E/CO ring carrier to function nationwide. EPA does not intend processors of ring carriers to make different ring carriers for use during different seasons of the year. EPA requests comment on the structure of this requirement; specifically, if a time limit expressed as 10,000 kilojoules of UV, 250 light hours under ASTM D–5208, or 200 hours using ASTM G–26 are equivalent to 35 days in a location below the latitude 26 degrees North in continental United States waters. EPA

also requests comment on placing one or all of these values in the rule.

D. Environmental Conditions for Degradation

After the formulation of the resin, environmental conditions are the most important factors for determining the rate of degradation. For example, a photodegradable plastic buried in a landfill will degrade at the same rate as the nondegradable formula of that plastic because there is no source of light to degrade the plastic. A degradable plastic must be tested under the environmental conditions in which the product will be disposed. The Statute directs the Agency to protect marine wildlife.

The quantity and wavelength of ultraviolet (UV) light a photodegradable plastic is exposed to are the most significant factors controlling the rate of photodegradation. Biodegradation in comparison to photodegradation is a much more complex process and any test to measure the rate of degradation would have to control more variables. Variables that impact the rate of biodegradation in a marine environment include: the microbial population, water quality/chemistry, temperature, amount of UV, and wave action. Biodegradable carriers would have difficulty meeting a standard based only on the amount and spectra of light.

The Agency explored several options for regulatory requirements that reflect "marine conditions":

1. Establish a laboratory test imposing specific limits on all the variables listed above that influence biodegradation and photodegradation.

2. Establish a test for photodegradable plastic limiting UV and temperature.

3. Require *in situ* testing, *i.e.*, ring carriers would be tested in a marine setting (as a opposed to a laboratory test simulating marine conditions). The important factors determining degradation for an *in situ* test are the latitude of the test site and season during testing.

4. Require ring carriers to meet a performance standard for degradability under certain environmental conditions without specifying the test method that must be used.

Option 1 would require the Agency to establish limits under which ring carriers would biodegrade. The Agency would define the species of micro- and macroorganisms and the agitation of the seawater. At this time, the Agency does not have enough information to define precisely conditions for these processes. The American Society for Testing and Materials (ASTM) and other groups are working on tests which might be appropriate to test biodegradable plastics in a laboratory setting. The Agency requests comment on this option and information on the processes described above.

For option 2, the Agency would define the two most important variables for photodegradables, temperature and light, and then allow the processor to test the ring carriers in a laboratory setting. ASTM has standards for testing photodegradable plastics which define these variables. ASTM test D–5208 and G–26 are designed to mimic UV exposure under laboratory conditions and D–3826 to measure elongation at break for plastics. These tests are accepted by the academic as well as the industrial community for simulating weathering conditions for photodegradable plastics. This option would be adequate to test the ring carriers presently used, but it would limit new technology that degrades by any means other than photodegradadation (e.g., biodegradation). Such a limitation would not meet the Agency's goal of providing flexibility for new technologies, as described earlier. The Agency requests comment on this option, specifically whether it should be included in the rule language as a requirement for photodegradable ring carriers.

Option 3 would require the processor to test *in situ*. The processor would anchor several ring carriers in a marine environment (ring carriers float until weighted with growth of algae and crustaceans) and test the samples to determine if they have degraded to the point of 5 percent elongation at break. There is no accepted test for exposure of biodegradable plastics in marine environments (either simulated in a lab or testing *in situ*). The Agency considered the following elements for an *in situ* test:

a. *Season and location*. The rate of biodegradation is most strongly influenced by the environmental conditions of the location for testing; the season (which determines temperature and sunlight) and biology in which an *in situ* test is performed will determine the degradation rate. The Agency explored the option of defining a specific month and geographic latitude so that the test results would be reproducible and comparable.

b. *Environment*. The Agency believes that, if an *in situ* test were proposed, certain restrictions should apply. The Agency would require that samples be exposed to a marine environment within U.S. nearshore waters; allowing testing in United States territories such as the United States Virgin Islands would favorably influence the test results because of higher amounts of UV and water temperature. Also prohibited would be testing in any location, such as sewage outfalls, that would favorably influence test results.

c. *Enclosure of Samples*. The Agency would require samples to be enclosed in a manner that allows free circulation of water into the enclosure but does not allow large fragments of ring carriers to leave the enclosure. The Agency requests comment on the size of screening necessary to retain fragments large enough to prevent a risk to wildlife.

An *in situ* test has the advantage of being applicable for both biodegradable and photodegradable plastics. A disadvantage of this option, however, is that the degradation rates will vary greatly between *in situ* test runs (as compared to a laboratory tests) because of the environmental variables. A plastic tested during a month which is relatively cloudy will show a slower rate than an equivalent plastic tested during a sunny month. Comparison of test results performed in different locations and/or during different time periods would be very difficult even to the extent that an otherwise degradable plastic may fail the test due to climate conditions.

EPA requests comment on the need for an *in situ* test. EPA also requests specific comment on the structure and content of an *in situ* testing procedure. If the comments on today's proposal indicate that an *in situ* test is desirable, an *in situ* test may be included in the final rule.

Option 4 would allow the greatest flexibility, and therefore EPA has chosen to use this approach in this proposal. Processors would design and manufacture for use ring carriers to meet a performance standard of degradability under certain conditions. The processor may choose a test to demonstrate compliance of the ring carriers based on the material used to manufacture the ring carriers. Current ring carriers could be tested using the ASTM photodegradation test (option 2) or any revisions of the ASTM tests. Processors employing new technology could use an in situ test (option 3). Processors would not be required to submit test results to the Agency.

The EPA is proposing three factors to be included in the performance standard: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. The first two factors have been defined as 5 percent elongation at break and 35 days under marine conditions in a location below the

latitude 26 degrees North in continental United States waters. The processor may choose to define the environmental conditions for the test from many different options so long as the conditions reflect the marine environment.

If a ring carrier processor wishes to market photodegradable ring carriers, the processor may test the ring carriers using the ASTM procedures for testing and handling photodegradable plastics. If a processor chooses to market a ring carrier which is biodegradable or is degradable by several processes (perhaps including photodegradation and biodegradation in the process) the processor may use an *in situ* test of their own design to measure degradability or an established test (ASTM is working on a lab test for biodegradable plastics). The EPA requests comment on this proposed structure of the rule, specifically whether the ASTM procedures (D–5208, G–26, and D–3826) and an *in situ* test should be included in the rule.

The exposure of photodegradable ring carriers should be equivalent to the amount of exposure ring carriers receive during 35 days under marine conditions in a location below the latitude 26 degrees North in continental United States waters.

E. Applicability and Compliance

Public Law 100–556 requires that EPA issue a rule providing that all ring carriers intended for use in the United States must be made of degradable material. EPA is proposing to apply this rule both to processors in the United States and also to any person in the United States importing ring carriers. This rule does not differentiate between ring carriers processed for use in the United States and other countries because, at the time of sale to beverage bottlers, the processor has no knowledge as to where the ring carriers will be sold or used.

The proposed rule would require each ring processor and importer to determine that its ring carrier meets this degradable performance standard before marketing for use the ring carriers. The Agency does not necessarily intend for importers of ring carriers to test each shipment of ring carriers to determine if they meet the performance standard. Importers must not knowingly distribute ring carriers that do not meet this performance standard and they should seek reassurance from the processors that the ring carriers meet the performance standard. If more than one processor manufactures ring carriers using the same ring carrier material and processing conditions, then they do not each have to test their own ring carrier. They may share the test data. However, the processors should document this agreement. The processor also should test the ring carrier each time the ring carrier's formulation or processing procedure changes substantially.

F. Recycling

Recycling of plastic consumer products is a growing industry. Many communities have programs for plastics recycling. There is a concern that if degradable plastics are included in recycled plastic stock the degradable plastics may, because of their ability to degrade, cause the recycled plastic product to become brittle and fail.

The Agency does not believe degradable ring carriers pose a threat to plastics recycling. The quantity of ring carriers compared to the total quantity of plastic disposed of every year is very small and, therefore, should have relatively little effect (Ref. 16). If photodegradable material is included in a recycled product that is a dark color, further degradation is not going to occur because the dark pigments will block UV penetration. Furthermore, there are preliminary data that show that inclusion of a small amount of degradable plastic does not increase the brittleness of recycled plastic (Ref. 16). In addition, ITW is running a pilot program to recycle E/CO ring carriers. The ring carriers have been recycled into ring carriers as well as into other consumer products (Ref. 28).

VI. Enforcement and Effective Date

The Agency requests comment on incentives for compliance with this rule. The Agency suggests the processors of ring carriers retain evidence of compliance in the event that citizens question the degradability claim. Public Law 100–556 does not provide the Agency with the authority to enforce this rule. Furthermore, it is a free-standing legislation that does not amend RCRA. Consequently, EPA cannot use the enforcement provisions in Section 3008 of RCRA. The Agency requests comment on the need for compliance incentives as well as specific suggestions of compliance strategies.

The Agency is proposing that this rule be effective six months after the date of the promulgation of the final rule. The Agency believes that the current ring carrier technology meets the proposed performance standard. The Agency requests comment on this effective date and whether processors will be able to test any ring carriers currently in use and comply with the proposed performance standard within this timeframe. Moreover, EPA believes that the entire existing inventory of ring carriers in the United States is made of the E/CO polymer, so it does not need to allow additional time for the use of noncomplying inventory. EPA requests comment on this finding.

VII. Administrative Designation and Regulatory Analysis

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The proposed rule published today is not major. It will not result in an effect on the economy of $100 million or more, will not result in significant increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity and innovation, and will not disrupt domestic export markets. This proposal will have none of the above effects, because the Agency finds the processors are able to meet these standards without changing current technology. Therefore the Agency has not prepared a regulatory impact analysis under the Executive Order. The Agency requests comment on the potential costs of this rulemaking. This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The proposed rule will affect ring carrier processor, none of whom are small entities. Small entities are not likely to enter into this market because of the requirements for expensive application equipment and quantities of materials. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

C. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*

VIII. References

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List of Subjects in 40 CFR Part 238

Beverage ring carrier, Biodegradation, Degradable plastic, Degradability standards, Photodegradation, Ring carrier.

Dated: March 30, 1993.

Carol Browner,

Administrator.

For the reasons set out in the preamble title 40 of the Code of Federal Regulations is proposed to be amended by adding part 238 to read as follows:

PART 238—DEGRADABLE PLASTIC RING CARRIERS

Subpart A—General Provisions

Sec.
238.10 Purpose and applicability.
238.20 Definitions.

Subpart B—Requirements

238.30 Requirement.

Authority: 42 U.S.C. 6914b-1.

Subpart A—General Provisions

§ 238.10 Purpose and applicability.

The purpose of this part is to require that plastic ring carriers be made of degradable materials as described in §§ 238.20 and 238.30. The requirements of this part apply to all processors and importers of plastic ring carriers in the United States as defined in § 238.20.

§ 238.20 Definitions.

For the purpose of this part;

5 percent Elongation at break means the increase in length of the plastic material caused by a tensile load. This is computed by dividing the length, at break, of the material before it is tested by the length of the material, at break, after it is stretched by the tensile load. It is stretched (and simultaneously measured) until the material breaks.

Processor means the persons or entities that produce ring carriers ready for use as beverage carriers.

Ring Carrier means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles.

Subpart B—Requirements

§ 238.30 Requirement.

(a) No processor shall manufacture ring carriers intended for use in the United States unless they are designed and manufactured so that the ring carriers degrade to the point of 5 percent elongation at break when exposed for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters or equivalent laboratory exposure conditions.

(b) No person shall import ring carriers in bulk unless they are designed and manufactured to degrade to the point of 5 percent elongation at break when exposed for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States

waters or equivalent laboratory exposure conditions.

[FR Doc. 93–8129 Filed 4–6–93; 8:45 am]
BILLING CODE 6560–50–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 394 (Sub-No. 12)]

Petition To Exempt From Regulation the Rail Transportation of Scrap Paper

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking public comment on a proposal from the Association of American Railroads (AAR) to exempt from regulation the rail transportation of scrap paper. If the exemption proposed by AAR is adopted, rates for the transportation of scrap paper would be deregulated and would not be subject to the evidentiary requirements associated with the annual compliance proceedings that govern other recyclable commodities. The proposal requested by AAR appears below. We also seek comments on an alternate approach that would grant an exemption from tariff and other filing requirements while retaining the maximum rate cap of section 10731(e) as to increases in individual rates.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by April 19, 1993. We will issue a service list of the parties of record shortly thereafter. Comments and replies must be served on all parties on the service list. Comments are due May 19, 1993. Replies are due June 18, 1993.

ADDRESSES: Send notices of intent to participate and an original and 10 copies of pleadings referring to Ex Parte No. 394 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Maynard Dixon, 202–927–5293 or Joseph Dettmar, 202–927–5660 (TDD for hearing impaired: 202–927–5721).

SUPPLEMENTARY INFORMATION: By notice published on September 9, 1992 at 57 FR 41122–41123 in Ex Parte No. 394 (Sub-No. 10), Railroad Rates on Recyclables—Exemptions, we proposed to exempt movements of nonferrous recyclable commodities whose rates are found, in an annual compliance proceeding for recyclables rates,[1] to recover revenues below the variable cost of service. In the (Sub-No. 10) proceeding, we stated that we would entertain petitions to exempt commodities such as scrap paper that are recovering revenues "just above the R/VC break even point."

By petition filed December 1, 1992 and docketed as Ex Parte No. 394 (Sub-No. 12), the Association of American Railroads and nine class I railroads (Petitioners) responded to our invitation in the (Sub-No. 10) proceeding by requesting that the Commission exempt railroad movements of scrap paper from regulation under 49 U.S.C. subtitle IV.

The provisions of 49 U.S.C. 10505 authorize us to exempt services from regulation where (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a and (2) the service is of limited scope or regulation is not necessary to protect shippers from abuse of market power.

Petitioners present substantial evidence that exemption of scrap paper would meet the criteria of 49 U.S.C. 10505:

1. Petitioners attempt to demonstrate that an exemption would not subject shippers to abuse of market power. Petitioners' witnesses present information designed to show that motor carriers move the great majority of the traffic and that the motor carriers' share has been increasing. Petitioners also present information designed to demonstrate the presence of substantial intramodal, geographic, and product competition. Petitioners testify that the movements proposed for exemption compete with exempt movements of substitutes for scrap paper in boxcars and that shippers are overwhelmingly satisfied with the boxcar exemption. Petitioners also testify that an exemption would enable railroads to compete more effectively with motor carriers by eliminating the delay and expense of filing tariffs and complying with the administrative requirements connected with contracts executed under section 10713.

2. As additional evidence of lack of market dominance, petitioners incorporate by reference testimony in Ex Parte No. 394 (Sub-No. 9), Cost Ratio for Recyclables—1992 Determination, which shows that the railroads' revenue/variable cost ratios for scrap paper range from 0.95 to 1.12. According to petitioners, this indicates that the traffic produces little, if any, net revenue and thus is subject to significant competition.

3. Petitioners cite cases in which this agency has found that exemptions of similar or greater economic effect are of "limited scope" under 49 U.S.C. 10505(a). We request comments on whether an exemption for scrap paper would satisfy section 10505.

In the (Sub-No. 10) proceeding, we asked whether we have authority to grant exemptions for commodities subject to section 10731's rate cap for recyclables. That question is at issue in this rulemaking as well. Accordingly, we also seek comments on the efficacy of a partial exemption which would exempt the transportation of scrap paper from tariff and other filing requirements (including participation in annual compliance proceedings) but would continue to subject the transportation to the maximum rate cap of section 10731(e). Such an approach may accommodate the objectives of the exemption provisions while preserving a shipper's right to relief in the event that an individual above-the-cap rate is increased. In a conference on March 23, 1993, we voted to adopt a partial exemption in the (Sub-No. 10) proceeding. We request comments on whether this approach would satisfy the objectives of the proponents of the exemption in this matter.

Finally, we seek comment on whether the exemption should be granted for transportation of all scrap paper covered by the 5-digit Standard Transportation Commodity Code (STCC) No. 40 241, or whether it should be drawn more narrowly. We note that 5-digit STCC groups contain several commodities, and if the exemption is to focus on a single 5-digit group, we might want to ensure that there are no commodities in the group with particular characteristics warranting regulation.

We preliminarily conclude that implementation of this proposal would not have a significant impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly. The purpose of the proposal is simply to reduce regulation where it appears to be unnecessary. The proposal should not significantly change the rates paid by shippers, large or small. The parties most affected by the regulatory burdens removed by this proposal are the larger railroads.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1039

Intermodal transportation, Manufactured commodities, Railroads.

Decided: March 30, 1993.

[1] See 49 CFR part 1145.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

Exemption Proposed by AAR

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is amended to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, and 11105; 5 U.S.C. 553.

2. Section 1039.11, paragraph (a) is proposed to be amended by adding to the chart, after STCC No. 39, STCC No. 40 241 (Scrap paper); and by adding to the concluding text the words "(except for specific recyclable commodities listed above)" after the words "by the Commission at 356 I.C.C. 445–447".

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
* * * * *		
40 241	6001–U, eff. 1–1–93..	Scrap paper.
* * * * *		

§ 1039.14 [Amended]

3. Section 1039.14, paragraph (b)(5) is proposed to be amended by adding the following words to the end of the sentence: "and specific recyclable commodities listed in § 1039.11 of this part."

[FR Doc. 93–8103 Filed 4–6–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Poa mannii (Mann's Bluegrass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Poa mannii* (Mann's bluegrass). Four extant populations containing a total of approximately 125 individuals of the species are known to occur in the northwestern and north-central region of the island of Kauai. The major threat to this species is damage done by feral goats. These animals trample vegetation, cause erosion, and open areas to invasion by alien plants. In addition, the species and its habitat are affected by competition for space, light, water, and nutrients by naturalized, introduced vegetation, especially *Erigeron karvinskianus* (daisy fleabane); fire; and landslides and erosion. The existence of few populations and individuals increases the likelihood of extinction from stochastic events and/or reduced reproductive vigor. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also augment State regulations protecting this plant as an endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by June 7, 1993. Public hearing requests must be received by May 24, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Poa mannii was first collected by Horace Mann, Jr., and William Tufts Brigham in 1864 or 1865 in Waimea Canyon on the island of Kauai. The name *Poa mannii* was published in Seemann's *Journal of Botany* in 1869 without a diagnosis and was attributed to William Munro. The specific epithet was selected to honor one of the original collectors. Subsequently, the species was validly published by Hillebrand (1888) in his flora.

Poa mannii of the grass family (Poaceae) is a perennial grass with short rhizomes (underground stems) and erect, tufted culms (bunched stems) 50 to 75 centimeters (cm) (20 to 30 inches (in)) tall. The leaf sheath completely surrounds the leaf, and the ligule (appendage at the junction of the leaf blade and sheath) completely encircles the stem, is about 0.5 millimeter (mm) (0.02 in) long, and has a tooth about 2 to 4 mm (0.08 to 0.2 in) long and a fringed margin. The leaf blade is up to 15 cm (6 in) long and 2 to 4 mm (0.08 to 0.2 in) wide, and has a rough upper surface and a hairless lower surface. The panicles (branched flower clusters) are usually less than 5 cm (2 in) long and have primary branches 5 to 20 mm (0.2 to 0.8 in) long. The 4 to 7 mm (0.2 to 0.3 in) long, flattened spikelets (ultimate flower clusters) are pale greenish or yellowish brown and usually comprise 4 or 5 flowers. The glumes (small pair of bracts at the base of each spikelet) are about 3 mm (0.1 in) long. The lemma (outer bract at the base of a floret) is 3 to 4 mm (0.1 to 0.2 in) long and has cobwebby hairs at its base. The palea (inner bract at the base of a floret) is 3 to 3.5 mm (about 0.1 in) long and has a sharp, longitudinal ridge. The reddish brown grain-like fruit is elliptical to spindle-shaped and about 1.5 mm (0.06 in) long. All three native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *Poa siphonoglossa* and *Poa sandvicensis* by its fringed ligule and from *Poa sandvicensis* by its shorter panicle branches (O'Connor 1990).

Poa mannii is found only on the northwestern and west-central portions of the island of Kauai. The four known populations extend over a distance of about 10.5 by 8.5 kilometers (km) (6.5 by 5.3 miles (mi)) and are found in Kalalau, Makaha, Koaie, and Waialae Valleys (David Lorence, National Tropical Botanical Garden, pers. comms., 1992). The species was formerly found in Olokele Gulch (O'Connor 1990). Approximately 125 individuals have been observed in the extant populations. This species typically grows on cliffs and rock faces at elevations between 460 and 1,150 meters (m) (1,510 and 3,770 (ft)) in Lowland and Montane Mesic Forests. Associated species include *Chamaesyce* sp. ('akoko), *Exocarpos luteolus* (heau), *Labordia helleri* (kamakahala), and *Nototrichium* sp., in Kalalau Valley; *Cyrtandra wawrae* (ha'iwale) in Makaha Valley; *Acacia koa* (koa), *Alectryon macrococcus* (mahoe), and *Antidesma platyphyllum* (hame) in Koaie Valley; and *Bidens cosmoides* (po'ola nui), *Carex meyenii*, *Dodonaea viscosa* ('a'ali'i), and *Schiedea amplexicaulis* in Waialae Valley. Threats to *Poa mannii* include habitat damage, trampling, and

browsing by feral *Capra hircus* (goats); competition with invasive alien plants, especially daisy fleabane, *Lantana camara* (lantana), and *Rubus argutus* (prickly Florida blackberry); landslides in the steep habitat; fire; and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (D. Lorence and Ken Wood, Hawaii Plant Conservation Center, pers. comms., 1992).

Federal action on *Poa mannii* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). *Poa mannii* was first included in the 1980 and 1985 notices of review as a Category 1 species. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1990 notice of review, *Poa mannii* was considered a Category 1* species. Category 1* taxa are those which are possibly extinct. Since the 1990 notice of review, three previously unknown populations of the species have been discovered, and a population has been found in an area in which the plant was formerly known.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Poa mannii* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposed rule constitutes the final 1-year finding for this species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the criteria and procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Poa mannii* Munro ex Hillebr. (Mann's bluegrass) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The area of Kauai in which *Poa mannii* is found has undergone extreme alteration because of past and present land management practices, including grazing, deliberate alien plant and animal introductions, water diversion, and recreational development (Wagner *et al.* 1985). Feral animals have made the greatest overall impact, altering and degrading the vegetation and habitats of the area; feral goats currently cause the most damage to the area.

Feral goats, which have inhabited the drier, more rugged areas of Kauai since the 1820s, consume native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990). Feral goats on Kauai are managed as a game species with a limited hunting season (Tomich 1986), but their numbers are large enough to cause considerable habitat damage. *Poa mannii* survives only in very steep areas that are inaccessible to goats, suggesting that goat predation may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai (Corn *et al.* 1979). Populations of *Poa mannii* are affected by erosion and landslides, resulting, in part, from goat activities in surrounding areas (K. Wood, pers. comm., 1992).

Brought to Hawaii as a cultivated herbaceous plant, daisy fleabane is naturalized in wetter areas of four islands (Wagner *et al.* 1990). Daisy fleabane has invaded Kalalau, Koaie, and Waialae Valleys, three of the four areas where *Poa mannii* occurs (K. Wood, pers. comms., 1992). Lantana, brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub that can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). Lantana threatens all known populations of *Poa mannii* (D. Lorence and K. Wood, pers. comms., 1992). Prickly Florida blackberry, an aggressive alien species in disturbed mesic to wet forests and subalpine grasslands on four islands, is considered a noxious weed by the State of Hawaii (Smith 1985, Wagner *et al.* 1990). Prickly Florida blackberry threatens the Kalalau and Waialae Valley populations of *Poa mannii* (K. Wood, pers. comm., 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This potential threat to *Poa mannii* could also promote erosion and greater ingress by competing alien species.

C. Disease or Predation

Poa mannii is not known to be unpalatable to goats, which are found in the areas where all four known populations of *Poa mannii* grow. Predation is a probable reason that this species is found only on cliff faces inaccessible to goats (D. Lorence and K. Wood, pers. comms., 1992). Predation by goats constitutes a threat to the expansion of the extant populations of *Poa mannii*.

D. The Inadequacy of Existing Regulatory Mechanisms

POA mannii is not presently listed as an endangered species by the State of Hawaii. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking of endangered plants in the State, encourages conservation by State agencies, and triggers other State regulations to protect the species (HRS, sect. 195D–4).

All populations of *Poa mannii* occur on State land. Two populations occur in forest reserves, which have rules and regulations for the protection of resources. However, the regulations are difficult to enforce because of limited personnel. State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). If listing were to occur, funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

All populations of *Poa mannii* are located on conservation district lands, which, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in the conservation district are chosen by considering how best to make a multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205–2, 205–4). For any proposed land use change that would occur on county or State land, would be funded in part or whole by county or State funds, or would occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it automatically invokes State listing, would also trigger these other State regulations protecting the plants. The Federal Act would offer additional protection to this species because, if it were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of only 4 populations and approximately 125 individuals of *Poa mannii* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance, a disease, or predation could destroy an entire population and a significant percentage of the known individuals of the species. In the steep areas where *Poa mannii* grows, erosion and landslides due to natural weathering can result in the death of individual plants, as well as habitat destruction. This process especially affects the continued existence of species or populations with limited numbers and/or narrow ranges, such as *Poa mannii*, and can be exacerbated by human disturbance and land use practices.

Fire is considered an immediate threat to the rare plants of the cliff faces and valleys of the Na Pali Coast, where the largest known population of *Poa mannii* occurs. Under dry conditions, human-set fires would spread rapidly and could destroy these plants, due to the strong prevailing winds and dry fuel load on cliff ledges. Fire could destroy dormant seeds as well as plants, even on steep cliffs (Clarke and Cuddihy 1980).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Poa mannii* as endangered. This species numbers only approximately 125 individuals in 4 known extant populations. Threats to the continued existence of the species include habitat degradation and/or predation by goats, competition from alien plants, fire, landslides and erosion, and lack of legal protection or difficulty in enforcing laws that are already in effect. Small population size and limited distribution make the species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because *Poa mannii* is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being proposed for *Poa mannii* for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered. The Service finds that designation of critical habitat is not presently prudent for *Poa mannii*. Such a determination would result in no known benefit to the species. The publication of a precise map and description of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered would publicize the rarity of the plant and, thus, make it attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowner have been notified of the importance of protecting the habitat of this species, which will be addressed through the recovery process. There are no known Federal activities within the currently known natural habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from

vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities that occur with the presently known habitat of *Poa mannii*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Poa mannii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for *Poa mannii*, because the species is not common in cultivation or in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Poa mannii*;

(2) The location of any additional populations of *Poa mannii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Poa mannii*, and

(4) Current or planned activities in the subject area and their possible impacts on *Poa mannii*.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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National Park Resources Studies Unit, University of Hawaii, Honolulu, pp. 23–74.

Author

The author of this proposed rule is Zella E. Ellshoff, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *		*	*		*	*
Poaceae—Grass family:						
* * *		*	*		*	*
Poa mannii	Mann's bluegrass	U.S.A. (HI)	E		NA	NA
* * *		*	*		*	*

Dated: March 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–8074 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 65
Wednesday, April 7, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 National Census Test II (Appeals and Long–Form Experiment, ALFE).

Form Number(s): DD–1B, DD–2A, DD–2B, DD–2C, and DD–17.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 16,350 hours.

Number of Respondents: 46,000.

Avg Hours Per Response: 21 minutes.

Needs and Uses: The 1993 National Census Test II (Appeals and Long–Form Experiment/ALFE) is one in a series of data collections to assist in formulating policy and design options for the 2000 Census of Population and Housing. This study is designed to measure the effects of alternative motivational appeals and data confidentiality messages upon response rates to a census short form, as well as to determine whether contrasting designs influence response and data quality for census long forms. The ALFE experiment is designed to develop empirical data, based upon messages contained in the questionnaire mailing package, about the response effects of highlighting **mandatory** versus **benefits** motivational messages. The degree of emphasis placed upon assurances of data confidentiality will be varied in conjunction with various response–motivational appeals. The experiment will measure possible differences in response to the three forms sharing the same data content (that of the 1990 decennial census) but having substantially different designs and layouts. An important secondary objective will be to determine whether design enhancements to the long forms can reduce the incidence of item non–response, as well as of blank (incomplete) forms returned by respondents.

Affected Public: Individuals or households.

Frequency: One–time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 1, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–7992 Filed 4–6–93; 8:45 am]

BILLING CODE 3510–07–F

Economic Development Administration

Notice of Availability of All Environmental Documents Prepared for EDA Funded Projects Under the Requirements of the National Environmental Policy Act of 1969 (NEPA)

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: This Notice announces the availability of all NEPA documents prepared for EDA projects funded in FY'93 as agency fulfillment of the requirements of the Council on Environmental Quality (CEQ) NEPA Regulation 1501.4(b).

SUPPLEMENTARY INFORMATION: The CEQ Regulations require EDA to provide public notice of the availability of project specific environmental documents such as environmental impacts statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in CEQ Regulation 1506.6(b).

Depending on the project location, environmental information concerning specific projects can be obtained from the Regional Environmental Officer (REO) in the appropriate EDA regional office. The EDA regional offices, and states covered are listed below.

Atlanta Regional Office

401 West Peachtree Street, NW., Suite 1820, Atlanta, GA 30308–3510, (404) 730–3010
States covered: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Austin Regional Office

Suite 201, Grant Building, 611 East Sixth Street, Austin, TX 78701, (512) 482–5407
States covered: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Chicago Regional Office

111 North Canal Street, Suite 855, Chicago, IL 60606–7204, (312) 353–8143
States covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Denver Regional Office

1244 Speer Boulevard, Room 670, Denver, CO 80204, (512) 482–5407 (call the REO in Austin)
States covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

Philadelphia Regional Office

Curtis Center, Suite 140 South, Independence Square West, Philadelphia, PA 19106, (215) 597–6767
States covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, West Virginia.

Seattle Regional Office

Jackson Federal Building, room 1856, 915 Second Avenue, Seattle, WA 98174, (206) 553–5681
States covered: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands,

Micronesia, Nevada, Northern Mariana Islands, Oregon, Washington.

For further information, please contact Dr. Frank Monteferrante, Environmental Branch, Compliance Review Division, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 482–4208.

Dated: March 30, 1993.

Craig M. Smith,

Acting Assistant Secretary for Economic Development.

[FR Doc. 93–8081 Filed 4–6–93; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–823–804 and A–834–804]

Antidumping Duty Orders: Ferrosilicon From Kazakhstan and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230: (202) 482–0371.

Scope of Orders

The merchandise subject to these antidumping duty orders is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than 3 percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these orders. Calcium silicon is an alloy containing, by weight, not more than 5 percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than 4 percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than 4 percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of these orders is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on March 3, 1993, the Department of Commerce (Department) made its final determinations that ferrosilicon from Kazakhstan and Ukraine is being sold at less than fair value (58 FR 13050 March 9, 1993). On March 23, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that such imports materially injure a U.S. industry.

Suspension of Liquidation

In accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of ferrosilicon from Kazakhstan and Ukraine. These antidumping duties will be assessed on all unliquidated entries of ferrosilicon from Kazakhstan and Ukraine entered, or withdrawn from warehouse, for consumption on or after December 29, 1992, the date on which the Department published its preliminary determinations notice in the **Federal Register** (57 FR 61876). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposit for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
All manufacturers/producers/exporters	104.18

In its final determinations, the Department found that critical circumstances exist with respect to exports of ferrosilicon from Kazakhstan and Ukraine. However, on March 23, 1993, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(d)(2) with respect to entries of subject merchandise entered or withdrawn from warehouse, for consumption prior to December 29, 1992.

This notice constitutes the antidumping duty orders with respect to ferrosilicon from Kazakhstan and Ukraine, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 31, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–7993 Filed 4–6–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs and Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Availability of NOAA Boundary Recommendation Information Developed Pursuant to 6217(e) of the Coastal Zone Act Reauthorization Amendments of 1990.

LOCATION: Washington, DC.

SUMMARY: Congress enacted section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) in November 1990 to help address the problem of nonpoint source pollution in coastal waters. As part of its responsibilities under section 6217, the National Oceanic and Atmospheric Administration (NOAA), in consultation with the Environmental Protection Agency (EPA), is required to review the inland coastal zone boundaries of participating states and evaluate whether they extend inland to the extent necessary to control the land and water uses that have a significant impact on a state's coastal waters. Based on this review, NOAA is required to develop recommendations for changes to existing coastal zone boundaries. Although expressed in terms of a recommendation that a state modify its coastal zone boundary, NOAA's recommendation also defines what NOAA and EPA believe should be the geographic scope of that state's coastal nonpoint program, i.e., "the 6217 management area." Further discussion of the geographic scope issue is contained in the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* published by NOAA and EPA on January 19, 1993 (Guidance).

Because of the public interest this program has received, NOAA is hereby giving notice of the availability of the boundary recommendation information which was sent to each state in March 1993. This information consists of boundary recommendation letters and draft guidance regarding criteria states may use when evaluating and responding to NOAA's boundary recommendation. We urge interested parties to comment on the geographic scope of the 6217 management area as part of each state's program development process.

Further detail on NOAA's boundary recommendation information may be obtained by contacting: John R. King, NOAA/Office of Ocean & Coastal Resource Management, 1825 Connecticut Avenue, NW., room 718, Washington, DC 20235, (202) 606–4130.

Individuals may also obtain a listing of state coastal management and nonpoint source pollution program contacts by contacting the Office of Ocean and Coastal Resource Management at the above address.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: March 31, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–8118 Filed 4–6–93; 8:45 am]

BILLING CODE 3510-08-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on April 19–23, 1993, at the Sea Palms on 5445 Frederica Road, St. Simons Island, GA, telephone: (912) 638–3351.

The full Council sessions will be held from 8:30 a.m. to 5:30 p.m. on April 22 and on April 23 from 8:30 a.m. to 12 p.m. to discuss reports and recommendations from the committees that will be meeting in conjunction with the Council.

The Council will review a mackerel stock assessment presented by the National Marine Fisheries Service (NMFS) Southeast Fisheries Science Center and comments from scientists, advisory panel members and the public before setting this year's bag limits and quotas. Public comments on the new mackerel limits will be taken on April 22 at 8:45 a.m.

Results of the 1992 red drum stock assessment will be presented to the Red Drum Committee on April 19, from 1:30 p.m. to 3:30 p.m., during its review of the status of the fishery. The harvest or possession of red drum is currently prohibited in South Atlantic Federal waters. The Committee will review management efforts of the states and comments from scientists on additional research needed.

There will be a closed session (not open to the public) of the Advisory Panel Selection Committee on April 19, from 3:30 p.m. to 6 p.m.

The Council is scheduled to set the 1993 total allowable catch (TAC) and bag limits for Atlantic king and Spanish mackerel in South Atlantic Federal waters. A joint Mackerel Advisory Panel and Committee meeting will be held from 8:30 a.m. to 12 p.m., on April 20. It will be followed by a Mackerel Committee meeting from 1:30 p.m. to 5:30 p.m.

The Mackerel Committee will review current trip limits which were set for the commercial Federal South Atlantic Spanish mackerel fishery beginning last year. The Committee also will discuss the status of the Gulf Council's actions to establish trip limits for the commercial Gulf king mackerel fishery.

The Mackerel Committee will evaluate current management of the cobia fishery following an updated stock assessment presented by the NMFS.

The Snapper-Grouper Committee will meet on April 21 from 8:30 a.m. to 5:30 p.m., to continue working on draft Amendment #6 to the Snapper-Grouper Fishery Management Plan. The amendment addresses the following changes to current regulations in the snapper-grouper fishery:

(1) Spawning closure for gag grouper,

(2) Specification of allowable gear;

(3) TACs for snowy grouper and golden tilefish;

(4) Inclusion of all tilefish species in the current recreational aggregate five-grouper bag limit;

(5) Requiring Federal dealer, charter and headboat permits;

(6) Requiring Federal permit to sell snapper-grouper caught in South Atlantic Federal waters;

(7) Establishing a 12-inch total length minimum size limit (recreational and commercial) for white grunt;

(8) Prohibiting all retention of speckled hind and warsaw grouper; and

(9) Requiring tending of sea bass pots.

The Snapper-Grouper Committee, while discussing TACs for snowy grouper and golden tilefish, will consider a 1,000 pound snowy grouper trip limit while the directed quota is open. Commercial bycatch would be limited to 100 pounds each of snowy grouper and golden tilefish when each directed quota is filled.

The above list of options is scheduled for public hearings throughout the South Atlantic coast in June before the June 21–25 Council meeting. Details of the hearings will be made public in mid-May.

A stock assessment for the amberjack fishery will be reviewed to evaluate the existing recreational three-fish bag limit and to address the need for a commercial quota.

A detailed agenda with specific meeting times will be available to the public on March 31. For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone (803) 571–4366.

Dated: March 31, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–8013 Filed 4–6–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Receipt of Application for a Scientific Research Permit to Take Marine Mammals (P775#1).

Notice is hereby given that Dr. Paul Becker, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910, has applied in due form for a Permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), Sections 216.33 (d) and (e), of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543), the Regulations Governing Endangered Fish and Wildlife (50 CFR parts 217–222), and the Fur Seal Act of 1966 (16 U.S.C. 1151–1187).

The Applicant seeks authorization to collect and maintain samples from up to 100 each of the following species over a five-year period: Bearded seals (*Erignathus barbatus*), bowhead whales (*Balaena mysticetus*), largha seals (*Phoca largha*), Northern fur seals (*Callorhinus ursinus*), Pacific harbor seals (*Phoca vitulina richardii*), ringed seals (*Phoca hispida*), and beluga whales (*Delphinapterus leucas*). The samples would be collected from animals take in Alaska Native subsistence hunts or from dead beached/stranded animals in Alaska, and would be archived for purposes of monitoring long-term trends in contaminant levels.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221).

Dated: April 1, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–8056 Filed 4–6–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of Scientific Research Permit No. 737 (P368B).

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 737 issued to Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, on May 8, 1991 (56 FR 22402), was modified to allow biopsy sampling of up to 100 harbor seals annually. This modification becomes on April 7, 1993.

Documents pertaining to Permit and this Modification are available for review upon written request or by appointment in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: March 31, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–8057 Filed 4–6–93; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON IMMIGRATION REFORM

Meeting

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The public meeting will include a panel of immigration policy experts who will discuss "Immigration and the U.S. Economy." The panel will provide expertise as to policy issues and research priorities for the Commission to address in responding to its mandate.

DATES: 9:30 a.m., April 27, 1993.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Beth Bickley or Brett Endres, Telephone: (202) 673–5348.

Dated: April 2, 1993.

Susan Forbes Martin,

Executive Director.

[FR Doc. 93–8132 Filed 4–6–93; 8:45 am]

BILLING CODE 6820-97-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations With the Government of Pakistan on Certain Cotton and Man-Made Fiber Textile Products; Correction

April 1, 1993.

In the notice published in the **Federal Register** on March 23, 1993, beginning on page 15487, first column, replace the letter to the Commissioner of Customs with the following letter:

Committee for the Implementation of Textile Agreements

March 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United

States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 25, 1993, entry into the United States for consumption and withdrawal from warehouse for consumptior of cotton and man-made fiber textile products in Categories 334/634, produced or manufactured in Pakistan and exported during the ninety-day period beginning on February 28, 1993 and extending through May 28, 1993, in excess of 44,773 dozen[1].

Textile products in Categories 334/634 which have been exported to the United States prior to February 28, 1993 shall not be subject to the limit established in this directive.

Textile products in Categories 334/634 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–8012 Filed 4–6–93; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISION

Technical Advisory Group for Cigarette Fire Safety; Notice of Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on April 29 and 30, 1993, in Gaithersburg, Maryland. The purpose of the meeting is to discuss current research to develop a test method to measure cigarette ignition propensity and other matters related to implementation of the Fire Safe Cigarette Act.

DATES: The meeting will be from 9 a.m. to 4 p.m. on April 29 and 30, 1993.

ADDRESSES: The meeting will be in room B245, Building 224, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 504-0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on April 29 and 30, 1993, to discuss current research to develop a test method to measure cigarette ignition propensity; the status of a cigarette fire incident study; plans to evaluate the possible health effect of cigarettes with reduced ignition propensity; and other administrative and operational plans to implement the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–8102 Filed 4–6–93; 8:45 am]

BILLING CODE 6355–01–F

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Environmental Assessment/Finding of No Significant Impact for the Disposal of Property at Hamilton Army Airfield

AGENCY: United States Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: Hamilton Army Airfield, California is directed for closure by the Defense Base Closure and Realignment Act of 1988, Public Law 100–526. The FY 1993 Department of Defense Appropriations Act directs the Army to transfer five parcels of land at Hamilton Army Airfield to the buyers of the General Services Administration sale parcel. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned transfer. The transfer of these parcels at Hamilton Army Airfield is not expected to significantly affect traffic, noise, air quality, population, employment, schools, or housing in the area. If transfer affects ongoing remediation in any way, it may expedite remediation efforts.

SCOPING: The public is encouraged to comment on the Environmental Assessment/Finding of No Significant Impact. Comments received within 30 days of this notice will be considered in decisions concerning this land transfer.

ADDRESSES: A copy of the EA/FNSI can be obtained by contacting Mr. Bob Koenigs, U.S. Army Corps of Engineers, Sacramento District, CESPK–PD–R, 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT: Questions regarding this action may be directed to Mr. Bob Koenigs, (916) 557–6712.

Dated: April 1, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 93–8114 Filed 4–6–93; 8:45 am]

BILLING CODE 3710–08–M

Preparation of the Theater Missile Defense (TMD) Extended Test Range Environmental Impact Statement

AGENCY: United States Army, Department of Defense.

ACTION: Notice of intent (NOI).

This NOI is for the preparation of an Environmental Impact Statement (EIS) for proposed long-range tests of

[1] The limit has not been adjusted to account for any imports exported after February 27, 1993.

groundbased Theater Missile Defense (TMD) missile and sensor systems. This TMD program would allow for the development of a means to protect deployed U.S. forces, as well as U.S. friends and allies around the world, against attacks by—short- and medium-range ballistic (e.g., Scud-type), cruise, or air-to-surface missiles armed with conventional, nuclear, biological, or chemical warheads.

These tests would consist of multiple demonstration and operational missile launches along proposed flight paths from off-range locations, with intercepts of targets over existing ranges or open ocean areas. Four alternative test range areas, located within and outside the United States, will be considered for these tests. These flight tests would support the developmental and operational requirements needed to validate system design and operational effectiveness.

Possible significant environmental issues to be analyzed in the TMD Extended Test Range EIS are in the areas of air quality, airspace use, biological resources, cultural resources, hazardous waste, health and safety, land use and recreation, noise, and socioeconomics.

LEAD AGENCY: United States Army Space and Strategic Defense Command (USASSDC).

COOPERATING AGENCY: Strategic Defense Initiative Organization (SDIO).

PROPOSED ACTION: The Army proposes to launch nondestructive targets along planned flight paths from off-range locations into existing test ranges. Defensive missiles (e.g., PATRIOT) would be launched from the test ranges to intercept the incoming targets over existing land or sea test ranges, or open ocean areas. It is anticipated that approximately 80 missile flight tests would be conducted between 1994 and 1999, from more than one off-range launch location and potentially at more than one test range.

Alternatives for conducting these missile flight tests and intercepts, which will be evaluated in the TMD Extended Test Range EIS, are:

a. White Sands Missile Range, NM, and potentially including McGregor Range of Fort Bliss, TX, with off-range missile launches from Fort Wingate Army Depot, NM, and/or Green River Launch Site, UT.

b. Eglin Air Force Base, FL, including Santa Rosa Island and/or Cape San Blas, with off-range missile launches from a ship or sea-platform stationed in the eastern Gulf of Mexico.

c. Western Range, CA, involving San Nicolas Island of the Naval Air Warfare Center Point Mugu, and/or Vandenberg Air Force Base, with off-range missile launches from a ship or sea-platform stationed off the Pacific Coast.

d. Kwajalein Missile Range, U.S. Army Kwajalein Atoll, Republic of the Marshall Islands, with off-range missile launches from Wake Island Airfield, and/or a ship or sea-platform stationed in the Pacific Ocean.

e. Some combination of the previous four alternative test range areas.

f. No Action.

SCOPING PROCESS: Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the human and natural environment. Individuals or organizations may participate in the scoping process by calling toll free 1–800–546–8552, which will be available April 7 to may 7, 1993, sending written questions and comments to the address below, and offering verbal or written comments at Scoping Meetings scheduled to be held at 7 p.m. in the following communities:

April 13—Green River, UT (6:30 p.m.)
April 15—Salt Lake City, UT
April 19—Fort Walton Beach, FL
April 21—Oxnard, CA
April 22—Lompoc, CA
April 27—Albuquerque, NM
April 29—Gallup, NM

ADDRESSES: Submit written questions and comments to Mr. David Hasley, U.S. Army Space and Strategic Defense Command, ATTN: CSSD–EN–V, Post Office Box 1500, Huntsville, AL 35807–3801. Comments should be received by May 7, 1993.

Dated: April 2, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 93–8119 Filed 4–6–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement and Environmental Impact Report (DSEIS/EIR) for Richmond Harbor Deep-Draft Navigation Improvements, Contra Costa County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY:

Proposed Action

The Corps of Engineers, San Francisco District, has been authorized by the Water Resources Development Act of 1986 (WRDA 1986), 99th Congress, 2nd Session, Public Law 99–662, and the Supplemental Appropriations Act of 1985 to improve the navigation channels at the Port of Richmond in San Francisco Bay. The Port of Richmond is the non-Federal (i.e., local) sponsor of the Federal project and will participate in the project cost in accordance with WRDA 1986. The environmental impacts of these improvements have been previously evaluated in a Final Environmental Impact Statement filed with the Environmental Protection Agency (EPA) in 1981. The Corps of Engineers, as the lead agency under the National Environmental Policy Act (NEPA) and the Port of Richmond, as the lead agency under the California Environmental Quality Act (CEQA), will prepare a joint Draft Supplemental Environmental Impact Statement/Environmental Impact Report (DSEIS/EIR) for the entire project. The subject DSEIS/EIR will address changes in the authorized project related to dredged material disposal and update information from previous environmental documents.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Gary Flickinger, USAED, San Francisco, California 94105–1905; (415) 744–3341.

SUPPLEMENTARY INFORMATION: Construction of the authorized project for Richmond Harbor will generate an estimated 1.5 million cubic yards of dredged material. As originally authorized, disposal of the dredged material was to be at a contemporary aquatic site identified by the U.S. EPA as "SF–11," near Alcatraz Island in Central San Francisco Bay. Due to the mounding of dredged material historically disposed of at the Alcatraz Site, initially discovered in 1982, and increased public concern about the impact of large-scale dredged material disposal events on the resources of San Francisco Bay, use of the Alcatraz Site would be difficult to achieve. The changing regulatory climate concerning dredged material disposal in the Bay Area has resulted in a need to consider additional options for dredged material disposal and has necessitated the preparation of this DSEIS/EIR.

The project area includes the Harbor Entrance Channel, Potrero Reach, Potrero Sharp Turn, Inner Channel, and Santa Fe Channel. At the request of the local sponsor, a two-phase plan to construct navigation improvements has been formulated. Phase I, the proposed action, calls for deepening the existing 4.5-mile navigation channel from −35 feet mean lower low water (MLLW) to

−38 feet MLLW and providing an approximately 1,200-foot wide turning basin at Potrero Point. In addition, berthing areas served by the project would be deepened by the local sponsor to depths commensurate with the improved Federal channels. All of these improvements will require the removal and disposal of approximately 1.5 million cubic yards of channel bottom sediments.

Phase II of the project, which would deepen the channel to −41 feet MLLW, has been deferred indefinitely. If and when the additional deepening takes place, it will be subject to separate environmental review.

Alternatives

Dredged material disposal alternatives to be considered in the DSEIS/EIR are ocean, in-Bay, and land disposal. Dredged material disposal in the San Francisco Bay Area is the subject of intensive study by the Corps of Engineers, the EPA, and two state regulatory agencies, under the Long-Term Management Strategy (LTMS) for the Disposal of Dredged Material in the San Francisco Bay Region. The disposal alternatives to be discussed in the DSEIS/EIR will reflect the LTMS work and address specific sites for the Richmond Harbor project.

A number of options are under consideration for disposal of the dredged material. These disposal options could be implemented separately or in combination, depending upon the nature of the sediments that each disposal site can accept and the respective disposal site capacity. The selection of disposal site alternatives is based upon environmental and economic factors. The disposal site options currently under consideration are:

—Disposal at an ocean site designated by the EPA for that purpose under section 102 of the Marine Protection, Research, and Sanctuaries Act;

—Confined and unconfined aquatic disposal at the Bay Farm Borrow Pit in San Francisco Bay offshore of the city of Alameda in Alameda County;

—Unconfined aquatic disposal at the Alcatraz Site in San Francisco Bay south of Alcatraz Island.

—Confined disposal in the Point Potrero greving docks at the Port of Richmond.

—Confined and unconfined fill for disposal and wetland restoration in Solano County on land owned by the Catellus Corporation as part of the proposed Montezuma Wetland project.

Scoping

The Corps of Engineers, San Francisco District and the Port of Richmond invite Federal, state, and local agencies and members of the public to provide comments on the proposed project. A public scoping meeting has been scheduled for April 20, 1993 at the City of Richmond, City Council Chambers, 2600 Barrett Avenue. Two sessions will be held: from 2 to 4 p.m. and from 7:30 to 9:00 p.m. Your views as to the scope and content of the environmental information to be included in the SEIS/EIR are important. To be most helpful, the scoping comments should clearly describe specific environmental issues or subjects which the commentor wishes addressed. Written comments should be mailed no later than April 28, 1993 to: Gary Flickinger, Corps of Engineers, San Francisco District, 211 Main St., Room 918, San Francisco, CA 94105–1905.

The Corps' experience has shown that the significant issues associated with the Richmond Harbor project primarily concern the disposal of dredged material. The following dredging and disposal impacts will be discussed in the SEIS/EIR.

1. Acute water and sediment quality impacts (in-Bay and ocean disposal).
2. Chronic and sublethal water quality impacts (in-Bay and ocean disposal).
3. Aquatic resources impacts (in-Bay and ocean disposal).
4. Water quality impacts (land disposal).
5. Terrestrial impacts (land disposal).
6. Wetland impacts (land disposal).
7. Air quality impacts (in-Bay, ocean, and land disposal).
8. Contaminated material impacts (in-Bay and land disposal).
9. Disposal site capacity impacts (in-Bay, land, and ocean disposal).
10. Socioeconomic impacts (in-Bay, ocean, and land disposal).
11. Recreational impacts (in-Bay, ocean, and land disposal).
12. Cultural resources impacts (land disposal).
13. Vessel transportation impacts (in-Bay and ocean disposal).
14. Groundwater contamination impacts (intersection of aquifers through dredging operations, especially in the Santa Fe Channel and Lauritzen Canal).
15. Groundwater cleanup impacts (interference with the groundwater cleanup operations of others, especially in the Santa Fe Channel and Lauritzen Canal).

The SEIS/EIR will be used as the primary information document to secure concurrence in a Federal Coastal Zone Consistency Determination. In addition, the SEIS/EIR will be used by the local sponsor to meet its responsibilities under CEQA and may also be used by the San Francisco Bay Regional Water Quality Control Board to meet its responsibilities under the same Act. Other reviews in which the SEIS/EIR may be a secondary source of information are: Fish and Wildlife Coordination Act, Marine Protection, Research and Sanctuaries Act, Endangered Species Act, Clean Air Act, Clean Water Act, and "trustee agency" reviews by the State of California.

Leonard E. Cardoza,

Commanding LTC, EN.

[FR Doc. 93–8008 Filed 4–6–93; 8:45 am]

BILLING CODE 3710–GF–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Hurricane and Wetland Protection in Terrebonne Parish, LA

AGENCY: U.S. Army Corps of Engineers, New Orleans District.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District (NOD) will prepare a DEIS that presents an assessment of the beneficial and adverse impacts of the South Terrebonne Tidewater Management and Conservation District's (STTMCD) intention to primarily provide protection to existing development from tropical storm and hurricane-induced tidal flooding and secondarily to protect coastal wetlands from hurricane surges in a portion of Terrebonne Parish, Louisiana. The STTMCD's plan calls for: (1) Upgrading many existing forced drainage system levees to FEMA 100-year flood elevations; (2) using other permitted and/or installed flood control features (e.g., floodgates); (3) constructing some new levees (to FEMA elevations) and water control structures; and, (4) operating the water control structures and flood gates in a coordinated manner.

Project implementation involves activities that are subject to Federal regulation. Accordingly, STTMCD has applied to the NOD for the necessary Federal permits. The NOD has advised the STTMCD that the scope and probable impacts of the proposed project are such that an EIS must be prepared before rendering a decision on the requested permit. The EIS will be a major source of information the NOD

considers in its evaluation of the requested permit.

FOR FURTHER INFORMATION: Questions regarding the proposed project may be directed to Mr. Oneil P. Malbrough, Coastal Engineering and Environmental Consultants, Inc., P.O. Box 370, Bourg, Louisiana 70343–0370, telephone (504) 868–3434.

Questions regarding the DEIS may be directed to Mr. Robert H. Bosenberg, CELMN–PD–RS, U.S. Army, Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2522.

SUPPLEMENTARY INFORMATION:

Location

The STTMCD's project would provide protection from hurricane flood waters to parish residents that live on several of the relic Mississippi River distributary ridges southeasterly from Houma, Louisiana. Residents of and communities along Bayou Grand Caillou, Bayou Petit Caillou, as well as Bayous du Large, Terrebonne, Pointe au Chien and St. Jean Charles are targeted for inclusion in a system that would provide protection against the applicable FEMA 100-year flood.

Flood Protection

Ridge elevations become lower as they extend southerly towards the Gulf of Mexico. Elevations of inhabited areas targeted for protection range upward from about two feet to nearly 10 feet above sea level. However, hurricane tides can exceed 10 feet.

Forced drainage projects along some of the distributary ridges were installed over the years by local interests. These leveed-off areas are no longer subject to minor tidal flooding (generally up to about five feet) but water levels in included wetlands are artificially controlled. Many of these areas, as well as others still subject to minor tidal flooding, are targeted for hurricane protection.

A goal of the STTMCD is to preserve life and property in south Terrebonne Parish by providing optimum hurricane protection. Accordingly, the STTCMD has recently been involved with installing flood control gates at strategic locations, upgrading existing forced drainage project features, and constructing additional forced drainage levees elsewhere. Local interests undertook those independent flood control initiatives anticipating that they may someday become part of a hurricane protection system. Those projects comprise a major component of the STTMCD's proposed plan.

Preservation of Wetlands and Their Values

Louisiana's coastal marshes and other wetland types have recognized socioeconomic and natural values. Those values are being reduced roughly in proportion to an annual loss rate of about 25 square miles per year. However, those wetland values can be even more greatly diminished by the typically adverse physical, chemical and physiological conditions related to tropical storm and hurricane tides.

Another goal of the STTMCD is to preserve wetlands as breeding habitat for marine organisms. Tidally influenced marsh and other wetland type areas occur between distributary ridges.

By implementing the STTMCD's proposed hurricane protection levee alignment, the applicant proposes to reduce adverse effects of storm-related tidal flooding to already included wetlands as well as reduce those adverse effects on newly included wetlands. Water levels in included wetlands would likely have to be managed and that could potentially adversely impact marine organisms. Thus, this aspect of the project has the potential to be controversial.

ALTERNATIVES: A no-action alternative will be evaluated. Additionally, non-structural solutions to protecting existing developments will also be evaluated. So, too, will several levee alignments, to include the STTMCD's preferred alignment that largely but not entirely uses many of the existing forced drainage levees and other permitted and/or installed flood control features (e.g., floodgates).

Each of the alternatives to protect existing developments from hurricane tides will also be evaluated relative to the secondary goal of protecting marshes as breeding habitat for marine organisms. Various water control structure operation plans will also be evaluated.

SCOPING PROCESS: The NOD will coordinate closely with Federal, state and local agencies and interested parties while preparing the DEIS. Formal (to include a public scoping meeting) and informal meetings will be held to collect information as well as periodically update interested parties.

Significant issues to be addressed in the DEIS will include the impacts of the proposed project on biological, cultural, historic, social, economic, water quality, and human resources. Specific issues will be formulated based upon the scoping process.

Preparation of the DEIS will be coordinated with Federal, state and local governmental agencies, environmental groups, landowners and other interested parties. All comments received about the DEIS will be considered when preparing the Final EIS.

SCOPING MEETING: A single scoping meeting is planned for mid- to late May 1993. The NOD will issue a public notice specifying the date and location for the scoping meeting.

The purpose of the public scoping meeting is to allow the general public, Federal, State and local governmental agencies, landowners, environmental groups and other interested parties an opportunity to assist the NOD in identifying significant issues to be addressed in the DEIS. Written comments will be accepted for at least 10 days after the date of the scoping meeting.

All verbal and written comments received at the meeting and written comments received through the comment period, will be reviewed, complied and assessed. The NOD will prepare a scoping document summarizing the comments received and make that scoping document available to all meeting participants.

AVAILABILITY OF THE DEIS: The DEIS is scheduled to be available for public review during April of 1994. However, the exact scope of the DEIS and the need and timing for any necessary studies will not be finally determined until after the public scoping meeting occurs. These factors can affect the date the DEIS is ultimately made available for public review and comment.

Michael Diffley,

Colonel, U.S. Army, District Engineer.

[FR Doc. 93–8007 Filed 4–6–93; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to CER Corp.

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36 month Cooperative Agreement to the CER

Corporation with an associated budget of approximately $9M of which the Gas Research Institute (GRI) will cost share approximately 50 percent.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880. Telephone: (304) 291–4079. Procurement Request No. 21–93MC30070.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for the project entitled "Hydraulic Fracture Diagnostics Tests and Model Verification at GRI/DOE Multi-Site Projects". The goal of this project is to conduct fracturing diagnostics research and development in order to characterize and test hydraulic fracturing technologies and performance. CER will develop a fully characterized, tight reservoir-typical, field scale hydraulic fracturing test site, utilizing the old DOE Multiwell Experiment field site near Rifle, Colorado, as well as drill additional instrumentation and diagnostic wells. DOE, GRI, and industry hydraulic fracturing models will be verified at the test site. The research is expected to develop new technologies and improve efficiency of existing fracturing practices. The expanded efficient and economic technology base will provide additional confidence in the long-term availability of natural gas from tight reservoirs, and the successful reduction of stimulation costs will help maintain the competitive advantages of the tight natural gas resource.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–8115 Filed 4–6–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Projects Nos. 2451–004, 2452–007 & 2468–003 Michigan]

Consumers Power Co.; Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of three hydropower projects located on the Muskegon River in southwest Michigan.

The three applications for new licenses for the Rogers, Hardy, and Croton Projects have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare an Environmental Assessment (EA) that evaluates the site-specific and cumulative environmental effects of the continued operation of the projects and proposed environmental enhancements.

The EA will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at the Velma Matson Upper Elementary School, 219 E. Post St., in Newaygo, Michigan, at 7 p.m. on May 4, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the three projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

A preliminary EA Scoping Document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219–2782, or Julie Bernt (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8047 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2599–005 & 2580–015, Michigan]

Consumers Power Co.; Notice of Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of two hydropower projects located on the Manistee River in west-central Michigan.

The two applications for new licenses for the Hodenpyl and Tippy Projects have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare an Environmental Assessment (EA) that evaluates the site-specific and cumulative environmental effects of the continued operation of the projects and proposed environmental enhancements.

The EA will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at the Wellston Elementary School, in Wellston, Michigan, at 7 p.m. on May 3, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the two projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

A preliminary EA Scoping Document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219–2782, or Julie Bernt, (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8048 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Projects Nos. 2448–011, 2447–008, 2449–007, 2453–003, 2450–005 & 2436–007—Michigan]

Consumers Power Co., Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of six hydropower projects located on the Au Sable River in east-central Michigan.

The six applications for new licenses for the Mio, Alcona, Loud, Five Channels, Cooke, and Foote Projects have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare an Environmental Assessment (EA) that evaluates the site-specific and cumulative environmental effects of the continued operation of the projects and proposed environmental enhancements.

The EA will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at Oscoda High School, 3550 East River Road, Oscoda, Michigan, at 7 p.m. on May 5, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the six projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

A preliminary EA Scoping Document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219–2782, or Julie Bernt (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8049 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2436–007, et al., Michigan]

Consumers Power Co.; Notice of Intent To Prepare Environmental Assessment and Notice of Public Meeting

April 1, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for new license filed by Consumers Power Company (Consumers) for the continued operation of 11 hydropower projects located on the Manistee, Muskegon, and Au Sable Rivers in Michigan.

The 11 applications for new licenses have recently been supplemented by the terms of a Settlement Agreement reached between Consumers and the state and Federal resource agencies.

In accordance with the requirements of the National Environmental Policy Act and other applicable laws, the FERC staff, in cooperation with the staff of the Huron-Manistee National Forests (Forest Service), plans to prepare three Environmental Assessments (EA) that evaluate the site-specific and cumulative environmental effects of the continued operation of the projects, and proposed environmental enhancements, in the three river systems.

The EA's will be based on a thorough public scoping of the environmental issues to ensure that the analysis is complete. The FERC and Forest Service staffs will conduct a public meeting at the Holiday Inn-South, 6820 S. Cedar St., Lansing, Michigan, at 7 p.m. on May 6, 1993. The meeting will be recorded by a stenographer, and thereby become a part of the formal record of the FERC proceeding on the 11 projects. Persons who have views on the issues or information relevant to the issues are invited to participate in the meeting, and may submit written statements for inclusion in the public record at that time.

Preliminary EA Scoping Documents outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties and will be available at the meeting.

For further information, please phone Frank Karwoski at (202) 219–2782, or Julie Bernt (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8050 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01

[Docket Nos. CP93–253–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

March 30, 1993.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP93–253–000]

Take notice that on March 16, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–253–000 an application pursuant to Section 3 of the Natural Gas Act and Sections 153.1 and 153.10 through 153.12 of the Commission's Regulations and Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order No. 0204–112. In that application, El Paso requested an order authorizing the siting, construction, operation and maintenance of pipeline facilities at the United States-Mexico international boundary in El Paso County, Texas, approximately six miles south of Clint, Texas. In addition, El Paso requested a Presidential Permit covering the proposed construction, connection and operation of pipeline facilities at the United States-Mexico border, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

El Paso requests authorization to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Mexico in El Paso County, Texas, approximately six miles south of Clint, Texas. El Paso proposes to construct approximately 500 feet of 24-inch O.D. pipeline, with appurtenances, necessary to connect El Paso's upstream facilities with a new pipeline system to be owned in Mexico by Petroleos Mexicanos (PEMEX).

El Paso states that it will construct the entire river crossing including those facilities extending to the Mexican side of the Rio Grande River (approximately 500 feet will be on the Mexican side of the border for a total of 1,000 feet to be constructed for the border crossing). El Paso further states that it will transfer those facilities located in Mexico to PEMEX for its ownership and operation.

El Paso states that it is filing concurrently an application, pursuant to section 7(c) of the Natural Gas Act, for authorization to construct and operate approximately 36.1 miles of mainline looping and lateral pipeline; 28,000 horsepower of compression; the uprate and restage of an existing compressor unit for an additional 4,800 horsepower of compression; and the construction and operation of certain metering facilities, with appurtenances, to transport natural gas from its existing interstate system to the International Boundary (hereby called the Samalayuca Lateral Expansion Project).

El Paso states that the proposed facilities to be constructed and operated at the International Boundary will constitute a portion of the Samalayuca Lateral Expansion Project and will facilitate the transportation and delivery of up to 300,000 Mcf per day of natural gas to PEMEX at the International Boundary for eventual delivery to the Samalayuca Power Plant, located approximately 30 miles south of the Cities of Juarez, Mexico, and El Paso, Texas for electric generation in northern Mexico.

El Paso states that the proposed PEMEX pipeline will interconnect with PEMEX's existing pipeline system, which crosses through the City of Chihuahua and terminates in the City of Juarez, Mexico. El Paso further states that, although natural gas in such pipeline flows north, it can be made capacable of flowing south. El Paso submits that the City of Juarez and the City of Chihuahua may also receive additional natural gas service.

El Paso submits that the proposed border facilities will be made available to any shipper who has executed a transportation service agreement with El Paso. El Paso also submits that the shippers who execute transportation service agreements with El Paso will obtain the necessary export authorization from the Department of Energy, Office of Fossil Energy prior to the commencement of service.

El Paso states that the transportation rates to be charged by El Paso transportation service are those rates set forth in its firm transportation service Rate Schedule T–3 and its interruptible transportation service Rate Schedule T–1. El Paso further states that the rates between the shippers and the ultimate purchaser in Mexico will be set by competition, and should be comparable to rates charged by any selling entity for similar service in the United States.

Comment date: April 20, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Caprock Pipeline Company

[Docket No. CP93–269–000]

Take notice that on March 25, 1993, Caprock Pipeline Company (Caprock), 333 Clay Street, suite 2000, Houston, Texas 77002–9817, filed in Docket No. CP93–269–000 an application pursuant to section 7 of the Natural Gas Act and subpart F of section 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Caprock states that it was recognized as a natural gas company subject to regulation pursuant to the Natural Gas Act in Docket Nos. CP69–134, CP70–209, CP72–227 and CP72–254. Caprock states that it is unaware of any outstanding budget-type certificates issued to it pursuant to § 157.7 of the Commission's Regulations. Caprock states that it agrees to comply with the terms, conditions and procedures specified in subpart F of the Commission's Regulations.

Comment date: April 20, 1993, in accordance with Standard Paragraph F at the end of the notice.

3. Algonquin Gas Transmission

[Docket No. CP93–261–000]

Take notice that on March 18, 1993, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP93–261–000, pursuant to section 7(c) of the Natural Gas Act an application for certificate of public convenience and necessity authorizing Algonquin to construct and operate facilities and to transport and deliver a total of approximately 40,000 MMbtu of natural gas per day on a firm basis to New England Power Company (NEP) and Bay State Gas Company (Bay State), and to abandon certain facilities pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Algonquin proposes to construct and operate: (1) 3.2 miles of 36-inch diameter pipeline to replace existing 26-inch diameter pipeline from Valve Site 11–1 to Valve Site 12–2 near Mahwah, New Jersey; (2) 3.8 miles of 16-inch diameter loop pipeline paralleling the existing 8-inch Brockton lateral near Brockton, Massachusetts; and, (3) 4.9 miles of 36-inch diameter pipeline to replace existing 26-inch pipeline from a point of 1400 feet east of Route 202 to Valve Site 18A–1 upstream of the Southeast Compressor Station in Southeast, New York. Algonquin also proposes to increase the horsepower ratings of units C–7 and C–8 at the Cromwell Compressor Station in Cromwell, Connecticut, and to modify certain metering facilities. The cost of Algonquin's proposed facilities is estimated to be approximately $35.4 million. Algonquin states that it will use revolving credit arrangements, short-term loans and funds on hand to finance the cost of the facilities.

Algonquin proposes to take receipt of Bay States' volume of 14,758 MMbtu per day at an interconnection between the facilities of Algonquin and Texas Eastern Transmission Corporation at Lambertville, New Jersey and transport such gas to the Brockton Meter Station located on Algonquin's I–2 lateral. Algonquin will take receipt of the remainder of the 40,000 MMbtu per day at an interconnection with Columbia Gas Transmission Corporation at Hanover, New Jersey and transport the gas to the Manchester Street Meter Station on Algonquin's G–12 lateral near Providence, Rhode Island.

Algonquin proposes to provide the firm transportation service for NEP and Bay State under proposed Rate Schedule AFT–5. The proposed incremental rate for service under Rate Schedule AFT–5 is a 100% demand rate of $19.2169 per MMbtu.

Comment date: April 20, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP93–268–000]

Take notice that on March 23, 1993, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP93–268–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the ecoshare transportation services which were authorized by its blanket certificate in Docket No. CP82–384–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

AER proposes to abandon the services, specified in subpart F of part 157 of the Commission's Regulations, previously performed under its (a) Ecoshare Transportation Rate Schedule, (b) Rate Schedule Ecoshare–AIC, and (c) Rate Schedule TRG–1, which are on file in its FERC Gas Tariff, First Revised Volume No. 2, Sheet Nos. 221–226. AER states that there is no longer a need for these rate schedules. AER explains that the services performed under the rate schedules were terminated with the issuance and effectiveness of Order No. 436.

Comment date: April 20, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP93–252–000]

Take notice that on March 16, 1993, El Paso Natural Gas Company (Applicant), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–252–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting authorization to construct and operate certain pipeline, metering and compression facilities in order to provide transportation service to the International Boundary between the United States and the Republic of Mexico near Clint, El Paso County, Texas (the Samalayuca Lateral Expansion Project), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate the following facilities to link Applicant's existing interstate system to a point of interconnection with facilities to be sited at the International Boundary between the United States and the Republic of Mexico in El Paso County, Texas, approximately six miles south of Clint, Texas:

Compression

1. Toyah Compressor Station

Install one (1) 14,000 ISO horsepower G.E. Frame 3 compressor unit, with appurtenances, at approximately milepost 27.0 on the Waha-Ehrenberg Line located in Reeves County, Texas.

2. Gresham Compressor Station

Uprate by an additional 4,800 ISO horsepower the existing 9,800 ISO horsepower turbine unit to 14,600 ISO horsepower located at approximately milepost 65.6 on the Waha-Ehrenberg Line located in Culberson County, Texas.

3. Sierra Diablo Compressor Station

Install one (1) 14,000 ISO horsepower G.E. Frame 3 compressor unit, with appurtenances, at approximately milepost 104.5 on the Waha-Ehrenberg Line located in Culberson County, Texas.

Pipelines

4. Cornudas Compressor Station to Hueco Compressor Station

Install approximately 14.9 miles of 30-inch O.D. pipeline, with appurtenances, commencing at the Cornudas "A" Compressor Station at milepost 144.5 on Applicant's existing 30-inch O.D. pipeline and terminating at milepost 159.4 in Hudspeth County, Texas.

5. Line from the Hueco Compressor Station to the International Boundary near Clint, Texas

Install approximately 21.11 miles of 24-inch O.D. pipeline, with appurtenances, commencing at milepost 174.5 on the California System at Applicant's Hueco Compressor Station located in Hudspeth County, Texas and terminating in Tract 4, Block 37, San Elizario Grant, El Paso County, Texas.

6. Rio Grande River Crossing

Install approximately 0.18 mile (1,000 feet) of 24-inch O.D. pipeline, with appurtenances, of which approximately 0.09 mile (500 feet) is on the United States side of the International Boundary, commencing at approximately milepost 21.11 Track 4, Block 37, San Elizario Grant, El Paso County, Texas and terminating 500 feet on the Mexican side of the International Boundary.

Delivery Meter Station

7. International Boundary

Install two (2) 16-inch standard orifice-type meter runs, with appurtenances, at approximately milepost 21.10 on Applicant's proposed 24-inch pipeline located in Track 4, Block 37, San Elizario Grant, El Paso County, Texas.

Applicant proposes to construct and operate, under Section 2.55(a) of the Commission's Regulations, those facilities as follows:

1. Gresham Compressor Station

Restage one (1) turbine unit at Applicant's existing Gresham Compressor Station located at approximately milepost 65.6 in Culberson County, Texas.

Applicant estimates the cost of the proposed facilities to be $56,610,000. Applicant indicates that it will finance the proposed construction through use of internally generated funds or through short-term borrowing.

Applicant states that its proposal will provide for firm and interruptible transportation service of up to 300,000 Mcf/d of natural gas, primarily for shippers serving existing and proposed electric generation facilities and other possible needs in northern Mexico.

Applicant states that the primary use for the proposed capacity will be in satisfaction of the natural gas requirements of the Samalayuca Power Plant, which is located in northern Mexico, approximately 30 miles south of the Cities of Juarez, Mexico and El Paso, Texas. Applicant further states that the Samalayuca Power Plant, with a capacity of 316 megawatts, generates electricity for use within northern Mexico and uses natural gas as fuel in one of two units. Applicant indicates that the second unit currently uses high sulphur residual oil. Applicant submits that plans are underway to expand the plant and convert the second unit to natural gas as a means to reduce air pollution.

Applicant indicates that the Comision Federal de Electicidad has recently awarded the contract for the expansion of the Samalayuca Power Plant to a consortium consisting of General Electric Company, Bechtel Enterprises, Inc. Corporation, Coastal Pan American Corporation, Grupo ICA and Applicant.

Applicant indicates that Petroleos Mexicanos (PEMEX) will own the necessary downstream pipeline in Mexico to move gas from the International Boundary to the Samalayuca Power Plant and other potential delivery points. Applicant anticipates that the Mexican pipeline facilities will consist of approximately 24 miles of pipeline and appurtenant facilities. Applicant indicates that the Mexican pipeline facilities and the Samalayuca Power Plant expansion are scheduled to be placed in-service by June 1, 1994.

Applicant states that the proposed PEMEX pipeline will interconnect with PEMEX's existing pipeline system, which crosses through the City of Chihuahua and terminates in the City of Juarez, Mexico. El Paso further states that, although natural gas in such pipeline flows north, it can be made capable of flowing south. El Paso submits that the City of Juarez and the City of Chihuahua may also receive additional natural gas service.

Applicant submits that it will offer a firm transportation arrangement to any shipper who requests the service proposed. Applicant states that it has initiated discussions for transportation service through the proposed facilities and that these arrangements will allow for flexible receipt points. Applicant further states that it may receive gas from the San Juan, Permian, or Anadarko Basins or from any pipeline interconnect. Applicant states that its existing pipeline system is capable of receiving and transporting to the Waha Compressor Station all or any portion of the proposed additional 300,000 Mcf per day of additional throughout from any of the above-named supply sources.

Applicant states that the facility design is not dependent upon the relinquishment of firm capacity on Applicant's system by any existing shipper as provided by the Order No. 636, *et seq.*, restructuring process.

Applicant states that the various shippers utilizing Applicant's proposed facilities at the border will be required to obtain the proper authorizations from the Department of Energy, Office of Fossil Energy for the exportation of natural gas. Applicant further states that it will not itself export any gas, and does not require any export authorization.

Applicant indicates that it filed concurrently with the subject application, an application for an order, under Section 3 of the Act and Section 153.1 of the Commission's Regulations under the Act, authorizing the siting of pipeline facilities at the International Boundary between the United States and the Republic of Mexico in El Paso County, Texas, approximately 6 miles south of Clint, Texas, and under Section 153.10 of the Commission's Regulations under the Act, for a Presidential Permit authorizing the proposed construction, connection, operation and maintenance of pipeline facilities at the International Boundary.

Applicant proposes to provide service utilizing the proposed facilities in accordance with its current Rate Schedules T–1 and T–3. Applicant states that new shippers will be offered

Transportation Service Agreements in accordance with Rate Schedule T–1 and T–3, with system-wide receipt points, and with delivery points located on the proposed expansion facilities.

Applicant requests a preliminary determination that the Samalayuca Lateral Expansion Project will provide a net system benefit and that the costs of the proposed facilities should be rolled into Applicant's cost-of-service in the first system-wide general rate proceeding initiated following the in-service date of the proposed facilities. Applicant states that it is willing to accept the financial risk for undersubscription, and it is willing to agree that its existing customers will be shielded from any risk of economic harm.

Comment date: April 20, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8035 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–06580T Louisiana–20]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 1, 1993.

Take notice that on March 29, 1993, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Haynesville Formation underlying a portion of the North Shongaloo-Red Rock Field, in Webster Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers portions of the following sections:

Township 23 North, Range 9 West

Section 6: W 3/4
Section 7: N/2
Section 8: NW/4

Township 23 North, Range 10 West

Section 12: NE/4

The notice of determination also contains Louisiana's findings that the referenced part of the Haynesville Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8043 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–06581T Texas–129]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 1, 1993.

Take notice that on March 29, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, White Oak Creek (Travis Peak) Field, underlying a portion of Cherokee County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 6 and is described as the Thomas Shartle #2 Proration Unit, a 704 acre tract within the Martin Lacey Survey, A–30.

The notice of determination also contains Texas' findings that the reference portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8044 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–06582T Texas-130]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 1, 1993.

Take notice that on March 29, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Georgetown Formation, underlying a portion of Burleson County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 3 and includes all or portions of the following surveys:

Cox, J.S.—A–15
Cummings, M.A.—A–16
Guild, A.R.—A–268

Hardeman, J.M.—A–140
Hollingsworth, J.A.—A–30
Huff, W.P.—A–31
Lastley, J.A.—A–35
Long, J.A.—A–37
McFadden, N.A.—A–38

The notice of determination also contains Texas' findings that the referenced portions of the Georgetown Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8045 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–6–63–000, TM93–6–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 1, 1993.

Take notice that on March 30, 1993, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of March 1, 1993:

Forty-Second Revised Sheet No. 8
Forty-Second Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie on and after April 1, 1993. Carnegie states that this filing was necessitated by (i) a substantial and unanticipated increase in the price of spot gas supplies available on and after April 1, 1993, as compared to the projected cost of purchased gas reflected in Carnegie's most recent PGA filed in Docket No. TQ93–5–63–000 on February 25, 1993, and (ii) the planned shutdown of Carnegie's Waynesburg compressor station, which Carnegie expects will cause a change in the projected supply mix of its Appalachian purchase gas and company-owned production, thereby affecting its weighted-average cost of gas.

The above revised tariff sheets reflect a commodity rate increase of $0.3586 per dth under Rate Schedules CDS, LVWS, and SEGSS, as compared to the rates filed in Carnegie's last fully-supported PGA in Docket No. TQ93–5–63–000, on February 25, 1993, reflecting an increase in Carnegie's average commodity cost of purchased gas from $1.8717 per dth to $2.2303 per dth. The revised tariff sheets also reflect an increase in the TCA charge of $0.0398 per dth, from $0.1635 per dth to $0.2033 per dth, as measured against Carnegie's last TCA in Docket No. TM93–5–63–000, filed on February 25, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8040 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–77–002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 1, 1993.

Take notice that on March 26, 1993, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Substitute Original Sheet No. 240
Substitute Original Sheet No. 243
Substitute Original Sheet No. 248
Substitute First Revised Sheet No. 260B
Substitute Original Sheet No. 260G

CNG states that the revised tariff sheets are being filed to correct typographical error to the filing that was made on March 19, 1993 in the above-referenced proceeding.

CNG states that copies of the filing have been mailed to CNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8041 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–9–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

April 1, 1993.

Take notice that on March 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Eighty-Fifth Revised Sheet No. 4 and Forty-Fourth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective April 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Eighty-Fifth Revised Sheet No. 4 and Forty-Fourth Revised Sheet No. 4.1 reflect an increase of 21.11 cents per MMBtu in the commodity cost of purchased gas, and a decrease of 89.8 cents per MMBtu in the demand costs from PGA rates contained in the motion filing to be effective April 1, 1993 in Docket No. RP93–4. MRT also states that since the March 29, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the

Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8046 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–5–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

April 1, 1993.

Take notice that on March 30, 1993, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on April 1, 1993:

Thirty-Second Revised Sheet No. 5

National states that the filing is made to implement an out-of-cycle Purchased Gas Adjustment ("PGA") rate change to reflect the increased gas cost resulted from the impact of the current market price. National's revised demand and commodity rates are $9.67 per Dt and 297.26 cents per Dt respectively.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8038 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

Panhandle Eastern Pipe Line Co., Refund Report

April 1, 1993.

Take notice that on March 12, 1993, Panhandle Eastern Pipe Line Company (Panhandle) filed a report of refunds paid to Michigan Consolidated Gas Company and Michigan Gas Utilities in compliance with Commission order issued February 11, 1993.

Panhandle states that the refunds, paid on March 12, 1993, reflect the amounts collected for production-related costs under Order Nos. 94 and 473, with carrying charges computed from the dates payments were received through March 12, 1993, in accordance with § 154.67 of the regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8036 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–4–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 1, 1993.

Take notice that on March 30, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Sixty-ninth Revised Sheet No. 10
Sixty-eighth Revised Sheet No. 10A
Fiftieth Revised Sheet No. 11
Fortieth Revised Sheet No. 11A
Thirty-ninth Revised Sheet No. 11B
Sixteenth Revised Sheet No. 12

First Revised Volume No. 2–A

Third Revised Sheet No. 14

Texas Gas states that the tariff sheets are being submitted to eliminate the Fixed Monthly Take-Or-Pay (TOP) Charge, which expired with Texas Gas's January 1993 invoice (1/31/93) and to remove the current TOP Volumetric Surcharge one month prior to the allowed April 30, 1993 expiration date to minimize any possible overcollection.

Texas Gas requests an effective date of April 1, 1993, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's sales customers and interested state commissions.

Texas Gas will maintain copies of this filing at its Owensboro, Kentucky, offices for public inspection during regular business hours.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8039 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–202–010]

Trunkline Gas. Co., Refund Report

April 1, 1993.

Take notice that on March 12, 1993, Trunkline Gas Company (Trunkline) filed its report of a refund made to Michigan Gas Utilities (MGU) in compliance with Commission order issued February 11, 1993, that required Trunkline to refund to MGU the Order No. 94 costs paid to Trunkline by MGU, with interest.

Trunkline states that it refunded $1,077,086.59, including interest computed through March 12, 1993, in Order No. 94 costs paid to Trunkline by MGU.

Trunkline states that a copy of the information was sent to MGU and the respective state regulatory commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before April 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–8037 Filed 4–6–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4611–T]

Scientific Conference on the Biological and Health Effects of Radiofrequency Radiation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency (EPA) will hold a scientific conference to assess the current knowledge about the biological and health effects of radiofrequency (RF) radiation. Experts have been invited to present papers and participate on panels to address RF radiation issues of special interest to the U.S. Environmental Protection Agency. The meeting is open to the public without advance registration.

DATES: The Conference will run from 8:30 a.m. to 5:30 p.m. on April 26 and 27, 1993.

ADDRESSES: The Conference will be held at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652–2000.

FOR FURTHER INFORMATION CONTACT: Further information on attending the Conference may be obtained by calling the Radiofrequency Radiation Conference Information Line at (703) 218–2565.

Dated: March 29, 1993.

Eugene Durman,

Director, Office of Radiation and Indoor Air.

[FR Doc. 93–8127 Filed 4–6–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66174; FRL 4577–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 6, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 23 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000352–00358	Du Pont Benomyl 50W	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 CA–88–0006	Du Pont Lorox DF Weed Killer	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000359 FL–87–0002	Mocap Nematocide-Insecticide 15% Granular	*O*-Ethyl *S,S*-dipropyl phosphorodithioate
000876 MT–79–0004	Banvel D Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
001386–00083	Unico Malathion Wettable Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001386–00403	Unico 5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001386–00636	Smith Douglass Malathion 10% Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001386–00637	Smith Douglass Malathion 5% Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
001839–00048	BTC 812	Isopropanol Octyl dodecyl dimethyl ammonium chloride
002596–00041	Hartz Algi Stop	Streptomycin sulfate
002935 CA–79–0146	Wilbur-Ellis Snail & Slug Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
005481 PA–79–0019	DDVP Technical Grade Organophosphorus Insecticide	2,2-Dichlorovinyl dimethyl phosphate
005905–00136	Helena Brand Ethion Emulsifiable Liquid Insecticide Acaricide	*O,O,O',O'*-Tetraethyl *S,S'*-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
005905–00188	Helena Brand Ethion 8	*O,O,O',O'*-Tetraethyl *S,S'*-methylene bis(phosphorodithioate) Aliphatic petroleum hydrocarbons
005905 FL–85–0008	Helena Brand Cythion the Permium Grade Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
036488–00032	Ringer Aphid Mite Attack/Indoor Plants	Potassium salts of fatty acids

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
038167 FL–89–0035	Helena Brand Cythion the Premium Grade Malathion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
042697–00015	Safer Agro-Chem's Indoor Flea Guard Concentrate	Potassium salts of fatty acids
056228 ME–92–0003	Compound DRC-1339 Concentrate-Feedlots	3-Chloro-*p*-toluidine hydrochloride
060182 FL–82–0072	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
060182 FL–87–0017	Resmethrin EC 26 Insect Spray	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
060182 FL–87–0018	Talstar 10WP Insecticide/miticide	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate
064000 AZ–91–0005	Fruit Doctor	

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000352	E. I. Du Pont Denemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000359	Rhone-Poulenc Agrochemical Division, 2 T. W. Alexander Drive, Box 12014, Research Triangle Park, NC 27709.
000876	Velsicol Chemical Corp., 10400 W. Higgins Rd., Suite 600, Rosemont, IL 60018.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002596	Hartz Mountain Corp., 700 Frank E. Rodgers Blvd., So, Harrison, NJ 07029.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd., Los Angeles, CA 90023.
005905	Helena Chemical Co, 6075 Popular Ave - Suite 500, Memphis, TN 38119.
036488	Ringer Corp., 9959 Valley View Rd., Eden Prairie, MN 55344.
038167	Setre Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
042697	Safer Inc., c/o Delta Analytical Corp., 1414 Fenwick Ln, Silver Springs, MD 20910.
056228	U. S. Dept of Agriculture, Animal & Plant Health Inspection, Federal Building, Room 533, Hyattsville, MD 20782.
060182	Land, Epcot Center, Box 10000, Lake Buena Vista, FL 32830.
064000	Arizona Grape Growers Association, Box 144, Waddell, AZ 85335.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3 with the EPA Company Number of the registrant:

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
10361–16–7	Octyo dodecyl dimethyl ammonium chloride	001839

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before [insert date 90 days after date of publication in the **Federal Register**.] This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders. Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for

shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: March 29, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–8123 Filed 4–6–93; 8:45 am]

BILLING CODE 6560–60–F

[OPP–180888; FRL 4580–4]

Receipt of Application for Emergency Exemption to use Tebuconazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Alabama Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide tebuconazole (CAS No. 107534–96–3) to control Rhizoctonia limb rot and Southern stem rot on up to 120,000 acres of peanuts in Alabama. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 22, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180888," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703–308–8327).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide tebuconazole, available as Folicur 3.6F from Miles, Inc., to control Southern stem rot and Rhizoctonia limb rot on up to 120,000 acres of peanuts in Alabama. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Southern stem rot, caused by the fungus, *Sclerotium rolfsii*, is responsible for yield losses in excess of 40 percent in some Alabama peanut fields, resulting in statewide economic losses of approximately $45 million annually. The Applicant attributes the stem rot epiphytotic to a combination of factors, including the large peanut acreage in Alabama, poor cropping practices due to land limitations, and the absence of efficacious pesticides to control the disease. Rhizoctonia limb rot, caused by the fungus, *Rhizoctonia solani*, has emerged as another important disease of peanuts in the southeastern U.S., causing yield losses in Alabama of 4 to 8 percent annually, valued at $6 million to $8 million. According to the Applicant, there are no pesticides registered and no alternative practices available to control this disease.

Under the proposed exemption, up to 4 ground applications of Folicur 3.6F would be made at 0.5 pint of product (0.225 pounds a.i.) per acre. A maximum of 2.0 pints of product (0.9 pounds a.i.) would be applied per acre per season. No applications would be made within 120 days of harvest. A maximum of 30,000 gallons of product (108,000 pounds a.i.) would be needed to treat up to 120,000 acres of peanuts.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Tebuconazole is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Alabama Department of Agriculture.

Dated: March 24, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–7876 Filed 4–6–93; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 19]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information to the Office of Management and Budget for review.

PURPOSE: Eximbank is the agency that facilitates U.S. goods and services through a variety of programs including Eximbank Insurance. This program enables U.S. exporters to compete fairly in foreign markets on the basis of price and product.

SUMMARY: The following summarizes the information collection proposal submitted to OMB.

(1) *Type of request:* New.

(2) *Number of forms submitted:* 9.

(3) *Form Numbers and Title of information collection:*

(1) EIB–92–45 Application for Export Credit Insurance Financing or Operating Lease Coverage;

(2) EIB–92–50 Application for Multibuyer Export Credit Insurance Policy;
(3) EIB–92–64 Application for Short-Term Single-Buyer Policy (For Exporters Only);
(4) EIB–92–68 Application for Export Credit Insurance Trade Association Policy;
(5) EIB–92–72 Application for Export Credit Insurance Umbrella Policy;
(6) EIB–92–80 Broker Registration Form;
(7) EIB–92–34 Application for Quotation-Export Credit Insurance Commercial Bank Insureds;
(8) EIB–92–41 Application for Short-Term Single-Buyer Coverage Financial Institution Buyer Credit Policies;
(9) EIB–92–48 Application for Export Credit Insurance Medium-Term Single Sale, Repetitive, or Combined Short-Term/Medium-Term Coverage.

(4) *Frequency of use:* Applications submitted one time, renewals annually.

(5) *Respondents:* Entities involved in the export of U.S. goods and services including exporters, banks, insurance brokers and non-profit or state and local governments acting as facilitators.

(6) *Estimated total number of annual responses:* 1,200 (per form).

(7) *Estimated total number of hours needed to fill out the form:* 1,200 (1 hour per form).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed application may be obtained from Helene H. Wall, Agency Clearance Officer, (202) 566–8111. Comments and questions should be directed to Mr. Jeff Hill, Office of Management and Budget, Information and Regulatory Affairs, room 3235, New Executive Office Building, Washington, DC 20503, (202) 395–3176. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are not unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: March 31, 1993.

Helene H. Wall,

Agency Clearance Officer.

[FR Doc. 93–8065 Filed 4–6–93; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3104–EM]

Kentucky; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Kentucky (FEMA–3104–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Kentucky dated March 16, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 16, 1993:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the counties of Allen and Green.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–8079 Filed 4–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3100–EM]

Maryland; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Maryland, (FEMA–3100–EM), dated March 16, 1993, and related determinations.

EFFECTIVE DATE: March 18, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Maryland dated March 16, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 16, 1993:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 to open critical emergency access on collector roads and streets, and on minor and principal arterial roads for emergency vehicles in the City of Baltimore.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–8077 Filed 4–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3095–EM]

Tennessee; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Tennessee (FEMA–3095–EM), dated March 14, 1993, and related determinations.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Tennessee dated March 14, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 14, 1993:

Assistance for required emergency measures for a period of five (5) days beginning on March 13 for opening critical emergency access on collector roads and streets, minor and principal arterial roads for emergency vehicles in the county of Sevier.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–8078 Filed 4–6–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. -1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders,

Federal Maritime Commission, Washington, DC 20573.

Aero Expediting Inc., 29205 Airport Drive, Romulus, MI 48174, Officers: Colleen E. Taylor, President, Kathleen A. Raymor, Vice President, David M. Opra, Vice President Int'l.

Koo Forwarding, 819 Princeton St., Santa Monica, CA 90403, Howard Y. Koo, Sole Proprietor.

AMR Shipping Ltd., 9 Murray Street, New York, NY 10007, Officers: Alberto M. Recca, President/Director/Stockholder, Anna Marie Gannon, Treasury/Secretary.

Oceanwide Shipping Inc., 2455 W. Bryn Mawr, #2F, Chicago, IL 60605, Officers: Magdy M. El-Hawary, President/Director, Marinam El-Hawary, Secretary.

American Exhibition Services International, Inc., 1600 Busse Road, Elk Grove Village, IL 60007, Officers: Jeanette Mucha, President/Stockholder, Michelle Kobelinski, Vice President, Gene F. Blum, Director.

Trato International Forwarders, 6503 S.W. 107 Place, Miami, FL 33173, Gloria V. Trapage-Torres, Sole Proprietor.

Express Shipping International, 700 Park Ave., #4D, Baltimore, MD 21201, Joseph M. Issa, Sole Proprietor.

Hopkins Services, 2223 Landscape Way, Richmond, TX 77469, James E. Hopkins, Sole Proprietor.

Advanced International Freight Services, Inc., 1722 Nokia Way, Eagan, MN 55122, Officer: Wayne Bachman, President.

Freight Brokers International Chicago L.P., 120 Old Higgins Road, Des Plaines, IL 60018, Officer: Julia L. Ertler, President.

By the Federal Maritime Commission.

Dated: April 1, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–8015 Filed 4–6–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Bancorp Investment, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citizens Bancorp Investment, Inc., Lafayette, Tennessee; to acquire Town and Country Finance Company, Lafayette, Tennessee; and thereby engage in making, acquiring, and servicing loans or other extensions of credit for its own account and for the account of others, pursuant to § 225.25(b)(1); and in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–8066 Filed 4–6–93; 8:45 am]

BILLING CODE 6210-01-F

Comerica Incorporated, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Comerica Incorporated, Detroit, Michigan; to engage *de novo* through its subsidiary, Comerica Community Development Corporation, Detroit, Michigan, in making equity and debt investments in corporations or projects designed to promote community welfare, primarily economic rehabilitation and development of low income areas by providing housing, services or jobs for residents pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marquette National Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Marquette Community Development Corporation, Chicago, Illinois, in forming a community development corporation to purchase, rehabilitate and resell affordable housing to low and moderate income families pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Chicago, Illinois.

Board of Governors of the Federal Reserve System, April 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–8067 Filed 4–6–93; 8:45 am]

BILLING CODE 6210–01–F

James Richard Gatlin, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 27, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. James Richard Gatlin, Powderly, Texas; to acquire an additional 0.90 percent for a total of 25.66 percent; and Harold Lee Blackburn, Blossom, Texas, to acquire an additional 0.91 percent for a total of 25.45 percent of the voting shares of Red River Financial Corporation, Detroit, Texas, and thereby indirectly acquire Community National Bank, Detroit, Texas.

2. William Osborn Barrett, San Antonio, Texas; to acquire an additional 22.54 percent for a total of 23.17 percent, and Marcus Barrett, San Antonio, Texas, to acquire an additional 22.54 percent for a total of 22.92 percent of the voting shares of Stone Oak Bankshares, Inc., San Antonio, Texas, and thereby indirectly acquire Stone Oak National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, April 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–8068 Filed 4–6–93; 8:45 am]

BILLING CODE 6210–01–F

HNB Holding Company, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 30, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. HNB Holding Company, Inc., Headland, Alabama; to become a bank holding company by acquiring 80.63 percent of the voting shares of Headland National Bank, Headland, Alabama.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Republic Bancshares, Inc., Duluth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bank, Inc., Duluth, Minnesota.

Board of Governors of the Federal Reserve System, April 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–8069 Filed 4–6–93; 8:45 am]

BILLING CODE 6210–01–F

Huntington Bancshares Incorporated, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than April 30, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, Columbus, Ohio; and Huntington Bancshares West Virginia, Inc., Columbus, Ohio, to merge with CB&T Financial Corp., Fairmont, West Virginia, and thereby indirectly acquire Community Bank & Trust, N.A., Fairmont, West Virginia; Community Bank & Trust of Ritchie County, Harrisville, West Virginia; Bank of Hundred, Inc., Hundred, West Virginia; and CBT-Westover Bank, Inc., Westover, West Virginia; and CB&T Clarksburg Corp., Fairmont, West Virginia, and thereby indirectly acquire Community Bank & Trust of Harrison County, Clarksburg, West Virginia, and Community Bank & Trust of Randolph County, Elkins, West Virginia.

In connection with this application, Applicants also propose to acquire CB&T Capital Investment Company, Fairmont, West Virginia, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-8070 Filed 4-6-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031593 AND 032693

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Caterpillar, Inc		
Anchor Coupling Company, Inc		
Anchor Coupling Company, Inc	93-0693	03/15/93
General Electric Company		
First Chicago Corporation		
JB One, Inc., Tealco, Inc., Washtenaw Hotel	93-0739	03/15/93
Broadcasting Partners, Inc		
Norman J. Pattiz		
WYNY-FM Inc	93-0764	03/15/93
Clyde Wm. Engle		
Alba-Waldensian, Inc		
Alba-Waldensian, Inc	93-0666	03/17/93
Fleming Companies, Inc		
Mr. Robert R. Onstead		
Tom Thumb Food & Drugs, Inc	93-0761	03/17/93
Petroleos de Venezuela, S.A		
Amoco Corporation		
Amoco Oil Company's East/South Asphalt Business Unit	92-1213	03/18/93
Ferro Corporation		
Imperial Chemical Industries PLC		
The Glidden Company	93-0743	03/19/93
Swift Energy Company		
Electrafina S.A		
American Cometra, Inc. and Cometra Oil & Gas, Inc	93-0765	03/19/93
U S West, Inc		
U S West, Inc		
Greeley MSA Limited Partnership, Ft. Collins MSA	93-0771	03/19/93
K N Energy, Inc		
Panhandle Eastern Corporation		
Panhandle Eastern Pipe Line Company	93-0774	03/19/93
Chevron Corporation		
Exxon Corporation		
Exxon Corporation	93-0775	03/19/93
Exxon Corporation		
Chevron Corporation		
Chevron Corporation	93-0776	03/19/93
Ronald O. Perelman		
SCI Television, Inc		
SCI Television, Inc	93-0794	03/19/93
Ronald O. Perelman		
Irving Pollack		
WTVT, Inc. and WTVT License, Inc	93-0795	03/19/93
Teleflex Incorporated		
Blackstone Capital Partners, L.P		
Collins & Aikman Group, Inc. and Cepco Inc	93-0744	03/24/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031593 AND 032893—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Teleflex Incorporated		
Wasserstein, Perella Partners, L.P.		
Collins & Aikman Group, Inc. and Capco Inc	93-0745	03/24/93
Norsen Energy Resources Limited		
North Canadian Oils Limited		
North Canadian Oils Limited	93-0747	03/24/93
Acadia Partners, L.P.		
UCC Investors Holding, Inc		
UCC Investors Holding, Inc	93-0746	03/25/93
Berwind Group Partners		
Larry G. McKenzie		
McKenzie Taxidermy Supply, Inc	93-0766	03/25/93
Trion Financial Corporation		
Euro Brokers Investment Corporation		
Euro Brokers Investment Corporation	93-0769	03/25/93
Arrow Electronics, Inc		
Zeus Components, Inc		
Zeus Components, Inc	93-0789	03/25/93
Bausch & Lomb Incorporated		
Dahlberg, Inc		
Dahlberg, Inc	93-0742	03/26/93
InterWest Partners IV, a limited partnership		
Lester D. Speyer		
Speyer Investments, Inc	93-0748	03/26/93
American Bankers Insurance Group, Inc		
Primerica Corporation		
Voyager Group, Inc., Voyager Life Insurance Company	93-0752	03/26/93
Dresser Industries, Inc		
Henry Zarrow		
TK Valve & Manufacturing, Inc	93-0778	03/26/93
Dresser Industries, Inc		
Jack Zarrow		
TK Valve & Manufacturing, Inc	93-0781	03/26/93
ITT Corporation		
AMBAC Inc		
Airport Hotel Associates #1, Ltd., Airport Hotel	93-0814	03/26/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–8131 Filed 4–6–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Project Grants; Maternal and Child Health (MCH) Services; MCH Community Integrated Service Systems (CISS) Set-Aside Program

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Extension of application deadline date.

The Special Project Grants; Maternal and Child Health (MCH) Services; MCH Community Integrated Service Systems (CISS) Set-Aside Program notice deadline date, published on March 17, 1993, beginning on page 14408, is hereby extended to June 16, 1993.

The rest of the notice remains as published.

Dated: April 1, 1993.

Robert G. Harmon, M.D., M.P.H.,

Administrator.

[FR Doc 93–8072 Filed 4–6–93; 8:45 am]

BILLING CODE 4160–15–P

Indian Health Service

Announcement of Financial Assistance for Tribal Recruitment and Retention of Health Professionals into Indian Health Programs

AGENCY: Indian Health Service, HHS.

ACTION: Notice of application for financial assistance awards for tribal recruitment and retention of health professionals into Indian health programs.

SUMMARY: The Indian Health Service (IHS) announces that competitive applications are now being accepted for financial assistance awards to fund American Indian and Alaska Native tribes and tribal and Indian health organizations in the recruitment, placement, and retention of health professionals to meet the staffing needs of Indian health programs. Indian health programs are defined in the statute, Indian Health Care Amendments of 1988 (25 U.S.C. 1616a), as any health program or facility funded, in whole or part, by the IHS for the benefit of Indians and administered—

(1) Directly by the IHS;

(2) By any Indian tribe or tribal or Indian organization pursuant to a contract under—

(a) The Indian Self-Determination Act (Pub. L. 93–638), or

(b) Section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the "Buy-Indian" Act; or

(3) By an urban Indian organization pursuant to Title V of Public Law 94–437.

These financial assistance awards are established under the authority of section 110 of the Indian Health Care Improvement Act, Public Law 94–437, as amended by Public Law 100–713 and Public Law 102–573. There will be one funding cycle during fiscal year (FY) 1993. This program is described at 93.954 in the Catalog of Federal Domestic Assistance. Financial assistance for this program will be awarded and administered in accordance with this announcement,

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Indian Tribes), Code of Federal Regulations (CFR) Title 45, part 92, or Administration of Grants for Non-profit Organizations, CFR Title 45, part 74; the Public Health Service Grant Policy Statement; and applicable Office of Management and Budget Circulars. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Clinical and Preventive Services. Interested applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

DATES: A. Application Receipt Date—An original and two (2) copies of the completed application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Operations, 12300 Twinbrook Parkway, suite 300, Rockville, Maryland 20852 by close of business (COB) May 14, 1993.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with a hand carried application received by COB 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the United States Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late applications will be returned to the applicant and will not be consideration for funding.

B. Application Review: June 22–23, 1993.

C. Applicants Notified of Results (approved, approved unfunded, or disapproved) on or about July 16, 1993.

D. Anticipated Project Start Date: on or about August 1, 1993.

CONTACTS FOR ASSISTANCE: For program information, contact Mr. Darrell Pratt, Chief, Health Professions Support Branch, Division of Health Professions Recruitment and Training, Indian Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–4242. For grants information, contact Ms. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, Suite 300, Rockville, Maryland 20852, telephone (301) 443–5204.

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility, program priority, programmatic objectives and type of award document, fund availability, period of support, application process, required documentation, review process, and review criteria.

A. General Program Purpose

Section 110 of Public Law 100–713 authorizes the IHS to make financial assistance awards to Indian tribes and tribal and Indian health organizations to enable them to recruit, place, and retain health professionals to fill critical vacancies and to meet the staffing needs of Indian health programs and facilities including those administered directly by the IHS. However, the selection or non-selection of individuals for Federal Government employment and the direction and control of Federal employees including the approval of position descriptions and performance standards for Federal employees are Federal functions that may only be performed by Federal officials.

B. Eligible Applicants

Any federally recognized Indian tribe or tribal or Indian health organization is eligible to apply for a grant. For purposes of this announcement, Indian Health organization is defined at CFR title 42, part 36.302(i) as "a non-profit corporate body composed of Indians which provides for the maximum participation of all interested Indian groups and individuals and which has the provision of health programs as its principal function." This means that the following types of organizations could be eligible: urban Indian organizations; Indian health boards; "Buy Indian" contractors, if they are non-profit and health oriented; and other national and regional non-profit Indian organizations having a health focus. The IHS components, i.e., Area Offices and service units, are not eligible to apply under this announcement.

C. Program Priority

First priority will be given to those applicants who propose to recruit for health programs and facilities that IHS has designated as Tier 1 sites for the IHS Loan Repayment Program for physicians, nurses, and other health professions. Tier 1 designation identifies IHS and tribally contracted health programs that experience high vacancy and staff turnover rates. For purposes of this announcement, the Tier 1 listings currently in effect will be used for priority determination. These listings are included in the IHS Grant Application Kit (refer to section G, Application Process, of this announcement).

The Tier listings do not include urban Indian health programs. Urban Indian health programs will be considered as Tier 1 Equivalents if they: (1) Address five established criteria that indicate need; (2) score 30 points or more on these criteria; and (3) provide documentation verifying their responses to the criteria. The criteria for Tier 1 and Tier 1 Equivalents are included in the IHS Grant Application Kit.

Those sites designated as Tiers 2 and 3 will be considered as the second priority and will be funded only if monies remain available after all approved Tier 1 and Tier 1 Equivalents have been awarded.

D. Programmatic Objectives and Type of Award

The objectives of this program are to recruit, to place, and to retain health professionals in areas identified by the IHS as having high vacancy and staff turnover rates. Demonstration projects will be funded to develop and test innovative strategies that may be replicated at other locations. Applicants must address activities for all three objectives—recruitment, placement, and retention.

Organizations that are approved for funding to carry out activities related to recruitment of personnel for health programs and facilities that they operate or that are operated by other tribes, tribal or Indian organizations will be awarded as grants. Organizations that receive health care directly from the IHS and are approved to carry out activities related to recruitment of Federal staff for IHS Area Offices, service units, Hospitals, and Health Centers will be awarded cooperative agreements. Cooperative agreements are financial assistance awards that require the substantial programmatic involvement of the Federal Government. Examples of such involvement in these projects are:

- The IHS personnel specialists and health professional recruiters must provide vacancy listings, copies of position descriptions and selection criteria for Federal Civil Service and commissioned corps employees.

• The IHS staff must be responsible for determining qualifications of candidates and interviewing and selecting employees. Specific programmatic involvement by the IHS in a project will be negotiated with an approved applicant before award of a cooperative agreement.

Applicants who propose to recruit for health programs operated by tribes and tribal and Indian health organizations will be given equal opportunity to compete with applicants who propose recruitment activities for programs operated directly by the IHS.

E. Fund Availability

In FY 1993, it is anticipated that approximately $523,500 will be available for recruitment, placement, and retention awards. It is anticipated that up to 7 awards will be funded. Although it is expected that project funding needs will vary depending on the scope of work, the anticipated funding range, inclusive of direct and indirect costs, is $85,000 to $100,000. Only one project grant will be awarded per Indian tribe or tribal or Indian health organization.

F. Period of Support

Projects will be funded for annual budget periods with project periods of up to 3 years, dependent upon the scope of work. The second and third year continuations will be based on the following: (1) Satisfactory progress; (2) availability of funds; and (3) continuing need of the IHS for the program.

G. Application Process

An IHS Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, 12300 Twinbrook Parkway, Suite 300, Rockville, Maryland 20852. Telephone (301) 443–5204. This kit includes Standard Form PHS 5161–1 (Rev. 7/92); Standard Forms 424, 424A, and 424B (Rev. 4/88); Application Receipt Card—PHS 3038 (Rev. 5/90); Tier 1 Listings; Criteria for Tier 1 Equivalents; instructions for preparing the program narrative; and IHS Application Check List.

The application must comply with the following format:

1. Abstract (1 page)—Summarizes the project
2. Table of Contents (1 page)
3. Narrative (10 pages)
4. Budget and Justification
5. Appendix (résumés, position descriptions, information on contractors/consultants, tribal resolutions/letters of support, responses to criteria for Tier 1 Equivalents and supporting documentation)

Narrative

The following instructions for the preparation of the narrative are to be used in lieu of the instructions on pages 19–21 of form PHS 5161–1. The narrative section of the application must include: (1) justification of need for assistance; (2) approach or methodology proposed, including a program evaluation; (3) adequacy of management controls, and (4) key personnel. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. THE NARRATIVE MAY NOT EXCEED TEN SINGLE-SPACED PAGES IN LENGTH, EXCLUDING ATTACHMENTS, BUDGET, AND LETTERS OF SUPPORT/TRIBAL RESOLUTIONS. Pages must be numbered.

1. Need for Assistance

(a) Describe the organization submitting the application.

(b) Describe the location(s) and health profession category(ies) for which the applicant will be recruiting. Indicate if the location(s) has been identified as a Tier 1 site for the health profession category(ies). If location is an urban Indian health program, you must address the criteria for Tier 1 Equivalents (you must score 30 or more points for Tier 1 consideration). Include your responses, scores, and supporting documentation of Tier 1 Equivalents in the Appendix. Supporting documentation is not necessary if site has been designated as Tier 1, 2, or 3 on the Tier listings.

(c) Describe efforts that have been made in the past to recruit health professionals and to meet needs.

2. Approach

(a) Program Objectives

1. State concisely the objectives of the project and how this project will address recruitment, placement, and retention. Be innovative.

2. Describe briefly what the project intends to accomplish and the number of Indians to benefit from the project.

3. Describe how accomplishment of the objectives will be measured (including if replicable).

4. Describe how the project has the potential to carry out objectives in an efficient and effective manner. Discuss cost effectiveness.

(b) Work Plan

1. The work plan section should be project specific.

2. Describe the tasks and resources needed to implement and complete this project. Be sure to address recruitment, placement, and retention.

3. Provide a task timeline (timelines) breakdown or chart.

4. Discuss data collection for the project—what data will be collected and how it will be obtained, analyzed, and maintained by the project. For example, how many people were contacted about vacancies; how many applied; how many were placed; how long they remained in the positions; etc.

5. Describe how the project will be evaluated. This is the evaluation process to determine if the project has been successful in meeting identified needs and in achieving its stated objectives. Include information on who will conduct the evaluation, the criteria to be used to evaluate results, when the evaluation will be conducted, and what will be done with the evaluation results.

6. Multi-year projects must include a description of the activities to be performed in the second and third years.

3. Adequacy of Management Controls

(a) Describe where the project will be housed, i.e., facilities and equipment available.

(b) Describe the management controls of the grantee over the direction and acceptability of work to be performed.

(c) Applicant must demonstrate that the organization has adequate systems and expertise to manage Federal funds.

(d) Provide an organizational chart and indicate how the project will operate within the organization.

(e) If the applicant proposes to recruit for other tribes, tribal or Indian organizations, indicate how the applicant will interrelate with these groups to obtain vacancy information and to refer those recruited for consideration and selection. Indicate a plan for tracking placement and retention.

(f) If the applicant proposes to recruit Federal staff for IHS directly operated health programs, indicate how the applicant will interrelate with the IHS Area Office, service unit, Hospital, or Clinic to obtain vacancy information and to refer those recruited for consideration and selection. Indicate a plan for tracking placement and retention.

4. Key Personnel

(a) Provide biographical sketches (résumés) and position descriptions for

the program director and other key personnel as described on pages 20–21 of form PHS 5161–1.

(b) List the qualifications and experience of consultants or contractors if their use is anticipated.

Budget

An itemized estimate of costs must be provided on form PHS 5161–1 (rev. date 7/92). A narrative justification must be submitted for costs by line item. Multi-year projects shall include funding requirements for the second and third years. (Grant funding may not be used to supplant existing public and private resources.)

Documentation of Support

1. Tribal Resolution

If the applicant is an Indian tribe or tribal organization, a resolution from the tribal government supporting the project must accompany the application submission. Applications that propose services that will benefit more than one Indian tribe must include a resolution from every tribe to be served. Applications by tribal organizations will not require resolution(s) if the current tribal resolution(s) under which they operate would encompass the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration. Indian health organizations (e.g., urban Indian health organizations, non-profit Buy Indian health organizations, etc.) are not required to submit tribal resolutions Refer to the following section or Letters of Cooperation/Collaboration/Assistance for requirements for Indian health organizations.

2. Letters of Cooperation/Collaboration/Assistance

(a) If any applicant proposes to recruit for a health program operated directly by IHS, a letter of support must be submitted by the IHS Area Director responsible for the program. In the letter, the Area Director must confirm the nature and extent of cooperation/collaboration/assistance with the applicant.

(b) An Indian health organization that proposes to carry out recruitment for Indian health programs operated by tribes, tribal organizations, or other Indian health organizations must have letters of support from each organization to be served.

H. Review Process

Applications that meet eligibility requirements, are complete, and conform to this announcement will be reviewed by an Ad Hoc Review Committee comprised of IHS and other Federal staff. Applications will be reviewed against established review criteria. Reviewers will assign a numerical score to each application. In making the final funding decision, the IHS will also consider recommendations of the IHS Area Office within which the applicant is located.

I. Review Criteria

Applications will be evaluated against the following criteria and weights:

Weights	Criteria
25	1. *Need*—Is the need for the project justified? Does proposed project target a Tier 1 site? A Tier 2 or 3 site? If a project targets urban Indian health programs, is there justification and documentation for conducting activities at that site? Do proposed efforts complement and expand past recruitment efforts?
40	2. *Approach*—Are the objectives well stated? Is the applicant's work plan for conducting the project sound and effective? Is the approach innovative? Are the activities proposed cost effective and will they lead to effective recruitment, placement, and retention? Does the applicant present a sound evaluation plan capable of determining the project's successes?
15	3. *Adequacy of Management Controls*—Is the applicant capable of successfully conducting the project both from a technical and business standpoint? Is the proposed interaction with IHS staff adequate for an application for recruitment of Federal staff? Is the budget sound in relation to the work plan and does it assure effective utilization of grant funds? Are the facilities and equipment adequate?
20	4. *Key Personnel*—Regarding the position descriptions, are the qualifications of key personnel appropriate and adequate to carry out the project? If a resumé is provided, are the individual's qualifications and experience consistent with the position description and conduct of the project?

Dated: January 29, 1993.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 93–8071 Filed 4–6–93; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of a Vaccine To Prevent Infection of the Human Genital Tract by Human Papillomaviruses

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a pharmaceutical company that can effectively pursue the scientific and commercial development of a safe and effective anti-virion vaccine to prevent infection of the human genital tract by human papillomaviruses. NCI has established that papillomaviruses virion-like particles self-assemble in insect cells when the major virion protein is overexpressed. These particles induce the production of high titer antibodies that prevent papillomavirus infection in an in vitro assay. The selected sponsor will be awarded a CRADA for the development of a subunit vaccine based on the self-assembled virus-like particles.

ADDRESSES: Questions about this opportunity may be addressed to John Schiller, Ph.D., Senior Investigator, Division of Cancer Biology, Diagnosis and Centers, NCI, 9000 Rockville Pike, Bld 37, room 1B26, Bethesda, MD 20892, (301) 496–9513, Fax (301) 480–5322.

DATES: On or before June 7, 1993.

SUPPLEMENTARY INFORMATION: The NCI is seeking a pharmaceutical or biotechnology company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR part 404), can develop a vaccine based on self-assembled human papillomavirus (HPV) virion proteins, for which a patent is pending, to meet the needs of the general public with the best terms for the NCI. HPV infection of the genital tract is a common venereal disease which at the present time is not adequately controlled or effectively treated. Infection with certain genital HPV types, most frequently HPV16, is the most significant risk factor in the development of cervical cancer, the second most common cancer in women world wide. A vaccine to prevent genital HPV infection has not been critically evaluated, in large part, because no adequate source of virions or properly folded virion capsid proteins has been available for testing. In an attempt to overcome this obstacle, the NCI has expressed the papillomavirus

major capsid protein L1 in insect cells via a baculovirus vector and demonstrated that the L1 protein has the intrinsic capacity to self-assemble into virion-like particles that are morphologically indistinguishable from native virions. Self-assembly has been demonstrated for bovine papillomavirus type 1 (BPV1), rhesus monkey papillomavirus (RHPV) and HPV16. Unlike bacterially derived BPV L1, the BPV particles mimic native virions in their ability to elicit high titer antibodies that neutralized papillomavirus infection of cultured cells.

Although the minor capsid protein L2 is not required for self-assembly or the generation of neutralizing antibodies, it is incorporated into the L1 particles when co-expressed in insect cells.

In order to bring a prophylactic vaccine against human genital papillomaviruses to market, it will be necessary to develop suitable animal models, design appropriate vaccination protocols for the models, conduct the studies, and establish the efficacy of vaccination in the animals. If protection is demonstrated in the animals, it will be necessary to produce a polyvalent vaccine consisting of the virion proteins of the most prevalent genital HPV types, conduct FDA approved human trial, evaluate the results, and lastly manufacture and market an FDA approved human vaccine.

The role of the Division of Cancer Biology, Diagnosis, and Centers, NCI, includes the following:

1. NCI will provide the baculovirus vectors that induce the self-assembly of L1 and L1 plus L2 particles for bovine papillomavirus type 1 (BPV1), Rhesus monkey papillomavirus type 1 (RHPV1), and human papillomavirus type 16 (HPV16). Similar vectors for other human and animal papillomavirus are currently being developed, including HPV6, HPV11, HPV18, BPV4, and cottontail rabbit papillomavirus (CRPV).

2. NCI will provide the methodology to efficiently generate and purify the virion particles from recombinant baculovirus infected insect cells. Current procedures, employing CsCl gradient centrifugation, yield approximately 10 mg of purified L1 particles per liter of infected cells. The L1 alone and L1 plus L2 particle will be compared to determine if L2 facilitates assembly or stability of the particles.

3. NCI will provide an ELISA assay based on the self-assembled particles to measure the titer of conformationally dependent anti-virion antibodies. ELISA assays for both animal and human genital types are being developed so that anti-virion immunity can be monitored prior to and after vaccination of the model animals and human populations.

4. NCI will evaluate the potential for using the anti-particle ELISA assay to measure current infection or previous exposure to HPV infection. The NCI will provide the necessary sera and lavages from women whose HPV status has been monitored using other procedures.

5. NCI will participate in designing, conducting and evaluating vaccine trials in animal models. At least three models are planned to be examined, RhPV which induces genital lesions with malignant potential, BPV4, which primarily infects the oral mucosa, and CRPV, which infects normal epidermis. In addition to the ELISA assays to measure seroconversion, PCR based assays are being developed to monitor papillomavirus infection.

6. If infectious virus can be produced in vitro, NCI will attempt to develop infectivity assays for HPV and RhPV which could be used to measure the neutralizing titer of the antibodies generated against our particle immunogens.

7. Relevant Patent rights are available for licensing through the Office of Technology Transfer, NIH. For further information contact: Mark Hankins, National Institutes of Health, Box OTT, Bethesda, MD 20892. (301) 496–7735, Fax (301) 402–0220.

The role of the successful corporate partner under the CRADA will include the following:

1. Generate large scale preparations of purified papillomavirus particles. This could either be accomplished by the CsCl gradient centrifugation method currently employed by the NCI or by an alternative procedure, such as chromatographic method, developed by the company.

2. Develop and optimize alternative expression systems for the generation of virion-like particles. It would be desirable for the corporate partner to attempt to develop a more cost effective method of generating the virus-like particles than the current expression in cultured insect cells. Bacterial expression is not an alternative because the L1 protein does not fold properly in bacteria. However, it is possible that expression in yeast might result in proper folding and self-assembly of L1, be amenable to large scale production, and be acceptable for a human vaccine.

3. Provide general support for the NCI's papillomavirus vaccine development program.

4. Provide funds for supporting the animal vaccination trials. This could be accomplished through contributing to the cost of the NCI studies and/or conducting some of the studies through the company.

5. Develop and test alternative vaccination protocols. It has yet to be determined if the virus-like particles can elicit sufficiently high titer and long lasting neutralizing antibodies on genital mucosal surfaces using standard vaccination procedures. It may be necessary to test recently developed adjuvants, novel delivery vehicles or unusual vaccination protocols to achieve long lasting protection by procedures that would be acceptable for use in humans. Should such procedures be needed, a corporate partner would be expected to contribute significantly to the development of alternative vaccination protocols and their testing in the animal models described above.

6. If protection is demonstrated in the animal models, approval for human trials will be sought. The corporate partner will cooperate with the NCI in designing and drafting the applications for the trials. In addition, it will assume major responsibilities for funding and conducting the trials, evaluating the results, and preparing and filing the FDA product license.

7. If efficacy is demonstrated in the human trials, the company will be responsible for large scale production, packaging, marketing and distribution of a commercial vaccine.

Criteria for choosing the cooperating company include the following:

1. Experience in developing and testing vaccines in animal models.

2. Experience in preclinical and clinical testing and evaluation of human vaccines.

3. Experience and ability to produce, package, market, and distribute pharmaceutical products in the United States and to provide the product at a reasonable price.

4. Willingness to cooperate with the NCI in the collection, evaluation, publication and maintenance of data from animal studies and from clinical trials of the investigational agents.

5. Willingness to cost share in animal studies and clinical trials as outlined above.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable,

nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: March 26, 1993.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93-8053 Filed 4-6-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3605; FR-3495-N-01]

Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: this notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the Federal Register. Mortgage market conditions now dictate that the Secretary decrease the section 235(r) maximum rate from 8.00 percent to 7.50 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met.

Therefore, the maximum for the premium section 235(r) interest rate will be 9.00 percent (7.50 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, room 9134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-2270, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235, so that the assistance payments which the Department pays on behalf of mortgagors is reduced. The regulations implementing the program are contained in 24 CFR part 235 (subpart H, on the refinancing of mortgages under section 235(r), was published on December 30, 1992 (57 FR 62452), and became effective on February 16, 1993). The interest rate for these loans is set by the Secretary and published in the **Federal Register** as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 8 percent was published in the **Federal Register** on December 30, 1992 (57 FR 62452). The market conditions dictate a change in the section 235(r) interest rate commencing on the date of publication of this notice.

The most recent monthly HUD survey of Mortgage Market conditions (i.e., Secondary Market Prices and Yields), an OMB-designated Principal Federal Indicator, found that the dominant national FHA rate being quoted to potential homebuyers for "lock-in" commitments of 10 days or more was 7.50 percent on March 1, 1993, with an average of .38 points, and an effective interest rate of 7.55 percent. The 7.50 percent rate was dominant in all parts of the country. Since the initial section 235(r) interest rate was set at 8.00 percent in December 1992, the bond market has experienced a substantial rally, pushing some long-term interest rates to twenty-year lows. As a result of investors reaction to the President's proposed economic package, coupled with signs the economy may be weakening, bond yields have fallen dramatically. The yield on 30-year Treasury bonds was 7.47 percent on January 8, 1993 and dropped to 7.02 percent on the day after the President's announcement of his economic program, and was 6.81 percent on March 19, 1993. The yield curve for Treasury bonds had climbed sharply upward because of investor uncertainty and lingering fear of inflation. Now those fears have been eased somewhat and long-term rates have moved downward.

Most FHA mortgages are funded in the GNMA mortgage-backed securities market. On March 22, 1993, the GNMA 7.00 percent coupon security, backed with 7.50 percent GHA/VA loans, was trading in the two-month forward delivery market at even par. This means lenders will be willing to commit to close these loans in the primary mortgage market at no discount points. On the other hand, the 8.00 percent FHA/VA loans are now trading at about 3 points premium.

Adjusting the section 235(r) rate to 7.50 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 7.50 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 24 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

Authority: 12 U.S.C. 1715z; 42 U.S.C. 3535(d).

Dated: March 26, 1993.

James. E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 93-8054 Filed 4-6-93; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-260-4210-05]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0012), Washington, DC 20503, telephone 202-395-7340.

Title: Recreation and Public Purposes Act, 43 CFR part 2740.

OMB Approval Number: 1004-0012.

Abstract: Respondents supply information and data describing the lands requested, the proposed use of the lands, applicant qualifications, and detailed plans concerning project development and management. This information allows the Bureau to determine if the applicant and proposed use meet the requirements of the Recreation and Public Purposes Act of 1926, as amended.

Bureau form number: 2740–1.
Frequency: Once as indicated on SF 83.
Description of respondents: State and local governments and nonprofit organizations.
Estimated completion time: 40 Hours.
Annual responses: 55.
Annual burden hours: 2,200.
Bureau Clearance Officer: (Alternate) Marsha Harley 202–653–6105.

Mike Penfold,

Assistant Director for Land and Renewable Resources.

[FR Doc. 93–8009 Filed 4–6–93; 8:45 am]
BILLING CODE 4310–84–M

[CA–010–03–4350–03; 3–00160–GP3–010–15]

Public Use Restriction; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a temporary visitation restriction order on public lands within the Carrizo Plain Natural Area, San Luis Obispo County, in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action temporarily restricts public visitation on BLM-administered rock outcrops within the Carrizo Plain Natural due to the presence of sensitive species of birds of prey during a critical part of their life cycles. The public lands affected by this restriction are located within San Luis Obispo County, California.

SUPPLEMENTARY INFORMATION: Effective on the date of publication, and pursuant to 43 CFR part 8360 and 42 CFR 8364.1(a), all authorized visitation within 0.25 miles of any rock outcrop in the vicinity of and including Painted Rock is unlawful. This prohibition includes all outcrops within public lands in T32S, R20E, Sections 8, 16, and 17, Mount Diablo Base and Meridian. Access shall be limited to persons carrying written permission from the Authorized Officer or those participating with an authorized guided tour. Individuals within 0.25 miles of the base of a rock-outcrop or climbing on a rock-outcrop within the above described area will be in violation of this Temporary Visitation Restriction Order.

This Temporary Visitation Restriction Order will be in effect from the date of publication in the **Federal Register** until 30 June 1993. Maps of the affected area and information concerning guided tours are available from the Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308. This emergency visitation restriction is intended to limit visitor-caused disturbance to nesting birds of prey to a level compatible with successful nesting while allowing for educational and recreational use.

Bureau of Land Management employees and Carrizo Plain cooperators are exempt from this order while in the course of their official duties.

Any person who fails to comply with this restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in 43 CFR 8360.0–7.

Dated: March 31, 1993.

James Wesley Abbott,

Caliente Resource Area Manager.

[FR Doc. 93–8058 Filed 4–6–93; 8:45 am]
BILLING CODE 4310–40–M

[CO–010–03–4210–04; COC–52864]

Reality Action; Exchange of Public and Private Land in Grand and Jackson Counties, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction to notice of reality action.

SUMMARY: A notice of realty action regarding an exchange of public and private lands in Grand and Jackson Counties was published in the **Federal Register** on January 4, 1993. Under the supplementary information section, item number 2 states that there will be "A reservation to the United States of all mineral deposits of known value" made in the patent. This is incorrect. Instead, under the supplementary information section, item number 2 should be deleted and item number 3 renumbered to number 2. Additionally, under the selected public land section, the last paragraph, second sentence reads "In exchange for these lands, the United States will acquire the following described lands from Daniel Ritchie, Grand River Ranch". This sentence should be deleted. The second sentence in the last paragraph of the selected public land section should read, "In exchange for these lands and subsurface rights, the United States will acquire the following described lands, including subsurface rights, from Daniel Ritchie Grand River Ranch".

Dated: March 30, 1993.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 93–8019 Filed 4–6–93; 8:45 am]
BILLING CODE 4310–JB–M

[UT–942–4210–06; U–42907 et. al.]

Proposed Continuation of Withdrawals; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that four land withdrawals for the Central Utah Project, totalling 10,665.60 acres, continue for 100 years. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received by July 6, 1993.

ADDRESSES: Comments should be sent to State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, (801) 539–4119.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Orders dated October 18, 1918 and November 17, 1916, Commissioner Order of January 30, 1956, and Public Land Order 3682, dated June 10, 1965, as to the following described land, be continued for 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Central Utah Project

Uintah Special Meridian

U–42907

T. 2 N., R. 9 W.,
Sec. 25, N½NW¼, SW¼NW¼;
Sec. 26, SE¼NE¼, E½SE¼;
Sec. 35, SE¼SE¼.

U–42938

T. 3 S., R. 12 W.,
Sec. 13, NE¼NE¼;
Sec. 24, SE¼NE¼, SE¼;
Sec. 25, SW¼SE¼.

U–42939

T. 1 N., R. 8 W.,
Sec. 6, lots 1–5, SE¼NW¼.
T. 1 N., R. 9 W.,
Sec. 1, lots 1, 2, 6, S½N½, N½SW¼, SW¼SW¼;
Sec. 2, lot 1, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 11, NW¼, NE¼, NW¼;
Sec. 15, N½NW¼;
Sec. 16, NE¼, SE¼NW¼, SW¼, NW¼SE¼;
Sec. 17, S½SE¼;
Sec. 20, N½NE¼, SW¼NE¼, E½NW¼, SW¼;
Sec. 21, NW¼NW¼.
T. 1 N., R. 10 W.,

Sec. 25, S½NE¼, SE¼NW¼, N½NE¼SW¼, SW¼NE¼SW¼, NW¼SW¼, N½N½SE¼, N½SE¼NE¼SE¼;
Sec. 26, N½S½;
Sec. 27, SW¼, N½SE¼, SW¼SE¼;
Sec. 28, E½SE¼;
Sec. 34, NW¼NE¼, E½NW¼, SW¼.
T. 1 S., R. 10 W.,
Sec. 4, lots 1, 2, S½NE¼, E½SW¼, W½SE¼;
Sec. 8, E½SE¼;
Sec. 9, NW¼, W½SW¼;
Sec. 17, E½NE¼, SW¼NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 20, NW¼NE¼, NE¼NW¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 29, W½NW¼;
Sec. 30, E½NE¼, NE¼SE¼, W½SE¼;
Sec. 31, lots 2, 3, 4, E½W½.
T. 1 S., R. 11 W.,
Sec. 36, SE¼NE¼, E½SE¼.
T. 2 N., R. 7 W.,
Sec 8, S½;
Sec. 17, 20;
Sec. 19, lots 3 and 4, S½NE¼, E½SW¼, N½SE¼;
Sec. 21, W½.
T. 2 N., R. 8 W.,
Sec. 24, SE¼SW¼, S½SE¼;
Sec. 25, N½N½, SW¼NW¼;
Sec. 26, NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼;
Sec. 27, S½SW¼, SE¼;
Sec. 31, S½SE¼;
Sec. 32, SE¼NE¼, E½SW¼, SW¼SW¼, N½SE¼, SW¼SE¼;
Sec. 33, NE¼, NW¼SW¼, S½NW¼;
Sec. 34, N½NW¼.
T. 2 S., R. 10 W.,
Sec. 6, lots 3–6, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, N½NE¼;
Sec. 8, W½NW¼, SW¼;
Sec. 17, W½NE¼, E½NW¼, NE¼SW¼, S½SE¼, NW¼SE¼.

U–0139316

T. 1 N., R. 9 W.,
Sec. 10, SW¼SE¼.
T. 4 S., R. 12 W.,
Sec. 10, lots 2, 3, E½NE¼, SW¼NE¼;
Sec. 11, N½NW¼.

The areas described aggregate 10,665.60 acres in Duchesne and Wasatch Counties.

The purpose of the withdrawals is to protect Soldier Creek Dam, and Strawberry Reservoir, the Strawberry Collection System, which consists of numerous tunnels and features, Upper Stillwater Dam and Reservoir, and Currant Creek Dam and Reservoir. The withdrawals segregate the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Utah State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Terry Catlin,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–8011 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–DQ–M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0049), Washington, DC 20503, telephone 202–395–7340.

Title: Tsunami Questionnaire
OMB approval number: 1028–0049
Abstract: Respondents supply information on the effects of earthquake-related tsunamis on themselves personally, buildings and their effects, other man-made structures, and coastal areas. This information will be used in the study of the hazards from earthquakes and tsunamis.
Bureau form number: 9–3014
Frequency: After each tsunami
Description of respondents: State and local employees; and, the general public
Estimated completion time: 0.1 hours
Annual responses: 200
Annual burden hours: 20 hours
Bureau clearance officer: Geraldine A. Wilson, 703–648–7309

Dated: February 16, 1993.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 93–7999 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–31–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0048), Washington, DC 20503, telephone 202–395–7340.

Title: Earthquake Report
OMB approval number: 1028–0048
Abstract: Respondents supply information on the effects of the shaking from an earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".
Bureau form number: 9–3013
Frequency: After each earthquake
Description of respondents: State and local employees; and, the general public
Estimated completion time: 0.1 hours
Annual responses: 1,500
Annual burden hours: 150 hours
Bureau clearance officer: Geraldine A. Wilson 703–648–7309

Dated: February 16, 1993.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 93–8000 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–13–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information described below is being submitted to the OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202/395–7340.

Title: Annual National Earthquake Hazards Reduction Program Announcement
OMB approval number: None
Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected project to assess scientific performance.
Bureau form number: None
Frequency: Annual proposals, annual or final reports.
Description of Respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.
Estimated completion time: 46 hours
Annual responses: 420
Annual burden hours: 19,300
Bureau Clearance Officer: Geraldine A. Wilson, telephone 703/648–7309.

Dated: January 15, 1993.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 93–8002 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Information Collection Submitted for Review

The collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Office at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010–0074), Washington, DC 20503, telephone 202–395–7340.

Title: Coal Washing and Transportation Allowances
OMB approval number: 1010–0074
Abstract: The Government collects royalties resulting from the sale of Federal and Indian coal. Coal sales contracts are required to be submitted upon request by the Minerals Management Service to ensure that the Federal and Indian lessor receives royalties that are based on product values representing fair market value. In some cases an allowance may be granted from royalties to compensate the lessee for the reasonable actual costs of washing the royalty portion of the coal. An allowance may also be granted for transporting the royalty portion of coal to a sales point not on the lease or in the mine area. Failure to collect the data described in this information collection could result in the undervaluation of coal and render it impossible to ensure that the public and Indians receive payment on the full value of the minerals being removed.
Bureau Form Numbers: MMS–4292 and MMS–4293
Frequency: Annually, or when a contract terminates or changes
Description of Respondents: Solid minerals mining companies
Estimated Completion Time: 6 hours
Annual Responses: 78
Annual Burden Hours: 498
Bureau Clearance Officer: Dorothy Christopher, 703–787–1238

Dated: November 9, 1992.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–7998 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted for Review

The collection of information listed below has been submitted to the Office of Management and Budget for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010–0061), Washington, DC 20503, telephone 202–395–7340.

Title: Oil Transportation Allowances
OMB approval number: 1010–0061
Abstract: The Government collects royalties resulting from the sale of Federal and Indian oil. In some cases an allowance is granted to compensate lessees for the reasonable costs of transporting the royalty portion of the oil to a delivery point remote from the lease. Transportation allowances are taken as a deduction from royalty. The allowance determination procedure is essential to ensure that the public and the Indians receive the full royalty payment to which they are entitled, and that lessees are correctly compensated for allowable transportation costs. Failure to collect the data described in this information collection could make it impossible to ensure that royalty rates computed and paid are appropriate.
Bureau Form Number: MMS 4110
Frequency: On occasion, annually, or when circumstances change
Description of Respondents: Oil companies
Estimated Completion Time: Average, 3.5 hours
Annual Responses: 1,200
Annual Burden Hours: 4,400
Bureau Clearance Officer: Dorothy Christopher, 703–787–1238

Dated: November 9, 1992.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 93–8001 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the

Office of Management and Budget, Paperwork Reduction Project (1029–0067), Washington DC 20503, telephone 202–395–7340.

Title: Restrictions on Financial Interests of State Employees, 30 CFR part 705
OMB approval number: 1029–0067
Abstract: Respondents supply information on employment and financial interests. The information is used to determine if respondents are in compliance with Section 517(g) of the Surface Mining Control and Reclamation Act of 1977 which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.
Bureau form number: OSM–23
Frequency: Entrance on duty and annually
Description of respondents: Any State regulatory authority employee or member of advisory boards and commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Act is required to file a statement of employment and financial interests.
Estimated completion time: 20 minutes
Annaul responses: 2,749
Annual burden hours: 928
Bureau clearance officer: John A. Trelease, 202–343–1475

Dated: January 29, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

Editorial Note: This document was received at the Office of the Federal Register on April 1, 1993.

[FR Doc. 93–7996 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project 1029–0083, Washington, DC 20503, telephone 202–395–7340.

Title: Application for Blaster Certification in Federal Program States and on Indian Lands, 30 CFR 955
Abstract: This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement.
Bureau Form Number: OSM–74
Frequency: Every three years
Description of Respondents: Individuals seeking certification as Blasters
Estimated Completion Time: 53 minutes
Annual Responses: 40
Annual Burden Hours: 35
Bureau clearance officer: John A. Trelease, (202) 343–1475

Dated: March 16, 1993.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–8003 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0090), Washington, DC 20503, telephone 202–395–7340.

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR part 870
OMB Number: 1029–0090
Abstract: Section 402 of the Surface Mining Control and Reclamation Act of 1977 requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection requirement is needed to support verification of the moisture deduction allowance. The information will be used by the regulatory authority during audits to verify that the amount of excess moisture taken by the operator is appropriate.
Bureau Form Number: None
Frequency: On Occasion
Description of Respondents: Coal Mine Operators
Annual Responses: None
Annual Burden Hours: 3,272
Estimated Recordkeeping Time: 2 hours
Bureau clearance officer: John A. Trelease, (202) 343–1475.

Dated: December 29, 1992.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–8004 Filed 4–6–93; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Malaria Vaccine Program Advisory Committee; Meeting

Action: Notice of partially closed meeting.

Committee: Malaria Vaccine Program Advisory Committee.

Date & Location: VBC Conference Room, 1901 North Fort Myer Drive, Arlington, VA 22209.

1. April 26, 9 am–12 pm, suite 400, (closed session).
2. April 26, 1 pm–4:30 pm, suite 400.
3. April 27, 9 am–4:30 pm, suite 400.

Agenda: The committee will (1) review progress towards malaria vaccine development by A.I.D.-funded and other invited investigators and (2) review procurement actions, both current and planned. Closed Meeting: Portions of the meeting are closed under exemption 9 (B) of 5 U.S.C. 552(b) to discuss proposals, scopes of work, cost estimates, and other sensitive procurement information. Disclosure of such information would be likely to significantly frustrate implementation of current and futures procurement by A.I.D.

FOR FURTHER INFORMATION CONTACT: Kirk D. Miller, M.D., Malaria Vaccine Development Program, A.I.D. Office of Health (SA–18 Room 1232), Washington, DC 20523–1817, (703) 875–5693. Julie Klement, Chief, Communicable Diseases Division, Office of Health, Bureau for Research and Development.

Dated: March 31, 1993.

Jan W. Miller,

Assistant General Counsel, Employees & Public Affairs.

[FR Doc. 93–8014 Filed 4–6–93; 8:45 am]

BILLING CODE 8116–01–M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (AID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (202) 467–9367, FA/AS/ISS, room 3726 NS, Washington, DC 20523–0042.

Date Submitted: March 26, 1993

Submitting Agency: Agency for International Development

OMB Number: 0412–0004

Form Number: AID–11

Type of Submission: Renewal

Title: Application for Approval of Commodity Eligibility

Purpose: AID provides loans and grants to many developing countries in the form of Commodity Import Programs (CIPS). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S. or in some cases, from other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, AID can finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and Agency policies. Using the Application for Approval of Commodity Eligibility (Form AID–11), the supplier certifies to AID information about the commodities being supplied, as required in section 604(f), so that AID may determine eligibility.

Annual Reporting Burden: Respondents: 385; annual responses: 2.1; average hours per response: .50; burden hours: 404

Reviewer: Jefferson Hill, (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 26, 1993.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 93–8016 Filed 4–6–93; 8:45 am]

BILLING CODE 8116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"

In the Matter of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by six months, i.e., from December 20, 1993, to June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3093.

SUPPLEMENTARY INFORMATION: On February 8, 1993, respondents Hyundai Electronics Industries Co., Ltd., Hyundai Electronics America, Inc. ("Hyundai"), Goldstar Electron Co., Ltd., and Goldstar Electron America, Inc. ("Goldstar"), filed a motion to designate the subject investigation "more complicated." Complainant Micron Semiconductor, Inc. opposed the motion. The Commission investigative attorney (IA) supported the motion.

On February 25, 1993, the presiding administrative law judge issued an ID (Order No. 3) granting the motion to designate the investigation more complicated because the technology involved is complex and discovery will be time-consuming, in light of the need for extensive third-party discovery, the possible need for making tests during various stages of respondents' production process to assess infringement, and the possible need for experiments reproducing prior art processes to assess validity.

On March 8, 1993, complainant Micron Semiconductor, Inc. filed a petition for review of the ID. The IA filed a response to the petition for review on March 15, 1993. Goldstar filed a response on March 16, 1993, and Hyundai filed a response on March 17, 1993.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

By order of the Commission.

Issued: March 29, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–8097 Filed 4–6–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–347]

Change of Commission Investigative Attorney

In the Matter of certain anti-theft deactivatable resonant tags and components thereof.

Notice is hereby given that, as of this date, Steven A. Glazer, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Jeffrey R. Whieldon, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: March 29, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–8096 Filed 4–6–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–559 (Final)]

New Steel Rails From the United Kingdom

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

material injury,[2] and the establishment of an industry in the United States is not materially retarded, by reason of imports from the United Kingdom of new steel rails,[3] provided for in subheading 7302.10.10 and heading 8548.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 14, 1992, following a preliminary determination by the Department of Commerce that imports of new steel rails from the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 12, 1992 (57 FR 53778). The hearing was held in Washington, DC, on February 16, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 26, 1993. The views of the Commission are contained in USITC Publication 2617 (March 1993), entitled "New Steel Rails from the United Kingdom: Determination of the Commission in Investigation No. 731–TA–559 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: March 30, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–8095 Filed 4–6–93; 8:45 am]

BILLING CODE 7020–02–M

[2] Chairman Newquist determines that an industry in the United States is materially injured by reason of imports from the United Kingdom.

[3] The merchandise covered by this investigation is new steel rails, except light rail and girder rail, of other than alloy steel, weighing over 30 kilograms per meter. New steel rails include standard and premium carbon steel tee rail, crane rail, and contact rail (electrical rail).

[Investigation No. 337–TA–340]

Commission Determination not to Review Initial Determination Granting Joint Motion to Terminate the Investigation in its Entirety

In the Matter of certain specimen container systems and components including alignment indicator labels, and method of use.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting joint motion to terminate the investigation with respect to respondent Starplex Scientific, Inc. (Starplex) consent order agreement.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington. DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On July 6, 1992, Sage Products, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the importation into the United States, the sale for importation, the sale within the United States after importation of certain specimen container systems and components, including alignment indicator labels, by reason of alleged infringement of claims 1–8 and 14 of U.S. Letters Patent No. 5,048,711. On August 5, 1992, the Commission instituted an investigation of the complaint and publish notice of its investigation in the **Federal Register** (57 FR 36109 (August 12, 1992)).

On January 27, 1993, complainant Sage and respondent Starplex jointly moved for termination of this investigation on the basis of a Consent Order Agreement (Motion Docket No. 340–4). The staff on February 8, 1993 supported Motion No. 340–4 to terminate the investigation. On March 2, 1993, the presiding administrative law judge issued an ID granting the motion and terminated the investigation in its entirety. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 19 CFR 210.51(c) and §§ 211.20—211.22 for the termination of the investigation.

By order of the Commission.

Issued: March 29, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–8098 Filed 4–6–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Released Rates Decision No. MC–999; Release Rates Application No. MC–1554]

Released Rates of Motor Common Carriers of Household Goods

AGENCY: Interstate Commerce Commission.

ACTION: Notice. Released Rates Application No. MC–1554.

SUMMARY: The Commission modifies existing released rates authority to permit household goods carriers to increase excess value charges for released rates shipments and to restructure excess value charges for storage-in-transit shipments.

EFFECTIVE DATE: Decision is effective on May 21, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 927–5180, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services (202) 927–5721.]

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10730(a).

Decided: March 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8101 Filed 4–6–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–394X]

Austin & Northwestern Railroad Co., Inc., Texas & New Mexico Railroad Division; Abandonment Exemption; in Lea County, NM

Austin & Northwestern Railroad Co., Inc., Texas & New Mexico Railroad Division, has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonment to abandon its 2.55-mile line of railroad between milepost 104.5 and milepost 107.05 (the end of the track), and approximately 0.65 mile of rail-owned sidetrack (located between the above mileposts), resulting in 3.2-mile line of track to be abandoned in the City of Lovington, Lea County, NM. The segment of the line between milepost 104.5 and milepost 105.3 will be reclassified as industrial track and will be kept in place.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 19, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by April 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 31, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8099 Filed 4–6–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 450X)]

CSX Transportation, Inc; Abandonment Exemption; in Polk County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of a 1.4-mile rail line extending from milepost AVC–828.71 at Haines City to the end of the line at milepost AVC–830.11, in Polk County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1993. Formal expressions of intent to file an OFA [1] under 49 CFR 1152.27(c)(2) must be filed by April 19, 1993; OFAs must be filed by May 7, 1993; requests for public use conditions must be filed by April 27, 1993; petitions to stay must be filed by April 22, 1993; and petitions to reopen must be filed by May 3, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 450X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: March 31, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8104 Filed 4–6–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32258]

Daniel R. Frick; Continuance in Control Exemption; Winamac Southern Railway Co.

Daniel R. Frick has filed a notice of exemption to continue in control of

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment (SEE) in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

Winamac Southern Railway Company (Winamac Southern) upon its becoming a class III rail carrier. Winamac Southern, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32257, Winamac Southern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation, to acquire and operate 75.6 miles of rail line, commonly known as the Logansport Cluster, which is owned by Consolidated Rail Corporation (Conrail) in the Counties of Carroll, Cass, Clinton, Howard, and Pulaski, IN.[1] Winamac Southern expected that transaction be consummated on or after March 18, 1993.

Mr. Frick also controls a nonconnecting class III rail carrier, J. K. Line, which owns and operates approximately 16 miles of rail line between Monterey, IN, and North Judson, IN. He has certified that (1) the properties operated by J. K. Line do not connect with the properties being acquired by Winamac Southern; (2) the continuance in control is not part of a series of anticipated transactions that would connect the two railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in New York Dock. Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

Decided: April 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8105 Filed 4–6–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The Conrail segments to be acquired and operated by Winamac Southern includes: (1) the Logansport Secondary Track between milepost 51.0 at Bringhurst, IN, and milepost 98.5 at Kokomo, IN; (2) the Winamac Secondary Track between milepost 0.0 at Van, IN, and milepost 25.7 at Winamac, IN; and (3) Conrail's interest in the Kokomo Belt Line between milepost 0.0 and milepost 2.4 at Kokomo, IN.

[Docket No. AB–393, Sub-No. 1X]

Northwestern Oklahoma Railroad Co.—Abandonment Exemption—in Woodward County, OK

Northwestern Oklahoma Railroad Co. has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad extending from its crossing with The Atchison, Topeka and Santa Fe Railway Co. south of Webster Avenue to the end of the track at the north line of Downs Avenue, all in the City of Woodward, Woodward County, OK.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7; 49 CFR 1105.8; 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 7, 1993,[1] unless stayed or a formal expression of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements[4] under 49 CFR 1152.29 must be filed by April 19, 1993. Petitions to reopen or requests for public use conditions[5] under 49 CFR 1152.28 must be filed by April 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, Northwestern Oklahoma Railroad Co., 211 South Leitch Avenue, LaGrange, IL 60525–2162.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by April 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 31, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8100 Filed 4–6–93; 8:45 am]

BILLING CODE 7035–01–M

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of May 4, 1993. Because the verified notice was not filed until March 18, 1993, consummation cannot take place prior to May 7, 1993. The applicant's representative has orally confirmed the corrected consummation date.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[5] The applicant indicates that the city of Woodward has expressed interest in acquiring a portion of the right-of-way south of Cedar Avenue to expand the grounds of its Pioneer Museum.

[Finance Docket No. 32257]

Winamac Southern Railway Co.; Acquisition and Operation Exemption; Lines of Consolidated Rail Corp.

Winamac Southern Railway Company (Winamac Southern), a noncarrier, has filed a notice of exemption to acquire and operate 75.6 miles of rail line, commonly known as the Logansport

Cluster, owned by Consolidated Rail Corporation (Conrail) in the Counties of Carroll, Case, Clinton, Howard, and Pulaski, IN.[1] The involved Conrail segments include: (1) The Logansport Secondary Track between milepost 51.0 at Bringhurst, IN, and milepost 98.5 at Kokomo, IN; (2) the Winamac Secondary Track between milepost 0.0 at Van, IN, and milepost 25.7 at Winamac, IN; and (3) Conrail's interest in the Kokomo Belt Line between milepost 0.0 and milepost 2.4 at Kokomo, IN. Winamac Southern will become a class III rail carrier. The parties expected to consummate the proposed transaction on or after March 18, 1993, the effective date.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3103.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–8106 Filed 4–6–93; 8:45 am]

BILLING CODE 7037-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Easton Area Joint Sewer Authority*, Civil Action No. 89–7144, (E.D. Pa.) and *CORCO et al.* v. *Pfizer Pigments, Inc., et al.*, Civil Action No. 88–1359 (E.D. Pa.) were lodged on January 26, 1993 and March 26, 1993 with the United States District Court for the Eastern District of Pennsylvania.

The cases arise out of violations of the Clean Water Act committed at the Easton Sewage Treatment Plant, located in Easton, Pennsylvania, and an industrial facility currently owned by Harcross Pigments, Inc., which discharges into the treatment plant. The United States' complaint alleges (1) that the Easton Area Joint Sewer Authority and the City of Easton violated the Act by discharging pollutants from the treatment plant in excess of amounts allowed by permit; (2) that the Authority violated the Act by failing properly to implement and enforce a pretreatment program; and (3) that Pfizer, Inc. and its subsidiary, Pfizer Pigments, Inc., both which are former operators of the industrial facility now owned by Harcross, violated pretreatment requirements applicable to the wastewater they discharged to the treatment plant.

The above-referenced consent decrees resolve the claims of the United States, the Commonwealth of Pennsylvania and the citizen plaintiffs in No. 88–159 against the authority, the City and Harcross. The decrees require the current operators of the treatment plant and the Harcross facility to comply with the Clean Water Act and to undertake specific corrective measures. The decrees require payment of civil penalties as follows: The Authority—$389,800; the City of Easton—$45,250. A prior decree required Pfizer, Inc. and Pfizer Pigments, Inc. to pay a civil penalty of $3.2 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Easton Area Joint Sewer Authority, et al.*, DOJ Ref. #90–5–1–1–3273.

The proposed consent decree may be examined at the Office of the United States Attorney, suite 1300, 615 Chestnut Street, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 815 Chestnut Building, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 2005, (202–624–0892). A copy of the proposed decrees may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $41.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–8006 Filed 4–6–93; 8:45 am]

BILLING CODE 4410-01-M

[1] This proceeding is related to Finance Docket No. 32258, in which Daniel R. Frick has concurrently filed a notice of exemption to continue in control of Winamac Southern when it becomes a carrier upon consummation of the transaction described in this notice.

DEPARTMENT OF LABOR

Employment and Training Administration

[Training and Employment Guidance Letter (TEGL) No. 7–92]

Job Training Partnership Act: Transition Guidance for Implementation of the Job Training Partnership Act (JTPA) Amendments of 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration has issued Training and Employment Guidance Letter (TEGL) No. 7–92, dated March 8, 1993. TEGL No. 7–92 provides guidance to States to facilitate their developing policy for Service Delivery Areas and other subrecipients as they establish systems in response to the JTPA Amendments of 1992. TEGL 7–92 is reprinted below for public information.

Dolores Battle,

Administrator, Office of Job Training Programs.

Training and Employment Guidance Letter No. 7–92

From: Carolyn Golding, Acting Assistant Secretary of Labor

Subject: Transition Guidance for Implementation of the Job Training Partnership Act (JTPA) Amendments of 1992

1. *Purpose.* To provide guidance to State to facilitate their developing policy for Service Delivery Areas (SDAs) and other subrecipients as they establish systems in response to the JTPA Amendments, which take effect on July 1, 1993. This guidance is being provided in advance of Final Regulations on 20 CFR Part 627 Subpart I, Transition Provisions, which will be published as soon as possible.

2. *References.* JTPA Interim Final Regulations published on December 29, 1992, TEIN No. 16–92; TEGL No. 2–92; TEGL No. 4–92; and TEGL No. 6–92.

3. *Background.* Public Law 102–367, dated September 7, 1992, established major revisions to JTPA. Section 701(i) of Public Law 102–367 permits the Department to "establish such rules and procedures as may be necessary to provide for an orderly implementation of the amendments." * * *" Interim final rules published December 29, 1992, provide policy on transition to the new

requirements at 20 CFR Part 627 Subpart I. The JTPA Amendments of 1992 made significant enhancements to program requirements and administrative systems. The regulations state that transition activities will be accomplished during the balance of Program Year (PY) 1992 in order to fully implement the Amendments on July 1, 1993, unless otherwise stated. Comments on the interim final rule have indicated considerable concern with the transition provisions. The anticipated expansion and enrichment of the Title II–B program for the upcoming summer has also prompted a reexamination of transition provisions. Accordingly, pursuant to the authority provided by Section 701(i) of Public Law 102–367, this issuance provides rules and procedures which the Department finds necessary to provide for the orderly implementation of the Amendments. It is intended that these guidelines may be relied on by States and SDAs. The Department will issue conforming amendments to the JTPA Interim Final Regulations as soon as possible.

4. *Program Implementation.* The Department recognizes that implementation by the States and SDAs of the new program design requirements, particularly objective assessment and development of the individual service strategies (ISS), may require additional time to fully implement beyond July 1, 1993. The Department intends that the program design changes be undertaken in a manner which ensures the long-term quality of service delivery in JTPA. Reasonable efforts to implement the provisions of 20 CFR 628.515, 628.520, and 628.530, objective assessment, individual service strategy, and referrals of participants to non-Title II services as soon after July 1, 1993 as possible, are expected to be made. However, all new participants will not be expected to initially receive such services until January 1, 1994. The Department acknowledges that the quality of those activities is expected to be improved and refined during PY 1993, as are all aspects of the JTPA program. Monitoring of the program aspects of the Amendments during PY 1993 by all levels of the JTPA system, including the Department, should focus heavily on improving service quality. In determining compliance with the program design requirements during PY 1993, the grant officer will consider the extent to which the States and SDAs have made good faith efforts to implement the new provisions during PY 1993.

5. *Immediate action.* In order to make the transition from the old to the new requirements, the JTPA Regulations at 20 CFR 627.902 identified actions that must be accomplished by the Governor prior to July 1, 1993. These actions cover four major areas: (a) Funding; (b) Participants; (c) Procurement; and (d) Reporting.

a. Funding

Effective July 1, 1993, PY 1993 funds must be administered in accordance with the new legislation and regulations. PY 1992 funds unexpended on June 30 may be expended after July 1 to serve "grandparented" participants under "old" rules, or they may be expended after July 1 to serve "new" or "old" participants under new rules. Whatever amount is used under the "old" rules is to be reported on the "old" reporting form. Whatever amount is used under the "new" rules is to be reported on the "new" reporting form.

There will be an increase allowed in the administrative cost limitation for PY 1992 funds from 15 percent to 20 percent, with a corresponding adjustment to the other cost limitations. Specifically, not less than 80 percent of Title II–A funds may be expended for training and participant support, and not less than 65 percent may be expended for training. Any unexpended PY 1992 funds to be used after June 30, 1993, may be used according to the "old" rules (20 CFR part 626 et al., published September 22, 1989) so long as these funds are used to provide training to participants who were enrolled on or before June 30, 1993. When all such participants are terminated, remaining unspent funds must be used and accounted for in accordance with the rules implementing the 1992 Amendments.

States and SDAs should identify PY 1992 and earlier funds that will be used in PY 1993 for programs operating under the new Amendments. Of these funds, not less than 40 percent, or the rate approved by the Governor as established under section 203(b)(2), must be used in PY 1993 as Title II–C funds to provide services to eligible youth. The cost limitations, cost classifications, and allowable costs requirements in the 1992 JTPA Amendments apply to these funds.

The Interim Final Regulations provide that administrative cost pool funds must be allocated on the basis of benefits received, rather than the past practice in some States and SDAs of allocating costs on the basis of proportionate fund contribution to the pool. Many commentors viewed this as unduly restrictive. It is important to note that States, in setting policy in this area, may apply whatever allocation methodology is in accordance with generally accepted accounting practices and is acceptable to its auditors.

Pursuant to TEGL 2–92, any available section 202(b)(3) PY 1992 or earlier "6 percent" funds may be used to develop and implement data collection and management information systems to track the program experience of participants.

The JTPA Amendments of 1992 provide SDAs with the option to transfer funds between the "Parts" within Title II. For the PY 1993 planning process, SDAs may use available PY 1992 and earlier Title II–A funds for Titles II–A and Title II–C purposes in PY 1993, and may also transfer PY 1993 Title II–A, II–B, and II–C funds to Titles II–A and II–C. Guidance that addresses this was issued separately in TEGL No. 6–92.

b. Participants

"Grandparenting" Participants

Participants enrolled in JTPA programs prior to July 1, 1993, may continue to be served under the "old" rules and regulations.

As previously noted, all new Title II–A and II–C participants enrolled after January 1, 1994, must be served under the requirements of the 1992 JTPA Amendments, e.g., assessment, ISS, and referral. The 65 percent barrier requirement for Titles II–A and II–C, however, will apply to all participants newly enrolled after June 30, 1993.

The 50 percent out-of-school participants requirement at 20 CFR 628.803(h) will not be the subject of compliance review until the period following July 1, 1994. During PY 1993, however, SDAs must show improvement in the proportion of out-of-school youth being served and ETA and States will monitor performance in increasing the proportion.

The Interim Final Regulations call for all participants to come under the requirements of the Amendments as of July 1, 1994. Final Regulations will allow participants on board prior to July 1, 1993 to continue service under the old arrangements until they terminate, which may be after June 30, 1994.

c. Procurement

Section 627.904(e) of the Interim Final Regulations states that "All procurements initiated on or after July 1, 1993, shall be governed by and follow the requirements in 20 CFR 627.420 * * *." Initiation of a procurement, for purposes of this section, is considered to be either the award of a sole source grant/contract, the award of a small purchase contract or the issuance of an Invitation For Bid or Request For Proposal. In accordance with 20 CFR 627.905, contracts, awards, and agreements entered into on or before June 30, 1993, are to be used to serve only participants enrolled on or before June 30, 1993, unless the contracts, awards and agreements are modified to comply with the new amendments and regulations.

d. Reporting

Financial Reports

States/SDAs may continue to use PY 1992 money for grandparented participants under old requirements, or PY 1992 funds may be used for new participants under new requirements. PY 1992 money used to implement the 1992 Amendments will be reported on the new Title II financial report format, and will be subject to the new financial management requirements. States will continue to report on the JTPA Annual Status Report (JASR), as usual, PY 1992 and earlier money that is not used to implement the 1992 Amendments. Reporting instructions for PY 1993 are forthcoming. As soon as OMB approval has been secured, the Department will issue instructions for the new fiscal reports.

PY 1992 and earlier funds used for PY 1993 activity will assume PY 1993 characteristics and cost limitations and audit requirements. They will not, however, lose their appropriation identity. These funds will be reported separately on the new financial report under new cost categories in accordance with the reporting instructions issued for PY 1993 funds.

Participant Reporting

All current annual and semi-annual reporting requirements for Title II and Title III will continue until full implementation of the Standardized Program Information Reporting (SPIR) system. Full SPIR

implementation is required for PY 1993, beginning July 1, 1993. For PY 1992, a dual system of participant reporting will be required as follows: (1) PY 1992 aggregate data required in the JASR and Worker Adjustment Program Annual Program Report (WAPR) will be reported no later than August 15, 1993; and (2) SPIR participant reports for all individuals terminating during PY 1992 will be reported no later than November 15, 1993. Reports will contain, at a minimum, that information needed to complete the JASR and WAPR. Title II–B information will be reported on the JTPA Summer Performance Report. Additional requirements may be added, depending on the proposed summer supplemental.

6. *Other Issues of Immediate Concern:*

a. State Human Resource Investment Council (HRIC)

Pursuant to section 701 of the JTPA as amended, States may establish an HRIC that would supersede and replace the State Job Training Coordination Council and other State councils. Section 703(c) provides that a State electing to establish an HRIC shall certify to the Secretary such establishment at least 90 days before the beginning of the 2-program year planning period. The 2-year period for the next State and local plans begins July 1, 1994. Therefore, an HRIC may be established now, or at any time during PY 1993. The certification for the HRIC is required 90 days prior to July 1, 1994.

b. Instructions Necessary for SDAs to Operate the 1993 Summer Program

There is contradictory language in the Interim Final Regulations at 20 CFR 627.902(j) and 627.904(k). The calendar year 1993 Title II–B Summer Youth Employment and Training Program will be governed by the Act and regulations in effect prior to the 1991 JTPA Amendments pursuant to 20 CFR 627.904(k). Additional guidance will follow related to the proposed summer supplemental.

c. Capacity Building and Technical Assistance

The JTPA Amendments of 1992 made capacity building and technical assistance priorities at the National, State and local levels. Governors are encouraged to use section 202(c)(1)(B) funds to develop a Statewide capacity building and technical assistance strategy, including provisions for SDAs in State planning. Funds may be used for capacity building purposes beginning July 1, 1993. Consideration should be given to directing resources and/or training directly to staff of SDAs and local service providers. Other coordinated capacity building arrangements, including cost-sharing approaches, should also be considered.

d. Performance Standards

Consistent with the transition provisions in Section 701, implementation of new performance standards requirements will begin on July 1, 1993 (PY 1994). Until that time, current requirements pertaining to measures and applications (i.e., adjustments, incentive awards, and imposition of sanctions) will remain in effect. Therefore, for calculating PY 1992 SDA performance on the postprogram performance employment and earnings measures, States are to use the PY 1992 JASR follow-up information (based on the first three quarters of PY 1992 and the fourth quarter of PY 1991). A similar procedure will be used for PY 1993 (using the first three quarters of PY 1993 from the August 15, 1994 SPIR and the fourth quarter of PY 1992 derived from the November 15, 1993 SPIR). This is consistent with the procedures used since the inception of postprogram measures.

e. Grievances

The transition provisions contained in the Interim Final Regulations appear to imply that "new" grievances procedures are required at the State and SDA levels as a result of the JTPA Amendments of 1992. This is not really the case. The basic requirements at section 144 of the Act, to have and maintain a JTPA grievance procedure for complaints and alleged violations of the Act and regulations, were not changed by the Amendments. The Amendments revised section 144 by adding new subsections which apply to the handling of alleged section 143 labor standards violations. The States and SDAs will need to modify their grievance procedures accordingly to cover such complaints. Complaints and grievances will continue to be handled in accordance with established grievance procedures, except as modified by the changes in the Amendments to section 144, and other minor revisions set forth at Subpart E, F, and H of the Interim Final Regulations.

f. Coordination Requirements

New coordination and linkage requirements are expected to be developed during PY 1993 so as to constructively impact the planning and coordination of PY 1994–95 activities under Titles I, II and III.

g. Plans Modifications

The Interim Final Regulations call for the modification of State and local job training plans. The plans need to reflect only those programmatic revisions which are necessary to implement the requirements that take effect on July 1, 1993 or during PY 1993. The plans must also reflect provisions for the new coordination requirements for local adult and youth programs which must be in place during PY 1993.

h. SDA Redesignation

Policies for the designation of SDAs need not affect SDAs prior to the designations for PY 1994. It is expected that these policies will apply to SDA designations prior to the 1994–1995 program year period.

7. *Action.* States should ensure that transition activities are consistent with this guidance.

8. *Inquiries.* Questions may be directed to Jim Aaron at (202) 219–6825 or Hugh Davies at (202) 219–5580.

[FR Doc. 93–8091 Filed 4–6–93; 8:45 am]

BILLING CODE 4510-30-M

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Application for Funds: Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738, Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: This notice sets forth the procedures for obtaining an application for funds for the operation of a Homeless Veterans Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738. Projects will be administered by the Department of Labor through grants with State and local public agencies and nonprofit organizations.

DATES: The closing date for receipt of a completed application package in response to this notice is May 14, 1993. Applications received after that time will be considered for award according to the instructions in the application package governing late proposals.

ADDRESSES: A copy of the application package and instructions for completion may be obtained by written request only directed to: U.S. Department of Labor, Office of Procurement Services, rm. S5220, 200 Constitution Ave., NW., Washington, DC 20210, Grant Officer, Attention: Robert MacLeod, Reference SGA 93–02. Self-addressed mailing labels will be appreciated.

FOR FURTHER INFORMATION CONTACT: Robert MacLeod, U.S. Department of Labor, Office of Procurement Services, 200 Constitution Ave., NW., rm. S5220, Washington, DC 20210, Telephone (202) 219–6246.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for its HVRP funds for Fiscal Year 1993. Funding for these projects is authorized by Section 738 of the Stewart B. McKinney Homeless Assistance Act, (Pub. L. 100–77). Most recently under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590, enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995.

The McKinney Act provides funds to various Federal agencies to administer a variety of programs for homeless persons. Title VII, Subtitle C, section

738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There is approximately $4.5 million available in Fiscal Year 1993 to carry out demonstration HVRPs in urban areas authorized under section 738. A separate competition for a small number of demonstration grants to operate in rural areas will be announced separately at a later time.

Project funding will range from $100,000 to $300,000 with an average of $150,000. Between 25 and 30 projects will be funded. Projects will begin no later than September 30, 1993 for a one-year period with an option to renew for an additional year. Individual starting dates will be negotiated with successful applicants.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of supportive and training-related activities which best meet the need of the homeless veteran population in its jurisdiction.

There are three elements, however, which will be required in each HVRP: (1) An outreach activity staffed by veterans who have experienced homelessness; or, if outreach is deemed not necessary due to the applicant's particular local circumstances, at least one veteran who has experienced homelessness must be employed on staff in a position involving direct client contact; (2) linkages with providers of other services which could benefit homeless veterans, including, where applicable, other recipients of funds under the McKinney Act; and (3) projects must be employment-focused in order to provide the employment and training services needed to reintegrate homeless veterans into the labor force.

Potential jurisdictions which will be served through HVRPs are limited to: (1) The 75 largest U.S. cities and/or jurisdictions which were served through the HVRP in FY 1992. A list of these jurisdictions follows:

Arizona
  Birmingham
Alaska
  Anchorage
Arizona
  Mesa
  Phoenix
  Tucson
California
  Anaheim
  Fresno
  Long Beach
  Los Angeles
  Oakland
  Riverside
  Sacramento
  San Diego*
  San Francisco
  San Jose*
  Santa Ana
  Stockton
Colorado
  Aurora
  Colorado Springs
  Denver*
District of Columbia
Florida
  Jacksonville
  Miami
  St. Petersburg
  Tampa
Georgia
  Atlanta*
Hawaii
  Honolulu
Illinois
  Chicago
Indiana
  Indianapolis
Kansas
  Wichita
Kentucky
  Lexington-Fayette
  Louisville
Louisiana
  Baton Rouge
  New Orleans
Maryland
  Baltimore
Massachusetts
  Boston*
Michigan
  Detroit*
Minnesota
  Minneapolis
  St. Paul
Missouri
  Kansas City
  St. Louis*
Nebraska
  Omaha
Nevada
  Las Vegas
New Jersey
  Jersey City
  Newark
New Mexico
  Albuquerque
New York
  Buffalo
  New York*
  Rochester
North Carolina
  Charlotte
  Raleigh
Ohio
  Akron
  Cincinnati
  Cleveland
  Columbus
  Toledo
Oklahoma
  Oklahoma City
  Tulsa*
Oregon
  Portland
Pennsylvania
  Philadelphia
  Pittsburgh
Tennessee
  Memphis
  Nashville/Davidson*
Texas
  Arlington
  Austin
  Corpus Christi
  Dallas
  El Paso
  Fort Worth
  Houston
  San Antonio
Virginia
  Norfolk
  Virginia Beach
Washington
  Seattle*
  Olympia*
  Tacoma*
Wisconsin
  Milwaukee*

* Fiscal Year 1992 Homeless Veterans Reintegration Project Jurisdictions.

Entities which are eligible to submit applications for serving the jurisdictions listed above are (1) State and local public agencies and (2) nonprofit organizations.

"Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties).

Nonprofit organizations invited to apply are those who have operated an HVRP or similar employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and will provide the necessary linkages for services.

The application instructions will include a more detailed program description, program guidelines, and approach to implementation. The application package will consist of a standard application form, a narrative description of proposed activities and current services, and a detailed budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 25 and 30 applicants will be identified as potential grantees. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The final decision on the award will be based upon what is advantageous to the Federal Government as determined by the Grant Officer.

Signed at Washington, DC this 1st day of April 1993.

Jeffrey C. Crandall,

Acting Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 93–8090 Filed 4–6–93; 8:45 am]

BILLING CODE 4510–79–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication

The Relocation of the Technical Specification Tables on Instrument Response Time Limits

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to provide guidance to assist licensees in preparing a license amendment request to relocate tables for instrument response time limits from technical specification to the updated final safety analysis report. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. At the 236th meeting of the Committee to Review Generic Requirements (CRGR), the NRC staff discussed the proposed generic letter and the supporting CRGR review package documentation. This information is available under accession number 9212150291 for inspection or copying for a fee in the NRC Public Document Room, the Gelman Building—room LL6 (Lower Level), 2120 L Street, NW., Washington DC, 20555. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires May 24, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Dunning, (301) 504–1189.

SUPPLEMENTARY INFORMATION: The following is the proposed generic letter that would be addressed to all holders of operating licenses for power reactors under the subject of "Relocation of the Technical Specification Tables on Instrument Response Time Limits."

The U.S. Nuclear Regulatory Commission (NRC) is issuing this guidance for requesting a license amendment to relocate tables of instrument response time limits from technical specifications (TS) to the updated final safety analysis report (FSAR). The NRC developed this line-item TS improvement in response to TS proposals by applicants for operating licenses.

Licensees that plan to adopt this line-item TS improvement are encouraged to propose TS changes consistent with the enclosed guidance in Enclosures 1 and 2. NRC project managers will review the amendment requests to verify that they conform to the guidance. Please contact your project manager or the contact indicated herein if you have questions on this matter.

Any action by licensees to propose technical specification changes in accordance with the guidance of this generic letter is voluntary and, therefore, not a backfit under 10 CFR 50.109. The following information, although not requested under the provisions of 10 CFR 50.54(f), would help the NRC to evaluate licensees' costs to propose TS changes in accordance with this generic letter.

1. The licensee's time and costs to prepare the amendment request.

2. An estimate of the licensee's long-term costs or savings as a result of this TS change.

Enclosure 1—Guidance for a Proposed License Amendment to Relocate Tables of Instrument Response Time Limits from Technical Specifications to the Updated Final Safety Analysis Report

Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing the following guidance for preparing a proposed license amendment to relocate the tables of response time limits for the reactor trip system (RTS) and the engineered safety features actuation system (ESFAS) instruments from technical specifications (TS) to the updated final safety analysis report (FSAR). The NRC has already implemented this line-item TS improvement for recently issued operating licenses and in the improved standard technical specifications.

Discussion

The limiting conditions for operation (LCO) for RTS and ESFAS instruments require that these systems be operable with response times as specified in TS tables for each of these systems. The surveillance requirements specify that licensees test these systems and verify that the response time of each function is within its limits. Relocating the tables for the RTS and ESFAS instrument response time limits from the TS to the updated FSAR will not alter these surveillance requirements. However, this TS change allows the licensee to administratively control changes to the response time limits for the RTS and ESFAS instruments in accordance with the provisions of 10 CFR 50.59 without the need to process a license amendment request.

The LCO for the RTS and the ESFAS typically specify that the associated instruments "shall be OPERABLE with RESPONSE TIMES as shown in Table 3.3–2" (RTS) or "Table 3.3–5" (ESFAS). An acceptable change to the LCO would be to remove the reference to response times and simply state that this instrumentation "shall be OPERABLE" as shown for the markup of the Westinghouse standard technical specifications in Enclosure 2. This change is compatible with relocating the referenced tables.

The surveillance requirements specify that the response time of each trip function is to be demonstrated to be within its limit at the specified frequency and do not reference the tables of response time limits. Therefore, the surveillance requirements specified in this manner need not be modified to implement this change. However, a footnote in the table of response time limits for the RTS states that neutron detectors are exempt from response time testing. To retain this exception, which is stated only in the table being removed from the TS, the surveillance requirements for the RTS should be modified to add the following statement:

Neutron detectors are exempt from response time testing. Each licensee that wishes to implement this line-item TS improvement should confirm that the plant procedures for response time testing include acceptance criteria that reflect the RTS and the ESFAS response

time limits in the tables being relocated from the TS to the updated FSAR. The licensee should also provide a commitment to include the RTS and the ESFAS response time limits in the next update of the FSAR.

Licensees would submit any subsequent changes to these limits in the FSAR as an update of the FSAR as required by 10 CFR 50.71(e). Related changes to plant procedures would be subject to the provisions that control changes to plant procedures as stated in the administrative controls section of the TS.

Enclosure 2—Model Technical Specifications

The model technical specifications are based on the "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," NUREG–0452, Revision 4a.

3/4.3.1 Reactor Trip System Instrumentation

3.3.1 As a minimum, the Reactor Trip System instrumentation channels and interlocks of Table 3.3–1 shall be OPERABLE.

(Change TS 3.3.1 as shown)

4.3.1.2 The REACTOR TRIP SYSTEM RESPONSE TIME of each Reactor trip function shall be demonstrated to be within its limit at least once per 18 months. Each test shall include at least one train such that both trains are tested at least once per 36 months and one channel per function such that all channels are tested at least once every N times 18 months where N is the total number of redundant channels in a specific Reactor trip function as shown in the "Total No. of Channels" column of Table 3.3–1.

(No change to TS 4.3.1.2)

3/4.3.2 Engineered Safety Features Actuation System Instrumentation

3.3.2 The Engineered Safety Features Actuation System (ESFAS) instrumentation channels and interlocks shown in Table 3.3–3 shall be OPERABLE with their Trip Setpoints set consistent with the values shown in the Trip Setpoint column of Table 3.3–4.

(Change TS 3.3.2 as shown)

4.3.2.2 The Engineered Safety Features Response Time of each ESFAS function shall be demonstrated to be within the limit at least once per 18 months. Each test shall include at least one train such that both trains are tested at least once per 36 months and one channel per function such that all channels are tested at least once every N times 18 months where N is the total number of redundant channels in a specific ESFAS function as shown in the "Total No. of Channels" column of Table 3.3–3.

(No change to TS 4.3.2.2)

Dated at Rockville, Maryland, this thirty-first day of March 1993.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–8120 Filed 4–6–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co., (Donald C. Cook Nuclear Plant Units 1 and 2); Exemption

I.

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or herafter in effect.

II.

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.3 of appendix E requires that each licensee at each site shall exercise with off-site authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

III.

By letter dated May 24, 1991, the licensee requested an exemption from the schedule requirements of Section IV.F.3 of appendix E to perform a biennial full participation emergency preparedness exercise for Donald C. Cook Nuclear Plant in 1992. This exemption was granted by the Commission on September 4, 1991, with the stipulation that the full participation exercise be conducted before June 1, 1993. By letter dated January 15, 1993, the licensee requested an extension to the previously granted exemption. As a result of a scheduling conference held November 12 and 13, 1992, with FEMA and representatives from all of the State and utilities in FEMA Region V, the licensee was assigned a date of June 30, 1993, for its full participation emergency preparedness exercise.

The rationale that was provided for originally granting the exemption, to balance the logistical and resource burden on the State and FEMA, is still germane. The current schedule only extends the previously granted exemption by a month. Also, local officials of Berrien County also participated in emergency preparedness exercises for the Palisades Nuclear Plant.

Based on a consideration of the facts presented in Section III above, the NRC staff finds that the following factors support granting of the requested exemption:

a. The capability of the State of Michigan and the local government agencies to respond to an emergency at the Donald C. Cook Nuclear Plant has been adequately demonstrated in previous exercises at D. C. Cook. FEMA has found that there is reasonable assurance that appropriate measures can be taken to protect the health and safety of the public in the event of a radiological accident at D. C. Cook and had previously granted an exemption to the requirements of 44 CFR 350.9(c).

b. The State of Michigan maintains a high level of preparedness through its participation in exercises with each of the nuclear power plants located in the State, including two full participation exercises in 1992.

c. FEMA and State and local agencies have indicated their agreement with the proposed exercise schedule change.

The requested exemption is a one-time schedule change which will result in extending the previously granted exemption by one month. This will result in a more balanced and efficient allocation of State and FEMA resources.

The licensee has made a good faith effort to comply with the regulations by conducting the required full participation emergency preparedness exercises at D. C. Cook with State and local government agencies since 1984. All affected parties support the proposed schedule change.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption as described in Section IV as authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission determines further that special circumstances as provided in 10 CFR 50.12(a)(2)(v) are presently justifying the exemption.

Therefore, the Commission hereby grants the Exemption from the requirements of 10 CFR part 50, appendix E, Section IV.F.3, for the conduct of a biennial off-site full participation emergency preparedness exercise in 1992, provided that such an exercise be conducted by the end of July 1993.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this Exemption will have no significant impact on the environment (58 FR 16555).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of March, 1993.

For the Nuclear Regulatory Commission.

Martin J. Virgilio, Acting Director,

Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–8121 Filed 4–6–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 12

AGENCY: Office of Management and Budget.

ACTION: Issuance of Transmittal Memorandum No. 12, amending OMB Circular No. A–76, "Performance of Commercial Activities."

SUMMARY: This notice contains Transmittal No. 12, to OMB Circular No. A–76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay cost increases for Fiscal Years 1993 through 1998. The Federal pay raise assumptions and the non-pay category rates are contained in the President's Budget for Fiscal Year 1994. The factors contained in OMB Circular No. A–76, Transmittal Memorandum No. 11 (See **Federal Register** Vol. 57, No. 59, dated March 26, 1992, page 10508) are outdated.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR).

FOR FURTHER INFORMATION CONTACT: Mr. David Childs, Federal Services Branch, General Management Division, Office of Management and Budget, (202) 395–6104.

Franklin S. Reeder,

Assistant Director for General Management.

Circular No. A–76 (Revised)

Transmittal Memorandum No. 12

To the Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay cost increases, as provided in the President's Budget for Fiscal Year 1994.

The following factors should be applied per paragraph C pages IV–6 and IV–7 of the OMB Circular A–76 Supplemental Cost Comparison Handbook (August 1983).

Federal pay raise assumptions, Effective date	Inflation factors, Military and civilian
January 1993	3.7
January 1994	0.0
January 1995	2.0
January 1996	1.7
January 1997	1.6
January 1998	2.3
Non-Pay categories (supplies and equipment, etc.)	
FY 1993	3.0
FY 1994	2.7
FY 1995	2.6
FY 1996	2.5
FY 1997	2.5
FY 1998	2.5

The above personnel pay raise factors do not include "locality pay," which is expected to begin in 1995 under the President's FY 1994 budget. Locality pay factors will be provided in a future update. Until that time, locality pay adjustments are not required. Locations that received the Interim Geographic Adjustments (IGA), as provided by section 302 of the Federal Employees Pay Comparability Act of 1990 (P.L. 101–509), will continue to receive those payments. The above personnel pay raise factors shall be applied at these locations after consideration is given to the Interim Geographic Adjustments.

These revisions are effective as follows: All changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Sincerely,

Franklin S. Reeder,

Assistant Director for General Management.

[FR Doc. 93–7877 Filed 4–6–93; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32083; File No. SR–AMEX–92–44]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On December 14, 1992, the American Stock Exchange, Inc. ("AMEX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the AMEX's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the **Federal Register** on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposed rule change amends AMEX Rule 232, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform AMEX Rule 232 with the ITS pre-

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the AMEX, the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[3] Securities Exchange Act Release No. 31882 (February 17, 1993), 58 FR 11265.

opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The AMEX's proposal would adopt the model ITS rule.

The proposed rule change amends the AMEX's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends a pre-opening notification of 30–31 for a stock that closed at 30. Subsequent to sending the notification, the specialist receives sell orders indicating that the stock will be opened at 29⅞. The specialist then sends a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–31; 30⅛–31⅛; or 30¼–31¼. It is then determined that the stock will open at 29¾ or 29⅞ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the specialist would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets or qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables an AMEX specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the AMEX and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8027 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32082; File No. SR–BSE–93–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Boston Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On January 26, 1993, the Boston Stock Exchange, Inc. ("BSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–BSE–93–02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the BSE's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the Federal Register on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposed rule change amends Chapter XXXI of the BSE Rules, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the BSE pre-opening application rule with the ITS pre-opening application rule.[4] Recently, the

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[4] AMEX Rule 232 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if an AMEX specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 8.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49629.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network B	Under $5	1/8 point.
	$5or over	1/4 point.

ITS Plan, Section 7(a).

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the BSE, the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[3] Securities Exchange Act Release No. 31684 (February 17, 1993), 58 FR 11267.

[4] Chapter XXXI of the BSE Rules contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and

Continued

Commission approved an amendment to the ITS pre-opening application rule.[5] The BSE's proposal would adopt the model ITS rule.

The proposed rule change amends the BSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29⅞. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 39¾ or 29⅞. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or, 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the specialist would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a BSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the BSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8026 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32081; File No. SR–CBOE–93–10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On February 11, 1993, the Chicago Board Options Exchange, Inc. ("CBOE"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–CBOE–93–10) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the CBOE's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the **Federal Register** on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposed rule change amends CBOE Rules 30.70, 30.71, and 30.72, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the CBOE pre-

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the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if a BSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over*	¼ point.
Network B	Under $5	⅛ point.
	$5 or over	¼ point.

*If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the CBOE, the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[3] Securities Exchange Act Release No. 31878 (February 17, 1993), 58 FR 11269.

opening application rule with the ITS pre-opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The CBOE's proposal would adopt the model ITS rule.

The proposed rule change amends the CBOE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

The proposed rule change applies to the situation where a DPM or OBO has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the DPM or OBO will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a DPM sends a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending the notification, the DPM receives sell orders indicating that the stock will be opened at 29⅞. The DPM then sends a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The DPM then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or, 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and the DPM sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the DPM would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a DPM or OBO who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the CBOE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8025 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32080; File No. SR–CSE–93–01]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On February 5, 1993, the Cincinnati Stock Exchange, Inc. ("CSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–CSE–93–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the CSE's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the **Federal Register** on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

I. Discussion

The proposed rule change amends CSE Rule 14.3, governing the pre-

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[4] The CBOE's pre-opening application rules contain basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if a CBOE designated primary market maker ("DPM") or order book official ("OBO") anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the DPM or OBO shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	1/8 point.
	$15 or over *. ...	1/4 point.
Network B	Under $5	1/8 point.
	$5 or over	1/4 point.

* If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the CSE, the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[3] Securities Exchange Act Release No. 31886 (February 17, 1993), 58 FR 11268.

opening application in the Intermarket Trading System ("ITS"), to conform the CSE pre-opening application rule with the ITS pre-opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The CSE's proposal would adopt the model ITS rule.

The proposed rule change amends the CSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29⅞. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅜; or 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the specialist would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a CSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the CSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8024 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[4] CSE Rules 14, 14.1, and 14.3 contain basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if a CSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also *infra* note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49828.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over*	¼ point.
Network B	Under $5	⅛ point.
	$5 or over	¼ point.

* If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

[Release No. 34–32079; File No. SR–MSE–93–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On February 11, 1993, the Midwest Stock Exchange, Inc. ("MSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSE–93–02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the MSE's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the Federal Register on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the MSE, the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[3] Securities Exchange Act Release No. 31879 (February 17, 1993), 58 FR 11271.

I. Description

The proposed rule change would amend MSE Article XX, Rule 39(c)(vi)(B), governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the MSE pre-opening application rule with the ITS pre-opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The MSE's proposal would adopt the model ITS rule.

The proposed rule change amends the MSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29⅞. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the specialist would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a MSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market-makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the MSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8023 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32085; File No. SR–NASD–93–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Pre-Opening Application in the Intermarket Trading System/Computer Assisted Execution System

March 31, 1993.

On January 28, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–93–02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the NASD's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the **Federal**

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[4] MSE Article XX, Rule 39 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if a MSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over*	¼ point.
Network B	Under $5	⅛ point.
	$5 or over	⅛ point.

*If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

Register on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposed rule change amends the NASD's ITS/CAES Rules, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the NASD pre-opening application rule with the ITS pre-opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The NASD's proposal would adopt the model ITS rule.

The proposed rule change amends the NASD's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

The proposed rule change applies to the situation where a market maker has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the market maker will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a market maker sends out a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending out the notification, the market maker receives sell orders indicating that the stock will be opened at 29⅞. The market maker then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The market maker then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges; 30–30½; 30⅛–30⅝; or 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and the market maker sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the market maker would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 15A(b)(6) and 11A(a)(1)(C)(ii) and (D). Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Section 11A(a)(1)(C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables an NASD market maker who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(b)(6) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8030 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

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[3] Securities Exchange Act Release No. 31883 (February 17, 1993), 58 FR 12275.

[4] The NASD's ITS/CAES Rules contain basic definitions pertaining to ITS, prescribes the transactions that may be affected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if an NASD market maker anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over*	¼ point.
Network B	Under $5	⅛ point.
	$5 or over	⅛ point.

* If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

ITS Plan, Section 7(a).

[Release No. 34–32077; File No. SR–NASD–93–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Quotation Size Requirements for Market Makers in OTC Equity Securities

March 31, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 24, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to revise the minimum size requirement applicable to markets makers utilizing

the OTC Bulletin Board Service ("OTCBB" or "Service") or any comparable inter-dealer quotation system to quote firm markets in OTC Equity Securities. The text of the proposed rule is set forth below and will be added as Section 5 to Schedule H to the NASD By-Laws. (New language is italicized.)

Minimum Quotation Size Requirements for OTC Equity Securities

Every member firm that functions as a market marker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service ("OTCBB") (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market marker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding those OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

Price (bid or offer)	*Minimum quote size*
0 to .50[1]	*5,000*
.51 to 1.00	*2,500*
1.01 to 10.00	*500*
10.01 to 100.00	*200*
100.01 to 200.00	*100*
200.01 to +	*50*

*For purposes of this rule, the term "OTC Equity Security" means any equity security not classified as a "designated security" for purposes of Parts XII or XIII of Schedule D to the NASD By-Laws, or as an "eligible security", for purposes of Schedule G to the NASD By-Laws. The term does not include "restricted securities", as defined by Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market.*SM

[1] *The OTCBB can accept bids/offers expressed in fractions as small as 1/256 or in decimals up to six places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of $.505 must be firm for a size of 2,500 shares.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of this filing is to obtain the Commission's approval of new quotation size requirements that would apply to NASD members that employ the OTCBB to enter and display firm quotations in OTC Equity Securities. Currently, priced bids and offers displayed in the Service for domestic securities must be firm for one trading unit, which is typically 100 shares.[1] This requirement was implemented in July of 1991. Since that time, NASD members that quote markets in the Service have gained substantial experience with this minimum size requirement in their day-to-day trading activities. Based on this experience and the input received from participating market makers, the NASD has determined that the 100 share minimum is no longer appropriate for the vast majority of issues quoted in the OTCBB, especially the lower priced issues. Accordingly, the NASD is proposing a tiered structure of minimum size requirements that corresponds more closely to the trading practices of market makers that actively use the Service. Under this proposal, the applicable size requirement depends on the level of a market maker's firm bid or offer displayed in the Service (or in a comparable quotation medium).

From an operational standpoint, the table contained in section 1 of this filing will establish the minimum size associated with a market maker's proprietary bid and/or offer. This table will be reproduced in a newsframe accessible to OTCBB market makers on the PC workstations that they use to enter and update their quotations. Every registered market maker in an OTC Equity Security will be obliged to honor its firm bid/offer for individual orders up to the prescribed size. To illustrate, if a market maker enters a quotation comprised of a bid of $.45 and an offer of $.55, the firm must honor its displayed bid for up to 5,000 shares, and its displayed offer for up to 2,500 shares. If the same firm updates its quotation to reflect a bid of $.40 and an offer of $.50, a size requirement of 5,000 shares attaches to both sides of the market maker's quotation. As is the case today, OTCBB market makers will retain the options of entering an unpriced indication of interest or a one-sided quotation. The unpriced indication of interest triggers no obligation to trade the subject security at a particular price or size. In contrast, a one-sided entry obligates the market maker to honor that bid (or offer) for the size established by the proposed standards.

Initially, the OTCBB display screen will not reflect the minimum size associated with each market maker's priced bid and offer in a particular security. Nonetheless, every OTCBB market maker will be required to honor its displayed bid and/or offer for the amount prescribed by this rule proposal. Under these circumstances, members should promptly report occurrences of backing away to the NASD Market Surveillance Department. The Department's staff will investigate each situation and refer apparent violations to the Market Surveillance Committee for appropriate enforcement action. Meanwhile, the NASD will proceed to develop the system enhancements needed to implement a size display capability for the Services.[2] As part of that initiative, the NASD will provide a default feature to ensure display of the correct minimum size if a market maker neglects to enter that size updating its priced bid/offer in a particular OTC Equity Security. The size display feature will also permit market makers to insert a size greater than the minimum requirements proposed in this rule filing.

Finally, the proposed size requirements would extend to member firms quoting markets in OTC Equity Securities through other systems with features approximating those of the OTCBB, specifically the capability to update quotations on a real-time basis. The NASD is unaware of any other interdealer quotation system that accommodates OTC Equity Securities and possesses operational characteristics approximating the OTCBB. However, should one be developed by an entity that is not a self-

[1] The new size requirements will not apply to any foreign/ADR issue in which firm quotations are not permitted to be entered into the OTCBB.

[2] The NASD anticipates implementation of the size display capability during the final quarter of 1993.

regulatory organization, the NASD would apply the new size requirements to members that make markets in OTC Equity Securities through that system.[3] Assuming approval of this proposed rule change, the NASD would implement the new size requirements within 90 days of the date of the SEC's approval order.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6), 15A(b)(11), and 17B of the Act. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and facilitate transactions in securities. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Finally, section 17B sets forth the Congressional findings and directives respecting the collection and dissemination of firm bids/offers from broker-dealers respecting OTC Equity Securities classified as "penny stocks" pursuant to Rule 3a51–1 under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] If a comparable system were provided by another self-regulatory organization, the applicable quotation size requirements would be established by that entity.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 28, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8093 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32078; File No. SR–NYSE–93–01]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On January 6, 1993, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NYSE–93–01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the NYSE's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the **Federal Register** on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the NYSE, the Pacific Stock Exchange, Inc. ("PSE") and the Philadelphia Stock Exchange, Inc. ("PHLX").

[3] Securities Exchange Act Release No. 31680 (February 17, 1993), 58 FR 11276.

I. Description

The proposed rule change amends NYSE Rule 15, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the NYSE pre-opening application rule with the ITS pre-opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The NYSE's proposal would adopt the model ITS rule.

The proposed rule change amends the NYSE's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

[4] NYSE Rule 15 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of comments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if a NYSE specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	¼ point.
	$15 or over*	¼ point.

* If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.
ITS Plan, Section 7(a).

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29⅞. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or 30⅛–30⅞. It is then determined that the stock will open at 29¾ or 29⅞ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30⅛, under the proposed rule change the specialist would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1) (C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a NYSE specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the NYSE and, in particular, sections 6(b)(5) and 11A(a)(1)(C)(ii) and (D) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8028 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32084; File No. SR–PHLX–92–32]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating To Its Pre-Opening Application Rule

March 31, 1993.

On November 13, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–PHLX–92–32) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposal is to conform the PHLX's pre-opening application rule with the ITS pre-opening application rule.[2] Notice of the proposal appeared in the **Federal Register** on February 24, 1993.[3] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

I. Description

The proposed rule change amends PHLX Rule 2001, governing the pre-opening application in the Intermarket Trading System ("ITS"), to conform the PHLX pre-opening application rule with the ITS pre-opening application rule.[4] Recently, the Commission approved an amendment to the ITS pre-opening application rule.[5] The PHLX's proposal would adopt the model ITS rule.

The proposed rule change amends the PHLX's pre-opening rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[6] Under the proposed rule change, a cancellation notification will have the effect of indicating that the security will open within the applicable price change.[7]

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[1] 15 U.S.C. 78s (b)(1).

[2] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the PHLX.

[3] Securities Exchange Act Release No. 31881 (February 17, 1993), 58 FR 11280.

[4] PHLX Rule 2001 contains basic definitions pertaining to ITS, prescribes the transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the pre-opening application.

[5] See Securities Exchange Act Release No. 31970 (March 9, 1993), 58 FR 14227.

[6] The pre-opening rule prescribes that if a PHLX specialist anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the previous day's consolidated closing price by more than the "applicable price change," the specialist shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, Section 7(a). See also infra note 7.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, Section 7(a). See also Securities Exchange Act Release No. 27471 (November 24, 1989), 54 FR 49629.

[7] The ITS rules define "applicable price changes" as:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $18	¼ point.
	$18 or over*	¼ point.
Network B	Under $5	⅛ point.
	$5 or over	¼ point.

* If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is on point.

ITS Plan, Section 7(a).

The proposed rule change applies to the situation where a specialist has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the specialist will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a specialist sends out a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending out the notification, the specialist receives sell orders indicating that the stock will be opened at 29⅞. The specialist then sends out a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The specialist then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure would operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or, 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and the specialist sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the proposed rule change the specialist would not be required to reindicate the stock.

II. Discussion

The Commission finds that approval of the proposed rule change is consistent with the Act, in particular, with sections 6(b)(5) and 11A(a) (C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(1) (C)(ii) and (D). Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a NMS. Section 11A(a)(2) (C)(ii) and (D) establish the NMS goals to provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders.

The pre-opening application enables a PHLX specialist who wishes to open his or her market in an ITS security to obtain any pre-opening interest in that security of other market-markers registered in that security in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a security in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the PHLX and, in particular, sections 6(b)(5) and 11A(a)(1) (C)(ii) and (D) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–8029 Filed 4–6–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19374; 812–8256]

Connecticut Mutual Investment Accounts, Inc., et al.; Notice of Application.

March 31, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Connecticut Mutual Investment Accounts, Inc. (the "Fund") and G.R. Phelps & Co., Inc. ("Phelps & Co.").

RELEVANT 1940 ACT SECTIONS: Conditional order requested under section 6(c) for exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit them to impose a contingent deferred sales charge ("CDSC") on the redemption of certain shares acquired through purchases of $500,000 or more, and to waive the CDSC under certain specified instances.

FILING DATES: The application was filed on January 22, 1993 and amended on March 24, 1993 and March 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Connecticut Mutual Investment Accounts, Inc., 140 Garden Street, Hartford, Connecticut 06154; G.R. Phelps & Co., Inc., 10 State House Square, Hartford, Connecticut 06154.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a diversified, open-end, management investment company.[1] The Fund offers five separate classes of shares relating to the following five series (the "Accounts"): Connecticut Mutual Liquid Account (the "Liquid Account"), Connecticut Mutual Government Securities Account (the "Government Securities Account"), Connecticut Mutual Income Account (the "Income Account"), Connecticut Mutual Total Return Account (the "Total Return Account"), and the Connecticut Mutual Growth Account (the "Growth Account"). Phelps & Co., an indirect subsidiary of Connecticut Mutual Life Insurance Company, serves as the investment adviser and exclusive distributor of shares of the Accounts.

2. Applicants request exemptive relief on behalf of themselves, the Accounts, and any existing or future registered investment companies or existing or future series thereof which may become a member of the Fund's "group of investment companies," as defined in rule 11a-3 under the Act, the shares of which will be distributed on substantially the same basis as those of the Accounts.[2]

3. Each of the Accounts currently offers its shares daily to the public at net asset value plus, except for the Liquid Account, a front-end sales charge that decreases as the aggregate dollar invested increases. The Government Securities Account, the Income Account, the Total Return Account and the Growth Account are collectively referred to as the "Sales Load Accounts." The Liquid Account has adopted a distribution financing plan pursuant to rule 12b-1 under the Act, which provides for distribution assistance payments to Phelps & Co. based on a percentage of the average daily net assets of the Liquid Account.

4. Applications propose to eliminate the front-end sales load, and impose a CDSC, on purchases of the Accounts' shares in amounts of $500,000 or more. An investor may purchase $500,000 or more of Account shares (whether in one or more than one Account) at the same time or the investor may sign a statement of intention to purchase $500,000 worth of Account shares over the course of 13 months. For the purpose of determining which shares are subject to the CDSC, the shares will be accounted for on an Account-by-Account basis, each share being designated as subject to the CDSC.

5. The CDSC will not apply to the Liquid Account and will be imposed only on shares of the Sales Load Accounts redeemed within a period of 12 months commencing after the end of the calendar month in which the purchase order was accepted (the "CDSC period"). The amount of the CDSC to be imposed at any time during the CDSC period will be equal to 1% of the lesser of (i) the net asset value of the redeemed shares at the time of purchase, or (ii) the net asset value of the redeemed shares at the time of redemption.

6. The Fund reserves the right to reduce or raise the CDSC amount and/or the CDSC period in the future. However, any such change will be disclosed in the Fund's prospectus and will not affect shares already issued, unless such change results in terms more favorable to shareholders. In addition, no CDSC will be imposed on any shares issued prior to the date of the order granting exemptive relief.

7. No CDSC will be imposed at redemption on (a) amounts attributable to increases in the value of the shareholder's account due to capital appreciation, (b) shares purchased through the reinvestment of dividends or capital gain distributions, or (c) shares held for more than the CDSC period. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, and then other shares in the order of purchase, resulting in the lowest CDSC being imposed at the time of redemption.

8. No CDSC will be imposed upon exchanges of shares of an Account subject to a CDSC for shares of another Account. However, if the shares acquired by such exchanges are redeemed within 12 months of the end of the calendar month of the initial purchase of the exchanged shares, the CDSC will apply to the acquired shares being redeemed. Applicants currently, and in the future, will comply at all times with the requirements of rule 11a-3 under the Act.

9. Shares on which a CDSC was paid at the time of redemption and which are subsequently reinvested in the same Account within 30 days will be credited with payment of the CDSC on such reinvestment, if identified by the shareholder at the time of reinvestment. The CDSC credit will be in the form of a reimbursement by Phelps & Co. of the CDSC paid at the time of redemption. Upon reinvestment, shareholders will not be credited with the time they held their original shares. In the event the reinvestment credit period is shortened with respect to any Account, a shareholder who redeemed prior to the time the period was shortened will be allowed reinvestment credit for the longer reinvestment period in effect at the time of the redemption.

10. Applicants request the ability to waive the CDSC in the case of redemptions of shares made: (a) By the estate of the shareholder; (b) upon the disability of the shareholder, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"); (c) for retirement distributions or loans to participants or beneficiaries from retirement plans qualified under sections 401(a) or 403(b)(7) of the Code or from IRAs, deferred compensation plans created under section 457 of the Code, or other employee benefit plans; (d) as tax-free returns of excess contributions to such retirement or employee benefit plans; (e) in whole or in part, in connection with shares sold to any state, county, or city, or any instrumentality, department, authority, or agency thereof, that is prohibited by applicable investment laws from paying a sales charge or commission in connection with the purchase of shares of any registered investment management company; (f) in connection with the redemption of shares of any fund or series that is combined with another investment company, or the combination of two or more series of the same fund, by virtue of a merger, acquisition, or similar reorganization transaction; (g) in connection with the Fund's right to redeem or liquidate an account that holds less than a certain minimum number or dollar amount of shares, as may be described in the Fund's prospectus; (h) in connection with automatic redemptions pursuant to the Fund's systematic withdrawal plan, as described in the Fund's prospectus, but limited to no more than 12% of the original account value annually; (i) as involuntary redemptions of shares by operation of law or under procedures set forth in the Fund's Articles of Incorporation or as adopted by the board of directors of the Fund; (j) by directors of the Fund; (k) by NASD registered representatives whose

[1] The Fund was established on December 9, 1981 by Connecticut Mutual Life Insurance Company as the Connecticut Mutual Liquid Account.

[2] There currently are no other investment companies in the Fund's group of investment companies. Any additional series or future registered investment companies or series thereof that in the future rely on the requested exemption will impose a CDSC in accordance with the representations and the condition in the application.

employer consents to such purchases and by the spouses and immediate family members of such representatives; (1) by employee benefit plans sponsored by Phelps & Co. and its affiliated companies; and (m) by one or more members of a group of at least 1,000 persons (and persons who are retirees from such group) engaged in a common business, profession, civic or charitable endeavor, or other activity, and the spouses and immediate family members of such persons, pursuant to a marketing program between Phelps & Co. and such group. If the Accounts waive the CDSC, such waiver will be uniformly applied to all shares in the specified category. If the board of directors, on behalf of an Account that has been waiving its CDSC, determines not to waive such CDSC any longer, the disclosure in that Account's prospectus will be appropriately revised and such revocation of waiver will be applied only to shares purchased after the date of such revision.

Applicants' Condition

If the requested order for exemption is granted, applicants expressly agree to comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-8031 Filed 4-6-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1785; Delegation of Authority No. 202]

Deputy Secretary of State; Delegation of Authority

Issued April 7, 1993.
Effective March 23, 1993.

1. *Delegation.* By virtue of the authority vested in the Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), as amended, I hereby delegate to the Deputy Secretary of State those functions conferred upon the Secretary of State by 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), and 21 U.S.C. 881(e)(1)(E), and similar statutes that may be enacted, to approve the transfer of forfeited assets to foreign governments.

2. *Technical provisions.* (a) Notwithstanding this delegation of authority, the Secretary of State may at any time exercise any function delegated by this delegation.

(b) Any act affected by this delegation shall be deemed to be such act as amended from time to time.

Dated: March 23, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93-8064 Filed 4-6-93; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 25.773-1, Pilot Compartment View Design Considerations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.773-1, Pilot Compartment View Design Considerations. The AC provides current guidance concerning the geometric characteristics of the pilot compartment and the properties of transparent materials necessary to assure adequate visibility from the flight deck.

DATES: Advisory Circular 25.773-1 was issued on January 8, 1993, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, in Renton, Washington.

HOW TO OBTAIN COPIES: A copy of AC 25.773-1 may be obtained by writing to the U.S. Department of Transportation, Utilization and Storage Section, M-443.2, Washington, DC 20590.

Issued in Renton, Washington, on March 17, 1993.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 93-8086 Filed 4-6-93; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program and Revised Noise Exposure Maps; Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Springfield Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 12, 1991, the FAA determined that the noise exposure maps submitted by the Springfield Airport Authority under part 150 were in compliance with applicable requirements. On March 1, 1993, the Assistant Administrator for Airports approved the Capital Airport noise compatibility program and accepted the revised noise exposure maps.

A total of sixteen (16) measures were included in Capital Airport's recommended program. Of these, three are listed as Noise Abatement Plan Measures, ten are listed as Land Use Management Plan Measures and three are listed as Implementation Plan Measures. The FAA has approved fourteen (14) of these measures in their entirety. One measure was divided into two sub-sections, with one sub-section approved and the other sub-section disapproved pending submittal of additional information. Another measure required no action, as it was withdrawn by the Springfield Airport Authority.

EFFECTIVE DATE: The effective date of the FAA's approval of Capital Airport's noise compatibility program is March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7522. Documents reflecting this FAA action may be revised at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its approval to the noise compatibility program and revised noise exposure maps for Capital Airport, effective March 1, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local

communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plains, Illinois.

The Springfield Airport Authority submitted to the FAA on May 3, 1989, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (Part 150) Study at Capital Airport from September 18, 1987, through December 3, 1992. The Capital Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 12, 1991. Notice of this determination was published in the **Federal Register** on April 24, 1991.

The Capital Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. The study also contains revised Noise Exposure Maps, labeled Noise Exposure Map 1991 and Abated Noise Exposure Map 1996 replacing the existing Noise Exposure Map 1987 and the 5-year map labeled Noise Exposure Map 1992, respectively. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on September 3, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The program proposed by the Springfield Airport Authority contained sixteen (16) measures for noise mitigation on and off Capital Airport, along with revised existing and 5-year noise exposure maps. The FAA completed its review and determined the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied, and the FAA has accepted the revised noise exposure map. The overall program, therefore, was approved by the Assistant Administrator for Airports effective March 1, 1993.

Of the sixteen measures originally submitted, three were listed as Noise Abatement Plan Measures and all were approved: (NA–1) Preferential Utilization of Runway 30 in Conjunction with the Extension of Runway 12/30 to the Northwest; (NA–2) Construct a Hush House Facility to Attenuate Noise Levels by Aircraft Ground Activity; and (NA–3) Reduction in Departure Thrust by the Illinois Air National Guard 183rd Tactical Fighter Group Aircraft (approved as a voluntary measure). Eight of the ten Land Use Management Plan Measures were approved in their entirety: (LU–1) Comprehensive/Master Plan; (LU–2) Establish Airport Overlay Zoning; (LU–3) Capital Improvement Program; (LU–4) Noise Disclosure Program; (LU–5) Building Code; (LU–8) Site Design Review; (LU–9) Environmental Project Review; (LU–10) Federal Regulations. One measure (LU–7) Land Acquisition-Fee Simple Purchase was divided into two subsections, with one sub-section (LU–7a) approved: Northeast Property Acquisition Map, Portion of Northwest Property Acquisition Map, and Portion of Southwest Property Acquisition Map; and the other sub-section disapproved: (LU–7b) Portion of the Northwest Property Acquisition Map and Portion of Southwest Property Acquisition Map (Disapproved pending submittal of additional information by the Airport Authority). One measure required no action as it was withdrawn by the Springfield Airport Authority: (LU–6) Sound Insulation. All three of the Implementation Plan Measures were approved in their original form: (IM–1) Noise Monitoring and Contour Updating; (IM–2) Noise Complaint Response; and (IM–3) Plan Review and Evaluation;

The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 615, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, Great Lakes Region, 2300 East Devon Avenue, room 260 Des Plaines, Illinois 60018

Springfield Airport Authority, Capital Airport, Airport Authority Office, Second Floor, Springfield, Illinois 62607

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, March 23, 1993.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 93–8087 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Crescent City, CA; Closure

Notice is hereby given that on March 12, 1993, the Flight Service Station at Crescent City, California, closed. Services to the general aviation public of Crescent City, formerly provided by this office, are being provided by the Automated Flight Service Station in Oakland, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on March 25, 1993.

Fanny Rivera,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 93–8089 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Santa Barbara, CA; Closure

Notice is hereby given that on or about March 26, 1993, the Flight Service Station at Santa Barbara, California, will be closed. Services to the general aviation public of Santa Barbara, formerly provided by this office, will be provided by the Automated Flight Service Station in Hawthorne, California. This information will be reflected in the next issue of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on March 25, 1993.

Fanny Rivera,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 93–8088 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–23; Notice 1]

General Motors; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors (GM) of Warren, Michigan has determined that some of its vehicles fail to comply with 49 CFR 571.115, "Vehicle Identification Number—Basic Requirements" (Federal Motor Vehicle Safety Standard No. 115), and has filed an appropriate report pursuant to 49 CFR part 573. GM has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the 1993 model year, GM manufactured 429 Chevrolet Camaros and 201 Pontiac Firebirds that do not comply with the lettering height requirements of Standard No. 115. The vehicle identification number (VIN) characters on the subject vehicles are 3.55 millimeters (mm) in height. Section S4.6 of Standard No. 115 requires that "[e]ach character in the VIN * * * shall have a minimum height of 4 mm."

GM supports its petition for inconsequential noncompliance with the following:

Although technically not in compliance with the 4 mm requirement of FMVSS 115 S4.6, [GM believes] the subject VIN-characters are no less legible than those meeting the 4 mm height requirement. Consequently, they could be clearly viewed from the specified position by an observer outside the vehicle adjacent to the left windshield pillar. Three GM engineers from our Auto Safety Engineering group were able to read without difficulty the subject VINs of 18 vehicles selected at random in the field under clear, cloudy, and foggy weather conditions. None of the windshields in the survey was cleaned or wiped prior to viewing the VINs checked.

The cost of windshield and VIN plate removal and replacement for the 1993 Firebirds and Camaros is currently estimated at about $300 per vehicle. The perceived risk the noncompliant VIN format poses to vehicle safety is at worse negligible, and at best nonexistent. The amount of customer inconvenience, on the other hand, would be considerable, and not likely to be viewed by the customer as providing a benefit commensurate with that inconvenience.

In light of these considerations, we don't believe that an agency ruling requiring recall and remedy of the affected vehicles would serve the best interest of the motoring public, GM, or GM's customers. It would instead impose a substantial burden of cost and inconvenience on the manufacturer and the customer with no demonstrable benefit to vehicle safety.

FMVSS 115 specifies the general physical requirements for a VIN "to simplify vehicle information retrieval and to reduce the incidence of accidents by increasing the accuracy and efficiency of vehicle recall campaigns." The reduced height of the subject VIN-characters in no way hinders or compromises the achievement of this purpose. In fact, the reduced height format seems to enhance rather than degrade the general legibility of the subject VINs. It seems that the laser-etching software program automatically provides more generous spacing and broader individual strokes for 3.55 mm characters than for those at 4 mm in order to achieve equivalency of legibility and visibility throughout the character-height range for VIN plate formatting.

On the basis of these observations, and the absence of any field reports or complaints from vehicle owners, car dealers, rental agencies, the law enforcement community, etc., GM has concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and therefore requests that the affected vehicles be exempted from the recall and remedy provisions of section 151 of the Safety Act.

Interested persons are invited to submit written data, views, and arguments on the petition of GM, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 7, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 2, 1993.

Harry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–8092 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

OMB Number: 1512–0001.
Form Numbers: ATF F 1600.1 and AFT F 1600.8.
Type of Review: Extension.
Title: Requisition of Forms or Publications (AFT F 1600.1). Requisition for Firearms/Explosives Forms (ATF F 1600.8).
Description: Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify AFT of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 30,000.
Estimated Burden Hours Per Respondent: 3 minutes, 45 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,725 hours.

OMB Number: 1512–0020.
Form Number: ATF F 9 (5320.9).
Type of Review: Extension.
Title: Application and Permit for Permanent Exportation of Firearms (26 U.S.C. chapter 53, Firearms).
Description: This form is used to move National Firearms Act weapons legally into export channels and serves as a vehicle to allow either the removal of the weapon from the National Firearms Registration and Transfer Record or to the collection of an excise tax. It is used by firearms manufacturers, exporters and others to obtain a benefit and by the Treasury Department to determine/collect taxes.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 300.
Estimated Burden Hours Per Respondent: 3 hours, 24 minutes.
Frequency of Response: Other (Optionally, 1–5 years).
Estimated Total Reporting Burden: 1,020 hours.

OMB Number: 1512–0163.
Form Number: ATF F 5210.5 (3068).
Type of Review: Extension.
Title: Manufacturer of Tobacco Products Monthly Report.
Description: ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 113.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,356 hours.

OMB Number: 1512–0467.
Form Number: ATF F 5000.24.
Type of Review: Extension.
Title: Excise Tax Return—Alcohol and Tobacco.
Description: ATF Form 5000.24 is completed by persons who owe tax on distilled spirits, beer, wine, cigars, cigarettes, cigarette paper and tubes, snuff and smoking tobacco (pipe). The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's liability and adjustments affecting amount paid.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,033.
Estimated Burden Hours Per Respondent: 42 minutes.
Frequency of Response: Other (bi-monthly).
Estimated Total Reporting Burden: 26,615 hours.

OMB Number: 1512–0497.
Form Number: ATF F 5000.25.
Type of Review: Extension.
Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).
Description: ATF Form 5000.25 is completed by persons in Puerto Rico who ship alcohol, tobacco products and cigarette papers and tubes to the U.S. for consumption or sale. The return, prescribed by law, identifies: taxpayer, tax liability, return period, type of payment, adjustments, and taxes for carry over into the Treasury of Puerto Rico.
Respondent: Businesses or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Other (bi-monthly).
Estimated Toal Reporting Burden: 150 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 93–8032 Filed 4–6–93; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 1, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545–0024.
Form Number: IRS Form 843.
Type of Review: Revision.
Title: Claim for Refund and Request for Abatement.
Description: Internal Revenue Code (IRC) sections 6402, and §§ 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the Internal Revenue Service. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit,

Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 688,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hour, 19 minutes.

Learning about the law or the form—10 minutes.

Preparing the form—41 minutes.

Copying, assembling, and sending the form to the IRS—58 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,001,545 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–8033 Filed 4–6–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FINANCIAL MANAGEMENT SERVICE

OMB Number: 1510–0037.

Form Number: TFS 5135.

Type of Review: Extension.

Title: Voucher for Payment of Awards.

Description: Awards certified to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to awardholders showing payments due. Awardholder signs voucher certifying that he is entitled to payment. Executed vouchers are used as a basis for payment.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,400.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 700 hours.

OMB Number: 1510–0042.

Form Number: SF 1055.

Type of Review: Extension.

Title: Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor.

Description: This form is required to determine who is entitled to the funds of a deceased postal savings depositor or deceased awardholder. The form properly completed with supporting documents enables this office to decide who is legally entitled to payment.

Respondents: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 400 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–8034 Filed 4–6–93; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Wednesday
April 7, 1993

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 11

Transition to an All Stage 3 Fleet; Addition to the OMB Control Number; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. 27245, Amendment No. 11–36]

Addition of the OMB Control Number Assigned for Information Collection Under the Transition to an All Stage 3 Fleet

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adds to the Federal Aviation Regulations the Office of Management and Budget (OMB) Control Number for annual progress reports required to comply with the Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia rule.

EFFECTIVE DATE: April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette Fisher, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3561.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) is amending its regulations to add an Office of Management and Budget (OMB) Control Number for FAR §§ 91.851 through 91.875. The reporting requirements of these FAR sections are subject to the provisions of the Paperwork Reduction Act of 1980. The Control Number is needed for annual progress reports that are required for operators to comply with the Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia rule.

Immediate Adoption

This amendment confirms that OMB approval has been granted for the reports required under the operating noise rules of part 91, and amends § 11.101 to include the OMB Control Number assigned. No changes have been made to the rule as promulgated September 25, 1991 (56 FR 48628). Accordingly, it is found that notice and prior public comment hereon unnecessary. Further, because the first reports were required by February 15, 1992, it is found that good cause exists for making this amendment effective in less than 30 days.

Conclusion

I certify that this amendment: (1) Is not a major rule under Executive Order 12291; (2) is not a significant rule, nor does it otherwise require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The Final Rule

Accordingly, the FAA amends 14 CFR part 11 of the Federal Aviation Regulations as follows:

PART 11—GENERAL RULE-MAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. App. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, and 1502; 49 U.S.C. 106(g).

2. In § 11.101(b), the table is amended by adding a new entry immediately following the entry "Part 91, Subpart E" to read as follows:

§ 11.101 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control No.
* * * * *	
§§ 91.851 thru 91.875	2120–0553
* * * * *	

Issued in Washington, DC on March 30 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–8085 Filed 4–6–93; 8:45 am]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 58, No. 65

Wednesday, April 7, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Electronic Bulletin Board	275–1538, 275–0920
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, APRIL

17081–17320.....1
17321–17490.....2
17491–17772.....5
17773–17942.....6
17943–18138.....7

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12842.....17081
Proclamation:
6540.....17773

7 CFR

400.....17943, 17944
1001.....17946
1002.....17946
1011.....17947
Proposed Rules:
1413.....17807
1785.....18043
1786.....18043

9 CFR

Proposed Rules:
94.....17462

10 CFR

2.....17321
72.....17948
Proposed Rules:
20.....18049

11 CFR

110.....17967

12 CFR

226.....17083
748.....17491
791.....17492
960.....17968
Proposed Rules:
327.....17533
701.....17808

14 CFR

11.....18138
39.....17972
71.....17322, 17494
73.....17323
97.....17324, 17325
Proposed Rules:
39.....18051, 18053
71.....17541, 17543, 18054, 18055

16 CFR

Proposed Rules:
305.....18056

17 CFR

1.....17495
30.....17495
33.....17495
150.....17973
180.....17495
190.....17495
200.....17327
202.....17327
229.....17327
230.....17327
239.....17327
240.....17327
249.....17327
250.....17327
259.....17327
270.....17327
274.....17327
Proposed Rules:
12.....17369
150.....18057

18 CFR

101.....17982
201.....17982
Proposed Rules:
141.....17544
1301.....17553

21 CFR

Ch. I.....17085
1.....17085, 17328
5.....17091, 17093, 17094, 17095, 17096, 17105, 17105, 17341
12.....17095
14.....17095
20.....17096, 17097
73.....17506, 17508
74.....17098, 17510
100.....17096, 17097
101.....17085, 17096, 17097, 17099, 17100, 17101, 17102, 17103, 17104, 17328, 17341, 17343
102.....17102, 17103
104.....17104
105.....17096, 17104
130.....17103, 17105
131.....17105
133.....17105
135.....17103, 17105
136.....17103
137.....17103
139.....17103
145.....17103
146.....17103
150.....17103
152.....17103
155.....17103
156.....17103
158.....17103
160.....17103
161.....17103
163.....17103
164.....17103
166.....17103
168.....17103, 17105

169.....17103
172.....17098
177.....17098
178.....17098, 17512, 17512, 17513, 17514
186.....17098
189.....17098
529.....17346
558.....17515, 17516, 17346
1308.....17106
Proposed Rules:
100.....17171
101.....17171, 18057
102.....17171
135.....17172
161.....17171
330.....17553
358.....17554

24 CFR
50.....17164
574.....17164
905.....17164
3500.....17165
Proposed Rules:
125.....17172
576.....17764

26 CFR
1.....17166, 17775
301.....17516, 17517
Proposed Rules:
1.....17557

28 CFR
35.....17520
36.....17521
Proposed Rules:
36.....17558

29 CFR
1400.....18007

30 CFR
Proposed Rules:
935.....17173, 17372
950.....17811

33 CFR
20.....17926
100.....17525, 18008, 18009
162.....17525
165.....17525
Proposed Rules:
165.....17567
334.....17373, 17374

34 CFR
377.....17308
Proposed Rules:
685.....17472

36 CFR
242.....17776
Proposed Rules:
1191.....17175

37 CFR
202.....17778

40 CFR
52.....17778, 17780, 18010, 18011
60.....18014
61.....18014
81.....17783
122.....18014
264.....18014
265.....18014
403.....18014
707.....18014
Proposed Rules:
Ch. I.....18062
80.....17175
238.....18062

42 CFR
413.....17527

43 CFR
PLO 6961.....18018

46 CFR
174.....17316
252.....17346

47 CFR
1.....17528
61.....17166, 17528
64.....17167
73.....17786, 17349
76.....17530, 17350
90.....17787
Proposed Rules:
2.....17180
61.....17813
73.....17816, 17817, 17818
80.....17180, 17568
87.....17568
90.....17819
94.....17568
97.....17180, 17375

49 CFR
1.....18018
523.....18019
525.....18019
533.....18019
537.....18019
552.....17787
821.....17531
826.....17531
1002.....17788
1017.....17788
1018.....17788
1312.....17788
1313.....17788
1314.....17788
Proposed Rules:
1039.....18072

50 CFR
17.....18029, 18035
100.....17776
216.....17789
217.....17364
227.....17364
301.....17791
611.....17462
658.....17169
672.....17806
675.....17366, 17367
685.....17462
Proposed Rules:
17.....17376, 18073
216.....17569
226.....17181
672.....17193, 17196, 17821
675.....17196, 17200, 17821

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List March 31, 1993

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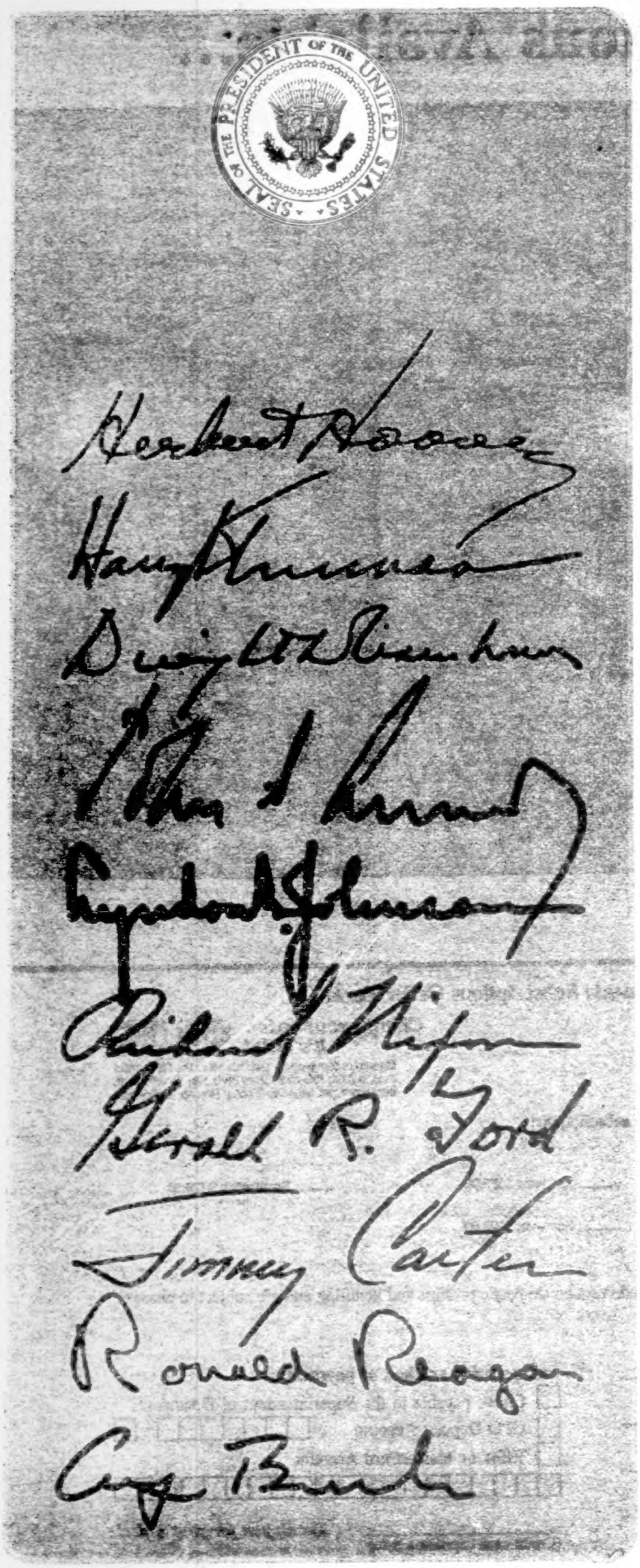

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